

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Orangeburg County

Honorable Heath P. Taylor, Circuit Court Judge

LANCE MILLER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2023-000273

APPENDIX

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1 STATE OF SOUTH CAROLINA)

2) IN THE COURT OF

3 COUNTY OF ORANGEBURG) GENERAL SESSIONS

4
5 THE STATE,)

6 Plaintiffs,)

7 Vs.) CASE NO. 2018-GS-38-1768

8 LANCE MILLER,) 2017-GS-38-0760

9 Defendant.)

10
11 OCTOBER 28-29, 2019

12 ORANGEBURG, SOUTH CAROLINA

13
14 HONORABLE EDGAR W. DICKSON, JUDGE

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

16 BY: DAVID M. PASCOE JR, ESQUIRE

17 CATHERINE E. MUBARAK, ESQUIRE

18 Attorneys for the Plaintiffs

19 BY: BLAIR C. JENNINGS, ESQUIRE

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25 REGISTERED PROFESSIONAL REPORTER

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1 MR. PASCOE: We are here in the interest of Lance
2 Miller. That's the trial for tomorrow.

3 THE COURT: Okay.

4 MR. PASCOE: Defense counsel filed a number of
5 motions, one of which was for a *Neil v. Biggers* hearing.
6 And we can proceed with our witness, our first witness,
7 who's going to be the lead investigator, Investigator
8 John Stuke.

9 THE COURT: Okay.

10 MR. PASCOE: And just, you know, give you a heads up
11 as to what we intend to do with Investigator Stuke. The
12 Defendant also was interviewed by law enforcement on
13 March 29, 2017, and even though I, as of right now, do
14 not intend to put any of that statement in, in our case
15 in chief. And in abundance of caution, I thought we
16 might as well do the *Denno* hearing since that was with
17 Investigator Stuke. So I had that marked as Court's
18 Exhibit One, the advice and rights for that.

19 THE COURT: Okay.

20 MR. PASCOE: And we're also going to go over a
21 proffer that the Defendant gave back in August of 2017,
22 to law enforcement in my office. And we're going to go
23 over that as well. Again, even though I don't intend to
24 put these in, in my case in chief, just an abundance of
25 caution.

JOHN STUKE - DIRECT EXAMINATION BY MR. PASCOE

1 So there can be a ruling as to whether they were
2 freely and voluntarily given. For example, if we can
3 get into it during the trial either in our case in chief
4 or cross examination. Okay?

5 THE COURT: Okay.

6 MR. PASCOE: And then the other thing -- items are
7 the photo lineup. So we're ready to go with
8 Investigator Stuke.

9 THE COURT: Okay. Are y'all ready?

10 MR. JENNINGS: Yes, sir.

11 THE COURT: Okay. You're making sure Mr. Jennings
12 does everything right?

13 MR. CHANDLER: He's the motion guy, Judge.

14 THE COURT: All right. (Laughter)

15 MR. PASCOE: So we'll call Investigator John Stuke.

16 JOHN STUKE,
17 being first duly sworn, was examined and testified as
18 follows:

19 THE COURT: All right. Investigator Stuke is your
20 witness.

21 DIRECT EXAMINATION BY MR. PASCOE:

22 Q If you could, please give me your full name,
23 Investigator.

24 A John Herbert Stuke, Jr.

25 Q And where do you work, Investigator?

JOHN STUKE - DIRECT EXAMINATION BY MR. PASCOE

1 A With the Orangeburg County Sheriff's Office.

2 Q How long have you worked in law enforcement
3 altogether?

4 A Approximately 18 years.

5 Q And what are your specific duties with the
6 sheriff's office?

7 A I work for the criminal investigations division.

8 Q Okay. And, specifically, what all does that
9 entail?

10 A I'm an investigator assigned to the major crimes
11 unit. Investigating everything from homicides to sex
12 crimes, child abuse.

13 Q And were these your duties with the sheriff's
14 office back in March of 2017?

15 A Yes, sir.

16 Q And as part of your duties, do you take statements
17 from witnesses?

18 A Yes, sir.

19 Q Statements from suspects and defendants?

20 A Yes, sir.

21 Q And do you also show photo lineups to witnesses?

22 A I do.

23 Q And how many times do you think you've had to take
24 statements from witnesses over the last 18 years?

25 A Hundreds.

1 Q Okay. And how many times have you shown
2 photographic lineups to witnesses in the last 18 years?

3 A I'd say over 50, 60.

4 Q Okay. And are you the lead investigator involved
5 in the arrest of the Defendant, Lance Miller, for the
6 attempted murder and attempted armed robbery of Eric
7 Jamison and for the murder of Scott Brooks?

8 A Yes, sir.

9 Q How old was Lance Miller back in March of 2017?
10 The Defendant in the courtroom today.

11 A Forty-six-years old.

12 Q And there was -- is there also a codefendant
13 indicted on this murder charges and the attempted armed
14 robbery of Mr. Jamison as well?

15 A Yes, sir.

16 Q And who is that?

17 A Mr. Aaron Beach.

18 Q And how old was Aaron Beach back in March of 2017?

19 A Thirty-one-years old.

20 Q Did you know either the Defendant or the
21 Codefendant, Aaron Beach, prior to March 2017?

22 A No, sir.

23 Q No dealings whatsoever prior to that date?

24 A No, sir.

25 Q And very briefly, if you could, and, I mean, really

1 briefly, give the Court some background concerning the
2 initial investigation of this case and how the sheriff's
3 office got involved.

4 A On the afternoon of March 20th of 2019, the
5 sheriff's office had responded to the residence of the
6 victim in this case, Mr. Scott Brooks. The address was
7 ████ Stonewall Jackson Boulevard here in Orangeburg.

8 Mr. Brooks had been discovered deceased inside of
9 his residence with what appeared to be a gunshot wound
10 to his head.

11 Later the same day, we discovered that a key
12 witness, by the name of Eric Jamison, had actually been
13 a victim of an attempted murder and an attempted armed
14 robbery in a nearby trailer park around the same
15 timeframe as when we believe the homicide occurred.

16 Q Okay. And did you learn as to whether Eric Jamison
17 was actually friends with Scott Brooks, the murder
18 victim?

19 A Yes, sir. As the investigation progressed, we did
20 discover that they were actually friends.

21 Q And as the investigation progressed that day on
22 March 20th, did you see the link between both the murder
23 and the attempted armed robbery of Jamison?

24 A Yes, sir.

25 Q And we're going to get back to Mr. Jamison in just

JOHN STUKE - DIRECT EXAMINATION BY MR. PASCOE

1 a minute. But after -- did you talk to him on the
2 afternoon of March 20th, Mr. Jamison?

3 A Yes, sir, I did.

4 Q And did you develop a suspect for the murder of
5 Scott Brooks and the attempted armed robbery of Eric
6 Jamison on that day, March 20th?

7 A Yes, sir.

8 Q And who was that suspect?

9 A The Defendant in the case today, Mr. Lance Miller.

10 Q And that was from your discussions with Eric
11 Jamison hours after discovering the body of Scott
12 Brooks?

13 A Yes, sir.

14 Q And was Lance Miller arrested on any warrants?

15 A Yes, sir, he was.

16 Q And when was he arrested?

17 A It was March 29th.

18 Q 2017?

19 A 2017; yes, sir.

20 Q And what were those warrants for?

21 A For attempted murder and attempted armed robbery.

22 Q And that was just on Eric Jamison?

23 A Correct. Yes, sir.

24 Q Not for the murder of Scott Brooks yet?

25 A Yes, sir.

JOHN STUKE - DIRECT EXAMINATION BY MR. PASCOE

1 Q Okay. And did you meet with the Defendant, Lance
2 Miller, after he was arrested on March 29th?

3 A Yes, sir, I did.

4 Q Where did you meet with him?

5 A At the criminal investigations division office in
6 our interview room.

7 Q Okay. Did you attempt to interview him?

8 A Yes, sir, I did.

9 Q And no question he was under arrest and detained at
10 the time you interviewed him; correct?

11 A Absolutely. Yes, sir.

12 Q Okay. And was the interview videotaped?

13 A Yes, sir.

14 Q What was the Defendant's demeanor when you
15 interviewed him that afternoon?

16 A Very calm.

17 Q Did he have any problems understanding you?

18 A No, sir.

19 Q Did he appear to have any mental incapacity?

20 A No, sir.

21 Q Was he under any duress whatsoever?

22 A No, sir.

23 Q Did you or anyone of the sheriff's office threaten
24 him to talk to you?

25 A No, sir.

1 Q Did you promise him anything to talk to you?

2 A No, sir.

3 Q Did you coerce him in any way to give you any kind
4 of a statement?

5 A No, sir.

6 Q Did you deny him any comfort such as food, water,
7 use of the bathroom to make him talk to you?

8 A No, sir.

9 Q Did he talk to you?

10 A Briefly.

11 Q Okay. And this is outside the presence of the
12 jury, why did the conversation stop? You can go ahead
13 and tell the Court.

14 A He basically invoked his right under Miranda.

15 Q And -- but prior to asking for an attorney, was
16 everything that he told you, was it freely and
17 voluntarily given to you?

18 A Yes, sir.

19 Q Okay. If you could, describe for the Court how the
20 interview started. And this is all on about 11 minutes
21 worth of video; correct?

22 A Right. It wasn't very long.

23 Q Okay. Tell the Court how the interview started.

24 A Basically, I sat in and began my interview with
25 Mr. Miller. Advised him who I was. He -- I asked if he

1 was aware of why he was there that day. He said that he
2 was not. So I advised him it was in reference to an
3 armed robbery and an attempted murder of a gentleman.

4 Mr. Miller asked if I had a picture of the person
5 who he supposedly had robbed and attempted to kill,
6 which I later produced during the interview.

7 Before we went too much further, after that, I went
8 ahead and read him his Miranda warning. When we got
9 about halfway through, he did ask to see the picture, so
10 I showed him the picture of the victim in this case,
11 Mr. Eric Jamison.

12 Mr. Miller made a statement to the effect of, he's
13 got a very good memory for faces and that he had never
14 seen that gentleman before. That there was no way that
15 he would have had any contact with him and was -- unless
16 the subject had been to, I believe he said Elloree or
17 Santee.

18 Q And so he denied any involvement or even knowing
19 anything about a robbery that afternoon with you?

20 A Correct, sir.

21 Q Okay. And I'm going to show you what's been marked
22 as Court's Exhibit One. Do you recognize that, sir?

23 A Yes, sir.

24 Q And what do you recognize that to be?

25 A This is the Miranda warning that I read. The

JOHN STUKE - DIRECT EXAMINATION BY MR. PASCOE

1 waiver of rights, to Mr. Miller on that day.

2 Q And that's the exact same waiver of rights that you
3 read to him that day?

4 A Yes, sir.

5 Q Okay. And whose initials are those by each one of
6 those rights?

7 A Mr. Miller's.

8 Q Did he have any problems whatsoever understanding
9 those rights?

10 A No, sir.

11 Q After Mr. Miller invoked his right to counsel,
12 however, did you try to question him anymore concerning
13 the attempted armed robbery of Mr. Jamison?

14 A No, sir.

15 Q Did you ask him then about the murder of Scott
16 Brooks?

17 A No, sir.

18 Q Was that your last contact with the Defendant that
19 afternoon?

20 A That afternoon, yes, sir.

21 Q Okay. Was this the Orangeburg County Sheriff's
22 Office's last contact with the Defendant?

23 A No, sir.

24 Q Okay. And when and who met with Mr. Miller again
25 on August 9, 2017?

1 A It would have been the Solicitor, Ashley Cornwell,
2 Lieutenant Shumpert, and Mr. Miller along with his
3 counsel.

4 Q Mr. Chandler?

5 A I believe so, yes, sir.

6 Q And did the Defendant provide a statement or a
7 proffer to all those parties that you just mentioned on
8 August 9, 2017?

9 A Yes, sir.

10 Q A verbal statement?

11 A Yes, sir.

12 Q And that's been documented in your investigative
13 file?

14 A Right.

15 Q And was everything, according to your file now,
16 everything the Defendant said that day freely and
17 voluntarily given on August 9th?

18 A Yes, sir.

19 Q On August 9th, did the Defendant continue to deny
20 knowing anything about the robbery and the murder?

21 A No, sir. He did admit to knowledge of it.

22 Q Okay. Did he admit to being present?

23 A Yes, sir.

24 Q And --

25 THE COURT: I hate to interrupt, admitted to being

JOHN STUKE - DIRECT EXAMINATION BY MR. PASCOE

1 present with the incident regarding Mr. Jamison?

2 A Initially, yes, Your Honor.

3 THE COURT: Okay.

4 A Subsequently, with the homicide as well.

5 THE COURT: Okay. Well, right now just asking -- I
6 just wanted to clear up. You were asking him about the
7 Jamison, attempted --

8 MR. PASCOE: I was, but I'm glad to clarify.

9 Q So does he admit on August 9th to being present for
10 both the attempted armed robbery of Mr. Jamison and the
11 murder minutes later of Scott Brooks?

12 A Yes, sir.

13 Q Okay. And so he gave that verbal statement in
14 Ms. Cornwell's office on August 9th; correct?

15 A Yes, sir.

16 Q All right. Did he, the Defendant, and his
17 attorney, Mr. Chandler, eventually put basically all
18 that into writing?

19 A Yes, sir.

20 Q Okay. And you have that in your file?

21 A Yes, sir.

22 Q And I'm going to show you what's been marked as
23 Court's Exhibit Two.

24 THE COURT: Have you seen these?

25 MR. JENNINGS: Yes.

1 MR. PASCOE: Yes, sir. And this was provided by
2 them.

3 Q Do you recognize Court's Exhibit Two?

4 A Yes, sir.

5 Q Okay. What do you recognize that to be?

6 A The, for lack of a better term, written statement
7 provided by Mr. Miller through his attorneys.

8 Q And is it signed by the Lance Miller, the
9 Defendant?

10 A Yes, sir.

11 Q And what's the date of when he signed that
12 statement?

13 A August 28th of 2017.

14 Q Okay. If you could, publish -- and, of course,
15 that statement was provided by Mr. Miller and his
16 attorney; correct?

17 A Yes, sir.

18 Q So do you have any knowledge that it was not freely
19 and voluntarily given by the Defendant, Lance Miller?

20 A Not to my knowledge, no, sir.

21 Q If you could, publish that statement of Mr. Miller
22 for the Court.

23 A "My name is Lance M. Miller. I make this statement
24 freely and voluntary after having the advice of my
25 lawyer, Ray E. Chandler.

1 Sunday, March 19, 2017, I was staying with a friend
2 of mine, Sonny Coker, at Stumphole Landing. I had gone
3 down to a store named "The Wagon Wheel" to buy some
4 beer. I ran into a guy I know, Aaron Beach. He asked
5 me if I wanted to go to Pedro's later and drink. You
6 can drink alcohol on Sunday's at Pedro's.

7 I said I would go. Aaron picked me up about 30
8 minutes later at Sonny Coker's. Cannot be sure of the
9 time of the day, but it was still light. Aaron was
10 driving his black extended cab pickup truck. I do not
11 know the make. He said he had been drinking, so he
12 asked me to drive. He told me that he did not want to
13 drive and that he had a DUI and had just beat one. I
14 have been drinking beer earlier, but said I would drive
15 the truck. Sonny did not go.

16 We went to Pedro's and drank for a good while.
17 When we left Pedro's it was dark. I was going to drive
18 back to Sonny's and get out. By the time we got to
19 Sonny's, we had decided we would ride around and drink
20 some more.

21 We had beer in the truck in a cooler. I pulled out
22 of Sonny's yard and turned left. As soon as I turned
23 left, Aaron saw a white guy that I only knew by the name
24 of 'Juice.' He was in the front yard of a house. Aaron
25 told me to pull over and let him talk to Juice for a

1 minute. He called Juice over to the truck. Juice came
2 up to the side of the passenger side door and Aaron took
3 a pistol from somewhere under his seat. I couldn't tell
4 where he got it from, but I had not seen it. It was an
5 automatic.

6 He cocked it and stuck it right in Juice's face and
7 he said, I ought to kill you. Juice said, what did I
8 do, Aaron? Aaron fired the pistol twice right by
9 Juice's ear. Juice jumped back a couple of steps and
10 just stood there. Aaron cussed him and told me to go.
11 We left Juice standing in the yard.

12 When we drove away, Aaron fired the gun up in the
13 air until all the bullets were gone. We got about a
14 quarter of a mile and I told him he had to get the gun
15 out of the truck. Because with my conviction, I was not
16 supposed to be in a car and have a gun around me.

17 I drove to his house and he went in with the gun.
18 I thought he was going to leave it there. While he was
19 in the house, I went around the back to check out his
20 boat. We were going to use the boat that day -- the
21 next day. I wanted to check the gas in it. There was
22 gas in the boat. Before I walked back, I took a leak in
23 the yard.

24 I walked back around the house to the truck. Aaron
25 was already getting in the truck. He was inside the

1 opened passenger side door. When I got in the driver's
2 side, he had already closed the door and was sitting in
3 the passenger's seat. I got in and we started to drive
4 to Orangeburg. I did not see the gun.

5 We were drinking beer and listening to music while
6 we drove. Aaron told me that he wanted to talk to some
7 girl in Orangeburg, but he did not give me her name.

8 Scott Brooks lived on the way to where we were
9 driving. Scott and I have known each other since high
10 school. He's a friend of my older brother and me.
11 Scott was at our house a lot when we were growing up.
12 He would even eat dinner with our family. Scott worked
13 for whoever owned the house he lived in. He did odd
14 jobs, enough to pay for his rent and keep himself up.
15 Scott had a pretty bad drug problem. He liked to smoke
16 crack cocaine.

17 When we drove -- he wrote doe, but up to his house,
18 we saw that his door was open. I figured that he was
19 home. I usually stop and just visit with him a little
20 bit because I've known him so long.

21 As we're getting out of the truck, Scott came to
22 the opened door. We all three went back inside the
23 house. After a little while, Scott asked if we wanted
24 to get some drugs. I told him I didn't, but that I
25 would get him some. Scott said he would call a black

1 guy who sold crack cocaine. He told me he went by 'E.'
2 I cannot be sure whether Scott used his phone or my
3 phone to call E.

4 Anyway, he called this guy. Scott asked E to bring
5 drugs to him and he told Scott that he didn't have a
6 ride. Scott asked me to drive him over there to buy the
7 drugs. I told him I would give him \$30.

8 When we got in the truck, I was driving. Aaron was
9 sitting on the passenger side and Scott was sitting
10 behind me in the backseat. We drove a mile or a little
11 more. Scott directed me to a trailer park. He pointed
12 out a trailer. I pulled up and stopped. My window was
13 down. Scott's window was down. I cannot remember if
14 Scott got out or opened the door and started to get out,
15 but this guy E got to the back window and Scott looked
16 at the drugs. I had given him \$30 just before we got
17 there and he used that money to buy the drugs. He
18 walked away.

19 I drove back to Scott's house. We went inside.
20 Scott lit up the crack cocaine and started smoking it.
21 Aaron and I did not smoke any crack cocaine. In a
22 little bit, Aaron and I left. We were going to find
23 this girl. When we got to the house where Aaron said
24 she was at, he didn't see a car there. He told me that
25 he did not want to stop and go in.

1 I don't know what that was about, but Aaron told me
2 that he wanted to turn around and go back toward
3 Stumphole. I had told Scott that if we weren't out too
4 late that I would come back by. On the way back, Aaron
5 asked me to stop at Dodge's. He put gas in the truck.
6 We left there and went back to Scott's house. The door
7 was closed. We knocked and walked in. Talked to Scott
8 for a little while and drank beer.

9 Scott had smoked about everything that he had
10 bought and was acting very high. Aaron and I were
11 getting ready to leave and Scott asked me if I would
12 give him some money to buy another piece of crack and he
13 would pay me back later. I told him that we were
14 friends and that he didn't have to pay me back.

15 Scott called the guy E and asked him if I could
16 bring the crack cocaine -- or if he could bring the
17 crack cocaine. E still didn't have a ride. Scott told
18 him I would pick up the crack cocaine for him and that I
19 would pull up in the black pickup. Scott seemed
20 paranoid after smoking the crack and didn't want to
21 leave the house.

22 Aaron and I drove back over to E's. I drove up to
23 the trailer and was going to get out and buy the drugs.
24 I had a big Mag flashlight in my hand because I wanted
25 to see the drugs before I paid. I was shaking it

1 because it was going on and off. Just as I started out
2 of the door, Aaron said, I think we ought to rob this
3 nigger. It happened so quickly. E was walking up
4 towards the truck. I was now out and said, we can't do
5 that. He ain't got nothing. He seen me.

6 As he walked up, Aaron came around the passenger
7 side. He had the gun in his hands. I had not seen the
8 gun since he went in the house with it. So this is when
9 I was about to make the switch, money for drugs. The
10 guy stopped, looked over at Aaron, and started backing
11 up. He then turned around and took off for his front
12 porch. He was about to the porch of the trailer. Aaron
13 shot at him at least three, maybe four or five times.
14 The guy ducked down and got in his door. I could see
15 him slam the door. I asked Aaron, what the fuck did you
16 do that for? He got in the truck and left the trailer
17 park.

18 When we got to 301, I said I got to tell Scott
19 because these people could go over and kill Scott. I
20 need to let him know what happened and tell that guy not
21 to call the cops. I drove up to Scott's. I told Aaron
22 I would be right back. I went up to Scott's door to
23 tell him what had happened. I didn't know Aaron had
24 gotten out of the truck. But when Scott opened his door
25 and I jumped up on the porch, Aaron was right behind me.

1 Aaron pushed me out of the way, went in the house
2 with the gun in his hand. He shoved Scott back into a
3 recliner. He told Scott he better not say anything.
4 Then he shot into the chair on both sides of Scott's
5 chest. In a few seconds, Scott got out of the chair and
6 was backing up towards the kitchen. He had the phone in
7 his hand and it looked like he was dialing it. I think
8 I said to Scott, please don't do that. I'm not sure. I
9 was trying to get out of the situation.

10 Aaron was close by, a few feet from Scott. He shot
11 him right in the head. Scott fell flat on his back on
12 the floor. Everything hit at one time. I could see
13 blood coming out of his head. I knew he was dead. I
14 turned around and started to run out of the house. And
15 Aaron pointed the gun at me and said, where the fuck are
16 you going? I said, we got to get out of here.

17 I was outside then on the porch. When we got into
18 the truck, he pointed the gun at me. And I said, don't
19 kill me, I've got a little girl.

20 We got back on 301 and there was a car out there.
21 I could see the headlights. I was so scared I thought
22 it could be a cop. I drove the truck about ten miles to
23 Love's truck stop where 301 and 26 come together. I
24 pulled into a parking space right in front of the store.
25 Aaron asked me why we were stopping. I told him I had

1 to get a drink and take a leak. When we got in the
2 store, he told me that he was going to go take a leak.
3 When he turned the corner to go to the bathroom, I took
4 off outside to go to the truck.

5 Before we went in, Aaron stuck the gun down in
6 between his seat and the console. I got the gun, but
7 couldn't figure out how to get the clip out. I hit a
8 button and the clip popped out about an inch.

9 I pulled it out. I was having trouble getting the
10 bullet out of the chamber. My hand kept slipping trying
11 to pull it back. Then it popped out and fell between
12 the seat and the console on my side. I emptied the
13 clip. I put the shells in my pocket. I put the clip
14 back in the gun then I put the gun back where I got it
15 and then ran back in the store. I can't remember if I
16 bought a drink or not.

17 Aaron came back out of the bathroom. We got in the
18 truck. We had not gotten out of the parking lot before
19 he pulled the gun out and started messing with it. He
20 asked me what I did with the bullets. And I told him I
21 took them out and the clip and chamber and put them in
22 my pocket. He was asking me why I did it. And I said,
23 when we get out in the country, you're going to kill me.
24 I know you are. He didn't answer.

25 When we got into Elloree by the Sox station, I

1 turned down the side road, snatched the gun out of his
2 hand right before I stopped. I got out of the truck and
3 told him I wasn't going to give the gun back. And he
4 said, man, I just paid \$1500 for that gun. He then said
5 he was too drunk to drive home. He needed me to drive
6 him and I told him I wasn't driving him anywhere.

7 I started walking back towards Stumphole. It took
8 me a little while before I caught a ride. I had the
9 driver drop me off so he would not know where I was
10 going. I walked back to Sonny's. The next day I took
11 the gun out to the lake on the bridge that you walk on
12 and threw it into the lake."

13 Q Is that extent of that statement?

14 A Yes, sir.

15 Q And so that's Lance Miller's statement or claim as
16 to what happened during the late night hours of March
17 19th, early morning hours of March 20, 2017?

18 A Yes, sir.

19 Q So in August of 2017, who now admits to being the
20 driver of Aaron Beach's vehicle?

21 A Lance Miller.

22 Q And he admits to driving it the late night hours of
23 March 19th, early morning hours of March 20th?

24 A Yes, sir.

25 Q And who now admits to being face-to-face with Eric

1 Jamison on at least two occasions that night?

2 A Lance Miller.

3 Q Now, was Lance Miller the first person to tell you
4 that he was the driver of Aaron -- of that truck that
5 night and to get out and buy drugs from Eric Jamison?

6 A No, sir.

7 Q Who was the first person to tell you that Lance
8 Miller was the driver of that truck and that he bought
9 drugs from him on two occasions?

10 A The victim from the armed robbery and attempted
11 murder of Mr. Eric Jamison.

12 Q When did Eric Jamison tell you or identify Lance
13 Miller as the person who drove that truck and was
14 face-to-face with him on two occasions on March 19th,
15 March 20th?

16 A During my interview with him on the same day that
17 we discovered the body, March 20, 2017.

18 Q So now I want to discuss Mr. Jamison's
19 identification of the Defendant, okay?

20 A Yes, sir.

21 Q What did Mr. Jamison tell you about the Defendant,
22 Lance Miller's role in the attempted armed robbery and
23 attempted murder of him?

24 A He advised that he was actually, of course, the
25 driver. He was the person who purchased the drugs on

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1 the first encounter and attempted, supposedly, on the
2 second one. And that during that second encounter where
3 the attempted murder and the attempted armed robbery
4 occurred, that Lance Miller was actually the gunman who
5 had gotten out of the driver's side of the vehicle.

6 Q And he told you that on the late afternoon of March
7 20th?

8 A Yes, sir.

9 Q Which would be hours after the discovery of
10 Mr. Brooks' body?

11 A Yes, sir.

12 Q And how would you describe Mr. Jamison's level of
13 certainty on March 20th that the Defendant, Lance
14 Miller, was the person who tried to rob him and shot at
15 him?

16 A He's very certain.

17 Q Where did you interview Eric Jamison that late
18 afternoon of March 20th?

19 A In the criminal investigations division office in
20 our interview room.

21 Q And how old was Mr. Jamison back then?

22 A He was 25-years old.

23 Q And how long did you interview Eric Jamison on
24 March 20th?

25 A Well over three hours.

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1 Q And did you have -- prior to talking to
2 Mr. Jamison, did you have any suspects --

3 A No, sir.

4 Q -- in murder of Scott Brooks?

5 A No, sir.

6 Q And you've already, I guess, testified, you didn't
7 even know who the Defendant was at the time on March
8 20th, who Lance Miller was; correct?

9 A No, sir.

10 Q Tell the Court a little bit about Mr. Jamison and
11 his cooperation and forthrightness that day.

12 A He was very forthright about a lot of things. Not
13 necessarily everything. When it came to the chain of
14 events that had occurred that night, as well as
15 identification of the people who were involved in it, he
16 was very forthcoming, very cooperative. Not as
17 forthright with some of the things that happened later
18 in the evening as far as friends of his that had
19 assisted him in getting to a safe location.

20 Q You've already alluded to this, Mr. Jamison did
21 what back in March of 2017? What was he selling?

22 A He was selling drugs.

23 Q And did he want to come forward to police that day
24 on March 20th?

25 A He was not very happy about having to do that, no,

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1 sir. He's not a big fan of law enforcement.

2 Q Was he friends with Scott Brooks, however?

3 A Yes, sir.

4 Q Did he show any care about his friend Scott Brooks
5 when you interviewed him?

6 A Absolutely. Anything involving the murder
7 investigation he was very passionate about helping us.

8 Q Did Mr. Jamison even want to come forward
9 concerning the attempted murder and attempted armed
10 robbery of himself?

11 A No, sir.

12 Q So really the only reason he was there to help
13 y'all with Scott Brooks' murder?

14 A Yes, sir.

15 Q And so very briefly, if you could, tell Judge
16 Dickson what Mr. Jamison described to you happened that
17 late night of March 19th and the early morning hours of
18 March 20th.

19 A Your Honor, on the late evening of March 19th of
20 2017, probably between the hours of like 10:30 and maybe
21 11:00, 11:30, Mr. Jamison said that an acquaintance of
22 his, Scott Brooks, had reached out to purchase some
23 crack cocaine from him and arrived in the trailer park
24 there off of Sprinkle Ave.

25 He was with other subjects in a black truck that he

1 described as a full size black truck with like jacked up
2 tires, kind of like a lift kit. It had dark tinted
3 windows. Black wheels. Had a very loud exhaust on it.

4 When that vehicle had pulled up, he could see that
5 Scott Brooks was in the backseat of that vehicle. The
6 driver of the vehicle who later identified as the
7 Defendant, Mr. Lance Miller, had gotten out of the
8 driver's seat and approached him. And they went ahead
9 and made the drug purchase. They got back in the
10 vehicle and had left.

11 Later on now into the morning of March 20th of
12 2017, Jamison receives another phone call from Scott
13 Brooks asking to purchase some more crack cocaine. He
14 did advise him that he wouldn't be coming. He would
15 actually be the guy who was with him earlier and a
16 friend of his would be coming in that same black truck
17 from earlier.

18 Scott calls again asking Mr. Jamison whether or not
19 the truck was there yet. As he's on the phone with
20 Mr. Brooks, the black truck actually pulls up, so he
21 gets off the phone with Mr. Brooks. Jamison began to
22 approach the truck. When the driver who later
23 identifies as the Defendant, Lance Miller, gets out of
24 the vehicle and points a gun and attempts to rob him.

25 Mr. Jamison said he then starts to back away and

1 then actually starts to run towards some of the trailers
2 there in the trailer park. And said that Mr. Miller had
3 then shot at him three to four times as he was running
4 away. One of those bullets of which ended up grazing
5 him on the right side of the head.

6 He then later is able to get out of the trailer
7 park and go to his place of employment over on Mike's
8 Customs not too far from the trailer park.

9 Q And let me ask you this, when you interviewed Mr.
10 Jamison on March 20th, was he able to give you a
11 description of the gunman?

12 A Yes.

13 Q Okay. Had he ever seen or met the gunman before
14 that night?

15 A Yes.

16 Q And how many times approximately did he tell y'all
17 on March 20th that he had seen the gunman prior to the
18 morning or night of his shooting?

19 A Approximately five times.

20 Q And where did he see that gunman, the Defendant,
21 approximately five times?

22 A Usually in the company of Scott Brooks over there,
23 as well as relaying a time where he had actually given
24 Lance Miller a ride up to the -- in fact, the same
25 Love's gas station that they referred to later in

1 Mr. Miller's statement up there at 301 and I26.

2 Q Okay. So he's actually seen the Defendant at Scott
3 Brooks' house on a number of occasions and even given
4 the Defendant, Lance Miller, a ride to the gas station?

5 A Yes, sir.

6 Q And why or how is it significant if a victim has
7 had prior interaction with the suspect in an
8 identification case for your purposes as an
9 investigator?

10 A I mean, based on my experience and, quite frankly,
11 common sense, the more times you see an individual,
12 certainly the more likely you are to identify them later
13 on as a witness or as a victim.

14 Q And so if he had already seen him five times prior
15 to that night and twice that night, he would have seen
16 him at least how many times?

17 A So now we're up to like seven times.

18 Q And I want to ask you about Mr. Jamison's
19 description of both defendants. Did he tell you on
20 March 20th who he got a better look at?

21 A Yeah. He said definitely the driver, not so much
22 the passenger.

23 Q Do you recall him -- in Mr. Jamison's interview,
24 the three and a half hours or almost four, is on
25 videotape?

1 A Yes.

2 Q And the Defense has a copy of it; correct?

3 A Yes, sir.

4 Q And do you remember Mr. Jamison telling you, I have
5 the driver down pat, but not the passenger?

6 A Yes, sir.

7 Q Okay. Did he say whether the driver or the
8 passenger was smaller or bigger than the gunman?

9 A He described the driver as a white male in his 40s
10 and that he was stocky built. The only thing he could
11 say for sure on the passenger was that he was wearing
12 camouflage and was smaller build.

13 Q And he was smaller build?

14 A Yes, sir.

15 Q And, again, how old -- you said -- did Mr. Jamison
16 say at 18 minutes and 45 seconds that the driver, the
17 man that shot at him was 40- to 44-years old was his
18 guess?

19 A If I recall correctly, yes, sir.

20 Q And how old was the Defendant back then?

21 A Forty-six-years old.

22 Q And what race is the Defendant?

23 A White male.

24 Q And what race did Eric Jamison tell you the two
25 culprits were?

1 A White males.

2 Q Did he ever say whether the Defendant -- the gunman
3 had any facial hair?

4 A Yes, sir. He did describe that he did have facial
5 hair. And what he described as a low cut haircut. And
6 kind of elaborated on that that it could whether or not
7 be like really short or possibly shaved.

8 Q Did Mr. Jamison, was he also able to describe the
9 vehicle that Lance Miller was driving that day?

10 A Yes, sir.

11 Q And tell the Court what Mr. Jamison's description
12 of the vehicle was.

13 A That it was a black pickup truck, possibly a Nissan
14 Titan or a Chevy Silverado. It had kind of a lift on it
15 with kind of jacked up tires. Very loud exhaust system.
16 Along with tinted windows and black rims.

17 Q And did he also say it was a four door?

18 A Yes, sir.

19 Q And he actually was able to tell you the possible
20 make and model of the vehicle; correct?

21 A Yes, sir.

22 Q We'll get back to that. Because during your
23 investigation, did you develop evidence as to what
24 vehicle was used in the attempted armed robbery of Eric
25 Jamison?

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1 A Yes, sir.

2 Q And what vehicle was actually used?

3 A A black Nissan Titan. Matched the description
4 almost to a tee.

5 Q Okay. In fact, showing one picture, State's 10.
6 Do you recognize State's 10?

7 A Yes, sir.

8 Q And is that the vehicle that your investigation has
9 determined was involved in the attempted armed robbery
10 of Mr. Jamison?

11 A Yes, sir.

12 Q The exact same vehicle; correct?

13 A Yes, sir.

14 MR. PASCOE: All right. I'll just pass it up to the
15 Court, if that's all right, Your Honor.

16 THE COURT: Okay.

17 Q And as you testified to, that matched Mr. Jamison's
18 description of the vehicle?

19 A Yes, sir.

20 Q Did Mr. Jamison describe the gun that was used that
21 the Defendant held on him?

22 A Yes, sir.

23 Q And what did he describe the gun as being?

24 A That it was a black semiautomatic handgun that
25 appeared to have either a laser or a flashlight mounted

1 on the underside of the barrel.

2 Q And later in the investigation were you able to
3 determine the type of gun that was used in the attempted
4 armed robbery and attempted murder of Mr. Jamison and in
5 the murder of Scott Brooks?

6 A Yes, sir.

7 Q And what type of gun was it?

8 A It was a FN Five-seven.

9 Q And in your investigation, do we now know the color
10 of that gun?

11 A Yes, sir.

12 Q And what was --

13 A Black.

14 Q And do we know whether it had either a laser or a
15 flashlight on it?

16 A Yes, sir. A flashlight.

17 Q So how would you describe his description of the
18 gun that was used on him that night?

19 A Very accurate.

20 Q Did Mr. Jamison say whether or not he had any
21 problems seeing the Defendant's face that night?

22 A No, he had no problem seeing it.

23 Q Did he say whether the Defendant tried to hide his
24 identity that night?

25 A No, sir.

1 Q When Mr. Jamison met with you on March 20th, that
2 afternoon, did he even have a suspect's name for you?

3 A Yes.

4 Q And what was the potential name of the suspect he
5 thought?

6 A Lance.

7 Q And do you know how he ascertained that name that
8 the Defendant's name might be Lance, when he came to see
9 you that his name might be Lance?

10 A He had reached out to some friends of his that were
11 also friends of Scott Brooks and inquired who the white
12 male was that usually hung out with Scott usually in a
13 black truck. And through those friends they had found
14 out that it was Lance Miller.

15 Q And while you were interviewing Mr. Jamison, did a
16 Lieutenant Furtick from the Orangeburg County Sheriff's
17 Office come in and show a photograph off his phone to
18 Eric Jamison?

19 A Yes, sir.

20 Q Okay. Tell the Court about that and what the
21 purpose of why that happened.

22 A At that point they were trying to validate whether
23 or not it was the correct subject known as Lance Miller.
24 They had met on social media sites attempting to figure
25 out exactly who he was.

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1 Q And had he already given you the name Lance before
2 Lieutenant Furtick came in the room to show him that
3 picture?

4 A Yes, sir.

5 Q And he had already given you a description of Lance
6 Miller, the gunman?

7 A Yes, sir.

8 Q Already gave you a description of the car?

9 A Yes, sir.

10 Q And the gun?

11 A Yes, sir.

12 Q And the incident as to how it happened?

13 A Yes, sir.

14 Q What type of photo did Lieutenant Furtick show Eric
15 Jamison?

16 A I believe it was something off of a social media
17 site, possibly Facebook, something to that effect.

18 Q Are you certain it was not a driver's license
19 photo?

20 A Yes, sir.

21 Q Are you certain it was not a mugshot?

22 A Yes, sir.

23 Q And you're certain it was not a photo that would be
24 used in a photo lineup?

25 A Correct.

1 Q And what was Mr. Jamison's reaction when they
2 scrolled through the photos on that social media site?

3 A The first photo he said maybe, he was not sure.
4 They actually swiped to a second photo. And when he saw
5 the second photo he said, that's the guy. He was very,
6 very sure at that point that it was in fact Lance Miller
7 who he had seen out there.

8 Q What was his degree of certainty?

9 A He's 100 percent sure.

10 Q Did you show him more photos about two and a half
11 hours later?

12 A Yes, sir.

13 Q Okay. What did you use to show photographs to Eric
14 Jamison at the 3 hour and 22 minute mark?

15 A A photo lineup that we had received through SLED.

16 Q And before even showing him the photo lineup, did
17 you ask him, do you think you could pick the person out
18 of a lineup?

19 A Yes.

20 Q And what was his reaction as to whether he could
21 pick the driver out of a lineup and the passenger out of
22 a lineup?

23 A And he was adamant that he could definitely
24 identify who the driver was, but didn't think that he
25 could on the passenger.

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1 Q Okay. And the driver was the one who held the gun
2 to him?

3 A Yes, sir.

4 Q All right. What types of photos are used in the
5 photographic lineup?

6 A Usually it will be either driver's license photos
7 or mugshot photos.

8 Q Okay. Did you use the photo that Lieutenant
9 Furtick showed to Mr. Jamison?

10 A Absolutely not.

11 Q I'm going to show you what's been marked as State's
12 Exhibit 14. Do you recognize that?

13 A Yes, sir.

14 Q And what do you recognize that to be?

15 A This would be the photo lineup that I showed Eric
16 Jamison.

17 Q Okay. It's the exact same lineup?

18 A Yes, sir.

19 Q Same condition it was in back on March 20th?

20 A Yes, sir.

21 Q And six photos in that lineup?

22 A Yes, sir.

23 Q All white males?

24 A Yes, sir.

25 Q All similar features?

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1 A Yes, sir.

2 Q All have the same facial hair?

3 A Yes, sir.

4 Q All either have short hair or shaved head?

5 A Yes, sir.

6 Q And is the reason for those type of photos because
7 of the description that Mr. Jamison gave you?

8 A Correct.

9 Q And when you showed Mr. Jamison that photo lineup,
10 and that's who you showed it to; correct?

11 A Yes, sir.

12 Q Did you tell him that the gunman is definitely in
13 this lineup?

14 A No, sir. Whenever I go to show photo lineups I
15 make it clear to whoever I'm showing it to that the
16 person involved may or may not be in this particular
17 photo lineup.

18 Q And did you suggest to him who to pick?

19 A No, sir.

20 Q Did he pick one of those photos out as him
21 recognizing somebody?

22 A Yes, sir, he did. Number three.

23 Q And whose picture is in number three?

24 A The Defendant, Mr. Lance Miller.

25 Q The same Lance Miller that's in the courtroom

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1 today?

2 A Yes, sir.

3 Q And how fast -- tell the Court how fast Eric
4 Jamison picked number three out of that photographic
5 lineup?

6 A Almost immediately. Very quickly.

7 Q What level of certainty did Mr. Jamison have when
8 he picked out number three?

9 A Very certain. He actually stated that he was 100
10 percent.

11 Q And he was 100 percent sure that number three is
12 the person who pointed a gun in his face?

13 A Yes, sir.

14 Q And shot at him?

15 A Yes, sir.

16 Q And let me show you what's been marked as State's
17 Exhibit 15; do you recognize that?

18 A Yes, sir.

19 Q What do you recognize that to be?

20 A This is the paperwork that we submit with the photo
21 lineup so that the person viewing it can indicate what
22 number they picked and who the person was.

23 Q Okay. And what does it says on there?

24 A That "I, Eric Jamison, after careful consideration
25 all the photographs shown to me in the lineup presented

1 to me by Investigator J. Stuke have identified the
2 subject in photograph number three as being the person
3 who shot at me."

4 Q And has Mr. Jamison's signature?

5 A Yes, sir.

6 Q So on March 20th -- and what time was that signed
7 and what time was that lineup shown to him?

8 A 8:07 p.m. on March 20, 2017.

9 Q So at that time, at 8:07 p.m., who did Mr. Jamison
10 say tried to rob him and shot at him?

11 A The Defendant, Mr. Lance Miller?

12 Q And since then, has anyone else corroborated
13 Mr. Jamison's statement that the Defendant, Lance
14 Miller, was the one who was driving that black Nissan
15 truck and shot at him that night?

16 A Yes, sir.

17 Q And who's corroborated that?

18 A The codefendant in the case, Mr. Aaron Beach.

19 Q Okay. And also since then, who corroborates the
20 fact that he was driving that black truck and had two
21 drug transactions with Eric Jamison that night or was
22 supposed to have two?

23 A The Defendant, Mr. Miller.

24 Q Finally, I'm going to ask you about the gun. Did
25 you show Mr. Jamison anything to determine or get an

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1 idea of what type of gun was used?

2 A Yes, sir.

3 Q Okay. I'm going to show you what's been marked as
4 State's Exhibit 16; do you recognize that?

5 A Yes, sir.

6 Q What do you recognize that to be?

7 A A photo lineup that we utilize to get general
8 descriptions of firearms.

9 Q Okay. Who did you show it to?

10 A To Mr. Jamison.

11 Q And that's the same diagram you showed to Mr.
12 Jamison?

13 A Yes, sir.

14 Q And which gun did he pick out as being the most
15 similar to the one that was used to attempt to rob him
16 that morning of March 20th?

17 A It would be the larger of the black semiautomatics,
18 the position number four on the top row.

19 Q And is that similar to -- especially considering
20 all the other firearms in there, is that the one that's
21 most similar to the one that was used on him that night
22 according to your investigation?

23 A Closest to what I've seen, yes, sir.

24 Q And did he say though that there was something else
25 that was attached to the gun that was used to rob him?

JOHN STUKE - DIRECT EXAMINATION BY MR. PASCOE

1 A Yes, sir. Either a laser or a flashlight.

2 Q Okay. And, finally, were you able during the
3 course of your investigation, not on March 20th,
4 sometime after you spoke with Mr. Jamison, were you able
5 to get still photographs of the area where the attempted
6 armed robbery took place?

7 A Yes, sir.

8 Q Of Mr. Jamison?

9 A Yes, sir.

10 Q And let me show you what's been marked as State's
11 Exhibit 12. Is that photo a still photograph of the
12 area where Mr. Jamison was and encountered the
13 Defendant, Lance Miller?

14 A Yes, sir.

15 Q And what's the significance of that photograph in
16 Number 12?

17 A It shows during that same timeframe that there was
18 a -- as he described, a full size black truck that was
19 going through the area at the time. It also kind of
20 shows pretty well to all of us that the entire area
21 there is really well lit which would definitely help.

22 Q And this picture will accurately -- does accurately
23 depict the way the lighting was in the area where
24 Jamison said he encountered the Defendant, Lance Miller?

25 A Yes, sir.

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1 Q Okay.

2 A It's actually right next to the DPU substation.

3 MR. PASCOE: Beg the Court's indulgence. I'll just
4 pass these up if you want to look at them.

5 THE COURT: And you said that's next to the DPU?

6 A DPU, yes, sir.

7 THE COURT: Okay.

8 Q And like also right across the street from the
9 fairgrounds off of Sprinkle Avenue?

10 A Yes, sir.

11 MR. PASCOE: Beg the Court's indulgence one moment.

12 THE COURT: Okay.

13 Q And the person we've been talking about, the person
14 that Mr. Jamison says pointed a gun at him and shot at
15 him, do you see him in the courtroom today?

16 A Yes, sir, I do.

17 Q If you could identify him for Judge Dickson.

18 A The Defendant, Mr. Lance Miller, sitting with his
19 counsel.

20 Q Okay. Answer any questions Mr. Jennings has for
21 you.

22 MR. JENNINGS: Thank you, Your Honor. May it please
23 the Court.

24 THE COURT: Yes, sir.

25 CROSS EXAMINATION BY MR. JENNINGS:

1 Q Detective Stuke, I want to make sure because after
2 listening to you testify, I think I might have watched
3 the wrong video.

4 Was your testimony that you portrayed Eric Jamison
5 as being forthright during your investigation?

6 A With certain parts, yes, sir.

7 Q Okay. With certain parts?

8 A Yes, sir.

9 Q And you testified that he was friends with Scott
10 Brooks and his only motivation in coming to talk to you
11 was to help out his friend?

12 A Not his only motivation. But during the interview
13 that was his primary reason for it.

14 Q Okay. And you think he was forthright about that?

15 A Absolutely. Yes, sir.

16 Q And you testified and I want to be clear about
17 this, you testified that he told you he had no problem
18 seeing the person's face?

19 A The driver, yes, sir.

20 Q Okay. Let's just sort of go through, I guess, on
21 sort of the big picture. And to be clear, he never came
22 forward to law enforcement; correct?

23 A Correct. Later on we found out.

24 Q Okay. The first incident, the attempted armed
25 robbery and the attempted murder happened, depending on

1 the rendition, anywhere between 12:30 and 1 o'clock in
2 the morning on March 20th?

3 A March 20th, yes, sir.

4 Q And then based on kind of trying to look at the
5 timeline of when you interviewed him, I would guess he
6 didn't get to the sheriff's office until 5 p.m.?

7 A Couldn't tell you the exact time, but it was
8 definitely later in the day.

9 Q Okay. Because I think by the time y'all did around
10 --

11 A That afternoon, early evening.

12 Q I'm sorry. Okay. And did y'all have to go pick
13 him up?

14 A Yes, sir, he was picked up.

15 Q And you would agree with me when he got down there,
16 he had no real interest in talking to you?

17 A No, sir. Like I indicated earlier, he's definitely
18 not a fan of law enforcement or speaking with law
19 enforcement.

20 Q And so just to sort of go through the chronology of
21 the different stories, I believe the first thing you
22 asked him is if he knows Scott Brooks and when the last
23 time was that he saw him?

24 A Right.

25 Q And he told you that he had last seen Scott Brooks

1 at 10 o'clock on March 19th?

2 A Yes, sir, if I recall correctly.

3 Q Okay. And that was not true?

4 A Well, it was for the first drug purchase is what he
5 was referring to where Scott --

6 Q No, I'm asking you. You asked him when was the
7 last time that you saw Scott Brooks?

8 A Okay. So you're saying -- correct.

9 Q And he told you 10 p.m. on March 19th?

10 A Initially, yes, sir.

11 Q And when you asked him that question that was his
12 answer?

13 A Yes, sir.

14 Q Okay. And that was not true?

15 A No, sir. Thankfully later he clarified.

16 Q Okay. And then you asked him -- you asked him to
17 tell you what happened that night whether he had been
18 the victim of a crime?

19 A Yes, sir.

20 Q Okay. And he told you that he said, no?

21 A I don't recall that. Sorry, sir.

22 Q Okay. I've got the video. We can go through all
23 of these.

24 A I don't recall that. No, sir.

25 Q Okay. If he would have said, no, then that would

1 not be true?

2 A Correct.

3 Q Then you start to progress through the story of
4 what happened. And you keep -- you've kind of conflate
5 the name Lance Miller in your report and you did that in
6 your testimony today. He never told you the name was
7 Lance Miller, did he?

8 A He said, Lance.

9 Q Okay. And that was not from his personal
10 knowledge, was it?

11 A No, sir.

12 Q All right. He actually called an acquaintance
13 based on the description that he gave, the short,
14 chubby, white male with low hair style?

15 A Correct.

16 Q Who was sometimes over at Scott Brooks' house. He
17 called an acquaintance who called another person who
18 said, I think that might be Lance?

19 A Right.

20 Q Now, you said you've been in law enforcement for 18
21 years?

22 A Yes, sir.

23 Q And one of the tools you use is supplemental
24 report?

25 A Yes, sir.

1 Q And can you describe for me what the purpose of
2 that is?

3 A It's to help articulate anything, you know, from
4 interviews to whatever additional information during the
5 ongoing investigation.

6 Q And you want to document not only witnesses you
7 interview, but important developments in the case?

8 A Yes, sir.

9 Q Both for documentation so that people can sort of
10 follow what happen with the investigation, but also so
11 that when you come to court, two years later, whenever
12 the case comes up, you can remember what happened?

13 A Correct.

14 Q And then you would agree with me so it's important
15 to put sort of key note events of the investigation in a
16 supplemental report?

17 A Yes, sir.

18 Q And would you agree with me that one of the,
19 probably most important events that can happen in an
20 investigation is when a potential suspect is developed
21 and then identified?

22 A Yes, sir.

23 Q In this case, we've got two -- we've got two crime
24 scenes. We've got the attempted armed robbery and the
25 attempted murder at the Pear Street or Pear Drive

1 address?

2 A Right. That was the original address, yes, sir.

3 Q And where Mr. Brooks was found was at the [REDACTED] Joe
4 South Jeffords Highway, I believe?

5 A It's actually Stonewall Jackson. It's right where
6 the road transitions over.

7 Q Okay. Was -- you would agree with me there is no
8 -- there's no physical evidence at the scene of the
9 attempted armed robbery and attempted murder?

10 A There was physical evidence recovered, yes, sir,
11 from everything from the DNA swabs that were taking by
12 basically crime scene processing as well as two shell
13 casings were recovered.

14 Q That's at the Stonewall Jackson address; correct?

15 A Yes, sir.

16 Q I'm talking about the attempted armed robbery or
17 the attempted murder?

18 A No, sir.

19 Q Was that scene processed?

20 A We searched the area and weren't able to locate
21 anything.

22 Q So no physical evidence was found?

23 A No, sir.

24 Q No shell casings?

25 A No, sir.

JOHN STUKE - CROSS EXAMINATION BY MR. JENNINGS

1 Q No eyewitnesses as to those direct events?

2 A Right.

3 Q I know there was some witness that heard gunshots.

4 So it would be accurate to say that the only -- at the
5 time, the only evidence of that was from Mr. Jamison?

6 A Right. Unfortunately, with the time delay
7 especially kind of in that trailer park finding things
8 like shell casings is very difficult.

9 Q And the time delay, that was due purely to
10 Mr. Jamison's not reporting it?

11 A Yes, sir.

12 Q And then at the scene where Mr. Brooks was found,
13 that was processed and as you mentioned, there were two
14 DNA swabs that were collected from the door?

15 A And I'm not sure exactly everything that the crime
16 scene processed, but, yes, sir, I know that from
17 conversations with him that they did do swabs.

18 Q Okay. But based on -- I mean, you're the lead
19 investigator in this case, aren't you?

20 A Yes, sir.

21 Q And so everything would have come through you?

22 A For the most part, yes, sir.

23 Q You collect all the -- anything that was sent to
24 SLED you would collect all of that analysis?

25 A Yes, sir.

1 Q And nothing's come through you, any evidence
2 whatsoever from that crime scene as to who may have
3 committed that crime?

4 A Correct.

5 Q There's no eyewitnesses?

6 A Correct.

7 Q No physical evidence?

8 A Right. The only eyewitness would be the
9 Codefendant, Mr. Aaron Beach.

10 Q And that was well after the fact?

11 A Yes, sir.

12 Q And then as you're meeting with Mr. Jamison, I
13 think there's pretty much only two descriptions that he
14 had given; one was a short, chubby, white male with a
15 low hair style?

16 A Yes, sir.

17 Q And then at one point during the interview he
18 describes him as short, fat, kind of heavy set?

19 A Right. He does indicate also the facial hair,
20 though.

21 Q Okay. At what point was that?

22 A I couldn't give you the exact timeframe on it. But
23 he does refer to him as having facial hair.

24 Q Okay. Well, I don't recall that so we'll have to
25 watch the video to see that. Because I think that's a

1 pretty significant omission. And he described the black
2 truck?

3 A Yes, sir.

4 Q Now, as part when he's talking to -- Timothy
5 Crawford is his friend who he initially calls?

6 A Yes, sir.

7 Q Trying to find an identity?

8 A Yes, sir.

9 Q Because at no point during the time when you were
10 interviewing him was he independently able to say that
11 this person was Lance?

12 A I don't understand the question.

13 Q Eric Jamison did not know that the person's name
14 was Lance?

15 A During my interview, yes, sir, he said Lance.

16 Q But he -- that was not from his personal knowledge,
17 he had to ask other people?

18 A Correct.

19 Q Other people who were not there?

20 A Yes, sir.

21 Q And based on, he called Timothy Crawford and said,
22 short, chubby, white male with a low hair style?

23 A Correct.

24 Q Timothy Crawford called John Staley?

25 A Yes, sir.

1 Q Who you interviewed?

2 A Yes, sir.

3 Q John Staley said, oh, that sounds like Lance?

4 A Right.

5 Q John Staley also told you that he had only met
6 Lance three or four times when they worked together in
7 1996; correct?

8 A That he had known him since then. And then, yes,
9 sir, around that time.

10 Q And that was the only time that he had known him?
11 He had only seen him three or four times?

12 A The impression was as far as actual interactions,
13 yes, sir.

14 Q And that he had never had a conversation with him?

15 A No, sir.

16 Q That's what he said?

17 A I don't recall specifically, but I know he said
18 that it was like back in the '90s that he really dealt
19 with him when he worked along with his brother.

20 Q Okay. And that was where the name Lance came from?

21 A Yes, sir.

22 Q But Eric Jamison did not know that without talking
23 to those people?

24 A As far as the name Lance, no, sir. He said he was
25 familiar with him, but didn't know him.

JOHN STUKE - CROSS EXAMINATION BY MR. JENNINGS

1 Q Now, from watching his interview, I counted over
2 ten times that he told you he didn't know the guy. And
3 didn't know the guy from a can of paint was his exact
4 phrase?

5 A Yes, sir. It was a little out of context, but,
6 yes, sir.

7 Q But you -- not out of context, he said
8 specifically, "I don't know the dude from a can of
9 paint"?

10 A Right. As far as on a personal level, not
11 necessarily the interactions that he had. He doesn't
12 know him on a personal level.

13 Q And he said I don't know his name?

14 A Right.

15 Q I don't know the guy. Says that multiple times?

16 A Right.

17 Q Now, Lance Miller does not own a black truck?

18 A No, sir, not that I'm aware of.

19 Q And from all of these descriptions, part of the
20 description was short, chubby, white male who drives a
21 black truck?

22 A Yes, sir.

23 Q And no part of your investigation can confirm that
24 Lance Miller drove that truck more than one or two
25 times; isn't that correct?

JOHN STUKE - CROSS EXAMINATION BY MR. JENNINGS

- 1 A As far as on that day, yes, sir.
- 2 Q And I'm talking about ever?
- 3 A As far as other times, I couldn't say for sure.
- 4 Q I'm saying based on your investigation, you were
5 never able to substantiate that Lance Miller drove that
6 truck more than one or two times?
- 7 A Correct, sir.
- 8 Q Now, as you interview Mr. Jamison further, he
9 finally starts to tell you about what happened when he
10 was selling drugs?
- 11 A Yes, sir.
- 12 Q Now, he kept saying he was selling marijuana, but
13 he was actually selling crack cocaine; correct?
- 14 A Correct, sir.
- 15 Q And he was very -- you had to basically were
16 pulling teeth trying to find out where he went after the
17 incident? Who he was with?
- 18 A Correct.
- 19 Q You had to basically pull his teeth to find out
20 whose trailer he was at?
- 21 A Correct.
- 22 Q That was not forthright?
- 23 A No, sir. That's why I said that second portion he
24 was definitely not forthright. It was more of the
25 incident how it occurred there in his identification.

1 Q Okay. Then as you -- you kind of start to put the
2 -- try to put the rest of the story together because I
3 guess y'all guessed at that point that the two incidents
4 might be intertwined?

5 A Yes, sir. It was pretty clear at that point.

6 Q And when you first started talking to Mr. Jamison,
7 he never indicated to you that he went back to Scott
8 Brooks' trailer at any point?

9 A Initially, in the interview; correct. He does
10 later tell us that, yes, he did go by.

11 Q In fact, he tells you, I never went back to that
12 house; correct?

13 A Initially, yes, sir.

14 Q Okay. And you asked him specifically if he went
15 back to Scott's?

16 A Correct.

17 Q And he told you repeatedly he did not?

18 A Until the end of the interview, yes, sir.

19 Q Okay. And you actually had to lie to him and tell
20 him that a neighbor saw him at Mr. Brooks' trailer?

21 A Correct.

22 Q And he still told you, even after you said a
23 neighbor saw you there, he even says that's not true. I
24 wasn't there. You can check the cameras, he says?

25 A Right.

1 Q He says he promises you he was never there?

2 A Right. Well, what he was saying was that he didn't
3 go inside and we can check the cameras and the cameras
4 will show that he didn't go inside.

5 Q Because he finally admits that he went to the
6 trailer?

7 A Correct.

8 Q But says he just knocked on the door?

9 A Right.

10 Q Okay. So we go from that he never went back to the
11 trailer, he stays with that for a little while?

12 A Yes, sir.

13 Q Then he admits, oh, well, yeah, I did go to the
14 trailer?

15 A Right.

16 Q But just knocked on the door?

17 A He knocked on the door and it was cracked open and
18 he was able to see inside.

19 Q And he says, I promise you I didn't go back to the
20 trailer?

21 A That I didn't go inside.

22 Q Then he admits that, yes, he actually did go back
23 and went inside and saw Mr. Brooks?

24 A Yes, sir.

25 Q And so all through that process, that fits your

1 definition of being forthright?

2 A Like I said, the -- I never said that his entire
3 interview was forthright. That was definitely not the
4 case. But portions of it were that what occurred there
5 as far as during the attempted murder and the attempted
6 armed robbery, very much so. His identification as far
7 as who the driver was, all that information, he was very
8 consistent and very open with it. But as far as going
9 back and actually seeing, no, sir, he was not initially
10 forthright.

11 Q Okay. Well, let's talk about that identification.
12 So what we've confirmed that the only description he's
13 given is short, stocky or chubby, white male?

14 A Right. With facial hair.

15 Q Okay. And then you testified in response to
16 Solicitor Pascoe's questions about Lieutenant Furtick
17 entering the room?

18 A Yes, sir.

19 Q And actually what happens with that process he
20 comes in with a cell phone?

21 A Yes, sir.

22 Q And he says, is this the guy?

23 A Yes, sir.

24 Q And Mr. Jamison tells him, tell you the truth, I'm
25 not sure. I didn't really get a good look at his face?

JOHN STUKE - CROSS EXAMINATION BY MR. JENNINGS

1 A Right.

2 Q Do you recall him saying that?

3 A Yes, sir.

4 Q Well, my first question when we started this cross
5 examination was to confirm when you told Solicitor
6 Pascoe that Mr. Jamison told you that he got a very good
7 look at his face?

8 A Right. And that's based on how the interview then
9 continues where he's very adamant especially when seeing
10 him in a photo lineup. That was the same subject that
11 he saw driving the vehicle.

12 Q So your position to the Court is that when a
13 witness tells you, I didn't really get a good look at
14 his face, that he did get a good look at his face?

15 A Well, then when they swipe the picture and he is
16 able to see and make that connection and that indicates
17 that, yes, that was definitely him.

18 Q He told you, I didn't really get a good look at his
19 face?

20 A Yes, sir, he did.

21 Q Okay. Then he -- then he swipes another photo?

22 A Yes, sir.

23 Q And at that point, he says -- he says, there again,
24 that looks like the guy?

25 A Yes, sir.

1 Q Now, in response to Solicitor Pascoe, you said that
2 it definitely was not a mugshot and it definitely was
3 not a driver's license photo?

4 A That Lieutenant Furtick showed?

5 Q Yes.

6 A Correct.

7 Q And how were you aware of that?

8 A Because, one, seeing what I saw as far as the swipe
9 and then during the interviews you're kind of able to
10 see that this very high colored picture something you
11 see on social media, not the very specific things that
12 are in DMV or on mugshots.

13 Q Did you see the photographs?

14 A I did not, sir.

15 Q Okay. Was a copy of the photographs kept as far as
16 the investigative file?

17 A No, sir.

18 Q In fact, there's really no record of that ever
19 happening, is there?

20 A I don't understand.

21 Q Of that whole process of Lieutenant Furtick coming
22 in and showing the photograph?

23 A Yes, sir, it's all recorded during the interview.

24 MR. JENNINGS: Can I mark this, please.

25 (WHEREUPON, Defendant's Exhibit Number 1 was marked)

JOHN STUKE - CROSS EXAMINATION BY MR. JENNINGS

1 Q I'm going to show you what's marked as Defense
2 Exhibit Number One.

3 A Yes, sir.

4 Q I believe that's what's been provided to us as your
5 -- the supplemental report that you created which sort
6 of encompasses the interview of Eric Jamison?

7 A Yes, sir.

8 Q Can you please point me to the section in that
9 supplemental report where Lieutenant Furtick -- or where
10 it's documented that Lieutenant Furtick came into the
11 interview room and showed Mr. Jamison two photographs.

12 A I don't believe it was documented in the
13 supplemental report, no, sir.

14 Q Okay. Well, when I asked you earlier about the
15 purpose of supplemental report you told me it was
16 important to document important progressions in the
17 investigation and that certainly when a suspect is
18 identified that that's an important thing that you would
19 want to put in your supplemental report?

20 A I would agree. Yes, sir.

21 Q So is there a reason why that interaction was not
22 recorded in your supplemental report?

23 A No, sir. Just an oversight on my part.

24 Q Beg your pardon.

25 A Just an oversight on my part.

1 Q Okay. Lieutenant Furtick hasn't created a single
2 supplemental report in this case, has he?

3 A Not that I'm aware of, no, sir.

4 Q Don't you think it would have been important for
5 Judge Dickson in analyzing this whole procedure to be
6 able to see what photographs were shown to Mr. Jamison?

7 A I can't disagree with that, no, sir.

8 Q And you said that it was recorded on video. This
9 incident took place in March of 2017?

10 A Yes, sir.

11 Q You would agree with me the case was originally
12 scheduled to be tried late in September of this year,
13 2019?

14 A If I recall correctly, yes, sir.

15 Q And those videos, recorded interviews of multiple
16 witnesses, basically all the witnesses in the case were
17 not turned over to the solicitor's office until what
18 would have been the week before the trial was scheduled
19 to begin?

20 A If I recall correctly, yes, sir.

21 Q And you would agree with me that had those videos
22 never been turned over, defense counsel, the solicitor's
23 office never would have known that Lieutenant Furtick
24 came into that investigation room and showed your key
25 eyewitness two photographs on a cell phone?

1 A Yes, sir.

2 Q During your interview of Mr. Jamison, he told you
3 that he was grazed by the bullet?

4 A Yes, sir.

5 Q And that he was bleeding?

6 A Yes, sir.

7 Q You didn't believe him?

8 A I could see where there's a red mark across his
9 head. I did not see any blood.

10 Q Okay. And, in fact, you told him had you been hit
11 or grazed there would have been hair missing?

12 A Yes, sir.

13 Q And there was no hair missing on his head?

14 A No, not that I saw. No, sir. All I could see was
15 the read mark where he indicated it was.

16 Q There was certainly no blood?

17 A There was no blood.

18 Q No dry blood?

19 A No, sir.

20 Q No physical evidence of an injury?

21 A Just the red mark where he indicated.

22 Q Repeatedly while you're -- in your questioning of
23 Mr. Jamison sort of progresses, he keeps telling you
24 that he's shown you the person on the phone and that
25 that's the person that did it?

JOHN STUKE - CROSS EXAMINATION BY MR. JENNINGS

1 A Yes, sir.

2 Q And even when you ultimately show the six person
3 lineup, State's Exhibit 14, he's still saying, yeah,
4 I've already showed you on the phone?

5 A Who the guy was?

6 Q Yes.

7 A Yes, sir.

8 Q At one point you were asking him some follow-up
9 questions about the black truck. Sorry, hold on just a
10 minute. Let me find my notes.

11 THE COURT: Take your time.

12 MR. JENNINGS: I'm sorry.

13 Q About 20 minutes into the interview you were trying
14 to follow-up with him and ask him some specific
15 questions about the black truck. And you asked him did
16 the truck have a rounded front. And he told you, I
17 couldn't really see because it was dark?

18 A And I don't want to testify that that's what he
19 said, but I assume you're correct, yes, sir.

20 Q Now, when we talk about -- to kind of circle back
21 to the statements, and I want the first statement you
22 took from Mr. Miller, but then the proffer. At that
23 point, that was August of 2017; correct?

24 A I believe that was the date, yes, sir.

25 Q And you had made no progress in the investigation

JOHN STUKE - CROSS EXAMINATION BY MR. JENNINGS

1 towards the case involving Mr. Brooks?

2 A Other than identifying that Lance Miller was
3 possibly involved.

4 Q Correct.

5 A And that the black truck was involved.

6 Q That was the only thing. Because there's no
7 physical evidence that either scene that connects
8 anybody to those crimes?

9 A Nothing that could definitively say one person did
10 it, no, sir.

11 Q And at that point you actually approached
12 Mr. Chandler and myself trying to get closure for the
13 family; isn't that correct?

14 A I specifically did?

15 Q Yes, sir. Following the preliminary hearing.

16 A I'm sorry, sir, I don't recall.

17 Q Okay. That you had obviously reached a standstill
18 in the investigation and for closure and wanted to know
19 if Mr. Miller would be willing to talk to you about what
20 happened?

21 A I would certainly would have approached you to have
22 him come in and speak with me, yes, sir.

23 Q Okay. And so through Ms. Cornwell then the proffer
24 was arranged?

25 A Correct.

JOHN STUKE - CROSS EXAMINATION BY MR. JENNINGS

1 Q And Mr. Miller came in and spoke to you freely?

2 A Not to me directly, but to Ms. Cornwell and
3 Lieutenant Shumpert.

4 Q Okay. And you would agree with me there's a high
5 probability that had he never come in and provided that
6 information that no arrest would have ever been made in
7 the death of Scott Brooks?

8 A I can't say that for sure. What the testimony
9 given by Eric Jamison was actually very, very important
10 towards that.

11 Q Well, it had been six months and no charges had
12 been made?

13 A Right.

14 Q There was no other evidence besides Mr. Jamison;
15 correct?

16 A Other than what led to the eventual arrest of Aaron
17 Beach.

18 Q Well, you didn't know about Mr. Beach until
19 Mr. Miller came and talked to you?

20 A We knew that it was his vehicle that was involved,
21 but not his role that was reported by Mr. Miller.

22 Q How did you know it was his vehicle?

23 A By going down and interviewing people around
24 Stumphole. Actually, after seeing the videos from over
25 there of the DPU camera and everything else, when we

JOHN STUKE - CROSS EXAMINATION BY MR. JENNINGS

1 were in the area trying to locate Sonny Coker who is
2 with -- Mr. Miller was staying with Sonny Coker, we
3 actually saw the vehicle out in front of Aaron Beach's
4 residence.

5 Q Okay. But nothing linking him to the incident?

6 A Directly, no, sir.

7 Q I think at one point you had finally become so
8 exasperated with Mr. Jamison that you told him that he
9 was just feeding you a line of bullshit?

10 A It's a distinct possibility, yes, sir.

11 Q Okay. Because he is not -- just hemming and hawing
12 basically about everything?

13 A Right. And keep in mind that wasn't as far as what
14 had occurred initially. But his entire rendition of
15 what had occurred after. Because he was afraid of
16 basically having -- calling names on his friends because
17 he didn't want them to have to come deal with law
18 enforcement.

19 Q And he also thought that y'all were going to think
20 that he had killed Scott Brooks?

21 A Certainly.

22 Q And you told him that?

23 A Yeah.

24 Q Because he had told -- had told acquaintances he
25 thought Scott had set him up?

1 A Right.

2 Q And then as the facts played out, he was the first
3 person to actually find Scott Brooks deceased?

4 A Correct.

5 Q Although, he never told anybody that?

6 A Yes, sir.

7 Q He went to Mark Irick and had Mark Irick call the
8 sheriff's office to go check on Mr. Brooks because he
9 was, quote, "worried about him"?

10 A I definitely remember phone calls that kind of went
11 back and forth between Jamison and Mr. Irick.

12 MR. JENNINGS: Can we que up some of this?

13 MR. PASCOE: Sure. We've got a copy for the Court.
14 Just let the Court have the whole thing.

15 MR. JENNINGS: However. I mean --

16 MR. PASCOE: I'll let you do it. If y'all want to
17 do that, that's fine. Go ahead.

18 MR. CHANDLER: Can we take five minutes while we set
19 it up?

20 MR. JENNINGS: Yeah. Can we take a few minutes,
21 Your Honor?

22 THE COURT: Sure. We'll take briefly a five minute
23 break.

24 (WHEREUPON, Defendant's Exhibit Number 2 was marked)

25 MR. JENNINGS: This is Mr. Jamison's interview.

JOHN STUKE - CROSS EXAMINATION BY MR. JENNINGS

1 THE COURT: Okay.

2 (There was a short break taken)

3 THE COURT: Okay. Are we ready to go back on the
4 record?

5 MR. JENNINGS: Yes, sir.

6 (Playing the video)

7 THE COURT: Mr. Jennings, just -- I'm sorry. Just
8 to put this in context, this is about an eleven minute
9 interview of Mr. Jamison?

10 MR. JENNINGS: The three and a half hour interview
11 of Mr. Jamison.

12 THE COURT: Oh, it's a three and a half hour one.
13 Well, I am so much looking forward to that. (Laughter)
14 Thank you, sir. And your timing is impeccable.

15 MR. JENNINGS: I didn't control today's schedule at
16 all, so I showed up when I was told.

17 THE COURT: Yes, sir. I'm not complaining at all,
18 you know.

19 CONTINUED RECROSS EXAMINATION BY MR. JENNINGS:

20 Q Now Detective Stuke, during that portion of the
21 interview that's when he's saying he doesn't know the
22 individual's name? And then he progresses and said he
23 was told that his name was Lance?

24 A Correct.

25 Q Okay.

1 (Playing the video)

2 Q Now, Detective, so you would agree with me
3 Mr. Jamison clearly says there, he did not get a good
4 look at the person's face?

5 A In that context, yes, sir, at that time.

6 Q That's what he said?

7 A Yes, sir.

8 Q Okay. And that interaction is the interaction
9 that's not recorded in any supplemental report by
10 yourself or Lieutenant Furtick?

11 A Oh, where Lieutenant Furtick comes in?

12 Q Yes.

13 A Yes, sir.

14 Q And that's the first time because we've had Eric
15 Jamison is told the name Lance by John Staley?

16 A Correct.

17 Q He does not know that name?

18 A He doesn't know the name, no, sir.

19 Q And then based on Lieutenant Furtick showing him
20 the photographs on a cell phone, he says that that's
21 Lance?

22 A Correct.

23 Q And we do not have those photographs?

24 A No, sir, we don't.

25 Q So there's no way to assess whether or whose photo

JOHN STUKE - REDIRECT EXAMINATION BY MR. PASCOE

1 that actually is?

2 A Not from me, no, sir.

3 Q And we don't know how those photographs compare to
4 the photograph that was actually -- that ultimately
5 ended up in the photo lineup in State's Exhibit 14?

6 A Correct, sir.

7 Q And when you stated that you -- that it was not a
8 -- it was not a booking photo and it was not a driver's
9 license photo, you could not tell the Court that
10 definitively?

11 A Not definitively, no, sir, just by what I can see
12 on there.

13 Q And Lance Miller is 5'11"?

14 A Correct.

15 Q And do you know how much he weighs?

16 A Two hundred and fifteen pounds.

17 Q Thank you.

18 MR. JENNINGS: That's all the questions I have.

19 THE COURT: Anything on redirect?

20 MR. PASCOE: Thank you, Your Honor, very briefly.

21 REDIRECT EXAMINATION BY MR. PASCOE:

22 Q Mr. Jennings said to you that, quote, "Mr. Jamison
23 was hemming and hawing about everything." But that's
24 not correct, is it?

25 A No, sir.

1 Q Did he hem and haw at all to you about who shot at
2 him?

3 A No, sir.

4 Q Who was he emphatic about who shot at him?

5 A The driver of the vehicle.

6 Q And who was the driver of the vehicle according to
7 Mr. Jamison?

8 A Lance.

9 Q The Defendant, Lance Miller?

10 A Yes, sir.

11 Q Did he hem and haw to you about who he thought and
12 told you murdered his friend Scott Brooks?

13 A No.

14 Q In fact -- and don't worry about this, I'll just
15 lead you on. So at 3:08 for the Court to know, at hour
16 3:08, didn't he tell you, the man you're looking for is
17 the man I pointed out? The truth will come out. All
18 the evidence will lead right there and lead back to that
19 one man. Do you remember him telling you that?

20 A If I recall correctly, yes, sir.

21 Q And it's on the video at hour 3:08; correct?

22 A Yes, sir.

23 Q And who was the man he was talking about that all
24 the evidence would lead back to?

25 A Lance Miller.

1 Q And let's talk a little bit about that evidence
2 real fast. Mr. Jennings asked you a bunch of questions
3 about the shooting at Sprinkle Avenue of Eric Jamison;
4 remember that?

5 A Yes, sir.

6 Q Trying to imply that there's no evidence about a
7 shooting at Sprinkle Avenue?

8 A Correct.

9 Q Okay. Are there witnesses that heard gunshots that
10 early morning hour of March 20th to corroborate
11 Mr. Jamison?

12 A Yes, sir.

13 Q And you took statements from them; correct?

14 A Yes, sir.

15 Q And is there other corroboration that there was a
16 shooting at Sprinkle Avenue of Eric Jamison? Do you
17 have a statement from the Codefendant, Aaron Beach?

18 A Yes, sir.

19 Q Does he say that Eric Jamison was shot at, at
20 Sprinkle Avenue?

21 A Yes.

22 Q And who does he say shot at Eric Jamison?

23 A Lance Miller.

24 Q Does Mr. Miller admit that there was a shooting of
25 Mr. Jamison on Sprinkle Avenue?

1 A Yes, sir.

2 Q He asked you to look at, I think it was minute 14
3 -- around minute 14 about -- and asking questions and
4 with the video that Mr. Jamison didn't get a good look
5 at the truck. But if you watch at minute 14:20 through
6 16 minutes, doesn't Mr. Jamison tell you, it is a black
7 Nissan Titan or Silverado, full size, black tinted
8 windows, and loud?

9 A Yes, sir.

10 Q And what type of vehicle was used in the attempted
11 armed robbery of Mr. Jamison?

12 A A black Nissan Titan.

13 Q And, in fact, is that State's --

14 THE COURT: 10.

15 Q -- 10, that is the exact vehicle that was used in
16 the attempted armed robbery of Mr. Jamison?

17 A Yes, sir.

18 Q So he was 100 percent accurate about the vehicle
19 that was used in his shooting?

20 A Yes, sir.

21 Q What type of gun did he say that was used?

22 A It was a black semiautomatic with either a laser or
23 a light.

24 Q And are you 100 percent certain as the investigator
25 in this case that that's the type of weapon that was

1 used in the murder of Scott Brooks, a black
2 semiautomatic?

3 A Yes, sir.

4 Q And it was used in the attempted armed robbery of
5 Mr. Jamison?

6 A Yes, sir.

7 Q From your investigation?

8 A Yes, sir.

9 Q Explain to the Court how Mr. Jennings was taking
10 the can of paint references out of context? Because at
11 least on two occasions at -- at least at 28:14 and at
12 36:06, Mr. Jamison does say I don't know him from a
13 can't of paint, but what was he talking about?

14 A Just the fact that they're not friends. He doesn't
15 know him on a social level. He only knows him through
16 seeing him with the association of Scott.

17 Q And, in fact, what did Mr. Jamison sell to Scott
18 and the Defendant at Scott -- Mr. Scott Brooks' house?

19 A Crack cocaine.

20 Q To the Defendant, Lance Miller, as well; correct?

21 A Correct.

22 Q Through Scott Brooks?

23 A Yes, sir.

24 Q You testified earlier on direct that Jamison did
25 care about one person in all this, who was that?

1 A Scott Brooks.

2 Q If it wasn't for Eric Jamison, does the Orangeburg
3 County Sheriff's Office even find Scott Brooks' body
4 probably on March 20th?

5 A No, sir.

6 Q And explain why?

7 A Other people had gone by and just honked the horn
8 as part of their normal routine to see if he wanted to
9 go to work, but it wasn't necessarily unusual for him
10 not to get up. So they just left. They never went in
11 to actually check on him. If Mr. Jamison hadn't made
12 those phone calls, those inquiries, and then asked for
13 someone else to go by so that law enforcement could be
14 notified, I'm not sure how long it would have taken us
15 to find that body.

16 Q In fact, it was Mr. Jamison that put everything in
17 motion to make sure that the sheriff's office was called
18 to find that body; correct?

19 A Yes, sir.

20 Q Even though he wanted to try to stay the heck out
21 of it?

22 A Yes, sir.

23 Q And I'll tell you -- the last thing I just want to
24 show you, I believe --

25 MR. PASCOE: Ms. Mubarak -- before I do that.

1 Q You testified that Mr. Miller was about 5'11", 215
2 pounds?

3 A Yes, sir.

4 Q And you had testified earlier on direct, correct me
5 if I'm wrong, that Jamison told you how the passenger
6 was smaller than the driver, than Mr. Miller?

7 A Yes, sir.

8 Q Is Mr. Beach smaller than Mr. Miller?

9 A Yes, sir. He's also 5'11", but only about 180
10 pounds. He's very thin.

11 Q So anywhere from 30 to 35 pounds smaller than
12 Mr. Miller?

13 A Yes, sir.

14 Q Consistent with what Mr. Jamison told you on March
15 20th?

16 A Yes, sir.

17 Q All right.

18 MR. PASCOE: And I'm just going to go to, I think,
19 Catherine, that it's at three minutes and -- 3 hours 40
20 minutes and maybe start around 30 seconds.

21 Q This will be the photographic lineup that you show
22 to Mr. Jamison.

23 (Playing the video)

24 MR. PASCOE: And the Court will have -- has this
25 video as part of the motion if you want to watch it.

JOHN STUKE - RECROSS EXAMINATION BY MR. JENNINGS

1 Q But what did it take, maybe a second for him to
2 pick out Mr. Miller's picture?

3 A Right. It was like an immediate identification.

4 Q Have you ever seen, in the 50 IDs that you've done
5 in your years of experience, any that was that quick?

6 A Not really. Most usually takes a few seconds to
7 look at all the pictures and then finally decide on one
8 and his was immediate.

9 Q And that much certainty?

10 A Yes, sir.

11 Q For the Court to see itself, not just to take you
12 at your word, but the Court can watch the video.

13 A (No response)

14 Q Okay.

15 MR. PASCOE: That's all I have, Your Honor. Thank
16 you.

17 THE COURT: All right. Anything on redirect?

18 MR. JENNINGS: One question.

19 RECROSS EXAMINATION BY MR. JENNINGS:

20 Q Were you really surprised it took him long to pick
21 out the picture of the person you had already shown him
22 on the cell phone?

23 A It wasn't the same picture, so, yes, sir.

24 Q It's the same person?

25 A The same person.

1 Q Okay. And all those photographic lineups that
2 you've shown people where this is the fastest
3 everybody's ever picked anybody. In any of those photo
4 lineups, had you shown a cell phone picture to the
5 person before you showed them a photo lineup?

6 A No, sir.

7 MR. JENNINGS: That's all.

8 THE COURT: You may step down. Thank you, sir. All
9 right. What else we got?

10 MR. PASCOE: If I can talk to Mr. Jennings real
11 fast. We have another witness that they subpoenaed if
12 they want to call that witness. Or let me talk to
13 Mr. Jennings.

14 THE COURT: Okay.

15 (Off the record)

16 MR. JENNINGS: Can we approach?

17 THE COURT: Sure.

18 (Off the record)

19 MR. PASCOE: Can we be done for the day, Your Honor?
20 We can just pick a jury? Can we wait? Can we wait? We
21 want to talk. Can we talk to you real fast?

22 THE COURT: Sure.

23 (Off the record)

24 THE COURT: Yes, ma'am.

25 MS. MUBARAK: Thank you, Your Honor. Standing

LANCE MILLER - EXAMINATION BY THE COURT

1 before you today is Lance Miller with his attorneys
2 Blair Jennings and Ray Chandler. Mr. Miller is pleading
3 guilty today to voluntary manslaughter reduced from
4 murder and attempted armed robbery. And you're
5 deferring sentencing until tomorrow morning.

6 THE COURT: Okay.

7 MS. MUBARAK: Would you -- may I approach?

8 THE COURT: Yes, ma'am.

9 MS. MUBARAK: And, Your Honor, this was true billed
10 when Ms. Cornwell was the solicitor. So her name is on
11 the indictments.

12 LANCE MILLER,
13 being first duly sworn, was examined and testified as
14 follows:

15 THE COURT: All right. Who's answering for -- when
16 I ask the attorney? All right, Mr. Chandler. Just
17 wanted to know.

18 All right. I know because we have, you know, been
19 taking up motions prior to the trial that was scheduled
20 for tomorrow, but you have had an opportunity to meet
21 with Mr. Miller and review the evidence that the State
22 has against him for the charges that we were going to
23 start trial on?

24 MR. CHANDLER: Mr. Jennings and I have both gone
25 through it in great detail.

LANCE MILLER - EXAMINATION BY THE COURT

1 THE COURT: Right. And you have also explained to
2 him the law that applies, possible sentences he could
3 get, and advised him on his Constitutional rights?

4 MR. CHANDLER: We have.

5 THE COURT: Okay. Do you believe it's in his best
6 interest to go forward and plead guilty to the charge of
7 voluntary manslaughter and attempted armed robbery?

8 MR. CHANDLER: Yes, sir.

9 THE COURT: Okay. All right.

10 EXAMINATION BY THE COURT:

11 THE COURT: Mr. Miller, you are in your 40s; right?

12 A Forty-eight.

13 THE COURT: You're 48?

14 A Yes, sir.

15 THE COURT: And, Mr. Miller, I need to get a little
16 background information from you.

17 A All right.

18 THE COURT: How far did you go in school? About.

19 A I think tenth.

20 THE COURT: Tenth grade?

21 A I got a diploma.

22 THE COURT: You did get a diploma?

23 A Yes, sir.

24 THE COURT: Okay. What school were you going to?

25 A Orangeburg Wilkerson.

LANCE MILLER - EXAMINATION BY THE COURT

1 THE COURT: Oh, OW?

2 A Yeah.

3 THE COURT: Okay. And any education past high
4 school?

5 A No, sir.

6 THE COURT: Okay. Before you got arrested, you were
7 working somewhere, weren't you?

8 A Driving 18 wheelers.

9 THE COURT: Okay. And how long had you been doing
10 that?

11 A I'm going to say six or seven years.

12 THE COURT: Okay. Have you ever been treated for
13 many mental health issues?

14 A No, sir.

15 THE COURT: Okay. Have you ever been treated for
16 any drug or alcohol abuse or dependency?

17 A Yes, sir.

18 THE COURT: Okay. Do you mind telling me about
19 that?

20 A I went to Morris Village and I think a place in
21 Florence years ago for cocaine.

22 THE COURT: Okay. How long ago was that? Just
23 about.

24 A Twenty or more.

25 THE COURT: Okay. All right.

LANCE MILLER - EXAMINATION BY THE COURT

1 MR. CHANDLER: The latest, I think the latest was
2 about 20 years ago or about 24.

3 A I'm guessing.

4 THE COURT: Are you taking any kind of prescription
5 medication?

6 A No, sir.

7 THE COURT: Okay. Are you thinking clearly now?

8 A Yes, sir.

9 THE COURT: This afternoon?

10 A Yes, sir.

11 THE COURT: Okay. I'm told that you're going to
12 plead guilty to a voluntary manslaughter charge and an
13 attempted armed robbery charge from events that occurred
14 here in Orangeburg on March 20, 2017?

15 A Yes, sir.

16 THE COURT: Okay. Now, you have gone over the
17 evidence that the State has against you with your
18 attorneys; is that correct?

19 A Yes, sir.

20 THE COURT: And they have explained to you the law
21 that applies in each situation?

22 A Yes, sir.

23 THE COURT: Okay. They have explained to you your
24 Constitutional rights?

25 A Yes, sir.

LANCE MILLER - EXAMINATION BY THE COURT

1 THE COURT: And I know you know you had the right to
2 have a jury trial because we were getting prepared to
3 have the trial starting tomorrow; is that correct?

4 A Yes, sir.

5 THE COURT: Okay. Did your attorneys answer all
6 your questions?

7 A Yes, sir.

8 THE COURT: Okay. Did you understand everything
9 that they told you?

10 A Yes, sir.

11 THE COURT: Are you satisfied with their services as
12 your attorney?

13 A Yes, sir.

14 THE COURT: Do you need anymore time to talk with
15 them?

16 (Off the record)

17 MR. JENNINGS: Let us talk for just a second.

18 THE COURT: Okay.

19 (Off the record)

20 MS. MUBARAK: Judge, do you mind giving us a couple
21 more minutes? There seems to be a dispute over whether
22 or not this should be allowed to go forward under
23 *Alford*.

24 THE COURT: I'm fine.

25 MS. MUBARAK: I don't know if the State's okay with

LANCE MILLER - EXAMINATION BY THE COURT

1 it.

2 THE COURT: It's still a plea.

3 MS. MUBARAK: I know. Okay. Hold on one second.

4 MR. CHANDLER: May he sit down?

5 THE COURT: Yes, he may. Go ahead, Mr. Miller.

6 (Off the record)

7 THE COURT: So what did we decide? Where are we --

8 MS. MUBARAK: The -- Mr. Miller will be pleading
9 guilty under *Alford* on the murder. And -- I'm sorry
10 involuntary manslaughter. And he will just be pleading
11 regular guilty --

12 THE COURT: On the attempted armed robbery?

13 MS. MUBARAK: -- on the attempted armed robbery.
14 Yes, Your Honor.

15 THE COURT: All right.

16 CONTINUED EXAMINATION BY THE COURT:

17 THE COURT: Mr. Miller, you heard what the Solicitor
18 told me; is that accurate?

19 A Yes, sir.

20 THE COURT: Okay. All right. Has anyone promised
21 you anything to get you to plead guilty?

22 A No, sir.

23 THE COURT: Now, I understand -- isn't there a cap
24 of 20 --

25 MR. JENNINGS: Twenty, yes, sir.

LANCE MILLER - EXAMINATION BY THE COURT

1 THE COURT: Yeah. You are aware there's a cap of
2 20?

3 A Yes, sir.

4 THE COURT: Okay.

5 MR. JENNINGS: So the range would be 2 to 20.

6 THE COURT: You understand that?

7 A Yes, sir.

8 THE COURT: Okay. But there have been no other
9 promises other than that?

10 A No, sir.

11 THE COURT: Okay. All right. Has anybody forced
12 you or threatened you to make you plead guilty to this
13 charge?

14 A No, sir.

15 THE COURT: Okay. Other than the promise or the
16 range that my sentencing, has anyone made you any other
17 promises to get you to plead guilty?

18 A No, sir.

19 THE COURT: Okay. Are you doing this freely and
20 voluntarily?

21 A Yes, sir.

22 THE COURT: Do you believe it's in your best
23 interest to go forward with the plea?

24 A Yes, sir.

25 THE COURT: Okay. All right. Ms. Mubarak?

LANCE MILLER - EXAMINATION BY THE COURT

1 MS. MUBARAK: Thank you, Your Honor.

2 This incident occurred on Sunday, March 19th.
3 Mr. Miller and a Codefendant, Aaron Beach, were together
4 over at a Mexican restaurant called Pedro's. They
5 eventually came over to Orangeburg County to Scott
6 Brooks' house. From Scott Brooks' house, Mr. Miller and
7 Mr. Brooks decided to go purchase cocaine from Eric
8 Jamison who is the victim of the attempted armed
9 robbery.

10 Mr. Miller and Mr. Beach had been drinking heavily
11 at Pedro's. Mr. Miller agreed to drive Mr. Beach's
12 truck. They -- the three individuals including
13 Mr. Brooks drove over to Mr. Jamison's trailer park area
14 off of Sprinkle Avenue. It was there that they made the
15 first purchase of cocaine. They came back to Mr. -- to
16 Scott Brooks' house who is the murder victim.

17 Second purchase was then attempted to be made from
18 Mr. Jamison. And at that point in time, just Mr. Miller
19 and the Codefendant, Aaron Beach, went over to Eric
20 Jamison's trailer park. And when they got there,
21 Mr. Miller -- or the Codefendant says, and Mr. Jamison
22 corroborates that Mr. Miller, the driver, got out of the
23 vehicle, put a gun in his face and told him this is a
24 stickup; to give him the drugs; give him everything. He
25 then -- Mr. Jamison then took off running. Mr. Miller

LANCE MILLER - EXAMINATION BY THE COURT

1 then shot the gun several times at Mr. Jamison. One of
2 the bullets grazes Mr. Jamison's head, he says.

3 The next morning, Mr. Jamison reports this incident
4 to -- well, I'm sorry. To a friend saying he believed
5 that Scott Brooks set him up. And that friend says go
6 -- does he know who the individuals are who hangs out
7 with Scott Brooks? That individual tells him to go over
8 to Scott's house and ask him who it was.

9 When Mr. Jamison gets there, he finds Scott Brooks
10 dead. He had been shot in the face. Throughout the
11 course of the investigation, it becomes known to law
12 enforcement that -- essentially that when Mr. Miller and
13 Mr. Beach left the trailer park after having shot at
14 Eric Jamison, they went back over to Scott Brooks' house
15 and Mr. Beach says that Mr. Miller shot Mr. Brooks in
16 the face and killed him.

17 We have phone records corroborating the timing of
18 the phone call and the incident. We have a DPU
19 surveillance video showing the truck going through the
20 trailer park around the same time. We have the
21 Codefendant's statement. We have Eric Jamison's
22 statement. And at testify -- Aaron Beach would have
23 testified that Mr. Miller was the shooter for Eric
24 Jamison for the attempted armed robbery and tried to
25 steal his drugs. And that he shot Scott Brooks and

LANCE MILLER - EXAMINATION BY THE COURT

1 killed him. And that's sort of where we are.

2 THE COURT: Okay. Thank you, ma'am.

3 MS. MUBARAK: Do you need the Defendant's prior
4 record at this point in time? Or...

5 THE COURT: You can give that to me tomorrow.

6 MS. MUBARAK: Okay. I'm sorry.

7 THE COURT: Okay. That's okay.

8 All right. Mr. Miller, you've heard what the
9 Solicitor indicated they would attempt to prove at
10 trial?

11 A Yes.

12 THE COURT: Okay. All right. You were -- they were
13 -- there was a true billed indictment for murder. The
14 State's allowing you to plead to voluntary manslaughter.
15 And it involves the killing of Mr. Scott Brooks in
16 Orangeburg County on March 20, 2017?

17 A Yes, sir.

18 THE COURT: Okay. It's my understanding that you're
19 pleading guilty to this charge of voluntary manslaughter
20 under *North Carolina verses Alford*?

21 A Yes, sir.

22 THE COURT: Okay. It's my understanding from
23 questioning you earlier, you had gone over the evidence
24 regarding this charge with your attorneys?

25 A Yes, sir.

LANCE MILLER - EXAMINATION BY THE COURT

1 THE COURT: Okay. They have explained to you the
2 law that applies in this situation?

3 A Yes, sir.

4 THE COURT: Okay. Based on the evidence that the
5 State has and the law that applies in this situation,
6 you understand that if you went to trial on this issue,
7 there's a substantial likelihood you could be convicted
8 of it; is that correct? And you want to take advantage
9 of the plea offer; is that also correct?

10 A Yes, sir.

11 THE COURT: Okay. So you understand that
12 manslaughter is a violent and a most serious offense?

13 A Yes, sir.

14 THE COURT: You understand it counts as a strike?

15 A Yes, sir.

16 THE COURT: Your attorneys have gone over how this
17 could affect you in the future?

18 A Yes, sir.

19 THE COURT: Okay. So you are pleading guilty to
20 voluntary manslaughter under *North Carolina verses*
21 *Alford*; is that correct?

22 A Yes, sir.

23 THE COURT: Okay. Now, also I have a true billed
24 indictment for attempted armed robbery from that same --
25 from March 20, 2017, here in Orangeburg County?

LANCE MILLER - EXAMINATION BY THE COURT

1 A Yes, sir.

2 THE COURT: The victim in this case is Eric Jamison;
3 you understand that?

4 A Yes, sir.

5 THE COURT: How do you plead to this charge of
6 attempted armed robbery?

7 A Guilty.

8 THE COURT: Okay. Now, Mr. Miller, it's my
9 understanding and I want to make sure it's your
10 understanding that if you -- that if these charges will
11 become convictions on your record?

12 A Yes, sir.

13 THE COURT: You know the attempted armed robbery is
14 also a violent and most serious offense?

15 A Yes, sir.

16 THE COURT: Okay. Do you want me to accept your
17 guilty plea to these two charges, the voluntary
18 manslaughter under *North Carolina verses Alford*, and the
19 attempted armed robbery, just a straight plea?

20 A Yes, sir. Yeah.

21 THE COURT: Mr. Miller, I find your decision to
22 plead guilty to these two charges is freely,
23 voluntarily, and intelligently made. I find you've had
24 the advice and counsel of two competent attorneys. I
25 find you're satisfied with the services of your

LANCE MILLER - EXAMINATION BY THE COURT

1 attorneys. I find as a factual basis on which to base
2 your guilty plea to these charges.

3 I further find that the voluntary manslaughter case
4 is one, that had you gone to trial, you were facing a
5 substantial likelihood of being convicted of it. And
6 that you made a wise decision to go forward with your
7 plea in this. Okay?

8 A Yes, sir.

9 THE COURT: So I am going to accept your guilty plea
10 to both of these charges.

11 It's my understanding we will come back tomorrow and
12 do the sentencing?

13 MR. JENNINGS: Correct.

14 THE COURT: Okay. All right. Thank you.

15 A Thank you.

16 MR. CHANDLER: Thank you very much, Judge.

17 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -
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1 (OCTOBER 29, 2019)

2 THE COURT: And, Mr. Miller, good morning.

3 MR. MILLER: How are you doing?

4 THE COURT: We're here for a sentencing, did the
5 State want to put any statements in about the sentencing
6 or anything like that?

7 MS. MUBARAK: Well, yes, Your Honor. We would like
8 to put at the appropriate time Mr. Miller's prior
9 convictions on the record. And Mr. Brooks' family, his
10 brother and his brother's daughter. His brother is Greg
11 Brooks. And he's Scott Brooks' brother would like to
12 speak at the appropriate time.

13 THE COURT: Okay.

14 MS. MUBARAK: Just let me know when. You want to do
15 it now? Or you want the Defense to speak?

16 THE COURT: If you'd go ahead and tell me about the
17 priors and stuff like that.

18 MS. MUBARAK: Yes, Your Honor. His prior record
19 includes going back to 1989, a grand larceny; a burglary
20 second degree; receiving stolen goods.

21 In 1989, another burglary second degree.

22 '91, two grand larcenies of automobiles; failure to
23 stop for a blue light.

24 '96, a strong armed robbery. And for that, he
25 received eight years, Your Honor.

1 1997, an escape attempt; a strong armed robbery; and
2 another grand larceny; and I believe he got five years
3 for that, Your Honor.

4 THE COURT: The last one is 2006?

5 MS. MUBARAK: Yes, Your Honor. That was a grand
6 larceny.

7 THE COURT: Okay. Nothing within the last ten
8 years?

9 MS. MUBARAK: No, Your Honor.

10 THE COURT: All right. And I'll be glad to hear
11 from y'all. However y'all want to do it.

12 MS. MUBARAK: State your name for the record.

13 GREG BROOKS: I'm Greg Brooks. This is my daughter
14 Payton.

15 THE COURT: Hey, how are you? What would you like
16 to tell me, Mr. Brooks?

17 GREG BROOKS: Oh, I mean, I don't know. My brother
18 wasn't no angel, but he didn't deserve to die like that
19 even though he was not doing the right things that
20 night. I just feel like -- I've known this fellow here
21 for a long time and he ain't changed. I feel that he
22 should get the maximum.

23 I mean, his family is good and everything, but I've
24 known this boy for a long time and he just -- ain't
25 nothing changed. And I feel bad about my brother being

1 passed.

2 THE COURT: Anything else? Did you want to say
3 anything? And your name again is --

4 MS. PADGETT: I'm Payton Padgett.

5 THE COURT: Yes, ma'am.

6 MS. PADGETT: And I do have two children. I have a
7 seven-year-old and a four-year-old and, you know, they
8 will no longer ever see there uncle again. They won't
9 spend any time, any birthdays or holidays with him.

10 I do ask for the maximum sentence as well for him.
11 For the fact that he will still eventually get to see
12 his family again where my uncle never will and we'll
13 never get that opportunity to have that with him either.

14 THE COURT: All right. Thank y'all for coming.
15 Appreciate it.

16 Anything else from the State?

17 MS. MUBARAK: No, Your Honor.

18 THE COURT: All right. Mr. Jennings?

19 MR. JENNINGS: Thank you, Your Honor. May it please
20 the Court. If it's okay with you, we're going to sort
21 of split up the presentation. I wanted to address just
22 some other aspects of the case. You know, had it
23 proceeded.

24 I think you got a taste in the beginning of the
25 pretrial motions yesterday with some of the issues with

1 the lineup procedure. And as you've noted and we've
2 talked in chambers, we were the only people sitting at
3 the defense table. There's a codefendant. Obviously,
4 we're well aware the solicitor's office has total
5 control of the docket and how to proceed with the case.
6 They made the election in this situation, either they
7 were going to call Mr. Beach to testify.

8 But I think it's significant and we ask Your Honor
9 to give Lance significant credit for the fact that we
10 would not have been at this position had Lance not come
11 in under the terms of that proffer and made that
12 statement at the request of the Detective Stuke to try
13 to give closure to the family so the back end of this
14 case could be cleared up.

15 I think as I questioned him yesterday during the
16 pretrial hearing, that was six months after the incident
17 had taken place. No arrests had been made. While they
18 had made some progress, I don't think that they were
19 ever going to be at the point where they would have
20 filed murder charges or cleared that case.

21 At the time, we were dealing with Assistant
22 Solicitor Cornwell. Came in. Lance fully cooperated.
23 Told what happened. And the follow-up provided a
24 written statement at their request just for
25 documentation.

1 And I think it's significant that following his
2 statement and Detective Stuke's synopsis of the case, he
3 said, "Based on the investigation of the Orangeburg
4 County Sheriff's Office, the Defendant Aaron O'Neil
5 Beach, did with malice aforethought in violation of
6 Section 16-3-10 while armed with a handgun, the
7 Defendant did shoot the victim Scott Allen Brooks in the
8 head causing his death." That was Detective Stuke's
9 opinion at the time when he filed the murder case
10 against Mr. Beach.

11 At the time of Ms. Cornwell's resignation from the
12 solicitor's office, I was actually supposed to come and
13 meet with her the next Monday to discuss the option of
14 Mr. Miller testifying against Mr. Beach in his murder
15 trial. Obviously, in the interchange in the office,
16 things changed and we ended up on trial for the murder.

17 I also think it's significant and would have come
18 out during the trial during -- Mr. Beach was interviewed
19 four separate occasions by the detectives. Provided
20 multiple different statements from, he had nothing to do
21 with it. Mr. Miller had nothing to do with it. And
22 then ultimately implicating Mr. Miller.

23 I think it's significant there is no physical
24 evidence that corroborates either statement. One person
25 said one person did it. The other person said the other

1 did it.

2 I do think it's significant that Detective Shumpert,
3 when he was interviewing Mr. Beach, and Mr. Beach failed
4 a polygraph as to his rendition of the facts.

5 Mr. Miller passed the polygraph. Obviously, those were
6 not -- would not have been admissible in the trial, but
7 I think it's significant when assessing the credibility
8 of each.

9 But the detectives told Mr. Beach they didn't think
10 he was telling the truth. And that he had not passed
11 the test and nothing that he said matched up with
12 anything they had learned in the case.

13 In the alternative, they said that what Mr. Miller
14 said had matched up. And Lieutenant Shumpert actually
15 told Mr. Beach that a jury would never believe what he
16 had to say.

17 All that to be said just to put the case in
18 prospective, I completely agree with Mr. Miller's plea.
19 I think given the status of the case and everything that
20 had transpired that it was extremely likely that he
21 would have been convicted had the case proceeded. So I
22 think this is the -- that was the correct decision.

23 But I just wanted to give you those facts to put the
24 whole sort of case in prospective in the fact that we're
25 the only ones sitting here taking responsibility. I

1 think he deserves credit for that and would ask you to
2 give him significant credit for being the first one to
3 come in to try to close up the loopholes for the
4 detectives and the family.

5 THE COURT: All right. Mr. Chandler, anything?

6 MR. CHANDLER: I'd like to bring his wife and family
7 here just to briefly address the Court, those who are
8 willing to do so.

9 This is his momma and daddy that are sitting here.
10 His mother has significant medical issues, so I don't
11 know that she will be able to do that. This is my
12 client's wife Katrina.

13 MS. MILLER: Katina.

14 MR. CHANDLER: Judge, we had talked about in
15 chambers, I think when you get to a certain point in
16 your practice that you can look back and you can say
17 every time you stand up, I've known these people for
18 years. It's just a, you know, a natural thing.

19 I met this family through their daughter, Ann Karen,
20 who was the -- had a dear friend of hers murdered over
21 in Santee one night and I defended the murderer. And
22 all of the family who had known him and cared for him,
23 sat on the other side. And if looks could have killed,
24 those people would have taken my life during that three
25 or four day trial.

1 Subsequent to that, they all have come to my office.
2 None related to anything that was criminal, but I met
3 Lance. And as a young man, he had a significant alcohol
4 and drug problem. Significant. And the first litany of
5 charges was related to him as a teenager, 19-years-old.
6 And they were boxed together and subsequent to that, he
7 went into drug rehab in to fight that. He got out and
8 that was not successful. We handled it again and he
9 then went to Morris Village drug rehab.

10 His last offense was in '96. Upon being released,
11 he started driving trucks long distance. How old is
12 your daughter?

13 MS. MILLER: Youngest, ten.

14 MR. CHANDLER: He's got a ten-year-old daughter.
15 He's been devoted to her. We -- this family is the salt
16 of the earth.

17 While I do not want to shift blame because it was my
18 judgement for him to come in and speak to the police.
19 We talked about it. And you heard the proffer read and
20 if it does not have the ring-of-truth, I've never heard
21 one. But the tale in it where the guy -- Mr. Beach buys
22 a gun on Friday and he's out drunk Saturday and Sunday
23 and the first person he sees is Juice and he pops two or
24 three shots at him; for what reason, we don't know.

25 I will tell you that the reason, not only polygraph

1 and other things, the reason that I am so convinced that
2 this person has been placed in such a tragic situation,
3 he told me that the mistake that he made was after he
4 left that convenient store that night. That he should
5 have reported it.

6 He said, Ray, I knew it. I knew I should have. I
7 should have done it. Then once I got disconnected from
8 this guy, got the cartridges in my pocket, the next day
9 I should have done it. And we can't re-plow that field,
10 Judge.

11 But the closure, I probably had four cases where
12 people have come in, five years, seven years, nine years
13 after they've lost a loved one and law enforcement has
14 not been able to resolve it. That is an opened wound in
15 that family that takes an untold, an untold penalty on
16 them. Every Thanksgiving, every Christmas, not knowing
17 and they cling to just about anything. Anything. And
18 Mr. Miller has taken away that agony from a family. And
19 in so doing, he placed himself in harms way. Because
20 that's what acceptance of responsibility is about.

21 And so we -- we're facing serious things. And when
22 we say significant consideration, we believe that doing
23 what he has done and accepting the responsibility would
24 demand that a person in his 40s do less than half of 20
25 years.

1 The fact that there were significant legal issues in
2 this case, the fact that we have saved the State from a
3 two or three day trial, the fact that we have resolved
4 the potential of appeals on this issue, I'm sure the
5 Court is going to take into consideration. We are going
6 to be punished because we did punishable acts.

7 And I would ask the Court to consider not only what
8 we have said, but these fine people here who will be
9 supporting him while he attempts at rehabilitation and
10 when he returns. But the State has already indicated,
11 because it's most serious, that it's an 85 percent
12 situation.

13 So we're not opening the door to him immediately for
14 anything. And I would ask you to value that 85 percent
15 in reaching a sentence.

16 Do you guys want to say anything at all?

17 MS. MILLER: I've been married to him --

18 THE COURT: And I need for you to just state your
19 name on the record.

20 MS. MILLER: My name is Katina Miller. I'm his
21 wife.

22 THE COURT: Yes, ma'am.

23 MS. MILLER: We've been married almost 29 years.
24 And my husband is not a bad person. I mean, there is a
25 lot of people that like to talk bad about him because of

1 stuff that he did in his past. And his situation with
2 Scott, Scott would call our house every football game
3 and they would talk about the Steelers and the Browns.
4 I mean, that's a rival team, they would joke around.

5 Scott's been to our house. We've been there. I
6 mean, it's -- there is nothing intent there. I mean,
7 and the way people talk about Lance, I mean, yes, he has
8 a bad record, but he is not a bad person. I mean, he's
9 been there for my three kids. I have a 27-year old, a
10 26-year old, and a 10-year old, and now we have a 2-year
11 old grandson. And, I mean, he's always been there.

12 THE COURT: Yes, ma'am.

13 MS. MILLER: I mean, I know it's bad of what
14 happened, but it's just -- we shouldn't have it affect
15 our family as bad as it's affecting us for somebody that
16 did something wrong and he was there. And, I mean, I
17 just ask you not to give him the maximum.

18 MR. CHANDLER: We're talking about the death of a
19 person who was raised from the time he was 14-years old
20 like family by these people and knows. He sat at their
21 table with Lance's brother. Spent weekends because he
22 did haven't a good home. He didn't have a family to go
23 to. I'm telling you straight. And that the thought of
24 Lance Miller callously taking the life of a person he's
25 known for years and years is just aberrant to me.

1 Anybody else? I think --

2 MICHAEL MILLER: Yeah, I'll say something.

3 THE COURT: I'm going to go with the ladies first.

4 TAYLOR: I'm Taylor, I'm his daughter. I believe
5 that everybody puts theirselves in bad situations. But
6 just like my mom said, when I was little, I remember
7 Scott being at our house all the time. Like every
8 football game like my mom said, him and Scott and his
9 mom lived at our house for like three weeks. He would
10 call my daddy all the time.

11 And I remember when I was younger, his brother and
12 him did not get along. I mean, things do change. Just
13 like what my daddy has done, things change. People
14 change. And I don't -- I mean, yeah, I don't think my
15 daddy should have put himself in that position, but I do
16 believe people change. My daddy has always been there
17 for me. If my grandparents need them, he's there with
18 no problem. If my brother needs him, if I need him, and
19 my sister needs him, he's there.

20 I understand, like I said, that he put himself in
21 this position, but my dad really is a good person. And
22 everybody puts theirselves in bad situations. But he
23 really and truly is.

24 THE COURT: Thank you, ma'am. Your name, please,
25 sir?

1 MICHAEL MILLER: Michael Miller, I'm his son.

2 THE COURT: Okay. Glad to hear from you.

3 MICHAEL MILLER: Like she was saying, I mean, why
4 would you give one of your friends somewhere to live for
5 three or four weeks, him and his mother. To keep them
6 off the street. I mean, you know, why would you come
7 back and do something like that to them.

8 I mean, he's always been there for me. I mean,
9 everybody I've talked to always asks about him. How
10 he's been. You know, how good of a fellow he is.

11 That's all I really got to say.

12 THE COURT: Okay. Thank you, sir.

13 ANN MILLER: Okay. I'm Lance's mom.

14 THE COURT: Yes, ma'am.

15 ANN MILLER: And he's been --

16 MICHAEL MILLER: Your name.

17 ANN MILLER: Oh, Ann. Ann Miller.

18 THE COURT: Yes, ma'am. Ms. Miller, glad to hear
19 from you.

20 ANN MILLER: And he's -- I just want to tell you
21 when he was small, when he went into high school, he was
22 in the Junior Olympics for running and missed it by only
23 a couple of points. He was -- worked for Kennedy Shiver
24 walking for the handicapped children. And he's done a
25 lot of things. And he's always good to me. He's always

1 been there to help me.

2 But I think that the downfall in everything is when
3 somebody gives somebody drugs or something when they're
4 16 or 17 and it ruins their lives and ours. So, that's
5 all.

6 THE COURT: Thank you, ma'am. And your name,
7 please, sir?

8 RON MILLER: Ron Miller, I'm his dad.

9 THE COURT: Yes, sir, Mr. Miller.

10 RON MILLER: I'm not much of a speaker, but we love
11 Lance and we hope everything comes out all right for
12 him. He's getting old like me. He's always been good
13 to me. Always took care of my cars and everything, so
14 we love him so. I hope everything comes out better for
15 him. Thank you.

16 THE COURT: Yes, sir. Thank you. Thank y'all for
17 coming. Appreciate it.

18 MR. CHANDLER: That's all, Your Honor.

19 THE COURT: Thank you, Mr. Chandler. Anything else
20 from the State?

21 MS. MUBARAK: Just that the Court takes into
22 consideration Mr. Miller's significant prior record and
23 the victims' wishes in the case and what the State
24 intended to prove at trial. And that you accordingly
25 give a fair sentence.

1 THE COURT: All right. All right. Mr. Miller,
2 appreciate you not making the family go through a trial.
3 Okay.

4 MR. MILLER: Yes, sir.

5 THE COURT: And I do appreciate you taking
6 responsibility for this, for these charges.

7 What I'm going to do on each one of these cases,
8 Mr. Miller, is, the sentence of this Court in each one
9 of these cases is that you're committed to the State
10 Department of Corrections for a period of 17 years.
11 Sentences are concurrent and I'm giving you credit for
12 the time you've served.

13 MR. MILLER: All right.

14 THE COURT: Thank you, sir.

15 - - -END OF REQUESTED TRANSCRIPT OF RECORD- - -
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

I, KATHERINE A. SPIRES, Registered Professional Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Orangeburg County, South Carolina, on the 28-29th of October, 2019.

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

June 1, 2020

Katherine A Spires

Katherine A. Spires

Registered Professional Reporter

FORM 5

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of OrangeburgLANCE MILLER 25047

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF

FEB 21 PM 1:38

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Corr Inst.
2. Name and location of Court which imposed sentence Orangeburg County Court house, Orangeburg, SC
3. Name(s) of co-defendant(s) (if any) Aaron Beach
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2017-62-38-0760
 - (b) 2017-62-38-1768

ATTEST: TRUE COPY

Wingy B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

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

- (a) 10-28-19 / 17 YEARS CONCURRENT
 (b) 10-28-19 / 17 YEARS 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 Alford plea

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. _____
 ii. _____
 iii. _____

(c) the date of each such result:

- i. _____
 ii. _____
 iii. _____

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

- i. _____
 ii. _____
 iii. _____

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

(a) Counsel did not inform me of my right.

(b) _____

ATTEST: TRUE COPY

Wingia B. Clark
 CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

- (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 Afford PLEA
- (c) Court lacked Jurisdiction for Voluntary manslaughter PLEA
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel's Advice to PLEA Afford was incompetent
- (b) Record Did not contain Strong Evidence
- (c) NO WAIVER
12. Prior to this application have you filed with respect to this conviction: NO
- (a) any petition in a State Court under South Carolina Law? _____
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? _____
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (d) any other petitions, motions or applications in this or any other Court? _____
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

ATTEST: TRUE COPY!

Wingy B. Clark

CLERK OF COURT

ORANGEBURG COUNTY, SOUTH CAROLINA

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

ATTEST: TRUE COPY

Wingja B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA
Revised 3/2003

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) This is my first P.C.R.
 (b) _____
 (c) _____

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

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

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

(a) the name and address of each attorney who represented you:

i. RAY CHANDLER
PAIR JENNINGS

ii. 1060 E. MONTAGUE AVE

iii. # 301 North Charleston, SC 29405

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

i. All, including plea of Alford.

ii. _____

iii. _____

ATTEST: TRUE COPY

Wingy B. Clark
 CLERK OF COURT
 ORANGEBURG COUNTY, SOUTH CAROLINA

Revised 3/2003

the clearly stated application:

VACATE PLEA AND SENTENCE AND REMAND
for A NEW TRIAL

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

No.

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Orangeburg)

I, Lance Miller, 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.

Lance Miller

SWORN to and subscribed before me this

day of Feb

19th
2020

Jenna M. Luke
Notary Public

(L.S.)

My Commission Expires:

09/04/2029

ATTEST: TRUE COPY

Wynona B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

Revised 3/2003

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

I, Lance Miller, 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.

Lance Miller
Applicant

SWORN or affirmed to and subscribed before me this
19th day of Feb, 2020.

James M. Yelke
Notary Public

My Commission Expires: 09/04/2029

ATTEST: TRUE COPY
Wynne B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SOUTH CAROLINA

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS	
COUNTY OF ORANGEBURG	)	FOR THE FIRST JUDICIAL CIRCUIT	
	)		
Lance Miller, SCDC #250647,	)	Case No. 2020-CP-38-00276	
	)		
Applicant,	)	RETURN TO THE APPLICATION	
	)	FOR POST-CONVICTION RELIEF	
v.	)	PARTIAL MOTION TO DISMISS,	
	)	AND MOTION FOR A MORE	
State of South Carolina,	)	DEFINITE STATEMENT	
	)	(Counsel Already Appointed)	
Respondent.	)		

FILED FOR RECORD
WINNIE B. CLARK
JAN 2 2021
SOUTH CAROLINA
CLERK OF COURT

Respondent the State of South Carolina, making its return¹ to the application for post-conviction relief filed by Applicant Lance Miller² on February 21, 2020, and received by the South Carolina Attorney General's office on February 27, 2020, would respectfully show this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections. Applicant was arrested on March 29, 2017, following an investigation into the shooting death of Scott Brooks and the attempted armed robbery and attempted murder of Eric Jamison. During its November 2018 term, the Orangeburg County Grand Jury indicted Applicant for attempted armed,

¹ Respondent's return was due to be filed within sixty days of receipt of Applicant's instant post-conviction relief application. *See* Rule 12(a), SCRCP ("[T]he State of South Carolina shall answer or otherwise respond to an application for post-conviction relief within 60 days after service of the application, if it arises out of a guilty plea, and 90 days if it arises out of a trial."). Now, having completed the return required in this matter, and in light of no demonstrable prejudice to Applicant as a consequence of the delay, Respondent respectfully asks this Court to accept this return as timely filed. *See* S.C. Code Ann. § 17-27-70(a) (establishing that the Court may fix the time in which the State must respond and that "respondent shall file with its answer the record or portions thereof that are material to the questions raised in the application."); *Guinyard v. State*, 260 S.C. 220, 195 S.E.2d 392 (1973) (holding the trial court may extend the time for filing and that the time limit prescribed by the statute is not mandatory, but discretionary with the trial court.).

² Applicant filed this post-conviction relief application *pro se*. Counsel, Arthur K. Aiken, Esquire, was appointed on March 12, 2020. Subsequently, Applicant retained Tommy A. Thomas to represent him in this matter. An order substituting counsel was filed June 1, 2020.

or allegedly armed, robbery (2017-GS-38-0760); attempted murder (2017-GS-38-0761); and murder (2018-GS-38-1768).

On October 28, 2019, Applicant appeared before the Honorable Edgar W. Dickson and pleaded guilty to voluntary manslaughter pursuant to *North Carolina v. Alford*³. Applicant also pleaded guilty, as indicted, to attempted armed robbery. Blair C. Jennings, Esquire and Ray E. Chandler, Esquire, represented Applicant. David M. Pascoe, Jr. and Catherine E. Mubarak of the First Circuit Solicitor's Office prosecuted the case. On October 29, 2019, Judge Dickson sentenced Applicant to concurrent terms of seventeen years' imprisonment for each charge. Applicant did not appeal his guilty plea or sentence.

II. Factual Summary Set Forth During Guilty Plea

The facts were articulated by the State at Applicant's plea hearing as follows:

This incident occurred on Sunday, March 19th. Mr. Miller and a Codefendant, Aaron Beach, were together over at a Mexican restaurant called Pedro's. They eventually came over to Orangeburg County to Scott Brooks' house. From Scott Brooks' house, Mr. Miller and Mr. Brooks decided to go purchase cocaine from Eric Jamison who is the victim of the attempted armed robbery.

Mr. Miller and Mr. Beach had been drinking heavily at Pedro's. Mr. Miller agreed to drive Mr. Beach's truck. They -- the three individuals including Mr. Brooks drove over to Mr. Jamison's trailer park area off of Sprinkle Avenue. It was there that they made the first purchase of cocaine. They came back to Mr. -- to Scott Brooks' house who is the murder victim.

Second purchase was then attempted to be made from Mr. Jamison. And at that point in time, just Mr. Miller and the Codefendant, Aaron Beach, went over to Eric Jamison's trailer park. And when they got there, Mr. Miller -- or the Codefendant says, and Mr. Jamison corroborates that Mr. Miller, the driver, got out of the vehicle, put a gun in his face and told him this is a stickup; to give him the drugs; give him everything. He then -- Mr. Jamison then took off running. Mr. Miller then shot the gun several times at Mr. Jamison. One of the bullets grazes Mr. Jamison's head, he says.

The next morning, Mr. Jamison reports this incident to -- well, I'm sorry. To a friend saying he believed that Scott Brooks set

³ 400 U.S. 25 (1970).

him up. And that friend says go -- does he know who the individuals are who hangs out with Scott Brooks? That individual tells him to go over to Scott's house and ask him who it was.

When Mr. Jamison gets there, he finds Scott Brooks dead. He had been shot in the face. Throughout the course of the investigation, it becomes known to law enforcement that -- essentially that when Mr. Miller and Mr. Beach left the trailer park after having shot at Eric Jamison, they went back over to Scott Brooks' house and Mr. Beach says that Mr. Miller shot Mr. Brooks in the face and killed him.

We have phone records corroborating the timing of the phone call and the incident. We have a DPU surveillance video showing the truck going through the trailer park around the same time. We have the Codefendant's statement. We have Eric Jamison's statement. And at testify -- Aaron Beach would have testified that Mr. Miller was the shooter for Eric Jamison for the attempted armed robbery and tried to steal his drugs. And that he shot Scott Brooks and killed him.

Plea Tr. 90-92.

III. Allegations Raised and Relief Sought in Post-Conviction Relief Application

Applicant timely commenced this PCR action on February 21, 2020. Applicant asserts he is being held in custody unlawfully based on the following reasons:

1. Ineffective assistance of counsel
 - a. "Counsel's advice to plea *Alford* was incompetent"
 - b. Involuntary *Alford* plea
2. Court lacked jurisdiction for voluntary manslaughter plea

Applicant requests relief as follows:

"vacate plea and sentence and remand for a new trial."

Attached herewith and incorporated by reference are the Orangeburg County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; the plea transcript; and the records of this current PCR action. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

IV. Partial Motion to Dismiss in Response to Allegation the Circuit Court Lacked Subject Matter Jurisdiction

The State submits the Applicant's allegation that the "court lacked jurisdiction for voluntary manslaughter plea" is meritless, and therefore should be summarily dismissed. A circuit court has subject matter jurisdiction to convict a defendant of an offense if there is an indictment that sufficiently states the offense, the defendant waives presentment, or the offense is a lesser-included offense of the crime charged in the indictment. *State v. Wilkes*, 353 S.C. 462, 464-465, 578 S.E.2d 717, 719 (2003) (citing *Brown v. State*, 343 S.C. 342, 540 S.E.2d 846 (2001)). In this case, the Applicant was indicted by the Orangeburg County Grand Jury of murder. That indictment was true-billed and signed by the foreman of the Grand Jury. The said indictment contains all the necessary elements of the offense, and further cites the applicable statute. On October 28, 2019, Applicant appeared before the Honorable Edgar W. Dickson and pleaded guilty to voluntary manslaughter, a lesser-included offense of murder. A presumption of regularity attaches to all proceedings in the courts of this State, and it is incumbent upon one who challenges a proceeding to prove his claims. *See, e.g., Tate v. State*, 345 S.C. 577, 549 S.E.2d 601 (2001); *Pringle v. State*, 287 S.C. 409, 339 S.E.2d 127 (1986). Here, Applicant cannot show any irregularity, because the indictments in question are sufficient on their face. Therefore, the Court should summarily dismiss this allegation.

V. Response to Allegations of Ineffective Assistance of Counsel

Applicant alleges he is entitled to post-conviction relief based on ineffective assistance of counsel. Applicant claims plea counsel's advice to plead guilty was incompetent. Applicant also asserts his guilty plea pursuant to *Alford* was involuntary. It is impossible for Respondent to reply specifically to Applicant's claims without more specific facts and detail. Therefore, Respondent

responds generally to Applicant's vague claims and moves below for a more definite statement and for Applicant, through appointed counsel, to file an amended application.

A. Ineffective Assistance of Counsel, Generally

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to “assistance by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair.” *Strickland v. Washington*, 466 U.S. 668, 685 (1984). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. *See generally* S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right, and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel's conduct “was so ineffective as to require reversal” of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Id.* at 687–88; *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown

in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985), extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. *See Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; *accord Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or “prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

B. Involuntary Guilty Plea

“[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced.” *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Accordingly, because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are

entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; *see also United States v. Smith*, 440 F.2d 521, 528-529 (7th Cir.) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman v. State*, 337 S.C. 597, 599, 524, S.E.2d 623, 624 (1999). The 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 court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *See also Wolfe v. State*, 326, S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304

S.C. 433, 434–35, 405 S.E.2d 391, 392 (1991). However, the plea judge “does not have to direct the defendant’s attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea.” *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The test for determining the validity of a guilty plea is “whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is “well established that a guilty plea is not rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–753, or by increasing the risks of punishment on those who do not. *North Carolina v. Alford*, 400 U.S. 25, 37 (1970).

Nonetheless, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)); see also *Jamison v. State*, 410 S.C. 456, 469–71, 765 S.E.2d 123, 129–30 (2014) (observing that “guilty plea[s] must be treated as final in the vast majority of cases” and instructing that caution must be exercised so as not to “undermine the solemn nature of a guilty plea and the finality that generally attaches to a guilty plea”). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” *Id.* at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); cf. *Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer,

and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”).

The voluntariness of a guilty plea, however, “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.” *Harres*, 282 S.C. at 133, 318 S.E.2d at 361. An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 485 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant’s claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant’s claim his lawyer misadvised him).

Surmounting *Strickland*’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” *Lee*, 582 U.S. ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because

of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." *Lee*, 582 U.S. ___, 137 S. Ct. at 1967. Rather, judges should "look to contemporaneous evidence to substantiate a defendant's expressed preferences." *Id.* Thus, in determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres v. Leake*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Based on the record and for the above reasons, Applicant cannot satisfy either requirement of *Hill*, nor show plea counsel was ineffective. Applicant has failed to provide evidence to support his allegations of ineffective assistance of counsel and involuntary *Alford* plea. However, the State requests Applicant, through appointed counsel, file an amended application, where after the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

VI. Motion for a More Definite Statement

Respondent submits Applicant's claims of ineffective assistance of counsel are without merit. However, it is impossible for the State to adequately respond to Applicant's allegations because Applicant has failed to provide specific facts to support each claim. "[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 [applicant] that he was deprived of adequate and effective assistance of counsel is insufficient." *Coardes v. State*, 262 S.C. 493, 497, 206 S.E.2d 264, 265 (1974); *see* S.C. Code Ann. § 17-27-50 (2014) (requiring an

applicant to “specifically set forth the grounds upon which the application is based”); *see also* Rule 8(a)(2), SCRCP (requiring all civil pleadings to include “a short and plain statement of the facts showing that the pleader is entitled to relief”); Rule 71.1(d), SCRCP (“Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary.”).

Accordingly, the State moves for Applicant, through counsel, to amend his application to provide a more definite statement of his allegations of ineffective assistance of counsel pursuant to Rule 12(e), SCRCP and the Uniform Post-Conviction Procedure Act.

VII. Any Future Amendments and Invocation of Discovery Process

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, not Applicant, is the only individual authorized to file amendments to this application. *See* Rule 11, SCRCP. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, the State will request a continuance in the matter. *Id.*, 428 S.C. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, the State reserves the right to move to dismiss this allegation or claim. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRCP. *See also* Rules 15(a)–(b), SCRCP. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State. *See* Rule 15(a), SCRCP.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, the State requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to the State well in advance of the evidentiary hearing. As noted above, the State reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute resulting in undue prejudice to the State. *See Love*, 428 S.C. 231, 834 S.E.2d 196.

VIII. Response to Any and All Other Allegations

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

IX. Conclusion

WHEREFORE, the State moves to dismiss the allegation that the circuit court lacked subject matter jurisdiction. Additionally, Respondent respectfully requests this Court grant its motion for a more definite statement and allow Respondent the opportunity to respond to the more definite statement, if necessary. Once a more definite statement is provided, the State requests an evidentiary hearing be held on the allegations of ineffective assistance of counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMANTHA J. WEIDAUER
Assistant Attorney General

By: 
ATTORNEYS FOR THE STATE
Office of the Attorney General
Post Office Box 11549
Columbia, S.C. 29211

August 26, 2021

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
	)	
COUNT OF ORANGEBURG	)	CASE NO.: 2020-CP-38-00276
	)	
Lance Miller # 250647,	)	
	)	
Applicant,	)	AMENDMENT TO POST CONVICTION
	)	RELIEF APPLICATION
Vs.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Applicant above named in the aforementioned matter, through his Attorney, Tommy A. Thomas, respectfully moves to amend his original Post Conviction Relief Application as follows:

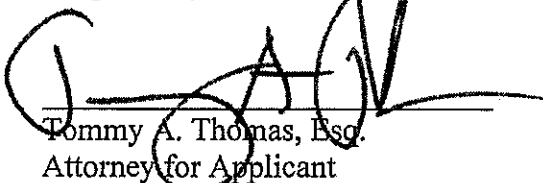
1. The Applicant's Alford Plea was not freely or voluntarily given. It was also not knowingly or intelligently given.
2. Counsel was ineffective for the following reasons which resulted in the Applicant's plea being involuntary.
 - a. Defense Counsel failed to adequately investigate and prepare the case for trial.
 - b. That the Applicant provided a proffer to law enforcement which allowed them to solve the case.
 - i. An Attempted Armed Robbery and Attempted Murder and 2) A murder at a different location.
 - c. That initially the Applicant was to be a witness against a Co-Defendant who committed the crimes. After a change in prosecutors, the case shifted to the Applicant being the culprit and the Co-Defendant was going to testify against him.

- d. Counsel was ineffective in failing to properly present the inconsistencies and factual problems with the Co-Defendant's statements and potential testimony.
- e. That the photo identification was suggestive, and counsel was ineffective in properly presenting this argument to the Court.
- f. That the Applicant was improperly advised to give the proffer to law enforcement which eventually resulted in his arrest.

That as a result of the above, the Applicant was left with no alternative but to enter into a plea and was deprived of his right to trial.

- 3. Any and all other issues as they may arise from the PCR Trial.

Respectfully submitted,



Tommy A. Thomas, Esq.
Attorney for Applicant
P.O. Box 88
Irmo, SC 29063
(803) 732-5507

January 20, 2023

STATE OF SOUTH CAROLINA)
COUNT OF ORANGEBURG)

THE COURT OF COMMON PLEAS

CASE NO.: 2020-CP-38-00276

Lance Miller # 250647,)

Applicant,)

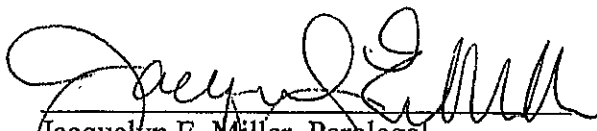
Vs.)

State of South Carolina,)

Respondent.)

CERTIFICATE OF SERVICE

I, Jacquelyn E. Miller, Paralegal to Tommy A. Thomas, Attorney for Applicant, hereby certify that pursuant to an Order of the Supreme Court dated March 20, 2020 regarding Operation of the Appellate Courts During the Coronavirus Emergency, I emailed a copy of an Amendment to Post Conviction Relief Applicant to Danielle Dixon, Esq., at the Office of the Attorney General, at DanielleDixon@scag.gov


Jacquelyn E. Miller, Paralegal
Tommy A. Thomas, Esq.
Attorney for Applicant
7588 Woodrow Street
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(803) 732-5507

January 20, 2023

STATE OF SOUTH CAROLINA	) COURT OF COMMON PLEAS
	)
COUNTY OF ORANGEBURG	) FIRST JUDICIAL CIRCUIT
LANCE MILLER	) NO. 2020-CP-38-00276
	)
VS.	) <u>TRANSCRIPT OF RECORD</u>
THE STATE OF SOUTH CAROLINA	) Post-Conviction Relief Hearing

B E F O R E:

The Honorable Heath P. Taylor, Judge
Orangeburg, South Carolina

DATE: Tuesday, January 24, 2023
9:26 a.m.

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

Tommy A. Thomas, Esquire

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Attorney for the State

Reported by: Cathy J. Provost, RMR, Official Court Reporter

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(No exhibits marked.)

COURT REPORTER LEGEND:

dash -- intentional/purposeful interruption; change in thought
 ellipses ... trailing off
 [ph] phonetically written
 [sic] written as said
 [indiscernible] unable to be understood due to low volume or
 quality of audio

1 -- P R O C E E D I N G S --

2 (Court called to order.)

3 ATTORNEY DIXON: May it please the Court. I'm Danielle
4 Dixon, Assistant Attorney General for the State of South
5 Carolina. This is the case of Lance Miller v. State, docket no.
6 2020-CP-40-00276. Mr. Miller is currently serving a 17-year
7 sentence. He was indicted by the Orangeburg Grand Jury in
8 November of 2018 for murder, attempted murder, and armed robbery.
9 The murder indictment is 2018-GS-38-1768. The other two are
10 2017-GS-38-760 and -761.

11 These charges arose from the fatal shooting of Scott Brooks,
12 and then the attempted robbery and shooting of Eric Jamison.
13 These occurred March 20th, 2017. There was a codefendant, Aaron
14 Beach, who was also indicted on some of these charges.

15 The State's evidence included an identification from the
16 victim from a photo lineup identifying Mr. Miller as the shooter.
17 In addition, the codefendant implicated him and he did ultimately
18 admit to being in the area but he claimed that Beach was the
19 shooter and he didn't-- Beach kind of just acted on his own.

20 He pled guilty before the Honorable Edgar Dickson
21 October 28th of 2019. At that time the State was represented by
22 David Pascoe and Catherine Mubarak, and he was represented by
23 Blair Jennings and Ray Chandler.

24 They did start a *Neil v. Biggers* and *Jackson v. Denno*
25 hearing but during the course of that he did enter into a guilty

1 plea. It was a 2 to 20-year range, and it was an *Alford* plea to
2 the lesser-included offense of voluntary manslaughter, and then
3 he also pled to attempted armed robbery. He got a sentence of 17
4 years on each, concurrent.

5 He did not file a direct appeal. This application was filed
6 February 21st, 2020, and I believe it has recently been amended.
7 And at this time I'll let Mr. Thomas set forth the grounds he
8 wants to go forward on today.

9 ATTORNEY THOMAS: Your Honor, if it please the Court.

10 THE COURT: Yes, sir.

11 ATTORNEY THOMAS: Tommy Thomas here for Mr. Miller. I think
12 we intend to follow the amended application. Those are the
13 issues that we're going to go forward unless something else pops
14 up at trial.

15 THE COURT: Okay.

16 ATTORNEY THOMAS: And if it please the Court, we'd call
17 Mr. Lance Miller to the stand.

18 THE COURT: Very good.

19 LANCE MILLER,
20 having first been duly sworn, was examined and testified as
21 follows:

22 ATTORNEY THOMAS: If it please the Court.

23 THE COURT: Yes, sir.
24
25

DIRECT EXAMINATION

BY ATTORNEY THOMAS:

Q Mr. Miller, you are currently incarcerated?

A Yes, sir.

Q South Carolina Department of Corrections?

A Yes, sir.

Q And you're serving what kind of sentence?

A Seventeen years.

Q All right, sir. And when is your max-out?

A I think it's 2034, maybe.

Q Twenty-when?

A 2034 or '35.

Q Thirty-four. And you're how old now?

A Fifty-two.

Q And how old will you be when you get out?

A Sixty-three, maybe.

Q Sixty-three, okay. And you're serving 85 percent crime?

A Yes, sir.

Q Now, you were arrested and charged with what?

A Attempted robbery, attempted murder, and murder.

Q Okay. And this occurred in two separate incidences?

A Yes, sir.

Q And we'll talk a little bit more about that. Now, you ended up taking a plea?

A Yes, sir.

1 Q And you pled to what?

2 A *Alford. North Carolina v. Alford.* I pled, it was, 2 to 20
3 for each charge.

4 Q On voluntary manslaughter?

5 A Yes, sir. They dropped the murder to manslaughter.

6 Q And then also the attempted armed robbery?

7 A Yes, sir.

8 Q So you're serving time for those two charges?

9 A Yes, sir.

10 Q And you received a sentence of 17 years?

11 A Yes, sir.

12 Q Now, you filed a Post-Conviction Relief action --

13 A Yes, sir.

14 Q -- and you're asking for your sentence to be set aside --

15 A Yes, sir.

16 Q -- and for a new trial, or a trial?

17 A Yes, sir.

18 Q Now, you and I have talked about that and you understand
19 that there's certain risks associated with that --

20 A Yes, sir.

21 Q -- in that you're asking for a trial, you could, in fact,
22 get a trial, could be taken back, and if you're found guilty for
23 these charges, or the murder charge, you could get more time?

24 A Yes, sir.

25 Q You understand that?

1 A Yes, sir.

2 Q And based upon that you wish to go forward today?

3 A Yes, sir.

4 Q All right, sir. Tell us a little bit, just a little bit,
5 about what the State said that you did. I don't want -- we don't
6 want a full narrative, but just kind of give us a little bit of
7 background of what the State said that you did.

8 A They said that I got out of the truck, tried to rob a dope
9 dealer, and shot at him, and he then ran.

10 Q Yes, sir.

11 A And then about a quarter a mile from there a friend of mine
12 named Scott Brooks was killed, and they said I did that.

13 Q Okay. All right, sir. Now, when you were arrested you were
14 charged with what first?

15 A Attempted murder and attempted robbery.

16 Q Okay. And that was from the gentleman who was the drug
17 dealer?

18 A Yes, sir.

19 Q And then when did the murder charges come?

20 A I'm not sure how long. Six months to a year later. I think
21 maybe around six months.

22 Q Okay. Now, during this period of time did you make bond?

23 A Yes, sir, I made bond.

24 Q All right, sir. And did you hire an attorney or were you
25 appointed an attorney?

1 A I hired an attorney.

2 Q And who did you hire?

3 A Ray Chandler and Blair Jennings.

4 Q All right, sir. Now, you were out, so you were able to go
5 and meet with your lawyers?

6 A Yes, sir.

7 Q Now, was Mr. Chandler your lawyer, he was your first lawyer?

8 A He was the one that I hired in the beginning, but he and
9 Blair Jennings, they were in office together, so --

10 Q Yes, sir.

11 A -- he let him take over most of the stuff because he worked
12 down here in Orangeburg.

13 Q And how many times did you meet with him?

14 A I'm going to just guess six or seven.

15 Q Now, during this period of time what did you talk about with
16 the meetings with your attorneys?

17 A Well, we just talked about what happened, and ...

18 Q Did you go over the discovery? Do you understand what I
19 mean by the term "discovery"? The evidence that the State has
20 against you, they have to turn it over to our lawyers.

21 A Oh, yes sir, we went over some of it.

22 Q And so you discussed that with them as far as what the State
23 had as far as proof against you?

24 A Yes, sir.

25 Q And I guess it gets a little bit complicated because it

1 first starts with the drug dealer; is that correct?

2 A Yes, sir.

3 Q And then at some later date it starts with the -- it then
4 begins with the murder charge?

5 A Yes, sir.

6 Q And during this initial time, you actually met with the
7 police; is that correct?

8 A Yes, sir.

9 Q And who was representing you when you met with the police?

10 A Ray Chandler and Blair Jennings.

11 Q They both were representing you at that time?

12 A They were both representing me. Yes.

13 Q Now, you helped to solve this case, didn't you?

14 ATTORNEY DIXON: Object to leading.

15 ATTORNEY THOMAS: I'll rephrase it, Your Honor.

16 THE COURT: Okay.

17 BY ATTORNEY THOMAS:

18 Q What happened when you met with your attorneys? Did they
19 suggest to you that you speak with --

20 ATTORNEY DIXON: Objection, leading.

21 THE COURT: Overruled. We don't have a jury. Let's move
22 on.

23 BY ATTORNEY THOMAS:

24 Q Did one of your attorneys suggest that you speak with the
25 police?

1 A Yes, sir.

2 Q And which attorney was that?

3 A Blair Jennings.

4 Q And what kind of discussions, if any, did you have with your
5 attorney in regards to this meeting?

6 A They said that they had no way to solve the murder, and a
7 friend of mine was killed, so I just didn't want the killer to go
8 loose because he was innocent, but -- so they told me the
9 solicitor would not charge me with murder if I came in and gave a
10 proffer. So then when I got down here to Orangeburg she said the
11 same thing. Then when I got done with it it seemed to be all
12 right with them. Sometime later, months and months and months,
13 they charged me with murder anyways.

14 Q Let me ask you this, a little bit more information. At what
15 point in time, or kind of the timeline of this, was the proffer
16 that was given to the police? Was this earlier in the case or
17 later in the case, or when?

18 A It was early in the case.

19 Q Early in the case. And at that point in time what were you
20 charged with?

21 A Attempted murder and attempted robbery.

22 Q Not the murder?

23 A Not the murder.

24 Q And who was the gentleman that got killed?

25 A Scott Brooks. He was a friend of mine ever since I was

1 little.

2 Q How long had you known Mr. Brooks?

3 A I'm 52. Probably somewhere close to 40 years, 35 - 40
4 years.

5 Q And what kind of friend was he to you?

6 A To me he was a good friend. I mean, him and his mom came
7 over to our house. And they didn't have much. Stayed for a
8 couple weekends here and there. We just always got along.

9 Q So in discussing this with your lawyers what benefit were
10 you going to get out of the giving the proffer?

11 A They weren't going to try me with the murder. That way, you
12 know, that could have been solved. Just not being charged with
13 murder. That's about it.

14 Q Okay. And did you, in fact, speak with the police?

15 A I did.

16 ATTORNEY THOMAS: And, Your Honor, for the Court's
17 information I think all of that information is contained in the
18 first part of the transcript.

19 THE COURT: Okay.

20 ATTORNEY THOMAS: Yes, sir. It's quite lengthy, and it's
21 pretty much in detail.

22 THE COURT: All right.

23 BY ATTORNEY THOMAS:

24 Q See you cooperated with the police. And you said that the
25 solicitor -- you said "she". Who is she?

1 A It was Ashley Cornwell.

2 Q And what was her role in this case?

3 A She was the solicitor over the case for most of the time but
4 then she got fired for something, and then Pascoe took over.

5 Q To what point in this case was she involved in the
6 prosecution? Again, on the timeline.

7 A She was there through about the whole -- I guess I was out
8 close to three years. I'm just guessing. But she was over it
9 just about the whole time. Just toward the end Pascoe took over.

10 Q And you said she left the office?

11 A Yeah. Somebody said she had got fired for misconduct --

12 Q Okay.

13 A -- but at the time I didn't know. I just know the solicitor
14 had changed.

15 Q Now, in this proffer -- could you kind of basically
16 summarize that for us?

17 A In the proffer?

18 Q Yes, sir. What did you tell the police?

19 A Oh. I told them what happened from the morning till the
20 night.

21 Q And, in your information, who committed this crime?

22 A Aaron Beach.

23 Q And who was he?

24 A He was my codefendant.

25 Q And were you with Mr. Beach?

1 A Yes, I was.

2 Q After you gave the proffer to the police what happened, if
3 anything?

4 A I guess they ended up charging him. But they ended up
5 charging me with murder about six months later, but just the same
6 evidence. Nothing changed.

7 Q So he was charged after the proffer? Do you know?

8 A He was charged after the proffer. Yeah. Right.

9 Q And what was he charged with; do you know?

10 A I think the same charges. I ain't for sure about the
11 murder, but attempted murder and robbery, I think.

12 Q And at that point in time do you know what was going to
13 happen to you?

14 A No, sir.

15 Q Now, what effect, if any, did your proffer that you gave to
16 the police, what effect did that have on this case?

17 A I don't know. I just went in there and told the truth and
18 they twisted it around and put it on me and let him go when all
19 the evidence points toward him.

20 Q Did your information help the police solve the case?

21 A No, sir. I mean, could have.

22 Q So at this point in time we get into kind of a trial
23 preparation, and at that point did you -- what kind of
24 discussions did you have with your lawyers about preparing this
25 case for trial?

1 A I was wanting -- we were doing the motions first, and the
2 day before the trial was supposed to begin, and I told -- I told
3 Ray and Blair that there's no way this man picked me out of a
4 lineup. So at the last second a audio video came out where they
5 were interviewing the victim -- I can't remember his name, but --

6 Q By victim, who are you talking about?

7 A Of the attempted murder and robbery.

8 Q Yeah, the drug dealer?

9 A Yeah. He picked me out of a lineup but when they showed
10 audio and video they gave him my name at the beginning of the
11 video, and then Officer Furtick, a lieutenant from the sheriff's
12 department, came in and showed him a picture of me on his phone
13 and asked him was I the one, and he said, It was dark that night;
14 I couldn't see. So he put another picture in front of his face
15 real close to his face, and he said, Yeah, that's him. And they
16 slid a photo lineup where there was six people, and he circled
17 me, the only reason he circled me.

18 Q Do you think it was because he was shown that picture of
19 you?

20 A Yeah. It's the only reason.

21 Q And you discussed this issue with your attorneys?

22 A Yeah.

23 Q Okay. And matter of fact, Mr. Jennings raises this issue at
24 a pretrial motion?

25 A Yes.

1 Q Now, was there any forensic evidence such as DNA or
2 fingerprints or anything like that?

3 A My paperwork. All of my paperwork said the only reason I
4 was arrested was because of the photo lineup.

5 Q Because of the photo lineup.

6 A (Nods head.)

7 Q And did you give a statement to the police? Other than the
8 proffer, did you give a statement to the police?

9 A No, sir.

10 Q And did you go over any witness statements in this case with
11 your attorneys?

12 A Really, there was no witnesses but they had people they had
13 interviewed from the area.

14 Q How about the codefendant, did he give statements?

15 A Yeah, he gave a statement.

16 Q Did you go over those with your lawyer?

17 A Yes, sir.

18 Q And were they consistent or inconsistent?

19 A They were inconsistent.

20 Q Did you talk to your attorneys about that?

21 A Yes, sir.

22 Q How were they going to defend you, What I call the theory of
23 defense? Did you talk to them about what your defense was going
24 to be?

25 A He said that it would be hands in one, hands in all. If I

1 took a trial that they would find both of us guilty and I could
2 get life. So I knew about the *Alford* plea. I didn't want to say
3 I was guilty of something I didn't do so I pled *Alford*,
4 *North Carolina v. Alford*.

5 Q At any time in this were you scheduled to be a witness
6 against the codefendant?

7 A No, sir.

8 Q Okay. And how about as far as plea offers? Were there plea
9 offers made in this case?

10 A They say 2 to 20 on both charges.

11 Q Is that the offer, though, that arises at trial -- before
12 trial?

13 A Yes, sir.

14 Q And prior to that were there any other plea offers that were
15 conveyed to you?

16 A I think in the beginning they said something about 20.

17 Q Okay.

18 A But I can't remember.

19 Q All right. But you do remember the one that was given, made
20 to you, just prior --

21 A Right.

22 Q -- to the trial?

23 A Yes, sir.

24 Q And what was that plea offer?

25 A Two to 20 on both charges.

1 Q And how did the *Alford* plea come about?

2 A I had talked to my lawyer about it and I just knew from the
3 past, you know, if you pled *North Carolina v. Alford* that I'm not
4 admitting I'm guilty; I'm not saying I'm guilty. I pled -- I
5 said it in the courtroom, that I was going to receive 30 to 40
6 years for something I didn't do, so I had to plea.

7 Q Was that important to you?

8 A Yes, sir.

9 Q And why was that important?

10 A One of my best friends is dead and I seen the man blow his
11 head off, and just because I had a past record they punished me
12 for it.

13 Q Now, we've talked about this, and we talked about your plea,
14 Lance. And was your plea freely and voluntarily given?

15 A Yes, sir. It was freely.

16 Q But was it based upon the information that you had? I mean,
17 you're saying now that you want to have your sentence set aside.

18 A Yeah. I should have never did that. I should have never
19 pled.

20 Q Should have never pled?

21 A No. It was a mistake.

22 Q And why do you feel like it was a mistake?

23 A Because my codefendant got 5 years probation, and I got 17
24 when it should have been the other way around. It was his truck
25 and his gun.

1 Q Now, you and I have talked about this at some length about
2 the representation that you received from your attorneys --

3 A Yes.

4 Q -- and you've indicated to me that you feel like that the
5 representation that you received was inadequate --

6 A Yes, sir.

7 Q -- which -- and that led up to you having to take the plea?

8 A Yes, sir.

9 Q Now, how do you feel like it was inadequate?

10 A I just believe, you know, going with the proffer and they
11 still charged me with murder, and then some of the things that
12 were said during the -- when they revoked my bond, and some of
13 the other things that happened, now I can see it. You know. It
14 wasn't right.

15 Q Why was your bond revoked?

16 A They were going in to get the trial extended a little bit,
17 and they put a gun charge on me. They ended up dropping the gun
18 charge. They just put it on me to get my bond revoked.

19 Q Okay.

20 A All I was doing was working for the last couple years.

21 Q Right. How long from then until your trial, timeframe-wise?

22 A From when it happened?

23 Q From the revocation to when you were taken up for trial.

24 A Oh, it had to be two-and-a-half years, I guess.

25 Q So how long were you out?

1 A Out on bond? Yeah, about two and a half.

2 Q Now, you said that you spoke with your attorneys about
3 entering into what you call the proffer agreement --

4 A Yes, sir.

5 Q -- to go and tell them what happened?

6 A Yes, sir.

7 Q Now, you feel like that was the best thing for you to do?

8 A I did at the time but not now.

9 Q And as a result of giving that proffer what happened to you?

10 A I got the worst end of the deal.

11 Q So it turned out not to be the best thing for you?

12 A Yes, sir.

13 Q And how about this thing about, you said earlier that it was
14 your understanding that you would not be charged with the murder?

15 A Yes, sir, they said that. My attorneys told me, and the
16 solicitor, Ashley Cornwell, told me that.

17 Q She told you that?

18 A Yes, sir.

19 Q Was that the reason that you went in to give the proffer?

20 A Yeah. That's one of them.

21 Q Now, you mentioned about the inconsistencies in the
22 statement that was given by your codefendant.

23 A Yes, sir.

24 Q Do you remember what some of those inconsistencies were?

25 A Yes, sir.

1 Q What were they?

2 A He said that I told him to go and kill the man in the
3 trailer, and he said he wasn't going to do it so he said I
4 grabbed the gun and went in there and did it, but he said he
5 heard no gunshot and he said he had the windows down in the
6 truck, with the truck running, with the radio playing. So, you
7 know, I guess he was in the yard having fun listening to the
8 radio while somebody was being killed.

9 He went in there and killed the man right in front of me.

10 Q Did you have any reason to kill him?

11 A No, sir. None.

12 Q Did your attorneys ever talk with you about motive, about
13 what the State felt like your motive was for killing your best
14 friend?

15 A No, I don't think so. I don't think they knew a motive.

16 Q Did you have any reason to kill him?

17 A No, sir.

18 Q Now, you mentioned the photo lineup, and you said that the
19 gentleman who was the drug dealer, he was shown a picture of you?

20 A Yes, sir.

21 Q And when was that? Was that prior or after that he was
22 shown the lineup itself?

23 A It was in the same interview. It was not long before they
24 slid the photo lineup and before he picked me out.

25 Q And as a result of him being shown that picture he selected

1 you?

2 A Yes, sir. That's the only reason he selected me.

3 Q And you discussed this with your lawyers?

4 A Yes, sir.

5 Q You mentioned your past. And how do you feel like that your
6 past hurt you?

7 A That's the only reason I can figure out why they would twist
8 it around and put it on me, is because I had a past record and
9 maybe he didn't.

10 Q And do you know what happened to the codefendant?

11 A They dropped all his charges except for failure to report a
12 crime and gave him five years probation.

13 Q Now, Lance, we talked about this, too. You understand we
14 talked about your post conviction and, you know, what your
15 burdens are today as far as your proof.

16 A Yes, sir.

17 Q And we talked about your plea, whether it was freely and
18 voluntarily given and knowingly and intelligently given; in other
19 words, you did it based upon information, all the information,
20 that you needed to make those decisions.

21 A Yes, sir.

22 Q Do you feel like that it was freely, voluntarily, and
23 knowingly, and intelligently given?

24 A No, sir.

25 Q Okay. And you're asking the Court to grant your post

1 conviction?

2 A Yes, sir.

3 Q All right. We talked about this, as well, Lance. You've
4 been waiting for a long time --

5 A Yes.

6 Q -- for this hearing?

7 A Yes, sir.

8 Q And I'm not suggesting that I have forgotten something but
9 now is your time if I have forgotten to raise something or if you
10 feel like there's something else that the Court should know.

11 A Yeah. I just believe that the photo lineup was done by
12 Lieutenant Furtick, that wasn't right. And he said a witness
13 when there was nobody at the scene, nothing. They were just
14 asking different people in the area, and one of them said they
15 knew me and that I acted black, but it didn't have -- it didn't
16 have nothing to do with the case. But when we got in the
17 courtroom, Lieutenant Furtick sat on the stand, and one of the
18 last things he said was that I acted black. I just don't know
19 what that got to do with anything.

20 I just feel with that being said, my photo lineup, and my
21 codefendant's attorney, that just proves everything, that they
22 were just out to get me.

23 Q Now, the codefendant's attorney was who?

24 A Williams Law Firm right over here.

25 Q Had you spoken to him prior?

1 A I tried to hire Charles Williams right after I got out on
2 bond but he said he couldn't hire me because he had already
3 represented the victim, Eric Jamison, in his case. So my
4 codefendant gets arrested with the same victim, he hires the same
5 lawyer that couldn't represent me. He couldn't represent me
6 because of the victim, but he represented my codefendant with the
7 same victim.

8 And my attorneys went in front of a judge -- and the
9 paperwork that I seen, I was already locked up by then in prison,
10 but the paper said that the judge was gonna let it go for now but
11 if we wanted to, you know, basically press the issue that he
12 would look into it farther. The only reason we were in front
13 of -- they went in front of the judge, Blair went in front of the
14 judge was, because how could he represent him and not me when we
15 got the same victim, but they never pushed the issue after. The
16 judge told him what he told him and he never pushed the issue.
17 He just let it go.

18 So me and my wife talked to Blair, I guess a week or two
19 later after that, he said that my codefendant couldn't use
20 Charles Williams; he had hired another lawyer out of Columbia.
21 So the whole time over them two years or something I thought my
22 codefendant had a different attorney, but the day after I pled my
23 codefendant got five years and he still had Charles Williams. I
24 don't know why they lied to me but that's what they did.

25 ATTORNEY THOMAS: Your Honor, I have no further question.

1 THE COURT: All right. Ms. Dixon.

2 ATTORNEY DIXON: Thank you, Your Honor.

3 CROSS-EXAMINATION

4 BY ATTORNEY DIXON:

5 Q Mr. Miller, how are you today?

6 A All right. How are you doing?

7 Q Good. And I know the lawyer has talked to you about the
8 type of relief the Court could give today if it decided you had
9 proved your case but I want to make sure you do fully understand
10 the type of sentences you could be facing if the State were to
11 come back and try you on these charges and get a conviction.

12 A Yes, ma'am.

13 Q Do you know the maximum sentence for murder?

14 A Life.

15 Q Life. That is correct. How about attempted robbery?

16 A Twenty to 30.

17 Q It's up to 20. How about attempted murder?

18 A Thirty maybe?

19 Q Thirty. So if those were all -- you got the max and they
20 were run concurrent do you know, what you could potentially be
21 facing?

22 A Life.

23 Q Life, plus 50. And what's your sentence you're serving?

24 A Seventeen.

25 Q Seventeen. And knowing that you do still wish to proceed?

1 A Yes, ma'am.

2 Q Okay. And I just want to clarify the timeframe a little bit
3 because you've made an issue about the proffer. When were you
4 arrested?

5 A I can't even remember.

6 Q March 2017, would that seem about accurate to you? Would
7 you agree with that?

8 A Yes, ma'am.

9 Q And do you recall when you gave the proffer?

10 A I don't know. Maybe a month or two. I don't know.

11 Q If I told you that it was August 7th -- August of 2017,
12 would you agree with that?

13 A I -- could be.

14 Q But at the time you gave the proffer you had already
15 arrested, correct?

16 A Not the murder but the other two.

17 Q But of the attempted murder and the armed robbery, correct?

18 A Yes.

19 Q And do you recall who implicated you in those cases?

20 A Eric Jamison.

21 Q Mr. Jamison. And who did he, in fact, tell the police had
22 the gun?

23 A He told them I had it.

24 Q He told the police you had the gun, correct? And let's see.
25 During -- do you recall your guilty plea?

1 A Do I recall my guilty plea?

2 Q Uh-huh.

3 A Yes.

4 Q And you told the Court at that time that you had reviewed
5 the evidence with your lawyers?

6 A I don't remember.

7 Q If I represented to you that that was on page 86 of the
8 transcript would you agree with that?

9 A If it's on there.

10 Q Would you like to read the transcript?

11 A If it's on there, it's on there.

12 Q And then you told the Court that your lawyers had explained
13 to you your constitutional rights, correct?

14 A Did they explain it?

15 Q You told the Court that they explained them, correct?

16 A I guess.

17 Q That's on page 86 of the transcript. And you told the Court
18 that they had explained to you the law, correct?

19 A Yes.

20 Q And you told the Court that they had answered your
21 questions?

22 A I ...

23 Q And, in fact, I think you told the Court you understood
24 everything they told you?

25 A Yeah.

1 Q And that is on page 87 of the transcript. And let's see.
2 You did say today that you knew from prior experience about
3 *Alford* so I guess based on that you had prior experience in court
4 before, correct?

5 A No. I didn't say that I had prior experience with an *Alford*
6 plea. I said, you know, somebody told me about the *Alford* plea.

7 Q Okay. But you were familiar with jury trials and what that
8 was and all those types of things at the time of your plea --

9 A Right.

10 Q -- and you knew you had a right to a jury trial, correct?

11 A Right.

12 Q And you told the Court no one had promised you anything?

13 A Nobody promised me nothing.

14 Q And that's on page 88 to 89 of the transcript. You told the
15 Court no one had threatened you; no one was forcing you to plea?

16 A That is right.

17 Q That is correct.

18 ATTORNEY DIXON: I have nothing further.

19 THE COURT: All right. Mr. Thomas, anything on redirect?

20 ATTORNEY THOMAS: Your Honor, one thing on redirect.

21 **REDIRECT EXAMINATION**

22 BY ATTORNEY THOMAS:

23 Q Counsel asked you about, you know, you told the judge that
24 nothing had ever been promised you.

25 A Right.

1 Q Did you ever talk to any of your attorneys about the promise
2 that was made to you about if you gave the proffer?

3 A Yeah. They said that I wouldn't be charged with murder.

4 Q Yeah, but did you talk to your attorneys about that?

5 A Yes, sir.

6 Q What did they say?

7 A Oh, he said they didn't know why they charged me with
8 murder.

9 Q But did anybody ever raise anything about a motion or
10 anything to say that they had promised you that you were not
11 going to be charged with murder?

12 A No, sir.

13 Q Okay.

14 ATTORNEY THOMAS: Nothing further, Your Honor.

15 THE COURT: Anything on recross?

16 ATTORNEY DIXON: Nothing further from the State.

17 THE COURT: All right. Mr. Miller, before you step down,
18 your lawyer and the State have asked you but I also need to make
19 sure you understand when you ask for post-conviction relief there
20 are two things that can happen. If I find you're not entitled to
21 post-conviction relief you serve the remainder of your sentence.

22 MR. MILLER: Yes, sir.

23 THE COURT: If I grant your application for post-conviction
24 relief we would vacate your conviction and sentence and send this
25 case back, potentially starting from the beginning.

1 MR. MILLER: Yes, sir.

2 THE COURT: That means if any of the charges you didn't plea
3 to, they could be applicable, and you would be facing the
4 original charges again, which I think the Attorney General just
5 went through that you could potentially be facing life plus 50
6 years.

7 MR. MILLER: Yes, sir.

8 THE COURT: And you understand that?

9 MR. MILLER: Yes, sir.

10 THE COURT: And you want to move forward?

11 ATTORNEY THOMAS: Yes, sir.

12 THE COURT: Okay. Very good. You can step down.

13 Mr. Thomas.

14 ATTORNEY THOMAS: Your Honor, if it please the Court, we
15 would call Mr. Ray Chandler to the stand.

16 THE COURT: All right.

17 RAY E. CHANDLER,

18 having first been duly sworn, was examined and testified as
19 follows:

20 ATTORNEY THOMAS: If it please the Court, Your Honor.

21 DIRECT EXAMINATION

22 BY ATTORNEY THOMAS:

23 Q Good morning, Mr. Chandler.

24 A Hey, how are you?

25 Q Good. Good.

1 A Great.

2 Q Just a few questions about your representation with Lance
3 Miller. Do you remember how long you represented him?

4 A Several months, maybe more than that. I think we started --
5 and my file indicates that I first retained payment was the 7th
6 of July of 2019.

7 Q Okay. Okay. Now, were you with him when you did the
8 proffer --

9 A Yes.

10 Q -- with the police?

11 A Yes.

12 Q How did that come about?

13 A I believe it was with the solicitor's office --

14 Q With the solicitor's office, okay.

15 A -- and the investigator. Yes.

16 Q And how did that come about?

17 A We were attempting to work out -- it looked we were going to
18 get a murder indictment, and we were trying to get ahead of the
19 game, so to speak, with cooperation in it. We had this other
20 thing pending, you know, with the robbery, you know --

21 Q Right.

22 A -- and we were hoping that -- they were intertwined, so it
23 was my hope that we would, by giving a proffer, get ourselves in
24 a much better position in case we had a trial because it was
25 going to be two guys; one guy saying it happened, right, because

1 out of that, it was somewhat sketchy. There were three of them.
2 One guy's dead, so ...

3 Q Now, how far had the police gone, if any, in putting these
4 two crimes together, being the drug dealer and the murder at that
5 point?

6 A I could not tell you.

7 Q Okay.

8 A I really could not tell you because we did not have all of
9 the discovery at that point. I just could not.

10 Q Okay. Okay. And Mr. Miller had testified that he, through
11 his proffer, had assisted in them kind of tying all that
12 together. Is that what happened with the proffer?

13 A Yes.

14 Q Okay. So was it beneficial to the solicitor and the
15 investigator?

16 A I thought it was.

17 Q And what did you think Mr. Miller was going to get out of
18 it?

19 A Of course, in a proffer, under those circumstances, if we
20 had gotten a promise at all it would have been a proffer, and I
21 was hoping to avoid a conviction for murder.

22 Q Yes. Yes, sir.

23 A I've known Lance since he was a teenager.

24 Q Yes, sir.

25 A I know his mother's father, his sisters, represented his

1 younger brother, represented Lance before. I think the world of
2 his family. His wife, Katrina [ph], is a saint in heaven. But
3 the fact of the matter is is Lance had a significant record, had
4 been in prison before --

5 Q Yes, sir.

6 A -- and this was -- this could have been a train wreck, in my
7 mind. You know, had the stars lined up, this could have been a
8 train wreck.

9 Q Yes, sir. Mr. Miller testified that he was told, I guess,
10 by counsel that if he gave the proffer that he would not be
11 charged with murder. Is that -- was that representation made?

12 A I don't recall that representation. I didn't make it.

13 Q Okay. Were you there?

14 A Yes, sir. I handled that.

15 Q Oh, did you? And was Mr. Jennings there?

16 A No.

17 Q All right.

18 A Please understand this: That Blair and I were partners
19 practicing law. Probably one of the finest lawyers I ever
20 practiced with integrity-wise, and certainly one of the smartest.
21 And I was trying to work through in my later -- for practicing 50
22 years --

23 Q Yes.

24 A -- but trying to work through the bad side of this, right.
25 And the real cross-examination, et cetera, because Blair was a

1 former prosecutor, you know, worked in this jurisdiction, and he
2 had worked for the solicitor that we had there, and I thought
3 that was a direct advantage in bringing him in and allowing him
4 to take the part in the robbery portion of this. Have I answered
5 your question?

6 Q I think so. So I guess for lack of better words,
7 Mr. Jennings kind of did some of the heavy lifting in this case?

8 A He always knew that in some of these cases he did most of
9 the heavy lifting.

10 Q Yes, sir. Yes, sir.

11 A We are equally responsible in this case.

12 Q Yes, sir. Yes, sir. Let me ask you about the assistant,
13 the first assistant solicitor. Who was that?

14 A You know, I cannot remember that young woman's name to save
15 my life. I went through and looked in my file. I remember,
16 though, that she was dismissed.

17 Q Yes, sir.

18 A I recall that because I had a bunch of trouble getting in
19 contact with her post this and didn't realize that was the case.
20 Does that make sense?

21 Q Yes, sir. Yes, sir.

22 ATTORNEY THOMAS: Your Honor, if I can beg the Court's
23 indulgence just for a second?

24 THE COURT: Yes, sir.

25 ATTORNEY THOMAS: Your Honor, I have no further questions.

1 THE COURT: All right. Ms. Dixon.

2 ATTORNEY DIXON: Yes, Your Honor. And we were also going to
3 call him in our case in chief. Can he we just go ahead and cover
4 all that in cross-examination?

5 THE COURT: I think that would be appropriate. Yes.

6 CROSS-EXAMINATION

7 BY ATTORNEY DIXON:

8 Q Mr. Chandler, how are you doing today?

9 A Pretty well, thank you. I hope you are.

10 Q I am, thank you. And I just want to clarify this timeline.
11 At the time of the proffer had Mr. Miller already been charged
12 with anything?

13 A I just can't recall that.

14 Q Okay. Do you recall that he was first arrested on the
15 attempted armed robbery and the attempted murder?

16 A Yes. That's correct. I'm sorry. I thought you were
17 talking about the murder portion.

18 Q No, no, no. The attempted murder and the attempted armed
19 robbery.

20 A No, ma'am. No, ma'am.

21 Q You recall that he had been already arrested on those?

22 A Yes, ma'am.

23 Q And who did the victim in that case implicate as the person
24 who held the gun?

25 A The victim implicated Lance, but it was squirrly --

1 recollection -- and I think Blair made this point very well --
2 there were two cops involved in this, as I recall. This has been
3 some years ago -- but there was one talk to go Lance, you know,
4 in the room, right, and this second guy comes in. There's a
5 video of it, I think. The second guy comes busting in, right,
6 and bows up, right and starts to hack on my client, this other
7 guy, and throws down, I think, a cellphone, right. And it was
8 kind of like, here, you know.

9 And so the gesture of it, you know, in and of itself was
10 kind of, you know, just not the best police work that you would
11 want, I would think, at least not caught on video.

12 Q Right. And so did y'all discuss that with Mr. Miller in
13 terms of --

14 A We did. We did. Lance is a smart guy, okay. And we --
15 since I've known him for so long we speak pretty candidly. I
16 mean, it's not like one of these things where you have to build
17 and build and build a relationship with a client. One of the
18 reasons that makes this so hard to take, and it makes the
19 sentence so hard, in my mind, is because of my personal
20 relationship with him.

21 Looking at what the alternative would have been, you know, I
22 might, if I didn't know him, hadn't known him for 25 or 30 years,
23 I might say, Well, heck, that was pretty good; go on to the next
24 one. It's hard to do when you know a family that well.

25 And in these cases I have to say, in all candor, we were

1 Q Okay.

2 A -- at best. Does that make sense?

3 Q Right. And I think if y'all had gone to trial, did you
4 intend to use any of his inconsistent statements at trial?

5 A Absolutely.

6 Q Okay.

7 A And the victim was a crack dealer, right, in a crack
8 neighborhood and just -- in my mind just wasn't the best witness
9 on the planet.

10 Q And is that something y'all would use to --

11 A Absolutely.

12 Q And then do you recall the pretrial hearing that began as a
13 *Neil v. Biggers* and a *Jackson v. Denno* hearing?

14 A Yes, for the identification issue.

15 Q And do you recall, I believe, Mr. Jennings handled that
16 portion, the in-camera portion?

17 A Yeah. We both worked on it, but Blair -- that's his strong
18 suit, and I was sitting right there. Yes.

19 Q And as a lawyer what did you think of his cross-examination
20 of him?

21 A I thought he was darn good.

22 Q And did he attempt to bring out the fact that the State had
23 first shown the picture on the camera to the victim before he
24 identified him?

25 A He really did. Let me tell you how this was, because my

1 right down the numbers, talking about how this was going to come
2 up. And really and truly, I thought Blair made a lot of headway
3 in it. I think Lance would agree with that, that we did.

4 Q Do you think that that had any impact on the State's
5 decision during that pretrial hearing to decide to allow that
6 lower range as part of the negotiations --

7 A Yes, ma'am.

8 Q -- the fact that cross-examination kind of led to the State?

9 A Yes, ma'am.

10 Q And in terms of the guilty plea itself, do you have any
11 reason to think that he did not understand what he was doing?

12 A I don't. And let me tell you the thing that I was not
13 present for. In your courtroom downstairs there's a holding area
14 that's incredibly uncomfortable, you know, to get around to and
15 talk to people in so, you know, when you get in these things
16 where everybody's in court and the place is full and somebody's
17 saying, Let's do this, let's do that, right, Blair went around to
18 that area while I was in the other room and did some additional
19 talking to Lance, you know, at that point. And I mean additional
20 talking rather than what was discussed before the hearing, you
21 know, came up.

22 Q Okay. Let's see. And do you think that -- ultimately, did
23 you believe at the time that this was the right decision for him,
24 the guilty plea?

25 A Yeah. Was I happy with it? You know, when you hang around

1 this profession as long as I do, everybody, I hear all these
2 folks saying it's kind of placating. Well, you know, there's
3 never such a good thing as a correct plea, or if you've got a
4 settlement nobody's really happy with it, you know.

5 Well, from my standpoint sitting here, I still feel as badly
6 about that -- I think it was 17 years, right -- I felt as badly
7 about it then as I do today and I think that, in part, is because
8 of my personal relationship with the family.

9 Q Right.

10 A And one of the reasons that I asked Blair to kind of step in
11 because, ma'am, I will tell you, that was a tough decision
12 personally for me. It was one of those calls that we every now
13 and then have to make. Some of them are just obvious as the day
14 is long. This was a tough one.

15 Q And when he made that decision do you believe he understood
16 the consequences of it and what he was giving up --

17 A He did.

18 Q -- the jury rights?

19 A He did.

20 Q And --

21 A I think -- was there something in that sentence, that one of
22 them was a cap of 20? I think that one of them was a cap, right,
23 because I think at that point somebody wanted 20.

24 Q Uh-huh.

25 A And I went back, or Blair went back, and we did a cap of 20,

1 so my goal and hope and prayer was, you know, when you've got a
2 cap, you're dropping downward --

3 Q Right.

4 A -- right, and you're not bumping up toward 20.

5 Q Right.

6 A In that -- and I know it seems insignificant when you're
7 looking at 17 versus 10 or 12, but in that -- regard I think we
8 saved 3 years. I do.

9 ATTORNEY DIXON: I have nothing further, Your Honor. Thank
10 you. Thank you.

11 THE COURT: Anything on redirect?

12 ATTORNEY THOMAS: Your Honor, just a couple.

13 THE COURT: Yes, sir.

14 **REDIRECT EXAMINATION**

15 BY ATTORNEY THOMAS:

16 Q Mr. Chandler, kind of going back to the proffer, was the
17 proffer, or the talking with the solicitor and the investigator,
18 was that your idea?

19 A Yeah.

20 Q Okay. All right.

21 A It was.

22 Q It was your suggestion?

23 A Yes.

24 Q And he took an *Alford* plea?

25 A Yes, he did. I recall that now that you mention it. I

1 would not have come up with that on my own.

2 Q And it was something that he suggested?

3 A He was resistant, you know, as he had been through the whole
4 process about the connection with the shooting.

5 Q Of his best friend?

6 A Well, it wasn't his best friend --

7 Q Okay.

8 A -- but it was somebody who was his brother's close friend
9 and Lance knew forever. You know, as young men, they ate dinner
10 at Ann's house, and so the young man was close. It gave me every
11 indication, when I'm talking about two people, right, in the case
12 where the guy who didn't get charged, right, owned the darn gun,
13 right, and, you know, brought the thing to the party, and Lance
14 knew the fellow for 16 or 17 years. Now, I may be off on some of
15 that --

16 Q Yes.

17 A -- led me to believe, knowing Lance, that if I had two guys
18 and he wasn't the one that was doing the murder, right. On the
19 other hand, I've got the idea, if we go to trial, Lance has got
20 not a good record, you know, had been in prison, definitely
21 difficult, if not impossible, for him to testify in that
22 circumstance.

23 And these guys were filthy high on alcohol and drugs, you
24 know, filthy high on alcohol and drugs. So there I am. Was I
25 responsive to that?

1 Q Yes.

2 A I hope so.

3 Q Yes. Now, you said that for the sentencing and the plea,
4 that this was a tough decision on your part?

5 A Sir?

6 Q Did you say this was a tough decision, the 17 years, I
7 think, is what you cited?

8 A It was tough.

9 Q Tough.

10 A It was absolutely -- I mean, you know, I had to go back and
11 tell his mama, you know, his sister, I've known since she was 17,
12 their son was, you know -- I don't know, Lance was in his 40s,
13 late 40s, maybe --

14 Q Yes, sir.

15 A That we were going to look at a 17-year sentence and be 62
16 when you get out. Of course it was.

17 Q Yes, sir. Yes. If the case had gone to trial there were
18 defenses that y'all could have put up?

19 A There were.

20 Q Yes?

21 A There were defenses. Right.

22 Q Yes, sir.

23 A And we hoped, with the combined experience that Blair and I
24 have, right, that we could find defenses. One of the things that
25 was unfortunate is -- I don't remember the codefendant's name,

1 forgive me, but they were riding around that evening earlier,
2 right, and the codefendant was driving, had the gun, and there
3 was a guy and his girlfriend out in the front yard -- this was
4 around July, I think, right in the front yard -- and that the
5 codefendant had had some words with this guy, right, reaches out
6 and pops off two rounds, you know, right in this man's face, you
7 know, out in front of God and everybody that evening.

8 And so -- but the time came for the thing to go to trial,
9 the guy passed away. And so I'm sitting there for six or eight
10 months riding that pony as hard as I could and, you know, had
11 done the background work on it that Lance gave me, because I
12 think the guy had some screwy name that was not his real name,
13 cabbage Patch or something.

14 Q Yes.

15 A You know, my heart sank, you know, when I learned of that
16 guy's passing because it could be ponied up, as I think, right.

17 Q Yes.

18 A Does that make sense?

19 Q Yes, sir.

20 A It could be ponied up to show the violent tendency of this
21 other person and the fact that he possessed the gun.

22 Q The codefendant?

23 A Yes, sir.

24 Q Yes.

25 A So you're asking if I had defenses.

1 Q Yes.

2 A You know, we can talk about the time was close, you know, it
3 was that evening, you know, and I think that might have at least
4 been something to move along that I lost.

5 Q Mr. Chandler, thank you.

6 ATTORNEY THOMAS: I have no further questions, Your Honor.

7 THE COURT: Anything on recross, Ms. Dixon?

8 ATTORNEY DIXON: Just real quick.

9 RECROSS-EXAMINATION

10 BY ATTORNEY DIXON:

11 Q Just to clarify, whose decision was it to plead guilty?

12 A Ma'am?

13 Q Whose decision was it ultimately to plead guilty?

14 A I'm having trouble hearing you.

15 THE COURT: It's harder to hear with this glass.

16 THE WITNESS: I'm deaf as a post, and I'm trying hard to
17 read your lips, and it's dirty glass.

18 THE COURT: It's the glass.

19 BY ATTORNEY DIXON:

20 Q Whose decision ultimately -- who decided to plead? Whose
21 decision was that?

22 A All of us collectively. And he agreed.

23 Q He agreed. Okay.

24 THE WITNESS: He did.

25 ATTORNEY DIXON: Nothing further.

1 THE WITNESS: And it was a reticent, reluctant conversation
2 on all sides.

3 THE COURT: Anything else, Mr. Thomas?

4 ATTORNEY THOMAS: No, Your Honor.

5 THE COURT: All right. Mr. Chandler, you can step down.

6 THE WITNESS: Thank you, sir.

7 ATTORNEY THOMAS: Your Honor, if it please the Court, that's
8 the applicant's case.

9 THE COURT: Okay.

10 ATTORNEY DIXON: Your Honor, the State would call Blair
11 Jennings.

12 THE COURT: Come on up, Mr. Jennings.

13 BLAIR C. JENNINGS,

14 having first been duly sworn, was examined and testified as
15 follows:

16 THE COURT: All right, Ms. Dixon.

17 DIRECT EXAMINATION

18 BY ATTORNEY DIXON:

19 Q Mr. Jennings, how are you today?

20 A I'm good.

21 Q Good. And can you tell us briefly how you got involved in
22 Mr. Miller's case?

23 A Ray Chandler, we were partners at the time. I was in
24 Charleston primarily and he was practicing in Manning, and he
25 told me his long-time client, Mr. Miller, had been charged with

1 the attempted murder and attempted armed robbery and asked me to
2 come to meet with him.

3 Q And do you recall how many times you met with him over the
4 course of your representation?

5 A Through to trial it was at least 10 to 20, if not more.

6 Q Okay. And do you recall the State's evidence?

7 A Yes.

8 Q And briefly what was that?

9 A Well, originally he was charged with attempted murder and
10 attempted armed robbery. I believe Eric Jamison was alleged
11 victim of that case, and that case was primarily based on his
12 identification of Lance. And that was what he was charged with
13 the first time we met in May of 2017.

14 Q And did you review all of that with Mr. Miller, all of that
15 evidence?

16 A Well, we did. At that time we didn't have any of the
17 discovery. We talked kind of generally and Lance told us the
18 course of the events that had played out, including the murder.

19 And I think it was a couple weeks later that the preliminary
20 hearing was scheduled on the attempted murder and attempted armed
21 robbery, and I went and handled that. And that was the first
22 chance I had to talk to Detective Stucke [ph], I believe, Stucke,
23 and that that was when the conversation started about the
24 potential proffer.

25 Q And did you discuss -- whenever you got the discovery did

1 you discuss that with Mr. Miller?

2 A Yes.

3 Q And did you discuss with him the strengths and weaknesses of
4 the State's case?

5 A We did.

6 Q And did he have any defenses?

7 A Yes. I mean, the discovery -- and that was one of the
8 issues with the case. I mean, that process of the discovery
9 started in, I think probably, 2018 is when we got the initial
10 disclosure, and it progressed all the way until September of
11 2020, I think, which was when we finally got the videos, probably
12 eight or ten videos from the sheriff's office that included the
13 video of the questioning of Mr. Jamison that raised the
14 significant issues about his identification.

15 Q Let's see. And did y'all discuss with him the defense --
16 any defenses he may have?

17 A We did.

18 Q Is there anything he asked you to investigate?

19 A Yes. The majority -- one of the main problems with the case
20 was that there was no real evidence connecting either Mr. Miller
21 or Mr. Beach. The anecdote that Mr. Chandler just relayed was
22 probably the main sort of corroborating thing that we tried to
23 come up with, and we were able to corroborate part of it but as
24 the time for the trial approached we weren't able to present that
25 in court.

1 Q And then in terms of the identification, is that something
2 y'all intended to challenge through trial if ...

3 A Yes. I thought that was a significant issue.

4 Q And y'all actually did start that hearing, correct?

5 A Correct.

6 Q And do you recall any conversations in chambers? Did y'all
7 have any idea how the judge might rule on that?

8 A Well, we had briefed it, obviously, before the trial, and
9 our position was that that procedure was unduly suggestive. Now,
10 there's a long line of cases that says even in a suggestive
11 identification procedure if there are enough prior encounters
12 between the person identifying the suspect, that that can
13 override that suggestiveness and allow the identification in
14 court. And Judge Dickson had indicated to us based on what he
15 heard and his research that his inclination was to allow the
16 identification.

17 Q Okay. In terms of the guilty plea itself, did you discuss
18 with Mr. Miller the constitutional rights he would be waiving by
19 pleading guilty?

20 A Yes.

21 Q And do you believe he understood?

22 A He did.

23 Q And did you discuss with him the potential sentence he would
24 face?

25 A Both on the plea and his exposure had the trial continued.

1 Yes.

2 Q And do you believe he understood these conversations?

3 A Yes.

4 Q And did you ever have any concerns of his ability to
5 understand?

6 A I did not.

7 Q And ultimately whose decision was it to plead guilty?

8 A Mr. Miller's.

9 Q And do you believe he understood the consequences of that?

10 A Yes.

11 ATTORNEY DIXON: Nothing further from the State.

12 ATTORNEY THOMAS: Your Honor, if it please the Court.

13 THE COURT: Yes, sir, Mr. Thomas. Sorry. I was making a
14 note.

15 CROSS-EXAMINATION

16 BY ATTORNEY THOMAS:

17 Q Good morning.

18 A Good morning.

19 Q Yeah, thank you for being here. So when you got involved in
20 the case this was still fairly early on?

21 A I think he had been arrested in March, and I believe the
22 first time I met Mr. Miller was kind of the middle of May.

23 Q Okay. All right. And he was out on bond at that point in
24 time?

25 A That's correct.

1 Q So there wasn't any impedence to you being able to meet with
2 him and discuss kind of what was going on?

3 A No, sir.

4 Q Now, it's two cases, actually; it's the drug dealer and the
5 alleged attempted armed robbery of him, and then the murder of
6 the other gentleman?

7 A Correct.

8 Q And the murder involved somebody that Lance was friends
9 with?

10 A Yes.

11 Q Was there any motive? Were they ever able to come up with
12 any kind of motive as to why he would kill his own friend?

13 A Well, I think the motive, depending on -- in either
14 direction was that Mr. Brooks, that individual, was the person
15 who connected Mr. Miller and Mr. Beach with Mr. Jamison that
16 night to purchase drugs.

17 Q Right.

18 A So depending on whose rendition of the story you believed,
19 they were back at Mr. Brooks's house because after the shooting
20 occurred with Mr. Jamison Mr. Brooks was sort of the person that
21 could connect the dots, and that was their concern if law
22 enforcement got involved.

23 Q And it was Lance's contention that the codefendant is the
24 one that got out of the car, shot at the drug dealer, tried to
25 rob him; is that correct?

1 A That's correct.

2 Q And then it was also Lance's position that they went back
3 over to his friend's house, and it was the codefendant, the
4 drug -- not the drug dealer but it was the codefendant with him
5 who shot his friend?

6 A Correct.

7 Q And as far as evidence, I think you indicated that there was
8 no real evidence connecting Lance to either of these crimes?

9 A No. I mean, the only evidence was Mr. Jamison's
10 identification of Mr. Miller, so that was significant evidence.
11 That was saying from a forensic standpoint or other eyewitness.

12 Q That identification was sketchy, at best?

13 A Once we had the full picture, I thought that it was unduly
14 suggestive. Now I was --

15 Q In reading the transcript, there was some discussion about
16 the gentleman who was a drug dealer calling a friend of his and
17 saying this is what happened and this is what this guy looked
18 like, and that friend is the one who told them that it sounded
19 like Lance Miller?

20 A Correct.

21 Q So he never was really able to identify him except for the
22 photo lineup?

23 A Yes. He identified him initially. And as Mr. Chandler
24 outlined, a detective comes in with a cellphone and says, Is this
25 the person?

1 Q Right.

2 A And he says yes. And then they show him a six photo lineup,
3 and he makes the identification. But prior to that, as he's
4 giving a description of how everything occurred and the car, or
5 the truck, that was involved, he says that he spoke to this other
6 individual and the other individual said that sounds like Lance.

7 Q Yes, sir. Yes, sir. And in reading the transcript, it
8 seems that when they're talking about the proffer, it seems like
9 they're talking about helping law enforcement to close this case;
10 that they were kind of stuck.

11 I think there's some reference to, this has been going on
12 for a while, they hadn't made any headway, and the proffer was
13 Lance was allowing them to bring some closure to this case, to
14 the family, or something along those lines?

15 A Well, it was two prong because Mr. Beach had not been
16 charged with the attempted murder and attempted armed robbery,
17 and that is who Lance said was responsible. He had not been
18 charged because Mr. Jamison had not identified him either being
19 in the truck or shooting the gun, so the proffer was twofold,
20 obviously, to provide evidence implicating Mr. Beach --

21 Q Yes.

22 A -- we hoped would turn Mr. Miller into a witness in that
23 case, and then also connecting the dots on what happened when
24 they went back to Mr. Brooks's house.

25 Q Did they know at that point in time who -- or, did they have

1 a suspect in who had committed the murder?

2 A They did not.

3 Q Think did not?

4 A No, sir.

5 Q So the proffer provides them with a suspect?

6 A Correct.

7 Q The codefendant?

8 A Yes, sir.

9 Q And places Lance both at the attempted armed robbery of the
10 drug dealer and at the scene of the murder?

11 A Yes.

12 Q Okay. And what I have trouble with is why was the proffer a
13 good idea?

14 A Well, under the terms of the proffer, obviously nothing that
15 Mr. Miller says can be used against him as long as he's fully
16 forthright, and at the time he had already been identified by the
17 victim of the attempted murder and the attempted armed robbery.
18 Mr. Beach had not been charged. There was no evidence
19 implicating him.

20 And so as we discussed with him at that point, with the
21 evidence that it wouldn't be able to be used against him, it was
22 a worthwhile strategy.

23 Q Right. And as a matter of fact, he was, Lance was,
24 scheduled to be the witness against the codefendant under the
25 first solicitor. Is that kind of where that was going?

1 A When I was dealing with Ms. Cornwell initially she was
2 hesitant to proffer him just because she felt her case against
3 him with the attempted armed robbery and attempted murder was so
4 strong. Now, we had Lance go through a polygraph process on our
5 own, which ultimately the expert rendered an opinion that he was
6 telling the truth as to his actual scenario. And so once I went
7 back to her with that information, then she agreed to go through
8 the proffer process with Mr. Miller.

9 Q And, as a matter of fact, the codefendant failed a
10 polygraph?

11 A Yes.

12 Q And neither one of those could be used in court?

13 A Exactly. But following the proffer Mr. Beach was
14 indicted -- or charged with attempted murder, attempted armed
15 robbery, and murder.

16 Q So when did this change? That's what -- for what it's
17 worth, you know, the proffer basically is kind of set forth in
18 the transcript, what he says --

19 A Yes, ma'am.

20 Q -- what Lance says, which seems to be pretty straightforward
21 and believable and makes sense to me. So how or when did this
22 change and Lance became the triggerman?

23 A Well, when Mr. Beach was arrested, then he provided -- or
24 interviewed with law enforcement -- and I think at one point did
25 fail a polygraph according to what they said -- and he

1 ultimately, you know, basically he gave one rendition of what
2 happened, and Mr. Miller gave another rendition of what happened.

3 Q Right.

4 A In that process, Ms. Cornwell resigned from the solicitor's
5 office and then the case was taken up by Ms. Mubarak and
6 Solicitor Pascoe. And I met with them several times trying to
7 reiterate our position and to keep Lance sort of in the posture
8 of where he was. Now, we had never had any kind of offer from
9 Ms. Cornwell as far as a resolution, you know, like where he
10 wouldn't have gone to prison as part of some plea, but I don't
11 think -- from the conversations, my impression was that they were
12 never able to find some element of Mr. Jamison's identification
13 of Lance's firing the gun that outweighed the other information
14 pointing to Mr. Beach. They found him credible, essentially.

15 Q They found Beach credible?

16 A Mr. Jamison.

17 Q Mr. Jamison?

18 A Who identified Mr. Miller as getting out of the truck with
19 the gun, trying to rob him, and firing a shot.

20 Q So that became kind of the evidence of the case then?

21 A Correct.

22 Q And then Lance's proffer allows the police to tie him from
23 that incident to the murder?

24 A And Mr. Beach's statement.

25 Q And Mr. Beach's statement.

1 A But the proffer was never going to be used -- was not going
2 to be used against him in the trial. Solicitor Pascoe had agreed
3 that the terms of that were clear and that that information was
4 not going to be used.

5 Q Lance testified that he felt, or he understood, that there
6 was a deal where if he gave the proffer he was not going to be
7 charged with the murder. Is that true?

8 A The evidence, or what he said would not be used against him?

9 Q Yeah.

10 A Now, had Mr. Beach not given a statement, I don't think he
11 would have ever been directly indicted for the murder.

12 Q Okay. And so the fact that there was a promise that he
13 wouldn't be charged with the murder would not have been -- would
14 not -- in relation to the proffer, would not have kept him from
15 being charged with the murder?

16 A We were never made any representation that he wouldn't be
17 charged with murder.

18 Q All right.

19 A Just that what he said would not be used against him.

20 Q Would not be used against him?

21 A Correct.

22 ATTORNEY THOMAS: Your Honor, if I can beg the Court's
23 indulgence just for a second?

24 THE COURT: Yes, sir.

25 ATTORNEY THOMAS: I have no further questions, Your Honor.

1 THE COURT: Anything on redirect?

2 ATTORNEY DIXON: Nothing further from the State.

3 THE COURT: All right, Mr. Jennings. You can step down.

4 THE WITNESS: Thank you, Judge.

5 THE COURT: Yes, sir.

6 ATTORNEY DIXON: No other witnesses from the State, Your
7 Honor.

8 THE COURT: Okay. Mr. Thomas, you got anything in reply?

9 ATTORNEY THOMAS: No, Your Honor.

10 THE COURT: Okay. Would y'all like to give me any
11 arguments?

12 ATTORNEY THOMAS: I can, very briefly.

13 THE COURT: Okay.

14 ATTORNEY THOMAS: Your Honor, I think if we look at this
15 case -- I read through the transcript, I've talked to Lance a
16 number of times, and I've talked to both Mr. Chandler and
17 Mr. Jennings -- what it comes down to, to me, is that there
18 really wasn't any evidence in this case, really, other than this
19 flawed identification from the drug dealer. And at some point in
20 time this -- and they weren't even looking at him for the murder
21 of his friend.

22 When the proffer was made, it did two things. It placed him
23 at the scene of the armed robbery, or attempted armed robbery,
24 and the attempted murder of the drug dealer, allowed there to be
25 some credibility and credence to the fact that he was there.

1 Then not only does it do that, but it places him at the scene of
2 a murder.

3 I don't think, that given those circumstances, that that was
4 a good decision. I think it was ineffective to make that
5 decision to give that proffer.

6 I don't know at that point in time what could have been
7 gained by it. If the Court would look at the transcript, in the
8 transcript it talks about the investigator saying, Well, it's
9 going to bring some closure for the family; it's going to give
10 them some piece of mind, but I don't understand, as a defense
11 attorney, why you put your client to that exposure. I mean, my
12 experiences have been, you know, that the investigator always
13 wants some closure and some peace of mind but, you know, that
14 closure in this case ended up putting my client as the shooter
15 and ended up with him getting 17 years in the Department of
16 Corrections. So I think counsel was ineffective for allowing
17 that proffer to take forward when I don't see what there was to
18 be gained from that.

19 In addition, we would also -- of course all of this goes to
20 the point of whether or not his plea was freely, voluntarily,
21 knowingly, and intelligently given. I don't think it was. One,
22 he was put in a situation by the proffer that set him up for
23 this. And then, you know, he's there at trial. They have the
24 pretrial motions. Obviously he didn't want to enter into the
25 plea for the murder one, because he didn't offer the plea, so

1 that shows some reluctance he had.

2 We can't just say, Well, he just freely -- and the offer
3 plea was his idea. It's clear in the transcript that he's the
4 one -- they stopped the proceedings and they said, you know, to
5 discuss him bringing up the fact about *Alford*, they finally
6 accept the *Alford* plea, so I think there's indication that he
7 basically felt like he didn't have a choice based upon the
8 representation of counsel, the proffer, the way all of this was
9 going, the inconsistencies, and the statements from the
10 codefendant. I mean, he walks away. Lance goes to prison. And
11 so I think that clearly not only is the murder charge not freely
12 and voluntarily given; neither is this accompanying charge
13 either.

14 So I think if we look at the case in a whole, if we look at
15 the case in light of the testimony and what's in the transcript,
16 I think that clearly that he'd be entitled to his post
17 conviction. I don't think that because of the ineffectiveness of
18 counsel that this was free and voluntary. Thank you, Your Honor.

19 THE COURT: All right. Ms. Dixon.

20 ATTORNEY DIXON: Your Honor, the State would submit that he
21 has not met his burden of showing that counsel was ineffective.
22 In terms of the, what they say the, only evidence was the flawed
23 identification, we would submit that that is -- to the extent
24 that they are asserting that that was unduly suggestive, that is
25 something that counsel was, in fact, arguing to the Court.

1 And if you read the transcript, it actually started making
2 that argument, I submit, very effectively, and very well, so that
3 was something they were challenging at the trial.

4 In terms of the proffer, Mr. Jennings testified on the stand
5 that it was a worthwhile strategy. He also testified that they
6 never represented to Mr. Miller that he would not be charged with
7 murder. And we have to remember in these PCRs that we cannot
8 judge things in hindsight; we have to do them based on what is
9 known to counsel at the time the decision is made. And, of
10 course, at the time that decision was made it was a different
11 solicitor. I don't know how counsel could have foreseen that
12 that solicitor would resign or get fired, or whatever, and then
13 there would be someone else who would treat the case differently,
14 but we do have to judge the decision by the time and in the
15 moment they are made.

16 The final thing I would say is that there's nothing to
17 suggest that this plea was involuntary. In order for it to be
18 voluntary, a person has to understand the consequences of what
19 they were doing, and it was testified to several times that he
20 did, in fact, understand the constitutional rights he was
21 waiving, which included the jury trial where he would have been
22 able to further challenge the suggestiveness of the lineup. He
23 understood those. He understood the consequence he faced. It
24 was ultimately his decision, and he entered into it freely and
25 voluntarily.

1 THE COURT: Okay. Anything else, Mr. Thomas?

2 ATTORNEY THOMAS: Nothing further, Your Honor.

3 THE COURT: All right. Well, I will -- I'll take it under
4 advisement, and I'll let y'all know something soon.

5 ATTORNEY THOMAS: Thank you so much.

6 ATTORNEY DIXON: Thank you.

7 THE COURT: All right.

8 (End of Transcript of Record.)

9

10 CERTIFICATE OF REPORTER

11 I, Cathy J. Provost, Official Court Reporter for the
12 Fourteenth Judicial Circuit of the State of South Carolina, do
13 hereby certify that the foregoing is a true, accurate and
14 complete Transcript of Record of the proceedings had and evidence
15 introduced in the trial/proceedings of the captioned case in the
16 Court of Common Pleas for Orangeburg County, South Carolina, on
17 the 24th day of January, 2023.

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

20

21 Date: April 27, 2023

22

23 \s\ Cathy J. Provost
24 Cathy J. Provost, RMR
25 Official Circuit Reporter

STATE OF SOUTH CAROLINA
COUNTY OF ORANGEBURG

LANCE MILLER, #250647

Applicant,

v.

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No.: 2020-CP-38-00279

ORDER OF DISMISSAL

CLERK OF COURT
ORANGEBURG, SC

2023 FEB 17 AM 9:14

FILED FOR RECORD
WINNIFRA B. CLARK

This matter is before the Court by way of an application for post-conviction relief (PCR) filed by Lance Miller on February 21, 2020. On January 24, 2023, an evidentiary hearing convened before the undersigned. Applicant was present and represented by Tommy Thomas, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Following a thorough review of the plea transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections serving a seventeen-year sentence. In November 2018, the Orangeburg County Grand Jury indicted Applicant for murder (2018-GS-38-1768), attempted murder (2017-GS-38-761), and attempted armed robbery (2017-GS-38-760). The attempted murder and attempted armed robbery charges arose from an incident involving Erik Jameson; Jameson alleged Applicant fired a gun at him during a drug deal. The murder charge arose from the fatal shooting of Scott Brooks in Brooks's home. Both incidents occurred on March 20, 2017.

ATTEST: TRUE COPY
Winnifra B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

On October 28, 2019, Applicant pled guilty to attempted armed robbery and voluntary manslaughter¹ before the Honorable Edgar W. Dickson. Ray Chandler and Blair Jennings, Esquires, represented Applicant. Solicitors David Pascoe and Catherine Mubarak represented the State. Judge Dickson sentenced Applicant concurrently to seventeen years' imprisonment for each charge. Applicant did not file a direct appeal.

Current Application

Applicant timely commenced this PCR application on February 21, 2020. In his application Applicant alleged he was entitled to relief based on the following grounds:

1. Ineffective assistance of counsel
 - a. Counsel's advice to plea Alford was incompetent
 - b. Involuntary Alford plea
2. Court lacked jurisdiction for voluntary manslaughter plea.

Prior to the evidentiary hearing, Applicant amended his application to allege the following:

1. Involuntary guilty plea: the Alford plea was not freely, voluntarily, knowingly, or intelligently given.
2. Ineffective assistance of counsel: Counsel's ineffectiveness in the following manners led to Applicant's involuntary plea:
 - a. Counsel failed to adequately investigate and prepare for trial.
 - b. Applicant provided a proffer to law enforcement that allowed them to solve the case.
 - c. Applicant initially was going to testify against a co-defendant, but after a change in prosecutors, the case shifted to Applicant being the culprit and the co-defendant was going to testify against Applicant.
 - d. Counsel failed to present inconsistencies and factual problems with the co-defendant's statements.
 - e. The photo identification was suggestive, and counsel was ineffective in properly presenting this issue to the Court.
 - f. Applicant was improperly advised to give the proffer which resulted in his arrest.

¹ Applicant pled to voluntary manslaughter as the lesser-included offense of murder pursuant to North Carolina v. Alford, 400 US 25 (1970).

ATTEST: TRUE COPY
Winnia B. [Signature]
 CLERK OF COURT
 ORANGEBURG COUNTY, SC

At the hearing, Applicant proceeded only on the claims raised in his amended application. Before this Court are the Orangeburg County Clerk of Court records of the underlying convictions, the plea transcript, the records from this PCR matter, and Applicant's records from the South Carolina Department of Corrections.

Testimony Presented at the Evidentiary Hearing

At the evidentiary hearing, Applicant testified he was initially charged with attempted murder and attempted armed robbery, and he retained Ray Chandler after he was released on bond. Blair Jennings, who worked with Chandler, took over his representation. Applicant stated he met with counsel six to seven times, discussed "what happened," and reviewed some discovery. He testified Brooks—the murder victim—had been his friend, and the investigation into that case had stalled. Applicant stated Jennings suggested he proffer a statement to police to aid in that investigation. In the statement, Applicant indicated he was present when Brooks was fatally shot and Aaron Beach was the shooter. Applicant testified plea counsel promised him he would not be charged with murder if he provided the proffer. He stated after his proffer, Beach was charged with murder. Thereafter, Beach implicated Applicant as the shooter, and Applicant was charged with murder. Applicant stated the original solicitor on the case was fired after the proffer and Pascoe took over the prosecution.

Applicant expressed concern with Jameson's identification of him, explaining he told counsel there was "no way this man picked [him] out of a lineup." Applicant stated a police officer showed Jameson a picture of Applicant from social media prior to presenting Jameson with a lineup, and Jameson identified Applicant from the social media picture as the person who shot at him.

Applicant testified he "knew from past" experiences about an Alford plea, and he raised

that to the plea court during his plea hearing. Although Applicant initially testified his plea was freely and voluntarily given, he later stated it was *not* freely and voluntarily given. Applicant asserted he never should have pled and complained that he received a seventeen-year-sentence while his co-defendant received five years of probation. Applicant maintained he had no reason to kill his friend and asserted counsel should have used inconsistencies in Beach's statements.

Chandler testified he was retained after Applicant was arrested for attempted armed robbery and attempted murder but before Applicant was arrested for murder. Chandler was with Applicant when Applicant provided the proffer; Chandler explained Jennings had previously worked with the solicitor's office and they were trying to "get ahead of the game." Chandler stated Applicant was not promised anything for the proffer, averring a promise would have been improper. Chandler testified Applicant had a significant prior record, and a trial could have been "a trainwreck." He clarified it would have been difficult for Applicant to testify at trial due to his prior record. Chandler did not recall telling Applicant he would not be charged with murder if he provided the proffer. He agreed the initial solicitor on Applicant's case was dismissed from the solicitor's office but could not recall the circumstances. Chandler asserted the photo lineup was not good—a point they raised pretrial during a Neil v. Biggers hearing. Chandler believed Jennings did a good job cross-examining the State's witness during the Biggers hearing, which ultimately led to the State making a plea offer.

Jennings testified he met with Applicant several times, reviewed the State's evidence, explained the strength and weaknesses of the State's case, and explained what the State would have to prove. Jennings stated he also explained to Applicant the constitutional rights Applicant would waive by pleading guilty and the sentence he potentially faced—both at the plea and if convicted at trial. Jennings never had any concerns with whether Applicant understood his

conversations. He averred Jameson's identification of Applicant was unduly suggestive—something he planned to challenge at trial. Regarding the proffer, Jennings stated that under the terms of the proffer, it could not be used against Applicant in a trial. He testified the proffer was a worthwhile strategy at the time. Jennings testified he never relayed to Applicant that Applicant would not be charged with murder if he provided the proffer.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the plea transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony. After a careful review based on the Strickland standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Involuntary Plea

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). "To be knowing and voluntary, a plea must be entered with an awareness of its consequences." Holland v. State, 322 S.C. 111, 113, 470 S.E.2d 378, 379 (1996). "To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him." Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007).

This Court finds Applicant failed to show his plea was involuntary. This Court finds **credible** Jennings' testimony that he explained to Applicant prior the plea the constitutional rights Applicant was waiving and the sentence he faced—both if convicted at trial and under the plea. This Court further finds **credible** Jennings' testimony that Jennings had no reason to doubt

Applicant understood their conversations. Finally, the plea transcript itself supports a finding that Applicant was fully aware of the consequences of his plea, and thus pled guilty knowingly, voluntarily, freely, and intelligently. Specifically, the plea court asked applicant whether plea counsel had explained his constitutional rights, including his right to a jury trial, and Applicant indicated counsel had explained those rights, counsel had answered his questions, and Applicant understood those conversations. (Tr. 86-87). Applicant also told the plea court he understood that under the plea terms, he faced a sentence of two to twenty years. (Tr. 89). Finally, Applicant informed the plea court no one had threatened or forced him to plead guilty. C.f. Dalton v. State, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (“[S]tatements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements.”). Based on the foregoing, this Court finds Applicant understood the consequences of pleading guilty at the time he entered his plea, and Applicant has failed to prove his plea was involuntary.

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 441, 334 S.E.2d at 813. “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” Watson v. State, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. at 441, 334 S.E.2d

at 813. An applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Strickland, 466 U.S. at 687–88; Cherry, 300 S.C. at 117–18, 386 S.E.2d at 625. "A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the applicant would not have pled guilty and would have insisted on going to trial." Dalton v. State, 376 S.C. 130, 136, 654 S.E.2d 870, 873 (Ct. App. 2007). To prove prejudice following a guilty plea, the applicant "must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill v. Lockhart, 474 U.S. 52, 59 (1985).

Failure to Investigate / Prepare for Trial

This Court finds Applicant failed to prove counsel was ineffective for failing to investigate and prepare for trial. At the PCR hearing, Applicant never testified specifically to *what* counsel allegedly failed to investigate or what more counsel should have done to prepare for trial; rather, his testimony focused primarily on the proffer. This Court finds **credible** counsel's testimony that they reviewed discovery with Applicant prior to trial. Further, this Court finds counsel *did* prepare for trial by reviewing discovery and filing a pretrial motion to challenge Jameson's identification.² (Tr. 47-83). Finally, Applicant did not produce any evidence at the PCR hearing of what a further investigation would have uncovered and thus failed to prove prejudice in this regard. Cf. Glover

² Although Applicant pled guilty before the conclusion of the pretrial Neil v. Biggers hearing, this Court finds counsel did an effective job of cross-examining the State's witness during the pretrial hearing and setting up an argument to attempt to suppress Jameson's identification.

v. State, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995) (providing an applicant must produce witnesses at a PCR hearing to support a claim that counsel was ineffective for failing to interview or call potential witnesses). Thus, Applicant has failed to show counsel was ineffective in either investigating or preparing for trial.

Proffer

Applicant contends counsel was ineffective for advising him to provide a proffer to law enforcement that allowed law enforcement to solve Brooks's murder and led to Applicant's arrest. This Court finds Applicant failed to prove counsel was ineffective in this regard.

At the PCR hearing, Applicant testified law enforcement was having trouble determining who murdered Brooks. He stated Brooks had been his good friend, and Applicant did not want the killer to go free. Applicant stated counsel suggested he talk to police.³

Counsel testified Applicant was initially arrested for attempted armed robbery and attempted murder stemming from an incident involving Jameson; at the time of the proffer, the investigation into Brook's murder had stalled. Chandler explained they were "trying to get ahead of the game" in providing the proffer. Jennings stated that under the proffer agreement, the State would not be able to use the statement against Applicant at trial. Finally, both Chandler and Jennings testified they did *not* promise Applicant he would not be charged with murder if he provided the proffer. Jennings testified it was Beach's statement rather than the proffer that led police to charge Applicant with murder.

This Court finds counsel's testimony in this regard was **credible**. Further, this Court finds counsel articulated a reasonable strategy in using the proffer to try to garner favor with the

³ Applicant's proffer is in the plea transcript. In it, Applicant admitted being present during the attempted armed robbery/attempted murder and the murder, but he claimed Beach had the gun. Applicant further claimed he did not know Beach would murder Brooks or attempt to rob Jameson.

ALL INFORMATION CONTAINED
HEREIN IS UNCLASSIFIED
DATE 11/11/01 BY SP-6
W. J. B. / J. B. / J. B.
CLERK OF COURT
ORANGE COUNTY, FLORIDA

prosecution. This Court further finds it was ultimately Applicant's decision to make the proffer, and based on Applicant's PCR testimony, he provided the proffer because Brooks was his friend and he wanted to help investigators solve that case. There is no evidence showing Applicant had previously told plea counsel something *other* than what he ultimately told investigators. In fact, Applicant's testimony at the PCR hearing was consistent with his proffer to law enforcement. Based on what counsel knew at the time of the proffer, their advice to proffer in an attempt to garner favor with the prosecution was reasonable under prevailing professional norms and thus not deficient. See Strickland, 466 U.S. at 689 (1984) ("[I]t is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable. A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel's challenged conduct, and to evaluate the conduct from counsel's perspective at the time." (internal citation omitted)).

Further, Applicant has not shown prejudice. Specifically, he has not shown a reasonable probability that but for the proffer, he would not have pled guilty but would have insisted on going to trial. Prior to the murder charge, Applicant faced charges for attempted armed robbery and attempted murder; if convicted of both charges, he faced a sentence of up to fifty years' imprisonment. Because the State could not use the statement against him at trial, his proffer did not make it more likely he would be convicted of those charges. Ultimately, Applicant pled guilty to attempted armed robbery in addition to the murder charge, and this Court finds Applicant did not meet his burden of proving he would have proceeded to trial rather than plead guilty if he had not provided the proffer. Thus, this allegation is denied and dismissed with prejudice.

Co-defendant testimony

In his amended application, Applicant raised two issues related to Beach, his co-defendant: (1) Applicant initially was going to testify against Beach, but after a change in prosecutors, the case shifted Applicant being the culprit and Beach was going to testify against Applicant; and (2) counsel failed to present inconsistencies and factual problems with Beach's statements. This Court finds Applicant has failed to prove counsel was ineffective. First, plea counsel had no control over who was assigned to prosecute the case, the State's strategy, or the order in which the cases were called. Applicant has not shown counsel's representation in this regard fell below prevailing professional norms; thus, Applicant has not shown deficiency. Second, Applicant pled guilty prior to trial—precluding counsel from using any allegedly inconsistent statements to impeach Beach. This Court notes Jennings cross-examined the State's witness during the pretrial hearing about inconsistencies in Beach's statements and finds it is reasonably likely counsel would have likewise cross-examined Beach about any inconsistent statements he may have made had this case proceeded to trial and Beach testified against Applicant. Ultimately it was Applicant's decision to plead guilty—which Applicant made freely, voluntarily, intelligently, and knowingly—that precluded counsel from cross-examining Beach about inconsistent statements; thus, Applicant has not shown counsel was ineffective in this regard.

Photo identification

Applicant contends counsel was ineffective for failing to challenge Jameson's identification of him from a photographic lineup, which he avers was procured by an unduly suggestive procedure. This Court finds Applicant has not shown counsel was ineffective in this regard. Critically, counsel filed a pretrial motion challenging the suggestiveness of the identification. (Tr. 4). Counsel cross-examined the State's witness extensively during a pretrial

Neil v. Biggers hearing; ultimately, however, Applicant chose to plead guilty in the middle of that hearing. At the PCR hearing, counsel testified the trial judge had relayed to them in chambers that he would likely allow the photographic lineup into evidence. Jennings further testified he would have continued to challenge the identification if Applicant had proceeded to trial. This Court finds the foregoing testimony by counsel **credible**. Because counsel filed a motion to challenge the identification and was in the process of challenging it when Applicant pled guilty, Applicant has not shown deficiency. Further, Applicant has not shown a reasonable probability that he would have proceeded to trial if counsel had challenged the identification (which counsel was in the process of doing), and thus did not prove prejudice. Ultimately Applicant pled guilty; in doing so, he waived his right to challenge this identification. Because it was Applicant's decision to plead guilty—which he did knowingly, freely, intelligently, and voluntarily—this Court finds Applicant failed to prove counsel was ineffective for not further challenging the identification.

Conclusion

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

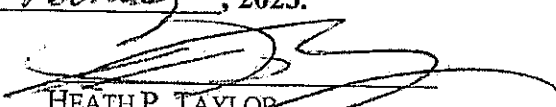
Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Pursuant to Rule 71.1(g), SCRCP, if an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

ATTEST: T. L. ...
Winnifred ...
 CLERK OF COURT
 ORANGE COUNTY, FL

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 16th day of February, 2023.


HEATH P. TAYLOR
Presiding Judge
First Judicial Circuit

Orangeburg, South Carolina

WITNESSES

John Stuke

Orangeburg County Sheriff

ARREST WARRANT NUMBER
2018ORB63

Arrested: March 30, 2017

ACTION OF GRAND JURY

TRUE BILL

Date

OCT 31 2018

Foreperson of Grand Jury

Date: October 31, 2018

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018GS38-1768

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

November 5, 2018 TERM

THE STATE
vs.

Lance Michael Miller

Indictment for

MURDER

SC Code: 16-3-10

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

Defendant

Lance Miller

hereby appear in my own proper person and plead guilty to the within indictment or to

Voluntary Manslaughter

Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST: TRUE COPY
Winnifred B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

FILED FOR RECORD
WINNIFRED B. CLARK
2018 OCT 31 AM 10:17
CLERK OF COURT
ORANGEBURG, SC

STATE OF SOUTH CAROLINA)
)
COUNTY OF ORANGEBURG)

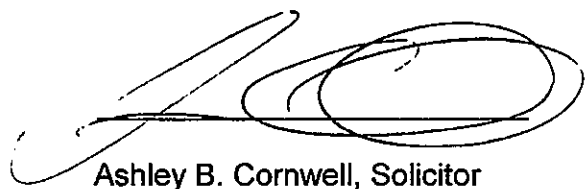
INDICTMENT
2018GS38-1768

At a Court of General Sessions, convened on October 31, 2018 the Grand Jurors of Orangeburg County present upon their oath:

MURDER

That in Orangeburg County on or about March 20, 2017, the defendant, Lance Michael Miller did kill one Scott Brooks, with malice aforethought by means, of shooting the victim in the head with a gun. The victim did die as a proximate result thereof. This offense being in violation of the Common Law and Section 16-3-10, of the South Carolina Code of Laws, as amended.

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



Ashley B. Cornwell, Solicitor

WITNESSES

John H Stuke

Orangeburg County Sheriff

2017-001906

ARREST WARRANT NUMBER

2017A3810700221

Arrested: March 30, 2017

ACTION OF GRAND JURY

TRUE BILL

Date OCT 31 2018

Foreperson of Grand Jury

Date: October 31, 2018

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2017GS38-0760

The State of South Carolina

County of ORANGEBURG

COURT OF GENERAL SESSIONS

November 5, 2018 TERM

THE STATE

vs.

Lance Michael Miller

Indictment for

**ATTEMPTED ARMED, OR ALLEGEDLY
ARMED, ROBBERY**

SC Code: 16-11-330(B)

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

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
WINNIFER B. CLARK
2018 OCT 31 AM 10:17
CLERK OF COURT
ORANGEBURG, SC

ATTEST: TRUE COPY
Winnifera B. Clark
CLERK OF COURT
ORANGEBURG COUNTY, SC

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

INDICTMENT
2017GS38-0760

At a Court of General Sessions, convened on October 31, 2018 the Grand Jurors of Orangeburg County present upon their oath:

ATTEMPTED ARMED, OR ALLEGEDLY ARMED, ROBBERY

That on or about March 20, 2017, in Orangeburg County, South Carolina, the Defendant, Lance Michael Miller, by use of force, threats or intimidation and while alleging, either by action or words, he was armed while using a deadly weapon or a representation of a deadly weapon or other object which a person present during the commission of the attempted robbery reasonably believed to be a deadly weapon, did attempt to take and carry away goods and/or monies from the person or immediate presence of Eric Jamison with the intent to permanently deprive him of possession thereof. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

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



Ashley B. Cornwell, Solicitor

WITNESSES

John H Stuke

Orangeburg County Sheriff

2017-001906

ARREST WARRANT NUMBER
2017A3810700222

Arrested: March 30, 2017

ACTION OF GRAND JURY

[Signature]
Date **OCT 31 2018**

Foreperson of Grand Jury
Date: October 31, 2018

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS38-0761

The State of South Carolina
County of ORANGEBURG

COURT OF GENERAL SESSIONS

November 5, 2018 TERM

THE STATE
vs.

Lance Michael Miller

Indictment for
ATTEMPTED MURDER

SC Code: 16-3-29

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

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED FOR RECORD
WINNIFA B. CLARK
2018 OCT 31 AM 10:17
CLERK OF COURT
ORANGEBURG, SC

ATTEST: TRUE COUNTY
[Signature]
CLERK OF COURT

STATE OF SOUTH CAROLINA)
COUNTY OF ORANGEBURG)

INDICTMENT
2017GS38-0761

At a Court of General Sessions, convened on October 31, 2018 the Grand Jurors of Orangeburg County present upon their oath:

ATTEMPTED MURDER

In that the defendant, Lance Michael Miller, did in Orangeburg County on or about March 20, 2017 with the intent to kill, attempt to kill one Eric Jamison with malice aforethought by shooting at the victim. This offense being in violation of Section 16-3-29 of the South Carolina Code of Laws, as amended.

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

A handwritten signature in black ink, appearing to read 'Ashley B. Cornwell', written over a horizontal line.

Ashley B. Cornwell, Solicitor