

STATE OF SOUTH CAROLINA

IN THE SUPREME COURTS

Certiorari to Richland County

Clifton Newman, Circuit Court Judge

THOMAS E. DUBOSE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2019-000208

APPENDIX

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1330

ATTORNEY FOR PETITIONER

ALAN WILSON
Attorney General

J. ANTHONY MABRY
Assistant Attorney General
Rembert Dennis Building
1000 Assembly Street, Room 519
Columbia, SC 29201

ATTORNEYS FOR RESPONDENT

RECEIVED
JUL 29 2019
S.C. SUPREME COURT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED MAY 12, 2015	1
APPLICATION FOR POST-CONVICTION RELIEF	24
RETURN.....	35
POST-CONVICTION RELIEF HEARING TRANSCRIPT DATED DEC. 11, 2017	42
ORDER OF DISMISSAL.....	97
INDICTMENT AND SENTENCE SHEETS	112

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF RICHLAND) IN THE COURT OF GENERAL SESSIONS

3 The State,)
4 -vs-) TRANSCRIPT OF RECORD
5 Thomas E. DuBose,) 2012-GS-40-02067
6 Defendant.) May 12, 2015
7 Columbia, South Carolina
8
9
10

11 B E F O R E:

12 HONORABLE ALISON R. LEE, JUDGE
13

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

15 MEGHAN L. WALKER, ESQUIRE
Attorney for the State

16 JOHN CHRISTOPHER SHIPMAN, ESQUIRE
17 ANASTASIA L. WALKER, ESQUIRE
Attorneys for the Defendant
18
19
20
21

22 ORIGINAL
23
24
25

Margaret A. Woods
Circuit Court Reporter

1 THE COURT: Are we ready?

2 MS. M. WALKER: Yes, Your Honor.

3 THE COURT: Yes, okay. Yes, ma'am.

4 MS. M. WALKER: Your Honor, the State calls the case of
5 the State vs. Thomas DuBose.

6 THE COURT: Good morning.

7 MS. A. WALKER: Good morning.

8 (Whereupon, the defendant came forward.)

9 POLICE OFFICER: Right here (indicating).

10 THE CLERK: Raise your right hand.

11 THOMAS E. DUBOSE, having been
12 first duly sworn, testified as follows:

13 (Whereupon, a discussion was held off the record.)

14 THE COURT: Yes, ma'am, Ms. Walker.

15 MS. M. WALKER: Thank Your Honor, I'm Meghan Walker for
16 the State. Standing before you is Thomas DuBose, he was
17 scheduled to go to trial on an attempted murder charge, uh,
18 this week, Your Honor. We, the State previously served him
19 with life, notice to seek life without parole but as a a fruit
20 of the discussions that we've had with defense counsel, who
21 he's represented by Anastasia Walker and Chris Shipman of the
22 Public Defender's Office we have, we'll we'll we'll withdraw
23 that notice for a negotiated sentence of 20 years, Your Honor.

24 EXAMINATION BY THE COURT:

25 Q. Thomas DuBose, ---

- 1 A. Yes, ma'am.
- 2 Q. --- how old are you, sir?
- 3 A. Forty-five.
- 4 Q. And how far did you go in school?
- 5 A. About eleventh grade.
- 6 Q. And before you were arrested were you employed?
- 7 A. Uh, well no, ma'am, not, uh, well I was workin' under the
- 8 table, whatever.
- 9 Q. What type of work did you do?
- 10 A. Uh, landscaping and and carpentry.
- 11 Q. Mr. DuBose, are you currently under the influence of any
- 12 drugs or alcohol, prescription medicines?
- 13 A. Uh, my blood pressure medicine, that's about it.
- 14 Q. Do you have any physical or mental conditions that would
- 15 prevent you from being able to understand a plea today?
- 16 A. No, ma'am.
- 17 Q. Uh, Mr. DuBose, you understand that you've been charged
- 18 with attempted murder and that that carries up to 30 years in
- 19 jail, do you understand that?
- 20 A. Yes, ma'am.
- 21 Q. And, Mr. DuBose, you understand it also is considered to
- 22 be a serious offense which constitutes a strike. Uh, do you
- 23 understand that if you are subsequently convicted of other
- 24 charges that carry a strike or, uh, then at some particular
- 25 point the su -- the State could serve you with a notice of

1 life without the possibility of parole, you understand that?

2 A. Yes, ma'am.

3 Q. And, Mr. DuBose, I understand that in this particular
4 case, uh, that you were previously served with that notice for
5 this charge, is that correct?

6 A. Yes, ma'am.

7 Q. Uh, I understand that the State is the withdrawing that,
8 uh, notice in light of the discussions and the negotiations
9 that you all have had, is that correct?

10 A. Yes, ma'am.

11 Q. Uh, and I'll I'll come, I'll come back to that particular
12 point. Mr. DuBose, you understand that even though you have
13 been charged with this crime, as you stand before me you are
14 still innocent of those charge at this point and that you
15 remain innocent unless and until the State is able to convince
16 a jury that you are guilty of this particular charge, uh, in
17 connection with that, you have certain constitutional rights.
18 First of all, Mr. DuBose, you have the right to require the
19 State to produce evidence of that charge to a grand jury. The
20 grand jury's made up of eighteen people, their function is to
21 determine whether there's reason to believe that a crime has
22 been committed and whether there's reason to believe that you
23 committed that particular crime. On the front of this
24 indictment here there's a space here that says "Action grand
25 jury" and there's a true bill stamped here and then there's a

1 signature of the foreperson the grand jury and the date in
2 which it was presented to the grand jury, what that tells me,
3 Mr. DuBose, is that this charge was presented to the grand
4 jury, uh, the grand jury's listened to the information that
5 was presented to them and then twelve of those eight grand
6 jurors returned a true bill, uh, in order to formally indict
7 you so what that means is that the criminal justice process
8 continues on. Uh, you also understand that you have the right
9 to remain silent which is notice of your right against
10 self-incrimination, that's your right not to say anything or
11 do anything that would give evidence against yourself, that
12 means that you don't have to talk to anybody in law
13 enforcement about this charge, you don't have to discuss, uh,
14 this matter with anyone in the solicitor's office and you
15 don't have to talk to to me about this particular charge but
16 do you understand that by coming here today and by offering to
17 plead guilty to this charge that you will be giving up your
18 right to remain silent, uh, because you will be required to
19 make statements that are against your interest, ---

20 A. Yeah.

21 Q. --- you understand that?

22 A. Yeah. Yes, ma'am.

23 Q. Uh, Mr. DuBose, you also have the right to a jury trial,
24 that's your right to have twelve jurors decide your guilt or
25 your innocence, uh, and just as I've told you that you're

1 innocent this morning, the jury is told the same thing, that
2 you are innocent of those charges and that you remain innocent
3 until the State can convince all twelve of those jurors that
4 you are guilty and the jury is also told that before they can
5 find you guilty, uh, the State would have to present enough
6 evidence to convince them that you are guilty beyond a
7 reasonable doubt. Uh, now with a jury trial you have the
8 right to be able to put up a defense, that means that you can
9 call, uh, witnesses who would testify on your behalf, you can
10 get on the witness stand and testify for yourself if that's
11 what you wish to do, you also have the opportunity before the
12 trial begins to raise any legal challenges, uh, so if there's
13 any reason that you and your attorneys believe that you have
14 to challenge the charge or to challenge the evidence then the
15 time that you would do that is before the jury trial begins,
16 uh, so; for example, if you've made statements to law
17 enforcement officers, you could have a hearing to determine
18 whether the or not those statements could be used against you,
19 uh, there are any issues about identification that, uh, as you
20 as the perpetrator of the crime, you could have a hearing to
21 determine, uh, whether or not, uh, that was properly
22 conducted, uh, or if you've been searched for whatever reason,
23 you can have a hearing to determine whether it's a valid
24 search or whether the evidence that came about as a result of
25 that search, uh, could be used against you, as I stated

1 there's any legal basis that you and your attorneys believe
2 that you have, uh, to have the charges dismissed or reduced or
3 to have the evidence, uh, uh, dismissed, uh, any any of those
4 issues, uh, you are entitled to do that and that's normally
5 done right before the jury trial begins, uh, by pleading
6 guilty at this particular point, Mr. DuBose, you would be
7 giving up your right to be able to raise any of those legal
8 challenges, do you understand that?

9 A. Yes, ma'am.

10 Q. Uh, and do you understand that this case has been called
11 for trial for this week and so we have a jury that's ready,
12 that could be brought up so that we could go forward with your
13 right to a jury trial that's what you wish to do, you
14 understand that?

15 A. Yes, ma'am.

16 Q. And do you understand that you're giving up your right to
17 a jury trial by pleading guilty to this charge?

18 A. Yes, ma'am.

19 Q. Uh, Mr. DuBose, you also have the right to confront your
20 accusers, that's known as your right of confrontation, that's
21 your right to require the State to bring in witnesses who
22 would testify against you, uh, those witnesses will be
23 required to come to court, they will be, uh, placed under oath
24 and they will give testimony from the witness stand so you
25 have the opportunity to see exactly who those witnesses are

1 and to hear in their own words what evidence they will be
2 offering against you, once they've testified then your
3 attorneys have the opportunity to cross-examine those
4 witnesses and ask them questions while they're under oath, uh,
5 do you understand that by coming here today and by pleading
6 guilty to this charge that you'd be giving up your right to
7 confront your accusers?

8 A. Yes. Yes, yes, ma'am.

9 Q. Mr. DuBose, uh, you're represented by Mr. Shipman and
10 Ms. Walker, is that correct?

11 A. Yes, ma'am.

12 Q. Have they explained that attempted, uh, murder charge,
13 uh, to you?

14 A. Yeah, uh, yes, ma'am.

15 Q. Have they explained to you all the elements that the
16 State would have to prove in order to convince a jury that
17 you're guilty?

18 A. Yes, ma'am.

19 Q. Did they explain to you the evidence that the State has
20 against you on the charge?

21 A. Yes, ma'am.

22 Q. And did they talk to you in more detail about your
23 constitutional rights?

24 A. Yes, ma'am.

25 THE COURT: Uh, Mr. Shipman, Ms. Walker, you've heard

1 your client indicate that you've had those conversations with
2 him, is that correct?

3 MR. SHIPMAN: Yes, ma'am.

4 MS. A. WALKER: Yes, ma'am.

5 THE COURT: Uh, and, uh, did you in fact discuss with
6 Mr. DuBose the charge and the possible penalties and the
7 consequences?

8 MR. SHIPMAN: We did, Your Honor.

9 THE COURT: Did you also discuss with him the evidence
10 that the State has against him?

11 MR. SHIPMAN: I did, Your Honor.

12 THE COURT: And did you discuss with him in more detail
13 his constitutional rights?

14 MR. SHIPMAN: Yes, ma'am.

15 THE COURT: Do you believe that he understood all the
16 conversations that ya had with him?

17 MR. SHIPMAN: I do, Your Honor.

18 EXAMINATION BY THE COURT:

19 Q. Uh, Mr. DuBose, I understand that you and your attorneys
20 and the State have come to an agreement about, uh, penalty
21 that, uh, or sentence that would be imposed for pleading
22 guilty, is that correct?

23 A. Yes, ma'am.

24 Q. And my understanding is that, uh, it -- you would be
25 sentenced to 20 years in the Department of Corrections, is

1 that your understanding?

2 A. Yes, ma'am.

3 Q. Uh, and do you understand that I cannot change that
4 sentence because of that agreement so I can't go up, I can't
5 go down, basically you and the State have come to an agreement
6 you will be sentenced to 20 years in the Department of
7 Corrections, you understand that?

8 A. Yes, ma'am.

9 Q. Other than that sentence has anyone promised you anything
10 to come here and plead guilty?

11 A. No, ma'am.

12 Q. Has anyone threatened you or coerced you in any way to
13 plead guilty?

14 A. Uh, no, ma'am, life paper was enough actually.

15 Q. I'm sorry?

16 A. Said that life paper was enough for me actually.

17 Q. Uh, and has there, uh, been any hope or promise of any
18 type a reward or benefit to you to plead guilty?

19 A. No, ma'am.

20 Q. Okay. Uh, then, Mr. DuBose, before I accept your plea
21 I'll hear from the State about the facts. Yes, ma'am.

22 MS. M. WALKER: Thank Your Honor. Your Honor, this
23 incident occurred on July 19th of 2013, the, uh, defendant and
24 the victim were married, they were estranged at this point in
25 time, the victim had actually left Camden to come to Columbia

1 to get way from, uh, the defendant in this case, she was at
2 the Days Inn on Parklane which is located here in Richland
3 County. Your Honor, at that point in time she was staying in
4 a room with her her adult daughter and her daughter's two
5 young children. There was a knock on the door on this day,
6 Your Honor, at about 6:45 in the morning, they went, the
7 victim went to go open the door, she saw the defendant, uh, he
8 came inside, told 'em that he was hungry and they provided
9 something to eat for him, at that point in time according to
10 the defendant, Your Honor, they they got into a verbal
11 altercation that escalated into this defendant stabbing, uh,
12 his estranged wife five times, Your Honor, her picture that I
13 will, that I'll hand up if I can approach.

14 THE COURT: Yes.

15 (Whereupon, counsel handed the photograph to the Court.)

16 MS. M. WALKER: Your Honor, he sti -- he stabbed her, uh,
17 repeatedly, to the point that she was, she was yelling for
18 help, that's what got her daughter's attention, her daughter
19 then went and ran over and tried to get the defendant off a
20 her mother. Uh, at that point in time, Your Honor, once she
21 was able to pull the defendant off of her mother the defendant
22 then ran out of the room, he dropped the book bag that he had
23 with him that was found later by law enforcement in the area,
24 they were never able to, uh, to recover the knife. Uh, at
25 that point law enforcement arrived, they did search the area,

1 they found that this, the defendant, uh, he did give a
2 statement to law enforcement that he had went into her
3 room, that she yelled at him for smoking crack, that he must
4 have had his small work knife out at which point she probably
5 ran into the knife several times which is how she got hurt.
6 Your Honor, he was, uh, arrested and charged with attempted
7 murder in this case. Over the course of us preparing for this
8 trial, Your Honor, we were put in contact with other witnesses
9 who were in the Camden area who saw the defendant the night
10 before this incident happened, he told them that, uh, his wife
11 had a new boyfriend and that he had something for both of them
12 and showed them a knife and said that he was going to, uh, to
13 to kill her. At that point in time, Your Honor, we did turn
14 that information over to
15 Ms. Walker, uh, of of those no -- new witness that had come
16 forward. Your Honor, uh, because of his prior record, I'm
17 sorry, the de -- the victim in this case was hospitalized,
18 Your Honor, she was hospil -- hospitalized for a week. She
19 had to have surgery to repair five stab wounds to the right
20 thigh, the interior abdomen, two lacerations to the breast,
21 one to the upper arm, uh, and she was released from the
22 hospital a week later. Because of his prior record, Your
23 Honor, we did serve him with our intention to seek life
24 without parole as, uh, some of the case -- as the -- we began
25 to discuss this we were able to come to a resolution that that

1 resulted in this plea

2 THE COURT: And what is the prior record?

3 MS. M. WALKER: Your Honor, the, uh, the conviction that
4 we were relying on for or life without parole was an assault
5 and battery with intent to kill from January of 2000, Your
6 Honor, he also has a concealed weapon from '89, a resisting
7 arrest, disorderly conduct and a grand larceny; from 1990 he
8 has accessory to to a felony; in 1996 he has petty, petty
9 larceny; '98 he has a petty larceny; 2000 is the assault and
10 battery with intent to kill, Your Honor, uh, and in 2005,
11 2006 those were not convictions, that's the extent of his
12 prior record, Your Honor.

13 THE COURT: Mr. DuBose, you've heard the facts as they've
14 been stated, is there anything that you wish to add or change
15 or correct about what's been stated?

16 MS. A. WALKER: Your Honor, I think there are two issues
17 that Mr. DuBose probly has, uh, a issue with. Uh, regarding
18 the statements that, uh, the State turned over, uh, late last
19 week regarding him being in Camden and indicating that he had
20 something for them and flashing a knife, Mr. DuBose indicates
21 that never happened. Uh, I understand that that has nothing
22 to do with the elements of attempted murder, uh, uh, in this
23 case of him pleading guilty but he does disagree that that
24 ever happened. Second of all, I -- in our reading of the
25 medical records, I believe, uh, Ms. DuBose, Caroline DuBose

1 was, uh, observed for a day regarding her injuries, uh, three
2 of the injuries were deemed superficial by the doctor, uh,
3 they were stitched up and two of them, uh, required more
4 complex surgery, uh, but I believe her observation only
5 consisted of a day, not a week, uh, in in our reading of the
6 medical record.

7 THE COURT: So she was not in hospital, she was
8 out-patient surgery or what?

9 MS. A. WALKER: She was not -- she was observed for a day
10 so it wasn't quite outpatient surgery so she was hospitalized
11 but I I don't believe it was for an entire week well according
12 to our reading of the records. One of the wounds on her arm
13 went into the muscle I believe and then one a the wounds on
14 her breast was, uh, required a a a multiple level of, uh,
15 stitches.

16 MS. M. WALKER: I I can review those right now, Your
17 Honor, and correct that if I'm wrong, I'm sorry.

18 THE COURT: But she wasn't -- she was hospitalized and
19 and there was some type of surgical intervention ---

20 MS. A. WALKER: Yes.

21 THE COURT: --- as a result of the injuries.

22 MS. A. WALKER: Yes.

23 EXAMINATION BY THE COURT:

24 Q. Uh, Mr. DuBose, is there anything else that you wish to
25 add or change or correct about what's been stated?

- 1 A. No, ma'am, I'm glad she cleared it up.
- 2 Q. Uh, and so, and, Mr. DuBose, you acknowledge that in July
- 3 of 2013, uh, that basically you, uh, stabbed multiple times,
- 4 uh, Ms. Carol7ine DuBose, is that correct?
- 5 A. Yes, sir -- yes, ma'am.
- 6 Q. Uh, and as a result of an altercation that, uh, between
- 7 the two of you all?
- 8 A. Yes, ma'am.
- 9 Q. Have you had enough time to discuss this matter with, uh,
- 10 Mr. Shipman and Ms. Walker?
- 11 A. Yes, ma'am.
- 12 Q. Have you cooperated with them so that they could prepare
- 13 defense with you?
- 14 A. Yes, ma'am.
- 15 Q. Have they done everything that you have asked them to do
- 16 in connection with this particular charge?
- 17 A. Uh, I feel that they have.
- 18 Q. Uh, Mr. DuBose, are you pleading guilty freely and
- 19 voluntarily?
- 20 A. Yes, ma'am.
- 21 Q. And are you pleading guilty to the attempted murder
- 22 because you are in fact guilty a that charge?
- 23 A. Yeah, I guess, yes, ma'am.
- 24 Q. I'm sorry?
- 25 A. I said I guess, yes, ma'am.

1 Q. Well you don't guess, you need to ---

2 A. Yeah.

3 Q. --- be sure.

4 A. Yes.

5 Q. And, again, Mr. DuBose, you're sure at this particular
6 point that you wish to plead guilty to attempted murder?

7 A. Yes, ma'am.

8 Q. Then I will accept your plea, find that it's freely and
9 voluntarily made and that you understand that you're giving up
10 your constitutional rights including your right to a jury
11 trial, uh, yes, Mr. Shipman, Ms. Walker?

12 MR. SHIPMAN: Thank Your Honor, may it please the Court.

13 Uh, as he said Ms. Walker or, excuse me, Mr. DuBose is, uh,
14 45-years-old, he was born in Connecticut, his parents are
15 actually from the Camden area, he moved back down here when he
16 was a child. He went to school in that area, that's, you
17 know, as he was growing up that's when he met Ms. DuBose. I
18 spent a lotta time with him the last couple weeks, uh, you
19 know, we talked about how they met, how they came to be in a
20 relationship, what it was like, uh, you know, during that
21 time, you know, I I, it seems, you know, to me like they they
22 were generally in love at some point and he talked about how
23 much they had in common, how they both liked to fish, now he
24 he actually mentioned that he was a little scared a catfish,
25 that she would take the fish off the hook for him, you know,

1 uh, so it seemed like they had a a loving relationship for a
2 long time, uh, you know, he would tear up talking about what
3 happened that that afternoon, he's, uh, that he was struggling
4 with a cocaine addiction at the time, I think it was the first
5 time he'd ever even tried really, uh, he never had a problem
6 with before, uh, you know, and that led to some very poor
7 decisions, Your Honor, and, uh, you know, he understood the
8 the rock and the hard place he was between with this life
9 without parole notice, uh, and I guess I'll save my opinions
10 about the law on that for another time and place but it did
11 make it very difficult, uh, for him. I, you know, I I believe
12 that he's truly remorseful for what he did, uh, he knows he's
13 got to do sometime, you know, I I believe we explained to him the
14 best shot we would have would possibly be to get an ABHAN
15 charge at a jury trial and, uh, that would get him right
16 around the ballpark where he is now and so he understands
17 that, he always understood he had to do some time, uh, Your
18 Honor, and I I, Your Honor, I I I really grown to like him a
19 lot in the last few weeks having spent a lotta time with him,
20 I believe he's an honest and decent person, he he did make a
21 horrible mistake and I believe he's truly sorry for what he
22 did and I know that he's got a lot of, uh, you know,
23 depression, anxiety about what's coming up for him in his
24 life, he he's begun sixty, about 61 or 62 when when he comes
25 out on community supervision and that that's that's a good

1 chunk of his life at this point, uh, he's gonna be behind
2 bars, I know he's worried about that but uh,, you know, I
3 wish, I wish the situation were different but he knows that
4 that's gonna be a substantial portion of his life and he's
5 gonna be a very different person when he comes out, the
6 world's gonna be very different when he comes out and so I I
7 believe that, uh, it's substantial sentence, uh, and
8 hopefully, you know, I I believe it'll give him a chance to to
9 turn his life around and still, uh, make something of himself
10 when he, when he does come out. We we've talked about getting
11 reintegrated when he comes out, he's worried that his family's
12 gonna be gone, you know, and friends are gonna be gone but
13 we've talked to him about getting involved in churches and
14 other activities and and trying to reform the social ties when
15 he gets out. I believe he understands that and I know that
16 he's he's dealing with a lot right now and I know he's sorry,
17 Your Honor, and I I don't think he's sorry just because a the
18 time that he's gonna be getting, I don't believe he's sorry
19 just because he got caught, Your Honor, I I think he's truly
20 feels regret for what he's done and, uh, you know, I ask him
21 if he could ever forgive himself, uh, and he, you know, he
22 said that uh, you know, in God's way he can, you know, like in
23 in kind of a Christian sense I suppose but still on human
24 level he's gonna know what he did, can't, he's not gonna be
25 able forget that and so I think it's gonna be something he

1 carries around for the rest of his life, Your Honor, and, uh,
2 I would just ask you to to go along the State's negotiations,
3 the State and defense's negotiations and, uh, hopefully this
4 will, something good will come out of this whole thing some
5 point, Your Honor.

6 THE COURT: Anything from you, Ms. Walker?

7 MS. A. WALKER: Your Honor, I I'd only add that I do
8 think he is a a a decent hardworking man very much so, uh, and
9 in speaking that I really think that this was a a drug-fueled
10 argument and and that he did suffer from a drug addiction and
11 and very different from many of our cases that we deal with, I
12 think this was a very short drug addiction. I think that he
13 got laid off from a job that he did very well and had done
14 very well at and, you know, a friend of his had it so he tried
15 crack I think just for a short couple months period is when he
16 was running around with this crack addiction and, uh, that's
17 all it takes and so I think this really was fueled, uh, by
18 drugs, not that that excuses anything, uh, but he immediately
19 cleaned up afterwards. He's been takin', uh, drug classes
20 while he's been at Alvin S. Glen, even knowing the amounta
21 time that he's had to do, he's still trying to make a
22 difference in his life, I think that does say a lot about him.
23 I think that a lotta people take drug classes and thinking,
24 Hey, this will help me with my sentence but I think he's
25 taking and thinking, Hey, I, you know, I need to do something

1 better with my life and I think that does say a lot about
2 Thomas and and and him as a person and, uh, Your Honor, I just
3 add that he does have 662 days credit.

4 THE COURT: Six hundred and ---

5 MS. A. WALKER: Sixty-two, Your Honor.

6 THE COURT: Uh, Mr. DuBose, I will follow the negotiation
7 that you've entered into with ---

8 MS. M. WALKER: Your Honor, may -- the victim just ---

9 THE COURT: Oh, ---

10 MS. M. WALKER: --- told me she would like to say
11 something. Uh, ---

12 THE COURT: --- yes ---

13 MS. M. WALKER: --- I'm very sorry for interrupting.

14 THE COURT: That's alright. Yes, ma'am, will you tell me
15 your name, please.

16 MS. DUBOSE: Caroline DuBose.

17 THE COURT: Yes, ma'am.

18 MS. DUBOSE: Uh, ---

19 THE COURT: I'll need ya speak up.

20 MS. DUBOSE: --- first of all, I would like to say to my
21 husband I forgive him for what he did but I am am afraid. I
22 don't sleep well at night but I know he's not really a violent
23 person, that he went through a depression. I asked him to get
24 help, it just hurts the fact that he turned on me but I
25 forgive him. I know he can turn his life around 'cause he did

1 before and I just want the Court to know that.

2 THE COURT: Thank you, Ms. DuBose.

3 MS. M. WALKER: Your Honor, the victim did previously ask
4 for no contact with the defendant while he's out, when he gets
5 out on home supervision and she just wanted me to, uh, to
6 bring that to the Court's attention.

7 MS. DUBOSE: And I don't, I mean, I mean, I will always
8 be his friend 'cause we was friends before we were married but
9 it's gonna take time for me to trust enough for him to come
10 around me because right now when I see him it just reminds me
11 of what I went through.

12 THE COURT: And that's understandable, Ms. DuBose, that's
13 understandable.

14 MS. DUBOSE: But I will always be a friend, you know, in
15 my heart I'll get . . .

16 THE COURT: And and when you're ready you can initiate
17 whatever contact you'd like to have with him, uh, but, uh,
18 currently what we'll ask is that he not initiate contact with
19 you.

20 MS. DUBOSE: Okay.

21 MS. M. WALKER: Thank Your Honor.

22 THE COURT: And so, Mr. DuBose, uh, you've you've heard,
23 uh, that we're asking that you not make any contact with, uh,
24 uh, Caroline DuBose on your release or while you're
25 incarcerated un -- unless she makes some overture, unless she

1 decides that she wishes to have contact with you, so that
2 means no indirect or direct contact either through family
3 members or otherwise, uh, that you should not have any contact
4 with her, you understand that?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Uh, again, I will follow the negotiations
7 that you've entered into, uh, and so, Mr. DuBose, I will
8 sentence you to the Department of Corrections for a period of
9 20 years, I'll give you credit for the 662-year -- 2 -- 3 --
10 662 days, uh, that you've served, uh, so that will go towards,
11 uh, time that you'll serve in Department of Corrections. Good
12 luck to you, sir.

13 MR. SHIPMAN: Thank Your Honor.

14 MS. M. WALKER: Thank Your Honor.

15 MS. A. WALKER: Thank Your Honor.

16

17

18

19

20

21

22

23

24

25

CERTIFICATE OF REPORTER

I, Margaret A. Woods, Court Reporter in and for the State of South Carolina at Large, hereby certify that I reported the preceding case on May 12, 2015 at the time and place heretofore set forth; and that the foregoing pages numbered from 2 through 22, inclusive, constitute a true and accurate transcription of my stenographic notes of the said proceeding.

I further certify that I am neither attorney nor counsel for, nor related to or employed by any of the parties connected to the action, nor am I financially interested in the action.

April 5, 2016

Margaret A. Woods

Margaret A. Woods, Court Reporter
in and for the State of South Carolina at Large.

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF

Thomas E. DuBose #166218
Full name and prison number (if any) of Applicant.

v.

State of South Carolina

2016 CP400 1062
IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
FEB 20 AM 2:56
CLERK OF COURT
RICHLAND COUNTY

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correction Institution / 990 Wisacky Highway
2. Name and location of Court which imposed sentence Richland County General Sessions
3. Name(s) of co-defendant(s) (if any) N/A
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) _____
 - (b) _____
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) May 12, 2015 . 20 Years
 - (b) _____

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?

8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. N/A
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. N/A
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Counsel Never Informed Me I Could Do So
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) *Ineffective Assistance Of Counsel*
 (b) *Involuntary Guilty Plea*
 (c) *Violation Of Fourth Amendment Rights*

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

- (a) *See Attached*
 (b) *See Attached*
 (c) *See Attached*

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

- (a) any petition in a State Court under South Carolina Law? No
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? No
 (d) any other petitions, motions or applications in this or any other Court? No

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i.

ii.

iii.

iv.

N/A

(b) the name and location of the Court in which each was filed:

i.

ii.

iii.

iv.

N/A

(c) the disposition thereof:

i.

ii.

iii.

N/A

A T T A C H M E N T

- 10(a) Applicant was denied U.S.C.A. Fourth Amendment right to be free from unreasonable seizure, effective assistance of counsel, as guaranteed by the Sixth Amendment and Fourteenth Amendment due process right whence he unknowingly, unintelligently, and involuntarily entered a guilty plea because: Defense counsel failed to advise Applicant prior to plea that he could proceed to trial and challenge the signature of Affiant Investigator _____, who was not the Officer applying for Arrest Warrant #2013A4010202603, neither was he duly sworn before the Magistrate as required by the Fourth Amendment to the U.S. Constitution, and S.C. Code §17-13-140 statutory provisions.
- 10(b) Applicant was denied U.S.C.A. Fourth Amendment right to be free from unreasonable seizure, effective assistance of counsel, as guaranteed by the Sixth Amendment and Fourteenth Amendment due process right whence he unknowingly, unintelligently, and involuntarily entered a guilty plea because: Defense counsel failed to advise Applicant he could proceed to trial and file a motion to suppress evidence emanated from arrest due to the signature of Affiant Investigator _____, who was not the Officer applying for Arrest Warrant #2013A4010202603, neither was he duly sworn in before the Magistrate as required by Fourth Amendment to the U.S. Constitution and S.C. Code §17-13-140 statutory provisions.

A T T A C H M E N T

11(a),(b) Affidavit - personally appeared before me the Affiant J P Smith who being duly sworn deposes and says that defendant Thomas Edward Dubose did within this county and state on or about 7/19/2013 violate the criminal laws of the State of South Carolina (or ordinance of County in the following particulars.

DESCRIPTION OF OFFENSE: Attempted Murder

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts: That on or about July 19, 2013 while at 7128 Parklane Rd. Rm.#245 in the Dentsville Magisterial District of Richland County, it is believed that the defendant did commit the crime of attempted murder because the defendant did with malice aforethought stab the victim Carolyn Dubose with a knife several times about the body. The victim was transported to Palmeto Richland Memorial Hospital for treatment. The defendant is the victim's husband and the victim knows him by name and sight. Affiant and others are witness to prove same.

Signature of Affiant Inv

A R R E S T - W A R R A N T

To any law enforcement Officer of this State or municipality or any Constable of this County:

It appearing from the above Affidavit that there are reasonable grounds to believe that on or about 7/19/2013 defendant Thomas Edward Dubose did violate the criminal laws of the State of South Carolina or ordinance Richland County Bond Court as set forth below:

DESCRIPTION OF OFFENSE: Attempted murder

Having found probable cause and the above Affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of it's execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on 7/19/2013.

Signature of issuing Judge (B. Woffard-Kanvat)

Applicant was prejudiced by counsels failure to advise him prior to waiving Fourth Amendment right that Investigator _____ could not sign Affidavit for Officer because (1) he was not sworn in before the Magistrate as required by Fourth Amendment (2) Investigator _____ did not apply for the Warrant, and, (3) the Fourth Amendment to the U.S. Constitution states that the right of the people to be secure in their persons, houses, papers and effects against unreasonable searches and seizures, shall not be violated and no warrants shall issue, but upon probable cause supported by oath or affirmation.

10(c) Whether Police Had Sufficient Evidence For Probable Cause Determination For Attempted Murder?

The Police failed to establish Probable cause for my arrest warrants. When Police obtained warrants there is no proof and under the Fourth amendment individuals have the right to be free from unlawful seizures of their persons, including unlawful arrests. *Imbler v. Pachtman*, 424 U.S. 409 (1976) *Pierson v. Ray*, 386 U.S. 547 (1967)

A warrantless arrest is valid if the arresting officer has Probable cause. Probable cause exists when the totality of the facts and circumstances within a Police officer's knowledge at the moment of arrest are sufficient for a reasonable person to conclude that the suspect had committed or was committing an offense. See, *United States v. Wadley*, 597.3d 510 (5th Cir. 1995)

The documentation shows that murder and attempt murder contain the same elements and the elements of ABHAW and attempt murder are not same as Murder. Based on injuries of victim, will not constitute as a valid basis for this charge

Whether Attempted Murder Is Unconstitutionally Vague

The attempt Murder Provision, fails to define a crime for which Petitioner could legally be convicted. As the language of the statute indicates, it clearly allows for multiple interpretations

10(c) This contributed to Prosecution enhancing crime from ABHON. to that
of Attzmet Murder

- iv. _____
- (d) the date of each such disposition:
- i. _____
- ii. N/A
- iii. _____
- iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
- i. _____
- ii. N/A
- iii. _____
- iv. _____
14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
- NO
15. If you answered "yes" to (14) identify:
- (a) which grounds have been presented:
- i. _____
- ii. N/A
- iii. _____
- (b) the proceedings in which each ground was raised:
- i. _____
- ii. N/A
- iii. _____
16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) _____
- (b) N/A
- (c) _____
17. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? No
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

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

- (a) the name and address of each attorney who represented you:
 - i. Christopher Shipman, 1701 Main Street / Anastasia Walker
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Plea / Sentencing
 - ii. _____
 - iii. _____

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

Vacate Plea OR Reduce to ~~Prison~~ / CDV / HAN

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

No

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

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

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

Thomas DuBose
Applicant

SWORN or affirmed to and subscribed before me this
25 day of Feb, 2016

Lacey A. Johnson
Notary Public

My Commission Expires: 12-10-2023

RICHLAND COUNTY
FILED
2016 FEB 20 AM 2:56
JEANETTE W. HOSKINS
C.C.P. & G.S.

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 OF THE FIFTH JUDICIAL CIRCUIT

Thomas E. DuBose, #166218,)

Case No.: 2016-CP-40-1062

Applicant,)

RETURN

v.)

State of South Carolina,)

Respondent.)

In response to Applicant's post-conviction relief application filed February 20, 2016, Respondent would show this Court:

I.

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Richland County Clerk of Court's orders of commitment. The Richland County Grand Jury indicted Applicant at the April 2014 term for attempted murder (2014-GS-40-2067).

Applicant pled guilty to the charge, as indicted, on May 12, 2015, in front of the Honorable Alison R. Lee. John Christopher Shipman, Esquire, and Anastasia L. Walker, Esquire, represented Applicant. Applicant's plea was in exchange for a negotiated sentence of twenty (20) years' imprisonment. The court accepted the negotiated plea, sentencing Applicant to twenty years, and credited Applicant with 662 days' of time served. Applicant did not appeal his conviction.

II.

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

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.
3. 4th Amendment violations.
 - a. "Police failed to establish probable cause for my arrest warrants."

Respondent denies Applicant is entitled to relief on these claims, and demands strict proof thereof. Any claims not specifically enumerated in the application or amendments thereto will be opposed by Respondent at the evidentiary hearing. All amendments should be made well in advance of hearing and should be filed in compliance with Rule 11, SCRPC.

Attached to this return and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction, the guilty plea transcript, and the records of this action. Any records not attached will be forwarded upon receipt. Respondent reserves the right to amend this return upon receipt of any relevant materials.

III.

Respondent asserts Applicant's allegation of ineffective assistance of counsel is without merit. Respondent asserts Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

Respondent submits Applicant cannot satisfy either requirement of the Strickland v. Washington 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, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

Respondent submits that any allegation that Applicant's 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, 338 S.C. at 363-64, 527 S.E.2d at 747 (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 that (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 that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. at 56. "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 submits Applicant's allegation of a violation of his 4th Amendment rights is without merit. Based on Applicant's grounds in support of his allegations for relief, Respondent construes Applicant's allegation of inadequate probable cause to arrest Applicant as ultimately challenging the sufficiency of the indictment against Applicant. The indictment was true billed by the Richland County Grand Jury at the April 2014 term, and Applicant did not challenge the sufficiency of his arrest warrant or subsequent indictment before pleading guilty. The post-conviction relief court cannot consider the sufficiency of the evidence against a convicted defendant. S.C. Code Ann. § 17-27-20(a)(6) (1985). Also, a guilty plea generally acts as a waiver of all non-jurisdictional defects and defenses. State v. Munsch, 287 S.C. 313, 338 S.E.2d 329 (1985). The plea admits all elements of the offense charged and "leaves open for review only the sufficiency of the indictment and waives all other defenses." Id. at 314, 338 S.E.2d at 330; cf. United States v. Broce, 488 U.S. 563, 569, 109 S.Ct. 757, 102 L.Ed.2d 927 (1989). The Uniform Post-Conviction Procedure Act is not a substitute for remedies that were available before and during the original trial or by review on motion for a new trial or on appeal. Irick v. State, 264 S.C. 632, 216 S.E.2d 545 (1975); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). Therefore, the Court should summarily dismiss this ground for relief.

VI.

Respondent denies each allegation not expressly admitted, qualified or explained.

VII.

WHEREFORE, having made its Return, Respondent requests that a hearing be held and counsel appointed to represent Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

JOHANNA C. VALENZUELA
Senior Assistant Deputy Attorney General

JESSICA E. KINARD
S.C. Bar #77889
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT
Post Office Box 11549
Columbia, South Carolina 29211
Telephone: (803) 734-3737

October 26, 2016

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

THOMAS E. DUBOSE, #166218,)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent,)

IN THE COURT OF COMMON PLEAS

2016-CP-40-1062

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 in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

**Jonathan Waller, Esquire
The Giese Law Firm, LLC
1315 Blanding Street
Columbia, SC 29201**

DATED this the 26th day of October, 2016.



Felicia V. Hayes, Legal Assistant
For Respondent

1 STATE OF SOUTH CAROLINA) IN THE COURT OF
2) COMMON PLEAS
3) OF THE FIFTH
COUNTY OF RICHLAND) JUDICIAL CIRCUIT
4)
5 THOMAS DUBOSE,)
6 Applicant,) TRANSCRIPT OF RECORD
7 vs.) 2016-CP-40-01062
8 THE STATE OF SOUTH CAROLINA,)
9 Respondent.)
10

11 December 11, 2017
12 Columbia, South Carolina

13 B E F O R E:

14 HONORABLE CLIFTON NEWMAN, Judge.
15

16 A P P E A R A N C E S

17 JONATHAN D. WALLER, ESQUIRE
For The Applicant

18 JESSICA E. KINARD, ASSISTANT ATTORNEY GENERAL
19 For The State
20
21
22

23 Julie A. Ashbrook,
24 Circuit Court Reporter
25 Seventh Judicial Circuit

I N D E X

<u>WITNESS</u>	<u>PAGE</u>
ANNOUNCEMENT OF CASE By Ms. Kinard	4
<u>THOMAS DUBOSE</u>	
DIRECT EXAMINATION By Mr. Waller	5
CROSS-EXAMINATION By Ms. Kinard	22
REDIRECT EXAMINATION By Mr. Waller	29
EXAMINATION By The Court	31
<u>JOHN C. SHIPMAN</u>	
DIRECT EXAMINATION By Ms. Kinard	37
CROSS-EXAMINATION By Mr. Waller	47
CLOSING ARGUMENT By Mr. Waller	51
CLOSING ARGUMENT By Ms. Kinard	51
ORDER OF THE COURT	54
CERTIFICATE OF REPORTER	56

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

EXHIBITS

MARKEDENTERED

NO EXHIBITS PROFFERED

1 THOMAS DUBOSE VERSUS THE STATE OF SOUTH CAROLINA

2 THE COURT: All right. Who's next?

3 MS. KINARD: We have the matter of Thomas Dubose.

4 THE COURT: Mr. Dubose, okay. I have the file on
5 Mr. Dubose. All right. Tell me about it.

6 MS. KINARD: Thank you, Your Honor. May it
7 please the Court. This is the matter of Thomas E.
8 Dubose versus the State of South Carolina. Case Number
9 2016-CP-40-1062. We're before the Court on the
10 Applicant's postconviction relief application that was
11 filed February 20th, 2016.

12 He's currently incarcerated with the South
13 Carolina Department of Corrections, pursuant to an Order
14 of Commitment from the Richland County Clerk of Court.
15 He was indicted at the April 2014 term by the Richland
16 County Grand Jury for attempted murder.

17 He pled guilty to the charge as indicted on May
18 12th, 2015, before the Honorable Allison R. Lee. He was
19 represented at that time by Mr. John Christopher Shipman
20 and Anastasia Walker.

21 This plea was in exchange for a negotiated
22 sentence of 20 years imprisonment. The Court accepted
23 that plea, sentencing him to those 20 years and
24 crediting him with 662 days of time served. He did not
25 appeal his conviction or sentence.

1 The State is present and ready to proceed. Mr.
2 Dubose is present, represented by Mr. Waller.

3 THE COURT: All right. Mr. Waller.

4 MR. WALLER: Thank you, Your Honor. You have a
5 copy of Mr. Dubose's application. He's raised
6 allegations of ineffective assistance of counsel,
7 specifically that his guilty plea was involuntary. So I
8 would call Thomas Dubose.

9 THE COURT: All right.

10 (Whereupon, witness comes forward.)

11 THE CLERK: Do you swear or affirm the testimony
12 that you will give this Court will be the truth, the
13 whole truth and nothing but the truth so help you God?

14 THE WITNESS: Yes, sir.

15 THE COURT: Please have a seat there, sir. State
16 your full name for the record and please spell your
17 last.

18 THE WITNESS: My full name is Thomas Dubose,
19 Thomas Edward Dubose. Last name is spelled D-U-B-O-S-E.

20 THE COURT: All right. Yes, sir.

21 MR. WALLER: Thank you, Your Honor. May it
22 please the Court.

23 THOMAS EDWARD DUBOSE,
24 having been duly sworn, testified as follows:

25 DIRECT EXAMINATION

DIRECT EXAMINATION OF THOMAS E. DUBOSE BY MR. WALLER

1 BY MR. WALLER:

2 Q. Good afternoon, Mr. Dubose, how are you today?

3 A. Doing pretty good.

4 Q. All right. Mr. Dubose, it's getting a little
5 late in the day, it's been a long day, but I've got to
6 ask you some questions, so if you can do your best to
7 just answer my questions and any questions that Ms.
8 Kinard would have.

9 Mr. Dubose, I want to ask you first, first of
10 all, you are aware that you were served with a Notice of
11 Intent to seek life without parole on your original
12 charge; is that right?

13 A. Yes, sir.

14 Q. Okay. And you're aware that if we are successful
15 in this PCR application today that potentially the State
16 could reserve you with that?

17 A. Yes, sir.

18 Q. Okay. Knowing that, do you still want to proceed
19 with the PCR today?

20 A. Yes, sir.

21 Q. Okay. Just wanted to make sure. All right. Mr.
22 Dubose, you pled guilty in this case; is that right?

23 A. Yes, sir.

24 Q. And you pled the morning that your trial was
25 supposed to start.

1 A. Yes, sir.

2 Q. Okay. How long had you -- did you have notice
3 that you were gonna go to trial?

4 A. I guess probably a week maybe.

5 Q. Okay. So you knew that your case was being
6 called for trial about a week before it actually was?

7 A. Yes, sir.

8 Q. Okay.

9 A. Or that week, yeah.

10 Q. Okay. And Mr. Shipman was representing you; is
11 that right?

12 A. Yes, sir.

13 Q. Okay. Was Mr. Shipman your only lawyer?

14 A. No, sir.

15 Q. Okay. Was he your first lawyer?

16 A. No, sir.

17 Q. Okay. Who did you have prior to Mr. Shipman
18 representing you?

19 A. When I was first arrested he gave me an attorney,
20 a Ms. Chris Hines, where she was gone on my case,
21 whatever, gone. She told me that she probably could get
22 me maybe one to ten years or zero to ten or whatever.
23 And then that's all. I met with her two times and she
24 got sick. I think she had some kind of cancer issue.
25 She had to get off my case because she said she couldn't

DIRECT EXAMINATION OF THOMAS E. DUBOSE BY MR. WALLER

1 take up on the case because it was stressful on her with
2 her health and stuff like that.

3 Q. Okay. And she was with the public defender's
4 office?

5 A. Yes, sir, she was.

6 Q. Okay. After Ms. Hines, who did you have after
7 that?

8 A. After that they gave me Ms. Courtney Gibbs, who I
9 saw maybe twice or whatever. You know, she told me that
10 same exact thing, that she probably could get me going
11 to jail zero to ten or whatever. The next thing I know,
12 she was gone. I think that they said she went to
13 another law firm and stuff like that. I had no idea.

14 Q. Okay. She was also a public defender?

15 A. Yes, sir.

16 Q. Okay. After Ms. Gibbs, who did you have?

17 A. After that they gave me Stephan. I think his
18 name was Stephan. Christian, is his last name. His
19 last name was Christian.

20 Q. Okay.

21 A. And he told me the exact same thing, zero to ten
22 or one to ten. And I saw them maybe, probably three
23 times at the most, if that, or whatever. You know, it
24 seemed like he wanted to try to help me in a way, but
25 then the next thing I knew he said he got in some kind

1 of trouble impersonating a police officer or something
2 like that. That was just what I was told. And I
3 haven't seen him no more.

4 Q. Okay. And so he was also a public defender?

5 A. Yes, sir.

6 Q. Okay. And so then Mr. Shipman was appointed to
7 represent you?

8 A. Yes, sir.

9 Q. Okay. Did -- in going from lawyer to lawyer to
10 lawyer, did each time you met with a new lawyer, did
11 they go over your constitutional rights with you?

12 A. No, sir.

13 Q. Okay. Specifically, did Mr. Shipman go over your
14 constitutional rights with you?

15 A. I really can't remember. I'm guessing maybe
16 vaguely.

17 Q. Okay.

18 A. Somewhat.

19 Q. Let's talk about the offense you were charged
20 with. Did you know the potential penalties?

21 A. No, sir, not really.

22 Q. Okay. Were you aware that you could get up to
23 30 years for that?

24 A. No, sir.

25 Q. Okay. When did you find that out?

DIRECT EXAMINATION OF THOMAS E. DUBOSE BY MR. WALLER

1 A. I found that out, Mr. Shipman, I think he was
2 doing that, telling me about that, that I think it
3 carries zero to 30. And he was interviewing me at the
4 jail.

5 Q. Okay. Do you recall when Mr. Shipman might have
6 told you that?

7 A. I'm guessing maybe, maybe the first time we met
8 probably, I guess, or something like that.

9 Q. Okay. But at some point before you pled?

10 A. Yeah.

11 Q. Okay. And you were -- did you and Mr. Shipman
12 specifically have a chance to discuss the allegations
13 the State was making and then the evidence they intended
14 to present against you?

15 A. Well, to a certain extent. I mean, I don't think
16 we discussed all of it, not a hundred percent of it, but
17 we just brushed on it.

18 Q. Okay. With any of your attorneys, but
19 specifically Mr. Shipman, what investigation did you all
20 talk about doing, the attorneys doing?

21 A. What the attorney felt about investigating the
22 case?

23 Q. Yes, sir.

24 A. Well, I wanted them to, you know, actually like
25 make -- just, you know, do their job or whatever. So

1 basically they talk with the solicitor or the prosecutor
2 or whatever to see if I could get some type of plea deal
3 or whatever. But it came to me before I could even say
4 anything. It came with, you know, 20 years to life. It
5 was like he was the solicitor and everything, you know,
6 judge and all.

7 Q. Okay. I just want to clarify something. When
8 you were talking about your previous lawyer, before Mr.
9 Shipman, you mentioned them communicating that they had
10 a certain offer, could get you a certain amount of time.
11 Do you know if that was an actual offer or just them
12 speculating about the case?

13 A. Well, I'm guessing maybe, maybe they could be
14 speculating about the case, but Ms. Courtney Gibbs, she
15 was -- she said that her and, um, I think, Ms. Campbell
16 were good friends and all this and whatever. That she
17 knew her. That, you know, my case wasn't that serious,
18 you know.

19 Q. Okay. All right. Let me ask you this. In
20 talking to any of your lawyers and, again, specifically
21 Mr. Shipman, did you all discuss the potential defenses
22 that you might have?

23 A. No, sir, not really. I told him how about a
24 bench trial or whatever. And at first Ms. Walker she
25 was with them at the time, and people were like that

1 sounds good or whatever, you know. And the next day, I
2 think, they were like, no, that's off the table. You
3 know, Ms. Campbell is gonna want you to do some time,
4 you know. And I was like, well, maybe. I mean, I don't
5 want maybe 15 years or something like that, you know.
6 And it is like no we're gonna give him some time, and
7 then let's do the 20 years, you know. It was like they
8 were just going away.

9 Q. Okay. Well, let me clarify something. When you
10 say Ms. Walker --

11 A. Yeah.

12 Q. Do you mean Ms. Anastasia Walker or Ms. Megan
13 Walker?

14 A. Ms. Anastasia Walker.

15 Q. Okay. You -- an attorney that was helping to
16 represent you?

17 A. Yes.

18 Q. Not the prosecutor?

19 A. Right.

20 Q. Okay. I just wanted to clarify in the transcript
21 there's two Ms. Walkers listed.

22 A. Oh, okay.

23 Q. Well, let me ask you this, Mr. Dubose. You came
24 to court to start your trial?

25 A. Yes, sir.

1 Q. Okay. What -- what did you think you-all's
2 defense was gonna be?

3 A. I had no idea. I mean, Mr. Shipman, he
4 questioned me or whatever. I mean, he -- the way it
5 seemed like he -- I mean, what he had told me, he never
6 had done a case like this or whatever. And that was the
7 reason that they appointed Anastasia Walker to assist
8 him or whatever, you know.

9 And understanding it myself, I mean, you know, it
10 seemed like they wanted a trial, you know. But if you,
11 you don't have it -- if you've got a lack of knowledge
12 in trying to do something or whatever, then, I mean,
13 that ain't gonna work, I guess, you know.

14 Q. Okay. Did you think that Mr. Shipman was
15 prepared to start your trial that day?

16 A. No.

17 Q. Okay. Did you have any understanding of what
18 you-all's defense was gonna be?

19 A. No.

20 Q. What did you think you all were gonna present if
21 you went to trial?

22 A. I had no idea.

23 Q. Okay. Did you and Mr. Shipman ever have any
24 conversations or any discussions about your defense and
25 what you all would try to do to defeat the State in that

1 case?

2 A. Well, not really. I mean, he sat me down and he
3 asked me a few questions like, you know, if they was to
4 ask you this or that, you know what I'm saying? You
5 know, like what we just said or whatever, but that was
6 like during the same week that the trial was supposed to
7 be taking place or whatever.

8 Q. Okay. So that was the week before the trial?

9 A. Well, no, the same -- it's supposed to take place
10 in that week.

11 Q. Okay. In that same week. So your trial wasn't
12 gonna start on Monday?

13 A. I can't recall.

14 Q. Okay. That's okay. All right. When you and Mr.
15 Shipman met, did you give him any information or any
16 witnesses you wanted him to talk to that might help you?

17 A. No, sir.

18 Q. Okay. And I'm gonna ask this again. If the
19 allegations were that you, you stabbed your estranged
20 wife, that you and your wife had separated; is that your
21 understanding of it?

22 A. Well, what they say, yeah.

23 Q. Okay. What was your understanding of your
24 defense to that and what you all were gonna present?

25 A. My defense to that would be I guess they could

1 try to make it like it was malice and this and that,
2 like I planned to kill my wife or premeditated to kill
3 my wife or something like that or whatever. You know,
4 and that never happened. That thought never crossed my
5 mind.

6 I even told -- I even gave them the address to
7 where she may be or whatever, you know, so they could
8 come, go and locate her or whatever for court or
9 whatever. And it was like they had their own
10 investigator and they was gonna, you know -- it was like
11 it was supposed to help me in a way because it really
12 was like, I guess, railroading me, you know.

13 Q. Okay. Let me ask you this. You just testified
14 that you didn't have any malice towards your wife.

15 A. Right.

16 Q. Did you and Mr. Shipman discuss the -- that
17 particular element of attempted murder, the intent?

18 A. No, not that I can remember.

19 Q. Okay. Let me ask it to you this way, Mr. Dubose.
20 Not what you and Mr. Shipman talked about, what did you
21 think you had as a defense if you had gone to trial?

22 A. The only defense I had was, I guess, it was
23 acknowledged that I didn't -- I don't -- I didn't hit my
24 wife and I still don't hit my wife, you know? I mean, I
25 love her dearly. So, I guess, it was just an argument

1 that blew out of proportion.

2 A few little drugs was involved, but I can't
3 blame that on the drugs because I was, you know, man
4 enough to do the drugs or whatever. Something I had
5 never done in my life, but I was just going through a
6 lot at the time. I got laid off from my job and just
7 things like that happening and not being able to pay the
8 bills and stuff, like a man should or whatever.

9 And it all started losing our place or whatever.
10 I mean, when I, when I first met my wife she was having
11 roaches at the house or whatever like that. And we
12 survived that. Well, you know, she had two girls with
13 her, two small girls. And I took them in and, you know,
14 tried to get them a better life, you know, so they could
15 go to school, stay in school, you know, stuff like that
16 or whatever.

17 And I wouldn't do anything to hurt my wife
18 period. You know, but after getting laid off and I
19 guess you would call it, I guess, the rules of life, you
20 know, it just took a toll.

21 Q. Okay. Mr. Dubose, what changed from when you got
22 to court that morning to start your trial to when you
23 ultimately pled guilty?

24 A. Well, Mr. Shipman came over. He said,
25 Mr. Dubose, they're gonna issue life papers or whatever.

1 I said life papers? You know, he was like, yeah, just
2 sign them. Don't say anything, just sign them or
3 whatever. They're gonna probably come and get you
4 tomorrow. And so they did come and get me that morning.

5 And I was panicked over here. I believe it was I
6 signed the life papers or whatever and I went back to
7 the jail or whatever. And I think they came to see me
8 that afternoon or whatever.

9 Q. Okay. Well, let me stop you right there. That
10 wasn't the day you pled guilty.

11 A. No, sir.

12 Q. Okay. That was prior?

13 A. Yeah.

14 Q. Okay. Sorry, keep going. I apologize.

15 A. Yeah. That was, I guess, the -- the way it
16 seemed to me or whatever, or actually the way it was, I
17 just didn't have anybody that would fight for me, you
18 know? And I really don't know too much about the law or
19 nothing like that.

20 The little bit that I did, you know, I forgot
21 because things change so fast in the law or whatever.
22 And, I mean, just someone offers you 20 years to life
23 and, you know, you ain't got nobody to fight for you,
24 well, you know, what do you do.

25 Q. Okay. Let me ask you this, Mr. Dubose. Do you

DIRECT EXAMINATION OF THOMAS E. DUBOSE BY MR. WALLER

1 think Mr. Shipman did a complete investigation of your
2 case?

3 A. No, sir, not really because I mean I -- I mean, I
4 don't know who to blame. Out of all the attorneys I
5 had, I never got any of my transcript. Well, not
6 transcript, but any of the stuff that I was supposed to
7 have, like the hospital report and stuff like that. And
8 motion and discovery, stuff like that. So, you know, I
9 was sitting in the county jail empty handed or whatever.
10 I mean, I never got any of that stuff.

11 Q. Did you ever receive a copy of that?

12 A. No. I got a few pages of that. When I asked for
13 it like that, when they was getting ready to talk about
14 going to trial.

15 Q. Okay.

16 A. And I was like, well, can I see the medical
17 report? And then Anastasia walked in with a little
18 small piece of it or whatever and that was about it.

19 Q. Okay. Had you all talked about some other parts
20 of it, though? Even if you didn't have copies of it,
21 you talked about it?

22 A. No, sir.

23 Q. Okay. Did you think that Mr. Shipman discussed
24 with you and developed any potential defenses that you
25 might have?

1 A. No, sir, not really. I mean, not that I recall.

2 Q. Okay. Do you have any issue with the arrest
3 warrant that was issued in the case?

4 A. Yes, sir.

5 Q. Okay. And what was your issue with that?

6 A. Well, my issue with that was J.P. Smith, he was
7 the investigator or whatever. The arresting officer,
8 when he first arrested me, he said the investigator
9 wanted to speak with you. And I was like okay, you
10 know?

11 So he took me over to his office and he tells me
12 first that I'll be charged with CDV/ABHAN or something
13 like that. And, you know, I'm okay. He said I'd like
14 you to write me a statement. And so I was like I can't
15 really remember because at the time I was, myself, you
16 know, I was high myself, you know, or whatever. And so,
17 um, he said, well, okay, we're gonna charge you with,
18 you know, CDV second ABHAN --

19 Q. Yeah.

20 A. -- or whatever. So when I went over to the
21 county jail, the warrant comes over and says attempted
22 murder, that it was an attempted murder charge. He was
23 like, yeah. He goes, I think he said something like,
24 um, kids were there or something like that, you know?
25 And that was why they bumped the charge. And that was

DIRECT EXAMINATION OF THOMAS E. DUBOSE BY MR. WALLER

1 why they was gonna charge me with the attempted murder
2 instead of the CDV --

3 Q. Yeah.

4 A. -- ABHAN or whatever.

5 Q. Okay. Did you and Mr. Shipman ever discuss your
6 issues with the arrest warrant?

7 A. Yeah. That's what I was gonna say. And, number
8 one, I asked him about it from the officer go before the
9 judge and sign a warrant for another officer or whatever
10 that -- I mean, I can't even remember what he told me.
11 He felt that was one of my arguments or whatever. I
12 mean, if my name is John and Tom was the arresting
13 officer or whatever, John signed and said where Tom was
14 like that and he wasn't there, you know?

15 Q. So you're saying the officer that signed the
16 warrant is not the one that presented it to the judge or
17 things issued. There was two different officers
18 involved.

19 A. Yeah. There was two different officers, yeah.

20 Q. Okay. What did Mr. Shipman and you discuss about
21 that? What was his response?

22 A. His response was he could probably do that, you
23 know?

24 Q. Okay. Did you all ever discuss that by pleading
25 guilty you're waiving the right to challenge the warrant

1 or the indictment or anything along those lines or the
2 evidence against you?

3 A. Well, he stated to me that by pleading guilty I
4 would be giving up some rights or whatever, but he never
5 explained to me a hundred percent the rights, all of the
6 rights that I would be giving up.

7 Q. Okay. Mr. Dubose, if the things that we just
8 talked about that you don't think that Mr. Shipman did
9 correctly, the investigation, dealt with any potential
10 defenses, you're challenging the arrest warrant, if he
11 had done those things, would you still have plead
12 guilty?

13 A. No, sir, I would not have.

14 Q. Would you have continued with your trial that
15 day?

16 A. Yes, sir.

17 Q. Okay. Mr. Dubose, I've asked you everything that
18 I have for you. Is there anything that you think that
19 I've left out that the judge needs to be aware of Mr.
20 Shipman's representation of you?

21 A. Well, I mean, I think Mr. Shipman is probably a
22 great lawyer but, I mean, he's admitted to me himself
23 that he had never done a case like that before. I don't
24 think he would say something, but a lawyer that does
25 misdemeanors and stuff like that and put them on a

CROSS-EXAMINATION OF THOMAS E. DUBOSE BY MS. KINARD

1 serious case or whatever, you know, you specialize --

2 I mean, if you're a lawyer and you specialize in
3 car accidents and stuff, then why would you try to jump
4 on a case that's not really a car accident? You know,
5 so that's -- I guess that's what I'm saying.

6 Q. Please answer any questions Ms. Kinard has.

7 Thank you.

8 A. Yes, sir.

9 CROSS-EXAMINATION

10 BY MS. KINARD:

11 Q. Thank you for your patience today, Mr. Dubose.

12 A. Yes, ma'am.

13 Q. Do you recall about how many times you met
14 Mr. Shipman or Ms. Walker?

15 A. I probably met Mr. Shipman probably, I'm guessing
16 maybe three, maybe four times. And he came probably
17 maybe three, three times in one week before that trial
18 or whatever and he said he was preparing for trial and
19 stuff like that.

20 Q. Preparing for trial?

21 A. Yeah. Preparing for trial and stuff like that,
22 like a week.

23 Q. So three or four times and then three within the
24 week before trial?

25 A. Yes, ma'am.

1 Q. Okay. What did you all discuss in that week
2 before trial?

3 A. Well, nothing much really. He was saying --
4 well, he really wasn't saying as much. He just sat
5 there. Ms. Walker, she was doing a lot of the talking
6 or whatever. She was like can you give us an address
7 where your wife is, this and that, you know? And I was
8 like I don't know, you know, but um, you know, I'm
9 saying to myself why would I, you know, help incriminate
10 myself?

11 Then God just touched my heart and he said, you
12 know, if you cooperate you're probably helping yourself.
13 I said okay. You know, so in my head I gave them an
14 address where she was or where her people are from or
15 whatever. Yeah.

16 Q. Okay. Why did you think that giving your wife's
17 address to them would hurt your case?

18 A. Well, I don't know. I mean, just listen to the
19 jailhouse talk, I guess. And then, you know, I mean, I
20 don't know.

21 Q. So you testified that you weren't aware of a
22 defense that your attorneys had developed. Is that
23 true?

24 A. Yes, ma'am.

25 Q. Okay. And you didn't think that they

1 investigated thoroughly enough to come up with a
2 defense?

3 A. Right.

4 Q. However, when Mr. Waller asked what your defense
5 would be, if you didn't have a lawyer and you were
6 trying to say, you know, what happened, why you didn't
7 do this, you didn't say that you didn't do it; is that
8 correct? You gave reasons why you might have done it,
9 but did you ever deny that you committed this act?

10 A. No. I never denied that I didn't commit the act
11 or whatever, but I didn't do that act in malice or
12 premeditating on doing anything like that. I think one
13 of them was telling me that somebody in my home town of
14 Camden said prior to that said I was out on the street
15 talking about coming to Columbia and killing my wife or
16 some junk like that or whatever, you know, which was a
17 lie or whatever, you know. I actually came to Columbia
18 to bring my wife some money or whatever because she was
19 sat in a motel or in her car or whatever. And we just
20 got into an altercation.

21 Q. Okay. And you didn't discuss the issue of malice
22 with Mr. Shipman, is that your testimony?

23 A. No. Huh-uh.

24 Q. Okay. And I believe I wanted to make sure you
25 said you did not review discovery with Mr. Shipman or

1 Ms. Walker?

2 A. No, I didn't get any of that.

3 Q. But they did give you a portion of it to review
4 when you requested it?

5 A. Well, when I, when I asked them, they gave me
6 probably maybe, maybe ten pages of the hospital thing or
7 whatever.

8 Q. Okay. And just to make sure I understood your
9 answer to Mr. Waller's question about why you decided to
10 plead guilty, did you state that you thought no one was
11 there to fight for you?

12 A. Yeah. I felt like, um, the way, the way things
13 were going, I mean, when you have that many public
14 defenders or whatever and you've got three of them
15 saying one thing and then one comes along and says
16 something else. And then you've got another one that's
17 saying that, you know, he's not really familiar with
18 this kind of case or whatever, this charge or whatever.
19 And then the other is coaching the other one and like
20 that and I didn't know what the deal was, you know?

21 And then, and then here it is the solicitor
22 pushing life papers in my face. You know, and like I
23 was the one telling it and like I was the one getting
24 threatened or whatever. You know, if you don't do this,
25 this is what's gonna take place or whatever.

1 And then me being ignorant of the law a hundred
2 percent or whatever, I just didn't have any help. The
3 counselor provided me, you know, what I needed.

4 Q. Okay. Have you pled guilty to any of your prior
5 offenses?

6 A. Any of my prior offenses?

7 Q. Yes, sir. Didn't you have a criminal history
8 before the commission of this incident?

9 A. Well, I had a little small criminal history.
10 Yeah, a little bit of some misdemeanors or whatever. I
11 had accessory after a felony or whatever. And then at
12 one particular time they charged me with assault and
13 battery with intent to kill. It was me and my brother
14 both were drinking and we were wrestling over a gun. We
15 didn't really know the gun was loaded. And if he was
16 here he could say the same thing.

17 Q. Okay. But did you plead guilty to any of those
18 or did you go to trial on all those counts?

19 A. No, I pled guilty.

20 Q. You pled guilty. So you kind of understood how,
21 how that system went?

22 A. Yes, ma'am.

23 Q. Okay. Beg the Court's indulgence.

24 Prior to the day you entered your plea or would
25 have started trial, had you talked to Mr. Shipman about

1 the acceptable range of years that would work for you in
2 a guilty plea?

3 A. Yes, ma'am, I did. Like I said, Mr. Shipman came
4 to me. The first thing he said was, well, I can get
5 you, probably have to give you at least 20 years. I
6 mean, the way he said it was he hadn't even talked to
7 the solicitor yet or whatever. I'm saying, Mr. Shipman,
8 how about maybe 15? You know, I said 20 years I'll be
9 maybe 61 years old.

10 You know, what kind of 61 year old guy who can't
11 work because I'm already subject to high blood pressure.
12 I'm taking two or three medicines now for it. And when
13 I asked that, it was like, well, she's probably not
14 gonna want that, you know, or whatever. You know, it's
15 Ms. Campbell, so she's probably gonna want at least 20
16 out of me, you know, so that's what he gave me.

17 Q. Were you aware of any negotiations Mr. Shipman
18 made on your behalf regarding that number of years?

19 A. No, ma'am, I don't.

20 Q. Okay. Have you discussed any lesser included
21 charges, such as assault and battery of a high and
22 aggravated nature or anything like that with you?

23 A. Oh, he did say one thing about, I think it was
24 something. You know, I heard that I think something
25 like zero to 20, I think, something like that. He said

1 something like that, you know?

2 Q. So he had talked about that in terms of the
3 sentencing range and what you could expect?

4 A. Um, not really. I mean, he just told me, you
5 know, he said, well, if we was to get it dropped to
6 assault and battery of a high and aggravative nature or
7 whatever, you know, he said I could see over 20 or
8 whatever. He said if you want us to take it to trial or
9 whatever, you know, they'll probably sell you up or
10 whatever you know?

11 You know, I'm saying to myself, I'm saying well,
12 you know, I could probably plead to 15 years man or
13 whatever, you know? And he was like well, it would be
14 best to just go ahead and do the 20. I mean, what is
15 four more years? To me, what is four more years?
16 That's four more years that I get with my life, you
17 know.

18 Q. So regardless, you decided to take the 20 rather
19 than risk getting a life sentence at trial?

20 A. Right.

21 Q. Okay.

22 A. I had no choice. It had to be until another
23 attorney showed up.

24 Q. And by that you mean you felt that you didn't
25 have anyone to assist you?

1 A. That's right.

2 Q. Okay. Thank you very much. I appreciate it.

3 A. Yes, ma'am.

4 MR. WALLER: Just briefly, Your Honor.

5 THE COURT: Yes, sir.

6 REDIRECT EXAMINATION

7 BY MR. WALLER:

8 Q. Mr. Dubose, Ms. Kinard asked you if your reason
9 for pleading was you felt that you didn't have anyone
10 fight for you. When I was questioning you earlier, you
11 also testified that you felt that no investigation had
12 been done; is that right?

13 A. Right.

14 Q. You also said that you didn't think your attorney
15 or attorneys had developed any defenses on your behalf.

16 A. Right.

17 Q. Okay. And you testified that you thought you had
18 some issues with the arrest warrants.

19 A. Uh-huh.

20 Q. Is that correct?

21 A. Yes, sir.

22 Q. Okay. You testified that you believed you were
23 gonna be charged with criminal domestic violence of a
24 high and aggravated nature.

25 A. Right.

1 Q. Okay. That's what law enforcement told you.

2 A. Uh-huh.

3 Q. Did you and Mr. Shipman ever discuss that and the
4 potential penalties it carries?

5 A. Well, I have it in my paperwork over there, but
6 the investigator, the people at the sheriff's office,
7 they said that was the type of crime it was, CDV/ABHAN
8 or something like that. And I showed it to him on the
9 paperwork or whatever like that.

10 And he was like, well, that's just that. You're
11 not being charged with that. We're gonna have to go
12 with what the warrant says, attempted murder. You know,
13 so how can the paperwork say one thing and then the
14 motion thing or whatever say something different.

15 Q. Okay. So you had some confusion as to why you
16 were charged with what you were charged?

17 A. Yes, sir.

18 Q. Okay. You're not a lawyer, are you Mr. Dubose?

19 A. No, sir.

20 Q. Okay. You weren't -- Ms. Kinard asked you about
21 any defenses you had -- you would have had if you were
22 representing yourself. You weren't representing
23 yourself, were you?

24 A. No, sir.

25 Q. You had an attorney?

1 A. Yes, sir.

2 Q. Okay. That attorney was appointed to represent
3 you in your case?

4 A. Yes, sir.

5 Q. Nothing further, thank you.

6 EXAMINATION

7 BY THE COURT:

8 Q. Now, Mr. Dubose, do you admit that you stabbed
9 your wife?

10 A. Well, sir, Your Honor, I'm not gonna say that I
11 actually stabbed my wife, sir, but she had some
12 lacerations.

13 Q. How many?

14 A. From what the warrant said several, but I believe
15 when I read the hospital thing I think it was three,
16 maybe four, something like that.

17 Q. She had to have surgery?

18 A. Um, they gave her some stitches and I think she
19 had a mild surgery and she was released the same day.

20 Q. And you were the one who gave her the
21 lacerations?

22 A. Yes, sir.

23 Q. And if she had died, what do you think you would
24 have been charged with?

25 A. I would have been charged with murder.

1 Q. Murder?

2 A. Yes, sir.

3 Q. All right. But you think that -- and what did
4 you plead guilty to, attempted murder?

5 A. Yes, sir.

6 Q. You were charged with attempted murder.

7 A. Uh-huh.

8 Q. What did you plead guilty to?

9 A. I plead guilty to attempted murders.

10 Q. Two attempted murders?

11 A. Yes, sir.

12 Q. Okay. And you put on here on 19 that you're
13 trying to get the plea, vacate the plea or reduce to
14 CDV/HAN?

15 A. Yes, sir.

16 Q. You're trying to get the charges reduced?

17 A. Yes, sir.

18 Q. You're not claiming that you're not guilty, but
19 you think you got a sentence that was too much?

20 A. Yes, sir.

21 Q. But the sentence was negotiated. It was a
22 negotiated sentence, right?

23 A. I don't know.

24 Q. You signed the paper negotiating the sentence.
25 How much time did you get?

1 A. I got 20 years.

2 Q. Twenty years? . .

3 A. Yes, sir.

4 Q. In looking at your guilty plea form, you signed
5 it. It's written on there 20 years, credit for 662
6 days.

7 A. Yes, sir.

8 Q. And the judge went through that with you, so you
9 knew what you were gonna get.

10 A. Yeah.

11 Q. You knew the sentence. And you said to the
12 judge: Well, would it help you make up your mind if
13 they gave that paper to you, that paper that said life
14 without parole?

15 A. Well, to me, sir, I mean, it was like -- like I
16 said, I mean, I didn't have a -- I didn't feel like I
17 had an attorney to really work on my behalf, you know.

18 Q. All right. You wanted him to try to prove that
19 you weren't trying to kill her?

20 A. Yes, sir. I mean, of course I wouldn't. I
21 wouldn't try to kill my wife. I didn't have any
22 knowledge of this.

23 Q. Were you on crack when you did it?

24 A. No, sir. I was, um, it was early that morning,
25 the way I put on.

EXAMINATION OF THOMAS E. DUBOSE BY THE COURT

1 Q. I know. Were you on crack?

2 A. Well, I was probably withdrawing I guess.

3 Q. Withdrawing?

4 A. Coming down on some cocaine or whatever. I
5 mean ---

6 Q. Were you gonna tell the jury that?

7 A. Well, I can't do nothing but tell the truth.

8 Q. Yes, sir. If you had a trial, were you gonna
9 tell the jury that, that you were on crack at 5 o'clock
10 in the morning at the Days Inn Motel? She had some
11 witnesses, didn't she? Didn't this happen in front of
12 her kids?

13 A. Well, her daughter was there, Your Honor.

14 Q. And she's the one that stopped you?

15 A. No, sir, not really. I mean, they wrote
16 statements or whatever. The statements didn't even have
17 any of that in there.

18 Q. Didn't stop you from cutting her?

19 A. No, sir.

20 Q. They didn't pull you off of her?

21 A. No, sir.

22 Q. What were you mad' about?

23 A. When I got there, like I said, I came to bring my
24 wife some money or whatever.

25 Q. You were bringing her some money at 5 o'clock in

1 the morning at her hotel?

2 A. Yes, sir.

3 Q. And she didn't like the fact that you were on
4 crack?

5 A. That's right. Before this incident, I mean, I
6 knew ---

7 Q. You weren't working, were you?

8 A. Sir?

9 Q. You weren't working any place, were you?

10 A. Well, at the time, I mean after I got laid off, I
11 had a little, little hustling job like that.

12 Q. What kind of hustling were you doing?

13 A. Well, I was working for this guy named Bubba
14 Smith from Camden and doing a little yard work and
15 stuff. And that is about it. Painting and stuff.

16 Q. I hear you. Any other questions based on my
17 questions?

18 MR. WALLER: No questions, Your Honor.

19 MS. KINARD: No, Your Honor.

20 THE COURT: All right. You may step down.

21 (Whereupon, witness leaves witness stand.)

22 MR. WALLER: Nothing further from the Applicant,
23 Your Honor.

24 THE COURT: All right.

25 MS. KINARD: Your Honor, based on his

EXAMINATION OF THOMAS E. DUBOSE BY THE COURT

1 presentation, the State would move for a nonsuit
2 pursuant to Rule 41(b), and that he has not carried his
3 burden based on his presentation in this case.

4 THE COURT: Nonsuit?

5 MR. WALLER: Your Honor ---

6 THE COURT: Never heard of that. What's that?

7 MR. WALLER: Your Honor, I believe taking the
8 evidence presented in the light most favorable to the
9 Applicant, the testimony was that he believed that no
10 investigation was done in this case.

11 THE COURT: That he didn't have any help. That
12 implies a nonsuit. He didn't have any -- they didn't
13 help him, he was all alone.

14 MR. WALLER: Yes, sir. Yes, sir.

15 THE COURT: Okay.

16 MR. WALLER: I think in the light most favorable
17 to the Applicant.

18 THE COURT: I agree with you, so I deny the
19 motion.

20 MR. WALLER: Thank you, Your Honor.

21 MS. KINARD: Thank you, Your Honor. In that case
22 we'll call Mr. Shipman.

23 THE COURT: Okay.

24 (Whereupon, witness comes forward.)

25 THE CLERK: Do you swear or affirm the testimony

1 you shall give this Court will be the truth, the whole
2 truth and nothing but the truth so help you God?

3 THE WITNESS: I do.

4 THE COURT: Thank you. Please have a seat and
5 state your full name for the record.

6 THE WITNESS: John Christopher Shipman.

7 JOHN CHRISTOPHER SHIPMAN,
8 having been duly sworn, testified as follows:

9 DIRECT EXAMINATION

10 BY MS. KINARD:

11 Q. Thank you for being here, Mr. Shipman, and for
12 being patient with us today.

13 A. Thank you.

14 Q. How did you come to be involved in this matter?

15 A. After Mr. Christian had his situation, the case
16 was reassigned to me within our office.

17 Q. And were you aware of the history of his
18 attorneys prior to you?

19 A. I was. We had a case document sheet that showed
20 that he had been assigned to Chris Hines and then Mr.
21 Christian. I don't recall Ms. Gibbs being on there, but
22 I wouldn't dispute that.

23 Q. Did you have the benefit of any of their notes or
24 interviews or questions that they have had with Mr.
25 Dubose?

1 A. I had a few notes. They weren't a lot of detail.
2 A lot of it was Mr. Christian on the case. I'm not sure
3 if Ms. Hines ever had any discovery in the case or not,
4 but I had a few e-mails that Mr. Christian had sent to
5 Ms. Campbell asking for particular items of discovery.
6 And then I followed up on some of those after the case
7 was reassigned to me.

8 Q. Speaking of discovery, certainly someone in your
9 office filed a reply motion.

10 A. Yes, ma'am.

11 Q. Do you believe that you received everything that
12 was pertinent in discovery, everything the State had?

13 A. I hope I did.

14 Q. And did you review the discovery with Mr. Dubose?

15 A. I'm sure that I did. I couldn't tell you what
16 day I did that.

17 Q. Did you give a physical copy?

18 A. I do not recall. If he had asked for it, it's
19 usually our policy to inform them about the danger of
20 jailhouse snitches. And that it was our advice not to
21 keep a physical copy there, but if they insisted then we
22 would grant usually a waiver saying that they've been
23 advised of, of the danger of that and they wanted to
24 take it with them.

25 Q. Okay. Did you find a copy of a waiver in your

1 file?

2 A. I don't recall. The file has been sent to the
3 archives. I did not see that in the case notes. I
4 didn't see it in the archives the other day, so I don't
5 know if it made it on it.

6 Q. Okay. Would you agree with Mr. Dubose's
7 testimony that he might have received a portion of the
8 file specifically for medical records he requested?

9 A. I recall going over the medical records with Ms.
10 Walker, Ms. Anastasia Walker, in the cell of the jail.

11 Q. What was the relevance of those medical records?

12 A. Confirmation that Caroline Dubose was gonna be
13 admitted with stab wounds.

14 Q. Okay. I'd like to step back just a little bit.
15 How long have you been practicing criminal law?

16 A. Five years now.

17 Q. And where are you practicing now?

18 A. Greenville County Public Defender's office.

19 Q. Okay. Did you leave Richland County on good
20 terms?

21 A. Yes.

22 Q. Okay. Do you recall approximately how many times
23 you met with Mr. Dubose?

24 A. I mean, I was thinking about that in the gallery.
25 I was thinking, you know, somewhere about ten, maybe six

1 to eight. And so I, you know, I know that I did meet
2 with him several times a week prior to the actual day
3 that it was set for trial. I came, I think it was
4 either Saturday night or Sunday night, before the trial
5 and we had a long conversation on the eve of the trial.

6 Q. What did you discuss during all those meetings?

7 A. I would discuss -- I initially told him at one
8 point, this was a mistake of mine, that if we got the
9 lesser included of ABHAN with his record it would still
10 strike him out and put you under the three strikes law.
11 That -- I think that would have been around March of
12 that year.

13 And then I went back to him because I was
14 mistaken about his prior record and that they would not
15 strike him of his own especially if we put out our
16 argument that there was no specific intent to kill but
17 rather it was an ABHAN.

18 And, you know, that's -- I think at some point I
19 told him that with an ABHAN you probably, if we go to
20 trial and prevail on an ABHAN charge, that he is likely
21 to get somewhere north of 15 years. You know, but that
22 was a very fine needle to thread that we would have to
23 argue it.

24 You know, I remember there being more than stab
25 wounds. And I want to say 15 to 18. I understand the

1 number of stab injuries implies with a specific intent
2 to kill. And we've got to argue that in spite of that,
3 despite all of the appearances, it was only an intent to
4 actually do physical harm.

5 You know, it was a very fine needle to thread
6 with a jury. And so you're risking whatever the balance
7 of your life is to save yourself, you know, and shave a
8 few years off of your potential sentence. And I don't
9 think that was a good bargain but, you know, he's free
10 to go to trial and risk that if he wants.

11 Q. Okay. You just said a whole lot of things. I'm
12 gonna break it down really quickly. You talked to him
13 about the potential of going to trial and seeking ABHAN
14 rather than attempted murder.

15 A. Right.

16 Q. So essentially admitting or being found guilty on
17 the lesser included, and that being the winning,
18 quote/unquote.

19 A. Right. That would be the only way to avoid an
20 LWOP is to get an offense or there was injury so a most
21 serious offense rather.

22 Q. Okay. And so if you had gone to trial and done
23 that, you thought you would have gotten 15 or more
24 years?

25 A. Yes.

1 Q. Okay. So is it fair to say that when it came to
2 looking at pleas, you were trying to get down into the
3 ABHAN sentencing range?

4 A. Yes.

5 Q. Okay. And then to go real quickly into what you
6 said about intent, this is before the King case that
7 said attempted murder was specific intent, but you also
8 believe that specific intent could be proven.

9 A. Yes. I mean, I believe we had a conversation
10 that at the time solicitors were trying to argue that in
11 spite of the changes in the law, that the new talk about
12 attempted murder, was basically common law ABWIK, which
13 I said I don't believe that it is. There might be an
14 issue there. But I told them that even if a judge
15 instructs them on specific intent, I thought the State
16 had enough evidence to get a directed verdict.

17 Q. And you believe that was due to the severity and
18 nature of the wounds inflicted?

19 A. I, I just think that the number of them, not, not
20 necessarily the severity. I mean, as he said, she was
21 only in the hospital for a few hours, but I did know
22 there were many stab wounds around, I believe, the upper
23 torso, and so I think they could argue that the repeated
24 blows, that there was intent.

25 Q. Do you recall the State presenting at the plea

1 that she was hospitalized for quite a while?

2 A. I don't recall that. I'm sure it's in the
3 transcript though.

4 Q. Okay. And I point to pages 13 and 14 about that.
5 It was argued at the plea. I'm not sure it's entirely
6 relevant so I'll move on.

7 So regarding defenses, what would your defense
8 have been with Mr. Dubose had you gone to trial?

9 A. Well, typically when I -- when the defense is to
10 admit guilt but to a lesser charge I like to explain
11 what's going on. Now, basically, I have his permission
12 to do that because it is kind of odd for a defense
13 attorney to come out to the State to admit he's guilty
14 of something but it depends on what they say. And so I
15 know we discussed that at length.

16 Q. Okay. How long or how much notice did you have
17 before the trial?

18 A. We had the LWOP notice. I believe it was that
19 may have been ten days on the nose for that. And then
20 the docket was published, we may have had a week or so
21 before that notice, it was coming up that Monday.

22 Q. Please explain to me your investigation into this
23 case.

24 A. We had an in-house investigator who I asked to
25 find Caroline and he was unable to find her. We

1 eventually hired Lee Conolly (phonetic), who found
2 Caroline, talked to her. I believe what Caroline said
3 was that, you know, that she had forgiven Thomas but
4 that, you know, it was gonna take a while for her to, I
5 guess, contemplate reuniting with him.

6 We found Loquitia Play (phonetic), who I believe
7 was the daughter of Caroline who was at the hotel that
8 night or that morning rather. She said she doesn't want
9 to talk with us and doesn't want to participate.

10 And then we were trying to find Thomas's brother
11 in Camden in case we went to trial. And when the prior
12 conviction for ABWIK came up, we would be able to
13 explain the story that, you know, that they buried the
14 hatchet long ago. And try to remove some of the damage
15 from that conviction potentially coming in to others.

16 Q. And you say you found him or tried to find him?

17 A. I know we tried to find him. I don't believe
18 that we did.

19 Q. Okay. Do you believe you were prepared to go
20 forward with the trial that day?

21 A. Well, we had decided I believe that Sunday or it
22 may have been the Saturday night before, when we were
23 down there late in the day. It may have been late in
24 the day and general on the weekend, and we explained to
25 him the negotiations. Earlier in the week prior to the

1 trial, the offer had been 30, then it became a range of
2 20 to 25. And then it became 20. And I believe I asked
3 for 15 several times during that, and they finally said
4 15 negotiated.

5 And so I went and, you know, that would have been
6 late. And I may have gotten it by text, but I'm not
7 sure exactly how I got the offer, but I remember working
8 through the weekend on the case. I went and talked to
9 him and explained to him the deal, what negotiated
10 meant. And so when Monday came, I knew we were not
11 going to trial, so I would have been prepared to do it
12 if I needed to, but it was never contemplated that we
13 were going to go to trial that Monday after accepting
14 the plea that weekend.

15 Q. So up to that time, and especially the week
16 before, were you preparing with him to go to trial?

17 A. Yes. I mean, we went several times. And I
18 believe Anastasia went several times with me as well.

19 Q. And she's not here today to testify. Is that
20 because this was your case?

21 A. Yes. I was assigned the case. I asked Anastasia
22 to help me because, I mean, I had not -- I had
23 represented a few more felonies before. I had not
24 represented someone on a life without parole case. So I
25 wanted somebody to, to be there to look at all the

1 pitfalls since I hadn't been through it before. I asked
2 Anastasia and she kindly agreed to do it, so...

3 Q. And was she going to be at trial with you?

4 A. Yes.

5 Q. Okay. So you felt that you had all your bases
6 covered in terms of representing him competently and
7 capably?

8 A. I think so, yes.

9 Q. All right. The last issue I believe I'd like to
10 ask you about is the warrant issue. He testified that
11 he didn't believe the warrant was sufficient or that it
12 was improperly executed. Do you recall anything about
13 that?

14 A. Yes. I believe that the active on the warrant
15 was not the investigating officer, which I informed him
16 I don't think it would affect your warrant. And
17 moreover, there was an indictment in the case, which
18 would have cured all the defects in the warrant.

19 Q. So that was a nonissue to you?

20 A. Yes.

21 Q. And you thought no need to move to quash or
22 anything like that?

23 A. No.

24 Q. Okay. I have no further questions. Is there
25 anything you'd like the Court to know about your

1 representation of him?

2 A. No thank you.

3 Q. Okay. Please answer any questions Mr. Waller
4 has.

5 CROSS-EXAMINATION

6 BY MR. WALLER:

7 Q. Mr. Shipman, you just testified that you have
8 represented clients on misdemeanors but not on a life
9 without parole penalty cases.

10 A. No, sir. But I had represented on criminal
11 cases, but this would have been my first LWOP case.

12 Q. Okay. How many trials had you had at that point?

13 A. Two or three, mostly in Summary Court.

14 Q. Mostly in Summary Court or Magistrate Court?

15 A. I had done one the prior year and ended up in the
16 courtroom actually for a, it was a manufacturing
17 methamphetamine case. And then I had done another that
18 was a bench trial for a mega fault violation case. A
19 lifetime monitoring violation. We lost on that case
20 based on one, you know, it was an electronic monitoring
21 case and those don't go to trial. And so those are the
22 two prior, at that time, General Sessions trials that I
23 had done, not counting the Summary Court trials.

24 Q. Okay. And just to clarify a few things that I
25 noticed being quite some time. You just testified a

CROSS-EXAMINATION OF JOHN SHIPMAN BY MR. WALLER

1 minute ago that the negotiation was for 15 years?

2 A. No. I ---

3 Q. Was that ---

4 A. The negotiations were 20 years.

5 Q. Okay. And maybe you just, just misspoke. That's
6 why I wanted to clarify.

7 A. I had asked for 15. I'm fairly confident that I
8 had put 15 out because that was the number that Thomas
9 wanted. So I -- yeah, it was rejected because, you
10 know, I don't have the document. All I know is it was
11 talking in the courtroom, but I can't tell if prior to
12 that I e-mailed it. I don't have it anymore, so I
13 couldn't tell you how high the score, but if he wanted
14 me to ask for 15, I would have asked for 15.

15 Q. Sure. And maybe I just misunderstood. The other
16 thing I wanted to clarify, your co-counsel in this case
17 actually clarified during the plea that Mr. Dubose's
18 wife was only in the hospital for one day. Do you
19 recall that?

20 A. I do. I had them release some of my notes this
21 morning and I had a notation about that. I think that
22 maybe the State presented that she was hospitalized for
23 longer than it appeared on her records and we told the
24 judge that there was a discrepancy there. That was
25 basically the first we heard of the victim being in the

1 hospital after being released at that time.

2 Q. Okay. And upon clarification, I just want to
3 make sure everybody's on the same page. I think you
4 testified that there was a tremendous number of wounds.

5 A. I believe that I -- my recollection, and I
6 haven't looked at discovery in the file in probably two
7 years, but my recollection was there was somewhere
8 around 18 wounds.

9 Q. Okay. If the solicitor presented five, does that
10 jog your memory?

11 A. I couldn't tell you. I don't know.

12 Q. Okay. That's okay. You testified at the
13 beginning of your direct examination that you had some
14 notes in your file from some of the previous public
15 defenders, more specifically Mr. Christian.

16 A. Yes, sir.

17 Q. Did you rely on those notes or did you do your
18 own view of anything those notes were pertaining to?

19 A. Well, the notes from Mr. Christian were primarily
20 he'll note that he and the client will meet and have a
21 little brief little rundown of a meeting or sent
22 following communication to Ms. Campbell. It wasn't
23 anything -- you know, it wasn't really worth much in the
24 sense of working on the defense.

25 You know, it was just in the case file. And so

CROSS-EXAMINATION OF JOHN SHIPMAN BY MR. WALLER

1 there wasn't a whole lot to rely on. I mean, I believe
2 that Mr. Christian and I could have easily and
3 accurately recorded his interactions with the State and
4 Mr. Dubose. There wasn't anything trial worthy to rely
5 on.

6 Q. Okay. I believe he testified that if you went to
7 trial, you thought the State could still survive a
8 directed verdict motion or a lay verdict motion on the
9 specific intent.

10 A. Yes.

11 Q. Okay. Did you, did you have the belief that a
12 jury could convict Mr. Dubose on specific intent?

13 A. Yes. If they believe the circumstances of what
14 the injuries were a reflection of his state of mind at
15 the time of the attack, yes.

16 MR. WALLER: Beg the Court's indulgence. I have
17 no further questions, thank you.

18 MS. KINARD: No redirect, Your Honor.

19 THE COURT: All right. Thank you, sir.

20 THE WITNESS: Thank you, Your Honor.

21 MS. KINARD: And we'd ask that Mr. Shipman be
22 excused and allowed to leave if he'd like.

23 THE COURT: Sure.

24 THE WITNESS: Thank you, Your Honor.

25 (Whereupon, witness leaves witness stand.)

1 MS. KINARD: No further witnesses for the State,
2 Your Honor.

3 THE COURT: All right. Any other comments?

4 MR. WALLER: Just very briefly, Your Honor. I
5 think Mr. Dubose's application lays out his allegations
6 fairly clearly. Additionally, the testimony from Mr.
7 Dubose was that the investigation into his case wasn't
8 done. He didn't feel that his attorneys were prepared
9 to go to trial for him. He pled guilty the day a jury
10 was supposed to be picked and testified that that is
11 what induced him to plead guilty instead of going to
12 trial.

13 We did acknowledge the fact that he was facing a
14 life without parole. And it's certainly, you know, I
15 understand that. And I think it had some bearing on
16 his, his decision. But his testimony I think can best
17 be characterized as not having -- having to take the
18 plea because he felt he had no chance of not getting
19 life if he proceeded to trial because he thought with
20 his attorney's deficiencies that he would be convicted.

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

22 MS. KINARD: Thank you, Your Honor. I would
23 think Mr. Shipman has provided very competent testimony
24 regarding his investigation, the efforts he made in this
25 case, including but certainly not limited to associating

1 Ms. Anastasia Walker to make sure that together they
2 survived any possible pitfalls or downfalls that might
3 present themselves in Mr. Dubose's case.

4 He informed Mr. Dubose he'd be getting out a lot
5 of papers that have been, he testified that they went
6 through the events together. That they discussed
7 discovery together. That he believed Mr. Dubose
8 understood on what he was looking for if they went to
9 trial, which would be to argue that, yes, he did it but
10 he's only guilty of ABHAN rather than attempted murder.

11 For that reason I think there might be some
12 confusion on whether there was a defense and the
13 traditional meaning in that term, proving or disproving
14 any guilt. In this case, as Mr. Shipman testified, the
15 defense was to admit guilt but argue a lesser included
16 offense. He also testified that this was discussed at
17 length with Mr. Dubose.

18 He further testified that a full investigation
19 was done. Both with an in-house investigator, as well
20 as hire a private investigator or an outside office
21 investigator. He detailed three witnesses that he
22 specifically wanted to get for trial. And the efforts
23 that they went to, to obtain testimony or the
24 availability of those witnesses.

25 Yet he didn't testify and he explained what

1 negotiated meant to Mr. Dubose. And that they were
2 working on this case up until literally the night before
3 they were informed to go to trial in order to get a plea
4 that Mr. Dubose was comfortable with.

5 Certainly, he did take the benefit of the
6 bargain, to use that phrase, by pleading to 20 years
7 rather than facing the possibility of life without
8 parole at trial. And that is his right. And he is
9 enjoying the benefit of that right in that he is only
10 serving 20 years instead of like life without parole.

11 Mr. Shipman testified that the 20 came down from
12 35 with which Ms. Campbell and Ms. Mable Walker had
13 started their negotiations. So I believe that it's very
14 clear from the testimony that though Mr. Dubose may not
15 be terribly satisfied with the end result, it is not by
16 any fault of Mr. Shipman that he got there. I believe
17 it was thoroughly investigated.

18 The legal ramifications and issues were all
19 explained to Mr. Dubose, including the warrants, which
20 were discussed. And I believe that for all of these
21 reasons there can be no filing of deficiency on the part
22 of Mr. Shipman, nor can there be any prejudice, both of
23 which would be required under *Strickland v. Washington*.

24 And, therefore, I would ask that you deny any
25 relief Mr. Dubose is seeking. Thank you.

ORDER OF THE COURT

ORDER OF THE COURT

THE COURT: I find that the defendant's guilty plea was free and voluntary. And the judge did query him as to whether he believed that he had -- the lawyers have done everything you can think of where they could have or should have done for the six count. Said he should have enough time to discuss the matter with him. He acknowledges his guilt. He said he was very happy with the negotiated sentence.

Not only negotiated, but considering what the possible alternative was, I find that the performance of counsel met the professional norms and there was no prejudice to the defendant as they represented, you know, he represented him as effectively as he could, particularly considering the circumstances and what appeared to be clear his guilty and the fact that he did not want to risk a possible life sentence.

And based upon the transcript of record and the testimony, the PCR is denied.

MS. KINARD: Thank you, Your Honor.

THE COURT: And that ruling means that we're done for this day and we'll try for early tomorrow morning.

(Whereupon, hearing concluded at 4:57 p.m.)

--- THIS ENDS REQUESTED TRANSCRIPT ---

1 COURT REPORTER CERTIFICATE

2
3 I, the undersigned Julie A. Ashbrook, Court
4 Reporter for the Seventh Judicial Circuit Court of the
5 State of South Carolina, do hereby certify that to the
6 best of my ability the foregoing is a true, accurate,
7 and complete transcript of record of all the proceedings
8 and evidence introduced in the hearing and/or trial of
9 the captioned case, relative to appeal, in the Court of
10 Common Pleas in Richland County, South Carolina, on the
11 11th day of December, 2017.

12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.
14
15
16
17
18

19 s/Julie A. Ashbrook.
20 Julie A. Ashbrook
21 Circuit Court Reporter
22 Seventh Judicial Circuit
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
OF THE FIFTH JUDICIAL CIRCUIT

Thomas E. DuBose, #166218,)

Case No.: 2016-CP-40-1062

Applicant,)

(Proposed)
ORDER OF DISMISSAL

v.)

State of South Carolina,)

Respondent.)

FILED
2016 FEB -4 PM 1:30
JEANETTE M. MCBRIDE
C.C.P. & G.S.

This matter is before this Court pursuant to Applicant's post-conviction relief (PCR) application filed February 20, 2016. Respondent filed a Return to the application denying the allegations and requesting an evidentiary hearing. A PCR evidentiary merits hearing was convened before this Court on December 11, 2017 at the Richland County Courthouse. Applicant was present at the hearing and represented by Jonathan D. Waller, Esquire. Respondent was represented by Jessica E. Kinard, Assistant Attorney General.

At the hearing, Applicant testified in his own behalf. John Shipman, Esquire, testified for Respondent. This Court also had before it the transcript of Applicant's guilty plea and sentencing proceeding, the records of the Richland County Clerk of Court regarding Applicant's guilty plea conviction and sentences, and Applicant's records from the S.C. Department of Corrections. Additionally, this Court had the opportunity to view the testimony of each witness presented at the PCR hearing and judge their credibility accordingly.

I. PROCEDURAL HISTORY

Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Richland County Grand Jury indicted Applicant at the April 2014 term for attempted murder (Indictment # 2014-GS-40-2067). John Christopher Shipman, Esquire, and Anastasia L. Walker, Esquire, represented Applicant on the charge. At least ten (10) days prior to trial, the State through the Fifth Circuit Solicitor's Office served Applicant with a Notice that it would seek a sentence of Life Without the Possibility of Parole (LWOP) if Applicant was convicted on the above indictment for attempted murder.¹ On May 12, 2015, the day of trial, Applicant pled guilty to the charge, as indicted, before the Honorable Alison R. Lee, Circuit Court Judge. Applicant's plea was a "negotiated plea/sentence" entered in exchange for a negotiated sentence of twenty (20) years' imprisonment and the withdrawal by the State of the Notice of intent to seek LWOP. Judge Lee accepted the "negotiated plea/sentence," sentencing Applicant to twenty (20) years, and credited Applicant with 662 days' of time served. Applicant did not directly appeal his conviction or sentence.

II. Allegations

In his application for post-conviction relief (PCR), Applicant alleged he was being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
2. Involuntary guilty plea.
3. 4th Amendment violations.

¹ Applicant had previously been convicted for assault and battery with intent to kill (ABWIK); therefore, a conviction for attempted murder would be Applicant's 2nd conviction for a "most serious offense," subjecting him to a mandatory sentence of life without parole pursuant to S.C. Code Ann. Section 17-25-45, South Carolina's "two strikes / three strikes" recidivist statute.

^{and} a. "Police failed to establish probable cause for my arrest warrants."
^{state} The ~~filed~~ a Return denying the allegations and asking for dismissal of the final ground as not cognizable in post-conviction relief because it was a direct appeal ground and one waived by a plea of guilty. At the PCR hearing, Applicant proceeded only on the following grounds:

1. Involuntary guilty plea due to ineffective assistance of counsel in that:
 - a. Counsel failed to develop a defense to the charge;
 - b. Counsel failed to investigate the case;
 - c. Counsel failed to challenge the arrest warrant.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court had the opportunity at the PCR hearing to view the testimony of both Applicant and his trial counsel Mr. Shipman and judge each witness' credibility. This Court finds the testimony of Applicant to be not credible. This Court also finds the testimony of Mr. Shipman to be credible and supported by the record in this case including the guilty plea / sentencing transcript. As a result, this Court had the opportunity to weigh the testimony accordingly. This Court also had the opportunity to review the Clerk of Court records regarding the subject conviction, Applicant's records from the Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, and the legal arguments of counsel. Pursuant to S.C. Code Ann. Section 17-27-80 (2015), this Court makes the following findings of fact and conclusions of law based upon all of the probative evidence presented.

Based on the following, this Court finds Applicant's allegations of involuntary guilty plea based on ineffective assistance of counsel are without merit. The record shows Applicant's attorneys rendered effective assistance well within the standard of "reasonableness within

professional norms” for a defense attorney. And, Applicant has failed to demonstrate resulting prejudice from any of counsels’ alleged deficiencies.

Standard of Review

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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 on as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume counsel “rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.” Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, Applicant must prove counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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. “A

reasonable probability is a probability sufficient to undermine confidence in the outcome of trial.” Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

In the guilty plea setting, Applicant must show deficient performance as defined above. And, in order to show prejudice, Applicant must show that but for his counsel’s alleged deficient performance, there is a reasonable probability he would not have pled guilty but would have proceeded to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz, 338 S.C. at 363-64, 527 S.E.2d at 747 (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 that (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 that his guilty plea was induced by ineffective assistance of counsel must prove that counsel’s advice was not “within the competence demanded of attorneys in criminal cases.” Hill v. Lockhart, 474 U.S. at 56.

“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)).

Relevant Factual Background

On July 19, 2013, the Applicant drove from Camden, S.C., to the Days Inn motel on Parklane Avenue in Richland County where Applicant’s estranged wife was staying. Applicant’s estranged wife had gone to the Days Inn to get away from Applicant. Applicant had told several individuals in Camden in the days leading up to July 19, 2013 that he was going to kill his wife and Applicant showed these individuals a knife when making these threats. On July 19, 2013, Applicant arrived at the Days Inn motel at approximately 6:45 a.m. Applicant went to his estranged wife’s room and eventually stabbed her five (5) times with a knife. As a result, according to the Solicitor, the victim was hospitalized for approximately one (1) week. Applicant’s step-daughter, who was an adult, witnessed the assault on her mother. (Guilty Plea Transcript, pp. 10-13). At the guilty plea, Applicant only denied he made the prior threats in Camden and that his wife had to remain in the hospital for an entire week. (Guilty Plea Transcript, pp. 13-14). Applicant admitted he stabbed his wife with a knife and blamed the incident on a crack cocaine addiction he was suffering from at the time. (Guilty Plea Transcript).

(1)(a) & (b) Failure to Investigate the Case and Develop a Defense

At the PCR hearing, Applicant testified his trial counsel did not investigate his case or develop a defense to the charge. Applicant also claimed his trial counsel did not give him a copy of his discovery and did not review the same with him. Applicant alleged these deficiencies

caused him to feel abandoned and as a result he involuntarily pled guilty. This Court viewed Applicant's testimony, and as previously stated, finds this testimony to be not credible; and, further finds this testimony is not supported by the record including the guilty plea transcript. (See Guilty Plea Tr. pp. 1-23).

Counsel testified at the PCR hearing that he and co-counsel did fully investigate the case including employing an investigator with his Office and employing an investigator from outside the Office in an attempt to locate witnesses. Counsel located Applicant's estranged wife, the victim. Counsel located Applicant's step-daughter, but she did not wish to be interviewed. Counsel was unable to locate Applicant's brother. Counsel testified he filed a discovery motion in the case and believes he obtained all of the discovery regarding the case from the State that he was entitled to. Counsel testified he and co-counsel reviewed the discovery in the case with Applicant. Counsel testified he specifically remembered going over the victim's medical records with Applicant. Counsel testified if Applicant wanted a copy of his discovery it would have been provided to him with a warning about sharing the same with other inmates. Counsel testified he reviewed the evidence the State had against Applicant with him.

Counsel testified there was no real defense to the case except to argue that Applicant was guilty of assault and battery of a high and aggravated nature (ABHAN) rather than attempted murder, the indicted charge. However, counsel testified this would have been a difficult argument to make given the number of times Applicant stabbed the victim with a knife, showing a specific intent to kill. Counsel testified there was sufficient evidence for the State to overcome a directed verdict motion on attempted murder and then it would have been up to the jury whether to convict Applicant of attempted murder or ABHAN. Counsel testified he advised

Applicant of all of the above. Counsel testified Applicant was served with an LWOP notice at least ten (10) days before trial, and Applicant would have been sentenced to LWOP if convicted of attempted murder because Applicant had a prior conviction for ABWIK. Counsel testified he negotiated with the State on Applicant's behalf and the lowest the State would go was an offer to withdraw the LWOP notice and Applicant receive a sentence of twenty (20) years on attempted murder if Applicant would plead guilty. Counsel testified he communicated the plea offer to Applicant as they were preparing for trial. Counsel also communicated to Applicant that even if they were successful in getting the jury to return with an ABHAN conviction, it was his belief that based on Applicant's record and the facts of this case, Applicant would be sentenced to near the maximum for ABHAN.² Counsel testified that in his opinion it was not worth the risk of going to trial and possibly receiving an LWOP sentence, in an attempt to shave a few years off of Applicant's sentence, and he informed Applicant of this. Counsel testified he was prepared to try the case and argue ABHAN rather than attempted murder, but Applicant chose to accept the "negotiated plea / sentence" of twenty (20) years offered by the State rather than risk being convicted by a jury of attempted murder and being sentenced to life without the possibility of parole (LWOP).

This Court had the opportunity to view trial counsel's testimony and finds that testimony to be credible and supported by the record including that of the guilty plea / sentencing proceeding. (Guilty Plea Tr. pp. 1-23). That transcript reflects both trial counsel reviewed with Applicant the discovery and evidence in the case, and that Applicant was fully aware of the risks

² As set forth in the guilty plea transcript, in addition to the prior ABWIK conviction, Applicant had a significant prior criminal record. (See Guilty Plea Tr. pp. 1-23).

of going to trial. That transcript reflects Applicant was fully satisfied with counsels' investigation, counsel's development of a defense of arguing the lesser included offense of ABHAN, and counsel's advice; and, Applicant chose to accept the "negotiate plea/sentence" rather than risk going to trial and being convicted of attempted murder and sentenced to LWOP. (Guilty Plea Tr. pp. 1-23). The transcript also reflects that Applicant was not threatened or coerced by either the State or trial counsel into pleading guilty, but it was Applicant's decision to plead guilty rather than go to trial. And, the transcript also reflects that Applicant stated under oath that his pleas of guilty were knowingly, voluntarily, and intelligently entered. (Guilty Plea Tr. pp. 1-23).

As a result, this Court finds and concludes that Applicant has failed to show that trial counsel was deficient in their investigation of the case or in attempting to develop a defense. Strickland. Counsel fully and thoroughly investigated the case and shared with Applicant the discovery and evidence in the case; however, trial counsel could not develop any defense to the charges other than argue a lesser included offense because of Applicant's actions and the State's evidence. Id. There was no question as to Applicant's identity as the perpetrator. And, there is no question Applicant stabbed the victim five (5) times with a knife. The record fully supports that counsels' investigation, development of a defense, and advice was reasonable and sound, given the evidence in the case against Applicant and the risks involved to Applicant, and it was Applicant who instead chose to accept the "negotiate plea/sentence" and plead guilty rather than proceed with that defense in a jury trial.

Furthermore, this Court finds and concludes that Applicant has failed to show prejudice from counsel's alleged deficient performance. Hill v. Lockhart. This Court finds given the

record in this case and the credible testimony of trial counsel, there is no reasonable probability, but for counsel's alleged deficient performance, Applicant would not have pled guilty and would have proceeded to trial given the overwhelming evidence of his guilt and the fact that he was facing LWOP if convicted of attempted murder. Hill v. Lockhart.

As a result of the fact Applicant has failed to prove deficient performance or resulting prejudice, there is no merit to these grounds and they must be denied and dismissed with prejudice. Strickland; Hill. Applicant has failed to show his guilty plea was involuntary due to ineffective assistance of counsel. Id.

1(c) Failure to Challenge the Arrest Warrant

Applicant alleges his guilty plea was involuntary because counsel was ineffective for failing to challenge the arrest warrant he was arrested on because the officer who investigated the case or interviewed him is not the same officer who signed the arrest warrant affidavit and presented the warrant to the magistrate for issuance. Applicant's allegation is without merit.

Even if a different officer obtained the arrest warrant, it makes no significant legal difference. First, it is not improper for another officer, working on the same investigation to obtain the arrest warrant. The knowledge of one (1) officer is imputed to other officers working on the same investigation. *See State v. Pearson*, 356 N.C. 22, 566 S.E.2d 50 (2002)(A police officer making the affidavit for issuance of a warrant may do so in reliance upon information reported to him by other officers in the performance of their duties.); State v. Stickelman, 207 Neb. 429, 299 N.W.2d (1980)(Probable cause is to be evaluated by the collective information of the police as reflected in the affidavit and is not limited to the first-hand knowledge of the officer who executes the affidavit.); *see also United States v. Morales*, 238 F.3d 952 (8th Cir.

2001)(probable cause may be based on collective knowledge of all law enforcement officers involved in an investigation and need not be based solely on information within knowledge of officer on scene if there is some degree of communication); Iddings v. State, 772 N.E.2d 1006 (Ind. Ct. App. 2002)(probable cause for a search warrant may be based upon information known to the law enforcement organization as a whole).

Second, a deficient arrest warrant or a defect in an arrest warrant will not defeat, excuse, or bar a subsequent prosecution of the defendant on an indictment. State v. Biehl, 271 S.C. 201, 246 S.E.2d 859 (1978); State v. Carpenter, 257 S.C. 162 184 S.E.2d 715 (1971); State v. Holiday, 255 S.C. 142, 177 S.E.2d 541 (1970); State v. McCoy, 255 S.C. 160, 177 S.E.2d 601 (1970); Thompson v. State, 251 S.C. 593, 164 S.E.2d 760 (1968); State v. Swilling, 246 S.C. 144, 142 S.E.2d 864 (1965); State v. Waitus, 226 S.C. 44, 83 S.E.2d 629 (1954). It is the indictment on which the defendant is tried, not the original arrest warrants. State v. Castineira, 341 S.C. 619, 535 S.E.2d 449 (Ct. App. 2000), *affirmed on writ of cert.*, 351 S.C. 635, 572 S.E.2d 263 (2003); State v. Cody, 180 S.C. 417, 186 S.E. 165 (1936). The subsequent indictment cures any defect in the arrest warrant. State v. McCoy, 255 S.C. 160, 177 S.E.2d 601 (1970); Thompson v. State, 251 S.C. 593, 164 S.E.2d 760 (1968); State v. Swilling, 246 S.C. 144, 142 S.E.2d 864 (1965); State v. Walker, 232 S.C. 290, 101 S.E.2d 826 (1958). *See also* State v. Bowman, 43 S.C. 108, 20 S.E. 1010 (1895). Further, Applicant was properly on notice of the charge against him and what he must defend. *See* Magazine v. State, 361 S.C. 610, 606 S.E.2d 761 (2004).

Furthermore, as counsel credibly testified the indictment was legally sufficient and correct and there was no validity to a motion to quash the indictment; therefore, he did not make one. *See* State v. Gentry, 363 S.C. 93, 102-103, 610 S.E.2d 494, 500 (2005); Locke v. State, 341

S.C. 54, 533 S.E.2d 324 (2000); State v. Jones, 333 S.C. 6, 507 S.E.2d 324 (1998); Granger v. State, 333 S.C. 2, 507 S.E.2d 322 (1998); State v. Wade, 306 S.C. 70, 409 S.E.2d 780 (1991); State v. Munn, 292 S.C. 497, 357 S.E.2d 461 (1987); State v. Hardee, 279 S.C. 409, 308 S.E.2d 521 (1983); State v. Tabor, 262 S.C. 136, 202 S.E.2d 852 (1974); State v. McIntire, 221 S.C. 504, 71 S.E.2d 410 (1952); State v. Perry, 87 S.C. 535, 70 S.E. 304 (1911). Therefore, even if any error in the arrest warrant, the error was cured by the indictment. State v. McCoy, 255 S.C. 160, 177 S.E.2d 601 (1970); Thompson v. State, 251 S.C. 593, 164 S.E.2d 760 (1968); State v. Swilling, 246 S.C. 144, 142 S.E.2d 864 (1965); State v. Walker, 232 S.C. 290, 101 S.E.2d 826 (1958). As a result, Applicant has failed to prove either prong of the Strickland test. Counsel was neither deficient for not objecting to the arrest warrant nor has Applicant shown any resulting prejudice. Strickland. Even had counsel objected or moved to quash the arrest warrant on this basis, the result of Applicant's proceeding would not have been different as Applicant pled guilty on the valid indictment. Strickland; Hill v. Lockhart. There is no reasonable probability had counsel objected to the arrest warrant, that Applicant would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart. Additionally, the objection to the arrest warrant on this basis would have been overruled. As a result, Applicant has failed to show resulting prejudice. Hill; Strickland.

Furthermore, the indictment was true billed by the Richland County Grand Jury at the April 2014 term, and Applicant did not challenge the sufficiency of his indictment before pleading guilty. Applicant did not challenge the sufficiency of the indictment at the PCR hearing. The post-conviction relief (PCR) court cannot consider the sufficiency of the evidence against a convicted defendant. S.C. Code Ann. § 17-27-20(a)(6) (1985). Also, a guilty plea

generally acts as a waiver of all non-jurisdictional defects and defenses. State v. Munsch, 287 S.C. 313, 338 S.E.2d 329 (1985). The plea admits all elements of the offense charged and “leaves open for review only the sufficiency of the indictment and waives all other defenses.” Id. at 314, 338 S.E.2d at 330; cf. United States v. Broce, 488 U.S. 563, 569, 109 S.Ct. 757, 102 L.Ed.2d 927 (1989). The Uniform Post-Conviction Procedure Act is not a substitute for remedies that were available before and during the original trial or by review on motion for a new trial or on appeal. Irick v. State, 264 S.C. 632, 216 S.E.2d 545 (1975); Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1975). As a result, Applicant waived and abandoned any challenge to his arrest warrant by accepting the “negotiated guilty plea/sentence” and pleading guilty before Judge Lee. He could not preserve a Fourth Amendment challenge and still plead guilty. As a result, Applicant cannot show deficient performance or resulting prejudice under this ground. Strickland; Hill v. Lockhart.

As a result, this Court finds Applicant has failed to show his guilty plea was involuntary due to ineffective assistance of counsel. This Court finds Applicant has failed to meet his burden of proof to show counsel was deficient in failing to challenge the arrest warrant for the reasons argued by Applicant. Strickland. This Court further finds that Applicant has failed to prove resulting prejudice from any alleged deficient performance as there is no reasonable probability that but for counsel’s alleged deficient performance in this regard that Applicant would not have pled guilty and would have proceeded to trial. Hill v. Lockhart. Not on this record.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly the Court finds the Applicant has abandoned any such allegations, and Applicant failed to meet his burden of proof regarding them. Strickland; Hill.

CONCLUSION

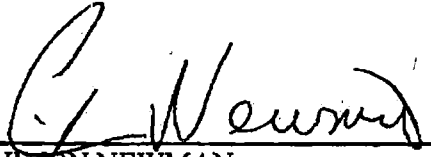
As a result of all of the above, this Court finds that Applicant has failed to prove his guilty pleas were involuntary due to ineffective assistance of counsel. Therefore, this application must be denied and dismissed with prejudice.

This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. See Rule 203, SCACR, Rule 71.1(g), SCRCP; and Bray v. State, 336 S.C. 137 620 S.E.2d 743 (2005), for the obligation of Applicant's counsel to file and serve a notice of intent to appeal. The Applicant's attention is also directed to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice;
2. Applicant is remanded to Respondent for completion of his sentence.

AND IT IS SO ORDERED this 14th day of January, 2018.


CLIFTON NEWMAN
Presiding Judge
5th Judicial Circuit

Columbia, South Carolina

WITNESSES

(S) J P Smith

- Richland County Sheriff

ARREST WARRANT NUMBER

2013A4010202603

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

APR 09 2014

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2014-GS-40-02067

The State of South Carolina

County of

Richland

COURT OF GENERAL SESSIONS

APRIL TERM 2014

42

THE STATE
vs.

Thomas Edward Dubose

Indictment for

ATTEMPTED MURDER

SC Code: 16-03-0029

CDR Code: 3410

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,

Jeannette W. McBride
C.C.C.P.&G.S.

RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on April 9, 2014, the
Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That Thomas Edward Dubose did in Richland County on or about July 19, 2013, did attempt to kill CAROLYN DUBOSE with malice aforethought, either expressed or implied. All in violation of SC Code of Laws § 16-3-29 (1976, as amended)

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


DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.
Thomas Edward Dubose

INDICTMENT/CASE#: 2014GS4002067 ✓
A/W#: 2013A4010202603
Date of Offense: 7/19/2013
S.C. Code § : 16-03-0029
CDR Code #: 3410

AKA:
Race: BLACK Sex: M Age: 45
DOB: [REDACTED] SS#: [REDACTED]
Address: No Permanent Address
City, State, Zip: Camden, SC 29020
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
TO: Attempted Murder

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

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

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

ATTEST: Walter Waller 78494 Thomas Dubose 20 yrs. CTS 662 days
Campbell, Luck SC Bar# Defendant Attorney for Defendant SC Bar# 100747

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. 662 days credit

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

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

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

PTUP _____ days/hours Public Service
OBTAIN TRUE COPY OF ORIGINAL FILED

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. Jaquetta McBride

May serve W/E beginning C.C.C.P&G.S.

Substance Abuse Counseling RICHLAND COUNTY

Random Drug/Alcohol testing SOUTH CAROLINA

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

\$ _____ paid to Public Defender Fund

Other: shall not initiate
contact with victim.
Victim may initiate
contact if she wishes
to do so.

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

Presiding Judge Al Shree Lee
Judge Code: 2118
Sentence Date: 5/12/2015

Clerk of Court/ Deputy Clerk Jaquetta McBride
Court Reporter: Wood
CCA/217 (03/2011)

ORIGINAL