

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

—————
Certiorari to Jasper County

Honorable Jennifer B. McCoy, Circuit Court Judge

—————
TRAVIS A. LEE,

PETITIONER

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO 2020-000047

—————
APPENDIX
—————

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1 STATE OF SOUTH CAROLINA)
) Court of General Sessions
 2 COUNTY OF BEAUFORT) Case No. 2015-GS-27-150,
) 2015-GS-27-151 and 2015-GS-27-152
 3 _____)
)
 4 STATE OF SOUTH CAROLINA)
)
 5 v.) Transcript of Record
)
 6 TRAVIS ANTWAN LEE,)
)
 7 Defendant.)
)
 _____) DATE: May 13, 2016

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9
10 B E F O R E:

11 THE HONORABLE MICHAEL NETTLES

12
13 A P P E A R A N C E:

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Attorney for the State

15 DONALD C. COLONGELI
Attorney for the Defendant

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17 Karen V. Andersen, RMR, CRR
18 Circuit Court Reporter
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20
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22
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1 MR. THORNTON: May it please the Court, Your Honor.
2 Before you is Travis Antwan Lee. Mr. Lee is here. He is
3 represented by Mr. Don Colongeli, Your Honor, of the Beaufort
4 County Bar. Mr. Lee is the co-defendant on the attempted
5 murder, kidnapping and conspiracy charge that you just took
6 the guilty plea on of Mr. Jonathan Lilly, who is his
7 co-defendant.

8 Your Honor, this is 2015-GS-27-150, kidnapping;
9 2015-GS-27-151, which is attempted murder; and
10 2015-GS-27-152, which is a conspiracy count. If I could, I
11 will hand those up to the Court.

12 THE COURT: Mr. Colongeli, do you represent Mr. Lee?

13 MR. COLONGELI: I do, Your Honor.

14 THE COURT: Have you explained to him the offense of
15 common law conspiracy, the fact that he could be incarcerated
16 up to five years, attempted murder up to 20 years, and
17 kidnapping up to 30 years?

18 MR. COLONGELI: I have, Your Honor.

19 THE COURT: Have you explained to him the elements
20 of each of these offenses, potential defenses and his
21 constitutional rights?

22 MR. COLONGELI: Yes, we have, Your Honor.

23 THE COURT: Does he also understand that attempted
24 murder is a violent and most serious offense, and that
25 kidnapping is also a violent and most serious offense that

1 falls within a very special category of crimes in that it's a
2 nonparolable, 85 percent rule case, and it's subject to the
3 two- and three-strike rule, and the fact that it's a violent
4 adversely affects his custody status? Does he understand all
5 of this and all of the collateral consequences of this plea?

6 MR. COLONGELI: Just recently went over those again
7 with him, Your Honor. Yes, he does.

8 THE COURT: Let's place Mr. Lee under oath, if we
9 could.

10 (Whereupon, the defendant is sworn.)

11 MR. THORNTON: I apologize for interrupting, Judge.
12 I neglected to put the negotiation on the record, if I could
13 at this time.

14 THE COURT: Okay.

15 MR. THORNTON: Your Honor, I had actually offered a
16 plea to Mr. Lee prior. He had Bob Hughes with the public
17 defender's office. And several weeks ago, I gave Mr. Hughes
18 an offer that was rejected by Mr. Lee. And as Mr. Colongeli
19 knows, and I'm sure the Court probably recalls as well, I
20 virtually never reissue an offer in a case like this once
21 it's been rejected. However, Mr. Colongeli and I have worked
22 together several times before. And he has been recently
23 hired on the case, but had been going through all of this
24 discovery, has had numerous conversations with me, and
25 requested, as a professional courtesy to him being recently

1 added to the case, that I reissue the offer.

2 And, again, that's something I almost never do. But
3 because Mr. Colongeli inquired of me and asked me to do that,
4 I did in this case, Judge. And I reoffered the same offer
5 that I had offered before, which is a negotiated sentence in
6 a range, everything concurrent, the three you have before
7 you, of between 15 years and 20 years. In other words, no
8 less than 15 and no more than 20. I apologize for not
9 putting that on the record at the beginning.

10 THE COURT: Very good.

11 All right. Mr. Lee, are you under the influence of
12 any drugs or alcohol here today?

13 THE DEFENDANT: No, sir.

14 THE COURT: Are you experiencing any kind of
15 physical or mental problem that could prevent from you
16 understanding what's going on here today?

17 THE DEFENDANT: No, sir.

18 THE COURT: Pay very close attention to the State as
19 he summarizes the facts that bring us here today.

20 MR. THORNTON: Thank you, Your Honor. I will be a
21 little bit briefer with the facts than I was the last time
22 before you when you accepted the guilty plea of his
23 co-defendant, Jonathan Lilly.

24 And to, hopefully, save perhaps Mr. Colongeli and
25 his client and the Court a little bit of heartache, I know

1 from my brief conversation with Mr. Colongeli, there may be
2 some discrepancy into what each, Mr. Lee and Mr. Lilly, admit
3 as far as whose conduct was what. But as the Court knows,
4 and I know Mr. Colongeli has explained to his client, under
5 the hand of one/hand of all, if they were both present and
6 participating, they are both held legally responsible for the
7 act of each other.

8 What occurred, Judge, is Mr. Grant, the victim in
9 this case, is in a text message, sending texts back and forth
10 to whom he believes is Denise Lilly. Upon his arrival, he
11 doesn't see her. He texts her at 5:03 and says, where are
12 you, because he doesn't see her. At that time, Jonathan
13 Lilly assaults him with what he believes to be brass
14 knuckles. He said he thought he saw an object, and that's
15 what it looked like. He is knocked, more or less -- not
16 quite unconscious, but he's beaten at that time severely.

17 He's in a pickup truck. It's a full-size pickup.
18 Jonathan Lilly has come in the passenger side. The light is
19 on. He knows Mr. Travis Lee as Trap. He knows Jonathan
20 Lilly as Ice. Picks them both out of a lineup. So there's
21 no identification issue.

22 As he's being pulled out of the truck from behind,
23 Mr. Lilly is coming out in front of him. He sees Travis Lee
24 coming around the front of the vehicle. At that time, he is
25 severely beaten. He hears more than one person say, stick

1 him, stick him. He is repeatedly stabbed. At one point, his
2 throat gets cut. And, again, he obviously doesn't know which
3 of the folks did all of this. His throat is cut. And then
4 he is set on fire.

5 Now, Jonathan Lilly has an ankle monitor on. And as
6 I indicated to the Court before, at the exact same time as
7 that last text message, when Mr. Grant indicates that he was
8 being assaulted, Jonathan Lilly is exactly where he would be
9 if he was doing the assaulting. He's right at the edge of
10 the road at 5:03 to 5:09 in the morning, or 5:08.

11 At that point in the morning, still dark,
12 Mr. Grant's hands are taped behind him. And he is then
13 loaded into a vehicle and driven away.

14 Not far from Jonathan Lilly's house, he manages to
15 roll out of the truck that he is being driven away in, his
16 truck. And it is found later several miles away burned near
17 the boat landing.

18 The other piece of crucial evidence I didn't go
19 over, Judge, which is more applicable to Mr. Lee, obviously,
20 somebody other than Mr. Jonathan Lilly took the victim away
21 in the truck and was driving the victim's truck, because
22 Jonathan Lilly had the ankle monitor. And we know he stayed
23 at the house.

24 There is a phone call made from the victim's phone,
25 which is after he no longer has it in his possession. That

1 phone call is made to a woman by the name of Latashia Dunham,
2 who is, I will say, girlfriend, but is a romantic
3 acquaintance of Mr. Travis Lee's. We have the cell phone
4 records to prove it. Obviously, I've got the Verizon rep on
5 standby. She's driving down from Atlanta to testify to this.

6 The reason we know it's Latashia Dunham's phone and
7 phone number is because Travis Lee, after he is incarcerated
8 for this charge, calls Latasha Dunham on that number. And I
9 have that on the secure website. I have all those reported
10 phone calls which have been turned over to Mr. Colongeli.

11 What's relevant in any of that is this, Judge.
12 There's a call placed from the victim's home to Latasha
13 Dunham that night. Number two, Latasha then sends a text to
14 Denise Lilly's phone that says, pour bleach on the concrete
15 in the ground. What it actually says is "concert", but it
16 would appear that it was just a number transposition, which,
17 obviously, would have some implication or connection to
18 Mr. Lee, in addition to the fact that now his co-defendant
19 has pled guilty and as the Court has heard he would testify
20 against him. So those are the facts as they apply to
21 Mr. Lee.

22 Again, neither the victim nor I could tell this
23 Court, other than we know Jonathan Lilly did the initial
24 assault and that he heard both Jonathan Lilly and someone
25 else say, stick him, stick him -- but he clearly identifies

1 Travis Lee. He clearly identifies Jonathan Lilly as being
2 there and participating in the assault. And, obviously,
3 Judge, under the hand-of-one-is-the-hand-of-all, I think that
4 would be more than legally sufficient for a conviction at
5 trial.

6 THE COURT: Mr. Lee, are those facts true and
7 accurate?

8 THE DEFENDANT: Sir, some of them, yes, sir.

9 THE COURT: Are you indeed guilty of attempted
10 murder?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: All right. Are you indeed guilty of
13 kidnapping?

14 THE DEFENDANT: Yes, sir. Yes, sir.

15 THE COURT: Are you guilty of common law conspiracy?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You stand before me pleading guilty, but
18 you don't have to plead guilty to anything. You can exercise
19 your right to a jury trial. In that process, the jury would
20 determine whether or not the State could actually prove you
21 guilty beyond a reasonable doubt. I would charge the jury,
22 as a matter of law, that you are presumed to be innocent. No
23 one can require that you take the witness stand. However, if
24 you wanted to, you could. You could subpoena witnesses on
25 your own behalf. In addition to that, you and your lawyer

1 could cross-examine the State's witnesses. You have an
2 opportunity to eyeball them and confront them as they are
3 testifying against you.

4 You realize by pleading guilty, you are giving up
5 all these rights?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right. Plea negotiation I
8 understand is a negotiated minimum 15, maximum 20?

9 MR. THORNTON: Yes, sir. As I told Mr. Colongeli,
10 obviously, even if the Court didn't stack the charges on top
11 of him, the maximum exposure he had would be 30. So we are
12 actually cutting a good bit off the top of that.

13 THE COURT: You understand if I accept this plea,
14 the least I can give you is 15 years, the most 20 years? Do
15 you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. Are you satisfied with your
18 lawyer?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Have you understood all your
21 conversations with him?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: All right. Has he done everything that
24 you've asked him to do?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: All right. Any complaints with him
2 whatsoever?

3 THE DEFENDANT: No, sir.

4 THE COURT: All right. Has anybody promised you
5 anything, threatened, pressured you, mistreated you in any
6 way, shape or form in an effort to get you to plead guilty
7 here today?

8 THE DEFENDANT: No, sir.

9 THE COURT: It's been your decision to plead guilty?

10 THE DEFENDANT: Yes, sir. So far, yes, sir.

11 THE COURT: All right. Do you understand that you
12 have 10 days to appeal any decision I might render here
13 today?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Based on your testimony, I
16 find that there is a substantial factual basis for your plea,
17 that your decision was freely and voluntarily entered into,
18 knowingly and intelligently, with consent of competent
19 counsel with whom you say you are satisfied.

20 I will accept your plea. Glad to hear from you and
21 your lawyer with regard to sentencing.

22 MR. COLONGELI: May it please the Court, Your Honor.
23 Briefly, Your Honor, as Mr. Thornton got into, I was hired,
24 basically, three weeks ago to get involved in this matter. I
25 never had an intention, and informed my client, that a motion

1 to continue would not be something that I would be preparing
2 for or doing based on what I had already learned about the
3 case and the research I did into the case prior to committing
4 myself to it. He was comfortable with that, and has been
5 comfortable with that throughout.

6 The decision had also been made that Mr. Hughes was
7 going to second chair me next week if, in fact, the trial
8 went forward, in order to cover any bases I may have lost
9 during the year that preceded my representation, because he
10 has been incarcerated almost a full year over in Jasper
11 detention center.

12 I would like to make it clear on the record that he
13 is satisfied with my services. As short as it has been, I
14 just told him, in the short three weeks I've been with him,
15 I've probably done more intensive work and research than I
16 have on cases that sat around -- that have sat around for
17 more than a year.

18 What I can tell you about Mr. Travis Lee is that, as
19 you can see, he's a young man. He's 24. He's just 24. He
20 just turned 24 the other day. I met him [REDACTED] in
21 the jail. And I'm not trying to make excuses for him.

22 When Mr. Fleming informed me about this, the facts
23 of this case initially, it's one of the worst cases than I've
24 been involved in. Obviously, I've been involved in some
25 pretty bad ones. But, obviously, there's no justification

1 for what happened to this man, no justification.

2 I will say, mere presence is a big part of this.
3 And that was the length of my discussions and the very
4 difficult part in getting over the hump with Mr. Lee. He did
5 come through in the end, though, and understands fully what
6 the law meant and the knowledge he had, along with the mere
7 presence, and what he got himself involved in.

8 I'm going to beg the Court to hear me as an officer
9 of the Court in letting you know that this young man has
10 impressed me to the extent that -- I'm not impressed with
11 what he did. And I know that he regrets greatly what he did.
12 The biggest concern on his mind right now are his children,
13 his daughters. He has a total of four children. But as I've
14 told many clients, and as I've explained to him, he should
15 have thought about that the night in question.

16 But as we see so many times and with so many
17 youths -- and we were all young once, hopefully not involved
18 in anything as close as what this was, a lot of people, a lot
19 of us are lucky. A lot of us, by association, guilt by
20 association, we were very lucky to get by.

21 And I'm not saying that that's what happened here,
22 but he got himself in a terrible situation with who I would
23 categorize as an evil, evil man, much more evil than Mr. Lee.
24 And I do that with respect to Mr. Fleming, obviously. That's
25 his client.

1 I don't know Mr. Lilly, but from the facts I've
2 heard and from the theories of the case that I have developed
3 and possible defenses, I don't know about this Lilly family,
4 but this man obviously already had another murder charge
5 pending. He made a very poor decision in who to hang out
6 with.

7 The offer -- I would like to make it clear also that
8 the rejection of the offer did, in fact, take place. But
9 that was before crucial evidence was discovered by me after I
10 was retained. So I don't want it to be held against Travis
11 that he rejected a very good offer by the State, because
12 Mr. Hughes at that time was not aware of the evidence that
13 Mr. Thornton just relayed to you that I think was damning and
14 actually critical in potentially what I think would be a
15 conviction, and those were the phone calls.

16 He's very concerned. And I think the problem I've
17 had with young clients is giving them a concept of time.
18 Obviously, this could have been and could easily justify
19 being a 30-year sentence, even if it was mere presence. And
20 I don't think anyone could fault the judge for doing that.
21 But I pray and, respectfully, hope that you take into account
22 his age, his mindset, the fact that he got caught up in
23 something that after it happened, he knew it was the worst
24 thing he could have ever done. And he's expressed that to me
25 and I think he'll expressed that to the Court.

1 I don't think it's a matter of feeling sorry for
2 himself here. I think it's a matter that he feels sorry for
3 the ones around him that he has hurt. And I hope the Court
4 believes that.

5 I don't know what happened that night. Only Lilly
6 and Mr. Lee know specifically what happened, but I do know
7 for a fact, I do believe for a fact that Travis Lee's
8 involvement was much, much less involved than Mr. Lilly. And
9 as you heard, there were, according to the victim himself,
10 several people, several different voices, more people than
11 just these two that he remembered in the attack. And what I
12 would hope is that justice someday follows up with this
13 investigation and maybe finds those people, because those
14 people are walking the street right now that were actively
15 involved in this same crime. And it's unfortunate. They are
16 walking and these men will pay the price. But there's no
17 reason they shouldn't. They were caught. And they were
18 lawfully arrested. The investigation went on and here we
19 are.

20 I don't want to take up much more of the Court's
21 time. I know y'all have waited for me today. And I
22 apologize for that. I went to the wrong courthouse. And
23 it's been quite a week for me too in preparing for this,
24 because we were prepared to go forward on Monday. But I
25 thank God and I thank Travis for understanding my discussions

1 with him today. And I pray I did the right thing in my
2 discussions with him today in bringing him to the realization
3 that he's here before you pleading guilty. And that's why
4 I'm respectfully asking you to give him the benefit of the
5 doubt and give him the lesser of the two numbers that the
6 State has given you the discretion of sentencing Mr. Lee.

7 I hope what happens -- I hope what doesn't happen is
8 that -- and I don't know what -- I think Mr. Lilly's
9 sentencing was held in abeyance depending whether this plea
10 went through, was my understanding. I don't know if that's
11 the case or not. What I was concerned about is that these
12 men both end up with 20 and 20. I hope that's not the case.
13 And I hope that Mr. Lee doesn't end up with 20. I'm
14 respectfully asking you to deeply consider the 15 based on
15 his age.

16 I told him, I said, you've got a strong back, you
17 are a young man. 15 rolls around, if you went to trial next
18 week and lost, because in my professional opinion, I do
19 believe the evidence is substantial enough for you to lose, I
20 can tell you, when that 15 comes around, you are going to
21 look back and ask, who that middle-aged Italian lawyer that
22 was saying take the 15? Trust me, because when that 15 comes
23 and you are looking at another 15, you are going to wish you
24 did. And not for himself, for his daughters, because they
25 are still going to be young. Could be his daughter's

1 graduation present when he's coming out in a sort of way,
2 sort of redemption for him. And that's up to him, whatever
3 he does with his family, if he keeps it together. And I
4 think he will.

5 I think there's a lot of good in him. I really do.
6 As outrageous as a case this is, I think there is good in
7 him. And I may be naive. I've been known many times to take
8 a liking to my clients. I may be naive. I admit that. But
9 I don't think I am. I think my intuition is pretty right on
10 the money.

11 By all means, he's not the most -- he didn't make
12 the right calls. He is not the most educated. He's not the
13 most experienced. And he did do some bad things. And I
14 don't know if that was a part of being raised or just his
15 core spirit, his core being. But I think there is good in
16 him. And I think there's potential that he does get out and
17 makes something of himself; whereas, other people I've been
18 so scared, they get a long sentence and come out and are a
19 menace to society, then I've got to worry about my children.

20 So without taking up any more of the Court's time, I
21 would ask that you -- respectfully ask that you consider the
22 lower of the two numbers, give him the 15. That is a long
23 time for a young man at his age. As horrible as the injuries
24 sounded on the victim -- I don't know if the Court has seen
25 them. But the pictures, and I think people would agree with

1 me, the worst injuries were on the neck.

2 It was amazing to look at this man in the pictures I
3 saw, because I thought I would see something much, much
4 worse. He's very fortunate to be alive, and particularly
5 with -- based on what the facts were that happened to him.

6 And I heard someone today that talked to him after
7 it had happened. And he seemed to be a very, very kind,
8 forgiving man himself, because he's living life best he can
9 now, from what I've heard. And I think he's forgiven and put
10 this behind him. So he's one in a million, how he could have
11 survived this and walked away from it, and still not have
12 very harsh feelings against the people that did this to him.

13 But I think I've said everything. And all I can do
14 now is leave it in your hands, Your Honor. As I said, I
15 would respectfully ask 15 years for Mr. Lee, concurrent,
16 credit for the time that he's served, which has been
17 approximately one year. He's 24 years old, as I had said, as
18 of the other day.

19 THE COURT: All right.

20 MR. COLONGELI: And I don't know if he would like to
21 address the Court.

22 THE COURT: Mr. Lee, would be glad to hear from you.

23 THE DEFENDANT: Yes, sir. I would like to say, Your
24 Honor, I would like to say that my participation in this
25 case, in this situation, wasn't as --

1 THE COURT: You need to direct your comments
2 directed to me and not to the victim.

3 THE DEFENDANT: But I didn't have too much to do
4 with this situation, no harm, no cut, and no none of that.
5 But I was involved in the situation, you know. I hope you do
6 have mercy over me. I apologize for anything, any harm,
7 anything I caused to the family. I feel like -- I regret, I
8 regret even being involved, even knowing Lilly, man. Like,
9 oh, God, please. I just ask that you have mercy on me.

10 My daughters will be out of school. I ain't even
11 get to see them go to kindergarten. I just ask that you have
12 mercy on me. That's it is.

13 THE COURT: Anything further from the Defense?

14 MR. COLONGELI: Very brief. Prior criminal history,
15 I think he was in jail for driving under suspension when they
16 served the warrant on him.

17 MR. THORNTON: Your Honor, I have that, as well as
18 the position of the State, if you would like to hear it.

19 THE COURT: Yes.

20 MR. THORNTON: Mr. Colongeli is correct. He had
21 basically a failure to stop for blue lights as an adult, as
22 well as simple possession of marijuana and giving false info.
23 He had a burglary second as a juvenile. That was all back in
24 2005. And that's really his only record.

25 Judge, obviously, I'm going to ask for the 20 years.

1 I will be very brief. I've talked to Mr. Grant, the victim
2 in this case, who is back in the back. You can't see him
3 right now because he's crying. And he said I could talk on
4 his behalf.

5 And all I'm going to do, Judge, you've already seen
6 the photographs. And it is not an exaggeration to say that
7 this is the worst beating and suffering I've ever seen an
8 individual take in 20 years of doing this job where they
9 didn't die. I've seen a few as bad or worse, but nobody that
10 lived. Right hemopneumothorax, which is a collapsed lung, I
11 found out; right ribs, 8 through 11 fracture; C4 lamina
12 fracture; C3 vertebral body and transverse process fracture,
13 multiple facial fractures. So many, in fact, they had to
14 have a separate surgery with plastic surgeons to rebuild part
15 of his face. Most of his front teeth were knocked out.

16 10 to 15 percent of his body surface was burned with
17 gasoline. He had a neck exploration; tracheotomy, or complex
18 repair of lacerations greater than 30 centimeters, which
19 basically means, Judge, that it took more than a foot of
20 sutures just to stitch up his neck.

21 Thank you, Your Honor.

22 THE COURT: I always like to give the defense the
23 last word. Would you like to say anything in response to
24 that?

25 MR. COLONGELI: Your Honor, I would only say

1 briefly, and as I said, I don't want to take up the Court's
2 time anymore, I think if Mr. Grant was able to -- I'm going
3 out on a limb here. I think you'd find a much more forgiving
4 man than you would ever expect.

5 I agree with Mr. Thornton that this is, on its face,
6 one of the worst injuries as far as the injuries this man
7 endured and went through that you could imagine. But in my
8 20 years, I've seen people's -- people executed with
9 shotguns, head blown off. We've seen it all. And I don't
10 think any of it is nice. But to put this as the worst that
11 we've ever seen, I think it's all horrible and terrible. And
12 I hope you believe what Mr. Lee told you as far as what
13 really happened here.

14 I think you are smart enough and wise enough to read
15 between the lines as to what happened. I think that there
16 should be some disparity in the punishment between Lilly and
17 Travis. As you can tell, he's wishing he never met the man.
18 You've got a young guy that hooked up with someone that he
19 regrets, he will regret the rest of his life he ever met.
20 And that's all I have to say.

21 THE COURT: Anything further, Mr. Lee?

22 THE DEFENDANT: Sir, I just ask for mercy. Just ask
23 for -- I wish I had another chance.

24 THE COURT: All right. Mr. Lee, on indictment
25 2015-GS-27-151, attempted murder, sentence of the Court is

1 that you be committed to the State Department of Corrections
2 for a period of 18 years, sentence to run concurrent, credit
3 for time served.

4 With regard to indictment 2015-GS-27-150,
5 kidnapping, sentence of the Court is that you be committed to
6 State Department of Corrections for a period of 18 years.
7 Sentence to run concurrent. Credit for time served.

8 With regard to indictment 2015-GS-27152, conspiracy,
9 sentence of the Court is that you be committed to State
10 Department of Corrections for a period of five years.

11 All of these sentences to run concurrent. And you
12 are given credit for the time that you've already served.

13 Good luck to you.

14 MR. COLONGELI: Thank you, Your Honor.

15 MR. THORNTON: Thank you, Your Honor.

16 (Whereupon, proceedings are adjourned.)

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CERTIFICATE OF REPORTER

I, Karen V. Andersen, Registered Merit Reporter,
Certified Realtime Reporter for the State of South Carolina
at Large, do hereby certify that the foregoing transcript is
a true, accurate and complete Transcript of Record of the
proceedings.

I further certify that I am neither related to nor
counsel for any party to the cause pending or interested in
the events thereof.


Karen V. Andersen
Registered Merit Reporter
Certified Realtime Reporter

FORM 5

STATE OF SOUTH CAROLINA)
County of JASPER COUNTY)
TRAVIS ANTHONY LEE #352842)
Full name and prison number (if any) of Applicant)

IN THE COURT OF COMMON PLEAS

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

20 17 - CP - 27 - 125

APR 17 9 00 AM '17

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth 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 clear to which question any such continued answer refers.

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

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

1. Place of detention JASPER COUNTY DETENTION CENTER

2. Name and location of Court which imposed sentence Beaufort county

3. Name(s) of co-defendant(s) (if any) Jonathan Lilly

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) Kidnapping 2015-GS-27-150, Conspiracy
 - (b) 2015-GS-152 Attempted murder 2015-GS-27-151

POSTED
BY gj DATE 3/28/17 **Scanned**

(c) _____

5. The date upon which sentence was imposed and the terms of the sentence:

(a) Date of Sentencing MAY 13, 2016

(b) Terms of sentencing 18 years with credit

(c) for time served.

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Yes

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

Yes

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

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. Appellant Attorney failed to provide a sufficient

ii. guilty plea explanation as required by Rule

iii. 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules

(c) the date of each such result:

i. JUNE 1, 2016 and JUNE 28, 2016

ii. _____

iii. _____

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

i. The Appeal was dismissed. Due to

ii. Attorney not meeting Deadline with guilty

iii. Plea explanation

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

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

- (a) Trial counsel deprive Applicant of the Sixth
- (b) Amendment right to the effective assistance of
- (c) counsel in failing to research, investigate and prepare a defense

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

- (a) ineffective assistance of counsel
- (b) Plea of guilty unlawfully induced
- (c) _____

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

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

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

- (a) the specific nature thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (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. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

15. If you answered "yes" to (14) identify:

(a) which grounds have been presented:

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

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

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

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (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? Yes

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

- (a) the name and address of each attorney who represented you:
 - i. Donald C. Colongeli The Law Office of Donald C. Colongeli, LLC Post office Box 6658
 - ii. Hilton Head Island, South Carolina 29938
 - iii. Bob Huge Public Defender
265 Russell Street Ridgeland SC 29936
- (b) the proceedings at which each such attorney represented you:
 - i. Donald C. Colongeli Represented me MAY 13, 2016
the DATE of SENTENCING
 - ii. _____
 - iii. Bob Huge Represented me During Bond
Reduction Hearing and Motion of Sever
April, 2016

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

~~State~~ Vacate of Sentence, New Trial
Due to Lack of Evidence, Ineffective
assistance of Counselors and false witness.

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

NO

STATE OF SOUTH CAROLINA)
County of JASPER)

VERIFICATION

I, TRAVIS ANTHONY Lee, 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.

Travis@Lee

SWORN to and subscribed before me this 20th
day of March, 2017.

Ludrean Bryant (L.S.)
Notary Public

My Commission Expires: May 26, 2020

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

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

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

Travis@Lee
Applicant

SWORN or affirmed to and subscribed before me this
20th day of March, 20th.

Ludheen Bryant
Notary Public

My Commission Expires: May 26, 2020

State of South Carolina
County of Jasper

Travis A. Lee #
Plaintiff

V

State of South Carolina
Defendant

IN the Court of COMMON Pleas
Fourteenth Judicial Circuit

2017-CP-27-25
C/A NO.

FILED
JUN - 1 PM 7:
CLERK OF COURT
JASPER COUNTY

MEMORANDUM OF LAW ^{RS} Support
OF Post Conviction Relief

STATEMENT OF the CASE

ON MARCH 23, 2014 the victim ANTHONY GRANT apparently had his throat cut while being stabbed Multiple times IN the body. The evidence revealed Mr. GRANT's hands and feet were bound with tape. The affiant Jeff Crosby after going through an abundance of inconclusive hearsay, interviewed Mr. GRANT ON MAY 5, 2014, Victim GRANT claimed that it was ICE OR whatever OR who ever he could think his NAME was and thereafter Victim GRANT "firmly guessed" that it was a tall white dude with a ankle monitor named Jonathon who was stabbing and beating him. Victim GRANT said he was Positive he could Pick ice out of a Photo Line up. Victim Grant said after he was incessantly Punched by ICE with what he "thought" was brass Knuckles he blacked out after getting drugged out of the truck by his head.

victim Grant was unable to recall the name of who did this but said "they" called him TRAP. Victim Grant then claimed to be 100 Percent Positive it was ICE who "he thought" stabbed him.

After failing to obtain a Search Warrant Prior to having the South Carolina Law Enforcement Division (SLED) Put together the Photo Line up to which contained a photo of Plaintiff, the affiant ON MAY 15, 2014 MET with victim Grant a second interviewed and based upon his belief without any statement of adequate Supportive fact suggestively showed victim Grant the illegally seized Photo Line up containing six people whom the affiant thought was TRAP. ON 9-7-14 evidence for DNA testing was submitted to the South Carolina Law Enforcement Division, Forensic Services Laboratory for analysis.

ON April 9, 2015 without any evidentiary support or a adequate statement of fact, the affiant took a disposition and maliciously said that Plaintiff and a CO-defendant committed the crimes of "Kidnapping" "Attempted Murder" and "conspiracy" against the victim Mr. Grant. Plaintiff assert positively that warrants # 2015A2710200091, 2015A2710200093 and 2015A2710200094 are defective on there face and trial counsel was ineffective in failing to have the 'bare bones' warrants dismissed with prejudice at the Preliminary hearing.

Trial counsel performed deficiently in failing to file a motion for ~~dismissed~~ of the aforementioned warrants during the Preliminary hearing and in failing to move the court to withdraw Plaintiff's guilty Plea and then move the court to quash the indictments to which are a nonentity. Had this evidence been suppressed the outcome would have been different. Strickland V. Washington 466 U.S. 668 (1984)

CONCLUSION

For the foregoing reasons, this Honorable Court should grant the application for Post Conviction Relief with the ultimate Relief of ^{vacating} ~~voiding~~ Plaintiff Sentence and conviction.

Respectfully Submitted
Travis A. Lee #552842
 Plaintiff

STATE OF SOUTH CAROLINA)
 COUNTY OF JASPER)
)
)
 Travis Lee, #352842,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

Case No.: 2017-CP-27-0125

RETURN

Respondent, making its Return to the application for Post-Conviction Relief ("PCR") filed on March 27, 2017, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Jasper County Clerk of Court. In May 2015, the Jasper County Grand Jury indicted Applicant for kidnapping (2015-GS-27-0150), attempted murder (2015-GS-27-0151), and criminal conspiracy (2015-GS-27-0152). The charges resulted from a 2015 attack in which Applicant and a codefendant were led the Victim to believe he was meeting with someone else before proceeding to brutally beat and repeatedly stab Victim. Victim was then set on fire. Tr. p. 5, l. 8 – p. 6, l. 4. Applicant’s codefendant was on an ankle monitor and placed at the scene of the attack, while Applicant drove away in the truck with Victim before Victim was able to roll out and escape with his hands tied behind his back. Tr. p. 6, ll. 11-23. While driving the truck, Applicant made a phone call to his girlfriend on Victim’s phone, calling his girlfriend at the same number he later called her at from jail. Tr. p. 6, l. 24 – p. 7, l. 21. Victim also identified Applicant as being involved in the attack. Tr. p. 5, ll. 17-21.

Robert M. Hughes, Esquire, originally represented Applicant. Donald C. Colongeli, Esquire, (“Plea Counsel”) represented Applicant when Applicant retained him three weeks prior to the plea. Applicant pled guilty under the same plea offer extended to him while represented by Mr. Hughes. Tr. p. 3, l. 15 – p. 4, l. 9. Sean P. Thornton, Esquire, prosecuted the case. On May 13, 2016, Applicant pled guilty as indicted to all charges before the Honorable Michael G. Nettles. Pursuant to the negotiated sentence of a range from fifteen to twenty years with all sentences being concurrent, Judge Nettles sentenced Applicant to imprisonment of eighteen years for attempted murder, eighteen years for kidnapping, and five years for conspiracy, all to be served concurrently.

Plea Counsel filed a timely notice of appeal on Applicant’s behalf. The South Carolina Court of Appeals dismissed Applicant’s appeal by order filed July 22, 2016, for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules and letters dated June 1, 2016, and June 28, 2016. State v. Lee, App. Case No. 2016-001126 (Ct. App. 2016). The remittitur was returned to the circuit court on August 9, 2016.

Attached to this Return and incorporated by reference are the records of the Jasper County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the plea transcript, Applicant's appellate records, 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:

1. Ineffective assistance of counsel
 - a. “Trial Counsel deprived Applicant of the Sixth Amendment right to the effective assistance of counsel in failing to research, investigate, and prepare a defense.”

- b. “Illegally seized photo lineup...”
 - c. “The warrants are defective on their face and Trial Counsel was ineffective in failing to have the ‘bare bones’ warrants dismissed with prejudice at the preliminary hearing.”
 - d. “Trial Counsel performed deficiently in failing to file a motion to dismiss the aforementioned warrants during the preliminary hearing and in failing to move the court to withdraw Applicant’s guilty plea and then move the court to quash the indictments to which are a [illegible].”
2. “Plea of guilty unlawfully induced.”

III.

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).

In this case, the record refutes Applicant's allegations. Applicant told the plea judge under oath that he was satisfied with his attorney, understood all the conversations with him, and his attorney had done everything asked of him. Tr. p. 9, ll. 17-25. Applicant confirmed he had no complaints with his attorney whatsoever. Tr. p. 10, ll. 1-3. Moreover, Applicant conceded the facts as recited by the solicitor are true and accurate and he is indeed guilty of attempted murder, kidnapping, and conspiracy. Tr. p. 8, ll. 6-16.

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.

Respondent interprets Applicant's allegation that his guilty plea was unlawfully induced to be an allegation that his guilty plea was not entered freely and voluntarily. In PCR cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (2000) (citations omitted). An

applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). An applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56 (1985). Further, "[t]hat a guilty plea must be intelligently made is not a requirement that all advice offered by the defendant's lawyer withstand retrospective examination in a post-conviction hearing." McMann v. Richardson, 397 U.S. 759, 770 (1970). Rather, "whether a plea of guilty is unintelligent . . . depends as an initial matter, not on whether a court would retrospectively consider counsel's advice to be right or wrong, but on whether that advice was within the range of competence demanded of attorneys in criminal cases." Id. at 771.

The record must establish the defendant had a full understanding of the consequences of his plea and the charges against him. Dalton v. State, 376 S.C. 130, 138, 654 S.E.2d 870, 874 (Ct. App. 2007) (citing Boykin v. Alabama, 395 U.S. 238, 242 (1969)). A defendant's knowing and voluntary waiver of statutory or constitutional rights must be established by a complete record, and "may be accomplished by colloquy between the court and defendant, between the court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)). Further, "[a] guilty plea is a solemn, judicial admission of the truth of the charges" against the applicant; thus, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Dalton, at 137–38, 654 S.E.2d at 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)). “In considering an allegation on PCR that a guilty plea was based on inaccurate advice of counsel, the transcript of the guilty plea hearing will be considered to determine whether any possible error by counsel was cured by the information conveyed at the plea hearing.” Id. at 138–39, 654 S.E.2d at 874 (citing Wolfe v. State, 326 S.C. 158, 165, 485 S.E.2d 367, 370 (1997)).

In this case, Applicant confirmed it was his decision to plead guilty. Tr. p. 10, l. 9. Furthermore, Applicant told the plea judge no one had promised him anything or threatened him to induce his guilty plea, nor had he been mistreated in any way. Tr. p. 10, ll. 4-8. Applicant was thoroughly advised of his constitutional rights and still admitted his guilt and decided to plead guilty.

Respondent therefore submits the record fully supports the knowing and voluntary nature of Applicant’s plea. However, allegations regarding the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. 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).

V.

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), SCRCF. 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, SCRPC. 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), SCRPC.

VI.

Respondent also hereby moves for a more definite statement. Applicant has failed to set forth any facts to support the ground that his guilty plea was unlawfully induced or to explain with any specificity whatsoever the facts upon which this claim is based. The Uniform Post-Conviction Procedure Act requires the Applicant to "*specifically set forth the grounds upon which the application is based.*" S.C. Code Ann. § 17-27-50 (1985) (emphasis added). Respondent respectfully submits that it is incumbent upon Applicant, through counsel, to amend his application to set forth specific facts upon which his allegations are based so that Respondent may adequately prepare for an evidentiary hearing. Therefore, Respondent requests that Applicant be required to amend his application to set forth specifically the grounds on which his claims are based.

VII.

Respondent therefore requests that this Court convene an evidentiary hearing on the allegations of ineffective assistance of counsel and the allegation regarding his guilty plea. 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.

VIII.

Each and every allegation contained within the application not expressly admitted, qualified,

or explained in this Return is hereby denied.

IX.

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

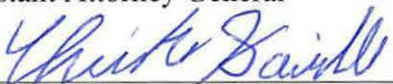
Respectfully submitted,

ALAN WILSON
Attorney General

W. JEFFREY YOUNG
Chief Deputy Attorney General

MEGAN HARRIGAN JAMESON
Senior Assistant Deputy Attorney General

CHRISTIAN SAVILLE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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Columbia, SC 29211
Telephone: (803) 734-3737

9/24, 2018

STATE OF SOUTH CAROLINA))
COUNTY OF BEAUFORT)) COURT OF COMMON PLEAS

TRAVIS ANTWAN LEE))
PETITIONER,))
v.)) TRANSCRIPT OF RECORD
)) 17-CP-27-0125
STATE OF SOUTH CAROLINA,))
RESPONDENT.)))

August 8, 2019
Beaufort, South Carolina

B E F O R E :

THE HONORABLE JENNIFER B. MCCOY, JUDGE

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

JAMES K. FALK, ESQ.
Attorney for the Petitioner

SARA GUNTON, ESQ.
Attorney for Respondent

FRANCES B. RAY, RPR
Circuit Court Reporter
Typed for Becky Hill

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(There were no exhibits submitted.)

1 THE COURT: Ms. Gunton, are you handling
2 this on behalf of the Attorney General's Office?

3 MS. GUNTON: Yes, Your Honor, I am.

4 THE COURT: Do you want to give the Court
5 a brief opening summation?

6 MS. GUNTON: May it please the Court.
7 Your Honor, this is the matter of Travis Antwan Lee
8 versus the State of South Carolina, docket number
9 2017-CP-27-0125. Mr. Lee is present here in the
10 courtroom today and is represented by Mr. James
11 Falk. Mr. Lee was indicted at the May 2015 term of
12 the Jasper County grand jury for kidnapping,
13 attempted murder, and conspiracy. He was first
14 represented on those charges by Mr. Robert N. Hughes
15 of the Beaufort County Public Defender's Office,
16 then retained by Mr. Donald Colongeli of the private
17 bar. Both are present in the courtroom today, Your
18 Honor.

19 On May 13th, 2016, Mr. Lee appeared before
20 the Honorable Michael T. Nettles and pled guilty as
21 indicted to a negotiated sentence of 15 to 20 years.
22 Judge Nettles sentenced him to a concurrent sentence
23 of 18 years for attempted murder and kidnapping and
24 an additional concurrent sentence of five years for
25 conspiracy. Plea counsel filed a timely notice of

1 appeal on applicant's behalf and indicated that
2 Mr. Lee was appealing his conviction pro se. The
3 Court of Appeals dismissed applicant's appeal by
4 order filed July 22nd, 2016, for failure to provide
5 sufficient explanation as required by rule
6 203(d)(1)(d)(4) of the South Carolina appellate
7 court rules. The remittitur was returned to the
8 circuit court on August 9th, 2016.

9 Mr. Lee filed an action for
10 post-conviction relief on March 27th, 2017. Mr. Lee
11 is alleging ineffective assistance of counsel. In
12 that trial counsel, sorry, plea counsel, failed to
13 research incarcerate and prepare a defense and in
14 addition that his guilty plea was unlawful induced.
15 Your Honor, the State is ready at this time;
16 however, before we proceed the State would request,
17 sorry, respectfully ask the Court to engage in a
18 thorough colloquy with applicant to better appraise
19 him of the purpose of and relief available from PCR
20 and to confirm that he wishes to go forward at this
21 time.

22 THE COURT: All right. Mr. Falk, have you
23 discussed with your client the purpose of a PCR?

24 MR. FALK: I have, Your Honor.

25 THE COURT: And have you discussed with

1 him where a successful PCR application puts a
2 petitioner?

3 MR. FALK: I advised him that his case
4 would go back to the Jasper County Solicitor's
5 Office, and they could make him another plea offer
6 or they could take it to trial. Of course, at trial
7 he'd have significantly greater sentencing exposure.

8 THE COURT: Okay. All right, do you mind
9 if I question your client about this briefly on the
10 record?

11 MR. FALK: No, Your Honor.

12 THE COURT: All right, Mr. Lee.

13 PETITIONER: Yes, ma'am.

14 THE COURT: Welcome again. I understand
15 you pled guilty to three separate charges. You were
16 indicted on three charges, at least, by the Jasper
17 County grand jury. Those charges include
18 kidnapping. That carries up to 30 years in state
19 penitentiary. You were also indicted on attempted
20 murder. That carries another possible 20 years in
21 state penitentiary, as well as that conspiracy claim
22 which, of course, carries up to five years in the
23 penitentiary. You could potentially face 55 years
24 if you went back and this PCR was successful. Do
25 you understand that?

1 PETITIONER: Yes, ma'am.

2 THE COURT: All right. You pled to a
3 negotiated range at some point and Judge Nettles
4 sentenced you to 18 years concurrent for all these
5 charges; is that correct?

6 PETITIONER: Yes, ma'am.

7 THE COURT: Okay. And you understand the
8 fact that you could, if successful on this PCR
9 application again potentially face up to 55 years in
10 the state penitentiary. You still want to go
11 forward today?

12 PETITIONER: That mean I'll be going back
13 to court, I mean, I'll be going back ---

14 THE COURT: Back to square one facing up
15 to 55 years.

16 PETITIONER: Yes, ma'am.

17 THE COURT: You still want to go forward
18 today?

19 PETITIONER: Yes, ma'am.

20 THE COURT: Okay. You under the influence
21 of alcohol or drugs or anything like that that would
22 keep you from understanding what's going on today?

23 PETITIONER: No, ma'am.

24 THE COURT: All right. How far did you go
25 in school?

1 PETITIONER: Tenth grade.

2 THE COURT: Okay. Do you have any trouble
3 understanding what I'm telling you today in court?

4 PETITIONER: Basically what you telling me
5 is that if this PCR is successful I go back to
6 square one as just getting indicted.

7 THE COURT: Correct.

8 PETITIONER: All right, yes, ma'am, 'cause
9 I never wanted to take this plea from the getgo so.

10 THE COURT: Okay.

11 PETITIONER: I wanted to go to trial.

12 THE COURT: All right.

13 PETITIONER: Yes, ma'am.

14 THE COURT: More importantly, you want to
15 go forward with your PCR?

16 PETITIONER: Yes, ma'am.

17 THE COURT: I'm satisfied he understands
18 the ramifications of going forward today. All
19 right, you can have a seat. Thank you, sir.

20 Mr. Falk, anything you want to tell the
21 Court before you call your first witness?

22 MR. FALK: No, Your Honor. We'll call
23 Mr. Lee.

24 THE COURT: Okay.

25 PETITIONER: I can't lift my arm.

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1 UNIDENTIFIED: He's asking if we can
2 possibly loosen his restraints.

3 THE COURT: I don't know, everybody else
4 has been all right, you'll be okay. Just raise your
5 hand to the best of your ability.

6 WHEREUPON,

7 **TRAVIS ANIWAN LEE,**
8 having been duly sworn by the Clerk, testified
9 as follows:

10 THE COURT: Thank you very much. Please
11 state your full name and spell your last.

12 PETITIONER: Travis Antwan Lee, L-E-E.

13 THE COURT: All right. Go ahead, Mr.
14 Falk.

15 **DIRECT EXAMINATION**

16 BY MR. FALK:

17 Q. Mr. Lee, who was your first lawyer in this
18 case?

19 A. Mr. Bob Hughes, Mr. Robert Hughes.

20 Q. With the Public Defender's Office?

21 A. With the Public Defender Office.

22 Q. And how many times did you meet with him?

23 A. I would say three times.

24 Q. Okay. And did he go over your discovery?

25 A. Yes. At the beginning he came, he was

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1 building up a, he was building up a strategy of
2 where we can fight for trial. He came to me with
3 two different pleas.

4 Q. Okay. I'll come back to that in a second,
5 but let me ask you, so you were -- something bad
6 happened to somebody in Jasper County; is that fair
7 to say?

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

9 Q. And you were kind of one of the people
10 there, but not necessarily the main person; is that
11 fair to say?

12 A. Actually I wasn't, I wasn't there. I was
13 ---

14 Q. Okay.

15 A. ---by association.

16 Q. Fair enough. All right, and so there were
17 some -- so what were the plea offers that you
18 received?

19 A. 15 to 20, the same plea offer twice that I
20 rejected twice by Mr. Robert Hughes.

21 Q. Okay. Was there conversations coming on
22 about your possible assistance in this case ---

23 A. Yeah, uh ---

24 Q. ---against the bad guys?

25 A. It wasn't no assistance. I never could

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1 have, I couldn't admit to nothing that I ain't had
2 no involvement in so ---

3 Q. 'Cause you were never there?

4 A. Yeah, I was never there. Robert Hughes
5 came to me, he was building a ground, that's why,
6 you know, we filed for severance of motions, motion
7 of severance and everything 'cause I ain't have no
8 involvement in this case.

9 Q. All right, so you were in the -- how long
10 were you in the Jasper County Detention Center?

11 A. I would say a year, a year.

12 Q. Did you ever make bond?

13 A. No, sir.

14 Q. Okay. What was your bond set at, do you
15 recall?

16 A. Two hundred thousand.

17 Q. Okay.

18 A. Two hundred thousand after six months.

19 Q. After six months it's set at
20 200,000-dollar bond?

21 A. Yes, sir.

22 Q. Did you ask your lawyer to try and get you
23 further bond relief?

24 A. Yes, sir. That's, well, the last bond
25 reduction I -- that was the last motion that he

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1 filed, a motion for reduction, bond reduction and
2 motion for severance.

3 Q. And so what happened at the motion for
4 severance?

5 A. It was denied. It was denied, and the
6 bond reduction was den-- it was on the same day, I
7 believe April 14th, 2016.

8 Q. And it wasn't to sever your charges. You
9 wanted to not be, go forward with a trial with those
10 other people; is that right?

11 A. Right, with my co-defendant. I didn't
12 want to have -- and that was, that was Bob Hughes.
13 That was his best, that was his idea, you know. I
14 felt like that was right.

15 Q. Okay. And you turned down both those plea
16 offers?

17 A. Yes, sir.

18 Q. Then what happened as far as when did you
19 hire new counsel?

20 A. After, after the se-- after the bond
21 reduction and the motion to sever was denied
22 April 14th, 2016, that's when I -- that when Bobby,
23 Rob Hughes told me I was scheduled to go to trial
24 May 16, 2016. So with that information being given
25 to me I ---

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1 Q. So let me back up. So when is the, when
2 was the bond reduction denied?

3 A. April 14th, 2016.

4 Q. And you're gonna go to trial a month
5 later?

6 A. Later this month, yes, sir, May 16th,
7 2016. And when I got that information right there I
8 was told -- me and my family, we had the choice to
9 either bond out or get a paid lawyer so I told my
10 lawyer -- I told my family let's get a paid lawyer
11 'cause I know I ain't had no involvement in the case
12 so we went, we went, we hired Don Colongeli. We
13 hired Don Colongeli May 2nd, 2016.

14 Q. For a trial that was going to start o n
15 May 16th?

16 A. Yes, sir.

17 Q. Okay.

18 A. Paid him a retainer fee of 6,000-dollars.

19 Q. What was the expectation there? Was he
20 gonna ask for a continuance?

21 A. To prepare for trial. And when he came to
22 see me May 6th, which is May 6th was the first time
23 that he received the evidence and the disk of the,
24 with the evidence on it from Bob Hughes; and Bob
25 Hughes was supposed to sit second chair with him.

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1 This was the first day he came to see me, and I
2 asked him that was the first thing I asked him, file
3 a motion for continuance.

4 Q. Okay.

5 A. And he told me that the judge wouldn't
6 grant it because how close our trial was.

7 Q. All right. So what was your next, what
8 was your next plan?

9 A. To file for the motion for continuance the
10 first plan 'cause I know that the lawyer, I know
11 that, I know that Don Colongeli wouldn't have had
12 enough time. I only had ten days to prepare for
13 trial so we paid him so he could, he could have, for
14 preparation of trial, prepare me to trial 'cause I
15 wanted to go to trial. I didn't want to take no
16 plea. I made that clear from the two rejections of
17 the pleas that I got from the prosecutor Mr. Tori
18 [sic], Mr. Tori, so, yeah, I wanted to go to trial.
19 He was prepared, supposed to file for a motion for
20 continuance.

21 Q. Okay.

22 A. And he didn't. Upon accepting my case he
23 automatically supposed to file for a continuance.

24 Q. Okay. Was he aware when you retained him
25 what the trial status was, that you were on deck for

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1 May 16?

2 A. Yes, sir. Yes, sir. Yes, sir. He told
3 me that he talked to my co-defendant previous, my
4 co-defendant lawyer which was Corey Flemings, and he
5 talked to Bobby Hughes, Robert Hughes, Robert,
6 Mr. Hughes.

7 Q. Mr. Hughes?

8 A. So he know what was going on with my
9 situation, my case.

10 Q. All right. So then when did you know that
11 you weren't going to get a continuance?

12 A. The second time Bob Hughes, I mean,
13 Mr. Don Colongeli came to see me which was May 12th.
14 May 12th he told me that. No, matter of fact, he
15 told me the same day that it was too late. May 6
16 when he came to see me the first time, he said that
17 the judge wouldn't have grant it because how close
18 trial was.

19 Q. Okay.

20 A. Okay.

21 Q. So then, and so what did he talk to you
22 about then?

23 A. Preparing for trial. He told me that he
24 was, he would do, he would, he would do his best in
25 preparing for trial coming up with strategies on how

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1 we gonna approach trial.

2 Q. And what was the -- what discussion did
3 you have about the strategy? Was it I wasn't there?

4 A. No.

5 Q. That you weren't there, that you weren't
6 present?

7 A. How you mean? I didn't understand.

8 Q. Was that going to be your defense that you
9 weren't there?

10 A. No, the defense was -- he never came, it
11 really wasn't, we never talked about the defense.
12 He had a lot of questions about...

13 Q. I'm sorry, I may have phrased that
14 question poorly. I said earlier I asked you about
15 why, for example, you couldn't cooperate in this
16 trial for the prosecution what I was calling the bad
17 guys, and you said you couldn't because you weren't
18 there.

19 A. Right, I ain't, I didn't, I couldn't
20 answer the questions that he was asking me, I didn't
21 know.

22 Q. Right, so your defense -- was your
23 understanding was that your defense was gonna be
24 that I was not present ---

25 A. Right.

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1 Q. ---at the scene?

2 A. Right.

3 Q. Okay. What did he tell you? I mean, did
4 he tell you anything else about a strategy?

5 A. Well, he never, he never displayed a
6 strategy to me.

7 Q. Okay.

8 A. You know, it was like, he only came to see
9 me this is the first time. I wasn't, I didn't talk
10 to him over the phone or nothing. May 16 was the
11 first time I met him [REDACTED] in the
12 Jasper County Detention Center, and that's when I
13 asked for him to file for a motion of continuance.

14 Q. Wait a minute, wait a minute, May 6th or
15 May 16th?

16 A. May 6th.

17 Q. Yeah.

18 A. May 6th is the first day he met me at the
19 Jasper County Detention Center, the first time I met
20 him period. And this was the first day I asked him
21 to file for a motion for continuance 'cause I know I
22 only had ten days to prepare for trial.

23 Q. Okay.

24 A. So with him, me hiring him as a lawyer I'm
25 hiring him to prepare for trial 'cause if not, I

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1 would have kept Bob Hughes, you know what I'm
2 saying. I would have kept the public defender that
3 I had; I would have bond out with the 6,000-dollars.
4 But I know that I had faith that I know that I could
5 have beat this if I had a lawyer to represent me
6 with their full ability, you know what I'm saying.
7 So the defense know it. He came to see me, the
8 second time was May 12th and he told me that he had
9 new evidence and he told me that my co-defendant was
10 taking a plea agreement to testify against me and
11 that was the new evidence. And then I was, told him
12 it was my word against his word, I still wanted to
13 go to trial. It never changed my mind 'cause I know
14 where I stand at in this situation, you know, so.
15 That was May 12th, the second time he came to see me
16 and he told me that ---

17 Q. So between the 12th and the 16th. So what
18 was that, a Thursday?

19 A. That was, that was a Thursday before,
20 yeah.

21 Q. Okay.

22 A. May 12th, May 12th was Thursday. Yeah,
23 May 12th, two thousand---

24 Q. What contact did you have with him over
25 the weekend?

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1 A. No, I had no contact with him. He came to
2 see me. When he came to see me on the 12th he told
3 me my co-defendant was taking a plea agreement the
4 next morning which was Friday the 13th, and that he
5 gonna get me transferred to the court just to see if
6 my co-defendant take the plea. I said, okay, I
7 agree, okay. I got in the courtroom, it was a whole
8 different, a whole different atmosphere. It was a
9 whole different attitude from he like, there's no
10 way possible that we can win at trial. It's
11 impossible that we can win at trial. You might, you
12 should take the plea that prosecutor Mr. Tori is
13 offering you, which is the same plea that I rejected
14 two times.

15 Q. Did your co-defendant enter a plea?

16 A. I didn't never see, I didn't never see my
17 co-defendant one time in the courtroom; but through
18 my transcript it says that he did took a plea. It
19 says in my transcript that he did take the plea
20 'cause I remember I read it in the transcript. It
21 says that my co-defendant ---

22 THE COURT: Page 7.

23 BY MR. FALK:

24 Q. Do you have your transcript?

25 A. Yes, sir. Yes, yes. Mr. Lee, in

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1 additional to the fact that now his co-defendant has
2 plead guilty; and as the Court has heard, he will
3 testify against him, which my, which my co-defendant
4 stand up in court and said.

5 Q. Okay.

6 A. But it also says right here on page 2,
7 line 7, page 2, line 6.

8 Q. So how did you go to accepting a plea,
9 agreeing to take the plea?

10 A. After a hour, after a hour, two hours,
11 after the coercing conversation of him telling me
12 that it's impossible, he would do his best in trying
13 to represent me to his best ability, but he will
14 only be trying to look good in failure. Then he
15 told me, he would start telling me about how I got
16 kids and my kids gonna be, my kids still will be at
17 a reasonable age when I come home, and it's best for
18 me to take this plea than going to trial and getting
19 55 years. Like, I felt like he gave me no, he had
20 no confidence in, in hisself. I felt like he had no
21 confidence in hisself. I feel like his advice was
22 not within the range of competitive demanding of
23 attorney of a criminal case.

24 Q. All right. Well, here's gonna be the
25 part -- I'm gonna ask you these questions before the

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1 attorney general asks you these questions. So you
2 took the stand, when you were taking the plea you
3 took the stand and you were sworn in and you gave an
4 oath to tell the truth; is that right?

5 A. I was just ---

6 Q. When you were sworn in you swear and so
7 the Court asked you, you realize that by pleading
8 guilty you are giving up all your rights, and you
9 answered yes. And you understand if I accept -- and
10 I'm on page 9.

11 A. Yes, sir.

12 Q. And you understand if I accept -- the
13 court says, you understand if I accept this plea the
14 least I could give you is 15 years and the most is
15 20 years and you say yes. And the next question
16 was, all right, are you satisfied with your lawyer?
17 And your answer was yes. Now were you, in fact,
18 satisfied with your lawyer at that time?

19 A. No, I wasn't. I was really emotional
20 wreck and I didn't, I was un, -- I wasn't educated
21 to what I was admitting to, like. For one, I'm, I
22 didn't know I was in court to plead guilty. For
23 two, all of a sudden you feel like trial three days
24 away, trial Monday and today Friday, all of a sudden
25 you got a whole different attitude so I'm like,

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1 discombobulated. No, I didn't understand what he
2 was saying. I understand the questions; but no, I
3 wasn't satisfied with my lawyer. And I didn't
4 thought about firing him at that moment because I'm,
5 it's -- I was confused, emotional, and unintelligent
6 to the law.

7 Q. Okay. 'Cause then he said, and the
8 question was asked, has he done everything that
9 you've asked him to do; and again, your response was
10 yes?

11 A. Right.

12 Q. And ---

13 A. I ---

14 Q. Same explanation? 'Cause he had ---

15 A. He didn't 'cause he didn't did a pre-crime
16 -- he didn't did a pretrial investigation. He
17 didn't did the things that required of a lawyer, a
18 independent professional attorney.

19 Q. Right, but I'm just saying the Court asked
20 you that question, you said yes, but that's not the
21 truth; is that correct?

22 A. That's not the truth. I was under, I was
23 under pres-- I felt like I was under pressure. If I
24 don't take this plea now, you're gonna get 55 years
25 at trial. I mean, you're gonna get 55 years at

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1 trial. So I'm like, I'm lost so my only -- I'm
2 gonna take, I'm gonna go, this my hired lawyer. I
3 done spend my last dollar on this lawyer so I put my
4 trust and expected to him to do, I trusted, I
5 trusted and expected him to expand every energy, tap
6 every legitimate resource to represent me to his
7 full abilities, to his full ability.

8 Q. And sometime on Friday, so that's Friday
9 the 13th.

10 A. Friday the 13th, 2016.

11 Q. Did he tell you that he wasn't ready for
12 trial on Monday?

13 A. No, he admit to it in the tran-- he admit
14 to it in the transcript. He admit to it in the
15 transcript that we were prepared to go on trial,
16 excuse me. Transcript, transcript page 14, line --
17 oh, transcript page 14, line 24. Mr. Colongeli did
18 admit to the court that we were prepared to go to
19 trial on Monday, May 16th, 2016. He admit to that.
20 But Friday 13th, you don't, you don't really feel
21 like that 'cause matter of fact, you haven't did,
22 you haven't did a pretrial investigation without --
23 he haven't did, he didn't did it. Ten days, in ten
24 days, I hire you May 16, trial is scheduled for May
25 16. You got ten days to prepare for a trial. And

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1 from this case being the way they explain it and
2 express it in the motion of, the motion of discovery
3 how crazy, how seriousness it was, you would need
4 more than ten days to prepare for trial. On any
5 case you would need more days to prepare for trial.

6 Q. So did you, were, did you want to, did you
7 feel that you would have been ready to go to trial
8 on the 16th?

9 A. I was, I already had my whole -- yes, sir,
10 I ---

11 Q. Did you think your lawyer was ready to
12 take you to trial on the 16th?

13 A. No, sir. I, no, sir. Well, what the
14 evidence -- if I would have kept Bob Hughes, we
15 would have most likely been ready 'cause Bob Hughes
16 was my attorney from the day I got incarcerated till
17 the day I got locked up for the traffic stop to the
18 bond reduction and the severance, motion of
19 severance. I guess that's why Don -- Bob Hughes was
20 supposed to sit secondhand of Don Colongeli.

21 Q. So you were presented with a choice either
22 you take the plea deal or you go to trial on Monday;
23 is that correct?

24 A. Naw, I was, I felt like, I felt like I
25 ain't had no choice.

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1 Q. And why is that?

2 A. He, because he coerced me. He told me he
3 ain't had faith in hisself.

4 Q. Got it.

5 A. He ain't had faith in hisself to defend me
6 at trial so I felt like I ain't had no choice but to
7 take this plea offer.

8 Q. Okay.

9 A. Yeah, that's how I felt.

10 Q. The court advised you that you could file
11 an appeal; is that correct?

12 A. Yes, sir.

13 Q. What did you think that you could appeal?

14 A. My, I was, I was thinking my plea. The
15 plea hearing, like, the plea that I took.

16 Q. Okay.

17 A. And he filed, he filed for appeal I think
18 after the ten days. Talking about the ten days
19 after the conviction?

20 Q. So on that day did you think that was your
21 out, that you could only just appeal what was
22 happening on that Friday?

23 A. No, I ain't know. I wasn't thinking that.

24 Q. Okay.

25 A. I was thinking like I just gave me life

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1 away 'cause I just trusted and expected my attorney
2 that I gave my last dollar to defend me with his
3 life, like, put it all on the line like; and I felt
4 like I just gave my life, I just put my life and
5 jeopardies in harms way.

6 Q. So it's your testimony that you felt
7 coerced into taking this deal 'cause you didn't want
8 to go to trial on that Monday with Mr., with your
9 trial lawyer Mr. Colongeli; is that right?

10 A. Yeah, no. I wanted to, I wanted to go to
11 trial.

12 Q. Then why did you take the plea if you
13 weren't ---

14 A. Because I was coerced into it because I
15 was coerced into pleading guilty. He ---

16 Q. Well, that's what I'm saying. So I mean,
17 you were worried. You said your lawyer was telling
18 he's not, he can't win, he has no confidence?

19 A. Right.

20 Q. He's telling you you got to take a plea;
21 is that correct?

22 A. Yes, sir.

23 Q. I mean, you wanted a trial; is that
24 correct?

25 A. Yes, sir.

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1 Q. That's why you turned down this same offer
2 twice in the past; is that correct?

3 A. Yes, sir, correct.

4 Q. So this wasn't any better deal?

5 A. It was the same deal.

6 Q. The same deal from before?

7 A. 15 to 20, yes, sir.

8 MR. FALK: I have no further questions,

9 Your Honor.

10 BY MR. FALK:

11 Q. Oh, excuse me, anything else you want to
12 add?

13 A. Yes, sir. I have, I have like from, like
14 from the discussion on May 12th throughout the
15 transcript, like May, like on May 13th, 2016,
16 Mr. Colongeli did, in fact, did not in fact, explain
17 to his client the elements of each offense,
18 potential defense, defense and client's
19 constitutional right. Mr. Colongeli provided
20 ineffective assistance by failing to request for a
21 motion of continuance upon acceptance tried (ph) to
22 be as his client May 6th, 2016. Due to the fact
23 that Mr. Colongeli only had approximately ten days
24 to prepare for trial which was dated for May 16th,
25 2016, Mr. Colongeli did had, Mr. Colongeli provided

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1 in-- Mr. Colongeli had inadequate time to prepare
2 for trial. Read transcript page 10, line 25, page
3 11, line 1 through 4. Mr. Colongeli admit to never
4 having intentions to file a mental -- a motion to
5 continuance which he did inform me, Mr. Lee, that
6 the judge would grant -- wouldn't grant because how
7 close trial was. Read transcript page 11, line 20.
8 Mr. Colongeli admit to meeting Travis Lee on [REDACTED]
9 [REDACTED] May 6th for the first time in
10 the Jasper County Detention Center. This is also
11 the date Mr. Colongeli received evidence from
12 previous attorney Mr. Bob Hughes to begin his
13 pretrial investigation. This is also the day Travis
14 Lee request for Mr. Colongeli, to file motion of,
15 motion for continuance. Defense counsel Don
16 Colongeli did not do his due his utter most to bring
17 to bear on behalf of his defendant. Mr. Colongeli
18 did not conduct a reasonable pretrial investigation
19 which could, which should include contact the
20 potential witnesses, prepare adequately and
21 professionally for trial.

22 On May the 13th, 2016, Don Colongeli did,
23 in fact, had a discussion with his client Travis Lee
24 and admit to how difficult it was to get his client
25 to plead guilty and voluntarily. See transcript

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1 page 12, line 33, 3 to 6.

2 Q. So I think you're just really reiterating
3 the fact that you don't think he did any type of
4 independent pretrial investigation; is that correct?

5 A. Correct.

6 Q. That you feel that he did not interview
7 any of the witnesses; is that correct?

8 A. Correct.

9 Q. Did he talk with you about the, what the
10 State would have to prove in order to get a
11 conviction, you know, what the elements of the
12 offense? Did he tell you what's required in order
13 to prove kidnapping beyond a reasonable doubt, what
14 the elements are?

15 A. Well, I already had knew what it was, but,
16 no, sir.

17 Q. Okay. And it's your understanding that he
18 did not interview any witnesses; is that correct?

19 A. Correct.

20 Q. I guess it's your testimony that the only
21 thing he did was get you the same deal that you had
22 a month ago; is that correct?

23 A. Same plea offer I could have got with
24 Mr. Bob Hughes two times.

25 Q. I have no further questions.

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1 THE COURT: All right. Anything further
2 examination?

3 MS. GUNTON: Yes, Your Honor.

4 **CROSS-EXAMINATION**

5 BY MS. GUNTON:

6 Q. Good afternoon, Mr. Lee.

7 A. Good afternoon.

8 Q. I wanted to start out by asking you a
9 couple of questions regarding your first attorney
10 Mr. Hughes. Do you recall how many times you met
11 with him?

12 A. About three times I would say.

13 Q. Okay.

14 A. I would say three times at the most.

15 Q. And do you remember if he reviewed the
16 evidence against you in this case?

17 A. Yes.

18 Q. And did you discuss any possible defenses
19 for your case with Mr. Hughes?

20 A. Yes, he was like, it was like a hate crime
21 thing it was lie. 'Cause my case, like, it was,
22 y'all -- they accuse me of helping a Caucasian
23 family brutally beat a black African-American older
24 man. And what's my reason for being on the scene is
25 that the Caucasian family, the Caucasian mother of

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1 the family was sleeping with a black guy. What's my
2 involvement in that?

3 Q. Do you -- so you mentioned earlier that
4 there were two plea offers I think you said from the
5 State that you rejected prior?

6 A. There was three. I rejected two from
7 Bobby, Mr. Rob Hughes.

8 Q. Do you know, do you recall what those
9 offers?

10 A. Yes, ma'am, it was 15 to 20 years.

11 Q. So it was the same thing, each of the
12 three total offers that you received was the same
13 exact?

14 A. Same 15 to 20 years, each plea.

15 Q. And I'm just a bit confused on this. You
16 said your family went ahead and found Mr. Colongeli
17 to represent you after, I guess -- do you want to go
18 into how did you reject Mr. Hughes as your attorney
19 or request that he stop representing you, or how did
20 that come about?

21 A. No, he was supposed to sit side -- from my
22 understanding I hired, I hired Don Colongeli after
23 the motion of severance was denied May --
24 April 14th, and the motion for bond reduction was
25 denied. It was the same day. The motion was denied

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1 on the same day. On that day right there that's
2 when I went, that's when I know that I was scheduled
3 to go to trial May 16th. That's when I found out I
4 was scheduled to go to trial May 16th, and that's
5 when me and my family decided to hire Don Colongeli.

6 Q. So were you not satisfied, did you not
7 think that Mr. Hughes would do a good job
8 representing you if you had continued along with him
9 and gone to trial?

10 A. I believe I would have had a better chance
11 at trial. I believe at the same time I was thinking
12 about public defender, the name public defender,
13 just public defender; and then you got a hired
14 attorney. It's a different battle scare. That's
15 how I was thinking back then. It was like I'm, I
16 paid this money to this man, he gonna represent me
17 to his full ability.

18 Q. So you just were concerned that a public
19 defender would not represent you as well at trial as
20 a paid private attorney?

21 A. Right, 'cause I feel like a public
22 defender work for the State.

23 Q. All right. And do you recall at your plea
24 there's testimony that Mr. Hughes would have sat
25 co-chair with Mr. Colongeli at the actual trial if

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1 you had ---

2 A. Can you repeat that.

3 Q. That both these attorneys would have been
4 present at your actual trial and helped to represent
5 you if you had gone to trial that Monday?

6 A. Yes, that was my understandings.

7 Q. And were you okay with Mr. Hughes also
8 being there at that trial?

9 A. Yes. Yes, that would have been, that
10 would have been outstanding.

11 Q. Okay. And so when you, whose decision was
12 it to have Mr. Hughes not represent you anymore?
13 Was that more so your decision or was there some
14 type of conflict between the two of you that you
15 didn't feel like you were ---

16 A. It was me. It was me and my family
17 decision; but I felt like Bob Hughes wouldn't have
18 been, he wouldn't have, he wouldn't have represent
19 me to his full ability, to his full ability. I
20 can't say that, I can't say that, 'cause he came up
21 with a strategy but...

22 Q. And did Mr. Hughes discuss any -- was your
23 defense the entire time that you were present at the
24 actual crime?

25 A. Defense was, the defense that Bob Hughes

PW - A. LEE - CROSS

1 came up with was that it's impossible, why would I
2 help a family do this. Like, what's my reason of
3 helping my homeboy, his family, his daddy, his
4 momma, they -- it wouldn't have been righteous.

5 Q. Okay. And so when you switched to Mr.
6 Colongeli you said you met him either once or twice
7 prior to pleading?

8 A. I met him twice.

9 Q. Okay. What dates were those, again?

10 A. May 6th.

11 Q. You said ---

12 A. 2016, and May 12th, 2016.

13 Q. Did you provide any witnesses or any other
14 evidence or any potential leads for him to go ahead
15 and investigate on your behalf?

16 A. No, ma'am.

17 Q. And did he go ahead and discuss the
18 elements of the crimes that you had been charged
19 with in this case?

20 A. On May 16th you're saying, like, discussed
21 it when he came, met with me?

22 Q. Uh-huh.

23 A. Yes.

24 Q. So you knew the elements of what the State
25 or what they had to meet in order to get you if you

PW - A. LEE - CROSS

1 had gone to trial?

2 A. Say it one more time.

3 Q. Sorry. You were aware of the elements of
4 each of the offenses charged and the evidence that
5 the State would have to produce in order for you to
6 be convicted at trial?

7 A. I knew what kidnapping -- no, I can't say
8 I knew what all of them meant. I knew from Bob
9 Hughes telling me what can happen from what Don
10 Colongeli.

11 Q. And so did Mr. Colongeli discuss any plea
12 offers with you? Was it the only plea offer on the
13 table went he started representing you was the one
14 that you actually agreed to plead guilty to?

15 A. Repeat that.

16 Q. So you said that you had two prior plea
17 offers that from the State that you rejected?

18 A. Right.

19 Q. Were any ---

20 A. Correct.

21 Q. ---of those offers made when Mr. Colongeli
22 was representing you?

23 A. Within the short time frame that, no,
24 Mr. Colongeli ain't came to me with no plea until
25 May 12th. May 12th, the last time he came to see

PW - A. LEE - CROSS

1 me, visit me he was, he had new evidence which is
2 phone records and which was my co-defendant phone
3 records and my co-defendant taking a plea agreement
4 to testify against me, and that's when he said that
5 the plea offer was still on the table.

6 Q. Okay.

7 A. And I said I want to go to trial.

8 Q. Okay. So now when we get into the actual
9 plea you did say on record that -- it's on page 10
10 of the transcript. The Court asked you that it had
11 been your decision to plead guilty, and you told
12 Judge Nettles that it was your decision to go ahead
13 and plead guilty. Do you recall that?

14 A. Yes, ma'am.

15 Q. And at that time this was sworn testimony.
16 You had been sworn at the beginning of this plea.
17 So are you telling this Court now in which you've
18 also been sworn then you were lying to the judge
19 when you told him that you, it was your decision?

20 A. Yeah, I mean, emotional, unintelligently,
21 involuntarily, yeah. I was, I was unaware. My
22 emotion took advantage of me that day.

23 Q. Okay. So during this ---

24 A. And I trusted my attorney to do his, do
25 his best.

PW - A. LEE - CROSS

1 Q. So throughout this entire time when the
2 Court asked you during your plea that this was your
3 decision to plead, that you were satisfied with your
4 attorney, that you understood all the conversations
5 with him, that he has done everything that you asked
6 him to do, you agreed with the judge and said that,
7 yes, you were satisfied, yes, this is your decision;
8 but it's your testimony now that the reason you said
9 that was only because you were in a bad, emotional
10 state, and that you did not actually intend to plead
11 guilty and you didn't want to?

12 A. It's because of my attorney advice that he
13 gave me.

14 Q. You still understand that it's your
15 decision at the end of the day?

16 A. I know that now.

17 Q. Okay.

18 A. I know that now.

19 Q. And getting into, I believe the
20 co-defendant was Jonathan Lily?

21 A. Yes, ma'am.

22 Q. So his plea at the start of the transcript
23 I believe it's page 1, is that Jonathan Lily
24 accepted a plea right before you went ahead and pled
25 guilty and ---

PW - A. LEE - CROSS

1 A. Correct.

2 Q. ---so the problem was then that there was
3 concern if you had gone ahead and to trial that
4 Jonathan Lily would have testified against you at
5 trial?

6 A. Correct.

7 Q. And so was that part of the reason why you
8 went ahead and pled guilty?

9 A. No, my co-defendant pled guilty first.

10 Q. Right.

11 A. And then I, I felt like ---

12 Q. I mean, was that part of the reason at all
13 that you decided not to go ahead with the trial,
14 that you were worried about ---

15 A. No, I wanted to go to trial from the getgo
16 from ---

17 Q. Okay.

18 A. On May 13th they took about two hours for
19 me to come to -- after Don Colongeli changed his
20 whole mind frame of going to trial, it took him two
21 hours to talk with me and conversate with me to get,
22 me to take this plea. I didn't want to take this
23 plea at all. And if I, if I, if it had registered
24 to me that I could have fired him right there I
25 would have fired him 'cause I felt like he wasn't in

PW - A. LEE - CROSS

1 my best interest.

2 Q. Okay.

3 A. I felt like he wasn't in my best interest.

4 Q. Do you know why you didn't tell Judge
5 Nettles that? 'Cause I can't, I've been looking
6 through this a bunch and I can't find anything in
7 the record that you indicated to the judge or anyone
8 else on this record in front of us that this was not
9 your decision to plead guilty, that you weren't
10 admitting your guilt for any of these three crimes
11 charged; and so your testimony today is that you
12 were just, I guess that you were lying to Judge
13 Nettles and you were just in a bad statement you
14 said?

15 A. I felt like I had no other choice.

16 Q. Okay.

17 A. I had to take, I felt like I had to take
18 this plea.

19 Q. Okay.

20 A. I felt like I had no other choice 'cause I
21 put all my trust and expected my attorney.

22 Q. So let me go back a little bit. When
23 you -- on page 8 of the transcript Judge Nettles did
24 go into a lengthy colloquy with you and eventually
25 explained to you that, hey, before I accept your

PW - A. LEE - CROSS

1 guilty plea you have the right to go to trial and
2 that if you didn't want to do this you could just
3 tell him and that he would stop and that you would
4 go forward with trial. And why at that point did
5 you not tell him that you, in fact, wanted to go to
6 trial?

7 A. 'Cause the person that I expected to use
8 their every skill, expand every energy and tap every
9 legitimate source, and exercising independent
10 professional judgment on my behalf felt like he
11 didn't have faith in himself. My attorney felt like
12 it was impossible for us to win at trial. He was
13 telling me I, you will get 55 years if you go to
14 trial, it was best for you to take this plea.

15 Q. Okay.

16 A. So I felt like I had no other choice. If
17 I done spent my money, I ain't, I ain't know what
18 other place, I ain't know no other way to go. I
19 felt like I only had two, two doors.

20 Q. Okay. So were you mitigating your
21 possible exposure of this 55 years by going and
22 pleading guilty 'cause there was a chance if you
23 went ahead and you did go to trial, that even with
24 the most competent attorney the jury at the end of
25 day would still find you guilty and you could have

PW - A. LEE - CROSS

1 been sentenced up to 55 years?

2 A. And that was the chance I was willing to
3 take and I wasn't, I wasn't able to get that
4 opportunity.

5 Q. Okay.

6 A. I felt like my right to trial wasn't given
7 to me.

8 Q. Okay. And if we go and look at your
9 application you did state that your attorney failed
10 to research, investigate, and prepare a defense.
11 What, can you explain to this Court what, what there
12 was to research, what he should have investigated?

13 A. I felt like he should have questioned the
14 witness 'cause there was one witness to the case,
15 question the witness. I felt like he should have
16 did his own ground work, a minimal investigation on
17 the, what, Jeff Crosby which was the officer of the
18 case was accusing me. Like in the transcript, I
19 read the transcript the questions of the transcript
20 from the officer, the officer coerced the witness
21 into admitting that agreeing that he seen me. You
22 know, things like that. Like, it was, it was
23 contradictive statements in the motion of discovery
24 from the officer asking the witness. It was a lot
25 of different things that he could have did to

PW - A. LEE - REDIRECT

1 prepare for trial and did a minimum investigation to
2 find out that I had my, I had no involvement in this
3 case.

4 Q. Okay. And going to page 18 of the
5 transcript the Court asked you if you had anything
6 to say prior to sentencing; and you stated on page
7 18, line 4 through 5, that you didn't have too much
8 to do with this situation, no harm, no cut, and no
9 none of that, but I was involved in the situation,
10 you know. So is that your testimony today that that
11 was an inaccurate statement that you today are
12 saying that you had no involvement at all?

13 A. I didn't have no involvement; but for me
14 to take this plea to stand up in front of the judge,
15 I have to, from -- I had to admit to something.

16 Q. Well, you know that you cannot say
17 anything or you can ---

18 A. If I'm standing, If I'm standing here
19 pleading before you and I'm saying I'm totally
20 innocent, I already -- my lawyer already told me
21 that I'm gonna lose at trial.

22 Q. Okay.

23 A. He done lost faith in hisself so I'm like,
24 boy, I ain't got no other way to go. I don't have
25 no other way to go if I done trusted and expected my

PW - R. HUGHES - DIRECT

1 attorney to do everything and he tell me he can't do
2 that. So, yeah, I'm gonna stand, I'm gonna plead.
3 I know I ain't had nothing to do with the situation,
4 but I'm pleading guilty so, yeah, I admit to having
5 something to do with it.

6 Q. Okay.

7 MS. GUNTON: I have no further questions
8 for this witness, Your Honor.

9 THE COURT: Mr. Falk, any redirect?

10 MR. FALK: If I could, Your Honor.

11 **REDIRECT EXAMINATION**

12 BY MR. FALK:

13 Q. Just looking at the Jasper County Clerk of
14 Court's page it lists your attorney as Corey
15 Fleming. Do you know who that is?

16 A. Corey Fleming was my co-defendant
17 attorney. He had Corey Fleming at his
18 representation. I had Don Colongeli.

19 Q. Okay, all right. No more questions.

20 THE COURT: Okay. Recross?

21 MS. GUNTON: No recross, Your Honor.

22 THE COURT: All right. Mr. Lee, you can
23 have a seat back in the box.

24 Your next witness.

25 MR. FALK: We call Mr. Hughes.

PW - B. HUGHES - CROSS

1 WHEREUPON,

2 **ROBERT M. HUGHES,**

3 having been duly sworn by the Clerk, testified
4 as follows:

5 THE COURT: Thank you, Mr. Hughes. If you
6 could state your name for the record and spell your
7 last name.

8 THE WITNESS: Robert Milton Hughes,
9 H-U-G-H-E-S.

10 **DIRECT EXAMINATION**

11 BY MR. FALK:

12 Q. Hello, Mr. Hughes. Were you gonna sit
13 second chair at this trial on the 16th?

14 A. I don't remember if I was or not. It
15 wouldn't have been uncommon for me to sit second
16 chair on a case that I had previously represented a
17 client on.

18 Q. I just, has that happened in the 14th
19 circuit as far as having a private lawyer, then the
20 public defender sitting second chair?

21 A. It's rare. What will generally happen is
22 once they retain private attorney the Public
23 Defender's Office steps back completely from it. In
24 this situation where there was a limited amount of
25 time, I knew that the private attorney wasn't fully

PW - B. HUGHES - CROSS

1 up to speed, I'd be more than willing to assist any
2 way that I could.

3 Q. No further questions.

4 THE COURT: Ms. Gunton, anything from the
5 State?

6 MS. GUNTON: Yes, Your Honor.

7 **CROSS-EXAMINATION**

8 BY MS. GUNTON:

9 Q. Good afternoon, Mr. Hughes.

10 A. Good afternoon.

11 Q. How long have you been practicing law?

12 A. Since 2004, that'll be 15 years.

13 Q. Okay. And has that been all criminal law
14 or how much of that time has been spent doing
15 criminal law?

16 A. I started with the Solicitor's Office. I
17 then worked for a nonprofit for a year and since
18 then I was with Public Defender's Office so 14 out
19 of the 15 years either criminal prosecution or
20 criminal defense.

21 Q. And so how many times did you meet with
22 the applicant during the scope of your
23 representation?

24 A. It would be probably once every two months
25 after the preliminary hearing so that could be three

PW - B. HUGHES - CROSS

1 or four times.

2 Q. And did you file request for discovery and
3 Rule 5 and Brady?

4 A. Of course.

5 Q. And were you provided response ---

6 A. Yes.

7 Q. ---to the requests? And do you go ahead
8 and review all that material to Mr. Lee?

9 A. Yes.

10 Q. And could you give us a brief overview of
11 what the State's evidence was against Mr. Lee.

12 A. Actually, there was very little actual
13 evidence against Mr. Lee. This was a case involving
14 a Mr. Grant who was assaulted at co-defendant's
15 residence, outside of the co-defendant's residence.
16 He was beaten up inside of his truck, stabbed,
17 dragged out of his truck, had his throat cut, set on
18 fire multiple times, was placed in the back of a
19 truck and was driven off while tied up and managed
20 to climb out of the back of the truck at a stop sign
21 and that's where he was found. The only evidence
22 against the, I'm sorry, the client, was there was
23 tentative identification made as an assailant in the
24 truck with the lights on from the truck.

25 Q. And did you go over all of that with your

PW - B. HUGHES - CROSS

1 client, just the strengths and weaknesses of the
2 State's case against him?

3 A. Of course.

4 Q. And at that time did you think it was in
5 his best interest to go to trial or to plead guilty?

6 A. If he had been guilty or given me any
7 indication of guilty, his best interest would have
8 been to agree to testify against one of the
9 co-defendants. The State wanted that co-defendant
10 more than anything. There was a outstanding murder
11 charge that he was looking at also. The State
12 wanted this guy.

13 Q. Okay. This guy being the co-defendant?

14 A. Right. My client never admitted to me in
15 any way, shape, or form that he was even there.

16 Q. Okay. And was that going to be your
17 defense the whole time that he just wasn't at the
18 scene and had no knowledge of it?

19 A. Right.

20 Q. Okay. And so you were fully preparing to
21 go ahead and go to trial on this?

22 A. Right. Also, Mr. Lee was
23 African-American. The victim was African-American.
24 The co-defendants who I did not want sitting at the
25 table with me -- that's the reason I moved to sever

PW - R. HUGHES - REDIRECT

1 the case -- were Caucasian, and I didn't want him
2 painted with the same brush that they were.

3 Q. Okay. So do you recall how your
4 representation of Mr. Lee ended?

5 A. I was informed that they'd retained
6 private counsel.

7 Q. Okay. And is that, was that your last
8 involvement in this case, or did you ---

9 A. Once I, they retained private counsel I'm
10 no longer their attorney so to be on their safe side
11 I don't have any communication with them.

12 Q. Okay. And did you prior to you -- or
13 sorry, post-representing Mr. Lee were you in contact
14 at all with his appointed, or sorry, retained
15 counsel Mr. Colongeli?

16 A. I'm sure I was if I provided him with
17 discovery, yeah. It happened so many times. His
18 lawyer would call up and say I got so and so, you
19 got any paperwork for me, sure meet me so and so,
20 I'll drop it off.

21 Q. Okay. And can you -- there's been mention
22 of two plea offers from the State. Do you recall
23 those two plea offers?

24 A. 15 to 20, but they would have gone lower
25 if I could have gotten him to turn on Lily.

PW - R. HUGHES - REDIRECT

1 Q. Okay. So was it essentially the same
2 offer each time?

3 A. Oh, yes, it never changed.

4 Q. Okay. I have no further questions.

5 THE COURT: Okay.

6 **REDIRECT EXAMINATION**

7 BY MR. FALK:

8 Q. It was more than one potential
9 co-defendant in this case?

10 A. Yes, there was two co-defendants.

11 Q. And the one that the State really wanted,
12 was that Lily or was that another person?

13 A. That was Lily.

14 Q. Okay. And were you ready to go to trial
15 on this case on the 16th of May?

16 A. As ready as I am for any trial. This was
17 a case where I didn't have anything to present. All
18 I could do was attack so, yeah, I was ready.

19 Q. Okay. And so, and you had explained to
20 Mr. Lee that this is a case that's gonna depend on
21 identification, right?

22 A. Of course.

23 Q. And this was a nighttime ---

24 A. Correct.

25 Q. ---and so you had some basis to think that

PW - D. COLONGELI - DIRECT

1 you could impeach the testimony of whatever
2 witnesses; is that correct?

3 A. The only witness that I would have to
4 impeach was the victim who was the only person that
5 I knew that put Mr. Lee at the scene.

6 Q. Okay. And so you'd explained that to
7 Mr. Lee; is that right?

8 A. Yes.

9 Q. Yeah, so he knew what he could use had he
10 go to trial; was that right?

11 A. Yes.

12 Q. That there was a -- it's not like there
13 was DNA evidence. There was no gunshot residue,
14 there was no video cameras. Is that correct?

15 A. Correct.

16 Q. No further questions.

17 THE COURT: All right. Anything else?

18 MS. GUNTON: No recross, Your Honor.

19 THE COURT: You can have a seat,
20 Mr. Hughes. Thank you very much.

21 Any objection to him being released?

22 MR. FALK: No, Your Honor.

23 MS. GUNTON: No objection.

24 THE COURT: You're free to go, sir.

25 THE WITNESS: I may be excused?

PW - D. COLONGELI - DIRECT

1 THE COURT: Yes, sir.

2 THE WITNESS: Thank you.

3 THE COURT: Call your next witness.

4 MR. FALK: We call Mr. Colongeli.

5 THE COURT: Okay.

6 WHEREUPON,

7 **DONALD C. COLONGELI,**

8 having been duly sworn by the Clerk, testified

9 as follows:

10 THE COURT: State your name and spell your
11 last name.

12 **DIRECT EXAMINATION**

13 BY MR. FALK:

14 Q. Mr. Colongeli.

15 A. Yes, sir.

16 Q. Are you ready? Okay.

17 THE COURT: If you would state your name
18 and spell your last name for me.

19 THE WITNESS: Yes, ma'am. Donald C.
20 Christopher Colongeli, C-O-L-O-N-G-E-L-I.

21 BY MR. FALK:

22 Q. You were in court while Mr. Lee was
23 testifying?

24 A. Yes, sir.

25 Q. And so he described some of the timeline?

PW - D. COLONGELI - DIRECT

1 A. He does.

2 Q. And ---

3 A. As a matter of fact, he does it quite
4 well.

5 Q. So the first time you met with him was on
6 May 6th of ---

7 A. That sounds about right.

8 Q. Okay.

9 A. Yes, sir.

10 Q. Okay. And then he talks about another
11 meeting on May 12th?

12 A. Correct.

13 Q. And at this time you knew that this case
14 was going to be called for trial on May 16th?

15 A. I knew it much sooner. I knew it the day
16 I sent my letter of representation. As a matter of
17 fact, after having filed the Notice of Intent to
18 Appeal as requested by Mr. Lee I've got -- luckily,
19 this file has survived two hurricanes and three
20 moves that I've been through, and I've got the full
21 file with me. But my letter of rep to Mr. Thorton,
22 deputy chief solicitor with the 14th circuit
23 Solicitor's Office is dated May 5th of 2016. "This
24 letter is to notify your office that I was retained
25 on May 2nd to represent the above named individual

PW - D. COLONGELI - DIRECT

1 concerning the charges presently pending, which we
2 know what those charges are." Interestingly enough,
3 it was in that same letter in notifying them of my
4 representation that I also requested, respectfully
5 requested a continuance. I was under subpoena
6 strangely enough or coincidentally for the Court of
7 Common Pleas term of PCRs the week of that trial,
8 the week the case was scheduled for trial. So I'm
9 thinking if my memory serves me correctly that that
10 was something we were banking on, or at least hoping
11 as an out for the judge possibly granting a
12 continuance. Not only that, let's see. Yeah, that
13 was a pretty big PCR. Harold Jackson is another big
14 case I was involved in. But that was, that was what
15 was sent on May 5th to the Solicitor's Office. And
16 obviously, we were aware upon being hired that this
17 case had already been scheduled for trial and there
18 was a great deal of concern. Because of that, I
19 normally don't get involved in cases that close to
20 trial so there was a great deal of discussion as far
21 as the scope of my representation of Mr. Lee; but I
22 would also agree with him that as far as my ability
23 to meet with him was limited and because I was
24 concentrating on getting ready for trial. But my
25 primary emphasis and my understanding as far as what

PW - D. COLONGELI - DIRECT

1 I remember now is, I was hired in the off chance
2 hope of getting a better result as far as the offer
3 goes. However, there would never be a time I'd get
4 involved in a case where I wouldn't tell the client,
5 please understand, very likely, more likely than
6 not, being hired this close to a trial day no judge
7 is going to probably grant a continuance, that we're
8 going to have to be ready to go forward to trial,
9 which meant that my timeframe for getting ready
10 obviously would be less than normal. And that's one
11 disadvantage the client would have to understand
12 before retaining me any amount of money that I'd
13 accept to get involved in a case of this magnitude,
14 particularly for the fee that I charged.

15 With the amount of exposure he was looking
16 at which was 45 or 55 years, I am known for being
17 very fair in my prices; but I would have never, I
18 would have been able to effectively represent him at
19 trial for 6,000-dollars. But regardless of what I
20 was paid, I would have lived up to my agreement to
21 represent him to my full ability.

22 Q. Was there a written engagement agreement
23 between the two of y'all?

24 A. I'm sure there was. I can't seem to find
25 one; everything else is documented. I have very

PW - D. COLONGELI - DIRECT

1 detailed notes. As a matter of fact, I have what
2 makes, I had a hard time remembering the specifics
3 of this until my administrative assistant which is
4 my wife who's worked for me all these years, told
5 me -- she remembered it quite well, much better than
6 I did, the bigger picture involved, and then it
7 started coming back to me when I got the file. But
8 as a matter of fact, I don't remember this, but I
9 have a full trial notebook prepared. I have, as a
10 matter of fact, everything, as I would in any other
11 case that was prepped for trial, I have 23 witnesses
12 listed for my own defense, for the defense. Now
13 whether or not I interviewed all 23 is very unlikely
14 in that short amount of time, but I had prepared a
15 full trial notebook which I have here in this file.

16 And also, there were a great deal of
17 mitigating circumstances. This was a mere presence
18 type situation for Mr. Lee. The evidence was very
19 scant as far as he went, in him being involved, but
20 there was evidence there. Obviously there was the
21 fear, not fear, it was the known factor that
22 co-defendants were going to pin him. His
23 non-willingness, which I don't blame him, as far as
24 not wanting to agree to cooperate with the State as
25 far as testifying against anyone else without

PW - D. COLONGELI - DIRECT

1 knowledge; and it was a tough position he was in,
2 very difficult position. And I now remember also
3 looking back that it was Judge Nettles, and Judge
4 Nettles has always been known from a defense
5 standpoint as being more likely than not obviously
6 to could get a fair or a maybe lesser number if
7 lawyers were in the business of judge shopping,
8 which I'm not saying I ever did; but it was
9 something that came into consideration as far as who
10 was presiding that week. The sentence, the plea
11 offer never did change. I mean, when he hired me it
12 was the same as it was with Mr. Hughes. That was
13 already testified to. And I think Judge Nettles
14 split the baby so to speak with the 18. We were
15 hoping for the 15.

16 And I mean, looking through, refreshing my
17 memory through some of these records, and this
18 doesn't, should not reflect on Mr. Lee at all; but
19 the extent of the injuries and the case itself, I
20 mean, you have an individual victim that was hog
21 tied. The doctor's medical reports even went so far
22 as to say that medical professionals stopped
23 counting the number of stab wounds on the victim
24 'cause they couldn't keep track. With gasoline
25 poured on him, the guy set on fire twice, he still

PW - D. COLONGELI - DIRECT

1 lived. Unfortunately, it was just those mere facts
2 alone that for me predicted a very dangerous setting
3 for Mr. Lee to run that risk at trial because I
4 think he would have suffered the same, if not worse,
5 as the rest of them which were the actual defendants
6 in my opinion, the actual people that did this, not
7 Mr. Lee. But in South Carolina under the hands of
8 one the hands of all he could have been convicted
9 just as easily, and I think that's where -- and I
10 feel bad about this, but that's where he's coming
11 from and I understand it completely where he seeks
12 possibly a lack of confidence in me at the end where
13 it wasn't so much a lack of confidence, it was me
14 trying to plead to his senses and saying, look, man,
15 you are gonna run a huge risk by going forward on
16 Monday. It's not that I'm not ready. I'm ready to
17 do what we have to do; but the ability of me to
18 win -- I'm very frank and open with my clients and I
19 think I've developed a great amount of respect. And
20 I don't want to sound self-serving, I care a great
21 deal about my clients and I feel bad for Mr. Lee
22 also because I think he's justified in feeling
23 shortchanged here. There was a very short window of
24 time I had to get ready and to basically do what he
25 expected me to do which was near next to impossible

PW - D. COLONGELI - DIRECT

1 when it came down to me having to be blunt enough
2 and telling him what my professional opinion was as
3 to our chances at trial. It wasn't that I wasn't
4 prepared. I would admit that I would not be as
5 prepared as if I had been hired six months or a year
6 earlier, but obviously I did not take the case
7 thinking that it was just with the intent of
8 pleading. Even though my fee would reflect that,
9 no, obviously I have a full file here that shows
10 that, with the exception of this notebook, this is
11 all delineated and broken down into what a trial
12 notebook would be: Witnesses, sheriff's incident
13 report, medical reports mostly, and evidence. And
14 the, attached to my notes where the actual sentence
15 was given by Judge Nettles I've got, let's see, two
16 pages of mitigating circumstances and I guess you
17 could reverse that and say that -- if can get a
18 glass, a cup of water?

19 THE COURT: Yes.

20 THE WITNESS: Thank you very much. It was
21 interesting for me to look over these notes, but
22 there's question marks next to all these things and
23 I've got things such as circumstantial evidence. It
24 was circumstantial against Mr. Lee. DNA, text
25 messages, background of victim, snitch, motive,

PW - D. COLONGELI - DIRECT

1 Lily's mother, drug deal gone bad, 40 plus stab
2 wounds, pictures, who called 9-1-1, I go on and on.
3 Brass knuckles, question mark, knife, question mark,
4 condition of victim, nonresponsive, other potential
5 witnesses' names, other questions I had that may
6 come up. But all these were mentioned, I think, as
7 far as mitigation, I framed them as mitigation. And
8 then, like I said, not, not 10, but 23 listed
9 witnesses I had prepared as far as if we had gone to
10 trial. Now that would have been either my thinking
11 as far as what the State would have, at least 23
12 potential witnesses the State probably would have
13 called, or the 23 I would have needed to at least
14 cross-examine or try to impeach. But there was no
15 question this was a circumstantial evidence case
16 against Mr. Lee, it was just a very serious case.
17 And I'd hoped that he would have more understanding
18 of that and obviously he didn't and was extremely
19 upset the day it happened, I remember that clearly.

20 Q. Was it your understanding that he wanted
21 you to file a motion for a continuance?

22 A. Which I did.

23 Q. You did file a motion?

24 A. I believe, yeah. As a matter of fact, I
25 stand to be directed, but if I can just take a look

PW - D. COLONGELI - DIRECT

1 here. Yes. There's the notice of intent to appeal
2 after the plea and then right here in my letter of
3 rep I believe it was attached to my letter of rep
4 where I informed the Solicitor's Office, "That I was
5 under subpoena to appear before the Court of Common
6 Pleas May 16th of 2016 to provide testimony in the
7 PCR matters of Harold L. Jackson versus State of
8 South Carolina and Andre Green versus State of South
9 Carolina; therefore, in light of the matters
10 referenced above I feel obligated to request at
11 least one continuance in this matter and I've
12 enclosed a motion for the same. Also, I've enclosed
13 a copy of the request for discovery in this matter,
14 a copy of which I'm providing to the arresting law
15 enforcement agency, as well as any other agency
16 involved in the investigation of this matter."

17 Q. Was your motion for continuance, was that
18 heard on the 13th?

19 A. I believe so. I believe so, yes.

20 MR. FALK: May I have a moment, Your
21 Honor?

22 THE COURT: Uh-huh.

23 BY MR. FALK:

24 Q. You said you have the motion there?

25 A. I have the original. This is my own

PW - D. COLONGELI - DIRECT

1 original so I asked for a copy.

2 Q. Do you mind if I looked at it?

3 A. No, no problem. The Solicitor's letter of
4 representation, the continuance, the marked and Rule
5 5 all in one package. Continuance requested
6 referenced, not -- it's referenced, but not
7 attached. It appears it's attached though.

8 Q. Thank you.

9 A. I also did notice that I believe the offer
10 for 15 to 20 had been -- as a matter of fact, my
11 notes reflect that that offer had been rejected. I
12 was able to re-- have that reissued so that was off
13 the table at the time I was hired according to my
14 notes. But obviously I don't believe Mr. Lee was
15 satisfied with that, otherwise, he wouldn't have
16 hired me.

17 Q. And it's your recollection that that
18 actually was heard, that motion?

19 A. I honestly don't, I don't have a
20 recollection of the motion being heard. All I have
21 is the fact that it was requested.

22 Q. There is a -- I'm -- not that the Jasper
23 County Clerk's Office is always the most tedious in
24 filing motions, I'm just saying when I look at the
25 Clerk's Office website I cannot find an entry for

PW - D. COLONGELI - DIRECT

1 it.

2 A. That's why it's interesting I don't, I
3 don't have any specific recollection of an oral
4 argument on the motion. All I know is I can tell
5 you here that it was obviously filed along with my
6 letter of rep on May 5th so I, I, I just can't
7 answer the question. I don't remember quite
8 honestly how, when I filed, how it was denied,
9 whether there was argument on it. I just don't
10 remember.

11 Q. Is it your understanding that the judge
12 denied it or just that the Solicitor wouldn't agree
13 to it and you didn't want to try to fight the
14 solicitor on it?

15 A. I would imagine it would have been a
16 judge's decision. I don't remember. I honestly
17 don't remember.

18 Q. Have you read the plea transcript? Have
19 you had a chance to look at the plea transcript?

20 A. In its entirety, no, I have not. I'd be
21 glad to go through it quickly if you want me to. I
22 don't -- this was, the assistant AG Office had
23 requested or asked if it would be okay that this
24 hearing be held today.

25 Q. Yes.

PW - D. COLONGELI - DIRECT

1 A. This was not originally scheduled for ---

2 Q. Right.

3 A. I don't believe I even was able to receive
4 a package before today, that's why. I would have
5 read it otherwise.

6 Q. I'm just, I can't find any represent-- I
7 can't find any discussion as this part of the
8 transcript that this motion was denied. Were you in
9 court a long time that day?

10 A. Which day?

11 Q. The 13th?

12 A. I ---

13 Q. That Friday the 13th?

14 A. Yes, it was a long day. It was a long
15 day. In all honesty I would defer to Mr. Lee as far
16 as his recollection goes as to whether or not a
17 motion was heard or if I just went along with the
18 Solicitor's office not accepting it so I would go
19 that far, I mean. Obviously he was extremely
20 dissatisfied. he was under a great deal of
21 pressure; however, I mean, I'm, it's not unusual for
22 clients in that kind of position to be that way. It
23 is unusual for my clients to get that upset. I've
24 got some people sitting on this row right here that
25 are probably charged with more serious crimes than

PW - D. COLONGELI - DIRECT

1 Mr. Lee's, believe it or not. Whether or not
2 they're, in fact, guilty is not for me to judge; but
3 you know, I think I'd venture to guess -- I don't
4 want to sound so self-serving, I really don't -- but
5 I have a great deal of respect for them to a certain
6 extent. I've done this for a long time. I do mean,
7 I would like to know that I've satisfied my client's
8 wishes and obviously you get yourself in situations
9 like this sometimes where you in retrospect maybe
10 think you shouldn't have gotten involved in the
11 first place; but you know, and that's, this is one
12 of those situations. But I don't normally have
13 clients get as upset as he did and he was extremely
14 upset; I do remember that. And I can't blame him,
15 but at the same time, in looking at these charges I
16 mean, they were very serious. I don't believe I've
17 -- that's wrong, I've had cases probably worse than
18 this, but this was right out there. As far as what
19 could have been inferred upon him even though he
20 wasn't the one -- the evidence would not have come
21 out that he was the one that inflicted any of those
22 injuries. He would have been present when it
23 occurred at most, at most.

24 Q. You would agree that if there were a
25 hearing before a judge and a motion for a

PW - D. COLONGELI - CROSS

1 continuance that your client would have been present
2 in the courtroom, right?

3 A. Absolutely, yeah, sure, yeah, he would
4 have to be. I think. I don't think I've ever had
5 one without him.

6 Q. That, that's what I'm thinking too. He'd
7 have to be present.

8 MR. FALK: One moment, Your Honor.

9 THE COURT: Uh-huh.

10 MR. FALK: Your Honor, I have no further
11 questions.

12 THE COURT: All right.

13 Ms. Gunton.

14 **CROSS-EXAMINATION**

15 BY MS. GUNTON:

16 Q. I just have a couple of brief questions
17 for you. In taking on this case you said you were
18 discussing you only had about three weeks to prepare
19 before he was scheduled to go ahead and go to trial.
20 And are you saying that you felt completely
21 confident, that you would have been confident at
22 trial representing him?

23 A. I'm not saying -- what I mean is that
24 having had the chance to review my, my, what the
25 file contains and as you can see, I mean, it's a

PW - D. COLONGELI - CROSS

1 quite large accordion file. And obviously this is
2 all, mostly discovery, but what it shows me is that
3 I had prepped this case and was prepared to go
4 forward to trial, it wasn't -- obviously I would
5 know if I wasn't prepared. Now would I have been as
6 well prepared if I had been hired six months to a
7 year earlier which is usually the case, I would have
8 been much better prepared in that instance. With
9 this short timeframe and the window I had, there
10 would have been no chance for me to get as ready as
11 I would have liked to have been. As far as the 23
12 potential witnesses, time would have not permitted,
13 it just would not have been feasible for me to
14 interview each witness prior to that, with that
15 amount of time. But that doesn't necessarily mean I
16 would not have been prepared, I mean, I don't
17 interview every witness before a trial.

18 Q. Right.

19 A. A lot of these were witnesses that I
20 probably wouldn't have done that with; but you know,
21 I think logic speaks for itself here. If I, six
22 months, been hired six months out, obviously I think
23 I would have had a better, more effectiveness at
24 trial maybe; but other than that, I was prepared to
25 go forward.

PW - D. COLONGELI - CROSS

1 Q. Okay.

2 A. I think -- Mr. Lee brought up an
3 interesting point and I do use this with a lot of
4 clients and I use the age factor. 18 years is a long
5 time, but you compare that with what he's charged
6 with and the exposure he's looking at. If I see any
7 sort of redeeming qualities with my clients in the
8 hopes that they can conform and not be a threat to
9 the community they're in, I use that as something
10 for them to try to understand as far as time. I
11 can't even fathom 18 year, an 18 year sentence.
12 It's very difficult to be involved in this kind of
13 thing. But when you look at the big picture and
14 you're being charged with these kind of crimes, it's
15 something that usually helps my clients understand
16 better what the odds -- if the odds are stacked
17 against them, to understand that at the end of the
18 day it may be in their better interest to take the
19 plea, which in this case my professional and
20 personal opinion was with this judge the only chance
21 he had was pleading. And my client is, my former
22 client is correct as far as me telling him that,
23 professionally or personally.

24 Q. Do you know what changed between wanting
25 to go ahead with, Mr. Lee wanting to go ahead to

PW - D. COLONGELI - CROSS

1 trial? What happened if you recall, in getting him
2 to actually go ahead and plead guilty?

3 A. With all due respect to this court and to
4 you and to all parties, I will say this,
5 unfortunately my memory if it serves me correctly,
6 is that I was hired specifically with the hopes of
7 getting a better deal than Mr. Hughes. However, I
8 would have made it clear to anyone hiring me
9 regardless of the amount of money I was paid, that
10 the chances of me doing that could be not
11 guaranteed, not only not guaranteed, but the
12 likelihood of trial would be imminent meaning that
13 more or less we would have to be ready for trial in
14 that short amount of time, are you still wanting to
15 get into that kind of situation with me before I
16 agree to represent you. So I would only hope that I
17 have conveyed that to Mr. Lee, and if I didn't, I
18 believe the Court will make that determination for
19 me and allow him his day in court; but otherwise, I
20 can only hope that I did.

21 Q. So is it, just let me clarify. Your
22 understanding that you were specifically hired by
23 Mr. Lee in order to get a better plea offer from the
24 State and that it was not your ---

25 A. I wouldn't go as far to say I was hired

PW - D. COLONGELI - CROSS

1 specifically for that because like I said, I can't,
2 I wouldn't, there's no way -- I don't think
3 ethically I can do that. I don't think ethically I
4 can do that.

5 Q. I understand that your understanding at
6 the time of accepting the representation that short
7 notice ---

8 A. That triggers my memory, yes. That's what
9 makes me recall this case more so than anything else
10 is the reason 'cause I kind of question myself what
11 I was doing getting involved in that late date and
12 the answer was, according to my office, was that the
13 hopes were that I could hopefully secure a better
14 number than what was being offered.

15 Q. Right. So that's to say that Mr. Lee was
16 open to accepting a plea offer and that he was open
17 to pleading guilty and that it wasn't -- he, if you
18 recall, correct me if I'm wrong, but were there
19 conversations between you and Mr. Lee where he
20 specifically told you, I do not want to plead
21 guilty, I only want to go to trial?

22 A. I pray that I'm not wrong here but, and I
23 try to err on the side of caution to my former
24 client at all times and, but I honestly can say that
25 I don't have any specific recollection of those

PW - D. COLONGELI - CROSS

1 discussions that it was a trial and that was the
2 only thing it ever was, I just don't. If I did I'd
3 obviously be telling you that. My recollection is
4 that it was more less primarily, and primarily with
5 the hope of a better deal.

6 Q. Right. And so if you recall that the
7 co-defendant Jonathan Lily did, in fact, plead
8 guilty right before Mr. Lee went ahead and pled
9 guilty so could you describe any, I guess, that this
10 in mitigation in order for him to plead guilty
11 because of the fear of Mr. Lee preceded at trial
12 next week to having Mr. Lily turn on him during
13 trial and testify against him?

14 A. Correct. Yes, to a certain extent. And
15 if my recollection serves me correctly, it was one
16 or the other. The main defendant got 24 years, not
17 -- one of them got 24 years. Mr. Lee, he got the
18 18. And obviously the offer was from 15 to 20. We
19 were hoping for 15 or less.

20 Q. So it would be in your, I guess
21 professional judgment, that this was the best kind
22 of result that Mr. Lee could have gotten and
23 although he could have gone to trial and the jury
24 could have acquitted him, the likelihood of that
25 happening given the evidence and given the fact that

PW - D. COLONGELI - CROSS

1 the co-defendant was blatantly to testify against
2 him at trial he possibly would have gotten a
3 significantly heavier sentence?

4 A. I'm sorry, yes, I honestly have to say
5 you're correct. I pray that I'm right, but I
6 believe that was the case.

7 Q. And do you recall anything, I mean, I know
8 this is short notice; we kind of switched the
9 schedule around. Do you recall Mr. Lee ever telling
10 you that he did not want to plead guilty, that this
11 is not his decision, that this he was being coerced
12 into it. Because you were in here the whole time
13 that he was testifying that he felt coerced to plead
14 guilty and that this wasn't his decision, do you
15 recall any of those conversations?

16 A. I'm sorry, to the extent of who was
17 testifying?

18 Q. Mr. Lee, I'm sorry.

19 A. When he was ---

20 Q. When Mr. Lee stated earlier ---

21 A. Oh, I'm sorry, during his testimony here.

22 Q. I'm sorry.

23 A. I think I mentioned this before. I will
24 agree with him to the extent he was under a great
25 deal of pressure. I think that it all hit him at

PW - D. COLONGELI - CROSS

1 once as far as me coming to him saying what I did as
2 far as my professional advice as to what he should
3 do so, I mean, to that extent he was, he was under a
4 great deal of pressure. However, the judge did what
5 every judge does as far as entering, when he entered
6 the plea, and went through each and every step and I
7 stood by him and I believe he understood the
8 questions and he answered them. And in all honesty,
9 in all honesty I'm surprised he answered that he was
10 satisfied with my representation then, but he did
11 so. But was he under a great deal of pressure,
12 unfortunately I have to say that he was. This was a
13 lot to decide in that short period of time because I
14 truly believe he had this idea in his head that I
15 was gonna be able to perform, I was gonna be able to
16 produce something better than Mr. Hughes had
17 obviously, and I wasn't.

18 Q. I understand. And just a last question,
19 ultimately it was Mr. Lee's decision to go ahead and
20 plead guilty and not go to trial?

21 A. Yeah, I, I would have never, I don't, I
22 wouldn't have forced him. It was his, it was
23 decision. It was his decision. Now did he feel
24 that, maybe he felt that way, but I did not
25 personally coerce that upon him and I hope he

PW - D. COLONGELI - REDIRECT

1 doesn't feel that way; but I know that I didn't. I
2 can't speak for him or how he felt. I may have a
3 little too much sympathy for some of my clients and
4 that it's jaded me over the years and I've made it
5 known to not be that way lately; but I do respect
6 everyone equally and I'm not one to judge. And I do
7 appreciate what these, some of these people are
8 going through without thinking about the crimes
9 they've alleged to have committed so I take a lot
10 into consideration as far as my respect for them and
11 what they're going through; but at the same time I
12 have to maintain my professional abilities to look
13 at everything professionally and give my advice and
14 hope that they take it.

15 Now in this case, whether or not he had
16 enough time to make a decision, that's entirely,
17 that's something he has to come to terms with now.
18 If he's putting that on me, I only can hope that I
19 gave him enough advice and the right advice to do
20 the right thing.

21 Q. Thank you.

22 MS. GUNTON: No further questions, Your
23 Honor.

24 THE COURT: Anything from you?

25 **REDIRECT EXAMINATION**

PW - D. COLONGELI - REDIRECT

1 BY MR. FALK:

2 Q. You testified that Mr. Lily was going to
3 testify against him and put him at the scene, put
4 Mr. Lee at the scene; is that correct?

5 A. I think that's, if I recall that's what
6 the State was hoping.

7 Q. Were you here earlier when Mr. Hughes said
8 that the State was looking to get Mr. Lee, I mean,
9 Mr. Lily, that he, that's the one that they wanted,
10 that they figured he was the worst guy?

11 A. I don't think there was any doubt that
12 they wanted Mr. Lily, but I was never given the
13 impression -- Mr. Hughes, quite frankly, I was
14 surprised when he said, I don't know if he said this
15 or not, but I was under the impression that Shawn
16 Thorton being the deputy chief solicitor involved in
17 this case and not backing down once I got involved,
18 not that I was anyone special, but my understanding
19 was they, he wanted, he wanted justice here and he
20 was looking at all of them. Obviously he had hoped
21 for the cooperation of Mr. Lee, but the point, by
22 the time I got involved that was a foregone
23 conclusion.

24 Q. I'm really sort of getting to a point, and
25 I don't know this, but I'm assuming you looked this

PW - A. LEE - REBUTTAL

1 up; but did Mr. Lee -- Mr. Lily, the co-defendant
2 who was gonna testify against him, did he have a
3 criminal record?

4 A. I don't know if he did.

5 Q. Would you have been able to impeach it?

6 A. Sure, sure. And that's why I believe that
7 was part of my notes too. I mean, you know, there
8 were some things to go on here, but at the end of
9 the day my professional opinion was it was a very
10 big risk to take because if he, I believe he would
11 have been found guilty based on what I was working
12 with and I believe that he would have been sentenced
13 to the maximum.

14 Q. Thank you. No further questions.

15 THE COURT: Okay. Anything else from you?

16 MS. GUNTON: No recross from the State,
17 Your Honor.

18 THE COURT: Any objection to this witness
19 being released?

20 MS. GUNTON: No objection, Your Honor.

21 MR. FALK: Your Honor, I'm gonna call my
22 client as a rebuttal witness so you may have to keep
23 him just a little...

24 THE COURT: All right. Mr. Lee, you can
25 stay right where you are. I can hear you perfectly

PW - A. LEE - REBUTTAL

1 fine; the court reporter can too. There's no need
2 for you to keep coming up and down.

3 So please go ahead, Mr. Falk.

4 **DIRECT EXAMINATION**

5 BY MR. FALK:

6 Q. When you hired Mr. Colongeli was he hired
7 in order to get a better plea deal for you?

8 A. No, he was hired to represent me at trial.

9 Q. Okay.

10 A. Prepare for trial.

11 Q. You did not want him to try and get a
12 better deal?

13 A. No, sir.

14 Q. You did want him to get a, to try to get a
15 continuance; is that correct?

16 A. I did want him to get a continuance so we
17 could prepare for trial.

18 Q. 'Cause you appreciated the fact that'd be
19 a short period of time to prepare for trial?

20 A. Yes, sir.

21 Q. And when was the first time you were in
22 court? On the 13th you went to court that day?

23 A. The 13th.

24 Q. And you said you were there a long time?

25 A. Yes, sir.

PW - A. LEE - REBUTTAL

1 Q. Was there ever a hearing on motions for a
2 continuance?

3 A. No, sir.

4 Q. So the judge never denied the -- do you
5 have any recollection of a motion for continuance?

6 A. No, sir, it never been no motion for
7 continuance?

8 Q. I mean, as far as the judge making a
9 decision on it?

10 A. No, I never went in front of the judge and
11 it never was nothing said about a motion for
12 continuance. There was never nothing said about a
13 motion for continuance. My attorney showed up late
14 and we were sitting -- one time he came and
15 discussed it was about, about me taking a plea.

16 Q. And ---

17 A. When I went in front of that judge I went
18 to take a plea.

19 Q. So your understanding of the
20 representation was that he was going to get a
21 continuance and then prepare for trial?

22 A. Yes, sir.

23 Q. He testified that he assumed that, as he
24 did with all his other clients, that he would have
25 told you coming in this late you were taking some

1 risk. Did he have any of that kind of conversation
2 that he might be forced to go to trial quickly?

3 A. I already know we was going to trial
4 'cause he ---

5 Q. Back on the 16th, on the 16th?

6 A. Yeah, we was scheduled to go on the 16th
7 but. Naw, it was no recollection that we would be
8 forced. I already, when he told me that on May 6th
9 that -- there was two courts. The judge was deny
10 the motion of continuance because how close the
11 trial was, that's when I realize, okay, we got ten
12 days left, it's crunch time. Now he got, put his
13 job on the line. I never came, I never, we never
14 had a mutual agreement that I want to take a plea or
15 I want him to get a better plea.

16 Q. Okay. No further questions, Your Honor.

17 THE COURT: Okay. Anything else from the
18 State?

19 MS. GUNTON: No questions for this
20 witness, Your Honor.

21 THE COURT: Okay, thank you so much. Any
22 other witnesses you'd like to call?

23 MR. FALK: No, Your Honor.

24 THE COURT: Anything else the Solicitor
25 or, excuse me, the AG would like to present?

1 MS. GUNTON: No, Your Honor, the State
2 rests at this time.

3 THE COURT: All right. Okay, anything
4 else that the attorneys wish to tell me by way of
5 argument they might sum up for me?

6 MR. FALK: I think obviously our argument
7 is clear from the record is that my client thought
8 he was hiring Mr. Colongeli to get a continuance and
9 then prepare for trial. He does not have any
10 recollection that motion for continuance was ever
11 being made. He does not recall any discussion with
12 Mr. Colongeli that, you know, that there's a risk,
13 that this thing being forced, still forced to go to
14 trial. I think we have a situation where my client
15 really felt coerced, that if he did not take this
16 deal on the 13th he was gonna have to go to trial on
17 the 16th with a lawyer who wasn't prepared by that,
18 having been coerced, making this plea involuntarily.

19 THE COURT: All right. Anything you want
20 to tell me?

21 MS. GUNTON: Yes, Your Honor. The State
22 would just argue that the allegations that Mr. Lee
23 has alleged against counsel are meritless. The plea
24 court conducted an extensive colloquy with Mr. Lee
25 in terms of his satisfaction with his attorney, that

1 he was pleading voluntary and knowingly.
2 Mr. Colongeli also just testified here that he did
3 say that pleading guilty was in the best interest of
4 his client. During the plea I believe it's about a
5 third of the actual plea transcript his,
6 Mr. Colongeli provided mitigation to the court
7 during on his behalf during the sentencing hearing.
8 And the State would just say that Mr. Lee has failed
9 to meet his burden set forth through Strickland.
10 The State would respectfully ask his application be
11 denied and dismissed with prejudice.

12 THE COURT: Okay. This one will take me
13 as long I expect to get, have a decision in the next
14 ten days. At that point in time I'll reach out from
15 one of your offices for a proposed order for the
16 record. All right, thank you very much.

17

18 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *

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C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES B. RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Third Judicial Circuit, do hereby certify that the foregoing proceeding was transcribed for Becky B. Hill from audio through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings to the best of my ability.

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

Witness my hand at Florence, South Carolina, this 17th day of March, 2020.

Frances B. Ray

FRANCES B. RAY, RPR

STATE OF SOUTH CAROLINA)
 COUNTY OF JASPER)
)
)
 Travis Antwan Lee, #352842,)
)
 Applicant,)
)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE FOURTEENTH JUDICIAL CIRCUIT

2017-CP-27-0125

ORDER OF DISMISSAL

FILED
 JASPER COUNTY
 CLERK OF COURT
 2019 OCT 28 AM 9:28

This matter comes before the Court by way of an application for post-conviction relief filed by Travis Antwan Lee (“Applicant”) on March 27, 2017. Respondent made its return on or about September 24, 2018. The Court convened an evidentiary hearing into the matter on Wednesday, August 28, 2019, at the Beaufort County Courthouse in Beaufort, South Carolina. Applicant was present at the hearing and represented by James K. Falk, Esq. Sara E. Gunton, Esq., of the South Carolina Attorney General’s Office, represented Respondent.

Applicant testified on his own behalf at the evidentiary hearing. Applicant’s appointed counsel, Robert M. Hughes, and retained counsel, Don C. Colongeli (“Counsel”) also testified. The Court has before it Applicant’s records from the South Carolina Department of Corrections, a copy of the original plea transcript, the records of the Jasper County Clerk of Court regarding the subject convictions, Applicant’s direct appeal records, and the pleadings. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Jasper County Clerk of Court. In May 2015, the Jasper County

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Grand Jury indicted Applicant for kidnapping (2015-GS-27-0150), attempted murder (2015-GS-27-0151), and criminal conspiracy (2015-GS-27-0152). The charges resulted from a 2015 attack in which Applicant and a co-defendant lured Victim to a location by impersonating a woman he was trying to meet through text messages. When Victim arrived to the planned location, Applicant and the co-defendant ambushed him, brutally beating and repeatedly stabbing him, before setting him on fire. Plea Tr. p. 5-6. Victim, who had his wrists zip tied behind his back, was then loaded into the back of the pickup truck. Applicant and co-defendant drove off with Victim. Shortly thereafter, Victim was able to roll out of the truck bed and escape. Plea Tr. p. 6, ll. 11-23. While driving the truck, Applicant made a phone call to his girlfriend on Victim's phone, calling his girlfriend at the same number he later used to call her from jail, after his arrest. Plea Tr. p. 6, ll. 24 – p. 7, ll. 21. Victim was also able to identify Applicant as being present and involved in the attack. Plea Tr. p. 5, ll. 17-21. Applicant's co-defendant was placed at the scene of the attack from his GPS ankle monitor. Plea Tr. p. 6.

Robert M. Hughes, Esquire, was originally appointed to represent Applicant. Donald C. Colongeli, Esquire, ("Counsel") represented Applicant when Applicant retained him three weeks prior to the plea.¹ Applicant pled guilty under the same plea offer extended to him while represented by Mr. Hughes. Plea Tr. p. 3, ll. 15 – p. 4, ll. 9. Sean P. Thornton, Esquire, prosecuted the case. On May 13, 2016, Applicant pled guilty as indicted to all charges before the Honorable Michael G. Nettles. Pursuant to the negotiated sentence of a range from fifteen to twenty years with all sentences being concurrent, Judge Nettles sentenced Applicant to imprisonment of eighteen years for attempted murder, eighteen years for kidnapping, and five years for conspiracy, all to be served concurrently.

¹ Applicant's allegations are construed as applying only to retained counsel, Donald C. Colongeli, Esq.

Counsel filed a timely notice of appeal on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal by order filed July 22, 2016, for failure to provide a sufficient explanation as required by Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules and letters dated June 1, 2016, and June 28, 2016. *State v. Lee*, App. Case No. 2016-001126 (Ct. App. 2016). The Remittitur was issued on August 9, 2016.

Present Application

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

1. Ineffective assistance of counsel²
 - a. "Trial Counsel deprived Applicant of the Sixth Amendment right to the effective assistance of counsel in failing to research, investigate, and prepare a defense."
 - b. "Illegally seized photo lineup..."
 - c. "The warrants are defective on their face and Trial Counsel was ineffective in failing to have the 'bare bones' warrants dismissed with prejudice at the preliminary hearing."
 - d. "Trial Counsel performed deficiently in failing to file a motion to dismiss the aforementioned warrants during the preliminary hearing and in failing to move the court to withdraw Applicant's guilty plea and then move the court to quash the indictments to which are a [illegible]."
2. "Plea of guilty unlawfully induced."

II. STANDARD OF REVIEW

In a post-conviction relief action, an applicant has the burden of proving the allegations in his application. Rule 71.1(e), SCRCP; *Butler v. State*, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant alleges ineffective assistance of counsel as a ground for relief, they must present

² Applicant's allegations as set forth as 1.b., 1.c., and 1.d., were contained in a supplemental memorandum filed *pro se* by Applicant on June 1, 2017, and incorporated into the Return by Respondent.

evidence to satisfy the two prong test enumerated in *Strickland v. Washington*, 466 U.S. 668, 687, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674 (1984), to determine whether counsel's "assistance was so defective as to require a reversal of" applicant's sentence. First, the applicant must show counsel's performance was deficient; and second, the applicant must show they were prejudiced by that deficiency. *State v. Stalk*, 383 S.C. 559, 560-61, 681 S.E.2d 592, 594 (2009) (citing *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)) (extending the Court's two prong *Strickland* test to apply to guilty pleas).

In order to prove deficient performance under the first prong of *Strickland*, the burden is on applicant to show that counsel's representation fell below an objective standard of reasonableness. *Strickland*, 466 U.S. at 687-88, 104 S.Ct. at 2064. The proper measure of attorney performance remains simply reasonableness under prevailing professional norms. *Id.* In considering whether counsel's performance was reasonable:

Judicial scrutiny of counsel's performance must be highly deferential, as it is all too tempting for a defendant to second-guess counsel's assistance after conviction or an adverse sentence, and it is all too easy for a court, examining counsel's defense after it has proved unsuccessful, to conclude that a particular act or omission of counsel was unreasonable.... A fair assessment of attorney performance requires that every effort be made to eliminate the distorting effects of hindsight.

Strickland, 466 U.S. at 689, 104 S.Ct. at 2065; *Edwards v. State*, 392 S.C. 449, 456-57, 710 S.E.2d 60, 64 (2011).

"[W]hen counsel articulates a valid reason for employing a certain strategy, such conduct will not be deemed ineffective assistance of counsel." *Smith v. State*, 386 S.C. 562, 567, 689 S.E.2d 629, 632 (2010) (citing *Caprood v. State*, 338 S.C. 103, 110, 525 S.E.2d 514, 517 (2000)).

"[C]ounsel is strongly presumed to have rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." *Butler*, 286 S.C. at 442, 334 S.E.2d

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at 814 (*quoting Strickland*, 466 U.S. at 690, 104 S.Ct. at 2066). The applicant must overcome this presumption to receive relief. *Cherry v. State*, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Even if the applicant can establish that counsel's performance was deficient, they must still overcome their burden to demonstrate prejudice from that deficiency. The second prong of *Strickland* requires the applicant to prove that counsel's deficient performance prejudiced applicant to the extent that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceedings would have been different." *Cherry*, 300 S.C., at 117-18, 386 S.E.2d, at 625 (citing *Strickland*, 466 U.S., at 694, 104 S.Ct., at 2068).

Hill v. Lockhart[474 U.S. 52, 58, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985)] extended the application of the two-part *Strickland* test "to challenges to guilty pleas based on ineffective assistance of counsel." *See also Stalk v. State*, 382 S.C. 559, 560, 681 S.E.2d 592, 594 (2009). The analysis of counsel's performance under the first prong of the *Strickland* test remains unchanged. *Hill*, 474 U.S., at 59, 106 S.Ct., at 370. The second requirement "focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process." *Id.* The applicant must "show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." *Id.*

The standards do not establish mechanical rules; the ultimate focus of inquiry must be on the fundamental fairness of the proceeding whose result is being challenged. *Strickland*, 466 U.S., at 696, 104 S.Ct., at 2068. A court need not first determine whether counsel's performance was deficient before examining the prejudice suffered by the applicant as a result of the alleged deficiencies; if it is easier to dispose of an ineffectiveness claim on the ground of lack of sufficient prejudice, that course should be followed. *Id.*, 466 U.S., at 696-97, 104 S.Ct., at 2068.

III. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the evidentiary hearing in conjunction with the records submitted to it by the parties, and has considered the legal arguments made by the attorneys. Pursuant to S.C. Code Ann. § 17-27-80, this Court makes the following findings based upon all of the probative evidence presented:

A. Ineffective Assistance of Counsel

i. Failure to Research, Investigate, and Prepare a Defense

Applicant alleges Counsel was ineffective for failing to properly research, investigate the facts of the case, and to prepare a defense. At the evidentiary hearing Counsel testified he was retained to represent Applicant roughly three weeks before Applicant pled guilty, after Applicant relieved Robert M. Hughes, Esq., his appointed attorney. Counsel explained that although he had an extremely short period to review Applicant's case, he was able to meet with Applicant several times, and had received and reviewed all of the discovery in the case. There was very little physical evidence tying Applicant to the crime, however, there was substantial circumstantial evidence and Applicant had been identified as a participant by Victim. Counsel described Applicant's wishes to proceed to trial, and Counsel readily agreed that he was prepared to try the case. However, Counsel was extremely concerned that if Applicant proceeded to trial, his co-defendant would be called as a State's witness. If convicted on all charges at trial Applicant faced a total possible sentencing exposure of sixty-five years. Counsel explained the State had offered Applicant a negotiated plea offer of 15-20 years on all charges, and spoke with Applicant at length explaining the risks he faced if he proceeded to trial. Counsel stated that, in his professional judgement, it was in Applicant's best interest to accept the plea offer to mitigate the sentencing exposure Applicant faced at trial.

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Applicant testified he planned to go to trial and decided at the last minute to accept the negotiated plea offer after he was informed on Friday, May 6, 2016, that his co-defendant would testify against him at trial. He explained he never wanted to plead guilty, however, he realized it was in his best interest to do so because of what his co-defendant might testify to at trial. Applicant stated he never talked about a possible defense with Counsel, nor did he discuss a trial strategy.

Counsel has a duty to undertake reasonable investigations or to make a decision that renders a particular investigation unnecessary. *Strickland v. Washington*, 466 U.S. 668, 691, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). Thus, “[a] criminal defense attorney has the duty to conduct a reasonable investigation to discover all reasonably available mitigation evidence and all reasonably available evidence tending to rebut any aggravating evidence introduced by the State.” *McKnight v. State*, 378 S.C. 33, 46, 661 S.E.2d 354, 360 (2008). Moreover, counsel's decision not to investigate should be assessed for reasonableness under all the circumstances with heavy deference to counsel's judgment. *Simpson v. Moore*, 367 S.C. 587, 597, 627 S.E.2d 701, 706 (2006). “[C]ounsel's conversations with the defendant may be critical to a proper assessment of counsel's investigation decisions....” *Strickland*, 466 U.S. at 691, 104 S.Ct. 2052. “[A] court deciding an actual ineffectiveness claim must judge the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct.” *Id.* at 690, 104 S.Ct. 2052. *Bagwell v. State*, 410 S.C. 259, 265, 763 S.E.2d 630, 633–34 (Ct. App. 2014).

Here, it is clear from the testimony presented at the evidentiary hearing that Counsel thoroughly investigated Applicant's case and advised Applicant that it was in his best interest to accept the plea offer based on the evidence against him, his lack of a defense, as well as the threat of his co-defendant testifying against him at trial. Applicant failed to testify as to what defense Counsel should have raised if he had proceeded to trial, nor did Applicant produce any witnesses

or evidence at the evidentiary hearing to establish what exactly Counsel failed to investigate or prepare as a defense.

Therefore, this Court finds Applicant has failed to meet his burden under either prong of *Hill*, and his request for relief by way of this allegation, as stated above as 1.a., is denied and dismissed with prejudice.

ii. Illegally Seized Photo Lineup

Applicant alleges that the photo lineup used in his case was “illegally seized.” However, Applicant failed to present any testimony, argument, or evidence at the evidentiary hearing concerning this allegation. The failure to do so has waived this allegation as grounds for relief. Accordingly, this allegation as set forth above as 1.b. is denied and dismissed with prejudice.

iii. Failure to Dismiss Defective Warrants

Applicant alleges that counsel was ineffective for “failing to have the ‘bare bones’ warrants dismissed with prejudice at the preliminary hearing.” However, Applicant failed to present any testimony, argument, or evidence at the evidentiary hearing concerning this allegation. The failure to do so has waived this allegation as grounds for relief. Accordingly, this allegation as set forth above as 1.c. is denied and dismissed with prejudice.

iv. Failure to Challenge Warrants and Withdraw Plea

Applicant alleges that counsel failed to file a motion to dismiss the warrants at the preliminary hearing, failed to withdraw Applicant’s guilty plea, and failed to have the indictments quashed. However, Applicant failed to present any testimony, argument, or evidence at the evidentiary hearing concerning these allegations. The failure to do so has waived these allegations as grounds for relief. Accordingly, these allegations as set forth above as 1.d. are denied and dismissed with prejudice.

B. Involuntary Guilty Plea

Applicant alleges his guilty plea was “unlawfully induced” and that counsel coerced him into pleading guilty. To find a guilty plea is voluntarily and knowingly entered into, the record must establish Applicant had a full understanding of the consequences of his plea and the charges against him. *Stalk v. State*, 375 S.C. 289, 298, 652 S.E. 2d 402, 406 (2007); *Boykin v. Alabama*, 395 U.S. 238, 242, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969)). “The longstanding test for determining the validity of a guilty plea is whether the plea represents a voluntary and intelligent choice among the alternative courses of action open to the defendant.” *Gustine v. State*, 325 S.C. 123, 127, 480 S.E.2d 444, 446 (1997) (quoting *Hill* at 56). “All that is required to knowingly and voluntarily enter a plea of guilty is that a defendant have a full understanding of the consequences of his plea and of the charges against him.” *Id.*, 325 S.C. at 128, 480 S.E.2d at 446 (citing *Simpson v. State*, 317 S.C. 506, 455 S.E.2d 175 (1995)).

Applicant’s knowing and voluntary waiver of the constitutional rights which accompanied his guilty plea may be established by colloquy between the plea court and Applicant, his Counsel, or both. *Pittman v. State*, 337 S.C. 597, 601, 524 S.E.2d 623, 625 (1999). “[T]he voluntariness of a guilty plea is not determined by an examination of the specific inquiry made by the sentencing judge alone, but is determined from both the record made at the time of the entry of the guilty plea and the record of the post-conviction hearing.” *Harres v. Leeke*, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984). It is proper for this Court to review the plea colloquy record as well as the testimony and evidence presented at the evidentiary hearing to determine the voluntariness of Applicant’s guilty plea. *Roddy v. State*, 339 S.C. 29, 33, 528 S.E.2d 418, 420 (2000). Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, an Applicant’s right to contest the validity of such a plea is usually barred. See *Blackledge v. Allison*,

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431 U.S. 63, 73-74, 97 S.Ct. 1621, 1628-29 (1977) ("Solemn declarations in open court carry a strong presumption of verity. The subsequent presentation of conclusory allegations unsupported by specifics is subject to summary dismissal, as are contentions that in the face of the record are wholly incredible."). Statements made during a guilty plea should be considered conclusively, unless Applicant presents valid reasons why he should be allowed to depart from the truth of his statements. *Crawford v. United States*, 519 F.2d 347, 350 (4th Cir. 1975) (overruled on other grounds by *United States v. Whitley*, 759 F.2d 327 (4th Cir.1985)).

Applicant entering a plea on the advice of counsel may only attack the voluntary and intelligent character of his plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty but would have insisted on going to trial. *Hill v. Lockhart*, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985); *Roscoe v. State*, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001); *Jackson v. State*, 342 S.C. 95, 535 S.E.2d 926 (2000).

Applicant did not provide any testimony or evidence at the evidentiary hearing that his plea was not voluntarily made. Review of the guilty plea transcript clearly refutes the allegation made in his application for relief that his plea was unlawfully induced. See *Rayford v. State*, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). The plea colloquy record shows Applicant was fully informed of his constitutional rights, understood the charges against him, was cognizant of the sentencing exposure he faced, as well as his satisfaction with Counsel's representation, and that it was his decision to plead guilty. Plea Tr. 9-10. Any misconceptions concerning Applicant's constitutional rights, the charge, or potential sentence on his part were

cured by the colloquy during the complete and thorough plea proceeding. *See State v. Stalk*, 375 S.C. 289, 300, 652 S.E.2d 402, 407-408 (2007). It is clear from the plea record that Applicant understood the terms of his plea, and he failed, both in his application for relief and at the evidentiary hearing, to assert error on the part of Counsel. From the testimony presented it is clear that Applicant accepted the negotiated plea offer, with the advice of counsel, to mitigate his sentencing exposure. In view of *Rayford*, this Court has determined that Applicant's plea was voluntary, intelligent, and knowing. Therefore, Applicant has failed to meet his burden under either prong of *Hill*, and his request for relief by way of this allegation, set forth above as 2., is denied and dismissed with prejudice.

[Conclusion and signature page to follow]

IV. CONCLUSION

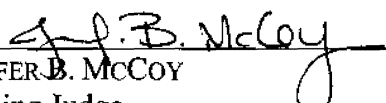
Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel 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), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP provides that if the Applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the South Carolina Department of Corrections.

AND IT IS SO ORDERED this 23 day of October, 2019.



 JENNIFER B. MCCOY
 Presiding Judge
 Fourteenth Judicial Circuit

Beaufort, South Carolina

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WITNESSES

J. Crosby - JCSO

DOCKET NO. 2015GS2700152

The State of South Carolina

County of Jasper

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

Defendant

I _____

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

ARREST WARRANT NUMBER

2015A2710200094

COURT OF GENERAL SESSIONS

May Term 2015

THE STATE

vs.

Travis Antwan Lee

ACTION OF GRAND JURY

TRUE BILL True

NO BILL _____

FOREMAN Wes Poutre

DATE 5/21/15

Foreperson of Grand Jury

Date:

Defendant

VERDICT

Indictment for

Conspiracy / Criminal Conspiracy

Witness:

COPY

SC Code: 16-17-0410

CDR Code:0049

C.C.C. PLS. and G.S.

Foreperson of Petit Jury

Date:

135

WITNESSES

Crosby - JCSO

DOCKET NO. 2015GS2700151

The State of South Carolina

County of Jasper

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

Defendant

COURT OF GENERAL SESSIONS

May Term 2015

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

ARREST WARRANT NUMBER

2015A2710200093

THE STATE

vs.

Travis Antwan Lee

ACTION OF GRAND JURY

TRUE BILL True
NO BILL _____
FOREMAN Wes Randle
DATE 5/21/15

Foreperson of Grand Jury
Date:

Defendant

VERDICT

Indictment for
Attempted Murder

Witness:

COPY

Foreperson of Petit Jury
Date:

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

C.C.C. PLS. and G.S.

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WITNESSES

Crosby - JCSO

DOCKET NO. 2015GS2700150

The State of South Carolina

County of Jasper

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

Defendant

COURT OF GENERAL SESSIONS

May Term 2015

I _____

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

ARREST WARRANT NUMBER

2015A2710200091

THE STATE

vs.

Travis Antwan Lee

ACTION OF GRAND JURY

TRUE BILL True

NO BILL

FOREMAN Wes Rountree

DATE 5/21/15

Foreperson of Grand Jury

Date:

Defendant

VERDICT

Indictment for

Kidnapping / Kidnapping

Witness:

COPY

SC Code: 16-03-0910

CDR Code:0095

C.C.C. PLS. and G.S.

Foreperson of Petit Jury

Date:

0-5yrs.

COUNTY OF Beaufort
STATE VS.
AKA: TRAVIS LEE
Race: B Sex: M Age: 24

INDICTMENT CASE#: 2015-6S-27-152
AW#: 2015A2710200094
Date of Offense: 3/23/2014
S.C. Code: 16-17-410
CDR Code #: 0049

SENTENCE SHEET

Address:
City, State, Zip:
DL#: SID#:
*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: CONSPIRACY (C/L)

In violation of 16-17-410 of the S.C. Code of Laws, bearing CDR Code = 0049
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w minor 1st or Lewd Act) 17-25-45

The charge is As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury
The plea is Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Solicitor, SC Bar= 15868, Defendant, Attorney for Defendant, SC Bar= 2419

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

for a determinate term of 5 days months years or under the Youthful Offender Act not to exceed years
and or to pay a fine of \$; provided that upon the service of days months years and or payment
of \$; plus costs and assessments as applicable*, the balance is suspended with probation for

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

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

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

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

SPECIAL CONDITIONS:

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

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

Recipient:

Table with 3 columns: Description, Amount, Total. Includes items like Assessments, Surcharges, and Fees.

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

Clerk of Court Deputy Clerk: Margaret Boshack
Court Reporter: KAREN ANDERSON

Presiding Judge:
Judge Code:
Sentence Date: 5-13-16 (BFT)

STATE OF SOUTH CAROLINA

0-20yrs.

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort
STATE VS.
Travis Anwan Lee
AKA:
Race: B Sex: M Age: 24
DOB: SS:
Address:
City, State, Zip:
DL#: SID#:

INDICTMENT CASE#: 2015-6S-27-151
A W#: 2015A2710200093
Date of Offense: 3/23/2014
S.C. Code: 16-3-029
CDR Code #: 3410

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

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

CONVICTED OF or PLEADS

TO: Attempted Murder

in violation of 16-3-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS
Mandatory GPS(CSC w/ minor 1st or Lewd Act) 17-25-45

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

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

ATTEST: Solicitor SC Bar= 15868 Defendant Attorney for Defendant SC Bar= 2419

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

for a determinate term of 18 days months years or under the Youthful Offender Act not to exceed years
and or to pay a fine of \$; provided that upon the service of days months years and or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

CONCURRENT or CONSECUTIVE to sentence on: 5-13-16
The Defendant is to be given credit for time served pursuant to S.C. Code 24-13-40 to be calculated and applied
by the State Department of Corrections.

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

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

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

Set by SCDPPPS

Recipient:

Table with 2 columns: Description and Amount. Includes items like 14-1-206 (Assessments 107.5%), 14-1-211(A)(1) (Conv. Surcharge) \$100, 14-1-211(A)(2) (DUI Surcharge) \$100, 56-5-2995 (DUI Assessment) \$12, 56-1-246 (DUI Breath Test) \$25, Proviso 47.9 (Public Def Prob) \$500, 14-1-212 (Law Enforce. Funding) \$25, 14-1-213 (Drug Court Surcharge) \$150, 50-21-114 (BUI Breath Test Fee) \$50, 56-5-2942(J) (Vehicle Assessment) \$40 ea, Proviso 90.5 (SCCJA Surcharge) \$5, 3% to County (if paid in installments) \$3.90, TOTAL \$133.90

PTUP

days hours Public Service Employment

Obtain GED

Attend Voc. Rehab. or Job Corp.

May serve W E beginning

Substance Abuse Counseling

Random Drug/Alcohol testing

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

\$ paid to Public Defender Fund

Other:

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

Clerk of Court Deputy Clerk

Court Reporter: KAREN ANDERSON

SCCA 217 (03/2011)

Presiding Judge

Judge Code:

Sentence Date:

Michael Hunter

5-13-2016 (BFT)

COUNTY OF Beaufort
 STATE VS.
Travis Antwan Lee
 AKA:
 Race: B Sex: M Age: 24
 DOB: [REDACTED] SS#: _____
 Address: _____
 City, State, Zip: _____
 DL#: _____ SID#: _____

INDICTMENT CASE#: 2015-GS-27-150
 A.W#: 2015A2710200091
 Date of Offense: 3/23/2014
 S.C. Code §: 16-3-910
 CDR Code #: 0095

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was TO: Kidnapping

in violation of 16-3-910 of the S.C. Code of Laws, bearing CDR Code = 0095
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC w/ minor 1st or Lewd Act) §17-25-45

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

ATTEST: [Signature] 15868 Travis Lee [Signature] 2419
 Solicitor SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections. County Detention Center.
 for a determinate term of 18 days, months 0 or under the Youthful Offender Act not to exceed _____ years
 and or to pay a fine of \$ _____; provided that upon the service of _____ days months years and or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on: 5-13-16
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

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

Recipient: _____

*Fine:		\$	
14-1-206 (Assessments 107.5%)		\$	0
14-1-211(A)(1) (Conv. Surcharge)	\$100	\$	100.00
14-1-211(A)(2) (DUI Surcharge)	\$100	\$	0
56-5-2995 (DUI Assessment)	\$12	\$	0
56-1-236 (DUI Breath Test)	\$25	\$	0
Proviso 47.9 (Public Def Prob)	\$500	\$	0
14-1-212 (Law Enforce. Funding)	\$25	\$	25.00
14-1-213 (Drug Court Surcharge)	\$150	\$	0
50-21-114 (BUI Breath Test Fee)	\$50	\$	0
56-5-2942(J) (Vehicle Assessment)	\$40 ea	\$	0
Proviso 90.5 (SCCA Surcharge)	\$5	\$	5.00
3% to County (if paid in installments)		\$	3.90
TOTAL		\$	133.90

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

Clerk of Court Deputy Clerk Mary Boshack
 Court Reporter: KAREN ANDERSON
 SCCA 217 (03 2011)

Presiding Judge [Signature]
 Judge Code: _____
 Sentence Date: 5-13-2016 (BFT)