

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Spartanburg County

Honorable Grace Gilchrist Knie, Circuit Court Judge

BRYAN HOLDER,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2018-001585

APPENDIX

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ATTORNEYS FOR RESPONDENT

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S.C. SUPREME COURT

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STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

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

BRYAN HOLDER,
APPLICANT.

) SUPPLEMENTAL APPLICATION
)
)
)

v.

THE STATE OF SOUTH CAROLINA,
RESPONDENT.

) CASE # 2016-CP-42-3827
)
)
)

2018 FEB -2 AM 10:55
M. HOPE BLACKLEY
CLERK OF COURT
SOUTH CAROLINA

This matter comes before the Court by way of application of post conviction relief filed October 3, 2016, alleging ineffective assistance of trial counsel and due process violations. A Return was made on June 14, 2017. This application is intended to incorporate and add to Mr. Holder's application allegations of Fifth, Sixth, Eighth and Fourteenth Amendment violations of the Constitution of the United States & Art. I Sec. 3, 10, & 14 of the South Carolina Constitution due to:

1. ineffective assistance of trial counsel for calling lead investigator Lorin Williams in defense case and failing to object to statement being used against him after Mr. Holder asked invoked his right to remain silent (pp. 398)
2. ineffective assistance of trial counsel for recalling co-defendant (pp. 337-44) and then failing to ask him why plead guilty if he had no idea D. planning to shoot
3. ineffective assistance of trial counsel for having no exceptions to jury instructions and failed to preserve argument made on page 408 that no testimony supported hand of one.
4. ineffective assistance of trial counsel for failing to argue in closing that co-defendant plead guilty to charges of attempted murder because he alone was guilty
5. ineffective assistance of trial counsel for failing defendant discovery, investigate, and present expert witness.

6. ineffective assistance of trial counsel for failing to effectively cross-examine W. David Hamilton

7. ineffective assistance of trial counsel for seating juror no. 19 who was V. of violent crime made foreman

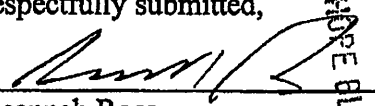
8. ineffective assistance of trial counsel for failing to object for the Solicitor appealing to emotions of jury when handing the defendant the gun yelling how did you shoot it

9. ineffective assistance of trial counsel for failing to move to reconsider grounds for reconsideration including the excessive sentence imposed, the sentence requested by Solicitor for acquitted charges and punishing Mr. Holder for exercising trial right when he attempted to plea two times which were not excepted though co-defendant also claimed not shooter and allowed to plead and got ten years.

10. ineffective assistance of trial counsel for failing to effectively object to W. not on jury list, mother of co-defendant p. 292 and

11. Due Process violation - guaranteed in the Fifth, and Fourteenth Amendments of the Constitution of the United States & Art. I Sec.3 of the South Carolina Constitution – when Solicitor asks the judge to sentence for attempted murder and Eighth Amendment violations for cruel and unusual punishment, excessive for asserting right to trial.

Respectfully submitted,


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

2018 FEB -2 AM 10:55
 M. ROBE BLACKLEY

CLERK OF COURT
 GREENVILLE COUNTY

Greenville, South Carolina
 This 2 day of Feb, 2018

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Bryan Holder, #337574,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

SEVENTH JUDICIAL CIRCUIT

2016-CP-42-3627

RETURN

Respondent, making its Return to the Application for Post-Conviction Relief (PCR) filed on October 3, 2016, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted by the December 2012 term of the Grand Jury for Spartanburg County for grand larceny (2012-GS-42-5761) and malicious injury to real property (2012-GS-42-5762). Applicant was later indicted by the May 2013 term of the Grand Jury for Spartanburg County for three counts of attempted murder and possession of a weapon during the commission of a violent crime (2012-GS-42-5370, -5371, -5372). Applicant was represented at trial by Christopher Paul Thompson, Esquire. The case was prosecuted by Solicitors, Barry Joe Barnette and Prina C. Tailor. On May 6, 2013, before proceeding to jury selection and trial, Applicant pled guilty as indicted to grand larceny and malicious injury to real property before proceeding to trial for the other charges. Sentencing for the guilty pleas was deferred until the end of the jury trial on the remaining charges. On May 9, 2013, Applicant was convicted of two counts of the lesser included offense of 1st degree assault and battery (2012-GS-42-5370, -5372), the lesser included

offense of assault and battery of a high and aggravated nature ("ABHAN") and possession of a firearm during the commission of a violent crime under (2012-GS-42-5371). Applicant was sentenced by the Honorable J. Derham Cole to imprisonment of five (5) years for grand larceny (-5761), five (5) years for malicious injury to real property (-5762), twenty (20) years for ABHAN (-5371) to be served consecutively to the sentence for (-5761), five (5) years for possession of a firearm during the commission of a violent crime (-5371) to be served consecutively to the sentence for count one of (-5371), ten (10) years for 1st degree assault and battery (-5372) to be served consecutively to the (-5371) sentences, and ten (10) years for the remaining 1st degree assault and battery (-5370).

Applicant filed a timely notice of appeal. An appeal was perfected by Kathrine H. Hudgins, Esquire. The South Carolina Court of Appeals affirmed Applicant's conviction on June 3, 2015. State v. Holder, Op. No. 2015-UP-273 (S.C. Ct. App. 2015). Applicant petitioned for rehearing. The petition for rehearing was denied by order on August 20, 2015. Applicant petitioned for writ of certiorari. The South Carolina Supreme Court denied the petition by order filed on May 5, 2016. The Remittitur was returned on May 16, 2016.

II.

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

1. Ineffective Assistance of Counsel

- a. "Applicant was denied due process by plea and at trial by [trial counsel].
- b. "Counsel never informed Applicant that his guilty plea to the grand larceny of the firearm that was used in the shooting could and would be used by the prosecutor against him in his upcoming trial."¹

¹ Respondent interprets this to be an allegation of involuntary or unknowingly entered guilty plea for lack of effective assistance of counsel.

2. "Due Process"²
 - a. "Applicant was denied due process by plea and trial counsel."
 - b. "Counsel did not do any pre-trial investigation of the crime scene."
 - c. "Counsel's failure to conduct an independent investigation of crime scene or call expert witness at trial to rebut the state expert testimony."

Attached herewith and incorporated herein by reference are the records of the Spartanburg County Clerk of Court regarding the subject convictions, the transcript from Applicant's trial, Applicant's appellate records, and Applicant's records for the Department of Corrections. Respondent reserves the right to amend its return upon the receipt of other relevant records.

III.

Applicant claims ineffective assistance of counsel in his application. Respondent contends Applicant's counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, Applicant 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." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

² Respondent also interprets these allegations to be effectively claims of ineffective assistance of counsel, although Applicant listed them as due process violations in his application.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to his guilty pleas, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Respondent submits that Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent further submits Applicant's second allegation that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-

Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citing Drayton v. Evatt, 312 S.C. 4, 430 S.E.2d 517 (1993); Hyman v. State, 278 S.C. 501, 299 S.E.2d 330 (1983); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993)). An applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill v. Lockhart, 474 U.S. 52; Jackson v. State, 342 S.C. 95, 535 S.E.2d 926 (2000); Thompson v. State, 340 S.C. 112, 531 S.E.2d 294 (2000); Rayford v. State, 314 S.C. 46, 443 S.E.2d 805 (1994)). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. Furthermore, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant. Dalton v. State, 376 S.C. 130, 137, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. at 137-38, 654 S.E.2d at 874 (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976)).

Respondent submits the record fully supports the knowing and voluntary nature of Applicant's plea. However, allegations regarding the voluntariness of the plea may raise questions of fact the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper, 279 S.C. 264, 305 S.E.2d 247.

V.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel and involuntary guilty plea. As to all other allegations, Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact that would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

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

VII.

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

VIII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held on the claims of ineffective assistance of counsel and involuntary guilty plea.

Respectfully submitted,

ALAN WILSON
Attorney General

ROBERT BOLCHOZ
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

VALERIE GARCIA GIOVANOLI
Assistant Attorney General

Office of the Attorney General
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Columbia, SC 29211
Telephone: (803) 734-3737

By: 
ATTORNEYS FOR RESPONDENT

June 14, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

BRYAN HOLDER,
S.C.D.C. No. 337574,

Applicant,

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)
_____)

IN THE COURT OF COMMON PLEAS

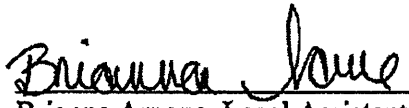
2016-CP-42-3627

AFFIDAVIT OF SERVICE BY MAIL

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

Susannah C. Ross, Esquire
 Ross & Enderlin, PA
 330 East Coffee St.
 Greenville, SC 29601

DATED this 14th day of June, 2017.


 Brianna Arnone, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF SPARTANBURG)

COURT OF COMMON PLEAS NONJURY

3
4 BRYAN HOLDER,

5 APPLICANT,

6 VS.

7 STATE OF SOUTH CAROLINA,

8 RESPONDENT.

TRANSCRIPT

OF

RECORD

2016-CP-42-3627

9
10 February 2nd, 2018
11 Spartanburg, South Carolina
12

13 B E F O R E:

14 THE HONORABLE GRACE GILCHRIST KNIE, Judge.

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

16 SUSANNAH C. ROSS
17 ESQ.
18 Attorney for the Applicant

19 VALERIE GIOVANOLI
20 ASSISTANT ATTORNEY GENERAL
21 Attorney for the State

22
23 PAMELA E. GREEN
24 Circuit Court Reporter
25 Seventh Judicial Circuit

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EXHIBITS

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P R O C E E D I N G S

MS. GIOVANOLI: All right. May it please the Court?

THE COURT: Yes, ma'am.

MS. GIOVANOLI: This is Bryan Holder versus The State of South Carolina. Docket Number 2016-CP-42-3627.

We're before the Court on an Application for Post-Conviction Relief that was filed on October 3rd, 2016. He was indicted in December of 2012 for grand larceny and malicious injury to real property. He was later indicted, in May of 2013, for three counts of attempted murder and possession of a weapon during the commission of a violent crime. He was represented by Christopher Paul Thompson, and, on May 6th, 2013, before proceeding to a jury selection and trial, Applicant pled guilty as indicted to the grand larceny and the malicious injury charges, and then he proceeded to trial on the remaining charges, which were the attempted murders and the possession of a weapon.

Applicant was convicted by a jury on May 9th, 2013, to two counts of the lesser offense of first degree assault and battery, and a lesser offense of assault and battery of a high and aggravated nature. He was also convicted of the possession of a firearm during the commission of a violent crime. The Applicant received various sentences. I believe the total, and counsel can correct me if I'm wrong, is 40

1 years. Five years for grand larceny, five years for
2 malicious injury to property, 20 years for ABHAN, five years
3 for possession of a firearm. Those were to be served
4 concurrent -- consecutive -- consecutively, excuse me, to
5 one of the other charges. Ten years for first degree
6 assault and battery. That was also to be served
7 consecutively to another sentence, and then another ten
8 years for the remaining first degree assault and battery.

9 Applicant then filed a timely Notice of Appeal. That
10 appeal was perfected by Catherine Hudgens of the Office of
11 Appellate Defense.

12 The South Carolina Court of Appeals dismissed that
13 appeal, and, thereafter, petitioned -- Applicant petitioned
14 for rehearing, which was also denied. Thereafter, Applicant
15 petitioned for a Writ of Certiorari from the South Carolina
16 Supreme Court, and the Supreme Court denied that Petition.

17 Thereafter, Applicant filed this Application for
18 Post-Conviction Relief, and he alleges, specifically,
19 ineffective assistance of counsel because counsel never
20 informed him that his guilty plea to the grand larceny and
21 the firearms charge, excuse me, grand larceny of the
22 firearms could be used against him in the trial on the
23 remaining attempted murder charges. He also alleges a
24 denial of due process, due process. Specifically, that
25 counsel failed to do any pretrial investigation of the crime

1 scene, and that counsel failed to independently investigate
2 the crime scene or call an expert to rebut the State's
3 expert witness.

4 I'll go ahead and address a matter. Those were pled in
5 October of 2016. Ms. Ross was thereafter appointed on
6 November 14th or, excuse me, October 20th of 2016. We
7 actually had a hearing scheduled in November before Judge
8 Cooper here, and the Applicant moved for a continuance in
9 order to fully more prepare for this case. The State did
10 not contest that continuance. So, it was rolled over to
11 this term.

12 We published this roster about five weeks before the
13 actual term of Court. I have received, this morning, an
14 Amended Application that has a lot new -- a lot of new
15 allegations that I had no notice of. This was filed this
16 morning at 10:55 in the Clerk's Office. I will say that Ms.
17 Ross handed it to me prior to us beginning Court today.

18 There's a whole number -- I don't know if you have a
19 copy of this because I, I didn't have it to put in the
20 Judge's packet.

21 Do you?

22 THE COURT: Yes, ma'am, I think this is what was just
23 handed to me. I have, I think, an outline of the
24 allegations or the, the -- an outline of -- I'm, I'm
25 assuming this may be an outline of all of the Applicant's

1 points, and then I have the Supplemental Application filed
2 today.

3 MS. GIOVANOLI: Okay. And as -- then at -- if you, you
4 have that document, you can see that 11 additional specific
5 allegations have been made today, and I just want to note
6 that we always send a notice letter to PCR counsel, and
7 specifically with regard to this January roster, it says
8 all -- that any amendments to the Application need to be
9 made well in advance of the hearing, and the day -- if
10 they're made -- if they're made any day, specifically with
11 regard to this roster, after Monday, January 22nd, that
12 the State will oppose the amendments.

13 Not only that, but in our return filed -- I'll get the
14 date of that. I filed our return on June 14th, 2017. I'll
15 refer you to Page 6 of that, Section 6. There's an entire
16 paragraph devoted to specifically alleging -- making
17 specific allegations well in advance of the hearing so that
18 the State can be on notice and ready to prepare and defend
19 those allegations.

20 I refer you to Rule 71.1 of the South Carolina Rules of
21 Civil Procedure, and also Rule 15(a), and, you know, this is
22 just getting to be too common of a practice. I understand
23 that you -- that the Court has been overly generous in
24 allowing me to discuss with counsel, but if you can -- if
25 you'll look at this record, just alone the trial transcript

1 totals 487 pages. There's also some pretty extensive direct
2 appeal records.

3 It is extremely difficult for me to present a good
4 argument, make a thorough record in this, in this hearing
5 today when I am not noticed of allegations until the day of
6 the hearing, and not to mention that this case was
7 previously set for the November roster and it was continued.

8 And so I just need to let the record reflect that the
9 State will oppose these amendments. We would respectfully,
10 respectfully request that you not allow the Applicant to
11 pursue on these allegations for failure to giving notice to
12 the State, and that's my request that I'd like on the
13 record.

14 THE COURT: Yes. Thank you.

15 MS. ROSS: Well, Judge, I'll start with---

16 THE COURT: Thank you.

17 And, Ms. Ross, yes, ma'am.

18 MS. ROSS: I'll start with the fact that the whole
19 appointed attorney system under OID puts it at a serious
20 disadvantage. They do not pay for any travel at all to make
21 it easy for us to go see our clients. I often have to
22 schedule teleconferences numerous times to ever get the
23 actual teleconference with lots of time put into that to try
24 to actually have the discussion.

25 I've been doing PCRs 20 years, and believe that

1 ineffective assistance of counsel is encompassed and clear
2 in every one of these arguments. I simply did the Amended
3 Application out of an abundance of caution to reflect every
4 little note. I put in the little outline of things that I
5 might bring up in my case.

6 Clearly, with any kind of testimony, unexpected things
7 come up at the last minute, and I believe a client, who is
8 doing 45 years, and I think it is 45 he tells me, not 40,
9 when a jury came back to lesser included offenses, deserves
10 every benefit of the doubt especially in an appointed case
11 where people really aren't given a lot of assistance and
12 ease in, in having conferences with the client to prepare.

13 So, we move to go forward on, on all these issues.
14 They all, in my opinion, are completely encompassed in the
15 allegations of ineffective assistance of counsel and they're
16 clear. They're little points like failed to effectively
17 cross, failed to object in closing, and these things---

18 THE COURT: Yes, ma'am.

19 MS. ROSS: ---are easy to rebut. The State has been
20 doing this for a long time. So, we ask to move forward on
21 all of our --.

22 THE COURT: Okay. And, and, Ms. Ross, let, let me just
23 ask.

24 Each, each of your new allegations, or more detailed
25 allegations might be a better way to say it, are they based

1 on the record in this case?

2 MS. ROSS: Yes.

3 THE COURT: Okay. And I'm looking and I'm seeing that,
4 for, for the very specific allegations, you have even
5 referred to the pages in the transcript.

6 MS. ROSS: I have, Your Honor.

7 THE COURT: Okay. All right.

8 MS. GIOVANOLI: May I just briefly respond?

9 THE COURT: Yes.

10 MS. GIOVANOLI: I think this is---

11 THE COURT: Yes, ma'am.

12 MS. GIOVANOLI: This is just an issue that we would
13 like on the record in case the, you know, gets taken up,
14 but -- and I will reinforce the fact that this is a civil
15 matter, and, all civil cases, a Plaintiff is required to
16 allege specific facts to support the grounds. PCR is no
17 different.

18 I understand that there's, that there's a fairness
19 argument, and I agree with that, that this Applicant
20 deserved his day in Court. He deserves to present the
21 allegations that have merit to them, and, with regard to us
22 being on notice at the last minute, it's not that there's no
23 page numbers, and it's not that I can't put the, the witness
24 on the stand and ask him specifically with regard to these
25 page numbers. But their files are often times way larger

1 than us.

2 So, a strategic decision or a reason that they made
3 during trial, they may not remember today, and it may
4 require them to look through their file, and it's unfair for
5 me to ask him to do that here. Dig through your big file
6 and tell me exactly what your decision making process was at
7 that time.

8 So, we're just significantly, significantly
9 disadvantaged because of these unfair late amendments. So,
10 I just wanted to put that on the record.

11 THE COURT: Yes, ma'am, and, and, and I, I understand
12 and sympathize with both of your positions, and you-all know
13 I was in private practice, and represented folks in PCR
14 hearings in my private practice prior to taking this
15 position, and I certainly do understand.

16 And so, in saying that, I, I give a lot of leeway to
17 everyone involved. And so, if the question is posed to Mr.
18 Thompson, if he remembers that, and he may say he does not
19 remember, he may say it's a strategic move, but that -- but,
20 but, quite frankly, it's been such a long period of time, I
21 understand all of that.

22 Okay. But I do think that Mr. Holder has an
23 opportunity today to basically, even from the witness stand,
24 which has happened quite a bit this week, and in my terms of
25 PCR Court, where that, you know, that the Applicant does

1 just air out everything, whether it's in their written
2 Application or not.

3 Okay. So, I'm, I'm going to allow this, and will
4 certainly give a lot of leeway though with the examination
5 of the State's witness in that regard.

6 MS. GIOVANOLI: Thank you, Your Honor.

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

8 MS. ROSS: Yes, we'd call Bryan Holder at this time.

9 THE COURT: Okay.

10 Okay. And I don't know if we stated it on the record,
11 but it's, it's 12:20 at this time. It's Friday afternoon.

12 Mr. Holder, if you'll just wait right there for me.

13 And with regard to scheduling lunch today, I have taken
14 a poll of the persons in the courtroom, and have made a
15 decision, based on that, that we will work through rather
16 than breaking for an hour and a half for lunch so that
17 Mr. Holder can get on his way, and, and these deputies and
18 other staff can, can be doing other things this afternoon.
19 I will be here until 5:00, but I will be reading and working
20 on some other things, but we will break for 15 or 20 minutes
21 at some point for the lunch hour, and I have a telephone
22 conference with counsel for my term of Court next week out
23 of circuit at two o'clock. And so I will need to break at
24 that time for 10 or 15 minutes.

25 Okay. Yes, sir.

Bryan Holder - Direct examination
by Ms. Ross

1 sir, will you raise your right-hand for me.

2 BRYAN HOLDER, being first duly
3 sworn, testified as follows:

4 THE COURT: Thank you, sir.

5 Please have a seat in that chair and pull yourself up
6 to that microphone.

7 All right.

8 (Witness complies.)

9 THE COURT: All right. Yes, ma'am.

10 DIRECT EXAMINATION

11 BY MS. ROSS:

12 Q Okay. Bryan, you understand that, if you win at this
13 pre -- PCR, you'll be back in the position you were in
14 before the plea?

15 A Yes, ma'am.

16 Q All right. And, and what do you want to do?
17 Do you want to withdraw or go forward knowing that?

18 A I want to go forward.

19 Q And let's just talk about -- you've alleged ineffective
20 assistance of counsel.

21 Can, can you tell us why?

22 A For several reasons.

23 Q Okay.

24 A I think one of the first ones is because of the hand of
25 one, hand of all issue.

Bryan Holder - Direct examination
by Ms. Ross

1 Q Okay. And that was a big issue in your appeal,
2 correct?

3 A Yes, ma'am.

4 Q And the State argued that, that it had not been
5 preserved by contemporaneous objection.

6 Is that correct or do you know about that?

7 Do you know what I'm --?

8 A Yes, ma'am, it said that, you know, it wasn't
9 preserved.

10 Q Okay. And what was the issue?

11 A That there wasn't sufficient evidence that to, to put
12 the hand of one, the hand of all, to charge the hand of one
13 the hand of all.

14 Q Okay. And let's just briefly talk about that.

15 What did the Codefendant say about the hand of one, the
16 hand of all during your trial?

17 Do you recall?

18 A No.

19 Q Did he say you -- that he knew what you were doing?

20 A He---

21 Q Did he -- sorry.

22 Did he say he was aware of what he said you were doing
23 during this shooting?

24 A Yes, he tried to -- he tried to point to me as the
25 shooter and, and blame everything on me.

Bryan Holder - Direct examination
by Ms. Ross

1 Q And did he say he was part of it and knew all about it?

2 A He had, he had several different statements that --

3 Q Okay.

4 A I'm not gonna -- he had like four different statements,
5 and one time he said that he didn't know anything, and one
6 time he said that he was there, and one time he said that I
7 was the person shooting.

8 Q Okay. And---

9 A So---

10 Q ---he pled guilty prior to trial, correct?

11 A Yes, ma'am.

12 Q And do you know what his -- he -- what his sentence
13 was?

14 A I believe they charged -- they give him ten years.

15 Q And what is your understanding of your sentence?

16 A They, they gave me 45 years.

17 Q Okay. Did your lawyer -- did -- how often did you meet
18 with him prior to trial?

19 A I, I can't recall. It's been a while. It was a, a few
20 times. I'm not sure how many.

21 Q Did you feel that he fully investigated your case?

22 A No, I don't.

23 Q What do you think he should of done?

24 A There was, there was somethings in the area that they
25 said the shooting happened that I wanted him to go look at,

Bryan Holder - Direct examination
by Ms. Ross

1 and I don't think that he took the time or had any
2 investigation done -- had an investigator go out there and
3 check into it.

4 Q Okay. And you testified at trial, correct?

5 A Yes, ma'am.

6 Q Was that testimony truthful?

7 A Yes, ma'am.

8 Q So, the record reflects a true testimony of what
9 happened?

10 A Yes, ma'am.

11 Q And, and, in that, you were not there that day?

12 A Yes, I wasn't.

13 Q And, and you didn't say anything that the Codefendant
14 claims you've said?

15 A No, ma'am.

16 Q All right. Now, did you get any plea offers?

17 A I think they offered me five to a hundred and five, but
18 I'm not sure. I don't think -- they wanted me to---

19 Q What does that mean?

20 A They wanted me to plea open five to a hundred and five.

21 Q Okay.

22 A I don't know if that was the plea offer or, or just
23 the, the regular amount of time that it was carrying. I'm
24 not sure.

25 Q Did you try to plead guilty?

Bryan Holder - Direct examination
by Ms. Ross

1 A Yeah, I did try to plead guilty, but I tried to plead
2 that I wasn't there during the shooting that happened and
3 they did not -- they declined. They told me I could either
4 plead guilty to all of it or not.

5 Q And you were willing to plead, to plead guilty to two
6 counts of attempted murder or three counts I believe?

7 A No, I, I mean I was gonna plead guilty to it to get it
8 over with, but I didn't want to -- I never wanted to
9 implicate, implicate myself into the crime I was having for
10 attempted murder.

11 Q All right. And why couldn't you -- so, you could never
12 get on the record the facts that you were there the night
13 that the, the young woman was shot?

14 MS. GIOVANOLI: Objection to leading.

15 THE COURT: Rephrase.

16 MS. ROSS: I'll rephrase. Sorry, Your Honor.

17 When the, the facts of attempted murder came out by the
18 State during your guilty pleas, why didn't you agree to
19 them?

20 A Because they tried to implicate me that I was there and
21 shooting at people and, and that was not true. So, I didn't
22 want to plead to that.

23 Q But you were willing and went in front of a judge two
24 times in an attempt to get it behind you?

25 A Yeah.

Bryan Holder - Direct examination
by Ms. Ross

1 Q Now, did you give a statement?

2 A No, I don't recall giving a statement.

3 Q All right. In the transcript, they made reference to
4 your statement, and let me find it. On Page 398, and I'll
5 show you, the investigator, Lorin Williams, was on the
6 stand, and it asked about Miranda rights?

7 Correct?

8 A Yes, ma'am.

9 Q And then it goes into a statement that you made?

10 A Yeah, I think when he, when he showed up at that -- at
11 the jail, he pulled out his phone and had a recorder on his
12 phone, and, at that time, I told him that I wanted to see my
13 lawyer because he was serving me the warrants for attempt
14 (sic) murder, and I told him I didn't know what he was
15 talking about. And I told him that I wanted my lawyer.

16 Q All right.

17 A I don't --.

18 Q And then, on Page 399 of the transcript, did
19 Mr. Williams testify about what you said, denying
20 involvement in the grand larceny?

21 MS. GIOVANOLI: Your Honor, I just need to object to
22 preserve the record.

23 A Yes, ma'am.

24 MS. GIOVANOLI: Contemporaneous objection. With regard
25 to the new allegations that I moved to dismiss.

1 THE COURT: Yes, ma'am.

2 Q Okay.

3 THE COURT: You may answer, sir.

4 THE WITNESS: Yes, ma'am, that's what he said.

5 Q And did your lawyer object before that came out?

6 A Yes, ma'am.

7 Q Okay. Would you agree, if the record reflects he
8 didn't object until that came out, you would just go by what
9 the record says?

10 Let me start on a different line of questioning.

11 A All right.

12 Q That's okay.

13 So, just going back to a statement, there shouldn't
14 have been any statement of you -- of yours in your trial
15 because you asked for a lawyer, correct?

16 A Yeah, I asked, I asked for, I asked for a lawyer at
17 that time, yes, ma'am.

18 Q So, anything that was said in the, the trial was after
19 you had asked for a lawyer?

20 A Yes, ma'am.

21 Q Okay. Now, did you get discovery?

22 Did your lawyer give you a copy of it?

23 A Yes, ma'am.

24 Q And, and did y'all go over that together?

25 A Not very much, but we did.

Bryan Holder - Direct examination
by MS. Ross

1 Q Did you feel that any -- that -- what other witnesses
2 would you of liked him to present on your behalf, your
3 lawyer?

4 A I was trying to get my mom to come and say that where I
5 was at that night, but she's got disabilities, and she
6 couldn't make it.

7 Q Okay. And how about any witnesses about guns or night
8 vision scopes?

9 Did you feel like the jury understood that?

10 A Well, no, I don't think -- I don't think they did.
11 That was -- I had never investigate (sic) that. I wanted my
12 lawyer to hire an investigator or something for -- to see
13 the things before trial, but I didn't.

14 Q But that didn't happen?

15 A Yeah, that never happened.

16 Q And he didn't get an expert on guns or, or night vision
17 scopes?

18 A No, he never did that.

19 Q And what was the distance we're talking about?

20 This was more than a football field length between
21 where you'd even been the night before out in that field?

22 A Yeah, I believe so.

23 Q Now, what did Mr. -- the Solicitor, when he was
24 questioning you, did he ever hand you a gun?

25 A Yeah, he, he -- at the time I didn't know that I

Bryan Holder - Direct examination
by Ms. Ross

1 could -- I didn't -- he handed it to me, but I didn't know
2 that I could tell them that I didn't want to do that. I
3 think it seemed like he was making me do that on the stand.

4 Q what was his tone of voice?

5 MS. GIOVANOLI: Renew my objection.

6 A well, he started screaming at me and trying to, trying
7 to make it look like I was the shooter by handing me the
8 gun.

9 Q Now -- and your lawyer didn't object to that?

10 A I don't believe he did.

11 Q All right. Now, after the trial, you did have an
12 appeal, but did your lawyer move to reconsider your
13 sentence?

14 MS. GIOVANOLI: Renew my objection.

15 A Did he---

16 Q Did, did your lawyer put in a Motion to Reconsider
17 after your trial?

18 A I don't think so.

19 Q Did you ever ask him to?

20 A See, I wasn't really -- I didn't know too much about
21 the law at that time. So, I didn't know if I was able to do
22 that or what was able to be done.

23 Q Okay. I've got no further questions.

24 THE COURT: Okay. Thank you.

25 Cross.

Bryan Holder - Cross-examination
by Ms. Giovanoli

1 MS. GIOVANOLI: Just briefly.

2 CROSS-EXAMINATION

3 BY MS. GIOVANOLI:

4 Q Good morning or good afternoon.

5 You, you testified, in direct, that your codefendant
6 said you were the shooter, but he had given multiple
7 inconsistent statements.

8 Is that correct?

9 A Yes, he did.

10 Q And you remember the trial.

11 Your lawyer actually cross-examined him on those
12 inconsistent statements, did he not?

13 A Yes.

14 Q I have no further questions. Thank you.

15 THE COURT: Okay. Redirect.

16 MS. ROSS: I've got nothing further, Your Honor.

17 THE COURT: Okay.

18 Okay. Mr. Holder, sir, you may step down.

19 THE WITNESS: All right.

20 THE COURT: Watch your step.

21 Next witness.

22 MS. ROSS: I guess, to change things up, I'll just go
23 ahead and call Christopher Paul Thompson.

24 THE COURT: Okay.

25 Okay. Good afternoon, Mr. Thompson.

Christopher Thompson - Direct examination
by Ms. Ross

1 THE WITNESS: Good afternoon.

2 THE COURT: Sir, will you raise your right-hand.

3 CHRISTOPHER THOMPSON, being first duly
4 sworn, testified as follows:

5 THE COURT: Okay. Thank you, sir. Please have a seat.
6 Make yourself comfortable.

7 Yes, ma'am.

8 DIRECT EXAMINATION

9 BY MS. ROSS:

10 Q All right. Mr. Thompson, I'll just dive in.

11 How, how long was the jury out deliberating on this
12 trial?

13 Do you recall?

14 A I know, I know at least two days I think. Seemed like
15 it went into two days. Maybe ten hours or so.

16 Q And did you ever ask for a, a mistrial --

17 A I don't believe I---

18 Q -- during that time?

19 A I don't believe I did.

20 Q And no Allen charges were -- I mean --?

21 A I believe the Judge, if I recall, maybe twice did do an
22 Allen charge, and it seems like right before the verdict.

23 Maybe it was -- I don't know. I always say it went -- gets
24 close to lunchtime or five o'clock, they're gonna come back
25 with something, and I think the second one was around five

Christopher Thompson - Direct examination
by MS. ROSS

1 o'clock. And I can't remember if it was on a Friday or not.

2 Q Okay.

3 A But, but it seemed like it was a -- it seemed like one
4 day was nothing but deliberations, and then it went to the
5 jury the day before that as well.

6 Q And---

7 A But I can't, I can't recall completely.

8 Q Okay. And you would concede to whatever the record
9 reflects?

10 A Sure.

11 Q And the jury had a number of questions, didn't they,
12 during --

13 A Yeah.

14 Q -- the trial?

15 A Yes.

16 Q And I guess one that they wanted to hear the testimony
17 of the pressure washer and the Defendant again.

18 Is that correct?

19 A At some point I believe so, and, yeah, that's in the
20 transcript.

21 Q All right. And it wouldn't -- and was that testimony
22 played for them?

23 A Yes.

24 Q And it was the, the pressure washer, not the
25 codefendant, that they wanted to hear?

Christopher Thompson - Direct examination
by Ms. Ross

1 A It---

2 Q well---

3 A I thought it was both. I'm not sure. I'd have to
4 look.

5 what page are you on?

6 MS. GIOVANOLI: 472.

7 MS. ROSS: Thank you.

8 Page 472.

9 MS. GIOVANOLI: No, I'm sorry. At the time of the
10 verdict came back---

11 THE COURT: Mr. Thompson, do you have the transcript?

12 THE WITNESS: Yes, Your Honor.

13 MS. GIOVANOLI: I'm sorry. 470.

14 Q It's on 470, Line 7.

15 A Oh, I'm sorry. I'm on 472. Mr. Swinger.

16 Q Okay. All right. And then they requested a copy of
17 the jury, the jury instructions, and that was given to them.

18 Does that sound correct?

19 A Sure.

20 Q Okay. Now, just going to the plea.

21 You had Mr. Holder plead to companion charges prior to
22 trial, correct?

23 A Some property crimes, yes.

24 Q All right. And they involved this case in that it was
25 about stealing the actual guns that were used in the

Christopher Thompson - Direct examination
by Ms. Ross

1 shooting?

2 A Yes.

3 Q And, and that was used against him, that he had pled
4 guilty to those charges, during the trial?

5 A Sure.

6 Q All right. And didn't he attempt to plead before this
7 trial, Mr. Holder?

8 A We, we had a plea scheduled. I think Judge Culbertson
9 was on the bench, and Mr. Schomer also was scheduled to, to
10 plead, and I believe, on that day, Bryan withdrew from the
11 property crime plea, and the, the attempted murder plea.

12 Q And was that because he wouldn't admit to the facts of
13 the attempted murder?

14 A If, if I recall, I -- he, he never would plea to the
15 attempted murders, but eventually he did -- I believe he
16 pled in front of Judge Cole on the property crimes --

17 Q Okay.

18 A -- on the second, on the second time, but not the, the
19 attempted murder.

20 Q Was he ever given a plea deal, a plea offer?

21 A Not that I recall.

22 Q And so any prior plea was just straight up?

23 A I believe so. He had -- and he, as he discussed
24 earlier, I believe that five to 105 was the sentencing range
25 possibly because the five would of been automatic with the

Christopher Thompson - Direct examination
by Ms. Ross

1 possession of weapon---

2 Q Okay.

3 A ---during the commission of a violent crime. And then
4 the three attempted (sic) would of been 90. And then the
5 property crime, based upon his prior record, would of been
6 ten I think. That would of gotten him to 105. So, I don't
7 have -- that wasn't an offer. That was just the sentencing
8 range that he was looking at on a plea.

9 Q Okay. And here I'm just referring to Page 164 and 165.
10 Do you have your transcript?

11 A Yes, ma'am.

12 Q On the questioning of Mr. Schomer, this is redirect by
13 Mr. Barnette, did you ever object to a mention that some of
14 that questioning might of been beyond the scope of your
15 cross?

16 A What---

17 MS. GIOVANOLI: Renew my objection from earlier.

18 THE COURT: Yes, ma'am.

19 A What line are you on?

20 Q I'm referring generally to the, the redirect of
21 Mr. Schomer on Page 164 and 165, and I've just said -- the,
22 the fact -- if the record reflects that there was no
23 objection made, would you agree that -- with the records?

24 A Can you repeat the question?

25 Q I'll, I'll just withdraw the question and move on.

Christopher Thompson - Direct examination
by MS. ROSS

1 As far as -- I'll move you on Page 457 of the record.
2 Here this goes to the -- excuse me while I look at the --
3 this goes to the, to the hand of one, the hand of all, or
4 charge that was given. At one point, on Page 457, 57, you
5 object to that instruction, and argue that the, the
6 Codefendant had said that he knew nothing of Mr. Holder's
7 activities. He testified Mr. Holder was the shooter and
8 that the Codefendant said he had no idea that that was
9 happening.

10 So, you argued that the hand of one, hand of all was
11 not appropriate in that case because that was not the
12 testimony, and that's on Page 457.

13 A 457?

14 Q 457.

15 A And, and you -- and the question is that did I---

16 Q Yes, I apologize. That's where the instruction's
17 coming out.

18 Did you make a contemporary -- contemporaneous
19 objection to that instruction or show -- have any exception
20 to the instruction after the fact?

21 A I, at some point, I did on -- the record on appeal
22 indicates that I did object to that being a jury charge, and
23 then requested that there be a mere presence charge in the
24 event the Court granted that. I think -- I'm not sure where
25 it is in the transcript.

1 Q Okay.

2 A But I do know the -- there's a -- I got a --.

3 Q Let me clarify. My, my numbering has been unclear.

4 On Page 408, you argue that the hand of one charge is
5 inappropriate, and, on Line 18 --

6 A Okay.

7 Q -- on 408. And, Line 18, you say there's no testimony
8 on the record that the, the actual firing of the gun was an
9 illegal activity, and that there's no testimony -- so, they
10 couldn't of been coconspirators or in an, in an illegal
11 activity because the firing of the gun itself wasn't, and
12 then---

13 A And I, I probably pulled that out of some case law
14 somewhere.

15 Q Right.

16 And that the testimony of the codefendant was that they
17 had -- they had no idea what each other were doing
18 essentially, and then on Page 466, on Line 12, the Judge
19 asked whether they're any exceptions to jury instruction and
20 you say no.

21 Is that correct?

22 A Probably so, yeah. I probably thought I'd already
23 preserved that issue for appeal appropriately.

24 Q All right. And, on Page 398, I'll just start -- did
25 you recall the lead or did you call the lead

Christopher Thompson - Direct examination
by MS. Ross

1 investigation -- investigator in the case?

2 A I, I did. That was -- he was the lead investigator,
3 and the, and the State never called him, which I felt was a
4 little bizarre. And I, I believe the point I wanted to get
5 across from him was the shooting of a sign. I think that's
6 something I went into, and, and just almost -- I think it's
7 something -- I don't know where it is, but, at some point,
8 he said oh, well, Mr. Wilkens handled all that, and I don't
9 know, I thought -- trying to make it look like a sloppy job
10 on behalf of the State. I have some experience with that
11 gentleman before, and it's the same, the same type of --

12 Q Okay.

13 A -- circumstance.

14 Q And when he was crossed by Mr. Barnette, was he asked
15 about statements made by the Defendant, and that's---

16 A Yeah, I think, when I, when I looked at the amended
17 competition (sic), I found, in his police report, where he
18 had asked about the property crimes, and Mr. Holder had
19 denied involvement.

20 MS. GIOVANOLI: Just renew my objection.

21 A And, and then I think there was -- I think where Barry
22 was going, the, the next line was that -- I told him --
23 Lorin Williams said I told Ty -- I told Mr. Holder that
24 Tyler had told the story that he stated they were both in
25 the field, and, and then it says Holder became agitated and

1 stated he wanted his lawyer.

2 I think, I think Barry was headed in that direction
3 trying to get that statement in about Tyler said they were
4 both in the field, and, and I thought that's where he was
5 headed. And my objection -- we, we approached -- we went
6 and had a bench conference. I don't remember what it was
7 about, but I believe what it -- I probably went into
8 something that well, we had already heard testimony from
9 Schomer, the codefendant, and I, I---

10 Q Uh-huh. (Affirmative).

11 A ---I just felt like Barry was trying to get more of
12 that on the record, trying to put Bryan in the field with
13 Schomer on the night of the shooting, and, and that's why I
14 think I objected before Williams could get that in, but I, I
15 thought that's where he was headed. But I don't believe
16 there was ever a statement. I think what they entered was
17 maybe a waiver of Miranda form.

18 Q Okay. And, and though there was -- now, there's,
19 there's -- Mr. Holder testified that he actually
20 requested -- he asked for a lawyer, correct?

21 A Well, he, he testified to that today, yes, and, and
22 this police reports reflects that he did that at, at that
23 point in the interview with, with Williams.

24 Q So, during the interview, he, he did stop and ask for a
25 lawyer?

Christopher Thompson - Direct examination
by MS. ROSS

1 A Yes.

2 Q And the statements that he made during that interview,
3 prior to that, were brought in before the jury through
4 Mr. Williams?

5 A By, by, by Lorin, right. By, by Lorin Williams, yes.

6 Q Okay. Now, just going to generally closing, did you,
7 did you argue, or I'll let the record reflect, did you argue
8 in closing that the, the Codefendant had actually pled
9 guilty already to attempted murder?

10 A I don't recall it. I think I attacked his credibility,
11 and I think I put him in the field at the time of the -- at
12 the, at the time of the shooting. I think he had, at one
13 point, when he first indicated that Bryan was the shooter, I
14 think, at some point, he said Bryan was lying down. Then,
15 when he testified, he said Bryan was standing up.

16 Q Did you---

17 A And I, I don't -- I -- maybe I went into that in
18 testimony. I don't -- I probably hadn't thought of that.
19 If it's not in the record, if it's not in the transcript,
20 then I didn't go into it at all.

21 Q Okay. Did you get a copy of the transcript of the
22 Codefendant's guilty plea?

23 A I did not, no. It's not -- he had, he had pled the
24 same week I would think. I don't, I don't -- I'm sure it
25 wasn't available, but --.

Christopher Thompson - Direct examination
by Ms. Ross

1 Q Were you aware of the facts that the Codefendant pled
2 guilty to?

3 A We, we were there.

4 Q Okay. And did you -- so, if the record doesn't -- did
5 you -- you didn't argue in closing that the Codefendant had
6 actually pled guilty to those facts?

7 A I, I must not have if it's not in the transcript.

8 Q Okay. Now, on -- it's a small point.

9 On Page 42, a Juror Number 19 stands up and says he's
10 been the victim of a violent crime, and would you agree, on
11 Page 51, you seated that juror?

12 MS. GIOVANOLI: Renew my objection.

13 THE COURT: Yes, ma'am.

14 A What juror number?

15 Q It was Juror Number 19, and it was on Page 42.

16 A Yes, that -- that's Mr. Blankenship, right?

17 Q Let's see. Yes.

18 A Yeah. He -- yeah, he, at some point, he, he did stand
19 up and inform the Court that he and I had knew each -- know
20 each other.

21 Q Oh, y'all knew each other as well?

22 A Yes, we had played basket -- played ball together. I
23 think Page 32.

24 Q Okay. Okay. Now, just moving on beyond the
25 transcript.

Christopher Thompson - Direct examination
by Ms. Ross

1 Did you file -- you filed an appeal, but did you file a
2 Motion to Reconsider?

3 A I, I did. I -- and I guess I just forgot about the --
4 it being denied. I don't, I don't recall it being denied,
5 but I do -- I showed my attorney a copy of it with some --
6 and I think what I filed was a May 17th, 2013, Motion to
7 Reconsider Sentence.

8 Q Okay. Does, does it list the grounds for your -- the
9 motion or did you state it specifically on the --?

10 THE COURT: What year was that, Mr. Thompson?

11 I'm sorry.

12 THE WITNESS: 2013.

13 THE COURT: Okay. Thank you.

14 A I, I put in here that, should the Court prefer, I would
15 submit a brief outlining the argument on the relief sought.

16 Q So, there was no, no argument that the---

17 A I, I believe the -- I, I the believe the case law I had
18 researched went into description -- the difference in
19 sentencing two codefendants. I believe most of that centers
20 around a trial as opposed to a -- this one, you had one pled
21 and one, one went to trial.

22 Q Right.

23 A And then one, I guess, was given the benefit of
24 testifying against this Codefendant, but I, I assume it was
25 denied because an appeal was granted.

Christopher Thompson - Direct examination
by Ms. Ross

1 Q Okay. So, you put in one, but you, but you don't have
2 listed---

3 A I---

4 Q ---the basis for it?

5 A I didn't, I didn't -- no, I didn't -- I, I offered a
6 briefing, but I didn't put it in the -- I didn't cite the,
7 the reasons. I think I, I think I had ten days. I'm not
8 sure when the trial ended, but --.

9 Q And, and the fact was the Codefendant got ten years --
10 you know, he got a substantial lighter sentence than
11 Mr. Holder?

12 A Yes.

13 Q Correct?

14 A Yes.

15 Q And on Page 481, Line 23, Mr. Barnette says to the
16 judge, I know you know the facts, and I won't go through
17 because you've heard it, and you've heard my closing
18 argument. To me, if this is not attempted murder, I don't
19 know what it is, but the jury has spoken, and I know that
20 the Court will take that into consideration, and give a
21 sentence appropriate for this action.

22 Did, did you ever object to that point or remind the
23 judge that he's under an obligation not to punish someone
24 for asserting their right to a trial?

25 MS.. GIOVANOLI: Renew my objection.

Christopher Thompson - Direct examination
by Ms. Ross

1 A I, I, I guess when he said the jury has spoken, I, I --
2 yeah, and that -- that's a -- I think it's out of bounds. I
3 will say that. I -- and I probably -- I should of objected
4 at that point probably.

5 Q Okay.

6 A And, and I guess it's kind of up in the air what he's
7 saying what the Court would give consideration to. whether
8 the, the fact of the -- what he said about if this isn't
9 attempted murder I don't know what it is or if he's saying
10 but the jury has spoken.

11 Q Now, I guess, in, in, in your opinion, do you find
12 judge -- for a judge to run a number of charges
13 consecutively like that to be a normal policy?

14 A On, on this, this one, we, you know, you had one victim
15 with a gunshot wound, and, and that was -- and I think there
16 was some damage to the home where -- where guns were stolen.
17 But I, I -- yeah, I thought it was a pretty, pretty big
18 sign. So, more, more than -- and especially with it -- when
19 it came back on a lesser included and the fact that the jury
20 was deliberating so long. It was a --.

21 Q And did, did Judge Cole say anything in chambers or
22 did -- or any indication to you to give you an idea of what
23 kind of sentence he planned to give?

24 A I would say that Judge Cole is a very hard read. I
25 don't -- I didn't have any idea. No idea.

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1 Q All right. I've got no further questions.

2 CROSS-EXAMINATION

3 BY MS. GIOVANOLI:

4 Q Good afternoon, Mr. Thompson.

5 A Hello.

6 THE COURT: Cross-examination.

7 MS. GIOVANOLI: Thank you.

8 Q How long have you been practicing law?

9 A Fourteen years.

10 Q And has most of that been criminal law?

11 A The majority have, yes.

12 Q Okay. And you were retained on this case in a private
13 capacity?

14 A Yes.

15 Q Okay. How long, how long did you have to prepare for
16 the trial approximately?

17 Months, years?

18 A Probably six months or more -- or so.

19 Q Okay. And did you make a Motion for Discovery?

20 A Yes.

21 Q And did you receive the discovery from the State?

22 A Yes, ma'am.

23 Q Did you meet with the Applicant and review all of that
24 discovery with him?

25 A I did. I think we probably made copies. I think I

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1 made copies of a few things.

2 Q Copies for him?

3 A Yeah. Yes.

4 Q And, in your view of the case -- well, let's just go --
5 get into the evidence against him.

6 What were the strengths and weaknesses of the case
7 taking it to trial?

8 A The, the strength, I guess, would be the fact of the
9 theft of the guns, and the willingness of the witnesses to
10 link those guns to Bryan and, and to the -- to Tyler
11 Schomer's home, and the fact that Schomer was willing to
12 testify against Bryan.

13 And, and, and the flip side of the coin, I felt like
14 Schomer was the weakness in the case. He had provided four
15 separate statements that said different things. He
16 testified contrary to those four statements. So, his
17 credibility was very much in question, and I, I believe that
18 was the weakness of their case. And I always, on an
19 attempted murder, you have the lesser includeds (sic) that,
20 that that can come -- they can come back with that. So,
21 that's always a, a -- I don't know. Almost sometimes feel
22 like the jury may say well, we'll come back with a lesser
23 included and it won't be that bad.

24 Q Did you request the lesser included be included in this
25 case?

1 A I always do, yes.

2 Q And so, in your view, was this a credibility case?

3 A Sure. I, I -- you know, I mean Bryan said he was there
4 one night. Mr. Schomer said Bryan was there two nights.

5 Q There were back -- a lot of the Defendant's friends
6 that testified against him in this case.

7 Is that correct?

8 A Well, I don't know if they testified. There, there
9 were statements out there, a guy named Kevin, that found him
10 to be fairly hostile toward Bryan. So, I didn't have any
11 interest in bringing him forth now, and, and Bryan was
12 correct about his mom. We attempted, the entire week, to
13 get her to attend trial. She indicated she was too sick to
14 come. She couldn't make it.

15 Q Could she have possibly been an alibi witness for him?

16 A I believe she was -- I think Bryan said she would be
17 able to say that he was home on the night that Schomer said
18 he was at her, at her home, but I -- and I think I recall
19 her saying she didn't remember, but, but she didn't -- she
20 was -- she didn't feel well.

21 Q Okay. So, one of the witnesses was Taylor Lyda, that
22 was the daughter of the homeowner from, from whom the guns
23 were stolen.

24 Do you remember that witness?

25 A She was the -- refresh me on her.

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1 Was she the---

2 Q She---

3 A ---girl that house sat or the --?

4 Q No, she was the daughter of the homeowner.

5 A Okay.

6 Q Not, she wasn't the one that house sat.

7 Do you recall her testimony?

8 A Not right offhand, no.

9 Q Okay. So, Tyler Schomer was the Codefendant who had
10 testified against the Applicant in this case?

11 A Yes.

12 Q Is that correct?

13 A That was -- he testified on behalf of the State. So
14 --.

15 Q Okay. And then there was also Kevin Bruce Denton. He
16 was Schomer's cousin, and they hid the guns in his trunk
17 after they were stolen.

18 Do you remember that?

19 A I believe so.

20 Q And that was -- you were, you were aware that he was
21 gonna testify to those facts prior to trial, correct?

22 A I believe -- yeah, I mean we were provided statements
23 to that, and then the witness list would coincide of -- so,
24 we had an idea of what he was gonna say.

25 Q And you knew that Matthew David Hamilton was gonna

1 testify?

2 He testified that he picked the Defendant up with guns
3 and the Defendant wanted to sell the guns and he took them
4 to Kevin's to unload them.

5 A Yeah, and that kind of goes back to what I said.
6 There's -- the strength of their case was linking Bryan from
7 the house the guns were stolen from to Schomer's house.

8 Q Okay.

9 A They, they, they pieced all that together.

10 Q But these witnesses were actually the Defendant's
11 friends, for a lack of a better word, correct?

12 A Right.

13 Q And then -- I'm sorry. I was looking over something.

14 Okay. So, the -- you had these -- the discovery and
15 you reviewed it with the Applicant.

16 What other investigation did you do?

17 A I, I, I know I went to the field twice, maybe three
18 times. I walked it and in, inquired -- I'm not a gun
19 person, but I did learn that a .30-06 and a 30-30 can shoot
20 400 yards, and they're extremely powerful guns. I did learn
21 that, and I -- there -- and, like I say, it goes back to
22 Lorin Williams.

23 There was a sign that backed up Bryan's testimony that
24 he shot a sign that -- but the sign was way down in the --
25 in a field because the allegation against Bryan was that he

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1 walked on up probably 75 to a hundred yards into a field
2 when he -- when these folk were shot at.

3 And -- but the -- and that's one -- the sign that was
4 shot down there, but I think Lorin William verified that was
5 down in the -- I call it the -- just the bearings dug out
6 area. So, I had, I had gone out there a few times to -- and
7 got an idea of where he -- the shooter would have to be
8 standing to, to shoot at the, at the victims.

9 Q Did you think calling a gun expert in this case would
10 of been beneficial to your client?

11 A I'm -- I think a gun expert would of said that those
12 guns could of shot that far based upon the 400 yards that I
13 had learned -- I believe that's what I had learned, that
14 they could shoot four, four football fields.

15 Q Okay. Now, was there any -- you advised -- did you
16 advise your client to plead guilty to the property charges?

17 A We discussed it, and I don't, I don't recall if I told
18 him he needed to or, or how that went about. I knew they
19 had strong evidence against him. I know they, they knew
20 where the guns came from, and I know the -- he had, he
21 had -- some girl had house sat, and he spent the night with
22 her at that home, and she had got up the next morning and
23 went to work and left Bryan there by herself (sic). I found
24 her to be hostile toward us. I think she would of hurt us
25 if we would of tried to go to trial.

1 Q Did you inform the client -- your -- the Applicant
2 that, that evidence would still come in at the trial for the
3 attempted murders?

4 A I think they may have went into in the guilty plea, and
5 I mean I, I know on the -- on his direct, when I, when I
6 questioned Bryan on direct, we -- I, I went ahead and went
7 into that and his prior record. I wanted to go ahead and
8 get that out before the, before the jury, and let -- you
9 know, just to show hey, we, we did take the guns. We admit
10 it when we do something wrong. We admit it. And, and his
11 prior, I think it was car breakings, that he, he had pled on
12 those, and he admitted his guilt on those. And --

13 Q So, was that a strategic decision?

14 A I think it was. I mean, you know, I wanted to say
15 well, if we do something wrong, we admit it, but we didn't
16 do these murders or attempted murders. So, we're not
17 gonna -- you know, we're not admitting to that.

18 Q Okay. And, in fact, on Page 14, I'll refer the Court
19 and opposing counsel.

20 You mentioned in that testimony that you think the
21 Courts went over the facts of the grand larceny coming in
22 at -- during the attempted murder charge and that was on
23 Page 14. Mr. Barnette said that he still intended to use
24 that evidence as part of their case. The events were very
25 close, intimately connected. Further down, on Line 20,

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1 Mr. Barnette wanted to make the record perfectly clear.

2 So, was there any basis for you to object there to any
3 evidence coming in with regard to the grand larceny charges?

4 A Okay. Yeah, that's, that's -- well, that's where it
5 came in, and I'll go -- okay. That's where I remember
6 seeing it. So --.

7 Q Was that prior to him pleading guilty?

8 A Yes. Yes, that was at the plea and --.

9 Q And then on Page 19, on Line 3, starting there,
10 actually Line 5, that this is actually the Judge saying now,
11 understand that you're going to trial on other charges, and
12 the information that relates to the larceny and malicious
13 injury may come up during the course of the trial.

14 And then, isn't it true, that the Defendant -- that
15 Applicant still pled guilty after that?

16 A Yes.

17 Q Okay. This is one of the new allegations that arose
18 from Page 398 when Lorin Williams was testifying, and we got
19 an opportunity to talk briefly before this hearing.

20 You have an investigator's report in your discovery
21 that you have with you today, do you not?

22 A I do.

23 Q Okay. And in that report -- well, in your testimony,
24 you said that Mr. Holder didn't make a statement.

25 Did you mean that he didn't give a written statement?

1 A Right. He didn't provide a, a written statement.

2 Q Okay. But you---

3 A He -- generally they'll, when they -- the pre, the
4 pre-interrogation form and waiver of Miranda, the waiver
5 form is done, and that's especially if they're gonna write
6 out a statement a lot of times.

7 Q And the waiver form was admitted into evidence at trial
8 as one of the---

9 A I think that, I think that's what that refers to
10 because Bryan, I don't, I don't recall ever seeing a
11 statement Bryan did, and there's no reference of him
12 providing a written statement---

13 Q Okay.

14 A ---at that time.

15 Q I'll just refer to Page 398. It starts at Line 21.
16 Mr. Barnette admitted Exhibit 103 into evidence, and that
17 was the Pre-Interrogation Waiver Form.

18 A Uh-huh. (Affirmative).

19 Q Okay. And then he proceeded with that line of
20 questioning with regard to the statements made to the law
21 enforcement officer after he waived his Miranda rights, and
22 that took place on Page 399, and, at the bottom of 399,
23 that's when you objected.

24 A Right.

25 Q At that---

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1 A Right.

2 Q At that point, you said in this statement it indicates
3 my clients asked for an attorney as soon as that question
4 was asked. I see nothing in the statement about guns.

5 okay. So, just to -- for clarity on the record, that
6 report that you have, the report that you have --

7 A Uh-huh. (Affirmative).

8 Q -- you had an opportunity to review that?

9 A Right.

10 Q Did all of those questions that Mr. Barnette asked
11 Lorin Williams about, did those -- were those questions
12 asked prior to the Defendant invoking his right to an
13 attorney?

14 A According, according to the police report.

15 Q Okay.

16 A Yes.

17 MS. GIOVANOLI: Okay. And may I approach the witness?

18 THE COURT: Yes, ma'am.

19 Q Would you mind if we took this into evidence and marked
20 it as an exhibit?

21 I can ask to make a copy. I just wasn't prepared.

22 A No, you, you, you can use this.

23 Q Okay. And this is the -- okay. How about we just take
24 one page?

25 A That's fine.

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1 (WHEREUPON, the police records were marked as State's
2 Exhibit No. 1 for identification purposes only at this
3 time.)

4 Q Okay. So, we've had this marked as State's Exhibit 1,
5 and I would move to offer this into evidence at -- as
6 State's Exhibit 1.

7 MS. ROSS: No objection, Your Honor.

8 (WHEREUPON, State's Exhibit No. 1 was received into
9 evidence at this time.)

10 THE COURT: Okay. And what is this exactly?

11 Q Okay. And would you explain to the Judge what this
12 document is?

13 A It's basically a police report, a narrative, by
14 Investigator Williams whereby he interviewed Mr. Holder in
15 the jail, and at -- it's basically indicating Mr. Holder
16 denied any involvement with the theft and the shooting, but
17 while the -- there's no mention of shooting. Well, what
18 the -- there was mention of guns being stolen.

19 Q Can I ask you one quick, quick question.

20 Is that what you were referring to when you lodged your
21 objection and said, in this statement, it indicates my
22 client asked for an attorney prior to that question?

23 A Right. Right, at that time.

24 Q Okay.

25 A Yes.

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1 Q And you have a paragraph marked on there.

2 Could you read that to us with regard to the questions
3 that were asked, and then when he, he asserted his right to
4 an attorney?

5 A Okay. This would be officer -- I'm know you're quoting
6 the officers, what he wrote.

7 Q Right.

8 A I told him that Tyler had told the story, and that he
9 stated they were both in the field. Holder became agitated
10 and stated he wanted his lawyer. The interview and the
11 warrants were served on him.

12 Q Is that the full paragraph?

13 A Well, that's the sentence. That's not the whole
14 paragraph.

15 Q Okay. But that paragraph actually talks about the---

16 A Oh, okay. Yeah. Okay. The entire paragraph. I'm
17 sorry. I just did that part I had marked. So, the whole
18 paragraph quoted I interviewed Holder in jail. He was given
19 Miranda, which he signed. I explained to him what the
20 interview was about. He denied any involvement in the
21 incident. He also denied being at the residence where the
22 weapons were taken from.

23 I asked him about contacting Lawing (phonetic) in
24 reference to changing her statement. He stated she was
25 lying, and that he was not there. I told him that Tyler had

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1 told the story, and that he stated that they were both in
2 the field. Holder became agitated and stated he wanted his
3 lawyer, and then the warrants were served on him.

4 Q So, based on that information, the questions and
5 answers that took place at trial regarding that statement
6 were prior to him invoking his right to an attorney?

7 A Yes.

8 Q Okay.

9 A And that's a -- I guess that's why---

10 Q Yeah.

11 A I've explained to everybody. I think that's where
12 Barry was going was---

13 Q Okay.

14 A ---trying to reinforce some of what Schomer said.

15 Q Okay. And then going to other new allegations, I'll
16 just go ahead and ask you, why didn't you ask the
17 Codefendant, whenever you were cross-examining him, why he
18 pled guilt to a charge if he had no idea that the Defendant
19 was gonna shoot him?

20 why didn't you ask that question?

21 A Repeat the question.

22 Q Well, the allegation is that you failed to ask the
23 Codefendant, during cross-examination that, basically why
24 did you plead guilty if you knew the Defendant wasn't,
25 wasn't planning to shoot him. That's the question she's

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1 alleging you should of been asking.

2 A If he didn't know he was gonna shoot, why would he
3 plead guilty to the hand of -- under the hand of one theory
4 I guess.

5 Q Right.

6 A I'm not sure. I thought there was plenty in there for
7 the jury to feel like Schomer was not credible, and looking
8 back through here, I, I probably should of tried to put the
9 gun in Schomer's hands more than that, but he does say he
10 shot some, but I'm not sure why. I don't know why I didn't
11 come out with that.

12 Q All right. And then there's also an allegation that
13 you didn't take exception to the hand of one, hand of all.
14 Did you -- and you failed to preserve that.

15 Did you feel that that would -- was something that
16 would of been successful on appeal?

17 A Based upon -- 15, 15 years ago I would of said it
18 would, it would -- the hand of one, hand of all wouldn't of
19 applied. But now, after doing thing, doing this for a long
20 time, it's, it's pretty loosely applied, and I, I mean it's,
21 it's worth a shot, but I'm, I'm not surprised it didn't.

22 Q Were you able to see what the issue that was argued on
23 appeal was in reviewing the direct appeal records?

24 A I don't, I don't recall exactly. It was that the --.

25 Q If I showed you the issues statement, would it refresh

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1 your recollection?

2 A I think I read it, but I don't recall what it was right
3 off.

4 Q Okay. Would you be -- if I showed you this, would it
5 refresh your recollection?

6 A Yes.

7 Q I'm showing him Appellate's brief, and the issues
8 statement page, which is part of the record.

9 THE COURT: Yes, ma'am, but he's -- you're on cross.

10 MS. GIOVANOLI: Okay. Thanks.

11 A Okay.

12 Q Okay. So, was the issue briefed, this issue about the
13 hand of one, hand of all?

14 A I, I -- yeah, I mean if -- I think Schomer testified
15 that it was common for he -- him to, to take a B.B. gun out
16 there. So, the rifles are added to the mix now so that -- I
17 think my argument was well, Bryan thinks they're going out
18 there to target shoot, which they did, and, you know, if
19 Schomer decides to start shooting somebody else, Bryan had
20 no accomplice liability there with no knowledge of it.

21 Q The appeal wasn't dismissed for failure to preserve,
22 was it?

23 A Not -- no. No.

24 Q Okay. What was your strategy in cross-examining David
25 Hamilton, and I'm gonna tell you who he was.

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by Ms. Giovanoli

1 He was the witness that picked the Defendant off of the
2 guns and the Defendant wanted -- he said the Defendant
3 wanted to sell the guns, and he took the Defendant to Kevin
4 to unload the guns.

5 Did you have a strategy in your cross-examination of
6 these witnesses?

7 A Realistically, on the -- on some of these earlier
8 witnesses, we had pled to the property crimes. So, in --
9 you know, we -- I, I believed -- my, my strategy was to
10 narrow the scope to the -- someone in that field shooting at
11 people, and really I don't, I don't believe he provided any
12 evidence that put Bryan in that field, near that field, or
13 anything like that. I mean, you know, it was already a
14 given that the guns were in Bryan's possession at one point,
15 and, and were under the -- I think one of them was found
16 under Schomer's porch later on.

17 But yeah, those -- that -- I didn't feel like that --
18 those -- those witnesses were not hurting us in a -- in the
19 attempted murder case, and that's where I narrowed the
20 scope.

21 Q Fair enough.

22 On Page 32 of the transcript, it got brought out that
23 Juror Number 19 knew you, and your testimony was that you
24 guys played ball together?

25 A Yeah. Yes.

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by Ms. Giovanoli

1 Q Is that correct?

2 A Right.

3 Q And so you had a friendly relationship with this juror?

4 A Well, I mean it wasn't an unfriendly one, but I mean we
5 didn't --

6 Q Yeah.

7 A You know, he, he was better than me, but I didn't tally
8 that against him, but what, what -- you know.

9 Q So, that's something you considered in deciding whether
10 or not to strike him?

11 A Yeah. Yeah, I mean I, I thought well, he, he knows I'm
12 competitive and we always got along. So, I --.

13 Q Did you, did you feel like that trumped the fact that
14 he answered that he had been the victim of a crime?

15 A Yeah, I did. Yeah.

16 Q Okay. Did you discuss this with Mr. Holder?

17 A I did not. I doubt I did.

18 Q Is it your general practice to include your client in
19 jury -- selection of the jury or is that something you
20 handle on your own?

21 A I'll let them review the list sometimes to see if they
22 know anybody, and, and, and sometimes I'll, I'll, I'll point
23 out some that I intend to strike and, and why.

24 Q Okay. So, when the Solicitor handed the Defendant the
25 gun, this is one of the new allegations, during his

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1 cross-examination of him, did you find that there was any
2 basis to object to that?

3 A Well, I mean I think Bryan had testified that he had
4 shot ten or twelve times at the target.

5 Q But this wasn't---

6 A So --.

7 Q ---an unreasonable appeal to the emotion of the jury in
8 your opinion, was it?

9 A I don't, I don't, I don't guess so. I mean I guess
10 everybody's got their strategies and tactics they use to be
11 a little theatrical, but I don't, I don't think so. I mean
12 it's --.

13 Q Okay. And---

14 A I think it's common for the---

15 Q We got about---

16 A ---prosecutors to do that type of thing.

17 Q Okay. And I'm sorry for interrupting you. We got only
18 two other allegations. I just want to give a little bit of
19 background that there's an allegation that he tried to plead
20 two times, and your testimony was that he went before Judge
21 Culbertson?

22 A Right. That's when Mr. Schomer entered his plea.

23 Q Okay. And, at the same time, Mr. Holder tried to plead
24 guilty to these attempted murder charges?

25 A We, we were up then. We were -- I believe he went in

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1 front of the Judge and, and then backed out or I'm, I'm not
2 sure how far in we got, but --.

3 Q Okay. In -- okay. On Page 292 of the transcript,
4 that -- a Jennifer Blackwell Thompson testified, and the
5 allegation, they're alleging that you were ineffective for
6 not objecting to the witness not on the jury list.

7 Did, did you even -- did you notice that this witness
8 wasn't listed as a potential witness or --?

9 A Sure. I think Line 12 I did object to that.

10 Q Okay. Well, then thank you very much. I have no
11 further questions.

12 THE COURT: Redirect.

13 MS. ROSS: All right. Just briefly.

14 REDIRECT EXAMINATION

15 BY MS. ROSS:

16 Q Going back to this witness, David Hamilton, and the
17 Codefendant, both testified -- elicited -- kind of specific
18 testimony about thinking that Mr. Holder was aiming at the
19 parking lot because he heard packing cigarettes.

20 Do you recall that on --?

21 A I, I recall the, at some point, some -- somebody
22 testified that the, the guy -- well, somebody come out the
23 store packing the cigarettes, and, and that's when I think
24 Schomer said that or maybe the guy said he was packing
25 cigarettes or something about that. Maybe that's why that

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by Ms. Ross

1 noise or something was heard. And then -- and that --
2 that's why the shooter started shooting in that direction.

3 Q In that direction.

4 Did you ever argue, in closing, that that's a pretty
5 specific memory for someone who was not the shooter to have?

6 A I, I, I think -- the main thing I remember, remember
7 about that was Judge Cole asking one of us to ask another
8 question about that cause the jury -- some of the jurors
9 didn't know what that meant, but I, I didn't go into that,
10 no.

11 Q Okay. And just briefly on the companion charges that
12 Mr. Holder did plead to, you didn't -- did you ever, in
13 closing, argue that look, Bryan Holder pled to what he did
14 just like the Codefendant pled to what he did, but he didn't
15 pled guilty to these?

16 Did you ever make that kind of argument in closing?

17 A I'd have to read the closing argument. If it's, it's
18 not in the record, I didn't.

19 Q Okay. I've got nothing further.

20 THE COURT: Okay.

21 MS. GIOVANOLI: Nothing -- well, this was the
22 Applicant's case.

23 THE COURT: Yes, ma'am, I understand, but do you plan
24 to recall Mr. Thompson in your case?

25 MS. GIOVANOLI: No, Your Honor. I don't think that's

1 necessary.

2 THE COURT: Okay. All right. Mr. Thompson, thank you,
3 sir. You may step down.

4 THE WITNESS: Thank you, Your Honor.

5 THE COURT: May Mr. Thompson be excused?

6 MS. GIOVANOLI: No objection from the State.

7 MS. ROSS: No objection, Your Honor.

8 THE WITNESS: Thank you.

9 THE COURT: You may be excused, sir, if that's your
10 wish.

11 THE WITNESS: Okay. Thank you.

12 THE COURT: Okay. Yes, ma'am, are you ready to
13 proceed?

14 MS. GIOVANOLI: Yes, the State rests.

15 THE COURT: Okay. Any argument?
16 Any motions?

17 MS. ROSS: Judge, as far as the argument, I sort of
18 handed up the points I intended to make. I recognize that,
19 that some of them didn't play out with the testimony.

20 You heard the testimony. I'd ask you to consider this
21 carefully. I think Mr. Holder got a substantially harsh
22 sentence especially in light of what the Codefendant got on,
23 on this.

24 I think, as I argued before, I think some dramatics
25 occurred with the, the Solicitor handing the Defendant a

1 gun. I think surely that would intimidate a jury and appeal
2 to their emotions.

3 So, I'd just ask you to seriously consider Mr. Holder's
4 Application.

5 THE COURT: Yes, ma'am. Thank you.

6 MS. GIOVANOLI: And I just wanted to touch on the
7 standard of ineffective assistance of counsel.

8 It's not what counsel could have done better. It's
9 the -- a standard of reasonableness, not perfection, and
10 it's viewed in the lense at the time of trial without the
11 distorting of facts of hindsight bias.

12 So, keep -- bearing that in mind, there's been a few
13 allegations of what counsel may have -- could have asked on
14 cross-examination, certain witnesses, or something he may of
15 brought up in closing argument, and I'm sure, if counsel had
16 the chance to do it over again, he would change his strategy
17 or maybe some of it -- his arguments cause, obviously, the
18 ones he made were not successful.

19 But bearing in -- that in mind, the standard is
20 reasonableness, and I believe, if Your Honor reads this
21 entire transcript, you will find that his representation was
22 reasonable, and, actually, in my opinion, did an excellent
23 job in trial. Unfortunately, the Applicant was found guilty
24 and sentenced to 40 years.

25 I also think that -- I want to renew my objection for

1 late allegations. I tried my best to defend those today,
2 but I do still maintain on the record that those should of
3 not brought -- been brought forth today in this hearing.

4 But, once again, it's the Applicant's burden to prove
5 that counsel was ineffective, and I feel that he is
6 significantly failed to prove that counsel was -- had any,
7 any acts or omissions in this case that fell below the
8 reasonable standard. So, I'd ask that you deny the
9 Application for Post-Conviction Relief.

10 MS. ROSS: And, Judge, one thing I just forgot, if I
11 might add, was the due process violations or with the
12 request that, that we would argue there was a request for
13 his sentence to reflect the charges that were committed.

14 THE COURT: That were?

15 MS. ROSS: That, that the jury acquitted on. The
16 attempted murder charges, and the solicitor asking --
17 reiterating that he thought that this was an attempted
18 murder prior to sentencing though the jury came back with a
19 verdict to assault and battery high and aggravated.

20 So, that would be the due process argument that we'd
21 make as well.

22 THE COURT: Okay. Thank you.

23 MS. ROSS: Thank you.

24 THE COURT: Okay. Mr. Holder, sir, I just want you to
25 understand that I will not be ruling today. I will not be

1 issuing a ruling from the bench because I want to review
2 everything. So, I need to do that, and it -- that will take
3 a little while. And so I don't want you to get discouraged
4 if you're not hearing from your lawyer about a decision
5 made.

6 These things take time, and I will be issuing
7 instructions to both counsel, and I will do that just as
8 quickly as I can, but, sir, I do not believe that you will
9 receive a decision sooner than 30 days from now.

10 Okay?

11 THE APPLICANT: Yes, ma'am.

12 THE COURT: I wish you the best of luck, sir.

13 THE APPLICANT: Okay. Thank you.

14 MS. ROSS: Thank you, Your Honor.

15 THE COURT: Thank you.

16 MS. GIOVANOLI: Thank you, Your Honor.

17

18

19 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

20

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22

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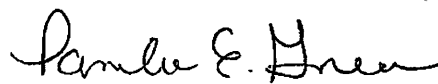
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas Nonjury for Spartanburg County, South Carolina, on the 2nd day of February, 2018.

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

July 2nd, 2018



PAMELA E. GREEN, Court Reporter

RECEIPT FOR EXHIBITS

Case No. 16-CP-42-3627 Judge Knice
 Plaintiff: Bryan Holder PIP's Atty S. Ross
 Defendant: State Def's Atty. V. Giovanoli
 Date Trial Started 2/2/18 Date Trial Ended: 2/2/18
 Received of Pam: Green Court Reporter for the above case, these exhibits:

5-1. Police records

- 2.
- 3.
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- 20.

This 11 day of February, 2018.

Page _____ of _____

By: Charlana Miller / Charlana Miller
Spokane County County, Clerk of Court.

Deputy Report for Incident 12070041

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BURGLARY'S RESIDENCE. SHE STATED IF SHE HEARD ANYTHING SHE WOULD GIVE US A CALL.

MYSELF AND INV. WILKINS AND BRYANT WENT TO SCOTT'S RESIDENCE IN THE CITY OF SPARTANBURG ON PICKNEY ST. SCOTT WAS IDENTIFIED AS DAVID. HIS MOTHER STATED HE WAS NOT THERE. SHE STATED SHE HAS NOT SEEN HIM IN A COUPLE OF DAYS. I TOLD HER WHEN I NEEDED TO SPEAK TO HIM ABOUT. I LEFT HER MY CARD AND SHE STATED SHE WOULD HAVE HIM CALL ME.

MYSELF AND INV. WILKINS WENT TO SCHOMER'S RESIDENCE AFTER RECEIVING A CALL FROM SCHOMER'S GRANDFATHER. THE ADDRESS IS [REDACTED], SPARTANBURG, SC. HE STATED HE HAD FOUND SOME BULLETS UNDER HIS BACK STEPS.

ID OFFICER DUKES CAME TO THE ADDRESS AND PHOTOGRAPHED THE BAG AND THE SHELLS THAT WERE LOCATED UNDER THE BACK STEPS. THERE WAS A PIECE OF LATTICE AROUND THE BOTTOM OF THE PORCH THAT WAS OUT OF PLACE. ID OFFICER DUKES PULLED IT BACK AND WE COULD SEE THE BUTT STOCK OF A WEAPON. THE WEAPON WAS REMOVED OUT FROM UNDER THE PORCH AND IT WAS A MARLIN 30-30 LEVER ACTION RIFLE. THIS WEAPON WAS STOLEN ALONG WITH THE OTHERS. THE WEAPON WAS PHOTOGRAPHED AND TAKEN INTO EVIDENCE. THE SUSPECT'S GRANDFATHER HAD LOOKED IN HIS ROOM HE HAD FOUND SEVERAL LOOSE RIFLE ROUNDS. THEY WERE ALSO COLLECTED BY ID AND PLACED INTO EVIDENCE.

INV. WILKINS TOLD ME THAT HE HAD SPOKEN WITH SCHOMER'S GRANDFATHER AND MOTHER. BOTH STATED THE NIGHT OF THE SHOOTING BRYAN WAS AT THEIR HOUSE. THEY STATED THAT TYLER AND BRYAN LEFT. THEY STATED WHEN THEY RETURNED THEY WERE BOTH SWEATING. THEY STATED IT WAS SOMETIME AROUND 1:30 OR 2:00AM. THIS WAS DIFFERENT FROM WHAT TYLER HAD TOLD US IN AN EARLIER INTERVIEW.

INV. WILKINS CALLED KEVIN AT BMW. HE CAME TO THE SHERIFF'S OFFICE. DURING THE INTERVIEW, HE ADMITTED THAT HE HAD WITHHELD INFORMATION IN REGARDS TO TYLER'S INVOLVEMENT IN THIS SHOOTING. HE STATED THAT TYLER WAS WITH BRYAN WHEN HE SHOT THE VICTIM. HE ALSO STATED THAT TYLER HAD BEEN WITH HIM WHEN HE GOT RID OF THE GUN. HE STATED TYLER TOLD HIM THAT THEY TRADED THE 30-06 TO A DRUG DEALER NAMED "WES." HE STATED HE DID NOT KNOW HIM BUT THAT HE LIVED AROUND LONE OAK.

I PRESENTED THIS CASE TO JUDGE SMITH WHO ISSUED WARRANTS FOR BOTH SCHOMER AND HOLDER.

I INTERVIEWED HOLDER IN THE JAIL. HE WAS GIVEN MIRANDA WHICH HE SIGNED. I EXPLAINED TO HIM WHAT THE INTERVIEW WAS ABOUT. HE DENIED ANY INVOLVEMENT IN THE INCIDENT. HE ALSO DENIED BEING AT THE RESIDENCE WHERE THE WEAPONS WERE TAKEN FROM. I ASKED ABOUT HIM CONTACTING LAWING IN REFERENCE TO CHANGING HER STATEMENT. HE STATED SHE WAS LYING AND THAT HE WAS NOT THERE. I TOLD HIM THAT TYLER HAD TOLD THE STORY AND THAT HE STATED THEY WERE BOTH IN THE FIELD. HODLER BECAME AGITATED AND STATED HE WANTED HIS LAWYER. THE INTERVIEW AND THE WARRANTS WERE SERVED ON HIM. - Sign
- Ingles

WE BEGAN LOOKING FOR SCHOMER. HE WAS LOCATED AT 465 HICKORY NUT RD. HE WAS TAKEN INTO CUSTODY. SCHOMER WAS BROUGHT TO THE SHERIFF'S OFFICE WHERE HE WAS AGAIN GIVEN MIRANDA WHICH HE SIGNED. I TOLD SCHOMER THAT WE HAD SPOKEN WITH OTHER PEOPLE AND WE KNEW HE WAS STILL LYING TO US. HE BEGAN TO GIVE ADDITIONAL INFORMATION AND ADMITTED TO BEING IN THE FIELD WITH HOLDER WHEN THE VICTIMS WERE SHOT AND SHOT AT. HE DENIED SHOOTING ANY OF THE ROUNDS AT THE VICTIM'S. HE STATED HE AND HOLDER RETURNED TO HIS RESIDENCE WHERE THEY SPENT THE NIGHT. SCHOMER STATED WHEN HOLDER LEFT THAT WAS THE LAST TIME HE SAW THE RIFLE. I ASKED HIM IF HE WAS SURE AND HE STATED HE WAS. I SHOWED HIM A PICTURE OF THE RIFLE AND ASK IF HE KNEW WHERE WE FOUND IT. HE DROPPED HIS HEAD AND STATED "FUCK IT YOU ALREADY KNOW." HE STATED HE TOOK THE RIFLE AND TRADED IT TO WES

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Bryan Holder, #337574,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

2016-CP-42-3627

ORDER OF DISMISSAL
WITH PREJUDICE

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This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Bryan Holder (Applicant) on October 3, 2016. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on February 2, 2018 at the Spartanburg County Courthouse. Applicant was present and represented by Susannah C. Ross, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Christopher Thompson, Esquire, (Counsel) also testified. This Court had before it a copy of the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the direct appeal records, the PCR application and amendment, and Respondent's return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted by the December 2012 term of the Grand Jury for Spartanburg County for grand larceny (2012-GS-42-5761) and malicious injury to real property (2012-GS-42-5762). Applicant was later

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indicted by the May 2013 term of the Grand Jury for Spartanburg County for three counts of attempted murder and possession of a weapon during the commission of a violent crime (2012-GS-42-5370, -5371, -5372). Applicant was represented at trial by Christopher Thompson, Esquire. Seventh Circuit Solicitor Barry Barnette and Assistant Solicitor Prina C. Tailor of the Seventh Circuit Solicitor's Office represented the State.

On May 6, 2013, before proceeding to jury selection and trial, Applicant pled guilty as indicted to grand larceny and malicious injury to real property before proceeding to trial for the other charges. Sentencing for the guilty pleas was deferred until the end of the jury trial on the remaining charges. On May 9, 2013, Applicant was convicted of two counts of the lesser included offense of 1st degree assault and battery (2012-GS-42-5370, -5372), the lesser included offense of assault and battery of a high and aggravated nature ("ABHAN") and possession of a firearm during the commission of a violent crime under (2012-GS-42-5371). Applicant was sentenced by the Honorable J. Derham Cole to imprisonment of five years for grand larceny (-5370), five years for malicious injury to real property (-5762), twenty years for ABHAN (-5372) to be served consecutively to the sentence for (-5761), five years for possession of a firearm during the commission of a violent crime (-5371) to be served consecutively to the sentence for count one of (-5371), ten years for 1st degree assault and battery (-5372) to be served consecutively to the (-5371) sentences, and ten years for the remaining 1st degree assault and battery (-5370).

Applicant filed a timely notice of appeal. An appeal was perfected by Appellate Defender Kathrine H. Hudgins of the South Carolina Commission on Indigent Defense-Office of Appellate Defense. On appeal, Applicant argued the trial court erred in instructing the jury with the law on accomplice liability, "hand of one is the hand of all," when there was no evidence that Applicant and

the co-defendant or anyone else acted together with a common purpose and plan to shoot at people and shooting at people is not a natural and probable consequence of agreeing to go target shooting in a vacant field with woods in the background." (FBOR). Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction by unpublished opinion filed on June 3, 2015. State v. Holder, Op. No. 2015-UP-273 (S.C. Ct. App. 2015). Applicant petitioned for rehearing. The petition for rehearing was denied by order on August 20, 2015. Applicant petitioned for writ of certiorari. The South Carolina Supreme Court denied the petition by order filed on May 5, 2016. The Remittitur was returned on May 16, 2016.

ALLEGATIONS RAISED IN APPLICATION AND AT HEARING

In his PCR application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel
 - a. "Applicant was denied due process by plea and at trial by [trial counsel].
 - b. "Counsel never informed Applicant that his guilty plea to the grand larceny of the firearm that was used in the shooting could and would be used by the prosecutor against him in his upcoming trial."
2. "Due Process"¹
 - a. "Applicant was denied due process by plea and trial counsel."
 - b. "Counsel did not do any pre-trial investigation of the crime scene."
 - c. "Counsel's failure to conduct an independent investigation of crime scene or call expert witness at trial to rebut the state expert testimony."

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At the start of the hearing, Respondent objected to the late addition of eleven new allegations at the hearing without any pleading beforehand, arguing it prejudiced the State in not allowing time

¹ Respondent also interprets these allegations to be effectively claims of ineffective assistance of counsel, although Applicant listed them as due process violations in his application.

to prepare to defend the allegations. Applicant provided a Supplemental Application filed the morning of the hearing. The new allegations included:

1. Ineffective Assistance of Counsel, in that:
 - a. Counsel called lead investigator Lorin Williams in defense case and failed to object to statement being used against him after Applicant invoked his right to remain silent;
 - b. Counsel recalled co-defendant (pp. 337-44) and then failed to ask him why plead guilty if he had no idea Applicant was planning to shoot;
 - c. Counsel had no exceptions to jury instructions and failed to preserve argument made on page 408 that no testimony supported had of one;
 - d. Counsel failed to argue in closing that co-defendant plead guilty to charges of attempted murder because he alone was guilty;
 - e. Counsel failed to provide Applicant discovery, to investigate, and to present expert witness;
 - f. Counsel failed to effectively cross-examine witness David Hamilton;
 - g. Counsel sat juror no. 19 who was the victim of a violent crime and who became the jury foreman;
 - h. Counsel failed to object to the Solicitor's appeal to the emotions of the jury when handing Applicant the gun and "yelling" how did you shoot it;
 - i. Counsel failed to move to reconsider grounds for reconsideration including the excessive sentence imposed
 - i. The sentence requested by Solicitor for acquitted charges and punishing Applicant for exercising his trial right when he attempted to plead two times which were not accepted, though co-defendant also claimed not shooter and allowed to plead and received ten years;
 - j. Counsel failed to effectively object to witness not on jury list, mother of co-defendant (p. 292); and
2. Due Process Violation, in that:
 - a. When the Solicitor asked the judge to sentence for attempted murder; and
 - b. Sentence was cruel, unusual, and excessive for asserting his right to trial.

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Respondent requested this Court to strike the late amendments. Argument was heard by both parties. This Court allowed Applicant to proceed on his late allegations.

SUMMARY OF FACTS ADDUCED AT TRIAL

The State presented evidence Applicant stole rifles, shotguns and ammunition from a home in Spartanburg County on June 29, 2012.² The guns included a Marlin 30-30 lever action rifle, and a Remington 30-06 bolt action rifle, both with mounted scopes. (Trial Transcript [TT], pp. 77-101; Record on Appeal [R.], pp. 17-41).

That night, Applicant and a co-defendant, Tyler Schomer ("Schomer"), took the 30-30 and 30-06 rifles out to a field to shoot at targets. The field was located across from a Raceway convenience store and an Ingles store. They shot the rifles toward the woods and in opposition direction from the stores, and took the rifles to Schomer's house after they finished (TT, pp. 108-111; R., pp. 48-51).

Schomer testified he and Applicant went back to the field the next night. Applicant used the 30-06 rifle to shoot at a road sign, and then aiming with the rifle's scope, fired shots toward the Raceway and Ingles stores. (State's Exhibits 47-50 [Photographs]). Applicant told Schomer he thought he hit someone in a car at the Raceway, so they listened to a police scanner to see if a call went out about a shooting there. When they heard the call go out, they returned to Schomer's house and put the rifles on Schomer's front porch.³ After Applicant's arrest, Schomer sold the 30-06 to a man in exchange for drugs. (TT, pp. 111-118, 122; R., pp. 51-58, 62).

Bonnie Raines was shot that night while sitting in the passenger seat of a car parked outside the Raceway store. The bullet entered through the car door, passed through Ms. Raines and went into the car's center console, which kept it from striking the driver, Bobby Swigert. In addition, two bullets hit concrete outside the Ingles store, bounced up and struck the front

²Prior to trial, Applicant pled guilty to grand larceny and malicious injury to property in connection with the stolen property, and those convictions are not at issue in this appeal.

³ Schomer eventually told law enforcement what happened, and prior to Applicant's trial, he pled guilty to three counts of attempted murder, but had not been sentenced at the time he testified. (TT, pp. 118-122; R., pp. 58-62).

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windows of two stores next to Ingles. Forensic evidence established all the bullets were fired from the 30-06 rifle Applicant stole two days before the shootings occurred. (TT, pp. 222-277; R., pp. 162-167).

Mark Swanger testified he was pressure washing the gas pumps in front of Ingles early on the morning of July 2, 2012, when he heard what sounded like a gunshot very close to him. A few seconds later he heard another shot go by him, and he hid until police arrived. He stated he heard a total of four to five shots, and saw a girl lying in the Raceway parking lot holding her side. (TT, pp. 284-290; R., pp. 224-230).

Applicant testified he only went to shoot the rifles once, both he and Schomer shot the 30-06 rifle, they shot at the lid of a five gallon bucket, and he never shot toward the Raceway and Ingles stores. He stated he never said anything to Schomer about shooting anyone. (TT, pp. 344-385; R., pp. 274-325).

The State requested a jury charge on the "hand of one is the hand of all." Applicant objected, arguing there was no evidence he and Schomer acted in concert in the attempted murders. Applicant then requested a mere presence charge in the event the court gave a "hand of one is the hand of all" charge. After a recess, and without ruling on the accomplice liability charge issues, the circuit court indicated it would charge the lesser included offenses of assault and battery of a high and aggravated nature as to Ms. Raines, and assault and battery first degree as to Mr. Swigert and Mr. Swanger. (TT, pp. 407-411; R., pp. 347-351).

During closing argument, Applicant asserted Schomer was the shooter. The State argued Applicant and Schomer essentially pointed the finger at the other as the shooter, but even if the jury believed Schomer was the shooter, Applicant testified they did everything together and Applicant supplied the stolen guns and ammunition, so at a minimum, Applicant was guilty as an

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accomplice. (TT, pp. 412-436; R., pp. 352-376). The circuit court charged the jury on "hand of one is the hand of all," mere presence, and the lesser included offenses.

SUMMARY OF TESTIMONY AT EVIDENTIARY HEARING

I. Applicant testified to the following:

Applicant testified the hand of one jury instruction issue was not preserved for appeal. Applicant testified his co-defendant, Schomer, testified at trial that Applicant was the shooter, but he had also made several different statements. Schomer pled guilty to the charge and received a ten year sentence. Applicant went to trial for the same charge and received a forty-five year sentence.

Applicant testified he met with Counsel a few times prior to trial. Applicant believed Counsel should have gone to the scene and investigated. Applicant maintained he was truthful during his testimony at trial and re-asserted he was not present at the scene at the time of the shooting. Applicant attempted to plead guilty, but the court would not accept his plea because he insisted he did not shoot the gun.

Applicant testified he did not give any statements to law enforcement. Applicant believed Counsel should have objected when Lorin Williams testified to statements made by Applicant. Applicant claimed Counsel did not object until after Williams testified to his statements.

Applicant testified Counsel reviewed his discovery with him, but not much. Applicant wanted his mother to testify to where he was that night, but she could not make it to his trial due to disabilities. Applicant wanted Counsel to hire a gun expert since the case involved guns and night vision scopes. Applicant recalled the Solicitor handing him a gun during his testimony and testified that the tone of the Solicitor's voice made it seem like Applicant shot the gun.

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Applicant testified he never asked Counsel to file a motion to reconsider because he was not familiar with the law.

II. Counsel testified to the following:

Counsel has been practicing criminal law for 14 years. Counsel testified he received the discovery in the case and made copies to provide to Applicant. He met with Applicant a number of times and they discussed the case and the strength of the State's evidence. The State's evidence of the theft of the guns was strong and Applicant admitted guilt to that charge. Counsel advised him to plead to those charges because he was in fact guilty and because he believed it would help establish credibility with the jury – that Applicant accepted responsibility for the crime he committed, but was going to trial on the crime for which he was innocent.

Counsel testified that in addition to reviewing all of the evidence and discovery, he went out to the scene 2-3 times. He also researched and learned a lot about guns, specifically the 30-30 and 30-06 involved in this case. Counsel did not feel a gun expert would have helped the defense at all.

Counsel testified he believed the jury may have deliberated for ten hours.⁴ Counsel did not ask for a mistrial, but recalled the judge giving an Allen charge before the jury returned a verdict. Counsel advised Applicant to plead guilty. However, he was brought to court to plead guilty and his plea would not be accepted because he denied shooting the gun. Applicant did plead guilty to the grand larceny charges because he admitted he was guilty of them. Counsel testified the sentencing range for the charges Applicant was facing was 5-105 years and he advised Applicant of this.

⁴ The record indicates the jury deliberated for one hour in the morning, returned to the courtroom to hear some testimony played back, then deliberated for another four and a half hours. Total deliberations approximated five and half hours.

Counsel agreed he argued against a hand of one charge, but felt that in the event it was read, he was entitled to a mere presence charge, which he requested and received. Although Counsel did not take exception to the charges read to the jury, he believed the issue was preserved for appeal.

Counsel testified he called the lead investigator because he wanted to present evidence of sloppy police work. Counsel had experience with Lorin Williams before. Counsel explained the purpose of calling Lorin Williams was to discuss the shooting of the sign in the field. Counsel also testified he objected to testimony regarding Applicant's oral statements to police. Counsel objected in anticipation that testimony would be elicited regarding statements made after Applicant had invoked his right to an attorney.

Counsel testified his strategy at trial would be to attack the credibility of the State's primary witness and Applicant's co-defendant, Schomer. Schomer gave multiple statements and Counsel cross-examined him on those statements to undermine his credibility. Counsel did not argue to the jury that Schomer had pled guilty.

Counsel testified that he decided to seat juror no. 19, Mr. Blankenship, despite being a victim of a violent crime, because he personally knew him from playing ball together. Counsel felt his friendly relationship with the juror would outweigh his having been the victim of a crime and potentially even benefit Applicant. Counsel testified he also filed a motion for reconsideration of Applicant's sentence and offered to submit a brief with case law regarding co-defendant sentencing discrepancies. However, Counsel testified the co-defendant received the benefit of a lowered sentence by both pleading guilty and for testifying against Applicant. Counsel conceded he probably should have objected to the Solicitor's comments during sentencing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Specifically, this Court finds that counsel was credible when he testified at the evidentiary hearing. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency. A Post-Conviction Relief application is not a venue for questioning each and every decision of trial counsel. Rather, the Applicant must demonstrate by a preponderance of the evidence that trial counsel was deficient and that the deficiency prejudiced the outcome of his trial. Applicant has failed to do so.

This Court will note Applicant has attempted to pick apart every detail of Counsel's performance and make ample recommendations of what should have or could have been done differently, in hindsight. But, the purpose of PCR is to highlight errors significant enough to carry with them constitutional implications, such that would cause this Court to question the fairness of the trial and undermine this Court's confidence in the outcome. For the Sixth Amendment does not exist for its own sake. The fundamental purpose of the Sixth Amendment is *not* to assess overall attorney performance, but to ensure the adversarial process functions fairly and reliably and that an accused receives a fair trial.

I. Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant 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).

Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant 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." Strickland v. Washington, 466 U.S. 668 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, *Id.* The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18.

Failure to advise Applicant his guilty plea to grand larceny would be used against him at trial for attempted murder

Applicant alleged Counsel was ineffective for advising him to plead guilty to grand larceny prior to trial and failing to advise him that evidence of the grand larceny would still be used against him at trial. Counsel testified he advised him to plead to those charges because he was in fact guilty and because he believed it would help establish credibility with the jury – that Applicant accepted responsibility for the crime he committed, but was going to trial on the crime for which he was innocent. Counsel articulated a reasonable trial strategy, and therefore, this Court finds he was not deficient in his performance. "Counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness." Abney v. State, 408 S.C. 41,

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46, 757 S.E.2d 544, 546-47 (Ct. App. 2014) (citing Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995)). When counsel articulates a strategy, it is measured under an objective standard of reasonableness. Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002).

Failure to investigate, provide discovery to Applicant, and present an expert witness

Applicant alleged Counsel was ineffective for failing to investigate. However, this Court finds Counsel's testimony on the issue more credible than Applicant's. Counsel's thorough investigation of the case involved reviewing all of the discovery, researching guns, and visiting the scene on more than one occasion to investigate. His investigation is evident from his trial performance. He was prepared to cross-examine and directly examine witnesses on the relevant issues and make relevant arguments.

Furthermore, to show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he more fully investigated. Jackson State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 353, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Applicant has failed to show what beneficial information could have been discovered had Counsel done more investigation.

Applicant also alleged Counsel was ineffective for not presenting an expert witness. First, this Court finds Counsel's testimony, that he did not believe an expert witness would have been of benefit to the defense, to be credible as well as reasonable. Secondly, this Court notes

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any claims surrounding the failure to present testimony from a witness assumes the testimony from the witness would have been favorable to the defense and therefore affected the outcome of the trial. However, this contention is based on pure conjecture and speculation. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Because Applicant failed to produce the testimony of an expert witness, any prejudice derived from any of Counsel's actions leading to her not testifying is purely speculative.

Applicant also alleged Counsel failed to provide him discovery. Again, Counsel's testimony is credible. Applicant even admitted Counsel reviewed the discovery with him. The Court finds Counsel fulfilled his duty and performed reasonably with regard to his review of the discovery with Applicant. Although this Court believes Counsel did provide Applicant with a copy of discovery, Counsel is not necessarily required to provide Applicant his own copy. He is just required to make sure he knows and understands the evidence against him.

Counsel's failure to object to testimony regarding Applicant's statements made after invoking his right to counsel

Applicant alleged Counsel was ineffective for failing to properly object to testimony regarding statements Applicant made after invoking his right to an attorney. However, the

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record before this court refutes these allegations. The record shows Counsel made a successful objection and prevented any testimony regarding his statements made after invoking his rights. Counsel testified he objected in anticipation of such testimony. Counsel provided this court with the incident report in which it indicated at what point during Applicant's questioning he invoked his rights. Counsel was not deficient.

Counsel failed to ask co-defendant why he pled guilty to the same charges

Applicant alleged Counsel was ineffective in failing to ask Schomer why he pled guilty to three counts of attempted murder, if he did not know Applicant was planning to shoot. While this may or may not have been a good question for the witness, this Court cannot find Counsel deficient on this issue. There are many questions that could have been asked of Schomer. But, a review of Counsel's questions to Schomer, in whole, reveal his questioning was reasonable. Applicant cannot overcome the strong presumption of reasonableness required to be given to Counsel's performance by simply pointing out other good questions he could have asked. The standard for effective assistance is reasonableness, not perfection. There could have been a dozen other good questions a dozen other attorneys may have asked, but that does not necessarily render Counsel's performance deficient in this regard. Also, this Court does not believe it could have reasonably affected the outcome of the trial. Counsel thoroughly impeached and undermined Schomer's credibility. But, the jury still believed him over Applicant. An additional question was not likely to change the jury's mind.

Failure to preserve hand of one issue for appeal

Applicant alleged Counsel failed to preserve his objection to the hand of one jury instruction. However, the record conclusively refutes this allegation. The issue was taken up on appeal to both the Court of Appeals and on certiorari to the Supreme Court. Although the State

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did make an argument that the issue was not preserved, neither the Court of Appeals nor the Supreme Court affirmed on that ground. Both courts issued orders dismissing the appeal and citing support for their decision which did not include any lack of preservation issues. Therefore, based on the appellate records and on the trial record, this Court finds Counsel did not fail to preserve the issue for appeal.

Failure to argue in closing that co-defendant had pled guilty to attempted murder because he, alone, was guilty

Applicant alleged Counsel was ineffective for not arguing in closing that Schomer pled guilty to the same charges because he was guilty, not Applicant. Again, Applicant cannot overcome the presumption favoring Counsel's performance and meet his burden of proving Counsel was ineffective, simply by alleging *other* arguments Counsel could have made that may or may not have bode well. PCR is not meant to second guess each and every action or inaction of counsel with the benefit of hindsight. This Court reviews Counsel's performance as a whole and finds it was reasonable. Counsel made intelligent and persuasive arguments in closing, despite not making the particular statement that Schomer pled guilty because he, alone, was guilty. Counsel's strategy was to discredit Schomer by showing his testimony was unreliable and not credible. Counsel executed this strategy well. Unfortunately, for Applicant, was unsuccessful, but that does not equate to deficiency.

Failed to effectively cross-examine David Hamilton

Applicant has alleged that trial counsel was ineffective for failing to effectively examine David Hamilton, a witness called by the State. This Court finds Applicant has failed to establish any ineffectiveness of counsel in handling Hamilton. The record reveals that counsel vigorously and effectively cross examined Hamilton at trial. Therefore, this allegation must be denied and dismissed with prejudice.

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STANBURN COUNTY
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CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 5th day of June



GRACE GILCHRIST KNIE
Presiding Judge
Seventh Judicial Circuit

Spartanburg, South Carolina

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SPARTANBURG COUNTY
2018 JUN -5 AM 11:44
M. HOPE BLACKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

STATE OF SOUTH CAROLINA

06/05/2018

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Bryan Holder #337574

7TH JUDICIAL CIRCUIT

Applicant

CASE # 2016 CP 42 3427

VS

State of S.C.

CERTIFICATE OF SERVICE

Respondent

I certify that, on this date, I served a copy of the Order of Dismissal with prejudice
In this action dated 06/05/2018 on 06/05/2018

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Megan Jameson

Susan Ross

06/05/2018

(Date)

Corrie Lee

(Signature)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CASE NO. 2016-CP-42-3627
COUNTY OF SPARTANBURG	)	
	)	
BRYAN HOLDER,	)	
APPLICANT,	)	
	)	MOTION TO ALTER OR AMEND
	)	THE JUDGMENT
VS.	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
RESPONDENT.	)	

COMES NOW the Applicant and hereby moves pursuant to Rule 59(e), SC CP to alter or amend the judgment of this Court filed on June 5, 2018. The Applicant seeks issue with the findings of fact and conclusions of law set fourth resulting in the denial of post-conviction relief in his case. He further argues that while each allegation may not amount to ineffective assistance of counsel standing alone, the cumulative effect of counsel's performance was deficient and prejudiced him to the degree that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry v. State, 386 S.E.2d 624, 625 (1989).

The Order of Dismissal fails to rule on Applicant's arguments of ineffective assistance of trial counsel outlined as g. - j and his due process arguments listed on page four of the Order. Specifically:

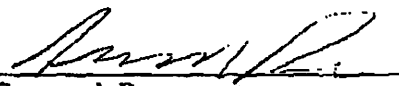
- g. Counsel sat juror number 19 who was victim of a violent crime and who became foreman;
- h. Counsel failed to object the Solicitor's appeal to the emotions of the jury when handing the defendant the gun and "yelling" how did you shoot it;
- i. Counsel failed to move to reconsider. Grounds for reconsideration including the excessive sentence imposed,

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1. The sentence requested by the Solicitor was for acquitted charges and punishing Applicant for exercising trial right when his two attempted pleas were not excepted he refused to admit to being the shooter though the co-defendant who also claimed not to be the shooter was allowed to plead and received ten years;
 - j. Counsel failed to effectively object to witness not on the witness list read to the jury who was the mother of the co-defendant (p. 292); and
- II. Due process violations in that:
- a. The Solicitor asks the judge to sentence for attempted murder (when jury acquitted on that charge p. 481-23); and
 - b. The sentence was cruel, unusual, and excessive for asserting his right to trial.

For the foregoing reasons, the Applicant requests the presiding Judge, Grace Gilchrist Knie, alter or amend the Order of Dismissal filed on June 5, 2018.

Respectfully submitted,


 Susannah Ross
 Attorney for the Applicant
 333 E. Coffee Street,
 Greenville, SC 29601
 (864) 242-0029

Greenville, South Carolina
 This 7 day of July, 2018.

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 SPARTANBURG COUNTY
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 M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Bryan Holder, SCDC # 337574,
Applicant,

v.

State of South Carolina,
Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

Case No. ~~2017-CP-42-1808~~

2016 3627

RETURN TO APPLICANT'S MOTION
TO ALTER OR AMEND JUDGMENT

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

Respondent, by and through undersigned counsel, making its Return to Applicant's
"Motion to Alter or Amend the Judgment" filed on June 11, 2018, would respectfully show unto
this Court:

I. Procedural History

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted by the December 2012 term of the Grand Jury for Spartanburg County for grand larceny (2012-GS-42-5761) and malicious injury to real property (2012-GS-42-5762). Applicant was later indicted by the May 2013 term of the Grand Jury for Spartanburg County for three counts of attempted murder and possession of a weapon during the commission of a violent crime (2012-GS-42-5370, -5371, -5372). Applicant was represented at trial by Christopher Thompson, Esquire. Seventh Circuit Solicitor Barry Barnette and Assistant Solicitor Prina C. Tailor of the Seventh Circuit Solicitor's Office represented the State.

On May 6, 2013, before proceeding to jury selection and trial, Applicant pled guilty as indicted to grand larceny and malicious injury to real property before proceeding to trial for the other charges. Sentencing for the guilty pleas was deferred until the end of the jury trial on the

remaining charges. On May 9, 2013, Applicant was convicted of two counts of the lesser included offense of 1st degree assault and battery (2012-GS-42-5370, -5372), the lesser included offense of assault and battery of a high and aggravated nature ("ABHAN") and possession of a firearm during the commission of a violent crime under (2012-GS-42-5371). Applicant was sentenced by the Honorable J. Derham Cole to imprisonment of five years for grand larceny (-5761), five years for malicious injury to real property (-5762), twenty years for ABHAN (-5371) to be served consecutively to the sentence for (-5761), five years for possession of a firearm during the commission of a violent crime (-5371) to be served consecutively to the sentence for count one of (-5371), ten years for 1st degree assault and battery (-5372) to be served consecutively to the (-5371) sentences, and ten years for the remaining 1st degree assault and battery (-5370).

Applicant filed a timely notice of appeal. An appeal was perfected by Appellate Defender Kathrine H. Hudgins of the South Carolina Commission on Indigent Defense-Office of Appellate Defense. On appeal, Applicant argued the trial court erred in instructing the jury with the law on accomplice liability, "hand of one is the hand of all," when there was no evidence that Applicant and the co-defendant or anyone else acted together with a common purpose and plan to shoot at people and shooting at people is not a natural and probable consequence of agreeing to go target shooting in a vacant field with woods in the background." (FBOR). Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction by unpublished opinion filed on June 3, 2015. State v. Holder, Op. No. 2015-UP-273 (S.C. Ct. App. 2015). Applicant petitioned for rehearing. The petition for rehearing was denied by order on August 20, 2015. Applicant petitioned for writ of certiorari. The South Carolina Supreme Court denied the petition by order filed on May 5, 2016. The Remittitur was returned on May 16, 2016.

II. Current Post-Conviction Relief Action

On October 3, 2016, Applicant filed an application for post-conviction relief. An evidentiary hearing into the matter was convened on February 2, 2018, at the Spartanburg County Courthouse. Applicant was present at the hearing and represented by Susannah Ross, Esquire. Assistant Attorney General Valerie Giovanoli of the South Carolina Attorney General's Office represented Respondent. Applicant testified on his own behalf. Applicant's trial counsel, Christopher Thompson, Esquire, also testified.

By written order signed June 5, 2018, the Honorable Grace G. Knie denied and dismissed the application with prejudice. On June 11, 2018, Applicant filed a "Motion to Alter or Amend Judgment." This Return follows.

III. Applicant Motion to Alter or Amend

In his motion, Applicant takes issue with the findings of fact and conclusions of law set forth resulting in the denial of post-conviction relief. Applicant argues that the Order of Dismissal fails to rule on each allegation of ineffective assistance of trial counsel, as well as any due process violation allegations. Respondent agrees with the Court's ruling that Applicant has failed to show any deficiency or prejudice as a result of trial counsel's representation, but recognizes that the Order of Dismissal fails to specifically address each individual allegation raised by Applicant. Respondent respectfully requests the Court to amend its Order of Dismissal to include specific findings of facts and conclusions of law for each individual allegation raised by Applicant.

Applicant also argues that while each allegation may not amount to ineffective assistance of counsel standing alone, the cumulative effect of counsel's performance was deficient and prejudiced him to the degree that "there is a reasonable probability that, but for counsel's

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unprofessional errors, the result of the proceeding would have been different." Applicant is not requesting an alteration or amendment to the Order. Rather, Applicant is asking this Court to reconsider its ruling and grant Applicant post-conviction relief. Such a request is more properly addressed through the appellate process. See Wilder Corp. v. Wilke, 330 S.C. 71, 77, 497 S.E.2d 731, 734 (1998) (noting the proper use of a Rule 59(e) motion is to preserve issues raised to but not ruled upon by the trial court). Applicant has failed to raise an allegation that was properly raised but not ruled upon by this Court.

IV. Relief Requested

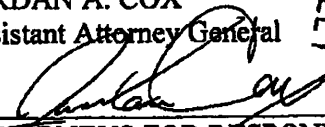
WHEREFORE, having made its Return to the motion, Respondent requests the Court to amend its Order of Dismissal to include additional findings of facts and conclusions of law, but maintaining its correct ruling of denying and dismissing the application for post-conviction relief with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

JORDAN A. COX
Assistant Attorney General

BY: 

ATTORNEYS FOR RESPONDENT
Office of the Attorney General
Post Office Box 11549
Columbia, South Carolina 29211
(803) 734-3737

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August 3, 2018

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS

2016-CP-42-3627

BRYAN HOLDER, #337574,

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

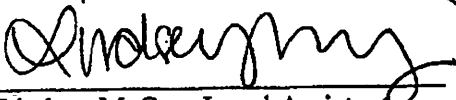
STATE OF SOUTH CAROLINA,

Respondent.

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

Susannah C. Ross, Esquire
Ross & Enderlin, PA
330 East Coffee Street
Greenville, South Carolina 29601

DATED this 3rd day of August, 2018.


Lindsey McCoy, Legal Assistant

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

Spartanburg County

Spartanburg County Court House
180 Magnolia Street
P. O. Box 3483
Spartanburg, SC 29304-3483



Phone (864) 596-2591
Fax (864) 596-2239

M. Hope Blackley
Clerk of Court

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SPARTANBURG

Bryan Hester #337574

Applicant

7TH JUDICIAL CIRCUIT

CASE # *2016CP42-3627*

VS
Steve

Respondent

CERTIFICATE OF SERVICE

I certify that, on this date, I served a copy of the *Return to Applicant's Motion*
In this action dated *8-3*, 2018 on *8-7-18*

By mailing to him/her, at his/her last known address, by depositing it in the U.S. Mail, in an envelope with sufficient postage affixed, addressed as follows:

Megan Garrison

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

8-7-18
(Date)

Corrie Gray
(Signature)

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

Bryan Holder, #337574,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE SEVENTH JUDICIAL CIRCUIT

2016-CP-42-3627

**AMENDED
ORDER OF DISMISSAL
WITH PREJUDICE**

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

This matter comes before this Court by way of an application for post-conviction relief (PCR) filed by Bryan Holder (Applicant) on October 3, 2016. The State (Respondent) made its return requesting an evidentiary hearing be held. An evidentiary hearing into the matter was convened on February 2, 2018 at the Spartanburg County Courthouse. Applicant was present and represented by Susannah C. Ross, Esquire. Valerie Garcia Giovanoli, Esquire, of the Office of the Attorney General represented Respondent.

At the hearing, Applicant testified on his own behalf. Christopher Thompson, Esquire, (Counsel) also testified. This Court had before it a copy of the Spartanburg County Clerk of Court records, Applicant's records from the South Carolina Department of Corrections, the trial transcript, the direct appeal records, the PCR application and amendment, and Respondent's return.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Spartanburg County. Applicant was indicted by the December 2012 term of the Grand Jury for Spartanburg County for grand larceny (2012-GS-42-5761) and malicious injury to real property (2012-GS-42-5762). Applicant was later

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indicted by the May 2013 term of the Grand Jury for Spartanburg County for three counts of attempted murder and possession of a weapon during the commission of a violent crime (2012-GS-42-5370, -5371, -5372). Applicant was represented at trial by Christopher Thompson, Esquire. Seventh Circuit Solicitor Barry Barnette and Assistant Solicitor Prina C. Tailor of the Seventh Circuit Solicitor's Office represented the State.

On May 6, 2013, before proceeding to jury selection and trial, Applicant pled guilty to the indicted to grand larceny and malicious injury to real property before proceeding to trial for the other charges. Sentencing for the guilty pleas was deferred until the end of the jury trial on the remaining charges. On May 9, 2013, Applicant was convicted of two counts of the lesser included offense of 1st degree assault and battery (2012-GS-42-5370, -5372), the lesser included offense of assault and battery of a high and aggravated nature ("ABHAN") and possession of a firearm during the commission of a violent crime under (2012-GS-42-5371). Applicant was sentenced by the Honorable J. Derham Cole to imprisonment of five years for grand larceny (-5761), five years for malicious injury to real property (-5762), twenty years for ABHAN (-5371) to be served consecutively to the sentence for (-5761), five years for possession of a firearm during the commission of a violent crime (-5371) to be served consecutively to the sentence for count one of (-5371), ten years for 1st degree assault and battery (-5372) to be served consecutively to the (-5371) sentences, and ten years for the remaining 1st degree assault and battery (-5370).

Applicant filed a timely notice of appeal. An appeal was perfected by Appellate Defender Kathrine H. Hudgins of the South Carolina Commission on Indigent Defense-Office of Appellate Defense. On appeal, Applicant argued the trial court erred in instructing the jury with the law on accomplice liability, "hand of one is the hand of all," when there was no evidence that Applicant and the co-defendant or anyone else acted together with a common purpose and plan to shoot at people and

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shooting at people is not a natural and probable consequence of agreeing to go target shooting in a vacant field with woods in the background." (FBOR). Following briefing, the South Carolina Court of Appeals affirmed Applicant's conviction by unpublished opinion filed on June 3, 2015. State v. Holder, Op. No. 2015-UP-273 (S.C. Ct. App. 2015). Applicant petitioned for rehearing. The petition for rehearing was denied by order on August 20, 2015. Applicant petitioned for writ of certiorari. The South Carolina Supreme Court denied the petition by order filed on May 5, 2016.

The Remittitur was returned on May 16, 2016.

ALLEGATIONS RAISED IN APPLICATION AND AT HEARING

In his PCR application, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective Assistance of Counsel

- a. "Applicant was denied due process by plea and at trial by [trial counsel].
- b. "Counsel never informed Applicant that his guilty plea to the grand larceny of the firearm that was used in the shooting could and would be used by the prosecutor against him in his upcoming trial."

2. "Due Process"¹

- a. "Applicant was denied due process by plea and trial counsel."
- b. "Counsel did not do any pre-trial investigation of the crime scene."
- c. "Counsel's failure to conduct an independent investigation of crime scene or call expert witness at trial to rebut the state expert testimony."

At the start of the hearing, Respondent objected to the late addition of eleven new allegations at the hearing without any pleading beforehand, arguing it prejudiced the State in not allowing time to prepare to defend the allegations. Applicant provided a Supplemental Application filed the morning of the hearing. The new allegations included:

1. Ineffective Assistance of Counsel, in that:

¹ Respondent also interprets these allegations to be effectively claims of ineffective assistance of counsel, although Applicant listed them as due process violations in his application.

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- a. Counsel called lead investigator Lorin Williams in defense case and failed to object to statement being used against him after Applicant invoked his right to remain silent;
 - b. Counsel recalled co-defendant (pp. 337-44) and then failed to ask him why plead guilty if he had no idea Applicant was planning to shoot;
 - c. Counsel had no exceptions to jury instructions and failed to preserve argument made on page 408 that no testimony supported had of one;
 - d. Counsel failed to argue in closing that co-defendant plead guilty to charges of attempted murder because he alone was guilty;
 - e. Counsel failed to provide Applicant discovery, to investigate, and to present expert witness;
 - f. Counsel failed to effectively cross-examine witness David Hamilton;
 - g. Counsel sat juror no. 19 who was the victim of a violent crime and who became the jury foreman;
 - h. Counsel failed to object to the Solicitor's appeal to the emotions of the jury when handing Applicant the gun and "yelling" how did you shoot it;
 - i. Counsel failed to move to reconsider grounds for reconsideration including the excessive sentence imposed
 - i. The sentence requested by Solicitor for acquitted charges and punishing Applicant for exercising his trial right when he attempted to plead two times which were not accepted, though co-defendant also claimed not shooter and allowed to plead and received ten years;
 - j. Counsel failed to effectively object to witness not on jury list, mother of co-defendant (p. 292); and
2. Due Process Violation, in that:
- a. When the Solicitor asked the judge to sentence for attempted murder; and
 - b. Sentence was cruel, unusual, and excessive for asserting his right to trial.

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Respondent requested this Court to strike the late amendments. Argument was heard by both parties. This Court allowed Applicant to proceed on his late allegations.

SUMMARY OF FACTS ADDUCED AT TRIAL

The State presented evidence Applicant stole rifles, shotguns and ammunition from a home in Spartanburg County on June 29, 2012.² The guns included a Marlin 30-30 lever action rifle,

²Prior to trial, Applicant pled guilty to grand larceny and malicious injury to property in connection with the stolen property, and those convictions are not at issue in this appeal.

R4

and a Remington-30-06 bolt action rifle, both with mounted scopes. (Trial Transcript [TT], pp. 77-101; Record on Appeal [R.], pp. 17-41).

That night, Applicant and a co-defendant, Tyler Schomer ("Schomer"), took the 30-30 and 30-06 rifles out to a field to shoot at targets. The field was located across from a Raceway convenience store and an Ingles store. They shot the rifles toward the woods and in the opposition direction from the stores; and took the rifles to Schomer's house after they finished. (TT, pp. 108-111; R., pp. 48-51).

Schomer testified he and Applicant went back to the field the next night. Applicant used the 30-06 rifle to shoot at a road sign, and then aiming with the rifle's scope, fired shots toward the Raceway and Ingles stores. (State's Exhibits 47-50 [Photographs]). Applicant told Schomer he thought he hit someone in a car at the Raceway, so they listened to a police scanner to see if a call went out about a shooting there. When they heard the call go out, they returned to Schomer's house and put the rifles on Schomer's front porch.³ After Applicant's arrest, Schomer sold the 30-06 to a man in exchange for drugs. (TT, pp. 111-118, 122; R., pp. 51-58, 62).

Bonnie Raines was shot that night while sitting in the passenger seat of a car parked outside the Raceway store. The bullet entered through the car door, passed through Ms. Raines and went into the car's center console, which kept it from striking the driver, Bobby Swigert. In addition, two bullets hit concrete outside the Ingles store, bounced up and struck the front windows of the stores next to Ingles. Forensic evidence established all the bullets were fired from the 30-06 rifle Applicant stole two days before the shootings occurred. (TT, pp. 222-277; R., pp. 162-167).

³ Schomer eventually told law enforcement what happened, and prior to Applicant's trial, he pled guilty to three counts of attempted murder, but had not been sentenced at the time he testified. (TT, pp. 118-122; R., pp. 58-62).

Q5.

Mark Swanger testified he was pressure washing the gas pumps in front of Ingles early on the morning of July 2, 2012, when he heard what sounded like a gunshot very close to him. A few seconds later he heard another shot go by him, and he hid until police arrived. He stated he heard a total of four to five shots, and saw a girl lying in the Raceway parking lot holding her side. (TT, pp. 284-290; R., pp. 224-230).

Applicant testified he only went to shoot the rifles once, both he and Schomer shot the 30-06 rifle, they shot at the lid of a five gallon bucket, and he never shot toward the Raceway and Ingles stores. He stated he never said anything to Schomer about shooting anyone. (TT, pp. 344-385; R., pp. 274-325).

The State requested a jury charge on the "hand of one is the hand of all." Applicant objected, arguing there was no evidence he and Schomer acted in concert in the attempted murders. Applicant then requested a mere presence charge in the event the court gave a "hand of one is the hand of all" charge. After a recess, and without ruling on the accomplice liability charge issues, the circuit court indicated it would charge the lesser included offenses of assault and battery of a high and aggravated nature as to Ms. Raines, and assault and battery first degree as to Mr. Swanger and Mr. Swanger. (TT, pp. 407-411; R., pp. 347-351).

During closing argument, Applicant asserted Schomer was the shooter. The State argued Applicant and Schomer essentially pointed the finger at the other as the shooter, but even if the jury believed Schomer was the shooter, Applicant testified they did everything together and Applicant supplied the stolen guns and ammunition, so at a minimum, Applicant was guilty as an accomplice. (TT, pp. 412-436; R., pp. 352-376). The circuit court charged the jury on "hand of one is the hand of all," mere presence, and the lesser included offenses.

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SUMMARY OF TESTIMONY AT EVIDENTIARY HEARING

I. Applicant testified to the following:

Applicant testified the hand of one jury instruction issue was not preserved for appeal. Applicant testified his co-defendant, Schomer, testified at trial that Applicant was the shooter, but he had also made several different statements. Schomer pled guilty to the charge and received a ten-year sentence. Applicant went to trial for the same charge and received a forty-five year sentence.

Applicant testified he met with Counsel a few times prior to trial. Applicant believed Counsel should have gone to the scene and investigated. Applicant maintained he was truthful during his testimony at trial and re-asserted he was not present at the scene at the time of the shooting. Applicant attempted to plead guilty, but the court would not accept his plea because he insisted he did not shoot the gun.

Applicant testified he did not give any statements to law enforcement. Applicant believed Counsel should have objected when Lorin Williams testified to statements made by Applicant. Applicant claimed Counsel did not object until after Williams testified to his statements.

Applicant testified Counsel reviewed his discovery with him, but not much. Applicant wanted his mother to testify to where he was that night, but she could not make it to his trial due to disabilities. Applicant wanted Counsel to hire a gun expert since the case involved guns and night vision scopes. Applicant recalled the Solicitor handing him a gun during his testimony and testified that the tone of the Solicitor's voice made it seem like Applicant shot the gun.

Applicant testified he never asked Counsel to file a motion to reconsider because he was not familiar with the law.

II. Counsel testified to the following:

⑦

Counsel has been practicing criminal law for 14 years. Counsel testified he received the discovery in the case and made copies to provide to Applicant. He met with Applicant a number of times and they discussed the case and the strength of the State's evidence. The State's evidence of the theft of the guns was strong and Applicant admitted guilt to that charge. Counsel advised him to plead to those charges because he was in fact guilty and because he believed it would help establish credibility with the jury — that Applicant accepted responsibility for the crime he committed, but was going to trial on the crime for which he was innocent.

Counsel testified that in addition to reviewing all of the evidence and discovery, he went out to the scene 2-3 times. He also researched and learned a lot about guns, specifically the 30-06 and 30-06 involved in this case. Counsel did not feel a gun expert would have helped the defense at all.

Counsel testified he believed the jury may have deliberated for ten hours.⁴ Counsel did not ask for a mistrial, but recalled the judge giving an Allen charge before the jury returned a verdict. Counsel advised Applicant to plead guilty. However, he was brought to court to plead guilty and his plea would not be accepted because he denied shooting the gun. Applicant did plead guilty to the grand larceny charges because he admitted he was guilty of them. Counsel testified the sentencing range for the charges Applicant was facing was 5-105 years and he advised Applicant of this.

Counsel agreed he argued against a hand of one charge, but felt that in the event it was read, he was entitled to a mere presence charge, which he requested and received. Although

⁴ The record indicates the jury deliberated for one hour in the morning, returned to the courtroom to hear some testimony played back, then deliberated for another four and a half hours. Total deliberations approximated five and half hours.

Counsel did not take exception to the charges read to the jury, he believed the issue was preserved for appeal.

Counsel testified he called the lead investigator because he wanted to present evidence of sloppy police work. Counsel had experience with Lorin Williams before. Counsel explained the purpose of calling Lorin Williams was to discuss the shooting of the sign in the field. Counsel also testified he objected to testimony regarding Applicant's oral statements to police. Counsel objected in anticipation that testimony would be elicited regarding statements made after Applicant had invoked his right to an attorney.

Counsel testified his strategy at trial would be to attack the credibility of the State's primary witness and Applicant's co-defendant, Schomer. Schomer gave multiple different statements. Counsel cross-examined him on those statements to undermine his credibility. Counsel did not argue to the jury that Schomer had pled guilty.

Counsel testified that he decided to seat juror no. 19, Mr. Blankenship, despite being the victim of a violent crime, because he personally knew him from playing ball together. Counsel felt his friendly relationship with the juror would outweigh his having been the victim of a crime and potentially even benefit Applicant. Counsel testified he also filed a motion for reconsideration of Applicant's sentence and offered to submit a brief with case law regarding co-defendant sentencing discrepancies. However, Counsel testified the co-defendant received the benefit of a lowered sentence by both pleading guilty and for testifying against Applicant. Counsel conceded he probably should have objected to the Solicitor's comments during sentencing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has had the opportunity to observe the



witnesses presented at the hearing, and has weighed their testimony and credibility accordingly. Specifically, this Court finds that counsel was credible when he testified at the evidentiary hearing. Below are the findings of fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2017). Applicant has failed to prove by a preponderance of the evidence that Counsel was deficient or that he was prejudiced by any deficiency. A Post-Conviction Relief application is not a venue for questioning each and every decision of trial counsel. Rather, the Applicant must demonstrate by a preponderance of the evidence that trial counsel was deficient and that the deficiency prejudiced the outcome of his trial. Applicant has failed to do so.

This Court will note Applicant has attempted to pick apart every detail of Counsel's performance and make ample recommendations of what should have or could have been done differently, in hindsight. But, the purpose of PCR is to highlight errors significant enough to carry with them constitutional implications, such that would cause this Court to question the fairness of the trial and undermine this Court's confidence in the outcome. For the Sixth Amendment does not exist for its own sake. The fundamental purpose of the Sixth Amendment is not to assess overall attorney performance, but to ensure the adversarial process functions fairly and reliably and that an accused receives a fair trial.

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I. Ineffective Assistance of Counsel

Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the Applicant 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), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant 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.” Strickland v. Washington, 466 U.S. 668 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, *Id.* The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989). First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under professional norms.” Cherry, 300 S.C. at 117 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that “there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.” Cherry, 300 S.C. at 117-18.

Failure to advise Applicant his guilty plea to grand larceny would be used against him at trial for attempted murder

Applicant alleged Counsel was ineffective for advising him to plead guilty to grand larceny prior to trial and failing to advise him that evidence of the grand larceny would still be used against him at trial. Counsel testified he advised him to plead to those charges because he was innocent and because he believed it would help establish credibility with the jury – that Applicant accepted responsibility for the crime he committed, but was going to trial on the crime for which he was innocent. Counsel articulated a reasonable trial strategy, and therefore, this Court finds he was not deficient in his performance. “Counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness.” Abney v. State, 408 S.C. 41, 46, 757 S.E.2d 544, 546-47 (Ct. App. 2014) (citing Roseboro v. State, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995)).

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When counsel articulates a strategy, it is measured under an objective standard of reasonableness.

Ingle v. State, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002).

Failure to investigate, provide discovery to Applicant, and present an expert witness

Applicant alleged Counsel was ineffective for failing to investigate. However, this Court finds Counsel's testimony on the issue more credible than Applicant's. Counsel's thorough investigation of the case involved reviewing all of the discovery, researching guns, and visiting the scene on more than one occasion to investigate. His investigation is evident from his trial performance. He was prepared to cross-examine and directly examine witnesses on the relevant issues and make relevant arguments.

Furthermore, to show ineffective assistance in this regard, Applicant must present evidence to show what counsel could have discovered had he more fully investigated. Jackson v. State, 329 S.C. 345, 354, 495 S.E.2d 768, 772 (1998) ("Respondent failed to present any evidence of what counsel could have discovered or what other defenses respondent would have requested counsel pursue had counsel more fully prepared for the trial."). Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to result. Porter v. State, 368 S.C. 378, 385-86, 629 S.E.2d 355, 357 (2006) (citing Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998)). Applicant has failed to show what beneficial information could have been discovered had Counsel done more investigation.

Applicant also alleged Counsel was ineffective for not presenting an expert witness. First, this Court finds Counsel's testimony, that he did not believe an expert witness would have been of benefit to the defense, to be credible as well as reasonable. Secondly, this Court notes any claims surrounding the failure to present testimony from a witness assumes the testimony from the witness



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would have been favorable to the defense and therefore affected the outcome of the trial. However, this contention is based on pure conjecture and speculation. Prejudice from trial counsel's failure to interview or call witnesses cannot be shown where the witnesses do not testify at post-conviction relief. Underwood v. State, 309 S.C. 560, 425 S.E.2d 20 (1992); Bassette v. Thompson, 915 F.2d 932 (4th Cir. 1990), cert. denied, 499 U.S. 982 (1991). Applicant's mere speculation as to what a witnesses' testimony would have been cannot, by itself, satisfy his burden of showing prejudice. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995). An Applicant must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial. Bannister v. State, 333 S.C. 298, 509 S.E.2d 807 (1998). Because Applicant failed to produce the testimony of an expert witness, any prejudiced derived from any of Counsel's actions leading to her not testifying is purely speculative.

Applicant also alleged Counsel failed to provide him discovery. Again, Counsel's testimony is credible. Applicant even admitted Counsel reviewed the discovery with him. This Court finds Counsel fulfilled his duty and performed reasonably with regard to his review of the discovery with Applicant. Although this Court believes Counsel did provide Applicant with a copy of discovery, Counsel is not necessarily required to provide Applicant his own copy. He is just required to make sure he knows and understands the evidence against him.

Counsel's failure to object to testimony regarding Applicant's statements made after invoking his right to counsel

Applicant alleged Counsel was ineffective for failing to properly object to testimony regarding statements Applicant made after invoking his right to an attorney. However, the record before this court refutes these allegations. The record shows Counsel made a successful objection and prevented any testimony regarding his statements made after invoking his rights. Counsel

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testified he objected in anticipation of such testimony. Counsel provided this court with the incident report in which it indicated at what point during Applicant's questioning he invoked his rights. Counsel was not deficient.

Counsel failed to ask co-defendant why he pled guilty to the same charges

Applicant alleged Counsel was ineffective in failing to ask Schomer why he pled guilty to three counts of attempted murder, if he did not know Applicant was planning to shoot. While this may or may not have been a good question for the witness, this Court cannot find Counsel deficient on this issue. There are many questions that could have been asked of Schomer. But, a review of Counsel's questions to Schomer, in whole, reveal his questioning was reasonable. Applicant cannot overcome the strong presumption of reasonableness required to be given to Counsel's performance by simply pointing out other good questions he could have asked. The standard for effective assistance is reasonableness, not perfection. There could have been a dozen other good questions a dozen other attorneys may have asked, but that does not necessarily render Counsel's performance deficient in this regard. Also, this Court does not believe it would have reasonably affected the outcome of the trial. Counsel thoroughly impeached and undermined Schomer's credibility. But, the jury still believed him over Applicant. Asking this additional question was not likely to change the jury's mind.

Failure to preserve hand of one issue for appeal

Applicant alleged Counsel failed to preserve his objection to the hand of one jury instruction. However, the record conclusively refutes this allegation. The issue was taken up on appeal to both the Court of Appeals and on certiorari to the Supreme Court. Although the State did make an argument that the issue was not preserved, neither the Court of Appeals nor the Supreme Court affirmed on that ground. Both courts issued orders dismissing the appeal and citing

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support for their decision which did not include any lack of preservation issues. Therefore, based on the appellate records and on the trial record, this Court finds Counsel did not fail to preserve the issue for appeal.

Failure to argue in closing that co-defendant had pled guilty to attempted murder because he, alone, was guilty

Applicant alleged Counsel was ineffective for not arguing in closing that Schomer pled guilty to the same charges because he was guilty, not Applicant. Again, Applicant cannot overcome the presumption favoring Counsel's performance and meet his burden of proving Counsel was ineffective, simply by alleging *other* arguments Counsel could have made that may or may not have bode well. PCR is not meant to second guess each and every action or inaction of counsel with the benefit of hindsight. This Court reviews Counsel's performance as a whole and finds it was reasonable. Counsel made intelligent and persuasive arguments in closing, despite not making the particular statement that Schomer pled guilty because he, alone, was guilty. Counsel's strategy was to discredit Schomer by showing his testimony was unreliable and not credible. Counsel executed this strategy well. Unfortunately, for Applicant, it was unsuccessful, but that does not equate to deficiency.

Failed to effectively cross-examine David Hamilton

Applicant has alleged that trial counsel was ineffective for failing to effectively cross-examine David Hamilton, a witness called by the State. This Court finds Applicant has failed to establish any ineffectiveness of counsel in handling Hamilton. The record reveals that counsel vigorously and effectively cross examined Hamilton at trial. Therefore, this allegation must be denied and dismissed with prejudice.

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Counsel sat juror number 19 who was victim of a violent crime and who became foreman

Applicant has alleged that trial counsel was ineffective for failing to strike a juror who claimed to be a victim of a violent crime. During voir dire, juror 19 indicated that neither the fact that he was previously the victim of a violent crime nor the fact that he knew trial counsel would have any bearing upon his decision in this case. In fact, juror 19 indicated that he had not spoken to trial counsel in years. During the evidentiary hearing, trial counsel testified that he knew the juror personally and the two had a friendly relationship. Based upon this prior relationship, trial counsel felt this outweighed any possible disadvantage of the juror previously being the victim of a violent crime. "[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." Smith v. State, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing Caprood v. State, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)). The validity of counsel's strategy is viewed under an "objective standard of reasonableness." Lounds v. State, 380 S.C. 454, 462, 670 S.E.2d 646, 650 (2008).

Trial counsel weighed the advantages of seating the juror or striking his attendance at trial. Trial counsel was reasonable in his strategic decision to not strike juror 19. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

Counsel failed to object to Solicitor's appeal to the emotions of the jury when handing the defendant the gun and "yelling" how did you shoot it

Applicant alleges his trial counsel was ineffective for failing to object when Solicitor Barnette handed an unloaded pistol to Applicant on cross-examination. Trial counsel testified that it is common practice for prosecutors to employ theatrical methods during cross-examination and that every attorney makes strategic decisions during trial. Trial counsel testified that he saw no basis to object to the Solicitor's question or action during cross-examination. Applicant failed to provide any evidence as to the effect of the Solicitor's actions or questions during cross-

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examination of Applicant at trial and therefore has failed to prove any prejudice by any alleged action. Trial counsel testified that he chose not to object, because there was no basis to do so. Applicant has failed to show how trial counsel was deficient for not objecting and has failed to show any prejudice. The allegation is denied and dismissed with prejudice.

Counsel failed to move to reconsider. Grounds for reconsideration including the excessive sentence imposed.

Applicant argues that his trial counsel was ineffective for failing to move to reconsider his sentencing. During the evidentiary hearing, trial counsel testified that he did file a Motion to Reconsider Applicant's sentence on May 17, 2013. Trial counsel testified that within the Motion to Reconsider, he included case law concerning the difference in sentencing between the codefendants and the benefit of testifying against a codefendant. Trial counsel testified that the Motion to Reconsider Sentencing was denied.

Applicant has failed to show that trial counsel was deficient for failing to move to reconsider, as the record is clear that trial counsel did, in fact, move to reconsider. The allegation is denied and dismissed with prejudice.

Counsel failed to effectively object to witness not on the witness list read to the jury who was the mother of the co-defendant

Applicant argues that trial counsel was ineffective for failing to effectively object to a witness testifying at trial who was not on the witness list and was the mother of the co-defendant. At the evidentiary hearing, trial counsel testified credibly that Ms. Jennifer Blackwell Thompson was called as a witness for the State, even though she had not been listed as a potential witness during voir dire. Trial counsel objected to her being allowed to testify, but the objection was not sustained. Applicant had failed to show what other grounds trial counsel should have objected to for this particular witness. Applicant has further failed to show how he was prejudiced by this

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witness' being allowed to testify, as the trial transcript shows Judge Cole questioning the jury's knowledge of the witness prior to her testimony. No juror indicated they knew the witness prior to her testimony and Applicant has failed to show any prejudicial effect of her being allowed to testify at trial. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

*The Solicitor asks the judge to sentence for attempted murder
(when jury acquitted on that charge)*

Applicant argues trial his due process rights were violated when the Solicitor asks the judge to sentence for attempted murder, when the jury acquitted on that charge. Applicant has failed to set forth with specificity how he was denied due process of law, other than claiming the Solicitor asked the judge to sentence him attempted murder.

The jury convicted Applicant for the lesser included offense of 1st degree assault and battery, as well as assault and battery of a high and aggravated nature ("ABHAN"). Judge Cole sentenced the Applicant to ten years for 1st degree assault and battery and twenty years ABHAN. This sentence was within the statutorily mandated range for the offenses that Applicant was convicted. Therefore the sentence was not cruel, unusual or excessive.

The Solicitor also did not request that Judge Cole sentence for attempted murder. Solicitor Barnette stated the following during the sentencing phase of Applicant's trial:

"I know you know the facts, and I won't go through because you've heard it, and you've heard my closing argument. To me if this is not attempted murder, I don't know what is. But the jury has spoken. And I know the Court will take that into consideration and give a sentence appropriate for that action."

Solicitor Barnette never requested the Court to impose a sentence of which Applicant was not convicted. Nonetheless, the Court sentenced Applicant in accordance with South Carolina law on

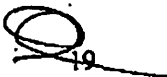
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the charges of which he was convicted. Applicant has failed to meet his burden of proof. The allegation is denied and dismissed with prejudice.

Cumulative Error

Applicant argues in his Motion to Alter or Amend Judgment that this Court should grant post-conviction relief based upon a cumulative error analysis. Specifically, if each allegation may not amount to ineffective assistance of counsel standing alone, the cumulative effect of counsel's performance was deficient and prejudiced him to the degree that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.

Before an alleged error may be considered as a factor contributing to cumulative prejudice, a court first must find that the alleged error is, in fact, error. Green v. State, 351 S.C. 184, 196-97, 369 S.E.2d 318, 324-25 (2002) ("While it is unsettled law whether individual errors, which may not be independently prejudicial, may be prejudicial when taken as a whole, we recognize the threshold to asking the cumulative prejudicial question is to first find multiple errors"). South Carolina courts have consistently declined to apply a cumulative error analysis in PCR litigation. See, e.g., Green, 351 S.C. at 197, 369 S.E.2d at 325 (declining to address whether applicant is entitled to relief based on supposed cumulative effect of counsel's alleged errors); Simpson, 367 S.C. 587, 604, 627 S.E.2d 701, 710 (2006) (finding PCR court did not err in failing to conduct a cumulative error analysis where only one allegation had merit and the "record simply did not contain 'several errors' for the judge to cumulatively assess."). Moreover, the Fourth Circuit has held that "ineffective assistance of counsel claims, like claims of trial court error, must be reviewed individually, rather than collectively" and, therefore, does not recognize a cumulative error analysis. Fisher v. Angelone, 163 F.3d 835, 852 (4th Cir. 1998).

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Applicant has failed to satisfy his burden of proving ineffective assistance of counsel on any issue, therefore the record has failed to contain anything for this Court to cumulatively assess. This allegation is without merit. The allegation is denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes Applicant has not established any violations that would require this Court to grant his application. This Court finds Applicant has failed to prove any deficiencies on the part of Counsel and further, Applicant has failed to prove prejudice from any alleged deficiencies in Counsel's representation of him. Therefore, as Applicant has failed to meet his burden of proof in this post-conviction relief action, his application is denied and dismissed with prejudice.

This Court notifies Applicant he must file and serve a notice of appeal within thirty (30) days from receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. An applicant has a right to an appellate counsel's assistance when they are seeking review of the denial of PCR. Austin v. State, 305 S.C. 453 (1991). If an applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. See Rule 71.1 (g), SCRCP. You must look at Rule 243 of the South Carolina Appellate Court Rules for appropriate procedures for appeal.

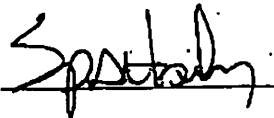
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IT IS THEREFORE ORDERED THAT:

1. The application for Post-Conviction Relief is denied and dismissed with prejudice;
2. Applicant shall remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 20 day of August, 2018.


GRACE GILCHRIST KNIE
Presiding Judge
Seventh Judicial Circuit


South Carolina

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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

Bryan M. Holder, Appellant.

Appellate Case No. 2013-001145

Appeal From Spartanburg County
J. Derham Cole, Circuit Court Judge

Unpublished Opinion No. 2015-UP-273
Submitted March 1, 2015 – Filed June 3, 2015

AFFIRMED

Appellate Defender Kathrine Haggard Hudgins, of
Columbia, for Appellant.

Attorney General Alan McCrory Wilson and Senior
Assistant Deputy Attorney General Deborah R.J. Shupe,
both of Columbia; and Solicitor Barry Joe Barnette, of
Spartanburg, for Respondent.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following
authorities: *State v. Condrey*, 349 S.C. 184, 194, 562 S.E.2d 320, 325 (Ct. App.

2002) ("The law to be charged is determined from the evidence presented at trial."); *id.* ("A trial court has a duty to give a requested instruction that correctly states the law applicable to the issues and which is supported by the evidence."); *State v. Ward*, 374 S.C. 606, 614, 649 S.E.2d 145, 149 (Ct. App. 2007) ("If any evidence supports a requested jury charge, the trial court should grant the request."); *State v. Reid*, 408 S.C. 461, 472, 758 S.E.2d 904, 910 (2014) (stating that under the "hand of one is the hand of all" theory of accomplice liability, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose"); *State v. Gibson*, 390 S.C. 347, 354, 701 S.E.2d 766, 770 (Ct. App. 2010) ("In order to establish the parties agreed to achieve an illegal purpose, thereby establishing presence by pre-arrangement, the State need not prove a formal expressed agreement, but rather can prove the same by circumstantial evidence and the conduct of the parties."); *Barber v. State*, 393 S.C. 232, 236, 712 S.E.2d 436, 439 (2011) ("Like a lesser-included offense, an alternate theory of liability may only be charged when the evidence is equivocal on some integral fact and the jury has been presented with evidence upon which it could rely to find the existence or nonexistence of that fact."); *id.* (finding no error in the trial court's decision to give the accomplice liability jury instruction because "the sum of the evidence presented at trial, both by the State and defense, was equivocal as to who was the shooter").

AFFIRMED.¹

SHORT, LOCKEMY, and McDONALD, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

The Supreme Court of South Carolina

The State, Respondent,

v.

Bryan M. Holder, Petitioner.

Appellate Case No. 2015-001980

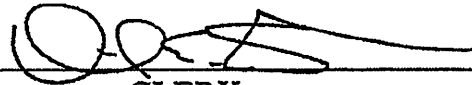
Lower Court Case Nos. 2012-GS-42-05370, 2012-GS-42-05371, 2012-GS-42-05372

ORDER

Based on the vote of the Court, the petition for a writ of certiorari is denied.

FOR THE COURT

BY



CLERK

Columbia, South Carolina

May 5, 2016

cc:

Kathrine Haggard Hudgins, Esquire

Alan McCrory Wilson, Esquire

Deborah R.J. Shupe, Esquire

John W. McIntosh, Esquire

John Benjamin Aplin, Esquire

The Honorable M. Hope Blackley

The Honorable Jenny Abbott Kitchings

WITNESSES

Spartanburg County Sheriff's Office

Kevin [Signature]

1. SENTENCE MADE ☒

2. REPORT ENDED ☒

3. CARD BULLETS ☒

4. INDEXED ☒

5. CHECKED WARRANTS

ARREST WARRANT NUMBER ☒

6. CHECKED SIGNATURE ☒

7. ASSESSMENT ☒
N158117 FINE CARD MADE

8. TRAFFIC VIOLATION COPY ☒

ACTION OF GRAND JURY

Dean [Signature]

True Bill

DEC 06 2012

Foreperson of Grand Jury
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. **12-GS-42-5761**

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 10 2012

TERM

THE STATE
VS.

Bryan Holder

Indictment for

GRAND LARCENY

SC Code: 16-13-30 (B) (1)

CDR Code: 3420

Class FEL-F

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STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

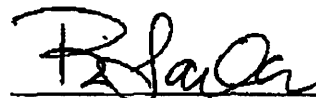
DEC 6 5 2012

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

GRAND LARCENY

That Bryan Holder, did in Spartanburg County on or about June 28, 2012, feloniously take and carry away the goods of Wayne Lyda valued at more than Two Thousand Dollars, but less than Ten Thousand Dollars, described as follows: electronics and/or firearms and/or jewelry and/or US currency, with the intent to deprive the owner permanently of such property, all in violation of Section 16-13-30 (B) (1), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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



ASSISTANT SOLICITOR

COUNTY OF SPARTANBURG
STATE VS.
Bryan Marion Holder
AKA:
Race: WHITE Sex: M Age: 21
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: Boiling Springs, SC 29316-5651
DL#: [REDACTED] SID#: [REDACTED]

INDICTMENT/CASE#: 2012GS4205761
A/W#: N158117
Date of Offense: 6/28/2012
S.C. Code §: 16-13-0030 (B)
CDR Code #: 3420

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was
TO: Larceny / Grand Larceny, value more than \$2,000 but less than \$10,000

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-13-0030 (B) of the S.C. Code of Laws, bearing CDR Code # 3420
☒ 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] 13039 [Signature] [Signature] 71265
TAYLOR, PRINA C SC Bar# Defendant Attorney for Defendant SC Bar#

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

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2012 - 5962
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered
Total: \$ — plus 20% fee: \$ —
Payment Terms: —
☐ Set by SCDPPPS —

Recipient: —

*Fine:	\$	
§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(f) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL:		\$133.90

PTUP — days/hours Public Service Employment
Obtain GED ☐
Attend Voc. Rehab. or Job Corp. —
May serve W/E beginning —
Substance Abuse Counseling ☐
Random Drug/Alcohol testing ☐
Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ — beginning —
\$ — paid to Public Defender Fund
Other: —

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

Clerk of Court/ Deputy Clerk: [Signature]
Court Reporter: [Signature]
SCCA/217 (03/2011)

Presiding Judge [Signature]
Judge Code: 1053
Sentence Date: May 9, 2013

1-6-12 ARREST WARRANT

N-158117

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

THE STATE

2012061636

against

Bryan Marion Holder

Address:

Boiling Springs, SC 29316-5651

Phone: _____ SSN: _____

Sex: M Race: W Height: 5 9 Weight: 160

DL State: SC DL #: _____

DOB: _____ Agency ORI # SC0420000

Prosecuting Agency: Spartanburg County Sheriff

Prosecuting Officer: Bryan Wilkins - 0215

Offense: Larceny / Grand Larceny, value more than \$2,000 but less than \$10,000

Offense Code: 3420

Code/Ordinance Sec: 16-13-0030(B)

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused is to be arrested and brought before me to be dealt with according to the law.

(L.S.)

Signature of Judge

Date

RETURN

A copy of this arrest warrant was delivered to defendant on

Bryan M. Holder
7-3-12

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P.O. Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Bryan Wilkins

being duly sworn deposes and says that defendant Bryan Marion Holder

did within this county and state on or about 06/28/2012

violate the criminal laws of the

State of South Carolina (or ordinance of

☒ County/☐ Municipality of

Spartanburg

in the following particulars:

DESCRIPTION OF OFFENSE: Larceny / Grand Larceny, value more than \$2,000 but less than \$10,000

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:

Between June 28, 2012 and June 29, 2012, in the county of Spartanburg, one Bryan Marion Holder did take and carry away electronics, firearms, jewelry and U.S. currency, with the intent to permanently deprive the owner of the property which is valued at more than \$2,000 but less than \$10,000 and is the property of victim, Wayne Lyda.

Warrant based upon police investigation. DSC

JUL 06 2012

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street
Spartanburg, SC 29303-

Affiant's Telephone

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 6/28/2012 defendant Bryan Marion Holder

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

☒ County/☐ Municipality of

Spartanburg

) as set forth below:

DESCRIPTION OF OFFENSE: Larceny / Grand Larceny, value more than \$2,000 but less than \$10,000

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 07/03/2012

(L.S.)

Judge's Address
James Buckingham, P. Clerk
Judge Code: 5483Judge's Address Spartanburg County Judicial Center
Spartanburg, SC 29306-2335

Judge's Telephone (864) 596-2564

Issuing Court

☒ Magistrate

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

CLERK OF COURT
SPARTANBURG COUNTY
BY: *M. Hope Blackley*
DATED 7-3-12FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 JUL -6 AM 10:45
M. HOPE BLACKLEYForm Approved by
G.C. Attorney General
April 21, 2003
SCCA 510

626

WITNESSES

SCSO

Kevin Rife

2. REPORTED

3. CARD PULLED

4. INDEXED

ARREST WARRANT NUMBER

6. CHECKED SIGNATURE

N158119

7. ASSESSMENT FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

Dean Bell

DEC 06 2012

Foreperson of Grand Jury

Date:

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO.

12-GS-42-5762

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

DEC 10 2012

TERM

THE STATE

VS.

Bryan Holder

Indictment for

**MALICIOUS INJURY TO
REAL PROPERTY**

SC Code: 16-11-520 (B) (2)

CDR Code: 3429

Class FELIF

RECEIVED 12 21 8:40
CLERK OF COURT

SCA

6272

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

DEC 03 2012

At a Court of General Sessions, convened on _____, the
Grand Jurors of Spartanburg County present upon their oath:

MALICIOUS INJURY TO REAL PROPERTY

That the Defendant Bryan Holder did in Spartanburg County on or about June 28, 2011, willfully, unlawfully and maliciously injure, damage, or destroy the real property belonging to Wayne Lyda, to-wit: by shooting a firearm into a house, causing damage of more than Two Thousand Dollars, but less than Ten Thousand Dollars, all in violation of §16-11-520 (B) (2), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976, as amended).

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



ASSISTANT SOLICITOR

COUNTY OF SPARTANBURG

STATE

VS.

Bryan Marion Holder

AKA:

Race: WHITE Sex: M Age: 21

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip: Boiling Springs, SC 29316-5651

DL#: [REDACTED] SID#: [REDACTED]

*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: Malicious / Malicious injury to tree, house; trespass upon real property, injury value more than \$2,000, but less than \$10,000

in violation of § 16-13-0520 (A) of the S.C. Code of Laws, bearing CDR Code # 3429

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.Attest: *[Signature]*
TAYLOR, PRINA C13039
SC Bar#*[Signature]*
Defendant*[Signature]*
Attorney for Defendant71255
SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed — yearsand/or to pay a fine of \$ —; provided that upon the service of — days/months/years and/or paymentof \$ —; plus costs and assessments as applicable*; ~~the balance is suspended with probation for~~

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

2012-5761

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL		\$133.90

— days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. —May serve W/E beginning —Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ — beginning —\$ — paid to Public Defender FundOther: —☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

2053

[Signature]
May 9, 2013

N-158119

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

THE STATE

2012061635

against

Bryan Marion Holder

Address:

Boiling Springs, SC 29316-5651

Phone:

SSN:

Sex: M Race: W Height: 5 9 Weight: 160

DL State: SC DL #:

DOB: Agency ORI #: SC0420000

Prosecuting Agency: Spartanburg County Sheriff

Prosecuting Officer: Bryan Wilkins - 0215

Offense: Malicious / Malicious injury to tree, house;
trespass upon real property, injury value more than

Offense Code: 3429

Code/Ordinance Sec: 16-11-0520(A)

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
onBryan M. Holder
7-3-12

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

General Sessions
180 Magnolia Street
P.O. Box 3483
Spartanburg, SC 29304

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

ORIGINAL

☒ County/ ☐ Municipality of

Spartanburg

Personally appeared before me the affiant Bryan Wilkins

being duly sworn deposes and says that defendant Bryan Marion Holder

did within this county and state on or about 06/28/2012

violate the criminal laws of the

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

in the following particulars:

DESCRIPTION OF OFFENSE Malicious / Malicious injury to tree, house; trespass upon real property, injury value more than \$2,000.
but less than \$10,000I 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 June 28, 2012 in the county of Spartanburg, one Bryan Marion Holder did willfully, unlawfully and maliciously do damage
in the amount valued more than \$2,000 but less than \$10,000 to the real property of victim, Wayne Lyda by shooting fire in
house, causing damage to structure.

Warrant based upon police investigation. DSC

JUL 10 2012

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of

Spartanburg

Affiant's Address 8045 Howard Street

Spartanburg, SC 29303-

Affiant's Telephone

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 6/28/2012 defendant Bryan Marion Holder

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

☒ County/ ☐ Municipality of Spartanburg) as set forth below:DESCRIPTION OF OFFENSE: Malicious / Malicious injury to tree, house; trespass upon real property, injury value more than
\$2,000 but less than \$10,000Having 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 07/03/2012

(L.S.)

Judge's Address

Judge's Telephone

Judge's Code

Judge's Address Spartanburg County Judicial Center

Spartanburg, SC 29306-2335

Judge's Telephone (864) 596-2564

Judge's Code

Magistrate

CERTIFIED COPY

CLERK OF COURT

SPARTANBURG COUNTY

BY: DATED: ORIGINAL

630

WITNESSES

Spartanburg County Sheriff's Office

1. SENTENCE MADE ☒

2. REPORT ENDED ☒

3. CARD PULLED ☒

4. INDEXED ☒

5. CHECKED WARRANTS ☒

6. CHECKED SIGNATURE ☒

7. ASSESSMENT MADE ☒

FINE CARD MADE ☒

ARREST WARRANT NUMBER

8. TRAFFIC VIOLATION COPY ☒

N-245059 (Amended)

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date:

MAY 03 2013

VERDICT

**GUILTY OF ASSAULT
AND BATTERY IN THE
FIRST DEGREE**

Foreperson of Petit Jury

Date:

5/9/2013

DOCKET NO. **12-GS-42-5370**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 03 2013

TERM

THE STATE

v.

BRYAN MARION HOLDER

Indictment for

ATTEMPTED MURDER

SC Code 16-03-0029

CDR Code 3410

Class FEL-A

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 03 2013, the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED MURDER

That the Defendant, Bryan Marion Holder, did in Spartanburg County on or about July 2, 2012, with intent to kill, attempted to kill Bobby Allen Swigert, Jr., with malice aforethought, expressed or implied, by shooting at him with a firearm, in violation of Section 16-3-0029, Code of Laws of South Carolina, (1976, as amended).

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


SOLICITOR

CERTIFIED COPIES OF THE FOLLOWING SENTENCE WERE ACCEPTED BY:

J. Thomas OF THE SPARTANBURG COUNTY JAIL.

DATED 5/9/13 ON Bryan Holder

WARRANT, TICKET, INDICTMENT NUMBER AND/OR PROBATION 12-5701, 162
5370, 71, 72

STATE OF SOUTH CAROLINA

Comp

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG

STATE VS.

Bryan Marion Holder

AKA:

Race: WHITE Sex: M Age: 21

DOB: 0 SS#: 0

Address:

City, State, Zip: Boiling Springs, SC 29316-5651

DL#: 0 SID#: 0

*CDI. Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Assault/Assault and Battery-1st degree, 0-10 yrs

INDICTMENT/CASE#: 2012GS4205370

A/W#: N245059

Date of Offense: 7/2/2012

S.C. Code §: 16-03-0029

CDR Code #: 3410

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0600 (C)(2) of the S.C. Code of Laws, bearing CDR Code # 3412

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.ATTORNEY: Barnette, Barry 13039 Byers, Ben Christopher P. Thomas 71255

BARNETTE, BARRY

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 10 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

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

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%) \$ § 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ § 56-5-2995 (DUI Assessment) \$12 \$ § 56-1-286 (DUI Breath Test) \$25 \$ Proviso 47.9 (Public Def/Prob) \$500 \$ § 14-1-212 (Law Enforce. Funding) \$25 \$ 25.00§ 14-1-213 (Drug Court Surcharge) \$150 \$ § 50-21-114 (DUI Breath Test Fee) \$50 \$ § 56-5-2942(J) (Vehicle Assessment) \$40/ca \$ Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.003% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.Clerk of Court/ Deputy Clerk Court Reporter: L. Moffitt

SCC/A217 (03/2011)

Presiding Judge Judge Code: Sentence Date: May 9, 2013

2053

WITNESSES

Spartanburg County Sheriff's Office

1. SENTENCE MADE

2. REPORTED

3. CARD FILED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

7. ASSESSMENT AND

8. CARD READ

ARREST WARRANT NUMBER

& TRAFFIC VIOLATION COPY

N-245058 (Amended)

N-245065

ACTION OF GRAND JURY

True Bill

Foreperson of Grand Jury

Date

MAY 03 2013

VERDICT

GUILTY OF ASSAULT AND
BATTERY OF A HIGH

AND AGGRAVATED NATURE
NO POSSESSION OF A FIREARM OR COMMISSION OF
A VIOLENT CRIME

Foreperson of Petit Jury

Date

5/9/2013

DOCKET NO. 12-GS-42-5371

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 03 2013

TERM

THE STATE

v.

BRYAN MARION HOLDER

Indictment for
ATTEMPTED MURDER AND
POSSESSION
OF WEAPON DURING COMMISSION
OF A VIOLENT CRIME

SC Code 16-03-0029; 16-23-490

CDR Code 3410; 0549

Class FEL-A; FEL-F

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 03 2013, the
Grand Jurors of Spartanburg County present upon their oath:

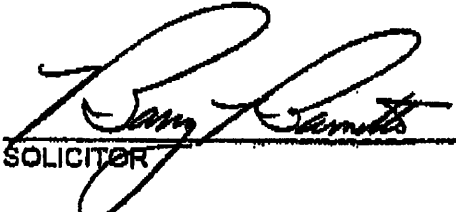
ATTEMPTED MURDER (Count I)

That the Defendant, Bryan Marion Holder, did in Spartanburg County on or about July 2, 2012, with intent to kill, attempted to kill Bonnie Leeann Raines, with malice aforethought, expressed or implied, by shooting her with a firearm, in violation of Section 16-3-0029, Code of Laws of South Carolina, (1976, as amended).

**POSSESSION OF WEAPON DURING
COMMISSION OF A VIOLENT CRIME (Count II)**

That the Defendant, Bryan Marion Holder, did in Spartanburg County on or about July 2, 2012, possess a firearm, during the commission of a violent crime as defined in Code §16-1-60, to wit: ATTEMPTED MURDER, in violation of Code §16-23-490. CODE OF LAWS OF SOUTH CAROLINA, (1976), as amended.

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


SOLICITOR

IN THE COURT OF GENERAL SESSIONS

Spartanburg County

CAROLINA

SPARTANBURG

Computer

VS.

Bryan Marion Holder

INDICTMENT/CASE#: 2012QS4205371

A/W#: N245058

Date of Offense: 7/2/2012

S.C. Code §: 16-03-0029

CDR Code #: 3410

JIM

WHITE Sex M Age 21

DOB: 07-22-1991 SSN: 248-87-2549

Address: 925 Wesley Ct Apt 29

City, State, Zip: Boiling Springs, SC 29316-5651

DL#: 0090535401 SID#:

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

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

TO: Assault/Battery of a High and Aggravated Nature, 0-20 yrs

in violation of § 16-03-0600 (B)(1)

of the S.C. Code of Laws, bearing CDR Code # 3411

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC

w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

BARNETT, BARRY

13039

SC Bar#

Defendant

Christie P. Vance

91255

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 ☐ 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:

2012-5761

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

by the State Department of Corrections

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 14-1-212 (Law Enforce Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 56-5-2942(I) (Vehicle Assessment)

Proviso 90.5 (SCCA Surcharge)

3% to County (if paid in installments)

TOTAL

\$	
\$	
\$100	\$100.00
\$100	
\$12	
\$25	
\$500	
\$25	\$25.00
\$150	
\$50	
\$40/ea	
\$5	\$5.00
\$	\$39.00
\$	\$133.90

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmis. of \$ beginning

\$ paid to Public Defender Fund

Other:

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

Clerk of Court/ Deputy Clerk

Court Reporter

SCCA/217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

 2053
 May 9, 2013

SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

SPARTANBURG

VS.

Bryan Marion Holder

Computer

INDICTMENT/CASE#: 2012GS4205371A

A/W#: N245065

Date of Offense: 7/2/2012

S.C. Code § 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

Race: WHITE Sex: M Age: 21

DOB: 07-22-1991 SS#: 248-87-2549

Address: 025 Wesley Ct Apt 29

City/State/Zip: Hot Springs, SC 29316-5651

DL#: 0090535401 SID#:

*CDL Yes [] No [] CMV Yes [] No [] Hazard Yes [] No []

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

☒ CONVICTED OF or ☐ PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death, 5 yrs

in violation of § 16-23-0490

of the S.C. Code of Laws, bearing CDR Code # 0549

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS (CSC

w/minor 1st or 1st Act)

The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

The plea is ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State,

ATTORNEY:

BARRY W. BARRY

13039 SC Bar# 77907

Defendant

Christopher P. Jones

71255 SC Bar#

WHEREFORE, the Defendant is committed to the

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

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on;

count I

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforcement Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(I) (Vehicle Assessment)	\$40/en	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)	\$	\$3.90
TOTAL		\$183.90

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: C. Moffitt

SCCA/217 (07/2011)

Presiding Judge

Judge Code:

Sentence Date:

2053
May 9, 2013

WITNESSES

Spartanburg County Sheriff's Office

[Signature]
1. SENTENCE MADE

2. REPORT ENTERED

3. CARD PULLED

4. INDEXED

ARREST WARRANT NUMBER

5. CHECKED WARRANTS

N-245060 (AMENDED SIGNATURE)

7. ASSESSMENT
FINE CARD MADE

8. TRAFFIC VIOLATION COPY

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury
Date:

MAY 03 2013

VERDICT

**CRIMINALITY OF ASSAULT AND
BATTERY IN THE FIRST
DEGREE**

[Signature]
Foreperson of Petit Jury
Date:

5/9/2013

DOCKET NO. **12-GS-42-5372**

The State of South Carolina

County of Spartanburg

Barry J. Barnette, Solicitor

COURT OF GENERAL SESSIONS

MAY 03 2013

TERM

THE STATE

v.

BRYAN MARION HOLDER

Indictment for

ATTEMPTED MURDER

SC Code 16-03-0029

CDR Code 3410

Class FEL-A

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on MAY 03 2013, the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED MURDER

That the Defendant, Bryan Marion Holder, did in Spartanburg County on or about July 2, 2012, with intent to kill, attempted to kill Mark Channing Swanger, with malice aforethought, expressed or implied, by shooting at him with a firearm, in violation of Section 16-3-0029, Code of Laws of South Carolina, (1976, as amended).

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


SOLICITOR

COUNTY OF SPARTANBURG **Compute**
 STATE VS.
Bryan Marion Holder
 AKA: _____
 Race: WHITE Sex: M Age: 21
 DOB: 11/11/1990 SS#: 123456789
 Address: _____
 City, State, Zip: Boiling Springs, SC 29316-5651
 DL#: 12345678 SID#: _____

INDICTMENT/CASE#: 2012GS4205372
 A/W#: N245060
 Date of Offense: 7/2/2012
 S.C. Code §: 16-03-0029
 CDR Code #: 3410

SENTENCE SHEET

*CDI. Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Assault/Assault and Battery-1st degree, 0-10 yrs

☒ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0600 (C)(2) of the S.C. Code of Laws, bearing CDR Code # 3412
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The pleas: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

BARNETTE, BARRY

13039

Defendant

Christal P. Thompson

71255

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 10 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: 2012 - 5371

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

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUJ Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)	\$	\$3.90
TOTAL	\$	\$133.90

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

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

\$ _____ paid to Public Defender Fund

Other: _____

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

Clerk of Court/ Deputy Clerk A. Seane

Court Reporter: L. Moffitt

SCCA/217 (03/2011)

Presiding Judge William Cole

Judge Code: 2053

Sentence Date: May 9, 2012