

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Certiorari to Sumter County

Honorable Brooks P. Goldsmith, Circuit Court Judge

HENRY ONEAL DINGLE, JR.

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2019-001558

APPENDIX

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S.C. SUPREME COURT

INDEX

INDEX	i
GUILTY PLEA TRANSCRIPT DATED APRIL 22, 2016	1
APPLICATION FOR POST-CONVICTION RELIEF	33
RETURN.....	39
POST-CONVICTION RELIEF HEARING TRANSCRIPT JULY 31, 2019.....	46
ORDER OF DISMISSAL	138
INDICTMENTS	154

1 State of South Carolina

2 County of Sumter

3

4 The State of South Carolina, General Sessions Pleas
Plaintiffs

5 2016-GS-43-483-485

2016-GS-43-00524

6 vs.

7 Henry Dingle,
Defendant

April 22, 2016
Sumter, S.C.

8

9

10

11 Before the Honorable George C. James, Jr., Judge.

12

13

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

15 Ms. Bronwyn M. McElveen,
Assistant Solicitor for the State

16

17 Mr. Steven S. McKenzie,
Attorney for Defendant

18

19

20 Margaret T. Sullivan,
Court Reporter

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22

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1 MS. MCELVEEN: Your Honor, this is the
2 State of South Carolina versus Henry Dingle. The
3 first charge under indictment 2016-GS-484, assault
4 and battery by a mob. Indictment 2016-GS-43-0483,
5 failure to stop for a blue light second offense,
6 PWID cocaine base or crack. PWID crack cocaine near
7 a school. Indictment 2016-GS-43-0485, PWID cocaine
8 third offense. And then the newest charge
9 2016-GS-43-0524, Four counts of attempted murder,
10 criminal conspiracy, unlawful carrying of a pistol,
11 and possession of a weapon during the commission of
12 a violent crime.

13 He is here with his attorney, Steve
14 McKenzie. In exchange for his plea, and after
15 speaking multiple times with the police department
16 and sheriff's office, everybody has agreed on
17 allowing Mr. Dingle to plead guilty to these charges
18 with a recommendation or negotiation, or
19 recommendation of 18 and a half years. Knowing that
20 because of their violent and most serious status,
21 he will serve 85 percent. And that's why we came
22 to 18 and half, so that he will serve 15, Your
23 Honor.

24 (Whereupon, the defendant is sworn.)

25 THE COURT: Of the 11 offenses, how many

1 have victims?

2 MS. MCELVEEN: Your Honor, the four
3 attempted murders are the case where the two cars
4 came at each other on Broad Street, and everybody
5 was shooting at each other. Everybody is a victim,
6 everybody is a defendant. Besides that, that is
7 assault and battery of a mob with Reggie Tindal. We
8 have attempted to contact him about the pleas, the
9 differing plea times. And he has never indicated
10 that he wishes to come and attend, Your Honor.

11 THE COURT: Mr. McKenzie, you represent
12 him in all of these cases?

13 MR. MCKENZIE: I do, Your Honor.

14 THE COURT: Do you think he would be
15 convicted if he went to trial?

16 MR. MCKENZIE: Yes, Your Honor. I'll
17 explain that a little later on, and we'll talk about
18 that. But yes, I do.

19 THE COURT: He understands the maximum
20 punishment that he faces on every charge?

21 MR. MCKENZIE: Yes, Your Honor. I think
22 we've added it up. It would be around 270 years if
23 you add them all together.

24 THE COURT: Does he understand the status
25 of some of these as serious, and or most serious

1 under our two and three strikes laws?

2 MR. MCKENZIE: He does, Your Honor. I
3 think we had talked about the attempted murder were
4 most serious offenses. And I am not sure---

5 THE COURT: Proximity might be serious.
6 And all assault and battery by a mob that's not,
7 because that's third degree.

8 MR. MCKENZIE: That's not. It's a---

9 MS. MCELVEEN: The PWID cocaine base third
10 offense, and the proximity charge, and the PWID
11 cocaine are also serious as well.

12 THE COURT: Does he understand what the
13 State has to prove, all of his rights, and the
14 punishment that he faces?

15 MR. MCKENZIE: Your Honor, I've been
16 through -- we have had, he and I have had extensive
17 and exhausted discussion in regards to all these
18 charges. And he believes it's in his best interest,
19 and I do too, that he takes this plea offer, and
20 pleads guilty.

21 THE COURT: Is he competent?

22 MR. MCKENZIE: He is, Your Honor.

23 THE COURT: Is there any dispute between
24 the two sides about how much credit he will get?

25 MR. MCKENZIE: No, Your Honor. He's been

1 incarcerated since the December incident with the
2 shooting on Broad Street incident. He's been
3 incarcerated since January 5th.

4 THE COURT: Of this year.

5 MR. MCKENZIE: Yes, sir.

6 THE COURT: Mr. Dingle, I am going to ask
7 you some questions today to make sure you enter
8 these pleas freely, voluntarily, knowingly and
9 intelligently. If you would like to stop and speak
10 with your lawyer as we go, or if you hear someone
11 say something you don't understand, if you don't
12 agree with it, let him know, and we'll stop and you
13 can get any misinformation or any confusion
14 clarified, okay.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Okay, you need to speak up.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: You are 21 years old?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: How far did you go in school?

21 THE DEFENDANT: I graduated.

22 THE COURT: What school?

23 THE DEFENDANT: Traveler's Rest High.

24 THE COURT: So you're from the upstate?

25 THE DEFENDANT: No, that's where I

1 graduated at. It was in my last couple of years in
2 high school.

3 THE COURT: Do you have any history of
4 mental problems?

5 THE DEFENDANT: No, sir.

6 THE COURT: Do you have any drug or
7 alcohol addictions?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you take medicine for
10 anything?

11 THE DEFENDANT: No, sir.

12 THE COURT: Are you supposed to?

13 THE DEFENDANT: No, sir.

14 THE COURT: Do you have any condition at
15 all today that would keep you from understanding
16 what you're doing?

17 THE DEFENDANT: No, sir.

18 THE COURT: I am going to go over these
19 indictments in numerical order, and by the way,
20 you're not on probation or parole, are you?

21 THE DEFENDANT: I'm on YOA parole.

22 THE COURT: You are?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that if
25 these pleas, if you go through with these pleas

1 today, that could result in a revocation of your YOA
2 parole?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: What are you on parole for?

5 MR. MCKENZIE: Cocaine, Your Honor. Or
6 possession of cocaine.

7 THE COURT: Mr. Dingle, the indictment
8 that ends in the 483, has 3 counts to it. One says
9 that on March 24th 2015, you were driving a vehicle
10 on the highways of this State here in Sumter County,
11 you failed to stop when you were signaled to stop by
12 a law enforcement vehicle using a siren or a
13 flashing light. That's up to 3 years in prison. Do
14 you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Count 2 says that on or about
17 the same date, you possessed a quantity of crack
18 cocaine with the intent to distribute it. Do you
19 understand that charge?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Well the blue light was
22 actually a second offense. Do you understand that
23 that that carries up to 5 years?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: The PWID crack cocaine.

1 MR. MCKENZIE: It's a third offense, Your
2 Honor.

3 THE COURT: A third offense carries from
4 10 to 30 years. Do you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: The last count on that
7 indictment says you engaged in that offense within
8 one half mile of Morris College. That carries up to
9 10 years. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: The two drug offenses on this
12 indictment are what are called serious offenses
13 under our three strikes law. And what that means
14 is, is if you get convicted of three serious
15 offenses, or 2 most serious offenses, you could be
16 facing life without parole. Do you understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Indictment 484 alleges that on
19 about October 22, 2015, you and at least one other
20 person committed a assault and battery on Reggie
21 Tindal. Do you understand that charge and that it
22 carries up to one year in prison?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Indictment No. 485 alleges
25 that on or about November 20, 2015, that you did

1 possess a quantity of crack cocaine with the intent
2 to distribute it. And that is also styled as a
3 third offense which carries 10 to 30 years. Is that
4 clear?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: That is also a serious offense
7 under the three strikes law. Do you understand
8 that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Incident 524 has several
11 counts to it. Six I believe, is that right?

12 MS. MCELVEEN: Six, Your Honor. But he is
13 -- in exchange for his plea, we are dismissing
14 possession of a weapon during the commission of a
15 violent crime, so he can avoid that 5-year add on
16 tag.

17 THE COURT: Count 1, Count 2, and Count 3
18 and Count 4, are all attempted murder counts. Those
19 counts collectively say that on or about December
20 29th 2015, you did with the intent to kill, attempt
21 to kill, a person named Eric Phillips, a person
22 named Rodriques Lewis, a person named Jaquan Wells,
23 and a person named Rominque Lewis Brand, by shooting
24 at them, or at the car in which they were located.
25 Do you understand those four charges?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Those individually carry a
3 possibility up to 30 years in prison per count. Do
4 you understand that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Those are also classified as
7 most serious offenses, which means that under that
8 law if are you convicted of one, and then get
9 charged with another most serious, you can be facing
10 life without parole. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Count 5 on that indictment,
13 alleges that on or about that same date 12/29/15,
14 you and William Jerquez Spann consider to commit the
15 offense of attempted murder. Do you understand that
16 charge?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: That also carries, is that a
19 30-year offense or a 5-year?

20 MS. MCELVEEN: That's a 5-year offense,
21 Your Honor.

22 THE COURT: Do you understand that's a
23 5-year offense?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And lastly on that indictment

1 Count 6, says that on about the same date you did
2 unlawfully carry a pistol. That carries up to a
3 year, is that clear?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Do you understand that when
6 you enter this pleas today, or these pleas today,
7 you give up the right to remain silent?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You also give up the right to
10 have jury trials. I would assume there would be
11 several different jury trials on these several
12 different indictments. But all and all the jury is
13 a group that you and your lawyer and the prosecutor
14 would pick. Do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: The jury once it is seated and
17 sworn, is told you are presumed innocent. You don't
18 have to prove or disprove anything. You can't be
19 convicted unless all 12 jurors are convinced beyond
20 a reasonable doubt that you are guilty. And
21 Ms. McElveen has that burden. You don't have a
22 burden at all. Is that clear?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: But when you plead guilty, you
25 also give up the right to look at, listen to and

1 question any and all witnesses. That would include
2 state's witnesses and your own witnesses, is that
3 clear?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Have you understood everything
6 we've been over so far?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: As far as the PWID third
9 offense on Indictment 483 with the offense date of
10 March 24, 2015, are you guilty or not guilty?

11 THE DEFENDANT: Guilty.

12 THE COURT: Failure stop to blue on that
13 date, are you guilty or not guilty?

14 THE DEFENDANT: Guilty.

15 THE COURT: Possession of crack cocaine
16 with the intent to distribute within a half mile of
17 Morris College, guilty or not guilty?

18 THE DEFENDANT: Guilty.

19 THE COURT: Indictment 484, assault and
20 battery by a mob in the third degree, guilty or not
21 guilty?

22 THE DEFENDANT: Guilty.

23 THE COURT: Indictment 485 PWID cocaine,
24 guilty or not guilty?

25 THE DEFENDANT: Guilty.

1 THE COURT: Indictment 524 attempted
2 murder of Eric Phillips, guilty or not guilty?

3 THE DEFENDANT: Guilty.

4 THE COURT: Attempted murder of Rodriques
5 Lewis, guilty or not guilty?

6 THE DEFENDANT: Guilty.

7 THE COURT: Attempted murder of Jaquan
8 Wells, guilty or not guilty?

9 THE DEFENDANT: Guilty.

10 THE COURT: Attempted murder of Rominique
11 Lewis Brand, guilty or not guilty?

12 THE DEFENDANT: Guilty.

13 THE COURT: Criminal conspiracy, guilty or
14 not guilty?

15 THE DEFENDANT: Guilty.

16 THE COURT: Unlawful carrying of a pistol,
17 guilty or not guilty?

18 THE DEFENDANT: Guilty.

19 THE COURT: Are you truly guilty of all of
20 those that you pled to today?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Do you understand you are
23 giving up all your defenses, and you're giving up
24 the right to challenge the admissibility of all
25 evidence?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Has anybody promised you
3 anything to get you to plead guilty?

4 THE DEFENDANT: No, sir.

5 THE COURT: Has anyone, that would include
6 Mr. McKenzie, or the police or a prosecutor or
7 anybody in the world, used any threat pressure or
8 force to get you to plead guilty?

9 THE DEFENDANT: No, sir.

10 THE COURT: Have you had enough time to
11 make up your mind?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Has Mr. McKenzie represented
14 you to your satisfaction?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you think he has done
17 everything he can do within reason to represent you
18 properly?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you had a chance to talk
21 to him enough about all these cases?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Have you all discussed
24 possible defenses and any other things that all
25 wanted to explore to see if they might benefit you?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Mr. McKenzie, are you
3 satisfied with the discovery that has been produced
4 in all these cases?

5 MR. MCKENZIE: I am, Your Honor. I have
6 had extensive discovery presented to me through the
7 solicitor's office on all indictments, and all the
8 charges that he is pleading to. It is very
9 voluminous and very extensive in regards to what it
10 proves and what it shows me that they can prove; the
11 State can prove in this case.

12 THE COURT: You have 10 days to appeal
13 these pleas and the sentences. Do you understand
14 that?

15 THE DEFENDANT: Yes, sir.

16 MS. MCELVEEN: Your Honor, regarding the
17 indictment ending in 483, on March 24th of 2015 in
18 the morning, officers with the Sumter County
19 Sheriff's office, observed a white 2015 Chevy Cruse
20 traveling South on US 15 in Sumter County, following
21 too closely. Officers initiated a traffic stop, and
22 the vehicle sped up, making a right on to Pointsett.
23 The officer turned on his blue lights and sirens,
24 and the vehicle took off at a high rate of speed,
25 ignoring them. The vehicle made a right turn on to

1 North Main Street, sliding through the stop sign,
2 then drove through the grass lot at the intersection
3 of Stark Street, before pulling into a yard at the
4 corner of Stark and Brown, and fleeing from the
5 vehicle on foot.

6 Officers conducted a foot chase, and
7 caught up with Mr. Dingle, this defendant, near the
8 Legree Street, deployed his taser, striking him in
9 the back. Then the officer got on Dingle's back
10 and observed him trying to eat something in a clear
11 baggy. The officer had to tase Mr. Dingle several
12 more times, because he kept trying to get up.
13 Mr. Dingle kept trying to get up. Get up. Other
14 officers arrived, and assisted helping making
15 Dingle, helping the officer arrest him, and made
16 Dingle spit out of the items out of his mouth. Two
17 bags were recovered. One had trace amounts of
18 cocaine, and the other bag that was half chewed,
19 contained 3.24 grams of cocaine base or crack.

20 Mr. Dingle at that point stated several
21 times that he was going to die. EMS responded, and
22 transported him to the ER. Cash received from his
23 pocket, along with a Motorola cell phone that was
24 found underneath him. The drugs were tested on
25 March 25th 2015, and came back as I indicated as

1 crack cocaine base or crack, 3.24 grams.

2 THE COURT: Let me ask him this first.

3 That happened in Sumter County.

4 MS. MCELVEEN: Within a half mile of
5 Morris College.

6 THE COURT: Is all that correct, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: The next indictment October
9 22, 2015, officers responded to [REDACTED] Miller Road in
10 reference to shots being fired. The law enforcement
11 found the victim Reggie Tindal who had just been
12 assaulted by three suspects. One of the unknown
13 subjects had fired multiple gunshots into the air,
14 before the three of them seen getting into a blue
15 Hyundai Accent. Officers -- and leave the apartment
16 complex. There was some sort of verbal
17 altercation. And Mr. Tindal was asked by the people
18 in the car whether he knew who they were. He told
19 them that he did not know who they were. They had
20 been locked in the -- the person in the car said
21 that we have been locked up together 2 weeks ago,
22 and come here. And when he walked over to the car,
23 one of the gentleman in the car got in his face, and
24 said, y'all remember me when I do this. And swung
25 at him. He was able to avoid the punch, but at that

1 point, subject No. 1 identified as this defendant,
2 Henry Dingle, pushed him from behind, where suspect
3 No. 2, Suspect No. 2 reached into waistband and
4 pulled out a firearm. And he basically --
5 Mr. Tindal evidently hit the gun out of his hand,
6 and it went across the the roof of the vehicle. And
7 then at that point everybody started hitting him,
8 and punching him in the face. They got into a
9 headlock and dropped him. And continued to jump
10 him. He was stomped multiple times. And there were
11 witnesses at that point. Defendants left. One of
12 them pulled out a gun and fired multiple shots into
13 the air.

14 Officers observed a blue Hyundai Accent
15 unoccupied in the parking lot of America's Best Inn
16 here in the City of Sumter. Officers observed an
17 individual matching the description of one of the
18 individuals involved in the altercation. He has
19 identified as Mr. Dingle. He refused to stop, and
20 took off on foot heading towards the Kmart parking
21 lot. Officers located him underneath a pickup on
22 the back side of Palmetto Towers. And Mr. Dingle
23 was later positively identified by a witness and
24 another witness during a show up, as one of the
25 suspects from the assault.

1 A K-9 was employed, and recovered cash
2 that Mr. Dingle had dropped in the amount of \$6,620
3 from his person.

4 THE COURT: He dropped it where?

5 MS. MCELVEEN: During, I guess while he
6 was running, Your Honor.

7 THE COURT: Mr. Dingle, are all those
8 facts correct?

9 THE DEFENDANT: Yes, sir. Well the fact
10 that the money was -- some of the money was dropped.
11 Most of it was found in my pocket.

12 THE COURT: I got you. Why were you all,
13 what did you all have against Mr. Tindal?

14 THE DEFENDANT: It was a story that was
15 kind of fabricated. He didn't tell all the truth
16 that A bunch of people jumped on him. It was me and
17 him got into an argument, and we started, you know,
18 we got into an altercation. Nobody else touched
19 him. He just told the pol -- I don't know why he
20 told the police.

21 THE COURT: Why did you all get into an
22 altercation?

23 THE DEFENDANT: Because he had supposed to
24 owe me some money.

25 THE COURT: Did you struck him?

1 THE DEFENDANT: Yes, sir. I didn't strike
2 him first.

3 THE COURT: All right.

4 MS. MCELVEEN: Yes, sir. The indictment
5 ending in 485, November 20, 2015, at approximately
6 3:15 in the morning while conducting a license
7 safety check point on Pike Road, here in the City of
8 Sumter, officers saw a silver Chevy Malibu stop in
9 the roadway, back up and turn right into the parking
10 area of the America's Best Value Inn without using a
11 turn signal. Officers drove to the parking lot and
12 observed Mr. Dingle get out of the passenger side of
13 the vehicle, and began walking down the sidewalk
14 towards the main office.

15 The officers also watched him drop an
16 unknown object later identified as a marijuana
17 cigar, and they made contact with him, saw the
18 cigar, the marijuana cigar, or suspect marijuana
19 cigar, and detained him. The cigar was collected.
20 Officers asked him who was driving the vehicle. And
21 Mr. Dingle stated that the driver ran, and pointed
22 to the wood line. They were able to detain the
23 second individual. He was in the vehicle. An
24 inventory, I'm sorry. An inventory of the vehicle
25 revealed a clear plastic baggy of cocaine powder in

1 the shift boot area. The shifter area, which was
2 seized by officers. There were also 3 cell phones
3 seized, and \$2,204 in currency.

4 The drugs were submitted into a best kit,
5 and were tested. And they came back 1.35 grams of
6 cocaine. Which is over the one gram limit for
7 permissive inference of possession with intent to
8 distribute, Your Honor.

9 THE COURT: Are all those facts correct,
10 sir?

11 THE DEFENDANT: Yes, sir.

12 MS. MCELVEEN: And then, Your Honor,
13 regarding the Indictment ending in 524, I think
14 you've heard many of the bond hearings on this case
15 this week. But December 29th 2015, at approximately
16 9:40 in the morning, officers first heard about a
17 set of shots fired on Miller Road near the UPS
18 headquarters in Sumter. Eleven thirty-four that
19 morning there was another reference of shots being
20 fired at Poplar Square Apartments. At 2:30 p.m.
21 another call of shots fired at Main Street in the
22 City of Sumter. Finally, at 3:30 p.m. law
23 enforcement responded to Frazier Street in reference
24 to shots fired in a two vehicle collision. There
25 was a white Nissan Altima and a Kia Amonte who had

1 rammed into each other head on. Basically both
2 vehicles sustained front end damage, and the
3 collision was from two cars driving down the road
4 and firing shots at each other. Both set of cars
5 were firing at each other. It was allegedly over
6 drug territory.

7 Officers set up a parameter and began
8 searching for subjects. Using a K-9, they were able
9 to locate the four individuals in I believe the Kia:
10 Eric Phillips, Rominique Lewis Brand, Rodriques
11 Lewis and Jaquan Wells. A witness identified them
12 as being the suspects that fled, I'm sorry, from the
13 Altima. They were in the Altima. And then further
14 investigation after speaking with them, revealed
15 that Henry Dingle, this defendant, was the driver of
16 the Kia, the other car. And William Jerquez Spann
17 was the passenger. And the owner of the Kia stated
18 that he had given his vehicle Mr. Dingle to drive.

19 A 44 Magnum Ruger handgun was located in
20 a wooded area near Milton and Brunson Street. There
21 were multiple unspent bullets. There were bullet
22 casings. There were 380 caliber shell casings, 40
23 shell casings, 9 millimeters, one box of Winchester
24 410 rounds, which shows there is some sort of
25 criminal conspiracy, some sort of plan had been in

1 place to shoot at each other, and try to claim some
2 sort of drug territory allegedly.

3 THE COURT: What kind of gun were you
4 shooting?

5 THE DEFENDANT: Pardon?

6 THE COURT: What kind of gun were you
7 shooting?

8 THE DEFENDANT: A 44 Magnum.

9 THE COURT: Go ahead.

10 MS. MCELVEEN: Your Honor, as you can tell
11 he, Mr. Dingle had a gun, everybody had a gun, Your
12 Honor, unfortunately.

13 THE COURT: Nobody got hit with all
14 that---

15 MS. MCELVEEN: No.

16 THE COURT: ---lead flying around?

17 MS. MCELVEEN: Thank goodness nobody got
18 hit.

19 THE COURT: And why were you doing that?

20 THE DEFENDANT: I didn't mean to
21 intentionally. They came -- they just came and
22 started shooting at me. So,---

23 THE COURT: Well do you want to stop now
24 and you all assert self defense? I've got -- you
25 were firing a weapon at who, those four people?

1 THE DEFENDANT: I am not sure who was in
2 the car.

3 THE COURT: Why did you have a gun in the
4 first place?

5 THE DEFENDANT: You know, for no
6 particular reason.

7 THE COURT: Well you were driving.

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Did you all hit head on?

10 THE DEFENDANT: Yes, sir. Well they ran
11 in the car -- the car, they ran into us.

12 THE COURT: Well, Mr. McKenzie, does he
13 want to go forward with this?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Are you guilty?

16 THE DEFENDANT: Yes, sir.

17 MS. MCELVEEN: Your Honor, it's kind of
18 tough because everybody in this is a victim, and
19 everybody is a defendant.

20 THE COURT: Is this all over drug
21 territory?

22 THE DEFENDANT: No, sir.

23 THE COURT: What was it about?

24 THE DEFENDANT: It was about something
25 that somebody else stole something from them. It

1 wasn't even involving me. Well something else stole
2 something from them. And they came to their house
3 looking, and I just so happened to be around the
4 area around the time.

5 THE COURT: You just happened to be there?

6 THE DEFENDANT: Yeah, I wasn't involved in
7 what was stolen. But when they came on the street,
8 they end up shooting, and they end up shooting at
9 me.

10 THE COURT: Go ahead, Ms. McElveen, any
11 additional facts?

12 MS. MCELVEEN: Well just that his
13 co-defendant, Mr. William Jerquez Spann, admitted
14 that he -- that this defendant had told him that one
15 of the occupants in the vehicle had shot at
16 Mr. Spann, his friend, with whom he was in the car.
17 And his co-defendant also put Mr. Dingle in the car
18 with him at the time of this shooting, with a gun.
19 And so they did according to our evidence, and our
20 State's position is that, they did go out there with
21 the intention of killing and or, killing these
22 people where shots were fired previously in the day.
23 This happened in the City of Sumter. And
24 I believe that's the end of the facts on that, Your
25 Honor.

1 THE COURT: His record.

2 MS. MCELVEEN: His record, Your Honor, a
3 2003 possession of crack. A July 2012---

4 THE COURT: In 2003, he was 8 years old?
5 I've got him as 21 years old.

6 MS. MCELVEEN: I don't know. Maybe that's
7 senior. I have a sentencing sheet from that, but
8 maybe it was senior.

9 THE COURT: Do you have a father named
10 Henry O'Neal Singleton?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Is he in prison?

13 THE DEFENDANT: No, sir.

14 MS. MCELVEEN: We don't need to use that
15 one for enhancement purposes. It's outside of
16 10 years anyways. July 2012, possession of a stolen
17 pistol. And then also manufacturing or distribution
18 to cocaine base first offense. November 2012,
19 larceny of bicycles. April 2013, leaving the scene
20 of an accident and driving without a license.
21 April 2013, manufacturing or distribution of cocaine
22 base. Also April of 2013, failure to stop for a
23 blue light. July 2013, possession of a stolen
24 weapon. December of 2014, distribution of cocaine
25 base and failure to stop for a blue light.

1 March 2015, driving under suspension. September
2 2015, DUI first offense, and driving under
3 suspension. And that is Mr. Dingle's criminal
4 history, Your Honor.

5 THE COURT: Is all that correct?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: And you understand that you
8 negotiated a sentence with the State that would
9 impose several all concurrent sentences. The
10 maximums of which would be 18 and a half years. The
11 other ones where the sentencing range is less than
12 that, would be the maximum sentence. In other
13 words, the sentences are equivalent to an 18 and a
14 half year sentence less what's you've already done.
15 Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: If I don't think that's an
18 appropriate sentence, I will allow you to withdraw
19 your plea. Mr. McKenzie.

20 MR. MCKENZIE: Thank Your Honor. Your
21 Honor, as you can probably tell, the problem that we
22 had or I had defending this case from the very
23 beginning is that, if we win the attempted murder
24 case, all 4, for example, then we're still looking
25 at two counts of PWID cocaine, in which he is going

1 to serve if he gets either one of those, 10 to 30
2 years, depending upon what Your Honor or another
3 judge may sentence him to. And he also that's still
4 going to be 85 percent, because it is a sentence
5 that carries greater than -- it's a third offense,
6 it carries greater than 20 years.

7 So even if he, he was lucky enough to and
8 fortunate enough to get away with one or all of
9 these attempted murder cases, the assault by mob
10 case, we're still facing two different counts of
11 possession with intent distribute third offense.
12 And the one case of the indictment ending in 483,
13 that's the one where he was actually, they signaled
14 him to stop for a traffic violation and he took off
15 in his car. And they found 3 and a half -- almost 3
16 and half grams of cocaine in his mouth after he ran
17 from the police. So that was going to be a very
18 difficult case to beat. I talked to Mr. Dingle
19 about all of these charges, about what he was
20 facing. We've had extensive conversations about
21 what's in his best interest to do. He's admitted
22 that he was involved in all these crimes to me.
23 And, Your Honor, we'd Your Honor to take the
24 negotiated plea.

25 THE COURT: Mr. Dingle, is there anything

1 you would like to tell me?

2 THE DEFENDANT: Yes, sir. First, I just
3 want to apologize to myself for doing this to
4 myself. And I want to apologize to the court for
5 being in this court. And I ain't no bad person.
6 You know, I made some mistakes. I don't feel like,
7 you know, like I should be in jail all my life. I
8 got kids and all that. And I ain't no bad person.
9 I just want to ask for some mercy and some leniency,
10 if you can, so I can at least be out and raise my
11 kids. My kids will be grown. And I can instill
12 some morales and values in their life, so they won't
13 go down and make some of the same mistakes I made.
14 Because I ain't no bad person. I just, some of the
15 circumstances and situations was there, and I didn't
16 mean to do all this, and none of this stuff would
17 happen.

18 THE COURT: Mr. McKenzie, does he want to
19 back away? Because the leniency, I certainly can't
20 give him anything less than 18 and a half years.

21 MR. MCKENZIE: No, sir. He understands
22 that all you can give is 18 and a half years.

23 THE COURT: Do you understand that?

24 THE DEFENDANT: Yes, sir.

25 MR. MCKENZIE: If he takes this plea is

1 all he can. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Well I wish you weren't here
4 too. I really do. You're going to be -- you're
5 going to miss the rest of your 20's. And then you
6 will be in your mid 30's when you get out. And I
7 sure am sorry. I really am. I wish something else
8 could be done. But young folks and guns, young
9 folks and drugs, nothing ever -- nothing good ever
10 happens.

11 Indictment 483, all concurrent all of
12 these sentences will be concurrent. I will accept
13 all the pleas. Entered freely, voluntarily,
14 knowingly and intelligently. He is satisfied with
15 his attorney. He certainly well should be. He's
16 done a good job for you. There is a sufficient
17 factual basis for all. I count 11 pleas.

18 Indictment 483 on the PWID third, 18 and a
19 half years. And all these, you will get credit for
20 all the time you've done. Failure to stop for a
21 blue light second offense, 5 years. Distribution of
22 or PWID within a half mile of Morris College, 10
23 years. Indictment 484, assault and battery by a
24 mob, one year. Indictment 485 PWID cocaine, 18 and
25 a half years. Indictment 524 unlawfully carrying a

1 pistol, one year. Criminal conspiracy, 5 years.

2 And the 4 counts of attempted murder, 18 and a half
3 years a piece.

4 I hope that you can make some use of
5 yourself while you're in prison. And I certainly do
6 wish you well there and once you get out. Any
7 questions? Thank you, sir. Good luck to you.

8 ----End of Requested Transcript of Record---

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1 C-E-R-T-I-F-I-C-A-T-E

2

3 I, Margaret T. Sullivan, Court Reporter,
4 for the Third Judicial Circuit of the State of South
5 Carolina, do hereby Certify that the foregoing is a
6 true, accurate and complete Transcript of Record of
7 the proceedings had and evidence introduced in
8 General Sessions Court, on April 22, 2016, in Sumter
9 County, Sumter, South Carolina.

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

12

13 6/15/17

Margaret T. Sullivan

14 DATE

COURT REPORTER

My Commission expires: 9/7/21

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RECORDED

2017 APR 10 PM 3:55

STATE OF SOUTH CAROLINA

County of SumterJAMES C. CAMPBELL
CLERK OF COURT
SUMTER COUNTY, S.C.

2017-CP-43-642

Henry O'neal Dingle, Jr. #356021*Full name and prison number (if any) of Applicant,*

vs.

State of South Carolina*Name of Respondent.*APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence IN THE COURT OF GENERAL SESSIONS, FOR SUMTER COUNTY
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2016-GS-43-0524 - (four (4) counts of attempted murder)
 - (b) Drugs, M&D, Narcotic schedule 1b - 2016-GS-43-0485
 - (c) 2016-GS-43-0524 - Criminal Conspiracy
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) April 22, 2016 - Eighteen and One (18 1/2) years - concurrent
 - (b) April 22, 2016 - Ten (10) years - concurrent
 - (c) April 22, 2016 - Five (5) years - concurrent
 - (d) April 22, 2016 - (5) Five years - concurrent
 - (e) April 22, 2016 - 1 (One) year - concurrent
 - (f) April 22, 2016 - five (5) years concurrent
 - (g) April 22, 2016 - Eighteen and a half (18 1/2) years concurrent
 - (h) April 22, 2016 - five (5) years concurrent

Attachment to page 1, Line 3.

- (d). 2016-GS-43-0524 - unlawful carrying
- (e). 2016-GS-43-0484 - assault and battery 3rd degree
- (f). 2016-GS-43-0524 - possession of a weapon during a violent crime.
- (g). 2016-GS-43-0483 - Drugs PWID.
- (h). 2016-GS-43-1883 - Failure to stop for a blue-light.

5. Check whether a finding of guilty was made

(a) ☒ after a plea of guilty

(b) after a plea of not guilty

(c) after a plea of nolo contendere

6. Did you appeal from the judgment of conviction or the imposition of sentence?

N/A

7. If you answered "yes" to (6), list

(a) the name of each Court to which you appealed:

i. _____

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. _____

ii. _____

iii. _____

(c) the date of each such result:

i. _____

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of counsel

(b) Ineffective assistance of counsel

(c) Ineffective assistance of counsel

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) Failure to investigate potentially exculpatory evidence

(b) Failure to discover potentially exculpatory evidence

(c) Failure to have a negotiated plea for five (5) years enforced.

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina Law? No
- (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
- (d) any other petitions, motions or applications in this or any other Court? No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No.

13. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) Initial Post-Conviction Action
- (b) Initial Post-Conviction Action
- (c) Initial Post-Conviction Action

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you:

- i. Steven S. McKenzie, 2 North Brooks Street
P.O. Box 1292, Manning SC 29102
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. Arraignment
- ii. Sentencing
- iii. Conviction and sentence

18. State clearly the relief you seek in filing this application.

Vacate sentence and conviction - grant new trial.

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

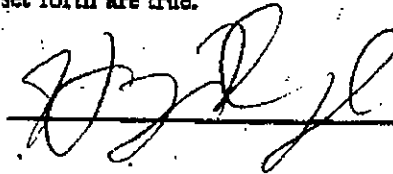
No

STATE OF SOUTH CAROLINA

County of Sumter

VERIFICATION

I, Henry Dingle, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.


SWORN to and subscribed before me this 07day of April, 19 2017

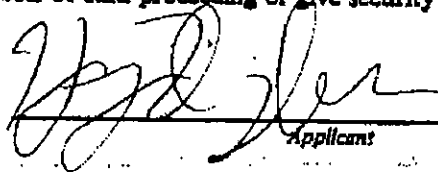
Franklin (L.S.)
Notary Public

My Commission Expires: 12-16-2019

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

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

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



Applicant

SWORN or affirmed to and subscribed before me this

07 day of April, 19 2017

Franklin
Notary Public

My Commission Expires 12-16-2019

STATE OF SOUTH CAROLINA
COUNTY OF SUMTER

IN THE COURT OF COMMON PLEAS
THIRD JUDICIAL CIRCUIT

Henry Oneal Dingle, Jr., #356021,

Case No.: 2017-CP-43-642

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

The State (Respondent), making its Return to the application for Post-Conviction Relief filed on April 10, 2017, would respectfully show this Court:

I.

Henry Oneal Dingle, Jr. (Applicant) is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Sumter County Clerk of Court. In April 2016, the Sumter County Grand Jury indicted Applicant for third degree assault and battery by a mob (2016-GS-43-0484), failure to stop for a blue light, second offense, possession with intent to distribute cocaine base or crack, possession with intent to distribute crack cocaine near a school (2016-GS-43-0483), possession with intent to distribute cocaine, third offense (2016-GS-43-0485), four counts of attempted murder, criminal conspiracy, unlawful carrying of a pistol, and possession of a weapon during the commission of a violent crime (2016-GS-43-0524).

The indictments arose from an incident occurring on March 24, 2015, when, after observing a traffic violation, law enforcement officers initiated a traffic stop on a white Chevy Cruze driven by Applicant, and Applicant refused to stop and instead drove off at a high rate of speed. Tr. 15. Applicant slid through a stop sign, pulled into a yard, and fled from the vehicle on

foot. Tr. 16. After a foot chase, the officers apprehended Applicant within a half mile of Morris College and found on him as they arrested him two bags that he was attempting to chew and swallow containing cocaine and 3.24 grams of cocaine base or crack. Tr. 16.

In another incident which occurred October 22, 2015, when a victim got into an altercation with Applicant and two other men, who physically beat the victim and fired shots into the air. Tr. 18. Additionally, on November 20, 2015, law enforcement officers observed Applicant get out of a car and walk away, dropping a marijuana cigarette. Tr. 20. The driver of the car ran away and was apprehended by law enforcement. Tr. 20. An inventory of the vehicle revealed a bag of 1.35 grams of cocaine powder, three cell phones, and \$2,204 in cash. Tr. 20-21. Finally, on December 29, 2015, law enforcement responded to a scene where Applicant was involved in a head on vehicle collision, where two cars were driving towards each other, shooting at each other in a dispute over drug territory. Tr. 21-22. Applicant was the driver of one of the vehicles, and there was a passenger in the front seat. Tr. 22.

Steven S. McKenzie, Esquire, represented Applicant. Assistant Solicitor Bronwyn McElveen, Esquire, prosecuted the case. On April 22, 2016, Applicant pled guilty as indicted to all charges before the Honorable George C. James, Jr. Pursuant to a negotiated sentence, Judge James sentenced Applicant to imprisonment for concurrent terms of eighteen years and six months for each charge of attempted murder, five years criminal conspiracy, one year for unlawful carrying of a pistol, eighteen years and six months for possession with intent to distribute cocaine case, third offense, ten years for possession with intent to distribute crack cocaine near a school, five years for failure to stop for a blue light, second or subsequent offense, one year for third degree assault and battery by a mob, and eighteen years and six months for possession with intent to distribute cocaine, third offense. Applicant did not appeal his

conviction or sentence.

Attached to this Return and incorporated by reference are the records of the Sumter County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, and the application. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

- I. Ineffective Assistance of Counsel
 - a. Failure to investigate potentially exculpatory evidence
 - b. Failure to discover potentially exculpatory evidence
 - c. Failure to have a negotiated plea for five years enforced

III.

Applicant alleges ineffective assistance of counsel. Respondent submits Applicant's allegations of ineffective assistance of counsel are without merit. In a PCR action, Applicant bears the burden of proving the allegations in his 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, 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 v. Washington, 466 U.S. 668 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

In evaluating allegations of ineffective assistance of counsel, the reviewing court applies the two-pronged test outlined in Strickland v. Washington, 466 U.S. 668. First, 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 the 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. With respect to guilty plea counsel, Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pleaded guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985).

Respondent submits Applicant can satisfy neither requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant must specify any claims he intends to raise at the PCR evidentiary hearing. Any claims not specifically laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing pursuant to §§ 17-27-10 to -160 of the South Carolina Code of Laws and Rule 71.1 of the South Carolina Rules of Civil Procedure. See also Rules 15(a)-(b), SCRCP. All claims should be made well in advance of the evidentiary hearing. Because Applicant has been appointed an attorney, the attorney, and not Applicant, is the only

individual authorized to file amendments to this application. See Rule 11, SCRCP. Pro se filings will not be considered at the PCR hearing. Respondent reserves the right to request that any amendments withheld until the last minute be stricken because of undue prejudice to Respondent. See Rule 15(a), SCRCP.

V.

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

VI.

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

[signature page to follow]

VII.

WHEREFORE, Respondent requests that an evidentiary hearing be held on the claims of ineffective assistance of plea counsel.

Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

JULIE A. COLEMAN
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

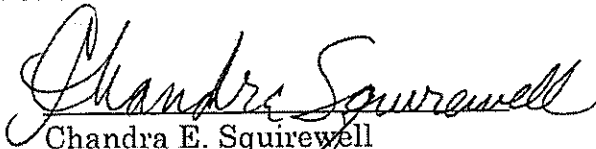
February 13, 2018

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF SUMTER	)	
	)	
	)	2017-CP-43-0642
HENRY DINGLE, JR., #356021	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	
_____	)	

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

Lance S. Boozer, Esquire
 1400 Laurel Street, Suite 4A.
 Columbia, SC 29201

DATED this 13TH day of February, 2018.


 Chandra E. Squirewell
 Legal Assistant For Respondent

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF SUMTER)

COURT OF COMMON PLEAS
2017-CP-43-00642

3
4 Henry O'Neal Dingle,)

5 Plaintiff,)

6 vs.)

7 State of South Carolina,)

8 Defendant.)

TRANSCRIPT OF RECORD

9 July 31, 2019
10 Sumter, South Carolina

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12
13 B E F O R E :

14 THE HONORABLE BROOKS P. GOLDSMITH, JUDGE.
15

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

18 JAMES K. FALK, ESQ.
Attorney for the Plaintiff

19 JANELL H. GREGORY, ASSISTANT ATTORNEY GENERAL
20 Attorney for the Defendant

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25 DEBORAH M. McCURDY, RPR
Official Court Reporter

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Direct By Mr. Falk	11
Cross By Ms. Gregory	34
Redirect By Mr. Falk	44

Direct By Mr. Falk	47
Cross By Ms. Gregory	62
Redirect By Mr. Falk	73

Direct By Mr. Falk 76

Direct By Ms. Gregory 81

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JULY 31, 2019

THE COURT: Whenever you are ready.

MS. GREGORY: May it please the Court, Your Honor? Before you is Henry Dingle, Case Number 2017-CP-43-642.

In April of 2016, Mr. Dingle was indicted by the Sumter County Grand Jury for third degree assault and battery by mob; failure to stop for a blue light, second offense; possession with intent to distribute cocaine base or crack; possession with intent to distribute cocaine, third offense; four counts of attempted murder; criminal conspiracy; unlawful carrying of a pistol; and possession of a weapon during the commission of a violent crime.

On April 22nd, 2016, Mr. Dingle appeared before Judge James and pled guilty as indicted on all charges.

In exchange for his plea, the State dismissed the possession of a weapon during the commission of a violent crime charge. And pursuant to a negotiated sentence, Judge James sentenced Mr. Dingle to 18 and a half years on the attempted murder charge; five years on the criminal conspiracy charge; one year for unlawful carrying

1 of a pistol; 18 and a half years for PWID cocaine,
2 third offense; five years for failure to stop for a
3 blue light, second or subsequent offense; ten years
4 for PWID crack cocaine near a school; and one year
5 for third degree assault and battery by mob.

6 Mr. Dingle did not appeal his guilty plea. He
7 did file a timely PCR application on April 10,
8 2017, alleging ineffective assistance of counsel
9 for failure to investigate potentially exculpatory
10 evidence; failure to discover potentially
11 exculpatory evidence; and failure to have a
12 negotiated plea for five years enforced.

13 Applicant is present today and represented by
14 Mr. Falk.

15 THE COURT: Mr. Falk?

16 MR. FALK: Yes, Your Honor. My client is
17 really focusing his request for post-conviction
18 relief on the plea that he entered on the four
19 counts of attempted murder.

20 He believes that based on -- it is his
21 allegation that based on ineffective assistance of
22 counsel he sort of was -- it became an involuntary
23 guilty plea with respect to those four charges.

24 And he is not asking this Court to set aside
25 the pleas on the other charges, on the drug charges

1 and the blue light charge. He wants to limit his
2 request for relief to the -- for the Court to
3 consider whether or not it was an involuntary plea
4 with respect to the four attempted murder charges.

5 THE COURT: Have you explained to Mr. Dingle
6 that if the Court approves -- I guess it is a
7 withdrawal as to those others?

8 MR. FALK: Yes, Your Honor.

9 THE COURT: That he would not be able to file
10 another application as to those charges?

11 MR. FALK: Yes, Your Honor.

12 THE COURT: He understands that, you think?

13 MR. FALK: It may be helpful if we have a
14 colloquy on that.

15 THE COURT: Mr. Dingle?

16 MR. DINGLE: Yes, sir.

17 THE COURT: Did you hear what your attorney
18 just told the Court?

19 MR. DINGLE: I didn't really understand what
20 he was saying.

21 THE COURT: I couldn't understand you, I'm
22 sorry. Speak up.

23 MR. DINGLE: I don't really understand what he
24 was saying. But when I went back to discover my
25 case, I found out that I could just open up the

1 attempted murder charges because it was really --

2 THE COURT REPORTER: Your Honor, I'm sorry, I
3 am having a hard time hearing.

4 THE COURT: She can't hear you. Let me
5 rephrase my question. Maybe that will help us
6 also.

7 MR. DINGLE: Yes, sir.

8 THE COURT: Did you hear what your attorney
9 just now told me?

10 MR. DINGLE: I don't understand the terms that
11 he used. I don't understand what he is saying.

12 MR. FALK: Your Honor, could we be at ease for
13 a moment?

14 THE COURT: Certainly.

15 (Pause.)

16 MR. FALK: Your Honor, if I may? I explained
17 to my client that -- you know, he wishes to
18 withdraw his plea with respect to the four murder
19 charges, attempted murder charges. And he
20 understands that whatever this Court would do would
21 not affect the plea that was already placed in his
22 sentence on the other charges, the drug charges and
23 the blue light charge and the assault by mob
24 charge. And he cannot -- but this is his one
25 chance to do a PCR, and so if he decided not to go

1 forward and try to say there was an involuntary
2 plea with respect to those other charges, he is
3 waiving that claim.

4 THE COURT: All right. Does the State,
5 through the Attorney General, have any position on
6 this?

7 MS. GREGORY: Your Honor, as long as we have a
8 voluntary waiver on the record of him understanding
9 that this is his one PCR, he is not going to file
10 an excessive application attacking the additional
11 charges on his negotiated plea.

12 THE COURT: Now we start all over again,
13 Mr. Dingle. Did you hear what your attorney just
14 said to me a few moments ago?

15 MR. DINGLE: Yes, sir, I understand now. I
16 understand.

17 THE COURT: Do you agree with what he told me?

18 MR. DINGLE: Yes, sir.

19 THE COURT: It sounds like to me that what he
20 said was that you wish to abandon or give up any
21 post-conviction claim as to all of these charges
22 that you pled guilty to except the four attempted
23 murder charges?

24 MR. DINGLE: Yes, sir.

25 THE COURT: Is that right?

1 MR. DINGLE: Yes, sir. And the conspiracy and
2 all the charges that came from that --

3 THE COURT REPORTER: I'm sorry, I can't hear
4 him.

5 MR. DINGLE: The conspiracy charge too, and
6 everything. Like it was attempted murder,
7 conspiracy, all those came together.

8 THE COURT: Is there a separate conspiracy
9 charge?

10 MR. FALK: Yes, Your Honor. He got five years
11 on a separate --

12 THE COURT: Let me ask Mr. Dingle. Are you
13 saying that you also wish to challenge the
14 voluntariness of that guilty plea also?

15 MR. DINGLE: Yes, sir, because it came -- that
16 I conspired to attempted murder, you know, it came
17 from the same charge.

18 THE COURT: Let me make sure I -- I want to
19 make sure we are all on the same page and we are
20 all understanding each other so we don't have this
21 problem later. But it is my understanding from
22 what you just said that you no longer wish to
23 challenge the voluntariness of the other
24 statements?

25 THE DEFENDANT: The charges.

1 THE COURT: The other charges.

2 MR. DINGLE: The failure to stop for blue
3 light, I don't want to challenge that.

4 THE COURT: You don't want to challenge that.
5 You do wish to challenge the four attempted murders
6 and the one conspiracy to commit them?

7 MR. DINGLE: Yes, sir.

8 THE COURT: Is all that correct?

9 MR. DINGLE: Yes, sir.

10 THE COURT: You understand that if the Court
11 permits you to do this -- and the Court is inclined
12 to as long as you understand what you are doing.

13 MR. DINGLE: Yes, sir. Yes, sir.

14 THE COURT: -- then you would not be able to
15 later come back and challenge the voluntariness of
16 those other pleas?

17 MR. DINGLE: Yes, sir.

18 THE COURT: Now, have you had enough time to
19 discuss these matters with Mr. Falk?

20 MR. DINGLE: Yes, sir. I feel like we had
21 enough time to discuss it.

22 THE COURT: Okay. Are you satisfied with his
23 services?

24 MR. DINGLE: Yes, sir.

25 THE COURT: Do you have any questions of any

1 kind about what you have said you want to do here
2 today?

3 MR. DINGLE: No, sir. I just want to go
4 forward with it and get it on over with.

5 THE COURT: It is my understanding that
6 Mr. Falk is getting ready to give you that right to
7 I assume take the witness stand --

8 MR. FALK: Yes, Your Honor.

9 THE COURT: -- and explain all this?

10 Has anyone threatened you or coerced you in
11 any way to make you do this?

12 MR. DINGLE: No, sir.

13 THE COURT: You are doing this of your own
14 free will?

15 MR. DINGLE: Yes, sir.

16 THE COURT: You are sure this is what you want
17 to do?

18 MR. DINGLE: Yes, sir.

19 THE COURT: No questions of any kind about it?

20 MR. DINGLE: No.

21 THE COURT: Anything else from the State?

22 MS. GREGORY: No, sir. Thank you, Your Honor.

23 THE COURT: All right. The Court will approve
24 proceeding in that manner.

25 MR. FALK: Thank you, Your Honor.

1 I would call Mr. Dingle to the stand.

2 (Witness approaches.)

3 THE BAILIFF: Place your left hand on the
4 Bible, and raise your right hand.

5 (Witness complies.)

6 THE BAILIFF: State your full name where she
7 can hear, sir.

8 THE WITNESS: Henry O'Neal Dingle, Jr.

9 THE BAILIFF: Do you solemnly swear and affirm
10 to the testimony of this court to be the whole
11 truth, and nothing but the truth, so help you God?

12 THE WITNESS: Yes, sir.

13 THE BAILIFF: Step around, sir.

14 (Witness seated.)

15 THE BAILIFF: State your full name, and spell
16 your last name, please, sir.

17 THE WITNESS: Henry O'Neal Dingle, Jr.

18 D-I-N-G-L-E.

19 MR. FALK: Thank you.

20 HENRY O'NEAL DINGLE, JR.,
21 after being duly sworn, testified as follows:

22 DIRECT EXAMINATION

23 BY MR. FALK:

24 Q Mr. Dingle, there is one more thing I think we
25 ought to get on the record. You understand that if

1 this Court grants you the relief that you are
2 requesting -- namely, that you are allow to
3 withdraw your guilty plea on the four attempted
4 murders and the criminal conspiracy charge -- that
5 those cases would go back to the Sumter County
6 Solicitor's Office and they would be free to
7 prosecute them?

8 A Yes, sir.

9 Q That this is not going to exonerate you in any way
10 from those charges, all it does is allow you to
11 withdraw your plea and those cases go back to the
12 Solicitor's Office?

13 A Yes, sir.

14 Q And obviously you could face another sentence and
15 that time would not have to run concurrent with the
16 time that you are serving right now?

17 A Yes, sir.

18 Q Okay. Fair enough. Can you -- let's sort of get
19 right to the meat here. December 29th of 2015,
20 when I'm looking at the trial transcript, it makes
21 a reference to four shootings that occurred that
22 day. There was one that occurred at 9:40 in the
23 morning, and that was on Miller Road near the UPS
24 headquarters; there was one that occurred at 11:34
25 that was fired at the Poplar Square Apartments;

1 there was a reported shooting at 2:30 in the
2 afternoon on Main Street in Sumter; and then
3 finally at 3:30 in the afternoon on Frazier Street.

4 Do you recollect that?

5 A I don't know anything about the shooting that
6 happened, the second one that you named, but the
7 first one and the last one was the ones that I was
8 initially charged with.

9 Q Okay. So that is the shooting that occurred at
10 9:40 in the morning at Miller Road?

11 A Yes. Yes, sir.

12 Q Okay. Can you tell me what happened there?

13 A Okay. At 9:40 on Miller Road, I got up and went to
14 go see somebody at the apartments where I was at
15 and where the shooting happened at. I didn't have
16 a gun or anything. I didn't have nothing. I just
17 came out there to talk to somebody. And in me
18 doing so, I was shot at by somebody, by the
19 Defendants named on my Rule 5. So that incident
20 happened. And then --

21 Q Okay. So what you are saying is that you were the
22 victim of that shooting?

23 A Yes, sir. Yes, sir.

24 Q And that the shooting that occurred at 9:30 that
25 morning was somebody shooting at you?

1 A Yes, sir.

2 Q And you were not armed at that time?

3 A No, sir.

4 Q Okay. Did you report that to the police?

5 A No, sir.

6 Q Okay. Then you said that you were involved in the
7 shooting that happened at 3:30 that afternoon?

8 A Right. Yes, sir.

9 Q And that was at Frazier Street, is that correct?

10 A Yes, sir. That was the only one I was charged
11 with. The one at 9:40 that morning, the Defendant
12 that is named --

13 Q I'll let you get there. Let me just sort of set
14 something up here. So this was Frazier Street, is
15 that right?

16 A Yes, sir.

17 Q Who lives at that house?

18 A My friend, my best friend. We were friends for
19 over ten years.

20 Q What is his name?

21 A Kevin Smith.

22 Q Kevin Smith?

23 A Yes, sir.

24 Q And how much time did you spend at that house?

25 A I be there, like I spend the night there sometimes,

1 but mostly during the day I be there like all
2 during the day. Numerous times I leave and come as
3 I please, you know. I know his grandmother. We
4 friends. I eat there. That is where I be at every
5 day. So, that is like my known hangout spot. Me
6 and him, we hang out there every day.

7 Q So that is a normal place for you to be, is that
8 right?

9 A Yes, sir.

10 Q And is his name Smith, you said?

11 A Yes, sir.

12 Q All right. And so what were y'all doing?

13 A We were -- at that time, we were sitting in the
14 yard, smoking, drinking sodas, and stuff, smoking
15 cigarettes, just talking. And -- you want me to
16 just go over the whole thing that happened?

17 Q Yes. I'll stop you if I want to.

18 A Okay. We were sitting in the yard. This was after
19 the incident that morning had happened, or
20 whatever, but I ain't going to mention that unless
21 you ask me about it.

22 Q No, but we were talking about the incident this
23 morning.

24 A Okay. Okay. Now, that morning, when that incident
25 happened, I didn't have a gun. So I left. And

1 that is where I went back to. I went back to Kevin
2 house. When I went back over there -- as a matter
3 of fact, it is named in my motion of discovery, the
4 dude who shot at me, he told -- he the one who told
5 the police about it, but they never questioned me
6 about it, so they only got his side of the story.
7 But he fabricated his side of the story. He did
8 not tell the truth. He told them that I shot at
9 him. Excuse me, I'm kind of nervous. But he told
10 them that I shot at him and he shot back at me,
11 which was a lie. I never got a chance to talk to
12 the police there or seen them, so I ain't never got
13 to tell my side of the story. But --

14 Q Okay. But you were not armed at the time?

15 A No, sir. No, sir.

16 Q And then you said that after that, then you went
17 and got a gun?

18 A Yes, sir.

19 Q Where was the gun kept?

20 A I kept -- well, when I come back -- when I got the
21 gun -- I kept it in the car. I didn't tote it
22 around with me. I just so happened to have it -- I
23 left it in the car that I was driving. And that is
24 when I went to Frazier Street. The gun was sitting
25 in the car. I was sitting outside the car, like --

1 I was scared for my life after I got shot at the
2 first time, which the situation, like it didn't --
3 it wasn't the truth about the situation, so it
4 wasn't like everybody wasn't on the same card when
5 I did get locked up, or whatever. So, but I didn't
6 have a gun then. And then when I went back and got
7 the gun, I just got it because I was shot at
8 already and I was thinking like, Man, I don't know,
9 like I was scared for my life, so I got the gun and
10 I kept it. I wasn't trying to hurt nobody or
11 nothing. So I just kept the gun. And I was over
12 there for the rest of day. And then I guess that's
13 when the other incidents that I didn't know nothing
14 about that I wasn't charged with, that's when that
15 transpired, but I wasn't there. So once that
16 incident happened, then they, um -- I'm just kind
17 of nervous, that's all.

18 Q Just relax.

19 A Excuse me. This is my first time ever doing this.
20 I'm kind of nervous.

21 Q Well, let me help you a little bit. So you were at
22 your friend Kevin's house?

23 A Yes, sir.

24 Q And y'all were in the front yard?

25 A Yes, sir.

1 Q And you had just been shot at earlier that morning?

2 A Yes, sir.

3 Q And the police didn't know that you had been shot
4 at?

5 A No, sir.

6 Q In fact, the police thought that you were --

7 A I guess at that time they didn't know what
8 happened.

9 Q Right. Okay.

10 A They didn't know what happened because nobody said
11 anything.

12 Q And so then a car pulls down the street in front of
13 Kevin's house, is that right?

14 A Right. I was actually -- I had actually got in the
15 car to go to the store. And so as me and my
16 Co-Defendant backing out, we see the car coming
17 down the street. We see the car turn on the
18 street. And when I saw the car, I knew who car it
19 was. So I was like, Oh, there they go.

20 Q Okay, so let's stop right there. So you recognized
21 the car?

22 A Yes, sir.

23 Q And the drivers in that car -- and that was a Kia
24 that came up?

25 A No, I was driving the Kia.

1 Q Okay, I'm sorry.

2 A They were driving the other car.

3 Q All right. But Eric Phillips, he was in the car

4 that came up on y'all?

5 A Yes, sir.

6 Q And Rominic Lewis -- excuse me, Rominic Brand?

7 A Yes, sir.

8 Q Rodriquez Lewis and Jaquan Wells?

9 A Yes, sir.

10 Q Or Walls -- Wells, I guess it is. Now, did you

11 know -- you knew who shot at you at 9:00 o'clock

12 that morning, right?

13 A Yes, sir.

14 Q So you knew that person?

15 A Yes, sir. But I never -- I never told -- I never

16 called the police or anything.

17 Q But is there a relationship between these people

18 that are coming in this car?

19 A Yes, sir. Three of them was brothers and one of

20 them was their friend.

21 Q Beg your pardon?

22 A Three of them was brothers and one of them was

23 their friend.

24 Q Of the person who shot at you this morning?

25 A No, one of them -- the person who shot at me, his

1 brother, and his other brother, and his friend,
2 they was the four people that was in the car.

3 Q Okay. So at this time you see those people coming
4 back?

5 A So --

6 Q Somebody -- one of their friends shot at you
7 earlier this morning?

8 A Right.

9 Q And now a car is coming back with four people?

10 A Yes, sir.

11 Q Who you think knows that guy?

12 A Yes. And then, when they came back, I was backing
13 out of the yard. And when I turned like to face to
14 go put the car in drive to drive, I paused when I
15 saw them, and then I got nervous, and then one of
16 them stuck a gun out the window and fired the first
17 shot.

18 Q Okay. What kind of gun was it, did you see? Was
19 it a long barrel or?

20 A Shotgun. It was a shotgun.

21 Q Okay.

22 A So when he fired the shot, I returned the fire.

23 Q And so how was the car facing?

24 A Their car was facing coming my way, and my car was
25 facing like going towards the stop sign to go to

1 turn off on Broad Street.

2 Q Would you have been able to pull out of that
3 parking spot?

4 A No, I wouldn't be able to go nowhere.

5 Q Because --

6 A Because bullets would have been coming at me. Who
7 knows.

8 Q Okay. But, I mean, the way they had the car, were
9 you blocked in?

10 A Well, I wasn't blocked in, but the only way I could
11 go to get out was to go past them, put the car in
12 reverse, and they still would have been coming my
13 way, so --

14 Q Fair enough.

15 A Yes, sir.

16 Q You weren't blocked in, but in order for you to get
17 out you would have had to pass them?

18 A Yes, sir.

19 Q And did you see more than one person with a gun in
20 that car?

21 A Once I saw the first shot fired, I didn't see
22 nothing else. But all of them had guns. And that
23 is why I was, when I was telling you about in my
24 motion of discovery, if you look at -- excuse me,
25 I'm just kind of nervous -- but if you look at

1 my -- if you look at my motion of discovery, it
2 will show you where they had extra ammo in their
3 car, they had ear muffs, and they had ski masks.
4 And, also, they got locked -- they got arrested
5 first and eventually told the police my name and
6 everything that got me locked up. So they had the
7 chance to tell the first story. So they went and
8 told -- they told the police -- like everything
9 they told them wasn't the truth and I never got a
10 chance to speak up on my behalf, my side of the
11 story, or anything, so.

12 Q So you were being threatened with deadly violence,
13 right?

14 A Yes, sir.

15 Q And you were at Kevin's house, and he is a friend
16 of yours, and you spent a lot of time there,
17 correct?

18 A Yes, sir.

19 Q And as the car was coming up, you had no other way
20 to escape, is that correct?

21 A No, sir. No, sir. If I did, I would have turned
22 and went the other way, if I could.

23 Q Okay. So what kind of conversation did you have
24 with your lawyer about this part of the incident?

25 A We didn't really go in -- we didn't talk about

1 this, because he only came to see me one time. And
2 he asked me what happened. I didn't go into saying
3 like the details. I just told him that I didn't
4 did nothing and I was really waiting on a
5 preliminary hearing so that I could find out the
6 details of the case. But everything happened so
7 fast. Like, we went to the preliminarily hearing,
8 then the next thing you know I had court. We
9 didn't really have a chance -- he didn't come back
10 and talk to me. We ain't set up no strategies. He
11 ain't investigate nothing that they said in their
12 statements or nothing. It was just -- everything
13 was so fast, I didn't have a chance to do nothing.

14 Q So was there ever any discussion about what they
15 would call a Stand Your Ground hearing?

16 A No, sir.

17 Q So why did you plead to those charges?

18 A Because when we came to court, like I say,
19 everything happened so fast, by the time we came to
20 court, they was telling me that day that if I
21 didn't plead to all the charges for 18 and a half
22 years, that I would go to trial the next day just
23 for the drug charge, and I was going to get 30
24 years. So I felt like I was supposed to take that.
25 I didn't know, you know. I felt like I had no

1 choice.

2 Q And you appreciate the fact that those were third
3 offense cocaine charges, right?

4 A Yes, sir.

5 Q And that the sentencing range would have been 10 to
6 30 on those, is that right?

7 A Yes, sir.

8 Q And you had two separate ones, is that correct?

9 A Yes, sir. I think I had a possession with intent
10 to distribute and a simple possession of cocaine.

11 Q Okay. But they would have all been third offenses?

12 A Yes, sir.

13 Q And so you could have been facing 30 years, is that
14 correct?

15 A Yes, sir.

16 Q Had you gone to trial?

17 A Yes, sir.

18 Q And as I read the facts about the blue light
19 charge, the failure to stop for a blue light, you
20 are not really contesting those facts, are you?

21 A No, sir.

22 Q And how about the facts regarding Reggie Tindal?

23 A Well --

24 Q I mean, you were part of that crowd there?

25 A Yes, sir. I was guilty of it.

1 Q There were a group of people that were beating down
2 on that guy, right?

3 A It wasn't really -- it wasn't really a group of
4 people beating down on him. Me and him got into an
5 altercation and I was the one that really fought
6 him, but other people came in, and I guess once
7 they broke it up, they kind of pushed him down, and
8 all that, so he kind of told them that they hit him
9 too, but I was the only person -- me and him had a
10 one-on-one fight, and my friends -- he kind of got
11 the best of me for a minute and, you know, my
12 friends came in the middle of it, but we didn't
13 really just actually beat him up, like.

14 MS. GREGORY: Objection, Your Honor. I don't
15 know why we are going into the mob charges when
16 that is not part of the PCR at this point. I don't
17 know why we are taking testimony on mob charges.

18 MR. FALK: I'm sorry if I am wasting the
19 Court's time. I just wanted to make sure that
20 everybody was on the same page, that we were just
21 talking about those.

22 THE COURT: Go ahead. Overruled.

23 BY MR. FALK:

24 Q You understand -- well, I guess if you are serving
25 18 and a half years at 85 percent, that is going to

1 be about 15 years, right?

2 A Sixteen years and some change.

3 Q Why do you care about the murder charges?

4 A Because --

5 Q Why do you care about the attempted murder charges?

6 A Because, you know, I got right to due process of
7 law, and the things that happened that day don't
8 fit the elements of attempted murder, so that is a
9 part of my constitution, I got the right to due
10 process of law or liberty. And the Stand Your
11 Ground law says that if I'm, um, if somebody is
12 causing deadly harm to me, I got to react, I got
13 the right to react in deadly force to take my life,
14 and that is all I was doing. I was never trying to
15 attempt to murder anybody. So I felt like I should
16 come back to court and, you know, get the due
17 process of law on that part, because, if not, I
18 would never be held for 16 and a half years. My
19 sentence would have been non-violent for the drug
20 conviction and I still would have had time, but
21 this right here just holding me on -- like, it is
22 holding me -- it ain't due process of law.

23 Q How do you think your sentence would -- let's say
24 the Court were to grant you the relief that we are
25 allowing -- asking for and that you were allowed to

1 withdraw your guilty pleas here. How would your
2 life be any different?

3 A It would be a lot different. I can --

4 Q I need you to explain.

5 A I can at least do my time for the stuff that I did
6 do, pay my debt to society, go back home and try to
7 live a better life. And this time done taught me
8 like to not do some of the things I done do. So I
9 done learned what not to do and what to do. I got
10 kids I'm trying to get back home to. And I just
11 want to be a better person. And this is just
12 holding me from being liberty -- liberty of a free
13 citizen by being hold on charges that I did not
14 commit. So that is why I wanted to come back and
15 get a relief.

16 Q Do you have any concerns of being in custody with
17 the people, the four people who were driving the
18 car? Are they all in custody also?

19 A No. They are free.

20 Q They are free?

21 A They are free.

22 Q Would you be -- do you have any understanding that
23 you would possibly be in a different yard if you
24 didn't have the attempted murder convictions?

25 A Yes, sir. I would have been in a whole nother

1 custody level. I would have parole.

2 Q Where are you now? Are you at Lee?

3 A No, at McCormick Correctional Institution, maximum
4 security.

5 Q Okay.

6 A Yes, sir.

7 Q So it is your understanding that if you did not
8 have these attempted murder charges, you would not
9 be held at Lee -- or, excuse me, at McCormick or
10 Lieber?

11 A Yes, sir.

12 Q Or one of those other yards?

13 A Yes, sir.

14 Q Is that correct?

15 A Yes, sir.

16 Q So when did you find out about the stuff that was
17 in the car, that there was the ammunition, the
18 extra rounds, the -- how many guns, and the ski
19 mask, and that kind of stuff? When did you find
20 that out?

21 A I didn't -- I didn't pay it any attention until I
22 actually got to McCormick and I start back looking
23 over my case and going and studying the law and
24 looking up different things, and that's when I find
25 out that, like the elements of the crime and about

1 the Stand Your Ground law -- excuse me -- about the
2 Stand Your Ground law, and everything.

3 So I was like, Well, my lawyer never told me
4 about none of this, and I got the right to go back
5 to court, and, you know, I got to go back to court
6 and challenge this stuff because it ain't right.
7 So that is when I filed my PCR.

8 And they even have -- excuse me -- they even
9 have in my Rule 5, when they wrote the statements,
10 when they -- because they got incarcerated first,
11 so when they got locked up, they went in the
12 interrogation room, and when they wrote the
13 statements, they told the investigators that they
14 was coming to look for me to shoot me, and all
15 that.

16 And I was trying to figure out like why was
17 none of this stuff never brought up on my first
18 appearance, the first time I was going to court. I
19 should have never been charged with this. Once I
20 went and looked over the Stand Your Ground law and
21 it said I had a right to stand my ground if
22 somebody said they was coming to do something -- do
23 harm to me. And they did admitted to that. But
24 they also told all kind of other like fabrications
25 that wasn't -- that was really irrelevant. And

1 that's what I felt like got me convicted of the
2 attempted murders because the first shooting that
3 happened, when I got shot at, I never told the
4 police anything. He told the police about the
5 shooting, but he didn't even get charged with it.
6 He didn't get charged with attempted murder or
7 nothing. So he basically slid that under the rug.
8 Nobody never got charged with it. But he admitted
9 it. But the only thing he fabricated about was me
10 returning fire to him, and I never had a gun. So
11 he kind of -- he kind of fabricated that. That
12 show that his testimony was faulty right there, but
13 nobody never went to investigate that. They never
14 investigated as to why their address said that they
15 was from way on another side of town, what they was
16 doing in an area that I had the right to be in
17 coming to --

18 Q The Frazier Street area?

19 A Right.

20 Q Let me ask you a question before the Attorney
21 General asks you this question. At some point --
22 you remember being in court when you pled guilty,
23 is that right?

24 A Yes, sir.

25 Q Yes, okay. And at some point the judge is asking

1 about whether or not anybody got hit by any
2 bullets. Nobody really got hurt?

3 A No.

4 Q There was a lot of -- I think it was determined a
5 lot of lead was flying around, but nobody got hurt?

6 A Nobody got injured at all.

7 Q And at one point the judge asked, Why were you
8 doing that? And I'm sure he was referring to the
9 shooting.

10 And your response on Page 23, Line 20 was: I
11 didn't mean to intentionally. They came -- they
12 just came and started shooting at me.

13 A Yes, sir.

14 Q So you told the Court that?

15 A Yes, sir.

16 Q And then it looks like the Court -- what do you
17 recall happening next? Did you talk to your
18 lawyer?

19 A I think -- I can't remember, it was so long ago,
20 but -- I can't really remember. But I remember him
21 saying --

22 Q How about if I let you look at a couple of pages of
23 the transcript right there and maybe refresh your
24 memory.

25 A Okay.

1 Q Just relax. I understand you are nervous.

2 A I apologize.

3 Q No, you're fine. Start right there. Is that Page
4 23 that you are reading from?

5 A Yes, sir.

6 Q Yes, sir?

7 A Yes, sir.

8 Q Okay.

9 A Do you want me to read or --

10 Q No, I don't want you to read. I want you to kind
11 of familiarize -- read that so that you can maybe
12 remember what was going on in court at that
13 particular moment.

14 A Okay. Yes, I remember this part. When I had said
15 that, it was only because before we had went in, he
16 was telling me to say yes to everything when asking
17 me the questions.

18 Q Who was doing that?

19 A My lawyer. He said --

20 Q Okay.

21 A He said, Are you going to take this plea?

22 I was like, I don't want to, but instead of
23 going to face 30 years, I am just going to go ahead
24 and take the plea.

25 So he was like, When you go in there, just say

1 yes, sir to all the questions he asks you. So
2 that's why I said, Yes, sir.

3 Q Okay.

4 A That was the only --

5 Q It looks like there is a break.

6 A I didn't want to.

7 Q And it sounded like the judge was asking you
8 whether or not you wanted to assert a self-defense
9 claim?

10 A Yes, sir. But --

11 Q And did you have a separate conversation with your
12 lawyer right then? Do you recall one?

13 A I can't really recall. But I remember him saying
14 that if I didn't -- if I didn't go through, that I
15 would still have to go to court for that and then
16 go to court separate, so that's why I said yes.
17 That is the only reason why.

18 Q It is your testimony today that you did not have
19 any intent to murder those four people?

20 A No, sir.

21 Q And the only reason why you fired a gun was in
22 self-defense?

23 A Yes, sir.

24 Q And, again, I think we asked this, but just
25 quickly, how much time did you spend in custody in

1 this case?

2 A Now, three years and --

3 Q No, prior -- from 12/29/2015 to the sentencing
4 date, you were in custody the whole time, right?

5 A Maybe 95 days.

6 Q Okay.

7 A Ninety something days.

8 Q And how many times did you meet with your lawyer?

9 A One time. And one time at the preliminary hearing.

10 We did not discuss anything about my case.

11 Q Was he retained or did you -- was he a Public
12 Defender?

13 A He was retained.

14 Q He was retained?

15 A Yes, sir.

16 MR. FALK: I have no further questions.

17 THE COURT: Cross-examination.

18 MS. GREGORY: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. GREGORY:

21 Q Mr. Dingle, do you want some water?

22 A No.

23 Q I get nervous too sometimes. Are you good?

24 A Yes, ma'am.

25 Q Okay. And your testimony is that you only met with

1 Mr. McKenzie one time, is that right?

2 A Yes, one time before --

3 Q One time?

4 A -- before my preliminary hearing and one time at
5 the preliminary hearing and then at court. That is
6 it.

7 Q Okay. So did you ever review your discovery with
8 him?

9 A No, ma'am.

10 Q You never even went over it?

11 A We never went over it together.

12 Q Do you know what I mean by discovery?

13 A My Rule 5 evidence?

14 Q Right, your evidence against you. So you never
15 reviewed that with Mr. McKenzie?

16 A No.

17 Q Did you retain Mr. McKenzie?

18 A Yes, my family did.

19 Q Your family retained him?

20 A Yes, ma'am.

21 Q Okay. Do you recall the attorney explaining to
22 you, like the Solicitor explaining -- I'm sorry,
23 your attorney, Mr. McKenzie, explaining to you that
24 you were facing 270 years if you were convicted on
25 all your charges?

1 A Yes, ma'am.

2 Q Do you recall the judge going through the charges
3 with you on each of your indictments, even though I
4 know you are only addressing the attempted murders
5 and conspiracy, do you recall the judge during the
6 plea going over all of your indictments?

7 A Yes, ma'am.

8 Q And the sentences you could potentially receive?

9 A Yes, ma'am.

10 Q And you waived your constitutional rights during
11 the plea hearing, do you remember that?

12 A Uh-huh.

13 Q Your right to a jury trial?

14 A Yes, ma'am.

15 Q Things of that nature?

16 A Yes, ma'am.

17 Q And do you recall pleading guilty to each charge as
18 the judge read them out to you and you said you
19 were guilty of each of the charges as he read them
20 out to you?

21 A Yes, ma'am, only because that is what was agreed
22 before.

23 Q Well, you told him that you were truly guilty of
24 each of the charges that you were pleading guilty
25 to, right?

1 A Yes, because that was a part of the agreement for
2 me to say that.

3 Q Okay. And this was a negotiated plea, so you knew
4 exactly how much time you were going to get when
5 you went into court that day, right?

6 A Yes, ma'am.

7 Q Eighteen and a half years, right?

8 A Yes, ma'am.

9 Q Okay. Do you recall telling the judge you were
10 giving up all of your defenses and your right to
11 challenge the admissibility of the evidence against
12 you?

13 A Yes, ma'am.

14 Q You do remember that?

15 A That was a part of the guilty plea.

16 Q Right. Do you recall telling the judge that you
17 had enough time to make a decision on whether to
18 plead guilty or not?

19 A Yes, ma'am.

20 Q I couldn't hear you. I'm sorry.

21 A Yes, ma'am. Even though I -- I didn't -- I didn't
22 want to plead guilty to the murder.

23 Q But you never told the judge that, right? You
24 never told the judge you didn't want to plead
25 guilty?

1 A Because my lawyer told me that was a part -- I
2 couldn't say that once I got in the courtroom.
3 That's what he told me.

4 Q But you recall telling the judge that you were
5 satisfied with your attorney?

6 A No, I don't remember --

7 Q You don't recall that? Okay.

8 A I don't --

9 MS. GREGORY: May I approach, Your Honor?

10 THE COURT: You may.

11 BY MS. GREGORY:

12 Q I am just going to show you part of your
13 transcript. And I believe I have highlighted some
14 of these. So looking here at the highlighted, you
15 can just review the highlighted sections.

16 A I remember now. In doing so, that was just in the
17 little bit of time that we talked because we didn't
18 get to talk. They really rushed me.

19 Q Okay. But you didn't tell the judge that you
20 didn't have enough time to talk to him or that you
21 weren't satisfied with your attorney or that you
22 needed more time to talk to your attorney, right?

23 A Because he told me if I didn't take the plea then,
24 that tomorrow I was going to go to trial, so I
25 wasn't trying to change that.

1 Q And you could have gone to trial the next day,
2 right?

3 A But then I would have had -- I would have been
4 convicted of everything still that I wasn't -- that
5 I didn't do and have more time, so I didn't want to
6 chance that.

7 Q Well, you said earlier that you were willing to go
8 to trial on your drug charges, which you are not
9 addressing here because you said you were guilty of
10 those, and you could have gotten 30 years on those?

11 A Right.

12 Q And that is what you were going to trial on the
13 next day, right?

14 A And that is what I didn't understand that day. I
15 was trying to ask them that. They was kind of
16 rushing me into everything, so I didn't --

17 Q Did you tell the judge you felt rushed and that you
18 needed more time?

19 A No, I just did it just to get it over with.

20 Q Okay. Do you recall telling the judge that you had
21 discussed possible defenses and explored other
22 things that might have benefited you with your
23 attorney? If not, you can turn to Page 14.

24 A On Page 14? Yes, ma'am, I see that, but --

25 Q Do you see that?

1 A Yes, ma'am.

2 Q Okay. Do you recall the State going over the facts
3 that led to each of the charges on your
4 indictments, so the Solicitor, Ms. McElveen,
5 provided fact patterns that led to each of your
6 indictments? Do you remember her going through
7 each of those?

8 A Yes, ma'am.

9 Q And do you recall that -- I think your attorney
10 brought this up, but the judge actually stopped the
11 guilty plea hearing and asked you if you wanted to
12 back off and assert a self-defense to the attempted
13 murder charges?

14 A Right.

15 Q And you continued with your guilty plea, right?

16 A But only because the lawyer told me that in order
17 to take the plea that I couldn't do that. He had
18 already told me that. He also told me that I could
19 have come back to court and -- once I done took the
20 plea, I could have came back to court on a PCR and
21 open the case back up too.

22 Q So your attorney told you that you could PCR him?

23 A (Nods affirmatively.)

24 Q Okay. And do you recall continuing to go forward
25 with those charges even though you backed away,

1 talked to your attorney, and continued to go
2 forward with your guilty plea at that point?

3 A Because he said there wasn't nothing he could do
4 for me to help me at that point if I didn't take
5 that. I didn't want to take the plea, but --

6 Q Did you want to go to trial on your attempted
7 murder charges?

8 A Yes, ma'am, I did.

9 Q You told your attorney that you wanted to go to
10 trial on your attempted murder charges?

11 A I told him that I didn't want to plead to them.

12 Q Okay.

13 A But he told me that -- I can't remember his exact
14 words. I don't want to quote, unquote and tell a
15 lie.

16 Q Sure. That's fine.

17 A Because I put my hand on the Bible. But it was
18 like, when I came -- it was like they forced me
19 into taking that plea because I didn't want to take
20 the -- I wanted to plead guilty to the drug charges
21 and not be held with a higher sentence, because it
22 was like they were trying to force me. So I just
23 was like, Okay, even though I wasn't, I just said
24 yes just to say it and get it over with. It wasn't
25 because --

1 Q But you knew that you were pleading to attempted
2 murder charges by the time that you entered your
3 guilty plea, right?

4 A Yes, ma'am.

5 Q And you knew that you were getting -- you could
6 potentially be seeing 30 years just on the drug
7 charges alone, right?

8 A Yes, ma'am.

9 Q And during the guilty plea hearing, you admitted to
10 shooting a .44 magnum and telling the judge that
11 you had a .44 magnum? Do you remember that?

12 A Yes, ma'am.

13 Q Were you a convicted felon at that time?

14 A Yes, ma'am.

15 Q Okay. Do you recall the judge reviewing the
16 negotiated sentence with you?

17 A Yes, ma'am.

18 Q I'm sorry?

19 A Yes, ma'am. That he was saying that a negotiated
20 sentence -- I can't remember his exact words.

21 Q Eighteen and a half years, right?

22 A Yes, ma'am.

23 Q And you were only going to be serving 15?

24 A Sixteen.

25 Q Sixteen?

1 A Yes, ma'am.

2 Q Okay. Do you recall the judge asking you if you
3 wanted to back away -- because you asked the Court
4 for leniency at the time of the sentence, so you
5 may not have I guess believed that you may not have
6 understood that it was a package deal and that you
7 had to accept the sentence along with the plea
8 deal? Do you remember that?

9 A I was thinking that maybe the judge -- I don't
10 think I understand the terms of being that
11 negotiated that the judge couldn't make his own
12 decision as far as taking the sentence down and
13 choosing to give me ten years, or whatever.

14 Q Right. Sure.

15 A I didn't fully understand that.

16 Q If you want to look at Page 29 you can see what you
17 discussed with the judge regarding that, because
18 you did ask for leniency when he gave you the
19 opportunity to talk?

20 A And that's when I found out. That's when I found
21 out.

22 Q And you continued to go with your plea at that
23 time, is that right?

24 A Yes.

25 Q Okay.

1 MS. GREGORY: No further questions, Your
2 Honor.

3 THE WITNESS: May I speak?

4 MS. GREGORY: May I have my transcript?

5 THE WITNESS: May I speak too?

6 MR. FALK: I am going to ask you some
7 questions.

8 THE COURT: Redirect.

9 REDIRECT EXAMINATION

10 BY MR. FALK:

11 Q The drug charge that you thought the trial was
12 going to start the next day, was that -- what were
13 the facts of that one? Was that the one where you
14 got followed with the blue lights and you had the
15 drugs in your mouth?

16 A Yes, sir, that was one incident, yes, sir.

17 Q Okay. And you thought that trial was going to
18 start the next day?

19 A That's what he told me.

20 Q Unless you took this plea?

21 A Right, yes, sir.

22 Q And you knew you were guilty of that?

23 A Yes, sir.

24 Q I mean, they -- the police stopped you. Did they
25 have dogs or did they just run you down?

1 A They ran my down.

2 Q And they got you on the ground and you had
3 3.4 grams in like a baggie that you were trying to
4 swallow, is that correct?

5 A Yes, sir.

6 Q So you knew you were guilty of that?

7 A Yes, sir. I didn't want to challenge that.

8 Q And the only way that you could get the benefit of
9 this plea deal of getting the 18 and a half years
10 is if you pled to these four attempted murder
11 charges and the conspiracy charge, is that right?

12 A Yes, sir. That is the only way they made it
13 possible for me to do it.

14 Q But you didn't do -- you didn't attempt to murder
15 them, is that right?

16 A Yes, sir.

17 Q Anything you need to add?

18 A I also do know that during -- my 14th Amendment, it
19 say I have a due process right of law and liberty;
20 whereas, I can't be convicted of -- I'm not -- I
21 wasn't ever supposed to be convicted of attempted
22 murder crime because what happened that day didn't
23 fit the elements of attempted murder, so that goes
24 against my amendment also. And also the Stand Your
25 Ground law, it don't matter if I'm a felon or not,

1 if somebody come do bodily harm to me, I got the
2 right to defend myself.

3 Q You could have been armed?

4 A Yes, I can defend myself. Even though I was wrong
5 for having a gun --

6 Q Right.

7 A -- I didn't try to -- attempt to murder nobody
8 because I was just defending myself. And that is
9 the whole point of my argument here today. That is
10 why I am back in court, because that ain't due
11 process of law and liberty if I'm convicted of a
12 crime that don't fit the elements of what they
13 charged me with or what I did don't fit the
14 elements of attempted murder, so therefore that is
15 an unconstitutional sentence. So that goes against
16 the constitution, basically. So that's why I'm
17 back in court today.

18 Q Thank you.

19 MR. FALK: No further questions.

20 THE COURT: Any redirect?

21 MS. GREGORY: No, sir.

22 THE COURT: Thank you. You may step down,
23 Mr. Dingle.

24 (Witness steps down.)

25 THE COURT: Call your next witness. Are you

1 going to call Mr. McKenzie?

2 (Witness approaches.)

3 THE BAILIFF: Place your left hand on the
4 Bible, and raise your right hand, and state your
5 full name, sir.

6 (Witness complies.)

7 THE WITNESS: Steven Smith McKenzie.

8 THE BAILIFF: Do you solemnly swear and affirm
9 to the testimony of this court to be the whole
10 truth, and nothing but the truth, so help you God?

11 THE WITNESS: I do.

12 THE CLERK: Step around, sir.

13 (Witness seated.)

14 THE BAILIFF: State your name, and spell your
15 last name for the record, please, sir.

16 THE WITNESS: Steven -- with a V -- Smith
17 McKenzie. M-C-K-E-N-Z-I-E.

18 STEVEN SMITH MCKENZIE,
19 after being duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. FALK:

22 Q Mr. McKenzie, you were retained in this case?

23 A I was.

24 Q All right. Let's just sort of a hypothetical here.
25 If the case that you were retained on was to

1 represent Mr. Dingle just regarding the incidents
2 of December 29th, 2015, what would your strategy
3 have been?

4 A In that situation, we had three Co-Defendants that
5 gave statements against Mr. Dingle that said he was
6 at the scene with a gun firing the gun. They also
7 were the victims in that case. I would have
8 thought that I had those victims -- I would have
9 thought those Defendants probably would not testify
10 or either testify incorrectly because everybody had
11 records here in this case. So the victims were
12 also the Defendants and the Defendants were also
13 the victims. So my strategy would have been
14 probably to try that case.

15 Q And would you have tried to assert a Stand Your
16 Ground claim?

17 A I don't think that would have been applicable in
18 this case.

19 Q And why is that?

20 A Because Mr. Dingle gave a statement to law
21 enforcement that the reason that he was on Frazier
22 Street -- and I'm reading from the statement that
23 he gave -- was he went there to purchase weed from
24 Quan. And in order to assert Stand Your Ground,
25 you cannot be in the commission of a crime. And so

1 he was going to buy marijuana is the whole reason
2 for this, I think drug deal gone bad, happened. So
3 that would have been a very difficult hurdle to
4 overcome.

5 Q But he was not purchasing the weed from -- the
6 illegality had nothing to do with the people who
7 were attacking him, is that right?

8 A Well, he -- you know, the statute is pretty clear.
9 I mean, you can't be going in the commission of a
10 crime. I mean, if he is robbing a bank and pulls a
11 gun out to defend himself, I mean, I am assuming
12 that is the same applicable law here. He went to
13 go buy weed, and this sounds to me like a drug deal
14 that went bad. And that is the reason the gun was
15 pulled.

16 Q It was your analysis that you think it was a drug
17 deal gone bad?

18 A Right.

19 Q So was he trying to buy weed from four people in
20 that car?

21 A Yes, one of them was Quan. He was with Spann. The
22 Co-Defendant with him was -- so it is -- yes, this
23 was a basically four people in one car, two people
24 in the other car. Mr. Dingle was in one car with
25 his friend, Mr. Spann. The other four people were

1 in other car, and Quan, the one who says -- he says
2 in his statement started shooting at him, he went
3 there to purchase weed from him. Marijuana, I'm
4 sorry. His words were weed, but --

5 Q How is this a flat self-defense construction?

6 A I'm sorry?

7 Q Well, how about -- do you think you could have
8 gotten a self-defense construction had you tried
9 this case?

10 A I don't think I could have because of those facts.
11 I think that -- and the other thing too is, you
12 know, he gave contradictory statements also in his
13 statement. First of all, he said he wasn't -- he
14 and Spann weren't even involved in it. And then he
15 changed his story and said that this is what
16 happened.

17 You know, so, first of all, he starts off
18 with, We weren't involved, I don't even know what
19 you are talking about.

20 Then, Yeah, we were involved. We were going
21 to buy weed. And Quan pulled out a gun and started
22 shooting at me. And I think Quan's name is
23 actually Quantrell. But, anyway, they -- I think
24 that is what he called him was Quan. But Quan
25 pulled a gun out and started shooting at me. Then

1 he -- of course, he never admits he has a gun
2 there. But on the record when he was in front of
3 Judge James, now Justice James, he admitted that he
4 had a .44 handgun. A .44 handgun was found close
5 to the scene in the woods. And he admitted that he
6 had it and that he shouldn't have had it, he was a
7 felon in possession of a firearm.

8 Q Well, he testified that at the 3:30 shooting he had
9 a gun?

10 A Right.

11 Q I think his testimony was he didn't have a gun at
12 the 9:00 o'clock shooting?

13 A Well, I mean, he was charged with attempted murder,
14 so according to his Co-Defendants, three statements
15 were given that said he was shooting at them and
16 they were shooting at him.

17 Q Uh-huh.

18 A So, and he was the driver of that vehicle and, you
19 know, that is the facts of this case. You know,
20 the overwhelming problem with his whole case is the
21 volume of charges that he had against him.

22 Q I will get there in a second. Let me ask just a
23 couple more specifics.

24 A Okay.

25 Q He had said that he looked at his discovery in this

1 case, his Rule 5, and that the car coming up on
2 them, there were lots of guns, there was lots of
3 ammunition in the car. Do you recall that?

4 A Yes. I mean, I recall. They -- yes.

5 Q And --

6 A Both cars were left at the scene. They actually
7 collided with each other.

8 Q Okay. Ski masks in the car?

9 A I think so.

10 Q Okay.

11 A I think so. But, I mean, his stuff wasn't found in
12 the car because he threw it in the woods. So I
13 guess the other guys just didn't take their stuff
14 with them, you know. His gun was a .44 caliber
15 magnum, a .44 caliber magnum was found in the
16 woods, and that is the gun he admitted to having.

17 Q Did any of those people in the car -- let me go
18 back over those names -- none of them resided over
19 on Frazier Street, did they?

20 A I don't believe so. I think this was also a turf
21 war issue. You know, you are not supposed to be on
22 my side of the I guess gang-related incident. But
23 that is what it appeared to me. And the people
24 that were in the other car were Rominic Brand, Eric
25 Phillips, Jaquan -- who was Quan -- Webb, and I

1 think there was one more, maybe Gumm -- Kevin Smith
2 maybe? Okay. Just trying to go through my -- or
3 Rodriquez -- Rodriquez Lewis, Phillips. So that
4 would have been the people in the other car, and
5 Quan, Jaquan Wells. Where they lived, I don't
6 know. I mean, but I think it was a turf war and an
7 issue over drugs. And so the bullets just started
8 flying, and that is what -- that is how all this
9 ended up like it did.

10 Q Well, his testimony -- Mr. Dingle's testimony just
11 was that he was at that address because that was
12 his friend's house and he spends a lot of time at
13 that house, keeps clothing at that house. Was
14 there anything in the discovery that would say that
15 that wasn't true?

16 A Well, I mean, he wasn't at the house whenever this
17 happened, he was driving a vehicle on the street.
18 And when the collision occurred, I mean, that is
19 whenever all this went down. Yes, he may have had
20 reason to be at Frazier Street, but I think he was
21 driving the vehicle, and I think he admitted he was
22 driving the vehicle, even in the plea admitted he
23 was driving the vehicle. So, I mean, again, you
24 know, he was involved in a shooting involved with
25 two cars. He was driving one of the cars that

1 collided with the other car. And he ran from the
2 scene.

3 You know, so again, Stand Your Ground. Let's
4 think about that for a minute. He didn't stand his
5 ground, he ran. So, I mean, that is another part
6 of the problem I was going to have with getting a
7 judge to -- if you didn't do anything wrong, then
8 why did you run? So he should have stood right
9 there and said, Hey, I didn't do anything wrong.
10 I'm here standing my ground and bring the police
11 on. I haven't done anything wrong. But he took
12 off.

13 And then he lied to the police and said he
14 didn't have any involvement. Then he changed his
15 story. So that is the things that I was dealing
16 with as a Defense attorney.

17 Q But still you would acknowledge that this is
18 certainly a case that you would want -- that you
19 would -- that there would be a reason to take the
20 case to a jury trial?

21 A There is -- there would be a reason to take this to
22 a jury trial. And I can tell you, because you
23 don't know how these other Defendants are going to
24 hold up. They gave statements. Because you don't
25 know how they are going to hold up under oath.

1 Q Right.

2 A And you and I both know that. So this was one of
3 those cases, if it was standing alone by itself, I
4 probably would have tried it.

5 Q So how did that go -- so that knowledge, that
6 belief, how did that fit into your conversations
7 with him about accepting the plea?

8 A We had a number of conversations. They actually
9 called his case the week before that.

10 Q What case?

11 A The possession with intent to distribute cocaine,
12 third offense, third or subsequent.

13 Q Now, was that the fact pattern that I was talking
14 about --

15 A It was.

16 Q The blue light and drug --

17 A Yes. He was absolutely guilty of that. They got
18 it out of his mouth. He was trying to ingest three
19 and a half grams of cocaine. All that was
20 positive. He was absolutely guilty of that. And
21 they were going to try that case in front of Judge
22 Young. In fact, I wrote notes --

23 Q Walter Young or Jeff Young?

24 A Jeff Young. Judge Jeff Young. So on 4/12, I
25 actually wrote notes in my file about this with a

1 meeting with Judge Young, myself and Ms. McElveen,
2 who was the prosecutor, went back in chambers with
3 Judge Young and asked him what would he do in this.
4 And this was just a cocaine case. You know, to
5 just kind of get some guidance. And said, We were
6 thinking about a negotiated plea of 18 and a half
7 years. And Judge Young's comment was that wasn't
8 enough time, he needs to do 30.

9 So we then -- I tell my client that, because
10 he was here that day. This was April 12th, 2016.
11 This is my notes. So we were here that day. We
12 talked about it. We discussed it. In fact, on
13 April 14th, we were here again. And I made some
14 more notes. We were here with two of his friends,
15 Ronald Peebles and Frederick Billy. Both of his
16 friends were here with him. And I don't know if
17 they are friends, but they were people that were
18 here in this courtroom with him. I think everybody
19 was out of the room, it was lunch break, and it was
20 just us sitting here.

21 And I said, Met with -- in my notes it says,
22 4/14/16, met with client, Frederick Billy, Ronald
23 Peebles. Judge Young advised myself and
24 Ms. McElveen that he would not accept the plea
25 offer for 18 and a half years. If he tried the

1 case, Judge Young -- he, Judge Young -- would
2 probably give him 30 years, conveyed all that in
3 Courtroom 1A, I think that is in this courtroom,
4 with Rodney Peebles, Frederick Billy. Client
5 agreed to take 18 and a half years with Billy and
6 Peebles present.

7 Q So the judge had told you that he would not accept
8 that offer?

9 A Right. We had to go judge shopping, so we went and
10 found Judge James, and Judge James agreed to take
11 the plea, a negotiated plea. And so that is why we
12 did the plea the next week, which was on the 22nd
13 or 23rd. So we had -- he actually had ten days to
14 think about this. And we did on April 22nd. So he
15 had from the 14th -- Well, the first time we talked
16 to Judge Young about it was on the 12th, so I know
17 I met with him that day, and also that he asked to
18 speak with Ms. McElveen, Mr. Dingle did, asked to
19 speak with -- to Ms. McElveen. We met in that room
20 right over here on the right. I remember it very
21 well because he got kind of out of hand, I had to
22 call him down. He wanted Ms. McElveen to give him
23 less time. It wasn't about pleading to the
24 attempted murders, he was okay with all of that, he
25 just wanted less time than 18 and a half years.

1 She wouldn't do it because she already had a judge
2 telling her that if we went to trial, she was
3 going -- or he was going to get 30 years. And so
4 she would not go below 18 and a half years. And he
5 heard her say that. And, in fact, again, I had --
6 he got a little loud with her, and I had to call
7 him down to get him to control himself.

8 And then after Ms. McElveen walked out of the
9 room, he followed her down the hallway. And there
10 was a deputy, Sheriff's Deputy Larhley,
11 L-A-R-H-L-E-Y, and, anyway, he intervened with
12 Mr. Dingle because he was following Ms. McElveen
13 down the hallway, and I was following Mr. Dingle to
14 make sure -- and be sure that nothing was going to
15 happen either.

16 Q Mr. Dingle was not in custody at this time?

17 A No, he wasn't in -- no, he wasn't in custody at
18 that time.

19 Q He was not in custody?

20 A He was not in custody.

21 Q He was not in custody?

22 A No. And so he had ample time to think about this.
23 Yes, he wasn't happy with 18 and a half years. I'm
24 not happy with 18 and a half years. But the facts
25 of the case are that Ms. McElveen was going to try

1 the possession with intent to distribute cocaine,
2 third offense, and Judge Young was going to give
3 him 30 years. And there was no way that I could
4 see him getting out of that case. He was caught
5 with the drugs in his mouth after failure to stop
6 for a blue light. I mean, you know, so this was
7 the negotiated plea that was offered to him and he
8 accepted it.

9 Q Was there any discussion about whether he could
10 plead to all the drug charges?

11 A She would not accept that, because you have got to
12 understand the Solicitor's position on this was she
13 had a shooting in the middle of Sumter in broad
14 daylight. And I think if I was a Solicitor I would
15 be in the same position. I think the public
16 demands some justice on that issue. And that was
17 her position, somebody needed to take
18 responsibility for that. And I'm pretty sure all
19 four of the Co-Defendants have pled to that, guilty
20 to that crime. So it wasn't just Mr. Dingle. So
21 it was everybody that was involved in it. Because
22 everybody had guns. And it is amazing that no one
23 got hit. Amazing. The number of shell casings
24 they found there and the rounds that were expended.
25 Absolutely a miracle.

1 Q At the point -- we had looked at this page before,
2 and it is Page 23 of the transcript, Line 20 or so.
3 It looked like Judge James was trying to put the
4 brakes on?

5 A Yes. I mean, Judge James did a -- you know, he is
6 always very conscientious about Defendants
7 voluntarily taking pleas, and so he gave him
8 enough -- a couple of opportunities to back out of
9 this if he wanted to do it.

10 And I told him, I said, Listen, you can back
11 out of it, you know. They had two judges running
12 like they normally do in General Sessions. Judge
13 James was in one courtroom, he was doing pleas.
14 Judge Young was in another courtroom, he was doing
15 trials. And so we were going to be in this one
16 doing a plea or over in the other one doing a
17 trial. And that basically was what I had been
18 told. And I told him that before the plea.

19 I said, If you don't do the plea, they will
20 probably start your trial in the morning. And so I
21 think he testified to that.

22 And so all of these things -- yes, it is a
23 negotiated plea, sure. Sure, it is. But you have
24 got to take whatever they are willing to offer you.
25 And I had him 30 years on a violent offense that he

1 was going to serve 85 percent on versus 18 and a
2 half where he would serve 15. So you do the math.
3 27, 28.

4 Q No question -- no, I'm not -- there is no question
5 that the time itself is a good deal.

6 A So, yes.

7 Q It is just -- the concern is whether or not the
8 only way he could avoid getting a 30-year sentence
9 on a charge he knew he was guilty for was to plead
10 to something he didn't think he was guilty for.

11 A Well, yeah, and he didn't think he was guilty, but,
12 you know, just because I would take the case to
13 trial doesn't mean I wouldn't have lost it. I
14 mean, there is a chance there too. I have lost my
15 share of cases like everybody I think who has tried
16 a case.

17 Q Sure.

18 A If you haven't, then you haven't tried them. But,
19 you know, I think that -- do I -- would I have
20 tried that case? I probably would have simply from
21 the standpoint of the Defendants were all victims
22 themselves also. So, again, I would have tried it
23 just because I would like to have seen how they
24 would have held up under cross-examination. It
25 doesn't mean I would have won it.

1 Q Of course.

2 A Okay. But --

3 MR. FALK: Judge, Your Honor, I have no
4 further questions.

5 THE COURT: Cross-examination.

6 MS. GREGORY: Thank you, Your Honor.

7 CROSS-EXAMINATION

8 BY MS. GREGORY:

9 Q Good morning -- or good afternoon, Mr. McKenzie.

10 A It is afternoon, isn't it?

11 Q Some of my questions have been answered, so I am
12 going to skip around a little bit.

13 A That's okay.

14 Q Just to piggyback on what you just said, you said
15 you would have taken it to trial, but it doesn't
16 necessarily mean you would have won it?

17 A That's right.

18 Q Do you think if a plea offer had been offered,
19 looking at just those cases isolated alone for 18
20 and a half years or 15 years for the attempted
21 murder charges, would you have entertained that
22 guilty plea on attempted murder charges?

23 A If, you know, if those were cases that was just
24 four, those four counts of attempted murder were
25 standing by themselves alone, I didn't have anything

1 else to deal with, I would have entertained -- I
2 would taken it to trial. But I also would have
3 entertained a guilty plea, but it would have been
4 something very favorable, I hope, to my client
5 because of the situation with the victims.

6 Q Okay.

7 A Again, they were all there committing a criminal
8 act, so.

9 Q Right. And you said Stand Your Ground would not
10 have --

11 A I don't think it would have applied simply because,
12 again, if you go to buy drugs, I don't think you
13 can say, Hey, if somebody pulls out a gun during a
14 drug deal, I don't think you really can say, I have
15 a right to stand my ground over a drug deal.

16 Q Okay. And you have a lot of experience in criminal
17 law. How many years have you been practicing?

18 A Twenty-five years in November.

19 Q And for Mr. Dingle's case, for all of his charges,
20 did you receive discovery for all of them?

21 A I did.

22 Q Okay.

23 A I've got it it in my file.

24 Q Okay. And did you review that with him?

25 A I did.

1 Q Okay.

2 A And, you know, he knew exactly -- like, again, for
3 example, the possession with intent to distribute
4 cocaine, third offense, I mean, we knew he didn't
5 have a defense. I mean, you know. We had all of
6 the -- we had all the -- that case was ready to go.
7 We had the discovery back. We had the SLED report
8 back. I mean, everything was ready to go. The
9 officers, you know, they obviously dug the cocaine
10 out of his mouth.

11 Q Right.

12 A So he can't say, Hey, that stuff is not mine. It
13 is in my mouth. So he knew he had that problem, so
14 that was the whole issue that we had to deal with.
15 How do you get around that case?

16 Q Right. And he is saying that he only met with you
17 one time. Is that true?

18 A No, that is not true. Like I said, I wrote down
19 the times that we actually met here at the
20 courthouse.

21 Q Okay.

22 A And we met at my office also.

23 Q Okay. Because he was not in custody at that time?

24 A No, not -- no, huh-uh.

25 Q And did you explain to him the difference between

1 like a plea straight up and a negotiated plea
2 and --

3 A I did.

4 Q Okay.

5 A He knew that very well because, again, we had
6 talked to Judge Young, and Judge Young wouldn't
7 take a negotiated plea for 18 and a half years, so
8 that is why we had to go find Judge James.

9 Q Okay.

10 A And that's why we ended up with Judge James.

11 Q Okay. Did he ever tell you he wanted a trial?

12 A No.

13 Q On any of his charges?

14 A No. In fact, when I took this case, this was --
15 when we first met, this was, Get me the best deal
16 you can get me.

17 Q He never maintained that he wanted a jury trial?

18 A No, he never -- no, not a -- the only trial that
19 they were starting to try or was going to try was
20 going to be the cocaine case.

21 Q Okay.

22 A And so we weren't even at the issue of trying the
23 attempted murder cases, but as the State always
24 does, they want to get rid of all the cases at one
25 time, they don't want to have to keep bringing him

1 back from SCDC.

2 Q Did you tell him he had a right to jury trial?

3 A Sure. Yes.

4 Q You went over his constitutional rights?

5 A Yes. Yes. He -- this is not his first rodeo. He
6 has been in front of the judges before, so he knew
7 that.

8 Q Okay. And he never, even during the guilty plea
9 when he backed away and discussed maybe the
10 leniency or any of his charges, did he ever, when
11 the judge kind of said, Do you want to assert
12 self-defense, did he ever tell you at that time --

13 A No.

14 Q -- Hey, this is not what I want to do?

15 A No.

16 Q I want to --

17 A No. In fact, to him the biggest concern was 18 and
18 a half years.

19 Q Okay.

20 A That is a lot of time.

21 Q Right.

22 A That means he is going to do 15 years.

23 Q Sure.

24 A And he and I both knew that, and we discussed that.

25 Q Sure.

1 A And I wanted to get it lower. I wanted to get him
2 maybe 12, 13 years, and then he wouldn't spend 15
3 years in jail.

4 Q Sure.

5 A But they would not offer that.

6 Q Right.

7 A And because they didn't have to.

8 Q Right. Yes. They had him dead to rights on the
9 other stuff and he could have gotten 30 years on
10 that?

11 A Yes. Yes. I mean, I -- Bronwyn could have
12 taken -- I'm sorry, Ms. McElveen could have taken
13 the case to trial and he would have received 30
14 years within a couple of days of, you know, when
15 the jury went out and came back, it would have been
16 30 years. No doubt in my mind that would have
17 happened.

18 Q Do you think it was in his best interest to take
19 this negotiated plea?

20 A Definitely. Because otherwise he would do 27, 28
21 years in SCDC, now he is doing 15.

22 Q Okay.

23 A So he saved himself at least 13 years.

24 Q Okay. And if he had backed away and said, I want a
25 jury trial, what would you have done?

1 A We would have talked, obviously. Judge James would
2 have never come back and taken the plea again
3 because --

4 Q Sure.

5 A -- he had backed out of it. But we certainly would
6 have -- we -- you know, the problem was he wouldn't
7 have done that, because the reason I think he
8 kept -- if he was reluctant, he knew that in the
9 back of his mind that we were getting ready to try
10 a possession with intent to distribute cocaine,
11 third offense.

12 Q Okay.

13 A And that the Solicitor had the file ready to go and
14 there was a jury in the next courtroom ready to try
15 his case.

16 Q Okay. And in his application, his allegations
17 regarding your failure to discover evidence or
18 anything exculpatory on his behalf, was there
19 anything -- did he provide you with any witnesses
20 that you could have maybe called to trial if you
21 had taken the attempted murder on its own?

22 A What you would be looking for in something like
23 that would be an alibi defense, I wasn't there.
24 Okay. What he said to start with. You know, he
25 told the police that. But then, of course, I got a

1 statement from him to the police that he said he
2 wasn't there and then he was there but he didn't
3 shoot at anybody.

4 Q Okay.

5 A And then he also offered to take the polygraph, but
6 then backed out on the polygraph. So, I mean,
7 again, I have got all this now -- obviously, that
8 wouldn't have been admissible at trial.

9 Q Right. Sure.

10 A But all of this was in his statement. And so there
11 was no alibi defense. I thought Stand Your Ground
12 defense was weak, at best, because he was there for
13 illegal activity.

14 Q Okay.

15 A You know, again, he had a right to defend himself
16 in a vehicle certainly. But he was there,
17 according to his own admission, to buy drugs.

18 Q Okay. And you were in the courtroom when he
19 testified earlier. Were the facts that he
20 testified to the same that he told you or told law
21 enforcement? Did he ever tell you --

22 A It depends on what part you -- I mean, obviously he
23 told the judge that he had a gun. He told him he
24 had a .44 magnum. A .44 magnum was found close to
25 the scene of this -- of where all the shooting

1 happened. So, yes, all that was correct, I mean,
2 yes. And so --

3 Q Okay.

4 A Now, as far as the fact of, you know, did he
5 voluntarily plead to the four counts of attempted
6 murder? He did.

7 Q Okay.

8 A You know.

9 Q Okay. And do you think it was in his best interest
10 to plead guilty?

11 A It was absolutely in his best interest.

12 Q He also alleged in his application, I believe, that
13 he was offered a 5-year plea. Was that ever --

14 A That was never on the table.

15 Q -- offered? Never on the table, okay.

16 A Five years were -- he was looking at on -- just on
17 this indictment, obviously, four counts of
18 attempted murder, that was just one indictment, but
19 on the other he had nine warrants that were
20 outstanding, and then I think also the assault and
21 battery by mob third. So he had ten other charges.

22 Q Okay.

23 A So. And I give the analogy like a dartboard. I
24 mean, you know, the Solicitor has to hit the
25 dartboard one time. I have got to make sure he

1 misses every time. And that is a lot of darts.

2 That is a lot of darts.

3 Q Right. So when he hired you, his posture was
4 never, We need to prepare for trial?

5 A No, because we were going to be trying, I mean, how
6 many different cases? You know, that one
7 possession with intent to distribute cocaine case
8 had a failure to stop for a blue light in it also,
9 but that is the case that Ms. McElveen used to get
10 the plea.

11 Q Sure.

12 A Simply. I mean, that is the way this works. I
13 mean, so she had -- that was her best case. She
14 was going to try her best case first. That was --
15 and he was going to get 30 years from Judge Young.
16 And she was going to try it in front of Judge
17 Young. She tries -- she calls the case, she puts
18 it in front of the judge, and the judge had already
19 told me in chambers he was going to give him 30
20 years.

21 Q Okay.

22 A So, that is the facts I was looking at as a Defense
23 attorney, and so I have to make a call and make my
24 recommendation to my client, and that is why he
25 wanted to speak to Ms. McElveen, and he did.

1 Q Right.

2 A And Ms. McElveen said, I am only going to give
3 you -- I am only going to negotiate with 18 and a
4 half years. He thought he could talk her out of
5 it. He couldn't do it. So. And, you know, she is
6 a tough negotiator too. But we -- you know, she
7 didn't have to offer him 18 and a half years. She
8 could have said 25. Because he was going to get
9 30.

10 Q Sure.

11 A So we got her down to 18 and a half years, and that
12 was the best -- that was the least amount of time
13 she was willing to do.

14 Q And during the entire negotiation, Mr. Dingle was
15 aware that the attempted murder charges were part
16 of that and he never provided you any kind of
17 resistance to pleading guilty to those attempted
18 murder charges, and you went over discovery with
19 him as well?

20 A Right. And his only -- his only concern was, How
21 much time am I going to be serving?

22 Q Okay.

23 A And he wanted something a lot less, obviously.
24 Everybody does. And I would have wanted something
25 a lot less for him too. But under the

1 circumstances, with what he was looking at, 18 and
2 a half years was not a bad plea offer.

3 Q Right.

4 A So that's why, you know, again, I have a judge
5 telling me he is going to give him 30 years, you
6 know, take it -- you better take the 18 and a half
7 and run. That's what we did.

8 Q And the attempted murder charge wasn't the only
9 charge that he received the 18 and a half years on,
10 he also received that on another drug charge that
11 he is not contesting here, right?

12 A That's right.

13 Q So he is serving 18 and a half years regardless,
14 even with that drug charge being on it, so --

15 A That's right. All of it was consecutive to the
16 other charges, so.

17 Q Okay.

18 MS. GREGORY: No further questions, Your
19 Honor.

20 MR. FALK: Briefly.

21 REDIRECT EXAMINATION

22 BY MR. FALK:

23 Q So he was going -- and so it was your
24 understanding -- you think he told you that he was
25 going there to buy weed from Jaquan, is that right?

1 A Well, that's what he told the police.

2 Q Okay.

3 A You know, I mean, that is not my understanding,
4 that is what he told the police, and so, you
5 know -- like -- well, he told them the first time
6 that he wasn't even there, so his statement to the
7 police was he was going there to buy weed from
8 Quan, which is --

9 Q Jaquan Wells?

10 A Yes. Jaquan Wells, yes.

11 Q Okay.

12 A And Jaquan Wells was one of the guys that he says
13 that opened up fire on them. So, again, you are
14 involved in some kind of criminal activity, I think
15 the Stand Your Ground is going to say, you know,
16 the judge is not going to charge it because of that
17 part of the statute. You can't -- you know,
18 obviously you have to be innocent in what you are
19 doing to stand your ground, protect other people,
20 or whatever he was doing. And he has a right to
21 protect himself in his own vehicle certainly. But
22 if you are there to purchase weed, I don't think
23 the judge can charge that. That is my opinion.
24 But I don't think he can.

25 Q Regardless of how much weed, whether or not it

1 was --

2 A Dime bag or --

3 Q -- enough to make it simple possession?

4 A Yes. I think if you are involved in a criminal
5 activity, I think you, you know, the judge can't
6 charge Stand Your Ground.

7 MR. FALK: No further questions.

8 MS. GREGORY: No redirect, Your Honor.

9 THE COURT: All right. Thank you,
10 Mr. McKenzie. You may step down.

11 (Witness steps down.)

12 MS. GREGORY: Your Honor, Mr. McKenzie can be
13 excused from our subpoena.

14 THE COURT: Any objection, Mr. Falk?

15 MR. FALK: No objection.

16 THE COURT: Yes, sir, you may be excused.

17 THE WITNESS: Thank you, Your Honor. I'll
18 just get my stuff.

19 THE COURT: You may call your next witness.

20 MR. FALK: Wait, before Mr. McKenzie goes, I
21 am going to call my client as a rebuttal witness.
22 I don't know if Mr. McKenzie needs to be here for
23 that or not.

24 MS. GREGORY: Yes. Please sit down. We would
25 ask Mr. McKenzie to stay in that case then, yes.

1 MR. MCKENZIE: I almost made it.

2 THE COURT: Are you going to call him now or
3 wait?

4 MR. FALK: Well, we are resting on our case,
5 and then we will call him as a rebuttal witness.

6 MS. GREGORY: We do not have any witnesses.
7 Mr. McKenzie was our only witness, Your Honor.

8 THE COURT: In reply?

9 MR. FALK: I call Mr. Dingle to the stand.

10 (Mr. Dingle returns to the witness stand.)

11 HENRY O'NEAL DINGLE, JR.,
12 after being duly sworn, testified as follows:

13 DIRECT EXAMINATION

14 BY MR. FALK:

15 Q Mr. Dingle, you heard Mr. McKenzie testifying?

16 A Yes, sir.

17 Q And are there portions of his testimony that you
18 don't believe are accurate?

19 A Yes, sir.

20 Q Specifically regarding the purchasing of the weed,
21 yes?

22 A Okay. Now, in his whole statement, it was a whole
23 mix-up. That is how you know he don't know the
24 details of the case because those two incidents was
25 two whole different incidents. The first incident,

1 nobody was ever charged with when I went to go buy
2 the weed. And, in fact, if you go back and look in
3 my motion of discovery, it will show you that when
4 I got locked up by the police, I told them I did
5 not know what happened because I was figuring that
6 nobody said nothing, so I said I didn't say
7 nothing. But once they told -- they laid all the
8 evidence out for me and showed me what was said
9 against me, then I went back and said, Well, you
10 must be talking about when somebody was shooting at
11 me when I went to go buy weed. That was the first
12 incident that I was never charged with. I didn't
13 even know that the whole second incident, which my
14 criminal charges stem from, were what we were
15 talking about. So basically when he said that I
16 couldn't have the right to stand my ground because
17 I was committing a crime, I wasn't buying weed when
18 they came and shot at me. That was a whole
19 different incident which don't even got nothing to
20 do with the first part. So that where the whole
21 mix-up was coming from. I was pulling out the yard
22 driving the car. Me and him never had no words
23 about buying no weed. That was something that
24 happened earlier that day and --

25 Q The 9:00 o'clock shooting?

1 A Right. And I was never charged with that. The
2 3:30, 4:30 shooting is when -- is what I'm charged
3 with, so me committing a crime other than what went
4 on at that time, I wasn't committing no crime. I
5 was pulling out the yard, minding my business. He
6 shot at me. I never called the police or anything.
7 I just let it go.

8 Q He shot at you. You mean at the 9:00 o'clock, you
9 didn't call the police?

10 A Right.

11 Q He came back at 3:30?

12 A And shot at me again.

13 Q More shooting?

14 A And that's when I was in the situation that I was
15 in. I wasn't committing no crime. So I did had
16 the right to legally stand my ground. And the
17 reason why I didn't stay on the scene was
18 because -- that's why you got to go back in the
19 evidence and look at who had what kind of gun. And
20 they had guns with all kind of bullets in it. I
21 had a six-shot .44. When I fired the bullets to
22 defend myself, I ran. They were still shooting at
23 me. So of course I would leave the scene. And
24 that is what I'm saying. That is where the
25 undiscovered evidence come in because --

1 Q A .44 magnum was a --

2 A A six-shot gun.

3 Q Six-shot gun?

4 A I'm shooting at four people with six bullets, and
5 all of them got guns with more than 17 rounds in
6 it. So after I shot the bullets out the gun, if I
7 would have stayed there, I would have been dead.
8 So I left. That is what happened. You know, and
9 the whole thing -- what he was talking about, it is
10 a mix-up because he ain't got the facts right. He
11 is talking about that I was buying weed. That go
12 to show you that he wasn't studying my case right
13 from the first part. So that is what I wanted to
14 say.

15 And also for the fact that when -- about the
16 9:00 o'clock shooting. He was like -- well, I
17 really don't want to -- I ain't going to really go
18 into that, but I didn't tell the police anything.
19 All I did was said that -- I tried to clear myself.
20 First I told them I didn't have no involvement in
21 it because I didn't figure that the dude would lie
22 and tell them that I shot at him, he shot at me.
23 It was a whole fabricated story so none of it was
24 the truth from the beginning, so how could it be --
25 it shouldn't even matter. And that part of the

1 case shouldn't even be brought up period. Nobody
2 was even charged with it. It is irrelevant to what
3 is going on that happened at 3:30, so --

4 Q I think it is relevant --

5 A Well, yeah.

6 Q The people who are shooting at you then is related
7 to the people who were shooting at you at 3:30.

8 A But -- and that is how the whole story came about
9 because I was never arrested. The other party was
10 arrested first, so they got the time to tell their
11 side of the story and make up any lies that they
12 wanted to make up, tell them anything. And because
13 I didn't -- because being that I wasn't at the
14 scene, I had to come back and defend myself when I
15 was questioned. So I was in there and I wasn't
16 trying to like say too much, but I was just trying
17 to like say like I didn't do nothing. And that is
18 all that was said. That is all that was said.

19 Q Okay.

20 MR. FALK: No further questions.

21 MS. GREGORY: No questions, Your Honor.

22 THE COURT: Thank you. You may step down.

23 (Witness steps down.)

24 THE COURT: Any other questions or evidence to
25 be presented by either side?

1 MS. GREGORY: If I may have a moment, Your
2 Honor?

3 THE COURT: You may.

4 (Pause.)

5 MS. GREGORY: Your Honor, the State would call
6 Mr. McKenzie to the stand briefly, Your Honor.

7 (Mr. McKenzie returns to the stand.)

8 STEVEN SMITH MCKENZIE,
9 after being duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MS. GREGORY:

12 Q Mr. McKenzie, you heard just what Mr. Dingle said,
13 that you are misunderstanding or misremembering or
14 not remembering the facts of this particular case.
15 Do you agree with his version of the facts?

16 A No, I don't, because that is not what he stated to
17 the police. And it is in the police report that he
18 said he went to buy weed from Quan. The next
19 sentence, according to Dingle, Quan fired shots at
20 him.

21 Q Okay.

22 A And then Quan says Dingle fired shots at him and
23 then shot the window out of his vehicle, so --

24 Q So clearly at the time that Mr. Dingle was firing
25 the shots he was buying weed based on his --

1 A According to his statement. I mean, it says that
2 he went to buy weed -- this is what it says. Henry
3 Dingle claims he went to buy weed from Quan.
4 According to Dingle, Quan fired shots at him.

5 Q Okay. Did he ever tell you the version of the
6 facts during your representation that he provided
7 here today?

8 A No.

9 Q No. Okay.

10 MS. GREGORY: No further questions, Your
11 Honor.

12 MR. FALK: Nothing further.

13 THE COURT: Okay. Thank you. You may step
14 down.

15 THE WITNESS: Thank you.

16 MS. GREGORY: The State doesn't have any more
17 witnesses, Your Honor. And Mr. McKenzie can be
18 excused at this point.

19 THE COURT: You are excused a second time.

20 (Witness steps down and is excused.)

21 THE COURT: Now, does either side wish to
22 present additional evidence or witnesses?

23 MS. GREGORY: Not from the State, Your Honor.

24 MR. FALK: No, Your Honor.

25 THE COURT: I will be glad to hear argument

1 then.

2 MR. FALK: Whether it is the way things always
3 go in court, I think we had -- we heard testimony
4 of somebody who felt coerced to plead guilty to
5 four charges of attempted murder. And he really
6 felt that he had legitimate defenses to those
7 claims. I mean, he may have put himself in that
8 predicament because he knew he was guilty on the
9 cocaine case and he knew that they were going to
10 try the cocaine case that day. This is the first
11 time I heard that he was sure that he would get 30
12 years if he was tried and convicted. And
13 pragmatically that might be great that if the
14 Solicitor had some sort of unresolved shooting and
15 they can tag that on my client, but my client does
16 not -- wanted to have a self-defense claim,
17 believes he has a self-defense claim. He doesn't
18 want to go back to SCDC having a charge for
19 attempted murder when he believes that he had
20 defenses to it. And the only reason why he pled
21 was because he knew he would get 30 years on
22 another charge for which he knew he was guilty.

23 This is not like a situation where -- you
24 know, it is not -- it is not like he knew what was
25 going to happen in a self-defense case. This is a

1 completely different case. He knows he is going to
2 get 30 years. And he knows he is guilty. They
3 caught him with the stuff in his mouth. But that
4 doesn't necessarily mean that the Solicitor can
5 then sort of pile on a bunch of other charges that
6 he is forced to plead guilty to in order to get the
7 benefit of that bargain.

8 I mean, it is just -- I don't believe it is
9 the way it should work, Your Honor. I don't think
10 somebody should have to plead guilty to an
11 unrelated case in order to get the benefit of the
12 bargain. And it may be the way it always goes, and
13 that is a pragmatic approach to how we move cases
14 through the dockets. I just -- I don't think it is
15 right.

16 THE COURT: Of course, the judge tried to give
17 him an out, didn't he?

18 MR. FALK: Yes, Your Honor. I don't know -- I
19 wasn't there. You know, I don't know how that
20 played out. I'm not sure my client was fully aware
21 of the Stand Your Ground law at that time. And,
22 you know, and possibly there would be conflicting
23 testimony as to what was going on. And I'm not
24 sure on a Stand Your Ground case if, you know, you
25 have one joint of marijuana in your pocket, a

1 simple possession quantity of marijuana in your
2 pocket, if that would prohibit you from asserting
3 Stand Your Ground. I mean, I'm not sure about
4 that. And, but there is certainly possibly
5 conflicting testimony as to what he was doing
6 there. He says he was at a house where he spent a
7 lot of time, he had the right to be at that place.
8 But, I mean, it -- we all heard that he felt
9 coerced into pleading guilty to the murder case in
10 order to get the benefit of the bargain on an
11 unrelated case. A separate transaction.

12 THE COURT: Wasn't there a recent Supreme
13 Court case dealing with drug -- doing a drug
14 transaction with a weapon?

15 MR. FALK: I thought there was.

16 THE COURT: In self-defense?

17 MR. FALK: Yes, Your Honor, but I'm not
18 prepared for that.

19 THE COURT: I thought it said you couldn't
20 allege self-defense if you were going to purchase
21 drugs and took a gun. But I'm not sure about that.
22 I'm not sure that has anything to do with what we
23 are talking about either.

24 MR. FALK: Well, I'm not sure there is a
25 difference between going to purchase heroin and

1 going to purchase marijuana.

2 THE COURT: All right. Anything else?

3 MS. GREGORY: Your Honor, the testimony that
4 the Applicant was coerced into his guilty plea is
5 self-serving. And Mr. Dingle is the only one
6 saying that he was coerced. This was a negotiated
7 plea from the beginning. As Mr. McKenzie
8 testified, he was aware of everything. The only
9 thing he was concerned about was how much time he
10 was going to be serving. He was never requesting a
11 jury trial. No matter what occurred at the guilty
12 plea hearing, he never backed away and said, I want
13 a jury trial. He retained Mr. McKenzie. And the
14 entire time he was only looking for the best deal.
15 Even met with Ms. McElveen to just secure the best
16 deal. He was only concerned about the time he is
17 serving. And from his testimony, it seems like he
18 is only concerned about having attempted murder
19 charges because of how he is housed at SCDC, which
20 isn't something that PCR can fix.

21 So, notwithstanding all that, I believe you
22 can just dismiss his application straight up on a
23 prejudice analysis alone under Strickland.

24 The plea court conducted an extensive colloquy
25 with Mr. Dingle. He was afforded an opportunity to

1 step back several times with his guilty plea, which
2 even by his own testimony he did not do.

3 Mr. McKenzie said he never said step back and said
4 I want a jury trial. Never indicated to the Court
5 that he didn't want to proceed. He said he was
6 satisfied with his attorney. Mr. McKenzie's
7 testimony today and his comments during the plea,
8 if you look at the record, indicate he investigated
9 Mr. Dingle's case and still believed it was in Mr.
10 Dingle's best interest to plead guilty, even having
11 all the discovery, including the attempted murder
12 charges.

13 Mr. Dingle also testified at the plea hearing
14 that he was satisfied with his attorney, like I
15 said, and was not promised anything in exchange for
16 his guilty plea. He understood his charges. And I
17 believe the record shows the knowing and
18 voluntariness of his guilty plea.

19 And, therefore, he failed to meet his burden
20 under both analyses of the Strickland test, but he
21 certainly wasn't prejudiced because he was going to
22 receive 30 years alone on just the drug charges,
23 which he is not saying he is not guilty of.

24 So we would ask that you dismiss the
25 application.

1 MR. FALK: Your Honor, I don't believe that is
2 an accurate analysis of what prejudice means under
3 Strickland. I think when they are talking about
4 prejudice under Strickland, it is, you know, the
5 lawyer made a mistake, but -- because there was DNA
6 evidence or he would have been convicted anyway.

7 So, I mean, I think Strickland is a two-part
8 test. It is not like you find one error that your
9 trial counsel made and you get a new trial. It is
10 just the ineffective assistance had to have an
11 impact on that trial.

12 Now, if you look at the recent Supreme Court,
13 South Carolina Supreme Court decision in Brown,
14 which is I think 5 -- I have it written down, I'll
15 get it in a second, but I think it is 523 S.C. 26.
16 And that is a case where -- excuse me, 423 S.C.
17 56 -- and that is a case where somebody was in SCDC
18 custody, had a PWID charge, serving one year, and
19 also serving a 10-year sentence. And he filed for
20 a post-conviction relief on the PWID charge. By
21 the time the case got to court, he was already
22 served out on the PWID charge.

23 And it seems to me, the way I read that
24 opinion, tried to talk about whether or not there
25 was prejudice, you know, they were saying

1 originally I think the State was asserting he is
2 not prejudiced by the PWID charge because he is
3 already out of custody. But he is prejudiced
4 because he is wearing the brand of being charged --
5 having four convictions for attempted murder for
6 something he believes that he was defending himself
7 on. And he certainly has a continuing prejudice
8 for the way he is treated at SCDC because of the
9 charges. That is his allegation.

10 I am just saying that I don't think the
11 prejudice he has to prove is the same type of -- I
12 think it is a different discussion when you are
13 talking about under Strickland and prejudice, they
14 mean whether or not the trial lawyer's mistake
15 would have made a difference in the case. He
16 wasn't prejudiced because he would have gotten
17 convicted anyway.

18 THE COURT: All right. I find that the
19 testimony of the trial counsel was compelling and
20 believable. And the Court agrees with the argument
21 of the State on this case.

22 For these reasons, I find the Applicant has
23 failed to meet his burden of proof, and therefore I
24 am compelled to deny the application.

25 Ms. Gregory, if you would please prepare an

1 order and submit it within 20 days.

2 MS. GREGORY: Yes, Your Honor. Thank you.

3 (WHEREUPON, the hearing adjourned at

4 2:47 p.m.)

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25 **(END OF TRANSCRIPT)**

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF SUMTER

)
)
)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Sumter County, South Carolina, on the 31st day of July, 2019.

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

December 30, 2019

s/Deborah M. McCurdy, RPR

Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

IN THE COURT OF COMMON PLEAS
FOR THE THIRD JUDICIAL CIRCUIT

2017-CP-43-642

Henry Oneal Dingle, Jr., #356021,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

CERTIFIED TRUE COPY
OF ORIGINAL FILED

DEPUTY CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

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CLERK OF COURT
SUMTER COUNTY
SOUTH CAROLINA

This matter comes before the Court by way of an application for post-conviction relief filed on April 10, 2017, by Henry Dingle, Jr. (Applicant). The State (Respondent) filed a return on February 15, 2018, requesting an evidentiary hearing. An evidentiary hearing into the matter was convened on July 31, 2019, at the Sumter County Courthouse. Applicant was present at the hearing and represented by James K. Falk, Esquire. Assistant Attorney General Janell H. Gregory of the South Carolina Attorney General's Office appeared on behalf of Respondent. During the hearing, Applicant testified on his own behalf. Steven S. McKenzie, Esquire (Counsel) also testified. After a review of the record and all evidence presented, this Court finds Applicant has failed to meet his requisite burden of proof and denies this application.

PROCEDURAL HISTORY

The records before this Court establish Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Sumter County Clerk of Court's order of commitment. During its April 2016, the Sumter County Grand Jury indicted Applicant for four counts of attempted murder, criminal conspiracy, unlawful carrying of a pistol, and possession of a weapon

during the commission of a violent crime (2016-GS-43-0524).¹

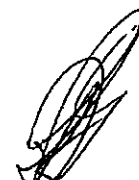
Counsel represented Applicant and Assistant Solicitor Bronwyn McElveen of the Third Circuit Solicitor's Office prosecuted the case. On April 22, 2016, Applicant pled guilty pursuant to a negotiated plea to four counts of attempted murder, criminal conspiracy, and unlawful carrying of a pistol before the Honorable George C. James, Jr. In exchange for his guilty plea, the State nolle prossed the possession of a weapon during the commission of a violent crime charge. Pursuant to plea negotiations, Judge James sentenced Applicant to imprisonment for concurrent terms of eighteen years and six months for each charge of attempted murder, five years criminal conspiracy, one year for unlawful carrying of a pistol. Applicant did not appeal his conviction or sentence.

SUMMARY OF FACTS

Facts leading to the four counts of attempted murder, criminal conspiracy, unlawful carrying of a pistol, and possession of a weapon during the commission of a violent crime

On December 29, 2015, at approximately 9:40AM, officers were told about shots being fired on Miller Road near the UPS headquarters in Sumter. (GP Tr. 21.) A second shooting was reported at approximately 11:34AM at the Popular Square Apartments. At 2:30PM on the same day another call was received for shots being fired at Main Street in Sumter. (GP Tr. 21.) Finally, at 3:30PM, law enforcement responded to Frazier Street in reference to shots being fired in a two vehicle collision. (GP Tr. 21.) Officers found a Kia and Nissan that had hit each other head on. (GP Tr. 21-22.) Both vehicles sustained front end damage and the collision was a result of the two

¹ Applicant was also indicted for third degree assault and battery by a mob (2016-GS-43-0484), failure to stop for a blue light, second offense, possession with intent to distribute cocaine base or crack, possession with intent to distribute crack cocaine near a school (2016-GS-43-0483), possession with intent to distribute cocaine, third offense (2016-GS-43-0485), but is only challenging the offenses associated with indictment 2016-GS-43-0524 in his post-conviction relief action.



cars driving down the road firing shots at each other. (GP Tr. 22.) The disagreement between the two groups was allegedly over drug territory. (GP Tr. 22.)

Officers set up a perimeter and began searching for subjects. (GP Tr. 22.) Using a K-9 officer, they were able to locate four individuals who had been in one vehicle together. (GP Tr. 22.) The individuals were identified as Eric Phillips (Phillips), Rominique Lewis Brand (Brand), Rodriques Lewis (Lewis), and Jaquan Wells (Wells). (GP Tr. 22.) A witness identified that group as being the subjects that fled from the Nissan. (GP Tr. 22.) Further investigation revealed that Applicant was the driver of the Kia and Jerquez Spann (Spann) was the passenger. (GP Tr. 22.) The owner of the vehicle told law enforcement that he had loaned Applicant the Kia. (GP Tr. 22.) Officers located a .44 Magnum Ruger handgun in a wooded area near Milton and Brunson Street. (GP Tr. 22.) There were .380 caliber shell casings, .40 caliber shell casings, 9 millimeter shell casings, and one box of Winchester 410 rounds, which shows there was some sort of criminal conspiracy to have a shootout over drug territory. (GP Tr. 22-23.)

During the guilty plea hearing, Applicant admitted to having the .44 Magnum and shooting the firearm during the incident. (GP Tr. 23.) Applicant claimed he was shot at first, and the plea judge asked Applicant at that time if he wanted to back away from his negotiated plea to assert a self-defense claim. (GP Tr. 23.) The plea judge asked Counsel if Applicant wanted to go forward with this and Applicant responded, "Yes, sir." (GP Tr. 24.) McElveen also responded stating it was a tough situation because everyone is a victim and a defendant in that scenario. (GP Tr. 24.) Applicant provided further explanation to the plea judge stating the shooting was not over drug territory, but had something to do with "something that somebody stole something from them." (GP Tr. 24.) Applicant claimed he had nothing to do with the theft, but that he just happened to be around at the time of the shooting. (GP Tr. 24-25.) McElveen told the plea judge that Applicant's co-defendant, Spann, also told the State that Applicant had a firearm and was in the



vehicle with him at the time of the shooting. (GP Tr. 25.) McElveen explained, according to the State's evidence, Applicant and Spann did go out there with the intention of killing the people that fired shots earlier in the day in Sumter. (GP Tr. 25.)

ALLEGATIONS RAISED

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

1. Ineffective Assistance of Counsel
 - a. Failure to investigate potentially exculpatory evidence
 - b. Failure to discover potentially exculpatory evidence
 - c. Failure to have a negotiated plea for five years enforced

On July 31, 2019, an evidentiary hearing was convened. Applicant proceeded with the hearing on all of the allegations set forth in his application. Additionally, although not alleged in his application, Applicant provided testimony indicating his guilty plea was involuntary.

At the outset of the hearing, this Court conducted a colloquy with Applicant to ensure he was aware of the consequences of his decision to proceed with his post-conviction relief matter only challenging the offenses associated with indictment 2016-GS-43-0524. Applicant testified he understood he was waiving all post-conviction relief claims as they pertain to his remaining charges. Applicant testified he understood he could not file a successive application raising issues pertaining to those charges that could be addressed before this Court during this hearing. Applicant testified he had enough time to review this decision with his attorney and he did not have any questions for this Court or his attorney. Applicant testified no one threatened or coerced him into withdrawing his claims on his remaining charges. This Court found Applicant knowingly, intelligently, and voluntarily waived his post-conviction claims on the remaining indictments in this matter and allowed Applicant to proceed challenging only his convictions on indictment 2016-GS-43-0524.



SUMMARY OF TESTIMONY PRESENTED AT THE EVIDENTIARY HEARING*Applicant's Testimony*

Applicant testified that he understood that if he is successful in his post-conviction relief claim that he would go back to square one at the Sumter County Solicitor's Office because winning his post-conviction relief matter would not exonerate him. Applicant testified he understands he could face additional time that would not necessarily be run concurrent to what he is currently serving.

Applicant testified there were four shootings in Sumter County that started at around 9:00AM. Applicant testified he did not have a gun at the early morning shooting. Applicant testified he just came to talk to someone and someone shot at him. Applicant testified he was a victim in that incident, however, he did not report it to police. Applicant testified at the 3:30PM shooting, he was at his friend's house. Applicant testified it was normal for him to be there because he stayed over there often. Applicant testified at the time of the shooting he was at his friend's house just talking to his friend, smoking cigarettes and drinking soda.

Applicant testified after the 9:30AM shooting, he went and got his gun and kept it in his car. Applicant testified he was scared for his life and was not trying to hurt anyone. Applicant testified a car came up to him and he recognized the subjects in the car. Applicant testified one of the subjects held a gun out of the window. Applicant testified they all had guns. Applicant testified he never got to tell law enforcement his side of the story. Applicant testified the other subjects got to tell their side of the story. Applicant testified the subjects in the vehicle fabricated a story that Applicant fired back.

Applicant testified he only met with Counsel one time during his representation. Applicant testified he retained Counsel. Applicant testified Counsel never investigated or came up with a trial strategy. Applicant testified Counsel never discussed a "stand your ground" defense.



Applicant testified he pled guilty because everything happened so fast. Applicant testified if he did not plead guilty to all of the charges he would be going to trial the next day. Applicant testified he understood his cocaine charges were a third offense and he faced ten to thirty years at trial.

Applicant testified that the facts of the attempted murder charge do not fit what happened that day. Applicant testified the "stand your ground" law says he has the right to react. Applicant testified his due process rights were violated. Applicant testified he would not currently be held at McCormick if he did not have the attempted murder charges. Applicant testified he had a right to stand his ground. Applicant testified during the guilty plea hearing the judge asked him why were you shooting and Applicant responded he didn't mean to that they started shooting at me. Applicant testified Counsel told him to say "yes" to everything at the guilty plea hearing. Applicant testified he never intended to hurt anyone, he was just acting in self-defense.

During cross-examination, Applicant testified he never went over discovery with Counsel and only met with him once. Applicant testified his family retained Counsel. Applicant testified he recalled waiving his constitutional rights. Applicant testified he recalled his attorney telling him that he was facing 270 years if he were to be convicted of all of his charges. Applicant testified he recalled pleading guilty to each of his charges as they were read to him during the plea hearing. Applicant testified he knew it was a negotiated plea and he knew how much time he would be getting on his charges.

Applicant testified he recalled telling the plea judge that he had enough time to talk with Counsel, but also testified he felt rushed but did not tell the judge because he just wanted to get the plea over with. Applicant testified he recalls the State going over the facts for each of his charges. Applicant testified he recalled the plea judge asking him if he wanted to back off and assert self-defense during the plea hearing and Applicant responded he did not. Applicant testified he did not want to plead to the attempted murder charges but agreed to do it just to get it over with.



On re-direct, Applicant testified he did not intend to hurt anyone. Applicant testified he believes his Fourteenth Amendment right to due process was violated because the facts do not fit the elements of the crime. Applicant testified it is an unconstitutional sentence.

Testimony of Counsel

Counsel testified he was retained in this case. Counsel testified if he was only representing Applicant on the attempted murder charges alone his strategy would have been to go to trial in that case, but "stand your ground" is not applicable to Applicant's case because Applicant told law enforcement he was on Frazier Street because he was getting weed from Quon.² Counsel testified in order to win a "stand your ground" case, you cannot be committing a crime. Counsel testified he believes the shooting was a drug deal gone bad because Quon was in the other car that was involved in the vehicle collision with Applicant's vehicle. Counsel also testified Applicant gave contradictory statements to law enforcement. Counsel testified Applicant also changed his story. Counsel testified Applicant admitted to have a .44 Magnum and officers located one near the scene of the shooting. Counsel testified the amount of charges Applicant had hurt his case. Counsel testified Applicant was not at his friend's house at the time of the incident because he admitted he was operating one of the vehicles involved in the collision. Counsel testified Applicant ran from the scene and did not "stand his ground." Counsel testified he did not understand why Applicant ran from the scene if he did not do anything wrong.

Counsel testified he had a number of conversations with Applicant regarding his plea. Counsel testified they were going to try his drug case with Jeff Young, but the solicitor asked what kind of sentence they could expect and Judge Young said Applicant needed to do thirty. Counsel testified on April 14, 2016, he met with Applicant and told him Judge Young would not accept the

² Counsel testified Wells was known by "Quon."

18.5 year plea negotiation. Counsel testified he told Applicant if Judge Young tried the case he would get a thirty year sentence. Counsel testified he had to go judge shopping and Judge James agreed to take the plea for 18.5 years. Counsel testified Applicant asked to speak to McElveen and Applicant asked McElveen to give him less time, but she would not go below 18.5 years, especially since Judge Young would give him thirty if he went to trial. Counsel testified Applicant got heated with McElveen and walked down the hallway towards McElveen and a deputy had to intervene.

Counsel testified McElveen would not allow Applicant to plead to only the drug charges. Counsel testified he believed the public was demanding justice on the shootings because they occurred in broad daylight. Counsel testified if Applicant had only been charged with the attempted murders he would have liked to have tried the case because he wanted to see how the witnesses would have held up under cross-examination.

On cross-examination, Counsel testified he would have taken the attempted murder charges to trial, but it does not mean he would have won. Counsel testified he would have entertained a guilty plea on the attempted murder charges as well even if they were standing alone.

Counsel testified he has been practicing law for twenty-five years. Counsel testified he obtained discovery and reviewed discovery with Applicant. Counsel testified he met with Applicant more than one time. Counsel testified he discussed the difference between a negotiated plea and a straight up plea with Applicant. Counsel testified he was retained to get Applicant the best deal he could. Counsel testified Applicant said to him, "get me the best deal you can get me." Counsel testified Applicant never told him he wanted a trial on any of his charges.

Counsel testified he reviewed Applicant's constitutional rights with him. Counsel testified he absolutely believed it was in Applicant's best interest to plead guilty because he saved himself at least thirteen years by pleading guilty. Counsel testified the only defense Applicant could have



had to these cases was to say he was not present, to provide an alibi. Counsel testified in the beginning Applicant told him he was not there, but then changed his mind.

Counsel testified McElveen never extended a five year plea offer. Counsel testified Applicant never asked for a trial or told Counsel they needed to prepare for trial. Counsel testified Applicant never provided any resistance to pleading guilty to all of the charges in his negotiated plea. Counsel testified Applicant was only concerned with how much time he would get.

On re-direct, Counsel testified the first time he talked to Applicant, Applicant claimed that he was not even present at the shooting. Counsel testified the stand your ground defense would not have worked because Applicant was buying weed.

Testimony of Applicant in Rebuttal

Applicant testified based on Counsel's testimony, it was clear Counsel did not study his case. Applicant testified he bought weed earlier that day, not at the time of the shooting. Applicant testified he was fleeing the scene because someone was shooting at him, so of course he ran.

Testimony of Counsel in Rebuttal

Counsel testified Applicant's claims are inconsistent with what he told law enforcement. Counsel testified Applicant told law enforcement he was buying weed from Quon.

APPLICABLE LAW

In a post-conviction relief action, the 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 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.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. Applicant must overcome this presumption in order 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. Id. at 117, 300 S.C. 115. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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." Id. at 117-18, 300 S.C. 115. With respect to guilty plea counsel, the applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

FINDINGS OF FACTS AND CONCLUSIONS OF LAW

This Court viewed the testimony presented at the evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court has reviewed the Clerk of Court records regarding the subject convictions, the immunity hearing transcript, guilty plea hearing transcript, Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, and the legal arguments made by the attorneys. Set forth below are the relevant findings of fact and conclusion of law as required by S.C. Code Ann. § 17-27-80 (2003).



Ineffective Assistance of Counsel

This Court finds Applicant has failed to meet his burden of proving he is entitled to post-conviction relief on any of his allegations of ineffective assistance of counsel. Applicant has failed to prove both deficiency on the part of Counsel and any prejudice therefrom.

Counsel was ineffective for failing to investigate and discover potentially exculpatory evidence

Applicant alleges Counsel was ineffective for failing to challenge the attempted murder, criminal conspiracy, and weapon charges against him as he believed he had a “stand your ground” defense. Applicant testified Counsel only met with him one time and did not investigate his case or come up with a trial strategy. Applicant testified Counsel never discussed the possibility of asserting a “stand your ground” defense in his case.

Counsel testified Applicant retained him and instructed Counsel to, “get me the best deal you can get me.” Counsel testified Applicant never wanted to proceed to a trial on any of his charges. Counsel testified Applicant was only concerned with how much time he was going to serve. Counsel testified Applicant even requested a meeting with McElveen in order to try to persuade her to give him less than the 18.5 years. Counsel testified Applicant changed his story and gave law enforcement conflicting statements regarding the shootings that occurred. Counsel testified Applicant told law enforcement he was buy weed from Quon, which Counsel said would have precluded any “stand your ground” defense. Counsel said “stand your ground” is not a defense when you are engaged in criminal activity at the time.

This Court finds the testimony of Counsel with respect to these allegations very credible, whereas Applicant’s testimony is not credible. This Court finds Applicant has failed to establish any deficiency on behalf of Counsel as Counsel investigated Applicant’s case and provided him with a very favorable deal, which is what Counsel testified he was hired to do. Counsel further assessed a “stand your ground” defense would not be applicable to Applicant since he was, by his

own admission, engaged in criminal activity at the time of the shooting. Applicant provided Counsel with no indication he wanted to go to trial.

Additionally, Applicant has failed to establish any resulting prejudice from any alleged deficiency as Applicant was clearly aware of the terms of his negotiated guilty plea prior to pleading guilty to all of his charges. Based on the forgoing, Applicant has failed to meet his burden to establish deficiency or prejudice as set forth in Strickland and this allegation must be denied and dismissed with prejudice.

Counsel failed to enforce the five year plea deal that was offered to Applicant

Applicant alleges Counsel was ineffective for failing to have the five year plea deal enforced. However, Counsel testified no five year plea offer was extended to Applicant. Counsel also testified that Applicant met with McElveen in an effort to negotiate a deal less than 18.5 years, but that McElveen would not agree to anything less. It is unreasonable to believe a five year plea offer was ever extended considering the number and severity of Applicant's charges.

This Court finds the testimony of Counsel with respect to these allegations very credible. This Court finds Applicant has failed to show how Counsel was deficient as Counsel testified there was never a five year plea offer in this case. Additionally, Applicant himself attempted to negotiate less time with McElveen, which was unsuccessful. Applicant has also failed to establish any resulting prejudice from this alleged deficiency. Based on the forgoing, Applicant has failed to meet his burden to establish deficiency and prejudice as set forth in Strickland and these allegations must be denied and dismissed with prejudice.



Involuntary Guilty Plea³

Counsel testified he went over Applicant's constitutional rights with him prior to Applicant entering his guilty plea. Counsel testified it was Applicant's decision whether to accept the negotiated plea and ultimately Applicant decided to accept the plea. Counsel testified Applicant never indicated to him that he did not want to plead guilty and proceed to trial. Counsel testified it was in Applicant's best interest to plead guilty. Counsel testified he saved himself fifteen years by taken the negotiated plea.

A review of the record shows, after McElveen read the facts of the attempted murders, conspiracy, and weapons offense charges, Applicant told the plea judge, "I didn't mean to intentionally. They came – they just came and started shooting at me." (GP Tr. 23.) The plea judge responded, "Well do you want to stop now and you all assert self-defense? I've got – you were firing a weapon at who, those four people?" (GP Tr. 23.) The plea judge asked Counsel if Applicant wanted to go forward with the plea, and Applicant responded, "Yes, sir." (GP Tr. 24.) The plea judge asked Applicant if he was guilty, and Applicant responded, "Yes, sir." (GP Tr. 24.) Counsel testified at no time did Applicant ever indicate to him or the plea court that he was not wanting to go forward with his plea.

Later, Applicant was given a second opportunity to back away from the plea when he stated, "I just want to ask for some mercy and some leniency, if you can, so I can at least be out to raise my kids." (GP Tr. 29.) Following that request, the plea judge stated, "[Counsel] does he want to back away? Because the leniency, I certainly can't give him anything less than 18 and a half years." (GP Tr. 29.) Counsel explained Applicant understood he was going to receive the

³ Although not specifically alleged, Applicant provided testimony indicating his plea was involuntary, therefore this allegation is being addressed.

18.5 years. Applicant also told the plea judge he understood and then proceeded with his guilty plea. (GP Tr. 29.)

This Court finds Applicant's guilty plea was freely, intelligently, and voluntarily made. In evaluating issues concerning guilty pleas, this Court will consider the entire record, including the transcript of the guilty plea proceeding and the evidence presented at the post-conviction relief hearing. Roddy v. State, 339 S.C. 29, 528 S.E.2d 418 (2000). Voluntariness of a guilty plea is not merely determined by an examination of a specific inquiry by the plea court alone but rather is determined by the record of both the guilty plea proceeding and the post-conviction relief hearing. Id. In order to find a guilty plea was knowingly and voluntarily entered into, the record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Boykin v. Alabama, 395 U.S. 238 (1969). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, an applicant's right to contest the validity of such a plea is usually foreclosed. Dalton v. State, 376 S.C. 130, 137–38, 654 S.E.2d 870, 874 (citing Blackledge v. Allison, 431 U.S. 63 (1977)). Therefore, admissions "made during a guilty plea should be considered conclusive unless [an applicant] presents valid reasons why he should be allowed to depart from the truth of his statements." Id. (citing Crawford v. United States, 519 F.2d 347 (4th Cir. 1975)); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

This Court finds this allegation is without merit, and Applicant has failed to carry his burden of proving his guilty plea was involuntary. The records before this Court, and particularly the transcript of Applicant's plea proceeding, show Applicant engaged in a thorough colloquy with the court before electing to forgo his constitutional rights and knowingly, voluntarily, and intelligently enter a plea of guilty. The plea court even provided Applicant two opportunities to withdraw his guilty plea when his responses caused the plea judge to question whether Applicant wanted to continue with his plea. In both instances, Applicant reassured the plea judge that he



wanted to proceed with his guilty plea and never indicated to the plea court or Counsel that he did not want to plead guilty. This Court finds Applicant knew the charges he was facing and understood the terms of his negotiated plea. This Court also finds Applicant was properly and fully advised of his constitutional rights and knowingly and voluntarily waived those rights to accept a favorable plea.

Therefore, this Court finds Applicant had a full understanding of the consequences of his plea and the charges against him, and the plea court correctly found Applicant's plea was freely, voluntarily, and intelligently made. Based on these findings, Applicant's allegations regarding his plea being involuntary are denied and dismissed with prejudice.

CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

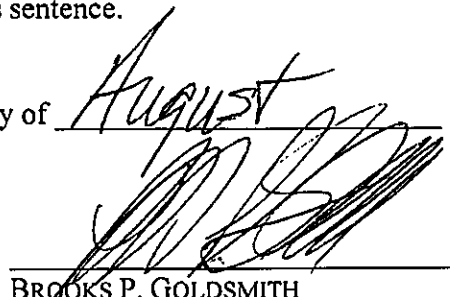
The Court notes Applicant must file and serve a notice of appeal within thirty days from post-conviction relief counsel's receipt of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), Applicant 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, post-conviction relief 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 THAT:

1. The application for post-conviction relief is denied and dismissed with prejudice; and
2. Applicant will remain in the custody of the South Carolina Department of Corrections to complete service of his sentence.

AND IT IS SO ORDERED this 28 day of August, 2019.


BROOKS P. GOLDSMITH
Presiding Judge
Third Judicial Circuit


_____, South Carolina

154

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

INDICTMENT FOR

Murder / Attempted Murder (4 counts)
Criminal Conspiracy
Unlawful Carrying of a Pistol
Poss. Weapon during Commission of a Violent Crime

At a Court of General Sessions, convened on April 7, 2016 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONE**ATTEMPTED MURDER**

That HENRY O'NEAL DINGLE and/or WILLIAM JERQUEZ SPANN did in Sumter on or about December 29, 2015, with intent to kill, attempt to kill another person, Eric Phillips, with malice aforethought, either express or implied, by shooting at the victim and/or the car in which the defendant was located; in violation of Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended.

COUNT TWO**ATTEMPTED MURDER**

That HENRY O'NEAL DINGLE and/or WILLIAM JERQUEZ SPANN did in Sumter on or about December 29, 2015, with intent to kill, attempt to kill another person, Rodrigues Lewis, with malice aforethought, either express or implied, by shooting at the victim and/or the car in which the defendant was located; in violation of Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended.

COUNT THREE**ATTEMPTED MURDER**

That HENRY O'NEAL DINGLE and/or WILLIAM JERQUEZ SPANN did in Sumter on or about December 29, 2015, with intent to kill, attempt to kill another person, Jaquan Wells, with malice aforethought, either express or implied, by shooting at the victim and/or the car in which the defendant was located; in violation of Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended.

COUNT FOUR**ATTEMPTED MURDER**

That HENRY O'NEAL DINGLE and/or WILLIAM JERQUEZ SPANN did in Sumter on or about December 29, 2015, with intent to kill, attempt to kill another person, Rominique Lewis-Brand, with malice aforethought, either express or implied, by shooting at the victim and/or the car in which the defendant was located; in violation of Section 16-3-29 of the Code of Laws of South Carolina (1976), as amended.

ATTACHED TO AND BECOMING PART OF THE ORIGINAL INDICTMENT FOR 2016-GS-43-0524 WITH THE AFORESAID NAMES OF HENRY O'NEAL DINGLE and WILLIAM JERQUEZ SPANN SHOWN THEREON:

COUNT FIVE
CRIMINAL CONSPIRACY

That HENRY O'NEAL DINGLE and/or WILLIAM JERQUEZ SPANN did in Sumter County on or about December 29, 2015 combine with co-defendant, and/or with other persons, for the purpose of accomplishing a criminal or unlawful object or an object that is neither criminal nor unlawful through criminal or unlawful means, to wit: Attempted Murder and/or Criminal Conspiracy, in violation of Section 16-17-410, S. C. Code of Laws, 1976, as amended.

COUNT SIX
UNLAWFUL CARRYING OF A PISTOL

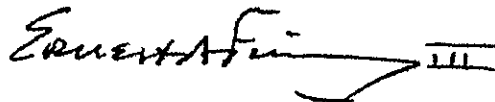
That HENRY O'NEAL DINGLE and/or WILLIAM JERQUEZ SPANN did in Sumter County on or about December 29, 2015, carry about the person a pistol, such carrying not being authorized by law, in violation of Section 16-23-0020, S. C. Code of Laws, 1976, as amended.

COUNT SEVEN
POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That HENRY O'NEAL DINGLE and/or WILLIAM JERQUEZ SPANN did in Sumter County, on or about December 29, 2015, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, S. C. Code of Laws, 1976, as amended.

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

Solicitor



WITNESSES

John Melton Sumter Police Dept.

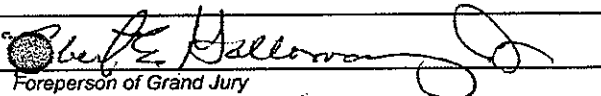
T. Sims Sumter Police Dept.

N. Kelly Sumter Police Dept.

REST WARRANT NUMBER

2015A4320101019 2015A4320101017
 2015A4320101029 2015A4320101030
 2015A4320101031 2015A4320101021
 2015A4320101032 2015A4320101033
 2015A4320101034 2015A4320101022
 2015A4320101023 2015A4320101024
 2015A4320101025 2015A4320101026

ACTION OF GRAND JURY


 Foreperson of Grand Jury
 Date: 4-7-2016

VERDICT

Foreperson of Petit Jury
 Date:

DOCKET NO. 2016-GS-43-0524

The State of South Carolina

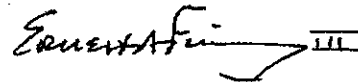
County of SUMTER

COURT OF GENERAL SESSIONSAPRIL TERM 2016**THE STATE**

vs.

HENRY ONEAL DINGLE JR.**WILLIAM JERQUEZ SPANN****Indictment for**

Murder / Attempted Murder (4 counts)
 Criminal Conspiracy
 Unlawful Carrying of a Pistol
 Poss. Weapon during Commission of a Violent Crime


ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Traffic / Failure to stop for a blue light, no injury or death - 2nd or
sub. OffenseDrugs / Poss. w/intent to Distribute cocaine Base (crack)
Drugs/ Poss. w/intent to Distribute within Proximity School/Park

At a Court of General Sessions, convened on April 7, 2016 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONE**FAILURE TO STOP FOR BLUE LIGHT/SIREN**

That Henry Oneal Dingle Jr. did in Sumter County on or about March 24, 2015, while operating a motor vehicle on a road, street, or highway of the State of South Carolina, ~~fail~~ to stop his/her motor vehicle when signaled to do so by a law enforcement vehicle, by means of a siren and/or flashing light, in violation of Section 56-05-0750(B)(2), S. C. Code of Laws, 1976, as amended.

COUNT TWO**POSSESSION WITH INTENT TO DISTRIBUTE COCAINE BASE (CRACK)**

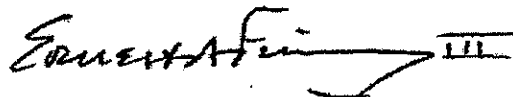
That in Sumter County, South Carolina, on or about March 24, 2015, the Defendant, Henry Oneal Dingle Jr., did manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possess with the intent to distribute, dispense, deliver a controlled substance or a controlled substance analogue, to wit: Cocaine Base (Crack); in violation of 44-53-375 of the South Carolina Code of Laws (1976) as amended.

COUNT THREE**POSSESSION OF COCAINE BASE (CRACK) WITH INTENT TO DISTRIBUTE IN
CLOSE PROXIMITY TO SCHOOL OR PARK**

That Henry Oneal Dingle Jr. did in Sumter County on or about March 24, 2015, unlawfully posses with intent to distribute, dispense, or deliver a quantity of Cocaine Base (Crack), within a one-half mile radius of the grounds of Morris College, a public or private school, college or university, a public playground or park, or a public vocational or trade school or technical education center; in violation of Section 44-53-445(B)(1), S. C. Code of Laws, 1976, as amended.

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

Solicitor



WITNESSES

J Tassone Sumter County Sheriff

Trevor Brown Sumter County Sheriff

T. Mims Sumter County Sheriff

J Williams Sumter County Sheriff

DOCKET NO. 2016-GS-43-0483**The State of South Carolina****County of SUMTER****COURT OF GENERAL SESSIONS****APRIL TERM 2016****THE STATE****vs.****HENRY ONEAL DINGLE JR.****ARREST WARRANT NUMBER**72195GU 2015A4310200283
2015A4310200284**Indictment for**Traffic / Failure to stop for a blue light, no injury or death
- 2nd or sub. offense
Drugs / Poss. w/intent to Distribute cocaine Base (crack)
Drugs/ Poss. w/Intent to Distribute within Proximity
School/Park**ACTION OF GRAND JURY**

Foreperson of Grand Jury

Date: 4/17/2016

VERDICT

Foreperson of Petit Jury

Date:

ERNEST A. FINNEY, III, SOLICITOR

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Assault / Assault & Battery by Mob, 3rd degree (Bodily injury
results)

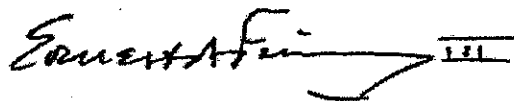
At a Court of General Sessions, convened on April 7, 2016 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONE**ASSAULT AND BATTERY BY MOB 3RD DEGREE**

That Henry Oneal Dingle Jr. did in Sumter County on or about October 22, 2015, commit an assault and/or battery by a mob (more than two people) upon the victim, Reggie Tindal, which resulted or could have resulted in bodily injury; in violation of Section 16-3-210(D), SC Code of Laws (1976, as amended).

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

Solicitor

A handwritten signature in black ink, appearing to read "Ernest A. Finney", followed by a horizontal line and the number "121".

WITNESSES

N. Kelly Sumter Police Dept.
T. Sims Sumter Police Dept.

DOCKET NO. 2016-GS-43-0484

The State of South Carolina

County of SUMTER

COURT OF GENERAL SESSIONS

APRIL TERM 2016

THE STATE

vs.

HENRY ONEAL DINGLE JR.

ARREST WARRANT NUMBER

2015A4320100847

Indictment for

Assault / Assault & Battery by Mob, 3rd degree (Bodily
injury results)

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date: 4/7/2014

VERDICT

Ernest A. Finney III

ERNEST A. FINNEY, III, SOLICITOR

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)

INDICTMENT FOR

COUNTY OF SUMTER)

Drugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and Schd. II

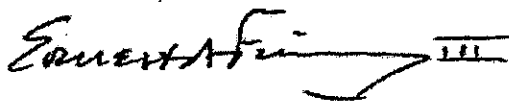
At a Court of General Sessions, convened on April 7, 2016 the Grand Jurors of
SUMTER County present upon their oath:

COUNT ONE**POSSESSION WITH INTENT TO DISTRIBUTE COCAINE**

That in Sumter County, South Carolina, on or about November 20, 2015, the Defendant(s), **HENRY O'NEAL DINGLE, JR and KEVIN DWAYNE SMITH, JR**, unlawfully did possess with intent to distribute, dispense, or deliver a quantity of Cocaine, a narcotic drug, in violation of Section 44-53-370, Code of Laws of South Carolina (1976), as amended.

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

Solicitor



WITNESSES

R. Beckford Sumter Police Dept.

T. Sims Sumter Police Dept.

DOCKET NO. 2016-GS-43-0485**The State of South Carolina****County of SUMTER****COURT OF GENERAL SESSIONS**APRIL TERM 2016**THE STATE**

vs.

HENRY ONEAL DINGLE JR.**KEVIN DWAYNE SMITH JR.****ARREST WARRANT NUMBER**

2015A4320100915 2015A4320100916

ACTION OF GRAND JURY

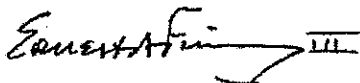
Foreperson of Grand Jury

Date: 4/7/2016

VERDICT

Foreperson of Petit Jury

Date:

Indictment forDrugs / MDP, Narcotic drugs in Sch. I(b) & (c), LSD, and
Sched. II**ERNEST A. FINNEY, III, SOLICITOR**