

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Certiorari to Richland County

Honorable Maite Murphy, Circuit Court Judge

HORACE E. WATTS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT.

APPELLATE CASE NO. 2024-001122

APPENDIX

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1 presented from this witness stand together with any
2 exhibits and stipulations that have been made a part of
3 the record.

4 Additionally, I have the duty to charge you the law
5 applicable to this case. And as the presiding judge, I am
6 the sole judge of the law in this case. It is your duty
7 as jurors to accept as correct and apply the law as I now
8 state it to you and then deliberate and reach your
9 verdict.

10 Finally, I charge you in this regard that you should
11 not be concerned with what you think the law ought to be,
12 but rather what I charge you that the law is.

13 You are also the judges, the sole judges of the
14 credibility, that is the believability of the witnesses
15 who have testified and the evidence which has been
16 presented during this trial. In evaluating credibility,
17 you may take into consideration many things, such as the
18 demeanor or manner of testifying, whether the witness had
19 reason to be biased or prejudiced, or whether the
20 testimony of a witness was contradicted on the one hand or
21 supported and corroborated on the other hand. It becomes
22 your duty as jurors to analyze and to evaluate the
23 evidence and determine that evidence which convinces you
24 of its truth.

25 You should consider any expert opinion received as

1 evidence in this case, and like any other evidence, give
2 it the weight that you think it should -- that it
3 deserves. If you decide the opinion of an expert is not
4 based on sufficient education and experience, or if you
5 conclude that the reasons given in support of the opinion
6 are not sound or that the opinion is outweighed by other
7 evidence, you may disregard the opinion entirely. An
8 expert witness's testimony is to be given no greater
9 weight than that of other witnesses simply because the
10 witness is an expert. Further, you are not required to
11 accept an expert's opinion even though it is not
12 contradicted.

13 Now, the fact that the Defendant was arrested,
14 charged and indicted in this case is not evidence and
15 cannot be considered by you as evidence of guilt. Nor
16 does it create any presumption or inference of guilt. An
17 indictment is simply the formal written instrument which
18 contains the charges made against the Defendant. An
19 indictment is a formal document by which a case is brought
20 into court.

21 The Defendant has pled not guilty to the charges
22 alleged against him. The burden is on the State to prove
23 the Defendant guilty as to each charge. A person charged
24 with committing a criminal offense in South Carolina is
25 never required to prove himself innocent. I charge you

1 that it is an important rule of the law, that the
2 defendant in a criminal trial, no matter what the
3 seriousness of the charges may be will always be presumed
4 to be not guilty of the crimes for which the indictments
5 were issued unless guilt has been proven by evidence
6 satisfying you of that guilt beyond a reasonable doubt.

7 The presumption of innocence does not end when you
8 begin your deliberations, but it accompanies the Defendant
9 throughout the trial until you reach a verdict of guilt
10 based on evidence satisfying you of that guilt beyond a
11 reasonable doubt. The presumption of innocence is like a
12 robe of righteousness placed about the shoulders of the
13 Defendant which remains with the Defendant until it has
14 been stripped from the Defendant by evidence satisfying
15 you of the Defendant's guilt beyond a reasonable doubt.

16 Now, the presumption of innocence is not a mere legal
17 theory, it's not just a legal phrase. It is a substantial
18 right to which every defendant is entitled unless you, the
19 jury, are satisfied from the evidence of the Defendant's
20 guilt beyond a reasonable doubt.

21 The State must prove the Defendant guilty beyond a
22 reasonable doubt. So what is a reasonable doubt in the
23 law? A reasonable doubt is a doubt which makes an honest,
24 sincere, conscientious juror in search of the truth to
25 hesitate to act. Proof beyond a reasonable doubt must

1 therefore be proof of such a convincing character that a
2 reasonable person would not hesitate to rely and act upon
3 it in the most important of his or her own affairs. Proof
4 beyond a reasonable doubt can also be described as proof
5 that leaves you firmly convinced of the Defendant's guilt.

6 There are very few things in this world that we know
7 with absolute certainty. And in criminal cases, the law
8 does not require proof that overcomes every possible
9 doubt. If based on your consideration of the evidence,
10 you are firmly convinced that the Defendant is guilty,
11 then you must find him guilty. If on the other hand, you
12 think there's a real possibility that he is not guilty,
13 you must then give him the benefit of the doubt and find
14 him not guilty.

15 I instruct you and emphasize that the fact that the
16 Defendant did not testify is not a factor to be considered
17 by you in any way in your deliberations and your
18 consideration on the question of the guilt or the
19 innocence of the Defendant. It must not be considered by
20 you in anyway whatsoever. A defendant has the
21 Constitutional right to remain silent. And the assertion
22 of this right must not be considered by you in your
23 deliberations. I repeat, under your oath, you are to draw
24 no conclusions whatsoever from the fact that the Defendant
25 in this case did not testify. The fact that the Defendant

1 did not testify should not even be discussed in the jury
2 room. The burden of proof, as I have stated to you, is on
3 the State. The Defendant is not required to prove his
4 innocence. The burden of proof remains on the State to
5 prove guilt beyond a reasonable doubt.

6 Now, the indictments in this case allege four
7 different charges against the Defendant. The Defendant is
8 charged with murder, attempted murder, unlawful carrying
9 of a pistol and possession of a weapon during the
10 commission of a violent crime. Each charge is a separate
11 and distinct offense. You must decide each charge
12 separately on the evidence and the law applicable to it,
13 uninfluenced by your decision as to the other charges.
14 The Defendant may be convicted or acquitted on each
15 charge. You will be asked to write a separate verdict for
16 each crime charged.

17 The Defendant is charged with murder. The State must
18 prove beyond a reasonable doubt that the Defendant killed
19 Isaac Lewis with malice aforethought. Malice is hatred,
20 ill will or hostility toward another person. It is the
21 intentional doing of a wrongful act without just cause or
22 excuse and with an intent to inflict an injury or under
23 circumstances that the law will infer an evil intent.

24 Malice aforethought does not require that malice
25 exist for any particular time before the act is committed,

1 but malice must exist in the mind of the defendant just
2 before and at the time the act is committed. Therefore,
3 there must be a combination of a previous evil intent and
4 the act.

5 Malice aforethought may be expressed or inferred.
6 These terms, expressed and inferred, do not mean different
7 kinds of malice, but merely the manner in which malice may
8 be shown to exist. That is either by direct evidence or
9 by inference from the facts and circumstances which are
10 proved.

11 Expressed malice is shown when a person speaks words
12 which express hatred or ill will toward another or when a
13 person prepared beforehand to do the act which was later
14 accomplished. For example, lying in wait or any other
15 acts of preparation going to show that the deed was within
16 the Defendant's mind would be expressed malice. Malice
17 may be inferred from conduct showing a total disregard for
18 human life. Inferred malice may also arise when the deed
19 is done with a deadly weapon. A deadly weapon is any
20 instrument which is likely to cause death or great bodily
21 harm.

22 The Defendant is charged with attempted murder. In
23 order to prove this crime, the State must prove beyond a
24 reasonable doubt that the Defendant attempted to kill
25 Tyrone Johnson with malice aforethought, either expressed

1 or implied. A person who with the intent to kill attempts
2 to kill another person with malice aforethought, either
3 expressed or implied, commits the offense of attempted
4 murder.

5 The Defendant is charged with unlawful carrying of a
6 pistol. The State must prove beyond a reasonable doubt
7 that the Defendant carried a pistol about his person,
8 whether concealed or not. A weapon is about the
9 Defendant's person if it is readily accessible and
10 convenient for immediate use.

11 The Defendant is charged with possession of a weapon
12 during the commission of a violent crime. The State must
13 prove beyond a reasonable doubt that the Defendant was in
14 possession of a firearm or weapon during the commission of
15 a violent crime. In order to find the Defendant guilty of
16 possession of a weapon during the commission of a violent
17 crime, you must first find the Defendant guilty of either
18 committing a violent crime or attempting to commit a
19 violent crime. Murder and/or attempted murder are violent
20 crimes.

21 The burden of proving the identity of the person who
22 committed the crime is upon the State. For you to find
23 the Defendant guilty, the State must prove beyond a
24 reasonable doubt that this Defendant is the person who
25 committed the alleged offenses. You must determine,

1 therefore, not only whether the State has proven each and
2 every element of the offense charged beyond a reasonable
3 doubt -- or offenses charged beyond a reasonable doubt,
4 but also whether the State has proven beyond a reasonable
5 doubt that this Defendant is the person who committed it.

6 It is your function to determine whether the
7 witnesses' identification of the Defendant is reliable and
8 believable or whether it was based on mistake or for any
9 reason which is not worthy of belief. You must decide
10 whether it is sufficiently reliable evidence that this
11 Defendant is the person who committed the offenses
12 charged.

13 In evaluating this identification, you should
14 consider the observations and perceptions on which the
15 identification was based, the witness's ability to make
16 those observations and perceive events and the
17 circumstances under which the identification was made.
18 Although nothing may appear more convincing than a
19 witness's categorical identification of a perpetrator, you
20 must critically analyze such testimony. Such
21 identification, even if made in good faith may be
22 mistaken. A witness's level of confidence standing alone
23 may not be an indication of the reliability of the
24 identification.

25 To decide whether the identification testimony is

1 sufficiently reliable evidence to conclude that this
2 Defendant is the person who committed the offenses
3 charged, you should evaluate the testimony of the witness
4 in light of the factors for considering credibility that
5 I've already explained to you.

6 In addition, you could consider the following
7 factors, the witness's opportunity to view and degree of
8 attention. In evaluating the reliability of the
9 identification, you should assess the witness's
10 opportunity to view the person who committed the offense
11 at the time of the offense and the witness's degree of
12 attention to the perpetrator at the time of the offense.

13 In making this assessment, you should consider the
14 following: Stress, the amount of the best viewing
15 conditions. High levels of stress can reduce an
16 eyewitness's ability to recall and make an accurate
17 identification. Duration. The amount of time an
18 eyewitness has to observe an event may affect the
19 reliability of identification. Weapon focus. You should
20 consider whether the witness saw a weapon during the
21 incident and the duration of the crime. Presence of a
22 weapon can distract the witness from and take the
23 witness's attention away from the perpetrator's face. As
24 a result, the presence of a visible weapon may reduce the
25 reliability of a subsequent identification. Lighting.

1 Inadequate lighting can reduce the reliability of
2 identification. You should consider the lighting
3 condition present at the time of the alleged crime.

4 Confidence and accuracy. You heard testimony that
5 several eyewitnesses in this case made statements at the
6 time they identified the Defendant from a photo lineup
7 concerning their level of certainty that the person they
8 selected is, in fact, the person who committed the crime.

9 As I explained earlier, the witness's level of
10 confidence standing alone may not be an indication of
11 reliability of the identification. Although some research
12 has found that highly confident witnesses are more likely
13 to make accurate identification, eyewitness confidence is
14 generally an unreliable indication of accuracy. In
15 evaluating the reliability of a witness's identification,
16 you should consider the circumstances under which any out
17 of court identification was made and whether it was a
18 result of a suggestive procedure.

19 In that regard, you may consider everything that was
20 done or said by law enforcement to the witness during the
21 identification process. You should consider the following
22 factors: The lineup composition. A suspect should not
23 stand out from other members in the lineup. The reason is
24 simple. An array of look-alikes forces a witness to
25 examine their memory. In addition, a biased lineup may

1 inflate a witness's confidence in identification because
2 the selection process seems so easy to a witness. It is,
3 of course, for you to determine whether the composition of
4 the lineup had any affect on the reliability of the
5 identification.

6 In determining the reliability of identification, you
7 should also consider whether the identification procedure
8 was properly conducted. Instructions. You should
9 consider what was or what was not said to the witness
10 prior to viewing a photo array. Identification procedure
11 should began with instructions to the witness that the
12 perpetrator may or may not be in the array and that the
13 witness should not feel compelled to make an
14 identification. The failure to give this instruction can
15 increase the risk of misidentification. If you find that
16 the police did not give the instruction, you may take this
17 factor into account when evaluating the identification
18 evidence.

19 You're also free to consider any other factors based
20 on the evidence or lack of evidence in this case that you
21 consider relevant for your determination of whether the
22 identifications were reliable. Keep in mind that the
23 presence of any single factor or combination of factors,
24 however, is not an indication that a particular witness is
25 incorrect. Instead, you may consider the factors that I

1 discussed as you assess all of the circumstances of this
2 case, including all of the testimony and documentary
3 evidence in determining whether a particular
4 identification made by a witness is accurate and thus
5 worthy of your consideration as you decide whether the
6 State has met its burden of proof -- the burden of proof
7 identification beyond a reasonable doubt.

8 If you determine that the in-court or out-of-court
9 identification resulted from the witness's observations or
10 perceptions of the perpetrator during the commission of
11 the offense, you may consider that evidence and decide how
12 much weight to give it. If you instead decide that the
13 identifications are the product of an impression gained at
14 the in-court or out-of-court identification procedures,
15 the identifications should be afforded no weight.

16 The ultimate issue of trustworthiness of an
17 identification is for you to decide. If after considering
18 all of the evidence, you determine that the State has not
19 proven beyond a reasonable doubt that Horace Watts was the
20 person who committed these alleged offenses, then you must
21 find him not guilty.

22 If a crime is committed by two or more people who are
23 acting together in committing a crime, the act of one is
24 act of all. A person who joins with another to commit an
25 unlawful act is criminally responsible for everything done

1 by the other person which happens as a probable or natural
2 consequence of the acts done in carrying out the common
3 plan and purpose. For example, two people can be guilty
4 of killing another person when only one of the two had a
5 gun and there is only one bullet and only one of the two
6 fired the shot that caused the death. If two or more
7 people are acting together -- are together, acting
8 together, assisting each other in committing the offense
9 or offenses, the act of one is the act of all, or as it is
10 sometimes said, the hand of one is the hand of all.

11 A person who voluntarily ingest alcohol or drugs and
12 thereby becomes intoxicated, he is no less responsible for
13 his acts while in such condition. If one voluntarily
14 drinks intoxicating liquors, wine or beer or ingest drugs
15 and becomes intoxicated to whatever degree and while in
16 that condition commits an act which would be a crime if it
17 had been committed by a sober person, that fact of
18 intoxication would not relieve the intoxicated person from
19 responsibility.

20 Now, while the arguments of counsel is a beneficial
21 part of every trial, you should remember that the
22 statements made by counsel are not evidence. In
23 presenting argument, counsel will often refer to the
24 evidence. However, you should base your verdict on the
25 evidence as you remember it. Therefore, if there are any

1 conflicts between the recollection of counsel about the
2 evidence and your own recollection, you should rely on
3 your own understanding of the evidence.

4 Madame Forelady, members of the jury, I am required
5 to charge you the law as I've done through these
6 instructions in order to help guide you to a just and
7 lawful verdict. Whether some of these instructions will
8 apply will depend upon what you find to be the facts. The
9 fact that I've instructed you on various subjects on this
10 case must not be taken as indicating an opinion of the
11 Court as to what you should find to be the facts or what
12 your verdict should be.

13 In conclusion, you have been selected by both the
14 State and the Defendant to be fair and impartial jurors.
15 It is your duty then, in joint deliberations, to determine
16 whether the Defendant is guilty or not guilty of the
17 crimes charged giving the Defendant the benefit of every
18 reasonable doubt on each charge.

19 I've told you the standards you have to apply to the
20 charges of murder, attempted murder, unlawful carrying of
21 a pistol and possession of a weapon during the commission
22 of a violent crime. I will give you a copy of these
23 instructions in written form. During your deliberations,
24 you may refer to the instructions to guide your decision
25 making. You must consider the instructions as a whole and

1 not follow some and ignore others.

2 And, Madame Forelady, it will be your duty to preside
3 over the deliberations of the jury.

4 If during your deliberations, it is your desire to
5 communicate with the Court, such as these notes I've been
6 getting, please reduce your message or questions to
7 writing signed by your foreperson and the foreperson only
8 and pass the note to the bailiff, who will bring it to my
9 attention. I will then respond as promptly as possible
10 either in writing or by having you return to the
11 courtroom. I caution you, however, with regard to any
12 message or question you might send that you should never
13 state or specify your numerical division at that time.

14 You've heard the evidence now. You have heard the
15 law. Whatever your verdict as to each charge, guilty or
16 not guilty, ladies and gentlemen, you will indicate it on
17 the indictments, which I will send back to you. For
18 example, the indictment for murder, there's a spot on here
19 that says verdict (indicating), you will write not guilty
20 or guilty, sign and date it. Same thing for each charge.
21 Remember that although the foreperson is the only juror
22 who writes the verdict, it is not her's alone. The
23 verdict has to be a unanimous verdict.

24 And Madam Forelady, you're not authorized to write
25 the verdict until you all -- all of you have agreed to

1 what the verdict should be.

2 Now, ladies and gentlemen, I'm going to send you back
3 to your jury room. Before I do so, we have two alternates
4 back there. We picked 14, but we can only use 12. So if
5 for some reason something might happen to either one or
6 two of the first 12, then we plug in the alternates. So
7 if for any reason any of you, the first 12, cannot
8 participate in the deliberations, let me know before we
9 cut the alternates loose. Let me know by raising your
10 hands if you can't participate in deliberating.

11 (There was on response.)

12 THE COURT: All right. All 12 jurors seem to be
13 good to go, so therefore, when they go back, the two of
14 you on the back row will stay with us.

15 So I'm going to send you back to your jury room.

16 Of course, the bailiff will get your things from the
17 jury room if you have anything back there.

18 I'll send you back to the jury room, but do not begin
19 to discuss the case until you have received a copy of this
20 jury charge, the indictments and the exhibits. Once you
21 receive these things, that will be your signal to begin
22 your deliberations. Once you begin your deliberations,
23 you will deliberate until you have reached a verdict, at
24 which time, you will knock on the door, advise the bailiff
25 and we will bring you out to receive your verdict.

1 Now, I heard mention -- and I know that there is in
2 evidence a disk. There are no computers, disk players or
3 anything of that sort in the jury room. The parties have
4 not indicated to the Court any kind of procedure they've
5 agreed on to submit any thing of that sort in the jury
6 room. It's my view that jurors should deliberate with all
7 the evidence in the jury room and not be forced to come
8 into the courtroom to view or listen to evidence. So if
9 for some reason you decide you need access to something
10 that's not in evidence to assist you with viewing the
11 evidence, then let me know.

12 But we'll have you go to the jury room, all of you,
13 except for the alternates, and wait until the bailiff
14 tells you it's time to deliberate.

15 (WHEREUPON, the jury left the courtroom at 11:49
16 a.m.)

17 THE COURT: Any additions or exceptions to the
18 charge?

19 MR. POTTS: None from the State, Your Honor.

20 MR. RUFFIN: None from the Defense.

21 THE COURT: All right. Well, you all can check out
22 those exhibits.

23 MR. POTTS: And, Your Honor, we have a computer, I
24 think, in our office we can send back there.

25 THE COURT: Well, that's another story another time.

1 MR. POTTS: Okay.

2 THE COURT: That's part of -- I purposely injected
3 that into my charge because when you put stuff in
4 evidence, it's kind of incumbent upon you during the
5 course of the trial to make preparation as to how the jury
6 is going to view this during the course of it. So,
7 generally, the best way is to get a stipulation or
8 something or raise it as an issue prior to deliberations
9 so that deliberations won't be delayed by going to find
10 this, find that, look at a computer, see what else is on
11 it, et cetera, et cetera, et cetera. We'll see if they
12 want to listen to it and y'all can prepare that in the
13 event they request it.

14 MR. POTTS: Certainly, Your Honor.

15 THE COURT: All right.

16 So y'all look at these exhibits and make sure we've
17 got them straight.

18 We're glad you all were here ready, willing and able.
19 We thought we were going to lose two, but after I fussed
20 at them, they made it through.

21 (Laughter.)

22 THE COURT: So we didn't lose anyone. So you can't
23 participate in the deliberations. Do y'all have some
24 things in the jury room?

25 ALTERNATES: Yes.

1 THE COURT: All right. The bailiff will get your
2 things from the jury room. We had lunch to come at 12:00.

3 BAILIFF: It's here.

4 THE COURT: It's here. So you can get that and leave
5 with -- take it with you. And I want to thank you.

6 ALTERNATES: Thank you.

7 THE COURT: You are welcome to stay if you would like
8 or you can go if you want to go.

9 ALTERNATES: All right. Have a good day.

10 THE COURT: You can watch it on the news maybe.

11 (WHEREUPON, a short recess was held.)

12 THE COURT: I have a note. We would like to have
13 the audio disk, the call to the aunt from jail.

14 MR. POTTS: Your Honor, Mr. Ruffin and I went through
15 the computer together, found there was nothing on it and
16 then we submitted that back there with the speakers.

17 THE COURT: All right. They have it already?

18 MR. POTTS: They have it.

19 THE COURT: All right. Good.

20 MR. RUFFIN: That's right, Judge.

21 (WHEREUPON, Court's Exhibit Nos. 5, 6 and 7 were
22 marked for identification only.)

23 (WHEREUPON, a short recess was held.)

24 THE COURT: All right. I understand there's a
25 verdict. We can have the jury.

1 Bring them on.

2 BAILIFF: Okay.

3 (WHEREUPON, the jury returned to the courtroom at
4 2:15 p.m.)

5 BAILIFF: The jury's present, Your Honor.

6 THE COURT: All right. Madam Forelady, if you will
7 stand for me. Have you reached a verdict?

8 MADAM FORELADY: Yes, Your Honor, we have.

9 THE COURT: Is it unanimous?

10 MADAM FORELADY: Yes, it is.

11 THE COURT: If you will pass it up, please. You may
12 be seated.

13 If the Defendant will stand.

14 (The Defendant stands.)

15 THE COURT: If will you publish them in this order
16 from the back.

17 VERDICT

18 THE CLERK: Indictment number 2015-GS-40-0024, the
19 State of South Carolina v. Horace Elijah Watts, indictment
20 for possession of weapon during --

21 THE COURT: Just the opposite. From the back, that's
22 why I said the opposite.

23 THE CLERK: Oh, okay. Indictment number
24 2015-GS-40-0083, the State of South Carolina v. Horace
25 Elijah Watts, indictment for murder, we, the jury, find

1 the Defendant guilty. Indictment number 2015-GS-40-0084,
2 the State of South of South Carolina v. Horace Elijah
3 Watts, indictment for attempted murder, we, the jury, find
4 the Defendant guilty. Indictment number 2015-GS-40-0085,
5 the State of South Carolina v. Horace Elijah Watts,
6 indictment for unlawful carrying of a pistol, we, the
7 jury, find the Defendant guilty. Indictment number
8 2015-GS-40-0024, the State of South Carolina v. Horace
9 Elijah Watts, indictment for possession of a weapon during
10 the commission of a violent crime, we, the jury, find the
11 Defendant guilty.

12 Madam Forelady, are these your verdicts and the
13 verdicts of the entire jury?

14 MADAM FORELADY: Yes.

15 THE CLERK: Thank you.

16 THE COURT: All right. Any additional polling
17 requested by the Defense?

18 MR. RUFFIN: Yes, Your Honor.

19 THE COURT: If you will pole the jurors individually,
20 please.

21 THE CLERK: Yes, sir, Your Honor.

22 Ladies and gentlemen of the jury, I'm going to ask
23 you two questions relating to your verdict, please answer
24 yes or no to each question.

25 Juror No. 43, were these your verdicts?

1 JUROR: Yes.

2 THE CLERK: Are they still your verdict?

3 JUROR: Yes.

4 THE CLERK: Juror No. 258, were these your verdicts?

5 JUROR: Yes.

6 THE CLERK: Are they still your verdicts?

7 JUROR: Yes.

8 THE CLERK: Juror No. 255, were these your verdicts?

9 JUROR: Yes.

10 THE CLERK: Are they still your verdicts?

11 JUROR: Yes.

12 THE CLERK: Juror No. 108, were these your verdicts?

13 JUROR: Yes.

14 THE CLERK: Are they still your verdicts?

15 JUROR: Yes.

16 THE CLERK: Juror No. 197, were these your verdicts?

17 JUROR: Yes.

18 THE CLERK: Are they still your verdicts?

19 JUROR: Yes.

20 THE CLERK: Juror No. 288, were these your verdicts?

21 JUROR: Yes.

22 THE CLERK: Are they still your verdicts?

23 JUROR: Yes.

24 THE CLERK: Juror No. 273, were these your verdicts?

25 JUROR: Yes.

1 THE CLERK: Are they still your verdicts?

2 JUROR: Yes.

3 THE CLERK: Juror No. 15, were these your verdicts?

4 JUROR: Yes.

5 THE CLERK: Are they still your verdicts?

6 JUROR: Yes.

7 THE CLERK: Juror No. 4, were these your verdicts?

8 JUROR: Yes.

9 THE CLERK: Are they still your verdicts?

10 JUROR: Yes.

11 THE CLERK: Juror No. 265, were these your verdicts?

12 JUROR: Yes.

13 THE CLERK: Are they still your verdicts?

14 JUROR: Yes.

15 THE CLERK: Jury No. 172, were these your verdicts?

16 JUROR: Yes.

17 THE CLERK: Are they still your verdicts?

18 JUROR: Yes.

19 THE CLERK: Juror No. 136, were these your verdicts?

20 JUROR: Yes.

21 THE CLERK: Are they still your verdicts?

22 JUROR: Yes.

23 THE CLERK: The jury has been polled, Your Honor.

24 THE COURT: All right. The jury's verdict is

25 unanimous. Any posttrial motions?

1 MR. RUFFIN: Your Honor, we just renew all of our
2 previous motions and objections.

3 THE COURT: All right. Thank you.

4 The evidence in this case is clear that the Defendant
5 is guilty of all of these things that the jury found him
6 guilty of. They took a good bit of time reviewing the
7 evidence, doing their job. The evidence is overwhelming
8 that he's guilty of all charges and I deny all post-trial
9 motions.

10 Ladies and gentlemen, once you've found a person
11 guilty, then it becomes my responsibility to sentence that
12 person. You have no role in the sentencing, but most
13 jurors wish to stay and see the case all the way through,
14 so we'll move toward that at this time.

15 If the State would give me what other information I
16 need to know, including the Defendant's criminal history.

17 MR. POTTS: Certainly, Your Honor. The Defendant's
18 criminal history is a 2013 simple possession of marijuana,
19 two counts of assault and battery in the first-degree,
20 throwing bodily fluids on an employee by a prisoner, a
21 2013 transporting alcohol in a motor vehicle with the seal
22 broken, a 2013 miscellaneous traffic offense, Your Honor.
23 And that is the full extent of his prior record.

24 THE COURT: At the time of the offense, was he on
25 probation or parole?

1 MR. POTTS: I do not believe so, Your Honor.

2 THE COURT: Do you know?

3 Was he?

4 MR. RUFFIN: No.

5 THE COURT: All right. All right. For the Defense,
6 Mr. Ruffin.

7 MR. RUFFIN: Thank you, Your Honor. I would just
8 like to say that Mr. Watts was 22 when this happened.
9 He's 24 now. Obviously, I don't need to tell you what the
10 charges carry. I would ask that you consider that
11 sentence for murder will be day for day. He does have his
12 family that have been present with him as much as
13 possible. They've been in and out through the trial. I
14 know that some of them would like to speak. And I'd just
15 like Your Honor to hear from them.

16 THE COURT: Okay. Will be happy to hear from anyone
17 who has something to say. Just tell me your name first.

18 MS. HENDERSON: I'm Janelle Henderson.

19 THE COURT: Yes, ma'am, Ms. Henderson.

20 MS. HENDERSON: Well, first, I'm the mother of his
21 child. I was five months pregnant when this happened.
22 He's never held his child. He's never kissed his child.
23 He's not a monster like people try to make him seem. He's
24 a good guy. Maybe made bad decisions, but everybody do.
25 But we love him, I just want him to know that we love him

1 and I just want everyone to look at it as he's a human
2 being.

3 THE COURT: That's why we're in here going through
4 this process because he's a human being.

5 MS. HENDERSON: Right, I understand.

6 THE COURT: A jury trial and go through a process and
7 make a determination and all of that. So yes, ma'am, go
8 ahead.

9 MS. HENDERSON: But I just wanted to just ask for
10 mercy for him. Not only for me, but for his mother and
11 our child.

12 THE COURT: How can I do that? He's convicted of
13 murder. The minimum sentence is 30 years, the maximum
14 sentence is life on murder. As his lawyer says, it's day
15 for day. So what decision can I make that will have any
16 impact on you having a child for him and his ability to
17 help you in that regard?

18 MS. HENDERSON: Well, it's not asking for help. It's
19 just the fact of just he hasn't -- I'm not looking for
20 help, I'm looking for a father for my child. I don't want
21 her to be grown --

22 THE COURT: Like I say, his minimum would be -- the
23 minimum sentence is 30 years.

24 MS. HENDERSON: I understand that.

25 THE COURT: So at a minimum, she'll be 30 years old,

1 so.

2 MS. HENDERSON: Will 30 years be day for day?

3 THE COURT: That's the minimum sentence on the first
4 sentence. The maximum sentence is life on that charge.

5 What is it for attempted murder?

6 MR. POTTS: Zero to 30, Your Honor.

7 THE COURT: Zero to 30 on attempted murder, five
8 years for possession of a weapon during the commission of
9 a violent crime, which can be consecutive, and one year
10 for the pistol, so.

11 MS. HENDERSON: That's all I have to say.

12 THE COURT: I understand everything you said. Thank
13 you very much.

14 MR. RUFFIN: Your Honor, this is his mother.

15 THE COURT: All right.

16 MR. RUFFIN: I think she would like to speak.

17 THE COURT: All right. Yes, ma'am.

18 What's his mother's name?

19 MR. RUFFIN: Beverly Wilburn.

20 THE COURT: All right, Mr. Wilburn, yes, ma'am.

21 MS. WILBURN: My son is not a monster. My son is a
22 good person, not a murderer. He didn't look for trouble.
23 Yes, he's had his problems, but he had finally got his
24 life together. He was working, trying to do the right
25 thing.

1 THE COURT: Where was he working?

2 MS. WILBURN: He was working at Columbia Farms.

3 THE COURT: Okay. Chicken place.

4 MS. WILBURN: I love my son. My son is guilty of
5 being a loyal friend, loving his friends and loving his
6 family. I know about the court system. I had to go
7 through it myself. I'm not a perfect person, but I do
8 know one thing, that it cost me -- my mistake and my
9 decisions cost me a relationship with two of my daughters
10 that I can never get back. My case is over 40 years old
11 and it still haunts me today. I don't want that for me
12 child.

13 I don't have -- I'm not promised tomorrow. I'm not
14 even promised tonight, but my prayer has been throughout
15 this whole thing from -- since it started that I can live
16 long enough to see my child stand back on solid ground. I
17 know what the prison system do to you and I know how hard
18 it is when you get in there. It's easy to get in, but
19 it's so hard to get out. And I'm still paying for my
20 mistake even after all of these years.

21 THE COURT: How old are you now?

22 MS. WILBURN: I'm 57.

23 THE COURT: All right.

24 MS. WILBURN: My son has a two-year-old daughter that
25 every day I have to look in her face and see my son. And

1 I got to answer when she says where is my daddy. And the
2 only thing I can say is he's somewhere thinking about you.
3 She loves her father even though she's only been able to
4 see him through glass. I want him to have a relationship
5 with her. I don't want him to be 50 years old and his
6 daughter is 30 and he never once got to hold her.

7 I ask that -- you say the minimum is 30, I ask that
8 you would take some kind of pity on him and run them
9 concurrent, at least, give him a chance to have some kind
10 of life. I didn't get a chance. I didn't have nobody. I
11 did it all by myself because what I did, I did by myself.
12 I don't want that for him. I don't. I know what it does.
13 I know how it destroys people.

14 For two and a half years, I have felt nothing but
15 guilt because my kids never ever got into any trouble
16 until we moved in that area. And now I feel responsible
17 because if I hadn't moved them over there, maybe none of
18 this would have happened. I love him. And I don't want
19 to close my eyes knowing he's behind bars.

20 THE COURT: All right.

21 MS. WILBURN: I'm sorry. When I get upset, I can't
22 breathe good.

23 THE COURT: All right. Thank you.

24 All right. Mr. Watts, what would you like to say?

25 THE DEFENDANT: I just want to say, Your Honor, I

1 know this is terrible situation, but it's not me. And
2 these people that judge me today don't know me from this
3 can of paint, but they found me guilty of all charges.
4 And like you said, the minimum is 30 years and I'm just
5 asking the Lord -- I'm asking that you have forgiveness on
6 me and please just give me the minimum. I'm only 24 years
7 old. I haven't even seen life yet. And I don't want to
8 spend the rest of my life in prison behind bars. And I
9 just ask that today you have some type of mercy on me.

10 THE COURT: All right. Thank you, sir.

11 Anything else from the Defense?

12 MR. RUFFIN: No, Your Honor.

13 THE COURT: From the State?

14 MR. POTTS: Your Honor, we do have impact.

15 THE COURT: All right.

16 MS. LEWIS: Good afternoon.

17 THE COURT: Good afternoon.

18 MS. LEWIS: I'm Mr. Lewis's widow. And I sit here
19 and I've listened to all of what's gone on. And I've
20 heard them say, both sides, that this man walked up and
21 just shot into a crowd of people. He just shot into a
22 crowd of people. This young man did not just shoot up
23 into a crowd of people. This man walked up and shot into
24 my family. Everybody that was in that yard that night is
25 family, everybody. Their last names may not have all been

1 the same, but they were our family and still are to this
2 day.

3 And this young man, he may get 30 years, I don't
4 know, but he's still going to get a chance to walk around
5 and do what he wants to do. His family can still come and
6 look at him and talk to him. I have three sons, that was
7 the only daddy they ever knew. They were not his kids,
8 they were his stepkids. They don't have a daddy to talk
9 to now. They can't go and say nothing to him. They got a
10 problem, they stuck with me or his brother. They can't go
11 talk to him anymore. And that's not fair, but life's not
12 fair.

13 But I just want him to know what he took from us. He
14 took a husband. He took a father. He took a brother. He
15 took an uncle to too many to count. He took somebody that
16 was loved by a whole lot of people over something that
17 didn't -- shouldn't even matter at any time. You know, I
18 don't understand it. Some things, we never will. But I
19 want him to know what he took from us. And that's all I
20 have to say.

21 THE COURT: All right. Thank you.

22 MS. LEWIS: Thank you.

23 THE COURT: Yes, sir.

24 MR. POTTS: Your Honor, obviously, you know all the
25 facts in this case, Your Honor. You heard the victim

1 impact. So we're done, Your Honor. Thank you.

2 THE COURT: Tell me his record again.

3 MR. POTTS: Certainly, Your Honor, he has a 2013
4 simple possession of marijuana, two counts of assault and
5 battery, first degree, which he received 26 months.

6 THE COURT: What was that about?

7 MR. POTTS: Your Honor, he was originally charged
8 with assault and battery with intent to kill. I am
9 unfamiliar with the facts of that particular case, but he
10 received 26 months sentence.

11 THE COURT: What was that about?

12 MR. RUFFIN: I have no idea. I don't know the facts.

13 THE COURT: Well, let's find out what it's about.
14 Goodness gracious, you're in the Richland County
15 courthouse and he pled guilty in 2013 in Richland County
16 and nobody knows anything about what's it about.

17 MR. RUFFIN: Your Honor, my client could address you.
18 All right. Yes, sir.

19 THE DEFENDANT: Well, I was in the car in 2013 when
20 somebody fired shots at another car and they locked me up
21 because I wouldn't tell them who did it. Then, you know,
22 I sat down there 26 months and I went to court. And they
23 said they would drop my charge if I told who did it. I
24 ended up telling them who did it and they dropped it to a
25 first degree and let me go home.

1 THE COURT: All right.

2 What else you got over there?

3 MR. POTTS: He had throwing bodily fluids on a
4 corrections employee, Your Honor.

5 THE COURT: Throwing bodily fluids on who?

6 MR. POTTS: Corrections employee, Your Honor.

7 THE COURT: Well, what's that about?

8 MR. RUFFIN: Your Honor, I imagine it was spitting.

9 I don't know. I'll pull the indictment.

10 THE COURT: We don't want your imagination.

11 MR. POTTS: No, sir, my imagination is terrible.

12 THE DEFENDANT: I had -- when I was in Alvin S. Glenn
13 the last time, the police jumped me and when they jumped
14 me, I spit on one of them.

15 THE COURT: They jumped on you?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: In the jail?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Why did they do that?

20 THE DEFENDANT: Because I refused to go in my room.

21 THE COURT: How old were you when you first went to
22 jail?

23 THE DEFENDANT: Just about to turn 18.

24 THE COURT: And how many times have you been in jail
25 since then?

1 THE DEFENDANT: After I did 26 months, I came home
2 and I never been back to jail.

3 THE COURT: When did you come home?

4 THE DEFENDANT: In May of 2013, May 8th to be exact.

5 THE COURT: And this happened July 2014?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: So what was the sentence on throwing
8 bodily fluids?

9 MR. POTTS: It was a concurrent sentence, Your Honor.
10 It does have the actual sentence.

11 THE COURT: Have you ever been on probation?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: For what?

14 THE DEFENDANT: A misdemeanor weed charge. They gave
15 me six months probation.

16 THE COURT: And when was that?

17 THE DEFENDANT: It happened in July of 2013, but they
18 put me on probation until April 1 of 2014.

19 THE COURT: Say it again.

20 THE DEFENDANT: I said the charge happened in July of
21 2013, but I didn't go to court and receive probation until
22 April the 1st of 2014.

23 THE COURT: April 1st, 2014?

24 THE DEFENDANT: Yes, sir.

25 MR. RUFFIN: I'm sorry, Your Honor, I need to correct

1 myself. He was on probation at the time of this incident.
2 I apologize.

3 THE COURT: That's why I'm asking questions.

4 MR. RUFFIN: Right. His probation was -- he had a
5 probation violation hearing and his probation was revoked
6 and he went to the Department of Corrections for a couple
7 of months, I think, then he came back to Alvin S. Glenn.
8 I'm sorry, Judge.

9 THE COURT: So you came to court in April of 2014 and
10 received a six-month sentence?

11 THE DEFENDANT: No, sir, six months probation.

12 THE COURT: Well, you got a sentence of some kind.

13 THE DEFENDANT: Yeah, they gave me six months
14 suspended to six months probation.

15 THE COURT: All right. And at the time this occurred
16 in July, you were on probation for possession of
17 marijuana?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And the probation was revoked?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you went to the Department of
22 Corrections?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: When was that?

25 THE DEFENDANT: I went to Department of Corrections

1 August 28th, 2014.

2 THE COURT: And how long did you stay there?

3 THE DEFENDANT: Approximately 30, 40 days. Because
4 my probation, they only wanted me to finish my probation
5 time in the Department of Corrections. And my probation
6 was up October 1st, so they sent me back when my probation
7 was up.

8 THE COURT: Have I ever handled any of your cases?

9 THE DEFENDANT: No, sir.

10 THE COURT: Still waiting on that solicitor. Where
11 did she go?

12 MR. POTTS: The clerk's office, Your Honor.

13 MR. ARANT: Your Honor, I also ask that we get
14 probation here if they want to verify that as well.

15 THE COURT: Okay. They're next door.

16 Well, ladies and gentlemen, these are tough
17 situations. I know that you can see the importance of it
18 because, you know, there are a lot of things that just
19 happen. And many times, you can't figure out why they
20 happened.

21 And this is one especially true if someone is just
22 having an event at their house and all of a sudden,
23 someone comes there shooting in the crowd, I say why. Of
24 course, on the video -- not video, audio where he says his
25 brother stole a gun from the boy and the boy beat him up,

1 but he wouldn't have touched him if he had been with him
2 because they know him. So, apparently, he's saying they
3 know his reputation. And so it provides, at least, some
4 motive or some reason in his own mind for what he did, for
5 going back and shooting up the place, shooting in the
6 crowd.

7 Of course, there are many, many other crimes that
8 could have been charged, firing into a dwelling, some
9 bullet holes in the house, firing into a dwelling,
10 shooting into a car.

11 What else?

12 MR. POTTS: I think we certainly could have charged
13 attempted murder on [REDACTED], on Diamond Corbett.

14 THE COURT: One bullet went by the person. And
15 that's [REDACTED]?

16 MR. POTTS: Yes, Your Honor -- I'm sorry, Diamond
17 Corbett was the one who had the bullet go by her arm.
18 [REDACTED] was the child who hid behind the car as he fired
19 at the car.

20 THE COURT: Yeah. So it's really the worse type of
21 crime you could image. Someone just -- and they weren't
22 strangers, to shoot into a crowd of people who you know.
23 Those are the kinds of situation that we deal with down
24 here and in courthouses throughout the State of South
25 Carolina.

1 And then after the person is convicted, then we get
2 the families crying and wishing the best for the person
3 going off to prison and want you to have mercy on them,
4 pity on them. Want them to have the opportunity to be
5 with their family, hug their loved ones, hug the babies.
6 You wonder where were these people trying to -- I'm sure
7 they were there trying to inspire him to go in a different
8 direction before he opted to be drunk on that day and to
9 let his 17-year-old brother convince him to go and shoot
10 up into a crowd of people. You can't turn back the hands
11 of time, we can only deal with what we have.

12 There's Mr. Troy. He's the man that knows everything
13 down here in this courthouse.

14 MR. ARANT: He handed me his notes.

15 THE COURT: There's always someone who knows and
16 there he is right there, Troy Smith.

17 MR. SMITH: Yes, sir.

18 THE COURT: I'm trying to figure out this guy, the
19 Defendant here. The first lawyer said he wasn't on
20 probation or anything at the time. Then as the Defendant
21 started talking and explaining to me some of his
22 situations and defenses, the lawyer corrected himself and
23 says he was on probation at the time. So if I can find
24 out from the probation department what you know about this
25 guy.

1 MR. SMITH: May it please the Court, Your Honor. He
2 was sentenced to probation on April the 1st, 2014, for a
3 simple possession charge. He received a six-month
4 suspended one year probation. On April 25th, 2014, he got
5 a 60 day rev probation violation hearing where he was
6 revoked 60 days and continued on probation.

7 THE COURT: Wait a minute, he was sentenced on April
8 the --

9 MR. SMITH: April the 1st, 2014.

10 THE COURT: Then brought back April?

11 MR. SMITH: Twenty-fifth, 2015.

12 THE COURT: That's sounds like a historic return.

13 MR. SMITH: He came into the office, I guess he was
14 having a bad day and got into it with a couple of the
15 agents and got arrested and they brought him back to court
16 for a probation hearing violation.

17 THE COURT: He got 60 days on April --

18 MR. SMITH: April 25th.

19 THE COURT: All right. So that will take us -- we're
20 trying to get to July when this happened.

21 MR. SMITH: He got released on the revocation,
22 reported once, then picked up the new charge in July.

23 THE COURT: When were you released?

24 THE DEFENDANT: June the 4th.

25 THE COURT: June 4th. All right. About a month

1 before or so and you reported once?

2 MR. SMITH: He reported once he was released and --

3 THE COURT: One time?

4 MR. SMITH: One time, and he got the new charge.

5 Then he got revoked the remaining four months in August of
6 2014.

7 THE COURT: All right. Thank you.

8 MS. NICKLES: Your Honor, if I may approach?

9 THE COURT: Just tell me about it.

10 MS. NICKLES: Your Honor, there were two indictments
11 from -- originally from 2011 that he plead to in 2014.
12 Those were --

13 THE COURT: 2011?

14 MS. NICKLES: Yes, sir.

15 THE COURT: How old were you then?

16 THE DEFENDANT: I was about to be 19. She talking
17 about the two simple assaults.

18 THE COURT: She hasn't started explaining it yet. I
19 don't know what she's talking about.

20 Go ahead, tell me about it.

21 MS. NICKLES: Yes, Your Honor, they were originally
22 charged and indicted as attempted murder. He pled to two
23 counts of assault and battery in the first degree.

24 THE COURT: What was he accused of doing? Or what
25 did he do?

1 MS. NICKLES: To the warrant, Your Honor?

2 THE COURT: Yes.

3 MS. NICKLES: This incident occurred on January 6th,
4 2011.

5 THE COURT: Where?

6 MS. NICKLES: [REDACTED] Overhill Road in Richland County.

7 THE COURT: Where is that, Mr. Watts?

8 THE DEFENDANT: I think that's the -- that's over
9 there by the mall area.

10 THE COURT: Which mall?

11 THE DEFENDANT: Decker Boulevard.

12 THE COURT: Go ahead.

13 MS. NICKLES: Your Honor, from the warrant, it
14 appears that he used a firearm to shoot at the victim, a
15 Terrance Adams, and fired several rounds towards the
16 victim as the victim sat inside a vehicle that was parked
17 at the incident location. He -- that victim identified
18 the Defendant through a photo lineup. And there were
19 multiple witnesses saying that he was the person
20 responsible for the shooting. The victim and the
21 Defendant both attended middle school together. And the
22 incident occurred as a result of a previous altercation.
23 Your Honor, the victim in that case provided a written
24 statement. And that's -- those are the extent of the
25 facts that are contained in the warrant.

1 THE COURT: He shot at someone in a car?

2 MS. NICKLES: Yes, Your Honor.

3 THE COURT: Did he hit them or didn't hit them?

4 MS. NICKLES: Your Honor, from the warrant, it's not
5 clear whether or not he hit them, although it does say
6 thus placing the victim's life in danger, so I would
7 assume he did not hit him in this case.

8 THE COURT: And who prosecuted that case?

9 MS. NICKLES: Joanna McDuffie. Your Honor, there was
10 a second victim.

11 THE COURT: Okay. What was that about?

12 MS. NICKLES: It was the same incident, Your Honor,
13 however, it appears that an Alvin Owens was also with
14 Terrance Adams when the Defendant fired shots at their
15 car.

16 THE COURT: And the sentence was what?

17 MS. NICKLES: Your Honor, the sentence, I have the
18 sentencing sheet --

19 MR. ARANT: Twenty-six months, Your Honor.

20 MS. NICKLES: Yes, Your Honor, 26 months. And that
21 was in front of Judge Hood in 2014.

22 THE COURT: All right. Sounds like you've had a lot
23 of activity down here. How old are you now?

24 THE DEFENDANT: Twenty-four.

25 THE COURT: Twenty-four. Sounds like you've had a

1 lot of activity down in this building.

2 THE DEFENDANT: Sir, they just reading the warrants
3 to you, but the victims came to court and said it wasn't
4 me. I was just at the scene at the time of the crime.
5 And that's why they didn't prosecute.

6 THE COURT: You're not guilty?

7 THE DEFENDANT: No. I pleaded because I had a lawyer
8 from Greenville. And like I said, I was young, I didn't
9 know. I was just ready to go home. I sat in the county
10 jail. I never been locked up before. So he told me if I
11 take the plea that they would let me go home today, so I
12 took it. But the victims clearly came on my behalf to
13 court and told the judge --

14 THE COURT: It says you went to middle school with
15 him.

16 THE DEFENDANT: Yeah, he came and told the judge that
17 I didn't -- I wasn't the person with the gun, I was just
18 there at the time of the crime.

19 THE COURT: Hand of one, hand of all.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You got that all over again.

22 Well, all right. What else, Mr. Ruffin?

23 MR. RUFFIN: Nothing else from the Defense.

24 THE COURT: Wise words from the State?

25 MR. POTTS: No, Your Honor.

1 THE COURT: What was the age of Mr. Lewis?

2 MS. NICKLES: He was 47, Your Honor.

3 THE COURT: Forty-seven. And Mr. Johnson, what
4 happened to him? He didn't want to come back today?

5 MR. POTTS: He wanted to stay home, Your Honor. He
6 wanted us to let him know what happened. His mother is
7 ill.

8 THE COURT: His mother is ill?

9 MR. POTTS: His mother is ill.

10 THE COURT: And the lady there, who are you with?

11 MS. LEWIS: I've Beverly Lewis. I'm his sister.

12 THE COURT: You're the sister to Mr. -- to Uncle
13 Isaac?

14 MS. LEWIS: Yes, sir, that's my baby brother.

15 THE COURT: All right. Thank you.

16 SENTENCE OF THE COURT

17 THE COURT: All right. Mr. Watts, for murder, the
18 sentence is 30 years; for attempted murder, the sentence
19 is 10 years, consecutive; for unlawful carrying of a
20 pistol, the sentence is one year; for possession of a
21 weapon during the commission of a violent crime, the
22 sentence is five years. You get credit for time served.

23 MR. RUFFIN: All those consecutive, Judge?

24 THE COURT: The sentences are concurrent by law,
25 unless specified as being consecutive. The sentence is 30

1 years for killing Mr. Lewis, 10 years consecutive for
2 shooting Mr. Johnson, one year for having a pistol, five
3 years for possession during the commission of a violent
4 crime. He gets credit for time served.

5 MR. RUFFIN: Thank you, Judge.

6 MR. POTTS: Thank you.

7 THE COURT: Thank you.

8 Now, ladies and gentlemen, I want to thank you for
9 your service. I know it's a sacrifice. It is important
10 for citizens to participate in the judicial process and to
11 have people who will take the time that you all took to
12 review the evidence and to be convinced as to the proper
13 verdict they're signing off on. And you certainly came to
14 the proper verdict in this case based on what was pretty
15 clear -- you know, some of the audio was redacted based on
16 just discussions with the lawyers. You know, obviously, a
17 lot of family discord going on between his mother and him
18 and his aunt. And those other girls got charged with
19 lying to the police trying to conceal where he was and
20 helping to conceal him until he was arrested. It's just a
21 tragic situation.

22 Thank you for your work, particularly, those of you
23 who were here, for the tremendous sacrifice, including
24 Juror No. 4, whose job tried to get him to go to Virginia,
25 but he opted to stay and perform his civic duty. We

1 appreciate it. And the juror whose mother was in serious
2 condition -- I mean, in the hospital in New Jersey, but
3 she stayed focused on the case and stayed with us this
4 week, and all the rest of you. Thank you very much. We
5 certainly appreciate it.

6 And with that, that's it for this case.

7 MR. KRZYSTON: Thank you, Judge.

8 MR. RUFFIN: Thank you, Judge.

9 MR. POTTS: Thank you, Your Honor.

10 MR. ARRANT: Thank you, Your Honor.

11 *****END OF PROCEEDINGS*****
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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN)

I, PENNY M. JOHNSON, Official Court Reporter for the
Second Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate, and
complete Transcript of Record of the proceedings had and the
evidence introduced in the trial of the captioned case,
relative to appeal, in Family Court for COUNTY County, South
Carolina, on the DAY ^ day ^ days of MONTH, ^ 2002 ^ 2003.

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

DATE, 2017

Penny M. Johnson

Penny M. Johnson Court Reporter

My Commission Expires: 06/16/2018

STATE OF SOUTH CAROLINA

County of

Richland

Horace Watts #35524

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legally 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 thereon 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 SCDC (South Carolina Department of Corrections) Broad River Institution,
2. Name and location of Court which imposed sentence RICHLAND County General Session (1701 Main Street Columbia, SC 29203)
3. Name(s) of co-defendant(s) (if any) Malik Davis
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2014A4021601628 (unlawful carrying of firearm)
 - (b) 2014A4021601621 (murder)

- (c) 2014A4021601622 (Att-Murder) 2014A4021601623
Poss. of firearm during crime
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) February 9th 2017
- (b) 30, 10, 5, 1
- (c) Consecutive (all)
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. The South Carolina In the Courts of Appeal
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. December 18, 2019
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) ineffective assistance of Counsel
- (b) Prosecutorial Misconduct
- (c) actual Innocence (new discovery evidence)

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

- (a) My lawyer did not help/fight to his best abilities. Also did not do the things me and my family asked him to do.
- (b) Prosecutors presented false evidence and also called witnesses who was not on the scene or did not have personal knowledge.
- (c) If murder victim stated he knew who shot him and that he only remember one shooter.

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

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

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

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

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

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

(a) new discovered evidence

(b) _____

(c) _____

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

(a) your arraignment and plea? _____

(b) your trial, if any? yes

(c) your sentencing? yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? no

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

yes

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. Adam Ruffin

1701 Main St. #103 Columbia, SC 29203

ii. _____

iii. _____

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

i. Bond Hearing

ii. Trial

iii. _____

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

I'm looking forward to a ~~reversal~~ and
a new trial. I deserve a fair chance at
Justice.

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

NO

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Horace Watts, 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.

Horace Watts

SWORN to and subscribed before me this 1st
 day of December, 2006.

[Signature] (L.S.)
 Notary Public

My Commission Expires: 7-27-2006

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

I, Horace Watts, 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.

Horace Watts

Applicant

SWORN or affirmed to and subscribed before me this

1st day of December, 2020.

[Signature]
Notary Public

My Commission Expires: 7-27-2026

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Horace Watts, #355244)

Case No.: 2021-CP-40-0225

Applicant)

v.)

RETURN & MOTION TO DISMISS

State of South Carolina,)

Respondent)

FILED
2021 MAY -3 AM 9:36
CLERK OF COURT
G.O.P. 2

In response to Applicant, Horace Watts's action for post-conviction relief (PCR) commenced January 19, 2021, Respondent, the State of South Carolina, makes the following return and moves to dismiss the application as untimely and for failure to present a *prima facie* showing of newly discovered evidence pursuant to S.C. Code Ann. § 17-27-20, § 17-27-45, and § 17-27-90. Respondent respectfully offers the following in support of its return and motion to dismiss:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (SCDC). Applicant was indicted during the January 2015 term of the Richland County Grand Jury for murder (2015-GS-40-0083), attempted murder (2015-GS-40-0084), unlawful carrying of a pistol (2015-GS-40-0085), and possession of a weapon during the commission of a violent crime (2015-GS-40-0024). The indictments arose out of a shooting incident at a large birthday party on July 12, 2014, where Applicant and another defendant fatally shot one individual, and wounded another. Applicant was represented by Adam Ruffin, Jonathan Comish, and Stephen Krzyston, Esquires. Assistant Solicitors Carter Potts, Jessica Nickles, and Brent Arant prosecuted the case.

Applicant proceeded to trial February 6-9, 2017, before the Honorable Clifton Newman. The jury found Applicant guilty on all four charges. Judge Newman sentenced Applicant to thirty years imprisonment for murder, ten years for attempted murder, one year for unlawful carrying of a pistol, and five years for possession of a weapon during the commission of a violent crime, to run concurrently.

Applicant filed a timely notice of appeal. Applicant was represented on appeal by Chief Appellate Defender Robert M. Dudek of the South Carolina Office of Appellate Defense, who filed an *Anders*¹ brief on his behalf. Following briefing, the appeal was denied and dismissed. *State v. Watts*, No. 2019-UP-385 (S.C. Ct. App. December 18, 2019). The Remittitur was issued on January 3, 2020.

II. CURRENT APPLICATION

In his first and current application for PCR, Applicant alleges he is being held in custody unlawfully on the following grounds:

1. “enaffective assistance of counsel”:
 - a. “My lawyer did not help fight to his best abilities. Also did not do the things me and my family asked him to do.”
2. “Prosecutorial misconduct”
 - a. “Prosacutors presented false evidence and also called witnesses who was not on the scene or a have personal knowledge.”
3. “actual Innocence (new discoverly evidence)”
 - a. “Att murder victim stated he know who shot him and that he only remember one shooter”

Attached to this return and incorporated herein are the Richland County Clerk of Court records, Applicant’s SCDC records, the trial transcript, Applicants appellate records, and the

¹ See *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396 (1967).

records of this PCR action. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. MOTION TO DISMISS

Respondent moves for summary dismissal pursuant to section 17-27-70 of the South Carolina Code of Laws on the basis that there is no genuine issue of material fact, which would necessitate an evidentiary hearing. Because there is no question of law or fact to necessitate a hearing, Respondent requests the issue a conditional order of dismissal indicating the Court's intent to dismiss the application and its reasons for so doing.² See S.C. Code Ann. § 17-27-70(b) (establishing procedure for summary disposition of PCR applications); *Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (summary disposition appropriate when there is no need to develop facts and the applicant is not entitled to relief); *Re: Appointment of Counsel in Post-Conviction Relief Cases before the Circuit Court*, S.C. Sup. Ct. Order filed October 6, 2008; Rule 71.1(d), SCRCF (providing for appointment of counsel only where there is a question of law or fact which necessitates a hearing). Respondent moves for summary dismissal for the following reasons:

i. Statute of Limitations

Respondent submits this application should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160. Specifically, the act requires as follows:

(A) An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

² A proposed Conditional Order of Dismissal consistent with this return and motion to dismiss is concurrently submitted for the Court's consideration.

(B) When a court whose decisions are binding upon the Supreme Court of this State or the Supreme Court of this State holds that the Constitution of the United States or the Constitution of South Carolina, or both, impose upon state criminal proceedings a substantive standard not previously recognized or a right not in existence at the time of the state court trial, and if the standard or right is intended to be applied retroactively, an application under this chapter may be filed not later than one year after the date on which the standard or right was determined to exist.

(C) If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

S.C. Code Ann. § 17-27-45.

The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. *Peloquin v. State*, 321 S.C. 468, 469 S.E.2d 606 (1996). A motion for summary judgment may properly be used to raise the defense of statute of limitations. *McDonnell v. Consolidated School District of Aiken*, 315 S.C. 487, 445 S.E.2d 638 (1994). Additionally, S.C. Code Ann. § 17-27-70(c) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.”

In the present case, Applicant is alleging he is entitled to post-conviction relief based on allegations that his counsel was ineffective among other allegations. However, Applicant failed to comply with the filing requirements under S.C. Code Ann. § 17-27-45. Applicant was convicted and sentenced on February 9, 2017, and he pursued a direct appeal. The Remittitur was issued January 3, 2020. Pursuant to section 17-27-4(A), Applicant needed to file his application for post-conviction relief on or before January 4, 2021. Applicant did not file this application until January

19, 2021, beyond the statute of limitations. Moreover, sections 17-27-45(B) and 17-27-45(C) are inapplicable to Applicant's current PCR application as he alleges no new rights to be applied retroactively, and cannot establish a *prima facie* showing of newly discovered evidence. Accordingly, this application is untimely pursuant to section 17-27-45 and should be dismissed for failure to file within the time mandated by Uniform Post-Conviction Procedure Act.

ii. Newly discovered evidence

Applicant's assertion he is being held in custody unlawfully as a result of newly-discovered evidence, such that he should be entitled to an evidentiary hearing is without merit. The Uniform Post-Conviction Procedure Act states a person may institute a PCR action if "there exists evidence or material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice." S.C. Code Ann. § 17-27-20(A)(4). If the applicant contends there is evidence of a material fact not previously presented, under the discovery rule, the PCR application must be filed within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. S.C. Code Ann. §17-27-45(C). An applicant requesting a new trial based on after-discovered evidence following a conviction must show that the evidence:

- (1) Is such as would probably change the result if a new trial was had;
- (2) Has been discovered since the trial;
- (3) Could not by the exercise of due diligence have been discovered before the trial;
- (4) Is material to the issue of guilt or innocence; and,
- (5) Is not merely cumulative or impeaching.

Hayden v. State, 278 S.C. 610, 611, 299 S.E.2d 854, 855 (1983) (citing *State v. Caskey*, 273 S.C. 325, 256 S.E.2d 737 (1979)).

In his current application, Applicant alleges the newly discovered evidence consists of statements from the attempted murder victim that the victim knows who shot him, and alleges the victim states he only remembers one shooter. Applicant has proffered no documentation to support this claim, nor has he detailed how this allegation satisfies the multiple requirements of *Hayden*. Before the Court will hold an evidentiary hearing, Applicant must make a *prima facie* showing he is entitled to relief. *Welch v. MacDougall*, 246 S.C. 258, 143 S.E.2d 455 (1965); *Blandshaw v. State*, 245 S.C. 385, 140 S.E.2d 784 (1965). Applicant has failed to make such showing he is entitled to relief based on the information set forth above; therefore, he is not entitled to an evidentiary hearing in the matter. Accordingly, Respondent submits this matter should be summarily dismissed with prejudice.

IV. ALL OTHER CLAIMS

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

V. CONCLUSION

WHEREFORE, Respondent moves to summarily dismiss the application because it is untimely and fails to make a *prima facie* showing of newly discovered evidence.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

YASMEEN E. KLEIN
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

April 27 2021

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

COURT OF COMMON PLEAS
 FIFTH JUDICIAL CIRCUIT
 Case No.: 2021-CP-40-0225

Horace Watts,)

)
 Applicant,)

)
 v.)

)
 State of South Carolina.)
 _____)

**AMENDED POST-CONVICTION
 RELIEF APPLICATION**

JEFFREY W. MCBRIDE
 S.P., G.S., & F.C.

2024 JAN -4 AM 10:53

RICHLAND COUNTY
 FILED

The Applicant, by and through his undersigned attorney, hereby amends his PCR application filed on January 19, 2021 to add the following allegations:

1. Ineffective assistance of counsel for

(a) Applicant's trial counsel incorrectly advised Applicant that it was too late for

Applicant to seek to have trial counsel relieved as his attorney and refused to bring

Applicant's request in front of the Court for a hearing.

(b) Applicant wished to assert a defense of self-defense to his charges. Applicant's trial

counsel refused to allow Applicant to assert this defense.

(c) Applicant's trial counsel insisted on asserting the defense that Applicant was not

present at the scene of the crime, despite their being numerous witnesses to the

contrary and despite Applicant's admissions to trial counsel that he was present and

was defending himself.

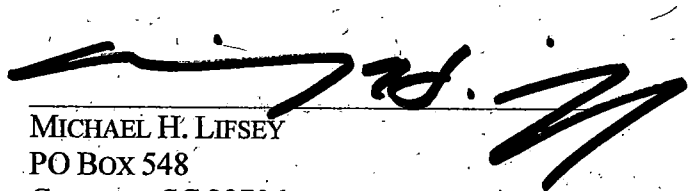
(d) Trial counsel's refusal to proceed with a self-defense case made it impossible for

Applicant to testify in his own defense since his testimony would be contrary to the

theory of trial counsel.

- (e) Because of trial counsel's refusal to proceed with a self-defense case, no pre-trial immunity hearing was held pursuant to the Protection of Persons and Property Act.
- (f) Trial counsel was ineffective in his cross-examination of eyewitnesses against Applicant.
- (g) Trial counsel was ineffective in his cross-examination of expert witness Chad Smith by opening the door to that witness testifying in a manner previously ruled inadmissible by the Court. See pages 666 to 668, 693, and 695 to 696 of the trial transcript.
2. The ineffective assistance of counsel as described above, both individually and in cumulative effect, resulted in prejudice to the Applicant and absent such ineffective assistance of counsel, the results of his trial would have been different.
3. Furthermore, the Applicant requests that he be permitted to amend his PCR application to conform to the evidence presented at the PCR hearing should any new or unaddressed issues arise during the course of the hearing that have not been specifically addressed in the Application. See Simpson v. Moore, 367 S.C. 587, 627 S.E.2d 701 (2006).

Respectfully submitted,



MICHAEL H. LIFSEY
PO Box 548
CHESTER, SC 29706
803-899-5040
MICHAEL.LIFSEY@GMAIL.COM
SC BAR No. 015154
ATTORNEY FOR APPLICANT

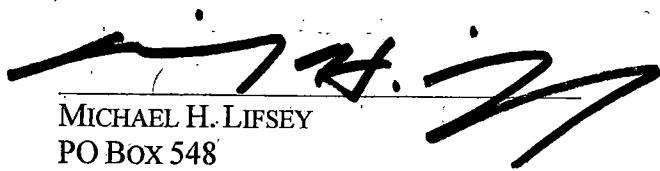
JANUARY 2, 2024

CERTIFICATE OF SERVICE

I certify that I have served this document via first class mail on:

D. Russell Barlow, II
Assistant Attorney General
Office of the Attorney General
PO Box 11549
Columbia, SC 29211

This 2nd Day of January, 2024.



MICHAEL H. LIFSEY
PO Box 548
CHESTER, SC 29706
803-899-5040
MICHAEL.LIFSEY@GMAIL.COM
SC BAR No. 015154
ATTORNEY FOR APPLICANT

January 2, 2024

STATE OF SOUTH CAROLINA	)	In The Court of Common Pleas
	)	Fifth Judicial Circuit
COUNTY OF RICHLAND	)	2021-CP-40-00225

HORACE E. WATTS,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	Transcript of Record
THE STATE ,	)	
	)	
Defendant.	)	
	)	
_____	)	

Columbia, South Carolina
January 11, 2024

B E F O R E:

The Honorable Maite Murphy

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

Mr. Michael F. Lifsey, Esquire
Attorney for the Plaintiff

Ms. Russell Barlow, III, Esquire
Attorney for the Defendant

Lisa Carter
Circuit Court Reporter

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I N D E X

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1 P-R-O-C-E-E-D-I-N-G-S

2 THE COURT: Are you ready to proceed?

3 MR. BARLOW: Yes, Your Honor. Thank you. May it
4 please, the Court?

5 THE COURT: Yes, sir.

6 MR. BARLOW: This is the case, excuse me, Russell
7 Barlow on behalf of the South Carolina. This is the
8 post-conviction relief matter of Horace E. Watts
9 versus the State. Case number 2021-CP-40-225 out of
10 Richland County. Applicant was indicted during the
11 Januarym 2015 terms of the Richland County grand jury
12 for murder, 2015-GS-40-0083; attempted murder 2015-
13 GS-40-0084; unlawful carrying of a pistol, 2015-GS-
14 40-0085; and, possession of a weapon during the
15 commission of violent crime, 2015-GS-40-00 24. The
16 indictments arose out of a shooting incident at a
17 large birthday party on July 12, 2014 where applicant
18 and another defendant fatally shot one individual and
19 wounded another. Applicant was represented by Adam
20 Rufffin, Jonathan Cornish and Stephen Krzyston. And
21 assistant solicitors Carter Potts, Jessica Nickles,
22 and Brent Arant prosecuted the case. Applicant
23 proceeded to trial February 6th through the 9th, 2017
24 before the Honorable Clifton Newman. The jury found
25 applicant guilty on all four charges. Judge Newman

1 sentenced applicant to 30 years in prison for murder;
2 10 years for attempted murder; one year for unlawful
3 carrying of a pistol; and, 5 years for possession of
4 a weapon during the commission of a violent crime to
5 run currently. Applicant filed a timely notice of
6 appeal. He was represented on appeal by Chief
7 Appellate Defender, Robert Dudek, of the South
8 Carolina Office of Appellate Defense. We filed in
9 Anders brief on his behalf. While in briefing the
10 appeal was denied and dismissed. State v. Watts
11 unpublished opinion, number 2019-UP-385 and that was
12 South Carolina Court of Appeals filed on December 18,
13 2018. The remittitur was returned to the lower
14 court on January 3, 2020. On January 19, 2021
15 applicant filed his current application for post-
16 conviction relief alleging ineffective assistance of
17 counsel, prosecutorial misconduct, and actual
18 innocence. On January 4, 2024 applicant through
19 counsel filed an amended application asserting
20 various allegations of ineffective assistance of
21 counsel. Applicant is requesting relief in the form
22 of a new trial. Before this Court are the Richland
23 County Clerk of Court records, applicants records
24 from the South Carolina Department of Corrections,
25 applicants appellate records, applicants amended

1 application, the entire trial transcripts, and the
2 records of the current PCR action. At this time we
3 would ask counsel to indicate which allegations he
4 intends to move forward on.

5 THE COURT: Good morning, counsel.

6 MR. LIFSEY: Good morning. May it please, the
7 Court, Your Honor?

8 THE COURT: Yes, sir.

9 MR. LIFSEY: My name is Michael Lifsey. I
10 represent the applicant in this manner. I was
11 appointed to represent him and represented him for a
12 good while here. We're ready to proceed today. It's
13 our intention to go forward solely on the ground
14 stated in the amended post-conviction relief
15 application that was filed a week or two ago.

16 THE COURT: All right. And sir, have you
17 explained to your client that should this matter be
18 granted that the case would start over and you could
19 potentially be looking at life imprisonment sentence?

20 MR. LIFSEY: I have, Your Honor.

21 THE COURT: All right. So you're ready to
22 proceed?

23 MR. LIFSEY: I am.

24 THE COURT: All right. You may call your first
25 witness.

1 MR. LIFSEY: I call Horace Watts to the stand,
2 please.

3 THE COURT: Do you swear or affirm the testimony
4 you have to give is the truth, the whole truth, and
5 nothing but the truth so help you God?

6 MS. WATTS: Yes, ma'am.

7 THE COURT: All right. Sir, please have a seat.
8 Your witness?

9 MR. LIFSEY: Thank you, Your Honor.

10 HORACE WATTS, first being
11 duly sworn, testified as follows:

12 **Direct Examination by Mr. Lifsey:**

13 Q. Mr. Watts, where are you currently being housed
14 right now?

15 A. Lee Correctional Facility.

16 Q. Okay. And you heard -- did you hear the attorney
17 general

18 layout the reason why you're incarcerated?

19 A. Yes, sir.

20 Q. Is that correct, you were convicted of those
21 offenses he outlined?

22 A. Yes, sir.

23 Q. All right. So did you have a trial or did you
24 plead guilty?

25 A. I had a trial.

H. Watts- Direct Examination by Mr. Lifsey

7

1 Q. And who was your lawyer at the trial or lawyers
2 at the trial?

3 A. The same one he stated earlier, Mr. Ruffin, Mr.
4 Cornish, and
5 someone else.

6 Q. And I don't want to get too much into great
7 detail in the case but this was a shooting case, is
8 that correct?

9 A. Yes, sir.

10 Q. All right. What was your defense or what defense
11 did you want to present at trial?

12 A. Well, when I initially got concentrated and Mr.
13 Ruffin wasn't my original lawyer, he was put on my
14 case, I told him, you know, that the act was done in
15 self-defense. And that, you know, I have evidence
16 and stuff to prove that this was done in self-
17 defense. He told me that it don't matter. A lot of
18 people seen me do it so they still gonna find me
19 guilty.

20 Q. All right. And thank you for reminding me that
21 Mr. Ruffin was not your, was not your first lawyer.
22 He had another lawyer, is that correct?

23 A. Yes, sir.

24 Q. Who -- who was that?

25 A. Ms. Anastasia Walker was my original lawyer.

1 Q. All right. And at some point was she taken off
2 the case?

3 A. Yeah. I received a letter in the mail stating
4 that she wouldn't be on my case anymore. They didn't
5 give any specific reason. It said that I'll get a
6 new lawyer.

7 Q. So it was not your request? It was not a
8 situation where you were just dissatisfied with your
9 prior lawyer?

10 A. No, sir. I was actually looking forward to her
11 fighting my case from me.

12 Q. All right. Now, Mr. Ruffin got on the case and
13 ultimately you became -- were you satisfied with him
14 or did you become dissatisfied with him?

15 A. Yeah. Within the first two encounters that me
16 and him had I told him that I want him off my case
17 because the way that he was telling me and the thing
18 that I was telling he was like it didn't matter in my
19 case that a lot of people seen me do it so I'm
20 guilty.

21 Q. Okay. Before we get to the exact talk about
22 defenses, let me ask you this, when you told him you
23 wanted -- did you tell him you wanted him off your
24 case and you wanted a new lawyer?

25 A. Yes, sir.

H. Watts- Direct Examination by Mr. Lifsey

9

1 Q. All right. What did he tell you about that?

2 A. He told me that it was too late I was stuck with
3 him because that I, they were getting prepared for a
4 trial.

5 Q. Did he ever tell you that you can come in from a
6 judge and ask a judge to appoint, to relieve him and
7 to appoint someone else?

8 A. No, sir. He -- his exact words were that I'm
9 stuck with him. He's getting ready for trial.

10 Q. Okay. Did you, in fact, ever go in front of a
11 judge and have a hearing on whether he should
12 continue to be your lawyer?

13 A. No, sir.

14 Q. Okay. All right. I want to ask you about -- I
15 started this earlier, your defense to this crime you
16 said was self-defense, is that correct?

17 A. Yes, sir.

18 Q. Did your lawyer or lawyers, any of them, what did
19 they say in regards to your self-defense claims?

20 A. Well, like I say I was well pleased with Ms.
21 Walker because she was the one who was actually
22 taking the time to look into what I was saying and
23 try to fight the case and help me. But as far as Mr.
24 Ruffin and them, they just, they never looked into
25 it. They was, basically, like we're gonna say that

1 they got the wrong person. They seen -- they seen
2 the wrong things.

3 Q. So are you telling the Court you wanted to argue
4 self-defense, but your lawyers said you couldn't
5 argue that, you're gonna argue somebody else did it?

6 A. Yeah. They -- they got the wrong person.

7 Q. Okay. And why did your lawyers telling you
8 that?

9 A. He said because that, you know, that a lot of
10 things, a lot of witnesses might have perceived
11 something different or, you know what I'm saying,
12 due to occurrence of what was going on. Like I told
13 them I never denied or I'm not saying that I wasn't
14 there or things like that, you know what I'm saying,
15 like I'm telling you that this how it really
16 happened. And he, he just was like we just gonna say
17 that they got the wrong person.

18 Q. And so are you saying that he cited the fact that
19 there were a bunch of witnesses against you is the
20 reason you couldn't go with self-defense?

21 A. Yes, sir.

22 Q. Okay. All right. Let's talk about testifying,
23 you did not testify at your trial, is that right?

24 A. No, sir.

25 Q. All right. Why did you not testify at your

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1 trial?

2 A. Because like I say Mr. Ruffin told me that if I
3 was to get up there and admit or to say that I was
4 there, the defense that he was working toward that
5 they got the wrong person it would be a conflict and
6 that I definitely would get found guilty.

7 Q. So in other words, if had -- when you get on a
8 witness stand and you're sworn to tell the truth,
9 right?

10 A. Yes, sir.

11 Q. Like you were sworn today, correct?

12 A. Yes, sir.

13 Q. And you're saying if you had gotten up on the
14 stand you would have testified you're acting in self-
15 defense?

16 A. Yes, sir.

17 Q. And that was contrary to the theory that your
18 lawyer was going with that somebody else did it, is
19 that right?

20 A. Yes, sir.

21 Q. So that's why you did not testify?

22 A. Yes, sir.

23 Q. If he had gone with your theory from the
24 beginning that it was a self-defense case, would you
25 have testified at trial?

1 A. Yes, sir. Because I had physical evidence and
2 multiple witnesses that would have corroborated what
3 I had to say.

4 Q. Okay. Did you ever have any kind of pre-trial
5 hearing on immunity or anything like that?

6 A. No. I do have a pre-trial hearing, but it would,
7 basically, getting ready for the, for the ---

8 Q. Gotcha.

9 A. --- the regular trial.

10 Q. Because, of course, if you're going to trial on
11 "somebody else did it" you're not entitled to argue
12 stand your ground or anything like that?

13 A. Yes, sir.

14 Q. Do you have complaints about the way your lawyer
15 cross-examined certain eyewitnesses?

16 A. Yes, sir. I know I'm not a lawyer and I'm not no
17 expert but if, you know, if somebody said something
18 two years ago when this first happened and then they
19 get on stand and say something totally different, me,
20 personally, I would attack that to try to help my
21 defending. Like he didn't attack none of it and they
22 was clearly, you know, saying what the solicitor or
23 whoever told them to say, you know, and, you know, we
24 have witness statements and audio statements from
25 most of the witnesses. So there's no way that he

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1 wasn't able to attack, you know what I'm saying, what
2 they were saying on the witness stand almost three
3 years later.

4 Q. So you're saying he didn't use audio and, or
5 prior statements or anything like that?

6 A. No, sir. He, basically, just, you know, ask them
7 a couple of questions and just left it at that.

8 Q. All right. Do you have any other complaints
9 about how your lawyer represented you in this case?

10 A. Yes, sir. Like I said from the get go it just,
11 we wasn't on the same page. We wasn't, you know,
12 just like I said I told him from day one that I did
13 commit an offense, but it was in the protection of me
14 and my co-defendant. And he was just like well, you
15 got twelve to twenty witnesses saying you murdered
16 this man so that's not the way we gone go.

17 Q. Anything else you wanna complain about, about
18 your lawyer while you're here?

19 A. I just like I say I wanted him off my case. I
20 verbally told him multiple times that I don't want
21 him on my case. I don't think he's good for me and
22 he still, was still on the case.

23 MR. LIFSEY: Your Honor, I don't have any other
24 further questions of Mr. Watts.

25 THE COURT: Thank you. Cross-examination?

1 MR. BARLOW: Thank you, Your Honor. May it
2 please, the Court?

3 THE COURT: Yes, sir.

4 Cross-Examination by Mr. Barlow:

5 Q. Good afternoon, Mr. Watts.

6 A. How are you doing?

7 Q. Good, sir. How are you?

8 A. I'm all right.

9 Q. All right. Let's jump right in. Your first
10 complaint is that you wanted to relieve Mr. Ruffin,
11 right?

12 A. Yes, sir.

13 Q. And tell us again why was that?

14 A. Because like I said if you look at the facts of
15 the case, you know, not the, um, the side of the
16 case, you will see that what they saying is not
17 accurate and I just told -- I kept telling him and he
18 was just like you got thirty people saying you did it
19 so it's, it's no use in trying to, trying to fight
20 it, basically.

21 Q. But Mr. Ruffin wasn't your only attorney,
22 correct?

23 A. Yes, sir.

24 Q. Who else -- who else was your attorney?

25 A. Ms. Walker.

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1 Q. Okay. Ms. Walker, though, was no longer -- she,
2 I believe, she went -- she left the solicitor's
3 office, I mean, the public defender's office,
4 correct?

5 A. That's -- that's what I told -- that's what was
6 told to me. Q. Okay. And then they appointed Mr.
7 Ruffin?

8 A. Yes, sir.

9 Q. And then you've also had others on your case,
10 correct?

11 A. No, sir. Mr. Ruffin.

12 Q. Was the only attorney on your case?

13 A. Yes, sir. But like I say when I went to trial
14 they had two other lawyers but I never really talked
15 to them throughout the ---

16 Q. Okay.

17 A. --- period of time I was at Alvin S. Glenn.

18 Q. Okay. So Mr. Krzyston, you never met with him?

19 A. No. We never like -- no, never.

20 Q. Okay. How about Mr. Cornish?

21 A. No, sir. It was like -- it was trial lawyer.

22 Q. So all of your allegations are just against Mr.
23 Ruffin?

24 A. Yes, sir. Like I said they told me Ms. Walker
25 was removed out of solicitor's office and taken off

1 my case. But she's, she's the one who handled my pre-
2 trial motion. So I'm not understanding how you take
3 her off my physical case, but you allow her to do my
4 pre-trial motions if she's not with the solicitor's
5 office anymore.

6 Q. Well, let's jump in, though, tell me -- tell me -
7 - let's go on to your next one, failed to raise the
8 defense of self-defense. This happened at a birthday
9 party, correct?

10 A. Yes, sir.

11 Q. Were you invited to that birthday party?

12 A. Yes, sir.

13 Q. By who?

14 A. One of the witnesses that testified on me. His
15 name is Daquan Cleckley.

16 Q. Testified for you or against you?

17 A. Against me. He testified.

18 Q. And was it is property?

19 A. It was his mother's property. He was staying
20 there.

21 Q. And how did you end up there?

22 A. Because like I say I was there previous to this,
23 the same day I was -- I was there previous to all
24 this happening. And I told him that I had to go to a
25 birthday party or/cookout that my family was having

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1 and then when I get finished I'd come back see him
2 later on 'cause we hang out every day.

3 Q. You use to play basketball at this home, correct?

4 A. Yes, sir.

5 Q. Okay. That's -- so -- let me ask you, was there
6 an event that occurred with your brother earlier that
7 day?

8 A. It wasn't earlier that day, but it was prior to
9 that week and yes, sir, it was. And that was the
10 reason why I was going back to defuse that situation
11 between those two 'cause both of those are my
12 brothers and, you know, I didn't want that amongst us
13 because we hang out every day.

14 Q. So you went to defuse the situation?

15 A. Yes, sir.

16 Q. With a gun?

17 A. I didn't take the gun to defuse the situation. I
18 had the gun because like I said prior to the incident
19 my mother house, she stayed on Wade Road (sic),
20 someone pulled up with a gun at my mother house due
21 to me dealing with Mr. Daquan. So I had a gun to
22 protect my family. I didn't take the gun to try to
23 defuse the situation.

24 Q. You had a gun because of Daquan?

25 A. Yeah. Mr. Daquan Cleckley.

1 Q. That's who invited you to the party?

2 A. Yes, sir.

3 Q. So it's your testimony that you were carrying --
4 you ---

5 A. No. He -- no. I had a situation with him like
6 this is my brother. Before all this happened me and
7 him cool. He had a situation that overturned to my
8 house, to my mother's house and I had gotta gun
9 because someone came to my mother's house with a gun
10 because of Mr. Daquan Cleckley and I be around him.

11 Q. Okay. Let me ask you this, since you were
12 invited to this party, do you recall the testimony
13 throughout trial that you weren't invited to this
14 party? That your brother was beat up and you came
15 back in defense of your brother because he was beat
16 up?

17 A. Yes. I remember them saying that.

18 Q. Okay. But you're denying that?

19 A. No, I'm not denying -- I'm denying that, you
20 know, I didn't come back down there 'cause of my
21 brother. I came -- I was at this house previous. If
22 you look at the transcripts they said it in trial
23 that he was there earlier before all this happened.

24 Q. Correct. And he returned with you in a vehicle.

25 A. That's -- that's what they say. Yes, sir.

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1 Q. But you're denying that?

2 A. Yes, sir.

3 Q. Okay. Because you were legally there?

4 A. Yes, sir.

5 Q. Okay. And do you recall where Mr. Isaac was
6 shot?

7 A. You talking medically or what the witnesses said?

8 Q. What the medical testimony was?

9 A. Ah, well, the medical testimony was that he was
10 shot in the back.

11 Q. Okay. But it's your belief that your life was
12 in imminent danger and that you had to pull a gun and
13 shoot him?

14 A. I never said that I initially shot him. I
15 discharged a firearm at the residents. All the
16 witnesses said that I was face-to-face and I shot him
17 in the chest. But medically testified from Mr., ah,
18 the pathologist say he was shot in the back.

19 Q. Right. And there was conflicting testimony at
20 trial, correct?

21 A. Yes, sir.

22 Q. As to where you were located, where he was
23 located. But the medical testimony that came in was
24 that he was shot in the back, correct?

25 A. Yes, sir.

1 Q. But again, if your, if your claim is that it's
2 self-defense you have to believe that your life is in
3 imminent danger and that you had no other choice?

4 A. That's what I'm saying, I discharged the firearm.
5 I don't -- I don't know personally what bullet struck
6 Mr. Isaac. You know, what I'm saying is that I
7 discharged my firearm in the self-defense manner
8 because I was in immediate danger and that's what I
9 had to do to save my life and his life. The
10 immediate danger of who?

11 A. Of these guys that was there at this, at this
12 party.

13 Q. Okay. So you had a mob coming after you?

14 A. Multiple people. More than ten.

15 Q. Let's move on. A couple questions. Failing to
16 effectively cross-examine the witnesses. Which
17 witnesses?

18 A. Mostly all the witnesses. Especially the
19 witnesses that in my Anders brief y'all said there
20 was the star witness, Ms. Cleckley, Mr. Daquan
21 Cleckley, Mr. Jamichael Lewis and just multiple
22 witnesses -- basically, all the witnesses.

23 Q. So you do not recall your, your three attorneys,
24 all of which had some involvement with a witness,
25 they were all in effective in cross-examining all of

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1 the witnesses?

2 A. Yes, sir.

3 Q. Okay.

4 MR. BARLOW: Your Honor, nothing further.

5 THE COURT: Any redirect?

6 MR. LIFSEY: No, ma'am.

7 THE COURT: You may step down, sir. Thank you.

8 You may call your next witness.

9 MR. LIFSEY: Your Honor, there's only really one
10 more issue that I need raise that with the lawyer, my
11 understanding is the attorney general is gonna call
12 that lawyer so I'm just gonna bring that out through
13 cross to kind of make my own ---

14 THE COURT: All right. Yes, sir. Thank you.

15 MR. LIFSEY: Thank you.

16 THE COURT: You may call your first witness.

17 MR. BARLOW: Thank you, Your Honor. We'd call
18 Adam Ruffin.

19 THE COURT: Do you swear or affirm the testimony
20 that you give is the truth, the whole truth, and
21 nothing but the truth so help you God?

22 MR. RUFFIN: Yes, ma'am.

23 THE COURT: Sir, please have a seat. Your
24 witness.

25 MR. BARLOW: Thank you, Your Honor. May it

1 please, the Court?

2 ADAM RUFFIN, first being
3 duly sworn, testified as follows:

4 **Direct Examination by Mr. Barlow:**

5 Q. Thank you for being here today, Mr. Ruffin.

6 A. Yes, sir.

7 Q. How long have you been practicing law?

8 A. Ten years.

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

10 A. First eight and a half.

11 Q. Okay. And were you appointed or retained?

12 A. I was appointed to represent Horace.

13 Q. And do you recall, roughly, how long before trial
14 you were appointed?

15 A. Probably a year. Because I know -- and he just
16 testified of this. He was represented by Anna Walker
17 in our office for maybe almost two years. And we
18 sort of -- the way that PD's office was set up, we
19 had a violent team and a non-violent team and Anna
20 and I were both on the violent team. I think that
21 Anna reached a point where she wanted to kind of
22 handle non-violent cases and that's why we switched.
23 So I took over as the lead attorney for Horace's
24 case. But Anna continued as second chair up until a
25 point where she actually left our office completely.

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1 And that's when Mr. Krzyston and Mr. Cornish were
2 brought in as the actual second and third chairs for
3 the trial.

4 Q. Okay. And during that time did you receive
5 discovery?

6 A. Yes.

7 Q. Okay. Did you review that with Mr. Watts?

8 A. Yes, sir. Multiple times.

9 Q. And can you give us a brief overview of what the
10 State's evidence was in this case?

11 A. So there was probably, I mean, the State's theory
12 of the case was that Horace's brother had been over
13 at this birthday party where there was probably fifty
14 or more people hanging out at this house. These were
15 people that knew Horace. They'd grown up with Horace
16 and his brother, Malik, who was a co-defendant.

17 There was a fight between Malik and one of the other
18 individuals at the party. Malik made some comments
19 about I'm gonna come back and settle this, basically.
20 Left. And then Horace and Malik came back together
21 firing guns, basically, as soon as they got out of
22 the car. They were dropped off by, I think, a couple
23 of girls. They got out of the car and were firing
24 in the street. There were shell casings in the
25 street. They walked up into the driveway or the

1 front yard of the house continuing to fire their
2 weapons. And then Isaac, I believe his name and they
3 -- he was one of the people at the party, he was
4 killed. And I think there was another guy who was in
5 the street in a car or next to a car who was also
6 shot and that was the basis for the attempted murder
7 charge. So -- so the evidence consisted of mostly, I
8 think, it was maybe thirteen, as many as thirteen
9 eyewitnesses who personally knew Horace and Malik.
10 Identified them by name at the scene of the crime.
11 So I think when the officers showed up and it was,
12 can you describe who the shooter was? And they said
13 it was Horace and Malik. They were the shooters.
14 And that's, essentially, what they testified to at
15 trial. So that was the main evidence was those
16 eyewitnesses.

17 Q. Well, based on the evidence as a whole, were you
18 able to craft a defense strategy?

19 A. Not really. I mean, the defense was gonna be all
20 we can do is really poke holes in the State's case.
21 There were inconsistencies certainly which is kind of
22 to be expected when you have a chaotic scene like
23 that and that many people recounting the events.
24 Now, I know Horace has talked about some self-defense
25 stuff today and we did discuss that I think on more

1 than one occasion. Horace was sort of like, you
2 know, can, can we present a self-defense -- I'm
3 sorry, you're ---

4 Q. Well, yeah, we'll get to that in just a second.
5 I just wanted to, to, to figure out like, your idea
6 here is you were gonna poke holes in it because you
7 didn't have much of a defense but that is a strategy
8 to go into trial when you don't have....

9 A. Yeah. Yeah, I mean, our strategy was reasonable
10 doubt. That was the defense.

11 Q. Okay.

12 A. Right.

13 Q. All right. So let's jump right in. So as you
14 know he is saying that you -- well, actually let's
15 start with the first one where he -- do you recall
16 him asking to have you relieved or that he wanted to
17 get rid of you?

18 A. I don't recall that. I looked at my notes. I
19 don't have anything in my notes about Horace wanting
20 to have me relieved. And it would be my practice to
21 file a motion to be relieved if a client did not want
22 me to continue to represent them.

23 Q. Okay.

24 A. I would have been happy to do that had he asked
25 me.

1 Q. All right. So now, our next one is, the failure
2 to raise the defense of self-defense?

3 A. So, I mean, a couple things, I think, we did
4 discuss that. So first of all none of the witnesses
5 who were there said anything remotely close to
6 something that would suggest this was, was an act of
7 self-defense. So we explain to Horace, and when I
8 say we, I'm talking about me and Anna because when I
9 was meeting with Horace at the jail, it usually was
10 either just me or me and Anna together. So we went
11 over with him and said, you know, the only way that
12 we will get a jury instruction for self-defense was,
13 essentially, if you testify and testify that it was
14 in self-defense and he wasn't gonna do that. So he
15 was not gonna testify. So we explained to him that
16 without his testimony there was going to be no way
17 for us to get a self-defense charge. And I will also
18 add to that and you just heard Horace's testimony
19 today, I mean, if we put him on the stand and he said
20 what he said he would say, we still weren't gonna get
21 a self-defense charge because it was he went to a
22 fight, a birthday party with a gun to settle a
23 dispute about a fight that his brother had had with
24 them earlier in the day. So he wasn't without fault
25 in bringing on the difficulty. We weren't gonna have

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1 this, you know, his actions were reasonable and that
2 he couldn't have avoided the difficulty. I mean, he
3 went over there.

4 Q. All right. Let me ask you 'cause you say that it
5 was you and

6 Ms. Walker mainly that visited him in jail?

7 A. Yes, sir.

8 Q. How much involvement did Mr. Krzyston have in, in
9 developing what's, you know, your trial strategy and
10 stuff?

11 A. They would have had a pretty good bit of
12 involvement. As soon as, you know, my goal in the
13 case was to get a plea offer that was gonna be
14 favorable -- we were trying to, basically, get as
15 good of a plea offer as we could get. And I think
16 there was times where Horace might have considered
17 pleading guilty if the charges were reduce. There
18 was a time where he wanted a condition of like
19 charges being dropped against his brother as sort of
20 a condition to a plea. So -- so the -- most of our
21 representation, most of my representational of Horace
22 was sort of driving towards trying to get to a plea
23 resolution. Once that was pretty clear was not gonna
24 happen, you know, and that we were headed to trial,
25 we had a pre-trial Neil v. Biggers hearing which I

1 think lasted like a whole day because I believe it
2 was twelve or thirteen witnesses who had identified
3 Horace out of photo lineups. So we did that months
4 before the actual trial. And so Anna and I did that
5 together. And once -- and that was unsuccessful.
6 Well, all the lineups were ruled that they were gonna
7 come in. So we continue to negotiate. And again, as
8 we got closer I can't -- I can't remember when
9 exactly the trial actually happened, maybe it was
10 February, but as we got closer Anna had left the
11 office. I brought on Mr. Krzyston and Mr. Cornish to
12 ask them to help me and they would have helped
13 significantly in the, let's say, two or three weeks
14 leading up to the actual trial.

15 Q. And do you have any involvement in cross-
16 examination, the witnesses?

17 A. Yes. Yes, sir.

18 Q. Are they're any -- have you reviewed the record?

19 A. As best I can, yes.

20 Q. Okay. Do you recall if you, you were
21 ineffective in your cross-examination, in your
22 opinion?

23 A. I don't -- I mean, in my opinion, we did the best
24 that we could with what we had to work with.

25 Q. And you stand by your representation?

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1 A. I do.

2 MR. BARLOW: Nothing further, Your Honor.

3 THE COURT: Cross-examination?

4 MR. LIFSEY: Thank you, Your Honor. Just a couple
5 of quick questions.

6 Cross-Examination by Mr. Lifsey:

7 Q. Mr. Krzyston was the one cross-examined the SLED
8 agent as to the shell casings and the weapon, is that
9 correct?

10 A. Yes. Yes, sir. That's right.

11 Q. Obviously, witness credibility is a jury issue,
12 correct?

13 A. Yes.

14 Q. And obviously, the number of witnesses is not
15 automatically determine what a jury believes or
16 doesn't believes, right?

17 A. That's right.

18 Q. And judges often instruct juries they can believe
19 one witness against many or many against one, is that
20 correct?

21 A. Yes. That's right.

22 Q. So if I'm understanding your testimony, one of
23 the problems in self-defense was you didn't think it
24 was a particularly believable defense?

25 A. Well, I agree with that. But I didn't think it

1 was a believable defense, but part of that was
2 because there was no evidence that it was self-
3 defense.

4 Q. Sure. And we'll come back to that in just a
5 second. Let me just say this, you mentioned in
6 response to Mr. Barlow's questions, you referenced
7 our, our client's testimony on the stand earlier
8 today, right?

9 A. Right. Yes, sir.

10 Q. I believe he testified -- the record reflects
11 whatever reflects, but I believe he testified at one
12 point he was going over there to defuse the
13 situation, is that correct?

14 A. Yes. He did say that.

15 Q. Obviously, if that were to be believed by twelve
16 jurors that does not mean that self-defense is
17 impossible at that point?

18 A. Yeah, I agree with that. I mean -- yeah, I mean
19 if Horace had testified ---

20 Q. Sure.

21 A. Yeah.

22 Q. And so you said part of the problem was you
23 thought that the twelve, that the twelve, thirteen,
24 however many fact witnesses they were, would not have
25 supported the idea of self-defense, correct?

A. Ruffin- Cross-Examination by Mr. Lifsey

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1 A. Right.

2 Q. But that problem also, those twelve or thirteen
3 witnesses, would not have supported the idea that
4 somebody else did it, right?

5 A. Right. Yes.

6 Q. 'Cause there's only two possible real defenses
7 that you can mount to this crime because there's no,
8 no question that the defendant was shot and killed?
9 The victim, excuse me, one victim was shot and
10 killed?

11 A. Right.

12 Q. So you got to argue either somebody else did it
13 or he did it and it was legally justified?

14 A. That's right.

15 Q. And your position was that somebody else did it
16 was the better defense to go with?

17 A. No, sir. The -- so if Horace had chosen to
18 testify then we would have argued self-defense. That
19 would have been our defense. But Horace wasn't gonna
20 testify. And said -- he told us as much on multiple
21 occasions.

22 Q. Gotcha.

23 A. So -- so, I guess, I guess, what I was telling
24 him is when we get to, when we get to the end of the
25 trial, okay, and I'm telling Horace this prior to us

1 going to trial, but when we arrive at the State has
2 rested its case and the evidence has been presented,
3 has been, call all the witnesses who have testified
4 as to what the State's theory of the case was which
5 was, you know, not gonna, not, not going to support a
6 jury instruction for self-defense, that the only way
7 we could get a jury instruction for self-defense was
8 that he testify and said it was self-defense and he
9 said he wasn't gonna do that.

10 Q. Correct. And so your, your testimony is that,
11 that, that,
12 he told you prior to the trial starting that he did
13 not want to testifying?

14 A. Yes, sir.

15 Q. Okay. Is that -- is that -- did you ever, at
16 any point, do you have any kind of waiver or any form
17 or notations that you discuss that matter with him?

18 A. There are notes that I took. But I never got
19 Horace to sign something.

20 Q. Okay.

21 MR. LIFSEY: Just one second, judge. May I have
22 just one second?

23 THE COURT: Certainly.

24 MR. LIFSEY: I don't have any further questions,
25 judge.

1 THE COURT: Any redirect?

2 MR. BARLOW: No, Your Honor.

3 THE COURT: You may step down, sir. Thank you.

4 MR. RUFFIN: Thank you.

5 THE COURT: You may call your next witness.

6 MR. BARLOW: Your Honor, our next witness, excuse
7 me, our next witness is Mr. Stephen Krzyston,
8 Krzyston.

9 THE COURT: Do you swear or affirm the testimony
10 you're about to give will be the truth, the whole
11 truth, nothing but the truth so help you God?

12 MR. KRZYSTON: I do, judge.

13 THE COURT: All right. Please have seat. Your
14 witness?

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

17 STEPHEN F. KRZYSTON, first being
18 duly sworn, testified as follows:

19 **Direct Examination by Mr. Barlow:**

20 Q. Would you state and spell your name for the Court
21 please?

22 A. Stephen Krzyston, K-r-z-y-s-t-o-n, S-t-e-p-h-e-n.

23 Q. Thank you, Mr. Krzyston. All right. You
24 represented Mr. Watts, correct?

25 A. I assisted in this trial, correct.

1 Q. Yeah. And do you recall -- well, let me ask you
2 this, how long have you been practicing law?

3 A. Since 20, end of 2012.

4 Q. Okay. And ---

5 A. Ten, twelve, something like that now.

6 Q. Has all ---

7 A. Going into eleven or twelve, something....

8 Q. Has all of that been criminal?

9 A. No. For the first seven years or thereabouts I
10 practice exclusively criminal defense in the public
11 defender's office. In 2019 I left to go to a
12 personal injury firm. I do continue to practice
13 criminal law but not exclusively.

14 Q. Did you review the evidence in this case?

15 A. Certainly.

16 Q. Okay. And you were involved in the trial pretty
17 extensively?

18 A. The trial, yes, sir.

19 Q. Okay. And there is an allegation here that --
20 trial counsel was ineffective in his cross-
21 examination of the expert witness, Chad Smith by
22 opening the door to testimony that was, that was
23 previously ruled on by inadmissible by the Court, do
24 you recall that?

25 A. I do.

S. Krzyston- Direct Examination by Mr. Barlow

35

1 Q. Okay. Can you tell us about that?

2 A. We had had several discussions throughout the
3 course of the trial. At that point, in the lead up
4 to trial, we had insisted that the Court conduct
5 Daubert hearings or in South Carolina called counsel
6 hearings under Rule 702 to deal with the
7 admissibility of, I believe it was forensic
8 identification evidence that stemmed from firearms
9 and tool mark analysis. We had successfully gotten
10 the Court to order the firearm examiner to change
11 some of the language or how he relayed some of the
12 language in his conclusions to the jury. And then he
13 was called in the State's case and chief. I cross-
14 examined him. I reviewed the record a couple of
15 weeks ago, maybe a couple of months ago, because this
16 is something that I remembered in the trial. Either
17 I asked an artful question or I believe, honestly, on
18 review the witness answered outside the question that
19 I specifically asked in proffered testimony in front
20 of the jury that the Court had previously ruled he
21 could not proffer. And so that is, upon review and
22 as I sit here, my best recollection of what occurred.

23 Q. Okay. Is there -- was the bullets the only
24 evidence in this case?

25 A. Certainly not.

1 Q. What else was there?

2 A. I mean, there was, obviously, as you've heard
3 extensive eyewitness testimony. There was medical
4 evidence presented. There was crime scene
5 investigation evidence presented. I mean, there was
6 a jail telephone call which, ultimately, after
7 talking to the jury after the verdict was rendered
8 and sentencing was passed, was a huge issue for Mr.
9 Watts. But that, is best I can remember, was some of
10 the evidence.

11 Q. In your involvement in this case, do you feel
12 that, um, that self-defense would have been viable?

13 A. I mean, certainly. I'll say this about that, you
14 know, going into the trial we were aware that Mr.
15 Watts did not wish to testify. Certainly as trials
16 unfold people's perceptions and wishes might change.
17 And so we intended to go down a road of poking holes
18 and reasonable doubt and pursuing reasonable doubt.
19 But I don't recall, and again, it's been a while
20 since I've reviewed the transcript, but I don't
21 recall saying anything in opening that would have
22 made pursuit of self-defense if Mr. Watts had wished
23 to testify mutually exclusive. And so I don't know
24 that -- does that squarely answer your question?

25 MR. BARLOW: Um, I beg the Court's indulgence.

1 Nothing further, Your Honor.

2 THE COURT: Cross-examination?

3 MR. LIFSEY: Thank you, judge. Very briefly.

4 Just to narrow a couple of things down for the
5 record.

6 THE COURT: Yes, sir.

7 **Cross-Examination by Mr. Lifsey:**

8 Q. They -- let me ask you this, the issue with the
9 SLED agent that you cross-examined.

10 A. Yes.

11 Q. Did the judge, ultimately, rule prior to the
12 testimony in front of the jury? Was a judge's ruling
13 that the witness could not call "it a match" could
14 only say it was consistent with. Does that sound
15 right?

16 A. That sounds correct.

17 Q. Okay.

18 MR. LIFSEY: And, Your Honor, just for the
19 purposes of the record I'm, I'm referencing Page 66,
20 the judge's ruling from Page 666 through 668, judge.

21 THE COURT: Thank you.

22 Q. All right. And then, did he, in fact, use the
23 term or referenced a match on, on or answered his
24 question in a way that was pretty close to saying "it
25 was a match", is that correct?

1 A. He certainly did. In fact, I objected. It's the
2 only time I've ever done it in my career, but I ended
3 up objecting to my own question and broke court
4 because of the transgression.

5 Q. Correct.

6 MR. LIFSEY: And just for the record I'm
7 referring to Page 693 of the transcript.

8 Q. Where you object and the judge overruled your
9 objection, correct?

10 A. I believe so.

11 Q. And -- and, in fact, you asked to take it up
12 outside the presence of the jury and he said we'll do
13 it a little bit later. Is that right?

14 A. That -- that may be. You can refresh my
15 recollection, but again, I'm sorry.

16 Q. And then just to, like I said to clarify for the
17 record, then later on outside the presence of jury,
18 the judge said you had opened the door to that answer
19 and refused to strike it from the record or grant any
20 kind of relief at that point ---

21 A. I believe that's correct.

22 MR. LIFSEY: And Your Honor, just at that point,
23 I'm referring to Page 695 and 696 of the transcript.
24 I beg the Court's indulgence just one second. I
25 don't have any further questions.

1 THE COURT: Anything further?

2 MR. BARLOW: Nothing, Your Honor.

3 THE COURT: You may step down, sir. Thank you.

4 MR. KRZYSTON: Thank you, judge.

5 MR. BARLOW: No further witnesses, Your Honor.

6 THE COURT: Anything further?

7 MR. LIFSEY: No, sir. No, ma'am.

8 THE COURT: Do the parties care to make any
9 closing remarks. I'm gonna read the transcription and
10 take it under advisement.

11 MR. LIFSEY: Yes, sir. You have to make -- Yes,
12 ma'am. You have to make credibility arguments,
13 decisions and we leave that the Court's discretion.

14 THE COURT: All right. Gentlemen, thank you.

15 MR. BARLOW: Thank you, Your Honor.

16 (CONCLUSION OF HEARING HELD ON JANUARY 11, 2024)

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CERTIFICATE

I, the undersigned, Lisa S. Carter, do hereby certify that the foregoing is a true, accurate, and complete excerpt of transcript of record of all the proceedings had and evidence introduced in the hearing of the captioned cause, relative to appeal, in the Fifth Circuit for Richland County, South Carolina, on the 11th day of January, 2024.

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

s/ Lisa Carter

Lisa Carter

Circuit Court Reporter

January 15, 2024

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Horace E. Watts, #355244

Applicant,

v.

State of South Carolina,

Respondent.

) IN THE COURT OF COMMON PLEAS
) FIFTH JUDICIAL CIRCUIT
)

) CASE NO. 2021-CP-40-00225
)

**ORDER OF DISMISSAL
WITH PREJUDICE**

Presiding Judge:

Applicant's Attorney:

Respondent's Attorney:

Trial Counsels:

Date of Hearing:

Court Reporter:

Hon. Maité Murphy

Michael H. Lifsey, Esq.

D. Russell Barlow, II, Esq.

Stephen F. Krzyston, Esq.

Adam S. Ruffin, Esq.

January 11, 2024

Lisa Carter

FILED
2021 JUN 26 AM 11:20
CLERK OF COURT
RICHLAND COUNTY

This matter comes before the Court by way of Horace E. Watt's (Applicant) Application for Post-Conviction Relief (PCR) filed on January 19, 2021. On May 3, 2021, Respondent submitted its Return and Motion to Dismiss the application as untimely and for failure to present *prima facie* showing of newly discovered evidence pursuant to S.C. Code Ann. §17-27-20 and § 17-27-90.

On April 29, 2021, the Honorable L. Casey Manning issued a Conditional Order of Dismissal provisionally dismissing Applicant's PCR application and granting Applicant twenty days to present specific reasons, legal or factual, why the dismissal should not become final. On May 17, 2021, Applicant filed his response to the Conditional Order of Dismissal asserting that his PCR application was timely submitted, as it was signed, notarized, and placed in the mailroom at the Lee Correctional Institution on December 1, 2020.

On June 1, 2021, Respondent submitted a letter to the Honorable Casey L. Manning, stating Applicant's response necessitated an evidentiary hearing to determine whether Applicant's filing should be considered timely pursuant to *Mose v. State*, 420 S.C. 500, 511-12, 803 S.E.2d 718, 723 (2017). On January 24, 2022, a *Mose* hearing occurred before the Honorable D. Craig Brown. Applicant was present and represented by Michael H. Lifsey, Esquire. Assistant Attorney General Yasmeeen E. Klein represented Respondent. Judge Brown issued an Order pursuant to *Mose v. State* granting equitable tolling of the statute of limitations filed on February 7, 2022.

On January 11, 2024, an evidentiary hearing was held at the Richland County Courthouse before the Honorable Maité Murphy. Applicant was present and represented by Michael H. Lifsey, Esquire. Assistant Attorney General D. Russell Barlow, II, represented Respondent. Applicant proceeded with the claims set forth in his amended application. In support of these claims, Applicant testified on his own behalf, and Respondent presented testimony from Adam Sinclair Ruffin and Stephen F. Krzyston, referred to collectively as Trial 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 relief and, accordingly, denies 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) pursuant to the Richland County Clerk of Court order of commitment. In January 2015, the Richland County Grand Jury indicted Applicant for Murder (2015-GS-40-0083), Attempted Murder (2015-GS-40-0084), Unlawful Carrying of a Pistol (2015-GS-40-0085), and Possession of a Weapon During the Commission of a Violent Crime (2015-GS-

40-0024). Richland County Public Defenders Adam Sinclair Ruffin, Jonathan Comish, and Stephen F. Krzyston represented Applicant. Fifth Circuit Assistant Solicitors Carter Reston Potts, Jessica Nickles, and Brent Hamilton Arant prosecuted the case.

On February 6–9, 2017, Applicant proceeded to a jury trial before the Honorable Clifton Newman. The jury found Applicant guilty as indicted. Judge Newman sentenced Applicant to thirty (30) years imprisonment for Murder, ten (10) years for Attempted Murder, one (1) year for Unlawful Carrying of a Pistol, and five (5) years for Possession of a Weapon During the Commission of a Violent Crime, to run concurrently.

On February 13, 2017, Applicant timely filed a Notice of Appeal. Appellate Defender Robert Dudek perfected Applicant's appeal by filing an *Anders*¹ brief presenting the following issue:

The court erred by allowing hearsay testimony that alleged witnesses told the police appellant and his brother, Malik Davis, were the shooters, and by also allowing victim Tyrone Johnson to give hearsay testimony that he was told appellant and Davis were the shooters, since this inadmissible hearsay testimony was very prejudicial, and denied appellant his constitutional right to Confrontation.

The Court of Appeals dismissed Applicant's appeal pursuant to *Anders. State v. Watts*, Op. No. 2019-UP-385 (Ct. App. filed Dec. 18, 2019). The Remittitur was returned to the circuit court on January 3, 2020.

FACTS GIVING RISE TO THE CONVICTION

On July 12, 2014, in Columbia, SC, Applicant shot sixteen bullets into a crowd at a party, killing Isaac Lewis (Victim) and injuring Tyrone Johnson (Johnson). R. 113–15. Prior to the shooting, an argument ensued between Applicant's brother, Malik Davis (Davis), and Terrell

¹ *Anders v. California*, 386 U.S. 738 (1967).

Threatt (Threatt). R. 117. Officer Ivan Birochak responded to the scene at 8:22 PM after the initial altercation but left after he was informed by others at the party that everything was fine. R. 118, 129–30. Thirty minutes later, Officer Birochak responded a second time to a call of multiple shots fired, and witnesses at the scene identified Applicant and Davis as the shooters. R. 118, 137–51. Jamichael Lewis (Lewis), Paris Young, Daquan Cleckley (Daquan), Benjamin Walker, Dominique Tucker, Jasmine Sims, and April Cleckley identified Applicant and Davis as the shooters to investigators who responded to the scene and from a photo lineup. R. 118–22, 183–213, 242–71, 292–319, 320–34, 411–18, 423–29, 600–17.

Investigator Matthew McCoy, the lead crime scene investigator, responded to the scene and made contact with Officer Birochak. R. 698–702. Investigator McCoy testified he interviewed multiple witnesses at the scene and at headquarters who identified the shooters, and Lewis led Investigator McCoy to Applicant's and Davis's residence. R. 702–05. Investigator McCoy testified that once Applicant was identified from a lineup, he prepared a search warrant for Applicant's and Davis's residence and prepared an arrest warrant based on the physical evidence and witness statements. R. 707–08. Investigator McCoy served the search warrant and discovered a box of ammunition matching the brand of the shell casings at the crime scene. R. 121, 710–12. Additionally, Investigator McCoy testified concerning a jail call made by Applicant that was played for the jury. R. 721–722; State's Ex. 174.

Officer Brian Zwolak was part of the fugitive team searching for Applicant and Davis after the shooting on July 14, 2014. R. 581. Officer Zwolak testified they received information that Applicant and Davis were hiding in an apartment complex on the north side of Columbia. R. 582. Officer Zwolak testified the fugitive team responded to the apartment and two females, Kadeisha Gosier and Quiera Durham, opened the door. Officer Zwolak testified that while speaking with the

females, they heard the door to the back bedroom shut and discovered Applicant and Davis in the room and arrested them. R. 122, 578–85, 582–84.

Investigator Chad Smith, a firearms expert at SLED, testified to his findings from his testing of the crime scene evidence. R. 667–87. Investigator Smith testified he received and tested several different calibers, specifically six fired 9mm Luger caliber cartridges, twelve fired 45 auto caliber cartridges, one unfired 9mm Luger cartridge, three fired bullets, one fired jacket fragment, and one miscellaneous metal. R. 673–74; State's Ex.s 125, 128–132, 146. Investigator Smith testified he assessed the cartridges and bullets to ascertain how many different firearms could have been used and determine the caliber of the bullets. R. 675–81. Investigator Smith testified that, in his opinion, two firearms were used in the shooting, one to fire the 9mm Luger caliber cartridges and one to fire the 45 auto caliber cartridges.² R. 681–82, 687.

CURRENT ACTION BEFORE THIS COURT

In his application for PCR, Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - "My lawyer did not help/fight to his best abilities. Also did not do the things me and my family asked him to do."
2. Prosecutorial Misconduct
 - "Prosecutors presented false evidence and also called witnesses who were not on the scene or ain't have personal knowledge."
3. Actual Innocence (Newly Discovered Evidence)

² After Krzyston's cross-examination of Investigator Smith in the in-camera hearing, Krzyston argued the evidence should be suppressed based on conflicting reports by commentators of the state of foundational validity with regard to this science. R. 665–66. The trial court did not suppress the evidence but limited the testimony of Investigator Smith, ruling that he could testify to his opinion that the bullet came from the same gun based on a reasonable degree of certainty but that he could not testify to his absolute certainty. R. 666–68. On cross-examination, Smith testified the "likelihood of it being fired by another gun would be practically impossible." R. 693:10–11. Krzyston objected to this testimony as the trial court had ruled this testimony was impermissible and requested a mistrial. R. 695. The trial court ruled Krzyston opened the door to the answer by asking Investigator Smith's opinion. R. 696.

- "Murder victim stated he knew (sic) who shot him and that he only remembers one shooter."

On January 4, 2024, by way of PCR Counsel, Applicant amended his PCR application and alleged additional allegations of ineffective assistance of counsel, as follows:

1. Ineffective Assistance of Counsel
 - a. Ruffin incorrectly advised Applicant that it was too late for Applicant to seek to have Ruffin relieved as his attorney and refused to bring Applicant's request in front of the Court for a hearing.
 - b. Applicant wished to assert a defense of self-defense to his charges. Ruffin refused to allow Applicant to assert this defense.
 - c. Ruffin insisted on asserting the defense that Applicant was not present at the scene of the crime, despite there being numerous witnesses to the contrary and despite Applicant's admissions to Ruffin that he was present and was defending himself.
 - d. Trial Counsels' refusal to proceed with a self-defense case made it impossible for Applicant to testify in his own defense since his testimony would be contrary to the theory of Trial Counsels.
 - e. Because of Trial Counsels refusal to proceed with a self-defense case, no pre-trial immunity hearing was held pursuant to the Protection of Persons and Property Act.
 - f. Ruffin was ineffective in his cross-examination of eyewitnesses against Applicant.
 - g. Krzyston was ineffective in his cross-examination of expert witness Chad Smith by opening the door to that witness testifying in a manner previously ruled inadmissible by the Court. See pages 666 to 668, 693, and 695 to 696 of the trial transcripts.

STANDARD OF REVIEW

The Uniform Post-Conviction Procedure Act (the Act), S.C. Code Ann. §§ 17-27-10 to -160, provides that any person may seek PCR based upon the following types of allegations:

1. That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
2. That the court was without jurisdiction to impose sentence;
3. That the sentence exceeds the maximum authorized by law;

4. That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
5. That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
6. That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant the right to effective assistance of counsel. *Strickland v. Washington*, 466 U.S. 668 (1984); *Taylor v. State*, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. *Rogers v. State*, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a PCR 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(e), 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 v. Washington* to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 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; *accord 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) ("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.'" (quoting *Strickland*, 466 U.S. at 687)).

Regarding the deficiency prong of the *Strickland* analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. *Butler*, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." *Kimmelman v. Morrison*, 477 U.S. 365, 384 (1986); *see also Cullen v. Pinholster*, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. *Strickland*, 466 U.S. at 689. To establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." *Id.* at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most

common custom." *Harrington v. Richter*, 562 U.S. 86, 105 (2011).

Beyond satisfying the burden required by the deficiency prong, an applicant also bears the burden of establishing prejudice in order to be entitled to relief as "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." *Strickland*, 466 U.S. at 691. To meet this burden, counsel's deficient performance must have prejudiced the applicant to such an extent, there is a reasonable probability the result of the proceeding would have been different but for counsel's unprofessional errors. *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625; see *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) ("To establish a claim of ineffective assistance of trial counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." *Richter*, 562 U.S. at 112.

Finally, the *Strickland* standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689–90. 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). The applicant's burden of proving both *Strickland* components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. *Id.* at 686; see *Nix v. Whiteside*, 475 U.S. 157, 175 (1986) (noting that

under *Strickland*, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); *see also United States v. Morrow*, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged various claims of ineffective assistance of counsel through the PCR 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 PCR. *See* Rule 71.1(e), SCRPC ("The [PCR] applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."). 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 Trial Counsel's testimony at the evidentiary hearing **credible** and **persuasive**, where he presented well-recalled testimony of relevant background, facts, and discussions leading up to and during the trial. This Court further finds applicable the strong presumption that at all stages of Trial Counsels' representation of Applicant they rendered adequate assistance and exercised reasonable professional judgment in her 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; *see Whitehead v. State*, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ON THE MERITS

Allegation 1a: Ruffin incorrectly advised Applicant that it was too late to relieve him and refused to bring Applicant's request in front of the Court for a hearing.

Applicant alleges Ruffin was constitutionally ineffective for incorrectly advising Applicant it was too late to remove Ruffin from his case. Specifically, Applicant testified he wanted to relieve Ruffin. This Court finds this allegation is without merit.

Evidentiary Hearing Testimony

At the evidentiary hearing on direct examination, Applicant testified he was initially represented by Anastasia Walker, but she was taken off his case even though he wanted her to represent him. PCR Tr. 7–8. Applicant testified he wanted Ruffin off his case from the first encounter, and that he informed Ruffin he wanted him relieved as counsel. PCR Tr. 8. Applicant testified Ruffin told him he was stuck with Ruffin because they were preparing his case for trial. PCR Tr. 9. Applicant testified he and Ruffin were not on the same page, and that he told Ruffin that he shot in self-defense, but Ruffin said there were numerous witnesses stating he murdered Victim. PCR Tr. 13. Applicant testified that he told Ruffin multiple times he wanted him off his case. *Id.* Applicant testified Ruffin did not advise he could have him relieved as counsel, and a hearing never took place to relieve Ruffin as counsel for Applicant. PCR Tr. 9. Applicant testified Trial Counsel did not take the time to examine what he would say and help fight his case. *Id.*

On cross-examination, Applicant testified he wanted Ruffin relieved as counsel because Ruffin would not listen to his side of the case and told him there was no use trying to fight because there were many witnesses that said he did it. PCR Tr. 14.

On direct examination, Ruffin testified Walker represented Applicant for almost two years and continued as second chair up until she left the Public Defender's Office completely. PCR Tr. 22. Ruffin testified that his notes did not indicate that Applicant requested to have him relieved as counsel. PCR Tr. 25. Ruffin testified it is his usual practice to file a motion to be relieved when a client expresses that they do not want him to represent them anymore. *Id.* Ruffin testified he would have been happy to file a motion had Applicant requested. *Id.*

Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. *See Butler, supra*. Notably, this Court finds Applicant's testimony **not credible** that he requested to have Ruffin relieved as counsel. Ruffin **credibly** testified it is his usual practice to file a motion to relieve him as counsel when his client wishes to end representation. Ruffin **credibly** testified he had no indication Applicant wanted to relieve him as counsel. Ruffin **credibly** testified he would have filed a motion had Applicant requested him to do so. At trial, there was no indication Applicant expressed his dissatisfaction with Ruffin, nor his wishes to relieve Ruffin.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the *Strickland* test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or

omissions to prove the second prong of *Strickland*—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

- Allegation 1b:** Applicant wished to assert a defense of self-defense to his charges. Ruffin refused to allow Applicant to assert this defense.
- Allegation 1c:** Ruffin insisted on asserting the defense that Applicant was not present at the scene of the crime, despite there being numerous witnesses to the contrary and despite Applicant's admissions to Ruffin that he was present and was defending himself.
- Allegation 1d.** Trial Counsels' refusal to proceed with a self-defense case made it impossible for Applicant to testify in his own defense since his testimony would be contrary to the theory of Trial Counsel.
- Allegation 1e** Because of Trial Counsel refusal to proceed with a self-defense case, no pre-trial immunity hearing was held pursuant to the Protection of Persons and Property Act Ruffin was ineffective for asserting at trial that Applicant was not present at the scene of the crime instead of asserting self-defense and failed to pursue a pre-trial immunity hearing.

Applicant alleges Trial Counsel was constitutionally ineffective for asserting that Applicant was not present at the crime scene. Specifically, Applicant averred Trial Counsel should have asserted self-defense and pursued a pre-trial immunity hearing. This Court finds these allegations are without merit.

A defendant must establish four things in asserting self-defense:

- (1) the defendant must be without fault in bringing on the difficulty.
- (2) the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger.

- (3) if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life.
- (4) the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense.

State v. Davis, 282 S.C. 45, 46, 317 S.E.2d 452 (1984). The Protection of Persons and Property Act (the Act) provides that "[a] person who uses deadly force as permitted by the provisions of this article or another applicable provision of law is justified in using deadly force and is immune from criminal prosecution and civil action for the use of deadly force." S.C. Code Ann. § 16-11-450(A). The Act further provides, in part, that:

A person who is not engaged in an unlawful activity and who is attacked in another place where he has a right to be, including, but not limited to, his place of business, has no duty to retreat and has the right to stand his ground and meet force with force, including deadly force, if he reasonably believes it is necessary to prevent death or great bodily injury to himself or another person or to prevent the commission of a violent crime as defined in Section 16-1-60.

S.C. Code Ann. § 16-11-440(C).

"[T]he main thrust of the Act, provides a presumption of reasonable fear of imminent peril of death or great bodily injury to a person who uses deadly force if he is attacked by or attempting to remove another from a dwelling, residence, or occupied vehicle." *State v. Curry*, 406 S.C. 364, 370, 752 S.E.2d 263, 266 (2013). A trial court must consider the elements of self-defense in determining whether a defendant is entitled to immunity. *State v. Glenn*, 429 S.C. 108, 118, 838 S.E.2d 491, 496 (2019) ("[A] defendant may seek immunity from prosecution under the Act by

demonstrating the elements of self-defense to the satisfaction of the trial court by the preponderance of the evidence. . . . [A] valid case of self-defense must exist, and the trial court must necessarily consider the elements of self-defense in determining a defendant's entitlement to the Act's immunity.") (quoting *Curry*, 406 S.C. at 371–72, 752 S.E.2d at 266–67).

Evidentiary Hearing Testimony

At the evidentiary hearing on direct examination, Applicant testified that he wanted to pursue self-defense at trial. PCR Tr. 7. Applicant testified that there was physical evidence and multiple witnesses that corroborated his version of events.³ PCR Tr. 12. Applicant testified he told Ruffin he acted in self-defense, and Ruffin said it didn't matter because many people said he did it. PCR Tr. 7. Applicant testified he never denied that he was not present at the scene. PCR Tr. 10. Applicant testified Ruffin considered pursuing a self-defense theory. PCR Tr. 9. Applicant testified Trial Counsel did not want to pursue self-defense and instead argued Applicant was not present. PCR Tr. 9–10. Applicant testified that Trial Counsel advised him they were pursuing defense that the witnesses identified the wrong person based on the amount of witnesses and their differing perceptions. PCR Tr. 10. Applicant further testified he did not have a pre-trial hearing on immunity. PCR Tr. 12. Applicant testified he was not entitled to an immunity hearing because Ruffin's defense strategy was that Applicant was not present. *Id.*

On cross-examination, Applicant testified that Daquan Cleckley invited Applicant to the birthday party at Cleckley's mother's home. PCR Tr. 16. Applicant testified he was present at the scene before the incident unfolded. *Id.* Applicant testified he left for a family event that day and returned later to hang out with Cleckley. PCR Tr. 17. Applicant testified that an incident ensued between Cleckley and his brother earlier that week, and Applicant returned to the party to diffuse

³ Notably, Applicant failed to present the alleged evidence and witnesses that would have corroborated his version of events that he acted in self-defense.

the situation and had a gun with him. *Id.* Applicant testified he had the gun to protect his family because Cleckley had previously pulled a gun at his mother's home, resulting from Applicant's dealings with Cleckley. *Id.* Applicant testified he recalled the testimony at trial that his brother was beaten, and Applicant returned in defense of his brother. PCR Tr. 18. Applicant testified he did not return to the party in defense of his brother. *Id.* Applicant testified he recalled the testimony throughout trial that Applicant was not invited to the party. PCR Tr. 18. Applicant testified he was legally present at the home. PCR Tr. 19. Applicant testified medical testimony indicated the victim had been shot in the back. *Id.* Applicant testified he never stated he shot the victim, but that he had discharged the firearm into the crowd. *Id.* Applicant further testified he discharged his firearm in self-defense because he was in imminent danger. PCR Tr. 20. Applicant testified that he fired the gun to save his life and his brother's life. *Id.*

On direct examination, Ruffin testified Applicant went to a birthday party with a gun to settle a dispute about a fight that ensued with his brother and someone else. PCR Tr. 26. Ruffin testified Applicant was not without fault in bringing on the difficulty because he went to the party. PCR Tr. 27. Ruffin testified there was nothing to support Applicant acted in self-defense. PCR Tr. 26. Ruffin testified he informed Applicant the only way to obtain a jury instruction for self-defense was if Applicant testified, and Applicant did not want to testify. *Id.* Ruffin testified he was unable to really craft a defense strategy. PCR Tr. 24. Ruffin testified their defense strategy was reasonable doubt. PCR Tr. 25. Specifically, Ruffin testified his strategy was to "poke holes" in the State's case. PCR Tr. 24. Ruffin testified his goal in the case was to obtain a favorable plea resolution leading up to trial. PCR Tr. 27. Ruffin testified that when the plea deal was unsuccessful, he

pursued a *Neil v. Biggers*⁴ hearing that lasted a day due to the numerous witnesses who identified Applicant from a lineup. *Id.*

On cross-examination, Ruffin testified he did not think self-defense was a believable defense because there was no evidence to support it. PCR Tr. 30. Ruffin testified he either had to argue that someone else did it or that Applicant did it and was justified. *Id.* Ruffin testified that if Applicant had testified, they would have argued self-defense. PCR Tr. 31. Ruffin testified that Applicant stated multiple times he would not testify at trial. *Id.* Ruffin testified his notes indicated Applicant did not wish to testify, but Applicant did not sign a waiver or form to that effect. PCR Tr. 32. Ruffin testified the evidence consisted of thirteen eyewitnesses who personally knew and identified Applicant and his brother, Malik, at the scene. PCR Tr. 24.

On direct examination, Krzyston testified he was involved extensively in Applicant's trial. PCR Tr. 33–34. Krzyston testified that there was extensive eyewitness testimony, medical evidence, crime scene investigation evidence, and a jail call⁵ that ultimately was a huge issue for Applicant. PCR Tr. 36. Krzyston testified self-defense would have been viable, but Applicant did not wish to testify. *Id.* Krzyston testified they intended to pursue reasonable doubt and poke holes. *Id.* Krzyston testified he does not recall pursuing self-defense or indicating anything in his opening statement about self-defense. *Id.*

Findings

This Court finds Applicant has failed to meet his burden of proving Trial Counsel was deficient and that the alleged deficiency prejudiced him. *See Butler, supra*. Ruffin **credibly** testified self-defense was not a believable defense. *See Roseboro v. State*, 317 S.C. 292, 454 S.E.2d 312 (1996) (stating that, where counsel articulates a valid strategic reason for his action or inaction,

⁴ *Neil v. Biggers*, 409 U.S. 188 (1972).

⁵ This record memorializes the jail call was played for the jury. Trial Tr. 722; State's Ex. 174.

counsel's performance should not be found ineffective). Ruffin credibly testified Applicant was not without fault because he went to the party. Ruffin credibly testified there were at least thirteen eyewitnesses who personally knew and identified Applicant at the scene. Ruffin credibly testified none of the witnesses' testimony established Applicant acted in self-defense. Ruffin credibly testified the only way to obtain a self-defense instruction was if Applicant testified at trial. Trial Counsel credibly testified Applicant did not wish to testify at trial. Even if Applicant had pursued self-defense, Ruffin credibly testified there was no evidence to support the theory. Therefore, Trial Counsel cannot be deficient for failing to pursue a non-viable defense at pre-trial or at trial.

Additionally, Applicant failed to show that, had Trial Counsel pursued a pre-trial immunity hearing or self-defense at trial, the outcome of his trial would have been different. To be entitled to immunity, Applicant would have had to establish the elements of self-defense by the preponderance of the evidence. However, there was substantial evidence—including the testimony of over a dozen eyewitnesses—that Applicant did not act in self-defense. Based on this, this Court cannot find Applicant would have been entitled to immunity. Moreover, as found *supra*, Trial Counsel credibly testified that, unless Applicant testified, self-defense was not a viable defense, and Applicant refused to testify.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the *Strickland* test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of *Strickland*—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

Allegation 1f: Ruffin was ineffective in his cross-examination of eyewitnesses against Applicant.

Allegation 1g: Krzyston was ineffective in his cross-examination of expert witness Chad Smith by opening the door to that witness testifying in a manner previously ruled inadmissible by the Court. See pages 666 to 668, 693, and 695 to 696 of the trial transcripts.

Applicant alleges Ruffin was constitutionally ineffective in his cross-examination of eyewitnesses. Specifically, at the evidentiary hearing Applicant testified Ruffin failed to effectively cross-examine Ms. Cleckley, Daquan, Lewis, and all the witnesses. Additionally, Applicant alleges Krzyston was constitutionally ineffective in the cross-examination of firearm examiner Smith when he opened the door to testimony the trial court had previously ruled inadmissible. This Court finds these allegations are without merit.

Evidentiary Hearing Testimony

At the evidentiary hearing on direct examination, Applicant testified that Trial Counsels failed to impeach the witness's testimony with their previous statements or argue the witnesses were saying what the solicitors or someone else told them to say. PCR Tr. 12. Applicant testified Ruffin only asked the witnesses a couple of questions. PCR Tr. 13.

On cross-examination, Applicant testified Ruffin failed to effectively cross-examine most of the witnesses. PCR Tr. 20. Applicant testified Trial Counsel was ineffective in their cross-examination of the witnesses. PCR Tr. 20–21.

On direct examination, Ruffin testified he did not believe he was ineffective in his cross-examination. PCR Tr. 28. Ruffin testified they did the best that they could with what they had to work with. *Id.* Ruffin testified that he stood by his representation. PCR Tr. 29.

On direct examination, Krzyston testified leading up to trial, they had asked the trial court to conduct an evidentiary hearing to determine the admissibility of forensic identification stemming from firearms and tool mark analysis under Rule 702. PCR Tr. 35. Krzyston testified they got the trial court to change how the firearm examiner was able to testify about his conclusions to the jury. *Id.* Krzyston testified he cross-examined Smith. *Id.* Krzyston testified the "witness answered outside the question he specifically asked in proffered testimony that the court had previously ruled he could not proffer." PCR Tr. 35:18–21. However, Krzyston testified the bullets were not the only evidence in the case. PCR Tr. 35. Krzyston testified that there was extensive eyewitness evidence, medical testimony, and crime scene investigation, along with a jail call. PCR Tr. 36. Krzyston testified that after speaking to the jury once the verdict had been rendered and sentencing passed, the jail call was a huge issue for Applicant. *Id.*

On cross-examination, Krzyston testified that the trial judge ruled prior to Investigator Smith's testimony that Smith could not call it a match and instead could say it was "consistent with." PCR Tr. 37–38. Krzyston testified he objected to his own question, and the Court overruled his objection. *Id.* Krzyston testified it is correct that the Judge stated outside the presence of the jury that he had opened the door to that answer and refused to strike it from the record. *Id.*

At trial, Krzyston objected to Smith's testimony, stating, "Judge...I asked a question, he proceeded to then say that he could match them beyond any practical certainty. The witness was instructed not to do that, he did it. That would be a matter of law. I object to the testimony as a whole and ask for a mistrial." Trial Tr. 696:12–17, *see supra* note 2.

Findings

This Court finds Applicant has failed to meet his burden of proving Ruffin was deficient and that the alleged deficiency prejudiced him. *See Butler, supra*. Applicant failed to present testimony or evidence of how Ruffin was ineffective in their cross-examination of the witnesses and what they could have discovered through a more thorough cross-examination that would have affected the outcome of Applicant's trial. *See Clark v. State*, 315 S.C. 385, 434 S.E.2d 266 (1993) (indicating mere speculation as to what a witness's testimony would have been, by itself, cannot satisfy applicant's burden of showing prejudice).

Additionally, this Court finds Applicant has failed to meet his burden of proving Krzyston was deficient and that the alleged deficiency prejudiced him. *See Butler, supra*. Applicant has a right to effective representation, not perfect representation. Further, this Court finds cross-examination is a matter of trial strategy, and Applicant has failed to overcome the presumption that Krzyston "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (citing *Strickland*, 466 U.S. at 690); *see also Abney v. State*, 408 S.C. 41, 48, 757 S.E.2d 544, 547 (Ct. App. 2014) (Pieper, J., concurring) ("[D]ecisions primarily involving trial strategy and tactics may be made by trial counsel. . . . Examples of such decisions include which jurors to accept or strike, which witnesses should be called on the defendant's behalf, what evidence should be introduced, whether to object to the admission of evidence, *[and] whether and how a witness should be cross-examined.*") (emphasis added) (citations omitted).

Even if this Court were to find Krzyston's performance deficient, Applicant cannot prove prejudice. The record and Krzyston's credible testimony establish there was overwhelming

evidence supporting Applicant's guilt, including extensive eyewitness evidence, medical testimony, a crime scene investigation, and an incriminating jail call.⁶

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove the first prong of the *Strickland* test—that Trial Counsel failed to render reasonably effective assistance under prevailing professional norms. Furthermore, Applicant has failed to present specific and compelling evidence that Trial Counsel committed either errors or omissions to prove the second prong of *Strickland*—that he was prejudiced by Trial Counsel's performance.

Accordingly, this Court finds Applicant has failed to establish any deficiency by Trial Counsel or any prejudice flowing therefrom. Thus, this allegation must be **DENIED** and **DISMISSED**.

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 a

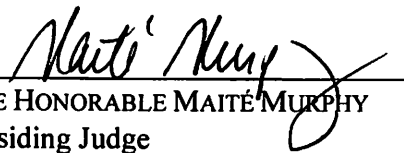
⁶ Jamichael Lewis (Lewis), Paris Young, Daquan Cleckley, Benjamin Walker, Dominique Tucker, Jasmine Sims, and April Cleckley identified Applicant and Davis as the shooters to investigators that responded to the scene and from a photo lineup. R. 118–22, 183–213, 242–71, 292–334, 411–18, 423–29, 600–17. A box of ammunition matching the brand of the shell casings at the crime scene were discovered at Applicant's residence. R. 121, 710–12. A jail call made by Applicant was played for the jury with incriminating statements. R. 721–722; State's Ex. 174.

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 21 day of June, 2024.


 THE HONORABLE MAITÉ MURPHY
 Presiding Judge
 Fifth Judicial Circuit

St. Mary, South Carolina

WITNESSES

(S) Matthew David McCoy
- Columbia Police Department

ARREST WARRANT NUMBER

2014A4021601621

ACTION OF GRAND JURY

TRUE BILL

Corrine L. [Signature]
Foreperson of Grand Jury
Date: **JAN 15 2015**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015 GS 40 0 00 83

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2015

87

THE STATE
vs.

Horace Elijah Watts

Indictment for
MURDER

SC Code: 16-03-0010
CDR Code: 0116

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

1128

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on January 14, 2015, the Grand Jurors of Richland County present upon their oath:

MURDER

That Horace Elijah Watts did in Richland County, on or about July 12, 2014, kill the victim, Isaac Lewis, with malice aforethought, either express or implied, by means of shoot and kill, and the victim did die as a proximate result thereof. All in violation of Section 16-03-0010, 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.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Matthew David McCoy
- Columbia Police Department

ARREST WARRANT NUMBER

2014A4021601622

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

JAN 15 2015

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015 GS 40 00084

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2015

87

THE STATE
vs.

Horace Elijah Watts

Indictment for
ATTEMPTED MURDER

SC Code: 16-03-0029
CDR Code: 3410

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

1130

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on January 14, 2015, the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Horace Elijah Watts did in Richland County on or about July 12, 2014, did with the intent to kill, attempt to kill Tyrone Johnson with malice aforethought, either expressed or implied. All in violation of SC Code of Laws § 16-3-29 (1976, as amended).

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



DAN JOHNSON, SOLICITOR

2015-1-14

FILED
JAN 14 2015
RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

(S) Matthew David McCoey
- Columbia Police Department

ARREST WARRANT NUMBER

2014A4021601623

ACTION OF GRAND JURY

TRUE BILL

Connie Lumpkin
Foreperson of Grand Jury

Date: JAN 15 2015

VERDICT

DOCKET NO. 2015 GS 40 0 0024

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2015

87

THE STATE
vs.

Horace Elijah Watts

Indictment for
POSSESSION OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-0490
CDR Code: 0549

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

1132

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on January 14, 2015, the
Grand Jurors of Richland County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME**

That Horace Elijah Watts did in Richland County, on or about July
12, 2014, possess a firearm, or visibly display what appeared to be a
firearm, or visibly displayed a knife, during the commission or attempted
commission of a violent crime, 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.



DAN JOHNSON, SOLICITOR

WITNESSES

(S) Matthew David McCoey
-- Columbia Police Department

ARREST WARRANT NUMBER

2014A4021601628

ACTION OF GRAND JURY

TRUE BILL

Connie L. Simpson
Foreperson of Grand Jury

Date: **JAN 15 2015**

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015 GS 40 0 0085

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

JANUARY TERM 2015

87

**THE STATE
vs.**

Horace Elijah Watts

**Indictment for
UNLAWFUL CARRYING OF PISTOL**

SC Code: **16-23-0020**
CDR Code: **0044**

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I
hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on January 14, 2015, the Grand Jurors of Richland County present upon their oath:

UNLAWFUL CARRYING OF A PISTOL

That Horace Elijah Watts did in Richland County on or about July 12, 2014, carry about the person a pistol, such carrying not being authorized by law, in violation of Section 16-23-0020, 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.



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATERichlandvs. Horace Elijah WattsAKA: _____
Race: _____ Sex: _____ Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ * SID# _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: MurderIn violation of § 16-03-0010 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

SC Bar # 7612

Defendant

Attorney for Defendant

SC Bar #

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department
of Corrections.☐ The Defendant is to be placed on 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 (Criminal
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 SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐*Fine: _____
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ _____
\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
\$56-1-286 (DUI Breath Test) \$25 \$ _____
\$47.12 (Public Def/Prob) \$500 \$ _____
\$14-1-212 (Law Enforce. Funding) \$25 \$ _____
\$14-1-213 (Drug Court Surcharge) \$100 \$ _____
\$50-21-114 (BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
\$90.7(SCCJA Surcharge) \$5 \$ _____
3% to County (if paid in installments) \$ _____
TOTAL \$ _____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,
\$47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/Deputy Clerk
Court Reporter: NoelmerJeanette W. McBride

Presiding Judge

Judge Code: 2107Sentence Date Feb. 9, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATERichlandvs.
Harce Elijah WattsAKA: _____
Race: _____ Sex: _____ Age: _____
DOB: _____ SS#: _____
Address: _____
City, State, Zip: _____
DL# _____ * SID# _____
*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐INDICTMENT/CASE#: 15 -GS- 40 - 0084AW#: 2014 A40211601122
Date of Offense: July 12, 2014
S.C. Code §: 16-03-0029
CDR Code #: _____

SENTENCE SHEET

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

☐ CONVICTED OF or ☐ PLEADSTO: Attempted MurderIn violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3910
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
ATTEST: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 10 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 15-GS-40-0083
☒ 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 State Department
of Corrections.☐ The Defendant is to be placed on 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 (Criminal
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 SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling ☐*Fine:
\$14-1-206 (Assessments 107.5%) \$ _____
\$14-1-211 (A)(1)(Conv. Surcharge) \$100 \$ _____
\$14-1-211 (A)(2)(DUI Surcharge) \$100 \$ _____
\$56-5-2995 (DUI Assessment) \$12 \$ _____
\$56-1-286 (DUI Breath Test) \$25 \$ _____
\$47.12 (Public Def/Prob) \$500 \$ _____
\$14-1-212 (Law Enforce. Funding) \$25 \$ _____
\$14-1-213 (Drug Court Surcharge) \$100 \$ _____
\$50-21-114 (BUI Breath Test Fee) \$50 \$ _____
\$56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____
\$90.7(SCCJA Surcharge) \$5 \$ _____
3% to County (if paid in installments) \$ _____
TOTAL \$ _____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,
\$47.12 requires \$500 be paid to Clerk
during probation.Clerk of Court/Deputy Clerk Jeanette W. M. Bridges
Court Reporter: AlmaPresiding Judge E. N. Nunn
Judge Code: 2127
Sentence Date Feb. 9, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATERichlandINDICTMENT/CASE#: 15 -GS- 40 -0024AW#: 2014A402/601623Date of Offense: July 12, 2014S.C. Code §: 16-23-0490CDR Code #: 0549

AKA: Horace Elijah Watts
 Race: _____ Sex: _____ Age: _____
 DOB: _____ SS#: _____
 Address: _____
 City, State, Zip: _____
 DL# _____ * SID# _____

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

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

☐ CONVICTED OF or ☐ PLEADSTO: Poss. of a Weapon During the Commission of a Violent CrimeIn 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

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:

Solicitor

SC Bar # 2012

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: _____☒ 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 State Department of Corrections.☐ The Defendant is to be placed on 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 (Criminal 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 SCDPPPS _____

Attend Voc. Rehab. Or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

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

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,
 \$47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/Deputy Clerk
 Court Reporter: Jeannette W. McBrider

Presiding Judge C. NeumanJudge Code: 212Sentence Date Feb. 9, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATERichlandHorace vs. Elijah Watts

AKA: _____

Race: B Sex: M Age: _____

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL# _____ SID# _____

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

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

TO: Unlawful Carrying of a PistolIn violation of § 16-23-0020 of the S.C. Code of Laws, bearing CDR Code # 0044☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS ☐ §17-25-45(CSC w/minor 1st or Lewd Act)The charge is: ☐ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentation to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____

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 1 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

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

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

incorporated by reference.

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

of Corrections.

☐ The Defendant is to be placed on 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 16-25-85 (Criminal

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 SCDPPPS _____ 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 _____ 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: _____

§47-12 (Public Def/Prob) \$500 _____

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

§14-1-213 (Drug Court Surcharge) \$100 _____

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

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

§90.7(SCCJA Surcharge) \$5 _____

3% to County (if paid in installments) _____

TOTAL \$ _____

Clerk of Court/Deputy Clerk _____

Court Reporter: NolmePresiding Judge C. A. NewJudge Code: 2187Sentence Date Feb. 9, 2017

SCCA/217 (11/2009)