VOL II OF II

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Charleston County

Michael G. Nettles, Circuit Court Judge

TORREN M. EADY,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2018-002206

APPENDIX

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Q: Okay. Did he bring this to you here at the courthouse when he met with you?
A: I believe he tell me at the county jail.
Q: You're gonna have to wait till I finish talking.
A: Okay, okay, cool.
Q: Cause she can't take down what two people are saying at the same time. Fair enough?
A: Okay.
Q: Okay. Do you think he talked to you at the jail about that?
A: Yes, yes.
Q: And you didn't take that deal, did you?
A: No.
Q: One of the things you've told me in preparation for this is you'd like Judge Nettles to know that, if your attorney had been a better attorney, you would've taken that deal; is that right?
A: Yeah.
Q: Okay. So, if I can tell Judge Nettles, when Mr. Lewis was first meeting with you ---
A: Right.
Q: --- what was his attitude and what was his opinion about your case when he was first speaking with you?
A: All right. At first, everything was good. Ain't no problem or nothing; everything was good. He was like, just

wait, just wait till you get the paperwork. I can't tell you too much until you get the paperwork and then we gonna talk. All right, cool, I'll wait. And we talking about the situation I had, the simple fact of me being in jail, why I in jail for. All right. That paperwork, I'd gone through paperwork here -- I sent the paperwork. He had write me up, I believe, but the paperwork, so I got the paperwork, everything that I did. Then he come see me, we was talking and stuff, and he was like thus, that, thus, that, thus, that. He was like he could beat this case for me, so he say he might be able to beat it for me to show -- he could beat the case and I say (inaudible) ---

THE COURT: Mr. Eady, I'm gonna ask you to -- I'm having a little bit of a hard time understanding you because of the speed of your speech. I'm gonna ask you to slow down a little bit.

A: Okay, okay.

THE COURT: And not only do I have to understand it, she has to write it down, so -- or at least re-speak it.

A: All right.

THE COURT: Slow down just a little bit because it's important. I want to hear what you've got to say.

A: All right. Yeah, at first -- at first, everything was good. At first, everything was good, that even that I wait -- just wait to get the paperwork, I'd say, two months to get the

paperwork, so don't be speaking about it, don't be doing nothing. When we get the paperwork, we'll talk then. Got the paperwork, he said to me, he said, got the paperwork, I went through the paperwork. He came and visit me probably the next day. He is a lawyer that will come to see me, I (inaudible) -- he come see me. He come see you, he write you, all that, you know. He be like, all right, thus, that, thus, that, you know, but he might can beat this case, we can get -- we can do something. We can beat this case. You know, everything good. All right. So, we -- don't talk to nobody, don't be doing thus, that, thus, that. You know, everything -- all right.

BY MR. DAVIS:

Q: So, at some time, though, ---

A: Later -- excuse me, my fault, my fault.

Q: At some time, did his attitude about, hey, it looks good, we can beat this case. At some time, did that change?

A: All that changed. He be no, thus, that, thus, that. I said, damn, at first you saying -- and now you saying do thus and do that -- I was like, nah, thus, that -- I said, well, damn, be like that, we going trial then cause I ain't have time for that. And then I go -- I at the penitentiary, I be on your name, so the -- you feel what I'm saying, at first, this and that and now it -- I ain't even know -- even if I say that, you feel what I'm saying, he like at first ---

Q: Slow down.
A: I can't even talk fast ---
Q: As the Judge says, it's important that everybody hears what you have to say.
A: I understand. I apologize.
Q: I'll ask it like this, Did he give you any reason to why his attitude and opinion changed?
A: No. He doesn't -- he was like, no -- well, if you like this right here and you already said at first, oh, no, I ain't never say that, I ain't never say -- all right, cool, I know you said because I write -- you be lying, I ain't -- I know you said -- you feel what I'm saying -- thus and that, that's all I -- you feel what I'm saying, I ain't taking no plea. If he come with a plea or whatever, whatever, whatever they call a plea, I ain't taking, I might be going to trial. I going trial. Fuck em, I'll just be over there in the penitentiary, cause that's wrong for you to say this at first and then all thus and that, then the rest of the whole time in county jail, add to -- be silent and everything, nah, I ain't -- I'll just do what I'm gonna do, man, I don't even ---
Q: Okay. And I want to be clear about this, you got so aggravated at your attorney's change in attitude, that you refused to listen about any plea ---
A: Hell, yeah.
Q: Hold on -- even if it was less that what you were facing

at trial? Is that right? You just weren't hearing him after he changed; is that fair?

A: You got to say that again for me.

Q: You just weren't hearing him after he changed his attitude, is that fair?

A: After he changed his attitude, I just throw hands up. I ain't tried to -- now he saying, get back to what he was saying at first. You feel me?

Q: Hoping he'd go back to ---

A: He wouldn't ever -- he ain't never going back the way he was saying it was the first time, he -- like, oh, well, thus and that. I was like fuck him, too. I ain't care. Oh, well, I can't really do nothing, like I in jail. See what I'm saying, I in jail. Nothing I can do about. So, ---

THE COURT: Mr. Eady, I'm gonna ask you again, I'm gonna ask you to slow down a little bit and I'm gonna ask you to refrain from using profanity.

A: Okay. I apologize.

THE COURT: I think I understood -- I think I understood you saying a cuss word. Let's not say any more.

A: I apologize.

THE COURT: Go ahead.

BY MR. DAVIS:

Q: Is it fair that your attorney's change in attitude is what caused you to not be interested in the 25 ---

A: No, that's not fair. That's not fair. That -- his attitude change was the reason why I wouldn't even accept or even consider accepting the offer that was placed out there.
Q: Okay. Well, I don't want to keep going on this if I'm wrong, but my understanding was you wanted Judge Nettles to know there's something about your attorney that caused you not to take that 25. If I'm wrong about that, tell me.
A: No, you're not wrong but that's me.
Q: I am or am not?
A: You're not.
Q: Okay. Well, then can you help me and Judge Nettles to understand what it was about Mr. Lewis that caused you to reject the 25 that you now have suggested to me that you would've taken? Help the Judge understand that and go slow now.
A: Simple fact, simple fact of that, man, he just start being bad towards me. Like, he come visit me and everything, I can't -- he come see me and everything, he come to me, he come in and see -- he come talk to me and everything -- fact was once I get in one (inaudible) -- no, thus -- no, I can't do that. I'm not gonna do that.
THE COURT: He did communicate the offer to you?
A: Yeah, he come see me plenty times. He come see me plenty times.
THE COURT: Did he communicate the offer to you? Did he

A: One time, yeah. He come tell me -- he talk to me about they was offering 25. I was like, nah, I ain't want that. They offer this and they say 25, you probably going to the prison, penitentiary. I be like, well, at first you was saying, I tell you -- at first, I ain't never saying that. And then but no, I -- I was saying -- I was never saying that at first. You lying. You say -- I wasn't never saying that at first, I'll tell you that, thus and that. I was like, man, just take me to trial, take me to trial and whatever happen, happen. You feel what I'm saying? If I end up in the pen, then then -- (inaudible) -- what I'm supposed to do when I in jail. I can't do nothing about -- thus right here, anyway, you feel me, so -- I'm gonna have to go ahead and -- you feel me? Here I am, right?

Q: Thank you, Mr. Eady; no further questions.

A: All right.

MR. LIMBAUGH: No questions, Your Honor.

THE COURT: All right. Very good.

All right. You may step down. Thank you.

MR. DAVIS: That's the applicant's case, Your Honor.

THE COURT: All right. Anything from the state?

MR. LIMBAUGH: The state would like to call Mr. Lewis for one question, Your Honor.

THE COURT: Very good.

I'll remind you're still under oath. You can have a seat.

MR. LEWIS: Yes, Your Honor.

DIRECT EXAMINATION OF BENJAMIN CARTER LEWIS BY MR. LIMBAUGH:

Q: Thank you, Mr. Lewis. I just have one question for you. I believe you stated you communicated and also begged your client to take this offer and you were with his mother when that occurred?

A: Yes. I -- normally, there's a section of the jail that's for professionals only and this -- like I said throughout, this case really bothered me. I did not want Torren to be exposed to a potential life sentence. I had an offer of 25. It's -- anything less than murder beats that, you're at 85 percent. He would've done 20 years. He would've been released when he was 39. What I have now is that he's gonna be in till April 17th, 2057. And I did not want that for him. I was begging him not to do that. And -- yeah.

Q: Thank you.

MR. LIMBAUGH: That's all I have, Your Honor.

THE COURT: All right. Any ---

MR. DAVIS: No, Your Honor.

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

BY THE COURT:

THE COURT: All right. Mr. Davis, I want you to explain in great detail the issue with regard to the mistrial. And

we're gonna ---

MR. LIMBAUGH: May Mr. Lewis be excused, Your Honor?

THE COURT: Yes.

MR. LEWIS: I have magistrate's court. I know it's not as important, Judge, but ---

THE COURT: You're free to leave.

MR. LEWIS: Thank you, Your Honor.

THE COURT: I'm gonna ask you to address the issue of mistrial and then I'm gonna call upon Mr. Limbaugh. We're gonna deal with them one at a time.

The first issue is mistrial.

MR. DAVIS: Judge, the argument there is that if Mr. Lewis was successful in blocking the state from going into that line of questioning, it was -- and of course, we've got pages so we can't tell exactly the timeframe, it was three pages later and I think that suggests it was very quickly in time thereafter. The solicitor disregarded Judge Nicholson's ruling and tried to go back on that same line of questioning. It was interrupted pretty quickly, but for the state to inquire about the same line of testimony that he'd just been told they shouldn't, I think that's inappropriate. It requires Mr. Lewis to object a second time which could cause the jury to feel that, boy, there must be something bad he's covering, two objections within a very short period of time on the same issue, the Judge had ruled ---

THE COURT: Sometimes the jury can perceive that as being overreaching on the part of the solicitor's office, they're trying to cheat.

MR. DAVIS: Yes, Your Honor. And I'm gonna advocate the alternative which is a benefit to my client. But, yes, Your Honor, they could look at it either way and we can't know what's in the 12 people's minds. But the way to ensure ---

THE COURT: But you agree that there was no real damaging information that came out, it was just the fact that he had to object twice?

MR. DAVIS: Very limited actual information came out, that's correct, Your Honor. I think ---

THE COURT: Very good. All right. Let's see what Mr. Limbaugh has to say about that.

MR. DAVIS: Yes, sir.

MR. LIMBAUGH: That was gonna be one of my main points, Your Honor, is that with the second objection, it basically cut off the line of questioning immediately. I believe that she could've been able to testify to voice I.D. had she been able to actually and had talked with Mr. Eady beforehand, identify his voice, I mean, it's a pretty high bar if I'm not mistaken as to that being sustained. I believe that Mr. Lewis himself testified that he was surprised he actually got that objection sustained the first time. So, I believe that's where the state lies on this issue, Your Honor.

THE COURT: And your position is that it probably should've been allowed in anyway, and that he objected to it twice, and there is very little information that came out, there was very little information that came out. He was shut down fairly quickly.

MR. LIMBAUGH: Yes, Your Honor.

THE COURT: So, you're saying essentially, that issue was really harmless?

MR. LIMBAUGH: Yes, sir, Your Honor. No question.

THE COURT: All right. The opening, the opening of the door with regard to the credibility of the investigating officer, Mr. Davis?

MR. DAVIS: And, again, Your Honor, certainly has the transcript -- but the witness that provided information about where she believed Mr. Eady was had already testified. Now, the state is trying to get her testimony through a detective in front of the jury. Mr. Lewis objected to that and should have, and yet the Judge points out, well, Mr. Lewis, you basically pointed out that law enforcement tells lies from time to time, you've raised that as an issue. The state has an opportunity now to fill in that hole that you've pecked away at, and this is the way they're gonna do it. You opened to door to allowing that testimony in so that we find fault with Mr. Lewis doing the cross the way he did which then ultimately on redirect allowed the state to get in an issue

they wouldn't have been able to because the witness had already gone.

THE COURT: Well, do you think that that was the proper ruling to allow in hearsay testimony because of some challenge of his credibility? Is that a question of law or a question of ineffectiveness is my question to you?

MR. DAVIS: That is a good question.

THE COURT: I thought it was, too, because he did -- I think he's got the right and an obligation to question the credibility of an investigating officer and he did that. And then he objected to the investigating officer getting into hearsay testimony, which is probably more a product of the fact that they forgot to ask the question and then probably the witness was already gone and they were trying to get it in the backdoor. But, he did object to it and so wouldn't that really be more of an issue on appeal than it would be ineffectiveness because it sounds like to me the trial, trial counsel did what he was supposed to do. He was supposed to challenge the credibility of the officer -- believe it or not, some of them will lie -- and he was able to question that. And then by virtue of doing that, for some reason, the Judge ruled that it allowed in hearsay testimony, which to me sounds like an issue for appeal.

MR. DAVIS: It very well could be, Your Honor. Of course, I'm the appointed attorney for the PCR and I'm going

for any reason I can, so I would argue that while it may be an appellate issue, we would argue that it could also be ineffective assistance of counsel.

THE COURT: Okay. But we do agree that what he did was right was challenge the credibility of the officer ---

MR. DAVIS: It would be more, I guess, to specifically say it would be how he did it, because obviously Judge Nicholson felt how he did it allowed the door to be opened to really bare it down, I guess, that would be the ---

THE COURT: You know, they've got a pile of exceptions to hearsay.

MR. DAVIS: Yes, sir.

THE COURT: I don't believe that's one of them, is it?

MR. DAVIS: I don't believe it is, Judge.

THE COURT: Okay. I think your complaint is really with Judge Nicholson.

MR. DAVIS: And yet at PCR we cannot do that. So, we've got to channel it through the attorney somehow.

THE COURT: Okay. Very good.

All right. What do you have to say about the opening -- opening the door?

MR. LIMBAUGH: Judge, he made the objection on the record, I believe that's a matter of law for the Judge to take up and he made his ruling. It's more of an issue for appeal. Also, there was, I believe, a conversation on the record with

the solicitor's office that they potentially could've called the -- back up to retestify and then there would've been no prejudice if the testimony was allowed in if it was, because they could've gotten it in and recalled her later on. So, that's the state's position.

THE COURT: Okay. So, that -- they could have had not allowed them to do that, there was a legitimate way that they could've brought her up to do that.

MR. LIMBAUGH: Yes, Your Honor.

THE COURT: Still doesn't allow in hearsay testimony; it should not, anyway.

MR. LIMBAUGH: Should not, no, Your Honor.

THE COURT: Okay. All right. Let's see here.

Mr. Davis, I want to hear from you with regard to the expert witness, but let me ask you from the very outset, when you make an allegation such as this in post-conviction relief, is there some obligation on behalf of the applicant to proffer what an expert would say?

MR. DAVIS: Yes, Judge, yes.

THE COURT: The answer to that is yes?

MR. DAVIS: Yes, sir.

THE COURT: Okay. And you would agree that based on his cross examination, he was able to at least point out the limitations of location based on this testimony. You can tell direction and general area but not exact location.

MR. DAVIS: I think the trial -- the trial transcript of his testimony they indicate that he did as much as he could without ---

THE COURT: An expert. And as we stand here today, we don't know what an expert would say.

MR. DAVIS: I don't have a witness to call to that issue.

THE COURT: What do you have to say about that, Mr. Limbaugh?

MR. LIMBAUGH: Your Honor, I would say that Mr. Lewis went into a pretty thorough cross examination of -- concerning that cell phone data where he pointed out the weaknesses by being general, not being specific. He cut into it pretty well on his cross. Also, there's no prejudice as you just said there's no expert here to testify as to what they might or might not have said if they had been called at trial.

THE COURT: Didn't say there wasn't any prejudice, I'm just saying they haven't proffered it to make a determination as to whether there was no prejudice?

MR. LIMBAUGH: Yes, Your Honor. I apologize. The state is saying that there would be no prejudice.

THE COURT: Okay. Well, you can't say that if we don't know what the expert would've said.

MR. LIMBAUGH: But without any expert to testify, it'd be mere speculation to say that there would've been.

THE COURT: Okay. That's what I think.

All right. All right. Let's hear about the *Denno* motion. What do you have to say about that, Mr. Davis?

MR. DAVIS: It was certainly trial strategy based on the content of the statement we had in Mr. Lewis' testimony today about that. The point we would make, and I don't think it's necessary to call an appellate attorney for this. And forgive me, I don't have a site here but, undoubtedly, there has been cases on appeal that have been published for *Denno* issues. The choice of Mr. Lewis to withdraw that motion and not preserve that for appeal is really the focus there, that it was -- he gave a reason strategically we would argue that does not cover the fact that there should've been a ruling on that. He anticipates the ruling would've been in favor of the state but just as you caught it on the last issue, you kind of don't know until you know. And so for him not getting a ruling from Judge Nicholson we think is error because had Judge Nicholson allowed it, that would've been preserved for appeal, it wasn't. There's certainly cases that convictions are overturned for ---

THE COURT: I think there's a lot of -- particularly, a lot of recent cases that say that if you're gonna let in a statement, particularly in a murder trial, there should be a *Jackson v. Denno* hearing. I think you can deweight that. Is that your understanding of the law, Mr. Limbaugh?

MR. LIMBAUGH: Yes, Your Honor. I believe Mr. Lewis

essentially testified that it was beneficial to them in a lot of ways to have that statement in as part of their overall defense strategy that, hey, Mr. Eady ---

THE COURT: He denied being there.

MR. LIMBAUGH: --- denied being there. And has said that since the first time he talked with the police officers. So, that's generally the state's position is that he doesn't believe it was harmful but rather it was beneficial to their case to have that in. And also on the appeal issue, I believe they would have to show that they would be successful on appeal issue, which I don't believe ---

THE COURT: And that was my next question to you, Mr. Davis, is that there is -- you don't have any kind of evidence that would indicate that he has a substandard I.Q., that they abused him in any way, they withheld food, they put pressure on him; there's nothing that you have here today that would indicate that the statement is anything but voluntary.

MR. DAVIS: I have nothing specific as to law enforcement conduct. The one thing I wonder Your Honor is the brief issue that I call -- you've been able to observe his demeanor, observe his ability to question or to follow logic. You've seen him testify.

THE COURT: Well, I think he talks a little fast, I think he's plenty smart, I think.

MR. LIMBAUGH: Yeah, the testimony was GED -- so, he did

not finish high school but he got his GED. So, yeah, we're not arguing some mental defect or anything like that.

THE COURT: Or any kind of police misconduct.

MR. LIMBAUGH: I have no reason to argue police misconduct, but certainly he's ---

THE COURT: You looked at the record, I assume that there was Miranda given.

MR. LIMBAUGH: I -- Judge, I don't recall it wasn't because if it wasn't, I think I'd be raising it. I can't tell you that I actually remember that, but if it wasn't I would be confident I'd ---

THE COURT: All right. Hang on just one second.

MR. LIMBAUGH: Yes, sir.

THE COURT: In the last -- well, the next to last one and it has to do with jury charge and the inference of malice.

MR. DAVIS: Can I say on final thing on the *Denno* issue, Judge?

THE COURT: Yes, you can say whatever you want to about any of it.

MR. DAVIS: The state had indicated that Mr. Lewis testified that he thought the statement was helpful and I do understand that, but at the same time the contradiction of that is that cell site evidence seemed to contradict the statement. So, while the substance of his client's statement he wasn't there, it wasn't me. Then there's independent

evidence that seems to refute that.

THE COURT: It's not completely inconsistent because there's no question but that the phone could've been given to someone else.

MR. DAVIS: Certainly. There's ways to explain it but it -- in the absence of that ---

THE COURT: And there's no way they can put it at that particular house. They can put it in the general area.

MR. DAVIS: Correct, Your Honor.

THE COURT: So, it's not logically inconsistent -- the statement is not logically inconsistent with the evidence.

MR. DAVIS: It's not, however -- however, it's not completely refuted but there is evidence that would tend to refute it.

THE COURT: All right. Okay.

MR. DAVIS: That was the final thing I wanted to add. Thank you, Your Honor.

THE COURT: Well, I think that might fall in the area of strategy, if you get some benefit and some harm, maybe.

MR. DAVIS: And we don't argue that the strategy imploring that still doesn't overcome the obligation ---

THE COURT: Okay. Now, how about the jury charge and the inference of malice. I want -- I think that pretty much speaks for itself and the law is clear that that's not an appropriate charge now. You want to say anything more about

that?

MR. DAVIS: No, sir.

THE COURT: And it was after the case, what was ---

MR. DAVIS: Again, I ---

THE COURT: --- *Belcher;* it was after *Belcher.*

MR. DAVIS: *Belcher* was 2009, I don't have the exact date, but it was 2009 and this was a February 18th through 20th, 2014 trial.

THE COURT: Okay. All right. So, let me ask you about the *Belcher* case, and as I recall it, doesn't it say that in -- that it's still good law for there to be an adverse inference or an inference of malice unless -- it's still appropriate to do that if there is no evidence for manslaughter or self-defense or something like that?

MR. DAVIS: The earliest case I saw on that, Judge, and forgive me, I should've brought the site, post-dated this trial. And if I stand incorrect on that, I'm sure you ---

THE COURT: Is that right? Is that your understanding the proposition of law is that the inference is not always inappropriate and if there is no evidence of mitigation like manslaughter or self-defense, then it's still -- you can still infer malice ---

MR. DAVIS: Right, my reading ---

THE COURT: --- by the use of a weapon?

MR. DAVIS: My reading on subsequent cases of *Belcher* had

refined it to that very issue, Judge. But, my recollection of the cases that did that post-date this trial.

THE COURT: Now, how would that affect the ruling on this issue if the that's the state of law? I mean, because *Belcher* said, you know, let's not do that anymore. And then -- but later on, they say the more we think about it, it's appropriate and you can infer malice, there's no mitigating circumstances.

MR. DAVIS: I'll make it analogous to Mr. Lewis was quite helpful in talking about the case to be -- to his credit, he -- and forgive me for not remembering what it was, but there was another charge that he picked up on -- if given a moment, I'll think of it -- anyway, Judge, he picked up an issue that was certainly being discussed by the defense bar that we were attempting to make a difference in it, but the law didn't change till after this trial. I'm not gonna come in and argue that Mr. Lewis should have maybe argued it because some day in the future it might change or might be refined. The fact that -- and if I'm correct -- that after the date of this trial it was refined, that's for those cases following. We can't presume that Mr. Lewis had the foresight to know that it'd be refined. The case in play at the time was *Belcher* in its unrefined state. It was given by Judge Nicholson and it was not objected to, that was the bottom line.

THE COURT: All right.

Mr. Limbaugh?

MR. LIMBAUGH: Your Honor, if I might keep quoting from *Belcher* ---

THE COURT: Right.

MR. LIMBAUGH: Having carefully scrutinized the historical antecedents to this permissive inference, we hold today that a jury charge instructing that malice may be inferred from the use of a deadly weapon is no longer good law in South Carolina where evidence is presented that would reduce, mitigate, excuse or justify the homicide. We heard testimony from Mr. Lewis today that this was never a self-defense case, that was never his take on it and there was no ---

THE COURT: So, that was actually set forth in *Belcher*, the original case ---

MR. LIMBAUGH: Yes, sir.

THE COURT: And it's been refined, addressed in that very qualification since then?

MR. LIMBAUGH: Yes, sir.

THE COURT: It's ironic.

MR. LIMBAUGH: Yes, Your Honor.

THE COURT: Well, you learn something every day. How about that.

MR. LIMBAUGH: So, we contend that the charge was proper because it was never a self-defense case.

THE COURT: Okay. All right.

MR. DAVIS: I'm looking at the language right now, there's no reason to refute that, Judge.

THE COURT: All right. And the last issue has to do with the plea offer. Would you like to say anything about that, Mr. Davis?

MR. DAVIS: Judge; I'll rely on ---

THE COURT: Okay. Mr. Limbaugh, would you like to say anything about the plea offer?

MR. LIMBAUGH: No, Your Honor.

THE COURT: All right.

RULING OF THE COURT:

THE COURT: Mr. Limbaugh, I'm gonna ask that you prepare an order denying the application for post-conviction relief setting forth the following reason. The issue with regard to the mistrial, I think does not demonstrate any ineffectiveness in that he appropriately questioned the credibility of the law enforcement officer and he made the objection before the jury on two different occasions. There was actually no information that was imparted to the jury and that there was no damage in that regard. The fact that he objected to it twice was not prejudicial to the defendant and in my estimation was probably beneficial in that it very well could lead the jury to believe that the solicitor was overreaching to some extent because the jury -- a lot of times, people think they aren't paying

attention but the jury knows, when the judge has already ruled on an issue and they continue to try to get it in, it does give the appearance of overreaching. But regardless of the effect of it, trial counsel did exactly what he was supposed to do. He objected or questioned the lawyers -- I mean, the investigator's credibility and he properly objected to the voice identification and perhaps was able to get it suppressed when indeed it should've been admissible.

With regard to the opening of the -- opening the door, Lewis objected properly and this is an issue -- is a question of law. He did exactly what he was supposed to do. And the fact that Judge Nicholson let in hearsay testimony because of the fact that he questioned the credibility of the law enforcement officer is in my estimation not proper. However, it very easily could've been presented -- the same information could've been presented by recalling that witness. So, really, that overall objection was harmless in that regard.

As far as the expert testimony, really the only thing that needs to be said about that is that he was able to bring out the limitations of this type testimony that you can't put the location of a phone at a specific location, only the general area and the direction of the call. And the only way that I could do anything about that would be is if there were an expert called here today that would show that it would be exculpatory, some expert testimony that would've been

exculpatory, that has to be proffered here in this setting in order for me to grant the relief requested.

As far as the *Jackson v. Denno*, I think it's a legitimate point that trial counsel wanted that statement in in that he denied that he was there. It was indeed exculpatory and not inculpatory. And I think that in order for me to grant the relief requested with regard to the *Denno* hearing, we would've had to have had the equivalent of a *Denno* hearing here and been able to make the determination whether or not there was any coercion, whether or not there was any -- whether or not the statement was involuntary and whether or not there was some problem with regard to the rendering of the Miranda rights. None of that was present. I can't grant relief in that regard.

The charge, we've had a discussion about the law set forth in *Belcher*. And in this case, specifically find that there was no evidence or mitigation. It was a shooting. There was no argument that it was in the heat of passion or that it was in self-defense. There's no evidence of mitigation whatsoever. So, therefore, the charge of the rebuttable inference of malice is indeed appropriate in this instance.

As far as the plea offer, simply, the plea offer was made. Trial counsel spoke with him about it. He explained to the defendant life without parole and the fact that he would

be exposed to that versus the 25 years, and he explained to him the age that he would be able to get out. The defendant listened to it and it was his constitutional right to turn it down. I think that the defendant has made on at least two occasions in his testimony said that his objection was not that the lawyer did not come -- he did make the offer, said that they visited a lot, they corresponded a lot, they just had a disagreement with regard to that, but I think the lawyer did everything he could do as far as communicating the offer, the defendant just didn't want to take it, which is -- and which is and was his constitutional right to do so. And I'm gonna ask that you prepare that within the next 30 days and send a copy of it to Mr. Davis to ensure that it accurately reflects what my ruling is here today.

MR. LIMBAUGH: Yes, Your Honor. Might I request that I have time to order the transcript from this hearing as I was having a little bit of trouble taking notes during the applicant's testimony.

THE COURT: Say that again?

MR. LIMBAUGH: I'd like to request time to order the transcript from the court reporter because I was having a little trouble deciphering some of the applicant's testimony.

THE COURT: I think you're gonna have that same problem when you read it, so the answer is no. Give me an order within the next 30 days. Do the very best you can.

MR. LIMBAUGH: Yes, Your Honor.

THE COURT: All right. Anything further from anybody?

MR. LIMBAUGH: Nothing from the state.

MR. DAVIS: No, Your Honor.

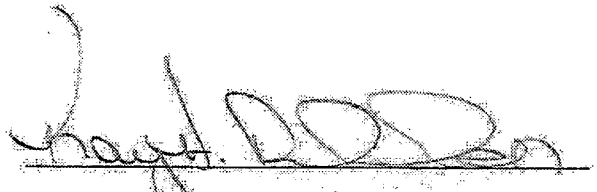
THE COURT: Good luck to you, Mr. Eady.

ADJOURNED - 2:17 P.M.

C E R T I F I C A T E

I, the undersigned, Kay H. Richardson, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the hearing held in the case of Torren Eady v. State of South Carolina, held in the Court of Common Pleas for Charleston County, Charleston County Courthouse, Charleston, South Carolina, on October 3, 2018.

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



Kay H. Richardson
Official Court Reporter

March 5, 2019.

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
Torren M. Eady, #358893, Applicant, v. State of South Carolina, Respondent.	)	Case No. 2017-CP-10-358 **ORDER OF DISMISSAL**

This matter comes before the Court by way of an application for post-conviction relief filed January 23, 2017 alleging ineffective assistance of counsel. The Applicant filed an *in forma pauperis* application for post-conviction relief on January 23, 2017. Applicant was appointed Rodney D. Davis esquire as council on March 9, 2017.

The State filed its Return and Motion to Dismiss on July 18, 2017, arguing the application should be summarily dismissed for failing to raise a cognizable claim for relief. On July 26, 2017 the Honorable Deadra Jefferson, acting in her capacity as Chief Administrative Judge for Charleston County Common Pleas, signed a Conditional Order of Dismissal, provisionally dismissing the action for failure to state a claim but giving Applicant, through counsel, twenty days to provide a sufficient reason as to why the application should not become final. Applicant failed to respond to the motion to dismiss or the conditional order of dismissal. On May 21, 2018 the Honorable Kristi Harrington, acting in her capacity as Chief Administrative Judge for Charleston County Common Pleas, signed the Final Order of Dismissal. The Applicant filed a Motion to Alter/Amend Judgment on June 6, 2018. An Order Vacating Dismissal was filed on Judge Harrington on June 14, 2018.

Thereafter, on July 2, 2018, Applicant through counsel, filed an amended application for post-conviction relief. In this amended application, Applicant incorporates the previously mentioned attachment (the State still has not been provided with the attachment) and sets forth the following grounds for post-conviction relief:

> 1. Trial counsel was ineffective for failing to properly advise the Applicant prior to trial.
>
> 2. Trial counsel was ineffective for failing to request a Jackson v. Denno hearing.
>
> 3. Trial counsel was ineffective for failing to fully prepare, discuss and/or present all potential defenses.

Procedural History

Applicant, Torren M. Eady, is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court.

During its August 2012, term, the Charleston County Grand Jury indicted Applicant for murder (2012-GS-10-04554), four counts of attempted murder (2012-GS-10-04555, 2012-GS-10-04556, 2012-GS-10-04557), and for possession of a firearm during the commission of a violent crime (2012-GS-10-04558). Assistant Public Defenders Benjamin Lewis and Christina Parnall, Esquire represented Applicant. Assistant Solicitors Timothy Finch and Gregory Voigt prosecuted the case. Applicant proceeded to a jury trial before the Honorable J.C. Nicholson, circuit court judge, and December 20, 2014, the jury convicted Applicant as indicted. Judge Nicholson sentenced Applicant to forty-five years imprisonment for murder, ten years imprisonment for each attempted murder, and five years' imprisonment for possession of a firearm during the commission of a violent crime, all of which were to be served concurrently.

Applicant filed an appeal and was represented by Chief Appellate Defender Robert Dudek, of the South Carolina Commission on Indigent Defense-Office of Appellate Defense. On appeal, Applicant raised the following issues:

1. The court erred by refusing to charge "mere presence" and "mere association" are insufficient to convict where there were allegedly two men present at the time of the shooting, it was undisputed several eyewitnesses were unable to identify which on was the shooter, and where there was also evidence the shooter acted spontaneously since this instruction was necessary given the facts of this case.

2. The court erred by allowing witness Teresa Jenkins to speculate that something "bad had happened" based on the way the appellant and the other man "were acting" when she dropped them off in Charleston on the day of the incident, since it was improper for the solicitor to elicit such improper speculation.

Following briefing, the South Carolina court of Appeals affirmed Applicants convictions and sentence by unpublished opinion. State v. Eady, 2016-UP-288 (filed June 15, 2016). The Remittitur was issued on July 1, 2016.

SUMMARY OF FACTS ADDUCED AT TRIAL

At trial, the evidence showed Applicant became upset over a former girlfriend's confrontation at his home earlier the same day, rounded up three individuals and at least two guns, went to the nearby home where the friends were and opened fire. One individual- who was not a part of the earlier confrontation- was killed on the porch. Three other individuals were also on the porch. One received a gunshot to the leg, while the other two escaped physical injury. The following facts support the instant summary.

Teresa Jenkins testified that she was dating Applicant at the time of the shooting. She went to Applicant's home on the afternoon of April 6, 2012. While there, Applicant's former girlfriend and mother of his child, Rochelle Grant, approached the house, banged on the door, and shouted. Jenkins testified she saw a text to Applicant from Grant that she was "coming to slap him." (Tr. p. 77, line 14 – p. 78 line 9; p. 80, line 11 – p. 81, line 8). She was not alone.

Jenkins testified that Applicant confronted Grant and stated: "You bringing these n****s to my mama house." (Tr. p 82, lines 5-7). Grant slapped Applicant's phone from his hand then left. (Tr. p. 82, lines 12-17). Jenkins testified that after the incident, Applicant left for a period of time only to come back with Da'Quan, TJ, and Jigg. TJ referenced that "they" had been "messing with Tezo," another name for Applicant. TJ had a long gun at this side. (Tr. p. 85, line 5 – p. 86, line 24). The group left, and, shortly after, Jenkins heard gunshots. (Tr. p. 87, lines 14-15; p. 89, lines 16-24). Jenkins testified that Applicant came to the back door of his home and asked to be let in. (Tr. p. 90, lines 5-14). She would later take him and Da'Quan downtown at Applicant's request. Da'Quan said to Jenkins: "I hope you don't think Torren did this, man." (Tr. p. 92, line 1 – p. 95, line 17).

In describing the precursor event to the shooting, attempted murder victim Gabrielle McCulley testified that several individuals left the house where the murder would alter occur and walked the short distance to the Eady home along with Grant. She understood they were going to "retrieve a child," but they later disbursed after the yelling, and walked the short – less than two blocks – distance back to the home where the murder occurred. (Tr. p. 110, line 6 – p. 113, line 24). Later that same evening, while she was on the porch with others, she saw "two individuals" approach the house from around the corner. They were dressed in black and one wore "a black fisherman's hat." (Tr. p. 115, lines 13-24). McCulley testified that the one with the hat was in front and asked about being "ganged." (Tr. p. 116, line 6 – p. 117, line 3). They were then fired upon. (Tr. p. 116, line 8 – p. 117, line 7). McCulley, along with Antione Foster, and Martel Brown, went into the house. Brown had been shot in the leg. Adrian King was shot on and believed dead on the porch. (Tr. p. 118, line 16 – p. 120, line 1). She could not identify Applicant

from a photographic lineup, but recognized his voice when she attended a bond hearing. (Tr. p. 120, lines 7-11; p. 123, line 14 – p. 127, line 4).

Antione Foster, another attempted murder victim, also testified as to the prior confrontation by Grant at the Eady home. (Tr. p. 144, line 6 – p. 146, line 24). He was familiar with Applicant as he had previously kept Applicant's young son, being friends with Grant. (Tr. p. 138, lines 3-18). Foster testified that after his return from the Eady home, murder victim Adrian King had called and arranged to come over. (Tr. p. 147, liens 15-24). While on the porch with King and others, Foster saw Applicant approach with another individual. (Tr. p. 148, lines 3-19; p. 150, line 22 – p. 151, line 4). Applicant asked about the people who tried to "gang" him. (Tr. p. 148, lines 21-25). Martel Brown walked outside on the porch, after having gotten a haircut from Foster's mother, and asked who Applicant was, but Applicant stated, "It don't matter, and he started shooting." Foster testified Brown was shot in the leg and King was shot in the head. (Tr. p. 148, line 25 – p. 149, line 4). Foster identified the gun as a revolver. (Tr. p. 150, lines 7-8). Foster testified that he went directly to the police station and identified Applicant for the officers, having viewed a prepared six photograph array. (Tr. p. 153, line 10 – p. 156, line 24; p. 171, line 19 – p. 173, line 2). He testified that Applicant was the one who shot at him and the others on the porch. (Tr. p. 157, lines 13-21). Foster testified that he only saw Applicant with one gun, and that was the only gun that he witnessed being fired. (Tr. p. 162, lines 2-9).

Forensic pathologist Dr. Lee Marie Tormos testified King died from the gunshot wound to his head, the bullet having entered his left temple, went to the base of his skull, fractured the bones and bounced into his brain. (Tr. p. 196, lines 4-25).

Investigators retrieved 9mm rounds, a "projectile... not fired," and a shotgun from the Eady home. (Tr. p. 187, lines 4-25). The parties stipulated that "four complete bullets and one

bullet fragment" were recovered from the scene. Three bullets and the fragment were fired by one gun, either a .38 special or a .357 Magnum. The remaining bullet was fired by a .38 special or a .357 Magnum, but not the same one. (Tr. p. 244, line 21 – p. 245, line 20).

After several interviews, officers prepared warrants for Applicant's arrest. (Tr. p. 202, lines 14-18). The arrest warrants were prepared the same night and were completed the next morning, on April 7, 2012; however, Applicant could not be located and arrested until April 17, 2012. (Tr. p. 209, lines 10-24). He was apprehended at an aunt's home. When officer initially arrived at the home the aunt denied that any males were present. Appellant was found attempting to hide behind a shower curtain. (Tr. p. 277, line 4 – p. 279, line 13).

Applicant spoke to officers the day after his arrest, but merely stated he had no involvement with the shooting; rather, he simply stated he went downtown with Jenkins after the Grant altercation. (Tr. p. 208, lines 1-7).

Applicant's cell phones were recovered after his arrest. (Tr. p. 208, line 23 – p. 209, line 9; p. 285, line 14 – p. 287, line 21). Cell phone records to the phone Applicant admitted was his were consistent with the general location and times recounted by the witnesses rather than his statement to police. (Tr. p. 262, line 3 – p. 264, line 8). Applicant confirmed to officers that his cell phone was with him during the "activities of that night." (Tr. p. 208, lines 15-22). Another phone that was retrieved with his admitted cell phone at the aunt's residence showed not only an email addressed to him but also a search of interest made on April 16, 2012, after the shooting and prior to Applicant's arrest: "how long does gun powder stay on the skin." (Tr. p. 299, line 11 – p. 302, line 6). At the same time the phones were recovered, officers also found a black hat which was admitted as State's Exhibit 35. (Tr. p. 289, line 22 – p. 290, line 17). Attempted

murder victim McCulley testified the hat was the one she saw on the individual in front who spoke before the shooting. (Tr. p. 116, liens 1-12).

APPLICABLE LAW

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 upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has thoroughly reviewed the record in its entirety. Additionally, this Court heard the testimony presented at the evidentiary hearing and was able to observe the witnesses presented, which allowed the Court to scrutinize the credibility presented. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Applicant has alleged numerous instances of ineffective assistance of counsel against trial counsel, Ben Lewis. Each allegation is addressed fully below.

The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. U.S. Const. amend. VI; Strickland v. Washington, 466 U.S. 668 (1984); Lomax v. State, 379 S.C. 93, 665 S.E.2d 164 (2008).

In a post-conviction relief action, an applicant bears the burden of proving the allegations in his or her application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that [it] cannot be relied upon as having produced a just result." Strickland, 466 U.S. 668; Butler, 286 S.C. at 442, 334 S.E.2d at 814.

Strickland does not guarantee perfect representation, only a " 'reasonably competent attorney.' " 466 U. S. at 687 (quoting McMann v. Richardson, 397 U. S. 759, 770 (1970));

Representation is constitutionally ineffective only if it "so undermined the proper functioning of the adversarial process" that the defendant was denied a fair trial. Strickland, 466 U.S. at 686. Just as there is no expectation that competent counsel will be a flawless strategist or tactician, an attorney may not be faulted for a reasonable miscalculation or lack of foresight or for failing to prepare for what appear to be remote possibilities. See generally Id.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland, 466 U.S. 668. First, an applicant must prove that counsel's performance was deficient. Id.; Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, the court measures an attorney's performance by its "reasonableness under prevailing professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 690). The proper measure of performance is whether an attorney provided representation within the range of competence required in criminal cases. Butler, 286 S.C. at 442, 334 S.E.2d at 814. "Counsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Id. (citing Strickland, 466 U.S. at 690). The applicant must overcome this presumption to receive relief. Cherry, 300 S.C. at 118, 386 S.E.2d at 625. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Although courts may not indulge "post hoc rationalization" for counsel's decision making that contradicts the available evidence of counsel's actions, Wiggins, 539 U. S., at 526–527, neither may they insist counsel confirm every aspect of the strategic basis for his or her actions. There is a "strong presumption" that counsel's attention to certain issues to the exclusion

of others reflects trial tactics rather than "sheer neglect." Yarborough v. Gentry, 540 U. S. 1, 8 (2003) (per curiam). After an adverse verdict at trial even the most experienced counsel may find it difficult to resist asking whether a different strategy might have been better, and, in the course of that reflection, to magnify their own responsibility for an unfavorable outcome. Strickland, however, calls for an inquiry into the objective reasonableness of counsel's performance, not counsel's subjective state of mind. Id. at 688; Harrington v. Richter, 562 U.S. 86 (2011)

With respect to prejudice, an applicant must demonstrate "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." Id. at 694. It is not enough "to show that the errors had some conceivable effect on the outcome of the proceeding." Id. at 693. Counsel's errors must be "so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." Id. at 687; Harrington, 562 U.S. 86.

"Surmounting Strickland's high bar is never an easy task." Padilla v. Kentucky, 559 U.S. 356, 371 (2010). An ineffective assistance of counsel claim can function as a way to escape rules of waiver and forfeiture and raise issues not presented at trial, and so the Strickland standard must be applied with scrupulous care, lest "intrusive post-trial inquiry" threaten the integrity of the very adversary process the right to counsel is meant to serve. Strickland, 466 U.S. at 689–690. Even under de novo review, the standard for judging counsel's representation is a most deferential one. Unlike a later reviewing court, the attorney observed the relevant proceedings knew of materials outside the record and interacted with the client, with opposing counsel, and with the judge. It is "all too tempting" to "second-guess counsel's assistance after conviction or adverse sentence." Id. at 689; see also Bell v. Cone, 535 U. S. 685, 702 (2002); Lockhart v. Fretwell, 506 U. S. 364, 372 (1993). The question is whether an attorney's representation

amounted to incompetence under "prevailing professional norms," not whether it deviated from best practices or most common custom. Strickland, 466 U.S at 690.

In assessing prejudice under Strickland, the question is not whether a court can be certain counsel's performance had no effect on the outcome or whether it is possible a reasonable doubt might have been established if counsel acted differently. Wong v. Belmontes, 558 U. S. 15 (2009); Strickland, 466 U.S. at 693. Instead, Strickland asks whether it is "reasonably likely" the result would have been different. Id. at 696. This does not require a showing that counsel's actions "more likely than not altered the outcome," but the difference between Strickland's prejudice standard and a more-probable-than-not standard is slight and matters "only in the rarest case." Id. at 693, 697. The likelihood of a different result must be substantial, not just conceivable. Id. at 693; Harrington, 562 U.S. 86.

Based on this standard set forth above, this Court finds Applicant has failed to meet his requisite burden of establishing any constitutional ineffectiveness of counsel as to any of his various allegations. Each allegation is addressed fully below:

Allegation: Failure to Move for a Mistrial

Applicant alleges trial counsel was ineffective for failing to move for a mistrial. The specific line of questioning that Applicant referred to is as follows:

> Q. Did you go to the bond hearing in this case?
>
> A. Yes.
>
> Q. Did you hear the Defendant?
>
> Mr. Lewis: Objection, Your Honor.
>
> The Court: Let him ask the question. Then I'll listen to your objection. I can't I've got to hear the question first.
>
> Mr. Lewis: This may require a hearing, Judge.
>
> The Court: Go ahead. Ask the question.

Q. Did you hear the Defendant speak at the bond hearing?

A. Yes.

Q. What did you notice about what did you realize when you heard the Defendant speak?

A. The voices were…

Mr. Lewis: Objection, Your Honor.

A. … very similar.

The Court: All right. Hold on a second. Let me see the attorneys up here.

For the record, I sustain the objection.

(R. p. 123, lines 19-25; p. 124, lines 1-16). Applicant also asserts the following line of questioning should have warranted a mistrial:

Q. Have you ever heard anyone with a voice like that before or after that night?

A. After.

Q. When did you hear that voice?

Mr. Lewis: Objection, Your Honor.

The Court: Overruled at this point in time. Go ahead.

A. When we went to the bond hearing and the Judge asked Torren his name.

Q. And what did he say?

A. He said his name is Torren Eady.

Q. And how did you respond?

A. At that point I had to be taken out of the courtroom because I started shaking and crying.

Q. Why were you shaking and crying?

A. I was just scared just to hear it again.

Q. Hear what again?

A. The voice. Like just to hear how he sounded and how he seemed like he still didn't care what he did.

Mr. Lewis: Objection, You Honor.

Mr. Finch: I don't have anything further. Please answer any questions…

The Court: The objection's overruled as far as the voice is concerned. Okay.

(R. p. 126, lines 11-25; p. 127, lines 1-9). Counsel objected on the record to both lines of questioning, but did not move for a mistrial. Counsel testified that he did not move for a mistrial because he did not feel that the testimony was that egregious. Counsel testified that he objected twice to the line of questioning and believed his point was made. Also, counsel testified that he was surprised his first objection was sustained, as the witness would likely be allowed to testify as to a voice identification if she was previously familiar with the Applicant's voice.

The Court finds that counsel was not ineffective for failing to ask for a mistrial after the line of questioning concerning the voice identification of the Applicant. The Court finds that counsel properly questioned the credibility of the law enforcement officer, objected to the line of questioning twice, and the objections made by counsel suppressed the testimony even if it was potentially admissible. The Court finds that Applicant failed to meet his burden in regards to this allegation.

Allegation: Opening Door

Applicant alleges trial counsel was ineffective for opening the door to testimony concerning his location. At trial, the Solicitor began questioning a law enforcement officer on re-direct about information concerning the defendant being downtown that "came to light" during the investigation. Defense counsel objected to this question. The Solicitor argued that defense counsel opened the door to the line of questioning by asking about information that guided his conversation with the Applicant. The Solicitor noted that on cross-examination it was brought out that some of what was told to the officer was true and some of it was not. The Solicitor argued that he was not offering the statements by the other witness, Teresa Jenkins, to the officer

to prove the truth of the matter asserted but rather to show the officer's justification for the questions he asked the Applicant. The trial court held that the Solicitor could go into this line of questioning, as defense counsel opened the door when he asked about lying on cross-examination. Ultimately, however, the court sustained the objection and ruled that the Solicitor could only go so far as to ask what transpired in the conversation between the Applicant and the officer. The court also noted that if the Solicitor wanted to elicit the specific statement from Teresa Jenkins about the Applicant being downtown he would be permitted to recall the witness.

This Court finds that counsel was not ineffective for potentially opening the door to a line of questioning concerning a hearsay statement to a law enforcement officer about the Applicant's whereabouts. This Court finds that counsel properly objected to the line of questioning as the testimony being elicited was inadmissible hearsay. This Court finds that the trial court allowed hearsay to be elicited, but that Teresa Jenkins could have been recalled to testify directly, therefore the error was harmless. This Court finds that there was no prejudice to Applicant as the trial court ultimately limited the line of questioning and Teresa Jenkins could have been recalled to elicit the testimony. This Court finds that Applicant has failed to meet his burden in regards to either prong of Strickland.

Allegation: Failure to Acquire Phone Data Expert

Applicant alleges that counsel was ineffective for failing to acquire and utilize an expert on the cell phone data used to show the Applicant's general location at certain times. At trial, historical cell site data was used to contradict the Applicant's statement to law enforcement as to his whereabouts at the time of the incident. The prosecution used the data to show that the Applicant was not downtown until much later in the evening, contradictory to his prior statement to law enforcement.

Counsel testified at the hearing that he did not think that hiring an expert was not necessary as he could bring out the weaknesses of the science on cross-examination. Counsel testified that the cell site data could track the general path of the phone, which might have been problematic. However, Counsel testified that the data could not show that the person was at any specific place at any specific time, but could only be used for generalities. Counsel also argued that he was concerned about potentially hiring an expert as the science can sometimes be inconsistent and thought it would be more effective to point out the weaknesses on cross-examination. Counsel testified that ultimately his strategy was to attempt to show that the cell site data could not show where the Applicant was at any specific point in time.

This Court finds that counsel was not ineffective for failing to hire cell site data expert. This Court finds that counsel was able to bring out the limitations of the science effectively on cross-examination. This Court finds that counsel was able to bring out on cross-examination that the cell site data was general in both area and direction.

Q. So you have to kind of extrapolate and kind of make a guess?

A. A good-faith estimate, yes, sir.

Q. And it's a pretty big area we're dealing with, right?

A. Yes, sir.

Q. So for example on this map there's a whole lot of stuff going on in there on any given day?

A. Yes, sir.

Q. A whole lot of people living, shopping, eating dinner, living their lives?

A. Yes, sir.

Q. So you can't say at any specific time this phone is exactly here like you could if it was GPS?

A. That's correct, sir. I can't tell exactly what address that cell phone is at.

Q. And you actually corrected yourself and I really appreciate it. You said the Defendant was – the phone was. Because you actually can't say if this phone is in my pocket. You can say it's pinging to this sort of location?

A. Yes, sir. Yeah, I can't tell you who had the phone. I can just tell you where the cell phone was hitting off of.

Q. So it's – this is basically really broad stuff?

A. Yes, sir.

Q. North Charleston versus Downtown?

A. Uh-huh.

(Tr. p. 260, 21-25; p. 261, 1-22). This Court finds that Applicant failed to meet his burden in regards to this allegation.

Allegation: Improperly Withdrawing Motion for Jackson v. Denno Hearing

Applicant alleges the counsel was ineffective for withdrawing his motion for a Jackson v. Denno hearing on Applicant's statements to law enforcement. Counsel testified that he initially moved for a Biggers hearing and a Jackson v. Denno hearing, but that he later withdrew his motion for the Jackson v. Denno hearing. Counsel testified that he did not believe that Applicant's statement to law enforcement was exculpatory and not incriminating. Counsel testified that he believed Applicant's statement that he was downtown at the time of the incident was only helpful to their case and wanted that statement presented at trial. Counsel testified that one of his defense strategies was that the Applicant was not there and was actually downtown at the time, so the Applicant's statement supported that theory. Counsel testified that he did not remember any red flags in the statement. Counsel testified that the law enforcement officers were aggressive, but that they did not elicit the statement from the Applicant. Finally, counsel testified that he did not believe he would be successful moving for a Jackson v. Denno hearing and he believes he should argue motions he believes in.

This Court finds that counsel was not ineffective for withdrawing his motion for a Jackson v. Denno hearing. This Court finds that counsel ultimately wanted the statement of the Applicant to come in, as it was exculpatory and supported their theory of the case. This Court finds that there was also no evidence that law enforcement coerced in the Applicant into giving the statement, either by being overly aggressive towards him or otherwise. Therefore, this Court finds that Applicant failed to meet his burden in regards to this allegation.

The decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Inman, 395 S.C. 539, 565, 720 S.E.2d 31, 45 (2011); State v. Meggett, 398 S.C. 516, 524, 728 S.E.2d 492, 496 (Ct. App. 2012). The granting of a motion for a mistrial is an extreme measure that should be taken only when the incident is so grievous the prejudicial effect can be removed in no other way. Inman, 395 S.C. at 565, 720 S.E.2d at 45. "Instead, the trial judge should exhaust other methods to cure possible prejudice before aborting a trial." State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999). A mistrial should be granted only when absolutely necessary and a defendant must show both error and resulting prejudice to be entitled to a mistrial. Meggett, 398 S.C. at 524. 728 S.E.2d at 496.

Allegation: Failure to Object to Malice Jury Charge

Applicant alleges that counsel was ineffective for failing to object to the trial judge's jury instruction on the element of malice. The specific language Applicant alleges was inappropriate is as follows:

> The Court: Malice may be inferred from conduct showing a total disregard for human life. Inferred malice may also arise when the deed is done with a deadly weapon.
>
> The following are examples of instruments that would be deadly weapons: a pistol, shotgun, a rifle, a dirk, a dagger, a knife, a slingshot,

> metal knuckles, a razor, gasoline, a firebomb, Molotov cocktail, lighter fluid. A gun may be a deadly weapon even if it's not operated.

Applicant alleged that this jury charge was inappropriate as it improperly shifted the burden from the State to prove malice and was no longer good law after the South Carolina Supreme Court's decision in State v. Belcher. State v. Belcher, 385 S.C. 597 (2009) Counsel testified that he did not have an objection to the malice charge at the time, as he did not see anything wrong with it. Counsel testified that this case was never in a million years a self-defense case and could not imagine a fact scenario where someone would argue self-defense in the circumstances. Counsel testified that that there was no attempt made to mitigate, excuse, or justify the homicide; the defense strategy was to try to show that the Applicant was not there or was not the shooter.

This Court finds that counsel was not ineffective for failing to object to the trial judge's jury instruction on the element of malice. This Court finds the jury instruction was properly used by the trial judge because there was no evidence presented that would "reduce, mitigate, excuse, or justify the homicide." State v. Belcher, 385 S.C. 597, 611, 685 S.E.2d 802, 809 (2009). The South Carolina Supreme Court made clear in Belcher that this type of charge was no longer good law, unless there was no evidence presented in an attempt to justify the homicide in some fashion. This Court finds that Counsel's testimony concerning the case not at all being one of self-defense to be dispositive in deciding this issue.

Allegation: Disagreement About Plea Offer

Applicant alleges that he would have accepted the plea offer if counsel had been more effective in his representation. Applicant testified that the plea offer was communicated to him, but that he rejected the offer because he had a disagreement with counsel. Counsel testified that

during his initial investigation of the case he thought that they might have a chance at trial, but that his opinion changed through the course of the investigation. Counsel testified that he desperately urged Applicant to accept the plea offer of twenty-five years for voluntary manslaughter, as he would've been eligible for release when he was thirty-nine. Counsel testified that he was very concerned with the level of exposure, as Applicant was facing life without the possibility of parole. Counsel testified that he spoke with Applicant's mother about how he thought pleading guilty was the best option in the case. Applicant testified that he had a disagreement with counsel about their ability to beat the case and that was the reason he did not accept the offer. Neither Counsel nor Applicant disagree that the offer was communicated and rejected.

This Court finds the counsel was not ineffective concerning the plea offer communicated to Applicant. This Court finds that counsel properly communicated the plea offer to Applicant and that Applicant knowingly rejected the offer. This Court finds that counsel properly explained to Applicant the high level of exposure he would be facing if he decided to go to trial, life without the possibility of parole. This Court also finds that Applicant admitted that counsel communicated the offer and that he rejected the offer.

CONCLUSION

Based on all the forgoing, this Court finds and concludes Applicant has not established any constitutional violations or deprivations before or during his trial and sentencing proceedings. Counsel was not deficient, nor was Applicant prejudiced by Counsel's representation. Therefore, this PCR application must be denied and dismissed with prejudice.

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

IT IS THEREFORE ORDERED:

1. The application for post-conviction relief be denied and dismissed with prejudice; and
2. Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED this 9 day of Nov, 2018.

MICHAEL G. NETTLES
Presiding Judge
Ninth Judicial Circuit

H20120402912

DOCKET NO. 2012GS1004554

WITNESSES

orth Charleston Police Department

AGENCY CASE NUMBER

12012281

ARREST WARRANT NUMBER

997379

DATE OF ARREST

pril 17, 2012

TION OF GRAND JURY

AUG 07 2012

reperson of Grand Jury

te:

RDICT

Guilty

2/20/14

reperson of Petit Jury Date:

DICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

TORREN MARQUIZ EADY
DOB: [redacted]
B/M

Indictment for

Murder

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on August 6, 2012 the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County on or about April 6, 2012, with malice aforethought, TORREN MARQUIZ EADY did kill and murder Adrian King by means of gunshot to the head, and that Adrian King did die in Charleston County as a proximate result thereof on April 6, 2012; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

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

TIMMY FINCH
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS.)
Torren Marquiz Eady)
AKA:)
Race: BLACK Sex: M Age: 22)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: North Charleston, SC 29405)
DL#: SID#: SC01943155)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS1004554
A/W#: M997379
Date of Offense: 4/6/2012
S.C. Code § : 16-03-0010, 0020
CDR Code #: 0116

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murder

in violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

Finch, Timmy	SC Bar#	Defendant	Attorney for Defendant	SC Bar#

WHEREFORE, the Defendant is commited to the ☑ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 45 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. 624 days
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

*Fine:		$
§ 14-1-206 (Assessments 107.5 %)		$
§ 14-1-211(A)(1) (Conv. Surcharge)	$100	$ 100.00
§14-1-211(A)(2) (DUI Surcharge)	$100	$
§ 56-5-2995 (DUI Assessment)	$12	$
§ 56-1-286 (DUI Breath Test)	$25	$
Proviso 47.9 (Public Def/Prob)	$500	$
§ 14-1-212 (Law Enforce. Funding)	$25	$ 25.00
§ 14-1-213 (Drug Court Surcharge)	$150	$
§ 50-21-114(BUI Breath Test Fee)	$50	$
§ 56-5-2942(J) (Vehicle Assessment)	$40/ea	$
Proviso 90.5 (SCCJA Surcharge)	$5	$ 5.00
3% to County (if paid in installments)		$ 3.98
TOTAL		$ 133.98

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

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

Clerk of Court/ Deputy Clerk Samuel Cusick
Court Reporter: Sharon Vizer-Hanks
Presiding Judge [signature]
Judge Code: 211
Sentence Date: 2/20/14

H20120402912

DOCKET NO. 2012GS1004555

WITNESSES

rth Charleston Police Department

The State of South Carolina

County of Charleston

AGENCY CASE NUMBER

12012281

COURT OF GENERAL SESSIONS

August Term 2012

ARREST WARRANT NUMBER

997380

THE STATE

vs.

DATE OF ARREST

ril 17, 2012

TORREN MARQUIZ EADY
DOB: [redacted]
B/M

TION OF GRAND JURY

TRUE BILL

eperson of Grand Jury

e:

Indictment for

Attempted Murder

RDICT Guilty

2/20/14

eperson of Petit Jury Date:

DICT

552

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on August 6, 2012 the Grand Jurors of Charleston County present upon their oath:

Attempted Murder

That in Charleston County, South Carolina, on or about April 6, 2012, the Defendant, TORREN MARQUIZ EADY, did, with intent to kill and malice aforethought, attempt to kill Garbrielle McCulley. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

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

TIMMY FINCH
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS.)
Torren Marquiz Eady)
AKA:)
Race: BLACK Sex: M Age: 22)
DOB: [redacted] SS#: [redacted])
Address: 1828 Leland Street)
City,State,Zip: North Charleston, SC 29405)
DL#: SID#: SC01943155)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS1004555
A/W#: M997380
Date of Offense: 4/6/2012
S.C. Code § : 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murder / Attempted Murder

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 w/minor 1st or Lewd Act) ☐ §17-25-45

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

Finch, Timmy	SC Bar#	Defendant	Attorney for Defendant	SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 10 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

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

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

Clerk of Court/ Deputy Clerk Darrell Cuny
Court Reporter: Sharon Wizzi-Hobbs
Presiding Judge
Judge Code: 210
Sentence Date: 2/22/14

:H20120402912

WITNESSES

orth Charleston Police Department

AGENCY CASE NUMBER

)12012281

ARREST WARRANT NUMBER

997381

DATE OF ARREST

pril 17, 2012

CTION OF GRAND JURY

TRUE BILL

reperson of Grand Jury

te: AUG 07 2012

ERDICT Guilty

2/20/14

reperson of Petit Jury *Date:*

DICT

DOCKET NO. **2012GS1004556**

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

TORREN MARQUIZ EADY
DOB: [redacted]
B/M

Indictment for

Attempted Murder

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on August 6, 2012 the Grand Jurors of Charleston County present upon their oath:

Attempted Murder

That in Charleston County, South Carolina, on or about April 6, 2012, the Defendant, TORREN MARQUIZ EADY, did, with intent to kill and malice aforethought, attempt to kill Martell Brown. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

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

TIMMY FINCH
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS.)
Torren Marquiz Eady)
AKA:)
Race: BLACK Sex: M Age: 22)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: North Charleston, SC 29405)
DL#: SID#: SC01943155)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS1004556
A/W#: M997381
Date of Offense: 4/6/2012
S.C. Code § : 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murder / Attempted Murder

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 w/minor 1st or Lewd Act) ☐ §17-25-45

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

Finch, Timmy | SC Bar# | Defendant | Attorney for Defendant | SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 10 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

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

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

Clerk of Court/ Deputy Clerk Annual Cusack
Court Reporter: Sharon Vizer-Hanks

Presiding Judge
Judge Code:
Sentence Date: 2/20/14

:H20120402912

WITNESSES

orth Charleston Police Department

AGENCY CASE NUMBER

)12012281

ARREST WARRANT NUMBER

997382

DATE OF ARREST

pril 17, 2012

:TION OF GRAND JURY

TRUE BILL

reperson of Grand Jury

te: AUG 07 2012

:RDICT

2/20/14

reperson of Petit Jury *Date:*

)ICT

DOCKET NO. 2012GS1004557

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

TORREN MARQUIZ EADY
DOB: [redacted]
B/M

Indictment for

Attempted Murder

558

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on August 6, 2012 the Grand Jurors of Charleston County present upon their oath:

Attempted Murder

That in Charleston County, South Carolina, on or about April 6, 2012, the Defendant, TORREN MARQUIZ EADY, did, with intent to kill and malice aforethought, attempt to kill Antione Foster. This is in violation of Section 16-3-29 of the South Carolina Code of Laws (1976) as amended.

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

TIMMY FINCH
ASSISTANT SOLICITOR

560

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS.)
Torren Marquiz Eady)
AKA:)
Race: BLACK Sex: M Age: 22)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: North Charleston, SC 29405)
DL#: SID#: SC01943155)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS1004557
A/W#: M997382
Date of Offense: 4/6/2012
S.C. Code § : 16-03-0029
CDR Code #: 3410

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Murder / Attempted Murder

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 w/minor 1st or Lewd Act) ☐ §17-25-45

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

Finch, Timmy	SC Bar#	Defendant	Attorney for Defendant	SC Bar#

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

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

SPECIAL CONDITIONS:

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

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

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

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

Clerk of Court/ Deputy Clerk Aaron Cuny
Court Reporter: Sharon Vizer-Hanks
Presiding Judge
Judge Code:
Sentence Date: 1/20/14

H20120402912

DOCKET NO. 2012GS1004558

WITNESSES

ırth Charleston Police Department

AGENCY CASE NUMBER

12012281

ARREST WARRANT NUMBER

997383

DATE OF ARREST

ɔril 17, 2012

TION OF GRAND JURY

TRUE BILL

eperson of Grand Jury

te: MAR 07 2012

RDICT

Guilty

2/20/14

eperson of Petit Jury *Date:*

ɔICT

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

August Term 2012

THE STATE

vs.

TORREN MARQUIZ EADY
DOB: [redacted]
B/M

Indictment for

Possession of a Firearm During the Commission of a Violent Crime

561

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on August 6, 2012 the Grand Jurors of Charleston County present upon their oath:

Possession of a Firearm During the Commission of a Violent Crime

That in Charleston County, South Carolina, on or about April 6, 2012, the Defendant, TORREN MARQUIZ EADY, did possess a handgun during the commission, or attempted commission, of murder, a violent crime. This is in violation of 16-23-490 of the South Carolina Code of Laws, (1976) as amended.

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

TIMMY FINCH
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Charleston)
STATE VS.)
Torren Marquiz Eady)
AKA:)
Race: BLACK Sex: M Age: 22)
DOB: [redacted] SS#: [redacted])
Address: [redacted])
City,State,Zip: North Charleston, SC 29405)
DL#: SID#: SC01943155)
*CDL Yes☐ No☐ CMV Yes☐ No☐ Hazmat Yes☐ No☐

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS1004558
A/W#: M997383
Date of Offense: 4/6/2012
S.C. Code § : 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☒ CONVICTED OF or ☐ PLEADS
TO: Possession of a Firearm or Knife During Commission of a Violent Crime

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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

Finch, Timmy	SC Bar#	Defendant	Attorney for Defendant	SC Bar#

WHEREFORE, the Defendant is commited to the ☒ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of 5 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ years
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payment
of $ _____; plus costs and assessments as applicable*; the balance is suspended with **probation** for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____ _____
☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

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

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

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

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

Clerk of Court/ Deputy Clerk Hannah Cuney
Court Reporter: Sharon Vizer-Hanks

Presiding Judge
Judge Code: 2947
Sentence Date: 2/20/14