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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Lexington County

Honorable R. Lawton McIntosh, Circuit Court Judge

EMONTE A. BROOKS,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2022-000605

APPENDIX

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State of South Carolina,)
)
 vs.) Transcript of Record
)
Emonte Antonio Brooks,)
)
 Defendant.)
)
)

May 8, 2017
Lexington, South Carolina

B E F O R E:

The Honorable R. Knox McMahon, Judge

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
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No exhibits marked during proceeding.

TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 11:25 a.m.)

THE COURT: All right. This is *State v. Emonte Antonio Brooks*; is that correct?

MS. USRY: Yes, sir, Your Honor.

THE COURT: And Mr. Brooks is present. You represent him, Ms. Zmroczek?

MS. ZMROCZEK: Yes, Your Honor.

THE COURT: All right. And, Solicitor, you have a motion?

MS. USRY: Yes, sir, Your Honor.

THE COURT: All right. Do you ---

MS. USRY: This case ---

THE COURT: --- have a copy of it?

MS. USRY: No, sir, Your Honor. I -- what I mailed to you -- e-mailed to you on Friday via e-mail -- I did not do one with the caption of the case name at the top of it.

THE COURT: All right. I'll be glad to hear from you.

MS. USRY: Yes, sir, Your Honor. This case was on the -- is on the trial roster for this week, and the trial roster went out Friday a week ago, Your Honor. During the preparation of this case, recently our office received a number of items from a testifying codefendant.

So the defendant in this case is Emonte Brooks. As part of our case-in-chief, two -- two codefendants that are

1 also charged with the same offenses as Mr. Brooks,
2 defendant Daniel Graves and defendant Lilreg Darby are both
3 planning to -- we were planning to call both of those
4 witnesses as part of this trial.

5 During our time talking to defendant Graves, we
6 learned from him and through his attorney, Sarah Mauldin,
7 that he had received notes in the jail from defendant
8 Emonte Brooks, otherwise known in the jail as kites, Your
9 Honor. We retrieved those kites about approximately two
10 weeks ago, Your Honor, and in the meantime, have been
11 attempting to authenticate the kites through various means
12 in an attempt to still go forward this week.

13 We believe the kites are of significant importance to
14 our case. They are -- especially with the defendant
15 clearly fighting the charges and indicating through a trial
16 that he would like to be found not guilty in this case, the
17 -- the kites are to, as I mentioned, defendant Graves.
18 They're encouraging him to change his statement on him.

19 Defendant Graves, when law enforcement first interview
20 him -- this incident occurred February 27th of 2016. And
21 they interview defendant Graves the -- excuse me -- January
22 27th -- I apologize -- of 2016.

23 They interviewed defendant Graves on January -- the
24 following day, less than 24 hours later, Your Honor. And
25 he indicated his story at that time and his testimony that

1 would be similar to what he told officers at that time:
2 that the defendant was involved in this incident. He gave
3 his nickname. He gave his codefendant's name.

4 He gave what was happening: that they had planned to
5 go to this house to buy marijuana. When they got there,
6 they planned to rob this house. So he gave a -- a thorough
7 statement.

8 While he's been in jail -- and all parties have been
9 in jail since this -- since their arrests. While he's been
10 in jail, he's received multiple letters from the defendant.
11 He provided them to us about two weeks ago. And as I
12 mentioned, those letters are from the defendant, trying to
13 get him to change his statement. And we think they're very
14 important to our case.

15 We've been unable to authenticate them in other means.
16 We've attempted to find people that are familiar with his
17 handwriting that could testify on the stand regarding that
18 for authentication. We've talked to the jail, as far as
19 infractions, if there were any other notes or anybody else
20 had received a note from him, just attempting in other ways
21 to -- to -- so we could still go forward today.

22 We have been unable to -- we believe that sending the
23 notes to SLED, along with a handwriting exemplar from the
24 defendant, is necessary at this point to authenticate them.
25 Because we would like to enter them in our case-in-chief.

1 And we think they're absolutely important.

2 Our second reason that we gave for requesting a
3 continuance at this point would be the fact that we
4 received notice of alibi from defense counsel via e-mail
5 late last Tuesday, which would've been, I believe, the
6 night of May 2nd. And it was ultimately filed May 3rd,
7 Your Honor.

8 The notice of alibi gave the individual gave the
9 individual's name and address where I believe she could be
10 located. It did not provide specifically where this alibi
11 and the defendant were during the time in question of this
12 incident.

13 We met with Ms. Zmroczek on Thursday afternoon at our
14 office. I had actually sent her an e-mail, asking if she
15 wanted to come and review anything in our file or had any
16 questions for us. And she came and we met and talked about
17 this case this past Thursday, which would be May 4th.

18 At that time I told her I thought that the rule
19 indicated she needed to tell us specifically where her
20 client was during that time. And that's Rule, Your Honor
21 -- Criminal Rules of Procedure 5(e)(1).

22 She indicated she was going to meet with her alibi and
23 she'd let us know later. She also at that time, for the
24 first time, mentioned that the defendant was with this --
25 this female that she mentioned in her alibi notice and

1 they'd also gone to visit another girl during that time.
2 But she didn't have any further information.

3 I believe she just knew the girl's name as Savon at
4 that time. But that's all she knew. And I told her I
5 believed we needed further information on this person if
6 that -- the defendant was going to say that he was also
7 with another girl at that time.

8 As of yesterday, Sunday, around 4:40, Ms. Zmroczek
9 responded to my e-mail that I have sent to Your Honor and
10 replied to all and indicated she had told us information in
11 this e-mail that I learned for the first time in receiving
12 this e-mail last night at 4:40.

13 THE COURT: May I -- may I see a -- a copy of the
14 document you're referring to on your Point No. 1, and also,
15 a copy of the e-mails, please?

16 MS. USRY: Yes, sir, Your Honor. I have unfortunately
17 written on my copy of the e-mail. I'll have someone
18 reprint it right now, Your Honor. I apologize.

19 (Whereupon, Ms. Usry and Mr. Bell conferred.)

20 MS. USRY: And then, I have the kites. Do you . . .

21 (Whereupon, Ms. Usry and Mr. Bell conferred.)

22 MS. USRY: And, Your Honor, you wanted -- I'm sorry.
23 Will you tell me again what you wanted copies of? I want
24 to make sure I'm ---

25 THE COURT: Of the e-mails and whatever document

1 you're referring to on No. 1 ---

2 MS. USRY: Yes, sir.

3 THE COURT: --- as far as -- to be -- wanting to
4 authenticate those.

5 MS. USRY: Yes, sir, Your Honor. I will tell you:
6 The originals at this point are still at SLED because they
7 do have them. They were going to have them back,
8 hopefully, today or tomorrow to us for purposes of this
9 trial. I sent them last week, just to see if I could get
10 them to at least say they were all from the same person
11 very quickly. But again, the -- as I mentioned, the issue
12 is going to be that they all -- that they're from the
13 defendant. And that's why I want the handwriting exemplar.
14 But this is a copy of those exhibits.

15 THE COURT: All right.

16 MS. USRY: And then, I will give you a copy of the
17 e-mail just momentarily.

18 (Off the record briefly.)

19 MS. USRY: And here's Ms. Zmroczek's notice of alibi.

20 (Off the record briefly.)

21 THE COURT: All right. Anything further, Solicitor?

22 MS. USRY: Nothing further from the state, Your Honor.

23 THE COURT: All right. Ms. Zmroczek?

24 MS. ZMROCZEK: Thank you, Your Honor. To clarify a
25 few things that -- yeah -- just to make sure that the Court

1 is aware: that this incident occurred January 27th, 2016,
2 late in the evening; that my client was arrested on
3 February 5th. Your Honor, he was given a \$370,000 bond.
4 So he's been in 459 days.

5 Your Honor, on December 8th Ms. Usry extended an offer
6 that she indicated she would be revoking on January -- on
7 December 8th of 2016. And she indicated that she'd be
8 revoking that offer on January 31st, 2017.

9 Your Honor, I have a record of appearance, where it's
10 indicated that it was marked for trial 9 a.m., 4/24/17; and
11 then, several follow-up offers, Your Honor, that my client
12 has continuously rejected, as he has maintained his
13 innocence. I received another e-mail Thursday, April 6th,
14 saying that I'm looking to call this case to trial the week
15 of May 8th, 2017. Her due date is mid-June, Your Honor.
16 That's why -- that's why this date was selected.

17 THE COURT: Why -- why was it selected?

18 MS. ZMROCZEK: Oh. It said her due date -- her due
19 date.

20 MS. USRY: You know, I mentioned in that e-mail that
21 this is the last week I felt comfortable trying ---

22 THE COURT: Oh.

23 MS. USRY: --- the case ---

24 THE COURT: Oh, okay.

25 MS. USRY: --- prior to ---

1 THE COURT: All right.

2 MS. USRY: --- my due date. Yes, sir.

3 THE COURT: I -- I wasn't tracking back to ---

4 MS. USRY: Yes, sir.

5 MS. ZMROCZEK: Sorry.

6 THE COURT: All right. Thank you.

7 MS. ZMROCZEK: Sorry, Your Honor. And then, Your
8 Honor, I was -- I've been provided -- and I do have a copy
9 of the -- of the trial term, where it lists that we are
10 first on trial. And -- and, Your Honor, as that -- as an
11 aside matter, we did meet on Thursday.

12 I asked for copies of the indictments. Because, Your
13 Honor, this has been on the trial notice since January
14 20th, at least. And I received copies of the indictments
15 this morning; that two of them were indicted this morning,
16 Your Honor, in front of the grand jury. It -- it -- it --
17 the case -- it -- I believe ---

18 THE COURT: The grand jury is here this morning?

19 MS. ZMROCZEK: I -- that's what I was ---

20 MS. USRY: Yes, sir ---

21 MS. ZMROCZEK: --- assuming ---

22 MS. USRY: --- Your Honor, it is.

23 MS. ZMROCZEK: I'm assuming they are, Your Honor,
24 because it's signed today. And, Your Honor, I received
25 additional discovery. And one of those things is a -- a --

1 a waiver of *Miranda*, dated April 14th of 2017.

2 So that's sixish weeks ago -- five weeks ago, maybe.
3 So may -- yeah. Maybe five or -- four or five weeks ago.
4 And, Your Honor, it was my understanding at that time that
5 these kites were recommended from the defendant Daniel.
6 And, Your Honor, at that time not once have they asked to
7 get a handwriting sample, which we would've gladly given
8 up.

9 And, in fact, when we met on Thursday and they
10 indicated that they had sent them -- sent these things to
11 SLED, Your Honor, I said, "Well, where is the -- where is
12 the handwriting sample from my client? How did you get
13 that?" -- I mean, which we would gladly give up. But
14 nobody ever asked for it, Your Honor.

15 I -- I don't believe that this case has been pursued
16 diligently. We are ready and prepared to go forward.
17 We've served over 22 subpoenas in this case.

18 But my schedule aside, my schedule is not is the issue
19 here. The issue here is Mr. Emonte Brooks, who was 18
20 years old when he was arrested. And he's been in jail,
21 like I said, 459 days, which is the problem that we're --
22 that we're addressing with *Langford*: not knowing when
23 these cases are going to be called and then being told when
24 they're going to be called and then, for the last minute,
25 things getting changed.

1 I -- I just look at it in -- in my situation. If --
2 if I had asked for a continuance, "Well, why weren't you
3 ready? You knew that the case was going to be this date.
4 Why weren't you prepared, Ms. Zmroczek?"

5 And I feel that the same question should be asked for
6 the state. They knew that -- that the case was going to be
7 set, yet it wasn't even indicted until this morning.

8 Your Honor, if -- if -- if the Court is inclined to
9 grant them a continuance, we would be asking for --
10 obviously, we oppose that. But if the Court, in its
11 discretion, decides that it's necessary, we would ask that
12 my client be allowed to be out on bond. He's been -- he --
13 no means -- he has no means of paying bond.

14 If the Court wants to put him on a -- an electronic
15 monitor or something like that and waive the fees, but,
16 Your Honor, for him to just sit in jail with a \$370,000
17 bond while his codefendant, Mr. Graves, who wrote -- who
18 supposedly turned all this stuff in and who -- he's met
19 with the solicitor several times, so I don't know why he
20 just is now turning them in. But it -- those are cross-
21 examination issues, I guess.

22 But, Your Honor, he has a \$100,000 bond. And -- and
23 -- and even he can't get out. I know my client couldn't
24 even make \$100,000 bond, Your Honor.

25 But, you know, with Ms. Usry taking maternity leave

1 and -- and I'm just concerned that my client's going to
2 have to sit in jail while the state decides when, again,
3 they would like to prosecute this case, those are my
4 concerns.

5 THE COURT: Well, what about the alibi?

6 MS. ZMROCZEK: Well, Your Honor, when we met on
7 Thursday, I said he was with his girlfriend. And I gave
8 them their address, which I had filed on Tuesday. The --
9 this whole additional alibi, I'm not sure what they're
10 talking about.

11 Like, I don't have to give him an alibi for his entire
12 life, just the time during the -- the -- the incident in
13 this crime. And I said he was with his girlfriend at her
14 apartment. And they had that address -- and name.

15 THE COURT: Thank you.

16 MS. USRY: Your Honor, there are a number of e-mails
17 back and forth with additional offers because after I at
18 first indicated the offer was going to expire in January --
19 going back to what Ms. Zmroczek first notified -- because
20 she kept asking -- she kept thinking that her client would
21 plea to something and wanted additional offers. And then,
22 in an attempt to meet with her and work with her on this
23 case and resolve it, I did make different additional
24 offers.

25 As recently as a few weeks ago, she asked me to

1 reextend the offer to see if he would plea, right before --
2 on the Thursday before we put it on the trial roster. So
3 I'm -- that's my attempts at -- to work with her, quite
4 frankly, in this case and resolve it.

5 The -- the handwriting, we did meet with the
6 defendant. We had an investigator with West Columbia --
7 defendant Graves about five weeks ago. Investigator Morris
8 with the West Columbia Police Department was present and
9 Mirandized him. Any additional statements that were made
10 during that time or anything that we needed -- felt like
11 needed to be added, he wrote a supplemental report for Ms.
12 Zmroczek.

13 And in that report, he did tell us at that time, he
14 had the kites. We did not receive them until about two
15 weeks ago from his attorney. It took that long for them to
16 get them from him.

17 And we were waiting and asking if they had them and
18 would they please provide them to us. So we did not delay
19 in attempts to get those any earlier than we actually
20 received them, once we became aware that -- of their
21 existence.

22 This case is about a year and three months old. We
23 are trying to move it. This is not a situation that I've
24 ever been in, where I'm asking for a continuance in a case,
25 in all honesty. I've always been ready to go forward in

1 cases.

2 I like -- we have also served all our witnesses, met
3 with all of them, prepped them. But we feel that this is
4 critical evidence that we need to prove our ---

5 THE COURT: Well, what ---

6 MS. USRY: --- case and to help ---

7 THE COURT: Why can't SLED do it now?

8 MS. USRY: We -- we ---

9 THE COURT: I mean, what ---

10 MS. USRY: --- can -- we can ask SLED if they can do
11 it -- do it now. They -- they are -- they do have the
12 kites now. She's never offered to give us the handwriting
13 exemplars. But I will agree, I've never asked for them
14 because I assumed, based on our conversations -- and maybe
15 I should've asked the question directly -- that they
16 would've refused them.

17 But if they're willing to give them today, we can send
18 them and see how quickly it would take. I do not know the
19 turnaround. When I dropped the letters off last week to be
20 compared to each other, I think I -- I think I had them
21 delivered first thing Thursday morning of last week. And
22 she said she could potentially have them late today or --
23 or tomorrow morning as a report.

24 I'm not sure how long it would take to compare. I
25 could ask. I just don't know the timing to compare for

1 those.

2 THE COURT: Will he give handwriting samples today?

3 MS. ZMROCZEK: Your Honor, he's always been willing to
4 do so.

5 MS. USRY: Our -- our last issue would be what we
6 believe is the incomplete alibi notice. She gave us the
7 address of the -- of the alibi. She never indicated that's
8 where he was to us. I mean, that -- the first time she's
9 saying that is now that he was at -- actually at that
10 address. And we believe that was -- it -- it was an
11 incomplete ---

12 THE COURT: Where is ---

13 MS. USRY: --- notice.

14 THE COURT: --- Bailey Street, the Colony? Is that
15 where it's at?

16 MS. ZMROCZEK: I'm sorry?

17 THE COURT: West Beltline? Is that where it's at?

18 MS. ZMROCZEK: The Colonies?

19 THE COURT: Bailey Street ---

20 MS. ZMROCZEK: The Colony.

21 THE COURT: The Colony?

22 MS. ZMROCZEK: Yeah, the Colonies.

23 THE COURT: Call SLED; tell them to come get his
24 exemplars today. He has no objection to that. I'll take
25 it under advisement.

1 MS. USRY: Yes, sir, Your Honor.

2 MS. ZMROCZEK: My concern ---

3 THE COURT: All right?

4 MS. ZMROCZEK: -- is, Your Honor, as -- as you know,
5 I'm set for a murder trial next week, so ---

6 THE COURT: I -- I'm -- I don't plan on being here
7 next week.

8 MS. ZMROCZEK: Okay.

9 THE COURT: I may end up here this weekend, but I
10 don't plan on being here next week. See if you can get the
11 exemplars and get SLED over here and do it. If you have
12 any problem with it, let me know. I know one fellow that
13 works over there.

14 MS. USRY: Yes, sir.

15 THE COURT: All right? I'll take it under advisement.

16 (Off the record briefly.)

17 THE COURT: All right. Thank you very much.

18 (Whereupon, the proceeding was adjourned at 11:46 a.m.

19 and reconvened at 2:29 p.m.)

20 THE COURT: All right. Solicitor, you have a progress
21 report?

22 MS. USRY: Yes, sir, Your Honor. SLED was able to
23 come and get the defendant's handwriting exemplar. They
24 did that today. They finished approximately 30 to 45
25 minutes ago. And they indicated to us that they could have

1 a report back by the end of the day tomorrow on -- on the
2 handwriting analysis.

3 THE COURT: All right. How long you think it's going
4 to take to try this case, Solicitor?

5 MS. USRY: Your Honor, I think two full days, perhaps
6 a little bit into the next day. If we started tomorrow
7 morning, I would anticipate we're closing late Thursday or
8 early Friday.

9 THE COURT: I -- I thought you said they'd have it by
10 the end of the day tomorrow.

11 MS. USRY: They -- they would -- they would. Yes,
12 sir. That -- yes. Yeah. Sorry. At the end of the day
13 tomorrow. Yes. I just didn't know if you were going to go
14 forward without the report coming back or not. I -- I was
15 looking ahead, I guess.

16 THE COURT: Well -- all right. Ms. Zmroczek?

17 MS. ZMROCZEK: Your Honor, I mean, I'll have my alibi
18 witness. So, I mean, obviously, that won't take very long.
19 You know, other than that, I think the cross -- the -- this
20 case is just based on the two codefendants words. So, I
21 mean, it's probably going to be -- it's just a lengthy
22 cross-examination on those.

23 Two -- the -- neither of the two victims can identify
24 my client. They both know him. They did not pick him out.
25 They did not identify him as being there.

1 So I know that there are four victims. It's -- I've
2 been told that they're only going forward on two of the
3 attempted murders.

4 MS. USRY: That's correct, Your Honor.

5 MS. ZMROCZEK: But it -- none of them could -- so it's
6 just a -- it's just a codefendant case, so . . .

7 THE COURT: Let me make sure I'm tracking. Solicitor,
8 you're saying you're fine with starting, although you don't
9 yet have the report?

10 MS. USRY: Well, Your Honor, I guess I was jumping
11 ahead and assuming that because they're going to issue the
12 report tomorrow that you would want us to go forward.
13 Obviously, I would like the report back to make an analysis
14 of the case before starting. But if Your Honor -- if -- if
15 we needed to, I -- I was -- I was -- I guess I was looking
16 at the week, as far as times for that, if that makes sense.

17 We -- we will -- we've been -- as I mentioned earlier,
18 we can -- we were prepared to try the case. We would like
19 the report back before we start. But that said, the state
20 will proceed as Your Honor sees fit.

21 THE COURT: What if you don't have the report back?

22 MS. USRY: That ---

23 THE COURT: I'm just thinking.

24 MS. USRY: Yes, sir.

25 THE COURT: I'm just saying.

1 MS. USRY: No. I am taking SLED at their word. I --
2 I don't know. If they don't have it back, it is critical
3 evidence for us, I -- I -- I believe. It's ---

4 THE COURT: Might be critical evidence for --
5 apologize -- Mr. -- was it Brooks?

6 MS. USRY: Yes, sir.

7 THE COURT: --- Mr. Brooks also.

8 MS. ZMROCZEK: I would agree with that, Your Honor.

9 MS. USRY: Yes. So . . .

10 THE COURT: Have you abandoned, Solicitor, your
11 argument as far as alibi?

12 MS. USRY: No, sir, Your Honor, we have not. We're
13 still looking to -- that we had the information that was
14 provided as of last night and this morning. We're looking
15 into it still. We -- we do believe that that information
16 was definitely withheld from us until late last night, on a
17 Sunday. But we're -- we're looking into it. We have not
18 located that alibi at this point.

19 MS. ZMROCZEK: She -- she was here this morning, Your
20 Honor.

21 THE COURT: I'm sorry ---

22 MS. ZMROCZEK: I ---

23 THE COURT: --- Ms. Zmroczek?

24 MS. ZMROCZEK: She -- she was here this morning. I --
25 and if they wanted to -- you know, I don't know that she

1 necessarily has to speak with them. But, I mean, if -- if
2 -- they can certainly speak with her. I can make her
3 available. I don't ---

4 THE COURT: Okay.

5 MS. ZMROCZEK: --- I don't know that she necessarily
6 has to. I don't think that's required under the rules.
7 But she was sitting in the courtroom today, so . . .

8 MS. USRY: And I was not aware of that, Your Honor.
9 That information was not relayed to our office when we were
10 talking about this earlier.

11 THE COURT: And, Ms. Zmroczek, what is your schedule
12 next week?

13 MS. ZMROCZEK: Next week, Your Honor, Your Honor set a
14 -- the *State v. Robert Jeter* with ---

15 THE COURT: In ---

16 MS. ZMROCZEK: --- Mr. Cathcart.

17 THE COURT: --- in Richland County?

18 MS. ZMROCZEK: Yes, sir. With Mr. Cathcart. This is
19 the one that was reset. And then, my only other trial
20 right now -- and then, I have PCRs, which I know don't take
21 precedence, the 24th, 25th, and 26th of May.

22 And then, the only other trial I have on the docket is
23 June. Mr. Potts in Richland said he's putting a case on
24 for June 24th, which is a Saturday, so I'm assuming he
25 means that Monday, the 26th.

1 THE COURT: All right. Considering the procedural
2 posture of the case, all the facts and circumstances, I'm
3 going to continue the case.

4 Solicitor, what -- what position do you have on Ms.
5 Zmroczek's motion for bond?

6 MS. USRY: Your Honor, at this time we believe that
7 bond is appropriate. However, we're -- we're happy to go
8 forward with a bond motion and put more information on the
9 record regarding the defendant's role in this incident, if
10 necessary, for a bond hearing.

11 (Whereupon, Ms. Usry and Mr. Bell conferred.)

12 MS. USRY: Oh. And -- and, Your Honor, in preparing
13 and attempting to get authentication for the handwriting
14 samples, we pulled his disciplinary record in the jail.
15 He's been in multiple -- he's had multiple infractions --
16 jail infractions during his time there. He hasn't been a
17 model prisoner. We're concerned about that, too, and how
18 he conducts himself.

19 THE COURT: All right. Ms. Zmroczek?

20 MS. ZMROCZEK: Thank you. Your Honor, my client is
21 ---

22 (Whereupon, Ms. Zmroczek and the defendant conferred.)

23 MS. ZMROCZEK: --- is -- now he's 20. Your Honor, but
24 he, like I said, is of very little means. His bond was set
25 at 370,000, when a codefendant was set at 100,000. And the

1 only disparity between those two that I can find is one was
2 white and one was not white. I have ---

3 THE COURT: Is -- is ---

4 MS. ZMROCZEK: --- no idea ---

5 THE COURT: --- that why the magistrate set bond
6 higher on Mr. Brooks than he did the codefendant, and do
7 you have any evidence of that?

8 MS. ZMROCZEK: I -- I don't, Your Honor. That's just
9 the only -- that's -- that's the only difference I can see.
10 I don't know why. I wasn't at the bond setting. I don't
11 know what the magistrate was -- I -- I -- I wasn't there.
12 So I don't know.

13 But what I do know is that you -- they get these jail
14 disciplinary infractions. But my client has been --
15 supposed to have keep-aways from his codefendants. And he
16 hasn't had -- that's been resolved. But he hasn't had
17 keep-aways from his codefendants.

18 Your Honor, so his codefendants have been constantly
19 harassing them -- harassing him -- excuse me. And in
20 listening to the jail calls of the codefendants, it --
21 there -- there is a plan, Your Honor, to -- to continue to
22 do so. And -- and -- and my client is younger than they
23 are.

24 But all that aside, Your Honor, when looking at the
25 factors for bond, you know, you look at the risk of flight.

1 Your Honor, he's lived here his whole life. His brother, I
2 spoke with this morning and was actually here. Actually,
3 I've spoken to him all weekend. But he was here this
4 morning and advised me that the client has a place to stay
5 with him and a stable and secure address.

6 And, Your Honor, he would like to be able to not have
7 to sit in jail. I know that -- that one of the concerns
8 with this case and Ms. Usry was that this was the last date
9 before her -- her child was born. And so I'm concerned
10 about maternity leave and how long that's going to -- to
11 delay this process.

12 And then, as far as a danger to the community, Your
13 Honor, he -- he -- the -- his only record, which is a very
14 -- I'm still trying to figure out how it ended up this way.
15 But he had a breaking into motor vehicles, where he got a
16 YOA. And so he was on that YOA, Your Honor, when he got
17 this charge.

18 But he has, I mean, obviously, no risk of flight. He
19 has no car, no phone, no vehicle. That's why, even, you
20 know -- if that's a concern to the community, that's why we
21 even suggested putting him on, you know, an ankle monitor.
22 Obviously, he couldn't pay that, so we would ask to waive
23 the fee. But if the Court would feel, you know, more
24 comfortable with having somebody watch where he is 24/7,
25 he's -- he's fine with that.

1 Part of his frustration -- and I think his
2 disciplinary record at the jail goes to his frustration
3 with just not being able to get a bond hearing, not -- his
4 case was transferred to me. So I actually haven't had his
5 case the whole time. And I know that that's been
6 frustrating for him.

7 And -- and just simply his -- his age and -- and, I
8 think, lack of maturity, Your Honor, I think that -- that
9 that's how his frustration gets displayed, not that it
10 excuses it. Because it's certainly, you know, not fun for
11 the jail to have to -- to babysit him.

12 But, Your Honor, every time I've met with him, he's
13 been respectful. He is -- he -- he's just maintaining his
14 innocence and, I think, is frustrated with the progress of
15 the case, or lack thereof.

16 THE COURT: Thank you. Thank you, Ms. Zmroczek.

17 MS. ZMROCZEK: Thank you.

18 THE COURT: Solicitor?

19 MS. ZMROCZEK: Yes, sir, Your Honor. I just want to
20 clarify for the record the facts in the case. Because they
21 are different between the codefendants. I believe the
22 codefendant she's referring to, the white male, defendant
23 Graves, he was the codefendant that went to the door of
24 this residence at first and paid \$20 for marijuana. So
25 he's essentially set the case up.

1 He never had a weapon. The victims never saw a weapon
2 on him. They knew of him because he bought drugs from them
3 before.

4 And then, when he walked out of the residence, he did
5 not get drugs that night. He asked for them; they did not
6 have any.

7 When he walked out of the residence, this defendant
8 and another defendant were in the yard and started running
9 towards the house. They -- the victims identify a backpack
10 of a -- of one that a defendant, Fruit Loop, would normally
11 wear, which is the other codefendant. They could not
12 identify either person in the yard. But they noticed a
13 backpack, similar to what the -- Fruit Loop would wear. He
14 was standing out by the gate further away.

15 The other defendant, which would later identify as the
16 defendant before you, was running towards the house with a
17 gun in his hand. He pulled the trigger multiple times, at
18 least twice. The third time it fired and went through the
19 residence. He clearly had knowledge that at least two
20 people were in the residence when he's firing towards the
21 door.

22 The gunshot hits just to the right of the door, about
23 head height, goes into the house, and enters into a
24 bedroom-closet door, where it's later retrieved by
25 investigators. His role is significantly different.

1 The next day, when officers identify the white male
2 that had gone to the door, they -- they find him in less
3 than 24 hours. He gives a full statement; identifies his
4 codefendants by their nicknames, Fruit Loop, and then, the
5 defendant before you is -- nickname is Hot Boy.

6 And he tells -- has told investigators both of them
7 had guns; that Hot Boy had the -- was shooting the weapon
8 at that time that night; and that he ran from the incident
9 location. And that's what kind of starts off the
10 investigation further, in addition to, obviously, the
11 eyewitness testimony.

12 When he's arrested -- the defendant's arrested -- the
13 officer that goes is -- it's a few days later. It's about
14 a week later when he's ultimately arrested. The officer
15 that pulls him over -- he's in the back of a car. He gives
16 a false name to officers when that car is pulled over.

17 The officers are familiar with him from prior
18 dealings. They know that he has warrants in West Columbia
19 for his arrest. And they ultimately arrest him. But he
20 attempts to evade law enforcement by giving a false name at
21 that time.

22 The jail infractions are not frustrations for this
23 case. They are fights with other inmates. He's picked up
24 a throwing bodily fluids while in the jail and various
25 confrontations with officers, disrespect with different

1 officers within the jail.

2 And none of the -- there may be some mention of -- at
3 some point about his case. But really, they're
4 frustrations with canteen and different matters to that
5 regard that -- that's been in my view of the case.

6 (Whereupon, Ms. Usry and Mr. Bell conferred.)

7 MS. USRY: And furthermore, his prior record includes
8 a 2014 -- he's got two simple-assault convictions on his
9 record. In 2015 he has the B&E auto that Ms. Zmroczek
10 mentioned. And also in 2015, he's got a hit-and-run
11 property-damage charge that was a -- a time-served. That
12 was a magistrate-level charge, Your Honor.

13 That's the full extent of his current record. He's
14 got these charges pending in our office that are currently
15 on the trial roster, in addition to the throwing bodily
16 fluids that is still pending and has not been resolved from
17 -- that he's picked up while being in custody.

18 THE COURT: Is there -- are there any motions filed
19 prior to today about bond -- motions for bond -- reduction
20 of bond?

21 MS. USRY: Your Honor, previously, the defendant was
22 represented by Derrick Mobley. I cannot recall, during
23 Derrick's representation, if there was a motion. I -- I
24 just cannot recall. I -- we have not done one with Ms.
25 Zmroczek that I'm aware of.

1 MS. ZMROCZEK: And, Your Honor, Ms. Usry and I talked
2 about doing one. And she -- and that's when she extended
3 the plea offer. And so that's what was in -- in place of
4 the bond hearing. He was supposed to plea and then -- and
5 rejected that plea offer. So it ---

6 THE COURT: And it ---

7 MS. ZMROCZEK: --- was set up ---

8 THE COURT: --- there were ---

9 MS. ZMROCZEK: --- it ---

10 THE COURT: --- no pending motions ---

11 MS. ZMROCZEK: Right. Right. It was set up ---

12 THE COURT: --- for this ---

13 MS. ZMROCZEK: --- for a bond ---

14 THE COURT: Okay.

15 MS. ZMROCZEK: --- motion, but then it was withdrawn.

16 So . . .

17 THE COURT: All right. Thank you. Thank you very
18 much, solicitor.

19 Thank you, Ms. Zmroczek.

20 As to the bond, considering the nature and
21 circumstances of the offenses charged, those matters that I
22 must consider under 17-15-30, I would find that there are
23 no change of circumstances, except perhaps a change -- not
24 a good change for the defendant, as far as the allegation
25 concerning jail infractions and such. So I'd respectfully

1 deny a motion for reduction of bond.

2 I've continued the case. I only have authority to
3 continue it through this term of court. I would advise the
4 parties to contact whoever the chief judge for
5 administrative purposes for general sessions is so that a
6 date-certain can be set in a timely manner and the trial
7 itself be set in a timely manner.

8 Thank you. Thank you very much.

9 MS. USRY: Yes, sir, Your Honor. We will.

10 THE COURT: Thank you, Ms. Zmroczek.

11 MS. ZMROCZEK: Thank you, Your Honor.

12 (Whereupon, the proceeding was adjourned at 2:48 p.m.)

13 --- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
REALTIME VERBATIM REPORTER, OFFICIAL COURT REPORTER
FOR THE EIGHTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH
CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD IN
THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO
APPEAL, IN THE CIRCUIT COURT FOR LEXINGTON COUNTY,
SOUTH CAROLINA, ON THE 8TH DAY OF MAY, 2017.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM, RVR

COLUMBIA, SOUTH CAROLINA

AUGUST 22, 2019

1 State of South Carolina) Court of General Sessions
2 County of Lexington) Eleventh Judicial Circuit

3

4 State of South Carolina,) Transcript of Record
5 vs.) 2016-GS-32-02026
6 Emonte Antonio Brooks,) 2016-GS-32-02027
7 Defendant.) 2017-GS-32-00925

8

9 October 30, 2017
10 Lexington, South Carolina

11 B E F O R E:

12 The Honorable Donald B. Hocker, Judge

13

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

15

16 Kate W. Usry, Assistant Solicitor
17 L. McGill Bell, Jr., Assistant Solicitor
18 On behalf of the State of South Carolina

19

20 Aimee J. Zmroczek, Esquire
21 On behalf of the Defendant

22

23

24 Stacy S. Johnson
25 Circuit Court Reporter

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I N D E X

PAGE

Certificate of Reporter

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E X H I B I T S

NO EXHIBITS WERE INTRODUCED

1 (Whereupon, the following proceedings were held
2 October 30, 2017, beginning at 12:23 PM.)

3 **BAILIFF:** All rise.

4 **THE COURT:** You're fine. Thank you. Have a seat.

5 **THE CLERK:** Emonte Brooks, come around.

6 Indictment 2017-GS-32-00925, State versus Emonte
7 Antonio Brooks, indicted for attempted murder. Pleading
8 as charged.

9 Indictment 2016-GS-32-02026, State versus Emonte
10 Antonio Brooks, indicted for discharging a firearm into a
11 dwelling. Pleading as charged.

12 And Indictment 2016-GS-32-02027, State versus Emonte
13 Antonio Brooks, indicted for attempted armed robbery;
14 pleading as charged.

15 They're all signed and properly attested to, they are
16 all true billed, witnessed, and he's represented by
17 Ms. Zmroczek.

18 Raise your right hand, sir.

19 (Whereupon, Emonte Antonio Brooks was duly sworn by
20 the Clerk of Court.)

21 **PROBATION AGENT:** Judge, Mr. Brooks is on probation
22 and we have served a citation and a warrant on him.

23 **THE COURT:** Okay. All right.

24 All right. Ms. Zmroczek, of course, for the record
25 you represent Emonte Brooks?

1 **MS. ZMROCZEK:** I do, Your Honor.

2 **THE COURT:** And it's my understanding that he's going
3 to tender a guilty plea to three of the indicted charges;
4 is that correct?

5 **MS. ZMROCZEK:** That's correct.

6 **THE COURT:** All right. Have you had an opportunity
7 to fully explain the charges to him, his rights that he's
8 giving up as a result of a plea and the maximum that each
9 offense -- maximum time that each offense carries?

10 **MS. ZMROCZEK:** I have.

11 **THE COURT:** And do you believe he has understood your
12 explanation?

13 **MS. ZMROCZEK:** I do.

14 **THE COURT:** Okay. And what I have before me, three
15 of the charges that he's pleading guilty to, attempted
16 armed robbery, attempted murder and discharging a firearm
17 into a dwelling, how does he plead?

18 **MS. ZMROCZEK:** He intends to plead guilty, Your Honor.

19 **THE COURT:** Okay. As his attorney, do you agree with
20 his decision to plead guilty?

21 **MS. ZMROCZEK:** I do.

22 **THE COURT:** And do you believe that if you went to
23 trial on these charges a strong likelihood would be he
24 would be found guilty?

25 **MS. ZMROCZEK:** I do.

1 **THE COURT:** Okay. All right. Thank you.

2 All right, Mr. Brooks. I'm gonna ask you a series
3 of questions. Take your hands out of your pockets,
4 please. Thank you.

5 You pay very close attention to the questions that I
6 ask you and when you respond, speak up loud enough, okay?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** Okay?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** All right. If at any time you don't
11 understand a question that I ask you, then you tell me and
12 I'll either try to repeat it or rephrase it or even give
13 you an opportunity to step back and talk with Ms. Zmroczek,
14 okay?

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

16 **THE COURT:** All right. You are Emonte Brooks; is that
17 correct?

18 **THE DEFENDANT:** Yes, sir.

19 **THE COURT:** And how old are you?

20 **THE DEFENDANT:** Twenty. Twenty years old.

21 **THE COURT:** Okay. And how far did you go in school?

22 **THE DEFENDANT:** Eleventh grade.

23 **THE COURT:** Eleventh grade?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** Now you just heard Ms. Zmroczek tell me

1 you're pleading guilty to three charges; attempted armed
2 robbery, attempted murder and discharging a firearm into a
3 dwelling; is that correct?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** Are you pleading guilty to those three
6 charges because, in fact, you are guilty of those three
7 charges?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** Anyone force you to plead guilty against
10 your will?

11 **THE DEFENDANT:** No, sir.

12 **THE COURT:** Anyone promise you anything to get you to
13 plead guilty against your will?

14 **THE DEFENDANT:** No, sir.

15 **THE COURT:** Are you pleading guilty today to these
16 three charges freely, voluntarily and intelligently?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Mr. Brooks, have you consumed any
19 substance; alcohol, drugs, medication that would not only
20 affect your ability to understand these proceedings, but
21 also affect your ability to make decisions?

22 **THE DEFENDANT:** No, sir.

23 **THE COURT:** Sir?

24 **THE DEFENDANT:** No, sir.

25 **THE COURT:** Do you suffer from any problem or

1 condition; physical, mental or emotional, that would not
2 only affect your ability to understand these proceedings,
3 but also affect your ability to make decisions?

4 **THE DEFENDANT:** No, sir.

5 **THE COURT:** And I understand that we're gonna be
6 dealing with your probation matter today as well; is that
7 correct?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** All right. I'm gonna ask one of the
10 solicitors to present the facts and you listen very
11 carefully because I'm gonna ask you whether or not you
12 agree with the facts as presented by the solicitor, okay?
13 So you listen very carefully.

14 All right, Solicitor.

15 **MS. USRY:** Thank you, Your Honor.

16 As Your Honor is well-aware, we were prepared to go
17 forward with his trial today. The Defendant has decided
18 to plead guilty. This incident occurred on 1-27-16,
19 January 27th of 2016. On that date, the Defendant, along
20 with two co-defendants, went to a home in West Columbia
21 located at [REDACTED] Leaphart Street. They went there with the
22 intent to rob the homeowners there. They had previously --
23 one of the co-defendants, if not both of the co-defendants,
24 had bought marijuana from that location before. They went
25 to that home to essentially set up a buy and then go in the

1 house and take money and drugs from the homeowners at that
2 location.

3 When they got there, the co-defendant, Defendant
4 Graves, went to the home as planned. He went up to the
5 door and knocked. He went into the home and spoke with a
6 Justin Erving, who was one of the victims in this case,
7 as well as a Doris Shotte was in the home. Two other
8 individuals were in the back of the home, Your Honor, not
9 in the front part of the home at that. When he went in,
10 he asked for marijuana. They did not have -- Mr. Erving
11 did not have the marijuana that he wanted. The interaction
12 took -- went a lot more quickly than they anticipated and
13 Mr. Graves left the location more quickly than they
14 anticipated; meaning Mr. Brooks and the other defendant,
15 Mr. Darby.

16 When Graves exited the home, Mr. Darby -- Mr. Brooks,
17 excuse me, began running towards the home with a handgun.
18 He began pointing it at the door of that home where Justin
19 Erving had previously stood. He fired. Multiple witnesses
20 will indicate they heard the gun clicking multiple times
21 and only went off one time into the home, but that bullet
22 struck to the right of the doorway and ultimately was found
23 lodged in the home. He continued up the -- so Mr. Graves
24 hit the ground, who had just exited the home, hit the
25 ground. The homeowner shut the door and then Mr. Brooks

1 continued towards the door. When he got up to the door,
2 he began kicking the door still attempting to get into the
3 location. He was unsuccessful. The three co-defendants
4 left the scene at that time. Mr. Graves returned to his
5 home and the two co-defendants left and went to another
6 location before turning back to Mr. Graves' home.

7 Your Honor, officers responded. That night when they
8 responded, they spoke to Ms. Shotte. She did not give the
9 full truth of what happened that night because she was
10 protecting her son who was selling drugs out of the home.
11 She said she opened the door and then saw the Defendant on
12 the porch fumbling with a gun and then she shut the door
13 in his face. At a later time when officers responded and
14 talked to other witnesses days later, it was determined
15 that they were selling drugs out of the home, which is
16 probably the reason that at first Ms. Shotte attempted to
17 protect her son essentially.

18 Law enforcement with the West Columbia Police
19 Department were involved in this case. Chris Morris was
20 the investigator on this case. He's all the way to Your
21 Honor's right. He got the case the next day, January 28th,
22 and begins his investigation. He meets with Ms. Shotte,
23 he gets information regarding Graves, who she knew as a DJ,
24 had previously bought marijuana at that house. They went
25 and actually took Graves into custody that day. So around

1 lunchtime or a little bit before begin talking with him, he
2 is Mirandized, waived Miranda rights and gave information
3 on this case as I've given to you, including knowing the
4 Defendant before you as Hot Boy, which was his nickname or
5 street name as he knew him.

6 Hot Boy -- he was able to pick out Hot Boy out of a
7 lineup. He gave information on this other co-defendant,
8 Fruitloop, who's Darby in this case, and then they also
9 talked to his wife that day, later that day. He actually
10 calls Darby on a cell phone with Investigator Morris
11 present and attempts to talk about the incident with him so
12 that we were prepared to introduce into evidence.

13 Officers then return to the incident location the next
14 day, on 1-29. They retrieved the projectile from the wall
15 because they were unable to retrieve it the night of the
16 incident, and take that into evidence. They subsequently
17 arrest Darby on February 2nd, bring him in, and he is
18 Mirandized and gives a full confession and is consistent
19 with his previous co-defendant who had been Mirandized,
20 Mr. Graves.

21 At that point they get warrants for the Defendant
22 before you. As you're aware, we're dismissing a number
23 of the attempted murder charges, but there were other
24 individuals in the house as I've mentioned, attempted
25 murder warrants in regards to Ms. Shotte, Dallas Lyles and

1 Rhett Shotte, who were also in the home, and he's pleading
2 guilty to the attempted murder with regards to Justin
3 Erving in the house.

4 Law enforcement was also able to pull security camera
5 footage from a business nearby that corroborates the
6 co-defendants when they say Mr. Graves ran from the
7 incident location and went straight home. The time on the
8 security camera confirms that. Darby says they waited a
9 while and then he and Mr. Brooks went back to Graves'
10 house. Again, about an hour later you see them walking by,
11 so it confirms their testimony about what time they were
12 leaving the incident location.

13 Furthermore, law enforcement was able -- upon talking
14 to Darby, he led them -- he admitted he had a gun in his
15 possession and he also told law enforcement that Hot Boy
16 or the Defendant before you, Mr. Brooks, had a gun in his
17 possession. Mr. Darby leads law enforcement to where the
18 Defendant before you's gun was left. It was at a house of
19 a Savon individual. His girlfriend, a Brittany Millhouse,
20 who was prepared to testify, was present. She went into
21 the home and retrieved the gun from the location. She
22 brought it back to law enforcement. West Columbia took it
23 back to the police department, swabbed the gun. Those
24 items were sent to SLED. The gun that was sent to SLED,
25 along with the projectile once tested, came back as

1 conclusively determining that the gun they retrieved that
2 was put in the Defendant before you's hands was the gun
3 that left the projectile in the home of the incident
4 location, so they were conclusively able to link the
5 projectile to that gun upon testing.

6 Furthermore, the swabs of the barrel and handle of
7 the gun came back as a mixture of two individuals. On the
8 barrel of the gun, they were able to determine the major
9 contributor on that gun was the Defendant before you based
10 on his Schmerber -- that we actually retrieved in September
11 of this year after a bond hearing before Your Honor, that
12 came back to the Defendant, so it showed the gun that he
13 had in his possession via touch DNA analysis, Your Honor.
14 The minor contributor that was ultimately located on the
15 gun they were unable to run that profile through the CODIS
16 system, but they did have enough of the minor contributor
17 to ultimately exclude the co-defendants in this case.
18 Their touch DNA was not found on that weapon.

19 Furthermore, Your Honor, when the Defendant was
20 arrested, he ultimately gave a false name. He told
21 officers a different name when he was arrested on
22 February 5th of 2016. While in jail -- he and his
23 co-defendants remained in jail since their arrests. He
24 has sent letters to his co-defendants in jail. In
25 particular, Mr. Graves kept his letters and turned them

1 over to his defense counsel. They then gave them to us.
2 In those letters, he is telling Mr. Graves to change his
3 story, to leave him out of it, to write a statement to our
4 office indicating that he wasn't present essentially. I'm
5 summarizing, but we have about six of those, I believe.
6 SLED did a handwriting analysis on those notes. In May of
7 this year, Judge McMahon ordered that we get a handwriting
8 sample. SLED ultimately came over to the courthouse and
9 took the Defendant's handwriting sample. SLED came back
10 indicating identification -- a positive identification and
11 they saw no discrepancies in the two handwritings that
12 would indicate anybody else could have written those notes.

13 Your Honor, the Defendant does have a prior record --
14 oh, and, Your Honor, the bullet was found in the house.
15 Obviously I have not mentioned anybody was injured and no
16 one was injured in this incident.

17 The Defendant has a prior record. In 2014, he has
18 two assault and battery third degrees. In 2015, he has a
19 hit and run property damage and a breaking and entering
20 motor vehicles. The State as part of this plea is
21 dismissing the other, as I mentioned, attempted murders,
22 as well as a possession of a weapon during a violent crime
23 and a conspiracy charge. We're also dismissing a throwing
24 bodily fluids that was picked up since he's been in jail.

25 Your Honor, I will just bring -- tell Your Honor

1 that in speaking with the co-defendants they were both
2 prepared to testify during this trial, they were both
3 going to take the stand. During our discussions with them
4 and in pulling jail history of the Defendant, it appears
5 that they've also -- that at least in one case Mr. Graves'
6 most recent jail infractions that I've pulled show in
7 September of this year an inmate in the jail told law
8 enforcement that the Defendant before you was threatening
9 Mr. Graves. In addition, Mr. Darby, when I met with him,
10 was in a protective area of the jail because he was afraid
11 of Mr. Brooks because they felt threatened because they
12 were testifying and that he was essentially was threatening
13 them. I don't have any example of overt threats in my
14 possession by any means that we've been able to obtain or
15 to show proof and give to defense counsel, but I will tell
16 you that both co-defendants have expressed that to me.

17 The victims we just called and they were planning to
18 be here tomorrow and be present for the trial. They
19 weren't gonna be here today. They are fine with the plea
20 going forward today and them not being present. They've
21 been involved in this from the beginning. They've
22 responded to us. We went on Friday out to Ms. Shotte's
23 house and met with her and Mr. Erving, so they are aware
24 this is going forward, they're fine with it going forward,
25 and they leave sentencing in Your Honor's discretion.

1 **THE COURT:** Okay. All right. Thank you, Solicitor.
2 Mr. Brooks, concerning the facts behind these three
3 charges, did the solicitor correctly state the facts?

4 **THE DEFENDANT:** Ah --

5 **MS. ZMROCZEK:** I think that there are -- I think that
6 there are minor discrepancies, Your Honor, but I think
7 that overall that's what they would intend to prove. I
8 think that there are some minor discrepancies, but none
9 that would alleviate any of his culpability.

10 **THE COURT:** Do you agree with that?

11 **THE DEFENDANT:** Yes, sir. Yes, sir.

12 **THE COURT:** Okay. So let me just ask it this way.
13 While you may not agree to every single detail presented by
14 the solicitor, would you agree that she was substantially
15 correct in the statement of the facts behind these three
16 charges?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Okay. And you admit that you attempted
19 armed robbery as it concerns Doris Shotte and Justin
20 Erving?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** Is that a yes? You need to speak up.

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** And do you agree that you attempted to
25 murder Justin Erving?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** And do you agree or admit that you
3 discharged a firearm into a dwelling either owned or
4 occupied or possessed by Doris Shotte and Justin Erving?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** Now, Mr. Brooks, you understand that
7 when you plead guilty as you're doing so now, you give up
8 certain constitutional rights that you have --

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** -- and I'm gonna go through those with
11 you, even though I'm sure Ms. Zmroczek has. You have a
12 constitutional right to a jury trial. We just picked a
13 jury in the case. You want to give up your right to a
14 jury trial, sir?

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

16 **THE COURT:** You understand that when you plead guilty,
17 you give up your right to remain silent? Do you understand
18 that, sir?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** You understand that when you plead guilty,
21 you give up your constitutional right for your attorney,
22 Ms. Zmroczek, to make legal arguments, put up legal
23 challenges, legal defenses, concerning any and all of the
24 evidence that the State may have, as well as to confront
25 and cross-examine the State's witnesses? There were a list

1 of multiple State's witnesses that may have -- may would
2 have testified in this case. You're giving up that right.
3 Do you understand that, sir?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** When you were arrested on these charges,
6 the ones you're pleading guilty to and also the ones that
7 are being dismissed by the State, you are automatically
8 presumed to be innocent and that presumption of innocence
9 has carried with you all the way until today; however, when
10 you plead guilty, as you're doing so now, you give up the
11 right to be presumed innocent. Do you understand that?

12 **THE DEFENDANT:** Yes, sir.

13 **THE COURT:** And when the State elected to charge you
14 with a criminal offense or offenses, they took on what we
15 call a burden of proof to prove each and every element of
16 each offense beyond a reasonable doubt standard. That is
17 the highest burden of proof that we have in the law, but
18 when you plead guilty they no longer have any burden of
19 proof, all they have to do is present sufficient facts to
20 base your guilty plea on. Do you understand that, sir?

21 **THE DEFENDANT:** Yes, sir.

22 **THE COURT:** Sir?

23 **THE DEFENDANT:** Yes, sir.

24 **THE COURT:** Now are you satisfied with the legal
25 representation afforded to you by Ms. Zmroczek?

1 **THE DEFENDANT:** Yes, sir.

2 **THE COURT:** Has she done everything you've asked her
3 to do?

4 **THE DEFENDANT:** Yes, sir.

5 **THE COURT:** Has she done everything you expected that
6 she would do on your behalf?

7 **THE DEFENDANT:** Yes, sir.

8 **THE COURT:** And you've had a full opportunity to
9 review and discuss with Ms. Zmroczek the discovery file?
10 In other words, all of the evidence, documents, that the
11 State has in this case and has provided to your attorney?

12 **THE DEFENDANT:** Yes, sir.

13 **MS. ZMROCEK:** And, Your Honor, with one exception.
14 I did receive a bunch of bench notes with the DNA, but
15 other than that he's received everything.

16 **THE COURT:** Okay.

17 All right. Other than some notes related to DNA --
18 do you want an opportunity to review that with Ms. Zmroczek
19 before we go forward?

20 **THE DEFENDANT:** No, sir.

21 **THE COURT:** Is that a no, sir?

22 **THE DEFENDANT:** Yes, sir.

23 **THE COURT:** Do you have any complaints against
24 Ms. Zmroczek, any complaints against anyone in the
25 solicitor's office, any complaints against any law

1 enforcement personnel involved in this case?

2 **THE DEFENDANT:** No, sir.

3 **THE COURT:** You understand, Mr. Brooks, that if you
4 have a legal basis to challenge this guilty plea you're
5 making today that you only have ten days to file a notice
6 of intent to appeal with a higher court. Do you understand
7 that, sir?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** And, again, I ask you, once again, are
10 you pleading guilty to attempted armed robbery, attempted
11 murder of Justin Erving and discharging a firearm into a
12 dwelling because, in fact, you are guilty of those three
13 charges?

14 **THE DEFENDANT:** Yes, sir.

15 **THE COURT:** Have you understood all of the Court's
16 questions?

17 **THE DEFENDANT:** Yes, sir.

18 **THE COURT:** Have all your answers been truthful?

19 **THE DEFENDANT:** Yes, sir.

20 **THE COURT:** Do you have any questions of your own?

21 **THE DEFENDANT:** No, sir.

22 **THE COURT:** All right. Let the record reflect that
23 there is a factual basis for this plea. The pleas were
24 made freely, voluntarily and intelligently by Mr. Brooks
25 and he's done so with competent counsel of whose services

1 he expresses satisfaction with.

2 Let me hear from probation. Anything you want to put
3 on the record?

4 **PROBATION AGENT:** Yes, sir. A couple of things.

5 **THE COURT:** Sure.

6 **PROBATION AGENT:** Mr. Brooks pled on July 14th of
7 2015 to breaking into a motor vehicle. I believe that was
8 Judge Griffith that was the sentencing judge. He had a
9 YOA not to exceed two years suspend to twenty-four months
10 probation and restitution of \$200.00. I do not have my
11 computer, so I don't know if any has been paid. He also
12 pled on the same day to hit and run; YOA not to exceed
13 one year with twenty-four months probation.

14 Judge, I believe he was scheduled to plea several
15 months back and I had contacted the victim in the hit and
16 run. She indicated that she was still very emotional about
17 that event on that day because she had a four-year-old
18 child in the car at the time and we would ask for a
19 revocation in this.

20 **THE COURT:** Okay. Well, how would that work? He's
21 got a YOA. I can't revoke and put him in the youthful
22 offender program. It would almost be just a termination
23 and the time satisfies any financial obligations and if
24 there is restitution owing, that would be converted to a
25 civil judgment.

1 **PROBATION AGENT:** That will suffice. That will be
2 fine.

3 **THE COURT:** Thank you, sir.

4 All right. Ms. Zmroczek, I'll be glad to hear from
5 you, ma'am.

6 **MS. ZMROCZEK:** Thank you, Judge.

7 My client is twenty years old and he and I have been
8 through a lot together and he, I believe, today is making
9 a good decision. As you saw from our pre-trial motions,
10 there were some issues with this case, and I don't -- I
11 don't want to take anything away from Ms. Usry and her
12 witnesses, but I think that they would agree -- and one of
13 the reasons I think that they agreed, you know, to enter
14 into this plea is they realize that there were some issues.
15 The co-defendants, Your Honor, may claim to the State that
16 they were afraid, but I've listened to each and every jail
17 phone call and watched each and every video visit. One,
18 Mr. Graves did get out on bond, but Mr. Darby is still in
19 and, in fact, he spent a lot of time in the same pod. He
20 keeps -- when he wants to learn about his case, he goes --
21 and he gets in trouble and he goes down so that he can
22 talk to his co-defendant. I have conversations right in
23 April right when we were about to try this case in May and
24 -- and the conversations -- you can hear the two of them
25 on the phone talking to each other, so it's the accomplice

1 liability that I think really would have -- that really
2 would have hung this case up. And not to take away from
3 his acceptance of responsibility, Your Honor, he made some
4 bad choices. The reason -- there's a very good reason not
5 to excuse, but to explain his behavior.

6 So, like I said, he's twenty years old and thank
7 goodness that Your Honor does not have the pleasure of
8 meeting his mother because she is a horrible person. Her
9 children are constantly taken away from her because of the
10 physical and mental abuse that she's heaped on them and my
11 client has had issues because of that. They're -- not with
12 his competency or ability to understand, but his ability to
13 deal and to know what normal behavior is. He knows it's
14 not right what -- what he was involved in, but he turned
15 to the streets because that's all he had. And I believe
16 Mr. Darby is similarly situated. Mr. Brooks doesn't have
17 any children and probably the other really good decision
18 that he made was to not just leave children out there to
19 end up like him.

20 Mr. -- the first co-defendant, Your Honor, is
21 significantly older than these two boys. There were
22 issues with what was going on at the house. And, again,
23 it doesn't excuse the behavior. I think another issue we
24 would have had in trial would be with the intent. I don't
25 believe there was ever a -- shooting a gun obviously can

1 be inferred -- the malice can be inferred, but I think
2 that -- and I'm not taking away from the elements, I think
3 that this was a situation that really escalated. There
4 were issues like, I think, with the victims who've met with
5 us several times, as well. My investigator has been inside
6 their home. If you saw, some of our motions dealt with
7 having trouble getting the witnesses here. The witnesses
8 at times, in fact, several times told our investigator they
9 didn't want to prosecute this case. I think that what
10 we've come to today is in the interest of judicial economy,
11 but also in an attempt for my client to -- to realize the
12 seriousness of where his behavior could continue to lead.

13 With that being said, Your Honor, I've seen a
14 noticeable -- a noticeable change, especially within the
15 last few months of him maturing and a lot of it, Your
16 Honor, has to do with him having no contact with his mother
17 because, you know what, she doesn't call, she doesn't --
18 well, she can't call, but she doesn't answer his calls,
19 she doesn't answer his e-mails. The only person he has
20 in the world is his brother. His brother is working today
21 and obviously we weren't planning on being here and I
22 couldn't get in touch with him, but his brother would
23 stand up and tell Your Honor that although he has admitted
24 to doing some awful things, that he is not an awful person.

25 I think that he knows that he's facing some

1 substantial time. What we're asking the Court to do is
2 to not make him a statistic. I'm terrified that when he
3 gets back there he's going to follow -- if you're familiar
4 with the problems that are happening in SCDC, and I think
5 that Mr. Brooks and I have had a lot of conversation about
6 it, he's in control of what happens back there. He can
7 fall in with the right crowd, he can fall in with the
8 wrong crowd, but what I'm asking the Court to consider is
9 a range of somewhere between five and ten years.

10 And I know that that sounds low, but it's, I think,
11 appropriate in this case. I think that also a period of
12 probation afterwards because he seems to do well once he
13 starts -- he's never trusted people and it took him a long
14 time to trust me and I think to get to a point that he can
15 do that will now lead him into making the right decisions.
16 Obviously he'll be at some point able to participate in
17 some programs and he wants to get his GED and he wants to
18 come out and not be in front of another court again and
19 certainly not have to deal with another lawyer again.

20 And as he stands here very stoically, Your Honor, and
21 he was very nervous and -- and didn't know exactly what to
22 say, and I may not be doing it justice, but he does accept
23 responsibility for the chaos and the crimes that were
24 committed, but at the same time, Your Honor, he is seeking
25 an opportunity to have a life outside of prison when he

1 gets that opportunity. We would ask the Court to consider
2 that five to ten-year range with a lot of probation
3 because, again, I think he realizes now that having people
4 watch over him can help guide him once he stays off of the
5 marijuana, stays clean, starts doing the right things, and
6 -- and I see that promise in him.

7 Obviously, we can't predict the future, but he knows
8 the seriousness of it, he knows that, you know, his future
9 is kind of in his hands at this point. He understand this
10 is a strike. This is a bad -- if something happened again,
11 he could go away for the rest of his life, and he knows
12 that. And he also knows that he has to be strong enough to
13 stand up to influences from other people and start to make
14 his own way.

15 With that being said, Your Honor, we'd just ask the
16 Court to take all of those things into consideration.
17 Obviously, he's twenty years old. His brain is still
18 forming and we just ask that the Court give him an
19 opportunity to do right.

20 **THE COURT:** Okay. Thank you very much.

21 Just to follow up on what Ms. Zmroczek said,
22 Mr. Brooks, and I failed to ask you this earlier,
23 understanding that the attempted murder, attempted armed
24 robbery are violent, most serious offences, you have laid
25 a lot of groundwork for a potential life without parole

1 sentence sometime in the future if you were to continue to
2 engage in criminal activity. Do you understand that?

3 **THE DEFENDANT:** Yes, sir.

4 **THE COURT:** All right. Anything further from the
5 State?

6 **MS. USRY:** Nothing further, Your Honor.

7 **THE COURT:** Okay.

8 All right. Everybody be at ease for just a moment.

9 Okay, Mr. Brooks. I mean, it goes without saying
10 these certainly are very serious charges. You ought to be
11 extremely thankful that no one was actually hurt or killed
12 because this -- you'd be looking at certainly a different
13 situation. But one thing that works in your favor is your
14 age. While I appreciate the efforts of Ms. Zmroczek to
15 try to get a five to ten-year range and probation, while
16 I appreciate that and respect her efforts, I can't do
17 that. But certainly I've factored it in considerably
18 understanding that your attempted murder carries thirty
19 years, attempted armed robbery twenty years max. I've
20 factored in your age where once you get out you still have
21 some life left and hopefully you can turn things around.

22 On the attempted murder and on the attempted armed
23 robbery, it will be a sentence of eighteen years, credit
24 for 633 days. On the discharge offense, that will be
25 eight years, 633 days credit, all to run concurrent.

1 Good luck to you, sir.

2 **PROBATION AGENT:** Judge, probation?

3 **THE COURT:** Probation, a full revocation. Time
4 will satisfy all financial obligations. If there is any
5 outstanding restitution, that will be converted to a civil
6 judgment. Terminate probation.

7 **PROBATION AGENT:** Just terminate it, not a revocation?

8 **THE COURT:** Right, terminate. No revocation.
9 Terminate it, yes.

10 **PROBATION AGENT:** Okay.

11 **MS. USRY:** Thank you, Your Honor.

12 **MS. ZMROCZEK:** Thank you.

13 (Whereupon, the proceedings were concluded at
14 12:59 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 30th day of October, 2017.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

October 8, 2018

/s/ Stacy S. Johnson
STACY S. JOHNSON
CIRCUIT COURT REPORTER

FILED
2017 NOV -3 AM 9:16
CLERK OF COURT
TAMU, TX 77701, SC

STATE OF SOUTH CAROLINA	)	Court of General Sessions
	)	
COUNTY OF LEXINGTON	)	
	)	
<u>State of South Carolina</u>	)	Indictment Numbers: 2017GS3200925,
	)	2016GS3202027, 2016GS3202026
vs.	)	
	)	ORDER
<u>Emonte Antonio Brooks</u>	)	
	)	
	)	

THIS MATTER CAME FOR HEARING before the undersigned on February 9, 2018 in Newberry, South Carolina. Ms. Aimee Zmroczek was present for Defendant, and Sol. Kate Usry represented the State. There was no objection to venue.

Defendant plead guilty without negotiations or recommendations to Attempted Murder, Attempted Armed Robbery, and Discharging a Firearm into a Dwelling on October 30, 2017 in Lexington, South Carolina. Defendant's Motion to Reconsider Sentencing was timely-filed on November 2, 2017.

For the charge of Attempted Murder (Indictment No. 2017GS3200925) Defendant received an eighteen (18) year sentence, with credit for 633 days. For the charge of Attempted Armed Robbery (Indictment No. 2016GS3202027), Defendant received the same. For the charge of Discharging a Firearm into a Dwelling (Indictment No. 2016GS3202026), Defendant received an eight (8) year sentence, with credit for 633 days. All sentences were to run concurrently.

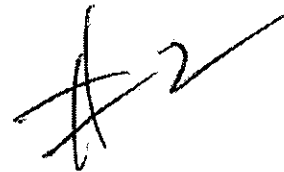
After careful consideration of the information provided to the Court at Plea and Sentencing, and at the more recent Reconsideration Hearing, the Court, based on Defendant's age, reduces the sentences for Attempted Murder and Armed Robbery from eighteen (18) years to fifteen (15) years.

The Court's decision not to grant a more significant reduction in Defendant's sentence is based upon his level of culpability compared to his co-defendants, and upon the fact that Defendant was on Probation when he committed the acts with which he is charged.

So Ordered.

Laurens, SC
February 12, 2018



Donald B. Hocker
Circuit Court Judge

FORM 5 **2018CP3202432**
FILED

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

Emanuel Bedoks #364670

Full name and prison number (if any) of Applicant

2018 JUL 16 PM 4:11

IN THE COURT OF COMMON PLEAS

LISA COMER
CLERK OF COURT
LEXINGTON, SC

v.

State of South Carolina

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 Litchie Correction Institution, 136 Wilborn Drive, Ridgely, SC 29472
2. Name and location of Court which imposed sentence Lexington County General Sessions
3. Name(s) of co-defendant(s) (if any) REG DORBY DANIAL GRAUZE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Attempted Murder 17GS3200925
 - (b) Attempted Armed Robbery 16GS3202037
 - (c) Discharge With Firearm In Dwelling 16GS3202026

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

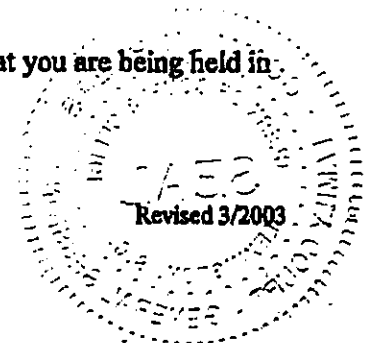
- (a) October 30th, 2017 15 years
- (b) _____

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Lex. Co. C.C., C.E., G.S. & F.C.

Revised 3/2003

- (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?
 _____ No
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____ N/A
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____ N/A
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____ N/A
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____ N/A
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel advised me that appeals from Guilty Plea are discretionary
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Involuntary Guilty Plea



- (b) Counsel Ineffective For Failing to Investigate And advise to Plead Guilty Wrong
 (c) Counsel Ineffective For not challenging constitutional violations

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

- (a) _____
 (b) _____ See Attached Sheet
 (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. _____
 ii. _____ N/A
 iii. _____
 iv. _____

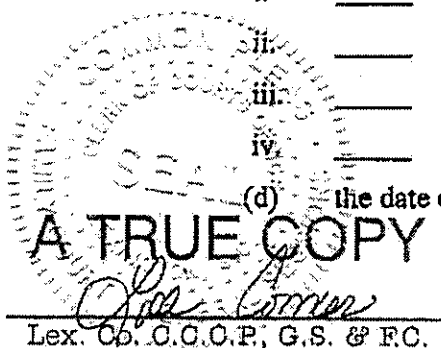
(b) the name and location of the Court in which each was filed:

- i. _____
 ii. _____ N/A
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
 ii. _____ N/A
 iii. _____
 iv. _____

(d) the date of each such disposition:



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

N/A

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

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

N/A

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. _____

N/A

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

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

N/A

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) _____

N/A

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? No
- (c) your sentencing? Yes

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- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (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. Aimee Zerkowick Lexington Public Defender
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Guilty Plea / Sentencing
- ii. _____
- iii. _____
19. State clearly the relief you seek in filing this application:
Vacate Guilty Plea
20. Are you now under sentence from any other court that you have not challenged?
NO

STATE OF SOUTH CAROLINA

VERIFICATION

County of

Emonte Brooks

I, *EAB*, 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.

Emonte Brooks

SWORN to and subscribed before me this 14th
day of June, 2018.

Richard Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

A TRUE COPY

Revised 3/2003

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

Emonk Brooks
I, EAB, 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.

Emonk Brooks

Applicant

SWORN or affirmed to and subscribed before me this
14th day of June, 2018.

Ludlow Bryant
Notary Public

My Commission Expires: May 26, 2020

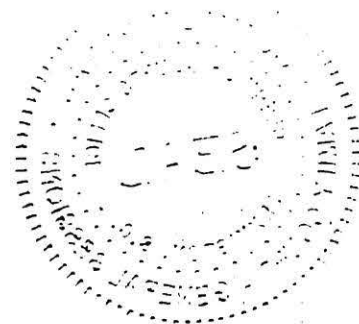
11)

A: Under *Boykin v. Alabama*, defendant Plea must be knowing, voluntary and intelligently made. The defendant was not made aware by counsel of the possible sentences each of these charges carried. Nor has court during Pleas, ensured itself defendant was so properly informed.

B) Counsel failed to investigate case, as counsel during Plea displayed lack of knowledge for elements of Attempted Murder and probable facts. Which state must prove and the facts presented by state during Guilty Plea, does not satisfy crime of attempted Murder. On attempted armed robbery, once again it can be shown by state account of this crime, that a trial evidence would not be sufficient for conviction.

Counsel advice to Plead Guilty without investigating case, was not within sound legal judgment under *Hill v. Lockhart*, "that if but for counsel advice, defendant would not have Plead Guilty" without an investigation counsel can not advise a client to Plead Guilty.

C) Counsel was not aware that arrest warrants lack Probable cause under *Beck v. Ohio*, and lack of sufficient proof supporting warrant for arrest.



State Of South Carolina
Lexington County Courthouse

Emonie Brooks,

Applicant,

vs.

State Of South Carolina,

Respondent.

Eleventh Judicial Circuit

Court Of Common Pleas

Motion To Amend Pleadings

#18-CP-32-02432

LISA H. COYER
CLERK OF COURT
LEXINGTON SC

2019 FEB 25 PM 4:14

FILED

Please Take Notice, Applicant by and through counsel files this motion to amend Pleadings as follows:

1) Critical Stage:

Counsel abandoned applicant at a critical stage of the Proceedings before Guilty Plea. counsel did not research law and advice to Plead Guilty and negotiations was inadequate

2) Attempted Murder:

Counsel Failed to research law on this charge, and counsel advice

to Plead Guilty was wrong, when counsel failed to understand that Attempted Murder is lesser included offense of ROBBERY and constitutes as a misdemeanor not felony

3) Arrest Warrants

Counsel was ineffective when counsel failed to challenge warrants as void of Probable cause and that standard used to obtain warrants is not in accordance with law of US Supreme Court.

Counsel also was ineffective when counsel did not challenge the Police delay to obtain warrants

4) Preliminary Hearing

Counsel was ineffective when counsel allowed State to waive client Preliminary hearing, and as such interfered with counsel obligation at critical stage of Proceedings

5) Closely Connected Offenses

Counsel was ineffective when counsel failed to inform client that all charges constitute as one offense

Whereby, it is Proved court allow amendments

Date: Feb day of 18th _____, 2019,

Respectfully Submitted:
Emonte Brooks
 Emonte Brooks/Pro Se

STATE OF SOUTH CAROLINA)

COUNTY OF LEXINGTON)

Emonte Brooks,)

Applicant,)

vs.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

ELEVENTH JUDICIAL CIRCUIT

C/A No.: 2018-CP-32-02432

NOTICE OF MOTION AND MOTION
TO AMEND APPLICATION FOR
POST-CONVICTION RELIEF

TO: JANELL H. GREGORY, ESQUIRE, ATTORNEY FOR RESPONDENT AND
RESPONDENT ABOVE-NAMED:

YOU WILL PLEASE TAKE NOTICE that the undersigned attorney for the Applicant, Emonte Brooks (hereinafter "Applicant") will move before the Honorable Walton J. McCleod, IV, of the Court of Common Pleas for the Eleventh Judicial Circuit, on April 2, 2019, or at such other time and place as is convenient to the Court and counsel, for an Order, pursuant to Rule 15(b) of the South Carolina Rules of Civil Procedure, amending the application for post-conviction relief, filed by Applicant on July 16, 2018, to conform to the evidence in the following particulars:

1. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to adequately investigate the criminal charge(s) for which Applicant was convicted.

2. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel advised him to enter into a guilty plea that was not knowingly and intelligently made.

Applicant entered a guilty plea without negotiations or recommendations from the State after

being advised by trial counsel that the State would agree to a sentencing range of five (5) to ten (10) years. Defendant was sentenced to a term of 18 years imprisonment.

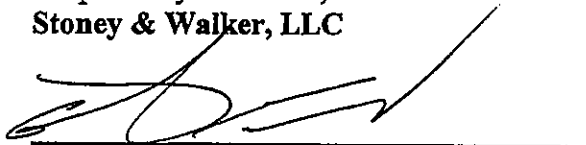
3. Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to call or communicate with material witnesses whose testimony would have been favorable to Applicant.

Based on the aforementioned grounds, the application for post-conviction relief, filed by Applicant on July 16, 2018, should be amended to conform to the evidence as set forth above.

This motion is based upon the testimony to be provided by witnesses at the hearing scheduled before this Court on April 2, 2019, and upon applicable case law and rules of court.

Pursuant to Rule 11(a) of the South Carolina Rules of Civil Procedure, Applicant, by and through his counsel, certifies that consultation with opposing counsel would serve no useful purpose due to the nature of this motion.

Respectfully submitted,
Stoney & Walker, LLC



Overture E. Walker
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Columbia, SC 29201
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Email: owalker@stoneywalkerlaw.com

March 25, 2019
Columbia, South Carolina

IN THE STATE OF SOUTH CAROLINA
IN THE COUNTY OF LEXINGTON

Emonte Brooks #364670,
Petitioner,

v.

State,
Respondent

CA No: 2018-LP-32-02432

Motion to Amend

FILED

2018 JUN 26 PM 3:51

LEA 11, 061133
CLERK OF COURT
LEXINGTON, SC

The Petitioner, an inmate now domiciled in SC's Perry Correctional Institution, does move before the Court wishing to amend the attached documents to his existing petition for Post-Conviction Relief. He is desirous to do so because he believes these issues to be detrimental to his case. So he humbly asks that his request be granted.

Emonte Brooks

Emonte Brooks #364670

SWORN to and subscribed before me this 19th
day of June, 2019

Mary C. Merchant (LS)
Notary Public

My Commission Expires 1.23.2022

The State Of South Carolina
Lexington County Courthouse

E Monte Brooks,
Applicant,

vs
Respondent

State Of South Carolina,
Respondent.

Court Of Common Pleas
Eleventh Judicial Circuit

Memorandum Of Law In Support Of Post
Conviction Relief Application

#18-CP-32-02432

Applicant contends that cumulative errors committed by counsel before and during Plea, denied his right to counsel at critical Stages of criminal Proceedings. Furthermore, applicant contends issues addressed during hearing are novel questions of law not addressed by court, or as herein, where State Court Precedents defining "Critical Stage" are in conflict and should be resolved.

Therefore, since applicant alleges ineffective assistance of counsel at critical Stages of adversarial Proceedings, Court analysis of critical stage doctrine, is not governed by Strickland v. Washington, 466 U.S. 668 (1984) but *Crome v. United States*, 466 U.S. 698 (1984)

Moreover, no State Precedents exist employing a *Hill v. Lockhart*, 474 U.S. 52 (1985) or *Crome* critical stage analysis, hence, neither has United States Supreme Court to the applicant knowledge. Because the analysis under *Crome*, *Hill*, could differ Strickland analysis significantly. When counsel's absence or prevented from assisting accused during critical Stage of the Proceedings. See, *Geders v. United States*, 425 U.S. 80 (1976), *Herring v. New York*, 422 U.S. 853 (1975), *Brooks v. Tennessee*, 406 U.S. 605 (1972), *Hamilton v. Alabama*, 368 U.S. 52 (1961), *White v. Maryland*,

393 U.S. 59 (1963) (per Curiam); *Precison v. Georgia*, 365 U.S. 590 (1961); *Williams v. Kaiser*, 323 U.S. 471 (1945)

The Sixth circuit in *Mitchell v. Mason*, 385 F.3d 732 (6th Cir. 2003) and district court of South Carolina in *Groves v. Padula*, 713 F.Supp.2d 611 (D.S.C. 2010) signaled a development in approach in doctrine before this court. These cases designated a broad time period, the season of pre-trial investigation and preparation as a critical stage. *Groves*, *id.*, *Mitchell*, *id.*. In a one-line order, the Supreme Court vacated *Mitchell* court decision and remanded to court for further review in light of decision in *Bell v. Cone*, 535 U.S. 685 (2002). The Fourth Circuit has not determined validity of *Groves* chronic inquiry. Thus, *Mitchell* court upon remand and in light of *Bell* reaffirmed district court's *Mitchell*'s habeas petition. *Mitchell*, *id.* at 737. Court deemed entire "Pre-trial Period" as indeed a "critical stage", *id.* at 741.

Like *Chronic*, these cases *Groves*, *Mitchell* in which lawyer was present throughout the trial but performances challenged as deficient. Conversely, *Groves*, *Mitchell* factual analysis are similar in challenging counsel absence during critical stage. Hence, *Cone v. Bell*, 243 F.3d 961 (6th Cir. 2001) took critical stage doctrine in an unprecedented and since then, apparently unduplicated direction. *Groves*, *id.* at 1. Momentarily melding classic critical stage inquiry, perhaps precariously, with *Strickland* effective assistance analysis, *Cone* cited *Chronic* for the proposition that "A presumption of prejudice is raised by counsel's behavior" so "Cone need not show actual prejudice" *Cone*, *id.* at 979.

Cone opinion suggests that having a totally silent lawyer by one's side is tantamount to having no lawyer at all. Court undertook the two-pronged analysis of *Strickland*, but leaned on *Chronic* to hold that no prejudice need be shown if the alleged "abandonment" by counsel had taken place during a critical stage.

Chief Justice Rehnquist, writing for the *Bell* majority, refreshed and explained the difference between *Chronic*, *Strickland* frameworks. *Chronic* court said was meant to cover those cases in which prejudice was to be assumed. *Strickland* court said, would address cases in which prejudice needed to be shown.

It is settled that *Cronic* is dominant decision in critical stage doctrine, when a complete absence of counsel throughout Prosecution, or critical stage is Per Se Sixth amendment violation warranting reversal of conviction, sentence or both, as applicable, without analysis for Prejudice. See, *United States v. Smith*, 411 F.2d 733 (1969)

Similarly, Applicant advances three (3) Guidelines from Bell in support of his argument counsel absence rendered Guilty Plea Proceedings unreliable. As follows:

1) Defendant suffers complete denial of counsel. Bell, id at 695 (quoting *Cronic*, id at 659) The court's first example by Justice Rehnquist is "complete denial of counsel" as first example full stop and goes no further. The next example introduces the phrase "critical stage" for first and only time in opinion. It reads: "A trial would be presumptively unfair, we said in *Cronic*, where the accused is denied the presence of counsel at a critical stage... a phrase we used in *Hamilton v. Alabama*, *White v. Maryland*, to denote a stage of a criminal proceeding, such as arraignment, that held significant consequences for the accused" Bell, id at 695-96; *Cronic*, id.

2) Where counsel is called upon to render assistance under circumstances where competent counsel very likely could not, the defendant need not show that the proceedings were affected (erring), *Cronic*, id. at 659-62; *Powell v. Alabama*, 287 U.S. 45 (1932).

3) Plea negotiations, Guilty Plea hearing, and sentencing are all "critical stages" *Low v. Town*, 541 U.S. 79 (2004)

Herein, counsel abandonment of applicant during Pretrial investigation, Preparation at the most "critical stage" of adversarial Proceedings, fell below an objective standard of reasonableness, and Prosecution Preventing counsel from doing so, resulted in ineffective assistance of counsel and Prejudiced him. See, *Hill v. Lockhart*, 474 U.S. 52 (1985); *Edwards v. State*, 392 S.C. 449 (2011) *Cronic*, id.

During Plea colloquy because counsel made no objections to Preliminary hearing violation or Probable cause stated in arrest warrants, and counsel failure to diligently research applicable laws, this court is called upon to assess if a given Point of criminal Proceedings herein is a critical stage, thereby asking long-standing question "How likely it is that significant consequences have resulted in the absence of counsel at these stages of criminal Proceedings does it or does not rest on a showing of Prejudice. *Hamilton*, id.. Applicant was charged (4 counts Attempted Murder) (1 Attempted Armed Robbery) Discharging firearm into dwelling

(4) Poss. Firearm/knife during violent crime; (5) Criminal Conspiracy; All of these charges are one continuous offense, among other things, there are no life threatening injuries to victims and affidavits for arrest warrants for (Attempt Murder/Attempt Armed Robbery) fail to establish Probable Cause to arrest as follows:

1) Probable Cause To Arrest / Beck v. Ohio, Henry v. United States;

Applicant begins analysis of this issue, by asserting that this state appellate courts have not had opportunity based on legal research to apply these two United States Supreme Court decisions. See, Beck v. Ohio 379 U.S. 89 (1964); Henry v. United States, 361 U.S. 98 (1959)

Thus, applicant likewise contends this novel issue has exceptional importance and breaks new ground, focusing on this state arrest warrant statutes and sets standards for lower courts in ruling on Probable Cause determinations. This state Probable Cause Jurisprudence, stems from search warrant analysis and, consequently, despite state protest that applicant analysis and or laws are misplaced. Based on unreasonable application of clearly established law and facts, the state decs of this court in State v. Sachs, _____ and its progeny adequately address arrest warrants. Is inconceivable, as state would by its own understanding intertwine these two separate and distinct determinations into one bowl.

Such interpretation in light of Beck, Henry surrounding Probable Cause to arrest, is no longer tenable and does nothing more than continuing to cloud, as well as, mislead courts in General Sessions, Appellate to ruling contrary to long-standing legal principles determining validity of arrest. Hence, the Sachs court made it clear as well as numerous United States Supreme Court Precedents. That trial courts determinations for search warrants, must view affidavit "With A Practical Eye" and determine whether facts were adequately set forth for magistrate to issue warrant. Those facts must allege reasons allowing magistrate to issue warrant, that Police reasonably believe items sought are at residence. As such, Probable Cause to seize Pro-

Party can not be harmonized with arrest. Whereas, in Beck, Henry courts decision. Those courts did not blend search warrant, arrest warrant laws, and instead court established Guidelines to follow when ruling on Police facts in affidavits for arrest. Beck, id, Henry, id.

Herein, Affidavit for Attempted Armed Robbery states:

"Emonte Antonio Brooks, did discharge a firearm into a dwelling while kicking the victims door in an attempt to steal money and other items from the victim"

Exhibit 1

This affidavit establishes a crime against Property not the Person. Whereas, the law of this state instructs Burglary is a crime against Property, and Robbery is a crime against the Person.

Clearly arrest warrant affidavit, fails to set forth facts sufficient to support Probable cause of attempted armed robbery. These facts, should have alerted counsel her client was arrested on crime not Presented to magistrate. Under Henry, court could rule Police failed to establish Probable cause, when crime alleged in affidavit is refuted by co-defendants statements, as well as, victims stated in Prosecutors Summary report and investigator report.

Counsel advice to Plead Guilty when she did no legal investigation based on facts, renders Guilty Plea involuntary as it was induced by counsel abandoning applicant at a critical stage of adversarial Process. Hill, id. Edwards, id at 456. Furthermore, the affidavits on Attempt Murder lack a sufficient basis to arrest as follows:

Emonte Antonio Brooks, did with malice aforethought and with intent to kill, shoot into the victim, Doris Sholtz's residence as he was attempting to commit a robbery and while the residence was occupied by the other victim, Justin Evans.

Exhibit 2 thru 5

Because some facts are alleged in all "Attempted Murder" warrants, applicant incorporates

them for reference.

Nonetheless, Attempted Murder is a lesser included offense of (ABITON) Assault and Battery High Aggravated Nature, which requires Proof of injuries that may or may not be life threatening. See, State v. King, 412 S.C. 403 (2015) There are no medical reports of injuries, to any of these victims, but the only thing supporting inference of a shooting corroborating applicant co-defendants statements. Is fact Police recovered bullet from crime scene (Exhibit 6-8)

Despite this, arrest warrant affidavits do not allege or establish Probable Cause for magistrate to form a belief applicant was shooting at her or anyone else in house. All affidavit does is at best, Prove discharging firearm in dwelling and under this statutory Provision. Language of statute, gives no indication legislature included serious body injury or death within Plain ordinary terms of statute. See, What Constitutes Attempted Murder, 54 A.L.R. 3d 612; 40 Am. Jur. 2d Homicide section 580; King, id

Assessing Counsel Performance under "Range of Competence", applicant examines counsel deficiencies before, during Plea. Doing so, what is noticeably clear is trial counsel did no legal investigation surrounding arrest warrants. Failure to conduct an investigation, could constitute as ineffective assistance of counsel if counsel advice to Plead Guilty, was given without knowing law relevant to applicant case; among other things, counsel must insure no investigation is warranted after reviewing case file. See, Franklin v. Color, 346 S.C. 563 N.3 (2001)

For this reason, it can be said that despite counsel Prodestations and court record of Plea colloquy, Applicant did not have an understanding of charges against him, nor was he informed about possible defenses against charges. See, Kelle v. State, 386 S.C. 578 (2010) Guilty Pleas based on advice of counsel, absent an investigation as herein, falls below "Range of Competence" required by attorney's in criminal cases.

2) Closely Connected Offenses:

All applicant charges, took Place on same day, Place and time, and therefore, under South Carolina Code Ann. Sec. 17-25-50 (cum. Supp. 16) constitutes as one offense. Not multiple offenses as

In 2003 the court held in *State v. Gordon*, 356 S.C. 193 (2003) that sections 17-25-45 and 17-25-50 must be construed together in determining whether crimes committed at Points so closely in time qualify for a recidivist sentence. *Gordon*, id. at 156 n. 12. While section 17-25-45(2) is only relevant as to trial court, counsel advising applicant he has two or more strikes, as a result of this conviction(s). The outcome of this issue turns on two points (1) Court, Counsel information relating to these offenses triggering section 17-25-45(2); (2) meaning of section 17-25-50 Phrase "so closely connected in Point of time that they may be considered as one offense"

First, applicant acknowledges the "so closely connected in Point of time" language in section 17-25-50 may become ambiguous as applied to certain situations. When construing statutes forming part of the same legislative scheme, applicant examines the statutes together as a whole. Accordingly, when reading the unambiguous timing feature of "a Prior Conviction" under section 17-25-45(2) alongside section 17-25-50, applicant construes the language of section 17-25-50 to Preclude a life without Parole sentence when the multiple offenses are connected and share an immediate Proximity.

State v. Woody, 359 S.C. 1 (2004) illustrates a Proper application of section 17-25-50 to Preclude a life without Parole sentence. Woody was convicted of second degree burglary and had two Prior convictions for armed robbery. *Woody*, id. at 2. The State sought to use both armed robbery convictions for enhancement Purposes and a life without Parole sentence. *Woody*, id. The State's Position was Rejected because the armed robberies constituted, as a matter of law, one offense for Purposes of section 17-25-50. *Woody*, id. at 4. The two armed robberies arose from a single incident at the same time and at the same location - a robbery of the store's clerk and the store itself. *Woody*, id. at 2.

Because the "so closely connected in Point of time" language in section 17-25-50 may become ambiguous in some situations, it necessarily follows that section 17-25-50 does not lend itself to a bright-line rule as court ruled in *Koon v. State*, 372 S.C. 531 (2007). When a Genuine ambiguity exists as a result of the Proposed application of section 17-25-50 to a Given situation, the rule of

lenity requires that the doubt be resolved in applicant's favor. See, *State v. Blackmon*, 304 S.E. 270 (1991); *United States v. Shabani*, 513 U.S. 10, 19 (1994)

This court, counsel advise or information concerning these offenses is ambiguous as it relates to applying section 17-25-50 to applicant sentences/convictions. As noted, these crimes took place on same date, time, and location, and time, date were inextricably connected as well as shared an immediate proximity. Therefore, applicant charges, as a matter of law, must be considered "One Offense" under section 17-25-50.

Counsel failure to inform applicant of collateral consequences, reflects upon counsel legal misadvice. Failure to understand, know laws applicable to case, results in a breakdown of adversarial process when counsel inadequate investigation, leads to an ill-advised guilty plea. With no knowledge or understanding of charges against him. See, *Padilla v. Kentucky*, 559 U.S. 356 (2010); *James E. Stokas*; Court finds Attorneys mistake of law that induced clients guilty plea to be ineffective assistance of counsel; 45 S.E.2d 121 (1993) As facts show by trial record, documents, as a result, the plea does not support finding applicant was aware of consequences of guilty plea. Waiving challenges to all jurisdictional, and non-jurisdictional challenges, sentences, indictments and challenges to sufficiency of evidence, defenses. Legal advice based on an inadequate investigation, during plea has resulted in determining counsel was ineffective for misadvice.

4) Unconstitutional Waiver And Interference With Probable Cause Determination:

Applicant contends that he was denied counsel at a critical stage of adversarial proceedings by (1) State indictment unconstitutionally waived hearing; (2) created ineffective assistance of counsel through either counsel, State either expressed or implied waiver. Either verbally expressed by applicant at hearing, or signed waiver of such rights. *Johnson v. Zerbst*, 304 U.S. 458 (1938) This analysis begins with an analysis of the "critical stage" doctrine established in *Crane v. United States*, 466 U.S. 648 (1984) ; *Mitchell v. Mason*, 325 F.3d at 137
Groves v. Padula, 713 F. Supp. 2d at 618-20.

Common law teaches that the Sixth Amendment views "critical stages" of a defendant's Pretrial and trial differently from other Parts. Critical stage doctrine was established in *Hamilton v. Alabama*, 368 U.S. 52 (1961) in its landmark decision. Court unanimously reversed Alabama Supreme Court's denial of a criminal defendant's writ of error coram nobis in a capital case where the defendant's counsel had been absent at his arraignment.

Under Alabama law, "what happens at an arraignment may affect the whole trial. Available defenses may be as irretrievably lost, if not then and there asserted, as they are when an accused represented by counsel waives a right for strategic purposes" *Hamilton*, id. at 53

In *Coleman v. Alabama*, 399 U.S. 1 (1970), court held that Alabama Pretrial hearing was a critical stage where the Proceeding was not required by Alabama law but was instead held at the discretion of the Prosecutor and where the "Sole Purposes of the Preliminary hearing are to determine whether there is sufficient evidence against the accused to warrant Presenting his case to Grand Jury and, if so, to fix bail if the offense is bailable." *Coleman*, id. at 3

A critical stage is "a Step of criminal Proceeding ... that holds significant consequences for the accused" See, *Bell v. Core*, 535 U.S. 685 (2002) Quoting, *United States v. Cronk*, id. at 659.

Determining whether a type of Proceeding or event is a critical stage, courts look at whether that Particular stage has the "Potential for substantial Prejudice to a defendant's rights. *Wade*, id. Also helpful in this examination, is whether defendant required aid in coping with legal Problems or assistance in meeting his adversary. See, *United States v. Ash*, 413 U.S. 306 (1973) Quoted in; *Patterson v. Illinois*, 487 U.S. 285 (1988)

Chief Justice Rehnquist, writing for Bell majority refreshed and explained the differences between the *Cronk*, *Strickland* frameworks. *Cronk* the Bell court said, was meant to cover those cases in which Prejudice was to be assumed. *Strickland* the court said, would address cases in which Prejudice needed to be shown. *Bell*, id. at 695.

Appellant's case is of exceptional importance, as it addresses novel questions of law as: (1) Applying critical stage doctrine under *Hill v. Lockhart*, *For Guilty Pleas*; (2) Resolving conflict whether Preliminary hearing is critical stage; (3) Unconstitutionality of law Permitting state to waive defendant right to Preliminary hearing upon indictment;

However, absent from Cronie Problem is the courts language on what would constitute as an absence of counsel during critical stage (1) Counsel own acts or omissions, (2) State Courts or Prosecution Cronie, id at .

All Parties concede, upon timely request the defendant is entitled to a Preliminary hearing, *inter alia*, after making timely request for Preliminary hearing, counsel was appointed. In *White v. Maryland*, 393 U.S. 59 (1963) another capital case, the Supreme Court, Per curiam, applied its *Hamilton* ruling to a Pretrial Procedure that functioned similarly to an arraignment. Although the *White* court, did not offer an explicit definition of a "critical stage" it declined to follow the Maryland appellate courts ruling that *Hamilton* had functionally defined a "critical stage" as one "where rights are preserved or lost. *White*, id, at 60.

Applicant concedes that unlike *Hamilton*, where counsel was absent from Proceedings, or *White* who was not provided counsel. At time this request was pending for Preliminary hearing, and at time State actions revoked this right. Applicant was aided by counsel, thus, question should be broadly examined. Whether executive, judicial branches as herein, sanctioning of Prosecutorial disregard for rights invoked upon request for Preliminary hearing in State court precedents. See, *State v. Shuler*, 394 S.C. 404 (01) Our State appellate courts in *State v. Shuler*, 397 S.C. 495 (2003) *Shuler*, *Supra*, addressed the critical stage question by examining details of case and without addressing whether defendants were prejudiced under *Cronie*, *Coleman*. State interference with "critical stage" when circumventing this right through indictment; repudiated applicant timely request invoking his right under 4th amendment to a Probable cause determination. Hearings under South Carolina Code Ann. Sec. 17-23-160 (*Cum. Supp. 16*) have been deemed, to encompass such rights as legality of seizure, confrontation, counsel, and fair Process.

Furthermore, when State decided to revoke this right, State also revoked applicant right to counsel at a critical stage. Noting so, counsel was prevented through examination and cross-examination weaknesses in State case, develop impeachment evidence for trial, discover more effectively State case to develop defenses, *Coleman*, id at 9.

Similarly, *Coleman* court analysis should be applied herein. Despite factual differences, the Pretrial hearing in *Coleman*, and herein, is a critical stage in South Carolina where provided by law. State

Judicially sanctioned Powers of Prosecution, to deny accused Prelim hearing when State reaches right to challenge seizure of his Person, before detached neutral magistrate.

Chief Justice Beatty Court, as well as Prior Chief Justices Zinner, Tol. Courts have not been called upon to address *Gerstein v. Pugh*, 420 U.S. 103 (1975); *Riverside v. McLaughlin*, 500 U.S. 446 (1991) and its application to arrest warrant Statutory Provisions, or Preliminary hearing Statutes. The Riverside Court, addressed Prelim detainees constitutional rights to a Prompt Probable cause determination. Riverside majority applied *Gerstein* ruling, and doing so took occasion to address a question left unanswered in *Gerstein*.

Gerstein as acknowledged by Riverside never said what it meant by "Prompt Probable Cause Determination" but allowed State Courts to develop its hearing in accordance with its own Rules, laws in light of that decision. Riverside said a "Prompt Probable Cause Determination" must be conducted within 48 hours after arrest. Like *Gerstein* the Riverside Court stated "States are free To Adopt Rules, laws" in accordance with ruling. Judging tone of this decision, it appears Court never states 48 hour rule in Stone and as is the occasion of Court. As Guidance, to ensure compliance with Riverside constitutional requirement of affording defendants Probable Cause determinations without delay.

This decision can also be said to have addressed, constitutionality of Riverside delays in Providing Probable Cause hearings. Holding Riverside to honor Pre-trial detainee rights, to not be held illegally by its failing to Provide a "Prompt" determination. Similarly, the court established a three (3) Prong test for defendants, Courts, to use when State delays to Provide *Gerstein* hearings as further Guidance in ruling on defendants challenges to violating *Gerstein*, Riverside Rule.

Despite factual differences of Riverside and case at bar, (i.e. Civil and Criminal) any notion that because Riverside was civil. Ignores the critical inquiry of a Pre-trial detainees right not State manipulate Process, by failure to Provide hearing or delay in doing so. Conversely, Riverside was held liable for violating McLaughlin 4th amendment rights, inter alia, McLaughlin as applicant was a Pre-trial detainee. Prompts Court to recognize, applicant until convicted whose liberty was restricted could not be deprived of his liberty immediately by State or its agents. Thus, Supreme Court Stone Decis has used Criminal laws in civil cases involving Pre-trial detainees. Rights as herein as

State deers. Gestein did not involve Pre-trial detainee rights to a "Prompt Probable Cause determination" and for this reason court never reached that conclusion. However, whatever reasons advanced concerning Riverside applicability herein, it is evident Riverside opinion is a Proprietary rule of Gestein and clearly constitutes as "Clearly Established Law"

Court is asked, to examine Riverside 3 PRODUCE regarding Prosecutions Failure to comply with request. Applicant concedes, the issue is not about delay in providing hearing. But the unconstitutional actions of Prosecutors, revoking rights which attach at Preliminary hearings, and State court Precedents granting such Powers. Doing so violates Separation of Powers doctrine, Prosecutors now become an arm of Judicial branch and under Separation of Powers such authority renders law unconstitutional.

Finally, the Sixth Circuit in *King v. Bobb*, 433 F.3d 483 (6th Cir. 2007) have held that Guilty Plea negotiations, hearings and sentencing are all critical stages. Applicant counsel made no objections to Prosecutions waiver of applicant rights to a Preliminary hearing, which amounted to applicant being denied counsel at critical stage, without counsel at Guilty Plea. See, *Sheely v. Wheaton*, 525 F.2d 713 (1975)

Also, Prosecution likewise can not argue that since State Precedents permit such authority counsel could not be ineffective for not doing so. Applicant invokes the constitutional doctrine, as recognized in *Giffin v. Illinois* 351 U.S. 12 (1956); *Anderson v. Wornowright*, 372 U.S. 335 (1963). The court determined in these two cases, that Failure to provide counsel to indigent defendants at trial and on appeal negated Possibility of a fair adversarial process.

Thus, the Procedure (Preliminary hearing) which was denied by Prosecution and challenged as unconstitutional infected every part of adversarial Proceedings connected to it with evident danger of an involuntary Guilty Plea. See, *Boikin v. Alabama*, _____. This Procedure was an obvious and fundamental denial of fairness in the Process leading to Guilty Plea.

At this juncture, when Prosecution assumed role of Judicial and waived all rights attaching upon request for Preliminary hearing, and subsequently thereafter, waiving rights that held significant consequences for Applicant. *Crane, id.*, *Hamilton, id.* 53. A hearing was to be convened for sole Purpose of determining, whether Applicant waived such right knowingly, voluntarily, and intelligently.

These rights challenged as being unconstitutionally revoked by Prosecution, has never according to applicant research been left to Judiciary branch in waiving constitutional rights such as, Preliminary hearing, trial by Jury, Grand Jury, Counsel. The United States Supreme Court and State Equal Precedents, all have consistently held that defendant upon being properly advised by counsel concerning waiving such rights for Strategic Purposes, Hamilton, id at 53, shall do so.

Any rule allowing such Practices, runs afoul of basic Principles of Fairness, integrity our system of Justice is based on. As in case at bar, for Purposes of Preliminary hearing as alleged. Our courts have unconstitutionally rendered statute unconstitutional, in allowing Prosecution dual roles under Sec 22-5-320 to waive rights of defendants; moreover, even if statutory language as promulgated by legislature does so, will not remove or diminish application of constitutional doctrine, to examine constitutionality of Prosecution authority to waive accused rights. As a final note, even if counsel did so, such actions would amount to absence of counsel without advising applicant, and or, obtaining waiver in writing. No such showing can be made, by Prosecution or counsel

5) Armed Robbery Parole Eligibility:

Exhibit A

ARREST WARRANT

2016A3221100057

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA

THE STATE

against

BROOKS, EMONTE ANTONIO

Address: TICKLE WEED RDSWANSEA SC 29180Phone: 000-000-0000 SSN:

Sex: M Race: B Height: 508 Weight: 200

DL State: SC DL#: DOB: /1997 Agency ORI #: SC0320500

Prosecuting Agency: WCPD

Prosecuting Officer: CHRISTOPHER J MORRIS

Offense: ATTEMPTED ARMED ROBBERY -

Offense Code: 26

Code/Ordinance Sec. 16-11-330 (B)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☒ Municipality of

WEST COLUMBIA - The Accused -

is to be arrested and brought before me to be dealt with according to law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant Brooks, Emonte Antonioon 2-5-16

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

KENNETH W. EBENER

200 N 12TH STREET

WEST COLUMBIA SC 29169

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

ORIGINAL

Personally appeared before me the affiant MORRIS, CHRISTOPHER J who
being duly sworn deposes and says that defendant BROOKS, EMONTE ANTONIOdid within this county and state on 01/27/2016 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☒ Municipality of WEST COLUMBIA)

in the following particulars:

DESCRIPTION OF OFFENSE:

ATTEMPTED ARMED ROBBERY - 16-11-330 (B)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:
IN THAT ON OR ABOUT JANUARY 27, 2016 WHILE AT LEAPHART STREET IN THE CITY OF WEST COLUMBIA, COUNTY AND STATE AFORESAID, ONE EMONTE ANTONIO BROOKS DID DISCHARGE A FIREARM INTO A DWELLING WHILE KICKING THE VICTIM'S DOOR IN AN ATTEMPT TO STEAL MONEY AND OTHER ITEMS FROM THE VICTIM; ALL OF WHICH CONSTITUTES THE CRIME OF ATTEMPT ARMED ROBBERY AND IS IN VIOLATION OF THE SOUTH CAROLINA CODE OF LAWS OF 1976, AS AMENDED. THE FORGOING IS BASED ON AN INVESTIGATION BY THE WEST COLUMBIA POLICE DEPARTMENT.

CASE #1602147

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

WEST COLUMBIA

Affiant's Address 200 N 12TH STWEST COLUMBIA SC 29169Affiant's Telephone 803-000-0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 01/27/2016 defendant BROOKS, EMONTE ANTONIO

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of WEST COLUMBIA as set forth below:

DESCRIPTION OF OFFENSE:

ATTEMPTED ARMED ROBBERY - 16-11-330 (B)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 2/5/16

Signature of Issuing Judge

(L.S.)

Judge Code: 540Judge's Address 200 N 12TH STREETWEST COLUMBIA SC 29169Judge's Telephone 803-794-0721Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

ARREST WARRANT

2016A3221100053

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA

THE STATE

against

BROOKS, EMONTE ANTONIO

Address: TICKLE WEED RD
SWANSEA SC 29160Phone: 000-000-0000 SSN: Sex: M Race: B Height: 508 Weight: 200DL State: SC DL#: DOB: Agency ORI #: SC0320500Prosecuting Agency: WCPDProsecuting Officer: CHRISTOPHER J MORRISOffense: ATTEMPTED MURDER - 16-3-29Offense Code: 3410Code/Ordinance Sec. 16-3-29

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☒ Municipality of
WEST COLUMBIAThe Accused
is to be arrested and brought before me to be
dealt with according to law._____
(L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant _____

on _____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

KENNETH W. EBENER

200 N 12TH STREET

WEST COLUMBIA SC 29169

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA

AFFIDAVIT

Form Approved by
U.S. Attorney General
April 24, 2003
SCCA 618Personally appeared before me the affiant MORRIS, CHRISTOPHER J who
being duly sworn deposes and says that defendant BROOKS, EMONTE ANTONIO
did within this county and state on 01/27/2016 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☒ Municipality of WEST COLUMBIA)
in the following particulars:

DESCRIPTION OF OFFENSE:

ATTEMPTED MURDER - 16-3-29

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
IN THAT ON OR ABOUT JANUARY 27, 2016 WHILE AT LEAPHART STREET IN THE CITY OF WEST COLUMBIA,
COUNTY AND STATE AFORESAID, ONE EMONTE ANTONIO BROOKS DID WITH MALICE AFORETHOUGHT AND
WITH THE INTENT TO KILL, SHOOT INTO THE VICTIM, DORIS SHOTTES RESIDENCE WAS OCCUPIED BY THE VICTIM;
ALL OF WHICH CONSTITUTES THE CRIME OF ATTEMPTED MURDER AND IS IN VIOLATION OF THE SOUTH
CAROLINA CODE OF LAWS OF 1976, AS AMENDED. THE FOREGOING IS BASED ON AN INVESTIGATION THE
WEST COLUMBIA POLICE DEPARTMENT.

CASE #1602147

Signature of Affiant _____

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIAAffiant's Address 200 N 12TH ST
WEST COLUMBIA SC 29169
Affiant's Telephone 803-000-0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 01/27/2016 defendant BROOKS, EMONTE ANTONIOdid violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of WEST COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE:

ATTEMPTED MURDER - 16-3-29

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 2-1-16 _____ (L.S.)

Signature of Issuing Judge

Judge Code: 540Judge's Address 200 N 12TH STREET
WEST COLUMBIA SC 29169Judge's Telephone 803-794-0721Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

LE Report: 2-1

ARREST WARRANT

2016A3221100058

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA

THE STATE

against

BROOKS, EMONTE ANTONIO

Address: TICKLE WEED RD

SWANSEA SC 29160

Phone: 000-000-0000 SSN: Sex: M Race: B Height: 508 Weight: 200DL State: SC DL#: DOB: Agency ORI #: SC0320500Prosecuting Agency: WCPDProsecuting Officer: CHRISTOPHER J MORRISOffense: DISCHARGING A FIREARM INTO AOffense Code: 62Code/Ordinance Sec. 16-23-440 (A)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☒ Municipality of
WEST COLUMBIA
The Accused
is to be arrested and brought before me to be
dealt with according to law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

KENNETH W. EBENER

200 N 12TH STREET

WEST COLUMBIA SC 29169

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA-618

Personally appeared before me the affiant MORRIS, CHRISTOPHER J who
being duly sworn deposes and says that defendant BROOKS, EMONTE ANTONIO
did within this county and state on 01/27/2016 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of WEST COLUMBIA)
in the following particulars:

DESCRIPTION OF OFFENSE:

DISCHARGING A FIREARM INTO A DWELLING - 16-23-440 (A)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
IN THAT ON OR ABOUT JANUARY 27, 2016 WHILE AT LEAPHART STREET IN THE CITY OF WEST COLUMBIA,
COUNTY AND STATE AFORESAID, ONE EMONTE ANTONIO BROOKS DID KNOWINGLY, INTENTIONALLY AND WITH
MALICE AFORETHOUGHT DISCHARGE A FIREARM INTO A DWELLING THAT HE KNEW TO BE OCCUPIED AT THE
TIME; ALL OF WHICH CONSTITUTES THE CRIME OF DISCHARGING A FIREARM INTO A DWELLING AND IS IN
VIOLATION OF THE SOUTH CAROLINA CODE OF LAWS OF 1976, AS AMENDED. THE FOREGOING IS BASED ON AN
INVESTIGATION BY THE WEST COLUMBIA POLICE DEPARTMENT.

CASE #1602147

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA
Affiant's Address 200 N 12TH STWEST COLUMBIA SC 29169Affiant's Telephone 803-000-0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 01/27/2016 defendant BROOKS, EMONTE ANTONIO
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of WEST COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE:

DISCHARGING A FIREARM INTO A DWELLING - 16-23-440 (A)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 01-27-2016Judge's Address 200 N 12TH STREETWEST COLUMBIA SC 29169

Signature of Issuing Judge

Judge's Telephone 803-794-0721Judge Code: 540

Issuing Court:

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

LE Report: 2-16

ARREST WARRANT

2016A3221100059

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 WEST COLUMBIA

 THE STATE
 against

BROOKS, EMONTE ANTONIO

 Address: TICKLE WEED RD
SWANSEA SC 29160
Phone: 000-000-0000 SSN: Sex: M Race: B Height: 508 Weight: 200DL State: SC DL#: DOB: Agency ORI #: SC0320500Prosecuting Agency: WCPDProsecuting Officer: CHRISTOPHER J MORRISOffense: POSS FIREARM / KNIFE DURINGOffense Code: 549Code/Ordinance Sec. 16-23-490

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☒ Municipality of
 WEST COLUMBIA

 The Accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

 A copy of this arrest warrant was delivered to
 defendant
 on
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

KENNETH W. EBENER

200 N 12TH STREET

WEST COLUMBIA SC 29169

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 WEST COLUMBIA

AFFIDAVIT

 Form Approved by
 S.C. Attorney General
 April 21, 2003
 SCCA 018

 Personally appeared before me the affiant MORRIS, CHRISTOPHER J who
 being duly sworn deposes and says that defendant BROOKS, EMONTE ANTONIO
 did within this county and state on 01/27/2016 violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of WEST COLUMBIA)
 in the following particulars:

DESCRIPTION OF OFFENSE:

POSS FIREARM / KNIFE DURING VIOLENT CRIME - 16-23-490

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:
 IN THAT ON OR ABOUT JANUARY 27, 2016 WHILE AT LEAPHART STREET IN THE CITY OF WEST COLUMBIA,
 COUNTY AND STATE AFORESAID, ONE EMONTE ANTONIO BROOKS DID HAVE IN HIS POSSESSION A FIREARM
 DURING THE COMMISSION OF AN ATTEMPTED MURDER, A VIOLENT CRIME; ALL OF WHICH CONSTITUTES THE
 CRIME OF POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME AND IS IN VIOLATION
 OF THE SOUTH CAROLINA CODE OF LAWS OF 1976, AS AMENDED. THE FORGOING IS BASED ON AN
 INVESTIGATION BY THE WEST COLUMBIA POLICE DEPARTMENT.

CASE #1602147

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 WEST COLUMBIA
Affiant's Address 200 N 12TH STWEST COLUMBIA SC 29169Affiant's Telephone 803-000-0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 01/27/2016 defendant BROOKS, EMONTE ANTONIO
 did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of WEST COLUMBIA) as set forth below;

DESCRIPTION OF OFFENSE:

POSS FIREARM / KNIFE DURING VIOLENT CRIME - 16-23-490

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
 defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
 the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

 on
 (L.S.)
 Signature of Issuing Judge
Judge Code: 540Judge's Address 200 N 12TH STREETWEST COLUMBIA SC 29169Judge's Telephone 803-794-0721
 Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

ARREST WARRANT

2016A3221100060

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA

 THE STATE
against

BROOKS, EMONTE ANTONIO

 Address: TICKLE WEED RD
SWANSEA SC 29160

Phone: 000-000-0000 SSN: [REDACTED]

Sex: M Race: B Height: 508 Weight: 200

DL State: SC DL#: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0320500

Prosecuting Agency: WCPD

Prosecuting Officer: CHRISTOPHER J MORRIS

Offense: CRIMINAL CONSPIRACY - 16-17-410

Offense Code: 4B

Code/Ordinance Sec. 16-17-410

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☒ Municipality of
WEST COLUMBIA

 The Accused
is - to - be - arrested - and brought before me to be
dealt with according to law.

Signature of Judge (L.S.)

Date:

RETURN

 A copy of this arrest warrant was delivered to
defendant

on

Signature of Constable/Law Enforcement Officer:

RETURN WARRANT TO:

KENNETH W. EBENER

200 N 12TH STREET

WEST COLUMBIA SC 29169

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA

AFFIDAVIT

 Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

 Personally appeared before me the affiant MORRIS, CHRISTOPHER J who
being duly sworn deposes and says that defendant BROOKS, EMONTE ANTONIO
did within this county and state on 01/27/2016 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of WEST COLUMBIA)
in the following particulars:

DESCRIPTION OF OFFENSE:

CRIMINAL CONSPIRACY - 16-17-410

 I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
IN THAT ON OR ABOUT JANUARY 27, 2016 WHILE AT LEAPHART STREET IN THE CITY OF WEST COLUMBIA,
COUNTY AND STATE AFORESAID, ONE EMONTE ANTONIO BROOKS DID PLAN, SCHEME, AND CONSPIRE WITH
HIS CODEFENDANTS, LILREG SHAKQUAN DARBY AND DANIEL GRAVES, TO COMMIT THE CRIME OF ARMED
ROBBERY AGAINST THE VICTIM; ALL OF WHICH CONSTITUTES THE CRIME OF CRIMINAL CONSPIRACY AND IS
IN VIOLATION OF THE SOUTH CAROLINA CODE OF LAWS OF 1976, AS AMENDED. THE FOREGOING IS BASED ON AN
INVESTIGATION BY THE WEST COLUMBIA POLICE DEPARTMENT.

CASE #1602147

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA
Affiant's Address 200 N 12TH STWEST COLUMBIA SC 29169Affiant's Telephone 803-000-0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
on 01/27/2016 defendant BROOKS, EMONTE ANTONIO
did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of WEST COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE:

CRIMINAL CONSPIRACY - 16-17-410

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

 on [Signature] (L.S.)

Signature of Issuing Judge

Judge Code: 540

Judge's Address 200 N 12TH STREETWEST COLUMBIA SC 29169Judge's Telephone 803-784-0721
 Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

LE Report: 2-10

ARREST WARRANT

2016A3221100056

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA

THE STATE

against

BROOKS, EMONTE ANTONIO

Address: WEED RD
SWANSEA SC 29160

Phone: 000-000-0000 SSN: [REDACTED]

Sex: M Race: B Height: 508 Weight: 200

DL State: SC DL#: [REDACTED]

DOB: [REDACTED] Agency ORI #: SC0320500

Prosecuting Agency: WCPD

Prosecuting Officer: CHRISTOPHER J MORRIS

Offense: ATTEMPTED MURDER - 16-3-29

Offense Code: 3410

Code/Ordinance Sec. 16-3-29

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☒ Municipality of
WEST COLUMBIA
The Accused
is to be arrested and brought before me to be
dealt with according to law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

KENNETH W. EBENER

200 N 12TH STREET

WEST COLUMBIA SC 29169

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2009
SCCA 618

Personally appeared before me the affiant MORRIS, CHRISTOPHER J who
being duly sworn deposes and says that defendant BROOKS, EMONTE ANTONIO
did within this county and state on 01/27/2016 violate the criminal laws of the

State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of WEST COLUMBIA)
in the following particulars:

DESCRIPTION OF OFFENSE:

ATTEMPTED MURDER - 16-3-29

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
IN THAT ON OR ABOUT JANUARY 27, 2016 WHILE AT LEAPHART STREET IN THE CITY OF WEST COLUMBIA,
COUNTY AND STATE AFORESAID, ONE EMONTE ANTONIO BROOKS DID WITH MALICE AFORETHOUGHT AND
WITH THE INTENT TO KILL, SHOOT INTO THE VICTIM, DORIS SHOTTES RESIDENCE AS HE ATTEMPTING TO COMMIT
A ROBBERY AND WHILE THE RESIDENCE WAS OCCUPIED BY THE OTHER VICTIM, JUSTON ERVIN, ALL OF
WHICH CONSTITUTES THE CRIME OF ATTEMPTED MURDER AND IS IN VIOLATION OF THE SOUTH CAROLINA
CODE OF LAWS OF 1976, AS AMENDED, THE FOREGOING IS BASED ON AN INVESTIGATION BY THE WEST
COLUMBIA POLICE DEPARTMENT.

CASE #1602147

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA

Affiant's Address 200 N 12TH ST
WEST COLUMBIA SC 29169
Affiant's Telephone 803-000-0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 01/27/2016 defendant BROOKS, EMONTE ANTONIO

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of WEST COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE:

ATTEMPTED MURDER - 16-3-29

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

Signature of Issuing Judge (L.S.)

Judge Code: 540

Judge's Address 200 N 12TH STREET
WEST COLUMBIA SC 29169

Judge's Telephone 803-794-0721

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

LE Report: 2-16

ARREST WARRANT

2016A3221100055

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA

THE STATE

against

BROOKS, EMONTE ANTONIO

Address: TICKLE WEED RDSWANSEA SC 29169Phone: 000-000-0000 SSN: Sex: M Race: B Height: 508 Weight: 200DL State: SC DL#: DOB: Agency ORI #: SC0320500Prosecuting Agency: WCPDProsecuting Officer: CHRISTOPHER J MORRISOffense: ATTEMPTED MURDER - 16-3-29Offense Code: 3410Code/Ordinance Sec. 16-3-29

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☒ Municipality of
WEST COLUMBIA
The Accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant
on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

KENNETH W. EBENER

200 N 12TH STREET

WEST COLUMBIA SC 29169

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 018Personally appeared before me the affiant MORRIS, CHRISTOPHER J who
being duly sworn deposes and says that defendant BROOKS, EMONTE ANTONIO
did within this county and state on 01/27/2016 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☒ Municipality of WEST COLUMBIA)
in the following particulars:

DESCRIPTION OF OFFENSE:

ATTEMPTED MURDER - 16-3-29

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
IN THAT ON OR ABOUT JANUARY 27, 2016 WHILE AT LEAPHART STREET IN THE CITY OF WEST COLUMBIA,
COUNTY AND STATE AFORESAID, ONE EMONTE ANTONIO BROOKS DID WITH MALICE AFORETHOUGHT AND
WITH THE INTENT TO KILL, SHOOT INTO THE VICTIM, DORIS SHOTTES RESIDENCE AS HE ATTEMPTING TO COMMIT
A ROBBERY AND WHILE THE RESIDENCE WAS OCCUPIED BY THE OTHER VICTIM, RHETTE SHOTTE; ALL OF
WHICH CONSTITUTES THE CRIME OF ATTEMPTED MURDER AND IS IN VIOLATION OF THE SOUTH CAROLINA
CODE OF LAWS OF 1976, AS AMENDED. THE FOREGOING IS BASED ON AN INVESTIGATION BY THE WEST
COLUMBIA POLICE DEPARTMENT.

CASE #1602147

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA
Affiant's Address 200 N 12TH STWEST COLUMBIA SC 29169Affiant's Telephone 803-000-0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 01/27/2016 defendant BROOKS, EMONTE ANTONIO
did violate the criminal laws of the State of South Carolina (or ordinance of☐ County/ ☒ Municipality of WEST COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE:

ATTEMPTED MURDER - 16-3-29

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

 (L.S.)
Signature of Issuing Judge
Judge Code: 540Judge's Address 200 N 12TH STREETWEST COLUMBIA SC 29169Judge's Telephone 803-704-0721Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

LE Report: 2-10

ARREST WARRANT

2016A3221100054

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA

THE STATE

against

BROOKS, EMONTE ANTONIO

Address: TICKLE WEED RD
SWANSEA SC 29160Phone: 000-000-0000 SSN: Sex: M Race: B Height: 508 Weight: 200DL State: SC DL#: DOB: Agency ORI #: SC0320500Prosecuting Agency: WCPDProsecuting Officer: CHRISTOPHER J MORRISOffense: ATTEMPTED MURDER - 16-3-29Offense Code: 3410Code/Ordinance Sec. 16-3-29This warrant is **CERTIFIED FOR SERVICE** in the
☐ County/ ☒ Municipality of
WEST COLUMBIA
The Accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant _____

on _____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

KENNETH W. EBENER

200 N 12TH STREET

WEST COLUMBIA SC 29169

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA

AFFIDAVIT

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA #18

Personally appeared before me the affiant MORRIS, CHRISTOPHER J who
being duly sworn deposes and says that defendant BROOKS, EMONTE ANTONIO
did within this county and state on 01/27/2016 violate the criminal laws of the
State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of WEST COLUMBIA)
in the following particulars:

DESCRIPTION OF OFFENSE:

ATTEMPTED MURDER - 16-3-29

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:
IN THAT ON OR ABOUT JANUARY 27, 2016 WHILE AT LEAPHART STREET IN THE CITY OF WEST COLUMBIA,
COUNTY AND STATE AFORESAID, ONE EMONTE ANTONIO BROOKS DID WITH MALICE AFORETHOUGHT AND
WITH THE INTENT TO KILL, SHOOT INTO THE VICTIM, DORIS SHOTTES RESIDENCE AS HE ATTEMPTING TO COMMIT
A ROBBERY AND WHILE THE RESIDENCE WAS OCCUPIED BY THE OTHER VICTIM, DALLAS LYLES; ALL OF
WHICH CONSTITUTES THE CRIME OF ATTEMPTED MURDER AND IS IN VIOLATION OF THE SOUTH CAROLINA
CODE OF LAWS OF 1876, AS AMENDED. THE FOREGOING IS BASED ON AN INVESTIGATION BY THE WEST
COLUMBIA POLICE DEPARTMENT.

CASE #1602147

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
WEST COLUMBIA

Affiant's Address 200 N 12TH ST
WEST COLUMBIA SC 29169
Affiant's Telephone 803-000-0000

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 01/27/2016 defendant BROOKS, EMONTE ANTONIO
did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County/ ☒ Municipality of WEST COLUMBIA) as set forth below:

DESCRIPTION OF OFFENSE:

ATTEMPTED MURDER - 16-3-29

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 01/27/2016 (L.S.)
Signature of Issuing Judge

Judge Code: 540

Judge's Address 200 N 12TH STREET
WEST COLUMBIA SC 29169

Judge's Telephone 803-794-0721

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

LE Report: 2-11

Exhibit B

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

INDICTMENT FOR
Attempted Armed Robbery

§ 16-11-0330(B)

At a Court of General Sessions, convened on August 2016, the Grand Jurors of Lexington County present upon their oath:

That **Emonte Antonio Brooks**, along with codefendants, did in Lexington County, South Carolina on or about January 27, 2016, knowingly and willingly either by action or words, did attempt to commit while with a deadly weapon or having possession of an object which the victim reasonably believed to be a deadly weapon and alleging by actions or words that he was armed, to wit: handgun and did attempt to feloniously take from the person or presence of Doris Shotte and/or Justin Erving by means of force, threats or intimidation goods or monies being described as follows: money or personal items, with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (B) of the South Carolina Code of Laws, 1976, as amended.

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



ASSISTANT SOLICITOR

PROSECUTOR'S SUMMARY REPORT**11TH JUDICIAL CIRCUIT**

West Columbia Police Department
P. O. Box 4044
West Columbia, SC 29171

Date: 01/27/2016

Case #: 1602147

DEFENDANT: Daniel A. Graves

RAP SHEET: Yes ARREST DATE: 01/28/2016

WARRANT NO(S): 2016A322110037-44

CHARGE(S): Attempted Murder (x4), Attempted armed robbery, possession of a knife/ firearm during a violent crime, criminal conspiracy, discharging a firearm into a dwelling

OFFICER: Inv. C. Morris CONFESSION: Yes PHYSICAL FORCE: No

EVIDENCE/PROPERTY RECOVERED: Incident Report, written statements, cd(s) containing photographs, firearm, projectile, photo lineups, gun lineups, cell phone, cd containing phone conversations, cd containing video surveillance, misc. documentation

SUMMARY OF FACTS:

On January 27, 2016, West Columbia Police responded to [REDACTED] Leaphart Street in West Columbia, SC in reference to a shooting. Officers made contact with four victims at the residence, Mrs. Doris Shotte, Mr. Rhett Shotte, Mr. Dallas Lyles and Mr. Juston Erving who were all present and inside the residence when the defendant, Mr. Daniel Graves and his co-defendants, Mr. Lilreg Darby and Mr. Emonte Brooks fired a handgun into the residence. On January 28, 2016, Mrs. Shotte gave a written statement and identified Mr. Graves as "DJ" who resides at [REDACTED] Shull Street in West Columbia, SC. Investigators made contact with Mr. Graves at his residence at which time he voluntarily came to the West Columbia Police Department for an interview. Mr. Graves waived his Miranda Rights and gave a confession to the facts of this case. During the interview Mr. Graves identified his co-defendants in photo lineups and stated they had planned to rob Mr. Erving for money and other items in the residence. During the robbery Mr. Graves stated that Mr. Brooks had fired a handgun into the residence and attempted to kick the front door open. Mr. Graves was subsequently arrested and transported to LCDC; later arrest warrants were issued for Mr. Brooks and Mr. Darby. On February 2, 2016, Mr. Darby was arrested and transported to West Columbia Police Department where he waived his Miranda Rights and gave a written confession to the facts of this case. Mr. Darby corroborated Mr. Graves statement and took investigators to the firearm that was used. Mr. Darby was transported to LCDC after the interview. On February 5, 2016, Mr. Brooks was arrested and transported to West Columbia Police Department for an interview; however he refused to talk to investigators about the incident and was transported to LCDC.

Exhibit D

AGENCY I.D.
SC0320500

SUPPLEMENTARY REPORT

CASE NUMBER

1602147

NCIC

INCL. ENCL.

☐ ORIGINAL
REPORT
☐ MODIFIES
ORIGINAL☒ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 OF 1 PAGES

SGT. SEBOE REQUESTED THAT I RESPOND TO THE INCIDENT LOCATION IN REFERENCE TO SHOTS FIRED INTO A DWELLING. I ARRIVED ON SCENE AND TOOK PHOTOGRAPHS LEADING UP TO THE RESIDENCE. I LOCATED NO DISTINCTIVE FOOTPRINTS LEADING UP TO OR AROUND THE RESIDENCE. I LOCATED A HOLE IN THE SIDING OUTSIDE OF THE RESIDENCE THAT WAS ESTABLISHED TO HAVE LED INTO AN INTERNAL POST INSIDE THE WALL OF THE RESIDENCE. THE ANGLE WAS SUCH THAT IT WOULD HAVE COME FROM SOMEONE STANDING ON THE RIGHT SIDE OF HER PROPERTY. I ASKED FOR PERMISSION TO DIG INTO THE SIDING OUTSIDE TO ATTEMPT TO RETRIEVE ANY POSSIBLE PROJECTILE WHICH SHE ALLOWED. I WAS UNSUCCESSFUL. WHEN I SHOWED HER WHAT WOULD HAVE TO BE REMOVED TO COLLECT ANY POSSIBLE PROJECTILE SHE WOULD NOT ALLOW US TO ALTER THE RESIDENCE ANY MORE. I DUSTED FOR PRINTS AT THE DOOR BUT FOUND NONE. I DID SEE DIRT ON THE BOTTOM OF THE DOOR THAT APPEARED TO HAVE BEEN KICKED BUT DID NOT LOCATE ANY VISIBLE FOOTPRINT. I TOOK PHOTOGRAPHS OF THIS AS WELL. BEFORE LEAVING I SEARCHED THE PERIMETER OF THE RESIDENCE FOR SHELL CASINGS ALONG WITH THE PORCH AND ALL OTHER AREAS FROM WHICH THE PROJECTILE WOULD HAVE COME. I FOUND NO CASINGS.

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☒ NO		SUBJECT LOCATED ☐ YES ☒ NO		☒ ACTIVE ☐ UNFOUNDED	☐ ADM. CLOSED	☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY							
REPORTING OFFICER DEAS, M		DATE 01/27/2016		UNIT NUMBER 225	APPROVING OFFICER		DATE
				FOLLOW-UP INVESTIGATION	OFFICER ☐ YES ☒ NO		UNIT NUMBER

EXHIBIT E

AGENCY I.D.
SC0320500

SUPPLEMENTARY REPORT

CASE NUMBER

1602147

NCIC

INQ. ENTD.

☐ ORIGINAL
REPORT
☐ MODIFIED
ORIGINAL☒ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 OF 1 PAGES

ON JAN. 29TH, 2016 INV MORRIS OBTAINED A SEARCH WARRANT FOR [REDACTED] LEAPHART STREET IN ORDER TO RETRIEVE A BULLET.

I/O EXECUTED THE SEARCH WARRANT ON 01/29/16 AT 1135AM. I/O'S ARRIVED AT [REDACTED] LEAPHART STREET AND MET WITH MS DORIS SHOTTE. I/O TOOK PHOTOS OF THE BULLET HOLE THAT WAS LOCATED IN THE SIDING TO THE RIGHT OF THE FRONT DOOR ON THE FRONT PORCH. I/O'S WERE NOT ABLE TO RETRIEVE THE BULLET FROM THAT ANGLE AND WENT INSIDE INTO THE VICTIM'S BED ROOM. THE VICTIM HAD A HOLE IN THE WALL OF HER CLOSET ALREADY AND INV MORRIS WAS ABLE TO LOOK UP THAT HOLE TO SEE EXACTLY WHERE THE BULLET MAY HAVE GONE INTO A 2X4 THAT FRAMED THE VICTIM'S CLOSET. THE VICTIM PROVIDED A SKIL SAW AND THE SMALL SECTION OF 2X4 WAS CUT BY INV MORRIS AND THE BULLET WAS IN THAT SECTION. I/O TOOK PHOTOS OF THE SECTION OF 2X4 AND ALSO WHERE THE SECTION WAS CUT FROM.

NARRATIVE

ADMINISTRATIVE

SUBJECT IDENTIFIED ☐ YES ☒ NO		SUBJECT LOCATED ☐ YES ☒ NO		☐ ACTIVE ☐ UNFOUNDED		☐ ADM. CLOSED		☐ ARRESTED UNDER 18 ☐ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER			
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH: 2. ☐ NO PROSECUTION: 3. ☐ EXTRADITION DENIED: 4. ☐ VICTIM DECLINES COOPERATION: 5. ☐ JUVENILE - NO CUSTODY													
REPORTING OFFICER				DATE		UNIT NUMBER		APPROVING OFFICER				DATE	
MCCRAW, P				02/01/2016		179							
FOLLOW-UP INVESTIGATION						OFFICER ☐ YES ☒ NO							

Exhibit 7

AGENCY I.D.
SC0320500

SUPPLEMENTARY REPORT

CASE NUMBER

1602147

NCIC

INQ. ENTD.

☐ ORIGINAL
REPORT

☐ MODIFIED
ORIGINAL

☒ SUPPLEMENTAL
REPORT

☐ CASE STATUS
CHANGE

☐ ADDITIONAL
VICTIMS

☐ ADDITIONAL
OFFENDERS

☐ ADDITIONAL
STOLEN PROPERTY

☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 OF 1 PAGES

ON FEB. 1ST, 2016 I/O PROCESSED THE WOOD IN THE LAB. I/O WAS ABLE TO RETRIEVE THE BULLET OUT OF THE 2X4 BLOCK OF WOOD AND PLACED IT IN AN EVIDENCE BAG BY ITSELF.

NARRATIVE

ADMINISTRATIVE	SUBJECT IDENTIFIED		SUBJECT LOCATED		ACTIVE	ADM. CLOSED	ARRESTED UNDER 18	EX-CLEAR UNDER 18
	☐ YES	☒ NO	☐ YES	☒ NO	UNFOUNDED		ARRESTED 18 AND OVER	EX-CLEAR 18 AND OVER
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY							
	REPORTING OFFICER		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER
MCCRAW, P		02/02/2016	179					
				FOLLOW-UP OFFICER				
				INVESTIGATION		☐ YES ☒ NO		

*Exhibit 6***AFFIDAVIT FOR ARREST WARRANT**CASE NUMBER 1602147CHARGE Attempted Armed RobberyOFFENSE CODE 17-25-30 RECORD# IN THAT ON OR ABOUT January 27, 2016WHILE AT 823 Leaphart Street

IN THE CITY OF WEST COLUMBIA, COUNTY AND STATE AFORESAID, ONE

Emonte Antonio Brooks

DID discharge a firearm into a dwelling while kicking the victim's door in an attempt to steal money and
other items
marijuana from the victim

ALL OF WHICH CONSTITUTES THE CRIME OF Attempted Armed Robbery

AND IS IN VIOLATION OF THE
SOUTH CAROLINA CODE OF LAWS OF 1976 AS AMENDED. THE FOREGOING IS BASED ON AN
INVESTIGATION BY THE WEST COLUMBIA POLICE DEPT.

Inv. C. Morris
OFFICER (OR) COMPLAINANT TO SIGN WARRANT

B. Nale
SIGNATURE OF SUPERVISOR APPROVAL

2/1/16
DATE

2/1/16
DATE

Exhibit #

AFFIDAVIT FOR ARREST WARRANTCASE NUMBER 1602147CHARGE ATTEMPTED MURDEROFFENSE CODE 16-3-29 RECORD# IN THAT ON OR ABOUT January 27, 2016WHILE AT 823 Leaphart Street

IN THE CITY OF WEST COLUMBIA, COUNTY AND STATE AFORESAID, ONE

Emonte Antonio Brooks

DID with malice aforethought and with the intent to kill, shoot into the victim, Doris Shotte's residence as
he was attempting to commit a robbery against her and while the residence was occupied by the victim

ALL OF WHICH CONSTITUTES THE CRIME OF ATTEMPTED MURDER

AND IS IN VIOLATION OF THE

SOUTH CAROLINA CODE OF LAWS OF 1976 AS AMENDED. THE FOREGOING IS BASED ON AN
INVESTIGATION BY THE WEST COLUMBIA POLICE DEPT.

Inv. C. Morris
OFFICER (OR) COMPLAINANT TO SIGN WARRANT

2/1/16
DATE

B. Nale
SIGNATURE OF SUPERVISOR APPROVAL

2/1/16
DATE

Exhibit I

AFFIDAVIT FOR ARREST WARRANTCASE NUMBER 1602147CHARGE ATTEMPTED MURDEROFFENSE CODE 16-3-29 RECORD# IN THAT ON OR ABOUT January 27, 2016WHILE AT 823 Leaphart Street

IN THE CITY OF WEST COLUMBIA, COUNTY AND STATE AFORESAID, ONE

Emonte Antonio Brooks

DID with malice aforethought and with the intent to kill, shoot into the victim, Doris Shotte's residence as
he was attempting to commit a robbery against her and while the residence was occupied by the other
victim, Dallas Lyles

ALL OF WHICH CONSTITUTES THE CRIME OF ATTEMPTED MURDER

AND IS IN VIOLATION OF THE
SOUTH CAROLINA CODE OF LAWS OF 1976 AS AMENDED. THE FOREGOING IS BASED ON AN
INVESTIGATION BY THE WEST COLUMBIA POLICE DEPT.

Inv. C. Morris
OFFICER (OR) COMPLAINANT TO SIGN WARRANT

B. Vale
SIGNATURE OF SUPERVISOR APPROVAL

2/1/16
DATE

2/1/16
DATE

Exhibit 1

AFFIDAVIT FOR ARREST WARRANTCASE NUMBER 1602147CHARGE ATTEMPTED MURDEROFFENSE CODE 16-3-29 RECORD# IN THAT ON OR ABOUT January 27, 2016WHILE AT 823 Leaphart Street

IN THE CITY OF WEST COLUMBIA, COUNTY AND STATE AFORESAID, ONE

Ermonite Antonio Brooks

DID with malice aforethought and with the intent to kill, shoot into the victim, Doris Shotte's residence as
he was attempting to commit a robbery against her and while the residence was occupied by the other
victim, Juston Erving

ALL OF WHICH CONSTITUTES THE CRIME OF ATTEMPTED MURDER

AND IS IN VIOLATION OF THE

SOUTH CAROLINA CODE OF LAWS OF 1976 AS AMENDED. THE FOREGOING IS BASED ON AN
INVESTIGATION BY THE WEST COLUMBIA POLICE DEPT.

C. MORRISOFFICER (OR) COMPLAINANT TO SIGN WARRANT2/1/16DATESIGNATURE OF SUPERVISOR APPROVALDATE

Exhibit K

AFFIDAVIT FOR ARREST WARRANTCASE NUMBER 1602147CHARGE ATTEMPTED MURDEROFFENSE CODE 16-3-29 RECORD# IN THAT ON OR ABOUT January 27, 2016WHILE AT 823 Leaphart Street

IN THE CITY OF WEST COLUMBIA, COUNTY AND STATE AFORESAID, ONE

Emonte Antonio Brooks

DID with malice aforethought and with the intent to kill, shoot into the victim, Doris Shotte's residence as he was attempting to commit a robbery ~~against her~~ and while the residence was occupied by the other victim, Rhetta Shotte

ALL OF WHICH CONSTITUTES THE CRIME OF ATTEMPTED MURDER

AND IS IN VIOLATION OF THE

SOUTH CAROLINA CODE OF LAWS OF 1976 AS AMENDED. THE FOREGOING IS BASED ON AN INVESTIGATION BY THE WEST COLUMBIA POLICE DEPT.

Inv. C. Morris
OFFICER (OR) COMPLAINANT TO SIGN WARRANT

2/1/16
DATE

B. Stale
SIGNATURE OF SUPERVISOR APPROVAL

2/1/16
DATE

STATE OF SOUTH CAROLINA

County of Lexington

SEARCH WARRANT

Date 4/7/17

Officer C. Morris

S v. Brooks, Darby, Graves

Additional Disc

Exhibit L

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

SEARCH WARRANT

Form Approved by
S.C. Attorney General
Section 17-13-160
March 15, 1979

TO ANY BONDED LAW ENFORCEMENT OFFICER OF THIS STATE OR COUNTY OR OF THE MUNICIPALITY
OF West Columbia :

It appearing from the attached affidavit that there are reasonable grounds to believe that certain property subject to seizure under provisions of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises:

DESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

White Alcatel one touch cell phone. Inscribed inside the battery compartment is the following, FCC ID: 2ACCJA002,
IMEI:014247000865676.

Now, therefore, you are hereby authorized to search the subject premises for the property described below, and to seize such property if found:

DESCRIPTION OF PROPERTY

Any and all materials that will aid investigators in the continuing investigation of an Attempted Murder case. This is to
include but not limited to all call logs, text messages, any and all saved personal information contained within the phone,
archived or deleted data including but not limited to E-mails, internet history, photographs, and videos taken from, derived
from, or contained within the cellular phone and any media or data storage devices of any kind contained within the
property.

This Search Warrant shall not be valid for more than ten days from the date of issuance.

A written inventory of all property seized pursuant to this Search Warrant shall be made to

Judge

within ten days from the date of this warrant, such inventory to be signed by the officer executing this warrant, and a copy of such inventory shall be furnished to the person whose premises are searched if demand for such copy is made.

A copy of this Search Warrant shall be delivered to the person in charge of the premises searched at the time of such search if practicable, and, if not, to such person as soon thereafter as is practicable; in the event the identity of the person in charge is not known or if such person cannot be found after reasonable diligence in attempting to locate the person, a copy shall be attached to a prominent place on such premises.

SCCA/513
(3-78)

West Columbia

April 10

, S.C.

19/2017

[Signature]

Signature of Judge

(L.S.)

Incident Number: 1602147
 Offense Description: SHOOTING [REDACTED] LEAPHART ST

Chain Of Custody

Date	Tag Number	Reason	Received By	Relinquishes By
4/7/17	10999	Out to Juv. Morris	[Signature]	[Signature]
4-10-17	10999	S. Warrant to SLED	[Signature]	[Signature]
4/12/17	10999	RETURN TO MORRIS	[Signature]	[Signature]
4-12-17	10999	Return to Evidence Dropbox	Dropbox	[Signature]

Exhibit A

04/07/2017 08:11

5 of 5

STATE OF SOUTH CAROLINA

COUNTY OF Lexington

AFFIDAVIT

Personally appeared before me, one Inv. Chris Morris
who, being duly sworn, says that there is probable cause to believe that certain property subject to seizure under provisions
of Section 17-13-140, 1976 Code of Laws of South Carolina, as amended, is located on the following premises in this County:

DESCRIPTION OF PROPERTY SOUGHT

See Attachment ADESCRIPTION OF PREMISES (PERSON, PLACE OR THING)
TO BE SEARCHED

White Alcatel one touch cell phone. Inscribed inside the battery compartment is the following, FCC ID: 2ACCJA002,
IMEI:014247000865676.

REASON FOR AFFIANT'S BELIEF THAT THE
PROPERTY SOUGHT IS ON THE SUBJECT PREMISESSee Attachment B

Sworn to and Subscribed before me

This 16th day of April, 2017
[Signature] (L.S.)
Signature of Judge

Affiant

Address 200 N. 12th StreetWest Columbia, SC 29169Phone 803-936-6273

Attachment A

Any and all materials that will aid investigators in the continuing investigation of an Attempted Murder case. This is to include but not limited to all call logs, text messages, any and all saved personal information contained within the phone, archived or deleted data including but not limited to E-mails, internet history, photographs, and videos taken from, derived from, or contained within the cellular phone and any media or data storage devices of any kind contained within the property.

Sworn to and Subscribed before me

this 10th day of April, 2017

[Signature] (L.S.)

Signature of Judge

[Signature]

Affiant

Address 200 N. 12th Street

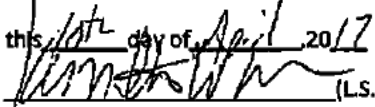
West Columbia, SC 29169

Phone 803-936-6273

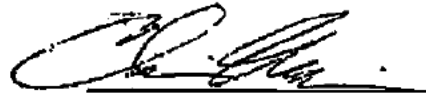
Attachment B

On January 27, 2016 the West Columbia Police Department was called to [REDACTED] Leaphart Street in West Columbia, SC in reference to shots being fired into a dwelling. Doris Shotte, a resident at the incident location, stated she was in the house with Juston Erving, Rhett Shotte and Dallas Lyles at approximately 20:00 hours when a white male knocked on the door. When she opened the door she observed two black males standing just outside her fence by the gate. After telling the white male to leave, she shut the door only to hear the door being kicked and a gun shot. When law enforcement arrived, they found what appeared to be a freshly made hole between the front door and the right window that was consistent with a bullet hole. The hole led into what investigators believed to be an internal beam in the wall where it struck. Investigators extracted this projectile from the wall on a previous search warrant. Investigators identified Daniel Graves as the white male and he gave a confession to the facts of this case. Graves stated him and his co-defendants, who he identified as Emonte Brooks and Lil Reg Darby, planned to rob Juston Erving. The plan was that Graves was to knock on the door so Erving would open the door. Brooks and Darby were to rush inside, armed with handgun and steal narcotics once inside. Darby also confessed to the facts of this case and corroborated Graves' statements. After interviewing Graves his cell phone was seized by investigators due to him communicating with Darby. Due to the prolific use of cell phones it's believed a search of Graves' cell phone may provide investigators with additional information that may aid investigators in the continuing investigation of this case. The cell phone has been secured in the West Columbia Evidence room since Graves arrest on January 28, 2016.

Sworn to and Subscribed before me

this 14th day of April, 2017
 (L.S.)

Signature of Judge



Affiant

Address 200 N. 12th StreetWest Columbia, SC 2919Phone 803-936-6273

RETURN

I received the attached Search Warrant APRIL 10, 2017, and have executed it as follows:

On APRIL 12, 2017 at 8:00 o'clock A M, I searched
(the person) described in the warrant and (the premises)

I left a copy of the warrant with _____
Name of person searched or "at the place of search" with.
Together with a receipt for the items seized.

The following is an inventory of property taken pursuant to the warrant: _____

DATA EXTRACTED FROM DEVICE AND STORED IN ELECTRONIC FORMAT

This inventory was made in the presence of _____

AND _____

I swear that this Inventory is a true and detailed account of all the property taken by me on the warrant.

SWORN to before me this _____
day of _____, 20____

Signature of Judge (L. S.)

[Signature]
(Signature of Officer Executing Warrant)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH JUDICIAL CIRCUIT
	)	
Emonte Brooks, #364670,	)	Case No.: 2018-CP-32-02432
	)	
Applicant,	)	
	)	RETURN
v.	)	
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for post-conviction relief filed on July 16, 2018, would respectfully show this Court:

I. Procedural History

Emonte Brooks (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. During its August 2016 term, the Lexington County Grand Jury indicted Applicant for discharging a firearm into a dwelling (2016-GS-32-02026) and attempted armed robbery (2016-GS-32-02027). The Lexington County Grand Jury also indicted Applicant for attempted murder in 2017 (2017-GS-32-00925). Aimee J. Zmroczek, Esquire, represented Applicant on these charges. Assistant Solicitors Kate W. Usry and L. McGill Bell, Jr., both of the Eleventh Circuit Solicitor's Office, prosecuted the case. On October 30, 2017, Applicant appeared before the Honorable Donald B. Hocker and pled guilty as indicted to all three charges. Judge Hocker accepted the plea, finding there was a factual basis to support the pleas and further finding the pleas were made freely, voluntarily, and intelligently. Plea Tr. 19. Judge Hocker sentenced Applicant to a term of imprisonment of eighteen years for attempted murder, eighteen years for attempted armed robbery, and eight years for the weapons charge. The sentences were to be served concurrently. Applicant did not appeal.

II. Factual History

On January 27, 2016, Applicant and his two co-defendants went to a home located in West Columbia, South Carolina with the intent to rob the homeowners. Plea Tr. 7. At least one of the co-defendants had purchased marijuana from these homeowners before, so their plan was to rob the homeowners of money and drugs. Plea Tr. 7-8.

When the three arrived, one of the co-defendants, Graves, went up to the home as planned. Plea Tr. 8. He knocked on the door and went into the home to speak with Justin Erving, one of the homeowners, and Doris Shotte. Plea Tr. 8. Graves asked for marijuana, but Mr. Erving did not have the marijuana he wanted. Plea Tr. 8. Graves then left the home. Plea Tr. 8.

When Graves exited the home, Applicant began running towards the home with a handgun. Plea Tr. 8. He then pointed the gun at the door, where Mr. Erving had previously been standing, and fired. Plea Tr. 8. Applicant continued towards the door and began kicking it, in an attempt to enter the home. Plea Tr. 8-9. Because he was unsuccessful in entering the home, Applicant and his co-defendants left the scene. Plea Tr. 9.

The next day, after speaking with Ms. Shotte, law enforcement took Graves into custody. Plea Tr. 9. Graves gave law enforcement a statement, implicating Applicant, also known as "Hot Boy." Plea Tr. 10. Graves also picked Applicant out of a lineup. Plea Tr. 10. Based on this information, law enforcement was also able to arrest the second co-defendant, Darby, on February 2nd. Plea Tr. 10. Darby gave a statement consistent with that of Graves. Plea Tr. 10. Darby also admitted to having a gun in his possession and told law enforcement Applicant also had a gun in his possession. Plea Tr. 11. Darby also led law enforcement to the location Applicant left his gun. Plea Tr. 11.

After retrieving the gun and running ballistics tests, law enforcement was able to match

Applicant's gun to the projectile found in the home. Plea Tr. 11-12. DNA from the barrel of the gun was also retrieved, and Applicant was a major contributor to that DNA sample. Plea Tr. 12. Both co-defendants were ruled out as minor contributors. Plea Tr. 12.

III. Current Application

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on:

1. Involuntary Guilty Plea[;]
 - a. Under Boykin v. Alabama, defendant plea [sic] must be knowing, voluntarily, and intelligently made. [Applicant] was not made aware by counsel of the possible sentences each of these charges carried. Nor has court during pleas ensured itself [Applicant] was so properly informed.
2. Counsel ineffective for failing to investigate and advice to plead guilty wrong; [and]
 - a. Counsel failed to investigate case, as counsel during plea displayed lack of knowledge for elements of Attempted Murder and oferable [sic] facts. Which state must prove and the facts presented by state during guilty plea does not satisfy crime of attempted murder[;]
 - b. On attempted armed robbery, once again it can be shown by state account of this crime that a trial evidence would not be sufficient for conviction[;] and
 - c. Counsel advice to plead guilty without investigating case was not within sound legal judgment under Hill v. Lockhart, "that if but for counsel advice, defendant would not have plead guilty" without an investigation counsel can not [sic] advise a client to plead guilty.
3. Counsel ineffective for not challenging constitutional violations.
 - a. Counsel was not aware that arrest warrants lack probable cause under Beck v. Ohio and lack of sufficient proof supporting warrant for arrest.

Attached to this Return and incorporated by reference are the records of the Lexington County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the transcript from Applicant's guilty plea proceeding, and the post-conviction relief application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

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

IV. Involuntary Guilty Plea

Applicant alleges his plea was not knowingly or intelligently entered. Respondent submits this allegation is without merit. In post-conviction relief cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing: (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. *Roscoe v. State*, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those

statements. *Crawford v. United States*, 519 F.2d 347 (4th Cir. 1975); *Edmonds v. Lewis*, 546 F.2d 566 (4th Cir. 1976).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. In particular, Applicant indicated to the plea court he was pleading guilty to all charges because he was, in fact, guilty. Plea Tr. 6. He further stated no one had forced him or promised him anything in order to get him to plead guilty. Plea Tr. 6. He further indicated he was pleading guilty freely, voluntarily, and intelligently. Plea Tr. 6. Applicant also told the court, although they had already picked a jury, he wanted to waive his right to a jury trial. Plea Tr. 16. He further indicated he understood his right to remain silent, to raise a defense, and to confront the witnesses against him. Plea Tr. 16-17. Applicant also told the court he understood he would waive the presumption of innocence by pleading guilty and also relieved the State of its burden of proof. Plea Tr. 17. Furthermore, plea counsel indicated to the plea court she had fully explained the charges and the maximum punishment for each offense to Applicant. Plea Tr. 4.

Based on the facts set forth above, Respondent submits Applicant's allegation his plea was involuntarily made is without merit. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. *Sharper v. State*, 305 S.E.2d 247.

V. Ineffective Assistance of Counsel

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a post-conviction relief action, Applicant bears the burden of proving the allegations in his application. *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's

conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in *Strickland v. Washington*, 466 U.S. 668. First, the applicant must prove that counsel’s performance was deficient. *Id.*; *Cherry v. State*, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney’s performance by its “reasonableness under prevailing professional norms.” *Cherry*, 300 S.C. at 117, 386 S.E.2d at 625 (quoting *Strickland*, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” *Id.* (citing *Strickland*, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625. In order to satisfy the prejudice prong of this test following a guilty plea, the applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Failure to Investigate

Applicant alleges his counsel was ineffective for failing to investigate. “There is a strong presumption counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case.” *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596

(2007). “Counsel’s concern is the faithful representation of the interest of his client and such representation frequently involves highly practical considerations as well as specialized knowledge of the law.” *Tollett v. Henderson*, 411 U.S. 258, 267-68 (1973). “Although counsel should conduct a reasonable investigation into potential defenses, *Strickland* does not impose a constitutional requirement that counsel uncover every scrap of evidence that could conceivably help their client.” *Tucker v. Ozmint*, 350 F.3d 433, 442 (4th Cir. 2003) (quoting *Green v. French*, 143 F.3d 865, 892 (4th Cir. 1998)). “In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” *Strickland*, 466 U.S. at 691; *Wiggins v. Smith*, 539 U.S. 510, 521-22 (2003). Moreover, “failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result.” *Porter*, 368 S.C. at 385-86, 629 S.E.2d at 357, *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836 (citing *Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Here, Applicant has wholly failed to identify what additional investigate he wanted plea counsel to partake. Moreover, at the plea, Applicant indicated plea counsel had done everything he asked of her and had done everything he expected she would do on his behalf. Plea Tr. 18. He also admitted he had had a full opportunity to review and discuss the discovery file with plea counsel, including all of the evidence and all of the documents. Plea Tr. 18. Additionally, although he had not seen the DNA results, Applicant indicated he did not wish to review those results with plea counsel before proceeding with the plea. Plea Tr. 18. Because counsel is presumed to have rendered adequate assistance and because Applicant has failed to identify any investigation in which she wanted plea counsel to partake, Respondent submits Applicant cannot establish any deficiency on the part of counsel.

Moreover, Applicant cannot establish any prejudice from this alleged deficiency. A guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses.” *State v. Thomason*, 341 S.C. 524, 526, 534 S.E.2d 708, 710 (Ct. App. 2000) (citing *State v. Munsch*, 287 S.C. 313, 338 S.E.2d 329 (1985)). Through a plea, a defendant admits all of the elements of the offense charged and waives all defenses, except for the sufficiency of the indictment. *Id.* At Applicant’s plea, Applicant indicated the facts, as given by the State, were substantially correct. Plea Tr. 15. He further admitted he attempted armed robbery against Ms. Shotte and Mr. Erving. Plea Tr. 15. He admitted he attempted to murder Mr. Erving. Plea Tr. 15-16. He also admitted he discharged a firearm into a dwelling. Plea Tr. 16. Moreover, Applicant indicated to the plea court he understood by pleading guilty he would not have a jury trial, would not be able to confront the witnesses against him, would be waiving his right to remain silent, and would not present a defense to these charges. Plea Tr. 16-17. Based on Applicant’s solemn admission of guilt at the plea, Respondent submits he cannot submit his burden

Failure to Object to the Arrest Warrant

Applicant further contends plea counsel was ineffective for failing to object to the arrest warrants on the basis there was no probable cause. “South Carolina has long embraced the rule that a true bill indictment is prima facie evidence of probable cause.” *Kinton v. Mobile Home Industries, Inc.*, 274 S.C. 179, 182, 262 S.E.2d 727, 728 (1980). Furthermore, ““where the grand jury have returned a true bill upon the charge made, such finding amounts to a judicial recognition that probable cause does exist.”” *Brown v. Griffin*, 25 S.C.L. 32, 32 (S.C. Ct. App. 1839). Here, Applicant was indicted by the Lexington County Grand Jury for attempted armed robbery and discharging a firearm into a dwelling in August of 2016. He was also indicted by the

Grand Jury for attempted murder in 2017. Because he was indicted for all counts, “such [a] finding amounts to judicial recognition that probable cause exists.” *Brown*, 25 S.C.L. at 32.

Respondent submits Applicant can satisfy neither requirement of the *Strickland* test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. *See Sharper v. State*, 279 S.C. 264, 305 S.E.2d 247 (1983).

VI. Denial of All Other Claims

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

VII. Request for evidentiary hearing

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of counsel and whether or not Applicant’s plea was knowingly and voluntarily made.

[signature block to follow]

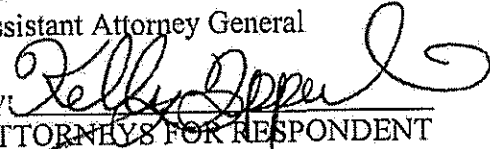
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

KELLY OPPENHEIMER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

November 13, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2018-CP-32-02432
	)	
EMONTE BROOKS, #364670,	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Overture E. Walker, Esquire
 Stoney & Walker, LLC
 1527 Blanding Street
 Columbia, South Carolina 29201

DATED this the 13th day of November, 2018.


 KELLY OPPENHEIMER
 Attorney for Respondent

McMAHAN & TAYLOR
ATTORNEYS at LAW

December 2, 2021

Lisa M. Comer
Lexington County Clerk of Court
ATTN: PCRs
205 East Main Street, Suite 128
Lexington, SC 29072

Re: Emonte Brooks, #364670 v. State of South Carolina
2018-CP-32-02432

Dear Ms. Comer:

Please find enclosed an Amended PCR Application for filing. Please clock this in and return a clocked copy to me. I have enclosed a return envelope.

Should you have any questions, I can be reached at the number listed below.

Best regards,



ASHLEY A. McMAHAN
ATTORNEY AT LAW

AAM
Enclosures

cc: Emonte Brooks, #364670

STATE OF SOUTH CAROLINA)
COUNTY OF LEXINGTON)

COURT OF COMMON PLEAS
FOR THE 8th JUDICIAL CIRCUIT
Case No.: 2018-CP-~~24~~02432

Emonte Brooks, #364670,)

Applicant,)

v.)

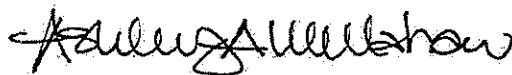
State of South Carolina.)

**3rd AMENDED POST-CONVICTION
RELIEF APPLICATION**

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on July 16, 2018, to add the following:

Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



ASHLEY A. MCMAHAN, ESQUIRE

McMAHAN & TAYLOR ATTORNEYS, LLC

PO Box 50536

Columbia, SC 29250

803-219-1110

ashley@mcmahantaylor.com

SC Bar No. 71676

ATTORNEY FOR APPLICANT

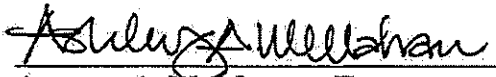
December 2, 2021

CERTIFICATE OF SERVICE

I certify that I have served this document via email to:

Lillian A. Meadows
Assistant Attorney General
lillianmeadows@scag.gov

This 2nd Day of December, 2021.


ASHLEY A. MCMAHAN, ESQUIRE
Attorney for Applicant

State of South Carolina	)	In the Court of Common Pleas
	)	Eleventh Judicial Circuit
County of Lexington	)	Case No. 2018-CP-32-02432
	)	
Emonte A. Brooks,	)	
	)	
Applicant,	)	
	)	
-vs-	)	Transcript of Record
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

December 13, 2021
Lexington, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge

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

Ashley McMahan, Esquire
Attorney for the Applicant

Lillian Meadows, Esquire
Attorney for the Respondent State

Proceedings taken down electronically

Transcribed by:
Krystal J. Smith
Official Circuit Court Reporter

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Aimee Zmroczek

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	Not specified		31
2	Email		31
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COURT REPORTER LEGEND

dashes -- intentional or purposeful interruption
 or change in thought
 ellipses . . . trailing off
 [ph] phonetically written
 [sic] written as said
 [inaudible] unable to hear or understand due to
 volume or quality of audio

1 DECEMBER 13, 2021

2 (WHEREUPON, the proceedings began at 11:00 a.m.)

3 THE COURT: Would you call your case, please, ma'am?

4 MS. MEADOWS: Yes, sir. May it please the Court.

5 This matter is Emonte Brooks versus the State of South
6 Carolina under Docket Number 2018-CP-32-2432. During its
7 August 2016 term, the Lexington County Grand Jury indicted Mr.
8 Brooks for attempted armed robbery and discharging a firearm
9 into a dwelling. He was then indicted for attempted murder in
10 April of 2017.

11 And on October 30th, 2017, Mr. Brooks appeared before the
12 Honorable Donald B. Hocker and pleaded guilty as indicted.
13 Ms. Zmroczek represented Mr. Brooks on these charges, and
14 Assistant Solicitor Kate Ussery prosecuted the case.

15 Judge Hocker sentenced Mr. Brooks to concurrent terms of
16 18 years for both attempted murder and attempted armed robbery
17 and 8 years for shooting into a dwelling. He did not appeal,
18 and then on July 16th, 2018, Mr. Brooks filed a timely
19 application for PCR. He is present today and represented by
20 Ms. McMahan.

21 Judge, just given the seriousness of these charges, I
22 would ask Your Honor before we get started to have a colloquy
23 with Mr. Brooks on the consequences should he prevail in PCR.

24 THE COURT: All right. Certainly.

25 Do you understand what the State is asking me to go over

1 with you? That even if you win that you may lose. Do you
2 understand that? The range of attempted murder -- is it max
3 30? Is that right?

4 MS. MEADOWS: It is.

5 THE COURT: Attempted armed robbery is 30 or up to life.
6 What is it?

7 MS. MEADOWS: Attempted arm robbery is 20.

8 THE COURT: Ma'am?

9 MS. MEADOWS: Zero to 20.

10 THE COURT: Zero to 20. And then discharge of a firearm
11 is 10. So you're looking at potentially 60 years today if you
12 prevail. In other words, if you are entitled to a new trial
13 and you are found guilty at that -- at a new trial, you're
14 subject to being sentenced to 60 years. Do you understand
15 that?

16 THE APPLICANT: Yes, sir.

17 THE COURT: Or 30 or 40 or somewhere along those lines,
18 any combination of those terms. Knowing that, do you still
19 want to go forward today?

20 THE APPLICANT: Yes, sir.

21 THE COURT: All right. Very good.

22 All right. Ms. McMahan, would you state your grounds for
23 the record, please?

24 MS. MCMAHAN: Yes, Your Honor. We are going ahead with
25 most of the grounds that are stated in the applications. If

1 you look on the one that was filed on September 25th, 2019?

2 THE COURT: Okay.

3 MS. MCMAHAN: The -- Number 1 kind of just goes towards
4 ineffective assistance of counsel. So I wouldn't say that's
5 an individual claim altogether. Same with Number 2. These
6 are all sort of related just to the claim of ineffective
7 assistance of counsel.

8 And then also in the one that was amended by Mr. Walker
9 back on June 26th, 2019, just all the grounds essentially as
10 Mr. Walker has typed them up on his pleading with the
11 attachments just going towards those allegations.

12 THE COURT: Say that again, please? The attachments go
13 what?

14 MS. MCMAHAN: With the attachments just being evidence
15 that sort of goes towards Mr. Walker's grounds as he is typing
16 them up.

17 THE COURT: All right.

18 MS. MCMAHAN: And then --

19 MS. MEADOWS: And, Your Honor, I agree with as far as I
20 believe Mr. Walker's amendments he filed are, you know,
21 sufficient separate allegations, but as to Mr. Brooks that he
22 filed in his motion to amend, I believe these are specific
23 claims.

24 MS. MCMAHAN: Yes, Judge. These are all specific claims
25 that go towards the overall arching claim of ineffective

1 assistance of counsel.

2 THE COURT: I will review those, and my understanding is
3 Mr. Brooks filed the motion to amend pleadings where he has
4 these amended allegations on February 25th of 2019, prior to
5 being represented; is that correct?

6 MS. MCMAHAN: It's my understanding, your Honor. I came
7 into this late obviously also, but it's my understanding those
8 were filed prior to Mr. Walker taking the case.

9 THE COURT: Was he represented by anyone else at that
10 time?

11 MS. MCMAHAN: I'm not aware.

12 Were you represented by anybody on these charges?

13 MS. MEADOWS: I can double check, Judge.

14 THE COURT: Ma'am?

15 MS. MEADOWS: I can double check really quick.

16 THE COURT: Okay. Do you mind doing that?

17 MS. MCMAHAN: Mr. Brooks is indicating Mr. Walker did
18 represent him on these. So at this point I would just ask
19 that the Court include these, even though they are *pro se*.

20 THE COURT: Well, you know, we don't have dual
21 representation.

22 MS. MCMAHAN: I know that, Judge.

23 THE COURT: I know you do.

24 MS. MCMAHAN: I just ask that you take the weight.

25 THE COURT: Let me ask you, since you have -- first of

EMONTE BROOKS - DIRECT BY MS. MCMAHAN

1 all, you know, whether these are valid grounds or not I'll
2 look at, but since you have had sufficient time to prepare, do
3 you have any objection to me considering those?

4 MS. MEADOWS: No, sir. I just -- I guess I'm asking if
5 Ashley is adopting those?

6 THE COURT: Okay.

7 MS. MCMAHAN: Yes, Your Honor. I'm adopting those
8 towards ineffective assistance of counsel.

9 THE COURT: Ma'am?

10 MS. MCMAHAN: Yes, sir. I am adopting those towards
11 ineffective assistance of counsel.

12 THE COURT: All right. Would you call your first
13 witness?

14 MS. MCMAHAN: Yes. Judge, the applicant calls Mr.
15 Brooks.

16 THE CLERK: Please raise your right hand. Do you
17 solemnly swear or affirm to tell the truth, the whole truth,
18 and nothing but the truth, so help you God?

19 THE APPLICANT: I do.

20 THE CLERK: Thank you.

21 THE COURT: Mr. Brooks, I'm going to ask that you speak
22 up a little bit. Pull that microphone to you, please. Thank
23 you, sir.

24 EMONTE BROOKS, being first duly
25 sworn, testified as follows:

EMONTE BROOKS - DIRECT BY MS. MCMAHAN

DIRECT EXAMINATION

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BY MS. MCMAHAN:

Q: Mr. Brooks, did you file this PCR application?

A: Yes, ma'am, I did.

Q: Let me back up a second. Please spell your first name for the record?

A: E-m-o-n-t-e.

THE COURT: Mr. Brooks, I know you're a soft-spoken individual, but I need you to speak up loudly, if you don't mind, please.

THE APPLICANT: Yes, sir.

BY MS. MCMAHAN:

Q: Okay. So it's E-m-o-n-t-e?

A: Yes, ma'am.

Q: Okay. So there is no D in there?

A: No.

Q: Okay. I just wanted to clarify that. And you filed these applications?

A: Yes, ma'am.

Q: Okay. And who was your original attorney on the charges? Who represented you on the murder -- the attempted murder and the attempted armed robbery?

A: I had several lawyers. I had Derrick Mobley at first, and then I was appointed Aimee Zmroczek.

Q: Okay. And how long were you in the detention center

EMONTE BROOKS - DIRECT BY MS. MCMAHAN

1 before -- were you out on bond at all?

2 A: No, ma'am, I wasn't.

3 Q: How many bond hearings did you have?

4 A: Two.

5 Q: How many times did you meet with Ms. Zmroczek?

6 A: Maybe five, six times maybe.

7 Q: Okay. What did you guys talk about when you guys met

8 together?

9 A: I mean mostly it was a plea deal that the solicitor was

10 coming at me with, and I didn't want to take it.

11 Q: Did you talk about the discovery and everything?

12 A: No.

13 Q: Did you have a copy of the discovery in your case?

14 A: Yes.

15 Q: And you guys didn't go over it?

16 A: No.

17 Q: Tell me about the plea deal. What kind of plea deal did

18 she bring out to you that you didn't want to take?

19 A: At first, it was just for attempted armed robbery,

20 discharging a firearm into a dwelling, and a criminal

21 conspiracy.

22 Q: Why didn't you want to take any type of plea offer?

23 A: Because I really didn't do it.

24 Q: Did you have a conversation with her about that?

25 A: Yes.

EMONTE BROOKS - DIRECT BY MS. MCMAHAN

- 1 Q: And what did that entail?
- 2 A: Well, she stated that, you know, I had two people
- 3 testifying against me saying that I did it and that, you know,
- 4 the odds was looking -- wasn't in my favor in the case and
- 5 things in that nature and stuff like that.
- 6 Q: Okay. So she was telling you that two people that were
- 7 going to testify against you, so you should take this plea
- 8 deal?
- 9 A: Correct.
- 10 Q: Do you remember what the original plea deal range was,
- 11 kind of the range?
- 12 A: It wasn't a cap. It just was an open plea deal for zero
- 13 to 20, zero to 10, and whatever the charges carried.
- 14 Q: So just plead straight up?
- 15 A: Yeah.
- 16 Q: Okay. Were they mentioning dismissing any?
- 17 A: Yeah. The other attempted murder charges and the
- 18 possession of a firearm charge.
- 19 Q: There were about five or six separate charges that you
- 20 pled?
- 21 A: Correct.
- 22 Q: Okay. And you understand that those would come back if
- 23 --
- 24 A: I do.
- 25 Q: -- you're successful today? So one of the allegations

EMONTE BROOKS - DIRECT BY MS. MCMAHAN

1 you have on here is she was ineffective because she didn't
2 investigate about the pleading guilty, something wrong about
3 that? Did we already talk about that? She did not challenge
4 your constitutional allegations regarding the warrants? What
5 was the issue with the warrants?

6 A: The warrants -- my attempted murder warrants doesn't
7 states attempted murder. It states that I discharged a
8 firearm into a dwelling. And then if you look at the elements
9 of attempted murder, it says and states that I caused
10 seriously [sic] bodily harm to a person, and there is no
11 medical record of anybody ever getting hurt. So how could you
12 advise me to plead guilty to attempted murder when technically
13 I didn't attempt to kill no one? And the warrants should be
14 ineffective because it doesn't states that I attempted to kill
15 anyone.

16 Q: So she never challenged the fact that your warrant never
17 said that you attempted to cause serious bodily harm or did
18 cause serious bodily harm --

19 A: To anyone.

20 Q: -- to any of these people?

21 A: Yes, ma'am.

22 Q: Okay.

23 A: And also --

24 Q: Just that you discharged it into a dwelling?

25 A: Yes, ma'am.

EMONTE BROOKS - DIRECT BY MS. MCMAHAN

1 Q: Did you guys have any conversations about that?

2 A: No, ma'am, we didn't.

3 Q: Did you bring it to her attention?

4 A: I was unaware of it at the time myself.

5 Q: Okay. So this was something you learned after the fact?

6 A: Yes, ma'am.

7 Q: Okay. And then does that also go to lack of probable
8 cause? How does that all intertwine with each other?

9 A: I mean the warrants that they said probable cause come
10 into the fact of -- okay. When they charged me with this,
11 they said that when they take it in front of the magistrate
12 judge to get a warrant, they're saying that I attempted to
13 kill someone, but when you look at the warrant, it doesn't
14 says that I attempted to kill no one because that's not
15 attempted murder. Discharging a firearm into a dwelling is
16 discharging a firearm into a dwelling, not attempting to kill
17 nobody.

18 Q: So that was the issue with why [inaudible] discharging
19 into a dwelling?

20 A: Yeah.

21 Q: Okay. And so on the one that you wrote yourself, I
22 believe touching -- I believe we've already touched base on
23 two or three preliminary hearings. You did not have one?

24 A: No. I had asked how come I didn't get my preliminary
25 hearing. She -- I was told that she waived my preliminary

EMONTE BROOKS - DIRECT BY MS. MCMAHAN

1 hearing because the grand jury already had done indicted me.

2 Q: So you asked for a prelim, but you didn't get one?

3 A: Correct.

4 Q: Okay. Because the grand jury had already indicted you?

5 A: Yes. So she said she waived it. In my county jail, they

6 -- after you go to bond court, they give you a form to fill

7 out and sign up for it and they tell you you have a right to

8 it and you have 10 days to sign up for it, and I signed up for

9 it and I was denied access to go.

10 Q: So you filled out the form requesting a hearing?

11 A: Yes, ma'am.

12 Q: Okay. Did you -- did she tell you that, that she had

13 waived it, or did somebody else tell you that?

14 A: No, she told me that she waived it.

15 Q: Okay. And what's the issue with her failing to inform

16 you that all of these charges are really one incident?

17 A: Well, I learned that afterwards too. Basically, I have

18 three. My crime was -- the crime that I'm accused of is

19 committed in the same place, same time, same date, and I have

20 three sentences: attempted murder, attempted armed robbery,

21 and discharging a firearm. But it states that I am supposed

22 to have one charge and one sentence, but I have three, and two

23 of my charges are most serious charges and, you know, I was

24 told basically if I was to get in trouble again after I get

25 out on these charges, I could possibly get a life sentence.

EMONTE BROOKS - DIRECT BY MS. MCMAHAN

1 Q: Okay. Because they're --

2 A: Most serious.

3 Q: -- most serious? Okay. So did you have a conversation

4 with her about asking why you were charged all these separate

5 charges for one incident?

6 A: No, I didn't.

7 Q: Okay. Did she ever explain to you why you were charged

8 with multiple different charges for one incident?

9 A: No.

10 Q: I mean let's just touch base on the one that Mr. Walker

11 brought forward.

12 A: All right.

13 Q: So did you talk about any witnesses or anything you could

14 have called in your favor?

15 A: Yeah. We was supposed to contact one of my victims in

16 the case who was supposed to testify and say -- who spoke on

17 my behalf stating that I had nothing to do with this.

18 Q: Who was the victim that you wanted Ms. Zmroczek to talk

19 to who was going to testify that you weren't there?

20 A: Yeah.

21 Q: And this victim was present?

22 A: No. I was told that she made contact with her, but she

23 never, you know, came into a courtroom or anything like that.

24 Q: Okay. Well, let me back up. When you and Ms. Zmroczek

25 were talking to each other, was there at any point a

EMONTE BROOKS - DIRECT BY MS. MCMAHAN

1 discussion of having a trial on this?

2 A: Yeah, I wanted to go to trial.

3 Q: Okay. So were you guys preparing for a trial?

4 A: She said she was. I mean I don't -- I wanted to go to
5 trial. I don't know if she was really preparing for it
6 though.

7 Q: So when you were talking to her, were you talking about,
8 hey, these are the witnesses I want called and all that kind
9 of stuff?

10 A: No. We never talked about calling them. We were just
11 saying they had to be there because the crime was committed
12 against them; so they would have to be there.

13 Q: Okay. And so [inaudible]?

14 A: Yeah.

15 Q: Okay. And so when you were in court and you ultimately
16 get convicted, were you going to trial at some point?

17 A: Yeah. I backed out of trial.

18 Q: Okay.

19 A: And pled guilty.

20 Q: And so what was your decision? Why did you change your
21 mind? Did you decide that you weren't going to go forward on
22 that trial for some reason?

23 A: Well, like I say, she advised me that, you know, she --
24 you know what I'm saying? -- to these charges that I wouldn't
25 catch the time from 5 to 10 years and, you know, the odds were

EMONTE BROOKS - DIRECT BY MS. MCMAHAN

1 stacked against me. I was young. I was scared. I didn't
2 really know no better. You know what I'm saying? So I just
3 felt like 5 to 10 years, just do it and come home and -- you
4 know what I'm saying? -- go another way, but when I got in
5 there, he gave me 18 years and --

6 Q: Okay.

7 A: -- I was confused on that.

8 Q: Did you go into there with an understanding that you were
9 not going to get more than what?

10 A: Anywhere from 5 to 10 years.

11 Q: Okay. And is that what Ms. Zmroczek told you?

12 A: Yes.

13 Q: So we understand why you decided to plead guilty before
14 going to trial, did you decide to plead guilty because you
15 thought you were just going to 5 to 10 years? Is that why you
16 backed out of the trial?

17 A: Yeah.

18 Q: At what point did you decide that you were going to
19 accept this and say either under *Alford* that the State could
20 prove you guilty or admit that you did it? What -- at what
21 point do you say, no, I don't want a trial anymore, what can I
22 get?

23 A: Well, it was just like -- you know what I'm saying? I
24 was -- like I said, I was scared. You know what I'm saying?
25 I -- and, like, it was just like the odds were just stacked

EMONTE BROOKS - DIRECT BY MS. MCMAHAN

1 against me. Like, everybody already had done lied and said
2 that I did it, and she was, like, oh, you know, if I plead
3 guilty -- she went and talked to him. She was, like -- you
4 know what I'm saying? -- it would be 5 to 10 years. And I was
5 just, like, okay, well. You know what I'm saying? I'd done
6 been locked up going on two years, you know. I wouldn't have
7 much longer to do. I was just really ready just to get it over
8 with.

9 Q: You thought if you were already in there you wouldn't
10 have much longer to go?

11 A: Correct.

12 Q: Did you have a conversation with her about getting shot?

13 A: We had a couple conversations, but really wasn't nothing,
14 like nothing done that I wanted done about it.

15 Q: What did you want done about it?

16 A: I wanted her to write affidavits and let them know that I
17 had nothing to do with this.

18 Q: You wanted Ms. Zmroczek to talk to Dora Shot [ph], who
19 had been the victim?

20 A: Correct.

21 Q: And say in an affidavit to say that you had nothing to do
22 with it?

23 A: Correct.

24 Q: Okay. And so that was not done?

25 A: No.

EMONTE BROOKS - DIRECT BY MS. MCMAHAN

1 Q: And also did you have a conversation with Ms. Zmroczek
2 after you entered the plea that you wanted to appeal it?

3 A: Correct.

4 Q: And what did she say?

5 A: She said -- first, she said she was going to file a
6 motion of --

7 Q: To reconsider?

8 A: -- reconsideration, and then after that she was going --
9 I asked about the direct appeal, and that just never happened.
10 And then she said she couldn't file the PCR because the PCR
11 was me basically suing her. So she couldn't do that.

12 Q: Okay. Did she tell you to file a PCR?

13 A: No.

14 Q: Okay. But you asked her if she could?

15 A: Yeah.

16 Q: What else do you want the Court to know today that you
17 feel Ms. Zmroczek did ineffectively?

18 A: I think you kind of covered it.

19 MS. MCMAHAN: Thank you. Please answer any questions
20 that the State has.

21 THE COURT: Cross-examination.

22 CROSS-EXAMINATION

23 BY MS. MEADOWS:

24 Q: Mr. Brooks, how many times did you meet with Ms. Zmroczek
25 before you entered a plea?

EMONTE BROOKS - CROSS BY MS. MEADOWS

- 1 A: Like maybe five or six times.
- 2 Q: Okay. So did she go over the charges and what they
- 3 carried with you?
- 4 A: No.
- 5 Q: She didn't tell you what the possible penalties were?
- 6 A: No.
- 7 Q: Okay. Do you recall reviewing discovery or discussing
- 8 discovery with Ms. Zmroczek?
- 9 A: Yes.
- 10 Q: Okay. And then in your amended application you claim Ms.
- 11 Zmroczek failed to call your [inaudible]. Who is this witness
- 12 or who are these witnesses that Ms. Zmroczek failed to call?
- 13 A: Dora Shot [ph].
- 14 Q: Okay. And you asked her to speak with this witness?
- 15 A: Correct.
- 16 Q: Okay. And what did she say?
- 17 A: She said she'd spoken to them, but that was all she said.
- 18 Q: Okay. And would you have said when you talked
- 19 [inaudible] with Ms. Zmroczek?
- 20 A: No.
- 21 Q: And would you have said the possibility of a denial?
- 22 A: Somewhat.
- 23 Q: Okay. Did she ever kind of explain to you how she would
- 24 have presented a defense for you at trial?
- 25 A: No.

EMONTE BROOKS - CROSS BY MS. MEADOWS

1 Q: And do you recall discussing any plea offers from the
2 State with Ms. Zmroczek?

3 A: There was, like, one or two.

4 Q: Okay. And do you know what those offers were?

5 A: The first one was discharging a firearm -- I mean
6 attempted armed robbery, discharging a firearm into a
7 dwelling, and criminal conspiracy, and then the second one
8 came, they just wanted me to plead guilty to attempted armed
9 robbery, and I wouldn't do it.

10 Q: Okay. Did they give you, like, a sentencing range?

11 A: Open plea deal, whatever that means.

12 Q: Okay.

13 THE COURT: Say that again? He was not given a
14 sentencing range; is that correct?

15 THE APPLICANT: No, sir, I wasn't.

16 THE COURT: Okay.

17 BY MS. MEADOWS:

18 Q: And you told her you did not want to accept a plea deal;
19 is that correct?

20 A: Correct.

21 Q: Okay. But you ultimately did decide to plead; right?

22 A: Correct.

23 Q: Okay. And did Ms. Zmroczek explain the terms of the plea
24 deal to you?

25 A: She just said -- I mean no. It was -- when she told me

EMONTE BROOKS - CROSS BY MS. MEADOWS

1 about it, she was just, like, it was from 5 to 10 years. So I
2 was just, like, okay, you know, just get it over with.

3 Q: Okay. So she told you that you could only receive 5 to
4 10 years; is that right?

5 A: Yeah.

6 Q: Okay. And do you recall at the plea hearing Judge Hocker
7 going over your constitutional rights with you?

8 A: Uh-huh.

9 Q: Okay. And that would include, you know, your right to a
10 jury trial, present witnesses [inaudible], and you told him
11 you wanted to waive those rights and plead guilty; correct?

12 A: Correct.

13 Q: Okay. You did tell Ms. McMahan that you did want a
14 trial. So do you know why you didn't tell the judge that you
15 did want a trial?

16 A: Because I already had done talked to my lawyer, and she
17 advised me just to go ahead and plead guilty. So I went with
18 my attorney's advice.

19 Q: Okay. And I think you've also alleged that the State
20 didn't have sufficient evidence against you to find you guilty
21 of attempted armed robbery or attempted murder, and after the
22 solicitor kind of gave a summary of the facts, do you recall
23 Judge Hocker saying if you plead guilty, the State no longer
24 has to prove you guilty beyond a reasonable doubt?

25 A: Can you say that again?

EMONTE BROOKS - CROSS BY MS. MEADOWS

1 Q: I'm sorry. So after the solicitor kind of gave a summary
2 of the facts of what happened, do you recall the judge kind of
3 explaining to you that when you plead guilty, you kind of
4 waive the right to challenge the State's facts and essentially
5 they don't have to prove you guilty beyond a reasonable doubt
6 without a trial?

7 A: I mean I don't --

8 Q: Okay.

9 A: -- understand that, but yeah.

10 Q: Okay. And do you recall Judge Hocker asking you whether
11 you were pleading guilty to attempted armed robbery, attempted
12 murder, and discharging a firearm into a dwelling because you
13 are guilty of these offenses?

14 A: I remember saying that.

15 Q: Okay. And then you also alleged that during the plea
16 hearing Ms. Zmroczek -- Ms. Zmroczek displayed a lack of
17 knowledge of the elements of attempted murder. What do you
18 mean by that?

19 A: Well, the elements of attempted murder states that I
20 caused seriously bodily harm to a person, but nobody was ever
21 hurt.

22 Q: Okay. And if I understand correctly, you were saying
23 that there was no warrant for the attempted murder?

24 A: They served the warrant, but the warrant was defective
25 for the fact of it doesn't state that I hurt anybody or caused

EMONTE BROOKS - REDIRECT BY MS. MCMAHAN

1 seriously bodily harm to somebody, and the elements of
2 attempted murder states that I caused seriously bodily harm to
3 somebody.

4 MS. MEADOWS: All right. Nothing further, Judge.

5 MS. MCMAHAN: Just briefly, Your Honor.

6 REDIRECT EXAMINATION

7 BY MS. MCMAHAN:

8 Q: You said that you went along with what your attorney told
9 you to do and you told the judge the way you were directed to
10 respond; right?

11 A: [Inaudible.]

12 Q: Did Ms. Zmroczek tell you anything else you needed to say
13 in court that day?

14 A: No.

15 MS. MCMAHAN: Nothing further, Your Honor.

16 MS. MEADOWS: No, sir.

17 THE COURT: Thank you, sir. You may step down.

18 MS. MCMAHAN: Your Honor, the applicant rests.

19 THE COURT: Okay. Call your first witness, please,
20 ma'am.

21 MS. MEADOWS: The State calls Aimee Zmroczek.

22 THE CLERK: Do you solemnly swear or affirm that the
23 statements you're about to give will be the truth, the whole
24 truth, and nothing but the truth, so help you God?

25 THE WITNESS: I do.

AIMEE ZMROCZEK - DIRECT BY MS. MEADOWS

1 THE CLERK: Thank you, ma'am.

2 THE COURT: Would you mind hanging on for one second?

3 What -- what charges were actually dismissed? Do you
4 know? Does anybody know?

5 MS. MEADOWS: The conspiracy and kidnapping.

6 THE COURT: Conspiracy and kidnapping?

7 MS. MEADOWS: Your Honor, [inaudible].

8 MS. MCMAHAN: There was I want to say five or seven more.
9 If you look on public index, it's another attempted murder.

10 THE WITNESS: I think there were two attempted murders.

11 MS. MCMAHAN: Three attempted murders, another criminal
12 conspiracy and possession, and stuff like that.

13 THE WITNESS: He also had a charge of throwing bodily
14 fluids, but that was dismissed as well.

15 THE COURT: Okay. I just want to make sure you
16 understand, sir. When I went over -- before this hearing, I
17 just went over your 60 years, but for all the charges that
18 were dismissed, if you are successful, the State can
19 reactivate those. Okay? And the maximum for each one of
20 those charges which you would be subjected to on top of the 60
21 years. Do you understand that?

22 THE APPLICANT: Yes, sir.

23 THE COURT: Okay.

24 AIMEE ZMROCZEK, being first duly
25 sworn, testified as follows:

AIMEE ZMROCZEK - DIRECT BY MS. MEADOWS

DIRECT EXAMINATION

1
2 BY MS. MEADOWS:

3 Q: And I'm sorry I have to ask you this, but how long have
4 you been practicing law?

5 A: I was sworn in in November of 2008.

6 Q: Okay. And how much of that has been criminal law?

7 A: Ninety-five percent at least.

8 Q: Okay. And then how did you become involved in Mr.
9 Brooks' case?

10 A: This was another case that I was appointed to as a
11 conflict case out of the Public Defender's Office.

12 Q: Okay. Do you recall about how long that was [inaudible]?

13 A: I do not remember.

14 Q: Okay. And would you mind giving a brief explanation of
15 these charges and how they -- how they were [inaudible]?

16 A: Sure. Mr. Brooks was charged with several attempted
17 murder related charges. So there were three co-defendants,
18 two co-defendants that eventually squealed and told
19 everything, but there were three co-defendants that were
20 charged with walking up to a house. They were wearing certain
21 clothing items that were very describable that also showed up
22 in videos. Apparently, somebody owed somebody money for a
23 drug deal or they were going to just rob the drug dealer. The
24 son that's inside of the first house was definitely involved
25 with them as well with drugs.

AIMEE ZMROCZEK - DIRECT BY MS. MEADOWS

1 Anyway, the two co-defendants confessed that Mr. Brooks
2 kicked in the door and shot the door. And so I -- he always
3 had maintained his innocence. I hired two -- actually, I had
4 two private investigators, one dealing with the digital and
5 one dealing with interviewing witnesses and prepping them for
6 trial.

7 In the middle of right before we went to trial the first
8 time, they had confiscated a bunch of kites, which are letters
9 between inmates back and forth at the jail, and that they were
10 written from Hot Boy to the co-defendants saying shut up, just
11 say I didn't have anything to do with it, several other
12 things. They -- eventually, my client denied writing those.
13 They did a handwriting expert. The client -- they came back
14 as being a match and then the client wrote a letter
15 apologizing for lying. He still wanted to go forward.

16 I kept negotiating deals. Because this client was
17 extremely difficult, I had everything in writing, including
18 that he had seen every bit of discovery, that he was rejecting
19 plea offers, because I felt like we had a plea offer that was
20 pretty reasonable. And I have them sign it, like physically
21 sign it when -- when I think it's reasonable and they're
22 rejecting it. So we did that in this case. Ultimately, he
23 ended up -- I had pretrial motions. I was ready to go, but
24 ultimately, he ended up taking the plea offer at the last
25 minute.

AIMEE ZMROCZEK - DIRECT BY MS. MEADOWS

1 MS. MEADOWS: I beg the Court's indulgence.

2 THE COURT: Yes, ma'am.

3 BY MS. MEADOWS:

4 Q: All right. Ms. Zmroczek, I'm going to hand you five -- I
5 believe one is a letter from you, one is an email regarding a
6 plea deal, and the other is -- one is a letter from Mr. Brooks
7 and then one is a letter or a statement that he signed to
8 acknowledge he did go through the file and everything. Could
9 you take a look at those?

10 A: Yeah. These are copies from my files that I provided to
11 the petitioner, and I think they provided it to the State.

12 Q: Okay.

13 MS. MEADOWS: Judge, I can give you a copy. Actually,
14 no, I don't.

15 THE COURT: You need to mark them 1 through 5.

16 Do you have any objection to those coming in?

17 MS. MCMAHAN: Your Honor, but only if she is -- I don't
18 think we've fully established a foundation for the handwritten
19 letters. So that may be one --

20 MS. MEADOWS: Right.

21 THE COURT: I agree you need to lay a further foundation.

22 MS. MEADOWS: All right.

23 THE COURT: Go ahead and have them marked though, if you
24 don't mind.

25 MS. MEADOWS: Okay. I'll do the letter Ms. Zmroczek

AIMEE ZMROCZEK - DIRECT BY MS. MEADOWS

1 wrote on that as well.

2 THE COURT: Let's do this. Mark them that way and go
3 show them to her again and that way she can point out the
4 particular --

5 MS. MEADOWS: Okay.

6 THE COURT: -- exhibit number that she objects too.

7 THE WITNESS: He needs them marked too.

8 MS. MEADOWS: Oh, okay. And so --

9 THE COURT: Hang on for one second. Just so we're clear,
10 go ahead and mark those for me, and then show them back to Ms.
11 McMahan just so you can point out the number of the exhibit
12 that you object to. Okay? And I assume by you only pointing
13 out one you have the rest you have no objections coming in,
14 Ms. McMahan?

15 MS. MCMAHAN: Yes, Your Honor.

16 THE COURT: Is that correct?

17 MS. MCMAHAN: Yes, Your Honor.

18 THE COURT: Okay. So once she marks those, show them to
19 her.

20 MS. MEADOWS: Okay.

21 (WHEREUPON, there was a pause in the proceedings, after
22 which the proceedings resumed as follows.)

23 THE COURT: Would you point out which ones you agree to
24 and the ones you do not?

25 MS. MCMAHAN: Judge, on No. 1 I agree to. No. 2, I think

AIMEE ZMROCZEK - DIRECT BY MS. MEADOWS

1 she needs to little bit more foundation with Ms. Zmroczek.
2 Plaintiff's 2, 3, and 4 [inaudible], but I don't have any
3 objections.

4 THE COURT: So the only one you do have an objection to
5 or you want more information on is State's No. 2?

6 MS. MCMAHAN: And 3 as well.

7 THE COURT: And 3? Okay.

8 MS. MCMAHAN:

9 THE COURT: If you would, 1, 4, and 5 are admitted, 2 and
10 3 you need to lay the proper foundation for.

11 THE WITNESS: I think there are only four.

12 BY MS. MEADOWS:

13 Q: And then, Ms. Zmroczek, I've handed you the second
14 exhibit. Is this -- what is this document? Do you know when
15 you received it?

16 A: If you can hand me that? Yeah. Thank you. Yes. So
17 what this is that's an email that's straight from my email
18 account. I received it from Ms. Ussery, who was the
19 solicitor, the lead solicitor on this case at the time. And
20 -- and what I did was printed that email off, took it to the
21 client, and had him sign -- had him sign it in front of me --
22 myself and my paralegal.

23 Q: And he was rejecting the offer; right?

24 A: That was rejecting the plea offer.

25 Q: And regarding -- I'm sorry -- the first -- the dismissed

AIMEE ZMROCZEK - DIRECT BY MS. MEADOWS

1 -- the letter he sent you regarding your [inaudible], but you
2 recognize this?

3 A: Yes.

4 Q: Okay. And No. 4, could you identify this?

5 A: I am. So the reason it says file Emonte at the top is
6 what happens as in the course of business of my law firm is
7 letters will come in from the clients. I will read them and
8 then I will write on them where -- which file they need to go
9 into. This was a letter that I received from the client
10 discussing -- discussing some of the evidence and some of the
11 frustrations that he had and his apology for lying to me about
12 not writing those -- those kites to his co-defendants.

13 Q: Okay. So did the handwriting {inaudible}?

14 A: It did.

15 Q: Okay. Did he admit to you that he wrote those kites?

16 A: Oh, he maintained that he did not write those at all.

17 Q: Okay. And then -- was that 3?

18 A: That was 3.

19 Q: Okay. And then can you identify what this one is?

20 A: Sure. So No. 4 is a letter also. Like I said, when I
21 have clients that I feel like are going to -- to try to change
22 their tune later on down the road, to be quite honest, I have
23 -- I document everything. And Robert Watkins was one of the
24 investigators that I had had. He is the one that I had serve
25 all the subpoenas for trial and did a lot of work on this

AIMEE ZMROCZEK - DIRECT BY MS. MEADOWS

1 case. And so he was the witness that I had sign the papers
2 saying that -- in front of Emonte signing as well saying that
3 he received everything. At that point in October, we still
4 hadn't had DNA results come back. So that was the only thing
5 that was outstanding.

6 Q: Okay.

7 MR. MCMAHAN: Ashley, is that sufficient?

8 THE COURT: Just move them into evidence and I'm going to
9 -- I'll admit them. I'll overrule your objection.

10 (WHEREUPON, State's Exhibits No. 1 through 5 were
11 admitted into evidence.)

12 BY MS. MEADOWS:

13 Q: Did he ever talk to you about wanting a preliminary
14 hearing or did you have any discussions with him about that?

15 A: Yes. So I was not the first lawyer on this case. By the
16 time I got the case, it had already been indicted. So any
17 discussion would have been that it was already indicted. I
18 didn't -- I -- actually, I typically go to all my prelims
19 because I feel like they're free discovery, but in this case
20 the prelim had already taken place prior to me being assigned
21 to this case.

22 Q: Okay. So there was a preliminary hearing?

23 A: I'm not saying there was or there wasn't.

24 Q: Oh, okay.

25 A: But what I'm saying is if the preliminary hearing hadn't

AIMEE ZMROCZEK - DIRECT BY MS. MEADOWS

1 already taken place, he had already been indicted. So once
2 you get indicted, you don't have a prelim anymore.

3 Q: Okay. And you may have said this already, but do you
4 know about how many times you met with him?

5 A: Between myself and the investigators, it was numerous.

6 Q: Okay. And did you discuss with him during these meetings
7 why these were separate charges?

8 A: Oh, yeah.

9 Q: Okay.

10 A: He also picked up a whole separate set of charges at the
11 jail. Like I said, he had throwing bodily fluids. I don't
12 know if he had an accompanying jail assault charge with that,
13 but the throwing bodily fluids, that was something that he
14 picked up while he was in the jail.

15 Q: Okay. And did he ever indicate to you that he believed
16 that this should have been one charge? [Inaudible.]

17 A: Right. No. Right. No.

18 Q: Okay. And did you see a basis to challenge [inaudible]?

19 A: I had an extensive pretrial. It was a typed out pretrial
20 motions list. So any and all motions would have been on
21 there. I've set the case law in attempted murders. So I'm
22 very familiar with what the elements are.

23 Q: Okay.

24 A: I know that you don't have to cause injury, but you have
25 to have the present ability to do so. But yeah, it's -- no.

AIMEE ZMROCZEK - DIRECT BY MS. MEADOWS

1 If we would have gotten into that, that may have been on my
2 list. Honestly, I don't remember.

3 Q: Okay. And did you discuss his constitutional rights with
4 him?

5 A: Constantly.

6 Q: Okay. And then what about his claim that the State
7 didn't have any evidence to convict him? Did you advise him
8 about [inaudible]?

9 A: I did.

10 Q: Okay. And also the [inaudible]?

11 A: Yeah. We had that -- I mean we had that discussion
12 numerous times.

13 Q: Okay. And you were able to [inaudible]?

14 A: Oh, yes.

15 Q: Can you kind of briefly describe the State's evidence
16 against him?

17 A: I mean there were digital -- the digital evidence
18 included videos. Where this happened was in West Columbia,
19 and it was by some different set of just work buildings that
20 all had video cameras on it. So it happened to catch -- it
21 happened to catch the people walking, the people were turning.
22 There were, you know, convoluted statements from the victims.
23 I don't think they were necessarily the best or willing
24 victims in the case, but the most damning evidence was his
25 notes to the co-defendants telling them to lie and then the

AIMEE ZMROCZEK - DIRECT BY MS. MEADOWS

1 co-defendants confessing their involvement but also including
2 his.

3 Q: Okay. And did you review all the discovery?

4 A: I did.

5 Q: Okay. And what type of investigation did you do?

6 A: Like I said, I hired two -- I had a digital forensics
7 investigator to try to -- because there were -- it was hard to
8 see on the nighttime videos; so I had them blown up, and they
9 ended up not being beneficial to us after that. And then the
10 color ones, the same thing because they had distinct clothing
11 and backpacks that could have been identified. And then I
12 also had a lay witness who, like I said, visited the scene,
13 spoke with witnesses, served subpoenas.

14 Q: Okay. And then I think you mentioned that when you --
15 the victims were able to -- one way [inaudible] had clothing
16 or something that was very distinct?

17 A: I did, yeah. Very distinct.

18 Q: Okay. And I guess what did he tell you about his version
19 of the facts or version of what happened?

20 A: There were numerous stories, but most of them involved
21 around him not being there.

22 Q: Okay.

23 A: Yeah, no.

24 Q: Did he give you any leads or things he wanted you to
25 investigate?

AIMEE ZMROCZEK - DIRECT BY MS. MEADOWS

1 A: He did. He did. In fact, I provided an alibi notice to
2 the State. It wasn't a complete alibi, but I -- you know, I
3 provided that notice to the State. I gave them all the
4 information that he -- that he gave me that I was required to
5 turn over.

6 Q: Okay. And who was the alibi witness he gave you?

7 A: I think it was a girlfriend, but I honestly can't
8 remember.

9 Q: Okay. But she was -- I guess was she with him part of
10 that time?

11 A: Correct.

12 Q: Okay. And I guess in light of the State's evidence and
13 your investigation, you didn't feel [inaudible] to come to
14 trial?

15 A: Oh, yeah.

16 Q: Okay. And I'm not sure if you've not responded to this
17 either, but [inaudible] that you were ready to go at that
18 time. What was your overall theory of [inaudible]?

19 A: Just to discredit the two co-defendants and to -- you
20 know, we had the -- the witness that he claims would testify
21 that it wasn't him shooting. We had her on notice. So we
22 were just going to put up the kind of "they can't prove it
23 beyond a reasonable doubt" plea.

24 Q: Okay. And then how did the guilty plea come about?

25 A: I mean it's my theory that everybody -- that all the

AIMEE ZMROCZEK - DIRECT BY MS. MEADOWS

1 lawyers were convinced he was going to be convicted, and I
2 don't think the State really wanted to deal with the hassle of
3 going to trial with me. But so they had back in December made
4 an offer and then they rejected -- or they pulled it when he
5 rejected it. They put that same offer on the table.

6 Q: Okay. And that was the offer he had rejected; correct?

7 A: Correct.

8 Q: And what were the terms of that offer?

9 A: That he would plea to I think three charges and the rest
10 would be dismissed.

11 Q: Okay. Was there a sentencing range?

12 A: I don't recall.

13 Q: Okay. And I guess meanwhile he changed his mind and
14 wanted to plea?

15 A: I don't -- I do not recall.

16 Q: Okay. And did you ever tell him he would only be looking
17 at 5 to 10 years?

18 A: No.

19 Q: Okay. And Mr. Brooks claimed that you failed to
20 understand that attempted murder is a lesser-included offense
21 to ABHAN. Is that [inaudible]?

22 A: It's the other way around. ABHAN is a lesser-included
23 offense of attempted murder.

24 Q: Okay. And are either of those offenses [inaudible]?

25 A: No. No, neither of them are.

AIMEE ZMROCZEK - DIRECT BY MS. MEADOWS

1 Q: And then did Mr. Brooks ask you to file an appeal or did
2 you a file a motion for reconsideration?

3 A: I filed a motion to reconsider based on -- I think I
4 tried to argue the disparity. I was just reading it. The
5 disparity between the -- amongst the sentences of the two
6 other cooperating defendants.

7 Q: Okay.

8 A: I don't remember what they received, but it was denied.
9 Judge Hocker denied that, and I know we discussed filing an
10 appeal. I'm pretty sure he said, no, I don't want to file an
11 appeal, I just want to go ahead and PCR you, which I said was,
12 you know, fine. I just couldn't file that for him.

13 Q: Right. Okay.

14 MS. MEADOWS: Nothing further.

15 MS. MCMAHAN: Just a couple of questions.

16 CROSS-EXAMINATION

17 BY MS. MCMAHAN:

18 Q: Did you go to that email [inaudible]?

19 A: Oh, yeah.

20 Q: Did -- is that his signature on it?

21 A: That's his signature.

22 Q: Okay.

23 A: And Christina Metz is my paralegal. So she would have
24 been an additional witness.

25 Q: And who actually wrote out the [inaudible]? Is that your

AIMEE ZMROCZEK - CROSS BY MS. MCMAHAN

1 handwriting?

2 A: That was my handwriting.

3 Q: Okay. And -- and what was your advice at that time that
4 he was going against?

5 A: So he just wanted to go forward with a trial. Even
6 though I had explained to him the -- basically, I don't know
7 that I called it a trial tax, but just the fact that if he
8 went to trial that he would be likely receiving the maximum
9 sentences consecutive in each of the [inaudible].

10 Q: What did the co-defendants get? Did you remember?

11 A: I do not remember, but I want to -- maybe the co-
12 defendants -- maybe one of them had ten years and maybe one
13 got -- I can't -- I honestly can't remember, but I know they
14 both had --

15 Q: They got less than he did?

16 A: They got less than he did. They had been cooperating
17 from the beginning. Yes.

18 Q: And were they going to testify against him?

19 A: Oh, absolutely, they were going to testify.

20 Q: And who was Dora Shot [ph]?

21 A: I believe she's the woman that owns the house.

22 Q: Have you ever talked with her?

23 A: So I had my investigators talk to people so I don't make
24 myself -- might make myself a witness. Sometimes I'll talk to
25 them with my investigator present. In this case, I remember

AIMEE ZMROCZEK - CROSS BY MS. MCMAHAN

1 she was really hard to get in touch with. So I -- my
2 investigators knew what to ask her and what to talk about. In
3 fact, they went out to her house several times.

4 Q: And they were never able to talk to her?

5 A: Oh, no, they did.

6 Q: Okay. What did -- did she say anything that would have
7 been helpful to Mr. Brooks?

8 A: No.

9 Q: She was one of the victims; is that right?

10 A: That's correct. I believe she owned the house.

11 Q: Do you remember what she told the investigators?

12 A: I remember -- I know that she was going to talk to them
13 about a fight. She specifically was able to describe what he
14 was wearing the last time she saw him, which was I think
15 similar or describable to what he was wearing that same day of
16 the incident.

17 Q: So at any -- was she at any point going to say that he
18 wasn't there?

19 A: No.

20 Q: Did Mr. Brooks know the people at this house?

21 A: Yes.

22 Q: And going back to the kites, do you recall if a previous
23 lawyer tried to use those against him at the trial?

24 A: Oh, she absolutely was, yes.

25 Q: And would it have gone to, like, hey, Hot Boy is

AIMEE ZMROCZEK - CROSS BY MS. MCMAHAN

1 [inaudible]?

2 A: Yes.

3 Q: That we've now determined we're actually going to get a

4 handwriting expert?

5 A: Yes. And the reason that that -- the reason that that

6 became even more damning was because -- not just because the

7 handwriting expert said it was his handwriting, but because

8 there were text messages that talked about Hot Boy and Hot

9 Boy's plan and things like that and, of course, that was his

10 nickname.

11 Q: Oh, prior to you going and him [inaudible]?

12 A: Right. Right.

13 Q: And that was what your digital PI had gotten?

14 A: Correct.

15 Q: Okay. Ooh, so that would have, like --

16 A: Really hurt his case even more.

17 Q: Okay.

18 A: Yes.

19 Q: And do you recall who else he wanted you to talk to that

20 you didn't talk to? Anybody that you couldn't get in touch

21 with?

22 A: I mean I know he wanted me to talk to co-defendants, but

23 obviously, their lawyers refused to let me, you know.

24 Q: Yes.

25 A: But no. I mean I spoke with girlfriends, all kinds of

AIMEE ZMROCZEK - CROSS BY MS. MCMAHAN

1 people.

2 Q: So the girlfriend's alibi, how was that? How strong was
3 that?

4 A: It was not. It was not very strong.

5 Q: Okay. Because I know that there was the whole, you know,
6 [inaudible]?

7 A: Right.

8 Q: And obviously, [inaudible] because you wouldn't be able
9 to [inaudible], but so you did give them notice of the alibi.
10 Would you -- would she have testified at the trial if you had
11 gone?

12 A: I mean I'm assuming so. I'm assuming that she would
13 have.

14 Q: Were you ready to go to trial?

15 A: We were ready to go. So --

16 Q: Was he going to be tried that week or when?

17 A: Yes. Well, he was going to be tried that week, and then
18 all of a sudden when these kites came up, it got -- got pushed
19 off.

20 Q: Yes.

21 A: So I was trying to say I was ready to go just because I
22 didn't want it -- I knew that they --

23 Q: You were trying --

24 A: I knew they were going to come back to match him.

25 Q: So you tried to subvert [inaudible] involved?

AIMEE ZMROCZEK - CROSS BY MS. MCMAHAN

1 A: Right.

2 Q: At that point?

3 A: Right.

4 Q: That's why you were pushing to go to trial?

5 A: Exactly.

6 Q: So then when it came up, he was there. Was he also

7 scheduled to go to trial then?

8 A: He was.

9 Q: Okay. Were you ready to go that day?

10 A: I was always ready.

11 Q: And I think you mentioned this before, but was there a --

12 before he was indicted, did he have a preliminary hearing?

13 A: No.

14 Q: [Inaudible]?

15 A: Yes.

16 Q: Okay. [Inaudible] criminal procedure [inaudible]?

17 A: Right. Right. And it's 3-C, but --

18 Q: One of the lower numbers --

19 A: Yes.

20 Q: -- of the court rules; is that --

21 A: It's my very weird brain.

22 Q: And you said you never told him 5 to 10 years?

23 A: No.

24 Q: Do you -- do you know why he might have thought that he

25 was going to kind of go in and get out pretty soon?

AIMEE ZMROCZEK - CROSS BY MS. MCMAHAN

1 A: I have no idea.

2 Q: Had his co-defendants already been sentenced by that
3 time?

4 A: They were -- they were not sentenced before him, no.

5 Q: Did they plead before him?

6 A: Nope. They pled because they were going to -- it's not
7 like federal where they plead and then get sentenced later or
8 whatever. They -- no, they were holding their pleas until
9 after they testified in his trial.

10 MS. MCMAHAN: Court's indulgence, Your Honor.

11 BY MS. MCMAHAN:

12 Q: Oh, and you said that he -- he told you that he didn't
13 want an appeal?

14 A: Yes. Yeah, he told me he wanted a PCR.

15 Q: Did you explain to him his right to appeal?

16 A: Yeah.

17 Q: Okay. Did you tell him he had ten days to file it?

18 A: Yes.

19 Q: Okay.

20 A: And that those ten -- and within those ten days he also
21 had to -- so the way that they do guilty plea appeals now is
22 they have to do an explanation. So I told him that he would
23 have to also include an explanation as to why he was appealing
24 the guilty plea.

25 Q: Did you -- did you at any point argue to the State that

AIMEE ZMROCZEK - CROSS BY MS. MCMAHAN

1 this case shouldn't have gone forward without a preliminary
2 hearing?

3 A: I did not. Again, if it were indicted, but then I lose
4 that argument.

5 Q: Okay.

6 MS. MEADOWS: Nothing further, Judge.

7 THE COURT: Were you done?

8 MS. MCMAHAN: No, sir.

9 MS. MEADOWS: Sorry.

10 BY MS. MEADOWS:

11 Q: I think earlier you said something about how you knew the
12 law on attempted murder from your past. What kind of research
13 did you do for that?

14 A: I mean the last three decisions that have come down in
15 attempted murder have come down on cases that I tried, but in
16 addition to that there's, you know, the old-time case law of
17 -- for *State v. Smith*, and my case is *State v. Jeter*. There
18 were *State v. King*. So I was very familiar with -- with the
19 elements and how to try to attack those at trial.

20 Q: And the elements being that you -- that you have to have
21 some sort of injury or not?

22 A: No, that's not an element. The element there is it's a
23 specific intent crime, and so that's always where kind of I've
24 been developing the case law. But no, it's -- it's -- there
25 doesn't have to be an injury. It could also be the ability to

AIMEE ZMROCZEK - CROSS BY MS. MCMAHAN

1 cause an injury that would lead to great bodily death [sic],
2 and that -- that's when shooting into a house where you know
3 someone is, if you're doing it intentionally, would fit the
4 elements of.

5 Q: [Inaudible] intent [inaudible] specifically [inaudible]?

6 A: Right, whoever was in there.

7 Q: Versus involuntary manslaughter?

8 A: Right.

9 MS. MCMAHAN: I have no further questions, Your Honor.

10 MS. MEADOWS: Nothing further, Judge.

11 THE COURT: All right. Thank you, ma'am. You may step
12 down.

13 THE WITNESS: Okay.

14 THE COURT: Any other witnesses from the State?

15 MS. MEADOWS: No, sir. The State rests.

16 THE COURT: From the applicant?

17 MS. MCMAHAN: No, your Honor.

18 THE COURT: All right. Very good.

19 All right. Mr. Brooks, what I'm going to do is look
20 through this in its entirety, and I'll issue an opinion as to
21 what I decide.

22 (WHEREUPON, the proceedings ended at 11:57 a.m.)

23

24 --- END REQUESTED TRANSCRIPT ---

25

State of South Carolina	)	
	)	Certificate
County of Florence	)	

I, the undersigned, Krystal J. Smith, Notary Public and Official Circuit Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 46, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of Common Pleas for Lexington County, South Carolina, on the 13th day of December, 2021, to the best of my ability based upon the audio and notes provided.

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

s/Krystal J. Smith

Court Reporter

Florence, South Carolina

October 31, 2022

brooks 121516 ltr (1).docx

December 15, 2016

Legal Mail
Emonte Brooks, #131806
LCDC
P.O. Box 2019
Lexington, SC 29072

RE: State of South Carolina v. Brooks

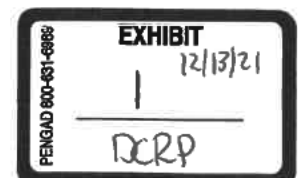
Dear Emonte:

Also, I wanted to let you know I reviewed all the discovery and DJ, Daniel Graves, gave a full confession and picked you out of line-up identifying you as Hotboi. He said that y'all three had planned to rob this guy and that you had the gun and fired it and tried to kick in the door. Your other co-defendant, Darby, gives the same kind of story. It is my strong recommendation that you accept this plea!

Best regards,

Aimee J. Zmroczek, Esq.

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M Gmail

Aimee Zniroczek <ajzlawfirm@gmail.com>

State v. Emonto brooks

3 messages

Usry, Kate Whatstone <KUsry@lex-co.com>
 To: Aimee Zniroczek <ajzlawfirm@gmail.com>
 Co: "Bell, Gill" <GBell@lex-co.com>

Tue, Apr 25, 2017 at 4:48 PM

Aimee,

You have reached out to me regarding **re-extending the plea offer** in this case. When your client appeared to plea last month **you returned the sentencing sheet** to me with "Rejected" written across the top.

I have considered this matter at length. If your client wishes to plea guilty in this matter I will re-extend the offer I originally made to him when he was represented by **Danick Tobley** which was Attempted Armed Robbery, Discharging a firearm into a Dwelling and possession of a Weapon during a Violent crime. I will dismiss all other pending charge. (So, your client must plea by the end of the day this Thursday, April 27, 2017 to receive **is benefit, otherwise the offer is revoked and this case will go on the May 8th 2017 trial** start.

Please know we have subpoenaed our witnesses for May 8th and are prepared to move forward. We have also met with both co-defendants in this matter and they are prepared testify against Defendant Brooks. Finally, as I provided you last week, forensics from ED have concluded the bullet located in the incident location is consistent with one d from the weapon retrieved in this case.

need to know by noon tomorrow if you wish to have Defendant Brooks added to the transport list for Thursday.

2
 respectfully,

I, Emonto Brooks, have been provided this offer and I am rejecting it. I understand my original charges and the penalties they carry and I am rejecting this plea offer. I understand my lawyer and the investigator are going to diligently defend my innocence at trial beginning May 8, 2017. Emonto Brooks 4/26/17
Aimee Zniroczek

ooqg.com/mas...?ty=2&...=61518222&view=pdf&search=inbox&...=15bet6070038f1&siml=15badd633548344&siml=15ubAcbe55f3d3&siml=1/3

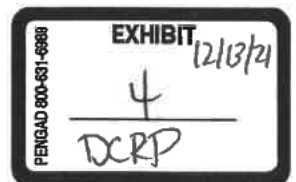
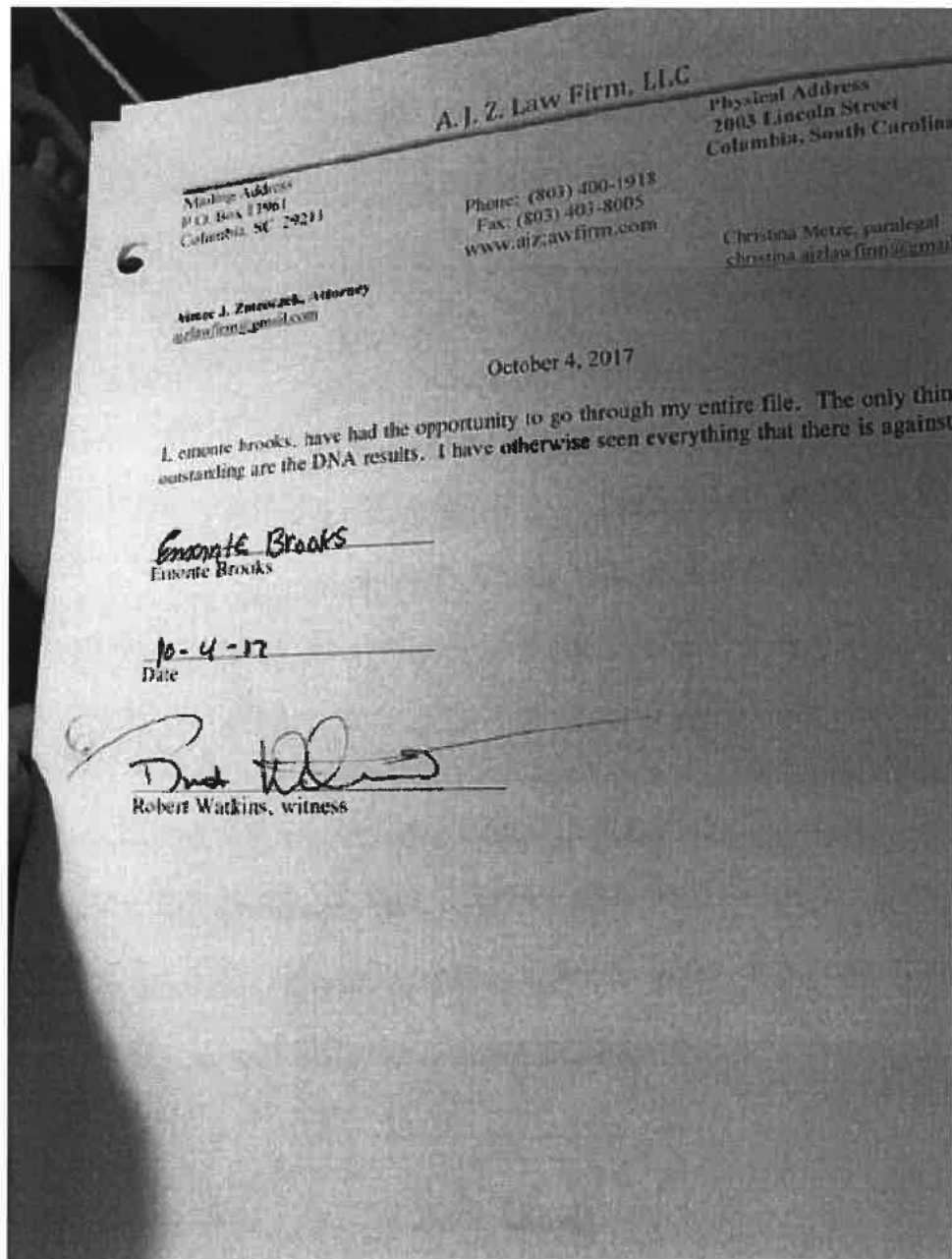


To Mrs. Boney
 I know your upset about the home writing
 sample and that I lied about it. As I do
 apologize for that I really mean it and I'm
 this point on I'll be honest with you
 about everything. But I did not let any
 of these people and I didn't sleep at
 home and I'm to the point where
 I'm going to go off on these people man
 that find any reason to mess with they
 push my button on purpose I'm trying
 to give my family but I can't talk but
 so much and to inform you I already
 gave them a DNA sample when I came
 here the officer that took it sign off on
 it and talked to so did I and they
 sent it to state I got copies made
 I sent you one I really do hate that
 investigator man's can't stand that guy he's
 a liar to and I'm not talking to him or
 helping him do nothing he better do
 everything on his own because I'm not
 working with him on nothing also it's crazy
 I've been in jail 15 months and now
 they wanna do another DNA sample after
 they realize I'm not taking no plea they
 push my trail out back because they don't
 have nothing besides my high code's



and That's all they got so now they
want to pull all this Bull shit it
isn't any way you can take me
to another Judge and try with that
Judge that's all I got for now
~~Thank you~~

Also in my motion they got they took
a DNA swab of the firearm and sent it
to Sled Can you find out about that
also I forgot to thank you, and
Christina for the Birthday card I
Really appreciated Thank You alot!



FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2018- CP-32-2432

EMONTE BROOKS
APPLICANT

THE STATE
RESPONDENT

Submitted by:	Attorney for : ☐ Plaintiff ☐ Defendant
	or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

APPLICANT'S PETITION FOR POST CONVICTION RELIEF IS DENIED. ALL OF APPLICANT'S GROUNDS GO TO THE ISSUE OF INEFFECTIVE ASSISTANCE OF COUNSEL. HOWEVER, THE GROUND AS STATED BY APPLICANT THAT COUNSEL ABANDONED APPLICANT AT THE CRITICAL STATE OF PROCEEDING BEFORE THE PLEA AND DID NOT RESEARCH THE LAW, IS MANIFESTLY WITHOUT MERIT. FURTHER, APPLICANT'S PLEA COLLOQUY WITH JUDGE HOCKER EVINCES THAT APPLICANT FREELY, VOLUNTARILY, AND INTELLIGENTLY PLED GUILTY, WITH NUMEROUS CHARGES BEING DISMISSED. THE NEXT GROUND, THAT COUNSEL FAILED TO RESEARCH THE LAW, AND THAT ATTEMPTED MURDER IS A LESSER-INCLUDED OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE IS MANIFESTLY WITHOUT MERIT. THE NEXT GROUND, THAT COUNSEL FAILED TO CHALLENGE THE WARRANTS AS VOID OF PROBABLE CAUSE, IS WITHOUT MERIT. NEXT, THAT COUNSEL WAS INEFFECTIVE IN FAILING TO ASK FOR PRELIMINARY HEARING IS DENIED IN THAT WHEN TRIAL COUNSEL WAS APPOINTED, APPLICANT HAD BEEN PREVIOUSLY INDICTED BY THE GRAND JURY. THE GROUND THAT COUNSEL WAS INEFFECTIVE BY NOT INFORMING APPLICANT THAT THERE ARE SEVERAL CHARGES FOR ONE OFFENSE IS WITHOUT MERIT, AND DENIED. MS. MEADOWS OF THE ATTORNEY GENERAL'S OFFICE TO PREPARE ORDER CONSISTENT WITH THIS, THEIR FILINGS AND EVIDENCE PRESENTED.

This order ☐ ends ☒ does not end the case.

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
--	--	--

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

FILED

2022 APR 29 AM 8:27

IN THE COURT OF COMMON PLEAS
FOR THE ELEVENTH JUDICIAL CIRCUIT

Emonte A. Brooks, SCDC #364670,

LISA M. COMER
CLERK OF COURT No. 2018-CP-32-2432
LEXINGTON SC

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

I. INTRODUCTION

This matter comes before this Court by way of a post-conviction relief (PCR) action commenced by Emonte A. Brooks (Applicant) on July 16, 2018, alleging he is entitled to post-conviction relief based on constitutionally ineffective assistance of counsel. A hearing into the matter convened before the undersigned on December 13, 2021, at the Lexington County Judicial Center. Applicant was present at the hearing and represented by Ashley A. McMahan. Assistant Attorney General Lillian L. Meadows represented the State. Applicant testified on his own behalf at the hearing, as did his plea counsel, Aimee J. Zmroczek. In addition to the pleadings in this action, this Court had before it a copy of the Lexington County Clerk of Court records regarding the subject convictions; Applicant's records from the South Carolina Department of Corrections; the pre-trial motion and plea transcripts; and the records of the current PCR action.

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to post-conviction relief. For the reasons discussed below, this Court denies relief and dismisses this action with prejudice.

II. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. Applicant was arrested on February 5, 2016, following an investigation into a shooting and armed robbery involving three-codefendants on January 27, 2016, in West Columbia. During its August 2016 term, the Lexington County Grand Jury indicted Applicant for attempted armed robbery (2016-GS-32-2027); discharging a firearm into a dwelling (2016-GS-32-2026); criminal conspiracy (2016-GS-32-2028); and possession of a weapon during the commission of a violent crime (2016-GS-32-2085). Applicant was subsequently indicted for attempted murder (2017-GS-32-0925) in April 2017 and three additional counts of attempted murder (2017-GS-32-1818, -1819, -1820) in May 2017. Aimee J. Zmroczek represented Applicant on these charges. Assistant Solicitor Kate W. Usry and L. McGill Bell, Jr., of the Eleventh Circuit Solicitor's Office prosecuted the case.

On October 30, 2017, Applicant appeared before the Honorable Donald B. Hocker and pleaded as indicted to one count of attempted murder (2017-GS-32-0925), attempted armed robbery (2016-GS-32-2027), and discharging a firearm into a dwelling (2016-GS-32-2026). No formal negotiations or recommendations were made as to sentencing; however, the State dismissed the remaining charges and a separate charge of throwing bodily fluids Applicant picked up in August 2016 while incarcerated. Judge Hocker accepted the pleas, finding there was a factual basis to support them and further finding the pleas were made freely, voluntarily, and intelligently. (Plea Tr. 19-20). Judge Hocker sentenced Applicant to concurrent terms of eighteen years' imprisonment for each charge. Applicant filed a motion to reconsider sentence, which Judge Hocker denied. Applicant did not appeal.

III. SUMMARY OF FACTS

On January 27, 2016, Applicant and his two co-defendants, Daniel Graves and Lilreg Darby, went to a home located in West Columbia with the intent to rob the homeowners. (Plea Tr. 7). At least one of the co-defendants had previously purchased marijuana from these homeowners. (Plea Tr. 7). Their plan was essentially to rob the homeowners of money and drugs. (Plea Tr. 7-8).

When the three arrived, Graves, knocked on the door. (Plea Tr. 8). Doris Shotte, one of the victims, answered the door. (Plea Tr. 8). Graves asked to speak with the other victim, Justin Erving, about purchasing marijuana. (Plea Tr. 8). Two other individuals, Dallas Lyles and Rhett Shotte, were also at the home. (Plea 10-11). Apparently, Mr. Erving did not have the marijuana Graves wanted. (Plea Tr. 8). Graves then left the house and ran straight to his home. (Plea Tr. 8, 11). As Graves was exiting, Applicant began running towards the home with a handgun. (Plea Tr. 8). He pointed the gun at the door, where Mr. Erving had previously been standing, and fired. (Plea Tr. 8). Several witnesses heard the gun clicking multiple times; however, only one bullet successfully discharged. (Plea Tr. 8). It struck the right side of the doorway. (Plea Tr. 8). Ms. Shotte immediately shut the door, but Applicant continued running towards the home. (Plea Tr. 8-9). He attempted to kick the door in but was unsuccessful. (Plea Tr. 9). Applicant and Darby then fled the scene. (Plea Tr. 9).

That night, officers responded and spoke with Ms. Shotte. (Plea Tr. 9). She did not give the full truth of what happened that night at the time because she was protecting her son, Mr. Erving, who was selling drugs out of the home at the time. (Plea Tr. 9). She stated she opened the door, saw Applicant fumbling with the gun, and immediately shut the door. (Plea Tr. 9). Law enforcement later determined from other witnesses that drugs were being sold out of the home. (Plea Tr. 9). The next day, an investigator spoke with Ms. Shotte again, who stated she knew Graves

as a DJ and admitted that he previously purchased marijuana at the home. (Plea Tr. 9). Law enforcement took Graves into custody that day. (Plea Tr. 10). Graves gave law enforcement a statement implicating Applicant, who was also known as "Hotboi" (Plea Tr. 10). Graves also identified Applicant in a photo lineup. (Plea Tr. 10). Graves further identified the other co-defendant, Darby, also known as "Fruitloop." (Plea Tr. 10). Later that day, Graves called Darby with one of the investigators present and attempted to talk about the incident. (Plea Tr. 10).

On January 29th, the following day, law enforcement returned to the crime scene. (Plea Tr. 10). At that time, they were able to retrieve the projectile that was lodged into the wall. (Plea Tr. 10). Law enforcement subsequently arrested Darby on February 2nd. (Plea Tr. 10). Darby gave a full confession, which was consistent with that of Graves. (Plea Tr. 10). Law enforcement also pulled security camera footage from a business nearby that corroborates the co-defendants' statements that Graves ran out of the home and ran straight to his house. (Plea Tr. 11). The footage further corroborates Darby's statement that, after the incident, he and Applicant waited a while before walking back to Graves' house. (Plea Tr. 11)

Darby admitted to having a gun and told law enforcement Applicant also had a gun in his possession. (Plea Tr. 11). Darby ultimately led law enforcement to the home where Applicant left his gun. (Plea Tr. 11). One of the individuals who resided at the home was able to retrieve the gun and turn it over to law enforcement. (Plea Tr. 11). After retrieving the gun and running ballistics tests, SLED was able to match Applicant's gun to the projectile found in the home. (Plea Tr. 11-12). Additionally, DNA taken from the barrel of the gun identified Applicant as a major contributor and the two co-defendants as minor contributors. (Plea Tr. 12).

When Applicant was initially arrested on February 5th, he attempted to give law enforcement a false name. (Plea Tr. 12). Applicant, Graves, and Darby all remained in jail after

they were arrested. (Plea Tr. 12). Applicant repeatedly attempted to send letters, or "kites," to his co-defendants, trying to convince them to change their statements and lie about his involvement. (Plea Tr. 13, Pre-trial Tr. 5). During a pre-trial hearing, Judge McMahon ordered SLED to conduct a handwriting analysis between the kites and a sample of Applicant's handwriting. (Plea Tr. 13, Pre-trial Tr. 16-18). The handwriting analysis matched the handwriting in the kites to Applicant's handwriting sample. (Plea Tr. 13). The report indicated that there were "no discrepancies in the two handwritings that would indicate anybody else could have written those notes." (Plea Tr. 13).

IV. ISSUES BEFORE THIS COURT

In his original application for post-conviction relief, Applicant alleges he is being held in custody unlawfully based on the following (verbatim):

1. "Involuntary guilty plea"
 - a. "Under Boykin v. Alabama, defendant plea[sic] must be knowing, voluntarily, and intelligently made. The defendant was not made aware by counsel of the possible sentences each of these charges carried. Nor has[sic] court during pleas ensured itself defendant was so properly informed."
2. "Counsel ineffective for failing to investigate and advice to plead guilty wrong"
 - a. "Counsel failed to investigate case, as counsel during plea displayed lack of knowledge for elements of Attempted Murder and operable[sic] facts. Which state must prove and the facts presented by state during guilty plea does not satisfy crime of attempted murder."
 - b. "On attempted armed robbery, once again it can be shown by state account of this crime that a trial evidence would not be sufficient for conviction"
 - c. "Counsel advice to plead guilty without investigating case was not within sound legal judgment under Hill v. Lockhart, 'that if but for counsel advice, defendant would not have plead guilty' without an investigation counsel can not advise a client to plead guilty."
3. "Counsel ineffective for not challenging constitutional violations"

- a. "Counsel was not aware that arrest warrants lack probable cause under Beck v. Ohio and lack of sufficient proof supporting warrant for arrest."

The State requested an evidentiary hearing through its return on November 13, 2018. On February 25, 2019, Applicant filed a *pro se* "Motion to Amend Pleadings" to include the following claims (verbatim):¹

1. "Critical stage:"
 - a. "Counsel abandoned applicant at a critical stage of the proceedings before guilty plea, counsel did not research law and advice to plead guilty and negotiations was[sic] inadequate"
2. "Attempted murder;"
 - a. "Counsel failed to research law on this charge and counsel[sic] advice to plead guilty was wrong, when counsel failed to understand that attempted murder is lesser included offense of ABHAN and constitutes as[sic] a misdemeanor not felony"
3. "Arrest warrants"
 - a. "Counsel was ineffective when counsel failed to challenge warrants as void of probable cause and that standard used to obtain warrants is not in accordance with law of US Supreme Court.
 - b. "Counsel also was ineffective when counsel did not challenge the police delay to obtain warrants."
4. "Preliminary hearing"
 - a. "Counsel was ineffective when counsel allowed state to waive client[sic] preliminary hearing and as such interfered with counsel[sic] obligation at critical stage of proceedings"
5. "Closely connected offenses"
 - a. "Counsel was ineffective when counsel failed to inform client that all charges constitute as[sic] one offense"

¹ Although Applicant was represented by previous PCR counsel when he filed the *pro se* amendments, current PCR counsel expressly adopted the amended allegations as her own at the start of the evidentiary hearing. See generally *State v. Stuckey*, 333 S.C. 56, 57–58, 508 S.E.2d 564, 564 (1998) (finding there is no right to "hybrid representation" under either the United States or South Carolina Constitutions and refusing to consider substantive documents filed *pro se* by person represented by counsel).

On March 25, 2019, PCR counsel, Overture E. Walker,² filed an amended application pursuant to Rule 71.1, SCRCP, to include the following allegations:

1. "Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to adequately investigate the criminal charge(s) for which Applicant was convicted."
2. "Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel advised him to enter a guilty plea that was not knowingly and intelligently made. Applicant entered a guilty plea without negotiations or recommendations from the State after being advised by trial counsel that the State would agree to a sentencing range of five (5) to ten (10) years. Defendant was sentenced to a term of 18 years imprisonment."
3. "Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to call or communicate with material witnesses whose testimony would have been favorable to Applicant."

Counsel Walker subsequently filed a second amended application on June 26, 2019, to include the following allegations:

1. "Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to adequately investigate the criminal charge(s) for which Applicant was convicted."
2. "Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel advised him to enter into a guilty plea that was not knowingly and intelligently made. Applicant entered a guilty plea without negotiations or recommendations from the State after being advised by trial counsel that the State would agree to a sentencing range of five (5) to ten (10) years. Defendant was sentenced to a term of 18 years imprisonment."
3. "Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to call or communicate with material witnesses whose testimony would have been favorable to Applicant."
4. "Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to argue that probable cause did not exist for him to be charged and/or convicted of the instant offenses attempted murder (2xs) and discharging a firearm into a dwelling."

² By order filed August 4, 2020, the Honorable Walton J. McLeod, IV, acting in his capacity as Chief Administrative Judge, relived Counsel Walker from Applicant's case.

5. "Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to advise him on South Carolina Code of Laws §§ 17-25-45(7) and 17-25-50, closely connected offenses, triggering offenses, recidivist provisions, and all its implications for sentencing purposes."
6. "Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to make timely objections to a defective indictment. Indictment alleges two victims that are not referenced in the arrest warrant. Further, the state alleged that Doris Shotte was a victim for one of the instant offenses which is belied by documents and/or testimony."
7. "Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to timely request a preliminary hearing."
8. "Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to object when the state proceeded to indict him on the instant charges prior to and without ever conducting a preliminary hearing."
9. "Applicant asserts ineffective assistance of counsel on the grounds that plea/trial counsel failed to advise applicant to plead guilty to attempted murder when the alleged victim(s) did not sustain life threatening injuries."
10. "Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to challenge the validity of the attempted robbery warrants for the co-defendants which were all issued four (4) days apart."
11. "Applicant asserts ineffective assistance of counsel on the grounds that trial/plea counsel failed to appeal my involuntary guilty plea."

At the start of the hearing before this Court, PCR counsel indicated Applicant would be proceeding only on the claims raised in the February 25, 2019, *pro se* amended application and the June 26, 2019, amended application filed by Counsel Walker.

V. STANDARD OF REVIEW

An applicant may seek PCR upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;

3. That the sentence exceeds the maximum authorized by law;
4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

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

The reviewing court applies the two-part test outlined in *Strickland* to determine whether counsel’s conduct “was so ineffective as to require reversal” of the applicant’s conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness; *and* (2) there is a reasonable probability the outcome of the proceeding would have been different but for counsel’s deficient performance. *Williams v. State*, 363 S.C. 341, 343, 611 S.E.2d 232, 233 (2005) (citing *Strickland*, 466 U.S. 668). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the

ineffectiveness claim. *Strickland*, 466 U.S. at 700; *see also Bell v. Cone*, 535 U.S. 685, 695 (2002) (explaining that “[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable” (citation and internal quotation marks omitted)).

The applicant bears the heavy burden of establishing both prongs of the *Strickland* standard by a preponderance of the evidence. *Hughes v. State*, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRCP. To prove deficient performance, the applicant must establish that, in light of all the circumstances, the acts or omissions complained of “fell below an objective standard of reasonableness” as measured by “prevailing professional norms.” *Strickland*, 466 U.S. at 688. Reviewing courts should be deferential in this inquiry, and apply “a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *Id.* at 689. With respect to prejudice, the applicant must demonstrate “a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 694. A reasonable probability is a probability “sufficient to undermine confidence in the outcome.” *Id.* When evaluating this probability, the reviewing court “should consider the specific impact counsel’s error had on the outcome of the trial” coupled with “the strength of the State’s case in light of . . . the [totality of the] evidence presented to the jury.” *Smalls v. State*, 422 S.C. 174, 188, 810 S.E.2d 836, 843 (2018). Significantly, “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.

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a “strong presumption that counsel’s conduct falls within the wide range of reasonably

professional assistance.” *Butler v. State*, 286 S.C. 441, 445, 334 S.E.2d 813, 816 (1985). “The burden of rebutting this presumption ‘rests squarely on the defendant,’ and ‘[i]t should go without saying that the absence of evidence cannot overcome [i]t.’ ” *Dunn v. Reeves*, 594 U.S. ___, ___, 141 S. Ct. 2405, 2410 (2021) (alteration in original) (quoting *Burt v. Titlow*, 571 U.S. 12, 22–23 (2013)). In fact, “even if there is reason to think that counsel’s conduct ‘was far from exemplary,’ a court still may not grant relief if ‘[t]he record does not reveal’ that counsel took an approach that *no competent lawyer would have chosen*.” *Id.* (alteration in original) (emphasis added) (quoting *Titlow*, 571 U.S. at 23–24). Representation is constitutionally ineffective only if counsel’s conduct “so undermined the proper functioning of the adversarial process” that the defendant was denied a fair proceeding. *Strickland*, 466 U.S. at 686; see *Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that under *Strickland*, the “benchmark” of the right to counsel is the “fairness of the adversary proceeding”).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, *Hill v. Lockhart*, 474 U.S. 52 (1985) extended the two-part *Strickland* test to challenge guilty pleas based on ineffective assistance of counsel. See *Padilla v. Kentucky*, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a “critical phase of litigation” for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis of counsel’s performance under the first prong of *Strickland* remains unchanged—the applicant must show that counsel’s representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. *Hill*, 474 U.S. at 58–59; accord *Thompson v. State*, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel’s advice to plead guilty was not “within the competence demanded of attorneys in criminal cases.” *Hill*, 474 U.S. at 56. The second, or

“prejudice” prong, however, “focuses on whether counsel’s constitutionally ineffective performance affected the outcome of the plea process.” *Id.* at 58–59. Specifically, when an applicant claims counsel’s deficient performance caused him to accept a plea, the applicant “must show that there is a reasonable probability that, but for [plea] counsel’s [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial.” *Id.* at 59.

This inquiry “focuses on a defendant’s decisionmaking” and does not turn on the outcome of a defendant’s actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. *Lee v. United States*, 582 U.S. ___, ___, 137 S. Ct. 1958, 1966 (2017). However, the applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. *Padilla*, 559 U.S. at 372. Judges must “look to contemporaneous evidence to substantiate a defendant’s expressed preferences.” *Lee*, 582 U.S. at ___, 137 S. Ct. at 1967. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. *Harres v. Leeke*, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Surmounting *Strickland*’s high bar is never an easy task, and the strong societal interest in finality has “special force with respect to convictions based on guilty pleas.” *Lee*, 582 U.S. at ___, 137 S. Ct. at 1967 (internal citations and quotation marks omitted); *cf. Hill*, 474 U.S. at 58 (“[R]equiring a ‘prejudice’ showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel ‘will serve the fundamental interest in the finality of guilty pleas.’”). Reviewing “[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney’s deficiencies.” *Lee*, 582 U.S. at ___, 137 S. Ct. at 1967. The question here is whether the applicant,

if correctly informed of circumstances surrounding the plea, would have pleaded guilty—not whether counsel would have still advised him or her to plead guilty. *Turner v. State*, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

VI. FINDINGS OF FACT & CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR hearing, observed the witnesses, passed upon their credibility, and weighed their testimony accordingly. After hearing the testimony presented and considering the legal arguments by counsel, as well as the record in this action incorporated by way of the State's return, this Court proceeds to the claims of ineffective assistance of counsel and involuntary guilty plea articulated at the start of the hearing and finds each to be without merit. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings of facts and conclusions of law based upon all of the probative evidence presented.

A. Ineffective Assistance of Plea Counsel³

Applicant first makes a series of claims alleging Counsel Zmroczek's performance was constitutionally ineffective before, during, and after plea negotiations. Specifically, he claims she abandoned him during a "critical stage" of the proceedings against him by failing to request a preliminary hearing; failing to challenge the arrest warrants; failing to research the law on attempted murder; failing to timely object to an allegedly defective indictment; failing to advise him on whether his charges constitute "closely connected offenses;" failing to investigate, review discovery, and communicate with material witnesses; and failing to file a notice of appeal on his behalf. *See Padilla*, 559 U.S. at 373 (noting that the Court has "long recognized that the negotiation of a plea bargain is a critical phase of litigation for purposes of the Sixth Amendment right to

³ Claims 1–5 in the February 25, 2019, *pro se* amended application; claims 1, 3, 4 and 6–11 in the June 26, 2019, second amended application.

effective assistance of counsel” (citing *Hill*, 474 U.S. at 57 and *McMann v. Richardson*, 397 U.S. 759, 770–71 (1970))). He further claims she provided ineffective assistance after his plea for failing to file an appeal on his behalf.

This Court disagrees, and notes that many of these claims fail as a matter of law. See *Basham v. United States*, 109 F. Supp. 3d 753, 776 (D.S.C. 2013) (noting that “[i]t is axiomatic that if the claim or claims that counsel failed to raise are devoid of legal merit, a defendant suffers no prejudice and cannot establish a claim of ineffective assistance of counsel” (citing *Strickland*, 466 U.S. at 687)), *aff’d*, 789 F.3d 358 (4th Cir. 2015), and *aff’d*, 789 F.3d 358 (4th Cir. 2015). This Court finds Applicant failed to overcome the strong presumption that Counsel Zmroczek rendered adequate assistance and exercised reasonable professional judgment in her representation of Applicant at all stages of the proceedings. *Ard v. Catoe*, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007); *Strickland*, 466 U.S. at 689. This Court further finds Applicant failed to produce any evidence showing that Counsel Zmroczek tendered improper or inaccurate advice either before or during the plea hearing. Given that Applicant was facing trial on, among other charges, four counts of attempted murder and in light of the State’s strong evidence against him, this Court finds Applicant failed to demonstrate that “a decision to reject the plea bargain would have been rational under the circumstances.” *Padilla*, 559 U.S. at 372; see *United States v. Fugit*, 703 F.3d 248, 260 (4th Cir. 2012) (noting that “subjective preferences . . . are not dispositive; what matters is whether proceeding to trial would have been objectively reasonable in light of all of the facts”).

This Court finds credible and persuasive the testimony of Counsel Zmroczek, who presented well-recalled testimony of the events leading up to Applicant’s plea and demonstrated knowledge of the rules, statutes, and case law addressing many of Applicant’s claims against her. Counsel Zmroczek’s credible testimony further demonstrates that she met with Applicant multiple

times, engaged in plea negotiations on his behalf, and worked out a plea deal that was beneficial to him. Applicant's own testimony, although predominantly incredible, established Counsel Zmroczek met with him multiple times to discuss the State's evidence, discovery, potential witnesses, proceeding to trial, and plea offers.

1. Failure to Request Preliminary Hearing

Applicant makes several allegations of ineffective assistance of counsel pertaining to his desire for a preliminary hearing. Specifically, Applicant claims Counsel Zmroczek was ineffective for allegedly allowing the State to waive his preliminary hearing; for failing to timely request a preliminary hearing; and for failing to object to the State indicting him without conducting a preliminary. This Court disagrees.

At the PCR hearing, Applicant testified he was initially represented by Derrick E. Mobley, but that the Court later appointed Counsel Zmroczek to represent him. Applicant testified that he filled out and timely submitted a form requesting a preliminary hearing after he was informed that he had ten days to do so. Nonetheless, he explained, Counsel Zmroczek waived his right to a preliminary hearing without his consent by letting a grand jury indict him.

Counsel Zmroczek testified that she was appointed due to a conflict of interest with the Lexington County Public Defender's Office. At that point, Applicant had already been indicted and therefore she could not request a preliminary hearing pursuant to Rule 2(c), SCrimP. This Court agrees with Counsel Zmroczek's assessment. *See State v. Ballington*, 346 S.C. 262, 268–69, 551 S.E.2d 280, 283 (Ct. App. 2001) (“[A]lthough Ballington may have timely requested a preliminary hearing, his right to have the hearing ended with the grand jury's indictment.”), *overruled on other grounds by State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009).

"The purpose of the preliminary hearing is to establish that probable cause exists to continue the criminal process." *State v. Cunningham*, 275 S.C. 189, 193, 268 S.E.2d 289, 291 (1980); Rule 2(c), SCrimP. While every criminal defendant is entitled to notice of his right to a preliminary hearing, neither the South Carolina nor United States Constitution require a preliminary hearing before a grand jury can indict a person for a crime. *State v. McClure*, 277 S.C. 432, 434, 289 S.E.2d 158, 160 (1982) (citing *State v. Irby*, 166 S.C. 430, 164 S.E. 912 (1932)); *State v. Keenan*, 278 S.C. 361, 365, 296 S.E.2d 676, 678 (1982).

Thus, no such hearing may be held if the defendant is indicted by a grand jury before a preliminary hearing is held. Rule 2(b), SCRCrimP; see *State v. Hawkins*, 310 S.C. 50, 54-55, 425 S.E.2d 50, 53 (Ct. App. 1992) (holding the trial court did not err in refusing to quash the defendant's indictments because he did not receive a requested preliminary hearing where he was indicted before a preliminary hearing was held); Rather, the indictment itself constitutes a finding of probable cause and thus avoids the need for a preliminary hearing." *McClure*, 277 S.C. at 434, 289 S.E.2d at 160; accord. *United States v. Soriano-Jarquin*, 492 F.3d 495, 502 (4th Cir. 2007) (noting that the probable cause requirement may be satisfied either by a preliminary hearing or by indictment by a grand jury).

Accordingly, this Court finds Applicant failed to establish Counsel Zmroczek's failure to request a preliminary hearing constitutes deficient performance because such a request would have been futile. Further, Applicant cannot establish prejudice because he was indicted for these offenses by a grand jury. Because each indictment itself constitutes a finding of probable cause, Applicant's request for relief by way of this allegation is **DENIED**.

2. Failure to Challenge Arrest Warrants

Applicant next raises three claims alleging Counsel Zmroczek was ineffective for failing to challenge his arrest warrants. First, Applicant claims she “failed to argue that probable cause did not exist for him to be charged and/or convicted of the instant offenses attempted murder (2xs) and discharging a firearm into a dwelling.” Second, Applicant claims she failed to challenge the validity of the attempted armed robbery warrant based on his co-defendants’ armed robbery warrants being issued four days apart. Finally, he alleges she failed to challenge the validity of the attempted murder warrant, which was defective because it failed to comply with the statutory requirement to provide evidence that Applicant caused substantial bodily harm to the victim.

This Court disagrees, and finds Applicant failed to establish a cognizable basis upon which Counsel Zmroczek could have challenged the arrest warrants for lack of probable cause. Further, even if Counsel Zmroczek was somehow deficient in this regard, he cannot establish prejudice because he was indicted for these offenses after his arrest, which also would have established probable cause. *See generally Law v. S.C. Dep’t of Corr.*, 368 S.C. 424, 441, 629 S.E.2d 642, 651 (2006) (noting South Carolina has long embraced the rule that a true bill of indictment is *prima facie* evidence of probable cause).

i. *Lack of Probable Cause, Generally*

The United States Supreme Court has held that the constitutional validity of an arrest warrant “depends in turn upon whether, at the moment the arrest was made, the officers had probable cause to make it—whether at that moment the facts and circumstances within their knowledge and of which they had reasonably trustworthy information were sufficient to warrant a prudent man in believing that the petitioner had committed or was committing an offense.” *Beck v. State of Ohio*, 379 U.S. 89, 91 (1964); *Law*, 368 S.C. at 441, 629 S.E.2d at 651 (“Probable cause

is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious man, under the circumstances, to believe likewise.”). “The rule of probable cause is a practical, nontechnical conception affording the best compromise that has been found for accommodating . . . often opposing interests. Requiring more would unduly hamper law enforcement. To allow less would be to leave law-abiding citizens at the mercy of the officers’ whim or caprice,” *Beck*, 379 U.S. at 91 (alteration in original) (quoting *Brinegar v. United States*, 338 U.S. 160, 176 (1949)).

Here, law enforcement had more than sufficient probable cause to arrest Applicant for attempted murder. The arrest warrant indicates Applicant was arrested on February 5, 2016, for crimes he committed on January 27, 2016. As set forth in Section III, *supra*, the solicitor set forth a detailed summary of law enforcement’s investigation and timeline. Notably, both of Applicant’s co-defendants implicated him in the crime and identified him in a photo lineup. Law enforcement also pulled security camera footage from a business nearby that corroborated the co-defendants’ statements and Ms. Shotte’s description of their clothing. The specifically corroborated Darby’s statement that, after the incident, he and Applicant waited a while before walking back to Graves’ house. (Plea Tr. 11). All of this occurred prior to law enforcement obtaining the warrants for Applicant’s arrest.

In *Ex parte U.S.*, the United States Supreme Court noted that “[i]t reasonably cannot be doubted that, in the court to which the indictment is returned, the finding of an indictment, fair upon its face, by a properly constituted grand jury, conclusively determines the existence of probable cause for the purpose of holding the accused to answer.” 287 U.S. 241, 250 (1932). The Court further explained in *Gerstein v. Pugh* that “[t]he willingness to let a grand jury’s judgment substitute for that of a neutral and detached magistrate is attributable to the grand jury’s

relationship to the courts and its historical role of protecting individuals from unjust prosecution.” 420 U.S. 103, 118 n.19 (1975); cf. *Brooks v. City of Winston-Salem, N.C.*, 85 F.3d 178, 182 (4th Cir. 1996) (holding that “charge that probable cause for a warrantless arrest was lacking, and thus that the seizure was unconstitutional, would not necessarily implicate the validity of a subsequently obtained conviction”).

As discussed above regarding the preliminary hearing issue, Applicant had already been indicted by the time Counsel Zmroczek was appointed. This Court likewise finds Applicant failed to establish Counsel Zmroczek’s failure to challenge the arrest warrants based on lack of probable cause constitutes deficient performance because such a request would have been futile. Further, Applicant cannot establish prejudice because he was indicted for these offenses by a grand jury. Therefore, even if Counsel Zmroczek or his prior counsel had successfully challenged the arrest warrants, Applicant would have been arrested after he was later indicted for the same charges. Accordingly, Applicant’s request for relief by way of this allegation is **DENIED**.

ii. *Attempted Armed Robbery Warrants*

Applicant further alleges Counsel Zmroczek was ineffective for failing to challenge the validity of the attempted armed robbery warrant because it was issued four days after the attempted armed robbery warrants were issued for his co-defendants. As set forth in Section III, *supra*, the solicitor set forth a detailed timeline of the investigation, including when the co-defendants were arrested. Specifically, Graves was taken into custody the day after the crime—on January 28, 2016. Darby was arrested on February 2, 2016. Applicant was arrested on February 5, 2016.

This Court would note that Applicant failed to introduce his co-defendants’ arrest warrants at the PCR hearing or provided any testimony in this issue. He further failed to provide a cognizable basis upon which Counsel Zmroczek could have challenged the validity of the arrest

warrant for attempted armed robbery based on it being issued several days after his co-defendants were arrested. This Court is unaware of any law or rule that requires co-defendants to be arrested on the same day. Further, Applicant had already been indicted for this offense by a grand jury at the time Counsel Zmroczek was appointed. Therefore, even had Counsel Zmroczek or his prior counsel successfully challenged the arrest warrant, Applicant would have been arrested after he was later indicted for the same charge. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

iii. Attempted Murder Warrant

At the PCR hearing, Applicant testified that an element of attempted murder is substantial bodily harm caused to another. However, the warrant did not provide any evidence that Applicant caused substantial bodily harm to anyone by simply shooting into the home. Despite these insufficiencies, Applicant explained, Counsel Zmroczek failed to challenge the attempted murder warrant. Applicant reiterated that the State had not and could not establish probable cause for attempted murder because (1) merely shooting into a dwelling was insufficient to establish probable cause and (2) Applicant did not cause any substantial bodily harm.

Counsel Zmroczek addressed Applicant's erroneous contention that the State had to prove he caused substantial injury to the victims for him to be convicted of attempted murder. She correctly explained that, pursuant to *State v. King*, 422 S.C. 47, 810 S.E.2d 18 (2017), attempted murder is a specific intent crime that *does not require actual injury*. Further, two recent published opinions from our appellate courts addressing the element of attempted murder—*State v. Geter*, 434 S.C. 557, 864 S.E.2d 569 (Ct. App. 2021), *reh'g denied* (Nov. 5, 2021), and *State v. Smith*, 430 S.C. 226, 845 S.E.2d 495 (2020)—were cases she tried. Counsel Zmroczek explained that the State only had to prove the *ability* to cause great bodily harm. By shooting into a home knowing

people were inside, Applicant had satisfied both the specific intent element and the ability to cause great bodily harm element. This Court again agrees with Counsel Zmroczek's assessment.

South Carolina's attempted murder statute provides that "[a] person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder." S.C. Code Ann. § 16-3-29. *See Keys v. State*, 766 P.2d 270, 273 (Nev. 1988) ("Attempted murder is the performance of an act or acts which tend, but fail, to kill a human being, when such acts are done with express malice, namely, with the deliberate intention unlawfully to kill." (cited with approval in *King*, 422 S.C. at 56-57, 810 S.E.2d at 23)). Nothing in the attempted murder statute suggests that substantial bodily harm or even injury to the victim is required. *Cf. State v. Middleton*, 407 S.C. 312, 315-16, 755 S.E.2d 432, 434-35 (2014) (where the trial judge "misconstrued the statutory definition of assault and battery in the first degree as requiring an injury to the victim," clarifying that first-degree assault and battery based on attempt to injure another person in manner likely to produce death or great bodily injury is lesser-included offense of attempted murder with respect to one of two victims *who suffered no injury*) (emphasis added); *King*, 422 S.C. at 59, 810 S.E.2d at 24 (2017) (contrasting the statutory offense of attempted murder with the now-abolished common law offense of assault and battery with intent to kill (ABWIK), which is often described as follows: "if the victim had died from the injury, the defendant would have been guilty of murder") (quoting *State v. Sutton*, 340 S.C. 393, 396, 532 S.E.2d 283, 285 (2000)).

Applicant's claim the attempted murder warrant was defective based on lack of evidence that he caused substantial bodily harm to the victim therefore fails as a matter of law. Applicant failed to offer any further basis upon which Counsel Zmroczek could have challenged the

attempted murder warrant based on lack of probable cause. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

3. Failure to Research the Law on Attempted Murder

Applicant further raises two claims pertaining to Counsel Zmroczek's alleged misunderstanding of the law on attempted murder, including the elements of the offense and lesser-included offenses. Specifically, Applicant claims Counsel Zmroczek (1) erroneously "advise[d] applicant to plead guilty to attempted murder when the alleged victim(s) did not sustain life threatening injuries," and (2) "failed to understand that attempted murder is lesser included offense of ABHAN and constitutes . . . a misdemeanor not felony." This Court disagrees.

i. *Advice to Plead*

Analogous to his claim that the State could not establish probable cause for attempted murder because he did not cause substantial bodily harm to the victim, Applicant contends Counsel Zmroczek erroneously advised him to plead guilty to attempted murder where the victims did not sustain life-threatening injuries. As aforementioned, substantial bodily harm is not an element of attempted murder. As Counsel Zmroczek explained, Applicant satisfied both the specific intent element and the ability to cause great bodily harm elements by shooting into a home knowing people were inside. Therefore, this claim similarly fails as a matter of law.

Moreover, this Court would point out that Applicant twice rejected plea offers—against Counsel Zmroczek's advice—that would have resulted in dismissal of his attempted murder charges. Counsel Zmroczek first advised Applicant to accept the State's plea offer for attempted armed robbery, discharging a firearm into a dwelling, and criminal conspiracy in 2016. *See* State's Exhibit #1. Applicant rejected the offer. The State then re-extended this offer in April of 2017, right before his trial was scheduled to start. Applicant rejected the offer again, and Counsel

Zmroczek had Applicant sign a document acknowledging that his decision to reject the plea offer was against his best interest. See State's Exhibit #2.

This Court finds credible Counsel Zmroczek's testimony that she explained the elements of the crimes to Applicant multiple times, and he never raised any questions or expressed any misunderstanding of what the State was required to prove. Applicant failed to produce any evidence showing that Counsel Zmroczek tendered improper or inaccurate advice either before or during the plea hearing regarding the elements of attempted murder. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

ii. Lesser-Included Offense

Applicant's claim regarding Counsel Zmroczek's purported "failure to research the law" on attempted murder and "failure to understand" that attempted murder is a lesser-included offense of ABHAN—based on Applicant's own misunderstanding—fails as a matter of law. Counsel Zmroczek correctly testified that, as provided in S.C. Code Ann. § 16-3-600(B)(3), "assault and battery of a high and aggravated nature [(ABHAN)] is a lesser-included offense of attempted murder." *Accord. Middleton*, 407 S.C. at 315, 755 S.E.2d at 434. Additionally, this allegation is wholly irrelevant to Applicant's case given that he was not charged with ABHAN nor offered to plead to ABHAN as a lesser-included offense of attempted murder. Further, both attempted murder and ABHAN are felonies that are classified as violent under section 16-1-60. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

4. Failure to Object to Indictments

Applicant next contends Counsel Zmroczek was ineffective for failing to timely object to alleged defects in one of the indictments, which purportedly references two victims that are not

mentioned in the arrest warrant.⁴ This Court disagrees, and would note as an initial matter that an indictment is a mere notice document. “The primary purposes of an indictment are to put the defendant on notice of what he is called upon to answer, *i.e.*, to apprise him of the elements of the offense and to allow him to decide whether to plead guilty or stand trial, and to enable the circuit court to know what judgment to pronounce if the defendant is convicted.” *Evans v. State*, 363 S.C. 495, 508, 611 S.E.2d 510, 517 (2005) (citing *State v. Gentry*, 363 S.C. 93, 102–03, 610 S.E.2d 494, 500 (2005) and S.C. Code Ann. § 17-29-30); *see also State v. Tumbleston*, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Ct. App. 2007) (“The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet.”).

Here, the indictments were certainly sufficient to give Applicant notice of the charges against him. Each indictment is facially valid because it states all the necessary elements of the crime, the date of the offense, and the name of the accused. *Costello v. United States*, 350 U.S. 359, 363 (1956); S.C. Code Ann. §§ 17-19-20, -30. All three indictments were true billed and signed by the foreman of the grand jury.

⁴ Applicant does not identify which warrant or indictment he is referring to. Warrant #2016A3221100056 identifies both Ms. Shotte and Mr. Erving as victims. The solicitor explained at the plea hearing that Applicant was pleading guilty to attempted murder only with regards to Justin Erving. (Plea Tr. 10–11). She further noted that there were three additional attempted murder warrants for Doris Shotte, Rhett Shotte, and Dallas Lyles, who were also in the home. Those charges were dismissed as part of the plea agreement. Warrant #2016A3221100057, which was the basis for the attempted armed robbery indictment (2016-GS-32-2027), mentions the “victim” but does not identify any victim or victims by name. Because Applicant pleaded guilty to the attempted murder of both Ms. Shotte and Mr. Erving, this Court assumed Applicant is referring to that indictment.

Further, Applicant freely and voluntarily pleaded guilty and admitted he committed the conduct outlined in the indictments. Judge Hocker engaged in the following colloquy with Applicant during the plea hearing:

THE COURT: Okay. And you admit that you attempted armed robbery as it concerns Doris Shotte and Justin Erving?

THE DEFENDANT: Yes, sir.

THE COURT: Is that a yes? You need to speak up.

THE DEFENDANT: Yes, sir.

THE COURT: And do you agree that you attempted to murder Justin Erving?

THE DEFENDANT: Yes, sir.

THE COURT: And do you agree or admit that you discharged a firearm into a dwelling either owned or occupied or possessed by Doris Shotte and Justin Erving?

THE DEFENDANT: Yes, sir.

(Plea Tr. 15–16); *See Whetsell v. State*, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (explaining that a plea waives all non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence and claims of a violation of a constitutional right prior to the plea) (citing *Rivers v. Strickland*, 264 S.C. 121, 213 S.E.2d 97 (1975)).

Further, as discussed above, “an indictment, ‘fair upon its face,’ and returned by a ‘properly constituted grand jury,’ conclusively determines the existence of probable cause . . .” *Gerstein*, 420 U.S. at 118 n.19. Regardless of the information contained in the arrest warrant, Applicant was indicted by the grand jury for the conduct set forth in the indictment. He did not present any evidence or testimony at the PCR hearing regarding the basis upon which counsel should have challenged any of the indictments.⁵ Applicant further failed to demonstrate a reasonable

⁵ Even had Counsel Zmroczek successfully moved to quash the indictment and been successful, jeopardy does not attach until a jury is sworn or the plea judge accepts the guilty plea. *Crist v. Bretz*, 437 U.S. 28, 37 (1978). Under this well-settled principle, the State would have been readily

probability that, had Counsel Zmroczek challenged his indictments, he would have chosen to forego the benefits of the plea deal and gone to trial. Accordingly, Applicant's claims pertaining to Counsel Zmroczek's failure to timely object to alleged deficiencies in the indictments is **DENIED.**⁶

5. Failure to Advise Applicant on Closely Connected Offenses: Double Jeopardy

Applicant raises two ineffective assistance of counsel claims relating to whether his charges constitute closely connected offenses.⁷ Applicant first claims Counsel Zmroczek was ineffective for failing to inform him "that all charges constitute . . . one offense." Although Applicant states this claim is based on "closely connected offenses," it appears from his testimony that this allegation is based on double jeopardy. At the PCR hearing, Applicant testified that the grand jury indicted him on three charges that all stemmed from one incident. He stated this was clearly an error, because he can only receive one charge per incident. Specifically, he explained that he should have only been charged with one offense "because it was just one action of shooting into a home."

The "Double Jeopardy Clause protects against a second prosecution for the same offense after acquittal or conviction, and protects against multiple punishments for the same offense." *State v. Brandt*, 393 S.C. 526, 538, 713 S.E.2d 591, 597 (2011) (quoting *Stevenson v. State*, 335 S.C. 193, 198, 516 S.E.2d 434, 436 (1999)). In *Blockburger v. United States*, the United States Supreme

able to re-indict Applicant on the same charge. *State v. Prince*, 279 S.C. 30, 32-33, 301 S.E.2d 471, 472-73 (1983).

⁶ Regarding the indictment issue, Applicant further claims that "the State alleged that Doris Shotte was a victim for one of the instant offenses which is belied by documents and/or testimony." Applicant did not present any such "documents and/or testimony" suggesting Ms. Shotte was not a victim for any of the offenses he pled to at the PCR hearing, nor did he elaborate on this claim. Accordingly, this Court finds this particular claim was voluntarily waived and abandoned and is therefore denied and dismissed with prejudice. S.C. Code Ann. §§ 17-27-80 and -90.

⁷ The second claim regarding "closely connected offenses" relates to the voluntariness of his plea and is addressed below.

Court clarified "[t]he applicable rule is that, where the same act or transaction constitutes a violation of two distinct statutory provisions, the test to be applied to determine whether there are two offenses or only one, is whether each provision requires proof of a fact which the other does not." 284 U.S. 299, 304 (1932). In other words, "*a single act may be an offense against two statutes*; and if each statute requires proof of an additional fact which the other does not, an acquittal or conviction under either statute does not exempt the defendant from prosecution and punishment under the other." *Id.* (emphasis added); *accord, State v. Moyd*, 321 S.C. 256, 258, 468 S.E.2d 7, 9 (Ct. App. 1996) ("A defendant may be severally indicted and punished for separate offenses without being placed in double jeopardy *where a single act consists of two 'distinct' offenses.*") (emphasis added).

This Court finds Applicant's claim fails as a matter of law. Each of the offenses Applicant pleaded guilty to clearly involve distinct elements. *Compare* S.C. Code Ann. § 16-3-29 ("A person who, with intent to kill, attempts to kill another person with malice aforethought, either expressed or implied, commits the offense of attempted murder."), *with* S.C. Code Ann. § 16-11-330(B) ("A person who commits attempted robbery while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, is guilty of a felony . . ."), *and* S.C. Code Ann. § 16-23-440 (A) ("It is unlawful for a person to discharge or cause to be discharged unlawfully firearms at or into a dwelling house, other building, structure, or enclosure regularly occupied by persons."). Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

6. Failure to Investigate, Review Discovery, and Communicate with Material Witnesses⁸

Applicant next contends Counsel Zmroczek was ineffective for failing to adequately investigate his case, failing to review discovery with him, and failing to call or communicate with material witnesses whose testimony would have allegedly been favorable to Applicant. This Court disagrees, and finds plea counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in her representation.

i. *PCR Testimony*

At the PCR hearing, Applicant testified he met with Counsel Zmroczek approximately five to six times. Applicant testified that Counsel Zmroczek provided him with a copy of the discovery although she never reviewed the discovery with him. However, he later testified on cross-examination that they discussed the State's evidence and reviewed the discovery. He further testified that he and Counsel Zmroczek did not discuss possible defense theories or trial strategies.

Applicant further expressed concerns regarding Counsel Zmroczek's investigation. Specifically, Applicant testified he requested that Counsel Zmroczek reach out to a potential witness who could say that Applicant was not at the scene of the crime. While Counsel Zmroczek allegedly spoke with the witness, the witness never appeared before the court. Applicant further testified he wanted one of the victims to testify he had nothing to do with the shooting. He stated he asked Counsel Zmroczek to obtain an affidavit from one of the victims stating that he was not involved in the robbery; however, she never produced the affidavit.

⁸ Although Applicant did not expressly raise a claim of ineffective assistance of counsel for failing to review discovery, this Court finds there was sufficient testimony and evidence presented on this issue such that it was implicitly raised. *See* Rule 15(b), SCRCP (pleadings may be amended, even after judgment, to conform to issues tried by express or implied consent but not raised in the original pleadings); *see also, e.g., Mangal v. State*, 421 S.C. 85, 94–96, 805 S.E.2d 568, 573 (2017), *Simpson v. Moore*, 367 S.C. 587, 599, 627 S.E.2d 701, 708 (2006), *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836.

Counsel Zmroczek testified that she has been practicing law since November 2008. She recalled being appointed to Applicant's case in early 2016 due to a conflict with the Lexington County Public Defender's Office. She testified she met with Applicant multiple times to discuss numerous aspects of the case. Specifically, they reviewed the discovery; discussed the elements of the crimes; examined plea offers; and explained Applicant's constitutional rights and the effect of pleading guilty. Because Applicant was extremely difficult, she kept extensive records relating to their meetings. *See* State's Exhibit #3. She made sure to put everything in writing and have him sign it. Through Counsel Zmroczek, the State introduced a document signed by Applicant on October 4, 2017, confirming that he had reviewed everything in his file. State's Exhibit #4.

As to the facts of the case and the State's evidence, Counsel Zmroczek testified that Applicant and three co-defendants were caught on camera—in very identifiable clothing—robbing the victim's home. The two co-defendants implicated Applicant in the crime and identified him as the individual who kicked the door open and shot into the home.

Counsel Zmroczek recalled the difficulties with this case and how they impacted her trial strategy. The most concerning evidence was the testimony of the co-defendants implicating Applicant and the letters from Applicant to the co-defendants asking them to lie about his involvement. *See* (Pre-trial Tr. 1–22). The State's handwriting expert confirmed that Applicant was the author of the kites from "Hotboi" to the co-defendants, insisting that they lie about his involvement. In addition to the letters, the State obtained text messages discussing "Hotboi's" attempted to rob the home.

Counsel Zmroczek nonetheless stated that her trial strategy was to discredit the co-defendants and the victims with the ultimate goal of raising reasonable doubt that Applicant was the shooter. She testified she hired two private investigators—one for the digital evidence one to

assist her with trial preparation. Despite Counsel Zmroczek's best efforts, she struggled to find any evidence to support their defense theory.

For example, Counsel Zmroczek hoped to use still images from the security camera to raise doubt as to Applicant's presence at the scene. However, the enlarged images made it even easier to identify Applicant as the perpetrator. She further recalled speaking with numerous individuals as part of her investigation. One of her private investigators interviewed the homeowner in an attempt to discredit her identification of Applicant as the shooter. Unfortunately, it did not prove helpful for Applicant's case. Ms. Shotte was able to provide extensive details regarding Applicant's attire when he robbed the home. Likewise, the other victims were able to identify the co-defendants based on their distinct clothing.

Counsel Zmroczek testified that Applicant gave her and her investigator numerous versions of the events that took place the night of the crime, but he mainly emphasized that he was not present. Applicant's girlfriend was able to provide her with a partial alibi; however, it did not cover the entire duration of the crime. Despite these concerns, Counsel Zmroczek had secured individuals to testify on Applicant's behalf and was prepared to proceed to trial.

ii. Discussion

This Court finds again finds applicable the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." *Ard*, 372 S.C. at 331, 642 S.E.2d at 596 (citing *Strickland*, 466 U.S. 668). "A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State." *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). "[W]hile the scope of a reasonable investigation depends upon a number of issues,

at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard*, 372 S.C. at 331–32, 642 S.E.2d at 597 (internal quotation marks omitted) (emphasis omitted). Essentially, trial “counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.” *Strickland*, 466 U.S. at 691.

Our Supreme Court has cautioned reviewing courts not to lose sight of the reasonableness standard regarding counsel’s duty to investigate. *See Ard*, 372 S.C. at 331, 642 S.E.2d at 597 (“Without a doubt, [a] criminal defense attorney has a duty to investigate, but this duty is limited to reasonable investigation.”). “[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.” *Strickland*, 466 U.S. at 690–91; *see id.* (“In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary.”). Thus, in applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation must be evaluated with heavy deference to counsel’s judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 63 (Ct. App. 2014).

This Court finds Applicant failed to establish Counsel Zmroczek was ineffective for failing to communicate with allegedly favorable witnesses. Applicant did not provide the name of any witness or witnesses he believes Counsel Zmroczek should have contacted. Counsel Zmroczek’s credible testimony indicates she spoke with numerous witnesses during her investigation; however, none of them were very helpful to Applicant’s case. Further, Applicant cannot meet his burden because he did not present any evidence or testimony from the purportedly favorable witness or

witnesses at the PCR hearing. *See Bannister v. State*, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (a PCR applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial); *see also Glover v. State*, 318 S.C. 496, 498–99, 458 S.E.2d 538, 540 (1995) (mere speculation as to un-presented witness' testimony does not satisfy PCR applicant's burden); *Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993) (pure conjecture as to what a witness's testimony would have been is not sufficient to show a reasonable probability the result at trial would have been different); *accord. Bassette v. Thompson*, 915 F.2d 932 (4th Cir. 1990) (petitioner's allegation that attorney performed ineffective investigation does not support relief, absent proffer of the supposed witness's favorable testimony).

This Court further finds Applicant failed to establish Counsel Zmroczek was ineffective for failing to review the discovery with him. Counsel Zmroczek credibly testified she met with Applicant prior to his plea, reviewed the discovery with him, and discussed his case with him at length. Considering Applicant confirmed to the plea court that he had a full opportunity to review and discuss all the discovery with Counsel Zmroczek and signed a written document confirming he had reviewed everything in his file, this Court does not find credible Applicant's claim that his attorney never reviewed the discovery with him. *See State's Exhibit #4; (Plea Tr. 18)*. Applicant further failed to specify what, if anything, could have been achieved had Counsel Zmroczek spent more time with him in consultation regarding the contents of his discovery. *See Smith v. State*, 404 S.C. 493, 500–01, 745 S.E.2d 378, 382 (Ct. App. 2012) (noting that an applicant must present evidence to show how additional time spent in consultation regarding discovery would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief).

Likewise, this Court will not credit Applicant's present claim he would have gone to trial absent Counsel Zmroczek's allegedly deficient performance when he failed to present evidence of any defense strategy or investigatory matter which would have helped his case or affected his decision to plead guilty. *See Moorehead v. State*, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (holding trial counsel's failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result); *Stalk v. State*, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009) (noting that to establish prejudice based on failure to investigate or prepare for trial when the applicant enters a guilty plea, he must ordinarily present some evidence "that would have affected counsel's advice to [him] to accept the plea bargain offered or that would have caused [him] to decline to accept it").

Because Applicant failed to present evidence of any viable defense, investigative tactic, or alternate strategy Counsel Zmroczek should have explored which would have helped Applicant's case or affected his decision to plead guilty, Applicant's claims pertaining to plea counsel's failure to investigate, review discovery, and communicate with witnesses are **DENIED**.

7. Failure to File Appeal

Although Applicant never stated in his pleadings or at the PCR hearing that he was seeking belated appellate review pursuant to *White v. State*,⁹ this Court finds Applicant knowingly and

⁹ In *White*, the PCR judge found the applicant did not knowingly and intelligently waive his right to direct appeal due to ineffective assistance of counsel. 263 S.C. at 117, 208 S.E.2d at 39. As a result, the PCR court directed PCR counsel to attempt to secure a belated appeal to the Supreme Court from his original conviction and sentence. *Id.* On appeal, our Supreme Court explained that it did not have jurisdiction to entertain a belated direct appeal absent the timely filing of notice of appeal. *Id.* at 119, 208 S.E.2d at 39. However, because the *post-conviction relief appeal* was properly before it, the Court reviewed the trial record and all issues properly raised as if the direct appeal had been perfected. *Id.* at 119, 208 S.E.2d at 39-40. The Court ultimately held that "that there was no reversible error in the trial and that there was not an arguably meritorious ground of appeal, even if notice of intention to appeal had been timely served." *Id.* at 119, 208 S.E.2d at 40. *See Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986) (establishing procedural guidelines for

intelligently waived his right to appeal based on the credible testimony of Counsel Zmroczek. Applicant testified she failed to comply with his request to file a notice of appeal. However, Counsel Zmroczek credibly testified that she informed Applicant of his right to appeal and explained he had ten days to appeal following the denial of her motion to reconsider sentence. She inquired about his desire to file a direct appeal; however, he told her wanted to skip the direct appeal and file an application for post-conviction relief. Accordingly, Applicant's claim pertaining to plea counsel's failure to file an appeal on his behalf is **DENIED**.

B. Involuntary Guilty Plea¹⁰

Applicant further alleges his plea was involuntary as a result of Counsel Zmroczek's ineffective assistance. This Court disagrees, and finds the combined record from the plea hearing and the PCR hearing establishes Applicant freely, knowingly, and voluntarily pleaded guilty.

1. Plea Testimony

At the outset of the plea hearing, Counsel Zmroczek advised the court that Applicant was planning to plead guilty to three of the indicted charges; that she explained to Applicant the charges against him, possible punishments, and constitutional rights; that she agreed with his decision to plead guilty; and that she believed if he went to trial on these charges, there is a strong likelihood he would be found guilty. (Plea Tr. 4). Applicant then confirmed Counsel Zmroczek's representations to the plea court. (Plea Tr. 5). He then stated he was pleading guilty because he is guilty; that he had not been promised anything or coerced into pleading guilty; and that was pleading guilty of his own free will. (Plea Tr. 6). Applicant further told the plea court he was not under the influence of any medications or alcohol and that he did not suffer any physical, mental,

White review when the PCR judge determines the applicant did not freely and voluntarily waive his appellate rights).

¹⁰ Claims 2 and 5 in Applicant's June 26, 2019, second amended application.

or emotional conditions that would affect his ability to understand the proceedings or make decisions. (Plea Tr. 6-7).

After a factual recitation from the solicitor, Applicant admitted she was substantially correct in the statement of the facts as presented although he did not agree with every single detail. (Plea Tr. 15). Applicant then admitted to the attempted armed robbery of Doris Shotte and Justin Erving; admitted that he attempted to murder Justin Erving; and admitted that he discharged a firearm into a dwelling either owned, occupied, or possessed by Doris Shotte and Justin Erving. (Plea Tr. 15-16).

Judge Hocker then explained to Applicant constitutional rights he waived by pleading guilty; including his right to remain silent, challenge the State's evidence, and present a defense; (Plea Tr. 16-17). Applicant informed the court he was knowingly, voluntarily, and freely waiving those constitutional rights by pleading guilty. (Plea Tr. 8-11). He further confirmed to the plea court that he had a full opportunity to review and discuss all the discovery with Counsel Zmroczek. (Plea Tr. 18). Applicant then indicated he was satisfied with Ms. Zmroczek's representation; that she had done everything he asked her to do; and that he had no complaints against Counsel Zmroczek, anyone in the solicitor's office, or any law enforcement officers involved in his case. (Plea Tr. 17-19).

2. PCR Testimony

i. Applicant

At the PCR hearing, Applicant testified that, during his meetings with Counsel Zmroczek, they would discuss plea deals offered by the State. The State had offered to drop the attempted murder and weapons charges if Applicant would plead guilty to attempted armed robbery, criminal conspiracy, and firing into a dwelling. Applicant understood this offer to be an open plea with the

possibility of zero to twenty years imprisonment. Counsel Zmroczek explained to him that the odds were not in Applicant's favor because the State had two witnesses who identified Applicant as the perpetrator. Applicant recalled Counsel Zmroczek advising him to take that plea deal. However, Applicant expressed that he did not want to take any deals offered by the State.

Applicant then testified that, although he maintained his innocence, he decided to plead guilty after speaking with Counsel Zmroczek, who advised him that he would likely be convicted at trial. Applicant further recalled Counsel Zmroczek ensuring Applicant that if he pleaded guilty, she could get him a sentence between five and ten years. Based on this information, Applicant made the decision to plead guilty. Applicant testified that he was completely shocked when he received eighteen years' imprisonment. Applicant stated he would not have plead guilty had he known he would receive an eighteen-year sentence.

On cross-examination, Applicant reiterated that he and Counsel Zmroczek did not discuss possible defense theories, trial strategies, or the potential sentencing range for any of the plea offers. However, he testified they did discuss the State's evidence discovery, his constitutional rights, a potential favorable witness, and plea offers. Specifically, Applicant recalled discussing the State's first offer, which was as "open plea" to attempted armed robbery, criminal conspiracy, and discharging a firearm into a dwelling with a sentencing range of zero to twenty years. Once again, Applicant explained that he repeatedly told Counsel Zmroczek he did not want to take a plea deal. However, Applicant changed his mind when Counsel Zmroczek allegedly informed him that there was a plea deal that only required him to serve five to ten years.

Further, Applicant initially testified he didn't remember judge saying the State did not have to prove his guilt if he pleaded guilty. He later admitted that he agreed to the facts provided by the solicitor during the plea hearing. Upon reflection, Applicant testified that his decision to plead and

agree with the solicitor's recitation of the facts was solely based on Counsel Zmroczek's advice to plead guilty.

ii. Counsel Zmroczek

Counsel Zmroczek testified that the first thing she did when she was appointed was review the State's evidence. She testified she met with Applicant multiple times and kept extensive records on their meetings and discussions because Applicant was so difficult. During these meetings, she testified they reviewed the discovery; discussed the elements of the crimes; examined plea offers; and explained Applicant's constitutional rights and the effect of pleading guilty.

In December of 2016, the State made an offer for Applicant to plead guilty to attempted armed robbery, discharging a firearm into a dwelling, and criminal conspiracy. All other charges would be dismissed, including the attempted murder indictments and recent charge for throwing bodily fluids. Through Counsel Zmroczek, the State introduced a letter she sent to Applicant on December 15, 2016, summarizing the evidence against him, the plea offer, and conveying her strong recommendation that he accept the plea offer. State's Exhibit #1. Counsel Zmroczek testified Applicant rejected that offer.

In the weeks prior to trial, Counsel Zmroczek continued her attempts to achieve the best outcome for Applicant. The State initially pulled their original offer but then re-extended it in April of 2017, right before his trial was scheduled to start. Applicant rejected the offer again, and Counsel Zmroczek had Applicant sign a document acknowledging that his decision to reject the plea offer was against his best interest. State's Exhibit #2. Beforehand, she reviewed with Applicant the evidence that the State had against him, including the co-defendants' testimony. Furthermore, she explained to Applicant that consequences of proceeding to trial. Namely, she warned Applicant

that he could receive the maximum sentences for each of the charges. Likewise, Counsel Zmroczek informed Applicant that Judge Hocker could decide to run each of the six sentences consecutively.

Counsel Zmroczek candidly testified she could not recall why Applicant ultimately decided to accept a subsequent offer for him to plead to attempted murder, attempted armed robbery, and discharging a firearm into a dwelling. However, she is confident that she never promised or otherwise ensured Applicant he would receive a sentence between five and ten years. Following the plea, Counsel Zmroczek testified she filed a motion to reconsider based on the disparities between his and his co-defendants' sentences. Judge Hocker denied the motion. Counsel Zmroczek inquired about Applicant's desire to file a direct appeal; however, he told her wanted to skip the direct appeal and file an application for post-conviction relief.

3. Discussion

i. *Involuntary Guilty Plea, Generally*

"[I]t is the prerogative of any person to waive his rights, confess, and plead guilty, under judicially defined safeguards, which are adequately enforced." *Reed v. Becka*, 333 S.C. 676, 685, 511 S.E.2d 396, 401 (Ct. App. 1999). Because a criminal defendant waives several constitutional rights by pleading guilty, the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently. *Boykin v. Alabama*, 395 U.S. 238 (1969); *Pittman v. State*, 337 S.C. 597, 524 S.E.2d 623 (1999). To be intelligent, a plea must be made by a mentally competent defendant who understands both the charges against him and the consequences of his plea. *Brady v. United States*, 397 U.S. 742, 748 (1970). To be voluntary, a plea must be free of threats or other coercion that would impermissibly distort the defendant's choice. *Id.* at 755; see also *United States v. Smith*, 440 F.2d 521, 528–529 (7th Cir. 1971) (Stevens, J., dissenting) (explaining that voluntariness relates to the trustworthiness of the admission of guilt and binding

character of the waiver of the constitutional protections which would be available to the accused if he elected to stand trial).

Before a court can accept a guilty plea, the defendant must be advised of the constitutional rights he or she is waiving; the right to a jury trial, the right to confront one's accusers, and the privilege against self-incrimination. *Boykin*, 395 U.S. at 243. Additionally, the defendant "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." *Pittman*, 337 S.C. at 599, 524 S.E.2d at 624. The defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." *State v. Ray*, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993); *see generally Wolfe v. State*, 326 S.C. 158, 485 S.E.2d 367 (1997) (guilty plea not involuntary where the colloquy demonstrated the trial judge asked defendant twice whether he understood there were no promises and that no sentencing recommendations were binding on the judge). To ensure the defendant understands the consequences of his guilty plea, the plea judge "usually questions the defendant about the facts surrounding the crime and punishment that could be imposed." *Dover v. State*, 304 S.C. 433, 434-35, 405 S.E.2d 391, 392 (1991). However, the plea judge "does not have to direct the defendant's attention to every consequence of his plea provided the record reveals affirmative awareness of the consequences of a guilty plea." *Carter v. State*, 329 S.C. 355, 362, 495 S.E.2d 773, 776 (1998).

The test for determining the validity of a guilty plea is "whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant." *North Carolina v. Alford*, 400 U.S. 25, 31 (1970). It is "well established that a guilty plea is not

rendered invalid because it represents a compromise by defendant, thrusts a difficult judgment upon him, or is motivated by fear of greater punishment.” *United States v. Cox*, 464 F.2d 937, 942 (6th Cir. 1972) (citing *Brady*, 397 U.S. 742). The State may properly encourage guilty pleas either by being more lenient to those who enter such pleas, *Brady*, 397 U.S. at 750–53, or by increasing the risks of punishment on those who do not. *Alford*, 400 U.S. at 37.

An applicant who enters a plea on the advice of counsel may “only attack voluntary, knowing and intelligent character of the plea by showing that plea counsel’s representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel’s errors, the [applicant] would not have pled guilty, but would have insisted on going to trial.” *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). In evaluating an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing. *Wolfe*, 326 S.C. at 165, 458 S.E.2d at 370; *cf. Rayford v. State*, 314 S.C. 46, 443 S.E.2d 805 (1994) (finding that, where the transcript of the guilty plea proceeding refuted applicant’s claim that he did not understand the terms of a plea bargain, granting PCR was inappropriate notwithstanding applicant’s claim his lawyer misadvised him). The 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.” *Harres*, 282 S.C. at 133, 318 S.E.2d at 361.

Nonetheless, because “[a] guilty plea is a solemn, judicial admission of the truth of the charges against an individual . . . , a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874

(Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74 (1977)); see *McMann*, 397 U.S. at 774 (noting the compelling interests in maintaining the finality of guilty-plea convictions validly obtained). Indeed, admissions made during a guilty plea should be considered conclusive unless an applicant presents valid reasons why he should be allowed to depart from the truth of his statements.” *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874 (internal citations and quotation marks omitted); cf. *Blackledge*, 431 U.S. at 73–74 (pointing out that representations made by a defendant, his lawyer, and the prosecutor at a guilty plea hearing, as well as any findings made by the judge accepting the plea, constitute a “formidable barrier in any subsequent collateral proceedings”); *United States v. Broce*, 488 U.S. 563, 569 (1989) (“A plea of guilty and the ensuing conviction comprehend all of the factual and legal elements necessary to sustain a binding, final judgment of guilty and a lawful sentence. Accordingly, when the judgment of conviction upon a guilty plea has become final and the offender seeks to reopen the proceeding, the inquiry is ordinarily confined to whether the underlying plea was both counseled and voluntary. If the answer is in the affirmative then the conviction and the plea, as a general rule, foreclose the collateral attack.”).

Guilty pleas “must be treated as final in the vast majority of cases. Indeed, ‘[w]hat is at stake in this phase of the case is not the integrity of the state convictions obtained on guilty pleas, but whether, years later, defendants must be permitted to withdraw their pleas, which were perfectly valid when made, and be given another choice between admitting their guilt and putting the State to its proof.’” *Jamison v. State*, 410 S.C. 456, 469, 765 S.E.2d 123, 129 (2014) (quoting *McMann*, 397 U.S. at 773. “Furthermore, there must be some consequence attached to the decision to plead guilty.” *People v. Schneider*, 25 P.3d 755, 761 (Colo. 2001) (cited with approval in *Jamison*, 410 S.C. at 469, 765 S.E.2d at 129).

This Court finds Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty in accordance with the requirements of *Boykin* and *Pittman*. The plea transcript reflects Applicant understood the proceedings, interacted intelligently with the plea court, and entered his guilty plea knowingly and voluntarily. Applicant failed to present any valid reasons why he should be allowed to depart from the truth of the statements he made during the plea proceeding. *Dalton*, 376 S.C. at 137–38, 654 S.E.2d at 874; *see also Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975) (finding that the accuracy and truth of an accused's statements at a guilty plea proceeding are "conclusively" established unless he makes some reasonable allegation why this should not be so), *overruled on other grounds by United States v. Whitley*, 759 F.2d 327 (4th Cir. 1985). This Court further finds the voluntary and intelligent nature of the plea is evidenced by the "by the fact that the plea agreement was favorable to him and accepting it was a reasonable and prudent decision" in light of the additional attempted murder and other charges that were dismissed. *Fields v. Gibson*, 277 F.3d 1203, 1299 (10th Cir. 2002)

Further, any possible deficiency or error by counsel was cured by the information conveyed at the plea hearing. *Id.* at 1214 (In the course of emphasizing the importance of plea colloquies, the Court stated that "[t]his colloquy between a judge and a defendant before accepting a guilty plea is not *pro forma* and without legal significance. Rather, it is an important safeguard that protects defendants from incompetent counsel or misunderstandings"). In *Brady*, the United States Supreme Court explained:

Often the decision to plead guilty is heavily influenced by the defendant's appraisal of the prosecution's case against him and by the apparent likelihood of securing leniency should a guilty plea be offered and accepted. Considerations like these frequently present imponderable questions for which there are no certain answers; judgments may be made that in the light of later events seem

improvident, although they were perfectly sensible at the time. The rule that a plea must be intelligently made to be valid does not require that a plea be vulnerable to later attack if the defendant did not correctly assess every relevant factor entering into his decision. A defendant is not entitled to withdraw his plea merely because he discovers long after the plea has been accepted that his calculus misapprehended the quality of the State's case or the likely penalties attached to alternative courses of action.

Id. at 756–57.

Surmounting *Strickland*'s high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." *Lee*, 137 S. Ct. at 1967; *cf. Hill*, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.' "). Based on the evidence presented at the PCR hearing and the record of the plea proceeding, this Court finds Applicant's plea was freely, knowingly, and voluntarily entered. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

ii. Failure to Advise Applicant on Closely Connected Offenses: Recidivist Statutes

As discussed in section A, *supra*, Applicant raises two ineffective assistance of counsel claims relating to whether his charges constitute closely connected offenses. The second claim is based on the possible consequences of pleading guilty to these offenses and the effect they may have on any future convictions under South Carolina's recidivist statutes. Specifically, Applicant next alleges Counsel Zmroczek was ineffective for failing to "advise him on South Carolina Code of Laws §§ 17-25-45([F]) and 17-25-50, closely connected offenses, triggering offenses, recidivist provisions, and all its implications for sentencing purposes." This Court finds this claim is both refuted by the record and based on a collateral consequence of sentencing of which a defendant need not be specifically advised before entering a guilty plea.

South Carolina's recidivist statutes or habitual offender legislation "attempts to encourage offenders to stay out of trouble and punishes those who refuse to be deterred even after a conviction." *State v. Benjamin*, 353 S.C. 441, 446, 579 S.E.2d 289, 291 (2003), *overruled on other grounds by State v. Gordon*, 356 S.C. 143, 588 S.E.2d 105 (2003). Section 17-25-45 mandates that criminal defendants who are convicted of two "most serious" or three "serious" crimes be sentenced to life imprisonment without parole (LWOP) while section 17-25-50 requires the sentencing court to "treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense."

Further, section 17-25-45(F) specifically provides that "a prior conviction shall mean the defendant has been convicted of a most serious or serious offense . . . on a separate occasion, prior to the instant adjudication. Sections 17-25-45 and 17-25-50 "must be construed together in determining whether crimes committed at points close in time qualify for a recidivist sentence." *Gordon*, 356 S.C. at 154, 588 S.E.2d at 111, *overruled on other grounds by Bryant v. State*, 384 S.C. 525, 683 S.E.2d 280 (2009). In *State v. Bryant*, our Supreme Court held that section 17-25-45(F) sets forth a straightforward timing feature for identifying "a prior conviction" while section 17-25-50 is intended to serve as a "legislatively sanctioned safeguard" to ensure that a life without parole sentence is not imposed in cases where the predicate offenses "are inextricably connected and share an immediate temporal proximity." 385 S.C. at 534-35, 683 S.E.2d at 285.

At the plea hearing, Judge Hocker advised Applicant that "attempted murder, attempted armed robbery are violent, most serious offenses." (Plea Tr. 25). He further told Applicant, "you have laid a lot of groundwork for a potential life without parole sentence sometime in the future if you were to continue to engage in criminal activity." (Plea Tr. 25-26). Applicant confirmed that

he understood. (Plea Tr. 26). Therefore, Applicant's claim that Counsel Zmroczek failed to explain the potential consequences of pleading guilty to "most serious" offenses is refuted by the record.

Further "a plea's possible enhancing effect on a subsequent sentence is merely a collateral consequence of the conviction; it is not the type of consequence about which a defendant must be advised before the defendant enters the plea." *Wright v. United States*, 624 F.2d 557, 561 (5th Cir. 1980); see *United States v. Brownlie*, 915 F.2d 527, 528 (9th Cir. 1990) ("The possibility that the defendant will be convicted of another offense in the future and will receive an enhanced sentence based on an instant conviction is not a direct consequence of a guilty plea."); *Appleby v. Warden, N. Reg'l Jail & Corr. Facility*, 595 F.3d 532, 540-41 (4th Cir. 2010) (rejecting petitioner's claim of involuntary plea based on counsel's failure to advise that a guilty plea would expose him to recidivist sentencing proceedings); *United States v. Littlejohn*, 224 F.3d 960, 965 (9th Cir. 2000) ("[W]here the consequence is contingent upon action taken by an individual or individuals other than the sentencing court . . . the consequence is generally 'collateral.'"); see also *Brown v. State*, 306 S.C. 381, 382, 412 S.E.2d 399, 400 (1991) ("The imposition of a sentence may have a number of collateral consequences . . . and a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is not informed of the collateral consequences."); cf. *Smith v. State*, 329 S.C. 280, 286, 494 S.E.2d 626, 629 (1997) (finding that classification of a crime as violent and non-violent is also a collateral consequence of sentencing and counsel is not ineffective for failure to inform a defendant of consequences of a violent crime conviction).

Therefore, even had Judge Hocker not questioned Applicant about his understanding of the consequences of pleading guilty to "most serious" offenses, his plea would nonetheless be voluntary. Accordingly, Applicant's request for relief by way of this allegation is **DENIED**.

VII. ALL OTHER ALLEGATIONS

As to any and all allegations raised in the application or at the hearing in this matter and not specifically addressed in this order, this Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds those claims were voluntarily waived and abandoned, and those claims are therefore denied and dismissed with prejudice. S.C. Code Ann. § 17-27-90.

VIII. CONCLUSION

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

Applicant must file and serve a notice of appeal within thirty days from PCR counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review pursuant to Rule 203, SCACR. Pursuant to *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant has the right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on Applicant's behalf. Applicant is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of the State.

AND IT IS SO ORDERED this 20 day of April, 2022.



R. LAWTON MCINTOSH
Presiding Circuit Court Judge
Eleventh Judicial Circuit

Anderson South Carolina

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2018CP3202432

Emonte Brooks 364670

South Carolina State of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j) SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order: _____

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge

Judge Code

4/29/2022

Date

For Clerk of Court Office Use Only

This judgment was entered on , and a copy mailed first class or placed in the appropriate attorney's box on 29th of April 2022, to attorneys of record or to parties (when appearing pro se) as follows:

Ashley A. McMahan PO Box 50536 Columbia, SC 29250

Taylor Zane Smith PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

Lisa M. Comer - Clerk of Court

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCF.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

WITNESSES

West Columbia Police Department

C Morris

Law Enforcement Case #: 1602147

KWJ

ARREST WARRANT NUMBER

2016A3221100058

ACTION OF GRAND JURY

1. Scott Clark
Foreperson of Grand Jury

Date: *8-8-16*

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

DOCKET NO. 2016GS3202026

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2016

THE STATE

vs.

Emonte Antonio Brooks

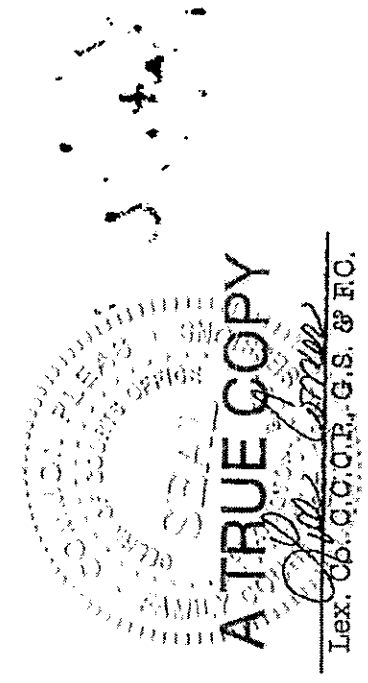
CDR #: 0052

Indictment for

Discharging a Firearm into a Dwelling

§ 16-23-0440(A)

DONALD V. MYERS, SOLICITOR



STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 Discharging a Firearm into a Dwelling
 § 16-23-0440(A)

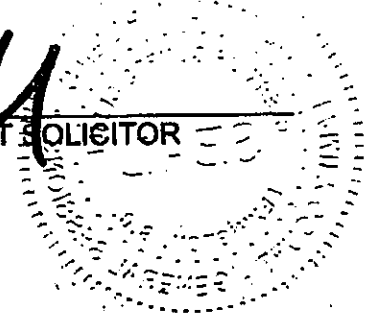
At a Court of General Sessions, convened on August 2016, the Grand Jurors of Lexington County present upon their oath:

That **Emonte Antonio Brooks**, along with co-defendants, did in Lexington County, South Carolina on or about January 27, 2016, knowingly and willfully discharge or cause to be discharged unlawfully a firearm at or into a dwelling house or other building or structure regularly occupied by persons, in violation of Section 16-23-440 of the State of South Carolina Code of Laws (1976), as amended.

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

[Handwritten Signature]

ASSISTANT SOLICITOR



WITNESSES

West Columbia Police Department

C Morris

Law Enforcement Case #: 1602147

KWU

ARREST WARRANT NUMBER

2016A3221100057

ACTION OF GRAND JURY

J. Scott Wat
Foreperson of Grand Jury
Date: 8-8-16

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

DOCKET NO. 2016GS3202027

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

AUGUST TERM 2016

THE STATE
vs.

Emonte Antonio Brooks

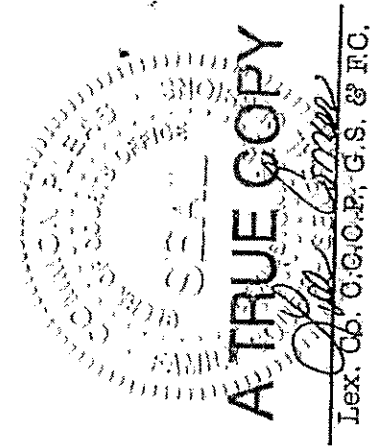
CDR #: 0026

Indictment for

Attempted Armed Robbery

§ 16-11-0330(B)

DONALD V. MYERS, SOLICITOR



STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 Attempted Armed Robbery

§ 16-11-0330(B)

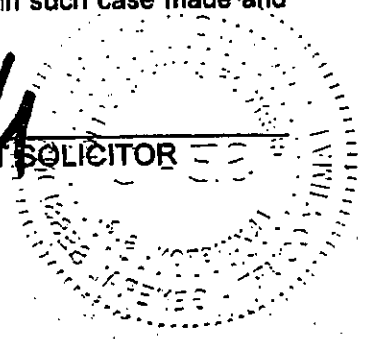
At a Court of General Sessions, convened on August 2016, the Grand Jurors of Lexington County present upon their oath:

That **Emonte Antonio Brooks**, along with codefendants, did in Lexington County, South Carolina on or about January 27, 2016, knowingly and willingly either by action or words, did attempt to commit while with a deadly weapon or having possession of an object which the victim reasonably believed to be a deadly weapon and alleging by actions or words that he was armed, to wit: handgun and did attempt to feloniously take from the person or presence of Doris Shotte and/or Justin Erving by means of force, threats or intimidation goods or monies being described as follows: money or personal items, with intent to deprive the owner of the use of such property, in violation of Section 16-11-330 (B) of the South Carolina Code of Laws, 1976, as amended.

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

Kathy [Signature]

ASSISTANT SOLICITOR



WITNESSES

West Columbia Police Department

C Morris

Law Enforcement Case #: 1602147

KWU

ARREST WARRANT NUMBER

2016A3221100053

ACTION OF GRAND JURY

TRUE BILL

Sheryl R. Ferguson
Foreperson of Grand Jury
Date: 5-8-17

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS3201818

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2017

THE STATE

vs.

Emonte Antonio Brooks

CDR #: 3410

Indictment for

Attempted Murder

§ 16-03-0029

S.R. Hubbard III, SOLICITOR

NOLLE PROSSED BY SOL:

DATE: 10/30/17

****SEE ATTACHED****

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Attempted Murder

§ 16-03-0029

At a Court of General Sessions, convened on May 2017, the Grand Jurors of Lexington County present upon their oath:

That Emonte Antonio Brooks, along with co-defendants, in Lexington County, South Carolina, on or about January 27, 2016, did, with the intent to kill, attempt to kill another person with malice aforethought, either express or implied, to wit: Doris Shotte, in violation of §16-03-0029 of the South Carolina Code of Laws of 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

West Columbia Police Department

C Morris

Law Enforcement Case #: 1602147

KWU

ARREST WARRANT NUMBER

2016A3221100054

ACTION OF GRAND JURY

TRUE BILL

Sheryl R. Ferguson
Foreperson of Grand Jury
Date: 5-8-17

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017GS3201819

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2017

**THE STATE
vs.**

Emonte Antonio Brooks

CDR #: 3410

Indictment for

Attempted Murder

§ 16-03-0029

S.R. Hubbard III, SOLICITOR

NOLLE PROSSSED BY SOL
DATE 10/30/17
JUDGE [illegible]

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Attempted Murder

§ 16-03-0029

At a Court of General Sessions, convened on May 2017, the Grand Jurors of Lexington County present upon their oath:

That Emonte Antonio Brooks, along with co-defendants, in Lexington County, South Carolina, on or about January 27, 2016, did, with the intent to kill, attempt to kill another person with malice aforethought, either express or implied, to wit: Dallas Lyles, in violation of §16-03-0029 of the South Carolina Code of Laws of 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

West Columbia Police Department

C Morris

Law Enforcement Case #: 1602147

KWU

ARREST WARRANT NUMBER

2016A3221100055

ACTION OF GRAND JURY

TRUE BILL

Sheryl R. Ferguson
Foreperson of Grand Jury
Date: 5-8-17

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2017-GS-32-01820

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MAY TERM 2017

**THE STATE
vs.**

Emonte Antonio Brooks

CDR #: 3410

Indictment for

Attempted Murder

§ 16-03-0029

S.R. Hubbard III, SOLICITOR

NOLLE PROSSED BY SOL:

DATE: 10/30/17

****SEE ATTACHED****

STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Attempted Murder

§ 16-03-0029

At a Court of General Sessions, convened on May 2017, the Grand Jurors of Lexington County present upon their oath:

That Emonte Antonio Brooks, along with co-defendants, in Lexington County, South Carolina, on or about January 27, 2016, did, with the intent to kill, attempt to kill another person with malice aforethought, either express or implied, to wit: Rhett Shotte, in violation of §16-03-0029 of the South Carolina Code of Laws of 1976, as amended.

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



ASSISTANT SOLICITOR