

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Spartanburg County

Honorable G.D. Morgan, Jr., Circuit Court Judge

MICHAEL E. KELLEY II,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2023-000584

APPENDIX

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1	STATE OF SOUTH CAROLINA	) IN THE COURT OF
		) GENERAL SESSIONS
2		) OF THE SEVENTH
	COUNTY OF SPARTANBURG	) JUDICIAL CIRCUIT
3		)
		)
4		) TRANSCRIPT OF RECORD
	STATE OF SOUTH CAROLINA,	) 2019-GS-42-00314
5		) 2019-GS-42-00317
	Plaintiff,	) 2019-GS-42-00318
6		) 2019-GS-42-00320
	vs.	) 2019-GS-42-00322
7		) 2019-GS-42-00323
	MICHAEL EUGENE KELLEY, II	) 2019-GS-42-01686
8		) 2019-GS-42-01687
	Defendant.	) 2019-GS-42-01688
9		)

10

11	July 8, 2019 Spartanburg, South Carolina
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13

B E F O R E:

14

HONORABLE R. KEITH KELLEY, Judge.

15

16

A P P E A R A N C E S

17

BARRY BARNETTE, SOLICITOR
For The State

18

19 | DAVID A BRAGHIROL, ESQUIRE
For Defendant

20

21

Also present: James Cheek

22

23

24

Julie A. Cendroski,
Circuit Court Reporter
Seventh Judicial Circuit

25

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1 THE STATE VERSUS MICHAEL EUGENE KELLEY, II

2 (State's Exhibit Number 1, Request for Discovery
3 Packet, was marked for identification.)

4 (State's Exhibit Number 2, Packet of 13
5 Photographs Of Drugs, was marked for identification.)

6 (State's Exhibit Number 3, Incident Report, was
7 marked for identification.)

8 (State's Exhibit Number 4, Accident Report, was
9 marked for identification.)

10 (State's Exhibit Number 5, In-Car Video, was
11 marked for identification.)

12 (State's Exhibit Number 6, Packet of Nine
13 Photographs of Accident, was marked for identification.)

14 (State's Exhibit Number 7, Motor Vehicle Accident
15 Fire Department Report, was marked for identification.)

16 (State's Exhibit Number 8, Toxicology Report, was
17 marked for identification.)

18 (State's Exhibit Number 9, Driving Record, was
19 marked for identification.)

20 (State's Exhibit Number 10, Criminal History Rap
21 Sheet, was marked for identification.)

22 (State's Exhibit Number 11, Indictment
23 11-GS-42-2881, was marked for identification.)

24 (State's Exhibit Number 12, Autopsy Report, was
25 marked for identification.)

1 (State's Exhibit Number 13, Photograph Packet of
2 Three Photos of Victims, was marked for identification.

3 THE COURT: Solicitor.

4 MR. BARNETTE: May it please the Court, Your
5 Honor?

6 THE COURT: Yes, sir.

7 MR. BARNETTE: Your Honor, this case was
8 scheduled for a plea in front of Your Honor at 10:30
9 today. The State versus Michael Eugene Kelly, II, Your
10 Honor. We had made an offer, Your Honor, in this case.

11 He has indicated through his attorney, David
12 Braghirol, that he is withdrawing. He does not want to
13 plead guilty, but I want to put the offer on the record,
14 Your Honor, protect the record in this case. Once he
15 refuses this offer it'll be revoked.

16 He is scheduled for trial in front of Judge Cole
17 this week on several drug charges on the trial docket.
18 And we'll be trying him on that later this week, so...
19 But, Your Honor, to put the offer on the record
20 originally, he was supposed to plead guilty to nine
21 indictments, Your Honor, or nine charges.

22 That's for 19-GS-42-314, Your Honor. Possession
23 with intent to distribute marijuana, Your Honor, first
24 offense. He's facing zero to five years on that, plus
25 up to a \$5,000 fine.

1 He's pleading guilty -- was supposed to plead
2 guilty on 19-GS-42-317, Your Honor. That's trafficking
3 heroin, Your Honor. And that was between four grams and
4 14 grams, Your Honor, on that. And that would have been
5 a second offense, Your Honor. He was gonna plead to
6 first offense on that. He was facing 7 to 25 years on
7 that charge, Your Honor, and up to a \$50,000 fine, Your
8 Honor, from there.

9 The next charge, Your Honor, was 19-GS-42-318,
10 Your Honor. That's also in trafficking heroin, Your
11 Honor. He was supposed to plead on it, Your Honor. Was
12 facing up to mandatory 25. And he's supposed to plead 7
13 to 25 on a first on that, Your Honor.

14 The next one is distribution of heroin, Your
15 Honor. 19-GS-42-320, Your Honor. He's pleading first
16 offense on that. Was facing 0 to 15 years, Your Honor,
17 in that case.

18 The next one is 19-GS-42-322, Your Honor. It was
19 also another distribution of heroin. He was gonna be
20 allowed to plead to a first on it. All these would have
21 been second offenses, Your Honor, normally. Zero to 15
22 years on that.

23 The next one is 19-GS-42-323, Your Honor.
24 Distribution of fentanyl, Your Honor. He was also gonna
25 be able to plead on a first offense there, Your Honor.

1 Was facing 0 to 15, but this would be a second offense,
2 Your Honor. And all those are 5 to 30, Your Honor.

3 19-GS-42-1686, Your Honor, he was pleading guilty
4 to felony DUI great bodily injury straight up, Your
5 Honor. He's facing 1 to 25 years on it.

6 Your Honor, then 19-GS-42-1687, driving under
7 suspension first offense, Your Honor. He's facing up to
8 30 days on that offense.

9 Then 19-GS-42-1688, Your Honor, is felony DUI
10 with great -- with death, Your Honor. I told you wrong.
11 The first one is great bodily injury, which was 30 days
12 to 15 years.

13 And this one, 19-GS-42-1688, Your Honor, is the
14 felony DUI death, 1 to 25, Your Honor. Once he had
15 plead guilty, Your Honor, we was gonna dismiss five
16 charges, Your Honor. That would have been 19-GS-42-351
17 -- 315, Your Honor, possession with intent to distribute
18 marijuana within a half mile of a school or park.

19 19-GS-42-316, possession with intent to
20 distribute heroin within one mile of a park or a school,
21 Your Honor.

22 19-GS-42-319, Your Honor, distribution of heroin
23 within one mile or half mile of a school or park, Your
24 Honor.

25 19-GS-42-321, Your Honor, distribution of heroin

1 within a half mile of a school or park, Your Honor.

2 19-GS-42-1686, Your Honor, reckless homicide.

3 And 19-GS-42-1789, Your Honor, assault and battery of a
4 high and aggravated nature, Your Honor. Those charges
5 were to be dismissed once he pled guilty to the nine,
6 Your Honor. If he decides not to plead today, Your
7 Honor, this offer will be revoked. We will go forward
8 on several, including one of the trafficking heroin
9 charges, in front of Judge Cole this week. And we'll
10 continue to try the other cases, too.

11 THE COURT: Yes, sir.

12 MR. BARNETTE: And he has five different
13 instances that he's facing. Four drug offenses. He's
14 facing different instances, plus the felony DUI
15 incident.

16 THE COURT: All right. Has he been sworn?

17 THE CLERK: No, sir.

18 Raise your right hand, please. (Complies.)

19 Do you solemnly swear that the testimony you're
20 about to give will be the truth, the whole truth and
21 nothing but the truth so help you God?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Sir, you are Mr. Michael Eugene
24 Kelley, II?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Mr. Kelley, you are in custody. Sir,
2 have you consumed any substance that would interfere
3 with your ability to think clearly?

4 THE DEFENDANT: No, sir.

5 THE COURT: Do you know what you're doing here
6 this morning?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I'm informed that earlier this
9 morning that this was gonna be a plea. I'm now informed
10 that you desire to go to trial. Is that true?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right, sir. Did anyone force
13 you, threaten you or make you change your mind?

14 THE DEFENDANT: No, sir.

15 THE COURT: Have you had sufficient time to speak
16 with your lawyer?

17 THE DEFENDANT: No, sir.

18 THE COURT: Well, I can give you some more time
19 to talk to him. Do you want to talk to him? Did you
20 get to talk to him about your decision to change your
21 plea?

22 THE DEFENDANT: No, sir.

23 THE COURT: So you don't need any more time to
24 make that decision?

25 THE DEFENDANT: No, sir.

1 THE COURT: Okay. So have you had sufficient --
2 let me ask a better question. Have you had sufficient
3 time to talk with your lawyer about whether or not you
4 should change your plea from a plea to a trial?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right, sir. And did he force
7 you, threaten you in any way to get you to change your
8 mind?

9 THE DEFENDANT: No, sir.

10 THE COURT: Is it your decision to now seek a
11 trial on these charges?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you intend to seek a trial on all
14 of the charges?

15 THE DEFENDANT: No, sir.

16 THE COURT: Okay. But you do intend to seek a
17 trial on some charges?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: All right, sir. Are there certain
20 pleas that you decide -- are there certain cases you
21 want to plead on today or not?

22 THE DEFENDANT: I will plead on the drug charges.

23 THE COURT: You want to plead on the drug
24 charges?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Okay.

2 MR. BARNETTE: Your Honor, he has to plead
3 straight up on those drug charges.

4 THE COURT: I understand. I understand.

5 You understand there's no deal? The solicitor
6 has denied it. It's a global deal or no deal, do you
7 understand?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: All right. So you want to plead
10 guilty on the drug charges?

11 THE DEFENDANT: No, sir.

12 THE COURT: No, sir?

13 THE DEFENDANT: With the DUI I want to plead.

14 THE COURT: Okay. Well, let me ask you. I'm
15 trying to -- you indicated there's some charges you wish
16 to plead guilty to and I'm happy to take those pleas for
17 you this morning. I'm taking pleas. Judge Cole, next
18 door, is gonna be the trial judge. So are there any
19 cases that you want to plead guilty to?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right, sir. Can you tell us what
22 those are?

23 THE DEFENDANT: All the drug charges.

24 THE COURT: All the drug charges, you want to
25 plead to those this morning?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right, sir. Do you understand
3 that there will be no deal and you'd be pleading, what's
4 called straight up? You understand that, right?

5 THE DEFENDANT: No, sir.

6 THE COURT: You don't understand that?

7 THE DEFENDANT: I don't want to plead then.

8 THE COURT: Then you don't want to plead?

9 THE DEFENDANT: No, sir.

10 THE COURT: Okay. So you're going to trial with
11 all the charges?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: The solicitor's revoking the offer,
14 is what I'm gonna tell you. You know that? It's a
15 global deal. Do you understand? If you don't want to
16 plead on everything, and you do not have to -- in fact,
17 I don't want you to if you want to go to trial on any of
18 the charges, but if you want to plead, it's a straight
19 up plea on each and every charge. Do you understand?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Yes, okay. Now, do you need any more
22 time to talk to your lawyer about whether or not you
23 should plead or go to trial?

24 THE DEFENDANT: No, sir.

25 THE COURT: All right, sir. And so your decision

1 is to go to trial?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: On all the charges?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Unless you have a deal --

6 THE DEFENDANT: Yes, sir.

7 THE COURT: -- on the co-charges? Okay. Do you
8 understand that there was a rejection of the offer, the
9 deal is off the table and the solicitor is not gonna be
10 extending another offer? Do you understand?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And do you also understand that you
13 are now -- I'm placing you now as number two trial,
14 behind -- actually, you're behind the Sunny Goodrich
15 trial, which is with Mr. Smith this morning. Do you
16 understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: So it's conceivable you'd be in trial
19 tomorrow on this -- on any charges that they decide to
20 bring. Do you understand?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And that's what you want to do?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Yes, sir.

25 MR. BRAGHIROL: Your Honor, for purposes of the

1 record, if we could verify that the drug charges he is
2 going to trial on this week, that will be number two on
3 the docket, carries a minimum mandatory 25 years if
4 convicted. I just want to make sure the record is
5 protected, as well as myself on that part. That if he
6 turns down this plea, it's mandatory 25 years is the
7 sentence that he will proceed if we do not succeed at
8 trial.

9 THE COURT: All right. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And you still want to go forward on a
12 trial?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Well, sir, you have a constitutional
15 right to do so. And many of us in this courtroom,
16 including myself, carry a rifle for that right, so he's
17 number two on the trial docket.

18 MR. BARNETTE: Yes, sir. And the offer is
19 withdrawn and there will not be any additional offers.

20 THE COURT: That's right.

21 MR. BARNETTE: Thank you, Your Honor.

22 THE COURT: Number two.

23 MR. BRAGHIROL: Thank you, Your Honor.

24 (Hearing recessed at 10:40 a.m.)

25 (Resumed hearing at 12:16 p.m.)

1 MR. BARNETTE: May it please the Court, Your
2 Honor.

3 THE COURT: Yes, sir.

4 MR. BARNETTE: We're back on the record, Your
5 Honor. I know earlier this morning we was in front of
6 Your Honor about this case, but it's back, I believe, as
7 a guilty plea at this point. There are nine counts,
8 Your Honor. Nine indictments he'll be pleading guilty
9 to.

10 The first indictment is 19-GS-42-314, Your Honor.
11 He is pleading guilty to possession with -- possession
12 with intent or possession with intent to distribute
13 marijuana first offense, Your Honor. He's facing 0 to
14 five years and up to a \$5,000 fine on that charge, Your
15 Honor. And all these are true billed.

16 19-GS-42-317, Your Honor, he's pleading guilty to
17 trafficking heroin four or more, but less than 14 grams.
18 And he's pleading to first offense on that, Your Honor.
19 He's facing 7 years, up to 25 years, plus a \$50,000
20 fine.

21 The next one is 19-GS-42-318, Your Honor. It's
22 also trafficking heroin, Your Honor. And that, Your
23 Honor, is 4 grams to 14 grams. First offense, Your
24 Honor, 7 years to 25 years and a \$50,000 fine, Your
25 Honor. Both the trafficking heroin charges are violent

1 offenses, serious offenses and no parole offenses, Your
2 Honor.

3 19-GS-42-320, Your Honor, is distribution of
4 heroin, Your Honor. He's pleading to first offense on
5 that. It's based on 0 to 15 years and up to a \$25,000
6 fine.

7 The next one is 19-GS-42-322, Your Honor. It's
8 also distribution of heroin. First offense, Your Honor,
9 0 to 15 years and up to a \$25 (sic) fine.

10 And, Your Honor, the next one is 19-GS-42-323.
11 Your Honor, it's distribution of fentanyl. First
12 offense, Your Honor. Also 0 to 15 years, and carries up
13 to a \$25,000 fine.

14 And then the next one, Your Honor, is 19 -- and
15 on all those, Your Honor, he is pleading guilty. And,
16 Your Honor, most of these were second offenses. They've
17 been reduced first offenses that he is pleading to. And
18 he is pleading guilty to those, Your Honor.

19 The next three he is pleading under State versus
20 -- North Carolina versus Alford, under Alford plea, Your
21 Honor. 19-GS-42-1686, Your Honor, felony DUI, great
22 bodily injury, Your Honor. He's facing 30 days up to 15
23 years and a fine of \$5,100, up to \$10,100 fines on that,
24 Your Honor.

25 The next one is 19-GS-42-1687, Your Honor,

1 driving under suspension first offense. That's 0 to 30
2 days. And that's also an *Alford* plea.

3 19-GS-42-1688, Your Honor, is felony DUI with
4 death, Your Honor. It carries one year and a \$10,100
5 fine to 25 years and \$25,100 fine, Your Honor. That is
6 also a serious offense and it's a no parole offense,
7 Your Honor.

8 All these have been true billed to the grand
9 jury. Mr. David Braghirol represents the defendant on
10 these charges, Your Honor. Once he pleads guilty, Your
11 Honor, we'll be dismissing five other charges. And that
12 is 19-GS-42-315, possession with intent to distribute
13 marijuana within a half mile.

14 19-GS-42-316, Your Honor, possession with intent
15 to distribute heroin within one-half mile.

16 19-GS-42-319, Your Honor, distribution of heroin
17 within one-half mile of the school or park.

18 19-GS-42-321, distribution of heroin with
19 one-half mile of the school.

20 19-GS-42-1685, reckless homicide.

21 And 19-GS-42-1689, Your Honor, assault and
22 battery of a high and aggravated nature. Those charges
23 will be dismissed once he enters the pleas and sentence
24 on the other nine charges, Your Honor.

25 What I did, Your Honor, I've got Court Exhibit 1,

1 which I've shared with the defense, Your Honor. This is
2 communication where I communicated with the defense
3 about the plea offer that was made. I want to make sure
4 that's a part of the record on this case and make sure
5 it's -- and it's the understanding of all parties in
6 this case, Your Honor. If -- I know Mr. Braghirol has
7 seen that. I don't think he has any objection. I'd
8 like to go ahead and enter that as Court Exhibit 1 at
9 this time.

10 MR. BRAGHIROL: Without objection, Your Honor.

11 THE COURT: It's without objection.

12 (State's Exhibit Number 1 was entered into the
13 record.)

14 MR. BARNETTE: And, Your Honor, for the record,
15 too, I have 13 exhibits that I'll be entering and making
16 those part of the record and the facts of this case when
17 I present the facts in the case. I've shown that to the
18 defense. I don't think there's any objection to that
19 also, Your Honor.

20 THE COURT: Any objection?

21 MR. BRAGHIROL: No, Your Honor.

22 THE COURT: Without objection, so admitted.

23 (State's Exhibit Numbers 2 - 13 were entered into
24 the record.)

25 MR. BARNETTE: May I approach the bench, Your

1 Honor?

2 THE COURT: Please.

3 (Solicitor Barnette hands documents to the
4 Court.)

5 THE CLERK: Raise your right hand, please, sir.
6 Raise your right hand, please. (Complies.)

7 Do you solemnly swear that the testimony you're
8 about to give will be the truth, the whole truth and
9 nothing but the truth so help you God?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Sir, we're back on the record. You
12 are Michael Eugene Kelley, II?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Mr. Kelley, you are remaining in
15 custody, have you taken any medication or substance that
16 interferes with your ability to think clearly?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do you know what you're doing here
19 today?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Mr. Kelley, you previously told me
22 that you did not want to go forward with your plea, that
23 you wanted a trial. Do you understand?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Is this what you want to do? You

1 want to enter a plea?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Anybody force you, threaten you or
4 make you change your mind?

5 THE DEFENDANT: No, sir.

6 THE COURT: I told you previously that you have a
7 right to go to a trial on each and every one of these.
8 Do you understand that right?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. In 2019-1688, the State says
11 that you did, in Spartanburg County, South Carolina,
12 on/or about February 8 of 2019, drive a motor vehicle
13 while under the influence of alcohol, drugs or a
14 combination of alcohol and drugs and violated, an act
15 forbidden by law or neglected a duty imposed by law in
16 that you failed to maintain proper control of your
17 vehicle; and/or failed to exercise due care; and/or
18 failed to follow the right-of-way restrictions; and/or
19 drove too fast for conditions; and/or failed to drive on
20 the roadway lane for traffic; and/or failed to maintain
21 a proper lookout for other traffic and/or pedestrians;
22 and/or violated the restriction of speeding; and/or
23 drove left of center; and/or driving while your license
24 was suspended, all in violation of law which proximately
25 caused the death of [REDACTED] -- is it Ruben? Ruben ---

1 MR. BARNETTE: Rubenizer.

2 MR. RUBENZER: Rubenzer.

3 MR. BARNETTE: Rubenzer.

4 THE COURT: Mr. [REDACTED] Rubenzer in violation of
5 state law. That matter has been true billed by the
6 grand jury.

7 It is my understanding you are offering to plead
8 as indicted. It's without negotiations or
9 recommendations. It is non-violent. It is serious for
10 future sentencing purposes. It carries from one year
11 and a \$10,100 fine up to 25 years and a 25,000 --
12 \$25,100 fine. It's my understanding you desire to enter
13 the plea under North Carolina versus Alford. Is that
14 your understanding?

15 THE DEFENDANT: Yes, sir. Yes, sir.

16 THE COURT: In 2019-1687, the State says that you
17 did, in Spartanburg County, South Carolina, on/or about
18 February 8 of this year, drive a motor vehicle on a
19 public highway of the state while your license to drive
20 was cancelled, suspended or revoked in violation of
21 state law.

22 That matter was true billed by the grand jury.
23 You've offered to plead as indicted without negotiations
24 or recommendations. It is non-violent by definition.
25 It carries from 0 to 30 days. Once again, you desire to

1 enter a plea under the *Alford* case. Is that your
2 understanding?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: 2019-1686, the State says that you
5 did, in Spartanburg County, South Carolina, on/or about
6 February 8 of 2019, drive a motor vehicle while under
7 the influence of alcohol and drugs or a combination of
8 alcohol and drugs and violated an act forbidden by law,
9 or neglected a duty imposed by law, in that you violated
10 a restriction on speed and/or failed to maintain a
11 proper control of your vehicle; and/or drove left of
12 center; and/or failed to follow right-of-way
13 restrictions; and/or recklessly drove your vehicle;
14 and/or failed to exercise due care; and/or failed to
15 maintain a proper lookout for traffic or pedestrian;
16 and/or you drove too fast for conditions; and/or that
17 you were driving while your license was suspended, which
18 proximately caused great bodily injury to Ms. Patricia
19 Rubenzer in violation of state law.

20 That matter was presented to the grand jury and a
21 true bill returned. You're pleading as indicted,
22 without negotiations or recommendations. It's
23 non-violent. It carries from 30 days up to \$5,100, up
24 to 15 years and a fine of \$10,100. It's my
25 understanding you desire to enter that under the *Alford*

1 case. Is that your understanding?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: On 2019-0323, the State says that you
4 did, in Spartanburg County, South Carolina, on/or about
5 March 7 of 2018, manufacture, distribute, dispense,
6 deliver, purchase or otherwise aid, abet, attempt or
7 conspire to do so with regard to a quantity of fentanyl,
8 which is a controlled substance in violation of state
9 law. That matter has been true billed by the grand
10 jury.

11 You're offering to plead to the lesser included
12 offense of first offense. It carries up to 15 years,
13 and up to a \$25,000 fine. It is non-violent by
14 definition. It's without negotiations or
15 recommendations. Do you understand?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: In 2019-0322, the State says that you
18 did, in Spartanburg County, South Carolina, on/or about
19 March 7 of 2018, manufacture, distribute, dispense,
20 deliver, purchase or otherwise aid, abet, attempt or
21 conspire to do so with regard to a quantity of heroin,
22 which is a controlled substance in violation of law.

23 That matter has been true billed by our grand
24 jury. You're offering to plead to the lesser included
25 offense, a first offense. It carries up to 15 years,

1 and/or a fine of up to \$25,000. It's non-violent. It's
2 without negotiations or recommendations. Do you
3 understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: 2019-0320, the State says that you
6 did, in Spartanburg County, South Carolina, on/or about
7 November 30 of 2017, manufacture, distribute, dispense,
8 deliver, purchase or otherwise aid, abet, attempt or
9 conspire to do so with regard to a quantity of heroin,
10 which is a Schedule I controlled substance in violation
11 of our state law.

12 That matter has been true billed by the grand
13 jury. You're offering to plead to the lesser included
14 offense, a first offense. It carries up to 15 years
15 and/or a fine of up to \$25,000. It's non-violent by
16 definition. It's without negotiations or
17 recommendations. Do you understand?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: 2019-0318, the State says you did in,
20 Spartanburg County, South Carolina, on/or about November
21 16 of 2017, knowingly sell, manufacture or cultivate,
22 deliver, purchase or bring into the state, or provide
23 financial assistance or did otherwise aid, abet, attempt
24 or conspire to sell, manufacture, cultivate, deliver,
25 purchase or bring into the state, or knowingly, actively

1 -- actually or constructively attempt to become in
2 actual or constructive possession of more than four
3 grams of heroin, which is a controlled substance in
4 violation of state law.

5 That matter has been true billed by the grand
6 jury. You're pleading to the lesser included offense of
7 more than 4, but less than 14 grams. It carries from 7
8 years, up to \$25,000 and a mandatory fine of \$50,000.
9 It's violent. It is serious. It's without negotiations
10 or recommendations. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: In 2019-0317, the State says you did,
13 in Spartanburg County, South Carolina, on/or about July
14 19 of 2018, knowingly sell, manufacture, cultivate,
15 deliver, purchase or bring into the state or provide
16 financial assistance or otherwise aid, abet, attempt or
17 conspire to sell, manufacture, cultivate, deliver or
18 purchase or bring into the State or knowingly, actually
19 or constructively possess or attempt to actually or
20 destructively possess more than 14 grams of heroin in
21 violation of state law.

22 That matter has been presented to the grand jury
23 and a true bill returned. You're pleading to the lesser
24 included offense of first offense. It carries -- you're
25 pleading to more than 4 but less than 14. It carries 7

1 years up to 25 and a fine of \$50,000. It is violent.
2 It is serious. It's without negotiations or
3 recommendations. Do you understand?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: 2019-0314 says that you did, in
6 Spartanburg County, South Carolina, on/or about July 19
7 of 2018, manufacture, distribute, dispense, deliver,
8 purchase, aid, abet, attempt or conspire to do so with
9 regard to a quantity of marijuana in violation of state
10 law.

11 That matter has been true billed by the grand
12 jury. You're pleading as indicted. It's without
13 negotiations or recommendations. It's non-violent. It
14 carries up to five years and a fine of up to \$5,000. Do
15 you understand what I told you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Mr. Kelley, there are certain rights
18 that you must waive and give up in order to enter a
19 plea. Mr. Kelley, you have the right under both our
20 federal and state constitution to remain silent. Sir,
21 you have the right to put 12 jurors in the box to try
22 your case. You know that they're here. Judge Cole
23 qualified them this morning.

24 You have the right to call any person you choose
25 to that witness stand to testify for you, and you have

1 the right to confront any person who testifies against
2 you. Usually that's a law enforcement officer, someone
3 who investigated this case. Do you understand each of
4 your rights?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you waive each of your rights?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Sir, how do you offer to plead on
9 2019-0314, guilty or not guilty?

10 THE DEFENDANT: Guilty.

11 THE COURT: 0317?

12 THE DEFENDANT: Guilty.

13 THE COURT: 0318?

14 THE DEFENDANT: Guilty.

15 THE COURT: 0320?

16 THE DEFENDANT: Guilty.

17 THE COURT: 0322?

18 THE DEFENDANT: Guilty.

19 THE COURT: And 0323?

20 THE DEFENDANT: Guilty.

21 THE COURT: Okay. Do you offer to plead under
22 North Carolina versus Alford on 2019-1686?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you enter that same *Alford* plea
25 under 1687?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And do you enter an *Alford* plea under
3 1688?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you do so freely, intelligently
6 and voluntarily?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: I don't know what all the facts are.
9 I know some of them, but isn't it true that in the event
10 of these three, the *Alford* plea, isn't it true if the
11 Solicitor calls his witnesses to testify to a jury,
12 there is a substantial likelihood you would be convicted
13 of these offenses?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And isn't it also true that you are
16 receiving a beneficial result by being allowed to plead
17 under North Carolina versus Alford as to these three
18 indictments?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Sir, did a family member, friend,
21 anyone pressure you in any way to get you to enter these
22 pleas?

23 THE DEFENDANT: No, sir.

24 THE COURT: Is it your decision to do so?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Have you had sufficient time to speak
2 with your lawyer?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Did he answer all of your questions?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Did he share all discovery materials
7 with you?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Has he done everything he can to help
10 you?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: We have these things called
13 post-conviction relief hearings from time to time.
14 People come in and they swear that the lawyer did
15 something wrong in their case, but let me ask you a few
16 questions. Is there anything he refused to do on your
17 case?

18 THE DEFENDANT: No, sir.

19 THE COURT: Has he worked hard, to your
20 knowledge, on your case?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did he share all of the information
23 that he retrieved with you?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Do you need any more time to speak

1 with your lawyer?

2 THE DEFENDANT: No, sir.

3 THE COURT: Sir, if you have a complaint about
4 your lawyer, you have to tell me today. Do you have a
5 complaint about your lawyer?

6 THE DEFENDANT: No, sir.

7 THE COURT: Okay. Solicitor.

8 MR. BARNETTE: Okay. Thank you, Your Honor.

9 Before I get started on the facts, Your Honor, I want to
10 make the exhibits, make them a part of the facts and
11 evidence in the case. State Exhibit 1, Your Honor, is
12 the packet on the four drug cases. It involves
13 information on all those, Your Honor, as well as the
14 weights. Information on each case, Your Honor.

15 State Exhibit 2, Your Honor, was one we went to
16 trial on, which was the July 19th, 2018, case where the
17 items were found in his house and in his car that he had
18 at his residence, Your Honor.

19 State Exhibit 3, Your Honor, is the packet from
20 the highway patrol. It's the incident reports, as well
21 as notes, as well as the implied consent. He gave
22 consent for his blood to be taken to be tested by SLED,
23 Your Honor. The consent's included with that. There's
24 also a video affidavit. The reason why it was not
25 videotaped was because it was obviously an emergency

1 situation from there, Your Honor. They also have the
2 blood collection report, as well as the evidence sheets
3 involved with that, Your Honor.

4 Your Honor, State Exhibit 4 is the actual
5 accident report that was done on this case, Your Honor.
6 You can look at the diagrams to see where -- how the
7 wreck occurred and where the cars wind up from the
8 wreck.

9 State Exhibit 5, Your Honor, is actually a DVD
10 from Trooper Raines. When he arrived there, Your Honor,
11 he interviewed some witnesses, did things that is
12 recorded on the DVD, Your Honor.

13 State Exhibit 6, Your Honor, is the wreck itself.
14 The cars that was involved with it, pictures that was
15 taken from the scene.

16 And then State Exhibit 7, Your Honor, the Boiling
17 Springs Fire Department worked it, came there, did a
18 report from there, Your Honor, in this case.

19 State Exhibit 8, Your Honor, is the toxicology
20 report that was done on Mr. Michael Kelley's blood in
21 this case, Your Honor.

22 State Exhibit 9, Your Honor, is -- State Exhibit
23 9, Your Honor, is the driver record of the defendant in
24 this case, Your Honor. He was driving under suspension
25 at the time this happened.

1 State Exhibit 10, Your Honor, is his rap sheet
2 concerning his record.

3 State Exhibit 11, Your Honor, these drug offenses
4 would have been a second offense. This is his actual
5 drug conviction, Your Honor, where he pled to possession
6 of a cocaine base substance in front of Judge Cole, Your
7 Honor. That was on September, I believe September 2nd,
8 2011, when he was sentenced on that.

9 State Exhibit 12, Your Honor, is the autopsy of
10 [REDACTED] the victim in this case, Your Honor. From there,
11 that's State's Exhibit 13, Your Honor. It's pictures
12 the family has given me. There's three of them with
13 them as a family with one of his classmates, as well as
14 his sister, Grace, taking care of him at the hospital
15 after this occurred, Your Honor.

16 Your Honor, I'd like to move all these into
17 evidence at this time, make them a part of the facts of
18 this plea at this time. I don't believe there's any
19 objection to that.

20 THE COURT: I didn't hear an objection
21 previously. No objection.

22 MR. BRAGHIROL: No objection, Your Honor.

23 THE COURT: They're so admitted.

24 (State's Exhibits 2-13 were previously entered.)

25 MR. BARNETTE: Okay. Your Honor, to go through

1 the facts of the case, I'll go through the drug cases
2 first, then finish with the felony DUI, Your Honor.

3 The first one, Your Honor, occurred on November
4 16th, 2017, Your Honor. It is 139 Phifer Street, Your
5 Honor, in this case. Narcotics agents from the
6 Spartanburg County Sheriff's Department, Investigator
7 Harbin and Sergeant Ruane, they had a confidential
8 reliable informant, Your Honor. The informant's name is
9 Mike, Your Honor.

10 They did the search and before they did the buy,
11 Your Honor, like they normally do from there, Your
12 Honor, was give the sheriff's office some phones, Your
13 Honor. Went in the involved location there, Your Honor.
14 In that buy, Your Honor, they bought heroin in the
15 amount of 5.14 grams. Your Honor, it was tested.

16 And from there, Your Honor, they did another buy
17 on November 30th, 2017. In that buy, Your Honor, they
18 met with a CI again, Your Honor, known as Mike. He went
19 into the residence, 139, Your Honor. Went in and did
20 another buy from that situation, Your Honor. In that
21 case, Your Honor, they bought heroin. It was 1.11 grams
22 of heroin in that case.

23 Another buy occurred on March 7th, 2018, Your
24 Honor. And in that buy, they used the CI known as Mike
25 again, Your Honor. Went in. His buy location was 309

1 South Church Street in this case, Your Honor. It was
2 basically done in a car. It was a white Chevrolet
3 Equinox, Your Honor. I believe the same car is gonna be
4 involved in the felony DUI.

5 From that standpoint, they did the funds and the
6 same transaction in that case, Your Honor. He had 1.05
7 grams of heroin and .13 grams of fentanyl in that buy,
8 Your Honor. He was charged with those offenses, Your
9 Honor.

10 The Sheriff's Department obtained warrants on
11 those three buys, Your Honor. Went to his residence,
12 139 Phifer Street here in Spartanburg on July 19th,
13 2018. All these locations in Spartanburg County.

14 The Sheriff's Department arrived there, Your
15 Honor. The same two officers involved in that.
16 Investigator Harbin, as well as Sergeant Ruane, Your
17 Honor, went in with several other officers, Your Honor,
18 for his arrest. They went inside. Jessica Jeter was
19 his girlfriend. Opened the door and come inside, so
20 they went inside. They could smell marijuana.

21 They saw marijuana on TV, started questioning him
22 about it. Him and his girlfriend gave consent to
23 search. That consent to search form is in this packet,
24 State Exhibit Number 1, Your Honor. In that case they
25 did a search, Your Honor.

1 In that situation they found -- they did a search
2 of the residence, as well as the car, Your Honor, which
3 is the Equinox again, Your Honor. They found 13.83
4 grams of heroin in one bag. 6.62 grams of heroin in
5 another bag. They found marijuana. They found -- they
6 actually tested three of the bags. 4.69 grams, .27
7 grams, .35 grams of marijuana. He was charged for all
8 those offenses also, Your Honor, in this case.

9 Your Honor, he was given bond. He was on a
10 \$34,000 surety bond when this occurred, Your Honor. He
11 was given no conditions. At that time, the felony DUI
12 occurred on February 8th, 2019, about 7:15 p.m. or a.m.,
13 excuse me, 15 a.m., Your Honor, on Route 9 here in
14 Spartanburg County near Boiling Springs, Your Honor, at
15 Bird Eye View in Boiling Springs.

16 It was basically a three-car wreck, Your Honor.
17 The defendant was driving a 2014 white Chevy Equinox,
18 Your Honor. He ran a red light. It was the same
19 vehicle that was owned by his girlfriend, Jessica Jeter.
20 Ran into a 2016 Kia, Your Honor. Patricia Rubenizer
21 (sic) was driving the car. Her son, [REDACTED] was in the
22 front seat with her, when he T-Boned the car.

23 And you can see on State Exhibit 4, Your Honor,
24 shows the wreck where he ran the light, T-boned him, and
25 actually drove them into -- when he hit them, drove them

1 into a van being driven by -- a 2002 Toyota, driven by
2 Leah Clevenger. And you see it from the pictures in
3 here, you'll see the results of the wreck in that case.

4 When officers arrived there, Your Honor, when
5 they opened the door, they could smell marijuana. They
6 actually found a baggie inside the car, the Equinox,
7 Your Honor. He was also found to be driving under
8 suspension.

9 [REDACTED] died from his injuries from there, Your
10 Honor, at Regional. I'll let his family go into the
11 details of what he went through, Your Honor.

12 His mother, Patricia was hurt. She had three
13 broken ribs, a concussion, other injuries, and she'll be
14 telling you about that, Your Honor, in this case. And,
15 Your Honor, they'd like to address the Court at the
16 appropriate time, Your Honor.

17 THE COURT: Yes, sir.

18 MR. BARNETTE: May I pass these up to Your Honor?

19 THE COURT: Please.

20 MR. BARNETTE: As I get them back in order.

21 (Hands documents to the Court.)

22 Thank you, Your Honor.

23 THE COURT: Sir, did you hear what the solicitor
24 told me?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Is that true?

2 THE DEFENDANT: Yes, sir.

3 MR. BARNETTE: Your Honor, one other thing I
4 forgot was, if he -- I think it's the State Exhibit
5 Number -- it's the toxicology report, Your Honor. He
6 was found to have active metabolite and marijuana, as
7 well as metabolite in his system in this case and we
8 feel like he was under the influence of marijuana.

9 And that's what the State would show in this case
10 in that -- especially when he had the active marijuana
11 there. He had said he had smoked marijuana 24 hours
12 before. We would argue that he actually smoked it
13 earlier than that, based off the results that was from
14 his blood test.

15 THE COURT: Did you hear what the solicitor told
16 me, sir?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is all that true?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: The Court accepts the pleas as being
21 freely, intelligently and voluntarily given by the sound
22 advice of an excellent lawyer with whom this Court is
23 familiar. Yes, sir, Mr. Braghirol.

24 MR. BRAGHIROL: Your Honor, may it please the
25 Court. David Braghirol here for Mr. Michael Kelley.

1 Your Honor, today started off a little chaotic and I'd
2 like to reiterate a little bit of that for the record.

3 Your Honor, initially the solicitor's office had
4 made the offer, which was handed up as Exhibit Number 1
5 to you. I conveyed that to my client. We've had
6 extensive discussions over the last week or so, at
7 least, over that.

8 It got complicated by the injection of a
9 third-party non-lawyer who started throwing out case law
10 and ideas to my client about issues he could raise
11 related to these cases. And, subsequently, from the
12 last time I saw him Saturday till this morning, I think
13 he had conversed with that gentleman again, and that
14 gentleman had provided him some case law that he thought
15 would be dispositive of some suppression issues relative
16 to this case.

17 Your Honor, in the end, after talking with him
18 this morning, he expressed his desire to go forward and
19 use those suppression issues. And, Your Honor, after
20 that, and the solicitor withdrew (sic) his plea offer,
21 I went back to speak with him again. Your Honor
22 actually ran into, someone the Court knows well, James
23 Cheek in the hallway, who actually was kind enough to
24 speak with my client with me and knew the third-party
25 individual as well. And, I guess, from what I

1 understand, that person has a reputation around here of
2 being a non-lawyer giving legal advice.

3 Your Honor, I believe Mr. Cheek's conversation
4 with my client, which happened with all three of us
5 there, helped bring some of these issues to closure for
6 my client. Your Honor, I do believe he freely,
7 voluntarily wanted to enter into this plea. I do
8 believe that he's analyzed those circumstances and those
9 issues.

10 Your Honor, just for purposes of the record, the
11 issues he wanted to raise, if I could put those on?

12 THE COURT: Yes, sir, please.

13 MR. BRAGHIROL: Your Honor, were a couple things
14 related to the drug case in particular. Your Honor,
15 there was a case that was cited by this third party to
16 my client, which made him believe that he had the right
17 to challenge the buy bust, the three distribution
18 charges, based upon there not being proof that those
19 offers or those buys had been set up with a prior
20 proving of predisposition towards illegal activity.
21 Basically an entrapment defense.

22 Your Honor, secondly, there was an issue where it
23 was raised to his attention that since the \$500 of the
24 third distribution case was not photographed and
25 attached in his discovery, that that would yield some

1 kind of dispositive benefit for him. And in this case
2 there was no recovered funds. He wasn't picked up on
3 that warrant for months. So there's no allegation by
4 the State that they found those funds and had to trace
5 them back.

6 Your Honor, subsequent to that also is that there
7 was no proof that the buy had been authorized by a
8 sergeant on a form, but there was no requirement that I
9 could find in case law or that could be cited by this
10 third party that he created this issue requiring them to
11 authorize these funds be released from the Sheriff's
12 Department; although, we know there is a form that they
13 typically do.

14 And I also advised my client that Sergeant Ruane
15 was actively involved in this investigation and was
16 there during these buys, surveillance with Jenna Harbin.
17 And, therefore, that might be able to compensate for the
18 lack of a form being required. It was a legal
19 requirement for and of itself.

20 Your Honor, finally, the other issue was related
21 to the consent to search that was given at the time they
22 served these three warrants. And based upon there being
23 body cam footage as to what happened in there, it would
24 be essentially, I believe, two narcotics officers, two
25 uniformed officers. And then my client and his

1 girlfriend would have differing views about that. So we
2 discussed the likelihood of being able to carry the
3 burden necessary to show that those consents were
4 invalid or coerced.

5 Your Honor, we've gone over all that with my
6 client. I've talked to my client ad nauseam about it.
7 I believe he understands that those are issues we would
8 have raised had we gone to trial. I believe he is
9 freely and voluntarily waiving raising those issues at
10 this time and ask the Court to accept his plea on that
11 now.

12 Your Honor, as to the DUI, without going too far
13 into it, there are issues we would have raised at trial
14 on that. But, Your Honor, I'd like to go back to the
15 drug case first.

16 The issue with the drug case is my client has a
17 prior possession of meth. He has had a long-standing
18 issue with marijuana. He smokes it chronically. And I
19 think, as the Court can see from the toxicology report,
20 his, what we would characterize as, inactive metabolites
21 are 9.5. It is high.

22 Your Honor, the active, as we would characterize
23 it at trial if it went that far, would be the 2.1, which
24 is just over the threshold. That would be consistent
25 with my client testifying or stating that he hadn't

1 smoked since the night before.

2 Quite frankly, Your Honor, with all the drug laws
3 changing around this country and some states legalizing
4 it, they're not catching up with the DUI laws, how long
5 is someone impaired, that's why we're doing the *Alford*
6 plea. My client understands that that does not mean
7 that he is not encountering the same exact ramifications
8 as if he pled guilty, but it does allow us to challenge
9 the fact that his admission of the guilt at this time,
10 to the extent that there are issues we would raise at
11 trial, he does believe there is a significant,
12 substantial likelihood he would be convicted based upon
13 this.

14 Your Honor, in the DUI case itself, there was no
15 implied consent. The blood sample was not taken by
16 implied consent. I believe it was actually taken by
17 search warrant.

18 MR. BARNETTE: Consent.

19 MR. BRAGHIROL: Consent?

20 MR. BARNETTE: Yeah, he gave consent.

21 MR. BRAGHIROL: Okay, consent. All right. There
22 was a search warrant for it, too, I believe; is that
23 right?

24 MR. BARNETTE: That implied consent was in there.
25 I included that in the packet.

1 MR. BRAGHIROL: Okay. All right.

2 Your Honor, he admitted to smoking marijuana. It
3 had been some eight hours before, I believe, or like at
4 11 o'clock that night. This accident happened early the
5 next morning.

6 Your Honor, we've already touched on the active
7 versus inactive. Of course, the State will have a
8 different position about whether that's the case, but I
9 do believe it was a triable case. The issue, Your
10 Honor, and I understand the solicitor's position and
11 probably would have had the same position had I been in
12 his position myself, was that this was a global
13 resolution.

14 We've got three distributions. We've got two
15 trafficking's. And then we've got a felony DUI, which
16 resulted in the loss of a little boy and injury to the
17 mom. Unfortunately, Your Honor, in so resolving the
18 drug charges, my client is having to deal with all the
19 issues at one time. The drug charges carry a 25-year
20 mandatory. And we are doing the *Alford* plea on the
21 felony DUI, understanding there is a significant
22 likelihood that he would be convicted. But my client
23 maintains he was not under the influence at the time
24 this accident happened.

25 That doesn't bring the little boy back. It

1 doesn't relieve the anxiety and the pain and the loss
2 that this family's had. Your Honor, unfortunately I
3 know you know well, there's no way to deal with that.

4 Your Honor, that being said, we are agreeable to
5 taking the plea. Your Honor, he understands that he is
6 on the track of he is looking at 7 to 25 years. He
7 understands that there is not a recommendation of it
8 being a concurrent sentence. Your Honor, we would ask
9 Your Honor make it a concurrent sentence on all charges,
10 since it is a package deal, and he is standing before
11 you willing to accept that.

12 He's also asked me to instruct and advise the
13 Court that he apologizes for the delay this morning. It
14 was not meant to play the system, so much as it was just
15 really just a sincere confusion on his part about what
16 to do based upon this inappropriate, inaccurate advice
17 he was getting.

18 Your Honor, he is 30 years of age. He has a
19 child, biological child of his own. He has two
20 step-children that he has raised for the last two years.
21 There were people here and his family that were here
22 this morning that I was not able to get back in order to
23 handle this plea this morning.

24 Your Honor, when he got out of jail in 2016, he
25 tried to get jobs. He had a hard time doing that. He

1 made the terrible decision to sell heroin. And, Your
2 Honor, unfortunately that led to these buys and his
3 arrest.

4 And, Your Honor, while he was out on bond he
5 actually had a friend, a family member that worked at a
6 place called Magnolia over in Inman. And that friend
7 went to bat for him to get him a job there. She had
8 been there for eight months before this happened, Your
9 Honor. It was the best job he's ever had. He was
10 making 14 an hour, but he was able to get in a lot of
11 overtime.

12 At that point I believe he had started to get his
13 life kind of focused on track, minus the marijuana.
14 But, I mean, in the end he was trying to get away from
15 doing the criminal activity as far as dealing and things
16 of that nature and take pills, Your Honor.

17 It's not a perfect explanation. Unfortunately,
18 it's a realistic one because it's hard with a prior
19 record to get on your feet. He doesn't justify
20 anything. It's just an explanation of what happened.

21 Your Honor, we, of course, are asking --
22 recognizing all the facts, we are asking the Court to
23 consider a sentence on the lower end, somewhere between
24 the 7 and 12-year mark, based upon this, in concurrent
25 time.

1 THE COURT: Thank you, sir.

2 Sir, would you like to speak?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Yes, sir.

5 THE DEFENDANT: I just want to tell the family
6 that I was sorry for what happened, but I don't feel
7 like I was under the influence at the time. But
8 mistakes happen, and I just wanted to let them know I
9 really am truly sorry for what happened to their son and
10 his mother.

11 And if I had another chance to get out and get a
12 job, then I would never touch drugs. But it didn't
13 happen that way, so I was forced to do what I had to do
14 to feed my family. But other than that I ask for your
15 mercy in this courtroom today.

16 THE COURT: Sir, I'm gonna ask you a question I
17 already know the answer to because, you know, lawyers
18 are taught the very first day of law school don't ask a
19 question you don't know the answer to. But so, I'm
20 gonna ask you, tell me the name of the third party who
21 gave you advice who's not a lawyer.

22 THE DEFENDANT: Gerald Davis.

23 THE COURT: Yeah. Gerald Davis. Okay. The
24 solicitor is gonna report that and prosecute him to the
25 attorney general's office of this state.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Solicitor.

3 MR. BARNETTE: Thank you, Your Honor. We had
4 several people here also, Your Honor. I talked to --
5 and they were in both sides of the room at the time.
6 Sheriff Chuck Wright was here, as well as many other
7 family members and friends of the family, Your Honor.

8 I'd like everybody that's still here to stand up
9 on behalf of the victim. (All stood.) Thank you all,
10 please have a seat.

11 Your Honor, I know the three family members would
12 like to address you --

13 THE COURT: Yes, sir.

14 MR. BARNETTE: -- at this time, Your Honor, in
15 this case. And I believe Patty would like to address
16 you first, if I remember right.

17 MS. RUBENZER: Good morning.

18 THE COURT: Good afternoon.

19 MS. RUBENZER: Good afternoon. Thank you.

20 THE COURT: Tell me your name, please.

21 MS. RUBENZER: Patricia Rubenzer.

22 THE COURT: Yes, ma'am.

23 MS. RUBENZER: First, I'd like to thank Solicitor
24 Barnette, Mr. Glen, our family and friends and our
25 pastor, Lane Bembenek, for being here with us today, and

1 since, really since February 8th.

2 On February 8th we lost everything that we knew.
3 Our beloved [REDACTED] our family as we knew it, and the
4 sense of security that we had. I'm so profoundly sorry
5 and sad to all of the parents of those who knew and
6 loved [REDACTED]

7 His loss is bigger than any words can say. I'm
8 so sorry that those parents have to explain to their
9 child that their friend was gone, killed on his way to
10 school. A piece of their childhood is gone. They all
11 grew up in an instant.

12 No parent should have to go through what we feel.
13 The loss that is so deep. It hurts so deeply at the
14 core of your being. No parent should have to hear that
15 the C0 C1 break in your son's spine was so bad that the
16 trauma surgeon had never seen one that bad in 28 years;
17 write an obituary for your child from your hospital bed.

18 To hold your remaining daughter as she sobs and
19 realizes that she's an only child. Wait 48 hours for
20 doctors to declare your son deceased because he's a
21 minor and they have to do three different tests by three
22 different doctors for their own liability. Get a visit
23 from the coroner who says they now have to perform an
24 autopsy on your son to make sure that the other side
25 can't say he wasn't perfect.

1 Watch hospital doctors and staff cry as they wore
2 pink and held candles and paid tribute to your son, a
3 hero for donating his organs so others could live.

4 [REDACTED] was a hero and not just at the end of this. 4,373
5 days that he was on this earth he was an advocate for
6 all. He loved life with all of his being.

7 There's so many milestones that we're gonna miss.
8 Too many to state here, but a few that come to mind are
9 every meal is an empty seat will always be there. Every
10 trip as his presence is missed. And waiving to me from
11 the window above the garage as I came home. Being his
12 sister's biggest supporter in life. And be the best man
13 at his best friend, Will's, wedding, as this is
14 something they had discussed since they were eight-years
15 old.

16 Instead, we have a death certificate that says
17 homicide as the cause of death and a box that holds his
18 remains. A box that his mother and sister cradled and
19 sobbed over. An image that I can't get out of my mind.
20 There's just so many images.

21 In conclusion, Your Honor, according to the World
22 Bank, [REDACTED] life expectancy was 78. That means 66
23 years were robbed from him. That's 24,090 days gone.
24 And all he was doing was going to school. No child
25 should ever die, but especially not that way. Thank

1 you, Your Honor.

2 THE COURT: Thank you, ma'am.

3 Ma'am, tell me your name, please.

4 MISS RUBENZER: My name is Grace Rubenzer. I was
5 [REDACTED] sister.

6 THE COURT: Yes, ma'am.

7 MISS RUBENZER: On February 8th of this year I
8 woke up to missed calls, text messages and voicemails
9 from family and friends and 9-1-1 operators telling me
10 that my mom and brother had been involved in a serious
11 car accident and that I needed to go home to the
12 hospital from school in Columbia.

13 When I got there, I found my mom bruised and
14 bloody laying in a hospital bed and was told that my
15 little brother's neck was broken in the accident and
16 that there was nothing they could do to save him. The
17 three of us spent the next five days in a hospital with
18 [REDACTED] body on a breathing machine before he was taken
19 to the operating room for an organ donation.

20 My brother was the most amazing child I'd ever
21 met. He did more in his 11 years of life than people do
22 living full lives and their entire lives. He was a Boy
23 Scout. He helped with community service. He was
24 involved in church. Obviously there's the organ
25 donation, you know, his final gift in life. But, Your

1 Honor, he was loved by so many people, as you saw
2 earlier today before things were interrupted. You know,
3 we filled this courtroom.

4 At his funeral so many people came. We filled
5 two churches and had to live stream it because thousands
6 of people were there. That's the community that loved
7 my brother. That's how much he touched everyone and now
8 he's gone. He was taken from us a week before his 12th
9 birthday. We were here. I was here speaking to the
10 Court like I was -- like I am right now months ago on
11 the day that was supposed to be his 12th birthday.

12 This is what we're having to go through now. His
13 life was robbed from us. He was, like my mom said, he
14 was just going to school. He was innocent. My mom was
15 innocent. No child should have to see their mother like
16 that.

17 She was so, so bruised and bloody. And she had
18 to, every night, comprehend losing her son while also
19 laying in a hospital bed, writing his obituary with
20 three broken ribs on pain medicine. She got so sick off
21 the pain medicine that she could barely see her son in
22 those final moments. And she would be sitting by his
23 bedside with a bucket vomiting because she was so sick
24 from the pain meds and from everything that her body
25 went through.

1 There's so much that we don't get to experience
2 now. I'm an only child now. I don't have any more
3 siblings because of this. And at the end of the day my
4 only ask is that the sentencing for the crimes that have
5 been committed against [REDACTED] or against our family are
6 appropriate and that the max sentence be given. Thank
7 you.

8 THE COURT: Thank you, ma'am.

9 Good afternoon.

10 MR. RUBENZER: Thank you, Your Honor. My name is
11 Trevor Rubenzer. Your Honor, thank you for allowing me
12 to address the Court today and have an opportunity to do
13 one last thing for my son instead of simply an honor of
14 my son.

15 Today is the five-month anniversary of what we
16 consider to be my son's death. [REDACTED] death was
17 declared on the tenth, but according to the first
18 neurosurgeon that I talked to, we have the same -- he
19 and I have the same set of religious beliefs, [REDACTED] went
20 to heaven on February 8th, okay? Today is July 8th, and
21 not a day has gone by that me and my family haven't
22 lived in complete agony.

23 The State of South Carolina doesn't give a ton of
24 guidance in terms of what should be in a victim impact
25 statement. It simply says on the Department of

1 Corrections website that the idea is to explain the
2 crime, which I think the solicitor has already done, and
3 explain the harm. To explain the harm, I have to take
4 you there with me.

5 On February 8th I received a phone call. But
6 before that phone call, I had spent a few precious
7 minutes cuddling with my son before he went to school.
8 [REDACTED] was a cuddler. He was a lover. He loved
9 recklessly, with abandon. I will never forget it. The
10 community will never forget it. He was the kind of kid
11 who drained his lunch account so he could buy food.

12 We had -- we made him lunch every day, but he had
13 a lunch account for milk. He was the kind of kid who
14 drained his lunch account so he could buy food for kids
15 that didn't have it. The only time he ever got in
16 trouble at school -- he got ISS once. He got suspended
17 in school once -- was standing up to a kid who's being
18 bullied when nobody else would stand up for him. The
19 only other time he almost got in trouble was standing up
20 for a kid, a young child with autism who was being
21 bullied and picked on in the classroom.

22 [REDACTED] loved. When [REDACTED] got ahold of money,
23 there were two things that might have happened to it.
24 One was, yeah, he might buy an I-tunes card so he could
25 play or get something on Minecraft. But if he ran

1 across somebody in need first, unfortunately that's all
2 too much of a reality in Spartanburg County, he gave his
3 money away. That's what he always did.

4 He was the one who rolled down the window in the
5 car. And he would have rather have given his money, all
6 of this money, 20 times to somebody who might not use it
7 wisely and have one person who truly needed it, okay,
8 that did not give his money and keep it.

9 He worked with the homeless. He stayed overnight
10 with the homeless at our church. Our pastor has a
11 picture on his desk of [REDACTED] in CD pajamas from when he
12 was really young staying at church helping the homeless.
13 He volunteered as well at the Carpenter's Table Food
14 Pantry and at the Humane Society and with veterans
15 organizations through Boy Scouts.

16 On the day of that accident as we were cuddling,
17 I didn't think of the sum total of that. But when I got
18 the call a few minutes later, not that long after he
19 left, I started to think about it as I drove to the
20 scene of the accident which, Your Honor, it's right
21 outside the subdivision, okay? Very, very close. So I
22 was one of the first people there.

23 When I arrived at the scene of the accident, my
24 wife was screaming. And she was screaming in pain
25 because her ribs were broken and she was screaming in

1 pain because of her shoulder and she couldn't move it.
2 And she was screaming in pain because she didn't know
3 where her son was. She knew he was in the car, but she
4 didn't know where he was.

5 A few minutes later they pried, while I was still
6 there, they pried my son out of the car. Patty doesn't
7 remember it, but I do. And I'm not gonna go into all of
8 it because I can't for her sake. But they pried the
9 body of my son from the car. They put it on, just on
10 the asphalt slab in the little strip mall that's right
11 out there. They started pumping away at his chest and I
12 begged him to come back. And I begged God to bring him
13 back and he didn't come back.

14 Eventually they said let's go, we need to get him
15 to the hospital. On the way, we went to the hospital,
16 the EMTs worked on [REDACTED] I alternated at the hospital
17 back and forth, because [REDACTED] went into surgery
18 immediately, between my wife's room in the emergency
19 room, I was able to see her after a certain amount of
20 time, and in between the waiting room for the operating
21 -- for operations. And all I could think about is how
22 am I gonna be able to tell my wife what I think has
23 happened to my son?

24 A few hours later I met with the neurosurgeons.
25 They gave me something like this to take notes with.

1 (Indicating.) And I started writing. I'm a pretty
2 systematic person. I'm a college professor by trade.
3 So I started writing. And they're like we were able to
4 get his heart beating, and I feel relieved. Some of the
5 color returned to his face. And then I wrote, I have
6 four entries on that sheet of paper, severe head injury.
7 And the final entry after which I stopped writing is
8 [REDACTED] is not expected to survive.

9 At that point I had to go with the neurosurgeons
10 to explain to my wife, as best as we could given her
11 condition, that her son wasn't going to survive. Dozens
12 of people were assembled waiting for updates. I had to
13 tell them that he was not going to survive.

14 That's the victim impact for me and the victim
15 impact for my wife and daughter, who got pulled out of a
16 classroom, told that her brother -- told nothing. Had
17 to sit in a car for 90 minutes on the way up from
18 Columbia wondering what had happened and having me
19 having to break it to her that he was going to die or in
20 practice was dead.

21 What is victim impact like? Victim impact is
22 every time I hear a siren I see them working on my son.
23 I can't get the image out of my head when I close my
24 eyes. When I'm in the shower, the white noise from the
25 shower I hear sirens. When there are actually sirens,

1 they last for a long time after the sirens have actually
2 passed every day.

3 And when I have dreams, I don't dream about the
4 crash itself, but I dream and I see [REDACTED] and I know in
5 my dreams that he is gone and it is torture. When I
6 wake up, my wife is often moaning right beside me, and I
7 can't tell whether she's moaning because she's still,
8 even five months later, in physical pain.

9 Her ribs have healed, but her shoulder, she has a
10 hard time finding a comfortable way to sleep. Even five
11 months later I don't know if she's moaning because of
12 physical pain or because of emotional pain. And,
13 frankly, to me it doesn't matter.

14 I appreciate that Mr. Kelley has apologized. And
15 I will say in open court that if it was just [REDACTED] the
16 first thing [REDACTED] would have done if he were in this
17 room right now, is either thrown his arms around Mr.
18 Kelley and said, it's okay, because that's the way he
19 was. He would have been a little bit slower on the
20 forgiveness for hurting his mom, but he would have
21 forgiven Mr. Kelley.

22 But we need to understand that forgiveness is not
23 absolution. And that in the same way if Mr. Kelley had
24 just waited the 20 seconds for the light to change,
25 that's all the longer the light is red at that

1 particular intersection, about 20 seconds. Just wait
2 for the light to change. That's all my son's life was
3 worth in the end was 20 seconds.

4 I would give you everything I had, including my
5 own life, to get that 20 seconds with him right now.
6 And I urge the Court to consider that when considering a
7 sentence. Thank you, Your Honor.

8 THE COURT: Thank you, Professor.

9 MR. BARNETTE: Thank you, Your Honor. I believe
10 that's it, Your Honor. Thank you.

11 THE COURT: Do you know the number of days he's
12 been incarcerated?

13 MR. BRAGHIROL: Your Honor, with all that
14 happened this morning, I honestly don't know the exact
15 number of days. I didn't get a chance to check, but we
16 would ask for credit for time served.

17 THE COURT: Okay.

18 MR. CHEEK: 118. 150, Your Honor.

19 MR. BRAGHIROL: Your Honor, I believe it's 150
20 days.

21 THE COURT: 150 days?

22 MR. BRAGHIROL: (Nods head up and down.)

23 ORDER OF THE COURT

24 THE COURT: I'm sorry for the loss of the family.
25 Sir, I'm sorry you have put yourself in such a terrible

1 position.

2 2019-1688, that's the felony driving under the
3 influence and death, you're confined to the Department
4 of Corrections for 25 years and pay a fine of \$25,100,
5 concurrent. Credit for 150 days.

6 2019-0323, that is the fentanyl. You're confined
7 to the Department of Corrections for a period of 15
8 years and pay a fine of \$25,000. It is consecutive to
9 all indictments. Credit for 150 days.

10 2019-1686, felony of driving under the influence,
11 great bodily injury, you're confined to the Department
12 of Corrections for 15 years and pay a fine of \$10,100.
13 Concurrent. Credit for time.

14 2019-0320, that is another cocaine. Department
15 of Corrections for 15 years and pay a fine of \$25,000.
16 Concurrent. Credit for time.

17 2019-0318, it's heroin. Department of
18 Corrections for 15 years and pay a fine of \$50,000.
19 Concurrent. Credit for time.

20 2019-0317, another heroin. Twenty-five years and
21 pay a fine of \$50,000. Concurrent. Credit for time.

22 2019-0322, that is another drugs, cocaine.
23 Fifteen years and pay a fine of \$25,000. It is
24 concurrent. Credit for time.

25 2019-0314, marijuana. Five years and pay a fine

1 of \$5,000. Concurrent. Credit for time.

2 And, lastly, 2019-1687, 30 days in the county.

3 Concurrent. Credit for time.

4 Sir, you have ten days from today's date to file
5 an appeal of your plea or a sentence. You must file
6 that with the Clerk of Court for the County of
7 Spartanburg, state of South Carolina. Do you
8 understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Best of luck to you.

11 MR. BARNETTE: Thank you, Your Honor.

12 THE COURT: We'll be in recess.

13 (Hearing concluded at 1:13 p.m.)

14

15 --- THIS ENDS REQUESTED TRANSCRIPT ---

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COURT REPORTER CERTIFICATE

I, the undersigned Julie A. Cendroski, Court Reporter for the Seventh Judicial Circuit Court of the State of South Carolina, do hereby certify that to the best of my ability the foregoing is a true, accurate, and complete transcript of record of all the proceedings and evidence introduced in the hearing and/or trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 8th day of July, 2019.

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

Julie A. Cendroski
Circuit Court Reporter
Seventh Judicial Circuit

WITNESSES

SPTBG CO SHERIFF'S OFFICE

[Signature]

ARREST WARRANT NUMBER

2018A4210202838

ACTION OF GRAND JURY

[Stamp]

JAN 23 2019

Foreperson of Grand Jury
Date: *[Signature]*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 19-GS-42-0317

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 28 2019

TERM

THE STATE

vs.

MICHAEL EUGENE KELLEY II

Indictment for

TRAFFICKING HEROIN

SC Code: 44-53-370

2019 JAN 30 PM 4:48
CLERK OF COURT

STATE OF SOUTH CAROLINA }
COUNTY OF SPARTANBURG }

INDICTMENT

JAN 23 2019

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING HEROIN

That Michael Eugene Kelley II did in Spartanburg County on or about July 19, 2018,
~~knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did~~
provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell,
manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly
actually or constructively possess or did knowingly attempt to become in actual or
constructive possession of more than (14) fourteen grams of Heroin, a schedule I
controlled substance, in violation of §44-53-370 , *THE CODE OF LAWS OF SOUTH*
CAROLINA, (1976), as amended.

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


ASSISTANT SOLICITOR

WITNESSES

SPTBG CO SHERIFF'S OFFICE

Jimmy W. Barnes

ARREST WARRANT NUMBER

2018A4210101764

ACTION OF GRAND JURY

JAN 28 2019

JAN 28 2019

Foreperson of Grand Jury
Date: *[Signature]*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

19-GS-42-0318

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 28 2019

TERM

THE STATE
vs.

MICHAEL EUGENE KELLEY II

Indictment for

TRAFFICKING HEROIN

SC Code: 44-53-370

SPARTANBURG COUNTY
2019 JAN 30 PM 4:48
03 JAN 30 2019

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JAN 23 2019, the

Grand Jurors of Spartanburg County present upon their oath:

TRAFFICKING HEROIN

That Michael Eugene Kelley II did in Spartanburg County on or about November 16, 2017, knowingly sell, manufacture, cultivate, deliver, purchase or bring into this State, or did provide financial assistance or did otherwise aid, abet, attempt, or conspire to sell, manufacture, cultivate, deliver, purchase or bring into this State, or did knowingly actually or constructively possess or did knowingly attempt to become in actual or constructive possession of more than (4) four grams of Heroin, a schedule I controlled substance, in violation of §44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


ASSISTANT SOLICITOR

WITNESSES

\$CSO

[Signature]

ARREST WARRANT NUMBER

201BA4210101762

ACTION OF GRAND JURY

TELETYPE

[Signature]

JAN 28 2019

Foreperson of Grand Jury

Date:

[Signature]

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 19-GS-42-0320

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 28 2019

TERM

THE STATE

vs.

MICHAEL EUGENE KELLEY II

Indictment for

DISTRIBUTION OF HEROIN

SC Code: 44-53-370

SPARTANBURG COUNTY
2019 JAN 30 PM 4:48

[Handwritten mark]

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JAN 23 2019 the
Grand Jurors of Spartanburg County present upon their oath:

DISTRIBUTION OF HEROIN

That Michael Eugene Kelley II did in Spartanburg County on or about
November 30, 2017, manufacture, distribute, dispense, deliver, purchase,
or otherwise aid, abet, attempt or conspire to manufacture, distribute,
dispense, deliver or purchase, or possess with intent to manufacture,
distribute, dispense, deliver, or purchase a quantity of Heroin, a schedule I
controlled substance or controlled substance analogue, in violation of § 44-
53-370, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as*
amended.

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


ASSISTANT SOLICITOR

WITNESSES

6660

Barry J. Barnette

ARREST WARRANT NUMBER

2018A4210101759

ACTION OF GRAND JURY
TECO BJJ

JAN 28 2019

For person of Grand Jury
Date: *[Signature]*

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO.

19-GS-42-0322

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 28 2019

TERM

THE STATE
vs.

MICHAEL EUGENE KELLEY II

Indictment for

DISTRIBUTION OF HEROIN

SC Code: 44-53-370

SPARTANBURG COUNTY
2019 JAN 30 PM 4:49

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

JAN 23 2019

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

DISTRIBUTION OF HEROIN

That Michael Eugene Kelley II did in Spartanburg County on or about March 7, 2018, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Heroin, a schedule I controlled substance or controlled substance analogue, in violation of § 44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

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


ASSISTANT SOLICITOR

WITNESSES

SCSO

[Signature]

ARREST WARRANT NUMBER

2018A4210101760

ACTION OF GRAND JURY

[Signature]

JAN 23 2019

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

19-GS-42-0323

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 28 2019

TERM

THE STATE

vs.

MICHAEL EUGENE KELLEY II

Indictment for

DISTRIBUTION OF FENTANYL

SC Code: 44-53-370

SPARTANBURG COUNTY
2019 JAN 30 PM 4:49

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

JAN 23 2019

At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

DISTRIBUTION OF FENTANYL

That Michael Eugene Kelley II did in Spartanburg County on or about March 7, 2018, manufacture, distribute, dispense, deliver, purchase, or otherwise aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Fentanyl, a schedule II controlled substance or controlled substance analogue, in violation of § 44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

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


ASSISTANT SOLICITOR

WITNESSES

South Carolina Highway Patrol

ARREST WARRANT NUMBER

20192370523122

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date: MAR 22 2019

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO **19-GS-42-1686**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAR 25 2019

TERM

THE STATE

v.

MICHAEL EUGENE KELLEY, II

Indictment for

FELONY DUI - GREAT BODILY INJURY

SC Code 56-5-2945 (A) (1)

CDR Code: 0406

Class FEL/D

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2019 MAR 29 AM 8:38

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAR 22 2019 the

Grand Jurors of Spartanburg County present upon their oath:

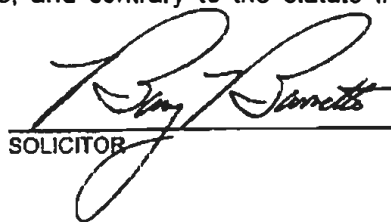
FELONY DUI – GREAT BODILY INJURY

That the Defendant, Michael Eugene Kelley, II, did in Spartanburg County on or about February 8, 2019, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs, and violated an act forbidden by law or neglected any duty imposed by law in the driving of the vehicle, to-wit:

- (1) Restriction on Speeding (Article II, Section 56), and/or
- (2) Failure to maintain proper control of vehicle, and/or
- (3) Driving Left of Center (Sections 56-5-1810 and 56-5-1880), and/or
- (4) Failure to follow right of way restrictions (Art 17, Section 56) and/or
- (5) Reckless Driving (Section 56-5-2920) and/or
- (6) Driver's failure to exercise due care and/or
- (7) Failure to maintain a proper lookout for other traffic and/or pedestrians and/or
- (8) Driving too fast for conditions (Section 56-5-1560) and/or
- (9) Driving while his driver's license is suspended (Title 56, Art. I).

Which proximately caused Great Bodily Injury to Patricia Rubenzer, in violation of §56-05-2945 (A) (1), of THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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


SOLICITOR

WITNESSES

SCHP

ARREST WARRANT NUMBER

20192370523123

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date:

MAR 22 2019

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **19-GS-42-1687**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAR 25 2019

TERM

**THE STATE
v.**

MICHAEL EUGENE KELLEY, II

**Indictment For
DUS/DRIVING UNDER SUSPENSION**

SC Code: 56-1-460

CDR Code: 0624

Class c

CLERK OF COURT
SPARTANBURG COUNTY
2019 MAR 29 AM 8:36

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

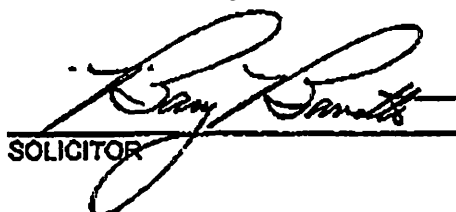
INDICTMENT

At a Court of General Sessions, convened on MAR 22 2019 the
 Grand Jurors of Spartanburg County present upon their oath:

DUS/DRIVING UNDER SUSPENSION

That the Defendant, Michael Eugene Kelley, II, did in Spartanburg County on or about February 8, 2019, drive a motor vehicle on a public highway of this State when his license to drive was canceled, suspended or revoked, all in violation of §56-1-460(A)(1)(a), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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


 SOLICITOR

WITNESSES

SCSO

[Signature]

ARREST WARRANT NUMBER

2018A4210202835

ACTION OF GRAND JURY

True Bill

JAN 23 2019

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

19-GS-42-0314

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JAN 28 2019

TERM

THE STATE

vs.

MICHAEL EUGENE KELLEY II

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA

SC Code: 44-53-370

2019 JAN 30 PM 4:48

STATE OF SOUTH CAROLINA }
COUNTY OF SPARTANBURG }

INDICTMENT

JAN 23 2019

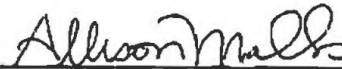
At a Court of General Sessions, convened on
Jurors of Spartanburg County present upon their oath:

, the Grand

POSSESSION WITH INTENT TO DISTRIBUTE

That Michael Eugene Kelley II did in Spartanburg County on or about July 19, 2018,
- - - manufacture, ~~distribute, dispense, deliver, purchase, aid, abet, attempt or conspire to~~ . . .
manufacture, distribute, dispense, deliver or purchase, or possess with intent to
manufacture, distribute, dispense, deliver, or purchase a quantity of Marijuana, a
schedule I controlled substance, in violation of § 44-53-370, *THE CODE OF LAWS OF*
SOUTH CAROLINA, (1976), as amended.

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


ASSISTANT SOLICITOR

WITNESSES

South Carolina Highway Patrol

[Signature]

ARREST WARRANT NUMBER

2019A4210100584

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

MAR 22 2019

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

19-GS-42-1688

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAR 25 2019

TERM

THE STATE

v.

MICHAEL EUGENE KELLEY, II

Indictment for

CAUSING DEATH BY OPERATING
VEHICLE WHILE UNDER THE
INFLUENCE OF DRUGS OR ALCOHOL
(FELONY DUI - DEATH)

SC Code: 56-5-2945(A)(2)

CDR Code(s): 0395

Class FEL-B

CLERK OF COURT
SPARTANBURG COUNTY
2019 MAR 29 AM 8:38

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAR 22 2019 the
 Grand Jurors of Spartanburg County present upon their oath:

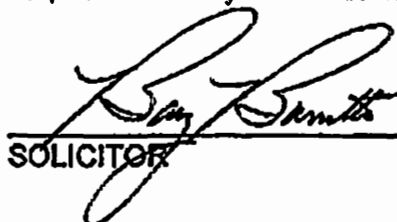
FELONY DUI - DEATH

That the Defendant, Michael Eugene Kelley, II, did in Spartanburg County on or about February 8, 2019, drive a motor vehicle while under the influence of alcohol, drugs, or a combination of alcohol and drugs, and violated an act forbidden by law or neglected any duty imposed by law in the driving of the vehicle, to-wit:

- (1) Failure to maintain proper control of vehicle, and/or
- (2) Driver's failure to exercise due care (56-5-3230) and/or
- (3) Failure to follow right of way restrictions (Art 17, Section 56), and/or
- (4) Driving too fast for conditions (Section 56-5-1560); and/or
- (5) Failure of driving on roadway laned for traffic (Section 56-5-1900); and/or
- (6) Failure to maintain a proper lookout for other traffic and/or pedestrians; and/or
- (7) Restriction on speeding (Article II, Section 56); and/or
- (8) Driving left of center (Sections 56-5-1810 and 56-5-1880) and
- (9) Driving while his driver's license is suspended (Title 56, Art I)

which proximately caused death to Ethan Rubenzer, a minor, in violation of §56-05-2945 (A) (2), of *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


 SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.AKA: Michael Eugene Kelley IIRace: BLACK Sex: M Age: 30DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED] AveCity, State, Zip: Spartanburg, SC 29303DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Trafficking in Heroin, morph., etc., 4 g or more, but less than 14 g - 1 (7 years to 25 years + \$50,000 fine)In violation of § 44-53-0370(e)(3)(a) of the S.C. Code of Laws, bearing CDR Code # 2361☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ \$17-25-45

w/minor 1st or Lowd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Winnow Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ALTEST: [Signature]

SOB13039

Michael Kelley

SCB14278

BARNETTE, BARRY

SC Bar#

Defendant

Brashford, David Arthur
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed — years and/or to pay a fine of \$ 50,000; provided that upon the service of — days/months/years and/or payment of \$ —; plus costs and assessments as applicable; the balance is suspended with probation for — months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

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

*Fees:

§14-1-206 (Assessments 107.5 %)		\$50,000.00
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$5,750.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$10.00
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$150.00
§50-21-114 (DUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$3,100.75

TOTAL \$107,145.75Clerk of Court/ Deputy Clerk [Signature]Court Reporter: [Signature]

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS4200317A/W#: 2018A4210202838Date of Offense: 7/19/2018S.C. Code § : 44-53-0370(e)(3)(a)CDR Code #: 2361

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSALTEST: [Signature]

SOB13039

Michael Kelley

SCB14278

BARNETTE, BARRY

SC Bar#

Defendant

Brashford, David Arthur
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed — years and/or to pay a fine of \$ 50,000; provided that upon the service of — days/months/years and/or payment of \$ —; plus costs and assessments as applicable; the balance is suspended with probation for — months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

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

*Fees:

§14-1-206 (Assessments 107.5 %)		\$50,000.00
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$5,750.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$10.00
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$150.00
§50-21-114 (DUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$3,100.75

TOTAL \$107,145.75Clerk of Court/ Deputy Clerk [Signature]Court Reporter: [Signature]

SCCA/217 (04/2018)

— days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. —May serve W/E beginning —Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ — beginning —\$ — paid to Public Defender FundOther: —

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

Presiding Judge [Signature]Judge Code: 2165Sentence Date: 8 July 2019

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Michael Eugene Kelley II

AKA:

Race: BLACK Sex: M Age: 30

DOB: SS#: [REDACTED]

Address: WinSmith Ave

City, State, Zip: Spartanburg, SC 29303

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Drugs / Trafficking in Heroin, morph., etc., 4 g or more, but less than 14 g - 1 (7 years to 25 years + \$50,000 fine)In violation of § 44-53-0370(e)(3)(a)1 of the S.C. Code of Laws, bearing CDR Code # 2361
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ \$17-25-45
w/minor 1st or Lowd Act)The charge is: ☐ As indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTORNEY: Barry Barnett SCB13039 Michael Kelley SCB14278
BARNETTE, BARRY SC Bar# Defendant BRIGHAM, David Arthur SC Bar#
Attorney for DefendantWHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed 150 days
under to pay a fine of \$ 2,000; provided that upon the service of 150 days/months/years and/or payment
of \$ 100.00; plus costs and assessments as applicable; the balance is suspended with probation for 150
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOP.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ 107,145.75 plus 20% fee: \$ 21,429.15

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$50,000.00
§14-1-206 (Assessments 107.5 %)		\$53,750.00
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$150.00
§50-21-114(BUI Breath Test Fee)	\$30	\$
§56-5-2942(f) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$3,329.25

TOTAL \$107,145.75

Clerk of Court/ Deputy Clerk

Court Reporter: Caroline

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS4200318

A/W#: 2018A4210101764

Date of Offense: 11/16/2017

S.C. Code § : 44-53-0370(e)(3)(a)1

CDR Code #: 2361

SENTENCE SHEET

150 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/B beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.

Presiding Judge

Judge Code: 2165Sentence Date: 8 July 2019

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE VS.

Michael Eugene Kelley II

AKA:

Race: BLACK Sex: M Age: 30

DOB: SS#:

Address: Winstnith Ave

City, State, Zip: Spartanburg, SC 29303

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense- (0 to 15 years up to \$25,000)

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act) ☐ §17-25-45The charge is: ☐ As Indicted ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTORNEY: Barnette, BarrySCB13039
SC Bar#Michael Kelley
DefendantBrathrol, David Arthur
Attorney for DefendantSCB14278
SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed 15 years and/or to pay a fine of \$ 25,000 provided that upon the service of 15 days/months/years and/or payment of \$ 25,000; plus costs and assessments as applicable*; the balance is suspended with probation for 15 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$ 25,000.00
 §14-1-206 (Assessments 107.5 %): \$ 214,875.00
 §14-1-211(A)(1) (Conv. Surcharge): \$100 \$ 100.00
 §14-1-211(A)(2) (DUI Surcharge): \$100 \$ 100.00
 §56-5-2995 (DUI Assessment): \$12 \$ 12.00
 §56-1-236 (DUI Breath Test): \$25 \$ 25.00
 Proviso (Public Def/Probation): \$500 \$ 500.00
 §14-1-212 (Law Enforce. Funding): \$25 \$ 25.00
 §14-1-213 (Drug Court Surcharge): \$150 \$ 150.00
 §50-21-114 (BUI Breath Test Fee): \$50 \$ 50.00
 §56-5-2942(I) (Vehicle Assessment): \$40/ea \$ 40.00
 3% to County (if paid in installments): \$ 15,146.50

TOTAL: \$ 253,714.50Clerk of Court/ Deputy Clerk: [Signature]Court Reporter: [Signature]

SOCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS4200320

A/W#: 2018A4210101762

Date of Offense: 11/30/2017

B.C. Code § : 44-53-0370(b)(1)

CDR Code #: 0183

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS☐ Mandatory GPS(CSC w/minor 1st or Lowd Act)☐ Recommendation by the State.Brathrol, David Arthur
Attorney for Defendant☐ County Detention Center,under the Youthful Offender Act not to exceed 15 yearsof \$ 25,000; plus costs and assessments as applicable*;the balance is suspended with probation for 15 months/years

and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,

which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

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

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,

Proviso requires \$500 be paid to Clerk

during probation and shall be collected before

any other fees.

Presiding Judge: [Signature]Judge Code: 2165Sentence Date: 8 July 2019

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.Michael Eugene Kelley II

AKA: _____

Race: BLACK Sex: M Age: 30

DOB: _____ SS#: _____

Address: Winsmith AveCity, State, Zip: Spartanburg, SC 29303

DL#: _____ SID#: _____

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADSTO: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense (0 to 15 years up to \$25,000 fine)in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ \$17-25-45

w/minor 1st or Lowd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTORNEY: BARNETTE, BARRY SCB13039 Michael Kelley SCB14278

SC Bar#

Defendant

Braghirol, David Arthur
Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ 25,000; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. 150 days
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-63 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fines:
 §14-1-206 (Assessments 107.5%) \$ 25,000.00
 §14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 25,250.00
 §14-1-211(A)(2) (DUI Surcharge) \$100 \$ 25,350.00
 §56-5-2993 (DUI Assessment) \$12 \$ 25,362.00
 §56-1-226 (DUI Breath Test) \$25 \$ 25,387.00
 Proviso (Public Def/Probation) \$500 \$ 25,887.00
 §14-1-212 (Law Enforce. Funding) \$25 \$ 25,912.00
 §14-1-213 (Drug Court Surcharge) \$150 \$ 26,062.00
 §50-21-114(BUI Breath Test Fee) \$50 \$ 26,112.00
 §56-5-2942(7) (Vehicle Assessment) \$40/ea \$ 26,152.00
 3% to County (if paid in installments) \$ 15,114.60

TOTAL \$ 55,714.60Clerk of Court/Deputy Clerk [Signature]Court Reporter: [Signature]

SCCA217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS4200322 ✓A/W#: 2018A4210101759Date of Offense: 3/7/2018S.C. Code § 44-53-0370(b)(1)CDR Code #: 0183

SENTENCE SHEET

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge [Signature]Judge Code: 2165Sentence Date: 8 July 2019

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

SPARTANBURG

VS.

Michael Eugene Kelley II

AKA:

Race: BLACK Sex: M Age: 30

DOB: SS#: [REDACTED]

Address: Winsmith Ave

City, State, Zip: Spartanburg, SC 29303

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Sched. II (Cocaine)- 1st offense (0 to 15 years up to \$25,000 fine)

in violation of § 44-53-0370(b)(1) of the S.C. Code of Laws, bearing CDR Code # 0183

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lewd Act)

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

ATTORNEY

BARNETTE, BARRY

SCB13039

SC Bar#

Defendant

Brachtol, David Arthur
Attorney for Defendant

SCB14278

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$ 25,000; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: all indictments☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. 150 days
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION; ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:		\$ 25,000.00
§14-1-206 (Assessments 107.5 %)		\$ 26,875.00
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ 2,500.00
§14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§50-21-114 (DUI Breath Test Fee)	\$50	\$
§56-5-2942(I) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 1,564.50

TOTAL

\$ 63,714.50

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS4200323 ✓

A/W#: 2018A4210101760

Date of Offense: 3/7/2018

S.C. Code § 44-53-0370(b)(1)

CDR Code #: 0183

SENTENCE SHEET

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/B beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther:

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

Presiding Judge

Judge Code:

Sentence Date:

R. Keith Kelly
2165
8 July 2019

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.Michael Eugene Kelly

AKA:

Race: BLACK Sex: M Age: 30DOB: SSAddress: Insmith AvCity, State, Zip: Spartanburg, SC 29303DL#: SS SID#: SS*CDL Y ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Manuf., poss. of Marijuana. in Sch. I, II, III or flunitrazepam or analogu- 1st offense- (0 to 5 years up to \$5,000 fine)in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0186☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lowd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The pleas is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

BARNETTE, BARRY

SCB13039

SC Bar#

Defendant

Brighfor, David Arthur
Attorney for Defendant

SCB14278

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 150 days years
and/or to pay a fine of \$ 5000; provided that upon the service of 150 days days/months/years and/or payment
of \$ 5000; plus costs and assessments as applicable*; the balance is suspended with probation for 150 days
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

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

_____ days/hours Public Service Employment

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§14-1-206 (Assessments 107.5 %)

\$100 \$ 5375.00

§14-1-211(A)(1) (Conv. Surcharge)

\$100 \$ 100.00

§14-1-211(A)(2) (DUI Surcharge)

\$12 \$

§56-5-2995 (DUI Assessment)

\$25 \$

§56-1-286 (DUI Breath Test)

\$500 \$

Proviso (Public Def/Probation)

§14-1-212 (Law Enforce. Funding)

\$25 \$ 25.00

§14-1-213 (Drug Court Surcharge)

\$50 \$ 150.00

§50-21-114 (BUI Breath Test Fee)

\$40/ea \$

§56-5-2942(I) (Vehicle Assessment)

\$319.50

TOTAL

\$ 1949.50

Clerk of Court/ Deputy Clerk

Court Reporter: Cardinale

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS4200314A/W#: 2018A4210202835Date of Offense: 7/19/2018S.C. Code § : 44-53-0370(b)(2)CDR Code #: 0186

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

1st offense- (0 to 5 years up to \$5,000 fine)

in violation of § 44-53-0370(b)(2) of the S.C. Code of Laws, bearing CDR Code # 0186☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lowd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The pleas is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Brighfor, David Arthur

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed 150 days years
and/or to pay a fine of \$ 5000; provided that upon the service of 150 days days/months/years and/or payment
of \$ 5000; plus costs and assessments as applicable*; the balance is suspended with probation for 150 days
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

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

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Other: _____

Presiding Judge

Judge Code: 2165Sentence Date: 8 July 2019

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

SPARTANBURG

VS.

Michael Eugene Kelley II

AKA:

Race: BLACK Sex: M Age: 30

DOB: [REDACTED] SS#: [REDACTED]

Address: [REDACTED] W Smith Ave

City, State, Zip: Spartanburg, SC 29306

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

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: DUS / Driving under suspension, license not suspended for DUI - 1st offense (0 to 30 days)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS4201687

A/W#: 20192370523123

Date of Offense: 2/8/2019

S.C. Code § : 56-01-0460(A)(1)(a)

CDR Code #: 0624

SENTENCE SHEET

In violation of § 56-01-0460(A)(1)(a) of the S.C. Code of Laws, bearing CDR Code # 0624

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTES: [Signature] SCB13039 Michael Kelley [Signature] 14278
BARNETTE, BARRY SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☒ County Detention Center, for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: ☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDoc.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. 150 days
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION; ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP Total: \$ plus 20% fee: \$ days/hours Public Service EmploymentPayment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:		\$
§14-1-206 (Assessments 107.5 %)		\$
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-236 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§14-1-213 (Drug Court Surcharge)	\$150	\$
§50-21-114(BU) Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ <u>3.75</u>

TOTAL \$ 123.75Clerk of Court/ Deputy Clerk: [Signature]
Court Reporter: [Signature]

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

☐ Appointed PD or appointed other counsel, Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.Presiding Judge: [Signature]
Judge Code:
Sentence Date: 8 July 2019

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE VS.

Michael Eugene Kelley II

AKA:

Race: BLACK Sex: M Age: 30

DOB: SS#: [REDACTED]

Address: Winsmith Ave

City, State: Spartanburg, SC 29306

DL#: SID#:

*CDL Y CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: DUI / Felony driving under the influence, great bodily injury results (30 days + \$5,100 fine to 15 years + \$10,100 fine) **ALFOA PLEA**

In violation of § 56-05-2945(A)(1) of the S.C. Code of Laws, bearing CDR Code # 0406

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45

w/minor 1st or Lowd Act)

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

ATTEST:

BARNETTE, BARRY

SCB13039

SC Bar#

Defendant

Barnette, David Arthur
Clerk for Defendant

14278

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed — years and/or to pay a fine of \$ 10,100; provided that upon the service of — days/months/years and/or payment of \$ —; plus costs and assessments as applicable*; the balance is suspended with probation for — months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: —☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by SCDOC.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. 150 days

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP —Total: \$ — plus 20% fee: \$ —— days/hours Public Service EmploymentPayment Terms: —☐ Set by SCDPPPS —Recipient: —

*Fine:

§14-1-206 (Assessments 107.5 %)		\$ 10,100.00
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 1,000.00
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$ 1,000.00
§56-5-2995 (DUI Assessment)	\$12	\$ 12.00
§56-1-286 (DUI Breath Test)	\$25	\$ 25.00
Proviso (Public Def/Probation)	\$500	\$ 500.00
§14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§50-21-114 (BUI Breath Test Fee)	\$30	\$ 30.00
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ 40.00
3% to County (if paid in installments)		\$ 657.00

TOTAL

\$21,830.50

Clerk of Court/ Deputy Clerk ImaxCourt Reporter: Chirchanski

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS4201686

A/W#: 20192370523122

Date of Offense: 2/8/2019

S.C. Code § : 56-05-2945(A)(1)

CDR Code #: 0406

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSPresiding Judge R. Keith KellyJudge Code: 2165Sentence Date: 8 July 2019

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.Michael Eugene Kelley II

AKA:

Race: BLACK Sex: M Age: 30DOB: [REDACTED] SS#: [REDACTED]Address: Winsmith AveCity, State, Zip: Spartanburg, SC 29106DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADSTO: DUI / Felony driving under the influence, death results (1 year + \$10,100 fine to 25 years + \$25,100 fine) ALFORD PLEAin violation of § 56-05-2945(A)(2) of the S.C. Code of Laws, bearing CDR Code # 0395☒ NON-VIOLENT ☐ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSCw/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

BARNETTE, BARRY

SCB13039

SC Bar#

Defendant

Attorney for Defendant

14278

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed 150 years and/or to pay a fine of \$ 25,100; provided that upon the service of 150 days/months/years and/or payment of \$ 25,100; plus costs and assessments as applicable; the balance is suspended with probation for 150 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

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

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

SPECIAL CONDITIONS:

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$25,100.00
 §14-1-206 (Assessments 107.5%) \$26,082.50
 §14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00
 §14-1-211(A)(2) (DUI Surcharge) \$100 \$100.00
 §56-5-2995 (DUI Assessment) \$12 \$12.00
 §56-1-286 (DUI Breath Test) \$25 \$25.00
 Proviso (Public Def/Probation) \$500 \$
 §14-1-212 (Law Enforce. Funding) \$25 \$25.00
 §14-1-213 (Drug Court Surcharge) \$150 \$
 §50-21-114 (DUI Breath Test Fee) \$50 \$
 §56-5-2942(f) (Vehicle Assessment) \$40/ca \$
 3% to County (if paid in installments) \$1570.25

TOTAL

\$53,917.25

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2019GS4201688A/W#: 2019A4210100584Date of Offense: 2/8/2019S.C. Code § 56-05-2945(A)(2)CDR Code #: 0395

SENTENCE SHEET

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

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

Presiding Judge

Judge Code: Sentence Date: 8 July 2019

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

County of Spartanburg)Michael Kelley II 361692)
Full name and prison number (if any) of Applicant)**2020-CP-42-00569**

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF

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 McCormick correctional institution
2. Name and location of Court which imposed sentence Spartanburg, SC
general sessions court
3. Name(s) of co-defendant(s) (if any) NA
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) File: 2019-68-42-00314
 - (b) 2019-68-42-00317

- (c) 2019-GS-42-00318(D) 2019-GS-42-00220 (E) 2019-GS-42-00322
 (F) 2019-GS-42-00323 (G) 2019-GS-42-01688 (H) 2019-GS-42-01687
5. The date upon which sentence was imposed and the terms of the sentence:

- (a) July 8, 2019
 (b) _____
 (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 _____

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

yes

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

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

- i. Carolina court of appeals
 ii. _____
 iii. _____

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

- i. dismissed
 ii. _____
 iii. _____

- (c) the date of each such result:

- i. december 5, 2019
 ii. _____
 iii. _____

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

- i. NA
 ii. _____
 iii. _____

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

- (a) NA
 (b) _____

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 2020 FEB 11 PM 4:43
 CLERK OF COURT
 SPARTANBURG COUNTY
 ARMY ADOX

- (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 by advising
- (b) me to plead guilty
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) entrapment
- (b) preserve right to amend
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. NA
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. NA
- ii. _____
- iii. _____
- iv. _____

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2020 FEB 11 PM 1:43
CLERK OF COURT
SPARTANBURG COUNTY
FAMILY COURT

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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

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2020 FEB 11 PM 1:43
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

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

no

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. David A. Braghirol, esquire

ii. _____

iii. _____

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

i. plea

ii. _____

iii. _____

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 2020 FEB 11 PM 1:43
 CLERK OF COURT
 SPARTANBURG COUNTY
 ARV 22 03X

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

new trial

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

no

STATE OF SOUTH CAROLINA)

County of McCormick)

VERIFICATION

I, Michael Kelley, 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.

Michael Kelley

SWORN to and subscribed before me this 8 day of January, 2020

Karen D. Peterson (L.S.)
Notary Public

My Commission Expires: 11/13/2024

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SPARTANBURG COUNTY
ANY VA. CIX

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

I, Michael Kelley, 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.

Michael Kelley
Applicant

SWORN or affirmed to and subscribed before me this

29 day of January, 2020.

Karen Wilke
Notary Public

My Commission Expires: 7-16-23

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SPARTANBURG COUNTY
SOUTH CAROLINA

Certificate of Service

The under signed certify that he mail a PCR relief application to Spartanburg county clerk of court Ms. Cox p.o. box 3483 spartanburg, SC this 8 of january 2020 by depositing same in the us mail at McCormick mail room.

Laren D. Peterson

Commission Expires 11/13/2024

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CLERK
SPARTANBURG COUNTY
COURT

State of South Carolina
County of Spartanburg

Michael Kelley II, #361692

V.

State of South Carolina

In the Court of Common Pleas⁹⁷
C/A No. 2020-CP-42-00569

Motion To Amend

P.C.R.

Counsel was ineffective by his failure to request A Jackson
Dennio hearing.

Counsel was ineffective by his failure to request A suppression
hearing for illegal search and seizure.

Counsel was ineffective for failure to do a ~~reasonable~~ reasonable
investigation on whether the police conducted its surveillance
according to law of this state including getting a warrant

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CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Michael E. Kelley, II, #361692,
Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2020-CP-42-00569

**RETURN AND MOTION FOR A
MORE DEFINITE STATEMENT**

NOW COMES the Respondent, moving for a more definite statement and making its return to the application for post-conviction relief (hereafter "PCR") filed on February 11, 2020 by Michael E. Kelley, II (hereafter "the Applicant"). Respondent respectfully offers the following in support of its return:

1. **Procedural History**

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its January 2019 term, the Spartanburg County Grand Jury indicted Applicant for distribution of fentanyl (2019-GS-42-0323), two counts of distribution of heroin (2019-GS-42-0320 and -0322), two counts of trafficking heroin (2019-GS-42-0317 and -0318), and possession with intent to distribute marijuana (2019-GS-42-00314). During its March 2019 term, the Spartanburg County Grand Jury indicted Applicant for felony DUI - death (2019-GS-42-1688) and DUS/driving under suspension (2019-GS-42-1687). Applicant was represented by David A. Braghirol, Esquire. Solicitor Barry Barnette of the Seventh Circuit Solicitor's Office prosecuted the case. On July 8, 2019, Applicant appeared before the Honorable R. Keith Kelley, circuit court judge, and pled guilty as indicted to all of the aforementioned charges without any negotiations or

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recommendations. Judge Kelley sentenced Applicant to twenty five years for the felony DUI and death charge, fifteen years for the fentanyl charge, fifteen years for the felony DUI great bodily injury charge, fifteen years for the cocaine (-0320) charge, fifteen years for the heroin (-0318) charge, twenty-five years for the other heroin (-0317) charge, fifteen years for the other cocaine (-0322) charge, five years for the marijuana charge, and thirty days for the driving under suspension charge, with all sentences running concurrently.

Applicant appealed his sentence to the South Carolina Court of Appeals, and the appeal was dismissed for want of a sufficient explanation, required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was issued on December 30, 2019. Applicant timely filed a PCR claim on February 11, 2020.

II. Statement of Facts

On November 16, 2017, narcotics agents and a confidential informant conducted a search of Applicant's home and a drug buy involving 5.14 grams of heroin. (Plea Tr. 33). On November 30, 2017 there was a second purchase at the same home as before, this time concerning 1.11 grams of heroin. (Plea Tr. 33). The third purchase was on March 7, 2018. (Plea Tr. 33). This purchase concerned .13 grams of fentanyl and occurred at a different address, from inside a car. (Plea Tr. 34). Warrants were obtained on the three purchases. (Plea Tr. 34). Officers went to Applicant's home on July 19, 2018 to execute the warrant. (Plea Tr. 34). When the officers entered the home, they smelled marijuana. (Plea Tr. 34). Marijuana was on television and when the officers started questioning Applicant and his girlfriend, they consented to the search. (Plea Tr. 34). The officers searched both the home and the car. (Plea Tr. 35). They found two bags of heroin: one containing 13.83 grams and the other containing 6.62 grams. (Plea Tr. 35). They also found three bags of marijuana: the first containing 4.69 grams, the second containing .27 grams,

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AMY W. COX

and the third containing .35 grams. (Plea Tr. 35). He was on a \$34,000 bond when this occurred, without conditions. (Plea Tr. 35).

On February 8, 2019, the Applicant was charged with felony DUI after running a red light and causing a three-car wreck, causing the death of the other drivers' son, who was a passenger in her car. (Plea Tr. 35-36). The driver herself sustained three broken ribs and a concussion, among other injuries. (Plea Tr. 36). When the officers arrived, they smelled marijuana in the car and found a baggie of marijuana in the car. (Plea Tr. 36). Applicant was also found to be driving under suspension. (Plea Tr. 36).

III. Current Action before this Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. Defense counsel was ineffective by:
 - a. "advising me to plead guilty."
 - b. "entrapment."¹

Regarding his request for relief, the Applicant requests a "new trial".

Attached to and incorporated herein are the Applicant's Spartanburg County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the plea transcript, direct appeal records, and the current application for relief. Respondent reserves the right to amend this Return upon receipt of additional relevant information.

IV. Argument

Ineffective Assistance of Counsel, Generally

In a PCR action, the applicant bears the burden of proving allegations contained in the

¹ Respondent interprets this allegation as "failure to pursue an entrapment defense."

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AMY W. COX

application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show that “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, which the Supreme Court expanded upon through developing the two-pronged test outlined in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by the preponderance of the evidence² that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. Reasonableness is determined by the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant” and the scope limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Yarborough v. Gentry*, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the

² As per Rule 71.1(e) SCRCP

proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694.

The court makes this determination based upon the totality of the evidence. *Id.* at 295.

Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

Regarding guilty pleas specifically, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). The applicant’s right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness inherently included in the plea’s judicial procession. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) (“Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible.”). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

Invalid Guilty Plea

Applicant alleges ineffective assistance of counsel because counsel advised him to plead guilty. An applicant can attack the voluntary, knowing and intelligent character of a guilty plea entered on advice of counsel by showing counsel’s advice in taking the plea fell below an objective standard of reasonableness. *Porter v. State*, 368 S.C. 378, 629 S.E.2d 353 (2006). To

establish voluntariness and knowingness, the record must establish that the applicant had a full understanding of the charges against him and the consequences of taking a plea. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Roddy v. State*, 339 S.C. 29 (2000).

Respondent respectfully request a more definite statement in this matter. Applicant's allegation regarding involuntariness and unknowingness of the plea remains unsupported by specific facts or evidence. Because the allegation remains unsupported by any evidence, Respondent cannot determine whether or not the allegation has merit and cannot respond accordingly. That said, a more definite statement is still needed to confirm the Respondent's perception of the allegation's validity.

Failure to Explore a Defense (Entrapment)

Applicant alleges ineffective assistance of counsel because he failed to explore an entrapment defense. Whether failure to assert a defense constitutes deficient performance ultimately hinges on whether failure to explore the decision was a strategic decision. *Strickland*, 466 U.S. at 680. If there is only one line of defense, counsel must conduct a "reasonably substantial investigation" into that line of defense. *Id.* (quoting *Washington v. Strickland*, 693 F.2d at 1252). That said, if there are several lines of defense, counsel may still be effective even if every single line is not explored. *Id.* "[W]hen counsel's assumptions are reasonable given the totality of the circumstances and when counsel's strategy represents a reasonable choice based upon those assumptions, counsel need not investigate lines of defense that he has chosen not to employ at trial." *Id.* at 681 (quoting *Washington v. Strickland*, 693 F.2d at 1255). Further, "[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect." *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

Regarding failure to alert the Applicant of a defense specifically, counsel will not be found ineffective if there was inadequate evidence to support the defense, if the defense did not exist at the time of trial, or another avenue of defense existed. *See McCray v. State*, 317 S.C. 557, 455 S.E.2d 686 (1995) (stating that failure to state an entrapment defense was not ineffective when the applicant denied any wrongdoing); *Arnette v. State*, 306 S.C. 556, 413 S.E.2d 803 (1992) (stating that failing to inform of a defense was not ineffective when there was no evidence at trial that supported the defense); *Robinson v. State*, 308 S.C. 361, 417 S.E.2d 361, 417 S.E.2d 88 (1992) (stating that counsel was not ineffective when failing to state a defense that was not recognized by the court until six years later and was just recently acknowledged by the scientific community).

Strickland makes clear that counsel “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” 466 U.S. at 661. When highlighting failure to investigate as a ground for a larger ineffective assistance of counsel claim, judicial determination of this claim’s validity is evaluated for “reasonableness under all the circumstances” with “a heavy measure of deference to counsel’s judgments” applied. That said, counsel is required to, at minimum, “interview potential witnesses and make an independent investigation of the facts and circumstances of the case”, *Ard v. Catoe*, 372 S.C. 318, 331-32, 642 S.E.2d 590, 597 (2007) (quoting *Troedel v. Wainwright*, 667 F.Supp. 1456, 1461 (S.D.Fla.1986), *aff’d*, 828 F.2d 670 (11th Cir.1987)), including aggressively re-examining all the government’s forensic evidence and conducting analyses of all other available forensic evidence.” *Id.* (quoting *American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases*, reprinted in 31 Hofstra L.Rev. 913, 1015 (2003) (emphasis added)).

That said, counsel is not obligated to “investigate lines of defense that he has chosen not to employ at trial.” *Strickland*, 466 U.S. at 682 (quoting *Washington v. Strickland*, 693 F.2d 1243, 1255 (5th Cir. 1982)). Further, “[w]hen counsel focuses on some issues to the exclusion of others, there is a strong presumption that he [or she] did so for tactical reasons rather than through sheer neglect.” *Yarborough*, 540 U.S. at 5 (citing *Strickland*, 466 U.S. at 690).

An entrapment defense is available where the “conception and planning of an offense by an officer, and his procurement of its commission by one who would not have perpetrated it except for trickery, persuasion, or fraud of the officer.” *State v. Jacobs*, 238 S.C. 234, 244, 119 S.E.2d 735, 740 (1961). This defense is not available to criminal defendants who have a predisposition to commit the crime independent of government involvement. *State v. Johnson*, 295 S.C. 215, 217, 367 S.E.2d 700, 701 (1988). Further, if an officer “merely afford[s] opportunities or facilities for the commission of the offense”, an entrapment is not available. *Sherman v. United States*, 356 U.S. 369, 372 (1958).

Here, the Applicant has not stated with any specificity how Counsel’s failure to pursue this defense has prejudiced him, nor stated with specificity what actions Counsel failed to undertake that caused ineffective service. Counsel had no obligation to investigate every conceivable defense available in the case; only to engage in reasonable investigation. The Applicant has made no showing that counsel’s inaction regarding investigating an entrapment defense fell outside the zone of reasonableness in this case.

Regarding an entrapment defense specifically, Applicant has made no showing that he did not have a predisposition to committing the crime absent government involvement. In fact, a drug deal involving Applicant was presumably initiated because law enforcement had information about previous sales involving Applicant that demonstrate not only predisposition

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towards commission of the crime, but instances of actual commission of the crime as well. Thus, Respondent cannot determine whether this issue has merit. Thus, Respondent requests Applicant be moved to produce a more definite statement regarding this allegation.

However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent respectfully requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (“Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.”).

V. Motion for a More Definite Statement

Respondent moves for a more definite statement regarding the Applicant's allegations. Applicant alleges that plea counsel was constitutionally ineffective by “advising [Applicant] to plead guilty” and failure to pursue an entrapment defense. That said, it does not explain exactly what Counsel did that constituted ineffective assistance of counsel. Applicant fails to set forth with specificity any facts and circumstances upon the claim is based. The Uniform Post-Conviction Procedure Act requires that applicants must “specifically set forth the grounds upon which the application is based.” Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon applicants to make at least a *prima facie* showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). The Supreme Court of South Carolina has provided that:

[M]ere allegations of incompetency or ineffectiveness of counsel will not ordinarily suffice as grounds for a new trial under the Post-Conviction Procedure

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Act. The bare assertion by the appellant that he was deprived of counsel is insufficient.

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

Furthermore, Rule 8(a), SCRCP, requires all civil pleadings include “a short and plain statement of the facts showing that the pleader is entitled to relief.”

Respondent moves pursuant to Rule 12(e), SCRCP, to require Applicant to provide a more definite statement of his claims. Respondent moves to require Applicant to file an additional amended application well in advance of any evidentiary hearing concerning this matter. If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss the allegation.

VI. Other Allegations Denied

Each and every other allegation in the Applicant’s post-conviction relief application not explicitly admitted, qualified, or explain in this Return is hereby denied by the Respondent.

VII. Assertion of Rights to Notice of Amendments, Experts

The Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, the Applicant’s court appointed attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRCP and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) (“Since there is no right to ‘hybrid representation’ that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.”).

Respondent reserves the right to request that any amendments withheld until the last

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minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) (“In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases.”); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) (“When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record.”); *see also* Rules 15(a)-(b), SCRCF (explaining how to amend a pleading). Pursuant to § 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

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VIII. Conclusion

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

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO
Assistant Attorney General

By: Cheryl F. Marto
ATTORNEYS FOR RESPONDENT

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

March 16, 2020

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SPARTANBURG COUNTY
AMY W. COX

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

MICHAEL E. KELLEY, #361692

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent,

IN THE COURT OF COMMON PLEAS

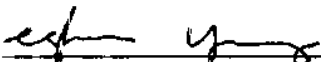
2020-CP-42-00569

AFFIDAVIT OF SERVICE BY MAIL

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

Rodney W. Richey, Esquire
Richey & Richey, PA
PO Box 10916
Greenville, SC 29603-0916

DATED this the 16th day of March, 2020.


Meghan Young, Legal Assistant
For Respondent

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SPARTANBURG COUNTY
AMY W. COX



ALAN WILSON
ATTORNEY GENERAL

March 16, 2020

The Honorable Amy W. Cox
Clerk of Court - Spartanburg County
PO Box 3483
Spartanburg, SC 29304-3483

Re: Michael E. Kelley, #361692 v. State of South Carolina
2020-CP-42-00569

Dear Ms. Cox:

Enclosed please find the original **Return** of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Chelsey F. Marto
Assistant Attorney General

CFM/my
Enclosure

cc: Rodney W. Richey, Esquire

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SPARTANBURG COUNTY
AMY W. COX

COUNTY OF SPARTANBURG

MICHAEL E. KELLEY, II #361692

Plaintiff(s)

vs.

STATE OF SOUTH CAROLINA

Defendant(s)

Submitted By: TOMMY A. THOMAS, ESOAddress: P.O. BOX 88IRMO, SC 29063

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2020 -CP- 42 - 00004

SC Bar #: 5536Telephone #: 803-732-5507Fax #: 803-781-4226

Other:

E-mail: JACKIE@PAROLEME.COM

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing cases that are NOT E-Filed. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint. This form is NOT required to be filed in E-Filed Cases.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|--|--|---|
| Contracts
☐ Construction (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/Warranty (160)
☐ Employment Dispute (170)
☐ Employment (180)
☐ Other (199) _____ | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 - 40 - _____
☐ Notice/ File Med Mal (230)
☐ Other (299) _____ | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) _____ | Real Property
☐ Claim of Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) _____ |
| Immune Proceedings
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) _____ | Administrative Law/Relief
☐ Reinst. Drv. License (800) +
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) _____ | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers Compensation Settlement Approval (780)
☐ Incapacitated Adult Settlement (790)
☐ Other (799) _____ | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm. (980)
☐ Employment Security Comm. (991)
☐ Other (999) _____ |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb (610)
☐ Medical (620)
☐ Other (699) _____
☐ Sexual Predator (510)
☐ Permanent Restraining Order (680)
☐ Interpleader (690) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: _____

Date: August 6, 2020

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

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SPARTANBURG
CLERK OF COURT
AMY W. HARRIS

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

MICHAEL E. KELLEY, II, #361692
Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2020-CP-42- 02664

APPLICATION FOR

POST-CONVICTION RELIEF

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 McCormick Correctional Inst., 386 Redemption Way, McCormick, SC 29899
2. Name and location of Court which imposed sentence Spartanburg County Courthouse
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2019GS4200314 - Marijuana Possession with intent to distribute
 - (b) 2019GS4200317 - Trafficking in Illegal drugs
 - (c) 2019GS4200318 - Trafficking in Illegal drugs
 - (d) 2019GS4200320 - Drugs/MDP Narc 1st offense
 - (e) 2019GS4200322 - Drugs/MDP Narc 1st offense

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- (f) 2019GS4200323 - Drugs/MDP Narc 1st offense
- (g) 2019GS4201686 - Felony DUI
- (h) 2019GS4201687 - Driving Under Suspension
- (i) 2019GS4201688 - Felony DUI - Death Result

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

- (a) July 8, 2019 - five (5) years, concurrent
- (b) July 8, 2019 - twenty five (25) years, concurrent
- (c) July 8, 2019 - twenty five (25) years, concurrent
- (d) July 8, 2019 - fifteen (15) years, concurrent
- (e) July 8, 2019 - fifteen (15) years, concurrent
- (f) July 8, 2019 - fifteen (15) years, consecutive
- (g) July 8, 2019 - Fifteen (15) years, concurrent
- (h) July 8, 2019 - 30 days, concurrent
- (i) July 8, 2019 - twenty five (25) years, concurrent

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty _____
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere _____

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

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

- (a) the name of each Court to which you appealed:
 - i. S.C. Court of Appeals
 - ii. _____
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. Dismissed
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. December 5, 2019
 - ii. _____
 - iii. _____

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- (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) _____
 - (b) _____
 - (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
 - (b) Involuntary guilty plea
 - (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) _____
 - (b) _____
 - (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? _____
 - (b) any petition in State or Federal Courts for habeas corpus or post-conviction 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. _____

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iv. _____
(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

no

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

(a) your arraignment and plea?

(b) your trial, if any? yes(c) your sentencing? yes(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes

- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

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

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

i. David A. Braghirol, Esq., 2158 East Main Street, Duncan, SC 29334

ii. _____

iii. _____

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

i. plea and sentencing

ii. _____

iii. _____

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

New Trial

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

no

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SPARTANBURG COUNTY
AMY W. COX

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STATE OF SOUTH CAROLINA

County of

)
)
)

VERIFICATION

I, Michael E. Kelley, II, 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.

Michael Kelley

SWORN to and subscribed before me this 28th
day of July 2020

[Signature] (L.S.)
Notary Public

My Commission Expires: 02/26/2028

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AMY V. COX

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

I, Michael E. Kelley, II, 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.

Michael Kelley
Applicant

SWORN or affirmed to and subscribed before me this
28th day of July, 2020
[Signature]
Notary Public

My Commission Expires: 2/26/2028

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THOMAS LAW

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AMY W. COX

August 4, 2020

The Honorable M. Hope Blackley
Spartanburg County Clerk of Court
P.O. Box 3483
Spartanburg, SC 29304

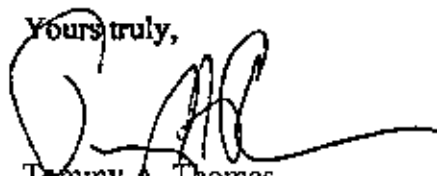
RE: Michael E. Kelley, II #361692 v. State

Dear Ms. Blackley:

Enclosed please find for filing an original and a copy of a Post Conviction Relief Application with coversheet in the above referenced matter.

Kindly return the clocked copy to me in the enclosed envelope. Thank you for your assistance in this matter and please feel free to contact me should you have any questions.

Yours truly,



Tommy A. Thomas,
Attorney at Law

TAT/jem

cc: Johnny James, Esq.
Michael E. Kelley, II #361692

TOMMY A. THOMAS, P.C.

803 732 5507 | FAX 803 781 4226 | INMATE LINE 803 732 6542
HARRINGTON BUILDING, 7588 WOODROW STREET, IRMO, SC 29063
MAIL: P.O. BOX 88, IRMO, SC 29063

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Michael E. Kelley, II, #361692,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2020-CP-42-002664

**RETURN AND MOTION
FOR MERGER**

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NOW COMES Respondent, moving to merge and for a more definite statement and making its return to the post-conviction relief (hereafter "PCR") application filed on August 11, 2020, by Michael E. Kelley, II (hereafter "Applicant"). Respondent respectfully offers the following in support of its return:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its January 2019 term, the Spartanburg County Grand Jury indicted Applicant for distribution of fentanyl (2019-GS-42-0323), two counts of distribution of heroin (2019-GS-42-0320 and -0322), two counts of trafficking heroin (2019-GS-42-0317 and -0318), and possession with intent to distribute marijuana (2019-GS-42-00314). During its March 2019 term, the Spartanburg County Grand Jury indicted Applicant for felony DUI - death (2019-GS-42-1688) and DUS/driving under suspension (2019-GS-42-1687). Applicant was represented by David A. Braghirol, Esquire. Solicitor Barry Barnette of the Seventh Circuit Solicitor's Office prosecuted the case. On July 8, 2019, Applicant appeared before the Honorable R. Keith Kelley, circuit court judge, and pled guilty as indicted to all of the aforementioned charges without negotiations or recommendations.

Judge Kelley sentenced Applicant to twenty five years for the felony DUI and death charge, fifteen years for the lesser included first offense fentanyl charge, fifteen years for the felony DUI great bodily injury charge, fifteen years for the lesser included first offense cocaine (-0320) charge, fifteen years for lesser included offense of more than four but less than fourteen grams of heroin (-0318) charge, twenty-five years to the lesser included first offense, between four and fourteen grams of heroin (-0317) charge, fifteen years for the lesser included first offense cocaine (-0322) charge, five years for the marijuana (-0314) charge, and thirty days for the driving under suspension charge, with all sentences running concurrently.

Applicant appealed his sentence to the South Carolina Court of Appeals, and the appeal was dismissed for want of a sufficient explanation, required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was issued on December 30, 2019.

Pending PCR Action: 2020-CP-42-00569

Applicant filed his first PCR Application on February 11, 2020. In it, he alleged

1. Defense counsel was ineffective by:
 - a. "advising me to plead guilty."
 - b. "entrapment."¹

Respondent made its Return Motion for a more definite statement on or around March 16, 2020. This matter remains pending.

II. Statement of Facts

On November 16, 2017, narcotics agents and a confidential informant conducted a search of Applicant's home and a drug buy involving 5.14 grams of heroin. (Plea Tr. 33). On November 30, 2017 there was a second purchase at the same home as before, this time concerning 1.11

¹ Respondent interprets this allegation as "failure to pursue an entrapment defense."

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grams of heroin. (Plea Tr. 33). The third purchase was on March 7, 2018. (Plea Tr. 33). This purchase concerned .13 grams of fentanyl and occurred at a different address, from inside a car. (Plea Tr. 34). Warrants were obtained on the three purchases. (Plea Tr. 34). Officers went to Applicant's home on July 19, 2018 to execute the warrant. (Plea Tr. 34). When the officers entered the home, they smelled marijuana. (Plea Tr. 34). Marijuana was on television and when the officers started questioning Applicant and his girlfriend, they consented to the search. (Plea Tr. 34). The officers searched both the home and the car. (Plea Tr. 35). They found two bags of heroin: one containing 13.83 grams and the other containing 6.62 grams. (Plea Tr. 35). They also found three bags of marijuana: the first containing 4.69 grams, the second containing .27 grams, and the third containing .35 grams. (Plea Tr. 35). He was on a \$34,000 bond when this occurred, without conditions. (Plea Tr. 35).

On February 8, 2019, the Applicant was charged with felony DUI after running a red light and causing a three-car wreck, causing the death of the other drivers' son, who was a passenger in her car. (Plea Tr. 35-36). The driver herself sustained three broken ribs and a concussion, among other injuries. (Plea Tr. 36). When the officers arrived, they smelled marijuana in the car and found a baggie of marijuana in the car. (Plea Tr. 36). Applicant was also found to be driving under suspension. (Plea Tr. 36).

III. Current Action before the Court

In his PCR application, Applicant, through retained counsel, alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. Ineffective Assistance of Counsel.
2. Involuntary Guilty Plea.

Attached to and incorporated herein are Applicant's Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and

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the current PCR application. Respondent reserves the right to amend this Return upon receipt of additional relevant information.

IV. Argument

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show “counsel’s conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel’s performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel’s actions fell outside of the zone of “reasonableness under prevailing professional norms.” *Strickland*, 466 U.S. at 688. *See also* Rule 71.1(e), SCRCP (“The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.”). Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.”

Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel's performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually "countless" ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel's deficient performance must have prejudiced the applicant so that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 117-18. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters "only in the rarest case" because "[t]he likelihood of a different result must be substantial, not just conceivable." *Harrington v. Richter*, 562 U.S. 86, 112 (2011) (quoting *Strickland*, 466 U.S. at 697).

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

Applicant provides no information in his most recent application indicating what Counsel did that was ineffective. No specific grounds were articulated whatsoever. Thus, a more definite statement is needed for Respondent to ascertain whether or not the allegation has merit.

Involuntary Guilty Plea

In the context of a guilty plea, the applicant must show there is a reasonable probability

that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. See *Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

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

The transcript reflects that the plea was entered freely, knowingly, intelligently, and voluntarily. Applicant stated he was not on any substances interfering with his ability to think clearly. (Plea Tr. 19). Applicant stated he wanted to plead and that no one forced or threatened him into deciding to plead. (Plea Tr. 19-20). Applicant stated he understood all of the charges, sentencing ranges, non-violent statuses, and whether it was a guilty plea or a plea pursuant to *Alford*. (Plea Tr. 20-27). Applicant stated he understood he was waiving his rights to a jury trial, to remain silent, to call and confront witnesses. (Plea Tr. 26-27). Thus, Respondent contends that

Applicant entered his plea freely, knowingly, intelligently, and voluntarily and, consequently, submits that the involuntary guilty plea allegation likely lacks merit. However, because Applicant has failed to state why exactly the plea was involuntary or to substantiate this claim with any supporting facts or evidence, a more definite statement is needed for Respondent to ascertain whether or not the allegation has merit.

V. Motion for Merger

Applicant in the above-captioned matters has filed two separate PCR applications. Each application challenges the same conviction and makes similar allegations in regards to the subject convictions (2020-CP-42-000569 & 2020-CP-42-002664). Since an applicant is not generally permitted to have multiple post-conviction relief proceedings in regards to the *same convictions* (See *Aice v. State*, 305 S.C. 448, 409 S.E.2d 392 (1991); *Foxworth v. State*, 275 S.C. 615, 274 S.E.2d 415 (1981); S.C. Code Ann. § 17-27-90). Respondent hereby moves to have the two proceedings merged and that the second PCR application, 2020-CP-42-002664, be considered an *amendment* to the initial PCR application, 2020-CP-42-000569.² Applicant's Counsel has informed Respondent that they do not oppose this motion.

Therefore, Respondent moves to merge these two post-conviction relief actions into a singular application, with docket number 2020-CP-42-000569 being the surviving case and the subsequent application (2020-CP-42-002664) considered an amendment.

VI. Other Allegations Denied

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

² Additionally, in concordance with the return and motion for more definite statement filed in the first PCR action, Respondent reasserts their request for a more definite statement in this action.

VII. Assertion of Rights to Notice of Amendments, Experts

Applicant should raise any claims he intends to raise at the PCR evidentiary hearing well in advance of the hearing. Here, Applicant's retained attorney is the only individual authorized to file amendments to this application, given his representative capacity, Rule 11(a), SCRCP and *pro se* filings will not be considered at the PCR hearing. *State v. Devore*, 416 S.C. 115, 123, 784 S.E.2d 690, 694 (Ct. App. 2016) (*Pro se* filing is a nullity where person was represented by counsel); *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010) ("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relief counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel.").

Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent or, in the alternative, continue the matter to permit adequate time to investigate and address the claims. *See Mangal v. State*, 421 S.C. 85, 805 S.E.2d 568 (2017) ("In most PCR cases . . . we have refused to excuse the pleading and issue-preservation requirements that apply in all civil cases."); *Love v. State*, 428 S.C. 231, 242, 834 S.E.2d 196, 201 (2019) ("When analyzing the substance of a proposed amendment and any prejudice the State might suffer, a PCR court should consider all relevant circumstances, including, but not limited to, the timing of the motion, the complexity of the new issue, the degree of surprise to the State, the need for and availability of necessary witnesses to defend against the claim, and whether the substance of the proposed amendment is readily apparent from the underlying plea or trial record."); *see also* Rules 15(a)-(b), SCRCP (explaining how to amend a pleading). Pursuant to Section 17-27-150 of the South Carolina Code of Laws, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain

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discovery materials unless the Court grants leave upon good cause shown. Furthermore, Respondent requests that all potential exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits withheld until the last minute resulting in undue prejudice to Respondent.

VIII. Conclusion

WHEREFORE, Respondent requests that this applicant be merged into Applicant's first PCR action and this application be treated as an amendment.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHELSEY F. MARTO
Assistant Attorney General

By:/s Chelsey F. Marto
ATTORNEYS FOR RESPONDENT

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

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October 16, 2020



ALAN WILSON
ATTORNEY GENERAL

October 16, 2020

The Honorable Amy W. Cox
Spartanburg County Clerk of Court
Post Office Box 3483
Spartanburg, South Carolina 29304-3483

Re: Michael E. Kelley, II, #361692 v. State of South Carolina
2020-CP-42-002664

Dear Ms. Cox:

Enclosed please find the original **Return and Motion for Merger** in the above-captioned case for filing in your office.

Sincerely,

/s Chelsey F. Marto
Chelsey F. Marto
Assistant Attorney General

CFM/ec
Enclosures

cc: Tommy A. Thomas, Esquire

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) FOR THE SEVENTH JUDICIAL
) CIRCUIT

Michael E. Kelley, #361692

) Case No.: 2020-CP-42-002664

) Applicant,

) v.

) Certificate of Service

) State of South Carolina

) Respondent,

1. Undersigned is counsel of record for the Respondent in the above-captioned action.

2. Pursuant to the South Carolina Supreme Court's Order "RE: Operation of the Trial Courts During the Coronavirus Emergency" (Appellate Case No. 2020-000447), dated April 3, 2020), "a lawyer admitted to practice law in this state may serve a document on another lawyer admitted to practice law in this state using the lawyer's primary email address listed in the Attorney Information System (AIS)."

3. Undersigned has served a copy of the **Return and Motion for Merger** in the above-captioned matter on opposing counsel by emailing a copy to the email address as listed in the AIS:

Tommy A. Thomas, Esquire
thomaslaw@me.com

DATED this 16th Day of October, 2020.

/s Chelsey F. Marto
Chelsey F. Marto
Assistant Attorney General
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3737
ChelseyMarto@scag.gov

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SPARTANBURG COUNTY
AMY W. COX

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STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF SPARTANBURG	)	2020-CP-42-002664
	)	2020-CP-42-00569
	)	
	)	
	)	
MICHAEL KELLEY II,	)	
	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
THE STATE OF SOUTH CAROLINA,	)	
DEFENDANT.	)	
	)	

April 22, 2022
Spartanburg, South Carolina

B E F O R E:

THE HONORABLE G.D. MORGAN JR., JUDGE.

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

CHELSEY MARTO, ESQ.
Assistant Attorney General

TOMMY THOMAS, ESQ.
Attorney for the Applicant

AMBER PAYNE, CVR
Circuit Court Reporter

I N D E X

(SW) - Denotes State's Witness

(AW) - Denotes Applicant's Witness

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There were no exhibits entered during this hearing.

P R O C E E D I N G S

(Whereupon, the hearing began at
9:39 a.m.)

THE COURT: We have Michael Kelley, 2020-CP-42-
002664 and 00569.

(To the State) We ready to go?

MS. MARTO: Yes, Your Honor.

THE COURT: Ms. Marto?

MS. MARTO: May it please the Court. Applicant is
presently confined in the South Carolina Department
of Corrections pursuant to orders of commitment from
the Spartanburg County Clerk of Court during its
January 2019 term. He was indicted for distribution
of fentanyl, two counts of distribution of heroin,
two counts of trafficking heroin, possession with
intent to distribute marijuana. During its March
2019 term, he was indicted for felony DUI with death
and driving under suspension.

He was represented by Mr. David Braghirol. The
solicitor, Barry Barnette, of the Seventh Circuit
Solicitor's office prosecuted the case. On July
8th, 2019, he appeared before the Honorable R. Keith
Kelly, Circuit Court Judge, and pled guilty as
indicted to all of the aforementioned charges. And
Judge Kelly sentenced him to 25 years for the felony

1 DUI death charge, 15 years for the fentanyl charge,
2 15 years for the felony DUI with great bodily injury
3 charge, 15 years for cocaine, 15 years for the
4 heroin charge, 25 for the other heroin charge, 15
5 for the other cocaine charge, five years for the
6 marijuana, and then 30 days for driving under
7 suspension. All sentences running concurrently. He
8 appealed his sentence to the South Carolina Supreme
9 -- or Court of Appeals, and the appeal was dismissed
10 for want of sufficient explanation required by Rule
11 203. The remittitur was issued December 30th, 2019.
12 He timely filed a PCR claim February 11th, 2020.
13 That would have been his first application, and then
14 the second application was filed August 11, 2020.
15 The State's return to the first application was made
16 March 16th, 2020, and then a return motion of
17 emergency application heard on October 16th, 2020.

18 And with that, I turn it over to Mr. Thomas.

19 THE COURT: All right. Mr. Thomas?

20 MR. THOMAS: Your Honor, if it please the Court.

21 I think Defense Counsel has a hearing that he's
22 got to run to. I'm going to go ahead and call him a
23 little bit out of turn and call him first, if that
24 pleases the Court?

25 THE COURT: All right. That'd be fine.

1 MR. THOMAS: Yes, sir. We call David Braghirol to
2 the stand.

3 (WHEREUPON, the witness was sworn.)

4 MR. THOMAS: Your Honor, if it please the Court.

5 **DIRECT EXAMINATION OF DAVID BRAGHIROL, ESQ.**

6 BY MR. THOMAS:

7 Q Mr. Braghirol, you had an opportunity to represent
8 Michael Kelley?

9 A Yes, sir.

10 Q All right. So -- and under what conditions or
11 circumstances did you represent Mr. Kelley?

12 A Initially, I was hired to represent him based on some
13 drug charges that came about that he came into hire me.
14 And apparently, as I recall, there were three buy -- or
15 three undercover buys that resulted in distribution
16 charges and proximity charges. He was subsequently
17 picked up later on those charges and additional charges
18 were filed at that time for items found in the house.
19 And I -- I was retained on that.

20 Q All right.

21 A While he was out on bond, he was charged with felony DUI
22 resulting in death and great bodily injury, and I was
23 retained on those, as well.

24 Q Okay. And the -- kind of the timeline as far as the drug
25 charges and the felony DUI, were they closer together or

1 further apart?

2 A As I recall, they were further apart.

3 Q Okay.

4 A I believe they were close to probably a year in between,
5 but, again, I'm -- I'm speculating on
6 that --

7 Q Yes, sir.

8 A -- without looking.

9 Q I -- and -- and the purpose of that question really was
10 just to get an idea of how you prepared the -- the -- you
11 know, those cases for either trial or plea.

12 A Sure.

13 Q Did that distance in time between the two separate sets
14 of charges, was that manageable or did -- was that a
15 problem or --

16 A Well, it was manageable at the beginning -- well, there
17 were initially discussions about offers on the drug
18 charges with the solicitor's office. Once the felony DUI
19 came about, that pretty much ended those conversations
20 because, ideally, we discussed having a global offer
21 trying to resolve everything rather than leaving him a
22 lot of exposure out there for those charges.

23 Q Okay. So the -- I guess, the -- the decision was made
24 that it was more effective to handle them both together
25 rather than concentrate on one and then concentrate on

1 the other as far as the trial or plea?

2 A Correct. There were two trafficking charges, both of
3 which carried a mandatory 25; one I believe carried up to
4 25 to 40 years, as I recall. And those were difficult to
5 handle based on the circumstances, and we discussed that,
6 you know, in length. However, when the felony DUI came
7 about, it was decided at that point between discussions
8 and my -- Mr. Kelley and myself to handle it all
9 together, ideally, if possible.

10 Q Okay. Were there plea offers prior to the DUI?

11 A There were. I believe the -- and looking through my file
12 in preparation for this hearing, I believe there was a
13 plea offer. It was either 10 to 12 years or 12 to 14
14 years for the drug charges --

15 A Okay.

16 Q -- as I recall.

17 A And what types of drugs were involved?

18 Q Heroin -- primarily heroin, I think, was the trafficking
19 charges. Fentanyl was one. I believe that's --

20 Q Okay.

21 A -- that's it --

22 Q So --

23 A -- or the -- that was -- the primary weight was the
24 heroin.

25 Q Right. So the nature of the drugs would be more

1 problematic than if it had been something else?

2 A Sure. If it had been marijuana, it'd be a -- probably
3 the solicitor's office would've had a little bit
4 different position.

5 Q Right. Or even possibly cocaine?

6 A Sure.

7 Q Okay. Okay. How did you prepare those cases? I would
8 assume that you worked them up initially for trial or --

9 A We did. We -- we first started off with obtaining
10 discovery from the solicitor's office. There were
11 videos; there was a lot of reports; there were consents
12 to search signed by the defendant; there were statements
13 by him where he admitted that the drugs found in the
14 house were his, not his girlfriend's. So there was a lot
15 of information to go over because, again, these were
16 three buys that had happened months prior to the actual
17 service of those warrants. So there was actually a ton
18 of different individual cases potentially that could be
19 individual trials.

20 Q Right. Right. In regards to how it all kicked off, was
21 it -- I know they had an arrest warrant for him, and they
22 went to his home. Was that for a drug charge, the -- the
23 initial arrest?

24 A Yes, sir.

25 Q Okay. All right. And then were there -- there were

1 sales to confidential informants?

2 A Yes, sir.

3 Q Okay. In regards to the -- the search of the home, there
4 were drugs that were found there?

5 A My recollection is that there was -- when they arrived at
6 the residence, I believe, his girlfriend answered the
7 door; they smelled the strong odor of marijuana; they
8 asked for a consent to search. I believe Michael was in
9 the back bedroom, and they asked where he was. He -- I
10 think she said he was in the back bedroom. When they
11 went in, they asked him about the drugs -- or the
12 marijuana, and he said there was some there, and he
13 pointed them in the direction. They asked for a consent
14 to search for other marijuana, and he gave consent; she
15 gave consent. There was a written consent form signed by
16 both. Actually, I think they signed the same consent
17 form if -- if I recall correctly.

18 Q For trial, did you investigate the potential for, I
19 guess, defense in regards to an improper search?

20 A Sure. We -- we discussed coercion in that, as well. And
21 -- and we looked at other opportunities. The main issue
22 with that was that the buys were with a confidential
23 informant, and the only way to -- I was able to review
24 the videos with the solicitor's office. Their policy is
25 not to let my client see it, because they don't want to

1 reveal the confidential informant unless we assert at
2 trial, so that was the gamble. Once we revealed that,
3 the negotiations would be potentially off, and we
4 discussed that thoroughly about the -- the opportunity.
5 I did review the videos and gave him my opinion that I
6 did not see a legal issue that I thought had significant
7 merit as to suppressing --

8 Q Suppressing?

9 A -- suppression.

10 Q Yeah. And that was my next question, was whether or not
11 Mr. Kelley had an opportunity to see the videos?

12 A He did not see the undercover buy videos, no.

13 Q Okay. All right. And did he -- do you remember if he
14 told you about threats made to his girlfriend, I guess,
15 that they were going to take her children; that they had
16 to go and get a warrant? Did he discuss that with you?

17 A I didn't see it my notes. Does that sound vaguely
18 familiar? It does.

19 Q Okay.

20 A It does. I think they said -- or it was along the lines
21 of, "If we have to go get a warrant, you know, you've got
22 children here, as well, so you may want to consent, and
23 we'll -- we -- we won't be as zealous, maybe" --

24 Q Yeah.

25 A -- with what they could do.

1 Q Is that actionable in regards to a motion?

2 A I didn't think so.

3 Q You didn't?

4 A I didn't think so. I -- I didn't -- personally, we
5 talked about it -- like I said, we talked about different
6 suppression issues, but, again, to assert that we
7 would've had to have gone to trial, it would've been
8 asserted at the beginning of the trial. Any suppression
9 issues would've been dealt with then, and then if we lost
10 those motions, we would've been going forward on a trial.
11 And if we lost those motions, I mean with the consent to
12 search and the amount of heroin and drugs found, he was
13 looking at a minimum mandatory of 25 years, so we -- we
14 discussed those thoroughly --

15 Q Okay.

16 A -- about whether that was worth the gamble or not.

17 Q Yeah. How about the drug analysis? I saw where the
18 analysis report was introduced as -- as an exhibit. Did
19 you receive that from the solicitor's office and had an
20 opportunity to review it?

21 A I did.

22 Q Okay. Did they come back positive? There was conclusive
23 evidence that these drugs were what they were reported to
24 be?

25 A Yes, sir.

1 Q Okay. So you didn't see any defense in regards to
2 suppression of the actual drugs?

3 A No.

4 Q Okay.

5 A Again, just to clarify it, there were potential issues we
6 could have brought up, but the gamble in making those
7 issues versus the likelihood of success, in my opinion,
8 is what we discussed in -- in determining -- or Mr.
9 Kelley determined not to go forward at that time.

10 Q And -- and the questions are really kind of related to
11 whether or not Mr. Kelley had all the information that he
12 needed to enter into the plea. So you discussed these
13 issues with him, the suppression and the drug analysis
14 and . . .

15 A We did.

16 Q Okay. I noticed in the transcript that you did say that
17 it was a triable case.

18 A The triable case part, if I recall correctly, was about
19 the felony DUI charge.

20 Q Okay.

21 A I felt that the weaker, as far as the State's cases, was
22 the felony DUI charge.

23 Q Okay.

24 A But the trafficking's were -- they were pretty slam dunk
25 as far as I was concerned.

1 Q All right. And was -- Mr. Kelley, was he out on bond?

2 A For the felony DUI, he was.

3 Q Okay. And so, you -- did you have ample opportunity to
4 discuss his case with him and come up with a theory and
5 defense?

6 A I did.

7 Q Did -- was it necessary to hire a private investigator?

8 A No. I do not believe so.

9 Q Okay. And I'm gonna try to keep them separate than the
10 felony DUI.

11 A Sure.

12 Q They kind of blend into each other. How about as far as
13 a toxicologist? Would it have been important to have
14 hired someone to have independently tested the drugs?

15 A As far as the drugs, I did not believe it was necessary.
16 Now, if we went to trial on the felony DUI, I may have
17 had -- I would've had a different answer. I would've
18 believed we needed one.

19 Q Right. So you -- you initially worked up the case in
20 regards to the drugs?

21 A Yes, sir.

22 Q And were you -- you discussed this with Mr. Kelley. Was
23 -- what was his situation? Was he wanting to take it to
24 trial, or was he considering the plea?

25 A He was worried about going back to jail.

1 Q He was?

2 A That was the biggest concern. And, as I recall, when we
3 had initial discussions about the drug charges before the
4 felony DUI occurred, like I said, we were engaged in
5 discussions with, I believe, it was Allison Mabbs at the
6 time, who was working that case. And then when the
7 felony DUI occurred, Barry Barnette became involved with
8 her on that. But Allison and I had had pretty extensive
9 discussions trying to work out a potential resolution.

10 My -- my -- the way I see my job as a defense
11 attorney is to try and create options for my client.
12 There's always an option of trial. There's always an
13 option of pleading straight up. My goal is to give my
14 client additional options. The better the deal, the
15 better the opportunities, he can make a more mature
16 conscious decision that affects his future, and that's my
17 ultimate goal always is to see what are the options I can
18 get on the table, so that in -- in choosing trial versus
19 pleading guilty straight up, what other options are there
20 so he can control his own destiny to some extent with my
21 advice.

22 Q All right. All right. So once the -- the DUI charges
23 came into play, how did that change, if any, your -- the
24 way that you were putting this case together for either
25 trial or -- for -- for the plea?

1 A Well, it put a hold on really preparing the drug -- drug
2 offense charges for trial. At that point, again, when
3 you have a significant -- or substantial charges from the
4 defense lawyer standpoint, at least the way I view it,
5 when you have charges that are carrying 25 mandatory and
6 then you complicate that and you get a new felony charge
7 that carries additional significant time, at that point
8 it becomes, "Do I prepare for this resolution and leave
9 the felony DUI hanging? Do -- and what options can I
10 create for my client?" Because ultimately the concern is
11 is his ability to make conscious decisions about his
12 future and to plead guilty and potentially get 25 years
13 on this, and then leave a felony DUI with great bodily
14 injury and one with death hanging out there, to me, is
15 not competent as a lawyer unless you really believe
16 there's a good chance you're going to win that felony DUI
17 trial. But, again, the ultimate goal was not to see the
18 sentence imposed on Mr. Kelley that he ended up getting.
19 We -- our goal was to get less time.

20 Q Right.

21 A So the goal was to handle them collectively together and
22 hopefully get a less time of 25 years or less.

23 Q Yeah.

24 A That was the ultimate goal to create a global resolution.
25 Unfortunately, it didn't work out that way.

1 Q Yeah. That's what I noticed in reading the transcript
2 and putting my trial notes together,
3 it -- it then started to just readily appear that you've
4 got two distinct cases running together.

5 A Correct.

6 Q And, you know, I was just curious as to how you handled
7 that and how informed Mr. Kelley was in regards to what
8 was going on and what his options were?

9 A We -- we had discussions about that multiple times about
10 what the potential way to handle the case was. I mean,
11 we could've gone to trial on the drug charges. Again, if
12 we tried them individually, they could be individual
13 trials. We could've potentially negotiated a plea on all
14 the drug charges. Do I recall specifically that there
15 was ever an offer on the drug charges solely once the
16 felony DUI had occurred, I don't believe there was. And
17 I believe that the solicitor's office desire to make a
18 deal went away once the felony DUI occurred while he was
19 out on bond. It was a very antagonizing inflammatory
20 fact pattern as far as the loss of the child, and -- and
21 I think at that point, there -- there was no -- there
22 wasn't going to be a simple resolution with minimal time
23 --

24 Q Uh-huh.

25 A -- as an option.

1 Q And you had said earlier that the statement in the
2 transcript that this was a defensible case that applied
3 to the felony DUI?

4 A I believe that was the best case for us if we had the
5 trial.

6 Q All right. And how so?

7 A Because I believe there was a significant argument. The
8 -- the toxicology that came back on that showed a rather
9 high what I would characterize as "inactive metabolite"
10 of the marijuana versus what I would refer to as the
11 "active metabolite." The active metabolite, based on my
12 understanding, would be a 2.1. The threshold is, if I
13 recall correctly, was 2.0. The problem with it was is he
14 was a chronic marijuana smoker. And he told me candidly
15 that he hadn't smoked since the night before. And, you
16 know, I -- I'd gotten to know Michael pretty well over
17 the course of this representation. I felt he would be
18 honest with me, and I believe he was honest with me.

19 That being said, it was early in the
20 morning -- I think it was around seven o'clock and he
21 had, I believe, dropped his girlfriend off at -- at work
22 and was heading home and, you know, unfortunately,
23 sometimes accidents are just accidents.

24 Q Yeah.

25 A And, you know, I don't -- I didn't get the feeling from

1 talking with him that he was under the influence at the
2 time it happened, or at least I thought that was a
3 triable issue of fact for the jury to consider. You
4 know, as I recall, there were no field sobriety tests.
5 There were -- there were things missing that you
6 generally would have in a regular DUI that I believe we
7 could have used at trial to -- to at least have a
8 fighting chance.

9 Q Right.

10 A But opposed to that is also the loss of the victims in
11 that case.

12 Q Right.

13 A So, I mean, it -- it was not a slam dunk by any means as
14 far as my concern, but I thought it was the better out of
15 the -- the other cases to try.

16 Q How about -- I noticed that they were saying that the
17 video -- there wasn't a video in regards to the felony
18 DUI. Was that something they adequately explained in an
19 affidavit as to why it either didn't happen or they
20 didn't have it?

21 A I'd -- generally, there is an affidavit submitted if
22 there's no video present. I don't recall off the top of
23 my head --

24 Q Yeah. I saw in the --

25 A -- if there was one.

1 Q -- transcript that talks about that there was an
2 affidavit. I just didn't know if you knew it. As it
3 appeared that they said there was -- was not an
4 opportunity when they were called to the scene or
5 something.

6 A I recall there not being an opportunity, but I'm not sure
7 if that was review of the transcript. But I don't recall
8 specifically if there was --

9 Q Okay.

10 A -- an affidavit. I know they're required to submit an
11 affidavit if there's not an opportunity from video or if
12 there's a malfunction.

13 Q Right.

14 A I -- I assume that would've been in there. I would've
15 checked that then, but I don't recall now whether there
16 specifically was one in there.

17 Q And that could've been a potential defense for you, or --

18 A It could've been, yes.

19 Q Okay.

20 A We would've moved to suppress the --

21 Q Yes.

22 A -- or -- or take some action pretrial on that issue if it
23 wasn't in there.

24 Q Right. And, again, another situation where you would've
25 been required to --

1 A Go to trial.

2 Q -- make that -- go to trial.

3 A Correct.

4 Q Make that motion at trial?

5 A Correct.

6 Q Okay. So then, maybe, the issue of a toxicologist
7 becomes more important than --

8 A Sure.

9 Q -- the DUI?

10 A Sure.

11 Q Okay. To have explained this -- whether or not he was
12 under the influence?

13 A Correct. Correct.

14 Q Getting back to the theory of defense, what would have
15 been your preference in regards to if you were going to
16 try these cases, how would you have done that?

17 A Can you be more specific? I guess, I'm --

18 Q Okay.

19 A -- yeah.

20 Q In -- in the best world, I guess, you would have tried
21 the -- the drug -- drug charges first, or would you?

22 A I mean, it requires me to speculate. If I was going to
23 speculate, I would -- sitting here today, I might have
24 tried the felony DUI first, because if we were able to
25 win that one, I think we might have gotten a more

1 reasonable back down to the ten -- ten, 12, 13, 14-year
2 range on the drug charges as a plea offer.

3 Q Right.

4 A Again, to me there were suppression issues on the drug
5 charges, but I didn't think those -- those were issues we
6 could raise, but I didn't think the merit outweighed the
7 risk, and we discussed that. So I probably wouldn't have
8 wanted to try the drug cases first is what I'm thinking
9 now simply because if he were in jail for 25 years plus,
10 it wouldn't have made any sense to try the DUI in the
11 hopes of gambling less.

12 Q So it would -- if he had taken it to trial, it was -- it
13 was more likely that he would get a substantial sentence?

14 A On the drug charges?

15 Q Yes, sir.

16 A Yes.

17 Q Okay. And the purpose of the questions is just to get an
18 idea of how the risk was -- was determined and evaluated.

19 A Sure.

20 Q Kind of how that was conveyed to Mr. Kelley.

21 A Sure. And just to be clear, I don't think the
22 solicitor's office would've tried the felony DUI first.
23 I think they would have tried the traffickings first.

24 Q Trafficking first. The chance of them trying
25 them --

1 A That's what I would've done if I was the prosecutor.

2 Q -- independently or altogether?

3 A I'm sorry?

4 Q Chance they would've tried them separately or altogether?

5 A Separately, would be my opinion.

6 Q Okay. So then the risk was substantial?

7 A It was.

8 Q You and I talked about this, and then, also, it's in the
9 transcript where there was a jailhouse lawyer that kind
10 of comes into play?

11 A There was. A gentleman named Gerald Davis was, I guess,
12 known to give jailhouse advice. I spoke with him at Mr.
13 Kelley's request, and he had talked with Mr. Kelley at
14 length and was telling him different suppression issues
15 and entrapment defenses and Title 3 violations and 14th
16 Amendment violations. There was a lot. Did I see any
17 merit in any of those that would, I think, change the
18 outcome in any of these cases? I did not.

19 Q Okay. How did that change, if any, your relationship
20 with Mr. Kelley on the advice that you were giving him?

21 A I don't think it changed our relationship. I think
22 Michael and I always got along well. Like I said, we --
23 we talked a lot over the period of my representation.

24 Q Uh-huh.

25 A You know, he's -- he's a nice guy. He was honest with

1 me, and he kept his word to me, I mean, you know, on
2 different things. I don't know that it changed our
3 relationship. I think it changed his thought process.

4 Q Uh-huh.

5 A I mean, you know, when you're facing that kind of time,
6 wishful thinking is the -- the most dangerous thing that
7 can happen to a client, because we -- we live in a world
8 of reality. But when you have hope and you see your
9 outlook is -- and future's bleak as far as what is
10 legally possible, you grab hold of different ideas and,
11 unfortunately, Mr. Davis fed off into that and, at that
12 point, Michael became conflicted inside about what he
13 needed to do, wanted to do, or thought he had
14 opportunities to do.

15 Q And, again, the purpose of that question is to, you know,
16 get your understanding of how that could have affected
17 Mr. Kelley's perception of what his risk was, and --

18 A Sure.

19 Q -- and to be able to make those determinations as to what
20 he needed to do.

21 A Sure. And as I recall, I actually had to speak -- I
22 didn't have to. He -- he authorized me to speak with his
23 brother at one point while he was incarcerated on the
24 felony DUI, because his brother had, I guess, heard or
25 talked with Gerald Davis or through Michael, and the

1 brother and I met to discuss -- with Michael's
2 permission, of course -- to discuss what I -- my position
3 was on those arguments, and I clarified with him, as
4 well, my concerns.

5 Q Right.

6 A So I didn't just speak with Michael, I also spoke with at
7 least his brother and -- and maybe another member of the
8 family with his permission.

9 Q All right. In talking to Michael, he said to me that,
10 "Well, I -- I didn't ever really get to talk to my family
11 because I was in the back," so I guess he was in custody?
12 Was he ever allowed to speak with his family about, you
13 know, the plea and the trial and -- and help with making
14 that decision?

15 A He was in custody at the time we did the plea. I do not
16 recall if we were -- I apologize. It's been three years.
17 I --

18 Q That's a long time.

19 A Yeah. I don't know that he ever had an opportunity to
20 speak with them. I do know I've had opportunities in the
21 past where we've been allowed to go in a side room or
22 whatever and talked to consult about a plea. I do not
23 recall if that happened in this case to be honest with
24 you.

25 Q Okay. And then --

1 A I know I had spoken with relatives of his --

2 Q Yes, sir.

3 A -- but whether he personally got to talk with them the
4 day of the plea, I -- I just don't recall.

5 Q Okay. The -- the family support for the plea, they were
6 not present at the actual plea and sentencing?

7 A I believe they were present in the early morning part.

8 Q Uh-huh.

9 A But I don't believe they were back for the afternoon,
10 because it -- the -- the break came about -- the plea
11 started off in the morning and then, at that point, Mr.
12 Kelley indicated he did not want to pled guilty, though,
13 it came up about Gerald Davis and -- and all that, and it
14 was recessed at that point. We were on the trial docket,
15 as well. We could've potentially started that afternoon.
16 At that point, James Cheek, who is a public defender here
17 in Spartanburg, had had significant dealings with Gerald
18 Davis and Gerald Davis involving himself in -- in cases
19 of his clients. And Michael consented talking with Mr.
20 Cheek, as well, and the three of us sat in the holding
21 cell over here and talked for a good while before we came
22 back in.

23 Q Okay.

24 A And he -- actually, at that time, Michael actually was
25 able to talk with Mr. Cheek and myself, as well, about

1 the concerns that Mr. Davis had raised to him about his
2 case. And so, it wasn't just my advice he was getting,
3 he also had James Cheek's advice, as well, about whether
4 those issues had merit, whether they were going to lead
5 anywhere and what the gamble was.

6 Q All right. So in essence kind of fast-forwarding to the
7 actual day in court, he was scheduled for a plea that
8 morning?

9 A He was.

10 Q Okay. And then he kind of backed out from, I guess, a
11 better -- lack of a better word of the plea, and that was
12 because of why? Were you able to determine that?

13 A My recollection is it was based on the Gerald
14 Davis --

15 Q Gerald Davis?

16 A -- yeah. I don't believe Gerald Davis was locked up at
17 the time with Mr. Kelley. I think they talked a lot on
18 the phone, if I recall correctly, and I could be wrong
19 about that.

20 Q Yes, sir.

21 A There was -- I had seen Michael the week before, the
22 weekend of the -- before the plea and trial, and when I
23 left, we had agreed on the plea. When he came in Monday,
24 I think he had had more time to think about it. I don't
25 know if he talked to Mr. Davis more, but either -- in

1 either event, he had changed his opinion about entering
2 the plea on Monday morning.

3 Q Okay. So then it was going to be set for trial?

4 A Correct.

5 Q It appears from --

6 A It was --

7 Q -- the transcript --

8 A It was actually already set for trial.

9 Q It was actually already set?

10 A Correct.

11 Q Okay. And was the trial -- I can't remember -- was it on
12 the start of the next day, or --

13 A It was either going to start that afternoon or the next
14 day.

15 Q Okay. All right. And then what happened to put it back
16 on the table in regards to the plea?

17 A I believe that was the conversation I referred to with
18 James Cheek and myself.

19 Q Yes, sir.

20 A You know, I think the Court understood that I was
21 concerned about my client receiving the advice that had
22 tainted where we were and they were agreeable to trying
23 to see if we could make sure we were doing the right
24 thing and that Mr. Kelley was having a -- a proper
25 advisement and making a good decision at that time. So

1 they took a break, basically, to do that and, at that
2 point in time, we spoke in the detention room or the
3 holding cell and I think we were in there probably for a
4 good 30 minutes to an hour, but I didn't write down
5 times.

6 Q Okay.

7 MR. THOMAS: Your Honor, if I can beg the Court's
8 indulgence just for a second?

9 THE COURT: Yes, sir.

10 Q Any thoughts about the necessity of a accident
11 reconstruction on the DUI?

12 A I think if we had decided to go to trial or that was an
13 option he seriously considered, we would definitely have
14 had one.

15 Q Okay. And you still had time to do that, I guess,
16 because it was not on the -- it wasn't scheduled for
17 trial?

18 A Correct. That one was not -- not even close to a trial
19 date.

20 Q How about any issues on the -- the hospital? the blood
21 draw? the testing? anything like that?

22 A I thought there were issues with that potentially, as
23 well. There was a -- an implied consent advisement
24 signed by Mr. Kelley. As I recall, there also was a
25 search warrant issued, but I'm not sure. There were

1 issues with the DUI like I said. I thought that was
2 probably the better of the altercations.

3 Q Better?

4 A Potentially to have a better -- or at least a -- a
5 fighting chance.

6 Q All right.

7 A As part of the plea, just to -- to throw in, too, I mean,
8 the ranges on the trafficking charges that he pled to I
9 believe were seven to 25, so we were -- of course, were
10 hoping for a lot less than 40 years. We were hoping for
11 less than 25.

12 Q What -- and I'll ask you this question: What did you
13 expect?

14 A It was one of those where I told him I can't tell him
15 exactly what's going to happen. I said, "You know, our -
16 - our goal is to go in and -- and throw ourselves on the
17 mercy of the courts. To discuss with the Court the
18 concerns we had about the DUI to an extent. You didn't
19 want to come in and say, "I'm not guilty all the way
20 around," okay. That would not have gone well with any
21 judge. You have to have a certain amount of remorse and
22 ownership of it.

23 Q Was he remorseful?

24 A He was remorseful for the loss and the injury to people,
25 of course.

1 Q Yes.

2 A Yes.

3 Q Uh-huh.

4 A I mean, do I think he believes he was under the influence
5 at the time, I don't believe that. I -- I believe he was
6 just remorseful that it turned out the way it did.

7 Q Right.

8 A You know, he had -- the drugs -- he -- he felt like he
9 had -- he was pushed to be in the business of the drug
10 dealing to provide for his family based on his prior
11 record.

12 MR. THOMAS: Your Honor, I have no further
13 questions.

14 THE COURT: All right. Ms. Marto?

15 THE COURT: Yes, Your Honor.

16 **CROSS-EXAMINATION OF DAVID BRAGHIROL, ESQ.**

17 BY MS. MARTO:

18 Q Good morning, sir.

19 A Good morning.

20 Q So all the discovery in this case, you're -- you reviewed
21 that with Mr. Kelley, correct?

22 A I did.

23 Q And --

24 A Except for the confidential informant and videos, yes.

25 Q Okay. And it was your understanding he understood the

1 weight of the evidence against him?

2 A Yes, ma'am.

3 Q And it was your understanding that the drug charges were
4 not triable?

5 A Every case is triable. I just didn't think the outcome
6 was substantially in his favor.

7 Q You thought the drug cases were a slam dunk in favor of
8 the State?

9 A Pretty much.

10 Q Okay. And all possible avenues for defense with the DUI
11 charge, you discussed that with Mr. Kelley, as well --

12 A I did.

13 Q -- correct? And he seemed to understand those
14 conversations, as well?

15 A Yes, ma'am.

16 Q Now, did you give him any promises concerning sentencing?

17 A No.

18 Q And so did he plead straight up to the charges?

19 A He did.

20 Q And did you think that the plea was in his best interest
21 at the time?

22 A I did.

23 Q And was the decision his?

24 A It was his decision. I believe there also was some
25 discussions of if we didn't do the plea, there might be a

1 life without parole potential for him, and he understood
2 that, as well.

3 Q And that -- was the primary incentive to plead that he
4 would likely face considerably more time if he went to
5 trial?

6 A That's correct.

7 Q Okay. So going back to the discovery, who was the
8 deceased in this case?

9 A It was a -- I'm sorry. I don't remember the age, but it
10 was a little boy on his way to school.

11 Q And did that factor into sentencing from your --

12 A I'm --

13 Q -- understanding?

14 A I'm sure it did.

15 Q He -- and did Mr. Kelley seem to understand all of the
16 rights he was waiving by pleading?

17 A He did.

18 Q And once the jailhouse lawyer issue was resolved, was he
19 on board with pleading thereafter?

20 A He -- he was. I hated, actually, it ever -- had ever
21 come up with the jailhouse lawyer, because I think that
22 took any -- I think it took a lot of peace that Michael
23 had going into the hearing away. Do I believe he knew
24 what he was doing when he entered the plea? I do.

25 MS. MARTO: No further questions, Your Honor.

1 THE COURT: All right. (To Mr. Thomas) Any
2 redirect?

3 MR. THOMAS: Yes, Your Honor. Just one. If it
4 please the Court.

5 **REDIRECT EXAMINATION OF DAVID BRAGHIROL, ESQ.**

6 BY MR. THOMAS:

7 Q Counsel, the State asked you about the -- the amount of
8 time and discussing the exposure and that kind of
9 stuff --

10 A Yes, sir.

11 Q -- with Michael. Did you ever convey to him any kind of
12 idea of what you thought about what the range of what he
13 could get was? Kind of like a realistic --

14 A I --

15 Q -- "This is what I think?"

16 A I'm sure at some point we discussed opportunities as far
17 as what he could get. I mean, he knew that there was
18 exposure well above the 25 years. He knew that there was
19 no guarantee any -- any sentences would be concurrent;
20 that they could be consecutive. That I expressed to him
21 that I thought the likelihood that they would be
22 consecutive, I don't recall, but sitting here today, I
23 probably would've not said that -- I would've expected
24 them to be concurrent potentially. But, again, I didn't
25 give a guarantee, and he understood I couldn't give a

1 guarantee.

2 Q Right.

3 A Simply because I -- I don't recall that part with him,
4 but I know I do it with every client. I can't guarantee
5 what a judge is going to do. The only way to do that is
6 a negotiated sentence where a judge either has to accept
7 it or not. Was I happy with the sentence? Not really.
8 But I think -- personally, I thought it was a little
9 excessive under the circumstances, but it was well within
10 the right of Judge Kelly.

11 Q Because he had two running consecutively, didn't he? Two
12 of the sentences?

13 A He had a 25-year-sentence and then ran a 15-year, I
14 think, a distribution charge consecutive to that. And
15 the 25, I know, is 85 percent, and the 15, I believe, it
16 is not, but I'm not sure a hundred percent. But -- but
17 either way, it was 40 years, which is more than what I
18 expected him to get, but, again, we knew we were going in
19 blind. Again, we also knew that we were set for trial on
20 a drug case that potentially could be a slam dunk. We
21 also knew that if the offer -- or global offer wasn't
22 accepted, there could be a potential for life without
23 parole, and we discussed all that.

24 Q Okay.

25 A Unfortunately --

1 Q I didn't --

2 A -- we didn't -- we didn't have a lot of leverage at that
3 point, to be honest.

4 Q Right. Right. I didn't know if it's kind of like, you
5 know, as -- as a defense counsel, you know, we'll --
6 sometimes we'll say, I can't promise you this, but my
7 best guess is such and such.

8 A No. We really knew on this one I -- that it was going to
9 be pretty rough. I mean, ideally, were we looking for
10 somewhere between eight and 12 years? Yes. But could I
11 tell him that I really thought that's what he was going
12 to get or that I knew Judge Kelly was going to give it to
13 him? No.

14 Q Right.

15 MR. THOMAS: Thank you, Your Honor.

16 THE COURT: (To the State) Anything else?

17 MS. MARTO: Briefly, Your Honor.

18 **RECROSS-EXAMINATION OF DAVID BRAGHIROL, ESQ.**

19 BY MS. MARTO:

20 Q All of the sentencing ranges for all of the charges were
21 explained during the course of the plea colloquy,
22 correct?

23 A That's correct.

24 Q And it was your understanding that Mr. Kelley seemed to
25 understand that as the Court conveyed it to him?

1 A Yes.

2 MS. MARTO: No further questions, Your Honor.

3 THE WITNESS: He -- okay. Sorry.

4 THE COURT: All right. Thank you, sir. You may
5 step down.

6 THE WITNESS: Thank you, Judge.

7 (WHEREUPON, the witness was excused.)

8 MR. THOMAS: Your Honor, I don't have any problem if
9 -- if he is excused. I don't know if --

10 MS. MARTO: No --

11 THE COURT: Any objection?

12 MS. MARTO: No. No objection, Your Honor.

13 THE COURT: All right. All right. Next witness.

14 MR. THOMAS: Your Honor, if it please the Court. We
15 would call Mr. Kelley to the stand.

16 THE COURT: All right. Mr. Kelley, come on up and
17 be sworn.

18 (WHEREUPON, the Applicant was sworn.)

19 MR. THOMAS: If it please the Court.

20 THE COURT: Yes, sir.

21 **DIRECT EXAMINATION OF MICHAEL KELLEY II**

22 BY MR. THOMAS:

23 Q Mr. Kelley, you're currently incarcerated in the South
24 Carolina Department of Corrections?

25 A Yes, sir.

1 Q And --

2 THE COURT: Mr. Kelley, you can put your mask down
3 so that everybody can understand you. Thank you.

4 THE COURT REPORTER: Can he slide up?

5 Q And just to kind of simplify things you're serving time
6 for drugs, as well as a felony DUI?

7 A Yes, sir.

8 Q And --

9 THE COURT: (To the court reporter) You need him to
10 speak up?

11 THE COURT REPORTER: Yeah. If he can slide up.

12 THE COURT: Yeah. (To the Applicant) If you can
13 slide up. She has to hear you, and -- and if you
14 can slide up closer to the microphone. Thank you.

15 Q And what is your sentence?

16 A I have a 25-year-sentence with a 15 consecutive.

17 Q Okay. And then all the other charges are running
18 concurrently to that?

19 A Yes, sir.

20 Q So you've got a total of how much time?

21 A Forty years.

22 Q What's your max-out date?

23 A 2051, I think.

24 Q Okay. And how old are you?

25 A Thirty-two.

1 Q All right. Do you -- do you know how old you'll be when
2 you max out?

3 A No, sir.

4 Q Okay. Now, you were arrested on two separate occasions;
5 is that correct?

6 A Yes, sir.

7 Q One for the drugs, and then one for the -- the felony
8 DUI?

9 A Yes, sir.

10 Q Okay. And did you make bond on either one of those
11 charges?

12 A Yes, sir.

13 Q Which ones?

14 A The drug charges.

15 Q And how long were you out on bond?

16 A Probably, like a year.

17 Q All right, sir. And then when the felony DUI happened,
18 did you make bond on that charge?

19 A No. I was out for a bond.

20 Q Okay. And how long were you in the -- the detention
21 center?

22 A Six months.

23 Q Prior to this plea?

24 A Uh-huh.

25 Q All right, sir. Now, you have filed a post-conviction

1 relief action, and you are asking for a new trial or new
2 plea --

3 A Yes, sir.

4 Q -- that your conviction be set aside?

5 A Yes, sir.

6 Q You and I have spoken about this, and you understand that
7 there are risks associated with post-conviction?

8 A Yes, sir.

9 Q And considering those risks, you want to go forward
10 today?

11 A Yes, sir.

12 Q All right, sir. Now, when you were arrested on the drug
13 charges, you hired an attorney?

14 A Yes, sir.

15 Q And who do you hire -- who did you hire?

16 A David Braghirol.

17 Q All right, sir. And during that period of time, I guess,
18 you were just arrested on the drugs. Did you have an
19 opportunity to meet with him?

20 A Yes, sir.

21 Q And how many times did you meet with him? Do you know?

22 A I mean, like, two or three times.

23 Q Okay. And when you met with him, what did y'all talk
24 about?

25 A At first, we was talking about getting the drug

1 suppressed. That's -- that's why I -- I really hired
2 him. He was saying when they came to my house he
3 believed they could've got thrown out because of
4 coercion, but I mean --

5 Q Kind of coercion of what? What kind of coercion?

6 A They told my -- they told my girlfriend that if they had
7 -- if they had to leave and go get a warrant, they was
8 gonna -- to take her kids and take her to jail.

9 Q Okay. And was that the basis as to why you and she
10 consented to the search?

11 A Yes.

12 Q Okay.

13 THE COURT REPORTER: (To the Applicant) I'm sorry.
14 Can you speak up? Can you repeat that last answer,
15 please?

16 THE APPLICANT: Yes, sir.

17 Q All right. And did you discuss that with Mr. Braghirol?

18 A Yes, sir.

19 Q And then -- so what else did y'all talk about?

20 A Other than that, really not too much.

21 Q How was he going to defend you? Did you -- did he tell
22 you? I mean, what I would call a theory of defense. In
23 other words, what was he going to do to represent you and
24 -- and defend you in these drug cases?

25 A I really don't know.

1 Q And did he hire a private investigator to look into any
2 of it?

3 A No, sir.

4 Q Did you have any idea what was going on?

5 A Really, I didn't.

6 Q So what'd you do?

7 A I just asked for help from somebody else.

8 Q All right.

9 A That --

10 Q And the help from somebody else turned out to be who?

11 A Gerald Davis.

12 Q And he was classified in this courtroom as a "jailhouse
13 lawyer"; is that what he was?

14 A Yes, sir.

15 Q Were you in the detention center with him? Or how did
16 you come across him?

17 A He -- he stayed down the street from me.

18 Q All right. He had a history of kind of dabbling in the
19 law?

20 A Yes, sir.

21 Q And did you pay him?

22 A No. I ain't (as spoken) pay him.

23 Q Okay. What kind of stuff was he telling you?

24 A He was telling me a lot of stuff was missing out of my
25 discovery. It could -- like, most of my drug charges

1 should've been suppressed in, like, a pretrial hearing,
2 and that was really about it he was telling me (as
3 spoken.)

4 Q Okay. And you -- I guess you did discuss that with Mr.
5 Braghirol?

6 A Yes, sir.

7 Q And what was his reaction? Or what did he advise you in
8 regards to that?

9 A He felt like the way he was saying had no way -- he
10 really couldn't use what he was giving him to fight the
11 cases.

12 Q Okay. Now, did you receive copies of the discovery in
13 this case?

14 A Yes, sir.

15 Q And what all -- do you remember what you received?

16 A I don't remember everything that was in there, but I know
17 I gave it to Gerald, and he was saying there was a lot of
18 stuff missing that he needed, that any lawyer would need
19 to fight the case.

20 Q All right. And that gave you concern?

21 A Uh-huh.

22 Q What kind of -- what was your feelings at that point in
23 time?

24 A That my lawyer wasn't fighting for me.

25 Q Okay. Confusion?

1 A Yeah.

2 Q All right. So -- so you're at this situation where
3 you're talking to Mr. Braghirol about the drugs, and then
4 your whole case gets complicated, unfortunately, with
5 this terrible accident with the DUI charge?

6 A (No response.)

7 Q And so then you're in the -- the County detention center;
8 is that correct?

9 A Yes, sir.

10 Q How many times was Mr. Braghirol able to come see you at
11 the detention center?

12 A Only time I talked to him was the week before I pled.

13 Q So did you see him at all during that period of time?

14 A Yes. I asked for him to come and speak to me, but I
15 think he was busy with other cases.

16 Q Okay. All right. Now, what did y'all talk about as far
17 as -- again, we're talking about a theory of defense, how
18 he was going to defend you. What did he say about the --
19 the DUI charges?

20 A He said that he think that we can beat those charges in
21 court, but with the drug charges he said he didn't want
22 to go to court with anything, really. He would rather
23 take a plea.

24 Q All right. Kind of taking everything a little bit out of
25 turn, is that why you ended up with the guilty plea on

1 the drugs and a Alford plea on the DUI?

2 A Yes, sir.

3 Q Okay. Because I think you say in the transcript you told
4 the judge that you were willing to plea to the drugs?

5 A Yes, sir.

6 Q Okay. But you felt like that you were not under the
7 influence at the time of the accident?

8 A No, sir.

9 Q Did you talk at any depth with your -- with Mr. Braghirol
10 about some of the more technical stuff about whether
11 there was a video of the -- of the scene of you being
12 given your Miranda rights and those kind of things?

13 A No, sir. I never talked any, like -- with the felony
14 DUI, I -- I really don't know anything about that case.
15 I never seen the discovery or anything about that case?

16 Q So you never received anything?

17 A No, sir.

18 Q Did -- did you go over with him or discuss with him the
19 toxicology report?

20 A We talked about a toxicology.

21 Q Okay. And did he talk about your blood levels in regards
22 to THC and those things?

23 A Yes. That's the only thing that I -- that he talked to
24 me about with their case, and he was telling me that I
25 might have to get -- hire a toxicologist.

1 Q Toxicologist. So when you went to court that morning,
2 you told the judge that you did not want to take the
3 plea?

4 A Yes, sir.

5 Q And why was that?

6 A Because I -- I felt as the charges could -- could've been
7 beaten.

8 Q And what were you basing that belief on?

9 A A lot of the cases and stuff that Gerald had gave me. I
10 had got them looked up, and it seemed like they were
11 beatable.

12 Q So Gerald was kind of acting like a -- another lawyer for
13 you?

14 A Yes, sir.

15 Q And giving you legal advice?

16 A Yes, sir.

17 Q Did you believe what he was telling you?

18 A Yes, sir.

19 Q So that influenced your decision to withdraw your
20 acceptance of the plea offer?

21 A Yes, sir.

22 Q All right. And then what happened after that?

23 A I was taken (as spoken) in the room and my lawyer and
24 James Cheeks (as spoken) came in and talked to me about
25 pleaing (as spoken).

- 1 Q Okay. And who is James Cheek?
- 2 A He's a public defender that works here.
- 3 Q Did you know him?
- 4 A I ain't know him, but I have seen him around.
- 5 Q Okay. And what did -- what did y'all talk about?
- 6 A He, basically, was telling me that I'm a Black man, and a
7 young, White child got killed in a wreck, so, basically,
8 the -- the best thing was to do was take my lawyer's
9 advice and plea (as spoken.)
- 10 Q Did you talk to Mr. Cheek about any of the things that
11 the jailhouse lawyer has told you about?
- 12 A He was saying Gerald did a good job on his brother's case
13 and a couple more cases, but he didn't think that he knew
14 what he was talking about in this case.
- 15 Q Okay. So he had a reputation in the community, then?
- 16 A Yes, sir.
- 17 Q Was he charging other people?
- 18 A I don't know.
- 19 Q Don't know. So how did you make the decision to get back
20 onboard and to accept the plea?
- 21 A Like he said, I'm a Black man, and a young, White child
22 was killed. I felt like that right there was going to
23 give me a lot of time anyway.
- 24 Q You were remorseful for what happened?
- 25 A Yes, sir.

1 Q You still live with it today?

2 A Yes, sir.

3 Q And your contention was that it was an accident and that
4 -- that you were not under the influence?

5 A Yes, sir.

6 Q Okay. And that's really kind of my questions is that how
7 did you process this information to be able to decide
8 that you wanted to enter into the plea?

9 A I really didn't want to plea, but it seemed at the time
10 my lawyer was telling me that that was the best thing to
11 do, so I just took his advice and pleaded.

12 Q All right. Now, you and I talked about this, as well,
13 about your plea, and, you know, the process that you went
14 into in -- in making that determination that that's what
15 you wanted to do. Do you feel that your plea was freely
16 given?

17 A No, sir.

18 Q Do you feel like it was voluntarily given?

19 A No, sir.

20 Q Do you feel like that you knew what you were doing, that
21 it was knowing?

22 A No, sir.

23 Q And probably, maybe, the more important one, was it
24 intelligently given?

25 A No, sir.

1 Q Do you feel like you had all the facts that you needed to
2 do to make the right decision as to take it to trial or
3 plea?

4 A No, sir.

5 Q Okay. Now, we also talked about this, too, Mr. Kelley.
6 You've been waiting a long time to come into court for
7 this post-conviction relief hearing. I'm not saying that
8 I have forgotten something or that I've missed something,
9 but this is your opportunity. If there is anything else
10 that you feel like the Court should know that I may have
11 left out or in addition to that, now is your opportunity.
12 Is there anything else you'd like to say?

13 A Not at this time.

14 Q Okay. All right.

15 MR. THOMAS: Thank you, Your Honor.

16 THE COURT: All right. (To the State) Yes, ma'am?

17 MS. MARTO: Thank you.

18 **CROSS-EXAMINATION OF MICHAEL KELLEY II**

19 BY MS. MARTO:

20 Q Good morning, sir.

21 A Morning.

22 Q So can you give me a brief fact summary of what facts the
23 State said happened that led to all of your convictions?

24 A Can you word that differently? I -- I don't understand
25 what --

1 Q Okay.

2 A -- you're saying?

3 Q So what -- what facts occurred that brought on the drug
4 charges?

5 A The facts was that they came to my house with a arrest
6 warrant -- three arrest warrants, and they found more
7 drugs there.

8 Q Were they your drugs?

9 A Yes.

10 THE COURT REPORTER: Sir, can you repeat that
11 answer? I didn't hear you.

12 THE WITNESS: Yes.

13 Q And then when it came to the DUI, what did they say
14 happened?

15 A I got into a wreck. They said I was under -- they --
16 they said they smelled weed in my car. They said I was
17 under the influence. They took my blood at the hospital,
18 and that was it.

19 Q Okay. Did they say that your blood showed that you had
20 some level of drugs or alcohol in your system?

21 A My lawyer told me that I had THC in my -- my . . .

22 Q And they found marijuana in your car?

23 A I don't think they found no marijuana in the car, but I
24 don't know.

25 Q Okay. Would you be surprised if they actually found a

1 baggie inside the car?

2 A Yes. I would.

3 Q Okay. Well, I'm looking on Page 36 of the transcript,
4 starting with Line 4, and it says, "When officers arrived
5 there, Your Honor, when they opened the door, they could
6 smell marijuana. They actually found a baggie inside the
7 car." Do you recall that being said at the plea hearing?

8 A I don't, but it probably was.

9 Q Okay. So were there drugs in your car?

10 A No.

11 Q So what do you think that they saw if it wasn't drugs?

12 A I don't know. I didn't -- I didn't have anything on me
13 that day.

14 Q Okay. And they also said, "They smelled marijuana,"
15 correct?

16 A Uh-huh.

17 Q Okay. And that's how you wound up being charged with the
18 DUI --

19 A Yes, ma'am.

20 Q -- is because they found drugs, they said you had THC in
21 your system and the wreck happened?

22 A Uh-huh.

23 Q Now, who -- do you know who was in the other car that you
24 hit?

25 A Oh, the child and his mother.

1 Q Do you know how roughly -- well, was the child young, or
2 was it a teen?

3 A Young.

4 Q Young. And that child passed away, correct? As a result
5 of the wreck?

6 A Yes, ma'am.

7 Q Now, did you discuss those things with your lawyer?

8 A I discussed the drug charges mostly, really not the
9 wreck.

10 Q Okay. Now, why did you decide to plead in this case?

11 A My -- my lawyer advised me to plea --

12 Q What --

13 A -- and he --

14 Q What did he say that advised you to plea?

15 A He told me to -- well, I came initially, and I pleaded
16 not guilty. He wanted me -- he -- he brought another
17 lawyer in, and they eventually got me to plea.

18 Q Okay. What did they say?

19 A They was saying that -- that I was a Black man and a
20 young, White child got killed and . . .

21 Q Did -- did they tell you you might face more time if you
22 went to trial?

23 A Yes.

24 Q Were you afraid of facing more time if you went to trial?

25 A Yes.

1 Q Did you want to get as low a sentence as you could?

2 A Eventually, yes.

3 Q And is that why you decided to plead?

4 A I really wanted to go to trial, but, yes. It -- I plead
5 (as spoken.)

6 Q You were afraid of spending life in prison if you went to
7 trial?

8 A Yes.

9 Q Now, the judge informed you of all of your rights at the
10 plea hearing, right?

11 A Yes.

12 Q And you stated you understood those rights, and you
13 wanted to plead.

14 A (No response.)

15 Q And the only hang-up in the beginning was due to advice
16 from --

17 THE COURT: Mr. Kelley, if you would speak up. When
18 you answer, if you would speak up in the microphone
19 right there. Thank you.

20 THE APPLICANT: Okay.

21 THE COURT REPORTER: Can he answer the last
22 question? He just nodded his head.

23 THE COURT: Answer the last question.

24 THE WITNESS: Yes.

25 Q And --

1 MS. MARTO: One moment, Your Honor, I lost my train
2 of thought.

3 Q And so you told the Court that you were pleading
4 knowingly and freely, right?

5 A Yes.

6 Q But that wasn't the case you're saying now?

7 A No, ma'am.

8 Q Then why did you tell the Court that that's what you were
9 doing?

10 THE COURT: Speak up, Mr. Kelley.

11 A I was in a -- I was really, like, in a bad place at the
12 time. Like, I didn't know -- I knew what was going on,
13 but I didn't know what was going on.

14 Q Okay. Why didn't -- did you bring any of your questions
15 about the proceedings up to your attorney?

16 A I did.

17 Q What did he say?

18 A Basically, he -- he told me that it was best for me to
19 plead. Like, he -- he told me that if I would've not --
20 pleaded not guilty, I would've -- he would've took the
21 drug charges. He would've fought -- he would help me
22 with my drug charges, but he was going to drop me on
23 felony DUI; on that, I need a public defender for that
24 charge. So I just went ahead and took the plea off his -
25 - off his advice.

1 Q Off his advice which also included that you would likely
2 face more time if you went to trial, right?

3 A Yes.

4 Q Okay. Now, the drugs that they found in your house, did
5 you deal?

6 A Yes.

7 Q Yes. And was the main reason why you didn't wanna plead
8 initially because of the conversations you had with
9 Gerald?

10 A Yeah. But when I initially hired my lawyer, he was
11 telling me that it was issues with the drug charges that
12 we could've fought. That's -- that's why I really hired
13 him.

14 Q Okay. But then as the conversations went on, you decided
15 to plead, right?

16 A He advised me to plead, yes.

17 Q And then when you showed up at court, you stated you no
18 longer wanted to plead because of your conversations with
19 Gerald, right?

20 A Yes. And initial conversations that I had with my
21 lawyer.

22 Q Okay. And Gerald wasn't your attorney, right?

23 A No.

24 Q And he didn't have a license to practice law, right?

25 A No.

1 Q And you knew that when you talked to him about your case,
2 right?

3 A Yes.

4 Q Okay. You only hired Mr. Braghirol, right?

5 A Yes.

6 MS. MARTO: No further questions, Your Honor.

7 THE COURT: All right. (To Mr. Thomas) Any
8 redirect?

9 MR. THOMAS: Your Honor, if it please the Court,
10 just a few.

11 **REDIRECT EXAMINATION OF MICHAEL KELLEY II**

12 BY MR. THOMAS:

13 Q Mr. Kelley, you were asked about the -- whether or not
14 you saw the -- the toxicology report and talked to Mr.
15 Braghirol about the drug analysis?

16 A Yes, sir.

17 Q And you knew that there was a -- a reading of THC?

18 A Yes, sir.

19 Q Now, did you -- you had smoked marijuana the day before?

20 A The night before.

21 Q The night before. Had you smoked that morning?

22 A No, sir.

23 Q Okay. And you told them that?

24 A Yes, sir.

25 Q Okay. And he discussed with you that if it went any

1 further that a toxicologist should be retained?

2 A Yes, sir.

3 Q Okay. And you've been very candid about the drug charges
4 today in regards to what happened. You understood, in
5 all of this, that there was a punishment that was going
6 to be required for -- for everything?

7 A Yes, sir.

8 Q And you were willing to accept that punishment?

9 A Yes, sir.

10 Q Okay. And, unfortunately, the punishment -- the only
11 punishment that we have is to put you in prison?

12 A Yes, sir.

13 Q Okay. So you knew that you were going?

14 A Yes, sir.

15 Q Okay. You pled to the DUI with an Alford plea?

16 A Yes, sir.

17 Q And did you understand that, the Alford plea?

18 A I think that's where you plea, but you really don't feel
19 like you have a winning chance in court, but you -- you
20 can plea. You really think you're not guilty.

21 Q Okay. And that was what your position had been all
22 along?

23 A Yes, sir.

24 Q Okay. Now, Gerald, the jailhouse lawyer, you knew he
25 wasn't a lawyer?

1 A Yes, sir.

2 Q But he did have a reputation in the community?

3 A Yes, sir.

4 Q And you were not his only, quote/unquote, "client"?

5 A No, sir.

6 Q Did you trust him?

7 A Yes, sir.

8 Q Okay. All right.

9 MR. THOMAS: Your Honor, I have no further
10 questions.

11 THE COURT: (To the State) All right. Anything
12 else?

13 MS. MARTO: No questions, Your Honor.

14 THE COURT: All right. (To the Applicant) You may
15 step down.

16 (WHEREUPON, the Applicant was excused.)

17 THE COURT: All right. Any additional witnesses
18 from the Applicant?

19 MR. THOMAS: Your Honor, that's the Applicant's
20 case.

21 THE COURT: All right. Ms. Marto?

22 MS. MARTO: Your Honor, I would like to call
23 Solicitor Barry Barnette to the stand.

24 THE COURT: All right. Mr. Barnette?

25 (WHEREUPON, the witness was sworn.)

DIRECT EXAMINATION OF BARRY BARNETTE, ESQ.

1
2 BY MS. MARTO:

3 Q Good morning, sir.

4 A Good morning.

5 Q So you prosecuted this case, correct?

6 A Yes, ma'am. Me and Ms. Alli Mabbs did.

7 Q And did you become involved after the DUI occurred? Is
8 that when you became involved, or were you involved
9 initially?

10 A No. I was involved once the felony DUI occurred.

11 Q Okay. And now can you give us a brief background of what
12 evidence the State had on this case?

13 A Well, the drug cases originally -- the original charges
14 he was charged on. And, of course, he was out on bond
15 before he did the felony DUI. On the drug cases, there
16 was basically, like Mr. Braghirol said, three buys that
17 was done, and -- and they used -- was taking an arrest
18 warrant to arrest him. When they got to his residence,
19 they got permission to search. Of course, they had an
20 arrest warrant for him to start with, and once they found
21 -- they found the drugs -- and, obviously, they were his.
22 From that standpoint, he was charged with that, of
23 course, the three-buy busts, too. And that amounted to
24 the drug charges.

25 While on bond, the -- the felony DUI occurred up in

1 Boiling Springs on Highway 9. He ran a stop light, T-
2 boned the car that was driven by the victims in this
3 case. Ethan, the 12-year-old boy was killed there, his
4 mama severely injured in that case, and his dad was
5 actually -- witnessed -- came down to the scene when he
6 heard the crash from that standpoint.

7 They did find a baggie inside the car. He was -- a
8 search warrant was done, blood was taken, found THC in
9 his system -- active THC in his system as well as
10 metabolite in the system in that case. They believed,
11 and based off their observations, he was under the
12 influence of drugs at that time and was arrested for the
13 felony DUI, death, great bodily injury, and also was
14 driving under suspension, I believe, also.

15 Q Okay. Now, were there discussions about plea
16 negotiations in this case? Do you recall?

17 A I think initially on the drug case, Alli Mabbs had those,
18 and she originally was talking to Mr. Braghirol about a
19 plea offer at that time. Once the felony DUI occurred,
20 there was no plea offers after that point.

21 Q Okay. And his option was to essentially enter a global
22 plea at that point; is that correct?

23 A It was. We had it on the trial docket that week. Mr.
24 Braghirol had indicated to me that he was gonna plead
25 guilty to -- globally to all the charges, but then,

1 obviously, that morning he decided not to. He -- and --
2 we were gonna try the drug cases, actually gonna try the
3 one with the house was -- with the drugs in it from the
4 standpoint, and, obviously, he was facing major time with
5 that. And our plan was to just try the drug cases and go
6 through to the felony DUI, which he could've faced some
7 very substantial time even up to life in prison from that
8 standpoint, because I was successful in the prosecution
9 of those cases.

10 Q And what would you say the likelihood of success for the
11 State would've been on the drug trial?

12 A I felt very strong with them from that standpoint.

13 Q Okay.

14 A Especially with the evidence we had, you know, them
15 having an arrest warrant for him off the prior buys from
16 the -- the confidential, reliable informant, as well as
17 them going in and finding the drugs itself, which wind up
18 being his drugs.

19 Q Okay. And what about the DUI?

20 A The felony DUI was a good case. Obviously, marijuana
21 creates erroneous issues from that standpoint. THC is
22 always a tricky drug to deal with from that standpoint.
23 It has such a short half-life. It has a half-life of 30
24 minutes to an hour from there, and, when absorbed, a lot
25 of times it goes into the fat of the person from that

1 standpoint. But he did have active THC in his system,
2 so, obviously, he had to smoke prior to the wreck from
3 that standpoint. It just wasn't metabolite. And based
4 off his actions, the trooper's testimony, everything
5 involved with it, I feel like he would've been convicted
6 of that. He did plead under Alford basically admitting -
7 - he wasn't admitting guilt, admitting that he could be
8 convicted -- had enough evidence of being convicted by a
9 jury, obviously.

10 Q Okay. And was it your understanding that the Alford plea
11 was entered because he denied being under the influence
12 at the time?

13 A Yes.

14 Q And you handled the plea proceeding, correct --

15 A I --

16 Q -- for the State?

17 A I did, and I put all the exhibits in the -- in the record
18 including the case on the drug case, the analysis, as
19 well as the felony DUI and the toxicology, and I believe
20 there's a MAIT Team report also in there, also.

21 Q Okay. And beyond the issue concerning the jailhouse
22 lawyer, did you see any red flags in the plea hearing
23 concerning them?

24 A Well, I don't know the whole detail. I know --
25 unfortunately, I know about Mr. Davis. We've had to deal

1 with him. I -- I see Mr. Schultz in the courtroom. I
2 know he's had to deal with him before. He is not a
3 lawyer. We had to actually have a -- there was a SLED
4 investigation involving him getting involved with clients
5 -- or with people in the jail -- outside of the jail from
6 there. And I don't know the results of that, because it
7 was actually sent to the Attorney General's office at
8 this time. I didn't know if it was gonna become the
9 issue today from there, but I didn't -- did not know the
10 background with him in this case and this until,
11 obviously, today hearing the testimony.

12 Q Okay. But you knew that there was some issue with the
13 jailhouse lawyer?

14 A Oh, there was. I didn't know who it -- you know, they --
15 they said there was a guy in the jail, and, of course,
16 you hear about jailhouse lawyers all the time from that
17 standpoint. But knowing who it is today, I know we've
18 had trouble with him in the past. And, like I said,
19 there was a SLED investigation involving him.

20 Q And after the jailhouse issue -- lawyer issue was
21 resolved, was it just a straightforward plea thereafter?

22 A It was. We met with Judge Kelly. We -- he went through
23 his rights explaining everything to him. And, like I
24 said, Mr. Braghirol said we needed to do an Alford plea,
25 because he -- he's not admitting that he was guilty of

1 this, you know, he still has his belief. Judge Kelly, I
2 think, did a very good job going through the plea from
3 there. We presented our evidence, and, like I said, I
4 entered the exhibits in as part of the evidence and facts
5 of the case, so -- so the Court could review that at a
6 later date if they needed to.

7 Q Is there anything else you would like to state concerning
8 the testimony you've heard from the court today?

9 A I know the victims was present, also. They (as spoken)
10 very powerful in their presentations and so forth
11 concerning the felony DUI from that standpoint.

12 Q And is it your understanding that the victim's
13 presentation, as well as the death of the young child,
14 were factors used in considering the sentence in this
15 case?

16 A I -- I'm assuming. I don't know. The judge, obviously,
17 takes all into consideration from that standpoint, but we
18 would -- we were gonna try the drug case first and try
19 those drug cases and then try the felony DUI. So if I
20 had to try five different trials, we would've tried five
21 different trials.

22 Q And is it your understanding he likely would've faced at
23 least more time, if not significantly more time if he
24 went to trial on all those charges?

25 A If he was convicted on it, he definitely had the

1 potential of having that.

2 MS. MARTO: No further questions, Your Honor.

3 THE COURT: All right. Mr. Thomas?

4 MR. THOMAS: Yeah. If I -- if I may. Just one.

5 **CROSS-EXAMINATION OF BARRY BARNETTE, ESQ.**

6 BY MR. THOMAS:

7 Q Solicitor, thank you for being here.

8 A Thank you.

9 Q Just one question. You're talking about Mr. Davis in
10 that he was kind of well-known, I guess, in your office?

11 A He -- well, he was more well-known. His sister actually
12 works in our office as assistant solicitor in Cherokee
13 County.

14 Q Oh, okay.

15 A But I can't speak for her. She was the one that brought
16 it to my attention, and then we noticed that he was
17 talking -- and -- and, unfortunately, it worked to the
18 detriment of several people, so --

19 Q (Inaudible.)

20 A -- you know, his advice did.

21 Q All right.

22 A Because he would always use the same arguments on search
23 and seizure issues. I think saying the same thing over
24 and over again to clients.

25 Q Yeah. And, like you said, you don't know what kind of

1 influence or what any consultations he had had with Mr.
2 Kelley, do you?

3 A No. I do not, no, sir.

4 Q Okay. All right.

5 MR. THOMAS: I have no further questions, Your
6 Honor.

7 THE COURT: All right. (To the State) Anything
8 else?

9 MS. MARTO: Nothing further, Your Honor.

10 THE COURT: Thank you, Mr. Barnette.

11 THE WITNESS: Thank you, Your Honor.

12 (WHEREUPON, the witness was excused.)

13 THE COURT: All right. Any additional witnesses?

14 MS. MARTO: No, Your Honor.

15 THE COURT: All right. Anything from the parties?

16 CLOSING ARGUMENTS

17 MR. THOMAS: Your Honor, if I may, just very, very
18 briefly.

19 THE COURT: Sure.

20 MR. THOMAS: This is an unusual case kind of in that
21 you've got two distinct cases going on at the same
22 time. It's -- it's relatively simple, and -- but
23 then when I was working it up, I said, "You know, it
24 gets really complicated when you start adding in the
25 felony DUI and the separate charges."

1 But I think that, just the whole basis of it --
2 if you read the transcript, if you look at the
3 pattern of, "I'm withdrawing my acceptance of the
4 plea, then I'm going to trial. I want to try the
5 case." And then it ends up coming back that
6 afternoon where, "I now want to accept the plea
7 again." I think it was a -- I think it indicates
8 confusion on Mr. Kelley's part. What kind of adds
9 to that is this thing -- the whole thing about why.
10 One -- and I don't mean to disparage my client at
11 all. I've been -- we've been talking, and he -- I
12 don't think he has any deficiency but is slower to
13 kind of understand what we're talking about and the
14 concepts and -- and communications I had with him on
15 post-conviction. But the adding of Mr. Davis kind
16 of changes this case, because then you've got him
17 reaching out -- like Counsel said, you know, "We're
18 reaching out for hope. We're reaching out for
19 whatever we want to believe." And you've got this
20 guy who's playing lawyer and he's giving him all
21 this advice and telling him, you know, "You've got
22 this and you've got that and whatever these defenses
23 are." It really clouds his ability and his
24 perception to be able to make the decision as to
25 what he really wants to do. You know, he was

1 explained in the -- in the colloquy by the Court,
2 you know, "You're doing this freely and voluntarily
3 and all this," and he probably answered those to the
4 best of his ability. But, I think, there is still
5 this underlying running of he doesn't really
6 understand.

7 And that's even kind of indicated by the -- the
8 Alford plea. You know, I think it goes to even show
9 further that, you know, I kind of wanted -- I wanted
10 to take this case to trial. I'm accepting this plea
11 because I don't really have any other option. And,
12 even more, I think fundamentally, is that the
13 knowingly and intelligently prongs of that
14 requirement are not met and the kind of the wild
15 card in this is Mr. Davis.

16 THE COURT: All right. Thank you.

17 MR. THOMAS: Thank you.

18 THE COURT: Yes, ma'am?

19 **CLOSING ARGUMENTS**

20 MS. MARTO: Your Honor, it would be the State's
21 contention that the record shows that the issue with
22 Gerald Davis was seemingly resolved early on. And
23 what followed and flowed from there was an otherwise
24 straightforward plea where Mr. Kelley seemingly
25 understood the rights he was waiving. He understood

1 why he was pleading. He acknowledged he knew the
2 rights he was waiving by pleading, and he stated
3 that one of the primary reasons why he pled was
4 because he was afraid of facing significantly more
5 time if he went to trial on all of these charges,
6 and that, in and of itself, is not cause to
7 invalidate a plea.

8 Additionally, we heard testimony by Mr.
9 Braghirol, who stated that he went over all the
10 discovery with him with the exception of the
11 confidential informant, that he seemed to understand
12 everything that was going on, that the plea was in
13 his best interest, that he knew all the rights he
14 was waiving, and they discussed all possible avenues
15 for defense. And he additionally stated that after
16 he and James Cheek talked to him about the case that
17 he understood that he should still plead.

18 And so, it would be the State's contention that
19 even though initially there may have been some
20 confusion concerning the jailhouse lawyer, this
21 issue had been resolved before the plea actually
22 took place, and what flowed from there was otherwise
23 a valid plea, so because of that we would request
24 you deny relief in this case.

25 THE COURT: All right. Thank you. Thank you both

1 for your arguments. I will re-review everything.
2 I've already reviewed everything once, and I'll
3 review it again. I'll let you know of my decision.
4 I will take it under advisement. Thank you both.
5 MS. MARTO: Thank you, Your Honor.
6 MR. THOMAS: Thank you, Your Honor.
7 (Whereupon, the within hearing was
8 concluded at 10:57 a.m.)
9 (*This transcript may contain quoted material.
10 Such material is reproduced as read or quoted by the
11 speaker.)

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

CERTIFICATE

I, Amber Payne, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina on April 22nd, 2022.

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



Amber J. Payne, CVR

Date: July 23, 2023

Notary public for South Carolina

My commission expires August 12, 2029

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS	
COUNTY OF SPARTANBURG)	FOR THE SEVENTH JUDICIAL CIRCUIT	
Michael E. Kelley, II, #361692,)	Case No.: 2020-CP-42-00569	
Applicant,)	2020-CP-42-002664	
v.)		
State of South Carolina,)	ORDER OF DISMISSAL	
Respondent.)		

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 SPARTANBURG COUNTY
 AMY W. COX

FILED

This matter comes before this Court by way of Applicant's post-conviction relief applications filed February 11, 2020, and August 11, 2020, respectively. Respondent made its return to the first application on March 16, 2020, requesting an evidentiary hearing be convened. Respondent made its return and motion to merge the applications concerning the second application on October 16, 2020. An evidentiary hearing was held at the Spartanburg County Courthouse. Tommy Thomas, Esquire, represented Applicant. Assistant Attorney General Chelsey Marto represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Counsel David Braghirol, Esquire, also testified. After reviewing all records and evidence before this Court, this Court finds Applicant cannot meet his requisite burden of proof of establishing he is entitled to post-conviction relief and denies and dismisses this application with prejudice. Findings of fact and conclusions of law are set forth below.

Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its January 2019 term, the Spartanburg County Grand Jury indicted Applicant for distribution of fentanyl (2019-GS-42-0323), two counts of distribution of heroin (2019-GS-42-0320 and -0322), two counts of

trafficking heroin (2019-GS-42-0317 and -0318), and possession with intent to distribute marijuana (2019-GS-42-00314). During its March 2019 term, the Spartanburg County Grand Jury indicted Applicant for felony DUI - death (2019-GS-42-1688) and DUS/driving under suspension (2019-GS-42-1687). Applicant was represented by David A. Braghirol, Esquire. Solicitor Barry Barnette of the Seventh Circuit Solicitor's Office prosecuted the case. On July 8, 2019, Applicant appeared before the Honorable R. Keith Kelley, circuit court judge, and pled guilty as indicted to all of the aforementioned charges without any negotiations or recommendations. Judge Kelley sentenced Applicant to twenty five years for the felony DUI and death charge, fifteen years for the fentanyl charge, fifteen years for the felony DUI great bodily injury charge, fifteen years for the cocaine (-0320) charge, fifteen years for the heroin (-0318) charge, twenty-five years for the other heroin (-0317) charge, fifteen years for the other cocaine (-0322) charge, five years for the marijuana charge, and thirty days for the driving under suspension charge, with all sentences running concurrently with exception to the fentanyl sentence, which ran consecutively.

Applicant appealed his sentence to the South Carolina Court of Appeals, and the appeal was dismissed for want of a sufficient explanation, required by Rule 203(d)(1)(B)(iv), SCACR. The Remittitur was issued on December 30, 2019. Applicant timely filed a PCR claim on February 11, 2020.

Summary of Relevant Facts

On November 16, 2017, narcotics agents and a confidential informant conducted a search of Applicant's home and a drug buy involving 5.14 grams of heroin. (Plea Tr. 33). On November 30, 2017 there was a second purchase at the same home as before, this time concerning 1.1 grams of heroin. (Plea Tr. 33). The third purchase was on March 7, 2018. (Plea Tr. 33). The

purchase concerned .13 grams of fentanyl and occurred at a different address, from inside a car. (Plea Tr. 34). Warrants were obtained on the three purchases. (Plea Tr. 34). Officers went to Applicant's home on July 19, 2018 to execute the warrant. (Plea Tr. 34). When the officers entered the home, they smelled marijuana. (Plea Tr. 34). Marijuana was on a television and when the officers started questioning Applicant and his girlfriend, they consented to the search. (Plea Tr. 34). The officers searched both the home and the car. (Plea Tr. 35). They found two bags of heroin: one containing 13.83 grams and the other containing 6.62 grams. (Plea Tr. 35). They also found three bags of marijuana: the first containing 4.69 grams, the second containing .27 grams, and the third containing .35 grams. (Plea Tr. 35). He was on a \$34,000 bond when this occurred, without conditions. (Plea Tr. 35).

On February 8, 2019, the Applicant was charged with felony DUI after running a red light and causing a three-car wreck, causing the death of the other drivers' son, who was a passenger in her car. (Plea Tr. 35-36). The driver herself sustained three broken ribs and a concussion, among other injuries. (Plea Tr. 36). When the officers arrived, they smelled marijuana in the car and found a baggie of marijuana in the car. (Plea Tr. 36). Applicant was also found to be driving under suspension. (Plea Tr. 36).

Current Action Before this Court

In his *pro se* PCR application, Applicant alleges he is detained unlawfully for the following reasons (excerpts verbatim):

1. Defense counsel was ineffective by:
 - a. "advising me to plead guilty."
 - b. "entrapment."¹

In his subsequent application, filed August 11, 2020, Applicant, through Co

¹ Respondent interprets this allegation as "failure to pursue an entrapment defense."

alleged:

1. Ineffective Assistance of Counsel.
2. Involuntary Guilty Plea.

At his PCR hearing, Applicant proceeded forward on the following:

1. Ineffective Assistance of Counsel.
 - a. Failure to pursue an accident reconstruction investigation.
 - b. Failure to move to suppress the drugs.
 - c. Failure to hire a private investigator.
 - d. Failure to show the discovery in the DUI case.
 - e. Failure to assert he was not intoxicated at the time of the car accident.
2. Invalid Plea.
 - a. Trial tax.
 - b. Applicant did not want to plead based upon the advice of a jailhouse lawyer.

All other allegations raised in his initial application and amendments are deemed waived and abandoned and, accordingly, will not be addressed in this order.

Summary of the Testimony

Counsel Testimony

Counsel testified that Applicant is a nice person and was always honest with him.

Counsel testified that Applicant incurred his first set of charges, made bond, and then incurred his second set of charges. Accordingly, Counsel testified that if the matter proceeded to trial he would have had to try the two sets of charges separately. He stated Applicant had a lot to lose going to trial. He testified that the drug charges were a slam dunk for the State, but that the DUI was triable. He stated that plea negotiations with the State blew up once Applicant was charged with the DUI. He stated that Applicant was given unfounded advice from a jailhouse lawyer. He stated Applicant was facing substantial time if he proceeded forward with both trials. He stated he was authorized to speak to Applicant's brother on the felony DUI charge to discuss Counsel's issues and positions. He stated that Applicant was in custody at the time of the plea.

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that he did not recall if Applicant talked to his family before the plea. He stated he spoke with Applicant's relatives but did not recall if Applicant talked to the family right before the plea. He stated he thought Applicant's family was present initially but did not think they were present in the afternoon. He stated that Attorney James Cheek had significant dealings with the jailhouse lawyer and spoke to Applicant with Counsel about the issues raised by the jailhouse lawyer.

Counsel testified that Applicant's plea was scheduled for the morning and was ready to proceed forward with the plea when Applicant stated he changed his mind and wanted to proceed to trial. He stated that the plan then changed to proceeding to trial that afternoon or the next day. He stated that Applicant decided to plead again after talking to Cheek and Counsel. He stated that this conversation lasted about thirty to sixty minutes. He stated that an accident reconstruction was possible at trial, but the case was not ready to proceed to trial. He stated that raising the issue of the blood draw was also available if they went to trial, but Applicant decided to plead. He stated Applicant was seemingly remorseful for what happened. He stated he did not promise him anything concerning sentencing and that they both knew that it would be harsh.

Applicant Testimony

Applicant stated that he received a total of forty years' imprisonment. He stated he was on bond for drugs and then got picked up again on the felony DUI. He stated he was detained for six months prior to the plea. Applicant stated he understood the risks of proceeding forward with a PCR hearing, despite knowing the remedy available and the risks associated with proceeding forward.

Applicant testified that Counsel was hired after he picked up the drug charges and stated that he wanted the drugs suppressed because his girlfriend was threatened into consenting to the search. He stated he was unsure how they would defend the drug charges and did not know the

private investigator. He stated he received advice from a jailhouse lawyer who told him he had missing discovery. He stated that copies of the discovery in the case were received.

He stated that the case was complicated by the DUI charge. He stated he asked for Counsel to speak with him but was told he was busy. Applicant stated that he thought he could have beat charges in court. He stated that Counsel told him to plead. He stated he pled guilty on the drug charges and pursuant to *Alford* on the DUI. He stated he did not think he was guilty of a DUI. He stated he did not know anything about the DUI case and did not see the discovery. He stated that he was told he may have to hire a toxicologist.

He stated that he thought he could have beat the case with the jailhouse lawyer. Applicant testified that Counsel and James Cheek, Esquire, met with him to discuss the plea, which led to him deciding to plead again. He stated that they told him that the optics of a black man killing a little white boy were poor and that he would receive a lot of time at trial. He admitted he hit the car and killed the child but denied being on drugs at the time.

He stated he did not think his plea was voluntary, knowing, and intelligent. He stated that the drugs were his and that he dealt them. He stated he still lives with what he does today. He stated he was willing to accept punishment for what happened.

He stated he knew that the jailhouse lawyer was not a licensed attorney. He stated that he trusted the jailhouse lawyer. He stated he pled because he was afraid of more time at trial.

Solicitor Testimony

Solicitor testified that Applicant was found with active THC in his system, indicating that he was high at the time of the accident. Solicitor stated that all trial exhibits were entered at the plea hearing. Solicitor testified that he knew the jailhouse lawyer and that the Attorney General's Office investigated his unauthorized activity.

Findings of Fact and Conclusions of Law

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. Before this Court are the Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and both PCR action's records. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusion of law as required by South Carolina Code Annotated Section 17-27-80 (2003).

Ineffective Assistance of Counsel

In a PCR action, the applicant bears the burden of proving allegations contained in the application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant asserts ineffective assistance of counsel as a ground for relief, the applicant must show "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." *Strickland v. Washington*, 466 U.S. 668, 686 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. Ineffective assistance of counsel is governed by the Sixth Amendment, as explained by the United States Supreme Court in *Strickland v. Washington*.

Pursuant to the first prong of the *Strickland* analysis, the applicant must prove defense counsel's performance was deficient. *Id.* at 686; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). To show deficiency, the applicant must prove by a preponderance of the evidence that counsel's actions fell outside of the zone of "reasonableness under prevailing professional norms." *Strickland*, 466 U.S. at 688. See also Rule 71.1(e), SCRCP ("The applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence.").

Reasonableness is determined by the “variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how to best represent a criminal defendant,” and the scope of the reasonableness inquiry is limited to facts counsel had available at the time of representation. *Id.* at 689. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.”

Yarborough v. Gentry, 540 U.S. 1, 5 (2003) (citing *Strickland*, 466 U.S. at 690). Judicial scrutiny of counsel’s performance remains highly deferential towards defense counsel with a strong presumption that counsel acted competently, because competent representation may be executed in virtually “countless” ways. *Strickland*, 466 U.S. at 688-89.

Second, counsel’s deficient performance must have prejudiced the applicant so that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18. “A reasonable probability is a probability sufficient to undermine confidence in the outcome.” *Strickland*, 466 U.S. at 694. The court makes this determination based upon the totality of the evidence. *Id.* at 695. Realistically, this matters “only in the rarest case” because “[t]he likelihood of a different result must be substantial, not just conceivable.” *Harrington v. Richter*, 562 U.S. 86, 111-12 (2011) (quoting *Strickland*, 466 U.S. at 697).

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

Invalid Plea

Here, the plea was freely, knowingly, intelligently, and voluntarily entered. In the context of a guilty plea, the applicant must show there is a reasonable probability that, but for ineffective assistance of counsel, he or she would not have pled guilty but, instead, would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Applicant's right to contest the validity of a plea is usually, but not invariably, foreclosed because of the inherent solemnity and truthfulness included in the guilty plea process. *See Blackledge v. Allison*, 431 U.S. 63, 73-74 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Absent valid reasons why the applicant is entitled to depart from previous judicial admissions made at the plea hearing, statements made during the original proceeding remain conclusive. *Dalton v. State*, 376 S.C. 130, 137-38, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975)).

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

A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." *Roddy v. State*, 339 S.C. 29, 33 at 528 S.E.2d at 421 (citing *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1992)).

voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Dalton*, 376 S.C. at 138, 654 S.E.2d at 874 (quoting *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). Further, “guilty pleas, freely and voluntarily entered, act as a waiver of all non-jurisdictional defects and defenses, including claims of a violation of a constitutional right prior to the plea.” *Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981).

The plea was entered freely, knowingly, intelligently, and voluntarily. Applicant stated he understood the sentences, charges, elements, and fines associate with all the charges he was pleading to. (Tr. 15-18, 21-26). He stated he was not on medication or substances and that he was not forced or coerced into pleading. (Tr. 19). He stated he understood he had the right to trial. (Tr. 19). He stated he understood the violent and serious distinctions associated with some of the charges. (Tr. 21-26). He waived his rights to remain silent, to a jury trial, and to call and confront witnesses. (Tr. 26). He stated that the plea was entered freely and voluntarily. (Tr. 28). He stated he had enough time to talk to Counsel, that Counsel answered his questions and showed him his discovery, that he worked hard for him, and that he did not need more time with Counsel. Accordingly, the plea was entered freely, knowingly, intelligently, and voluntarily and cannot be withdrawn now.

Failure to Pursue Accident Reconstruction Investigation

Applicant claims Counsel was ineffective for failure to investigate an accident reconstruction. *Strickland* makes clear that defense counsel “has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” 466 U.S. at 691. When highlighting failure to investigate as a ground for a later

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ineffective assistance of counsel claim, judicial determination of this claim's validity is evaluated for "reasonableness [under] all the circumstances" with "a heavy measure of deference to counsel's judgments" applied. *Id.* At the PCR hearing, Applicant is required to present evidence or witnesses he alleges Counsel did not properly investigate. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). Additionally, whether Applicant was prejudiced by Counsel's failure to investigate is contingent on whether the evidence presented would have led Counsel to change his recommendation regarding the plea. *Stalk v. State*, 383 S.C. 559, 562, 681 S.E.2d 592, 594 (2009).

Applicant claims Counsel was ineffective for failure to pursue a crime scene investigation. However, Applicant failed to show what that investigation would have produced or how that investigation would have impacted the recommendation as to the plea. Applicant has failed to meet his burden of proof and relief is denied accordingly.

Failure to Move to Suppress the Drugs

Applicant claims Counsel was ineffective for failure to move to suppress the drugs. However, Applicant waived this right by entering his plea. Additionally, Applicant has failed to establish how the motion would have been successful or why the possibility of moving to suppress the drugs would have caused him to proceed to trial. Accordingly, relief is denied on this ground.

Failure to Hire a Private Investigator

Applicant claims Counsel was ineffective for failure to hire a private investigator. However, there was no showing at the PCR hearing that the investigator would have produced anything advantageous in Applicant's case. This Court finds Applicant has failed to meet his burden of proof in showing Counsel was unreasonable in failing to hire an investigator and no

evidence of prejudice has been shown. Accordingly, relief is denied on this ground.

Failure to Show DUI Discovery

Applicant claims Counsel was ineffective and his plea invalid because he never reviewed the DUI discovery with Counsel. This Court finds this improbable, particularly considering Applicant's representation to the plea hearing that Counsel reviewed the discovery with him and turned over all information he had about the case. (Tr. 29-30). Regardless, Applicant has failed to show what discovery he wished he had seen and how it would have caused him to proceed to trial instead. Accordingly, Applicant has not met his burden of proof and denies relief accordingly.

Failure to Assert he was not Intoxicated at Time of Accident

Applicant claims Counsel was ineffective for failure to argue that Applicant was not intoxicated at the time of the accident. This defense was waived as a result of an otherwise valid plea and Applicant is not entitled to relief as a result.

Trial Tax

Applicant contends that he was essentially coerced into pleading because he was afraid of a harsher sentence if he went to trial. Being informed that if he went to trial, he would face more time in prison does not rise to the level of coercion and is not enough to render the plead invalid. Accordingly, relief is denied on this ground.

Jailhouse Lawyer

Applicant claims his plea was coerced because a jailhouse lawyer convinced him to proceed to trial instead. However, this issue was seemingly dispelled with, as the plea transcript and Counsel's and Solicitor's credible testimonies suggest. (Tr. 38, 46). There is no indication that this advice impacted Applicant's decision after the issue was resolved by Applicant meeting

with Counsel and Attorney James Cheek. Accordingly, relief is denied on this ground.

Conclusion

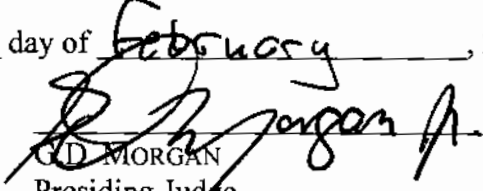
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. The PCR application be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 27th day of February, 2023.


G.D. MORGAN
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina.