

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM OCONEE COUNTY
Court of Common Pleas

Perry T. Gravely, Circuit Court Judge

Appellate Case No. 2026-000355

RECEIVED
MAY 22 2026
S.C. SUPREME COURT

The State of South Carolina Respondents,

vs.

Laquavius T. Cleveland.....Petitioner.

APPENDIX VOL, III

Bruce A. Byrholdt
SC Bar #1071
BYRHOLDT DRAWDY, LLC
2315 N. Main Street
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Anderson, SC 29621
(864) 261-3977
Attorney for Petitioner Cleveland

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PO Box 11549
Columbia, SC 29211-1549
(803) 734-3970
Attorney for Respondent

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

SENTENCE MODIFIED ON INDICTMENT NUMBER 2013-GS-37-1044
AND SENTENCE AFFIRMED ON INDICTMENT NUMBER 2013-GS-37-1043
AS SENTENCED JULY 24, 2014

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

No

STATE OF SOUTH CAROLINA)

County of LEE)

VERIFICATION

2017-CP-37-327

2017 JUN -5 PM 4:08

CLERK OF COURT

I, Lavarious Cleveland, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Lavarious Cleveland

SWORN to and subscribed before me this 30
day of May, 2017.

Debra Eastbury (L.S.)
Notary Public

My Commission Expires: 3/3/2026

STATE OF SOUTH CAROLINA
COUNTY OF OCONEE

Laquavius Cleveland, #360829,

Applicant,

v.

State of South Carolina,

Respondent.

FILED OCONEE COUNTY, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2017 SEP 15) A 10:37
IN THE TENTH JUDICIAL CIRCUIT

Case No.: 2017-CP-37-0327

**RETURN AND MOTION
FOR A MORE DEFINITE STATEMENT**

Respondent, making its Return to the Application for Post-Conviction Relief ("PCR") filed on June 5, 2017, and received by Respondent on June 15, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Oconee County Clerk of Court. In October 2013, the Oconee County Grand Jury indicted Applicant for attempted murder (2013-GS-37-1043), and possession of a weapon during the commission of a violent crime (2013-GS-37-1044). Charles R. Griffin, Jr., Esquire, represented Applicant. Assistant Solicitors Lindsey Satterfield Simmons, Esquire, and David Rhys Wagner, Jr., Esquire, prosecuted the case. On July 21, 2014, Applicant proceeded to trial before the Honorable Alexander S. Macaulay and a jury. The jury found Applicant guilty as indicted. On July 24, 2014, Judge Macaulay sentenced Applicant to imprisonment for consecutive terms of twenty-two years for attempted murder and five years for possession of a weapon during the commission of a violent crime. Special conditions were placed on both sentences requiring Applicant to obtain his GED, undergo drug and alcohol testing and treatment, and undergo substance abuse counseling.

Applicant filed a motion to vacate his conviction and/or sentence on July 28, 2014. A hearing was held on August 15, 2014, and Judge Macaulay denied all of Applicant's motions.

Applicant filed a timely notice of appeal. Lara M. Caudy, Esquire, of the Office of Appellate Defense, perfected the appeal. The South Carolina Court of Appeals affirmed Applicant's conviction in an unpublished opinion, finding the issue raised by Applicant was not preserved for appellate review. State v. Cleveland, Op. No. 2016-UP-324 (S.C. Ct. App. filed June 22, 2016). The Remittitur was returned to the circuit court on July 13, 2016.

Attached to this Return and incorporated by reference are the records of the Oconee County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the motion hearing transcript, Applicant's appellate records, and the application.

II.

Applicant's charges resulted from a July 8, 2013, incident in which Applicant met with his cousin to buy a bag of marijuana and a pistol before stabbing his cousin eleven times with a knife. Applicant confessed to the crimes at the police station in the early hours of July 9, 2013, the day following the incident. A Jackson v. Denno hearing was held prior to trial, during which Applicant testified that he was not forced to confess nor was he promised anything in exchange for a confession. Judge Macaulay found the confession to be valid and voluntarily given.

III.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Trial Counsel."

2. "Ineffective Assistance of Appellate Counsel."

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

IV.

Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, Applicant must prove "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, Applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness

under prevailing professional norms.” Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. “Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Id. (citing Strickland, 466 U.S. at 690). Applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel’s deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

V.

Applicant also alleges ineffective assistance of appellate counsel. Respondent submits this allegation is without merit. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985). “However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record.” Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v.

Aiken, 775 F.2d 1226 (4th Cir. 1985).

Applicant must show appellate counsel's performance was deficient, and he was prejudiced by the deficiency. Thrift, at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

Respondent contends Applicant's appellate attorney rendered effective assistance of counsel. However, this ground for relief may raise factual issues that are not conclusively refuted by the record. Respondent therefore requests an evidentiary hearing on this allegation.

VI.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to "support each ground" or to explain with any specificity whatsoever the facts upon which his claims are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of trial and appellate counsel.

VIII.

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

IX.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of trial and appellate counsel.

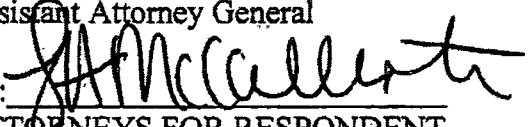
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Deputy Attorney General

LINDSEY MCCALLISTER
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
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Telephone: (803) 734-3737

Sept 12, 2017

Byrholdt Drawdy

ATTORNEYS AT LAW, LLC

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Aug. 8, 2018

Hon. R. Scott Sprouse
Circuit Judge
Box 1277
Walhalla, SC 29691

Clerk of Court
Oconee County Courthouse
P.O. Box 678
Walhalla, SC 29691

Kelly Oppenheimer
SCAG
Box 11549
Columbia, SC 29211

**Re: Laquavius Cleveland vs. State of South Carolina
2017-CP-37-00327**

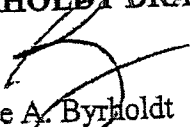
Dear Beverly and Kelly:

Please be advised that I have been retained to represent Mr. Cleveland on the above-captioned case. Notice of Appearance attached hereto. I understand this case has been set for August 28, 2018, I was just retained and I have protection from August 24, 2018 through September 7, 2018 as I will be out of the country. I can be ready for an evidentiary hearing at the next week for PCR's in Oconee County. Thank you for your cooperation.

With kindest regards, I am

Sincerely yours,

BYRHOLDT DRAWDY, LLC


Bruce A. Byrholdt
Attorney for Mr. Cleveland

Encl. (1)

IT IS THEREFORE ORDERED:

1. Rodney W. Richey, Esquire, shall be relieved from representation of Applicant; and
2. That this post-conviction relief matter shall be continued and re-scheduled for the next regularly scheduled term of court for post-conviction relief for the Tenth Judicial Circuit; and
3. Applicant shall remain in the custody of the State.

AND IT IS SO ORDERED this 15 day of March, 2018.



J. CORDELL MADDOX, JR.
Presiding Judge
Tenth Judicial Circuit

Anderson, South Carolina

FILED OCONEE COUNTY, SC
BEVERLY A. WHITFIELD
CLERK OF COURT
2018 MAR 19 A 11:20

STATE OF SOUTH CAROLINA IN THE COURT OF COMMON PLEAS
COUNTY OF OCONEE BEVERLY H. WHITFIELD
CLERK OF COURT FOR THE TENTH JUDICIAL CIRCUIT

Laquavius Cleveland, #360829, 2018 MAR 19 A 11:20 2017-CP-37-327

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER RELIEVING COUNSEL
AND CONTINUING THE MATTER**

This matter comes before the Court by way of an application for post-conviction relief filed June 5, 2017. The State made its return to the application on September 13, 2017, requesting an evidentiary hearing be held. An evidentiary hearing was scheduled for February 22, 2018, at the Anderson County Courthouse, and at the start of the hearing, Applicant's appointed counsel, Rodney W. Richey, Esquire, indicated his client's family had requested he be relieved from this matter. This Court questioned Applicant, and Applicant informed this Court he consented to the relief of counsel Richey and a continuance to the next term of court once new counsel was appointed to represent him. Respondent, who was represented by Assistant Attorney General Kelly Oppenheimer, objected to the motion to relieve counsel Richey, as the family had ample time before the scheduled hearing to retain counsel.

This Court finds counsel Richey should be relieved as counsel for Applicant. Should Applicant not retain counsel by the time this matter is scheduled for an evidentiary hearing, this Court finds that Applicant will be required to proceed with the hearing *pro se*. Furthermore, this Court finds that this matter should be continued to the next scheduled term of court for the Tenth Judicial Circuit.

11/05/2014	LEE	INCARCERATED	ADMINISTRATIVE
08/15/2014	TURBEVILLE	INCARCERATED	RETURN FROM COURT
08/15/2014	OCONEE CO	AUTH ABSENCE (AWL)	TO COURT
08/11/2014	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
07/29/2014	KIRKLAND	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

NO HISTORY OF EARNED WORK CREDIT ASSIGNMENTS

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
LVL 5 - FULL TIME(NO EWC)	10/02/2015	08/23/2016	PLACED IN ST/SP CUSTODY
LVL 3 - FULL TIME(NO EWC)	12/04/2014	10/01/2015	CUSTODY REVIEW
LVL 3 - FULL TIME(NO EWC)	08/20/2014	11/05/2014	INSTIT TRANSFER

***** END OF REPORT *****

Create PDF

Source : SummaryReport.jsp

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[Version: 1.4.12 Built: 02/03/2015 11:57:23 AM Time: 12:45:18 PM]

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF OCONEE

Laquavius T. Cleveland
SCDC 360829,

Petitioner,

Vs.

Petitioner's Response to Respondent's
Motion to Make More Definite and Certain
2017-CP-37-00327

State of South Carolina,

Respondent.

Petitioner, by and through his undersigned attorney responds to Respondent's Motion to Make More Definite and Certain as follows:

Allegations of ineffective assistance of Trial Counsel. First, trial counsel never attempted to talk with victim in case. Trial Counsel has only been involved in case for a week or two prior to trial and only met with Petitioner 2 or 3 times. Trial counsel should have sought immediate appeal from denial of motion to continue trial which trial judge denied.

Trial counsel failed to object to general intent jury instruction and failed to request specific intent charge by trial judge on page 59 of Transcript of Record. SEE: State v. Coleman, 422 S.C. 47, 810 S.E.2d 18 (S.Ct. 2018) and State v. Sutton, 340 S.C. 493, 532 S.E.2d 283 (S.Ct. 2000).

Trial counsel failed to object to and/or request curative instruction when "house arrest" was mentioned during State's cross-examination of Petitioner's mother on page 12 of Transcript of Record.

Copies to:

Atty ☒ (P) _____ (D) _____

DSS _____ other _____

Filed ☒ Boxed _____ handed _____

ENTERED
aw

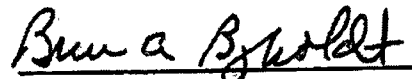
000430

FILED OCONEE COUNTY SC
CLERK OF COURT
2019 SEP 19 A 11:08

Appellant Counsel was ineffective for failure to preserve on appeal trial counsel's object to photographs on pages 23, 163 and 171 of trial transcript because prejudice of photographs outweighed any probative value of the photographs.

Respectfully submitted,

BYRHOLDT DRAWDY



Bruce A. Byrholdt
2315 N. Main Street, Ste. 117
Anderson, SC 29621
(864) 261-3977
(864) 261-3978 fax
ATTORNEYS FOR PETITIONER

Sept. 17, 2019

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Oconee

VS.

Laquavius Tyshawn Cleveland

AKA:

Race: B Sex: M Age: 17

DOB: SS#:

Address: 2403 Brown St

City, State, Zip: Seneca, SC 29672

DL#: SID#:

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

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

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

INDICTMENT/CASE#: 2013GS3701044

A/W#: 2013A3710400560

Date of Offense: 7/8/2013

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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: *Blair L. Stoudermire*

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

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

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2013-GS-37-1043
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$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	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

PTUP

_____ days/hours Public Service Employment

Obtain GED ☒

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☒Random Drug/Alcohol testing ☒

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

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: *Susan W. Hudgins*

SCCA/217 (03/2011)

Presiding Judge: *[Signature]*Judge Code: *63*Sentence Date: *7/24/19*

000432

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Oconee
 STATE VS.
Laquavius Tyshawh Cleveland
 AKA:
 Race: B Sex: M Age: 16
 DOB: SS#:
 Address: 2403 Brown St
 City, State, Zip: Seneca, SC 29672
 DL#: SID#:

INDICTMENT/CASE#: 2013G53701044
 A/W#: 2013A3710400560
 Date of Offense: 7/8/2013
 S.C. Code §: 16-23-0490
 CDR Code #: 0549

SENTENCE SHEET

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

In disposition of the said indictment comes now the Defendant who was
 TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(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: Simmons 70224 2. Cleveland 6/18/13
Simmons, Lindsey Satterfield SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for _____
 months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

☐ The Defendant is to be placed on 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 (Criminal
 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 47.9 (Public Def/Prob)	\$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
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☒

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☒

Random Drug/Alcohol testing ☒

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

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge _____

Judge Code: 103

Sentence Date: 7/24/14

Clerk of Court/ Deputy Clerk _____

Court Reporter: _____

SCCA/217 (03/2011)

000433

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF OCONEE)

Indictment Nos. 2013-GS-37-01043
2013-GS-37-01044

State of South Carolina)

v.)

Laquavius Tyshawn Cleveland,)

Defendant.)

VERDICT

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2014 JUL 24 PM 4 31

INDICTMENT NO. 2013-GS-37-01043
ATTEMPTED MURDER

We, the jury, unanimously find on Indictment Number 2013-GS-37-01043, that the Defendant,
Laquavius Tyshawn Cleveland, is:

☒

Guilty of Attempted Murder

OR

☐

Guilty of the Lesser Included Offense of Assault and Battery of a High and Aggravated Nature

OR

☐

Guilty of the Lesser Included Offense of Assault and Battery in the First Degree

OR

☐

Guilty of the Lesser Included Offense of Assault and Battery in the Second Degree

OR

☐

Not Guilty

IF YOU FIND THE DEFENDANT GUILTY OF ATTEMPTED MURDER OR GUILTY OF ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE AS TO INDICTMENT NUMBER 2013-GS-37-01043, PROCEED TO INDICTMENT NUMBER 2013-GS-37-1044.

IF YOU FIND THE DEFENDANT GUILTY OF ASSAULT AND BATTERY IN THE FIRST DEGREE – GUILTY OF ASSAULT AND BATTERY IN THE SECOND DEGREE – OR NOT GUILTY AS TO INDICTMENT NUMBER 2013-GS-37-01043, SIGN THE VERDICT FORM AND STOP YOUR DELIBERATIONS.

INDICTMENT NO. 2013-GS-37-01044

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

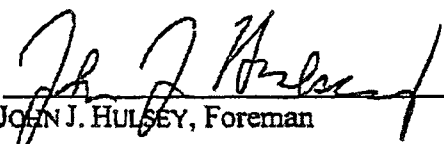
We, the jury, unanimously find on Indictment Number 2013-GS-37-01044, that the Defendant,
Laquavius Tyshawn Cleveland, is:

✓

**Guilty of Possession of a Weapon During the Commission of a Violent
Crime**

OR

 Not Guilty


JOHN J. HULSEY, Foreman

Walhalla, South Carolina
July 24, 2014

WITNESSES

Mandy Tinsley, Oconee Co Sheriff's Dept.

DAVID B. SMITH

ARREST WARRANT NUMBER

2013A3710400560

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury
Date: OCT 28 2013

VERDICT

Guilty

Foreperson of Petit Jury
Date: 7/24/14

DOCKET NO. 2013GS3701044

The State of South Carolina
County of Oconee

COURT OF GENERAL SESSIONS
OCT 28 2013

Term

THE STATE

VS.

LAQUAVIUS TYSHAWN CLEVELAND

BLS

Indictment for

WEAPONS / POSS. WEAPON DURING VIOLENT
CRIME, IF NOT ALSO SENTENCED TO LIFE
WITHOUT PAROLE OR DEATH

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

FILED OCONEE, SC
BEVERLY H. WHITFIELD
CLERK OF COURT
2013 OCT 30 PM 1:15

ENTERED
BB
COMPUTER

General Sessions Tracking Sheet
Indictment # 0000GS37

Name: Cleveland, Laquavius Tyshawn

AKA:

Addr: 2403 Brown St
Seneca, SC 29672

SSN#:

Sex: M Race: B

DOB:

DL# SC/103184821

Warrant/Ticket #: 2013A3710400560

Date of Arrest: 07/09/2013

Date of Offense: 07/08/2013

Date Rcv by Clerk 07/11/2013

Magistrate: Clerk Of Court C P, G S, And Family Court

Counts: Code: 0549/Weapons / Poss. weapon during
violent crime, if not also sentenced to life
without parole or death

Indictment # 2013
0000GS37-1044

Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk
3. Date of Disposition:

- 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
 9. No Bill
 9. Failure to Appear
 10. Other

Explain:

Explain:

Explain:

Explain:

Explain:

Possession of a Weapon During Violent Crime

Judge: 2063 Macaulay

Defense Atty: Charles Griffin

Counts: Code:

Court Reporter: Thompson/Hudgins

Solicitor: Simmons/Wagner

Sentence: 5 yrs consecutive to 2013-GS-37-01043; obtained; d to next counsel

DOCKET NO. 2013GS37 01043

WITNESSES

Mandy Tinsley, Oconee Co Sheriff's Dept.

DAVID B. SMITH

The State of South Carolina
County of Oconee

COURT OF GENERAL SESSIONS

OCT 28 2013

Term

ARREST WARRANT NUMBER

2013A3710400559

THE STATE

VS.

LAQUAVIUS TYSHAWN CLEVELAND

ACTION OF GRAND JURY

True Bill

BLS

Indictment for

MURDER/ATTEMPTED MURDER

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

VERDICT

Guilty

Foreperson of Grand Jury
Date: OCT 28 2013

Foreperson of Petit Jury
Date: 7/24/14

FILED OCONEE CO
DEWEY H. WHITEFIELD
CLERK OF COURT
OCT 30 PM 1:25

ENTERED
BB
COMPUTER

INMATE SEARCH DETAIL REPORT

CLEVELAND, LAQUAVIUS TYSHAWN (00360829)



INMATE DESCRIPTION		INMATE SENTENCE AND LOCATION	
SEX:	MALE	SCDC ID:	00360829
RACE:	BLACK	SID:	SC02162768
HEIGHT:	5' 11"	OFFENDER TYPE:	ADULT-STRAIGHT SENTENCE
WEIGHT:	165 lbs.	ADMISSION DATE:	07/29/2014
AGE:	20	LOCATION:	KERSHAW
CITIZENSHIP:	CITIZEN - NATIVE BORN	DORM-ROOM-BUNK:	CYP-0096-A
BUILD:	MEDIUM	SECURITY / CUSTODY:	3 / SECURITY DETENTION
COMPLEXION:	LIGHT BROWN	EWC LEVEL:	
HAIR COLOR:	BLACK	EEC LEVEL:	
EYE COLOR:	BROWN	PROJECTED RELEASE DATE:	10/31/2038
PICTURE DATE:	07/29/2014	PROJECTED PAROLE ELIGIBILITY:	NOT ELIGIBLE
		SUP. FURLOUGH ELIGIBILITY:	NOT ELIGIBLE

CURRENT OFFENSES

OFFENSE	SENTENCE TYPE	YRS	MOS	DYS	COUNTY	START DATE	V/NV	CAT	INDICT	STATUS
FIREARMS PROVISION	ADULT-STRAIGHT SENTENCE	5	0	0	OCONEE	01/07/2014	N	3	13GS3701044	ACTIVE
ATTEMPTED MURDER	ADULT-STRAIGHT SENTENCE	22	0	0	OCONEE	01/07/2014	V	4	13GS3701043	ACTIVE

ESCAPES

NO ESCAPES DURING CURRENT INCARCERATION

DISCIPLINARIES

SANCTIONS NOT AVAILABLE IN THE AUTOMATED SYSTEM PRIOR TO JANUARY 2009

DATE	DESCRIPTION
11/29/2016	THREATENING TO INFLECT HARM ON EMPLOYEE
	LOSS OF GOOD TIME: 6 DAYS
	LOSS OF CANTEEN PRIVILEGES FOR 60 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 60 DAYS
	LOSS OF TELEVISION PRIVILEGES FOR 360 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 60 DAYS
11/28/2016	THREATENING TO INFLECT HARM ON EMPLOYEE
	LOSS OF CANTEEN PRIVILEGES FOR 45 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 45 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 45 DAYS
08/22/2016	STRIKING AN INMATE WITH/WITHOUT A WEAPON
	LOSS OF GOOD TIME: 12 DAYS
	LOSS OF CANTEEN PRIVILEGES FOR 160 DAYS
	DISC. DETENTION FOR 30 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 160 DAYS
	LOSS OF TELEVISION PRIVILEGES FOR 360 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 160 DAYS
07/30/2016	INCITING/CREATING A DISTURBANCE
	LOSS OF CANTEEN PRIVILEGES FOR 120 DAYS
	DISC. DETENTION FOR 30 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 120 DAYS
	LOSS OF TELEVISION PRIVILEGES FOR 360 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 120 DAYS
04/03/2016	INTERFERING WITH COUNT
	LOSS OF CANTEEN PRIVILEGES FOR 30 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 30 DAYS

July Trial

INMATE SEARCH DETAIL REPORT

CLEVELAND, LAQUAVIUS TYSHAWN (00360829)

DISCIPLINARIES

SANCTIONS NOT AVAILABLE IN THE AUTOMATED SYSTEM PRIOR TO JANUARY 2009

DATE	DESCRIPTION
04/03/2016	INCITING/CREATING A DISTURBANCE
	LOSS OF CANTEEN PRIVILEGES FOR 120 DAYS
	DISC. DETENTION FOR 30 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 120 DAYS
	LOSS OF TELEVISION PRIVILEGES FOR 360 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 120 DAYS
08/19/2015	POSSESSION OF A WEAPON
	LOSS OF CANTEEN PRIVILEGES FOR 135 DAYS
	DISC. DETENTION FOR 45 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 135 DAYS
	LOSS OF TELEVISION PRIVILEGES FOR 365 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 135 DAYS
08/19/2015	IM UNDER INFLUENCE/POSS ALCOHOL OR BUCK
	LOSS OF CANTEEN PRIVILEGES FOR 30 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 30 DAYS
08/19/2015	POSSESSION OF A NEGOTIABLE INSTRUMENT
	LOSS OF CANTEEN PRIVILEGES FOR 90 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 90 DAYS
	LOSS OF TELEVISION PRIVILEGES FOR 365 DAYS
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08/19/2015	POSS. OR/ATTEMPT TO POSSESS CELL PHONE
	LOSS OF CANTEEN PRIVILEGES FOR 145 DAYS
	DISC. DETENTION FOR 45 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 145 DAYS
	LOSS OF TELEVISION PRIVILEGES FOR 365 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 145 DAYS
11/21/2014	REFUSING OR FAILING OBEY ORDERS
	LOSS OF GOOD TIME: 3 DAYS
	LOSS OF CANTEEN PRIVILEGES FOR 42 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 42 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 42 DAYS

MOVEMENT

MOVEMENT DATE	TO LOCATION	STATUS	REASON
06/23/2017	KERSHAW	INCARCERATED	LOCKUP-ADJUSTMENT COMM.
06/30/2016	LEE	INCARCERATED	ADMINISTRATIVE
06/30/2016	KIRKLAND	INCARCERATED	MEDICAL
11/05/2014	LEE	INCARCERATED	ADMINISTRATIVE
08/15/2014	TURBEVILLE	INCARCERATED	RETURN FROM COURT
08/15/2014	OCONEE CO	AUTH ABSENCE (AWL)	TO COURT
08/11/2014	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
07/29/2014	KIRKLAND	INCARCERATED	NEW ADMISSION

EARNED WORK CREDITS

NO EARNED WORK CREDITS DURING CURRENT INCARCERATION

EARNED EDUCATION CREDITS

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
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INMATE SEARCH DETAIL REPORT

CLEVELAND, LAQUAVIUS TYSHAWN (00360829)

EARNED EDUCATION CREDITS

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
LVL 5 - FULL TIME(NO EWC)	10/02/2015	08/23/2016	PLACED IN ST/SP CUSTODY
LVL 3 - FULL TIME(NO EWC)	12/04/2014	10/01/2015	CUSTODY REVIEW
LVL 3 - FULL TIME(NO EWC)	08/20/2014	11/09/2014	INSTIT TRANSFER

INMATE SEARCH DETAIL REPORT

CLEVELAND, LAQUAVIUS TYSHAWN (00360829)



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RACE:	BLACK	SID:	SC02162768
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AGE:	20	LOCATION:	KERSHAW
CITIZENSHIP:	CITIZEN - NATIVE BORN	DORM-ROOM-BUNK:	CYP-0096-A
BUILD:	MEDIUM	SECURITY / CUSTODY:	3 / SECURITY DETENTION
COMPLEXION:	LIGHT BROWN	EWC LEVEL:	
HAIR COLOR:	BLACK	EEC LEVEL:	
EYE COLOR:	BROWN	PROJECTED RELEASE DATE:	10/31/2038
PICTURE DATE:	07/29/2014	PROJECTED PAROLE ELIGIBILITY:	NOT ELIGIBLE
		SUP. FURLOUGH ELIGIBILITY:	NOT ELIGIBLE

CURRENT OFFENSES

OFFENSE	SENTENCE TYPE	YRS	MOS	DYS	COUNTY	START DATE	V/NV	CAT	INDICT	STATUS
FIREARMS PROVISION	ADULT-STRAIGHT SENTENCE	5	0	0	OONEE	01/07/2014	N	3	13GS3701044	ACTIVE
ATTEMPTED MURDER	ADULT-STRAIGHT SENTENCE	22	0	0	OONEE	01/07/2014	V	4	13GS3701043	ACTIVE

ESCAPES

NO ESCAPES DURING CURRENT INCARCERATION

DISCIPLINARIES

SANCTIONS NOT AVAILABLE IN THE AUTOMATED SYSTEM PRIOR TO JANUARY 2009

DATE	DESCRIPTION
11/29/2016	THREATENING TO INFLICT HARM ON EMPLOYEE
	LOSS OF GOOD TIME: 6 DAYS
	LOSS OF CANTEEN PRIVILEGES FOR 60 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 60 DAYS
	LOSS OF TELEVISION PRIVILEGES FOR 360 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 60 DAYS
11/28/2016	THREATENING TO INFLICT HARM ON EMPLOYEE
	LOSS OF CANTEEN PRIVILEGES FOR 45 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 45 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 45 DAYS
08/22/2016	STRIKING AN INMATE WITH/WITHOUT A WEAPON
	LOSS OF GOOD TIME: 12 DAYS
	LOSS OF CANTEEN PRIVILEGES FOR 160 DAYS
	DISC. DETENTION FOR 30 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 160 DAYS
	LOSS OF TELEVISION PRIVILEGES FOR 360 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 160 DAYS
07/30/2016	INCITING/CREATING A DISTURBANCE
	LOSS OF CANTEEN PRIVILEGES FOR 120 DAYS
	DISC. DETENTION FOR 30 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 120 DAYS
	LOSS OF TELEVISION PRIVILEGES FOR 360 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 120 DAYS
04/03/2016	INTERFERING WITH COUNT
	LOSS OF CANTEEN PRIVILEGES FOR 30 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 30 DAYS

Jury Trial

DOCKET NO. 2013GS37 01043

WITNESSES

Mandy Tinsley, Oconee Co Sheriff's Dept.

DAVID B. SMITH

The State of South Carolina
County of Oconee

COURT OF GENERAL SESSIONS

OCT 28 2013

Term

ARREST WARRANT NUMBER

2013A3710400559

THE STATE

vs.

LAQUAVIUS TYSHAWN CLEVELAND

ACTION OF GRAND JURY

True Bill

BLS

Indictment for

MURDER/ATTEMPTED MURDER

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

VERDICT

Guilty

Foreperson of Grand Jury
Date: OCT 28 2013

Foreperson of Petit Jury
Date: 7/24/14

FILED OCONEE CO
BEVERLY H. WHITEFIELD
CLERK OF COURT
OCT 29 PM 1:15

ENTERED
BB
COMPUTER

South Carolina Department of Corrections

Classification Summary Reports

Date: Monday, July 17, 2017

Classification Summary Reports

Inmate Number **360829**

Submit

Classification Summary Report for CLEVELAND, LAQUAVIUS TYSHAWN :

Create PDF

CLASSIFICATION SUMMARY REPORT DATED 07/17/2017

SCDC# 00360829

CLEVELAND, LAQUAVIUS TYSHAWN

FBI# 56670CE8

OFFENDER ADULT-STRAIGHT
TYPE: SENTENCE

INSTITUTION: KERSHAW

SECURITY/CUST: 3 SECURITY
DETENTION

CURR INCARC 27 YRS 0 MOS 0
SENT: DAYS

VICTIM
WITNESS: SEPREQ:N

MED
CLASS:

INST
RESTRICT: NO RESTRICTION

MENTAL NMH (NO MENTAL
CLASS: HEALTH TRE

CURRENT NO CURRENT
PROGRAM: PROGRAM

SEX REGISTRY: N

DNA: C

AGE: 20



RESIDENT
STABILITY: NA

DORMROOMBUNK_CODE: CYP 0047 A

PROJ MAXOUT
DATE: 12/15/2038

PROJ PAROLE
DATE:

EWC
JOB: NO CURRENT JOB

ASSIGNMENT: LOCKED - UP

EWC
LEVEL: 0 EEC LEVEL:

EDUC
PGM: NO CURR EDUC PROGRAM

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	DYS	COUNTY	START	SENTENCE	
						V/NV	CAT INDICT
FIREARMS PROVISION	5	0	0	OCONEE	01/07/2014 N	3	13GS3701044
ATTEMPTED MURDER	22	0	0	OCONEE	01/07/2014 V	4	13GS3701043

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):

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

06/25/2017	POSSESSION OF A WEAPON	CONVICTED	MAJOR DISC. HEARING	N
08/22/2016	STRIKING AN INMATE WITH/WITHOUT A WEAPON	CONVICTED	MAJOR DISC. HEARING	N
08/19/2015	POSSESSION OF A WEAPON	CONVICTED	MAJOR DISC. HEARING	N

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

07/03/2017	DAMAGE,DESTROY PROP. VALUED LESS \$100.		MAJOR DISC. HEARING
07/03/2017	THREATENING TO INFLICT HARM ON EMPLOYEE		MAJOR DISC. HEARING
07/03/2017	THREATENING TO INFLICT HARM ON EMPLOYEE		MAJOR DISC. HEARING
06/30/2017	THREATENING TO INFLICT HARM ON EMPLOYEE	DISMISSED	MAJOR DISC. HEARING
06/25/2017	DAMAGE,DESTROY,PROP.VALUE AT \$100./MORE	CONVICTED	MAJOR DISC. HEARING
06/24/2017	UNAUTH I/M ORGAN/PART STG OR STG ACT	CONVICTED	MAJOR DISC. HEARING
06/23/2017	POSSESSION OF A NEGOTIABLE INSTRUMENT		MAJOR DISC. HEARING
06/23/2017	POSS. OR/ATTEMPT TO POSSESS CELL PHONE		MAJOR DISC. HEARING
11/29/2016	THREATENING TO INFLICT HARM ON EMPLOYEE	CONVICTED	MAJOR DISC. HEARING
11/28/2016	THREATENING TO INFLICT HARM ON EMPLOYEE	CONVICTED	MAJOR DISC. HEARING
07/30/2016	INCITING/CREATING A DISTURBANCE	CONVICTED	MAJOR DISC. HEARING
04/03/2016	INTERFERING WITH DUTIES OF ANY PERSON	DISMISSED	MAJOR DISC. HEARING
04/03/2016	INTERFERING WITH COUNT	CONVICTED	MAJOR DISC. HEARING
04/03/2016	INCITING/CREATING A DISTURBANCE	CONVICTED	MAJOR DISC. HEARING
10/11/2015	INTERFERING WITH COUNT	CONVICTED	ADMINISTRATIVE RESOLUTION
10/11/2015	REFUSING OR FAILING OBEY ORDERS	CONVICTED	ADMINISTRATIVE RESOLUTION
08/19/2015	I/M UNDER INFLUENCE/POSS ALCOHOL OR BUCK	CONVICTED	MAJOR DISC. HEARING
08/19/2015	POSS. OR/ATTEMPT TO POSSESS CELL PHONE	CONVICTED	MAJOR DISC. HEARING
08/19/2015	POSSESSION OF A NEGOTIABLE INSTRUMENT	CONVICTED	MAJOR DISC. HEARING
11/21/2014	REFUSING OR FAILING OBEY ORDERS	CONVICTED	MAJOR DISC. HEARING
11/21/2014	EVADING A SECURITY DEVICE	DISMISSED	MAJOR DISC. HEARING

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

06/23/2017	KERSHAW	INCARCERATED	LOCKUP-ADJUSTMENT COMM.
06/30/2016	LEE	INCARCERATED	ADMINISTRATIVE
06/30/2016	KIRKLAND	INCARCERATED	MEDICAL

INMATE SEARCH DETAIL REPORT

CLEVELAND, LAQUAVIUS TYSHAWN (00360829)

DISCIPLINARIES

SANCTIONS NOT AVAILABLE IN THE AUTOMATED SYSTEM PRIOR TO JANUARY 2009

DATE	DESCRIPTION
04/03/2016	INCITING/CREATING A DISTURBANCE
	LOSS OF CANTEEN PRIVILEGES FOR 120 DAYS
	DISC. DETENTION FOR 30 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 120 DAYS
	LOSS OF TELEVISION PRIVILEGES FOR 360 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 120 DAYS
08/19/2015	POSSESSION OF A WEAPON
	LOSS OF CANTEEN PRIVILEGES FOR 135 DAYS
	DISC. DETENTION FOR 45 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 135 DAYS
	LOSS OF TELEVISION PRIVILEGES FOR 365 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 135 DAYS
08/19/2015	IM UNDER INFLUENCE/POSS ALCOHOL OR BUCK
	LOSS OF CANTEEN PRIVILEGES FOR 30 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 30 DAYS
08/19/2015	POSSESSION OF A NEGOTIABLE INSTRUMENT
	LOSS OF CANTEEN PRIVILEGES FOR 90 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 90 DAYS
	LOSS OF TELEVISION PRIVILEGES FOR 365 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 90 DAYS
08/19/2015	POSS. OR/ATTEMPT TO POSSESS CELL PHONE
	LOSS OF CANTEEN PRIVILEGES FOR 145 DAYS
	DISC. DETENTION FOR 45 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 145 DAYS
	LOSS OF TELEVISION PRIVILEGES FOR 365 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 145 DAYS
11/21/2014	REFUSING OR FAILING OBEY ORDERS
	LOSS OF GOOD TIME: 3 DAYS
	LOSS OF CANTEEN PRIVILEGES FOR 42 DAYS
	LOSS OF TELEPHONE PRIVILEGES FOR 42 DAYS
	LOSS OF VISITATION PRIVILEGES FOR 42 DAYS

MOVEMENT

MOVEMENT DATE	TO LOCATION	STATUS	REASON
08/23/2017	KERSHAW	INCARCERATED	LOCKUP-ADJUSTMENT COMM.
06/30/2016	LEE	INCARCERATED	ADMINISTRATIVE
06/30/2016	KIRKLAND	INCARCERATED	MEDICAL
11/05/2014	LEE	INCARCERATED	ADMINISTRATIVE
08/15/2014	TURBEVILLE	INCARCERATED	RETURN FROM COURT
08/15/2014	OCONEE CO	AUTH ABSENCE (AWL)	TO COURT
08/11/2014	TURBEVILLE	INCARCERATED	ADMINISTRATIVE
07/29/2014	KIRKLAND	INCARCERATED	NEW ADMISSION

EARNED WORK CREDITS

NO EARNED WORK CREDITS DURING CURRENT INCARCERATION

EARNED EDUCATION CREDITS

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
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INMATE SEARCH DETAIL REPORT

CLEVELAND, LAQUAVIUS TYSHAWN (00360829)

EARNED EDUCATION CREDITS			
EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
LVL 5 - FULL TIME(NO EWC)	10/02/2015	08/23/2016	PLACED IN ST/SP CUSTODY
LVL 3 - FULL TIME(NO EWC)	12/04/2014	10/01/2015	CUSTODY REVIEW
LVL 3 - FULL TIME(NO EWC)	08/20/2014	11/05/2014	INSTIT TRANSFER

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Oconee
STATE VS.Laquavius Tyshawn Cleveland

AKA:

Race: B Sex: M Age: 16DOB: SS#:Address: 2403 Brown StCity, State, Zip: Seneca, SC 29672DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Murder / Attempted MurderINDICTMENT/CASE#: 2013GS3701043A/W#: 2013A3710400559Date of Offense: 7/8/2013S.C. Code § : 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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.ATTORNEY
Simpson, Lindsey Satterfield70224
SC Bar#2 Cleveland
Defendant6489
Attorney for Defendant

SC Bar#

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

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2013-GS-37-1044
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on 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 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

\$

\$

\$100

\$

\$100

\$

\$12

\$

\$25

\$

\$500

\$

\$25

\$

\$150

\$

\$50

\$

\$40/ea

\$

\$5

\$

\$

PTUP

 days/hours Public Service EmploymentObtain GED ☒

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☒Random Drug/Alcohol testing ☒Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

000448

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Oconee

VS.

Laquavius Tyshawn Cleveland

AKA:

Race: B Sex: M Age: 17

DOB: SS#:

Address: 2403 Brown St

City, State, Zip: Seneca, SC 29672

DL#: SID#:

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

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

TO: Murder / Attempted Murder

INDICTMENT/CASE#: 2013GS3701043

A/W#: 2013A3710400559

Date of Offense: 7/8/2013

S.C. Code §: 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ 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: Blair L. Stoudemire 9868 SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*: the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on 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 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$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/cr
Proviso 90.5 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$ 133.90

PTUP

 days/hours Public Service EmploymentObtain GED ☒Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☒Random Drug/Alcohol testing ☒Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge Judge Code: 03Sentence Date: 7/24/14Clerk of Court/ Deputy Clerk Beverly H. WhitfieldCourt Reporter: Susan W. Hudgins

SCCA/217 (03/2011)

000449

General Sessions Tracking Sheet
Indictment # 0000GS37

Name: Cleveland, Laquavius Tyshawn

Warrant/Ticket #: 2013A3710400559

AKA:

Date of Arrest: 07/09/2013

Addr: 2403 Brown St
Seneca, SC 29672

Date of Offense: 07/08/2013

Date Rcv by Clerk 07/11/2013

Magistrate: Clerk Of Court-C P, G S, And Family Court

Counts: Code: 3410/Murder / Attempted Murder

SSN#

Sex: M Race: B

DOB:

DL# SC-103184821

Indictment #

2013
0000GS37 1043

Disposition Information:

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition:

- 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: Attempted Murder

Explain: _____

Explain: _____

Explain: _____

Explain: _____

Judge: 2063 Macaulay

Court Reporter: Thompson/Hudgins

Defense Atty: Charles Griffin

Solicitor: Simmons/Wagner

Counts: Code:

Sentence: 22 yrs; obtain GED; d+a test + counsel

INDICTMENT NO. 2013-GS-37-01044

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

We, the jury, unanimously find on Indictment Number 2013-GS-37-01044, that the Defendant.

Laquavius Tyshawn Cleveland, is:

✓

Guilty of Possession of a Weapon During the Commission of a Violent
Crime

OR

 Not Guilty

John J. Hulsey
JOHN J. HULSEY, Foreman

Walhalla, South Carolina
July 24, 2014

STATE OF SOUTH CAROLINA

COUNTY OF OLONEE

IN THE COURT OF COMMON PLEAS

LAQUAVIUS CLEVELAND # 360829

Plaintiff(s) 51 4: 07

CIVIL ACTION COVERSHEET

2017-CP-37-327

vs.

State of South Carolina

Defendant(s)

Submitted By: LAQUAVIUS CLEVELAND

Address: LEE CORRECTIONAL INSTITUTION

F-7-80-B990 WISACKY HWY.

BISHOPVILLE, S.C. 29010

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ General (130)
☐ Breach of Contract (140)
☐ Fraud/Bad Faith (150)
☐ Failure to Deliver/
Warranty (160)
☐ Employment Discrim (170)
☐ Employment (180)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20 <u>-NI-</u>
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Assault/Battery (370)
☐ Slander/Libel (380)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Immune Petitions
☒ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Administrative Law/Relief
☐ Reinstate Drv. License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured
Settlement Payment Rights
Application (760)
☐ Confession of Judgment (770)
☐ Petition for Workers
Compensation Settlement
Approval (780)
☐ Other (799) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Comm (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex/Other
☐ Environmental (600)
☐ Automobile Arb (610)
☐ Medical (620)
☐ Other (699)
☐ Sexual Predator (510) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of-State Depositions (650)
☐ Motion to Quash Subpoena in an
Out-of-County Action (660)
☐ Pre-Suit Discovery (670) | | |

Submitting Party Signature: _____

Date: _____

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

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

I, Laguarias Oveland, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give
security thereof.

Laguarias Oveland
Applicant

SWORN or affirmed to and subscribed before me this

30 day of May, 2017.

Debra Eastledge
Notary Public

My Commission Expires: 3/3/2024

2017 JUN -5 PM 4:08
Clerk of Court

COUNTY OF
STATEOconee
VS.

Laquavius Tyshawn Cleveland

AKA:

Race: B Sex: M Age: 17

DOB: SS#:

Address: 2403 Brown St

City, State, Zip: Seneca, SC 29672

DL#: 103184821 SID#:

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TO: Murder / Attempted Murder

INDICTMENT/CASE#: 2013GS3701043

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in violation of § 16-03-0029

of the S.C. Code of Laws, bearing CDR Code # 3410

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Stouffville, Blair L.70224
9868
SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ ~~County Detention Center~~,
for a determinate term of 22 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on 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 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$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(3) (Vehicle Assessment)	\$40/en	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 390
TOTAL	\$	\$ 133.90

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☒

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☒Random Drug/Alcohol testing ☒Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: C03

Sentence Date: 7/24/14

Clerk of Court/ Deputy Clerk

Court Reporter: Susan W. Hudgins

SCCA/217 (03/2011)

LAQUAVIUS CLEVELAND, #360829
LEE CORRECTIONAL INSTITUTION
990 WISACKY HWY. F7B CELL #80
Bishopville, S.C. 29010

DATE:

BEVERLY H. WHITEFIELD, CLERK OF COURT
OCONEE COUNTY COURT OF COMMON PLEAS
Post office Box 678
Walhalla, S.C. 29691

2017 JUN -5 PM 4:08
LAQUAVIUS CLEVELAND

DEAR HON. CLERK OF COURT:

ENCLOSED YOU WILL FIND THE ORIGINAL AND ONE COPY OF A
APPLICATION FOR POST CONVICTION RELIEF (PCR). THEREFORE, WOULD
YOU PLEASE FILE BOTH APPLICATIONS UPON RETURNING THE
COPY TO ME IN THE SELF ADDRESS FOR MY FILE.

THANKS IN ADVANCE.

RESPECTFULLY

s/ LAQUAVIUS
Cleveland

CC: FILE

ORIGINAL

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

SENTENCE MODIFIED ON INDICTMENT NUMBER 2013-GS-37-1044
AND SENTENCE AFFIRMED ON INDICTMENT NUMBER 2013-GS-37-1043
AS SENTENCED JULY 24, 2014

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

No

STATE OF SOUTH CAROLINA)

County of LEE)

VERIFICATION

2017 JUN -5 PM 4:08

I, Laperrius Cleveland, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application: that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application: and that the matters and allegations therein set forth are true.

Laperrius Cleveland

SWORN to and subscribed before me this 30
day of May, 2017.

Debra Eastbury (L.S.)
Notary Public

My Commission Expires: 3/3/2026

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

(a) SEE AMENDMENT

(b) SEE AMENDMENT

(c) _____

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

(a) your arraignment and plea? _____

(b) your trial, if any? YES

(c) your sentencing? YES

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? YES

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

No

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

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

i. CHARLES R. GRIFFIN JR., ESQUIRE

ii. LARA M. CAUDY, APPELLATE DEFENDER

iii. _____

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

i. TRIAL COUNSEL

ii. DIRECT APPEAL COUNSEL

iii. _____

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

NO

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

(a) which grounds have been presented:

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

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

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

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL
- (b) INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) LEAVE OPEN TO AMEND ALLEGATIONS / MEMORANDUM OF LAW
- (b) LEAVE OPEN TO AMEND ALLEGATIONS / MEMORANDUM OF LAW
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
- ii. _____
- iii. _____
- iv. _____

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 24, 2014 - FIVE YEARS
- (b) July 24, 2014 - TWENTY-TWO YEARS
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ☒ _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
YES
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. AFFIRMED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. April 1, 2016
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NO. 2016 - WP - 324
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

FORM 5

STATE OF SOUTH CAROLINA

CLERK OF COURT

County of OCONEE

327 PM

-5

IN THE COURT OF COMMON PLEAS

PM 4:08

LAGUANIUS CLEVELAND #360829

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention LEE CORRECTIONAL INSTITUTION 990 WISACKY
 Hwy., Bishopville, S.C. 29010
2. Name and location of Court which imposed sentence OCONEE County
Court House Post Office Box 678 Waihalla
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2013 - GS - 37 - 1043, Attempted Murder
 - (b) 2013 - GS - 37 - 1044 POSSESSION OF WEAPON

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Oconee

VS.

Laquavius Tyshawyn Cleveland

AKA:

Race: B Sex: M Age: 16

DOB: SS#:

Address: 2403 Brown St

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DL#: 103184821 SID#:

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

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TO: Murder / Attempted Murder

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in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410

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Defendant
SC Bar#6489
Attorney for Defendant
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections. ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
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3% to County (if paid in installments)	\$
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PTUP

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Obtain GED ☒

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

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Other: _____

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge Dr. [Signature]Judge Code: 603Sentence Date: 7/24/14

Clerk of Court/ Deputy Clerk _____

Court Reporter: _____

SCCA217 (03/2011)

000462

INDICTMENT NO. 2013-GS-37-01044

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

We, the jury, unanimously find on Indictment Number 2013-GS-37-01044, that the Defendant,

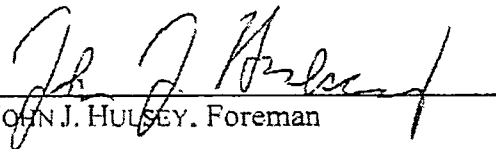
Laquavius Tyshawn Cleveland, is:

✓

Guilty of Possession of a Weapon During the Commission of a Violent
Crime

OR

 Not Guilty


JOHN J. HULSEY, Foreman

Walhalla, South Carolina
July 24, 2014

General Sessions Tracking Sheet

Indictment # 0000GS37

Name: Cleveland, Laquavius Tyshawn

Warrant/Ticket #: 2013A3710400559

AKA:

Date of Arrest: 07/09/2013

Addr: 2403 Brown St
Seneca, SC 29672

Date of Offense: 07/08/2013

Date Rcv by Clerk 07/11/2013

Magistrate: Clerk Of Court C P, G S, And Family Court

Counts: Code: 3410/Murder / Attempted Murder

SSN#

Sex: M Race: B

DOB:

DL# SC/

Indictment #

2013
0000GS37 1043

Disposition Information

1. Transmitted to SOL & SCCA:
2. Disp Received by Clerk:
3. Date of Disposition:

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:

Attempted Murder

Explain:

Explain:

Explain:

Explain:

Judge: 2063 MacaulayCourt Reporter: Thommes/HudginsDefense Atty: Charles GriffinSolicitor: Simmons/Wagner

Counts: Code:

Sentence: 22 yrs; obtain GED; d + a test + counsel

WITNESSES

Mandy Tinsley, Oconee Co Sheriff's Dept.

DAVID B. SMITH

The State of South Carolina
County of Oconee

COURT OF GENERAL SESSIONS

OCT 28 2013

Term

ARREST WARRANT NUMBER

2013A3710400559

THE STATE

vs.

LAQUAVIUS TYSHAWN CLEVELAND

ACTION OF GRAND JURY

True Bill

BLS

Indictment for

MURDER/ATTEMPTED MURDER

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

VERDICT

Guilty

Foreperson of Petit Jury
Date: 7/24/14

FILED OCONEE, SC
BEVERLY R. WHITFIELD
CLERK OF COURT
OCT 30 PM 1:15

ENTERED
BB
COMPUTER

ARREST WARRANT

2013A3710400559

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Oconee

THE STATE

1323302

against

Laquavius Tyshawn Cleveland

Address 2403 Brown St

Seneca, SC 29672-

Phone SSN

Sex: M Race: B Height: 5'9" Weight: 170

DL State: SC DL #

DOB: Agency ORI #: SC0370000

Prosecuting Agency: Oconee County Sheriff

Prosecuting Officer: M Tinsley - 1143

Offense: Murder / Attempted Murder

Offense Code: 3410

Code/Ordinance Sec: 16-03-0029

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

RETURN

A copy of this arrest warrant was delivered to

defendant on 7/9/13 Laquavius Tyshawn Cleveland

Signature of Law Enforcement Officer #3750

RETURN WARRANT TO:

Walhalla Magistrate
208 Booker Drive
Walhalla, SC 29691

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Oconee

Personally appeared before me the affiant M Tinsley

being duly sworn deposes and says that defendant Laquavius Tyshawn Cleveland

did within this county and state on or about 7/8/2013

State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Oconee

in the following particulars

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

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 DEFENDANT DID, ON 07-08-13, WITH MALICE AFORETHOUGHT, ATTEMPT TO KILL THE VICTIM, HYKEEM SHAMOOM KIRKLANDO, BY STABBING HIM WITH A KNIFE NUMEROUS TIMES ABOUT THE CHEST, SIDE, BACK AND NECK. THIS INCIDENT OCCURRED 2403 BROWN ST., SENECA, SC IN OCONEE COUNTY AND WAS INVESTIGATED BY OCSO. A WRITTEN REPORT IS ON FILE. CASE #1323302.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Oconee

Affiant's Address 300 S Church Street

Walhalla, SC 29691-

Affiant's Telephone (864)638-4111

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 7/8/2013

defendant Laquavius Tyshawn Cleveland

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

☒ County/ ☐ Municipality of Oconee

) as set forth below

DESCRIPTION OF OFFENSE: Murder / Attempted Murder

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 7/9/2013

Signature of Issuing Judge (L.S.)

Blake A. Norton

Judge Code 5033

Judge's Address 208 Booker Drive

Walhalla, SC 29691-2278

Judge's Telephone (864)638-4125

Issuing Court ☒ Magistrate ☐ Municipal

ORIGINAL

ORIGINAL

ORIGINAL

FILED OCONEE SC
BEVERLY H. WHITEFIELD
CLERK OF COURT
2013 JUL 11 AM 9:20ENTERED
2013 JUL 11 AM 9:20
CLERK OF COURT

ARREST WARRANT

2013A3710400560

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Oconee

THE STATE

1323302

Laquavius Tyshawn Cleveland

Address: 2403 Brown St

Seneca, SC 29672-

Phone _____ SSN _____

Sex: M Race: B Height: 5 9 Weight: 170DL State: SC DL # _____DOB: _____ Agency ORI is: SC0370000Prosecuting Agency: Oconee County SheriffProsecuting Officer: M Tinsley - 1143Offense: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or deathOffense Code: 0549Code/Ordinance Sec: 16-23-0490

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

RETURN

A copy of this arrest warrant was delivered to

defendant Laquavius Tyshawn Clevelandon 7/9/13Cell # 3750

RETURN WARRANT TO:

Walhalla Magistrate
208 Booker Drive
Walhalla, SC 29691

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Oconee

AFFIDAVIT

ORIGINAL

Form Approved by
U.S. GPO
April 21, 2003
5010-108Personally appeared before me the affiant M Tinsley whobeing duly sworn deposes and says that defendant Laquavius Tyshawn Clevelanddid within this county and state on or about 7/8/2013 violate the criminal laws of theState of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Oconee)

in the following particulars

DESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

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 DEFENDANT DID, ON 07-08-13, HAVE IN HIS POSSESSION, A KNIFE WHICH HE USED IN THE COMMISSION OF THE VIOLENT CRIME OF ATTEMPTED MURDER. THE DEFENDANT STABBED THE VICTIM HYKEEM SHAMON KIRKLAND NUMEROUS TIMES IN THE HIS UPPER CHEST, SIDE, BACK AND NECK. THIS INCIDENT OCCURRED AT 2403 BROWN STREET, SENECA, SC IN OCONEE COUNTY AND WAS INVESTIGATED BY OCSO. A WRITTEN REPORT, STATEMENTS AND PHOTOGRAPHS ARE ON FILE. CASE #1323302.

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Oconee

Affiant's Address 300 S Church StreetWalhalla, SC 29691-Affiant's Telephone (864)638-4111

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 7/8/2013 defendant Laquavius Tyshawn Clevelanddid violate the criminal laws of the State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of Oconee) as set forth belowDESCRIPTION OF OFFENSE: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

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 7/9/2013

Signature of Issuing Judge

Blake A. Norrin

Judge Code 5033Judge's Address 208 Booker DriveWalhalla, SC 29691-2278Judge's Telephone (864)638-4125Issuing Court ☒ Magistrate ☐ Municipal

ORIGINAL

ORIGINAL

ORIGINAL

.12:44:08 Monday, July 17, 2017

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 07/17/17
OMCOMITA RELEASE DATE SCREEN C056427
SCDC# > 360829 LOC: KERSHAW
CLEVELAND, LAQUAVIUS TYSHAWN 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...:
PREA VICTIM...:
CURRENT SENTENCE: 027-00-000 CONSECUTIVE SENTENCE ...: Y
027-00-000 CURRENT SENT START DATE: 01/07/2014
PROJECTED COMPLETION DATES
MAXOUT DATE ...: 12/15/2038 CURRENT EWC ...: NOT CURRENTLY EARNING EWC
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 ...: 000033 LABOR CREW/WORK PROG DATE: 99/99/9999
TOTAL EARNED WORK CREDITS ...: 000000 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS ...: 000122 CATEGORY 4 OR 5 OFFENSE
TOTAL EXTRA EARNED CREDITS ...: 000 SUPERVISED REENTRY DATE...: 00/00/00
TOTAL SERVICE TIME EARNED ...: 001287 ISS...:

PFKEYS: 5:HISTORY OF DATE CHANGES

State of South Carolina
County of Oconee

Court of Common Pleas

Laquavius T. Cleveland	)	
	)	
Plaintiff,	)	Transcript of Record
v.	)	2017-CP-37-00327
	)	
State of South Carolina	)	
	)	
<u>Defendant.</u>	)	

February 27, 2023
Anderson, South Carolina

B E F O R E:

The Honorable Perry H. Gravely, Judge.

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

Bruce A. Byrholdt, Esquire
Attorney for the Applicant

D. Russell Barlow, II, Esquire
Attorney for the State

Lisa Scott
Circuit Court Reporter

I N D E X

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EVD.</u>
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No Exhibits.

P R O C E E D I N G S

* * * * *

THE COURT: All right. So we're now going back to Cleveland; is that correct?

MR. BARLOW: Yes, Your Honor. If I -- if I can -- let me get you a packet together. It's a pretty big one. It'll make it easier.

THE COURT: That's fine.

(State hands packet to Court.)

THE COURT: All right. Mr. Byrholdt, are y'all ready?

MR. BYRHOLDT: We're ready, Your Honor.

THE COURT: State ready?

MR. BARLOW: Yes, Your Honor.

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

MR. BARLOW: All right. May it please the Court? Russ Barlow on behalf of the State of South Carolina. This is the post-conviction relief matter of *Laquavius T. Cleveland v. The State*, Case No. 2017-CP-37-00327 out of Oconee County.

During its October 2013 term, the Oconee Grand Jury indicted Applicant for attempted murder on Indictment 2013-GS-37-01043, and possession of a weapon during the commission of a violent crime,

1 2013-GS-37-01044. These charges arose from an
2 incident outside of Applicant's home where his
3 cousin was stabbed with a butcher knife 11 times.

4 Charles R. Griffin, Jr., represented Applicant
5 on July 21st through the 24th of 2014. Applicant
6 proceeded to a jury trial before the Honorable
7 Alexander S. Macaulay. Applicant was found guilty
8 as indicted. And Judge Macaulay sentenced him to
9 22 years imprisonment for attempted murder and five
10 years imprisonment for possession of a weapon during
11 the commission of a violent crime, which was to be
12 served consecutively.

13 Thereafter, Applicant filed a motion to vacate
14 the conviction alleging Applicant's sentence was in
15 violation of the Eighth Amendment for prohibition of
16 cruel and unusual punishment and violated the United
17 States Supreme Court holding in *Miller v. Alabama*.

18 A hearing into the matter was convened on
19 August 15, 2014, before Judge Macaulay. Following
20 argument by both Applicant and the State, Judge
21 Macaulay denied Applicant's motion.

22 Applicant filed a timely notice of appeal and
23 Appellate Defender Lara Caudy of the South Carolina
24 Commission on Indigent Defense, Office of Appell --
25 Office of Appellate Defense perfected an appeal on

1 Applicant's behalf.

2 On appeal, Applicant raised the issue of
3 whether the Trial Court erred by refusing to
4 suppress Applicant's statements to law enforcement.
5 While in briefing, the South Carolina Court of
6 Appeals affirmed Applicant's convictions and
7 sentences by an unpublished opinion, *State v.*
8 *Cleveland*, 2016-UP-324, filed on June 22, 2016. The
9 remittor was returned on July 13, 2016.

10 On June 5, 2017, Applicant filed an application
11 for post-conviction relief alleging ineffective
12 assistance of counsel and ineffective assistance of
13 appellate counsel. The State made its return, a
14 motion for more definite statement, on September 13,
15 2017, requesting an evidentiary hearing be held.

16 Applicant was originally represented by Rodney
17 Richey, Esquire. And the last time the State was
18 docketed, Applicant moved to continue the case so
19 his family could hire private counsel. That
20 continuance was granted and Applicant hired
21 Mr. Bruce A. Byrholdt, Esquire.

22 On September 17, 2019, Applicant amended the
23 application for post-conviction relief to allege
24 ineffective assistance of trial counsel. There were
25 five allegations there, and an allegation of

1 ineffective assistance of appellate counsel. One
2 allegation to that was time. We'd ask Mr. Byrholdt
3 to state for the record which issues he intends to
4 move forward on.

5 THE COURT: All right. Mr. Byrholdt.

6 MR. BYRHOLDT: We're moving forward on all of
7 them, Your Honor.

8 THE COURT: Okay. All right.

9 MR. BARLOW: We call the petition -- petitioner
10 to the stand, Your Honor, Laquavius Cleveland.

11 THE COURT: Mr. Cleveland, come around and be
12 sworn.

13 THE APPLICANT: (Complying.)

14 THE CLERK: Would you please come forward. If
15 you're able to, please raise your right hand.

16 THE APPLICANT: (Complying.)

17 THE CLERK: Do you swear or affirm the
18 testimony that you're about to give shall be the
19 truth, the whole truth, and nothing but the truth?

20 THE APPLICANT: Yes, ma'am.

21 THE CLERK: Thank you. Please take a seat
22 there at the witness stand.

23 THE APPLICANT: (Complying.)

24 MR. BYRHOLDT: If you could pull that
25 microphone to you.

1 THE APPLICANT: (Complying.)

2 MR. BYRHOLDT: Thank you.

3 LAQUAVIUS T. CLEVELAND,
4 having been produced and first duly sworn as a
5 witness on behalf of the Applicant testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. BYRHOLDT:

9 Q. Mr. Cleveland, give us your full name.

10 A. Laquavius Cleveland, 3608 -- I mean, Laquavius
11 Cleveland.

12 Q. All right. How old are you?

13 A. Twenty-six.

14 Q. And in 2014, when you went to trial, how old
15 were you?

16 A. Seventeen.

17 Q. And who were you represented by initially when
18 you were charged with these crimes in Oconee County?

19 A. Charles Griffin.

20 Q. Was he your first attorney or did you have one
21 before that?

22 A. I had one before that, Mr. Danny Day.

23 Q. All right. And Mr. Danny Day was the public --
24 the former public defender?

25 A. Yes, sir.

1 Q. And then there was a change of attorneys and
2 Mr. Griffin was hired?

3 A. Yes, sir.

4 Q. Do you know how long before your trial
5 Mr. Griffin was hired?

6 A. Maybe two weeks I want to say.

7 Q. And how many opportunities did you have to meet
8 with Mr. Griffin prior to trial?

9 A. Probably once or twice.

10 Q. For how long a period of time?

11 A. No longer -- no longer than an hour and 30
12 minutes.

13 Q. Did Mr. Griffin discuss what was going to
14 happen at the trial?

15 A. No, sir.

16 Q. Did he discuss trial strategy or anything with
17 you?

18 A. No, sir.

19 Q. When the trial started, did he explain to you
20 what was going to happen in the trial?

21 A. No. He was just saying I was going to -- he
22 was just representing me. I was going to trial.
23 That's it.

24 Q. At any time prior to the trial beginning, did
25 he give you any written offers that the State had

1 made to you?

2 A. No, sir.

3 Q. Did he ever ask you to sign any alleged offers?

4 A. No, sir.

5 Q. When you went to trial, it appears his big
6 thing was the statements you gave?

7 A. Yes, sir.

8 Q. He tried to keep that out?

9 A. Yes, sir.

10 Q. In meeting with you prior to trial and/or
11 during the trial, did he ever go over to you -- with
12 you your educational background, how far you went in
13 school, or anything like that?

14 A. No, sir. Not that I can recall.

15 Q. During the trial, he objected to the statement.
16 There was a *Jackson v. Denno* hearing to see if the
17 Court would limit it primarily.

18 A. Yes, sir.

19 Q. Did he have -- did he continue with that
20 objection throughout the trial to try and keep that
21 to preserve it for appeal?

22 A. Yeah.

23 Q. Following your conviction and the filing of
24 your motion, there was an appeal filed.

25 A. Yes, sir.

1 Q. Did the appellate attorney ever speak with you
2 about what grounds you wanted to raise in your
3 appeal?

4 A. No, sir.

5 Q. Did she ever communicate and ask you to review
6 the brief that she was submitting on your behalf?

7 A. No, sir.

8 Q. Did you ever have any communications with the
9 appellate counsel at all?

10 A. No, sir.

11 Q. Tell the Court what you believe Mr. Griffin
12 should've done in representing you in your trial?
13 What are your main concerns?

14 A. Well, he was ineffective. And when I say he
15 was ineffective, as you'll -- as you'll see on trial
16 page 59, lines 14 through 16.

17 Q. Go slow. They -- they need to find the pages
18 you're on.

19 A. Okay.

20 THE COURT: Lines what?

21 THE APPLICANT: Fourteen through 16, page 59.

22 THE COURT: Okay. All right.

23 THE APPLICANT: "Trial counsel failed to object
24 when Trial Court instructed the jury was a
25 specific -- that Trial Court instructed the jury

1 that specific intent to kill is not an element of
2 attempted murder, but it was the general intent to
3 commit serious bodily injury."

4 You'll find the same exact error in *State v.*
5 *King*, 422 S.C. 47, 810 S.E.2d 18. It was well
6 settled by the Court of Appeals who properly looked
7 at the legislative issue of Section 16-3-29.
8 Appellate decision holding that attempt prior to the
9 party's statement through the defendant have a
10 specific intent ---

11 MR. BARLOW: Your Honor, objection. What is he
12 reading?

13 THE COURT: Yeah, I don't know. My page 59,
14 line 14, talks about the alternate jury.

15 THE APPLICANT: No. The trial -- the charge of
16 the Court, trial page 59.

17 THE COURT: I'm looking at -- is there
18 another one? There must be.

19 MR. BARLOW: Your Honor, there are five volumes
20 in this. There are different days that things
21 happened.

22 MR. BYRHOLDT: It may be page 225 ---

23 MR. BARLOW: --- of the record ---

24 MR. BYRHOLDT: --- of the record, Your Honor.

25 MR. BARLOW: Your Honor, do have a copy of the

1 record? That is separate from the transcript.

2 THE COURT: All right. So where is -- I've got
3 two. I've got a record on appeal and a transcript
4 of record.

5 MR. BARLOW: So the record of appeal, Your
6 Honor, would be page 225.

7 THE COURT: Okay.

8 MR. BYRHOLDT: This front part on page 224.

9 THE COURT: All right. Okay. All right. I'm
10 at that page.

11 MR. BYRHOLDT: Line 14, I believe.

12 THE COURT: All right. Okay. I've got you
13 now.

14 THE APPLICANT: All right. "Trial counsel
15 failed to object when Trial Court instructed the
16 jury that specific intent to kill was not an element
17 of attempted murder, but that would be a general
18 intent to commit serious bodily injury."

19 You'll find the same exact error in *State v.*
20 *King*, 422 S.C. 47, 810 S.E.2d 18. It was well
21 settled by the Court of Appeals the proper
22 legislative history of Section 16-3-29, appellate
23 decision holding that intent of crime required the
24 State to prove intent as specific intent to complete
25 the attempted crime.

1 Also, in *State v. Williams*, 427 S.C. 148, 829
2 S.E.2d 702, states that attempted murder is a
3 specific intent crime in South Carolina. *State v.*
4 *Williams* also states that if the petitioner did not
5 argue a trial court error when instructing the jury
6 that attempted murder was a general intent crime,
7 that the petitioner was entitled to a new trial
8 based on that error alone.

9 BY MR. BYRHOLDT:

10 Q. Mr. Cleveland, at any time did Mr. Griffin
11 object to the charge or preserve that issue for
12 appeal?

13 A. No, sir.

14 Q. What else do you believe Mr. Griffin failed to
15 do to protect your rights?

16 A. (No response.)

17 Q. Did he ever ask for a continuance to give more
18 time to prepare?

19 A. He did -- I don't think so.

20 Q. Did you ever have sufficient time to talk with
21 him and plan a trial strategy?

22 A. No, sir. But ---

23 Q. Did you attempt to -- did you want to kill the
24 victim in this case?

25 A. No, sir. And it was well said in trial, page

1 243, lines 8 through 10, the detective testified I
2 didn't use my full force strength when I stabbed
3 Hykeem (phonetic) because I didn't want the blade to
4 penetrate deep.

5 Q. Anything else you want to tell Judge Gravely?

6 A. I mean, you had asked me how could that outcome
7 would've been different. I'll tell you, one, I
8 would've never be convicted of an erroneous charge;
9 and, two, if the jury would've been properly
10 instructed on the law, then the burden of proof
11 would've never shifted and the State wouldn't have
12 proof I had specific intent to kill the victim.

13 Q. Was it brought out during the trial that you
14 were on house arrest when this crime occurred?

15 A. I think so. I think my mother had testified to
16 that.

17 Q. Did Mr. Griffin object to that or ask for a
18 curative charge or anything?

19 A. No, sir.

20 MR. BYRHOLDT: Mr. Cleveland, answer any
21 questions that the State would have or that Judge
22 Gravely would have for you.

23 THE APPLICANT: Yes, sir.

24 THE COURT: Cross-examination?

25 MR. BARLOW: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. BARLOW:

Q. Good morning, Mr. Cleveland.

A. Good morning.

Q. So today you're here alleging ineffective assistance of your trial counsel and your appellate counsel, correct?

A. Yes, sir.

Q. And I'd like to confirm just for the record that you understand what relief is available to you here today in that this Court can put you back into the -- to the position you were in when you were originally indicted. You go back to step one. You have a new trial, correct?

A. Yes, sir.

Q. Okay. And all indictments come back on?

A. Uh-huh.

Q. Okay. And you were how -- what was your sentence?

A. Twenty-seven years. Twenty-two on attempted murder and five years on the possession of a weapon.

Q. And what is the max -- do you know what the maximum sentence is for attempted murder?

A. I think 30 years.

Q. Okay. And for the possession of a weapon?

1 A. I think that's five years.

2 Q. And to run consecutive. If you were to go back
3 to trial, you could potentially face a maximum of
4 35 years?

5 A. Yes, sir.

6 Q. That's adding another eight years to the
7 current sentence you have?

8 A. Yes, sir.

9 Q. And you're willing to proceed with that?

10 A. Yes, sir.

11 Q. Okay. One of your allegations is that trial
12 counsel never attempted to talk to the victim in
13 this case. Why would the trial counsel want to talk
14 to the victim in this case?

15 A. Possibly to get an understanding and to see
16 how -- continue and see and hear his side of the
17 story.

18 Q. Was the victim -- did the victim give testimony
19 at your trial?

20 A. Yes, sir, he did.

21 Q. Okay. So let me ask you this: But for trial
22 counsel not speaking to the victim, your -- the
23 outcome of your trial would've been different?

24 A. Oh, I ain't going to say that, you know, but...

25 Q. All right. Your second was one was that trial

1 counsel was only involved in your case for a couple
2 of weeks, and he only met with you two or three
3 times, correct?

4 A. That's correct.

5 Q. Okay. Who decided to -- let me ask you this:
6 How long were you in jail for on house arrest
7 awaiting your trial?

8 A. I can't give you a specific time, but it was --
9 I mean, I was in county for seven months.

10 Q. Okay. So for a year and seven months plus
11 some, you were represented by counsel, correct?

12 A. I was represented by Mr. Danny Day.

13 Q. Okay. And who decided to hire Mr. Griffin?

14 A. My family.

15 Q. Okay. And that was decided -- was your case
16 docketed?

17 A. I don't think so at the time.

18 Q. Okay.

19 A. Not that I can recall.

20 Q. But it was your decision to hire Mr. Griffin?

21 A. My family.

22 Q. Okay. And there's an allegation on the general
23 intent jury instruction, and you were reading from
24 something up there, but let me ask you this: You --
25 you -- you cite to *State v. King* as the controlling

1 law in this matter, correct?

2 A. That's correct.

3 Q. Okay. When was *State v. King* decided?

4 A. I think that was in 2000 -- like, I can give
5 you the exact date. One second. October 25, 2017.
6 That's the date I got right here.

7 Q. When was your trial?

8 A. July 26, 2014.

9 Q. So *State v. King* was not decided when you were
10 in trial, correct?

11 A. That's correct.

12 Q. Okay. So it was not controlling law at the
13 time, correct?

14 A. No, but *State v. Sutton* was.

15 Q. And that's *State v. Sutton*?

16 A. State -- *State v. Sutton*. It was -- *State v.*
17 *Sutton* is 2020 -- I mean, a 2000 case, March 22nd.
18 And the number is 340 S.C. 393, 532 S.E.2d 283. And
19 it was well cited that backed up the King case that
20 specific intent to kill is an element of attempted
21 murder.

22 Q. Okay. Let me ask you this: *State v. Sutton*,
23 was that cited in your amended allegations?

24 A. I don't think so. I know I raised the issue
25 that he didn't object to the trial, the jury

1 instruction.

2 MR. BARLOW: Your Honor, beg the Court's
3 indulgence?

4 MR. BYRHOLDT: Your Honor, I've got copies of
5 *State v. Sutton* to hand up.

6 BY MR. BARLOW:

7 Q. So the Sutton case, it was cited in your
8 amended allegations. That case was basically
9 talking about ABWIK, which we did not have attempted
10 murder in South Carolina at that time, correct?

11 A. Yes, sir.

12 Q. Okay. And so at that time, they actually
13 decided in this case that the charge of general
14 intent for ABWIK encompassed the attempted murder,
15 even though we don't have attempted murder, correct?

16 A. I mean, I just see it says that attempted
17 murder requires specific intent to kill.

18 Q. All right. Let's see. One of your allegations
19 is failure to request a curative instruction or
20 object to house arrest being given. Who -- who was
21 giving the testimony to that?

22 A. My mother.

23 Q. Okay. Was she -- and who -- when did that come
24 out? Who was examining her at that time? Was it
25 your attorney or was it the State?

1 A. I can't recall.

2 Q. Okay. And then I guess to tie it up here. You
3 have some -- or an allegation against appellate
4 defense, right?

5 A. That's correct.

6 Q. And tell us about that.

7 A. Well, like I said, I did not talk to my
8 appellate defense counsel. And if I did, then she
9 could've represented me properly. She could've
10 looked over the case and seen that clearly, you
11 know, on the jury instruction, and that was an
12 automatic reversal.

13 Q. Let me ask you something. Would it surprise
14 you that in South Carolina appellate defense does --
15 is not required to contact you?

16 A. I never heard of that.

17 Q. Would it surprise you that appellate defense
18 has the ultimate say so on what allegations are
19 raised? They do not have to raise the allegations
20 that you want them to?

21 A. I've never heard of that. That's new to me.

22 MR. BARLOW: Nothing further from the State,
23 Your Honor.

24 THE COURT: Direct?

25 MR. BYRHOLDT: No redirect.

1 THE COURT: All right. Thank you,
2 Mr. Cleveland. You can step down.

3 THE APPLICANT: Yes, sir.

4 MR. BYRHOLDT: We rest at this time.

5 THE COURT: All right.

6 MR. BARLOW: Your Honor, at this time the State
7 would call Mr. Charles Griffin.

8 THE COURT: All right. Mr. Griffin, if you'll
9 come around.

10 THE WITNESS: (Complying.)

11 THE CLERK: Would you please come forward and
12 raise your right hand?

13 THE WITNESS: (Complying.)

14 THE CLERK: Do you swear or affirm the
15 testimony you're about to give shall be the truth,
16 the whole truth, and nothing but the truth?

17 THE WITNESS: Yes, ma'am.

18 THE CLERK: Thank you. Please take a seat
19 there at the witness stand.

20 THE WITNESS: (Complying.)

21 CHARLES GRIFFIN,
22 having been produced and first duly sworn as a
23 witness on behalf of the State, then testified as
24 follows:

25 DIRECT EXAMINATION

1 BY MR. BARLOW:

2 Q. Good morning, Mr. Griffin.

3 A. Good morning.

4 Q. Could you state your name and spell your last
5 name for the record, please?

6 A. Charles R. Griffin, Jr., G-r-i-f-f-i-n.

7 Q. Mr. Griffin, you were a criminal law attorney?

8 A. Yes, sir.

9 Q. How long did you practice criminal law?

10 A. Thirty something years.

11 Q. And were you appointed or were you retained to
12 represent Mr. Cleveland in this case?

13 A. I was retained.

14 Q. Okay. And do you recall how long before the
15 trial you were retained?

16 A. I think it was less than a week. Along those
17 lines maybe.

18 Q. Did you receive discovery in that case?

19 A. Yes, sir. I met with -- I think I filed a
20 motion to continue. I met with Judge Macaulay in
21 his chambers. That's when I got the file at that
22 point.

23 Q. Did you review that record?

24 A. Yes, sir. There was discrepancies in it about
25 the alleged victim's age. Stuff like that.

1 Q. Could you give us a brief overview of your
2 understanding of the State's evidence in the case?

3 A. Well, the evidence, they had a statement by the
4 victim. I objected to that. And the EMT personnel
5 testified as to the defendant's injuries and the
6 loss of blood. And I think it was a pretty thorough
7 file.

8 Q. Do you recall if you had a defense strategy in
9 this?

10 A. My main strategy was to get his statement
11 suppressed. Based on his age, he was a juvenile at
12 that time. There was some movement in the federal
13 system about the age of the defendants and
14 statements that when they questioned him, they
15 should've had a lawyer present because they wouldn't
16 understand the gravity of what -- a juvenile really
17 don't understand the gravity of what's occurring at
18 the time and the statements they're making. They
19 really don't have a concept of the length of time
20 that they're facing.

21 Q. Do you feel that you were prepared to try this
22 case?

23 A. I was prepared best I could given the -- I
24 think I got the motion to continue filed and met
25 with Judge Macaulay, and that was the Monday. They

1 had trial -- the trial was supposed to be scheduled
2 on Monday. He kicked it over to Wednesday, so he
3 gave me a couple of extra days. And had like a
4 two-day trial. I think he got convicted on Friday,
5 and I filed a motion to vacate the sentence, some of
6 that sort, and it came back in August.

7 Q. So you did file a motion for continuance?

8 A. Yes.

9 Q. Was that motion granted or denied?

10 A. It was denied in chambers. We didn't have a
11 record of it, and I didn't really want to make --
12 make Judge Macaulay mad by making him go in the
13 room.

14 Q. All right. Let's jump into the allegations
15 real quick on this. The first allegation was that
16 you never attempted to talk to the victim in this
17 case. Did you have any reason to contact the
18 victim?

19 A. No. I had been through some issues about it.
20 The victim spent three-year Odyssey through the
21 disciplinary process with the Supreme Court on stuff
22 like that, so I really tried to stay away from
23 trying to do that.

24 I had a case with Steve Henry, a death penalty
25 case back in the late 80s and -- and talking to

1 victims is not very -- it's kind of -- it's fraught
2 with peril. I mean, they make up stuff. And, I
3 mean, you do so at your peril if you want to try to
4 talk to an adverse party and it's not a wise thing
5 to do at times.

6 Q. Let me ask you this: Do you recall the victim
7 testifying in this case?

8 A. Yeah, he testified.

9 Q. And do you recall the testimony being anything
10 of help to your side?

11 A. I think he testified that they got in an
12 altercation about something, and then he almost bled
13 to death. And they had -- he had -- Mr. Cleveland
14 had a knife or something that like. I had -- I
15 believe the victim had gone over there. And I think
16 I had his statements, and they pretty much said he
17 went over there to sell marijuana, a gun, or
18 something like that. Something along those lines.
19 It was ten years ago. I haven't really ---

20 Q. Let me ask you this: But for you not talking
21 to the victim, in your opinion, do you think that
22 that is what convicted him?

23 A. No. They had statements in the file. Like I
24 said, you try to talk to an adverse party, you do so
25 at your peril. I got in a bunch of mess because I

1 went and looked at something, which is now a
2 painting on the road.

3 Q. All right. Mr. Griffin, let me ask you this:
4 We're going to move on to allegation number two that
5 you were only involved in this case for a week or
6 two prior to trial and met with him two or three
7 times. Do you recall how many times you met with
8 him?

9 A. That sounds about right, but, I mean, I met
10 with him when I went to Oconee. That's where we're
11 talking about in Anderson, so...

12 And I had some other stuff going on during that
13 period -- in that short period of time. And I met
14 with him as often as I could. And we talked about
15 some issues about the victim, which I think it was
16 related to him.

17 And he was only like 17 at the time or so, like
18 he was a juvenile. Almost a year older than a
19 juvenile. I mean, in South Carolina you can be
20 considered an adult at 17 and facing General
21 Sessions, but I was never given any offers or
22 anything like that. That may've occurred with
23 Mr. Day.

24 Q. Do you recall there being any offer in the --
25 in the file that you received, the defense file?

1 A. I don't know. I don't know if there was an
2 offer in the file, but I was told by Mr. Day I think
3 they offered him ten years.

4 Q. Well, let me ask you this: Do you -- if he
5 intended to -- well, let me withdraw that question.

6 Let's go on to allegation number three. It's
7 that you should have sought an immediate appeal for
8 the denial of the motion for a continuance. Are you
9 aware of any court procedure that permits you to
10 file an interrogatory appeal on a motion to
11 continue?

12 A. I really wasn't aware of any at the time. And
13 there was no written order issued, and that creates
14 a problem, talking about appeal.

15 Q. And did you just testify that Judge Macaulay --
16 I'm sorry. What was it?

17 A. Macaulay.

18 Q. Did he give you a couple of extra days?

19 A. Yeah, because the trial was scheduled to be
20 heard starting on Monday. I believe it was
21 July 19th or something like that. I think the
22 family member came in on like -- they had talked to
23 me previously, and I think they came in on Thursday.
24 And then Friday I ran out to Oconee to file a motion
25 to talk to Mr. Cleveland, and I think I went --

1 probably every time I came up there, I talked to
2 him.

3 Q. All right. Go ahead and jump to the last
4 allegation on this is that you failed to request
5 a -- you failed to object or request a curative
6 instruction to the -- the mention of a house arrest
7 on -- from the Applicant's mother. Do you recall
8 that?

9 A. Yes, sir. I recall that. I -- I met with her
10 and talked to her at length about -- about her
11 testimony. And I advised her not to volunteer any
12 information.

13 And on cross-examination by the solicitor, she
14 made those statements. And I didn't feel like I --
15 I mean, if I got up and objected, it would've
16 brought more attention. I would've brought more
17 attention to that what she said than -- than -- than
18 the -- than the attention it should've gotten, and
19 that's why I didn't object. She was my own witness.
20 I wasn't trying to impeach my own witness. That
21 would be to -- that would kind of lessen her
22 credibility in front of the jury.

23 Q. All right. So -- so that was on -- she did --
24 I believe she mentioned the house arrest on -- on
25 the State's cross-examination, correct?

1 A. Yes. She mentioned that. And like I said,
2 I -- I didn't want to bring any more attention to
3 the statement than was necessary. If I made a big
4 deal about it, the jury would've obviously keyed in
5 on that.

6 Q. And do you think that the single reference to
7 it -- in your opinion, the single reference to him
8 being on house arrest is what convicted him?

9 A. I wouldn't think so. House arrest as to what?
10 This case here? I don't think -- I don't know if
11 it -- she said about what house arrest, but he
12 was -- he was denied bond on this charge I think.
13 He was in jail a good while when I met with him.
14 And, no, I don't think that had anything to do with
15 the outcome of the trial, no.

16 Q. Okay. My last question for -- my last set of
17 questions here is on their allegation of rapport
18 regarding the general intent of jury instruction,
19 failure to request specific intent. Are you
20 familiar with *State v. King*?

21 A. Not at this point. Not about the instructions
22 going on.

23 Q. Do you recall the jury instruction though?

24 A. It was ten years ago. No.

25 Q. Okay.

1 A. There were a lot of instructions given. I
2 mean, a juvenile issue about his -- about his --
3 about his statements. I think that was what I was
4 keying on most of all and trying to make -- make a
5 record of that so if he got Federal -- in the
6 Federal system, that he may've had some relief --
7 relief there. That's what I concentrated on.

8 Q. Do you recall -- well, let me ask you this:
9 Did you understand the difference between specific
10 intent and general intent?

11 A. Yeah, I know what that is, but, I mean, at the
12 time -- like I said, I was trying to concentrate on
13 getting statements and preserving that for appeal.
14 And as far as specific intent and general intent, I
15 didn't really think about it at the time.

16 MR. BARLOW: Beg the Court's indulgence.
17 Nothing further from the State, Your Honor.

18 THE COURT: Mr. Byrholdt.

19 MR. BYRHOLDT: May it please the Court?

20 CROSS-EXAMINATION

21 BY MR. BYRHOLDT:

22 Q. Was the defendant present when you had made
23 this motion for the continuance?

24 A. He was not present in chambers, no. That I
25 recall. He had -- he had a right to be at every --

1 at every hearing on the issues.

2 Q. Did appellate counsel ever contact you ---

3 A. No.

4 Q. --- on what issues to raise?

5 A. No, sir. They never contacted.

6 Q. And you didn't communicate any plea offers?

7 A. Like I said, I never got an offer. Danny Day
8 got the offers. I didn't. I was going to try to
9 make an offer of maybe seven years. Mr. Cleveland
10 didn't want to do that.

11 Q. Did you make -- did you make any offers?

12 A. I tried to. Mr. Cleveland ---

13 Q. Did the State make any offers to you?

14 A. No. None.

15 Q. So you testified you were on the case maybe a
16 little over a week?

17 A. Yes.

18 Q. You asked for a continuance because you knew
19 you weren't prepared, correct?

20 A. Yeah, at that time -- at the time.

21 Q. Right.

22 A. That's when I called Ocone. They said it was
23 on the trial docket for Monday. I was going to go
24 up and ask for a continuance, and I didn't get the
25 file. I didn't get the file until that Friday

1 before that Monday.

2 Q. Did you ever take the opportunity to meet with
3 Danny Day who'd had the case and kind of knew what
4 was going on?

5 A. We talked a little bit, but not a whole lot.

6 Q. Okay.

7 A. The only time I met with him was in chambers
8 with Judge Macaulay and David Wagner and maybe a
9 couple other solicitors were there.

10 Q. Was that when you moved for the continuance?

11 A. Yes. And Judge Macaulay wanted to have it done
12 in his chambers and Mr. Cleveland was not present.

13 Q. And what you got was an extra day and a half?

14 A. Yeah, two days. Something like that. We
15 started on Wednesday and finished on Friday,
16 Wednesday the 21st.

17 Q. During this period of time, and I know it was a
18 long time ago. It was back almost 10 years now, 9
19 years ago. Were you having any personal problems
20 during that period of time, Charlie?

21 A. No.

22 Q. You said you'd gone through a four-year battle
23 with disciplinary. Was that before this?

24 A. Yeah, it started in 2010 or something like that
25 over some ---

1 Q. And that was taking a lot of your time?

2 A. Oh, yeah. It consumed -- it had consumed a lot
3 of my time. I mean, people were -- I became a
4 target by a bunch of people because I represented a
5 radio station.

6 Q. At this time your -- your license to practice
7 is suspended for not completing the licensing
8 requirements?

9 A. Yeah, I was in the hospital at the time. And
10 I've been kind of taking it -- taking it easy for a
11 few years.

12 MR. BYRHOLDT: That's all the questions I have
13 for Mr. Griffin at this time.

14 THE COURT: Any redirect?

15 MR. BARLOW: Beg the Court's indulgence. Very
16 briefly, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. BARLOW:

19 Q. Mr. Griffin, let me ask you two -- two points I
20 want to hit on here. In your 30-plus years as a
21 criminal attorney, how often did appellate defense
22 contact you and ask what allegations that you
23 raised?

24 A. None.

25 Q. And -- and, lastly, what was your understanding

1 of the -- of the jury charge when this trial
2 happened? Was it your understanding attempted
3 murder was a specific intent or general intent
4 crime?

5 A. I thought attempted murder, I mean, that's
6 pretty -- just the words are pretty strong.
7 Basically, it encompasses a lot of things. I really
8 didn't get any -- I really didn't get any intent,
9 specific in general. The attempted murder is pretty
10 strong with the words themselves. And once they
11 come out, I mean, it's pretty -- it's one step less
12 than murder I guess. I mean, we would object all
13 day. We would've objected all day to things like
14 that, but in the real world, that doesn't really
15 affect too many people.

16 MR. BARLOW: Nothing further from the State,
17 Your Honor.

18 THE COURT: Thank you, Mr. Griffin. You may
19 step down.

20 THE WITNESS: Thank you.

21 (Witness excused.)

22 MR. BARLOW: Your Honor, if we could jump on
23 WebEx. Ms. Caudy, I think is how you say it, should
24 be there.

25 THE COURT: She is not.

1 MR. BARLOW: Okay.

2 THE COURT: She's not logged in yet.

3 MR. BARLOW: If I may have just a moment to...

4 (From 10:36 to 10:39 a.m., brief recess.)

5 THE COURT: All right. We have -- I think we
6 have somebody on now. Good morning, Ms. Caudy.

7 THE WITNESS: Good morning, Your Honor.

8 THE COURT: First of all, is this going to be
9 your next witness?

10 MR. BARLOW: Yes, sir.

11 THE COURT: We'll put on the record that
12 previous -- prior to today, Thursday or Friday of
13 last week, counsel e-mailed me to indicate that they
14 consented to having Ms. Caudy testify by WebEx; is
15 that -- is that correct, State?

16 MR. BARLOW: Yes, Your Honor.

17 MR. BYRHOLDT: Yes, sir.

18 THE COURT: All right. So you may proceed.

19 MR. BARLOW: Thank you, Your Honor. My video
20 does not work. Let me see if she can hear me.

21 THE COURT: Well, if we need to, we can swap
22 his computer around over here.

23 (Brief recess.)

24 THE COURT: All right. You may proceed.

25 MR. BARLOW: Good morning, Ms. Caudy. How are

1 you?

2 THE WITNESS: Good. How are you?

3 MR. BARLOW: Doing well. Thank you for being
4 here. I just have one quick or maybe a couple.
5 We'll see.

6 There's an allegation here that you failed to
7 raise trial counsel's objections to the photographs
8 because the prejudice outweighed any probative value
9 of the photographs. Have you had the chance to look
10 that over?

11 THE COURT: Hold on. Hold on just a minute. I
12 got -- I've got to toggle back and forth with my
13 audio and then play it. All right. You may
14 proceed.

15 THE WITNESS: Do you want to put me under oath?

16 THE COURT: Oh, yes. Would you raise your
17 right hand?

18 THE WITNESS: (Complying.)

19 THE COURT: Do you solemnly swear to tell the
20 truth, the whole truth, and nothing but the truth so
21 help you God?

22 THE WITNESS: I do.

23 THE COURT: And state your full name for the
24 record.

25 THE WITNESS: Lara Caudy.

1 THE COURT: All right. And, now, go ahead and
2 ask her questions.

3 LARA CAUDY,
4 having been produced and first duly sworn as a
5 witness on behalf of the State, testified as
6 follows:

7 DIRECT EXAMINATION

8 BY MR. BARLOW,

9 Q. Ms. Caudy, there's an allegation that you
10 failed to raise the -- in your brief, you failed to
11 raise the objection to the photographs and that the
12 prejudice outweighed any probative value of those
13 photographs. Have you reviewed that?

14 A. I have. Yes.

15 Q. And in your review, what did you discover?

16 A. The objection, from my understanding, was to
17 State's Exhibit Nos. 4 through 9, which were
18 photographs of the victim where he was found after
19 he was stabbed. The objection, from my
20 understanding, was related to Rule 403 that any
21 probative value would outweigh the unfair prejudice.
22 I didn't raise the issue on appeal because I didn't
23 think it had any merit.

24 *State v. Collins*, which is 409 S.C. 524, is a
25 Supreme Court case that had come out a year after

1 the trial in this case. It came out shortly before
2 I wrote my brief, which deals with prejudice, who
3 had been the victim of dog bites. And the Supreme
4 Court held that those photographs -- the Supreme
5 Court affirmed the decision of the Trial Court as
6 being those photographs based on the probative
7 value, even though they were extremely prejudicial.

8 So based on *State v. Collins*, I did not raise
9 this -- this objection on appeal. I thought that
10 the photographs corroborated the witness's testimony
11 as to what she saw when the victim arrived at her
12 store.

13 Q. Did you think the issue had any merit?

14 A. I did not.

15 Q. Okay. There was -- you missed some of the
16 testimony here today, but there were a few questions
17 raised about appellate defense, and one of them was
18 that you failed to contact the Applicant. Are you
19 required to contact an Applicant, or in your case,
20 it would be the Appellant?

21 A. Well, I have a duty to communicate certainly.
22 You mean, as far as to consult with the Appellant on
23 appeal as to which issues I'm going to raise?

24 Q. Correct.

25 A. As to what issues to raise on appeal, are

1 solely mine. And I don't need to seek any sort of
2 permission or consent from the client as to what
3 issues to raise, but, of course, I do have a duty to
4 communicate. And I would ask, you know, the
5 plaintiff, procedurally sent him all the trial
6 transcript, sent him all the briefs, the State's
7 briefs, et cetera, and communicated throughout the
8 appellate process.

9 Q. And that communication, how -- how do you
10 communicate? Is it by phone? Is it through
11 letters?

12 A. I communicate through letters, so I would've
13 sent everything, all correspondence, in writing, but
14 our clients, including Mr. Cleveland, are free to
15 call us at any time collect. It's -- it's more
16 difficult for us to contact them in the Department
17 of Corrections, as it's much easier for them to
18 reach out to us. Whereas, they can call us collect
19 any time during business hours.

20 Q. Have you reviewed your file in this case?

21 A. Briefly, last week.

22 Q. Well, in your review of it, did you -- did you
23 find the communications that you sent to Applicant?

24 A. I did. Yes.

25 MR. BARLOW: Nothing further from the State,

1 Your Honor.

2 THE COURT: Mr. Byrholdt.

3 MR. BYRHOLDT: May it please the Court?

4 CROSS-EXAMINATION

5 BY MR. BYRHOLDT:

6 Q. Ms. Caudy, what was the outcome on the appeal?

7 A. The convictions were affirmed on appeal.

8 Q. Were there arguments granted or was it met
9 without any arguments?

10 A. Based on my recollection, there were no oral
11 arguments.

12 Q. Was the appeal dismissed for failure to, you
13 know, preserve -- preserve objections on the record?

14 A. Not that I recall, but I don't have the opinion
15 in front of me.

16 Q. You don't have your file -- you don't have the
17 opinion in front of you?

18 A. No, but I can pull it up if you give me a quick
19 second.

20 Q. Please.

21 A. Okay. It does look like the Court of Appeals
22 held that the issue raised was not preserved for
23 appellate review.

24 Q. So that would be an error by the trial counsel
25 not preserving that issue, correct?

1 A. That's correct. The (inaudible) should have
2 granted the objection.

3 Q. And the issue you raised on appeal was the
4 voluntariness of his statement, correct?

5 A. That's correct.

6 MR. BYRHOLDT: No further questions. Thank
7 you.

8 MR. BARLOW: Nothing from the State, Your
9 Honor.

10 THE COURT: All right. Nothing further from
11 Ms. Caudy?

12 MR. BARLOW: No, sir.

13 THE COURT: Thank you, Ms. Caudy. I think
14 that's the extent of your participation as needed.

15 THE WITNESS: Thank you.

16 (Witness excused.)

17 THE COURT: That's all we need from WebEx,
18 right?

19 MR. BARLOW: Yes, sir.

20 MR. BYRHOLDT: Correct.

21 MR. BARLOW: And, Your Honor, the State has no
22 further witnesses.

23 THE COURT: Any additional information,
24 Mr. Byrholdt?

25 MR. BYRHOLDT: Call Lindsey Simmons to the

1 stand.

2 THE WITNESS: (Approaching.)

3 THE CLERK: Would you please raise your right
4 hand?

5 THE WITNESS: (Complying.)

6 THE CLERK: Do you swear or affirm the
7 testimony you're about to give shall be the truth,
8 the whole truth, and nothing but the truth?

9 THE WITNESS: I do.

10 THE CLERK: Thank you. Please take a seat at
11 the witness stand.

12 THE WITNESS: (Complying.)

13 LINDSEY SIMMONS,
14 having been produced and first duly sworn as a
15 witness on behalf of the Applicant, then testified
16 as follows:

17 DIRECT EXAMINATION

18 BY MR. BYRHOLDT:

19 Q. Lindsey, give us your full name for the record.

20 A. Lindsey Simmons, S-i-m-m-o-n-s.

21 Q. And back in 2014, you're Assistant Solicitor of
22 the Tenth Circuit of Oconee County?

23 A. Correct.

24 Q. You're no longer in that position?

25 A. No.

1 Q. You're now a judge for the University?

2 A. I work for Clemson University.

3 Q. Clemson University. In the *State v. Laquavius*
4 *T. Cleveland* prosecution, did you make any plea
5 offers to Mr. Charlie Griffin?

6 A. I believe that we made a plea offer of ten
7 years or less during this case. For some reason,
8 the number seven does stick out in my mind.

9 Q. And you heard Mr. Griffin say he doesn't recall
10 that. He would like to make -- did he make any
11 offers to you?

12 A. I can't recall that. From what I remember
13 about this case, Mr. Day represented Mr. Cleveland.
14 The case was on the trial docket. At the eleventh
15 hour, Mr. Cleveland's family did retain Mr. Griffin
16 and we did the -- and the case was already set at
17 that time. And I -- I certainly made a plea offer
18 to either Mr. Day or Mr. Griffin.

19 MR. BYRHOLDT: That's all the questions I have.
20 Thank you.

21 THE COURT: Cross-examination?

22 MR. BARLOW: Thank you, Your Honor. May it
23 please the Court?

24 CROSS-EXAMINATION

25 BY MR. BARLOW:

1 Q. Ms. Simmons, I believe you just testified to
2 one of my questions, but I'm going ask you again.
3 Was that plea offer made to Mr. Griffin or to Mr. --
4 or to the public defender?

5 A. I cannot recall which one received that offer.

6 Q. Okay.

7 A. I can tell you after court, Mr. Cleveland's
8 mother came to the office because I had met -- I
9 knew her from previous dealings and conveyed to me
10 that the plea offer was not communicated to her son.

11 Q. Okay. Let me ask you: In your experience as a
12 solicitor, leading up when you got a week or two
13 before trial, is it common for defendant's to fire
14 their public defender and then hire or retain
15 counsel if they're intending to plea?

16 A. Not usually.

17 MR. BARLOW: Beg the Court's indulgence.
18 Nothing else.

19 THE COURT: Redirect?

20 REDIRECT EXAMINATION

21 BY MR. BYRHOLDT:

22 Q. But your normal -- I mean, in your trial
23 packets where you're prosecuting cases, during the
24 course -- during the trial, plea offers are -- are
25 talked about during that period of time to try and

1 resolve it without going to trial?

2 A. In this particular case, I believe that the
3 victim was amenable to a plea offer for an extended
4 period of time.

5 MR. BYRHOLDT: Thank you. Nothing further.

6 THE COURT: All right. Thank you. You may
7 step down.

8 (Witness excused.)

9 MR. BYRHOLDT: That's the Applicant's case,
10 Your Honor.

11 THE COURT: All right. Brief argument?

12 MR. BYRHOLDT: Your Honor, one, I think the
13 appellant counsel like the -- the appeal was
14 dismissed because the record wasn't preserved.
15 That's a failure of trial counsel. You've got to
16 make sure that is done in all your cases. Whatever
17 issues ---

18 THE COURT: But don't we still have to
19 determine whether it was a -- it was prejudicial
20 regardless of whether it's preserved or not?

21 MR. BYRHOLDT: But we've got -- we've got
22 somebody involved in the case at the eleventh hour.
23 At best, talked to the defendant once or twice for
24 maybe 60 to 90 minutes. No trial strategy was
25 discussed. The most important thing, no -- no plea

1 offer was communicated by Mr. Griffin to the
2 Applicant. And I think that's -- that's critical in
3 this case.

4 The specific intent charge -- the Sutton case,
5 while not on point, was discussed in 2000 addressing
6 specific intent to give it for aggravated assault.
7 The year after this, specific intent is now
8 required. And I think that's -- that should've been
9 anticipated, at least should've been made a question
10 for the Court to have to address.

11 It's -- I don't fault Mr. Griffin. He got in
12 at the last moment. He tried the best he could, but
13 he was not ready for trial, Your Honor. It's
14 impossible. He went and asked for a continuance and
15 it was denied, even though he was involved in the
16 case less than a week. And the Court was gracious
17 enough to give him a day-and-a-half of time to
18 prepare.

19 I think Mr. Cleveland was denied a fair trial,
20 and I think he's entitled for the Court to grant him
21 a new trial and give him the opportunity to go back
22 and have this case decided.

23 THE COURT: Mr. Barlow.

24 MR. BARLOW: Thank you, Your Honor. Your
25 Honor, our position is that this -- the hiring of

1 Mr. Griffin was done at the eleventh hour, yes, but
2 it was done at the Applicant's -- as his own doing.
3 He had a -- a very capable public defender serving
4 him for at least a year-and-a-half leading up to
5 trial. The trial ---

6 THE COURT: Again, how effective is counsel? I
7 realize that was his decision, but how -- I mean,
8 we're looking at the effectiveness of counsel. How
9 effective is counsel? I think it's been one week
10 before. I think he said he got the file on Friday
11 before the Monday term.

12 MR. BARLOW: Yes, sir. I understand that. And
13 I -- I would submit that he testified that he was as
14 prepared as he could be. This is a case where the
15 defendant or the Applicant in this case, he gave a
16 statement. He admitted to doing what he did. So at
17 his trial, he even testified to his trial strategy
18 being trying to suppress that statement. And that
19 statement was not suppressed and that's at the Trial
20 Court's discretion as to what evidence is admitted.

21 And as to the specific intent issue with the
22 jury charge, again *State v. King* was decided after
23 this case. And as he just argued that he should
24 have anticipated that it was coming from the Sutton
25 case; however, trial counsel is not required to

1 anticipate changes in law. They're not to -- they
2 don't have to be -- I guess how is it they say that
3 you don't have to see into the future and know what
4 the law is going to be. At that time specific
5 intent was not required, and I would submit that in
6 the whole at the time of that trial, everything was
7 done correct and that trial counsel was effective.

8 THE COURT: Anything further?

9 MR. BYRHOLDT: Just briefly. I think Your
10 Honor hit it on the nose. Picking up a file on
11 Friday to try a case, there's no way it can be
12 effective. There's no way you can adequately review
13 even the evidence of that. It's just a -- it's an
14 impossibility.

15 He understands he's looking at 37 years or
16 35 years, I'm sorry, if he goes back to trial, and
17 he's willing to take that risk, Your Honor. There's
18 also other indictments that could be brought back,
19 which could have him face additional time. He's
20 asking the Court to give him that opportunity.

21 THE COURT: All right. I'm going to take it
22 under advisement and I'll let y'all know.

23 MR. BARLOW: Thank you, Your Honor.

24 (At 10:55 a.m., the proceedings concluded.)

25 * * * * *

C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

I, the undersigned, Lisa Scott, Circuit Court Reporter for the Tenth 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 cause, relative to appeal in the Circuit Court for Anderson County, South Carolina, on the 27th day of February, 2023.

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

April 2, 2024

/s/Lisa Scott

Lisa Scott
Circuit Court Reporter

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testified on his own behalf. Respondent presented testimony from Charles R. Griffin, Jr., Esquire, Lara M. Caudy, Esquire, and the Honorable Lindsey S. Simmons.¹

Following a thorough review of the record in its entirety, along with the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant has failed to establish any constitutional violations or deprivations entitling him to relief and, accordingly, denies and dismisses this action with prejudice.

PROCEDURAL HISTORY

The records before this Court establish Applicant is presently confined in the South Carolina Department of Corrections (SCDC). During the October 2013 term, the Oconee County Grand Jury indicted Applicant for Attempted Murder (2013-GS-37-01043) and Possession of a Weapon During the Commission of a Violent Crime (2013-GS-37-01044). Applicant was represented by Charles R. Griffin, Jr., Esquire (Trial Counsel). Tenth Circuit Assistant Solicitor Lindsey Satterfield Simmons (Simmons) and Assistant Solicitor David Rhys Wagner, Jr. (A.S. Wagner), prosecuted the case.

On July 21, 23–24, 2014, Applicant's case proceeded to a jury trial before the Honorable Alexander S. Macaulay. The jury found Applicant guilty as indicted. On July 24, 2014, Judge Macaulay sentenced Applicant to twenty-two (22) years imprisonment for Attempted Murder and five (5) years imprisonment for Possession of a Weapon During the Commission of a Violent Crime, to run consecutively with the first sentence. Special conditions were placed on both sentences requiring Applicant to obtain his GED, undergo drug and alcohol testing and treatment, and undergo substance abuse counseling. On July 28, 2014, Applicant filed a Motion to Vacate

¹ At the time of Applicant's trial, Simmons was an Assistant Solicitor with the Tenth Circuit Solicitor's Office.

his Conviction and/or Sentence. On August 15, 2014, a hearing was held, and Judge Macaulay denied all of Applicant's motions.

Applicant filed a timely Notice of Appeal. On June 3, 2015, Appellate Defender Lara M. Caudy (Appellate Counsel) of the South Carolina Commission on Indigent Defense perfected the appeal, presenting the following sole issue:

Whether the court erred by refusing to suppress Appellant's statements to law enforcement where Appellant was only sixteen years old, had been interviewed multiple times over the course of eight hours without his mother or friendly adult present, and was subjected to a polygraph exam and told the results showed he was being deceptive since under the totality of the circumstances the statements were not given freely and voluntarily?

The Court of Appeals affirmed Applicant's convictions and sentences in an unpublished opinion, finding the issue raised by Applicant was not preserved for appellate review. State v. Cleveland, Op. 2016-UP-324 (S.C. Ct. App. filed June 22, 2016). The Remittitur was returned to the lower court on July 13, 2016.

FACTS ADDUCED AT TRIAL

Applicant stabbed his second cousin, Hakeem Kirkland (Victim), eleven times while Applicant was under house arrest. Prior to the jury trial, the trial court held a hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964).

The Jackson v. Denno Hearing

The first witness in the Jackson v. Denno hearing was Sergeant Margaret Tinsley (Sergeant Tinsley). She testified that Applicant's aunt, Patrice, brought Applicant to Corporal Philip Robertson (Corporal Robertson), who in turn brought Applicant to the Sheriff's Office in his patrol car. Sergeant Tinsley testified that Applicant was not under arrest. Sergeant Tinsley spoke to Applicant at 5:48 P.M. Sergeant Tinsley testified that Applicant was not in handcuffs, was not denied anything, appeared to be in the right frame of mind, and was not under the influence of

anything. He was very polite. Sergeant Tinsley testified that Applicant was read his rights and signed and initialed the Miranda² rights form. (ROA pp. 6-11). Sergeant Tinsley testified that Applicant was not threatened or promised anything. (ROA p. 15). Applicant agreed to talk. Sergeant Tinsley explained that it was early in the investigation; she knew little about the crime. She knew that there was a stabbing, but did not know how many times Victim was stabbed or the extent of the injuries. (ROA p. 12).

The essence of Applicant's first statement was that Victim was trying to collect a debt and presented a gun. Applicant was scared and stabbed Victim a couple of times. Applicant signed this statement. (ROA p. 15). Applicant also told Sergeant Tinsley that the house had a security camera and that the whole incident was probably recorded. Sergeant Tinsley called Applicant's mother, Yashica Cleveland (Yashica), to request that she obtain a copy of the video. (ROA p. 24).

Sergeant Tinsley testified that at this point, they watched television while waiting for several hours for additional information. Other officers were out at Greenville Memorial, where Victim was being treated. Sergeant Tinsley testified that Victim was offered both food and drink. Applicant declined food but took up the offer for iced tea, so Applicant and Sergeant Tinsley both drank tea while watching television and waiting for more information. (ROA p. 16). Sergeant Tinsley testified on redirect that Applicant never complained of being tired or requested to leave during this period. Instead, he appeared to be patiently waiting to find out about the video he told Sergeant Tinsley about. It took a while because Yashica needed to wait for a break at work to call her ex-boyfriend, who had the software application on his phone to retrieve the video. (ROA p. 33).

Sergeant Tinsley found out that Victim was stabbed eleven times, not two times. She also

² Miranda v. Arizona, 384 U.S. 436 (1966).

discovered that Victim had provided text messages arranging a transaction between Victim and Applicant. She started interviewing Applicant again at 1:15 A.M. Accompanying her in the interview room was Captain Greg Reed (Captain Reed). (ROA pp. 17-18). Sergeant Tinsley testified that she did not threaten or coerce Applicant. She did, however, confront Applicant on the point "that it just wasn't adding up." Applicant agreed to talk some more. (ROA p. 19).

Applicant admitted in his second statement that he arranged by text messages to buy a gun and some marijuana from Victim. Applicant did not actually have the money for the purchase, and he intended to rob Victim and take the gun and marijuana. He admitted that he stabbed Victim with a butcher knife. (ROA p. 20).

Sergeant Tinsley testified that they asked him if he would provide a written statement, and Applicant said that he was tired. They asked Applicant to sign Sergeant Tinsley's notes instead, and Applicant agreed. Sergeant Tinsley read her notes back to him, and he signed them. (ROA p. 21). Sergeant Tinsley explained to him, "You let me know if I left anything out. You let me know if there's something in here that I have incorrect, that I need to change. If you need to change anything, just point it out, let me know." (ROA p. 21).

On cross-examination, Sergeant Tinsley explained that Corporal Robertson initially asked Yashica if she minded if they spoke with Applicant, and she said that she did not. (ROA p. 24). Applicant agreed to a polygraph test. When he took the polygraph test, he showed signs of deception. (ROA pp. 24-26).

Sergeant Tinsley testified that Applicant was willfully staying and was cooperative. Sergeant Tinsley explained, "I thought that there may be video. He was telling us the truth." (ROA p. 31).

Captain Reed testified that he was present for the second interview. He confirmed that

-- —Applicant was not promised anything or threatened when he gave his second statement. Captain Reed testified that Applicant appeared to understand what was going on and was in his right frame of mind. (ROA pp. 37–39). On cross-examination, Captain Reed testified that he and Sergeant Tinsley informed Applicant that he did not do well on his polygraph test. (ROA p. 41).

Applicant testified on his own behalf during the hearing. He claimed that Patrice instructed him to draft a statement and that he would then go home. Applicant testified that he did not feel free to leave. Applicant claimed that he thought they could use the polygraph examination in court. Applicant testified that the polygraph examiner told him that the results showed that Applicant was lying. (ROA pp. 44–46).

On cross-examination, Applicant testified that he remembered Sergeant Tinsley going over his rights with him. He agreed that he had initialed the form after she went through it line by line with him. (ROA pp. 48–49). Applicant testified that he can read and write. He confirmed that he knew what Sergeant Tinsley was asking him, and he understood his rights. He admitted to signing the waiver form. (ROA p. 49).

Applicant agreed that Sergeant Tinsley did not threaten him or promise him anything. (ROA p. 49). Applicant agreed that he came to the station of his own free will. (ROA p. 50). Applicant agreed that he gave his first statement freely and voluntarily, and that he was not promised anything or threatened in connection with its provision. (ROA pp. 50–51).

Applicant testified that he agreed to take the polygraph examination. He admitted that the examiner was nice to him. (ROA p. 52). Applicant testified that he agreed to speak with law enforcement a second time. He claimed that he was tired, but previously agreed that he woke up around lunchtime that day. (ROA pp. 49–50; 52–53).

Applicant testified as follows about the second statement:

Q: Do you remember telling her and her taking down notes?

A: I remember her taking down notes, yes, sir.

Q: Now, you changed your story quite a bit the second go-round. You kind of told what really happened, didn't you?

A: Yes, sir.

Q: And then at the end, did she ever promise you anything, did she ever threaten you in any manner to make you talk to her the second time?

A: No, sir.

Q: Did Captain Reed? They were nice to you, weren't they?

A: Yes, sir.

(ROA p. 53).

The prosecution asked Applicant, "Do you remember Sergeant Tinsley reading that back to you and saying, 'Was that what happened?' and you signed it?" Applicant answered, "I can honestly say yes, sir." (ROA p. 54).

Yashica was at work when her sister called her and said the house was surrounded by police, and she needed to get out of work. Yashica asked why she needed to leave work, and her sister told her that the police were looking for her son. Yashica testified that Applicant was supposed to be on house arrest. Yashica signed a consent form authorizing Applicant to take a polygraph examination. Yashica testified that Applicant was sixteen years old at the time of the stabbing. She explained that Applicant had average grades, ranging from A's to C's. (ROA pp. 55-59). Although the testimony is not entirely clear, Yashica appears to have agreed that she spoke with an investigator and consented to the investigator's discussion with Applicant. (ROA p. 61).

Defense counsel argued that the statement should be suppressed. (ROA pp. 64-75). He agreed that law enforcement did not tell Applicant that the results of the polygraph examination could be used against him in court. (ROA p. 75).

Jury Trial

Cindy Blackwell (Blackwell) operates a produce stand adjacent to a tire shop and is also a

certified nursing assistant. On July 8, 2013, Blackwell went out the front door of the produce shop and found Victim, whose white shirt was soaked with blood. Blood was squirting out of his head. The flesh in the back of his ears was hanging off. Blackwell assisted while someone called 911. She testified that she needed five gallons of Clorox and a hose to clean the front of the store afterwards. (ROA pp. 83-90). Although he was initially able to talk, Victim was no longer able to do so by the time the ambulance arrived. (ROA p. 92).

Victim testified that he was twenty-two years old. Applicant was his second cousin. Applicant's street name is Quay. The State admitted exhibits 35-42 into evidence, which were text messages between Applicant and Victim arranging for Victim to sell Applicant a gun and some marijuana. (ROA pp. 99-100). The exchange started with Applicant asking, "You got sum [sic] 380 shells you wanna sell?" (ROA p. 102). The agreement was to sell the gun, shells, and marijuana for \$150. (ROA pp. 103-05).

Victim met Applicant at Applicant's house. He permitted Applicant to take the gun and test it behind the house. Applicant returned with the gun. Victim took it back when Applicant was playing with it. Applicant went back into the house, came outside, and said "All right, Cuzzo" before he started stabbing Victim. (ROA pp. 106-07). Victim was stabbed eleven times. Applicant ran away. (ROA pp. 107-08).

Victim testified that he was stabbed with a long knife. Victim did not know why Applicant stabbed him. Applicant did not take the gun or the marijuana. Victim explained that he rolled out of the car to get away, and that is when Applicant ran away. Victim jumped back in his car and drove away; he called 911, although he was hesitant to do so because Applicant was family. He ultimately drove to Seneca Tires, where he received assistance. (ROA pp. 108-10). Victim needed to stay in the hospital for four days. (ROA p. 114).

-Victim-verified on cross-examination that he had sold guns and marijuana to Applicant before. Victim agreed that he wanted to cover up for the gun and the marijuana, but testified that he also initially did not want to get his cousin in trouble. (ROA pp. 115-16). Victim testified that Applicant never owed him \$200. (ROA p. 120).

Joseph Anderson (Anderson), a paramedic, responded to the scene and found Victim, who had stab wounds. Anderson explained that Victim needed to go to the trauma center in Greenville; Oconee was not equipped to provide sufficient medical attention. (ROA pp. 123-26). Anderson explained that Victim's injuries were life-threatening. (ROA p. 127).

Investigator David McMahan (Investigator McMahan) responded to the shop where Victim was found. Victim was no longer there; he was already transported for medical attention. There was a lot of blood on the front steps. Investigator McMahan went to Greenville Memorial and interviewed Victim. Victim identified the perpetrator but was reluctant to say what happened because of the gun and marijuana. Investigator McMahan identified the photographs for the jury that showed the stab wounds on the arms, chest, and back. One of the injuries was a knife wound where the knife went entirely through the arm. (ROA pp. 130-39).

Sergeant Tinsley testified that when Applicant was brought to the sheriff's office, she administered the Miranda warnings to Applicant; he initialed and signed the waiver form. Applicant was not under the influence of alcohol, he was not denied any comforts, and he was not promised anything or threatened. Applicant agreed to waive his rights and speak with Sergeant Tinsley. (ROA pp. 145-50).

In his first statement, Applicant claimed that Victim demanded \$200 that Applicant owed him and pulled out a gun. Applicant claimed that he stabbed Victim with a pocket knife two times and ran - Victim fired a shot as Applicant ran. After Applicant provided Sergeant Tinsley with

...this statement, they watched television while they waited for more information. Applicant was offered food, but he declined. Sergeant Tinsley and Applicant drank sweet tea together. (ROA pp. 151-54).

Sergeant Tinsley testified that she did not know the extent of Victim's injuries at the time. However, Sergeant Tinsley found out there were eleven stab wounds, not two. Further, she was shown pictures of Victim's injuries, and the stab wounds were too large to be made by a pocket knife. She was also advised about the texts arranging a transaction for a gun and marijuana. So, Sergeant Tinsley interviewed Applicant again. (ROA pp. 154-56).

Sergeant Tinsley and Captain Reed interviewed Applicant for the second time from 1:15 A.M. until 1:58 A.M. Although it was a late hour, Sergeant Tinsley testified that Applicant indicated he had slept until noon that day. After Applicant confessed, she asked him to prepare a written statement, but Applicant said that he did not want to because he was tired. Applicant agreed to sign her notes from the conversation instead. Applicant gave the second statement after he was confronted with the new information law enforcement had learned since he gave his initial statement. (ROA pp. 156-60).

Sergeant Tinsley published the notes for the jury. Applicant told the investigators that he had bought guns from Victim before. Applicant contacted Victim about purchasing a gun and marijuana. Applicant intended to take the gun and marijuana and run without paying Victim. Victim gave Applicant the gun so that Applicant could go behind the house and fire it. Applicant brought the gun back to Victim and told him he was going back inside the house to get the money. Applicant fetched the knife from the kitchen "because a gun can do all kinds of damage." Applicant returned and, while Victim was looking away, began to lean into the car for the gun and marijuana when Victim looked at him with a "what the fuck" look. Applicant stabbed Victim

--- twice because he thought he was caught, but Applicant maintained he did not intend to hurt Victim badly, just enough to run away. Applicant told the investigators that at this point, he was in an adrenaline rush: he thought he had only stabbed Victim twice. Applicant ran into the woods. Applicant claimed that he did not use the full force of his strength because he did not mean for the blade to penetrate too deeply. Applicant indicated that he was regretful. (ROA pp. 160-62).

Sergeant Tinsley asked Applicant to write a statement, but Applicant stated he was tired and did not wish to do so. (ROA pp. 167-68). Sergeant Tinsley noted that Applicant did not have any injuries. (ROA p. 171).

Captain Reed testified that they did not use threats or coercion during the second interview. He testified that the first interview lasted around an hour to an hour and a half, and the second interview lasted almost forty-five minutes. In between, everyone was simply waiting for information. Captain Reed testified that Applicant was free to leave between interviews. (ROA pp. 176-78).

The only defense witness was Yashica. She claimed that she was never told that Applicant was taken to the law enforcement center in Oconee. She found out that Applicant was under arrest around 2:00 A.M. to 3:00 A.M. She admitted that law enforcement brought her papers to sign to consent to the polygraph examination. She said until that time she was calling around to find Applicant because at the time he was under house arrest and she was in charge of him. (ROA pp. 186-91).

On June 5, 2017, Applicant filed his PCR application alleging he was being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Trial Counsel
2. Ineffective Assistance of Appellate Counsel

On September 19, 2019, Applicant amended his application by filing his Petitioner's Response to Respondent's Motion to Make More Definite and Certain:

1. Ineffective Assistance of Trial Counsel
 - a. "First, trial counsel never attempted to talk with victim in case."
 - b. "Trial Counsel has only been involved in case for a week or two prior to trial and only met with Petitioner 2 or 3 times."
 - c. "Trial counsel should have sought immediate appeal from denial of motion to continue trial which trial judge denied."
 - d. "Trial counsel failed to object to general intent jury instruction and failed to request specific intent charge by trial judge on page 59 of Transcript of Record. SEE: State v. Coleman, 422 S.C. 47, 810 S.E.2d 18 (S.Ct. 2018)³ and State v. Sutton, 340 S.C. 493, 532 S.E.2d 283 (S.Ct. 2000)."
 - e. "Trial counsel failed to object to and/or request curative instruction when "house arrest" was mentioned during State's cross-examination of Petitioner's mother on page 12 of Transcript of Record."
2. Ineffective Assistance of Appellate Counsel
 - a. "Appellant Counsel was ineffective for failure to preserve on appeal trial counsel's object to photographs on pages 23, 163 and 171 of trial transcript because prejudice of photographs outweighed any probative value of the photographs."

At the evidentiary hearing, Applicant raised additional allegations:

1. Ineffective Assistance of Trial Counsel
 - f. Trial Counsel failed to explain any plea offers.
 - g. Trial Counsel failed to preserve objections for appellate review.

³ Because the citation is for State v. King despite stating the case name as State v. Coleman, this Court interprets this citation as referencing State v. King.

----- Applicant requested relief in the form of "[s]entence modified on indictment number 2013-GS-37-1044 and sentence affirmed on indictment number 2013-GS-37-1043 as sentenced July 24, 2014."

Before this Court are the Oconee County Clerk of Court records from the underlying conviction and sentence, Applicant's records from SCDC, the trial transcript, the appellate records, and the records of this PCR action.

STANDARD OF REVIEW

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

The Uniform Post-Conviction Procedure Act⁴ (the Act) provides that any person who has been convicted of a crime may seek post-conviction relief based upon the following types of allegations:

- (1) That the conviction or the sentence was in violation of the Constitution of the United States or the Constitution or laws of this State;
- (2) That the court was without jurisdiction to impose sentence;
- (3) That the sentence exceeds the maximum authorized by law;
- (4) That there exists evidence of material facts, not previously presented and heard, that requires vacation of the conviction or sentence in the interest of justice;
- (5) That his sentence has expired, his probation, parole or conditional release unlawfully revoked, or he is otherwise unlawfully held in custody or other restraint; or
- (6) That the conviction or sentence is otherwise subject to collateral attack upon any ground of alleged error heretofore available under any common law, statutory or other writ, motion, petition, proceeding or remedy[.]

S.C. Code Ann. § 17-27-20(A).

The Sixth and Fourteenth Amendments to the United States Constitution guarantee Applicant, like all other defendants, the right to effective assistance of counsel. Strickland v. Washington, 466 U.S. 668 (1984); Taylor v. State, 404 S.C. 350, 359, 745 S.E.2d 97, 101 (2013).

⁴ S.C. Code Ann. §§ 17-27-10 to -160.

- Ordinarily, PCR allegations are centered upon an allegation that the applicant did not receive *effective* assistance of counsel guaranteed by the Sixth Amendment. The allegation of denial of such representation sets forth a *prima facie* violation of this constitutional right and raises a question of fact that can only be determined by an evidentiary hearing. Rogers v. State, 261 S.C. 288, 291, 199 S.E.2d 761, 762 (1973).

In a post-conviction relief action, the applicant bears the burden of proving the allegations by a preponderance of the evidence—a mere allegation of ineffective assistance is not sufficient to warrant granting relief. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). The reviewing court applies the two-part test outlined in Strickland v. Washington to determine whether counsel's conduct "was so [ineffective] as to require reversal" of the applicant's conviction. 466 U.S. 668, 687 (1984). To obtain relief, a PCR applicant must prove (1) counsel's performance fell below an objective standard of reasonableness, and (2) the applicant sustained prejudice as a result of counsel's deficient performance. Id. at 687–88; accord Cherry v. State, 300 S.C. 115, 117–18, 386 S.E.2d 624, 625 (1989). Failure to make the required showing of either deficient performance or sufficient prejudice defeats the ineffectiveness claim. Strickland, 466 U.S. at 700; see also Bell v. Cone, 535 U.S. 685, 695 (2002) (explaining that "[w]ithout proof of both deficient performance and prejudice to the defense, . . . it could not be said that the sentence or conviction resulted from a breakdown in the adversary process that rendered the result of the proceeding unreliable." (citation and internal quotation marks omitted)).

Regarding the deficiency prong of the Strickland analysis, the proper measure of performance is whether counsel provided representation within the reasonable range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. When analyzing counsel's performance, the reviewing court will strongly presume counsel provided

adequate assistance, and the applicant is responsible for rebutting that presumption "by proving that his attorney's representation was unreasonable under prevailing professional norms and that the challenged action was not sound strategy." Kimmelman v. Morrison, 477 U.S. 365, 384 (1986); cf. Cullen v. Pinholster, 563 U.S. 170, 189 (2011) (explaining a defendant must show defense counsel failed to act reasonably considering all the circumstances in order to overcome the presumption of adequate representation).

Furthermore, the reviewing court will scrutinize counsel's performance in a highly deferential manner, make every effort "to eliminate the distorting effects of hindsight," and "evaluate the conduct from counsel's perspective at the time" in light of then-existing circumstances. Strickland, 466 U.S. at 689. In order to establish counsel's performance was deficient, the applicant must demonstrate "counsel made errors so serious that counsel was not functioning as the 'counsel' guaranteed the defendant by the Sixth Amendment." Id. at 687. Accordingly, counsel's performance will be considered deficient only when it was objectively incompetent under prevailing professional norms and *not* when it simply "deviated from best practices or most common custom." Harrington v. Richter, 562 U.S. 86, 105 (2011).

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

Counsel, a PCR applicant has the burden of proving counsel's representation fell below an objective standard of reasonableness and, but for counsel's errors, there is a reasonable probability the result at trial would have been different."). Importantly, "[t]he likelihood of a different result must be *substantial*, not just conceivable." Richter, 562 U.S. at 112.

Finally, the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. 466 U.S. at 689-90. Courts must be wary of second-guessing counsel's trial tactics, and where counsel articulates a valid reason for employing such a strategy, such conduct is not ineffective assistance of counsel. Whitehead v. State, 308 S.C. 119, 417 S.E.2d 529 (1992). The applicant's burden of proving both Strickland components is heavy in light of the strong presumption that counsel's conduct fell within the range of reasonable professional legal assistance. 466 U.S. at 690. Representation is constitutionally ineffective only if counsel's conduct "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair proceeding. Id. at 686; see Nix v. Whiteside, 475 U.S. 157, 175 (1986) (noting that under Strickland, the "benchmark" of the right to counsel is the "fairness of the adversary proceeding"); cf. United States v. Morrow, 977 F.2d 222, 229 (6th Cir. 1992) ("[T]he threshold issue is not whether [the applicant's] attorney was inadequate; rather, it is whether he was so *manifestly* ineffective that defeat was snatched from the hands of probable victory.").

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Applicant has alleged and elected to pursue various claims of ineffective assistance of counsel and a claim of ineffective assistance of appellate counsel through the post-conviction relief action presently before this Court. In analyzing these claims, this Court has considered the legal arguments by counsel and thoroughly reviewed the record in its entirety. This Court additionally

heard the testimony presented at the evidentiary hearing and was able to observe the witnesses, which allowed the Court to evaluate and scrutinize their credibility. See, e.g., State v. Mercer, 381 S.C. 149, 166, 672 S.E.2d 556, 565 (2009) ("In this post-trial setting, our jurisprudence recognizes the gatekeeping role of the trial court in making a credibility assessment."); Clemons v. Mississippi, 494 U.S. 738, 766 (1990) (Blackmun, J., concurring in part and dissenting in part) ("The trial judge who hears the witnesses live, observes their demeanor and in general smells the smoke of the battle is by his very position far better equipped to make findings of fact which will have the reliability that we need and desire.").

Upon conducting and completing its analysis, this Court finds that Applicant has failed to establish any constitutional violations or deprivations that would require this Court to grant his application for post-conviction relief. See Rule 71.1(e), SCRPC (stating that in a post-conviction relief action, "[t]he applicant has the burden of establishing his entitlement to relief by a preponderance of the evidence."); Lucero v. State, 414 S.C. 238, 244, 777 S.E.2d 409, 412 (Ct. App. 2015) ("In a PCR proceeding, the applicant bears the burden of establishing that he or she is entitled to relief."); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) ("The burden of proof is on the Applicant in post-conviction proceedings to prove the allegations in his application.").

Accordingly, set forth below are the relevant findings of facts and conclusions of law as required by § 17-27-80 of the South Carolina Code:

INITIAL FINDINGS

As a matter of general impression, this Court finds applicable the strong presumption that at all stages of Trial Counsel's and Appellate Counsel's representation of Applicant, they both rendered adequate assistance and exercised reasonable professional judgment in both of their representations. Ard v. Catoe, 372 S.C. 318, 331, 642 S.E.2d 590, 596 (2007) (citing Strickland,

—*supra*). The United States Supreme Court has cautioned that "every effort be made to eliminate the distorting effects of hindsight" and evaluate counsel's decisions at the time they were made. Strickland, 466 U.S. at 689; see Whitehead v. State, 308 S.C. 119, 122, 417 S.E.2d 529, 531 (1992).

INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL ALLEGATIONS

Allegation 1a: Trial Counsel failed to investigate.

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to investigate. Applicant avers that due to his retaining Trial Counsel just before trial, Trial Counsel did not have enough time to complete any critical investigation. Specifically, Applicant avers Trial Counsel never attempted to talk with Victim. This Court finds this allegation is without merit.

"[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation." Strickland, 466 U.S. at 690–91. "In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Id. at 691. "In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Id.

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

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

PCR Evidentiary Hearing

On direct examination, Applicant testified that he did not think that Trial Counsel ever asked for a continuance to give himself more time to prepare. (PCR Tr. p. 14).

On cross-examination, Applicant testified that Trial Counsel should have talked with Victim to possibly "get an understanding" and hear Victim's side of the story. (PCR Tr. p. 17). Applicant testified that Victim testified at trial. (PCR Tr. p. 17). When questioned whether the outcome of his trial would have been different but for Trial Counsel not talking with Victim, Applicant testified that he was not going to say that. (PCR Tr. p. 17).

On direct examination, Trial Counsel testified that he filed a motion to continue and met with Judge Macaulay in his chambers, where he was given the file. (PCR Tr. pp. 23; 24). Trial Counsel testified that the motion for continuance was denied in chambers. (PCR Tr. p. 25). Trial Counsel testified that there was no record of the motion and that he did not want to make Judge

—Macaulay angry by "making him go in the room." (PCR Tr. p. 25). Trial Counsel testified that Judge Macaulay gave him a couple of extra days to prepare for trial because the trial was scheduled to be heard on Monday. (PCR Tr. p. 28). Trial Counsel testified that he was retained to represent Applicant around a week before trial. (PCR Tr. p. 23). Trial Counsel testified that he received discovery for Applicant's case. (PCR Tr. p. 23). Trial Counsel testified that he reviewed the file that he was given, which contained discrepancies about Victim's age, *inter alia*. (PCR Tr. p. 23).

Trial Counsel testified that he had no reason to contact Victim. (PCR Tr. p. 25). Trial Counsel testified that he spoke with Applicant regarding certain issues involving Victim. (PCR Tr. p. 27). When questioned whether he had any reason to contact Victim, Trial Counsel testified that he "had been through some issues about it. The victim spent three-year Odyssey through the disciplinary process with the Supreme Court on stuff like that, so I really tried to stay away from trying to do that." (PCR Tr. p. 25). Trial Counsel testified that he had a death penalty case from the late 1980s and that talking with victims is "fraught with peril" because they lie. (PCR Tr. pp. 25-26). Trial Counsel testified that an attorney talks with an adverse party at their own peril, which is "not a wise thing to do at times." (PCR Tr. p. 26). When questioned whether he recalled the testimony being helpful to Applicant, Trial Counsel testified that he recalled Victim testifying at trial about getting into an altercation with Applicant, almost bleeding to death, and Applicant having a knife. (PCR Tr. p. 26). Trial Counsel testified that he thought he had Victim's statements and that they said that Victim had gone to Applicant's house to sell marijuana or a gun, but Trial Counsel was not certain because of the length of time since the trial. (PCR Tr. p. 26). Trial Counsel testified that Applicant was convicted based on other evidence and not because Trial Counsel did not talk with Victim. (PCR Tr. p. 26). Trial Counsel testified that Victim's statements were in the file. (PCR TR. p. 26).

During cross-examination, Trial Counsel testified that he had requested a continuance because he was not prepared at that time. (PCR Tr. p. 32).

Findings

This Court finds the combination of the record and Trial Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Trial Counsel *credibly* testified that he had no reason to speak with Victim in Applicant's case. Trial Counsel's decision not to talk with Victim was reasonable, as Trial Counsel had Victim's statements and was able to review them before trial. This Court cannot find Trial Counsel was deficient for not speaking with Victim.

To the extent Applicant relies on the trial judge not granting a continuance to support his allegation, Trial Counsel *credibly* testified that he was given two extra days to work on the trial. Trial Counsel cannot be held as deficient for failing to secure a continuance when that decision rested solely with the trial judge.

Importantly, Applicant presented no evidence of what matters Trial Counsel should have investigated more, and how those matters would have resulted in a different outcome of his trial. Applicant did not present any testimony or affidavit from Victim at the evidentiary hearing. Applicant did not show how Trial Counsel obtaining Victim's side of the story from speaking with him would have resulted in a different outcome in Applicant's trial. Applicant himself testified that he could not say that, but for Trial Counsel's failure to speak with Victim, the result of his trial would have been different. Notably, the burden of proof is with Applicant, and with no evidence

- - - being presented to this Court, this Court finds that Applicant has not met his burden of proof.

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

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

Allegation 1b: Trial Counsel failed to meet with Applicant a sufficient number of times.

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to meet with Applicant a sufficient number of times. Specifically, Applicant avers Trial Counsel was constitutionally ineffective for accepting his case one week prior to trial, for only being involved in his case for a week or two prior to trial, and for only meeting with Applicant two or three times. This Court finds this allegation is without merit.

Federal case law holds that there is no constitutional minimum number of meetings between attorneys and their clients to satisfy competency. Campbell v. Polk, 447 F.3d 270, 279 fn.2 (4th Cir. 2006) (no constitutional minimum number of meetings to satisfy competency); United States v. Olson, 846 F.2d 1103, 1108 (7th Cir. 1988) (reciting that there is no constitutional minimum number of meetings between attorney and client and observing that an experienced attorney may get more out of a single meeting than a neophyte). "Brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609

F.2d 756, 759 (5th Cir. 1980) (holding it is not enough to merely show that counsel only met with his client twice before trial as long as counsel devoted sufficient time to ensure an adequate defense and to become thoroughly familiar with the facts of the case and the law applicable to the case, and holding the record revealed that counsel was so prepared).

South Carolina case law has established that even if Trial Counsel only met with his client very briefly, that alone does not establish that he was unprepared or ineffective at trial. See Harris v. State, 377 S.C. 66, 75, 659 S.E.2d 140, 145 (2008) (citing Easter) ("First, there is no question that counsel met with [Applicant] on several occasions prior to the first trial. Even if the meetings were brief, this fact alone is not indicative of inadequate trial preparation."). An applicant must present evidence demonstrating that additional time spent in consultation would have resulted in a different outcome; mere speculation as to how the alleged lack of preparation prejudiced the applicant is insufficient to support a grant of relief. Smith v. State, 404 S.C. 493, 500–01, 745 S.E.2d 378, 382 (Ct. App. 2012) (citing Jackson v. State, 329 S.C. 345, 353–54, 495 S.E.2d 768, 772 (1998); Skeen v. State, 325 S.C. 210, 214–15, 481 S.E.2d 129, 132 (1997)).

PCR Evidentiary Hearing

On direct examination, Applicant testified that his original attorney before Trial Counsel was a public defender, Danny Day (Counsel Day). (PCR Tr. p. 8). Applicant testified that Trial Counsel was hired to replace Counsel Day around two weeks before trial. (PCR Tr. p. 9). Applicant testified that he probably had two or three opportunities to meet with Trial Counsel before trial. (PCR Tr. p. 9). Applicant testified that he met with Trial Counsel for no more than an hour and thirty minutes.⁵ (PCR Tr. p. 9). Applicant testified that Trial Counsel did not discuss

⁵ The record is unclear whether the time testified to was for each meeting or for the total time that they met.

anything with him, including trial strategy and what was going to happen at trial. (PCR Tr. p. 9). Applicant testified that, when the trial started, Trial Counsel did not explain what was going to happen at trial. (PCR Tr. p. 9). Applicant testified that Trial Counsel only told him that he was just representing him and that he was going to trial. (PCR Tr. p. 9). Applicant testified that he did not think that Trial Counsel ever asked for a continuance to give himself more time to prepare. (PCR Tr. p. 14). Applicant testified that he never had sufficient time to talk with Trial Counsel and plan a trial strategy. (PCR Tr. p. 14).

On cross-examination, Applicant testified that he was represented by Counsel Day for over a year and seven months. (PCR Tr. p. 18). Applicant testified that his family decided to hire Trial Counsel and that he could not recall whether his case was docketed at that time. (PCR Tr. p. 18).

On direct examination, Trial Counsel testified that he was a criminal law attorney with more than 30 years of experience. (PCR Tr. p. 23). Trial Counsel testified that he was retained to represent Applicant approximately 1 week before trial. (PCR Tr. p. 23). Trial Counsel testified that he filed a motion for continuance and met with Judge Macaulay in his chambers on Monday, where he was given the file. (PCR Tr. pp. 23; 24; 25). Trial Counsel testified that the motion for continuance was denied in chambers. (PCR Tr. p. 25). Trial Counsel testified that there was no record of the motion and that he did not want to make Judge Macaulay angry by "making him go in the room." (PCR Tr. p. 25). Trial Counsel testified that the trial was scheduled on Monday, but Judge Macaulay moved the trial to Wednesday to give him a couple of extra days to prepare. (PCR Tr. pp. 24-25; 28). Trial Counsel testified that the trial lasted two days and that he believed Applicant was convicted on Friday.⁶ (PCR Tr. p. 25). Trial Counsel testified that a family member

⁶ Jury qualifications were held on Monday, July 21, 2014. The trial itself was held on July 23-24, 2014. Applicant was convicted and sentenced on Thursday, July 24, 2014.

of Applicant spoke with him on Thursday before trial; on Friday, he went to Oconee to file a motion to speak with Applicant, and that he probably spoke with Applicant every time he went to Oconee. (PCR Tr. pp. 28-29). Trial Counsel testified that he met with Applicant about two or three times prior to trial and that he met with Applicant when he went to Oconee. (PCR Tr. p. 27). Trial Counsel testified that he "had some other stuff going on" during the time of Applicant's trial and that he met with Applicant as often as he could. (PCR Tr. p. 27). Trial Counsel testified that he spoke with Applicant regarding certain issues involving Victim. (PCR Tr. p. 27). Trial Counsel testified that he was as prepared as possible to try the case. (PCR Tr. p. 24).

On direct examination, Simmons testified that Counsel Day represented Applicant and that the case was on the docket. (PCR Tr. p. 44). Simmons testified that Applicant's family retained Trial Counsel at the "eleventh hour" when the trial was already set. (PCR Tr. p. 44).

Findings

This Court finds the combination of the record and Trial Counsel's testimony that Applicant has failed to overcome the "strong presumption that counsel rendered adequate assistance and exercised reasonable professional judgment in making all significant decisions in [his] case." Ard v. Catoe, *supra*. This Court additionally finds that Applicant has failed to overcome his burden in proving that Trial Counsel's representation was deficient and any resulting prejudice from that alleged deficiency. See Butler, 286 S.C. at 442, 334 S.E.2d at 814. Trial Counsel *credibly* testified that he made a motion for continuance that the trial court denied, but the trial court also gave him two extra days to prepare. Trial Counsel *credibly* testified that he met with Applicant two or three times prior to trial. Applicant testified that his family retained Trial Counsel approximately two weeks before trial to replace his prior attorney, Counsel Day, who had represented Applicant for more than one year and seven months. Despite having such limited time to prepare for Applicant's

trial, and despite Applicant's testimony that he never had sufficient time to speak with Trial Counsel and plan a trial strategy, Trial Counsel *credibly* testified that he was as prepared as he could be to try the case.

This Court cannot find Trial Counsel's representation deficient for several reasons: (1) after reviewing this record before this Court, this Court finds this case was not complex; (2) Trial Counsel *credibly* testified to multiple meetings with Applicant, and Trial Counsel was given two extra days to prepare; (3) the record shows the Applicant was found to be indigent and was provided a public defender who represented him for nearly sixteen months; however, Applicant chose to assert his right to retain Trial Counsel, and he has the right to be represented by his preferred attorney if he has the funds; (4) Trial Counsel's representation was competent—something the Applicant is entitled to—not perfect representation; and (5) Applicant presented no competent evidence to this Court demonstrating how additional time for preparation or consultation would have changed the outcome of the trial. Notably, the burden of proof is with Applicant, and this Court finds Applicant has failed in his burden of proving any deficiency in Trial Counsel's representation, nor has he shown any prejudice flowing therefrom.

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

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

Allegation 1c: Trial Counsel should have sought immediate appeal from denial of motion to continue trial which the trial judge denied.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to immediately appeal the trial court's denial of the motion for continuance. This Court finds this allegation to be without merit.

South Carolina Code § 14-3-330 states that the South Carolina Supreme Court "shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

- (1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction, and final judgments in such actions; provided, that if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from;
- (2) An order affecting a substantial right made in an action when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action, (b) grants or refuses a new trial or (c) strikes out an answer or any part thereof or any pleading in any action;
- (3) A final order affecting a substantial right made in any special proceeding or upon a summary application in any action after judgment; and
- (4) An interlocutory order or decree in a court of common pleas granting, continuing, modifying, or refusing an injunction or granting, continuing, modifying, or refusing the appointment of a receiver.

S.C. Code Ann. § 14-3-330.

PCR Evidentiary Hearing

On direct examination, Trial Counsel testified that he filed a motion to continue and met with Judge Macaulay in his chambers on Monday. (PCR Tr. pp. 23; 24). Trial Counsel testified that the motion for continuance was denied in chambers. (PCR Tr. p. 25). Trial Counsel testified

that there was no record of the motion and that he did not want to make Judge Macaulay angry by "making him go in the room." (PCR Tr. p. 25). Trial Counsel testified that the trial court did not issue a written order, which creates a problem with appealing an order. (PCR Tr. p. 28). Trial Counsel testified that, at the time of the trial, he was not aware of any court procedure that allowed him to file an interlocutory appeal on a motion to continue. (PCR Tr. p. 28). Trial Counsel testified that Judge Macaulay gave him a couple of extra days to prepare for trial because the trial was scheduled to be heard on Monday. (PCR Tr. p. 28).

On cross-examination, Trial Counsel testified that Applicant was not present in chambers when Trial Counsel made the motion for continuance and that Applicant had a right to be at every hearing on the issues. (PCR Tr. p. 31). Trial Counsel testified that he asked for a continuance because he was not prepared at that time. (PCR Tr. p. 32). Trial Counsel testified that when he made the motion for continuance, Judge Macaulay wanted to have it done in his chambers and that Applicant was not present. (PCR Tr. p. 33).

Findings

As an initial matter, this Court finds this issue fails as a matter of law. An interlocutory appeal cannot be made for a denial of a motion for continuance, and Trial Counsel *credibly* testified that he was not aware of any procedure that allowed him to file an interlocutory appeal on a motion for continuance at the time the motion was denied. This Court cannot find Trial Counsel deficient for not filing an interlocutory appeal when he had no procedure that would allow him to do so.

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

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

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

Allegation 1d: Trial Counsel failed to object to the general intent jury instruction and failed to request a specific intent charge.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to object to the jury charge that attempted murder was a general intent crime and for failing to request a specific intent jury charge. Applicant also alleges that Trial Counsel was constitutionally ineffective for failing to preserve objections for appellate review, specifically for failing to object to the jury charge on general intent. This Court finds these allegations to be without merit.

An attorney is not required to anticipate or discover changes in the law or facts that did not exist at the time of trial to render effective assistance of counsel. Thornes v. State, 310 S.C. 306, 309–10, 426 S.E.2d 764, 765 (1993). In State v. King, the Court of Appeals held for the first time that "the Legislature intended to require the State to prove specific intent to commit murder as an element of attempted murder." 412 S.C. 403, 411, 772 S.E.2d 189, 193 (Ct. App. 2015). Thereafter, our Supreme Court, in State v. King, 422 S.C. 47, 810 S.E.2d 18 (2017), agreed that attempted murder was a specific intent crime. However, our Supreme Court recognized the confusion, stating, "While it may seem counterintuitive for the attempt of a crime to require a higher level of *mens rea* than that of the completed crime, this is the majority rule and a rule that our appellate courts and General Assembly have followed." King, 422 S.C. at 56, 810 S.E.2d at 22.

- - -The purpose of a trial judge's jury instructions is "to enlighten the jury and to aid it in arriving at a correct verdict." State v. Leonard, 292 S.C. 133, 137, 355 S.E.2d 270, 273 (1987). When instructing a jury on the law, a trial judge must charge only the current and correct law of South Carolina. State v. Taylor, 356 S.C. 227, 231, 589 S.E.2d 1, 2 (2003). In doing so, a trial judge is only required to instruct the jury on the substance of the law and does not have to use any particular verbiage. State v. Burkhardt, 350 S.C. 252, 261, 565 S.E.2d 298, 302 (2002). A trial judge's jury charge is appropriate if it is substantially correct and adequately covers the law applicable to the case. State v. Foust, 325 S.C. 12, 16, 479 S.E.2d 50, 52 (1996); see State v. Adkins, 353 S.C. 312, 318, 577 S.E.2d 460, 464 (Ct. App. 2003) ("A jury charge is correct if, when the charge is read as a whole, it contains the correct definition and adequately covers the law.").

To show prejudice where counsel fails to preserve an issue, an applicant must show the trial court would have sustained an objection, and the unpreserved issue would have been successful on appeal. Milledge v. State, 422 S.C. 366, 811 S.E.2d 796 (2018). A PCR court must view the trial court's ruling on an issue through the same lens applied on appeal, giving appropriate deference to the trial court's findings. Milledge, 422 S.C. at 380, 811 S.E.2d 804. The Supreme Court of South Carolina has stated that it "review[s] a trial court's ruling on the admission or exclusion of evidence—when the ruling is based on the South Carolina Rules of Evidence—under an abuse of discretion standard. State v. Wallace, 440 S.C. 537, 541, 892 S.E.2d 310, 312 (2023).

Jury Trial

At trial, the trial court charged the jury on the intent required for attempted murder: "A specific intent to kill is not an element of attempted murder, but there must be a general intent to commit serious bodily injury." (ROA p. 224). When the trial court asked the defense whether

they had any exceptions to the charge or any requests for additional charges, Trial Counsel indicated they did not. (ROA p. 234).

On direct examination, Sergeant Tinsley testified that Applicant told her that he did not use his "full force of strength" when he stabbed Victim because "he didn't want the blade to penetrate deep." (ROA p. 162). Sergeant Tinsley testified that Applicant told her he chose a knife from the kitchen over a gun because of the damage a weapon can do. (ROA p. 161). Furthermore, Sergeant Tinsley testified that Applicant stabbed Victim eleven times, that she told Applicant that his story "just didn't seem to add up," and that Applicant admitted that he was not initially telling the truth. (ROA pp. 155; 160). Sergeant Tinsey also testified that Applicant told her the knife he used was similar to the one Michael Myers used in the movie, *Halloween*. (ROA p. 162).

Victim testified that the knife Applicant used was long and was "like a kitchen knife." (ROA p. 108).

Sergeant McMahan testified on Victim's injuries, including a defensive wound that went completely through Victim's arm, creating an exit wound, a chest wound that entered Victim's body and cut into his "liver area," and several wounds that had to be held together with staples. (ROA pp. 135-37; 139).

PCR Evidentiary Hearing

On direct examination, Applicant testified that Trial Counsel was ineffective for failing to object to the trial court's jury charge on the intent required for attempted murder. (PCR Tr. pp. 11-12). Applicant testified to the following:

Trial Counsel failed to object when Trial Court instructed the jury that specific intent to kill was not an element of attempted murder, but that would be a general intent to commit serious bodily injury. You'll find the same exact error in State v. King, 422 S.C. 47, 810 S.E.2d 18. It was well settled by the Court of Appeals the proper legislative history of Section 16-3-29, appellate decision holding that intent of crime required the State to prove intent as specific intent to complete the

attempted crime. Also, in State v. Williams, 427 S.C. 148, 829 S.E.2d 702, states that attempted murder is a specific intent crime in South Carolina. State v. Williams also states that if the petitioner did not argue a trial court error when instructing the jury that attempted murder was a general intent crime, that the petitioner was entitled to a new trial based on that error alone.

(PCR Tr. pp. 13–14).

Applicant testified that Trial Counsel never objected to the charge or preserved the issue for appeal. (PCR Tr. p. 14). Applicant testified that he did not want to kill Victim. (PCR Tr. p. 14). Applicant testified that Sergeant Tinsley testified that he did not use his "full force strength" when he stabbed Victim because he did not want the knife to deeply penetrate Victim. (PCR Tr. pp. 14–15). Applicant testified that the outcome of his trial would have been different because he would not have been convicted of an erroneous charge. (PCR Tr. p. 15). Applicant also testified that if the jury had been properly instructed on the law, then the burden of proof would not have shifted and the State would not have had evidence that he had the specific intent to kill Victim. (PCR Tr. p. 15).

On cross-examination, Applicant testified that he cited State v. King, decided on October 25, 2017, as the controlling authority on this matter. (PCR Tr. pp. 18–19). Applicant testified that his trial was in July 2014 and that State v. King had not been decided at that time and therefore was not controlling law. (PCR Tr. p. 19). Applicant testified that Sutton was the controlling law at the time of his trial. (PCR Tr. p. 19). Applicant testified that Sutton was well-cited and backed up the King case, that specific intent to kill is an element of attempted murder. (PCR Tr. p. 19). Applicant testified that Sutton was concerned about assault and battery with intent to kill, and that South Carolina did not have attempted murder at that time in that case. (PCR Tr. p. 20). When questioned on whether he understood that it was decided in Sutton that the charge of general intent for assault and battery with intent to kill encompassed the attempted murder, even though South

Carolina did not have attempted murder at that time, Applicant testified that he only saw that the case said that attempted murder required specific intent to kill. (PCR Tr. p. 20).

On direct examination, Trial Counsel testified that he was not familiar with State v. King "at this point. Not about the instructions going on." (PCR Tr. p. 30). Trial Counsel testified that he did not recall the jury instruction because it was ten years ago. (PCR Tr. p. 30). Trial Counsel testified that the trial court gave a lot of instructions and that his primary focus was on "a juvenile issue about . . . his statements" and trying to make a record of that so if Applicant got in the Federal system, then he could possibly get some relief there. (PCR Tr. p. 31). Trial Counsel testified that he knew the difference between specific intent and general intent but that he was trying to concentrate on "getting statements and preserving that for appeal." (PCR Tr. p. 31). Trial Counsel testified that, as far as the intent issue, he was not really thinking about it at the time. (PCR Tr. p. 31).

Findings

This Court finds Applicant's claim fails as a matter of law. The attempted murder statute created an ambiguity as to whether attempted murder was a specific or general intent crime, and it was not until 2015 that the appellate court decided the issue. Ultimately, in 2017, our Supreme Court clarified that attempted murder is a specific intent crime. As for the cases that Applicant relied on in his allegations and in his testimony at the evidentiary hearing that hold that attempted murder is a specific intent crime, most of them were decided after Applicant's trial, which concluded with his conviction and sentencing on July 24, 2014, so they were not controlling law at that time: State v. King, 422 S.C. 47, 810 S.E.2d 18, was filed on October 25, 2017; and State v. Williams, 427 S.C. 148, 829 S.E.2d 702, was filed on June 12, 2019.

- - - To the extent Applicant relied on State v. Sutton, 340 S.C. 393, 532 S.E.2d 283 (2000), the statement in Sutton constitutes *dicta*. Id. at 409, 772 S.E.2d at 192. It was not until the King decision in 2017 that the Supreme Court held that, although the statement in Sutton is *dicta*, "it is still an accurate statement of law." King, 422 S.C. at 55–56, 810 S.E.2d at 22. Thus, providing clarification on this matter for the Bar in South Carolina. Applicant further relied on State v. Williams, 427 S.C. 148, 829 S.E.2d 702 (2019), which was decided five years after Applicant's trial and was neither controlling nor could it be controlling case law in this case.

"For an ineffective assistance claim, the PCR court must 'determine whether counsel was ineffective *at the time of the alleged error*.' Thus, the court must consider the law as it existed at the time of trial and 'not as it has evolved today. . . .' Accordingly, trial counsel will not be found deficient for failing "to be clairvoyant or anticipate changes in the law. . . ." Chappell v. State, 429 S.C. 68, 79, 837 S.E.2d 496, 501–02 (Ct. App. 2019) (emphasis in original). To have required Trial Counsel to correctly assess the level of intent required by the statute at the time of Applicant's trial, before our appellate courts settled the matter in King, would be to hold Trial Counsel, wrongly, to the standard of a clairvoyant. Trial Counsel cannot be deficient for failing to anticipate a change in the law.

Turning to prejudice, "[i]n assessing prejudice under Strickland, the question is *not* whether a court can be certain counsel's performance had no effect on the outcome" Harrington v. Richter, 562 U.S. 86, 111 (2011) (emphasis added). "Instead, Strickland asks whether it is 'reasonably likely' the result would have been different." Id. (quoting Strickland, 466 U.S. at 696). "The likelihood of a different result must be substantial, not just conceivable." Id. at 112. Assuming, *arguendo*, Trial Counsel should have objected to the general intent jury charge, the Court finds the likelihood of the jury reaching a different verdict had the trial court given a specific

intent jury instruction is not substantial. Although in Applicant's statement to police, he told them that he chose a knife because a gun would do more damage, the knife Applicant chose was one that Victim described as "long" and one that Applicant himself described as similar to the murder weapon used by a killer in a horror movie. Most notably, Applicant did not stab Victim once—he stabbed the Victim *eleven* times and only stopped because Victim was able to get out of the car on the other side opposite Applicant. Applicant then took off running.

Additionally, contrary to what Applicant testified to at the evidentiary hearing, Sergeant Tinsley did not testify at trial that Applicant did not stab Victim with his "full force strength;" instead, Sergeant Tinsley testified that *Applicant told her* he did not stab Victim with his "full force of strength." Furthermore, Applicant's claim that he did not stab Victim with his "full force strength" is contradicted by the nature and extent of Victim's injuries, as Sergeant McMahan testified to at trial. Thus, this Court finds that Applicant has failed to meet his burden of proving that Trial Counsel's performance was deficient and any prejudice flowing therefrom.

As for Applicant's allegation that Trial Counsel failed to preserve the issue for appeal, the jury charge at the time was not improper and was the law at the time of Applicant's trial. Therefore, this Court finds that Applicant has failed in proving that Trial Counsel's performance was deficient and any prejudice flowing therefrom.

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

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

Allegation 1e: Trial Counsel failed to object to and/or request curative instruction when "house arrest" was mentioned during State's cross-examination of Applicant's mother on page 12 of trial transcript.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to object to and/or request a curative instruction when "house arrest" was mentioned during the State's cross-examination of Yashica. This Court finds this allegation to be without merit.

An ineffective assistance claim based on a failure to object is tied to the admissibility of the underlying evidence." Hough v. Anderson, 272 F.3d 878, 898 (7th Cir. 2001). "If evidence admitted without objection was admissible, then the complained of action fails both prongs of the Strickland test: failing to object to admissible evidence cannot be a professionally 'unreasonable' action, nor can it prejudice the defendant against whom the evidence was admitted." Id.; see Miller v. Keeney, 882 F.2d 1428, 1434 (9th Cir. 1989) (noting that if a petitioner challenges a futile objection, he fails both Strickland prongs); U.S. ex rel. Link v. Lane, 811 F.2d 1166, 1170 (7th Cir. 1987) (finding there is no prejudice from the failure to object unless there is a legally supportable argument for exclusion of the evidence). Also, "[a]n error by counsel, even if professionally unreasonable, does not warrant setting aside the judgment of a criminal proceeding if the error had no effect on the judgment." Strickland, 466 U.S. at 691.

The "use and timing of objections at trial is a quintessential matter of strategy and discretion on the part of the trial attorney, and will very seldom constitute objectively deficient representation." United States v. Nguyen, 379 F. App'x 177, 181 (3d Cir. 2010); see Humphries v. Ozmint, 397 F.3d 206, 234 (4th Cir. 2005) (Luttig, J., concurring) ("[I]t is well established that

- - failure to object-to-inadmissible or objectionable material for tactical reasons can constitute objectively reasonable trial strategy under Strickland."); cf. Bergmann v. McCaughtry, 65 F.3d 1372, 1380 (7th Cir. 1995) (noting that deciding when to object is a matter of trial strategy that a lawyer has to make on the spot.).

When analyzing counsel's performance, the reviewing court will "strong[ly] presume[e] that counsel's attention to certain issues to the exclusion of others reflects trial tactics rather than sheer neglect. Yarborough, 540 U.S. at 8 (internal quotation marks omitted); cf. Higgs v. United States, 711 F. Supp. 2d 479, 515 (D. Md. 2010) ("Defense counsel constantly must decide what questions to ask and how much time to spend on a particular witness. These are precisely the types of tactical decisions a court is not supposed to second guess.") (citing Byram v. Ozmint, 339 F.3d 203, 209 (4th Cir. 2003)); Sallie v. North Carolina, 587 F.2d 636, 640 (4th Cir. 1978) (Strickland standard was not developed "to promote judicial second-guessing on questions of strategy as basic as the handling of a witness.").

To avoid a finding of ineffectiveness, and where counsel articulates a strategy, counsel must also articulate a valid reason for employing a particular strategy. Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995). Thereafter, that strategy is measured under an objective standard of reasonableness. Id.; see also Stacy v. Solem, 801 F.2d 1048, 1051 (8th Cir. 1986) (finding that "labeling counsel's actions as "trial strategy" does not automatically immunize an attorney's performance from sixth amendment challenges."). When counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel. Smith v. State, 386 S.C. 562, 689 S.E.2d 629 (2010).

During the trial, when questioned by A.S. Wagner on cross-examination on whether she remembered talking to people from the sheriff's office, Yashica testified that Applicant "was under house arrest bracelet" at the time. (ROA p. 191). Trial Counsel did not object to Yashica's testimony.

PCR Evidentiary Hearing

On direct examination, Applicant testified that he believed that Yashica testified at trial that Applicant was on house arrest when the crime occurred. (PCR Tr. p. 15). Applicant testified that Trial Counsel did not object to Yashica's testimony or ask for a curative charge. (PCR Tr. p. 15).

On cross-examination, Applicant testified that he could not recall who questioned Yashica when she testified that he was under house arrest. (PCR Tr. p. 20).

On direct examination, Trial Counsel testified that he recalled Yashica's testimony regarding Applicant's house arrest, which she gave on cross-examination. (PCR Tr. pp. 29-30). Trial Counsel testified that he met with Yashica, spoke with her "at length" regarding her testimony, and advised her not to volunteer any information. (PCR Tr. p. 29). Trial Counsel testified that the reason why he did not object was that if he had objected, then he would have brought more attention to Yashica's testimony than it should have gotten. (PCR Tr. p. 29). Trial Counsel testified that he did not want to draw undue attention to her testimony. (PCR Tr. p. 30). Trial Counsel testified that Yashica was his witness and that he did not want to impeach his own witness. (PCR Tr. p. 29). Trial Counsel testified that objecting would have lessened her credibility in front of the jury and would have caused the jury to key in on her testimony. (PCR Tr. pp. 29-30). Trial Counsel testified that there was ambiguity regarding the charges for which the house

arrest was imposed. (PCR Tr. p. 30). Trial Counsel testified that he believed Applicant was denied bond on "this charge" and was in jail "a good while" when Trial Counsel met Applicant. (PCR Tr. p. 30). Trial Counsel testified that he did not believe that the single reference to Applicant being on house arrest was what convicted him or had any bearing on the outcome of the trial. (PCR Tr. p. 30).

Findings

This Court finds that Trial Counsel *credibly* testified that he advised Yashica and spoke with her at length about her testimony, telling her not to volunteer any information. However, Yashica testified on cross-examination that Applicant was under house arrest, despite A.S. Wagner not having asked a question that would elicit such information. Trial Counsel *credibly* testified that his reasoning for not objecting to Yashica's testimony was strategic for several reasons – (1) if he had objected, then he would have brought more attention to her testimony, and Trial Counsel did not want to bring any more attention than necessary to her testimony because the jury would have keyed in on that testimony; (2) Yashica was the defense's witness and Trial Counsel did not want to impeach his own witness; and (3) objecting to Yashica's testimony would have lessened her credibility in front of the jury. Furthermore, Trial Counsel *credibly* testified that there was some ambiguity as to what the house arrest testimony referred to. Trial Counsel *credibly* testified that he did not believe that the single reference to Applicant's being on house arrest had anything to do with the outcome of the trial and was not what led to his conviction. This Court agrees with Trial Counsel and finds that Trial Counsel offered a valid and objectively reasonable reason for not objecting to the single reference made by Yashica. Additionally, this Court finds that even if Trial Counsel had objected, the result of Applicant's trial would not have been different.

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

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

Allegation 1f: Trial Counsel failed to explain any plea offers.

Applicant alleges that Trial Counsel's representation was constitutionally ineffective for failing to convey or explain any plea offers. This Court finds this allegation to be without merit.

A defendant has the right to effective assistance of counsel during the plea-bargaining process. Davie v. State, 381 S.C. 601, 675 S.E.2d 416 (2009) (abrogated on other grounds by Smalls v. State, 422 S.C. 174, 810 S.E.2d 836 (2018)). "The United States Supreme Court has held that 'defense counsel has the duty to communicate formal offers from the prosecution to accept a plea on terms and conditions that may be favorable to the accused.' " Collins v. State, 422 S.C. 250, 261, 810 S.E.2d 871, 876 (2018) (quoting Missouri v. Frye, 566 U.S. 134, 145 (2012)); see also Lafler v. Cooper, 566 U.S. 156, 169–70 (2012) (rejecting proposition that a fair trial wipes clean any deficient performance by defense counsel during plea bargaining). Generally, defense counsel provides deficient performance when he or she does not communicate such an offer to the defendant. Frye, 566 U.S. at 145.

To show prejudice, an applicant for post-conviction relief "must demonstrate a reasonable probability that: (1) he [or she] 'would have accepted the earlier plea offer had [he or she] been afforded effective assistance of counsel;' (2) 'the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it;' and (3) 'the end result of the criminal process would have been more favorable by reason of a plea to a lesser charge or a sentence of less prison time.' " Collins, 422 S.C. at 262, 810 S.E.2d at 877 (quoting Frye, 566 U.S. at 147; citing Lafler, 566 U.S. at 164). An applicant must show actual prejudice, but depending on the facts of the case, an applicant's self-serving statement *may* be sufficient to establish actual prejudice. Davie, 381 S.C. at 613, 675 S.E.2d at 422.

PCR Evidentiary Hearing

On direct examination, Applicant testified that, prior to trial, Trial Counsel did not give Applicant any written offers that the State had made to him, nor did Trial Counsel ever ask Applicant to sign any alleged offers. (PCR Tr. pp. 9–10).

On direct examination, Trial Counsel testified that he was never given any offers or "anything like that," but Counsel Day may have received offers. (PCR Tr. p. 27). Trial Counsel testified that he did not recall any offers in the defense file he received, but Counsel Day told him that the State offered Applicant 10 years. (PCR Tr. pp. 27–28).

On cross-examination, Trial Counsel testified that the State never presented a plea offer to him and that Counsel Day was the one who was given plea offers. (PCR Tr. p. 32). Trial Counsel testified that he was going to try to make an offer of around seven years, but Applicant did not want to do that. (PCR Tr. p. 32).

On direct examination, Simmons testified that she believed they made a plea offer of ten years or less in Applicant's case and that the number seven stood out in her mind. (PCR Tr. p. 44).

Simmons testified that she could not recall Trial Counsel making any offers. (PCR Tr. p. 44). Simmons testified that, as she remembered it, Counsel Day represented Applicant; the case was on the trial docket; Applicant's family retained Trial Counsel immediately before trial; and the case was already set when he was retained. (PCR Tr. p. 44). Simmons testified that she made a plea offer to either Counsel Day or Trial Counsel. (PCR Tr. p. 44).

On cross-examination, Simmons testified that she could not recall which attorney received her plea offer. (PCR Tr. p. 45). Simmons testified that Yashica went to the Solicitor's Office after court and told Simmons that the plea offer was not communicated to Applicant. (PCR Tr. p. 45). Simmons testified that, in her experience as a solicitor, it was uncommon for defendants to fire their public defender and hire counsel a week or two before trial if the defendant intended to plead. (PCR Tr. p. 45).

Findings

As an initial matter, this Court finds Trial Counsel's and Simmons's testimony *credible* on this issue and Applicant's testimony *not credible*. Trial Counsel *credibly* testified that the State never gave him any plea offers and that he did not remember any plea offers in the defense file. Furthermore, Trial Counsel *credibly* testified that any plea offers the State made were to Applicant's prior attorney, Counsel Day. Although Simmons testified that she was unsure to whom she made the plea offer, Trial Counsel *credibly* testified that Counsel Day received any and all offers, and that Trial Counsel received none. Trial Counsel *credibly* testified that Counsel Day informed him of a ten-year plea offer and that Trial Counsel intended to seek seven years; however, Applicant did not want to do so. Furthermore, at no point at the evidentiary hearing did Applicant indicate that he would have accepted a plea offer and not gone to trial if one had been offered to him. This Court finds that Applicant has failed in his burden of proof.

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

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

Allegation 1g: Trial Counsel failed to preserve objections for appellate review.

Applicant alleges Trial Counsel's representation was constitutionally ineffective for failing to preserve objections for appellate review. Specifically, Applicant avers that Trial Counsel failed to object to testimony regarding Applicant's statements to police. This Court finds this allegation is without merit.

An issue that was raised on direct appeal but was disposed of on the ground that it was not preserved for appeal may be raised in a post-conviction relief proceeding. Foye v. State, 335 S.C. 586, 518 S.E.2d 265 (1999). To show prejudice where counsel fails to preserve an issue, an applicant must show the trial court would have sustained an objection, and the unpreserved issue would have been successful on appeal. Milledge v. State, 422 S.C. 366, 811 S.E.2d 796 (2018). A PCR court must view the trial court's ruling on an issue through the same lens applied on appeal, giving appropriate deference to the trial court's findings. Id., 422 S.C. at 380, 811 S.E.2d at 804. The Supreme Court of South Carolina has stated that it "review[s] a trial court's ruling on the admission or exclusion of evidence—when the ruling is based on the South Carolina Rules of

Evidence—under an abuse of discretion standard. State v. Wallace, 440 S.C. 537, 541, 892 S.E.2d 310, 312 (2023).

"Whenever evidence is introduced that was allegedly obtained by conduct violative of a defendant's constitutional rights, the defendant is entitled to have the trial judge conduct an evidentiary hearing outside of the presence of the jury at the threshold point to establish the circumstances under which it was gained. In Jackson v. Denno . . . the United States Supreme Court declared it axiomatic that a defendant in a criminal case is entitled to an independent evidentiary hearing to determine the voluntariness of statements made by the defendant prior to the submission of such statements to the jury. Thus, where there is conflicting evidence about a statement, the court must first make a finding as to the validity of the statement. In making the determination, the trial judge should examine the totality of circumstances surrounding the utterance to determine whether the state has met its burden of proof so as to warrant admission of the confession. Part of the State's burden during this hearing is to prove that the statement was voluntary and taken in compliance with Miranda. The trial judge's resolution of the issue of voluntariness of a statement will not be disturbed on appeal absent an error of law." State v. Creech, 314 S.C. 76, 84, 441 S.E.2d 635, 639 (Ct. App. 1993).

Trial

At the Jackson v. Denno hearing, the trial court found that Applicant could read and write and that Applicant made "exemplary grades" and was of above-average intelligence.⁷ (ROA p. 76). Considering the totality of the circumstances, the trial court found by a preponderance of the evidence that Applicant was fully advised of his rights under the Fifth, Sixth, and Fourteenth

⁷ In making this finding, the trial court cited State v. Parker, 381 S.C. 68, 671 S.E.2d 619 (2008); State v. Miller, 375 S.C. 370, 652 S.E.2d 444 (2007); and Fare v. Michael C., 442 U.S. 707 (1979).

Amendments; that Applicant knowingly and intelligently waived those rights under the Fifth and Sixth Amendments of the Constitution; and that Applicant's statements were freely and voluntarily given without duress, coercion, undue influence, reward, promise of hope for reward, promise of leniency, threat of injury, or coercion or inducement of any kind. (ROA pp. 76-77). The trial court concluded its findings with the following statements:

The statement or confession was a voluntary product of the free and unconstrained will of the defendant. I find all of these foregoing conclusions actually beyond a reasonable doubt, but I am only concerned with whether or not by the preponderance of the evidence. Of course it will be up to the jury to determine, if it's submitted to the jury, the statement is submitted to the jury, was in fact made and the voluntariness was beyond a reasonable doubt.

(ROA p. 77).

During the trial, Trial Counsel did not object to any testimony regarding Applicant's statements to police.

PCR Evidentiary Hearing

On direct examination, Applicant testified that there was a Jackson v. Denno hearing on Applicant's statements to the police and that Trial Counsel objected to the statements throughout the trial to try and preserve the issue for appeal. (PCR Tr. p. 10).

On cross-examination, Appellate Counsel testified that the Court of Appeals held that the issue raised was not preserved for appellate review. (PCR Tr. p. 41). Appellate Counsel testified that it would be an error by Trial Counsel not to have preserved that issue. (PCR Tr. pp. 41-42). Appellate Counsel testified that the "(inaudible)"⁸ should have granted the objection." (PCR Tr. p. 42). Appellate Counsel testified that the issue she raised on appeal was the voluntariness of Applicant's statement. (PCR Tr. p. 42).

⁸ The transcript does not include what Appellate Counsel said, but based on context this Court interprets her testimony as saying "the trial court."

Findings

Before trial, a Jackson v. Denno hearing was held on Applicant's statements, and the trial court found them voluntary and admitted them into evidence. Applicant did not present any evidence showing that the trial court would have sustained an objection if Trial Counsel had objected to Applicant's statements during the trial. After a review of the record, this Court is unable to find any testimony that differed from that offered to the trial court during the Denno hearing. Thus, there is not a reasonable probability that the trial court would have sustained an objection to Applicant's statements being entered into evidence. Furthermore, Applicant did not demonstrate that the trial court abused its discretion in admitting his statements to the police. Therefore, this Court cannot find that Trial Counsel was deficient for failing to object to Applicant's statements that were already found by the trial court to be admissible.

Assuming, *arguendo*, that Trial Counsel had preserved this issue for appeal, this Court cannot find that the issue would have been successful on appeal. A trial court's ruling on the voluntariness and admissibility of a statement to police will be upheld when it is supported by any evidence. State v. Parker, 381 S.C. 68, 671 S.E.2d 619 (Ct. App. 2008). Here, the trial court's findings are amply supported by evidence. Thus, even if this issue were preserved for appellate review, it would not have been successful on appeal, and Applicant's sentence and conviction would have been affirmed.

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

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

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

INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL ALLEGATION

Allegation 2a: Appellate Counsel was ineffective for failing to raise on appeal Trial Counsel's objection to photographs on pages 23, 163, and 171 of trial transcript because the photographs' prejudice outweighed any probative value of the photographs.

Applicant alleges Appellate Counsel was constitutionally ineffective for failing to raise on appeal Trial Counsel's objection. Specifically, Applicant avers that Appellate Counsel was ineffective for failing to preserve Trial Counsel's objection to photographs on pages 23, 163, and 171 of the trial transcript⁹ because the prejudice from the photographs outweighed any probative value the photographs had. This Court finds this allegation to be without merit.

In a post-conviction relief action, an applicant has the burden of proving the allegations in his or her application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 441, 334 S.E.2d 813, 814 (1985). A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 396–97 (1985) (citing Douglas v. California, 372 U.S. 353 (1963)). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). Rather, appellate

⁹ The introduction of and testimony regarding the photographs in State's Exhibits nos. 4–9 were on pages 88–92 of the ROA, which are pages 163–67 in the trial transcript, and the trial court's reasoning for admitting the photographs was on pages 169–71 of the trial transcript, which was not included in the ROA. Page 23 in both the ROA and the trial transcript do not contain anything relating to State's Exhibits nos. 4–9.

counsel has a professional duty to choose among potential issues according to their merit. Jones v. Barnes, 463 U.S. 745, 752–53 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Griffin v. Aiken, 775 F.2d 1226 (4th Cir. 1985).

The applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, 302 S.C. at 537; Gilchrist v. State, 364 S.C. 173, 612 S.E.2d 702 (2005); Anderson v. State, 354 S.C. 431, 581 S.E.2d 834 (2003). When a claim of ineffective assistance of appellate counsel is based upon failure to raise viable issues, the court must examine the record to determine "whether appellate counsel failed to present significant and obvious issues on appeal." Gray v. Greer, 800 F.2d 644, 646 (7th Cir. 1986). Generally, the presumption of effective assistance of counsel will be overcome only when the alleged ignored issues are clearly stronger than those actually raised on appeal. Id.

The burden of proof is upon applicant to show counsel's performance was deficient as measured by the standard of reasonableness under prevailing professional norms. The applicant must then prove that because of appellate counsel's deficient performance, there is a reasonable probability that, but for appellate counsel's unprofessional errors, the result of the proceeding (*appeal, not trial*) would have been different. Southerland v. State, 337 S.C. 610, 524 S.E.2d 833 (1999).

The Supreme Court of South Carolina has stated that it "review[s] a trial court's ruling on the admission or exclusion of evidence—when the ruling is based on the South Carolina Rules of Evidence—under an abuse of discretion standard." State v. Wallace, 440 S.C. 537, 541, 892 S.E.2d 310, 312 (2023).

Trial

On direct examination of Blackwell, Simmons had Blackwell identify State's Exhibits nos. 4-9, which were photographs of Victim when he arrived at her produce shop. (ROA pp. 88-92). Trial Counsel objected on the ground that the State failed to lay a proper foundation and that the photographs were unduly prejudicial and highly inflammatory. (ROA p. 89). Following a bench conference that was held off the record in the presence of—but out of the hearing of—the jury, the trial court admitted State's Exhibits nos. 4-9 over Trial Counsel's objection. (ROA p. 89). Out of the presence of the jury, the trial court declared that its ruling was based on the fact that State's Exhibits nos. 4-9 were altered to black and white, reflected the testimony that the trial court heard up to that point, reflected the testimony of the exact condition of Victim at the time the photographs were taken, and were "more evidentiary than offensive." (Tr. pp. 169-70). The trial court noted that Trial Counsel's objection was subject to its ruling that the photographs were admissible. (Tr. p. 171).

PCR Evidentiary Hearing

On direct examination, Applicant testified that an appeal was filed in his case following his conviction and the filing of a post-trial motion. (PCR Tr. p. 10). Applicant testified that Appellate Counsel never spoke with him about what grounds he wanted to raise in his appeal. (PCR Tr. p. 11). Applicant testified that Appellate Counsel never asked him to review the brief that she was submitting on his behalf. (PCR Tr. p. 11). Applicant testified that he never had any communications with Appellate Counsel. (PCR Tr. p. 11).

On cross-examination, Applicant testified that he did not speak with Appellate Counsel, but that if he had, she could have properly represented him by reviewing the case and determining that the jury instruction warranted automatic reversal. (PCR Tr. p. 21). Applicant testified that he

never heard that appellate defense is not required to contact the appellant in South Carolina, and that appellate defense has the ultimate say on what allegations are raised and does not have to raise the allegations that the appellant wants raised. (PCR Tr. p. 21).

On cross-examination, Trial Counsel testified that Appellate Counsel never contacted him on what issues to raise on appeal. (PCR Tr. p. 32).

On redirect examination, Trial Counsel testified that, in his thirty-plus years as a criminal defense attorney, the appellate defense never contacted him to ask what objections he raised. (PCR Tr. p. 34).

On direct examination, Appellate Counsel testified that she reviewed the allegation of ineffective assistance of appellate counsel and discovered that the objection to State's Exhibits nos. 4–9 was related to Rule 403, which concerns whether any unfair prejudice outweighs the probative value of evidence. (PCR Tr. p. 38). Appellate Counsel testified that she did not raise the issue on appeal because she did not think it had any merit. (PCR Tr. pp. 38; 39). Appellate Counsel testified that the Supreme Court case State v. Collins¹⁰ was decided a year after Applicant's trial and before she wrote the appellate brief. (PCR Tr. pp. 38–39). Appellate Counsel testified that the court in Collins affirmed the trial court's admission of photographs of a dog-bite victim because of their probative value despite them being "extremely prejudicial." (PCR Tr. p. 39). Appellate Counsel testified that, based on State v. Collins, she did not raise Trial Counsel's objection on appeal. (PCR Tr. p. 39). Appellate Counsel testified that she thought that the photographs corroborated the witness's testimony of what the witness saw when Victim arrived at her store. (PCR Tr. p. 39).

Appellate Counsel testified that she has a duty to communicate with an appellant, but the decision of what issues to raise on appeal is solely hers. (PCR Tr. pp. 39–40). Appellate Counsel

¹⁰ 409 S.C. 524, 763 S.E.2d 22 (2014).

testified that she does not need to seek any permission or consent from an appellant as to what issues to raise. (PCR Tr. p. 40). Appellate Counsel testified that per procedure, she sent Applicant the trial transcript, the briefs, the State's briefs, *et cetera*, and communicated with him throughout the appellate process. (PCR Tr. p. 40). Appellate Counsel testified that she communicates with an appellant by letter and would therefore have sent all correspondence in writing. (PCR Tr. p. 40). Appellate Counsel testified that their clients, including Applicant, could call them collect at any time during business hours, and that it was much more challenging to contact their clients at the Department of Corrections. (PCR Tr. p. 40). Appellate Counsel testified that she briefly reviewed the file in Applicant's case and found the communications she sent to Applicant. (PCR Tr. p. 40).

Findings

This Court finds Appellate Counsel *credibly* testified that she decided not to raise the issue of the objection to State's Exhibits no. 4-9 because she determined that the issue had no merit. Furthermore, Appellate Counsel reasonably based her decision on a South Carolina Supreme Court decision where the admittance of "extremely prejudicial" photos of a dog-bite victim was upheld because of their probative value, which is the same reason that the trial court admitted State's Exhibits nos. 4-9. Appellate Counsel herself thought that the photos of Victim had probative value because they corroborated the testimony presented at trial. Furthermore, the photographs in State's Exhibits nos. 4-9 were converted to black-and-white, thereby reducing their prejudicial effect. Therefore, Appellate Counsel was not deficient for failing to raise this issue. Because her decision to exclude certain issues on appeal was based on her reasonable professional judgment and because the issue likely would not have been successful on appeal, this Court cannot find Appellate Counsel's performance to be deficient or any prejudice flowing therefrom.

Although Applicant testified that Appellate Counsel never spoke with him about what grounds he wanted to raise in his appeal and never asked him to review the brief, Appellate Counsel *credibly* testified that the decision of what issues to raise was solely hers.¹¹ Although Applicant testified that he had no communications with Appellate Counsel, Appellate Counsel *credibly* testified that she communicates with her clients through written correspondence and provides them with all necessary documents, which she did in Applicant's case. Appellate Counsel *credibly* testified that she found the communications she sent to Applicant in Applicant's file.

Based on the foregoing, this Court finds the Applicant has failed to present sufficient evidence to prove that Appellate Counsel's performance was deficient as measured by the standard of reasonableness under professional norms. Furthermore, Applicant failed to prove that, because of Appellate Counsel's deficient performance, there is a reasonable probability that, but for Appellate Counsel's unprofessional errors, the result of the proceeding (*appeal, not trial*) would have been different. See Southerland, supra.

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

|CONCLUSION PAGE FOLLOWS|

¹¹ This Court notes how Trial Counsel testified that in his thirty-plus year career he was never contacted once by appellate counsel on which issues to raise on appeal or on what objections he raised.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be **DENIED and DISMISSED WITH PREJUDICE**.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry to judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf if the Applicant wishes to seek appellate review. Your attention is directed to South Carolina Appellate Rule 243 for the appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 27 day of December, 2025.

Pickens, South Carolina


PERRY H. GRAVELY
Presiding Judge
Tenth Judicial Circuit

FILED OCONEE COUNTY, SC
MELISSA E. BURTON
CLERK OF COURT

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Appendix contains all material proposed to be included by any of the parties and not any other material.

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May 20, 2026

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2026