

Nonhearsay
Evidence

202-CP-21-1711
"Explanation"

Exhibit-I
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State of South Carolina)	Court of General Sessions
)	Twelfth Judicial Circuit
County of Florence)	Case No. 2018-GS-21-01520
)	Case No. 2018-GS-21-01523
)	
State of South Carolina,)	
)	
Plaintiff,)	
)	
-vs-)	Transcript of Record
)	
James Edgar Hutchinson,)	
)	
Defendant.)	

RECEIVED
JUN 14 2022
S.C. SUPREME COURT

January 8, 2019
Florence, South Carolina

B E F O R E:

The Honorable Thomas A. Russo, Judge

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

John Jupertinger, Esquire
Attorney for the Plaintiff

Caroline Lawson, Esquire
Attorney for the Defendant

Krystal J. Smith
Circuit Court Reporter

This Exhibit is for showing that
Counsel Lawson in my current
conviction let the Court tell me
I did not have to prove anything and
never told me to my right to challenge
priors was going to let me get life
with the wrongful conviction in
the 2002-GS-21-1670 that was not
a nighttime burglary and did not
qualify as a most-serious offense.

1 their accusers or to confront their accusers. What that
2 means is during that jury trial you would have the right to
3 question those witnesses, to cross-examine those State's
4 witnesses. That is your right of confrontation under the
5 Constitution.

6 You have the right to challenge any evidence the State
7 would put up against you, but when you plead guilty by
8 entering that plea of guilt, you give up that presumption of
9 innocence that I spoke about, you relieve the State of their
10 burden of proof and, since they don't have to prove your
11 guilt, they don't have to bring their witnesses into court
12 and so you waive or you give up the right to confront those
13 folks.

14 Now, the State is not the only one that can call
15 witnesses at a trial or to present evidence. You could
16 present evidence in your defense. You could call witnesses.
17 You yourself could testify. You could do either one of those
18 things or you could do both of those things, but the
19 important thing to understand is this: You don't have to do
20 anything.

21 In this country, a person charged with a criminal
22 offense is never required to prove him or herself innocent.
23 The burden of proof is on the State to prove guilt. You
24 don't have to prove anything. You could remain silent and,
25 if you chose to remain silent, I would instruct the jury that

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1 that is your constitutional right and that they could not
2 consider your exercise of that right during their
3 deliberations. As a matter of fact, I would take it a step
4 further and tell them that the fact that you chose to remain
5 silent could not even be discussed in the jury room. They're
6 to give it no consideration whatsoever because you don't have
7 to prove anything. The burden of proof is on the State to
8 prove guilt.

9 Now, the State has to prove guilt to a unanimous
10 decision. In other words, they have to convince all twelve
11 members of the jury that you are guilty or they cannot
12 convict you. But if you did go forward with a jury trial and
13 if you were convicted, you could appeal that conviction to a
14 higher court, if you felt that was appropriate.

15 Now, these are the rights that we all have, but if you
16 decide to go forward with a guilty plea, then for purposes of
17 your plea you waive or you give up these rights, you will not
18 have a jury trial, and your case will be resolved pursuant to
19 your plea.

20 Like I said earlier, if you have any questions about
21 anything that I just went over, I'll give you whatever time
22 you need to talk to your lawyer and have those questions
23 answered, but it's important that you understand these rights
24 if you go forward because if you go forward with a plea, then
25 for purposes of that plea you waive or you give up these

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State of South Carolina)	
)	Certificate
County of Florence)	
<p>I, the undersigned, Krystal J. Smith, Notary Public and Official Court Reporter for the Twelfth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing pages, numbered 1 through 21, constitute a true, accurate, and complete Transcript of Record of all the proceedings had and evidence introduced in the hearing of the above captioned case, relative to appeal, in the Court of General Sessions for Florence County, South Carolina, on the 8th day of January, 2019.</p> <p>I do further certify that I am neither of kin, counsel, nor interest to any party hereto.</p> <p style="text-align: right;"><u>Krystal J. Smith</u> Court Reporter</p> <p>Florence, South Carolina October 6, 2020</p>		

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Exhibit - J

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF FLORENCE) 02-GS-21-1670 & 02-GS-33-169
and COUNTY OF MARION)

THE STATE,)
-vs-) TRANSCRIPT OF RECORD
JAMES EDGAR HUTCHINSON,)
Defendant.)

December 5, 2002
Florence, South Carolina

B E F O R E:

THE HONORABLE B. HICKS HARWELL, JR., Judge.

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

JOHN C. JEPERTINGER, Esquire
Assistant Solicitor for the Twelfth Judicial Circuit
Attorney for the State

STEPHEN L. HILL, Esquire
Assistant Public Defender for Florence County
Attorney for the Defendant

This Exhibit is for showing that Counsel
Stavura Hill in 2002-GS-21-1670 case
failed to inform me of right to challenge prices
and also let the Court tell me that I did not
have to prove anything. Then acted as a
friend of the Court to try and have them amend
the indictment to keep me from coming back
on appeal, and let me enter an inventory
plea to a nighttime burglary when it was a
daytime offense. This is what Counsel Lawson
should have shown the Court in my current case;

PATRICIA A. MCDANIEL
Circuit Court Reporter

1 DEFENDANT HUTCHINSON: Yes, sir.

2 THE COURT: You want to waive it?

3 DEFENDANT HUTCHINSON: Yes, sir.

4 THE COURT: I see where you've signed it here on this
5 proposed indictment.

6 Are you also waiving and giving up your right to a
7 trial by jury where the law presumes you to be innocent,
8 places the burden on the State to prove you guilty beyond
9 a reasonable doubt?

10 ~~You can't be compelled to call witnesses to testify.~~

11 You don't have to prove you innocent. They got to prove
12 you guilty of these charges, and all twelve's got to agree
13 unanimously before you could be found guilty. You could
14 confront your accusers while remaining silent. Dispute,
15 disagree, and challenge, and contest these charges. And
16 if you chose to compel witnesses to come from which you
17 might benefit -- But you can't be required to do that
18 either because you don't have to prove you're innocent.

19 But you're giving up all of those rights. You
20 understand what you're giving up?

21 You explained---

22 DEFENDANT HUTCHINSON: Yes, sir.

23 THE COURT: ---it to him in detail, Mr. Hill?

24 MR. HILL: Yes, I did.

25 THE COURT: You understand you know what the

1 excuse me.

2 THE COURT: Oh, in '88. I was fixing to say that
3 don't make sense. He's thirty-one (31) years old.

4 MR. JEPERTINGER: No. It was 1938, Your Honor, that
5 -- And -- Or the court date was---

6 THE COURT: Thirteen (13) years ago.

7 MR. JEPERTINGER: Yes, sir.. He also caught a
8 burglary, second degree, sentence which he caught a -- a
9 Y.O.A. sentence for.

10 THE COURT: He decided he wanted to be -- wanted to
11 be a professional crook.

12 MR. JEPERTINGER: Right. And, Your Honor,---

13 THE COURT: That Youthful Offender didn't help him at
14 all.

15 MR. JEPERTINGER: ---he also caught another burglary
16 conviction, Your Honor, in 1999, where he caught twelve
17 (12) years, suspended to six (6) years service and---

18 THE COURT: I see---

19 MR. JEPERTINGER: ---probation---

20 THE COURT: ---that on---

21 MR. JEPERTINGER: ---for five (5)---

22 THE COURT: ---looking---

23 MR. JEPERTINGER: ---years.

24 THE COURT: ---at that.

25 MR. JEPERTINGER: And other than that, he has some

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1 other matters: shoplifting and--

2 THE COURT: What I---

3 MR. JEPERTINGER: ---public drunk---

4 THE COURT: ---don't under--

5 MR. JEPERTINGER: ---type things.

6 THE COURT: ---stand is how he ever got on probation.

7 You got an habitual offender, Mr. Hill.

8 MR. HILL: Yes, sir.

9 THE COURT: You've cut him a sweet deal. Sooner or
10 later he's gone die in prison.

11 (WHEREUPON, Mr. Hill conferred with Mr. Jepertinger.)

12 THE COURT: (While the attorneys were conferring) He
13 ain't gone change. He's as hard as a nail.

14 MR. JEPERTINGER: (To Mr. Hill) Yes. We can do that.

15 Judge -- Judge, what we would do---

16 THE COURT: I can't reach you. Can't attempt to.

17 MR. JEPERTINGER: Judge, could we---

18 THE COURT: They cut you a deal, and I'm gone take
19 it.

20 MR. JEPERTINGER: Judge, let me -- let me just -- let

21 me just state this: And I -- Since this matter has been

22 waived in terms of presentment, I would add as an

23 additional issue in terms of the -- of the burglary,

24 first, charges on the 1670 indictment that the burglary

25 first, should also contain additional element that the

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21

1 burglary was committed by an individual with two prior
2 convictions, separate convictions, for burglary.

3 MR. HILL: And we have no objection to that amendment
4 being made to the indictment. I believe it should be
5 made.

6 (To Mr. Jepertinger) Two counts in that indictment,
7 isn't that correct?

8 MR. JEPERTINGER: That is correct.. Counts one and
9 two.

10 MR. HILL: The reason for that---

11 MR. JEPERTINGER: It would be a jurisdictional issue.

12 THE COURT: All right. You know, I'm crazy. I ain't
13 got a lick of sense. I am a optimist with no reason for
14 optimism, believing that everybody that comes before me
15 that in some way I can get their attention and that I can
16 help them in some way and get them on the right track and
17 get them off that path of self-destruction; and I been a
18 lawyer for about forty-two (42) years, long as Mr. Rogers;
19 and I practiced defense law for over thirty (30) years;
20 and I've seen them come and go. I've seen them go home
21 with me; and I've seen them go to prison; and I've seen
22 them go for long period of times (sic); and I've seen some
23 of them change; but, in all those years experience, when I
24 see somebody with your history and your record, with every
25 opportunity, with support from family and every chance of

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
06-CP-21-375

JAMES EDGAR HUTCHINSON,)
Applicant,)

-vs-

THE STATE,

Respondent.)

TRANSCRIPT OF RECORD

October 2, 2006
Florence, South Carolina

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, Judge.

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

CHARLES T. BROOKS III, Esquire
Attorney for the Applicant

SABRINA C. TODD, Esquire
Assistant Attorney General
Attorney for the Respondent

This Exhibit is for showing that Counsel Hill and Counsel Brooks were not concerned with whether I got convicted of

a nighttime burglary that I did not do. But was too busy worrying about the priors that I was never told I could challenge. And where Steven Hill lived on the stand, he said he realized it was not a nighttime burglary. That's false perjury.

PATRICIA A. McDANIEL
Circuit Court Reporter

as shown in trial transcript he told the prosecutor to amend the indictment. Also he lied saying he always lets his client know if they have a valid defense.

NorthCarolina
Evidence

Stephen Lawrence Hill - Direct by Ms. Todd

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1 A. In the indictment---

2 Q. ---for burglary, first, was pled?

3 A. That it occurred during the nighttime.

4 Q. Okay. And---

5 A. And that was not correct.

6 Q. Okay.

7 A. Which is why -- As Mr. Hutchinson stated, he recalls
8 that I stepped over to Mr. Jepertinger, and I think
9 something like this probably happened, is that I realized
10 that the proper aggravating circumstance wasn't alleged or
11 had not been put into evidence to support a plea on this
12 particular indictment. And I'm certain I told Mr.
13 Jepertinger -- I'm sure I told Mr. Jepertinger that, for
14 the plea to be proper, the correct aggravating
15 circumstance of two or more convictions for burglary
16 and/or housebreaking or a combination of those two had to
17 exist.

18 Upon my review of the record, there were at least
19 three (3) instances, once of which -- two of which you may
20 could have argued could have been treated as one
21 sentencing event or being closely enough related in time.
22 A third was -- I think there was at least a year, maybe
23 two, in-between those. So there was significant -- There
24 -- The number of convictions were appropriate, and I
25 wanted to make sure -- Since we were doing a waiver, I

- 1 Q. Okay. Do you have any recollection as to whether he
2 understood that that was what he was pleading to?
3 A. That he was pleading to burglary, first; or pleading
4 to burglary, first, with those particular aggravating
5 circumstances?
6 Q. That he was pleading to burglary, first?
7 A. Yes. I'm -- I'm confident he was aware he was
8 pleading to burglary, first degree.
9 Q. Okay. Do you think that he understood regarding the
10 aggravating circumstances that actually existed?
11 A. ~~Apparently not.~~
12 Q. Okay. Did you think that at the time?
13 A. That he understood?
14 Q. Yes.
15 A. I don't know. The reason -- The only reason I did
16 that, in making that amendment, was so he could take
17 advantage of the plea offer that had been given to him
18 that day.
19 Q. Okay.
20 A. But I can't tell you that he was aware of that.
21 Q. Okay. Do you have any recollection or notes
22 regarding advising him as to community supervision?
23 A. I know I didn't.
24 Q. Okay.
25 A. And that's come up quite often in the last two (2)

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10

Stephen Lawrence Hill - Cross by Mr. Brooks

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1 good thing to do.

2 Q. Okay.

3 A. Although my practice was, and still is if I was to
4 defend folks, that if they've got a legitimate defense
5 that's always made aware of them; and I always attempted
6 not to let people plead guilty unless they were guilty.

7 And---

8 Q. The information presented in the factual recitation
9 to the court during the plea, did you -- did you believe
10 that tracked the evidence that the State had?

11 A. I read both, and I think it reflects the evidence as
12 I understood it.

13 Q. And during that factual recitation, did not the
14 solicitor indicate that items from two of the three
15 burglaries were found on the Applicant when he was
16 found---

17 A. Yes.

18 Q. ---by the police?

19 A. I believe that's correct.

20 MS. TODD: Okay. Thank you. I have nothing further.

21 Please answer any questions Mr. Brooks has.

22 THE COURT: Mr. Brooks.

23 CROSS-EXAMINATION BY MR. BROOKS:

24 Q. Mr. Hill?

25 A. Yes, sir.

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"Explanation"

1 A. Apparently so if I stepped over to Mr. Jepertinger
2 and pointed out that for the plea to be correct and for
3 this not to come back, as it has today or even on appeal,
4 that we needed to make sure that the correct circumstances
5 were made a part of the record and that he had a record of
6 two or more burglaries and/or housebreakings.

7 Q. And was that, to your understanding, explained fully
8 to Mr. Hutchinson?

9 A. ~~That particular amendment? I can't tell you that~~
10 ~~because apparently this happened during the plea.~~

11 Q. Okay.

12 THE COURT: Is it -- Might I interrupt. Is it that
13 everybody's understanding that the case of St- -- Jackson
14 vs. State essentially says it's not a -- ineffective
15 asent- -- ineffective assistance of counsel not to advise
16 an individual about community service because it is, in
17 fact, a collateral consequence of a sentence? Is that
18 your understanding of the law?

19 MR. BROOKS: Judge, I -- I -- That would be my
20 understanding in regards to the community---

21 THE COURT: That's a---

22 MR. BROOKS: ---supervision.

23 THE COURT: ---April 8th, 2002, case. Is that your
24 understanding?

25 MS. TODD: Yes, Your Honor.

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STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Marion County
Appeal from Florence County

B. Hicks Harwell, Jr., Circuit Court Judge

THE STATE,

RESPONDENT,

V.

JAMES EDGAR HUTCHINSON,

APPELLANT

BRIEF OF APPELLANT

ELEANOR DUFFY CLEARY
Assistant Appellate Defender

South Carolina Office
of Appellate Defense
1205 Pendleton Street, Room 306
Columbia, S. C. 29201
(803) 734-1330

ATTORNEY FOR APPELLANT

This Exhibit here is to show the Appellate Counsel was ineffective in failing to advise that the factual basis did not support the guilty plea in case 2002-GS-21-1670, Instead trying to deter me from challenging it by saying that I would be re-indicted because of prior convictions but never informed me that if I could show that they were invalid they could be stopped from using them. Plus see herein, wherein it is plain on the record that it was not a nighttime burglary that she knew of as well,

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ARGUMENT

The plea court lacked subject matter jurisdiction to accept Hutchinson's guilty pleas since the first-degree burglary indictments were amended to include the additional aggravating factor that the crimes were committed by a person with two or more prior burglary convictions.

Counts One and Two of the three-count Florence County indictment in appellant's case read as follows:

COUNT ONE – BURGLARY (FIRST DEGREE)

That [appellant] did in FLORENCE County on or about June 10, 2002, violate Section 16-11-0311 of the Code of Laws of South Carolina (1976), as amended, in that he did enter the dwelling of Judy Jackson without consent and with the intent to commit a crime therein and said defendant entered or remained in said dwelling in the nighttime.

COUNT TWO – BURGLARY (FIRST DEGREE)

That [appellant] did in FLORENCE County on or about June 10, 2002, violate Section 16-11-0311 of the Code of Laws of South Carolina (1976), as amended, in that he did enter the dwelling of Matthew Harvey without consent and with the intent to commit a crime therein and said defendant entered or remained in said dwelling in the nighttime.

ROA p. 38.

During the course of his guilty plea hearing, the solicitor and defense counsel conferred privately. ROA p. 20, lines 11-13. After saying “[y]es we can do that” to defense counsel, the solicitor moved to amend Count One and Count Two of the indictment to include the “additional element that the burglary was committed by an individual with two prior convictions, separate convictions, for burglary.” ROA p. 20, line 14 – p. 21, line 2. Plea counsel stated that he had no objection to that amendment and stated he believed it

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should be made. ROA p. 21, line 3-5. The solicitor told the judge "it would be a jurisdictional issue." ROA p. 21, lines 7-9

Nothing in the arrest warrants or the recitation of facts by the solicitor indicates that the burglary occurred in the nighttime. ROA pp. 29-30; p. 16, line 11 – p. 18, line 8.

This amendment deprived the plea court of subject matter jurisdiction to accept appellant's pleas to these two counts of first-degree burglary.

Issues related to subject matter jurisdiction may be raised at any time. Browning v. State, 320 S.C. 366, 465 S.E.2d 358 (1995). A circuit court lacks subject matter jurisdiction and may not accept a guilty plea if the indictment does not sufficiently state the offense. Hooks v. State, 353 S.C. 48, 577 S.E.2d 211 (2003). The lack of subject matter jurisdiction is fundamental and may not be waived even by consent of the parties. Brown v. State, 343 S.C. 342, 540 S.E.2d 846 (2001)

The "true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently appraises the defendant of what he must be prepared to meet." Browning, 320 S.C. at 368, 465 S.E.2d at 359.

An indictment may be amended as long as the amendment does not change the nature of the offense charged. S.C.Code Ann. § 17-19-100 (1985). An amendment may deprive the circuit court of jurisdiction even if it does not change the penalty. State v. Lynch, 344 S.C. 635, 639, 545 S.E.2d 511, 513 (2001). The proper analysis for determining whether an amendment to an indictment deprives the trial court of subject matter jurisdiction is whether the amendment changed the nature of the offense charged, not whether the amendment in any way surprised or prejudiced the defendant. Id. at 641, 545 S.E.2d at 514.

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should be made. ROA p. 21, line 3-5. The solicitor told the judge "it would be a jurisdictional issue." ROA p. 21, lines 7-9

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CONCLUSION

Based on the foregoing argument, appellant respectfully requests that his convictions for first-degree burglary be vacated.

Respectfully submitted,

Eleanor Duffy Cleary
Eleanor Duffy Cleary
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

This 14th day of February, 2005.

As shown in the following pages of Transcript that all counsel have been ineffective and denied me a fair trial by keeping me in the dark as to my defense in order to rush me through the system causing me to enter involuntary guilty pleas denying my due process and right to effective assistance of counsel and not putting the State's cases through an adversarial testing.

Petitioner should have been told of his right to challenge prior convictions before allowing the court to elicit incriminating admissions that were used to convict him.