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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

S.C. SUPREME COURT

Certiorari to Hampton County

Honorable The Hon. Dale E Van Slambrook, Circuit Court Judge

JAMES A. GARDNER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2026-000653

APPENDIX

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1 Q. Okay.

2 A. I can't hear at all.

3 Q. All right. Nothing further.

4 Thank you.

5 THE COURT: All right. Any follow-up?

6 MS. MARTO: No, Your Honor.

7 THE COURT: Okay. All right. You can step down.

8 All right. Go ahead and call your next witness.

9 MS. MARTO: We call Cory Fleming.

10 THE COURT: All right. Mr. Fleming, can you hear us
11 all right?

12 (WHEREUPON, there was no response.)

13 THE COURT: Mr., Mr. Fleming, can you hear us?

14 MR. FLEMING: Yes, sir.

15 THE COURT: All right. Thank you very much. I'm
16 gonna have the clerk swear you in.

17 Okay?

18 THE CLERK: Sir, if you would---

19 MR. FLEMING: Yes, sir.

20 THE CLERK: If you would, please raise your
21 right-hand.

22 CORY FLEMING, being first duly
23 sworn, testified as follows:

24 THE CLERK: And, if you would, please state your
25 first and last name and spell both for the record.

1 THE WITNESS: Cory Fleming. C-O-R-Y. F-L-E-M-I-N-G.

2 DIRECT EXAMINATION

3 BY MS. MARTO:

4 Q. Good morning, sir.

5 Can you hear me okay?

6 A. Yes, ma'am. Let me see if I can't turn that down
7 just a little bit. It's a little bit distorted.

8 (Pause.)

9 Okay. Go ahead please.

10 Q. Yes, sir.

11 So you represented Mr. Gardner, correct?

12 A. Yes, I did.

13 Q. And do you recall roughly how long you represented
14 him for?

15 A. I do not.

16 Q. Do you know how many times you talked to him?

17 A. I don't have any -- it's been a very long time. I
18 don't have any specific recollection of how many times I
19 talked to him but it was numerous.

20 Q. Were there any plea offers on this case?

21 A. I believe there was. I don't have any specific
22 recollection of it. But I've read some transcripts of
23 testimony and it refers to a plea offer.

24 Q. Well, did -- but you don't recall the specifics
25 behind what it was?

1 A. I do not.

2 Q. Did you request lesser included offense jury
3 instructions in this case?

4 Do you recall?

5 A. Again, if I can add that I believe this trial was 10
6 years ago and much of that memory has faded and I am
7 unclear as to what I remember versus what I have read in
8 the various transcripts.

9 And so, out of an ab -- out of an abundance of
10 caution, I would like to say that, upon reviewing the
11 documents that were provided to me, the transcripts, it ap
12 -- I did not request lesser included offense.

13 Q. Okay. Do you recall why you wouldn't of done that?

14 A. Well, I looked at my previous testimony that
15 refreshed my recollection and what it appeared to me from
16 that information was that, based on the situation in the
17 case, a lesser included offense would have created the
18 possibility or even the likelihood of a compromised
19 verdict. And that compromised verdict would have carried
20 a penalty or sentence far and above what the existing
21 offer -- plea offer on the table was.

22 And so, in order to satisfy Mr. Gardner's wishes of a
23 sentence far below what the offer -- what the plea offer
24 was, we would have to approach it under an all or nothing
25 where a jury was going to have to either find that he

1 intended to murder or that there was no such intent
2 leaving the only remaining verdict of not guilty. And
3 that was -- appeared to be, as I'm reading the transcripts
4 and, and whatever memory I do have, that appears to me to
5 be the strategy that we employed.

6 Q. But you'd agree that a compromised verdict, as you
7 said, is better than what he actually received, correct?

8 A. I'm sorry?

9 Q. Would you agree that the compromised verdict would of
10 been a better outcome than what he actually received?

11 A. Well, that's a lot of supposition. I don't know what
12 the compromised verdict would of resulted in. But it, it
13 would not have resulted in the sentence that he got. I
14 think that's very clear.

15 Q. Do you recall if you went to school with
16 Mr. Gardner's stepson?

17 A. Pardon me?

18 Q. Do you recall if you went to high school with
19 Mr. Gardner's stepson?

20 A. I don't know Mr. Gardner's stepson and I went to
21 school -- I went to high school in Savannah, Georgia. I
22 graduated in 1986 from Benedictine Military Academy. I --
23 unless he went to Benedictine Military Academy and was
24 from Savannah, I am certain I did not go to high school
25 with him.

1 Q. Did you personally see anything wrong with the
2 indictments?

3 A. Pardon me?

4 Q. Did you personally see anything wrong with the
5 indictments in this case?

6 A. I don't, I don't recall. I, I would of -- I would
7 think that, if I did, I would of raised it.

8 Q. Do you recall -- looking at Page 174 of the trial
9 transcript, there was mention of the relationship with a
10 Mr. Gardner and one of the victims as being abusive.

11 Do you---

12 A. May I refer to that line?

13 Q. Yes, sir.

14 A. I have a copy with me. I'm, I'm happy to do it here.

15 Q. Okay.

16 A. And this is -- is it 174?

17 Okay. I have it before me. Yes, I see that line.

18 Line 6 are you relating to?

19 Q. Yes, sir.

20 A. I don't specifically recall that. But, of course, I
21 can -- I've read the transcript now that you have directed
22 me to.

23 Q. Do you recall if there's a reason why you didn't ask
24 for a curative instruction or anything of that extent?

25 A. I -- well, I see -- it looks as though there was a

1 bench conference. I do not remember the bench conference.
2 I suspect that I did request some relief because there was
3 obviously -- I actually -- I mean it says -- the
4 transcript says I have a matter of law to take up outside
5 the presence and then the judge cut me off and said
6 counsel approach and then I do not remember the bench
7 conference.

8 So, I do not know what I requested from the judge at
9 that point and I do not know what the judge told me nor do
10 I know what counsel for the State said.

11 Q. Do you recall if Mr. Gardner ever mentioned that the
12 victim was the prosecutor's school teacher in this case?

13 A. That, that who?

14 Q. The pros -- the victim -- one of the victims was the
15 prosecutor's school teacher.

16 Did Mr. Gardner---

17 A. I don't---

18 Q. ---ever mention that to you?

19 A. Oh, that's -- I'm sorry.

20 Q. I was just asking did Mr. Gardner ever mention that
21 to you?

22 A. I don't recall that, no.

23 Q. And then looking at Page 100 of the trial transcript,
24 it looks like, starting around Line 12, their search for
25 the truth line would be raised.

1 Is there a specific reason why you didn't object to
2 that?

3 A. Give me a moment so I can get to that page please.

4 Okay. What line are you talking about?

5 Q. Starting with Line 12.

6 A. And I told --.

7 THE COURT: What page was that?

8 A. So---

9 MS. MARTO: One hundred.

10 THE COURT: One hundred.

11 All right.

12 Q. Yeah, Page 100 starting Line 12.

13 A. And who is -- I, I would have to go back to determine
14 who the speaker was.

15 Who is this person?

16 Oh, this is the Court.

17 Okay. I don't specifically remember the, the Court's
18 instructions.

19 MS. MARTO: Okay. One moment, Your Honor.

20 (Pause.)

21 MS. MARTO: Nothing further.

22 THE COURT: Cross-examination.

23 MS. DIXON: May it please the Court?

24 CROSS-EXAMINATION

25 BY MS. DIXON:

1 Q. Let me come up here. I think the microphone's over
2 here.

3 Is that correct?

4 Okay. May it please the Court.

5 How are you today, Mr. Fleming?

6 A. I'm well. Thank you. I hope you are.

7 Q. Thank you. I am.

8 And can you tell us briefly how you got involved in
9 Mr. Gather's case -- Gardner's case?

10 A. I actually don't remember specifically.

11 Q. Uh-huh. (Affirmative).

12 A. I just remember representing James. But I don't
13 remember how I got involved.

14 Q. Okay.

15 A. I know I was hired. I don't -- I was not appointed.

16 Q. Okay. And I think you said on direct that you spoke
17 with him numerous times.

18 Did you, did you feel like you had sufficient time to
19 talk to him?

20 A. Yes, I did.

21 Q. And did you have sufficient time to review the
22 discovery with him?

23 A. Yes, I did.

24 Q. And do you recall some of the State's evidence that
25 was presented at trial?

1 A. As I would say to you that I, I said previously --

2 Q. Uh-huh. (Affirmative).

3 A. -- it's very difficult for me to determine what I
4 recall of my own recollection --

5 Q. Uh-huh. (Affirmative).

6 A. -- and what I call -- can recall as a result of
7 reading the transcript.

8 Q. Uh-huh. (Affirmative).

9 A. So, I do recall some of the evidence now. I just
10 don't know where I recall it from.

11 Q. Okay. What was some of the evidence?

12 A. Well, I -- obviously the, the eye witness
13 testimony --

14 Q. Uh-huh. (Affirmative).

15 A. -- was available. I re -- I recall that. And, and,
16 of course, the, the videotape of the confession in this
17 case I believe. The physical evidence itself I don't
18 really have any recollection of although I don't recall it
19 being particularly helpful for the defense.

20 Q. In terms of the victims, do you recall if they had
21 any type of relationship, if they knew Mr. Gardner, what,
22 what that situation was?

23 A. Yes, I under -- understood it they were -- one was
24 the partner/girlfriend of some sort.

25 Q. Uh-huh. (Affirmative).

1 A. Another was the sibling of that, that person.

2 Q. Okay.

3 A. And then, of course, the law enforcement that were
4 involved were -- their roles --

5 Q. Uh-huh. (Affirmative).

6 A. -- were solely as law enforcement officers.

7 Q. And do you recall the testimony was that, when law
8 enforcement responded, he came -- started shooting or I
9 guess started aiming towards them as well?

10 A. Yes. But I -- again, and that, that would only be
11 what I remember from the transcript but yes.

12 Q. And then there was a confession that he gave as well,
13 correct?

14 A. Yes, that, that -- that's true.

15 Q. And what do you recall about the confession?

16 A. I actually have a specific memory of that --

17 Q. Uh-huh. (Affirmative).

18 A. -- because of the unusual nature of the confession --

19 Q. Uh-huh. (Affirmative).

20 A. -- and, and because it was videotaped.

21 Now, I, I -- I just seem to recall that Chief Tyrone
22 Smith and the way he conducted the, the interrogation was
23 very -- was sort of an open thing. He just -- he almost
24 was attempting to lead James in a certain direction --

25 Q. Uh-huh. (Affirmative).

1 A. -- how he was talking. It was just an unusual -- I
2 think it speaks for itself but it was just unusual.

3 There wasn't a lot of probing questions. It was
4 simply you tell me what happened kind of thing and, and I
5 just remember -- I remember drawing some conclusions about
6 how persuasive it was.

7 Q. And when you say lead him in a certain direction, do
8 you think he was trying to lead him to a false confession
9 or do you think he was trying to lead him in a way that
10 would be helpful to Mr. Gardner?

11 A. My, my interpretation was that he was trying to, to
12 get James to, to say that he did not -- he did not intend
13 to kill anybody --

14 Q. Okay. And what was his---

15 A. ---and that, that wasn't James' intent.

16 Q. And what was his response?

17 A. And I think he said something to the effect -- I'm
18 sorry. I'm talking over you.

19 Q. No, I don't---

20 A. I apologize.

21 Q. I'm sorry.

22 what was his response --

23 A. Um.

24 Q. -- in the video?

25 A. Well, when -- oh, I'm sorry. I'm not in control of

1 this room. And so I can't -- I don't know that I can do
2 anything about that phone ringing.

3 James -- so, when, when the chief, Tyrone Smith, said
4 something to the effect that he didn't, you know,
5 something about James not wanting to kill somebody, and I
6 think James contradicted him and said oh, no, I really
7 did --

8 Q. Okay.

9 A. -- or something. I mean I don't know what the quotes
10 are but --

11 Q. Right. Right.

12 A. -- it just seemed to me very profound --

13 Q. Uh-huh. (Affirmative).

14 A. -- and very problematic.

15 Q. Okay. And going into your trial, what was your kind
16 of strategy to the best of your memory and I guess based
17 on -- you have -- you've had a chance to read your closing
18 argument, correct?

19 A. That's correct.

20 Q. And do you think your closing---

21 A. As I, as I said a little bit earlier, I didn't --
22 there wasn't any real hope of, of denying the, the factual
23 allegations with regard to shooting and using the weapon
24 and those things and identity and all of that.

25 And my -- so, it's clear, from, from the combination

1 of memory and looking at the transcript, that what the
2 approach would be is that, first, that James was
3 intoxicated, that he had drank an inordinate amount of
4 alcohol, and, and while -- we, we all know that
5 involuntary intoxication is not a defense. It is an
6 explanation and it can be a form of mitigation with the
7 jury with regard to what your intent is.

8 Q. Uh-huh. (Affirmative).

9 A. And so I felt like that both -- we could both
10 challenge the government's position on intent by his
11 intoxication and additionally challenge his own voracity
12 in his confession by, by talking about the fact that he
13 was intoxicated and it sounded sort of like a little bit
14 of drunk talk --

15 Q. Uh-huh. (Affirmative).

16 A. -- if you will. And, furthermore, you know,
17 obviously challenging the admissibility of the confession
18 but really I didn't think that was gonna work.

19 But, but I -- but I still thought it was important to
20 raise and then, and then, ultimately, the, the -- using
21 the facts and circumstances as the government presented to
22 show that, had James really intended to kill anybody, he
23 had ample opportunity.

24 Q. Uh-huh. (Affirmative).

25 A. He had the ability and there was nothing standing in

1 his way from, from doing that. He could of killed, killed
2 multiple people had he wanted to and simply did not act
3 that way and, therefore, there would be no intent. I mean
4 there was no actual attempt to kill.

5 Now, there was certainly an attempt to harm and it
6 was terribly reckless, et cetera. But that was not intent
7 to kill and, therefore, without that intent to kill being
8 an element of the offense that he was charged with --

9 Q. Uh-huh. (Affirmative).

10 A. -- it would leave the jury with only one choice and
11 that would be to find him not guilty of that particular
12 charge.

13 Q. Uh-huh. (Affirmative).

14 And do you recall what types of guns he had?

15 were they pistols?

16 were they long gauge?

17 what kinds of guns were they?

18 A. I, I believe it was a rifle. But, again, I -- no, I
19 don't remember but I believe it was a rifle.

20 Q. And do you recall the victim that -- who was shot in
21 the leg, did they sat -- did the um -- did they testify
22 that was a short range, long range?

23 Did they testify as to how far away he would of been
24 standing from her when---

25 A. Very close.

1 Q. Very close.

2 Okay. And did you use that in your closing argument
3 to show lack of intent?

4 Do you recall?

5 A. I believe I did, yes.

6 Q. Okay.

7 A. Yes.

8 Q. Okay. And then going back to some of the specific
9 questions you were asked, and, on Page 174, you were asked
10 about an objection that you made, a bench conference.

11 If you'll go to Page 175 and 176?

12 Do you see where the judge comes back on the record
13 and discusses kind of what happened at that bench
14 conference?

15 A. Yes, if you'll give me a moment so I can refresh my
16 recollection.

17 (Pause.)

18 A. Oh, yes, it says that objected to the fact that he
19 did not want the solicitor, on redirect, to bring up any
20 more questions concerning the witnesses observation, the
21 degree of sobriety.

22 Okay. Yeah. And I, I -- we obviously had
23 discussed -- this, this indicates we obviously had
24 discussed a curative instruction --

25 Q. Uh-huh. (Affirmative).

1 A. -- and that I ultimately decided to withdraw that.

2 Q. Uh-huh. (Affirmative).

3 And what would be a reason that you wouldn't want the
4 Court to issue a curative instruction?

5 A. Well, that was a strategic thing I'm sure and I, I
6 would like to say this. I don't specifically remember.

7 Q. Uh-huh. (Affirmative).

8 A. All I can testify to is what my thought process is as
9 I, I look at these documents right here in front of me.

10 But it would of been my practice to evaluate the
11 efficacy of a curative instruction because, often times,
12 the curative instruction serves only to highlight the, the
13 information that the witness testified to --

14 Q. Uh-huh. (Affirmative).

15 A. -- and that the jury would not listen to the curative
16 instruction and only focus on the statement that was made
17 by the witness. Thereby, making -- compounding it, making
18 it worse.

19 And so I'm sure that what I would of done in this --
20 I'm not sure -- I would -- I believed that what I would of
21 done in this circumstance is made the, the calculated sort
22 of guess, if you will, that it, it would of been worse --

23 Q. Uh-huh. (Affirmative).

24 A. -- to have the curative instruction than, than to
25 have it. And so that's probably why I withdrew it.

1 Q. Okay. Let's see. They've raised some allegations
2 that you went to high school with the victim's stepson. I
3 think you testified on direct that you went to high school
4 in Savannah.

5 Is that correct?

6 A. That, that is correct. And I, I don't know this,
7 this person that they're talking about.

8 Q. Uh-huh. (Affirmative).

9 A. I'm -- I mean I, I don't know the name.

10 Q. Uh-huh. (Affirmative).

11 A. I, I mean I don't -- I've never been given a name.

12 Q. Did you ever---

13 A. So, I don't know.

14 But all I can say is that if the person did not go to
15 high school in, in Benedictine in Savannah, Georgia, then
16 I would not have gone to high school with him --

17 Q. Did you ever---

18 A. -- cause that's where I went to high school.

19 Q. Did you ever go to school at all in Hampton County?

20 A. I did not.

21 Q. Okay. And when did you live in Hampton?

22 A. After law school. I was a lawyer when I moved to
23 Hampton.

24 Q. Okay. And how many years were you there?

25 A. A couple years.

1 Q. Just about two.

2 Okay. Let's see. And then I think you testified on
3 direct that you do recall there was maybe a plea deal that
4 he didn't want and you couldn't remember the specifics of
5 that?

6 A. Other than what it said, said, there was some
7 testimony I think from a previous PCR hearing --

8 Q. Uh-huh. (Affirmative).

9 A. -- maybe about what the plea deal was and, at that
10 time, I remembered it was, I think, nine years.

11 Q. Okay. And do you have any reason today to think
12 that, that, at that time, you were not testifying
13 truthfully?

14 A. Oh no. That -- if I -- if that's what my memory was
15 then, then I, I would of assumed that's what the plea,
16 plea deal was.

17 Q. Okay. And so, he had rejected a nine year plea
18 offer.

19 Is that kind of what you remember based on the
20 transcript and, and sitting here today?

21 A. Yes.

22 Q. And then tell us about your relationship, your
23 working relationship, with the solicitor in this case?

24 Did you -- is she someone you worked with regularly?

25 Is she someone that you were able to negotiate with?

1 what was that relationship like?

2 A. I would, I would consider it a very good, healthy,
3 cordial working relationship.

4 Q. Uh-huh. (Affirmative).

5 A. I respected her. I respected Ms. Legette's
6 integrity.

7 Q. Uh-huh. (Affirmative).

8 A. I trusted what she told me and we had worked on I
9 mean countless cases over the years, serious cases like
10 this one, cases that were difficult to negotiate, cases
11 that had -- that were serious injuries to victims, you
12 know, and I knew -- you know, I, I had confidence when she
13 told me that that was the best she was gonna do, that was
14 the best she was gonna do, and she would stand by that.

15 And so I, I mean I -- I, I, I think she's a -- she's
16 a very trustworthy human being.

17 Q. And so you feel like you got the best offer you were
18 gonna get from her on this case?

19 A. I do, yes.

20 Q. All right. And then you, of course, relayed that to
21 Mr. Gardner, told him about it?

22 A. Yes, I did.

23 Q. Okay. And he turned---

24 A. I did.

25 Q. And he turned it down?

1 A. He, he did, yes.

2 Q. And I think you---

3 A. Obviously.

4 Q. And I think you testified on direct that that was
5 some -- that part of -- that sort of helped your strategy
6 in terms of an all or nothing, that if he had turned down
7 a nine year plea offer, it wouldn't really do him much
8 good to have a conviction on a lesser included.

9 Is that consistent with what you testified with?

10 A. Yes, that is.

11 Q. And do you think he would of gotten a conviction on a
12 lesser -- well, let's put it this way.

13 If it had just been an ABHAN hanging out, you think
14 he would of been convicted of an ABHAN removing the
15 attempted murder?

16 A. I mean -- you know, it, it sort of -- sort of playing
17 Monday morning quarterback. But the -- I mean clearly
18 the, the jury won't -- felt like there was sufficient
19 evidence to find him guilty.

20 would it have been a compromised verdict?

21 Potentially.

22 I, I don't -- I don't recall the length of
23 deliberation. I don't recall if there were questions, you
24 know, that sort of give you the tea leaves about what
25 jury's are thinking.

1 Q. Uh-huh. (Affirmative).

2 A. I don't recall having any conversations about -- with
3 jurors following the verdict.

4 So, I really don't know exactly what they would do.
5 But I, I believe that, under the circumstances of the
6 verdict that we did receive --

7 Q. Uh-huh. (Affirmative).

8 A. -- it's very clear to me he would of at least gotten
9 convicted of that.

10 Q. Okay. Now, Mr. Gardner, on direct exam, testified
11 that he believed the jury foreman was related to the
12 victim.

13 Did you have any knowledge or indication that that
14 was the case?

15 A. I do not recall that at all. I feel like, had that
16 been relayed to me, I would of, of made some sort of
17 inquiry---

18 Q. Okay.

19 A. ---at, at a bare minimum.

20 Q. And you've had the chance to review the indictments
21 relatively recently, recently.

22 Is that correct?

23 A. Yes.

24 Q. And do you see---

25 A. Yes, ma'am.

1 Q. ---any basis that you should of objected to the
2 indictments?

3 A. Not, not the ones that -- not the ones that
4 ultimately were presented to the jury.

5 Q. Uh-huh. (Affirmative).

6 A. There were some indictments that were dismissed in
7 the process of the trial --

8 Q. Uh-huh. (Affirmative).

9 A. -- based on some testimony provided by one of the
10 witnesses --

11 Q. Uh-huh. (Affirmative).

12 A. -- that I believe that compelled the solicitor to
13 dismiss those. So, they didn't have to be addressed.

14 Q. Okay.

15 A. I think -- I don't see anything else regarding the
16 remainder of the indictments.

17 Q. Okay. And to be clear, each of the three attempted
18 murder indictments deals with a different victim, correct?

19 A. It does appear that way, yes.

20 Q. Okay. And then I think this will be my last
21 question. Mr. Gardner had testified on direct that no one
22 checked him about how much alcohol he had been drinking.

23 Do you recall making that a theme throughout trial
24 that he was intoxicated during his confession?

25 A. Yes.

1 Q. And do you recall questioning---

2 A. I did.

3 Q. Do you recall questioning law enforcement about
4 whether they smelled alcohol or saw al -- or noticed signs
5 of intoxication?

6 A. I, I, I, I saw it in the transcript. Yes, I, I did
7 that.

8 Q. And do you recall there was an empty Crown Royal
9 bottle that you brought out before the jury?

10 A. I don't have any memory of that. But it sounds like
11 something I might do.

12 Q. Okay. Okay. I, I -- all right. I think that's all.
13 Thank you for your time.

14 THE COURT: Thank you.

15 THE WITNESS: Thank you very much.

16 THE COURT: All right. Ms. Marto, any, any
17 follow-up?

18 MS. MARTO: No redirect and no further witnesses.

19 THE COURT: All right. All right. Thank you,
20 Mr. Fleming.

21 THE WITNESS: Thank you, sir.

22 THE COURT: All right. You can, you can be excused.
23 I'm not sure how that would, would take place.

24 Do we have any other witnesses?

25 MS. DIXON: Your Honor, the State calls Tameaka

524 Tameaka Legette - Direct examination
By Ms. Dixon

1 Legette. I see she's on there. Let me get this---

2 THE COURT: All right. So the---

3 MS. DIXON: Turn on her camera.

4 THE COURT: So, the applicant has, has rested?

5 There's no further---

6 MS. MARTO: Yeah, this is your---

7 THE COURT: ---witnesses?

8 (Pause.)

9 THE COURT: Ms. Marto?

10 Ms. Marto, you've, you've rested?

11 No further---

12 MS. MARTO: Yes, Your Honor.

13 THE COURT: Okay. Thank you.

14 All right. All right. I'll hear from the State.

15 MS. DIXON: May it please the Court.

16 The State calls Tameaka Legette.

17 THE CLERK: Ms. Legette, if you would, please raise
18 your right-hand.

19 TAMEAKA LEGETTE, being first duly
20 sworn, testified as follows:

21 THE CLERK: And, if you would, please state your
22 first and last name and spell both for the record please.

23 THE WITNESS: Yes, good morning.

24 My name is Tameaka Legette. Tameaka, T-A-M-E-A-K-A.
25 Last name Legette, L-E-G-E-T-T-E.

1 DIRECT EXAMINATION

2 BY MS. DIXON:

3 Q. Ms. Legette, how are you today?

4 A. I'm doing well, ma'am.

5 How are you?

6 Q. Good. Good. Thank you.

7 And can you tell us about your involvement in this
8 case?

9 A. Yes, ma'am.

10 I work for the solicitor's Office in the Fourteenth
11 Circuit, and, at the time of this case, this case was
12 reassigned to me after one of our other prosecutors,
13 kelvin wright, had previously had the case and I think he
14 may of left the office by this time.

15 Oh, he may of been still working here. It may of
16 been on I think a -- maybe a military furlough. But the
17 case was reassigned to me after he had the case. And so I
18 became the prosecutor responsible for trying the case.

19 Q. And did you make any plea offers in this case or
20 would that have been --?

21 A. I don't, I don't -- I don't recall making any. There
22 may have been some that were made prior to me getting
23 involved in the case.

24 I, I remember -- and I didn't -- this is -- my, my
25 recollection is that, by the time I got involved with the

1 case, whatever plea offers there were had already been
2 previously extended. And by the time I got involved with
3 the case, there was a -- an LWOP notice that had been
4 filed, life without parole notice, that had been filed.

5 Now, me, me and Mr. Fleming may of discussed some
6 plea offers while we were talking. I don't have any, any
7 real recollection of myself making any plea offers.

8 However, Kelvin Wright may of made some. And if
9 Mr. Fleming testified earlier that there was a nine year
10 plea offer, then I would go along with what he says
11 because I, I did trust Mr. Fleming in what he would tell
12 me, yes.

13 Q. Okay. Now, I think, in this case, there's been some
14 allegations that you may have been taught by the victims.

15 where -- did you grow up in Hampton County?

16 A. No, I did not.

17 Q. Did you go to school in Hampton County?

18 A. No, I did not.

19 Q. Do you recall any of the victims in this case ever
20 being a teacher of yours?

21 A. No, they were not.

22 Q. Okay. And let's see.

23 Did you know them before you became a solicitor?

24 A. I did not know Ms., Ms. Walden. I did not know Ms.
25 Walden. I had never met Ms. Walden. I did have -- I did

1 know Ms. -- I can't think of her last name, Montooth
2 (phonetic).

3 Q. Uh-huh. (Affirmative).

4 A. I had met her before.

5 Q. Uh-huh. (Affirmative).

6 A. But we were not friends. I, I had met her before --

7 Q. Uh-huh. (Affirmative).

8 A. -- but that's it---

9 Q. And do you recall---

10 A. And I'm not even really sure -- go ahead. I'm sorry.

11 Q. No, go ahead.

12 Do you recall if the judge asked the jury panel if
13 anyone was a close personal friend or relative of yours?

14 A. Yes, those were his standard questions. He would
15 always ask those, yes, ma'am.

16 Q. And, in that same vein, if any of the members of the
17 jury panel had been a close personal friend or relative of
18 yours, what would you have done?

19 A. I would of made Mr. Fleming aware of it as well as
20 the Court.

21 Q. Okay. Okay. So, that's not something you would of
22 hidden from the Court or him?

23 A. No. No, and I would not of allowed them on the jury
24 either.

25 Q. Okay.

528 Tameaka Legette - Direct examination
By Ms. Dixon

1 A. If I -- even if I had to strike them, I would of had
2 to strike them.

3 Q. Okay. I think that's all. Thank you for being here
4 today.

5 THE COURT: All right. Any cross---

6 A. Yes, ma'am.

7 THE COURT: Any cross-examination?

8 MS. MARTO: Nothing, Your Honor.

9 THE COURT: All right. Thank you, Ms. Legette.

10 Any objection---

11 THE WITNESS: Thank you.

12 THE COURT: ---to this witness being excused?

13 MS. MARTO: No, Your Honor.

14 MS. DIXON: None from the State.

15 THE COURT: Thank you.

16 MS. DIXON: Thank you.

17 THE WITNESS: Thank you, Your Honor.

18 THE COURT: All right. Any further witnesses for the
19 State?

20 MS. DIXON: No further witnesses, Your Honor.

21 THE COURT: Okay. All right. Let me, let me hear
22 from you.

23 Ms. Marto.

24 MS. MARTO: Yes, Your Honor.

25 we would just request that this Court consider

1 granting relief in this case and give Mr. Gardner an
2 opportunity to go back to General Sessions Court for a new
3 plea or trial.

4 We're certainly not abandoning any of the issues we
5 raised today. But I would just highlight specifically
6 that I think that there was evidence to support that
7 Mr. Gardner committed a lesser included offense as opposed
8 to an attempted murder.

9 I, I don't think that the reasoning that he should of
10 gotten less or he would of gotten more time through that
11 versus pleading is reasonable given the fact that he
12 received a substantial sentence that would exceed whatever
13 would of been given if he was found guilty of ABHAN or
14 first degree instead.

15 THE COURT: All right. Go ahead.

16 MS. MARTO: And we would also highlight that a
17 curative instruction should of been given concerning a
18 relationship being abused if that was the case.

19 Again, not abandoning any other issues. But based
20 upon those specifically, we would just request relief.

21 Thank you.

22 THE COURT: All right. Thank you.

23 MS. DIXON: May it please the Court, Your Honor.

24 As Your Honor---

25 THE COURT: Please.

1 MS. DIXON: ---is aware, the standard here is, of
2 course, *Strickland v. Washington*. It is a standard that
3 requires them to show both deficiency and prejudice and
4 the burden is on him and there's a presumption of
5 effectiveness that is embedded in *Strickland* that the
6 defendant has to or that the applicant has to overcome to
7 obtain relief in addition to showing deficiency, which is
8 measured by reasonableness under prevailing professional
9 norms.

10 He must also show prejudice, which is a reasonable
11 probability the outcome would of been different but for
12 any alleged deficiency and the State would submit he has
13 not met his burden today.

14 I do have a couple of cases related to the truth
15 seeking language.

16 I would point the Court first to *State v. Aleksey*, I
17 can never get that right, *Aleksey*. That is cite number
18 343 S.C. 20 and 538 SE2d 248. It is a 2000 South Carolina
19 Supreme Court case considering a situation where the judge
20 charged truth language in -- within the -- I believe it
21 was part of the circumstantial doubt charge and the issue
22 they were faced with on appeal was whether that
23 unconstitutionally shifted the burden of proof and the
24 Court there said, you know, the jury charge has to be
25 considered as a whole, and, here, where that truth

1 language was not charged in conjunction with the
2 reasonable doubt charge or the circumstantial evidence
3 charge but was rather charged in conjunction with the
4 credibility of a witness charge, that it was -- it did not
5 unconstitutionally shift the burden of proof. And so they
6 affirmed in *State v. Aleksey*.

7 I think, as a matter of law, here where these
8 statements weren't even given in the jury charge, but were
9 rather preliminary statements to the jury, it could not
10 have unconstitutionally shifted the burden of proof.

11 We would also cite the *State v. Beatty* and that is a
12 2019 case which I know came out after Mr. Gardner's trial.

13 So, at that time, of course, trial counsel couldn't
14 have known what the Supreme Court was gonna do four years
15 later. But it does note that this was a standard thing in
16 the bench books at that time and that's in Footnote 2 and
17 this is *State v. Beatty*, 423 S.C. 26, 813 SE2d 502, and
18 that's a 2018 Supreme Court's case.

19 So, they do note that that was a standard thing in
20 the bench book. But *State v. Beatty's* actually more in
21 line in -- with what happened here I believe cause, in
22 that case, the statements were given preliminarily at the
23 start of the trial and they found that that -- it was, it
24 was a harm -- it wasn't -- they basically cited back to
25 *Aleksey* and found that it was not reversible error in that

1 case. So, I would say, as a matter of law, that claim
2 fails.

3 Looking on, they've talked about the curative
4 instruction. I think he articulated a very valid reason,
5 of course, telling the jury, you know, disregard the
6 statement about the abuse is going to do nothing but
7 highlight to the jury oh, wait, you know, there was a
8 statement about abuse. Whereas, if you sometimes just let
9 things lie, people tend to forget them more. So, he did
10 articulate what is a valid trial strategy there.

11 The lesser included, I think he articulated his trial
12 strategy and I will say, if you review the transcript, and
13 especially his closing argument I think really hits on
14 what his trial strategy was, and I would note specifically
15 Pages 350 to 352 of his closing argument. He really goes
16 in on how Mr. Gardner did not intend to kill these people,
17 that this was a close range shot. If he had intended to
18 kill them, he would have not, you know, missed that poorly
19 at close range with a rifle.

20 So, I think that his, his trial strategy is very
21 evident in his closing statements as well as throughout
22 the trial itself and consistent with what he articulated
23 today and, of course, when you are a lawyer, you get the
24 facts you get. You can't change the facts.

25 The confession is the confession. The witnesses'

1 testimony is the witnesses' testimony. You take what you
2 get and you work with it and you do the best you can.

3 But we would submit that -- make sure that I'm
4 not missing -- in terms of prosecutorial misconduct and
5 the conflict of interest, I don't think he's presented any
6 credible evidence today that any of these people knew
7 the -- any of the jurors or had any kind of relationship
8 with the victims that would of precluded them from doing
9 their jobs in this case. And I think he did testify that
10 there was a nine year plea offer that Mr. Gardner
11 rejected.

12 So, we would submit that he hasn't met his burden of
13 proof.

14 THE COURT: All right. All right. Thank you.

15 All right. All right. I'm gonna, I'm gonna take the
16 matter under advisement. I'm gonna review and thank y'all
17 for the presentation today.

18 I, I, I did have the opportunity to review the
19 materials prior to today's hearing. So, I was familiar
20 with where your, where your arguments were headed.

21 But now that you've highlighted some very important
22 points, I'm gonna review those records and consider
23 testimony today as well as the arguments that y'all've
24 made. I'll reach out to one or both of y'all with my
25 decision and a request to assist with the preparation of

1 an order as quickly as I can.

2 okay?

3 MS. DIXON: Thank you, Your Honor.

4 MS. MARTO: Thank you, judge.

5 THE COURT: All right. Thank you.

6 Good luck to you, Mr. Gardner.

7

8 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Hampton County, South Carolina, on the 13th day of November, 2025.

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

April 27th, 2026



PAMELA E. GREEN, Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF HAMPTON

FILED
AM/PM

COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

James A. Gardner, #177263,

Case No. 2017-CP-25-0006

Applicant,

Jvonndra Brooks-Creech
Clerk of Court
Hampton County SC

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

This matter is before the Court by way of an application for post-conviction relief filed by James A. Gardner (Applicant) on January 9, 2017. Following a remand by the South Carolina Court of Appeals, an evidentiary hearing convened before the Honorable Dale E. Van Slambrook on November 13, 2025. Applicant was present and represented by Chelsey F. Marto, Esquire. Assistant Attorney General Danielle Dixon represented Respondent. Applicant testified at the hearing and called as a witnesses trial counsel Cory Fleming. Respondent called Assistant Solicitor Tameaka Legette. Following a thorough review of the records before this Court, and the testimony and evidence presented at the evidentiary hearing, this Court finds Applicant did not meet his burden of proof. Thus, this Court denies and dismisses this application with prejudice.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections serving an aggregate twenty-five-year sentence. In August 2013, the Hampton County Grand Jury indicted Applicant for three counts of attempted murder (2013-GS-25-0073, -0075, -0079) and possession of a weapon during a violent crime (-0080).¹ On February 2-4, 2015, Applicant proceeded to a jury

¹ In October 2014, Applicant was additionally indicted for pointing and presenting firearms, but the State withdrew that indictment at the close of the State's case. (2014-GS-25-374; Tr. 319).

trial before the Honorable Perry M. Buckner. Cory Fleming, Esquire, represented Applicant. Assistant Solicitor Tameaka Legette prosecuted the case. The jury convicted Applicant as indicted, and Judge Buckner imposed concurrent sentences of twenty-five years for each attempted murder and five years for the weapon charge.

Applicant filed a timely notice of appeal, which was perfected by Appellate Defender Kathrine Hudgins through the filing of a brief pursuant to Anders v. California, 386 U.S. 738 (1967). Applicant filed a pro se response. The South Carolina Court of Appeals dismissed the appeal pursuant to Anders, and the remittitur was sent August 5, 2016.

On January 9, 2017, Applicant timely filed this PCR application along with a Motion in Support of Post-Conviction Relief Application.² On May 1, 2017, Applicant filed a motion to amend his application. On August 9, 2017, Respondent filed a return and partial motion to dismiss, requesting the Court dismiss an actual innocence claim as not cognizable under the PCR Act and hold a hearing on the remainder allegations.

On January 29, 2018, a hearing convened before the Honorable R. Lawton McIntosh. On April 24, 2018, Judge McIntosh issued an order denying relief and dismissing the application with prejudice. Applicant filed a timely notice of appeal, and Chief Appellate Defender Robert M. Dudek filed a petition for writ of certiorari arguing *inter alia* the PCR court erred in limiting Applicant to raising only three issues at the hearing under the threat of Rule 11, SCRCP, sanctions. After the matter was transferred to the Court of Appeals, the Court of Appeals granted certiorari. Following briefing, the Court of Appeals issued an opinion finding the PCR court erred in limiting the number of issues Applicant could present and reversing and remanding to the PCR court for a new PCR hearing. The remittitur was sent March 19, 2024.

² The specific grounds raised will be discussed in the next section.

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ALLEGATIONS

On January 9, 2017, Applicant timely filed this PCR application along with a Motion in Support of Post-Conviction Relief alleging:

a. Ineffective assistance of trial counsel:

1. Failed to object to the jury composition because Juror Alice Scott is biologically related to alleged victim.;
2. Failed to investigate case, interview witnesses, file motions for funding for an investigator, and investigate the medical records of alleged victims to assess the extent of their claimed injuries. The radiologist wasn't subpoenaed to testify to the extent of the alleged bullet wound; the applicant was denied his substantial rights to confrontation and also compulsory S.C. Constitution Art. 1 Section 13;
3. Failed to object to the indictment being multiplicitous because it contained several counts for one firearm.
4. Stipulated to involuntary statement made by Applicant to investigators. Counsel should have requested an *in camera* Jackson v. Denno hearing because the stipulation was used when the judge instructed the jury;
5. Failed to object to the use of Applicant's prior convictions as beyond ten years and too remote; failed to investigate validity of prior convictions;
6. Failed to request instruction on lesser-included offenses of first, second, and third degree assault.
7. Applicant proceeded to trial due to a breakdown in communication; he would have pled to a lesser-included offense for a sentence under nine years, but counsel would not hire an investigator to show evidence of a lesser-included offense.

b. Ineffective assistance of appellate counsel: Did not raise court's denial of motion for directed verdict;

c. Actual innocence.

On May 1, 2017, Applicant filed a motion for leave to amend his application. Citing Gonzales v. State, 419 S.C. 2, 795 S.E.2d 835 (2017), he alleged the breakdown in communication was caused by counsel's conflict of interest. At the 2018 PCR hearing, counsel for Applicant entered an amended allegation raising the issue as follows:

Trial counsel had a conflict of interest in his representation of Applicant in this case. Trial counsel was a close friend of Adonis Cocker who was a son of the victim. This relationship was not disclosed prior to trial counsel's representation in this case. Once Applicant became aware of the conflicting relationship, Applicant sought to have trial counsel relieved from the case.

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Following the first order denying PCR and the subsequent remand from the Court of Appeals, Applicant filed an amended application on November 17, 2025, raising the following additional allegations:

1. Ineffective assistance of counsel:
 - a. Failed to object to truth-seeking language (Tr. 100);
 - b. Failed to request a curative instruction regarding the mention of the relationship being abusive (Tr. 174);
 - c. Failed to request a lesser-included offense jury instruction
 - d. Failed to get a better plea deal.
2. Prosecutorial Misconduct: there was a connection between the victim and the prosecutor.

At the hearing, Applicant proceeded on the allegations in his original and amended applications.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the records before it, including the Orangeburg County Clerk of Court records of the underlying convictions, Applicant's records from the South Carolina Department of Corrections, the trial transcript, Applicant's appellate records, and the records of this PCR action. This Court has further had the opportunity to observe the witnesses at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. After a careful review based on Strickland, this Court finds Applicant has failed to carry his burden of proof. Below are this Court's findings of fact and conclusions of law as required by section 17-27-80 of the South Carolina Code (2017).

Ineffective Assistance of Counsel

In a PCR action, an applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). To prove ineffective assistance of counsel, the applicant must show counsel was deficient, and the deficiency prejudiced applicant. Strickland v. Washington, 466 U.S. 668 (1984). When evaluating deficiency, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." "Counsel is strongly

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presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment,” and a PCR applicant must overcome this presumption to obtain relief. Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 690); Cherry, 300 S.C. at 118, 386 S.E.2d at 625. “A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight, to reconstruct the circumstances of counsel’s challenged conduct, and to evaluate the conduct from counsel’s perspective at the time.” Strickland, 466 U.S. at 689. Strickland “calls for an inquiry into the objective reasonableness of counsel’s performance, not counsel’s subjective state of mind.” Harrington v. Richter, 562 U.S. 86, 109-10 (2011). To prove prejudice, an applicant must prove counsel’s deficiency prejudiced the applicant such that “there is a reasonable probability that, but for counsel’s unprofessional errors, the result of the proceeding would have been different.” Id. at 117-18, 386 S.E.2d at 625.

Jury composition

Applicant first contends counsel was ineffective for failing to object to the jury composition because Juror Alice Scott is biologically related to the alleged victim.³ Applicant did not prove this ground. At the PCR hearing, Applicant averred the foreman⁴ of the jury was related to the victim. Trial counsel testified he did not recall any information indicating the foreman was related to the victims, but he would have inquired into it if he had been aware.

This Court finds trial counsel’s testimony on this issue more credible than Applicant’s testimony. Based on counsel’s testimony, his performance was reasonable under prevailing professional norms and not deficient. Further, Applicant did not introduce any credible evidence of a relationship between any juror and the victims. During voir dire, the panel was informed that

³ There were three victims in this case: Mary Etta Montouth, who had dated Applicant; Mariam Walden, Montouth’s sister; and Officer Bobby Anderson. Applicant did not clarify which victim he alleges was related to a juror.

⁴ Alice Scott was not the foreman.

Bobby Anderson, Mariam Walden, and Mary Etta Montouth (the victims in this case) were potential witnesses. (Tr. 53-54). The jury was then questioned about whether anyone was “related by blood, connected by marriage or a close personal friend of any of the potential witnesses.” (Tr. 54-55). Although three members of the panel stood, none of them indicated they were related to or friends with the victims.⁵ (Tr. 55-59). Juror Alice Scott, whom Applicant specifically named in his application, did not stand in response to that question. (Tr. 54-59). Likewise, the foreperson—Harold Ennis (Tr. 79)—also did not stand in response to that question. Applicant has failed to produce any credible evidence of any relationship between a juror and the victims and thus did not prove deficiency or prejudice.

Failed to investigate

Applicant next contends counsel was ineffective for failing to investigate the case, interview witnesses, file motions for funding for an investigator, and investigate the medical records of alleged victims to assess the extent of their claimed injuries. He further avers the radiologist wasn’t subpoenaed to testify to the extent of the alleged bullet wound, which violated his right to cross-examine the radiologist. Applicant did not prove this ground. Critically, Applicant did not introduce any evidence at the PCR hearing of what an investigation would have uncovered and thus did not meet his burden of proving prejudice. For the same reason, he failed to overcome the presumption that counsel’s performance in this regard was effective.

Regarding the claim related to the victim’s medical records, the issue of victim Marian Walden’s medical records was addressed on the record in the context of the State’s Motion to Protect the Records from dissemination to Applicant. At that time, trial counsel indicated he had

⁵ Juror 4—who was seated as an alternate—stated his cousin was married to Chief Smith’s brother; Juror 40—who was not seated—stated he was a close friend of Officer Michael Smith; and Juror 12—who also was not seated—stated she attended church with and knew Captain Anthony Russell. Chief Smith was not one of the three victims of the offenses Applicant was convicted of.

received the records but had not disseminated them to Applicant. (Tr. 91-92). The trial court asked if there was any dispute as to whether Walden sustained an injury requiring medical treatment, and counsel replied, “I don’t believe there is. I have spoken to my client about the consenting to this motion, and he has agreed. He said he doesn’t need this information.” (Tr. 92). Thereafter, the trial court granted the State’s motion, noting Article I, Section (a)(6) of the South Carolina Constitution protected the victim’s personal information from disclosure to the defendant unless relevant to the defense. This Court finds counsel’s performance in this regard reasonable under prevailing professional norms and not deficient. This Court likewise finds Applicant failed to show how disclosure of Walden’s medical records to *him* (when counsel already had them) would have changed the outcome of the proceeding—especially when the injury itself was not materially disputed.⁶ For the same reason (that the shooting itself was not disputed), Applicant did not show counsel was deficient for not objecting to the entry of the x-rays based on the Confrontation Clause.⁷ (Tr. 204). Further, because the x-rays were not testimonial, there is no reasonable probability an objection based on the Confrontation Clause would have excluded them. Finally,

⁶ The defense strategy, as reflected by the opening statement, was to argue that Applicant “had every opportunity in the world if he intended to murder somebody,” but the physical evidence would show he did not intend to kill anyone. (Tr. 116-21). Counsel argued in closing that if Applicant had intended to kill Walden, he would have shot her during the time she testified she was on her knees praying while Applicant was standing next to her with the gun. (Tr. 351-52). Regarding Walden’s leg injury, counsel posited:

Instead of—with all the time in the world to shoot her, instead of doing it, he leaves the house, and that’s when apparently the police are arriving and it’s getting to be chaotic outside, and she says she runs. And she’s running and she gets shot in her backside on the thigh. So she’s running and she doesn’t see who shot her because she’s running looking that way. You don’t run like that.
She doesn’t see who shot her. And none of the police officers testified that they saw him shoot her. They testified they were exchanging rounds is what they said.

(Tr. 352). Critically, Applicant did not submit credible evidence that the records would have further supported the foregoing strategy or a different strategy.

⁷ Counsel initially objected but withdrew his objection after a bench conference. (Tr. 204).

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Applicant has not introduced any credible evidence to show how cross-examination of the radiologist would have had a reasonable probability of altering the outcome of trial. Applicant failed to meet his burden of proving deficiency or prejudice, and this claim is denied.

Indictment

Applicant contends counsel was ineffective for failing to object to the indictment being multiplicitous because it contained several counts for one firearm. Applicant did not prove this ground. At the PCR hearing, counsel credibly testified he did not see a basis to object to the indictments, explaining each attempted murder indictment dealt with a different victim. Having reviewed the indictments, this Court agrees. Applicant has not shown a valid basis to object to the indictments and thus did not prove deficiency or prejudice. This claim is thus denied.

Custodial statement

Applicant next contends counsel was ineffective for stipulating to his custodial statement. He avers counsel should have requested a Jackson v. Denno hearing because the stipulation was used when the judge instructed the jury.⁸ Applicant did not prove this ground.

As a threshold matter, Applicant seems to be conflating the issue of his custodial statement with counsel's stipulation that the guns entered as State's Exhibits 10 and 11 "were in good working order on the date of January 26th, 2013." (Tr. 316-17). To the extent Applicant is alleging counsel was ineffective for agreeing to this stipulation, this Court finds that a stipulation that the guns were in good working order supported counsel's strategy that Applicant "had every opportunity in the world if he intended to murder somebody," but the physical evidence would show he did not intend to kill anyone. (Tr. 116-21). Further, in light of the stipulation, the stipulation charge was proper, and there was no basis to object. (Tr. 363, 374). Applicant thus did

⁸ Applicant cites pages 85-86, 316-19, and 363-64, and 374 of the transcript in support.

not prove counsel was ineffective in this regard.

Regarding the custodial statement, counsel *did* challenge its admissibility through a Jackson v. Denno hearing. (Tr. 8-40). Although counsel challenged the voluntariness of the statement itself, counsel did not raise an issue with the Miranda warnings. (Tr. 10). This Court finds Applicant has failed to prove deficiency or prejudice in this regard. Specifically, during the pretrial *in camera* hearing, Officer Luiss Hernandez testified he advised Applicant of his Miranda rights when he arrested him, and Applicant appeared to understand. (Tr. 16). Chief Tyrone Smith testified that prior to interviewing Applicant, he asked if he had been “read his Miranda, and he said yes or he nodded. And I asked him did he understand, and he said yes.” (Tr. 23). The foregoing was sufficient for admissibility purposes to show Applicant was advised of Miranda, and Applicant did not set forth any additional argument counsel could have raised that would have had a reasonable probability of excluding the statement. Further, the jury was properly instructed that the State had the burden of proving the voluntariness of the statement beyond a reasonable doubt. (Tr. 365-66). Applicant did not prove deficiency or prejudice, and this claim is denied.

Prior convictions

Applicant contends counsel was ineffective for not objecting to the use of his prior convictions as beyond ten years and too remote. He further avers counsel failed to investigate the validity of these convictions. Applicant did not prove this ground. Initially, Applicant did not testify at trial, so the State did not seek to enter any impeachable convictions against him. Further, although the State served Applicant with notice of intent to seek life without parole (LWOP), trial counsel successfully challenged the LWOP notice, and the trial court ultimately sentenced Applicant to an aggregate sentence of twenty-five years. (Tr. 395-402). Applicant thus has not shown deficiency or prejudice in this regard, and this claim is denied.

*Lesser-included offense*⁹

Applicant contends counsel was ineffective for not requesting a charge on the lesser-included offenses of first, second, and third-degree assault. However, counsel articulated a valid strategy in pursuing an all-or-nothing defense, and Applicant thus did not prove this ground.

“[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690. “[S]trategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation.” Id. at 691.

At the 2018 PCR hearing, counsel testified he was able to negotiate a nine-year plea offer, but Applicant refused to consider it: “I went and told him. [Applicant] said, ‘I ain’t pleading to nine years.’ I said, ‘well, I just don’t think it’s going to get any better than that; this is a fairly serious case; and you’ve got a significant prior record.’” (2018 PCR 31). Trial counsel explained his strategy after Applicant’s refusal to consider a nine year offer:

[A]bout the only was that he was going to get a sentence less than the nine that was on the table was an all-or-nothing strategy, wherein you either – you either win it or you lose it, because James – at James’ age, almost any sentence was going to be significant, like he’s facing now, essentially a life sentence. And I was trying to tell him that at least at nine, there’s certainly hope that you won’t die in prison. And so, he wanted to significantly lower the nine. I don’t recall him ever telling me anything less than nine. I didn’t want to give the jury the opportunity to split the baby and give him a charge that was going to get him 20 years, anyway. I didn’t think that that would give us – or give him the result that he was looking for.

⁹ This section combines allegation (a)(6) of the original application and allegation (1)(c) of the November 2025 amendment.

(PCR App. 466-67). At the 2025 PCR hearing, counsel testified similarly about his strategy.

This Court finds counsel's testimony about his articulated strategy credible, and this strategy was reasonable under prevailing professional norms. From the trial transcript, it is evident counsel's strategy was to argue Applicant "had every opportunity in the world if he intended to murder somebody," but he lacked the specific intent to kill anyone. This was an especially reasonable strategy here where all three victims (two of whom lived with Applicant) identified Applicant as the shooter (Tr. 146, 158-60, 193, 199-200, 277-79); Applicant was apprehended at the scene following a shootout with police (Tr. 277-78,); and Applicant ultimately confessed on a video recording that was played for the jury (Tr. 307-08). In other words, this was not a case of mistaken identity, nor could counsel reasonably rely on the State's burden of proof for an acquittal. Thus, a strategy that embraced the evidence but asserted Applicant lacked the specific intent to kill was reasonable under prevailing professional norms. In light of this strategy, a request for a charge on a lesser-included offense would have absolutely led to a conviction on *something*. Counsel ultimately weighed Applicant's desire for a sentence of less than nine years and determined the only reasonable way to achieve that was through an acquittal—which would only be possible if he took an all or nothing approach. Here, where counsel articulated a valid strategy, Applicant has not overcome the presumption of effectiveness, and this claim is denied.

*Plea offer*¹⁰

Applicant asserts he proceeded to trial due to a breakdown in communication. He contends he would have pled to a lesser-included offense for a sentence under nine years, but counsel would not hire an investigator to show evidence of a lesser-included offense. He further contends counsel

¹⁰ This section combines allegation (a)(7) of his original application and allegation (1)(d) of the amendment filed November 17, 2025.

was infective for not procuring a better plea offer. Applicant did not prove this ground. At the PCR hearing, counsel testified he spoke with Applicant numerous times and had sufficient time to talk to Applicant and review discovery with him. Counsel recalled relaying a nine-year-offer to Applicant—which Applicant rejected. Counsel testified he had a good working relationship with the solicitor who prosecuted this case. Based on counsel’s foregoing credible testimony, this Court finds counsel’s performance reasonable under prevailing professional grounds and not deficient. This Court further finds that here where Applicant engaged in a shootout with responding officers, the fact that counsel procured a nine-year offer was remarkable. To the extent Applicant alleges counsel was ineffective for not hiring an investigator to support a lesser-included offense as part of plea negotiations, Applicant failed to enter any evidence at the PCR hearing to show how any investigation could have supported a lesser-included offense and thus did not meet his burden. Finally, to the extent he contends he proceeded to trial due to a breakdown in communication, Applicant did not offer any testimony to show how further communication would have changed the outcome. Applicant did not prove deficiency or prejudice, and this claim is denied.

Failed to object – Court’s preliminary comments¹¹

Applicant argues counsel was ineffective for not objecting to the trial court’s truth-seeking language during its preliminary comments to the jury.¹² Applicant did not prove this ground. As a matter of law, Applicant cannot show prejudice because the statements occurred during the court’s

¹¹ This section addresses allegation (1)(a) of the amended application filed November 17, 2025.

¹² During its preliminary remarks, the trial court stated,

[A]n actual trial, unlike a television show, a movie or even a book, is not for entertainment. An actual trial, ladies and gentlemen, is a fundamental part of our democracy. It is a search for the truth in an effort to make sure that justice is done between the parties before the court. Searching for the truth and trying to make sure justice is done is often slow.

(Tr. 100).

preliminary remarks to the jury and not as part of the trial court's charge on reasonable doubt or circumstantial evidence. See State v. Aleksey, 343 S.C. 20, 28-29, 538 S.E.2d 248, 252-53 (2000) (finding that although truth-seeking language in a *jury charge* was inappropriate, it did not shift the burden of proof when it was not given in conjunction with the charge on the State's burden of proof or circumstantial evidence). Thus, the pre-trial comments did not prejudice Applicant, and there is no reasonable probability the outcome would be different had counsel objected. See State v. Beaty, 423 S.C. 26, 32-34, 813 S.E.2d 502, 505-06 (2018) (finding defendant not prejudiced by court's pretrial comments that trial is search for the truth and the jury's role is to render true and just verdict and determine true facts when "they were a mere statement to the jury and not a charge on the law," and they "were not linked to either the reasonable doubt or the circumstantial evidence charges as was condemned in Aleksey").

Further, although Beaty subsequently admonished judges to stop using *any* truth-seeking language,¹³ it came out *after* Applicant's trial, and counsel was not deficient for not anticipating that change—especially when the general sessions benchbook contained virtually similar language. Beaty, 423 S.C. at 34 n. 2, 813 S.E.2d at 506 n.2. Thus, counsel's failure to object was reasonable under prevailing professional norms and not deficient. Applicant did not prove deficiency or prejudice here, and this claim is denied.

Failed to request curative instruction

Applicant avers counsel was ineffective for not requesting a curative instruction after victim Montouth mentioned her relationship with Applicant was abusive. Applicant did not prove this ground. During the State's redirect examination of Montouth, the following occurred:

¹³ Prior to Beaty, the South Carolina Supreme Court instructed judges to "to remove any suggestion from [its] *general sessions charges* that a criminal jury's duty is to return a verdict that is 'just' or 'fair' to all parties. State v. Daniels, 401 S.C. 251, 737 S.E.2d 473 (2012) (emphasis added). Daniels, however, did not address the use of such language during preliminary comments.

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Q. Okay. And did you—the things that he said to you, did you believe him?

A. Yes. Yes. I guess I've been in a abusive relationship with James—

Mr. Flening: Your Honor—

A. —all the time

Mr. Fleming: I have a matter of law to take up outside the presence—

(Tr. 174). Following a bench conference, counsel relayed he was withdrawing his objection. Neither the solicitor nor trial counsel elicited additional testimony from Montouth. (Tr. 174).

At the PCR hearing, counsel credibly testified that although he could not recall the specifics of that particular bench conference, his general practice was to evaluate the efficiency of a curative instruction. He further noted that curative instructions generally only serve to highlight the optionable testimony and make it worse, and he believed he made a calculated guess that it would be worse to have the instruction. This Court finds counsel's basis for not requesting a curative instruction reasonable and not deficient. This Court further agrees with counsel's assessment that a curative instruction would have only served to highlight the damaging testimony, especially here where counsel successfully prevented Montouth from going into further detail. Finally, because this was a mere passing statement in a trial where the State had compelling evidence, there is no reasonable probability the outcome would be different had counsel requested a curative instruction. Applicant did not prove deficiency or prejudice, and this claim is denied.

Conflict of Interest

Applicant contends he did not receive effective representation due to counsel's conflict of interest. Specifically, he avers trial counsel was a close friend of the victim's son, Adonis Cocker. He further avers this relationship was not disclosed prior to trial counsel's representation, and once Applicant became aware of the conflicting relationship, he sought to have trial counsel relieved from the case. Applicant failed to prove this ground. At the PCR hearing, counsel testified he did

not know Applicant's stepson (which is the victim's son); he went to high school in Savannah and not Hampton; and he did not go to high school with Applicant's stepson. This Court finds counsel's foregoing testimony credible. Based on the foregoing, Applicant has not shown any conflict of interest and has thus not met his burden. This claim is denied.

Ineffective Assistance of Appellate Counsel

A defendant is entitled to effective assistance of appellate counsel. *Southerland v. State*, 337 S.C. 610, 615, 524 S.E.2d 833, 836 (1999). Although appellate counsel is required to provide effective assistance of counsel, "appellate counsel is *not* required to raise every non-frivolous issue that is presented by the record." *Thrift v. State*, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990) citing *Jones v. Barnes*, 463 U.S. 745 (1983). "For judges to second-guess reasonable professional judgments and impose on ... counsel a duty to raise every 'colorable' claim suggested by a client would disserve the very goal of vigorous and effective advocacy. . ." *Jones*, 463 U.S. at 754.

Generally, in analyzing a claim of ineffective assistance of appellate counsel, the Court applies the Strickland test just as it would when analyzing a claim of ineffective assistance of trial counsel. See *Southerland v. State*, 337 S.C. 610, 616, 524 S.E.2d 833, 836 (1999). Thus, in this case, we ask (1) whether appellate counsel's performance was deficient, and (2) whether Respondent was prejudiced by appellate counsel's deficient performance. *Bennett v. State*, 383 S.C. 303, 309, 680 S.E.2d 273, 276 (2009). To prove prejudice, the applicant must show that, but for counsel's errors, there is a reasonable probability he would have prevailed on appeal. *Anderson v. State*, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003).

Failed to appeal denial of directed verdict

Applicant contends appellate counsel was ineffective for not appealing the trial court's denial of his motion for directed verdict. Applicant did not prove this ground. Initially, this Court

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finds an appeal of the denial of a directed verdict would not have been successful. Thus, Applicant has not overcome the strong presumption that counsel was effective. Likewise, Applicant has not shown any additional preserved issue appellate counsel could have raised that would have been meritorious and thus did prove deficiency or prejudice. This claim is thus denied.

Actual Innocence

Applicant alleges he is “actually, factually, and legally innocent of attempted murder” because South Carolina laws “require the state to prove their case beyond a reasonable doubt.” (PCR App. 416). He further avers the State must prove each element beyond a reasonable doubt. However, this Court agrees with Respondent that this is not a cognizable ground for PCR. See S.C. Code Ann. § 17-27-10(A)(6) (providing the PCR Act “shall not be construed to permit collateral attack on the ground that the evidence was insufficient to support a conviction”). Thus, Respondent’s motion to dismiss this claim is granted, and this allegation is denied and dismissed with prejudice.¹⁴

Prosecutorial Misconduct

Applicant contends the prosecutor engaged in misconduct in that she had a connection with the victim. More specifically, he alleged a victim had taught the solicitor. Applicant did not prove this ground. At the PCR hearing, Assistant Solicitor Leggette testified she did not go to school in Hampton County and was not taught by any of the victims. She further stated she did not know Ms. Walden and although she had previously met Ms. Montouth, they were not friends. This Court finds Assistant Solicitor Leggette’s testimony credible. This Court further finds Applicant did not present any credible evidence that the solicitor had any type of connection with the victims that

¹⁴ This Court further notes counsel moved for a directed verdict—the appropriate procedure for challenging the State’s lack of evidence. (Tr. 319-20).

caused her to engage in any type of prosecutorial misconduct. This claim is thus denied.

CONCLUSION

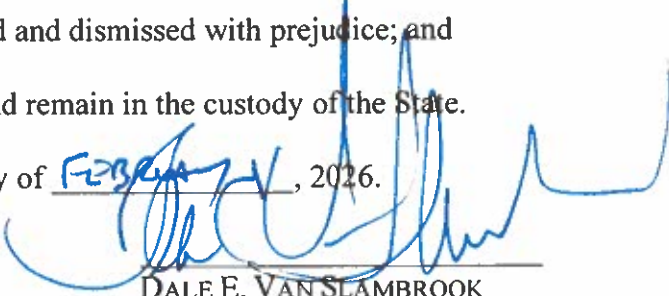
Based on the foregoing, this Court concludes Applicant has not established any constitutional violations that would require this Court to grant relief. Thus, this application is denied and dismissed with prejudice.

Should Applicant wish to secure appellate review, he must file and serve a notice of appeal within thirty days of receipt by counsel of written notice of entry of judgment. See Rule 203, SCACR. Applicant has the right to an appellate counsel's assistance in seeking review of the denial of PCR. Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991). If Applicant wishes to seek appellate review, PCR counsel must serve and file a notice of appeal on applicant's behalf. Rule 71.1(g), SCRCP. Attention is directed to Rule 243, SCACR, for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. This application for PCR is denied and dismissed with prejudice; and
2. Applicant shall be remanded to and remain in the custody of the State.

AND IT IS SO ORDERED THIS 26th day of February, 2016.


DALE E. VAN SLAMBROOK
Presiding Judge
Fourteenth Judicial Circuit

Munika Lee, South Carolina

WITNESSES

Chief Tyrone Smith

Officer Michael Smith

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TEST WARRANT NUMBER

2013A0250400004

Date of Arrest: January 27, 2013

ACTION OF GRAND JURY

TRUE BILL

James M. Wooten
Foreperson of Grand Jury

OCT 30 2014

VERDICT

Guilt

Harold E. Smith
Foreperson of Petit Jury

Date: 2-4-2015

INDICT

RECEIVED
FEB 09 2015
SC Court of Appeals

DOCKET NO. 2013-GS-25-00073

Amended Indictment

The State of South Carolina

County of Hampton

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

VS.

James Gardner

Indictment for

Attempted Murder

SC Code: 16-03-0029

CDR Code:3410

James M. Wooten

STATE OF SOUTH CAROLINA)
COUNTY OF HAMPTON)

INDICTMENT

2013-GS-25-00073

FILED

At a Court of General Sessions, convened on October 30, 2014, the Grand Jurors of Hampton County present upon their oath:

Attempted Murder

That in Hampton County, South Carolina, on or about January 26, 2013, the Defendant, James Gardner, with the intent to kill, did attempt to kill the victim, Major Bobby Anderson, with malice aforethought either express or implied, to wit: the Defendant did shoot at the victim with a firearm; all in violation of Section 16-23-0029 of the Code of Laws of South Carolina (1976, as amended).

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



Isaac M. Stone, III
Solicitor, 14th Judicial Circuit

WITNESSES

Chief Tyrone Smith

555 Officer Michael Smith

DOCKET NO. 2013-GS-25-00075

Amended Indictment

The State of South Carolina

County of Hampton

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

VS.

James Gardner

ACTION OF GRAND JURY

TRUE BILL

James M. Wood
Foreperson of Grand Jury
Date: **OCT 30 2014**

VERDICT

Guilty

Harold E. Smith
Foreperson of Petit Jury
Date: **2-4-2015**

INDICT

Indictment for

Attempted Murder

SC Code: 16-03-0029

CDR Code: 3410

RECEIVED

FEB 09 2015

SC Court of Appeals

James M. Wood

STATE OF SOUTH CAROLINA)
COUNTY OF HAMPTON)

INDICTMENT

2013-GS-25-00075

At a Court of General Sessions, convened on October 30, 2014, the Grand Jurors of Hampton County present upon their oath:

Attempted Murder

That in Hampton County, South Carolina, on or about January 26, 2013, the Defendant, James Gardner, with the intent to kill, did attempt to kill the victim, Mariam Walden, with malice aforethought either express or implied, to wit: the Defendant did shoot at the victim with a firearm, striking her in the upper leg; all in violation of Section 16-23-0029 of the Code of Laws of South Carolina (1976, as amended).

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



Isaac M. Stone, III
Solicitor, 14th Judicial Circuit

WITNESSES

Chief Tyrone Smith

Officer Michael Smith

55

ARREST WARRANT NUMBER

2013A0250400010

Date of Arrest: January 27, 2014

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: **OCT 30 2014**

VERDICT

Guilty

Harold Emis
Foreperson of Petit Jury

Date: **2-4-2015**

INDICT

DOCKET NO. 2013-GS-25-00079
Amended Indictment

The State of South Carolina

County of Hampton

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

VS.

James Gardner

Indictment for

Attempted Murder

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

RECEIVED
FEB 09 2015
1st Court of Appeals

STATE OF SOUTH CAROLINA)
COUNTY OF HAMPTON)

INDICTMENT
2013-GS-25-00079

At a Court of General Sessions, convened on October 30, 2014, the Grand Jurors of Hampton County present upon their oath:

Attempted Murder

That in Hampton County, South Carolina, on or about January 26, 2013, the Defendant, James Gardner, with the intent to kill, did attempt to kill the victim, Mary Etta Montouth, with malice aforethought either express or implied, to wit: the Defendant did shoot at the victim with a firearm; all in violation of Section 16-23-0029 of the Code of Laws of South Carolina (1976, as amended).

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



Isaac M. Stone, III
Solicitor, 14th Judicial Circuit

FILED

WITNESSES

Chief Tyrone Smith

Officer Michael Smith

ARREST WARRANT NUMBER

2013A0250400011

Date of Arrest: January 27, 2013

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: **OCT 30 2014**

VERDICT

Guilt

Foreperson of Petit Jury

Date: **2-4-2015**

INDICT

DOCKET NO. 2013-GS-25-00080

Amended Indictment

The State of South Carolina

County of Hampton

COURT OF GENERAL SESSIONS

October Term 2014

THE STATE

VS.

James Gardner

Indictment for

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

SC Code: 16-23-0490

CDR Code:0549

RECEIVED
FEB 09 2015
COURT OF APPEALS

INDICTMENT
2013-GS-25-00080

At a Court of General Sessions, convened on October 30, 2014, the Grand Jurors of Hampton County present upon their oath:

Weapons / Poss. weapon during violent crime, if not also sentenced to life

That in Hampton County, South Carolina, on or about January 26, 2013, the Defendant, James Gardner, did possess a firearm or did visibly display what appeared to be a firearm during the commission of or attempted commission of a violent crime, to wit: attempted murder, a violent crime for which he is convicted of committing or attempting to commit; in violation of Section 16-23-490, Code of Laws of South Carolina, (1976, as amended).

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

Steve M. Stone

Isaac M. Stone, III
Solicitor, 14th Judicial Circuit

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