

STATE OF SOUTH CAROLINA  
IN THE SUPREME COURT

RECEIVED

May 06 2021

\_\_\_\_\_

Certiorari to Georgetown County

S.C. SUPREME COURT

Honorable William H. Seals, Circuit Court Judge

\_\_\_\_\_

JAMIE L. GILES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2020-001364

\_\_\_\_\_

APPENDIX

\_\_\_\_\_

LARA M. CAUDY  
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

WILLIAM H. RAY  
Assistant Attorney General  
Rembert Dennis Building  
1000 Assembly St., Room 519  
Columbia, SC 29201  
(803) 734-3737

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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(c) 2015CS52200172

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

(a) FEB. 04, 2016 - 20 YEARS / CONCURRENT

(b) FEB. 04, 2016 - 5 YEARS / CONCURRENT

(c) FEB. 04, 2016 - 10 YEARS / CONCURRENT

6. Check whether a finding of guilty was made:

(a) after a plea of guilty \_\_\_\_\_

(b) after a plea of not guilty AFTER A PLEA OF NOT GUILTY

(c) after a plea of nolo contendere \_\_\_\_\_

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

YES.

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

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

i. STATE OF SOUTH CAROLINA / IN THE COURT OF APPEALS

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. APPEAL DISMISSED / UNPUBLISHED OPINION NO. 2017-LP-128

ii. \_\_\_\_\_

iii. \_\_\_\_\_

(c) the date of each such result:

i. MARCH 1, 2017 SUBMITTED - MARCH 22, 2017 FILED

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. UNPUBLISHED OPINION NO. 2017-LP-128

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(a) \_\_\_\_\_

(b) \_\_\_\_\_

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

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

- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- (b) SELF DEFENSE / STAND YOUR GROUND
- (c) DUE PROCESS VIOLATED

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

- (a) SEE ATTACHED PAGE # 1
- (b) SEE ATTACHED PAGE # 2
- (c) SEE ATTACHED PAGE # 3

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

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? \_\_\_\_\_

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

- (a) the specific nature thereof:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_
- (b) the name and location of the Court in which each was filed:
  - i. \_\_\_\_\_
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
  - iv. \_\_\_\_\_

(c) the disposition thereof:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

(d) the date of each such disposition:

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

- i. \_\_\_\_\_
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- iv. \_\_\_\_\_

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

no

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

(a) which grounds have been presented:

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

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

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

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

- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) your arraignment and plea? NO
- (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?  
\_\_\_\_\_

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. Robert M. Pachak / Div. SOLE OF APPELLATE DEFENSE, 1330 Lady St, Suite 401, Columbia, SC, 29201-3332
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_
- (b) the proceedings at which each such attorney represented you:
  - i. SOUTH CAROLINA COURT OF APPEALS
  - ii. \_\_\_\_\_
  - iii. \_\_\_\_\_

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

NEW TRIAL

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

NO

STATE OF SOUTH CAROLINA )  
County of Georgetown )

VERIFICATION

I, Jamie Giles, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Jamie Giles

SWORN to and subscribed before me this 3 day of July, 2017.

[Signature] (L.S.)  
*Notary Public*

My Commission Expires: 9/16/2020

FILED  
2017 JUL -7 AM 11:37  
ALMA Y. WHITE  
CLERK OF COURT

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

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

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

Jamie Giles  
Applicant

SWORN or affirmed to and subscribed before me this  
3 day of July, 2017.

[Signature]  
Notary Public

My Commission Expires: 9/16/2020

FILED  
2017 JUL -7 AM 11:37  
ALMA Y. WHITE  
CLERK OF COURT

# #1 INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL 5071

My TRIAL ATTORNEY, MR. RONALD W. HAZZARD, was INEFFECTIVE because He failed to Address my PRIOR medical CONDITIONS leading up to the Incident, Dec. 03, 2014, knowing that if He had subpoenaed my Emergency Room Records, and my medical Records from my primary care Physician, Dr. Mathox, at St. James Medical Clinic, in Anderson, S.C., IT would Have ESTABLISHED THAT I WAS PREVIOUSLY ASSAULTED AND THREATENED BY THE VICTIM AND HIS FRIENDS IN A manner that which lead me to believe that my life was in jeopardy. ALSO, my TRIAL ATTORNEY failed to establish that my ACTIONS in this Incident was in SELF-DEFENSE. My ATTORNEY failed to subpoena the SLED forensic analysis to show that Damien Kelley and Taveria McCree did fire a weapon in that they had GUNSHOT residue on their hands. My TRIAL ATTORNEY was in violation of my Due process, my SIXTH / 6<sup>th</sup> Amendment, AND I DO Believe if these matters were Brought forth at TRIAL, my TRIAL Outcome would have been different.

SELF-DEFENSE

My Trial Attorney, MR HAZZARD, failed to establish my SELF-DEFENSE/stand your ground Defense. Upon finding by the State law enforcement Division (SLED), they found and established that DANIELA KELLEY AND TIVERA MCCRACKEN did in fact fire a ~~weapon~~ the night of the incident in retaliation. The SLED analysis showed and proved the GUNSHOT RESIDUE was found on MR. KELLEY'S HAND AND MRS. MCCRACKEN'S HAND MR. HAZZARD SHOULD HAVE BROUGHT THIS IMPORTANT AND CRUCIAL piece of evidence to the COURT'S ATTENTION. I DO BELIEVE IF THIS MATTER WAS BROUGHT FORTH, THE OUTCOME OF MY TRIAL WOULD HAVE BEEN DIFFERENT.

The South Carolina Rules of Criminal Procedure, and the Constitutional Rules that govern our country, states that every defendant is protected and is assured that the due process clause is mandated and in effect, and should be established in every criminal proceeding. I do believe that my trial counsel, Mr. Hazard violated my due process and prohibited me from having a fair and just trial. I do believe if the right of my due application would have been applied, my trial outcome would have been different.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF GEORGETOWN	)	
Jamie L. Giles,	)	Case No.: 2017-CP-22-00556
S.C.D.C. No. 324946,	)	
	)	
Applicant,	)	
	)	<b>RETURN</b>
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

---

In response to the application for post-conviction relief filed by Jamie L. Giles (Applicant) on July 7, 2017, Respondent would show this Court:

**I.**

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the February 2015 term of the Georgetown County Grand Jury for two counts of attempted murder (2015-GS-22-00169, -00170), possession of a weapon during the commission of a violent crime (2015-GS-22-00171), and discharging a firearm into an occupied conveyance (2015-GS-22-00172). Ronald W. Hazzard represented Applicant, and Richard D. Todd, of the 15<sup>th</sup> Circuit Solicitor's Office, prosecuted the case.

On February 1, 2014, Applicant proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. At trial, the State presented evidence to show that on December 3<sup>rd</sup>, 2014, in the Andrews section of Georgetown County off of Myrtle Road, Applicant stepped out of a trailer, onto a porch, and emptied the magazine of his 9mm pistol by firing six times at close range into a car parked immediately before the porch. Sitting in the vehicle at the time were Mr.

Dania Kelly, who was struck three times, and Ms. Tuvera McCrea, who was not harmed. Applicant testified and Counsel argued that Applicant acted in self-defense in light of previous violent encounter with the victim.

On February 4, 2016, the jury found Applicant guilty of the lesser included charges of assault and battery, 3<sup>rd</sup> degree (-00169), assault and battery of a high and aggravated nature (-00170), and as indicted on the other two charges. Judge Culbertson sentenced Applicant to imprisonment for concurrent terms of 30 days for A&B 3<sup>rd</sup>, 20 years for ABHAN, 5 years for possession of a weapon, and 10 years for discharging into an occupied vehicle.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Robert M. Pachak, Esq. filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion and granted appellate counsel's motion to be relieved. State v. Giles, Op. No. 2017-UP-128 (S.C. Ct. App. filed March 22, 2017). The Remittitur was issued on April 28, 2017.

## II.

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

1. "Ineffective assistance of trial counsel"
  - a. "My trial attorney, Mr. Ronald W. Hazzard, was ineffective because he failed to address my prior medical conditions leading up to the incident, Dec. 03, 2014, knowing that if he had subpoenaed my emergency room records and my medical records from my primary care physician, Dr. Mattox, at St. James Medical Clinic in Andrews, S.C., it would have established that I was previously assaulted and threatened by the victim and his friends in a manner that which lead me to believe that my life was in jeopardy."
  - b. "Also, my trial attorney failed to establish that my actions in this incident was in self-defense."

- c. “My attorney failed to subpoena the SLED forensic analysis to show that Daniea Kelly and Tuvera McCrea did fire a weapon in that they had gunshot residue on their hands.”
  - d. “My trial attorney was in violation of my due process, my 6<sup>th</sup> Amendment and I do believe if these matters were brought forth at trial, my trial outcome would have been different.”
2. “Self Defense / Stand Your Ground”
    - a. “My trial attorney, Mr. Hazzard, failed to establish my self-defense/stand your ground defense. Upon finding by the State Law Enforcement Division (SLED), they found and established that Daniea Kelly and Tuvera McCrea did in fact fired a weapon the night of the incident in retaliation. The SLED analysis showed and proved the gunshot residue was found on Mr. Kelley’s hand and Ms. McCrae’s hand. Mr. Hazzard should have brought this important and crucial piece of evidence to the Court’s attention. I do believe if this matter was brought forth, the outcome of my trial would have been different.”
3. “Due Process Violated”
    - a. “The South Carolina Rules of Criminal Procedure, and the Constitutional rules that govern our country, states that every Defendant is protected and is assured that the Due Process clause is mandated and in effect, and should be established in every criminal proceeding. I do believe that my Trial Counsel, Mr. Hazzard violated my due process and prohibited me from having a fair and just trial. I do believe if these/this right of my due application had been applied, my trial outcome would have been different.”

Attached to and incorporated herein are the records of the Georgetown County Clerk of Court regarding the subject convictions, Applicant’s records from the South Carolina Department of Corrections, the trial transcript, Applicant’s appellate records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of relevant information.

### III.

Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the

proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (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 v. Washington, 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). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Particular portions of the trial transcript demonstrate the meritless character of Applicant’s allegations. As to Applicant’s allegation regarding his medical records, Applicant himself testified at trial about the injuries he sustained in his prior encounters with the victim, the medical treatment he received, other relevant medical conditions, and the fact that he never told doctors that the cause of his injuries had been in a violent confrontation with the victim. Tr. 348-50, 379-81. Any medical records would have been merely cumulative to Applicant’s trial

testimony. As to Applicant's allegations regarding the gunshot residue found on the victims, those facts were presented to the jury at trial through the testimony of Ms. Whitney Berry, analyst for the South Carolina Law Enforcement Division, who explained that "the majority of gunshot residue follows the bullet or the projectile towards its target and it comes out of the gun in a cone pattern. So as it's coming out anyone or anything standing in that cone area has the potential to get gunshot residue on them[.]" Tr. 326, ll. 11-15; see generally Tr. 324-29. A copy of Ms. Berry's report was introduced as an exhibit at trial. See Tr. 323-24 (State's Exhibit 166). The "crucial piece of evidence" complained of as not presented to the jury was, in fact, presented to the jury.

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 respectfully requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

#### IV.

Because Applicant's other allegations are functionally indistinguishable from his allegations of ineffective assistance of counsel, Respondent interprets his due process allegation and his "self-defense" allegation as allegations of ineffective assistance of counsel. Accordingly, Respondent denies Applicant is entitled to any relief for the same reasons set forth in Section III, above.

#### V.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments *will be opposed by the State at an evidentiary hearing* pursuant to §§ 17-27-10 to -160 of the South Carolina Code

of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP; Mangal v. State, Op. No. 27726 (S.C.Sup.Ct. filed July 19, 2017) (Shearouse Adv.Sh. No. 27 at 47). All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to Respondent.

## VI.

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

VII.

WHEREFORE, Respondent respectfully requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel.

Respectfully submitted,

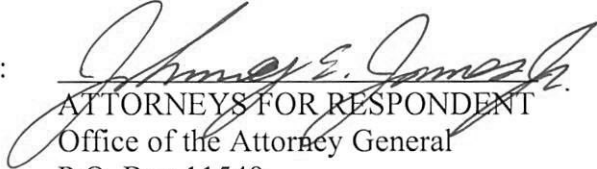
ALAN WILSON  
Attorney General

W. JEFFREY YOUNG  
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON  
Senior Assistant Deputy Attorney General

JOHNNY ELLIS JAMES JR.  
Assistant Attorney General

By:

  
ATTORNEYS FOR RESPONDENT  
Office of the Attorney General  
P.O. Box 11549  
Columbia, S.C. 29211

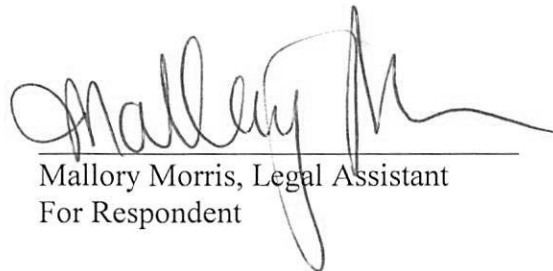
5 Oct., 2017

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEORGETOWN	)	
	)	
	)	2017-CP-22-0556
JAMIE L. GILES, #324946,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

**James K. Falk, Esquire**  
**Falk Law Firm, LLC**  
**PO Box 1058**  
**Charleston, SC 29402**

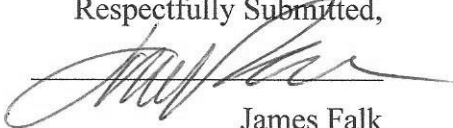
DATED this 5<sup>th</sup> day of September, 2017.

  
 \_\_\_\_\_  
 Mallory Morris, Legal Assistant  
 For Respondent

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF GEORGETOWN	)	FOR THE 15th JUDICIAL CIRCUIT
	)	
Jamie L Giles 324969	)	
	)	2017-CP-22-0556
Applicant	)	
Vs.	)	
State of South Carolina	)	Amendment to PCR Application
	)	
Respondent,)	)	
_____)		

Applicant by counsel hereby amends his July 7, 2017 PCR application to add the following grounds for relief. The amended grounds for relief all relate to trial counsel’s attempt to cross examine the alleged victim, Daniea Kelly, regarding Kelly’s then pending charges. When Daniea Kelly testified at Mr. Giles’ trial, Kelly was being held at the Georgetown County Detention Center on seven drug-related charges and one weapons charge. Prior to the start of trial the State moved to suppress any cross examination testimony regarding Daniea Kelly’s pending charges. The trial court granted the State’s motion and prohibited trial counsel from soliciting the testimony during cross examination.

1. The trial court’s decision to prevent defense counsel from cross examining the alleged victim, Daniea Kelly, regarding his pending charges was an appellate issue worthy of a merits brief. Appellate Counsel provided ineffective assistance of appellate counsel by filing an Anders brief on the issue.
2. Trial counsel provided ineffective assistance of counsel by failing to present all meritorious arguments in opposition to the State’s suppression motion. Trial counsel failed to argue that since Kelly had pending charges before the 15<sup>th</sup> Circuit Solicitor’s office trial counsel should have been able to impeach Kelly for bias. Additionally, trial counsel failed to argue that preventing cross examination of Kelly on his pending gun charge violated Defendant’s rights under the 6<sup>th</sup> and 14<sup>th</sup> Amendments to present a defense.

Respectfully Submitted,  
  
 James Falk  
 Applicant’s Counsel

**CERTIFICATE OF SERVICE**

Undersigned certifies that on August 23, 2013 a copy of the above was mailed to Johnny James Jr. Esq. at Office of the Attorney General PO Box 11549, Columbia SC 29211.

A handwritten signature in black ink, appearing to read 'James Falk', written over a horizontal line.

James Falk  
PO Box 1058  
Charleston SC 29402  
(843) 606 6007  
jfalklaw@gmail.com

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS

COUNTY OF GEORGETOWN ) 2017-CP-22-00556

JAMIE L. GILES, )

Applicant, )

vs. )

STATE OF SOUTH CAROLINA, )

Respondent. )

**Transcript of Record**

MARCH 25, 2019

**B E F O R E:**

Honorable William H. Seals, Jr.  
Georgetown County Courthouse  
Georgetown, South Carolina

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

James K. Falk, Esquire  
**Attorney for Applicant**

Johnny James, Jr., Esquire  
**Attorney for State**

Sallie Beth Todd  
**Circuit Court Reporter**

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I N D E X

WITNESS                      DIRECT              CROSS              REDIRECT      RECROSS

**RONALD HAZZARD**

By Mr. Falk                      7    23

By Mr. James    16

**JAMES GILES**

By Mr. Falk                      26

-----  
Certificate of Court Reporter ..... 38

E X H I B I T S

NO.      DESCRIPTION    ID      EV      PAGE

(THERE WERE NO EXHIBITS MARKED DURING THIS HEARING.)

1           **THE COURT:** All right. If the state will go ahead and  
2 call your case.

3           **MR. JAMES:** If it may please the Court?

4           **THE COURT:** Yes, sir.

5           **MR. JAMES:** This is the matter of Jamie L. Giles versus  
6 the State of South Carolina, docket number 2017-CP-22-00556.  
7 Mr. Giles is present here in the courtroom today and is  
8 represented by Mr. Jim Falk, Esquire. Mr. Giles was indicted  
9 at the February 2015 term of the Georgetown County Grand Jury  
10 on two counts of attempted murder, possession of a weapon  
11 during the commission of a violent crime, and discharging a  
12 firearm into an occupied conveyance. He was represented on  
13 that charge By Mr. Ron Hazzard and the case was prosecuted by  
14 Mr. Richard D. Todd of the 15th Circuit Solicitor's Office.  
15 On February 1st, 2014 (sic) it proceeded to trial before the  
16 Honorable Benjamin H. Culbertson and a jury. He was convicted  
17 by that jury on February 4th, 2016 of the lesser included  
18 charges of assault and battery third degree, assault and  
19 battery of a high and aggravated nature, and as indicted on  
20 the other two charges. Judge Culbertson sentenced him to  
21 imprisonment for concurrent terms of 30 days for assault and  
22 battery third, 20 years for ABHAN, five years for possession  
23 of a weapon, and 10 years for discharging into an unoccupied -  
24 - or into an occupied vehicle. He filed a timely notice of  
25 appeal and a direct appeal was perfected by Mr. Robert Pachak

1 of South Carolina Office of Appellate Defense. He filed an  
2 Anders Brief. South Carolina Court of Appeals dismissed the  
3 applicants appeal by an unpublished opinion and the remittitur  
4 was issued on April 28, 2017.

5 Mr. Giles has raised primarily two issues in an  
6 amendment, and I would respectfully request that the Court  
7 just go ahead and check the packet of materials that have been  
8 handed up and confirm that his amendment was included in that  
9 box.

10 **THE COURT:** All right. And was, was his sentences --  
11 were they concurrent?

12 **MR. JAMES:** Yes.

13 **THE COURT:** All right. We do have it. Thank you.

14 **MR. JAMES:** All right. Excellent. With that stated, I  
15 will give the floor over to Mr. Jim Falk.

16 **THE COURT:** All right.

17 **MR. FALK:** Your Honor, just before we start, apparently  
18 there is an issue with trying to reach appellate defense.

19 **THE COURT:** Okay.

20 **MR. FALK:** And let me just sort of state where I have a  
21 concern and maybe there's a way to hold the record open at  
22 some point. I believe that there was a line of cross  
23 examination of one of the prosecution's witnesses that was not  
24 done. And our argument is that trial counsel could have tried  
25 to impeach the prosecuting witness based on bias, based on --

1 as a result that he had several pending charges at the time.  
2 Now, trial counsel did argue, one of the charges was a  
3 weapon's charge, and trial counsel asked to go into that as  
4 far as showing a reputation for violence in the community.  
5 The problem with the pending charges is that they are ten  
6 months after this charge so, you know, as far as how they  
7 would relate to a self-defense basis, you know. And the Court  
8 really went sort of went through a 402 kind of 403 analysis to  
9 determine that, you know, the prejudicial -- the probative  
10 value would be outweighed, it would prejudice the jury, be  
11 confused, etcetera. And they certainly were talking about the  
12 -- and trial counsel did raise the fact that, you know, it  
13 touches on the witness's credibility. However, he did not  
14 raise the fact that under 608(c) you can always cross examine  
15 a witness based on bias. So this issue was not raised in the  
16 Anders Brief, and the Anders Brief really focused more on sort  
17 of the self-defense argument and, you know, turbulence in the  
18 community. So this issue was not raised in the Anders Brief.  
19 I don't want to be put in a situation that, you know, somebody  
20 could argue well it was preserved and the trial counsel, I  
21 mean, appellate counsel should have picked it up, and that's  
22 why we have to find out why didn't do it.

23 **THE COURT:** All right.

24 **MR. FALK:** But, you know, that might be three questions  
25 on a telephone call.

1           **THE COURT:** Can we not get him on the telephone by  
2 chance?

3           **MR. JAMES:** I tried calling him during the lunch break  
4 and did not get an answer on the phone number provided by the  
5 Office of Appellate Defense. It was very clearly Mr. Pachak's  
6 phone number because I did get his voicemail. I have no  
7 problem, if it's amenable to Your Honor, with leaving the  
8 record open for 30 - 45 days to get an affidavit from Mr.  
9 Pachak asking him questions that Mr. Falk would like to ask  
10 him. I'd be even happy to do a -- we can do a three-way call  
11 with him and write down whatever he says, and we can stipulate  
12 to it ---

13           **THE COURT:** All right.

14           **MR. JAMES:** --- if that's amenable to the Court.

15           **THE COURT:** All right. That's fine with me. If we can  
16 just go ahead and do it before everybody forgets what's going  
17 on.

18           **MR. JAMES:** Absolutely.

19           **THE COURT:** All right. Sounds good.

20           **MR. FALK:** There wasn't -- my client also did raise an  
21 issue in his PCR application about not talking about the gun  
22 powder residue that was on two of the witnesses that my client  
23 -- and we are going to talk briefly about that issue as well.

24           **THE COURT:** Okay. I'm ready when you are.

25           **MR. FALK:** We would call Mr. Hazzard to the stand.

1 **RONALD HAZZARD, HAVING BEEN**

2 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

3 **THE CLERK:** Please be seated and state your full name for  
4 the record, please.

5 **MR. HAZZARD:** Yes, ma'am. Ronald William Hazzard. Last  
6 name is spelled H-A-Z-Z-A-R-D.

7 **DIRECT EXAMINATION OF MR. HAZZARD BY MR. FALK:**

8 Q: Thank you. Mr. Hazzard, were you appointed to represent  
9 Mr. Giles?

10 A: Yes, sir.

11 Q: Okay. And do you recall sort of generally the facts in  
12 this case?

13 A: Yes, sir.

14 Q: What roll did -- and I don't want to -- Tavera Lynn  
15 McCray play?

16 A: Oh Lord.

17 Q: Or I'll also give you another name would be Daniea Kelly.

18 A: Danny Kelly was the victim. He was in the truck that was  
19 shot in to. There was another young lady in the truck with  
20 him. I do not recall if that was Tavera McCray. I remember  
21 that name, but I don't remember specifically who that  
22 individual was.

23 Q: Okay. Were these two males or two females?

24 A: It was a male and a female. Danny Kelly is a man.

25 Q: Okay. Okay. All right. And I think we're really mostly

1 going to focus on Danny Kelly. I'll just call him Mr. Kelly.

2 A: Okay.

3 Q: You had an opportunity to look at the discovery in this  
4 case; did you not?

5 A: Yes, sir.

6 Q: And was, was -- did they do gun shot residue testing on  
7 some of the witnesses in this case?

8 A: They -- they being the local police, did some testing but  
9 they initially never sent the result off to SLED or any other  
10 agency to have them tested; and I raised that point and the  
11 trial was delayed so that it subsequently could be tested.

12 Q: Do you recall what the results of the gunshot residue  
13 testing were?

14 A: That the two individuals in the truck, the two punitive  
15 victims had gunshot residue on their person.

16 Q: They did have gunshot residue on their person?

17 A: Yes, sir.

18 Q: Did you try to use that evidence? Did you get that  
19 introduced into the trial?

20 A: Yes, sir.

21 Q: Did you consult with a gunshot residue expert or how did  
22 you --

23 A: I cross examined the person who came from SLED. If I  
24 remember correctly, her big deal was that excuse me, was that  
25 it was not unusual that the victims would have gunshot residue

1 on them because the gunshot residue was expelled along with  
2 the projectile and goes in the same direction as the bullet,  
3 and from her thinking that they would just be covered in  
4 gunshot residue if someone got shot. But no, I did not -- I  
5 didn't get an expert, no, sir.

6 Q: How many -- how long have you been a public defender?  
7 How long have you been trying criminal cases?

8 A: I started trying criminal cases in 1988.

9 Q: Have you frequently had cases that involve gunshot  
10 residue issues?

11 A: Occasionally.

12 Q: Do you think it would have been helpful to have gotten --  
13 consulted a gunshot residue expert.

14 A: In hindsight, yes.

15 Q: Let me talk -- let's talk a little bit about Mr. Kelly.  
16 Now, there was a -- the state moved in limine, I guess, to  
17 prevent you from talking about his pending charges. Is that  
18 your recollection?

19 A: I recall he had pending charges; I do not recall whether  
20 they moved to exclude them.

21 Q: I'm going to bring you the transcript.

22 A: I've got a copy, if you'll just tell me what page.

23 Q: Oh, 117.

24 A: All right.

25 Q: Wait a -- let me -- I'm sorry. On 117, if you just look

1 at Lines 7 through 18, that's actually I guess -- there was a  
2 stand your ground hearing in this case; was there not?

3 A: I believe so. Yes, sir.

4 Q: Okay. And so that's, that's testimony from Mr. Kelly  
5 during the stand your ground hearing; is that ---

6 A: I will take your word for that.

7 Q: It's hard because the pages are indexed pretty poorly  
8 because they all say Hazzard on the top of them.

9 A: No, my 117 doesn't say my name on it, so -- I see what  
10 you're referring to. I see the motion hearing you're  
11 referring to.

12 Q: Okay. Now, let's skip over to Page 143. I guess we'll  
13 start at 142, and that's Line 14 through 143 Line 21, if you  
14 just kind of want to read through that.

15 A: Yes. Court's indulgence, Your Honor. Yes, sir.

16 Q: So they moved in limine to try and stop you from talking  
17 about the pending charges; is that correct?

18 A: Yes, sir.

19 Q: Do you recall, because I'm not sure if it's reflected in  
20 the transcript, when he actually testified later that day, was  
21 he still in jail clothes?

22 A: I do not recall.

23 Q: Okay. Because there's a line in here where you asked him  
24 about jail clothes at the beginning. Okay. So I  
25 characterized what I thought was the state's argument as to

1 why you should not be able to go into the pending charges,  
2 that being that they thought it was going to be more  
3 prejudicial than probative on the issue about whether or not  
4 Mr. Giles had any violent tendencies or for reputation in the  
5 community for turbulence. And their argument was this was 10  
6 months after the fact so, you know, its probative value is  
7 minimized. Is that a fair characterization of their argument?

8 A: Yes, sir.

9 Q: Okay. And you had also tried -- you also argued that you  
10 thought the charges affected the witness's credibility, but  
11 did you consider arguing that there was a valid area for cross  
12 examination under South Carolina Rules of Evidence 608(c)  
13 which talks about the right to impeach for bias?

14 A: No, sir.

15 Q: Because the Court kind of went through a 404, kind of 403  
16 argument about talking about how to prove, you know, bad  
17 character in one of the witnesses. I'm going to show you  
18 print outs from sccourts. I'm going to first show them to Mr.  
19 ---

20 **MR. FALK:** Your Honor, I spoke with -- these are  
21 printouts from sccourts. All right.

22 **BY MR. FALK:**

23 Q: I'm just going to hand these to you.

24 **THE COURT:** Any objections?

25 **MR. JAMES:** No objection, Your Honor. These are print

1 offs from the public index from South Carolina Courts.org.  
2 These are, as I understand it, records of previously pending  
3 charges.

4 **MR. FALK:** I can run and get the clerk ---

5 **THE COURT:** I mean, if he doesn't object, I'm fine. I'm  
6 just asking.

7 **MR. JAMES:** I think the Court can take judicial notice of  
8 its own records in any event.

9 **THE COURT:** That'll be fine.

10 **BY MR. FALK:**

11 Q: Okay. Is it typical of the solicitor's office here in  
12 Georgetown to supply you with a summary of some sort of  
13 witness's criminal records or do you have access ---

14 A: I'm sorry. Do you mean their rap sheet?

15 Q: Their rap sheets.

16 A: Yes, sir.

17 Q: Okay. So I've shown you five or six rap sheets for  
18 Daniea Kelly or Danny Kelly; is that correct?

19 A: You've shown me the Clerk of Court's Public Index ---

20 Q: I'm sorry, yes.

21 A: --- showing charges and disposition.

22 Q: Okay. Just so we can make the record here, would you  
23 mind reading the warrant numbers and the charge?

24 A: That's always a little difficult with ---

25 Q: Well, I know. And actually, if you want to just do the

1 CDR codes that's fine, because they're drug charges and  
2 they're always confusing.

3 A: Well, I don't think they put the CDR codes on them, but  
4 here goes.

5 **MR. FALK:** May I approach?

6 **BY MR. FALK:**

7 A: The first one, oh I'm sorry.

8 Q: It's right there. That's the only way I can sort it out.

9 A: The first one's a drug charge, either possession with  
10 intent of distribution, proximity to a school, CDR code 0107,  
11 arrest date October 15, 2015, disposition date March 16, 2016,  
12 disposition dismissed not indicted.

13 Q: Okay. And let me -- just before we get too much farther,  
14 the trial in this case was on February 4th, 2016 -- February  
15 1st through 4th, 2016; does that sound right?

16 A: Yes, sir.

17 Q: Okay. So there was a pending charge at the time; is that  
18 correct?

19 A: Yes, sir, appears to be.

20 Q: Okay. All right. Do you mind going through the rest of  
21 them?

22 A: Second one is a charge for unlawful weapon possession,  
23 CDR code 2364, arrest date November 2nd, 2015, disposition  
24 date March 16th, 2016, disposition dismissed not indicted.

25 Third one for Dania Davon Kelly is a drug distribution

1 proximity charge, CDR code 0107, arrest date October 15th,  
2 2015, disposition date March 16th, 2016, disposition dismissed  
3 not indicted. Fourth one is another drug charge, CDR code  
4 0184, arrest date October 15th, 2015, disposition date March  
5 16th, 2016, disposition dismissed not indicted. Next one is  
6 another drug charge for Mr. Kelly, CDR code 0184, arrest date  
7 October 15th, 2015, disposition date March 16th, 2016,  
8 disposition dismissed not indicted. The next one is a drug  
9 charge, CDR code 0184, arrest date October 16th, 2015,  
10 disposition date March 16th, 2016, disposition dismissed not  
11 indicted. Next one is a drug charge cocaine base second  
12 offense, manufacturing, distributing, CDR code 3015, arrest  
13 date March -- October 16th, 2015 arrest date, disposition date  
14 March 16th, 2016, disposition dismissed not indicted. And the  
15 last one is a weapons charge, CDR code 2364, arrest date  
16 October 16th, 2015, disposition March 16th, 2016, disposition  
17 dismissed not indicted.

18 Q: All right. Now, there were three of those charges that  
19 were CDR code 184, that was the distribution charge second  
20 offense. Do you know what the sentencing range is on those?

21 A: For a second offense, it depends upon the drug, it would  
22 be up to 30 -- it would be five to 30 years.

23 Q: Okay. So it's safe to say that he was facing, if he got  
24 convicted on one of those charges, he could be facing 30  
25 years, Mr. Kelly; is that correct?

1 A: Yes, sir.

2 Q: Okay. And he had multiple charges and some of those were  
3 second offenses; is that correct?

4 A: Apparently so. Yes, sir.

5 Q: And you wanted to get that information before the jury;  
6 did you not?

7 A: What I wanted to get in front of the jury is the fact  
8 that he was a bad guy, and to highlight that by showing his  
9 prior record and the fact that he was still a bad guy even  
10 after this incident with Mr. Giles happened.

11 Q: So if he had five or six pending drug charges would that  
12 sort of fit in to your story that he's a bad guy?

13 A: Very much so because that was part of the narrative of  
14 what occurred between Mr. Kelly and Mr. Giles.

15 Q: Because a lot of the evidence -- this is a credibility  
16 case, is it not, between Mr. Kelly's testimony and what Mr.  
17 Giles' testimony might have been.

18 A: Yes. To some extent, yes.

19 Q: Because there was some idea that this -- well, I mean,  
20 you had the stand your ground hearing so there was some type  
21 of self-defense element to it and the credibility of the  
22 victim witness would be important; would it not?

23 A: Yes, sir. That is correct.

24 Q: Okay. And I believe you said you did not raise the issue  
25 about whether or not those pending charges would be -- that

1 that would be a fair area for cross examination under 608(c),  
2 but you did not raise that issue.

3 A: No, sir. I did not.

4 Q: But you did raise the issue as far as the gun charge as  
5 it would relate to turbulence in the community.

6 A: Yes, sir.

7 Q: And you would agree that that would possibly have been  
8 helpful had the jury known that he had six pending gun  
9 charges, I mean drug charges; would it not?

10 A: Yes, sir.

11 **MR. FALK:** One moment, Your Honor. Your Honor, I have no  
12 further questions.

13 **THE COURT:** All right. State.

14 **CROSS EXAMINATION OF MR. HAZZARD BY MR. JAMES:**

15 Q: Do you have a copy of the transcript up there, Mr.  
16 Hazzard?

17 A: Yes, sir.

18 Q: If you'll flip with me to Page 148.

19 A: Yes, sir.

20 Q: And on Lines 11 to 23 of Page 148, you would agree with  
21 me that state made an argument to distinguish the impeachment  
22 you were seeking to conduct from the more traditional  
23 impeachment of raking a witness, or perhaps a codefendant,  
24 over the coals for any pending charges or plea deals; correct?

25 A: Which lines are you referring to, sir?

1 Q: I'm looking at Lines 11 to 23, but primarily 17 to 23, so  
2 about half of that paragraph. And to read aloud as you read  
3 along silently: In that case because his honesty and  
4 credibility was brought up because he's testifying for the  
5 state and has pending charges with the state on that same  
6 case, the defense could ask what is your deal; have you been  
7 given a deal; these are your current pending charges which are  
8 the same as my client's, what are you getting out of it?  
9 We're not in the same boat here, this isn't even a related  
10 case and there are no offers. So the state made an effort to  
11 distinguish that, correct?

12 A: Yes, sir.

13 Q: And ultimately that in conjunction with the other  
14 arguments made by the state compelled Judge Culbertson to  
15 exclude reference to the pending charges, correct?

16 A: Yes, sir.

17 Q: All right. But ultimately if you will flip ahead with me  
18 to Page 187.

19 A: Yes, sir.

20 Q: Starting at Line 22.

21 A: Yes, sir.

22 Q: You asked Mr. Kelly if a prior date in question was the  
23 only time that he ever had a gun in his possession and he not  
24 quite so cleverly denied it. And on the following page on  
25 Page 188 from Lines 1 through 8, you managed to raise, if

1 nothing else, the pending charge for his gun violation,  
2 correct?

3 A: Yes, sir.

4 Q: All right. So you did at least get some of them into the  
5 record, correct?

6 A: Yes, sir. And that was his -- his use of guns, the fact  
7 that the word on the street was he always had guns on him and  
8 was willing to use them was what I was most concerned with.  
9 The drug information would have been nice because it also was  
10 part of the story as far as the interaction between Mr. Kelly  
11 and Mr. Giles, but I was most concerned with again getting in  
12 any factor that showed his propensity for turbulence and  
13 violence in the community.

14 Q: And in addition to that pending charge, on the previous  
15 page, it was 185 and 186 and even onward onto 187, you went  
16 over his really quite extensive prior bad act record; is that  
17 correct?

18 A: Yes, sir.

19 Q: All right. And we've been speaking a little bit  
20 obliquely about this case; do you recall generally the facts  
21 of this case?

22 A: Yes, sir.

23 Q: All right. So can you explain to the Court what the  
24 state's evidence was against your client?

25 A: Mr. Giles had gone to someone's home, a fellow by the

1 name of Punchy. Punchy was the neighborhood bootlegger,  
2 meaning you could go to his home and you could buy convenience  
3 store items such as chips or soda or beer. You could also  
4 hang out there and drink and listen to music. So it was kind  
5 of a little nightclub/convenient store. Mr. Giles had gone in  
6 there, he was waiting on some other members of the family of  
7 the woman he was dating at the time because they were all  
8 going to go somewhere else. And when he arrived at the  
9 trailer, he noticed that Mr. Kelly and one of the people that  
10 he referred to as Mr. Kelly's henchman were there. First, the  
11 quote/unquote henchman came in and Jamie felt that this guy  
12 was kind of mean mugging him or giving him the stank eye. The  
13 fellow came in a couple of different times, stood right behind  
14 Jamie which caused him to have some concern regarding his  
15 safety. He then looks out of the window; he thinks he sees  
16 Danny Kelly's black truck out there, so now he's really  
17 concerned because these two fellows, along with a couple other  
18 people according to Jaime, had beaten him rather severely  
19 months prior. The state's evidence was Punchy's testimony as  
20 to Jamie being there, some other individuals who came in and  
21 out and who were there said that as far as they were concerned  
22 nothing was going on, that Jamie subsequently without a doubt  
23 came out of the door kind of guns blazing and shot up Mr.  
24 Kelly's truck and there were two people in the truck. There  
25 was Mr. Kelly and I'm assuming the other person was Ms. McCray

1 as has been referred to. But not, there was no question that  
2 he shot at them, the only question was whether he had the  
3 right to.

4 Q: Was any gun recovered from Mr. Kelly's truck?

5 A: No, sir.

6 Q: All right. And at trial you made an issue of the fact  
7 that Mr. Kelly, or I suppose rather Ms. McCray driving the  
8 truck for Mr. Kelly, absconded from the scene after the  
9 shooting, correct?

10 A: Correct.

11 Q: And you certainly made the argument that they had this  
12 opportunity to dispense of any weapon that may have been in  
13 the truck.

14 A: Yes, sir.

15 Q: Okay. And you were referring to a henchman, does it jog  
16 your memory if I refer to the gentleman by the name of Rodney  
17 Kinlock? Is that the henchman to which you are referring?

18 A: I believe so. Yes, sir.

19 Q: In the original application for relief there was a claim  
20 that you were ineffective for failing to retrieve emergency  
21 room records for Mr. Giles regarding injuries sustained or  
22 allegedly sustained from a prior confrontation with Mr. Kelly.  
23 Did you make an effort to obtain any such medical records or  
24 otherwise discuss that subject with your client?

25 A: Yes, sir.

1 Q: All right. And what did you find from that  
2 investigation?

3 A: There was some medical records. We obtained them, went  
4 over them with Jamie, with Mr. Giles. In fact, this note here  
5 January 14th of 2016 conference with him at the Georgetown  
6 Detention Center. Discussed medical records and the fact that  
7 they did not indicate his prior assault at hands of the  
8 victim. And then he said that he did not inform the  
9 healthcare professionals of the severe beating he suffered at  
10 the hands of the victim and friends during the summer of 2014.  
11 Then we went on to discuss some things with regard to the  
12 gunshot residue test and things like that. But yeah, that was  
13 a big issue was that when Jamie told me that, the thing was  
14 that he was apprehensive of Mr. Kelly and Mr. Kinlock and  
15 anyone else that Mr. Kelly and Mr. Kinlock were going around  
16 and doing nefarious things with, it was because they had put  
17 quite the beating on him prior and that he had gone to the  
18 doctor and I said well we'll get the records. We got the  
19 records; they don't reflect that. It talks more about issues  
20 with his colon, blood in his stool, but he never said that's  
21 because they kicked the crap out of me.

22 Q: So those medical records weren't particularly helpful to  
23 you.

24 A: Not as helpful as I was hoping.

25 Q: And you cross examined the state's expert witness on the

1 gunshot residue, correct?

2 A: Yes, sir.

3 Q: And the result of the testing of the gunshot residue, the  
4 tests that were taken from the victims shortly after the time  
5 of the crime?

6 A: Yes, sir.

7 Q: All right. And the state's argument in response to that,  
8 or rather the witness's explanation of the gunshot residue  
9 recovered from the victims, was that since they were on the  
10 bad end of the firearm being discharged that they were likely  
11 to be covered in the stuff?

12 A: That was her basic point of view, that apparently gunshot  
13 residue coming out of a barrel is just a never-ending cloud of  
14 metallic debris that goes on forever.

15 Q: And you attempted to assert the stand your ground statute  
16 prior to trial?

17 A: Yes, sir.

18 Q: And ultimately you were unsuccessful in that effort?

19 A: The Court ruled against us. Yes, sir. And if I might --  
20 if I might clarify one thing I testified to.

21 Q: Go right on ahead.

22 A: I was asked regarding did I think to try to get Mr.  
23 Kelly's charges, pending charges in as a point of potential  
24 bias. I did not. And the way the records look, it looks as  
25 if he was given some kind of great benefit when he testified

1 against Mr. Giles. I do not believe that anything could be  
2 farther from the truth. They really did not like Danny Kelly.  
3 The state really felt he was a bad actor. And if I am not  
4 mistaken, the reason these charges were dismissed March 16th  
5 of 2016 about a month after the trial, is I believe if I'm not  
6 mistaken, Mr. Kelly died on or about March 9th of 2016. So  
7 there would be no need to have his charges pending after that  
8 point.

9 Q: Do you recall his cause of death?

10 A: I'm not really sure. He had -- the argument could have  
11 been -- whether it was a lingering issue, it wasn't a violent  
12 death from some new activity, I'm aware of that. Some people  
13 were of the thought that it was the lingering result of having  
14 had an altercation with Mr. Giles. I do not know, but he had  
15 had several altercations in his life and came up at the short  
16 end of a couple of them, so I don't know.

17 Q: So suffice it to say that he wouldn't be able to testify  
18 in the event that there were any second trial against Mr.  
19 Giles?

20 A: No, sir.

21 **MR. JAMES:** I have no further questions for this witness,  
22 Your Honor.

23 **THE COURT:** All right.

24 **REDIRECT EXAMINATION OF MR. HAZZARD BY MR. FALK:**

25 Q: Regarding the gun charge that you gave today; did you

1 find that one up there?

2 A: The gun -- the weapons charges?

3 Q: The weapons charge that you did cross examine Mr. Giles -  
4 - Mr. Kelly about?

5 A: Court's indulgence, Your Honor.

6 Q: I think it's the one that ends like at 377.

7 A: I'm looking at two of them. One of them is a warrant  
8 ending in 959. The other one is a warrant ending in 920.  
9 Neither of them were ever indicted. One was an arrest date  
10 October 16th, 2015; that's the warrant ending in 920. The  
11 other one is an arrest date November 2nd, 2015; that's the  
12 warrant ending in 959.

13 Q: And I wrote a sentencing range on top of those sheets.  
14 Do you know what the sentencing range was for those two  
15 charges?

16 A: Five years each, zero to five.

17 Q: Zero to five.

18 A: Yes, sir.

19 Q: And there's no question that a conviction on the drug  
20 charges would have carried much more time?

21 A: Yes, sir.

22 Q: And if you were trying to sort of impeach a witness based  
23 on the fact that he could be lying in order to get a deal from  
24 the solicitor knowing that he had five pending drug charges  
25 and facing 30 years if the times run concurrently, obviously

1 much more if it's run consecutively, that's a greater  
2 incentive to lie; is it not?

3 A: That would be my argument to the jury. Yes, sir.

4 Q: Okay. And by not getting those charges in, you couldn't  
5 really paint Mr. Kelly as being an armed drug dealer sort of  
6 out there in the community?

7 A: That is correct. I could not get into any of his drug  
8 activities at the time of the incident with Mr. Giles up to  
9 the day of the trial.

10 Q: So really for the point of the value to the jury it's not  
11 so much whether he was offered a deal, it's just whether or  
12 not you could have persuaded the jury to believe that he might  
13 have had a deal or he might have had some type of incentive to  
14 lie.

15 A: I did not have that option. No, sir.

16 Q: No further questions.

17 **THE COURT:** Anything else?

18 **MR. JAMES:** Nothing further from the state, Your Honor.

19 **THE COURT:** You have a good day, Mr. Hazzard.

20 **MR. HAZZARD:** Yes, sir. Thank you. Good to see you  
21 again, sir.

22 **THE COURT:** All right. Any other witnesses?

23 **MR. FALK:** I would like to call Mr. Giles. I call Mr.  
24 Giles to the stand.

25

**JAMIE GILES, HAVING BEEN**

1 **FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

2 **THE CLERK:** Would you please be seated and state your  
3 full name for the record, please?

4 **MR. GILES:** Jamie Giles, G-I-L-E-S.

5 **DIRECT EXAMINATION OF MR. GILES BY MR. FALK:**

6 Q: Are you ready, Mr. Giles?

7 A: Yes, sir.

8 **MR. FALK:** Can the court reporter hear him?

9 **COURT REPORTER:** Yes, sir.

10 **MR. FALK:** All right.

11 **BY MR. FALK:**

12 Q: Can you say your name?

13 A: Jamie Giles.

14 Q: Mr. Giles, why did you want to get -- why did you want to  
15 talk about the emergency room records?

16 A: Just like I told Mr. Hazzard when he questioned me about  
17 it, that I didn't went into no details about how the injuries  
18 occurred, but they occurred when I was kicked in the side --

19 Q: By who?

20 A: --- and in the stomach area.

21 Q: Who kicked you?

22 A: Mr. Kelly. A guy by the name of Quez. Rodney Kinlock  
23 was there, but I'm not sure if he had any doing in this. One  
24 guy named Twin and I think there was one more guy there, but  
25 it was altogether about six or seven that were actually

1 involved.

2 Q: And Mr. Kelly was one of them?

3 A: Yes, sir. He was the one that initiated it.

4 Q: And is that why -- there was a stand your ground hearing  
5 at the beginning of this trial; was there not?

6 A: Yes, ma'am -- yes, sir.

7 Q: And what was your testimony at the stand your ground  
8 hearing? Were you defending yourself?

9 A: Yes, sir. Well, at the time yes, sir, I was. When they  
10 keep coming inside -- when Rodney came out and keep coming  
11 inside. He was coming in and standing about a foot or less --  
12 keep coming in and standing about a foot or less behind me.  
13 And at the time the first couple times I ignored it and then  
14 his demeanor kind of made me think more about something might  
15 be up. And so after about the third time I went and looked --  
16 looked out the window and he went to Mr. Kelly -- Mr. Kelly  
17 truck driver's door. At the time the truck was parked in a  
18 different place than where the incident happened, but it  
19 looked like Mr. Kelly had hand him a gun. And when he did I  
20 went and asked because at the time I didn't really know that  
21 it was Mr. Kinlock and I asked a friend of mine, Jermaine  
22 Hannah, who -- who that was because at that time Jermaine  
23 Hannah was dealing with Ms. (inaudible) mother. So, he said  
24 yeah that was -- I think that is the guy that jumped you. At  
25 the time it was ---

1 Q: So you thought that he might have had a gun?

2 A: Yes, sir. After I went to -- after I look out the  
3 window.

4 Q: Okay. And do you know if he had somewhat of a -- did you  
5 know he had pending charges for drug cases? Did you know that  
6 he'd been convicted of drug offenses in the past?

7 A: I made it clear with Mr. Hazzard that in 2007 when I was  
8 locked up in the Georgetown County Detention Center that Mr.  
9 Kelly used to cut my hair. And at the time in conversation,  
10 he was telling me about his arrest record and his records and  
11 about why he was in there for a stolen police gun, you know.  
12 And I made it clear to Mr. Hazzard then too that anybody brave  
13 enough to steal, or crazy enough to steal a police issued gun  
14 is crazy enough to kill somebody. So ---

15 Q: So you were --

16 A: --- I wasn't trying to take no chances.

17 Q: So he had a charge for stealing a gun from a police  
18 officer?

19 A: Yeah. Well a stolen police gun in his possession.

20 Q: Okay. Stolen police gun. I have no further questions.

21 **THE COURT:** All right. State.

22 **MR. JAMES:** I have no questions for this witness, Your  
23 Honor.

24 **THE COURT:** All right.

25 You may step down.

1 Any other witnesses?

2 **MR. FALK:** No, Your Honor.

3 **THE COURT:** State, any witnesses?

4 **MR. JAMES:** Not withstanding the record being left open  
5 for a period of time to get an affidavit from Mr. -- from  
6 appellate counsel.

7 **THE COURT:** How long do you think that would take?

8 **MR. JAMES:** Well this is actually closing in at the end  
9 of my really, really, really intense month of March.

10 **THE COURT:** Do you think you could just call him maybe  
11 and talk to him?

12 **MR. JAMES:** That would be my hope to call him and talk to  
13 him sometime next week, early next week.

14 **THE COURT:** Do you know if he's out of the office by  
15 chance?

16 **MR. JAMES:** He's no -- he's retired. He no longer works  
17 at appellate defense, so it's a personal cell phone I'm  
18 calling. So sooner or later he's got to pick up, either that  
19 or he's knows what my number is and he's ducking me.

20 **THE COURT:** All right. Well, if you leave a message tell  
21 him if he doesn't return your call, I'm going to be calling  
22 him.

23 **MR. JAMES:** All right.

24 **THE COURT:** Hopefully you all can talk to him in the next  
25 week or so. I don't think it'll take long, that way we don't

1 let this thing just drift off and be forgotten about.

2 **MR. JAMES:** I suspect it should be a very, very succinct  
3 phone call.

4 **THE COURT:** All right. Is that okay with you, Mr. Falk?

5 **MR. FALK:** Absolutely.

6 **MR. JAMES:** Thank you, Your Honor.

7 **THE COURT:** Anything else for the day or we're done?

8 **MR. FALK:** Your Honor, if I could just -- what I think is  
9 relevant law?

10 **THE COURT:** Sure. Sure.

11 **MR. FALK:** Your Honor, the first case I'd like you to  
12 look at is *Smalls versus State*. It's a PCR case and it's from  
13 2017, so it's clearly after, you know, this trial. But I  
14 don't believe that it sort of crafted any new ground as far as  
15 what the evidentiary law was in South Carolina. If you go to  
16 headnote five on Page 840: Evidence of a witness's bias can be  
17 compelling impeachment evidence, and for that reason  
18 considerable latitude is allowed to defense counsel in  
19 criminal cases in the cross-examination of an adverse witness  
20 for the purpose of testing bias. So I think there's -- the  
21 trial court's have got to afford a criminal defendant a bit of  
22 latitude in cross examining a witness for bias.

23 And if you'll look at *State versus Sims*, which is a 2002  
24 case, that's a case where -- and I would point you to Page  
25 523, the second paragraph where they talk about 608(c). And

1 this is another case where the witness for the prosecution had  
2 several pending charges and the Court said that: Because of  
3 the number of charges pending against Peterson and the  
4 severity of the potential sentences, we find the evidence was  
5 probative on the issue of bias and should have been admitted.  
6 There was substantial possibility that Peterson could have --  
7 could give biased testimony in an effort to give -- to have  
8 the solicitor highlight to his future trial judge how he had  
9 cooperated in the instant case. I mean, that's a 2002 case  
10 where they show -- where the Court discusses the fact that it  
11 is fair game to cross examine a witness in a criminal trial on  
12 the issue of whether or not they have pending charges. And  
13 you can cross examine them for bias with the idea that he had  
14 a reason to possibly not be totally candid in his testimony,  
15 and at the time he had at least three drug charges that  
16 carried zero to 30 years. So he had a substantial amount of  
17 time on his head. That would have been something that I think  
18 the jury should have heard. Mr. Hazzard, although I think he  
19 was very vigorous in trying to get the testimony about the gun  
20 in as far as that would -- it would have probably supported  
21 the self-defense claim a little bit better and the turbulence  
22 in the community. But still the fact that the prosecuting  
23 witness who was an essential witness for the state had a very  
24 (inaudible) area that he could have cross examined him for  
25 bias and the fact that that was not done, we believe is

1 deficient.

2           And I think that as far as sort of getting an idea of  
3 what the Court of Appeals would think about this case, I think  
4 their decision in *Smalls* would show that the failure to handle  
5 the bias based on pending charges was an area that was --  
6 should have been brought up. It was deficient for not doing  
7 it, of course he got PCR relief as a result of that. In  
8 *Smalls* the issue -- the trial counsel -- the guy had a bunch  
9 of pending charges that were dismissed the day of trial and  
10 the trial counsel said ghee, I thought since they were  
11 dismissed, I really lost my argument. And if you read through  
12 the decision in *Smalls* the Court said it was just as fertile  
13 for the idea that, you know, the state had already paid for  
14 their part of the bargain and he delivered when he testified.  
15 So, I think it's an area for PCR relief. This is -- there was  
16 not a tremendous amount of forensic evidence in this case.  
17 There was not a -- I mean, this was sort of an imperfect self-  
18 defense case possibly. There was a stand your ground hearing  
19 that didn't go his way but, you know, it was the veracity of  
20 one person versus the other as to what happened. So I think  
21 because this is a case where credibility was an issue and if  
22 you could attack the credibility of one of the state's  
23 witnesses, I think that was an area that my client possibly  
24 could have benefited from. And again, I don't know if he  
25 could have argued on appeal that because of Mr. Hazzard's

1 efforts to talk about this it was sufficiently preserved or  
2 not. I don't know. I mean, the only thing I could say on  
3 that -- and even again, Kelly was the first witness that  
4 testified. So even the arguments made at the motion in limine  
5 hearing when, I think, it's the first witness, I think, the  
6 case law in South Carolina is you don't have to renew the  
7 objections when the Court has just ruled and there's been no  
8 intervening testimony. So that's why I wanted to bring  
9 appellate defense in because I just -- I don't know if the  
10 issue was preserved.

11 **THE COURT:** All right. Let me hear from the state.

12 **MR. JAMES:** The state's position is that Mr. Hazzard  
13 effectively and consciously sought to impeach Mr. Giles(sic)  
14 by emphasizing that he was a bad guy; and that in that effort  
15 he was able to successfully bring in at least one of the  
16 pending charges, namely the pending gun charge, which the  
17 state respectfully submits is the most damaging to the  
18 character of the victim in so far as it showed that he was a  
19 liar on the stand when he asserted that he had not been in  
20 possession of a firearm since a prior date, long prior to the  
21 incident in question. And it showed that he was going around  
22 with an illegal firearm. Unfortunately, for Mr. Giles there  
23 were other witnesses who testified at trial to the fact that  
24 there was no weapon in that truck. Ms. McCray was still  
25 there. Mr. Giles(sic), by his own testimony, blacked out

1 shortly after being shot. It was Ms. McCray who drove them  
2 away from the scene.

3         Given the additional testimony that there was no gun and  
4 to corroborate the story, even in the absence of the victim's  
5 testimony, Mr. Kelly, the state more than met its burden  
6 beyond a reasonable doubt of showing -- of disproving self-  
7 defense. And for that reason alone, the application for post-  
8 conviction relief should be respectfully denied.

9         One subject that I have been mulling around in my head as  
10 I sit here and contemplate the testimony from Mr. Hazzard, Mr.  
11 Kelly is no longer with us, is that there has been some  
12 suggestion that his passing may be, distant in time, but  
13 ultimately may be the proximate cause of the injury that he  
14 suffered at the hands of Mr. Giles. I don't have an answer to  
15 this question and I'm only putting it out there for everybody  
16 to consider, not necessarily as an argument to support the  
17 state's position. But if a man is acquitted of attempted  
18 murder and charged -- and convicted of the lesser included  
19 offenses and then after the trial the victim passes, and it  
20 can be proven that the -- his death is the result of injuries  
21 that he suffered at the hands of Mr. Giles, would that  
22 potentially open him up for re-prosecution or just plain  
23 murder, or would that be barred by double jeopardy? I don't  
24 know the answer to that question. I haven't had an  
25 opportunity to research it, but that maybe something that Mr.

1 Falk might want to look into in determining if continuing to  
2 proceed with the action is what his client wishes to do.

3 Your Honor, the testimony against Mr. Giles at trial was  
4 considerable. There is no evidence to support his self-  
5 defense claim other than his own self-service testimony which  
6 is largely not credible. It was not credible at trial; it's  
7 not credible here today. And I respectfully request that the  
8 application for post-conviction relief be denied as to  
9 ineffective assistance of trial counsel.

10 We're leaving the record open in order to give Mr. Pachak  
11 an opportunity to respond. Mr. Pachak did submit an Anders  
12 Brief, which is included in the record before the Court. And  
13 he did raise the issue of whether the trial court erred in  
14 refusing to allow defense counsel to impeach cross examine the  
15 victim, Daniae Kelly, about his reputation in the community  
16 for violence and weapons charges. It was essential in  
17 determining the credibility of that witness in a case where  
18 credibility was a key issue. So at least in part the issue  
19 raised was brought to the attention of the Court of Appeals,  
20 but it does stand that Mr. Pachak does not specifically refer  
21 to 608(c) in his statement of the issue. But none the less,  
22 he submitted the Anders Brief, he submitted the best issue  
23 that appeared to be available to him but by virtue of  
24 submitting the Anders Brief indicates that he didn't think  
25 there were any valid preserved issues and for that reason I

1 respectfully request that the application for relief as to  
2 ineffective assistance of appellate counsel also be denied.

3 I do not believe that Mr. Giles has met his burden as to  
4 either prong under *Strickland* of showing a deficiency of  
5 either his trial or appellate counsels or any prejudice  
6 therefrom and the entire application should be denied.

7 **THE COURT:** All right. Why don't you let me know once  
8 you've talked with appellate counsel and I'll go from there?

9 **MR. JAMES:** I appreciate that, Your Honor. Thank you.

10 **MR. FALK:** Your Honor, if I could just respond on one  
11 point that Mr. James brought up which is a little far from our  
12 testimony here. I would presume, just like Mr. James is  
13 presuming, I would presume that if the solicitor's office and  
14 Georgetown County thought that they could connect the dots  
15 with the attempted murder charge and then his ultimate death  
16 they would have already indicted him for the murder charge.  
17 So I think it pretty highly speculative that my client is  
18 responsible for the death of Mr. Kelly. Thank you.

19 **MR. JAMES:** Thank you, Your Honor.

20 **THE COURT:** All right. I'll see you tomorrow.

21 **MR. JAMES:** Tomorrow you will see -- well Mr. Falk, but  
22 Lindsey McAllister will be here in my stead. I will see you  
23 on Thursday in Conway.

24 **THE COURT:** Sounds good. Safe travels back.

25 **MR. FALK:** So just so I -- we're going to report to you

1 about what Mr. Pachak says and then you're going to decide  
2 what's next.

3 **THE COURT:** Yes. I'll rule thereafter.

4 **MR. FALK:** Okay.

5 **(COURT ADJOURNED)**

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

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I, the undersigned, Sallie Beth Todd, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of the Transcript of Record of the hearing held in the interest of Jamie L. Giles versus State of South Carolina held in the Court of Common Pleas for Georgetown County, Georgetown County Courthouse, Georgetown, South Carolina, on March 25, 2019.

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



---

Sallie Beth Todd, CVR

Official Reporter

January 1, 2021.

STATE OF SOUTH CAROLINA ) IN THE COURT OF COMMON PLEAS  
 ) FOR THE FIFTEENTH JUDICIAL CIRCUIT  
 COUNTY OF GEORGETOWN )  
 )  
 Jamie L. Giles, ) Case No.: 2017-CP-22-00556  
 S.C.D.C. No. 324946, )  
 )  
 Applicant, )  
 )  
 v. ) **ORDER OF DISMISSAL**  
 )  
 State of South Carolina, )  
 )  
 Respondent. )

2020 OCT 30 AM 8:15  
 ALMA Y. WHITE  
 CLERK OF COURT  
 CANCELLED  
 GEORGETOWN COUNTY

This matter comes before the Court by way of an application for post-conviction relief filed by Jamie L. Giles (“Applicant”) on July 7, 2017. Respondent made its return on or about October 5, 2017. The Court convened an evidentiary hearing into the matter on March 25, 2019, at the Georgetown County Judicial Center in Georgetown, South Carolina. Applicant was present at the hearing and represented by James K. Falk, Esq. Johnny Ellis James Jr., Esq., of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s trial counsel, Ronald W. Hazzard, Esq. (“Trial Counsel”) also testified. The Court had before it Applicant’s records from the South Carolina Department of Corrections, the records of the Georgetown County Clerk of Court regarding the subject convictions, Applicant’s direct appeal records (including the complete trial transcript as included in the Record on Appeal), and the pleadings. The Court finds as follows:

**I. PROCEDURAL HISTORY**

Applicant is confined in the South Carolina Department of Corrections pursuant to an order of commitment of the Georgetown County Clerk of Court. Applicant was indicted at the

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 CLERK OF COURT  
 FILED  
 GEORGETOWN COUNTY

February 2015 term of the Georgetown County Grand Jury for two counts of attempted murder (2015-GS-22-00169, -00170), one count of possession of a weapon during the commission of a violent crime (2015-GS-22-00171), and one count of discharging a firearm into an occupied conveyance (2015-GS-22-00172). Ronald W. Hazzard, Esq. represented Applicant, and Richard D. Todd, Esq., of the Fifteenth Circuit Solicitor's Office, prosecuted the case. On February 1, 2014, Applicant proceeded to trial before the Honorable Benjamin H. Culbertson and a jury. The jury found Applicant guilty on February 4, 2016, of the lesser-included offense of assault and battery, third degree (-00169); of the lesser-included offense of assault and battery of a high and aggravated nature (-00170); and as indicted for the other two charges. Judge Culbertson sentenced Applicant to imprisonment for concurrent terms of 30 days for assault and battery, third degree; 20 years for ABHAN; 5 years for possession of a weapon; and 10 years for discharging into an occupied vehicle.

Applicant filed a timely notice of appeal and a direct appeal was perfected by Robert M. Pachak, Esq. filing a brief pursuant to Anders v. California, 386 U.S. 738 (1967), which offered the following issue:

Whether the trial court erred in refusing to allow defense counsel to impeach/cross-examine the victim, Daniea Kelly, about his reputation in the community for violence and weapon charges because it was essential to determining the credibility of that witness in a case where credibility was the key issue?

The South Carolina Court of Appeals dismissed Applicant's appeal by unpublished opinion. State v. Giles, Op. No. 2017-UP-128 (S.C. Ct. App. filed March 22, 2017). The Remittitur was issued on April 28, 2017.

#### **Present Application**

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

1. "Ineffective assistance of trial counsel"
  - a. "My trial attorney, Mr. Ronald W. Hazzard, was ineffective because he failed to address my prior medical conditions leading up to the incident, Dec. 03, 2014, knowing that if he had subpoenaed my emergency room records and my medical records from my primary care physician, Dr. Mattox, at St. James Medical Clinic in Andrews, S.C., it would have established that I was previously assaulted and threatened by the victim and his friends in a manner that which lead me to believe that my life was in jeopardy."
  - b. "Also, my trial attorney failed to establish that my actions in this incident was in self-defense."
  - c. "My attorney failed to subpoena the SLED forensic analysis to show that Daniea Kelly and Tuvera McCrea did fire a weapon in that they had gunshot residue on their hands."
  - d. "My trial attorney was in violation of my due process, my 6<sup>th</sup> Amendment and I do believe if these matters were brought forth at trial, my trial outcome would have been different."
2. "Self Defense / Stand Your Ground"
  - a. "My trial attorney, Mr. Hazzard, failed to establish my self-defense/stand your ground defense. Upon finding by the State Law Enforcement Tuvera McCrea did in fact fired a weapon the night of the incident in retaliation. The SLED analysis showed and proved the gunshot residue was found on Mr. Kelly's hand and Ms. McCrae's hand. Mr. Hazzard should have brought this important and crucial piece of evidence to the Court's attention. I do believe if this matter was brought forth, the outcome of my trial would have been different."
3. "Due Process Violated"
  - a. "The South Carolina Rules of Criminal Procedure, and the Constitutional rules that govern our country, states that every Defendant is protected and is assured that the Due Process clause is mandated and in effect, and should be established in every criminal proceeding. I do believe that my Trial Counsel, Mr. Hazzard violated my due process and prohibited me from having a fair and just trial. I do believe if these/this right of my due application had been applied, my trial outcome would have been different."

Applicant subsequently amended his application by filing on August 27, 2018, which raised the following additional grounds for relief:

1. Ineffective assistance of appellate counsel, in that:
  - a. "The trial court's decision to prevent defense counsel from cross examining the alleged victim, Daniea Kelly, regarding his pending charges was an appellate issue worthy of a merits brief. Appellate Counsel provided ineffective assistance of appellate counsel by filing an Anders brief on the issue."
2. Ineffective assistance of trial counsel, in that:

- a. Trial Counsel failed “to present all meritorious arguments in opposition to the State’s suppression motion. Trial counsel failed to argue that since Kelly had pending charges before the 15<sup>th</sup> Circuit Solicitor’s office trial counsel should have been able to impeach Kelly for bias.”
- b. “Additionally, trial counsel failed to argue that preventing cross examination of Kelly on his pending gun charge violated Defendant’s rights under the 6<sup>th</sup> and 14<sup>th</sup> Amendments to present a defense.”

Applicant requests relief as follows:

- “New Trial”

## II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the records submitted to it by the parties and the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented.

### A. Ineffective Assistance of Counsel

Applicant’s allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland. First, Applicant must prove that counsel’s performance was deficient. Strickland, 466 U.S. at 686; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Applicant must so prove his factual allegations by a preponderance of

the evidence. Rule 71.1(e), SCRCP. Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). "When counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing Strickland, 466 U.S. at 690). The Court, in determining deficiency, must affirmatively entertain the range of possible reasons counsel may have had for proceeding as they did. Cullen v. Pinholster, 563 U.S. 170, 196 (2011); Harrington v. Richter, 562 U.S. 86, 109-10 (2011). "[E]ven if an omission is inadvertent, relief is not automatic. The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight." Yarborough, 540 U.S. at 6; see also Murphy v. Davis, 901 F.3d 578, 592 (5th Cir. 2018) ("[C]ounsel's performance need not be optimal to be reasonable."). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625.

Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "This does not require a showing that counsel's actions 'more likely than not altered the outcome,' but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters 'only in the rarest case.'" Harrington, 562 U.S. at 111-12 (quoting Strickland,

466 U.S. at 697). “The likelihood of a different result must be substantial, not just conceivable.” *Id.* at 112. “The prejudice analysis requires the court deciding the ineffectiveness claim to consider the totality of the evidence before the judge or jury.” *United States v. Basham*, 789 F.3d 358, 371-72 (4th Cir. 2015) (quoting *Elmore v. Ozmint*, 661 F.3d 783, 858 (4th Cir. 2011)).

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

#### *1. Failure to Establish Self-Defense, Stand-Your-Ground Defense*

Applicant alleges Trial Counsel was ineffective in failing to establish Applicant acted in self-defense.<sup>1</sup> The “Protection of Persons and Property Act” (“the Act”) provides that “[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force[.]” S.C. Code Ann. § 16-11-450. The Act further provides, in part, that:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

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<sup>1</sup> Though Applicant’s second ground for relief, the Court addresses it first due to its breadth and comprehension of the other issues raised.

S.C. Code Ann. § 16-11-440(C). “A claim of immunity under the Act requires a pretrial determination using a preponderance of the evidence standard[.]” State v. Curry, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013) (citing State v. Duncan, 392 S.C. 404, 709 S.E.2d 662 (2011)).

Where a defendant seeks treatment under § 16-11-440(C), it is not enough for a defendant to establish that he was “not engaged in an unlawful activity” and was in a “place where he has a right to be.” Rather, “[c]onsistent with the Castle Doctrine and the text of the Act, a valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant’s entitlement to the Act’s immunity” save the duty to retreat. Id., 406 S.C. at 371, 752 S.E.2d at 266 (emphasis added). Notwithstanding the Act or other provisions of law, in order to establish self-defense, the defendant must show (1) he was without fault in bringing on the difficulty; (2) he actually believed he was in imminent danger of losing his life or sustaining serious bodily injury; (3) a reasonably prudent person of ordinary firmness and courage would have entertained the same belief; and (4) he had no other probable means of avoiding the danger. State v. Long, 325 S.C. 59, 62, 480 S.E.2d 62, 63 (1997).

That a defendant was engaged in unlawful activity at the time of the incident does not in-and-of-itself defeat a claim for immunity. Rather, where a defendant was engaged in unlawful activity at the time of the incident, the trial court must consider whether the unlawful activity was the proximate cause of the incident. A person who is otherwise acting lawfully is not deprived of the right to self-defense by merely incidental illegality. State v. Glenn, 429 S.C. 108, 120-21, 838 S.E.2d 491, 497-98 (2019) (citing State v. Burriss, 334 S.C. 256, 262, 513 S.E.2d 104, 108 (1999); State v. Goodson, 312 S.C. 278, 280 n.1, 440 S.E.2d 370, 372 n.1 (1994)).

*Trial*

At trial, Trial Counsel moved the trial court grant Applicant immunity pursuant to S.C. Code Ann. § 16-11-440(C), and requested a hearing. (R. 51, ll. 2-18). Trial Counsel called only Applicant to testify for the hearing. The State called as witnesses the victims, Tuvera McCrea and Daniea Kelly; and the lead investigator Melvyn Garrett.

Applicant testified that on July 15, 2014, nearly five months prior to the shooting for which he was on trial, he was at the speakeasy of Punchy Burroughs, a neighborhood bootlegger, enjoying a few drinks when his then-partner Brenda Brown appeared. Applicant and Brown argued with escalating intensity until she beat him with her shoe, and Applicant reflexively stuck back, knocking her to the ground. (R. 54-56; R. 73-75). Others present broke up the fight temporarily, but Applicant and Brown began arguing again until Kelly, McCrea, and three to five additional people intervened and severely beat Applicant for three to five minutes. (R. 56-57; R. 74-77). Applicant testified that after the crowd was finished stomping him, Kelly retrieved a gun from his car, cocked it, and said something about coming "out of retirement," which prompted Applicant to leave the trailer park for fear of his safety. (R. 57-58; R. 76, ll. 2-15).

Applicant testified he went to the doctor sometime around August 4, 2014, after finding blood in his stool. (R. 58-59; R. 78, ll. 4-8). Applicant admitted that while he told the doctor about his various injuries, he did not tell her he was injured due to any beating, but rather told her that he had fallen from the rafters of a home while doing handyman work with a friend. (R. 58-59; R. 78-80). After the doctor's visit, Applicant's symptoms worsened, and he checked into the emergency room at Georgetown Memorial Hospital on or about October 20, 2014, but again Applicant did not tell doctors about the beating. (R. 60-61). Applicant explained he still did not disclose the beating because it had by that time occurred two months prior, and that Kelly had

apologized to him for the beating not long before the ER visit. (R. 61-62; R. 76-78; R. 80, ll. 16-23).

Applicant then turned to the events of December 3, 2014. Applicant was again at Punchy's speakeasy, drinking and chatting with a friend when, after about twenty to thirty minutes, Rodney Kinloch entered alongside Brown and her associates. (R. 62-64; R. 85, ll. 1-2). Kinloch ordered a drink, stared at Applicant for a time, and then went outside. (R. 64, ll. 3-8). Kinloch returned a few minutes later, purchased cigarettes, stared at Applicant again while standing right behind him, and then went back outside. (R. 64, ll. 8-10). Applicant denied speaking to Kinloch during either encounter. (R. 64, ll. 16-18).

Applicant testified he saw Kelly outside in his truck parked in the yard before the speakeasy; Kinloch met Kelly at the driver's side window of the truck, and Kelly provided him a gun. (R. 64-65; R. 80-81). Applicant alerted a friend, Barney Wilson, of the hand-off and continued to watch the situation through a window. Applicant noted that Kelly parked his truck "almost up in front of Mr. Burroughs' house" very near the door with a clear line-of-sight upon anybody who would come out of the door. (R. 65, ll. 11-21). Wilson provided Applicant a gun, and Kinloch entered again and again stood behind Applicant momentarily before leaving again without buying anything. (R. 65-66; R. 84, ll. 4-16). Worried Kelly might mean to harm him inside Punchy's, Applicant set out to leave to his own trailer only a few yards away; he opened the door and saw Kelly in his truck while Kinloch stood on the other side of the porch. (R. 66-67; R. 81-83; R. 85-88). The driver's side window of Kelly's truck was about halfway open. (R. 67, ll. 22-24; R. 81, ll. 10-13). Applicant testified he saw Kelly reach for something, as though reaching for a gun, and so Applicant drew his own gun and fired off two or three shots. (R. 67, ll. 7-12; R. 69, ll. 5-14; R. 83, ll. 6-7). Applicant asserted that based on his prior experience with

Kelly, his understanding of Kelly's reputation for violence in the community, the exchange of a weapon between Kelly and Kinloch, and the positions of Kinloch and Kelly outside the trailer, he believed Kelly was about to draw a gun and shoot him. (R. 68-69; R. 86, ll. 10-18).

Applicant testified he tried to shoot Kelly once more at close range, but his gun jammed. (R. 69, ll. 5-12; R. 82-83).

Applicant testified he had only seen Kelly once between the alleged beating and the shooting—other than in passing—and had not seen Kinloch at all during that period. Applicant explained his understanding that Kelly was a regular in the area near Punchy's, in that he often visited another neighbor in the trailer park and was known to deal narcotics in the area. (R. 70-73).

Tuvera McCrea was the State's first witness for the hearing. McCrea testified she was picked up on December 3, 2014, by Kelly and Kinloch, who were headed to Punchy's so that Kinloch could get a cigarette and to hang out. (R. 89-91; R. 100-03). McCrea denied the purpose of their trip was to sell drugs. (R. 101-02). McCrea demurred at the description of Punchy's home as a place of business, and described him as merely generous to friends and people he regularly dealt with. (R. 90-91).

McCrea recalled that they parked in front of Punchy's trailer and Kinloch went inside. Kinloch returned, told them the trailer was packed, listed off names of who was present, and noted that Applicant was "giving him a look." Kinloch had tried to shake hands with somebody conversing with Applicant inside, but only got "looks." Kelly and Kinloch discussed whether to leave, and Kinloch decided to get his drink and cigarette. Kinloch went back inside and Kelly repositioned the truck so the driver's side faced the door to the trailer. Kinloch emerged and started smoking a cigarette on or by the porch. (R. 93-94; R. 97-100; R. 106-08). The exact

number of times Kinloch entered and exited the building is not entirely clear, as McCrea variously testifies or acknowledges he went in and out three or four times. (R. 98-99; R. 104-05). McCrea denied she ever saw either Kelly or Kinloch with a gun, or that Kelly ever took a gun from Kinloch. (R. 91, ll. 9-19; R. 94, ll. 12-16). The truck windows were tinted and rolled up. (R. 92-93). Around thirty minutes passed since arriving at Punchy's. (R. 97-98).

McCrea recalled that she was gazing out the passenger window talking to Kelly when the first shot ring out; she heard the truck window shatter, saw Kelly flinching, and saw Giles fire the next round. McCrea leapt from the truck cab and hid "under the truck on the side of the truck. Kelly never shot back. (R. 92, ll. 5-20; R. 104, ll. 13-23). McCrea believed six or seven shots were fired. (R. 92, ll. 21-22).

At some point after the shooting, McCrea jumped back into the truck, took the wheel, and drove away from the scene while Kelly called family and 911. (R. 96, ll. 4-11). McCrea called her mother, who told her to stop "at the nearest place;" McCrea brought the truck—which lacked breaks—to a stop at an intersection with Morgan Avenue. (R. 96, ll. 11-22).

Victim Daniaea Kelly was the State's next witness. Kelly recalled the earlier encounter with Applicant on July 15, 2014, and testified Applicant was heavily intoxicated at a cookout. (R. 110, ll. 16-23). Applicant began fighting with Brown inside Punchy's and the dispute spilled outside, where Applicant physically assaulted her. (R. 110-11). Kelly testified he, Kinloch, and a third man—Phillip Bell—intervened to restrain Applicant. (R. 111, ll. 3-6). A couple of weeks later, Applicant thanked Kelly for intervening and saving him a trip to jail. (R. 111, ll. 7-13). Kelly denied there was any fight, and asserted that Applicant would have required immediate medical attention at a hospital had the three men "jumped" him. (R. 111, ll. 13-23). Kelly denied ever possessing a gun during the July confrontation. (R. 111-12).

Turning to December 3, 2014, Kelly testified that he and Kinloch finished work at a barbershop, picked up McCrea to hang out, and then went to Punchy's so Kinloch could get some cigarettes and a drink. (R. 113, ll. 1-23). Kelly pulled up, saw Bell—who happened to live nearby—and began to talk to him while Kinloch went inside. (R. 114, ll. 14-20). Kinloch returned, reported that Punchy's was packed, and expressed discomfort with the circumstances; Kelly told him "Man, if you feel like that just go ahead, get your stuff and let's go[.]" (R. 113-15). Kinloch went back in, then emerged and began smoking a cigarette outside because Kelly did not permit smoking in his truck. (R. 115, ll. 5-10). Kelly testified it was a cold night, so his truck window was up. (R. 115, ll. 10-12). Kelly denied having a gun that night and asserted that, even if had possessed a gun, Applicant would not have been able to see any through the truck's tinted windows. (R. 115, ll. 15-24). Kelly further denied Kinloch or McCrea possessed a gun on the night of the shooting. (R. 115-16).

Applicant stepped out onto the porch and fired multiple shots, after which Kelly sensed "a lot of pain to the chest" and blacked out. (R. 115, ll. 12-14; R. 122-23). When Kelly came to, he was still in the truck at Punchy's as McCrea screamed at him not to die; he called 911 himself, but was unable to speak. (R. 122-25). McCrea did not take Kelly to the hospital, but came to a stop near railroad tracks in Andrews, South Carolina, where McCrea called her mother, who in turn called 911. (R. 124-25). Applicant shot Kelly three times: once in the chest, once in the hip, and once in the leg. (R. 126, ll. 5-13).

On cross-examination during the immunity hearing, Kelly admitted he was incarcerated at that time facing charges for drugs and guns in his car on October 15, 2015. (R. 117, ll. 3-21). Kelly also testified the truck was a rental and that he had never sold drugs in the trailer park where he was shot, or in any other trailer park. (R. 118-20).

Investigator Melvyn Garrett, who responded to the scene the night of the shooting and took over as lead investigator, found no shell casings or guns in Kelly's truck. (R. 126-27). Garrett testified law enforcement retraced the path Kelly and McCrea took after the shooting and found no guns along the route. (R. 127-29).

After the conclusion of testimony for the immunity hearing, Trial Counsel introduced the SLED gunshot residue report provided to the defense by the State; the State objected that Trial Counsel failed to lay any foundation for the report, but admitted the State had provided the report and so the trial court let it into evidence for the immunity hearing. (R. 131-34).

Trial Counsel argued that Applicant possessed a reasonable fear of death or great bodily injury and that he was within his rights to stand his ground and shoot at Kelly due to (1) the prior beating and threats he received from Kelly and Kinloch, (2) Kelly's significant and known prior criminality and propensity for violence, (3) Kinloch's suspicious behavior inside Punchy's, (4) the exchange of a weapon from Kelly to Kinloch outside, and (5) the repositioning of the truck to produce a clear line of fire on the door to Punchy's. (R. 135-39). Trial Counsel noted the victims had gunshot residue on their persons, and that the GSR indicated they were using or handling a gun, but the trial court interrupted and contested the argument and noted nobody was present to explain the GSR report. (R. 139-40). Nonetheless, Trial Counsel argued that McCrae handled the gun Applicant spotted on Kelly and dispensed with it before police could meet up with her and Kelly. (R. 139-40). The trial court denied the motion for immunity and opined: "I don't know if the State is going to be able to disprove self-defense beyond a reasonable doubt, but my ruling is that the Defendant has not proved by a preponderance of the evidence that he is entitled to immunity under 16-11-440." (R. 140, ll. 11-24).

During opening statements, the State framed the case as one of a question of “why did he do this?” (R. 168, line 8). The State framed the answer as a desire for revenge after Kelly broke up the fight between him and Brown months prior. (R. 168-69). Trial Counsel argued that Kelly beat Applicant and racked a gun in his face during the July confrontation, and that Applicant acted in self-defense when Kelly positioned himself to ambush Applicant outside of Punchy’s. (R. 169-73).

In addition to other witnesses, the State called Kelly, McCrea, and Garrett at trial; their testimony was substantially consistent with that in the immunity hearing. The State also called Rodney Kinloch, who testified that the two men firmly but nonviolently intervened in Applicant’s July dispute with Brown. (R. 236-39; R. 247-48). Kinloch testified he, Kelly, and McCrea went to Punchy’s to get a couple of “looseys” and a drink, and got there sometime after 9 P.M. (R. 239-40; R. 245-46). Contrary to Kelly’s testimony, Kinloch described the evening’s weather as not cold, and even a little warm, because he did not “have no big jacket or nothing.” (R. 240, ll. 12-15). Kinloch went inside Punchy’s and tried to shake hands with all present, but Applicant would not acknowledge the gesture and instead unsettled Kinloch with a look. (R. 240-41; R. 249-50). Kinloch testified he entered and exited the trailer two or three times that evening. (R. 241, ll. 5-7; R. 246, ll. 15-20). Recalling the shooting itself, Kinloch testified he was standing outside when he heard the door to the trailer open; he turned to look, heard a gun cock, and “just took off running[.]” (R. 241, ll. 8-13). Kinloch denied seeing who the shooter was or who was shot; Kinloch only heard the shots as he fled. (R. 241-42; R. 253, ll. 13-21). Kinloch denied arguing with Applicant the night of the shooting, or that he knew Applicant would be at Punchy’s that evening; he only intended to go, get a drink, and leave. (R. 242, ll. 2-17). Kinloch denied possessing or exchanging a gun that night, or that he ever saw or knew

Kelly or McCrea to have a gun that night. (R. 242-43; R. 253, ll. 22-23). Kinloch confirmed the brakes in the rental truck would slip. (R. 247, ll. 13-20).

Wilbert "Punchy" Burroughs testified that on December 3, 2014, Applicant was in Punchy's home talking with Barney Wilson and a third unknown individual. (R. 254-58). Punchy overheard an exchange between Wilson and Applicant, after which Applicant had his coat on, walked outside, and gunshots rang out six or seven times. (R. 257-58). Punchy confirmed seeing and serving Kinloch that night. (R. 258-59).

Chakana Brown, niece of Brenda Brown, confirmed that an intoxicated Applicant had argued with Brenda, during which he went to another trailer, retrieved a screwdriver, and had to be restrained and beaten to prevent him from attacking Brenda. (R. 268-70). However, Chakana could not remember Kinloch being involved in the July altercation, and denied seeing Kelly at all. (R. 269, ll. 3-8). Applicant was able to flee under his own power. (R. 269, ll. 9-11).

Chakana was also present at Punchy's on December 3, 2014, and confirmed that Applicant, armed with a gun, "opened the door and just started shooting and walk off the step and walk to Mr. Kelly's vehicle and then he just turned back, look around and walked off." (R. 271, ll. 17-25). Chakana did not initially sense that Applicant was heavily intoxicated, afraid, or concerned. (R. 271-72). However, Chakana recalled:

When [Applicant] saw Mr. Kinloch then he went to the door, he opened it, and he closed the door back. He went to Barney [Wilson] and said, "That's the n\*\*\*\*\* right there. I'm going to jail tonight." So he went in the back and made a phone call to someone, a short guy, and he came back with the jacket that Mr. Giles had on wrapped up. He went into the back room, put the jacket on, came by me again, look at me, did a little smirk and open the door and just started shooting.

(R. 272, ll. 13-20). On cross-examination, Chakana explained that Applicant told Wilson to call "whoever the guy was," and that "the guy" returned to Punchy's with a wrapped up jacket—Applicant had not initially shown up with a coat. (R. 273-74).

Investigator Brenda Lambert, of the Andrews Police Department, testified she took samples from McCrae's and Kinloch's hands for gunshot residue kits, another officer obtained a sample from Kelly, and all of the samples were sent to SLED for testing. (R. 309-14). Whitney Berry, an analyst for SLED, tested all three samples. (R. 318-24). Berry found particles associated with GSR from the discharge of a firearm on both of McCrae's hands, a single particle on Kelly's left hand, and nothing on Kinloch's hands. (R. 324-25). Berry explained that GSR can result "from firing a gun, being in the vicinity to the firing of a gun or coming into contact with something that was in the vicinity to the firing of a gun." (R. 326-28). Berry testified that the findings of GSR on Kelly and McCrae's hands were not consistent with the discharge of a firearm from within a vehicle. (R. 329, ll. 6-21). On cross-examination, Berry confirmed that a person who merely handled a gun that had not been cleaned could test positively for a small amount of GSR. (R. 330-31).

Applicant testified in his own defense, largely consistent with his testimony during the immunity hearing. (R. 339-97). On cross-examination, Applicant testified that when he visited the doctor after his July encounter with Kelly, he only provided symptoms and no explanation of how he may have potentially generated the problems. (R. 379-81). Applicant also testified nobody made any aggressive movements towards him inside Punchy's, and that he never bothered to call the police or ask others to do so at Punchy's despite knowing multiple people there may have had a cell phone, and despite calling Wilson on Punchy's phone. (R. 389-90).

In closing arguments, Trial Counsel argued Applicant acted in self-defense and that the case boiled down to who the jury believed: Applicant or Kelly, McCrae, and Kinloch. (R. 410, ll. 1-25). Accordingly, Trial Counsel committed a substantial part of his closing arguments to impeaching the three victims/witnesses. Trial Counsel framed the accusers' stories as a

nonsensical date between Kelly and McCrea with Kinloch as a third wheel, and that the three gave inconsistent explanations of what their purposes were for going to Punchy's that evening. (R. 411, ll. 1-17). Trial Counsel recalled Punchy's testimony that he served Kinloch a drink without fuss or delay, pointed the three were present for "the better part of an hour," and argued that their lingering both undermined their story and supported Applicant's fears. (R. 411-13). Trial Counsel reviewed Applicant's version of events up to the moment he walked out of the trailer, when Applicant found the three arranged to create a "triangular kill zone." (R. 413-17; R. 425-26). Trial Counsel then argued the accusers' recollections regarding precisely where Kinloch was and what he was doing at that moment were inconsistent and changed upon questioning. (R. 417-18). As for the State's repeated questions as to why Applicant did not call the police, Trial Counsel simply asserted that Applicant was within his rights to not live in fear or intimidation. (R. 418-19). Returning to the July confrontation between Applicant and Kelly, Trial Counsel argued that Chakana's testimony was inconsistent with that of Kelly and Kinloch, as she testified they beat Applicant "like a dog" and did not merely restrain him. (R. 419-20). Trial Counsel also drew the jury's attention to Kelly's denial of illegally possessing a gun after his 2007 conviction, despite Kelly's 2015 arrest for possessing guns and drugs in his car. (R. 421-22).

Trial Counsel emphasized in particular Applicant's right to act on self-defense, and that he did not need to wait for his assailant to get "the drop on him[,] " that Applicant had the right to act on appearances in determining whether to act in self-defense, and that the trial court would instruct the jury accordingly. (R. 422-23). Once again, Trial Counsel briefly reviewed the circumstances as they were perceived by Applicant: Kinloch entered and exited Punchy's, "mean mugged" Applicant, exchanged a weapon with Kelly (known to carry guns), and

positioned around the door to the trailer. (R. 423, ll. 7-15). As for McCrea's denial that any guns were in the truck that night, Trial Counsel assailed her testimony as to where they went and why after Kelly was shot, and argued that she drove them away from the scene and delayed in calling 911 in order to dispose of Kelly's gun. (R. 424-25). Trial Counsel then addressed each element of self-defense in turn and argued Applicant (1) was without fault in bringing about the difficulty, (2) actually believed he was in danger, (3) that a reasonably firm and prudent man would reach the same conclusion, and (4) that Applicant had no other means of avoiding the danger because calling the police while inside would only delay Kelly's ill intent, and it was too late to do anything but act in self-defense once Applicant stepped outside in an attempt to go home. (R. 426-28). Trial Counsel resumed arguing against the credibility of the accusers by exploring the myriad familial and romantic relations that connected the State's witnesses to one another and against Applicant, with a particular emphasis on Chakana, who attributed a statement to Applicant not mentioned by any other witness, and who admitted Applicant was thoroughly beaten during the July confrontation. (R. 428-31). After explaining why Applicant would understandably misremember how many times he fired the gun, and noting that McCrae was wholly unharmed, Trial Counsel emphasized that self-defense was a complete defense, and the burden was upon the State to disprove it. (R. 431-33). Trial Counsel concluded with a summary of the elements of the charges. (R. 433-36).

The State's closing was substantially shorter. (R. 436-43). The State emphasized Applicant was safe inside Punchy's trailer and that he brought about the difficulty "by walking out with his loaded, cocked weapon and started firing into the car," and thus brought about the difficulty and could not claim self-defense. (R. 440-42).

The trial court instructed the jury on all of the elements of self-defense, that self-defense is a complete defense, and that the State's burden was to disprove self-defense by proof beyond a reasonable doubt. (R. 456-58). The trial court, as part of its self-defense instructions, told the jurors that Applicant was:

... not required to wait until his adversary is on equal terms. He has the right to act under the law of self-preservation and prevent his assailant from getting the drop on him. Evidence of prior difficulties between the Defendant and the victim may be considered in deciding whether a threat existed, whether the Defendant had a reason to believe a threat existed and how serious that threat was.

(R. 457-58).

### *Findings*

The Court finds no ineffectiveness on the part of Trial Counsel. The Court finds Applicant's allegation that Trial Counsel failed to argue he shot at Kelly and McCrea in self-defense is *thoroughly* refuted by the record. Trial Counsel presented a well-prepared case for immunity under the Protection of Persons and Property Act, and then zealously advocated that Applicant legally acted in self-defense. Trial Counsel presented arguments drawn from the evidence presented to support each element of self-defense, and at great length worked to impeach the multiple witnesses and victims who testified against Applicant's claim of self-defense. Applicant cannot satisfy either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

### ***2. Failure to Present Evidence of Prior Assault, Battery by Victim***

Applicant alleges Trial Counsel was ineffective in failing to procure and present records from St. James Medical Clinic in Andrews, S.C., which Applicant avers would establish a previous violent confrontation with the victim Danica Kelly. "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable

precisely to the extent that reasonable professional judgments support the limitations on investigation.” Strickland, 466 U.S. at 690-91. “In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” Id. at 691. “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” Id.

“The reasonableness of counsel’s actions may be determined or substantially influenced by the defendant’s own statements or actions.” Id. “Counsel’s actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant.” Id. “In particular, what investigation decisions are reasonable depends critically on such information.” Id.

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

The portions of Applicant's trial which provide the relevant context for this claim are already set forth in the prior section. During both the immunity hearing and the jury trial, Applicant testified about his medical appointments between the alleged beating and the shooting, and that he did not tell doctors his injuries were the result of a violent confrontation, but rather that he either (1) told doctors they were caused by a fall while working or (2) told doctors no information about the potential cause of his injuries.

During cross-examination at the PCR evidentiary hearing, Trial Counsel testified that he was able to locate and review the medical records requested by Applicant. Trial Counsel recalled that on or about January 14, 2016, he told Applicant that the records did not reflect he had received any beating, and that Applicant had not told the doctors about any fight. Trial Counsel expressed that the records were not as helpful as he had hoped.

Applicant merely offered he had wanted to talk about emergency room records from a prior incident where Kelly kicked him in the side. No medical records were introduced.

The Court finds no ineffectiveness on the part of Trial Counsel. The Court finds Trial Counsel's testimony credible, and accepts that he located the records, reviewed them, found them of little use to Applicant, and reported his findings to Applicant. Thus, the records were not presented at trial. As Trial Counsel conducted an adequate investigation into the matter, his strategic decisions regarding what he found are entitled to deference. Furthermore, Applicant has failed to meet his burden of proof by failing to introduce to this Court the records insisted upon. The only thing Applicant offers to contest Trial Counsel's judgment is his vague assertions that the prior records would have established what he purports they would have shown, which is inadequate. Applicant's description of the records and his prior difficulties with Kelly are not credible to this Court. For all of these reasons, Applicant has failed to meet his

burden as to either prong of Strickland, and his request for relief upon this allegation is **DENIED**.

### *3. Failure to Introduce SLED Forensic Analysis*

Applicant alleges Trial Counsel was ineffective in failing to procure and present certain forensic records in the possession of the South Carolina Law Enforcement Division (SLED) which purportedly show that victims Daniae Kelly and Tuvera McCrea had gunshot residue on their hands. The relevant law to guide the Court's analysis is set forth in the prior sections of this Order.

During the Protection of Persons and Property Act hearing at trial, Trial Counsel was permitted to introduce the SLED's gunshot residue report. (R. 131-32). The State argued against the admissibility and probative value of the report, explaining that SLED did not normally test victims for GSR because "there's a lot of false positives" and that expert testimony would be needed to explain it. (R. 132-33). The trial court agreed that there would need to be groundwork for the purpose of presenting it to the jury, but permitted the introduction of the report for the stand-your-ground hearing. (R. 132-34). As summarized in Section II.A.1, above, witnesses testified to taking GSR samples from Kelly, McCrea, and Kinloch, that little to no GSR was found on each of the three, and that the GSR findings were not consistent with any of the three discharging a firearm in a closed space, but rather could be attributed to either being shot at or to handling a weapon previously discharged and not cleaned.

At the PCR evidentiary hearing, Trial Counsel testified that law enforcement conducted testing for gunshot residue and that both victims did test positive for GSR. Trial Counsel offered that, with the benefit of hindsight, an independent GSR expert could have been helpful.

The Court finds no ineffectiveness on the part of Trial Counsel. The Court finds Applicant's allegation that Trial Counsel failed to introduce evidence and establish that GSR was on Kelly and McCrea after the shooting is refuted by the record. Trial Counsel introduced SLED's GSR report for the immunity hearing and it was accepted by the trial court for the purposes of that hearing. The GSR report was thereafter introduced during the jury trial after the State laid the appropriate groundwork through law enforcement witnesses who took the samples and performed the testing. That trace particles consistent with GSR were found on Kelly and McCrea does not appear to have been a subject in dispute at trial, but rather the point of disagreement between the parties was what those trace particles represented. Trial Counsel speculated that an independent expert could have offered something to Applicant's benefit, but his speculation on the point is (1) purely through the lens of hindsight and (2) without the support of any such expert testimony at the PCR evidentiary hearing. Accordingly, Applicant has failed to satisfy his burden of proof as to either prong of Strickland, and his request for relief is **DENIED**.

#### *4. Failure to Argue Against Suppression of Kelly's Pending Charges*

Applicant alleges Trial Counsel was ineffective in failing to offer arguments against the State's pre-trial motion to suppress questions regarding Dania Kelly's charges pending at the time of trial.

#### *Trial*

At trial, the State expressed concern about questions asked of Kelly about his then-pending charges during the immunity hearing held the prior day. (R. 142-43). The State argued questioning regarding the pending charges was nothing but an attack on the victim's character using charges incurred a year after the shooting, and would be needless presentation of

cumulative evidence because Kelly had prior convictions that were admissible for impeachment purposes. (R. 143, ll. 5-20). Upon inquiry by the trial court, the State clarified it sought to suppress examination of Kelly on his then-pending drug charges: "He has a count of distribution, I believe a possession and a weapons charge." (R. 143-45, quote at R. 144, ll. 3-4).

Trial Counsel answered that Kelly's prior and pending charges were not limited and relevant "to the issue of his turbulence and violence in the community." (R. 145, ll. 10-11). Trial Counsel noted that Kelly claimed in his immunity hearing testimony that he was not a violent person and, thus, the pending charges for having drugs and two guns in his possession were proper for the jury. (R. 145, ll. 12-19). Trial Counsel offered as a concession that the trial court could give a limiting instruction to the jury, but took exception to the State's dressing of Kelly in plain clothes and desire to conceal his then-incarcerated status, and described those efforts as "misleading to the jury." (R. 145-46). The trial court acknowledged that if Kelly denied ever carrying a gun, or something to that effect, the door would be opened to questioning regarding his pending charges, and questioned if Trial Counsel's argument was that Kelly opened that door simply by taking the stand; Trial Counsel confirmed as much. (R. 146, ll. 10-18).

The State replied by citation to S.C. Code Ann. §16-3-1501 and State v. McCray, 413 S.C. 76, 94-95, 773 S.E.2d 914, 924 (Ct. App. 2015) to again argue that the passage of a year between the shooting and Kelly's subsequent criminal acts rendered them irrelevant. (R. 147-49). The trial court took the matter under advisement. (R. 149, ll. 9-11).

After review of a plea offer on the record and a break in proceedings, the trial court granted the State's motion to suppress based on McCray and "some other Supreme Court decisions[.]" (R. 153, ll. 1-11). Trial Counsel argued in reply that the questions should be

admissible under Rule 404(A)(2), SCRE; State v. Moody, 94 S.C. 26, 77 S.E. 713 (1913); and State v. Franklin, 267 S.C. 240, 226 S.E.2d 896 (1976): “that the general reputation for turbulence and violence of a putative victim is always for the jury to consider.” (R. 153-54, quotation at R. 154, ll. 8-10). The trial court followed up by describing a distinction in McCray—in that case the testimony of concern was to come from a witness who was neither the victim nor the defendant regarding conduct of which the defendant had not been aware, whereas Trial Counsel instead sought to directly impeach Kelly with the other bad act. (R. 154-55). The State replied that Applicant could not rely upon acts subsequent to the shooting to justify his frame of mind, and the trial court noted that Trial Counsel was not doing so but rather was seeking to attack Kelly’s credibility. (R. 155-56). Ultimately the trial court stood by its prior ruling granting the motion to suppress, primarily because the pending charges were based on acts occurring many months after the shooting. (R. 157-58).

Kelly was the State’s first witness. On cross-examination, Kelly artfully attempted to avoid opening the door to questions regarding his subsequent gun possession, but failed:

Q. Yes, sir. Okay. But now on this incident, December 3<sup>rd</sup> of 2014, you’re saying you didn’t have a gun that night.

A. Didn’t have a – I didn’t have a gun, sir.

Q. Okay. Okay. And you deny that you had a gun in July of 2014, didn’t have a gun that night?

A. Yes, sir. Didn’t have a gun in July neither, sir.

Q. Okay. So the only time you’ve had a gun was May 29<sup>th</sup> when you were convicted of the offense May 29<sup>th</sup> of 2007?

A. Yes, sir.

Q. That was the only time?

A. Sir?

Q. That was, that was the only time you ever had a gun in your possession?

A. Yes, sir. That's the only time I ever had a gun in my possession what I've been convicted of.

Q. Okay. Is that the only time you've ever had a gun in your possession?

A. That's the only time I ever had a gun in my possession what I been convicted of, sir.

Q. Okay. So when you were charged October 15<sup>th</sup> of 2015 for having two guns in your possession you didn't have those guns in your possession?

MR. TODD: Objection, Your Honor.

THE COURT: Overruled.

A. They were in the vehicle. They was not mine, sir.

Q. And whose vehicle were you in?

A. That was in my – I was in my vehicle, sir.

Q. Okay. But December of 2014 you didn't have a gun in your possession?

A. No, sir.

(R. 187-88). Trial Counsel wove the exchange into his closing argument assailing Kelly's credibility and propensity for wrongdoing:

So Mr. Kelly, the putative victim, says, "Yeah. I, I didn't, you know, pose any threat to Mr. Giles or do anything of that nature," but what did Mr. Kelly say on the stand? He said, "Yeah. I was convicted of guns and drugs back in 2007," and I didn't even ask him this. He volunteered it and said, "Yeah. That was when the police came to my house with a search warrant." Now, how do you have to be living your life that the police go to a judge and get a search warrant to go in your home? But okay, we'll let that pass. People, people can change and people can be better. Right? They can be rehabilitated. That is what our system is about. I asked him then, "Well, okay. Illegally possessed a gun back then, no problem. You haven't done that since. Have you?" And what did he say? He said, "Oh, no, no, no, not me." I said, "Oh. Well, wait a minute now Chief. Weren't you arrested on October 15<sup>th</sup> of 2015 for having two guns and more drugs in your car?" "Oh, well, yeah." Is that someone who seems like a person who wouldn't have a gun in their possession? Eight years, ain't nothing changed. Ain't a thing changed in eight years, and what did he say about the October 15<sup>th</sup>, 2015, is that, "Yeah. The guns weren't mind. They're, they're the fellow in the car." I said, "Okay. I can appreciate that. Whose car was it?" "My car." "How many guns were in it?" "Two guns." Is this someone who strikes you as a peaceful and law-

abiding individual, and is this someone who strikes you as someone whose words are worthy of belief?

(R. 421-22). Trial Counsel again noted Kelly's illegal gun possession in October 2015 while contrasting his denial beating Applicant during the July 2014 confrontation to Chakana Brown's testimony that he very much beat Applicant. (R. 425, ll. 20-23).

*PCR Evidentiary Hearing*

Trial Counsel testified at the evidentiary hearing that, with respect to the pending gun charges, he was attempting to show to the jury that Kelly was a bad guy and still was a bad guy. Trial Counsel opined that Kelly's credibility was important to Applicant's defense. Trial Counsel acknowledged that he did not argue the other bad acts could be admissible as character evidence under Rule 608(c), SCRE. On cross-examination, Trial Counsel acknowledged that he was ultimately permitted to question Kelly regarding the subsequent weapons charges. After thinking further on the question of Kelly's bias, Trial Counsel testified the questioning of Kelly regarding his charges played out such that it appeared as though Kelly had received some great benefit or deal for his testimony, even though the charges against him were only ultimately dismissed after trial because he passed away.

*Findings*

The Court finds no ineffectiveness on the part of Trial Counsel. Whether Trial Counsel did or did not make any particular arguments against the State's motion to suppress questioning regarding Kelly's pending charges is of no consequence; Trial Counsel was ultimately permitted to question Kelly on the subject and argue in closing against Kelly's credibility and for Kelly's propensity to always carry a gun based (in part) on the pending gun charges. Applicant cannot show prejudice, and accordingly his request for relief by way of this allegation is **DENIED**.

### B. Ineffective Assistance of Appellate Counsel

A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387 (1985). “However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Tisdale v. State, 357 S.C. 474, 476, 594 S.E.2d 166, 167 (2004) (quoting Jones v. Barnes, 463 U.S. 745, 754 (1983) (“For judges to second-guess reasonable professional judgments and impose on . . . counsel a duty to raise every ‘colorable’ claim suggested by a client would disserve the very goal of vigorous and effective advocacy . . . ”)).

Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, 302 S.C. at 537, 397 S.E.2d at 525; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon neglecting to file a merits brief, Applicant must show that (1) appellate counsel unreasonably failed to discover non-frivolous issues and file a merits brief raising them, and (2) a reasonable probability that, but for his counsel's unreasonable failure to file a merits brief, he or she would have prevailed on his appeal. Smith v. Robbins, 528 U.S. 259, 285 (2000). Applicant must show that a reasonably competent attorney would have found one nonfrivolous issue warranting a merits brief, and that the issue identified would have won on appeal. Id. at 288.

**1. Failure to Appeal Ruling re: Cross-Examination of Dania Kelly on Pending Charges**

Applicant alleges Appellate Counsel was ineffective in failing to appeal the trial court's ruling regarding cross-examination regarding the permissible scope of Trial Counsel's cross-examination of Dania Kelly regarding his charges pending at the time of Applicant's trial. This allegation is resolved by the same facts and findings as set forth by Section II.A.4, above: Trial Counsel was ultimately permitted to question Kelly regarding his pending gun charges. Thus, Appellate Counsel could not have appealed the issue. See Davis v. South Carolina, 420 S.C. 98, 103, 800 S.E.2d 493, 495 (Ct. App. 2017) (quoting Rule 201(b), SCACR) ("Only a party aggrieved by an order, judgment, sentence[, ] or decision may appeal. If a party prevails on an issue below, the party is not an aggrieved party with respect to those rulings, and thus, the party may not appeal those issues."). Applicant cannot meet his burden as to either prong of Strickland, and his request for relief by way of this allegation is **DENIED**.

**C. Due Process Violation**

Applicant alleges his rights to due process of law were violated. "Due process considerations apply in contested cases or hearings which affect an individual's property or liberty interests as contemplated by the federal and state constitutions." Dangerfield v. State, 376 S.C. 176, 179, 656 S.E.2d 352, 353-54 (2008) (citing U.S. Const. amend. XIV, § 1; S.C. Const. art. I, § 3). "The procedural component of the state and federal due process clauses requires the individual whose property or liberty interests are affected to have received adequate notice of the proceeding, the opportunity to be heard in person, the opportunity to introduce evidence, the right to confront and cross-examine adverse witnesses, and the right to meaningful judicial review." Id., 376 S.C. at 179, 656 S.E.2d at 354 (citing State v. Hill, 368 S.C. 649, 656, 630 S.E.2d 274, 278 (2006)). The substantive component of due process, meanwhile, "requires

a rational basis for legislation depriving a person of life, liberty, or property.” In re Ronnie A., 355 S.C. 407, 409, 585 S.E.2d 311, 311 (2003).

However, when asserting a violation of a constitutional right in a post-conviction relief action, the applicant “generally must frame the issue as one of ineffective assistance of counsel.” Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)); but see Fortune v. State, 428 S.C. 545, 559, 837 S.E.2d 37, 44 (2019) (“In some circumstances, however, an inmate may present a claim for PCR based on constitutional violations other than ineffective assistance of counsel[;]” thereafter finding the prosecutor’s misconduct could only be reviewed as a due process claim in PCR). Issues which could have been raised at trial or on direct appeal are not cognizable in an action for post-conviction relief. S.C. Code Ann. § 17-27-20(b); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). But for those deprivations which cannot be addressed in either the context of a direct appeal or a claim of ineffective assistance of counsel, an applicant who contends his due process rights were violated must show he was deprived of those rights due representation that fell below an objective standard of reasonableness, and 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; Fortune, 428 S.C. 558-59, 837 S.E.2d at 44-45.

Applicant does not identify any particular errors or violations of his Due Process Rights beyond his general proposition that Trial Counsel’s performance deprived him of due process. The Court finds Applicant has failed to state a cognizable due process claim: To whatever extent Applicant intends to reassert the previously addressed claims of ineffective assistance of counsel in the context of the right to due process, and notwithstanding the finding that those claims are not cognizable, the Court incorporates its prior analysis by reference and finds

Applicant has failed to establish a deprivation of his right to due process. Applicant's request for relief by way of this allegation is **DENIED**.

### III. CONCLUSION


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

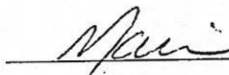
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

#### IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 6 day of Sept., 2020.

  
 WILLIAM H. SEALS, JR.  
 Presiding Judge  
 Fifteenth Judicial Circuit

 \_\_\_\_\_, South Carolina

**WITNESSES**

Andrews Police Department

DOCKET NO. 2015GS2200170

**The State of South Carolina  
County of Georgetown**

Richard D. Todd, Jr.

14G01159

**COURT OF GENERAL SESSIONS  
FEBRUARY, 2015 TERM**

**ARREST WARRANT NUMBER**

2014A2210800173

CDR: 3410 §16-03-0029

DOI: 12/3/2014

**THE STATE**

**vs.**

**JAMIE LAHUANE GILES**

104 JONES AVE

ANDREWS, SC 29510-3107

DOB

SSN:

B/M

**ACTION OF GRAND JURY**

**TRUE BILL**

**ATTORNEY: Ronald W. Hazzard**

**Indictment for**

*Garet Ranple*  
Foreperson of Grand Jury  
Date: *2-25-15*

**ATTEMPTED MURDER**

**VERDICT**

**Jimmy A. Richardson, II, Solicitor**

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GEORGETOWN )

INDICTMENT

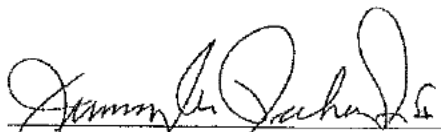
FILED  
FEB 25 2015  
CLERK OF COURT  
GEORGETOWN COUNTY  
SOUTH CAROLINA

At a Court of General Sessions, convened on February 25, 2015, the Grand Jurors of Georgetown County present upon their oath:

**ATTEMPTED MURDER**  
CDR: 3410 §16-03-0029

That Jamie Lahuane Giles did in Georgetown County on or about December 3, 2014 with intent to kill Daniea Kelly, attempt to kill the victim with malice aforethought, either expressed or implied in violation of Section 16-3-29, S. C. Code of Laws, 1976, as amended.

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

  
\_\_\_\_\_  
JIMMY A. RICHARDSON, II  
FIFTEENTH CIRCUIT SOLICITOR

WITNESSES

Andrews Police Department

DOCKET NO. 2015GS2200171

The State of South Carolina  
County of Georgetown

Richard D. Todd, Jr.

14G01159

COURT OF GENERAL SESSIONS  
FEBRUARY, 2015 TERM

REST WARRANT NUMBER

DIRECT INDICTMENT

CDR: 0549 §16-23-0490

DOI: 12/3/2014

THE STATE

vs.

JAMIE LAHUANE GILES

104 JONES AVE

ANDREWS, SC 29510-3107

DOB [REDACTED]

SSN: [REDACTED]

B / M

ACTION OF GRAND JURY

**TRUQUE BILL**

ATTORNEY: Ronald W. Hazzard

Indictment for

POSSESSION OF A WEAPON  
DURING THE COMMISSION OF A  
VIOLENT CRIME

*Grant Langley*  
Foreperson of Grand Jury  
Date: 2-25-15

VERDICT

Jimmy A. Richardson, II, Solicitor

Foreperson of Petit Jury  
Date:



WITNESSES

Andrews Police Department

DOCKET NO. 2015GS2200172

The State of South Carolina

County of Georgetown

Richard D. Todd, Jr. 14G01159

COURT OF GENERAL SESSIONS

FEBRUARY, 2015 TERM

REST WARRANT NUMBER

DIRECT INDICTMENT

CDR: 2907 §16-23-0440(B)  
DOI: 12/3/2014

THE STATE

vs.

JAMIE LAHUANE GILES

104 JONES AVE

ANDREWS, SC 29510-3107

DOB [REDACTED]

SSN: [REDACTED]

B / M

ACTION OF GRAND JURY

**TRUE BILL**

ATTORNEY: Ronald W. Hazzard

Indictment for

**DISCHARGING A FIREARM INTO  
OCCUPIED CONVEYANCE**

Jimmy A. Richardson, II, Solicitor

*Ranet Langley*  
person of Grand Jury  
Date: *2-25-15*

VERDICT

Foreperson of Petit Jury  
Date:

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF GEORGETOWN )

INDICTMENT

RECEIVED

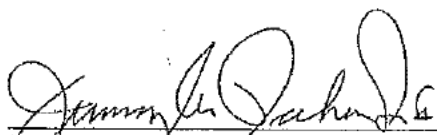
At a Court of General Sessions, convened on February 25, 2015, the Grand Jurors of Georgetown County present upon their oath:

DISCHARGING FIREARM INTO OCCUPIED CONVEYANCE

CDR: 2907 §16-23-0440(B)

That Jamie Lahuane Giles did in Georgetown on or about December 3, 2014, discharge or cause to be discharged unlawfully, firearms at or into a vehicle, aircraft, watercraft, or other conveyance, device, or equipment, while it was occupied, in violation of Section 16-23-0440, S. C. Code of Laws, 1976, as amended

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

  
\_\_\_\_\_  
JIMMY A. RICHARDSON, II  
FIFTEENTH CIRCUIT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown
STATE VS.

INDICTMENT/CASE#: 2015GS2200170

AKA: Jamie Lahuane Giles

A/W#: 2014A2210800173

Race: BLACK Sex: M Age: 40

Date of Offense: 12/3/2014

DOB: [REDACTED] SS#: [REDACTED]

S.C. Code §: 16-03-0029

Address: [REDACTED]

CDR Code # 3410

City, State, Zip: Andrews, SC 29510-3107

SENTENCE SHEET

DL#: [REDACTED] SID#: [REDACTED]

\*CDL Yes [ ] No [ ] CMV Yes [ ] No [ ] Hazmat Yes [ ] No [ ]

RECEIVED FEB 08 2016 SC Court of Appeals

In disposition of the said indictment comes now the Defendant who was TO: Murder / Attempted Murder ARMAN CONVICTED OF or [ ] PLEADS

in violation of § 16-03-0029 (C) of the S.C. Code of Laws, bearing CDR Code # 3410 3411

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

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

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

ATTEST: Todd, Jr., Richard D. SCB74770 SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [ ] County Detention Center, for a determinate term of 20 days/months/years or [ ] under the Youthful Offender Act not to exceed X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment of \$ X; plus costs and assessments as applicable\*; the balance is suspended with probation for X

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

[X] CONCURRENT or [ ] CONSECUTIVE to sentence on: 2/4/2016
[X] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 427 days
[ ] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge), § 14-1-211(A)(2) (DUI Surcharge), § 56-5-2995 (DUI Assessment), § 56-1-286 (DUI Breath Test), Proviso 47.9 (Public Def/Prob), § 14-1-212 (Law Enforce. Funding), § 14-1-213 (Drug Court Surcharge), § 50-21-114 (BUI Breath Test Fee), § 56-5-2942(I) (Vehicle Assessment), Proviso 90.5 (SCCJA Surcharge), 3% to County (if paid in installments), TOTAL \$130.90

days/hours Public Service Employment
Obtain GED [ ]
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling [ ]
Random Drug/Alcohol testing [ ]
Fine may be pd. in equal, consecutive weekly (monthly) pmts. of \$ 20.00 beginning 1mo after release
\$ paid to Public Defender Fund
Other:

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

Clerk of Court/ Deputy Clerk: [Signature]
Court Reporter: Grace Hurley
SCCA/217 (03/2011)

Presiding Judge: [Signature]
Judge Code: 2148
Sentence Date: Feb. 4, 2016

596  
STATE OF SOUTH CAROLINA )

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown )  
STATE VS. )

INDICTMENT/CASE#: 2015GS2200171  
A/W#: DIRECT INDICTMENT  
Date of Offense: 12/3/2014  
S.C. Code § : 16-23-0490  
CDR Code #: 0549

AKA: Jamie Lahuane Giles )  
Race: BLACK Sex: M Age: 40 )  
DOB: [REDACTED] SS#: [REDACTED] )  
Address: [REDACTED] )  
City, State, Zip: Andrews, SC 29510-3107 )  
DL#: [REDACTED] SID#: [REDACTED] )

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
In disposition of the said indictment comes now the Defendant who was  
TO: Possession of a Firearm During Commission of a Violent Crime

SENTENCE SHEET  
 CONVICTED OF or  PLEADS  
0-5 years

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lewd Act)  §17-25-45

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

ATTEST: Richard Todd J. SCB74770  
Todd, Jr., Richard D. SC Bar#                      Defendant Attorney for Defendant SC Bar#                     

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 5 days/months/years or  under the Youthful Offender Act not to exceed X years  
and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment  
of \$ X; plus costs and assessments as applicable\*; the balance is suspended with probation for X

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

CONCURRENT or  CONSECUTIVE to sentence on: 2/4/2016  
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 427 days  
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP                       
                     days/hours Public Service Employment

Recipient:                     

Obtain GED   
Attend Voc. Rehab. or Job Corp.                       
May serve W/E beginning                       
Substance Abuse Counseling   
Random Drug/Alcohol testing   
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ 20.00 beginning 1 mo after release  
\$                      paid to Public Defender Fund  
Other:                     

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

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

Clerk of Court/ Deputy Clerk Sharon Wilson  
Court Reporter: Grace Hurley  
SCCA/217 (03/2011)

Presiding Judge Miriam P. [Signature]  
Judge Code: 2198  
Sentence Date: Feb. 4, 2016

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Georgetown
STATE VS.
Jamic Lahuane Giles
AKA:
Race: BLACK Sex: M Age: 40
DOB: SS#
Address:
City, State, Zip: Andrews, SC 29510-3107
DL#: SID#

INDICTMENT/CASE#: 2015GS2200172
A/W#: DIRECT INDICTMENT
Date of Offense: 12/3/2014
S.C. Code § : 16-23-0440(B)
CDR Code #: 2907

SENTENCE SHEET

\*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Discharging a Firearm into an Occupied Vehicle 0-10 yrs

CONVICTED OF or PLEADS

in violation of § 16-23-0440(B) of the S.C. Code of Laws, bearing CDR Code # 2907

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

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

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

ATTEST: Todd, Jr., Richard D. SCB74770 Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed X years and/or to pay a fine of \$ X; provided that upon the service of X days/months/years and/or payment of \$ X; plus costs and assessments as applicable\*; the balance is suspended with probation for X

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

CONCURRENT or CONSECUTIVE to sentence on: 2/4/2016
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 427 days
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

PTUP
days/hours Public Service Employment

Recipient:

Obtain GED
Attend Voc. Rehab. or Job Corp.

Table with 2 columns: Description and Amount. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 47.9 (Public Def/Prob) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

May serve W/E beginning

Substance Abuse Counseling
Random Drug/Alcohol testing

Fine may be pd, in equal, consecutive weekly/monthly pmts. of \$ 20.00 beginning 1 mo after release

\$ paid to Public Defender Fund
Other:

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

Clerk of Court/ Deputy Clerk: Susanne Wilson
Court Reporter: Grace Hurley
SCCA/217 (03/2011)

Presiding Judge: M. J. ...
Judge Code: 2148
Sentence Date: Feb. 4, 2016