

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

—————
Certiorari to Cherokee County

Honorable William A. McKinnon, Circuit Court Judge
—————

JOHNNY DAVIS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-001382
—————

APPENDIX
—————

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STATE OF SOUTH CAROLINA)	IN THE COURT OF
)	GENERAL SESSIONS
COUNTY OF CHEROKEE)	OF THE SEVENTH
)	JUDICIAL CIRCUIT
)	
THE STATE OF SOUTH CAROLINA,)	
Plaintiff,)	TRANSCRIPT OF RECORD
)	2019-GS-11-01057
vs.)	2019-GS-11-01057A
)	2020-GS-11-1184
JOHNNY EDWARD DAVIS, Jr.,)	
Defendant.)	

September 23-24, 2020
Spartanburg, South Carolina

B E F O R E:
HONORABLE GRACE G. KNIE, Judge.

A P P E A R A N C E S
KIMBERLY LESKANIC, ASSISTANT SOLICITOR
For The State
FLETCHER SMITH, ESQUIRE
For Defendant

Julie A. Cendroski,
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Seventh Judicial Circuit

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THE STATE VS. JOHNNY E. DAVIS

(State's Exhibit No. 1, CD Video Surveillance, was marked for identification.)

(State's Exhibit No. 2, CD Suspect Interview, was marked for identification.)

(State's Exhibit No. 3, Three Photographs, was marked for identification.)

(Defendant's Exhibit No. 1, Sentencing Memorandum, was marked for identification.)

(Defendant's Exhibit No. 2, Packet of Exhibits, was marked for identification.)

THE COURT: Good afternoon. Mr. Davis, can you hear me?

THE DEFENDANT: Yes, ma'am, I can hear just now.

THE COURT: Okay. And that should have video with it. Is there an echo there with y'all?

THE DEFENDANT: No, ma'am, it sounds pretty good.

THE COURT: Okay. What we're gonna do, Mr. Davis, is I'm questioning you because there is an echo over this.

THE DEFENDANT: Yes, ma'am.

THE COURT: I'm gonna try to mute and un mute that room so that we get a clean record. All right?

Okay. All right. And I want to make sure that the -- anyone that is wanting to participate with regard

1 to Mr. Davis or regard to, the State will also be able
2 to see and hear me. Bear with me just one moment.

3 (Off the record discussion occurred.)

4 Okay. I'm trying to address my comments to
5 anyone who is here either on behalf of the State or on
6 behalf of Mr. Johnny Edward Davis. And I was trying to
7 pin the room downstairs. I can see you all in a grid
8 view.

9 And so, good afternoon, I'm Judge Knie and I will
10 be allowing y'all to tell me anything that you want to,
11 but first we're going to go through a series of
12 questions. I need to question Mr. Davis. I'm going to
13 hear from the State. I'm going to hear from Mr. Smith,
14 okay? And so I don't want y'all to think that you won't
15 be allowed to address me, you will. And that will be
16 before I hear from Mr. Davis.

17 Ms. Leskanic, is there anyone that's gonna be
18 addressing me either on behalf of -- it's Mr. Wilkie,
19 the victim, or his family members or anything else from
20 the State? I have received exhibits from the State and
21 documents from Mr. Smith already that I have reviewed
22 prior to the hearing today. But I know y'all will
23 probably go into those again, which is welcome.

24 But anyway, Ms. Leskanic, is there anyone else
25 that's going to be addressing me? If so, I need to try

1 to make sure they're here. Can you un-mute her, please?
2 It's Kim Leskanic. Thank you.

3 MS. LESKANIC: Thank you, Your Honor. No one
4 else from the State will be addressing you.

5 THE COURT: Okay. And so, before I call on Ms.
6 Leskanic, then, to call the case, these comments are
7 going to be addressed to Mr. Johnny Edward Davis.

8 Mr. Davis, sir, just bear with me one moment.
9 I'm trying to pin you now. Okay. I'm not sure why
10 that's not doing it. I can see you, though, in a grid
11 view, Mr. Davis. Sir, good afternoon, I'm Judge Knie.
12 I'm at the Cherokee County courthouse this afternoon.
13 And you, sir, are at the detention facility. Everyone
14 else who is present today is present remotely.

15 And, first, I need for you to understand that
16 while I'm not fussing at you at all, I'm gonna need for
17 you to talk pretty loudly today, just due to the nature
18 of the way we are handling the hearing. And I do need
19 to place you under oath. If you will raise your right
20 hand for me. (Complies.)

21 Do you swear or affirm the testimony that you
22 give is the truth? You can un-mute him.

23 THE DEFENDANT: Yes, ma'am. Yes, ma'am, I do,
24 Ms. Knie.

25 THE COURT: Okay. Thank you, sir. You can put

1 your hand down. Mr. Davis, sir, do you understand that,
2 as I stated earlier, everyone is present remotely except
3 the court reporter who is here in the courtroom with me
4 today? A record is being made of the proceeding. And
5 it has been agreed by counsel that this hearing would be
6 conducted today via video conference. Do you understand
7 that?

8 THE DEFENDANT: Yes, ma'am, I do, Judge Knie.

9 THE COURT: Thank you. And, sir, do you waive
10 being physically in my presence? Normally you would be
11 in the courtroom with me, here physically with me, as
12 would Mr. Smith, as would Ms. Leskanic and anyone else
13 that wanted to address me. So first let me ask, do you
14 waive being physically in my presence, as well as the
15 presence of Mr. Smith here with you today, sir?

16 THE DEFENDANT: Yes, ma'am, Ms. Knie.

17 THE COURT: Thank you. And, sir, do you
18 understand that if anyone else is going to address me,
19 they also will be doing so remotely via Webex? They
20 will not be physically here with me. Do you understand?

21 THE DEFENDANT: Yes, ma'am, Judge Knie.

22 THE COURT: Okay. Thank you, sir. And
23 understanding all of that, sir, we are going to proceed
24 today, okay? All right.

25 And so, now I am going to call upon our deputy

1 solicitor for the Seventh Circuit, Kim Leskanic, to
2 announce the case.

3 MS. LESKANIC: May it please the Court. Before
4 you is Johnny Edward Davis, Jr. He is pleading guilty
5 on three charges. The first is 2019-GS-11-1057. That
6 is Count I true bill indictment for attempted murder.
7 Mr. Davis is entering a plea to assault and battery of a
8 high and aggravated nature as a lesser included offense.
9 And that plea is offered without further negotiations or
10 recommendation.

11 He is also pleading guilty on the same
12 indictment, 2019-GS-11-1057, under Count II for
13 possession of a weapon during the commission of a
14 violent crime, as assault and battery of a high and
15 aggravated nature is designated as a violent crime.

16 He is also pleading guilty on indictment
17 2020-GS-11-1184. That is a direct indictment for
18 pointing or presenting a firearm at another person. Mr.
19 Davis should be waiving presentment to the grand jury on
20 that charge. Your Honor, I do not believe he initialed
21 that on the sentencing sheet that was provided to me by
22 Mr. Smith, so if Your Honor could address that with him.
23 But those are the three charges that he is pleading to.
24 And all of those, other than the reduction in charge,
25 are offered without further negotiation or

1 recommendation. And he is represented by Fletcher Smith
2 on all charges.

3 THE COURT: Okay, thank you.

4 All right. Okay. At this time, Mr. Davis, I am
5 going to go through a series of questions with you, sir.
6 And I need to make one more thing clear for you, that in
7 the event you wish to speak with your legal counsel, Mr.
8 Fletcher Smith, you will be afforded an opportunity to
9 do so in a private and confidential manner. You just
10 let me know and we will take a recess to allow that to
11 happen. Mr. Smith can call into the area where you are.
12 Do you understand that, Mr. Davis?

13 THE DEFENDANT: Thank you, Judge Knie.

14 THE COURT: And do you understand that, sir?

15 I'm sorry, you have to un-mute him one more time.

16 THE DEFENDANT: Yes, ma'am. Thank you, Judge
17 Knie.

18 THE COURT: All right, thank you. And so now,
19 Mr. Davis, do you understand that, first of all, this
20 proceeding is very serious and this is a formal
21 proceeding and we are recording this? And -- but the
22 purpose of the hearing today is for you to enter pleas.
23 Well, let me ask Mr. Smith.

24 Mr. Smith, I read somewhere that he's pleading no
25 contest. Is he pleading under Alford on these?

1 MR. SMITH: Just no contest, Your Honor, but it
2 could be. I discussed the offer with him. Yes, it's
3 Alford.

4 THE COURT: Oh.

5 MR. SMITH: We don't think that the State -- what
6 he's saying is no contest. We believe that the State
7 could probably prove the -- his guilt beyond a
8 reasonable doubt, but he's not, he's not challenging the
9 -- he's not challenging the indictment or the factual
10 nature of the indictment, you know, that produced these
11 charges.

12 THE COURT: And that would be ---

13 MR. SMITH: We believe that the attempted murder
14 was an over-charge, but the fact is with assault and
15 battery of a high and aggravated nature, he's pleading
16 no contest to that and the other two weapons charges,
17 Your Honor, if that makes sense.

18 THE COURT: Okay. And so just to be clear,
19 though, Mr. Smith, it's as to all three?

20 MR. SMITH: Yes, ma'am.

21 THE COURT: Okay. All right. And the train
22 would be going by right now. If y'all can just bear
23 with me for just a second. All right?

24 Okay. And so, Mr. Davis, sir, do you understand
25 that the purpose of the hearing today is for you to

1 enter pleas as to the three charges against you? That
2 would be as opposed to having either a jury trial or a
3 bench trial on these charges. Do you understand?

4 THE DEFENDANT: Yes, ma'am, Judge Knie.

5 THE COURT: Thank you. And, sir, when you enter
6 a plea, whether it's under Alford or a normal plea,
7 you're waiving very important rights. Not only are you
8 waiving your right to a trial by jury, but you also
9 waive your right to confront witnesses against you and
10 your right to remain silent. Do you understand?

11 THE DEFENDANT: Yes, ma'am, Judge Knie.

12 THE COURT: And, sir, if you were to go forward
13 and have a trial, the burden of proof would not be on
14 you and Mr. Smith. The burden of proof is on the State,
15 on the solicitor to prove every element of every charge
16 against you beyond a reasonable doubt. You, sir, are
17 presumed to be innocent until proven guilty. Do you
18 understand?

19 THE DEFENDANT: Yes, ma'am, Judge Knie.

20 THE COURT: And, sir, if you were to have a jury
21 trial, every member of the jury, all 12, would have to
22 agree as to your guilt for you to be found guilty. Do
23 you understand that?

24 THE DEFENDANT: Yes, ma'am, Judge Knie.

25 THE COURT: And so, Mr. Davis, understanding all

1 of that, is it still your wish today that you waive
2 these very important constitutional rights in exchange
3 for a plea?

4 THE DEFENDANT: Yes, ma'am, Judge Knie.

5 THE COURT: Okay. Sir, has anybody threatened
6 you or coerced you or promised you anything to get you
7 to enter your pleas today?

8 THE DEFENDANT: No, ma'am, Judge Knie.

9 THE COURT: And, Mr. Davis, don't be offended
10 because I ask everybody the next questions. Are you
11 today under the influence of alcohol, drugs, or any
12 intoxicant that would impair your judgment?

13 THE DEFENDANT: No, ma'am, Judge Knie.

14 THE COURT: And, sir, do you suffer from any
15 mental or physical infirmity that would affect your
16 ability in understanding what we're doing today?

17 THE DEFENDANT: No, ma'am, Judge Knie.

18 THE COURT: Sir, do you take any type of
19 prescribed medication?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: And, sir, have you taken that
22 medication in the last three days?

23 THE DEFENDANT: I take medication for high blood
24 pressure.

25 THE COURT: Okay. Have you taken that medication

1 in the last three days?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And when you take that medication,
4 Mr. Davis, does it interfere with your ability to think
5 and reason clearly?

6 THE DEFENDANT: No, ma'am, Judge Knie.

7 THE COURT: Okay. And I'm gonna speak to the
8 deputy there in the room with you. Do you have any type
9 of Kleenex tissue available? It seems like he's wiping
10 his face with his uniform.

11 THE DEPUTY: We'll get something.

12 THE COURT: Thank you. All right. And let me
13 ask Mr. Smith. Mr. Smith, sir, do you have any concerns
14 about proceeding today understanding that Mr. Davis has
15 taken a prescribed medication during the last three
16 days?

17 MR. SMITH: No, ma'am. I met with Mr. Davis on
18 September the 21st and on September the 22nd, and we
19 went over what he's going to do today. He's fully
20 knowledgeable, he's aware, and he's competent to proceed
21 with these proceedings based on my judgment and
22 professionalism in the field of law.

23 THE COURT: Okay. Sir, do you think that he
24 understands the proceeding?

25 MR. SMITH: Yes, ma'am, he understands the

1 proceedings. He understands where he is, and he's now
2 before the Court accepting responsibility.

3 THE COURT: And, sir, do you believe that he is
4 able to assist you in his representation?

5 MR. SMITH: Yes, ma'am. He's a very intelligent
6 individual. He has assisted me. The memorandum that I
7 produced to the Court from overnight, he substantially
8 gave me substantial information in regards to generating
9 that report or memorandum to the Court.

10 THE COURT: Okay, thank you.

11 MR. SMITH: Yes, ma'am.

12 THE COURT: All right. And, Mr. Davis, sir, do
13 you feel comfortable moving forward?

14 THE DEFENDANT: Yes, ma'am, Judge Knie.

15 THE COURT: All right, sir. And are you
16 satisfied with the services of legal counsel?

17 THE DEFENDANT: Yes, ma'am, Judge Knie.

18 THE COURT: All right, sir. I'm now going to go
19 through the charges against you, all right? I have
20 three indictments. I have a waiver indictment,
21 2020-GS-11-1184, and this is for pointing and presenting
22 firearms at persons. Sir, it appears that this is a
23 waiver. The potential penalty is zero to five years.

24 So, first, let me ask you, Mr. Davis, do you
25 waive presentment of this indictment to the grand jury?

1 Do you wish to go forward today?

2 THE DEFENDANT: Yes, ma'am, Judge Knie.

3 THE COURT: And, sir, with regard to this
4 indictment, this charge, do you understand what you're
5 entering your plea to?

6 THE DEFENDANT: Yes, ma'am. Yes, ma'am.

7 THE COURT: And do you understand the potential
8 penalty?

9 THE DEFENDANT: Yes, ma'am, Judge Knie.

10 THE COURT: Okay. With regard to indictment
11 2019-GS-11-1057, this is a true billed indictment for
12 attempted murder as the first count, and possession of a
13 weapon during the commission of a violent crime as the
14 second count. It's my understanding that today you are
15 entering a plea to a lesser included offense of assault
16 and battery of a high and aggravated nature, with a
17 potential penalty of 0 to 20 years. So, Mr. Davis, with
18 regard to this indictment 19-1057, do you understand the
19 offense that you're entering your plea to?

20 THE DEFENDANT: Yes, ma'am, Judge Knie.

21 THE COURT: And, sir, do you understand the
22 potential penalty as being 0 to 20 years?

23 THE DEFENDANT: Yes, ma'am, Judge Knie.

24 THE COURT: And, sir, do you understand that this
25 offense is classified as being both violent and serious?

1 THE DEFENDANT: Yes, ma'am, Judge Knie.

2 THE COURT: Sir, do you have any questions with
3 regard to the classification of this offense for me or
4 for Mr. Smith?

5 THE DEFENDANT: No, ma'am, Judge Knie.

6 THE COURT: And, sir, I have indictment 19 -- as
7 part of indictment 19-GS-11-1057, this is 1057A, this is
8 possession of a firearm during the commission of a
9 violent crime. Sir, do you understand the offense that
10 you're entering your plea to?

11 THE DEFENDANT: Yes, ma'am, Judge Knie.

12 THE COURT: And do you understand the potential
13 penalty as being five years?

14 THE DEFENDANT: Yes, ma'am, Judge Knie.

15 THE COURT: And, sir, this plea is coming before
16 me today as an open plea from the solicitor's office.

17 Is that correct, Ms. Leskanic?

18 MS. LESKANIC: Yes, Your Honor, that is correct.

19 THE COURT: Okay. And so, sir -- and let me ask
20 the solicitor one more thing.

21 And so there's not even a recommendation of
22 concurrent sentencing?

23 MS. LESKANIC: No, Your Honor, the defense did
24 not want any recommendation, so it is without
25 negotiation or recommendation.

1 THE COURT: Okay, thank you. And so, Mr. Davis,
2 do you understand that?

3 THE DEFENDANT: Yes, ma'am, Judge Knie.

4 THE COURT: And, sir, do you understand that with
5 regard to indictment 19-GS-11-1057A, possession of a
6 firearm during the commission of a violent crime, that
7 that sentence is not suspend-able, that is five years?
8 Do you understand?

9 THE DEFENDANT: Yes, ma'am, Judge Knie.

10 THE COURT: Have you had an opportunity to talk
11 to your attorney about that?

12 THE DEFENDANT: Yes, ma'am, Judge Knie.

13 THE COURT: Okay. And further, sir, it's my
14 understanding that you're pleading under North Carolina
15 versus Alford; is that correct?

16 THE DEFENDANT: What is North Carolina versus
17 Alford, Ms. Judge Knie? What is North Carolina versus
18 Alford?

19 THE COURT: Okay. I think that you need to talk
20 with Mr. Smith for just a moment. I think there's just
21 some confusion about the terminology that I'm using.
22 And I, Mr. Davis, I don't want to confuse you.

23 And so, Mr. Smith, can you give the detention
24 facility a call?

25 MR. SMITH: Yes, ma'am. The number?

1 THE COURT: We can get that number.

2 MR. SMITH: Yes, ma'am.

3 THE CLERK: 902-2380.

4 MR. SMITH: What's the number?

5 THE CLERK: 902-2380.

6 MR. SMITH: Okay, thank you.

7 THE COURT: Okay. Mr. Davis, sir, we're gonna
8 take a recess from your case and we're gonna reconvene
9 in a few minutes after you have an opportunity to talk
10 to Mr. Smith. You take all the time you need and we
11 will move on to something else, okay, and come back to
12 you.

13 (Recess was had from 9:44 a.m. - 10:13 a.m.)

14 THE COURT: Okay. Mr. Smith, sir, are we ready
15 to proceed?

16 MR. SMITH: Yes, ma'am, we are.

17 THE COURT: Okay. And so, Mr. Davis, I have
18 asked you about the charges that you were entering your
19 pleas to. I was also asking you with regard to the
20 nature of the plea, asking you if you understood the
21 offenses that you're entering your pleas to and the
22 potential penalties. It's my understanding, again --
23 let me make sure, is Kim on? She was just down here.
24 All right. Ms. Leskanic, I see you.

25 All right. Okay. And so, Mr. Davis -- I can see

1 Mr. Smith. Just bear with me one moment.

2 And so, Mr. Davis, just to be clear, sir, you are
3 going to enter a plea of guilt -- of guilty for the
4 pointing and -- pointing a firearm at another person,
5 and you are pleading under North Carolina versus Alford
6 as to the assault and battery of a high and aggravated
7 nature and the possession of a firearm during the
8 commission of a violent crime; is that right?

9 THE DEFENDANT: Yes, ma'am, Judge Knie.

10 THE COURT: Okay. And, Mr. Smith, did I get that
11 right?

12 MR. SMITH: Yes, ma'am, you sure did, Your Honor.

13 THE COURT: Okay. And so, Mr. Davis, with regard
14 to the offense of pointing and presenting or pointing a
15 firearm at another person under indictment 20-1184, sir,
16 how do you plead?

17 THE DEFENDANT: Guilty.

18 THE COURT: And, Mr. Davis, are you doing so
19 freely, knowingly, and voluntarily?

20 THE DEFENDANT: Yes, ma'am, Judge Knie.

21 THE COURT: All right, sir. And then with regard
22 to the offenses of assault and battery of a high and
23 aggravated nature under indictment 19-1057, and
24 possession of a firearm during the commission of a
25 violent crime under 19 -- I'm sorry, it's 1050 --

1 19-1057 was the assault and battery of a high and
2 aggravated nature. And indictment 19-1057A, possession
3 of a firearm during the commission of a violent crime.
4 Sir, it's my understanding that you're entering your
5 plea today under North Carolina versus Alford; is that
6 correct?

7 THE DEFENDANT: Yes, ma'am, Judge Knie.

8 THE COURT: Okay. And so, let me ask Mr. Smith.
9 Mr. Smith, as to all of the charges, did you have an
10 opportunity to review the evidence and the discovery
11 with Mr. Davis?

12 MR. SMITH: Yes, ma'am, I sure did, Your Honor.

13 THE COURT: And, Mr. Smith, did you also have an
14 opportunity to discuss with Mr. Davis his options of
15 going forward and entering a plea or having a jury trial
16 or a bench trial on these offenses?

17 MR. SMITH: Yes, ma'am, I did, Your Honor.

18 THE COURT: All right, thank you.

19 Mr. Davis, I will now question you, sir. Do you
20 remember speaking with Mr. Smith regarding the evidence
21 and the discovery? And you may have also reviewed those
22 documents and the State's file. Do you remember that?

23 THE DEFENDANT: Yes, ma'am, Judge Knie.

24 THE COURT: Do you also remember talking to Mr.
25 Smith regarding your options of going forward with a

1 jury trial or a bench trial or entering a plea like
2 you're doing today?

3 THE DEFENDANT: Yes, ma'am, Judge Knie.

4 THE COURT: And, sir, if you went forward and you
5 had a jury trial, do you believe that based on the
6 evidence against you it is more likely than not that you
7 would be found guilty as to the offense of assault and
8 battery of a high and aggravated nature and possession
9 of a firearm during the commission of a violent crime?

10 THE DEFENDANT: Yes, ma'am, Judge Knie.

11 THE COURT: And, sir, is that the reason that
12 you're entering your plea today under North Carolina
13 versus Alford as to those two offenses?

14 THE DEFENDANT: Yes, ma'am, Judge Knie.

15 THE COURT: And, sir, are you doing so freely,
16 knowingly, and voluntarily?

17 THE DEFENDANT: Yes, ma'am, Judge Knie.

18 THE COURT: Mr. Davis, also, sir, please be
19 advised that in the event you wish to appeal any aspect
20 of the plea hearing today, you only have ten days to do
21 so in writing to this court. Do you understand?

22 THE DEFENDANT: Yes, ma'am, Judge Knie.

23 THE COURT: Thank you. I find and conclude that
24 Johnny Edward Davis has knowingly and intelligently
25 waived his right to both be physically in my presence,

1 as well as the presence of legal counsel during this
2 plea proceeding today. He also has acknowledged and
3 taken advantage of his right to speak with legal counsel
4 via telephone at any time during the proceeding in a
5 private and confidential manner.

6 And so, with that I will call upon first, Ms.
7 Leskanic, if you will recite, ma'am, the facts that led
8 to these charges.

9 MS. LESKANIC: Thank you, Your Honor. May it
10 please the Court? These charges arose from an incident
11 that happened on March 13th of 2019. It happened at
12 Huntington Square Apartments, which is located here in
13 Cherokee County.

14 I did submit, as Your Honor noted earlier, three
15 exhibits in this case. And it should be Exhibit 1 is a
16 surveillance video, which essentially contains most of
17 the facts of the case. Along with Exhibit 1, which is
18 the surveillance video, Exhibit 2 is the recorded
19 statement of the defendant, Mr. Johnny Davis.

20 And Exhibit 3 contains three photographs. The
21 first photograph shows where the vehicles were initially
22 positioned in the facts that I'm about to give to the
23 Court. Photograph number two shows the location where
24 the shot was fired. And photograph three is a still
25 shot from an officer's body cam that shows the victim,

1 Mr. Wilkie, on the left-hand side with his hand bandaged
2 and blood coming from his mouth.

3 Essentially what happened, Your Honor, Mr. Wilkie
4 was pulling into Huntington Square Apartments. Mr.
5 Davis apparently saw him and pulled up beside him. Mr.
6 Davis got out of the driver's side of the black vehicle
7 that you can see in the first photograph that I handed
8 up as an exhibit.

9 He walks over to the driver's side of Mr.
10 Wilkie's truck, and at that point I believe he's armed
11 with a firearm. According to Mr. Wilkie, he said you're
12 gonna empty your pockets. Mr. Wilkie refused to empty
13 his pockets. He tried to pull away, which is photograph
14 number two, showing where Mr. Wilkie had pulled forward
15 and turned left through the apartment complex.

16 Mr. Davis gave chase. Mr. Wilkie stopped, Mr.
17 Davis pointed and loaded a, what appears to be, .40
18 caliber firearm at the victim. The gun is pointed at
19 Mr. Wilkie's head, so he tries to knock the gun away
20 from his head and away from Mr. Davis. And at that
21 point the gun discharges and strikes Mr. Wilkie in the
22 right hand. Mr. Wilkie then drives directly to the
23 sheriff's department where he reports this incident to
24 the sheriff's department.

25 The defendant is seen on video dropping the clip

1 to the gun, but then picking that up and running back to
2 his vehicle. There is another unidentified individual
3 in the car with Mr. Davis. That person was initially in
4 the passenger's seat, but after the shooting took place,
5 that individual moved over to the driver's seat and
6 drove Mr. Davis away from the scene.

7 During Mr. Davis's interview with police, he did
8 not identify that person. He also told police that he
9 had hidden the gun in Greenville County; that he was the
10 only one who could get to the gun, and he would not
11 disclose that location to police.

12 Now, the victim in this case states that he did
13 not owe Johnny Davis any money. He knew Mr. Davis.
14 They had engaged in drug transactions in the past. Mr.
15 Wilkie admitted to me that he had purchased marijuana
16 from Mr. Davis, but stated that he did not owe him any
17 money.

18 I will tell you that during Mr. Davis's statement
19 to police, he told them that he had, I believe, fronted
20 some meth to Mr. Wilkie and Mr. Wilkie owed him money,
21 \$200, and he was there to collect that drug debt. But
22 in any event, as Your Honor's fully aware, you cannot
23 point a loaded gun at anyone to collect any kind of
24 debt.

25 He did point that loaded gun at Mr. Wilkie. The

1 gun fired, and Mr. Davis is responsible for those
2 consequences. So those are essentially the facts of the
3 case. The victim in this case did not have to have
4 surgery. He did go to the hospital. He has a permanent
5 scar, can no longer straighten his pinky finger. And
6 those are essentially the facts of the case.

7 I will tell the Court that I did receive a copy
8 of the sentencing memorandum, and at the appropriate
9 time I may want to comment on that. I don't think that
10 goes to the facts of the case that the State wants to
11 present, but I may have some reply, if I may have that
12 after Mr. Smith, Your Honor.

13 THE COURT: Okay. And so, Ms. Leskanic, the way
14 that this will work then, I will allow you to address me
15 before Mr. Davis addresses me, okay? And I will go
16 ahead and state that I have reviewed the photographs. I
17 have reviewed the sentencing memorandum and the exhibits
18 attached to that. There were five exhibits.

19 Ms. Leskanic, did you see the exhibits? I'm
20 assuming those may have been provided through you-all's
21 discovery.

22 MS. LESKANIC: Yes, Your Honor. Mr. Smith sent
23 me a copy of the sentencing memorandum and the exhibits,
24 so I have all of that.

25 THE COURT: Okay. And so, but I also want to

1 point out that I have not yet reviewed State's Exhibits
2 1 and 2, which are videos, okay? And so I'm going to
3 need to do that before I issue the sentence in this
4 matter, but...

5 So, let me -- let me see. Mr. Davis, with regard
6 to the charge of pointing a firearm at another person,
7 you heard the facts as stated by the State. Is that
8 what happened?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: That's the offense you're pleading
11 guilty to?

12 THE DEFENDANT: Yes, ma'am, I did point a
13 firearm.

14 THE COURT: Okay, thank you. I find that there
15 is a factual basis for the plea as to that charge. And
16 based on the statements of the solicitor, I find there's
17 a factual basis for the other indictments as well.

18 Mr. Smith, I am now happy to hear from you, sir.
19 You've already stated that you have reviewed the
20 evidence and discovery in this matter with your client.
21 After I hear from you, I will hear, if asked, I will
22 hear from anyone wishing to address me on Mr. Davis's
23 behalf.

24 MR. SMITH: Thank you, Your Honor. May it please
25 the Court?

1 THE COURT: Yes, sir.

2 MR. SMITH: On behalf of Mr. Davis, I went
3 through the discovery and, as I stated, Mr. Davis is a
4 36-year-old male. He's involved in a partnership
5 relationship with Ms. Robin Cook. Together they have
6 four children. Some of the children have medical
7 disorders. Like one of his daughters has an immune
8 system disorder and she has periodic fevers. And she
9 was scheduled for Thursday -- I mean, for Tuesday this
10 week for surgery, but I think they postponed it until
11 Friday.

12 He comes from a loving family, Your Honor, except
13 that his father was addicted to drugs at the time he was
14 growing up. Mr. Davis did have positive role models in
15 terms of his mother and his sister Janika (phonetic).
16 But tragedy struck that family when Janika was killed in
17 an automobile accident. This had a severe effect on Mr.
18 Davis's life. And at some point he got involved in
19 crime. And at that sentencing, and as the guilty plea
20 information sheet demonstrates, he does have somewhat of
21 a record.

22 But while -- he was incarcerated in the prison
23 system of South Carolina for a period of time and then
24 he rehabilitated himself and got a diploma. And so, in
25 mitigation, Your Honor, when we looked at the facts and

1 circumstances of this case, we have a different take on
2 it. When the pictures that you'll see that Ms. -- my
3 counsel for the State has presented to the Court, you
4 will see that the car stops, the men have a discussion.

5 And we were, we were gonna present at trial if it
6 had gone to trial, that the man pulled up to a different
7 location and that's why Mr. -- and told Mr. -- my client
8 to come up to where he was. Otherwise, if he was so
9 fearful of Mr. Davis because he knew Mr. Davis had the
10 gun out, he wouldn't have stopped. He would have kept
11 on going.

12 So the facts and circumstances doesn't
13 demonstrate that Mr. Davis was going to harm that man
14 with the gun at the time. However, when they did come
15 up to the vehicle, Mr. Wilkie, who was known to carry a
16 gun himself, reached for something. And it was at that
17 time Mr. Davis pointed his gun, and then Mr. Wilkie hit
18 the gun.

19 But we don't understand the dynamics of how the
20 shots were actually taking place because there's no
21 ballistics in the car that demonstrates that a bullet
22 actually entered the vehicle, because Mr. Wilkie's hand
23 was shot on the right, so...

24 And then there was a shell that was inside the
25 vehicle but is in the little compartment that was inside

1 the door. So we don't know how that shell got there
2 that they were claiming came from the gun that was
3 actually utilized by Mr. -- Mr. Davis. We think that's
4 physically impossible for that to happen.

5 He is here today to accept responsibility for
6 what transpired out there that day. And as Ms. Leskanic
7 pointed out to me in an e-mail during discovery, that
8 this Mr. Wilkie has pending charges with one of the
9 solicitors there for methamphetamines, he has a
10 well-known drug relationship with Mr. Davis.

11 And Mr. Davis understands that it was wrong to be
12 selling drugs that and, you know, you can't be doing
13 that in Cherokee County. And he fully accepts
14 responsibility for that. And he understands that the
15 excuse that he may have given that he was trying to
16 support his family because at that time he didn't have a
17 job and his family was hungry.

18 But as the Court has read my memorandum, it is
19 clear that there is a need for just punishment. And I
20 think the solicitor initially, when we presented a -- we
21 asked for a sentence of around five years. She rejected
22 our, our counteroffer and said that she would do a
23 negotiated plea for ten years, but Mr. Davis turned that
24 plea down. And so, now we're at this, now he's willing
25 and asked me to instruct the Court or ask the Court or

1 request of the Court, sentence him to a ten-year
2 sentence to be served on home detention, with credit for
3 the time he served for a period of 18 months in the
4 Cherokee County Detention Center.

5 We're asking for this sentence due to the fact
6 that he is a family man; that he has been very
7 supportive of his family. That he's probably one of the
8 principal -- at the time he was out, he was the
9 principal support for the family. He's 36 years old.
10 He has remorse. He's remorseful. He cooperated with
11 law enforcement early on. And he has an ability to be
12 repatriated based on the statements that I gave or the
13 exhibits that I presented to the Court.

14 And the thing that concerns Mr. Davis and myself,
15 Your Honor, is the fact that the officers first
16 indicated on their incident report that this was no more
17 than an aggravated assault. But then he was charged by
18 the officer. And then the State with attempted murder
19 when he actually had no intention of trying to murder
20 Mr. Wilkie at all.

21 And Mr. Wilkie sent messages through another
22 person that he wasn't gonna appear in court to try to
23 hurt Mr. Davis. He didn't want Mr. Davis to get any
24 time. But that has nothing to do with the decision that
25 the Court has to make, but I'm just bringing that up

1 based on this defendant, who's actually before the Court
2 on criminal charges in Cherokee County right now.

3 I mean, and the victim's also pending criminal
4 charges in Cherokee County for meth, the very drug that
5 he said he wasn't using. Those charges are pending in
6 Cherokee County right now. But because of the, the
7 nature of the charge, Mr. Davis has been incarcerated
8 for 18 months because of the assault and battery -- I
9 mean, not the assault and battery, but because of the
10 attempted murder.

11 And so, he's been unable to participate in the
12 life of his family. His blood pressure has been
13 increased. He suffers from post-traumatic stress
14 because he's been shot before during the course of his
15 life. And there's a question as to whether or not he
16 suffers from bipolar disorder, as spoken to me by his,
17 by his partner.

18 Your Honor, we believe that giving him credit for
19 the 18 months that he served and a ten-year sentence
20 with the potential of some home detention, would be a
21 fair and just sentence, based on the facts and
22 circumstances of this case.

23 I know that he has a prior criminal record, but
24 it was over time and he overcame those difficulties.
25 And I believe that he's an ideal candidate for that

1 10-year-sentence because I believe that was what was
2 being negotiated by the solicitor in the first place.

3 So, Your Honor, at this time I'd ask that the
4 Court -- if the Court wants to give this gentlemen a
5 second chance, provide him with some mercy so that his
6 minor children will be able to participate with their
7 father and that he can be the father that his father was
8 never to him, and that he be allowed to be repatriated
9 in the Cherokee County community as soon as possible.

10 THE COURT: Thank you. Mr. Smith, do any of the
11 family members want to address me?

12 MR. SMITH: Yes, ma'am. There are a number of --
13 Ms. Robin Cook is in the audience, Your Honor, there in
14 Cherokee County and I think she would like to address
15 the Court. That's his partner.

16 THE COURT: Yes, ma'am.

17 MS. COOK: Yes, ma'am. I just want ---

18 THE COURT: Yes, ma'am, you're gonna really need
19 to speak up for me, okay?

20 MS. COOK: This 18 months without him home on me
21 and the kids have been very difficult. My nine year
22 old, he's on medication to help him sleep at night
23 because he no longer feels safe. He has aggression
24 issues so they have him on Putnam for the day so he can
25 get through school. Our son, Junior, he's eight. He's

1 on Adderall right now because he showed out at school.

2 October 7th of 2019, Johnny went up for his
3 second bond hearing, which was denied. And after that
4 Junior's stress level just went through the roof and
5 he's been having to go to mental health because he says
6 I don't know what time my daddy's coming home.

7 Our four-year-old is a very sick little girl.
8 And I'm trying to work 10 hours a day while I'm trying
9 to take care of these kids and get her to her doctor
10 appointments because she has surgery at 6 o'clock Friday
11 morning.

12 Johnny's a family man and he's always been there
13 with me through everything for four years. Taylor was
14 an infant when we got together and he's the only dad
15 that she knows. He talks to these kids every night
16 before they go to sleep and she loves to cook and she
17 cooks her daddy a meal everyday. She has to tell him
18 what she cooked him.

19 Our two-year-old doesn't even know who he is.
20 She was eight months old when all of this happened.
21 He's missed her first birthday. He's missed her second
22 birthday. He's missed her first real Christmas. All
23 she has is just pictures and hearing his voice on the
24 phone because right now we can't even come and visit
25 him.

1 He's not the monster that they try to make him
2 out to be. Johnny loves and supports his family any way
3 he can. I have to fuss at him all the time because
4 he'll stop and pull over for a stranger. I tell him to
5 stay inside, I don't want you getting hurt. He's my
6 backbone and it is so hard not having him here. And if
7 y'all can just, please, I mean see that he's not, he's
8 not a bad person. This 18 months has physically and
9 mentally strained him.

10 We fussed and argued over the phone because I'm
11 stressed without him and he's stressed in there without
12 us. We took it out on each other a few times, but we
13 know he'll be home soon. And his aunt would like to
14 speak also.

15 THE COURT: Okay. Thank you, ma'am, and thank
16 you for your input. And what is the aunt's name,
17 please?

18 MS. DAVIS: Ruby B. Davis.

19 THE COURT: One more time, please.

20 MS. DAVIS: Ruby B. Davis.

21 THE COURT: Ms. Davis, yes, ma'am, I'd be happy
22 to hear from you.

23 MS. DAVIS: Yes, ma'am. Thank you so much for
24 allowing us to speak to you today.

25 THE COURT: Yes, ma'am.

1 MS. DAVIS: On behalf of my nephew, I want to
2 tell you a little something. I've had Johnny a little
3 something from in and out of my household since he was a
4 little something. My mom and I took him and tried to
5 raise him the best we could.

6 I have seven children of my own, so with that
7 being said, having him and his sister in my home because
8 him and his mother separated when Jimmy was very young
9 -- we call him Jimmy, was very young. And so I did the
10 best I could with as many children as I had in my
11 household.

12 And then with me being sick -- I'm a cancer
13 survivor, and with me being sick and going through
14 everything that I had to go through too, I tried to
15 raise him the best I could, but... In all of this
16 process, he lost his sister in a bad car wreck at 18.
17 After that my mother died. After that my brother died,
18 which was his father.

19 And then I was sick during the time of all of
20 this going through chemo and all of this. And this
21 child having nobody else to depend on, it's a lot on
22 him. And so I tried to get him some kind of, you know,
23 help or something with the best I knew how to get him
24 some help or something, because with the bipolar or
25 whatever, he had a whole lot of stuff going on in his

1 head because he didn't have no kind of guidance.

2 Do you understand what I'm saying? After I got
3 sick and after he lost momma, because momma was
4 backbone, she was grandma, so she was like there when I
5 was working taking in all the kids and trying to teach
6 them to do the right thing. But we did the best we
7 could do with him.

8 And then after I got sick and then, you know, it
9 was just like, you know, he didn't have nobody to depend
10 on. But I've never known Johnny to be violent. I've
11 never known him to be violent. I've known him to sell
12 drugs, but I've never known him to be violent. And this
13 man that he's accused of hurting, I know that they had
14 some dealings together. And as far as I know, they
15 still talk and still friends or whatever.

16 But when you do -- what I always taught my
17 children is when you do wrong, you know, two wrongs
18 don't make no right. We understand that. But sometimes
19 you need somebody to get you to the right place, the
20 right kind of help you need. Do you understand what I'm
21 saying?

22 And so, I think what Jimmy -- what Jimmy needs is
23 help. Jimmy needs to be on a medication. He needs
24 help, and that help he needs I can't give it to him.
25 And he needs some kind of medicine for his nerves and

1 stuff and for what he's done been through and all of
2 this stuff he's had to go through with in these years
3 and, you know, it's just there.

4 But violent, no, ma'am, he's not a violent
5 person. And, as I said, I've had him around me all his
6 life because I was the only support person after my
7 momma died. So violent he's not. And he has done some
8 wrong, we all have, but he's not a violent person.

9 And that's what I wanted to tell you just a
10 little bit about him. He's a very good father. Good
11 nephew. Good to anybody. Anything he can do for you,
12 he will do. I thank you for listening to me.

13 THE COURT: Thank you, Ms. Davis.

14 MS. DAVIS: Yes, ma'am.

15 THE COURT: Okay. Now, anything else from the
16 defense at this time? I'm going to allow the --
17 actually, I want to review the video surveillance discs.
18 I believe those were provided today just before the
19 hearing, which is normal. But I am going to probably
20 reconvene this. I know that we have several other pleas
21 set this afternoon. And so it may be tomorrow before
22 reconvene for sentencing.

23 And I want to say that so that Mr. Davis
24 understands that he needs -- I want him to address me,
25 okay, before sentencing.

1 Ms. Leskanic, if you would like to withhold your
2 comments concerning sentencing until that time, that
3 would be fine with me. As well s, Mr. Smith I will give
4 you an opportunity to tell me anything that you want to
5 as well, okay.

6 Yes, ma'am. Ms. Leskanic, I'm happy to hear from
7 you.

8 MS. LESKANIC: Thank you, Your Honor. I just
9 wanted to make sure. It appeared there may be one other
10 individual in the Webex room who wanted to address Your
11 Honor on behalf of Mr. Davis.

12 THE COURT: Okay, thank. Let me then hear from
13 -- un-mute that Webex one, please. Thank you. Yes,
14 ma'am, I did not mean to overlook you. Ma'am, would you
15 like to address the Court?

16 MS. MARKS: Yes, ma'am. Thank you.

17 THE COURT: Yes, ma'am. And what is your name,
18 please?

19 MS. MARKS: Yes. My name is Regina Marks.

20 THE COURT: Marks?

21 MS. MARKS: Yes, ma'am. M-a-r-k-s.

22 THE COURT: Okay, thank you. Yes, ma'am, and
23 what is your relationship to Mr. Davis?

24 MS. MARKS: I'm his first cousin/sister. We was
25 kind of raised up in the house together. I'm the

1 daughter of Ruby Davis.

2 THE COURT: Yes, ma'am, I'm happy to hear from
3 you.

4 MS. MARKS: Yes, ma'am. When we was raised up in
5 the home that my mother stayed in, we all had it hard
6 coming up. We all kind of stayed in the home together.
7 So we was all in a three-bedroom, one home -- I mean,
8 one bathroom home. So it was my mother's family and my
9 grandmother's family and their kids, so we all had to
10 kind of make what we had at that home. We had to make
11 it work. So, we all kind of had it hard coming up, you
12 know, understand?

13 So, Jimmy was loved all his life, so it had to be
14 some kind of mental issue, like dealing with what he had
15 to go through with losing his sister, losing with my
16 grandmother, losing his father, because he has truly
17 been loved from day by the whole family. So it had to
18 be a mental issue.

19 But when Jimmy got out of incarceration the last
20 time, I could tell a change in him because he hasn't
21 been leaning and depending on God. I don't know what
22 happened with this situation right here, but he has been
23 leaning towards God. He has been trying to change his
24 life. I can tell a change, a difference in him.

25 I can, even since we've been talking to him on

1 the phone, since he's been incarcerated this time, I can
2 tell the change. Like he has God in his life, so I
3 think he put God first with everything that he's got
4 going on, even though he got problems that he's still
5 dealing with. I know, I can tell that God is in his
6 life, you know?

7 So I don't know what the outcome may be, but
8 whatever it is the whole family is putting God first.
9 And thank you, Ms. Leskanic for giving -- remind her
10 about we tried to get her attention. And thank you,
11 Your Honor, for your time. Appreciate you.

12 THE COURT: Okay. Thank you, ma'am. Thank you
13 for your input. Okay. And so with that, let me direct
14 my comments to Mr. Davis.

15 Mr. Davis, sir, I would prefer to hear from you
16 last, okay, before I issue my sentence. And because I
17 need to review a couple of the exhibits from the State
18 that may take some time because they're on disc, I don't
19 want to delay anymore today, but we can reconvene, okay?
20 And we can reconvene.

21 Mr. Smith, sir, I know you're busy and you're
22 state wide. I can't go anywhere in the state where Mr.
23 Smith doesn't appear in front of me.

24 MR. SMITH: Yes, ma'am.

25 THE COURT: So I know that your calendar is

1 probably full, sir. And, Ms. Leskanic, I don't know
2 your schedule for tomorrow and Friday. I'm, of course,
3 going to be here doing pleas. I know that this is a
4 strange week because of the solicitor's conference, but
5 normally we would not be doing criminal court this week.
6 And we're trying to get a lot done, though. And I
7 appreciate Ms. Leskanic being here this afternoon.

8 Mr. Smith, what is your availability tomorrow and
9 Friday?

10 MR. SMITH: I can be at 9 o'clock or whatever
11 time you set it in the morning, I can be available, Your
12 Honor.

13 THE COURT: Okay. What I was thinking is
14 possibly at 12:30.

15 MR. SMITH: That's fine, Your Honor.

16 THE COURT: Because, hopefully that would be a
17 normal breaking point.

18 And Ms. Leskanic, ma'am, would that work for you?
19 I don't think this will take as long as it has taken
20 today, but I just want to make sure I have an
21 opportunity to review everything and review my notes.
22 And so, 12:30 will work for me if that will work for
23 you, ma'am.

24 MS. LESKANIC: Yes, Your Honor, I'll be here all
25 day.

1 THE COURT: Okay. And so, then we will -- Mr.
2 Smith, we will reconvene as we have today in the same
3 manner.

4 Okay. Mr. Davis, sir, do you understand? I'm
5 going to give you an opportunity to tell me anything you
6 want tomorrow at 12:30 before I issued a sentence. Do
7 you understand?

8 THE DEFENDANT: Yeah. Thank you, Judge Knie.
9 You have a blessed day.

10 THE COURT: All right. Thank you very much. And
11 to your family members, thank you all for being here. I
12 know you all are busy. You're also welcome to come back
13 tomorrow or observe. All right, thank you. That
14 concludes everything for today.

15 MR. SMITH: Okay.

16 (Hearing recessed for the day at 1:08 P.M.)
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1 (State's Exhibit No. 2 was entered into the
2 record.)

3 (State's Exhibit No. 3 was entered into the
4 record.)

5 (Defendant's Exhibit No. 1 was entered into the
6 record.)

7 (Defendant's Exhibit No. 2 was entered into the
8 record.)

9 And I have, earlier today when Ms. Leskanic was
10 in the courtroom on another matter, I did inquire if she
11 had also received that and she said that she had. I
12 have had an opportunity to review that.

13 And so, at this time, I heard from Mr. Smith
14 yesterday. I will not preclude him from supplementing
15 his comments to me today, but I know that I had also
16 heard from the family members, I believe a cousin, an
17 aunt and a fiancée of Mr. Davis. And I have not yet
18 heard from Mr. Davis. But, again, I won't preclude
19 being addressed. And I also am going to give the State
20 an opportunity to address me with regard to sentencing,
21 as promised from yesterday, before I allow Mr. Davis to,
22 to go. Okay?

23 And so, with that, let me first -- oh, and I also
24 want to state that I did review the two discs that were
25 submitted by the State, which was the reason that we

1 broke yesterday so that I would have time to review that
2 information, which I did last evening. All right?

3 And so now, first, let me ask Mr. Smith. Mr.
4 Smith, sir, I am happy to hear from anyone else that you
5 would like to have address me or any additional comments
6 from you, sir.

7 MR. SMITH: Yes, ma'am. Ms. Prosecutor, Your
8 Honor, may it please the Court. Yesterday out of an
9 abundance of caution, I wanted to make sure that -- Mr.
10 Davis wanted me to instruct the Court on what the
11 sentence is with regard to the home detention. And
12 yesterday, you know, I wanted to make sure he had an
13 understanding of what that meant under the law. Under
14 the law home detention is not available for a violent
15 offense or violent offenses in this state.

16 And then I, this morning, I spoke to him again.
17 I spoke to him yesterday and then I spoke to him again.
18 So I wanted to say that if, if the case does not plea
19 out, it goes back to the original charge of attempted
20 murder that it'll be tried under, is my understanding.
21 And that carries a 30-year sentence, so...

22 And also, I also gave him the definitions of --
23 and this is why I think the *Alford* plea is so
24 appropriate in this because one of the elements in, in
25 the definition of assault and battery of a high and

1 aggravated nature is likely to cause death or great
2 bodily harm. And so, it was my indication, based on my
3 reading and understanding of the law, that a deadly
4 weapon constitutes a likely source that can provide
5 deadly force or likely to cause deadly force or
6 seriously harm to someone.

7 So having said that, I wanted to make sure that
8 Mr. Davis, pursuant to those conversations, was fully
9 aware of those particular items that could affect his
10 decision. And I also told him that he would not be able
11 to get probation on the five-year sentence with regard
12 to the weapons, but that he -- the Court could consider
13 a probationary sentence with the other two charges if
14 the Court is deemed inclined to, to entertain that.

15 THE COURT: All right, thank you. And, Mr.
16 Smith, I am going to enter your amended sentencing
17 memorandum with the attachment.

18 MR. SMITH: Yes, ma'am.

19 THE COURT: I will make that Defense Exhibit
20 Number 3.

21 MR. SMITH: Yes, ma'am.

22 THE COURT: Okay. Any objection, Ms. Leskanic?

23 MS. LESKANIC: No objection.

24 THE COURT: Okay, thank you. This will be duly
25 marked without objection.

1 (Defendant's Exhibit Number 3, Amended
2 Memorandum, was marked for identification.)

3 (Defendant's Exhibit Number 3 was entered into
4 the record.)

5 And, Mr. Smith, thank you for your efforts on
6 that. I know you were burning the midnight oil working
7 on that and getting that to us today.

8 MR. SMITH: Yes, ma'am.

9 THE COURT: Okay. So, anything else from the
10 family members of Mr. Johnny Davis before I hear from
11 the State and then hear from Mr. Davis himself?

12 And I'm looking at Webex one, I believe it's Ms.
13 Cook, Ms. Ruby Davis, and the young lady. And I
14 apologize, you addressed me yesterday. Okay. Yes,
15 ma'am. Okay. Anything else from you ladies?

16 MS. DAVIS: Thank you so much. And I know it's
17 been a rough night for all of us. So I just want to say
18 thank you, whatever your decision -- whatever your
19 decision is we thank you. I just want to say that, you
20 know, as his aunt and has been his provider for a while,
21 you know where my heart is today.

22 To be here period is a bad place for me because I
23 have a son that's serving life in prison. And so, every
24 night I go to bed kind of crying, you know, teared up,
25 you know, afraid for him or whatever. So I never go to

1 bed happy. I go to bed -- I go to be happy because he's
2 alive and I'm alive. I'm still here, but I don't never
3 going to bed without thinking of where my son's at, you
4 know?

5 So today is just a, it's a bad place for me to be
6 today, but thank you. Thank you for what you do.

7 THE COURT: Yes, ma'am.

8 MS. COOK: And thank you for allowing us to be
9 here because Lord knows I don't want him going through
10 this by himself. But the thing is just for you to take
11 into consideration is how much a family man and a father
12 he is and how badly he is -- me and his kids need him
13 home. Like I said, our four-year-old has surgery at 6
14 o'clock in the morning. If you can please take into
15 consideration his remorse and he did make a bad
16 decision, but he regrets what he has done.

17 He's not a bad person. He's really not. I thank
18 God every day he's been in me and my kids' lives. They
19 didn't have a father. It was like that with Johnny. It
20 is hard to find a man with six kids that's not their
21 own.

22 And, like I said, our two-year-old, she don't
23 even know him. With this COVID I can't do visitations.
24 All we have is phone calls and photographs and family
25 videos. And it's just not fair.

1 But thank you so much once again for giving us
2 time to be here today. And may God bless you and it's
3 in God's hands for what happens today.

4 THE COURT: Yes, ma'am. Thank you.

5 MS. COOK: Thank you.

6 MS. DAVIS: Thank you, Your Honor, for everything
7 you've done.

8 THE COURT: Yes, ma'am.

9 MS. DAVIS: Thank you so much.

10 THE COURT: Okay. And so, I need to hear from
11 the State with regard to sentencing before I hear from
12 Mr. Davis. Ms. Leskanic?

13 MS. LESKANIC: Thank you, Your Honor. And I had
14 conversations with Mr. Smith last night. I guess,
15 before I go any further, based upon Mr. Smith's
16 conversations with his client not being eligible for
17 home detention, is there any motion to withdraw the plea
18 or is the plea accepted and we're going forward?

19 MR. SMITH: That's up to my client. If the Court
20 would -- I'm sorry.

21 THE COURT: Go ahead. Mr. Smith, you're not
22 muted.

23 MR. SMITH: Pardon?

24 THE COURT: Okay. Start over again, okay?

25 MR. SMITH: Yes, ma'am. May it please the Court?

1 THE COURT: Yes.

2 MR. SMITH: I haven't filed any motion to
3 withdraw the plea. That would be up to Mr. Davis to
4 make that decision. After I've had consultation with
5 him yesterday with you as to the memorandum and my
6 conversation with him this morning before he speaks.
7 But I told him, basically exactly what's in my
8 memorandums, that the State could -- has a strong
9 possibility of convicting him if he goes to trial.
10 We're asking for mercy in front of Judge Knie on these
11 charges. And his life is in his hands because he's
12 always told me that this is his life, and so I would ask
13 the Court to inquire of him of what he would like to do
14 in terms of proceeding.

15 THE COURT: Okay. And just to be clear, and so,
16 Mr. Smith, you and Ms. Leskanic spoke last night and
17 that would be the "you" that you were referring to?

18 MR. SMITH: Yes, ma'am.

19 THE COURT: Okay. Mr. Davis, sir, do you wish to
20 proceed today with the plea hearing?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Do you need any more time to talk to
23 Mr. Smith?

24 THE DEFENDANT: No, ma'am, Your Honor. I'm just
25 ready to get it over with.

1 THE COURT: Okay. All right, thank you.

2 Okay. Ms. Leskanic, Deputy Solicitor, I'm happy
3 to hear from you, ma'am.

4 MS. LESKANIC: Thank you, Your Honor. First of
5 all, going to Mr. Smith's amended sentencing memorandum,
6 I did not object to that being admitted as a defense
7 exhibit. However, there are things contained in there
8 that I just wanted to clarify on the record. And I
9 think it is clear from the court record, but there are
10 several places that the plea is listed as a no-contest
11 plea. I believe we discussed yesterday no-contest is
12 not available for felony offenses, and so the defendant
13 is pleading guilty under North Carolina versus Alford on
14 the ABHAN and possession of a weapon during the
15 commission of a violent crime. I just want to clarify
16 that.

17 Additionally, the high and aggravated charge is
18 written in the memorandum as a non-aggravated nature,
19 but that is assault and battery of a high and aggravated
20 nature. It also says that he's pleading guilty to
21 unlawful possession of a pistol, but he is pleading to
22 pointing and presenting a firearm. And that is on the
23 waive indictment that he is actually pleading guilty to.
24 That's all in the first two paragraphs of the
25 memorandum.

1 The second paragraph of the memorandum and also
2 the family members that are with us today, talks about
3 the children and the difficulties that they are having.
4 And I understand that, and the tears that the family is
5 shedding downstairs. But Mr. Davis has placed himself
6 in this position. Everything that brought him here
7 today were his choices.

8 There are comments in the memorandum about the
9 State making charges, judges not granting bonds. You
10 know, this being over drugs. All of this comes down to
11 the fact that that entire interaction, Mr. Davis, was
12 engaged in criminal conduct. He admitted that he was
13 there. Taking his set of facts, he was there as a drug
14 dealer. He was driving under suspension and an habitual
15 traffic offender. Shouldn't have even been driving.

16 Before any of this happened, if he was in
17 possession of that gun, and he was, under federal law he
18 couldn't possess a gun because he has a conviction that
19 carries more than a year on his record. And those
20 convictions include domestic violence convictions, so he
21 wasn't even supposed to have a gun.

22 He continues with criminal conduct by pointing a
23 loaded gun, even if it's over drug money. He fires that
24 loaded gun at an apartment complex where innocent people
25 could have been hurt or killed. And then he goes back

1 to Greenville County and he hides the gun.

2 So although it is stated in the memorandum that
3 he fully and completely cooperated with police, he did
4 not. He didn't tell the name of his accomplice who
5 drove him away from the scene. And he has not, to this
6 day, told the location of that gun, but he knows where
7 it is and he's not allowed to possess guns.

8 There was not one legal action that he was
9 involved in that day. And he wants to blame our office,
10 the police department, the courts for not getting bonds,
11 or even, you know, Mr. Wilkie, if this was a drug deal.
12 These were all his choices, and every single one of them
13 was criminal conduct.

14 We did offer the ten years initially. He did not
15 want that. He wanted to plead straight up. And it
16 seems that the mitigation in this case is that his
17 family needs him and that this was over drugs. A drug
18 deal should not mitigate a shooting. We have more
19 murders in this county over drug deals that have gone
20 wrong or home invasions over drugs, then we have murders
21 for anything else.

22 It is the most dangerous conduct that I have seen
23 as a prosecutor in Cherokee County. Violence over
24 drugs. Guns and drugs. And this case is no exception
25 to that. So the fact that this may have been over drug

1 money that is owed is not mitigation, but it just shows
2 how dangerous those two activities are when they're
3 combined.

4 Going back to the memorandum, he talks about
5 there's no evidence. There was a .40 caliber shell
6 casing found in the vehicle and there was one shot
7 fired. Mr. Smith talks about Mr. Wilkie possibly
8 shooting himself, and I think there is zero evidence of
9 that. No one alleged that. And, in fact, as the Court
10 knows because you watched his statement, Mr. Davis
11 stated that Mr. Wilkie was not armed with a gun. He was
12 admittedly not armed with a gun when he was shot by Mr.
13 Davis.

14 So with that all being said, Your Honor, I
15 appreciate the opportunity to speak and comment on the
16 memorandum. There is one other thing that's in here
17 that Mr. Smith notes on page eight of the updated
18 memorandum that Mr. Davis has a conviction for ABHAN
19 under 16-160. I don't like to get into sentencing;
20 however, I believe that was in 2005, which would be the
21 old ABHAN, which was the zero to ten-year misdemeanor
22 and not classified as a violent offense. So I just
23 wanted to correct that.

24 It's a dangerous situation. What Mr. Davis is
25 being allowed to plead to is what he admitted happened.

1 He, assuming his facts, he went to collect a drug debt.
2 He pointed a gun. He shot a man at an apartment
3 complex, and it is the most dangerous and deadly
4 activity we have in this community.

5 THE COURT: Okay, thank you.

6 MS. LESKANIC: Thank you.

7 THE COURT: Okay. Mr. Smith, anything before I
8 hear from Mr. Davis?

9 MR. SMITH: Yes, ma'am. May it please the Court?
10 There are people that have been actively involved in his
11 life. And I've cited those documents that show that he
12 would have gainful employment. As a matter of fact, a
13 job is waiting for him from McDaniel's Construction
14 Company and at Vericheck. So there are people that
15 actually trust that Mr. Davis will conform his conduct
16 to the requirements of the law.

17 He's had -- he's 36 years old, and I think the
18 statistics show that once a person gets about that age,
19 their criminal days are basically over statistically.
20 And so, I think he's well on the path of getting his
21 life right. He has a -- he knows he's gonna have to do
22 five years based under this sentence. And he loves his
23 family. That's the main thing. And I think he made a
24 mistake because of his protection of his family. It's
25 no excuse. He understands that, but I believe that this

1 all endears to his benefit that he can conform himself.
2 He's very smart. He's a very intelligent person.

3 And I do think, like his aunt says, he does need
4 psychiatric treatment and counseling to get beyond some
5 of the traumatic experiences that he suffered in his
6 life as being a gunshot wound victim, losing his sister,
7 losing -- not having much family support except through
8 his aunt and his mom potentially during the course of
9 his life.

10 And so, you know, you can't blame society on
11 everything, but sometimes society or nurturing factors
12 do come into play as to why somebody's life gets off
13 track. And so, I would ask if the Court would have
14 mercy on him, consider that 10 years. And I think the
15 State, in our initial offer, thought that was a fair
16 sentence of that ten years. And if the Court could
17 provide any sort of probationary period.

18 But we're asking for mercy, Your Honor. We're
19 not trying to ask for the world, we're just asking for
20 mercy today. Thank you, Your Honor.

21 THE COURT: Thank you. Okay. Mr. Davis, now is
22 your time to address me, sir. And so I'll ask my law
23 clerk to un-mute you so I can hear you.

24 THE DEFENDANT: Thank you, Judge Knie. May it
25 please the Court, Ms. Knie? I come here today to

1 apologize to the Court, the victim, my family, and
2 society. Now, I do hold full responsibility for my
3 actions taken. Now may I speak to you from my heart,
4 Judge Knie?

5 I made some bad decisions and choices that led me
6 here today. Please let me be obligated to get a second
7 chance. I have learned a great lesson. I just want to
8 work, stay home, and take care of my family. Like I
9 mentioned, I have made some wrong choices in life, but I
10 give you my word I will never do something without
11 thinking and using my wisdom and knowledge and
12 understanding.

13 These 18 months I have been -- I stayed around
14 positive people, older people because they have lots of
15 wisdom. And I have knowledge to want to do better for
16 myself and my kids.

17 I apologize for my actions, and I mean that from
18 the bottom of my heart. I had a rough life, losing my
19 dad and sister and I've been hurt. And it hurts me more
20 because my kids and my mom and my family have lost me
21 for 18 months. My kids are scarred from my actions. My
22 eight-year son takes medicine for mental health because
23 of my actions.

24 I'm not a bad person. My record proves it, Judge
25 Knie. I'm a kind hearted, caring guy. I'm

1 soft-hearted. I'm mentally torn to pieces. These 18
2 months have made me get my life together. I'm not
3 perfect, Judge Knie, but I strive for perfection.

4 I'm 36 years old. Some people learn at an
5 earlier age and some learn later, but that is my heart
6 and I have done learned my lesson. And I want you to
7 know that, Ms. Knie. This journey I've had has learned
8 me life is about love, pain, tears, joy, and laughter.

9 My kids and fiancée need me. I'm a great father
10 to my kids. I'm not on child support for neither one of
11 my children. I have five. I help them with their
12 school work. I have a two-year-old, a four-year-old, an
13 eight-year-old, nine-year-old, and a ten-year-old. I
14 disappointed my kids and myself, but they'll forgive me.
15 I just have to go home and pick up where I left off,
16 where I got off track.

17 Judge Knie, I just want to be there for my kids.
18 I just want to see my kids happy again, and I want my
19 kids to be able to forgive me and say my daddy's home.
20 My family's been through a struggle without my help. It
21 is very difficult to see your kids and loved ones
22 struggle when you know you can make a difference.

23 I didn't shoot the victim, which is my friend,
24 Judge Knie. He stated in the police report he shot the
25 gun, that's when it went off. That's lack of intent,

1 Ms. Knie. But I take responsibility for my actions
2 still. He has not pushed the issue in the matter
3 because we both know it's a misunderstanding. I'm not
4 mad at him, Judge Knie, and he's not mad at me. The
5 bullet grazed his hand. We've been friends since I was
6 12 years old and we're still friends.

7 Ms. Leskanic states most people say or think I'm
8 a bad person, but the 18 months I've been here from the
9 major to the captain to the lieutenant to the sergeant,
10 can tell you, Judge Knie, I haven't been in one incident
11 with no trouble. I respect all officers. All officers
12 have a caring heart for me because they know I'm a well
13 respected young man and I'm very lovable and I'd give
14 anybody anything that don't have much.

15 Ms. Knie, I'm a follower of Christ and I'm a
16 child of God. These 18 months I have done have been an
17 experience. Judge Knie, every experience is education.
18 These 18 months have taught me a lesson. In this
19 situation I've been there, Ms. Knie. Only person I can
20 call is God for help. Not only has he saved me, but
21 he's talking to me.

22 Judge Knie, I have high blood pressure ma'am. I
23 went from taking a 10 milligram Pentopril morning and
24 night to taking 200 milligrams in a pill. It's not
25 getting any better, it's getting worse.

1 My mom got married, Ms. Knie, on July 18th of
2 2020. That's my mother and her husband. As you know,
3 you can see my son in the corner right here, but I don't
4 want to hold you up with this picture, Ms. Knie.

5 But I've been held against my rights 18 months.
6 Article 1, Section 15 of the constitution allows for all
7 persons is guaranteed a bond, Judge Knie, unless they
8 have a capitol offense. Judge Knie, I've been charged
9 with a trumped up charge of attempted murder with the
10 State. Johnny Davis did, on March 13th, 2019, with
11 malice aforethought did or apply attempt to kill James
12 Wilkie by shooting him.

13 Ms. Knie, like I stated earlier, ma'am, the
14 police report stated and there was a video that the
15 State didn't give you as an exhibit to where when the
16 victim gave his statement to the police report, Ms.
17 Knie, he stated he hit the gun. On the video that you
18 watched, Ms. Knie, of me and him in the apartment
19 complex, as you know the clip fell off the gun, but if
20 you're shooting the gun, Judge Knie, if the clip fell
21 out it would be to where you could reach down and pick
22 it up.

23 As you know, Ms. Knie, the clip was long, a few,
24 like five, maybe ten feet away from where I was standing
25 because of the force of him hitting the gun. Ms. Knie,

1 if I had anything to hide, I've got enough knowledge,
2 Ms. Knie, to where I wouldn't have gave a statement to
3 the detective without a lawyer present. But I'm an
4 honest man, Judge Knie, and I like to be honest with
5 everyone no matter what the situation is.

6 Judge Knie, on my original charge I could have
7 got a bond 18 months ago. I left my family on 3/19/19.
8 My youngest girl was eight months only, Ms. Knie, and
9 now she's two. I talk to my kids every day and every
10 night when my fiancée get off work from working 10-hour
11 shift. My kids ask me, daddy, what time are you coming
12 home? Daddy, when are you coming home? I even hear
13 them in the background when I'm talking to my fiancée,
14 Facetime daddy, momma, like we do grandma, and it hurt.

15 Ms. Knie, I came in front of you August the 17th
16 for a bond hearing. And before I came in front of you,
17 Ms. Knie, I talked to my son like a week -- no, it was
18 before. And I told him, daddy got a surprise for you.
19 I thought I would have had a bond on the 17th, so my
20 surprise to my son was gonna be me popping up at home.

21 So when I talked to him two weeks after I came in
22 front of you, I was stressed because I didn't really
23 want to, you know, talk to the children because I was so
24 hurt that I couldn't be there for them and I couldn't
25 give him his surprise. But when I talked to him, one of

1 the first thing he asked me, daddy, where's my surprise
2 at? And it nearly broke my heart because I knew the
3 surprise, the only surprise I had was coming home.

4 My youngest son stay with my momma and she is
5 struggling to maintain her job because she has to get
6 him ready for school. My momma works with disabled
7 kids. They're mentally disabled. She takes care of her
8 mom, which had -- she had two light heart attacks and
9 had fluid around her heart. And the doctor said that
10 her arteries and veins were too weak to put a stint in
11 her heart.

12 I have a four-year-old with multiple disorders,
13 Ms. Knie. And I hate to destroy my kids. It's not only
14 affecting me, it's affecting my children, Judge Knie.
15 And that could cause more mental issues in the future
16 for me not being there for my children, Judge Knie.

17 Judge Knie, ma'am, I hope to grab your attention.
18 They had no pictures of the victim's hand in my motion.
19 I have medical records also, Judge Knie. The victim got
20 Narco .5, 325 milligrams for his medication. Judge
21 Knie, there's no way possible, ma'am, he got shot when
22 in his medical records there's no stitches, there's no
23 staples, there's no hole. He got 14 pills for three
24 days, Ms. Knie. Narco .5, ma'am.

25 So I just wanted to let you know, Judge Knie,

1 with the .40 caliber pistol, if he would have got shot
2 in the hand, it would have been a lot of damage.
3 Yesterday they stated -- Ms. Leskanic said that I had
4 the gun at the jail. Judge Knie, the way as you saw how
5 we was positioned as I would be the victim and he would
6 be -- this would be me, this table, Judge Knie, from
7 this side. The victim was where I'm at. His right hand
8 went from lower to where I would hit your car. And if I
9 had a gun to his head, Judge Knie, when he smacked that
10 gun, it would have shot him in his head.

11 How -- the way the tip of the gun went, Judge
12 Knie, this is the victim, I'm the victim. This is me in
13 the video. This is me, this is the building. This is
14 me, Judge Knie. If I had the gun to his head -- now, I
15 remind you, Judge Knie, this is the victim. If I had
16 the gun up to his head, Judge Knie, and he smacked it,
17 as he stated on video for the defense, he hit it like
18 this. (Indicating.)

19 If he hits that gun, Judge Knie, and I got it to
20 his head, he hit my hand this way and he hit this way,
21 Ms. Knie. This would be him. This will be me at the
22 car. If I had the gun to his head, when he shoved it
23 like this, Ms. Knie, it would have went on his back --
24 it would have went like it would have shot him in the
25 back of the head or something, Ms. Knie.

1 The bullet went to the right of me from his
2 impact. So I didn't pull no trigger, Judge Knie. I
3 just wanted to address that to you, ma'am. Ms. Knie,
4 the State is biased. They prejudice in favor or against
5 another person who broke a pack with the other. Usually
6 in a, usually in a way represented to be unfair.

7 I have a friend in the dorm, Ms. Knie. He had to
8 plea for assault and battery of a high and aggravated
9 nature, what I'm pleading to today, ma'am, and he shot
10 two victims. One, five times in the chest. And they
11 dropped his charges Friday. And if you would like a
12 name for the record, Ms. Knie, you could see that I'm
13 stating facts. There's nothing that's not fact, Ms.
14 Knie. And when you're in the court you state the facts,
15 we don't state assumptions and what could have happened.
16 We state facts of what happened.

17 So I have a friend, Judge Knie, that had two
18 attempted murders. One victim got shot five times in
19 the chest, one time in the leg, and two times by the
20 groin area and they dropped his charges to assault and
21 battery high and aggravated nature.

22 Ms. Knie, ma'am, I know at the minimum, Ms. Knie,
23 I know, you have to give me five years. I know that
24 just for the pistol charge. And I'm all right with it,
25 Judge Knie. But Ms. Knie, ma'am, when I was in prison

1 in 2014, I maxed out in 2015. I was stabbed. I was
2 beaten with a rifle. Judge Knie, ma'am, I don't want to
3 go back to prison. I know that for possession of a
4 commission of a violent crime (sic) that's a five-year
5 mandatory sentence, Judge Knie.

6 But Judge Knie, ma'am, one thing I want you to
7 understand, Ms. Knie, I can die in prison. Please, Ms.
8 Knie, I'm begging you from the bottom of my heart,
9 please be as lenient as possible.

10 Ms. Judge Knie, this is excessive and cruel
11 punishment and pain. I grew up without my dad and it
12 hurt. I'm not trying to put my kids through the pain
13 any longer than I have to. It will tear my spirit in
14 pieces. The only thing I look forward to is being there
15 for my family and my kids. Judge Knie, ma'am, you don't
16 know my kids. But I ask you, Ms. Knie, please, please,
17 Ms. Knie, be a blessing to my children and send me home
18 soon.

19 Ms. Knie, ma'am, I'm not here today -- the tears
20 I'm shedding to you now, ma'am, they're not for me being
21 scared, but my tears are for pain, Ms. Knie. Ms. Knie,
22 all I've been through in my life is pain. Ms. Knie, I
23 wish, I pray, and I've been praying for 18 months to be
24 able to go home to my family.

25 Like I said earlier, Ms. Knie, it was wrong for

1 me to be charged with attempted murder. The State says
2 I attempted to kill the victim when my original charge
3 was aggravated assault, Ms. Knie, from the Gaffney
4 Police Department. The investigator was Roger Hannon
5 (phonetic). He charged me with aggravated assault, one
6 count on 3/13/19.

7 Judge Knie, ma'am, my warrant was signed 3/15/19.
8 The judge signed the warrant for attempted murder,
9 ma'am. In order to uplift the charge, Ms. Knie, the
10 grand jury gotta have evidence. There's no evidence in
11 my police report or my motion, Judge Knie, that stated I
12 attempted to kill the victim. But my charges got
13 uplifted to attempted murder. I'm pleading today, Ms.
14 Knie, back to my original charge. So it's really like
15 I'm not getting a plea deal because my original charge
16 was aggravated assault.

17 It got me messed up and kept me away from my
18 family for 19 months on a bogus attempted murder, Judge
19 Knie. I didn't attempt to kill the victim. The victim
20 never stated I tried to kill him. He never stated I
21 shot him.

22 Judge Knie, from the victim who is not here today
23 stated that he shot the gun and that's when it went off.
24 There's a lack of intent on my behalf, Ms. Knie. I had
25 no intention on that gun going off. Ms. Knie, I even

1 called the victim's ex-wife when the incident after.
2 Where did he get shot at? Because I didn't shoot him.
3 If I had shot him, Ms. Knie, I would have knew where he
4 got shot at.

5 Judge Knie, I don't want to hold too much more of
6 your time, though, ma'am, but I thank you for every
7 minute, every second you gave me. I still haven't been
8 to church, Judge Knie. In 18 months, my momma taught me
9 at eight-years old. It was in you. She always said God
10 is everywhere. And I need him like I never needed
11 anything or anyone. Ms. Knie, let me come into your
12 heart before you sentence me.

13 You have a blessed and beautiful day, Judge.
14 Thank you Judge Knie.

15 THE COURT: All right. Thank you, sir. If y'all
16 will bear with me just one moment. I do have a question
17 for Mr. Smith. The amount of time that Mr. Davis has
18 been at the detention facility it's 555 days; is that
19 correct?

20 MR. SMITH: Yes, ma'am.

21 THE COURT: Okay. All right, thank you. Y'all
22 bear with me for just a moment, please.

23 Okay. With regard to the matter of the State
24 versus Johnny Edward Davis, I do want to thank counsel
25 for all of their work on the exhibits and getting that

1 information to me as efficiently as they did, not only
2 to me but to each other. And I appreciate the input
3 from Mr. Davis's family as well. And thank you for your
4 patience in deferring the sentence from yesterday until
5 today so that I could review everything.

6 I have thought about this a lot and I understand
7 that the facts and circumstances are a little bit
8 unusual in that the victim and the defendant know each
9 other and have known each other for a number of years.
10 But the victim has not been active in this proceeding.
11 I'm not certain if he was ever active in assisting the
12 prosecution against the defendant; however, I'm assuming
13 that he did cooperate somewhat with the prosecution in
14 this matter.

15 With regard to my sentence, again, I take this
16 very seriously and I have considered everything that has
17 been presented. As to the charge of indictment 19-1057
18 and assault and battery of a high and aggravated nature,
19 again, the potential penalty is zero to 20 years. And I
20 find that the defendant shall be committed to the State
21 Department of Corrections for a period of ten years. He
22 will receive credit for 555 days.

23 This is concurrent with his sentences as to
24 indictments 20-GS-11-1184 and 19-57A, in which he will
25 receive a sentence of five years. These are concurrent.

1 And I do wish Mr. Davis, as well as his family the very
2 best in the future. Thank y'all. This will conclude
3 the hearing.

4 Thank you, Mr. Smith. Thank you, Deputy
5 Solicitor.

6 (Hearing concluded at 3:50 p.m.)

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--- THIS ENDS REQUESTED TRANSCRIPT ---

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1 COURT REPORTER CERTIFICATE

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I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court of COMMON PLEAS for Cherokee County, South Carolina, on the 24th day of July, 2016.

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

s/o Julie A Cendroski

Julie A. Cendroski
Circuit Court Reporter III
Seventh Judicial Circuit

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Cherokee)
)
Johnny E. Davis, #0315622)
 Full name and prison number (if any) of Applicant)
)
 v.)
)
 State of South Carolina)
)
)
)
)

IN THE COURT OF COMMON PLEAS

21 CP-110413

APPLICATION FOR
POST-CONVICTION RELIEF

2021 JUN 10
 BRANDY W. MCBEE

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention MacDougall Correctional Inst., 1516 Old Gilliard Rd.,
Ridgeville, S.C. 29472
2. Name and location of Court which imposed sentence Cherokee County Court of
General Sessions, Gaffney South Carolina
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Attempted Murder - Indict. No. 19-CS-11-01057, and Possession
 - (b) of a Weapon Durinf a Violent Crime.

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 9-24-20 - ten(10) yrs.
 - (b) 9-24-20 - 5 yrs. Concurrent
 - (c) _____
- 6. Check whether a finding of guilty was made:
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere X
- 7. Did you appeal from the judgment of conviction or the imposition of sentence?
No
- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. N/A
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. N/A
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. N/A
 - ii. _____
 - iii. _____
- 9. If you answered "no" to (7), state your reasons for not so appealing:
 - (a) Post- Conviction related allegations and Issues
 - (b) Never advised of right to appeal

- (c) _____
- 10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Ineffective Assistance of Counsel
 - (b) Involuntary Guilty Plea
 - (c) Ineffective Assistance of Counsel
- 11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) See Attached Memorandum of Law in Support Thereof
 - (b) See Attached Memorandum of Law in Support Thereof
 - (c) _____
- 12. Prior to this application have you filed with respect to this conviction:
 - (a) any petition in a State Court under South Carolina Law? No
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
 - (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. N/A
 - ii. _____
 - iii. _____
 - iv. _____
 - (b) the name and location of the Court in which each was filed:
 - i. N/A
 - ii. _____
 - iii. _____
 - iv. _____

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) Grounds can only be raised on post-conviction relief
- (b) Grounds can only be raised on post-conviction relief
- (c) Grounds can only be raised on post-conviction relief

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. Michael Berry, Assistant Public Defender, Cherokee County
Doald Loren Smith, Esq.
 - ii. Fletcher N. Smith, Jr., - 112 Wakefield St. Greenville, S.G.
29601
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. First Bond Hearing
Second Bond Hearing
 - ii. Arraignment and plea
 - iii. _____

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

Vacate Sentence, Conviction and Guilty Plea

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

No

STATE OF SOUTH CAROLINA)
)
County of Berkeley)

VERIFICATION

I, Johnny Edward Davis, #315622, 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.

Johnny Davis

SWORN to and subscribed before me this 24th
day of June, 2021.

Lauren N. (s.)
Notary Public

My Commission Expires: 4-12-2031

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

I, Johnny Edward Davis, #315622, 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.

x Johnny Davis
Applicant

SWORN or affirmed to and subscribed before me this
24th day of June, 2021.

L. DeLauren
Notary Public

My Commission Expires: 4-12-2031

EXHIBITS

Pursuant to the South Carolina Rules of Evidence, the Applicant respectfully submits the following exhibits thereof.

Exhibit - A Indictment

Exhibit - B Case Summary of Investigation - Gaffney Police Department

ALLEGATION I.

Counsel was ineffective by failing to challenge the sufficiency of the evidence that charged that the Applicant committed the offense of Attempted Murder, whereas victim's statement indicated that due to him shoving the pistol away, causing it to discharge.

On or about 3/13/2019, officers from the Gaffney Police Department, dispatch received a call to the Sheriff office in Cherokee County in reference to a gun shot wound. Once officer got to the scene he found that the incident occurred in the city limits at 100 Huntington Square Dr. (Huntington Square Apartments). The victim, Donald Wilkie Jr. had been shot in the hand. The victim told Ofc. Harvey and other County Deputies on scene that Applicant had pointed a gun at him and that he Donald Wilkie, Jr., the alleged victim tried to push the gun away causing the gun to discharge and shoot him in the hand. See Summary Investigation Report. The alleged victim's son, James Wilkie also gave a statement, but he was not at the scene when the incident occurred, he stated that he had left and when he heard a shot or what he believed to be a gun shot he then returned to the complex or apartment only to find that his father's vehicle was not there nor the applicant's vehicle was there.

So the only witnesses to the incident was the applicant and Mr. Wilkie, the alleged victim in the case.

Applicant was originally charged and subsequently indicted for the offense of Attempted Murder § 16-3-29. Counsel was ineffective by failing to challenge the Intent element of the offense that is necessary to establish the crime. Because had counsel made an attempted and was successful, then applicant's indictment could have been amended to the lesser included offense of pointing and presenting a firearm, in which carry a substantial less amount of time. Instead, counsel relied on the prosecutor's evidence other than putting it through a meaningful adversarial testing. Counsel's representation fell below an objective standard of reasonableness and professional norm.

Applicant was originally charged with the offense of Attempted Murder §16-3-29, which carries a penalty of 0 to 30 years. applicant subsequently entered a guilty plea to the lesser included offense of attempted murder by pleading to Assault and Battery of an High and Aggravated Nature, which carries a penalty of 0 to 20 years and was sentenced to ten (10) years and Five years concurrent for the weapons charge.

LAW ANALYSIS

To establish a claim of ineffective assistance of counsel, post-conviction relief (PCR) applicant has the burden of proving the claims made in his application . He must prove that counsel's performance was deficient and that this deficient performance prejudiced his case. U.S.C.A. Amend. 6.

A post-conviction relief (PCR) applicant claiming ineffective assistance of counsel must show that his counsel's performance was deficient such that it falls below an objective standard of reasonableness; an applicant must also show there is a reasonable probability, but for counsel's unprofessional errors the result of the proceeding would have been different. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Martinez v. State, 304 S.C. 39, 403 S.E.2d 113 (1991).

There is a two-prong test for evaluating claims of ineffective assistance of counsel.

STANDARD OF REVIEW

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109 S.E.2d 514 (2000). Where there has been a guilty plea, THE APPLICANT MUST PROVE PREJUDICE BY SHOWING THAT, BUT FOR COUNSEL'S ERRORS, THERE IS A REASONABLE PROBABILITY HE WOULD NOT HAVE PLEADED GUILTY and INSTEAD WOULD HAVE INSISTED on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed. 2d 203, 210 (1985); Jordan v. State, 297 S.C. 52, 54, 374 S.E.2d 683, 684 (1988). In determining guilty plea issues, it is proper to consider the guilty

plea transcript as well as evidence at the PCR hearing. Harres v. Leeke, 357 S.C. 646, 651, 594 S.E.2d 462 (2004).

Although Applicant entered a plea of nolocontendere, the judge could have still considered that Applicant committed the lesser included offense attempted murder, which is also pointing and presenting a firearm. But, because counsel failed to challenge the indictment, the judge did not consider it as well. But, see; State v. Gourline, 322 S.C. 396, 398, 472 S.E. 2d 241, 242 (1996), in which our South Carolina Supreme Court held; The trial court is required to charge a jury on a lesser-included offense "if there is any evidence from which it could be inferred the lesser, rather than the greater, offense was committed." However, the trial court should refuse to charge on a lesser-included offense where there is no evidence that the defendant committed the lesser rather than the greater offense. State v. Smith, 315 S.C. 549, 466 S.E.2d 411 (1994).

Counsel's failure to challenge the sufficiency of the indictment, was ineffective assistance of counsel and thereby prejudicial to applicant.

ALLEGATION II.

Applicant's guilty plea was unknowingly and involuntarily entered as a result of counsel's ineffective assistance of counsel, and thereby prejudicial to Applicant.

Applicant's plea was not entered knowingly, voluntarily and intelligently. Due to the circumstances concerning the applicant's case, he made counsel fully aware that he applicant did not have the requisite nor the intent to kill or cause the alleged victim harm. Due to Mr. Wilkie's action, the gun was discharged. Had Applicant knew that counsel would rely solely on the evidence of the prosecutor and not rigorously defend applicant's position that it was not his intent to harm Mr. Wilkie, and that intent is a necessary element of the offense of Attempted Murder, which was not present, he would have insisted on going to trial.

LAW ANALYSIS

The Due process Clause of the Fourteenth Amendment requires that a plea of guilty be made knowingly and voluntarily because it involves a waiver of constitutional rights on the part of the person making the plea. Rule 11 of the Federal Rules of Criminal Procedure is basically identical to the Rules of Criminal Procedure in the State, which governs the acceptance of guilty pleas in federal courts. The rule requires that the judge address a defendant in open court to make sure that there is a clear understanding between the court and the defendant of the following:

1. The nature of the charges
2. That the guilty plea was free from coercion
3. The consequences of the guilty plea
4. The mandatory minimum and maximum sentences for the charge, including special parole or supervised release terms and the possibility of victim restitution
5. That the court may be required to consider applicable sentencing guidelines
6. the defendant's right to representation by an attorney at all stages of the criminal proceedings
7. Constitutional waivers associated with a guilty plea (right to trial, right to cross-examine witnesses, privilege against self-incrimination)
8. The answers to the court's questions may be used against you in a subsequent proceeding

There are also other factors the court will consider or take into consideration before accepting a guilty plea as well. In order to make a knowing, voluntary and intelligent plea, a defendant must be capable of understanding the consequences of his plea. You must be considered legally competent in order to enter a plea knowingly and voluntarily and with the capability to understand the plea and its effect. Boykin v. Alabama, 395 U.S. 238 (1969); U.S. v. McCarthy, 394 U.S. 459 (1969).

Some of the factors the court will or should consider when a plea is intelligently made is as follows:

- (a) Education level;
- (b) IQ level;
- (c) Ability to distinguish right from wrong;
- (d) Ability to understand the English Language;
- (e) Whether or not you were/are taking prescribed medication (or an illegal drug) that affects your ability to think;
- (f) Whether or not you suffer from a debilitating mental disease;
- (g) Whether the court refused a psychiatric evaluation in light of your circumstances;

The following cases involves a defendant's ability to intelligently enter a plea:

Court must conduct, sua sponte, a competency hearing when there is information known to the court at the time of trial or plea hearing sufficient to raise doubts about a defendant's competency, even if not requested by the parties. Pate v. Robinson, 383 U.S. 375 (1966).

Defendant who was illiterate and possessed "minimal mental capacity" was found to have entered guilty plea involuntarily because he did not understand the elements of malice murder. Gaddy v. Linahan, 780 F.2d 935 (11th Cir.1986)

Uncontroverted testimony concerning mental illness of defendant, history of abuse as a child, limited education and history of pre-adolescent drug abuse as a child supported assertion that plea was not made knowingly, intelligently or voluntarily. Wilkins v. Bowersox, 145 R.3d 1006 (8th Cir.1988)

A defendant must also be informed of the elements of the offense prior to or during the plea hearing, Some examples of cases where a defendant's knowledge and understanding of the elements of the charged offense were brought into question include;

Defendant who was not informed of critical element of the offense to which he pled guilty entered his plea involuntarily. Hendersov. Morgan, 426 U.S. 637 (1976).

Defendant who was misformed about one of the critical elements of the charge against him and pled guilty was entitled to relief based on the involuntarily nature of his plea. U.S. v. Brown, 117 F.3d 471 (11th Cir. 1997).

Defendant who was not informed that the elements of his offense would have provided an affirmative defense reducing his crime from robbery in the first degree to robbery in the second degree was entitled to relief. Ames v. New York State Bd. of Parole, Supp. 972 (1984).

Due to the following, Applicant's plea was not a knowing, voluntary, and intelligent plea, therefore applicant's plea should be vacated.

Allegation III.

Applicant was not advised of his right to appeal his sentence and plea by counsel, thereby constituting ineffective assistance of counsel.

Applicant's counsel was ineffective by his failure to advise and inform applicant of his right to appeal his guilty plea, thus denying applicant's right to Appellate review.

One surprisingly and most common area for conviction-related errors is the plea process. Many individuals incorrectly think that if plea, you have given up all of your rights. However, that's not true. Nearly 90% of Federal and State Cases involve guilty pleas. If you plead guilty, you should be aware of how the plea might impact your post-conviction options. There are issues that can be challenged on direct appeal relating to pleas and sentencing.

In theory, plea agreements are supposed to give some benefit to the defendant in exchange for giving up his right to trial, and by pleading, it limits cost and time and resources in going to trial.

A direct appeal is usually the first step for criminal defendants wishing to make an attempt to obtain relief. In the simplest terms, an appeal is a request to the appellate court to review a conviction or sentence and decide whether any errors of law occurred. If the appellate court determines that there was or were significant legal issues that were not handled properly in the criminal proceedings, the judgment may be vacated (set aside because of error), reversed (overthrown by contrary decision) or remanded.

further, applicant was sentenced to a term not exceeding ten years, in which he was entitled to bail pending appellate review.

The purpose of an appeal bond in a criminal case is to allow defendant to go free during pendency of appeal while assuring his presence upon affirmation of his conviction, or as the court may otherwise direct.

Factors to be considered in admitting a person to bail pending appeal as stated in the Chapter of Corpus Secundum dealing with the subject of the allowance of bail after conviction, the applicant is not required to show that he is entitled to reversal. However, the Court in exercising its discretion should consider the probabilities of a reversal, and should not allow bail where the record shows that the errors assigned are frivolous or the appeal taken merely for delay, or where there is no reasonable ground or probable cause for the appeal.

"Important considerations in the discretionary allowance or refusal of bail pending appeal include the probability of reversal, the nature of the crime, the possibility of escape, and the character and circumstances of the accused." 8 C.J.S., Bail, §36, p. 72.

"As a general rule the allowance of bail after conviction is a matter of discretion and not of right!"

Had applicant's counsel advised applicant of his right to appeal his Plea of nolo contendere, there is a possibility that the supreme Court may have found errors of law based on the circumstances of the case. Also had counsel made a motion for bail pending appellate review to the circuit court there is a probability that the motion would have been granted because as stated, applicant's sentence did not exceed ten years.

All criminal defendants, whether represented by private counsel or a public defender, has a constitutional right to be advised of his right to appeal a conviction regardless of whether conviction was obtained from a trial or a plea. The defendant has the right to be informed of an appeal and the manner and method for taking the appeal. Nelson v. Peyton, 415 F.2d 1154 (4th.Cir.1996).. Further, Supreme Court Rule 51 E.(3) provides in part:

After conviction of an accused who has been represented by counsel or Public Defender, the Office of Appellate Defense shall represent the accused until final judgement. After serving and filing a Notice of Intent to Appeal for an accused who desires to appeal, then counsel may be relieved as counsel by the court.

Cherry v. State, 300S.C. 115, 386 S.E.2d 624 (1989)

Applicant did not knowingly and intelligently waive right to appeal, the applicant informed counsel that he wished to appeal, but counsel failed to pursue and perfect appeal, thus rendering ineffective assistant of counsel. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Martinez v. State, 304 S.C. 39, 409 S.E.2d 113(1991); Clark v. State, (S.C.App. 2011) 396 S.C. 164, 719 S.E.2d 708. Criminal Law key 1026. 10(1); Criminal Law key 1069(6).

See also; SCACR 243(k), Bail Pending Appellate Review.

A post-conviction relief applicant may be admitted to bail after service of the notice of appeal by either the applicant or the State. Where the sentence originally imposed did not exceed imprisonment for ten (10) years, the petition for bail shall be made to the lower court. In all other cases, the petition for bail shall be made to the Supreme Court. The petition and any return or reply shall comply with the requirements of Rule 240. In deciding whether to exercise the discretionary authority to admit an applicant to bail, the following factors will be considered: the probability the applicant will

prevail on appellate review and the nature of the relief he or she will receive; the seriousness of the criminal offense committed; the danger the applicant may pose to the community if he or she is released; the likelihood that the applicant may flee if released; and the character and circumstances of the applicant

Due to the following, applicant's case should be vacated and released on appeal bond pending appellate review.

The Applicant respectfully leaves this Application open for any future Amendments.

CONCLUSION

Based on the following facts and conclusion of law, Applicant's sentence and conviction should be vacated and granted a new trial and an Appeal Bond pending Appellate Review.

Respect submitted,

s/ Johnny E. Davis
Johnny E. Davis

AFFIDAVIT OF SERVICE

I, Johnny Edward Davis, #315622, being duly sworn disposes and swears under the penalty of perjury that on this 24 day of June, 2021 forwarded for filing one (1) original application for post-conviction relief along with attached exhibits to the Cherokee County Clerk of Court Brandy W. MCBEE at the below listed address:

Brandy W. Mc Bee
125 East Floyd Baker Blvd

Gaffney, SC 29340

Respectfully submitted,

x s/ Johnny Edward Davis
Johnny Edward Davis

SWORN or affirmed to and subscribed before me this

24th day of June, 2021.

J. B. Lauren
Notary Public

My Commission Expires: 4-12-2031

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

Cherokee
VS.
Johnny Edward Davis

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS1101057
A/W#: 2019A1120200127
Date of Offense: 3/13/2019
S.C. Code § : 16-03-0029
CDR Code #: 3410

AKA:
Race: BLACK Sex: M Age: 36
DOB: 1984 SS#: [REDACTED]
Address:
City, State, Zip:
OL#: [REDACTED] SID#: [REDACTED]

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was
TO: Assault and Battery of a High and Aggravated Nature [0-20 years].

CONVICTED OF or PLEA

in violation of § 16-3-600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3411
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lowd Act)

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

ATTEST: [Signature] LESBMANIC, KRM SCB16837 SC Bar# [Signature] Defendant [Signature] Smith Jr., Fletcher N. 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 _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC. 555 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 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Det. Waives Hearing Ordered PTUP
_____ days/hours Public Service Employment

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

Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2993 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(B) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL 3128.75

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

Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Clerk of Court/Deputy Clerk Brandy W. McBee
Court Reporter: Julie Androski

Presiding Judge [Signature]
Judge Code: 2760
Sentence Date: September 2019

COUNTY OF Cherokee
 STATE VS.
Johnny Edward Davis
 AKA: _____
 Race: BLACK Sex: M Age: 36
 DOB: 1984 SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____
 *CDL Yes No CMV Yes No Hazmat Yes No

COURT OF GENERAL SESSIONS 93
 INDICTMENT/CASE#: 2019GS1101057A
 A/W#: 2019A1120200130
 Date of Offense: 3/13/2019
 S.C. Code § : 16-23-0490
 CDR Code #: 0549

SENTENCE SHEET

CONVICTED OF or PLEADS

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 §17-25-45
 w/minor 1st or Lowd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, _____ (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.
 ATTEST: LESKANIC, KRM SCB16837 John Davis Defendant Smith Jr., Fletcher N. Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center
 for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
 which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC 555 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 (Domestic
 Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
 Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine;	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Coop. Surcharge)	\$700
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§56-1-286 (DUI Breath Test)	\$25
Proviso (Public Def/Probation)	\$500
§14-1-212 (Law Enforce. Funding)	\$25
§14-1-213 (Drug Court Surcharge)	\$150
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(C) (Vehicle Assessment)	\$40/cr
3% to County (if paid in installments)	\$ 3.25

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Brandy W. McBee
 Court Reporter: Julie Gendraski

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

Appointed PD or appointed other counsel,
 Proviso requires \$500 be paid to Clerk
 during probation and shall be collected before
 any other fees.

Presiding Judge Rud Kien
 Judge Code: 2760
 Sentence Date: September 23, 2020

STATE OF SOUTH CAROLINA

COUNTY OF Cherokee
STATE VS.

Johnny Edward Davis

AKA:

Race: BLACK Sex: M Age: 36

DOB: 1984 SS#: -4340

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was
TO: Pointing firearm at another person [0-5 years]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 20-05-11-0118

A/W#: 201001106200128 DI

Date of Offense: 3/13/2019

S.C. Code § : 16-23-410

CDR Code #: 0122

SENTENCE SHEET

CONVICTED OF or PLEADS

in violation of § 16-23-410 of the S.C. Code of Laws, bearing CDR Code # 0122
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS/CSC (defendant's info) (w/ minor 1st or Lewd Act)

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

ATTEST: LESKOVIC, KIM SCB16837 SC Bar# John Davis Defendant JTB SC Bar# 565

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: _____
 The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc. 55
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered FTUP _____
_____ days/hours Public Service Employment

Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
 Set by SCDPPPS _____

Recipient: _____

*Fine:	\$
§14-1-206 (Assessments 107.5%)	\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100
§14-1-211(A)(2) (DUI Surcharge)	\$100
§56-5-2995 (DUI Assessment)	\$12
§56-1-286 (DUI Breath Test)	\$25
Proviso (Public Def/Probation)	\$500
§14-1-212 (Law Enforce. Funding)	\$25
§14-1-213 (Drug Court Surcharge)	\$150
§50-21-114(BUI Breath Test Fee)	\$50
§56-5-2942(1) (Vehicle Assessment)	\$40/ea
3% to County (if paid in installments)	\$ 3.25
TOTAL	\$ 128.75

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

Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Clerk of Court/Deputy Clerk: Brandy W. McBee
Julie Gendinski

Presiding Judge: R.J. Kei
Judge Code: 27100
Sentence Date: September 23, 2020



SC Judicial Branch

3 messages

Fletcher N. Smith <fsmith@piedmontlegal.com>

Wed, Apr 29, 2020 at 6:28 PM

To: robin cook <[REDACTED]>

<https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=2486>

Sent from my iPhone

robin cook <[REDACTED]>

Wed, Apr 29, 2020

To: Fletcher N. Smith <fsmith@piedmontlegal.com>

9802254857 this is Neil Phillips number

[Quoted text hidden]

robin cook <[REDACTED]>

Thu, Apr 30, 2020 at 9:44 AM

To: Fletcher N. Smith <fsmith@piedmontlegal.com>

I had a long discussion with johnny last night hopefully he has seen the light but he does want you to try and get his mental health record from a place called monarch I have gave Mrs. Loretta the information a few weeks ago and also he wants to see if he can get it to where a officer can take him to get the gun which he wrote in a letter to me and that I have the gun box with the guns information on it. He thinks and I also think he has a chance with the jury not with the gun but the victim agreeing over the phone it was a misunderstanding no robbery and he doesn't want jimmy doing alot of time but you are the expert in this not me but he wanted to make sure I told you about the gun and mental health record

[Quoted text hidden]



Johnny Davis

4 messages

robin cook <[REDACTED]>
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Mon, May 25, 2020 at 10:00 AM

Hi Mr. Smith Johnny wanted me to email asking what can be done about Kelly denying his bond hearing that is violating his 8th amendment rights to a bond hearing and also that he wants a Blue Collar Jury for his trial

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook <[REDACTED]>

Mon, May 25, 2020 at 10:00 AM

He can appeal the denial of bond. Cost \$5000.00 dollars. There is no right to a blue collar jury. Whatever that means.

Sent from my iPhone

> On May 25, 2020, at 9:48 AM, robin cook <[REDACTED]> wrote:

>
>

[Quoted text hidden]

robin cook <[REDACTED]>
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Mon, May 25, 2020 at 7:07 AM

I'm sorry I ment to say a Blue Ribbon jury and I talked to him and told him whatever title 42 suit all the need to wait he needs to let you work his trial he agreed I explained how he making it worse instead of [REDACTED]

[Quoted text hidden]

robin cook <[REDACTED]>
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Mon, May 25, 2020 at 11:09 AM

He explained the blue ribbon jury in a letter he said it's his 6th amendment he has 12 peers of his nationality

[Quoted text hidden]



Johnny Davis

7 messages

robin cook [REDACTED]
 To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Fri, Jul 31, 2020

Mr. Smith I'm emailing to get some updates and also Johnny contacted the clerk of court Mrs. McBee there should be some paperwork of Judge Kelly's ruling and Mrs. McBee should be forwarding you letters. Johnny hasn't been up for a hearing since Oct. 7th he wants a copy of his retainment agreement he signed. If you cant handle his case or do anything refund the 7500 he just sitting there not knowing anything for almost 17 months. He said people are getting paperwork and things done even with this covid-19 virus pandemic going on.

Fletcher N. Smith <fsmith@piedmontlegal.com>
 To: robin cook [REDACTED]

Fri, Jul 31, 2020

The retainer is non refundable. Plus the court is not going to let him hire another lawyer. If he gives up the gun he can probably get out. At least that is what the prosecution tells me. Also he runs his mouth too much and his letter to the clerk of court further incriminated him.

Sent from my iPhone

> On Jul 31, 2020, at 2:51 PM, robin cook <[REDACTED]> wrote:

>
>

[Quoted text hidden]

Fletcher N. Smith <fsmith@piedmontlegal.com>
 To: robin cook [REDACTED]

Fri, Jul 31, 2020 at 2:51 PM

Finally,
 I have earned the fee by planning for trial after his alleged bungled robbery attempt that he has already admitted to.

Sent from my iPhone

> On Jul 31, 2020, at 2:51 PM, robin cook <[REDACTED]> wrote:

>
>

[Quoted text hidden]

Fletcher N. Smith <fsmith@piedmontlegal.com>
 To: robin cook [REDACTED]

Fri, Jul 31, 2020 at 3:08 PM

I will file another bond request. I am not guaranteeing the Judge will let him out.

Sent from my iPhone

> On Jul 31, 2020, at 2:51 PM, robin cook <[REDACTED]> wrote:

>
>

[Quoted text hidden]

June 24, 2021

Johnny E. Davis/315622
MacDougall Corr. Inst.
1516 Old Gilliard Rd.
Ridgeville, S.C. 29472
Cyprus#2 Unit C2-C4

Dear Honorable Clerk:

Enclosed for filing, please find one original application for post-conviction relief along with attached exhibits. Upon receipt please clock stamp, assign case number and return a true copy to me at the above listed address for my records.

Thanking you in advance,

Sincerely,

S/ Johnny Davis
Johnny E. Davis

2021 JUN 28 AM 11:47
BRANDY W. MOBLEE
CLERK OF COURT
MOBILE COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF CHEROKEE

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Johnny Davis, #315622,
Applicant,

Case No. 2021-CP-11-0413

v.

RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT

State of South Carolina,
Respondent.

2021 DEC 13 AM 8:52
BRYAN W. MOORE
CLERK OF COURT
CHEROKEE COUNTY, S.C.

NOW COMES Respondent, moving for a more definite statement and making its return to the post-conviction relief (hereafter "PCR") application filed on June 28, 2021, by Johnny Davis (hereafter "Applicant"). Respondent respectfully offers the following in support of its return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. During its July 2019 term, the Cherokee County Grand Jury indicted Applicant for attempted murder (count one) and possession of a weapon during the commission of a violent crime (count two) (2019-GS-11-01057). He waived presentment to the grand jury for pointing or presenting a firearm at another person (2019-GS-11-01184). Applicant was represented by Fletcher Smith, Esquire. Assistant Solicitor Kimberly Leskanc of the Seventh Circuit Solicitor's Office prosecuted the case. On September 23-24, 2020, Applicant appeared before the Honorable Grace G. Knie, circuit court judge, and entered an *Alford* plea to the lesser included offense of assault and battery of a high and aggravated nature and possession of a weapon, and pled guilty to pointing or presenting a firearm at another person. Judge Knie sentenced Applicant to ten years' imprisonment for assault

and battery, and five years' imprisonment for pointing or presenting a pistol and for possession of a weapon, sentences running concurrently. Applicant did not pursue a direct appeal.

II. Statement of Facts

On March 13, 2019, the victim pulled up to an apartment complex and Applicant pulled beside him. (Tr. 23-24). Applicant got out of the driver's seat, went over to the victim while armed with a firearm, and demanded the victim empty his pockets. (Tr. 24). The victim refused to comply and tried to pull away. (Tr. 24). Applicant gave chase, the victim stopped, and Applicant pointed a firearm at his head. (Tr. 24). The victim tried to knock the gun away from his head and away from Applicant. (Tr. 24). The gun discharged and struck the victim in the hand. (Tr. 24). The victim drove straight to the police department to report the incident. (Tr. 24).

Applicant was caught on tape dropping the clip to the gun, picking it up, and running back to his vehicle. (Tr. 24-25). An unidentified person was in the car with Applicant. (Tr. 25). The second person was initially in the passenger seat, but moved over to the driver's seat and drove Applicant from the scene. (Tr. 25).

Applicant gave a police statement, where he did not identify the second person. (Tr. 25). He told the police he hid the gun in Greenville County, and he was the only one who could get the gun. (Tr. 25). He did not disclose the exact location of the gun to the police. (Tr. 25). The victim stated he did not owe Applicant money, but that he bought marijuana in the past. (Tr. 25). Applicant stated he fronted the victim some meth, and the victim owed him \$200. (Tr. 25). The victim did not require surgery but did go to the hospital and suffered a permanent scar and can no longer straighten his pinkie finger. (Tr. 26).

III. Current Action before the Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the

following reasons (excerpts verbatim):

1. Ineffective Assistance of Counsel.
 - a. Counsel was ineffective by failing to challenge the sufficiency of the evidence that charged that the Applicant committed the offense of attempted murder, whereas victim's statement indicated that due to him shoving the pistol away, causing it to discharge.
 - b. Applicant was not advised of his right to appeal his sentence and plea by counsel.
2. Involuntary Guilty Plea.
 - a. Applicant's guilty plea was unknowingly and involuntarily entered as a result of counsel's ineffective assistance of counsel, and thereby prejudicial to Applicant.

Attached to and incorporated herein are Applicant's Cherokee County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and the current PCR application. Respondent reserves the right to amend this return upon receipt of additional relevant information.

IV. Argument

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Effective assistance of counsel does not mean perfect or mistake-free representation. *See Weaver v. Massachusetts*, 137 S. Ct. 1899 (2017) (“[A] defendant has a right to effective representation, not a right to an attorney who performs his duties ‘mistake-free.’” (citation omitted)); *Burt v. Titlow*, 571 U.S. 12, 24 (2013) (“[T]he Sixth Amendment does not guarantee the right to perfect counsel; it promises only the right to effective assistance[.]”); *Yarborough v. Gentry*, 540 U.S. 1, 8 (2003) (“The Sixth Amendment guarantees reasonable competence, not perfect advocacy judged with the benefit of hindsight.”). Instead, it simply means assistance that was objectively reasonable under prevailing professional norms. *Strickland*, 466 U.S. at 687-688.

When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRCP (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690); *see Dunn v. Reeves*, 141 S. Ct. 2405, 2410 (2021) (noting counsel’s strategic decisions are to be afforded “‘strong presumption’ of reasonableness that the defendant must overcome); *Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation). Judicial scrutiny of counsel’s performance remains highly deferential

towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Importantly, “[t]he likelihood of a different result must be *substantial*, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 112 (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.

Involuntary Guilty Plea

Applicant claims the plea was entered involuntarily, unknowingly, and unintelligently. In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant’s right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-

74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and crucial elements of the offense, the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000). A plea is not knowing or voluntary if a defendant “lacks knowledge of material evidence in the prosecution’s possession.” *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant’s knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and “may be accomplished by colloquy between the court and defendant, between the court and defendant’s counsel, or both.” *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). “[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, “guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea.” *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

The record reflects that the plea was entered freely, knowingly, intelligently, and voluntarily. Applicant stated he understood he was pleading no contest to the charges as stated by the prosecutor, as opposed to having a jury trial. (Tr. 11-12). Applicant stated he understood he was waiving his right to a jury trial, where he could call and confront witnesses and had a right to remain silent. (Tr. 12). Applicant stated he understood that if he went to trial, the burden of proof would be on the State and they would have to prove every element of every charge against him beyond a reasonable doubt and where he would be presumed innocent until proven guilty. (Tr. 12). Applicant stated he understood that if he went to trial, every single juror would have to find him guilty for him to be found guilty. (Tr. 12). After this, Applicant confirmed he still wanted to plead. (Tr. 12-13). Applicant stated that no one coerced or promised him anything to get him to plead, that he was not under the influence of any substances that would impair his judgment, and that he has no mental or physical disability impacting his ability to understand what he is doing. (Tr. 13). Applicant stated that he takes medication for high blood pressure, but that medication does not impact his ability to think clearly. (Tr. 14).

Counsel stated that he thought Applicant understood what he was doing at the plea hearing, that he was accepting responsibility, and that he was able to assist in his representation. (Tr. 14-15). Applicant stated he was satisfied with Counsel's representation of him. (Tr. 15). Applicant stated he understood the charges he was pleading to and their potential penalties. (Tr. 15-17). He stated he understood the ABHAN charge was classified as violent and serious and stated he understood the ramifications of those classifications. (Tr. 16-17). Applicant confirmed he understood the plea was being entered without negotiation or recommendations. (Tr. 17-18). After taking a brief recess in which Counsel consulted with Applicant about the meaning of the term *Alford* plea, Applicant stated he understood he was pleading guilty to pointing or presenting

a firearm and under *Alford* for the other two charges. (Tr. 18-21). Counsel stated he reviewed the evidence and discovery in the case with Applicant and discussed his options concerning pleading versus going to trial. (Tr. 21). Applicant stated he remembered discussing the discovery and evidence with Counsel and talking with Counsel about pleading versus going to trial. (Tr. 21-22). He stated that he thought if he went to trial on the charges he was pleading under *Alford* to, that it is more likely than not, given the evidence against him, that he would be found guilty. (Tr. 22). Applicant again stated he was pleading freely, knowingly, intelligently, and voluntarily. (Tr. 22). Applicant stated he understood he had ten days to appeal. (Tr. 22). After the State read the facts, Applicant stated he was pleading guilty to pointing or presenting a firearm because he did, in fact, point a firearm. (Tr. 27). Accordingly, this plea was seemingly entered freely, knowingly, intelligently, and voluntarily and cannot be withdrawn now.

Concerning failure to challenge the sufficiency of the evidence, Respondent contends that this is refuted by the record. Counsel stated at the plea hearing that he thought attempted murder was an over charge. (Tr. 11). Additionally, Applicant plead to the lesser included offense of assault and battery of a high and aggravated nature; not attempted murder. Further, Applicant waived his right to challenge the sufficiency of the evidence when he pled to the three charges; attempted murder not being among them. Accordingly, Respondent contends this allegation is without merit and relief should be denied on this ground.

Failure to Advise of Right to Appeal

Applicant claims Counsel was ineffective for failing to file an appeal. Counsel is required to make certain the defendant is made fully aware of the right to appeal following a trial. *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974). However, absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a

guilty plea. *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995). The bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. *Id.* Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal. *Id.* Extraordinary circumstances may exist when there is reason to think that a rational defendant would want an appeal, such as when non-frivolous grounds for an appeal exist, or when the defendant reasonably demonstrates an interest in appealing. *Id.*; *Roe v. Flores-Ortega*, 528 U.S. 470 (2000).

This claim is seemingly refuted by the record; specifically, Applicant was informed of his right to appeal the plea by the Court at the plea hearing. (Tr. 22). Still, the ineffective assistance of counsel allegations probably raise questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”).

V. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding Applicant’s allegations. Applicant alleges that plea counsel was constitutionally ineffective, and the plea was entered involuntarily, unknowingly, and unintelligently. However, he does not explain exactly what Counsel did that constituted ineffective assistance of counsel. Applicant fails to set forth with specificity any facts and circumstances upon the claim is based. The Uniform Post-Conviction Procedure Act requires that applicants must “specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In a PCR

application, it is incumbent upon applicants to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v.*

MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

Coardes v. State, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974).

Furthermore, Rule 8(a), SCRCPP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.” Respondent moves pursuant to Rule 12(e), SCRCPP, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended application well in advance of any evidentiary hearing concerning this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VI. Other Allegations Denied

Each and every other allegation in Applicant’s PCR application not explicitly admitted, qualified, or explained in this return is hereby denied by Respondent.

VII. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant’s court-appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRCPP and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was

represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRCF (explaining how to amend a pleading). Pursuant to Section 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 the Court grants leave upon good cause shown. 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 withheld until the last minute resulting in undue prejudice to Respondent.

VIII. Conclusion

WHEREFORE, Respondent requests that the Court require Applicant to provide a more definite statement and then hold an evidentiary hearing regarding Applicant's allegations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-0386

December 10, 2021

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF CHEROKEE) IN THE COMMON PLEAS COURT
 3
 4 Johnny Davis,)
 Applicant,) TRANSCRIPT OF RECORD
 5 -vs-) 2021-CP-11-0413
 6 The State.) June 6, 2022
) Spartanburg, South Carolina

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B E F O R E :

HONORABLE WILLIAM A. MCKINNON, JUDGE

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

RODNEY WADE RICHEY, ESQUIRE
Attorney for the Applicant

CHELSEY FAITH MARTO, ESQUIRE
Attorney for the State

Linda D. Moffitt
Circuit Court Reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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1 (Proceedings June 6, 2022)

2 MS. MARTO: Good afternoon, Your Honor. May it please
3 the Court.

4 We are here today on the case of Johnny Davis vs. the
5 State of South Carolina, Docket No. 2021-CP-11-0413.

6 My name is Chelsey Marto and I represent the
7 respondent in this matter and Mr. Rodney Richey is
8 representing the applicant.

9 Applicant is presently confined in the South Carolina
10 Department of Corrections. During its July 2019 term, he
11 was indicted for attempted murder and possession of a
12 weapon during the commission of a violent crime, and that
13 he waived presentment to the grand jury for pointing and
14 presenting a firearm at another person. He was represented
15 by Mr. Fletcher Smith, and Assistant Solicitor Kimberly
16 Leskanic prosecuted the case.

17 September 23rd through the 24th, 2020, he appeared
18 before the Honorable Grace G. Knie and entered an Alford
19 plea to the lesser --

20 THE COURT: There were two -- the plea took two days?

21 MS. MARTO: It was a 2-day ordeal.

22 THE COURT: Okay.

23 MS. MARTO: Entered an Alford plea to the lesser
24 included offense of assault and battery of a high and
25 aggravated nature and possession a weapon. He pled guilty

Johnny Edward Davis
Direct examination by Mr. Richey

1 to pointing and presenting a firearm.

2 He was sentenced by Judge Knie to ten years
3 imprisonment for assault and battery, five years for
4 pointing or presenting a firearm or pistol, and also for
5 possession of a weapon. And the sentences ran
6 concurrently.

7 Applicant did not pursue a direct appeal.

8 The application was filed June 28th of 2021 and the
9 return was made December 10th of 2021.

10 With that, I'll turn it over to Mr. Richey.

11 MR. RICHEY: Thank you, Your Honor.

12 THE COURT: Yes, sir. Mr. Richey.

13 MR. RICHEY: Call Mr. Johnny Davis.

14 JOHNNY EDWARD DAVIS, having
15 been first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. RICHEY

17 Q Sir, will you state your name, please?

18 A Johnny Edward Davis, 315622.

19 Q What's that?

20 A Johnny Edward Davis.

21 Q Okay. And, Mr. Davis, you are incarcerated at the
22 department of corrections?

23 A Yes, sir.

24 Q And are you incarcerated for the crimes that was listed
25 by the attorney general?

Johnny Edward Davis
Direct examination by Mr. Richey

1 A Yes, sir.

2 Q Okay. Did you have a trial or plead guilty in your
3 case?

4 A I had an open plea, sir.

5 Q Okay. So you did not have a jury trial, correct?

6 A Correct.

7 Q Okay. Who represented you in your case?

8 THE COURT: Hold on just a minute, sir.

9 what did you mean by it was an open plea?

10 THE WITNESS: A zero to 20, like.

11 THE COURT: Oh, you mean without negotiation or
12 recommendation.

13 THE WITNESS: Yes, sir, yes, sir, yes, sir.

14 THE COURT: Okay.

15 Q Okay.

16 A Fletcher -- Fletcher Smith was my attorney.

17 Q Okay. And you filed an application for post conviction
18 relief because you believe that Mr. Fletcher Smith did not
19 properly represent you, correct?

20 A Correct.

21 Q And some of the -- and you raised issues, and I'm going
22 to go from this amended application.

23 Well, let me do it this way. You -- you have -- I want
24 you to --

25 MR. RICHEY: May I approach the witness, Your Honor?

Johnny Edward Davis
Direct examination by Mr. Richey

1 THE COURT: Certainly.

2 Q I want you to look at these right here. Just take a
3 few minutes.

4 A I can remember them really.

5 Q Okay. Well, just take a few minutes and make sure.

6 (Pause.)

7 Q What are -- what are those, sir?

8 A These are emails between my fiancée, Robin Cook and
9 Fletcher Smith.

10 Q And do they pertain to your case?

11 A Yes, sir.

12 Q Okay. And are all of them in there that pertain to
13 your case?

14 A Yes, sir. I got counted 14 exhibits.

15 Q So is all of those in that --

16 A Yes, sir.

17 Q -- that I just gave you?

18 A Yes, sir.

19 Q All right. Let me have those back.

20 MR. RICHEY: We move these into evidence at this time.

21 MS. MARTO: No objection.

22 THE COURT: Mr. Richey, they're emails between who and
23 who?

24 THE WITNESS: My fiancée --

25 THE COURT: Hold on. Let me speak to Mr. Richey.

Johnny Edward Davis
Direct examination by Mr. Richey

1 THE WITNESS: I'm sorry. Yes, sir.

2 MR. RICHEY: And, Your Honor, Ms. Cook and Mr. Smith.

3 THE COURT: And they were prior to the plea or after
4 the plea? When?

5 MR. RICHEY: Prior to the plea.

6 THE COURT: Okay.

7 (Emails marked Applicant's Exhibit No. 1.)

8 Q All right. Okay. Sir, and these -- okay. You
9 believed that Mr. Smith did not investigate your case?

10 A Correct.

11 Q Okay. And what do you mean by that? What -- what
12 investigation did you want him to do?

13 A I asked Attorney Fletcher Smith to get a police to take
14 me to get the gun. I was trying to get a weapon to the
15 courts. I asked him to subpoena my records; I asked him to
16 come and visit me.

17 Q Hold on. Okay. Let's go back.

18 Okay. This is supposedly an incident that occurred
19 between you and this gentleman --

20 A Yes, sir.

21 Q -- where this gentleman was shot, is that correct?

22 A Correct.

23 Q And -- and -- and the police wanted your gun at some
24 point, correct?

25 A Correct.

Johnny Edward Davis
Direct examination by Mr. Richey

1 Q And did you ask Mr. Fletcher, Mr. Smith, to get the
2 gun?

3 A Yes, sir. I asked him to get an officer to take me to
4 where I can get chained up to go get the gun.

5 Q And where were you at the time?

6 A Cherokee County Detention Center.

7 Q And did that happen?

8 A No, sir.

9 Q Okay. And do you believe that affected your case?

10 A That and a lot more, yes, sir.

11 Q Okay. And -- and what other type of investigation did
12 you want him to do?

13 A I wanted him to investigate. The victim say he shoved
14 the gun, that's when the gun went off. And I was charged
15 with attempted murder, like the victim never said I shot him
16 or nothing. The victim say he shoved the weapon and that's
17 when the gun went off with the gun grazing -- the gun grazed
18 his hand and he got 14 narcos and an ace bandage for the
19 wounds. And I wanted Fletcher Smith to investigate the
20 case.

21 Q Investigate his injuries?

22 A Just investigate. Fletcher -- I didn't talk to
23 Fletcher Smith. I hired Fletcher Smith, paid a retrainier
24 January the 29th of 2020. I didn't see Fletcher Smith until
25 two days before I went to court, and I paid him \$7,500 for a

Johnny Edward Davis
Direct examination by Mr. Richey

1 jury trial.

2 Q Okay. Did you talk to him?

3 A No, sir. I talked to -- I saw him September the 21st.
4 He brought the zero-to-20 plea for me to sign the plea.

5 Q Okay. And so you didn't have any contact with him.

6 A No, sir.

7 Q Now, these emails that you got -- these -- do these
8 reflect any messages that you had for him or anything?

9 A Yes, sir. The emails is -- he -- sometime he'll answer
10 for -- from my fiancée, and sometimes he wouldn't. So I
11 would just get her to email him, and I would have to tell
12 her what to say to him. And I would have to know his
13 response from emails.

14 Q And so you got those responses. Did you get those
15 responses?

16 A Yes, sir. I do.

17 Q Okay. And -- and do you believe those responses were
18 appropriate?

19 A No, sir. Them responses was disrespect for an
20 unprofessional.

21 Q Unprofessional. What do you mean? Well, let me ask
22 you this.

23 A He didn't do the duties of a lawyer.

24 Q Okay. Let me ask you this question.

25 At some point did you want to retain another attorney?

Johnny Edward Davis
Direct examination by Mr. Richey

1 A Yes, sir.

2 Q Okay. And at what point did you want to retain another
3 attorney that's in this email stuff? You got it memorized,
4 right?

5 A Yes, sir. It was in -- I want to say it was in June.
6 I want to say either June the 22nd or June the 27th of 2020.

7 Q Okay. June the 22nd.

8 A Or two thousand -- or June the 27th or June the 22nd.

9 Q Okay. What time was that?

10 A At 6:30. It was -- I got the email at July the 31st at
11 3:06.

12 Q July the 31st at 3:06. Okay. Okay. And this email,
13 you're asking about hiring another attorney, right?

14 A Yes, sir. I told him if he couldn't get the job done
15 to refund my money.

16 Q Okay. And -- and -- and so he stayed on your case,
17 right?

18 A Yes, sir.

19 Q Okay. Did you make an attempt to hire someone else?

20 A Yes, sir. I talked to a lawyer Neil Phillips out of
21 Rock Hill, and he said that he will team up with my lawyer
22 Fletcher Smith and work on my case with him. And Fletcher
23 Smith told me that no other attorney can get involved.

24 Q Okay. That no one else could get involved.

25 A Yes, sir. In my email July the 31st, Fletcher Smith

Johnny Edward Davis
Direct examination by Mr. Richey

1 told me the retainer is nonrefundable, plus the Court is not
2 going to let him hire another lawyer. If he gives up the
3 gun, he can probably get out. At least that's what the
4 prosecution tells me. Also, he runs his mouth too much and
5 his letter to the clerk of court for -- further incriminated
6 him.

7 Q Okay. So -- so he told you you couldn't hire anybody.

8 A Yes, sir.

9 Q And he told you to stop writing letters.

10 A Yes, sir.

11 Q Okay. And did you -- so you attempted to hire another
12 lawyer, correct?

13 A Yes, sir.

14 Q Okay. And that lawyer would not take the case or
15 wouldn't, whatever.

16 A Fletcher wouldn't cooperate with him. He told my
17 fiancée that my -- if my lawyer don't cooperate, he couldn't
18 do nothing to help me.

19 Q Okay. Okay. You believe that he should have moved to
20 suppress evidence in your case?

21 A Yes, sir.

22 Q What evidence is that?

23 A It was the pistol. They found a 40 cal shell casing in
24 the driver of the vehicle's truck and I -- I'm on video with
25 a Glock 30 .45, and I was trying to get a gun to the courts

Johnny Edward Davis
Direct examination by Mr. Richey

1 and go to trial because the ballistics didn't match.

2 Q So you're saying the gun that you had on the video
3 doesn't match the casings in the car.

4 A Yes, sir. The gun I had in the case, period, yes, sir.

5 Q So you're saying that you're not guilty of this charge,
6 right?

7 A I'm not guilty even of no assault and battery, no, sir.
8 I want to go to jury trial.

9 Q Okay. So -- so you're not guilty of shooting this
10 gentleman.

11 A No, sir.

12 Q Okay. And -- and did you tell Mr. Smith why you were
13 not guilty?

14 A Yes, sir.

15 Q And -- and you told him that you did not shoot the guy,
16 correct?

17 A Correct.

18 Q And the gun went off how?

19 A The victim -- in the police report the victim stated he
20 shoved the pistol. That's when it went off. That's not
21 coming from me. That's coming from the victim in my case.
22 He told the officers he shoved the gun. That's when the gun
23 went off.

24 Q He shoved what gun?

25 A The gun I had.

Johnny Edward Davis
Direct examination by Mr. Richey

1 Q Okay.

2 A The Glock 30 .45.

3 Q So the gun you had, the victim shoved you and --

4 A Shoved the gun. He hit the gun, and not me. He
5 smacked the gun.

6 Q And the gun went off.

7 A Yes, sir.

8 Q Okay. And so you didn't intentionally shoot him.

9 A No, sir.

10 Q okay. All right.

11 A The victim was my friend, no.

12 Q okay. And you told Mr. Smith that.

13 A Yes, sir.

14 Q Okay. And you wanted to go to trial.

15 THE COURT: Let me just ask one question, sir.

16 Mr. Davis, you said a few minutes ago that you wanted
17 to go to trial on this case.

18 THE WITNESS: Yes, sir.

19 THE COURT: Is that correct?

20 THE WITNESS: Yes, sir.

21 THE COURT: So why did you plead guilty over two days
22 in front of Judge Knie if you didn't want to plead guilty?

23 THE WITNESS: Because, Your Honor, Judge McKinnon,
24 sir, I was under a lot of duress. My attorney -- I asked
25 him to subpoena things. I asked him to give me an update

Johnny Edward Davis
Direct examination by Mr. Richey

1 on what all had he prepared for my jury trial. He never
2 responded.

3 THE COURT: So what do you mean by you were under
4 duress?

5 THE WITNESS: I was stressed. I was stressed, Your
6 Honor. My kids was ill. I was forced, like he wasn't
7 communicating with me. I paid him seventy-five hundred to
8 email my fiancée. He never visited me. He never got in no
9 motion of discovery. He never gave me a copy of my
10 retainer agreement. And I got all of this in email, sir.

11 THE COURT: So why did you tell Judge Knie you were
12 happy with your attorney and wanted to proceed that day?

13 THE WITNESS: Because if I wouldn't've took that zero
14 to 20, Judge McKinnon, I'd got 30 years, like, I didn't
15 have no choice. He told me I couldn't hired another
16 lawyer. And if I can't hire another lawyer, that means I'm
17 stuck with you. You told me -- you told me that I couldn't
18 hire another lawyer. So now I'm stuck with him. I asked
19 you to subpoena three things for my jury trial.

20 THE COURT: Mr. Davis, I just want to know why did you
21 tell -- you're telling me now what you told Judge Knie was
22 not the truth.

23 THE WITNESS: No, sir. It wasn't the truth. No, sir.
24 Although I said what I said, no, sir, Mr. McKinnon, it
25 wasn't true because I wasn't satisfied, sir, but if I

Johnny Edward Davis
Direct examination by Mr. Richey

1 didn't take it, I would've got 30 years in trial.

2 so he told me I go to trial in two weeks, but he never
3 subpoenaed my evidence. So if I wouldn't've took the zero
4 to 20, which is a lesser than a 30-year sentence, because
5 if I go to trial I'm going to get 30 years, I told him, Mr.
6 Smith, I say the victim not even going to show up. He say,
7 well, you hardhead, if you don't take the zero to 20 your
8 A-S-S going to get 30 years.

9 And you told me I couldn't fire him, so what else
10 could I could? I mean, if I go to trial, you're not
11 getting no evidence that I wanted you to subpoena.

12 I wrote him a letter and told him there's things I got
13 outta the law book pertaining to my case. I asked him did
14 he receive the letter. He told me no.

15 My fiancée wrote back and said I mailed it a little
16 over a week ago. He say it doesn't matter, I do my own
17 research, when you get a law degree and license, let me
18 know, like he was -- he -- he -- he took everything out of
19 me, Judge McKinnon. He turned a strong man to a weak man,
20 sir, like he took everything.

21 I give you \$7,500 in 31 days. I took from my kids'
22 mouth, sir, to try to be home quicker to my kids. And he
23 didn't communicate with me. I paid him \$2,500 January the
24 29th; \$500 February the 3rd; \$4,500 March the 2nd. I saw
25 you two days before I go to court in September.

Johnny Edward Davis
Direct examination by Mr. Richey

1 But I paid you for jury trials. Then you telling me
2 on email that you earned your fee by preparing for trial.
3 I asked you to give me a update on what all had he
4 prepared. You don't tell me nothing.

5 I asked you for a copy of my retainer agreement. You
6 don't respond to nothing. Like he never was transparent
7 with me, sir, like, he -- he tell my fiancée, he say he
8 can't receive my letter, which was a false and misleading
9 statement. That's attorney misconduct.

10 He say he didn't receive a letter, when she say I
11 mailed for a little over a week ago. Judge, he say it
12 doesn't matter, I do my own research, when he gets a law
13 degree and license, you let me know. That thing you sent
14 was full of legal error, and she was like my fiancé --

15 Q Okay.

16 THE COURT: Mr. Davis, let your attorney ask
17 questions.

18 THE WITNESS: Yes, sir.

19 THE COURT: All I wanted to know was about what you
20 told Judge Knie.

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay.

23 Q Okay. What you just said is your complaint against
24 Mr. Smith, right? And I'm not going to have you go back
25 through it, but you essentially say that you were told you

Johnny Edward Davis
Direct examination by Mr. Richey

1 could not fire him and therefore you believe that you were
2 somehow forced to plead because of that, is that correct?

3 A Yes, sir.

4 Q Okay. At the date that you were pleading at the trial,
5 you said you wanted a trial. The date that you pled did you
6 believe that you could win a trial on that day?

7 A Do I believe I could have won a trial?

8 Q Yes.

9 A With my evidence.

10 Q Okay. With your evidence. And was that evidence
11 furnished to you at that time?

12 A Mr. Smith never got my evidence.

13 Q Okay.

14 A But if I'd had the evidence I would have insisted on
15 going to trial. I wanted a trial. If he'd subpoenaed the
16 evidence I asked him he -- he never even went over a
17 strategy with me for trial, like, what I supposed to do I --
18 I mean.

19 Q Well, let me ask you. How many times did he talk to
20 you?

21 A Zero. I talked to him.

22 Q None.

23 A No, sir. I talked to him one time. He told me I go up
24 for bond on the telephone. He said you go up for a bond
25 tomorrow. That's it.

Johnny Edward Davis
Direct examination by Mr. Richey

1 The second time -- when I ever saw Fletcher Smith, I
2 saw him two times in person. January the 29th I give him a
3 \$2,500 retainer. I didn't see Fletcher Smith again until
4 September the 21st.

5 Q Okay.

6 A Two days before I went to court.

7 Q You gave -- when you say you gave him the retainer, was
8 paid by somebody else and he came to see you --

9 A The retainer was paid by me.

10 Q At the jail.

11 A Yes, sir.

12 Q So you gave him \$2,500 at the jail.

13 A Yes, sir.

14 Q What is it, off your jail account or something?

15 A It's off -- yeah. It was off that. I cut a check.

16 Q Off your jail account.

17 A Yes, sir.

18 Q And you gave it to him at the jail.

19 A Yes, sir.

20 Q And what did he talk to you about that day?

21 A I was trying to talk about my case then. He was, like,
22 well, I just come to take your payment, we'll go over there
23 later on, I'm in a rush, I gotta catch this traffic, go back
24 to Greenville. So I'm, like, can I get a copy of my
25 retainer agreement. I'll get you a copy later.

Johnny Edward Davis
Direct examination by Mr. Richey

- 1 Q And so that's all you talked to him about the case.
- 2 A Yes, sir.
- 3 Q At all.
- 4 A Yes, sir.
- 5 Q And so what -- and so did he give you the discovery?
- 6 A No, sir. He never gave me a motion of discovery. I
7 never got a motion or saw my videos with Fletcher Smith. I
8 never dealt with Fletcher Smith.
- 9 Q Okay. Did you get the discovery?
- 10 A No, sir. I got the discovery from Joshua Schultz. I
11 hired -- I had three paid attorneys. I fired two, and I
12 ended up with Fletcher Smith.
- 13 Q So you had -- you had him before Fletcher, right?
- 14 A Yes, sir. I had Joshua Schultz before Fletcher.
- 15 Q So he gave you discovery.
- 16 A Yes, sir.
- 17 Q Okay. Did you talk to Mr. Smith about him giving you
18 discovery or you just --
- 19 A Yes, sir. My fiancée told Mr. Smith that I would like
20 to get the copies of my motions that I gave to him back, and
21 he said okay.
- 22 My fiancée took Fletcher Smith copies of my motion, my
23 discovery, my rule -- my Brady Rule 5.
- 24 Q Okay.
- 25 A Yes, sir. She took him copies. She took copies from

Johnny Edward Davis
Cross-examination by Ms. Marto

1 Joshua Schultz to Fletcher Smith.

2 Q Okay. So -- okay. So you gave him the discovery.

3 A Yes, sir. I gave Fletcher Smith --

4 Q Okay.

5 A -- my discovery.

6 Q Okay. And you said the two of y'all never went over
7 that.

8 A No, sir. I never had a sit-down with him but September
9 the 21st, and that's two days before I go to court. And
10 that's to sign the zero-to-20-year plea.

11 Q Okay.

12 A And he left the room because I was, like, man, what's
13 up with trial.

14 He was like -- I say, man, this is my life on the line,
15 like, I got a family, I got kids, I paid you seventy-five
16 hundred. Well, you hardheaded.

17 I say the victim not going to show up. Well, if you
18 don't take the zero to 20 you're going to get 30 years. And
19 he ran down and left. He didn't even -- I didn't even sign
20 the plea then. He didn't like the fact that I'm arguing
21 over, like, man, I paid you money for jury trial, like, you
22 just now coming to see me and you keep telling me I'm first
23 on a trial docket. If I'm first on a trial docket, why not
24 you correspond and working with me. If I'm first to go up
25 for trial after the COVID crisis, we need to come up with

Johnny Edward Davis
Cross-examination by Ms. Marto

1 some kind of strategy. I didn't pay you to email my fiancée
2 \$7,500. I paid you to come and represent me, provide legal
3 advice.

4 Q Okay. All right. So -- so that's why you -- that's
5 why you pled, because you didn't feel comfortable with your
6 lawyer.

7 A Yes, sir. Like, I believe he put my back against the
8 wall. If I can't fire you and you got me a zero-to-20
9 plea -- zero to 20 years is lesser than doing 30 years. So
10 I had to take the 20 because I didn't want to do the 30.

11 Q Answer any questions the attorney general will have for
12 you.

13 CROSS-EXAMINATION

14 BY MS. MARTO

15 Q Good afternoon, sir.

16 A Good afternoon. How are you doing?

17 Q Good. Hope you are.

18 A I'm fine.

19 Q So you don't dispute that you were the one holding the
20 gun, correct?

21 A No, ma'am. I don't dispute it.

22 Q Okay. And you had the gun. It wasn't in your
23 waistband. It was in your hand when you interacted, right?

24 A Yes, ma'am.

25 Q Why did you have a gun in your hand?

Johnny Edward Davis
Cross-examination by Ms. Marto

1 A I done been shot before, and my friend, which was the
2 victim, Donnie Wilkie, he's on methamphetamines. And I
3 bought a pistol from him, and I told the detectives the day
4 they called me that he carried guns. So he carried a pistol
5 also.

6 Q Okay. And so you were afraid he'd shoot you first?

7 A Yes, ma'am.

8 Q Okay. And you don't dispute the fact that the gun went
9 off when it was in your hand, right, and that is what shot
10 the victim?

11 A He shoved it and that's when it went off.

12 Q Okay. Did you review your discovery with Josh Schultz?

13 A Ma'am?

14 Q Did you review the discovery in the case with Josh
15 Schultz?

16 A Yes, ma'am.

17 Q So you knew the discovery.

18 A He showed me the videos and he gave me my motion, yes,
19 ma'am.

20 Q Okay. And then you yourself provided the discovery to
21 Mr. Smith. Is that what you stated?

22 A Yes, ma'am.

23 Q Okay. And were you the one that discarded the gun in
24 the case after it was fired?

25 A Did I do what with it?

Johnny Edward Davis
Cross-examination by Ms. Marto

1 Q Did -- were you the one that dropped it off at whatever
2 location?

3 A Yes, ma'am, yes, ma'am.

4 Q Okay. You told the police you would help them find
5 wherever the gun was?

6 A Yes, ma'am. I told my lawyer -- I told Fletcher Smith
7 that if he get a police, if he subpoena a police to come and
8 take me, I would get them the gun, yes, ma'am.

9 Q Okay. And is it fair to say one of the main reasons
10 why you pled was because you were afraid you'd get more time
11 at trial?

12 A Yes, ma'am. If I went to trial with Fletcher Smith, I
13 would've got more time, like, it's no guarantee. He
14 never -- we never went over a strategy. He never was
15 transparent with me.

16 THE COURT: Let me ask. I'm actually confused on a
17 point. Maybe I -- I thought -- sir, you testified, I
18 thought, earlier that the gun wouldn't match what was on
19 the video.

20 THE WITNESS: That I'm on video. The gun that I got
21 in the car with is the same gun that I got here like --
22 like what I'm trying to say, Judge, they couldn't try to
23 say it was another pistol. Like if they took me to go get
24 the gun right now, you would know that's the same gun that
25 was -- that I had.

Johnny Edward Davis
Cross-examination by Ms. Marto

1 THE COURT: But you -- but I thought you just admitted
2 to the state that you admitted you were holding the gun and
3 it went off accidentally.

4 THE WITNESS: Right. They found the 40 caliber shell
5 casing. I had a .45 pistol.

6 THE COURT: Well, what gun went off then? I mean, I
7 don't understand.

8 THE WITNESS: I don't know. To be honest with you,
9 Judge McKinnon, I thought it was my gun, but when a police
10 got a 40 cal shell casing, I'm like my gun don't shoot 40
11 caliber shells. I got a Glock 30 .45.

12 THE COURT: I thought you just told the state that you
13 admitted you were holding the gun.

14 THE WITNESS: I was holding a Glock 30 .45, but they
15 got a 40 cal shell casing.

16 Q Where was the shell casing found, sir?

17 A In the driver-door compartment.

18 Q Were there additional shell casings found, or just that
19 one?

20 A Just that. That's why -- that's what threw me off,
21 Judge, because when Joshua Schultz showed me my paperwork,
22 you know, with what they got in evidence and I saw a 40 cal
23 shell casing, I'm like I told Schultz, I say no. I say I
24 got a Glock 30 .45. So Schultz wrote on a piece of paper
25 Glock 30 .45.

Johnny Edward Davis
Cross-examination by Ms. Marto

1 THE COURT: Let me ask. Mr. Davis, let me ask
2 specifically. What is the significance of that if you
3 admit you were holding the gun that shot the victim in the
4 case?

5 THE WITNESS: Well, what I'm saying, Judge, me
6 personally, I thought my gun went off, the .45.

7 THE COURT: Okay.

8 THE WITNESS: When they done their research and got
9 their -- and got the bullet shell, when I saw the motion, I
10 didn't see my motion until months later. But when I saw
11 the motion I'm like, well, wow, this is a 40 caliber shell.
12 He carry a 40 caliber pistol -- the victim.

13 So I'm -- I'm confused, Judge, like, because I'm like
14 my gun went off. My gun discharged. Pow. I heard it.
15 You see what I'm saying?

16 THE COURT: You told the state --

17 THE WITNESS: My gun discharged. You know, and it
18 did. My gun discharged, Judge McKinnon, but they didn't
19 find my bullet shell.

20 So I'm -- I'm confused if he tried to grab his gun and
21 shoot me because he got a 40 caliber. I don't know if he
22 grabbed his gun and it discharged in the truck because they
23 found a 40 caliber shell casing in his truck.

24 THE COURT: I think -- so okay. So you believe that's
25 significant because you think it means there was a second,

Johnny Edward Davis
Cross-examination by Ms. Marto

1 somebody else was firing a gun.

2 THE WITNESS: Yes, sir, yes, sir.

3 THE COURT: Now I understand.

4 THE WITNESS: Yes, sir.

5 Q Well, you shot the victim in the hand, correct?

6 A Ma'am?

7 Q You shot the victim in the hand?

8 A No, ma'am.

9 Q The gun accidentally discharged into the victim's hand?

10 A He shoved the gun.

11 Q Okay.

12 A Yes, ma'am.

13 Q With his hand outside of the car?

14 A Yes, ma'am. He reached up and smacked the gun.

15 Q Okay.

16 A His hand was in the car. I got the gun drawn in his
17 window, like, well, facing him. This is the window. I got
18 the gun at the light of this window.

19 Q And he stuck his hand out the window --

20 A He reached up to smack it. When he smacked it, the
21 clip was -- there's a video to it. It's like all on video.
22 The clip fell outta the gun probably from here to the
23 deputy-officer right there. That's how far the clip slid
24 outta the gun.

25 You see my hand at the window swing back and you see

Johnny Edward Davis
Cross-examination by Ms. Marto

1 the clip laying from where I'm at all the way to the deputy.

2 That's how far the clip went.

3 So if -- common sense a person -- people know guns, a
4 clip wasn't -- wouldn't slide. It wouldn't. So you can
5 tell it was hit with force. Yes, ma'am.

6 Q Now, is your primary concern with Mr. Smith that he
7 didn't act professionally with you?

8 A Yes, ma'am. He was completely unprofessional like. He
9 was disrespectful to my fiancée, towards me on emails, like
10 he never came and saw me, like, he -- he didn't. I mean, he
11 didn't do no professional work, period. He didn't show me
12 no kind of professionalism. Then when I get ready to fire
13 him, he tells me I couldn't fire him. He say the courts
14 won't let me get another attorney. So I gotta deal with
15 whatever he do.

16 Q Again, he was your third attorney, correct?

17 A Yes, ma'am.

18 Q Now, do you think if you went to trial you would be
19 found guilty?

20 A No, ma'am.

21 Q Why not?

22 A Because, for one, the ballistics didn't match. They
23 found a 40 cal. I had a .45. For, two, the victim wasn't
24 going to show up.

25 The victim -- we -- I made a phone call. The victim

Johnny Edward Davis
Cross-examination by Ms. Marto

1 told me to reach out to him. I called him, and the victim
2 told me he don't want nothing to happen, he's not coming to
3 court. If I -- if he'd been in his other car, his other
4 vehicle, he would have shot the S-H-I-T outta me. And I
5 knew, like, attempted murder have two elements. I took some
6 action towards killing him or my intentions was to kill him.

7 He was my friend. I just been shot twice. I got shot
8 one time walking at 2:00 o'clock at the age of 17. Two
9 times in my chest, two times in my arm.

10 With him being on methamphetamines, I didn't want to
11 approach him and he hallucinate and mess around and shoot
12 me. You see what I'm saying?

13 Q Sir, do you have a prior criminal record?

14 A Yes, ma'am.

15 Q What does that roughly consist of?

16 A I can read it all starting from 2002 if I'm not
17 mistaken, animal cruelty; 2005, assault and battery of a
18 high and aggravated nature; 2010, distribution of crack
19 cocaine; 2013, failure to stop for blue lights.

20 And between the year of 2002 until '13 I got some blue
21 tickets as far as driving under suspension, probably two
22 simple possession of marijuanas. But the three felonies on
23 my record, 2005, assault and battery of a high and
24 aggravated nature; 2010, distribution of crack cocaine;
25 2013, failure to stop for a blue light. That's my prior

Johnny Edward Davis
Cross-examination by Ms. Marto

1 record.

2 Q Now, whose decision was it to plead? Was it yours?

3 A No, ma'am.

4 Q Do you know whose decision it was then?

5 A It was, basically, my attorney took over. Like, I
6 wanted a trial. Like, I wasn't wanting nothing but trial.
7 And he told me, like I asked him. I said, well, what. He
8 said I earned my fee by preparing for trial.

9 I was, like, well, give me a update on everything you
10 prepared. He didn't reply, like he's not transparent with
11 me.

12 You talking about my life. I'm 38. I can do a ten-z,
13 but 20 -- zero to 20 -- if he would have said we're going to
14 give you 20 years or you going to trial October the 7th like
15 he told me two weeks later, I would've took the 20 because
16 it's ten years lesser than 30.

17 If I went to trial with this lawyer, I'd've got 30
18 years in trial. So I had to take the plea he got for me. I
19 only got one plea, which was the zero-to-20-year plea.

20 I'd done a year and a half in the county jail. I only
21 got one plea for zero to 20. So if I wouldn't have took it
22 I'd be doing a 30-year sentence because he's not subpoenaing
23 my evidence. He's not got -- we don't have no trial
24 strategy. He never communicated with me. Like I paid him
25 \$7,500 to write a bunch of emails to my fiancée.

Johnny Edward Davis
Cross-examination by Ms. Marto

1 Q And it's your belief that counsel wouldn't have
2 prepared for a trial even if you decided not to plead?

3 A No, ma'am. I know he wasn't prepared.

4 Q Why didn't you bring counsel's lack of preparation to
5 the Court's attention at the plea?

6 A Because I was under duress. He told me I couldn't hire
7 another lawyer.

8 I'm seeing people -- he got one client eight months
9 before me. A manslaughter got ten years, 85 percent.

10 I got a grazed victim on the hand and I got the same
11 thing. Like, my lawyer, he wasn't doing no work like he --
12 he was disrespectful to my fiancée on emails. He told me I
13 couldn't get a new lawyer, I couldn't contact another
14 lawyer, I mean, another lawyer can't get involved. I could
15 contact whoever I want. He told me, he say the court say I
16 can get out if I give them the gun. He told me that July
17 the 31st. If I give up the gun, the prosecution said I
18 could get out.

19 I wrote him a email April the 30th -- my fiancée -- and
20 tried to give up the gun, but he wait three months later and
21 say if I give up the gun I can get out.

22 what about when I wrote you April the 30th trying to
23 give you the weapon? That's evidence. Any court system
24 gonna want a weapon off the streets. I'm trying to be a
25 good citizen and give this gun up.

Johnny Edward Davis
Cross-examination by Ms. Marto

1 He never -- the captain and major say, tell, Fletcher
2 don't have to drive from Greenville, we'll email him the
3 phone record between you and the victim.

4 My fiancée say do you need the information again. He
5 just replied okay, like he would -- when he did reply he --
6 it wasn't the answer that, you know, that was even
7 appropriate. Like, I asked him for a copy of my retainer
8 agreement, he blew off the question. I never got a copy of
9 my retainer agreement.

10 My fiancée told him I'm going to get the copies I
11 brought you of this motion and transcript. He was, like,
12 okay.

13 He came and visit somebody at the jail. My fiancée say
14 Johnny said it would've been nice if you could've seen him
15 today when you was up there. He blew off the question. He
16 didn't reply to her like he -- he -- she asked him was I
17 going up for a bond in May. He said yeah. She say when.
18 He say yep. He just replied yep.

19 Two days -- a day or two later he texted her back and
20 say, oh, na, but when I find out I'll let her know.

21 Judge Cole ordered for me to go up for a bond April of
22 2020. I tell Fletcher Smith it's time for me to get a new
23 bond. He told me Judge Kelly denied your bond. I say I
24 ain't even went in front of Judge Kelly. He say, oh, he
25 denied your hearing. I say, well, give me something on

Johnny Edward Davis
Cross-examination by Ms. Marto

1 writing. That's supposed to be on paper where Judge Kelly
2 denied my hearing without me even going in front of him,
3 know -- didn't know nothing about Kelly, you know.

4 He was, like, well, don't contact me. He told my
5 fiancée on email don't contact me on his statements no more.
6 If he talking about trial, I'll hear, otherwise, the judge
7 made his ruling and he got to live with it.

8 Like, it's a paper trial is everything, but he told me
9 cause of the COVID virus we couldn't get a paper trail. He
10 told my fiancée I couldn't get a bond because I had a charge
11 of -- a charge of a crime of violence, attempted murder.

12 Article One, section 15 of the constitution, all people
13 guaranteed a bond unless you got murder or treason, like he
14 was fine. My fiancée don't know nothing about jail. She
15 don't know nothing about lawyers. So he just telling her
16 something to blow her off. He took my \$7,500 in 31 days.
17 That's how quick I paid him. And just blew us off.

18 He was disrespectful to her, and she's a church woman,
19 so she would just, you know, talk back nice to him. And she
20 wasn't even telling me half of the stuff he was saying. And
21 when I filed my P.C.R., I said you got any kinda documents.
22 And she said I still got emails.

23 So when I looked at them, I'm upset about how he was --
24 not only you took my money, you robbed me, but you
25 disrespected my fiancée.

Fletcher N. Smith, Jr.
Direct examination by Mr. Richey

1 So when I read the emails I got upset. I said why
2 wasn't you telling me this stuff. She say because you
3 already caught high blood pressure from stressing and
4 worrying in the county, I didn't want to worry you no more.
5 And I'm like he was real disrespectful, you know. But
6 that's what me and her, we deal with, a disrespectful lawyer
7 that I paid \$7,500 to email me.

8 Q Okay. And you would have a full of understanding of
9 the charges you pled to and the rights you waived by
10 pleading, right?

11 A No, ma'am. I didn't. I didn't actually at the time
12 know the elements of ABHAN. I knew the elements of
13 attempted murder, but, no, ma'am, I didn't know the elements
14 of ABHAN.

15 Q And you understood the rights you were waiving, right?

16 A Yes, ma'am.

17 MS. MARTO: No further questions.

18 THE COURT: Mr. Richey.

19 MR. RICHEY: No other questions.

20 Call Fletcher Smith.

21

22

23

24

25

Fletcher N. Smith, Jr.
Direct examination by Mr. Richey

1 FLETCHER N. SMITH, JR., having
2 been first duly sworn, testified as follows:

3 DIRECT EXAMINATION BY MR. RICHEY

4 Q Mr. Smith --

5 A Yes.

6 Q -- do you recall representing Mr. Davis?

7 A I do.

8 Q And was that representation in Cherokee County?

9 A Most certainly.

10 Q And was it for the charges that the state spelled
11 out -- attempted murder?

12 A Yeah. Attempted murder and some of the gun charges.

13 Q Okay. Mr. Davis -- you were in the courtroom with
14 Mr. Davis' testimony. Can you tell me how many times that
15 you actually went and saw him down in Cherokee?

16 A Yeah. I had an initial visit where we went over the
17 case with him.

18 I don't recall him paying me any money from the jail.
19 I don't recall that.

20 But the -- the fact is I know this lady paid money on
21 the case. But okay. We went over in detail what he was
22 charged with when I had the initial contact with him.

23 At some point the COVID crisis came through, so you
24 couldn't actually go to the Cherokee County Jail for a
25 period of time.

Fletcher N. Smith, Jr.
Direct examination by Mr. Richey

1 And then the case was developing and, as such, his --
2 he calls her his --

3 Q So the COVID crisis prevented you from going to the
4 jail.

5 A Yeah, on some occasions, yes, sir.

6 Q Do you recall discussing the discovery with him?

7 A Most certainly.

8 Q Okay. And can you talk to me about those discussions?

9 A Yeah. Well, basically, Johnny Davis admits that he --
10 okay. Johnny Davis is a drug dealer. He went to collect
11 with force of violence the money that he claims that this
12 fellow that he sold drugs to -- and you will note that there
13 was no safety on the gun. There was a clip inside the gun
14 ready to shoot the guy if the guy didn't pay him off.

15 And so Johnny Davis is a violent person. So he was
16 indicted by Kim Leskanic. He has a record with regard to
17 violence. And so Kim Leskanic was not going to give him --
18 first, she didn't want him out on bond. And every time he
19 went up -- because he had two other lawyers and they
20 didn't -- Josh -- I didn't know this was going to be this
21 difficult with a client, but, anyway, as far as I was
22 concerned this guy was facing a lot of time because he fired
23 the gun. He pointed the gun at the guy when the guy was in
24 the car. And the guy in self-defense shoved the gun away,
25 and he got shot.

Fletcher N. Smith, Jr.
Direct examination by Mr. Richey

1 So to me that supports an attempted murder -- attempted
2 murder. And so he was facing 30 years in prison as a result
3 of bringing a gun to a scene where he wants to collect on a
4 drug deal. And I think a jury hearing they got a drug
5 dealer and you're the prosecutor, you got a strong case,
6 right?

7 This guy brings a gun. He wants to collect from a drug
8 deal, and it goes bad and he shoots the guy. You tell me.
9 If that's not attempted murder, then I don't know what is.

10 MR. RICHEY: One moment, Your Honor.

11 (Pause.)

12 Q Okay. Mr. Smith --

13 A Yes, sir.

14 Q -- the victim -- what type of injuries did he have?

15 A I think he a hand injury from what I recall. I don't
16 recall all the details.

17 Q And -- and in discussing the case with your client did
18 your client say anything about his intent to go there and
19 shoot the guy or hold him up, or was there any discussion of
20 that that you're aware of?

21 A What Mr. Davis said, he went there to collect on a drug
22 deal. That was our conversation in the jail.

23 He took the gun to the scene to use force of violence
24 to get his money from the guy that owed him the money, and
25 so we had a detailed conversation about that. And, as he

Fletcher N. Smith, Jr.
Direct examination by Mr. Richey

1 said, we had a 2-week window where we were going to have
2 a -- have a jury trial.

3 I don't know. It might've been a tougher sentencing
4 judge on the jury-trial level in that 2-week when we was
5 getting ready to go to trial.

6 So when I went -- because I had prepared for trial, and
7 you'll see it on his emails. I told him, yeah, I'm ready to
8 go to trial if you want to go to trial on this thing.

9 But he knew the odds. I mean, this guy is not dumb.
10 He's street smart. And he knew the odds that he was going
11 to get convicted, and he participated in these negotiations
12 with me. This is what's so -- because he wasn't going to
13 plead guilty to attempted murder. And he told me exactly
14 what he would take and what he wouldn't take.

15 And so what happens is I have this conversation with
16 him about the strategy in this case and I tell him Judge
17 Knie is going to be in town and Judge Knie might give you a
18 better opportunity on a non-negotiated plea because what
19 you've got, he discharged a gun. You struck the victim.

20 He wouldn't shut his mouth when he was on the phone in
21 the jail. And they tape everything you say when you're on
22 the phone.

23 And I couldn't get this across to the guy, because when
24 I first met with him I told him do not discuss your case on
25 the telephone. And Kim Leskanic there was just laughing

Fletcher N. Smith, Jr.
Direct examination by Mr. Richey

1 about how this guy talks so much.

2 And so this street-smart fellow right here, you know,
3 if you wanted to negotiate something on his behalf, he had
4 had a bad run-in with all of those folks.

5 Got two other lawyers he wasn't satisfied with. He
6 probably won't be satisfied with you either. But the key
7 component here is this. He knew he was going to be found
8 guilty of attempted murder. He just admitted that today.
9 And so if we had gone to trial on attempted murder, it was
10 my prediction there was a 90 percent chance that he was
11 going to get convicted. That shell in the thing didn't mean
12 anything, doesn't mean anything today.

13 He admits that he shot the gun; he admits that he
14 pointed the gun a few minutes ago at the man while the man
15 was sitting in his own car.

16 So I go and talk to Kim because I'm over there going
17 back and forth between the jail and the -- and the
18 courthouse. And I sit down with Kim. I said, "Look, let's
19 see if we can get this thing resolved." She decides she'll
20 do assault and battery of a high and aggravated nature, and
21 that's as far as she -- she went.

22 So actually I got the charge, the principal charge,
23 that he was charged with, and to me this is a good deal for
24 him. We get the principal charge reduced. And not only do
25 we get it reduced, he doesn't get the full 20 years for

Fletcher N. Smith, Jr.
Cross-examination by Ms. Marto

1 assault and battery of a high and aggravated nature. He
2 gets ten years. And so actually he got a good -- a good
3 deal from my representation better than he got from the
4 other two lawyers. So it's --

5 Q Let me ask you about this gun and going and getting
6 this gun. Did he -- there's something about this returning
7 a gun to them would have been beneficial to him.

8 A There's no possible way. If I point a gun at you and
9 the gun goes off and I shoot you, just because they find a
10 shell casing of a different gun in the car, you're still
11 guilty of shooting at a person with a gun that you got in
12 your hand that you admit. And even if he got the gun,
13 there's no mitigation in it. They still were not going to
14 negotiate a plea down if he got the gun, so.

15 Q Okay. And let me ask you the question about the
16 investigation.

17 He made mention that you failed to investigate the
18 facts and circumstances of the case. Did you do -- what
19 type of investigation did you do?

20 A Well, I looked at the discovery. There were videos on
21 it. He's on the video. His discussions with me, he
22 admitted that he shot the man. What other investigation is
23 there?

24 Q Answer any questions the attorney general has for you.

25 A Yes.

Fletcher N. Smith, Jr.
Cross-examination by Ms. Marto

1 CROSS-EXAMINATION

2 BY MS. MARTO

3 Q Good afternoon, sir.

4 THE COURT: Mr. Davis, I need to caution you. You
5 need to stop making comments --

6 THE APPLICANT: Yes, sir.

7 THE COURT: -- and faces and noises.

8 THE APPLICANT: Yes, sir.

9 THE COURT: Because I would hate to have to hold you
10 in contempt.

11 THE APPLICANT: Yes, sir. I'm sorry, Judge McKinnon,
12 sir.

13 Q Now, I understand that you stated that Cherokee County
14 Jail was closed to the public. Did y'all ever meet in
15 person?

16 A Yes, we met. As he said, the initial thing. In
17 January of that year I did have COVID myself, but Cherokee
18 County had a pretty serious outbreak of COVID in its jail
19 facility at some period of time during 2020.

20 I think a lot of the jail facility in order to protect
21 people -- and since I was -- you know, I'm up in age. I was
22 kinda like high risk if I got COVID. So I was not going to
23 take that many chances going inside these jail facilities at
24 that point.

25 However, I did meet with him, he said, and we -- in

Fletcher N. Smith, Jr.
Cross-examination by Ms. Marto

1 detail because when he hired me, I had to have a detailed
2 conversation.

3 If he wasn't -- the common sense, if he wasn't
4 satisfied with the interview that we had at the first
5 initial meeting, why would you allegedly, like he said
6 today, give me \$2,500 off the cuff? That wouldn't have made
7 sense.

8 Street-smartism to try to get over something, that does
9 make sense.

10 The other thing too is that when we met two weeks
11 before the trial was going to do, because you'll see in
12 there, we -- I went in detail at the jail facility and met
13 him face to face in the Cherokee County Jail and went over
14 his discovery again and told him that it was a high
15 probability he was going to get convicted.

16 And I told him that Kim Leskanic said that the man was
17 going to show up for trial. The victim was going to show up
18 for trial and testify that that man, Johnny Davis, shot him.
19 And that guy would have been credible because it's on video.
20 So probably a hundred percent chance he would have been
21 convicted.

22 Q And you told him he wouldn't be able to get another
23 attorney because you were --

24 A I didn't tell him any such thing. The Court, I think,
25 informed -- I don't have all of the transcripts, but he kept

Fletcher N. Smith, Jr.
Cross-examination by Ms. Marto

1 gaming the system. And -- and the way a lot of these
2 street-smart guys game the system is they'll go through one
3 lawyer first, and then they'll complain about that lawyer.

4 I usually don't take cases any more for people that
5 have several lawyers in front of this because you know
6 that's going to be a problem.

7 But he gamed the system with the first lawyer. Then
8 Josh Schultz is one of the finest lawyers in -- in the
9 Upstate. He wasn't satisfied with Josh. And then I took it
10 up, and then of course he wasn't satisfied with me, yet I
11 got it reduced.

12 Q And it's your understanding that Mr. Davis had a full
13 understanding of what he was pleading to?

14 A Most certainly. And the judge asked him, and she
15 allowed him when he had questions about what he was pleading
16 to, that he could confer with me. He conferred with me.
17 The thing went on for two days. So we actually conferred
18 together.

19 And the other thing about it too, I think there was
20 something in one of those papers said that I didn't notify
21 him that he had a right to appeal.

22 Well, the judge did. She told him during the course of
23 the plea you can plead -- you can appeal within ten days.
24 He decided that he had such a good deal he didn't need to
25 plea. That's where we are.

Robin Cook
Direct examination by Mr. Richey

1 Q And he had a full understanding of the rights when
2 he --

3 A He had a full understanding of his rights. He's not
4 a -- he's a very intelligent person.

5 Q And you said that he played a relatively large role in
6 assisting in plea negotiations.

7 A Yes, because he would tell me what he was going to do
8 and what he wasn't going to do.

9 He wanted five years and the state didn't want to give
10 him five years. And then she said she would not -- she
11 would reduce it and then, you know, the no-recommendations.
12 She did no rec. And I think if I'm not mistaken he signed a
13 waiver of the grand jury with regard to the assault and
14 battery of a high and aggravated nature.

15 MS. MARTO: No further questions.

16 THE COURT: Mr. Richey.

17 MR. RICHEY: No questions.

18 THE COURT: Thank you, Mr. Fletcher. Thank you, Mr.
19 Smith. I'm sorry.

20 MR. RICHEY: Call Ms. Cook.

21

22

23

24

25

Robin Cook
Direct examination by Mr. Richey

1 some situations, yes, sir.

2 Q And what do you mean by that? Did you talk to him
3 about the case? Right?

4 A Yes, sir.

5 Q Okay.

6 A Johnny made it a point, because with being a Cherokee
7 County, sign papers, you know, for communication because,
8 you know, I -- we're together. So we did talk a lot back
9 and forth about the case, yes, sir, through emails and phone
10 calls. And I went to the office a few times and spoke with
11 Ms. Loretta, his secretary, there.

12 Q So when you just say we talked a lot, are you referring
13 to you and Mr. Smith?

14 A Yes, sir.

15 Q So Mr. Smith talked to you a lot about the case?

16 A Yes, sir.

17 Q And --

18 A Well, as much as he would, you know, let me know
19 pertaining to -- he didn't like conversating about things
20 over the phone too much.

21 Q Okay. But did he -- did he tell you anything about the
22 offers and all of that stuff?

23 A He did bring up and explain to me about the zero-to-20
24 plea, and he did stress the fact that if he goes to trial --
25 he said, Ms. Cook, he's going to get 30 years more than

Robin Cook
Direct examination by Mr. Richey

1 likely. He said if he forces trial he's taking a good
2 chance of being away from you and the babies for a long
3 time.

4 So, and I kind of pushed Johnny to take the plea also.
5 Me and his mother, by going on what was brought to our
6 attention, naturally we don't want him getting 30 years. I
7 didn't want him getting the ten, but we took what we could
8 get.

9 Q Okay. And -- and during this time you were talking to
10 Johnny at the jail, correct?

11 A Yes, sir. We talked daily.

12 Q And -- and he was talking about these plea offers
13 and -- and the investigation of the case. From talking to
14 him did you sense him being under any stress about taking
15 this offer?

16 A He was under stress through the whole situation and
17 with -- you know, he didn't have no choice but to kind of
18 talk over the phone with me because of COVID.

19 our 6-year-old -- I don't to get -- I get -- this just
20 breaks my heart seeing them like that -- but, anyways, our
21 6-year-old's a very sick little girl. She has autoimmune
22 issues. So when COVID hit, we did not go the jail to see
23 him. So it was hard. He had to kind of communicate over
24 that phone, like, we didn't have any other choice.

25 Q Okay. And do you need something to drink?

Robin Cook
Direct examination by Mr. Richey

1 A No. I'm getting over sick. I'm still kind of hoarse.

2 Q Okay.

3 (Pause for witness to get water.)

4 THE COURT: Thank you, Mr. Smith.

5 Q Did Mr. Smith tell you -- did you talk to Mr. Smith
6 about him being able to win the trial?

7 A Yes, sir. I brought up trial, because I pushed. I was
8 pushing to try also the five years.

9 I understand he didn't make the best decisions in
10 life --

11 Q Right.

12 A -- but Johnny went on a good long call of he was
13 working construction and he fell off a little bit and got
14 stressed. And I was working two jobs. So he went back to
15 what he knew was going to get the light bill paid and grant
16 wishes. Is that always the right thing to do? But no. But
17 when you're struggling, you don't know what you're going to
18 do.

19 So me and him talked a lot, and it always went to if we
20 do this to trial, Ms. Cook, it's the 30 years, you know.
21 And even when he spoke with his mother, he let him know he's
22 talked too much over this phone, we get in front of,
23 Leskanic, Leskanic wants it and she's going to make sure.
24 You know, we were scared. And Johnny knew if he went, he
25 was going to get the 30 years.

Robin Cook
Cross-examination by Ms. Marto

1 But Donnie was -- if he was to testify, I don't believe
2 he would have testified against him because I've -- was on
3 the phone when he spoke with Donnie -- family members. He
4 sees Jimmy's mama, uncles, cousins, and he checks on Jimmy
5 to ask how he's doing. So I don't feel like Donnie would
6 have ever come to trial and testified against him.

7 Q Well, why do y'all -- because the victim's not going be
8 at the trial to testify -- why did y'all encourage him to go
9 to trial, to a jury trial, instead of encouraging him to
10 plead?

11 A I, at first, was encouraging the jury trial, but when
12 we were under the impression it's not going to go your way,
13 why I pushed for him to take the plea, because zero to 20
14 versus 30 years is a better outcome.

15 We were looking at the better chance of getting that
16 5-year sentence, because I knew regardless he had the gun.
17 He should not have had the gun. And he has admitted to
18 that. So I knew regardless he was going to get that
19 mandatory 5-year sentence. We felt like there was a better
20 chance doing the zero to 20 in front of Grace Knie.

21 Q Thank you. Answer any questions of the attorney
22 general.

23

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Robin Cook
Cross-examination by Ms. Marto

1 CROSS-EXAMINATION

2 BY MS. MARTO

3 Q Good afternoon, ma'am.

4 A Good afternoon, Sweetie.

5 Q So just to confirm, your main issue with Mr. Smith was
6 that he was rude and disrespectful to you.

7 A Yes, ma'am. I felt like even through the COVID he
8 could have possibly tried to do like the phone calls more
9 with him because there was -- he didn't get a lot of
10 communication through him. And I understand being up in age
11 with COVID. I had to be very careful with my daughter
12 during that time.

13 But I felt like he might have -- him seeing the other
14 lawyers, making illegal phone calls and things stressed him
15 even more because he sees my attorney's not doing this. So
16 his blood pressure -- there was two incidents he was rushed
17 to the emergency room. He reached stroke level. So I tried
18 to handle most of it on my own because I wanted him to stay
19 cool, calm and collected as he possibly could through all of
20 it.

21 Q And so you talked to Mr. Smith quite a bit.

22 A Yes, ma'am.

23 Q And in your discussions with Mr. Smith when deciding
24 whether to plead or go to trial you -- it was your opinion
25 that the plea was the best option.

1 A Yes, ma'am. And I'm not very educated with these
2 things. Like, this is my first go-around. So I can only go
3 by what was being told.

4 So the cards that was given to me, I'm looking for his
5 best interest. Of course our daughter was eight months old
6 when all of this happened. So he needs to be home with her.
7 But the plea got him home sooner, not as soon as what we had
8 wanted, obviously, but he still is going to get to see her
9 graduate and, you know, do things. And also our boy. So,
10 you know, we got a better bargain than going to trial taking
11 a plea. We did.

12 Q Do you still believe that to this day?

13 A Yes. If he would have went to trial with what we had,
14 he would have got 30 years, and I honestly believe it.
15 That's why I told him not to go.

16 MS. MARTO: No further questions, Your Honor.

17 THE COURT: Any questions?

18 MR. RICHEY: No other questions.

19 THE COURT: Thank you, ma'am. You can step down.
20 Any further witnesses?

21 MR. RICHEY: No, Your Honor.

22 Your Honor, at this time we'd ask the Court. We know
23 the Court will read these emails, along with the
24 application and the testimony presented. And we will rely
25 on that and ask the Court for a favorable ruling based off

1 these documents.

2 THE COURT: Yes, sir.

3 MR. RICHEY: Thank you, Your Honor.

4 THE COURT: Any argument? No further argument?

5 MR. RICHEY: No, Your Honor.

6 THE COURT: Ms. Marto.

7 MS. MARTO: Your Honor, we would just rely upon the
8 record as well. Request you deny the relief in this case.

9 THE COURT: Thank you. Thank you, Counsel.

10 MS. MARTO: Thank you, Your Honor.

11 THE COURT: Yes. Y'all are waiting on me. I
12 apologize. I'm going to take this under advisement. Thank
13 you.

14 END OF REQUESTED TRANSCRIPT OF RECORD

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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Cherokee County, South Carolina, on the 6th day of June 2022.

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

October 8, 2022

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

Johnny Davis

14 messages

robin cook [redacted]
To: fsmith@bellsouth.net

Thu, Apr 16, 2020 at 6:11 PM

I'm emailing you to inform you that Johnny has reached out to another attorney who is willing to take him for a emergency bond hearing during this time and is willing to work through this time the attorney said he will reach out to you. Its not that I myself or johnny isnt happy with you just during this time we know it's in your best interest to stay home and not work and with these emergency bond hearings going well we dont want to miss a chance of getting him home. if you could contact me back by phone or email thank you for all your time

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [redacted]

Thu, Apr 16, 2020 at 6:44 PM

That's fine. I had spoken with an insurance adjuster today. But have the lawyer contact me at his earliest opportunity.

Sent from my iPhone

> On Apr 16, 2020, at 6:11 PM, robin cook [redacted] wrote:
>
>
[Quoted text hidden]

robin cook [redacted]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Thu, Apr 16, 2020 at 8:49 PM

if you dont mind me asking what is a insurance adjuster needed for? And ok I'll let them know
[Quoted text hidden]

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, GA
2022 APR 13 AM 8:45
BRANDY W. MCBEE

Loretta Maddox <loretta@piedmontlegal.com>
To: robin cook [redacted]
Cc: fsmith@bellsouth.net <fsmith@bellsouth.net>

Fri, Apr 17, 2020 at 10:09 AM

Good morning Ms. Cook,

Attorney Smith instructed me to reach out to you to let you know we emailed Ms. Leskanic and the Deputy Docket Clerk to see if we can get Mr. Davis an emergency bond hearing. I will get back to you as soon as I hear

back from Ms. Leskanic or the Ms. Jolly (Chief Deputy Clerk of Court).

Also on another note we have a Mr. J Davis that's an accident case and I believe Attorney Smith might have gotten the Davis' mixed up and we do apologize for that. Please disregard the comments about the insurance

Adjuster.

Thank you,



Loretta Maddox

Legal Administrator to Fletcher N. Smith, Jr. Esquire

112 Wakefield Street (29601)

P.O. Box 10496

Greenville, SC 29603

P- 864.232.6541

F- 864.232.6756

loretta@piedmontlegal.com

fsmith@bellsouth.net

[Quoted text hidden]

robin cook [redacted]
To: Loretta Maddox <loretta@piedmontlegal.com>

Fri, Apr 17, 2020 at 11:56 AM

Ok thank you just let me know soon as possible and once again thank you

[Quoted text hidden]

robin cook [redacted]
To: Loretta Maddox <loretta@piedmontlegal.com>

Fri, Apr 17, 2020 at 3:56 PM

I'm emailing you back johnny health is an issue his hyper tension blood pressure with the covid 19 puts him at higher risk and also they had to bring a doctor in to do chest xrays on him give him meds he still is having trouble. Also has anything changed far as has Mrs. Leskanic came down on her plea has he spoke with her about retrieving the phone call between johnny and the victim.

[Quoted text hidden]

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: Loretta Maddox <loretta@piedmontlegal.com>
Cc: robin cook [redacted], fsmith@bellsouth.net <fsmith@bellsouth.net>

Fri, Apr 17, 2020 at 4:22 PM

Mistook Johnny for another client with an accident case. Sorry about that. Was at home and not at the office. So no access to file.

Sent from my iPhone

On Apr 17, 2020, at 11:09 AM, Loretta Maddox <loretta@piedmontlegal.com> wrote:

[Quoted text hidden]

robin cook [redacted]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Fri, Apr 17, 2020 at 4:27 PM

That's fine Johnny is just wanting to know if there has been any changes in pleas and all that and how long will it be before he knows if he gets a emergency bond hearing

[Quoted text hidden]

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [redacted]

Fri, Apr 17, 2020 at 4:52 PM

166

will let you guys know soon.

Sent from my iPhone

On Apr 17, 2020, at 4:28 PM, robin cook [REDACTED] wrote:

[Quoted text hidden]

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Fri, Apr 17, 2020 at 4:53 PM

Ok thank you
[Quoted text hidden]

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Mon, Apr 20, 2020 at 9:51 AM

Mr. Smith I'm just sending this email letting you know something's that might would help if johnny is able to get a emergency bond hearing our 3 year old is having another episode with her immune system disorder with Johnny's health being poor right now I'm worried the longer he is in the county the worst and with this virus just worries me and junlors mental health isnt any better I'm not trying to tell you how to do anything I'm confident in you I'm just worried and want him home
[Quoted text hidden]

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Mon, Apr 20, 2020 at 3:30 PM

[Quoted text hidden]

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Mon, Apr 20, 2020 at 9:03 PM

I'm emailing again I'm trying to figure out what's going on was a motion put in for a bond because me and Johnny thought he was eligible in april for a bond hearing so many inmates are getting these bond hearings we not understanding why its difficult for him to receive one is it that right now with this crisis going his case is to much I dont get emails back johnny keeps asking questions I cant answer I have no answers for the kids I'm not trying to be out the way or get on your nerves its been a long and stressful 13 months still have no answers for our kids
[Quoted text hidden]

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [REDACTED]

Mon, Apr 20, 2020 at 10:24 PM

Thanks

Sent from my iPhone

On Apr 20, 2020, at 9:03 PM, robin cook [REDACTED] wrote:

[Quoted text hidden]

M**Johnny Davis**

5 messages

robin cook [REDACTED]
 To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Wed, Apr 29, 2020 at 5:58 PM

I am emailing you about Johnny he is eligible for a bond hearing in April in February he did not even have a bond hearing that was their mistake not yours or Johnny's it doesnt make any sense he is going to have me contact the Chief Justice Beatty and the NAACP and the State Bar to find out what is going on and why he cant get a bond hearing and also contact another attorney about getting him an emergency bond hearing if you are not able to get the job done

Fletcher N. Smith <fsmith@piedmontlegal.com>

Wed, Apr 29, 2020 at 6:17 PM

To: robin cook [REDACTED]

I have already contacted Judge Kelly. He contact anyone he so desires. I have no problem with that.

Sent from my iPhone

> On Apr 29, 2020, at 5:58 PM, robin cook [REDACTED] wrote:

>

>

[Quoted text hidden]

Fletcher N. Smith <fsmith@piedmontlegal.com>

Wed, Apr 29, 2020 at 6:21 PM

To: robin cook [REDACTED]

Robin,

He may not be entitled to an emergency bond hearing because he is charged with attempted murder, a crime of violence. No other attorney can get involved.

I Judge Kelly contacts never and sets it, I will let you know. His threats will not make any difference.

So he can contact whomever he want.

As soon as the virus threat is over he will be called to trial.

Fletcher Smith.

Sent from my iPhone

> On Apr 29, 2020, at 5:58 PM, robin cook [REDACTED] wrote:

>

>

[Quoted text hidden]

Fletcher N. Smith <fsmith@piedmontlegal.com>

Wed, Apr 29, 2020 at 6:22 PM

To: robin cook [REDACTED]

Send me your phone number and I will discuss this matter.

Sent from my iPhone

> On Apr 29, 2020, at 6:17 PM, Fletcher N. Smith <fsmith@piedmontlegal.com> wrote:

>

> I have already contacted Judge Kelly. He contact anyone he so desires. I have no problem with that.

[Quoted text hidden]

robin cook [REDACTED]

Wed, Apr 29, 2020 at 6:25 PM

SC Judicial Branch

3 messages

Fletcher N. Smith <fsmith@piedmontlegal.com>

To: robin cook [REDACTED]

Wed, Apr 29, 2020 at 6:40 PM

<https://www.sccourts.org/whatsnew/displayWhatsNew.cfm?indexId=2486>

Sent from my iPhone

robin cook [REDACTED]

To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Wed, Apr 29, 2020 at 6:40 PM

9802254857 this is Neil Phillips number

[Quoted text hidden]

robin cook [REDACTED]

To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Thu, Apr 30, 2020 at 9:44 AM

I had a long discussion with Johnny last night hopefully he has seen the light but he does want you to try and get his mental health record from a place called monarch I have gave Mrs. Loretta the information a few weeks ago and also he wants to see if he can get it to where a officer can take him to get the gun which he wrote in a letter to me and that I have the gun box with the guns information on it. He thinks and I also think he has a chance with the jury not with the gun but the victim agreeing over the phone it was a misunderstanding no robbery and he doesn't want Jimmy doing alot of time but you are the expert in this not me but he wanted to make sure I told you about the gun and mental health record

[Quoted text hidden]

To: Fletcher N. Smith <fsmith@piedmontlegal.com>

169

864-492-7706

[Quoted text hidden]

robin cook

To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Tue, May 5, 2020 at 6:11 PM

Johnny wanted me to tell you that it would have been nice if you could have seen him today also while you were there at the jail and when you think you will make it there to see him

[Quoted text hidden]

170
M

Johnny Davis

6 messages

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Fri, May 8, 2020 at 5:18 PM

Will Johnny be going up for a bond with Nick Tate? He is wanting to know

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [REDACTED]

Fri, May 8, 2020 at 5:54 PM

Yes

Sent from my iPhone

> On May 8, 2020, at 5:18 PM, robin cook [REDACTED] wrote:

>
>

[Quoted text hidden]

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Fri, May 8, 2020 at 5:55 PM

Ok what day?
[Quoted text hidden]

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [REDACTED]

Fri, May 8, 2020 at 9:58 PM

Yep.

Sent from my iPhone

On May 8, 2020, at 5:55 PM, robin cook [REDACTED] wrote:

[Quoted text hidden]

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2022 JUN 13 PM 3: 23
BRANDY W. MCBEE

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [REDACTED]

Sat, May 9, 2020 at 7:57 AM

I don't know yet. When I do I will inform you.

Sent from my iPhone

On May 8, 2020, at 5:55 PM, robin cook [REDACTED] wrote:

[Quoted text hidden]

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [REDACTED]

Mon, May 11, 2020 at 9:14 AM

Ms. Cook,

Just got word from the Clerk's Office that Judge Kelly will not have a bond hearing for Johnny Davis on Tuesday, April 12, 2020, because the Judge has ruled that there is no substantial change in circumstances that would warrant considering a bond for Mr. Davis at this time. You can tell Mr. Davis that the Judge has denied his bond hearing.

Fletcher Smith, Jr.

[Quoted text hidden]

Johnny Davis

2 messages

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Mon, May 11, 2020 at 8:35 PM

Also I forgot to add he wants me to get the copies I brought you of his transcripts and motions and case summary

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [REDACTED]

Mon, May 11, 2020 at 9:30 PM

Okay

Sent from my iPhone

> On May 11, 2020, at 8:36 PM, robin cook [REDACTED] wrote:

>

>

[Quoted text hidden]



Paperwork

3 messages

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Thu, May 14, 2020 at 11:57 AM

Mr. Smith my daughter has fallen ill again I want be able to come get those papers from you tomorrow ill have to come next friday if it is ok

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [REDACTED]

Fri, May 15, 2020 at 12:21 AM

Yes.

Sent from my iPhone

> On May 14, 2020, at 3:34 PM, robin cook [REDACTED] wrote:

>

>

[Quoted text hidden]

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Fri, May 15, 2020 at 10:04 AM

Also we heard the courts might possibly open in june Johnny is wanting a update on everything as far as what all you have prepared for his trial
[Quoted text hidden]

Johnny Davis

7 messages

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Wed, May 20, 2020 at 10:06 AM

Johnny would like if you would look over his indictments because he says they are bare bones indictments

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [REDACTED]

Wed, May 20, 2020 at 1:31 PM

So what. They are legal.

Sent from my iPhone

> On May 20, 2020, at 10:06 AM, robin cook [REDACTED] wrote:

>
>
[Quoted text hidden]

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Thu, May 21, 2020 at 9:44 AM

What time is good for me to come get those papers for johnny tomorrow?
[Quoted text hidden]

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [REDACTED]

Thu, May 21, 2020 at 10:24 AM

Ms. Cook,

I don't know. We have had these documents all week. So I may not be in the office tomorrow.

You call tomorrow.

Fletcher

[Quoted text hidden]

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CHEROKEE COUNTY, GA.
2020 JUN 13 PM 3:30
BRANDY W. MCBEE

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Thu, May 21, 2020 at 12:30 PM

Ok i tried emailing and calling Wednesday while I was off my only days off is Friday
[Quoted text hidden]

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [REDACTED]

Thu, May 21, 2020 at 1:18 PM

See u at 10 Friday

Sent from my iPhone

On May 21, 2020, at 12:31 PM, robin cook [REDACTED] wrote:

[Quoted text hidden]

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Thu, May 21, 2020 at 3:02 .

Ok, see you then.
[Quoted text hidden]

Johnny Davis

4 messages

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Mon, Jun 22, 2020 at 12:08 PM

Johnny is wanting to know since Cole is in this week if you can get him front of him and he wants a paper with Kelly's ruling

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Mon, Jun 22, 2020 at 12:20 PM

He also said if he cant go up in front of judge cole then he needs a paper like the one with coles ruling with Kelly's ruling on it that there should be something on file with Kelly's ruling with Kelly's signature
[Quoted text hidden]

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [REDACTED]

Mon, Jun 22, 2020 at 12:33 PM

Robin,

Don't contact me about his statements on this issue anymore. It's a waste of my time. If he has anything to say about the upcoming trial then I am all ears. Otherwise tell him the judge has made his ruling and he will have to live with it.

Fletcher Smith, jr.

[Quoted text hidden]

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Mon, Jun 22, 2020 at 3:04 PM

Will do.
[Quoted text hidden]

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CLERK OF COURT
HEROKEE COUNTY, S.C.
2022 JUN 13 PM 3:30
BRANDY W. MCBEE

M**Johnny Davis**

10 messages

robin cook [REDACTED] Sat, Jun 27, 2020 at 7:11 PM
 To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Johnny would like to know if you received his letter it was things he read in a law book that would help his case

Fletcher N. Smith <fsmith@piedmontlegal.com> Sat, Jun 27, 2020 at 7:26 PM
 To: robin cook [REDACTED]

No.

Sent from my iPhone

> On Jun 27, 2020, at 7:11 PM, robin cook [REDACTED] wrote:

>

>

[Quoted text hidden]

robin cook [REDACTED] Sat, Jun 27, 2020 at 7:49 PM
 To: Fletcher N. Smith <fsmith@piedmontlegal.com>

I mailed it for him a lil over a week ago
 [Quoted text hidden]

Fletcher N. Smith <fsmith@piedmontlegal.com> Sat, Jun 27, 2020 at 7:51 PM
 To: robin cook [REDACTED]

Doesn't matter. I do my own research. When he gets a law degree and license let me know. That thing you sent was full of legal error. So don't tell me how to do my job.

Sent from my iPhone

On Jun 27, 2020, at 7:49 PM, robin cook [REDACTED] wrote:

[Quoted text hidden]

robin cook [REDACTED] Sat, Jun 27, 2020 at 7:54 PM
 To: Fletcher N. Smith <fsmith@piedmontlegal.com>

It's some book he has been reading but I will just let him know that you received it
 [Quoted text hidden]

Fletcher N. Smith <fsmith@piedmontlegal.com> Sat, Jun 27, 2020 at 7:56 PM
 To: robin cook [REDACTED]

Good. He doesn't understand what he is reading and how it applies to his case.

Sent from my iPhone

Johnny Davis

3 messages

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Mon, Jul 13, 2020 at 2:27

Johnny is wanting you to put in for a fast speedy trial he paid you for a reason he needs out of there

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [REDACTED]

Mon, Jul 13, 2020 at 10:02 PM

There is no speedy trial. But he is up first for trial after the COVID-19 crisis.

Sent from my iPhone

> On Jul 13, 2020, at 2:28 PM, robin cook [REDACTED] wrote:

>

>

[Quoted text hidden]

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Mon, Jul 13, 2020 at 10:07 PM

Yes I told him that but he just asked since November will be his 6 mths will another bond hearing happen
[Quoted text hidden]

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CLERK OF COURT
CHEROKEE COUNTY, S.C.
2022 JUN 13 PM 3:30
BRANDY W. MCBEE



Johnny Davis

7 messages

robin cook [redacted]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Fri, Jul 31, 2020 at 2:51 PM

Mr. Smith I'm emailing to get some updates and also Johnny contacted the clerk of court Mrs. McBee and there should be some paperwork of Judge Kelly's ruling and Mrs. McBee should be forwarding you some letters. Johnny hasn't been up for a hearing since Oct. 7th he wants a copy of his retainment agreement that he signed. If you cant handle his case or do anything refund the 7500 he just sitting there not knowing anything for almost 17 months. He said people are getting paperwork and things done even with this covid-19 virus pandemic going on.

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [redacted]

Fri, Jul 31, 2020 at 3:06 PM

The retainer is non refundable. Plus the court is not going to let him hire another lawyer. If he gives up the gun he can probably get out. At least that is what the prosecution tells me. Also he runs his mouth too much and his letter to the clerk of court further incriminated him.

Sent from my iPhone

> On Jul 31, 2020, at 2:51 PM, robin cook [redacted] wrote:
>
>
[Quoted text hidden]

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [redacted]

Fri, Jul 31, 2020 at 3:07 PM

Finally,
I have earned the fee by planning for trial after his alleged bungled robbery attempt that he has allegedly admitted to.

Sent from my iPhone

> On Jul 31, 2020, at 2:51 PM, robin cook [redacted] wrote:
>
>
[Quoted text hidden]

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [redacted]

Fri, Jul 31, 2020 at 3:08 PM

I will file another bond request. I am not guaranteeing the Judge will let him out.

Sent from my iPhone

> On Jul 31, 2020, at 2:51 PM, robin cook [redacted] wrote:
>
>
[Quoted text hidden]

robin cook [redacted]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Fri, Jul 31, 2020 at 3:13 PM

I will let him know when he contacts me back
[Quoted text hidden]

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CLERK OF COURT
CHEROKEE COUNTY, S.C.
2022 JUN 18 PM 3:31
BRANDY J. MCBEE

180

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Fri, Jul 31, 2020 at 5:41

Can u tell us how incriminated himself with the letter and he hasn't admitted to no robbery
(Quoted text hidden)

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Fri, Jul 31, 2020 at 5:41

And also when will you put in for another hearing
(Quoted text hidden)



Johnny Davis

2 messages

robin cook [redacted]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Tue, Aug 4, 2020 at 12:22 PM

Johnny wanted me to let you know that he spoke with captain Wells and she said you can call up there and speak with Lt. or Major Anderson and they will email you the phone call recording between Johnny and the victim if you need me to ask you the phone call info again let me know

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [redacted]

Tue, Aug 4, 2020 at 12:37 PM

Okay

Sent from my iPhone

> On Aug 4, 2020, at 12:23 PM, robin cook [redacted] wrote:

>

>

[Quoted text hidden]

Johnny Davis

8 messages

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Mon, Sep 21, 2020 at 2:56 PM

And if not he goes to trial do you have what he asked for you to get in the emails and the papers are signed you can pick them up

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [REDACTED]

Mon, Sep 21, 2020 at 10:05 PM

Tell Johnny to write up his strategy and that the plea will be Wednesday at 1:00 before Judge Krife. I will call him in the morning.
Thanks.

Sent from my iPhone

> On Sep 21, 2020, at 2:56 PM, robin cook [REDACTED] > wrote:

>

>

[Quoted text hidden]

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Mon, Sep 21, 2020 at 10:05 PM

Ok
[Quoted text hidden]

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Mon, Sep 21, 2020 at 10:15 PM

He said the box need to be checked where it says the plea is without negotiations or recommendation and one of them charges pointing a firearm at another person or possession of a firearm during commission of violent crime need to go away and also when are you going to pick up the paperwork
[Quoted text hidden]

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Mon, Sep 21, 2020 at 10:17 PM

And one more thing he said what is the link so I can be present on the computer screen
[Quoted text hidden]

robin cook [REDACTED]
To: Fletcher N. Smith <fsmith@piedmontlegal.com>

Mon, Sep 21, 2020 at 10:27 PM

He said he thought court was Thursday and friday the public index has him down for thursday
[Quoted text hidden]

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [REDACTED]

Mon, Sep 21, 2020 at 11:06 PM

They changed the time today when I got back to the office. They want to take the private attorneys Wednesday.

Sent from my iPhone

On Sep 21, 2020, at 10:27 PM, robin cook [REDACTED] wrote:

183

[Quoted text hidden]

Fletcher N. Smith <fsmith@piedmontlegal.com>
To: robin cook [REDACTED]

Mon, Sep 21, 2020 at 11:09 PM

The public defenders on Thursday and Friday. The hearing will be by WebEx because Judge Knie does not want in person pleas. Judge Cole will do in person pleas on the 28th.

Sent from my iPhone

On Sep 21, 2020, at 10:27 PM, robin cook [REDACTED] wrote:

[Quoted text hidden]

STATE OF SOUTH CAROLINA)
 COUNTY OF CHEROKEE)
)
)
 Johnny Davis, #315622,)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No.: 2021-CP-11-0413

ORDER OF DISMISSAL

FILED IN THE OFFICE
 CLERK OF COURT
 2022 SEP 14 A 11:07
 BRANDY W. MOORE
 CHEROKEE COUNTY, SC

This matter comes before this Court by way of Applicant's post-conviction relief application filed June 28, 2021. Respondent made its return on December 30, 2021 and requested an evidentiary hearing. An evidentiary hearing was held on June 6, 2022, at the Spartanburg County Courthouse. Rodney Richey, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant's fiancé Robin Cook and Counsel Fletcher Smith also testified. After reviewing all records and evidence before this Court, this Court finds Applicant did not meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined by the South Carolina Department of Corrections pursuant to orders of commitment from the Cherokee County Clerk of Court. During its July 2019 term, the Cherokee County Grand Jury indicted Applicant for attempted murder (count one) and possession of a weapon during the commission of a violent crime (count two) (2019-GS-11-01057). He waived presentment to the grand jury for pointing or presenting a firearm at another person (2019-GS-11-01184). Applicant was represented by Fletcher Smith, Esquire.

Assistant Solicitor Kimberly Leskanic of the Seventh Circuit Solicitor's Office prosecuted the case. On September 23-24, 2020, Applicant appeared before the Honorable Grace G. Knie, circuit court judge, and entered an *Alford* plea to the lesser included offense of assault and battery of a high and aggravated nature and possession of a weapon. He also pled guilty to pointing or presenting a firearm at another person. Judge Knie sentenced Applicant to ten years' imprisonment for assault and battery and five years' imprisonment for each of pointing or presenting a pistol and for possession of a weapon. The weapons-related sentences were ordered to run concurrently with each other but consecutively to the aggravated assault and battery sentence. Applicant did not pursue a direct appeal.

Summary of Relevant Facts

On March 13, 2019, the victim pulled up to an apartment complex and Applicant pulled beside him. (Tr. 23-24). Applicant got out of the driver's seat, went over to the victim while armed with a firearm, and demanded the victim empty his pockets. (Tr. 24). The victim refused to comply and tried to pull away. (Tr. 24). Applicant gave chase, the victim stopped, and Applicant pointed a firearm at his head. (Tr. 24). The victim tried to knock the gun away from his head and away from Applicant. (Tr. 24). The gun discharged and struck the victim in the hand. (Tr. 24). The victim drove straight to the police department to report the incident. (Tr. 24).

Applicant was caught on tape dropping the clip to the gun, picking it up, and running back to his vehicle. (Tr. 24-25). An unidentified person was in the car with Applicant. (Tr. 25). The second person was initially in the passenger seat but moved over to the driver's seat and drove Applicant from the scene. (Tr. 25).

Applicant gave a police statement in which he did not identify the second person. (Tr. 25). He told the police he hid the gun in Greenville County and he was the only one who could

get the gun. (Tr. 25). He did not disclose the exact location of the gun to the police. (Tr. 25). Applicant stated he fronted the victim some meth and the victim owed him \$200. (Tr. 25). The victim stated he did not owe Applicant money, but that he had previously bought marijuana from him. (Tr. 25). The victim did not require surgery but did go to the hospital, has a permanent scar on his hand, and can no longer straighten his pinkie finger. (Tr. 26).

Current Action Before this Court

In his current PCR application, Applicant alleges he is being held in custody unlawfully because of ineffective assistance of counsel in that:

1. Ineffective Assistance of Counsel.
 - a. Counsel was ineffective by failing to challenge the sufficiency of the evidence that charged that the Applicant committed the offense of attempted murder, whereas victim's statement indicated that due to him shoving the pistol away, causing it to discharge.
 - b. Applicant was not advised of his right to appeal his sentence and plea by counsel.
2. Involuntary Guilty Plea.
 - a. Applicant's guilty plea was unknowingly and involuntarily entered as a result of counsel's ineffective assistance of counsel, and thereby prejudicial to Applicant.

At the PCR hearing, Applicant proceeded forward on the following allegations:

1. Ineffective Assistance of Counsel:
 - a. Brevity of time in consultation.
 - b. Failure to move to suppress the ballistics.
 - c. Failure to argue that Applicant did not intend to shoot the victim.
 - d. Failure to obtain and review discovery with Applicant.
2. Involuntary plea:
 - a. Afraid of receiving a harsher sentence at trial.
 - b. Applicant stated he did not have a full understanding of the charges.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Applicant Testimony

Applicant stated he entered an open plea. He stated he was represented by Counsel. Applicant stated that he asked Counsel for a police investigator to obtain a gun. He stated he did not talk to Counsel at all, and Counsel primarily communicated with Applicant's fiancé instead. He stated he asked for another attorney either June 22 or 27 but stated that another attorney could not work with Counsel on the case. He stated that he wanted Counsel to suppress the ballistics, which he stated did not match. He stated he was not guilty of assault and battery and that he told Counsel that he did not shoot the victim. He stated the victim hit the gun, which caused it to fire.

Upon questioning from this Court, Applicant stated he pled because he was under duress. He stated that he thought he would have received thirty years' imprisonment if he did not plead. He stated that Counsel was never transparent with him.

On direct, Applicant stated that he would have gone to trial if he had his "evidence." He stated he gave Counsel \$2500 in jail and that prior counsel, Joshua Schultz, gave him the discovery. He stated he gave this discovery to Counsel. He stated he took the twenty-year sentence because he did not want thirty.

On cross-examination, Applicant stated he had a gun in his hand for protection and that the victim shoved the gun. He stated that he reviewed the discovery with Schultz. He stated that he pled because he thought he would receive more time if he went to trial. He stated that he thought that the gun went off. He stated that a .40 caliber casing was found, not a Glock .45 caliber casing. Applicant stated that his gun discharged in the victim's hand. Applicant stated that his primary grievance against Counsel was that he was disrespectful toward him and his fiancé. Applicant stated that he would not have been found guilty at trial because the ballistics did not match his gun. He stated that his prior record included convictions for distribution of crack cocaine, driving under suspension, and ABHAN. He stated that the decision to plead was

ultimately Counsel's decision because his attorney was not transparent with him. He stated he had to take the plea provided to him. He stated he did not bring Counsel's deficiencies to the Court's attention because he was under duress. He stated that he never received a copy of his retainer agreement. He stated he did not have a full understanding of the charges pled to. He stated he understood the rights he was waiving by pleading.

Counsel Testimony

Counsel testified that he met with Applicant and reviewed the discovery. He stated that there was a clip inside the gun ready to kill the victim unless he was paid his debt to Applicant. He stated that Applicant pointed the gun at the victim, who shoved the gun away in self-defense. He stated that he thought this was sufficient to secure an attempted murder conviction. Counsel testified that Applicant had a criminal history and that he was a violent person. He stated that the victim's hand was injured in Applicant's attempt to collect on a drug deal. Counsel testified that Applicant admitted to holding the gun, the gun discharging, and that he shot the victim. Counsel testified that he was prepared to go to trial. He stated that Applicant told him what he would and would not take concerning plea deals. He stated that he was able to get a plea offer to a lesser-included offense.

On cross-examination, he stated that he told Applicant there was a high probability he would be convicted at trial. He stated that he never told Applicant he could not hire another attorney. Counsel testified that Applicant seemingly understood what he was pleading to and what rights he was waiving. He stated that process of obtaining the plea occurred over the course of two days.

Fiancé Testimony

Applicant's fiancé stated that she was aware of the incident and issues with Counsel prior

to the plea. She testified that Counsel's anger got the better of him sometimes. She stated she spoke with Counsel often. She stated she and Applicant were planning on proceeding to trial at first but pushed Counsel into getting the best deal possible. She stated Applicant was stressed at the time.

On cross-examination, she testified that she felt like Counsel was disrespectful and that Counsel could have done more for Applicant. She testified that she believed the plea was in Applicant's best interest when he entered it and still believed it would be in his best interest if he had to make the decision again on the date of the hearing.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and this PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the

Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRPC ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). Reasonableness is determined by the "variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant," and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result

must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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

Invalid Plea

Applicant claims the plea was entered involuntarily, unknowingly, and unintelligently. In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

For a plea to be valid, the applicant must have been aware of the nature and crucial

elements of the offense, the maximum and minimum penalties, and the rights he is waiving by accepting the plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000).

A plea is not knowing or voluntary if a defendant "lacks knowledge of material evidence in the prosecution's possession." *Gibson v. State*, 334 S.C. 515, 523, 514 S.E.2d 320, 324 (1999).

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. at 34, 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). "[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing." *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, "guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea." *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

The record reflects that the plea was entered freely, knowingly, intelligently, and voluntarily. Applicant stated he understood he was pleading no contest to the charges as stated by the prosecutor, as opposed to having a jury trial. (Tr. 11-12). Applicant stated he understood he was waiving his right to a jury trial, where he could call and confront witnesses and had a right to remain silent. (Tr. 12). Applicant stated he understood that if he went to trial, the burden of proof would be on the State, and they would have to prove every element of every charge against him beyond a reasonable doubt and where he would be presumed innocent until proven guilty. (Tr. 12). Applicant stated he understood that if he went to trial, every single juror would

have to find him guilty for him to be found guilty. (Tr. 12). After this, Applicant confirmed he still wanted to plead. (Tr. 12-13). Applicant stated that no one coerced or promised him anything to get him to plead, that he was not under the influence of any substances that would impair his judgment, and that he has no mental or physical disability impacting his ability to understand what he is doing. (Tr. 13). Applicant stated that he was then taking medication for high blood pressure but that the medication did not impact his ability to think clearly. (Tr. 14).

Counsel stated that he thought Applicant understood what he was doing at the plea hearing, that he was accepting responsibility, and that he was able to assist in his representation. (Tr. 14-15). Applicant stated he was satisfied with Counsel's representation of him. (Tr. 15). Applicant stated he understood the charges he was pleading to and their potential penalties. (Tr. 15-17). He stated he understood the ABHAN charge was classified as violent and serious and stated he understood the ramifications of those classifications. (Tr. 16-17). Applicant confirmed he understood the plea was being entered without negotiation or recommendations. (Tr. 17-18). After taking a brief recess in which Counsel consulted with Applicant about the meaning of the term *Alford* plea, Applicant stated he understood he was pleading guilty to pointing or presenting a firearm and under *Alford* for the other two charges. (Tr. 18-21). Counsel stated he reviewed the evidence and discovery in the case with Applicant and discussed his options concerning pleading versus going to trial. (Tr. 21). Applicant stated he remembered discussing the discovery and evidence with Counsel and talking with Counsel about pleading versus going to trial. (Tr. 21-22). He stated that he thought if he went to trial on the charges he was pleading under *Alford* to, that it is more likely than not, given the evidence against him, that he would be found guilty. (Tr. 22). Applicant again stated he was pleading freely, knowingly, intelligently, and voluntarily. (Tr. 22). Applicant stated he understood he had ten days to appeal. (Tr. 22). After the State read the facts,

Applicant stated he was pleading guilty to pointing or presenting a firearm because he did, in fact, point a firearm. (Tr. 27).

At the evidentiary hearing, Applicant testified that he pled because he was afraid of a harsher sentence at trial and that he understood the rights he was waiving by pleading. Additionally, Counsel credibly testified that Applicant seemingly understood what he was pleading to and what rights he was waiving. Accordingly, this Court finds that the plea was entered freely, knowingly, intelligently, and voluntarily and cannot be withdrawn now.

Trial Tax

Applicant contends that he was essentially coerced into pleading because he was afraid of a harsher sentence if he went to trial. Being informed that if he went to trial, he would face more time in prison does not rise to the level of coercion and is not enough to render the plead invalid. Accordingly, relief is denied on this ground.

Lack of Understanding of the Charges

Applicant claims his plea was invalid because he did not fully understand the charges against him. However, this Court finds that this allegation is contradicted by Applicant's confirmation that he understood the charges when questioned by the plea court. (Tr. 15-17). Additionally, this Court finds Counsel credible in his assertion that Applicant seemingly understood what he was pleading to. The Court declines to find the plea involuntarily entered on this basis. Accordingly, relief is denied on this ground.

Brevity of Time

Applicant alleges that Counsel was ineffective for brevity of time spent in consultation. "[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must

show evidence indicating "how additional preparation or communication would have resulted in a different outcome." *Id. See Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998) (where application failed to show ineffective assistance of counsel based on lack of preparation by neglecting to show evidence of what counsel failed to discover or what defenses counsel could have pursued had he more fully prepared for the case); *Skeen v. State*, 325 S.C. 210, 214-15, 481 S.E.2d 129, 132 (1997) (where applicant failed to show ineffective assistance of counsel when he did not present evidence showing how additional preparation would have impacted the trial).

Applicant claims that Counsel did not speak with him about the case enough but failed to show how this brevity of time spent in consultation impacted Counsel's representation. There is also no indication that the results of the proceedings or the decision to plead would have been different had Counsel conferred with him more. Applicant has failed to establish ineffective assistance of counsel and this Court declines to grant relief accordingly.

Failure to Move to Suppress Ballistics

Applicant claims Counsel was ineffective for failure to move to suppress the ballistics. However, this was waived with the entry of an otherwise valid plea. Applicant elected to plead instead of going to trial out of fear he would receive more time at trial. Counsel was not ineffective for failing to pursue motions inaccessible to him due to Applicant's decision to plead. Thus, relief is denied on this ground.

Failure to Argue Mistake

Applicant claims Counsel was ineffective for failing to argue the gun was fired by mistake. However, this was waived when Applicant entered his plea and waived his right to a trial (Tr. 12). Counsel is not ineffective for failure to assert a defense when that right is

affirmatively waived by Applicant himself. Thus, relief is denied on this ground.

Failure to Obtain and Review Discovery

Applicant claims Counsel was ineffective for failure to obtain and review the discovery. However, Applicant testified he received his discovery from his prior attorney, Joshua Schultz, and that he provided this copy to Counsel. Additionally, Counsel credibly testified that he obtained the discovery in the case, met with Applicant, and reviewed the discovery with Applicant. Thus, this Court finds the claim without merit and denies relief accordingly.

Conclusion

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

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

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 6 day of September, 2022.


WILLIAM A. MCKINNON

Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.

RECEIVED

OCT 04 2022

S.C. SUPREME COURT

WITNESSES
[Signature]
Gaffney Police Dept.

ARREST WARRANT NUMBER
2019A1120200127 - Count 1
2019A1120200130 - Count 2
ACTION OF GRAND JURY

TRUE BILL
[Signature]
Foreperson of Grand Jury
Date: 7/25/19
VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **19-GS-11-01057**

The State of South Carolina
County of Cherokee
Barry Barnette, Solicitor

FILED IN OFFICE OF
CLERK OF COURT
CHEROKEE COUNTY, S.C.
2019 JUL 25 AM 10:37
BRANDY W. MCBEE

COURT OF GENERAL SESSIONS

July 25, 2019 TERM

THE STATE

vs.

JOHNNY EDWARD DAVIS, JR.

Indictment for

ATTEMPTED MURDER-COUNT ONE AND
POSSESSION OF A WEAPON DURING
COMMISSION OF A VIOLENT CRIME-
COUNT TWO

SC Code: 16-3-0029, 16-23-490
CDR Code: 3410, 0549
Class FEL-A, FEL/F

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHEROKEE)

INDICTMENT

At a Court of General Sessions, convened on July 25, 2019 the
Grand Jurors of Cherokee County present upon their oath:

ATTEMPTED MURDER-COUNT ONE

That Johnny Edward Davis, Jr. did in Cherokee County on or about March 13, 2019, with malice aforethought either expressed or implied, attempt to kill James Donald Wilkie, Jr., by shooting him, with the intent to kill the victim, in violation of §16-03-029, OF THE CODE OF LAWS OF SOUTH CAROLINA, (1976, as amended).

**POSSESSION OF A WEAPON DURING
COMMISSION OF A VIOLENT CRIME-COUNT TWO**

That Johnny Edward Davis, Jr. did in Cherokee County on or about March 13, 2019, possess a firearm during the commission of a violent crime as defined in Code §16-1-60, to wit: Attempted Murder, in violation of Code §16-23-490, CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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

Kimberly Rokaine
DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA)
 COUNTY OF CHEROKEE)
 Johnny E. Davis, SCDC# 315622,)
 Applicant,)
 v.)
 State of South Carolina,)
 Respondent.)

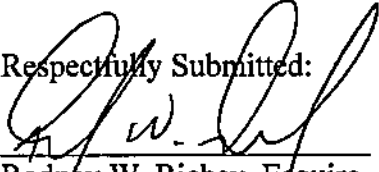
) IN THE COURT OF COMMON PLEAS
)
)
) Case No: 2021-CP-11-0413
)
) **AMENDMENTS TO POST CONVICTION**
) **RELIEF APPLICATION**

FILED IN OFFICE OF
 CLERK OF COURT
 CHEROKEE COUNTY, S.C.
 2022 JAN 31 AM 9:15
 BRANDY W. MOBERG

The Applicant, Johnny E. Davis, by and through his undersigned counsel amends his application for Post-Conviction Relief. The Application was filed on June 28, 2021. The amendments are as followings:

1. Counsel was ineffective for failure to move to suppress evidence that was against the Applicant;
2. Counsel was ineffective for failure to investigate the case;
3. Counsel was ineffective for not subpoenaing phone records and mental health records;
4. Counsel was ineffective for failing to explain the elements of the crimes that Applicant pled no contest.

Wherefore, Applicant requests an evidentiary hearing on his amended allegations as well as the allegations in his original application.

Respectfully Submitted:

 Rodney W. Richey, Esquire
 Attorney for Applicant
 Post Office Box 10916
 Greenville, SC 29603
 (864) 467-0503
 (864) 467-0646 fax

Dated: January 26, 2022