

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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Certiorari to Spartanburg County

Honorable R. Lawton McIntosh, Circuit Court Judge
—————

TROY BRAXTON,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2025-000381
—————

APPENDIX
—————

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE GENERAL SESSIONS COURT

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Troy Dashaun Braxton,) 2020-GS-42-3472-3477;
6 Defendant.) 2022-GS-42-2555
7) March 13 & 14, 2023
8) Spartanburg, South Carolina

9
10 B E F O R E:

11 HONORABLE J. DERHAM COLE, JUDGE

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

14 BARRY JOE BARNETTE, ESQUIRE
15 Attorney for the State

16 E. JOSHUA SCHULTZ, ESQUIRE
17 MICHAEL DAVID MORIN, ESQUIRE
18 Attorneys for the Defendant

19
20
21 Linda D. Moffitt
22 Circuit Court Reporter
23
24
25

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2 Guilty plea -- page 3.

3 No sworn testimony.

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	Fired R-9mm Lugar casing	16	20
S-2	Fired R-9mm Lugar casing	16	20
S-3	Fired R-9mm Lugar casing	16	20
S-4	Fired R-9mm Lugar casing	16	20
S-5	Fired R-9mm Lugar casing	17	20
S-6	Fired R-9mm Lugar casing	17	20
S-7	Fired R-9mm Lugar casing	17	20
S-8	Fired R-9mm Lugar casing	17	20
S-9	Fired R-9mm Lugar casing	17	20
S-10	Fired R-9mm Lugar casing	17	20
S-11	Fired R-9mm Lugar casing	17	20
S-12	Beretta Model 92F semiautomatic pistol with magazine and 17 unfired 9mm caliber cartridges	17	20
S-13	One piece of lead	17	20
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S-16	Photograph	17	20
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S-20	B.W.C.	17	20
S-21	Black bookbag	17	20
S-22	Drug report	17	20

4

1

EXHIBITS

2

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
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3

S-23	Photograph	17	20
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4

S-24	Photograph	17	20
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5

S-25	Photograph	17	20
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6

S-26	Photograph	18	20
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7

S-27	Photograph	18	20
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8

S-28	Photograph	18	20
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9

S-29	waiver of rights	18	20
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10

S-30	video	18	20
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11

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12

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
C-1	D.V.D.		18
C-2	C.D.		18
C-3	D.V.D.		18
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1 (Proceedings March 13, 2023)

2 THE COURT: All right. We're here in the matter of
3 the State vs. Troy Deshaun Braxton. He is here on
4 Indictment Nos. 2020-GS-42-3472 through 3477 inclusive.
5 Case has been called for trial.

6 Mr. Schultz, you represent Mr. Braxton?

7 MR. SCHULTZ: I do, Your Honor, on all charges.

8 THE COURT: All right. Solicitor Barnette is here on
9 behalf of the state.

10 Do we have any pretrial matters?

11 MR. SCHULTZ: We do, Your Honor.

12 There's a few that we have to -- we may do now or may
13 do after lunch, but my understanding -- and I've talked to
14 my client about this -- is that Mr. Braxton is rejecting
15 the state's offer. And I think both the state and the
16 defense would like to put this on the record before
17 beginning the case in chief.

18 The offer as it stands is that Mr. Braxton not only
19 has these armed robberies. I think there's five
20 indictments -- possession of a weapon during a violent
21 crime and also a failure to stop, possession with intent to
22 distribute marijuana and, unfortunately, he also has a
23 murder charge, which the incident allegedly happened a few
24 weeks after this incident in question.

25 Mr. Barnette in a conversation that I had with him a

1 couple of weeks ago intended to offer a plea straight up to
2 all of the charges, but the murder charge will be dismissed
3 if Mr. Braxton offers to plead to voluntary manslaughter
4 that carries between two year and 30 years.

5 Mr. Braxton to my understanding, unless this has
6 changed in the last couple of minutes, is rejecting that
7 offer formally.

8 MR. BARNETTE: Your Honor, if I could put the record
9 on -- make sure the record is clean.

10 Your Honor, he has five armed robbery charges, two
11 possession of weapon during a violent crime, a murder
12 charge, a failure to stop charge, a possession with intent
13 to distribute marijuana charge.

14 The armed robbery -- four of the armed robberies and
15 possession of a weapon during a violent crime occurred on
16 January 1st of 2020, Your Honor.

17 The murder, the other possession of a weapon during a
18 violent crime and armed robbery occurred approximately on
19 January 9th of 2020, Your Honor.

20 The failure to stop and possession with intent to
21 distribute marijuana occurred on January 21st of 2020.

22 Your Honor, and he also has an ABHAN charge that
23 Mr. Schultz is not representing him on. Mr. Mike Morin
24 represented him on. That was never part of the plea
25 agreement. That was always left open because Mr. Morin

1 would have to talk to him about that.

2 The only offer we made, Your Honor, he would have to
3 plead straight up on all of the charges. The murder would
4 be reduced to voluntary manslaughter, and it'd be all
5 straight up, Your Honor.

6 We did this in front of Judge Kelly on March 7th, and
7 Judge Kelly went through this offer with him, Your Honor.

8 I was talking to Mr. Schultz. He was telling me on
9 Friday he had some trouble with the video tapes, getting
10 them to play. So, I thought I'd better reopen this because
11 we had actually withdrawn the offer. But to protect the
12 record, I thought I needed to reoffer it today if he
13 decides to take it, but that would be the offer, Your
14 Honor, as stated. And of course if he declines it, then
15 the offer will be revoked and withdrawn if he does not take
16 the deal.

17 THE COURT: All right. Well, I'm a little bit
18 confused about it.

19 You said there were four armed robberies that occurred
20 on January 1 of 2020.

21 MR. BARNETTE: Yes, sir. And there was a possession
22 of a weapon during a violent crime. There's actually five
23 charges on four indictments.

24 THE COURT: What about the fifth armed robbery?

25 MR. BARNETTE: The fifth armed robbery is with the

1 murder, Your Honor. There was an armed robbery --

2 THE COURT: That's not -- that's not -- I mean, I know
3 it's part of the plea offer, but that's not part of the
4 trial today.

5 MR. BARNETTE: No, sir. It's not. The
6 January 9th incident is not.

7 THE COURT: All right. You are Troy Deshaun Braxton.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Mr. Braxton, Mr. Schultz has been
10 representing you. How long has he been representing you on
11 these charges?

12 THE DEFENDANT: He been representing me ever since I
13 been incarcerated.

14 THE COURT: Has that been since the first of 2020?

15 MR. SCHULTZ: January of 2020, Your Honor.

16 THE COURT: All right. And how long after you got
17 arrested did you hire Mr. Schultz?

18 THE DEFENDANT: Maybe like within 30 days.

19 THE COURT: Okay. And so during the time --

20 MR. BARNETTE: Your Honor, may we approach one minute,
21 Your Honor, just to make sure?

22 THE COURT: Okay.

23 (Bench conference held off the record.)

24 MR. SCHULTZ: Yes, Your Honor. I misspoke. I know I
25 began talking to Mr. Braxton. I know I began talking with

1 Mr. Braxton in January of 2020 in jail.

2 I have here that Mr. Abusaft at the -- well, at the
3 time he was at the public defender's office. He filed a
4 notice of representation in February of 2020 and I filed a
5 notice of representation on March 24th of 2020. And I was
6 listed -- I am listed in the public index as his attorney
7 on March 25th of 2020. So, I apologize for the confusion.

8 THE COURT: That's all right.

9 All right. Mr. Braxton, Mr. Schultz says that he
10 talked to you in January but he didn't actually begin
11 representing you until March of 2020. Is that what you
12 understand?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. And since that time have you had
15 plenty of opportunity to talk to him about your cases and
16 how you want to proceed with them?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And has he shared with you all of the
19 evidence that the state has in their possession that they
20 would present in court if your cases went to trial before a
21 jury?

22 THE DEFENDANT: Yes, sir. Everything that he has, he
23 shared with me.

24 THE COURT: All right. So y'all discussed everything
25 about the evidence and about your cases, what you're

1 charged with?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And have y'all also discussed what kind of
4 sentence you could get if you were convicted of each of the
5 charges?

6 THE DEFENDANT: He told me what the armed robbery
7 carries, what we're going to trial for. He told me what
8 that carries.

9 THE COURT: All right. What's your understanding that
10 armed robbery carries?

11 THE DEFENDANT: Ten to 30 years.

12 THE COURT: Ten to 30?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: And you've got five of those.

15 Did he tell you about the possession of a weapon
16 during the commission of a violent crime?

17 THE DEFENDANT: No. Not to my understanding.

18 THE COURT: All right. Well, you can get five years
19 for each of those if convicted.

20 Did he talk to you about the failing to stop?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Did he tell you what kind of sentence you
23 could get for that?

24 THE DEFENDANT: I'm not sure it's been explained.

25 THE COURT: Is that the three-year or five-year?

1 MR. BARNETTE: Three-year, Your Honor.

2 THE COURT: All right. Get three years for that if
3 convicted.

4 Did he talk to you about possession with intent to
5 distribute marijuana?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you understand what kind of sentence
8 you can get if you are convicted of that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: What can you get?

11 THE DEFENDANT: It can be a fine, but I'm not sure.

12 THE COURT: Okay. Is this the five years?

13 MR. BARNETTE: Yes, sir. It is.

14 THE COURT: It's up to five years too. And is that
15 all of it?

16 MR. BARNETTE: He also had the murder, Your Honor.

17 THE COURT: And the murder charge and the armed
18 robbery. So, the murder charge -- is there a possession of
19 a weapon with that?

20 MR. BARNETTE: Yes, sir. There is.

21 THE COURT: All right. So you've got a charge of
22 murder, which is accompanied by a possession of a weapon
23 during a violent crime and armed robbery.

24 So, you knew the armed robbery carries ten to 30.
25 Possession of a weapon carries up to five. Murder carries

1 up to life. Mandatory minimum is 30, day for day. No
2 credits of any kind. Mandatory minimum 30, do it day for
3 day. But it could be up to life in prison, which of course
4 you'd have to do day for day too.

5 So that's -- if you're convicted of murder that's the
6 sentence you could get on that. Do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you and Mr. Schultz, as you say, have
9 discussed all the evidence and what the state would
10 present.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And, so, you know what their case is
13 about --

14 THE DEFENDANT: Yes, sir.

15 THE COURT: -- and what they contend they have against
16 you that would tend to prove you guilty.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Now, Mr. Schultz says that -- and
19 Mr. Barnette confirmed it -- that they've been talking
20 about trying to resolve your cases by way of a guilty plea
21 as opposed to a jury trial. And the solicitor and
22 Mr. Schultz have both indicated their agreement as to what
23 was offered.

24 And as I understand it -- and they'll correct me if I
25 misspeak -- as I understand if you plead to everything

1 they're willing to reduce the murder charge from that of
2 murder to the lesser offense of voluntary manslaughter,
3 that you would plead guilty to all of the armed robberies,
4 that you would plead guilty to possession -- the two
5 possession of weapons during the commission of a violent
6 crime, failing to stop and possession with intent to
7 distribute marijuana.

8 Is that what you understood?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Did I state it right?

11 MR. BARNETTE: Yes, sir. It'd be a straight-up plea
12 to that, and the ABHAN would stay pending, Your Honor.

13 THE COURT: That's right. Excuse me. Yeah. You've
14 got an aggravated assault and battery charge that doesn't
15 relate to any of this. And somebody else represents you on
16 that. So, that's not covered in this trial or in this plea
17 offer because you have other representation on that.

18 Now, of course it could be covered if you and your
19 lawyer talked about it and the solicitor agreed to include
20 that in the mix. But do you understand what the offer is?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. Do you understand that it
23 makes a difference as far as any sentence that you might
24 receive? It makes a substantial difference as to any
25 sentence you might receive if you're convicted of each of

1 these offenses.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: So, have you had time to talk to
4 Mr. Schultz about whether or not you want to accept the
5 plea offer?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And do you understand that if you don't
8 accept the plea offer that the state will consider it
9 rejected? And Mr. Barnette says he won't be making that
10 again. So, you'll go forward on the charges just as they
11 are, no reductions or anything. Did you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you made a decision about what you
14 want to do, or do you need to talk to Mr. Schultz about it
15 any more?

16 THE DEFENDANT: I made a decision.

17 THE COURT: All right. What would you like to do?

18 THE DEFENDANT: I reject the offer.

19 THE COURT: You're rejecting the offer?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You want to go to trial on the charges
22 that have been mentioned that will be for trial today?

23 THE DEFENDANT: Yeah, the armed robbery, yes, sir.
24 That's right.

25 THE COURT: Okay. Are there any questions you need to

1 ask me about the situation, or do you need to think about
2 it any more?

3 THE DEFENDANT: Me, sir?

4 THE COURT: Yes.

5 THE DEFENDANT: As far as --

6 THE COURT: what I'm saying, do you have any questions
7 you need to ask me about it, or do you need to think about
8 it any more before you give the final rejection?

9 THE DEFENDANT: I'd like to think about it.

10 THE COURT: And how much time do you need? Can you do
11 it -- can you talk to Mr. Schultz and tell me something
12 before 1:00 o'clock?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Okay. Y'all take that break and talk
15 about it.

16 MR. SCHULTZ: Thank you, Judge.

17 THE COURT: Come back and tell me.

18 MR. SCHULTZ: Yes, sir.

19 (Whereupon, a recess was taken.)

20 (Fired R-9mm Lugar casing marked State's Exhibit No. 1
21 for Identification; fired R-9mm Lugar casing marked State's
22 Exhibit No. 2 for Identification; fired R-9mm Lugar casing
23 marked State's Exhibit No. 3 for Identification; fired R-9mm
24 Lugar casing marked State's Exhibit No. 4 for
25 Identification; fired R-9mm Lugar casing marked State's

1 Exhibit No. 5 for Identification; fired R-9mm Luger casing
2 marked State's Exhibit No. 6 for Identification; fired R-9mm
3 Luger casing marked State's Exhibit No. 7 for
4 Identification; fired R-9mm Luger casing marked State's
5 Exhibit No. 8 for Identification; fired R-9mm Luger casing
6 marked State's Exhibit No. 9 for Identification; fired R-9mm
7 Luger casing marked State's Exhibit No. 10 for
8 Identification; fired R-9mm Luger casing marked State's
9 Exhibit No. 11 for Identification; Beretta Model 92F
10 semiautomatic pistol with magazine and 17 unfired 9mm
11 caliber cartridges marked State's Exhibit No. 12 for
12 Identification; one piece of lead marked State's Exhibit No.
13 13 for Identification; one fired bullet marked State's
14 Exhibit No. 14 for Identification; photograph marked State's
15 Exhibit No. 15 for Identification; photograph marked State's
16 Exhibit No. 16 for Identification; SLED report marked
17 State's Exhibit No. 17 for Identification; videos marked
18 State's Exhibit No. 18 for Identification; in-car video
19 marked State's Exhibit No. 19 for Identification; B.W.C.
20 marked State's Exhibit No. 20 for Identification; black
21 bookbag marked State's Exhibit No. 21 for Identification;
22 drug report marked State's Exhibit No. 22 for
23 Identification; photograph marked State's Exhibit No. 23 for
24 Identification; photograph marked State's Exhibit No. 24 for
25 Identification; photograph marked State's Exhibit No. 25 for

1 Identification; photograph marked State's Exhibit No. 26 for
2 Identification; photograph marked State's Exhibit No. 27 for
3 Identification; photograph marked State's Exhibit No. 28 for
4 Identification; waiver of rights marked State's Exhibit No.
5 29 for Identification; video marked State's Exhibit No. 30
6 for Identification; photograph marked State's Exhibit No. 31
7 for Identification; photograph marked State's Exhibit No. 32
8 for Identification.

9 D.V.D. marked Court's Exhibit No. 1; C.D. marked
10 Court's Exhibit No. 2; D.V.D. marked Court's Exhibit No. 3;
11 D.V.D. marked Court's Exhibit No. 4; lineup marked Court's
12 Exhibit No. 5; lineup marked Court's Exhibit No. 6.)

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

14 This is Troy Deshaun Braxton. Your Honor, he's
15 pleading guilty to the following indictments, Your Honor:
16 20-GS-42-3472, Your Honor, failure to stop for a motor
17 vehicle; 20-GS-42-3473, Your Honor, possession, P.W.I.D.
18 marijuana; Your Honor; and 20-GS-42-3474, Your Honor. And
19 these are -- this is a two-count indictment, Your Honor.
20 The first count is for armed robbery; the second count is
21 possession of a firearm during the commission of a violent
22 crime.

23 The next count will be 20-GS-42-3475, Your Honor.
24 It's another count for armed robbery in that case, Your
25 Honor.

1 20-GS-42-3476, Your Honor, is another count for armed
2 robbery.

3 20-GS-42-3477, Your Honor, is another count for armed
4 robbery.

5 Your Honor, 20-GS-42-3478, Your Honor, is another
6 count for armed robbery.

7 And then 20-GS-42-3479, Your Honor, is a two-count
8 indictment. Count one was indicted for murder, Your Honor.
9 He is pleading guilty to the lesser included offense of
10 voluntary manslaughter.

11 And the second count, Your Honor, is possession of a
12 weapon during a violent crime.

13 Your Honor, all of these have been true billed by the
14 grand jury. He's represented by Josh Schultz, Your Honor,
15 and these are straight-up pleas without negotiations or
16 recommendations on the case, Your Honor.

17 I do have 36 exhibits, state's exhibits, that I want
18 to enter in at the appropriate time, Your Honor, as part of
19 the evidence and facts in the case, along with six court's
20 exhibits that I also entered in as part of the facts and
21 the evidence in the case.

22 Your Honor, I don't think there's any objection from
23 Mr. Schultz to that.

24 MR. SCHULTZ: No objection, Your Honor.

25 (Fired R-9mm Luger casing marked State's Exhibit No. 1;

1 fired R-9mm Luger casing marked State's Exhibit No. 2; fired
2 R-9mm Luger casing marked State's Exhibit No. 3; fired R-9mm
3 Luger casing marked State's Exhibit No. 4; fired R-9mm Luger
4 casing marked State's Exhibit No. 5; fired R-9mm Luger
5 casing marked State's Exhibit No. 6; fired R-9mm Luger
6 casing marked State's Exhibit No. 7; fired R-9mm Luger
7 casing marked State's Exhibit No. 8; fired R-9mm Luger
8 casing marked State's Exhibit No. 9; fired R-9mm Luger
9 casing marked State's Exhibit No. 10; fired R-9mm Luger
10 casing marked State's Exhibit No. 11; Beretta Model 92F
11 semiautomatic pistol with magazine and 17 unfired 9mm
12 caliber cartridges marked State's Exhibit No. 12; one piece
13 of lead marked State's Exhibit No. 13; one fired bullet
14 marked State's Exhibit No. 14; photograph marked State's
15 Exhibit No. 15; photograph marked State's Exhibit No. 16;
16 SLED report marked State's Exhibit No. 17; videos marked
17 State's Exhibit No. 18; in-car video marked State's Exhibit
18 No. 19; B.W.C. marked State's Exhibit No. 20; black bookbag
19 marked State's Exhibit No. 21; drug report marked State's
20 Exhibit No. 22; photograph marked State's Exhibit No. 23;
21 photograph marked State's Exhibit No. 24; photograph marked
22 State's Exhibit No. 25; photograph marked State's Exhibit
23 No. 26; photograph marked State's Exhibit No. 27; photograph
24 marked State's Exhibit No. 28; waiver of rights marked
25 State's Exhibit No. 29; video marked State's Exhibit No. 30;

1 photograph marked State's Exhibit No. 31; photograph marked
2 State's Exhibit No. 32; marijuana marked State's Exhibit No.
3 33; investigator notebook homicide 1/10/20 marked State's
4 Exhibit No. 34; incident reports marked State's Exhibit No.
5 35; Florida and South Carolina rap sheets marked State's
6 Exhibit No. 36.)

7 MR. BARNETTE: Your Honor, we'd ask to take the plea
8 today.

9 The -- we were prepared to go forward on the trial
10 today involving the armed robbery at the Donnette and the
11 people that was involved in that on January 1st of 2020.
12 And we was also going to go forward on the failure to stop,
13 as well as the PWID marijuana from January 21st of 2020.

14 Your Honor, he's also pleading to the murder that
15 occurred on January 10th of 2020, Your Honor. And those
16 victims are not present, Your Honor.

17 The victims are present for the armed robbery, Your
18 Honor, and can speak at the appropriate time, Your Honor.
19 So, I'd ask to delay the sentencing so the murder victims
20 or the voluntary manslaughter victims can be here.

21 Your Honor, I do have both officers that's been
22 involved in the investigation in this case, Your Honor.
23 Investigator Megan Bennett and Investigator Chris Jenkins.
24 They're here from the sheriff's department also, Your
25 Honor, if you need to speak to them.

1 THE COURT: It appears I've got a murder indictment
2 wherein he's pleading guilty to voluntary manslaughter and
3 the possession of a weapon during the commission of a
4 violent crime.

5 I've got five indictments alleging armed robbery, and
6 one of those indictments has a possession of a weapon
7 during the commission of a violent crime.

8 I've got possession with intent to distribute
9 marijuana and failing to stop.

10 Is that everything?

11 MR. BARNETTE: Yes, sir. But there is an ABHAN charge
12 that is pending that would not be part of this guilty plea,
13 Your Honor. That will be left, left open, Your Honor.

14 THE COURT: So, that's not a part of the -- of any
15 agreement in this case.

16 MR. BARNETTE: That's correct, Your Honor. And, as a
17 matter of fact, he has a separate attorney for that.

18 THE COURT: All right. You are Troy Deshaun Braxton.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Mr. Braxton, Mr. Schultz is your lawyer.
21 As we discussed earlier -- I think you told me that he --
22 or you employed him back in March of 2020. Is that right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: And since that time you have been in the
25 Spartanburg County Detention Facility.

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And during that time, I think you told me,
3 that you'd had plenty of time to talk with Mr. Schultz
4 about your cases and about your decision as to what you
5 want to do.

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Is that right?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: I have before me a number of indictments,
10 as you know. I'm going to go through each to be certain
11 that you know what's in them, that Mr. Schultz has been
12 over them with you, that you understand what they claim you
13 did, that you understand the potential punishments that can
14 be imposed.

15 Upon acceptance of the guilty plea I'll also talk
16 about whether or not you have any defenses to any of the
17 charges.

18 So, if at any time you have a question for me, let me
19 know. And if you need to stop and talk to Mr. Schultz, let
20 me know of that too. Okay?

21 THE DEFENDANT: Okay.

22 THE COURT: Indictment 2020-03479 charges you with the
23 crimes of murder and possession of a weapon during the
24 commission of a violent crime.

25 This indictment alleges that on or about January the

1 10th of 2020 you did with malice aforethought kill one Juan
2 Booker by shooting him and that he died as a proximate
3 result of a gunshot wound.

4 Count two of the indictment alleges that you possessed
5 a firearm during the commission of that violent crime.

6 If convicted of the crime of murder, you could receive
7 a sentence of not less than 30 years in jail, and that
8 means day for day, 30 years, and not more than the balance
9 of your natural life. Anything in between.

10 Count two of the indictment alleges possession of a
11 weapon, and you can receive an additional five-year
12 sentence for that.

13 Do you understand the charges in that indictment and
14 the potential sentences that can be imposed?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: I also have before me 2020-03478. That
17 indictment charges you with armed robbery.

18 The state alleges that occurred on January the 10th of
19 2020, and they allege on that date that you did while armed
20 with a deadly weapon take, steal and carry away from the
21 person or presence of Juan Booker by the use of force or
22 intimidation a certain sum of money and that you intended
23 to steal the money and deprive him of use and possession of
24 his property.

25 Armed robbery carries a potential sentence of 30 years

1 in jail. It requires a mandatory minimum sentence of not
2 less than ten years in jail.

3 Do you understand that charge and the potential
4 punishment?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Indictment 2020-03477 also charges you
7 with armed robbery, same allegations as stated in the
8 previous indictment except that this indictment alleges
9 that the armed robbery occurred on January the 1st of 2020.
10 And they allege the victim of that armed robbery was
11 Crystal Risko. As I said, it carries an additional
12 possible sentence of not less than ten, not more than 30.

13 Do you understand that charge and the potential
14 sentences?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Indictment 2020-0346 also charges you with
17 armed robbery, again, almost identical allegations except
18 that in this indictment David L. Moore is alleged to be the
19 victim, and the incident date was also on January the
20 1st of 2020. Again, it carries not less than ten, not more
21 than 30.

22 Do you understand that charge and the potential
23 punishment?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Indictment 2020-03475 also charges you

1 with armed robbery.

2 Again, the indictment -- the language is very similar
3 as to the other armed robbery charges. This one is alleged
4 to have occurred on January the 1st of 2020. Different
5 victim is alleged, that being Irvin Comer.

6 Do you understand that charge and the potential
7 punishment of not less than ten, not more than 30?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And the remaining armed robbery indictment
10 is 2020-03474, which contains two counts. Count one
11 alleges armed robbery occurring on January 1 of 2010. The
12 victim is alleged to be the Donnette or persons at the
13 Donnette. And they allege you stole currency with the use
14 of a deadly weapon. Again, armed robbery carries not less
15 than ten, not more than 30 years in jail.

16 And count two alleges possession of a weapon during
17 that commission or the commission of that violent crime.
18 And that carries an additional potential sentence of five
19 years in jail.

20 Do you understand that indictment and the two charges
21 contained therein and the potential sentence as applicable
22 to each?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Indictment 2020-03473 charges you with
25 possession with intent to distribute marijuana.

1 The state alleges that that occurred on January the
2 21st of 2020, and they allege on that date you possessed
3 marijuana and that at the time you did possess it you
4 intended to distribute it, to dispense it, or to deliver
5 it.

6 If convicted of possession with intent to distribute
7 marijuana you could receive an additional sentence of up to
8 five years in jail.

9 Do you understand that charge and the potential
10 punishment?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Indictment 2020-03472 charges you with
13 failing to stop.

14 The state alleges on January 21 of 2020 you did fail
15 to stop a motor vehicle that you were driving on a road,
16 street or highway in this county and in this state after
17 you were signaled to do so by a law enforcement vehicle
18 using a blue light, a siren or both in violation of a
19 particular code section.

20 If convicted you could receive a sentence of not less
21 than three years in jail and a fine of \$5,000.

22 Do you understand that potential -- do you understand
23 that charge and the potential sentence?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Has Mr. Schultz also explained to you that

1 crimes of murder and voluntary manslaughter are classified
2 as violent offenses under the law?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And did he explain to you the significance
5 of a crime being classified as violent?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Do you also understand that voluntary
8 manslaughter is classified as a most serious offense under
9 the law?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Did Mr. Schultz explain to you the
12 significance of that designation as to a crime?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Did Mr. Schultz also explain to you that
15 each of these indictments charging you with armed
16 robbery -- those armed robberies are also classified as
17 violent and most serious?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Did you know that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Okay. And you understand the significance
22 of it.

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, I think you told me earlier that in
25 your discussions with Mr. Schultz that y'all talked about

1 and looked at all of the evidence that the state intends to
2 use in their prosecution of you on these cases. In other
3 words, what information they have to present to a jury to
4 try to convince that jury that you committed these crimes.

5 Did I understand that correctly, that you and
6 Mr. Schultz had a chance to look at the state's evidence?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And you understand what it is?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And did Mr. Schultz answer any questions
11 that you have about it?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you had some -- did you have videos
14 too?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Have you looked at those?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And, so, is there anything that you've
19 not -- that they've not shared with you that you're aware
20 of or that you haven't had a chance to review?

21 THE DEFENDANT: No, sir.

22 THE COURT: All right. Did you tell Mr. Schultz
23 everything you know about any of these allegations made
24 against you?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And after you told him about your position
2 in the matter and what you knew about it, did you and he
3 discuss whether or not you have a defense to any one or
4 more of these charges?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you aware of any defense that you have
7 to any of these charges?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And what defense do you believe that you
10 have and as to which charge?

11 THE DEFENDANT: None.

12 THE COURT: So you have no -- do you understand what a
13 defense is?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: What I mean by that is that if you have
16 any reason, either based upon the facts, based upon the law
17 or based upon both -- are you aware of any reason that you
18 have as to why you should not be found guilty of any of
19 these charges?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Did you say yes or no?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: So, you do have a reason why you think you
24 should not be found guilty? And my question might not be
25 clear. But what I'm trying to find out is do you think you

1 know of a reason why you should not be convicted.

2 THE DEFENDANT: Yes, sir.

3 THE COURT: All right. What reason do you have as to
4 why you should not be convicted?

5 MR. SCHULTZ: Your Honor, if it please the Court.

6 I went over those questions that the Court asks with
7 that, questions being do you -- did you -- did you and
8 Mr. Schultz go over any defenses that you have to this
9 case.

10 Then I asked the other question that goes consecutive
11 to that, which is are you aware of any defenses.

12 He -- he answered the first one in the affirmative,
13 and the second one is no. Just my conversation that I had
14 with him. So perhaps if the Court could redo those
15 questions.

16 THE COURT: All right. Well, I'll try.

17 All right. Mr. Braxton, here's the thing.

18 Sometimes when a person is charged with a crime
19 they've got a defense. In other words, they've got a
20 reason why they shouldn't be found guilty of a crime that
21 somebody claims they committed.

22 For instance, in an armed robbery case a defense might
23 be that I wasn't there, I was in San Francisco when they
24 claim that crime was committed. That would be an alibi
25 defense. Could be that you were there, you participated in

1 a robbery, but you weren't armed with a deadly weapon. If
2 that's the case, then it could be robbery but it could not
3 be armed robbery. Do you understand?

4 THE DEFENDANT: Yes, sir.

5 MR. BARNETTE: Your Honor, on the armed robbery you
6 might want to explain the representation counts like that
7 also.

8 THE COURT: Okay. Well, yeah.

9 Armed robbery, either you have a gun or you have a
10 deadly weapon of any kind, or you represent to a potential
11 victim while using some representation that appears to be a
12 deadly weapon or what a reasonable person on site might
13 believe, reasonably believe, to be a deadly weapon.

14 You don't have to actually have a deadly weapon, but
15 you have to represent that you do if you don't actually
16 have one. But you could still be found guilty of armed
17 robbery if you commit a robbery while using a
18 representation of a deadly weapon.

19 Do you understand?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. So, anyway, my question is
22 just do you think you have a reason why you should not be
23 convicted of any crime.

24 THE DEFENDANT: No, sir.

25 THE COURT: Sir?

1 THE DEFENDANT: No, sir.

2 THE COURT: Okay. All right. So, you understand what
3 you're charged with and you understand the potential
4 sentences. And you said that you and Mr. Schultz have
5 talked about it fully and that you have no defense to any
6 of the charges.

7 So, my question to you now is would you like to plead
8 guilty to the charges, including the reduced charge from
9 that of murder to that of manslaughter pursuant to a plea
10 agreement. Would you like to plead guilty as you've
11 indicated earlier or would you rather plead not guilty and
12 have a jury trial?

13 THE DEFENDANT: I rather plead guilty, sir.

14 THE COURT: All right. In order for me to accept your
15 plea of guilty I've got to ask you some more questions, and
16 the purpose of these questions is to find out if you
17 understand what you're doing, that you fully understand the
18 consequences of your decision and that nobody has forced
19 you or coerced you or pressured you in any way to cause you
20 to plead guilty.

21 So, has Mr. Schultz explained to you each of the
22 constitutional rights you have that you must give up if you
23 want to plead guilty?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Did he explain to you that you have a

1 right to remain silent?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And what I mean by that is you have a
4 right to remain silent, not to say anything, not to
5 testify, not to provide statements, not to answer questions
6 that might tend to prove your own guilt.

7 You've got an absolute right to remain silent and to
8 require the state to come into court with sufficient
9 evidence to establish your guilt to the satisfaction of a
10 jury beyond a reasonable doubt, and you don't ever have to
11 help the state in their efforts to prove you guilty by you
12 testifying or making statements or answering questions that
13 might tend to prove your own guilt.

14 If you want to plead guilty you have to give that
15 right up. So, do you understand the right?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you wish to give it up in order to
18 plead guilty?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did Mr. Schultz also explain to you about
21 your right to confront and to examine any witness in court
22 that would provide evidence against you?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: In other words, you've got a right to
25 require the state to prove your guilt in court. They would

1 do that by bringing witnesses to court. Each of those
2 witnesses would have to take the witness stand. They would
3 testify in your presence under oath. You could see them;
4 you could hear them. Mr. Schultz could cross-examine them
5 on their testimony in order to test the credibility of each
6 of those witnesses and the reliability of the information
7 that they're providing to the Court.

8 Now, if you plead guilty that process does not take
9 place. That only takes place during a jury trial.

10 Do you understand your right to confront and to
11 examine the witnesses?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you understand that if you plead guilty
14 you'll be giving that right up?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Is that what you want to do?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: All right. Did Mr. Schultz also explain
19 to you that you have a right to have a jury trial and to
20 have a jury consider the evidence and apply the law and
21 determine if you're guilty or not?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Did y'all discuss about how a jury is
24 selected?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you know who selects them?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Do you know how many are selected?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you know how many of those selected
6 have to vote guilty before you could be found guilty?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: How many?

9 THE DEFENDANT: All of them.

10 THE COURT: That's right. All 12.

11 Before you could be convicted of a crime all 12 jurors
12 have to be convinced of your guilt, and they have to be
13 convinced beyond a reasonable doubt.

14 The burden's on the state to convince them of that
15 fact. The burden is not upon you to prove anything.

16 Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Do you have any questions about your right
19 to have a jury trial?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you wish to give that right up in order
22 to plead guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Now, from what I have been told today with
25 you, the state has agreed to reduce the murder indictment

1 to the lesser offense of voluntary manslaughter. Voluntary
2 manslaughter carries up to 30 years in jail. That's in the
3 discretion of the Court. And you agreed to plead guilty to
4 that and to plead guilty to each of the armed robbery
5 indictments, to the two possession of weapons during the
6 commission of a violent crime indictments and to the
7 possession with intent to distribute marijuana indictment
8 and to the failing to stop for a blue light indictment.

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Was that all that was agreed upon?

11 THE DEFENDANT: Yes, yes, sir.

12 THE COURT: And has anything -- did I state anything
13 incorrectly or leave anything out?

14 THE DEFENDANT: No, sir.

15 THE COURT: Is that all that you believe was part of
16 the agreement?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And was the agreement also that the
19 sentences will be left up to me, whatever that might be?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: All right. Has anybody promised you or
22 offered you anything aside from that that caused you to
23 make a decision to plead guilty?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you understand the other charge of

1 assault and battery of a high and aggravated nature is not
2 being included or considered in this plea today?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Has anyone forced you in any fashion or
5 coerced you in any way or put any pressure upon you at all
6 that resulted in your decision to plead guilty that you
7 otherwise would not have made had you not been so coerced
8 or pressured?

9 THE DEFENDANT: No, sir.

10 THE COURT: Your decision to plead guilty is freely
11 and voluntarily made?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you're satisfied with that decision?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. You are 31 years old.

16 THE DEFENDANT: Yes, sir.

17 THE COURT: How far did you go in school?

18 THE DEFENDANT: G.E.D., sir.

19 THE COURT: Have you ever been married?

20 THE DEFENDANT: No, sir.

21 THE COURT: Have you ever had a child?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: How many?

24 THE DEFENDANT: One.

25 THE COURT: What age?

1 THE DEFENDANT: He's five.

2 THE COURT: where does he live?

3 THE DEFENDANT: His mother.

4 THE COURT: And where were you living before January
5 of 2020?

6 THE DEFENDANT: With my girlfriend.

7 THE COURT: All right. Is that the address that
8 appears on the sentencing sheet Clevedale Road,
9 Fairforest-Clevedale Road?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And what kind of employment have you had?

12 THE DEFENDANT: Warehouse jobs, like driving
13 forklifts.

14 THE COURT: All right. And have you ever been treated
15 for any type of substance abuse or addiction?

16 THE DEFENDANT: No, sir.

17 THE COURT: Do you suffer from any of a -- do you
18 suffer from a condition like that?

19 THE DEFENDANT: No, sir.

20 THE COURT: Have you ever been treated for any type of
21 mental illness or emotional disturbance?

22 THE DEFENDANT: No, sir.

23 THE COURT: Do you suffer from any such condition like
24 that today?

25 THE DEFENDANT: No, sir.

1 THE COURT: And you understand fully what you're doing
2 now?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. I'm going to ask the solicitor
5 to tell me about the facts that relate to each of the
6 cases. So, listen to what he tells me, because when he's
7 through I'll ask you if you agree or disagree with his
8 version of those facts. Okay?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Mr. Barnette.

11 MR. BARNETTE: Thank you, Your Honor.

12 Just for some housekeeping matters before I go into
13 the facts of the case, I've got State's Exhibits 1 through
14 36 that was prepared for trial and for the plea today.

15 Like I said, those have been moved into evidence
16 without objection, Your Honor.

17 What it is, I do have six court exhibits, Your Honor,
18 and just to explain that on the record in case down the
19 road people ask questions about it.

20 What I had to do was Court's Exhibit 1, for example,
21 is videos from the Donnette in there. Some of those videos
22 was pertinent. Some of them wasn't. But this is all the
23 videos the Donnette had.

24 What I entered in as state's exhibits was parts that
25 we were planning to play in front of the jury, Your Honor.

1 State's Exhibit 2 is an interview by Investigator
2 Bennett and Investigator Jenkins of the defendant, Your
3 Honor. We couldn't play that whole video on there for a
4 couple of reasons. He'd mentioned he was on probation at
5 one point, and then he also admitted to another robbery at
6 Red's here in Spartanburg County that was never prosecuted,
7 never charged.

8 I was putting the full video in just for the court's
9 exhibit just to show, but the actual state's exhibit is the
10 redacted part of that, not to have that was going to be
11 played for the jury, to keep that out.

12 State's Exhibit 3, Your Honor, was the B.W.C.s, all
13 the B.W.C.S that the sheriff's department had back on
14 January 21st and 22nd of 2020 where they actually -- the
15 failure to stop and the drug charge, Your Honor. That was
16 all of them. We weren't going to play all of the body cam
17 videos, but I was making that part of the record, Your
18 Honor.

19 Court's Exhibit 4, Your Honor, is -- was the full
20 interview by Troy Braxton from both cameras. There was two
21 cameras that actually video taped during the interview, and
22 I had those on there, Your Honor.

23 Court's Exhibits 5 and 6, Your Honor, was two lineups
24 that was shown to Crystal Risko in this matter, Your Honor.
25 She's one of the victims. I was moving that in.

1 And one other thing I do want to add, Your Honor.
2 State's Exhibit 7. With the failure to stop, he was also
3 charged with driving under suspension. He pled guilty to
4 that in front of Judge Kesler, Your Honor, back on
5 February 12th of 2020. Your Honor, I'd like to make that
6 Court's Exhibit 7 and make that part of the record also.

7 I don't think there's any objection to that, Your
8 Honor.

9 (Magistrate court printout marked Court's Exhibit No.
10 7.)

11 MR. BARNETTE: That will become relevant when I talk
12 about the facts of the case.

13 Thank you, Your Honor.

14 This started back on January 1st of 2020. Your Honor,
15 the defendant went into the Donnette, Your Honor. He went
16 in approximately 11:40 a.m. on December 31st of 2019.

17 When he went in, Your Honor, he had like a bag on the
18 front of him. Your Honor, from there the way he was
19 dressed, he went into the front door. He actually drove a
20 blue Crown Vic, Your Honor, into the parking lot. That was
21 shown on the video, Your Honor. He actually drove it to
22 the side or near the back of the Donnette, Your Honor, in
23 this case.

24 He goes in. He sits at a fish game table with another
25 gentleman there. He's there for a period of time. You'll

1 see him on one of the video cameras. He kinda turns to his
2 side when they're emptying the machine out for the pay-out
3 and everything, taking the money.

4 He pulls his gun out. Actually jumps on the bar in
5 front of two of the victims in this case, Your Honor. Goes
6 from the bar. Actually, winds up stealing their cell
7 phones, Your Honor. Went in the back where the bar keeper
8 was. Had her come back out. Took the money outta the cash
9 register, took her purse, took several items with him.

10 He brandished the gun. There's no question. You can
11 see the gun in his hand. He actually comes out from behind
12 the bar and comes back out and actually goes out in the
13 area. There's a couple of men that moved in the direction.

14 Mr. Comer, which is the owner, he thought at some
15 point that those people was involved with it too. So, when
16 the defendant ran out the front door, he follows, and he
17 actually shoots three shots up in the air to make sure
18 everybody backs up. Goes out the front door, sees the
19 defendant driving off, shoots eight more shots, hits the
20 car several times from there.

21 Sheriff's department arrived there. State's
22 Exhibits 1 through 11, Your Honor, is the fired shell
23 casings that was fired by Mr. Comer in this case, Your
24 Honor.

25 State's Exhibit 12 is actually the weapon that he

1 used, the Beretta, Your Honor, 9mm that he used in this
2 case, Your Honor.

3 And State's Exhibits 15 and 16 shows the pictures of
4 the Beretta when they got at the scene there, the sheriff's
5 department, as well as the shell casings found at the
6 Donnette where he went through the front of it and came
7 around and actually shot. You can see the shell casings
8 right there at the end of the building in this case.

9 On January 10th of 2020, Your Honor, Investigator
10 Jenkins and several members of the sheriff's department was
11 called to [REDACTED] Dornoch Drive in Boiling Springs, South
12 Carolina.

13 And all of these crimes occurred in Spartanburg
14 County, Your Honor.

15 When they arrived there, Your Honor, Juan Booker had
16 been shot.

17 THE COURT: Let's stop right there, please.

18 MR. BARNETTE: Okay.

19 THE COURT: All right. With the Donnette, so the
20 Donnette, we have four armed robberies?

21 MR. BARNETTE: Yes, sir. You have the Donnette itself
22 where he robbed, and you also have the three victims in
23 this case, Your Honor.

24 THE COURT: And that all took place at the Donnette.

25 MR. BARNETTE: Yes, sir. And that was Irvin Comer,

1 David Morris and Crystal Risko, Your Honor, and they're
2 present in the courtroom here today.

3 THE COURT: All right. And there's also attached to
4 one of those indictments the possession of a weapon during
5 the commission of a violent crime.

6 MR. BARNETTE: That's correct, Your Honor.

7 THE COURT: All right. Mr. Braxton, did you hear what
8 the solicitor told me about the event that occurred on
9 January the 1st of 2010 at the Donnette?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: And is everything he told me stated
12 correctly?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Continue, please.

15 MR. BARNETTE: Okay. Your Honor, the murder, which is
16 the murder, which he's pleading to voluntary manslaughter,
17 the armed robbery, as well as the possession of a weapon,
18 Your Honor, occurred on January 10th of 2020, Your Honor,
19 at [REDACTED] Dornoch Drive in Boiling Springs, Your Honor.

20 Juan Booker was the victim in this case, Your Honor.
21 What I've done, Your Honor, I'm going to enter the total
22 book that Investigator Jenkins -- State's Exhibit 34 --
23 will be that book, Your Honor, that's in there.

24 But he went to Regional, Your Honor, and found out the
25 defendant was -- the victim had been shot in the groin,

1 Your Honor. They responded to the scene, Your Honor. When
2 he arrived there he had passed away.

3 He started through his investigation, Your Honor. He
4 actually started videos. And, like I said, he's here to
5 explain this better. Like I said, we was ready to try the
6 armed robbery and the failure to stop, Your Honor. But,
7 basically, through their investigation they started looking
8 for a small white car that came out of this investigation,
9 Your Honor. And that small white car -- and I'll have to
10 explain the other event to explain how that connects to it.

11 They started researching through that, Your Honor.
12 And also let me go from there to the third event.

13 The third event, Your Honor, occurred on
14 January 21st of 2020. Your Honor, the defendant was
15 driving a white vehicle, Your Honor, a white Honda at the
16 time which wound up being a 1996 Honda Accord, Your Honor.

17 Sheriff's officers Matthew Smith and Trevor Shue, Your
18 Honor, was on patrol. They were coming down Reidville Road
19 or John White Boulevard, Your Honor, near where the
20 Fuddruckers is.

21 They saw this car. It had the wrong tag on it. The
22 tag did not match up with the car. He was also not
23 properly using his turn lanes and was committing other
24 offenses, Your Honor.

25 They went to blue-light him. He took off, Your Honor.

1 They followed him down Reidville Road. He took several
2 turns and went about five miles, Your Honor, into the city,
3 Your Honor.

4 They finally stopped him. It's on video. He -- when
5 they finally got him almost stopped, he jumps out of the
6 vehicle. He has a black bag with him, which is State's
7 Exhibit 21 that's been entered into evidence.

8 Your Honor, this bag -- he goes outta the car. He
9 actually throws it. You hear Matt Smith talk on his
10 body-cam video that -- that he throws the thing. They
11 capture him, Your Honor, and bring him back, get the bag,
12 Your Honor.

13 Inside the bag is a small body bag that's worn here.
14 You go back to the January 1st incident, the defendant is
15 wearing a bag just like this on his chest.

16 Putting it back inside State's Exhibit 21, Your Honor.

17 Also, through the investigation, Your Honor, they
18 track the license tag back to a Crown Vic. What happened
19 was they actually called for L & J Towing Company to come
20 out to get the car -- the sheriff's department did.

21 The tow driver looked at him. He said, "well, the
22 defendant already owes me for one car. He's got a blue
23 Crown Vic back in my yard."

24 They go back to the yard. They investigate. There's
25 several gunshots in there, and there's several pictures

1 that's been entered into evidence, Your Honor, in this
2 case.

3 Let me show you State's Exhibits 23 through State's
4 Exhibit 28, Your Honor.

5 THE COURT: These are photographs, Mr. Schultz, of a
6 vehicle, and looks like some pieces of vehicle on the
7 ground.

8 MR. SCHULTZ: Thank you, Judge.

9 THE COURT: You and Mr. Braxton have seen these
10 before?

11 MR. SCHULTZ: We have, Your Honor.

12 THE COURT: Okay.

13 MR. BARNETTE: And, Your Honor, through the
14 investigation Investigator Taco Talanges was there, Your
15 Honor, along with Investigator Megan Bennett was with her
16 when he collected.

17 He collected the bullet, State's Exhibit 14, as well
18 as the part of a bullet, State's Exhibit 13. State's
19 Exhibit 14 was collected and sent to SLED, Your Honor.

20 State's Exhibit 17 is the SLED toxicology or SLED
21 analysis on that firearm analysis.

22 THE COURT: You've seen that, Mr. Schultz?

23 MR. SCHULTZ: I have. I shared with Mr. Braxton when
24 it was received by my office.

25 MR. BARNETTE: And the bullet came back to Mr. Comer's

1 gun that was fired on January 1st in this case. So, the
2 bullet that was found in the Crown Vic matches up with this
3 gun, which the tow driver was willing to come and testify
4 that this defendant -- that was his car.

5 Your Honor, there was also marijuana that was found in
6 his car, and he was charged. That's possession with intent
7 to distribute marijuana. We do have the report in
8 evidence, as well as the marijuana that's in evidence also,
9 Your Honor.

10 THE COURT: All right. What about the failure to
11 stop? Anything aggravated about the failure to stop?

12 MR. BARNETTE: It was a five-mile chase, Your Honor.
13 He did go across the center line several times, Your Honor.
14 He was a danger to the community, people out there, because
15 he's actually going through downtown. Not downtown
16 Spartanburg but going through the south side of
17 Spartanburg, throughout there.

18 THE COURT: What kind of speed was involved?

19 MR. BARNETTE: The maximum was 65, but the problem is
20 if you're familiar with that area, Your Honor, it's a very
21 curvy, going back and forth, and obviously it took a lot of
22 time and everything. We do have the failure to stop video
23 if you'd like to see it.

24 THE COURT: I don't think I need to see it. That will
25 depend upon what Mr. Braxton tells me, but/and the

1 marijuana was how much?

2 MR. BARNETTE: It was -- let me give you the report,
3 Your Honor, State's Exhibit No. 22. Your Honor, it was two
4 bags. One was 27 grams and the other one was eight grams,
5 Your Honor.

6 During the chase he had threw something out of the
7 window, Your Honor, and they never did -- was able to
8 collect it.

9 THE COURT: All right. Is that all you're telling me
10 about the failure to stop and possession with intent to
11 distribute?

12 MR. BARNETTE: Yes, sir, but it kinda relates back to
13 the murder.

14 THE COURT: I know. But I'm going to ask him about
15 those too in a few minutes.

16 All right. Mr. Braxton, you heard what the solicitor
17 told me about your failing to stop and then after getting
18 you stopped your possession of marijuana.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Did what he tells me sound accurate to
21 you?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And the amount of marijuana appears to be
24 about 36 grams, it looks like.

25 They claim that you possessed it and intended to

1 distribute it.

2 Is that also true?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: All right. Thank you.

5 Mr. Barnette.

6 MR. BARNETTE: Thank you, Your Honor.

7 And State's Exhibit 35 is the incident reports
8 involving the armed robberies at the Donnette, as well as
9 the failure to stop, Your Honor. I'm entering that as part
10 of the facts and the evidence in the case.

11 Going back to the murder, Your Honor. Once --

12 THE COURT: Mr. Schultz, you've been provided with
13 each of those documents Mr. Barnette just referred to so
14 far as the incident reports of the armed robbery?

15 MR. SCHULTZ: I believe so, Your Honor.

16 THE COURT: And you shared those with Mr. Braxton?

17 MR. SCHULTZ: I have, Your Honor.

18 THE COURT: Okay. Thank you.

19 MR. BARNETTE: Going through this, Your Honor.

20 Investigator Jenkins with the sheriff's department --
21 once they realized he had this white Honda, Your Honor, it
22 matched up with the videos that he was looking at in this
23 case, Your Honor, from there, and so what they did was they
24 actually -- him and Investigator Jon Guest -- went and
25 spoke to him and did an interview with him.

1 Your Honor, and basically they also looked at his
2 phone records showing them that he's talking to C. Lyles or
3 Corey Lyles, which is kinda interesting.

4 Corey Lyles was involved in the Donnette from January
5 1st because he's actually present at that robbery. Talking
6 to Juan, about the victim, about robbing him.

7 So they have that evidence, Your Honor. From there
8 they went and talked to him about it. He admitted being
9 there but not the actual shooter in the case.

10 Investigator Jenkins is here if he needs to clear up
11 anything else on that.

12 And, Your Honor, through that, Your Honor, they was
13 able to piece that he was involved with the murder. There
14 was a robbery of Mr. Booker in this case, Your Honor, as
15 well as the possession of a weapon during a violent crime,
16 Your Honor.

17 THE COURT: All right. So, as I understand it, then
18 the state's position is that Mr. Lender is the person who
19 actually fired the weapon?

20 MR. BARNETTE: No. We don't know, Your Honor, to be
21 honest with you.

22 THE COURT: You don't know.

23 MR. BARNETTE: But Corey Lyles is somebody he was
24 involved with was actually at the Donnette, Your Honor,
25 that night.

1 THE COURT: Well, I'm sorry. I send Lender. It's
2 Corey Lyles.

3 MR. BARNETTE: Corey Lyles. Yes, sir.

4 THE COURT: All right. But so Mr. Braxton is charged
5 with murder and the lesser of voluntary manslaughter. But
6 the state's position is that he was with someone else?

7 MR. BARNETTE: Possibly, Your Honor. Like I said,
8 there's no question he talked to Corey Lyles on the phone
9 through messages that they were going to rob Mr. Booker in
10 this case.

11 THE COURT: So, the state has evidence that
12 Mr. Braxton and another person conspired to commit a
13 robbery of Mr. Booker.

14 MR. BARNETTE: Uh-huh.

15 THE COURT: And that that robbery took place and
16 resulted in Mr. Booker's death.

17 MR. BARNETTE: That's correct, Your Honor.

18 THE COURT: But you're not certain as to whether Mr.
19 Braxton fired the weapon?

20 MR. BARNETTE: I don't know if -- I'm going to let
21 Investigator Jenkins speak on this, Your Honor.

22 INVESTIGATOR JENKINS: There is -- when I was
23 interviewing Mr. Braxton, we were actually -- and it's in
24 the book -- but I gave him a -- had him tell me where he
25 was at, because his phone location put him at the apartment

1 complex.

2 I had him draw me -- he told me that where he was shot
3 at in the stairwell, told me which apartment he went in
4 down to the right. He told me all of these things.

5 I had him draw me a diagram, but he told me he saw
6 that from the vehicle. Had the diagram. There's no way he
7 could have saw it unless he had first-hand knowledge of
8 being in that stairwell.

9 So, the state's position is that even though we have
10 Mr. Lyles at the Donnette, nothing to indicate anything
11 other than Mr. Braxton was at the Promenade.

12 THE COURT: All right. Mr. Braxton, you've heard what
13 the solicitor told me about the allegations and the facts
14 that relate to the murder charge.

15 Is what he stated accurate?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Do you believe that if your case went to
18 trial before a jury that you would help select that if all
19 of that evidence was presented to the jury that there's a
20 reasonable probability that you would be convicted of the
21 crime of murder?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And so because you have that belief that
24 you could be convicted of the crime of murder, you prefer
25 to take advantage of the offer made by the prosecutor and

1 to plead guilty to the lesser offense of voluntary
2 manslaughter?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And you're satisfied with that decision?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: All right.

7 MR. BARNETTE: One second, Your Honor, please.

8 (Pause.)

9 MR. BARNETTE: And, Your Honor, the robbery and the
10 basis for it was the cell phone of the victim in this case,
11 Mr. Booker, as well as money that was taken. And that
12 would be all included in State's Exhibit 34.

13 And, Your Honor, I do have the victims from the
14 Donnette robbery if you'd like to hear from them at the
15 appropriate time, Your Honor.

16 THE COURT: well, are they -- will they be coming
17 back?

18 MR. BARNETTE: I don't know if they'll be coming back
19 or not. They'll come back, Your Honor.

20 THE COURT: Here's what I meant. If they -- if
21 they're unable to come back, I'll hear them now. If they
22 are able to come back and want to come back, then I'll hear
23 them after they get to hear from Mr. Braxton.

24 MR. BARNETTE: Yes, sir.

25 THE COURT: Okay. So, whatever they wish to do about

1 that, I'm happy to do it.

2 MR. BARNETTE: And, Your Honor, State's Exhibit 36 is
3 also his criminal record from South Carolina, as well as
4 Florida, Your Honor.

5 THE COURT: All right. Mr. Braxton, the solicitor
6 says you've got a prior criminal history and that that
7 criminal history has been provided to Mr. Schultz. Did you
8 and Mr. Schultz talk about it?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And is that document that's been provided
11 containing your criminal history accurate?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right.

14 MR. BARNETTE: Do you want it now, Your Honor, or
15 during sentencing?

16 THE COURT: well, I'll look at it when you hand up
17 everything.

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

19 THE COURT: All right. Anything else?

20 MR. BARNETTE: Nothing else from the state, Your
21 Honor.

22 THE COURT: All right. Mr. Braxton, you heard what
23 the solicitor told me, now. You've told me that you admit
24 the allegations. And as to murder charge, you believe that
25 all of that evidence would support and likely result in a

1 jury finding you guilty of murder and so you want to plead
2 guilty to voluntary manslaughter.

3 Do you still wish to plead guilty to each of the
4 crimes as you've previously indicated?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Do you need to talk to Mr. Schultz about
7 that any further?

8 THE DEFENDANT: No, sir.

9 THE COURT: All right. I'll accept your pleas of
10 guilty to each of the indictments as indicated, and we'll
11 defer sentencing until later in the week when all persons
12 that are pertinent to the cases are able to be present and
13 be heard from.

14 Do we know when that is?

15 MR. BARNETTE: Your Honor, I have to check. Let me
16 check with the victims here and see. We've got to check
17 with the murder victim or the manslaughter victim, Your
18 Honor.

19 (Pause.)

20 MR. BARNETTE: Your Honor, we're going to check. They
21 can be -- they're available whenever. I've just got to
22 check with them. Maybe we can do it tomorrow morning, Your
23 Honor.

24 THE COURT: All right. Well, let's plan right now to
25 reconvene in the morning at 10:00 o'clock. But if everyone

1 can't be here, you just need to let me know of that fact.

2 MR. BARNETTE: Yes, sir.

3 THE COURT: And be sure you stay in touch. I know you
4 will, but let the other persons know when they need to be
5 here.

6 MR. BARNETTE: Yes, sir.

7 THE COURT: Okay. Anything else?

8 MR. SCHULTZ: No, Your Honor. 10:00 o'clock works for
9 me and my client.

10 THE COURT: All right. Thank you, Mr. Braxton.

11 Mr. Schultz, I'll perhaps see y'all at 10:00 o'clock
12 in the morning unless something impedes our ability to
13 handle it at that time. But we'll, I'm guessing for
14 certain, going to finish it this week.

15 MR. BARNETTE: Yes, sir. We'll finish it this week.
16 I will check with them.

17 MR. SCHULTZ: Thank you, Your Honor.

18 THE COURT: All right. We're in recess until
19 10:00 o'clock in the morning.

20 END OF PROCEEDINGS MARCH 13, 2023

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1 (Proceedings March 14, 2023)

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

3 I just -- one thing housecleaning matter from
4 yesterday, Your Honor.

5 I have State's Exhibit 37. These are the videos and
6 the phone extractions and different things that was done by
7 the sheriff's department on the homicide case in this case.

8 I'd like to introduce that as part of the record and
9 part of the facts of the case.

10 I've talked to Mr. Schultz. He has no objection to
11 that.

12 THE COURT: Okay.

13 (Videos for homicide case marked State's Exhibit No.
14 37.)

15 MR. BARNETTE: Your Honor, in addition to all of the
16 cases he pled yesterday, Mr. Braxton is pleading to another
17 count today, Your Honor.

18 It's 22-GS-42-2555, Your Honor. It's assault and
19 battery of a high and aggravated nature, Your Honor, ABHAN.

20 He's pleading as indicted, Your Honor. And it's a
21 negotiated ten-year sentence to run concurrent with
22 whatever sentence the Court gives from the charges for
23 yesterday that he pled to, Your Honor.

24 He is represented by Mr. Mike Morin on this charge,
25 Your Honor.

1 I do have another exhibit for that. It'll be State's
2 Exhibit 38, Your Honor. It includes the incident report,
3 as well as the pictures that was involved in this case,
4 Your Honor, and making that part of the facts and the
5 evidence in the case at this time.

6 I don't think Mr. Morin has any objection to that
7 either.

8 MR. MORIN: No objection.

9 THE COURT: All right.

10 (Incident report and pictures marked State's Exhibit
11 No. 38.)

12 MR. BARNETTE: Your Honor, and this has been true
13 billed by the grand jury, Your Honor.

14 May I approach the bench, Your Honor?

15 THE COURT: All right. Mr. Troy Deshaun Braxton,
16 you're back before the Court for sentencing as to the
17 charges that were pled to yesterday, but also I've been
18 handed another additional indictment. That's Indictment
19 2022-42-02555, and that indictment charges you with the
20 offense of assault and battery of a high and aggravated
21 nature.

22 The state alleges that that offense occurred on
23 July 9, 2021. They allege that by way of the indictment
24 that you did commit an act causing an unlawful injury to
25 another person and that the act resulted in great bodily

1 injury to that person, or it was accomplished by means
2 likely to produce death or great bodily injury to that
3 person.

4 They allege the victim of that event was Jesse
5 Redding.

6 Do you understand the charge contained in that
7 indictment?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And Mr. Morin, the Public Defender in the
10 Seventh Circuit, is representing you on this charge.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have you had plenty of time to talk to him
13 about this case and about your decision and how you want to
14 proceed with it?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And he went over the indictment with you?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Explained the charge to you?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And did he tell you what kind of sentence
21 you could receive if convicted of it?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: What do you understand the sentence can
24 be?

25 THE DEFENDANT: Zero to 20, but he said he's going to

1 see if he can get ten years negotiated ran concurrent with
2 the other sentence you give me today.

3 THE COURT: All right. So, you understood it could
4 carry up 20 years, but he and -- he's gotten the solicitor
5 to agree to a sentence of ten years if you plead guilty.
6 Is that what you understood?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And were you able to discuss with Mr.
9 Morin the evidence that the state has in their possession
10 that they would present in Court to a jury if your case
11 went to trial?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you understand what the evidence is
14 that supports the state's claim as made in this indictment?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: And did you tell Mr. Morin everything you
17 know about the event or any information you have about it?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And after y'all discussed everything did
20 y'all determine whether or not you had a defense to this
21 charge?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Do you have a defense to this charge?

24 THE DEFENDANT: No, sir.

25 THE COURT: And did he also go over with you each of

1 the constitutional rights you have that you must give up if
2 you want to plead guilty?

3 First of all, the first being, that you have a right
4 to remain silent. And as I told you yesterday, that means
5 you don't have to say anything and you don't have to answer
6 any questions that relate to the charge if you don't want
7 to.

8 Do you understand your right to remain silent?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And how do you want to proceed with this
11 indictment? Do you want to have a trial or a guilty plea?

12 THE DEFENDANT: I want to go ahead and get it over
13 with, sir.

14 THE COURT: Do you want to plead guilty to it?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. And, so, you want to give up
17 your right to remain silent in order for that to be
18 accomplished?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: And did Mr. Morin explain to you your
21 right to confront and examine the witnesses that relate to
22 this case?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Did he explain your right to also have a
25 jury trial as it relates to this case?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And I've explained those two procedures
3 with you yesterday. Do you still understand them?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you wish to give up each of your
6 constitutional rights in order to plead guilty to this
7 charge of aggravated assault and battery?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Did Mr. Morin explain to you that this
10 offense is classified as a violent offense?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And just as in the case of manslaughter
13 and armed robbery, you told me yesterday that you
14 understood what the significance of a crime being
15 classified as violent is. Do you still understand that
16 significance?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: This crime is also classified as a serious
19 offense.

20 Now, manslaughter and armed robbery were classified as
21 most serious offenses. Aggravated assault and battery is
22 classified as a serious offense.

23 Do you understand that classification also?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Now, do you also understand that the

1 crimes of manslaughter, armed robbery and aggravated
2 assault and battery are also classified in the law as
3 no-parole offenses?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand the significance of that
6 classification?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: And that's also been explained to you by
9 Mr. Morin and Mr. Schultz?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. So, you still wish to enter a
12 plea of guilty as to the charge of aggravate assault and
13 battery?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Now, the solicitor is going to
16 tell me about the facts that relate to that case. So, as
17 yesterday, you listen to what he tells me because when he's
18 done I'll ask you if agree or disagree with his version.

19 MR. BARNETTE: Thank you, Your Honor.

20 This occurred on July 9th of 2021, Your Honor. Jesse
21 Redding was an inmate at the Spartanburg County Detention
22 Center with the defendant in this case.

23 Your Honor, there was an altercation that occurred.
24 Your Honor, there was also another codefendant Jamie Kates,
25 Your Honor, in this case. But according to witnesses there

1 and through investigators or whatever, Mr. Braxton was
2 identified as the person that threw the first blow, Your
3 Honor, in this case. He saw Mr. Braxton hit Mr. Redding --
4 and this is from Mr. Sible -- from that standpoint that
5 knocked him out, Your Honor, and they were basically
6 beating him up, Your Honor, from that standpoint.

7 He did sustain substantial injuries, Your Honor. He
8 also had a fracture to his skull in this case.

9 THE COURT: All right. You heard what he told me
10 about the facts.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Do you agree or disagree?

13 THE DEFENDANT: I agree, sir.

14 THE COURT: Do you still want to plead guilty to it?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. I'll accept your plea of
17 guilty, and I will hear from both Mr. Morin and Mr. Schultz
18 about anything they'd like to present to me as it relates
19 to the issue of sentence.

20 MR. SCHULTZ: Thank you, Your Honor. May it please
21 the Court.

22 This was -- this was a very difficult case, Your
23 Honor. I will say that just from the get-go.

24 I was retained back in the early part of 2020. That
25 was approximately three years ago. And just as I was

1 retained, the COVID-19 pandemic shut down most of the
2 operations of the court and everything.

3 We filed for a couple bond motions for Mr. Braxton.
4 Those were denied by a circuit court judge, and he has been
5 in since that time, since January, I believe, 20th of 2020.
6 And he has not received any form of bond or any relief from
7 the Court to this -- to this day.

8 I believe -- I've come to know him very well in the
9 three years that I've represented him. Maybe Mr. Morin has
10 as well. But I can speak for myself that I shared
11 discovery with him. We've been over videos several times.
12 Just in the last couple of days we've been over the
13 statement that he gave to the officers actually seated
14 here, I believe, in the armed robbery case. We have been
15 over the defenses that we had.

16 If this case would have proceeded to trial on the
17 armed robbery cases, would have proceeded to trial, we
18 would have filed a Jackson vs. Denno hearing to challenge
19 the voluntariness of the statement. But yet at the same
20 time both him and I felt that the right thing to do would
21 be to offer pleas to the offer that the state made in this
22 case.

23 The defenses for the murder case, I believe, were more
24 persuasive, but we had a lot to overcome with the armed
25 robbery cases. There was videos, as Mr. Barnette will

1 show, I guess, in a couple of minutes.

2 There was, obviously, a statement that I made
3 reference to before. So, we had a lot to overcome in order
4 to sustain a not-guilty verdict on all charges there.

5 Nevertheless, Your Honor, Mr. Braxton presents
6 himself, at least to me -- and I think Mr. Morin would
7 agree with this -- as a man of few words. I don't mean to
8 make light of his situation, but that's just the way he
9 always presents to me, just a very quiet individual, very
10 respectful.

11 When I went over the discovery with him, he didn't ask
12 a lot of questions. It was mostly just me talking. And he
13 answers my questions yes, sir, no, sir.

14 And to my understanding, I instructed him when I began
15 representing him not to discuss the case with anybody over
16 the phone -- his mother who is seated here. I think she
17 wishes to present something at the appropriate time. But
18 he listened to me, and a lot of clients do not listen to
19 me. And that's a good thing. So he listened to my
20 instructions. He did everything as I asked him. I shared
21 discovery with him at the jail.

22 Obviously, the incident itself -- and I think you're
23 going to hear in just a couple of minutes here --
24 Mr. Braxton is very, very remorseful and very, very sorry
25 for what happened.

1 He grew up. He did not come from here. He grew up in
2 Florida, and his mother was constantly involved in his
3 life.

4 He had a stepfather, for lack of a better word, but he
5 didn't have a lot of what I would call positive male
6 influences in his life. That's not -- certainly that's not
7 an excuse, Your Honor, for the types of behavior that he
8 was engaged in. But, nevertheless, I wanted to let the
9 Court know -- know about that before sentencing.

10 He -- he's 31 years old now. He's still what I would
11 call a very young man.

12 We are asking for as much leniency as the Court can
13 give for these crimes. What I'm asking for, Your Honor,
14 is, specifically, that you hear from not only Mr. Braxton,
15 Mr. Morin, but also his family too.

16 His mother has called me probably about every other
17 month or so concerned about her son, concerned about his
18 fate and what would happen.

19 And we stand before Your Honor very humble and also
20 very remorseful of the fact that it came down to this.

21 I think he is making the right decision here today to
22 accept responsibility, and I think he should be given
23 credit for accepting responsibility in this case, in both
24 of these cases.

25 I think that's better for him and I think it's better

1 for everybody involved that he is accepting responsibility.
2 And I think he should be given credit for doing this and
3 not putting the state and the victims through a potential
4 trial.

5 Your Honor, I would like to present his mother and his
6 brother if the Court so allows.

7 THE COURT: Sure. All right. Whoever wishes to speak
8 first, if you will, identify yourself by name, and tell me
9 what your connection is with Mr. Braxton. And then you can
10 tell me what you like.

11 ISAIAH TERRANCE BRAXTON: I'm his brother, his little
12 brother, Isaiah Terrance Braxton.

13 As far as I got to say, you know, anything that
14 transpired, I mean, I don't look at him as no kind of bad
15 person or anything. And my brother in the day, he made
16 mistakes. Everybody makes mistakes and everybody is not
17 perfect. I'm not saying it to be lenient or ask for
18 anything. I'm just saying everybody makes mistakes and
19 everybody's not perfect.

20 So, and he -- in my eyes, I mean, I don't -- I don't
21 see no wrongdoing. I'm his younger brother. I barely been
22 around my brother, barely, you know.

23 So, I just really want to be able to say, you know,
24 besides all of this that has transpired, other than that he
25 is a good person. You would never think any stuff that had

1 transpired would be him. He is a good person. That's all
2 I got to say.

3 THE COURT: Okay. Thank you, Mr. Braxton.

4 Yes, ma'am.

5 SHAMEKA BRAXTON: I'm Shameka Braxton. I'm Troy's
6 mother.

7 Naturally, no mother wants to see their child go
8 through anything like this. As my son, I love him. I'm
9 here to support him.

10 I feel for the people that were hurt or involved or
11 lost something throughout this situation. And as my
12 younger son said, everybody makes mistakes. And I just ask
13 that you think about that. That's it.

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

15 MR. SCHULTZ: Thank you, Your Honor. That would be my
16 presentation.

17 THE COURT: Mr. Morin, do you have anything you want
18 to tell me?

19 MR. MORIN: Just briefly, Your Honor.

20 Mr. Braxton was put in -- got to the county jail about
21 six months before I took over as circuit public defender.
22 He had other attorneys in our office that were representing
23 him until about November. I've seen him in the 90 days or
24 so that it's been on my list.

25 I would agree with Mr. Schultz in that Mr. Braxton

1 listens to what you have to say about the case, whether
2 it's the facts or what his options are. He gives
3 appropriate responses and hasn't really had too many
4 questions.

5 But, nonetheless, I would agree with what Mr. Schultz
6 has said. That's what I have observed in the time that
7 I've been representing him. And we would ask that you
8 accept the negotiation that is in the case I represent him
9 on.

10 THE COURT: All right. Mr. Braxton, do you have
11 anything you'd like to tell me?

12 THE DEFENDANT: Yes, sir.

13 Like my brother said, people make mistakes. I just
14 ask for forgiveness. I ask God to forgive me. I ask the
15 state for forgiveness and I ask anybody who is involved --
16 the victim's family -- in this situation, I ask them for
17 forgiveness. And I wish none of this never happened. I
18 wish I could go back and take it back, but today I just ask
19 for forgiveness.

20 THE COURT: Okay. Thank you.

21 Mr. Barnette.

22 MR. BARNETTE: Thank you, Your Honor.

23 I'd like to go first before I get all the victims to
24 speak, Your Honor, I'd like to enter State's Exhibit 36,
25 Your Honor, which is his prior record. I'd like to put

1 that on the record.

2 Your Honor, he has a record in Florida, as well as
3 South Carolina. Your Honor, his South Carolina record
4 appears to be in 2017, Your Honor, or 2011 from there, he
5 was convicted of ABHAN, Your Honor, and was sentenced to
6 ten years suspended to hundred eighteen forty-one -- 1,841
7 days and three years probation at that time.

8 Your Honor, he was convicted of marijuana possession
9 in 2018, Your Honor.

10 In 2019, Your Honor, he was convicted of burglary
11 second in that case, Your Honor.

12 In 2018, he had a obtaining goods by false pretenses.

13 And his Florida record, Your Honor, in 2012 he had a
14 possession of stolen credit card, fraudulent use of credit
15 card over a hundred dollars, equivalent to our common-law
16 robbery. He received a four-year sentence at that time.

17 In 2013 he had a burglary of unoccupied dwelling, Your
18 Honor, and grand theft in the third degree, Your Honor.

19 Your Honor, I do have victims that would like to
20 speak. would you like to hear from them at this time, Your
21 Honor?

22 THE COURT: Okay.

23 MR. BARNETTE: Your Honor, I'll start with the case on
24 the voluntary manslaughter and armed robbery and possession
25 of a weapon during a violent crime, Your Honor, from

1 January 10th.

2 If the Booker family would, stand up. Please stand
3 up.

4 (Whereupon, the Booker family complied.)

5 MR. BARNETTE: Thank y'all. Please be seated.

6 Your Honor, his brother, Mr. Booker, would like to
7 address the Court, Your Honor.

8 THE COURT: All right.

9 PURCELL BOOKER: How are you doing, Your Honor?

10 THE COURT: I'm fine. Thank you. Tell me your name,
11 please, sir.

12 PURCELL BOOKER: My name is Purcell Booker. I'm the
13 oldest brother.

14 My brother's been dead three years, two months and
15 three days to this day. He's gone. He's not coming back.

16 He's got two kids. When he passed away the kids was
17 two and three. And we take them to the grave. When we get
18 them, we take them to the grave to see them.

19 My mom and dad still in therapy getting help. Your
20 Honor, it's been hard. It's a hard situation. But life,
21 you make decisions. It's all about decisions. And you
22 make the right decisions, you wouldn't do all -- go through
23 all of this. Life is about decisions. And, Lord, we
24 love -- we love our brother.

25 My mom and dad, they just having a hard time. My dad.

1 Three years ago he was walking without a cane, nothing.
2 Just walking. But now he's barely walking. It done
3 affected him that much.

4 So, we are asking for -- to receive the maximum
5 penalty for manslaughter.

6 He was a great father, a great son and a great
7 brother. And we loved him. Thank you.

8 THE COURT: All right. Thank you Mr. Booker.

9 MR. BARNETTE: Thank you, Your Honor.

10 Your Honor, going to the armed robbery, I'd like to
11 show a clip real quick, Your Honor, of the armed robbery.
12 I believe you have your T.V. set there.

13 THE COURT: All right.

14 MR. BARNETTE: The reason why I showed you that clip,
15 Your Honor, obviously, he has a weapon on him that he used
16 during the armed robbery, Your Honor.

17 This occurred on January 1st of 2020. He also had the
18 book bag that we were talking, a little bag on the front.
19 And he stole all of the phones. He actually had Ms.
20 Risko's purse. He took several items from there, Your
21 Honor. I just wanted you to see there was an actual weapon
22 in this case that he used.

23 THE COURT: And do you have a still shot of that, this
24 video, showing the weapon?

25 MR. BARNETTE: Let me see if I can get one. I don't

1 know if I have it with me, Your Honor, from that
2 standpoint. I could get --

3 THE COURT: It's not in these exhibits?

4 MR. BARNETTE: No, sir. This is actually a video.
5 This is Camera 6 out of the exhibits, Your Honor.

6 THE COURT: All right. Well, play it for me again.

7 MR. BARNETTE: Yes, sir. I can play other videos too,
8 Your Honor, if you'd like to see those.

9 THE COURT: Well, no. This will be fine.

10 (Whereupon, the video was played for the Court.)

11 MR. BARNETTE: Go back, Your Honor. I will show --
12 show one clip.

13 THE COURT: This location is where?

14 MR. BARNETTE: This is the Donnette, Your Honor, 995
15 Asheville Highway here in Spartanburg County.

16 (Whereupon, the video was played for the Court.)

17 MR. BARNETTE: Shortly he'll come back out here in a
18 second.

19 (Whereupon, the video was played for the Court.)

20 MR. BARNETTE: Your Honor, there was another camera
21 angle. There was an angle where he actually jumps on the
22 bar with the gun. That's where he faced Mr. Comer and Mr.
23 Moore. They were actually sitting there at the bar when
24 that happened. I can show that to you.

25 THE COURT: I can see clearly a handgun in his

1 possession because I can see the ejection port, and it
2 appears to be silver as opposed to the handgun being black.

3 Is there any issue about that being a handgun?

4 MR. SCHULTZ: I think there would have been an issue
5 with it at trial.

6 THE COURT: What is the issue?

7 MR. BARNETTE: The reason I'm showing that, Your
8 Honor, in his statement he claimed it was a plastic gun.
9 That's the reason I wanted to make sure that you understood
10 that going into it. It appeared to be a real gun.
11 Actually, Mr. Comer was within feet. I mean, 2 or 3 feet.
12 He will be able to describe it for you too -- Mr. Moore.

13 THE COURT: Right. Was any weapon ever taken from
14 Mr. Braxton?

15 MR. BARNETTE: No, sir.

16 MR. SCHULTZ: Did you want me to address that, Judge?

17 THE COURT: Yes, sir.

18 MR. SCHULTZ: Okay. He still maintains to me that it
19 was a false gun, fake gun. However, he did present it, and
20 I think that potentially the state would have been able to
21 overcome that defense in a trial.

22 THE COURT: Well, is that a defense, that it's not a
23 real gun? I mean, you and Mr. Braxton have seen these
24 videos.

25 MR. SCHULTZ: Yes, sir.

1 THE COURT: When you look at it, was there any
2 question in your mind that it appeared to be an actual
3 handgun, an automatic weapon?

4 MR. SCHULTZ: No.

5 THE COURT: It didn't appear?

6 MR. SCHULTZ: It -- it appeared to be a real handgun.
7 But, nevertheless, in Mr. Braxton's statement that we
8 reviewed several times he claimed that it was a false gun
9 or a fake gun.

10 THE COURT: No. I understand that. I understand what
11 his position is. I'm just saying but you and he have
12 looked at the video.

13 MR. SCHULTZ: Yes, sir.

14 THE COURT: And when you looked at the video did it
15 appear to y'all that he was, in fact, in possession of an
16 actual pistol or handgun, or at least something that looked
17 exactly like a pistol or a handgun? In other words, any
18 reasonable person seeing that video or seeing Mr. Braxton
19 on that day would have believed that he actually had a
20 handgun in his hand?

21 MR. SCHULTZ: If I'm a juror looking at that video, I
22 would assume that he had a handgun.

23 THE COURT: That's what I'm asking. And so, and you
24 would assume it yourself, wouldn't you, except for the fact
25 that Mr. Braxton has told you while it looks like a

1 handgun, it was actually not a functioning handgun?

2 MR. SCHULTZ: Yes, sir.

3 THE COURT: Okay.

4 MR. SCHULTZ: And without -- without talking to
5 Mr. Braxton about that, I would. I do agree with the
6 Court, but I also believe my client.

7 THE COURT: I'm not questioning that.

8 MR. SCHULTZ: Yes, sir.

9 THE COURT: I'm just -- what I'm saying, armed robbery
10 is either having an actual deadly weapon, actual handgun,
11 or having something that appears to be an actual handgun
12 and it represents itself to be a handgun and therefore
13 would put someone in fear just like if it were a real
14 handgun. Is that fair enough?

15 MR. SCHULTZ: That's fair and accurate, Your Honor,
16 and that's how I understand the law as well. And I told
17 Mr. Braxton about that as well.

18 THE COURT: Right. Okay.

19 Mr. Braxton, let me ask you this, because I didn't go
20 over this with you originally, but it's been brought up to
21 me now that after your arrest you were interviewed by law
22 enforcement, and they say you provided them with a
23 statement. And I'm assuming in that statement is something
24 that the solicitor would probably want to introduce at
25 trial, because there must be something in the statement

1 that would implicate you in the commission of at least that
2 armed robbery that I just saw on the screen.

3 Is that true? Did you give a statement to law
4 enforcement after your arrest?

5 THE DEFENDANT: Yes, sir. I gave a statement. Yes,
6 sir.

7 THE COURT: All right. And it was about -- did they
8 ask you about these armed robberies?

9 THE DEFENDANT: Yes. They did, sir.

10 THE COURT: Did you -- did you provide a statement
11 about the allegations of murder?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. So, you talked about all of
14 your cases with law enforcement?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Now, in order for a statement
17 to be introduced at trial if there is -- if it's contested
18 it has to be shown to have been given freely and
19 voluntarily in most cases with you having an understanding
20 of your right to remain silent and to have a lawyer and not
21 to have to say anything unless you want to. But if you did
22 say something, that it would be used against you in court.

23 And, so, you're -- Mr. Schultz mentioned the Jackson
24 vs. Denno hearing. So, by that I'm assuming that you and
25 he had a discussion about your right to have a hearing for

1 me to determine the voluntariness of any statement that you
2 might have given to law enforcement after your arrest that
3 the state intended to introduce at the trial of your case.

4 Is that a fair statement? You and Mr. Schultz
5 discussed all of that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And did he explain to you that you have
8 a -- had a right to have that hearing?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. Do you understand that if you plead
11 guilty -- that's a constitutional right of course and if
12 you -- because I have to determine the voluntariness if
13 it's going to be introduced at trial. It doesn't have to
14 be introduced necessarily at a guilty plea, but may be.

15 But, in any event, do you understand that if you plead
16 guilty to these charges as you have indicated you wish to
17 that you'll be giving up your right to challenge the
18 legality or the voluntariness of any statement that you
19 made that the state would present?

20 So, in other words, if we had a Jackson vs. Denno
21 hearing and I determined that the statement was not
22 voluntarily made by you, then it could be excluded from the
23 trial or it could be presented to the jury and they told
24 they can determine whether or not it was voluntary.

25 But I would have to do that first. It would first

1 have to be presented to me, and I would have to decide
2 whether or not to allow the solicitor to present that
3 statement to the jury.

4 Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And do you understand that if you plead
7 guilty you'll be giving up your right to have that process
8 take place, just like you're giving up your right to have a
9 jury trial?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Is that what you want to do?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you need to talk to Mr. Schultz about
14 that any further?

15 THE DEFENDANT: No, sir.

16 THE COURT: Okay. His pleas are still accepted.

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

18 I can show you more video, Your Honor, but I think you
19 understand why I showed that video in that case.

20 THE COURT: Oh, of course. Yes.

21 MR. BARNETTE: And, Your Honor, I do have the officers
22 here also. I have Chris Jenkins from the sheriff's
23 department, Megan Bennett from the sheriff's department, as
24 well as Matt Smith. They -- actually, it was different
25 parts of the case, Your Honor, from there if you need more

1 additional information on that from there.

2 THE COURT: On what?

3 MR. BARNETTE: On anything from there.

4 THE COURT: Oh, no. I think I fully understand it.

5 MR. BARNETTE: Yes, sir. No problem.

6 Your Honor, I'd like to ask Mr. Comer to come up, Your
7 Honor. He was one of the victims in the armed robbery on
8 January 1st at the Donnette, Your Honor.

9 THE COURT: All right.

10 ERVIN KEITH COMER, JR.: How are you doing, Your
11 Honor?

12 THE COURT: Fine.

13 ERVIN KEITH COMER, JR.: My name is Ervin Keith Comer,
14 Jr., and I'm here today to share the impact the morning of
15 January 1st, 2020, has had on my life.

16 Every New Year's Day I'm reminded of the fear I felt
17 the morning being robbed by gunpoint. I remember the fear
18 I felt seeing one of my employees being forced in the back
19 room.

20 I can see him jumping on the bar pointing the gun into
21 my head and saying you know what time it is. I didn't
22 think I would ever see my children, grandchildren and
23 parents again.

24 I will never forget trying to stop this man for
25 shooting the vehicle and trying to stop him before he hurt

1 someone else. I still deal with the guilt that I wasn't
2 able to stop him before another man lost his life.

3 My family has been impacted too. They didn't want me
4 to go back to the business because they were scared the
5 defendant would come back to harm me.

6 I experienced financial losses because I've had to
7 close my business, unfortunately.

8 Every year I relive -- I relive in my mind that
9 morning. I still have a problem trusting people and always
10 feel like the need to carry a gun. I need to defend
11 myself. Thank you, Your Honor, for allowing me to share
12 this impact that morning had on me.

13 THE COURT: All right. Thank you, Mr. Comer.

14 MR. BARNETTE: Can I just ask him one more question
15 real quick, Your Honor?

16 THE COURT: Sure.

17 MR. BARNETTE: How close was he with you -- the gun?

18 ERVIN KEITH COMER, JR.: Inches.

19 MR. BARNETTE: Was that a real gun or a plastic gun?

20 ERVIN KEITH COMER, JR.: It was a Glock, and I have
21 several Glocks.

22 MR. BARNETTE: Thank you, sir.

23 Your Honor, the other two victims are present also,
24 Your Honor. I know you saw them yesterday too. I don't
25 think -- did y'all want to speak? Thank you, sir. That'd

1 be our presentation.

2 THE COURT: All right. Anything else?

3 MR. SCHULTZ: No, sir, Your Honor. Thank you for
4 hearing us.

5 THE COURT: Okay.

6 MR. SCHULTZ: Your Honor, may it please the Court.
7 I apologize. The total amount of days that
8 Mr. Braxton has served was 1,147 days. I failed to put
9 that on the record before.

10 THE COURT: 1,147 as of today?

11 MR. SCHULTZ: As of today, Your Honor.

12 THE COURT: Are you in agreement with that, Mr.
13 Barnette?

14 MR. BARNETTE: Yes, sir.

15 THE COURT: All right. On Indictment 2020-42-03479,
16 count one, indictment for murder, count two indictment for
17 possession of a weapon during the commission of a violent
18 crime, the defendant has pled guilty to the lesser offense
19 of voluntary manslaughter.

20 So, as to count one, voluntary manslaughter, Sentence
21 of the Court is you, Troy Deshaun Braxton, be confined to
22 the South Carolina Department of Corrections for a period
23 of 25 years.

24 The defendant is to be given credit for 1,147 days
25 served.

1 Count two, possession of a weapon during the
2 commission of a violent crime, the sentence is you are to
3 be confined to the Department of Corrections for a period
4 of five years. That sentence is concurrent.

5 Credit for 1,147 days.

6 Indictment 2020-42-03478, indictment for armed
7 robbery, which involves the same victim, Mr. Booker, as in
8 the previous indictment, as to that armed robbery the
9 sentence of the Court, is you, Troy Deshaun Braxton, be
10 confined to the South Carolina Department of Corrections
11 for a period of 15 years. That sentence is concurrent with
12 any other.

13 Credit being given for 1,147 days.

14 Indictment 2020-42-03475, an indictment for armed
15 robbery, the victim in that indictment is Mr. Comer,
16 sentence of the Court is you be confined to the South
17 Carolina Department of Corrections for a period of 15
18 years. That sentence is consecutive to that sentence
19 imposed on 2020-03479.

20 The defendant to be given credit for 1,147 days.

21 Indictment 2020-03474, an indictment for armed
22 robbery, the victim alleged to be the Donnette, and it also
23 carries a count two, possession of a firearm during the
24 commission of that violent crime, the sentences of the
25 Court are as to count one, armed robbery, you be confined

1 to the South Carolina Department of Corrections for a
2 period of 15 years. That sentence is concurrent to any
3 other sentence.

4 Credit for 1,147 days.

5 Count two, possession of a weapon during the
6 commission of a violent crime, sentence is five years
7 concurrent.

8 Credit for 1,147 days.

9 Indictment 2020-03476, indictment for armed robbery,
10 the victim alleged to have been David L. Moore, as to that
11 indictment, the Sentence is you be confined to the
12 Department of Corrections for a period of 15 years. That
13 sentence is concurrent to any other.

14 Credit for 1,147 days.

15 Indictment 2020-42-03477, an indictment for armed
16 robbery, the victim alleged to be Crystal Risko, Sentence
17 of the Court is you be confined to the South Carolina
18 Department of Corrections for a period of 15 years. That
19 sentence is concurrent with any other.

20 Credit being given for 1,147 days.

21 Indictment 2020-42-03473, an indictment for possession
22 of marijuana with intent to distribute, Sentence of the
23 Court is you be confined to the Department of Corrections
24 for a period of five years. That sentence is concurrent
25 with any other.

1 Credit for 1,147 days.

2 Indictment 2022-42-02555, an indictment for aggravated
3 assault and battery, Sentence of the Court is you be
4 confined to the South Carolina Department of Corrections
5 for a period of ten years. That sentence is concurrent
6 with any other.

7 Credit for 1,147 days.

8 Indictment 2020-42-03472, an indictment for failing to
9 stop when signaled, Sentence of the Court is you be
10 confined to the South Carolina Department of Corrections
11 for a period of three years. That sentence is consecutive
12 to any other sentence imposed today.

13 Credit being given for 1,147 days.

14 I think that covers all of them.

15 Anything else?

16 MR. BARNETTE: No, sir. Thank you.

17 MR. SCHULTZ: No, sir, Your Honor.

18 THE COURT: All right. This matter is in recess.

19 END OF REQUESTED TRANSCRIPT OF RECORD
20
21
22
23
24
25

CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 13th and 14th days of March 2023.

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

January 16, 2024

s/Linda D. Moffitt

Linda D. Moffitt
Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 County of Spartanburg)
)
Troy D. Braxton)
 Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

2024-CP-42-00043

v.

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE Corr.
2. Name and location of Court which imposed sentence Spartanburg General Sessions
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2020 GS 4203472
 - (b) 2020 GS 4203473

(c)

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

(a) March 2023

(b)

(c)

6. Check whether a finding of guilty was made:

(a) after a plea of guilty

(b) after a plea of not guilty

(c) after a plea of nolo contendere

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

yes

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

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

i. Court of Appeals

ii.

iii.

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

i.

ii.

iii.

(c) the date of each such result:

i. MAY 24, 2023

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) Involuntary Guilty Plea
- (c) Unconstitutional sentence

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

- (a) Counsel failed to investigate my case.
- (b) Guilty was obtained in violation of Boykin
- (c) Counsel allowed me to obtain sentence illegally

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. _____

N/A

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

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

N/A

(c) the disposition thereof:

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

N/A

(d) the date of each such disposition:

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

N/A

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

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

N/A

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

N/A

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

(a) which grounds have been presented:

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

N/A

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

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

N/A

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

- (a) _____
- (b) _____
- (c) _____

N/A

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

- (a) your arraignment and plea? YES
- (b) your trial, if any? NO
- (c) your sentencing? YES
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? NO
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
NO

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

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

- i. E. Joshua Schultz
- ii. _____
- iii. _____

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

- i. Guilty Plea and Sentencing
- ii. _____
- iii. _____

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

Vacate Guilty Plea

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

NO

STATE OF SOUTH CAROLINA)

County of Spartanburg)

VERIFICATION

I, Tray D. Braxton, 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.

[Signature]

SWORN to and subscribed before me this 27 day of December, 2023.

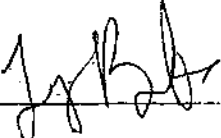
Debra Elizabeth [Signature] (L.S.)
Notary Public

My Commission Expires: 3/3/2026

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

I, Terry D. Braxton, 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.


Applicant

SWORN or affirmed to and subscribed before me this
22 day of December, 2023.


Notary Public

My Commission Expires: 3/3/2026

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Troy Dashaun Braxton, #372305,
Applicant,

v.

State of South Carolina,
Respondent.

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

) CASE NO. 2024-CP-42-00043

) RETURN

) (Counsel Appointed)

FILED
2024 JUL -8 PM 12:15
CLERK OF COURT
SPARTANBURG COUNTY
AMY W. COX

In response to Troy D. Braxton's (Applicant) application for post-conviction relief (PCR), commenced on January 29, 2024, Respondent, the State of South Carolina, makes the following Return:¹

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Spartanburg County Clerk of Court. During its June 2020 term, the Spartanburg County Grand Jury indicted Applicant for failure to stop for blue light (2020GS4203472); possession with intent to distribute marijuana (2020-GS-42-03473); armed robbery and possession of a weapon during the commission of a violent crime (2020-GS-42-

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

03474); armed robbery (2020-GS-42-03475; -76; -77); armed robbery (2020-GS-42-03478), and murder and possession of a weapon during the commission of a violent crime (2020-GS-42-03479). During its May 2022 term, the Spartanburg County Grand Jury indicted Applicant for assault and battery of a high and aggravated nature (2022-GS-42-02555).² Applicant was represented by E. Joshua Schultz and Michael David Morin, Esquires. Solicitor Barry Joe Barnette of the Seventh Circuit Solicitor's Office prosecuted the case.

On March 13 - 14, 2023, Applicant appeared before the Honorable J. Derham Cole, circuit court judge, and pled guilty as indicted without any negotiation or recommendation to the charges arising from indictment numbers 2020-GS-42-03472; -73; -74; -75; -76; -77; -78 and 2022-GS-42-02555. Applicant pled guilty to the lesser included offense of voluntary manslaughter regarding the charges associated with indictment number 2020-GS-42-03479. Judge Cole sentenced Applicant to twenty five years' imprisonment for involuntary manslaughter (2020-GS-42-03479), five years' imprisonment for and possession of a weapon during the commission of a violent crime (2020-GS-42-03479), fifteen year's imprisonment for armed robbery (2020-GS-42-03476), fifteen year's imprisonment for armed robbery (2020-GS-42-03477), fifteen year's imprisonment for armed robbery (2020-GS-42-03478), five year's imprisonment for possession with intent to distribute marijuana (2020-GS-42-03473), fifteen year's imprisonment for armed robbery and five year's imprisonment for possession of a weapon during the commission of a violent crime (2020-GS-42-03474), and ten years imprisonment for assault and battery of a high and aggravated nature (2022-GS-42-02555), to be served concurrently. Additionally, Judge Cole sentenced Applicant to fifteen years' imprisonment for armed robbery (2020-GS-42-03475), to be served consecutively to the sentence imposed for

² Applicant was represented by Michael David Morin, Esquire, solely on this charge.

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indictment number 2020-GS-42-03479, and three years' imprisonment for failure to stop for blue light (2020GS4203472), to be served consecutively to any other sentence.

Applicant filed a timely notice of appeal. Applicant's appeal was perfected by Appellate Defender Robert Michael Dudek of the Office of Appellate Defense. On May 24, 2023, the South Carolina Court of Appeals denied Applicant's appeal pursuant to Rule 203(d)(1)(B)(iv), SCACR. State v. Troy Dashaun Braxton, No. 2023-000487 (S.C. Ct. App. Filed May 24, 2023). The Remittitur was returned on June 9, 2023.

STATEMENT OF FACTS

The facts regarding the incident resulting in applicant's charges of four counts armed robbery and one count of possession of a weapon during the commission of a violent crime³ are taken from the guilty plea transcript as articulated by the State:

This started back on January 1st of 2020. Your Honor, the defendant went into the Donnette, Your Honor. He went in approximately 11:40 a.m. on December 31st of 2019. When he went in, Your Honor, he had like a bag on the front of him. Your Honor, from there the way he was dressed, he went into the front door. He actually drove a blue Crown Vic, Your Honor, into the parking lot. That was shown on the video, Your Honor. He actually drove it to the side or near the back of the Donnette, Your Honor, in this case. He goes in. He sits at a fish game table with another gentleman there. He's there for a period of time. You'll see him on one of the video cameras. He kinda turns to his side when they're emptying the machine out for the pay-out and everything, taking the money. He pulls his gun out. Actually jumps on the bar in front of two of the victims in this case, Your Honor. Goes from the bar. Actually, winds up stealing their cell phones, Your Honor. Went in the back where the bar keeper was. Had her come back out. Took the money outta the cash register, took her purse, took several items with him. He brandished the gun. There's a question. You can see the gun in his hand. He actually comes out from behind the bar and comes back out and actually goes out the area. There's a couple of men that moved in the direction. Me Comer, which is the owner, he thought at some point that those

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³ 2020-GS-42-03474; -75; -76; -77.

people was involved with it too. So, when the defendant ran out the front door, he follows, and he actually shoots three shots up in the air to make sure everybody backs up. Goes out the front door, sees the defendant driving off, shoots eight more shots, hits the car several times from there. Sheriff's department arrived there. State's Exhibits 1 through 11, Your Honor, is the fired shell casings that was fired by Mr. Comer in this case, Your Honor. State's Exhibit 12 is actually the weapon that he 44 used, the Beretta, Your Honor, 9mm that he used in this case, Your Honor. And State's Exhibits 15 and 16 shows the pictures of the Beretta when they got at the scene there, the sheriff's department, as well as the shell casings found at the Donnette where he went through the front of it and came around and actually shot. You can see the shell casings right there at the end of the building in this case. On January 10th of 2020, Your Honor, Investigator Jenkins and several members of the sheriff's department was called to 1000 Dornoch Drive in Boiling Springs, South Carolina. And all of these crimes occurred in Spartanburg County, Your Honor. When they arrived there, Your Honor, Juan Booker had been shot.

The Court: Let's stop right there, please.

Solicitor: Okay.

The Court: All right. With the Donnette, so the Donnette, we have four armed robberies?

Solicitor: Yes, sir. You have the Donnette itself where he robbed, and you also have the three victims in this case, Your Honor.

The Court: And that all took place at the Donnette.

Solicitor: Yes, sir. And that was Irvin Comer, 45 David Morris and Crystal Risko, Your Honor, and they're present in the courtroom here today.

The Court: All right. With the Donnette, so the Donnette, we have four armed robberies?

Solicitor: Yes, sir. You have the Donnette itself where he robbed, and you also have the three victims in this case, Your Honor.

The Court: All right. And there's also attached to one of those indictments the possession of a weapon during the commission of a violent crime.

Solicitor: That's correct, Your Honor.

(PCR Tr. pp. 42-45).

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The facts regarding the incident resulting in applicant's charges for one count of armed robbery,⁴ one count of murder and one count of possession of a weapon during the commission of a violent crime,⁵ one count of failure to stop for blue light,⁶ and one count of possession with intent to distribute marijuana⁷ are taken from the guilty plea transcript as articulated by the State:

MR. BARNETTE: Okay. Your Honor, the murder, which is the murder, which he's pleading to voluntary manslaughter, the armed robbery, as well as the possession of a weapon, Your Honor, occurred on January 10th of 2020, Your Honor, at 1000 Dornoch Drive in Boiling Springs, Your Honor. Juan Booker was the victim in this case, Your Honor. What I've done, Your Honor, I'm going to enter the total book that Investigator Jenkins -- State's Exhibit 34 -- will be that book, Your Honor, that's in there. But he went to Regional, Your Honor, and found out the defendant was -- the victim had been shot in the groin, Your Honor. They responded to the scene, Your Honor. When he arrived there he had passed away. He started through his investigation, Your Honor. He actually started videos. And, like I said, he's here to explain this better. Like I said, we was ready to try the armed robbery and the failure to stop, Your Honor. But, basically, through their investigation they started looking for a small white car that came out of this investigation, Your Honor. And that small white car -- and I'll have to explain the other event to explain how that connects to it. They started researching through that, Your Honor. And also let me go from there to the third event.

The third event, Your Honor, occurred on January 21st of 2020. Your Honor, the defendant was driving a white vehicle, Your Honor, a white Honda at the time which wound up being a 1996 Honda Accord, Your Honor. Sheriff's officers Matthew Smith and Trevor Shue, Your Honor, was on patrol. They were coming down Reidville Road or John White Boulevard, Your Honor, near where the Fuddruckers is. They saw this car. It had the wrong tag on it. The tag did not match up with the car. He was also not properly using his turn lanes and was committing other offenses, Your Honor. They went to blue-light him. He took off, Your Honor. They followed him down Reidville Road. He took several turns and went about five miles, Your Honor, into the city, Your Honor. They finally stopped him. It's on video. He -- when they finally got

⁴ 2020-GS-42-03478.

⁵ 2020-GS-42-03479.

⁶ 2020-GS-42-03472.

⁷ 2020-GS-42-03473.

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him almost stopped, he jumps out of the vehicle. He has a black bag with him, which is State's Exhibit 21 that's been entered into evidence. Your Honor, this bag -- he goes outta the car. He actually throws it. You hear Matt Smith talk on his body-cam video that -- that he throws the thing. They capture him, Your Honor, and bring him back, get the bag, Your Honor. Inside the bag is a small body bag that's worn here. You go back to the January 1st incident, the defendant is wearing a bag just like this on his chest. Putting it back inside State's Exhibit 21, Your Honor. Also, through the investigation, Your Honor, they track the license tag back to a Crown Vic. What happened was they actually called for L & J Towing Company to come out to get the car -- the sheriff's department did. The tow driver looked at him. He said, "Well, the defendant already owes me for one car. He's got a blue Crown Vic back in my yard." They go back to the yard. They investigate. There's several gunshots in there, and there's several pictures that's been entered into evidence, Your Honor, in this case.... And, Your Honor, through the investigation Investigator Taco Talanges was there, Your Honor, along with Investigator Megan Bennett was with her when he collected. He collected the bullet, State's Exhibit 14, as well as the part of a bullet, State's Exhibit 13. State's Exhibit 14 was collected and sent to SLED, Your Honor. State's Exhibit 17 is the SLED toxicology or SLED analysis on that firearm analysis.... And the bullet came back to Mr. Comer's gun that was fired on January 1st in this case. So, the bullet that was found in the Crown Vic matches up with this gun, which the tow driver was willing to come and testify that this defendant -- that was his car.

Your Honor, there was also marijuana that was found in his car, and he was charged. That's possession with intent to distribute marijuana. We do have the report in evidence, as well as the marijuana that's in evidence also, Your Honor.

The Court: All right. What about the failure to stop? Anything aggravated about the failure to stop?

Solicitor: It was a five-mile chase, Your Honor. He did go across the center line several times, Your Honor. He was a danger to the community, people out there, because he's actually going through downtown. Not downtown Spartanburg but going through the south side of Spartanburg, throughout there.

The Court: What kind of speed was involved?

Solicitor: The maximum was 65, but the problem is if you're familiar with that area, Your Honor, it's a very curvy, going back and forth, and obviously it took

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- lot of time and everything. We do have the failure to stop video if you'd like to see it.
- The Court: I don't think I need to see it. That will depend upon what Mr. Braxton tells me, but/and the marijuana was how much?
- Solicitor: It was -- let me give you the report, Your Honor, State's Exhibit No. 22. Your Honor, it was two bags. One was 27 grams and the other one was eight grams, Your Honor. During the chase he had threw something out of the window, Your Honor, and they never did -- was able to collect it.
- The Court: All right. Is that all you're telling me about the failure to stop and possession with intent to distribute?
- Solicitor: Yes, sir. You have the Donnette itself where he robbed, and you also have the three victims in this case, Your Honor.
- The Court: All right. And there's also attached to one of those indictments the possession of a weapon during the commission of a violent crime.
- Solicitor: Yes, sir, but it kinda relates back to the murder....

....

MR. BARNETTE: Thank you, Your Honor. And State's Exhibit 35 is the incident reports involving the armed robberies at the Donnette, as well as the failure to stop, Your Honor. I'm entering that as part of the facts and the evidence in the case. Going back to the murder, Your Honor. Once.... Going through this, Your Honor. Investigator Jenkins with the sheriff's department -- once they realized he had this white Honda, Your Honor, it matched up with the videos that he was looking at in this case, Your Honor, from there, and so what they did was they actually -- him and Investigator Jon Guest -- went and spoke to him and did an interview with him. Your Honor, and basically they also looked at his phone records showing them that he's talking to C. Lyles or Corey Lyles, which is kinda interesting. Corey Lyles was involved in the Donnette from January 1st because he's actually present at that robbery. Talking to Juan, about the victim, about robbing him. So they have that evidence, Your Honor. From there they went and talked to him about it. He admitted being there but not the actual shooter in the case. Investigator Jenkins is here if he needs to clear up anything else on that. And, Your Honor, through that, Your Honor, they was able to piece that he was involved with the murder. There was a robbery of Mr. Booker in this case, Your

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Honor, as well as the possession of a weapon during a violent crime, Your Honor.

The Court: All right. So, as I understand it, then the state's position is that Mr. Lender is the person who actually fired the weapon?

Solicitor: No. We don't know, Your Honor, to be honest with you.

The Court: You don't know.

Solicitor: But Corey Lyles is somebody he was involved with was actually at the Donnette, Your Honor, that night.

The Court: Well, I'm sorry. I send Lender. It's Corey Lyles.

Solicitor: Corey Lyles. Yes, sir.

The Court: All right. But so Mr. Braxton is charged with murder and the lesser of voluntary manslaughter. But the state's position is that he was with someone else?

Solicitor: Possibly, Your Honor. Like I said, there's no question he talked to Corey Lyles on the phone through messages that they were going to rob Mr. Booker in this case.

The Court: So, the state has evidence that Mr. Braxton and another person conspired to commit a robbery of Mr. Booker.

Solicitor: Uh-huh.

The Court: And that that robbery took place and resulted in Mr. Booker's death.

Solicitor: That's correct, Your Honor.

The Court: But you're not certain as to whether Mr. Braxton fired the weapon?

Solicitor: I don't know if -- I'm going to let Investigator Jenkins speak on this, Your Honor.

Investigator: There is -- when I was interviewing Mr. Braxton, we were actually -- and it's in the book -- but I gave him a -- had him tell me where he was at, because his phone location put him at the apartment complex. I had him draw me -- he told me that where he was shot at in the stairwell, told me which apartment he went in down to the right. He told me all of these things. I had him draw me a diagram, but he told me he saw that from the vehicle. Had the diagram. There's no way he could have saw it unless he had first-hand knowledge of being in that stairwell. So, the state's position is that even though

we have Mr. Lyles at the Donnette, nothing to indicate anything other than Mr. Braxton was at the Promenade.....

Solicitor: And, Your Honor, the robbery and the basis for it was the cell phone of the victim in this case, Mr. Booker, as well as money that was taken. And that would be all included in State's Exhibit 34.

(Plea Tr. pp. 45-55).

The facts regarding the incident resulting in applicant's charge of assault and battery of a high and aggravated nature⁸ are taken from the guilty plea transcript as articulated by the State:

This occurred on July 9th of 2021, Your Honor. Jesse Redding was an inmate at the Spartanburg County Detention Center with the defendant in this case. Your Honor, there was an altercation that occurred. Your Honor, there was also another codefendant Jamie Kates, Your Honor, in this case. But according to witnesses there and through investigators or whatever, Mr. Braxton was identified as the person that threw the first blow, Your Honor, in this case. He saw Mr. Braxton hit Mr. Redding -- and this is from Mr. Sible - - from that standpoint that knocked him out, Your Honor, and they were basically beating him up, Your Honor, from that standpoint. He did sustain substantial injuries, Your Honor. He also had a fracture to his skull in this case.

(Plea Tr. pp. 65-66).

CURRENT APPLICATION

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

1. Ineffective assistance of counsel:
 - a. "Counsel failed to investigate my case."
2. Involuntary Guilty Plea
 - a. "Guilty was obtained in violation of Boykin."
 - b. "Counsel allowed me to obtain sentence illegally."

Applicant requests relief in the form of vacating his guilty plea.

⁸ 2022-GS-42-02555.

Attached to and incorporated herein are Applicant's Spartanburg County Clerk of Court Records, Applicant's South Carolina Department of Corrections Records, the plea transcript, and the current PCR application. Respondent reserves the right to amend this return upon receipt of additional relevant information.

RESPONSE TO ALLEGATIONS OF INEFFECTIVE ASSISTANCE OF PLEA COUNSEL

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant—like all other defendants—the right to "assist[ance] by an attorney, whether retained or appointed, who plays the role necessary to ensure that the trial is fair." Strickland v. Washington, 466 U.S. 668, 685 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013). Ordinarily, PCR allegations are centered upon an assertion that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. See generally S.C. Code Ann. § 17-27-20(A) (enumerating allegations cognizable in PCR actions). The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985); Rule 71.1(e), SCRCP. The reviewing court applies the two-part test outlined in Strickland to determine whether counsel's conduct "was so [ineffective] as to require reversal of the applicant's conviction. 466 U.S. at 687. To obtain relief, a PCR applicant must prove counsel's performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice due to counsel's deficient performance. Id. at 687–88; Cherry v. State, 302 S.C. 161, 162 (2016).

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S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable" (citation and internal quotation marks omitted)).

As aforementioned, the applicant has the burden of establishing both deficiency and prejudice in order to be entitled to relief. Hughes v. State, 346 S.C. 554, 558, 552 S.E.2d 315, 317 (2001); Rule 71.1(e), SCRPC. To prove deficient performance, the applicant must establish that "in light of all the circumstances, the identified acts or omissions [complained of] were outside the wide range of" competence demanded of attorneys in criminal cases. Strickland, 466 U.S. at 690. To prove prejudice, the applicant must establish that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. at 694. A reasonable probability is a probability "sufficient to undermine confidence in the outcome." Id. However, "the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged." Id. at 696.

Because of the difficulties inherent in making such an evaluation, the reviewing court must indulge in a "strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Butler, 286 S.C. at 445, 334 S.E.2d at 816. "The burden of rebutting this presumption 'rests squarely on the defendant,' and "[i]t should go without saying that the absence of evidence cannot overcome [i]t." Dunn v. Reeves, 594 U.S. 739, 753 (2021) (alteration in original) (quoting Burt v. Titlow, 571 U.S. 12, 22–23 (2013)). Id. "When if there is reason to think that counsel's conduct 'was far from exemplary,' a court may not

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grant relief if "[t]he record does not reveal' that counsel took an approach that *no competent lawyer would have chosen.*" Id. (alteration in original) (emphasis added) (quoting Titlow, 571 U.S. at 23–24). Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Strickland, 466 U.S. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding").

Because the Sixth Amendment right to counsel also applies to a defendant entering a guilty plea, Hill v. Lockhart, 474 U.S. 52 (1985) extended the two-part Strickland test to challenge guilty pleas based on ineffective assistance of counsel. See Padilla v. Kentucky, 559 U.S. 356, 373 (2010) (recognizing that the guilty plea process is a "critical phase of litigation" for purposes of the Sixth Amendment right to effective assistance of counsel). When reviewing a guilty plea, the analysis of counsel's performance under the first prong of Strickland remains unchanged—the applicant must show that counsel's representation fell below an objective standard of reasonableness demanded of attorneys in criminal cases. Hill, 474 U.S. at 58–59; accord Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000).

An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice to plead guilty was not "within the range of competence demanded of attorneys in criminal cases." Hill, 474 U.S. at 56. The second, or "prejudice" prong—however—"focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." Id. at 58–59. Specifically, when an applicant claims counsel's deficient performance caused him to accept a plea, the applicant "must show that there is a

reasonable probability that, but for [plea] counsel's [alleged] errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 59.

This inquiry "focuses on a defendant's decision making" and does not turn on the outcome of a defendant's actual criminal proceeding or potential outcome had a defendant chosen to proceed to trial. Lee v. United States, 582 U.S. 357, 367 (2017). However, the applicant must convince the court that a decision to reject the plea bargain would have been rational under the circumstances. Padilla, 559 U.S. at 372. Judges must "look to contemporaneous evidence to substantiate a defendant's expressed preferences." Lee, 582 U.S. at 369. In determining whether a guilty plea was taken in accordance with constitutional standards, the reviewing judge must analyze and consider the entire record, including the transcript of the guilty plea and the evidence presented at the PCR hearing. Harres v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

Surmounting the Strickland high bar is never an easy task, and the strong societal interest in finality has "special force with respect to convictions based on guilty pleas." Lee, 582 U.S. at 368-369 1967 (internal citations and quotation marks omitted); cf. Hill, 474 U.S. at 58 ("[R]equiring a 'prejudice' showing from defendants who seek to challenge the validity of their guilty pleas on the ground of ineffective assistance of counsel 'will serve the fundamental interest in the finality of guilty pleas.'"). Reviewing "[c]ourts should not upset a plea solely because of *post hoc* assertions from a defendant about how he would have pleaded but for his attorney's deficiencies." Lee, 582 U.S. at 369. The question here is whether the applicant, if correctly informed of circumstances surrounding the plea, would have pleaded guilty—*not* whether counsel would have still advised him or her to plead guilty. Turner v. State, 335 S.C. 382, 385, 517 S.E.2d 442, 444 (1999).

Moreover, "there is no reason for a court deciding an ineffective assistance claim to approach the inquiry in the same order or even to address both components of the inquiry if the defendant makes an insufficient showing on one." Strickland, 466 U.S. at 697. The court "need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies." Id. If it is easier to dispose of an ineffectiveness claim on the grounds of lack of sufficient prejudice, the court may evaluate the prejudice prong only. Id.

In the present case, Applicant has asserted various allegations that Plea Counsel provided ineffective assistance of counsel. Because these allegations likely raises questions of fact not conclusively refuted by the record, the State requests an evidentiary hearing to fully resolve the issues. Accordingly, Respondent requests an evidentiary hearing to resolve this issue fully. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983) ("Where an application for post-conviction relief alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court, a question of fact is raised which can only be resolved by an evidentiary hearing.").

RESPONSE TO ALLEGATION PLEA COUNSEL FAILED TO INVESTIGATE

Applicant alleges Plea Counsel was ineffective for failing to investigate his case. "[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690-91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffective assistance case, a

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particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

"The reasonableness of counsel's actions may be determined or substantially influenced by the defendant's own statements or actions." Id. Counsel's actions are usually based, quite properly, on informed strategic choices made by the defendant and on information supplied by the defendant." Id. "In particular, what investigation decisions are reasonable depends critically on such information." Id.

In order to prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop and present had counsel been more prepared. Harris v. State, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)) (citing Jackson v. State, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998)). Furthermore, an applicant must also present evidence to show how the discoverable matters or defenses would have resulted in a different outcome. Id. (citing Davis v. State, 326 S.C. 283, 288, 486 S.E.2d 747, 749 (1997); Skeen v. State, 325 S.C. 210, 214, 481 S.E.2d 129, 132 (1997)). Mere speculation as to how the alleged lack of preparation prejudiced an applicant is not sufficient to support a grant of relief. Id., 377 S.C. at 75, 659 S.E.2d at 145 (citing Glover v. State, 318 S.C. 496, 498, 458 S.E.2d 538, 540 (1995)).

Here, Applicant has asserted that Plea Counsel was ineffective for failing to investigate. While Respondent maintains the record refutes this allegation, Respondent requests an evidentiary hearing to fully resolve the issues. See Sharper v. State, 279 S.C. 265, 305 S.E.2d 247, 248 (1983) (providing an evidentiary hearing shall be held when a

"alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

RESPONSE TO ALLEGATION OF INVOLUNTARY GUILTY PLEA

Applicant alleges his guilty plea was obtained in violation of Boykin, and that Plea Counsel was ineffective in allowing Applicant to obtain his sentence illegally. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence presented at the PCR hearing. See Harris v. Leeke, 282 S.C. 131, 134, 318 S.E.2d 360, 361 (1984).

The transcript reflects that the guilty plea was knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, the PCR applicant's right to contest the validity of such a plea is usually, but not invariably, foreclosed. See Blackledge v. Allison, 431 U.S. 63, 73-74 (1977). Statements made during a guilty plea should be considered conclusively unless an Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. See Crawford v. U.S., 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by U.S. v. Whitley, 759 F.2d 327 (4th Cir.1985)). Applicant presented no reasons to show that he should be allowed to depart from the truth of the statements he made during his guilty plea hearing.

An applicant who enters a plea on the advice of counsel may only attack the voluntariness and intelligent character of the plea by showing that trial counsel's representation was below an

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objective standard of reasonableness and that there is a reasonable probability that, but for trial counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial instead. See Roscoe v. State, 345 S.C.16, 20, 546 S.E.2d 417, 419 (2001); see also Richardson v. State, 310 S.C. 360, 362 426 S.E.2d 795, 797 (1993). Given Applicant's burden of proof and the analysis to be applied to this claim, Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it will be treated as such.

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

RESPONSE TO APPLICANT'S REQUESTED RELIEF

In his prayer for relief, Applicant requests this Court vacate his guilty plea. This relief is only part of the relief available in a post-conviction relief action. If this Court finds a defect in the original proceedings, the appropriate relief would be a new trial on *all* of the original indictments. Gilstrap v. State, 252 S.C. 625, 168 S.E.2d 88 (1969); see also Grant v. MacDougall, 244 S.C. 387, 391, 137 S.E.2d 270, 272 (1964) (relief of absolute release not available). Where an applicant seeks only relief to which he or she is not entitled, "it is not incumbent upon [the] court to pass upon what relief, if any, he [or she] might, perchance, be entitled to." Young v. State, 250 S.C. 476, 479, 158 S.E.2d 764, 765 (1968). For these reasons, if the application is not otherwise amended before the evidentiary hearing to reflect the desired appropriate relief, Respondent would respectfully request this Court engage through

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colloquy with Applicant to apprise her of the relief available in a PCR. If, at the evidentiary hearing, Applicant indicates no desire for appropriate relief but a desire to proceed, Respondent will then move to dismiss the Application.

ANY FUTURE AMENDMENTS AND INVOCATION OF DISCOVERY PROCESS

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. All claims should be made well in advance of the evidentiary hearing. Because Applicant has retained an attorney, the attorney, and not Applicant, is the only individual authorized to file amendments to this application. See Rule 11, SCRPC. *Pro se* filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent pursuant to Love v. State, 428 S.C. 231, 834 S.E.2d 196 (2019), or, alternatively, Respondent will request a continuance in the matter. Id. at 245, 834 S.E.2d at 203 (Kittredge, J., dissenting) ("If, however, the proposed amendment . . . would truly prejudice the State, the better course of action would be to continue the matter and thus remove any possibility of prejudice resulting from the belated amendments.").

If Applicant fails to file a timely and responsive amended application setting forth specific allegations for relief, Respondent reserves the right to move to dismiss these allegations or claims. S.C. Code Ann. §§ 17-27-10 to -160; Rule 71.1, SCRPC; see also Rules 15(a)-(b), SCRPC. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice against Respondent. See Rule 15(a), SCRPC.

Pursuant to S.C. Code Ann. § 17-27-150, Applicant may not invoke formal discovery processes to issue subpoenas or otherwise obtain discovery materials unless granted leave from the Court upon a showing of good cause. Furthermore, Respondent requests that the Court

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exhibits and materials used to produce potential expert witness testimony be sent to Respondent well in advance of the evidentiary hearing. Respondent reserves the right to request a continuance and oppose witness testimony and exhibits that are withheld until the last minute, resulting in undue prejudice against Respondent.

CONCLUSION AND ACTION REQUESTED


Respondent submits Applicant cannot satisfy the requirements of Strickland. However, the record likely does not refute or disprove all of Applicant's allegations. Therefore, Respondent requests an evidentiary hearing to resolve the issues fully after Applicant has filed amendments to his PCR application through Counsel. See Sharper, 279 S.C. at 265, 305 S.E.2d at 248 (providing an evidentiary hearing shall be held when a PCR application "alleges specific instances of ineffective assistance of counsel which are not conclusively refuted by the record before the lower court").

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

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Assistant Attorney General

By: 
 ATTORNEYS FOR RESPONDENT
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July 3, 2024

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SPARTANBURG COUNTY
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Troy D. Braxton #372305)
)
 Applicant,)
)
 vs)
)
 State of South Carolina,)
)
 Respondent,)

IN THE COURT OF COMMON PLEAS

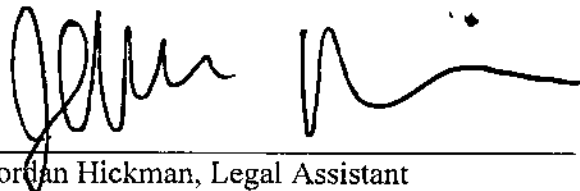
2024-CP-42-00043

CERTIFICATE OF SERVICE BY MAIL

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

Ms. Susannah Conyers Ross
Ross & Enderlin, PA
330 East Coffee St.
Greenville, SC 29601

DATED this 3rd day of July 2024.



 Jordan Hickman, Legal Assistant
 For Respondent

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF SPARTANBURG)	SEVENTH JUDICIAL CIRCUIT
)	
TROY DESHAUN BAXTER,)	AMENDED APPLICATION
APPLICANT.)	
v.)	
)	
THE STATE OF SOUTH CAROLINA,)	CASE # 2024-CP-42-00043
RESPONDENT.)	
_____)	

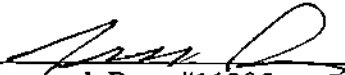
This matter comes before the Court by way of application of post-conviction relief filed January 29, 2024, alleging ineffective assistance of trial counsel, involuntary guilty plea, and unconstitutional sentence. A Return was made on July 3, 2024. This application is intended to incorporate and clarify the allegations of the original application with the following allegations:

1. Ineffective assistance of trial counsel for

- (a) failure to investigate review discovery with the Applicant;
- (b) advising the Applicant that the reduction of his charge to voluntary manslaughter would limit his potential sentence from two to thirty years; and
- (c) failure to effectuate an appeal.

2. Due Process violations because the plea was not knowingly and voluntarily made.

Respectfully submitted,


 Susannah Ross #11205
 Attorney for the Applicant
 330 E. Coffee St,
 Greenville, SC 29601
 (864) 242-0029

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 SPARTANBURG COUNTY
 ANJAY W. COX

Greenville, South Carolina
 This 20 day of August 2024

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P R O C E E D I N G S

MR. HALL: May it please the Court?

THE COURT: Yes, sir.

MR. HALL: Assistant Attorney General Bryan Hall for the State, Your Honor.

This is the case of Troy Braxton versus State of South Carolina. Docket Number 2024-CP-42-00043.

In June of 2020 the Spartanburg County Grand Jury indicted Mr. Braxton for murder, Indictment Number 2020-GS-42-03479, four counts of armed robbery. The armed robbery indictment numbers are 2020-GS-42-03475 through 478. Possession of a weapon during the commission of a violent crime. Indictment number 2020-GS-42-03474, possession with intent to distribute marijuana, 2020-GS-42-03473, fail -- failure to stop for a blue light, 2020-GS-42-03472. He was represented on those charges by E. Joshua Schultz.

And, in May of 2022, the Spartanburg County Grand Jury indicted him for assault and battery of a high and aggravated nature indictment, Indictment Number 2022-GS-42-02555, and he was represented on that charge by Michael Morin.

He pled guilty before the Honorable J. Derham Cole on March 13th and 14th of 2023 and solicitor Barry

1 Barnette prosecuted this case.

2 He was sentenced to a concurrent sentence -- well,
3 before I get there, he pled to the lesser included offense
4 of voluntary manslaughter on that murder indictment and he
5 was sentenced to a concurrent sentence of 25 years for
6 voluntary manslaughter, 15 years for each count of armed
7 robbery, five years for the weapon charge, and five years
8 to the PWID marijuana charge, and then he received a
9 consecutive sentence of three years for the failure to
10 stop for a blue light.

11 Mr. Braxton appealed his conviction and was
12 represented on appeal by Appellate Defender Michael Dudek.
13 The Court of Appeals confirmed the conviction and the
14 sentence and the remittitur was sent on June 9th of 2023.

15 His PCR was filed on January 29th of 2024 and Mr.
16 Braxton's alleging ineffective assistance of counsel,
17 involuntary guilty plea, and he's alleging that his
18 sentence is unconstitutional. But I'll let opposing
19 counsel put on the record the allegations that he intends
20 to go forward on.

21 We received an amended application in August of 2024.
22 In that amended application he's alleging additional
23 claims of ineffect -- additional allegations of
24 ineffective assistance of counsel as well as an allegation
25 that counsel failed to file an appeal.

1 Mr. Braxton is present and represented by Susannah
2 Ross and the State is ready to proceed, Your Honor.

3 THE COURT: Ms. Ross.

4 MS. ROSS: Thank you, Your Honor.

5 May it please the Court.

6 I just refer to Page 86 of the transcript. I believe
7 one of the armed robberies was also run consecutive to the
8 manslaughter sentence.

9 So, it, it was -- the three years and 15 years
10 consecutive just to clarify for the record, and, yes, the
11 third allegation -- I believe there, there -- an, an
12 appeal was a -- filed, filed but it was not effectuated.
13 It was dismissed by the Court later on. So, maybe the
14 basis for the appeal wasn't clarified enough for that
15 appeal to, to stand through and be heard by the Court.

16 At this point though, Mr. Braxton and -- I've been
17 talking to him down in the holding cell. On his behalf,
18 I'd like to ask for a continuance. He tells me that there
19 are a number of -- he wants evidence from the Anderson
20 County Jail of the number of visits Mr. Schultz made
21 to him -- with him over three years. He says they were
22 not adequate and would demonstrate ineffective assistance
23 of counsel showing there -- a failure to prepare and, and
24 review the case with the applicant.

25 MR. HALL: Judge, the State will object to a

1 continuance. We have Mr. Schultz, his plea attorney,
2 present and Mr. Braxton is welcome to cross-examine
3 Mr. Schultz regarding the number of times that he, that
4 he's met with him if he believes it is insufficient. But
5 the State is ready to proceed.

6 THE COURT: All right. Ms. Ross, I am gon' deny your
7 request. However, I will -- I'm willing to leave the
8 record open for a certain amount of time for him to
9 supplement it for any records he may be able to obtain
10 from Anderson County.

11 okay?

12 MS. ROSS: All right. Thank you.

13 THE COURT: Yes, ma'am.

14 MS. ROSS: And then, at this point, I, I would stand
15 by the amended application.

16 we're alleging ineffective assistance of counsel that
17 brings him to question the knowing and voluntarily --
18 knowing and voluntary nature of his guilty plea pursuant
19 to Rule 11 and Boykin v. Alabama, failing to review
20 discovery with the applicant to fully prepare for trial,
21 misadvising the applicant, applicant that the reduction of
22 the murder charge to voluntary manslaughter would limit
23 his exposure to two to ten years, failure to effectuate
24 the appeal as I said before, and, and, at this point, I'd
25 call Mr. Troy Braxton to the stand to testify.

1 THE COURT: Come around please, sir.

2 while he's coming around, Ms. Ross, how long you
3 think it's gon' take you to get those records from
4 Anderson County?

5 MS. ROSS: You know, I, I just called there the other
6 day for another client and it -- they just gave them to
7 me. I don't know if you need them authenticated. That
8 would take longer for me to get -- but I --.

9 THE COURT: Okay.

10 MS. ROSS: They just will give me a printout.

11 THE COURT: whatever you get, would you copy the
12 State on for me?

13 MS. ROSS: Yes, Your Honor.

14 THE COURT: will you raise your right-hand?

15 TROY BRAXTON, being first duly
16 sworn, testified as follows:

17 THE COURT: Have a seat. State your name and spell
18 your last name please, sir.

19 THE WITNESS: Troy Braxton. B-R-A-X-T-O-N.

20 THE COURT: And I'm gon' get you to speak into the
21 microphone for me please, sir.

22 THE WITNESS: You want me to repeat it?

23 THE COURT: sir?

24 THE WITNESS: You want me to repeat it?

25 THE COURT: Get down a little bit. Try that. Try

1 one, two.

2 THE WITNESS: One, two.

3 THE OFFICER: Check.

4 THE COURT: Okay.

5 THE WITNESS: One, two.

6 THE COURT: I think that's better.

7 All right. Thank you.

8 DIRECT EXAMINATION

9 BY MS. ROSS:

10 Q. Morning, Mr. Braxton.

11 I guess the first question I always have in PCRs is
12 do you understand that the relief you get, if you're
13 granted relief, is to be put back in the position you were
14 in before your guilty plea facing potential life?

15 A. Yes, ma'am.

16 Q. Okay. And what would you like to do?

17 A. Proceed.

18 Q. All right. Now, we've made some allegations of, of
19 ineffective assistance of counsel and that your plea
20 wasn't knowingly and voluntarily made.

21 Can you tell the Court the basis for those
22 allegations?

23 A. I was advised that I was getting a two to 30 plea. I
24 wasn't gon' get more than 30 years. That's why I took a
25 plea.

1 Q. All right. And who advised you that?

2 A. My lawyer. My counsel.

3 Q. And, based on that advice, what did you do?

4 A. I reconsidered going to trial, went back and forth
5 with the trial, and decided to take a plea cause I wasn't
6 gon' get more than 30 years.

7 Q. All right. If you thought you could get more than 30
8 years, what would you of done?

9 A. I would of -- I would of went to trial on one of my
10 cases. I would definitely went to trial on my murder
11 case.

12 Q. Would you of pled if you thought you would get
13 consecutive sentences?

14 A. No, ma'am.

15 Q. All right. And, and why didn't you think you could
16 get consecutive sentences even when Judge Cole was telling
17 you what kind of time you could get on each charge?

18 A. Cause I, I, I had knowledge of thinking that I wasn't
19 gon' get more than 30 years.

20 Q. And what was that thought process based on?

21 A. Me and my con -- me and my lawyer talking.

22 Q. Okay.

23 A. Consistently doing -- talking about this during the
24 plea, during the plea, during -- right before my trial
25 started.

1 Q. And, you know, and the transcript you initially said
2 nope, I want a trial, correct?

3 Do you remember that?

4 A. Yes, ma'am.

5 Q. What changed your mind to, to go ahead and plea?

6 A. Probably just recess. Me talking to my mother.

7 They, they let me talk to my mother during one of my

8 recesses and it just made me reconsider like okay.

9 Between two to 30 years, might -- I might be able to -- it
10 might be I won't get more than 30 years. I -- I'll take a
11 plea.

12 Q. All right. And so your, your mom told you that too
13 based on what your lawyer had told her?

14 A. Yes, ma'am.

15 Q. Now, any other -- did -- how, how many times did you
16 meet with your lawyer prior to?

17 A. In prior three years, we probably spent no more than
18 like 10 hours on my case, 12 hours on my case if that --

19 Q. And we're talking---

20 A. -- in three years.

21 Q. And we're talking Mr. Schultz, not Mr. Morin, who had
22 your ABHAN charge, right?

23 A. Yes, ma'am.

24 Q. Okay.

25 A. Mr. Schultz had my charge since like the second or

130 Troy Braxton - Direct examination
By Ms. Ross

1 third week -- third month that I was in -- incarcerated in
2 the county.

3 Q. And how many times do you think he came to see you?

4 A. He probably came probably like -- probably like no
5 more than probably like four or five times. I'm not sure
6 really.

7 Q. Did you---

8 A. But we, we didn't -- we, we haven't talked more than
9 probably like six hours about the case altogether in three
10 years.

11 Q. And how---

12 A. I talked---

13 Q. ---did you feel he was representing you?

14 A. I -- it, it got to the point after a while, cause I
15 had my people calling his office every week, it got to a
16 point to where I, I felt like he wasn't in my best
17 interest to the point that I had ended up going in front
18 of -- I had end up talking to him. He said that he'd give
19 me my money back and I can get, get another
20 representation.

21 I went to court in front a judge some time in
22 September, 2022 to get him removed off my counsel and I
23 was denied, and I was denied to get a public defender too
24 because they felt like I had enough -- my, my family had
25 money to get another representation, which we did. We was

1 gon' get the money back from him and get another
2 representation cause I just felt like he wasn't in my
3 best -- we ain't, we ain't match.

4 Q. All right. And just going back to -- as far as
5 reviewing the discovery with you, how many times did, did
6 y'all -- did y'all go over all that discovery, the
7 evidence?

8 A. We never went over the whole discovery. We went over
9 some of the discovery. We went over a lot of discovery.
10 We never really went over all the discovery like
11 everything.

12 Q. All right. And do you feel that affected the outcome
13 of your plea?

14 A. Yes. Yes. Yes.

15 Q. All right. Now, let's, let's talk a little bit
16 about -- you mentioned to me South Carolina Code 17-25-50
17 and---

18 A. I did.

19 Q. ---that talks about closely related crimes --

20 A. Yes, ma'am.

21 Q. -- will be considered the same as far as sentencing.

22 A. Yes, ma'am.

23 Q. And, and you say you feel that you were -- the
24 consecutive sentences---

25 A. I feel like---

132 Troy Braxton - Direct examination
By Ms. Ross

1 Q. ---violated that --?

2 A. Yes, I feel like it violated that right, that code
3 based on Brian versus State because I had -- I got three
4 different cases, which that, that, that -- they, they
5 similar and, and around the same time. But it's like I
6 got four cases in this charge, four cases in this charge,
7 and they ran one charge out this case consecutive to the
8 one charge out this case. But the other charges in this
9 case was ran concurrent.

10 I didn't know -- like that, that really confused me.
11 I didn't know they can really -- I thought that was
12 illegal for them to take one charge out of this one case
13 over here and just run this consecutive to the one charge.
14 But the rest of the incidents in this situation, y'all,
15 y'all ran it concurrent.

16 MR. HALL: Your Honor, I'm gonna -- Your Honor, I'm
17 going to object for the reason of lack of notice on this
18 allegation. Although Mr. Braxton alleged in his
19 application an unconstitutional sentence, he didn't
20 specify what about his sentence was unconstitutional. We
21 would just like to just put that on the record barring --.

22 THE COURT: Noted. Overruled.

23 Go ahead.

24 MS. ROSS: And I'd move to conform the, the pleadings
25 to, to the---

1 THE COURT: Granted.

2 MS. ROSS: ---the evidence.

3 Now, were there any other issues that you wanted to
4 present to the judge at this point besides the fact that
5 you wouldn't of pled if you hadn't of thought that you
6 were looking at---

7 A. Um.

8 Q. ---two to 30?

9 A. I got -- I, I took a lot of notes and stuff and I
10 really like unprepared for this cause I ain't know I
11 was -- whenever my court date was. So, those were like
12 the main things that I -- that my, my in -- the, the
13 counseling and the sentence, the illegal sentence, that
14 was like my main things.

15 Q. All right. And how about -- and if, and if you had
16 to have notice, would your, your mom support what you're
17 saying about the two to 30 years?

18 A. Yes, ma'am.

19 MR. HALL: Objection. Hearsay and speculation.

20 THE COURT: What was your question?

21 Q. Do you feel like if, if you'd known this court date,
22 your mother would of been here, correct?

23 A. Yeah, all my fam -- yes.

24 MR. HALL: Objection.

25 MS. ROSS: Or I'll---

134 Troy Braxton - Direct examination
By Ms. Ross

1 MR. HALL: Hearsay.

2 MS. ROSS: ---try to rephrase it.

3 THE COURT: I'm asking her to --

4 MR. HALL: Sorry.

5 THE COURT: -- tell me what the question was.

6 Okay. I want to hear it.

7 MS. ROSS: I can't remember exactly the wording. I
8 think I, I said would your mom support what---

9 THE COURT: I'm gonna---

10 MS. ROSS: ---you're saying.

11 THE COURT: I'm gonna sustain it.

12 Just rephrase your question for me please.

13 MS. ROSS: Thank you.

14 If you had -- if your mother was here today -- would
15 you have wanted your mother here today?

16 A. Yes, ma'am. Yes, of course she would of been here.
17 If she would of knew, she would of been here. She just
18 got a new number and contact number and stuff like that.
19 So --

20 Q. All right.

21 A. -- I know I gave you the old one. I, I gave -- I
22 know I gave you the old numbers.

23 Q. Yeah.

24 So, so I didn't have her new contact information?

25 A. No, ma'am.

1 Q. And what do you think -- how would her presence or
2 test -- testimony would of helped your -- how could her
3 testimony have helped your case?

4 A. Well, if she -- well, is -- she gon' tell you that
5 --.

6 MR. HALL: Objection. Hearsay.

7 A. The only thing she gon'---

8 THE COURT: Hang on. Hang on. Hang on. Overruled.
9 Go ahead.

10 A. The only thing that she can tell you that I can say
11 honestly that would probably help me is that they -- when
12 I had a recess, when I had a recess during the -- when I
13 was about to go to trial and I had a recess, she came in
14 and talked to me. They let her all the way back in the --
15 all the way back and talked to me face-to-face one-on-one.

16 So, yeah, that's the only thing I can say that can
17 probably help my case. But she would---

18 Q. What kind of sentence---

19 A. ---actually want to be here though.

20 Q. ---was she thinking you would get?

21 A. Two to 30.

22 Q. Okay.

23 A. No more than 30.

24 MS. ROSS: Okay. All right. I have no further
25 questions.

136 Troy Braxton - Cross-examination
By Mr. Hall

1 THE COURT: Cross-examination.

2 CROSS-EXAMINATION

3 BY MR. HALL:

4 Q. Mr. Braxton --

5 A. Yes, sir.

6 Q. -- your case was called for trial, wasn't it?

7 A. Yes, sir.

8 Q. Okay. And you were there, right?

9 A. Yes, sir.

10 Q. Okay. And didn't the State say on the date that your
11 case was called for trial that they made an offer to you
12 to plead straight to all of the charges and plead guilty
13 to voluntary manslaughter, right?

14 A. Yes, sir.

15 Q. Okay. And didn't the State also say that the plea to
16 voluntary manslaughter, the vol -- that the voluntary
17 manslaughter charge carries between two and 30 years,
18 right?

19 A. Yes, sir.

20 Q. Okay. And isn't it true that you told the plea judge
21 that you had plenty of opportunity to speak to your lawyer
22 about, about your cases?

23 A. Yes, sir.

24 Q. Okay. And isn't it true that you also told the Court
25 that your lawyer had shared all the evidence the State had

1 and would present if you had proceeded to trial, right?

2 A. Yes, sir.

3 Q. Okay. And isn't it true that you even told the plea
4 court that your attorney had shared everything with you,
5 right?

6 A. Yes, sir.

7 Q. Okay. And you also told the plea court that you and
8 your attorney discussed everything in the case from the
9 evidence to the charges, right?

10 A. Yes, sir.

11 Q. Okay. And isn't it true that you told the judge that
12 your lawyer had explained to you that the possible
13 sentence for each count of armed robbery was 10 to 30
14 years?

15 A. Yes, sir.

16 Q. Okay.

17 A. But even though -- if I---

18 Q. Oh, wait. Hold on.

19 A. Sorry.

20 Q. And it's also true that you said that your lawyer
21 didn't explain the possession of a weapon charge, right?

22 Is that what you told the plea court?

23 A. I don't recall talking about that.

24 Q. If I say that that's in the transcript, would you
25 dispute that?

138 Troy Braxton - Cross-examination
By Mr. Hall

1 A. No.

2 Q. Okay.

3 A. I can't.

4 Q. And that's at Transcript Page 11.

5 But after you told the judge that your lawyer didn't
6 explain the possession of a weapon charge to you, isn't it
7 true that the judge explained that charge to you and
8 explained that it carried up -- it carried a five year
9 sentence, right?

10 A. Yes, sir.

11 Q. Okay. And the judge explained to you that failure to
12 stop for a blue light carried a three year sentence,
13 right?

14 A. Yes, sir.

15 Q. And the judge explained to you that possession with
16 intent to distribute marijuana carried up to five years,
17 right?

18 A. Yes, sir.

19 Q. And the judge explained to you that murder carried 30
20 to life and was a mandatory minimum of 30 years day for
21 day, right?

22 A. Yes, sir.

23 MR. HALL: Okay. Beg the Court's indulgence.

24 (Pause.)

25 Q. And isn't it true that the judge explained to you

1 that the State had made an offer in this case that you
2 would plead guilty to all of the charges including
3 pleading guilty to voluntary manslaughter which carries
4 two to 30 years and you told the judge that you understood
5 that, right?

6 A. Yes, sir.

7 Q. Okay. Say -- you have to say yes.

8 THE COURT: Hang on.

9 MR. HALL: I'm sorry.

10 THE COURT: Would you give an oral response please,
11 sir?

12 THE WITNESS: Yes, sir.

13 Q. Okay. And isn't it true that you also told the judge
14 an additional time that you and your lawyer had looked
15 over all the State's evidence and that you understood that
16 evidence, right?

17 A. Yes, sir.

18 Q. And that included looking at video surveillance from,
19 from the, the charges, right?

20 A. Yes, sir.

21 Q. Okay. And isn't it true that you told the plea judge
22 that you also discussed defenses with your lawyer, right?

23 A. Yes, sir.

24 Q. Okay. And you also told the plea judge that you
25 wanted to plead guilty, didn't you?

140 Troy Braxton - Cross-examination
By Mr. Hall

1 A. Yes, sir.

2 Q. Okay. And you also told the judge that your lawyer
3 had explained to you your constitutional rights, right?

4 A. Yes, sir.

5 Q. Your right to remain silent, right?

6 A. Yes, sir.

7 Q. And he explained your right to confront witnesses,
8 didn't he?

9 A. Yes, sir.

10 Q. And he explained to you that you had a right to a
11 jury trial if you wanted one, right?

12 A. Yes, sir.

13 Q. Okay. And knowing all of that, you decided to plead
14 guilty, didn't you?

15 A. Yes, sir.

16 Q. Okay. And you told the judge that you weren't
17 promised anything to plead guilty, right?

18 A. Yes, sir.

19 Q. And nobody pressured you to plead guilty, right?

20 A. Yes, sir.

21 Q. And you told them that you were pleading guilty
22 freely and voluntarily, right?

23 A. Yes, sir.

24 Q. Okay. Now, that was for the charges that Mr. Schultz
25 represented you on.

1 But you also told the judge, regarding the ABHAN
2 charge, that Mr. Morin had discussed with you the State's
3 evidence, right?

4 A. Yes, sir.

5 Q. Okay. And you told the judge that Mr. Morin knew
6 everything he needed, he needed to know about the facts of
7 that case, right?

8 A. Yes, sir.

9 Q. Okay. And you told the judge that you didn't have a
10 defense to the ABHAN charge, right?

11 A. Yes, sir.

12 Q. Okay. And you told the judge that Mr. Morin
13 explained to you your constitutional rights, right?

14 A. Yes, sir.

15 Q. Including your right to confront witnesses --

16 A. Yes, sir.

17 Q. -- correct?

18 Your right to remain silent?

19 A. Yes, sir.

20 Q. And your right to a jury trial, right?

21 A. Yes, sir.

22 Q. Okay. And knowing all those rights, you told the
23 judge that you wanted to waive them and plead guilty.

24 Is that correct?

25 A. Yes, sir.

142 Troy Braxton - Cross-examination
By Mr. Hall

1 Q. Okay. And in deciding to plead guilty or go to
2 trial, you testified on direct that, after speaking to
3 your, to your mother, that's what made you reconsider
4 going to trial, right?

5 A. Yes, sir.

6 MR. HALL: Okay. No further questions, Your Honor.

7 THE COURT: Redirect.

8 REDIRECT EXAMINATION

9 BY MS. ROSS:

10 Q. Okay. Just to clarify one thing.

11 On Page 15 of the transcript, you initially re --
12 rejected the plea offer, correct?

13 A. Yes, sir. Yes, ma'am.

14 Q. And then, while Judge Cole talked about the sentences
15 you could receive, all those were -- the most was 30 years
16 for all those charges, right?

17 A. Yes, ma'am.

18 Q. And, and so, when he -- when you're hearing what you
19 could get, did he ever tell you I could run all these
20 consecutive to each other and you'd get more than 30
21 years?

22 A. I don't recall.

23 MS. ROSS: Okay. All right. I have no further
24 questions.

25 THE COURT: All right. Thank you, sir. You can step

1 down.

2 Call your next witness please.

3 MS. ROSS: That's the applicant's case, Your Honor.
4 I'd ask that -- leave the record open if I can supplement
5 with those visits to the jail.

6 THE COURT: Would you be in contact with my law clerk
7 and State's attorney just to give us an idea, you know,
8 generally how long that's gonna take?

9 MS. ROSS: I sure will.

10 THE COURT: All right. Thank you.

11 MR. HALL: Your Honor, the State calls Joshua Schultz
12 to the stand.

13 JOSHUA SCHULTZ, being first duly
14 sworn, testified as follows:

15 THE COURT: All right, sir. Would you come around
16 and state your name for the record and spell your last
17 name please, sir?

18 THE WITNESS: Attorney Joshua Schultz. Last name
19 Schultz, S-C-H-U-L-T-Z.

20 DIRECT EXAMINATION

21 BY MR. HALL:

22 Q. How you doing, Mr. Schultz?

23 A. Very well. Hope you are.

24 Q. Yes, sir.

25 Mr. Schultz, how long have you been practicing law?

144 Josh Schultz - Direct examination
By Mr. Hall

1 A. Since 2005.

2 Q. Okay. And how much of that time has spent devoted to
3 criminal law?

4 A. Almost a hundred percent.

5 Q. Okay. And how did you become involved in Mr.
6 Braxton's case?

7 A. Mr. Braxton's family came in actually right before
8 the pandemic. I think it was January of 2020. I was
9 retained soon thereafter.

10 Q. Okay. And during the course of your representation,
11 how many times did you meet with Mr. Braxton?

12 A. I'm not sure of the exact amount. But it was a fair
13 amount.

14 Q. Okay. Do you believe that the number -- do you
15 believe that you met sufficiently with Mr. Braxton?

16 A. Yes.

17 Q. Okay. And did you request and receive discovery in
18 this case?

19 A. I did.

20 Q. Okay. And did you review that discovery with Mr.
21 Braxton?

22 A. I did.

23 Q. Can you tell the Court what evidence the State had
24 against Mr. Braxton?

25 A. Yes, I received incar camera videos, surveillance

1 videos from the Dinette, several body cams, surveillance
2 videos like I said before, several downloads of, of
3 statements.

4 Q. And, by statements, you mean statements that Mr.
5 Braxton made or --?

6 A. No, state---

7 Q. That the---

8 A. Statements from witnesses and victims in the case --

9 Q. Okay.

10 A. -- 9-1-1 calls and especially in this case -- excuse
11 me.

12 In, in the armed robbery, there were surveillance
13 videos. So, other than the incident reports, forensics
14 and everything, they -- there was a lot of discovery.

15 Q. Okay. And in those surveillance videos, could Mr.
16 Braxton be identified in those videos?

17 A. I think the question of identity in those videos was
18 questionable. I, I think ultimately maybe the State could
19 of overcome that. But identity was one of the defenses
20 that we, we could of possibly used had the case gone to
21 trial and they were going to try -- the State was going to
22 try the armed robberies first and when, when his case got
23 called.

24 Obviously they could of tried the murder and the
25 armed robberies at the same time. They were gonna try

1 their best case first, which, in their opinion, was the
2 armed robberies.

3 Q. Okay. And, at that time, was the -- at the time that
4 the case was called for trial, was the State also
5 proceeding on the murder charge at that time?

6 A. To try the murder?

7 Q. Yes, at the same time as the armed robbery?

8 A. No.

9 Q. No.

10 Okay. So they -- were they gonna try the murder at a
11 separate time?

12 A. Yes, they had to.

13 Q. Okay. And you testified that you reviewed that
14 evidence with Mr. Braxton.

15 Did he have any defenses to the armed -- to, to those
16 charges that were called for trial?

17 A. Yes.

18 Q. Okay. What was that defense?

19 A. Identity, that could of been one. I think that was
20 it. That was a fairly decent one that we could of
21 pursued. The murder, which is another case of possible,
22 possible -- possibly identity. But there were several
23 defenses that we ultimately concluded would not be worth
24 pursuing.

25 Q. Okay. And in preparing Mr. Braxton's cases, did you

1 explain to him all the charges in this case?

2 A. Yes.

3 Q. Did you explain to him the elements of, of those
4 offenses?

5 A. Yes.

6 Q. Okay. Did you explain to him the potential sentences
7 that he would receive for each charge?

8 A. Yes.

9 Q. Okay. Did you explain to him that voluntary
10 manslaughter carried a, a sentence of two to 30 years?

11 A. Yes.

12 Q. Okay. In preparation and reviewing things with Mr.
13 Braxton, did he ask you to investigate anything in, in
14 relation to these charges?

15 A. Well, other than filing for discovery, he didn't ask
16 me to investigate something specific to my recollection.

17 Q. Okay. And did you see anything in this case that was
18 worth investigating?

19 A. Well, yes, the, the, the whole case obviously. I, I
20 filed discovery. I reviewed it. I assessed the evidence
21 that the State had.

22 Q. Okay. I want to ask you about your negotiations with
23 the State.

24 Did you engage in plea nego -- plea negotiations with
25 the State?

148 Josh Schultz - Direct examination
By Mr. Hall

1 A. I did.

2 Q. Can you tell the Court about those negotiations?

3 A. Yes.

4 Originally, Mr. Derrick Bulsa, who's now in private
5 practice, had this case, was prosecuting Mr. Braxton. In
6 2021 I believe he gave me an offer of -- I think it was --
7 can, can I check my --?

8 THE COURT: Sure.

9 A. -- computer?

10 Mr. Bulsa wrote me an email on April 2nd, 2021. He
11 says Josh, I was able to meet with the family of Warren
12 Booker who's the victim of the murder. They are agreeable
13 to something less than a life sentence in exchange for a
14 plea. The State is willing to offer a plea range of 30 to
15 45 years on the murder charge and 30 years on the armed
16 robbery charges. This is a reasonable offer. It allows
17 you to argue for the minimum sentence for the murder while
18 allowing the Court to consider the victim position.

19 Now, that at -- that would of exposed him to a 30
20 year sentence or potentially 45 year sentence day for day
21 because he would be pleading to a murder. Then, in June,
22 Mr. Bulsa sent me another email. The previous offer was a
23 plea range of 30 to 45 with the family asking for the full
24 45 years. This offer knocks off five years to a
25 negotiated 40 years. I'm surprised you did not take the

1 previous offer since it gave you some wiggle room.

2 But that was on the murder. I felt that, if the
3 State moved down from murder, which carries 30 to life,
4 then if that, if that murder would be moved down to
5 voluntary manslaughter, we'd possibly could have gotten
6 less time on that. Then his exposure, at least on the
7 voluntary manslaughter, would be up, up to 30 and that
8 would be served at 85 percent not, not day for day.

9 Q. Okay.

10 A. And then if I could?

11 Q. Yes, sir.

12 A. And then, right before the case was called to trial,
13 Mr. Barnette, who then took -- who, who took over the case
14 after Mr. Bulsa left the Solicitor's Office, offered me
15 he, he can plead to five armed robbery charges, the two
16 possession of a weapon during violent crime charge, the
17 failure to stop for a blue light, PWID marijuana, and the
18 murder charge will be reduced to the less -- to the lesser
19 included offense of voluntary manslaughter. This, this
20 plea will be straight up without any recommendation or
21 negotiations on it.

22 The ABHAN, that's Mr. Morin's case, on Indictment
23 Number 2555 will be pending and open and will not be a
24 part of this plea. Now, ultimately, that was part of the
25 plea that Mr. Braxton pled to.

150 Josh Schultz - Direct examination
By Mr. Hall

1 Q. Okay. And you testified or you mentioned that the
2 State communicated to you that that offer will be made
3 without recommendation or negotiation?

4 A. Yes.

5 Q. Okay. And because there were no recommendations or
6 negotiations in this case, that sentence would of been
7 left up to the judge -- to the judge's discretion?

8 A. Yes, sir.

9 Q. Okay. And did you explain that to the -- those
10 offers to Mr. Braxton?

11 A. Yes, sir.

12 Q. Okay. Did you have any concerns about Mr. Braxton's
13 ability to understand anything that you explained to him?

14 A. No.

15 MR. HALL: Okay. Beg the Court's indulgence.

16 (Pause.)

17 Q. Mr. Schultz, after you explained all this information
18 to Mr. Braxton, can you tell us about Mr. Braxton's
19 decision to plead guilty in this case?

20 A. Yes.

21 Q. Do you have recollection of what those discussions
22 and, and -- were like and what was said during them?

23 A. We were going to proceed to trial in March of 2023 to
24 my recollection. I met with him that weekend going into
25 the trial.

1 We were prepared to go, pick a jury. At that point I
2 was just looking through my file. I see the juror
3 information paperwork that I got from the clerk of court.
4 So, I was prepared to try that case, try the armed robbery
5 cases first cause that's -- that -- those, those are the
6 cases that the State intended to call.

7 His mother -- I was in communication with his mother
8 later on in the case. This is during the pandemic. So, I
9 believe his case probably could of been called sooner if,
10 if the pandemic didn't happen because I picked up the case
11 in, in January, February, 2020. The pandemic, pandemic
12 happened.

13 I filed for I think one or two bond hearings during
14 that time. They were, they were all denied and then we
15 proceeded to trial, you know, three years later. And if
16 there was not a pandemic, there, there -- we probably
17 could of tried it soon -- sooner.

18 But I was prepared to try the armed robberies in
19 March of 2023. His mother came to me saying could I talk
20 to my son and usually the jail -- we were in the old
21 courthouse at that time.

22 At, at our old jail room, usually members of the
23 family are not allowed to go in and talk to inmates. I
24 had to ask special permission for his mom to talk to him
25 after he had rejected the State's offer on the case.

1 I think that was, to my recollection, I think that
2 was done in the morning and then, in the -- soon
3 thereafter, his mother went to go talk to him and then he
4 decided to plead.

5 Q. Okay. Now, after he pled, did you file a notice of
6 appeal in this case?

7 A. I did.

8 Q. Okay. And do you recall what happened with that
9 appeal?

10 A. I think it was dismissed.

11 MR. HALL: Okay. Beg the Court's indulgence.

12 (Pause.)

13 Q. No further questions. Please answer anything Ms.
14 Ross has for you.

15 A. Thank you.

16 CROSS-EXAMINATION

17 BY MS. ROSS:

18 Q. And I believe it's true, if, if you recall, the
19 appeal was dismissed because it, it didn't have a factual
20 basis to -- it wasn't heard by the appellate court.

21 It was just dismissed --

22 A. Yes.

23 Q. -- right after filing?

24 Okay. As far as advising Mr. Braxton about the
25 sentence he could receive, did you tell him the sentence

1 for manslaughter, the minimum/maximums?

2 A. Yes.

3 Q. And you discussed that with him?

4 A. Yes.

5 Q. Did you discuss that with his mother?

6 A. I believe so, yes.

7 Q. Is it possible that he could under -- have understood
8 he was looking at a maximum of 30 years?

9 A. I, I will say this.

10 when, when I talk to clients, I often say sometimes
11 we are hoping for, you know, a 20 year sentence or we are
12 hoping for a 30 year sentence. We are hoping for a, you
13 know, whatever. But I think he was well aware that he
14 could get over 30.

15 Q. Okay. But that's just you---

16 A. And, and I remember saying to him it's like listen
17 I -- we are hoping for the least sentence possible.

18 Q. But you can't say for sure until -- you'd have to
19 speculate to exactly what he took away from that?

20 A. Yeah, I would have to speculate.

21 Q. And I just refer you to Page 37 of the transcript,
22 Line 18. There the Court does inform that the sentence is
23 up to him---

24 A. Yes.

25 Q. ---but he does not say I could run these sentences

1 consecutive.

2 A. Yes.

3 Do, do you want me to read that into the record?

4 Q. Sure.

5 A. Okay.

6 Q. Just that.

7 A. All right.

8 The Court: And was the agreement also that the
9 sentences will be left up to me, whatever that might be?

10 Mr. Braxton, or the defendant: Yes, sir.

11 Q. All right. I have no further -- well, let me ask. I
12 have no further questions.

13 THE COURT: Redirect.

14 MR. HALL: Briefly, Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. HALL:

17 Q. Mr. Schultz, in regarding the judge stating that the
18 sentence, that the sentence would be left up to him,
19 generally sentencing is within the judge's discretion,
20 right?

21 A. Yes.

22 Q. Okay. And does that discretion include running a
23 sentence concurrent to other charges or, or -- yeah.

24 A. Yes. But also it's the judge's discretion to run
25 something consecutive.

1 MR. HALL: Okay. No further questions, Your Honor.

2 THE COURT: All right. May this witness be excused?

3 MR. HALL: Yes, sir.

4 MS. ROSS: No objection.

5 THE COURT: Thank you, sir.

6 THE WITNESS: Thank you, Your Honor.

7 MR. HALL: Your Honor, the State calls Michael Morin
8 to the stand.

9 MS. ROSS: And, judge, I just say that we, we have no
10 allegation of ineffective assistance of counsel against---

11 THE COURT: You have nothing against Mr. Morin?

12 MS. ROSS: No, Your Honor.

13 MR. HALL: Beg the Court's indulgence.

14 (Pause.)

15 THE COURT: Do you still want to call Mr. Morin?

16 MR. HALL: No, Your Honor, in light of Ms. Ross' --.

17 THE COURT: Everybody agree to excuse Mr. Morin?

18 MR. HALL: Yes, Your Honor.

19 THE COURT: Thank you, sir.

20 MS. ROSS: Yes. And I'll just put on the record
21 that -- the ABHAN was a 10 year concurrent sentence.

22 THE COURT: Okay.

23 Any reply, Ms. Ross?

24 MS. ROSS: No, Your Honor.

25 MR. HALL: The State has no further witnesses, Your

1 Honor. The State would just ask---

2 THE COURT: You jumped ahead of me. I'm sorry.

3 Any, any final statements?

4 MS. ROSS: Well, the -- judge, briefly, I, you know,
5 that was a long transcript and I could always miss
6 something. I -- just looking through for the word
7 consecutive, I did not see that in the transcript. At one
8 point Judge Cole said and the consecutive thought is this
9 when he was reasoning with him -- but that was -- I did
10 not see that in the transcript and you've heard that --
11 the testimony of the applicant saying that he did not have
12 that understanding.

13 So, we would just argue that, based on that, it
14 becomes questionable whether he would of pled if he had
15 had the understanding that those sentences could run
16 consecutively as they did.

17 THE COURT: All right.

18 MS. ROSS: So, that's the, the main basis of our
19 argument.

20 Also, clearly, Mr. Braxton wanted an appeal. He did
21 not get one. So, it was not effectuated.

22 THE COURT: What happened to the appeal?

23 MS. ROSS: I'm, I'm waiting on the rule number. It
24 was dismissed with failure to comply with Rule 237.

25 MR. HALL: Yes.

1 Judge, I'm -- I'm sorry.

2 MS. ROSS: Go ahead.

3 MR. HALL: Judge, I meant to state this when I was
4 calling the case.

5 We provided Your Honor -- Your, Your Honor's office
6 with the clerk of court records as well as the PCR records
7 from this case and the transcript. We usually include
8 appellate records and SCDC records.

9 Those were omitted in the packets that we gave you.
10 But we do have those records and can supplement the record
11 with them.

12 Your Honor, according to the appellate records,
13 notify -- a notice of appeal was filed in this case and
14 the Court of Appeals dismissed the appeal for failure to
15 state a sufficient explanation for or an issue that could
16 be appealed. And I believe that's Appellate Court Rule
17 203(d)(1)(B)(iv).

18 And so that was the basis of, of the appeal being
19 dismissed.

20 THE COURT: Okay. Thank you, sir.

21 MS. ROSS: That sounds correct, Your Honor.

22 THE COURT: All right. Anything further from anyone?

23 MR. HALL: Yes, Your Honor, just briefly.

24 As, as I'm sure Your Honor knows, to -- for a plea to
25 be made knowingly and voluntarily, freely and

1 intelligently, the applicant, the defendant, must be aware
2 of the charges against him, the possible sentences, and
3 his constitutional rights.

4 You heard testimony that he -- that Mr. Braxton was
5 advised of those charges. He was advised of the possible
6 sentence for each charge.

7 Sentencing is left within the judge's discretion.
8 It's within the judge's discretion to run the sentences
9 concurrent or consecutive as I'm sure Your Honor knows.
10 And the judge in this case stated on the record that the
11 sentence will be up to him because the State had made a
12 recommendation or negotiation. And so Mr. Braxton was
13 aware that sentencing was open in this case.

14 Regarding, again, their argument regarding the
15 sentence being unlawful, again, we received notice of, of
16 the specifics of that allegation this morning. But, Your
17 Honor, case law states that a defendant's hope that he
18 would receive a certain sentence does not make his, his
19 guilty plea involuntary and I can find that cite for you.

20 THE COURT: That's not necessary.

21 MR. HALL: Okay. That's all the State has, Your
22 Honor.

23 THE COURT: All right.

24 MR. HALL: We would ask, we would ask that you deny
25 his PCR application.

1 THE COURT: All right. Thank you.

2 If you would, Ms. Ross, make sure you just get in
3 take -- stay in touch with my law clerk. Let us know when
4 we can reasonably expect that information please, ma'am.

5 MS. ROSS: I will, Your Honor.

6 THE COURT: And I'll read all the documents. Once I
7 get that, I'll make a decision.

8 Okay?

9 MR. HALL: Thank you, Your Honor.

10 THE COURT: Thank you, guys.

11 Y'all take care.

12 MS. ROSS: Thank you, judge.

13

14 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for 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 evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 5th day of September, 2024.

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

October 23rd, 2024



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA)
 COUNTY OF SPARTANBURG)
)
 Troy Braxton, SCDC #372305,)
)
 Applicant,)
 v.)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. 2024-CP-42-00043

ORDER OF DISMISSAL

CLERK OF COURT
 SPARTANBURG COUNTY
 ARMY AVE
 SPARTANBURG, SC 29576

2024 DEC -2 PM 3:54

FILED

This matter is before the Court pursuant to an application for post-conviction relief (“PCR”) filed by Troy Braxton (“Applicant”) on January 29, 2024. On September 5, 2024, an evidentiary hearing convened before the Honorable R. Lawton McIntosh. Applicant was present and represented by Susannah C. Ross, Esquire. Assistant Attorney General Bryan T. Hall represented Respondent. At the hearing, Applicant testified on his own behalf. Respondent called as a witness E. Joshua Schultz, Esquire. Following a thorough review of the plea transcript and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies relief and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections (“SCDC”) serving a forty-three (43) year sentence. In June 2020, the Spartanburg County Grand Jury indicted Applicant for murder (202-GS-42-03479), four (4) counts of armed robbery (2020-GS-42-03475; -03476; 03477; -03478); possession of a weapon during the commission of a violent crime (2020-GS-42-03474); possession with intent to distribute (“PWID”) marijuana (2020-GS-42-03473); and failure to stop for blue lights (2020-GS-42-03472). In May 2022, the Spartanburg County Grand

Jury indicted Applicant for assault and battery of a high and aggravated nature (“ABHAN”) (2022-GS-42-02555).

On March 13, 2023, Applicant pled guilty before the Honorable J. Derham Cole. Michael Morin, Esquire, represented Applicant on the ABHAN charge; E. Joshua Schultz, Esquire, (“Counsel”) represented Applicant on all other charges. Solicitor Barry Barnette prosecuted the case. Applicant pled to voluntary manslaughter, the lesser-included offense of murder, and Judge Cole sentenced Applicant to a concurrent sentence of twenty-five (25) years for voluntary manslaughter; fifteen (15) years for three (3) counts of armed robbery; ten (10) years for ABHAN; five (5) years for PWID marijuana; five (5) years for the weapon charge. Judge Cole sentenced Applicant to a consecutive sentence of fifteen (15) years for one (1) count of armed robbery and three (3) years for FTS for blue light.

Applicant filed a timely notice of appeal. The Court of Appeals dismissed the Applicant’s appeal for failure to provide a sufficient explanation as to why an appeal from his guilty plea should proceed, pursuant to Rule 203(d)(1)(B)(iv), SCACR. *State v. Braxton*, S.C. Ct. App. Order filed May 24, 2023.

FACTUAL HISTORY

These charges arose from a December 31, 2019, incident in which Applicant went to a restaurant, pulled out a gun, stole cell phones from the victims, and fled. (Plea Tr. 42-43). On January 10, 2020, law enforcement responded to a location, whereat a victim had been shot in the groin. (Plea Tr. 44). On January 21, 2020, law enforcement observed Applicant with a wrong tag and committing other traffic offenses, Applicant fled when law enforcement initiated blue lights. Applicant jumped out of the vehicle and was captured; drugs were found in Applicant’s vehicle. Law enforcement officers noticed the vehicle driven by Applicant, a white Honda, matched a

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CLERK OF COURT
SUPERIOR COURT
NORTH CAROLINA

vehicle in videos related to the murder in which the victim was shot in the groin. Law enforcement searched Applicant's phone records, which revealed messages referencing the victim and a robbery between Applicant and Corey Lyles, who was present at the armed robbery that led to Victim's death. Applicant admitted to being present but denied being the shooter. (Plea Tr. 45-55).

Regarding ABHAN, Applicant got into an altercation with another inmate at the Spartanburg County Detention Center. The ABHAN victim suffered substantial injuries including a skull fracture. (Plea Tr. 65-66).

CURRENT APPLICATION

Applicant timely commenced this PCR action on January 29, 2024, alleging he is being held in custody unlawfully for the following reasons:

Ineffective Assistance of Counsel

- a. Failure to investigate

Involuntary Guilty Plea

Unconstitutional Sentence

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On July 8, 2024, Respondent filed its Return. In August 2024, Applicant amended his application to add the following allegations:

Ineffective Assistance of Counsel

- b. Failure to review discovery with Applicant.
 c. Advising Applicant that a reduction of his murder charge to voluntary manslaughter would limit his potential sentence to two (2) to thirty (30) years.
 d. Failure to file an appeal.

Before this Court are the Spartanburg County Clerk of Court records of the subject conviction; Applicant's records from SCDC; the appellate records; the plea transcript; and the records of the current PCR action.

TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING

Applicant's Testimony

At the evidentiary hearing, Applicant testified that Counsel advised him of a two (2) to thirty (30) year plea offer but Applicant received more time. Applicant testified that he considered trial but decided to plea. Applicant testified that he spoke to his mother, which made him reconsider going to trial. Applicant averred that he would have gone to trial if he knew he would receive more time. Applicant testified that he did not believe he would get a consecutive sentence. Applicant averred that Counsel met with him four (4) to five (5) times and did not spend more than ten (10) hours on his case. Applicant testified that he did not feel Counsel was acting in his best interest, and Applicant wanted to relieve Counsel but the motion to relieve was denied after a hearing. Applicant averred Counsel did not go over the whole discovery, which affected the outcome of the plea. Applicant averred his sentence was unlawful because the crimes were closing related, citing Section 17-25-50 and *Bryant v. State*. Applicant testified that he would have wanted his mother to be present at the evidentiary hearing and she would have said that she spoke to him during the recess.

On cross-examination, Applicant testified that he informed the plea judge that he had plenty of opportunity to speak to Counsel about his cases. Applicant testified that he told the court that Counsel shared all the evidence the State had and would present if he proceeded to trial, and Applicant and Counsel looked over the State's evidence. Applicant testified that he explained to the plea judge that Counsel explained to him the possible sentences for each count of armed robbery was ten (10) to thirty (30) years. Applicant testified that the plea judge explained him that possession of a weapon charge carried up to five (5) years, PWID marijuana carried up to five (5) years, and failure to stop for blue lights carried three (3) years.

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Counsel's Testimony

E. Joshua Schultz (“Counsel”) testified that he met with Applicant a “fair amount” of times and believed he met sufficiently with Applicant. Counsel testified that he requested and received discovery and reviewed the discovery with Applicant. Counsel testified that the State’s evidence included 911 calls, video surveillance, and statements from witnesses. Counsel testified that there was a question of [the robber’s] identity in the surveillance videos, which was a defense that could be used if the case went to trial. Counsel testified that the State was going to try the armed robbery charges first, which the State believed to be their best case. Counsel testified that he explained to Applicant the charges in his case, the elements of the offenses, and the potential sentences for each charge. Counsel testified that he explained to Applicant that voluntary manslaughter carried a sentence of two (2) to thirty (30) years instead of murder, which carried thirty (30) years to life.

Counsel testified that Applicant did not ask him to investigate anything specifically, but Counsel reviewed discovery and assessed the evidence the State had. Counsel testified that he engaged in plea negotiations with the State. Counsel testified that he believed if the State moved from murder to voluntary manslaughter, Applicant could possibly get less time and would only serve eighty-five percent (85%). Counsel testified that Applicant was pleading straight up without any recommendation or negotiations, which meant the sentence would be left to the judge’s discretion. Counsel testified that he explained the plea offers to Applicant. Counsel testified that he filed a notice of appeal, and Applicant’s appeal was dismissed.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the plea transcript in its entirety and has heard the testimony at the PCR hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility, and weigh their testimony.

After a careful review based on the *Strickland* standard set forth below, this Court finds Applicant has failed to carry his burden of proof. Below are this Court’s findings of facts and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1E, SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). An applicant alleging ineffective assistance of counsel must prove “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” *Strickland v. Washington*, 466 U.S. 668 (1984); *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. “The test for effective assistance of counsel is whether the representation was within the range of competence demanded of attorneys in criminal cases.” *Watson v. State*, 287 S.C. 356, 357, 338 S.E.2d 636, 637 (1985). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. *Butler*, 286 S.C. at 441, 334 S.E.2d at 813. An applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989).

To establish ineffective assistance of counsel, a PCR applicant must prove (1) counsel’s performance fell below an objective standard of reasonableness and (2) the applicant sustained prejudice as a result of counsel’s deficient performance. *Strickland*, 466 U.S. at 687–88; *Cherry*, 300 S.C. at 117–18, 386 S.E.2d at 625. Applicant must prove prejudice by showing “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 117-18, 386 S.E.2d at 625.

“A PCR applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that

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but for counsel’s errors, the applicant would not have pled guilty and would have insisted on going to trial.” *Dalton v. State*, 376 S.C. 130, 136, 654 S.E.2d 870, 873 (Ct. App. 2007). To prove prejudice following a guilty plea, the applicant “must show that there is a reasonable probability that, but for counsel’s errors, he would not have pleaded guilty and would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 59 (1985). Counsel is presumed to have rendered competent advice at the time their clients considered pleading guilty. *Padilla v. Kentucky*, 559 U.S. 356, 372 (2010). Additionally, the burden is on the applicant to convince the court that rejecting a plea or plea bargain would have been rational under the circumstances. *Id.*

Failure to Investigate

This Court finds Applicant failed to prove Counsel was ineffective for failing to conduct an independent investigation. “A criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). “The scope of a reasonable investigation depends on a number of issues, but at a minimum, counsel has the duty to interview potential witnesses and to make an independent investigation of the facts and circumstances of the case.” *Ard v. Catoe*, 372 S.C. 318, 331–32, 642 S.E.2d 590, 597 (2007). Counsel’s duty to investigate is limited to reasonable investigations or a reasonable decision that makes particular investigations unnecessary. *Id.* at 331, 642 S.E.2d at 597; *Strickland*, 466 U.S. at 691. In applying the *Strickland* standard to a claim of failure to investigate, counsel’s decision not to undertake a particular investigation should be evaluated for reasonableness under all the circumstances, with heavy deference to counsel’s judgment. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633 (Ct. App. 2014).

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To prevail upon a claim that counsel did not adequately prepare or investigate a case, an applicant must present evidence of what counsel could have discovered or what other defenses applicant could have requested counsel develop if counsel had more fully prepared. *Jackson v. State*, 329 S.C. 345, 353-54, 495 S.E.2d 768, 772 (1998). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result. *Moorehead v. State*, 329 S.C. 329, 496 S.E.2d 415 (1998). The applicant must further present evidence demonstrating how additional preparation and the discoverable matters or defenses would have resulted in a different outcome. *Harris v. State*, 377 S.C. 66, 75-76, 659 S.E.2d 140, 145-46 (2008) (holding applicant’s allegation that counsel’s preparation was inadequate was merely speculative, and applicant failed to prove he was prejudiced by counsel’s preparation), *abrogated on other grounds by Smalls v. State*, 422 S.C. 174, 810 S.E.2d 836 (2018)).

This Court finds Counsel’s investigation of the case was reasonable under prevailing professional norms, and thus was not deficient. This Court finds *credible* Counsel’s testimony that he reviewed and assessed the discovery and evidence in Applicant’s case. This Court finds *credible* Counsel's testimony that Applicant did not ask Counsel to investigate anything specifically. Further, Applicant failed to prove prejudice by failing to show discoverable matters or defenses that Counsel could have discovered or developed that would have resulted in a different outcome. Thus, Applicant failed to meet his burden.

Failure to Prepare and Review Discovery with Applicant

This Court finds Applicant failed to prove Counsel was ineffective for failing to prepare and failing to review discovery with Applicant. To prevail on a claim that counsel did not adequately prepare, Applicant must present evidence of what counsel could have discovered or

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what defenses could have been developed with additional preparation, and Applicant must demonstrate how the discoverable matters or defenses would have resulted in a different outcome. *Jackson*, 329 S.C. at 353-54; 495 S.E.2d at 772; *Harris*, 377 S.C. at 75-76, 659 S.E.2d at 145-46, *abrogated on other grounds by Smalls*, 422 S.C. 174, 810 S.E.2d 836.

This Court finds Counsel's preparation and review of the discovery with Applicant was reasonable under prevailing professional norms, and thus was not deficient. This Court finds *credible* Counsel's testimony that he requested and received discovery from the State. This Court finds *credible* Counsel's testimony that he reviewed the discovery with Applicant, including reviewing video surveillance. This Court finds *credible* Counsel's testimony that upon review of the video surveillance, identity would be an issue if Applicant were to proceed to trial. This Court finds *credible* Counsel's testimony that identity would have been Applicant's defense if he chose to proceed to trial. Further, this Court finds Applicant failed to prove prejudice by failing to present evidence of discoverable matters or defenses that Counsel could have developed that would have resulted in a different outcome. Thus, Applicant failed to meet his burden.

Failed to Spend Adequate Time

This Court finds Applicant failed to prove Counsel was ineffective for failing to meet with him sufficiently or spend adequate time. "[B]revity of time spent in consultation with a defendant alone is not indicative of inadequate trial preparation." *Smith v. State*, 404 S.C. 493, 500, 745 S.E.2d 378, 382 (2012). Applicant must show evidence of how additional preparation or communication would have resulted in a different outcome. *Id.*; see *Jackson*, 329 S.C. at 353-54, 495 S.E.2d at 772.

This Court finds *credible* Counsel's testimony that he met with Applicant a fair amount of times and believed the time spent was sufficient. This Court has had the opportunity to review

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the jail visitation logs submitted by Applicant, and finds the logs reflect Counsel met with Applicant several times. This Court finds Applicant failed to prove prejudice by failing to present evidence of how additional time would have resulted in a different outcome. Thus, Applicant failed to meet his burden.

Misadvising Applicant that Voluntary Manslaughter Would Limit his Exposure to Two to Ten Years

This Court finds Applicant failed to prove Counsel was ineffective in misadvising him that voluntary manslaughter would limit his exposure to two (2) to thirty (30) years. To collaterally attack a guilty plea, an applicant must prove (1) counsel was ineffective [in advising] and (2) but for counsel’s deficient performance, the applicant would not have pled guilty and would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. at 59 (1985); *Dalton*, 376 S.C. at 136, 654 S.E.2d at 873.

This Court finds Counsel was not deficient in advising Applicant. This Court finds *credible* Counsel’s testimony that he believed and advised Applicant that by pleading to voluntary manslaughter, Applicant *could* serve less time than the murder charge, which carries thirty (30) years to life. This Court finds *credible* Counsel’s testimony that he advised Applicant that voluntary manslaughter carries two (2) to thirty (30) years and is an eighty-five percent (85%) offense. This Court finds *credible* Counsel’s testimony that he informed Applicant that he would be pleading without negotiation or recommendation from the State, which meant the sentence would be in the judge’s discretion. This Court finds Counsel’s advice was reasonable under prevailing professional norms, and thus was not deficient. Further, this Court finds Applicant failed to prove prejudice by failing to show a reasonable probability that but for Counsel’s advice, he would have rejected the plea offer and proceeded to trial. The fact that Applicant hoped for a concurrent sentence is insufficient to collaterally attack his guilty plea. *Wolfe v. State*, 326 S.C.

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158, 485 S.E.2d 367 (1997) (stating the fact that defendant “hoped” and “expected” to get a reduced sentence does not render a plea invalid). Thus, Applicant failed to meet his burden.

Failure to File an Appeal

This Court finds Applicant failed to prove Counsel was ineffective for failing to file an appeal from Applicant’s guilty plea. There is no constitutional requirement that a defendant be informed of the right to direct appeal from a guilty plea. *Turner v. State*, 380 S.C. 223, 670 S.E.2d 373 (2008). Counsel does not have a duty to initiate an appeal after a guilty plea “absent extraordinary circumstances, such as when there is reason to think a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal) or when the defendant reasonably demonstrated an interest in appealing.” *Id.* at 224, 670 S.E.2d at 374.

Upon review of Applicant’s appellate records, this Court finds Counsel filed a notice of appeal on March 24, 2023. The Court of Appeals dismissed Applicant’s appeal for failure to provide a sufficient explanation showing that there is an issue that can be reviewed on appeal, pursuant to Rule 203(d)(1)(B)(iv).¹ To the extent that Applicant alleges Counsel was ineffective for failing to provide an explanation of an appealable issue, this Court finds Applicant failed to prove prejudice by failing to present evidence of an issue from his guilty plea that could be reviewed on appeal. Thus, Applicant failed to meet his burden.

Unlawful Sentence

Applicant alleges his sentence was unlawful under section 17-25-50 and *Bryant v. State*, 384 S.C. 525, 683 S.E.2d 280 (2009). This Court finds Applicant failed to prove his sentence was unlawful. Under 17-25-50, for purposes of imposing a sentence, the court shall treat as one offense any number of offenses which have been committed at times so closely connected in time that they

¹ *State v. Braxton*, S.C. Ct. App. Order filed May 24, 2023.

may be considered as one offense, notwithstanding under the law they constitute separate and distinct offenses. S.C. Code Ann. § 17-25-50. In *Bryant*, the Supreme Court held that section 17-25-50 is a legislatively sanctioned safeguard to ensure that a life without parole sentence is not imposed in cases where multiple section 17-25-45 offenses are “so closely connected in point of time that they may be considered as one offense[.]” *Bryant v. State*, 384 S.C. at 534-35, 683 S.E.2d at 285. In interpreting section 17-25-50, the Court stated the following:

In essence, what may be charged as two, three or more strikes under section 17-25-45 must be deemed ‘one-strike’ for sentencing purposes under section 17-25-50 and, as a result, preclude a life without parole sentence. We believe this approach most closely hews to legislative intent based on what is admittedly imprecise statutory language.

Id. In its reasoning, the Court cited *State v. Woody*, 359 S.C. 1, 596 S.E.2d 907 (2004) (holding that a defendant’s two convictions of armed robbery constituted one offense under section 17-25-50 for purposes of the three-strikes law since the offenses were committed at the same time). *Id.* at 532, 683 S.E.2d at 284.

In accordance with the holdings from *Bryant* and *Woody*, this Court finds the statutory designation of offenses under section 17-45-50 as “one offense” for purposes of sentencing was legislatively intended to prevent subjecting a defendant to life without parole under the three-strikes law for multiple offenses that occurred so closely in time. This Court finds the statute does not prohibit the sentencing judge from ordering consecutive sentences for offenses that occurred so closely in time.

This Court finds Applicant failed to prove his sentences were unlawful because the sentences were imposed within the statutory limits for the offenses, subject to the discretion of the sentencing judge, and Applicant failed to present evidence of prejudice by the sentencing judge. *State v. Sidell*, 262 S.C. 397, 205 S.E.2d 2 (1974) (a judge has discretion in sentencing within

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statutory limits); *Cummings v. State*, 274 S.C. 26, 260 S.E.2d 187 (1979) (a sentence is not excessive if it is imposed within the statutory limitations and there is no evidence of prejudice against a defendant). Thus, Applicant failed to meet his burden.

Involuntary Plea

In a PCR action, an applicant bears the burden of proving the allegations. Rule 71.1(e), SCRPC; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). “To be knowing and voluntary, a plea must be entered with an awareness of its consequences.” *Holland v. State*, 322 S.C. 111, 113, 470 S.E.2d 378, 379 (1996). “To find a guilty plea is voluntarily and knowingly entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him.” *Dalton v. State*, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007).

This Court finds Applicant failed to show his plea was involuntary. Applicant indicated to the plea judge that Counsel shared all of the evidence the State had against Applicant. (Plea Tr. 10). This Court finds *credible* Counsel’s testimony that he reviewed discovery with Applicant and explained to Applicant the charges against him, the elements of the offenses, and the possible sentences for each offense. The record reflects the plea judge also explained to Applicant the charges against him and the possible sentences for each offense. (Plea Tr. 11-13). This Court finds the record establishes Counsel explained to Applicant his constitutional rights, including the right to remain silent, right to confront witnesses, and right to a jury trial. (Plea. Tr. 33-35) Applicant indicated to the plea judge that no one promised him anything, and he was not pressured to plead guilty. (Plea Tr. 37-38). Applicant indicated to the plea judge that he was pleading guilty freely and voluntarily. (Plea Tr. 38). Thus, this Court finds the record establishes Applicant pled guilty knowingly, intelligently, freely and voluntarily with an understanding of the consequences of pleading. Thus, Applicant failed to meet his burden.

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CONCLUSION

Based on the foregoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

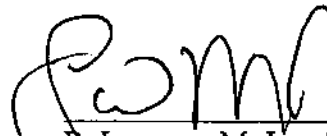
Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty (30) days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. *Austin v. State*, 305 S.C. 453, 409 S.E.2d 395 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCR. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant must be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 20 day of November, 2024.

Anderson, South Carolina


 R. LAWTON MCINTOSH
 Presiding Judge
 Seventh Judicial Circuit

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DOCKET NO. -

20-GS-42-3472

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 15 2020

TERM

**THE STATE
vs.**

Troy Dashaun Braxton

Indictment for

FAILURE TO STOP MOTOR VEHICLE

SC Code: 56-5-750

CDR Code: 0065

Class MIS/A

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SPARTANBURG, SC

CLP

WITNESSES

SCSO

Jimmy W. Owens

ARREST WARRANT NUMBER

20202580095515

ACTION OF GRAND JURY

[Signature]

JUN 12 2020

Mary
Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

JUN 12 2020


At a Court of General Sessions, convened on _____ the

Grand Jurors of Spartanburg County present upon their oath:

FAILURE TO STOP MOTOR VEHICLE

That Troy Dashaun Braxton, did in Spartanburg County on or about January 21, 2020, fail to stop the motor vehicle which he was driving on a road, street, or highway of the State of South Carolina when he was signaled by a law enforcement vehicle by means of a siren or flashing light, in violation of §56-5-750, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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



 Deputy Solicitor

WITNESSES

SCSO

Jimmy G. Powers

ARREST WARRANT NUMBER

2020A4210200396

ACTION OF GRAND JURY

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Shaw

Foreperson of Grand Jury

JUN 12 2020

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

20-GS-42-3473

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 15 2020

TERM

THE STATE

vs.

TROY DASHAUN BRAXTON

Indictment for

POSSESSION WITH INTENT TO
DISTRIBUTE MARIJUANA

SC Code: 44-53-370

CDR 0186

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SPARTANBURG COUNTY
AMY M. COX

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

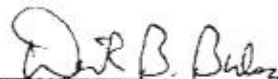
JUN 12 2020

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

POSSESSION WITH INTENT TO DISTRIBUTE

That Troy Dashaun Braxton did in Spartanburg County on or about January 21, 2020, manufacture, distribute, dispense, deliver, purchase, aid, abet, attempt or conspire to manufacture, distribute, dispense, deliver or purchase, or possess with intent to manufacture, distribute, dispense, deliver, or purchase a quantity of Marijuana, a schedule I controlled substance, in violation of § 44-53-370, *THE CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.*

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



ASSISTANT SOLICITOR

WITNESSES

SCSO

James W. Davis

ARREST WARRANT NUMBER

2020A4210200401 (Count One)

2020A4210200405 (Count Two)

ACTION OF GRAND JURY

JUN 12 2020

Sharon JUN 12 2020
Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. -

20-GS-42-3474

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 15 2020 TERM

THE STATE

vs.

Troy Dashaun Braxton

Indictment for

ARMED ROBBERY AND
POSSESSION
OF FIREARM DURING COMMISSION
OF A VIOLENT CRIME

SC Code: 16-11-330 (A); 16-23-490
CDR CODE: 139; 0549
CLASS: FEL/A; FEL/F

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SPARTANBURG COUNTY
JAMES W. COX



STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

JUN 12 2020

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

COUNT ONE-ARMED ROBBERY

That the Defendant, Troy Dashaun Braxton, did in Spartanburg County on or about January 1, 2010, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of The Donnette, by means of force or intimidation goods or monies of The Donnette, described as follows: US currency, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

**COUNT TWO-POSSESSION OF FIREARM DURING
 COMMISSION OF A VIOLENT CRIME**

That the Defendant, Troy Dashaun Braxton, did in Spartanburg County on or about January 1, 2020, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: ARMED ROBBERY, in violation of Code §16-23-490. *CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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



 DEPUTY SOLICITOR

WITNESSES

SCSO

James G. Powers

ARREST WARRANT NUMBER

2020A4210200402

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date:

JUN 12 2020

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **20-GS-42-3475**

The State of South Carolina

County of Spartanburg

Barry Barnette, *Solicitor*

COURT OF GENERAL SESSIONS

JUN 15 2020

TERM

THE STATE
vs.

Troy Dashaun Braxton

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)
CDR Code: 139
Class FEL/A

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SPARTANBURG COUNTY
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on JUN 12 2020, the Grand Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

That the Defendant, Troy Dashaun Braxton, did in Spartanburg County, on or about January 1, 2020, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Irvin K. Comer, by means of force or intimidation goods or monies of Irvin K. Comer, described as follows: a cell phone, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

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


 DEPUTY SOLICITOR

WITNESSES

SCSO

Jimmy W. Owens

ARREST WARRANT NUMBER

2020A4210200403

ACTION OF GRAND JURY

INDICTED

J. Sherry
Foreperson of Grand Jury

JUN 12 2020

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. **20-GS-42-3476**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 15 2020

TERM

THE STATE
vs.

Troy Dashaun Braxton

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

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COUNTY OF SPARTANBURG
JUN 22 11 09 AM '20



STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

JUN 12 2020

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

ARMED ROBBERY

That the Defendant, Troy Dashaun Braxton, did in Spartanburg County, on or about January 1, 2020, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of David L. Moore, by means of force or intimidation goods or monies of David L. Moore, described as follows: a cell phone, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

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



 DEPUTY SOLICITOR

WITNESSES

DOCKET NO.

20-GS-42-3477

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

JUN 15 2020

TERM

ARREST WARRANT NUMBER

THE STATE

vs.

Troy Dashaun Braxton

ACTION OF GRAND JURY

True Bill

JUN 12 2020

Foreperson of Grand Jury
Date:

VERDICT

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)
CDR Code: 139
Class FEL/A

Foreperson of Petit Jury
Date:

CLERK OF COURT
SPARTANBURG COUNTY
100 W. MAIN ST.
SPARTANBURG, SC 29303
JUN 22 2020 11:59 AM



STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

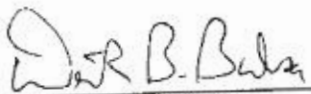
JUN 12 2020

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

ARMED ROBBERY

That the Defendant, Troy Dashaun Braxton, did in Spartanburg County, on or about January 1, 2020, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Crystal Risko, by means of force or intimidation goods or monies of Crystal Risko, described as follows: a purse and contents, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

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



DEPUTY SOLICITOR

WITNESSES

Spartanburg County Detention Facility

ARREST WARRANT NUMBER

2021A4210203658

ACTION OF GRAND JURY

MAY 20 2022

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

22-GS-42-2555

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 23 2022

TERM

THE STATE

v.

TROY DASHAUN BRAXTON

Indictment for
ASSAULT AND BATTERY OF A
HIGH AND AGGRAVATED NATURE

SC Code: 16-3-600

CDR Code: 3411

Class FEL-C

FILED
MAY 23 2022
CLERK OF COURT
SPARTANBURG COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

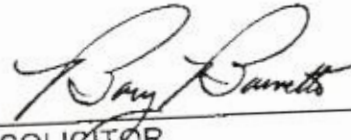
MAY 20 2022

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

ASSAULT AND BATTERY OF HIGH AND AGGRAVATED NATURE

That the Defendant, Troy Dashaun Braxton, did in Spartanburg County on or about July 9, 2021, commit an act causing an unlawful injury to another person, and the act resulted in great bodily injury to the person and/or the act was accomplished by means likely to produce death and/or great bodily injury to the person, to wit: by punching the victim, Jesse Redding, in the back of the head causing a laceration and rendering him unconscious, the act being aggravated in that the incident caused a brain bleed and cranial fractures, all in violation of § 16-3-600, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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



SOLICITOR