

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Marion County

Honorable Debra McCaslin, Circuit Court Judge

KENDELL A. GAMBLE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2024-000264

APPENDIX

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1 STATE OF SOUTH CAROLINA)
COUNTY OF MARION) COURT OF GENERAL SESSIONS
2) 2018-GS-33-120
3) 2018-GS-33-121
4)
5 State of South Carolina) TRANSCRIPT OF RECORD
vs.)
6 Jayme D. Gamble)
Kendell A. Gamble)
DEFENDANT) August 1, 2018
Marion, South Carolina

8
9 B E F O R E:

10 THE HONORABLE WILLIAM H. SEALS, JR.
11

12
13 A P P E A R A N C E S:

14
15 PATTI PARKER, ASSISTANT SOLICITOR
Attorney for the State
16

17 LAURA HILLER, ESQ.
18 JONATHAN HILLER, ESQ.
Attorneys for the Defendants
19

20
21
22
23 KESHIA REED
Official Court Reporter
24
25

I N D E X

(WHEREUPON, no witnesses were called.)

1 THE CLERK: Left hand on the Bible raise your
2 right hand. Do you solemnly swear or affirm to tell the
3 truth, the whole truth, and nothing but the truth so help
4 you God?

5 KENDELL GAMBLE: Yes, ma'am.

6 THE CLERK: Thank you. Do you solemnly swear or
7 affirm to tell the truth, the whole truth, and nothing but
8 the truth so help you God?

9 JAYME GAMBLE: Yes.

10 MS. PARKER: Your Honor, before the Court is
11 Kendell Alan Gamble 2018-GS-33-00121 and also Jayme
12 Deshawn Gamble 2018-GS-33-120 both of these individuals
13 are here on these indictments. They have been true billed
14 by the grand jury. Kendell Gamble is represented by Mr.
15 Jonathan Hiller. And on this indictment it is a 24 count
16 indictment. He's pleading to several counts and I'll call
17 them out. He's pleading to Count 1 burglary first, Count
18 2 attempted armed robbery, Count 15 kidnapping, Count 16
19 attempted murder, Count 17 attempted murder, Count 20
20 attempted murder and Count 24 possession of a weapon
21 during the commission of a violent crime. He's pleading
22 straight up without any negotiations or recommendations
23 from the State.

24 Jayme Gamble is represented by Mrs. Laura
25 Hiller. And he's pleading to Count 1 burglary in the

1 first degree. Count 2 on that indictment attempted armed
2 robbery, Count 15 kidnapping, Count 16 attempted murder,
3 Count 17 attempted murder and Count 20 attempted murder.
4 He's also pleading to possession of a weapon during the
5 commission of a violent crime and failure to stop for a
6 blue light. He is also pleading straight up without any
7 recommendations or negotiations from the State. Your
8 Honor, we have numerous victims that are present here that
9 at the appropriate time that they would like to speak. I
10 also have a presentation on the facts and have a short
11 video at the appropriate time.

12 THE COURT: All right.

13 MRS. LAURA HILLER: Your Honor, I did just want
14 to clarify one thing. The only recommendation or
15 negotiation was that you would recommend concurrent.

16 MS. PARKER: Concurrent that is correct, Your
17 Honor, that any sentence impose by the Court would run
18 concurrent.

19 THE COURT: All right. Mr. Jayme Gamble, you
20 are pleading guilty to burglary first degree which carries
21 a minimum of 15 years and a maximum of life; is that
22 correct?

23 JAYME GAMBLE: Yes, sir.

24 THE COURT: All right. You need to speak up.
25 And you are pleading guilty to armed robbery which carries

1 a maximum of 20 years; is that correct?

2 JAYME GAMBLE: Yes, sir.

3 THE COURT: And you're pleading guilty to
4 kidnapping which carries a maximum of 30 years?

5 JAYME GAMBLE: Yes, sir.

6 THE COURT: Pleading guilty to attempted murder
7 which carries a maximum of 30?

8 JAYME GAMBLE: Yes, sir.

9 THE COURT: Another count of attempted murder
10 which carries a maximum of 30?

11 JAYME GAMBLE: Yes, sir.

12 THE COURT: Another count of attempted murder
13 which carries a maximum of 30?

14 JAYME GAMBLE: Yes, sir.

15 THE COURT: And possession of a weapon during
16 the commission of a violent crime which carries up to five
17 years; is that correct?

18 JAYME GAMBLE: Yes, sir.

19 THE COURT: And you are pleading guilty to
20 failure to stop for a blue light which carries a minimum
21 of 90 days and a maximum of three years; is that correct?

22 JAYME GAMBLE: Yes, sir.

23 THE COURT: All right. And, Mr. Kendell
24 Gamble, you are pleading guilty to burglary first degree
25 which carries a minimum of 15 and a maximum of life; is

1 that correct?

2 KENDELL GAMBLE: Yes, sir.

3 THE COURT: And you are pleading guilty to
4 attempted armed robbery which carries up to 20?

5 KENDELL GAMBLE: Yes, sir.

6 THE COURT: You are pleading guilty to
7 kidnapping which carries up to 30 years?

8 KENDELL GAMBLE: Yes, sir.

9 THE COURT: And you are pleading guilty to
10 attempted murder. You're pleading guilty to three counts
11 of that. Each count carrying up to 30 years in jail; is
12 that correct?

13 KENDELL GAMBLE: Yes, sir.

14 THE COURT: And you are pleading guilty to
15 possession of a weapon during the commission of a violent
16 crime which carries up to five years; is that correct.

17 KENDELL GAMBLE: Yes, sir.

18 THE COURT: All right. Now, Mr. Jayme Gamble,
19 you understand that you do not have to plead guilty?

20 KENDELL GAMBLE: Yes, sir.

21 THE COURT: Go over all of this with both of you
22 and I want Mr. Jayme Gamble to answer first and I want
23 Kendell Gamble to answer second, okay?

24 KENDELL GAMBLE: Yes, sir.

25 THE COURT: All right. I want you both to

1 understand you do not have to plead guilty. If you would
2 rather have a jury trial instead, all you have to do is
3 ask and I'll make sure you give get one. You understand
4 that?

5 JAYME GAMBLE: Yes, sir.

6 KENDELL GAMBLE: Yes, sir.

7 THE COURT: You understand that if you have a
8 jury trial the burden of proof is on the State of South
9 Carolina. They would have to prove you guilty beyond a
10 reasonable doubt?

11 JAYME GAMBLE: Yes, sir.

12 KENDELL GAMBLE: Yes, sir.

13 THE COURT: Also if you had a jury trial, you
14 have a jury made up of 12 people and it would have to take
15 all 12 members of that jury to agree unanimously to
16 convict you before the Court could sentence?

17 JAYME GAMBLE: Yes, sir.

18 KENDELL GAMBLE: Yes, sir.

19 THE COURT: Also at your trial each one of your
20 lawyers would have the right and the opportunity to
21 cross-examine and confront each and every one of the
22 State's witnesses?

23 JAYME GAMBLE: Yes, sir.

24 KENDELL GAMBLE: Yes, sir.

25 THE COURT: Also at your trial you could come

1 over here, you could be sworn in. You could take the
2 witness stand and you could testify if you like. However,
3 it's important to understand that you do not have to
4 testify because you have the constitutional right to
5 remain silent. And if you choose to exercise that right,
6 I would tell the jury they cannot use that against you in
7 any way. I would tell the jury the fact that you did not
8 testify is to have absolutely no prejudice against you. I
9 would even go so far as to tell the jury they cannot even
10 talk about that fact in the jury room. You understand
11 that?

12 JAYME GAMBLE: Yes, sir.

13 KENDELL GAMBLE: Yes, sir.

14 THE COURT: You understand that if you had a
15 trial or with this plea if you're not happy with something
16 that takes place, you can appeal it, but you got to do so
17 within ten days. Do you understand that?

18 JAYME GAMBLE: Yes, sir.

19 KENDELL GAMBLE: Yes, sir.

20 THE COURT: All right. Do you want to waive
21 these rights to a jury trial and go ahead and plead guilty
22 today?

23 JAYME GAMBLE: Yes, sir.

24 KENDELL GAMBLE: Yes, sir.

25 THE COURT: You satisfied with your lawyer?

1 JAYME GAMBLE: Yes, sir.

2 KENDELL GAMBLE: Yes, sir.

3 THE COURT: Have you had enough time with your
4 lawyer?

5 JAYME GAMBLE: Yes, sir.

6 KENDELL GAMBLE: Yes, sir.

7 THE COURT: Has your lawyer answered all of your
8 questions?

9 JAYME GAMBLE: Yes, sir.

10 KENDELL GAMBLE: Yes, sir.

11 THE COURT: Has anybody promised you anything to
12 get you to plead guilty?

13 JAYME GAMBLE: No, sir.

14 KENDELL GAMBLE: No, sir.

15 THE COURT: Anybody threatening you in any way
16 to make you plead guilty?

17 JAYME GAMBLE: No, sir.

18 KENDELL GAMBLE: No, sir.

19 THE COURT: Are you under the influence of any
20 drugs or alcohol at this time?

21 JAYME GAMBLE: No, sir.

22 KENDELL GAMBLE: No, sir.

23 THE COURT: Are you guilty?

24 JAYME GAMBLE: Yes, sir.

25 KENDELL GAMBLE: Yes, sir.

1 THE COURT: Have you understood all of my
2 questions?

3 JAYME GAMBLE: Yes, sir.

4 KENDELL GAMBLE: Yes, sir.

5 THE COURT: Have you answered me truthfully?

6 JAYME GAMBLE: Yes, sir.

7 KENDELL GAMBLE: Yes, sir.

8 THE COURT: All right, thank you.

9 Solicitor.

10 MS. PARKER: Thank you, Your Honor. This
11 incident occurred on a Friday morning July 21st 2017 at
12 approximately -- it was a little before 7:30 in the
13 morning. Ms. Hattie Pernell who resides on -- at 6216
14 Vinson Road in the Mullins area of Marion County. Ms.
15 Hattie Pernell was up that morning getting ready for work
16 about to iron clothes and she heard what sounded like a
17 loud knock on the door. She looked out the window and did
18 not recognize the truck in the driveway, looked out the
19 peephole and did not recognize these individuals that were
20 knocking at her door. She went and woke up a Ms. Lawanda
21 Williams that was asleep in the residence, that is her
22 grandchild's mother that was there. There were also
23 children in the home. And got Lawanda up and Lawanda also
24 said I don't recognize this truck I don't know who they.
25 Something didn't seem right to Ms. Hattie and she picked

1 up her cell phone and dialed 9-1-1 and about that time the
2 door was busted up. These individuals busted in Ms.
3 Hattie's home. They had guns. They had weapons. They
4 started hollering for them to get down on the floor,
5 pulled the guns on these women and children that were in
6 the home.

7 She had dialed 9-1-1 and press send, but when he
8 hollered put down your phone, of course, these individuals
9 didn't realize that the call to 9-1-1 already gone
10 through. And so she placed the phone down and so a
11 dispatcher here in Marion County thought that something
12 wasn't right, could hear the commotion in the background,
13 could hear hollering and screaming where's the money, get
14 down on the floor, where's the money and women screaming
15 in the background. And so this dispatcher did a very good
16 job that day with this call and thought that she needed to
17 send deputies out to this residence and so deputies did
18 respond to the residence.

19 Before I get to what happened after deputies
20 responded, I'll talk about what they did in the house.
21 They demanded money from these women and children. There
22 were four children total in the residence a ten year old
23 by the name of Jasmine, a 16 year old Merdick (sic), 14
24 year old Dennis who was Ms. Lawanda's son and five year
25 old Jacari (sic). Three of the children were Ms. Hattie's

1 grandchildren. They were all woken by this incident and
2 two of the women were slapped. They had guns put to their
3 head. And even when they kept demanding money, Ms. Hattie
4 and the ladies in the house didn't know what they were
5 talking about. These individuals were corresponding with
6 somebody on the cell phone on the other end of the phone.
7 And one of the ladies heard from the other end of the
8 phone just kill them all and so they were terrified for
9 their life.

10 At one point they grabbed Jacari, who is five
11 years old, and put a knife to his throat trying to up the
12 intimidation, up the threats because they thought there
13 was some money there that they could get and threaten this
14 child, threaten to cut his fingers off if these women
15 didn't produce the money. So when law enforcement
16 responded to the residence, they did get there rather
17 quickly. Deputy Causey was the first. Deputy Causey
18 along with Deputy Herring were the first two to arrive.
19 And Deputy Causey kind of parked his car kind of by the
20 driveway. Deputy Herring a little further back. And they
21 were waiting on backup to get there, but Deputy Tracy
22 Causey wanted to go ahead and clear the backyard, kind of
23 clear the back portion of the residence. So he had his
24 county issued shotgun that he retrieved from his patrol
25 car and went around the back of the residence. Deputy

1 Causey did not realize that these two individuals just
2 prior to him walking around the backside of the house,
3 they had ran out of the side door of the house and
4 actually were hiding behind what looks like a storage
5 barn, like a storage building. And you'll see shortly
6 hear in the video when they decided to make a run for it,
7 they did fire three shots at Deputy Causey. One of the
8 shots actually got so close to him that it struck his
9 shotgun and actually knocked the shotgun out of his hand.
10 And he then later grabbed it and tried to, you know, to
11 use it to fire some shots, but it was disabled because,
12 you know, that -- one of the shots had actually hit his
13 shotgun. These two individuals run, jump in the Dodge
14 Durango that they were driving. It was a rental car that
15 they had. They had carefully planned this out. The
16 rental car had a North Carolina license plate. They had
17 put a South Carolina license plate on top of the North
18 Carolina plate.

19 They proceeded to back out of the driveway and
20 they're going to run from the police and they're not going
21 to stop. So you have Deputy Herring along with Deputy
22 Cribb and Trooper Jimmy King also hears what's going on on
23 the radio. You have several law enforcement officers
24 responding and this chase ensues throughout the county at
25 some instances well in excess of 100 miles an hour. And

1 eventually you'll see here shortly on the video ends with
2 a crash right here outside of the City of Marion. There
3 was a civilian vehicle that was struck and then when
4 deputy excuse me -- when Trooper King follows after them
5 when they lose control of the vehicle and go into like a
6 grassy area off like the main highway, he's able to
7 disable their vehicle by hitting it in the side and then
8 he jumps out and runs. Jayme Gamble was the driver of
9 that vehicle. He ran from the vehicle and Trooper King
10 was able to catch him and apprehend him and he was
11 arrested there on site. The passenger, I believe,
12 surrendered and put his hands up and never tried to run
13 from the car.

14 So, Your Honor, I guess, to try to sum this up
15 from the time they run from the house through some of the
16 home surveillance video we have and then through various
17 dash cam videos we have, we have sight on them. We have
18 our eyes on them throughout these videos up until the
19 point they're both apprehended. And so no question at all
20 in the State's case that it was them. While they were
21 driving and during part of the chase and the video's going
22 to touch on this, but I want to point out because it's not
23 -- doesn't jump out at you when you're watching the video.
24 One of the accounts of attempted murder -- of course,
25 they're pleading to one count to attempted murder for

1 Deputy Causey for firing those three shots at him. You'll
2 hear that on the video.

3 Constable Glen Turner had heard what was going
4 on on the radio and he was responding. And you'll see
5 when they're on one of our roads here in Marion County
6 they -- during the chase, they take a right at the first
7 stop sign and go down that road and deputy constable
8 excuse me -- Constable Glen Turner was just coming from
9 the opposite direction and they fire a shot into his
10 windshield, two shots. Fired two shots at him. One shot
11 -- I had a picture. One shot goes in the front of the
12 windshield right there at his rear view mirror, so would
13 have been inches from his head and he pose no threat to
14 them. He was just literally just responding to the call
15 and was coming in the opposite direction. He was not in
16 pursuit of them. And also I have a picture of the shotgun
17 that shows, you know, where it was hit. It was actually
18 very close to Deputy Causey's body when that bullet struck
19 the shotgun.

20 They also right before this chase ends that you
21 see there at the intersection coming into the City of
22 Marion and Trooper King makes reference to this in the
23 video there were shots fired from the passenger side of
24 the vehicle at him right before the chase ended. They
25 were firing shots out the car at him. Certainly they were

1 indicted for, I think, two additional counts of attempted
2 murder, but in consideration of this plea, the State did
3 try to pair it down. It was two rather large indictments
4 paired down. And they're pleading to about eight or nine
5 counts each. I'm trying to think if I'm leaving anything
6 out other than I want to play the video. And at the
7 appropriate time, I know Deputy Causey wants to speak and
8 Ms. Parnell may want to speak also and also the sheriff.
9 Obviously, you know, we indicted the burglary first degree
10 because they entered the house with the weapons and
11 immediately pulled them on the ladies that were in the
12 home.

13 THE COURT: All right. Go ahead and play it.

14 MS. PARKER: Your Honor, I prepared three pieces
15 of video. This first video is the homeowner's
16 surveillance footage and has no sound. And then
17 immediately after this you'll see a clip from Deputy
18 Herring's dash cam and kind of what happened when he
19 arrived at the house. You can kind of -- by seeing this
20 video and then listening to and seeing the second one, you
21 can kind of see when the shots were fired at Deputy
22 Causey. And then the final video -- I'm not going to show
23 the whole chase, but we edited to just show the last few
24 moments of the chase. It was a very high speed chase and
25 you can see how there were several civilian cars that were

1 put in danger and one that actually hit.

2 (WHEREUPON, videos played for the Court.)

3 MS. PARKER: Your Honor, that last video was
4 Trooper Jimmy King. And right after he crashed his
5 vehicle into the defendant's vehicle, he did a foot chase
6 and eventually apprehended Jayme Gamble, but you saw on
7 the video when his car hit the curve, you kind of see it
8 kind of knocked his camera loose. He did suffer a
9 concussion to the head where his head hit the top of his
10 patrol car. And not long after this, you know, suffering
11 from headaches eventually he's now on medical retirement
12 and he's not here today. He was willing to come, you
13 know, had this gone to trial and would have been available
14 as a witness for us.

15 THE COURT: All right. Anybody else?

16 CORPORAL TRACY CAUSEY: Your Honor, I'm just
17 asking that you set an example not just for the people in
18 Marion for this nation. It's possible cop killers
19 teaching people, teaching and just set a lesson and set
20 the standard high as you can. And sentence as high as you
21 can if possible.

22 THE COURT: Give me your name for the record if
23 you don't mind?

24 CORPORAL TRACY CAUSEY: Tracy Causey. Corporal
25 Tracy Causey with the Marion County Sheriff's Office.

1 THE COURT: Thank you.

2 All right, anybody else?

3 MS. PARKER: This is Lawanda Williams.

4 LAWANDA WILLIAMS: Your Honor, I just ask that
5 justice be served today. This is hard for me and my
6 family. And I just think people really realize how hard
7 it is for us. If you haven't been through this, you can't
8 really speak on it. You can't really say, oh, it's just
9 an every day a crime. No. After this, I stood outside
10 and I saw the yellow tape around the house, God, this
11 could have been a murder scene. I know it was nothing but
12 the grace of God that we got out of that house alive, and
13 the police department and the dispatcher. And I just ask
14 for justice to be served today because this is something
15 we still live with every day. We all go to counseling.
16 My son he jumps in his sleep. He ask me, mom, do you
17 still think about it. I think about it every day. And I
18 just ask for justice to be served, that's all.

19 THE COURT: Thank you.

20 Sheriff.

21 SHERIFF BRIAN WALLACE: Your Honor, I stand
22 before you today as the sheriff of Marion County elected
23 by the citizens of this county to serve and protect. Your
24 Honor, I can tell you that on that day one of the
25 sheriff's worse fears was to lose an officer in the line

1 of duty. On that day, at least three officers could have
2 lost their lives. I believe in my heart if we had not got
3 there that every member in that house would have been
4 killed. And you can look at the video to see that our
5 officers could have easily been killed.

6 Your Honor, I ask you today to send a message
7 that can be heard across this community that this type
8 acts by two individuals dressed in three-piece suits,
9 drives from Georgetown to Marion County and commits these
10 acts of violent will not be tolerated in our community.
11 Your Honor, every day when an officer puts a badge on, we
12 know that we may not come home that night, but those four
13 kids, those four children in their house have a right to
14 be safe and secure, no matter what the circumstances they
15 were there for, whether it's money, dirty money, whatever
16 the case may be, those four children have a right to be
17 safe in their home.

18 Your Honor, I think it's my duty to ask you to
19 serve justice that can be served. A picture is worth a
20 thousand words. It's not many cases in my 19 years as a
21 law enforcement officer that is on video from beginning to
22 end. I ask you as you seen on the tape it shows -- it's
23 not somebody's word, it's not witness' statement, it's
24 there. As I stated, a picture is worth a thousand words.
25 Thank you.

1 THE COURT: Thank you.

2 Anything else?

3 MS. PARKER: No, Your Honor. The State would
4 just ask that you, you know, would hand down a sentence
5 that just reflects the severity and the gravity of the
6 situation. We certainly thank the Marion County Sheriff's
7 Office and all local law enforcement for their
8 cooperation. Their agency did a good job with getting us
9 everything we needed to prosecute this matter.

10 THE COURT: The recommendation is concurrent?

11 MS. PARKER: Yes, sir, that's my recommendation
12 is the sentences be served concurrently.

13 THE COURT: Law enforcement okay with that?

14 SHERIFF BRIAN WALLACE: Yes, sir.

15 THE COURT: All right, Mrs. Hiller.

16 MRS. LAURA HILLER: Your Honor, you seen and
17 heard some horrible facts. Your Honor, I know it's not
18 every plea that the State choses to put video evidence up.
19 Especially since from day one our clients have been saying
20 this happened. It was awful. We shouldn't have done it.
21 They never asked the State to put these people, the
22 deputies or the families through a trial, Your Honor, not
23 from day one they've come to us.

24 Jayme is an incredible client. He really his
25 is. He's here. His mother is here. His aunt is here.

1 They support him and are incredible women as well. Jayme
2 has never ask me to get him off. He's never ask me for
3 anything, but the best plea that we can possibly get. And
4 we're standing here today pleading straight up, which is
5 not a great place to be as you know, Your Honor. And he's
6 doing that because he knows that this is the best it's
7 going to get, Your Honor, based on what happened. He
8 knows that.

9 But let me tell you a little bit about Jayme.
10 He's 33 years old, has minimum record, Your Honor. He --
11 but it's possession with intent to distribute. He has
12 five children. They range from five to 12. He
13 understands and he told me this back here today, but I was
14 thinking about this earlier as well that if you were to
15 give him the mandatory minimum today, the very least that
16 he could get, his baby is going to be 20 years old when he
17 gets out of jail or prison and he knows that. He's only
18 33 and that's almost half of his life again, Your Honor,
19 and he knows that. He knows that's what he is facing
20 today. He has expressed extreme remorse for what has
21 happened.

22 I will tell you two weeks before this incident
23 his father or it's actually his step father that raised
24 him, his father had died of cancer. They buried him end
25 of June. This happened just in the middle of July, Your

1 Honor. They were going through a great deal. They were
2 under a lot of stress. It excuses nothing. They are not
3 asking me to tell you that it does, but that's what was
4 going on. They wanted to care for their mother. And they
5 went to their mother before it happened and said we're
6 going to take care of mama, that's what they told her.

7 Your Honor, I think there's a lot more about the
8 facts that Mr. Hiller might go into. I'm not going to
9 address them any further. His mother is going to speak
10 once we're done on his behalf and maybe his aunt as well
11 I'm not sure. But we ask you to see that this is one day
12 in 33 years. And even the minimum sentence, Your Honor,
13 is significant. It's a huge amount of time.

14 I know the officers were asking you to set an
15 example about potential cop killers. I would just remind
16 the Court that no one got shot that day. No one died that
17 day. There's been many cases in this courtroom and
18 courtrooms around South Carolina where people died and got
19 20 years, Your Honor, got 25 years. These are not. This
20 is a case where lots of bad things could have happened,
21 but we are very grateful they did not. My clients are
22 very grateful that nothing worse happen that day than
23 happened. And we ask you to remember that through it all
24 everyone is still here today and are fortunate of that.

25 THE COURT: Thank you.

1 Mr. Hiller.

2 MR. JONATHAN HILLER: Your Honor, Jonathan
3 Hiller on behalf of Kendell Gamble stands before you today
4 with no prior record. He's 30 years old. Your Honor,
5 that says something. He hasn't committed -- in those 30
6 years had nothing on his record. Twenty year olds get
7 records. I'm saying 30 years is enough time for someone
8 to get a significant record. He stands before you today
9 with nothing on his record. He knows that's changing
10 today, Your Honor. After today, when he sees the light of
11 day if he's still lucky, he's eligible for anything that
12 rises to this level. I discuss that with them. He knows
13 that not only is he getting two most serious charges on
14 his record as a result of those -- the hour or so that day
15 on July 21st, Your Honor.

16 The sentence sheet reflects their Georgetown
17 address and the State in their presentation mentioned that
18 they're from Georgetown. A burning question in everyone's
19 mind after this was what are these two Georgetown boys
20 doing in the middle of Marion at a mobile home, how, why.
21 There a few pieces of evidence in their car, some
22 addresses, which was that address on Vinson and there were
23 a couple of names. Why they were in the area was answered
24 by my client, Your Honor. At the request of the State
25 after reviewing the evidence, we sat down. We debriefed.

1 He told them why he was there. He didn't hide what he
2 did. He didn't minimize his actions. He confessed, Your
3 Honor. This never was a case for trial. I wrote a letter
4 back to the Solicitor's office back on the 13th of March
5 telling him it wasn't a trial and asking for a chance to
6 mitigate before today. But one of the things we did is
7 both confess and explain what was going on.

8 Your Honor, what was going on is -- and I get no
9 disrespect to anyone in that mobile home that was at least
10 according to someone in SCDC from Marion a place where
11 significant drugs and money could be found. I think
12 that's kind of why there's four security cameras around
13 the little mobile home, Your Honor. But they went there
14 looking for drugs and money trying to score a big lick
15 that someone in the department of corrections using a cell
16 phone told them about, trying to get a cut, pressured them
17 to do this thing.

18 They didn't go in there to rob women and
19 children, Judge, that's who was in that house, but they
20 did not go there to terrorize women and children. What
21 happened, happened. It is on audio. One of the only
22 things I can clearly hear I will say there's screaming,
23 but one of the things you can clearly hear my client say
24 is calm down and it will be all right. I'm not here today
25 to -- all I can say, Your Honor, is had they gone to trial

1 we would have tried to show that not everything alleged to
2 have happened in that home did happen in that home. You
3 can clearly hear people say calm down. It will be all
4 right. No one was hurt in that house, Judge. Not
5 physically any way.

6 Your Honor, I know every case is different and I
7 try to think about cases that have made news for their
8 scale and their news worthiness. And again I recognize
9 that they are differences, but I've thought about it. My
10 client knows that significant times have all been this
11 case. And I would ask the Court to consider something in
12 the range of 20 years. I only mention this because of the
13 aspect of law enforcement, but when an unarmed black man
14 was shot in the back in Charleston. Michael Slager
15 received 20 years.

16 The Walter Scott family is without a father,
17 without an uncle, without a grandfather, Judge. A life
18 was lost. Here we do not have any lost of life. And
19 that's not necessarily something that my client can take
20 credit for, but, Judge, it's true we're here today taking
21 ownership of what happened, pleading guilty to the facts
22 as brought by the State at least to these serious charges
23 brought by the State saving the State from the cost and
24 expense of a multiple day trial.

25 They know that they're guilty. It's always been

1 a plea, Judge. I just don't want the -- that to be lost
2 on the Court in the face of the evidence that they admit
3 to what happened. Of course, you have to plead guilty.
4 They pled guilty before the State showed it. They are
5 guilty and they're here to take ownership of that. Your
6 Honor, they never did get a bond. As, you know, you've
7 heard this case twice now in the context of bond. So
8 we're on the 376 days of jail time from July 21st until
9 today I calculated that is 376 days.

10 Your Honor, briefly to just -- just to let you
11 know like something about how this could happen because it
12 doesn't seem like how could this happen. They just came
13 out. I do think you can see in that video that they
14 didn't know trooper or Mr. Causey was in that backyard,
15 Your Honor, that was a surprise thing. It happened. I'm
16 not saying -- they did not. If they knew you were there
17 and they wanted go out there and do something, they could
18 have. His back to them, Judge. They ran for it. They
19 saw him. And then things just went so terribly side ways.
20 I just don't think that their -- had any intent to do what
21 she said that they did, Judge. It's hard for me to
22 explain that, I guess. If they wanted to do something,
23 they would have. And I just want you to keep that in
24 mind, Your Honor. My client's cooperation. His lack of a
25 record and just ask that you hand down a sentence you see

1 as appropriate. I do believe my client would like to
2 speak if the Court would have a minute to hear from him.

3 THE COURT: Sure.

4 MS. PARKER: Judge, I have one more thing to say
5 if that's okay.

6 THE COURT: Okay.

7 MS. PARKER: I failed to mention in the State's
8 presentation of the facts that when the cops pulled up,
9 they did send Ms. Hattie Parnell outside and had
10 threatened her and told her she better send the cops away.
11 So we did have on video she met with Deputy Causey and
12 said nothing's wrong. Oh, nobody's inside just my
13 children. And so they did know that the cops were there
14 and then sent her out to get rid of them.

15 THE COURT: All right.

16 KENDELL GAMBLE: Your Honor, on behalf of me and
17 my brother, I just want to apologize to each and every
18 person that's involved in this situation, even though I
19 know it's probably held less than a grain of salt. I just
20 want to go on record that saying we are remorseful and we
21 do apologize.

22 THE COURT: All right. Yes, sir.

23 JAYME GAMBLE: Same thing. Same thing, sir.

24 THE COURT: Any family?

25 MRS. LAURA HILLER: Yes, this is Ms. Debra

1 Grant. This is their mother.

2 MS. DEBRA GRANT: Your Honor, my name is Debra
3 Grant. I'm the mother of these two men first born and
4 second born. And you see them standing before you and
5 that's how they grew up together. And even after this
6 took place, which I have no excuse for them, so sorry I
7 apologize to everybody that was involved. But in talking
8 to them, they concern was the charges. Jayme say, Ma, if
9 I can take the whole charge and send Kendell home I would
10 do that. Kendell said, Ma, I had my share in it. I stand
11 with James, so they love each other. They always -- I
12 just ask for mercy of the Court because at the end of the
13 day they are somebody's child too. They are my kids. I
14 just ask for mercy of the Court.

15 MRS. LAURA HILLER: This is Ms. Keshia Gamble.

16 MS. KESHIA GAMBLE: My name is Keshia Gamble
17 their aunt. I want everybody to know they're good boys
18 and I know them their whole life. And I just want to
19 apologize to the victims and everybody involved in this.
20 And just asking for mercy from the Court for a lesser
21 sentence. Thank you.

22 THE COURT: All right.

23 MRS. LAURA HILLER: Your Honor, if we could
24 reiterate what his family has said, I have never seen a
25 case with people facing so much time that never once did

1 they try to put anybody else under the bus. It was never,
2 well, he did this, this and this, no. These boys have
3 supported each other: They stand by each other and as an
4 act of men not of boys, Your Honor.

5 THE COURT: All right. Anything else?

6 MR. JONATHAN HILLER: No, Your Honor.

7 THE COURT: I accept the plea. And find that
8 they did so freely, intelligently and with the advice of
9 two lawyers.

10 (WHEREUPON, a pause in the proceedings.)

11 THE COURT: All right. All of these sentences
12 will be concurrent. I will give them 376 days credit. In
13 reference to both of them in reference to the burglary
14 first degree, the sentence of the Court will be 50 years.
15 In reference to the armed robbery, it will be 20 years.
16 In reference to the kidnapping 30 and the other kidnapping
17 30, the other kidnapping 30 and in reference to the
18 attempted murder 30, in reference to the possession of a
19 weapon five, in reference to failure to stop for a blue
20 light three. All run concurrent.

21 END OF REQUESTED TRANSCRIPT

22

23

24

25

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF FLORENCE)

I, Keshia Reed, Court Reporter in and for the State of South Carolina At Large, do hereby certify that the above-entitled cause was heard as hereinafter set out; that I was authorized to and did transcribe the said proceedings; and that the foregoing and annexed paged, numbered 1 through 30, inclusive, constitute a true and accurate transcription of my stenographic report of the said cause taken during the said hearing. In the Court of General Sessions for Marion County, South Carolina, on the 1st day of August, 2018.

I do further certify that I am neither of kin, counsel nor interest to any party hereto. In witness whereof, I have hereunto affixed my signature this 1st day of May 2019.



Keshia Reed, Court Reporter

WITNESSES

Arthur R Hotaling Jr Marion County Sheriff

John W. Holt, IV

ARREST WARRANT NUMBERS

2017A3310100464 ✓	2017A3310100465 ✓
2017A3310100466 ✓	
2017A3310100467 ✓	2017A3310100468 ✓
2017A3310100469 ✓	2017A3310100470 ✓
2017A3310100471 ✓	2017A3310100472 ✓
2017A3310100473 ✓	2017A3310100474 ✓
2017A3310100475 ✓	2017A3310100476 ✓
2017A3310100477 ✓	2017A3310100479 ✓
2017A3310100483 ✓	2017A3310100485 ✓
2017A3310100488 ✓	2017A3310100490 ✓
2017A3310100493 ✓	2017A3310100496 ✓
2017A3310100504 ✓	2017A3310100501 ✓
2017A3310100506 ✓	

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 2-8-18

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2018-GS-33-00121

The State of South Carolina

County of

MARION

COURT OF GENERAL SESSIONS

TERM 2018

THE STATE

vs.

KENDELL ALLEN GAMBLE

TRUE BILL

Indictment for

**BURGLARY 1ST DEGREE
ATTEMPTED ARMED ROBBERY (7**

COUNTS);

**KIDNAPPING (7 COUNTS); ATTEMPTED
MURDER (5 COUNTS); DISCHARGING A
FIREARM INTO A VEHICLE; CONSPIRACY;
POSSESSION OF A STOLEN HANDGUN;
AND POSSESSION OF A WEAPON DURING
COMMISSION OF VIOLENT CRIME**

FILED
MAR 1 2018
MARION COUNTY
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF MARION)

INDICTMENT FOR

BURGLARY 1ST DEGREE
 ATTEMPTED ARMED ROBBERY (7 COUNTS)
 KIDNAPPING (7 COUNTS) ATTEMPTED
 MURDER (5 COUNTS); DISCHARGING A
 FIREARM INTO A VEHICLE; CONSPIRACY;
 POSSESSION OF A STOLEN HANDGUN; AND
 POSSESSION OF A WEAPON DURING
 COMMISSION OF VIOLENT CRIME

At a Court of General Sessions, convened on FEBRUARY 8, 2018 the Grand Jurors of MARION County present upon their oath:

COUNT ONE- BURLGARY 1ST DEGREE

CDR: 0079 C/L 16-11-311, 16-1-80,16-1-60

That KENDELL ALLEN GAMBLE did in Marion County on or about July 21, 2017, willfully and unlawfully attempt to enter the dwelling of Hattie Pernell located at 6216 Vincent Road, Mullins SC, without consent and with the intent to commit a crime therein, and the defendant was armed with a deadly weapon, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

COUNT TWO- ATTEMPTED ARMED ROBBERY

CDR: 0026 16-11-0330(B)

That KENDELL ALLEN GAMBLE did, along with a co-defendant in Marion County on or about July 21, 2017, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of Hattie Pernell, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

COUNT THREE- ATTEMPTED ARMED ROBBERY

CDR: 0026 16-11-0330(B)

That KENDELL ALLEN GAMBLE did, along with a co-defendant in Marion County on or about July 21, 2017, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of Whitney Pernell, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

COUNT FOUR- ATTEMPTED ARMED ROBBERY

CDR: 0026 16-11-0330(B)

That KENDELL ALLEN GAMBLE did, along with a co-defendant in Marion County on or about July 21, 2017, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of Lawanda Williams, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

COUNT FIVE- ATTEMPTED ARMED ROBBERY

CDR: 0026 16-11-0330(B)

That KENDELL ALLEN GAMBLE did, along with a co-defendant in Marion County on or about July 21, 2017, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of a sixteen (16) year old minor, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

COUNT SIX- ATTEMPTED ARMED ROBBERY

CDR: 0026 16-11-0330(B)

That KENDELL ALLEN GAMBLE did, along with a co-defendant in Marion County on or about July 21, 2017, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of a fourteen (14) year old minor, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

COUNT SEVEN- ATTEMPTED ARMED ROBBERY

CDR: 0026 16-11-0330(B)

That KENDELL ALLEN GAMBLE did, along with a co-defendant in Marion County on or about July 21, 2017, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of a ten (10) year old minor, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

COUNT EIGHT- ATTEMPTED ARMED ROBBERY

CDR: 0026 16-11-0330(B)

That KENDELL ALLEN GAMBLE did, along with a co-defendant in Marion County on or about July 21, 2017, while armed with a deadly weapon, attempt to take and carry away the personal property from or in the immediate presence of a five (5) year old minor, with intent to deprive him/her of possession by use of force, threats, or intimidation, in violation of Section 16-11-0330(B), S. C. Code of Laws, 1976, as amended.

COUNT NINE - KIDNAPPING

CDR: 0095 16-3-0910

That KENDELL ALLEN GAMBLE did in MARION County on or about July 21, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one Hattie Pernell, by any means whatsoever, without authority of law and by use of force, by holding him/her against his/her will at gunpoint; in violation of Sections 16-03-0910 and 16-01-0060, S.C. Code of Laws, 1976, as amended.

COUNT TEN - KIDNAPPING

CDR: 0095 16-3-0910

That KENDELL ALLEN GAMBLE did in MARION County on or about July 21, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one Whitney Pernell, by any means whatsoever, without authority of law and by use of force, by holding him/her against his/her will at gunpoint; in violation of Sections 16-03-0910 and 16-01-0060, S.C. Code of Laws, 1976, as amended.

COUNT ELEVEN - KIDNAPPING

CDR: 0095 16-3-0910

That KENDELL ALLEN GAMBLE did in MARION County on or about July 21, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one Lawanda Williams, by any means whatsoever, without authority of law and by use of force, by holding him/her against his/her will at gunpoint; in violation of Sections 16-03-0910 and 16-01-0060, S.C. Code of Laws, 1976, as amended.

COUNT TWELVE - KIDNAPPING

CDR: 0095 16-3-0910

That KENDELL ALLEN GAMBLE did in MARION County on or about July 21, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one sixteen (16) year old minor, by any means whatsoever, without authority of law and by use of force, by holding him/her against his/her will at gunpoint; in violation of Sections 16-03-0910 and 16-01-0060, S.C. Code of Laws, 1976, as amended.

COUNT THIRTEEN - KIDNAPPING

CDR: 0095 16-3-0910

That KENDELL ALLEN GAMBLE did in MARION County on or about July 21, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one fourteen (14) year old minor, by any means whatsoever, without authority of law and by use of force, by holding him/her against his/her will at gunpoint; in violation of Sections 16-03-0910 and 16-01-0060, S.C. Code of Laws, 1976, as amended.

COUNT FOURTEEN - KIDNAPPING

CDR: 0095 16-3-0910

That KENDELL ALLEN GAMBLE did in MARION County on or about July 21, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one ten (10) year old minor, by any means whatsoever, without authority of law and by use of force, by holding him/her against his/her will at gunpoint; in violation of Sections 16-03-0910 and 16-01-0060, S.C. Code of Laws, 1976, as amended.

COUNT FIFTEEN - KIDNAPPING

CDR: 0095 16-3-0910

That KENDELL ALLEN GAMBLE did in MARION County on or about July 21, 2017, unlawfully seize, confine, inveigle, decoy, kidnap, abduct, and/or carry away one five (5) year old minor, by any means whatsoever, without authority of law and by use of force, by holding him/her against his/her will at gunpoint; in violation of Sections 16-03-0910 and 16-01-0060, S.C. Code of Laws, 1976, as amended.

COUNT SIXTEEN - ATTEMPTED MURDER

CDR: 3410 16-03-0029

That KENDELL ALLEN GAMBLE did in MARION County on or about July 21, 2017, with intent to kill, with malice aforethought, either expressed or implied, attempt to murder Marion Sheriff's Deputy Tracy Causey, by shooting at him with a firearm, causing great bodily injury and/or substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

COUNT SEVENTEEN - ATTEMPTED MURDER

CDR: 3410 16-03-0029

That KENDELL ALLEN GAMBLE did in MARION County on or about July 21, 2017, with intent to kill, with malice aforethought, either expressed or implied, attempt to murder Marion County Constable Glen Turner, by shooting at him with a firearm, causing great bodily injury and/or substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

COUNT EIGHTEEN - ATTEMPTED MURDER

CDR: 3410 16-03-0029

That KENDELL ALLEN GAMBLE did in MARION County on or about July 21, 2017, with intent to kill, with malice aforethought, either expressed or implied, attempt to murder Marion Sheriff's Deputy Daniel Cribb, by shooting at him with a firearm, causing great bodily injury and/or substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

COUNT NINETEEN ATTEMPTED MURDER

CDR: 3410 16-03-0029

That KENDELL ALLEN GAMBLE did in MARION County on or about July 21, 2017, with intent to kill, with malice aforethought, either expressed or implied, attempt to murder Marion Sheriff's Deputy Johnathan Herring, by shooting at him with a firearm, causing great bodily injury and/or substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

COUNT TWENTY - ATTEMPTED MURDER

CDR: 3410 16-03-0029

That KENDELL ALLEN GAMBLE did in MARION County on or about July 21, 2017, with intent to kill, with malice aforethought, either expressed or implied, attempt to murder Highway Patrol Trooper Jimmy King, by shooting at him with a firearm, causing great bodily injury and/or substantial risk of death; in violation of Section 16-03-0029, S.C. Code of Laws, 1976, as amended.

COUNT TWENTY-ONE - DISCHARGING FIREARM AT/INTO A VEHICLE

CDR: 2907 16-23-0440

That KENDELL ALLEN GAMBLE did in Marion County on or about July 21, 2017, willfully and unlawfully discharge, or cause to be discharged, a firearm at or into a vehicle, aircraft, watercraft, or other conveyance, device or equipment, to wit: a vehicle occupied by Glen Turner; in violation of Section 16-23-0440(B), S.C. Code of Laws, 1976, as amended.

COUNT - TWENTY-TWO - POSSESSION OF STOLEN HANDGUN

CDR: 2364 16-23-0030

That KENDELL ALLEN GAMBLE did in Marion County on or about July 21, 2017, willfully and knowingly have in his possession or on his person, a pistol, to wit: a .40 caliber Taurus handgun, which he knew, or should have known to be stolen; in violation of Section 16-23-0030(C), S. C. Code of Laws, 1976, as amended.

COUNT TWENTY-THREE - CONSPIRACY

CDR: 0049 16-17-0410

That KENDELL ALLEN GAMBLE did in Marion County on or about July 21, 2017, together with co-defendant Jayme Gamble, unlawfully, willfully, knowingly, wickedly and feloniously unite, combine, and conspire for the purpose of committing the crime of Burglary and Armed Robbery; in violation of Section 16-17-0410, S.C. Code of Laws, 1976, as amended.

**COUNT TWENTY-FOUR - POSSESSION OF WEAPON DURING THE COMMISSION
OF A VIOLENT**

CDR: 0549 16-23-0490

That KENDELL ALLEN GAMBLE did in Marion County on or about July 21, 2017, was in possession of a firearm, or did visibly display what appeared to be a firearm, or visibly displayed a knife, to wit: a handgun, during the commission of a violent crime, to wit: Burglary 1st Degree, Attempted Armed Robbery, and/or Attempted Murder; in violation of Section 16-23-0490, S.C Code of Laws, 1976, as amended.

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

A handwritten signature in black ink, reading "E.L. Clements, III". The signature is written in a cursive, flowing style with a prominent "E" and "L" at the beginning, and a stylized "III" at the end.

E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

38
STATE OF SOUTH CAROLINA

COUNTY OF Marion
STATE VS.
Kendell Allen Gamble
AKA:
Race: Black Sex: M Age: 30
DOB: [REDACTED] SS# [REDACTED]
Address: 18 Oxford Lane
City, State, Zip: Georgetown, SC 29440
DL#: [REDACTED] SID#: [REDACTED]

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

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

TO: Burglary / Burglary (After June 20, 1985) - First degree

15 - life

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079

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

(CSC w/minor 1st or CSC w/minor 3rd)

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

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

ATTEST:

Patty M Parker 74836 K. Gamble [Signature] 76482
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 50 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: today

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDoc.

3760 days

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) 100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) 100 \$

§ 56-5-2995 (DUI Assessment) 12 \$

§ 56-1-286 (DUI Breath Test) 25 \$

Proviso (Public Def/Probation) 500 \$

§ 14-1-212 (Law Enforce. Funding) 25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) 150 \$

§ 50-21-114 (BUI Breath Test Fee) 50 \$

§ 56-5-2942(J) (Vehicle Assessment) 40/ea \$

3% to County (if paid in installments) 3.75 \$

TOTAL 128.75 \$

Clerk of Court/ Deputy Clerk Christy M. Gray

Court Reporter: Heisha L. Beer

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-3320121

A/W#: 2017A3310100464

Date of Offense: 7/21/2017

S.C. Code § : 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

FILED

AUG - 1 PM 4:21
MARION COUNTY
CLERK OF COURT

Presiding Judge [Signature]

Judge Code: 457

Sentence Date: 8/1/18

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

39

COUNTY OF Marion
 STATE VS.
Kendell Allen Gamble

AKA:

Race: Black Sex: M Age: 30DOB: [REDACTED] SS#: [REDACTED]Address: 18 Oxford LaneCity, State, Zip: Georgetown, SC 29440DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Robbery / Attempted armed, or allegedly armed, robberyINDICTMENT/CASE#: 2018-GS-33-00121A/W#: 2017A3310100472Date of Offense: 7/21/2017S.C. Code § : 16-11-0330(B)CDR Code #: 0026

SENTENCE SHEET

☐ CONVICTED OF or☒ PLEADS COURTin violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

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

ATTEST:

Patti M Parker
Solicitor74836
SC Bar#K. Gamble
Defendant[Signature]
Attorney for Defendant76482
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

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

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso (Public Def/Probation) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ 3.75TOTAL \$ 128.75Clerk of Court/ Deputy Clerk, Christy M. GraysonCourt Reporter: Deisha T. Bee

SCCA/217 (04/2018)

PTUP days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,

§ Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge [Signature]Judge Code: Sentence Date: 6/1/18

FILED
 2018 AUG -1 PM 4:21
 MARION COUNTY SC
 CHRISTY M. GRAYSON
 CLERK OF COURT

40
STATE OF SOUTH CAROLINA

COUNTY OF Marion
STATE VS.
Kendell Allen Gamble
AKA:
Race: Black Sex: M Age: 30
DOB: [REDACTED] SS#: [REDACTED]
Address: 18 Oxford Lane
City, State, Zip: Georgetown, SC 29440
DL#: [REDACTED] SID#: [REDACTED]

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

In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping / Kidnapping 0-30 yrs

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

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

Patti M Parker 74836 K. Gamble [REDACTED] 76482
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine: \$
§ 14-1-206 (Assessments 107.5 %) \$
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$
§ 56-5-2995 (DUI Assessment) \$12 \$
§ 56-1-286 (DUI Breath Test) \$25 \$
Proviso (Public Def/Probation) \$500 \$
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00
§ 14-1-213 (Drug Court Surcharge) \$150 \$
§ 50-21-114 (BUI Breath Test Fee) \$50 \$
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$
3% to County (if paid in installments) \$ 3.75

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-3209121
A/W#: 2017A3310100471
Date of Offense: 7/21/2017
S.C. Code § : 16-03-0910
CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

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

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

Presiding Judge

Judge Code: 2157

Sentence Date: 8/1/18

FILED
AUG -1 PM 4:21
MARION COUNTY SC
CLERK OF COURT

Christy M. Gray
Heisha T. Reed

STATE OF SOUTH CAROLINA)
COUNTY OF Marion)
STATE VS.)
Kendell Allen Gamble)
AKA:)
Race: Black Sex: M Age: 30)
DOB: SS#:)
Address: 18 Oxford Lane)
City, State, Zip: Georgetown, SC 29440)
DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-03-33-00121
A/W#: 2017A3310100493
Date of Offense: 7/21/2017
S.C. Code §: 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Assault / Attempted Murder

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

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

ATTEST:
Patti m Parker 74834 Solicitor
H. H. H. Defendant
Attorney for Defendant 76482 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ 3.75

TOTAL \$128.75
Clerk of Court/ Deputy Clerk: Christy M. Gray
Court Reporter: Hersha Reed
SCCA/217 (04/2018)

☐ Appointed PD or appointed other counsel,
§Proviso requires \$500 be paid to Clerk
during probation and shall be collected before
any other fees.
Presiding Judge: [Signature]
Judge Code: 257
Sentence Date: 8/1/18

STATE OF SOUTH CAROLINA

COUNTY OF Marion
STATE VS.
Kendell Allen Gamble

AKA: _____
Race: Black Sex: M Age: 30
DOB: [REDACTED] SS#: [REDACTED]

Address: 18 Oxford Lane
City, State, Zip: Georgetown, SC 29440
DL#: _____ SID#: _____

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

In disposition of the said indictment comes now the Defendant who was
TO: Assault / Attempted Murder 0-30 yrs

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

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

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

ATTEST: Patricia M. Parker 74836 M. A. Aulie 76482
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

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

376 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 (Assessments 107.5 %) _____ \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 128.75

Clerk of Court/ Deputy Clerk Christy M. Gray

Court Reporter: Heisha T. Reed

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-200121

A/W#: 2017A3310100490

Date of Offense: 7/21/2017

S.C. Code § : 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Presiding Judge [Signature]

Judge Code: 1257

Sentence Date: 8/1/18

STATE OF SOUTH CAROLINA

COUNTY OF Marion
 STATE VS.
Kendell Allen Gamble

AKA:

Race: Black Sex: M Age: 30DOB: [REDACTED] SS#: [REDACTED]Address: 18 Oxford LaneCity, State, Zip: Georgetown, SC 29440DL#: [REDACTED] SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Assault / Attempted Murder0-30 yrsin violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45

(CSC w/minor 1st or CSC w/minor 3rd)

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

ATTEST:

Patti M Parker

Solicitor

74836

SC Bar#

K. Gamble

Defendant

Attorney for Defendant

76482

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: today☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the SCDoc.376 days☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso (Public Def/Probation) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114 (BUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ 3% to County (if paid in installments) \$ 3.75

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter: Christy M. Gray

SCCA/217 (04/2018)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-GS-33-00121A/W#: 2017A3310100483Date of Offense: 7/21/2017S.C. Code § : 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

43

FILED

2018 AUG -1 PM 4:21
MARION COUNTY SC
CHRISTY M GRAY SC
CLERK OF COURT☐ Appointed PD or appointed other counsel, § Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Presiding Judge

Judge Code: 257Sentence Date: 8/1/18

44
STATE OF SOUTH CAROLINA

COUNTY OF Marion
STATE VS.
Kendell Allen Gamble
AKA:
Race: Black Sex: M Age: 30
DOB: [REDACTED] SS#: [REDACTED]
Address: 18 Oxford Lane
City, State, Zip: Georgetown, SC 29440
DL#: [REDACTED] SID#: [REDACTED]

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

In disposition of the said indictment comes now the Defendant who was
TO: Weapons / Poss. weapon during commission of a violent crime

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

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

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

ATTEST: Patti M Parker 74836 K. Gamble 76482
Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

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

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

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

376 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms: Obtain GED ☐

☐ Set by SCDPPS Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning

*Fine: Substance Abuse Counseling ☐

§ 14-1-206 (Assessments 107.5 %) \$ Random Drug/Alcohol testing ☐

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ pmts. of \$ beginning

§ 56-5-2995 (DUI Assessment) \$12 \$ \$ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ Other:

Proviso (Public Def/Probation) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$ 3.75

TOTAL \$ 28.75

Clerk of Court/ Deputy Clerk Christina Grayson Presiding Judge

Court Reporter: Heather L. Reed Judge Code: 2157

SCCA/217 (04/2018) Sentence Date: 8/1/18

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2018-SS-33-00121
A/W#: 2017A3310100506
Date of Offense: 7/21/2017
S.C. Code § : 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

5 yrs

FILED
2018 AUG -1 PM 4:21
MARION COUNTY SC
CLERK OF COURT

FILED
FORM 5

2019-CP-33-65345

STATE OF SOUTH CAROLINA 2019 SEP 18 AM 9:58
COUNTY OF MARION) IN THE COURT OF COMMON PLEAS
KENDALL ALLEN GAMBLE # 377230)
Full name and prison number (if any) of Applicant.)
v.) APPLICATION FOR
State of South Carolina) POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Correctional Institutional, 136 Wilborn Avenue,
P.O. Box 205, Ridgeville, SC 29472.
2. Name and location of Court which imposed sentence Court of General Sessions for
Marion County, 100 West Court Street, P.O. Box 295, Marion, SC 29571
3. Name(s) of co-defendant(s) (if any) Jayme Gamble
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) # 2018-GS-33-00121
 - (b) NA
 - (c) NA
5. The date upon which sentence was imposed and the terms of the sentence:

- (a) Kidnapping 30 years
 - (b) Attempted armed robbery 20 years
 - (c) Attempted murder 30 years (3 counts)
 - (d) Burglary 1st degree 50 years
 - (e) Firearm provision 5 years
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
 - (b) after a plea of not guilty _____
 - (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
 - i. Court of Appeals for the State of South Carolina
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Voluntarily dismissed appeal
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. October 12, 2018
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. NA
 - ii. _____
 - iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) NA
 - (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Applicant was provided with ineffective assistance of counsel in violation of his Sixth Amendment rights before and during his guilty plea:
 - (b) for representing Petitioner under a conflict of interest
 - (c) for failing to move to dismiss the armed robbery count
 - (d) for failing to move to dismiss the attempted murder counts involving Constable Glen Turner, and Deputies Jonathan Herring and Daniel Cribb
 - (e) for failing to investigate the facts of the case
 - (f) for failing to explain the consequences of a negotiated plea agreement versus an open plea
 - (g) for failing to ensure that the Court explained the nature of each offense and elements that had to be proven for each offense
 - (h) for failing to move to reduce the Burglary 1st degree count to Burglary 2nd degree
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See Memorandum of Supporting Facts for all claims of ineffective assistance of counsel
 - (b) _____
 - (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
 - (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 - (d) any other petitions, motions or applications in this or any other Court? No
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. NA

ii. _____

iii. _____

iv. _____

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

i. NA

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. NA

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. NA

ii. _____

iii. _____

iv. _____

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

i. NA

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. NA

- ii. _____
- iii. _____
- (b) the proceedings in which each ground was raised:
 - i. NA
 - ii. _____
 - iii. _____
- 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) An ineffective assistance of counsel claim is usually raised in a post-conviction motion.
 - (b) _____
 - (c) _____
- 17. Were you represented by an attorney at any time during the course of:
 - (a) your arraignment and plea? Yes
 - (b) your trial, if any? NA
 - (c) your sentencing? Yes
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NA
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? NA
- 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. During guilty -- Jonathan Hiller
 - ii. Sentencing -- Jonathan Hiller
 - iii. Appeal -- NA
 - (b) the proceedings at which each such attorney represented you:
 - i. During guilty plea -- Jonathan Hiller
 - ii. During sentencing -- Jonathan Hiller
 - iii. On appeal -- NA
- 19. State clearly the relief you seek in filing this application:

Vacate the convictions/sentences, so that Applicant can proceed to trial on the charges, or so that he can enter a knowing and intelligent guilty plea.

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

No

STATE OF SOUTH CAROLINA)
)
 County of MARION)

VERIFICATION

I, Kendall Allen Gamble, 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.

Kendall Allen Gamble

SWORN to and subscribed before me this 16th
 day of September, 2019

Ruby Martin (L.S.)
 Notary Public

My Commission Expires: 10/21/26

FILED
 2019 SEP 18 AM 9:58
 CLERK OF COURT
 1000 1000 1000

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

I, Kendall Allen Gamble, 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.

Kendall Allen Gamble
Applicant

SWORN or affirmed to and subscribed before me this
16th day of September, 2019

Rick Martin
Notary Public

My Commission Expires: 10/21/20

FILED
2019 SEP 18 AM 9:58

FILED

IN THE COURT OF COMMON PLEA
MARION COUNTY

2019 SEP 18 AM 9:58

Civil Action No. _____
Indictment No. 2018-GS-33-00121MARION COUNTY CO
CLERK OF COURT

The State of South Carolina

v.

Kendall Allen Gamble,
Applicant.

MEMORANDUM OF SUPPORTING FACTS

COMES NOW, the Applicant, Kendall Allen Gamble, acting on his own behalf with the assistance of another person who is untrained in the law, and **REQUESTS** this Honorable Court to grant him the relief sought in the instant action. Petitioner is presenting seven claims of ineffective assistance of counsel. Petitioner was represented by Jonathan Hiller before and during the guilty plea and sentencing, and he provided ineffective assistance of counsel for the following reasons: 1) for representing Petitioner under a conflict of interest; 2) for failing to move to dismiss the armed robbery count; 3) for failing to move to dismiss the attempted murder counts involving Constable Glen Turner, and Deputies Jonathan Herring and Daniel Cribb; 4) for failing to investigate the facts of the case; 5) for failing to explain the consequences of a negotiated plea agreement versus an open plea; 6) for failing to ensure that the Court explained the nature

of each offense and elements that had to be proven for each offense; 7) for failing to move to reduce the Burglary 1st degree count to Burglary 2nd degree.

The relief should be granted for the following reasons:

STATEMENT OF THE CASE

After learning that a residence in Mullins, South Carolina was holding drug money for a person in federal custody, Petitioner and his brother, Jayme Gamble, staged a home invasion at 6216 Vincent Ct., Mullins, SC on July 21, 2017 at about 7:26 am. Upon arriving at the residence and parking the rented Durango SUV in the driveway, Petitioner and his brother knocked at the front door of the residence and waited for someone to answer, and then they knocked again. When no one answered after the second set of knocks, one of them forced the door open and made everyone visible get on the floor. The first demand once entering the residence, was "[w]here is the money?" which was repeated several times.

During the commotion in the front room, someone in the residence in another room called 911 and dispatch was able to hear most of what was occurring throughout the residence. Pfc. Jonathan Herring and Cpl. Tracy Causey were the first officers to arrive at the residence after a call went out from dispatch. Once they arrived, Ms. Hattie Ford Pernell went outside to assure the officers that all was well, but the officers told her that they would still have to come in and check for themselves. Mr. Pernell went back inside the residence, Petitioner and his brother ran out a side door and hid outside, and Cpl. Causey went to the rear of the residence with a shotgun.

Shortly after Cpl. Causey had gotten in position near the rear of the residence, Petitioner and his brother made a break for the Durango, and Petitioner fired a few shots

in the air to provide cover for them to get to the Durango and possibly escape. Petitioner and his brother were able to make it onto the highway without any shots being fired at them. Petitioner was in the passenger seat and his brother, Jayme Gamble, drove. Soon they were being pursued by at least two cars with flashing blue lights and the cars were closing the distance between them quickly. Petitioner fired several shots into the pavement in hope that it would make the pursuing cars fall back and the shots served their purpose. One or more of the pursuing cars returned gunfire. After the fleeing vehicle wrecked, Jayme ran and was caught, and Petitioner remained in the wrecked vehicle and was arrested without further incident.

On or about February 12, 2018, an Indictment was filed naming Petitioner in twenty-four counts, namely, Burglary 1st degree, Attempted Armed Robbery (7 counts); Kidnapping (7 counts); Attempted Murder (5 counts); Discharging a Firearm into a Vehicle; Conspiracy; Possession of a Stolen Handgun, and Possession of a Weapon during Commission of Violent Crime.

On August 1, 2018, Petitioner appeared before the Honorable William H. Seals, Jr., Circuit Court Judge, and pled guilty to Burglary 1st degree, (Attempted) Armed Robbery, Kidnapping; Possession of a Weapon during Commission of a Violent Crime, and three counts of Attempted Murder. The Court imposed a 50-year term of imprisonment for the Burglary 1st degree; a 30-year term of imprisonment for the Kidnapping offense; 30-year sentence for the Attempted Armed Robbery offense; a five-year term of imprisonment for Possession of a Weapon during Commission of a Violent Crime; and 30-year terms of imprisonment for each of the three Attempted Murder

offenses, with all sentences imposed to be served concurrently and Petitioner was to be given the 376 days of jail credit applied to his sentences.

Appellate counsel for Petitioner filed a no-merit brief on appeal, and Petitioner was allowed to voluntarily dismissed his appeal on October 12, 2018.

APPLICABLE CASE LAW

The Sixth Amendment to the United States Constitution guarantees a criminal defendant the right “to have the assistance of counsel for his defense”, and the United States Supreme Court has recognized that, “the right to counsel is the right to the effective assistance of counsel”. McMann v Richardson, 397 U.S. 759, 771 n. 14 (1970); Marzullo v Maryland, 561 F.2d 540 (4th Cir. 1977), cert. denied, 435 U.S. 1011 (1978).

In Strickland v Washington, 466 U.S. 668 (1984), the Supreme Court outlined two components that a convicted defendant must show to prevail on a claim of ineffective assistance of counsel. “First, the defendant must show that counsel’s performance was deficient.... Second, the defendant must show that the deficient performance prejudiced the defense.” Id. at 687; and, Butler v State, 286 S.C. 441, 442, 334 S/E.2d 813, 814 (1985).

There is a strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in the case. Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2025, 80 L. Ed. 2d 674 (1984); In order to prove that counsel was ineffective, the applicant must show counsel's performance was deficient and the deficient performance prejudiced the defense. Strickland v. Washington, *supra*; Thrift v. State, 302 S.C. 535, 397 S.E.2d 523 (1990).

To show prejudice, the applicant must show, but for counsel's errors, there is a reasonable

probability the result of the trial would have been different. Johnson v. State, __ S.C. __, 480 S.E.2d 733 (1997). A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial. Strickland, *supra*. This Court will sustain the PCR judge's factual findings and conclusions regarding ineffective assistance of counsel if there is any probative evidence to support those findings. Skeen v. State, __ S.C. __, 481 S.E.2d 129 (1997). However, if there is no probative evidence to support the PCR judge's findings, the findings will not be upheld. Satterwhite v. State, __ S.C. __, 481 S.E.2d 709 (1997); Holland v. State, 322 S.C. 111, 470 S.E.2d 378 (1996).

In showing that counsel's performance was deficient requires a showing that counsel made error so serious that counsel was not functioning as the "counsel" guarantee the defendant by the Sixth Amendment. In showing that the counsel's deficient performance prejudiced the defense requires a showing that counsel's error was so serious as to deprive the defendant of a fair trial, a trial whose result is reliable. Strickland, 466 U.S. at 693.

GROUND PRESENTED

Ground One: Petitioner was provided with ineffective assistance of counsel in violation of his Sixth Amendment rights before and during his guilty plea.

Supporting Facts: Petitioner was provided with ineffective assistance of counsel in violation of his Sixth Amendment rights before and during his guilty plea to the offenses of attempted murder (3 counts), attempted armed robbery, kidnapping, burglary-1st degree, and possession of a weapon during violent crime. Counsel for Applicant, Jonathan Hiller, provided ineffective assistance of counsel for the following reasons: 1) for representing Petitioner under a conflict of interest; 2) for failing to move to dismiss

the armed robbery count; 3) for failing to move to dismiss the attempted murder counts involving Constable Glen Turner, and Deputies Jonathan Herring and Daniel Cribb; 4) for failing to investigate the facts of the case; 5) for failing to explain the consequences of a negotiated plea agreement versus an open plea; 6) for failing to ensure that the Court explained the nature of each offense and elements that had to be proven for each offense; 7) for failing to move to reduce the Burglary 1st degree count to Burglary 2nd degree.

ARGUMENTS

I.

1. Counsel for Petitioner provided ineffective assistance of counsel for representing Petitioner under a conflict of interest.

To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance. Cuyler v. Sullivan, 446 U.S. 335, 100 S.Ct. 1708, 64 L.Ed.2d 333 (1980); Fuller v. State, 347 S.C. 630, 557 S.E.2d 664 (2001); Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001). An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are averse to the defendant's. Id. In Thomas, this Court held that a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice to obtain relief.

Petitioner was represented by Jonathan Hiller; his brother, Jayme Gamble was represented by Jonathan Hiller's wife, Laura Hiller. Even though, Jonathan and Laura worked in different law offices, they were husband and wife at the end of the day. From the record, it cannot be determined whether there was a possible conflict of interest with the husband and wife team handling the case of brothers and co-defendants. With the

advice of their counsel, Petitioner and his brother pled guilty with open pleas. If Petitioner was going to trial, his brother was going to trial. If Petitioner was pleading guilty to several offenses, then his brother had to plead guilty to those same offenses.

Laura Hiller stated during the guilty plea/sentencing hearing, that she was going to allow her husband to go into certain facts about the case for her client; even though, she should have been speaking for her client, Jayme Gamble. **Transcript of Records at page 22 (Aug. 1, 2018).** Loyalty and independent judgment are essential elements in the lawyer's relationship to a client. Concurrent conflicts of interest can arise from the lawyer's responsibilities to another client, a former client or a third person or from the lawyer's own interests.

Even where there is no direct adverseness, a conflict of interest exists if there is a significant risk that a lawyer's ability to consider, recommend or carry out an appropriate course of action for the client will be materially limited as a result of the lawyer's other responsibilities or interests. The critical questions are the likelihood that a difference in interests will eventuate and, if it does, whether it will materially interfere with the lawyer's independent professional judgment in considering alternatives or foreclose courses of action that reasonably should be pursued on behalf of the client.

The lawyer's own interests should not be permitted to have an adverse effect on representation of a client. For example, if the probity of a lawyer's own conduct in a transaction is in serious question, it may be difficult or impossible for the lawyer to give a client detached advice. Similarly, when a lawyer has discussions concerning possible employment with an opponent of the lawyer's client, or with a law firm representing the opponent, such discussions could materially limit the lawyer's representation of the client.

In addition, a lawyer may not allow related business interests to affect representation, for example, by referring clients to an enterprise in which the lawyer has an undisclosed financial interest.

Jonathan Hiller was hired by the family to represent Petitioner, and Jonathan Hiller recommended bringing his wife, Laura Hiller, on to represent Jayme Gamble, which the family hired. Jonathan and Laura worked as a team with one suggesting the course of action for both brothers, getting both brothers to take an open plea after neither counsel did any investigation, and neither Jonathan or Laura explained the nature of the offenses or their elements. Jonathan Hiller provided ineffective assistance of counsel for representing Petitioner under a conflict of interest.

II.

2. Counsel for Petitioner provided ineffective assistance of counsel for failing to move to dismiss the attempted armed robbery count.

During the guilty plea and sentencing of Petitioner, the Court asked Petitioner whether he was pleading guilty to *armed robbery* which carried a maximum sentence of 20 years. **Transcript of Records at page 4-5.** During the same hearing, the State stated that Petitioner was pleading guilty to Count 2 which charged *attempted armed robbery*. **Id. at pages 3.** The armed robbery/attempted armed robbery count, count 2, should be dismissed; because, Petitioner pled guilty to armed robbery, the offense the Court asked him about pleading guilty to and not to attempted armed robbery.

The Indictment and the Sentence Sheet lists the offense as robbery/attempted armed, or allegedly armed, robbery. Jonathan Hiller provided ineffective assistance of counsel for not moving to dismiss the Indictment that charged armed

robbery/attempted armed robbery, because, Petitioner did not commit the offense of armed robbery, the offense he pled guilty to committing.

The offenses of Robbery or Attempted Armed Robbery are charged under South Carolina Code of Laws 16-11-330, which provide:

- (A) A person who commits 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, upon conviction, must be imprisoned for a mandatory minimum term of not less than ten years or more than thirty years, no part of which may be suspended or probation granted. A person convicted under this subsection is not eligible for parole until the person has served at least seven years of the sentence.
- (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, upon conviction, must be imprisoned not more than twenty years.

S.C. Code of Laws 16-11-330.

Jonathan Hiller provided ineffective assistance of counsel for not moving to dismiss Count 2 of the Indictment; since, it is not known whether Petitioner pled guilty to the offense charged in the Indictment, or, the offense the Court questioned him? Added to this omission, the Court's failure to explain the nature of the offense and the elements that would have to be proven, it cannot be determined what offense, armed robbery or attempted armed robbery, Petitioner pled guilty to committing.

III.

3. **Counsel for Petitioner provided ineffective assistance of counsel for failing to move to dismiss the attempted murder counts involving Constable Glen Turner, and Deputies Jonathan Herring and Daniel Cribb.**

Petitioner was charged with three counts of attempted murder involving Constable Glen Turner, Deputy Tracy Causey, and Trooper Jimmy King. **See Counts 16, 17, and 20 of the Indictment.** Counsel for Petitioner, Jonathan Hiller, provided ineffective assistance of counsel for his failure to move to dismiss the attempted murder counts, counts 16, 17, and 20. Jonathan Hiller should have moved to dismiss the attempted murder counts; because the evidence was insufficient to show that Petitioner committed all the elements necessary for convictions for attempted murder. Instead, Counts 16, 17, and 20 should have charged assault and battery with intent to kill (ABIK) under Section 16-3-620.

Section 16-3-29 of the S. C. Code of Laws describes *attempted murder* as:

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. A person who violates this section is guilty of a felony, and, upon conviction, must be imprisoned for not more than thirty years. A sentence imposed pursuant to this section may not be suspended nor may probation be granted.

S. C. Code of Laws 16-3-29 (2016). According to South Carolina law attempted murder occurs when: “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.” The three key elements of this definition are intent to kill, attempt to kill, and express/implied malice aforethought.

1. Intent to kill -- means you want to kill another person.
2. Attempt to kill -- means you actually tried to kill that person. This goes beyond assaulting someone. You were not just trying to beat up the person. You meant for this person to die as a result of your actions.
3. With malice aforethought, either expressed or implied – malice means you had ill will toward the other person – so much that you wanted to kill him or her. This desire to kill was present before the act. Essentially, the act was premeditated. When aforethought is “expressed,” the accuser says or writes down the ill intent. When malice aforethought is “implied,” the accused’s

actions show the intent. Malice aforethought does not apply to “a crime of passion” or “temporary insanity.”

S.C. Code of Laws 16-3-29 (2016) commentary. In an attempted murder, a person must take a direct step towards the killing and must have the specific intent to kill that person.

In the instant matter, Petitioner’s actions had no premeditation. Events occurred, and Petitioner reacted as best he could. Unfortunate results occurred, but Petitioner did not intend them to occur. You cannot accidentally commit attempted murder. To be convicted of attempted murder, a prosecutor must show that the accused specifically intended to commit the crime. The prosecutor must not only show that the accused intended to kill, but that the intent was to kill the specific victim.

The instant offenses of attempted murder should have been charged as ABIK or Assault with intent to kill (AIK). Assault has been defined as an “attempted battery” or an unlawful attempt or offer to commit a violent injury upon another person, coupled with the present ability to complete the attempt or offer by a battery. State v. Mims, 286 S.C. 553, 335 S.E.2d 237 (1985). Under this definition of assault pointing a toy gun at someone or withholding insulin from a diabetic would not be an AIK. However, the South Carolina Supreme Court has on at least two occasions defined an assault as placing another in apprehension of harm. In State v. Sims, 34 S.C.L. (3 Strob.) 137 (1848), the Court held if a defendant rode his horse so near the victim so as to cause the victim to believe he intended to ride upon or strike him, he would be guilty of an assault. More recently, in In re McGee, 278 S.C. 506, 299 S.E.2d 334, 334-335 (1983), the state Supreme Court held “[w]hile words alone do not constitute an assault, State v. Lymburn, 3 S.C.L. (1 Brev.) 397 (1804), if by words and conduct a person intentionally creates a reasonable apprehension of bodily harm, it is an assault. State v. Sims, 34 S.C.L. (3

Strob.) 137 (1848); see generally LaFave and Scott, Criminal Law Section 82 (1972).

Thus, if a person ‘shook his hickory over his head, indicating an intention to strike, and within striking distance,’ and ‘if his action and conduct were such as to create the belief in the mind of the [victim] that he intended to . strike him, he would be guilty of an assault.’ Sims, at 138; see also State v. Davis, 19 S.C.L. (1 Hill) 46 (1833).”

IV.

4. Counsel for Petitioner provided ineffective assistance of counsel for failing to investigate the facts of the case.

Jonathan Hiller provided ineffective assistance of counsel for his failure to investigate the caliber of the firearms used by Highway Trooper Jimmy King; for his failure to investigate the bullet that hit the shotgun of Deputy Tracy Causey; for his failure to determine how many shots were fired from Trooper King’s weapon at the fleeing car of the suspects; and, for his failure to determine how many shots were fired by other law enforcement officials at the fleeing car of the suspects.

“[A]n attorney must investigate a case, when [s]he has cause to do so, in order to provide minimally competent professional representation.” United States v Kauffman, 109 F.3d 186, 190 (3rd Cir. 1997). When assessing an ineffective assistance of counsel claim for a failure to investigate, a court must assess the decision not to investigate “reasonableness in all the circumstances, applying a heavy measure of deference to counsel’s judgments.” Strickland, 566 U.S. at 691; see also Duncan v Morton, 256 F.3d 189, 201 (3rd Cir. 2001). “Strategic choices made after less than complete investigation is reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.” Strickland, 466 U.S. at 691-92; and, Horton v Zant, 941 F.2d 1449, 1462 (11th Cir. 1991) (“Our case law rejects the notion that a ‘strategic’

decision can be reasonable when the attorney has failed to investigate his options and make a reasonable choice between them.”). Thomas v Lockhart, 738 F.2d 304, 308 (8th Cir.1984) (holding that counsel rendered ineffective assistance by relying exclusively on the prosecution's investigative file even though his client provided him with information casting doubt on the prosecution's evidence).

Jonathan Hiller, provided ineffective assistance of counsel for not investigating the caliber of the firearm used by Highway Trooper Jimmy King. Trooper King fired several shots at the fleeing vehicle and the bullet from his firearm most likely hit the windshield of the car of Constable Glen Turner who was approaching the chase from the opposite direction. Only the passenger in the suspects' car fired shots, and all of his shots were directed at the vehicles in pursuit and those shots were fired downward and not directly at the chasing vehicles. Trooper King returned fire and most likely fired the shot that went thru the window shield of Constable Turner's vehicle. It would have been almost impossible for Petitioner, who was the only one in the fleeing vehicle firing, and he was on the passenger side of the fleeing vehicle to have shot through the windshield of Constable Glen Turner's approaching vehicle unless the bullet entered at an angle.

As Petitioner and his brother raced away from the residence in which they had attempted a home invasion, they were pursued by more than one vehicle with flashing lights. Petitioner fired shots toward the road, so that the trailing vehicles would slow their chase and possibly stop pursuing them. Although, the pursuing vehicles slowed their chase, one or more of the vehicles fired shot at the vehicle in which Petitioner and his brother occupied.

Jonathan Hiller did not investigate to determine how many shots were fired by Trooper King at the fleeing vehicle of Petitioner. Hiller also did not investigate whether one of the shots fired from King's weapon hit the windshield of the car driven by Constable Glen Turner. Hiller did not investigate whether it was even possible for Petitioner to have fired a shot through the windshield of Constable Turner who was approaching from the opposite direction from the passenger side of the fleeing vehicle. Petitioner had no reason to fire shots at the approaching vehicle of Constable Turner; since Turner's vehicle was not pursuing them.

Petitioner and his brother were charged with attempted murder for firing at Deputy Tracy Causey as they were leaving the residence of Ms. Hattie Pernell after a failed attempt at home invasion. Supposedly, one of the shots fired toward Causey hit a shotgun in which he was carrying, which led to Petitioner and his brother being charged with attempted murder of Deputy Causey.

After Petitioner and his brother Jayme gained entry into the residence of Ms. Hattie Pernell and attempted to find the location of the drug money that was being held by Ms. Pernell, officers arrived and inquired whether everything was okay. Even though, the officers were assured by Ms. Pernell that all was well, the officers did not leave and one of the officers was calling a report in to dispatch.

Once Kendell and Jayme became trapped in the residence with officers at the front of the residence, they took their chance and left the residence but did not reach their vehicle. Deputy Causey stationed himself toward the back of the residence as Petitioner and his brother decided to make a break for their vehicle. Seeing Deputy Causey clearly, one of the brothers fired shots to create confusion, but he did not shoot directly at Deputy

Causey. Shots were fired from somewhere else toward Petitioner and his brother as they ran to retrieve their vehicle to escape.

Jonathan Hiller did not investigate the caliber of the bullet that struck Deputy Tracey Causey's shotgun as he surveillanced the rear of the house on July 21, 2017. The firearm used by the Petitioner as he ran from the rear of the residence was Glock 9 mm caliber firearm; Jayme Gamble carried a Taurus Model PT 740 .40 caliber, but it was not fired.

Jonathan Hiller also did not investigate to determine how many shots were fired by the officers in the other pursuing vehicles. Someone firing shots from behind the fleeing vehicle of Petitioner and his brother fired the shot that went through the Constable's windshield and whoever fired the shot is not a part of "the hand of one is the hand of all", practiced in South Carolina justice system.

Defense counsel's investigative efforts should commence promptly and should explore appropriate avenues that reasonably might lead to information relevant to the merits of the matter, consequences of the criminal proceedings, and potential dispositions and penalties. Although investigation will vary depending on the circumstances, it should always be shaped by what is in the client's best interests, after consultation with the client. Defense counsel's investigation of the merits of the criminal charges should include efforts to secure relevant information in the possession of the prosecution, law enforcement authorities, and others, as well as independent investigation.

Counsel's investigation should also include evaluation of the prosecution's evidence (including possible re-testing or re-evaluation of physical, forensic, and expert evidence) and consideration of inconsistencies, potential avenues of impeachment of

prosecution witnesses, and other possible suspects and alternative theories that the evidence may raise. Defense counsel should determine whether the client's interests would be served by engaging fact investigators, forensic, accounting or other experts, or other professional witnesses such as sentencing specialists or social workers, and if so, consider, in consultation with the client, whether to engage them. Counsel should regularly re-evaluate the need for such services throughout the representation.

Jonathan Hiller wanted a guilty plea to the offenses charged and his only interest was whether the plea was going to be straight up or an agreed upon maximum sentence for the most serious offense, *Burglary 1st degree*. Jonathan Hiller provided ineffective assistance of counsel for his failure to investigate the facts of the case as cited above, and his deficient performance prejudiced Petitioner.

V.

5. Counsel for Petitioner provided ineffective assistance of counsel for failing to explain the consequences of a negotiated plea agreement versus an open plea.

Jonathan Hiller provided ineffective assistance of counsel for his failure to explain the consequences of a negotiated plea agreement versus an open plea. Hiller informed Petitioner about the State's 30-year cap sentences for the offenses, which meant that Petitioner would receive no more than 30 years for the most serious offense, *Burglary 1st degree*, which carried a maximum sentence of life imprisonment. Hiller also informed Petitioner that the other side of the 30-year cap sentences for the offenses would be an open plea, which meant relying on the discretion of the Court to impose any sentence for the most serious offense, *Burglary 1st degree*, up to life imprisonment.

Hiller ensured Petitioner that if he took the open plea, he could receive less than

30 years; because he was pleading guilty to offenses straight up without any agreement and Petitioner was accepting responsibility for his actions as charged. Hiller did not attempt to challenge the *Burglary 1st degree* offense, and he failed to do any investigation of the facts of the case. Instead, Hiller merely accepted the discovery from the State and failed to do any independent investigation of the law or the facts himself.

This was ineffective assistance of counsel by Jonathan Hiller, and this deficient performance prejudiced Petitioner; because, he made an unintelligent open plea to offenses that should not have been charged and which could not have been proven.

VI.

6. **Counsel for Petitioner provided ineffective assistance of counsel for failing to ensure that the Court explained the nature of each offense and elements that had to be proven for each offense.**

Petitioner was charged with seven different felony offenses which were attempted murder (3 counts), kidnapping, attempted armed robbery, burglary 1st degree, and possession of weapon during violent crime. Hiller did not explain the nature of the offenses or the elements of the offenses, nor, did Hiller ensure that the Court explained the nature of the offenses and the elements of the offenses the State had to prove beyond a reasonable doubt before Petitioner pled guilty to the offenses. Therefore, Petitioner had no way of knowing the nature of the offenses and the elements for the offenses the State had to prove to find him guilty of the offenses beyond a reasonable doubt.

In Boykins, the United States Supreme Court held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he is waiving.

Boykins v Alabama, 395 U.S. 238, 89 S. Ct. 1709, 23 L.Ed.2d 274 (1969). Specifically, a defendant must be aware of the privilege against self-incrimination, the right to a jury

trial, and the right to confront one's accusers. Id. In the instant matter, the Court explained the constitutional rights Applicant was waiving by pleading guilty.

While the Court did explain the constitutional rights Petitioner was waiving in the instant matter, it did not explain the nature of the offenses, and it did not explain the elements the State had to prove beyond a reasonable doubt to prove guilt if there was a trial for the offenses. In order for a plea of guilty to be knowingly, intelligently, and voluntarily, the defendant has to know the elements of the offense, the nature of the offense, the minimum and maximum penalties, and whether any promises, or coercion has been used to obtain the guilty plea. See Dover v State, 304 S.C. 433, 405 S.E.2d 391 (1991) (In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea.). To ensure the defendant understands the consequences of his guilty plea, the trial judge usually questions the defendant about the facts surrounding the crime and punishment that could be imposed. Id. at 434-435, 405 S.E.2d at 392

In the instant matter, the Court explained the minimum and maximum penalties for the offenses, and the Court ensured that the Applicant had not been promised anything to get him to plead guilty. But the Court did not explain the nature of the offenses, or the elements for the offense. Therefore, Petitioner was not fully aware of the consequences of the plea.

If the Petitioner had known the nature of charges and the elements which would have had to be proven beyond a reasonable doubt by the State, he would not have pled guilty to some of the charged offenses. The State gave a factual basis for the offenses to which the Petitioner was pleading guilty to, but this was not an explanation of the nature

of the offenses or the elements for the offenses. If Petitioner had known that attempted murder has elements of *intent to murder* and an *intent to murder with malice afterthought*, he would not have pled guilty to attempted murder, three counts.

South Carolina has no equivalent to Rule 11 of the Federal Rule of Criminal Procedure, but the mandates of the federal rule must be observed in order for the plea to be knowingly and voluntarily. See United States v Goins, 51 F.3d 400 (4th Cir. 1995) (the district court's failure to inform the defendant of the mandatory minimum sentence during plea colloquy constituted a substantial violation of his rights and is reversible error.); and United States v Hourihan, 936 F.2d 508, 510 m.3 (11th Cir. 1991) (same).

In Smith, the United States Court of Appeals for the Ninth Circuit held that the failure to explain the nature of the charge was reversible error. The Ninth Circuit said “[w]e are not dealing with the failure to explain an element of the crime, where the defendant’s responses in open court showed knowledge of that element. We are dealing instead with a total failure to identify the crime, much less explain it, and Smith’s responses indicated nothing at all about his possible knowledge of the charge. United States v Smith, 60 F.3d 595, 599 (9th Cir. 1994). See also United States v Quinones, 97 F.3d 473, 475 (5th Cir. 1996) (the district court failed to address a core concern of Rule 11. We have identified three core objectives of Rule 11: (1) ensuring that the guilty plea is free of coercion; (2) ensuring that the defendant understands the nature of the charges against him; and (3) ensuring that the defendant is aware of the direct consequences of the guilty plea. Failure to satisfy any of the core objectives violates the defendant’s substantial rights. In this case, the district court failed to satisfy the core objective that the defendant understands the nature of the charges against him.); and United States v

Gigot, 147 F.3d 1193 (10th Cir. 1998) (Failure to admonish defendant of elements of offense and possible penalties rendered plea involuntary). See also Dover v State, 304 S.C. 433, 405 S.E.2d 391 (1991) (To ensure the defendant understands, the trial judge should question the defendant about the facts surrounding the crime and the punishment which could be imposed.).

In the instant matter, Jonathan Hiller failed to ensure that the nature and elements of the offenses were explained to Petitioner by the Court, and this was ineffective assistance of counsel that prejudiced the Petitioner. Plus, Hiller did not explain the nature of the offenses or the elements for the offenses in which the Petitioner was pleading guilty to committing. Counsel told the Petitioner that he faced some serious charges, he read the indictment to Petitioner with no explanation for each charged offense, and he told him that he had a good judge who would be fair, but this did not enhance Petitioner's knowledge on the nature and elements for the offenses.

During the guilty plea and sentencing for the seven felony offenses, the Court merely gave the short title for each offense without even a rote recitation of the Indictment for each count. The Court did not explain the elements that had to be proven beyond a reasonable doubt if there has been a trial. Petitioner was charged with Burglary 1st degree, Attempted Armed Robbery (7 counts); Kidnapping (7 counts); Attempted Murder (5 counts); Discharging a Firearm into a Vehicle; Conspiracy; Possession of a Stolen Handgun, and Possession of a Weapon during Commission of Violent Crime. Petitioner pled guilty to Burglary 1st degree, Armed Robbery, Kidnapping; Possession of a Weapon during Commission of a Violent Crime, and three counts of Attempted Murder.

From the records of the guilty plea and sentencing, there is no indication as to which three of five attempted murder offenses Petitioner was pleading guilty to committing; it is not known which one of the seven kidnapping counts he was pleading guilty to committing, and, it is not known which one of the seven attempted armed robbery offenses he was pleading guilty to committing.

The test for determining the validity of a guilty plea based upon alleged ineffective assistance of counsel is whether counsel's advice was within the range of competence demanded of attorneys in criminal cases and whether there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty. Hill v Lockhart, 474 U.S. 52 (1985); Ray v State, 303 S.C. 374, 401 S.E.2d 151 (1991); Hinson v State, 297 S.C. 456, 377 S.E.2d 338 (1989). "A defendant who pleads guilty upon the advice of counsel may only attack the voluntary and intelligent character of the guilty plea by showing the advice he received from counsel was not within the range of competence demanded of attorneys in criminal cases." Richardson v State, 310 S.C. 360, 363, 426 S.E.2d 795, 797 (1993).

The records do not show that the Court explained the nature of the offenses, or, the elements for the offenses. The records also do not show that the Court inquired of Jonathan Hiller to determine whether Hiller had performed these functions. Therefore, counsel was ineffective and this ineffectiveness caused the Petitioner to make an uninformed decision to plead guilty.

VII.

7. **Counsel for Petitioner provided ineffective assistance of counsel for failing to move to reduce the Burglary 1st degree count to Burglary 2nd degree.**

In Count One of the Indictment, Petitioner was charged as follows:

That KENDELL ALLEN GAMBLE did in Marion County on or about July 21, 2017, willfully and unlawfully attempt to enter the dwelling of Hattie Pernell located at 6116 Vincent Road, Mullins, SC, without consent and with the intent to commit a crime therein, and the defendant was armed with a deadly weapon, in violation of the Common Law and Section 16-11-311. S. C. Code of Laws, 1976, as amended.

Exhibit I. Jonathan Hiller provided ineffective assistance of counsel for his failure to challenge the *Burglary 1st degree* count; since, the offense should have been charged as *Burglary 2nd degree*. Burglary is broken into three categories, with increasing penalties according to severity of the crime. *Burglary in the first degree* occurs when the defendant unlawfully entered a dwelling with the intent to commit a crime therein and either was armed, caused physical injury to another person (other than an accomplice), used or threatened to use a dangerous instrument, or displayed a weapon during the crime (or while fleeing the crime scene); if the defendant had two or more prior burglary convictions; or if the entry occurred at nighttime. Burglary in the first degree is punished with a minimum of 15 years to life imprisonment. (S.C. Laws Ann. Section 16-11-311.)

Burglary in the second degree occurs when the defendant unlawfully entered a dwelling with the intent to commit a crime therein. Penalties include up to ten years in prison. *Second degree burglary* also includes unlawful entry into a non-residential building with criminal intent when either the defendant was armed, caused physical injury to another person (other than an accomplice), used or threatened to use a dangerous instrument, or displayed a weapon during the crime (or while fleeing the crime scene); if the defendant had two or more prior burglary convictions; or if the entry occurred at nighttime. Penalties include up to 15 years in prison. (S.C. Laws Ann. § 16-11-312.)

Burglary in the third degree occurs when the defendant unlawfully entered a building with the intent to commit a crime therein under circumstances not included in first- or second-degree burglary. Penalties include up to five years in prison for a first conviction, and up to ten years for a second conviction. (S.C. Laws Ann. § 16-11-313).

On July 21, 2017 at the break of day, 7:30 am, Petitioner and his brother entered the residence of Hattie Pernell without consent and with intent to commit a crime while armed. Petitioner does not have any prior convictions for burglary and the burglary was not committed at night. Therefore, Jonathan Hiller should have objected to the overcharge in Count 1 of the Indictment.

In State v. Zulfer, 345 S.C. 258, 547 S.E.2d 885 (Ct. App. 2001), the South Carolina Court of Appeals faced a similar question under the statute defining burglary in the first degree -- subsection 16-11-311 (A) of the South Carolina Code of Laws (2003). The Court held that Subsection 16-11-311 (A) (2) provides that what would otherwise be a second-degree burglary is elevated to first-degree if "the burglary is committed by a person with a prior record of two or more convictions for burglary . . . ". Zulfer, 345 S.C. at 265. See also S.C. Code Ann. section 16-11-312 (A) (2003) (defining second-degree burglary of a dwelling).

Jonathan Hiller's failure to object to Burglary 1st degree being charged instead of the lesser included offense of Burglary 2nd degree was ineffective assistance of counsel and this deficient performance caused Petitioner to be sentenced to a term of imprisonment of 50 years when he should have faced a maximum sentence of 15 years for Burglary 2nd degree. This is prejudice under Strickland.

CONCLUSION

Petitioner respectfully requests that his convictions for Burglary 1st degree, Armed Robbery (or attempted armed robbery), Attempted Murder (3 counts), and Unlawfully Possession of Firearm be vacated, so that, he can proceed to trial, or in the alternative, so that he can plead again with a full understanding of the nature of the offenses and the elements of the offenses.

Respectfully submitted this 16 day of Sept. 2019.


Kendall A. Gamble # 377230
Lieber Correctional Institutional
P.O. Box 205
Ridgeville, SC 29472

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARION	)	FOR THE TWELFTH JUDICIAL CIRCUIT
	)	
Kendall A. Gamble, #377230,	)	2019-CP-33-653
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	(Counsel Appointed)
State of South Carolina,	)	
	)	
Respondent,	)	
_____	)	

In response to Kendall A. Gamble's (Applicant) action for post-conviction relief (PCR) commenced September 18, 2019, the State makes this return:

I. Procedural History

Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Marion County Clerk of Court. Applicant was indicted at the February 2018 term of the Marion County Grand Jury on a twenty-four count indictment for: one count of first-degree burglary; seven counts of attempted armed robbery; seven counts of kidnapping; five counts of attempted murder; one count of discharging a firearm into a vehicle; one count of conspiracy; one count of possession of a stolen handgun; and one count of possession of a weapon during the commission of a violent crime (2018-GS-33-0121). Applicant was represented by Jonathan Hiller (Counsel). Assistant Solicitor Patti Parker prosecuted the case.

Applicant pleaded guilty to one count of first-degree burglary, one count of attempted armed robbery, one count of kidnapping, three counts of attempted murder, and one count of possession of a weapon during the commission of a violent crime on August 1, 2018, before the

Honorable William H. Seals, Jr.¹ The State recommended that Applicant receive concurrent sentences. Additionally, in exchange for Applicant's guilty plea, the State dropped Applicant's seventeen remaining charges. Judge Seals accepted Applicant's guilty plea and sentenced him to serve concurrent terms of: fifty years for first-degree burglary; twenty years for attempted armed robbery; thirty years for kidnapping; thirty years for each attempted murder; and five years for the weapons charge. Applicant appealed.

Counsel filed a notice of appeal, along with a statement pursuant to Rule 203(d)(1)(B)(iv), SCACR, with the Court of Appeals on August 9, 2018. The Court of Appeals dismissed the appeal on October, 12, 2018. *State v. Gamble*, S.C. Ct. App. Order filed October 12, 2018. The Case was remitted back to the circuit court on October 30, 2018.

Applicant timely commenced this PCR action on September 18, 2019.

II. Facts

Applicant's charges stem from an incident that occurred around 7:30 a.m. on July 21, 2017. That morning, Hattie Pernell was inside her home getting ready for work when she heard a loud knock on the door. Plea Tr. 10. Pernell noticed a truck parked in her driveway she did not recognize, and did not recognize the two men standing outside her front door, so she went and woke-up Lawanda Williams, the mother of Pernell's grandchildren who was asleep in the house. There were also four children in the home. Plea Tr. 10; 11. Williams also did not recognize the truck or the men standing outside the front door. Plea Tr. 10. Pernell then decided to call 911. Plea Tr. 10-11. As Pernell dialed 911, the two men busted through the front door wielding guns and

¹ Applicant's codefendant and brother, Jayme Gamble, pleaded guilty at the same time as Applicant before Judge Seals. Jayme Gamble was represented by Laura Hiller, Esquire.

hollering for everyone inside to get on the floor. The men demanded Pernell to put down her phone; however, they did not realize the call to 911 had already connected. Plea Tr. 11.

The 911 operator could hear yelling—the intruders ordering the residents to tell them where the money was located and to get down on the floor. Plea Tr. 11. Hearing the demands, the operator dispatched deputies to the home. Plea Tr. 11.

The men kept asking where the money was located, but Pernell did not know what money they were referring to. The intruders were speaking to someone on the phone, and one of the victims heard the person on the other end of the phone instruct the intruders to “just kill them.” Plea Tr. 12. The intruders were convinced there was money in the home, so they grabbed one of the children and held a knife to his throat and kept demanding the money’s location. Plea Tr. 12.

Corporal Tracy Causey and Deputy Herring were the first officers to arrive at the home, and while waiting for backup, Causey attempted to clear the back-yard. Plea Tr. 12. By this time, the intruders had fled the house from a side-door and were hiding behind a storage building in the backyard. Plea Tr. 12-13. The two men then attempted to flee Causey, and fired three shots in Causey’s direction. Plea Tr. 13. One of the shots struck Causey’s shotgun, disarming Causey. Plea Tr. 13. The men then fled to the car parked in the driveway—a rented Dodge Durango. Plea Tr. 13. A high-speed chase ensued. Plea Tr. 13. During the chase, two shots were fired from the Durango into Constable Glen Turner’s patrol car windshield. Plea Tr. 15. Turner was responding to the call and not pursuing the men. Plea Tr. 15. Additionally, two shots were fired from the passenger side of the Durango towards Trooper Jimmy King in his patrol car before the chase ended. Plea Tr. 15.

The chase ended when the men crashed the Durango. Plea Tr. 13-14. Jayme Gamble, the driver, attempted to flee on foot but was apprehended and arrested on site. Plea Tr. 14. Applicant stayed in the vehicle and surrendered to law enforcement. Plea Tr. 14.

III. Current Application

Applicant alleges he is being held in custody unlawfully, alleging:

1. Ineffective assistance of counsel:
 - a. Counsel represented Applicant under a conflict of interest;
 - b. Failure to move to dismiss the armed robbery count;
 - c. Failure to move to dismiss the three counts of attempted murder;
 - d. Failure to investigate the facts surrounding the case;
 - e. Failure to explain the difference between a negotiated and open plea;
 - f. Failure to ensure the plea court explained the nature of each offense and elements that had to be proven for each offense; and
 - g. Failure to move for the first-degree burglary charge to be reduced to second-degree burglary.

Applicant requests relief in the form of a new trial.

Attached to this return and incorporated herein are the Marion County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's appellate records, and the records of this PCR action.

IV. Response to Allegation of Ineffective Assistance of Counsel

Applicant's allegations of ineffective assistance of plea counsel are without merit. To establish ineffective assistance of counsel, the PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. *Strickland v. Washington*, 466 U.S. 668, 687–88 (1984); *Cherry v. State*, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989).

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). "[A] defendant entering a guilty plea must be

aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived.” *Pittman v. State*, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999). “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). To prove prejudice, the applicant must show a reasonable probability he would not have pleaded guilty and would have insisted on going to trial absent plea counsel’s alleged deficiency. *Hill v. Lockhart*, 474 U.S. 52, 59 (1985).

Strickland requires trial counsel must be given leeway to make reasonable strategic decisions. No particular set of detailed rules for counsel’s conduct can satisfactorily take account of the variety of circumstances faced by defense counsel or the range of legitimate decisions regarding how best to represent a criminal defendant. *Strickland*, 466 U.S. at 688-689. “Representation is an art, and an act or omission that is unprofessional in one case may be sound or even brilliant in another.” *Id.* at 691. Therefore, judicial scrutiny of counsel’s performance must be highly deferential. *Id.* at 689. Where counsel articulates a valid strategic reason for his action or inaction, counsel’s performance should not be found ineffective. *Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996); *Underwood v. State*, 309 S.C. 560, 425 S.E.2d 20 (1992); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). Courts must be wary of second guessing counsel’s trial tactics; and where counsel articulates a valid reason for employing such strategy, such conduct is not ineffective assistance of counsel. *Whitehead v. State*, 308 S.C. 119, 417 S.E.2d 529 (1992). In making a fair assessment of attorney performance, a court must make every effort to “eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Strickland*, 466 U.S. at 689.

Counsel must, at a minimum, make some effort to interview potential witnesses identified by the defendant, and make an independent investigation of the facts and circumstances of the case. *Edwards v. State*, 392 S.C. 449, 456, 710 S.E.2d 60, 64 (2011); *Walker v. State*, 407 S.C. 400, 405, 756 S.E.2d 144, 147 (2014). To support a claim that trial counsel was ineffective for failing to interview or call potential witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. *Glover v. State*, 318 S.C. 496, 498-99, 458 S.E.2d 538, 540 (1995). The applicant's mere speculation about what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice. *Id.*

Applicant cannot satisfy either requirement of *Strickland*. However, the record likely does not refute or disprove Applicant's allegations of ineffective assistance of counsel; therefore, the State requests an evidentiary hearing to fully resolve the issues. *See Sharper v. State*, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

V. Any Future Amendments

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, 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 PCR hearing. The State reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to the State pursuant to *Love v. State*, Op. No. 27921 (S.C. Sup. Ct. filed Oct. 2, 2019) (Shearouse Adv. Sh. No. 39 at 14), or, alternatively, the State

will request a continuance in the matter. *See Id.* at 24 (Kittredge, J., dissent) (“If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.”).

VI. Any and All other Allegations

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

VII. Conclusion

WHEREFORE, the State requests an evidentiary hearing be held on the claims of ineffective assistance of counsel.

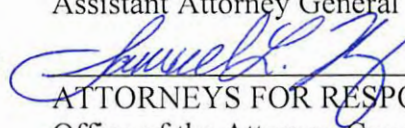
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

SAMUEL L. KEY
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT
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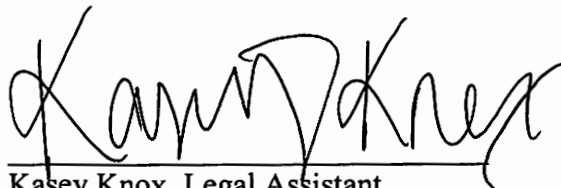
Feb. 4, 2020

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF MARION	)	
	)	
	)	2019-CP-33-653
	)	
KENDALL A. GAMBLE #377230	)	
	)	
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:

Joshua A. Bailey
Snow & Bailey Law Firm, P.A.
PO Box 555
Florence, SC 29503

DATED this the 4th day of February, 2020.



Kasey Knox, Legal Assistant
For Respondent

1 State of South Carolina) **TRANSCRIPT OF RECORD**
2 COUNTY OF FLORENCE) CASE NO. : 2019-CP-33-0653

3 -----

4 June 12, 2023

5 **BEFORE:** The Honorable Debra McCaslin

6 -----

7

8 Kendell Gamble,)

9 Applicant,)

10 vs.)

11 State of South Carolina,)

12 -----

13 APPEARANCES:

14 Russell Barlow, II, Esquire
15 Attorney for the State of South Carolina

16 Joshua Bailey, Esquire
17 Attorney for the Applicant.

18

19 Julie A. Kevish
20 Official Court Reporter

21

22

23

24

25

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1 June 12, 2023

2 **P-R-O-C-E-E-D-I-N-G-S**

3 THE COURT: Are you all ready to proceed?

4 MR. BARLOW: Yes, ma'am, we're going to have them get
5 the inmate.

6 THE COURT: And we're going to start with Kendell
7 Gamble?

8 MR. BARLOW: Yes, ma'am.

9 THE COURT: Let's go ahead and start. Call the case.

10 MR. BARLOW: Thank you, Your Honor. May it please
11 the Court? Russ Barlow on behalf of the State of South
12 Carolina. This is the post-conviction relief matter of Kendell
13 A. Gamble versus the State, Case Number 2019-CP-33-653 out of
14 Marion County. Applicant was indicted at the February 2018
15 term of the Marion County Grand Jury on a 24-count indictment
16 for one count of first degree burglary, 7 counts of attempted
17 armed robbery, seven counts of kidnapping, five counts of
18 attempted murder, one count of discharging a firearm into a
19 vehicle, one count of conspiracy, one count of possession of a
20 stolen handgun and one count of possession of a weapon during
21 commission of a violent crime. That's 2018-GS-33-0121.
22 Applicant was represented by Jonathan Hiller, and Assistant
23 Solicitor Patty Parker prosecuted the case. Applicant pleaded
24 guilty to one count of first degree burglary, one count of
25 attempted armed robbery, one count of kidnapping, three counts

1 of attempted murder and one count of possession of a weapon
2 during the commission of a violent crime on August 1, 2018
3 before the Honorable William H. Seals, Jr. The State
4 recommended that Applicant receive concurrent sentences.
5 Additionally, in exchange for Applicant's guilty plea the State
6 dropped Applicant's 17 remaining charges. Judge Seals accepted
7 Applicant's guilty plea and sentenced him to serve concurrent
8 terms of 50 years for first degree burglary, 20 years for
9 attempted armed robbery, 30 years for kidnapping, 30 years for
10 each attempted murder and five years for the weapons charged.
11 Applicant appealed. Counsel filed a notice of appeal along
12 with a statement pursuant to Rule 203(d)(1)(b)(iv) of the SCACR
13 did 44 with the Court of Appeals on August 9, 2019. the Court
14 of Appeals dismissed the appeal on October 12, 2018, that's in
15 State v. Gamble SC Court of Appeals, order filed October 12,
16 2018 and the remittitur was returned to the Circuit Court on
17 October 30, 2018. Applicant timely commenced this PCR action
18 on September 18, 2019 and he is alleging multiple allegations
19 of ineffective assistance of counsel, he is requesting relief
20 in the form of a new trial and before this Court is the Marion
21 County Clerk of Court records, Applicant's records from the
22 South Carolina Department of Corrections, Applicant's trial
23 transcript, Applicant's appeal records, and the records of this
24 PCR action. At this time we would ask Mr. Bailey to state for
25 the record which allegations he intends to move forward on.

1 THE COURT: Mr. Bailey?

2 MR. BAILEY: Good morning. Thank you, Your Honor.
3 May it please the Court?

4 THE COURT: Yes, sir.

5 MR. BAILEY: Your Honor, as the State indicated, my
6 client filed his application for post-conviction relief on
7 September 18, 2019. Judge, we will be proceeding on all of the
8 counts contained within the application with the exception of
9 count two which falls on pages 15 to 16 of the application, and
10 that count is captioned as counsel for Petitioner provided
11 ineffective assistance for counsel for failing to move to
12 dismiss the attempted armed robbery count. We will not proceed
13 on count two.

14 THE COURT: Okay.

15 MR. BAILEY: And we are ready to proceed when the
16 Court is ready.

17 THE COURT: Go ahead and call your first witness.

18 MR. BAILEY: Thank you, Your Honor. We will call
19 Kendell Gamble as our witness this morning.

20 THE COURT: Mr. Gamble, if you'll come forward and be
21 sworn?

22 **KENDELL GAMBLE WAS DULY SWORN AT THIS TIME AND**
23 **TESTIFIED AS FOLLOWS:**

24 THE CLERK: Thank you. You can have a seat in the
25 witness stand.

DIRECT EXAMINATION

1

2 BY MR. BAILEY:

3 Q. Mr. Gamble?

4 A. Yes, sir.

5 Q. Can you please provide us with your SCDC number?

6 A. 377230.

7 Q. And you were present in the courtroom when the Attorney
8 General's Office recited the procedural history that gets us
9 here today, were you not?

10 A. Yes, sir.

11 Q. Do you take any exception to the procedural history
12 placed on the record by the Attorney General's Office leading
13 up to this hearing today?

14 A. Meaning?

15 Q. The dates that you were indicted, the dates that you
16 pled guilty to, the charges you pled guilty to, all of that was
17 accurate information?

18 A. Yes, sir.

19 Q. Now, in your application for post-conviction relief
20 you've set forth a number of allegations of ineffective
21 assistance of counsel. Now, we're going to go through those
22 one by one through your hearing this morning, okay?

23 A. Okay.

24 Q. The first count of your application deals with
25 ineffective assistance of counsel based upon a conflict of

1 interest. Do you recall that being included in your
2 application?

3 A. Yes, sir.

4 Q. Who was your attorney during your plea in leading up to
5 your guilty plea in Marion County?

6 A. Jonathan Hiller.

7 Q. Is Mr. Hiller present in the courtroom with us today?

8 A. Yes, sir.

9 Q. Can you explain to the Court why there was a conflict of
10 interest that leads to the ineffective assistance of counsel
11 claim that you have alleged?

12 A. Mr. Hiller really never, you know, sat down and
13 separated -- it's two individuals in this situation. Mr.
14 Hiller never sat down and seen who did what. You know what I
15 mean?

16 Q. Well, I'm talking about the conflicts of interest. So
17 let me ask it to you this way.

18 A. Okay.

19 Q. Your brother is your co-defendant in this case, correct?

20 A. Yes, sir.

21 Q. You were represented by Mr. Hiller, correct?

22 A. Yes, sir.

23 Q. Who was your brother represented by?

24 A. Mrs. Laura Hiller.

25 Q. And who is she, to your knowledge?

1 A. The wife of Mr. Jonathan Hiller.

2 Q. Were they appointed to represent you all or were they
3 retained counsel?

4 A. Retained. My brother hired Laura Hiller first and she
5 gave us Jonathan Hiller as a -- she recommended him.

6 Q. And you've laid out in your petition that you believe
7 there was a conflict of interest by having a husband and wife
8 provide representation to you and your brother; is that
9 correct?

10 A. Absolutely.

11 Q. Please tell the Court as to why you believe that is a
12 conflict of interest.

13 A. There was several times Laura spoke in my interest
14 rather than in her client's interest. Things that, like, when
15 we was meeting between me and him she was there without the
16 presence of my brother being there.

17 Q. And let me ask you this, Mr. Gamble, how many times can
18 you recall meeting with Mr. Hiller alone?

19 A. About two or three times including the initial meeting.

20 Q. And were there meetings outside of those that involved
21 Mrs. Laura Hiller?

22 A. Yes, sir.

23 Q. How many meetings would you say took place where it was
24 you, Mr. Hiller and Mrs. Hiller?

25 A. I would say that would have been about once, one

1 meeting.

2 Q. And I believe your testimony was, and I'll ask you
3 again, was your brother present for that meeting?

4 A. No.

5 Q. During the course of the representation afforded to you
6 by Mr. Hiller, were you under the impression that Mr. Hiller
7 was providing more representation to you or Mrs. Hiller was?

8 A. Mr. Hiller, you know, but it was just certain questions
9 at certain times that she answered for me that he, you know, he
10 was supposed to ask.

11 Q. Well, give us a couple examples so we have a record made
12 of your allegation.

13 A. Well, it should be on the transcript. When we was in
14 Court she spoke on the behalf of -- well, he spoke on behalf of
15 my brother, she spoke on the behalf of me.

16 Q. Is there anything else about the conflict of interest
17 argument that you are raising with regards to Mr. and Mrs
18 Hiller representing you and your brother?

19 A. No. Just, you know, like I said, you know, they would
20 speak on us on behalf when they wasn't supposed to.

21 Q. And you and I have discussed count two, and you were
22 present when I informed the Court that we are withdrawing that
23 count from your application?

24 A. Yes, sir.

25 Q. You're in agreement with that, correct, Mr. Gamble?

1 A. In the transcript -- in the beginning of the transcript
2 when we was in court the judge started off doing it
3 individually as far as, you know, I'm gonna ask you these
4 questions, you say guilty to each charge. He started and then
5 he stopped and said, you know, on the strength of being that it
6 was two individual people he was going to do it one time and
7 the both of us would say guilty or innocent.

8 Q. But the judge did ask you, and it's in the transcript,
9 if you were pleading guilty to the attempted armed robbery,
10 correct?

11 A. Yes.

12 Q. And the allegation raised in your application is more
13 geared to your brother's claim when he was asked if he was
14 pleading guilty to armed robbery, correct?

15 A. I believe so, yes, sir.

16 Q. And that's why we informed the Court that we were
17 withdrawing that count because the judge did ask you if you
18 were pleading guilty to the attempted armed robbery as charged?

19 A. Okay.

20 Q. Do you understand that, Mr. Gamble?

21 A. Yes, sir.

22 Q. Now, in count three of your application, Mr. Gamble, you
23 alleged that Mr. Hiller provided ineffective assistance of
24 counsel for moving to dismiss the attempted murder counts
25 against you that involved Constable Glenn Turner, Deputies

1 Jonathan Herring and Daniel Cribb?

2 A. Yes, sir.

3 Q. Can you explain to the Court why you believe your
4 attorney should have moved to dismiss those attempted murder
5 counts?

6 A. Well, the lawyer that -- well, the paralegal that helped
7 us with the work figured there was no grounds to prove the
8 attempted murder.

9 Q. Did Mr. Hiller ever sit down with you and discuss the
10 elements of attempted murder?

11 A. No, sir.

12 Q. He never explained to you what the State of South
13 Carolina would be required to prove if you proceeded to trial?

14 A. No, sir.

15 Q. Did he ever sit down and explain to you the facts of
16 what the State was alleging and compare those to any of the
17 attempted murder charges that were brought against you?

18 A. No, sir.

19 Q. During your plea colloquy with, I believe it was Judge
20 Seals who took your plea?

21 A. Yes, sir.

22 Q. Did Judge Seals ever ask you if Mr. Hiller explained the
23 elements of the crimes to you?

24 A. No, sir.

25 Q. He explained to you your constitutional rights, correct?

1 A. As far as Judge Seals?

2 Q. Your right to a trial?

3 A. Yes, sir.

4 Q. You had the right to remain silent at trial?

5 A. Yes, sir.

6 Q. You could present evidence and witnesses at trial if it
7 so was deemed necessary?

8 A. Yes, sir.

9 Q. But he never asked you if Mr. Hiller explained the
10 elements of the crimes to you?

11 A. No, sir.

12 Q. And Judge Seals never asked you on the record whether
13 Mr. Hiller reviewed or prepared any defenses with you?

14 A. No, sir.

15 Q. During the conversations that you had with Mr. Hiller
16 leading up to your guilty plea, what kinds of conversations
17 would you all have? Was it just about the mitigation for the
18 plea?

19 A. Not at all. As far as that day before we took the plea?

20 Q. No, no, just leading up to your guilty plea.

21 A. Honestly, he was trying to get home on bond, so that's
22 what really we was concerned about. The time before that, I
23 believe we went to Court before that, 90 days before that, and
24 the judge said that they wasn't ready and had us on the docket
25 and to go to trial he would give us the bail on, you know, the

1 90 days when we come back, so we kept, you know, within two
2 weeks of going back up we kept calling my mother, hey, call up,
3 see if we on the docket, see if we on the docket, we're not on
4 the docket. So when Mr. Hiller came to see me with his wife
5 that was my main concern, we ain't on the docket, we going up
6 in a few more days, they gonna get the bond? So we went there
7 that day thinking it was a bond hearing. Okay, do you guys got
8 them on the docket? Okay, no, okay, I'm gonna get him his
9 bond. That's what it was, we never -- we was blindsided with
10 the whole plea hearing when we got to the courthouse.

11 Q. So prior to the date of your guilty plea --

12 A. Uh-huh.

13 Q. -- had you had any conversations with your attorney, Mr.
14 Hiller, about pleading guilty?

15 A. No, not at all. We -- it was in February we -- I got a
16 call on a Friday, my mother said that we're going up that
17 Monday for a plea hearing, and we went up, me and my brother
18 was in a holding cell, and we been the holding cell for about
19 maybe five, ten minutes, they told us to go back to the county,
20 we asked Mr. Hiller and his wife what happened. They said that
21 the State was trying to ask the judge for 35 years, for a plea
22 hearing for 35 years for me and my brother. The judge on the
23 bench at that time told them that's too much time for what was
24 going on.

25 MR. BARLOW: Objection to hearsay.

1 THE APPLICANT: Absolutely, because it wasn't on the
2 record, it wasn't even on the record.

3 THE COURT: I'm gonna let him go on. Let him go on,
4 I'm gonna hear the story.

5 A. When we asked Mr. and Mrs. Hiller what was going on,
6 they said that, you know, we can go ahead back to the county.
7 The judge said he wasn't going to entertain it. It was too
8 much time for what was going on at the moment, come up with
9 something better and he would entertain it. We went back to
10 the -- that was first and last time we ever heard about a plea
11 until the day we went to the courtroom.

12 Q. And what kind of conversation took place between you and
13 Mr. Hiller on the day of your plea?

14 A. The day that we got pleaded to the time we're doing now?
15 I asked him, you know, because we want to know what's our
16 chances so I asked him, you know, what would you think? He
17 told me on a bad day he don't see the judge giving us no more
18 than 30 years and being that this is my first offense he don't
19 see that. So I asked him, I said, okay, well, let me talk
20 things over with my mom, let me see what she think would be
21 best. She said don't go to trial, you know, just take the
22 plea. So I'm thinking, okay, the most is 30, whatever the case
23 may be, but it was more than that. That's the only
24 conversation we really ever had about any type of plea and what
25 was going on. He didn't explain, you know, what was an open

1 plea or anything. Because, like, me and my brother asked them,
2 if we go up there and say we guilty they can hand us life. We
3 got to say we're guilty before they give us the time? He said,
4 yeah. That's the only understanding I had about the plea.

5 Q. And as it relates to the attempted murder charges, as
6 you alleged in your application, he never explained anything
7 about attempted murder to you leading up to your plea; is that
8 correct?

9 A. No, sir. No, sir.

10 Q. The fourth count of your application, Mr. Gamble, deals
11 with alleging that Mr. Hiller was ineffective for failure to
12 investigate the facts of your case?

13 A. Yes, sir.

14 Q. And this is where we're going to have to kind of get
15 into the weeds of what happened that day. Okay?

16 A. Okay.

17 Q. And I'm going to break it into two parts, what happened
18 in the house, what happened during the pursuit, okay, so we can
19 try to keep things organized for the record.

20 A. Okay.

21 Q. Dealing with what happened at the house that particular
22 night, can you explain to the Court what you allege as it
23 relates to Deputy Causey and his shotgun?

24 A. Honestly, we was trying to get back into the car. We
25 left out the house and went around the back of like a shed

1 area. We was waiting, Officer Causey walked past the shed area
2 going to around the side of the house and my brother shot off
3 and went towards the car -- well, he took off, he didn't shoot
4 off, he took off and went towards the car and when he just
5 sprung out there and left me like that, now I'm caught behind
6 the barn and the police, he's almost, he's about to turn around
7 to see, you know, where we at, and just fired once and tried to
8 get into the jeep and ran towards the truck.

9 Q. Were there a lot of shots fired off that day with law
10 enforcement being present at the house?

11 A. No, sir, no. I just, like -- I just shot once to get in
12 the -- and that was just one of the most dumbest things I ever
13 did, but I shot once to try to get into the car.

14 Q. I understand. But did law enforcement return fire?

15 A. Yes, sir.

16 Q. And that was the question I was asking. Were there
17 other shots made before you all went onto the pursuit at the
18 house --

19 A. Yes, sir.

20 Q. -- were there other shots?

21 A. Yes, sir.

22 Q. Okay. Now, part of the State's case against you was
23 Deputy Causey had a shotgun, correct?

24 A. Yes, sir.

25 Q. And in the discoverable material as it relates to Deputy

1 Causey's statement he says that his shotgun was struck by one
2 of your bullets; is that correct?

3 A. Yes, sir.

4 Q. Did can Mr. Hiller ever show you pictures of a damaged
5 shotgun?

6 A. Not that I recall, he could have.

7 Q. Did he ever talk to you about him going to the police
8 department to observe the damaged shotgun?

9 A. No, sir.

10 Q. Did he talk to you at all about how that could be used
11 at a trial if you went to trial?

12 A. No, sir.

13 Q. Are you aware of any type of forensic testing that was
14 done on the shotgun?

15 A. No, sir, I wasn't.

16 Q. Do you recall how many shell casings were collected at
17 the house?

18 A. No, sir.

19 Q. There were not -- do you recall there being a lot of
20 shell casings collected?

21 A. No, sir. I don't remember anything being recalled as
22 far as -- I never received my motion, my lawyer had it, always
23 had my motion.

24 Q. He never provided you with a copy of the incident
25 reports or evidence collection reports?

1 A. No, sir.

2 Q. Did he ever talk to you about any shell casings being
3 forensically tested by SLED?

4 A. We never spoke in detail about my situation.

5 Q. So Deputy Causey holding the shotgun is one of the
6 counts of attempted murder that you were charged with, correct?

7 A. Yes, sir.

8 Q. But Mr. Hiller never talked to you about any evidence
9 that would support the attempted murder charge?

10 A. No, sir.

11 Q. Now, let's transition and talk about the pursuit aspect
12 of that day. Can you explain to us briefly what happened
13 during the pursuit?

14 A. We got in the car -- we got in the car, we left the
15 yard, I'm the passenger and my brother's driving. I'm wanting
16 them to just stop pursuing us, so I put the window down and
17 just, you know, but I'm not even really fully looking back, I'm
18 just, you know, shooting out of the window from the passenger
19 side. I'm doing that and ducking because they're shooting as
20 well. We seen a police car coming towards us and the
21 pedestrians on the road are, you know, slowing up traffic to
22 slow us up, and that's pretty much it.

23 Q. How many deputies were pursuing you from behind?

24 A. I couldn't really tell you. Like I said, I wasn't
25 really looking back, I really wasn't. I can assume that it

1 was, I know for a fact it was two cars outside of that house
2 before we left so I can assume those were two cars of the cars
3 that was behind in the chase, but I don't know exactly the
4 number of cars.

5 Q. And one of the attempted murder charges involves
6 Constable Glenn Turner?

7 A. Yes, sir.

8 Q. Where did he fall into the pursuit aspect of the case?
9 Was he the one that was coming towards you all?

10 A. I'm not sure which one by name. I always thought, I
11 guess there's a Jimmy trooper or somebody that was involved, I
12 always thought that was him in the oncoming, but I could be
13 wrong.

14 Q. But one of the attempted murders is for the -- someone
15 coming towards where you and your brother were coming from?

16 A. Yes, sir.

17 Q. And if I understand the evidence correctly, one of -- a
18 bullet had gone through that constable's windshield?

19 A. Windshield, yes, sir.

20 Q. Was it ever determined whose bullet went through the
21 constable's windshield?

22 A. No, sir.

23 Q. Did Mr. Hiller ever discuss that with you?

24 A. No, sir, nothing.

25 Q. Did you ever fire your weapon in front of him?

1 A. Never.

2 Q. Do you know if evidence was collected from Constable
3 Turner's vehicle?

4 A. Not that I know of, I'm not sure.

5 Q. So Mr. Hiller never told you that it could have been law
6 enforcement behind you that shot into that car?

7 A. No, sir. This is -- I got that much in knowing that the
8 car was shot in front of us after I was in prison and we was
9 getting, you know, a paralegal to work on our argument.

10 Q. Count number five in your application deals with Mr.
11 Hiller's failure to discuss the consequences of your plea with
12 you?

13 A. Okay.

14 Q. And you put in here that he didn't discuss a negotiated
15 plea versus an open plea. You testified previously that you
16 didn't know how much time you were gonna get ahead of time?

17 A. Yes, sir.

18 Q. Did Mr. Hiller ever explain the plea process to you?

19 A. No, sir. I mean, other than the fact, like I said, he
20 just told us, you know, you ask him what do we do other than go
21 up here and say you all guilty and then he's gonna hand down a
22 time. So you mean we got to say we guilty before we even know
23 what we facing? He goes, yeah. So you know, it was that, it
24 was either that or go to trial that Monday, or the following
25 week.

1 Q. You indicated in your application that you thought there
2 was a cap of 30 years on your plea?

3 A. Yes, sir.

4 Q. What do you mean by that?

5 A. I just, like he said, you know, the maximum would be 30
6 years that the judge would give and being that it was my first
7 offense he don't see him giving me nowhere close to that.

8 Q. In count six, Mr. Gamble, you alleged that Mr. Hiller
9 did not explain the elements of each charge. You testified to
10 that earlier. Is there anything else you would like to add to
11 that count?

12 A. No, sir.

13 Q. So for all of the charges that you were facing he didn't
14 explain to you for any of them what the elements were required
15 to be proven by the State?

16 A. No, sir.

17 Q. In count seven, Mr. Gamble, you allege that Mr. Hiller
18 was ineffective for failing to make a motion to reduce the
19 burglary first to a burglary second degree?

20 A. Yes, sir.

21 Q. What would you like to tell the Court about that count
22 on your application?

23 A. A paralegal prepared that for us, but like he said, the
24 criteria didn't meet burglary first in our situation.

25 Q. And what criteria did not meet the burglary first

1 criteria?

2 A. I'm not sure.

3 Q. In your application, Mr. Gamble, you allege that it did
4 not happen in the nighttime?

5 A. It did not.

6 Q. And you have no prior burglary convictions, correct?

7 A. No, sir.

8 Q. Mr. Gamble, was there anything else you would like to
9 testify to the judge this morning about the ineffective
10 assistance of counsel as it relates to Mr. Hiller?

11 A. No, no, sir.

12 Q. Mr. Gamble, please answer any questions that the State
13 may have for you or the judge may have for you, okay?

14 THE COURT: Mr. Barlow?

15 MR. BARLOW: Thank you, Your Honor. May it please
16 the Court?

17 THE COURT: Yes, sir.

18 **CROSS-EXAMINATION**

19 BY MR. BARLOW:

20 Q. Good morning, Mr. Gamble. How are you doing today?

21 A. Alright, good morning. How are you?

22 Q. I'm doing well. Thank you. So I want to be clear on
23 this that you understand the relief that you can get from this
24 Court today from PCR, that you go back to square one, all 24
25 counts come back on and you go to trial on 24 counts. Do you

1 understand that?

2 A. Yes, sir.

3 Q. Okay. And you still want to proceed forward?

4 A. Yes, sir.

5 Q. On your first allegation regarding the conflict of
6 interest, can you explain to me again exactly what the conflict
7 of interest was?

8 A. Them being husband and wife.

9 Q. How is that a conflict?

10 A. I remember when my brother -- my brother hired Laura
11 Hiller first, but at that time it was Axelrod, I mean, you
12 know, so you know, big name off TV, can I get the same -- can I
13 have the same lawyer too? They can't do that, that's a
14 conflict of interest, you can't have the same lawyer. Okay?
15 For them to be husband and wife who live in the same home,
16 you're not gonna -- I feel me and my brother, that's a conflict
17 of interest. If one of us is going down the wrong road the
18 other one is gonna follow instead of saying, hey, no, I'm not
19 goin. And I don't think at one time Mr. Hiller said, okay, he
20 did something, his client, I think he just did it in the best
21 for them, he didn't do it in the best for me and she and move
22 in the best interest of my brother. It's a conflict of
23 interest. Let me ask you a question, two people in the car --
24 THE COURT: Okay. Wait a minute. You don't get to
25 ask questions. You get to answer. Okay?

1 THE APPLICANT: Yes, sir. I mean, yes, ma'am. I'm
2 sorry, yes, ma'am.

3 THE COURT: That's okay. You're fine. Go ahead, Mr.
4 Barlow.

5 MR. BARLOW: Thank you.

6 Q. It was your choice to plead, though, right?

7 A. Uh-huh.

8 Q. And you could have withdrawn that plea had you felt
9 there was a conflict of interest at any time?

10 A. As far as, what, the open plea?

11 Q. You could have withdrawn your plea. You didn't have to
12 plea with Mr. Hiller as your counsel. You retained Mr. Hiller,
13 correct?

14 A. Yes.

15 Q. Okay. You could have fired Mr. Hiller and hired someone
16 else. Why didn't you do so?

17 A. Because at this time we had already said guilty -- I'm
18 still going off of what my lawyer is telling me. Okay? Thirty
19 years being the max, where the 50 came from?

20 Q. Well, let's get to that, because it is one of your
21 allegations that they didn't -- do you recall the plea court
22 explaining to you each charge that you were facing and the
23 maximum the Court could give you?

24 A. No, sir.

25 Q. You do not recall that?

1 A. No, sir.

2 MR. BARLOW: Your Honor, that's page five. That's
3 where it starts.

4 THE COURT: Got it.

5 Q. Let's go onto allegation number three, failure to move
6 to dismiss the three counts of attempted murder. Why should
7 Mr. Hiller have moved, what basis would he have moved the Court
8 to dismiss those charges?

9 A. What, the attempted murders?

10 Q. Yes.

11 A. Nobody was struck. Nobody was struck.

12 Q. And I understand that. So no one was struck, hence, it
13 was not "murder" because no one died. It's called "attempted
14 murder."

15 A. Okay. I thought there were other lesser charges,
16 assault, assault with deadly, you know, I just thought there
17 was other charges.

18 Q. On direct you testified that you shot at the officer,
19 correct?

20 A. Uh-huh.

21 Q. Were you aiming to hit the officer?

22 A. No, sir.

23 Q. But it did strike his shotgun, according to the State's
24 evidence?

25 A. What, you need a yes, no, or the fact that I missed the

1 whole body?

2 Q. That your bullet struck his shotgun?

3 A. Oh, yes, sir.

4 Q. And this house had video surveillance, correct?

5 A. Yes, sir.

6 Q. And all of that was caught on video surveillance?

7 A. Uh-huh.

8 Q. And there was a 911 call that was opened when you were
9 inside the home?

10 A. Uh-huh.

11 Q. And that was also caught on --

12 A. Uh-huh.

13 Q. Okay. And the officers were wearing Body Cams, correct?

14 A. Okay.

15 Q. And there were Dash Cams, correct?

16 A. Absolutely.

17 Q. So the entirety of your --

18 A. It was part of the motion, it was a whole lot of DVD's,
19 yes, sir.

20 Q. So you did review some DVD's?

21 A. No, I did not. I didn't have the resources to do any of
22 that. No offense, I was there that day. Nothing in a playback
23 that can show me I don't dream about or have a nightmare about
24 almost every other night.

25 Q. Well, I'm just curious how you know what was on the

1 DVD's if you did not review those DVD's.

2 A. What else would be on the DVD's, the black and white
3 words? There were DVD's, there was video part of the motion.

4 Q. And let's move on to the allegation for failure to
5 investigate the facts surrounding this case. Which facts were
6 needing to be investigated that Mr. Hiller failed to do so?

7 A. Repeat that again.

8 Q. Your allegation is failure to investigate the facts
9 surrounding the case. Which facts did Mr. Hiller fail to
10 investigate?

11 A. I was going to ask you earlier, and this goes into the
12 previous conflict of interest. There's two people in the
13 vehicle. The vehicle is going at a high rate of speed and
14 somebody's shooting out the passenger side. Right now to this
15 day without me saying what I'm saying, he couldn't tell you who
16 did what, not off of his investigation, not off doing his job,
17 he couldn't tell you who did what. You got a car going at
18 100 miles plus hours and you got a shooter out of one window.
19 Why wouldn't he investigate that? You're supposed to look for
20 the best interest of your client. You don't know what your
21 client did and didn't do.

22 Q. So if you didn't discuss anything with him and he didn't
23 investigate anything why did you plea?

24 A. Because, like I said, we didn't want to face trial. We
25 didn't want to go to trial and get a life sentence.

1 Q. But now you want to face trial?

2 A. I'm 35 years, five years in on a 50-year sentence.

3 Q. So you're upset about the time that you got and you're
4 willing to take the risk at trial because 50 is a life
5 sentence?

6 A. I'm not upset with the time I got. I'm not upset with
7 the time I got, I'm just upset with the job that was done which
8 led up to me getting the time that I got.

9 Q. Well, you understand that the 50 came from the burglary,
10 correct?

11 A. No, I do not, because every sentence serves 20 years for
12 this or X amount of years for that, I didn't know the whole 50
13 came from the burglary.

14 Q. Let's move on to failure to explain the difference
15 between the negotiated and open plea. Let me ask you this. If
16 you knew the difference between negotiated and open would you
17 have chosen to go to trial?

18 A. Yes, sir.

19 Q. Why?

20 A. I had a better chance.

21 Q. How so?

22 A. I mean, you have to fight, you have to prove without a
23 doubt these things rather than me saying I'm guilty and I'm in
24 the blind, I don't know what's going on.

25 Q. But you previously just testified that you were facing

1 life and you didn't want to go to trial, but now you're saying
2 you would go to trial had you known the difference?

3 A. Who's facing life?

4 Q. You.

5 A. I am currently, I am currently. So the appeal -- you're
6 asking two different things. You're asking two different
7 things. What is your question, sir?

8 Q. Let me try to clarify this. Just a second ago you
9 testified that had you gone to trial you were facing life and
10 you did not want to go to trial?

11 A. No. I didn't -- no, what I said was, I asked my mama,
12 what would you rather us do, don't go to trial, take the 30.
13 Then I said, now, I'm facing 50 years, why not take my chances?

14 Q. Okay. We'll move on. Let's go onto allegation number
15 seven. Failure to move for the first degree burglary charge to
16 be reduced to second degree burglary. What basis would he have
17 done that on?

18 A. Repeat that again.

19 Q. You wanted first degree burglary reduced to second
20 degree burglary, and but for that happening you would have
21 chosen to go to trial. What is the basis of that reduction in
22 that charge?

23 A. Well, I don't have a prior record, and at the time we
24 went into the house.

25 Q. Did you enter a home?

1 A. Yes.

2 Q. Did you enter a home with a weapon?

3 A. Yes.

4 Q. Did you enter a home with a weapon with the intent to
5 commit a crime?

6 A. We was let in the home. There was no evidence that said
7 we was not let into the home by somebody opening that door.

8 Q. Except for the surveillance video that was there.

9 A. Okay. We don't -- okay, so you have to show me kicking
10 that door in or anything above on the surveillance.

11 MR. BARLOW: Beg the Court's indulgence?

12 THE COURT: Take your time.

13 Q. I believe on direct you testified that you thought there
14 was a cap in the sentencing?

15 A. Uh-huh.

16 Q. And I'm going to ask you one more time, do you recall
17 the judge explaining to you on each and every charge what the
18 maximum time he could give you was?

19 A. No, I don't recall that. He could have, but I don't
20 recall that one.

21 Q. And actually, the Court, do you recall the Court
22 actually telling you that you're pleading to first degree
23 burglary which carries a minimum of 15 years to a maximum of
24 life, and do you recall responding with, yes, sir?

25 A. No, I can't recall, I can't recall that.

1 MR. BARLOW: Nothing further, Your Honor.

2 THE COURT: Thank you. Any Redirect?

3 MR. BAILEY: Judge, I have no follow-up questions for
4 Mr. Gamble.

5 THE COURT: Alright, then I'm going to let Mr.
6 Gamble, Mr. Gamble, just let me ask you one other thing.

7 THE APPLICANT: Yes, ma'am.

8 THE COURT: There was some negotiation about your
9 plea that all your counts would run concurrent; is that right?

10 THE APPLICANT: By the judge?

11 THE COURT: Yes.

12 THE APPLICANT: He may have said that.

13 THE COURT: Did your lawyer tell you that?

14 THE APPLICANT: No, ma'am.

15 THE COURT: And you're telling me you didn't watch
16 any of your videos?

17 THE APPLICANT: No, ma'am. We didn't have resources
18 in the county to do any of that.

19 THE COURT: Did your lawyer come out to the jail and
20 show you the videos?

21 THE APPLICANT: I mean, like, I seen, I seen him and
22 how he had them because when he came he always came with my
23 whole entire motion. You know, and that's a part of the
24 motion, so I know there are videos, you know what I mean, but I
25 never seen them, I never watched them.

1 THE COURT: Did you ask to see them?

2 THE APPLICANT: No.

3 THE COURT: And let me ask you, how many times did
4 you, I heard you say I thought it was one time you met with him
5 and your brother's lawyer?

6 THE APPLICANT: Once.

7 THE COURT: One time?

8 THE APPLICANT: Once.

9 THE COURT: Was that to discuss both you and your
10 brother's plea?

11 THE APPLICANT: No, it wasn't the plea, that was --

12 THE COURT: Or whether to go to trial?

13 THE APPLICANT: No. Well, trial, they were speaking
14 about trial being a possibility, but like I said, we was more
15 concerned about getting a bond, so when they came they was just
16 telling us that we are going to court next week, and you know,
17 we was asking, you know, are we on the docket to go to trial,
18 things like that.

19 THE COURT: And how long was Mr. Hiller your lawyer?

20 THE APPLICANT: I would say about a year, I would say
21 a year, I would say a year, because I served the county a year.

22 THE COURT: And let me ask you, who -- on this
23 failure to reduce a burg. first and a burg. second, you
24 testified that your paralegal said that it didn't meet the
25 criteria for a burg. first, but you're not real sure how. Who

1 is his paralegal? Is this somebody from Mr. Hiller's office or
2 somebody you all hired?

3 THE APPLICANT: No, ma'am. I'm gonna say hired him
4 as a friend of the family, Robert Sweeney.

5 THE COURT: And this is after the fact?

6 THE APPLICANT: Yes, ma'am.

7 THE COURT: And on this failing to investigate --

8 THE APPLICANT: Yes, ma'am.

9 THE COURT: -- you're telling the Court that your
10 lawyer just didn't know what you did or what you didn't do, but
11 you knew you didn't want to go to trial because you could
12 possibly get a life sentence, they gave you time to talk to
13 your mom about this plea; is that right?

14 THE APPLICANT: Yes, ma'am.

15 THE COURT: Did your lawyer talk to your mom about
16 your plea?

17 THE APPLICANT: No, ma'am.

18 THE COURT: Not that you know of?

19 THE APPLICANT: No, I don't think he -- because even
20 then we were in a court setting so we was on the pews, I think
21 she sat, like, two pews, we wasn't able to go to her so we sat
22 like two pews difference in between her, but he never mentioned
23 anything about a plea to us nor our mother.

24 THE COURT: That's all I have. You can step down.

25 THE APPLICANT: Thank you.

1 THE COURT: Mr. Bailey, anymore witnesses?

2 MR. BAILEY: Judge, that will be all of the witnesses
3 on our behalf.

4 THE COURT: Let me turn to you Mr, Mr. Barlow.

5 MR. BARLOW: Thank you. We would call Mr. Jonathan
6 Hiller.

7 THE COURT: Come on up, Mr. Hiller, and be sworn.

8 JONATHAN HILLER WAS DULY SWORN AT THIS TIME AND
9 TESTIFIED AS FOLLOWS:

10 THE COURT: Mr. Barlow, go ahead.

11 MR. BARLOW: Thank you, Your Honor, may it please the
12 Court?

13 THE COURT: Yes.

14 **DIRECT EXAMINATION**

15 BY MR. BARLOW:

16 Q. Mr. Hiller, how long have you been practicing law?

17 A. I was sworn in in November of 2009.

18 Q. And how much of that has been criminal law?

19 A. All of it. My entire career has been devoted to
20 criminal practice.

21 Q. And you were retained in this case, correct?

22 A. Yes.

23 Q. And how long, roughly, before trial were you, or before
24 the plea hearing were you retained?

25 A. I believe, Mr. Gamble testified, at least a year. I

1 would certainly confirm that. I was retained after the
2 preliminary hearing would have been held, so I did not
3 participate in that, but I participated in at least two bond
4 hearings, various pretrial hearings and then, of course, the
5 ultimate resolution of the case, and that spanned many, many,
6 many months.

7 Q. And during that time did you receive discovery?

8 A. Of course.

9 Q. And did you review discovery with the Applicant?

10 A. Yes. He was housed in the Marion County Detention
11 Center. I made many, many trips to Marion to review his file
12 with him to discuss this case. He did reference a lot of
13 DVD's, he's certainly correct about that. I was certainly
14 allowed into the Marion County Detention Center with my laptop,
15 I had a Macbook Pro at the time. There was an attorney/client
16 room that we could use, but for a while they stopped allowing
17 us to use it. It was just a small room, maybe eight by ten.
18 There was another space in the courtroom that was more open, it
19 was almost like a room that led into the actual pod itself,
20 secured on both ends, with enough conjoling, the corrections
21 officers would usually let us use that. I was kind of a fairly
22 recognizable figure out there by the time this case was
23 actually resolved.

24 Q. Could you tell us roughly how many times you met with
25 Mr. Gamble?

1 A. I would say at least, I want to say more than ten, but
2 I'm very comfortable with ten over the course of the
3 representation.

4 Q. And could you give us a brief overview of your
5 understanding of the State's evidence in this case?

6 A. Like I said, I've been doing this since 2009, and I
7 think to date this is the case that was most captured on
8 camera. The housing question was most likely a drug house. I
9 say, most likely, because according to the memorandum in
10 support of the application they were told by someone at SCDC it
11 was a drug house that did have surveillance mainly in the back
12 of house, so the back of the house captured the officer being
13 struck on his shotgun, of course it doesn't capture the side of
14 the house, but once Mr. Gamble and his brother got into the
15 vehicle other officers were arriving on scene so the action
16 picks back up on Dash Cam and continues mostly on Dash Cam with
17 a few exceptions at the beginning until, ultimately, the
18 co-defendant crashed into a civilian, went over a ditch, and
19 came to rest disabled in a field where he then ran and Mr.
20 Kendell Gamble surrendered without incident. So really we had
21 the entirety of the incident on camera beginning when they
22 exited the back, but as I alluded to before, the 911 call made
23 from inside the home was captured on an open line which you
24 could hear two males screaming, threatening, yelling,
25 demanding, and the protests of the women and the children

1 inside.

2 Q. Based on the State's evidence were you able to create or
3 craft a defense strategy in this case?

4 A. My firm belief is that I have a lot of control over how
5 a case goes as an attorney, my client also has a say, he can
6 control whether this is a plea or a trial, he can control
7 whether or not he testifies, and he can certainly control
8 whether or not he cooperates with the State. Unfortunately, in
9 this case what I believe would have been the best strategy was
10 closed, shut down by Mr. Kendell Gamble, he did not want to
11 cooperate against his brother. I believe that he, probably,
12 given the overwhelming weight of the evidence should have gone,
13 allowed, authorized me to go to the Solicitor, offer any
14 assistance that the State would give them, and frankly, they
15 probably would not have been very interested because they
16 didn't really need his help, but the other strategy failing
17 that would, of course, be to try to parse out who did what. I
18 mean, obviously, the hand of one hand, hand of all is going to
19 be a struggle to overcome at trial, but parsing out who did
20 what in an attempt to, as we say, you know, throw the other
21 person under the bus. That was also something that my client
22 did not want me to do.

23 Q. That lead to my next question, was, did you discuss that
24 with the Applicant?

25 A. Absolutely.

1 Q. Let's start with allegation number one. Counsel, Mr.
2 Gamble alleges that there was a conflict of interest in your
3 representation of him and your wife's representation of his
4 brother. In your professional opinion, do you see any conflict
5 in that?

6 A. No, I don't. He is absolutely correct that the family
7 reached out to her employer at the time, Stewart Axelrod of
8 billboard fame in the Myrtle Beach area. My wife, Laura
9 Hiller, was an associate handling his criminal practice, but of
10 course, under Mr. Axelrod's overview, or at least when he chose
11 to be around, so her office was contacted and she did, as
12 testified, recommend or at least say, you know, my husband's a
13 solo practitioner, he may be a good fit for the case, so that
14 is how I came to meet Mr. Kendell Gamble. I don't think in a
15 million years would I have been found by his family with my
16 little small one-man shop in Myrtle Beach had it not been for
17 the fact that she was at a much more -- at a firm with much
18 more a presence in terms of marketing.

19 Q. I'll move to allegation number three, the failure to
20 move to dismiss the three counts of attempted murder. I
21 believe in the memorandum they say that it should have been
22 charged as ABWIK. Do you see any issue with that?

23 A. Of course, the paralegal or whoever he had mentioned
24 helped him probably doesn't know that that CDR code had been
25 retired at the time of these allegations. There are certainly

1 still valuable lesser included offenses such as ABHAN, which
2 would be a zero to 20-year offense, lesser included of
3 attempted murder, assault first, all the way down to assault
4 third, but as I said, I was not involved at the time of the
5 prelim, which is one point in the case where a defense attorney
6 can make a viable motion asking a judge to dismiss, in that
7 case, of course, for lack of probable cause, unfortunately, or
8 fortunately, depending on your perspective, in our system, the
9 next viable option for that is at a directed verdict stage.
10 The State failed to carry its burden. These are obviously fact
11 questions, facts are decided by a jury, not judges. So, no, I
12 did not file a motion to dismiss asking a judge to step into
13 the role of a juror prior to the resolution of a case, that's
14 not proper, it's not done in South Carolina. I'm a public
15 defender now. I have this conversation quite regularly with
16 clients at the jail. It's certainly a belief, I understand the
17 belief, but it is not practice in this state to ask a judge to
18 judicially dismiss a case that has fact questions.

19 Q. And on direct Mr. Gamble testified as to a hearing
20 regarding a bond, or something of the like, but do you recall a
21 judge telling you that 35 years was too much time for the
22 crimes he and his brother had committed?

23 A. No. There was no chambers conversation with Judge Seals
24 at all the day of plea, and let me just add, there was no plea
25 offer until the day of plea. The way that it worked in Marion

1 was -- well, Marion notoriously has very little court. Once a
2 month is usually that, maybe a bit more than that, obviously I
3 don't practice a lot in Marion, but in this particular instance
4 Marion had two back to back terms of General Sessions court.
5 One was the term of court in which the plea was entered. The
6 next week was the week that this case was going to be first up,
7 so it was plea this week or go to trial next. It was that
8 clear cut, that simple. The only reason a negotiated 30 was
9 ever offered, I believe, was due to the tenacity of the
10 attorneys representing, myself and my wife, each with our own
11 client's purposes in mind but attacking the State seeking some
12 sort of a plea. In my experience the stronger the case the
13 less likely the State is to make a good offer. You know, a lot
14 of times it's not understood but the strength of the case is
15 something that the State generally weighs in factors when
16 they're making a plea offer. They also had incredible
17 cooperation from the victims, and Marion often, or at least
18 sometimes the victims are not as helpful to law enforcement.
19 These folks, the of age folks who were in the mobile home the
20 day of this incident showed up to court for every bond hearing,
21 they were present in court for the plea. The State had a good
22 case in their estimation and they never made a written plea
23 offer. The negotiated 30 was something, again, that came out
24 the morning of plea. It was, take this negotiated 30 -- I do
25 remember, vividly, the Solicitor almost are arguing with one of

1 to officers. I wasn't standing immediately there, but you
2 could see them in the hall, like, the officer was not okay with
3 this concession of 30 years at 85 percent that the State was
4 willing to offer to get the plea done. So it did come up fast,
5 it came up at the last minute, but that was a viable plea offer
6 that was conveyed to my client. He did not accept it and opted
7 to plead, as they say, straight up, or with an open plea
8 instead.

9 Q. Well, I'm going to skip over to this real quick because
10 it's on allegation five, you had the difference between
11 negotiated and open, let me ask you this: When you made the
12 offer to him did you explain to him that the 30 was a
13 negotiated plea but if he didn't take that that he was facing
14 more than that, potentially?

15 A. Yes, yes. He even admitted as much, I wrote it down on
16 his direct -- or on cross, he said something to the effect, do
17 you mean we have to enter a plea before we even know what we're
18 gonna get, to which he says I said: Yeah. That's the
19 definition of an open plea. It came out of his mouth from this
20 chair just a moment ago that this was covered. They thought 30
21 years was too much. Obviously, you can read from the
22 transcript, I tried for 20, that is not how the judge saw the
23 case.

24 Q. And jump back to allegation number four. Failure to
25 investigate the facts surrounding to case. Do you think that

1 you conducted a reasonable investigation in this case?

2 A. Yes. The shotgun that was struck, just to paint the
3 picture a little bit, the officer approaches from the right
4 side of the house if you're facing the front door, turns the
5 corner where he comes on camera, he's just looking around, he
6 has no idea that in the shed directly in front of the tree line
7 are two people hiding behind it, you can actually see them on
8 surveillance but the officer can't see them. So he was holding
9 a shotgun almost like a Century at a 45 degree angle across his
10 chest, as my former client and his brother break for it he
11 reacts, there's no audio but just kind of grainy black and
12 white surveillance, he reacts almost as if he had been stung by
13 a bee, and that was actually the bullet striking right around
14 the trigger guard, center mass had the shotgun not impeded the
15 path of the bullet. He drops to one knee and does get off one
16 shot, I believe there was some damage to the door across the
17 street. So we did have that gun into evidence, we had closeups
18 showing the actual damage which was clearly done by a bullet.
19 It almost defies reason that an officer who basically is
20 shooting past two individuals hits another officer and doesn't
21 continue to shoot. I mean, that defies reason that that would
22 have been the factual pattern, but, no, you cannot tell who
23 shot. I do believe we have an omission as to who shot now, but
24 since it happened on camera, since there was nobody else given
25 hand of one hand of all, given the fact there was no fragment

1 recovered from the scene to even have tested, there was really
2 nothing else to investigate.

3 Q. Moving to allegation number six, failure to ensure that
4 the nature of each offense and the elements that had to be
5 proven for each offense was explained by the Court, did you
6 explain the elements of the charges to Mr. Gamble?

7 A. During our meetings I have no doubt that I explained the
8 elements, what the State would have to prove for burglary
9 first, for attempted murder, for all of the -- the armed
10 robbery, possession of a weapon, yes.

11 Q. And is it your standard practice to review the charges,
12 the elements and what the State has to prove with all of your
13 clients?

14 A. All of the above, plus collateral consequences, such as
15 strikes, classification, 85 percent, all those LWOP
16 possibility, all of those are standard, sex offender registry,
17 as appropriate. Honestly, I do not know if that was --
18 honestly, I cannot tell you that I covered sex offender
19 registry in connection with this kidnapping, I do not have an
20 independent recollection of that, but one thing I am not sure
21 that I did is tell him that sex offender registry could be
22 required upon release for a kidnapping, and I do not believe
23 that I asked the judge to make a finding on the sentence sheet
24 that sex offender registry is not required. That is something
25 I'm not sure that I did. Everything else, yes, I ever covered

1 it.

2 Q. Moving to the last allegation: Failure to move for the
3 first degree burglary charge to be reduced to second degree
4 burglary. In your professional opinion did Mr. Gamble's
5 actions meet the requirements of first degree burglary?

6 A. Yes.

7 Q. And do you stand by your representation?

8 A. Yes. We were ready for trial, just as ready as the
9 State was.

10 MR. BARLOW: Thank you. Nothing further, Your Honor.

11 THE COURT: Mr. Bailey?

12 MR. BAILEY: Thank you, Your Honor.

13 **CROSS-EXAMINATION**

14 BY MR. BAILEY:

15 Q. Good morning, Mr. Hiller.

16 A. Good morning.

17 Q. What was your theory at trial, or what was going to be
18 your theory at trial?

19 A. At trial, even, I believe, at that point without my
20 client's consent it would have had to distinguished his actions
21 from his brother's as much as possible to hope that a jury saw
22 something that maybe they would convict Jamie Gamble but not
23 Kendell Gamble, which given the fact that Mr. Gamble is leaning
24 out of a vehicle shooting at officers on Dash Cam would have
25 been a tall order.

1 Q. And prior to this case had you proceeded to trial on
2 charges this serious in nature?

3 A. No.

4 Q. So this would have been your first trial in terms of,
5 had you tried a burg. first before, burglary first degree
6 charge?

7 A. No.

8 Q. Attempted murder?

9 A. No. I think, probably in terms of time, yes, I've tried
10 charges that serious I had at that time, but about possession
11 with intent third or subsequent ten to 30 would have been
12 probably been the most serious case that went to trial in my
13 office at that time.

14 Q. Do you recall the incident where you met with Mr.
15 Gamble, Jamie, his brother was not present, but Laura was
16 present, your wife?

17 A. Absolutely not. I would add, though, there could,
18 theoretically, be a -- I do recall trying to see if the four of
19 us could be in the same room at the same time, and Marion
20 Prison, or jail, rather, did shut that down. They would not
21 allow two inmates, I'm sure would keep separate holds on them
22 to be in the same room at the same time. I don't see it as an
23 obvious conflict with allowing, as long as, obviously,
24 everyone's representing their own client and there's some, you
25 know, viable reason for it, I don't necessarily know that it's

1 per se, a conflict for two attorneys to meet with the same
2 person. I mean, I certainly have state attorneys now where
3 co-defendants wish to interview my client, attorneys for any
4 reason, it happens. Obviously, I generally say, no, because I
5 don't see how it can help my client, but I can see a theory
6 where that is permissible, but to answer your question, I do
7 not ever recall the three of us sitting down together, I don't
8 even know what purpose that would have served.

9 Q. Now, you testified earlier that the video showed what
10 appeared to be Deputy Causey's shotgun being struck by a
11 bullet?

12 A. Yes. Given his reaction, it appeared the shotgun was
13 struck, he briefly dropped it.

14 Q. I didn't mean to cut you off, Mr. Hiller.

15 A. Yes. I saw the video that appeared to show Deputy
16 Causey being struck.

17 Q. And I think your testimony was you couldn't tell who
18 shot?

19 A. Correct. There was only one person in the frame when
20 what appears to be the bullet struck the shotgun. The camera
21 doesn't pan. It just is a static and the shooters were off
22 camera.

23 Q. Okay. Now, in Deputy Causey's report he says that
24 whoever did this shooting that struck his shotgun fired three
25 shots, do you recall that?

1 A. I do not recall that, per se, but I certainly have no
2 reason to dispute that if his report says that.

3 Q. And my question is this, in the materials that you
4 forwarded me from your file there was only one shell casing
5 recovered from the scene. Do you know where that shell casing
6 was recovered from?

7 A. Without reviewing the discovery, no. I'm sure it
8 would've been --

9 Q. Did they provide you a map to show where evidence was
10 discovered at that house where everything happened?

11 A. You mean like a sketch drawn map or something? I don't
12 recall one, but I could just be misremembering that.

13 Q. Was that shell casing ever tested against the firearms
14 that were found with the defendants?

15 A. To my knowledge, no. I don't remember any ballistic
16 reports from SLED.

17 Q. Did you ever file a motion to have a ballistic report
18 completed to see if that was a shell casing from one of those
19 guns?

20 A. The two guns at issue were a nine millimeter and a 40
21 caliber. No. And again, this line of defense would be hoping
22 to throw Jamie Gamble under the bus, which again was something
23 my client did not want. I mean, I understand that I still have
24 an ethical duty, despite what my client wants, but at the same
25 time it's a viable strategy -- the strategy that was adopted

1 was viable, but it's to the exclusion of the other which is to
2 try to just go after the other co-defendant. You can't have
3 your cake and eat it too. You can't say, you know, I did what
4 you wanted, now you did what I didn't want, you're ineffective,
5 you can say it all you want, that's what the judge is here for,
6 but you can't do both.

7 Q. So understanding the two-week term that Marion has, you
8 all were there during the first week. What day were you all
9 there, do you recall? And you may have testified on direct.

10 A. I think it was the Monday of. August 1st is the
11 transcript date. Look back on the calendar, but I believe it
12 was the Monday of, it could have been later in the week,
13 though.

14 Q. And you all were scheduled first up for trial the
15 following week?

16 A. Yes, Judge Kristi Curtis presiding. She was very new at
17 the time. I really didn't know anything about her, but it was
18 plea that week or the deal is off, we're prepping over the
19 weekend and going, don't ask for a plea Monday morning of next
20 week.

21 Q. What day did you tell Mr. Gamble that your theory at
22 trial was going to be throwing his brother under the bus?

23 A. Throughout the representation. We talked about that.
24 That's really what we've got. I mean, when something happens
25 that on camera, that's what we had, and that is not what he

1 wanted to do. It was discussed many times throughout
2 representation.

3 Q. One of the attempted murder charges was Constable Glenn
4 Turner who was the vehicle coming towards the pursuit. Did you
5 observe any evidence from his vehicle in your preparation for
6 trial?

7 A. Other than photographs, no. You mean did I go actually
8 physically look at the constable's vehicle? No.

9 Q. What about the bullets that were recovered from his
10 vehicle?

11 A. No. I never did a physical evidence view in this case.
12 The photographs were very, very detailed to include the hole
13 through the windshield. It was clearly a bullet hole. To add
14 a little color there were some -- the cars did get up to a
15 pretty high rate of speed, eventually, but there were a lot of
16 turns to get out of the neighborhood. The constable in a much
17 older model Crown Victoria unequipped with Dash Cam, unequipped
18 with even a light bar was coming head-on. The actual shooting
19 of that vehicle is not on Dash Cam, if memory serves. They had
20 rounded the bend. By the time the first pursuing officer
21 rounds the bend in pursuit Constable Glenn's car is already
22 swerved off, obviously -- well, not obviously, perhaps, but
23 when the bullet struck his windshield he lost a bit of control
24 over the vehicle, swerved off the road, was able to get the car
25 to a stop, but that ended his participation in the case. So

1 given that there was no vehicle -- given that's what the lead
2 vehicle captured in the chase on Dash Cam was the immediate
3 aftermath. There was no -- there was no cop, officer bullet
4 bending a 45 degree angle on potentially striking the vehicle.
5 It was clear that the only vehicle that could have done the
6 shooting was the fleeing Dodge, whether that was Mr. Gamble
7 shooting or the driver shooting, obviously, that could have
8 been a question for trial. I do not really see how the trial
9 would have gone well either way, though, given hand of one hand
10 of all.

11 Q. Did you personally interview any of the officers
12 involved in the case?

13 A. No.

14 MR. BAILEY: I have no further questions, Your Honor.

15 THE COURT: Thank you. Any Redirect?

16 MR. BARLOW: No, Your Honor, nothing from the State.

17 THE COURT: Mr. Hiller, let me ask you, did both the
18 brother's plead together?

19 MR. HILLER: Yes, Your Honor. It was a joint plea
20 where we sort of divvied up -- when I say, "we," I mean my wife
21 and I tried to be strategic so we just didn't repeat each
22 other, but we did divvy up some of the work that would be
23 applicable to both brothers such as the passing of a father.
24 The judge doesn't really need to hear about that twice, we
25 didn't think, but it was a joint plea where the two of us, the

1 two attorneys and the two clients were lined up at the defense
2 table entering a joint plea.

3 THE COURT: Were they going to go to trial together,
4 or had you all gotten that far?

5 MR. HILLER: Well, obviously, I don't know if Judge
6 Curtis would have granted a motion to sever. My guess would
7 have been, no, that she would not have, the analysis is pretty
8 in favor of trying the case together since it's the same
9 evidence. You know, there was no Bruton issues, for example,
10 no one spoke to law enforcement after the fact, at least that I
11 can recall. I don't think it would have Bruton issues, but I
12 honestly did not get that far. I probably would have made the
13 motion to protect the record, I don't see why I wouldn't have
14 made the motion to protect the record, but it didn't get that
15 far.

16 THE COURT: Right, they decided to plea. Let me ask
17 you, you and your wife worked at the time at separate law
18 firms?

19 MR. HILLER: Yes, we actually -- just really quick,
20 she started working for an attorney, she launched her on
21 practice, I stopped working for an attorney. We worked
22 together for a number of years, moved back home to Greenville
23 where we had a practice, and then the offer from Mr. Axelrod
24 brought us kind of back to the Horry County community and she
25 was working for him at the time. I was winding up the firm

1 that we used to have together and trying to get on board at the
2 Public Defender's Office, and full disclosure, and my client
3 already knows this, I was a public defender at the time of this
4 plea, still obviously responsible for and closing out the cases
5 that were, you know, still with the firm.

6 THE COURT: Okay. Did Mr. Axelrod show up to any of
7 the hearings?

8 MR. HILLER: He had no participation in this case at
9 all other than to send my wife flowers at the end of it.

10 THE COURT: Now, let me ask you about these videos.
11 Everybody keeps talking about a stack of videos and Dash Cam
12 cameras and your testimony is that you went to the jail at
13 least ten times, and I know just from experience myself that it
14 takes a lot to get a computer into a jail or a detention
15 center, so you were able to do that?

16 MR. HILLER: Yes.

17 THE COURT: And did he watch the videos?

18 MR. HILLER: I know that they were available to him.
19 I do very vividly recall flipping through photographs on the
20 laptop. I do think that there was a bit of a less interest in
21 watching some of the videos. I think Mr. Gamble got it right
22 on the stand when he said that he has nightmares about this
23 case. This was -- I do believe, and I'm gonna say, out of
24 character for him, but unfortunately it happened.

25 THE COURT: He admits it was him.

1 MR. HILLER: I know, but this was not him. I mean,
2 in terms of he doesn't have a record of this. I do think it
3 was hard for him to come to terms with what he did and that was
4 part of the reason he did not really want to watch everything.
5 There was a lot of remorse, unfortunately there was a lot of
6 evidence, as well.

7 THE COURT: Okay. And you discussed with him the
8 plea, because he said he had time to talk to his mom?

9 MR. HILLER: That was all the morning of the plea.
10 Again, that plea, if I wasn't clear, I apologize, the plea did
11 come out, verbal offer only from the solicitors. It was --

12 THE COURT: Take 30 or straight plea?

13 MR. HILLER: Or straight up, yes, Your Honor, and the
14 30 negotiated, of course. So his mother was there, his aunt
15 was there, obviously, if you've never been in Marion it's a
16 much older courthouse. It might have even served the 1900's.
17 The courtroom is about the only thing on the second floor.
18 There aren't attorney/client conference rooms. There's inmate
19 holding downstairs, but when they bring inmates up they have to
20 keep them, actually, on the pews. I think he mentioned the
21 back pews, that's absolutely correct, he and his brother were
22 being kind of cornered off in the back of the courtroom. I do
23 believe it was partly just the rapport that I had with the
24 corrections officers, I kind of pushed it on him and he
25 probably kind of bent policy to let his mother sit two rows

1 away from him to actually have contact with an inmate in
2 custody. Horry County, right now, as much as I know the
3 bailiffs, they would have never let my client do that these
4 days, but smaller counties, smaller venue kind of a thing, but
5 they did.

6 THE COURT: I guess that's what I was kind of getting
7 to --

8 MR. HILLER: It happened.

9 THE COURT: -- because it doesn't happen very often.
10 I know that I get asked all the time and I always make
11 arrangements if lawyers ask me because sometimes I find it to
12 be helpful.

13 MR. HILLER: Well, Judge Seals was not involved in
14 that. It was more of a, come on, man, he's sitting there in
15 cuffs, let him talk to his mama while he decides between a
16 trial, a straight up plea or a negotiated 30, and I think he
17 was right that she was leaning, take the plea, son.

18 THE COURT: Okay. Well, he testified to that.
19 Now, let me ask you on the three counts of attempted murder.
20 He testified, nobody was struck. You explained to him, or did
21 you explain to him the elements of attempted murder for not to
22 be struck to --

23 MR. HILLER: Right, it's not about the effect -- or
24 the consequence of the act, it's about the act. I mean, simply
25 because the -- and this was explained, Your Honor, by my self.

1 Simply because a shotgun, trigger guard impeded the bullet from
2 striking someone center mass does not mean -- does not -- yes,
3 it takes it down from murder because nobody was struck, but for
4 the happened stance that the gun was in the way it would have
5 struck the officer, hopefully, in some body armor of sort.

6 Similarly with the vehicle, it almost took the rearview mirror
7 off, the bullet hole was so close. It missed, but not by much.

8 THE COURT: And let me ask you this. Did he ever ask
9 you about this burg. first being reduced to a second? Did he
10 ever ask you to ask for a reduction?

11 MR. HILLER: No, he did not. This is an after the
12 fact idea. I would have had to say no. There was weapons
13 involved, and obviously burg. first entering armed, I believe
14 there was even knives strapped to thighs that were -- they came
15 armed. There was no --

16 THE COURT: Correct me if I'm wrong, any negotiation
17 to reduce the charge would be up to the Solicitor's office?

18 MR. HILLER: That was going nowhere. Yes, it's up to
19 the Solicitor's office, they had no interest.

20 THE COURT: And your testimony was that you and his
21 brother's attorney never met with him by himself?

22 MR. HILLER: I have no memory of it, and again, I
23 have no idea what that would have served. If anything, that
24 would have, in theory, prejudiced her client because I'm there
25 protecting my client. It's not like we were both there -- I

1 don't believe it happened, but I'm just trying to think why it
2 would have even happened if he can prove it happened. I mean,
3 there was no pressure on him to -- I mean, they went down
4 together for this, and I don't want to say as was their wish,
5 but the only other option was to try to, you know, get out
6 ahead of the other one, and that was also not a wish, and I
7 respect the hard spot that that puts everybody in, but again, I
8 do not recall my wife who had her own practice and a much
9 busier schedule than me, since it is a sort of a volume office,
10 the two of us ever -- I mean, I would have been on her schedule
11 in that situation because I could have gone, but I have no
12 memory at all of the three of us sitting down to talk to Mr.
13 Kendell Gamble alone.

14 THE COURT: And you explained the hand of one hand of
15 all theory?

16 MR. HILLER: Absolutely, the theory that probably
17 would have carried the day at trial.

18 THE COURT: That's all I have. Thank you. Anything
19 else from the lawyers?

20 MR. BARLOW: Nothing from the State, Your Honor.

21 THE COURT: Thank you so much, Mr. Hiller. Is there
22 anything from you, Mr. Bailey?

23 MR. BAILEY: Nothing further, Your Honor.

24 THE COURT: Anything else, Mr. Barlow?

25 MR. BARLOW: No, Your Honor.

1 THE COURT: Let me see the lawyers just for a second.
2 Mr. Gamble, I'm going to take this under advisement. I'm going
3 to review the transcript and look over again because I notice
4 that you sent a memorandum in support of your PCR application
5 so I'm going to go back over that, and I should get out an
6 order in the next couple of weeks. Okay?

7 THE APPLICANT: Yes, ma'am.

8 THE COURT: Thank you, Mr. Gamble.

9 MR. BAILEY: Thank you, Judge.

10 THE COURT: You're welcome.

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25 CERTIFICATE

1 STATE OF SOUTH CAROLINA

2 COUNTY OF FLORENCE

3 I, Julie A. Kevish, Official Court Reporter for the
4 State of South Carolina, do hereby certify that the foregoing
5 is a true, accurate and complete Transcript of Record of the
6 proceedings had and evidence introduced in the Court of Common
7 Pleas for Florence County, South Carolina, on the 12th of June,
8 2023.

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

11 June 12, 2023

12

13



JULIE A. KEVISH
OFFICIAL COURT REPORTER

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STATE OF SOUTH CAROLINA
COUNTY OF MARION

Kendell A. Gamble #377230,

Applicant,

v.

State of South Carolina,

Respondent.

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

) CASE NO. 2019-CP-33-00653

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**ORDER OF DISMISSALS.C. SUPREME COURT
WITH PREJUDICE**

Presiding Judge:

Applicant's Attorney:

Respondent's Attorney:

Trial Counsel:

Date of Hearing:

Court Reporter:

Hon. Debra R. McCaslin

Joshua A. Bailey, Esq.

D. Russell Barlow, II, Esq.

Jonathan M. Hiller, Esq.

June 12, 2023

Julie A. Kevish

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MARION COUNTY
CLERK OF COURT

This matter comes before this Court by way of Kendell A. Gamble's (Applicant) application for Post-Conviction Relief (PCR) timely commenced on September 18, 2019. Respondent, the State of South Carolina, filed its Return on February 6, 2020, requesting an evidentiary hearing to resolve the claims set forth in the application.

On June 12, 2023, an evidentiary hearing was held at the Florence County Courthouse before the Honorable Debra R. McCaslin. Applicant was present and represented by Joshua A. Bailey, Esquire. Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant proceeded on the allegations within his original PCR application except for ineffective assistance of counsel for failing to move to dismiss the attempted armed robbery count. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Jonathan M. Hiller, Esquire (Plea Counsel).

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 any form of relief. Accordingly, this Court denies relief and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). Applicant was indicted at the February 2018 term of the Marion County Grand Jury on a twenty-four count indictment for: one count of first-degree burglary; seven counts of attempted armed robbery; seven counts of kidnapping; five counts of attempted murder; one count of discharging a firearm into a vehicle; one count of conspiracy; one count of possession of a stolen handgun; and one count of possession of a weapon during the commission of a violent crime (2018-GS-33-0121). Applicant was represented by Jonathan M. Hiller, Esquire. Assistant Solicitor Patti M. Parker prosecuted the case.

On August 1, 2018, Applicant appeared before the Honorable William H. Seals, Jr. and pleaded guilty to one count of first-degree burglary, one count of attempted armed robbery, one count of kidnapping, three counts of attempted murder, and one count of possession of a weapon during the commission of a violent crime.¹ The State recommended that Applicant receive concurrent sentences. Additionally, in exchange for Applicant's guilty plea, the State dropped Applicant's seventeen remaining charges. Judge Seals accepted Applicant's guilty plea and sentenced him to serve concurrent terms of fifty years for first-degree burglary, twenty years for

¹ Applicant's codefendant and brother, Jayme Gamble, pleaded guilty at the same time as Applicant before Judge Seals. Jayme Gamble was represented by Laura Hiller, Esquire.

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attempted armed robbery, thirty years for kidnapping, thirty years for each attempted murder, and five years for the weapons charge.

Applicant filed a timely Notice of Appeal and a statement pursuant to Rule 203(d)(1)(B)(iv), SCACR, with the Court of Appeals on August 9, 2018. The Court of Appeals dismissed the appeal on October 12, 2018. State v. Gamble, S.C. Ct. App. Order filed October 12, 2018. The Remittitur was returned to the circuit court on October 30, 2018.

FACTS GIVING RISE TO CONVICTION

The facts giving rise to Applicant's conviction were articulated by the State at Applicant's plea hearing, as follows:

This incident occurred on a Friday morning July 21st 2017 at 12 approximately -- it was a little before 7:30 in the morning. Ms. Hattie [REDACTED] who resides on at [REDACTED] in the Mullins area of Marion County. Ms. Hattie [REDACTED] was up that morning getting ready for work about to iron clothes and she heard what sounded like a loud knock on the door. She looked out the window and did not recognize the truck in the driveway, looked out the peephole and did not recognize these individuals that were knocking at her door. She went and woke up a Ms. Lawanda [REDACTED] that was asleep in the residence, that is her grandchild's mother that was there. There were also children in the home. And got Lawanda up and Lawanda also said I don't recognize this truck I don't know who they. Something didn't seem right to Ms. Hattie and she picked up her cell phone and dialed 9-1-1 and about that time the door was busted up. These individuals busted in Ms. Hattie's home. They had guns. They had weapons. They started hollering for them to get down on the floor, pulled the guns on these women and children that were in the home. She had dialed 9-1-1 and press send, but when he hollered put down your phone, of course, these individuals didn't realize that the call to 9-1-1 already gone through. And so she placed the phone down and so a dispatcher here in Marion County thought that something wasn't right, could hear the commotion in the background, could hear hollering and screaming where's the money, get down on the floor, where's the money and women screaming in the background. And so this dispatcher did a very good job that day with this call and

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thought that she needed to send deputies out to this residence and so deputies did respond to the residence. Before I get to what happened after deputies responded, I'll talk about what they did in the house. They demanded money from these women and children. There were four children total in the residence a ten year old by the name of [REDACTED], a 16 year old [REDACTED], 24 year old Dennis who was Ms. Lawanda's son and five year old [REDACTED] (sic). Three of the children were Ms. Hattie's grandchildren. They were all woken by this incident and two of the women were slapped. They had guns put to their head. And even when they kept demanding money, Ms. Hattie and the ladies in the house didn't know what they were talking about. These individuals were corresponding with somebody on the cell phone on the other end of the phone. And one of the ladies heard from the other end of the phone just kill them all and so they were terrified for their life. At one point they grabbed [REDACTED], who is five years old, and put a knife to his throat trying to up the intimidation, up the threats because they thought there was some money there that they could get and threaten this child, threaten to cut his fingers off if these women didn't produce the money. So when law enforcement responded to the residence, they did get there rather quickly. Deputy Causey was the first. Deputy Causey along with Deputy Herring were the first two to arrive. And Deputy Causey kind of parked his car kind of by the driveway. Deputy Herring a little further back. And they were waiting on backup to get there, but Deputy Tracy Causey wanted to go ahead and clear the backyard, kind of clear the back portion of the residence. So he had his county issued shotgun that he retrieved from his patrol car and went around the back of the residence. Deputy Causey did not realize that these two individuals just prior to him walking around the backside of the house, they had ran out of the side door of the house and actually were hiding behind what looks like a storage barn, like a storage building. And you'll see shortly hear in the video when they decided to make a run for it, they did fire three shots at Deputy Causey. One of the shots actually got so close to him that it struck his shotgun and actually knocked the shotgun out of his hand. And he then later grabbed it and tried to, you know, to use it to fire some shots, but it was disabled because, you know, that -- one of the shots had actually hit his shotgun. These two individuals run, jump in the Dodge Durango that they were driving. It was a rental car that they had. They had carefully planned this out. The rental car had a North Carolina license plate. They had put a South Carolina license plate on top of the North Carolina plate. They proceeded to

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back out of the driveway and they're going to run from the police and they're not going to stop. So you have Deputy Herring along with Deputy Cribb and Trooper Jimmy King also hears what's going on on the radio. You have several law enforcement officers responding and this chase ensues throughout the county at some instances well in excess of 100 miles an hour. And eventually you'll see here shortly on the video ends with a crash right here outside of the City of Marion. There was a civilian vehicle that was struck and then when deputy excuse me -- when Trooper King follows after them when they lose control of the vehicle and go into like a grassy area off like the main highway, he's able to disable their vehicle by hitting it in the side and then he jumps out and runs. Jayme Gamble was the driver of that vehicle. He ran from the vehicle and Trooper King was able to catch him and apprehend him and he was arrested there on site. The passenger, I believe, surrendered and put his hands up and never tried to run from the car. So, Your Honor, I guess, to try to sum this up from the time they run from the house through some of the home surveillance video we have and then through various dash cam videos we have, we have sight on them. We have our eyes on them throughout these videos up until the point they're both apprehended. And so no question at all in the State's case that it was them. While they were driving and during part of the chase and the video's going to touch on this, but I want to point out because it's not -- doesn't jump out at you when you're watching the video. One of the accounts of attempted murder --of course, they're pleading to one count to attempted murder for Deputy Causey for firing those three shots at him. You'll hear that on the video. Constable Glen Turner had heard what was going on on the radio and he was responding. And you'll see when they're on one of our roads here in Marion County they -- during the chase, they take a right at the first stop sign and go down that road and deputy constable excuse me -- Constable Glen Turner was just coming from the opposite direction and they fire a shot into his windshield, two shots. Fired two shots at him. One shot I had a picture. One shot goes in the front of the windshield right there at his rear view mirror, so would have been inches from his head and he pose no threat to them. He was just literally just responding to the call and was coming in the opposite direction. He was not in pursuit of them. And also I have a picture of the shotgun that shows, you know, where it was hit. It was actually very close to Deputy Causey's body when that bullet struck the shotgun. They also right before this chase ends that you see there at the intersection coming

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into the City of Marion and Trooper King makes reference to this in the video there were shots fired from the passenger side of the vehicle at him right before the chase ended. They were firing shots out the car at him. Certainly they were indicted for, I think, two additional counts of attempted murder, but in consideration of this plea, the State did try to pair it down. It was two rather large indictments paired down. And they're pleading to about eight or nine counts each. I'm trying to think if I'm leaving anything out other than I want to play the video. And at the appropriate time, I know Deputy Causey wants to speak and Ms. [REDACTED] may want to speak also and also the sheriff. Obviously, you know, we indicted the burglary first degree because they entered the house with the weapons and immediately pulled them on the ladies that were in the home.

THE COURT: All right. Go ahead and play it.

Your Honor, I prepared three pieces of video. This first video is the homeowner's surveillance footage and has no sound. And then immediately after this you'll see a clip from Deputy Herring's dash cam and kind of what happened when he arrived at the house. You can kind of -- by seeing this video and then listening to and seeing the second one, you can kind of see when the shots were fired at Deputy Causey. And then the final video I'm not going to show the whole chase, but we edited to just show the last few moments of the chase. It was a very high speed chase and you can see how there were several civilian cars that were put in danger and one that actually hit.

(WHEREUPON, videos played for the Court.)

Your Honor, that last video was Trooper Jimmy King. And right after he crashed his vehicle into the defendant's vehicle, he did a foot chase and eventually apprehended Jayme Gamble, but you saw on the video when his car hit the curve, you kind of see it kind of knocked his camera loose. He did suffer a concussion to the head where his head hit the top of his patrol car. And not long after this, you know, suffering from headaches eventually he's now on medical retirement and he's not here today. He was willing to come, you know, had this gone to trial and would have been available as a witness for us.

(Plea Tr. pp. 10-17).

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CURRENT ACTION BEFORE THIS COURT

In his application for post-conviction relief filed on September 18, 2019, Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel:
 - a. "For representing [Applicant] under a conflict of interest."
 - b. "For failing to move to dismiss the armed robbery count."
 - c. "For failing to move to dismiss the attempted murder counts involving Constable Glen Turner, and Deputies Jonathan Herring and Daniel Cribb."
 - d. "For failing to investigate the facts of the case."
 - e. "For failing to explain the consequences of a negotiated plea agreement versus an open plea."
 - f. "For failing to ensue that the Court explained the nature of each offense and elements that had to be proven for each offense."
 - g. "For failing to move to reduce the Burglary 1st degree count to Burglary 2nd degree."

Attached to Applicant's PCR applicant was a "Memorandum of Supporting Facts" for all claims of ineffective assistance of counsel. Applicant requests relief in the form of a new trial and to vacate the convictions/sentences.

Before this Court is the Marion County Clerk of Court records regarding the subject's convictions and sentences, Applicant's records from the South Carolina Department of Corrections, Applicant's guilty plea transcript, Applicant's appellate records, and the records of Applicant's current PCR action.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act² (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based on the following types of allegations:

² S.C. Code Ann. §§ 17-27-10 to -160.

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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).

Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive effective assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (cnumrating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(c), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. Strickland v. Washington, 466 U.S. 668 at 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient

performance. Id. at 687-88; Cherry v. State, 300 S.C. 115, 117—18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[without proof of both deficient performance and prejudice to the defense... it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea. Hill v. Lockhart, 474 U.S. 52 (1985), extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). The analysis of counsel's performance under the first prong of Strickland remains unchanged, the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58-59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of 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

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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. 357, 367 (2017). However, an 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. 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) (emphasis added).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility.

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRCP (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Cl. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she

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is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

As a matter of general impression, this Court finds Plea Counsel's testimony at the evidentiary hearing credible and persuasive, where he presented well-recollected testimony of relevant background, facts, and discussions leading up to and during the plea hearing. This Court finds Applicant's testimony at the evidentiary hearing generally not credible and not persuasive. This Court further finds applicable the strong presumption that at all stages of Plea Counsel's representation of Applicant, he rendered adequate assistance and exercised reasonable professional judgment in his representation. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland, *supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689, 104 S.Ct. 2052; *see* Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

From the record, this Court makes the following findings: 1. Applicant understood the charges and sentences he faced at his plea hearing (Plea Tr. pp. 5-10); 2. Applicant understood the details and circumstances of a straight-up plea (Plea Tr. pp. 3-4); 3. Applicant clearly indicated he was satisfied with his attorneys (Plea Tr. pp. 8-9); 4. Applicant understood his right to a jury trial and that he waived those rights by pleading guilty (Plea Tr. pp. 6-8); 5. Applicant indicated he had enough time with his attorneys (Plea Tr. p. 9); 6. Applicant indicated his attorneys answered all of his questions, and he had no more questions for them (Plea Tr. p. 9).

Applicant indicated no promises were made to him, and his decision to plead guilty was voluntary (Plea Tr. pp. 9-10); 8. Applicant was not under the influence of drugs or alcohol, which may affect his ability to understand the plea proceedings (Plea Tr. p. 9); 9. Applicant understood the range of sentencing (Plea Tr. pp. 5-7); 10. Applicant was clearly advised of his right to appeal (Plea Tr. p. 8); 11. Applicant did not disagree with the facts surrounding the State's case against him, and apologized (Plea Tr. pp. 10-27); 12. Applicant's plea was qualified as freely, knowingly, and voluntarily entered into (Plea Tr. p.29).

INEFFECTIVE ASSISTANCE OF PLEA COUNSEL ALLEGATIONS ON THE MERITS

Allegation 1a: Plea Counsel Represented Applicant Under a Conflict of Interest.

Applicant alleges Plea Counsel was constitutionally ineffective and represented him under conflict because Plea Counsel is married to co-defendant's defense counsel. This Court finds this allegation is without merit.

"The mere possibility defense counsel may have a conflict of interest is insufficient to impugn a criminal conviction." Jordan v. State, 406 S.C. 443, 449, 752 S.E.2d 538, 541 (2013) (quoting Lomax v. State, 379 S.C. 93, 101, 665 S.E.2d 164, 168 (2008)). An actual conflict of interest occurs:

when a defense attorney places himself in a situation inherently conducive to divided loyalties. . . . If a defense attorney owes duties to a party whose interests are adverse to those of the defendant, then an actual conflict exists. The interests of the other client and the defendant are sufficiently adverse if it is shown that the attorney owes a duty to the defendant to take some action that could be detrimental to his other client.

Lomax, 379 S.C. at 101, 665 S.E.2d at 168 (quoting Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809, 811 (1984)). "[U]ntil a defendant shows that his counsel actively represented conflicting interests, he has not established the constitutional predicate for his claim of

ineffective assistance." Id. "However, a defendant who shows that a conflict of interest actually affected the adequacy of his representation need not demonstrate prejudice to obtain relief." Id. (quoting Staggs v. State, 372 S.C. 549, 551-52, 643 S.E.2d 690, 692 (2007)). Conflicts of interest may be waived so long as such waiver is done knowingly, intelligently, and voluntarily. Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001).

At the evidentiary hearing on direct examination, Applicant testified he met with Plea Counsel about two or three times, including the initial meeting. There were several times Mrs. Hiller spoke in his interest rather than his co-defendant. Applicant testified that there was one meeting where he, Plea Counsel, and Mrs. Hiller appeared without his co-defendant. However, Applicant testified there were certain questions he believed she answered for him when Plea Counsel should have answered. Additionally, Applicant emphasized that both counsels spoke simultaneously on either his or co-defendants' behalf when they should not have done so. Applicant clarified that during his representation, he was not under the impression that Mrs. Hiller provided more representation than his Plea Counsel.

On cross-examination, Applicant testified his co-defendant retained Mrs. Hiller, who worked for Axelrod & Associates, a well-known firm, and understood that he could not have the same attorney because it would be a conflict of interest. Applicant further testified that both counsels were husband and wife and lived together, resulting in a conflict of interest. Applicant stated that he and his co-defendant were in a conflict of interest and that if one went down the wrong road, the other would follow. Notwithstanding, Applicant testified he retained Plea Counsel, pleaded guilty of his own free will, and was conscious that he could have withdrawn his guilty plea, but chose not to. Applicant testified he could not have fired Plea Counsel and hired other counsel because he had already pleaded guilty.

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On direct examination, Plea Counsel testified that there was no conflict of interest in his professional opinion.

On cross-examination, Plea Counsel testified that they never met with Applicant's co-defendant without his attorney.

This Court finds the combination of the record and Plea Counsel's credible testimony that there was no conflict of interest. Applicant has the burden to prove every allegation in his application. See Butler, 286 S.C. at 441, 334 S.E.2d at 814. This Court further finds Applicant has failed to prove that Plea Counsel actively represented conflicting interests. Applicant chose to plead guilty and chose not to withdraw guilty plea. Therefore, this Court finds Plea Counsel's representation of Applicant was not ineffective, and Applicant cannot demonstrate any prejudice flowing from Plea Counsel's performance in this matter.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel, or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 1b: Failure to Move to Dismiss the Armed Robbery Count.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to move to dismiss the armed robbery charge. However, at the evidentiary hearing on direct examination, Applicant testified that he agreed with Plea Counsel about withdrawing Count 2 from his PCR application. (PCR Tr. pp. 9-10).

Therefore, the Court deems it abandoned. "When a party provides no legal authority regarding a particular argument, the argument is abandoned, and the court will not address the merits of the issue." Palmer v. State, 427 S.C. 36, 47, 829 S.E.2d 255, 261 (Ct. App. 2019) (citing State v. Lindsey, 394 S.C. 354, 363, 714 S.E.2d 554, 558 (Ct. App. 2011)).

Allegation 1c: Failure to Move to Dismiss the Three Counts of Attempted Murder and He Should Have Been Charged With ABWIK.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to dismiss the three counts of attempted murder. This Court finds this allegation is without merit.

At the evidentiary hearing on direct examination, Applicant testified that the attempted murder charges against him involved Constable Glenn Turner, Deputy Jonathan Herring, and Deputy Daniel Cribb. Applicant testified that a paralegal informed him there were no grounds to prove attempted murder.

On cross-examination, Applicant testified that Plea Counsel should have moved to have the attempted murder charges dismissed because the bullets hit no one.

On direct examination, Plea Counsel testified he did not file a motion to reduce the attempted murder charges because that is not standard practice in South Carolina. Plea Counsel testified that ABWIK was retired at the time Applicant was charged. Plea Counsel testified that without a doubt, he explained the offenses for which Applicant was charged and the elements of those offenses.

This Court finds Plea Counsel was not deficient in his performance with regard to this allegation because there was no meritorious motion Plea Counsel could have made. Applicant has the burden to prove every allegation in his application. See Butler, 286 S.C. at 441, 334 S.E.2d at 814. Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel not moving to dismiss the attempted murder charges, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea.

Accordingly, this Court finds Plea Counsel's representation of Applicant was not

deficient, nor did Applicant demonstrate any prejudice flowing from Plea Counsel's performance in this matter. Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation 1d: Failure to Investigate the Facts Surrounding the Case.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to investigate the facts surrounding the case. Specifically, Plea Counsel should have investigated the following: 1. The bullet that hit Officer Causey's shotgun; and 2. The bullet that hit Constable Turner's windshield. This Court finds these allegations are without merit.

"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). However, counsel need only interview potential witnesses "when it is reasonable to do so." Edwards v. State, 392 S.C. 449, 457, 710 S.E.2d 60, 65 (2011); see id. at 457, 710 S.E.2d at 64– 65 ("While our case law does provide that defense counsel must, at a minimum, interview potential witnesses, a strict adherence to that rule loses sight of the controlling standard for counsel's duty to investigate: reasonableness. Indeed, it would be an absurdity to require criminal defense lawyers to interview *every* potential witness when they can articulate reasonable grounds not to. When counsel makes such a reasonable decision, he will have fulfilled the duty he owes to his client.").

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"In other words, 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; cf. Green v. French, 143 F.3d 865, 892 (4th Cir. 1998) ("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."), abrogated on other grounds by Williams v. Taylor, 529 U.S. 362 (2000).

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).

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

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At the evidentiary hearing on direct examination, Applicant testified Plea Counsel never discussed the bullet casings found at the house with him. Applicant testified that Plea Counsel did not discuss anything regarding the gunshot that hit the Constable's windshield.

On cross-examination, Applicant testified that Plea Counsel could not have investigated anything because without him there telling the Court what he was, Plea Counsel could not have told the Court what happened. Applicant testified that he pleaded guilty because he did not want to endure a trial and receive a life sentence. Applicant testified he was not upset about the fifty years he got; rather, he was upset that Plea Counsel's job led him to getting the fifty years. Applicant testified that he did not realize the entire fifty years came from the burglary.

On direct examination, Plea Counsel testified to the following regarding failure to investigate:

The shotgun that was struck, just to paint the picture a little bit, the officer approaches from the right side of the house if you're facing the front door, turns the corner where he comes on camera, he's just looking around, he has no idea that in the shed directly in front of the tree line are two people hiding behind it, you can actually see them on surveillance but the officer can't see them. So he was holding a shotgun almost like a Century at a 45 degree angle across his chest, as my former client and his brother break for it he reacts, there's no audio but just kind of grainy black and white surveillance, he reacts almost as if he had been stung by a bee, and that was actually the bullet striking right around the trigger guard, center mass had the shotgun not impeded the path of the bullet. He drops to one knee and does get off one shot, I believe there was some damage to the door across the street. So we did have that gun into evidence, we had closeups showing the actual damage which was clearly done by a bullet. It almost defies reason that an officer who basically is shooting past two individuals hits another officer and doesn't continue to shoot. I mean, that defies reason that that would have been the factual pattern, but, no, you cannot tell who shot. I do believe we have an omission as to who shot now, but since it happened on camera, since there was nobody else given hand of one hand of all, given the fact there was no fragment recovered from the scene to even have tested, there was really nothing else to investigate.

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(PCR Tr. pp. 42-43).

On cross-examination, Plea Counsel testified that not having a ballistic report went to his trial strategy of going after the co-defendant. Plea Counsel testified to the following regarding the bullet that hit the constable's windshield:

- Q. One of the attempted murder charges was Constable Glenn Turner who was the vehicle coming towards the pursuit. Did you observe any evidence from his vehicle in your preparation for trial?
- A. Other than photographs, no. You mean did I go actually physically look at the constable's vehicle? No.
- Q. What about the bullets that were recovered from his vehicle?
- A. No. I never did a physical evidence view in this case. The photographs were very, very detailed to include the hole through the windshield. It was clearly a bullet hole. To add a little color there were some -- the cars did get up to a pretty high rate of speed, eventually, but there were a lot of turns to get out of the neighborhood. The constable in a much older model Crown Victoria unequipped with Dash Cam, unequipped with even a light bar was coming head-on. The actual shooting of that vehicle is not on Dash Cam, if memory serves. They had rounded the bend. By the time the first pursuing officer rounds the bend in pursuit Constable Glenn's car is already swerved off, obviously -- well, not obviously, perhaps, but when the bullet struck his windshield he lost a bit of control over the vehicle, swerved off the road, was able to get the car to a stop, but that ended his participation in the case. So given that there was no vehicle -- given that's what the lead vehicle captured in the chase on Dash Cam was the immediate aftermath. There was no -- there was no cop, officer bullet bending a 45 degree angle on potentially striking the vehicle. It was clear that the only vehicle that could have done the shooting was the fleeing Dodge, whether that was Mr. Gamble shooting or the driver shooting, obviously, that could have been a question for trial. I do not really see how the trial would have gone well either way, though, given hand of one hand of all.

(PCR Tr. pp. 49-50).

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Based on the record before this Court and Plea Counsel's credible testimony, this Court finds that Plea Counsel's investigation was reasonable. See Taylor, 404 S.C. at 364, 745 S.E.2d at 104 (citing Wiggins v. Smith, 539 U.S. 510, 522–23 (2003)). Notably, Applicant testified that he never wanted to go to trial. This Court will not credit Applicant's present claim that he would have gone to trial absent Plea Counsel's alleged failure to investigate, as Applicant has failed to present evidence of any discoverable matters or defenses Plea Counsel would have discovered had he been more prepared. This Court further finds Applicant has offered little more than mere speculation, and speculation does not meet Applicant's burden. Therefore, the Court finds Applicant failed to adequately show that he would have opted to go to trial but for Plea Counsel's lack of investigation.

Moreover, to whatever extent Applicant was not entirely satisfied with Plea Counsel's investigation, he was presented an opportunity to express his dissatisfaction to the plea court, knowingly opted not to do so, and instead chose to proceed with his guilty plea.

Accordingly, this Court finds Plea Counsel's representation of Applicant was not deficient, and he performed a reasonable investigation. Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

Allegation 1e: Failure to Explain the Consequences Between a Negotiated and Open Plea.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to explain the difference between a negotiated and open plea. This Court finds this allegation is without merit.

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, Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). In evaluating an allegation on PER that

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 v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997); 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).

At Applicant's plea hearing, the following colloquy between Applicant and the plea court occurred:

Q: All right. And, Mr. Kendell Gamble, you are pleading guilty to burglary first degree which carries a minimum of 15 and a maximum of life; is that correct?

A: Yes, sir.

Q: And you are pleading guilty to attempted armed robbery which carries up to 20?

A: Yes, sir.

Q: You are pleading guilty to kidnapping which carries up to 30 years?

A: Yes, sir.

Q: And you are pleading guilty to attempted murder. You're pleading guilty to three counts of that. Each count carrying up to 30 years in jail; is that correct?

A: Yes, sir.

Q: And you are pleading guilty to possession of a weapon during the commission of a violent crime which carries up to five years; is that correct.

A: Yes, sir.

(Plea Tr. pp. 5-6)

At the evidentiary hearing on direct examination, Applicant testified he did know how much time he would get ahead of his guilty plea. Applicant testified Plea Counsel did not discuss the plea process with him. Applicant testified that Plea Counsel did explain that he would have to admit guilt before he would know the sentence the judge would render. Applicant

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testified he thought the maximum he would get would be thirty years.

On cross-examination, Applicant testified he thought thirty years was the max and did not know how he got fifty years.³

On direct examination, Plea Counsel credibly testified he explained to Applicant the difference between a negotiated and open plea when he presented the State's plea offer. Plea Counsel credibly testified that he explained that Applicant could receive more time than the offer the State presented. Plea Counsel credibly testified the State offered a last-minute viable plea offer conveyed to Applicant of thirty years at eighty-five percent. Applicant chose not to accept the negotiated plea and chose to go with an open plea instead. Plea Counsel noted in his testimony that Applicant testified that he asked Plea Counsel a question of whether he had to plead guilty before the judge would impose the sentence, and Plea Counsel answered Applicant in the affirmative.

This Court finds the combination of the record and Plea Counsel's credible testimony at the evidentiary hearing provides Applicant knew the nature of the charges against him, the terms of the plea agreement, and the consequences of pleading guilty pursuant to the requirements of Boykin. See Boykin supra. Moreover, the plea colloquy cured any alleged deficiency regarding Plea Counsel's alleged erroneous advice. The plea transcript reflects that Applicant entered his plea knowingly and voluntarily, engaged in an intelligent colloquy with the plea court, and gave appropriate responses to the plea court's questions. Applicant has presented no valid reason why he should be able to depart from the statements made during his guilty plea as provided *supra*. See Crawford v. United States, 519 F.2d 347, 350 (4th Cir. 1975), overruled on other grounds by

³ Contrary to this testimony, Applicant previously testified on direct examination that he did not want to go to trial and face a life sentence, so he discussed with his mother whether to take the plea deal, or to go to trial and ended up rejecting the plea deal and receiving a higher sentence. (PCR Tr. p. 14-15)

United States v. Whitley, 759 F.2d 327 (4th Cir. 1985) (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).

Accordingly, this Court finds Applicant has failed to establish any deficiency by Plea Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 1f: Failure to Ensure That the Plea Court Explained the Nature of Each Offense and Elements That Had to be Proven for Each Charged Offense.

Applicant alleges Plea Counsel was constitutionally ineffective for failing to ensure the plea court explained the nature of the charges and elements for each offense. This Court finds this allegation is without merit.

At the evidentiary hearing on direct examination, Applicant testified Plea Counsel did not explain the elements of attempted murder, nor what the State would be required to prove or any evidence that would support the charge.

On direct examination, Plea Counsel credibly testified that he explained the elements of the charges and what the State would have to prove to convict Applicant. Plea Counsel credibly testified that it is his standard practice to review the charges, the elements, the State's evidence, and potential collateral consequences.

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

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

This Court finds Plea Counsel's testimony that he explained to Applicant the elements of the charges and what the State had to prove to convict Applicant credible. Further, this Court finds Applicant has failed to show that, but for Plea Counsel's performance, he would have proceeded to trial. See Roddy supra.

Accordingly, this Court finds Plea Counsel's representation of Applicant was not deficient, nor did Applicant demonstrate any prejudice flowing from Plea Counsel's performance in this matter. Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

**Allegation 1g: Failure to Move for the First-Degree Burglary
Charge to be Reduced to Second-Degree Burglary.**

Applicant alleges Plea Counsel provided constitutionally ineffective assistance of counsel because he failed to move to reduce the first-degree burglary charge to second-degree burglary.

This Court finds this allegation is without merit.

At the evidentiary hearing on direct examination, Applicant testified that a paralegal helped them prepare the memorandum attached to the application for PCR and told him that the criteria did not meet first-degree burglary. Applicant testified that he did not have any prior burglary convictions, nor did the incident occur at nighttime. However, Applicant testified that he, in fact, entered a home with a weapon with the intent to commit a crime. As well, Applicant testified that he did not recall pleading guilty to first-degree burglary that carried a minimum of 15 years to a maximum of life.

On direct examination, Plea Counsel credibly testified that, in his professional opinion, Applicant's actions met the requirements of first-degree burglary. Plea Counsel testified that Applicant entered the home with guns and knives strapped to their thighs. Plea Counsel credibly testified that any negotiation to reduce the charge would be up to the Solicitor and they had no interest in reducing the charges.

This Court finds Plea Counsel's representation with regard to this allegation was not deficient. This Court finds the record is without any evidence that Applicant's charge of first-degree burglary was not appropriate and that second-degree burglary would have been a more appropriate charge. The record provides Applicant and his co-defendant entered a home with guns and knives to commit a crime. Thus, this satisfies the statutory requirements for a charge of first-degree burglary.

Accordingly, this Court finds Plea Counsel's representation of Applicant was not deficient, nor did Applicant demonstrate any prejudice flowing from Plea Counsel's performance in this matter. Therefore, Applicant's request for relief by way of this allegation is **DENIED** and **DISMISSED**.

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CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 29 day of November, 2023.

THE HONORABLE DEBRA R. MCCASLIN
Presiding Judge
Twelfth Judicial Circuit

Union, South Carolina

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STATE OF SOUTH CAROLINA
COUNTY OF MARION
IN THE COURT OF COMMON PLEAS

Kendell A. Gamble, #377230

Applicant.

v.

State of South Carolina,

Respondent.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the Order of Dismissal with Prejudice has been served upon the applicant by mailing one copy in the United States mail, postage prepaid, addressed to:

**Joshua A. Bailey, Esquire
Snow & Bailey Law Firm, P.A.
Post Office Box 555
Florence, SC 29503**

This 16th day of February, 2024.



Summer Etheredge
Legal Assistant for Respondent