

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of General Sessions

Brooks P. Goldsmith, Circuit Court Judge

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Case No. 2011-GS-07-01813

Case No. 2011-GS-07-01758

Case No. 2011-GS-07-01744

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The State

Respondent

v.

John DeCarlo

Appellant

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NOTICE OF APPEAL

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John DeCarlo appeals his sentences in this case. The sentences were imposed by the Honorable Brooks P. Goldsmith on May 21, 2013. Copies of the sentencing sheets are attached hereto.

May 31, 2013

Law Office of Thomas C. Taylor, LLC

By: 

Thomas C. Taylor  
Attorney For The Defendant

P.O. Box 5550

Hilton Head Isl., SC 29938

843-785-5050

E-mail: [tom@thomastaylorlaw.com](mailto:tom@thomastaylorlaw.com)

**RECEIVED**

JUN 04 2013

**SC Court of Appeals**

Other Counsel of Record:  
Duffie Stone,  
Solicitor  
Fourteenth Judicial Circuit  
P.O. Box 2226  
Beaufort, SC 29901

**PROOF OF SERVICE OF A NOTICE OF APPEAL**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY  
Court of General Sessions

Thomas Anthony Russo, Circuit Court Judge

Case No. 2010-GS-07-01036

The State

Respondent

v.

Ricardo Acevedo

Appellant

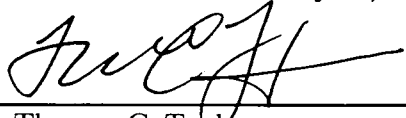
**PROOF OF SERVICE**

I certify that I have served the Notice of Appeal on Duffie Stone, Solicitor of the Fourteenth Circuit, P.O. Box 2226, Beaufort, SC, 29901, by depositing a copy in the United States Mail, postage prepaid, on May 31, 2013. I further certify that copies were likewise deposited in the United States Mail on May 31, 2013, and addressed to the Honorable Jenny Abbott Kitchings, Clerk of Court of the South Carolina Court of Appeals, P.O. Box 11629, Columbia, SC, 29211 and the Hon. Jeri Ann Roseneau, Clerk of Court of Beaufort County, P.O. Drawer 1128, Beaufort, SC 29901, postage prepaid.

May 31, 2013

**Law Office of Thomas C. Taylor, LLC**

By: \_\_\_\_\_

  
Thomas C. Taylor  
Attorney For The Defendant  
P.O. Box 5550  
Hilton Head Isl, SC 29928

1

**RECEIVED**

JUN 04 2013

**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM BEAUFORT COUNTY  
Court of General Sessions

Brooks P. Goldsmith, Circuit Court Judge

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Case No. 2011-GS-07-01813

Case No. 2011-GS-07-01758

Case No. 2011-GS-07-01744

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The State

Respondent

v.

John DeCarlo

Appellant

---

SCACR 203(d)(1)(B)(iv) WRITTEN EXPLANATION  
OF ISSUE THAT CAN BE REVIEWED ON APPEAL

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Pursuant to SCACR 203(d)(1)(B)(iv), Counsel for the Defendant John DeCarlo hereby advises the Court that this appeal from guilty pleas and sentence of 15 years concurrent is based upon the legal argument that Judge Goldsmith had the ability to suspend a portion of the sentence for Burglary First (S.C. Code Section 16-11-311) in his discretion. Counsel advises the Court that Judge Goldsmith heard counsel and the Solicitor in chambers prior to the plea, and counsel provided Judge Goldsmith at the time with a copy of State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621(2011). Counsel argued to Judge Goldsmith that Jacobs should be read strictly and restricted to its facts, which therein included a request to suspend a portion of the minimum 15 year sentence and place Mr. Jacobs on probation. In our case, we urged Judge Goldsmith to examine the numerous mitigating factors set forth in the Psychological Evaluation of John DeCarlo performed by David R. Price, Ph.D., (submitted as a Court's Exhibit and a true and correct copy being attached to this Written Explanation) and to give Mr. DeCarlo a sentence that would comport with the findings of Dr. Price, to include supervised home arrest and drug and alcohol counseling. Judge Goldsmith indicated on the record during the plea, that he found the factors surrounding Mr. DeCarlo's earlier drug and alcohol abuse, along with physical abuse he suffered at the hands of his father, to be compelling, but said he was constrained by Section 16-

11-311 and Jacobs to sentence Mr. DeCarlo to a minimum of 15 years in a South Carolina prison.

Counsel respectfully argues that the intention of the Legislature and the plain reading of the current statutes in South Carolina, allows our Circuit Court Judges discretion to craft a sentence to comport with the facts of the case and provide alternative time under supervised house arrest and treatment. Mr. DeCarlo requests that the Court so rule and remand the case for sentencing by Judge Goldsmith in conformity with his findings and conclusions.

**Law Office of Thomas C. Taylor, LLC**

By: 

Thomas C. Taylor  
Attorney For The Defendant  
P.O. Box 5550  
Hilton Head Isl., SC 29938  
843-785-5050  
E-mail: [tom@thomastaylorlaw.com](mailto:tom@thomastaylorlaw.com)

10-30

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort )  
STATE VS. )

INDICTMENT/CASE#: 2011GS0701813

John Decarlo )

A/W#: 1261129

AKA: )

Date of Offense: 8/14/2011

Race: W Sex: M Age: 19 )

S.C. Code §: 16-11-0330(A)

DOB: 10-29-1993 SS#: 46-96-6062 )

CDR Code #: 0139

Address: 123 Old Salem Rd B-3 )

City, State, Zip: Beaufort, SC 29906 )

DL#: 101981638 SID#: )

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: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

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] #11683 [Signature] [Signature] 0005499  
Stine, Duffie 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 15 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 ITUP \_\_\_\_\_ days/hours Public Service Employment  
Total: \$ \_\_\_\_\_ plus 20% fee: \$ \_\_\_\_\_  
Payment Terms: \_\_\_\_\_  
 Set by SCDPPPS \_\_\_\_\_

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

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

Clerk of Court/ Deputy Clerk [Signature]  
Court Reporter: [Signature]  
SCCA217 (03/2011)

Presiding Judge [Signature]  
Judge Code: 2139  
Sentence Date: May 21, 2013

5 yrs

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Beaufort  
STATE VS.

INDICTMENT/CASE#: 2011GS0701758

John Decarlo

A/W#: 1261121

AKA:

Date of Offense: 8/14/2011

Race: W Sex: M Age: 19

S.C. Code §: 16-23-0490

DOB: 10-29-1993 SS#: 46-96-6062

CDR Code #: 0549

Address: 123 Old Salem Rd. B-3

City, State, Zip: Beaufort, SC 29906

DL#: 101981638 SID#:

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No

In disposition of the said indictment comes now the Defendant who was  
TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death  CONVICTED OF or  PLEADS

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549  
 NON-VIOLENT  VIOLENT  SERIOUS  MOST SERIOUS  Mandatory GPS(CSC w/minor 1st or Lowd 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] #11883 [Signature] [Signature] 0005499  
Stone, Duffie 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 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  
Recipient: \_\_\_\_\_

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

Clerk of Court/ Deputy Clerk [Signature]  
Court Reporter: [Signature]  
SCCA217 (03/2011)  
Presiding Judge [Signature]  
Judge Code: 2139  
Sentence Date: Aug 21, 2013

15 to Life

STATE OF SOUTH CAROLINA )  
COUNTY OF Beaufort )  
STATE VS. )  
John Decarlo )  
AKA: )  
Race: W Sex: M Age: 19 )  
DOB: 10-29-1993 SS#: 46-96-6062 )  
Address: 123 Old Salem Rd. B-3 )  
City,State,Zip: Beaufort, SC 29906 )  
DL#: 101981638 SID#: )

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS0701744  
A/W#: 1261113  
Date of Offense: 8/14/2011  
S.C. Code § : 16-11-0311  
CDR Code #: 0079

SENTENCE SHEET

\*CDL Yes  No  CMV Yes  No  Hazmat Yes  No   
In disposition of the said indictment comes now the Defendant who was  
TO: Burglary / Burglary (After June 20, 1985) - First degree

CONVICTED OF or  PLEADS

in violation of § 16-11-0311 of the S.C. Code of Laws, bearing CDR Code # 0079  
 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 Presentation to Grand Jury. (defendant's initials)  
The plea is:  Without Negotiations or Recommendation,  Negotiated Sentence,  Recommendation by the State.

ATTEST: [Signature] #11983 SC Bar# [Signature] Defendant [Signature] Attorney for Defendant SC Bar# 8005499

WHEREFORE, the Defendant is committed to the  State Department of Corrections,  County Detention Center,  
for a determinate term of 15 days/months/years of  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% fec: \$ \_\_\_\_\_  
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 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

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

Clerk of Court/ Deputy Clerk Kristy Taylor  
Court Reporter: Wanda R. [Signature]  
SCCA/217 (03/2011)

Presiding Judge 2139 [Signature]  
Judge Code: \_\_\_\_\_  
Sentence Date: July 21, 2013

## PSYCHOLOGICAL EVALUATION

**NAME:** John Foster DeCarlo  
**DOB:** 10/29/93  
**RACE/SEX:** Caucasian/Male  
**EVALUATION DATE:** 05/03/13  
**REPORT DATE:** 05/07/13  
**EXAMINER:** David R. Price, Ph.D.  
**REFERRAL SOURCE:** Thomas C. Taylor, Esquire

### REASON FOR REFERRAL:

Mr. DeCarlo was referred for a psychological evaluation related to mitigation in the criminal defense of current criminal charges of Armed Robbery With a Deadly Weapon, Assault and Battery by Violence Second Degree, Possession of a Weapon During a Violent Crime, and Burglary First Degree.

### EVALUATION PROCEDURES:

Background Information

Behavioral Observations

Clinical Interview

Psychological Testing

Minnesota Multiphasic Personality Inventory-2 (MMPI-2)

Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV)

Wide Range Achievement Test: Fourth Edition (WRAT4)

Review of Medical Records:

Psychiatric Evaluation dated 03/29/13 by Mandy E. Horrigan, M.D.

Interview with mother, Martha Foster

Interview with uncle, William Foster

### BEHAVIORAL OBSERVATIONS:

Mr. DeCarlo was seen in the Beaufort County Detention Center. He was evaluated in a visitation room. He wore prison issued clothing. At the time seen he was on no medications. He did not wear any glasses. He did not have hearing aids. He was neither manacled nor cuffed.

Prison attire included a green jumpsuit, flip-flops and socks. Mr. DeCarlo had a wristband that had his picture attached to it. He had some stubble across his chin but not to the degree of having a goatee. He had very short hair. He did not have any jewelry. There were no visible tattoos. He was right-handed. He was a tall and well-built young man. There were no visible scars other than a slight scar across the bridge of his nose. This was the result of falling at the age of two and needing 30 sutures to close that injury. He had very short nails which suggested that he bites them which he later admitted.

Mr. DeCarlo was seen alone. His ambulation was normal. The prison issued dress was casual. His grooming and hygiene appeared to be neat and normal. There were no grossly obvious motor abnormalities. His eye contact was normal. His speech volume, rate and prosody were within normal limits. No dysarthria was noted. His language was normal and his speech was coherent and fluent. His thought content was normal and his thought processes appeared to be linear and non-psychotic. His affect appeared to be normal with appropriate range.

Mr. DeCarlo appeared motivated to give good effort on testing. He was compliant with all tasks requested of him. Tests results should be a valid indicator of his current level of functioning.

Mr. DeCarlo was oriented to person, place, date and situation. His attention and concentration were within normal limits. He could recall five of five words immediately but could not recall any of them after a five minute delay with interference. It is related to distractibility. He could not perform a Serial 7's task counting 100, 92, 84, 76. He could spell "WORLD" correctly forward and in reverse. He could recall six digits forward and four digits backwards. He was able to abstract. When asked to interpret the proverb, "Don't cry over spilled milk," he replied "Not that big a deal." When asked to interpret the proverb "Strike while the iron is hot," he originally said "I don't know," but when prompted he said "Get it while you can." When asked what he would do if he was the first person to see smoke and fire in a movie theater, he replied "Tell everyone to get out." When asked what he would do if he found an envelope in the street that was sealed, addressed and had a new stamp on it, he replied "Shove it in the mailbox." This indicates some intact social judgment.

#### **BACKGROUND INFORMATION:**

Mr. DeCarlo reported he has a history of stress. He also has had a history of being treated for Attention Deficit Disorder and hyperactivity. He has been treated in the past on psychostimulant medications, including Ritalin, Adderall, Concerta and Clonidine.

Mr. DeCarlo, prior to incarceration, used to drink a 24-pack or more of beer every weekend. He would drink wine "but not a lot" every other weekend. His consumption of hard liquor varied and occurred predominantly on the weekends. He began the use of illegal drugs with the use of marijuana at the age of 11 when he and a friend found a stash of pot at the friend's father's home. Other drug consumption began at the age of 15. He also has used "shrooms, pills, acid, cocaine and marijuana." He used drugs to excess between the ages of 15 and his incarceration at age 17. Mr. DeCarlo was diagnosed by Mandy E. Horrigan, M.D. with:

"Axis I:	Attention Deficit Hyperactivity Disorder Conduct Disorder Marijuana Dependence in a Controlled Environment
Axis II	No diagnosis
Axis III	Unknown."

The records indicate that Mr. DeCarlo completed the 10<sup>th</sup> grade. He later quit school in the 11<sup>th</sup> grade. A prior evaluation by the Department of Juvenile Justice on 11/17/09 found Mr. DeCarlo to have a Verbal IQ of 103 and a Performance IQ of 80.

Prior mental health treatment indicates being placed in the John deLaHowe School for a year for treatment, placement at the Orangeburg Detention Home for Boys and Coastal Evaluation Center. He has had diagnoses in the past of Attention Deficit Hyperactivity Disorder, Disruptive Behavior Disorder Not Otherwise Specified, a Reading Disorder, a Mathematics Disorder and Cannabis Abuse. He was subsequently placed at the McCord Center. He has been on psychostimulant medication since the age of eight. He has been seen at the Coastal Mental Health Center for treatment.

#### **CLINICAL INTERVIEW:**

Mr. DeCarlo reported he was arrested on 08/13/11. He was able to recall the particulars of his arrest and alleged crime. He reported prior to the evening of the alleged crimes, he had been at work and had been paid. He reported that he, Denny and Robby decided that they would get "fucked up" and proceeded to acquire liquor, Xanax, marijuana and cocaine. He reported on the day of the event he had taken two Adderall pills at work. He said that started getting him "fired up". Then at home he did lines of cocaine and used Xanax. The Xanax is to buffer the effects of the cocaine. He reported that Zack, who he had known for three months at that time, lived in his apartment complex. Zack came over with a plan to steal three pounds of marijuana from a drug dealer. According to Mr. DeCarlo, Zack said "We kind of drive in and get it."

Mr. DeCarlo reported that he had had a pistol that was broken. He said that D. Smith Peters had gotten the pistol from him the day before. Mr. Smith Peters had apparently tucked the weapon in the waist of his pants. This was the violent weapon allegedly used. Zack reported that he was "out of it" and did not want to be "not cool" so he went along with the "decision". He reported that they all had bandanas on. He remembered the door was locked and someone tried to open the door with a credit card. They told Mr. DeCarlo to kick the door in at which he did. According to Mr. DeCarlo it was at that point "Zack shot upstairs". That was when Zack and the victim began to get in a fight. Mr. DeCarlo reported Zack and his brother, Chase, were beating the "shit" out of the individual. He reported that he grabbed the victim and put him in a hold to try to restrain him to protect him from the beating. The victim then tried to "grab his nuts" so he "threw him on the bed". He said at this time he got scared and ran. In their car the people had taken TV's, an Xbox, but no drugs or marijuana. He said after they left the apartment complex they were pulled over by police and detained.

Mr. DeCarlo was able to cite the charges against him and potential penalties for them.

Mr. DeCarlo was seen while incarcerated. He denied a history of mental abuse and/or sexual abuse. He did endorse a positive history of physical abuse. He said his father is a large man and

he used to beat his children. He said on one occasion he had fallen asleep with the phone and when his father discovered that he beat him badly. In using this assault he also used a cowboy boot as a weapon. He went to school the next day where the bruises were noted and the school officials alerted the authorities. Mr. DeCarlo reported they all (his siblings) got beatings and his father was an alcoholic. Apparently charges were lodged against his father regarding this incident but somehow was not prosecuted.

Mr. DeCarlo acknowledged he had a history of ADHD, a Conduct Disorder and a Learning Disability. He also reported he had been diagnosed with depression by a D.C. Campbell and was seen at the Coastal Mental Health Center. He denied any history of anxiety.

Mr. DeCarlo reported a family history of diabetes in his brother, grandfather and aunt. There were no other significant physical disorders. There were no untimely deaths. Mr. DeCarlo had asthma as a young child. He apparently aspirated fluid at birth and was kept in the hospital. His parents divorced when he was either 12 or 13. He rotated between living with them. His father now lives in Atlanta. His father is a graduate from the University of Rhode Island and his mother is a graduate of Winthrop.

Mr. DeCarlo reported that the family's socioeconomic stature was low or middle class. He said his parents were healthy. He said his primary caregiver were both his parents for awhile but later just his mother.

As far as he knew, Mr. DeCarlo met his developmental milestones on time. His first memories were of a blue house. He started biting his nails as a child and still does. He denied any history of head banging or bedwetting. He did suffer from nightmares as a child. He fell against the windowsill at age two and had over 30 stitches. He likely also experienced a concussion. Mr. DeCarlo reported he has taken pills for as long as he could remember. He started Concerta at the age of six. When asked to describe himself as a student, he said he was a good "C" student. He said he did not like school. He should have repeated the seventh grade but because of his prior placement at John deLaHowe he was not. He quit school in the 11<sup>th</sup> grade. He never received a GED.

Mr. DeCarlo reported he got along "okay" with teachers and peers. He had school adjustment problems. He had behavior problems in school. He would often fight other students. He was using drugs. He moved while in the 5<sup>th</sup> grade from Connecticut to South Carolina which cost him some friends.

Mr. DeCarlo's performance at school fell as he grew older. For extracurricular activities Mr. DeCarlo played football and wrestling. He said his coaches would fix his grades for him.

Mr. DeCarlo denied being involved in gang activities while in high school. He did have difficulty in school with numerous suspensions for fighting but no expulsions. He was never in special classes.

Mr. DeCarlo began smoking marijuana at the age of 11 and had his first alcohol at the age of 12 stealing Makers Mark from his mother. He started smoking cigarettes at age 16 but was not really ever a "smoker".

Mr. DeCarlo is heterosexual. He denied homosexual experiences. He has never had a socially transmitted disease. He has never been sexually assaulted nor sexually assaulted anyone.

Mr. DeCarlo was raised Catholic. He said he tries to practice his faith the best he can while incarcerated. He denied any fantasies or daydreams.

The only criminal charges for Mr. DeCarlo are the current ones. He has not had any civil difficulties. When he was 14 he was charged with possession of Schedule II narcotic with intending to distribute. This was Lortab and Percocet. This resulted in him having a 30-day evaluation. Mr. DeCarlo reported he was seen at Coastal Evaluation Center in Charleston by the Department of Juvenile Justice. He was also at the John deLaHowe in 2005 for behavioral problems. He was placed in a group home in Orangeburg for six weeks. Additionally he was at the McCord Center for drug treatment at age 17 in 2010.

Mr. DeCarlo denied ever having any hospitalizations for physical reasons. He has never been in the military.

When asked to describe his current physical condition, Mr. DeCarlo said "Stressed out". He reported prior psychiatric treatment as stated above. He essentially began to be treated in the second grade with Concerta. He was seen at the Coastal Mental Health Center and he was also seen by a D.C. Campbell. He has never had a psychiatric admission.

Mr. DeCarlo said his mood was "iffy". He said his sleep was "bad" and he sleeps approximately four hours out of a 24-hour period. He said his energy level is "all right". For pleasure he likes to work out while incarcerated. When asked about his appetite he replied "I eat." He reported a loss of 85 pounds since his arrest. He is currently 230 pounds.

Mr. DeCarlo denied any current crying spells. He does not have any feelings of guilt or worthlessness. He has been treated for hyperactivity since the age of eight. He denied any pressured speech, flight of ideas or inflated self-esteem.

Mr. DeCarlo has been involved in activities with painful consequences he did not recognize nor with his narcotic use. He denied any significant symptoms of anxiety. He has not had any panic attacks. He has not had any problems with obsessions or compulsions.

Mr. DeCarlo denied any flashbacks or nightmares. He denied any phobias. He did not endorse any delusions. He denied any experiences of thought insertion or thought broadcasting phenomena. He denied any auditory, visual or olfactory hallucinations. He denied any current

suicidal ideation. He has not had any homicidal ideation. He denied any history of self-mutilation. He has never been anorexic. He has never been bulimic.

Mr. DeCarlo reported he has never been arrested for alcohol problems. He did go to Alcoholics Anonymous at the age of 14 upon court order. He has had one blackout while drinking. He has never had DT's. He has been in trouble for distribution for Lortab and Percocet.

#### **TEST RESULTS AND INTERPRETATION:**

Mr. DeCarlo completed the Minnesota Multiphasic Personality Inventory-2 (MMPI-2); the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV); and the Wide Range Achievement Test: Fourth Edition (WRAT4).

#### **MINNESOTA MULTIPHASIC PERSONALITY INVENTORY-2 (MMPI-2):**

The MMPI-2 is a personality inventory that assesses a wide variety of personality characteristics, as well as the presence of psychopathology or psychiatric distress.

*The interpretive report of the MMPI-2 is as follows:*

#### **...PROFILE VALIDITY**

This client's approach to the MMPI-2 was open and cooperative. The resulting clinical and content scale profiles are valid and are probably a good indication of his present level of personality functioning. This cooperative performance may be viewed as a positive indication of his involvement with the evaluation.

#### **SYMPTOMATIC PATTERNS**

...The client is likely to be impulsive and immature and tends to seek immediate gratification of his wishes, often without apparent concern for the consequences. Individuals with this profile tend to be very pleasure-oriented and may seek self-gratification at the expense of others' welfare. He may show an uncontrolled behavioral history with legal, school, work, or family problems.

Such clients are easily frustrated and may continue to engage in socially and/or legally problematic behavior even though they have been previously punished for it in the past. He may be aggressive and hostile at times...

He endorsed a number of items reflecting a high degree of anger. He appears to have a high potential for explosive behavior at times. He endorses statements that show some inability to control his anger. He may physically or verbally attack others when he is angry. He considers himself to be in good health and does not complain of somatic difficulties...

#### **INTERPERSONAL RELATIONS**

He may seem likable at first and may make a good impression on others; however, his relationships tend to be very superficial. His behavior is primarily hedonistic and self-centered,

and he is quite insensitive to the needs of other people, manipulating them for his own ends and feeling no guilt about it. He is likely to be experiencing some difficulty with family or personal relationships. His acting-out behavior is likely to put great strain on his relationships.

His social interests appear to be high and he seems to enjoy social participation. However, his interpersonal behavior may be problematic at times in the sense that he may lose his temper in frustrating situations. Personality characteristics related to social introversion-extraversion tend to be stable over time. The client is typically outgoing, and his sociable behavior is not likely to change if he is retested at a later time...

**DIAGNOSTIC CONSIDERATIONS**

...He appears to have a number of personality characteristics that have been associated with substance use or abuse problems. His scores on the addiction proneness indicators suggest that there is a possibility of his developing an addictive disorder. In his response to the MMPI-2, he acknowledged some problems with excessive use or abuse of addictive substances...

**WECHSLER ADULT INTELLIGENCE SCALE-FOURTH EDITION (WAIS-IV):**

On the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV) Mr. DeCarlo received the following:

FACTOR	SCORE	PERCENTILE
Full Scale	83	13 <sup>th</sup>
Verbal Comprehension	93	32 <sup>nd</sup>
Perceptual Reasoning	88	21 <sup>st</sup>
Working Memory	83	13 <sup>th</sup>
Processing Speed	79	8 <sup>th</sup>

Mr. DeCarlo's Scaled Scores are as follows:

<u>Subtest</u>	<u>Scaled Score</u>	<u>Percentile</u>	<u>Measure</u>
Block Design	5	5 <sup>th</sup>	It is designed to measure the ability to analyze and synthesize abstract visual stimuli. It also involves nonverbal concept formation and reasoning, broad visual intelligence, fluid intelligence, visual Perception and organization, simultaneous Processing, visual-motor coordination, learning, and the ability to separate figure-ground in visual stimuli.
Similarities	7	16 <sup>th</sup>	It is designed to measure verbal concept formation and reasoning. It also involves crystallized intelligence, abstract reasoning, auditory

			comprehension, memory, associative and categorical thinking, distinction between nonessential and essential features, and verbal expression.
Digit Span	7	16 <sup>th</sup>	The shift from one Digit Span task to another requires cognitive flexibility and mental alertness. Digit Span Forward involves rote learning and memory, attention, encoding, and auditory processing. Digit Span Backward involves working memory, transformation of information, mental manipulation, and visuospatial imaging. Digit Span Sequencing is similar to other tasks that are designed to measure working memory and mental manipulation.
Matrix Reasoning	9	37 <sup>th</sup>	It involves fluid intelligence, broad visual intelligence, classification and spatial ability, knowledge of part-whole relationships, simultaneous processing, and perceptual organization.
Vocabulary	11	63 <sup>rd</sup>	Vocabulary is designed to measure word knowledge and verbal concept formation. It also measures crystallized intelligence, fund of knowledge, learning ability, long-term memory, and degree of language development.
Arithmetic	7	16 <sup>th</sup>	It involves mental manipulation, concentration, attention, short- and long-term memory, numerical reasoning ability, and mental alertness. It may also involve sequential processing; fluid, quantitative, and logical reasoning; and quantitative knowledge.
Symbol Search	7	16 <sup>th</sup>	In addition to processing speed, the subtest involves short-term visual memory, visual-motor coordination, cognitive flexibility, visual discrimination, psychomotor speed, speed of mental operation, attention, and concentration. It may also measure auditory comprehension, perceptual organization, fluid intelligence, and planning and learning ability.

Visual Puzzles	10	50 <sup>th</sup>	It is a new subtest designed to measure nonverbal reasoning and the ability to analyze and synthesize abstract visual stimuli. Similar measures, such as Object Assembly, involve visual perception, broad visual intelligence, fluid intelligence, simultaneous processing, spatial visualization and manipulation, and the ability to anticipate relationships among parts.
Information	8	25 <sup>th</sup>	It is designed to measure the ability to acquire, retain, and retrieve general factual knowledge. It involves crystallized intelligence and long-term memory. Other skills that may be used include verbal perception, comprehension, and expression.
Coding	5	5 <sup>th</sup>	In addition to processing speed, the subtest measures short-term visual memory, learning ability, psychomotor speed, visual perception, visual-motor coordination, visual scanning ability, cognitive flexibility, attention, concentration, and motivation. It may also involve visual sequential processing and fluid intelligence.

**WIDE RANGE ACHIEVEMENT TEST: FOURTH EDITION (WRAT4):**

The Wide Range Achievement Test: Fourth Edition is designed to measure Reading (Word Recognition and Comprehension), Spelling and Arithmetic. It is one of the most frequently used measures of academic achievement. Mr. DeCarlo has the following scores:

SUBTEST	STANDARD SCORE	PERCENTILE RANK	GRADE EQUIVALENCY
Word Reading	97	42 <sup>nd</sup>	11.7
Sentence Comprehension	106	66 <sup>th</sup>	12.9
Spelling	83	13 <sup>th</sup>	6.4
Math Computation	77	6 <sup>th</sup>	4.9

**DIAGNOSTIC IMPRESSION:**

Based upon all available information, and with the assumption that the veracity of Mr. DeCarlo's self-report is valid, and using the multi-axial diagnostic system as recommended by the *Diagnostic and Statistical Manual of Mental Disorders-Fourth Edition-Text Revision* (DSM-IV-TR), which states on page 27 that "The use of the multi-axial system facilitates comprehensive and systematic evaluation with attention to the various mental disorders and general medical conditions, psychosocial and environmental problems, and level of functioning that might be overlooked if the focus were on assessing a single presenting problem," Mr. DeCarlo has the following probable diagnosis:

- Axis I:            Attention Deficit Disorder, Combined Type (DSM-IV-TR 314.01)  
                      Bipolar I Disorder, most recent episode Hypomanic (DSM-IV-TR 296.40)  
                      Polysubstance Dependence in a Controlled Environment (DSM-IV-TR 304.80)  
                      Learning Disorder NOS (DSM-IV-TR 315.9)
- Axis II:            Deferred (DSM-IV-TR 799.90)
- Axis III:           No diagnosis
- Axis IV:           Psychosocial stressors:  
   Criminal charges  
   Incarceration
- Axis V:            Current Global Assessment of Functioning:  
   Current GAF - 60

**SUMMARY AND CONCLUSIONS:**

1. I would agree with Amanda E. Horrigan, M.D. that Mr. DeCarlo is competent. He is capable of assisting his attorney in his own defense. He understands the nature of the charges against him and the potential penalties for those charges. He knows the difference between right and wrong. He knows who the officers of the court are, and their roles.

2. While able to know the difference between right and wrong at the time of the crime, Mr. DeCarlo did not have the capacity to conform his behavior to the requirements of the law. At the time of the event, Mr. DeCarlo had an Attention Deficit Disorder, Combined Type (DSM-IV-TR 314.01), a Bipolar I Disorder, Most Recent Episode Hypomanic (DSM-IV-TR 296.40), and Polysubstance Dependence including the use of marijuana, cocaine, Adderall and alcohol that substantially inhibited his ability to conform his behavior to the requirements of the law. All of these disorders affect his judgment, increase his impulsiveness, and contributes to him participating in activities without appreciating the consequences of his behavior. It causes him

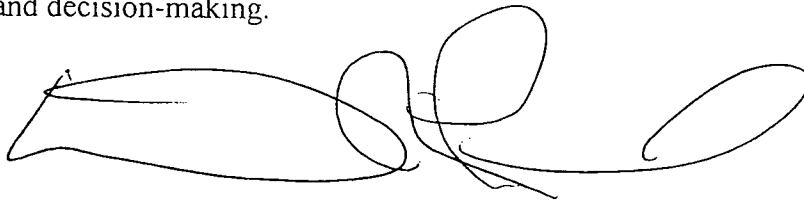
significant impairment socially, educationally and academically. The Attention Deficit Hyperactivity Disorder and the Bipolar I Disorder directly contribute to emotional lability and may contribute to aggressive behavior. These mental conditions contribute to Mr. DeCarlo participating in activities without consideration of possible consequences for himself and for others.

3. Mr. DeCarlo's Attention Deficit Hyperactivity Disorder, Combined Type has been a source of treatment since the age of six. Attention Deficit Hyperactivity Disorders often co-exist with mood disorders such as Bipolar Disorder or Major Depression. The mood disorders substantially contribute to feelings of irritability which can lead to aggressiveness.

4. Mr. DeCarlo has been treated with psychostimulant medications since the age of six and has used recreational drugs since the age of 11 with marijuana, alcohol at 12, and with numerous other drugs at age 15. At the time of the event, he had consumed cocaine, alcohol, had taken Adderall, Xanax, and marijuana. The cocaine and Adderall could contribute and precipitate manic behavior which in the hypomanic stage could contribute to him being irritable and aggressive and act impulsively without any regard to the consequences of his behavior.

5. Mr. DeCarlo likely had a pre-existing Conduct Disorder with Adolescent Onset (DSM-IV-TR 312.02) that was a precursor to the Bipolar I Disorder.

6. Mr. DeCarlo has a Learning Disorder NOS (DSM-IV-TR 315.9) which contributes to his difficulty with spelling and math and difficulty at school. This can also affect social judgment and decision-making.

A handwritten signature in black ink, appearing to read 'David R. Price', with a large, stylized flourish extending to the right.

David R. Price, Ph.D.  
Licensed Clinical Psychologist  
The Forensic Network PA

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May 31, 2013

CERTIFIED CIRCUIT  
COURT MEDIATOR

ALSO ADMITTED  
GEORGIA BAR

MAILING ADDRESS  
P.O. BOX 5550  
HILTON HEAD ISLAND, SC  
29938

**Via U.S. Mail**

Honorable Jenny Abbott Kitchings  
Clerk of Court  
South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Re: **State v. DeCarlo**; Indictment Nos. 2011-GS-07-01813; 2011-GS-07-01758;  
2011-GS-07-01744; Notice of Appeal

Dear Clerk Kitchings:

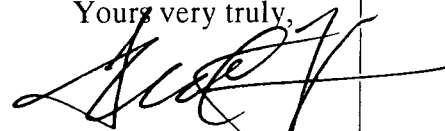
I enclose herein for filing, an original and one copy of the Notice of Appeal of Defendant John DeCarlo who pled guilty to one count of Robbery/Armed Robbery, one count of Burglary, First Degree and one count of Weapons/Possession of a weapon during a violent crime, on May 21, 2013, here in Beaufort County. Judge Goldsmith presided. Copies of the sentencing sheets are attached. Please file the Notice and return the additional copy to me stamped "filed" in the self-addressed stamped envelope provided herein. Also enclosed are the following:

1. Proof of Service of the Notice of Appeal on the Solicitor, Duffie Stone and the Beaufort County Clerk of Court, and,
2. A SCACR 203(d)(1)(B)(iv) Explanation Of Issue That Can Be Reviewed On Appeal and attached Psychological Evaluation.

Kindly also file the original of these documents and return the copies to me in the SASE herein provided.

Please advise me if you have any questions. Thank you.

Yours very truly,



Thomas C. Taylor

TCT/dpt

cc: John DeCarlo  
Hon. Jeri Ann Roseneau, Beaufort County Clerk of Court  
Duffie Stone, Solicitor, Fourteenth Judicial Circuit  
Ms. Sharon Graham, Office of Appellate Defense, SCCID

**RECEIVED**

JUN 04 2013

**SC Court of Appeals**

CERTIFIED CIRCUIT  
COURT MEDIATOR

ALSO ADMITTED  
GEORGIA BAR

LAW OFFICE OF  
**THOMAS C. TAYLOR, LLC**

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MAILING ADDRESS  
P.O. BOX 5550  
HILTON HEAD ISLAND, SC  
29938

May 31, 2013

**Via U.S. Mail**

Hon. Jerri Ann Roseneau  
Clerk of Court  
Beaufort County  
P.O. Drawer 1128  
Beaufort, SC 29901

Re: State v. DeCarlo; Indictment Nos. 2011-GS-07-01813; 2011-GS-07-01758;  
2011-GS-07-01744; Notice of Appeal

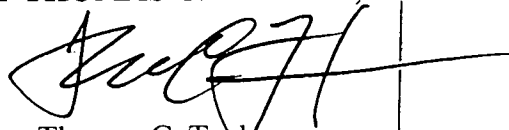
Dear Jerri Ann:

I enclose herein for filing, a Notice of Appeal in the above case.

Please advise me if you have any questions. Thank you.

Yours very truly,

LAW OFFICE OF THOMAS C. TAYLOR, LLC

  
Thomas C. Taylor

TCT/dpt

cc: John DeCarlo  
Duffie Stone, Solicitor, Fourteenth Judicial Circuit  
Hon. Jenny Abbott Kitchings, Clerk of Court, S.C. Court of Appeals

**RECEIVED**

JUN 04 2013

**SC Court of Appeals**

**NOTICE TO APPELLATE DEFENSE**

To: Division of Appellate Defense/ Office of Attorney

From: L. Bellamy

Date: June 14, 2013

Re: Notice of Filing of Notice of Appeal

Case Name: The State v. John DeCarlo

Case Number: 2011-GS-07-01818, 2011-GS-07-01758, 2011-GS-07-01744

County: Beaufort

Date of Filing: June 4, 2013

Filed by: Thomas C. Taylor, Esquire

Judge: The Honorable Brooks P. Goldsmith

Hearing Date: May 21, 2013

Guilty plea: Yes