

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

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Certiorari to Charleston County

S.C. SUPREME COURT

Honorable Deadra L. Jefferson, Circuit Court Judge

\_\_\_\_\_

VAUGHN HILLIARD,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-002207

\_\_\_\_\_

APPENDIX

\_\_\_\_\_

TAYLOR D GILLIAM  
Appellate Defender

ALAN WILSON  
Attorney General

South Carolina Commission on Indigent  
Defense  
Division of Appellate Defense  
PO Box 11589  
Columbia, SC 29211-1589  
(803) 734-1330

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General  
Rembert Dennis Building  
1000 Assembly Street, Room 519  
Columbia, SC 29201

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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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) The grounds incorporated herewithin are only appropriate
- (b) for collateral review pursuant to establish state law
- (c) \_\_\_\_\_

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

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

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. Megan Ehrlich Charleston County Public Defender
  - Michael Loignon Charleston County Public Defender
  - ii. \_\_\_\_\_
  - Robert M. Pachak Commission on Appellate Defense
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. Trial
  - Trial
  - ii. \_\_\_\_\_
  - Direct Review
  - iii. \_\_\_\_\_

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

Vacate conviction and sentence and remand for new trial

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

NO

STATE OF SOUTH CAROLINA )  
County of Charleston )

VERIFICATION

**Vaughn Hilliard # 364310**

I, \_\_\_\_\_, 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 at this time for vacating, setting aside or correcting the convictions and sentence attacked in this application; and that the matters and allegations therein set forth are true and correct.

Vaughn Hilliard  
Vaughn Hilliard #364310

SWORN to and subscribed before me this 19  
day of July 2017

Delma Eastridge (L.S.)  
Notary Public

My Commission Expires: 3/3/2024

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

I, Vaughn Hilliard # 364310, hereby apply for leave to proceed in this action without prepayment of fees or costs or security thereof. In support of my application I declare under penalty of perjury that the following facts are true:

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

Vaughn Hilliard  
Applicant

SWORN or affirmed to and subscribed before me this

19 day of July 2017

Lee Corr., Inst.,  
990 Wisacky Highway  
Bishopville, SC 29010-1775

Debra Eastridge  
Notary Public

My Commission Expires: 3/3/2020



as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and by Article 1, §§ 3 and 14 of the South Carolina Constitution - prior to and during applicant's criminal trial.

11. (A)... Trial counsel's stewardship prior to and during applicant's trial was both unreasonable and prejudicial. SEE STRICKLAND -vs- WASHINGTON, 466 U.S. 668 (1984). Counsel's acts and omissions included, but were not limited to, the following:

A)... Counsel was ineffective prior to trial for failing to move before the court for an Immunity hearing under the Protection of Persons and Property Act codified in S.C. Code Ann. § 16-11-420(B) (Supp. 2010).

B)... Counsel was ineffective for failing to request a charge of manslaughter the lesser include offense of murder.

C)... Counsel was ineffective for failing to move for a mistrial when the trial court overruled counsel's hearsay objection and allowed Lt. Tammy Sad to testify to witness identification of applicant Rule 801(c) SCRE.

Applicant asserts that there is a reasonable probability that if not for counsel's errors the outcome of this trial has a reasonable probability of the results being different.

Respectfully submitted,

---

Vaughn Hilliard, 364310  
Lee Correctional Institution  
990 Wisacky Highway  
Bishopville, South Carolina

Date: \_\_\_\_\_

29010

APPLICANT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Vaughn Hilliard, #364310,	)	Case No.: 2017-CP-10-3719
	)	
Applicant,	)	
	)	<b>RETURN</b>
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

Respondent, making its Return to the application for Post-Conviction Relief (PCR) filed on July 21, 2017, would respectfully show this Court:

I.

Vaughn Hilliard (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. In March 2014, the Charleston County Grand Jury indicted Applicant murder (2014-GS-10-1341). The charge resulted from an incident on September 7, 2013, in which Applicant shot and killed the victim with a .22 rifle after an argument. Public Defenders Megan Ehrlich, Esquire and Michael Loignon, Esquire represented Applicant. Culver Kidd, Esquire and Richard Waring, Esquire prosecuted the case. On June 8, 2015, Applicant proceeded to trial before the Honorable Kristi L. Harrington. The jury found Applicant guilty as indicted. On June 10, 2015, Judge Harrington sentenced Applicant to imprisonment for forty years for murder.

Applicant filed a timely notice of appeal. Appellate Defender Robert M. Pachak of the South Carolina Commission on Indigent Defense—Office of Appellate Defense filed a brief on behalf of Applicant pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of

Appeals dismissed Applicant's appeal and granted counsel's motion to be relieved. State v. Hilliard, Op. No. 2017-UP-048 (S.C. Ct. App. filed January 25, 2017). The remittitur was returned to the circuit court on February 10, 2017.

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

## II.

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

1. "Ineffective Assistance of Counsel"
  - a. "Applicant received ineffective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the U.S. Constitution and by Article I, §§ 3 and 14 of the South Carolina Constitution – prior to and during Applicant's criminal trial."
  - b. "Trial Counsel's stewardship prior to and during Applicant's trial was both unreasonable and prejudicial."
  - c. "Counsel was ineffective prior to trial for failing to move before the court for an immunity hearing under the Protection of Persons and Property Act codified in S.C. Code Ann. § 16-11-420(B) (Supp. 2010)."
  - d. "Counsel was ineffective for failing to request a charge of manslaughter, the lesser included offense of murder."
  - e. "Counsel was ineffective for failing to move for a mistrial when the trial court overruled Counsel's hearsay objection and allowed Lt. Tammy Sad to testify to witness identification of Applicant – Rule 801(c) SCRE."

## III.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his or her

application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, Applicant must prove that counsel’s performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). The Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Applicant alleges Trial Counsel was ineffective for failing to move for a mistrial. The power of a court to declare a mistrial ought to be used with the greatest caution under urgent circumstances, and for very plain and obvious causes stated into the record by the trial judge. State v. Kirby, 269 S.C. 25, 28, 236 S.E.2d 33, 34 (1977). Granting of motion for mistrial is an extreme measure that

should be taken only where an incident is so grievous that prejudicial effect can be removed in no other way. State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999). Mistrial should not be granted unless absolutely necessary; to receive mistrial, defendant must show error and resulting prejudice. State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999). The record contains no evidence of any errors that would necessitate a mistrial. Trial Counsel did move for a new trial, but the trial judge denied the motion because she had not heard anything that would cause her to grant a motion for a new trial. (Tr. p. 490).

Applicant also alleges Trial Counsel was ineffective for not requesting a charge of the lesser-included offense of manslaughter. Trial Counsel told the trial judge that she did not want a charge on manslaughter because nobody had testified about Applicant being enraged, but rather requested a charge on self-defense and mutual combat. (Tr. p. 402-403). Where counsel articulates a valid strategic decision for her action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 454 S.E.2d 312 (1996); Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Stokes v. State, 308 S.C. 546, 419 S.E.2d 778 (1992). As the court observed in Strickland, "No particular set of detailed rules for counsel's conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant." Strickland, at 688-689. Counsel affirmatively decided not to request a manslaughter charge, which was reasonable in light of the facts of the case and the already valid defense strategies that were employed at trial.

Respondent therefore submits Applicant can satisfy neither 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.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRPC. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRPC.

V.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel. As to all other allegations, Respondent moves for summary dismissal pursuant to § 17-27-70 of the South Carolina Code of Laws 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.

VI.

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

VII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial counsel.

Respectfully submitted,

ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

By:   
ATTORNEYS FOR RESPONDENT

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

October 18, 2017

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 )  
 VAUGHN HILLIARD, #364310 )  
 )  
 Applicant, )  
 )  
 vs )  
 )  
 STATE OF SOUTH CAROLINA, )  
 )  
 Respondent, )  
 \_\_\_\_\_ )


IN THE COURT OF COMMON PLEAS  
**2017-CP-10-3719**

AFFIDAVIT OF SERVICE BY MAIL

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

**Rodney Duane Davis, Esquire**  
**Lowcountry Law Office**  
**4000 Faber Place Drive, Suite 300**  
**Charleston, SC 29405**

DATED this the 18<sup>th</sup> day of October, 2017.

  
 \_\_\_\_\_  
 Jennifer Jennison, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF CHARLESTON )  
 )  
 )  
 )  
 VAUGHN HILLIARD )  
 )  
 Applicant )  
 )  
 vs. )  
 )  
 STATE OF SOUTH CAROLINA )  
 )  
 Respondent )  
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THE COURT OF COMMON PLEAS  
 DOCKET NO. 2017-CP-10-3719

TRANSCRIPT OF RECORD

July 25, 2018  
 Charleston, South Carolina

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

RODNEY D. DAVIS, ESQ.  
 Attorney for the Applicant

MEGAN HARRIGAN JAMESON, ESQ.  
 Attorney for the State

JOYCE C. RUEGER, CVR-M  
 Circuit Court Reporter

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No exhibits were introduced

Vaughn Hilliard v State  
Post-Conviction Relief Hearing  
July 25, 2018

1 PROCEEDINGS

2 THE COURT: All right. Is the applicant ready to  
3 proceed?

4 MR. DAVIS: Yes, Your Honor.

5 THE COURT: Is the State ready to proceed?

6 MS. JAMESON: Yes, Your Honor.

7 THE COURT: This is Vaughn Hilliard versus the  
8 State, 2017-CP-10-3719. It's before the Court on an  
9 application for post-conviction relief, which was filed  
10 on July 21st of 2107. The State filed its return and Mr.  
11 Hilliard was convicted of murder on 6-10 of '15,  
12 sentenced by Judge Harrington to 40 years with credit for  
13 any time he was entitled to pursuant to 24-13-40. And  
14 that is indictment 2014-GS-10-1341, which is alleged to  
15 have taken place from incidents arising on September 7th  
16 of 2013. Ms. Ehrlich represented -- and Mr. Loignon  
17 represented the applicant at trial. Culver Kidd and  
18 Richard Waring appeared on behalf of the State. The  
19 trial began on June 18th.

20 And as I've already stated the jury found him guilty  
21 on June 10th of 2015 and he was sentenced to 40 years.  
22 The matter was appealed and it was dismissed pursuant to  
23 an Anders brief before the South Carolina Court of  
24 Appeals. And that is 2017-UP-48 filed January 25th of  
25 2017 and the remittitur was issued on February 10th of

Vaughn Hilliard v State  
Post-Conviction Relief Hearing  
July 25, 2018

1 2017. I assume we can dispense with any opening remarks  
2 Mr. Davis?

3 MR. DAVIS: Yes, Your Honor.

4 THE COURT: Ms. Jameson?

5 MS. JAMESON: Yes, Your Honor.

6 THE COURT: Call your first witness.

7 MR. DAVIS: Your Honor, for clarity of the record I  
8 appreciate I had time this morning to talk to Mr.  
9 Hilliard. We will be narrowing, and I've spoken with the  
10 Attorney General about this, we will be narrowing our  
11 grounds to three things; failure to explain in closing  
12 the ---

13 THE COURT: --- I'm sorry, say that -- your voice  
14 is -- and it might be my allergies.

15 MR. DAVIS: Well, I'm starting to lose a little bit  
16 too, Judge ---

17 THE COURT: --- no, I always tell my doctor I know  
18 when I'm having issues when I can't hear anybody and I'm  
19 going huh, huh. And it's not you. It's probably that my  
20 ears are a little stopped up. And I apologize for asking  
21 you having to repeat yourself. Go ahead, I'm listening.

22 MR. DAVIS: It was a self-defense case so the first  
23 ground would be failure to fully argue to the jury his  
24 frailty and inability to fully defend himself. Second of  
25 all was a failure to request a lesser included charge of

Vaughn Hilliard v State  
Post-Conviction Relief Hearing  
July 25, 2018

1 voluntary manslaughter. And finally, failing to discuss  
2 plea options including an Alford plea. Those would be  
3 the three grounds we would go forward on.

4 THE COURT: Okay. Is that the State's  
5 understanding?

6 MS. JAMESON: Yes, Your Honor.

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Vaughn Hilliard v State  
Post-Conviction Relief-Vaughn Hilliard-Direct Examination by Mr. Davis  
July 25, 2018

1 MR. DAVIS: We would call Mr. Hilliard as our first  
2 witness.

3 THE COURT: Sir, you can't stand. I just need you  
4 to raise your right hand for me to be sworn.

5 [Whereupon, the witness complies]

6 [Whereupon, the witness is duly sworn by the Court]

7 THE COURT: You can put your right hand down, sir.  
8 State your full name for the record.

9 THE WITNESS: Vaughn Hilliard.

10 THE COURT: And Mr. Hilliard if you could spell  
11 your last name for the court reporter for me?

12 THE WITNESS: H-I-L-L-I-A-R-D.

13 THE COURT: Thank you, sir. And if you can speak  
14 as loudly and as clearly as you can for me so that the  
15 court reporter can take down everything that you're  
16 saying I would appreciate it. You may proceed, Mr.  
17 Davis.

18 MR. DAVIS: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 - - - - -

21 VAUGHN HILLIARD,

22 Having been first duly sworn,

23 Was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. DAVIS:

Vaughn Hilliard v State  
Post-Conviction Relief-Vaughn Hilliard-Direct Examination by Mr. Davis  
July 25, 2018

1 Q. At the very beginning Mr. Hilliard you understand  
2 the charge that we are complaining about was a murder  
3 charge?

4 A. Yes.

5 Q. Do you understand if we are successful at your PCR  
6 that you would begin again and face the murder charge  
7 anew?

8 A. Yes.

9 Q. Do you understand that murder in South Carolina  
10 carries a mandatory minimum of 30 years in prison, which  
11 is day for day up to a life sentence?

12 A. Yes.

13 Q. Knowing that if we go forward we could open it back  
14 up and you could face an exposure is it still your desire  
15 to go forward today on the PCR?

16 A. Yes.

17 Q. Can you tell Judge Jefferson a little bit about your  
18 background? Where were you born and raised?

19 A. In Orangeburg County. And I resided in Charleston  
20 after that.

21 Q. And before you became disabled what kind of work did  
22 you do?

23 A. On the shipyard as a stevedore.

24 Q. And I apologize let me back up one step. What about  
25 your education, how far did you go in school?

Vaughn Hilliard v State  
Post-Conviction Relief-Vaughn Hilliard-Direct Examination by Mr. Davis  
July 25, 2018

- 1 A. Eleventh.
- 2 Q. Did you get your diploma or GED?
- 3 A. No, I did not.
- 4 Q. Are you able to read and write okay?
- 5 A. Yes.
- 6 Q. And now on the charge we're talking about and we're  
7 complaining about today who were your attorneys?
- 8 A. Ehrlich Megan and Michael something -- Loignon.
- 9 Q. Okay. Now did you hire attorneys or were those  
10 attorneys appointed to you from the Public Defender's  
11 Office?
- 12 A. They were appointed to me by the Public Defender's  
13 Office.
- 14 Q. Okay. Now the next few questions assume that I'm  
15 talking about both attorneys, okay?
- 16 A. Okay.
- 17 Q. Can you tell Judge Jefferson approximately how many  
18 times you met with your attorneys prior to going to  
19 trial?
- 20 A. It was about six times.
- 21 Q. Can you tell the Judge whether you were able to get  
22 out on bond or whether you remained in jail until your  
23 trial?
- 24 A. I remained in jail.
- 25 Q. So these six meetings would they have occurred at

Vaughn Hilliard v State  
Post-Conviction Relief-Vaughn Hilliard-Direct Examination by Mr. Davis  
July 25, 2018

1 the Charleston County Detention Center?

2 A. Yes.

3 Q. Were they in person meetings or were they by video  
4 or both?

5 A. Both.

6 Q. Okay. Can you give the Judge an idea of  
7 approximately how long these meetings would last when  
8 your attorneys would talk to you?

9 A. About an hour.

10 Q. Okay. Now were there any meetings here at the  
11 courthouse before you started your trial on June the 8th?

12 A. No.

13 Q. Okay. During the trial were there meetings here at  
14 the courthouse with your attorneys?

15 A. No.

16 Q. Did you receive a packet of paperwork including  
17 police reports and witness statements and that type of  
18 thing? Did you receive that from your attorneys?

19 A. Yes.

20 Q. Did they during these meetings with you did they  
21 review that paperwork?

22 A. Yes.

23 Q. In your discussions with your attorneys did they  
24 define for you what the elements of murder were?

25 A. Yes.

Vaughn Hilliard v State  
Post-Conviction Relief-Vaughn Hilliard-Direct Examination by Mr. Davis  
July 25, 2018

1 Q. Did they also explain to you what the possible  
2 sentence for a murder charge was?

3 A. Yes.

4 Q. Did they have discussions with you about going to  
5 trial on this charge?

6 A. Yes.

7 Q. And what was the defense that you were going to  
8 present at trial?

9 A. Self-defense.

10 Q. Now in preparation to go to trial and present that  
11 defense were there discussions about you testifying or  
12 not?

13 A. Yes.

14 Q. Did they tell you that you had the right to not  
15 testify if you wanted to; that you could remain silent?

16 A. Yes.

17 Q. But did they talk to you about testifying?

18 A. Yes, they just asked me did I want to testify, yes.

19 Q. Was there any preparation or practice about you  
20 testifying?

21 A. Yes.

22 Q. Can you tell the Judge -- can you tell Judge  
23 Jefferson what type of practice or preparation your  
24 attorneys conducted to get you ready to testify?

25 A. They came by and they spoke to me acknowledging me

Vaughn Hilliard v State  
Post-Conviction Relief-Vaughn Hilliard-Direct Examination by Mr. Davis  
July 25, 2018

1 about what questions might be asked.

2 Q. Were they practicing questions they would ask you?

3 A. Or the other, the Solicitor.

4 Q. And what the Solicitor would ask as well, right?

5 A. Right.

6 Q. Were there attorneys that participated in that other  
7 than Mr. Loignon and Ms. Ehrlich?

8 A. Yes.

9 Q. And would that have happened during these meetings  
10 that they had at the jail with you?

11 A. Yes.

12 Q. Now ultimately though did your two attorneys did  
13 they give you any opinion about whether you should remain  
14 silent or whether you should testify? Did they have an  
15 opinion on that?

16 A. No, I didn't --

17 THE COURT REPORTER: I'm sorry; repeat your answer  
18 please.

19 A. No, I didn't -- they didn't.

20 Q. [Mr. Davis] Ultimately did you make the decision  
21 about whether to testify or not?

22 A. Right. I made a decision to testify.

23 Q. That was your decision?

24 A. Right.

25 Q. You wanted to.

Vaughn Hilliard v State  
Post-Conviction Relief-Vaughn Hilliard-Direct Examination by Mr. Davis  
July 25, 2018

1 A. I wanted to testify.

2 Q. Now you were present during the entirety of your  
3 trial; you were in the courtroom right?

4 A. Yes.

5 Q. Now one of the complaints that you have indicated  
6 and I've told the Judge we'd be talking about is you have  
7 a complaint with Ms. Ehrlich about the closing argument  
8 she gave.

9 A. Correct.

10 Q. Can you tell the Judge what you think was wrong or  
11 was missing from the closing argument?

12 A. I think she didn't state it enough about my health.

13 Q. Well, if you could have written the script for the  
14 closing about your health why don't you tell Judge  
15 Jefferson what it is that you would have wanted that jury  
16 to know about your health in closing?

17 A. That I could not defend myself.

18 Q. And why was that?

19 A. I was in an accident.

20 Q. What kind of accident?

21 A. On the job accident. I messed up my knees, my wrist  
22 and my back and knocked out three of my teeth when I fell  
23 in the ship hold.

24 Q. And because of that accident what did that do to  
25 your mobility?

Vaughn Hilliard v State  
Post-Conviction Relief-Vaughn Hilliard-Direct Examination by Mr. Davis  
July 25, 2018

- 1 A. I was unable to do any kind of work. I couldn't  
2 finish --
- 3 THE COURT REPORTER: ' Couldn't finish?
- 4 THE COURT: His therapy.
- 5 A. Therapy.
- 6 Q. [Mr. Davis] What kind of therapy were you doing?
- 7 A. They were giving me like exercises and stuff.
- 8 Q. And where were you doing that?
- 9 A. At a chiropractor.
- 10 Q. And why couldn't you finish?
- 11 A. Because I was unable to finish it.
- 12 Q. Physically you ---
- 13 A. --- physically I couldn't do it.
- 14 Q. How were you -- and we're talking back in the summer  
15 of 2015 when you went to trial?
- 16 A. Right.
- 17 Q. How were you able to get around then?
- 18 A. In a wheelchair.
- 19 Q. Okay. And you're in a wheelchair again today.
- 20 A. A wheelchair today, yes sir.
- 21 Q. Were you also sometimes using a cane or canes to get  
22 around?
- 23 A. Sometimes I would use a cane.
- 24 Q. What about any other issue with your body? Were you  
25 wearing braces or anything like that?

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1 A. Yes, I wore a wrist brace, knee braces and back  
2 braces.

3 Q. And back in 2014 would your physical health have  
4 been about the same way?

5 A. Yes.

6 Q. How old were you -- I'll ask it the other way; I'll  
7 make it easy on you. When were you born?

8 A. November the 10th, 1957.

9 Q. And the other gentleman that you got into the  
10 argument -- got in the fight with was he older or younger  
11 than you?

12 A. He was much younger than me.

13 Q. Was he bigger or smaller than you?

14 A. He was bigger than me.

15 Q. At any time, at any time including through your  
16 trial do you remember having discussions with your  
17 attorneys about what is called lesser included offenses?  
18 Do you remember that phrase being discussed?

19 A. No, I don't remember that.

20 Q. Do you remember ever having a discussion with your  
21 attorneys about asking Judge Harrington to give the jury  
22 a third option as a verdict?

23 A. No, I don't remember that.

24 Q. So you knew at trial the jury could find you guilty  
25 of murder or not guilty.

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1 A. Or not guilty; guilty or not guilty.

2 Q. Was there ever a discussion a third option of a  
3 charge called voluntary manslaughter?

4 A. Yes.

5 Q. Can you -- what discussion was that?

6 A. The discussion was if I would accept the plea they  
7 would give me -- I could take anywhere from two years to  
8 20 years.

9 Q. Let me pause you there. We're going to get to an  
10 offer here in just a second.

11 A. Okay.

12 Q. Other than when that term voluntary manslaughter was  
13 used during your plea offer other than that was there any  
14 other discussion about that term voluntary manslaughter?

15 A. No.

16 Q. If you had been advised by your attorney that she  
17 could request of Judge Harrington to give the jury a  
18 third option of voluntary manslaughter would you have  
19 wanted your attorney to request that?

20 A. Yes.

21 Q. Now let's shift gears to an offer you were talking  
22 about, okay. At some point there was a discussion about  
23 pleading guilty to voluntary manslaughter, is that right?

24 A. Correct.

25 Q. When do you recall that happening; how far ahead of

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1 the trial do you remember?

2 A. Not exactly.

3 Q. Can you tell Judge Jefferson what you recall the  
4 discussion with your attorneys about that offer?

5 A. That offer I was going to be charged I could be  
6 charged for murder of not guilty or guilty.

7 Q. Okay. When they came to you and said there was an  
8 option to plead guilty, when your attorneys talked to you  
9 about maybe pleading guilty do you remember what those  
10 discussions were?

11 A. No --

12 THE COURT: I'm sorry sir; could you repeat your  
13 answer?

14 A. Not right off hand.

15 Q. [Mr. Davis] Do you remember the charge that you were  
16 being offered? What were they calling it?

17 A. It was voluntary manslaughter.

18 Q. And did your attorneys tell you what that charge  
19 carried, what the possible sentence was for voluntary  
20 manslaughter?

21 A. Two to 20; two to 20 years.

22 Q. Okay. And you rejected that, you didn't take it,  
23 you went to trial right?

24 A. Right.

25 Q. Why didn't you accept that offer?

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1 A. Because I didn't want to admit to murder which it's  
2 not murder.

3 Q. Okay. And even though they were calling it  
4 something else, they were calling it voluntary  
5 manslaughter with a smaller range of punishment, why  
6 didn't you plead to the smaller charge?

7 A. I didn't want to be charged with murder.

8 Q. They were offering you to plead to something other  
9 than murder. Why didn't you plead to the charge other  
10 than murder, the voluntary manslaughter? Why didn't you  
11 plead to that?

12 A. I don't know nothing about any other charges. It  
13 was murder or voluntary.

14 Q. They brought you an offer for voluntary  
15 manslaughter. I'm simply asking you to tell Judge  
16 Jefferson why you didn't accept ---

17 A. --- oh, I didn't ---

18 Q. --- a guilty plea to voluntary manslaughter?

19 A. Because I didn't feel I was guilty.

20 Q. So finally I want to ask you a few questions about  
21 another alternative. In the discussions about pleading  
22 guilty to voluntary manslaughter, in those discussions  
23 about pleading to a smaller charge, do you ever recall  
24 your attorneys using the phrase Alford plea or guilty  
25 under Alford?

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1 A. No, I don't recall that.

2 Q. If you pled guilty to voluntary manslaughter based  
3 on the offer they were bringing you did you think you  
4 would have to admit to the Judge that you intentionally  
5 did that?

6 A. Yes.

7 Q. If you had been given this option I want to know if  
8 you would have taken it.

9 A. Yes, I would have ---

10 Q. --- hold on. I'm going to give you the option,  
11 okay. If you had been given the option of being  
12 convicted of voluntary manslaughter two years to 20 years  
13 instead of murder but you didn't have to admit guilt but  
14 you do admit that if you went to trial the State had  
15 witnesses and evidence that if the jury believed them you  
16 would be found guilty of murder and you could avoid that  
17 would you have pled guilty to voluntary manslaughter  
18 under those circumstances?

19 A. Yes.

20 Q. Was that ever offered to you and explained to you?

21 A. No, I don't remember that --

22 Q. One final question on that. You understand even if  
23 you had been offered that and accepted that the range of  
24 punishment that Judge Harrington could have chosen from  
25 was for two years to 20 years.

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1 A. Correct.

2 Q. And you're telling Judge Jefferson you would have  
3 taken that?

4 A. Correct.

5 Q. Why would you have taken the conviction if you're  
6 still maintaining you're innocent of something less than  
7 murder? Why?

8 A. Because I didn't want to face --

9 THE COURT REPORTER: I'm sorry?

10 THE COURT: He didn't want to face 40 years.

11 Q. [Mr. Davis] Thank you, Mr. Hilliard.

12 MR. DAVIS: Thank you, Your Honor. No further  
13 questions.

14 THE COURT: You may proceed.

15 MS. JAMESON: Thank you, Your Honor.

16 THE COURT: You're welcome.

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1 CROSS-EXAMINATION

2 BY MS. JAMESON:

3 Q. Mr. Hilliard, you testified you turned down the  
4 original 20 year offer because you didn't want to admit  
5 you were guilty, right?

6 A. Correct.

7 Q. But now you just testified you would have taken the  
8 20 year offer under Alford because you didn't want to  
9 face the 40.

10 A. Correct.

11 Q. So was it admitting your guilt or the sentence?  
12 What would cause you to turn down the initial plea offer?

13 A. Because I'm not guilty.

14 Q. So, you would have taken the plea only if it was  
15 pursuant to Alford?

16 A. Correct.

17 Q. Even if it was for 20 years?

18 A. Correct.

19 MS. JAMESON: No further questions, Your Honor.

20 THE COURT: You may call your next witness -- or  
21 any redirect; I'm sorry.

22 MR. DAVIS: No, Your Honor. And Your Honor we  
23 would rely on Mr. Hilliard's presentation.

24 THE COURT: You may proceed.

25

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1 MS. JAMESON: The State would call Megan Ehrlich.

2 [Whereupon, Ms. Ehrlich comes forward]

3 [Whereupon, the witness is duly sworn by the Clerk  
4 of Court]

5 CLERK OF COURT: Please state your first and last  
6 name and spell your last name loudly and clearly into the  
7 microphone.

8 THE WITNESS: Megan Ehrlich, E-H-R-L-I-C-H.

9 THE COURT: You may proceed.

10 MS. JAMESON: Thank you, Your Honor.

11 THE COURT: You're welcome.

12 - - - - -

13 MEGAN EHRLICH,

14 Having been first duly sworn,

15 Was examined and testified as follows:

16 DIRECT EXAMINATION

17 BY MS. JAMESON:

18 Q. Ms. Ehrlich, how long have you been practicing law?

19 A. Since November of 2006.

20 Q. Where are you presently employed?

21 A. At the Charleston County Public Defender's office.

22 Q. And it was in that capacity that you were appointed  
23 to represent Mr. Hilliard?

24 A. Yes, ma'am.

25 Q. Were you his first attorney?

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1 A. I was.

2 Q. How many times did you meet with him before trial?

3 A. In looking through my notes, and I didn't keep notes  
4 for every single meeting, I have that I met with him  
5 approximately 12 to 13 times.

6 Q. Did you receive discovery materials from the State  
7 in this case?

8 A. I did.

9 Q. Did you share those materials with Mr. Hilliard?

10 A. I did. I reviewed it with him and met with him at  
11 times in the jail multipurpose room where we could view  
12 the evidence on a laptop so he could see photographs and  
13 watch anything that we needed to watch that was only  
14 available electronically.

15 Q. What was the State's theory of the case or what was  
16 their evidence to show that he was guilty?

17 A. Their theory of the case was that there had been a  
18 minor argument between two people and that Mr. Hilliard  
19 had been humiliated by being pushed down by the victim  
20 and that that led to him getting a gun and shooting the  
21 victim through a fence.

22 THE COURT: I'm sorry, you said shooting the victim  
23 through a fence?

24 THE WITNESS: Through a chain-link fence.

25 THE COURT: Okay.

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1 Q. [Ms. Jameson] Was this fence locked?

2 A. It was locked. There were gates that kind of  
3 surrounded the property so it was a property where there  
4 were two trailers where Mr. Hilliard lived at that time  
5 with his wife Charlotte and then his mother lived in the  
6 other trailer.

7 There was a six foot chain-link fence that  
8 surrounded it. There was barbed wire at the top. And  
9 there was a gate that cars could come in that was locked  
10 and then also a side gate that faced the apartments near  
11 where this happened.

12 Q. And the State never alleged that the victim had gone  
13 onto Mr. Hilliard's property or that Mr. Hilliard had  
14 gone onto the adjacent property where the victim was  
15 socializing, correct?

16 A. The State conceded that the victim either pushed or  
17 punched Mr. Hilliard. They said that wasn't an intrusion  
18 on his property. We argued that that was an intrusion on  
19 his property.

20 Q. And his arm went through the hole in the fence,  
21 correct?

22 A. Right, when he punched Mr. Hilliard in the face.

23 Q. Was there any testimony from State's witnesses that  
24 the victim was turned to leave when he was shot?

25 A. There was testimony I believe from Angela Steed who

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1 said that he had turned to leave when the shot was fired.

2 I think she was the only person who testified to that.

3 Q. Was there any testimony from a pathologist here  
4 about the angle at which the entry wound of the bullet?

5 A. There might have been. If you want me to refer to a  
6 page in the transcript I can.

7 Q. Do you recall that being an issue the State arguing  
8 that in their closing that the physical evidence also  
9 supported that the victim had turned to leave when he was  
10 shot?

11 A. I don't recall that specifically but if it's in the  
12 transcript I'm sure that they would have argued that just  
13 as we would have probably crossed the medical examiner  
14 about bodies being fluid and turning and people aren't  
15 straight-forward when shots are fired.

16 Q. What sort of investigation did you do here? I think  
17 you said -- or excuse me, did you go to the scene?

18 A. I went -- I had two different investigators who were  
19 involved in the case. The first one was Lee Ginn  
20 [phonetic] who then retired and Dale Wilson from my  
21 office took over the investigation after that.

22 I actually went out to the scene to walk the scene  
23 and spoke to some of the people who hung out in that area  
24 including Earl who was one of the State's many witnesses  
25 we found. Another witness through I believe Mr.

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1 Hilliard's wife pointed us to a Paul Bradley who we  
2 located that the police had never spoken to. We did a  
3 lot of investigation as far as interviewing and prepping  
4 witnesses. We found another witness, Carl who we talked  
5 to that the State had not really found or spoken to much.  
6 So we did a lot of investigation.

7 Q. Some of these witnesses that you found are there any  
8 that you elected not to call -- how many witnesses did  
9 you call in his defense?

10 A. We called Paul Bradley who was a neighbor who lived  
11 in an apartment who saw part of the altercation and  
12 testified about having to call his mother so that Mr.  
13 Hilliard would have help getting up off the ground. And  
14 then we also called Mr. Hilliard.

15 I elected not to call that other witness I was  
16 talking about, Carlton Moore. We flew him here from  
17 Florida and we were potentially going to call him but  
18 decided his testimony would not help the self-defense  
19 claim.

20 Q. Why was that?

21 A. One of our better arguments for the self-defense was  
22 that there was testimony that the victim was coming  
23 towards Mr. Hilliard when the incident was going on after  
24 there is the punch that leads to Mr. Hilliard getting up  
25 and going into the trailer and getting his rifle and

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1 sitting back down. But then there was testimony that the  
2 altercation kind of started back up after the victim went  
3 to the car. Most of the witnesses were saying that there  
4 was Mr. -- the victim was coming towards Mr. Hilliard.

5 Mr. Moore didn't really support that. He made it  
6 sound like they were standing at the fence or standing  
7 about four feet away arguing back and forth and that  
8 there wasn't an advance by the victim. And I was  
9 concerned that that was going to hurt the self-defense  
10 claim.

11 Q. And that was your defense at trial, self-defense,  
12 correct?

13 A. Yes.

14 Q. Did you ask for a self-defense charge?

15 A. I did.

16 Q. Was one given?

17 A. It was.

18 Q. Regarding plea offers what offers did you get in  
19 this case?

20 A. The plea offer that was made by the State was to  
21 plead to voluntary manslaughter for a negotiated 20 year  
22 sentence. So there was no range offered. The offer was  
23 plead to the 20 or go forward to trial on the murder.

24 Q. Did you convey that to your client?

25 A. I did. I conveyed it to him in writing and in

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1 person.

2 Q. Did you explain the terms of that offer?

3 A. I did.

4 Q. Did you explain to him the potential sentences for  
5 murder?

6 A. I did.

7 Q. Did you explain that it would be 20 years -- excuse  
8 me, 30 years day for day up to life?

9 A. I did.

10 Q. What was his response to the 20 year negotiated  
11 offer?

12 A. He was not interested in the offer. There was a lot  
13 of concern over his health and whether or not he would be  
14 able to survive that sort of sentence. We had extensive  
15 discussions about that.

16 My notes from back on May 22, 2015 indicated that  
17 there was no plea offer that he was interested in, that  
18 he did not believe he would survive the 17 years, and  
19 that he did not think that he would make it through a 10  
20 year sentence.

21 Q. So he affirmatively told you he wasn't interested in  
22 serving any term of imprisonment?

23 A. That's what my notes indicate.

24 Q. Did you ever -- did the State ever offer to let him  
25 plead pursuant to Alford?

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1 A. No.

2 Q. Did you ever approach the State about negotiating an  
3 Alford plea?

4 A. I didn't because there didn't appear to be an  
5 interest on Mr. Hilliard's part of serving the length of  
6 sentence the State was looking to have in this case. So  
7 if he felt he couldn't survive even a 10 year offer when  
8 we had a 20 year offer there didn't seem to be much  
9 negotiation that would be successful there.

10 Q. So based on your interactions with him, his  
11 hesitancy towards the plea in your opinion would have  
12 been the term of sentence; not admitting his guilt.

13 A. I mean he was also clear with me that he didn't feel  
14 that he was guilty, that he thought if he was acting in  
15 self-defense that he was protecting himself that he  
16 didn't have another option. He was very clear that he  
17 felt he was innocent.

18 But there were two parts of the plea discussion. It  
19 was I didn't do this and very serious concern over his  
20 health conditions and whether or not he would survive any  
21 sort of prison sentence.

22 Q. Is that one of the reasons you didn't request a  
23 lesser included on voluntary manslaughter?

24 A. It is. And we also had discussions and meetings  
25 over whether or not we should ask for manslaughter or not

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1 or should we go all or nothing on murder.

2 Q. And what was your client's opinion at the time  
3 regarding that?

4 A. My recollection of it was that he wanted to go all  
5 or nothing on murder. Ultimately our last discussion he  
6 left it up to me to make the decision. But our  
7 discussions throughout the process supported that he  
8 would not want to be going to prison for a substantial  
9 prison sentence.

10 And if we had been successful at getting a  
11 conviction of only manslaughter he would have received a  
12 substantial prison sentence and that did not appear to be  
13 something he was interested in.

14 Q. Do you recall when the Court asked you about a  
15 voluntary instruction during the charge conference?

16 A. Yes.

17 Q. Do you recall what you told the Court, and I'm  
18 referencing page 437 if you need to refresh your  
19 recollection.

20 A. I believe I said no pretty quickly. Judge  
21 Harrington asked me -- she was asking me if he wanted to  
22 plea at the time after hearing the testimony. And I  
23 responded he didn't even want a voluntary instruction.  
24 She said have you talked to him after he testified and I  
25 said he hasn't changed much in the past two years. And

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1 then we dealt with a juror issue.

2 THE COURT: Can I interrupt you one second Ms.  
3 Jameson. Totally -- it's a little administrative issue I  
4 need to deal with in Berkeley. Let me take a little  
5 quick break. Bear with me just one second and let me see  
6 what's going on.

7 [Off the record momentarily]

8 THE COURT: Thank y'all, I appreciate it. We had a  
9 little emergency at the jail I needed to address. But  
10 it's resolved. You may proceed. I apologize and again I  
11 appreciate y'all being indulgent.

12 MS. JAMESON: Thank you, Your Honor.

13 THE COURT: You're welcome.

14 Q. [Ms. Jameson] Ms. Ehrlich, I want to turn your  
15 attention to your closing argument. You testified that  
16 your defense was self-defense. Did you mention to the  
17 jury throughout the trial Mr. Hilliard's medical  
18 condition?

19 A. I did.

20 Q. Was that one of the focuses of your closing  
21 argument?

22 A. It was included in the closing argument. I don't  
23 know if -- I think -- whether or not it was a focus is  
24 probably subjective.

25 Q. If you will turn to page 450.

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- 1 [Whereupon, the witness complies]
- 2 A. Yes.
- 3 Q. How do you start your closing argument? What's the  
4 second, I guess your third statement to the jury? How do  
5 you describe Mr. Hilliard there?
- 6 A. Scared, vulnerable and feeble and acted in self-  
7 defense.
- 8 Q. And if you will turn to the bottom of that page do  
9 you discuss the discrepancies between Mr. Hilliard and  
10 the victim?
- 11 A. You're talking about at the bottom of 450?
- 12 Q. Yes, if you'll look at lines 22 and 23.
- 13 A. Yes. I said that at the time he was 55 years old.  
14 He's 57 now; he's walking with a back brace and a cane.
- 15 Q. If you will, turn to page 452.
- 16 [Whereupon, the witness complies]
- 17 Q. Do you make comparisons physically between the  
18 victim Troy and Mr. Hilliard? If you will, read 452 to  
19 453 to yourself, the bottom to the top.
- 20 A. I did. Do you want me to go through that?
- 21 Q. No, that's all right. He was on a cane or a walker  
22 at the time of the incident, right?
- 23 A. Yes.
- 24 Q. And during trial he was in a wheelchair.
- 25 A. Yes.

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1 Q. If you will, turn to the next page 454. Was there  
2 any discussion about the multiple types of medication  
3 that Mr. Hilliard was on at the time of the shooting?

4 A. Which page?

5 Q. This is just general. Was there any evidence  
6 presented, did you present any evidence to the jury that  
7 Mr. Hilliard was on different types of medication for  
8 various different ailments at the time of the shooting?

9 A. I believe there was testimony that when one of the  
10 officers was searching the trailer that along with  
11 ammunition they found some different pill bottles and I  
12 believe we pointed that out to the jury.

13 Q. Was there testimony that he was in so much pain he  
14 was on Oxycontin?

15 A. There might have been. I can't remember what  
16 medication he was on. I know there was mention of that  
17 somewhere in one of the closing arguments.

18 Q. Was he having difficulty walking at the time of the  
19 crime according to some witnesses?

20 A. Yes.

21 Q. And let's look at 458, the last paragraph, your  
22 final statement to the jury. Would you read what your  
23 final sentence to the jury was?

24 A. Are you talking about starting at line 17?

25 Q. Yes.

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1 A. [Reading] The only person who stopped him was the  
2 vulnerable, feeble guy scared for his life who shot one  
3 time in self-defense.

4 Q. So you mentioned numerous times throughout your  
5 closing that Mr. Hilliard is frail, can barely walk, and  
6 acted in self-defense.

7 A. Yes.

8 MS. JAMESON: Moment's indulgence, Your Honor.

9 [Whereupon, Ms. Jameson reviews documents]

10 MS. JAMESON: No further questions, Your Honor.

11 THE COURT: You may proceed, Mr. Davis.

12 MR. DAVIS: Thank you, Your Honor.

13 THE COURT: You're welcome.

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1 CROSS-EXAMINATION

2 BY MR. DAVIS:

3 Q. The offer of voluntary manslaughter was conditioned  
4 that it would be a negotiated plea to 20 years, right?

5 A. Yes.

6 Q. And then in testimony about the lesser included at  
7 trial I believe you indicated that you had a discussion  
8 with Mr. Hilliard. He wanted all or nothing but  
9 ultimately left the decision to you.

10 A. That's what my notes indicate. We discussed it  
11 multiple times. We didn't just discuss it once. My last  
12 note about it from June 4th I believe I have a note  
13 murder or manslaughter let me, and then I have an arrow  
14 that says let me decide.

15 And then I have later in my notes kind of a  
16 comparison of the two charges where I have what murder  
17 carries, that he could be found guilty or not guilty.  
18 I have manslaughter and then I have a big line through it  
19 so that tells me that during discussions he was still  
20 wanting to go forward murder or nothing.

21 But ultimately he knew that it was my decision and I  
22 made that decision based on all of our prior  
23 conversations.

24 Q. One of the things you paraphrased a bit ago was one  
25 of the factors dealt with, one factor for not asking for

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1 the lesser dealt with his view that any lengthy sentence  
2 might be a life sentence, is that right?

3 A. Yes.

4 Q. And so the negotiated 20 was rejected and he  
5 discussed with you about 10 and he wasn't interested in  
6 that either.

7 A. That wasn't from the State. So the State never came  
8 to us with a 10 year offer. But in trying to gauge where  
9 he was I asked him would you even be interested if they  
10 came to you at 10 and he felt that he wouldn't survive  
11 the 10 year sentence.

12 Q. And that was one of several factors on your mind  
13 when you made the decision not to ask for a lesser  
14 included.

15 A. Right.

16 Q. The one thing on that though had a jury been given  
17 that option and convicted him of that then it would have  
18 been an open sentence from the two to 20.

19 A. Two to 30.

20 Q. Two to 30; I apologize, two to 30. So the State  
21 wouldn't have locked him in to any particular number,  
22 right?

23 A. Had he been convicted of manslaughter?

24 Q. Correct.

25 A. Right. The sentencing would have been up to the

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1 Judge.

2 Q. And you could have argued for less than 10.

3 A. I could have.

4 [Whereupon, Mr. Davis confers with his client]

5 Q. Thank you, Ms. Ehrlich. No other questions.

6 MS. JAMESON: Briefly, Your Honor.

7 THE COURT: Yes, ma'am.

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Vaughn Hilliard v State  
Post-Conviction Relief-Megan Ehrlich-Redirect Examination by Ms. Jameson  
July 25, 2018

1 was going to leave. I know he was going towards the car  
2 with his girlfriend. I don't know what he was doing. I  
3 think the girlfriend said that they were going to leave.

4 Q. He appeared to be leaving or ---

5 A. --- he definitely appeared to be ---

6 Q. --- walking away.

7 A. He was going to the car.

8 Q. When your client came back out with a rifle.

9 A. Yes..

10 MS. JAMESON: No further questions, Your Honor.

11 THE COURT: Any objection to Ms. Ehrlich being  
12 excused from the applicant?

13 MR. DAVIS: No, Your Honor.

14 THE COURT: From the State?

15 MS. JAMESON: No, Your Honor.

16 THE COURT: You're excused.

17 THE WITNESS: Thank you.

18 [Whereupon, the witness is excused and exits the  
19 witness stand]

20 THE COURT: Any further witnesses?

21 MS. JAMESON: No, Your Honor.

22 THE COURT: Any rebuttal testimony?

23 MR. DAVIS: No, Your Honor.

24 THE COURT: Any argument?

25

Vaughn Hilliard v State  
Post-Conviction Relief-Closing Arguments-Remarks by Mr. Davis  
July 25, 2018

1 CLOSING ARGUMENT

2 BY MR. DAVIS:

3 Just briefly on the three issues, Your Honor. We  
4 would argue that if the lesser included charge had been  
5 requested there was ample reason for it to be given. In  
6 fact on page 402 it begins in chambers charge conference  
7 and the very first question by Judge Harrington: All  
8 right, are you requesting any lesser included. So the  
9 Judge was anticipating and expecting that. And Ms.  
10 Ehrlich, the decision was left to her and she did not.  
11 We would argue that it should have been requested.

12 And given that the jury had the option of not guilty  
13 because now there it is less clear so there is not a  
14 binary choice between guilty or not guilty. It makes it  
15 a much more nuance and complex decision for them. It  
16 could have hung them up or certainly they could have  
17 believed that while he was guilty of some offense it was  
18 not malice aforethought homicide.

19 I'll briefly go over the part that Mr. Hilliard has  
20 been focused on a bunch. We understand there were some  
21 references to his health, to medication ---

22 THE COURT: --- I'm sorry; repeat that one more  
23 time.

24 MR. DAVIS: There was some references to his --

25 THE COURT: --- no, the first sentence you said; I

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1 didn't hear what you said.

2 MR. DAVIS: This is something Mr. Hilliard has been  
3 focusing on from basically day one. While he knows that  
4 Ms. Erhlich presented some evidence as to his health,  
5 medications, his feebleness he has always maintained that  
6 it was not sufficiently presented to the Court. You have  
7 the transcript and we'll rely on the transcripts on that  
8 issue.

9 And then finally Your Honor we do think it is clear  
10 that pleading guilty under Alford to a much favorable  
11 offer negotiated 20 years that is not day for day ---

12 THE COURT: --- is there any evidence in the record  
13 that that was ever an option?

14 MR. DAVIS: Yes. Ms. Ehrlich and my client both  
15 testified that it was offered and ---

16 THE COURT: --- no, no. Did the State ever offer  
17 an Alford plea on the 20 years? It was my understanding  
18 the offer was voluntary manslaughter 20 years. Generally  
19 when the State makes an offer like that if it was Alford  
20 was included then that would be a part of it.

21 Generally in a case like this if they make that  
22 offer they expect you to plead guilty. They don't expect  
23 there to be any vague anything about it. They want you  
24 to allocute to the facts. And so generally if you're  
25 going to do that they tell you then you plead straight up

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1 to the offense. They're not going to entertain really an  
2 Alford plea under a circumstance like this. So I'm  
3 trying to figure out where in the record was an Alford  
4 ever a part of that equation.

5 MR. DAVIS: Our argument is that's the problem is  
6 that Ms. Ehrlich represents Mr. Hilliard ---

7 THE COURT: --- I understand that ---

8 MR. DAVIS: --- and she could have begun those  
9 negotiations. Negotiations still have to come from the  
10 State. She could have talked to Mr. Hilliard who has  
11 testified he would have said wait, if I can do it under  
12 that -- under the Alford protection I'll do that. Had  
13 she had the discussion he would have answered that way.  
14 She would have taken it to the State ---

15 THE COURT: --- yes, my question is what proof is  
16 there in the record the State would have ever accepted  
17 that?

18 MR. DAVIS: Well, the accepting or not would have  
19 been through the Court.

20 THE COURT: No, no, the State has to -- when you  
21 negotiate a sentence all the terms are negotiated. When  
22 you -- in other words if they were going to offer 20  
23 years then Alford would have been a part of that  
24 discussion if that was acceptable to them. You don't get  
25 to say I'm going to reduce it and I'm going to let you

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1 plead and you can then get before the Court and say  
2 Alford. I can assure you it would have fallen apart at  
3 that point and the State would have said no, no; that was  
4 not our agreement. So what I'm trying to figure out is  
5 because I haven't read anything in there that says that  
6 and I haven't heard any testimony that supports that that  
7 Alford was ever a part of that discussion because Alford  
8 says you can prove my guilt; I'm not going to admit my  
9 guilt but I don't want to take the risk.

10 And in a circumstance where the State is reducing a  
11 murder charge based on experience I don't see that, not  
12 where they had a strong case that ever being a part of  
13 the discussion. And they would have to agree if it was  
14 negotiated to 20 years. They would have to agree that it  
15 was an Alford plea unless their position would be you can  
16 plead straight up to the murder and you can say whatever  
17 you want to say whether it's Alford or whatever.

18 But if you're going to negotiate a sentence all of  
19 that is part of the negotiation. You don't get to  
20 negotiate a sentence and then tell the Court I'm going to  
21 make it an Alford plea because that's a part of the  
22 negotiations.

23 MR. DAVIS: Not always, Your Honor, because you've  
24 entertained pleas where the negotiation was for the  
25 period of incarceration, a suspended sentence and then

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1 are you leaving probation up to me? Yes, Your Honor, the  
2 negotiation ---

3 THE COURT: --- Alford is not up to me; not when it  
4 comes to that. I've never had a negotiated plea where  
5 Alford was not a part of the discussion. And if it ever  
6 came up the plea fell apart.

7 MR. DAVIS: And ---

8 THE COURT: --- unless they went back and  
9 renegotiated it and came back and told me that Alford was  
10 a part of the negotiation. A negotiated plea gives me  
11 one option; to accept it or reject it. And the terms are  
12 specified by the State and the defense.

13 MR. DAVIS: And generally ---

14 THE COURT: --- and that's what we're talking  
15 about, correct; a negotiated plea?

16 MR. DAVIS: Generally speaking Your Honor you have  
17 had pleas where part of the plea has been negotiated and  
18 some terms and conditions ---

19 THE COURT: --- but they tell me that.

20 MR. DAVIS: That's right, Your Honor. But what I'm  
21 saying is it doesn't have to be that every part of it ---

22 THE COURT: --- that's not a part of the sentence.  
23 Alford is not a part of the sentence.

24 MR. DAVIS: I understand that.

25 THE COURT: But guilt and sentence -- the bottom

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Post-Conviction Relief-Closing Arguments-Remarks by Mr. Davis  
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1 line is a negotiated plea is a contract, which means you  
2 have to have a meeting of the minds and some  
3 consideration. The State gives you some consideration in  
4 reducing; you give them some consideration by accepting  
5 it and alleviating them of the responsibility, the option  
6 and the expense of a trial in its most simplistic terms.  
7 I've never had a plea where Alford was negotiated.

8 MR. DAVIS: Anecdotally I believe you ---

9 THE COURT: ---, I mean un-negotiated.

10 MR. DAVIS: Anecdotally I believe Your Honor. But  
11 the law would allow the plea to go forward under those  
12 circumstances is our ---

13 THE COURT: --- no Judge would take it unless the  
14 State agreed that it was Alford because that would be a  
15 part of the negotiation because the State would say we  
16 withdraw our offer because we did not accept that ---

17 MR. DAVIS: --- and Your Honor ---

18 THE COURT: --- that was not a part of what we  
19 agreed to.

20 MR. DAVIS: And I believe that's assuming facts not  
21 in evidence. I ---

22 THE COURT: --- no, it's a legal theory. It's  
23 precedent. It's about what a negotiated plea in its very  
24 essence is from a black letter precedent. A negotiated  
25 plea is a negotiated written in stone whatever. So even

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1 if probation is left up to the Court that part of it is  
2 still negotiated. They're saying Your Honor we've  
3 negotiated a five year plea suspended on whatever your  
4 discretionary decision is about probation. That does not  
5 eliminate the negotiated posture of that case. It just  
6 simply says we've negotiated to let you have discretion  
7 about this part of it. But we've negotiated what the  
8 rest of it is.

9 MR. DAVIS: And ---

10 THE COURT: --- but really in theory the probation  
11 is negotiated too. It's just negotiated that you're  
12 going to let me make the decision.

13 MR. DAVIS: So likewise the crime and the sentence  
14 could be and the term meaning Alford or straight up  
15 doesn't have to be. I understand anecdotally you've not  
16 seen it that way but as you just said parts can be  
17 negotiated and parts left to the Judge's discretion. We  
18 would argue the Judge would have accepted it. That's the  
19 end of my argument, Your Honor. Thank you.

20 THE COURT: Okay. Yes ma'am?

21 MS. JAMESON: Thank you, Your Honor. May it please  
22 the Court?

23 THE COURT: Yes, ma'am.

24

25

Vaughn Hilliard v State  
Post-Conviction Relief-Closing Arguments-Remarks by Ms. Jameson  
July 25, 2018

1 CLOSING ARGUMENTS

2 BY MS. JAMESON:

3 As to the first issue that counsel failed to bring  
4 up his health conditions and his frailty in her closing  
5 the record is very clear that she thoroughly did this. I  
6 counted seven different passages where Ms. Ehrlich  
7 brought that up to the jury in her closing including in  
8 her beginning portion where she describes him as scared,  
9 vulnerable, feeble, and acted in self-defense.

10 And then again the last words she says to the jury  
11 are again describing him as vulnerable, feeble guy scared  
12 for his life who shot one time in self-defense. The  
13 record clearly refutes this allegation. Ms. Ehrlich  
14 wasn't deficient. She was proficient in bringing that  
15 out to the jury. That was the whole crux of her defense  
16 so we'd ask you to deny that claim.

17 Failure to request a lesser included offense the  
18 State would submit there is no deficiency here. The  
19 testimony from Ms. Ehrlich is that they had discussed  
20 this. The record offers support that she made a comment  
21 in the charge conference that for the past two years her  
22 client has been consistent that he was not interested in  
23 voluntary manslaughter or a lesser included. He wanted  
24 to go straight up. And Ms. Ehrlich made a strategic  
25 decision to go straight up, to not give the jury an

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Post-Conviction Relief-Closing Arguments-Remarks by Ms. Jameson  
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1 opportunity to split the baby and go for the acquittal.  
2 And so that was a strategic decision she made and there  
3 is no deficiency that can be shown there. Regarding the  
4 prejudice prong the State would submit there is no  
5 evidence that he would have been convicted of voluntary  
6 manslaughter if the Court had charged the jury on that.

7       The evidence here shows that Mr. Hilliard after the  
8 fight had concluded went into his house, got a gun and  
9 shot the victim while he was turned approaching his car.  
10 Witnesses said he was turned to leave. The pathologist  
11 says based on the way the bullet entered the body he was  
12 turning to leave. So the State would submit there is no  
13 prejudice. He can't show that he would have been  
14 convicted of the lesser included but for Ms. Ehrlich  
15 failing to request the charge.

16       And then to the last allegation failure to explain  
17 an Alford plea the Court is correct, there is no evidence  
18 here that the State had ever offered an Alford plea.  
19 It's not credible that he would have taken an Alford plea  
20 for 20 years when he turned down a 20 year offer before.

21       And counsel testified he turned the offers down  
22 because he didn't think he would survive any term of  
23 imprisonment. We have her credible testimony that beyond  
24 that I would again reference that portion of the  
25 transcript during the charge conference where she says

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1 she's discussed lesser included with him during the two  
2 years of representation and that is not something he was  
3 interested. So the State would submit that the  
4 application should be denied in full as to those three  
5 allegations.

6 THE COURT: Anything further Mr. Davis?

7 MR. DAVIS: No, Your Honor. Thank you.

8 THE COURT: You're welcome.

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Vaughn Hilliard v State  
Post-Conviction Relief-Ruling by the Court  
July 25, 2018

1 countered by the fact that he after a cooling off period,  
2 which is a part of the self-defense instruction and  
3 mitigates against it that after there was a time for him  
4 to coolly reflect he went and got a gun and shot him.  
5 And you don't need a whole lot of strength to shoot a  
6 gun.

7       So there are two parts of that analysis; one his  
8 perception of the need to defend himself and then with  
9 there having been what is arguably a cooling off period  
10 him then exercising deadly force in killing the victim.  
11 But I do not find that Ms. Ehrlich was deficient in any  
12 way in arguing it. She argued it quite strenuously at  
13 many portions of the transcript.

14       As regards the request for a lesser included offense  
15 there is no testimony in the record that she was  
16 deficient in that regard. There was clearly a charge  
17 conference where the Court asked whether that was  
18 something that the defendant wanted to pursue. And I  
19 also find in conjunction with that Ms. Ehrlich's  
20 testimony credible on that issue that she had multiple  
21 discussions with the applicant regarding that; that  
22 ultimately after those discussions he told her it was her  
23 strategic decision to make. And she said in light of  
24 that and the totality of the circumstances her knowing  
25 her client, knowing what his desires were, his position

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1 at all times that he was not guilty and that he had no  
2 desire to spend any time incarcerated that she felt  
3 strategically it was an appropriate decision not to ask  
4 for the lesser included offense. In addition to that  
5 just as an observation a lesser included offense is not a  
6 compromise. You only consider a lesser included offense  
7 when the State has failed to meet its burden of proof on  
8 the greater offense.

9 And under these -- so really arguably if that were  
10 in fact the case he would have been found not guilty  
11 because then there would have been no other option. And  
12 often times lawyers make that strategic decision because  
13 they feel either the State has met their burden of proof  
14 or they haven't. And if they haven't met their burden  
15 of proof then their client is not guilty. So why give  
16 the State the option of a lesser included offense thereby  
17 exposing their client to jail time unnecessarily.

18 So when you look at the totality of the record in  
19 this case clearly the jury when looking at the facts and  
20 circumstances felt the State met their burden beyond a  
21 reasonable doubt that he was in fact guilty of the  
22 offense of murder. So again a lesser included offense is  
23 not a compromise. A lesser included offense is when -- a  
24 lesser included offense is when you really feel the facts  
25 as presented that the State has failed to meet their

Vaughn Hilliard v State  
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1 burden of proof and as a result they should then consider  
2 this lesser offense. And again when you look at the  
3 elements of voluntary manslaughter some of them are met  
4 but one of the biggest issues I think in this would have  
5 been in terms of him prevailing on it was the cooling off  
6 period and then going to use deadly force with a victim  
7 who by the accounts of the witnesses was unarmed.

8       Of course it's all premised on his perception of  
9 being in danger. But I think you're hard pressed to  
10 prove to a jury that you're in danger of being killed by  
11 an unarmed person. Although ordinary objects as well as  
12 your fists and otherwise can be considered deadly weapons  
13 or objects of deadly force, there is no evidence in the  
14 record to support that version or if it were in fact a  
15 version of those facts.

16       And I do find Ms. Ehrlich credible that he left the  
17 decision ultimately up to her. But again she very  
18 adequately, more than adequately argued self-defense and  
19 his limitations in her closing argument regarding the  
20 case and the issue of self-defense being a complete  
21 defense and that he should be found not guilty.

22       I also find Ms. Ehrlich credible regarding any  
23 discussions of a plea offer. I also find her testimony  
24 credible that he had significant health concerns. And he  
25 had significant health concerns regarding his ability to

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1 survive a prison sentence, which would be legitimate  
2 concerns even for a healthy person much less a person of  
3 compromised health. And I do find her credible regarding  
4 those discussions and that he was in fact not interested  
5 in any jail time much less a 20 year sentence because he  
6 did not feel that he could survive it.

7       And the plea offer was for voluntary manslaughter  
8 for a negotiated term of 20 years. No range was ever  
9 offered. She -- I find credible her testimony regarding  
10 the nature of the offer as well as her testimony that she  
11 explained it to him both in writing and verbally, that  
12 she conveyed the offer and the range of penalty.

13       And that he -- I find also credible her testimony  
14 that he advised her that he was not interested in 20  
15 years due to his health concerns and that was  
16 corroborated by her note in her records from a meeting  
17 with him on May 22nd of 2015 that he was not interested,  
18 that he did not believe he would survive a 17 year  
19 sentence or a 10 year sentence; that he was not  
20 interested in any jail time.

21       So the standard is not whether something could have  
22 maybe should have been discussed. It's whether something  
23 of that nature was viable or that it was ever offered and  
24 never discussed with him thereby eliminating his ability  
25 to give meaningful voluntary knowing consideration to

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1 that issue. I do not find credible his testimony that he  
2 had no other option. But I do find credible his  
3 testimony that he did feel he was innocent. And that  
4 corroborates what Ms. Ehrlich has testified to that  
5 really he was never interested in any plea offer of any  
6 type that involved jail time.

7 I disagree and do not find the argument of merit  
8 that a defendant can enter into an Alford plea when it is  
9 negotiated. The fact that it's a negotiated plea all  
10 terms of the plea are negotiated. There may be some  
11 terms that are left to the discretion of the Court but  
12 the Court's discretion is a part of that negotiation.  
13 And I do not find any evidence in the record that a  
14 negotiated plea of that type was ever offered, that is  
15 was ever viable.

16 In addition to that as a part of her assessment of  
17 her client and her strategy if a client indicates to you  
18 that I'm not interested in any jail time at all I do find  
19 it credible that she did not fail in any way or was  
20 deficient in any way to explore that with him because his  
21 main concern was not having any jail time because he felt  
22 that he was -- he acted in self-defense, that it was a  
23 complete defense and therefore he was not guilty and  
24 should have been found not guilty regarding this offense.  
25 So it's not what could have happened, might have

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1 happened, or would have happened there is just no  
2 evidence in the record that a plea offer regarding Alford  
3 was ever offered, that is was ever negotiated or that it  
4 was ever viable. And in my experience in this Court  
5 Alford is a part of the negotiation.

6       Sometimes when you're taking a plea Alford may come  
7 up and then the parties step away and re-negotiate that  
8 portion of it. But I've never had a circumstance where a  
9 defendant offers to plead guilty under negotiated terms  
10 and then all of a sudden says well, I want to do this  
11 pursuant to Alford. In fact it's written on the plea  
12 sheets; everybody knows that's what's going to be done.  
13 Most instances where you take an Alford posture like that  
14 in a case of this type is where you plead straight up to  
15 the offense. And then the State takes the position you  
16 can take whatever position on it you want to take. But  
17 where it is negotiated Alford definitely would have been  
18 a part of the negotiations.

19       But again I think strategically when a client tells  
20 you I'm not interested in any plea involving jail time  
21 there is no -- it's not incumbent on her to explore or  
22 look into something that her client has already told her  
23 is not viable or acceptable to them. If the State could  
24 -- how long do y'all need to -- with my other concerns in  
25 hand regarding my Clerk transitioning how long do you

Vaughn Hilliard v State  
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July 25, 2018

1 think it will take you to get me an order?

2 MS. JAMESON: I'm hopeful I can get you one in the  
3 next two weeks. I'm in court in two different circuits  
4 next week but I'm hopeful I can ---

5 THE COURT: --- so if I said 10 days it wouldn't  
6 make you -- let's shoot for that.

7 MS. JAMESON: Could I have 15?

8 THE COURT: I'm going to say 10 and then if you  
9 need an extension you can ask me.

10 MS. JAMESON: Thank you, Your Honor.

11 THE COURT: But 10 will then become 25 and then  
12 I'll be -- we'll both be between the rock and hard place.

13 MS. JAMESON: I'll do my best to get it to you  
14 within 10 days.

15 THE COURT: And if you will send it to me again by  
16 email and copy Mr. Davis on it in the event that he wants  
17 to have any input.

18 MR. DAVIS: Thank you, Your Honor.

19 THE COURT: You're welcome.

20 MS. JAMESON: Thank you, Your Honor.

21 THE COURT: Sure.

22 \*\*\*\*\*END OF TRANSCRIPT OF RECORD\*\*\*\*\*

23

24

25

Vaughn Hilliard v State  
Certificate of the Court Reporter  
July 25, 2018

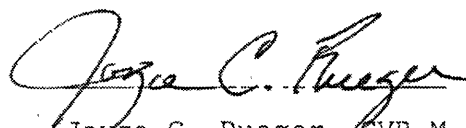
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C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official  
Circuit Court Reporter for the Ninth Judicial Circuit of  
the State of South Carolina, do hereby certify that the  
foregoing is a true, accurate, and complete Transcript of  
Record of the proceedings had and evidence introduced in  
the trial of the captioned case, relative to appeal, in  
the Court of Common Pleas for Charleston County, South  
Carolina on the 25th day of July, 2018.

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

January 18, 2019



Joyce C. Rueger, CVR-M  
Court Reporter

STATE OF SOUTH CAROLINA )  
 COUNTY OF CHARLESTON )  
 )  
 Vaughn Hilliard, SCDC #364310, )  
 )  
 Applicant, )  
 )  
 v. )  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

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IN THE COURT OF COMMON PLEAS  
 FOR THE NINTH JUDICIAL CIRCUIT

Case No. 2017-CP-10-3719

**ORDER OF DISMISSAL**

2018 NOV 15 AM 10:33  
 CLERK OF COURT

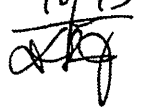
Presiding Judge:	The Hon. Deadra L. Jefferson
Applicant's Attorney:	Rodney Davis, Esquire
Respondent's Attorney:	Megan H. Jameson, Esq.
Trial Counsel:	Megan S. Ehrlich, Esq. Michael R. Loignon, Esq.
Date of Hearing:	July 25, 2018
Court Reporter:	Joyce Rueger

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed on July 21, 2017 by Vaughn Hilliard (Applicant). The Respondent made its Return on or about October 18, 2017. An evidentiary hearing into the matter was convened July 25, 2018 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Rodney D. Davis, Esquire. Megan H. Jameson, Esquire of the South Carolina Attorney General's Office was present on behalf of the State of South Carolina. The Applicant's trial counsel, Megan S. Ehrlich, Esquire, was also present at the hearing and testified regarding her representation of the Applicant.<sup>1</sup>

The Court also had before it the trial transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR

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<sup>1</sup> Attorney Michael Loignon was present at the hearing, but was not called as a witness by the State or Applicant.

10/13  


application, and the Respondent's Return thereto. After careful consideration of these records, the testimony presented at the hearing, and the arguments of counsel, this Court finds that the Applicant failed to meet his burden of proof and hereby denies the Application for Post-Conviction Relief.

### **PROCEDURAL HISTORY**

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Charleston County Clerk of Court. The Applicant was indicted at the March 2014 term of the Charleston Grand Jury for Murder<sup>2</sup> (2014-GS-10-1341). This indictment stems from an incident occurring on September 7, 2013 whereby Applicant is alleged to have fired a single, fatal shot at the victim through a locked, six-foot tall chain-link fence with barbed wire following a physical altercation with the victim and a "cooling off" period.

The Applicant proceeded to trial before the Honorable Kristi L. Harrington on June 8, 2015. The Applicant was present at trial and represented by Megan Ehrlich, Esquire and Michael Loignon, Esquire of the Charleston County Public Defender's Office. Culver Kidd, Esquire and Richard Waring, Esquire of the Ninth Circuit Solicitor's Office prosecuted the case on behalf of the State of South Carolina. On June 10, 2015, the jury convicted Applicant of Murder. Judge Harrington subsequently sentenced the Applicant to imprisonment for forty (40) years.

The Applicant thereafter filed a timely Notice of Appeal at the South Carolina Court of Appeals. Robert M. Pachak, Esquire of the South Carolina Office of Appellate Defense filed a brief on behalf of the Applicant pursuant to Anders v. California, 386 U.S. 738 (1967). The South

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<sup>2</sup> A person who is convicted of or pleads guilty to Murder must be punished by death, by imprisonment for life, or by a mandatory minimum term of imprisonment for thirty (30) years. See S.C. CODE ANN. § 16-3-20 (2006). The offense of Murder is a violent, most serious felony. See S.C. CODE ANN. § 16-1-60 (2006); S.C. CODE ANN. § 17-25-45 (2006).

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Carolina Court of Appeals dismissed the appeal and granted counsel's motion to be relieved. State v. Hilliard, Op. No. 2017-UP-048 (S.C. Ct. App. filed January 25, 2017). The Remittitur was issued on February 10, 2017.

### ALLEGATIONS

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

1. Ineffective Assistance of Trial Counsel
  - a. "Trial Counsel's stewardship prior to and during Applicant's trial was both unreasonable and prejudicial."
  - b. "Counsel was ineffective prior to trial for failing to move before the court for an immunity hearing under the Protection of Persons and Property Act codified in S.C. Code Ann. § 16-11-420(B) (Supp. 2010)."
  - c. "Counsel was ineffective for failing to request a charge of manslaughter, the lesser included offense of murder."
  - d. "Counsel was ineffective for failing to move for a mistrial when the trial court overruled Counsel's hearsay objection and allowed Lt. Tammy Sad to testify to witness identification of Applicant – Rule 801(c) SCRE."

At the evidentiary hearing, Applicant proceeded solely on the following allegations:

1. Counsel was ineffective for failing to properly argue Applicant's fragility and poor health in closing argument.
2. Counsel was ineffective for failing to request the trial court charge the jury on the lesser-included offense of Voluntary Manslaughter.
3. Counsel was ineffective for failing to explain to Applicant that he could have pled to the lesser-included offense of Voluntary Manslaughter pursuant to Alford without having to admit his guilt.

The Applicant failed to present any evidence or testimony regarding any other allegations; therefore, this Court deems any other allegations to have been abandoned by the Applicant.

**FINDINGS OF FACT AND CONCLUSIONS OF LAW**

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the Post-Conviction Relief hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, closely pass upon his or her credibility, and weigh his or her testimony accordingly. The Court has detailed its relevant findings of facts and conclusions of law below, as required by S.C. Code Ann. §17-27-80 (1985).

The Applicant seeks relief from his conviction on the basis that he received ineffective assistance of counsel at his criminal trial in violation of the Sixth Amendment. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984). In an action for post-conviction relief, the Applicant bears the burden of proving the allegations in his or her application by a preponderance of the evidence. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (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, 466 U.S. at 686, 104 S. Ct. at 2064; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court must apply a two-pronged test. Strickland, 466 U.S. 668, 104 S. Ct. at 2064. First, the applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d

624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690, 104 S. Ct. at 2064). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690, 104 S. Ct. at 2064). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068).

After careful review of the entire record, including the testimony presented at the evidentiary hearing, and in consideration of the above standard, this Court finds that the Applicant has failed to meet his burden of proof and has, thus, failed to establish ineffective assistance of counsel. The Court will address each of the specific allegations made by the Applicant as follows.

**I. Failure to Properly Argue Applicant's Fragility in Closing Argument**

The Applicant asserts that trial counsel was ineffective for failing to properly argue his fragility to the jury during closing arguments. Applicant testified at the evidentiary hearing that he was in poor health at the time of the incident and that the victim was much larger, younger, and in better health than him. Applicant testified that his trial counsel should have presented more

evidence of his poor health and fragility at the trial, specifically in her closing argument, and that counsel's failure to do so resulted in his conviction. In light of these allegations, trial counsel, Megan Ehrlich, testified at the hearing about the content of her closing argument. Ms. Ehrlich testified that she argued that the Applicant was in poor health, feeble, and at a significant physical disadvantage to the victim, the alleged instigator, during her closing argument.

This Court finds that trial counsel provided credible testimony that she did, in fact, argue that the Applicant was feeble, disabled, and in poor health at the time of the incident. The Court also finds it to be credible that Ms. Ehrlich drew comparisons between the Applicant's physical appearance and that of the victim during her closing argument. Moreover, Ms. Ehrlich's testimony is supported by the trial transcript, whereby she makes reference to the Applicant's fragility during the following portions of her closing argument:

- (1) "Mr. Hilliard was scared, vulnerable, and feeble and acted in self-defense." Transcript of Trial at 450: 4-5, State v. Vaughn Hilliard, June 10, 2015.
- (2) "The two guys walked towards the gate and Mr. Hilliard told you he wasn't taking this guy too seriously. I mean at the time he's 55 years old; he's 57 now, he's walking with a back brace and a cane. He's not going over there to fight. He can't fight. He thinks they are going to talk this through like normal people might be able to do. They might be able to just talk it through and then that would be the end of that and squash the conversation and squash the problem. But everything changes when Troy Cason decided to punch Mr. Hilliard." Transcript of Trial at 450:20 – 451:5, State v. Vaughn Hilliard, June 10, 2015.
- (3) "This case is about a stranger who comes up and attacks an older in poor condition gentleman while he is making terrible threats and visible threats." Transcript of Trial at 452: 9-11, State v. Vaughn Hilliard, June 10, 2015.
- (4) "Then you compare the two guys physically. You've got [the victim] 46 years old, able to ride a bike, able to run, 6-1, 243 pounds. I think they thought the medical examiner was going to say he wasn't in good shape but the medical examiner said no, he was in reasonable good shape." Transcript of Trial at 452: 23 – 453:3, State v. Vaughn Hilliard, June 10, 2015.

- (5) "Then you've got Mr. Hilliard at the time 55 years old, knee injury, wrist injury, back injury, wears a brace here [indicates], here [indicates], here [indicates], walks with a cane or a walker. We've got testimony from police officers that he was a very feeble, that he was having a hard time walking, that he needed a chair to sit in while they were trying to do the identification procedure." Transcript of Trial at 453: 4-11, State v. Vaughn Hilliard, June 10, 2015.
- (6) "It is right there for everybody to see; right next to multiple bottles of medicine and the two canes by his bed." Transcript of Trial at 454: 15-16, State v. Vaughn Hilliard, June 10, 2015.
- (7) "And the sergeant who was out there says he called Mr. Hilliard over, that he complied and came out and there weren't any problems with him except for the fact that he was having difficulty walking and seemed very weak." Transcript of Trial at 454: 17-21, State v. Vaughn Hilliard, June 10, 2015.
- (8) "The only person who stopped him was the vulnerable feeble guy scared for his life who shot one time in self-defense." Transcript of Trial at 458: 17-19, State v. Vaughn Hilliard, June 10, 2015.

As evidenced above, the record conclusively establishes that trial counsel thoroughly and zealously argued Applicant's fragility and poor physical condition at the beginning, end, and all throughout her closing argument and tied these conditions directly to Applicant's theory of self-defense. This Court, thus, finds that counsel was not deficient in her performance.

Further, the Applicant did not suffer prejudice as a result of this purported deficiency as there is not any credible evidence that the result of Applicant's trial would have been different had counsel argued his fragility more forcefully during her closing statement. To the contrary, the evidence presented at trial establishes that the Applicant left the scene of the initial altercation with the victim, entered his home, and then reemerged with a rifle after a sufficient cooling off period. Further, eye witness testimony established that the victim had no weapon and had turned to leave when the fatal shot was fired. The Applicant thereafter shot the victim while the victim attempted to flee. The record simply does not support Applicant's assertions that he fired the shot in self-

defense. In making this determination, the Court notes that it does not take any exceptional strength to pull the trigger of a firearm, and that Applicant could have performed this task easily, despite his physical limitations. Accordingly, this Court finds that the Applicant has failed to establish he was prejudiced by counsel's alleged failure to properly argue his poor physical condition during closing argument. This allegation is hereby denied and dismissed with prejudice.

## **II. Failure to Request Jury Charge on Lesser-Included Offense of Voluntary Manslaughter**

The Applicant further asserts that trial counsel was ineffective for failing to request a jury instruction on the lesser-included offense of Voluntary Manslaughter.<sup>3</sup> At the evidentiary hearing, Applicant initially testified that he never discussed the lesser-included offense of Voluntary Manslaughter with counsel, but later changed his testimony to state that he did, in fact, discuss the offense of Voluntary Manslaughter with counsel. Specifically, Applicant testified that he wanted trial counsel to request a Voluntary Manslaughter instruction for the jury's consideration, but that she failed to do so. Conversely, Ms. Ehrlich testified that she discussed requesting a jury instruction on the lesser-included offense of Voluntary Manslaughter or proceeding with an "all or nothing" jury charge strategy with the Applicant numerous times. Applicant consistently told Ms. Ehrlich that he was not interested in serving any jail time since he did not believe he could survive it due to his poor health. Ms. Ehrlich testified that the Applicant left the decision regarding the Voluntary Manslaughter jury instruction to her, and that she ultimately decided not to request the lesser-included offense of Voluntary Manslaughter based on her conversations with the Applicant.

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<sup>3</sup> Voluntary Manslaughter is the unlawful killing of a human being in the sudden heat of passion upon sufficient legal provocation. *State v. Wood*, 362 S.C. 135, 142, 607 S.E.2d 57, 60 (2004). A person convicted of manslaughter, or the unlawful killing of another without malice, express or implied must be imprisoned not more than thirty years or less than two years. See S.C. CODE ANN. § 16-3-20 (2006). The offense of Voluntary Manslaughter is a violent, most serious felony. See S.C. CODE ANN. § 16-1-60 (2006); S.C. CODE ANN. § 17-25-45 (2006).

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This Court finds that the Applicant has failed to establish that trial counsel was deficient for failing to request a jury instruction on the lesser-included offense of Voluntary Manslaughter. There was credible testimony from Ms. Ehrlich that she discussed the lesser-included offense of Voluntary Manslaughter with Applicant numerous times, and that Applicant consistently voiced disinterest in a charge of Voluntary Manslaughter because it carried jail time, and he did not believe he could survive incarceration. Further, bolstering Counsel's decision was the Applicant's adamant position that he acted in self-defense and believed he had done nothing wrong. Ms. Ehrlich also expressed Applicant's position on Voluntary Manslaughter to the Court on the record at trial. See Transcript of Trial at 437: 7-13, *State v. Vaughn Hilliard*, June 10, 2015 ("He didn't even want a voluntary instruction.").

In light of these discussions with the Applicant, the Court finds that trial counsel made a valid strategic decision not to request a Voluntary Manslaughter instruction in accordance with the Applicant's desires. It is clear from the record and the testimony presented at the hearing that Counsel thought the best strategy was to go "all or nothing" and not give the jury the option of Voluntary Manslaughter, if the jury felt the State did not prove malice, especially since the Applicant repeatedly expressed his desire for freedom. Trial counsel must be given the necessary leeway to make reasonable strategic decisions as Counsel did here. Indeed, where counsel articulates a valid strategic reason for his action or inaction, counsel's performance should not be found ineffective. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1996); Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992); Stokes v. State, 308 S.C. 546, 548, 419 S.E.2d 778, 778-79 (1992). Courts must be wary of second guessing counsel's trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not

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ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992) (citing Goodson v. U.S., 564 F.2d 1071 (4th Cir. 1977)).

The Applicant has also failed to establish any resulting prejudice from Counsel's failure to request a charge of Voluntary Manslaughter. After all, there is no evidence in the record to support a charge of Voluntary Manslaughter. The record reflects that the Applicant was angry and embarrassed which precipitated his retrieval of the weapon from his residence as contrasted with being in fear of his life coupled with sudden heat of passion based on sufficient legal provocation thereby necessitating the use of deadly force. The record further reflects that the victim was unarmed. To the contrary, the evidence presented at trial established that the Applicant fired a single, fatal shot at the victim in retaliation for a previous altercation while the victim was fleeing and after there had been a sufficient cooling off period. Based on these uncontroverted facts, the Court finds it highly unlikely that a jury would have convicted Applicant of Voluntary Manslaughter instead of Murder. See State v. Hernandez, 386 S.C. 655, 661, 690 S.E.2d 582, 585 (Ct. App. 2010) (quoting State v. Knoten, 347 S.C. 296, 303, 555 S.E.2d 391, 395 (2001)) ("However, even when a person's passion is 'sufficiently aroused by a legally adequate provocation, if at the time of the killing those passions had cooled or a sufficiently reasonable time had elapsed so that the passions of the ordinary reasonable person would have cooled, the killing would be murder and not manslaughter."). Accordingly, the Court denies this allegation and dismisses it with prejudice.

### **III. Failure to Explain Nature of Alford Plea to Applicant**

Lastly, the Applicant asserts that trial counsel was ineffective for failing to properly advise him of the option of pleading guilty to the charge of Voluntary Manslaughter without having to

admit his guilt under North Carolina v. Alford, 400 U.S. 25 (1970). It is uncontested by the parties that there was a plea offer of twenty (20) years extended to the Applicant on the charge of Voluntary Manslaughter. The Applicant testified at the hearing that trial counsel advised him of the plea offer for twenty (20) years imprisonment on the lesser-included offense of Voluntary Manslaughter. However, the Applicant testified that he rejected the offer because he was not guilty, did not want to admit to killing the victim, and did not want to serve any time incarcerated. Applicant further testified that trial counsel did not discuss or explain the nature of an Alford plea to him during the course of her representation. Applicant was adamant during his testimony that he would have pled guilty under Alford if the option was presented to him by Counsel. Counsel testified that she explained the twenty (20) year plea offer to the Applicant both verbally and in writing, but did not discuss an Alford plea with him because it was not a part of the State's offer. Counsel further testified that Applicant would not have accepted any type of plea offer with jail time, Alford or otherwise, due to his ardent desire to remain out of jail.

This Court finds that the Applicant has failed to meet the burden of proof necessary to establish that trial counsel was deficient for failing to discuss Alford with him. Counsel properly advised Applicant of the State's plea offer and credibly testified at the hearing that the Applicant repeatedly advised her that he was not interested in any plea deal with an active sentence, including this one. The Court further finds that Applicant made the knowing, voluntary, and intelligent decision to decline the plea offer and proceed to trial on a theory of self-defense rather than admit his guilt and face incarceration. This Court finds counsel's performance and explanation of the offer to be reasonable and proficient.

The Court further finds no showing of prejudice to the Applicant as a result of this alleged deficiency as there is no evidence in the record to suggest that an Alford plea was offered, negotiated, or viable. Indeed, the only evidence before this Court is that the State offered to allow Applicant to plead guilty to the offense of Voluntary Manslaughter in exchange for a negotiated term of twenty (20) years imprisonment, and that those negotiations were premised on Applicant accepting responsibility and admitting his guilt during the plea. The Court rejects the Applicant's assertion that he could and would have pled guilty pursuant to Alford if trial counsel presented the option to him. An Alford plea is traditionally negotiated as part of the plea offer; that is to say, this type of plea requires the consent of both the State and the Defendant. Because the Applicant has not proven that the State would have agreed to an Alford plea, the Applicant has failed to meet his burden of proving that trial counsel was ineffective for failing to discuss Alford with him. This allegation is therefore denied and dismissed with prejudice.

#### CONCLUSION

In light of the foregoing, this Court finds and concludes that the Applicant has not established any other constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. Counsel was not deficient and the Applicant was not prejudiced by counsel's representation. The Application is therefore denied and dismissed with prejudice.

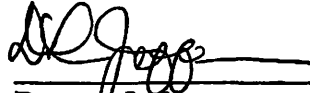
The Court advises the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt of this Order if he wants to secure the appropriate appellate review. See Rule 203, SCACR. The applicant has a right to an appellate counsel's assistance in seeking review of the denial of post-conviction relief; however, post-conviction relief counsel must serve and file

a Notice of Appeal on the Applicant's behalf pursuant to Rule 71.1(g), SCRPC. See Austin v. State, 305 S.C. 453 (1991). The Applicant is hereby directed to South Carolina Appellate Court Rule 243 for the appropriate procedures for appeal.

**IT IS THEREFORE ORDERED:**

1. This application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant shall remain in the custody of the State.

**AND IT IS SO ORDERED** this 8th day of November, 2018.

  
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DEADRA L. JEFFERSON  
Presiding Judge  
Ninth Judicial Circuit

Charleston, South Carolina

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WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

013031003

ARREST WARRANT NUMBER

013A1010204947

DATE OF ARREST

September 9, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury  
Date:

MAR 11 2014

VERDICT

Guilty

Shelly J Weaver 6/10/15

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2014GS1001341

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

March Term 2014

THE STATE

vs.

VAUGHN HILLIARD

DOB: [REDACTED]

B/M

Indictment for

Murder

