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S.C. SUPREME COURT

STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM GREENVILLE COUNTY

Court of Common Pleas
The Honorable B. Alex Hyman, Post-Conviction Relief Court Judge

Appellate Case No. 2025-002475

State of South Carolina

Petitioner,

v.

Braxton L. Hare, #373172

Respondent.

APPENDIX

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1 A. He did.

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

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

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

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

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

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

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

23 A. That's right.

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

25 Is that --

1 A. That's correct.

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

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

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

12 A. He did.

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

18 A. That's right.

19 Q. And a jury's selected?

20 A. Absolutely.

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

23 A. They did.

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

25 A. Yes.

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

3 A. That's correct.

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

7 A. That's right.

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

14 A. That's right.

15 Q. Is that all fair to say?

16 A. That's fair.

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

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

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

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

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

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

1 A. I -- I did not.

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

7 A. I did not.

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

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

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

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

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

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

8 Q. The criminal history part of it?

9 A. Yes.

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

11 A. No.

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

13 A. That's right.

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

16 A. No, I didn't.

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

23 A. Right.

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

1 an expert to present mitigation evidence?

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

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

7 A. Right.

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

10 A. Right.

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

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

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

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

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

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

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

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

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

6 A. That's right.

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

9 A. We were ambushed.

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

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

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

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

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

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

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

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

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

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

9 A. Yeah.

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

11 A. Yeah.

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

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

16 Q. You don't remember?

17 A. -- I don't remember.

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

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

25 Q. There wasn't any specific reason?

1 A. Yeah.

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

9 A. That's -- yeah.

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

15 A. I remember, yes.

16 Q. Or twenty preemptory challenges to be specific?

17 A. That's right.

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

19 A. (Nods head.)

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

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

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

1 MR. PHILLIPS: A moment, Your Honor.

2 THE COURT: Yes, sir.

3 BY MR. PHILLIPS:

4 Q. Now in this case there was an identification process.

5 Was there any specific reason as far as for a Neil v.

6 Biggers identification process? What was your strategy in

7 regard to trying to challenge that identification?

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

9 didn't challenge any identification.

10 Q. Okay. So your strategic reason, you didn't find it to

11 be -- and, again, I apologize. You just didn't find it to

12 be prejudicial or --

13 A. I didn't.

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

15 procedure?

16 A. I don't remember.

17 Q. Now during your opening statement you make a reference

18 to the defendants essentially -- them not being in school

19 and that they were up to no good, about nothing good going

20 on. Essentially could you walk me through as far as what

21 the trial strategy is, the -- and, I guess, and I'll be

22 specific and I can certainly show you.

23 MR. PHILLIPS: Your Honor, may I approach to kind of

24 help him?

25 THE COURT: Yes.

1 BY MR. PHILLIPS:

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

3 A. Yes, sir. I appreciate it.

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

14 A. That's right.

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

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

1 know, he participated in this.

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

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

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

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

24 THE COURT: Yes.

25 BY MR. PHILLIPS:

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

7 A. Yes, sir.

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

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

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

1 telling the jury he's gonna testify.

2 A. Uh-huh.

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

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

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

9 A. Yeah. Absolutely.

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

11 A. That he was gonna testify.

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

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

21 Q. But he did.

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

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

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

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

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

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

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

12 A. Yeah.

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

16 A. Yeah. That's right.

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

18 A. Absolutely had not been.

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

23 A. Right.

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

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

5 A. Right.

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

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

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

24 A. It shows here I didn't.

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

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

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

6 Q. Shooting the car?

7 A. (No verbal response.)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 A. No.

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

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

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

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

20 A. Impeachment evidence?

21 Q. Specifically of the complainant.

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

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

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

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

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

12 A. No.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

10 A. Okay.

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

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

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

12 A. Yeah.

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

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

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

25 A. No specific reason.

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

5 A. Yes.

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

11 A. It was.

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

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

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

17 A. That's fair.

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

23 A. No.

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

1 remember that?

2 A. (Nods head.)

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

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

22 Q. Yes, sir.

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

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

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

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

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

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

8 MS. BATTENFIELD: Sure.

9 Thank you, Judge.

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

11 MR. PHILLIPS: Thank you, Your Honor.

12 (Recess taken at 11:47 AM.)

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

14 BAILIFF: Remain seated.

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

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

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

20 MR. PHILLIPS: Thank you.

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

22 MR. PHILLIPS: Yes, Your Honor.

23 THE COURT: You may continue.

24 MR. PHILLIPS: Thank you.

25 BY MR. PHILLIPS:

1 Q. Mr. Hamilton --

2 A. Yes, sir.

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

11 A. No specific reason.

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

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

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

21 A. That's correct.

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

25 A. No.

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

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

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

16 A. No. No reason.

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

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

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

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

15 A. Yes, I would have.

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

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

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

21 No further questions.

22 THE COURT: All right. Counsel.

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

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

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

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

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

10 MS. BATTENFIELD: Yes, sir.

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

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

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

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

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

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

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

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

17 THE COURT: The second one.

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

23 Is that fair to say?

24 MS. BATTENFIELD: Yes.

25 THE COURT: Okay.

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

4 THE COURT: No, I understand.

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

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

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

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

19 MS. BATTENFIELD: Yes, sir.

20 CROSS-EXAMINATION

21 BY MS. BATTENFIELD:

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

23 A. Hello.

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

1 we are here seven years later, right?

2 A. (Nods head.)

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

4 A. Correct.

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

9 A. (Nods head.)

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

13 A. That's true.

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

17 A. Correct.

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

20 A. That's right.

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

23 A. Right.

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

1 consecutive sentences, is 102 years in jail?

2 A. A lot of time.

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

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

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

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

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

13 A. I did.

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

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

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

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

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

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

1 times.

2 MS. BATTENFIELD: One second, Your Honor.

3 THE COURT: All right.

4 BY MS. BATTENFIELD:

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

7 A. That's correct.

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

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

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

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

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

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

8 A. Right.

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

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

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

19 A. Yeah.

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

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

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

1 A. Uh-huh.

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

4 A. I didn't say that.

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

7 A. Yes.

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

11 A. Right.

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

13 A. Right. Yes.

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

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

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

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

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

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

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

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

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

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

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

14 Q. How did you get your start?

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

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

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

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

4 A. (Nods head.)

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

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

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

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

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

24 A. I don't remember.

25 Q. I apologize, Your Honor.

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

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

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

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

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

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

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

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

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

6 Q. Page 286 of the transcript.

7 A. Okay.

8 Q. You actually did object to --

9 A. Okay.

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

13 All right. So the testimony specifically about the
14 bandana, this is Matt Owens's direct evidence by the
15 solicitor. The question was what is -- essentially what
16 was inside the backpack that was in the front seat of the
17 Mercedes. The answer, what was inside the backpack?

18 Question, yes. The answer was there was a black and white
19 bandana, a white and black bandana question mark, and you
20 said you said Your Honor, I object. So because there had
21 been a ruling that the bandana needs to stay out, then you
22 hear testimony about the bandana, you objected, do you
23 believe there's anything else you should have done at that
24 point other than just objecting for the record?

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

1 they had been told not to talk about that.

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

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

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

10 BY MS. BATTENFIELD:

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

19 A. Hesitate to act, is it -- is that reasonable doubt?

20 Q. Correct.

21 A. That is common, yes.

22 Q. So that's the common, you know --

23 A. Theme.

24 Q. -- Supreme Court-approved definition of hesitate --
25 excuse me, reasonable doubt?

1 A. Yes.

2 Q. Now in terms of inferring malice from use of a deadly
3 weapon, you're aware that Belcher came out around 2009?

4 A. Uh-huh. Yes, ma'am.

5 Q. So Belcher was -- that's the case that said hey,
6 there's an instruction you can't charge inferring malice
7 from use of a deadly weapon if there's any evidence of
8 self-defense presented, right?

9 A. That's right.

10 Q. So you were aware of the case at the time?

11 A. I'm -- was I aware of that case?

12 Q. Because this would have been -- the trial was 2017,
13 so it's been around for a while?

14 A. Right.

15 Q. So -- but in terms of -- we were talking about earlier
16 was there evidence of self-defense, this was -- or in terms
17 of talking to the judge about jury instructions, the judge
18 I think you testified earlier --

19 A. Yeah.

20 Q. -- wasn't gonna give you a self-defense jury
21 instruction. So in your professional opinion, was there
22 enough evidence of self-defense at that point to even have
23 a Belcher objection?

24 A. I didn't -- I didn't think we developed that as well
25 as it should have been.

1 Q. And in terms of any jury instruction having to do
2 with accomplice liability, at this point there was no
3 accomplice, right, because the co-defendant had already
4 pled?

5 A. That's right.

6 Q. So there would have been no need for an accomplice
7 liability instruction or what's your opinion on that?

8 A. There was no need.

9 Q. All right. So then to lastly move to sentencing, I
10 know we talked about mitigation in this case. You spent
11 pretty much the whole trial trying to mitigate your
12 client's circumstances, correct?

13 A. Correct.

14 Q. So was there anything else you could have presented
15 as mitigation that would have helped the judge besides
16 everything we've already talked about?

17 A. I didn't -- I had nothing else to mitigate.

18 Q. Because the jury very well could have found him guilty
19 of attempted murder, correct?

20 A. Absolutely.

21 Q. And that's zero to thirty?

22 A. Zero to thirty, I think, yes.

23 Q. And that's evidence the judge heard the whole time?

24 A. The whole time.

25 Q. So then the jury found him guilty of ABHAN, which is

1 zero to twenty?

2 A. Right.

3 Q. Is there anything that you -- you said earlier
4 when you were talking about Jackson versus Denno with
5 Mr. Phillips you would have used everything you knew about
6 your client as mitigation. So what exactly specifically
7 from everything we've heard today would you have told the
8 judge? Like if you were giving a mitigation presentation
9 right now to this judge, what would you say?

10 A. I would say that -- and I did say that he -- he was a
11 troubled child and that he had situations that affected his
12 ability to make some logical decisions, you know, and his
13 conduct was quite juvenile and mischievous and -- but his
14 pure intent was not malicious and evil, just mischievous.

15 Q. So -- all right. You just said that his conduct --
16 you conceded to the jury that his conduct was mischievous
17 and juvenile, correct?

18 A. Yes, ma'am.

19 Q. So introducing evidence of a juvenile record, would
20 that have just proven the same thing?

21 A. That's exactly what that evidence would do,
22 substantiate what --

23 Q. So essentially we've been arguing all morning about
24 competency, all this evidence and how it should have come
25 in, how it would have affected sentencing, but isn't it

1 true that you the whole time conceded to all that in the
2 beginning?

3 A. That was my strategy.

4 Q. So the judge would have known about this. He would
5 have probably maybe taken it into account, correct?

6 MR. PHILLIPS: Objection. Speculation.

7 THE COURT: I'll sustain your objection.

8 MS. BATTENFIELD: That's fair, Judge.

9 BY MS. BATTENFIELD:

10 Q. But in terms of all the fourteen sections of over
11 a thousand pages of evidence we've heard about today,
12 had you known about it, how would you have couched it
13 in a phrase to the judge that was any more than what you
14 already had told the jury and the judge heard in terms of
15 mitigation?

16 A. I would have had expert testimony as was presented
17 today.

18 Q. But, I mean, do you think hearing about -- because, I
19 mean, the expert would have been open -- the State would
20 have been able to question the expert at that point. So if
21 the judge on one hand had heard all the evidence about his
22 unspecified cognitive disorder, the judge also, wouldn't it
23 be fair to say, would have heard about Mr. Hare's extensive
24 juvenile record, correct?

25 A. Correct.

1 Q. So in mitigation and getting less than twenty years,
2 do you think that would have made a difference or would the
3 judge just have said the same thing in your reasonable, you
4 know, professional opinion?

5 A. I don't know. I was disappointed in the sentence, but
6 I couldn't have presented it no more than I was able to
7 present it.

8 Q. Sure. The last question, which I know is dangerous
9 to say, but if you could pick one thing that Dr. Maddox
10 talked about that you would have presented at mitigation
11 that would in your opinion asked -- have actually affected
12 the judge's final sentence, what would it be? To say this
13 is the key piece of evidence that the judge would have
14 given the lesser sentence.

15 A. I think what she was saying, that his ability to --
16 to condense situations factually in reality form and
17 maturity, that the immaturity of his mental status and his
18 ability to think as, you know, the brain hadn't developed
19 to comprehend. He was comprehending, but he wasn't opining
20 normal comprehensions and ability to do that.

21 Q. Sure.

22 MS. BATTENFIELD: Thank you very much.

23 No further questions, Judge.

24 THE COURT: All right. A brief redirect?

25 MR. PHILLIPS: Yes, Your Honor.

1 REDIRECT EXAMINATION

2 BY MR. PHILLIPS:

3 Q. The State had asked you about the lesser included
4 offense of assault and battery first degree. I don't know
5 if you're aware of a case called State versus Middleton.
6 That's 407 S.C. 312. And specifically in that case there
7 was an individual charged with attempted murders and the
8 Court finds essentially that assault and battery first is
9 a lesser included, and I think the State was saying that
10 in the definition that it has to be during the commission
11 of a robbery, burglary or kidnapping or theft, but there's
12 -- it's an "or" before that. That there's a Subsection B
13 to that statute and specifically to Section 16-3-600(C)
14 that the relevant part is a sub-sect of (C)1, Subsection
15 (b), is offers or attempts to injure another person with
16 the present ability to do so and the act is accomplished by
17 means likely to produce death or great bodily injury.

18 Now with that being said, understanding the questions
19 that the State had, but in this case they found that there
20 was err in not presenting the lesser included offense of
21 assault and battery in the first degree, they ultimately
22 found it was harmless in that case, former Chief Justice
23 Pleicones dissented and said it couldn't be harmless, but
24 ultimately the main issues was that assault and battery
25 first degree could be a lesser included offense.

1 Is that a fair reading of this case?

2 A. That's a fair reading of that case.

3 Q. Okay. And so -- and that's based on fortunately for
4 Mr. -- or unfortunately, it was harmless error, for
5 Mr. Middleton, that did come, it says, in the case
6 three months after the 2010 omnibus sentencing bill -- or
7 sentencing reform, ultimately the statute that we have now
8 or the statutory scheme that we have now from attempted
9 murder, assault and battery high and aggravated and assault
10 and battery first degree?

11 A. That's right.

12 Q. And as far as the qualifications of Mr. Shaw, when you
13 referenced him and when you say expertise, anything outside
14 of, let's say, under Rule 701 that the average person would
15 know that would not require any training or experience,
16 that triggers a 702 qualification as an expert witness to
17 get that opinion. Is that fair to say?

18 A. Fair.

19 Q. And then as far as the bandanas where Judge Miller
20 had suppressed that evidence and the State elicited it,
21 you did not move to strike that evidence after you did your
22 objection. You didn't move to move for a mistrial or even
23 at minimum move ask for a curative instruction related to
24 that bandana evidence, which would have that implication
25 of potential gang evidence, which then triggers 404(b)

1 propensity evidence. Is that fair to say?

2 A. That's fair to say.

3 Q. And then in terms of the Belcher inference of using a
4 deadly weapon -- or, excuse me, inference of malice through
5 the use of a deadly weapon, that even our Supreme Court,
6 this occurs -- this case comes after this trial, but in
7 State versus Burdette, 427 S.C. 490, even our state Supreme
8 Court ultimately finds that trial courts cannot instruct
9 inference of malice from the use of a deadly weapon in any
10 case, and so at that point -- obviously I'm not asking you
11 to do retroactive, but your theory at that point was
12 self-defense as far as the theme, as far as what was gonna
13 be presented, you say that he's gonna testify in opening
14 statement and then ultimately with this inference you did
15 not object to the closing argument when it was referenced
16 and you did not have the objection when the judge said he
17 was gonna instruct the jury on that as well. Is that fair
18 to say?

19 A. That is fair.

20 MR. PHILLIPS: Thank you, Your Honor. No further
21 questions.

22 THE COURT: All right. Thank you.

23 Mr. Hamilton, you may step down.

24 THE WITNESS: Thank you, Judge.

25 THE COURT: May Mr. Hamilton be excused?

1 MR. PHILLIPS: Absolutely, Your Honor.

2 THE COURT: Okay.

3 (Witness excused.)

4 THE COURT: All right.

5 MR. PHILLIPS: And I have no objection if they need
6 to call him real quick obviously.

7 THE COURT: Okay. Do you want to do that?

8 MS. BATTENFIELD: Judge, if you're okay with that?

9 THE COURT: I'm fine with it.

10 MS. BATTENFIELD: At this time the State would call
11 former Solicitor Mark Moyer.

12 (Whereupon, Lester Mark Moyer was duly sworn by the
13 Clerk of Court.)

14 THE CLERK: Thank you. You may be seated and please
15 state your full name for the record.

16 THE WITNESS: My full name is Lester Mark Moyer. I
17 go by my middle name.

18 MS. BATTENFIELD: And, Judge, just apologies about
19 this Judge, but I wasn't -- I have had an entire PCR on
20 this. We did swear in all the other witnesses, correct?

21 THE COURT: Yes.

22 THE CLERK: Uh-huh.

23 MS. BATTENFIELD: Okay. Great. Yeah, I have spent
24 a long time arguing about that, so I appreciate that.

25 LESTER MARK MOYER,

1 A. Okay.

2 Q. But were you -- you also worked with another solicitor
3 on your trial, Mr. Fowler?

4 A. On the trial, yes.

5 Q. Brann Fowler?

6 A. Yes.

7 Q. So is it possible that he had other cases or were you
8 working together? My -- my main question I'm asking you is
9 did you have authority to resolve all of Mr. Hare's cases?

10 A. I did. I had all of his cases and when it became
11 obvious that one of them was a trial, I brought on the
12 other attorney to work it with me.

13 Q. In terms of Brady, Rule 5, for the trial itself, the
14 attempted murder and the failure to stop, what kind of
15 evidence was there that you turned over to Mr. Hamilton?

16 MR. PHILLIPS: Objection, Your Honor. We're outside
17 the scope of what we presented in the PCR. This is -- I
18 have not raised a Brady violation claim, so I would have
19 a relevance issue, as well as none of this was presented
20 on -- at least what was presented in the Applicant's case.

21 MS. BATTENFIELD: Judge, he raised a failure to
22 properly investigate for Mr. Hamilton and failure to go
23 over the evidence with his client. I'm just trying to
24 get in the record what the evidence was.

25 THE COURT: I'll give you some latitude on it. I

1 don't want to get in the weeds on it.

2 MS. BATTENFIELD: Thank you, Judge.

3 BY MS. BATTENFIELD:

4 Q. Yeah, Mr. Moyer, I'm just asking you what the evidence
5 in this case was.

6 A. I can't recall what all of the evidence was, but I
7 know that my -- my assistant and I provided everything to
8 Mr. Hamilton in a timely fashion.

9 Q. So there was something about a car door, maybe photos
10 of the car --

11 A. Yes.

12 Q. -- and that you would have -- well, anyway, let's just
13 move on from that.

14 In terms of severance, what was your opinion on
15 severing the trial for failure to stop? What --

16 MR. PHILLIPS: Objection, Your Honor. As far as
17 ineffective assistance of counsel, his opinion as the
18 prosecuting attorney doesn't have a basis in the Court's
19 determination about whether --

20 THE COURT: I'm gonna sustain your objection.

21 MS. BATTENFIELD: That's fair. Moving on.

22 BY MS. BATTENFIELD:

23 Q. Okay. So for voir dire, are there any questions you
24 would have asked the judge?

25 MR. PHILLIPS: Objection. Same -- same.

1 THE COURT: Sustained.

2 MS. BATTENFIELD: All right.

3 BY MS. BATTENFIELD:

4 Q. Okay. Let's move to pre-trial identification. That's
5 something we can talk about. What was the situation with
6 pre-trial identification?

7 A. Okay. As I recall, we had a -- we had a hearing to
8 determine the constitutionality of the procedure that was
9 used for the photo lineup and as I recall the judge ruled
10 that everything as having been done constitutionally sound
11 and it was admitted into evidence as I recall.

12 Q. Did the victim who was driving the yellow vehicle, did
13 he identify Mr. Hare?

14 A. Yes.

15 Q. Right away?

16 A. I don't remember. I just don't remember that part of
17 the trial.

18 Q. What kind of identification procedure was this? Was
19 it photo? Was it show-up?

20 A. It was a photo lineup.

21 Q. With how many photos; do you remember?

22 A. They're all -- all photo lineups that we used in
23 Greenville in every case I ever had was a six-person photo
24 lineup.

25 Q. Was it standard procedure?

1 A. To do photo --

2 Q. In terms of the six photos and presenting it to the
3 witness.

4 A. Yes.

5 Q. And did the witness ever balk and say I don't know
6 or did he immediately identify Mr. Hare as the person
7 driving?

8 A. Yes. The victim was -- was very clear on his
9 identification.

10 Q. And what was your theory of this case?

11 A. Well, it -- it was fairly straightforward. There was
12 the car that contained Mr. Hare and the co-defendant.

13 MR. PHILLIPS: Objection, Your Honor. I hate to
14 keep interrupting, but his theory of the case, I'm trying
15 to figure out the relevance for ineffective of assistance
16 of counsel.

17 THE COURT: I don't know if we know the relevance of
18 that either.

19 MS. BATTENFIELD: That's fine, Judge. I'm just
20 trying to present both sides to see -- because, I mean,
21 one of the main issues is whether self-defense was an
22 issue. But could I ask him about the evidence at trial
23 that went to self-defense, Judge?

24 THE COURT: Well, the judge didn't charge
25 self-defense, did he?

1 MS. BATTENFIELD: No, he didn't.

2 THE COURT: I'm gonna sustain the objection.

3 MS. BATTENFIELD: Very good, Judge.

4 BY MS. BATTENFIELD:

5 Q. All right. Mr. Moyer, do you remember the
6 co-defendant's plea?

7 A. I remember the co-defendant pled at some point after
8 the trial had begun. It was rather tortured to get to that
9 point, but he did plead.

10 Q. What was your -- did you make two separate plea offers
11 to Mr. Hare and the co-defendant before trial?

12 A. I made plea offers to both, the specifics of which I'm
13 -- I don't recall, but I believe they were both for assault
14 and battery high and aggravated nature as I recall.

15 Q. All right. So you did extend an ABHAN offer to
16 Mr. Hare pre-trial?

17 A. Yes.

18 Q. Did he reject it?

19 A. Yes.

20 Q. And then you decided to go forward on attempted murder
21 because he rejected the ABHAN plea offer?

22 A. Well, yes. That was what he was charged with, which
23 I believed to be factually sound, and to the plea offer was
24 -- was just that, it was an offer. If he chose to plead
25 guilty and accept responsibility, I was gonna do a lower

1 charge, but since he didn't I went forward with what he was
2 charged with and indicted for.

3 Q. Do you remember what the ballistics evidence was or
4 the -- well, do you remember what the testimony was about
5 the bullets and the car door and any kind of trajectory?

6 A. I -- as I recall, there wasn't -- we -- we just talked
7 about the fact that there was a -- a bullet hole in the
8 doorway, which is pretty obvious, and it was pretty obvious
9 just to the naked eye which direction it was going because
10 the metal was bent towards the inside of the vehicle, which
11 indicated it came from outside to inside, but we didn't go
12 to any great lengths to -- to talk about trajectory or
13 anything as I recall.

14 Q. You called two witnesses. The first one I believe was
15 Darwin Shaw and you also called Investigator Matt Owens.

16 A. Uh-huh.

17 Q. You asked them questions about the bullets going into
18 the vehicle.

19 A. Okay.

20 Q. Why did you not move to qualify either as an expert
21 witness?

22 A. I didn't -- I didn't consider that to be opinion
23 testimony. Like I said, it was pretty much just based on
24 the training and experience and really I think just about
25 anybody could have looked at a -- at a hole that went into

1 a piece metal and be able to infer what was going on in
2 that situation and that really wasn't a big issue in the
3 case. There was no evidence that the victim had fired at
4 the defendant, so, you know, it -- it really wasn't the
5 main focus of the case at all.

6 Q. Now in terms of your closing argument, I don't know
7 if you were in here when Mr. Phillips was questioning
8 Mr. Hamilton about your reasonable doubt analogy. Do you
9 remember that?

10 A. Yeah. Can you -- in case my memory is failing me, did
11 not Mr. Fowler do the closing argument?

12 Q. Oh, I apologize. Yes, you're correct. Well, in that
13 case, I'll just ask you an in general question since you
14 didn't actually do it. What is the standard for reasonable
15 doubt in South Carolina? How do you define that to a jury?

16 A. Well, I usually spent very little of time trying to
17 define it to the injury. It's just a doubt for which --
18 you know, there were several different expla -- definitions
19 that have been given over the years and so usually when I
20 gave a closing argument I didn't spend much time talking
21 about reasonable doubt.

22 Q. Sure. When did you stop being a solicitor just for
23 the record?

24 A. It was in 2021. September 2021.

25 Q. So you were a solicitor during the time Belcher came

1 out, Burdette? Because Burdette was 2019 on or about.

2 A. Okay.

3 Q. What is your understanding of Belcher and then
4 Burdette in terms of -- because you were also in the jury
5 charge conference --

6 A. Okay.

7 Q. -- and the jury charge implied malice with use of a
8 deadly weapon was charged, correct? Or I shouldn't say
9 correct. Right?

10 A. That I don't have a clear memory of, so you may have
11 to -- have to school me a little bit, but those are the
12 cases where it talks about attempted murder being a
13 specific intent crime. Is that correct?

14 Q. I believe that's State versus King.

15 A. Okay. I'm sorry. Then please refresh my memory.

16 MS. BATTENFIELD: Would it be okay, Judge, to just
17 briefly give a description or should we just --

18 MR. PHILLIPS: I --

19 THE COURT: I'm very aware of it, so we don't need
20 to really get into it. If he knows or doesn't know, I
21 know it.

22 MS. BATTENFIELD: Sure. Yes, sir.

23 BY MS. BATTENFIELD:

24 Q. But in general back when you were a solicitor, would
25 you have been aware of Belcher at the time of trial in

1 2017?

2 A. Yes, I would say so.

3 MR. PHILLIPS: And I -- Your Honor, I've given as
4 much leeway --

5 MS. BATTENFIELD: You know, I'll withdraw. I can
6 move on. The judge has already sort of --

7 THE COURT: Thank you.

8 MS. BATTENFIELD: Indulgence, Judge.

9 THE COURT: Take your time.

10 BY MS. BATTENFIELD:

11 Q. Mr. Moyer, is there anything else you believe that
12 the judge needs to know from your knowledge of the case to
13 decide on this issue today this case?

14 A. I'll be honest, I'd have to have a question about what
15 the exact issue would be before I could answer that.

16 Q. No problem.

17 MS. BATTENFIELD: Thank you, Mr. Moyer.

18 No further questions.

19 MR. PHILLIPS: I'll be very brief. Very brief.

20 THE COURT: Yes, sir, Mr. Phillips.

21 CROSS-EXAMINATION

22 BY MR. PHILLIPS:

23 Q. Good afternoon, I think, right? Yeah.

24 A. Yes, sir.

25 Q. So did you have any -- did you have the full DJJ case

1 file of Mr. Hare?

2 A. I don't remember. I think I knew what his -- usually
3 what we would get would just be the -- it's almost like a
4 rap sheet you see for an adult, but it's just the DJJ --

5 Q. So you wouldn't -- you wouldn't have had -- well,
6 basically I guess I'll cut to the chase. You wouldn't have
7 had his IQ records, his intellectual functioning records,
8 his medical records, his mental health records. You didn't
9 have any of that?

10 A. No, I would not have had that.

11 Q. And so you didn't have any idea that he had a sub 80
12 IQ, intellectual deficit or a closed-head injury? You
13 didn't have any knowledge of any of those things?

14 A. No. I mean, nothing about his intellectual state or
15 functioning ever became an issue at any point during the
16 time I represented {sic} him and from my interactions with
17 him nothing ever stood out unusual about him.

18 Q. And in terms of the Biggers identification motion,
19 Mr. Hamilton didn't object to that procedure at all?

20 A. I don't recall and that wasn't really an issue in the
21 case. I mean, I don't think at any point either of one of
22 these guys were making the issue that they were not the --
23 the persons in the other vehicle. It was more of an
24 accident slash self-defense sort of case, not a whodunit.
25 So I don't recall that being an issue.

1 Q. Understood. And do you send your plea offers in
2 writing or was that just communication to Mr. Hamilton?

3 A. I send my offers in writing.

4 Q. Okay. So that would be in his class file?

5 A. I couldn't tell you how Mr. Hamilton's case file was
6 like, but we sent plea offers in writing.

7 Q. Understood.

8 MR. PHILLIPS: Thank you.

9 THE COURT: Ms. Battenfield, any further redirect?

10 MS. BATTENFIELD: No further questions.

11 Thank you very much, Mr. Moyer.

12 THE COURT: Mr. Moyer, you may step down.

13 THE WITNESS: Thank you, Your Honor.

14 (Witness excused.)

15 MR. PHILLIPS: I propose -- I know how I am as well
16 that normally somewhere between that 12:30, 1:00 hour,
17 if the Court would want to break. If the virtual part of
18 getting it set up is not laborious, it won't take long.
19 This is a 10-minute -- five to 10-minute type situation
20 and we could be done with testimony. Again, I don't know
21 how --

22 THE COURT: Is this your last witness?

23 MR. PHILLIPS: It is, Your Honor.

24 THE COURT: Let's go ahead and do it now then.

25 Now I don't know -- Greenville's got a lot more

1 technology than Horry County does, but as far as setting
2 that up, is it just through --

3 MR. PHILLIPS: If I could step out and tell him to
4 log into your virtual courtroom.

5 THE COURT: Okay.

6 MR. PHILLIPS: I'm not sure how the audio is set up.

7 THE COURT: I'm sure we can do that on here.

8 MR. PHILLIPS: I mean, worse case if for whatever
9 reason we don't get it up, I guess we could ask to hold
10 the record open for a deposition, but I would hate to
11 do that. I'd like to --

12 THE COURT: Well, if I can figure out this, we
13 can --

14 MR. PHILLIPS: We can make it happen?

15 THE COURT: Yes.

16 MR. PHILLIPS: Let me step out because he was on
17 standby, Your Honor.

18 THE COURT: All right.

19 MR. PHILLIPS: Thank you.

20 (Pause in proceedings.)

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

23 MR. PHILLIPS: Thank you, Your Honor.

24 The Applicant would call Taylor Gilliam as his
25 final witness. I was on mute, Your Honor.

1 THE COURT: That's okay.

2 MR. PHILLIPS: Your Honor, the Applicant would call
3 Taylor Gilliam as the Applicant's final witness.

4 THE COURT: All right. Mr. Gilliam, can you hear me?

5 MR. GILLIAM: Thank you for indulging me to testify
6 virtually.

7 THE COURT: That's not a problem at all.

8 Mr. Gilliam, if you can raise your right hand for
9 me, please.

10 (Whereupon, Taylor Gilliam was duly sworn by the
11 Court.)

12 THE COURT: Thank you.

13 Counsel.

14 MR. PHILLIPS: Thank you, Your Honor.

15 TAYLOR GILLIAM,

16 having been duly sworn, testified as follows:

17 DIRECT EXAMINATION

18 BY MR. PHILLIPS:

19 Q. Mr. Gilliam, could you give some background into your
20 education and training, as well as experience as a lawyer?

21 A. Certainly. I graduated from the University of South
22 Carolina School of Law in 2014. I worked briefly in the
23 area of insurance defense before joining the South Carolina
24 Commission on Indigent Defense Appellate Division in 2016
25 as an appellate defender. During that time as a --

1 employed as an appellate defender, I handled two primary
2 types of cases, and that would be direct appeals following
3 a trial or a guilty plea, as well as post-conviction relief
4 appeals from the circuit court.

5 Q. All right. And how many appeals do you believe you've
6 handled in your career?

7 A. I think if you were to pull it up on C-Track and put
8 in my bar number, there would be over three hundred.

9 Q. And how many oral arguments have you presented at the
10 appellate courts?

11 A. Between the Court of Appeals and the State Supreme
12 Court at least twenty.

13 Q. And have you ever testified in court before?

14 A. I have in this capacity exactly. Not in this case,
15 but as a witness in a post-conviction relief hearing, yes.

16 Q. And in terms of your current employment, it has
17 nothing to do with appellate defense in any way at this
18 stage, correct?

19 A. Correct. I left the Division of Appellate Defense and
20 joined the law school as the pro bono director in April of
21 last year, April 2023, and have been employed and remain
22 employed at the law school in that capacity.

23 Q. Now in this case, have you had an opportunity -- or I
24 guess I'll start this and I'll say it more broadly. How
25 did you get involved in this case?

1 A. Sure. So I was employed at the Commission on Indigent
2 Defense in 2018. During that year a different appellate
3 defender, Rob Pachak, P-A-C-H-A-K, left the Commission and
4 I believe retired, but what was important was that he had
5 cases that needed to be reassigned. So for this case in
6 particular the case was reassigned to me after Mr. Pachak
7 left the employment of the Commission on Indigent Defense.

8 Q. And so have you had an opportunity to review the
9 transcripts in this matter?

10 A. Yes, I have reviewed the transcript -- transcripts, as
11 well as the C-Track list, the client's PCR application and
12 the State's responsive pleading as well.

13 Q. And in terms of being an appellate lawyer or appellate
14 defender, could you describe on direct appeal how an issue
15 is raised essentially. Mr. Pachak raised -- or filed an
16 Anders brief. Could you describe kind of the basis for
17 our error preservation law and that basis as far as the
18 record's concerned?

19 A. Yes. So just in general in order for an appellate
20 court to reach the merits of an issue, it must be raised
21 and ruled upon. In practice, what that means is the
22 attorney has to make an objection or a motion and the judge
23 has to rule accordingly. There are some nuisances when
24 it comes to whether a subsequent or follow-up action is
25 required, whether it is a mistrial motion, but it can vary.

1 But the general rule is that it must be raised and ruled
2 upon by the trial judge in order for the appellate court to
3 reach the merits of the issue.

4 And you are right. Mr. Paycheck filed a short Anders
5 brief in this case. He cited one opinion, State v. King,
6 one case, and raised a single issue.

7 Q. And related to a specific intent to kill?

8 A. That is correct, yes.

9 Q. Now in terms of other potential issues, had they been
10 preserved for appellate review he would have been able to
11 file what's called a merits brief for the Court of Appeals?

12 A. That is correct. And as to this case, that is exactly
13 right. Generally speaking, from -- from my perspective in
14 reviewing the transcript and determining what issues to
15 raise, you can in good faith only raise issues that have
16 been raised and ruled upon at the appellate level;
17 otherwise, it's the opinion of some that you're wasting
18 your own resources, opposing counsel's resources and court
19 resources. So generally speaking I would only look for
20 issues that were preserved for appellate review if the goal
21 is to just get relief for the client. That's correct.

22 Q. And in this case there was jury selection of a joint
23 trial of co-defendants. After jury selection one of the
24 co-defendants -- or the other co-defendant in this case,
25 Mr. Hunter, pled guilty. In this case, defense lawyer,

1 former counsel, did not move for a continuance, did not
2 move for a mistrial, did not move to recuse Judge Miller,
3 who ultimately decided to hold Mr. Hunter's sentence in
4 abeyance depending on, I assume, what he believed to be
5 his cooperation and credibility as far as his testimony.
6 So the impaneled jury saw two individuals move forward for
7 trial and then one of those individuals plead guilty to
8 assault and battery high and aggravated nature and at that
9 point, again, and based on your training and experience as
10 an appellate lawyer --

11 MR. PHILLIPS: And, Your Honor, I can go through
12 this, but I've had some judges kind of say it's not
13 needed, but as far as trying to qualify him as an expert
14 witness essentially.

15 THE COURT: It's not necessarily needed on this,
16 but I will allow Ms. Battenfield to respond if she needs
17 to at this point on that.

18 MR. PHILLIPS: Understood.

19 MS. BATTENFIELD: Judge, in terms of what he's about
20 to ask him, I mean, we're all lawyers here, we can all
21 offer an opinion. He's talking about a matter of law that
22 ultimately Your Honor has to decide. Your Honor's already
23 indicated Your Honor is well versed in these issues, so
24 basically what we'd be hearing is just another lawyer
25 testifying to what any other lawyer would probably say --

1 or, I mean, we'd all probably make a little bit different
2 arguments, but --

3 THE COURT: What's the question you intend to ask?

4 MR. PHILLIPS: The question would be had either one
5 of those things been done and properly preserved for
6 appellate review, would that have been a meritorious issue
7 to raise on appeal.

8 THE COURT: All right.

9 MR. PHILLIPS: I know it's direct --

10 THE COURT: I know the answer to it, so, I mean, I
11 don't think we necessarily need him to testify to that.

12 MR. PHILLIPS: Understood. And if Your Honor is
13 essentially taking that into account, certainly that
14 would be one of the things that we wouldn't need to
15 review. I understand --

16 THE COURT: Yes, sir.

17 MR. PHILLIPS: -- that we've done that.

18 BY MR. PHILLIPS:

19 Q. Now as far as what's -- I guess as far as your
20 testimony, Mr. Gilliam, when someone files an Anders
21 brief, that -- and, I guess, just to be clear, that is
22 that appellate lawyer saying that they have not seen any
23 meritorious issues in that appellate record. Is that fair
24 to say?

25 A. That is correct. The Anders versus California

1 procedure allows appointed counsel to telegraph to the
2 Court that the transcript contains no meritorious issues,
3 but although the client is entitled to counsel the
4 appellate courts have carved out this system in order to
5 allow the client to supplement with their own pro se
6 response and allow the Court to conduct its own review.

7 Q. And you've even seen cases where appellate -- or I
8 guess I don't want to put words in your mouth. Have you
9 seen cases where appellate attorneys have filed a no merits
10 Anders brief and that the appellate court has sent it back
11 for further briefing?

12 A. Yes. The informal nomenclature there is that the
13 appellate courts buck, B-U-C-K, the case. The chief
14 appellate defender does not like that language, but, in
15 essence, that's what gets sent back down for the lawyers to
16 re-brief it.

17 Q. And in this matter, there was one allegation of
18 ineffective assistance of appellate counsel that if trial
19 counsel did preserve the issue of whether the trial court
20 erred in refusing to submit the jury instruction of
21 self-defense to the jury, that appellate counsel failed to
22 file a merits brief before the South Carolina Court of
23 Appeals raising that issue and failed to file -- obviously
24 to kind of fully challenge it as far as filing a petition
25 for re-hearing if it was affirmed and then, of course,

1 petitioning the Supreme Court for its review on a petition
2 for writ of certiorari. And so with that being said, I
3 guess could you kind of expound or present your position on
4 whether that issue was preserved?

5 A. Certainly. So the -- the allegation that you
6 mentioned is on page 9 of the Applicant's PCR application
7 and in this case it was my opinion that it was unpreserved,
8 and this was a caretaker case, so I do not recall with
9 specificity whether I reviewed Mr. Pachak's Anders brief,
10 but I do believe that this was unpreserved, meaning the
11 trial counsel did not correctly or adequately object and,
12 therefore, allow appellate counsel to raise it on appeal.

13 Q. In other words, that there wasn't each individual
14 element of self-defense argued or presented in such a way
15 that the trial court addressed each element of self-defense
16 sufficient enough to be raised on appeal?

17 A. That is correct. And had appellate counsel I believe
18 raised this issue in a merits brief, it is likely that
19 the Court of Appeals would have found it unpreserved and,
20 therefore, unable to reach the merits because of the lack
21 of contemporaneous efforts by trial counsel to bring it to
22 the judge's attention as to every element.

23 Q. And I understand that this is a case that you
24 inherited, but given obviously that you've seen that
25 there's a significant number of issues of ineffective --

1 or allegations of ineffective assistance of counsel raised,
2 based on reviewing those, if preserved, are those the types
3 of issues that are commonly raised in merits briefs on
4 appeal?

5 A. Yes.

6 Q. And are those -- again, this is not an opinion, it's
7 an affirmative 100 percent, do some of those issues get
8 reversed on appeal?

9 A. Yes.

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

11 THE COURT: Thank you.

12 Ms. Battenfield.

13 MS. BATTENFIELD: No cross, Judge. Thank you.

14 THE COURT: All right.

15 MR. PHILLIPS: Thank you, Mr. Gilliam.

16 THE WITNESS: Thank you, Judge.

17 THE COURT: Thank you thank, Mr. Gilliam.

18 (Witness excused.)

19 MR. PHILLIPS: And, Your Honor, I just want to say
20 I appreciate you letting him testify virtually.

21 THE COURT: Yes.

22 All right. It is ten after one.

23 Ms. Battenfield, did you have other witnesses as
24 well?

25 MS. BATTENFIELD: No, Judge. No further witnesses.

1 THE COURT: Do you-all want to go ahead and make
2 closing arguments or do you want to come back at two and
3 do that?

4 MS. BATTENFIELD: I'm prepared, Judge.

5 THE COURT: All right.

6 MR. PHILLIPS: Yes, Your Honor.

7 THE COURT: Yes, Mr. Phillips.

8 MR. PHILLIPS: Specifically in this case trial
9 counsel, as well as -- since we're arguing both
10 essentially, that trial counsel and plea counsel
11 provided ineffective assistance of counsel in this case
12 based on the allegations raised. I understand there's a
13 significant number of issues that are before the Court.
14 We've also argued ineffective assistance of appellate
15 counsel mainly through the issue of highlighting the
16 ineffective assistance of trial counsel that had those
17 issues -- through the testimony we've had, had those
18 issues been preserved for appellate review, had trial
19 counsel made those proper contemporaneous timely
20 objections and had rulings from the trial court, that
21 those issues could have been raised on direct appeal for
22 the appellate court's review and, ultimately, Mr. Hare
23 was denied that opportunity.

24 There are significant issues. I mean, the one
25 that jumps out from the beginning, and I think we have

1 numerous specific, what I would argue compelling, issues,
2 but the one that jumps out most right at the heart of the
3 beginning of the trial the jury sees two co-defendants
4 together, they both are charged with attempted murder,
5 the jury is impaneled, they know what they're charged
6 with, and at that point one of those wit -- one of those
7 defendants pleads guilty to assault and battery of a high
8 and aggravated nature, which ultimately Mr. Hare was
9 convicted of, and I think that's part and parcel of that
10 and I think it's evidence of, but with that being said,
11 the jury at that point I believe was prejudiced or
12 specifically that Mr. Hare's right to a fair trial was
13 prejudiced at that point by trial counsel not either
14 moving for a continuance because of that issue, either
15 moving for a mistrial because of that and/or at that
16 point moving to recuse Judge Miller because not only do
17 we have the jury being prejudiced from knowing that both
18 of those individuals were coming into the trial saying
19 they're not guilty, now one is saying they're guilty and
20 they're gonna be a material witness against the other,
21 but also Judge Miller is holding Mr. Hunter's sentence
22 in abeyance, has essentially the keys to the jail cell
23 in his hand. And so you have Judge Miller having to
24 weigh the credibility of the co-defendant, having to
25 assess whether he's fully cooperated and what sentence

1 he was gonna impose, and having that dynamic, plus the
2 jury knowing that they were together, that -- earlier I
3 referenced an unusual procedural posture, I think at that
4 point the burden had improperly -- or the burden on the
5 State had been improperly shifted in that case and that
6 it was a fundamentally unfair system or a fundamentally
7 unfair procedure that denied Mr. Hare's right to due
8 process, to a fair trial.

9 And there's a number of different arguments that he
10 could have made. Again, what you had was -- and I think
11 from -- and, again, I don't want to rehash every element
12 of the testimony, Your Honor, and if Your Honor because
13 of the significant number of allegations has any issues
14 with it, I certainly have no issue if we need to address
15 maybe proposed orders or -- I just don't want you to feel
16 that I'm sitting here rehashing every single piece of
17 testimony that Your Honor just heard, I don't want to
18 insult you in that way of just kind of hammering you
19 with every single thing, but in a lot of -- and the next
20 big issue, absolutely big issue, is the fact that trial
21 counsel had those DJ -- had the DJJ records, used them
22 at trial as far as the criminal history, but did not
23 seek to obtain the full DJJ records where he would have
24 saw the IQ, the intellectual deficit, would have saw all
25 the things that he needed to investigate further. Under

1 the case law, failure to investigate is once counsel has
2 reason to know something, they need to investigate it,
3 and he knew that he had a DJJ record, he uses that in
4 trial, and then even his testimony today was in hindsight
5 he shouldn't have presented the juvenile conviction, but
6 knowing that he should have obtained the full file, which
7 then would have triggered him to know that he had a
8 sub 80 IQ, that he had all these other issues that would
9 have triggered hopefully, at least as he said in hindsight,
10 getting an expert witness at least for mitigation, as
11 well as potentially to present in challenging Mr. Hare's
12 statement to police as far as an involuntary statement
13 through a Jackson v. Denno hearing.

14 Again, there's significant issues as far as his
15 failure -- trial counsel's failure to object to the
16 specific issues that we've raised in the application
17 and through our testimony here today, but through the
18 expert witness testimony that we have, Dr. Maddox
19 testified based on her training and experience that this
20 is in my -- what I believe she said was that this was
21 material mitigation evidence that Judge Miller had he
22 had that information could have resulted -- obviously
23 he had full discretion, and that's part of it, but he
24 did not have that information and had he had it that
25 certainly could have played a significant role in the

1 sentence he imposed. Specifically, she referenced that
2 it appeared based on her review that Judge Miller felt
3 like some of the things -- that Mr. Hare was not being
4 as candid as possible or being kind of aloof to some of
5 the questions or not being direct, and she was explaining
6 that as an expert she could have testified and explained
7 to Judge Miller not only his background and got him fully
8 aware of the situation, but why he was acting that way
9 and why he had certain responses that he did or
10 non-responses, and as far as his judgment and how it
11 would have affected him. And so Judge Maddox's {sic}
12 testimony I think is critical here in showing not just
13 from the trial, but also the plea standpoint where
14 essentially had that mitigation evidence been presented
15 at both the sentencing phase of the trial, as well as
16 the sentencing phase of the plea, we could have had an
17 entirely different sentence imposed, and that's in and
18 of itself separate than all the other ineffective
19 assistance of trial counsel issues that would trigger a
20 new trial as far as the remedy concerned. Again,
21 specifically that he had the intellectual deficit, a
22 closed-head injury, and we've have expert testimony in
23 forensic psychiatry that goes directly to it.

24 Now with that being said, there was at least from
25 the Applicant's testimony that there was no preparation

1 of him as far as whether he would testify at the trial
2 until the break before it was essentially his turn for
3 the colloquy with the judge about whether he would
4 testify. Yet trial counsel told the jury in opening that
5 he was gonna testify and pretty much from a credibility
6 standpoint force that issue, that had Applicant not
7 testified that would have been prejudicial to him as
8 well because trial counsel had already presented that.

9 Trial counsel also made concessions and, again, I
10 have case law to go through this, but made concessions
11 of guilt in regards to the failure to stop, concessions
12 of guilt in terms of shooting the weapon, different
13 things that he specifically said he had not provided
14 more so on the failure to stop case.

15 Counsel admitted that he did not have a strategic
16 reason for why he didn't move to sever specifically the
17 failure to stop. When you have evidence of something
18 that's not a continuous conduct that's provable by
19 different evidence, you know, different witnesses at
20 that point, you can make a motion to sever. Obviously
21 it's within the trial court's discretion, but with that
22 being said, you heard trial counsel's testimony that he
23 felt like he was ambushed by the co-defendant's decision
24 to plead guilty after jury selection, so he was highly
25 caught off guard by that and he did not challenge the

1 identification procedure, he presented no proposed voir
2 dire to try to present a -- in my opinion for a defense
3 attorney not to present any proposed voir dire, in my
4 opinion is ineffective assistance of counsel in trying
5 to elicit -- we already have -- and, again, I have all
6 the arguments for that, either the shortest or the
7 second shortest voir dire in the United States in our
8 criminal cases and for a defense attorney not to have
9 any proposed voir dire I believe is ineffective
10 assistance of counsel trying to elicit known and
11 unknown biases, trying to have intelligent peremptory
12 strikes. About the only information we know in South
13 Carolina related to these peremptory strikes outside of
14 an address or where somebody works is the constitutional
15 things that we're not able to use as strikes; gender,
16 race, age, and so there's things that were said by both
17 trial counsel, as well as the prosecutor, in opening and
18 closing, that we argued that are improper, saying about
19 essentially that nothing good was going on. As far as
20 the specific quote, we can get. Again, I think we read
21 it out loud from both sides about them not being in
22 school, that -- again, conceding the failure to stop,
23 the bench conferences were not put on the record and
24 preserved.

25 THE COURT: And I -- I want you to understand you

1 don't have to go through every one.

2 MR. PHILLIPS: I'm not taking every one. Well,
3 and then what I'll say is -- to hit the highlights again,
4 I would say the other part, Your Honor, the closing
5 argument as far as the prosecutor's argument of explaining
6 that a reasonable doubt, the hesitate to act, that you
7 can hesitate to act and still find guilty I believe is
8 a -- is an issue that certainly I believe if preserved
9 would have been an interesting appellate issue for our
10 appellate courts to address, whether that improperly
11 shifted the burden of proof and was a misstatement of
12 law.

13 Again, we had the closing arguments and jury
14 instructions regarding the inference of a deadly weapon,
15 which should have been objected to by counsel, and had
16 no objections. There was no request for the Logan
17 circumstantial evidence charge, which is very critical
18 in terms of ensuring -- as far as jury instructions
19 are concerned as far as ensuring that he has a right
20 to a fair trial by having the proper law read to the
21 jury prior to their deliberation that a lesser included
22 offense can be assault and battery first degree and was
23 not requested.

24 And so with that I believe for the most part that
25 trial counsel was very candid in his responses in

1 admitting faults and admitting things that he had not
2 considered and -- and some of his responses I would
3 argue that his strategy was not reasonable, that Your
4 Honor's determination has to be if he presents a strategy
5 whether it's reasonable, and I would argue in the context
6 of many things that was argued where he did present some
7 strategy, that it was not reasonable.

8 Again, the bandana part where Judge Miller
9 appropriately argued that it was inadmissible to
10 reference. The bandana's found in the bookbag and then
11 once that evidence was elicited, there was no motion
12 for a mistrial, no motion to strike, no motion for a
13 curative instruction, all the things needed to protect
14 defendants where the judge had already said this is
15 highly prejudicial propensity evidence that should not
16 come in.

17 With that, Your Honor, you know, I'm not gonna hit
18 every single one because I know Your Honor has it, but
19 I think this is a case where ineffective assistance of
20 plea counsel is there in terms of not presenting that
21 mitigation, that critical mitigation evidence, that that
22 would have affected the sentence itself.

23 And then in terms of the trial, that I believe we
24 have a significant number of allegations that cross
25 that threshold of deficient performance and prejudice

1 that affects the outcome of the trial that amount to
2 ineffective assistance of counsel.

3 THE COURT: Was the plea -- how much longer after
4 the actual trial was the plea?

5 MR. PHILLIPS: So you had July was the trial, and I
6 can grab the exact dates.

7 THE COURT: I think I actually --

8 MR. PHILLIPS: Then it was October for the -- for
9 the plea.

10 THE COURT: And the plea was a 20-year sentence as
11 well?

12 MR. PHILLIPS: Yes, Your Honor.

13 THE COURT: All right.

14 MR. PHILLIPS: And essentially they were up for
15 trial again on the carjacking, and they can correct if
16 I'm wrong, and then this kind of came up that we'll
17 recommend the twenty and then the trial -- you know,
18 instead of going to trial the case was resolved that way.

19 THE COURT: Thank you, sir.

20 MR. PHILLIPS: And the last thing as far as the
21 ineffective assistance of appellate testimony, I didn't
22 address that. That based on the testimony we had
23 presented that had their issues been raised and
24 preserved that those issues could have been presented
25 to the appellate court and ultimately would have resulted

1 in a reversal on appeal.

2 THE COURT: All right. Thank you, Mr. Phillips.

3 MR. PHILLIPS: Thank you.

4 THE COURT: Ms. Battenfield.

5 MS. BATTENFIELD: Thank you very much, Judge.

6 First, a little bit of housekeeping. Just for the
7 record, all the victims were notified in both the plea
8 and the trial and did not want to be here today just
9 for Victims Bill of Rights purposes, as well as just to
10 clarify that for the plea, are we going to also have a
11 hearing on the plea or we're also arguing the plea right
12 now?

13 MR. PHILLIPS: I thought we --

14 THE COURT: I'm like you. I thought we were gonna
15 have a hearing on that, but --

16 MS. BATTENFIELD: I'm fine just arguing it, Judge,
17 right now.

18 THE COURT: I am, too, but it's up to you. I mean,
19 was there -- would there be any other evidence? It seems
20 like we kind of merged the two a little bit together.

21 MR. PHILLIPS: Agreed, Your Honor. I -- what would
22 be additional would be very minimal. Certainly as far
23 as the -- maybe two or three questions for him, but I
24 don't believe it's necessary in moving the needle as far
25 as what we're presenting.

1 THE COURT: Okay.

2 MR. PHILLIPS: The main issue is that there wasn't
3 credible mitigation evidence presented at the plea
4 hearing. Essentially the remedy for that would not be
5 to validate the plea itself, but to do a new sentencing
6 hearing with that mitigation now.

7 And then in terms of the trial counsel part of it,
8 so to me I don't believe there's any additional evidence
9 necessary.

10 THE COURT: Okay. That's fine. Then I'll let you
11 talk about both.

12 Go ahead, Ms. Battenfield.

13 MS. BATTENFIELD: Thank you, Judge.

14 Well, just to, again, highlight, you heard
15 Mr. Hamilton say that his client was facing an aggregate
16 of 102 years. He went on a large crime spree from August
17 and September of 2015 and committed five or six very
18 high level crimes, Judge. It might be four to six
19 depending on the count, but, I mean, there is a
20 presumption, again, under Strickland as you know, Judge,
21 of effective assistance, so there is no such thing as a
22 cumulative error doctrine. It's not been recognized by
23 our Supreme Court. It's been talked about, but it's not
24 currently a defense to be raised, so.

25 THE COURT: I think they bring up the death by

1 a thousand cuts argument. But, yeah, it hasn't been
2 adopted.

3 MS. BATTENFIELD: Yes, sir.

4 So we do recognize that Mr. Phillips has raised
5 fifty-two grounds and has to his credit, to his great
6 credit, got through them in one morning, however, we
7 still have to focus on each individual ones and whether
8 Applicant has overcome his presumption of effective
9 assistance in something a reasonable defense attorney
10 would have done back in 2017, Judge.

11 So most of the questions go to Mr. Hamilton's
12 strategy and as you heard he was saying hey, this was
13 road rage. There was a lot of evidence against Mr. Hare
14 in all of the different cases. I mean, Mr. Hare even
15 conceded that he was driving the car and he did shoot,
16 so in that case -- and the judge didn't even charge
17 self-defense. So Mr. Hamilton's faced with the situation
18 where they go to trial with a co-defendant with an agreed
19 upon strategy just to try to mitigate the attempted
20 murder and then you have a co-defendant that pleads
21 guilty in the middle of trial. So Mr. Hamilton did
22 what any attorney would do, he pivoted, and he wasn't
23 expecting that, but he still had a strategy that was
24 effective to his credit. I mean, the jury still found
25 Mr. Hare guilty of the lesser included of ABHAN, so

1 that's ten years less than he could have gotten.

2 So in terms of a reasonable strategy, Mr. Hamilton
3 decided to concede certain things strategically and
4 the case law says as long as counsel has a reasonable
5 strategic reason to move forward with certain things,
6 then effective assistance should be found.

7 So to the second prong briefly, Judge, of Strickland,
8 prejudice, how could he show prejudice in this case,
9 Judge, because he was looking at an aggregate 102 years.

10 So going to the plea, he pled guilty and received a
11 concurrent sentence. What I have not put on the record
12 -- or I don't know if I have, I might have, Judge, I
13 apologize, but the solicitor nol prosed -- because
14 Mr. Hare pled guilty, he nol prosed an attempted murder
15 indictment, which was zero to thirty, as well as another
16 indictment, Judge, I believe it was armed robbery, which
17 carries I believe zero to twenty, so that's fifty years
18 he could have gotten nol prosed because of the plea, so
19 how could he possibly show prejudice with a current
20 sentence with the plea?

21 Now in the court packet, Judge, we did provide you
22 just to briefly address the plea while I'm here, we did
23 provide you with a transcript of the plea, it's about
24 twenty-ish pages, and Mr. Hare does say I'm pleading
25 guilty, I understand the charges against me, I understand

1 how much time, I am happy with my attorney, et cetera.
2 Just the normal -- just the normal, you know, plea
3 colloquy, Judge, so I just want to briefly bring your
4 attention to that, but that's enough about the plea.
5 I'll move back to the trial.

6 In terms of case law, I know we talked a lot about
7 mitigation and sentencing here and the judge did give
8 Mr. Hare twenty years, but in terms of case law, Judge,
9 and I did, of course -- because there are fifty-two
10 issues, Judge, I'd be happy to provide if you would let
11 Mr. Phillips and I know if there's any question in your
12 mind, we'd be happy to provide post-hearing briefs, at
13 least I would, on any issue you'd like.

14 THE COURT: Well, and I'm gonna tell both of you
15 I'm gonna take this under advisement.

16 MS. BATTENFIELD: Yes, sir.

17 THE COURT: There's a lot of the transcript that
18 I want to go through and read. I think the trial
19 transcript's 400 pages, I think the plea transcript's
20 fifteen, twenty pages, something like that. So there's
21 a substantial amount that my law clerk and I will go
22 through, so I think post-hearing briefs would be great
23 just to cut off with that, but you can continue.

24 Thank you.

25 MS. BATTENFIELD: Would you like them on all the

1 issues, Judge, or just specific ones? Because fifty-two
2 might take --

3 THE COURT: I think you've both made your arguments
4 in regards to the mitigation factors. We'll e-mail you
5 about that.

6 MR. PHILLIPS: Yes, Your Honor.

7 MS. BATTENFIELD: Yes, Your Honor.

8 THE COURT: Because I don't want to tell you now
9 and then all of a sudden -- and to agree to it or tell
10 you now and then say no, I don't need any of that, okay?

11 MS. BATTENFIELD: Yes, sir. If I may briefly put a
12 couple of cases on the record in regard to mitigation.

13 THE COURT: Yes, please.

14 MS. BATTENFIELD: There is in terms of -- so
15 State versus Levy, which is a Sixth Circuit case. It's
16 904 F.2d 1026. It's from 1990. With regards to the
17 first prong of prejudice, Judge, the Federal court has
18 ruled the Constitution does not require a sentencing
19 court to consider mitigating circumstances in a noncapital
20 case. So in terms of the first prong of Strickland,
21 Federal courts have ruled it's not a constitutional issue
22 to be considered in these situations, but the jury is
23 still out as to prejudice, the second prong, which is
24 interesting because, of course, in Strickland you have
25 to meet both prongs, but for prejudice there is a circuit

1 split regarding prejudice, and there's three brief cases.
2 In *Lafler versus Cooper*, 566 U.S. 156, it's a 2012 case,
3 they found -- that mostly addresses plea bargaining in
4 sentences, but that case did find -- it's a United States
5 Supreme Court case, that mitigation -- there cannot be
6 prejudice in mitigation when it comes to sentencing
7 unless the evidence that should have maybe -- or could
8 have been -- could have been presented goes directly to
9 the fact that it would enhanced the sentence, Judge. And
10 then United States -- which is a factfinding situation,
11 like arguments, strategy, and not about additional jail
12 time.

13 And then the second case, *United States versus*
14 *Powell*. It's a Fourth Circuit case from 2011. It's
15 650 F3d. 388. That held that unless there's a
16 reasonable probability that the sentence would have
17 been significantly less harsh, prejudice cannot be
18 found in ineffective assistance PCR.

19 And then the last case, *Glover versus United*
20 *States*, also speaks to this. It's 531 U.S. 198. It's
21 a 2001 case.

22 So -- and I'd, of course, be happy to expound in
23 any kind of brief, but Mr. Hamilton you heard on the
24 stand, I mean, he knew about the prior DJJ convictions,
25 he knew his client was, you know, going to a DJJ school

1 at the time, and he already conceded these things, so
2 the judge had already known, okay, you know, Mr. Hare
3 has got some issues going on in his life at the time,
4 so in terms of mitigation I don't know exactly how that
5 would have affected the judge. I mean, it's still in
6 the judge's discretion at this point.

7 The only thing that I really heard Mr. Hamilton say
8 was hey, I might not have -- I probably maybe not or
9 should have talked about the DJJ armed robbery, but in
10 terms of guilt, Judge, how can Mr. Hare prove that would
11 have affected the outcome because, again, there was a
12 lot of evidence again Mr. Hare. And counsel was very --
13 very successful in getting the jury to find him guilty
14 of the lesser included. I mean, ABHAN was proven. He
15 did shoot into the vehicle, which -- at least my
16 understanding of ABHAN is that meets the elements of
17 ABHAN with an individual who's alive inside the vehicle.
18 So in terms of showing prejudice about that, I don't
19 know if that would have affected the outcome of the
20 case, Judge.

21 And then Belcher, Burdette, you've already said
22 you're aware of that, but then another -- one more case
23 is Stanko, a death penalty case, also talked about that.

24 THE COURT: That's an Horry county.

25 MS. BATTENFIELD: February -- sure -- 27, 2013,

1 found it's harmless error even if it was wrongly charged.

2 THE COURT: My dad tried that one.

3 MS. BATTENFIELD: Yes, sir. That's fantastic.

4 You're very -- yeah, I'm gonna move on.

5 And then -- so, yeah, Judge, I just -- the State
6 just maintains that yes, there's fifty-two grounds raised,
7 but on balance that the defendant has -- Applicant has
8 not met his burden in proving either Strickland prongs
9 in either case.

10 So thank you, Judge.

11 THE COURT: Thank you.

12 All right. Counsel, we'll try to get something
13 e-mailed to you by the end of the week if we need
14 any post briefs, but I, again, thank you for the
15 presentations that you-all have provided.

16 MR. PHILLIPS: Yes, Your Honor. Thank you.

17 MS. BATTENFIELD: Thank you very much, Judge.

18 THE COURT: Thank you.

19 (Whereupon, the proceedings were concluded at
20 1:34 PM.)

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C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 13th day of May, 2024.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

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

November 3, 2024

/s/ Stacy S. Johnson
STACY S JOHNSON
CIRCUIT COURT REPORTER

On Thu, Sep 12, 2024 at 1:35 PM Hyman, B. Alex Law Clerk (Taylor Langston)
<bhymanlc@sccourts.org> wrote:

Good afternoon,

Judge Hyman is granting PCR application 2020CP230737 as to the following allegations: 13, 23, 24, 28, 29, 31, 32, 33, 34, and 37. Allegation 41 is denied. PCR application 2020CP230736 is denied.

Please let me know if you have any questions or concerns.

Thanks,

Taylor L. Langston

Law Clerk for The Honorable B. Alex Hyman

bhymanlc@sccourts.org

THE STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Braxton Lavon Hare,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

IN THE COURT OF **COMMON PLEAS**

THIRTEENTH JUDICIAL CIRCUIT

Case No.: **2020-CP-23-0737**

**ORDER GRANTING APPLICANT
POST-CONVICTION RELIEF**

ENTERED COMPUTER

FILED: 25NOV26AM8:46
COC JAY GRESHAM GUL SC

This matter comes before the Court on the above-named Applicant's application for Post-Conviction Relief (PCR).¹ Applicant appeared before the Honorable B. Alex Hyman on May 13, 2024, for a hearing on the above-captioned PCR action.² Dayne Phillips represented the Applicant, and Assistant Attorney General Julianna Battenfield represented the Respondent. Applicant, forensic psychiatrist Donna Maddox, former Appellate Defender Taylor Gilliam, Attorney Ernest Hamilton, and former Assistant Solicitor Lestor Mark Moyer testified at the evidentiary hearing. Applicant admitted the following items into evidence at the hearing: (1) Psychological evaluation addendum; (2) Psychological evaluation; and (3) Flash drive with documents under seal.

At the close of evidence and hearing arguments from counsel, the PCR Court requested that the parties submit proposed orders for his review and consideration. After reviewing the proposed orders from the parties and weighing the evidence presented at

¹ Applicant filed a separate application requesting Post-Conviction Relief (PCR) related to his subsequent conviction from a guilty plea to carjacking before the Honorable Edward W. Miller and received a concurrent twenty-year sentence. (Case No. 2020-CP-23-0736).

² The evidentiary hearing addressed both PCR actions, and this Court denied relief for the application resulting from the guilty plea conviction.

the hearing, this Court grants the PCR application requesting a new trial based on ineffective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668 (1984); U.S. Const. amends. VI, XIV; S.C. Const. art. I, §§ 3 and 14; S.C. Code § 17-27-20(A)(1), (4), and (6).

PROCEDURAL HISTORY

On May 24, 2016, the Greenville County Grand Jury indicted Applicant for attempted murder, possession of a weapon during the commission of a violent crime, and failure to stop for a blue light. (2015-GS-23-9117–9118).

On July 12–13, 2017, Applicant and his Co-Defendant proceeded to a joint jury trial before the Honorable Edward W. Miller. Trial Counsel, Ernest Hamilton, represented Applicant, and Assistant Solicitors L. Mark Moyer and Brann W. Fowler prosecuted the case on behalf of the State.

After jury selection and opening statements, the Co-Defendant pleaded guilty to assault and battery of a high and aggravated nature (ABHAN). The Trial Court deferred sentencing for the Co-Defendant based on his testimony at Applicant's trial. At the conclusion of trial, the jury found Applicant guilty of the lesser-included offense of ABHAN and failure to stop for a blue light. Judge Miller sentenced Applicant to twenty years imprisonment for the ABHAN conviction and three years for the FSBL conviction.

On July 14, 2017, the State dismissed the charge for the possession of a weapon during the commission of a violent crime due to prosecutorial discretion.

On July 19, 2017, Trial counsel filed a timely notice of appeal. Appellate Defenders Robert M. Pachak and Taylor Davis Gilliam represented Applicant on the direct appeal. Senior Assistant Deputy Attorney General John Benjamin Aplin represented the State.

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Appellate Defender Pachak filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Applicant did not file a *pro se* response.

On February 6, 2019, the South Carolina Court of Appeals dismissed the appeal in an unpublished opinion. *State v. Hare*, Op. No. 2019-UP-055 (S.C. Ct. App. filed February 6, 2019) (per curiam). The Court of Appeals issued the Remittitur on February 26, 2019.

On February 5, 2020, Applicant filed an application requesting PCR. Respondent filed its Return on May 18, 2020.

On March 15, 2023, Applicant filed an amended application requesting PCR:

Trial Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Specifically, Trial Counsel's unreasonably deficient performance fell below an objective standard of reasonableness "under prevailing professional norms" and prejudiced Applicant because there is a reasonable probability that, but for Trial Counsel's errors, the result of the proceeding would have been different. See *Strickland v. Washington*, 466 U.S. 668 (1984) (establishing the standard for ineffective assistance of counsel claims); see also *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted). Therefore, "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result". *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting *Strickland*, 466 U.S. at 692).

Appellate Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. Specifically, Appellate Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Appellate Counsel's errors, the result of the proceeding would have been different. See *Strickland v. Washington*, 466 U.S. 668 (1984); *Evitts v.*

Lucey, 469 U.S. 387 (1985); *Simpkins v. State*, 303 S.C. 364, 401 S.E.2d 142 (1991).

EVIDENTIARY HEARING

On May 13, 2024, Applicant appeared before the Court for an evidentiary hearing. Dayne Phillips represented Applicant, and Julianna Battenfield represented the State. The following witnesses testified at the evidentiary hearing: Applicant, Forensic Psychologist Donna Maddox, former Appellate Defender Taylor Gilliam, Attorney Ernest Hamilton, and former Assistant Solicitor Lestor Mark Moyer testified at the evidentiary hearing. Applicant admitted the following items into evidence at the hearing: (1) Psychological evaluation addendum; (2) Psychological evaluation; and (3) Flash drive with documents under seal.

BRAXTON HARE

Applicant testified that his attorney visited him five or six times while he was incarcerated. Applicant also testified that during these visits, Trial Counsel discussed the motion for discovery, the evidence discovered in the case, defense's theory of the case, and the plea offers made by the Solicitor's office. Applicant further testified that Trial Counsel did not discuss any additional motions or potential defenses with him prior to trial.

Specifically, Applicant stated that they did not discuss arguing a motion to sever the case between the co-defendants or between the indicted offenses. Applicant also stated that the decision to testify at trial was never discussed prior to trial and occurred while on a break during the trial. Applicant further noted that Trial Counsel never discussed the chance of being found guilty of a lesser included offense.

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Additionally, Applicant testified that Trial Counsel never discussed presenting motions for continuance, mistrial, or recusal of the Judge after his Co-Defendant pled guilty. Applicant also stated that he never had any discussion with Trial Counsel about conceding guilt during opening statement and closing argument or presenting his cognitive deficits as mitigating factors. Applicant further explained that these decisions were made solely by Trial Counsel without his approval. Notably, Applicant testified that Trial Counsel did not discuss obtaining his school or medical records or seeking a mental health evaluation.

On cross-examination, the State questioned Applicant about rejecting the plea offers, his trial testimony, and the charge for failure to stop for a blue light. Applicant then testified on re-direct examination that Trial Counsel never discussed moving for severance of the failure to stop for a blue light charge.

ERNEST HAMILTON

Trial Counsel testified that he was retained for the indicted offenses of attempted murder and failure to stop for blue lights. Trial Counsel admitted that he did not consider moving to sever the attempted murder charge from the failure to stop for a blue light charge. Trial Counsel conceded that Applicant's Co-Defendant pled guilty after jury selection, the Trial Court held sentencing in abeyance based on the Co-Defendant's testimony, and the jury is informed that the Co-Defendant pled guilty to ABHAN. Trial Counsel further noted that the Co-Defendant pleading guilty "was a complete ambush" and that it was to Applicant's advantage because his testimony would be that Applicant did not intend to kill the victim (despite that he did not consider moving for a mistrial or recusal of the trial judge due to the Co-Defendant's deferred sentencing).

Trial Counsel acknowledged that if he had Dr. Maddox, he could have presented that mitigation evidence to the Trial Court and that it would have been advantageous for Applicant during sentencing. Trial Counsel also admitted that he never inquired into the background of Applicant; specifically, his intellectual deficits nor his prior criminal record (besides what was provided in discovery from the solicitor's office). Trial Counsel further admitted that he would have hired an expert to present mitigation evidence "knowing what I know now . . . but there was nothing to indicate that I needed to present that [evidence]" (despite conceding that he knew Applicant went to DJJ).

Trial Counsel testified that he prepared the trial, alongside Applicant, through discussions of the evidence and the state's ability to prove the differing legal issues. Trial Counsel stated he could not remember whether he apprised Applicant of whether he could be found guilty of a lesser included offense. Trial Counsel also admitted that he did not have a reason for his failure to submit proposed *voir dire* questions. Trial Counsel testified that he did not have a strategic reason for not joining the motion of the co-defendant's lawyer for the additional peremptory strikes.

Trial Counsel testified that in his opening statement he committed his client to testify—without Applicant's consent—and any invocation of his fifth amendment right to remain silent would be detrimental to his case.

Trial Counsel testified that he did not find the identification of his client, Applicant, to be an issue. Trial Counsel acknowledged that he stated that Applicant was essentially up to no good the morning of the incident because they were skipping school. Trial Counsel also acknowledged that he conceded Applicant's guilt for the FSBL charge because "[Applicant] was not trying to hide anything."

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When asked about the victim's passenger side door—and the failure of the state to maintain a proper chain of custody—Trial Counsel testified that he had no justification for failing to object to its admissibility. Trial Counsel also testified that he had no justification for his failure to put the bench conferences between Counsel and the Trial Court on the record for error preservation on appellate review. Trial Counsel further stated that he stipulated the admission of the introduction of the car chase video because he could not formulate an objection against its admission into evidence.

Trial Counsel admitted that he did not have a strategic reason for failing to object to Jaquan Salter's testimony that he had previously seen Applicant with a gun. When questioned about his failure to object to improper opinion testimony regarding firing ballistic rounds into a sheet of metal, Trial Counsel stated that he had no strategic reason for his failure. Trial Counsel testified that he did not have a strategic reason for his failure to request for either a mistrial or curative instruction regarding the improper testimony referencing Applicant's bandana based on the Trial Court's previous ruling prohibiting references to gang involvement. Trial Counsel further conceded that there was not a specific strategic reason for the introduction of Applicant's prior juvenile record for strong-arm robbery and shoplifting and noted, "[t]hat may have been a misstep by counsel."

Trial Counsel testified that it was misleading and must have gone over his head when he failed to object when the Prosecutor argued reasonable doubt being similar to a loan offer from a bank during closing argument and argued that the jury could find Applicant guilty "after hesitating to act". Trial Counsel further acknowledged that he had no strategic reason for failing to object to the inferred malice charged based on use of a deadly weapon.

Trial Counsel acknowledged that he referenced Applicant as a troubled child and noted that he was of mix-race and not doing well in school during his closing argument. Trial Counsel admitted that his trial strategy was self-defense, and the Trial Court denied Counsel's request to charge the jury on self-defense. Trial Counsel also conceded that he had no reason for failing to request the *Logan* circumstantial evidence jury instruction.

Trial Counsel acknowledged that he could have used the expert testimony to assist in moving to suppress the Applicant's statements to police during a *Jackson v. Denno* hearing.

On cross-examination, Trial Counsel explained that there was evidence mitigating the road rage and that self-defense evidence was Applicant's perception of what he observed the victim to be doing. Trial Counsel also clarified that, during his opening statement, he said nothing good happened because they should have been in school. Trial Counsel testified that he had been practicing criminal law for forty years and had been a career prosecutor for twenty years. Trial Counsel further noted that he did not object to the testimony about the bandana.

MARK MOYER

Former solicitor Mark Moyer testified that he had the power to resolve the case, and that he turned over all evidence in a timely manner. Mr. Moyer also testified that there was a hearing where a judge ruled that the pre-trial identification was done constitutionally. He testified that the identification was done through six-person photo-lineup where the victim was able to identify the Applicant.

Mr. Moyer testified that he extended plea offers for ABHAN to both co-defendants before trial, and that Applicant rejected the plea offer. Mr. Moyer stated that he did not

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move to qualify Darwin Shaw or Investigator Matt Owens as an expert because he believed that the testimony about the trajectory of the bullet from the defects in the car door was not opinion. Mr. Moyer also testified that he never received the Applicant's records from the DJJ that reflect his sub-80 IQ, intellectual deficit, or closed head injury. Mr. Moyer further stated that he did not remember Trial Counsel making an objection to the identification, and that he sent his plea offers in writing. Notably, Mr. Moyer acknowledged that the co-defendant pleaded guilty after the trial began.

TAYLOR GILLIAM

Taylor Gilliam testified virtually that he used to work at the Appellate Division of the South Carolina Commission on Indigent Defense and was assigned Applicant's case after Rob Pachak left that office. He testified that Mr. Pachak filed a short, one issue *Anders* brief about the specific intent to kill because the other potential issues were not preserved for review. Mr. Gilliam testified that had these meritorious issues been preserved, they could have been raised, and that, in his opinion, some of these issues were the kind that could have been reversed on appeal.

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LAW

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI. To establish ineffective assistance of counsel, a Petitioner must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984) (establishing the standard for ineffective assistance of counsel claims). “First, an [Petitioner] must show that counsel's performance was deficient. Under this prong, [t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted). “The second prong of the *Strickland* test requires a showing that the deficient performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” *Id.* at 118, 386 S.E.2d at 625 (internal citations omitted). Therefore, a Petitioner must prove that “counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result” when seeking relief based on ineffective assistance of counsel. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting *Strickland*, 466 U.S. at 692).

In a PCR action, “[t]he burden of proof is on the Petitioner to prove his allegations by a preponderance of the evidence.” *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Strategic “[d]ecisions made [by counsel] in ignorance of relevant, available information cannot be characterized as strategic.” *Weik v. State*, 409 S.C. 214, 236, 761 S.E.2d 757, 768 (2014). “Ordinarily, the existence of ‘overwhelming evidence’ does not automatically preclude a finding of prejudice.”

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Smalls v. State, 422 S.C. 174, 189, 810 S.E.2d 836, 844 (2018). Notably, “for the evidence to be ‘overwhelming’ such that it categorically precludes a finding of prejudice . . . the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of ‘a reasonable probability . . . the factfinder would have had a reasonable doubt’ cannot possibly be met.” *Id.* 422 S.C. at 191, 810 S.E.2d at 845.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court heard the testimony presented at the evidentiary hearing, observed the witnesses, assessed their credibility, and weighed the testimony accordingly based on the evidence presented at the hearing. This Court also reviewed the Clerk of Court records, trial transcript, applications for post-conviction relief, and legal arguments made by the lawyers. Therefore, the relevant findings of fact and conclusions of law are set forth below as required by Section 17-27-80 of the South Carolina Code of Laws.

This Court finds that Trial Counsel’s performance fell below an objective standard of reasonableness under prevailing professional norms. *See Strickland*, 466 U.S. at 687-88. This Court also finds that Trial Counsel’s deficient performance prejudiced Petitioner because it “so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (quoting *Strickland*, 466 U.S. at 692). Therefore, this Court has concluded that Trial Counsel provided ineffective assistance of counsel because “there is a reasonable probability that, but for [trial] counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625 (internal citations omitted); *See* U.S. Const. amends. VI, XIV; S.C. Const. art. I, §§ 3 and

14; S.C. Code § 17-27-20(A)(1), (4), and (6).

CONCLUSION

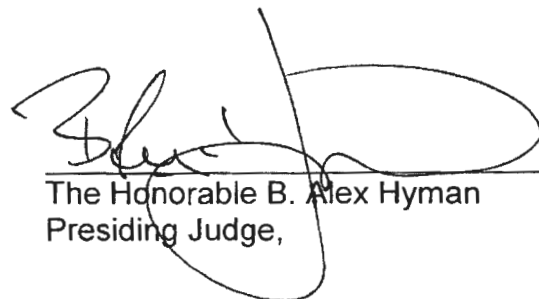
Based on the foregoing reasons, this Court finds and concludes Applicant has established constitutional violations and deprivations that would require post-conviction relief. This Court finds that Trial Counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. See *Strickland*, 466 U.S. at 687-88. This Court also finds that Trial Counsel's deficient performance prejudiced Petitioner because it "so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (quoting *Strickland*, 466 U.S. at 692).

Therefore, This Court has concluded that Trial Counsel provided ineffective assistance of counsel because "there is a reasonable probability that, but for [trial] counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625 (internal citations omitted); See U.S. Const. amends. VI, XIV; S.C. Const. art. I, §§ 3 and 14; S.C. Code § 17-27-20(A)(1), (4), and (6).

Accordingly, Applicant's convictions and sentences are vacated and remanded to the Greenville County Court of General Sessions for a new trial.

IT IS ORDERED that Applicant's application for PCR is hereby **GRANTED**.

IT IS SO ORDERED.


The Honorable B. Alex Hyman
Presiding Judge,

4/10, 2025
Conway, South Carolina.

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE)	FOR THE THIRTEENTH JUDICIAL CIRCUIT
)	
Braxton Hare, SCDC #373172,)	Case No.: 2020-CP-23-0737 (Trial)
)	
Applicant.)	
)	RESPONDENT'S RULE 59(e) MOTION
v.)	TO ALTER OR AMEND JUDGMENT
)	
State of South Carolina,)	
)	ENTERED COMPUTER
Respondent.)	

1. On April 10, 2025, this Court emailed the Order granting Applicant relief on his trial convictions for failure to stop for a blue light and assault and battery of a high and aggravated nature (ABHAN).¹ Respondent now moves for this Court to alter or amend the judgment pursuant to Rule 59(e), SCRPC. On September 12, 2024, via email, this Court identified the following grounds on which it granted relief:

- 13. Trial Counsel failed to move to recuse the Trial Counsel who took the co-defendant's plea after jury selection when sentencing was deferred until after the co-defendant's testimony in this trial, and when the Trial Court presented the indictment for attempted murder to the jury prior to Co-Defendant's guilty plea to Assault and Battery of a High and Aggravated Nature.
- 23. Trial Counsel improperly questioned Applicant on direct examination regarding propensity character evidence about him shoplifting.
- 24. Trial Counsel improperly questioned Applicant on direct examination regarding a strong-arm robbery that occurred when he was a juvenile.
- 28. Trial Counsel improperly conceded Applicant's guilt to the charge of Assault and Battery of a High and Aggravated Nature during his closing argument.

¹ Applicant filed conjunctive PCR applications challenging his trial convictions as well as his subsequent guilty plea to carjacking. This Court denied relief as to Applicant's action challenging his guilty plea, PCR action 2020-CP-23-0736. The PCR evidentiary hearing addressed both PCR actions and witnesses testified as to the circumstances of both Applicant's trial and guilty plea.

29. Trial Counsel improperly referred to Applicant as a juvenile delinquent in his closing argument (prejudicial propensity character).
31. Trial Counsel improperly presented Applicant as a troubled child of mixed race who was not good in school during his closing argument.
32. Trial Counsel failed to request and properly argue for a jury instruction on self-defense.
33. Trial Counsel failed to object to the incorrect standard used by the Trial Court for the self-defense jury instruction ("any evidence" standard).
34. Trial Counsel failed to request and properly argue for a jury instruction on acting on appearances for self-defense.
37. Trial Counsel failed to object to and preserve for appellate review the inferred malice jury instruction on the use of a deadly weapon.

2. As to the specific allegations raised in Applicant's application, this Court did not address specific findings as it relates to the claims but summarizes the testimony without making findings of prejudice on counsel's alleged deficiencies.

3. As to allegation 13, that trial counsel failed to move for a continuance or to move for the trial judge's recusal after accepting the Co-defendant's guilty plea and deferring his sentencing until after he presented testimony at Applicant's trial. Respondent submits that trial counsel did not act deficiently, nor can prejudice be shown for the alleged deficiency. This Court noted that "[t]rial [c]ounsel conceded that Applicant's Co-Defendant pled guilty after jury selection, the Trial Court held sentencing in abeyance based on the Co-Defendant's testimony, and the jury is informed that the Co-Defendant pled guilty to ABHAN." (Order Granting Relief p. 5). This Court also noted that "[t]rial [c]ounsel further noted that the Co-Defendant pleading guilty 'was a complete ambush' and that it was to Applicant's advantage because his testimony would be that Applicant did not intend to kill the victim (despite that he did not consider moving

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for a mistrial or recusal of the trial judge due to the Co-Defendant's deferred sentencing)." (Order Granting Relief p. 5). Such testimony alone does not support a deficiency finding.

4. Even if counsel had moved for a mistrial or moved to recuse the presiding judge, the Co-Defendant - who was in the car with Applicant at the time of the incident - would have still testified at the subsequent trial. The jury would have still been appraised of the information that the Co-Defendant pled guilty to ABILAN when he testified at Applicant's trial and the same information would have reached the jury. Additionally, as this Court referenced, trial counsel testified that he believed the Co-Defendant's testimony would be helpful in showing the jury that Applicant was not attempting to harm or kill the victim. It would appear to be counterintuitive to delay receipt of testimony that be helpful to Applicant's case. Furthermore, advising the jury that the Co-defendant pled guilty is not error as long as the Court informs the jury that the guilty plea is not evidence of Applicant's guilt. *See State v. Moore*, 337 S.C. 104, 107-108 522 S.E.2d 354, 356 (Ct. App. 1999) (relying on *State v. Murphy*, 270 S.C. 642, 244 S.E.2d 36 (1978)). The Trial Court did as such. *See Trial Tr.* 98. Thus, prejudice cannot be shown.

5. The record does not support a deficiency finding that trial counsel was deficient for not requesting a continuance, a mistrial or the trial judge's recusal after the Co-Defendant entered his guilty plea. Trial counsel's testimony contradicts the rationale behind requesting a continuance, and no law or fact has been identified which would warrant a request - or grant - of a mistrial motion or motion to recuse.

6. As to allegations 23 & 24, that trial counsel improperly questioned Applicant on direct examination regarding a strong-arm robbery and shoplifting that occurred when he was a juvenile under Rules 403 and 404(B), SCRE. Respondent submits that counsel's deficiency nor resulting prejudice has been adequately identified. This Court noted that "[t]rial [c]ounsel further

conceded that there was not a specific strategic reason for the introduction of Applicant's prior juvenile record for strong-arm robbery and shoplifting and noted, "[t]hat may have been a misstep by counsel." (Order granting relief p. 7). But that in itself does not show deficiency.

7. However, absent from the Order is the remaining portion of trial counsel's testimony that the purpose of bringing up Applicant's juvenile record was to "take the sting out of cross examination from the State" in efforts to show the jury that he wasn't trying to hide his character with the hopes of appearing credible. (PCR Tr. 79-80). Applicant's defense hinged on his own mental state that he did not intend to harm or kill the victim, preserving his credibility is an appropriate consideration of trial counsel, and he articulated as such. *See Roseboro v. State*, 317 S.C. 292, 294 454 S.E.2d 312, 313 (1995) (counsel must articulate a valid reason, measured under an objective standard of reasonableness, for employing a certain strategy to avoid a finding of ineffectiveness).

8. Further, the inclusion of Applicant's prior juvenile offenses could not have had such a prejudicial effect that there is a reasonable probability that its exclusion would have changed the outcome of trial. In consideration of the evidence and testimony presented, the facts of Applicant's crime itself demonstrate guilt and the Order granting Applicant relief on this allegation does not identify the prejudicial impact in light of the evidence supporting guilt.

9. As to allegation 28, that trial counsel improperly conceded Applicant's guilt to the ABHAN charge during his closing argument, Respondent submits that the Order does not address the allegation. A review of trial counsel's closing argument reflects that trial counsel stated that the State was overcharging Applicant by charging him with attempted murder and that a more accurate charge would have been assault and battery with the intent to kill, now ABHAN, though the State still cannot prove that Applicant intended to harm or kill the victim. (Trial Tr.

358-362). The record does not support the conclusion that trial counsel conceded Applicant's guilt to ABHAN, and the Order does address the full extent of trial counsel's closing argument and relies on an isolated portion that does not accurately portray trial counsel's strategy. As such, Respondent submits that a deficiency finding is not supported by the record.

11. As to allegation 29 & 31, that trial counsel improperly referred to Applicant as a juvenile delinquent, as well as a troubled child of mixed race in his closing argument, Respondent submits that trial counsel's explanation for making these comments in his closing have been overlooked. Trial counsel testified that he made the comments to soften the perception that Applicant "wasn't a little angel," and that he had some problems in his life but that his intent in this circumstance was inconsistent with what happened. (PCR Tr. 84). Trial counsel made clear that he was worried about how the State would frame Applicant considering his juvenile record and his background. The findings presented in the Order do not support a finding that there is a reasonable probability that trial counsel's comments - whether determined to be deficient or objectively reasonable - affected the outcome of trial considering the evidence presented against Applicant.

12. As to allegations 32, 33, & 34, that trial counsel failed to request and argue for self defense jury instructions as well as object to the trial court's "any evidence standard" which would warrant the self defense instruction, Respondent submits that the Order overlooked trial counsel's testimony, and the record itself. Trial counsel testified that he didn't believe there was enough evidence presented to request self-defense instruction. (PCR Tr. 102). At trial, the passenger in Applicant's vehicle, William Hunter, testified that the victim almost made him and Applicant hit the victim's car when he hopped out of traffic and went in front of their vehicle. (Trial Tr. 204-205). He testified that Applicant then caught up to the victim's vehicle and that he

pulled out the gun at pointed it at the victim because he started making rude gestures and making fun of him and Applicant. (Trial Tr. 266-267). He testified that Applicant then pulled his gun out and shot into the car. (Trial Tr. 267). The victim testified that when Applicant pulled up next to him, he rolled his window down two or three inches to see what Applicant was going to say to him, saw the passenger and Applicant point their guns at him, and proceeded to duck when he saw Applicant squeeze the trigger. (Trial Tr. 108-110; 114; 118; 149; 158). Applicant testified at trial that the victim upset him when he swerved in front of his vehicle; he then proceeded to catch up with him, and when he did, he noticed the victim was reaching down. Believing that the victim was reaching for a gun, he then pointed his gun and shot at the wheel to scare the victim off. (Trial Tr. 313-315).

13. The evidence does not support a self-defense instruction: thus counsel cannot be considered deficient when he had no basis to request the self defense charge. Applicant pursued the victim, and both Applicant and his passenger testified that they pointed their guns at the victim because they were mad he cut them off in traffic. Applicant thus fails the first element of establishing self-defense that he must be without fault for bringing on the difficulty. *See State v. Bryant*, 336 S.C. 340, 344-345, 520 S.E.2d 319, 321-322 (1999). As to a self-defense on appearances instruction, the circumstances of each case should be considered by the trial court when fashioning an appropriate charge. *State v. Fuller*, 297 S.C. 440, 443 377 S.E.2d 328, 300 (1989). Here, Applicant's isolated testimony that he believed the victim had a gun was not corroborated, nor did it prove to be true. Further, upon trial counsel's request for a self defense instruction, the trial court stated, "If you look at the circumstances surrounding this entire event, I don't find that he meets the requirements of self-defense." (Trial Tr. 348). Applicant has not presented what trial counsel should have argued to the Court, or that there is a probability that

the trial court would have issued a self-defense instruction on that argument. As such, a deficiency finding is not warranted as trial counsel had no further evidence to support the argument than what he raised to the Court.

14. As to allegation 37, that trial counsel failed to preserve the inferred malice on the use of a deadly weapon jury instruction for appellate review. Respondent submits that the Order has not analyzed the prejudice prong, which would require a review of *Belcher's* applicability to Applicant's case. *See State v. Belcher*, 385 S.C. 597, 685 S.E.2d 802 (2009), *overruled by State v. Burdette*, 427 S.C. 490, 832 S.E.2d 575 (2019) (holding that juries shall not be charged that malice can be inferred from the use of a deadly weapon when there is evidence that would reduce, mitigate, excuse or justify a homicide or ABWIK caused by the use of a deadly weapon). Because trial counsel testified that he did not believe a self defense claim was adequately presented at trial, an objection based on *Belcher* would appear to be inapplicable. Further, Applicant has not shown that absent the instruction, there is a reasonable probability that the outcome of trial would have been different considering the circumstances of the incident and the evidence presented.

14. Respondent respectfully submits that the Order does not address specific findings of law and fact that warrant relief. Respondent requests that this Court reconsider its findings in light of Respondent's motion and deny Applicant post-conviction relief.

Respectfully submitted,

ALAN WILSON
Attorney General

DONALD J. ZELENKA
Deputy Attorney General

MELODY J. BROWN
Senior Assistant Deputy Attorney General

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By: 
KAYLEE C. KEMP

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P.O. Box 11549
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May 5, 2025
Columbia, South Carolina

ATTORNEYS FOR RESPONDENT

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

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

Braxton Hare, SCDC #373172,

) Case No.: 2020-CP-23-0737 (Trial)

) Applicant.

) v.

) **PROOF OF SERVICE**

) State of South Carolina.

) Respondent.

-
1. I am an employee of Respondent in the above-captioned action.
 2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
 3. I have this day served a copy of the **Respondent's Rule 59(e) Motion to Alter or Amend Judgment** in the above captioned matter on the following by depositing same in the United States mail, postage prepaid:

Dayne C. Phillips, Esq.
1614 Taylor Street, Suite D
Columbia, South Carolina 29201

Brice Garrett
Greenville Clerk of Court
305 E. North St.
Greenville, South Carolina 29602

The Honorable B. Alex Hyman
1301 2nd Avenuc. Suite 3A30
Conway, South Carolina. 29526

DATED this 5th day of May 2025.

By: Kaylee C. Kemp
Kaylee C. Kemp
Assistant Attorney General



ALAN WILSON
ATTORNEY GENERAL

May 5, 2025

The Honorable Jay Gresham
Greenville County Clerk of Court
305 E. North Street
Greenville, South Carolina 29601

Re: Braxton Hare, #373172 v. State of South Carolina
Case No. 2020-CP-23-0737 (Trial)

Dear Mr. Gresham:

Enclosed please find, for filing in your office, Respondent's Rule 59(e) Motion to Alter or Amend Judgment, along with a Certificate of Service in reference to the above-mentioned case.

Thank you for your assistance in this matter, and please do not hesitate to contact me should you have any questions or concerns.

Sincerely,

Kaylee C. Kemp
Assistant Attorney General

KCK/abb
Enclosure

cc: The Honorable B. Alex Hyman (via email and US Mail w/copy of enclosure)
Dayne C. Phillips, Esquire (via email and US Mail w/copy of enclosure)
Victim Advocacy Division (with copy of enclosures)

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THE STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Braxton Lavon Hare,)
Applicant,)
)
v.)
)
The State,)
Respondent.)

IN THE COURT OF COMMON PLEAS

THIRTEENTH JUDICIAL CIRCUIT

Case Nos.: 2020-CP-23-0737

**RETURN TO RESPONDENT'S
RULE 59(E) MOTION TO ALTER OR
AMEND JUDGEMENT**

25 MAY 19 04:11:03
JAY GRESHAM 200 GVL 5K

The Applicant, by and through the undersigned Counsel, submits that the Court properly found that Applicant established constitutional violations and deprivations that require post-conviction relief. Specifically, Applicant's Proposed Order Granting PCR addressed the Court's findings of ineffective assistance of counsel. See Attachment A. Therefore, the Court properly held to vacate Applicant's convictions and sentences, and remand to the Greenville County Court of General Sessions for a new trial.

CONCLUSION

Based on the foregoing reasons, the undersigned Counsel respectfully requests this Court deny the Respondent's Motion to Alter or Amend.

IT IS SO MOVED.

Respectfully submitted,

s/ Dayne Phillips

Dayne C. Phillips, Esq.

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May 15, 2025

ATTORNEY FOR THE APPLICANT

ATTACHMENT

A

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THE STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	
COUNTY OF GREENVILLE)	THIRTEENTH JUDICIAL CIRCUIT
)	
Braxton Lavon Hare,)	Case No.: 2020-CP-23-0736, 0737
)	
Applicant,)	
)	
v.)	ORDER GRANTING APPLICANT
)	POST-CONVICTION RELIEF
State of South Carolina,)	
)	
Respondent.)	
<hr/>		

This matter comes before the Court on the above-named Applicant's application for Post-Conviction Relief (PCR).¹ Applicant appeared before the Honorable B. Alex Hyman on May 13, 2024, for a hearing on the above-captioned PCR action.² Dayne Phillips represented the Applicant, and Assistant Attorney General Julianna Battenfield represented the Respondent. Applicant, forensic psychiatrist Donna Maddox, former Appellate Defender Taylor Gilliam, Attorney Ernest Hamilton, and former Assistant Solicitor Lestor Mark Moyer testified at the evidentiary hearing. Applicant admitted the following items into evidence at the hearing: (1) Psychological evaluation addendum; (2) Psychological evaluation; and (3) Flash drive with documents under seal.

At the close of evidence and hearing arguments from counsel, the PCR Court requested that the parties submit proposed orders for his review and consideration. After reviewing the proposed orders from the parties and weighing the evidence presented at

¹ Applicant filed a separate application requesting Post-Conviction Relief (PCR) related to his subsequent conviction from a guilty plea to carjacking before the Honorable Edward W. Miller and received a concurrent twenty-year sentence. (Case No. 2020-CP-23-0736).

² The evidentiary hearing addressed both PCR actions, and this Court denied relief for the application resulting from the guilty plea conviction.

the hearing, this Court grants the PCR application requesting a new trial based on ineffective assistance of counsel. *See Strickland v. Washington*, 466 U.S. 668 (1984); U.S. Const. amends. VI, XIV; S.C. Const. art. I, §§ 3 and 14; S.C. Code § 17-27-20(A)(1), (4), and (6).

PROCEDURAL HISTORY

On May 24, 2016, the Greenville County Grand Jury indicted Applicant for attempted murder, possession of a weapon during the commission of a violent crime, and failure to stop for a blue light. (2015-GS-23-9117–9118).

On July 12–13, 2017, Applicant and his Co-Defendant proceeded to a joint jury trial before the Honorable Edward W. Miller. Trial Counsel, Ernest Hamilton, represented Applicant, and Assistant Solicitors L. Mark Moyer and Brann W. Fowler prosecuted the case on behalf of the State.

After jury selection and opening statements, the Co-Defendant pleaded guilty to assault and battery of a high and aggravated nature (ABHAN). The Trial Court deferred sentencing for the Co-Defendant based on his testimony at Applicant's trial. At the conclusion of trial, the jury found Applicant guilty of the lesser-included offense of ABHAN and failure to stop for a blue light. Judge Miller sentenced Applicant to twenty years imprisonment for the ABHAN conviction and three years for the FSBL conviction.

On July 14, 2017, the State dismissed the charge for the possession of a weapon during the commission of a violent crime due to prosecutorial discretion.

On July 19, 2017, Trial counsel filed a timely notice of appeal. Appellate Defenders Robert M. Pachak and Taylor Davis Gilliam represented Applicant on the direct appeal. Senior Assistant Deputy Attorney General John Benjamin Aplin represented the State.

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Appellate Defender Pachak filed a brief pursuant to *Anders v. California*, 386 U.S. 738 (1967), and Applicant did not file a *pro se* response.

On February 6, 2019, the South Carolina Court of Appeals dismissed the appeal in an unpublished opinion. *State v. Hare*, Op. No. 2019-UP-055 (S.C. Ct. App. filed February 6, 2019) (per curiam). The Court of Appeals issued the Remittitur on February 26, 2019.

On February 5, 2020, Applicant filed an application requesting PCR. Respondent filed its Return on May 18, 2020.

On March 15, 2023, Applicant filed an amended application requesting PCR:

Trial Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. See S.C. Code § 17-27-20(A)(1), (4), and (6). Specifically, Trial Counsel's unreasonably deficient performance fell below an objective standard of reasonableness "under prevailing professional norms" and prejudiced Applicant because there is a reasonable probability that, but for Trial Counsel's errors, the result of the proceeding would have been different. See *Strickland v. Washington*, 466 U.S. 668 (1984) (establishing the standard for ineffective assistance of counsel claims); see also *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted). Therefore, "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result". *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting *Strickland*, 466 U.S. at 692).

Appellate Counsel denied Applicant's right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article I, Sections 3 and 14 of the South Carolina Constitution. Specifically, Appellate Counsel's unreasonably deficient performance prejudiced Applicant because there is a reasonable probability that, but for Appellate Counsel's errors, the result of the proceeding would have been different. See *Strickland v. Washington*, 466 U.S. 668 (1984); *Evitts v.*

Lucey, 469 U.S. 387 (1985); *Simpkins v. State*, 303 S.C. 364, 401 S.E.2d 142 (1991).

Specifically, Applicant alleged the following acts or omissions of ineffective assistance of Trial Counsel:

- (1) Trial Counsel failed to have Applicant evaluated by a qualified medical professional for criminal responsibility and competency to stand trial prior to his trial.
- (2) Trial Counsel failed to move for a Blair hearing prior to trial to determine Applicant's competency to stand trial. *See State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981); *Matthews v. State*, 358 S.C. 456, 596 S.E.2d 49 (2004); S.C. Code 44-23-410 and 430.
- (3) Trial Counsel failed to properly prepare for trial, meet with Applicant, and provide adequate/accurate advice to Applicant prior to trial.
- (4) Trial Counsel failed to share, discuss, and advise Applicant regarding the State's evidence, the elements of the offenses, his constitutional rights, and the sentencing ranges.
- (5) Trial Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. *See Wiggins v. Smith*, 539 U.S. 510 (2003); *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015)
- (6) Trial Counsel failed to properly move for and preserve for appellate review the severance of Applicant's Failure to Stop for Blue Light charge.
- (7) Trial Counsel failed to submit to any *voir dire* questions to elicit bias from the *voir dire* to ensure Applicant received a fair and impartial jury.
- (8) Trial Counsel failed to object to the Trial Court's decision to limit the number of peremptory strikes Trial Counsel had during jury selection.
- (9) Trial Counsel failed to properly move for and preserve for appellate review the suppression of pre-trial identification procedures for Applicant.
- (10) Trial Counsel improperly commented during his opening statement that Applicant was doing nothing good (prejudicial attack on Applicant's character).

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- (11) Trial Counsel improperly commented during his opening statement that Applicant was going to testify despite that he had a right not to testify or present any evidence. See *Roseboro v. State* 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding , "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness"); *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.").
- (12) Trial Counsel improperly conceded Applicant's guilt on the failure to stop for a blue light charge during the opening statement.
- (13) Trial Counsel failed to move for a continuance and recusal when Applicant's Co-Defendant accepted a plea after jury selection and sentencing was deferred until after the co-defendant's testimony in this trial, and when the Trial Court presented the indictment for attempted murder to the jury prior to Co-Defendant's guilty plea to Assault and Battery of a High and Aggravated Nature, and the jury being notified that the Co-Defendant had pled guilty during the break.
- (14) Trial Counsel failed to properly object and preserve for appellate review the Trial Court's admission of the car door when it was in the possession of the victim's family member and not in the custody of the police (implicating possible discovery (*Brady* and Rule 5, SCRCrimP) violation and chain of custody issues).
- (15) Trial Counsel routinely failed to put bench conferences on the record to preserve the arguments and rulings for appellate review (no explanation or proffer on the record).
- (16) Trial Counsel failed to properly challenge the ballistics evidence using supplemental motions of discovery or through adequate cross-examination.
- (17) Trial Counsel improperly stipulated to the car chase video recording when there was no proper foundation, and the charge should have been severed prior to trial.
- (18) Trial Counsel failed to object to the State's questioning of witness Salter about whether he had ever previously seen Applicant with a gun under Rules 403 and 404(B), SCRE.
- (19) Trial Counsel failed to object to Darwin Shaw's testimony regarding the firing of weapons into metal when he was not qualified as an expert and would have exceeded the scope of expertise if qualified in a general area under

Rules 701 and 702 SCRE.

- (20) Trial Counsel failed to properly impeach the alleged victim on cross-examination when he subsequently tried to admit into evidence a video recorded interview through witness Dave Warner, and Trial Court refused his request.
- (21) Trial Counsel failed to move for a mistrial, or at a minimum, a curative instruction, after the State elicited irrelevant and unduly prejudicial testimony from Matt Owens regarding two bandanas being inside the bookbag found in Applicant's vehicle, when the Trial Court had previously ruled that the bandanas were not admissible.
- (22) Trial Counsel failed to object to Matt Owens's testimony regarding the firing of the weapons into metal and distances when he was not qualified as an expert and would have exceeded the scope of expertise if qualified in a general area.
- (23) Trial Counsel improperly questioned Applicant on direct examination regarding propensity character evidence about him shoplifting under Rules 401, 403, and 404(b), SCRE.
- (24) Trial Counsel improperly questioned Applicant on direct examination regarding a strong-arm robbery that occurred when he was a juvenile under Rules 403 and 404(B), SCRE.
- (25) Trial Counsel failed to move for a directed verdict and a new trial after the close of the Defendant's case.
- (26) Trial Counsel failed to object to the Prosecutor's improper burden-shifting example of reasonable doubt and comparing it to a loan during the State's closing argument in violation of Applicant's Due Process right to a fair trial.
- (27) Trial Counsel failed to object and properly preserve for appellate review the Prosecutor's improper comments on inferring malice from use of the deadly weapon.
- (28) Trial Counsel improperly conceded Applicant's guilt to the charge of Assault and Battery of a High and Aggravated Nature during his closing argument.
- (29) Trial Counsel improperly referred to Applicant as a juvenile delinquent in his closing argument (prejudicial propensity character).
- (30) Trial Counsel improperly conceded Applicant's malice to damage the alleged victim's property during closing argument.

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- (31) Trial Counsel improperly presented Applicant as a troubled child of mixed race who was not good in school during his closing argument.
- (32) Trial Counsel failed to request and properly argue for a jury instruction on self-defense (under the "any evidence" standard) based on Applicant's testimony that he was acting on appearances. See *Slate v. Fuller*, 297 S.C. 440, 377 S.E.2d 328 a 989.), *Douglas v. State*, 332 S.C. 67. 504 S.E.2d 307 (1998).
- (33) Trial Counsel failed to object to the incorrect standard used by the Trial Court for the self-defense jury instruction ("any evidence" standard).
- (34) Trial Counsel failed to request and properly argue for a jury instruction on acting on appearances for self-defense.
- (35) Trial Counsel failed to request and properly argue for a jury instruction on being lawfully armed in self-defense.
- (36) Trial Counsel failed to request and properly argue for the Logan circumstantial evidence instruction.
- (37) Trial Counsel failed to object to and preserve for appellate review the unduly prejudicial inferred malice jury instruction on the use of a deadly weapon.
- (38) Trial Counsel failed to object to and preserve for appellate review the accomplice liability jury instruction.
- (39) Trial Counsel failed to request a jury instruction for Assault and Battery First Degree, as a lesser-included offense of Attempted Murder when the Trial Court agreed to charge ABHAN. See *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness"); *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.").
- (40) Trial Counsel failed to present all reasonable and necessary evidence to the Trial Court during the sentencing phase in mitigation of Applicant's potential sentence.
- (41) Trial Counsel failed to provide the Trial Court with evidence regarding Applicant's intellectual deficits, documented closed head injury, and associated cognitive deficits as noted in Dr. Donna Maddox's report.

Furthermore, Applicant also alleged the following acts or omissions of ineffective assistance of Appellate Counsel:

- (1) If Trial Counsel did preserve the issue of whether the Trial Court erred in refusing to submit the jury instruction for self-defense to the jury, Appellate Counsel failed to file merits brief in the South Carolina Court of Appeals raising this issue on the "any evidence" standard and failed to file a Petition for Rehearing in the Court of Appeals to preserve Applicant's ability to file a Petition for Writ of Certiorari to the Court of Appeals in the South Carolina Supreme Court.

EVIDENTIARY HEARING

On May 13, 2024, Applicant appeared before the Court for an evidentiary hearing. Dayne Phillips represented Applicant, and Julianna Battenfield represented the State. The following witnesses testified at the evidentiary hearing: Applicant, Forensic Psychologist Donna Maddox, former Appellate Defender Taylor Gilliam, Attorney Ernest Hamilton, and former Assistant Solicitor Lestor Mark Moyer testified at the evidentiary hearing. Applicant admitted the following items into evidence at the hearing: (1) Psychological evaluation addendum; (2) Psychological evaluation; and (3) Flash drive with documents under seal.

Dr. Donna Maddox

At the hearing, Applicant called Dr. Donna Maddox as his first witness. Based on the motion from PCR Counsel, this Court qualified Dr. Donna Maddox as an expert in forensic psychiatry without objection. Dr. Maddox testified that she reviewed the Applicant's relevant medical, school, and legal records in preparation for her evaluations. Dr. Maddox also testified that she conducted her first evaluation of Applicant on July 21, 2020, and the second evaluation on November 4, 2022. Dr. Maddox further testified that she issued a report after the initial evaluation and an addendum to that report after the

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subsequent evaluation.

Based on PCR Counsel's motion, this Court admitted Dr. Maddox's Report and Addendum into evidence without objection as Applicant's Exhibit numbers 1 and 2. This Court also admitted a flash drive containing Applicant's mental health and medical records into evidence (under seal) without objection as Applicant's Exhibit number 3.

Dr. Maddox testified that Applicant had cognitive deficits that should have been presented as mitigation evidence during sentencing. Dr. Maddox testified that seventeen-year-olds generally have a brain that is still developing, particularly the prefrontal lobe, which controls judgment. Dr. Maddox also testified that Applicant suffered a significant closed-head injury which should have been offered as mitigating evidence. Dr. Maddox further testified that Applicant is intellectually disabled and had been diagnosed with borderline intellectual functioning (manifesting in a lower IQ than his peers). In sum, Dr. Maddox testified that it is unfair to compare Applicant to other seventeen-year-olds due to his medical and mental health history.

Dr. Maddox suggested that Applicant's cognitive deficits could have resulted in him appearing oppositional before Judge Miller during sentencing. Dr. Maddox testified that she believed Judge Miller's assessment of Applicant not knowing this mitigation evidence affected the sentence (noting that Applicant received the maximum sentence). Dr. Maddox noted that the Trial Court asked how the gun was acquired, and Applicant replied that he could not remember. Dr. Maddox explained that this response could appear volitional and oppositional to the Court; however, this was likely a result of his cognitive deficits. Dr. Maddox further noted that when persons with cognitive deficits are subjected to stress, it results in unclear thinking.

Notably, Dr. Maddox testified that, had she been retained for Applicant's case, she would have recommended that the Trial Court conduct a *Blair* hearing to introduce evidence of Applicant's cognitive deficits. Dr. Maddox also testified that she would have diagnosed the Applicant with unspecified neurocognitive disorder, outlined his other diagnoses, and recommended options for the Trial Court to accommodate Applicant due to his intellectual deficits. Dr. Maddox further provided what she would have presented all this information to the Trial Court as mitigation evidence, included that she would have also diagnosed Applicant "with a bit of trauma disorder", and recommended that Applicant receive mental health treatment.

On cross-examination, Dr. Maddox acknowledged he previous testimony that Applicant was competent to stand trial and had the capacity for criminal responsibility. Dr. Maddox reiterated that Applicants "waxing and waning" in answering the Trial Court's questions may have caused the Trial Court to misinterpret this as volitional behavior.

BRAXTON HARE

Applicant testified that his attorney visited him five or six times while he was incarcerated. Applicant also testified that during these visits, Trial Counsel discussed the motion for discovery, the evidence discovered in the case, defense's theory of the case, and the plea offers made by the Solicitor's office. Applicant further testified that Trial Counsel did not discuss any additional motions or potential defenses with him prior to trial.

Specifically, Applicant stated that they did not discuss arguing a motion to sever the case between the co-defendants or between the indicted offenses. Applicant also stated that the decision to testify at trial was never discussed prior to trial and occurred

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while on a break during the trial. Applicant further noted that Trial Counsel never discussed the chance of being found guilty of a lesser included offense.

Additionally, Applicant testified that Trial Counsel never discussed presenting motions for continuance, mistrial, or recusal of the Judge after his Co-Defendant pled guilty. Applicant also stated that he never had any discussion with Trial Counsel about conceding guilt during opening statement and closing argument or presenting his cognitive deficits as mitigating factors. Applicant further explained that these decisions were made solely by Trial Counsel without his approval. Notably, Applicant testified that Trial Counsel did not discuss obtaining his school or medical records or seeking a mental health evaluation.

On cross-examination, the State questioned Applicant about rejecting the plea offers, his trial testimony, and the charge for failure to stop for a blue light. Applicant then testified on re-direct examination that Trial Counsel never discussed moving for severance of the failure to stop for a blue light charge.

ERNEST HAMILTON

Trial Counsel testified that he was retained for the indicted offenses of attempted murder and failure to stop for blue lights. Trial Counsel admitted that he did not consider moving to sever the attempted murder charge from the failure to stop for a blue light charge. Trial Counsel conceded that Applicant's Co-Defendant pled guilty after jury selection, the Trial Court held sentencing in abeyance based on the Co-Defendant's testimony, and the jury is informed that the Co-Defendant pled guilty to ABHAN. Trial Counsel further noted that the Co-Defendant pleading guilty "was a complete ambush" and that it was to Applicant's advantage because his testimony would be that Applicant

did not intend to kill the victim (despite that he did not consider moving for a mistrial or recusal of the trial judge due to the Co-Defendant's deferred sentencing).

Trial Counsel acknowledged that if he had Dr. Maddox, he could have presented that mitigation evidence to the Trial Court and that it would have been advantageous for Applicant during sentencing. Trial Counsel also admitted that he never inquired into the background of Applicant; specifically, his intellectual deficits nor his prior criminal record (besides what was provided in discovery from the solicitor's office). Trial Counsel further admitted that he would have hired an expert to present mitigation evidence "knowing what I know now . . . but there was nothing to indicate that I needed to present that [evidence]" (despite conceding that he knew Applicant went to DJJ).

Trial Counsel testified that he prepared the trial, alongside Applicant, through discussions of the evidence and the state's ability to prove the differing legal issues. Trial Counsel stated he could not remember whether he apprised Applicant of whether he could be found guilty of a lesser included offense. Trial Counsel also admitted that he did not have a reason for his failure to submit proposed *voir dire* questions. Trial Counsel testified that he did not have a strategic reason for not joining the motion of the co-defendant's lawyer for the additional peremptory strikes.

Trial Counsel testified that in his opening statement he committed his client to testify—without Applicant's consent—and any invocation of his fifth amendment right to remain silent would be detrimental to his case.

Trial Counsel testified that he did not find the identification of his client, Applicant, to be an issue. Trial Counsel acknowledged that he stated that Applicant was essentially up to no good the morning of the incident because they were skipping school. Trial

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Counsel also acknowledged that he conceded Applicant's guilt for the FSBL charge because "[Applicant] was not trying to hide anything."

When asked about the victim's passenger side door—and the failure of the state to maintain a proper chain of custody—Trial Counsel testified that he had no justification for failing to object to its admissibility. Trial Counsel also testified that he had no justification for his failure to put the bench conferences between Counsel and the Trial Court on the record for error preservation on appellate review. Trial Counsel further stated that he stipulated the admission of the introduction of the car chase video because he could not formulate an objection against its admission into evidence.

Trial Counsel admitted that he did not have a strategic reason for failing to object to Jaquan Salter's testimony that he had previously seen Applicant with a gun. When questioned about his failure to object to improper opinion testimony regarding firing ballistic rounds into a sheet of metal, Trial Counsel stated that he had no strategic reason for his failure. Trial Counsel testified that he did not have a strategic reason for his failure to request for either a mistrial or curative instruction regarding the improper testimony referencing Applicant's bandana based on the Trial Court's previous ruling prohibiting references to gang involvement. Trial Counsel further conceded that there was not a specific strategic reason for the introduction of Applicant's prior juvenile record for strong-arm robbery and shoplifting and noted, "[t]hat may have been a misstep by counsel."

Trial Counsel testified that it was misleading and must have gone over his head when he failed to object when the Prosecutor argued reasonable doubt being similar to a loan offer from a bank during closing argument and argued that the jury could find Applicant guilty "after hesitating to act". Trial Counsel further acknowledged that he had

no strategic reason for failing to object to the inferred malice charged based on use of a deadly weapon.

Trial Counsel acknowledged that he referenced Applicant as a troubled child and noted that he was of mix-race and not doing well in school during his closing argument. Trial Counsel admitted that his trial strategy was self-defense, and the Trial Court denied Counsel's request to charge the jury on self-defense. Trial Counsel also conceded that he had no reason for failing to request the *Logan* circumstantial evidence jury instruction.

Trial Counsel acknowledged that he could have used the expert testimony to assist in moving to suppress the Applicant's statements to police during a *Jackson v. Denno* hearing.

On cross-examination, Trial Counsel explained that there was evidence mitigating the road rage and that self-defense evidence was Applicant's perception of what he observed the victim to be doing. Trial Counsel also clarified that, during his opening statement, he said nothing good happened because they should have been in school. Trial Counsel testified that he had been practicing criminal law for forty years and had been a career prosecutor for twenty years. Trial Counsel further noted that he did not object to the testimony about the bandana.

MARK MOYER

Former solicitor Mark Moyer testified that he had the power to resolve the case, and that he turned over all evidence in a timely manner. Mr. Moyer also testified that there was a hearing where a judge ruled that the pre-trial identification was done constitutionally. He testified that the identification was done through six-person photo-lineup where the victim was able to identify the Applicant.

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Mr. Moyer testified that he extended plea offers for ABHAN to both co-defendants before trial, and that Applicant rejected the plea offer. Mr. Moyer stated that he did not move to qualify Darwin Shaw or Investigator Matt Owens as an expert because he believed that the testimony about the trajectory of the bullet from the defects in the car door was not opinion. Mr. Moyer also testified that he never received the Applicant's records from the DJJ that reflect his sub-80 IQ, intellectual deficit, or closed head injury. Mr. Moyer further stated that he did not remember Trial Counsel making an objection to the identification, and that he sent his plea offers in writing. Notably, Mr. Moyer acknowledged that the co-defendant pleaded guilty after the trial began.

TAYLOR GILLIAM

Taylor Gilliam testified virtually that he used to work at the Appellate Division of the South Carolina Commission on Indigent Defense and was assigned Applicant's case after Rob Pachak left that office. He testified that Mr. Pachak filed a short, one issue *Anders* brief about the specific intent to kill because the other potential issues were not preserved for review. Mr. Gilliam testified that had these meritorious issues been preserved, they could have been raised, and that, in his opinion, some of these issues were the kind that could have been reversed on appeal.

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LAW

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI. To establish ineffective assistance of counsel, a Petitioner must satisfy the two-prong test set forth in *Strickland v. Washington*, 466 U.S. 668 (1984) (establishing the standard for ineffective assistance of counsel claims). “First, an [Petitioner] must show that counsel’s performance was deficient. Under this prong, [t]he proper measure of attorney performance remains simply reasonableness under prevailing professional norms.” *Cherry v. State*, 300 S.C. 115, 386 S.E.2d 624 (1989) (internal citations omitted). “The second prong of the *Strickland* test requires a showing that the deficient performance prejudiced the defendant to the extent that there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” *Id.* at 118, 386 S.E.2d at 625 (internal citations omitted). Therefore, a Petitioner must prove that “counsel’s conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result” when seeking relief based on ineffective assistance of counsel. *Butler v. State*, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (quoting *Strickland*, 466 U.S. at 692).

In a PCR action, “[t]he burden of proof is on the Petitioner to prove his allegations by a preponderance of the evidence.” *Frasier v. State*, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Strategic “[d]ecisions made [by counsel] in ignorance of relevant, available information cannot be characterized as strategic.” *Weik v. State*, 409 S.C. 214, 236, 761 S.E.2d 757, 768 (2014). “Ordinarily, the existence of ‘overwhelming evidence’ does not automatically preclude a finding of prejudice.” *Smalls v. State*, 422 S.C. 174, 189, 810 S.E.2d 836, 844 (2018). Notably, “for the

evidence to be ‘overwhelming’ such that it categorically precludes a finding of prejudice . . . the evidence must include something conclusive, such as a confession, DNA evidence demonstrating guilt, or a combination of physical and corroborating evidence so strong that the *Strickland* standard of ‘a reasonable probability . . . the factfinder would have had a reasonable doubt’ cannot possibly be met.” *Id.* 422 S.C. at 191, 810 S.E.2d at 845.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court heard the testimony presented at the evidentiary hearing, observed the witnesses, assessed their credibility, and weighed the testimony accordingly based on the evidence presented at the hearing. This Court also reviewed the Clerk of Court records, trial transcript, applications for post-conviction relief, and legal arguments made by the lawyers. Therefore, the relevant findings of fact and conclusions of law are set forth below as required by Section 17-27-80 of the South Carolina Code of Laws.

This Court finds that Trial Counsel’s performance fell below an objective standard of reasonableness under prevailing professional norms. *See Strickland*, 466 U.S. at 687-88. This Court also finds that Trial Counsel’s deficient performance prejudiced Petitioner because it “so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result.” *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (quoting *Strickland*, 466 U.S. at 692). Therefore, this Court has concluded that Trial Counsel provided ineffective assistance of counsel because “there is a reasonable probability that, but for [trial] counsel’s unprofessional errors, the result of the proceeding would have been different.” *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625 (internal citations omitted); *See* U.S. Const. amends. VI, XIV; S.C. Const. art. I, §§ 3 and 14; S.C. Code § 17-27-20(A)(1), (4), and (6).

ALLEGATIONS INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL GRANTING POST-CONVICTION RELIEF

Allegation Thirteen: Trial Counsel failed to move for a continuance and recusal when Applicant's Co-Defendant accepted a plea after jury selection and sentencing was deferred until after the co-defendant's testimony in this trial, and when the Trial Court presented the indictment for attempted murder to the jury prior to Co-Defendant's guilty plea to Assault and Battery of a High and Aggravated Nature, and the jury being notified that the Co-Defendant had pled guilty during the break.

Canon 3(B)(1) of the Code of Judicial Conduct, Rule 501, SCACR, provides, "A judge shall hear and decide matters assigned to the judge except those in which disqualification is required."). It is well settled judges should recuse themselves where questions of impartiality or impropriety are raised. The Code of Judicial Conduct requires a judge to "disqualify himself in a proceeding in which his impartiality might reasonably be questioned." Canon 3(C)(1) of the Code of Judicial Conduct, Rule 501, SCACR. See *State v. Jackson*, 353 S.C. 625, 627, 578 S.E.2d 744, 745 (Ct.App.2003) ("It is not enough for a party seeking disqualification to simply allege bias or prejudice. The party must show some evidence of that bias or prejudice."); *State v. Atterberry*, 134 S.C. 392, 133 S.E. 101 (1926) (where trial judge expressed opinion that defendant was guilty when sentencing defendant, must recuse at retrial upon objection).

However, it is not enough for a party seeking disqualification to simply allege bias. The party must show some evidence of bias. *Christensen v. Mikell*, 324 S.C. 70, 476 S.E.2d 692 (1996); *Mallett v. Mallett*, 323 S.C. 141, 473 S.E.2d 804 (Ct. App. 1996). See also *Floyd v. State*, 303 S.C. 298, 299, 400 S.E.2d 145, 146 (1991) ("[I]n all post-

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conviction relief hearings ..., a judge shall, upon motion, recuse himself if he was the judge who presided at the guilty plea, criminal trial, or probation revocation proceeding for which relief is being sought.” (emphasis added)).

“Generally, a motion for continuance should be made at the time the underlying reason for such becomes known.” *State v. Nelson*, 431 S.C. 287, 304, 847 S.E.2d 480, 489 (Ct. App. 2020). See Rule 7(c), SCRCrimP (providing in relevant part: “If other good sufficient cause for continuance is shown, a continuance may be granted by the chief administrative judge for General Sessions Court.”).

In determining whether to grant a mistrial, our Supreme Court has noted that “[t]he less than lucid test is . . . whether the mistrial was dictated by manifest necessity or the ends of public justice, the latter being defined as the public’s interest in a fair trial designated to end in just judgment.” *State v. Prince*, 279 S.C. 30, 33, 301 S.E.2d 471, 472 (1983). Specifically, the trial court is to consider the following factors when ruling on a motion for mistrial: (1) the character of the testimony; (2) the circumstances under which it was offered; (3) the nature of the case; (4) other testimony in the case; and (5) “perhaps other matters.” *State v. Craig*, 267 S.C. 262, 269, 227 S.E.2d 306, 310 (1976). Therefore, although the decision to grant or deny a mistrial is within the trial court’s discretion, such discretion is not unfettered. See *State v. Edwards*, 373 S.C. 230, 236, 644 S.E.2d 66, 69 (Ct. App. 2007).

In this case, Applicant alleged Trial Counsel provided ineffective assistance by failing to move for a continuance, mistrial, or recusal of the Trial Court when the Co-Defendant pleaded guilty after jury selection. The Trial Court presented attempted murder indictments for both defendants, deferred sentencing until after the Co-

Defendant's testimony, and when the Co-Defendant's attorney gave an opening statement that the Co-Defendant was not guilty, and the jury subsequently being notified that the Co-Defendant had pleaded guilty to ABHAN.

At the hearing, Trial Counsel maintained that the Co-Defendant pleading guilty to ABHAN was an advantage because his strategy was that the Applicant did not have the intent to specific to kill the victim.

This Court finds that Trial Counsel's performance was deficient for failing to either move for a continuance, mistrial, quash the jury panel, or recusal of the Trial Court because the Co-Defendant pleading guilty during a joint trial, and the Trial Judge deferring sentencing based on Co-Defendant's cooperation to testify as a Prosecution witness. Trial Counsel's deficient performance prejudiced Applicant because this unusual and unfairly prejudicial circumstance violated Applicant's right to a fair trial, including his right to a trial by an impartial jury and impartial tribunal.

Trial Counsel's purported strategy was objectively unreasonable because he failed to make any motions in response to the Co-Defendant's decision to plead guilty after the jury heard opening statements. *See Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness"); *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."). Therefore, this Court finds that Trial Counsel provided ineffective assistance of counsel. *See Strickland*, 466 U.S. 668.

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Allegation Twenty-Three: Trial Counsel improperly questioned Applicant on direct examination regarding propensity character evidence about him shoplifting under Rules 401, 403, and 404(b), SCRE.

Allegation Twenty-Four: Trial Counsel improperly questioned Applicant on direct examination regarding a strong-arm robbery that occurred when he was a juvenile under Rules 403 and 404(B), SCRE.

Evidence is relevant if it tends to make more or less probable a fact in issue. Rule 401, SCRE; *State v. Huggins*, 336 S.C. 200, 519 S.E.2d 574 (1999). Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Rule 403, SCRE. Generally, evidence of a person's character is not admissible to prove the person acted "in conformity therewith on a particular occasion." Rule 404(a), SCRE.

Under Rule 404(b), SCRE, evidence of a person's "other crimes, wrongs, or acts" are inadmissible to prove a person's general character "in order to show action in conformity therewith." However, evidence of other bad acts are admissible when that evidence tends to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others; or (5) the identity of the person charged with the commission of the crime on trial. See *State v. Lyle*, 125 S.C. 406, 416, 118 S.E. 803, 807 (1923).

The proponent of prior bad act evidence must demonstrate it has a legitimate purpose, "i.e., the evidence does something more than prove a person has propensity to commit crimes." *Johnson v. State*, 433 S.C. 550, 555, 860 S.E.2d 696, 699 (Ct. App.

2021). This Court recently explained the State's initial burden in seeking to admit prior bad act evidence against a criminal defendant *Johnson v. State*:

In a criminal case, the State must convince the trial court that the prior bad act evidence is logically relevant to a material fact at issue in the case: "If it is logically pertinent in that it reasonably tends to prove a material fact in issue, it is not to be rejected merely because it incidentally proves the defendant guilty of another crime."

Id. (quoting *State v. Lyle*, 125 S.C. 406, 417, 118 S.E. 803, 807 (1923)). This Court also held that trial courts are to apply the logical relevancy test with "rigid scrutiny." *Id.* at 556, 860 S.E.2d at 699.

Specifically, if the trial court concludes the prior bad act evidence serves a purpose other than to show the defendant's proclivity for criminal conduct and the purpose is one listed under Rule 404(b), then such evidence is admissible unless its "probative value is substantially outweighed by the danger of unfair prejudice." Rule 403, SCRE; see *Johnson*, 433 S.C. at 556, 860 S.E.2d at 699. The danger of unfair prejudice is also enhanced when the prior bad act is "strikingly similar" to the one for which the appellant is being tried. *State v. Gore*, 283 S.C. 118, 121, 322 S.E.2d 12, 13 (1984).

In this case, Applicant alleged Trial Counsel improperly questioned Applicant on direct examination regarding propensity character evidence about him shoplifting under Rules 401, 403, and 404(b), SCRE. Applicant also alleged Trial Counsel improperly questioned Applicant on direct examination regarding a strong-arm robbery that occurred when he was a juvenile under Rules 403 and 404(B), SCRE.

At the evidentiary hearing, Trial Counsel claimed he questioned Applicant on direct examination about his conviction for shoplifting and juvenile adjudication for strong-arm robbery because he was "trying to take the sting out of cross-examination". However,

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Trial Counsel conceded “[t]hat may have been a misstep by counsel.” (PCR Tr. 79–80).

This Court finds that Trial Counsel’s performance was deficient for eliciting unfavorable propensity character evidence against Applicant. Trial Counsel’s purported strategy was objectively unreasonable given the nature of the character evidence. See *Roseboro*, 317 S.C. at 294, 454 S.E.2d at 313. Trial Counsel’s deficient performance prejudiced Applicant because Counsel presented this prior bad act evidence that served no purpose other than to show the Applicant’s proclivity for criminal conduct and its “probative value is substantially outweighed by the danger of unfair prejudice.” Rules 403 and 404(b), SCRE; see *Johnson*, 433 S.C. at 556, 860 S.E.2d at 699. Therefore, this Court finds that Trial Counsel provided ineffective assistance of counsel. See *Strickland*, 466 U.S. 668.

Allegation Twenty-Eight: Trial Counsel improperly conceded Applicant’s guilt to the charge of Assault and Battery of a High and Aggravated Nature during his closing argument.

Attorneys have a duty to consult with their clients regarding “important decisions,” including questions of overarching “defense strategy.” *Florida v. Nixon*, 543 U.S. 175, 187, 125 S.Ct. 551 (2004) (citation omitted). This does not require counsel to obtain the defendant’s consent on every strategic decision, but certain decisions regarding the waiver of basic trial rights cannot be made for the defendant by surrogate. *Id.* A defendant has the “ultimate authority” to determine whether to “plead guilty, waive a jury, testify on his own behalf, or take an appeal.” *Id.* (emphasis added). A defendant’s waiver of the right to a jury trial must be knowing, voluntary, and intelligent. *Patton v. United States*, 281 U.S. 276, 312–13, 50 S.Ct. 253 (1930), overruled on other grounds by *Williams v.*

Florida, 399 U.S. 78, 92, 90 S.Ct. 1893 (1970). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record and may be accomplished by a colloquy between the court and defendant, between the court and defendant's counsel, or both. *Roddy v. State*, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

In this case, Applicant alleged Trial Counsel improperly conceded Applicant's guilt to the charge of ABHAN during his closing argument.

At the PCR hearing, Trial Counsel maintained his strategy was to argue that Applicant did not have the specific intent to kill the victim but admitted he never consulted with Applicant before conceding his guilt of a lesser-included offense at trial.

This Court finds that Trial Counsel's performance was deficient for failing to consult with Applicant prior to conceding his guilt to a lesser-included offense. Trial Counsel's purported strategy was objectively unreasonable because he had a duty to consult with Applicant regarding this important decision. Trial Counsel's deficient performance prejudiced Applicant because Applicant had a right to discuss this important decision with his lawyer before his lawyer conceded his guilt at trial (particularly where Applicant proceeded to joint trial with his Co-Defendant, and the jury learned that his Co-Defendant subsequently pleaded guilty to ABHAN). Therefore, this Court finds that Trial Counsel provided ineffective assistance of counsel. *See Strickland*, 466 U.S. 668.

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Allegation Twenty-Nine: Trial Counsel improperly referred to Applicant as a juvenile delinquent in his closing argument (prejudicial propensity character).

Allegation Thirty-One: Trial Counsel improperly presented Applicant as a troubled child of mixed race who was not good in school during his closing argument.

Evidence is relevant if it tends to make more or less probable a fact in issue. Rule 401, SCORE; *Huggins*, 336 S.C. 200, 519 S.E.2d 574. Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury. Rule 403, SCORE. Generally, evidence of a person's character is not admissible to prove the person acted "in conformity therewith on a particular occasion." Rule 404(a), SCORE.

Under Rule 404(b), SCORE, evidence of a person's "other crimes, wrongs, or acts" are inadmissible to prove a person's general character "in order to show action in conformity therewith." However, evidence of other bad acts are admissible when that evidence tends to establish (1) motive; (2) intent; (3) the absence of mistake or accident; (4) a common scheme or plan embracing the commission of two or more crimes so related to each other that proof of one tends to establish the others; or (5) the identity of the person charged with the commission of the crime on trial. See *Lyle*, 125 S.C. at 416, 118 S.E. at 807.

In *Roseboro v. State*, 317 S.C. at 294, 454 S.E.2d at 313, our Supreme Court found "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness"). 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.”).

In this case, Applicant alleged Trial Counsel improperly referred to Applicant as a juvenile delinquent in his closing argument (prejudicial propensity character). Applicant also alleged Trial Counsel improperly presented Applicant as a troubled child of mixed race who was not good in school during his closing argument.

This Court finds that Trial Counsel's performance was deficient for presenting irrelevant and unfairly prejudicial character evidence when referring to Applicant in his closing argument. See Rules 401, 403, and 404(b), SCRE. Trial Counsel's purported strategy was objectively unreasonable because Applicant's race and not doing well in school was completely irrelevant to the crime charged, and referring to Applicant as a juvenile delinquent was unfairly prejudicial. Trial Counsel's deficient performance prejudiced Applicant because Counsel's argument was not a valid defense (did not excuse or mitigate any evidence against Applicant) and only served to highlight Applicant's bad character to the jury. Therefore, this Court finds that Trial Counsel provided ineffective assistance of counsel. See *Strickland*, 466 U.S. 668.

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Allegation Thirty-Two: Trial Counsel failed to request and properly argue for a jury instruction on self-defense (under the "any evidence" standard) based on Applicant's testimony that he was acting on appearances. See *Slate v. Fuller*, 297 S.C. 440, 377 S.E.2d 328 a 989.), *Douglas v. State*, 332 S.C. 67. 504 S.E.2d 307 (1998).

Allegation Thirty-Three: Trial Counsel failed to object to the incorrect standard used by the Trial Court for the self-defense jury instruction ("any evidence" standard).

Allegation Thirty-Four: Trial Counsel failed to request and properly argue for a jury instruction on acting on appearances for self-defense.

“[T]he trial court is required to charge only the current and correct law of South Carolina.” *State v. Brandt*, 393 S.C. 526, 549, 713 S.E.2d 591, 603 (2011) (alteration in original) (quoting *Sheppard v. State*, 357 S.C. 646, 665, 594 S.E.2d 462, 472 (2004)). “The law to be charged must be determined from the evidence presented at trial.” *Id.* at 549, 713 S.E.2d at 603 (quoting *State v. Knoten*, 347 S.C. 296, 302, 555 S.E.2d 391, 394 (2001)).

Trial counsel is ineffective for failing to object to improper self-defense jury charge. See *Dandy v. State*, 301 S.C. 303, 391 S.E.2d 581 (1990); *State v. Nichols*, 325 S.C. 111, 118, 481 S.E.2d 118, 122 (1997) (explaining that a defendant “is entitled to a new trial based on the court's refusal to give a complete self-defense charge”); *State v. Fuller*, 297 S.C. 440, 443, 377 S.E.2d 328, 330 (1989) (“In charging self-defense, we instruct the trial court to consider the facts and circumstances of the case at bar in order to fashion an appropriate charge.”).

In *State v. Davis*, 282 S.C. 45, 46, 317 S.E.2d 452, 453 (1984), our Supreme Court addressed the four elements of self-defense: “First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance. If, however, the defendant was on his own premises he had no duty to retreat before acting in self-defense”. See *State v. Fuller*, 297 S.C. 440, 443, 377 S.E.2d 328, 330 (1989); *State v. Rash*, 182 S.C. 42, 50, 188 S.E. 435, 438 (1936) (explaining the trial court instructed the jury on the duty to retreat by including the additional explanation that “one may act on appearances ... [t]he law does not hold him to a refined assessment of the danger, provided ... he acted as the person of ordinary coolness and courage would have acted or should have acted in meeting the appearance of danger” and “if it is apparent, or reasonably apparent his assailant is taking steps to get the drop on him, he must take steps first to prevent such assailant from getting the drop on him”); see also *State v. Hendrix*, 270 S.C. 653, 659-61, 244 S.E.2d 503, 506-07 (1978) (holding self-defense was established as a matter of law and explaining the third element of self-defense includes consideration of the principle that “[o]nce the appellant's right to fire in self-defense arose,

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he was not required to wait until his adversary was on equal terms or until he fired or aimed his weapon”).

In *State v. Starnes*, 340 S.C. 312, 319, 531 S.E.2d 907, 911 (2000), our Supreme Court held that “the trial [court] erred by refusing to provide the jury with more specific instructions regarding self-defense” by failing to include the *Hendrix* and *Rash* language in its charge because Starnes testified the victim pointed a gun at him and he believed another to be armed. Compare with *State v. Harris*, 382 S.C. 107, 114-15, 674 S.E.2d 532, 536 (Ct. App. 2009) (holding the trial court’s instruction on self-defense adequately covered the law because an instruction that the defendant had the “right to act on appearances” was substantially similar to the “gets the drop” language from *Rash*), and *State v. Marin*, 415 S.C. 475, 483, 783 S.E.2d 808, 813 (2016) (holding the trial court’s instruction that “a person may use such force as is reasonably necessary even to the point of taking human life where such is reasonable” captured the essence of the *Hendrix* charge).

In this case, Applicant alleged Trial Counsel failed to request and properly argue for a jury instruction on self-defense based on Applicant’s testimony that he was acting on appearances. Applicant also alleged Trial Counsel failed to object to the incorrect standard used by the Trial Court for the self-defense jury instruction (“any evidence” standard).

This Court finds that Trial Counsel’s performance was deficient for failing to properly argue for the Trial Court to instruct the jury on self-defense based on Applicant’s testimony. Trial Counsel’s deficient performance prejudiced Applicant because self-defense was a central theme of the defense. Therefore, this Court finds that Trial Counsel

provided ineffective assistance of counsel. *See Strickland*, 466 U.S. 668.

Allegation Thirty-Seven: Trial Counsel failed to object to and preserve for appellate review the unduly prejudicial inferred malice jury instruction on the use of a deadly weapon.

In *State v. Belcher*, 385 S.C. 597, 600, 685 S.E.2d 802, 803-04 (2009), our Supreme Court held, “A jury charge instructing that malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina where evidence is presented that would reduce, mitigate, excuse, or justify the homicide.”

In this case, Applicant alleged Trial Counsel provided ineffective assistance by failing to object to and preserve for appellate review the unduly prejudicial inferred malice jury instruction on the use of a deadly weapon.

This Court finds that Trial Counsel’s performance was deficient because the implied malice jury instruction was not appropriate based on the charge of attempted murder and based on Applicant’s testimony. Trial Counsel’s deficient performance prejudiced Applicant because the jury instructed served no legitimate purpose other than to confuse and mislead the jury on a misstatement of law. Therefore, this Court finds that Trial Counsel provided ineffective assistance of counsel. *See Strickland*, 466 U.S. 668.

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ALLEGATIONS INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL DENYING POST-CONVICTION RELIEF

After consideration of the testimony given at the hearing, reviewing and considering the record, the arguments presented by counsel, and the controlling case law, this Court finds that Applicant failed to carry his burden of proof to show either deficiency in representation or that any purported deficiency supported a reasonable probability of a different result. This Court finds that Applicant has failed to establish ineffective assistance of trial counsel on the remaining allegations because they are without merit. Therefore, this Court **DENIES** relief for the following allegations of ineffective assistance of Trial Counsel.

- (1) Trial Counsel failed to have Applicant evaluated by a qualified medical professional for criminal responsibility and competency to stand trial prior to his trial.
- (2) Trial Counsel failed to move for a Blair hearing prior to trial to determine Applicant's competency to stand trial. *See State v. Blair*, 275 S.C. 529, 273 S.E.2d 536 (1981); *Matthews v. State*, 358 S.C. 456, 596 S.E.2d 49 (2004); S.C. Code 44-23-410 and 430.
- (3) Trial Counsel failed to properly prepare for trial, meet with Applicant, and provide adequate/accurate advice to Applicant prior to trial.
- (4) Trial Counsel failed to share, discuss, and advise Applicant regarding the State's evidence, the elements of the offenses, his constitutional rights, and the sentencing ranges.
- (5) Trial Counsel failed to conduct a reasonable investigation and to develop all available, relevant, and admissible or mitigating evidence in preparation of Applicant's defense. *See Wiggins v. Smith*, 539 U.S. 510 (2003); *Lounds v. State*, 380 S.C. 454, 670 S.E.2d 646 (2008); *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008); *Von Dohlen v. State*, 360 S.C. 598, 607, 602 S.E.2d 738, 743 (2004); *Reeves v. State*, 415 S.C. 366, 782 S.E.2d 747 (Ct. App. 2015)
- (6) Trial Counsel failed to properly move for and preserve for appellate review the severance of Applicant's Failure to Stop for Blue Light charge.
- (7) Trial Counsel failed to submit to any *voir dire* questions to elicit bias from

the *voir dire* to ensure Applicant received a fair and impartial jury.

- (8) Trial Counsel failed to object to the Trial Court's decision to limit the number of peremptory strikes Trial Counsel had during jury selection.
- (9) Trial Counsel failed to properly move for and preserve for appellate review the suppression of pre-trial identification procedures for Applicant.
- (10) Trial Counsel improperly commented during his opening statement that Applicant was doing nothing good (prejudicial attack on Applicant's character).
- (11) Trial Counsel improperly commented during his opening statement that Applicant was going to testify despite that he had a right not to testify or present any evidence. See *Roseboro v. State* 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding , "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness"); *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.").
- (12) Trial Counsel improperly conceded Applicant's guilt on the failure to stop for a blue light charge during the opening statement.
- (14) Trial Counsel failed to properly object and preserve for appellate review the Trial Court's admission of the car door when it was in the possession of the victim's family member and not in the custody of the police (implicating possible discovery (*Brady* and Rule 5, SCRCrimP) violation and chain of custody issues).
- (15) Trial Counsel routinely failed to put bench conferences on the record to preserve the arguments and rulings for appellate review (no explanation or proffer on the record).
- (16) Trial Counsel failed to properly challenge the ballistics evidence using supplemental motions of discovery or through adequate cross-examination.
- (17) Trial Counsel improperly stipulated to the car chase video recording when there was no proper foundation, and the charge should have been severed prior to trial.
- (18) Trial Counsel failed to object to the State's questioning of witness Salter about whether he had ever previously seen Applicant with a gun under Rules 403 and 404(B), SCRE.

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- (19) Trial Counsel failed to object to Darwin Shaw's testimony regarding the firing of weapons into metal when he was not qualified as an expert and would have exceeded the scope of expertise if qualified in a general area under Rules 701 and 702 SCRE.
- (20) Trial Counsel failed to properly impeach the alleged victim on cross-examination when he subsequently tried to admit into evidence a video recorded interview through witness Dave Warner, and Trial Court refused his request.
- (21) Trial Counsel failed to move for a mistrial, or at a minimum, a curative instruction, after the State elicited irrelevant and unduly prejudicial testimony from Matt Owens regarding two bandanas being inside the bookbag found in Applicant's vehicle, when the Trial Court had previously ruled that the bandanas were not admissible.
- (22) Trial Counsel failed to object to Matt Owens's testimony regarding the firing of the weapons into metal and distances when he was not qualified as an expert and would have exceeded the scope of expertise if qualified in a general area.
- (25) Trial Counsel failed to move for a directed verdict and a new trial after the close of the Defendant's case.
- (26) Trial Counsel failed to object to the Prosecutor's improper burden-shifting example of reasonable doubt and comparing it to a loan during the State's closing argument in violation of Applicant's Due Process right to a fair trial.
- (27) Trial Counsel failed to object and properly preserve for appellate review the Prosecutor's improper comments on inferring malice from use of the deadly weapon.
- (30) Trial Counsel improperly conceded Applicant's malice to damage the alleged victim's property during closing argument.
- (35) Trial Counsel failed to request and properly argue for a jury instruction on being lawfully armed in self-defense.
- (36) Trial Counsel failed to request and properly argue for the Logan circumstantial evidence instruction.
- (38) Trial Counsel failed to object to and preserve for appellate review the accomplice liability jury instruction.
- (39) Trial Counsel failed to request a jury instruction for Assault and Battery First

Degree, as a lesser-included offense of Attempted Murder when the Trial Court agreed to charge ABHAN. See *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995) (finding "counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness, and where counsel articulates a strategy, it is measured under an objective standard of reasonableness"); *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.").

- (40) Trial Counsel failed to present all reasonable and necessary evidence to the Trial Court during the sentencing phase in mitigation of Applicant's potential sentence.
- (41) Trial Counsel failed to provide the Trial Court with evidence regarding Applicant's intellectual deficits, documented closed head injury, and associated cognitive deficits as noted in Dr. Donna Maddox's report.

ALLEGATIONS INEFFECTIVE ASSISTANCE OF APPELLATE COUNSEL DENYING POST-CONVICTION RELIEF

After consideration of the testimony given at the hearing, reviewing and considering the record, the arguments presented by counsel, and the controlling case law, this Court finds that Applicant failed to carry his burden of proof to show either deficiency in representation or that any purported deficiency supported a reasonable probability of a different result. This Court finds that Applicant has failed to establish ineffective assistance of trial counsel on the remaining allegations because they are without merit. Therefore, this Court DENIES relief for the following allegations of ineffective assistance of Appellate Counsel.

- (1) If Trial Counsel did preserve the issue of whether the Trial Court erred in refusing to submit the jury instruction for self-defense to the jury, Appellate Counsel failed to file merits brief in the South Carolina Court of Appeals raising this issue on the 'any evidence' standard and failed to file a Petition for Rehearing in the Court of Appeals to preserve Applicant's ability to file a Petition for Writ of Certiorari to the

Appendix 657

Court of Appeals in the South Carolina Supreme Court.

CONCLUSION

Based on the foregoing reasons, this Court finds and concludes Applicant has established constitutional violations and deprivations that would require post-conviction relief. This Court finds that Trial Counsel's performance fell below an objective standard of reasonableness under prevailing professional norms. See *Strickland*, 466 U.S. at 687-88. This Court also finds that Trial Counsel's deficient performance prejudiced Petitioner because it "so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." *Butler*, 286 S.C. at 442, 334 S.E.2d at 814 (quoting *Strickland*, 466 U.S. at 692).

Therefore, This Court has concluded that Trial Counsel provided ineffective assistance of counsel because "there is a reasonable probability that, but for [trial] counsel's unprofessional errors, the result of the proceeding would have been different." *Cherry*, 300 S.C. at 118, 386 S.E.2d at 625 (internal citations omitted); See U.S. Const. amends. VI, XIV; S.C. Const. art. I, §§ 3 and 14; S.C. Code § 17-27-20(A)(1), (4), and (6).

Accordingly, Applicant's convictions and sentences are vacated and remanded to the Greenville County Court of General Sessions for a new trial.

IT IS ORDERED that Applicant's application for PCR is hereby **GRANTED**.

IT IS SO ORDERED.

The Honorable B. Alex Hyman
Presiding Judge,

_____, 2024

_____, South Carolina.

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
Braxton Hare,)
)
Applicant,)
)
v.)
)
State of South Carolina,)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT
Case No. **2020-CP-23-0737**

CERTIFICATE OF SERVICE

25 MAY 19 AM 11:05
JAY GRESHAM CDDC GOV SC

I hereby certify that I have this date served the within and foregoing Return to Respondent's Rule 59(e) Motion to Alter or Amend by depositing a true and correct copy of the same via first-class mail, postage prepaid, upon all parties as follows:

Kaylee Kamp, Esq.
SC Attorney General's Office
P.O. Box 11549
Columbia, SC 29211

The Hon. Jay Gresham
Greenville Clerk of Court
305 E North St.
Greenville, SC 29601

The Honorable B. Alex Hyman
1301 2nd Avenue, Suite 3A30
Conway, SC 29526

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

1614 Taylor Street, Suite D.
Columbia, SC 29201
(803) 216-5561
courtney@pricebenowitz.com

May 15, 2025

PRICE BENOWITZ LLP

1614 TAYLOR STREET
SUITE D
COLUMBIA, SC 29201

OFFICE: (803) 272-4503
DIRECT: (803) 807-0234
FAX: (803) 380-8035

DAVID BENOWITZ
ADMITTED DC, MD & VA
DAYNE PHILLIPS
ADMITTED SC
JOHN YANNONE
ADMITTED MD & DC
KERRI CASTELLINI
ADMITTED DC, MD & VA
KUSH ARORA
ADMITTED MD & DC
NICOLAS TORRES
ADMITTED FL
SEAN O'BRIEN
ADMITTED FL
PETER KENT ODOM
ADMITTED DC, MD, VA, NH & GA
RAMMY BARBARI
ADMITTED DC & VA
MARVIN OCHOA
ADMITTED MD
ARREN WALDREP
ADMITTED DC, MD & SC
KENNETH LADUCA
ADMITTED DC, MD & VA
JEFF STICKLE
ADMITTED MD & DC
FARRAL HABER
ADMITTED FL, VA & DC
PAULETTE PAGAN
ADMITTED DC, MD & MO
RYAN HUTTAR
ADMITTED VA
DONNA MURPHY
ADMITTED VA & DC
JEANNE BROWN
ADMITTED VA & DC
TAYLOR COMSTOCK
ADMITTED MD, DC & VA
ELIANE MAKHLOUF
ADMITTED MD & DC
TONY MUNTER
ADMITTED DC, MA & MD
DRAKE BIRNBAUM
ADMITTED DC & MD

*OF COUNSEL

409 7TH STREET NW, SUITE 200
WASHINGTON, DC 20004

SETH PRICE
ADMITTED DC & NY
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ADMITTED DC & MD
KARIN RILEY PORTER
ADMITTED VA
SETH OKIN
ADMITTED MD
DENNIS SOMECH
ADMITTED DC & VA
ABIGAIL BEICHLER
ADMITTED MD
JOEL NIED
ADMITTED VA, PA & UK
MICHAEL LEE
ADMITTED VA & CO
CHAD PROPST
ADMITTED SC
DAMIEN SMITH
ADMITTED DC & VA
W. ANDREW PATZIG
ADMITTED DC & VA
SUKHPREET "VICK" SINGH
ADMITTED SC
KEN KOPPELMAN
ADMITTED IL, DC & VA
RAYAN MOMENAH
ADMITTED DC & MD
HANNAH AMUNDSON
ADMITTED FL, DC & MD
JUSTIN TURNER
ADMITTED MD & DC
KIMBERLY PHILLIPS
ADMITTED VA & DC
ANDREW LINDSEY
ADMITTED VA
EVA SWANSON
ADMITTED VA
ASHLEY WILSON
ADMITTED VA & DC
BRIAN MORRIS
ADMITTED DC, TX & IL
KEVIN KELLEY
ADMITTED MD, SC & FL

10505 JUDICIAL DRIVE, SUITE 203
FAIRFAX, VA 22030

May 15, 2025

The Hon. Jay Gresham
Greenville Clerk of Court
305 E North St.
Greenville, SC 29601

Re: **Braxton Hare v. State**
RETURN TO RESPONDENT'S RULE 59(E) MOTION TO ALTER OR
AMEND JUDGEMENT
Case No. **2020-CP-23-0737**

Dear Mr. Gresham:

I have enclosed an original and one copy of the Return to Respondent's Rule 59(e) Motion to Alter or Amend along with a Certificate of Service for filing.

I would greatly appreciate you filing the enclosed motions and returning the clocked-in copy to me. Thank you for your assistance with filing this document.

Sincerely,



Dayne C. Phillips, Esq.
(803) 807-0234

Enclosures (noted)
cc: **Braxton Hare**
Kaylee Kamp, Esq.

WWW.SCCRIMINALLAWS.COM

WWW.PRICEBENOWITZ.COM

ENTERED COMPUTER

Braxton Lavon Hare
 PLAINTIFF(S)

State of South Carolina
 DEFENDANT(S)

FILED: 11/25/20 12:26 PM B:45
 CSC JAP/RESHAM GVL SC

Submitted by: _____ Attorney for : Plaintiff Defendant
 or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.

Additional Information for the Clerk : Respondent's Motion to Alter or Amend Judgment is respectfully DENIED.

INFORMATION FOR THE JUDGMENT INDEX

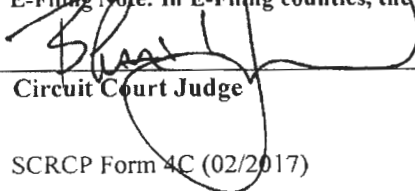
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


 Circuit Court Judge

2776
 Judge Code

11/24/25
 Date

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2020 CP-23-0737

ENTERED COMPUTER

FILED: 25DEC04 10:01
CSC 309 GREENVILLE SC

Braxton Lavon Hare
PLAINTIFF(S)

State of South Carolina
DEFENDANT(S)

Submitted by:

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON): Rule 12(b), SCRCP; Rule 41(a), SCRCP (Vol. Nonsuit); Rule 43(k), SCRCP (Settled); Other
- ACTION STRICKEN (CHECK REASON): Rule 40(j), SCRCP; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
 Affirmed; Reversed; Remanded; Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

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Additional Information for the Clerk : Respondent's Motion to Alter or Amend Judgment is respectfully DENIED.

INFORMATION FOR THE JUDGMENT INDEX

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Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.


Circuit Court Judge

2776
Judge Code

11/24/25
Date

009117

DOCKET NO. 2015-GS-23-
CLK

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2015

THE STATE

vs.

BRAXTON LAVON HARE

WITNESSES

K Bonaguro

Greenville County Sheriffs Office

9/1/2015

TLA

ARREST WARRANT NUMBER

2015A2330207758, 2015A2330207760

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Pugh

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

3411 ✓
3410, 0549

Indictment for

ATTEMPTED MURDER AND POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME

Foreperson of Petit Jury

Date:

OO
FILED

SECTION § 16-03-0029 and § 16-23-0490

FILED

OCT 29 2015

Clerk of Court
Greenville County

ARREST WARRANT

2015A2330207758

STATE OF SOUTH CAROLINA

[X] County/ [] Municipality of

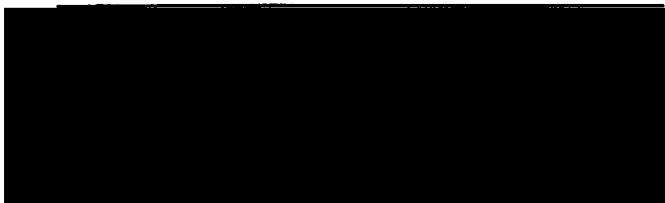
Greenville

THE STATE against

01-2015-14431

5029
9-3-15
1444/31

Braxton Lavon Hare



Prosecuting Agency: Greenville County Sheriffs Office
Prosecuting Officer: K Bonaguro - 1353
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 BRAXTON L. HARE on 9/1/15

D.S. McLight + 998/670 - GCSO
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO: Lord
Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA)
[X] County/ [] Municipality of)
Greenville)

AFFIDAVIT

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

Personally appeared before me the affiant K Bonaguro who being duly sworn deposes and says that defendant Braxton Lavon Hare did within this county and state on or about 9/1/2015 violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [] Municipality of Greenville) 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 AFFIANT, A DEPUTY WITH THE GREENVILLE COUNTY SHERIFFS OFFICE, HAS A STATEMENT FROM THE VICTIM STATING THAT THE DEFENDANT DROVE UP TO THE VICTIMS VEHICLE AT WHICH TIME THE DEFENDANT PULLED A FIREARM OUT AND FIRED SEVERAL PROJECTILES AT THE VICTIM WITH MALICE AND FORTHOUGHT TO CAUSE INJURY AND/OR DEATH. THIS OFFENSE OCCURRED IN GREENVILLE COUNTY SOUTH CAROLINA.

Signature of Affiant

1353/E36

STATE OF SOUTH CAROLINA)
[X] County/ [] Municipality of)
Greenville)

Affiant's Address 4 Mcgee Street
Greenville 29601-
Affiant's Telephone (864)271-5210

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/1/2015 defendant Braxton Lavon Hare did violate the criminal laws of the State of South Carolina (or ordinance of [X] County/ [] Municipality of Greenville) 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 9/1/2015
Signature of Issuing Judge Letonya T. Simmons (L.S.)
Judge Code: 5077

Judge's Address Law Enforcement Center
Greenville, SC 29601-

Judge's Telephone

Issuing Court: [X] Magistrate [] Municipal [] Circuit

ORIGINAL

ORIGINAL

ORIGINAL

1007327

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

J.

COUNTY OF Greenville
STATE VS.
Braxton Lavon Hare

INDICTMENT/CASE#: 2015GS2309117
A/W#: 2015A2330207758
Date of Offense: 9/1/2015
S.C. Code § : 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS
TO: Attempted Murder Assault and Battery of a high and aggravated nature

in violation of § 16-03-0029 600 (b)(1) of the S.C. Code of Laws, bearing CDR Code # 3410 3411
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Moyer, Mark 64155 SC Bar# Defendant HAMILTON, ERNEST 02625 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.
CONCURRENT or CONSECUTIVE to sentence on:
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
The State Department of Corrections. 518 DAYS
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic
Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Recipient:
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:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$375.

TOTAL \$ 128.75

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Paul B. Wickensmin
Court Reporter:
SCCA/217 (07/2016)

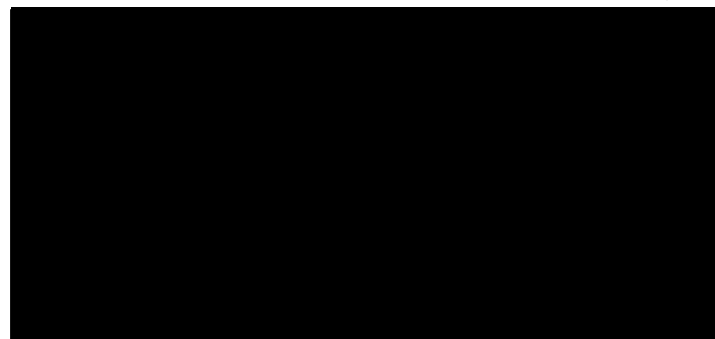
Presiding Judge 20. (W. Will)
Judge Code: 2130
Sentence Date: 7-13-17

✓ GCDC / SCDC

GENERAL SESSIONS DOCKET TRACKING SHEET

Name: BRAXTON LAVON HARE

Indictment #: 2015GS2309117



Warrant/Ticket # 2015A2330207760

No Warrant: _____

Offense Code: 0549

Offense Name: Weapons / Poss. Weapon Du

Date of Arrest: September 1, 2015

DATE OF DISPOSITION: 7/14/17

FILED

JUL 17 2017

Clerk of Court
Greenville County

DISPOSITION:

- 1. Guilty Plea
- 2. Trial (Guilty)
- 3. Trial (Not Guilty)
- * 4. Dism/Nol 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: Prosecutorial discretion

Judge: _____

Ct. Reporter: _____

Defense Attorney: HAMILTON, ERNEST

Solicitor: Mark Moyer

Bar #: 64155

Offense Code: 0549

Offense Name: Weapons / Poss. Weapon Du

Sentence: _____

WITNESSES

K Bonaguro

Greenville County Sheriffs Office

9/1/2015

Tink

ARREST WARRANT NUMBER

2015A2330207762

ACTION OF GRAND JURY

TRUE BILL

Thomas J. Pro...

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2015-GS-23-

CLK

000110

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

May

TERM 2015

2015

THE STATE

vs.

BRAXTON LAVON HARE

Indictment for

0065

FAILURE TO STOP FOR A BLUE LIGHT

VIOLATION § 56-05-0750

ENTERED ACCT. *[Signature]*

FILED

OCT 29 2015

Clerk of Court
Greenville County

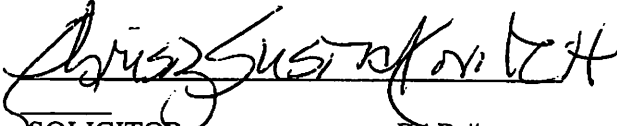
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
FAILURE TO STOP FOR A BLUE LIGHT

At a Court of General Sessions, convened on **MAY 24 2016** the Grand Jurors of Greenville
County present upon their oath:

That BRAXTON LAVON HARE did in Greenville County, on or about the 1st day of September 2015,
willfully, knowingly, and unlawfully commit the offense of failure to stop for a law enforcement vehicle
in that the said defendant while driving on a road, street or highway of the State did intentionally fail to
stop when signaled to do so by a law enforcement vehicle using blue lights and/or siren. This is in
violation of §56-05-0750 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR BAR #

Appendix 671

ARREST WARRANT

2015A2330207762

STATE OF SOUTH CAROLINA

County/ Municipality of

Greenville

THE STATE

01-2015-144489

against

Braxton Lavon Hare

STATE OF SOUTH CAROLINA)

County/ Municipality of)

Greenville)

Personally appeared before me the affiant K Bonaguro who

being duly sworn deposes and says that defendant Braxton Lavon Hare

did within this county and state on or about 9/1/2015

State of South Carolina (or ordinance of County/ Municipality of Greenville)

in the following particulars:

DESCRIPTION OF OFFENSE: Traffic / Failure to stop for a blue light, no injury or death - 1st offense

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:

That on September 1, 2015 in the city/county of Greenville, one Braxton Lavon Hare, while driving a motor vehicle, did fail to stop when signaled by means of siren and/or flashing light on a law enforcement vehicle. This offense occurred in Greenville County South Carolina.

Prosecuting Agency: Greenville County Sheriffs Office

Prosecuting Officer: K Bonaguro - 1353

Offense: Traffic / Failure to stop for a blue light, no injury or death - 1st offense

Offense Code: 0065

Code/Ordinance Sec: 56-05-0750(B)(1)

This warrant is CERTIFIED FOR SERVICE in the

County/ Municipality of

The accused

is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant BRAXTON L HARE

on 9/1/15

D.S. Kitchener 498/670-6CS0
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

Jord
Greenville General Sessions
305 E. North Street
Greenville County Courthouse
Greenville, SC 29601-2120

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Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 616

Signature of Affiant

STATE OF SOUTH CAROLINA)

County/ Municipality of)

Greenville)

Affiant's Address 4 Mcgee Street
Greenville 29601-

Affiant's Telephone (864)271-5210

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on or about 9/1/2015

defendant Braxton Lavon Hare

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

County/ Municipality of Greenville) as set forth below.

DESCRIPTION OF OFFENSE: Traffic / Failure to stop for a blue light, no injury or death - 1st offense

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable

Sworn to and subscribed before me

on 9/1/2015

Letonya T. Simmons (L.S.)
Signature of Issuing Judge

Letonya T. Simmons

Judge Code: 5077

Judge's Address Law Enforcement Center
Greenville, SC 29601-

Judge's Telephone

Issuing Court: Magistrate Municipal Circuit

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STATE OF SOUTH CAROLINA

1407327

IN THE COURT OF GENERAL SESSIONS

904-12007

COUNTY OF Greenville
STATE VS.
Braxton Lavon Hare

INDICTMENT/CASE#: 2015GS2309118
A/W#: 2015A2330207762
Date of Offense: 9/1/2015
S.C. Code § : 56-05-0750(B)(1)
CDR Code #: 0065

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Failure To Stop For Blue Light

CONVICTED OF or PLEADS

in violation of § 56-05-0750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0065

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

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

ATTEST: Moyer, Mark Defendant HAMILTON ERNEST SC Bar# 02625

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 3 days/months/years or under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on: The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied the State Department of Corrections. 518 DAYS

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP days/hours Public Service Employment

Total: \$ plus 20% fee: \$ Obtain GED Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling Random Drug/Alcohol testing Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender Fund Other:

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114(BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments) \$75.

TOTAL

\$ 25.75

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Paul B. Wickens

Court Reporter: Herron

SCCA/217 (07/2016)

Presiding Judge [Signature]

Judge Code: 2130

Sentence Date: 7-13-17

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)
)
)
STATE OF SOUTH CAROLINA,)
)
vs.)
)
BRAXTON HARE,)
)
DEFENDANT.)

IN THE COURT OF GENERAL SESSIONS
INDICTMENTS: 2015-GS-23-09117
2015-GS-23-09118

VERDICT FORM

1. As to the charge of **Failure to Stop For A Blue Light**, we the Jury find the Defendant:

- Guilty.**
- Not Guilty.**

2. As to the charge of **Attempted Murder**, we the Jury find the Defendant:

- Guilty**
- Not Guilty**

******Instructions******

If you find the Defendant **NOT GUILTY** of **Attempted Murder**, then you must consider the lesser included offense of **Assault and Battery of a High and Aggravated Nature**. However, if you find the defendant **Guilty**, then you need not consider the lesser included offense.

3. As to the charge of **Assault and Battery of A High And Aggravated Nature**, we the Jury find the Defendant:

- Guilty**
- Not Guilty**

I certify this decision was the unanimous decision of the jury.

QA Eynh
Foreperson
July 13, 2017

PLEASE NOTIFY THE BAILIFF WHEN YOU HAVE COMPLETED THIS FORM.

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 03/10/20
 OMCOMITA RELEASE DATE SCREEN C063953
 SCDC# > 373172 LOC: MCCORMICK
HARE, BRAXTON LAVON SCDC CLASSIFICATION...: **VIOLENT**
 OFFENDER TYPE...: **ADULT-STRAIGHT SENTENCE** SEXUAL REGISTRY...: **N**
 SEXUAL PREDATOR...: **NOT APP**
 DNA STATUS.....: **COMPLETED**
 GPS REQUIREMENT...: **N**
 PREA DECISION.....: **NONE**
 PREA VICTIM.....: **HIGH VULNERABLE** PREA PERP...: **NONE**
 CURRENT SENTENCE: **020-00-000** CONSECUTIVE SENTENCE ...: **N**
020-00-000 CURRENT SENT START DATE: **02/11/2016**
 PROJECTED COMPLETION DATES
 MAXOUT DATE: **02/06/2033** CURRENT EWC ..: **2 F 5**
 YOA SIX YEAR DATE: / / CURRENT EEC ..: **NOT CURRENTLY EARNING EEC**
 INITIAL PAROLE DATE: **00/00/0000** NEXT PAROLE HEARING DATE: **00/00/0000**

 TOTAL GT DAYS EARNED: **000000** LABOR CREW/WORK PROG DATE: **99/99/9999**
 TOTAL EARNED WORK CREDITS ..: **000524** LABOR CREW DISQ REASON:
 TOTAL EDUCATION CREDITS: **000000** **CATEGORY 4 OR 5 OFFENSE**
 TOTAL EXTRA EARNED CREDITS ..: **000** SUPERVISED REENTRY DATE...: **00/00/00**
 TOTAL SERVICE TIME EARNED ..: **001469** ISS.....:

PFKEYS: 5:HISTORY OF DATE CHANGES

South Carolina Department of Corrections Classification Summary Reports

Date: Tuesday, March 10, 2020 Logout

Classification Summary Reports

Inmate Number

Classification Summary Report for HARE, BRAXTON LAVON :

CLASSIFICATION SUMMARY REPORT DATED 03/10/2020

SCDC# 00373172

HARE, BRAXTON LAVON

FBI# HXFMNCLND

OFFENDER ADULT-STRAIGHT
TYPE: SENTENCE

RESIDENT
STABILITY: NA

INSTITUTION: MCCORMICK

DORMROOMBUNK_CODE: F4 0235 B

SECURITY/CUST: 3 MEDIUM

PROJ MAXOUT
DATE: 02/06/2033

NEW CUSTODY:

PROJ PAROLE
DATE: -

CURR INCARC 20 YRS 0 MOS
SENT: DAYS

EWC
JOB: GENERAL WORKER

SEPREQ:N

ASSIGNMENT: BLDING DETAIL BLDG.
#4

INST
RESTRICT: NO RESTRICTION

EWC
LEVEL: 2F5 EEC LEVEL:

EDUC
PGM: NO CURR EDUC PROGRAM

HS / GED: N

CURRENT NO CURRENT
PROGRAM: PROGRAM

SEX REGISTRY: N

DNA: C

AGE: 21

.....
.....
SECURITY THREAT GROUP DESCRIPTION: SECURITY THREAT GROUP STATUS:
NONE NONE

PREVIOUS NUMBERS:

NO PREVIOUS NUMBERS

CURRENT OFFENSES	YRS	MOS	SENTENCE		START	SENTENCE	
			DYS	COUNTY		V/NV	CAT
ABHAN	20	0	0	GREENVILLE	02/11/2016 V	4	15GS2309117
FAIL TO STOP FOR OFFICER	3	0	0	GREENVILLE	02/11/2016 N	2	15GS2309118
CARJACKING	20	0	0	GREENVILLE	12/23/2015 V	4	15GS23-11000

COMPLETED OFFENSES

NO COMPLETED OFFENSES

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

OFFENSES UNDER PREVIOUS NUMBER:

NO PREVIOUS OFFENSES

DETAINERS (HOLD,WANTED,NOTIFY):

FIREARMS PROVISION	WANTED	PRESIDING JUDGE	CATEG:3
KIDNAPPING	WANTED	PRESIDING JUDGE	CATEG:5
ASSAULT & BATTERY 3RD	WANTED	PRESIDING JUDGE	CATEG:1
MOVING TRAFFIC VIOL	WANTED	PRESIDING JUDGE	CATEG:1
HIT AND RUN	WANTED	PRESIDING JUDGE	CATEG:3
DISCH. FIREARM IN DWELLI	WANTED	PRESIDING JUDGE	CATEG:3
ATTEMPTED MURDER	WANTED	PRESIDING JUDGE	CATEG:4

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

12/10/2019	POSSESSION OF A WEAPON	CONVICTED	MAJOR DISC. HEARING	N
10/18/2019	POSSESSION OF A WEAPON	CONVICTED	MAJOR DISC. HEARING	N

PREVIOUS ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:

01/10/2020	EXHIBITIONISM AND PUBLIC MASTURBATION	CONVICTED	MAJOR DISC. HEARING
12/06/2019	INTERFERING WITH COUNT	CLOSED	OTHER ACTION TAKEN/INFORM
11/23/2019	EXHIBITIONISM AND PUBLIC MASTURBATION	DISMISSED	MAJOR DISC. HEARING
10/28/2019	EXHIBITIONISM AND PUBLIC MASTURBATION	CONVICTED	MAJOR DISC. HEARING
09/19/2019	EXHIBITIONISM AND PUBLIC MASTURBATION	CONVICTED	MAJOR DISC. HEARING
09/19/2019	EXHIBITIONISM AND PUBLIC MASTURBATION	CONVICTED	MAJOR DISC. HEARING
06/04/2019	EXHIBITIONISM AND PUBLIC MASTURBATION	CONVICTED	MAJOR DISC. HEARING
06/04/2019	INCITING/CREATING A DISTURBANCE	DISMISSED	MAJOR DISC. HEARING
05/06/2019	EXHIBITIONISM AND PUBLIC MASTURBATION	CONVICTED	MAJOR DISC. HEARING
09/21/2017	USE,POSS NARC,MARIJ,UNAUTH DRUG,INHALANT	DISMISSED	MAJOR DISC. HEARING

PREVIOUS NON-ASSAULTIVE DISCIPLINARIES:

NO PREVIOUS NON-ASSAULTIVE DISCIPLINARIES HISTORY

HISTORY OF MOVEMENTS:

09/12/2019	MCCORMICK	INCARCERATED	ADMINISTRATIVE
10/02/2017	LEE	INCARCERATED	RETURN FROM COURT
10/02/2017	GREENVILLE CO	AUTH ABSENCE (AWL)	TO COURT
09/25/2017	LEE	INCARCERATED	ADMINISTRATIVE
07/19/2017	KIRKLAND	INCARCERATED	R&E PROCESSING
07/19/2017	PERRY	INCARCERATED	NEW ADMISSION

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:

JOB DESCRIPTION	START DATE	END DATE	TERMINATION REASON	JOB LVL
GENERAL WORKER	02/18/2020	-		2F5
GENERAL WORKER	01/23/2020	02/17/2020	POLICY CHANGE 2020	5F5
GENERAL WORKER	09/26/2017	12/04/2017	LATERAL TRANSFER	3F5

HISTORY OF EARNED EDUCATION CREDITS:

EEC DESCRIPTION	START DATE	END DATE	TERMINATION REASON
LVL 3 - FULL TIME(NO EWC)	12/05/2017	06/21/2019	PLACED IN ST/SP CUSTODY

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

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[Version: 1.4.20 Built: 02/21/2020 11:06:32 AM Time: 01:54:59 PM]

STATE OF SOUTH CAROLINA

1007327

IN THE COURT OF GENERAL SESSIONS

3

COUNTY OF
STATE

Greenville

VS.

Braxton Lavon Hare

AKA:

INDICTMENT/CASE#: 2015GS2309117

A/W#: 2015A2330207758

Date of Offense: 9/1/2015

S.C. Code § : 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

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

TO: ~~Attempted Murder~~ Assault and Battery of a high and aggravated nature CONVICTED OF or PLEADS

in violation of § ~~16-03-0029~~ 600(B)(1) of the S.C. Code of Laws, bearing CDR Code # 3410 3411

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

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

ATTEST: [Signature] Moyer, Mark SC Bar# 64155 Defendant [Signature] HAMILTON, ERNEST SC Bar# 02625

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied the State Department of Corrections. 518 DAYS

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

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

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-21 1(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-21 1(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-1 14(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$ <u>3.75</u>
TOTAL		\$ <u>128.75</u>

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol testing

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

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Paul B. Wickens
Court Reporter: [Signature]
SCCA/217 (07/2016)

Presiding Judge [Signature]
Judge Code: 2130
Sentence Date: 7-13-17

COUNTY OF Greenville VS. Braxton Layon Hare

INDICTMENT/CASE#: 2015GS2309118 A/W#: 2015A2330207762 Date of Offense: 9/1/2015 S.C. Code § : 56-05-0750(B)(1) CDR Code #: 0065

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No In disposition of the said indictment comes now the Defendant who was TO: Failure To Stop For Blue Light

CONVICTED OF or PLEADS

in violation of § 56-05-0750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0065 [X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS(CSC w/minor 1st or Lewd Act) [] §17-25-45

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury. The plea is: [] Without Negotiations or Recommendation, [] Negotiated Sentence, [] Recommendation by the State.

ATTEST: Moyer, Mark SC Bar# 64155 Defendant Braxton Hare HAMILTON ERNEST SC Bar# 02625

WHEREFORE, the Defendant is committed to the [] State Department of Corrections, [] County Detention Center, for a determinate term of 3 days/months/years or [] under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

[] CONCURRENT or [] CONSECUTIVE to sentence on: [X] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied the State Department of Corrections. 518 DAYS [] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135. Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered Total: \$ plus 20% fee: \$

Payment Terms: [] Set by SCDPPPS

Recipient:

Table with 3 columns: Description, Amount, Total. Rows include § 14-1-206 (Assessments 107.5 %), § 14-1-211(A)(1) (Conv. Surcharge) \$100, § 14-1-211(A)(2) (DUI Surcharge) \$100, § 56-5-2995 (DUI Assessment) \$12, § 56-1-286 (DUI Breath Test) \$25, Proviso 61.6 (Public Def/Probation) \$500, § 14-1-212 (Law Enforce. Funding) \$25, § 14-1-213 (Drug Court Surcharge) \$150, § 50-21-114 (BUI Breath Test Fee) \$50, § 56-5-2942(J) (Vehicle Assessment) \$40/ea, 3% to County (if paid in installments)

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, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk Paul B. Wischenawski Court Reporter: Herron

Presiding Judge Judge Code: 2130 Sentence Date: 7-13-17

STATE OF SOUTH CAROLINA

COUNTY OF Greenville
STATE VS.

Braxton Lavon Hare

AKA:

IN THE COURT OF GENERAL SESSIONS
2-6-2033

INDICTMENT/CASE#: 2015GS2311000

A/W#: 2015A2330207889

Date of Offense: 8/31/2015

S.C. Code § : 16-03-1075(B)(1)

CDR Code #: 2599

Spady

SENTENCE SHEET

CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Carjacking, without great bodily harm

CONVICTED OF or PLEADS

in violation of § 16-03-1075(B)(1) of the S.C. Code of Laws, bearing CDR Code # 2599

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/minor 1st or Lewd Act) §17-25-45

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

ATTEST: *Meyer, Mark* 64155 SC Bar# * *Braxton Hare* Defendant *Hamilton, Ernest* 02625 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

CONCURRENT or CONSECUTIVE to sentence on: 7/19/17
 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. 649 DAYS

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135 Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP

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

Payment Terms: _____

Set by SCDPPPS _____

Recipient: _____

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 61.6 (Public Def/Probation)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
3% to County (if paid in installments)		\$

TOTAL \$ _____

_____ days/hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling

Random Drug/Alcohol testing

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

\$ _____ paid to Public Defender Fund

Other: _____

Appointed PD or appointed other counsel, Proviso 61.6 requires \$500 be paid to Clerk during probation and shall be collected before any other fees.

Clerk of Court/ Deputy Clerk *Pearl B. Wickham*

Court Reporter: *J. ...*

SCCA/217 (07/2016)

Presiding Judge *John C. Wells*

Judge Code: 2130

Sentence Date: 10-2-17