

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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Oct 15 2025

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

S.C. SUPREME COURT

The Honorable B. Alex Hyman, Circuit Court Judge

Appellate Case No. 2024-002181
Lower Case No. 2020-CP-23-0736

Braxton Hare #373172,

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THE GREENVILLE COUNTY
CLERK OF COURT’S OFFICE: APPLICANT’S EXHIBIT #3 (FLASH DRIVE)**

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

COURT OF GENERAL SESSIONS
2015-GS-23-11000

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

BRAXTON LAVON HARE,
DEFENDANT.

COPY

October 2, 2017
Greenville, South Carolina

B E F O R E :

THE HONORABLE EDWARD W. MILLER, JUDGE.

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

L. MARK MOYER. ESQ.
Assistant Solicitor

ERNEST HAMILTON, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

THE COURT: What's he going to do?

He looks familiar. How do I know him?

MR. HAMILTON: Judge, he was tried in an attempted murder. The jury found high and aggravated in a -- a shooting into a cab driver situation. And they found the lesser included.

Judge, he's -- he understands that he's been offered a -- a situation where if he pleads guilty that the Court -- the State will take into consideration other pending charges. And I'm just not sure that he understands the severity of the consequences of not taking the concurrent time and how that would affect his decision to plead guilty.

THE COURT: All right. Well, he's -- what's he -- he's under sentence now?

MR. HAMILTON: He's under sentence now for 22 years.

THE COURT: 22?

MR. MOYER: 20.

MR. HAMILTON: 20 years. He's got an active sentence of 20 years and --

THE COURT: For attempted murder?

MR. HAMILTON: For assault high and aggravated.

THE COURT: High and aggravated. Oh, this is that car chase thing.

1 MR. HAMILTON: Yeah. And then they had the car chase
2 and this was run concurrent.

3 THE COURT: I remember that.

4 MR. HAMILTON: And he has some -- the offer is that
5 if he pleads guilty to this one carjacking offense and
6 then all his other matters will be taken into
7 consideration and dismissed.

8 And he -- he wants 15 years -- 10 to 15 years. But I
9 don't know if it matters. I don't understand if he
10 understands what -- the difference in it.

11 THE COURT: Well, I'll tell you the difference is if
12 he goes to trial, I take it into consideration that he
13 hasn't accepted responsibility. He's not showing remorse.
14 That's what I take into consideration. He's got a chance
15 to limit his liability. He's got a bird in the hand.

16 Is that right, Mr. Hare?

17 DEFENDANT HARE: Sir?

18 THE COURT: Do you want to take their deal or not?

19 What are you offering, Mr. Moyer?

20 MR. MOYER: Your Honor, we would recommend 20 years
21 concurrent with his -- with the sentence that he is doing
22 now. And he, also, has an unrelated armed robbery and
23 attempted murder case that would be dismissed.

24 So that would be the recommendation, to take care of
25 all of his pending charges.

1 THE COURT: Well, it's a one-time deal. And I'll do
2 it. If not, that ain't going to happen.

3 Do you understand what I'm saying to you?

4 DEFENDANT HARE: Yes, sir.

5 THE COURT: I -- at this point right now, I will
6 accept the offer that they have laid on the table. That's
7 your choice. And I'm not going to make it for you.

8 (Pause.)

9 THE BAILIFF: This is his mother, Your Honor, if you
10 wanted to hear from her.

11 THE COURT: I don't -- I don't want to hear from her.
12 It's his choice.

13 She can -- does she need to talk to him right there
14 without touching him?

15 DEFENDANT HARE'S MOTHER: Oh, no, sir. I didn't
16 touch to him.

17 THE COURT: No. I'm talking -- do you need to talk
18 to him right now? Because we're about to pull a jury and
19 we're going to get this done.

20 THE BAILIFF: You can talk to him right here without
21 touching him.

22 DEFENDANT HARE'S MOTHER: Yes, sir.

23 THE COURT: Do you want to talk to your mother about
24 this decision?

25 (WHEREUPON, there was no verbal response.)

1 (Pause.)

2 DEFENDANT HARE: I'll take it.

3 THE COURT: Okay.

4 DEFENDANT HARE'S MOTHER: Thank you, Your Honor.

5 THE COURT: I think that's a wise choice.

6 DEFENDANT HARE'S MOTHER: Thank you, sir. Thank you,
7 sir.

8 THE COURT: Have y'all got the paperwork and all
9 that?

10 MR. MOYER: I do, Your Honor.

11 (Pause.)

12 THE CLERK: All right. Your Honor, in the case of
13 2015-GS-23-11000, the State v. Braxton Lavon Hare,
14 indicted for carjacking. He is pleading to carjacking
15 without great bodily harm. And it is true billed.

16 Mr. Hare, if you would, please, raise your right
17 hand.

18 WHEREUPON,

19 BRAXTON LAVON HARE,
20 after first having been duly sworn, testified as follows:

21 THE CLERK: Thank you.

22 THE COURT: All right. Mr. Hare, in the last
23 24 hours, have you had any drugs, alcohol, or medication?

24 DEFENDANT HARE: No, sir.

25 THE COURT: Okay. Have you ever been treated for

1 substance abuse or mental illness?

2 DEFENDANT HARE: No, sir.

3 THE COURT: All right. This indictment alleges that
4 you did in Greenville County on August 31, 2015, take or
5 attempt to take a 2001 Nissan Altima from Abimile [phonetic]
6 Cruz by force or intimidation while he was operating the
7 vehicle.

8 This carries up to 20 years in prison. It is a
9 violent offense, which impacts parole eligibility. It is
10 a most serious offense. And if you get convictions for
11 two or more most serious offenses, you're eligible for
12 life in prison without parole.

13 Do you understand all that?

14 DEFENDANT HARE: Yes, sir.

15 THE COURT: All right. Understanding the nature of
16 the charges, the maximum possible punishment, how do you
17 want to plead?

18 DEFENDANT HARE: Sir?

19 THE COURT: How do you want to plea to it, guilty or
20 not guilty?

21 DEFENDANT HARE: Guilty.

22 THE COURT: Okay. Is that your free and voluntary
23 choice.

24 DEFENDANT HARE: (There was no verbal response.)

25 THE COURT: You've got to speak.

1 DEFENDANT HARE: Yes, sir.

2 THE COURT: Okay. And do you understand you have an
3 absolute right to a trial by jury where you'd be presumed
4 innocent, unless and until the State could prove you
5 guilty beyond any reasonable doubt of each and every
6 element of the offense you're charged with? And you'd
7 have a right to confront and cross-examine the witnesses
8 and the evidence put up against you. You'd have a right
9 to compel in court all relevant and competent evidence in
10 your own defense, or you can remain silent. Your silence
11 cannot be held against you. And you can never be
12 compelled to incriminate yourself.

13 Do you understand all those rights?

14 DEFENDANT HARE: Yes, sir.

15 THE COURT: All right. Do you want to give them all
16 up to enter this plea?

17 DEFENDANT HARE: (There was no response.)

18 THE COURT: Do you want to give up all the rights we
19 just talked about so you can plead guilty?

20 DEFENDANT HARE: Yes, sir.

21 THE COURT: I can't --

22 DEFENDANT HARE: Yes, sir.

23 THE COURT: Okay. And are you guilty?

24 DEFENDANT HARE: Yes, sir.

25 THE COURT: Okay. And are you totally and completely

1 satisfied with your attorney?

2 DEFENDANT HARE: Yes, sir.

3 THE COURT: And do you know what the facts are that
4 the State has against you?

5 DEFENDANT HARE: Yes, sir.

6 THE COURT: Okay. Listen. He's going to put them on
7 the record for me.

8 MR. MOYER: Thank you, Your Honor.

9 May it please the Court.

10 The incident happened on August 31st of 2015. The
11 victim, Mr. Abimile Cruz, was driving at -- near the
12 intersection of Fronage Road -- Frontage Road and Staunton
13 Bridge Road. He slowed down to -- to make a turn when
14 he -- he was approached by a group of three to four men,
15 one of whom was this Defendant.

16 Two of the men pulled pistols and got the victim to
17 get out of the vehicle. He did so. When he got out of
18 the vehicle, his cell phone was taken.

19 The men then got into the car and drove it away. The
20 car was recovered a couple of days later when a
21 co-defendant's ankle monitor was left at the scene where
22 the vehicle was found that led to the arrest of that
23 person. And then a subsequent investigation led to the
24 arrest of this Defendant as well.

25 He has 649 days of jail time in the detention center

1 that he would get credit for.

2 THE COURT: All right. Is that substantially true
3 and correct?

4 DEFENDANT HARE: 600 and --

5 THE COURT: 649 days. I'm -- I'm talking about the
6 facts of the case.

7 DEFENDANT HARE: Uh-huh.

8 THE COURT: Is it substantially correct?

9 DEFENDANT HARE: Yes, sir.

10 THE COURT: Speak up a little bit.

11 DEFENDANT HARE: Yes, sir.

12 THE COURT: All right. Just tell me what did -- what
13 did -- what did the other two guys do?

14 DEFENDANT HARE: I don't know, sir.

15 THE COURT: You don't know. What did Brown do?

16 DEFENDANT HARE: I don't know, sir.

17 THE COURT: You don't know. Okay. Anything you want
18 to tell me?

19 DEFENDANT HARE: No, sir.

20 THE COURT: No?

21 DEFENDANT HARE: No, sir.

22 THE COURT: All right. Mr. Hamilton, anything?

23 MR. HAMILTON: Your Honor, he -- he stands before the
24 Court. I think he's made a conscious decision to plead.

25 We appreciate -- on his behalf, I'd like to appreciate the

1 Court accepting his plea and the recommendation.

2 And any and all cases pending will be dismissed.

3 MR. MOYER: Yes, Your Honor. That is the -- the
4 negotiation with the Defense. And the recommendation is
5 for 20 years concurrent with the 20 years he's doing now.

6 THE COURT: All right. And when did he get that?
7 When did you get that time?

8 DEFENDANT HARE: June.

9 MR. HAMILTON: July 18th --

10 MR. MOYER: July.

11 DEFENDANT HARE: July 19th --

12 MR. MOYER: Actually, it was July 19th. That's
13 correct.

14 THE COURT: All right. 20 years concurrent with the
15 sentence he got on 7/19/17. He gets credit for 649 days.

16 Good luck to you.

17 *****END OF TRANSCRIPT OF RECORD*****
18
19
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CERTIFICATE OF REPORTER

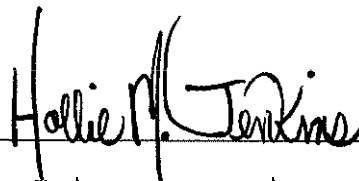
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Greenville County, South Carolina, on the 2nd day of October, 2017.

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

April 7, 2020

A handwritten signature in cursive script, reading "Hollie M. Jenkins", is written over a horizontal line.

Hollie M. Jenkins, Court Reporter

My Commission Expires: 09/24/20

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Braxton Hare,)

Applicant,)

v.)

State of South Carolina,)

Defendant.)

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-23-00736

APPLICATION FOR
POST-CONVICTION RELIEF20 FEB 5 PM 10:07
2020-02-05 10:07:00

As required by Rule 71.1(b), SCRCP, this application is in conformity with Form 5 of the SCRCP Appendix of Forms.

1. Place of Detention: Applicant is detained in the South Carolina Department of Corrections at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899.
2. Name and location of Court which imposed sentence: Greenville County Court of General Sessions, 305 E North St # 202, Greenville, SC 29601.
3. Name(s) of co-defendant(s) (if any):
4. The indictment number(s) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-23-11000 (Carjacking without great bodily harm).
5. The date upon which the sentence was imposed and the terms of the sentence:
 - (a) October 02, 2017.
 - (b) Twenty (20) year sentence (Carjacking without great bodily harm).
6. A finding of guilty was made:
 - (a) After a guilty plea before the Honorable Edward W. Miller.
7. Did you appeal from the judgment of conviction and/or the imposition of the sentence?
 - (a) No.

8. If you answered "yes" to number (7), list:
 - (a) The name of each Court to which you appealed:
 - i. Not applicable.
 - (b) The result in each Court to which you appealed:
 - i. Not applicable.
 - (c) The date of each result:
 - i. Not applicable.
 - (d) If known, citations of any written opinions or ordered entered pursuant to such result:
 - i. Not applicable.
 - ii. Not applicable.
9. If you answered "no" to number (7), state your reasons for not appealing:
 - (a) Applicant told Plea Counsel to file an appeal but did not file the Notice of Appeal. Applicant did not knowingly, intelligently, and voluntarily plead guilty or waive his right to appellate review.
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) Plea Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Plea Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Plea Counsel's errors, Applicant would not have pled guilty and went to trial. See *Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel).

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

- (a) Plea Counsel's acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations:
 - (i) Plea Counsel failed to file a Notice of Appeal as requested by Applicant of his guilty plea and sentence, thereby denying Applicant belated review of direct appeal issues. Specifically, Applicant did not knowingly, intelligently, and voluntarily waive his right to file an appeal of his guilty plea and sentence. See *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974); *Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581 (2002); *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986).
 - (ii) Applicant did not voluntarily, knowingly, or intelligently plead guilty based on Plea Counsel's erroneous advice. See *Boykin v. Alabama*, 395 U.S. 238 (1969).
 - (iii) Plea Counsel failed to have Applicant evaluated by a qualified medical professional for criminal responsibility and competency to stand trial. See *Jeter v. State*, 308 S.C. 230, 417 S.E.2d 594 (1992).
 - (iv) Plea Counsel failed to move for a *Blair* hearing prior to the plea hearing to determine Applicant's competency to stand trial. See *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981); *Matthews v. State*, 358 S.C. 456, 596 S.E.2d 49 (2004); S.C. Code §§ 44-23-410 and 430.
 - (v) Plea Counsel failed to present all reasonable and necessary evidence to the Court during the sentencing phase in mitigation of Applicant's potential sentence.
 - (vi) Plea Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. See *Wiggins v. Smith*, 539 U.S. 510 (2003); *Lounds v. State*,

380 S.C. 454, 670 S.E.2d 646 (2008); McKnight v. State, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); Von Dohlen v. State, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); Reeves v. State, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).

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

(a) Any petition in a State Court under South Carolina Law? Not applicable.

(b) Any petition in State or Federal Courts for Federal Habeas Corpus or Post-Conviction Relief? No. Applicant has not previously filed an application for Post-Conviction Relief or Petition for Writ of Habeas Corpus in either state or federal court. Applicant requests a hearing to present evidence in support of equitable tolling for the statute of limitations. See Ferguson v. State, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009); Gary v. State, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001); Pelzer v. State, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008).

(c) Any petition in the Supreme Court of the United States for certiorari other than petitions, if any, already specified in number (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 number (12), list with respect to each petition, motion, or application:

(a) The specific nature thereof: Not applicable.

(b) The name and location of the Court in which each was filed: Not applicable.

(c) The disposition thereof: Not applicable.

(d) The date of each such disposition: Not applicable.

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

No.

15. If you answered “yes” to number (14), identify:
- (a) The grounds which have been presented:
 - i. Not applicable.
 - (b) The proceedings in which each ground was raised:
 - i. Not applicable.
16. If any ground set forth in number (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) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are evidence of ineffective assistance of counsel, issues not preserved for appellate review, and/or were not appropriate to raise on Direct Appeal. Applicant requests a hearing to present evidence in support of equitable tolling of the statute of limitations. See *Ferguson v. State*, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009); *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001); *Pelzer v. State*, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008).
17. Were you represented by an attorney at any time during the course of:
- (a) Your plea hearing? Yes.
 - (b) Your trial? Not applicable.
 - (c) Your sentencing? Yes.
 - (d) Your appeal, if any, from the judgment of conviction and/or imposition of the sentence? Not applicable.
 - (e) Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes, this application.
18. If you answered “yes” to one or more parts of number (17), list:
- (a) The name and address of each attorney who represented you:

(i) Ernest Hamilton, PO Box 10672, Greenville, SC 29603.

(ii) Dayne C. Phillips, 1614 Taylor Street, Ste D., Columbia, SC 29201.

(b) The proceedings at which each attorney represented you:

(i) Ernest Hamilton represented Applicant the plea hearing.

(ii) Dayne C. Phillips is currently representing Applicant on this application for Post-Conviction Relief.

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

(i) Applicant seeks a belated appeal of his guilty plea and sentence; and

(ii) Applicant also seeks Post-Conviction Relief by vacating his conviction and sentence and remanding the indictment for a new trial based on ineffective assistance of plea counsel.

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

Yes, 2015-GS-23-09117-9118 (Attempted Murder and Failure to Stop for a Blue Light).

However, Applicant is also filing in conjunction with this PCR action, a separate application for post-conviction relief against those convictions and sentences.

[Verification Page to Follow]

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Braxton Hare,

Applicant,

v.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

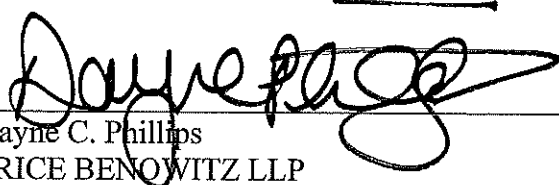
THIRTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-23-00 736

VERIFICATION

20 FEB 5 AM 10:07
Paul Wickensimer COC SUL SC

I, Dayne C. Phillips, Esq., on behalf of my client, Braxton Hare, 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 attached in this application; and that the matters and allegations therein set forth are true.



Dayne C. Phillips
PRICE BENOWITZ LLP
1614 Taylor Street, Suite D.
Columbia, SC 29201
O: 803-272-4503
C: 803-807-0234
F: 803-380-8035
dayne@pricebenowitz.com

SWORN to and subscribed before me this 3rd

day of February, 2020.

Courtney Powers (L.S.)
Notary Public

My Commission Expires: May 2, 2027

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Braxton Hare, #373172,	)	Case No.: 2020-CP-23-0736
	)	
Applicant,	)	
	)	
v.	)	RETURN AND PARTIAL
	)	MOTION TO DISMISS
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The State of South Carolina (Respondent), making its return to the application for post-conviction relief filed by Braxton Hare (Applicant) through counsel on February 5, 2020, would respectfully show this Court:

I. Procedural History

Applicant is presently incarcerated in the South Carolina Department of Corrections. During its May of 2016 term, the Greenville County Grand Jury indicted Applicant for carjacking (2015-GS-23-11000). Applicant was represented by Ernest Hamilton, Esquire, and Assistant Solicitor L. Mark Moyer of the Thirteenth Circuit Solicitor's Office prosecuted the case. On October 2, 2017, Applicant appeared before the Honorable Edward W. Miller and pleaded guilty. In accordance with the State's recommendation, Judge Miller sentenced Applicant to imprisonment for twenty years, concurrent with his previous convictions and sentences from July of 2017, with credit for time served. In accordance with the plea deal, the State dismissed an indictment for attempted murder (2016-GS-23-6478) and another for armed robbery (2015-GS-23-10999).

Applicant did not appeal his conviction and sentence.

II. Current Application

In his application for post-conviction relief, Applicant argues he is entitled to relief based upon the following claims: (1) Applicant did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence, (2) Applicant's guilty plea was not knowingly and voluntarily entered because plea counsel rendered erroneous advice, (3) plea counsel was constitutionally ineffective for failing to have Applicant evaluated by a qualified medical professional in order to determine mental competency and criminal responsibility, (4) plea counsel was constitutionally ineffective for failing to move for a hearing before trial, pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), in order to determine whether Applicant was competent to plead guilty, (5) plea counsel was constitutionally ineffective for failing to present all reasonable and necessary evidence during sentencing in mitigation, and (6) plea counsel was constitutionally ineffective for failing to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. Applicant prays the Court would grant post-conviction relief and allow him to seek belated appellate review of his conviction and sentence, vacate his conviction and sentence, and remand for a new trial.

Attached to this return and incorporated herein by reference are the records of the Greenville County Clerk of Court regarding Applicant's conviction and the indictments dismissed in accordance with the plea agreement, Applicant's records from the South Carolina Department of Corrections, transcript from Applicant's plea hearing, and the application for post-conviction relief. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III. Motion for Summary Dismissal

Pursuant to S.C. Code Ann. § 17-27-70(c), the Court may summarily dispose of an application if there is no genuine issue of material fact in the "pleadings, depositions and

admissions and agreements of fact” and the movant is entitled to judgment as a matter of law. The summary dismissal of an application for post-conviction relief without a hearing is appropriate only when it is apparent on the fact of the application that a hearing is not needed for the development of a factual record and the applicant is not entitled to relief. Mose v. State, 420 S.C. 500, 505, 803 S.E.2d 718, 720 (2017) (citing Leamon v. State, 363 S.C. 432, 611 S.E.2d 494 (2005)). The Court, in considering the motion for summary dismissal without the holding of an evidentiary hearing, must assume the facts presented by Applicant as true and view then in the light most favorable to Applicant. Robertson v. State, 418 S.C. 505, 519, 795 S.E.2d 29, 36 (2016) (citing McCoy v. State, 401 S.C. 363, 737 S.E.2d 623 (2013)).

First, all of Applicant’s claims, with the exception of his claim that he did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence, should be dismissed summarily for Applicant’s failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10 to -160 (the Act). A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994).

The Act requires as follows:

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

S.C. Code Ann. § 17-27-45(A). The South Carolina Supreme Court has held the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). Applicant did not appeal his convictions or sentences, and he was convicted and sentenced on October 2, 2017. The application was, therefore, due on or before October 3, 2018. This application was not filed until February 5, 2020, about one-and-a-half years

after the statutory deadline had passed. Therefore, the claims specified in this subsection should be dismissed summarily for Applicant's failure to file within the time mandated by Act and by Peloquin. Id.

IV. Response to Applicant's Direct Appeal Claim

Applicant's claim that he did not knowingly and voluntarily waive his right to direct appellate review of her conviction and sentence is addressed herein, as the one-year limitations period in which to file a petition for post-conviction relief does not apply where a defendant alleges he or she was denied a direct appeal due to ineffective assistance of counsel. Wilson v. State, 348 S.C. 215, 218, 559 S.E.2d 581, 582-83 (2002).

In White v. State, 263 S.C. 110, 119, 108 S.E.2d 35, 39 (1974), the South Carolina Supreme Court held that, even though the post-conviction relief court may find that an applicant did not voluntarily and intelligently abandon his right to a direct appeal, the PCR court does not have jurisdiction to grant a belated appeal. However, when an accused establishes in a post-conviction relief hearing that he was unconstitutionally deprived of his right to a direct appeal, the South Carolina Supreme Court, upon an appeal of the post-conviction relief decision, will review the trial record and pass upon all issues properly raised and argued as if the direct appeal has been perfected. Id. at 119, 108 S.E.2d at 39-40.

Counsel has a constitutionally-imposed duty to consult with a defendant about an appeal when there is reason to think either: (1) that a rational defendant would want to appeal or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Roe v. Flores-Ortega, 528 U.S. 470 (2000). When counsel has consulted with the defendant regarding the right to appeal, "Counsel performs in a professionally unreasonable manner only by failing to follow the defendant's express instructions with respect to an appeal." Id. at 478 (underlining added). In order to establish he was prejudiced by counsel's failure to file an appeal,

an applicant must show he would have appealed absent counsel's deficient performance. See Id. at 484. "Acts inconsistent with the continued assertion of a right, such as a failure to insist upon the right, may constitute waiver." Bonnette v. State, 277 S.C. 17, 18, 282 S.E.2d 597, 598 (1981).

Respondent submits Applicant cannot meet his burden in showing that he did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence. However, because this allegation may raise questions of fact not conclusively refuted by the record, Respondent requests an evidentiary hearing to fully resolve the matter. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (holding that an evidentiary hearing is required when an application for post-conviction relief alleges specific instances of ineffectiveness that are not conclusively refuted by the record) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

V. Denial of All Other Claims

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

VI. Conclusion

WHEREFORE, Respondent requests that the Court convene a hearing regarding Applicant's claim that he did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence and dismiss summarily the remaining claims are barred by the statute of limitations.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

TAYLOR ZANE SMITH
Assistant Attorney General

By: s/Taylor Zane Smith
ATTORNEYS FOR RESPONDENT

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

May 26, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GEENVILLE	)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
	)	
Braxton Hare, #373172,	)	Case No.: 2020-CP-23-0736
	)	
Applicant,	)	
	)	
v.	)	CERTIFICATE OF SERVICE
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

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

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

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

Dayne C. Phillips, Esquire
dayne@pricebenowitz.com

DATED this 27th day of May 2020.

s/Taylor Zane Smith
 ATTORNEY NAME
 Assistant Attorney General
 S.C. Bar No.: 103282

Office of the Attorney General
 Post Office Box 11549
 Columbia, SC 29211
 (803) 734-3737
 TSmith@scag.gov

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Braxton Hare,	)	Case No. 2020-CP-23-0736
	)	
Applicant,	)	
	)	
v.	)	APPLICANT'S REPLY AND MOTION
	)	TO DENY RESPONDENT'S PARTIAL
State of South Carolina.	)	MOTION FOR SUMMARY DISMISSAL
	)	
Defendant.	)	REQUEST FOR HEARING

FILED-COURT
PAUL B. GREEN
2020 JUN 11 9:11

TO: THE HONORABLE ALEX KINLAW, JR., Chief Administrative Judge for CP

The above-named Applicant, by and through the undersigned Counsel, respectfully moves to deny the Respondent's partial motion for summary dismissal, and respectfully requests an evidentiary hearing based on the following reasons:

(1) This Court should deny Respondent's request for summary dismissal of the PCR application because there is a genuine issue of material fact for the Court's consideration (e.g., whether to allow tolling of the statute of limitations; necessitating an evidentiary hearing to present evidence and arguments to the Court), and Respondent is not entitled to judgment as a matter of law. *See* S.C. Code § 17-27-70(b) and (c) (Court procedure on receipt of application); *See generally Pelzer v. State*, 378 S.C. 516, 521, 662 S.E.2d 618, 620-621 (Ct. App. 2008) (addressing the issue of whether the S.C. Court of Appeals should remand a case for a hearing to determine if the statute of limitations should be equitably tolled).

(2) Specifically, an evidentiary hearing is necessary for the Court to determine whether Applicant can demonstrate that his failure to timely file the PCR application was due to mental incompetency. Based on information and belief, Applicant alleged Plea Counsel provided ineffective assistance of counsel by failing to have Applicant evaluated by a qualified medical

professional for criminal responsibility and competency to stand trial, and for failing to move for a *Blair* hearing prior to the plea hearing to determine Applicant's competency to stand trial. See generally *Ferguson v. State*, 382 S.C. 615, 677 S.E.2d 600 (2009) (holding the proper remedy was to remand to the PCR judge to determine whether application was filed within one year of the date he regained competence); see also *Jeter v. State*, 308 S.C. 230, 417 S.E.2d 594 (1992) (allowing an incompetent defendant to plead guilty constitutes ineffective assistance of counsel, and the competency to enter a guilty plea is no more stringent than a defendant's competency to stand trial.)¹; see also *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981); *Matthews v. State*, 358 S.C. 456, 596 S.E.2d 49 (2004); S.C. Code §§ 44-23-410 and 430.

(3) Based upon information, belief, and the IAC allegations; PCR Counsel has retained psychiatrist, Dr. Donna Maddox, to conduct the necessary mental health evaluations on Applicant to determine his criminal responsibility and competency to stand trial. Although these evaluations were delayed due to extraordinary circumstances, McCormick Correctional Institution has agreed to allow Dr. Maddox to perform the evaluations remotely. It appears that these evaluations will be scheduled and conducted by Dr. Maddox as soon as possible. PCR Counsel will provide the findings for the Court's review since it is critical evidence for the Court's determination of whether to toll the statute of limitations in this case.

(4) In the light most favorable to Applicant, an evidentiary hearing is reasonable and necessary to develop facts and present evidence for the Court's consideration in determining whether to toll the statute of limitations for filing the PCR application based on Applicant's

¹ To sustain a claim of incompetency at a guilty plea, an applicant in a PCR proceeding must show by the preponderance of the evidence that he was incompetent at the time of plea. To sustain a claim that counsel was ineffective for failing to request a competency hearing, an applicant must show a reasonable probability petitioner would have been found incompetent. *Id.* Counsel may reasonably rely on his own perceptions in deciding a client is competent to stand trial. *Id.*

argument that his failure to timely file a PCR application was due to mental incompetency. *See generally Leamon v. State*, 363 S.C. 432, 434, 611 S.E.2d 494, 495 (2005) (noting the following standard of review in determining when summary dismissal is appropriate: “Summary dismissal of a PCR application without a hearing is appropriate only when (1) it is apparent on the face of the application that there is **no need for a hearing to develop any facts** and (2) the applicant is not entitled to relief.... When considering the State's motion for summary dismissal of an application, **where no evidentiary hearing has been held, the circuit court must assume facts presented by an applicant are true and view those facts in the light most favorable to the applicant.** Similarly, when reviewing the propriety of a dismissal, this Court must view the facts in the same fashion. *See* S.C. Code Ann. § 17-27-80 (2003) (PCR actions are governed by usual rules of civil procedure).”) (citations omitted) (emphasis added); *Cf. Pelzer*, 378 S.C. at 522, 662 S.E.2d at 621.

(5) The Court must also assume the facts presented by Applicant are true because no evidentiary hearing has been held to develop a record and for the Court to weigh the credibility of the evidence. *See generally Leamon*, 363 S.C. at 434, 611 S.E.2d at 495.

(6) This Court should also deny Respondent’s Partial Motion to Dismiss without an evidentiary hearing since PCR actions are generally governed by the South Carolina Rules of Civil Procedure, and Respondent failed to timely file a Return within thirty (30) days or within a further time specified by the Court as required by *See* S.C. Code § 17-27-70(b) (providing, in relevant part: “(Within thirty days after the docketing of the application, or within any further time the court may fix, the State shall respond by answer or by motion which may be supported by affidavits.”). Notably, Applicant filed an Application for Post-Conviction Relief on February 5, 2020. Respondent submitted the State’s Return and request for summary dismissal on May 27, 2020, occurring 111 days after the filing of Applicant’s PCR application.

CONCLUSION

Based on the foregoing reasons, Applicant respectfully moves to deny the Respondent's Partial Motion to Dismiss and respectfully requests an evidentiary hearing to present evidence and arguments in support of equitable tolling of the statute of limitations.

Sincerely,



Dayne C. Phillips, Esq.

PRICE BENOWITZ LLP
1614 Taylor Street, Suite D.
Columbia, SC 29201
O: 803-272-4503
C: 803-807-0234
F: 803-380-8035
dayne@pricebenowitz.com

June 8, 2020

Enclosures (PCR Application)

CERTIFICATE OF SERVICE

I hereby certify that I have this date served the within and foregoing Applicant's Reply and Motion to Deny Respondent's Partial Motion for Summary Dismissal and Request for Hearing by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

Taylor Smith, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

The Honorable Alex Kinlaw Jr.
305 E. North Street
Greenville, SC 29601

The Honorable Paul B. Wickensimer
Greenville County Clerk of Court
305 E North St.
Greenville, SC 29601-2121

FILED-CLERK OF COURT
PAUL B. WICKENSIMER
GREENVILLE CO, SC

2020 JUN 12 AM 9:11

By: Courtney Powers
Courtney Powers
Paralegal for Dayne C. Phillips, Esq.

1614 Taylor Street, Suite D.
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June 8, 2020

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Braxton Hare,

Applicant,

v.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-2300736

AMENDED APPLICATION FOR
POST-CONVICTION RELIEF23 MAR 15 PM 1:55
PAUL WICKHAMER CDD GVL SC

As required by Rule 71.1(b), SCRCP, this application is in conformity with Form 5 of the SCRCP Appendix of Forms.

1. Place of Detention: Applicant is detained in the South Carolina Department of Corrections at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC29899.
2. Name and location of Court which imposed sentence: Greenville County Court of General Sessions, 305 E North St# 202, Greenville, SC 29601.
3. Name(s) of co-defendant(s) (if any):
4. The indictment number(s) upon which and the offenses for which sentence was imposed:
 - (a) 2015-GS-23-11000 (Carjacking without great bodily harm).
5. The date upon which the sentence was imposed and the terms of the sentence:
 - (a) October 02, 2017.
 - (b) Twenty (20) year sentence (Carjacking without great bodily harm).
6. A finding of guilty was made:
 - (a) After a guilty plea before the Honorable Edward W. Miller.
7. Did you appeal from the judgment of conviction and/or the imposition of the sentence?
 - (a) No.

8. If you answered "yes" to number (7), list:
- (a) The name of each Court to which you appealed:
 - i. Not applicable.
 - (b) The result in each Court to which you appealed:
 - i. Not applicable.
 - (c) The date of each result:
 - i. Not applicable.
 - (d) If known, citations of any written opinions or ordered entered pursuant to such result:
 - i. Not applicable.
 - ii. Not applicable.
9. If you answered "no" to number (7), state your reasons for not appealing:
- (a) Applicant told Plea Counsel to file an appeal but did not file the Notice of Appeal.
Applicant did not knowingly, intelligently, and voluntarily plead guilty or waive his
right to appellate review.
10. **State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:**
- (a) Plea Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Plea Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Plea Counsel's errors, Applicant would not have pled guilty and went to trial. See *Hilly. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel).

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

- (a) Plea Counsel's acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations:
 - (i) Plea Counsel failed to file a Notice of Appeal as requested by Applicant of his guilty plea and sentence, thereby denying Applicant belated review of direct appeal issues. Specifically, Applicant did not knowingly, intelligently, and voluntarily waive his right to file an appeal of his guilty plea and sentence. See *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974); *Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581 (2002); *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986).
 - (ii) Applicant did not voluntarily, knowingly, or intelligently plead guilty based on Plea Counsel's erroneous advice. See *Boykin v. Alabama*, 395 U.S. 238 (1969).
 - (iii) Plea Counsel failed to have Applicant evaluated by a qualified medical professional for criminal responsibility and competency to stand trial. See *Jeter v. State*, 308 S.C. 230, 417 S.E.2d 594 (1992).
 - (iv) Plea Counsel failed to move for a *Blair* hearing prior to the plea hearing to determine Applicant's competency to stand trial. See *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981); *Matthews v. State*, 358 S.C. 456, 596 S.E.2d 49 (2004); S.C. Code §§ 44-23-410 and 430.
 - (v) Plea Counsel failed to present all reasonable and necessary evidence to the Court during the sentencing phase in mitigation of Applicant's potential sentence.
 - (vi) Trial Counsel failed to provide the Trial Court with evidence regarding Applicant's intellectual deficits, documented closed head injury, and associated cognitive deficits as noted in Dr. Donna Maddox's reports.

(vii) Plea Counsel provided erroneous advice to Applicant to accept this guilty plea based on his conviction after the guilty verdict in a separate trial.

(viii) Plea Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. See *Wiggins v. Smith*, 539 U.S. 510 (2003); *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).

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

(a) Any petition in a State Court under South Carolina Law? Not applicable.

(b) Any petition in State or Federal Courts for Federal Habeas Corpus or Post-Conviction Relief? No. Applicant has not previously filed an application for Post-Conviction Relief or Petition for Writ of Habeas Corpus in either state or federal court. Applicant requests a hearing to present evidence in support of equitable tolling for the statute of limitations. See *Ferguson v. State*, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009); *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001); *Pelzer v. State*, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008).

(c) Any petition in the Supreme Court of the United States for certiorari other than petitions, if any, already specified in number (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 number (12), list with respect to each petition, motion, or application:

(a) The specific nature thereof: Not applicable.

(b) The name and location of the Court in which each was filed: Not applicable.

(c) The disposition thereof: Not applicable.

(d) The date of each such disposition: Not applicable.

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

No.

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

(a) The grounds which have been presented:

i. Not applicable.

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

i. Not applicable.

16. If any ground set forth in number (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) Post-Conviction Relief is the proper forum and remedy for these allegations because the grounds for relief presented in this application are evidence of ineffective assistance of counsel, issues not preserved for appellate review, and/or were not appropriate to raise on Direct Appeal. Applicant requests a hearing to present evidence in support of equitable tolling of the statute of limitations. See *Ferguson v. State*, 382 S.C. 615, 619, 677 S.E.2d 600, 602 (2009); *Gary v. State*, 347 S.C. 627, 629, 557 S.E.2d 662, 663 (2001); *Pelzer v. State*, 378 S.C. 516, 520, 662 S.E.2d 618, 620 (Ct. App. 2008).

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

(a) Your plea hearing? Yes.

(b) Your trial? Not applicable.

(c) Your sentencing? Yes.

(d) Your appeal, if any, from the judgment of conviction and/or imposition of the sentence?

Not applicable.

- (e) Preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? Yes, this application.

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

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

(i) Ernest Hamilton, PO Box 10672, Greenville, SC 29603.

(ii) Dayne C. Phillips, 1614 Taylor Street, Ste D., Columbia, SC 29201.

(b) The proceedings at which each attorney represented you:

(i) Ernest Hamilton represented Applicant the plea hearing.

(ii) Dayne C. Phillips is currently representing Applicant on this application for Post-Conviction Relief.

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

(i) Applicant seeks a belated appeal of his guilty plea and sentence; and

(ii) Applicant also seeks Post-Conviction Relief by vacating his conviction and sentence and remanding the indictment for a new trial based on ineffective assistance of plea counsel.

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

Yes, 2015-GS-23-09117-9118 (Attempted Murder and Failure to Stop for a Blue Light).

However, Applicant is also filing in conjunction with this PCR action, a separate application for post-conviction relief against those convictions and sentences.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Braxton Hare,

Applicant,

v.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Case No. 2023 – CP –23 –0736

CERTIFICATE OF SERVICE

23 MAR 15 PM 1:38
Paul Wickensimer COC.GVL.SC

I hereby certify that I have this date served the within and foregoing Amended Application for Post-Conviction Relief by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

Taylor Smith, Esq.
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

The Honorable Paul B. Wickensimer
Greenville County Clerk of Court
305 E North St.
Greenville, SC 29601-2121

By: Courtney Powers
Courtney Powers
Paralegal for Dayne C. Phillips, Esq.

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courtney@pricebenowitz.com

March 8, 2023

1 State of South Carolina) Court of Common Pleas
2 County of Greenville) Thirteenth Judicial Circuit
3
4 Braxton Lavon Hare,) Transcript of Record
5 Applicant/Petitioner,)
6 vs.) 2020-CP-23-00736
7 State of South Carolina,) 2020-CP-23-00737
8 Respondent.)

9
10 May 13, 2024
11 Greenville, South Carolina

12 B E F O R E:

13 The Honorable B. Alex Hyman, Judge

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

15 Dayne C. Phillips, Esquire
16 On behalf of the Applicant/Petitioner

17 Julianna E. Battenfield, Assistant Attorney General
18 On behalf of the State of South Carolina

19 Stacy S. Johnson, RPR
20 Circuit Court Reporter
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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
A/P-1	Psychological Evaluation Addendum	4	12
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1 (The following proceedings were held May 13, 2024,
2 beginning at 9:55 AM.)

3 (Applicant's/Plaintiff's Exhibit Number 1 and 2 were
4 marked for identification.)

5 THE COURT: All right. Mr. Phillips, Ms. Battenfield,
6 are we ready to proceed?

7 MR. PHILLIPS: Yes, Your Honor.

8 THE COURT: All right. You may call your first
9 witness.

10 MR. PHILLIPS: Thank you, Your Honor. I believe
11 the State had indicated they were gonna do a little bit
12 of a brief procedural history for Your Honor and for the
13 record.

14 THE COURT: I'm happy to hear it.

15 MS. BATTENFIELD: Good morning. May it please the
16 Court?

17 THE COURT: Yes, ma'am.

18 MS. BATTENFIELD: Juliana Battenfield for the
19 Respondent, the Attorney General's Office. Judge, this
20 morning we have two separate cases for Braxton Hare.
21 I believe Mr. Phillips has indicated we're gonna start
22 with the trial, and that's 2020-CP-23-00737. And
23 Mr. Hare proceeded to trial on an amended murder
24 indictment, Indictment Number 2015-GS-23-9117, and he
25 was found guilty of the lesser included ABHAN or assault

1 and battery high and aggravated, as well as failure to
2 stop for a blue light, and that indictment number is
3 2016-GS-23-9118, and he was given twenty years by Judge
4 Miller on July 19th of 2017.

5 After that, Mr. Hamilton, who's here today, Judge,
6 the original defense attorney, he appealed. The direct
7 appeal ended in an unpublished opinion in February 2019.
8 The PCR was filed February 5, 2020. We did our return
9 five months later. Mr. Phillips filed an amended PCR
10 application on March 15, 2020.

11 And, Judge, just for purposes of a Federal habeas
12 later, I just want to briefly put the continuance on the
13 record.

14 So on March 10, 2022, the defense moved for a
15 continuance in the PCR, and May 10, 2022, the State moved
16 for a continuance because our witnesses were unavailable.
17 September 9, 2022, the defense moved for a continuance
18 for Dr. Maddox needed to meet with Applicant again, and
19 March 15, 2023, last year, we moved -- the State moved
20 for a continuance to review the medical information
21 Mr. Dayne provided. In May 2023, it was a mutual
22 continuance, Judge, and then two more. One, there was
23 one in September 2023, Applicant moved for a continuance,
24 and then another in January of 2024, Applicant moved for
25 a continuance.

1 Judge, we have -- Mr. Phillips has raised forty --
2 forty-two grounds from the trial. I have divided them
3 into sixteen different categories for my witnesses. And
4 then we also have the plea, which we're going to move to
5 incorporate Donna Maddox's testimony into the plea so she
6 doesn't have to testify twice --

7 THE COURT: Okay.

8 MS. BATTENFIELD: -- and that number is
9 2020-CP-23-0736, and he pled guilty to carjacking.

10 THE COURT: All right. Thank you.

11 Mr. Phillips, any opening that you want to make?

12 MR. PHILLIPS: No, Your Honor. We reserve that for
13 later at the appropriate time.

14 THE COURT: All right.

15 MR. PHILLIPS: We would call Dr. Maddox as our first
16 witness.

17 (Whereupon, Donna Schwartz Maddox was duly sworn by
18 the Clerk of Court.)

19 THE CLERK: You may be seated. And please state your
20 full name for the record.

21 THE COURT: All right. Good morning, Ms. Maddox.
22 How are you?

23 THE WITNESS: Good morning.

24 THE COURT: Good to see you.

25 THE WITNESS: Thank you.

1 My full name is Donna, middle name Schwartz,
2 S-C-H-W-A-R-T-Z, and last name Maddox, M-A-D-D-O-X.

3 DONNA SCHWARTZ MADDOX,

4 having been duly sworn, testified as follows:

5 DIRECT EXAMINATION

6 BY MR. PHILLIPS:

7 Q. Good morning, Dr. Maddox.

8 A. Good morning.

9 Q. If you could, give a brief background into your
10 education and training.

11 A. Absolutely. I graduated from Furman University in
12 1985 with a bachelor of arts degree in psychology. I
13 graduated from medical school in 1989, from the University
14 of South Carolina School of Medicine, and then I completed
15 a four-year residency in general psychiatry at the William
16 S. Hall Institute and slash University of South Carolina,
17 and then I completed an additional year of training in
18 forensic psychiatry, and I completed that in 1994. I've
19 worked at the Department of Mental Health for a number of
20 years, then the University of South Carolina for, I think,
21 fourteen, fifteen years, and then I finished my State
22 service with twenty-eight years at the Department of Mental
23 Health at Patrick Harris Hospital where I was treating
24 patients. I retired from there five years ago and I've
25 been in private practice in forensic psychiatry, and I am

1 licensed to practice medicine in South Carolina.

2 Q. Now as far as your experience, you've touched on that
3 already, in state court how many times have you been
4 qualified as an expert witness?

5 A. Over eight hundred and fifty times.

6 Q. And what specific area have you been qualified in?

7 A. Forensic psychiatry, which is any issue where a
8 mental status has to do with a legal issue, so it could
9 be in civil courts, family court, probate, Federal
10 courts, criminal matters, post-conviction relief matters,
11 sexually violent predator trials, personal injury cases,
12 malpractice. Pretty much most areas. I specialize and I
13 go over the country and I do a lot of Federal habeas work
14 for death penalty cases as well.

15 MR. PHILLIPS: Your Honor, at this time the Applicant
16 would move to admit Ms. Donna -- Dr. Maddox as an expert
17 witness in forensic psychiatry.

18 MS. BATTENFIELD: No objection, Judge.

19 THE COURT: All right. Dr. Donna Maddox will be
20 deemed an expert in forensic psychiatry.

21 BY MR. PHILLIPS:

22 Q. Dr. Maddox, you had an opportunity to review records
23 in this case and meet with Mr. Hare?

24 A. I did.

25 Q. All right. And if you could -- if you could kind of

1 give an overview of the records you reviewed and the
2 meetings that you had with him.

3 A. Sure. Originally you had provided me prior to my
4 first evaluation -- I saw him twice, Your Honor.

5 THE COURT: Okay.

6 A. The first time that I evaluated him I had mainly his
7 legal proceedings, his school records, and also the trial
8 transcripts, so I read through those. I interviewed
9 Mr. Hare on July 21, 2020. That was during COVID, so we
10 had to do the evaluation virtually. After I evaluated
11 him, I had learned that he had had a closed-head injury
12 and so I requested some more records and Mr. Phillips very
13 kindly got -- he had an MRI of his brain and he had medical
14 records where he was treated in Seneca, in Oconee, so I got
15 those records, and then I evaluated him again because I
16 needed to perform a cognitive exam on him since he had had
17 a history of closed-head injury, and I saw him the second
18 time on November 4, 2022.

19 Q. And you issued two different reports in this case.
20 Essentially an initial report and then an addendum?

21 A. Yes, sir. And the addendum was after the second
22 evaluation updating my cognitive exam and then outlining
23 the medical records we had reviewed.

24 Q. Thank you.

25 MR. PHILLIPS: Your Honor, may I approach?

1 THE COURT: Yes, sir.

2 BY MR. PHILLIPS:

3 Q. Dr. Maddox, I'm gonna hand you what's been marked as
4 Plaintiff's Exhibits 1 and 2. Exhibit 1 is the amended
5 report -- or, excuse me, the addendum report, the most
6 recent, and then the second is the initial report. If you
7 could take a moment to review those.

8 A. Yes, these are my reports.

9 Q. And as far as the sources of information that's listed
10 in those reports, those are the documents that you reviewed
11 in preparation for your meetings with Mr. Hare?

12 A. Yes.

13 MR. PHILLIPS: Your Honor, at this time I would move
14 to admit Plaintiff's Exhibit 1 and 2 into evidence.

15 THE COURT: Any objection?

16 MS. BATTENFIELD: Judge, I had a conversation with
17 Mr. Phillips pre-trial and there is a flash drive with
18 over a thousand pages of documents with fourteen sections
19 of psychiatric evaluations, DJJ records, et cetera.
20 Mr. Phillips and I were talking beforehand and the State
21 would inquire as to your preferences of whether the
22 psychiatric report -- we would just stipulate that is
23 available and all these other documents are available or
24 whether we should admit them under seal because they are
25 DJJ reports, there's school reports. There's all kind of

1 personal identifying information. So we would inquire as
2 to Your Honor's preference about those things to make sure
3 none of these things become public record.

4 THE COURT: But it's all on a flash drive?

5 MR. PHILLIPS: I have put it on a flash drive, Your
6 Honor.

7 THE COURT: I would prefer to have it just admitted
8 under seal.

9 MR. PHILLIPS: Yes, Your Honor. There's absolutely
10 no objection from either party and we discussed that and
11 believe that would be appropriate.

12 THE COURT: All right. Has that been marked?

13 MR. PHILLIPS: No, Your Honor, but we can mark it.

14 MS. BATTENFIELD: Your Honor, in that case we have
15 no objection to these coming in.

16 THE COURT: All right.

17 (Applicant's/Plaintiff's Exhibit Number 3 was marked
18 for identification.)

19 MR. PHILLIPS: And, Your Honor, for the record,
20 the flash drive is being marked as Plaintiff's Exhibit
21 Number 3 and I would move to admit that flash drive into
22 evidence at this time.

23 THE COURT: And her -- her two reports are 1 and 2?

24 MR. PHILLIPS: Yes, Your Honor.

25 And for the Court's review, I'm handing up copies of

1 those reports, and Number 1 is on top.

2 THE COURT: Thank you.

3 All right. Plaintiff's 1, 2 and 3 are admitted.

4 (Applicant's/Plaintiff's Exhibit Number 1,
5 psychological evaluation addendum; Number 2, psychological
6 evaluation; and Number 3, a flash drive with documents,
7 were admitted into evidence.)

8 BY MR. PHILLIPS:

9 Q. Dr. Maddox, if you could, explain during your meetings
10 what are you looking -- or even from the document review,
11 medical records-wise leading into the meetings, as well
12 as your meetings, what -- what are you looking for as a
13 forensic psychiatrist in terms of your review?

14 A. Sure. The methodology I use is normally I will review
15 records. You have to remember in forensic psychiatry
16 because there's a legal standard, we have to do a little
17 bit more than you would in just a general psychiatric
18 practice. You have to make sure there's collateral
19 records, you're trying to verify whether the information
20 you're getting from the client is accurate, so that's
21 always helpful. What I do is I'll review records and then
22 I'll perform a history and then what's called a mental
23 status examination.

24 What I'm looking for are things that need to come to
25 the Court's attention. Is there a history of learning

1 disorders, were there problems that could lead to mental
2 illness such as trauma during childhood or problems during
3 birth. You're looking for things like difficulties with
4 education and then you're looking for family histories
5 of mental illness. So basically I'm trying to make a
6 psychiatric diagnosis. Either there's a mental illness or
7 some kind of mental defect that should come to the Court's
8 attention in terms of whether it's an issue for competency
9 for criminal responsibility or for mitigation during
10 sentencing.

11 Q. And specifically here, although allegations were
12 raised regarding competency, your main report is addressing
13 issues regarding intellectual deficits for mitigation. Is
14 that fair to say?

15 A. Yes. Yes.

16 Q. Could you expound on that?

17 A. Absolutely. What happened in this case, Your Honor,
18 he was seventeen when these crimes occurred and, as you
19 know, there's extensive medical literature, young men
20 and women, their brains don't finish developing until
21 they're twenty-four. So the typical seventeen-year-old
22 is beginning to get judgment. The frontal part of their
23 brain is developing, so they start to get good judgment.
24 In this case, I don't think it's fair to compare Mr. Hare
25 to other seventeen-year-olds at the time because he had a

1 history of a significant closed-head injury that I will
2 explain. He also had intellectual disability. He was
3 diagnosed with borderline intellectual functioning, so his
4 IQ was lower than the typical seventeen-year-old as well.
5 So he had two very unique factors about him.

6 His closed-injury, he was on a moped and got hit by
7 a van when he was younger, and he woke up in a ditch. He
8 was unconscious. He was taken to Oconee Hospital. He had
9 a contusion of the face. He -- they had an MRI ordered.
10 Anyway, he did have some cognitive deficits. His family
11 had noted that he had problems with his memory after the
12 concussion. So those are just things that you have to take
13 into account when you're comparing him to other young men.

14 First of all, his brain was very immature and more
15 immature than other seventeen-year-olds at the time of his
16 offense. Secondly, he ran into some issues in his trial.
17 What happened is there was a period of time where he was
18 uncertain whether he would testify or not. He finally
19 decided to testify in his trial in chief and then I believe
20 in the guilty plea during sentencing Judge Miller was
21 asking him some questions and one of the questions he asked
22 him was where did he get the gun and Mr. Hare told him he
23 could not remember, and it appears -- it looked like his
24 inability to remember could have been volitional and
25 oppositional to the Court, and in my opinion it was not,

1 and I think had Judge Miller had known the history of him,
2 that he had intellectual deficits and a closed-head injury,
3 and when persons with those kinds of brains are under
4 stress, their brain, when they're anxious, they don't
5 think very clearly, and I don't think that Mr. Hare was
6 intentionally trying to be oppositional or not answer a
7 question to Judge Miller, and I think it affected the
8 sentencing. He got the maximum sentence.

9 Q. And so based on your training and experience, it's
10 your expert opinion that your findings after reviewing
11 his medical records and meeting with him on two separate
12 occasions, it's your expert opinion that you would have
13 been able to testify to these findings at the mitigation
14 phase of his trial after he was convicted, as well as the
15 guilty plea, in terms of his intellectual deficit, his
16 closed-head injury and how that affects his thinking, his
17 mood, essentially his rational understanding of the
18 proceedings?

19 A. Yes. And -- and also had he had -- even though in
20 my opinion I think he was competent, looking back, you
21 know, he's following testimony, he's got -- he's got the
22 capacity. Now he doesn't necessarily know everything. He
23 told me he was lost. That some of the legal terms going
24 on he was not familiar with, but he still had the capacity
25 to understand those things. Whether he was prepared or not

1 is another issue, but I also think had he had a competency
2 examination these things would have come to light. The
3 school records would have been obtained. There would have
4 -- the school records themselves even not knowing that he
5 had a closed-head injury are very telling. He had language
6 deficits, he did poorly in math. He scored in the fourth
7 percentile in reading, so 96 percent of the other children
8 his age were better at reading. The low IQ scores would
9 have been revealed. So even with just those records in
10 themselves there would have been enough information there
11 to understand that his brain was probably less mature than
12 peers his age. The reason I say that, his co-defendant was
13 a sixteen-year-old and the other co-defendant was older
14 than him and outweighed him, so he also was someone that
15 could be influenced and more likely to be influenced. I
16 don't know the cognitive functioning of his co-defendants,
17 but just given his cognitive deficits I think that would
18 have been an area I would have testified in as well.

19 Q. And so as an expert in forensic psychology, it's your
20 opinion that this would have been material or critical
21 mitigation evidence that could have been presented at the
22 sentencing phases for both the trial and the guilty plea?

23 A. Yes. I would have -- had you retained me or a defense
24 attorney, I would have recommended -- and I may have even
25 recommended we have a Blair hearing just to have it on

1 record to protect the record and then that's also a place
2 where you can introduce that testimony. Some judges don't
3 like to have separate sentencing hearings, so even in a
4 Blair hearing that information could have come out to be
5 used later.

6 Q. And then, I guess, just to make it clear, we had
7 previously raised a competency issue. You deemed based
8 on your review that he is competent to stand trial.
9 That's not what you're testifying to today. What you're
10 testifying to today is specifically your expert opinion
11 regarding his intellectual deficits, as well as the
12 closed-head injury and then, of course, your assessment
13 of that based on reviewing his medical records and your
14 interviews with him?

15 A. Yes.

16 Q. I just wanted to make sure that's -- that's clear.
17 And so you still believe that a Blair hearing would have
18 potentially been necessary for the Court to feel
19 comfortable to have all that information?

20 A. That would have been one of the venues to get that
21 information in had it -- but, yes, had you retained me, I
22 would have and we had -- I would have recommended a Blair
23 hearing just because given his deficits and low IQ, the
24 closed-head injury, sometimes before trial people's
25 functioning, their cognitive impairment, can get worse if

1 they're anxious. That's why they do neuro psych testing.
2 The reason they do testing is they put somebody under a
3 time limit and they make them anxious on purpose, but
4 sometimes our brain deficits don't show up until you're
5 stressed or until your brain's under anxiety. So sometimes
6 court is similar to that for people. Some people are so
7 anxious that they have more trouble maybe getting the right
8 -- finding the right words, being able to follow questions.
9 But based on looking at the transcript, he -- in my
10 opinion, he was competent and he was competent to testify.
11 Q. And how many times have you testified as an expert in
12 mitigation? Separate from trial. In mitigation.
13 A. Plenty. Plenty. Normally in guilty pleas, but also
14 after a trial. Hundreds of times.
15 Q. And based on, again, your review of the medical
16 records and your interviews with him, what is your expert
17 opinion in terms of presenting this mitigation during -- I
18 guess in terms of how you would have presented it to Judge
19 Miller had you been retained from the initial mitigation
20 standpoint from the trial? You know, knowing that you
21 would have been hired pre-trial in preparation for if he
22 was found guilty that you could presented that and
23 testified in front of Judge Miller in mitigation.
24 A. Yes, I would have done two separate things. First of
25 all, if he had -- say he had pled and we were in front of

1 the judge, I would have examined him the morning of the
2 hearing to make sure that he was still competent. I would
3 have instructed or informed Judge Miller that -- that we
4 probably would need to speak a little slower during the
5 proceedings, make sure -- take breaks to make sure that he
6 understood what was going on because of his deficits.

7 Number two, I would have outlined exactly what his
8 diagnoses were, and it's borderline intellectual
9 functioning, which means that his IQ is less than 80,
10 but higher than 69, in that he doesn't function as
11 intellectually disabled, but he has borderline functioning.
12 I would have diagnosed him with what's called an
13 unspecified neurocognitive disorder. That means that I
14 know he had some brain damage from the closed-head injury.
15 He also has a history of ADHD as a child. He was on
16 Ritalin and medications for that, so I would have at length
17 talked about those illnesses and that they would further
18 impair, number one, his judgment. They would make him more
19 susceptible to being outsmarted by other people who are
20 higher functioning than him.

21 And then, thirdly, I had also diagnosed him with a
22 bit of trauma disorder, and all of those things I would
23 have taken into account and recommended that he have mental
24 health treatment when he was detained at the Department of
25 Corrections and then I would have contacted the Department

1 of Corrections and provided his records to make sure that
2 he had a continuity of care.

3 Q. And so based on your review of both the trial
4 transcript and specifically the sentencing hearing and
5 the plea hearing transcript, was any of that presented to
6 Judge Miller?

7 A. Not that I'm aware of. I did not see any information.

8 MR. PHILLIPS: Thank you.

9 No further questions, Your Honor.

10 CROSS-EXAMINATION

11 BY MS. BATTENFIELD:

12 Q. Dr. Maddox, I didn't know you went to Furman. I was
13 also a Furman grad. Go Paladins.

14 A. Yes.

15 Q. So, Dr. Maddox, I know you just -- in both the trial
16 and the plea and Mr. Hare's PCR application, I know
17 Mr. Phillips just went through this with you, but you are
18 saying at the time of Mr. Hare's plea and also at the time
19 of his trial he was -- according to your expert opinion he
20 would have been competent to stand trial and plead guilty?

21 A. Yes. Yes, based on what I've read and just the
22 colloquy, answering questions. His capacity's impaired,
23 but he had enough capacity and it's clear in looking at
24 the record that he understood the things being asked, but
25 I think where his deficit showed up during the plea and

1 the trial was his waxing and waning, looking like maybe
2 he would take the stand, maybe he would not, and then
3 answering select questions. I think that misled -- or
4 the judge may have misinterpreted that hesitation or
5 ambivalence as being volitional when in my opinion it was
6 not.

7 Q. Okay. And from Ramirez versus State, this is the
8 competency standard just for the record. It's 419 South
9 Carolina 14, a 2017 case. The first prong is sufficient
10 present ability to consult with his lawyer.

11 A. Yes.

12 Q. You're saying he had the ability to consult?

13 A. Yes, and he did.

14 Q. Great. With a rational degree of reasonable rational
15 understanding?

16 A. Yes.

17 Q. Okay. So he understood the proceedings, he understood
18 how much time he was facing?

19 A. Yes. There were some areas that he was not clear
20 on, but, again, it's not just -- it's the capacity. It's
21 not what you actually know, it's do you have the capacity
22 to know it. So he may not have been prepared, he may not
23 have -- you know, maybe he and his attorney -- what he
24 says is he wasn't sure, he felt lost, he was relying upon
25 his attorney, but he still had the capacity. Whether he

1 actually knew it or not is really not the issue. It's does
2 he have the capacity to understand those things, and he
3 did.

4 Q. He did. Okay. And then the second prong is what we
5 just talked about, is whether he had a rational factual
6 understanding of the proceedings against him. You're
7 saying he did?

8 A. Yes, he did. He knew he was going to trial. He knew
9 he wanted to testify. He was self-protective and thought
10 that his story would help him in his -- in his proceedings.

11 Q. Great. Okay. Now I'm gonna show you a couple of
12 things really fast and then I'll be done. I really
13 appreciate your testimony this morning.

14 So just briefly, the offenses we're talking about
15 this morning, there was an August 22, 2015, armed robbery,
16 and there was an August 21, 2015, carjacking.

17 A. Yes.

18 Q. So same week about -- on or about, but that's a
19 separate offense?

20 A. Correct.

21 Q. And then the trial we're talking about was for
22 September 1, 2015?

23 A. Yes.

24 Q. Just a couple of days later that was originally
25 indicted for attempted murder and failure to stop for blue

1 light, right?

2 A. Yes.

3 Q. All right. So it was all about August 2015 -- August,
4 September 2015?

5 A. Yes.

6 Q. Now I'm gonna show you three report cards from
7 Section 10 and Section 8 of Plaintiff's 3, and I'm gonna
8 show you them and I'd like you to -- so the first one just
9 for the record is from Lakeview Middle School printed on
10 June 3, 2011, and then I'm gonna ask you -- so that was
11 before his incident with the car --

12 A. Correct.

13 Q. -- and the bicycle? And the car accident would have
14 been March 3, 2012?

15 A. Correct.

16 Q. And then I'm gonna show you a report card dated
17 May 31, 2012, from Seneca Middle School, I believe.

18 A. Yes.

19 Q. And that would have been after the car accident.
20 And then I'm gonna show you a State of South Carolina
21 transcript dated August 20, 2015, so right in this same
22 period of crimes, and I'm gonna ask you to read the grades
23 on here for the judge.

24 A. Sure.

25 MS. BATTENFIELD: May I approach, Judge?

1 THE COURT: Yes.

2 BY MS. BATTENFIELD:

3 Q. If you could just go through one by one.

4 A. Absolutely.

5 Q. Well, first, do you recognize those? Are those part
6 of what you reviewed?

7 A. Yes.

8 Q. And those are fair and accurate?

9 A. Yes.

10 Q. Great. Thanks.

11 A. Okay. The first is Lakeview Middle School and this
12 was the fourth quarter report card and the final grades
13 printed on June 3, 2011, and he is in the seventh grade,
14 in English --

15 Q. And I've circled the grades, the final.

16 A. Yes. Well, this one, the first page, is not circled,
17 but --

18 Q. I apologize.

19 A. That's okay. In English, the fourth quarter, his
20 grade was a 69, but he did pass for the year and had an 83,
21 which --

22 Q. I'm just concerned with the final grades, if that's
23 okay?

24 A. Okay. Sure. The final grade was an 83, which is
25 a C, in English. Student reading, the final grade is a 79,

1 which is a C. In social studies, the final grade was a 79,
2 which is a C. I don't know what ADD is. I'm sorry. The
3 score was 100. In math, his final score was a 79, which
4 is a C. In PE, the final score was a 93, which is an A.
5 And in science, the final score was a 75, which is a D.

6 Q. Okay. And that was before the car accident, correct?

7 A. Yes.

8 Q. All right. Thanks.

9 A. I'm looking -- he also was in Special Ed. I do not
10 see -- this one I do not see that -- if it's designated
11 as Special Ed. I don't know if the report cards would do
12 that.

13 Q. Sure.

14 A. Okay. The second was 2011 through 2012. And was your
15 -- the question was this was after the accident and the
16 fourth quarter grades --

17 Q. Yes.

18 A. -- or the final grades? Okay. So --

19 Q. About two or three months after the accident.

20 A. Yes. May 31, 2012. So that would have been two
21 months.

22 Q. Sure.

23 A. His fourth quarter he had a 92 in language arts, but
24 noted late, incomplete, missing work. Science, he had an
25 85 for the final. Social studies, an 85. Keyboarding, a

1 97. Math, an 86. And PE a 93.

2 Q. So A's and B's and this is after the car accident?

3 A. Correct.

4 Q. So he went from A's, B's, C's and D's to A's and B's
5 after the car accident?

6 A. Right.

7 Q. All right.

8 A. But I don't know -- I think you might be -- we could
9 be comparing apples and oranges. It's gonna depend on the
10 teacher, the class. He was also in a different school,
11 so also keep in mind -- but, yes, I think that's very fair
12 to say his grades certainly were stable and better. A
13 little bit worse in PE, but, yes. And then his high school
14 transcript --

15 Q. And this is right around the same time as all the
16 crimes, right, August 2015?

17 A. Correct, but keep in mind now at Birchwood High
18 School, I worked at DJJ for fifteen years, that school is
19 much easier. The children loved going to school at DJJ
20 because their classroom pace is a little bit slower, so
21 they tend to do a little bit better.

22 Q. Sure. Now, Dr. Maddox, speaking of which, if I could
23 just briefly stop you, so we're talking about the times of
24 the crimes right now and so Mr. Hare was at school in DJJ
25 at the time, but not incarcerated in DJJ, correct?

1 A. Correct.

2 Q. Okay. Great.

3 A. Yeah, so the transcript from high school comes from
4 Birchwood from 2013 to 2014, Sandhills from 2013 to 2014,
5 Carolina Academy in 2012, 2013, and then Birchwood again in
6 2014, '15. So it looks like the yearly grades in English
7 was a 98. Physical science is 76. World history, a 79.
8 PE, an 89. Art, a 97. Algebra I, an 88. Carpentry, a 93.
9 Welding, 75.

10 English at Sandhills, which would have been -- it
11 looks like in the same year, I don't know which came first,
12 a 93. Geography, a 72. Algebra, an 85. Carpentry, an 80.

13 And then at Carolina Academy is sports -- leisure
14 sports class, 79. And at Birchwood, sound design and
15 recording, an 82. And digital desktop publishing, a 90.

16 Q. So it sounds like mostly A's and B's about this time
17 during the crimes, correct?

18 A. Two C's, yes, but the majority -- let's see. It looks
19 like three A's, a lot of B's, and a few C's.

20 Q. Okay. I mean, so your testimony is that Mr. Hare has
21 cognitive deficits that would have affected him at trial?

22 A. Yes.

23 Q. Unlike another criminal defendant, any other ordinary
24 criminal defendant?

25 A. Correct.

1 Q. He would have had more issues understanding what was
2 happening at trial other than any criminal defendant?

3 A. Not necessarily. It just would have taken him longer.
4 Where his deficits are -- I did -- I did some testing on
5 him. We already know he had a little bit of weakness in
6 language, and that's -- that was preexisting, that was from
7 his borderline intellectual functioning, and we know that
8 he had difficulties with attention, he had a history of
9 ADHD, so it would just take him longer. It doesn't mean
10 that his processor was necessarily broken, it just means,
11 number one, it might take him longer to process things.

12 And then, secondly, if he's anxious, he's gonna have
13 a little bit more impairment. It may take him longer. He
14 might not -- again, his memory deficits. Just for the
15 record, he still does not know where he got the gun. I
16 asked him about that years later and he still doesn't
17 recall that. So it's more -- more you could have seen him
18 maybe feeling comfortable making a decision, not trusting
19 his judgment. So in terms of him being able to talk about
20 what happened, I don't think that would -- that kind of
21 memory was not affected with him.

22 Q. Okay. So because -- I mean, it seems like across all
23 of this time, before and after the car accident and then
24 during the crimes, he's had really good grades for the most
25 part?

1 A. Yes. Overall.

2 Q. So would you say -- would it be fair to say having
3 all of this information or a great expert like you would
4 have made Mr. Hare more comfortable at trial, but not
5 necessarily impacted whether he had a fair trial?

6 A. Say that again, please.

7 Q. So were -- were Mr. Hare's defense attorney to have
8 gotten all of this and then the judge were to have had
9 this and say accommodations would have been made during the
10 trial, Mr. Hare would have been more comfortable at trial,
11 but in your expert opinion did it affect his right to a
12 fair trial?

13 A. No, I don't think it did, but -- but I think in terms
14 of a sentencing issue, what would have happened -- say the
15 time when he was not sure whether he wanted to take the
16 stand or not, I would have -- had I been there I would have
17 met with him and tried to understand and then would have
18 explained to the judge his -- his ambivalence is due to
19 these things and not volitional behavioral issues or him
20 being disrespectful of the Court.

21 Q. Sure. But legally the judge was not required to give
22 him a lesser sentence because of any of these things,
23 correct?

24 A. Not at all. Not at all, no.

25 Q. Okay.

1 MS. BATTENFIELD: Thank you, Dr. Maddox.

2 THE WITNESS: You're welcome?

3 MS. BATTENFIELD: May I approach to --

4 THE COURT: Yes.

5 MS. BATTENFIELD: Thank you so much.

6 No further questions, Judge.

7 MR. PHILLIPS: Thank you, Your Honor.

8 THE COURT: Yes, sir.

9 REDIRECT EXAMINATION

10 BY MR. PHILLIPS:

11 Q. Dr. Maddox, in terms of your expert opinion, and
12 you can tell me what the -- what your findings would be,
13 someone with his IQ and intellectual deficit, does that --
14 how does that affect their ability, their judgment, their
15 decisionmaking, their responses, whether they're
16 influenced? Could you go into that again?

17 A. Yes. Again, if you're looking at brain development,
18 even though he was seventeen at the time these offenses
19 happened, he was functioning less than a 17-year-old
20 because of his intellectual deficits, and then cumulative
21 to that was the history of the closed-head injury. So
22 he would have been probably more consistent with a
23 16-year-old. Again, a psychologist, they have -- they're
24 able to do -- when they do testing, they can use some of
25 the scales and extrapolate back to what a chronological

1 age is, but I think it's very fair to say and I can say
2 with a reasonable degree of medical certainty that he was
3 functioning less than the typical 17-year-old peer his age.

4 Q. And they had his IQ at one point listed as 76, below
5 80; is that fair to say?

6 A. Yes, I believe -- I believe there's also one of 72,
7 but, yes, they've consistently been in the borderline range
8 of intellectual functioning.

9 Q. Now in terms of his grades, does that have any effect
10 in relation to your findings or expert opinions here today?

11 A. Well, what he tells me is that he tries hard. I'm
12 actually surprised -- I didn't recall his grades being
13 that good, but I told you he had a -- he has a very good
14 mom. His mom's successful, she's employed. There were
15 periods of time where she would be out of the county.
16 There was one period where she was in Afghanistan for
17 twenty-two months. He would have caretakers who would
18 make sure that he did well in school. I mean, he was
19 nurtured and he was cared for, so -- and he was -- his
20 family encouraged him to do well. So it tells me that he
21 tries really hard at what he does.

22 And, in fact, Your Honor, the first time I saw him
23 he was in McCormick and then the second time I evaluated
24 him he had been moved to Lee and he was so much happier
25 because they have an education program there. He really

1 wants to get his GED and so that was one of the things he
2 was concerned about. So he continues -- he tries really
3 hard and he wants to do well and he wants to achieve, and
4 that's -- that's pretty typical in people with intellectual
5 disabilities. They -- they want to do better. They --
6 they recognize at some level that they have some deficits
7 and they want to do better and want to learn.

8 Q. And in terms of your findings on the intellectual
9 deficit and, again, with -- specifically as to mitigation
10 and his closed-head injury, is it based on -- again,
11 based on your prior expert testimony in other cases with
12 mitigation and, of course, your findings in this case,
13 is it your expert opinion that this would be critical
14 mitigation evidence that Judge Miller would have been able
15 to assess and needed to hear?

16 A. Yes, and based on my experience with Judge Miller,
17 he's very open and he always -- he listens to those things
18 and he takes them into account. What sentences, I can't
19 tell you, but I know that he listens and I know that he
20 takes those things into account.

21 Q. Right, because ultimately he has the discretion,
22 but he did not have this information to use in his
23 consideration in imposing a sentence; is that fair?

24 A. Correct. And I think what -- the other issue I would
25 have brought up, if you look at his legal history, he

1 didn't get into trouble until after these -- until this
2 closed-head injury. He had not had that history before.
3 So he had been along on a track to succeed.

4 MR. PHILLIPS: Thank you. No further questions.

5 THE COURT: Anything else, Ms. Battenfield?

6 MS. BATTENFIELD: No, Judge. Thank you.

7 THE COURT: All right. Dr. Maddox, you can step
8 down.

9 THE WITNESS: Thank you.

10 May I be excused, Your Honor?

11 THE COURT: Yes, ma'am. Any --

12 MS. BATTENFIELD: No objection.

13 MR. PHILLIPS: No objection, Your Honor.

14 And just for the record, through consent or
15 stipulation, that we're going to have her testimony
16 apply to both PCR applications.

17 THE COURT: All right.

18 MR. PHILLIPS: Thank you.

19 (Witness excused.)

20 THE COURT: All right. Mr. Phillips, you can call
21 your next witness.

22 MR. PHILLIPS: The next witness would be Mr. Braxton
23 Hare.

24 (Whereupon, Braxton Lavon Hare was duly sworn by the
25 Clerk of Court.)

1 THE CLERK: Thank you. You may be seated. Please
2 state your full name for the record.

3 THE WITNESS: Braxton Lavon Hare.

4 BRAXTON LAVON HARE,
5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. PHILLIPS:

8 Q. Good morning, Mr. Hare.

9 A. Good morning.

10 Q. If you could -- I think, yeah, you've already
11 identified yourself. Could you explain how you met your
12 lawyer, Mr. Ernest Hamilton, the first time? Do you
13 remember when?

14 A. I don't remember the first visit. No, sir.

15 Q. Specifically could you describe the representation
16 in terms of once you were arrested for those charges, the
17 attempted murder, the failure to stop for a blue light
18 charges, could you go into how you were -- had you retained
19 Mr. Hamilton?

20 A. I know I just remember him coming to visit me a couple
21 of times just going over the case and showing me my motion
22 for discovery.

23 Q. And so your mother retained him on your behalf?

24 A. What's retained mean?

25 Q. Hired him.

1 A. Oh, yes, sir.

2 Q. And so specifically once he was hired, he came to the
3 jail and saw you?

4 A. Correct.

5 Q. And during those meetings you said he did discuss the
6 case with you?

7 A. Correct.

8 Q. And how many times did he come to meet with you there
9 at the jail?

10 A. Approximately like five times. Five, six times.

11 Q. And during those five to six times, what did you
12 discuss with him?

13 A. Just going over the evidence and like --

14 Q. And, if you could, kind of explain as best you can
15 when you say go over the evidence, did he have paperwork
16 that he would sit down with you? What all did you-all
17 discuss?

18 A. We went over the motion for discovery, we went over
19 the evidence, and when -- when they gave us a plea deal,
20 we went over the plea deals.

21 Q. And so -- and ultimately you rejected that deal and
22 went forward with the trial?

23 A. Yes, sir.

24 Q. All right. Now talk to me, in preparation for the
25 trial, was there specific conversations you had regarding

1 your rights at a trial, potential defenses?

2 A. No, sir.

3 Q. All right. So your meetings mainly contained -- or
4 the discussions was related to the evidence?

5 A. Yes, sir.

6 Q. Did you-all discuss whether you would testify?

7 A. At the last moment during trial.

8 Q. And so when you say during trial, literally before you
9 -- like right before you went to testify?

10 A. During a break. During a break.

11 Q. And so you had never -- prior to that point, you and
12 him had never discussed whether you would testify at your
13 trial?

14 A. No, sir.

15 Q. The first time was during a break?

16 A. Yes, sir.

17 Q. During the actual trial?

18 A. From what I remember, yes, sir.

19 Q. Was there any other specific discussions about any,
20 again, legal motions that was gonna be presented, motions
21 to suppress or any other legal process or procedure,
22 anything about the trial? Did you-all discuss in
23 preparation, prior to that trial starting, what was gonna
24 happen at that trial?

25 A. No, sir.

1 Q. So your meetings were pretty much to review the
2 evidence?

3 A. Yeah, just like, you know, they had given me a plea.
4 I think my last plea was like twenty -- twenty years. Like
5 we just -- I didn't feel I would go through with the plea
6 deal or like -- because I had more than one charge. There
7 were a lot of charges, so I knew I had to go to court more
8 than one time. So we was just basically trying to get like
9 all of it concurrent or whatever, but I didn't know about
10 no trial.

11 Q. And so in terms -- so he's discussing those plea
12 offers to you and you decided to reject them and go to
13 trial? That was your decision?

14 A. Yes, sir. Before I knew that they could -- I thought
15 I was going to trial for attempted murder, so that's what
16 I thought I was going to trial for, that's what I was
17 preparing myself for, so that's why I went to go there. I
18 didn't know they could change the lesser included offense
19 and throw me -- throw some different charges at me after
20 I got -- pled guilty. I mean, not guilty of attempted
21 murder. I didn't know they could switch it up and hit me
22 with another charge.

23 Q. Well, I guess that -- that would be one of my next
24 questions. So prior to the trial, was there any
25 discussions about potential lesser included offenses?

1 A. No, sir.

2 Q. So you were under the impression if you went to
3 trial for attempted murder, you had to be found guilty on
4 attempted murder and there would be no other charges that
5 they could find you guilty of?

6 A. No, sir. Because it wasn't on my indictment paper.

7 Q. All right. And that was not discussed any further?
8 There was no discussion with him prior to trial regarding
9 a lesser included offense?

10 A. No, sir.

11 Q. Now in terms of your sentencing ranges or the elements
12 of what constituted an attempted murder, did you-all have
13 any discussions about that? In other words, what the law
14 defines attempted murder?

15 A. Yes, sir.

16 Q. All right. And what did you believe attempted murder
17 meant under the law?

18 A. Like actually harming somebody, actually like -- like
19 -- yeah, harming somebody, you know, shooting them or
20 whatever.

21 Q. Was there any discussions regarding a specific intent
22 to kill?

23 A. I believe so.

24 Q. Okay. And in terms of -- with, again, sentencing
25 ranges, did you know how much time were you were facing

1 prior to going to trial?

2 A. Yes, sir. My plea deal.

3 Q. No, in terms of the charges themselves, did you know
4 what the maximum sentence was for attempted murder?

5 A. Yes, sir.

6 Q. And what was that?

7 A. Zero to thirty, I believe.

8 Q. That's right. And so you-all did discuss that at
9 least in context of the plea offers?

10 A. Yes, sir.

11 Q. Okay. And in terms of, again, legal issues, was there
12 any discussion regarding trying to move to sever charges or
13 challenge the identification in the case?

14 A. No, sir. I don't know what that is, sir.

15 Q. All right. So there was no discussions about
16 potential -- challenging legal issues or potential
17 defenses?

18 A. No, sir.

19 Q. Was there any discussions in regards to what the theme
20 or theory of the defense was going to trial?

21 A. Break that down a little bit more. I don't
22 understand.

23 Q. In other words, in meeting -- in preparation for trial
24 prior to you actually physically being in court for the
25 trial, was there a discussion saying this is what our --

1 what we're gonna present to the jury if we go to trial as
2 to why you would be not guilty?

3 A. Yeah. Yes, sir. We talked about that, I believe.

4 Q. And when you say you believe, what was your belief?

5 A. Like just let me know what -- like what's the statute
6 of limitations of the charge, like zero to thirty for
7 attempted murder.

8 Q. And I guess -- and I apologize. I might have been
9 more confusing than I needed to be. So prior to the trial,
10 was there any discussion about what he was gonna present,
11 what your defense would be at trial?

12 A. No, sir. I just -- no, sir. I think I was just --
13 I think he told me he was just gonna handle everything, do
14 all the talking, and then during trial I changed my mind
15 and then that's when I testified on my behalf.

16 Q. And when you say you changed your mind, you meant
17 about testifying?

18 A. Yes, sir.

19 Q. You initially thought you weren't gonna testify?

20 A. No, sir.

21 Q. And you-all had the discussion during that break?

22 A. Yes, sir.

23 Q. And what did he tell you during that discussion during
24 the break?

25 A. I can't remember exactly. I can't remember.

1 Q. But whatever the discussion was, you decided that you
2 were gonna testify at that point?

3 A. Yes, sir.

4 Q. And you-all had never prepped or done anything?

5 A. I changed my mind because I think they had read --
6 I think the judge or somebody had read the statute of
7 limitations of attempted murder and I realized that that
8 wasn't attempted murder, so that's what made me change my
9 mind during trial.

10 Q. All right. And so you were saying you heard the judge
11 basically describe what attempted murder was and you -- at
12 that point you were gonna move forward with testifying?

13 A. Basically, yeah. Yes, sir.

14 Q. Now in terms of, again, any other issues, once your
15 co-defendant pled guilty when the trial started or during
16 that selection process when he plead guilty, was there any
17 discussion by your lawyer to move for a continuance, to
18 move for a mistrial, to move for recusal of the judge that
19 was holding his sentence in abeyance since he was gonna
20 testify in your case?

21 A. No, sir. That -- that had something to do with it,
22 too. I had -- me and my co-defendant agreed on our going
23 to trial and then at the last minute in the holding cell
24 they was saying they were gonna go ahead and plead guilty
25 to it and they were gonna testify on me, so I was just like

1 I'm gonna testify and say like -- on my behalf just to try
2 to cover up, you know what I'm saying? Like I didn't
3 really -- I didn't attempt to murder him, you know what
4 I'm saying? I wasn't attempting to murder him. I was
5 just trying -- it was road rage and I was trying really to
6 protect myself and keep going, you know what I'm saying?

7 Q. Understood. Because your testimony was essentially a
8 self-defense type testimony?

9 A. Yes, sir.

10 Q. And I guess that will maybe help clarify what I was
11 trying to ask earlier. Was there any discussion prior to
12 trial about a self -- self-defense?

13 A. Yes, sir. Me and my lawyer. Yeah. Yeah.

14 Q. And describe that part then, what that discussion was
15 like.

16 A. Like it was road rage, you know what I'm saying? So
17 it was road rage and I -- you know what I'm saying? I
18 seen the man clutching on something, so I was assuming he
19 was gonna do something to me, so I was just trying to get
20 him out of the way. Like I said, I only shot one time to
21 keep on going, you know what I'm saying, and take my
22 co-defendant to school, but -- so that's why -- that's why
23 I testified and said I wasn't trying to kill him. I was
24 trying to -- self-defense, you know.

25 Q. And in terms of your case, during the trial was there

1 any other discussions about what was going on during the
2 trial? Was it -- did you have an active role in that at
3 all?

4 A. What do you mean by that?

5 Q. In other words, was he discussing anything with you
6 during the trial about what was going on or --

7 A. During the trial, no, sir.

8 Q. Okay. And in terms of --

9 A. I mean, yeah, yeah. He was -- yeah, he was --

10 Q. Go ahead.

11 A. Yeah, we was going through things like. Yeah. I
12 mean, just like have a conversation about what's going on
13 and stuff.

14 Q. And in preparation for trial, just to make sure and
15 be clear, there's some concessions he makes in opening
16 statement that he also makes in closing statement. Did he
17 basically tell you prior to trial that he was gonna admit
18 guilt on certain things at trial?

19 A. No, sir.

20 Q. Did he get your permission to do that?

21 A. No, sir.

22 Q. And so during opening statement and closing whenever
23 he made concessions regarding your guilt, those were not
24 based on your -- you did not give permission prior to trial
25 to do that?

1 A. No, sir.

2 Q. Now in terms of him referencing your prior criminal
3 history regarding a juvenile record, those things, did
4 you-all discuss any of that prior to trial?

5 A. No, sir.

6 Q. All right. So when he brought those things up, that
7 was a decision he made himself?

8 A. Yes, sir.

9 Q. And I guess I just want to be clear in terms of the
10 specifics with self-defense. What exactly did you-all
11 discuss prior to trial?

12 A. That that was the game plan. Like it was
13 self-defense, you know what I mean? I wasn't trying to
14 attempted murder him.

15 Q. And so at that point the theory was or the strategy
16 was self-defense, but you-all had never prepared for you
17 to testify?

18 A. No, sir.

19 Q. All right. So you-all never had any back and forth
20 or prep for you to testify?

21 A. No, sir.

22 Q. Or discussions until that break?

23 A. No, sir.

24 Q. But the theme of the case, the defense that was gonna
25 be presented, was self-defense?

1 A. Yes, sir.

2 Q. Okay.

3 MR. PHILLIPS: A moment, Your Honor?

4 THE COURT: Yes, sir.

5 BY MR. PHILLIPS:

6 Q. In terms of, again, preparation for trial, was there
7 any discussion from your lawyer about trying to obtain any
8 records regarding your head injury or school records or --

9 A. No, sir.

10 Q. Medical records? Was there any discussions about any
11 of that?

12 A. No, sir.

13 Q. Was there any discussions about having you seek an
14 evaluation, whether it would be a private evaluation?

15 A. No, sir.

16 MR. PHILLIPS: No further questions, Your Honor.

17 THE COURT: All right. Thank you.

18 Ms. Battenfield.

19 MS. BATTENFIELD: Thank you, Judge.

20 CROSS-EXAMINATION

21 BY MS. BATTENFIELD:

22 Q. Good morning, Mr. Hare. How are you?

23 A. Good morning to you.

24 Q. Now, Mr. Hare, while you were testifying during trial
25 -- because you testified for quite a while in your defense,

1 right?

2 A. Right.

3 Q. Your defense attorney brought up a few of your DJJ --
4 I know there was a shoplifting one. He talked about it at
5 trial. He asked you about it at trial. Do you remember
6 that?

7 A. I believe -- I don't remember it, but I kind of -- you
8 talking about my defense or my --

9 Q. Your defense attorney, Mr. Hamilton.

10 A. Ask the question again.

11 Q. He asked you at trial about certain things like
12 shoplifting, prior -- different offenses on your prior
13 record, right?

14 A. I can't remember.

15 Q. That's all right. We can move on. I want to talk to
16 you about your plea agreement really fast because I know
17 you mentioned it and you said the solicitor, Mr. Mark
18 Moyer, he had offered you a plea agreement, right, before
19 trial?

20 A. I don't know who offered it, but somebody offered me
21 a deal. Not the same day of trial, but --

22 Q. Sure. Yeah.

23 A. -- like a month or two before, something like that.

24 Q. Okay. And you said it was a plea offer.

25 A. Yeah. I don't know who offered the plea, but, yeah,

1 my lawyer acknowledged me that I had a plea.

2 Q. Great. And -- but the offer was, to my understanding,
3 if you would plead guilty to assault and battery high and
4 aggravated or what's called ABHAN, you wouldn't go to trial
5 on the attempted murder, right?

6 A. No. Assault and battery was never brought up until
7 after I got -- founded not guilty of attempted murder.

8 Q. Okay. Because you just said a second ago you were
9 offered a plea offer for ABHAN.

10 A. No, that's not what I said.

11 Q. So what was the plea offer for?

12 A. I think my last plea was -- it was twenty and then
13 twenty-five, I believe.

14 Q. Not the carjacking. You pled guilty to carjacking,
15 but I'm talking about before the attempted murder trial.
16 I'm only talking about the attempted murder and the failure
17 to stop right now.

18 A. Okay.

19 Q. So you were offered a plea agreement before that
20 trial, to plead guilty before that trial, right?

21 A. Right, to attempted murder.

22 Q. Okay.

23 A. It was never ABHAN until I got founded not guilty of
24 attempted murder, right then and there, and then it hit
25 me they found me guilty of ABHAN without preparing me or

1 nothing. I was never prepared to go for the statute of
2 limitations of ABHAN. I never heard of ABHAM -- ABHAN up
3 until I got found not guilty of attempted murder.

4 Q. Okay. But you chose to not plead guilty and go to
5 trial, right? It was your choice?

6 A. Yeah.

7 Q. Great. Now I was reading the transcript just a
8 second ago of your testimony. So do you remember what you
9 told the judge and told the jury at your trial as to what
10 happened?

11 A. A little bit.

12 Q. So that morning it was around 10:30 in the morning,
13 right?

14 A. It had to be before -- it had to be before that because I
15 was trying to take my co-defendant to school. He had just
16 got suspended from school and I was trying to make sure he
17 go to school.

18 Q. Sure. But it was -- it was during the school day,
19 right?

20 A. Yeah. So it happened like 8:30 or nine. It could
21 have been ten because he had meeting that day.

22 Q. Sir?

23 A. It could have been somewhere around there because he
24 did have a meeting, but it was somewhere in the morning
25 time, right.

1 Q. Okay. And you were driving a black Mercedes?

2 A. Yes, ma'am.

3 Q. And your co-defendant was in the passenger seat?

4 A. Yes, ma'am.

5 Q. And then what happened? You pulled up next to the
6 individual in the other vehicle and it was -- to my
7 understanding it was a yellow vehicle, it was a drivers ed
8 vehicle, so a teacher who's teaching other students how to
9 drive?

10 A. I don't know.

11 Q. And it might -- may or might not -- excuse me -- may
12 or may not have red letters on the side that said driving
13 school?

14 A. Yeah.

15 Q. Okay. So when you came across this vehicle, what
16 happened?

17 A. It was road rage. I thought he was -- I don't
18 remember exactly how it started, how it happened, but I
19 know it was road rage and I thought he was clutching, I
20 thought he was bending -- he was fixing on bending over
21 to grab something, so I was like just go ahead and I kept
22 going and he came up beside me and I only shot one time and
23 I kept going, kept going. I thought he was trying to harm
24 me, so.

25 Q. So road rage on your part or his part?

1 A. I mean, both.

2 Q. Okay.

3 A. Road rage. We was both like having a little like
4 arguments through the window and I kept going. Like that's
5 a slow car. I kept going, it ended up beside me again, so
6 then that's when I seen him clutching and then I shot.

7 Q. Sure. So on Appendix 313, this is your -- your
8 testimony, you said I was in the middle lane and he came
9 from -- there's a lot of traffic and he swerved in front of
10 us and he almost hit -- we almost hit his back end and he
11 stayed in the middle line. Does that sound right?

12 A. It could be. I don't -- I don't remember --

13 Q. All right.

14 A. -- exactly what happened that day.

15 Q. And then later on Appendix 313 you were asked the
16 question: So what did you do about it? And you answered
17 -- this is at line 24: Well, when I caught to him after a
18 red light I was beside him. He was waving his hand, doing
19 his middle finger, this is now on Appendix 314, the top,
20 and laughing, and then when I seen -- my window was already
21 down looking at him and he started reaching down and then I
22 -- well, I pointed my gun, I shot a gun at -- I tried to
23 hit the wheel so I would scare him off and I didn't know
24 what he was about to do. I thought he was endangering my
25 life by reaching down like picking up a weapon. Right?

1 A. Right.

2 Q. Does that sound about right?

3 A. I can't remember exactly, but, yeah.

4 Q. And then later it says you fired the gun one time,
5 right?

6 A. Correct.

7 Q. So you don't contest pointing the gun at him and
8 firing, correct?

9 A. What's contest mean?

10 Q. You're not saying that's not true? Like you did point
11 the gun, right?

12 A. From what I remember, yeah.

13 Q. Okay. Did you ever see a weapon in his hand?

14 A. I think so. I couldn't see 'cause like he had a bag
15 or something over his hand. There was something in his
16 hand, yeah.

17 Q. Okay. Because you testified at trial that you only
18 saw him reaching down.

19 A. Yeah. Correct. Yeah. Correct.

20 Q. Okay. And did any part of his vehicle ever hit your
21 vehicle?

22 A. I can't remember.

23 Q. Were --

24 A. I can't remember.

25 Q. Were you ever actually in danger from him?

1 A. Yeah.

2 Q. Like your body being hurt?

3 A. No. You say my body was hurt?

4 Q. Were you ever in danger of him -- of your body being
5 hurt by him?

6 A. Yeah, I thought -- yeah, I thought he was about to
7 harm me.

8 Q. Right. Okay. And then after that -- what happened
9 after that? Was that the end of the incident? You shot at
10 him and then what happened?

11 A. Yeah, I believe that was it.

12 Q. All right. And then you took your co-defendant to
13 school after that?

14 A. Yeah.

15 Q. All right.

16 A. Correct.

17 Q. And then -- so there's a separate charge that you were
18 also tried for at the same time. Failure to stop for a
19 blue light. Do you remember what happened with that?

20 A. No.

21 Q. Did you pick up another person that day after -- in
22 your same black Mercedes?

23 A. I don't remember. No. Yeah. Yeah. Yeah. Yeah. I
24 caught my other co-defendant in the car.

25 Q. Okay.

1 A. Oh, yeah. That's what -- that's where the failure to
2 stop for blue lights come from.

3 Q. Okay. And what happened with that? Law enforcement,
4 how did you meet them that day?

5 A. They hit the blue lights and got behind us or
6 whatever. I really don't remember all that.

7 Q. And did you stop?

8 A. I don't remember.

9 Q. Did you conduct a ten to 15-minute high speed car
10 chase through the city of Greenville with law enforcement;
11 do you remember?

12 A. Yeah. I remember that. Yeah. Yeah.

13 Q. Okay. And that was -- I mean, you conceded that at
14 trial, right? You were guilty of that, right? Because
15 they -- they caught you in the car driving.

16 A. Correct.

17 Q. Okay. So you never said I was not guilty of that.
18 You said from the beginning hey, you know, I was guilty of
19 that?

20 A. Correct.

21 Q. Okay.

22 A. I didn't say that, but correct. I was found guilty.

23 Q. All right.

24 MS. BATTENFIELD: Thank you, Mr. Hare.

25 No further questions, Judge.

1 THE COURT: Mr. Phillips.

2 MR. PHILLIPS: Yes, sir.

3 REDIRECT EXAMINATION

4 BY MR. PHILLIPS:

5 Q. As to the failure to stop for a blue light charge,
6 was there any discussion in preparation for trial that
7 Mr. Hamilton had with you about moving to sever that? In
8 other words, to have a separate trial to make the attempted
9 murder trial separate, basically requesting that the Court
10 have the attempted murder trial separate from the failure
11 to stop for a blue light? Did you-all discuss that at all?

12 A. No, sir.

13 MR. PHILLIPS: No further questions, Your Honor.

14 THE COURT: All right.

15 All right. Mr. Hare, you may step down.

16 (Witness excused.)

17 MR. PHILLIPS: Your Honor, the Applicant would call
18 Ernest Hamilton as the next witness.

19 THE CLERK: Place your left hand on the Bible and
20 raise your right hand.

21 (Whereupon, Ernest Hamilton was duly sworn by the
22 Clerk of Court.)

23 THE CLERK: Thank you. You may be seated. And
24 please state your full name for the record.

25 THE WITNESS: My name is Ernest Hamilton.

1 THE COURT: Thank you, Mr. Hamilton.
2 Counsel.

3 MR. PHILLIPS: Thank you, Your Honor.

4 ERNEST HAMILTON,
5 having been duly sworn, testified as follows:

6 DIRECT EXAMINATION

7 BY MR. PHILLIPS:

8 Q. Good morning, Mr. Hamilton.

9 A. Good morning.

10 Q. If you could, kind of describe how you were retained
11 in this case.

12 A. I believe I was referred to Braxton's family through
13 an associate of mine and --

14 Q. His mother came and hired you?

15 A. -- his mother came and hired me, yeah.

16 Q. And, I guess, specifically I wanted to go to in
17 preparation for the trial, you did meet with him?

18 A. I did. I did.

19 Q. And you-all went over the discovery?

20 A. We went over the discovery.

21 Q. And so ultimately when you went to trial, this was a
22 joint trial of both co-defendants and charges; is that fair
23 to say?

24 A. That's fair.

25 Q. And so he had a co-defendant named William Hunter?

1 A. He did.

2 Q. And he had both the attempted murder charge, as well
3 as that failure to stop for a blue light charge?

4 A. Yes, I think it was -- yes.

5 Q. And so at any point was there a strategic decision you
6 made not to move to sever that failure to stop for a blue
7 light charge?

8 A. That portion, I -- I never came up with that portion
9 of a strategy in the case.

10 Q. And, if you could, explain what -- what was the
11 strategic decision not to move to sever?

12 A. I -- I just didn't consider the severance of the case.
13 It was a -- a nonissue in my opinion as to according to the
14 facts and the discovery. There's no question that, you
15 know, there was a police chase and my client was driving
16 the automobile, so.

17 Q. And you had -- so just to make sure factually, and you
18 tell me if I'm wrong, so you have this attempted murder
19 allegation, these charges where that happens in the
20 morning, Mr. Hare's alleged to have taken his -- the
21 co-defendant and Mr. Hunter back to school at that point;
22 is that right?

23 A. That's right.

24 Q. And then he leaves and after that a car chase occurs.
25 Is that --

1 A. That's correct.

2 Q. Now in terms of moving to sever, was there any
3 specifics as to, you know, challenging that in terms of
4 had you had any thought processes why you didn't want to
5 try to move to sever that?

6 A. I just -- that never -- that strategy never came --
7 came to my thought process.

8 Q. Now during the -- kind of the pre-trial part, and
9 definitely clarify for me if I misstate anything, at one
10 point Mr. Hunter, the co-defendant, pleads guilty; is that
11 right?

12 A. He did.

13 Q. And so -- and, again, just to make sure, at what point
14 -- I mean, it's essentially you have jury selection. So,
15 in other words, both Mr. Hare and Mr. Hunter proceeded
16 through jury selection, right? In other words, the venire,
17 the jury pool, they see two defendants that are on trial?

18 A. That's right.

19 Q. And a jury's selected?

20 A. Absolutely.

21 Q. So the impaneled jurors see the two -- the two
22 defendants who are on trial?

23 A. They did.

24 Q. And then during a break Mr. Hunter pleads guilty?

25 A. Yes.

1 Q. All right. And during that break Judge Miller says
2 he's gonna hold the sentencing for Mr. Hunter in abeyance?

3 A. That's correct.

4 Q. And at that point the jury is told that one
5 co-defendant has pled guilty to assault and battery of a
6 high and aggravated nature?

7 A. That's right.

8 Q. All right. Now at that point when the jury has seen
9 two defendants who have pled not guilty go through jury
10 selection, they get impaneled and now one of them has pled
11 guilty to assault and battery of a high and aggravated
12 nature, the judge is holding the sentence over their head
13 and he's gonna testify as a witness in this trial?

14 A. That's right.

15 Q. Is that all fair to say?

16 A. That's fair.

17 Q. And so at any point did you make a strategic decision
18 to move for a continuance or move to recuse Judge Miller
19 in the sense that he's gonna have to impose a sentence on
20 Mr. Hunter's cooperation essentially, you know, whether he
21 testifies truthfully, all of those will be factors for him
22 to consider, but the fact that also when you have -- I
23 guess kind of threefold. You have, one, a motion for
24 continuance or a motion for a mistrial or a motion for
25 recusal of Judge Miller. Had you thought about any of

1 those things at the point where the impaneled jury knows
2 that there were two defendants that were going to trial
3 and one has now pled guilty and gonna be a material witness
4 in this trial?

5 A. Yeah, and all of that happened -- prior to that
6 happening, I had met with co-counsel long before the trial
7 took place and we had a conference and preparing for the
8 case and when he pled guilty it was a complete ambush to me
9 and then my strategy at that time became to take advantage
10 of that, you know, so the motion to sever didn't -- or the
11 mistrial or to continue did not come up. It was -- it was
12 all to my client's advantage.

13 Q. And so, I guess, if you could, could you explain where
14 that advantage would be for the impaneled jury to know that
15 there were two defendants, now there's one and one of those
16 defendants is gonna testify against the other?

17 A. In that my -- it was the advantage that he would
18 testify to what happened and that it was no intent to
19 kill anybody, you know, that my client didn't try to kill
20 anybody. My whole strategy in this case was that he --
21 there was no intent to murder.

22 Q. And so as far as the thought process -- and I'm
23 sorry to kind of keep going in circles, but the thought
24 process of moving for a continuance or a mistrial, had you
25 considered any of those?

1 A. I -- I did not.

2 Q. And in terms of kind of maybe that next level since
3 Judge Miller's gonna have to impose the sentence on
4 Mr. Hunter, but also preside over the trial and impose a
5 sentence on Mr. Hare, had you thought about whether to move
6 to recuse him to have a different trial judge?

7 A. I did not.

8 Q. Now before we go too far, you were present in the
9 courtroom. We didn't sequester you. You heard
10 Dr. Maddox's testimony. Now knowing that testimony and
11 the findings, would it be your opinion that had you been
12 able to present that mitigation evidence to Judge Miller
13 that that potentially could have impacted his sentence?

14 A. Oh, yes, if I knew that he had -- that the doctor
15 could testify to all of that and Judge Miller was able to
16 take that into consideration in sentencing.

17 Q. And in terms of, I guess, that point, I just want
18 to make sure -- I'm not gonna put words in your mouth.
19 Obviously you said if you knew, so I guess your position --
20 and, again, I'm not gonna put words in your mouth, is you
21 didn't have any hesitation about presenting that type of
22 mitigation evidence?

23 A. No, it was to his advantage if that would be a
24 mitigating factor in the sentencing portion. His whole --
25 yeah, I mean, you know, any evidence.

1 Q. Did you have any specific discussions with him about
2 kind of his background, his understanding, his -- and,
3 again, you referenced his juvenile record, his DJJ. Did
4 you ever get those records in preparation for trial and
5 review them?

6 A. No, I didn't other than the prosecutor presented it
7 to me, you know, in discovery that he had them.

8 Q. The criminal history part of it?

9 A. Yes.

10 Q. But not the actual records of his --

11 A. No.

12 Q. -- intellectual deficit or his IQ or anything of that?

13 A. That's right.

14 Q. So you were unaware -- you didn't get those records
15 from DJJ yourself?

16 A. No, I didn't.

17 Q. And had you -- again, I know we're asking in
18 hindsight, and that's always the trial lawyer's dilemma,
19 again, looking back had you requested those DJJ records
20 knowing that -- that potentially you would have seen those
21 -- that they've had him evaluated, that he's had a low IQ,
22 that he had intellectual deficit --

23 A. Right.

24 Q. -- again, now having that opportunity with what we've
25 presented as far as an expert opinion, would you have hired

1 an expert to present mitigation evidence?

2 A. I would have, yeah. I had no -- yeah, knowing what I
3 know now, yes, I would do that, but there was nothing to
4 indicate that I needed to present that.

5 Q. But you were aware, again, that he had been to DJJ.
6 You referenced the DJJ record in trial --

7 A. Right.

8 Q. -- and so you knew that he had been to DJJ, you knew
9 that there were DJJ records, but you didn't obtain them?

10 A. Right.

11 Q. Okay. In terms of your preparation for trial, could
12 you kind of explain what -- what was your process? What
13 did you go through to prepare for this trial?

14 A. Absolutely. Just counseling and meeting with the
15 client and going over discovery, understanding what the
16 State evidence would be and what would be the items they
17 would prove, exactly what could be presented as far as the
18 State case in chief and then the defense to it, you know,
19 how to counteract the -- you know, truthfully, the things
20 that happened. And we can't -- we couldn't change the fact
21 of what happened, but we could, like I say, mitigate and
22 expound on the action taken and, therefore, it required the
23 -- the malice that he was charged with, the intention to
24 harm and kill, how would he counter that, you know.

25 Q. And so as far as him -- and, again, I'm not gonna

1 put words in your mouth, what discussions did you-all have
2 about his right to testify or refuse to testify? What
3 discussions did you-all have about that?

4 A. Just how we're gonna show that he had no intent to
5 kill, you know, there was the inference of a gun, of
6 malice, and the victim in the case, you know, stating that
7 he was in fear and -- and what actually happened, a gun was
8 used, and how would we counter the intent part of the case,
9 you know.

10 Q. Did you-all do a -- did you-all prepare him to -- did
11 you prepare him to testify?

12 A. We went over his story like he just said, that he
13 wasn't intending to shoot anybody. He was trying to -- my
14 position in talking with him back and forth, you know, it
15 was more of a malicious damage to, you know, property. He
16 intended to shoot the car. His intent from my discussion
17 and my memory of what his defense was is that it was road
18 rage. The victim in the car made gestures to him and he
19 made gestures back, he responded by intending to shoot the
20 tire. He didn't hit the tire, he was a poor shot, and hit
21 the car door, and then the trajectory of the -- of the
22 bullet at trial showed it going through the car door, you
23 know, not at a person, and that his intention was not to
24 commit murder. It was to do damage, malicious damage, and
25 -- but the legal theory of, you know, that the car's a part

1 of the person driving it, you hit the car, you hit the
2 person and, therefore, under that jurisprudence that it
3 would show assault of a high and aggravated nature.

4 Q. And so you had meetings with the co-defendant's
5 attorney. You-all were going to have a joint defense?

6 A. That's right.

7 Q. And then they deviated last minute after jury
8 selection?

9 A. We were ambushed.

10 Q. Now in terms of -- and, I guess, with the changing
11 of the co-defendant's decision to plead guilty after jury
12 selection, the joint defense was gonna be, specifically
13 what was the co-defendant's position going to be?

14 A. I'm not -- I'm not exactly sure. You know, he was
15 gonna tell his part of the story, but it was not to plead
16 guilty, the point was, you know, and -- and it was also to
17 the -- to defeat the evidence of the State that it was
18 two shots, you know, and where would the two shots come
19 from, you know, and my client didn't fire twice and, you
20 know, so part of our defense was that -- and during the
21 trial in the cross-examining of the victim in the case, he
22 showed that he kind of escalated and kind of embellished
23 what really happened there and the reason why, you know, he
24 was -- you know, he even made up the fact at trial that he
25 hurt himself ducking and trying to dodge a bullet, you

1 know, when that conversation never was taken place at the
2 -- at the scene. So, you know, it was -- it was a road
3 rage case and I presented to the jury that my client did
4 not have intent to commit murder and I was asking for not
5 guilty on murder.

6 Q. Now as far as the lesser included offense part of it,
7 could you explain to me what discussions you had with him
8 about the lesser included offense? In other words, if he
9 goes to trial is it your position he was aware that he
10 could be found guilty of assault and battery high and
11 aggravated?

12 A. I'm not -- he testified that he don't remember me
13 saying -- I can't say that yeah, I remember telling him
14 exactly that, but, you know, in my mind we -- we talked
15 about that it wasn't -- he was guilty of something in that,
16 but it was not intention to kill anybody, you know. It was
17 a malicious damage to a vehicle.

18 Q. And, I guess, as far as your memory is concerned,
19 you don't have any specific memory of having the specific
20 conversation that if you go to trial the State could ask
21 for a lesser included offense?

22 A. We would ask for -- the State was asking for a
23 conviction.

24 Q. Or -- I mean, but sometimes that they have the
25 opportunity?

1 A. Yeah, that was a lesser included. I mean, I don't
2 recall specifically doing that, but generally I do, you
3 know. We saying we can shoot for that and that could --
4 and now that I think about it, I'm sure I mentioned that,
5 you know, that you could get less -- that we're not
6 shooting for murder. They gonna find you guilty of
7 something.

8 Q. And, I guess, maybe that's my question.

9 A. Yeah.

10 Q. So I understand you had that conversation --

11 A. Yeah.

12 Q. -- but there wasn't a specific conversation of you
13 could be found guilty of assault and battery high and
14 aggravated nature?

15 A. And I'm not gonna say I didn't, but --

16 Q. You don't remember?

17 A. -- I don't remember.

18 Q. Fair to say. And so as far as at trial, you didn't
19 present any voir dire or any proposed voir dire of
20 questions to be asked in this case. What -- was there any
21 strategic reason why you didn't ask any or didn't request
22 to have any proposed voir dire questions of the judge --
23 for the judge to do to the jury?

24 A. I don't have any -- no, I didn't have any.

25 Q. There wasn't any specific reason?

1 A. Yeah.

2 Q. Now at trial Judge Miller -- there was an exchange
3 about the number of jury strikes with -- in this case,
4 essentially that in a joint trial as far as that
5 standpoint. Was there any strategic reason -- I mean, his
6 decision was, again, to limit it to ten strikes, five for
7 the State if I remember correctly, and ten for the -- five
8 for each defendant. Is that a fair memory?

9 A. That's -- yeah.

10 Q. And at this point co-counsel's -- or, excuse me,
11 let me rephrase. Co-defendant's attorney, Mr. Warder,
12 essentially argued under Section 14-7-1110 -- 1110, excuse
13 me, tried to argue that it should be eligible for twenty
14 strikes. Do you remember that?

15 A. I remember, yes.

16 Q. Or twenty preemptory challenges to be specific?

17 A. That's right.

18 Q. And, of course, Judge Miller denied that?

19 A. (Nods head.)

20 Q. Was there any specific reason why you didn't join in
21 that?

22 A. I didn't join in it. No specific reason not that I
23 didn't.

24 Q. Now at trial ultimately -- I'm trying not to jump
25 around.

1 MR. PHILLIPS: A moment, Your Honor.

2 THE COURT: Yes, sir.

3 BY MR. PHILLIPS:

4 Q. Now in this case there was an identification process.
5 Was there any specific reason as far as for a Neil v.
6 Biggers identification process? What was your strategy in
7 regard to trying to challenge that identification?

8 A. I didn't find the identification to be an issue. I
9 didn't challenge any identification.

10 Q. Okay. So your strategic reason, you didn't find it to
11 be -- and, again, I apologize. You just didn't find it to
12 be prejudicial or --

13 A. I didn't.

14 Q. And do you remember how they did the identification
15 procedure?

16 A. I don't remember.

17 Q. Now during your opening statement you make a reference
18 to the defendants essentially -- them not being in school
19 and that they were up to no good, about nothing good going
20 on. Essentially could you walk me through as far as what
21 the trial strategy is, the -- and, I guess, and I'll be
22 specific and I can certainly show you.

23 MR. PHILLIPS: Your Honor, may I approach to kind of
24 help him?

25 THE COURT: Yes.

1 BY MR. PHILLIPS:

2 Q. I know it's been a long time and I've been there.

3 A. Yes, sir. I appreciate it.

4 Q. So, again -- so on page 74 of the trial transcript
5 in opening statement you're explaining on -- starting on
6 line 13, that this happened on September 1st, during school
7 about, 10:28. These two boys should have been in school.
8 They were not in school and if you're not in -- if you're
9 not -- no school nothing good is gonna happen, nothing good
10 did happen, nothing good happened, and I believe that the
11 evidence will show that the victim in this case also didn't
12 like the fact that these two boys were riding around in a
13 late model Mercedes.

14 A. That's right.

15 Q. And so could you kind of walk through what the
16 strategy is to kind of concede to the jury that they were
17 up to no good or nothing good was happening with them?

18 A. Well, it's they weren't in school. They should --
19 they should have been in school and then this would have
20 never happened, but they were -- and then that's what
21 happened. They weren't in school and -- and then all this
22 trouble happened and that -- but that -- the other point
23 was, is that the drivers ed guy, and he sort of testified
24 to it, that he -- he participated in this. I think he got
25 mad because they were driving and cutting him off and, you

1 know, he participated in this.

2 Q. And I guess as far as the strategy is self-defense,
3 as far as explaining that your client was up to no good or
4 nothing good was going on with them, I'm just trying to
5 figure out the strategy with that. Was that --

6 A. Oh, no, no, no, no, no. That -- yeah, let me explain
7 that. You know, the point of that is that you were
8 supposed to be in school and had you been in school this
9 wouldn't have happened, and that's it. It was just a
10 statement pre -- preference -- preface, whatever the way
11 you say that word. You know, hey, had you been in school
12 this wouldn't have happened, but you wasn't, and that's why
13 this happened. It was just an opening statement in that,
14 you know, the conduct -- stay in school is the point.

15 Q. Understood. And in your opening you tell the jury
16 that -- essentially that he's gonna testify. He's gonna
17 -- that Mr. Hare's gonna tell you these things, and I
18 understand that he ultimately did testify, but at that
19 point you've committed him to testify and he has a
20 constitutional right not to present any evidence. Could
21 you walk me through that part essentially? And, again,
22 I'll --

23 MR. PHILLIPS: Your Honor, if I may?

24 THE COURT: Yes.

25 BY MR. PHILLIPS:

1 Q. On page 80 of the trial transcript, I believe it says
2 see, Braxton, he will tell you when he takes the stand in
3 his own words what happened and his story will be exactly
4 like Mr. Moyer said that his witnesses are going to say.
5 He's gonna tell you what was reported to the police except
6 who started the road rage exchange.

7 A. Yes, sir.

8 Q. So in terms of committing him in opening statement to
9 testify, what was the strategy if he decided I'm not gonna
10 testify and you've now told the jury, you've now committed
11 him to testify?

12 A. I -- I had all the confidence in the world that from
13 my preparation for this case that his defense was that I
14 did not shoot that gun -- I shot the gun, but I didn't try
15 to kill him. I tried to shoot his wheel out. Now the
16 self-defense part, it wasn't -- it was talked about, you
17 know, that he could have been reaching for a gun and all
18 that. I don't know how well that came -- he did on the
19 stand in that portion of it, but the key to it, the
20 strategy, was that he was gonna testify, he was gonna
21 explain that he did not attempt to murder anybody.

22 Q. But, again, if -- and I understand, you know, we're
23 all -- we're looking at it in hindsight, but -- and he did
24 testify, but at that point you boxed him into where he had
25 to testify or the jury would have -- I mean, you were

1 telling the jury he's gonna testify.

2 A. Uh-huh.

3 Q. And so I'm just trying to -- what was the strategy
4 there to commit him to testify when he had a right not to?

5 A. Well, that's -- he had a right not to and --

6 Q. But if he didn't testify, if he didn't take the stand
7 and you offered that to the jury, I mean, that would be
8 detrimental to his case, right?

9 A. Yeah. Absolutely.

10 Q. And so what was the strategy for that?

11 A. That he was gonna testify.

12 Q. Understood. And so during opening -- I should have
13 did this all at once -- there was -- you referenced the
14 failure to stop and you concede his guilt on the failure to
15 stop.

16 A. Braxton was not trying to hide anything. He would
17 have pled guilty to the failure to stop if that would have
18 been part of -- I mean, yeah. I mean, that was part of
19 the plea negotiations, but, you know, he -- he didn't go
20 to trial on failure to stop and I was --

21 Q. But he did.

22 A. My strategy was to tell the jury that we're not up
23 here trying to waste your time with a failure to stop. My
24 strategy.

25 Q. And so, I guess, if we could, if we -- so in the

1 reflection of it, was there any -- did you try to plead
2 guilty to the failure to stop so he wasn't going to trial
3 on it?

4 A. I can't -- I don't know if I presented that to the
5 solicitor or whether or not the solicitor would allow me to
6 plead guilty to failure to stop.

7 Q. Well, I mean, it was straight up. Did you ask the
8 judge, we're ready to plead guilty to the failure to stop?

9 A. I didn't do that, no.

10 Q. Now ultimately at trial there was the door that was
11 brought in. Do you remember that?

12 A. Yeah.

13 Q. And I know that's a unique thing. It happens in some
14 cases, mainly like murder cases, but the whole door of the
15 car just was presented as an exhibit?

16 A. Yeah. That's right.

17 Q. Now that had not been in police custody?

18 A. Absolutely had not been.

19 Q. Was there any specific reason -- I guess let me go
20 back. You never objected to that door coming into
21 evidence, however, it had been in the -- at least not in
22 the State's custody --

23 A. Right.

24 Q. -- pre-trial. In other words, as far as the chain of
25 custody as we normally have with evidence, that door was

1 not in the State's custody for a significant period of
2 time. It was in, I believe -- I can pull up the transcript
3 here -- but the victim's -- it was in like a warehouse or
4 whatever --

5 A. Right.

6 Q. -- but not having that chain of custody, was there any
7 specific reason why you didn't object to having that door
8 brought in when it wasn't a secured piece of evidence that
9 you could actually have a chain of custody for?

10 A. You say I didn't object to it, but I didn't, but --
11 and if I didn't, then I took advantage of the fact that the
12 door showed exactly what Braxton said he was doing. He
13 wasn't shooting at nobody. He was shooting at the car.

14 Q. And so on page 135 of the trial transcript -- so I
15 believe they're describing what they did with -- and I'm
16 talking about the complainant in the case. It says we
17 removed the door from the vehicle because it was the only
18 part that had actual damage. We removed the door. We
19 stuck it in a storage container under lock and key until
20 just a few weeks ago when we brought it here for evidence
21 for this trial and so Solicitor Moyer says so I think your
22 father's gonna go get it now and ultimately they go to move
23 it into evidence and you have no objection. Is that --

24 A. It shows here I didn't.

25 Q. And so was there any specific reason knowing that

1 there wasn't a chain of custody on that piece of evidence
2 why you didn't object? And I think you were answering
3 that. I apologize for interrupting.

4 A. Yeah, because I -- the door was proof that he didn't
5 shoot at a person. He was shooting the car.

6 Q. Shooting the car?

7 A. (No verbal response.)

8 Q. Now in this case in the transcript there's notations
9 that there were bench conferences had, and I understand
10 that error preservation is one that -- another battle as
11 trial lawyers we fight, but those bench conferences
12 weren't put on the record afterwards to preserve those
13 conversations, those arguments and issues that were
14 discussed, preserved for appellate review. Was there any
15 strategic reason why you didn't put those bench conferences
16 on the record?

17 A. No, no reason. No specific reason.

18 Q. Now at trial you ultimately stipulated to allow the
19 car chase video in from the failure to stop. What was the
20 strategic reason for allowing that video into evidence of
21 the failure to stop?

22 A. There was no objection. It was -- the evidence speaks
23 for itself. It wasn't -- I mean, it just -- it just was
24 not objected to.

25 Q. Was there any strategic reason why you wanted it in?

1 A. I didn't want it in. It was just that the State
2 wanted it in and there was no -- I didn't -- I couldn't
3 formulate an objection to it.

4 Q. At trial there was -- the prosecutor questioned
5 Witness Salter about whether he had ever seen Mr. Hare with
6 a gun. Was there any reason why you didn't object under,
7 say, 404(b) or 403 as in a prior -- they're saying had --
8 you know, prior to that point had that witness ever seen
9 Mr. Hare with a gun before? Was there any reason you
10 didn't object to that?

11 A. Maybe I -- maybe I just missed it. Now Mr. Salter,
12 who is that?

13 Q. Walter. Let me get it up here. I think I've got it.
14 Salter. I apologize. Jaquan Salter.

15 A. Who is Jaquan Salter? Is that the victim? Who is
16 that?

17 Q. The other individual that was in the car.

18 A. Okay. Yeah. I thought it was somebody else.

19 Q. This is page 210 and so this is the direct examination
20 by Mr. Moyer that said -- so essentially they said no, sir.
21 I said I seen him prior to the incident, and Prosecutor
22 Moyer says you saw him prior to the incident with what, he
23 said with a weapon before, when, before all this happened,
24 how long before, about like a week, and he says so you've
25 seen him with a gun before? It says witness nods. Did you

1 tell an officer that Braxton Hare threw a pistol out of the
2 window while you were on that high speed chase and at that
3 point you said Your Honor, and that's where it stops, but
4 prior to all this discussion with the gun, was there any
5 specific reason why you didn't object under, says, 404(b)
6 or 403 as to the referencing of a gun prior to the actual
7 incident?

8 A. I -- I don't have a reason.

9 Q. Now during redirect examination of Darwin Shaw -- do
10 you remember Darwin Shaw? There was testimony regarding
11 firing weapons into the metal and him providing essentially
12 some opinion testimony or at least that's our position.
13 Was there any specific reason why you didn't object to
14 Darwin Shaw's testimony regarding the firing of weapons
15 into metal and his opinions of how that was done or the
16 findings of that when he was not qualified as an expert
17 witness or certainly would have exceeded the scope of
18 expertise in a general area outside -- you know, under
19 701, 702, why he wasn't qualified at that point as an
20 expert witness and he's providing what certainly would
21 potentially be expert witness or opinion testimony? Was
22 there any strategic reason why you didn't object to that?

23 A. No.

24 Q. Now during the trial there was a point where there
25 was a video recorded interview that you were trying to use

1 for impeachment through Witness Warner. Specifically --
2 let's see if I can get it up for you here. In other words,
3 I believe the -- what's presented from the transcript
4 pages 283 to 286, there is a -- the original officer who
5 conducted the interview was Kevin Moreno, but he was, at
6 least what's presented by Mr. Moyer, fired two years prior
7 to that and I believe you were trying to put the victim's
8 recorded statements, the interview, in through Officer Dave
9 Warner, who didn't conduct the interview, and Solicitor
10 Moyer objected to that and said that wasn't proper and
11 ultimately Judge Miller didn't allow to you present that
12 evidence. Was there any specific strategic reason why you
13 didn't subpoena or try to use or make, I guess, an argument
14 that that was part of the investigation that was presented
15 since you weren't able to present that evidence, that
16 impeachment evidence?

17 A. No, I don't -- I tried and I wasn't successful.

18 Q. And what was your purpose of trying to present that
19 impeachment evidence?

20 A. Impeachment evidence?

21 Q. Specifically of the complainant.

22 A. Right, yeah, to show that he -- it was -- I can't
23 remember exactly. To show that he wasn't -- I don't -- I
24 can't remember.

25 Q. Now at trial there was bandanas that were found in the

1 bookbag and ultimately Judge Miller decided to suppress
2 that, that he didn't want any kind of evidence related to
3 any implication of gangs, and so he says that's not allowed
4 to come in. Was there any reason you didn't move for a
5 mistrial or at a minimum a curative instruction when the
6 State elicited basically the testimony from Matt Owens
7 regarding those two bandanas found in a bookbag after Judge
8 Miller made it clear that that was gonna be inadmissible?

9 A. I didn't move for a mistrial, no.

10 Q. Was there any strategic reason why you didn't or move
11 for a curative instruction?

12 A. No.

13 Q. Now in terms of Mr. Hare, on his direct examination
14 you wanted to, I guess, present or you did present
15 specifically his shoplifting conviction. What was the
16 strategic reason for bringing up the shoplifting
17 conviction?

18 A. I was afraid of -- I was trying to take the sting out
19 of cross-examination from the State that if they could
20 have pierced his credibility with it rather than just to
21 be upfront that -- with the jury that he wasn't trying to
22 hide his -- his character or to lessen the sting of any
23 credibility appearance.

24 Q. And, again, on direct examination you bring up that
25 he had a strong arm robbery when he was a juvenile. You

1 go kind of through his juvenile record there and you bring
2 that up. And, again, specifically with him being a
3 juvenile, was there a strategic reason why you wanted to
4 bring up his juvenile record that generally wouldn't have
5 been able to have been elicited by the prosecutor?

6 A. That may have been a misstep by counsel.

7 Q. And so there wasn't any specific strategic reason for
8 why?

9 A. The whole thing was to take the sting out of it coming
10 out.

11 Q. Understood. And, I guess, obviously, you know, the
12 nature of it, the hindsight, with the strong arm robbery
13 being part of the juvenile record, in hindsight you would
14 have just left it as the shoplifting?

15 A. Yeah, I probably just looked at it too specifically.

16 Q. In terms of -- was there any specific reason why you
17 did not move for a directed verdict or a new trial at the
18 close of the State's case?

19 A. If I -- normally I do, but if I -- you say I didn't?

20 Q. I'll confirm. I don't want to speak out of school.
21 I have that as one of the allegations in my notes. I don't
22 want to tell you the wrong --

23 A. I -- I don't remember.

24 Q. Now in terms of the Solicitor's closing argument, he
25 provides an explanation of -- an example of reasonable

1 doubt and he compares it to a loan and during that
2 explanation of reasonable doubt he basically says if you --
3 I guess, and I'll show you again, here on page 357, he's
4 explaining that generally one of the definitions of
5 reasonable doubt, as I know you know, it would be one that
6 would cause a reasonable person to hesitate to act. Well,
7 Solicitor Moyer kind of has his own example that he uses to
8 address this and he says on page 357, for example, I'm sure
9 -- it starts up here.

10 A. Okay.

11 Q. Sorry about that. For example, I'm sure some, if not
12 all of you, on your -- own your own home. Before you
13 bought that house you looked at various properties on the
14 market, you compared pluses and minuses on each of those
15 and you probably compared several different loan offers
16 from different banks, you hesitated and examined the
17 evidence and ultimately made a decision. Now you may
18 still today harbor some doubt as to whether or not that
19 decision was the right decision; however, I put to you
20 that that decision was beyond a reasonable doubt. You
21 hesitated to act, examined the evidence and ultimately
22 made a call. And then so he goes through to explain that,
23 and exactly what I want you to do -- and, I guess, let me
24 keep saying that. On line 14 Solicitor Moyer says and
25 that's exactly what I want you to do in this case, folks.

1 I want you to go back in that jury room and carefully and
2 deliberately look at all the evidence that's been put
3 forward in this case, think about all the testimony you've
4 heard in the past day and a half and after hesitating to
5 act I want you to reach the only verdict in this case this
6 evidence allows, the defendant is guilty of failure to stop
7 for a blue light and guilty of attempted murder.

8 Now was there any specific reason why you didn't
9 object as a misstatement of law of saying that if the jury
10 has a hesitation to act that they still could find him
11 guilty?

12 A. Yeah.

13 Q. In other words, if they have a hesitation to act,
14 if they have a reasonable doubt, that they can still find
15 him guilty. Was there any reason you didn't object as a
16 misstatement of law?

17 A. That is misleading. It probably just went over my
18 head. I never -- I didn't hear that.

19 Q. The solicitor argues in closing argument specifically
20 about inferring malice, use of a deadly weapon. Was there
21 any specific reason -- and that's on, I believe, page 355.
22 Was there any specific reason you didn't object to the
23 solicitor arguing that malice could be inferred by the use
24 of a deadly weapon?

25 A. No specific reason.

1 Q. And, I guess, at that point -- I mean, had you been
2 aware of State versus Belcher and kind of the case law that
3 dealt with kind of challenging the inference of use of a
4 deadly weapon?

5 A. Yes.

6 Q. And then in closing, again, and I think you've already
7 answered this, when you essentially concede guilt on the
8 assault and battery of a high and aggravated nature, that
9 was your -- essentially your trial strategy in so many
10 terms?

11 A. It was.

12 Q. Not necessarily to have assault and battery high and
13 aggravated, just to attack the specific intent that there
14 was no specific intent?

15 A. I think that -- I'm sure that was my strategy.

16 Q. I mean, is that a fair assessment?

17 A. That's fair.

18 Q. Okay. Now was there any discussions that you had with
19 Mr. Hare prior to like -- and I guess you -- I don't want
20 to put words in your mouth since this is direct, did you
21 have any specific discussions with him about what you were
22 gonna concede in opening and closing?

23 A. No.

24 Q. So in your closing argument you reference him being --
25 on page 366, 366, about him being a troubled child. Do you

1 remember that?

2 A. (Nods head.)

3 Q. And so, again, as far as trial strategy-wise, again,
4 on 366 on line 20 you say now -- you pose the question is
5 Braxton a troubled child, you answer and you say yes, he's
6 mixed race, he was not that good in school, he's very
7 immature and he's very mischievously playful, and so with
8 that being said -- and you say his intentions in this case
9 though was to do something to the car, trying to kind of
10 balance the strategic reason of saying he's a troubled --
11 bringing in his character of being a troubled child, of
12 mixed race, that he's not good in school, that he's
13 mischievous and that his intent's to shoot the car when
14 the trial strategy is self-defense?

15 A. The trial strategy of self-defense didn't come --
16 didn't materialize in the testimony I don't believe, but
17 it was just to soften the perception that he's -- you know,
18 he -- he wasn't a little angel, you know, he had some
19 problems and -- but on this he makes decisions that --
20 inconsistent with what happened, you know, what -- the
21 intent that happened.

22 Q. Yes, sir.

23 MS. BATTENFIELD: Judge, if I may briefly? I'm so
24 sorry. I know Mr. Phillips is --

25 THE COURT: You're good. You're fine.

1 MS. BATTENFIELD: -- you know, he's still got about
2 twelve-ish, fifteen questions left in his application.
3 We've been going for over two hours. Would you like to
4 take a break at this point, Judge?

5 MR. PHILLIPS: We can take a break. I'm not gonna --

6 THE COURT: Let's take a short five-minute break.

7 MR. PHILLIPS: -- have any issue with it.

8 MS. BATTENFIELD: Sure.

9 Thank you, Judge.

10 THE COURT: We'll be at ease for five minutes.

11 MR. PHILLIPS: Thank you, Your Honor.

12 (Recess taken at 11:47 AM.)

13 (Back on the record at 11:58 AM.)

14 BAILIFF: Remain seated.

15 THE COURT: All right. We'll wait until your client
16 gets out and we'll go ahead and proceed.

17 MR. PHILLIPS: Yes, sir. Trying to keep it moving,
18 Your Honor.

19 THE COURT: No. I understand. Take your time.

20 MR. PHILLIPS: Thank you.

21 THE COURT: All right. Are we ready to proceed?

22 MR. PHILLIPS: Yes, Your Honor.

23 THE COURT: You may continue.

24 MR. PHILLIPS: Thank you.

25 BY MR. PHILLIPS:

1 Q. Mr. Hamilton --

2 A. Yes, sir.

3 Q. -- when the trial court decided to -- that he was
4 going to present the inferred malice, use of a deadly
5 weapon charge, and I think we've kind of talked about
6 that this was raised in closing by the solicitor, but
7 once Judge Miller said I'm gonna instruct the jury about
8 malice -- or inferred malice through use of a deadly
9 weapon, was there any specific reason you didn't object
10 to them presenting that jury instruction?

11 A. No specific reason.

12 Q. And you did request the self-defense instruction and
13 he said he didn't believe that there was sufficient
14 evidence. Is that fair to say as far as what was
15 presented?

16 A. I think that was the ruling by the Court.

17 Q. And your initial strategy was to present self-defense
18 and requested a self-defense instruction and ultimately
19 you weren't able to get that instruction. Is that fair
20 to say?

21 A. That's correct.

22 Q. Now for the -- what we call the Logan circumstantial
23 evidence charge, was there any specific reason you didn't
24 request to have the -- that charge presented?

25 A. No.

1 Q. And so -- and just to make sure you understand, the
2 Logan circumstantial evidence charge, it's a case that came
3 out in 2013. You can stop me if you're aware of it, but
4 essentially it's the standard charge that the appellate
5 court said needs to be presented if there's circumstantial
6 evidence in the case and request it to be presented.

7 A. Yeah. There's no reason. Yeah.

8 Q. And in terms of -- I think we hammered the lesser
9 included offense. There wasn't any strategic reason
10 per se as far as -- well, I guess, and I can take that a
11 step further. With the lesser included of assault and
12 battery high and aggravated nature being presented, was
13 there any reason why you didn't want to request the further
14 lesser included of assault and battery first degree, which
15 also is a lesser included offense of attempted murder?

16 A. No. No reason.

17 Q. Now as far as, again, mitigation, and this will be
18 both for the trial and the plea, we addressed this kind
19 of at the very beginning. With this mitigation evidence
20 obviously now, if you would have had those DJJ records and
21 seen that, you would have hired an expert to testify in
22 mitigation and sentencing?

23 A. I would have -- as it was -- was it presented today,
24 yes, I would have.

25 Q. Now in terms of the statement that was presented, the

1 interview done with police, you know, as far as having a
2 Jackson v. Denno hearing challenging the voluntariness of
3 his statement, having what we have as far as the expert
4 witness testimony of Dr. Maddox, was that -- was there
5 any position on your end as far as challenging the
6 voluntariness of his statement? In other words, had you
7 had those records, had you had an expert procured already
8 and ready for the mitigation to talk about, again, the
9 intellectual deficit, as well as the closed-head injury,
10 all of the things that was testified to as far as trying
11 to present that, and, again, I know you're getting this in
12 the hindsight part of it, presenting that as far as a
13 motion to suppress the defendant's or the Applicant's
14 statements in a Jackson v. Denno as far as involuntary?

15 A. Yes, I would have.

16 Q. In other words, you could have presented -- you could
17 have presented the expert there as well?

18 A. I would have used every thing that I knew to help my
19 client.

20 MR. PHILLIPS: Just a second, Your Honor.

21 No further questions.

22 THE COURT: All right. Counsel.

23 MS. BATTENFIELD: Now, Judge, just briefly for
24 scheduling purposes, it's 12:04. I, of course, still
25 have to question Mr. Hamilton extensively. I have a

1 witness that needs to leave at 12:45, it's the solicitor,
2 so I don't know -- and then I think Mr. Phillips also
3 has a witness via WebEx, so I don't know if we should go
4 ahead and call the solicitor now or go ahead and continue.

5 THE COURT: It's five after twelve. Let's continue
6 right now with this witness if we can get to the solicitor
7 by 12:45.

8 MS. BATTENFIELD: He needs to leave at 12:45.

9 THE COURT: Oh, he needs to leave at 12:45?

10 MS. BATTENFIELD: Yes, sir.

11 THE COURT: Counsel, what's your thoughts on it?

12 MR. PHILLIPS: It would be unusual to have someone
13 stop and then have another witness testify. I generally
14 don't like to do unusual things procedurally.

15 THE COURT: Is this the same solicitor that's on the
16 second hearing as well?

17 MS. BATTENFIELD: Yes, sir. And so for continuance
18 scheduling purposes, I have talked to Mr. Phillips about
19 it, my colleague here has two cases before Your Honor this
20 afternoon. We only transported Mr. Hare this morning,
21 but we do have Wednesday afternoon to continue this case
22 and all my witnesses are available then. I mean, I'm just
23 putting all the options before the Court.

24 THE COURT: I would prefer to finish Mr. Hare rather
25 than -- I mean, if we need to re-transport the people out

1 this afternoon, I know that's a pain, but I don't want to
2 stop this in the middle of it.

3 MS. BATTENFIELD: Yes, sir. I just know Mr. Moyer
4 needs to leave at 12:45 and, I mean, I have a quite a few
5 questions for him.

6 MR. PHILLIPS: Your Honor, the two issues, one I
7 think -- just so we can put it on the record, we did have
8 a chambers discussion this morning. The State is not
9 challenging -- because I just thought of this, I would
10 have to recall him because we didn't address that
11 specifically. The State agreed that they weren't
12 challenging based on the return that was filed by a
13 different assistant solicitor or, excuse me, assistant
14 attorney general, not challenging the statute of
15 limitations issue. They're not moving to dismiss on
16 the -- let me make sure I'm --

17 THE COURT: The second one.

18 MR. PHILLIPS: The 736, the guilty plea PCR
19 application, that they're not moving to dismiss on a
20 statute of limitations issue, that these are full
21 merits hearings on both the trial and guilty plea PCR
22 applications.

23 Is that fair to say?

24 MS. BATTENFIELD: Yes.

25 THE COURT: Okay.

1 MR. PHILLIPS: Because that way I won't have to
2 recall him on that issues, so I just wanted to make sure
3 while it was on my mind I got it out there.

4 THE COURT: No, I understand.

5 MR. PHILLIPS: Now I can tell you as far as the
6 virtual testimony it will be quick.

7 THE COURT: I don't mind calling Mr. Moyer out of
8 turn as far as that, but I don't want to call him right
9 now when we're in the middle of this witness.

10 MS. BATTENFIELD: Yes, sir. I understand that. I
11 just know my conversation with Mr. Hamilton may be twenty
12 minutes and then my conversation with Mr. Moyer will be
13 thirty and I don't want to get in the place where I can't
14 call him. But, again, we do have Wednesday afternoon if
15 I need to have Mr. Moyer back. He's just not available
16 this afternoon.

17 THE COURT: Okay. Well, let's continue with this
18 witness and we'll cross that bridge when we get there.

19 MS. BATTENFIELD: Yes, sir.

20 CROSS-EXAMINATION

21 BY MS. BATTENFIELD:

22 Q. Hey, Mr. Hamilton. How are you?

23 A. Hello.

24 Q. All right. Now to begin, I just want to briefly go
25 over all the different charges against your client. Now

1 we are here seven years later, right?

2 A. (Nods head.)

3 Q. So it's been a while, correct?

4 A. Correct.

5 Q. Now your client was looking at carjacking -- in terms
6 of a plea and the trial all because there was a concurrent
7 sentence with the plea, it's all kind of wrapped in there
8 together.

9 A. (Nods head.)

10 Q. But the pending charges at the time of trial were,
11 number one, car carjacking without great bodily injury. So
12 to you knowledge that carries zero to twenty?

13 A. That's true.

14 Q. All right. And then you have two counts of attempted
15 murder that were pending, which each carries zero to
16 thirty, correct?

17 A. Correct.

18 Q. And then you have the failure to stop for a blue
19 light, which I believe that's zero to three?

20 A. That's right.

21 Q. And then armed robbery was also pending, a zero to
22 twenty?

23 A. Right.

24 Q. So it would be fair to say your client was looking
25 at an aggregate of possibly -- if judges were to give him

1 consecutive sentences, is 102 years in jail?

2 A. A lot of time.

3 Q. So on balance getting twenty years, what's your
4 opinion about that?

5 A. My opinion is it was a lot of time. Twenty years is
6 a lot of time.

7 Q. Sure. But, I mean, compared to 102 years, twenty is
8 smaller than 102, correct?

9 A. Yeah. Yeah. That's right.

10 Q. Okay. Great. Now in terms of trial prep, you
11 testified you did meet with Mr. Hare and go over all the
12 evidence with him, right?

13 A. I did.

14 Q. For the trial, so that would have been attempted
15 murder, failure to stop, what kind of evidence did you
16 review with him?

17 A. The -- the police reports and witnesses' testimony
18 that was gonna be used at trial.

19 Q. And were there any photos of the car door or anything
20 that you looked at, photos from the solicitor?

21 A. I can't remember. I can't remember.

22 Q. It's been seven years, so I understand, but in terms
23 of -- you met with him Mr. Hare testified maybe five to six
24 times before trial to prep?

25 A. That's correct. I did meet with him a number of

1 times.

2 MS. BATTENFIELD: One second, Your Honor.

3 THE COURT: All right.

4 BY MS. BATTENFIELD:

5 Q. And then -- so just to -- not to beat a dead horse,
6 but your trial strategy was road rage?

7 A. That's correct.

8 Q. And then so in your professional opinion was there
9 evidence for self-defense or it was just mitigating the
10 road rage?

11 A. Mitigating the road rage. Self-defense evidence was
12 just his perception of he -- what he observed the victim
13 to be doing and, you know, I was -- I -- I didn't have a
14 lot other than what he said was why he was trying to defend
15 himself and the action he took.

16 Q. Sure. And is it common as a defense attorney to have
17 to kind of pivot mid trial when something happens like a
18 co-defendant pleads guilty pre-trial and you have to pivot
19 strategy?

20 A. That has never happened to me before and -- and I
21 don't recall it ever happening. That was my first
22 experience with that and, I don't know, and that's -- the
23 strategy I took was to take advantage of it. It was -- it
24 was helping my case.

25 Q. Definitely. And so the assault and battery first

1 degree, I know Mr. Phillips was just talking to you about
2 that, whether you should have asked for a jury instruction
3 on assault and battery first. Isn't it true that assault
4 and battery first degree is only harm that occurs in two
5 ways; number one, nonconsensual touching in a sexual way
6 or, number two, harm that occurs during a kidnapping,
7 robbery, et cetera, right?

8 A. Right.

9 Q. So was this trial either of those to make assault and
10 battery even possible?

11 A. I don't think it was possible, but I was -- yeah,
12 you're correct in your statement what I used as a basis for
13 my decision.

14 Q. Now to your opening statement, I know you've already
15 testified to this, but specifically on page 79 Mr. Phillips
16 contests that you were saying they were up to no good,
17 right? But that's not actually what the trial transcript
18 says specifically. It says nothing good happened.

19 A. Yeah.

20 Q. You didn't say they were up to no good?

21 A. I did not say they were up to no good. They should
22 have been in school because nothing good happened.

23 Q. Okay. Specifically you said and if you're not -- no
24 school, nothing good is going to happen. Nothing good did
25 happen. Nothing good happened.

1 A. Uh-huh.

2 Q. But you never said they were up to no good, they're
3 bad people?

4 A. I didn't say that.

5 Q. And by commenting that Applicant was going to testify,
6 that was part of your strategy from the beginning?

7 A. Yes.

8 Q. So it was not unreasonable to tell the jury at the
9 beginning of the trial that you're gonna be hearing from
10 the Applicant, right?

11 A. Right.

12 Q. Because you wanted him to explain his story?

13 A. Right. Yes.

14 Q. Now in terms of the chain of custody with the door,
15 would that have mattered because there were bullet holes
16 in the door?

17 A. I didn't -- yeah, the door helped me in the fact
18 that -- I thought the door helped as to where -- it was
19 consistent with my client saying what he was intending in
20 the firing of the gun, not at nobody, but at the car.

21 Q. And did you have any concerns that that wasn't
22 actually the actual door and the victim had tampered with
23 it in any way?

24 A. I -- I think -- I don't know if -- I can't remember
25 what -- how the discussion was about the entry of it. I

1 thought I objected to it initially. If I didn't, I don't
2 know, but -- okay. I can't remember how it got to that
3 point.

4 Q. But either way did you have any concerns that was --
5 it had been tampered with? Like --

6 A. I think I even mentioned -- no. No, I had no concern
7 that it was tampered with.

8 Q. Okay. Oh, by the way, just to pull back and zoom out
9 for a second, I forgot to ask you this. Mr. Hamilton, how
10 -- by whom are you employed at the moment?

11 A. Right now I'm in private practice.

12 Q. How long have you been in criminal law?

13 A. I've been in criminal law forty years.

14 Q. How did you get your start?

15 A. I started out as a criminal investigator, then became
16 an assistant -- went to law school and went to assistant
17 solicitor and a career prosecutor for twenty years,
18 nineteen and a half years, and then worked in criminal
19 defense for twenty years.

20 Q. Great. I appreciate that, Mr. Hamilton. I'm gonna
21 zoom back in now, but I wanted to make sure to get that in
22 the record, that you've been around the block a while in
23 criminal law.

24 Now in terms of all the different ineffective
25 assistance of counsel claims, your failure to challenge

1 the ballistic evidence just to the door, again, you said
2 that your strategy was to show that in general your client
3 was aiming at the bottom of the car, right?

4 A. (Nods head.)

5 Q. So would specific expert testimony about ballistics
6 evidence have mattered in the trial, about exactly where
7 the trajectory was?

8 A. I -- I thought it shows it was consistent -- I was
9 trying to get testimony to show that the bullet holes was
10 consistent with the intent and what happened.

11 Q. Sure. But if you, say, had called a ballistics
12 expert, would that have helped ultimately to know exactly
13 where the trajectory was or was it enough to just say there
14 were bullet holes in the bottom of the car in general?

15 A. In general. In general, it was enough in the
16 defendant's case.

17 Q. So to go to Claim Number 19, Judge, failure to
18 object to Darwin Shaw's testimony, this is apparently a
19 witness who talked about firing a weapon into metal, and
20 Mr. Phillips is saying you're ineffective for not
21 qualifying him as an expert. That's on page 233 of the
22 transcript. Do you remember at all that testimony, what
23 he testified to, Mr. Shaw, about bullets into the metal?

24 A. I don't remember.

25 Q. I apologize, Your Honor.

1 Well, just in general, Mr. Hamilton, going back to my
2 original questions about the bullets into the metal, do you
3 think it would have been expert testimony about a bullet
4 going into the car door?

5 A. If that expert -- testimony required an expert to say
6 whether or not it was a bullet? I don't know if it took an
7 expert to say that.

8 Q. I can pull up the exact testimony. Okay. This is
9 page 240. This is your first question.

10 If it's, okay, I can just read it, Judge.

11 Your first question to this witness, Mr. Shaw, on
12 cross-examination, you say okay, Mr. Shaw, you from your
13 expertise, are you able to tell from looking at what
14 direction the bullet -- that's State's Exhibit Number 15 --
15 what direction in the hole that bullet would enter, and
16 then you talk about that for a little while and the witness
17 I can tell you that it entered from the outside to the
18 inside. That answer, that the bullet entered from the
19 outside to the inside, is that expert witness testimony or
20 can any lay witness testify to that?

21 A. Yes, any layperson can testify to that.

22 Q. All right. So I know we talked -- there's -- may or
23 may not have been testimony, there's two -- or there's a
24 Claim Number 21 about a bandana, testimony about a bandana
25 being admitted at trial. I believe the solicitor ahead

1 of time objected, excuse me, to that coming in and then a
2 witness may or may not have mentioned it and then you
3 objected. Do you remember that part?

4 A. I remember. I don't remember it specifically, but if
5 it's in the transcript, I...

6 Q. Page 286 of the transcript.

7 A. Okay.

8 Q. You actually did object to --

9 A. Okay.

10 Q. -- to the witness saying that. Now just objecting --
11 I'm sorry, Judge -- I apologize. I think it's 294.
12 Yeah.

13 All right. So the testimony specifically about the
14 bandana, this is Matt Owens's direct evidence by the
15 solicitor. The question was what is -- essentially what
16 was inside the backpack that was in the front seat of the
17 Mercedes. The answer, what was inside the backpack?
18 Question, yes. The answer was there was a black and white
19 bandana, a white and black bandana question mark, and you
20 said you said Your Honor, I object. So because there had
21 been a ruling that the bandana needs to stay out, then you
22 hear testimony about the bandana, you objected, do you
23 believe there's anything else you should have done at that
24 point other than just objecting for the record?

25 A. I believe I objected for the record and -- because of

1 they had been told not to talk about that.

2 Q. Now going to the directed verdict question briefly, I
3 looked it up in the transcript and it turns out Applicant
4 -- or, excuse me, Appendix pages 303 to 304, you did move
5 for a directed verdict. So just --

6 MR. PHILLIPS: And, Your Honor, I must have -- as
7 soon as I said that, if I remembered incorrectly, we can
8 certainly waive that.

9 THE COURT: We'll strike that part. Thank you.

10 BY MS. BATTENFIELD:

11 Q. In terms of claim -- now I'm at Claim Number 26,
12 ineffective assistance of counsel for failure to object to
13 the solicitor's reasonable doubt example. Now Mr. Phillips
14 just talked to you about how the solicitor was talking
15 about an analogy about hesitating to act. Now you've been
16 around criminal law for a long time. In a trial right now,
17 what's the standard in case law for reasonable doubt? Is
18 it hesitate to act?

19 A. Hesitate to act, is it -- is that reasonable doubt?

20 Q. Correct.

21 A. That is common, yes.

22 Q. So that's the common, you know --

23 A. Theme.

24 Q. -- Supreme Court-approved definition of hesitate --
25 excuse me, reasonable doubt?

1 A. Yes.

2 Q. Now in terms of inferring malice from use of a deadly
3 weapon, you're aware that Belcher came out around 2009?

4 A. Uh-huh. Yes, ma'am.

5 Q. So Belcher was -- that's the case that said hey,
6 there's an instruction you can't charge inferring malice
7 from use of a deadly weapon if there's any evidence of
8 self-defense presented, right?

9 A. That's right.

10 Q. So you were aware of the case at the time?

11 A. I'm -- was I aware of that case?

12 Q. Because this would have been -- the trial was 2017,
13 so it's been around for a while?

14 A. Right.

15 Q. So -- but in terms of -- we were talking about earlier
16 was there evidence of self-defense, this was -- or in terms
17 of talking to the judge about jury instructions, the judge
18 I think you testified earlier --

19 A. Yeah.

20 Q. -- wasn't gonna give you a self-defense jury
21 instruction. So in your professional opinion, was there
22 enough evidence of self-defense at that point to even have
23 a Belcher objection?

24 A. I didn't -- I didn't think we developed that as well
25 as it should have been.

1 Q. And in terms of any jury instruction having to do
2 with accomplice liability, at this point there was no
3 accomplice, right, because the co-defendant had already
4 pled?

5 A. That's right.

6 Q. So there would have been no need for an accomplice
7 liability instruction or what's your opinion on that?

8 A. There was no need.

9 Q. All right. So then to lastly move to sentencing, I
10 know we talked about mitigation in this case. You spent
11 pretty much the whole trial trying to mitigate your
12 client's circumstances, correct?

13 A. Correct.

14 Q. So was there anything else you could have presented
15 as mitigation that would have helped the judge besides
16 everything we've already talked about?

17 A. I didn't -- I had nothing else to mitigate.

18 Q. Because the jury very well could have found him guilty
19 of attempted murder, correct?

20 A. Absolutely.

21 Q. And that's zero to thirty?

22 A. Zero to thirty, I think, yes.

23 Q. And that's evidence the judge heard the whole time?

24 A. The whole time.

25 Q. So then the jury found him guilty of ABHAN, which is

1 zero to twenty?

2 A. Right.

3 Q. Is there anything that you -- you said earlier
4 when you were talking about Jackson versus Denno with
5 Mr. Phillips you would have used everything you knew about
6 your client as mitigation. So what exactly specifically
7 from everything we've heard today would you have told the
8 judge? Like if you were giving a mitigation presentation
9 right now to this judge, what would you say?

10 A. I would say that -- and I did say that he -- he was a
11 troubled child and that he had situations that affected his
12 ability to make some logical decisions, you know, and his
13 conduct was quite juvenile and mischievous and -- but his
14 pure intent was not malicious and evil, just mischievous.

15 Q. So -- all right. You just said that his conduct --
16 you conceded to the jury that his conduct was mischievous
17 and juvenile, correct?

18 A. Yes, ma'am.

19 Q. So introducing evidence of a juvenile record, would
20 that have just proven the same thing?

21 A. That's exactly what that evidence would do,
22 substantiate what --

23 Q. So essentially we've been arguing all morning about
24 competency, all this evidence and how it should have come
25 in, how it would have affected sentencing, but isn't it

1 true that you the whole time conceded to all that in the
2 beginning?

3 A. That was my strategy.

4 Q. So the judge would have known about this. He would
5 have probably maybe taken it into account, correct?

6 MR. PHILLIPS: Objection. Speculation.

7 THE COURT: I'll sustain your objection.

8 MS. BATTENFIELD: That's fair, Judge.

9 BY MS. BATTENFIELD:

10 Q. But in terms of all the fourteen sections of over
11 a thousand pages of evidence we've heard about today,
12 had you known about it, how would you have couched it
13 in a phrase to the judge that was any more than what you
14 already had told the jury and the judge heard in terms of
15 mitigation?

16 A. I would have had expert testimony as was presented
17 today.

18 Q. But, I mean, do you think hearing about -- because, I
19 mean, the expert would have been open -- the State would
20 have been able to question the expert at that point. So if
21 the judge on one hand had heard all the evidence about his
22 unspecified cognitive disorder, the judge also, wouldn't it
23 be fair to say, would have heard about Mr. Hare's extensive
24 juvenile record, correct?

25 A. Correct.

1 Q. So in mitigation and getting less than twenty years,
2 do you think that would have made a difference or would the
3 judge just have said the same thing in your reasonable, you
4 know, professional opinion?

5 A. I don't know. I was disappointed in the sentence, but
6 I couldn't have presented it no more than I was able to
7 present it.

8 Q. Sure. The last question, which I know is dangerous
9 to say, but if you could pick one thing that Dr. Maddox
10 talked about that you would have presented at mitigation
11 that would in your opinion asked -- have actually affected
12 the judge's final sentence, what would it be? To say this
13 is the key piece of evidence that the judge would have
14 given the lesser sentence.

15 A. I think what she was saying, that his ability to --
16 to condense situations factually in reality form and
17 maturity, that the immaturity of his mental status and his
18 ability to think as, you know, the brain hadn't developed
19 to comprehend. He was comprehending, but he wasn't opining
20 normal comprehensions and ability to do that.

21 Q. Sure.

22 MS. BATTENFIELD: Thank you very much.

23 No further questions, Judge.

24 THE COURT: All right. A brief redirect?

25 MR. PHILLIPS: Yes, Your Honor.

REDIRECT EXAMINATION

BY MR. PHILLIPS:

Q. The State had asked you about the lesser included offense of assault and battery first degree. I don't know if you're aware of a case called State versus Middleton. That's 407 S.C. 312. And specifically in that case there was an individual charged with attempted murders and the Court finds essentially that assault and battery first is a lesser included, and I think the State was saying that in the definition that it has to be during the commission of a robbery, burglary or kidnapping or theft, but there's -- it's an "or" before that. That there's a Subsection B to that statute and specifically to Section 16-3-600(C) that the relevant part is a sub-sect of (C)1, Subsection (b), is offers or attempts to injure another person with the present ability to do so and the act is accomplished by means likely to produce death or great bodily injury.

Now with that being said, understanding the questions that the State had, but in this case they found that there was err in not presenting the lesser included offense of assault and battery in the first degree, they ultimately found it was harmless in that case, former Chief Justice Pleicones dissented and said it couldn't be harmless, but ultimately the main issues was that assault and battery first degree could be a lesser included offense.

1 Is that a fair reading of this case?

2 A. That's a fair reading of that case.

3 Q. Okay. And so -- and that's based on fortunately for
4 Mr. -- or unfortunately, it was harmless error, for
5 Mr. Middleton, that did come, it says, in the case
6 three months after the 2010 omnibus sentencing bill -- or
7 sentencing reform, ultimately the statute that we have now
8 or the statutory scheme that we have now from attempted
9 murder, assault and battery high and aggravated and assault
10 and battery first degree?

11 A. That's right.

12 Q. And as far as the qualifications of Mr. Shaw, when you
13 referenced him and when you say expertise, anything outside
14 of, let's say, under Rule 701 that the average person would
15 know that would not require any training or experience,
16 that triggers a 702 qualification as an expert witness to
17 get that opinion. Is that fair to say?

18 A. Fair.

19 Q. And then as far as the bandanas where Judge Miller
20 had suppressed that evidence and the State elicited it,
21 you did not move to strike that evidence after you did your
22 objection. You didn't move to move for a mistrial or even
23 at minimum move ask for a curative instruction related to
24 that bandana evidence, which would have that implication
25 of potential gang evidence, which then triggers 404(b)

1 propensities evidence. Is that fair to say?

2 A. That's fair to say.

3 Q. And then in terms of the Belcher inference of using a
4 deadly weapon -- or, excuse me, inference of malice through
5 the use of a deadly weapon, that even our Supreme Court,
6 this occurs -- this case comes after this trial, but in
7 State versus Burdette, 427 S.C. 490, even our state Supreme
8 Court ultimately finds that trial courts cannot instruct
9 inference of malice from the use of a deadly weapon in any
10 case, and so at that point -- obviously I'm not asking you
11 to do retroactive, but your theory at that point was
12 self-defense as far as the theme, as far as what was gonna
13 be presented, you say that he's gonna testify in opening
14 statement and then ultimately with this inference you did
15 not object to the closing argument when it was referenced
16 and you did not have the objection when the judge said he
17 was gonna instruct the jury on that as well. Is that fair
18 to say?

19 A. That is fair.

20 MR. PHILLIPS: Thank you, Your Honor. No further
21 questions.

22 THE COURT: All right. Thank you.

23 Mr. Hamilton, you may step down.

24 THE WITNESS: Thank you, Judge.

25 THE COURT: May Mr. Hamilton be excused?

1 MR. PHILLIPS: Absolutely, Your Honor.

2 THE COURT: Okay.

3 (Witness excused.)

4 THE COURT: All right.

5 MR. PHILLIPS: And I have no objection if they need
6 to call him real quick obviously.

7 THE COURT: Okay. Do you want to do that?

8 MS. BATTENFIELD: Judge, if you're okay with that?

9 THE COURT: I'm fine with it.

10 MS. BATTENFIELD: At this time the State would call
11 former Solicitor Mark Moyer.

12 (Whereupon, Lester Mark Moyer was duly sworn by the
13 Clerk of Court.)

14 THE CLERK: Thank you. You may be seated and please
15 state your full name for the record.

16 THE WITNESS: My full name is Lester Mark Moyer. I
17 go by my middle name.

18 MS. BATTENFIELD: And, Judge, just apologies about
19 this Judge, but I wasn't -- I have had an entire PCR on
20 this. We did swear in all the other witnesses, correct?

21 THE COURT: Yes.

22 THE CLERK: Uh-huh.

23 MS. BATTENFIELD: Okay. Great. Yeah, I have spent
24 a long time arguing about that, so I appreciate that.

25 LESTER MARK MOYER,

1 having been duly sworn, testified as follows:

2 DIRECT EXAMINATION

3 BY MS. BATTENFIELD:

4 Q. Good morning, Mr. Moyer.

5 A. Good morning.

6 Q. At this point, good afternoon. By whom are you
7 currently employed?

8 A. I'm sorry?

9 Q. By whom are you currently employed?

10 A. I'm in -- I work for myself. Moyer Law Firm.

11 Q. Back in 2017, by whom were you employed then?

12 A. I was employed with the Thirteenth Circuit Solicitor's
13 Office.

14 Q. How did you get involved with this case?

15 A. It was assigned to me. I couldn't tell you when
16 exactly. I believe it was a 2015 case, so the case was
17 assigned to me to prosecute.

18 Q. And were you -- did you receive all of these charges
19 all at one time, the two attempted murders, the failure to
20 stop, armed robbery, and then -- I'm forgetting one.

21 A. That I don't remember. I know he had a lot of charges
22 and I can't remember if they all came at once. I seem to
23 recall they came in a couple of different time periods, but
24 I'm not a hundred percent sure.

25 Q. Carjacking was the other one.

1 A. Okay.

2 Q. But were you -- you also worked with another solicitor
3 on your trial, Mr. Fowler?

4 A. On the trial, yes.

5 Q. Brann Fowler?

6 A. Yes.

7 Q. So is it possible that he had other cases or were you
8 working together? My -- my main question I'm asking you is
9 did you have authority to resolve all of Mr. Hare's cases?

10 A. I did. I had all of his cases and when it became
11 obvious that one of them was a trial, I brought on the
12 other attorney to work it with me.

13 Q. In terms of Brady, Rule 5, for the trial itself, the
14 attempted murder and the failure to stop, what kind of
15 evidence was there that you turned over to Mr. Hamilton?

16 MR. PHILLIPS: Objection, Your Honor. We're outside
17 the scope of what we presented in the PCR. This is -- I
18 have not raised a Brady violation claim, so I would have
19 a relevance issue, as well as none of this was presented
20 on -- at least what was presented in the Applicant's case.

21 MS. BATTENFIELD: Judge, he raised a failure to
22 properly investigate for Mr. Hamilton and failure to go
23 over the evidence with his client. I'm just trying to
24 get in the record what the evidence was.

25 THE COURT: I'll give you some latitude on it. I

1 don't want to get in the weeds on it.

2 MS. BATTENFIELD: Thank you, Judge.

3 BY MS. BATTENFIELD:

4 Q. Yeah, Mr. Moyer, I'm just asking you what the evidence
5 in this case was.

6 A. I can't recall what all of the evidence was, but I
7 know that my -- my assistant and I provided everything to
8 Mr. Hamilton in a timely fashion.

9 Q. So there was something about a car door, maybe photos
10 of the car --

11 A. Yes.

12 Q. -- and that you would have -- well, anyway, let's just
13 move on from that.

14 In terms of severance, what was your opinion on
15 severing the trial for failure to stop? What --

16 MR. PHILLIPS: Objection, Your Honor. As far as
17 ineffective assistance of counsel, his opinion as the
18 prosecuting attorney doesn't have a basis in the Court's
19 determination about whether --

20 THE COURT: I'm gonna sustain your objection.

21 MS. BATTENFIELD: That's fair. Moving on.

22 BY MS. BATTENFIELD:

23 Q. Okay. So for voir dire, are there any questions you
24 would have asked the judge?

25 MR. PHILLIPS: Objection. Same -- same.

1 THE COURT: Sustained.

2 MS. BATTENFIELD: All right.

3 BY MS. BATTENFIELD:

4 Q. Okay. Let's move to pre-trial identification. That's
5 something we can talk about. What was the situation with
6 pre-trial identification?

7 A. Okay. As I recall, we had a -- we had a hearing to
8 determine the constitutionality of the procedure that was
9 used for the photo lineup and as I recall the judge ruled
10 that everything as having been done constitutionally sound
11 and it was admitted into evidence as I recall.

12 Q. Did the victim who was driving the yellow vehicle, did
13 he identify Mr. Hare?

14 A. Yes.

15 Q. Right away?

16 A. I don't remember. I just don't remember that part of
17 the trial.

18 Q. What kind of identification procedure was this? Was
19 it photo? Was it show-up?

20 A. It was a photo lineup.

21 Q. With how many photos; do you remember?

22 A. They're all -- all photo lineups that we used in
23 Greenville in every case I ever had was a six-person photo
24 lineup.

25 Q. Was it standard procedure?

1 A. To do photo --

2 Q. In terms of the six photos and presenting it to the
3 witness.

4 A. Yes.

5 Q. And did the witness ever baulk and say I don't know
6 or did he immediately identify Mr. Hare as the person
7 driving?

8 A. Yes. The victim was -- was very clear on his
9 identification.

10 Q. And what was your theory of this case?

11 A. Well, it -- it was fairly straightforward. There was
12 the car that contained Mr. Hare and the co-defendant.

13 MR. PHILLIPS: Objection, Your Honor. I hate to
14 keep interrupting, but his theory of the case, I'm trying
15 to figure out the relevance for ineffective of assistance
16 of counsel.

17 THE COURT: I don't know if we know the relevance of
18 that either.

19 MS. BATTENFIELD: That's fine, Judge. I'm just
20 trying to present both sides to see -- because, I mean,
21 one of the main issues is whether self-defense was an
22 issue. But could I ask him about the evidence at trial
23 that went to self-defense, Judge?

24 THE COURT: Well, the judge didn't charge
25 self-defense, did he?

1 MS. BATTENFIELD: No, he didn't.

2 THE COURT: I'm gonna sustain the objection.

3 MS. BATTENFIELD: Very good, Judge.

4 BY MS. BATTENFIELD:

5 Q. All right. Mr. Moyer, do you remember the
6 co-defendant's plea?

7 A. I remember the co-defendant pled at some point after
8 the trial had begun. It was rather tortured to get to that
9 point, but he did plead.

10 Q. What was your -- did you make two separate plea offers
11 to Mr. Hare and the co-defendant before trial?

12 A. I made plea offers to both, the specifics of which I'm
13 -- I don't recall, but I believe they were both for assault
14 and battery high and aggravated nature as I recall.

15 Q. All right. So you did extend an ABHAN offer to
16 Mr. Hare pre-trial?

17 A. Yes.

18 Q. Did he reject it?

19 A. Yes.

20 Q. And then you decided to go forward on attempted murder
21 because he rejected the ABHAN plea offer?

22 A. Well, yes. That was what he was charged with, which
23 I believed to be factually sound, and to the plea offer was
24 -- was just that, it was an offer. If he chose to plead
25 guilty and accept responsibility, I was gonna do a lower

1 charge, but since he didn't I went forward with what he was
2 charged with and indicted for.

3 Q. Do you remember what the ballistics evidence was or
4 the -- well, do you remember what the testimony was about
5 the bullets and the car door and any kind of trajectory?

6 A. I -- as I recall, there wasn't -- we -- we just talked
7 about the fact that there was a -- a bullet hole in the
8 doorway, which is pretty obvious, and it was pretty obvious
9 just to the naked eye which direction it was going because
10 the metal was bent towards the inside of the vehicle, which
11 indicated it came from outside to inside, but we didn't go
12 to any great lengths to -- to talk about trajectory or
13 anything as I recall.

14 Q. You called two witnesses. The first one I believe was
15 Darwin Shaw and you also called Investigator Matt Owens.

16 A. Uh-huh.

17 Q. You asked them questions about the bullets going into
18 the vehicle.

19 A. Okay.

20 Q. Why did you not move to qualify either as an expert
21 witness?

22 A. I didn't -- I didn't consider that to be opinion
23 testimony. Like I said, it was pretty much just based on
24 the training and experience and really I think just about
25 anybody could have looked at a -- at a hole that went into

1 a piece metal and be able to infer what was going on in
2 that situation and that really wasn't a big issue in the
3 case. There was no evidence that the victim had fired at
4 the defendant, so, you know, it -- it really wasn't the
5 main focus of the case at all.

6 Q. Now in terms of your closing argument, I don't know
7 if you were in here when Mr. Phillips was questioning
8 Mr. Hamilton about your reasonable doubt analogy. Do you
9 remember that?

10 A. Yeah. Can you -- in case my memory is failing me, did
11 not Mr. Fowler do the closing argument?

12 Q. Oh, I apologize. Yes, you're correct. Well, in that
13 case, I'll just ask you an in general question since you
14 didn't actually do it. What is the standard for reasonable
15 doubt in South Carolina? How do you define that to a jury?

16 A. Well, I usually spent very little of time trying to
17 define it to the injury. It's just a doubt for which --
18 you know, there were several different expla -- definitions
19 that have been given over the years and so usually when I
20 gave a closing argument I didn't spend much time talking
21 about reasonable doubt.

22 Q. Sure. When did you stop being a solicitor just for
23 the record?

24 A. It was in 2021. September 2021.

25 Q. So you were a solicitor during the time Belcher came

1 out, Burdette? Because Burdette was 2019 on or about.

2 A. Okay.

3 Q. What is your understanding of Belcher and then
4 Burdette in terms of -- because you were also in the jury
5 charge conference --

6 A. Okay.

7 Q. -- and the jury charge implied malice with use of a
8 deadly weapon was charged, correct? Or I shouldn't say
9 correct. Right?

10 A. That I don't have a clear memory of, so you may have
11 to -- have to school me a little bit, but those are the
12 cases where it talks about attempted murder being a
13 specific intent crime. Is that correct?

14 Q. I believe that's State versus King.

15 A. Okay. I'm sorry. Then please refresh my memory.

16 MS. BATTENFIELD: Would it be okay, Judge, to just
17 briefly give a description or should we just --

18 MR. PHILLIPS: I --

19 THE COURT: I'm very aware of it, so we don't need
20 to really get into it. If he knows or doesn't know, I
21 know it.

22 MS. BATTENFIELD: Sure. Yes, sir.

23 BY MS. BATTENFIELD:

24 Q. But in general back when you were a solicitor, would
25 you have been aware of Belcher at the time of trial in

1 2017?

2 A. Yes, I would say so.

3 MR. PHILLIPS: And I -- Your Honor, I've given as
4 much leeway --

5 MS. BATTENFIELD: You know, I'll withdraw. I can
6 move on. The judge has already sort of --

7 THE COURT: Thank you.

8 MS. BATTENFIELD: Indulgence, Judge.

9 THE COURT: Take your time.

10 BY MS. BATTENFIELD:

11 Q. Mr. Moyer, is there anything else you believe that
12 the judge needs to know from your knowledge of the case to
13 decide on this issue today this case?

14 A. I'll be honest, I'd have to have a question about what
15 the exact issue would be before I could answer that.

16 Q. No problem.

17 MS. BATTENFIELD: Thank you, Mr. Moyer.

18 No further questions.

19 MR. PHILLIPS: I'll be very brief. Very brief.

20 THE COURT: Yes, sir, Mr. Phillips.

21 CROSS-EXAMINATION

22 BY MR. PHILLIPS:

23 Q. Good afternoon, I think, right? Yeah.

24 A. Yes, sir.

25 Q. So did you have any -- did you have the full DJJ case

1 file of Mr. Hare?

2 A. I don't remember. I think I knew what his -- usually
3 what we would get would just be the -- it's almost like a
4 rap sheet you see for an adult, but it's just the DJJ --

5 Q. So you wouldn't -- you wouldn't have had -- well,
6 basically I guess I'll cut to the chase. You wouldn't have
7 had his IQ records, his intellectual functioning records,
8 his medical records, his mental health records. You didn't
9 have any of that?

10 A. No, I would not have had that.

11 Q. And so you didn't have any idea that he had a sub 80
12 IQ, intellectual deficit or a closed-head injury? You
13 didn't have any knowledge of any of those things?

14 A. No. I mean, nothing about his intellectual state or
15 functioning ever became an issue at any point during the
16 time I represented {sic} him and from my interactions with
17 him nothing ever stood out unusual about him.

18 Q. And in terms of the Biggers identification motion,
19 Mr. Hamilton didn't object to that procedure at all?

20 A. I don't recall and that wasn't really an issue in the
21 case. I mean, I don't think at any point either of one of
22 these guys were making the issue that they were not the --
23 the persons in the other vehicle. It was more of an
24 accident slash self-defense sort of case, not a whodunit.
25 So I don't recall that being an issue.

1 Q. Understood. And do you send your plea offers in
2 writing or was that just communication to Mr. Hamilton?

3 A. I send my offers in writing.

4 Q. Okay. So that would been in his class file?

5 A. I couldn't tell you how Mr. Hamilton's case file was
6 like, but we sent plea offers in writing.

7 Q. Understood.

8 MR. PHILLIPS: Thank you.

9 THE COURT: Ms. Battenfield, any further redirect?

10 MS. BATTENFIELD: No further questions.

11 Thank you very much, Mr. Moyer.

12 THE COURT: Mr. Moyer, you may step down.

13 THE WITNESS: Thank you, Your Honor.

14 (Witness excused.)

15 MR. PHILLIPS: I propose -- I know how I am as well
16 that normally somewhere between that 12:30, 1:00 hour,
17 if the Court would want to break. If the virtual part of
18 getting it set up is not laborious, it won't take long.
19 This is a 10-minute -- five to 10-minute type situation
20 and we could be done with testimony. Again, I don't know
21 how --

22 THE COURT: Is this your last witness?

23 MR. PHILLIPS: It is, Your Honor.

24 THE COURT: Let's go ahead and do it now then.

25 Now I don't know -- Greenville's got a lot more

1 technology than Horry County does, but as far as setting
2 that up, is it just through --

3 MR. PHILLIPS: If I could step out and tell him to
4 log into your virtual courtroom.

5 THE COURT: Okay.

6 MR. PHILLIPS: I'm not sure how the audio is set up.

7 THE COURT: I'm sure we can do that on here.

8 MR. PHILLIPS: I mean, worse case if for whatever
9 reason we don't get it up, I guess we could ask to hold
10 the record open for a deposition, but I would hate to
11 do that. I'd like to --

12 THE COURT: Well, if I can figure out this, we
13 can --

14 MR. PHILLIPS: We can make it happen?

15 THE COURT: Yes.

16 MR. PHILLIPS: Let me step out because he was on
17 standby, Your Honor.

18 THE COURT: All right.

19 MR. PHILLIPS: Thank you.

20 (Pause in proceedings.)

21 THE COURT: All right. Mr. Phillips, you can call
22 your next witness.

23 MR. PHILLIPS: Thank you, Your Honor.

24 The Applicant would call Taylor Gilliam as his
25 final witness. I was on mute, Your Honor.

1 THE COURT: That's okay.

2 MR. PHILLIPS: Your Honor, the Applicant would call
3 Taylor Gilliam as the Applicant's final witness.

4 THE COURT: All right. Mr. Gilliam, can you hear me?

5 MR. GILLIAM: Thank you for indulging me to testify
6 virtually.

7 THE COURT: That's not a problem at all.

8 Mr. Gilliam, if you can raise your right hand for
9 me, please.

10 (Whereupon, Taylor Gilliam was duly sworn by the
11 Court.)

12 THE COURT: Thank you.

13 Counsel.

14 MR. PHILLIPS: Thank you, Your Honor.

15 TAYLOR GILLIAM,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. PHILLIPS:

19 Q. Mr. Gilliam, could you give some background into your
20 education and training, as well as experience as a lawyer?

21 A. Certainly. I graduated from the University of South
22 Carolina School of Law in 2014. I worked briefly in the
23 area of insurance defense before joining the South Carolina
24 Commission on Indigent Defense Appellate Division in 2016
25 as an appellate defender. During that time as a --

1 employed as an appellate defender, I handled two primary
2 types of cases, and that would be direct appeals following
3 a trial or a guilty plea, as well as post-conviction relief
4 appeals from the circuit court.

5 Q. All right. And how many appeals do you believe you've
6 handled in your career?

7 A. I think if you were to pull it up on C-Track and put
8 in my bar number, there would be over three hundred.

9 Q. And how many oral arguments have you presented at the
10 appellate courts?

11 A. Between the Court of Appeals and the State Supreme
12 Court at least twenty.

13 Q. And have you ever testified in court before?

14 A. I have in this capacity exactly. Not in this case,
15 but as a witness in a post-conviction relief hearing, yes.

16 Q. And in terms of your current employment, it has
17 nothing to do with appellate defense in any way at this
18 stage, correct?

19 A. Correct. I left the Division of Appellate Defense and
20 joined the law school as the pro bono director in April of
21 last year, April 2023, and have been employed and remain
22 employed at the law school in that capacity.

23 Q. Now in this case, have you had an opportunity -- or I
24 guess I'll start this and I'll say it more broadly. How
25 did you get involved in this case?

1 A. Sure. So I was employed at the Commission on Indigent
2 Defense in 2018. During that year a different appellate
3 defender, Rob Pachak, P-A-C-H-A-K, left the Commission and
4 I believe retired, but what was important was that he had
5 cases that needed to be reassigned. So for this case in
6 particular the case was reassigned to me after Mr. Pachak
7 left the employment of the Commission on Indigent Defense.

8 Q. And so have you had an opportunity to review the
9 transcripts in this matter?

10 A. Yes, I have reviewed the transcript -- transcripts, as
11 well as the C-Track list, the client's PCR application and
12 the State's responsive pleading as well.

13 Q. And in terms of being an appellate lawyer or appellate
14 defender, could you describe on direct appeal how an issue
15 is raised essentially. Mr. Pachak raised -- or filed an
16 Anders brief. Could you describe kind of the basis for
17 our error preservation law and that basis as far as the
18 record's concerned?

19 A. Yes. So just in general in order for an appellate
20 court to reach the merits of an issue, it must be raised
21 and ruled upon. In practice, what that means is the
22 attorney has to make an objection or a motion and the judge
23 has to rule accordingly. There are some nuisances when
24 it comes to whether a subsequent or follow-up action is
25 required, whether it is a mistrial motion, but it can vary.

1 But the general rule is that it must be raised and ruled
2 upon by the trial judge in order for the appellate court to
3 reach the merits of the issue.

4 And you are right. Mr. Paycheck filed a short Anders
5 brief in this case. He cited one opinion, State v. King,
6 one case, and raised a single issue.

7 Q. And related to a specific intent to kill?

8 A. That is correct, yes.

9 Q. Now in terms of other potential issues, had they been
10 preserved for appellate review he would have been able to
11 file what's called a merits brief for the Court of Appeals?

12 A. That is correct. And as to this case, that is exactly
13 right. Generally speaking, from -- from my perspective in
14 reviewing the transcript and determining what issues to
15 raise, you can in good faith only raise issues that have
16 been raised and ruled upon at the appellate level;
17 otherwise, it's the opinion of some that you're wasting
18 your own resources, opposing counsel's resources and court
19 resources. So generally speaking I would only look for
20 issues that were preserved for appellate review if the goal
21 is to just get relief for the client. That's correct.

22 Q. And in this case there was jury selection of a joint
23 trial of co-defendants. After jury selection one of the
24 co-defendants -- or the other co-defendant in this case,
25 Mr. Hunter, pled guilty. In this case, defense lawyer,

1 former counsel, did not move for a continuance, did not
2 move for a mistrial, did not move to recuse Judge Miller,
3 who ultimately decided to hold Mr. Hunter's sentence in
4 abeyance depending on, I assume, what he believed to be
5 his cooperation and credibility as far as his testimony.
6 So the impaneled jury saw two individuals move forward for
7 trial and then one of those individuals plead guilty to
8 assault and battery high and aggravated nature and at that
9 point, again, and based on your training and experience as
10 an appellate lawyer --

11 MR. PHILLIPS: And, Your Honor, I can go through
12 this, but I've had some judges kind of say it's not
13 needed, but as far as trying to qualify him as an expert
14 witness essentially.

15 THE COURT: It's not necessarily needed on this,
16 but I will allow Ms. Battenfield to respond if she needs
17 to at this point on that.

18 MR. PHILLIPS: Understood.

19 MS. BATTENFIELD: Judge, in terms of what he's about
20 to ask him, I mean, we're all lawyers here, we can all
21 offer an opinion. He's talking about a matter of law that
22 ultimately Your Honor has to decide. Your Honor's already
23 indicated Your Honor is well versed in these issues, so
24 basically what we'd be hearing is just another lawyer
25 testifying to what any other lawyer would probably say --

1 or, I mean, we'd all probably make a little bit different
2 arguments, but --

3 THE COURT: What's the question you intend to ask?

4 MR. PHILLIPS: The question would be had either one
5 of those things been done and properly preserved for
6 appellate review, would that have been a meritorious issue
7 to raise on appeal.

8 THE COURT: All right.

9 MR. PHILLIPS: I know it's direct --

10 THE COURT: I know the answer to it, so, I mean, I
11 don't think we necessarily need him to testify to that.

12 MR. PHILLIPS: Understood. And if Your Honor is
13 essentially taking that into account, certainly that
14 would be one of the things that we wouldn't need to
15 review. I understand --

16 THE COURT: Yes, sir.

17 MR. PHILLIPS: -- that we've done that.

18 BY MR. PHILLIPS:

19 Q. Now as far as what's -- I guess as far as your
20 testimony, Mr. Gilliam, when someone files an Anders
21 brief, that -- and, I guess, just to be clear, that is
22 that appellate lawyer saying that they have not seen any
23 meritorious issues in that appellate record. Is that fair
24 to say?

25 A. That is correct. The Anders versus California

1 procedure allows appointed counsel to telegraph to the
2 Court that the transcript contains no meritorious issues,
3 but although the client is entitled to counsel the
4 appellate courts have carved out this system in order to
5 allow the client to supplement with their own pro se
6 response and allow the Court to conduct its own review.

7 Q. And you've even seen cases where appellate -- or I
8 guess I don't want to put words in your mouth. Have you
9 seen cases where appellate attorneys have filed a no merits
10 Anders brief and that the appellate court has sent it back
11 for further briefing?

12 A. Yes. The informal nomenclature there is that the
13 appellate courts buck, B-U-C-K, the case. The chief
14 appellate defender does not like that language, but, in
15 essence, that's what gets sent back down for the lawyers to
16 re-brief it.

17 Q. And in this matter, there was one allegation of
18 ineffective assistance of appellate counsel that if trial
19 counsel did preserve the issue of whether the trial court
20 erred in refusing to submit the jury instruction of
21 self-defense to the jury, that appellate counsel failed to
22 file a merits brief before the South Carolina Court of
23 Appeals raising that issue and failed to file -- obviously
24 to kind of fully challenge it as far as filing a petition
25 for re-hearing if it was affirmed and then, of course,

1 petitioning the Supreme Court for its review on a petition
2 for writ of certiorari. And so with that being said, I
3 guess could you kind of expound or present your position on
4 whether that issue was preserved?

5 A. Certainly. So the -- the allegation that you
6 mentioned is on page 9 of the Applicant's PCR application
7 and in this case it was my opinion that it was unpreserved,
8 and this was a caretaker case, so I do not recall with
9 specificity whether I reviewed Mr. Pachak's Anders brief,
10 but I do believe that this was unpreserved, meaning the
11 trial counsel did not correctly or adequately object and,
12 therefore, allow appellate counsel to raise it on appeal.

13 Q. In other words, that there wasn't each individual
14 element of self-defense argued or presented in such a way
15 that the trial court addressed each element of self-defense
16 sufficient enough to be raised on appeal?

17 A. That is correct. And had appellate counsel I believe
18 raised this issue in a merits brief, it is likely that
19 the Court of Appeals would have found it unpreserved and,
20 therefore, unable to reach the merits because of the lack
21 of contemporaneous efforts by trial counsel to bring it to
22 the judge's attention as to every element.

23 Q. And I understand that this is a case that you
24 inherited, but given obviously that you've seen that
25 there's a significant number of issues of ineffective --

1 or allegations of ineffective assistance of counsel raised,
2 based on reviewing those, if preserved, are those the types
3 of issues that are commonly raised in merits briefs on
4 appeal?

5 A. Yes.

6 Q. And are those -- again, this is not an opinion, it's
7 an affirmative 100 percent, do some of those issues get
8 reversed on appeal?

9 A. Yes.

10 MR. PHILLIPS: No further questions, Your Honor.

11 THE COURT: Thank you.

12 Ms. Battenfield.

13 MS. BATTENFIELD: No cross, Judge. Thank you.

14 THE COURT: All right.

15 MR. PHILLIPS: Thank you, Mr. Gilliam.

16 THE WITNESS: Thank you, Judge.

17 THE COURT: Thank you thank, Mr. Gilliam.

18 (Witness excused.)

19 MR. PHILLIPS: And, Your Honor, I just want to say
20 I appreciate you letting him testify virtually.

21 THE COURT: Yes.

22 All right. It is ten after one.

23 Ms. Battenfield, did you have other witnesses as
24 well?

25 MS. BATTENFIELD: No, Judge. No further witnesses.

1 THE COURT: Do you-all want to go ahead and make
2 closing arguments or do you want to come back at two and
3 do that?

4 MS. BATTENFIELD: I'm prepared, Judge.

5 THE COURT: All right.

6 MR. PHILLIPS: Yes, Your Honor.

7 THE COURT: Yes, Mr. Phillips.

8 MR. PHILLIPS: Specifically in this case trial
9 counsel, as well as -- since we're arguing both
10 essentially, that trial counsel and plea counsel
11 provided ineffective assistance of counsel in this case
12 based on the allegations raised. I understand there's a
13 significant number of issues that are before the Court.
14 We've also argued ineffective assistance of appellate
15 counsel mainly through the issue of highlighting the
16 ineffective assistance of trial counsel that had those
17 issues -- through the testimony we've had, had those
18 issues been preserved for appellate review, had trial
19 counsel made those proper contemporaneous timely
20 objections and had rulings from the trial court, that
21 those issues could have been raised on direct appeal for
22 the appellate court's review and, ultimately, Mr. Hare
23 was denied that opportunity.

24 There are significant issues. I mean, the one
25 that jumps out from the beginning, and I think we have

1 numerous specific, what I would argue compelling, issues,
2 but the one that jumps out most right at the heart of the
3 beginning of the trial the jury sees two co-defendants
4 together, they both are charged with attempted murder,
5 the jury is impaneled, they know what they're charged
6 with, and at that point one of those wit -- one of those
7 defendants pleads guilty to assault and battery of a high
8 and aggravated nature, which ultimately Mr. Hare was
9 convicted of, and I think that's part and parcel of that
10 and I think it's evidence of, but with that being said,
11 the jury at that point I believe was prejudiced or
12 specifically that Mr. Hare's right to a fair trial was
13 prejudiced at that point by trial counsel not either
14 moving for a continuance because of that issue, either
15 moving for a mistrial because of that and/or at that
16 point moving to recuse Judge Miller because not only do
17 we have the jury being prejudiced from knowing that both
18 of those individuals were coming into the trial saying
19 they're not guilty, now one is saying they're guilty and
20 they're gonna be a material witness against the other,
21 but also Judge Miller is holding Mr. Hunter's sentence
22 in abeyance, has essentially the keys to the jail cell
23 in his hand. And so you have Judge Miller having to
24 weigh the credibility of the co-defendant, having to
25 assess whether he's fully cooperated and what sentence

1 he was gonna impose, and having that dynamic, plus the
2 jury knowing that they were together, that -- earlier I
3 referenced an unusual procedural posture, I think at that
4 point the burden had improperly -- or the burden on the
5 State had been improperly shifted in that case and that
6 it was a fundamentally unfair system or a fundamentally
7 unfair procedure that denied Mr. Hare's right to due
8 process, to a fair trial.

9 And there's a number of different arguments that he
10 could have made. Again, what you had was -- and I think
11 from -- and, again, I don't want to rehash every element
12 of the testimony, Your Honor, and if Your Honor because
13 of the significant number of allegations has any issues
14 with it, I certainly have no issue if we need to address
15 maybe proposed orders or -- I just don't want you to feel
16 that I'm sitting here rehashing every single piece of
17 testimony that Your Honor just heard, I don't want to
18 insult you in that way of just kind of hammering you
19 with every single thing, but in a lot of -- and the next
20 big issue, absolutely big issue, is the fact that trial
21 counsel had those DJ -- had the DJJ records, used them
22 at trial as far as the criminal history, but did not
23 seek to obtain the full DJJ records where he would have
24 saw the IQ, the intellectual deficit, would have saw all
25 the things that he needed to investigate further. Under

1 the case law, failure to investigate is once counsel has
2 reason to know something, they need to investigate it,
3 and he knew that he had a DJJ record, he uses that in
4 trial, and then even his testimony today was in hindsight
5 he shouldn't have presented the juvenile conviction, but
6 knowing that he should have obtained the full file, which
7 then would have triggered him to know that he had a
8 sub 80 IQ, that he had all these other issues that would
9 have triggered hopefully, at least as he said in hindsight,
10 getting an expert witness at least for mitigation, as
11 well as potentially to present in challenging Mr. Hare's
12 statement to police as far as an involuntary statement
13 through a Jackson v. Denno hearing.

14 Again, there's significant issues as far as his
15 failure -- trial counsel's failure to object to the
16 specific issues that we've raised in the application
17 and through our testimony here today, but through the
18 expert witness testimony that we have, Dr. Maddox
19 testified based on her training and experience that this
20 is in my -- what I believe she said was that this was
21 material mitigation evidence that Judge Miller had he
22 had that information could have resulted -- obviously
23 he had full discretion, and that's part of it, but he
24 did not have that information and had he had it that
25 certainly could have played a significant role in the

1 sentence he imposed. Specifically, she referenced that
2 it appeared based on her review that Judge Miller felt
3 like some of the things -- that Mr. Hare was not being
4 as candid as possible or being kind of aloof to some of
5 the questions or not being direct, and she was explaining
6 that as an expert she could have testified and explained
7 to Judge Miller not only his background and got him fully
8 aware of the situation, but why he was acting that way
9 and why he had certain responses that he did or
10 non-responses, and as far as his judgment and how it
11 would have affected him. And so Judge Maddox's {sic}
12 testimony I think is critical here in showing not just
13 from the trial, but also the plea standpoint where
14 essentially had that mitigation evidence been presented
15 at both the sentencing phase of the trial, as well as
16 the sentencing phase of the plea, we could have had an
17 entirely different sentence imposed, and that's in and
18 of itself separate than all the other ineffective
19 assistance of trial counsel issues that would trigger a
20 new trial as far as the remedy concerned. Again,
21 specifically that he had the intellectual deficit, a
22 closed-head injury, and we've have expert testimony in
23 forensic psychiatry that goes directly to it.

24 Now with that being said, there was at least from
25 the Applicant's testimony that there was no preparation

1 of him as far as whether he would testify at the trial
2 until the break before it was essentially his turn for
3 the colloquy with the judge about whether he would
4 testify. Yet trial counsel told the jury in opening that
5 he was gonna testify and pretty much from a credibility
6 standpoint force that issue, that had Applicant not
7 testified that would have been prejudicial to him as
8 well because trial counsel had already presented that.

9 Trial counsel also made concessions and, again, I
10 have case law to go through this, but made concessions
11 of guilt in regards to the failure to stop, concessions
12 of guilt in terms of shooting the weapon, different
13 things that he specifically said he had not provided
14 more so on the failure to stop case.

15 Counsel admitted that he did not have a strategic
16 reason for why he didn't move to sever specifically the
17 failure to stop. When you have evidence of something
18 that's not a continuous conduct that's provable by
19 different evidence, you know, different witnesses at
20 that point, you can make a motion to sever. Obviously
21 it's within the trial court's discretion, but with that
22 being said, you heard trial counsel's testimony that he
23 felt like he was ambushed by the co-defendant's decision
24 to plead guilty after jury selection, so he was highly
25 caught off guard by that and he did not challenge the

1 identification procedure, he presented no proposed voir
2 dire to try to present a -- in my opinion for a defense
3 attorney not to present any proposed voir dire, in my
4 opinion is ineffective assistance of counsel in trying
5 to elicit -- we already have -- and, again, I have all
6 the arguments for that, either the shortest or the
7 second shortest voir dire in the United States in our
8 criminal cases and for a defense attorney not to have
9 any proposed voir dire I believe is ineffective
10 assistance of counsel trying to elicit known and
11 unknown biases, trying to have intelligent peremptory
12 strikes. About the only information we know in South
13 Carolina related to these peremptory strikes outside of
14 an address or where somebody works is the constitutional
15 things that we're not able to use as strikes; gender,
16 race, age, and so there's things that were said by both
17 trial counsel, as well as the prosecutor, in opening and
18 closing, that we argued that are improper, saying about
19 essentially that nothing good was going on. As far as
20 the specific quote, we can get. Again, I think we read
21 it out loud from both sides about them not being in
22 school, that -- again, conceding the failure to stop,
23 the bench conferences were not put on the record and
24 preserved.

25 THE COURT: And I -- I want you to understand you

1 don't have to go through every one.

2 MR. PHILLIPS: I'm not taking every one. Well,
3 and then what I'll say is -- to hit the highlights again,
4 I would say the other part, Your Honor, the closing
5 argument as far as the prosecutor's argument of explaining
6 that a reasonable doubt, the hesitate to act, that you
7 can hesitate to act and still find guilty I believe is
8 a -- is an issue that certainly I believe if preserved
9 would have been an interesting appellate issue for our
10 appellate courts to address, whether that improperly
11 shifted the burden of proof and was a misstatement of
12 law.

13 Again, we had the closing arguments and jury
14 instructions regarding the inference of a deadly weapon,
15 which should have been objected to by counsel, and had
16 no objections. There was no request for the Logan
17 circumstantial evidence charge, which is very critical
18 in terms of ensuring -- as far as jury instructions
19 are concerned as far as ensuring that he has a right
20 to a fair trial by having the proper law read to the
21 jury prior to their deliberation that a lesser included
22 offense can be assault and battery first degree and was
23 not requested.

24 And so with that I believe for the most part that
25 trial counsel was very candid in his responses in

1 admitting faults and admitting things that he had not
2 considered and -- and some of his responses I would
3 argue that his strategy was not reasonable, that Your
4 Honor's determination has to be if he presents a strategy
5 whether it's reasonable, and I would argue in the context
6 of many things that was argued where he did present some
7 strategy, that it was not reasonable.

8 Again, the bandana part where Judge Miller
9 appropriately argued that it was inadmissible to
10 reference. The bandana's found in the bookbag and then
11 once that evidence was elicited, there was no motion
12 for a mistrial, no motion to strike, no motion for a
13 curative instruction, all the things needed to protect
14 defendants where the judge had already said this is
15 highly prejudicial propensity evidence that should not
16 come in.

17 With that, Your Honor, you know, I'm not gonna hit
18 every single one because I know Your Honor has it, but
19 I think this is a case where ineffective assistance of
20 plea counsel is there in terms of not presenting that
21 mitigation, that critical mitigation evidence, that that
22 would have affected the sentence itself.

23 And then in terms of the trial, that I believe we
24 have a significant number of allegations that cross
25 that threshold of deficient performance and prejudice

1 that affects the outcome of the trial that amount to
2 ineffective assistance of counsel.

3 THE COURT: Was the plea -- how much longer after
4 the actual trial was the plea?

5 MR. PHILLIPS: So you had July was the trial, and I
6 can grab the exact dates.

7 THE COURT: I think I actually --

8 MR. PHILLIPS: Then it was October for the -- for
9 the plea.

10 THE COURT: And the plea was a 20-year sentence as
11 well?

12 MR. PHILLIPS: Yes, Your Honor.

13 THE COURT: All right.

14 MR. PHILLIPS: And essentially they were up for
15 trial again on the carjacking, and they can correct if
16 I'm wrong, and then this kind of came up that we'll
17 recommend the twenty and then the trial -- you know,
18 instead of going to trial the case was resolved that way.

19 THE COURT: Thank you, sir.

20 MR. PHILLIPS: And the last thing as far as the
21 ineffective assistance of appellate testimony, I didn't
22 address that. That based on the testimony we had
23 presented that had their issues been raised and
24 preserved that those issues could have been presented
25 to the appellate court and ultimately would have resulted

1 in a reversal on appeal.

2 THE COURT: All right. Thank you, Mr. Phillips.

3 MR. PHILLIPS: Thank you.

4 THE COURT: Ms. Battenfield.

5 MS. BATTENFIELD: Thank you very much, Judge.

6 First, a little bit of housekeeping. Just for the
7 record, all the victims were notified in both the plea
8 and the trial and did not want to be here today just
9 for Victims Bill of Rights purposes, as well as just to
10 clarify that for the plea, are we going to also have a
11 hearing on the plea or we're also arguing the plea right
12 now?

13 MR. PHILLIPS: I thought we --

14 THE COURT: I'm like you. I thought we were gonna
15 have a hearing on that, but --

16 MS. BATTENFIELD: I'm fine just arguing it, Judge,
17 right now.

18 THE COURT: I am, too, but it's up to you. I mean,
19 was there -- would there be any other evidence? It seems
20 like we kind of merged the two a little bit together.

21 MR. PHILLIPS: Agreed, Your Honor. I -- what would
22 be additional would be very minimal. Certainly as far
23 as the -- maybe two or three questions for him, but I
24 don't believe it's necessary in moving the needle as far
25 as what we're presenting.

1 THE COURT: Okay.

2 MR. PHILLIPS: The main issue is that there wasn't
3 credible mitigation evidence presented at the plea
4 hearing. Essentially the remedy for that would not be
5 to validate the plea itself, but to do a new sentencing
6 hearing with that mitigation now.

7 And then in terms of the trial counsel part of it,
8 so to me I don't believe there's any additional evidence
9 necessary.

10 THE COURT: Okay. That's fine. Then I'll let you
11 talk about both.

12 Go ahead, Ms. Battenfield.

13 MS. BATTENFIELD: Thank you, Judge.

14 Well, just to, again, highlight, you heard
15 Mr. Hamilton say that his client was facing an aggregate
16 of 102 years. He went on a large crime spree from August
17 and September of 2015 and committed five or six very
18 high level crimes, Judge. It might be four to six
19 depending on the count, but, I mean, there is a
20 presumption, again, under Strickland as you know, Judge,
21 of effective assistance, so there is no such thing as a
22 cumulative error doctrine. It's not been recognized by
23 our Supreme Court. It's been talked about, but it's not
24 currently a defense to be raised, so.

25 THE COURT: I think they bring up the death by

1 a thousand cuts argument. But, yeah, it hasn't been
2 adopted.

3 MS. BATTENFIELD: Yes, sir.

4 So we do recognize that Mr. Phillips has raised
5 fifty-two grounds and has to his credit, to his great
6 credit, got through them in one morning, however, we
7 still have to focus on each individual ones and whether
8 Applicant has overcome his presumption of effective
9 assistance in something a reasonable defense attorney
10 would have done back in 2017, Judge.

11 So most of the questions go to Mr. Hamilton's
12 strategy and as you heard he was saying hey, this was
13 road rage. There was a lot of evidence against Mr. Hare
14 in all of the different cases. I mean, Mr. Hare even
15 conceded that he was driving the car and he did shoot,
16 so in that case -- and the judge didn't even charge
17 self-defense. So Mr. Hamilton's faced with the situation
18 where they go to trial with a co-defendant with an agreed
19 upon strategy just to try to mitigate the attempted
20 murder and then you have a co-defendant that pleads
21 guilty in the middle of trial. So Mr. Hamilton did
22 what any attorney would do, he pivoted, and he wasn't
23 expecting that, but he still had a strategy that was
24 effective to his credit. I mean, the jury still found
25 Mr. Hare guilty of the lesser included of ABHAN, so

1 that's ten years less than he could have gotten.

2 So in terms of a reasonable strategy, Mr. Hamilton
3 decided to concede certain things strategically and
4 the case law says as long as counsel has a reasonable
5 strategic reason to move forward with certain things,
6 then effective assistance should be found.

7 So to the second prong briefly, Judge, of Strickland,
8 prejudice, how could he show prejudice in this case,
9 Judge, because he was looking at an aggregate 102 years.

10 So going to the plea, he pled guilty and received a
11 concurrent sentence. What I have not put on the record
12 -- or I don't know if I have, I might have, Judge, I
13 apologize, but the solicitor nol prosed -- because
14 Mr. Hare pled guilty, he nol prosed an attempted murder
15 indictment, which was zero to thirty, as well as another
16 indictment, Judge, I believe it was armed robbery, which
17 carries I believe zero to twenty, so that's fifty years
18 he could have gotten nol prosed because of the plea, so
19 how could he possibly show prejudice with a current
20 sentence with the plea?

21 Now in the court packet, Judge, we did provide you
22 just to briefly address the plea while I'm here, we did
23 provide you with a transcript of the plea, it's about
24 twenty-ish pages, and Mr. Hare does say I'm pleading
25 guilty, I understand the charges against me, I understand

1 how much time, I am happy with my attorney, et cetera.
2 Just the normal -- just the normal, you know, plea
3 colloquy, Judge, so I just want to briefly bring your
4 attention to that, but that's enough about the plea.
5 I'll move back to the trial.

6 In terms of case law, I know we talked a lot about
7 mitigation and sentencing here and the judge did give
8 Mr. Hare twenty years, but in terms of case law, Judge,
9 and I did, of course -- because there are fifty-two
10 issues, Judge, I'd be happy to provide if you would let
11 Mr. Phillips and I know if there's any question in your
12 mind, we'd be happy to provide post-hearing briefs, at
13 least I would, on any issue you'd like.

14 THE COURT: Well, and I'm gonna tell both of you
15 I'm gonna take this under advisement.

16 MS. BATTENFIELD: Yes, sir.

17 THE COURT: There's a lot of the transcript that
18 I want to go through and read. I think the trial
19 transcript's 400 pages, I think the plea transcript's
20 fifteen, twenty pages, something like that. So there's
21 a substantial amount that my law clerk and I will go
22 through, so I think post-hearing briefs would be great
23 just to cut off with that, but you can continue.

24 Thank you.

25 MS. BATTENFIELD: Would you like them on all the

1 issues, Judge, or just specific ones? Because fifty-two
2 might take --

3 THE COURT: I think you've both made your arguments
4 in regards to the mitigation factors. We'll e-mail you
5 about that.

6 MR. PHILLIPS: Yes, Your Honor.

7 MS. BATTENFIELD: Yes, Your Honor.

8 THE COURT: Because I don't want to tell you now
9 and then all of a sudden -- and to agree to it or tell
10 you now and then say no, I don't need any of that, okay?

11 MS. BATTENFIELD: Yes, sir. If I may briefly put a
12 couple of cases on the record in regard to mitigation.

13 THE COURT: Yes, please.

14 MS. BATTENFIELD: There is in terms of -- so
15 State versus Levy, which is a Sixth Circuit case. It's
16 904 F.2d 1026. It's from 1990. With regards to the
17 first prong of prejudice, Judge, the Federal court has
18 ruled the Constitution does not require a sentencing
19 court to consider mitigating circumstances in a noncapital
20 case. So in terms of the first prong of Strickland,
21 Federal courts have ruled it's not a constitutional issue
22 to be considered in these situations, but the jury is
23 still out as to prejudice, the second prong, which is
24 interesting because, of course, in Strickland you have
25 to meet both prongs, but for prejudice there is a circuit

1 split regarding prejudice, and there's three brief cases.
2 In *Lafler versus Cooper*, 566 U.S. 156, it's a 2012 case,
3 they found -- that mostly addresses plea bargaining in
4 sentences, but that case did find -- it's a United States
5 Supreme Court case, that mitigation -- there cannot be
6 prejudice in mitigation when it comes to sentencing
7 unless the evidence that should have maybe -- or could
8 have been -- could have been presented goes directly to
9 the fact that it would enhanced the sentence, Judge. And
10 then United States -- which is a factfinding situation,
11 like arguments, strategy, and not about additional jail
12 time.

13 And then the second case, *United States versus*
14 *Powell*. It's a Fourth Circuit case from 2011. It's
15 650 F3d. 388. That held that unless there's a
16 reasonable probability that the sentence would have
17 been significantly less harsh, prejudice cannot be
18 found in ineffective assistance PCR.

19 And then the last case, *Glover versus United*
20 *States*, also speaks to this. It's 531 U.S. 198. It's
21 a 2001 case.

22 So -- and I'd, of course, be happy to expound in
23 any kind of brief, but Mr. Hamilton you heard on the
24 stand, I mean, he knew about the prior DJJ convictions,
25 he knew his client was, you know, going to a DJJ school

1 at the time, and he already conceded these things, so
2 the judge had already known, okay, you know, Mr. Hare
3 has got some issues going on in his life at the time,
4 so in terms of mitigation I don't know exactly how that
5 would have affected the judge. I mean, it's still in
6 the judge's discretion at this point.

7 The only thing that I really heard Mr. Hamilton say
8 was hey, I might not have -- I probably maybe not or
9 should have talked about the DJJ armed robbery, but in
10 terms of guilt, Judge, how can Mr. Hare prove that would
11 have affected the outcome because, again, there was a
12 lot of evidence again Mr. Hare. And counsel was very --
13 very successful in getting the jury to find him guilty
14 of the lesser included. I mean, ABHAN was proven. He
15 did shoot into the vehicle, which -- at least my
16 understanding of ABHAN is that meets the elements of
17 ABHAN with an individual who's alive inside the vehicle.
18 So in terms of showing prejudice about that, I don't
19 know if that would have affected the outcome of the
20 case, Judge.

21 And then Belcher, Burdette, you've already said
22 you're aware of that, but then another -- one more case
23 is Stanko, a death penalty case, also talked about that.

24 THE COURT: That's an Horry county.

25 MS. BATTENFIELD: February -- sure -- 27, 2013,

1 found it's harmless error even if it was wrongly charged.

2 THE COURT: My dad tried that one.

3 MS. BATTENFIELD: Yes, sir. That's fantastic.

4 You're very -- yeah, I'm gonna move on.

5 And then -- so, yeah, Judge, I just -- the State
6 just maintains that yes, there's fifty-two grounds raised,
7 but on balance that the defendant has -- Applicant has
8 not met his burden in proving either Strickland prongs
9 in either case.

10 So thank you, Judge.

11 THE COURT: Thank you.

12 All right. Counsel, we'll try to get something
13 e-mailed to you by the end of the week if we need
14 any post briefs, but I, again, thank you for the
15 presentations that you-all have provided.

16 MR. PHILLIPS: Yes, Your Honor. Thank you.

17 MS. BATTENFIELD: Thank you very much, Judge.

18 THE COURT: Thank you.

19 (Whereupon, the proceedings were concluded at
20 1:34 PM.)

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25

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter
for the Eleventh Judicial Circuit of the State of
South Carolina, do hereby certify that the foregoing
is a true, accurate and complete transcript of record
of all the proceedings had and the evidence introduced
in the hearing of the captioned case in Circuit Court
on the 13th day of May, 2024.

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

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

November 3, 2024

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

Psychiatric Evaluation
Braxton Lavon Hare
Date of Birth: 6/12/98
Date of Virtual Evaluation: 7/21/20, 11/4/22
Date of Report: 10/17/21
Date of Addendum: 11/4/22

Identifying Information:

Mr. Hare is a 24-year-old male evaluated pursuant to a request from his attorney Dayne Phillips. Mr. Hare has filed Post Conviction relief proceedings for two separate convictions. He was sentenced to 20 years for ABHAN and 3 years for Failure to Stop after a jury trial. He was sentenced to 20 years for Carjacking after pleading guilty.

Statement of Nonconfidentiality:

Mr. Hare was informed the undersigned is an agent of his attorney and that all communication would be shared with Mr. Phillips and potentially used in his upcoming legal proceedings.

Sources of Information:

PCR Application #1 ABHAN, FTS
 PCR Application #2 Carjacking
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 SCDC Offender Summary
 High School Transcript
 2011-2012 Report card Seneca Middle School
 Seneca High School test scores (9th grade)
 Durable power of attorney Margaret Amelia Hare 2011
 Greenville Elementary School records 4 k
 Seneca Middle School tests (ELA not met, Math not met, science not met, social studies not met. A note from Tracy Hall principal indicated he was a-teamed in 2010 but did not qualify for special ed)
 Lakeview middle school records grades 6 (2010-2011), grade 7 (2011-2012)
 Mona View Elementary school 2007 third grade, math below basic, social studies below basic,
 Westcliffe 4th grade, 2005
 Student discipline summary 2011-2012
 DJJ Coastal Evaluation Center records 2013



DJJ Commitment Order 7/25/13

DJJ Upstate Evaluation Comprehensive Psychosocial Evaluation 7/24/13

MRI brain 8/15/13

Incident Report Attempted Armed Robbery 6/8/13

Supplemental Reports 2013

Oconee Medical Center records 3/13/12

EMS records 3/13/12

Pertinent Statements:

Mr. Hare was 17 years old when the Carjacking was committed. The 16-year-old codefendant was charged as a juvenile. The second codefendant was one year older and weighed 45 lbs more than Mr. Hare. The discovery indicated Mr. Hare was the driver of the green Altima, although Mr. Hare denies driving the car. The codefendant was wearing an ankle monitor and had cut it off. The discovery indicated that Mr. Hare and his codefendant were members of the Cross tracks gang.

The Discovery for the ABHAN indicated Mr. Hare participated in a drive by shooting on 9/2/15. When he was mirandized, he requested a lawyer. Even though he invoked a right to counsel, he continued to talk with police. He stated he drove his mother's car to Academy Sports. He stated she did not know he had the car. He stated his friend was accused of stealing from Academy Sports. He did not know the name of the highway when questioned.

During his trial, he initially told Judge Nettles he would testify. After a recess, he returned and stated he would not testify. After some colloquy between the lawyers and judge, Mr. Hare told his attorney he wanted to testify. He took the stand. He denied being involved in the shooting.

After being found guilty and during sentencing, Mr. Moyer presented that the defendant had numerous pictures on his phone posing with and shooting guns. Officer Owens testified about his membership in the Cross tracks gang. He testified to the violent nature of the gang. His attorney referred to his testimony and stated he wanted to apologize. Judge Nettles asked him where he got the gun and Mr. Hare replied he didn't remember. He was then sentenced.

Mr. Hare denied that he was a member of the Cross tracks gang. He stated he was "cool" with one of the members. He denied any present gang affiliation. He reported he still does not remember where he got the gun. He stated he was living "fast" at the time and had a hard time remembering things which is consistent with his medical history which will be discussed below.

At the time of his first evaluation, he was 22 years old. He has been at Lee County for 16 months and McCormick prior to that. He stated Lee County is better than McCormick. He reported he attends school inside of the dorm. He stated there is more freedom as well. He reported he hears from his mother, but no one else. He stated his mother has not visited. He stated she lives in Greenville. He stated he speaks with her via telephone. He stated she is 46 years old and in good health. In his DJJ evaluation, she reported she was 25 when she gave birth to him. He does not have contact with his sibling nor his father. He stated his mother would

work overseas at times, and he would stay with his father, Dan Temple. In his DJJ evaluation, it was noted that Mr. Temple served 11 years on a drug possession charge when Margaret Amelia Hare was pregnant with Braxton. He visited his father in prison when he was nine years old. He was released from prison in 2011 but arrested again. He has an older half-brother but does not keep in contact with him.

During his present evaluation, he reported he talked to his father yesterday. He reported he had a visit from his mother last month. He stated he spends his day playing basketball. He is discouraged that he has not been accepted to the GED program. He stated he has been told there is a "waiting list." He reported he reads and learns five new words three times a week. He reported his recent words included "controversial and abatement." He is prescribed the antidepressant Remeron for sleep but notes he continues to have difficulty sleeping. He reported it worked at first but now no longer helps. He stated he works out before he goes to bed to help him sleep.

His mother reported he was hyperactive and diagnosed with ADHD in elementary school. He had taken Adderall until 2011. DSS was involved in 2002 after Mrs. Hare allegedly left Braxton unattended for a few hours. The case was closed in 2003.

He reported he attended Mona View Elementary (first grade), Lakeview Middle School, West Greenville, Seneca Middle School, and Carolina Academy. His records from Seneca Middle School indicate he was often disciplined for disrupting class and wearing his pants too low. He stated he was "kicked out" of Carolina Academy in 9th grade. His high school transcript shows he received .5hrs of credit for a keyboarding class from Seneca High School. His test scores while at Seneca High School reveal he was in the 16% for math, the 26% for language and the 4% for reading. He also attended Code Academy which was alternative placement. He was administered the WASI-II while at DJJ in 2013. He had a Verbal Comprehension score of 72, a Perceptual reasoning score of 84 and a Full-scale score of 76 which is in the Borderline range of intellectual functioning. He scored very low in Vocabulary (t score 28) and a t score of 33 in Similarities. His visual motor integration was low for his age. The DJJ psychiatric evaluation noted he was to be retained in the ninth grade for academic deficiencies and expulsion. He also reported witnessing a drive by shooting in 2013 where the victim died. The brain imaging ordered by the court was negative.

Medically, he reported good health. He stated he was involved in a Moped accident at age 13 and was treated for a concussion at Oconee Memorial Hospital at age 13. The Oconee Medical records indicate that on 3/3/12 his moped was struck by a van and he was transported via EMS. His paternal aunt accompanied him. EMS records noted he had memory impairment post-accident. His moped was found under the van. He had abrasions on his left cheek, bilateral knees and arms. A CT scan of his head showed contusion over the left side of his face. His discharge diagnosis was facial contusion, and closed head trauma. The DJJ record and his mother confirm the accident. The DJJ psychologist noted he had some avoidance behaviors and administered a trauma assessment which did not indicate he had PTSD. He reported he has had "electric impulses down my legs ever since I got hit by a car." He stated he saw a chiropractor in

the community. He denied any allergies to medications and denied any surgeries. His DJJ record from 2013 confirm he reported he was struck by a car in 2012.

He reported he saw a van and then later “woke up in a ditch.” He has resultant post traumatic vascular headaches. He reports photophobia and scotomata. He reported the headache is in the bilateral parietal areas. He also reports problems with his memory.

In the DJJ evaluation, his mother reported a family history of dementia and cancer. His mother reported she was arrested once for a bad check. There was a strong paternal history of substance abuse. His paternal aunt was diagnosed with Bipolar Disorder.

He denied any prior history of inpatient or outpatient psychiatric treatment. He stated he was prescribed Ritalin as a child. He stated he stopped taking it. He did receive a comprehensive psychosocial evaluation while at the Upstate Evaluation Center on 7/24/13. His mother was also interviewed as well as his in loco parents, Harry and Brenda Dendy. He grabbed the arm of a male and demanded he give him the money in his wallet. The victim ran and eluded Mr. Hare and his accomplice. He was diagnosed with Disruptive Behavior Disorder, Cannabis Abuse, rule out PSD and rule out ADHD. His psychiatric evaluation was conducted by Sg Thomas MD. She diagnosed him with Oppositional Defiant Disorder and Cannabis Abuse. She also recorded a rule out of PTSD and ADHD. DJJ recommended probation and community service. DJJ medical records indicate he was prescribed Strattera in 2014 and Trazodone in 2015.

He reported he is receiving an antidepressant at SCDC. These records need to be reviewed.

He denied active substance abuse. His DJJ records indicated he was abusing cannabis in 2013.

Legal History:

His DJJ records (2013) indicate he was 15 years old and charged with Attempted Strong Armed Robbery and Possession of a Handgun. He was evaluated at Coastal Evaluation Center. His legal guardians at the time were Harry and Brenda Denny because his mother working for Fluor Federal Global products in Afghanistan for the past 22 months. He was a ninth grader at Carolina High School and Academy and was reportedly not attending school. His prior record indicated he had a charge of possession of marijuana in 2010 which was diverted with a behavioral contract. He received an Indeterminate sentence e for his offenses in 2013. The court order requested he have a psychiatric evaluation and MRI of the brain. His service plan indicated he had a Full-scale IQ of 76. Alternative placement was recommended. He was noted to be a follower. Mr. Dendy reported Braxton had been fine until two months earlier. His mother made arrangements for him to Be evaluated by John de la Howe and he had been accepted prior to his new charges. Braxton initially lived with his paternal aunt in Seneca when his mother moved, but she was financially unable to care for him.

Mental Status Examination:

Mr. Hare was soft spoken and cooperative. His speech was muffled at times. The speed and low tone of his voice made some communication difficult. He was not psychotic. He was not suicidal

or homicidal. His judgment was impulsive historically when involved with peers. His intelligence is below average.

During his second evaluation, he scored average on a test of verbal fluency. He gave a good effort and his performance was not limited by anxiety. His performance improved with encouragement. His thinking was very concrete. He was unable to abstract similarities between objects. He did notice he is less impulsive as he ages.

Diagnoses:

Borderline Intellectual Functioning by history

Unspecified neurocognitive disorder (ADHD, closed head injury)

Unspecified Trauma and Other Stressor related Disorder

Cannabis Use Disorder

Post Traumatic Vascular headaches

Opinions:

1. There is no evidence that Mr. Hare had a psychiatric evaluation to assess his competency to stand trial. He reported he “was lost. I didn’t know anything about the law.”

2. There was no evidence presented to Judge Miller prior to sentencing about Mr. Hare’s intellectual deficits.

3. There was no evidence that Mr. Hare’s documented closed head injury and associated cognitive deficits were presented to Judge Miller prior to his sentencing.

4. When questioned, Mr. Hare did not disclose to Judge Miller where he obtained the gun. Persons with intellectual disability and a history of closed head injury perform even more poorly when under stress such as sentencing. Mr. Hare denied memory pertaining to the gun. He denied that he is covering for anyone, although he did report he would not “snitch” on anyone.

5. There is no evidence that Mr. Hamilton explored the possibility that Mr. Hare was influenced by the older male who outweighed him by 45 lbs during the carjacking. Mr. Hare denied he was influenced.

Recommendations:

1. Mr. Hare needs to be enrolled in the GED program.
2. His SCDC medical records need to be reviewed to determine his outpatient psychiatric treatment status.

Donna S. Maddox, MD
Consulting Forensic Psychiatrist

Psychiatric Evaluation
Braxton Lavon Hare
Date of Birth: 6/12/98
Date of Virtual Evaluation: 7/21/20
Date of Report: 10/17/21

Identifying Information:

Mr. Hare is a 23-year-old male evaluated pursuant to a request from his attorney Dayne Phillips. Mr. Hare has field Post Conviction relief proceedings for two separate convictions. He was sentenced to 20 years for ABHAN and 3 years for Failure to Stop after a jury trial. He was sentenced to 20 years for Carjacking after pleading guilty.

Statement of Nonconfidentiality:

Mr. Hare was informed the undersigned is an agent of his attorney and that all communication would be shared with Mr. Phillips and potentially used in his upcoming legal proceedings.

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 MRI brain 8/15/13
 Incident Report Attempted Armed Robbery 6/8/13
 Supplemental Reports 2013
 Oconee Medical Center records 3/13/12
 EMS records 3/13/12

Pertinent Statements:

Mr. Hare was 17 years old when the Carjacking was committed. The 16-year-old codefendant was charged as a juvenile. The second codefendant was one year older and weighed 45 lbs more than Mr. Hare. The discovery indicated Mr. Hare was the driver of the green Altima. The codefendant was wearing an ankle monitor and had cut it off. The discovery indicated that Mr. Hare and his codefendant were members of the Cross tracks gang.

The Discovery for the ABHAN indicated Mr. Hare participated in a drive by shooting on 9/2/15. When he was mirandized, he requested a lawyer. Even though he invoked a right to counsel, he continued to talk with police. He stated he drove his mother's car to Academy Sports. He stated she did not know he had the car. He stated his friend was accused of stealing from Academy Sports. He did not know the name of the highway when questioned.

During his trial, he initially told Judge Nettles he would testify. After a recess, he returned and stated he would not testify. After some colloquy between the lawyers and judge, Mr. Hare told his attorney he wanted to testify. He took the stand. He denied being involved in the shooting.

After being found guilty and during sentencing, Mr. Moyer presented that the defendant had numerous pictures on his phone posing with and shooting guns. Officer Owens testified about his membership in the Cross tracks gang. He testified to the violent nature of the gang. His attorney referred to his testimony and stated he wanted to apologize. Judge Nettles asked him where he got the gun and Mr. Hare replied he didn't remember. He was then sentenced.

At the time of his evaluation, he was 22 years old. He has been at Lee County for 16 months and McCormick prior to that. He stated Lee County is better than McCormick. He reported he attends school inside of the dorm. He stated there is more freedom as well. He reported he hears from his mother, but no one else. He stated his mother has not visited. He stated she lives in Greenville. He stated he speaks with her via telephone. He stated she is 46 years old and in good health. In his DJJ evaluation, she reported she was 25 when she gave birth to him. He does not have contact with his sibling nor his father. He stated his mother would work overseas at times, and he would stay with his father, Dan Temple who was released from prison and later died. In his DJJ evaluation, it was noted that Mr. Temple served 11 years on a drug possession charge when Margaret Amelia Hare was pregnant with Braxton. He visited his father in prison when he was nine years old. he was released from prison in 2011 but arrested again. He has an older half-brother but does not keep in contact with him.

His mother reported he was hyperactive and diagnosed with ADHD in elementary school. He had taken Adderall until 2011. DSS was involved in 2002 after Mrs. Hare allegedly left Braxton unattended for a few hours. The case was closed in 2003.

He reported he attended Mona view Elementary (first grade), Lakeview Middle School, West Greenville, Seneca Middle School, and Carolina Academy. His records from Seneca Middle School indicate he was often disciplined for disrupting class and wearing his pants too low. He stated he was "kicked out" of Carolina Academy in 9th grade. He stated he was in special education. His high school transcript shows he received .5hrs of credit for a keyboarding class from Seneca High School. His test scores while at Seneca High School reveal he was in the 16% for math, the 26% for language and the 4% for reading. He also attended Code Academy which was alternative placement. He was administered the WASI-II while at DJJ in 2013. He had a Verbal Comprehension score of 72, a Perceptual reasoning score of 84 and a Full-scale score of 76 which is in the Borderline range of intellectual functioning. He scored very low in Vocabulary (t score 28) and a t score of 33 in Similarities. His visual motor integration was low for his age. The DJJ psychiatric evaluation noted he was to be retained in the ninth grade for academic deficiencies and expulsion. He also reported witnessing a drive by shooting in 2013 where the victim died. The brain imaging ordered by the court was negative.

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In the DJJ evaluation, his mother reported a family history of dementia and cancer. His mother reported she was arrested once for a bad check. There was a strong paternal history of substance abuse. His paternal aunt was diagnosed with Bipolar Disorder.

He denied any prior history of inpatient or outpatient psychiatric treatment. He stated he was prescribed Ritalin as a child. He stated he stopped taking it. He did receive a comprehensive psychosocial evaluation while at the Upstate Evaluation Center on 7/24/13. His mother was also interviewed as well as his in loco parents, Harry and Brenda Dendy. He grabbed the arm of a male and demanded he give him the money in his wallet. The victim ran and eluded Mr. Hare and his accomplice. He was diagnosed with Disruptive Behavior Disorder, Cannabis Abuse, rule out PSD and rule out ADHD. His psychiatric evaluation was conducted by Sg Thomas MD. She diagnosed him with Oppositional Defiant Disorder and Cannabis Abuse. She also recorded a rule

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He denied active substance abuse. His DJJ records indicated he was abusing cannabis in 2013.

Legal History:

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Mental Status Examination:

Mr. Hare was soft spoken and cooperative. His speech was muffled at times. The speed and low tone of his voice made some communication difficult. He was not psychotic. He was not suicidal or homicidal. His judgment was impulsive historically when involved with peers. His intelligence is below average.

Diagnoses:

Borderline Intellectual Functioning by history
Unspecified Trauma and Other Stressor related Disorder
Cannabis Use Disorder

Opinions:

1. There is no evidence that Mr. Hare had a psychiatric evaluation to assess his competency to stand trial.
2. There was no evidence presented to Judge Miller prior to sentencing about Mr. Hare's intellectual deficits.
3. There was no evidence that Mr. Hare's documented closed head injury and associated memory deficits were presented to Judge Miller prior to his sentencing.
4. When questioned, Mr. Hare did not disclose to Judge Miller where he obtained the gun. Persons with intellectual disability and a history of closed head injury perform even more poorly when under stress such as sentencing.
5. There is no evidence that Mr. Hamilton explored the possibility that Mr. Hare was influenced by the older male who outweighed him by 45 lbs during the carjacking.

Recommendations:

1. The undersigned needs to read the transcript of the guilty plea to the carjacking.
2. The undersigned needs to evaluate Mr. Hare again since the visual component of the Zoom meeting failed during the first evaluation. Also further questioning is necessary due to the nature of his later disclosed medical records.

Donna S. Maddox, MD
Consulting Forensic Psychiatrist



Dayne Phillips <dayne@pricebenowitz.com>

Re: Rulings on May 13 Greenville PCR Term

Hyman, B. Alex Law Clerk (Payne Hoy) <bhymanlc@sccourts.org>

Tue, Jun 4, 2024 at 1:20 PM

To: "dayne@pricebenowitz.com" <dayne@pricebenowitz.com>, Sarah Henry <sarah@sarahmhenrylaw.com>, "susannah@rossenderlin.com" <susannah@rossenderlin.com>, "Tommy Evans, Jr." <TommyEvansJr@scag.gov>, Julianna Battenfield <JuliannaBattenfield@scag.gov>, Chris Runyan <crunyan@scag.gov>, "jfalknerwilkes@gmail.com" <jfalknerwilkes@gmail.com>, "scarlet28@msn.com" <scarlet28@msn.com>, Josh Edwards <JEdwards@scag.gov>, "sjhlaw@sjhlaw.com" <sjhlaw@sjhlaw.com>
Cc: "Hyman, B. Alex Secretary (Allison Pogue)" <bhymanlc@sccourts.org>

Good afternoon attorneys,

Attached is a document setting forth Judge Hyman's rulings from the May 14 PCR term in Greenville. The document includes only those cases on which Judge Hyman ruled on the merits; it does not include the cases for which a Form 4 was entered.

Can I please ask the Applicant's attorney to prepare the proposed orders on the applications which Judge Hyman granted and for the Respondent's attorney to prepare the proposed orders on the applications which Judge Hyman denied? Please submit the proposed orders in word format via this email thread.

If you have any questions or concerns regarding Judge Hyman's rulings, please do not hesitate to contact me. Also, please let me know if I have failed to include any necessary parties on this email.

Thank you,

Payne Hoy

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.



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**Greenville PCR Rulings\_Final.docx**

14K

13th Circuit PCR Term May 13-17, 2024

Monday, May 13, 2024

**PCR Hearing No. 1: 2020-CP-23-737****County:** Greenville**Applicant:** Braxton Hare**Applicant Attorney:** Dayne C. Phillips**Respondent Attorney:** Julianna E. Battenfield**Ruling:** Granted.**PCR Hearing No. 2: 2020-CP-23-736****County:** Greenville**Applicant:** Braxton Hare**Applicant Attorney:** Dayne C. Phillips**Respondent Attorney:** Julianna E. Battenfield**Ruling:** Denied.**PCR Hearing No. 3: 2021-CP-39-245****County:** Pickens**Applicant:** Jose Reyes**Applicant Attorney:** Sarah M. Henry**Respondent Attorney:** Joshua A. Edwards**Ruling:** Denied.**PCR Hearing No. 4: 2020-CP-23-4164****County:** Greenville**Applicant:** Christian Scowcroft**Applicant Attorney:** Sarah M. Henry

**Respondent Attorney:** Joshua A. Edwards

**Ruling:** Denied.

Tuesday May 14, 2024

**PCR Hearing No. 7:** 2022-CP-23-568

**County:** Greenville

**Applicant:** Christopher Kennan

**Applicant Attorney:** Susannah C. Ross

**Respondent Attorney:** Tommy Evans, Jr.

**Ruling:** Denied.

**PCR Hearing No. 10:** 2022-CP-39-1061

**County:** Pickens

**Applicant:** Miranda Graham

**Applicant Attorney:** Susannah C. Ross

**Respondent Attorney:** Tommy Evans, Jr.

**Ruling:** Granted.

Wednesday May 15, 2024

**PCR Hearing No. 13:** 2021-CP-23-3356

**County:** Greenville

**Applicant:** David Dozier

**Applicant Attorney:** Scarlett B. Moore

**Respondent Attorney:** Tommy Evans, Jr.

**Ruling:** Denied.

Thursday May 16, 2024

**PCR Hearing No. 14:** 2022-CP-39-0479

**County:** Pickens

**Applicant:** Zoe Hopkins

**Applicant Attorney:** Susannah C. Ross

**Respondent Attorney:** Christopher Runyan

**Ruling:** Denied.

**PCR Hearing No. 19:** 2022-CP-23-1152

**County:** Greenville

**Applicant:** Frederick Jarvis

**Applicant Attorney:** Stephen J. Henry

**Respondent Attorney:** Christopher Runyan

**Ruling:** Denied with respect to merits of PCR application. However, the court finds that Applicant is entitled to belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974).

**PCR Hearing No. 20:** 2022-CP-23-2161

**County:** Greenville

**Applicant:** Tristan Cummings

**Applicant Attorney:** J. Falkner Wilkes

**Respondent Attorney:** Christopher Runyan

**Ruling:** Denied.



Dayne Phillips &lt;dayne@pricebenowitz.com&gt;

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**Re: Rulings on May 13 Greenville PCR Term**

---

**Dayne Phillips** <dayne@pricebenowitz.com>

Mon, Jun 10, 2024 at 8:00 AM

To: "Hyman, B. Alex Law Clerk (Payne Hoy)" &lt;bhymanlc@sccourts.org&gt;

Cc: "Hyman, B. Alex Secretary (Allison Pogue)" &lt;bhymanlc@sccourts.org&gt;, Julianna Battenfield &lt;JuliannaBattenfield@scag.gov&gt;,

Courtney Powers &lt;courtney@pricebenowitz.com&gt;

Bcc: "Clio Maildrop Braxton.Hare.2020.01.00001" &lt;800ca9c17+matter1202768809@maildrop.clio.com&gt;

Good morning, M. Hoy:

I hope all is well. I am respectfully requesting specific rulings for each of Braxton Hare's PCR applications prior to the issuance of the Proposed Order. See *Marlar v. State*, 375 S.C. 407, 408, 653 S.E.2d 266 (2007) (holding, "Pursuant to S.C. Code Ann. § 17-27-80 . . . , the PCR judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented.").

Thank you,



PRICE BENOWITZ LLP

**Dayne Phillips**

Attorney at Law

**Criminal Defense | Appeals |  
Professional License Defense**

1614 Taylor Street, Suite D,

Columbia, SC 29201

Office: [803.272.4503](tel:803.272.4503)Direct: [803.807.0234](tel:803.807.0234)Fax: [803.380.8035](tel:803.380.8035)**Paralegal: Courtney Powers**Email | [803-216-5561](tel:803-216-5561)SC Website: [SCCriminalLaws.com](http://SCCriminalLaws.com)Firm Website: [PriceBenowitz.com](http://PriceBenowitz.com)

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**Former President and Board Member, South Carolina Association of Criminal Defense  
Lawyers (SCACDL)  
Chairman, SCACDL Educational Foundation**

**Attorney Profile**

[Quoted text hidden]

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**5 attachments****Amended PCR App 736 Carjacking.pdf**

249K

206



**Amended PCR App 737 ABHAN.pdf**

421K



**- Braxton hare addendum.docx**

25K



**Braxton hare (1).docx**

23K



**Greenville PCR Rulings\_\_Final.docx**

14K



Dayne Phillips &lt;dayne@pricebenowitz.com&gt;

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**Re: Rulings on May 13 Greenville PCR Term**

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**Hyman, B. Alex Law Clerk (Payne Hoy)** <bhymanlc@sccourts.org>

Mon, Jul 29, 2024 at 3:02 PM

To: Julianna Battenfield &lt;JuliannaBattenfield@scag.gov&gt;, Dayne Phillips &lt;dayne@pricebenowitz.com&gt;

Cc: "Hyman, B. Alex Secretary (Allison Pogue)" &lt;bhymanlc@sccourts.org&gt;, Courtney Powers &lt;courtney@pricebenowitz.com&gt;

Good afternoon Ms. Battenfield and Mr. Phillips,

I apologize for the delay, but with regard to your request for specific findings of error in the PCR application of Braxton Hare for his trial—2020-CP-23-0737—Judge Hyman has identified the following grounds in Mr. Hare's Amended PCR Application that warrant the granting of his application: 13, 24, and 41.

Please let me know if either of you have any questions or concerns.

Thank you,

Payne Hoy

---

**From:** Julianna Battenfield <JuliannaBattenfield@scag.gov>**Sent:** Wednesday, June 26, 2024 2:23 PM**To:** Dayne Phillips <dayne@pricebenowitz.com>; Hyman, B. Alex Law Clerk (Payne Hoy) <bhymanlc@sccourts.org>**Cc:** Hyman, B. Alex Secretary (Allison Pogue) <bhymanlc@sccourts.org>; Courtney Powers <courtney@pricebenowitz.com>**Subject:** RE: Rulings on May 13 Greenville PCR Term

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Dayne Phillips &lt;dayne@pricebenowitz.com&gt;

## Re: Rulings on May 13 Greenville PCR Term

Dayne Phillips &lt;dayne@pricebenowitz.com&gt;

Wed, Jul 31, 2024 at 2:52 PM

To: "Hyman, B. Alex Law Clerk (Payne Hoy)" &lt;bhymanlc@sccourts.org&gt;

Cc: Julianna Battenfield &lt;JuliannaBattenfield@scag.gov&gt;, "Hyman, B. Alex Secretary (Allison Pogue)" &lt;bhymanlc@sccourts.org&gt;, Courtney Powers &lt;courtney@pricebenowitz.com&gt;, "Clio Maildrop Braxton.Hare.2020.01.00001" &lt;800ca9c17+matter1202768809@maildrop.clio.com&gt;

Thank you so much for the clarification on Judge Hyman's findings (allegations 13, 24, and 41).

I am respectfully requesting reconsideration of Judge Hyman's denial of PCR application (2020-CP-23-0736), based on allegation #6 mirroring allegation #41 in (2020-CP-23-0737) and allegation #5 (Plea Counsel failed to present all reasonable and necessary evidence to the Court during the sentencing phase in mitigation of Applicant's potential sentence). Specifically, Trial Counsel failed to present that critical mitigation evidence during the sentencing hearing, and therefore, provided ineffective assistance of counsel during the sentencing phase.

Allegations #6 and 41 in the PCR applications: (Trial Counsel failed to provide the Trial Court with evidence regarding Applicant's intellectual deficits, documented closed head injury, and associated cognitive deficits as noted in Dr. Donna Maddox's report).

Please let me know if you or Judge Hyman have any additional questions or concerns.

Thank you,

### Dayne Phillips

Attorney at Law

**Criminal Defense | Appeals |  
Professional License Defense**

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PRICE BENOWITZ LLP

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**Former President and Board Member, South Carolina Association of Criminal Defense  
Lawyers (SCACDL)  
Chairman, SCACDL Educational Foundation**

[Attorney Profile](#)



Dayne Phillips &lt;dayne@pricebenowitz.com&gt;

---

**Re: Rulings on May 13 Greenville PCR Term**

---

**Hyman, B. Alex Law Clerk (Taylor Langston)** <bhymanlc@sccourts.org>

Thu, Sep 12, 2024 at 1:35 PM

To: Dayne Phillips &lt;dayne@pricebenowitz.com&gt;

Cc: "Hyman, B. Alex Secretary (Allison Pogue)" &lt;bhymanlc@sccourts.org&gt;, Courtney Powers &lt;courtney@pricebenowitz.com&gt;, "Clio Maildrop Braxton.Hare.2020.01.00001" &lt;800ca9c17+matter1202768809@maildrop.clio.com&gt;, "Zelenka, Don" &lt;dzelenka@scag.gov&gt;

Good afternoon,

Judge Hyman is granting PCR application 2020CP230737 as to the following allegations: 13, 23, 24, 28, 29, 31, 32, 33, 34, and 37. Allegation 41 is denied. PCR application 2020CP230736 is denied.

Please let me know if you have any questions or concerns.

Thanks,

**Taylor L. Langston**

Law Clerk for The Honorable B. Alex Hyman

[bhymanlc@sccourts.org](mailto:bhymanlc@sccourts.org)

---

**From:** Dayne Phillips <dayne@pricebenowitz.com>**Sent:** Monday, September 9, 2024 8:00 AM**To:** Hyman, B. Alex Law Clerk (Taylor Langston) <bhymanlc@sccourts.org>**Cc:** Hyman, B. Alex Secretary (Allison Pogue) <bhymanlc@sccourts.org>; Courtney Powers <courtney@pricebenowitz.com>; Clio Maildrop Braxton.Hare.2020.01.00001 <800ca9c17+matter1202768809@maildrop.clio.com>; Zelenka, Don <dzelenka@scag.gov>**Subject:** Re: Rulings on May 13 Greenville PCR Term

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Good morning,

I hope all is well. I am following up on my request for reconsideration of Judge Hyman's denial of PCR application (2020-CP-23-0736), based on allegation #6 mirroring allegation #41 in (2020-CP-23-0737) and allegation #5 (Plea Counsel failed to present all reasonable and necessary evidence to the Court during the sentencing phase in mitigation of Applicant's potential sentence).

Specifically, Trial Counsel failed to present that critical mitigation evidence during the sentencing hearing, and therefore, provided ineffective assistance of counsel during the sentencing phase.

Allegations #6 and 41 in the PCR applications: (Trial Counsel failed to provide the Trial Court with evidence regarding Applicant's intellectual deficits, documented closed head injury, and associated cognitive deficits as noted in Dr. Donna Maddox's report).

Please let me know if you or Judge Hyman have any additional questions or concerns.

Thank you,

|                             |   |                                      |
|-----------------------------|---|--------------------------------------|
| STATE OF SOUTH CAROLINA     | ) | IN THE COURT OF COMMON PLEAS         |
|                             | ) |                                      |
| COUNTY OF <b>GREENVILLE</b> | ) | <b>THIRTEENTH JUDICIAL CIRCUIT</b>   |
|                             | ) |                                      |
| <b>Braxton Hare,</b>        | ) | Case No. <b>2020-CP-23-0736</b>      |
|                             | ) |                                      |
| Applicant,                  | ) |                                      |
|                             | ) |                                      |
| v.                          | ) | <b>MOTION TO ALTER OR AMEND</b>      |
|                             | ) | <b>PURSUANT TO RULE 59(E), SCRPC</b> |
| State of South Carolina,    | ) |                                      |
|                             | ) |                                      |
| Defendant.                  | ) |                                      |
| _____                       | ) |                                      |

FILED  
2024 SEP 11 10:42  
CLERK OF COURT  
JAMES W. HARRIS, JR.  
CLERK

The Applicant, by and through the undersigned Counsel, moves this Court to alter or amend the denial of Applicant's PCR Application in the above-captioned case that was emailed to Counsel on September 12, 2024, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. Rule 59(e), SCRE; U.S. Const. amends. V, VI, XIV; S.C. Const. art. I, §§ 3 and 14.

In support of this motion, Applicant submits the following arguments and does not abandon or waive any previous issues or arguments raised in the prior pleadings and evidentiary hearing in this PCR action:

- (1) Applicant incorporates by reference the issues and arguments raised in the pleadings and at the evidentiary hearing as if fully set forth verbatim into this motion.
- (2) On June 4, 2024, via email, the Court denied this PCR action (736; Plea) and granted Applicant's other PCR action (737; Trial).
- (3) On June 10, 2024, via email, Applicant's Counsel requested specific rulings for each of the PCR applications prior to the issuance of the Proposed Order. See *Marlar v. State*, 375 S.C. 407, 408, 653 S.E.2d 266 (2007) (holding, "Pursuant to

S.C. Code Ann. § 17-27-80 . . . , the PCR judge must make specific findings of fact and state expressly the conclusions of law relating to each issue presented.”).

- (4) On July 29, 2024, via email, the Court identified the specific allegations for granting (737):

(a) “I apologize for the delay, but with regard to your request for specific findings of error in the PCR application of Braxton Hare for his trial—2020-CP-23-0737—Judge Hyman has identified the following grounds in Mr. Hare’s Amended PCR Application that warrant the granting of his application: 13, 24, and 41.”

- (5) On July 31, 2024, via email, Applicant’s Counsel requested reconsideration of the Court denial of (736):

(a) “I am respectfully requesting reconsideration of Judge Hyman’s denial of PCR application (2020-CP-23-0736), based on allegation #6 mirroring allegation #41 in (2020-CP-23-0737) and allegation #5 (Plea Counsel failed to present all reasonable and necessary evidence to the Court during the sentencing phase in mitigation of Applicant’s potential sentence). Specifically, Trial Counsel failed to present that critical mitigation evidence during the sentencing hearing, and therefore, provided ineffective assistance of counsel during the sentencing phase.”

(b) “Allegations #6 and 41 in the PCR applications: (Trial Counsel failed to provide the Trial Court with evidence regarding Applicant’s intellectual deficits, documented closed head injury, and associated cognitive deficits as noted in Dr. Donna Maddox’s report).”

- (6) On September 12, 2024, via email, the Court provided the following response to the request for reconsideration:
  - (a) “Judge Hyman is granting PCR application 2020CP230737 as to the following allegations: 13, 23, 24, 28, 29, 31, 32, 33, 34, and 37. Allegation 41 is denied. PCR application 2020CP230736 is denied.”
- (7) The Court failed to properly address the inconsistent rulings because of the Court's original decision to grant Applicant's other PCR action (2020-CP-23-0737).
  - (a) Specifically, in that PCR action (737 – Allegation #41), this Court found that Trial Counsel provided ineffective assistance of counsel by failing to provide the Trial Court with evidence regarding Applicant's intellectual deficits, documented closed head injury, and associated cognitive deficits as noted in Dr. Donna Maddox's report.
  - (b) In this PCR action (736 – Allegation #6), mirrors the above allegation.
- (8) The Court failed to properly address Plea Counsel's failure to present all reasonable and necessary evidence to the Court during the sentencing phase in mitigation of Applicant's potential sentence. (Allegation #5).
- (9) The Court failed to properly address Plea Counsel's failure to provide the Plea Court with evidence regarding Applicant's intellectual deficits, documented closed head injury, and associated cognitive deficits as noted in Dr. Donna Maddox's report and Dr. Maddox's testimony at the evidentiary hearing.
- (10) The Court failed to properly address Plea Counsel's failure to present that critical mitigation evidence during sentencing, and therefore, provided ineffective assistance of counsel.

Based on the testimony and evidence presented at the evidentiary hearing, Applicant has established constitutional violations and deprivations that would require post-conviction relief. Specifically, Plea Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Counsel's errors, Applicant would have received a reduced sentence due to the compelling mitigation not presented to the Plea Court during sentencing. See *Hill v. Lockhart*, 474 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel) (quoting *Strickland*, 466 U.S. at 692). Therefore, the Court should reconsider the denial of this PCR action and enter an Order Granting Applicant Post-Conviction Relief.

### CONCLUSION

Based on the foregoing reasons, the Applicant respectfully requests this Court reconsider the denial of this application, enter an Order Granting Applicant Post-Conviction Relief authorizing a new trial.

**IT IS SO MOVED.**

Respectfully submitted,

s/ Dayne Phillips

Dayne C. Phillips, Esq.



Price Benowitz LLP  
1614 Taylor Street, Suite D.  
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O: 803-272-4503  
C: 803-807-0234  
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dayne@pricebenowitz.com

**ATTORNEY FOR THE APPLICANT**

**September 23, 2024**

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

Braxton Hare,

Applicant,

v.

State of South Carolina,

Defendant.

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Case No. 2020-CP-23-0736

CERTIFICATE OF SERVICE

24 OCT 1 7:3:49  
Brice Garrett, CLERK, SC

I hereby certify that I have this date served the within and foregoing Motion to Alter or Amend pursuant to Rule 59(e), SCRPC, by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

**Melody Brown, Esq.**  
SC Attorney General's Office  
P.O. Box 11549  
Columbia, SC 29211

**Brice Garrett**  
Greenville Clerk of Court  
305 E North St.  
Greenville, SC 29601

**The Honorable B. Alex Hyman**  
1301 2nd Avenue, Suite 3A30  
Conway, SC 29526

By: Courtney Powers  
**Courtney Powers**  
*Paralegal for Dayne C. Phillips, Esq.*

1614 Taylor Street, Suite D.  
Columbia, SC 29201  
(803) 216-5561  
courtney@pricebenowitz.com

September 23, 2024

|                          |   |                                     |
|--------------------------|---|-------------------------------------|
| STATE OF SOUTH CAROLINA  | ) | IN THE COURT OF COMMON PLEAS        |
| COUNTY OF GREENVILLE     | ) | FOR THE THIRTEENTH JUDICIAL CIRCUIT |
|                          | ) |                                     |
| Braxton Hare, #373172,   | ) | Case No.: 2020-CP-23-0736           |
|                          | ) |                                     |
| Applicant,               | ) |                                     |
|                          | ) |                                     |
| v.                       | ) | <b>ORDER OF DISMISSAL</b>           |
|                          | ) | <i>(with prejudice)</i>             |
| State of South Carolina, | ) |                                     |
|                          | ) |                                     |
| Respondent.              | ) |                                     |

---

This matter comes before the Court by way of an application for post-conviction relief filed by Applicant Braxton Hare, through counsel, on February 5, 2020. Respondent made its return and partial motion to dismiss on May 27, 2020. Applicant filed a reply and motion to deny Respondent's partial motion to dismiss on June 12, 2020. Applicant then amended his allegations on March 15, 2023.

An evidentiary hearing was held on May 13, 2024, at the Greenville County Courthouse with the Honorable B. Alex Hyman presiding.<sup>1</sup> Applicant and his counsel, Dayne C. Phillips Esq., were present. Assistant Attorney General Julianna Battenfield of the South Carolina Attorney General's Office represented Respondent. In his case before this Court, Applicant called trial counsel Ernest Hamilton Esq., appellate counsel Taylor Gilliam Esq., and Dr. Donna Maddox to present testimony, as well as testified on his own behalf. The State called former

---

<sup>1</sup> Applicant filed a conjunctive PCR application (Case No: 2020-CP-23-0737) in regard to related trial convictions which he received a 20-year sentence. (Indictment No: 2015-GS-23-9117, Assault and Battery of High and Aggravated Nature and Indictment No: 2016-GS-23-9118), Failure to Stop For a Blue Light). Ernest Hamilton, Esq., represented Applicant at the plea as well as at trial.

The evidentiary hearing addressed the allegations of both PCR applications, and the Court considered the testimony presented as applicable to allegations in both applications. This Court granted relief as to the application (Case No: 2020-CP-23-0737) regarding the trial convictions.

prosecutor of the 13<sup>th</sup> Circuit Solicitor's Office L. Mark Moyer. At the conclusion of the hearing, this Court took the matter under advisement.

After consideration of the testimony given at the hearing, reviewing and considering the record, the arguments presented by counsel, and the controlling case law, this Court finds that Applicant failed to carry his burden of proof to show either deficiency in representation or that any purported deficiency supported a reasonable probability of a different result. This Court requested that counsel for the State prepared a proposed order.<sup>2</sup> This Court now **DENIES** relief for the specific reasons set out in this order.

#### PROCEDURAL HISTORY

Applicant is presently incarcerated by the South Carolina Department of Corrections in Perry Correctional Institution.<sup>3</sup> During its May of 2016 term, the Greenville County grand jury indicted Applicant for carjacking (2015-GS-23-11000). Applicant was represented by Ernest Hamilton Esq., and Assistant Solicitor L. Mark Moyer of the 13<sup>th</sup> Circuit Solicitor's Office prosecuted the case. On October 2, 2017, Applicant appeared before the Honorable Edward W. Miller and pleaded guilty to carjacking. Former Assistant Solicitor Moyer presented the following facts:

The incident happened on August 31<sup>st</sup> of 2015. The victim, Mr. Abimile Cruz, was driving at -- near the intersection of Fronage Road - - Frontage Road and Staunton Bridge Road. He slowed down to - - make a turn when he -- he was approached by a group of three to four men, one of whom was this Defendant.

---

<sup>2</sup> The proposed order was provided to counsel for Applicant prior to this Court's acceptance. Applicant's counsel was allowed sufficient time to review the proposed order while this Court made its own detailed review. *See Fishburne v. State*, 427 S.C. 505, 516, 832 S.E.2d 584, 589 (2019) (providing a "proposed order should be transmitted to opposing counsel" for review and that counsel "should ... alert preparing counsel and the PCR court as to any deficiencies in the proposed order.").

<sup>3</sup> Applicant was incarcerated at McCormick Correctional Institution at the time of the filing of his PCR application. (PCR App. at 1).

Two of the men pulled pistols and got the victim to get out of the vehicle. He did so. When he got out of the vehicle, his cell phone was taken.

The men then got into the car and drove it away. The car was recovered a couple of days later when a co-defendant's ankle monitor was left at the scene where the vehicle was found that led to the arrest of that person. And then a subsequent investigation led to the arrest of this Defendant as well.

(Guilty Plea Tr. at 9).

In accordance with the State's recommendation, Judge Miller sentenced Applicant to imprisonment for 20 years, to be served concurrently with his previous trial conviction and sentence from July of 2017, with 649 days credit for time served. (Guilty Plea Tr. at 11). The State dismissed an indictment for attempted murder (2016-GS-23-6478) and armed robbery (2015-GS-23-10999). (Guilty Plea Tr. at 4).

Applicant did not appeal his conviction and sentence.

#### ALLEGATIONS

In his application for post-conviction relief, Applicant argues he is entitled to relief based upon the following claims:

- (1) Applicant did not knowingly and voluntarily waive his right to direct appellate review of his conviction and sentence;
- (2) Applicant's guilty plea was not knowingly and voluntarily entered because plea counsel rendered erroneous advice;
- (3) plea counsel was constitutionally ineffective for failing to have Applicant evaluated by a qualified medical professional in order to determine mental competency and criminal responsibility;
- (4) plea counsel was constitutionally ineffective for failing to move for a hearing before trial, pursuant to State v. Blair, 275 S.C. 529, 273 S.E.2d 536 (1981), in order to determine whether Applicant was competent to plead guilty;
- (5) plea counsel was constitutionally ineffective for failing to

present all reasonable and necessary evidence during sentencing in mitigation, and

- (6) plea counsel was constitutionally ineffective for failing to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense.

(PCR App. at 2-3). Applicant prays the Court would grant post-conviction relief and allow him to seek belated appellate review of his conviction and sentence, vacate his conviction and sentence, and remand for a new trial. (PCR App. at 6).

On March 15, 2023, Applicant, through counsel, amended the application as to the following:

Plea Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. *See* S.C. Code § 17-27-20(A)(1), (4), and (6). Plea Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Plea Counsel's errors, Applicant would not have pled guilty and went to trial. *See Hill v. Lockhart*, 414 U.S. 52 (1985) (applying the *Strickland v. Washington*, 466 U.S. 668 (1984) standard to guilty plea challenges of ineffective assistance of counsel).

Plea Counsel's acts or omissions of ineffective assistance of counsel include but are not limited to the following allegations:

- (I) Plea Counsel failed to file a Notice of Appeal as requested by Applicant of his guilty plea and sentence, thereby denying Applicant belated review of direct appeal issues. Specifically, Applicant did not knowingly, intelligently, and voluntarily waive his right to file an appeal of his guilty plea and sentence. *See White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974); *Wilson v. State*, 348 S.C. 215, 559 S.E.2d 581 (2002); *Davis v. State*, 288 S.C. 290, 342 S.E.2d 60 (1986).
- (II) Applicant did not voluntarily, knowingly, or intelligently plead guilty based on Plea Counsel's erroneous advice. *See Boykin v. Alabama*, 395 U.S. 238 (1969).

- (III) Plea Counsel failed to have Applicant evaluated by a qualified medical professional for criminal responsibility and competency to stand trial. *See Jeter v. State*, 308 S.C. 230, 417 S.E.2d 594 (1992).
- (IV) Plea Counsel failed to move for a *Blair* hearing prior to the plea hearing to determine Applicant's competency to stand trial. *See State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981); *Matthews v. State*, 358 S.C. 456, 596 S.E.2d 49 (2004); S.C. Code §§ 44-23-410 and 430.
- (V) Plea Counsel failed to present all reasonable and necessary evidence to the Court during the sentencing phase in mitigation of Applicant's potential sentence.
- (VI) Trial Counsel failed to provide the Trial Court with evidence regarding Applicant's intellectual deficits, documented closed head injury, and associated cognitive deficits as noted in Dr. Donna Maddox's reports.
- (VII) Plea Counsel provided erroneous advice to Applicant to accept this guilty plea based on his conviction after the guilty verdict in a separate trial.
- (VIII) Plea Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. *See Wiggins v. Smith*, 539 U.S. 510 (2003); *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von Dohen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015).

(Amended PCR App. at 2-4). Applicant seeks a belated appeal of his guilty plea and sentence and Applicant also seeks Post-Conviction Relief by vacating his conviction and sentence and remanding the indictment for a new trial based on ineffective assistance of plea counsel. (Amended PCR App. at 6).

## FINDINGS OF FACT AND CONCLUSIONS OF LAW

In addition to carefully considering the record and the arguments presented by counsel, this Court has also had the opportunity to consider the testimony presented at the PCR evidentiary hearings and has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. §17-27-80 (2003).

### *Ineffective Assistance Claims*

For claims that trial counsel provided ineffective assistance, this Court is guided by the familiar test: To show a violation of the Sixth Amendment, an applicant must show that counsel's representation fell below an objective standard of reasonableness, and but for counsel's error, there is a reasonable probability that the outcome of the trial would have been different. *Strickland v. Washington*, 466 U.S. 668, 694 (1984); *Simpson v. Moore*, 367 S.C. 587, 595–96, 627 S.E.2d 701, 706 (2006). “A reasonable probability is a probability sufficient to undermine confidence in the outcome” of the trial. *Strickland*, at 694. Relief will not be granted on a showing of mere error—prejudice must also be shown. *Id.*

“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 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, 654 S.E.2d 870 (Ct. App. 2007) (citing *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001)). “When alleging that his guilty plea was induced by ineffective assistance of counsel, an applicant must prove that counsel's advice was not ‘within the competence demanded of attorneys in criminal cases.’” *Hill v. Lockhart*, 474 U.S. 52, 56, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985).

“The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases.” *Dalton v. State*, 376 S.C. 130, 654 S.E.2d 870 (Ct. App. 2007). To conduct a fair review of counsel’s performance, a reviewing court must “eliminate the distorting effects of hindsight” and attempt “to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” *Strickland*, 466 U.S. at 689. Further, it is presumed that counsel made all decisions in exercise of reasonable judgment. *Strickland*, at 689. It is the applicant’s burden to prove, by a preponderance of the evidence, that he is entitled to relief. Rule 71.1 (e), SCRCRCP. *See also Speaks v. State*, 377 S.C. 396, 399, 660 S.E.2d 512, 514 (2008) (“the burden of proof is on the applicant to prove the allegations in his application”).

*Allegation I: Failure to File a Notice of Appeal*

Applicant alleges plea counsel failed to file a notice of appeal though he requested counsel to do so. Applicant requests relief pursuant to *White v. State*, 263 S.C. 110, 208 S.E.2d 35 (1974), alleging that he did not knowingly, intelligently, and voluntarily waive his right to file an appeal of his guilty plea and sentence.

“Following a trial, counsel is required to make certain the defendant is made fully aware of the right to appeal.” *Turner v. State*, 380 S.C. 223, 224, 670 S.E.2d 373, 374 (2008) (citing *White v. State, supra*). “In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal or comply with the procedure in *Anders v. California*, 386 U.S. 738, 87 S.Ct. 1396, 18 L.Ed.2d 493 (1967).” *Id.* However, the standard for a guilty plea differs.

“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, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea.” *Id.*

(citing *Roe v. Flores–Ortega*, 528 U.S. 470, 120 S.Ct. 1029, 145 L.Ed.2d 985 (2000); *Weathers v. State*, 319 S.C. 59, 459 S.E.2d 838 (1995)).

The standard again differs when an applicant alleges that he did request counsel to file an appeal, but counsel failed to do so. Regardless of whether the appeal would have had merit, “[a] lawyer who disregards specific instructions from the defendant to file a notice of appeal acts in a manner that is professionally unreasonable.” *Kinard v. State*, 418 S.C. 478, 481, 795 S.E.2d 15, 16 (2016) (citing *Roe v. Flores–Ortega*, 528 U.S. at 477, 120 S.Ct. at 1029). “[W]hen counsel’s constitutionally deficient performance deprives a defendant of an appeal that he otherwise would have taken, the defendant has made out a successful ineffective assistance of counsel claim entitling him to an appeal.” *Roe v. Flores–Ortega*, 528 U.S. at 484, 120 S.Ct. at 1029. “The defendant need not show that his hypothetical appeal might have had merit, only that but for counsel’s deficient conduct, the defendant would have appealed.” *Id.*, at 486, 120 S.Ct. 1029.

However, an applicant is not simply relieved of his burden of proof and must rely on evidence that he sufficiently demonstrated to counsel his interest in an appeal. *See Roe v. Flores–Ortega*, 528 U.S. at 485–486, 120 S.Ct. at 1039 (“evidence that there were nonfrivolous grounds for appeal or that the defendant in question promptly expressed a desire to appeal will often be highly relevant in making this determination”). “[I]t is proper to consider the guilty plea transcript as well as evidence at the PCR hearing.” *Suber v. State*, 371 S.C. 554, 558, 640 S.E.2d 884, 886 (2007).

This Court looks to the testimony presented at the evidentiary hearing and finds Applicant has failed to provide testimony alleging that he asked counsel to file an appeal, nor is there testimony from plea counsel conceding that he did not file an appeal despite Applicant’s request. As such, Applicant has not established that counsel acted deficiently. Further, Applicant received

a 20-year sentence due to his convictions at trial, and plea counsel negotiated with the prosecution for a 20-year sentence to be served concurrently with his trial sentence. In addition, the State dismissed an armed robbery and attempted murder charge – an aggregate of 60 years if Applicant was sentenced to the maximum. As such, Applicant has not shown any resulting prejudice as to counsel’s alleged deficiency.

Even if Applicant had established that he requested plea counsel to file an appeal, Applicant has not presented a direct appeal issue for this Court to review. *See Kinard v. State*, 418 S.C. 478, 481, 795 S.E.2d 15, 16 (2016) (The proper standard in evaluating a claim where Applicant requested plea counsel to appeal and he failed to do so, is a review of Applicant’s direct appeal issue.).

Considering the lack of testimony and evidence as to this allegation, Applicant has failed to show that he requested plea counsel to file a direct appeal, and that he was prejudiced as a result. Therefore, this allegation is denied and dismissed with prejudice.

#### *Allegations II & VII: Involuntary Guilty Plea*

Applicant alleges that his plea was involuntary due to counsel’s erroneous advice to accept the guilty plea based on his conviction in a separate trial.

“A defendant who pleads guilty on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing (1) that counsel’s representation fell below an objective standard of reasonableness and (2) that there is a reasonable probability that but for counsel’s errors, the defendant would not have pleaded guilty but would have insisted on going to trial.” *Hill v. Lockhart*, 474 U.S. 52, 56-57, 106 S.Ct. 366, 369, 88 L.Ed.2d 203, 208-09 (1985).

Upon review of the record, plea counsel indicated to the court that he was unsure if Applicant understood the consequences of not accepting the offer of serving concurrent time.

(Guilty Plea Tr. at 3). Plea counsel relayed that Applicant wanted 10-15 years; however, he was unsure if Applicant understood he would be serving the 20-year sentence from his trial convictions regardless of the sentence as to the carjacking. (Guilty Plea Tr. at 4). Prior to Applicant entering the plea, the court informed Applicant that he would accept the State's recommendation, and if Applicant proceeded to trial, the fact that Applicant had not taken responsibility would be taken into consideration. (Guilty Plea Tr. at 4-5). Looking objectively at the State's plea offer and considering Applicant was convicted under a similar set of circumstances at his prior trial, counsel's advice appears to be well within reason.

Notably, there is no evidence in the record or testimony presented at the PCR hearing, that Applicant wanted or considered proceeding to trial on the carjacking indictment. In fact, the record shows that Applicant merely wanted to plead to less time. Further, even if Applicant did not fully understand the consequences of his plea – though the record suggests otherwise – he suffered no prejudice. If Applicant had declined the State's plea offer and proceeded to trial on the carjacking charge, he would have faced a 20-year sentence to potentially run consecutively with his trial charges and could have faced time for the unrelated armed robbery, carrying a maximum sentence of 20 years, and the attempted murder, carrying a maximum sentence of 30 years imprisonment. *See Rollison v. State*, 346 S.C. 506, 511, 552 S.E.2d 290, 293 (2001) (“[Applicant] received the benefit of the agreement for which he bargained and cannot now complain.”)

Applicant presented no testimony concerning counsel's advice as to pleading guilty to the carjacking indictment and offered no explanation as to how counsel's advice was erroneous. Applicant must show that counsel's performance falls below an “objective standard of reasonableness” and that counsel's advice “was not within the range of competence demanded of attorneys in criminal cases.” *Bennett v. State*, 371 S.C. 198, 203-204, 638 S.E.2d 673, 675 (2006).

There is no evidence in the record to support the allegation that plea counsel erroneously advised Applicant to accept the State's plea offer. Further, there is no supporting facts suggesting that Applicant wanted to proceed to trial. Considering Applicant received the benefit of the bargain, Applicant has failed to show plea counsel acted deficiently, and that he was prejudiced from plea counsel's advice. Therefore, this allegation is denied and dismissed with prejudice.

*Allegations: III & IV: Failure to Request Competency Evaluation*

Applicant alleges that counsel failed to move for a hearing pursuant to *State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981) to have Applicant evaluated by a medical professional to determine Applicant's competency to stand trial and criminal responsibility.

"The test of competency to enter a plea is the same as required to stand trial." *Jeter v. State*, 308 S.C. 230, 232, 417 S.E.2d 594, 596 (1992). "The accused must have sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and have a rational as well as factual understanding of the proceedings against him." *Id.* "[W]hen establishing *Strickland* prejudice in the context of plea counsel's failure to request a mental competency evaluation, the applicant need only show a reasonable probability that he was incompetent at the time of the plea." *Ramirez v. State*, 419 S.C. 14, 21, 795 S.E.2d 841,845 (2017) (internal marks omitted) (quoting *Jeter v. State*, 308 S.C. 230,233,417 S.E.2d 594, 596 (1992)).

Plea counsel discussed Applicant's case and his options with him on several occasions prior to his trial. (PCR Tr. at 35). Plea counsel was retained by Applicant's mother, and there was no testimony to indicate that she, Applicant, or any other family member raised concern as to Applicant's competency. (PCR Tr. at 55). Plea counsel was familiar with Applicant as he had represented him in his prior trial, and did not indicate that there were any communication issues regarding discussing the facts of Applicant's case with him. *Compare Jeter*, 308 S.C. at 232–33,

417 S.E.2d at 596 (finding counsel acted reasonably in relying on his own perceptions of a defendant's competency), with *Ramirez*, 419 S.C. at 22–23, 795 S.E.2d at 845–46 (finding plea counsel was deficient in failing to seek an independent competency evaluation where plea counsel was “clearly on notice” the defendant had mental health issues based on his own personal interactions with the defendant, as well as a previous psychological evaluation identifying several mental health issues). Plea counsel further testified that he was aware of Applicant’s DJJ records from his trial, however there was no information presented to him that indicated he needed to present evidence of intellectual deficits. (PCR App. at 61-62 and 121). The transcript shows that Applicant clearly understood the questions that were asked of him at his guilty plea, and his responses to those questions were appropriate.

Applicant presented the testimony of Dr. Donna Maddox who performed a psychiatric evaluation on Applicant on July 21, 2020, and November 4, 2020. *See* Applicant’s Exhibit 1 and 2; *see also* PCR Tr. at 9-10. While Dr. Maddox concludes that Applicant suffers from intellectual deficits, she testified that Applicant does have the capacity to understand, it just may take him longer to process the information. (PCR Tr. at 28). She testified, in her opinion, Applicant had the ability to consult with his lawyer with a rational degree of reasonable understanding, and that he understood the proceedings against him. (PCR Tr. at 21 and 22). Ultimately, Dr. Maddox concluded that Applicant was competent at the time he entered the plea. (PCR Tr. at 15). *See Hall v. Catoe*, 360 S.C. 353, 601 S.E.2d 335 (2004) (“[Our Supreme] Court has held that the PCR judge erred in granting relief on the basis that the defendant was not competent to stand trial when (1) counsel testified at the PCR hearing that he had no trouble communicating with the defendant; (2) the trial transcript showed that the defendant clearly understood the questions asked and responded in an

appropriate manner; and (3) a forensic psychiatrist evaluated the defendant prior to trial and found the defendant's medical conditions did not affect his mental state”).

Applicant has not presented supporting evidence to show that he was incompetent at the time of the plea, in fact, the evidence presented shows that Applicant was competent. As such, Applicant has failed to show plea counsel acted deficiently by failing to move for a *Blair* hearing to have Applicant evaluated for competency to stand trial and criminal responsibility. Further, Applicant cannot prove resulting prejudice. Therefore, this allegation is denied and dismissed with prejudice.

*Allegations V & VI: Failure to Present Mitigating Evidence*

Applicant alleges plea counsel failed to present all reasonable and necessary evidence to the Court during the sentencing phase in mitigation of Applicant's potential sentence which would include Applicant's intellectual deficits, a documented closed head injury, and associated cognitive deficits as noted in Dr. Donna Maddox's reports.

However, as this is not a capital matter, no fact-finding is required that could reduce or increase the sentencing range. The sentencing range is set by statute as a result of the plea. Further, Applicant admitted the facts of the crime by virtue of the plea. It is nearly impossible to show the required *Strickland* prejudice. *Strickland, supra*.

As previously stated, this Court finds that plea counsel was not deficient for failing to acquire and present evidence to the plea court regarding Applicant's intellectual deficits. There is no evidence to suggest plea counsel acted objectively unreasonable by failing to do so. The circumstances of the negotiated plea as well as plea counsel's testimony that he had no issues communicating with Applicant, or concern as to his competency by his own perception or from Applicant and family members negate *Strickland* deficiency as to mental state.

At any rate, Dr. Maddox's testimony appears to suggest that Applicant may be immature or impulsive, but her assessment does not assist Applicant in meeting his burden of proof in accordance with *Strickland*. Dr. Maddox testified that Applicant had history of a significant closed-head injury which resulted from a moped accident likely contributing to his cognitive deficits. (PCR Tr. at 14). Applicant was diagnosed with borderline intellectual functioning, so his IQ was lower than the typical 17-year-old and more consistent with that of a 16-year-old. (PCR Tr. at 14-16 and 30). Dr. Maddox opined that Applicant is more likely to be influenced, and considering that one co-defendant was 16 years old and the other was older and physically outweighed Applicant, his cognitive defects could have contributed to his decision making in committing the crime. (PCR Tr. at 16).

Even if Dr. Maddox's testimony or information of the like from plea counsel was presented to Judge Miller, the information in summary, would be that Applicant had average grades of no concern from 2011-2015; Applicant may take longer to process things – especially if he is anxious; Applicant has a sub 80 IQ but above 69; an unspecified neurocognitive disorder and a history of ADHD, and a head injury that could have affected his judgement at the time of the crime. (PCR Tr. at 19 and 23-29). Though mitigation efforts as to guilty plea sentencing are not statutorily warranted in non-capital cases, this Court's assessment of Dr. Maddox's testimony concludes that the information presented at the PCR hearing does not support a reasonable probability of a different outcome. *Strickland, supra*.

Therefore, this Court finds plea counsel did not act deficiently in failing to present mitigation evidence as exemplified by Dr. Maddox's testimony, and that Applicant cannot prove resulting prejudice for his failure to do so. This allegation is denied and dismissed with prejudice.

*Allegation VIII: Failure to Investigate*

Lastly, Applicant alleges plea counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of his defense.

“Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary.” *Taylor v. State*, 404 S.C. 350, 363, 745 S.E.2d 97, 104 (2013) (citing *Strickland*, 466 U.S. at 691, 104 S.Ct. 2052. Thus, “[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.” *Id.* (citing *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008) (citation omitted).

“In reviewing a claim that defense counsel failed to properly investigate a defense to a crime, a court’s principle concern is whether the investigation ‘was itself reasonable.’” *Taylor*, 404 S.C. at 364, 745 S.E.2d at 104 (citing *Wiggins v. Smith*, 539 U.S. 510, 522–23, 123 S.Ct. 2527, 156 L.Ed.2d 471 (2003) (emphasis in original) (citation omitted)). “Moreover, counsel’s decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel’s judgment.” *Id.* (citing *Simpson v. Moore*, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006).

This court construes this allegation in reference to Applicant’s guilty plea only and emphasizes “[a] guilty plea is a solemn, judicial admission of the truth of the charges against an individual; thus, a criminal inmate’s right to contest the validity of such a plea is usually, but not invariably, foreclosed.” *Dalton v. State*, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing *Blackledge v. Allison*, 431 U.S. 63, 74, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977)). When the plea is voluntarily and understandingly made, as is the case here, the plea “constitutes a waiver of

nonjurisdictional defects and defenses, including claims of violation of constitutional rights prior to the plea.” *Rivers v. Strickland*, 264 S.C. 121, 124, 213 S.E.2d 97, 98 (1975).

Specifically, as to the circumstances surrounding the plea, it appears from review of the record that Applicant did not want to proceed to trial for the carjacking indictment and wished for a lesser sentence than the 20 years that was recommended by the State. There is no testimony from the PCR hearing to suggest the alternative. There is no evidence to suggest plea counsel was concerned or notified of Applicant’s intellectual deficits prior to Dr. Maddox’s testimony. Considering counsel advocated for Applicant to accept the negotiated plea deal, and the court explicitly confirmed that it would accept the State’s recommendation, any mitigation efforts would be futile and are now judged under the *Strickland* lense of reasonableness.

As such, Applicant has failed to show counsel acted deficiently and that he suffered resulting prejudice. He has not met his burden of proof. Therefore, this allegation is denied and dismissed with prejudice.

#### CONCLUSION

Based upon review of the records, pleadings, and the arguments of counsel in this matter, this Court finds the Applicant has failed carry his burden of proof on any of the allegations in his application and **DENIES** and **DISMISSES** the allegations within the application with prejudice.

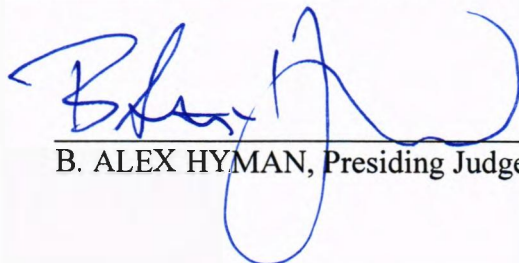
This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

#### **IT IS THEREFORE ORDERED:**

1. Applicant’s application for post-conviction relief is denied and dismissed with prejudice; and

2. Applicant is remanded to the custody of Respondent for the completion of his sentence.

AND IT IS SO ORDERED this 19 day of Dec., 2024.



B. ALEX HYMAN, Presiding Judge

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable B. Alex Hyman, Circuit Court Judge

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Case No. 2020-CP-23-0736

---

Braxton Hare #373172,

Petitioner,

v.

State of South Carolina,

Respondent.

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**NOTICE OF APPEAL**

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Petitioner Braxton Hare appeals the Honorable B. Alex Hyman's Order of Dismissal filed on **December 19, 2024**.

  
Dayne C. Phillips, Esq.  
1614 Taylor Street, Suite D.  
Columbia, SC 29201

**ATTORNEY FOR PETITIONER**

**December 27, 2024**

**Other Counsel of Record:**

Melody Brown, Senior Assistant Deputy Attorney General  
South Carolina Attorney General's Office  
1000 Assembly Street, Room 519  
Columbia, SC 29201

**cc:**

Brice Garrett, Greenville County Clerk of Court

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM GREENVILLE COUNTY  
Court of Common Pleas

The Honorable B. Alex Hyman, Circuit Court Judge

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Case No. 2020-CP-23-0736

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Braxton Hare #373172,

Petitioner,

v.

State of South Carolina,

Respondent.

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**PROOF OF SERVICE**

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I certify that I have served the Notice of Appeal on Senior Assistant Deputy Attorney General Melody Brown, and the Honorable Brice Garrett, by depositing a copy in the United States Mail, postage prepaid, on **December 27, 2024**, addressed to the following parties:

Melody Brown, Esquire, South Carolina Attorney General's Office  
1000 Assembly Street, Room 519, Columbia, SC 29201

The Hon. Brice Garrett, Greenville County Clerk of Court  
305 E North St., Greenville, SC 29601-2121



Courtney Powers  
Paralegal for Dayne Phillips, Esq.  
1614 Taylor Street, Suite D.  
Columbia, SC 29201

**December 27, 2024**

STATE OF SOUTH CAROLINA  
COUNTY OF Greenville  
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020 CP- 230736

Braxton Hare  
PLAINTIFF(S)

State of SC  
DEFENDANT(S)

Submitted by: \_\_\_\_\_

Attorney for : ☐ Plaintiff ☐ Defendant  
or  
☐ Self-Represented Litigant

## DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other \_\_\_\_\_
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other \_\_\_\_\_
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**  
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other \_\_\_\_\_

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: \_\_\_\_\_

## ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : \_\_\_\_\_

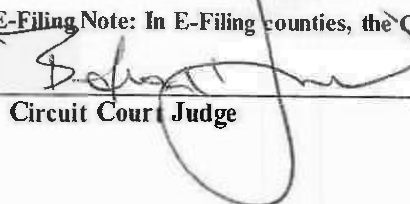
## INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

| Judgment in Favor of<br>(List name(s) below) | Judgment Against<br>(List name(s) below) | Judgment Amount To be<br>Enrolled<br>(List amount(s) below) |
|----------------------------------------------|------------------------------------------|-------------------------------------------------------------|
|                                              |                                          | \$                                                          |
|                                              |                                          | \$                                                          |
|                                              |                                          | \$                                                          |

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

  
Circuit Court Judge

2776  
Judge Code

1/8/25  
Date

**For Clerk of Court Office Use Only**

This judgment was entered on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ and a copy mailed first class or placed in the appropriate attorney's box on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ to attorneys of record or to parties (when appearing pro se) as follows:

\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE PLAINTIFF(S)

\_\_\_\_\_  
\_\_\_\_\_  
ATTORNEY(S) FOR THE DEFENDANT(S)

\_\_\_\_\_  
CLERK OF COURT

**Court Reporter:** \_\_\_\_\_

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

**ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.**

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

After careful consideration, the Applicant's  
Motion to Alter or Amend pursuant to Rule 59(E)  
is denied.

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**FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE**

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA     )  
                                                   )  
COUNTY OF GREENVILLE     )

INDICTMENT FOR  
CARJACKING

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

MAY 24 2016

the Grand Jurors of Greenville

That BRAXTON LAVON HARE did in Greenville County, on or about the 31st day of August, 2015, take or attempt to take a motor vehicle, to wit: a 2001 Nissan Altima from ABIMAEEL CRUZ by force, and violence or by intimidation while ABIMAEEL CRUZ, was operating and/or was in the said vehicle. This is in violation of §16-03-1075 of the South Carolina Code of Laws (1976) as amended.

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

  
SOLICITOR

BAR#64155

**WITNESSES**

Darrell S Kicklighter

*2MS 5/24/16*

Greenville County Sheriffs Office

9/4/2015

**ARREST WARRANT NUMBER**

2015A2330207889

**ACTION OF GRAND JURY**

**TRUE BILL**

*Thomas J. Price*

FOREMAN GRAND JURY

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury*

*Date:*

DOCKET NO. 2015-GS-23-

LMM

011000

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

*2016*  
TERM 2015

THE STATE

vs.

BRAXTON LAVON HARE

Indictment for

2599

CARJACKING

VIOLATION § 16-03-1075

**FILED**

**DEC 23 2015**

Clerk of Court  
Greenville County

## ARREST WARRANT

2015A2330207889

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

THE STATE

15-144044

against

Braxton Lavon Hare

Address:

Greenville, SC 29605-

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 6 2 Weight: 135

DL State: SC DL #: [REDACTED]

DOB: [REDACTED]/1998 Agency ORI #: SC0230000

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: Darrell S Kicklighter - \*998

Offense: Carjacking / Take or attempt a vehicle from person by force without great bodily harm

Offense Code: 2599

Code/Ordinance Sec: 16-03-1075(B)(1)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

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

(L.S.)

Signature of Judge

Date: [REDACTED]

## RETURN

A copy of this arrest warrant was delivered to defendant on [REDACTED]

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Greenville General Sessions  
305 E. North Street  
Greenville County Courthouse  
Greenville, SC 29601-2120

CAGUE

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Personally appeared before me the affiant Darrell S Kicklighter who being duly sworn deposes and says that defendant Braxton Lavon Hare did within this county and state on or about 8/31/2015 violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville) in the following particulars:

DESCRIPTION OF OFFENSE: Carjacking / Take or attempt a vehicle from person by force without great bodily harm

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

The affiant, an Investigator with the Greenville County Sheriff's Office, has a report of a carjacking incident that occurred on Frontage Rd. in Greenville County. The victim was forced out his green 2001 Nissan Altima vehicle (VIN: [REDACTED]) at gun point. The affiant has evidence implicating the defendant, along with co-defendant, as the perpetrators for carjacking. The defendant, along with co-defendant, controlled the victim's movements while holding him at gun point during the incident stealing the vehicle in the process. This offense occurred in Greenville County, SC.

Signature of Affiant

D.S. Kicklighter \*998/670

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Greenville

Affiant's Address 4 McGee Street  
Greenville, SC 29601-  
Affiant's Telephone (864)271-5210

## ARREST WARRANT

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

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 8/31/2015 defendant Braxton Lavon Hare did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Greenville) as set forth below:

DESCRIPTION OF OFFENSE: Carjacking / Take or attempt a vehicle from person by force without great bodily harm

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable  
Sworn to and subscribed before me  
on 9/4/2015

Signature of Issuing Judge

Jacquie I Duckett

Judge Code: 7332

(L.S.)

Judge's Address

Judge's Telephone

Issuing Court: ☒ Magistrate ☐ Municipal ☐ Circuit

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

Form Approved by  
S.C. Attorney General  
April 11, 2003  
SC-A 518

242

6000/SCC

# General Sessions Tracking Sheet

## Indictment # 0000GS23

Name: Hare, Braxton Lavon

AKA:

Addr: [REDACTED]  
Greenville, SC 29611-4875SSN# [REDACTED]

Sex: M Race: B

DOB: [REDACTED] 1998DL# [REDACTED]

Warrant/Ticket #: 2016A2330203611

Date of Arrest: 05/16/2016

Date of Offense: 04/26/2016

Date Rcv by Clerk: 05/20/2016

Magistrate: Fisher, Darrell Scott

Counts: Code: 3410/Murder / Attempted Murder

**FILED****OCT 03 2017**Clerk of Court  
Greenville County

Indictment # 0000GS23

2016-GS-23-6478

**Disposition Information**

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition: 10/2/17

**Disposition**

- \_\_\_ 1. Guilty plea
- \_\_\_ 2. Trial-- guilty
- \_\_\_ 3. Trial - not guilty
- ☒ 4. Dism/Not Pros/Pros Ended
- \_\_\_ 5. Judicial Commitment
- \_\_\_ 6. Judicial Dismissal
- \_\_\_ 7. Remanded
- \_\_\_ 8. Dismissed at Prelim
- \_\_\_ 8. No Bill
- \_\_\_ 9. Failure to Appear
- \_\_\_ 10. Other

Explain:

Explain:

Explain:

Explain:

Explain:

Judge: \_\_\_\_\_

Defense Atty: \_\_\_\_\_

Counts: \_\_\_\_\_ Code: \_\_\_\_\_

Sentence: \_\_\_\_\_

Court Reporter: \_\_\_\_\_

Solicitor: L.M. Hoyer 64155

STATE OF SOUTH CAROLINA     )  
                                          )  
COUNTY OF GREENVILLE     )

INDICTMENT FOR  
ATTEMPTED MURDER

At a Court of General Sessions, convened on

**JUL 26 2016**

the Grand Jurors of Greenville

County present upon their oath:

That BRAXTON LAVON HARE did in Greenville County, on or about the 26th day of April, 2016, unlawfully, with malice aforethought, and with the intent to kill, attempt to kill Jay Gist. This is in violation of § 16-03-0029 of the South Carolina Code of Laws (1976) as amended.

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

  
SOLICITOR

BAR #64155

**WITNESSES**

G S Fowler

Greenville County Sheriffs Office

5/16/2016

*[Handwritten signature]*

**ARREST WARRANT NUMBER**

2016A2330203611

**ACTION OF GRAND JURY**

**TRUE BILL**

*[Handwritten signature]*

**FOREMAN GRAND JURY**

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury*

*Date:*

DOCKET NO. 2016-GS-23-

LMM

006478

**The State of South Carolina**

**County of Greenville**

**COURT OF GENERAL SESSIONS**

**July**

**TERM 2016**

**THE STATE**

**vs.**

**BRAXTON LAVON HARE**

**Indictment for**

**3410**

**ATTEMPTED MURDER**

**VIOLATION § 16-03-0029**

GCDC/SCDC

General Sessions Tracking Sheet  
Indictment # 0000GS23

245

Name: Hare, Braxton Lavon

Warrant/Ticket #: 2015A2330209222

AKA:

Date of Arrest: 10/19/2015

Addr: [Redacted]  
Greenville, SC 29605

Date of Offense: 08/22/2015

Date Rev by Clerk 10/26/2015

Magistrate: Cagle, Diane Day

SSN# [Redacted]

Counts: Code: 0B39/Robbery / Armed Robbery,  
robbery while armed or allegedly armed with a  
deadly weapon

Sex: M Race: B

DOB: [Redacted] 1998

DL# [Redacted]

Indictment # 0000GS23

FILED

20 1523 - 10999

OCT 03 2017

Clerk of Court  
Greenville County

Disposition Information

- 1. Transmitted to SOL & SCCA:
- 2. Disp Received by Clerk:
- 3. Date of Disposition: 10/2/17

- Disposition
- ☐ 1. Guilty plea
  - ☐ 2. Trial -- guilty
  - ☐ 3. Trial -- not guilty
  - ☒ 4. Dism/Not Pros/Pros Ended
  - ☐ 5. Judicial Commitment
  - ☐ 6. Judicial Dismissal
  - ☐ 7. Remanded
  - ☐ 8. Dismissed at Prelim
  - ☐ 8. No Bill
  - ☐ 9. Failure to Appear
  - ☐ 10. Other

Explain: Disposed to the District Attorney

Explain: \_\_\_\_\_

Explain: \_\_\_\_\_

Explain: \_\_\_\_\_

Explain: \_\_\_\_\_

Explain: \_\_\_\_\_

Judge: \_\_\_\_\_

CourtReporter: \_\_\_\_\_

Defense Atty: Eric Hamilton

Solicitor: L.M. Hoyer 64155

Counts: \_\_\_\_\_ Code: \_\_\_\_\_

Sentence: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

|                         |   |                                                 |
|-------------------------|---|-------------------------------------------------|
| STATE OF SOUTH CAROLINA | ) | INDICTMENT FOR                                  |
|                         | ) | ARMED ROBBERY AND POSSESSION OF A WEAPON DURING |
| COUNTY OF GREENVILLE    | ) | THE COMMISSION OF A VIOLENT CRIME               |

At a Court of General Sessions, convened on **MAY 24 2016** the Grand Jurors of Greenville  
County present upon their oath:

**COUNT ONE**

**ARMED ROBBERY**

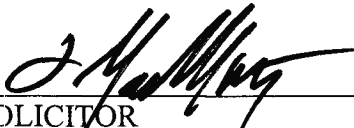
That BRAXTON LAVON HARE did in Greenville County, on or about the 22nd day of August, 2015, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: money belonging to Corner Mart from the person or presence of Katrina Hughes. This is in violation of §16-11-330 of the South Carolina Code of Laws (1976) as amended.

**COUNT TWO**

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

That BRAXTON LAVON HARE did in Greenville County, on or about the 22nd day of August, 2015, possess or visibly display a handgun during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

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

  
SOLICITOR

BAR # 64155

**WITNESSES**

Michael D Stanten

*Ums 5/24/16*

Greenville County Sheriffs Office

10/19/2015

**ARREST WARRANT NUMBER**

2015A2330209222, 2015A2330209223

**ACTION OF GRAND JURY**

**TRUE BILL**

*Thomas J. Pridemore*

FOREMAN GRAND JURY

*Foreperson of Grand Jury*

**VERDICT**

*Foreperson of Petit Jury*

*Date:*

DOCKET NO. 2015-GS-23-010999  
LMM

**The State of South Carolina**

**County of Greenville**

**COURT OF GENERAL SESSIONS**

**May**

**TERM 2015**

**THE STATE**

**vs.**

**BRAXTON LAVON HARE**

**Indictment for**

**0139, 0549**

**ARMED ROBBERY AND POSSESSION OF A  
WEAPON DURING THE COMMISSION OF A  
VIOLENT CRIME**

**VIOLATION § 16-11-0330 and §16-23-0490**

**FILED**

**DEC 23 2015**

**Clerk of Court  
Greenville County**



STATE OF SOUTH CAROLINA IN THE COURT OF GENERAL SESSIONS

COUNTY OF Greenville  
STATE VS.  
Braxton Lavon Hare  
AKA:  
Age: 19 Sex: M  
DOB: 1998 SS#: [redacted]  
Address: [redacted]  
City, State, Zip: Greenville, SC 29605  
DL#: [redacted] SID#: [redacted]  
INDICTMENT/CASE#: 2015GS2309117  
A/W#: 2015A2330207758  
Date of Offense: 9/1/2015  
S.C. Code: 16-03-0029  
C.R. Code: 3410

SENTENCE SHEET

\*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐  
In disposition of the said indictment comes now the Defendant who was  
TO: Attempted Murder Assault and Battery of a high and aggravated nature  
in violation of § 16-03-0029 600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3410 3411  
☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)  
The charge is: ☒ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)  
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.  
ATTEST: [Signature] 64155 [Signature] 02625  
Moyer, Mark SC Bar# Defendant HAMILTON, ERNEST SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,  
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
and/or to pay a fine of \$ \_\_\_\_\_; provided that upon the service of \_\_\_\_\_ days/months/years and/or payment  
of \$ \_\_\_\_\_; plus costs and assessments as applicable\*; the balance is suspended with probation for \_\_\_\_\_  
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of  
probation, which are incorporated by reference.  
☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:  
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied  
the State Department of Corrections. 518 DAYS  
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.  
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic  
Violence ) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP \_\_\_\_\_  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_ days/hours Public Service Employment  
Payment Terms: \_\_\_\_\_ ObtainGED ☐  
☐ Set by SCDPPPS \_\_\_\_\_ Attend Voc. Rehab. or Job Corp. \_\_\_\_\_  
Recipient: \_\_\_\_\_ May serve W/E beginning \_\_\_\_\_  
Substance Abuse Counseling ☐  
Random Drug/Alcohol testing ☐  
Fine may be pd. in equal, consecutive weekly/monthly  
pmts. of \$ \_\_\_\_\_ beginning \_\_\_\_\_  
\$ \_\_\_\_\_ paid to Public Defender Fund  
Other: \_\_\_\_\_  
\*Fine: \$ \_\_\_\_\_  
§14-1-206 (Assessments 107.5%) \$ \_\_\_\_\_  
§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00  
§14-1-211(A)(2) (DUI Surcharge) \$100 \$ \_\_\_\_\_  
§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_  
§ 56-1-286 (DUI Breath Test) \$25 \$ \_\_\_\_\_  
Proviso 61.6 (Public Def/Probation) \$500 \$ \_\_\_\_\_  
§ 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00  
§ 14-1-213 (Drug Court Surcharge) \$150 \$ \_\_\_\_\_  
§ 50-21-114 (BUI Breath Test Fee) \$50 \$ \_\_\_\_\_  
§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ \_\_\_\_\_  
3% to County (if paid in installments) \$ 3.75  
\$ 128.75

TAL  
Clerk of Court/Deputy Clerk Paul B. Wickham  
Court Reporter: Hern  
SCCA/217 (07/2016)  
Presiding Judge ED. (W. Will)  
Judge Code: 2220  
Sentence Date: 7-13-17

250

/13/17 05:10PM COURTROOM 8644678574

COUNTY OF Greenville

STATE OF South Carolina

Braxton Lavon Hare

AKA:

Sex: M Age: 19

DOB: 1998 SS#: [REDACTED]

City, State, Zip: Greenville, SC 29605

DL#: SID#:

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

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

TO: Failure To Stop For Blue Light

in violation of § 56-05-0750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0065

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUSThe charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentences, ☐ Recommendation by the State.

ATTEST: Moyer, Mark SC Bar# 64155 Defendant HAMILTON, ERNEST SC Bar# 02625

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years

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

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

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

probation, which are incorporated by reference.

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

the State Department of Corrections. 518 DAYS

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic

Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS

Recipient: \_\_\_\_\_

\*Fine: \$ \_\_\_\_\_

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

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

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

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

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

Proviso 61.6 (Public Def./Probation) \$500 \$ \_\_\_\_\_

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

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

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

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

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

TOTAL \$ \_\_\_\_\_

Clerk of Court/ Deputy Clerk \_\_\_\_\_ Court Reporter: \_\_\_\_\_

SCCA/217 (07/2016)

p. 01 IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2015GS2309118

A/W#: 2015A2330207762

Date of Offense: 9/1/2015

S.C. Code § : 56-05-0750(B)(1)

CDR Code #: 0065

## SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 56-05-0750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0065

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC § 17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentences, ☐ Recommendation by the State.

ATTEST: Moyer, Mark SC Bar# 64155 Defendant HAMILTON, ERNEST SC Bar# 02625

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years

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

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

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

probation, which are incorporated by reference.

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

the State Department of Corrections. 518 DAYS

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

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic

Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: \_\_\_\_\_

☐ Set by SCDPPPS

Recipient: \_\_\_\_\_

\*Fine: \$ \_\_\_\_\_

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

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

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

§ 56-5-2995 (DUI Assessment) \$12 \$ \_\_\_\_\_

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

Proviso 61.6 (Public Def./Probation) \$500 \$ \_\_\_\_\_

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

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

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

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

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

TOTAL \$ \_\_\_\_\_

Clerk of Court/ Deputy Clerk \_\_\_\_\_ Court Reporter: \_\_\_\_\_

SCCA/217 (07/2016)

Presiding Judge

Judge Code: 2730

Sentence Date: 7-13-17

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 03/10/20  
OMCOMITA RELEASE DATE SCREEN C063953  
SCDC# > 373172 LOC: MCCORMICK  
**HARE, BRAXTON LAVON** SCDC CLASSIFICATION..: VIOLENT  
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY..: N  
SEXUAL PREDATOR..: NOT APP  
DNA STATUS.....: COMPLETED  
GPS REQUIREMENT..: N  
PREA DECISION.....: PREA PERP...: NONE  
PREA VICTIM.....: HIGH VULNERABLE  
CURRENT SENTENCE: 020-00-000 CONSECUTIVE SENTENCE ...: N  
020-00-000 CURRENT SENT START DATE: 02/11/2016  
PROJECTED COMPLETION DATES  
MAXOUT DATE .....: 02/06/2033 CURRENT EWC ..: 2 F 5  
YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC  
INITIAL PAROLE DATE: 00/00/0000 NEXT PAROLE HEARING DATE: 00/00/0000  
  
TOTAL GT DAYS EARNED .....: 000000 LABOR CREW/WORK PROG DATE: 99/99/9999  
TOTAL EARNED WORK CREDITS ..: 000524 LABOR CREW DISQ REASON:  
TOTAL EDUCATION CREDITS ....: 000000 CATEGORY 4 OR 5 OFFENSE  
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00  
TOTAL SERVICE TIME EARNED ...: 001469 ISS.....:  
  
PFKEYS: 5:HISTORY OF DATE CHANGES

# South Carolina Department of Corrections

## Classification Summary Reports

Date: Tuesday, March 10, 2020 Logout

### Classification Summary Reports

Inmate Number 373172

Submit

#### Classification Summary Report for HARE, BRAXTON LAVON :

[Create PDF](#)

CLASSIFICATION SUMMARY REPORT DATED 03/10/2020

SCDC# 00373172

HARE, BRAXTON LAVON

FBI# HXFMNCLND

OFFENDER ADULT-STRAIGHT  
TYPE: SENTENCE

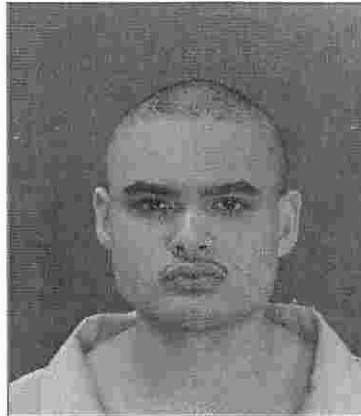
INSTITUTION: MCCORMICK

SECURITY/CUST: 3 MEDIUM

NEW CUSTODY:

CURR INCARC 20 YRS 0 MOS 0  
SENT: DAYS

SEPREQ:N

RESIDENT  
STABILITY: NA

DORMROOMBUNK\_CODE: F4 0235 B

PROJ MAXOUT  
DATE: 02/06/2033PROJ PAROLE  
DATE:EWC  
JOB: GENERAL WORKERASSIGNMENT: B LDIING DETAIL BLDG.  
#4EWC  
LEVEL: 2F5 EEC LEVEL:EDUC  
PGM: NO CURR EDUC PROGRAMINST  
RESTRICT: NO RESTRICTION

HS/ GED: N

CURRENT NO CURRENT  
PROGRAM: PROGRAM

SEX REGISTRY: N

DNA: C

AGE: 21

SECURITY THREAT GROUP DESCRIPTION: SECURITY THREAT GROUP STATUS:  
NONE NONE

PREVIOUS NUMBERS:

\*NO PREVIOUS NUMBERS\*

| CURRENT OFFENSES         | YRS | MOS | SENTENCE |            | START      | SENTENCE |     | INDICT       |
|--------------------------|-----|-----|----------|------------|------------|----------|-----|--------------|
|                          |     |     | DYS      | COUNTY     |            | V/NV     | CAT |              |
| ABHAN                    | 20  | 0   | 0        | GREENVILLE | 02/11/2016 | V        | 4   | 15GS2309117  |
| FAIL TO STOP FOR OFFICER | 3   | 0   | 0        | GREENVILLE | 02/11/2016 | N        | 2   | 15GS2309118  |
| CARJACKING               | 20  | 0   | 0        | GREENVILLE | 12/23/2015 | V        | 4   | 15GS23-11000 |

COMPLETED OFFENSES

\*NO COMPLETED OFFENSES\*

PRIOR COMMITMENTS OVER 90 DAYS:

\*INMATE HAS NO PRIORS\*

OFFENSES UNDER PREVIOUS NUMBER:

\*NO PREVIOUS OFFENSES\*

DETAINERS (HOLD,WANTED,NOTIFY):

|                         |        |                 |         |
|-------------------------|--------|-----------------|---------|
| FIREARMS PROVISION      | WANTED | PRESIDING JUDGE | CATEG:3 |
| KIDNAPPING              | WANTED | PRESIDING JUDGE | CATEG:5 |
| ASSAULT & BATTERY 3RD   | WANTED | PRESIDING JUDGE | CATEG:1 |
| MOVING TRAFFIC VIOL     | WANTED | PRESIDING JUDGE | CATEG:1 |
| HIT AND RUN             | WANTED | PRESIDING JUDGE | CATEG:3 |
| DISCH. FIREARM IN DWELL | WANTED | PRESIDING JUDGE | CATEG:3 |
| ATTEMPTED MURDER        | WANTED | PRESIDING JUDGE | CATEG:4 |

ESCAPES:

\*NO ESCAPE HISTORY\*

CRIMINAL CHARGES:

\*NO CRIMINAL CHARGES HISTORY\*

ASSAULTIVE DISCIPLINARIES:

|            |                        |           |                     |   |
|------------|------------------------|-----------|---------------------|---|
| 12/10/2019 | POSSESSION OF A WEAPON | CONVICTED | MAJOR DISC. HEARING | N |
| 10/18/2019 | POSSESSION OF A WEAPON | CONVICTED | MAJOR DISC. HEARING | N |

PREVIOUS ASSAULTIVE DISCIPLINARIES:

\*NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY\*

NON-ASSAULTIVE DISCIPLINARIES:

|            |                                          |           |                           |
|------------|------------------------------------------|-----------|---------------------------|
| 01/10/2020 | EXHIBITIONISM AND PUBLIC MASTURBATION    | CONVICTED | MAJOR DISC. HEARING       |
| 12/06/2019 | INTERFERING WITH COUNT                   | CLOSED    | OTHER ACTION TAKEN/INFORM |
| 11/23/2019 | EXHIBITIONISM AND PUBLIC MASTURBATION    | DISMISSED | MAJOR DISC. HEARING       |
| 10/28/2019 | EXHIBITIONISM AND PUBLIC MASTURBATION    | CONVICTED | MAJOR DISC. HEARING       |
| 09/19/2019 | EXHIBITIONISM AND PUBLIC MASTURBATION    | CONVICTED | MAJOR DISC. HEARING       |
| 09/19/2019 | EXHIBITIONISM AND PUBLIC MASTURBATION    | CONVICTED | MAJOR DISC. HEARING       |
| 06/04/2019 | EXHIBITIONISM AND PUBLIC MASTURBATION    | CONVICTED | MAJOR DISC. HEARING       |
| 06/04/2019 | INCITING/CREATING A DISTURBANCE          | DISMISSED | MAJOR DISC. HEARING       |
| 05/06/2019 | EXHIBITIONISM AND PUBLIC MASTURBATION    | CONVICTED | MAJOR DISC. HEARING       |
| 09/21/2017 | USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT | DISMISSED | MAJOR DISC. HEARING       |

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

\*NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY\*

## HISTORY OF MOVEMENTS:

|            |               |                    |                   |
|------------|---------------|--------------------|-------------------|
| 09/12/2019 | MCCORMICK     | INCARCERATED       | ADMINISTRATIVE    |
| 10/02/2017 | LEE           | INCARCERATED       | RETURN FROM COURT |
| 10/02/2017 | GREENVILLE CO | AUTH ABSENCE (AWL) | TO COURT          |
| 09/25/2017 | LEE           | INCARCERATED       | ADMINISTRATIVE    |
| 07/19/2017 | KIRKLAND      | INCARCERATED       | R&E PROCESSING    |
| 07/19/2017 | PERRY         | INCARCERATED       | NEW ADMISSION     |

## HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

| JOB DESCRIPTION | START DATE | END DATE   | TERMINATION REASON | JOB LVL |
|-----------------|------------|------------|--------------------|---------|
| GENERAL WORKER  | 02/18/2020 | -          |                    | 2F5     |
| GENERAL WORKER  | 01/23/2020 | 02/17/2020 | POLICY CHANGE 2020 | 5F5     |
| GENERAL WORKER  | 09/26/2017 | 12/04/2017 | LATERAL TRANSFER   | 3F5     |

## HISTORY OF EARNED EDUCATION CREDITS:

| EEC DESCRIPTION           | START DATE | END DATE   | TERMINATION REASON      |
|---------------------------|------------|------------|-------------------------|
| LVL 3 - FULL TIME(NO EWC) | 12/05/2017 | 06/21/2019 | PLACED IN ST/SP CUSTODY |

\*\*\*\*\* END OF REPORT\*\*\*\*\*

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