

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

R. Knox McMahon, Circuit Court Judge

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JUN 28 2013

S.C. Supreme Court

SYLVESTER BOONE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

Appellate Case No. 2012-213338

APPENDIX

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STATE OF SOUTH CAROLINA) COURT OF GENERAL SESSIONS
COUNTY OF RICHLAND)

State of South Carolina)
)
 vs.) TRANSCRIPT OF RECORD
) (Guilty Pleas)
)
 Demon Griffin, Sylvester)
 Boone, Dwight Davis,)
)
 Defendants.)

May 27 and 28, 2010
Columbia, South Carolina

BEFORE:

THE HONORABLE GEORGE C. JAMES, JR., JUDGE

APPEARANCES:

Kathryn Luck Campbell, Assistant Solicitor
Dolly Justice Garfield, Assistant Solicitor
Attorneys for the State

STEPHEN BECKMAN, DEPUTY PUBLIC DEFENDER
Attorney for Demon Griffin

APRIL SAMPSON, ATTORNEY AT LAW
Attorney for Sylvester Boone

JONATHAN HARVEY, ATTORNEY AT LAW
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Thursday, May 27, 2010

MS. CAMPBELL: The State calls Demon Griffin, Sylvester Boone, and Dwight Davis. May it please the Court?

THE COURT: Yes, ma'am.

MS. CAMPBELL: Your Honor, these three defendants are before you today pleading guilty to one count of kidnapping, one count of armed robbery and two counts of assault with intent to kill. They are co-defendants.

THE CLERK: Defendants, raise your right hands.

DEMON GRIFFIN, having been first duly sworn, pleads guilty as follows.

SYLVESTER BOONE, having been first duly sworn, pleads guilty as follows.

DWIGHT DAVIS, having been first duly sworn, pleads guilty as follows.

THE COURT: Did they all take the oath?

THE CLERK: Yes.

THE COURT: What is your name, sir?

MR. GRIFFIN: Demon Griffin.

MR. BOONE: Sylvester Boone.

COURT REPORTER: You're going to have to speak up.

MR. BOONE: Sylvester Boone.

1 **MR. DAVIS:** Dwight Davis.

2 **THE COURT:** You are Mr. Davis?

3 **MR. DAVIS:** Yes, sir.

4 **THE COURT:** All right. The record shows that
5 all of them have been sworn. All right. They're all
6 facing the same charges? Are these all true bills?

7 **MS. CAMPBELL:** Yes, sir.

8 **THE COURT:** Any recommendations or negotiations?

9 **MS. CAMPBELL:** No, sir.

10 **THE COURT:** All right. Mr. Beckman, you
11 represent Mr. Griffin?

12 **MR. BECKMAN:** Yes, Your Honor.

13 **THE COURT:** And your name, please, ma'am?

14 **MS. SAMPSON:** April Sampson.

15 **THE COURT:** All right. Ms. Sampson, you
16 represent Mr. Boone?

17 **MS. SAMPSON:** Correct, Your Honor.

18 **THE COURT:** And, Mr. Harvey, you represent
19 Mr. Davis?

20 **MR. HARVEY:** I do, Your Honor.

21 **THE COURT:** Would you -- since it's one incident
22 involving all these charges; is that correct?

23 **MS. CAMPBELL:** Yes, sir.

24 **THE COURT:** Could you go ahead and give me the
25 facts so I can --

1 **MS. CAMPBELL:** Yes, sir. Investigator Lindler
2 can give you the facts.

3 **THE COURT:** All right.

4 **INVESTIGATOR LINDLER:** Your Honor, on
5 October 30th of 2009, the IGA at 135-B Blythewood
6 Road was robbed as the manager was returning from the
7 bank with the operating cash for the weekend. It's a
8 typical thing they do on Fridays.

9 **THE COURT:** All right.

10 **INVESTIGATOR LINDLER:** A witness, who is not
11 here today, who would ultimately become a victim in
12 all this, Mr. James Mitchell, would observe the
13 robbery and he would actually follow the individuals
14 who fled the scene in a blue Mercury Mountaineer.

15 **THE COURT:** He was just a bystander who followed
16 them?

17 **INVESTIGATOR LINDLER:** Right. He owns one of
18 the stores up there in that same shopping center
19 right next by to the IGA. And he happened to witness
20 everything. And he followed them as they left the
21 parking lot after the robbery occurred.

22 While following them trying to get the tag
23 number on the vehicle and while on the phone with our
24 dispatch, individuals from that vehicle, that blue
25 Mercury Mountaineer, opened fire on him, striking his

1 vehicle, striking the front windshield of his
2 vehicle.

3 Griffin, Boone, and Davis would all ditch the
4 vehicle at Martha Drive and Farrow Road. They would
5 exit the vehicle and run through an open field and
6 wind up hiding in an abandoned shed behind the rec
7 center. They would be apprehended inside of that
8 abandoned shed with the gun that was used in the
9 robbery as well as some of the cash that they had
10 taken from the store.

11 The rest of the cash and money was left inside
12 the blue Mercury Mountaineer. Mr. Boone actually had
13 some of the cash stuffed in his pockets in his
14 waistband whenever the deputies arrived on the scene
15 and actually arrested him.

16 They were all brought back to headquarters where
17 they were Mirandized, given their Miranda Warnings,
18 and all three confessed to some part, to their parts
19 in the robbery, Mr. Boone more so than any of the
20 others. And we found out a little bit later that
21 there was also another vehicle struck.

22 Mrs. Laura Monroe was driving her vehicle on
23 Farrow Road at the same time. Her vehicle was also
24 struck by one of the stray bullets that was fired
25 from that vehicle. And Griffin, Davis, and Boone

1 were also charged with assault with intent to kill
2 for the gunfire striking her car as well.

3 **THE COURT:** All right. All right. Mr. Beckman
4 and Ms. Sampson and Mr. Harvey, I'll ask you these
5 questions. If you could just respond in the order
6 that I just followed. Do you think your client
7 understands the charges, the punishment that he faces
8 and all of his rights?

9 **MR. BECKMAN:** Yes, Your Honor.

10 **MS. SAMPSON:** Yes, sir.

11 **MR. HARVEY:** Yes, Your Honor.

12 **THE COURT:** Based on your knowledge of the facts
13 of this case, do you think it's likely that a jury
14 would find your client guilty of all these charges?

15 **MR. BECKMAN:** Yes, Your Honor.

16 **MS. SAMPSON:** Yes, Your Honor.

17 **MR. HARVEY:** Yes, Your Honor.

18 **THE COURT:** Have you explained to them the fact
19 that they will be getting a strike under the
20 two-strikes law?

21 **MR. BECKMAN:** I have, Your Honor.

22 **MS. SAMPSON:** Yes, sir.

23 **MR. HARVEY:** I have discussed that with my
24 client, Your Honor.

25 **THE COURT:** And also have you discussed with

1 them, I think the maximum they could receive is an
2 aggregate of 100 years?

3 **MR. BECKMAN:** Yes, Your Honor.

4 **MS. SAMPSON:** Yes, sir.

5 **THE COURT:** For some reason I thought AWIK was
6 zero to ten. But is it zero to twenty?

7 **MS. CAMPBELL:** Zero to ten.

8 **MR. HARVEY:** Zero to ten, Your Honor.

9 **MS. SAMPSON:** Zero to ten, Your Honor.

10 **THE COURT:** That's what I thought. There are
11 two counts of--

12 **MS. CAMPBELL:** Two counts of assault with intent
13 to kill, one count of kidnapping, and one count of
14 armed robbery. Those two carry 30 each, which would
15 be 60, and then an additional 20 for the A.W.I.K.'s.

16 **THE COURT:** Okay. Because on the sentencing
17 sheet it's got -- I mean, excuse me. On the sheet
18 that --

19 **MR. BECKMAN:** That was my fault, Your Honor.

20 **THE COURT:** You filled that out?

21 **MR. BECKMAN:** Yes.

22 **MS. CAMPBELL:** I'm sorry. I don't --

23 **THE COURT:** Ten to thirty; zero to ten; zero to
24 ten; zero to thirty.

25 **MS. CAMPBELL:** That's correct, Your Honor.

1 **THE COURT:** So it's 80 years total they're
2 facing?

3 **MS. CAMPBELL:** Yes, sir.

4 **MR. BECKMAN:** Yes.

5 **THE COURT:** All right. There is no
6 recommendation or negotiations. Does your client
7 understand that?

8 **MR. BECKMAN:** Yes, Your Honor.

9 **MS. SAMPSON:** Yes, Your Honor.

10 **MR. HARVEY:** Yes, Your Honor.

11 **THE COURT:** Do you have any concerns about your
12 client's competency?

13 **MR. BECKMAN:** No, Your Honor.

14 **MS. SAMPSON:** No, sir.

15 **MR. HARVEY:** No, Your Honor.

16 **THE COURT:** All right. I'll ask you gentlemen
17 these questions in the order that you're standing by
18 your lawyers. Your answers don't have to be the
19 same, but I want to make sure that you listen
20 carefully and you understand that you are under oath
21 and you have to provide truthful answers.

22 If you want to stop and talk to your lawyer, you
23 have to let me know that. Also, if somebody says
24 something that you don't understand or you don't
25 agree with, you let your lawyer know and we'll stop

1 while you confer with your lawyer about that and
2 bring it to my attention. Do you understand that,
3 Mr. Griffin?

4 **MR. GRIFFIN:** Yes, sir.

5 **THE COURT:** Mr. Boone?

6 **MR. BOONE:** Yes, sir.

7 **THE COURT:** And Mr. Davis?

8 **MR. DAVIS:** Yes, sir.

9 **THE COURT:** All right. All in all, I'm not
10 going to accept your pleas unless you enter your
11 pleas freely and voluntarily. All right, Mr.
12 Griffin. How old are you?

13 **MR. GRIFFIN:** Nineteen years old, sir.

14 **THE COURT:** Mr. Boone?

15 **MR. BOONE:** Eighteen.

16 **MR. DAVIS:** Nineteen, sir.

17 **THE COURT:** Now, how far have you gone in
18 school?

19 **MR. GRIFFIN:** Junior year.

20 **THE COURT:** Junior year of high school?

21 **MR. GRIFFIN:** Yes, sir.

22 **MR. BOONE:** I'm supposed to graduate today.

23 **THE COURT:** Today?

24 **MR. BOONE:** Yes, sir.

25 **THE COURT:** Mr. Davis?

1 **MR. DAVIS:** Junior, sir.

2 **THE COURT:** Have you ever been treated for
3 alcohol or drug problems, Mr. Griffin?

4 **MR. GRIFFIN:** No, sir.

5 **THE COURT:** Mr. Boone?

6 **MR. BOONE:** No, sir.

7 **THE COURT:** Mr. Davis?

8 **MR. DAVIS:** No, sir.

9 **THE COURT:** Have you ever been treated for any
10 mental problems?

11 **MR. GRIFFIN:** No, sir.

12 **MR. BOONE:** Yes, sir.

13 **THE COURT:** All right. Tell me about that, if
14 you would?

15 **MR. BOONE:** The Court told -- well, said I had
16 to take counseling after my niece died, my brother
17 got incarcerated. So he allowed everybody to go to
18 therapy and stuff like that.

19 **THE COURT:** You had some therapy for that?

20 **MR. BOONE:** Yes, sir.

21 **THE COURT:** All right. Do you take any kind of
22 medication?

23 **MR. BOONE:** I didn't get nothing diagnosed.

24 **THE COURT:** You didn't get diagnosed?

25 **MR. BOONE:** No, sir.

1 **THE COURT:** All right. Mr. Davis, have you ever
2 been treated for any mental problems?

3 **MR. DAVIS:** No, sir.

4 **THE COURT:** And you said you're 19, Mr. Davis?

5 **MR. DAVIS:** Yes, sir.

6 **THE COURT:** And you're how old, Mr. Boone?

7 **MR. BOONE:** Eighteen.

8 **THE COURT:** And Mr. Griffin?

9 **MR. GRIFFIN:** Nineteen.

10 **THE COURT:** Do you take medications?

11 **MR. GRIFFIN:** Yes, sir.

12 **THE COURT:** What do you take?

13 **MR. GRIFFIN:** Vistaril and Tylenol.

14 **THE COURT:** What do you take that for?

15 **MR. GRIFFIN:** Vistaril, sometimes I can't sleep.

16 **THE COURT:** All right.

17 **MR. GRIFFIN:** And Tylenol for my pains in my
18 back from working out, sir.

19 **THE COURT:** From working out?

20 **MR. GRIFFIN:** Yes, sir.

21 **THE COURT:** Okay. How about you, Mr. Boone? Do
22 you take any medicine?

23 **MR. BOONE:** No, but I need to.

24 **THE COURT:** Sir?

25 **MR. BOONE:** No, but I need to.

1 **THE COURT:** You need to? For what?

2 **MR. BOONE:** Bad nerves.

3 **THE COURT:** All right. Mr. Davis, do you take
4 any medicine?

5 **MR. DAVIS:** No, sir.

6 **THE COURT:** All right. Listen carefully to this
7 question right now. Do you have any--

8 (Pause)

9 **THE COURT:** All right. Listen carefully to this
10 question. Do you have any condition today that would
11 keep you from being able to understand what you're
12 doing?

13 **MR. GRIFFIN:** No, sir.

14 **THE COURT:** All right. Mr. Boone, Mr. Griffin,
15 you said?

16 **MR. GRIFFIN:** No, sir.

17 **THE COURT:** All right. How about you, Mr.
18 Boone?

19 **MR. BOONE:** No, sir.

20 **THE COURT:** How about you, Mr. Davis?

21 **MR. DAVIS:** No, sir.

22 **THE COURT:** All right. All of you are facing
23 charges of kidnapping, armed robbery, and assault
24 with intent to kill. There are two counts of assault
25 with intent to kill. Do you understand that under

1 the law you would be facing up to 30 years for the
2 kidnapping, between 10 and 30 for the armed robbery,
3 and from zero to ten for the assault with intent to
4 kill? Do you understand that, Mr. Griffin?

5 **MR. GRIFFIN:** Yes, sir.

6 **THE COURT:** Mr. Boone?

7 **MR. BOONE:** Yes, sir.

8 **THE COURT:** Mr. Davis?

9 **MR. DAVIS:** Yes, sir.

10 **THE COURT:** All right. The kidnapping and the
11 armed robbery, the A.W.I.K. is not a strike, is it?

12 **MS. CAMPBELL:** No, sir.

13 **THE COURT:** Kidnapping and the armed robbery are
14 under our law what they call most serious offenses.
15 In the context of your charges, if you plead guilty
16 to these charges you will be receiving one most
17 serious conviction. Under our two-strikes law, that
18 is one strike. If you are ever convicted in the
19 future of another most serious offense under the law
20 as it is written right now, you'd be facing mandatory
21 life imprisonment without parole upon your
22 conviction, whether the prosecutor liked it or not,
23 whether you liked it or not. Do you understand that,
24 Mr. Griffin?

25 **MR. GRIFFIN:** Yes, sir.

1 **THE COURT:** Mr. Boone?

2 **MR. BOONE:** Yes, sir.

3 **THE COURT:** Mr. Davis?

4 **MR. DAVIS:** Yes, sir.

5 **THE COURT:** And we also have a three-strikes
6 law, just to fully explain it to you. After your
7 most serious strike today, under the three-strikes
8 law, in the future if you're ever convicted of two
9 serious offenses you'd be facing under the current
10 law the possibility of life without parole. The
11 prosecutor would have some leeway on that as the law
12 as is currently written exists right now. All right.
13 Do you understand that, Mr. Griffin?

14 **MR. GRIFFIN:** Yes, sir.

15 **THE COURT:** Mr. Boone?

16 **MR. BOONE:** Yes, sir.

17 **THE COURT:** And Mr. Davis?

18 **MR. DAVIS:** Yes, sir.

19 **THE COURT:** All the lawyers think I've explained
20 all that correctly?

21 **MS. CAMPBELL:** Yes, sir.

22 **MR. BECKMAN:** Yes, Your Honor.

23 **MS. SAMPSON:** Yes, Your Honor.

24 **THE COURT:** And these are 85 percent sentences.
25 Do you understand that, sir?

1 **MR. GRIFFIN:** Yes, sir.

2 **MR. BOONE:** Yes, sir.

3 **MR. DAVIS:** Yes, sir.

4 **THE COURT:** Regardless of whatever period of
5 time I sentence you to, you have to assume that
6 you'll serve that entire amount of time in prison.
7 Do you understand that?

8 **MR. GRIFFIN:** Yes, sir.

9 **MR. BOONE:** Yes, sir.

10 **MR. DAVIS:** Yes, sir.

11 **THE COURT:** All right. Any sexual component to
12 the kidnapping?

13 **MS. CAMPBELL:** No, sir.

14 **THE COURT:** Does the State agree with the
15 finding that they would not be on the sex offender
16 registry?

17 **MS. CAMPBELL:** Yes, sir.

18 **THE COURT:** All right. If I accept your pleas,
19 you will not be on the sex offender registry. And
20 I'll make that clear on the sentencing sheet, but
21 it's clear on the record now. Do you understand
22 that?

23 **MR. GRIFFIN:** Yes, sir.

24 **MR. BOONE:** Yes, sir.

25 **MR. DAVIS:** Yes, sir.

1 **THE COURT:** All right. Okay. These indictments
2 are identical but just different pieces of paper?

3 **MS. CAMPBELL:** Yes, sir.

4 **THE COURT:** All right. The kidnapping
5 indictment, gentlemen, says that you did in this
6 county on or about October 30, 2009 unlawfully seize,
7 confine, decoy, kidnap, abduct or carry away Charles
8 Humphries without authority of law. Again, that
9 carries up to 30 years in prison. Do you understand
10 that, Mr. Griffin?

11 **MR. GRIFFIN:** Yes, sir.

12 **THE COURT:** And Mr. Boone and Mr. Davis?

13 **MR. BOONE:** Yes, I do. Yes, sir.

14 **MR. DAVIS:** Yes, sir.

15 **THE COURT:** All right. And the indictment for
16 armed robbery says that you did in this county on or
17 about October 30, 2009 commit robbery by feloniously
18 taking from Charles Humphries by means of force or
19 intimidation goods or monies of IGA, and that is
20 described as United States currency and/or coins,
21 with the intent to deprive the owner permanently of
22 that property while you were armed with a deadly
23 weapon or while using representation of that deadly
24 weapon during the commission of that robbery.

25 Do you understand that charge and that that is

1 the period of time or the period of time for which
2 you could be imprisoned is 10 to 30 years. Mr.
3 Griffin?

4 **MR. GRIFFIN:** Yes, sir.

5 **THE COURT:** Mr. Boone?

6 **MR. BOONE:** Yes, sir.

7 **THE COURT:** And, Mr. Davis?

8 **MR. DAVIS:** Yes, sir.

9 **THE COURT:** The third indictment, assault with
10 intent to kill, says that on or about the same date,
11 October 30, in this county with malice aforethought
12 you committed an assault with intent to kill upon one
13 Laura Monroe. That's zero to ten. Do you understand
14 that charge and the punishment?

15 **MR. GRIFFIN:** Yes, sir.

16 **MR. BOONE:** Yes, sir.

17 **MR. DAVIS:** Yes, sir.

18 **THE COURT:** I'm looking for the other AWIK
19 indictment. Okay. The last indictment for assault
20 with intent to kill says that on the same date in
21 this county you did with malice aforethought commit
22 assault with intent to kill upon one James Mitchell.
23 Do you understand that charge and that you could be
24 sentenced up to ten years for that? Mr. Griffin?

25 **MR. GRIFFIN:** Yes, sir.

1 **THE COURT:** Mr. Boone?

2 **MR. BOONE:** Yes, sir.

3 **THE COURT:** You have some question about that?

4 **MR. BOONE:** Can you read it again, sir?

5 **THE COURT:** Yes, sir. It says that on or about
6 October 30, 2009, you did with malice aforethought
7 commit an assault with intent to kill upon one James
8 Mitchell. Do you understand that charge?

9 **MR. BOONE:** Yes, sir.

10 **THE COURT:** And you're facing zero to ten?

11 **MR. BOONE:** Yes, sir.

12 **THE COURT:** All right. How about you, Mr.
13 Davis? Do you understand that charge and the
14 punishment?

15 **MR. DAVIS:** Yes, sir.

16 **THE COURT:** All right. Are you on probation or
17 parole now, Mr. Boone?

18 **MS. SAMPSON:** That's Mr. Griffin.

19 **THE COURT:** I'm sorry. Mr. Griffin?

20 **MR. GRIFFIN:** No, sir.

21 **THE COURT:** Mr. Boone?

22 **MR. BOONE:** No, sir.

23 **THE COURT:** Mr. Davis?

24 **MR. DAVIS:** No, sir.

25 **THE COURT:** All right, gentlemen. When you

1 plead guilty you give up some rights that you have
2 under the Constitution, and there are essentially
3 three that I'm going to talk to you about now.
4 First, you give up your right to remain silent,
5 because I will not accept your pleas unless you are
6 willing to tell me fully what you did that makes you
7 guilty.

8 Second, you would give up your right to have a
9 jury trial, which means you give up your right to
10 have a 12-person jury decide whether or not you're
11 guilty or not guilty. If this case were tried in the
12 courtroom, they'd sit right over there in that
13 position. All the courtrooms in this building are
14 about the same as far as the jury boxes are
15 concerned.

16 You'd be present for that trial, as would your
17 lawyers, witnesses, and the prosecutor. You would
18 not have to prove or disprove anything. The State
19 has the sole burden of proving you guilty beyond a
20 reasonable doubt. That's a very high burden of
21 proof. All right.

22 Thirdly, you would give up -- and by the way,
23 you would be presumed innocent during that trial
24 until the jury was convinced, and that's all 12 of
25 them, were convinced that you were guilty beyond a

1 reasonable doubt. Thirdly, when you plead guilty you
2 give up your right to confront and be confronted by
3 witnesses who are called to testify.

4 That means you would give up your right to see
5 them, listen to their testimony, and you give up your
6 right to have your lawyer cross-examine them. Also,
7 even though you would not be required to do so, you
8 give up your right to call witnesses to testify for
9 you. Do you understand all those rights, Mr.
10 Griffin?

11 **MR. GRIFFIN:** Yes, sir.

12 **THE COURT:** Mr. Boone?

13 **MR. BOONE:** Yes, sir.

14 **THE COURT:** And Mr. Davis?

15 **MR. DAVIS:** Yes, sir. My lawyer told me
16 everything, sir.

17 **THE COURT:** All right. Do you understand that
18 if you plead guilty you don't get a jury trial?

19 **MR. GRIFFIN:** Yes, sir.

20 **MR. BOONE:** Yes, sir.

21 **MR. DAVIS:** Yes, sir.

22 **THE COURT:** All right. Do you want to give up
23 those rights and plead guilty today, Mr. Griffin?

24 **MR. GRIFFIN:** Yes, sir.

25 **THE COURT:** Mr. Boone?

1 **MR. BOONE:** Yes, sir.

2 **THE COURT:** And Mr. Davis?

3 **MR. DAVIS:** Yes, sir.

4 **THE COURT:** If you have any defenses to these
5 charges, when you plead guilty you give up those
6 defenses forever. Do you understand that, Mr.
7 Griffin?

8 **MR. GRIFFIN:** Yes, sir.

9 **THE COURT:** Mr. Boone?

10 **MR. BOONE:** Yes, sir.

11 **THE COURT:** And, Mr. Davis?

12 **MR. DAVIS:** Yes, Your Honor.

13 **THE COURT:** Also, if you gave any incriminating
14 statement to the police, when you plead guilty you
15 give up your right to contest whether or not you made
16 that statement voluntarily or otherwise in accordance
17 with your Constitutional rights. Do you understand
18 that, Mr. Griffin?

19 **MR. GRIFFIN:** Yes, sir.

20 **THE COURT:** Mr. Boone?

21 **MR. BOONE:** Yes, sir.

22 **THE COURT:** And Mr. Davis?

23 **MR. DAVIS:** Yes, sir.

24 **THE COURT:** All right. First of all, Mr.
25 Griffin, understanding the charge of armed robbery

1 and the punishment that you face, do you plead guilty
2 or not guilty?

3 **MR. GRIFFIN:** Guilty.

4 **THE COURT:** All right. Mr. Griffin, tell me
5 what you did.

6 **MR. GRIFFIN:** On that date I just -- I was
7 walking up towards the store and I just saw the guy
8 putting the money bags in the cart.

9 **THE COURT:** Speak up just a little bit for me.

10 **MR. GRIFFIN:** I saw the guy putting money bags
11 on the cart and I just ran over and snatched one and
12 kept going, kept running.

13 **THE COURT:** All right. What did these other two
14 folks do?

15 **MR. GRIFFIN:** For all I know, sir, Mr. Boone was
16 right behind me. I mean, I never took the chance to
17 look back. I know he was right on my heels. That's
18 all I know. Mr. Davis never got out the car.

19 **THE COURT:** All right. Was there a gun?

20 **MS. CAMPBELL:** Yes, sir.

21 **THE COURT:** Who had the gun?

22 **MR. GRIFFIN:** I don't know, sir.

23 **THE COURT:** Did you have a gun?

24 **MR. GRIFFIN:** No, sir. I didn't recall anyone
25 having a gun.

1 **THE COURT:** He's admitting to strong armed
2 robbery or larceny but how about the gun? I've got
3 to hear something because I want to make sure that I
4 hear everything that backs up your plea. Do you all
5 need some time to talk?

6 **MR. BECKMAN:** Well, Your Honor, I think there's
7 a question through the discovery in terms of who had
8 the gun.

9 **THE COURT:** Well, he's saying nobody had one.

10 **MR. BECKMAN:** Well, I don't think that's what he
11 meant to say.

12 **MR. GRIFFIN:** I'm not saying that no one had
13 one. I just didn't see who had it, sir. But it
14 wasn't me who had it.

15 **THE COURT:** Did somebody have a gun?

16 **MR. GRIFFIN:** Yes, sir.

17 **THE COURT:** Was it one of you three young men?

18 **MR. GRIFFIN:** Yes, sir.

19 **THE COURT:** Was it Mr. Boone?

20 **MR. GRIFFIN:** I don't know, sir.

21 (Pause - conferring)

22 **THE COURT:** Okay. All right. I'll talk to Mr.
23 Boone. Understanding the armed robbery charge and
24 the punishment you face, do you plead guilty or not
25 guilty to armed robbery? Do you need to talk to your

1 lawyer?

2 **MR. BOONE:** No, sir.

3 **THE COURT:** You can if you want. That's fine
4 with me.

5 **MR. BOONE:** I snatched it and ran.

6 **THE COURT:** I need to know first whether or not
7 you're guilty or not.

8 **MR. BOONE:** Guilty.

9 **THE COURT:** What did you do that makes you
10 guilty?

11 **MR. BOONE:** I ran by and snatched the money.

12 **THE COURT:** Okay. Did you have a gun?

13 **MR. BOONE:** No, sir.

14 **THE COURT:** Who had a gun?

15 **MR. BOONE:** Well, we ran by and snatched the
16 money and nobody had a gun pointed at nobody. We
17 went by and snatched it.

18 **THE COURT:** Nobody had a gun?

19 **MR. BOONE:** Not to rob the man, the dude. I
20 mean, you know, Mr. Whoever. Nobody pulled a gun out
21 or nothing. We just ran by and snatched the money.

22 **THE COURT:** All right. I'll try Mr. Davis. Are
23 you guilty or not guilty of armed robbery?

24 **MR. DAVIS:** Guilty.

25 **THE COURT:** What did you do that makes you

1 guilty?

2 **MR. DAVIS:** I participated in the crime of armed
3 robbery.

4 **THE COURT:** Where were you? In the car?

5 **MR. DAVIS:** Yes, sir.

6 **THE COURT:** You were the get-away man?

7 **MR. DAVIS:** Yes, Your Honor.

8 **THE COURT:** Who had a gun?

9 **MR. DAVIS:** Both of them had a gun, Your Honor.

10 **THE COURT:** Both of these fellas had a gun. Did
11 they point it at the victim?

12 **MR. DAVIS:** I don't know, sir, if they pointed
13 it at him. I wasn't over there at the scene.

14 **THE COURT:** All right. And I want to make sure
15 you--

16 **MR. BOONE:** Sir?

17 **THE COURT:** Yes, sir.

18 **MR. BOONE:** When we proceeded to take the money,
19 we didn't have a gun on us. But in the vehicle we
20 had a weapon then. But getting out the car to
21 approach the vehicle, we didn't have a weapon on us,
22 sir.

23 **THE COURT:** All right. Talk a little bit louder
24 for me.

25 **MR. BOONE:** When we approached the vehicle to

1 seize the money from him we didn't have the weapons
2 on us but when we got back into the car we had the
3 weapons on us, sir.

4 **THE COURT:** All right. Well, that's not an
5 armed robbery. Is it?

6 **MS. CAMPBELL:** I agree.

7 **THE COURT:** Was it your understanding they were
8 going to plead to using a gun to steal money from the
9 victim?

10 **MS. CAMPBELL:** Yes, Your Honor. The victim's
11 testimony would have been that they were both armed
12 at the time. And I believe in their statements Mr.
13 Griffin kind of fudged on who had a gun. He
14 ultimately puts the gun in Mr. Davis's possession.
15 And Mr. Boone says he had what appeared to be a gun
16 which was a cell phone in his hands in the
17 statements. However, the victim's testimony would be
18 unequivocally that both of them were armed at the
19 time.

20 **MS. SAMPSON:** And Mr. Boone would admit he had
21 something that could have been appeared to have been
22 a weapon, and that's why I was okay with the armed
23 robbery. He's never said he was armed.

24 **MR. HARVEY:** If I may, Your Honor. In
25 discussing the discovery with my client, my client

1 was the driver. My client tells me, and he would
2 tell the Court after waiving his Fifth Amendment
3 rights, that they had planned to engage in a robbery
4 of the manager of the IGA.

5 **THE COURT:** Is that right?

6 **MR. DAVIS:** Yes, Your Honor.

7 **MR. HARVEY:** My client tells me that, and he
8 would tell after waiving his Fifth Amendment rights,
9 that these gentlemen had a weapon. I would also
10 clarify that Mr. Griffin's statement -- Your Honor,
11 if I may, this factual situation has actually three
12 components. One, Mr. Griffin, it is uncontroverted
13 that Mr. Griffin and Mr. Boone were the perpetrators
14 of the actual robbery.

15 **THE COURT:** The taking.

16 **MR. HARVEY:** The taking. Mr. Humphries is here.
17 He gave a very detailed statement and he describes
18 the perpetrators as being the short one and the
19 taller one. There's some witnesses who aren't here,
20 two gentlemen by the name of Inman, but I've been
21 over this time and time again with my client.

22 The witnesses see two perpetrators run to the
23 victim, run past the victim. A witness says the
24 second, the taller perpetrator comes by. Mr. Inman
25 tries to stop them. At that time he describes the

1 second perpetrator brandishing a firearm and the
2 gentleman backs off. What Mr. Griffin described,
3 that's the robbery and leaving the scene portion of
4 the robbery. What happens, my client is the driver.
5 He acknowledges the fact that he is the driver.

6 **THE COURT:** Right.

7 **MR. HARVEY:** As they're leaving the scene, my
8 client is the driver, Mr. Boone is a passenger, Mr.
9 Griffin is a passenger. The most credible person in
10 the case amongst credible people we've discussed,
11 there's a witness who is not here named Mr. Mitchell.
12 He follows the car. Mr. Mitchell says --

13 **THE COURT:** I haven't gotten there yet.

14 **MR. HARVEY:** But I'm explaining how Mr. Griffin
15 says Mr. Davis has a gun, because it's not credible.
16 I just wanted to clarify what happened because I
17 think it's in my client's best interest to have this
18 matter resolved. I don't want their recalcitrance or
19 their inability to explain it to run counter to the
20 interest of justice, especially to my client's best
21 interest.

22 So if I may, Your Honor. What happens, Mr.
23 Mitchell is following the get-away car driven by my
24 client. Someone who occupies the right rear
25 passenger's side opens the door and shoots at Mr.

1 Mitchell. And shoots. That's where the two AWIK's
2 come in.

3 **THE COURT:** You're saying that can't be your
4 client?

5 **MR. HARVEY:** It can't be my client.

6 **THE COURT:** As the shooter.

7 **MR. HARVEY:** And when Mr. Griffin says my client
8 possessed a weapon, that's the portion of the events
9 that he claims my client possessed a weapon. So,
10 Your Honor, what I'm hoping to do is help clarify the
11 matter. Okay. My client wants to move forward with
12 his plea because --

13 **THE COURT:** Well, yeah. I understand that, but
14 I'm trying to hash out now who is going to admit they
15 had a gun. Right now your client says that he didn't
16 have one but they had one, and they both say they
17 didn't have one. So for it to be an armed robbery
18 plea, somebody -- and I don't think a cell phone is
19 going to suit me.

20 **MS. CAMPBELL:** I didn't -- I'm not saying it was
21 a cell phone, Judge. I don't want to represent that.
22 It wasn't a cell phone.

23 **THE COURT:** Frankly, I don't buy that. But
24 somebody has got to tell me who had a gun. Mr.
25 Griffin, you said you didn't have a gun?

1 **MR. GRIFFIN:** Yes, sir.

2 **THE COURT:** You did?

3 **MR. GRIFFIN:** No, sir.

4 **THE COURT:** All right. So you did or you did
5 not?

6 **MR. GRIFFIN:** I did not have a weapon, sir.

7 **THE COURT:** Mr. Boone, did you have one?

8 **MR. BOONE:** I did not. No, sir. I did not arm
9 rob the dude, but it looked like a weapon.

10 **THE COURT:** You had a weapon. You left it in
11 the car?

12 **MR. BOONE:** I did not fire a weapon.

13 **THE COURT:** Why would you go steal a money bag
14 and leave your gun in the car?

15 **MR. BOONE:** I planned on running by and
16 snatching the money, sir. I'm telling the truth,
17 sir.

18 **THE COURT:** All right. What are we going to do?

19 **MS. CAMPBELL:** Your Honor, I mean, at this point
20 I don't --

21 **THE COURT:** We can't have a bench trial. Is
22 that Mr. Humphries in the back?

23 **MS. CAMPBELL:** Yes, sir.

24 **THE COURT:** Of course we can't have a bench
25 trial and we find them guilty. They've got to plead

1 guilty. All right. Tell me, what's the kidnapping?

2 **MS. CAMPBELL:** The kidnapping is on Mr.
3 Humphries. They basically made it so he could not
4 move because they threatened him with the gun and
5 snatched the money from him.

6 **THE COURT:** Of course they're saying they just
7 ran by and snatched it at full speed.

8 **MS. CAMPBELL:** Got that.

9 **THE COURT:** Do you know what kidnapping is?
10 Have they explained it you?

11 **MR. GRIFFIN:** My lawyer has elaborated on it
12 somewhat, Your Honor, but I still don't fully
13 acknowledge the whole kidnapping situation.

14 **THE COURT:** All right. How about you, Ms.
15 Sampson? Do you need to talk to your client about
16 the--

17 **MS. SAMPSON:** No. We've gone over the
18 kidnapping. I've explained to him that by confining
19 him, even if it was for one second, that could be
20 kidnapping under the way our statute is defined.

21 **THE COURT:** The way they've explained it, too,
22 is that they ran by. How many money bags were there?

23 **MS. CAMPBELL:** It's \$27,000.

24 **THE COURT:** Well, how many bags?

25 **MS. SAMPSON:** Four, if I remember.

1 **THE COURT:** How many did you snatch?

2 **MR. GRIFFIN:** One, sir.

3 **THE COURT:** How many did you snatch?

4 **MR. BOONE:** One.

5 **THE COURT:** All right. So you must have left
6 two there. Did Mr. Humphries see you coming?

7 **MR. GRIFFIN:** No, sir. He had his back turned
8 towards me, sir.

9 **THE COURT:** All right. So you ran by and
10 snatched it full speed?

11 **MR. GRIFFIN:** Yes, sir. He was coming out of
12 his vehicle with it, sir.

13 **THE COURT:** Are you guilty or not guilty of
14 kidnapping?

15 **MR. GRIFFIN:** Not guilty.

16 **THE COURT:** Okay. Well, we'll just stop. Are
17 you guilty or not guilty of kidnapping?

18 **MR. BOONE:** Sir, can you excuse me?

19 **THE COURT:** Yeah.

20 **MR. BOONE:** If you all say it's kidnapping, then
21 I'm guilty of kidnapping, sir.

22 **THE COURT:** Well, I don't say it's kidnapping.
23 I just tell you -- your lawyers tell you what
24 kidnapping is. All I'm doing is asking you whether
25 or not you're guilty or not guilty. And I know,

1 Mr. Harvey, you've got your own issues.

2 Are you wanting to do all these pleas -- of
3 course, I can't keep Mr. Davis from pleading guilty
4 if he wants to. I just want -- here. Let's just
5 make the record clear. There is going to be a
6 transcript of this plea. I want to make sure that
7 before I accept your pleas every single thing is done
8 right.

9 And I'm not telling you gentlemen that you need
10 to plead guilty. I'm just asking questions and I'm
11 just getting answers that I can't quarrel with. I'm
12 not fussing at you, but I just need to--

13 **MR. GRIFFIN:** Sir?

14 **THE COURT:** Yes, sir.

15 **MR. GRIFFIN:** I understand. But, sir, my
16 parents and I, we had been working, you know, trying
17 to do certain things to get people to come forward
18 and tell you, tell everyone in the courtroom about
19 me, sir, that I have done a lot for the community.

20 **THE COURT:** All right. We're not talking about
21 that yet.

22 **MR. GRIFFIN:** I understand. I understand, sir.

23 **THE COURT:** I'm going to hear that. I mean,
24 I'll hear all that later. All right. I just
25 don't -- right now I'm not going to accept Mr.

1 Griffin's or Mr. Boone's pleas to armed robbery,
2 unless somebody can convince me otherwise. Ms.
3 Campbell?

4 **MS. CAMPBELL:** I would agree.

5 **THE COURT:** Okay. All right. You want me to
6 continue with Mr. Davis? Or do you want to stand
7 down?

8 **MS. CAMPBELL:** I think just stand them all down,
9 Your Honor. At this point we would just notice the
10 defense attorneys that at the next status conferences
11 we'll be setting trial dates.

12 **THE COURT:** All right. Now, Mr. Harvey's client
13 still-- he's formulated answers that call for pleas,
14 but if you want to regroup I don't think, Mr. Harvey,
15 she can keep you from pleading guilty.

16 **MR. DAVIS:** Yes, Your Honor. I plead guilty to
17 the armed robbery.

18 **THE COURT:** I know you're pleading guilty but
19 you haven't told me you were guilty.

20 **MR. DAVIS:** I told you I was guilty, Your Honor,
21 and I didn't understand that if we were running by
22 snatching bags, you know, but I plead guilty to it.

23 **THE COURT:** All right. Mr. Harvey, go talk to
24 Mr. Davis, please. And I'm sorry I'm leaning over.
25 I've got a sore back.

1 (Pause)

2 **THE COURT:** You all stay right there. I'll be
3 right back.

4 (Whereupon, a break is taken)

5 **THE COURT:** Okay. Gentlemen, you can just stand
6 where you are. Just stand right there if you would
7 please, so you can hear me. All right. All the
8 lawyers back?

9 **MS. SAMPSON:** Yes, sir.

10 **THE COURT:** All right. With regard to the pleas
11 that we've been moving through, I want to make sure
12 that Mr. Griffin and Mr. Boone understand that all
13 I've asked you to do is answer my questions. I don't
14 find -- I do not find fault with any of your answers,
15 because those are your answers.

16 Mr. Davis, we'll proceed with your plea tomorrow
17 morning and I will hear the remainder of your plea.
18 And, Mr. Griffin and Mr. Boone, as things sit now, I
19 will not accept your pleas under the current state of
20 the record. I want to make sure that you do not feel
21 any pressure to go forward with any responses to
22 questions that are not the truth. And we'll
23 reconvene tomorrow morning at 9:30, perhaps not in
24 this case at 9:30, but I'll be back tomorrow at 9:30
25 for probation violations, pleas, and other matters as

1 long as you all need me to be here tomorrow.

2 Okay. All right. I think Mr. Boone,
3 Ms. Sampson, had raised his hand. I would suggest
4 that he discuss that with you--

5 **MS. SAMPSON:** Thank you, Your Honor. I didn't
6 see him.

7 **THE COURT:** -- whatever questions he has.
8 Anything else?

9 **MS. CAMPBELL:** No, sir.

10 **THE COURT:** Thank you. All right. Thank you
11 all. And thank you, folks, for coming. I'll give
12 these back to the clerk.

13 (Whereupon, the proceedings are concluded for the
14 day and reconvened the following day as follows)
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Friday, May 28, 2010

1
2 **MS. CAMPBELL:** May it please the Court?

3 **THE COURT:** Yes, ma'am.

4 **MS. CAMPBELL:** The State would recall Sylvester
5 Boone and Dwight Davis, Your Honor.

6 **THE COURT:** Are we going to address Mr.
7 Beckman's issue this morning?

8 **MS. CAMPBELL:** Your Honor, yes. I wanted to put
9 on the record I did speak with Ms. Johns briefly just
10 a minute ago on the telephone, and she indicates at
11 this point she has not been retained, so there would
12 be no need to relieve him as counsel.

13 **THE COURT:** All right. Okay.

14 **MS. CAMPBELL:** Your Honor, with the Court's
15 permission, Ms. Garfield is going to stand in for me
16 because I have to leave the courtroom.

17 **THE COURT:** All right.

18 (Whereupon, Ms. Campbell leaves the courtroom)

19 **THE COURT:** All right. So the record is clear,
20 Ms. Sampson, you are here with Mr. Boone. Is that
21 right?

22 **MS. SAMPSON:** Yes, sir.

23 **THE COURT:** Mr. Harvey, you're here with Mr.
24 Davis?

25 **MR. HARVEY:** Correct, Your Honor.

1 **THE COURT:** When we broke yesterday Mr. Griffin
2 was also here with his lawyer, Mr. Beckman. And we
3 adjourned the pleas at that time because I was not
4 satisfied with regard to Mr. Boone and Mr. Griffin
5 actually admitting their guilt. I think the question
6 that I actually asked was: Are you guilty or not
7 guilty of armed robbery? Mr. Griffin and Mr. Boone
8 replied that they were guilty.

9 And then I asked the follow-up question: What
10 did you do that made you guilty? And they both gave
11 a statement, and I started asking about the use of a
12 deadly weapon, which is an element of the crime of
13 armed robbery, and both denied that they had a gun.
14 I think that was the gist of it. Is that right, Ms.
15 Sampson?

16 **MS. SAMPSON:** Yes, sir. That's exactly correct.

17 **THE COURT:** Is that right, Mr. Harvey?

18 **MR. HARVEY:** Yes, Your Honor.

19 **THE COURT:** And, Ms. Garfield, is that right to
20 your recollection?

21 **MS. GARFIELD:** Yes, sir.

22 **THE COURT:** Are we ready to proceed now, Ms.
23 Sampson?

24 **MS. SAMPSON:** Yes, sir.

25 **THE COURT:** I'm going to put aside Mr. Griffin's

1 sheets. What I'm looking for is the second -- I've
2 got Mr. Griffin -- armed robbery indictment
3 sentencing sheet, an AWIK indictment and sentencing
4 sheet and another AWIK sentencing sheet, but I don't
5 have his indictment. I'm sure it's up here
6 somewhere.

7 All right. I want to ask you again, Mr. Boone,
8 what is your full name?

9 **MR. BOONE:** Sylvester Boone.

10 **THE COURT:** All right. Mr. Boone, you recall
11 yesterday when we broke and we were discussing the
12 facts of the case. Do you recall that?

13 **MR. BOONE:** Yes, sir.

14 **THE COURT:** All right. I want to ask you a
15 couple of questions right now. Since about -- let's
16 just say less than 24 hours has gone by since we were
17 on the record yesterday. Do you have any condition
18 today that would keep you from being able to
19 understand what you're doing?

20 **MR. BOONE:** No, sir.

21 **THE COURT:** You told me yesterday you were
22 extremely nervous. Is that correct?

23 **MR. BOONE:** Yes. I've been very nervous, sir.

24 **THE COURT:** And are you still feeling that
25 today?

1 **MR. BOONE:** Yes, sir.

2 **THE COURT:** Do you think you're able to go
3 forward with this plea?

4 **MR. BOONE:** Yes, sir.

5 **THE COURT:** Ms. Sampson, you've talked to him
6 this morning?

7 **MS. SAMPSON:** Yes, sir.

8 **THE COURT:** Do you agree with him in that
9 regard?

10 **MS. SAMPSON:** Yes. He appears to be the same
11 with me as he was yesterday. He just is really
12 nervous about all this.

13 **THE COURT:** All right. All right. Mr. Boone?

14 **MR. BOONE:** Yes, sir.

15 **THE COURT:** Understanding the charge of armed
16 robbery, you've heard the facts recited yesterday as
17 far as the State was concerned--

18 **MR. BOONE:** Yes, sir.

19 **THE COURT:** -- at least preliminarily. Do you
20 plead guilty or not guilty?

21 **MR. BOONE:** I plead guilty, Your Honor.

22 **THE COURT:** Are you truly guilty?

23 **MR. BOONE:** Yes, sir. I'm guilty.

24 **THE COURT:** All right. I want you to tell me
25 exactly what you did. And I want you to go slow, as

1 slow as you think you need to and speak very clear.

2 **MR. BOONE:** Well, Your Honor, first I would like
3 to apologize to you about yesterday. And, Your
4 Honor, we ran -- I was armed when I approached the
5 victim and snatched the money, Your Honor. And--

6 **THE COURT:** Okay. Where was he in relation to
7 the grocery store?

8 **MR. BOONE:** In front of the grocery store.

9 **THE COURT:** And did he have the bags in cash
10 bags in a buggy?

11 **MR. BOONE:** Yes, sir.

12 **THE COURT:** Or was he carrying them?

13 **MR. BOONE:** He was turning around putting them
14 in the buggy.

15 **THE COURT:** And what kind of weapon did you
16 have?

17 **MR. BOONE:** I had a -- I don't even know what
18 kind of gun it was.

19 **THE COURT:** Was it a pistol?

20 **MS. GARFIELD:** It was a pistol.

21 **THE COURT:** All right. And you walked up to him
22 or ran up to him?

23 **MR. BOONE:** Ran, sir.

24 **THE COURT:** What time was it, about?

25 **MR. BOONE:** I don't know, sir.

1 **THE COURT:** Daylight or dark?

2 **MR. BOONE:** Morning time.

3 **THE COURT:** Morning? Okay. And what did you do
4 when you got up there with the gun?

5 **MR. BOONE:** I snatched the money, snatched the
6 money and ran.

7 **THE COURT:** Did you display the gun to him?

8 **MR. BOONE:** I don't -- I mean, he probably seen
9 it but I didn't point it at him or anything, sir.
10 But I had the gun.

11 **THE COURT:** Did you say anything to him?

12 **MR. BOONE:** No, sir.

13 **THE COURT:** All right. With regard-- now,
14 yesterday you told me you did not have a gun.

15 **MR. BOONE:** Sir, I apologize to you. It's just
16 that I've never been in a situation like this before.

17 **THE COURT:** Was the situation where yesterday
18 you were just nervous?

19 **MR. BOONE:** Scared, Your Honor.

20 **THE COURT:** Therefore afraid to admit it?

21 **MR. BOONE:** Yes, sir.

22 **THE COURT:** I want to ask you this question.
23 Are you telling me the truth today?

24 **MR. BOONE:** Yes, sir.

25 **THE COURT:** And yesterday you just weren't able

1 to tell me the truth?

2 **MR. BOONE:** I was just scared, Your Honor.

3 **THE COURT:** All right.

4 **MR. BOONE:** I apologize.

5 **THE COURT:** Now, is what you've just told me now
6 the absolute, 100 percent truth?

7 **MR. BOONE:** Yes, Your Honor.

8 **THE COURT:** All right. And was Mr. Davis in the
9 car?

10 **MR. BOONE:** Yes, Your Honor.

11 **THE COURT:** Was Mr. Griffin with you?

12 **MR. BOONE:** Yes, sir.

13 **THE COURT:** All right. With regard to the
14 charge of kidnapping, I'm going to read that
15 indictment again. Some people are sometimes confused
16 about kidnapping. But in any event, that indictment
17 says that on the same date, the same time you did
18 unlawfully seize, confine, decoy, kidnap, abduct, and
19 there's a fancy word called inveigle or carry away
20 Mr. Humphries without authority of law. Are you
21 guilty or not guilty of that?

22 **MR. BOONE:** I'm guilty, Your Honor.

23 **THE COURT:** All right. In a minute she is going
24 to tell me what the circumstances are about the
25 kidnapping. I'm going to come back to you and ask

1 you whether or not those are correct. Are you
2 willing to -- will you tell me the truth about that?

3 **MR. BOONE:** Did you say did I tell you the truth
4 yesterday?

5 **THE COURT:** I said will you tell me the truth
6 later on about that?

7 **MR. BOONE:** Yes, Your Honor.

8 **THE COURT:** All right. There are two
9 indictments for assault with intent to kill. And one
10 says that on or about the same date, the same time
11 with malice aforethought you committed assault with
12 intent to kill upon Laura Monroe. Are you guilty or
13 not guilty of that?

14 (Pause - conferring)

15 **MR. BOONE:** Yes, sir.

16 **THE COURT:** Which one? Guilty or not guilty?

17 (Pause - conferring)

18 **MR. BOONE:** Guilty.

19 **THE COURT:** You're guilty?

20 **MR. BOONE:** Yes, sir.

21 **MS. SAMPSON:** If you're wondering what we're
22 talking about, he's trying to figure out what-- if
23 he's telling what he's doing now or if he's--

24 **THE COURT:** No, not yet. I just want to know
25 are you guilty or not guilty of assault with intent

1 to kill.

2 **MR. BOONE:** Guilty.

3 **THE COURT:** All right. With regard to the
4 second indictment for assault with intent to kill,
5 the same date, the same time with malice
6 aforethought, committing assault with intent to kill
7 one James Mitchell, guilty or not guilty?

8 **MR. BOONE:** Guilty, Your Honor.

9 **THE COURT:** All right. Tell me what happened
10 when you all left the scene when Mr. Davis was
11 driving.

12 **MR. BOONE:** Sir, we just--

13 **THE COURT:** And speak up loudly for me. Okay?

14 **MR. BOONE:** Your Honor, we just was driving. We
15 was [sic] being followed.

16 **MS. SAMPSON:** Speak up.

17 **MR. BOONE:** We was [sic] being followed, Your
18 Honor. And our intention wasn't to hurt or harm
19 anyone, Your Honor. You understand? It just all
20 happened so fast. And we seen that we were being
21 followed. So we just fired guns to see if we could
22 scare the victim away and we didn't have no intention
23 of hitting no cars or nobody, Your Honor.

24 **THE COURT:** All right. Did you fire a weapon?

25 **MR. BOONE:** I fired one time, Your Honor.

1 **THE COURT:** All right. And was it out of the
2 window, obviously, out of the window of the vehicle?

3 (Pause - conferring)

4 **MR. BOONE:** I believe the window, Your Honor.

5 **THE COURT:** All right. So did you lean out of
6 the window and fire?

7 **MR. BOONE:** No, no. I just -- I didn't lean
8 out. I just--

9 **THE COURT:** Pointed it behind you and fired?

10 **MR. BOONE:** Yes, sir. And I didn't try to aim
11 at no car or anything, Your Honor. Yes, sir.

12 **THE COURT:** All right. And why did you do that?

13 **MR. BOONE:** Your Honor, everything was happening
14 so fast, Your Honor. I was scared, Your Honor.
15 And--

16 **THE COURT:** Were you trying to make those people
17 quit following you?

18 **MR. BOONE:** Yes, sir.

19 **THE COURT:** Or person quit following you. All
20 right. In case we didn't go over it thoroughly
21 yesterday, do you understand that if you have any
22 defenses to these four charges you give those up when
23 you plead guilty?

24 **MR. BOONE:** Yes, Your Honor.

25 **THE COURT:** If you said anything to the police

1 at all and it incriminates you, do you understand
2 that when you plead guilty you give up the right to
3 contest or challenge whether or not you made that
4 statement voluntarily?

5 **MR. BOONE:** Yes, sir.

6 **THE COURT:** Any recommendations or negotiations
7 in the case?

8 **MS. GARFIELD:** Not in reference to Mr. Boone.

9 **THE COURT:** All right. All right. Mr. Davis,
10 I'll turn to you now. And we did discuss some issues
11 specifically with you yesterday but I'm going to
12 essentially start over. Do you understand that?

13 **MR. DAVIS:** Yes, sir.

14 **THE COURT:** All right. And how are you feeling?
15 Clear in your mind today?

16 **MR. DAVIS:** Yes, sir.

17 **THE COURT:** Do you have any condition at all
18 today that would keep you from being able to
19 understand what you're doing?

20 **MR. DAVIS:** No, sir. Just a little scared,
21 nervous.

22 **THE COURT:** Okay. If you would, please, you all
23 can do it one of two ways. Perhaps let him slide
24 down in front of the microphone. All right. Just
25 speak up loudly for me. All right?

1 **MR. DAVIS:** Yes, sir.

2 **THE COURT:** You're clear in your mind today?
3 You're just a little scared or a lot scared?

4 **MR. DAVIS:** Yes, Your Honor.

5 **THE COURT:** Are you going to tell me the truth?

6 **MR. DAVIS:** Yes, Your Honor.

7 **THE COURT:** I think yesterday you had made some
8 statements about what happened. I'm going to ask you
9 some formal questions now concerning the charge of
10 armed robbery. Do you plead guilty or not guilty?

11 **MR. DAVIS:** Guilty.

12 **THE COURT:** Tell me what happened that makes you
13 guilty or just tell me everything that happened.

14 **MR. DAVIS:** Basically, I knew it was a planned
15 robbery.

16 **THE COURT:** Tell me about that. What was the
17 plan?

18 **MR. DAVIS:** We planned to go get the money from
19 the man at the store and I participated in driving.

20 **THE COURT:** All right. You drove the vehicle.
21 Who was with you?

22 **MR. DAVIS:** Sylvester and Demon.

23 **THE COURT:** Okay. And then tell me what
24 happened.

25 **MR. DAVIS:** As soon as we pulled up at the

1 store, they had hopped out. And as soon as they
2 hopped out, I parked the car across the street where
3 they supposed to meet me back at.

4 **THE COURT:** All right. And you said yesterday
5 they both had pistols. Is that right?

6 **MR. DAVIS:** Yes, Your Honor.

7 **THE COURT:** Is that correct?

8 **MR. DAVIS:** Yes, Your Honor.

9 **THE COURT:** All right. Did you see the thing
10 happen?

11 **MR. DAVIS:** No, sir.

12 **THE COURT:** They went out of sight?

13 **MR. DAVIS:** No. I had pulled off. When it
14 happened, I pulled off.

15 **THE COURT:** How did they get back into the car?
16 Did you come back?

17 **MR. DAVIS:** No. They ran across, like across
18 the street basically.

19 **THE COURT:** Okay. And they came back?

20 **MR. DAVIS:** Yes, Your Honor.

21 **THE COURT:** And they had money bags with them?

22 **MR. DAVIS:** Yes, Your Honor.

23 **THE COURT:** Did they get in the car?

24 **MR. DAVIS:** Yes, Your Honor.

25 **THE COURT:** All right. And you participated in

1 that?

2 **MR. DAVIS:** Yes, Your Honor.

3 **THE COURT:** All right. With regard to the
4 charge of kidnapping -- and you heard me reference
5 that indictment a few minutes ago -- do you plead
6 guilty or not guilty?

7 **MR. DAVIS:** Guilty.

8 **THE COURT:** Are you truly guilty of that?

9 **MR. DAVIS:** Yes, Your Honor.

10 **THE COURT:** The assault with intent to kill
11 charge, where the indictment says that you did with
12 malice aforethought commit assault with intent to
13 kill on James Mitchell, are you guilty or not guilty
14 of that?

15 **MR. DAVIS:** Guilty, Your Honor. I know if I
16 participated, I know I'm as guilty as them. The
17 hands of one, hands of all.

18 **THE COURT:** All right. The second indictment
19 for assault with intent to kill on Ms. Monroe, guilty
20 or not guilty?

21 **MR. DAVIS:** Guilty.

22 **THE COURT:** Tell me what happened in that
23 context that makes you guilty of the two assaults.

24 **MR. DAVIS:** After we were leaving the scene,
25 Your Honor, we're riding. Mr. Mitchell, I guess

1 that's his name, was following us, and after that I
2 seen Demon fire shots at the car.

3 **THE COURT:** All right.

4 **MR. DAVIS:** And it was all part of, you know,
5 trying to get away.

6 **THE COURT:** All right. Okay. And did you all
7 get away for a period of time?

8 **MR. DAVIS:** Yes, Your Honor. Okay. After we --
9 I'm trying to make a quick turn and I kind of like
10 sideswiped a tree or whatever and we got out and ran.
11 We ran into a shed, and that's where the K-9 unit
12 found me.

13 **THE COURT:** All right. Okay. All right. Mr.--

14 **MR. HARVEY:** Your Honor, if I may?

15 **THE COURT:** Yes, sir.

16 **MR. HARVEY:** He wanted to add one thing.

17 **MR. DAVIS:** Yes, sir. After we stopped and got
18 out and run, I seen Demon throw a gun, and that's
19 when we ran to the shed or whatever. That's when we
20 got caught.

21 **THE COURT:** All right. Mr. Boone.

22 **MR. BOONE:** Yes, Your Honor.

23 **THE COURT:** And, Mr. Davis, has anybody promised
24 you anything to get you to plead guilty?

25 **MR. BOONE:** No, Your Honor.

1 **MR. DAVIS:** No, sir, Your Honor.

2 **THE COURT:** Has anybody used any threat,
3 pressure, force to get you to plead guilty?

4 **MR. BOONE:** No, Your Honor.

5 **MR. DAVIS:** No, sir, Your Honor.

6 **THE COURT:** Is your lawyer making you plead
7 guilty?

8 **MR. BOONE:** No, Your Honor.

9 **MR. DAVIS:** No, sir, Your Honor.

10 **THE COURT:** Have you had enough time to decide
11 that you wanted to plead guilty?

12 **MR. BOONE:** Yes, sir.

13 **MR. DAVIS:** Yes, sir, Your Honor.

14 **THE COURT:** And are you pleading guilty of your
15 own free will?

16 **MR. BOONE:** Yes, sir.

17 **MR. DAVIS:** Yes, Your Honor.

18 **THE COURT:** All right. Mr. Boone, are you
19 satisfied with the services provided to you by your
20 lawyer?

21 **MR. BOONE:** I can't change, Your Honor.

22 **THE COURT:** All right. Well, and I understand
23 that. If we were just sitting around talking, I'd
24 understand what you were saying. Are you completely
25 satisfied with the work she's done?

1 **MR. BOONE:** Yes, Your Honor.

2 **THE COURT:** Okay. How about you, Mr. Davis?

3 Are you satisfied with the work your lawyer has done?

4 **MR. DAVIS:** Yes, Your Honor. We've met about
5 five or six times, Your Honor.

6 **THE COURT:** Okay. Do you think, Mr. Boone,
7 you've talked to your-- all right, Mr. Boone. You've
8 got to listen to me.

9 **MR. BOONE:** Yes, sir.

10 **THE COURT:** Do you think you have talked to your
11 lawyer long enough and often enough?

12 **MS. SAMPSON:** About this.

13 **MR. BOONE:** Yes, Your Honor.

14 **THE COURT:** All right. Speak up for me.

15 **MR. BOONE:** Yes, Your Honor.

16 **THE COURT:** Okay. Do you think she's done
17 everything within reason to represent you in this
18 case?

19 **MR. BOONE:** I mean, there's not too much she
20 could do, Your Honor.

21 **THE COURT:** Okay. Do you think she's done
22 everything she could have done to help you?

23 **MR. BOONE:** Yes, Your Honor.

24 **THE COURT:** All right. Is there anything else
25 you want her to do that she hasn't done? In this

1 case.

2 **MS. SAMPSON:** He's hesitating because there is
3 things he wants me to tell you when we get to the
4 mitigation part.

5 **THE COURT:** She's going to have that chance in a
6 minute. But I'm talking about up to now. Has she
7 done everything you think she could have done to
8 properly represent you?

9 **MR. BOONE:** Yes, Your Honor.

10 **THE COURT:** All right. Mr. Davis, are you
11 satisfied with Mr. Harvey's service?

12 **MR. DAVIS:** Yes, Your Honor. We've talked a
13 good amount of times and he's writing me letters.

14 **THE COURT:** You're satisfied?

15 **MR. DAVIS:** Yes, Your Honor.

16 **THE COURT:** Have you understood everything
17 you've talked about?

18 **MR. DAVIS:** Yes, Your Honor.

19 **THE COURT:** And is there anything else you want
20 him to do that he hasn't done other than speak for
21 you at the time you're sentenced?

22 **MR. DAVIS:** No, sir, Your Honor.

23 **THE COURT:** All right. Now, Mr. Boone?

24 **MR. BOONE:** Yes, sir.

25 **THE COURT:** Is there anything-- do you have any

1 complaints about the police or the prosecutor's
2 office insofar as how they've treated you?

3 **MR. BOONE:** How they treated me?

4 **THE COURT:** Talking about in this process. Do
5 you have any complaints about the police or the
6 prosecutor?

7 **MR. BOONE:** Harassment. But, no, sir.

8 **THE COURT:** All right. How have you been
9 harassed? You need to speak up for me. Okay?

10 **MR. BOONE:** I've been called all kinds of names.

11 **THE COURT:** By who?

12 **MR. BOONE:** Mr. Beckman.

13 **THE COURT:** All right. Has he forced you to
14 plead guilty?

15 **MR. BOONE:** No, Your Honor.

16 **THE COURT:** Has he coerced you or used any
17 intimidation to get you to plead guilty?

18 **MR. BOONE:** No, Your Honor.

19 **THE COURT:** All right. Mr. Davis, do you have
20 any complaints about the police or the prosecutor?

21 **MR. DAVIS:** No, Your Honor.

22 **THE COURT:** Mr. Boone, have you understood all
23 of my questions?

24 **MR. BOONE:** Yes, Your Honor.

25 **THE COURT:** Mr. Davis?

1 **MR. DAVIS:** Yes, sir, Your Honor.

2 **THE COURT:** And Mr. Boone, listen carefully to
3 this. Mr. Davis, you, too. You have ten days from
4 today to appeal your guilty plea and the sentence.
5 Do you understand that, Mr. Boone?

6 **MR. BOONE:** I have ten days to -- yes.

7 **THE COURT:** You have ten days from today to
8 appeal your plea, your pleas and the sentences that I
9 give you. Do you understand that?

10 **MR. BOONE:** Yes, sir.

11 **THE COURT:** All right. Mr. Davis is not going
12 to be sentenced today.

13 **MS. GARFIELD:** That's correct, Your Honor.
14 We've entered negotiations with Mr. Davis through his
15 attorney Mr. Harvey. We will ask you to withhold
16 sentencing until the disposition of Mr. Griffin's
17 case.

18 **THE COURT:** And another judge will sentence him?

19 **MR. HARVEY:** Your Honor, we would -- I'll--

20 **THE COURT:** I'll retain jurisdiction if you want
21 me to.

22 **MS. GARFIELD:** We would prefer that.

23 **MR. HARVEY:** Yes, Your Honor.

24 **THE COURT:** Okay. Now, Mr. Davis, whenever
25 you're sentenced, do you understand you'll have an

1 appeal -- time after that to appeal?

2 **MR. DAVIS:** Yes, sir, Your Honor.

3 **THE COURT:** All right. Okay.

4 **MS. GARFIELD:** Your Honor, do you wish us to go
5 through all the facts again?

6 **THE COURT:** Facts, and then I'd like to hear
7 from either or both of the victims if they'd like or
8 all three of them. I don't know who is here. But
9 ...

10 **MS. SAMPSON:** I believe they have a letter, Your
11 Honor. Not to interrupt Ms. Garfield. But two of
12 them are here, and the third one I believe wrote a
13 letter because he couldn't be here.

14 **MS. GARFIELD:** That's correct.

15 **THE COURT:** Mr. Boone and Mr. Davis, I want you
16 all to listen real carefully to what she says and
17 what all these people say.

18 **MS. GARFIELD:** I apologize, Your Honor.

19 **THE COURT:** That's all right.

20 **MS. GARFIELD:** This incident occurred
21 October 30th of last year at the IGA in Blythewood.
22 The manager on duty that day was Mr. Charles
23 Humphries and he was making a run to the bank with
24 the deposit money, actually coming from the bank with
25 the money to operate the grocery store for that day.

1 Previous to this, and obviously unknown to the
2 manager, Mr. Boone had a cousin who is intellectually
3 disabled who worked at the IGA, and essentially he
4 got information from this cousin as to when this type
5 of drop off would be made. We do not have any
6 evidence to believe that the cousin in any way knew
7 that this robbery was taking place. He was just
8 supplying information to Mr. Boone.

9 **THE COURT:** Is that true, Mr. Boone?

10 **MR. BOONE:** Sir?

11 **THE COURT:** Is that part true?

12 (Pause - conferring)

13 **THE COURT:** You found out from your cousin about
14 when the bank bags would go out?

15 **MR. BOONE:** I overheard him having a
16 conversation, I guess, with one of the employees.
17 Then I took it in my own knowledge, Your Honor.

18 **THE COURT:** All right.

19 **MS. GARFIELD:** Thank you. The three individuals
20 that are before you, well, minus Mr. Griffin, chose
21 to conduct this robbery on this particular day. Mr.
22 Davis was driving the car and dropped Mr. Boone and
23 Mr. Griffin off at the IGA, at which point they were
24 both armed with a pistol. They approached Mr.
25 Humphries and they take two bags out of the money

1 that was being brought to the store that day.

2 At that time they took off running and got into
3 a car driven by Dwight Davis and took off. What they
4 did not know is that another business owner was in
5 the parking lot, business owner right beside the IGA
6 was in the parking lot by the name of Mr. James
7 Mitchell, and he observed all of this take place.

8 He then chose to follow the car being driven by
9 Dwight Davis. And he is calling 911 giving a
10 description of what has occurred and a description
11 over 911 of the details involved in the case. At
12 that time we believe these individuals believed that
13 Mr. Mitchell was indeed following them and Mr.
14 Griffin and Mr. Boone rolled down the windows and
15 both began firing their weapons several times at Mr.
16 Mitchell as he is following them.

17 There was another car that had passed the
18 individuals and had gone up some further. That car
19 was being driven by Ms. Laura Monroe. Actual
20 gunshots did enter into her vehicle. She was driving
21 an SUV. There was a gunshot lodged in the back seat
22 of the car. Fortunately, there was no one in the
23 car -- in the back seat at that particular time.

24 Eventually, they got to a pull-off point where
25 they pulled off. The three individuals took off

1 running. They ran into a shed where they were
2 apprehended by law enforcement. K-9 units had
3 already arrived. They were taken into custody. Your
4 Honor, all of the money was recovered. It's in the
5 amount of \$27,141.46.

6 **THE COURT:** Did they have masks on?

7 **MS. GARFIELD:** They did not.

8 **THE COURT:** All right.

9 **MS. GARFIELD:** There was also another--

10 **THE COURT:** I'm going to ask you one more
11 question while I'm thinking about it.

12 **MS. GARFIELD:** Sure.

13 **THE COURT:** How many gunshots hit the Mitchell
14 vehicle?

15 **INVESTIGATOR LINDLER:** I believe it was two,
16 Your Honor.

17 **THE COURT:** And one in the Monroe vehicle?

18 **INVESTIGATOR LINDLER:** Yes, sir.

19 **THE COURT:** But were there more than three shots
20 fired?

21 **INVESTIGATOR LINDLER:** We don't know at this
22 time. We just know that those were the actual bullet
23 strikes themselves.

24 **THE COURT:** All right. Okay.

25 **MS. GARFIELD:** I believe that's the extent of

1 the facts. If you will hear from the victims at the
2 appropriate time.

3 **THE COURT:** I'll be glad to do that now.

4 **MS. GARFIELD:** Okay.

5 **THE COURT:** He can come down to the podium right
6 there or wherever you'd like to have him, Ms.
7 Garfield.

8 **MS. GARFIELD:** I think that will be fine.

9 **THE COURT:** Yes, sir. Your name, sir?

10 **MR. HUMPHRIES:** Charles Humphries.

11 **THE COURT:** Yes, sir. I'll be glad to hear from
12 you.

13 **MR. HUMPHRIES:** Yes, sir. On October of 2009,
14 two individuals ran up to me as I was coming from the
15 bank and parked my vehicle in front of the store.
16 They stuck guns in my face demanding money. Both of
17 them said: Give me the money. At that time, they
18 each grabbed a bag out of my hand and went running
19 off. There were a lot of people in the area. It
20 just so happened that one of the other business
21 owners was there, saw everything that happened and he
22 followed them.

23 I'd just like to say that not only did they take
24 money from me that day, they took away my peace of
25 mind and my trust of people. And every night when I

1 go to bed I think about this. Every day I go to the
2 bank for my company I think about this. And in a way
3 they sentenced me to a life of thinking about this.
4 And I hope the Court sees fit to give them the
5 maximum penalty they deserve.

6 **THE COURT:** All right. Thank you, sir.

7 **MR. HUMPHRIES:** Thank you.

8 **THE COURT:** Thank you, sir. Yes, ma'am. Your
9 name?

10 **MS. MONROE:** I'm Laura Monroe, and I was the
11 individual driving the car that was on Farrow Road
12 that day. I never met these men. I'd never seen
13 them before. And you said, Mr. Boone, that you were
14 scared. Well, Mr. Boone, you've made me very scared.

15 **THE COURT:** Make sure you talk -- you can direct
16 your comments to me, if you would, please.

17 **MS. MONROE:** He has made me very scared because
18 I came within an inch of losing my life for something
19 that I had no part in, nothing. An inch. I wouldn't
20 be here today. I would not be going to my daughter's
21 graduation tomorrow. I would not see my son get
22 married.

23 **THE COURT:** When you were on Farrow Road, did
24 you pass these vehicles?

25 **MS. MONROE:** Yes, sir. I did.

1 **THE COURT:** Did you see anything?

2 **MS. MONROE:** I just saw the blue car, sir. It
3 was a Friday, beautiful Friday afternoon. It was a
4 beautiful Friday afternoon. I was on my lunch hour.
5 I'd left the State headquarters there in Blythewood
6 and I was just going out to get a prescription at the
7 drugstore. And these men nearly took my life for
8 this. And it's something that I think about every
9 day. And I thank God that God protected me. But for
10 the grace of God I'm here today. That's all.

11 **THE COURT:** Thank you, ma'am. How about from
12 Mr. Mitchell?

13 **MS. GARFIELD:** Mr. Mitchell could not be present
14 today, Your Honor. He has been present previously
15 for other court hearings. He did provide a letter.
16 If I may read that into the record?

17 **THE COURT:** Yes, ma'am.

18 **MS. GARFIELD:** "I am sorry that I cannot attend
19 a hearing tomorrow regarding one of the three men" --
20 at that point he thought there would only be one --
21 "who robbed the IGA manager at gunpoint. I would
22 like to be there but unfortunately I do not have
23 enough time to change my work schedule after I was
24 notified about the hearing.

25 "I feel all three men should get the maximum

1 sentencing available. Their robbery was
2 pre-meditated, right down to their clothing, guns,
3 and get-away car. They held the IGA manager at
4 gunpoint while he attempted to load deposits into his
5 car. They were prepared to shoot him if he did not
6 cooperate.

7 "While I followed them and attempted to get
8 their license plate, they shot at me on public
9 highways with total disregard for other vehicles,
10 property, and human life. Their bullets broke my
11 windshield, damaged the interior of my vehicle, and
12 missed my head by inches.

13 "Since that time I have had trouble sleeping,
14 suffer from bad dreams, fear of retaliation, and
15 depression. My grandchildren have not been allowed
16 to stay overnight in my home because their parents
17 are afraid of retaliation. In addition, my employees
18 have been afraid. I had to schedule extra employees
19 to work certain periods of the day for several weeks
20 after this incident happened.

21 "I strongly feel all these men should get the
22 maximum sentence allowed by law. Anyone who acts
23 with malice and is willing to take a human life to
24 satisfy their own selfish desires deserves the full
25 maximum penalty. I ask the Court to please impose

1 the harshest penalty possible. Sincerely, James
2 Mitchell."

3 **THE COURT:** All right. Thank you. I do find
4 that all the victims' rights have been protected.

5 Mr. Boone, you've heard the recitation of facts
6 from the prosecutor about what happened. Are all
7 those facts correct?

8 **MR. BOONE:** I mean, like I told you, I didn't
9 put a gun in his face, Your Honor. Like, I didn't
10 say nothing to him, Your Honor. I was a little
11 behind my co-defendant when I got up to him and
12 snatched the money and ran, Your Honor.

13 (Pause - conferring)

14 **MR. BOONE:** Yes. Yes, Your Honor.

15 **THE COURT:** The rest of it's the truth?

16 **MR. BOONE:** Yes, Your Honor.

17 **THE COURT:** You had a gun. You held him up and
18 took his money. Is that pretty much what happened?

19 **MR. BOONE:** I mean, yes. Your Honor, I just ran
20 by and snatched it, Your Honor. I didn't --

21 **THE COURT:** All right. We're not--

22 **MR. BOONE:** Yes, sir.

23 **THE COURT:** If we're going to do this again--

24 **MR. BOONE:** Yes, sir.

25 **THE COURT:** What I'm trying to do, sir, is give

1 you the opportunity to tell me what happened.

2 **MR. BOONE:** Yes, sir.

3 **THE COURT:** And I'm not going to go back into
4 the situation where you say you ran by and snatched
5 it.

6 **MR. BOONE:** Yes, sir.

7 **THE COURT:** You told me this morning that you
8 went up there quickly and you took money from his
9 presence while he was looking at you. Is that
10 correct?

11 (Pause - conferring)

12 **MR. BOONE:** Yes, Your Honor.

13 **THE COURT:** Your lawyer doesn't need to tell you
14 whether or not you say yes or no.

15 **MR. BOONE:** Yes, Your Honor.

16 **THE COURT:** Is that what happened?

17 **MR. BOONE:** Yes, Your Honor.

18 **THE COURT:** And you had a pistol?

19 **MR. BOONE:** Yes, sir.

20 **THE COURT:** And you displayed it?

21 **MR. BOONE:** It was in my hand, Your Honor.

22 **THE COURT:** Showed it to him?

23 **MR. BOONE:** I guess he seen [sic] it, Your
24 Honor. But that wasn't the intention, Your Honor.

25 **THE COURT:** All right. Then, Mr. Davis, what

1 you have told me today is what essentially all these
2 people have said. So you agree with what they've
3 said?

4 **MR. DAVIS:** Yes, sir, Your Honor.

5 **THE COURT:** All right. What is Mr. Boone's
6 record?

7 **MS. CAMPBELL:** Your Honor, he has a disorderly
8 conduct from 2007 and has a juvenile breach of peace.

9 **MR. BOONE:** Your Honor?

10 **THE COURT:** Wait just a second. Mr. Davis's
11 record?

12 **MS. GARFIELD:** Mr. Davis has no adult record.
13 He did have a weapons charge as a juvenile in 2007.

14 **THE COURT:** All right. Mr. Boone, you may have
15 discussed parole, parole eligibility, early release,
16 85 percent, whatever. You may have discussed that
17 with people. Do you understand that whatever period
18 of time I sentence you to, you have to assume that
19 you'll serve every bit of that time in prison? Do
20 you understand that?

21 **MR. BOONE:** Yes, Your Honor.

22 **THE COURT:** All right. And we've talked about
23 strikes, right?

24 **MS. SAMPSON:** Yes. We did that, Your Honor,
25 yesterday.

1 **THE COURT:** And what have you explained to him
2 about the 85 percent aspect of the sentences?

3 **MS. SAMPSON:** Yes, sir. We went over the
4 85 percent and the fact that it was a strike. We
5 have been over that a lot.

6 **THE COURT:** All right. And, Mr. Harvey?

7 **MR. HARVEY:** Yes, Your Honor. He understands
8 it's a strike. It's a non-parolable offense and he
9 understands if he gets convicted of another most
10 serious offense in the future, it's a life sentence
11 without parole.

12 **THE COURT:** All right.

13 **MR. HARVEY:** And he also understands he will be
14 on community supervision when he is released as well.

15 **THE COURT:** Which is a hybrid of parole?

16 **MR. HARVEY:** Yes, Your Honor.

17 **THE COURT:** Do you understand that, too, Mr.
18 Boone?

19 **MR. BOONE:** Yes, Your Honor.

20 **THE COURT:** All right. All right. I do find
21 that there is a substantial factual basis for both
22 Mr. Boone's pleas and Mr. Davis's pleas. Their
23 decisions to plead guilty have been made freely,
24 voluntarily, knowingly, and intelligently. They have
25 had the advice of counsel, of attorneys with whom

1 they are satisfied.

2 I'll accept all four of Mr. Boone's pleas and
3 all four of Mr. Davis's pleas. And I'll also note
4 that Mr. Boone's statement today explaining why he
5 was reluctant to divulge all the pertinent facts to
6 me yesterday was I think two-fold, that he was
7 nervous yesterday, and also he just couldn't bring
8 himself to admit something that he is apparently very
9 distressed about having done. At least that's my
10 take on it.

11 All right. I'll be glad to hear from you,
12 Ms. Sampson. And then, Mr. Harvey, I suppose you
13 want to withhold your comments?

14 **MR. HARVEY:** Your Honor, if I may. If the Court
15 would allow me at this time rather than inconvenience
16 the victims to have to come back, if they want to
17 come back, I understand that's their prerogative. I
18 just want everyone to understand from my client, Your
19 Honor, my client's family is here.

20 I just wanted the Court to know in case
21 procedurally how we schedule the other part of this
22 that my client and his family had expressed through
23 the officers and my office to the solicitor their
24 regret for this incident. They want the victims to
25 understand that they're well aware that a case like

1 this not only affects my client but affects everyone
2 involved.

3 His family is here. They collectively want to
4 apologize to everyone involved. They also
5 collectively want everyone, including the Court, to
6 know they understand with actions come consequences.
7 They want the Court to know and these victims to know
8 the fact that they hired a lawyer to represent their
9 son, their grandson and their nephew doesn't mean
10 that they're cavalier about this but understand that
11 this is very serious.

12 My involvement is to try and make sure that as
13 this case proceeds through the criminal justice
14 system that all the competing events are articulated
15 and balanced the best that they can.

16 So, Your Honor, again I appreciate the Court
17 affording me this opportunity. I know they've been
18 here several times. I have had the opportunity to
19 meet with Mr. Humphries who was gracious enough to
20 speak with me. I know they've indicated the
21 traumatic nature of this event.

22 I wanted to be able to say this now in the
23 advent that for scheduling purposes they couldn't be
24 here, I wanted my client's wishes, his apology and
25 his family's apology to be known.

1 If Your Honor would just afford Mr. Davis the
2 opportunity to just briefly at this time apologize.
3 And I know you're about to sentence Mr. Boone. It's
4 important. I'm confident Your Honor will give Mr.
5 Boone's sentence all the due deliberation it needs.
6 I don't want to be taking advantage of this
7 opportunity to be misconstrued by the Court in trying
8 to intercede on Mr. Boone's proceeding. But it's
9 really out of deference to the victims.

10 **MR. DAVIS:** I want to apologize to you all for
11 the pain and suffering which you all had to go
12 through. You all shouldn't have to went [sic]
13 through this. And I know I was wrong for
14 participating in this crime. I hope you accept my
15 heartfelt apologies. I just apologize. And I also
16 want to apologize to my family for putting them
17 through so much.

18 **MR. DAVIS'S GRANDMOTHER:** We love you, baby.
19 Grandma loves you.

20 **MR. HARVEY:** Thank you, Your Honor.

21 **THE COURT:** All right. Ms. Sampson?

22 **MS. SAMPSON:** Thank you, Your Honor. May it
23 please the Court. This is Sylvester. You've heard a
24 lot about him. At the time this incident occurred he
25 was only 17. He has turned 18 while incarcerated.

1 He has been in jail since October 30th or when this
2 incident occurred.

3 As you heard the officer say from the beginning,
4 Sylvester was the first one to admit what they had
5 done and begin the ball rolling in talking to the
6 other ones. Since I have been appointed on this
7 case; I'm appointed, not retained, Your Honor, Mr.
8 Boone, Sylvester has always wanted to plead. He has
9 always wanted to accept responsibility.

10 I have had clients in the past -- I've been
11 doing this for 11 years -- I've had clients in the
12 past that never want a trial, want me to try to come
13 up with some kind of defense for them. He has never
14 done that. He has always admitted it, he just wanted
15 to know when this day would come.

16 And the whole reason we're here pleading today
17 is because I called the solicitor and asked if we
18 could go ahead and schedule this, because he wanted
19 to get it done and he didn't want to keep dragging
20 this out on and on.

21 And I would like to hand up to the Court -- and
22 I gave to Ms. Campbell yesterday; I don't know if Ms.
23 Garfield has it or not -- letters --

24 **MS. GARFIELD:** Is it okay if I approach, Your
25 Honor?

1 **THE COURT:** Yes, ma'am.

2 **MS. SAMPSON:** -- letters from not only family
3 members, but Mr. Boone had left school and had gone
4 back to finish. He was in a full-time program where
5 he could go to school at night and he was scheduled
6 to complete that program when this occurred.

7 Even despite all this, they have sent you
8 letters talking about how wonderful of a student he
9 was, how he wasn't problematic. Since he's been
10 incarcerated, what you are just looking at is a
11 certificate he's received at a readiness program to
12 learn different skills so that whenever he is able to
13 get out, he's not just going to go out and commit
14 more crimes. He's going to better himself.

15 He understands that what he has done is
16 unforgivable. We've talked about that. He wanted to
17 contact the victims and I wouldn't let him. He
18 wanted to write letters. I just don't feel that's
19 appropriate to try to bombard them. I think this is
20 the appropriate time if you want to talk to them,
21 when they're ready to receive and speak with you, not
22 when you're ready. And so that's why he's not had
23 any contact with them, although he wanted to.

24 This has truly affected Sylvester. He's been on
25 suicide watch while at the jail, not because he's

1 afraid of going to jail necessarily, but it bothers
2 him that he participated in a crime that would bother
3 someone else in such a way that it has.

4 He does stand here with his family, Your Honor.
5 His mother and his aunt are in the middle in the red
6 jacket. His father is over here. They were here
7 yesterday all morning. They're here again today. I
8 have had constant contact with his mother. She texts
9 me probably on a weekly basis just checking in on
10 Sylvester.

11 She has tried to get him help at the jail as far
12 as mental counseling. That's what he was telling
13 you. He's been diagnosed, but because -- they've
14 been looking at him for some severe depression and
15 other things before he even went in. But because
16 he's there, he can't receive an outside counselor.
17 And so we've had some problems trying to get him
18 medicated. Hopefully they'll be able to do that at the
19 Department of Corrections.

20 I've explained to him that the least amount of
21 time you could give him is ten years. And he would
22 think that's the greatest thing since sliced bread,
23 if the best you could do is give him ten years.

24 As Ms. Garfield told you, his priors are
25 disorderly conduct and a breach of peace when he was

1 a juvenile. This is the first time he has ever been
2 in this kind of trouble, been to jail and that kind
3 of thing, and it truly has affected him.

4 He would like to address the victims at the
5 appropriate time. That's the only thing he's asked
6 me today, was: Do I get to talk to the victim? Do I
7 get to talk to the judge? He didn't like the fact
8 that yesterday they were here and he didn't get to
9 address them. He's been wanting to do that for a
10 while. So if Your Honor would allow, I would like
11 for him to speak at this point.

12 **THE COURT:** All right. Make sure you keep your
13 voice up. Mr. Boone, I'll be glad to hear from you.

14 **MR. BOONE:** Yes, sir. First, Your Honor, I'd
15 like to apologize for everything, Your Honor. Your
16 Honor, I'm not a violent person, you know. I started
17 to go to school. I went to school every day, you
18 know. About the therapies and all that, you know,
19 family problems, all the little stuff that just
20 builds up in a person and you--

21 **THE COURT:** You need to speak up loudly into the
22 microphone so the folks, Ms. Monroe and Mr. Mitchell,
23 can hear you. Okay?

24 **MR. BOONE:** Yes, sir. I'd like to apologize to
25 the victims. You know, everything happened so fast

1 and I -- I don't know how to explain myself, you
2 know. It's in the -- that's not something somebody
3 just gives you, but I pray for you all. I pray for
4 you all in jail every night that you all forgive me
5 and just see through my eyes that I've got a good
6 heart, you know, 'cause nobody wanted to lose their
7 child to no prison system. I lost two brothers to
8 prison, you know. One of them I never knew. And it
9 hurt my mama. If I -- excuse me, Your Honor.

10 **THE COURT:** That's all right.

11 **MR. BOONE:** I just apologize to you all, you
12 know. And I never meant to, you know, try and harm
13 nobody or give nobody problems. It's just that
14 people tell you when you're young you don't go
15 through things. But I tell you that's a lie because
16 that's when you go through things the most. I was
17 going through a lot. And I think I was trying to get
18 money to help my problems, get my brother a lawyer,
19 but now I need a lawyer for myself. And I would just
20 appreciate you all forgiving me.

21 Your Honor, I would like to apologize to you,
22 too, Your Honor, and just -- I just pray.
23 Understand? I pray for the judge every night, the
24 solicitor, and my victims every night. And I pray
25 that you just -- just don't throw my life away in a

1 jail, Your Honor, because I'm not a violent person,
2 you know.

3 I always try to do right by my parents, you
4 know, do right by school and everything, Your Honor.
5 Just -- I just -- if you going through a lot and I
6 feel it's a heavy load on my heart and I ain't know
7 [sic] how to deal with it. And I made the wrong
8 decision and I made the wrong decision with good
9 intentions, tried to do something good but doing the
10 wrong thing and it cost me, you know, it cost me some
11 time, you know.

12 And I just want to apologize to anybody I caused
13 problems to. I just don't know how to say I'm sorry
14 because that's not the problem. The trouble I caused
15 you two, I'm sorry.

16 **THE COURT:** Thank you.

17 **MS. SAMPSON:** If at all possible, his mother
18 would like to address the Court.

19 **THE COURT:** Yes, ma'am. Your name, please? She
20 can come to the edge of the rail right there.

21 **MS. SAMPSON:** And his father as well, very
22 briefly. Why don't you go first, Mr. Boone, since
23 you're closer.

24 **THE COURT:** Your name, sir?

25 **MR. HALL:** Hi. I'm his father.

1 **THE COURT:** Your name?

2 **MR. HALL:** Kwami Hall.

3 **MS. SAMPSON:** Kwami Hall. I'm sorry.

4 K-W-A-M-I.

5 **THE COURT:** Yes, sir?

6 **MR. HALL:** Yes. My son -- I'm an electrician,
7 and he worked for me during the summer. And some of
8 the old guys really say: Hey, get him back next
9 summer. I tried to talk to him. And I know these
10 people done went through a whole lot because I can't
11 imagine getting shot at. But I know his heart. And
12 he worked with me.

13 I wanted to be around. Me and his mother, you
14 know, are not together. She is married. But we've
15 got a son we try to care about. And I keep him with
16 me any chance I can. And he's a good worker. I
17 talked to my bossman about summer coming, getting him
18 on with me, and something like this happened.

19 I heard it from a friend. You've got to look at
20 the news and see your son. It's -- you know, you
21 think kids gone crazy these days. But it's the
22 guidance sometimes that don't give him the direction
23 that he need [sic] to go in. I'm just as guilty as
24 him because I need to be around him all the time, as
25 much as I can.

1 I try to work and take care of my family I'm
2 with and let him know I love him. And he knows that.
3 I don't think I have to tell him. But this is real
4 bad here. And the only thing I can say is I'm sorry
5 to the family. I'm really, truly sorry. And, you
6 know, it's out of my control.

7 **THE COURT:** Thank you, sir. Your name, please,
8 ma'am?

9 **MRS. BOONE:** Sandra Boone.

10 **THE COURT:** Your last name is Boone?

11 **MRS. BOONE:** Yes. I am his mother. At first I
12 want to address to the victims, I am truly sorry for
13 what my son put you all through. My son has been in
14 special ed classes since day one. So he is slow
15 basically. He was -- tries to fit in and mentally he
16 really does not fit in. He was raised in church and
17 he knows I am against breaking the law.

18 All I ask, Your Honor, to please find it in your
19 heart. I'm a God-fearing woman and my son has been
20 in the church since he's been born. If you are to
21 find any compassion, just to forgive him. I know he
22 made a mistake and he made a drastic one, one he
23 should not.

24 Sylvester was supposed to be going to get a job
25 that morning, not detour the wrong way. And I truly

1 believe if his stepfather had taken him like I
2 requested, he would have went for that job instead of
3 letting him ride with his friends to get that job.

4 All I ask, Your Honor, is please have some mercy
5 on my baby. I have his little brother here and
6 they've both been in counseling since 2007. My son
7 here, I don't know how much he can take. He has lost
8 one brother. And I don't -- yes, he deserves to be
9 sentenced something. I'm not denying that, because
10 he committed the crime. And I'm one: You do the
11 crime; you do the time. I just ask that you don't
12 give him the maximum. If you can find it in your
13 heart, just give him just as little time as you can
14 give him. Thank you.

15 **THE COURT:** Thank you, Mrs. Boone. All right.
16 Anything else, Ms. Sampson?

17 **MS. SAMPSON:** No, sir.

18 **THE COURT:** Does the State want to be heard on
19 the sentencing?

20 **MS. GARFIELD:** Your Honor, we leave it in your
21 discretion.

22 **THE COURT:** All right. Give me five minutes. I
23 want to go back in my office and read these letters.
24 Could I see one of the security folks back there or
25 the bailiff back there?

1 (Whereupon, a break is taken)

2 **THE COURT:** Come on back up, sir. All right.

3 The record will show at this point when I pronounced
4 the sentence a moment ago we did not have a court
5 reporter in the room. So I'm going to go through
6 this again and make sure the record is clear.

7 I'm not going to repeat the comments that I made
8 earlier except to say that I do view these situations
9 as drastic. And with regard to the armed robbery and
10 kidnapping, those two sentences are concurrent with
11 one another, 20 years in the Department of
12 Corrections. Of course Mr. Boone will get credit for
13 the time he has served.

14 The sentences on the assaults with intent to
15 kill are seven years concurrent with one another but
16 consecutive to the armed robbery and kidnapping. I
17 am -- the reason I am making those consecutive is I
18 see in my mind those two sets of events as separate.

19 All right. The kidnapping will not carry any
20 sex offender registry ramifications. I put on the
21 sentencing sheet that I am recommending mental health
22 counseling at SCDC. All right. Thank you.

23 (Whereupon, the proceedings are concluded)

24

25

CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Jenny H. Williams, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the guilt pleas of the captioned cases, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 27th and 28th days of May, 2010.

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

February 1, 2011

Jenny H. Williams

Jenny H. Williams, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA

County of RICHLANDSylvester A. Boone

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

RICHLAND COUNTY
FILED
2011 APR 15 PM 3:35
JENNIFER W. HOBBS
C.P. & G.S.

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 LEE Correctional Institution
990 WISACKY HWY, Bishopville S.C. 29010
2. Name and location of Court which imposed sentence Richland County
Judicial Center, 1701 Main Street, Columbia, S.C. 29201
3. Name(s) of co-defendant(s) (if any) Dwight Davis Deaton
Griffen
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 10-6540-10499 Kidnapping
 - (b) 10-6540-10500 Armed Robbery

DO NOT WRITE IN THESE SPACES
RECEIVED

ALTONA GENERAL OFFICE

Pr. & CA
Case # 2d02762
Box # 4-K

ATTORNEY GENERAL'S OFFICE

RECEIVED

4/19/11

ADMINISTRATIVE INSTRUCTIONS

____ FILE ____ OPEN ____ END

____ HAVE ____ COPIES MADE

____ ROUTE TO ____

____ ORDER: ____ TRANSCRIPT

____ PEN RECORDS ____ CLERK RECORDS

____ OTHER: ____

2011 APR 22

(c)* 10-6540-10501 AWIK, 10-6540-10502 AWIK

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

(a) MAY 27 2010 20 years Kidnapping

(b) MAY 27 2010 20 years Armed Robbery

(c) MAY 27 2010 7 years AWIK, MAY 27 2010 7 years AWIK

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. APPEAL WAS NOT FINALIZED BY ATTORNEY

ii. _____

iii. _____

(c) the date of each such result:

i. NONE

ii. _____

iii. _____

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

results:

i. N/A

ii. _____

iii. _____

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

(a) N/A

(b) _____

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) INEFFECTIVE ASSISTANCE OF COUNSEL
- (c) INEFFECTIVE ASSISTANCE OF COUNSEL
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel's Failure to Solidify Plea Agreement
- (b) Counsel's Failure to Perfect Direct Appeal - Attached
- (c) Counsel's Failure to request a Competency Hearing
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? Court of Appeals
- (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. Direct Appeal
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. SOUTH CAROLINA COURT OF APPEALS
- ii. _____
- iii. _____
- iv. _____

(c) the disposition thereof:

- i. APPEAL WAS NOT PERFECTED
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. NONE
- ii. _____
- iii. _____
- iv. _____

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

- i. N/A
- 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) NO
(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? _____
(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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. APRIL W. SAMPSON, Esquire
201 West Main Street, Lexington S.C. 29072

ii. _____

iii. _____

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

i. PLEA Agreement Hearing

ii. _____

iii. _____

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

Applicant request that his Sentence be
Corrected to Conform With the
Original Plea agreement or Reverse Conviction.

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

NO

STATE OF SOUTH CAROLINA)

County of

RICHLAND)

VERIFICATION

I, Sylvester A. Boone, 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.

Sylvester Boone

SWORN to and subscribed before me this

day of

April

13

2011

J. Bruce Dunn

(L.S.)

Notary Public

My Commission Expires:

5-16-11

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

I, Sylvester A. Boone, 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.

Sylvester Boone
Applicant

SWORN or affirmed to and subscribed before me this
13 day of April, 2011.
[Signature]
Notary Public

My Commission Expires: 5-16-11

RICHLAND COUNTY
 FILED
 2011 APR 15 PM 3:35
 JEANETTE W. MCBRIDE
 C.C.P. & G.S.

Revised 3/2003

LAW OFFICES OF

RICHARD J. BREIBART, LLC

Richard J. Breitbart	James B. O'Connor
Maura Dawson	Bryn C. Sarvis
April Sampson	Jesse Near
Nancy T. Jordan	Alyssa Haladay
Rebecca West	

201 West Main Street Lexington SC 29072
PO Box 310 Lexington SC 29071

main	803 359.7996
toll free	1.888 359.7996
fax	803 951.4619
web	breibartlaw.com palmettolegal.com

July 22, 2010

LEGAL MAIL
PERSONAL & CONFIDENTIAL
TO BE OPENED BY ADDRESSEE
Mr. Sylvester A. Boone, SCDC ID# 00341082
Kirkland Correctional Institution
4344 Broad River Rd.
Columbia, SC 29210

RE: The State of South Carolina v. Sylvester A. Boone
2010163767

Dear Sylvester:

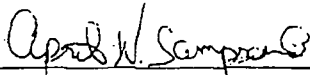
We received a letter from the South Carolina Court of Appeals today indicating that you have twenty (20) days from the date of this letter to inform the Court in writing of any arguable basis that there are issues preserved for appeal. I have already submitted to the court any reasons I had for appeal, but the court is now requesting you submit any issues you may have. Please send your letter to:

South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

Additionally, I would ask that you forward a copy of your letter to our office so that we may place in your file.

Should you have any questions, please do not hesitate to call.

Sincerely yours,


April W. Sampson, Esquire

AWS:ddm

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

**BOONE Sylvester A -
00341082,**

2011CP4002556

Applicant,

V.

RETURN

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed March 15, 2011, would respectfully show this Court:¹

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was represented by April W. Sampson, Esquire. On May 28, 2010, following a guilty plea, the Applicant was sentenced by The Honorable George C. James, Jr., as follows:

<u>Name</u>	Boone, Sylvester Anterrio	<u>Offender Type</u>	Adult-straight Sentence
<u>SCDC ID</u>	00341082	<u>Offense</u>	Kidnapping
<u>SID</u>	SC01946484	<u>Sentence Start Date</u>	10/30/2009
<u>DOB</u>	04/14/1992	<u>Sentence Length</u>	27 YRS, 0 MOS, 0 DYS

I

<http://www4.rcgov.us/publicindex/PICaseDetails.aspx?County=40+&Casenum=2011CP4002556&CourtType=G&CaseType=Civil&CourtAgency=40002>

The Applicant had been indicted and/or convicted of the following: Armed Robbery, Kidnapping - (2010-GS-40-10500;10499).²

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the trial transcript, and the Applicant's applicable direct appeal files.³ The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

Direct Appeal

The Applicant appealed his conviction and/or sentence. The appeal was unsuccessful and the Remittitur was dated September 28, 2010.

The application for post conviction relief (PCR) was filed March 15, 2011.

III.

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

² <https://sword.doc.state.sc.us/scdc-public/inmateDetails.do?id=+00341082>

³ The Respondent will utilize the Record on Appeal if the direct appeal was an Anders appeal.

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

- (a) INEFFECTIVE ASSISTANCE OF COUNSEL
- (b) INEFFECTIVE ASSISTANCE OF COUNSEL
- (c) INEFFECTIVE ASSISTANCE OF COUNSEL

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

- (a) Counsel's Failure to Solidify Plea Agreement
- (b) Counsel's Failure to Perfect Direct Appeal - Amuck
- (c) Counsel's Failure to request a Competency Hearing

IV.

For the purposes of this Return, the Respondent interprets each of the Applicant's allegations to be claims that he received ineffective assistance of counsel. The Respondent contends that the Applicant's trial counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases. See Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). Even with respect to guilty plea counsel, the applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985)

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance

of counsel probably raises questions of fact that cannot be conclusively refuted by the record. **The 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.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held. The Respondent will coordinate with the Applicant's attorney who is, according to the Respondent's file, Eleanor Duffy Cleary, Esquire regarding when the hearing should be set.⁴

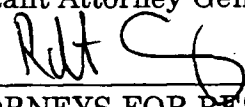
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney
General

ROBERT D. CORNEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737
rcorney@scag.gov

January 31, 2012

⁴ The current PCR Roster for the 5th Circuit is available at <http://www.scag.gov/criminal-litigation/postconvictionrelief>
BOONE Sylvester A - State's Return - (2011CP4002556)

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

BOONE Sylvester A -
00341082,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

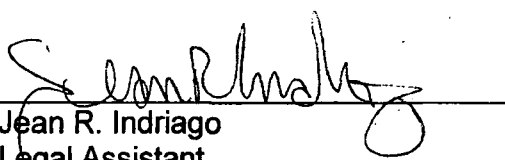
2011CP4002556

CERTIFICATE OF SERVICE

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

Eleanor Duffy Cleary, 1720 Main Street, Suite 303 , Columbia, SC 29201

DATED January 31, 2012.


Jean R. Indriago
Legal Assistant

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	FIFTH JUDICIAL CIRCUIT
COUNTY OF RICHLAND	)	CASE NO. 2011-CP-40-2556

SYLVESTER A. BOONE,	)	
	)	
Plaintiff,	)	

-vs-

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	

August 13, 2012
Columbia, South Carolina

B E F O R E:

THE HONORABLE R. KNOX MCMAHON, Judge

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

ELEANOR DUFFY CLEARY, Esquire
Attorney for the Plaintiff

ROB D. CORNEY, Esquire
Office of the Attorney General
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1	School Records		17
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1 AUGUST 13, 2012

2 (WHEREAS this matter was scheduled for a PCR hearing, the
3 applicant/plaintiff appeared along with his counsel of
4 record. The hearing began at 9:52 a.m.)

5 MR. CORNEY: We're going to go forward with Sylvester
6 Boone at this time, Your Honor.

7 THE COURT: Who now?

8 MR. CORNEY: Sylvester Boone. May it please the Court,
9 Your Honor.

10 THE COURT: Yes, sir.

11 MR. CORNEY: Your Honor, this is the PCR application of
12 Sylvester Boone. It's Docket Number 2011-CP-40-2556. Mr.
13 Boone was true bill indicted at the February 2010 term of
14 Richland County Grand Jury for kidnapping, armed robbery, and
15 two counts of assault with intent to kill.

16 Mr. Boone appeared May 27th, 2010, before Judge James for
17 a plea hearing. Due to answers given by the three co-
18 defendants at the plea and Mr. -- or Mr. Boone and his two co-
19 defendants having a plea, Judge James stood aside the
20 defendants at that time, saying he couldn't accept the plea to
21 the charges. The next morning, Mr. Boone came back on May
22 28th, 2010, before Judge James and went through with his guilty
23 plea as indicted without negotiations or recommendations from
24 the State.

25 Mr. Boone was sentenced to 20 years imprisonment for each

1 for kidnapping and armed robbery to run concurrent and 7 years
2 imprisonment for each assault with intent to kill to run
3 concurrently to each other, but consecutively to the 20 year
4 term imposed for an aggregate 27 year term.

5 A notice of appeal was filed, but dismissed by the Court
6 of Appeals by order filed August 31st, 2010. The remittitur
7 was sent down September 27th, 2010, and the application was
8 filed March 15th, 2011. He is represented today by Ms. Eleanor
9 Duffy Cleary.

10 THE COURT: All right. Tell me -- tell me, Solicitor --
11 excuse me. Tell me, Mr. Attorney General ---

12 MR. CORNEY: Yes, sir, Judge.

13 THE COURT: --- how much is the maximum sentence on the
14 kidnapping?

15 MR. CORNEY: I believe his maximum on the kidnapping was
16 -- was 30, Your Honor.

17 THE COURT: And the armed robbery?

18 MR. CORNEY: Armed robbery is at 30 also I believe.

19 THE COURT: Assault -- assault with intent to kill?

20 MR. CORNEY: I believe that's 20, Your Honor, if I'm
21 correct on that.

22 THE COURT: So he had two counts of that?

23 MR. CORNEY: Yes, Your Honor.

24 THE COURT: Thank you.

25 MR. CORNEY: And I'll double-check. I'm pretty sure

1 those are the right sentences and I'm sure Your Honor knows
2 this also, but I might be -- I'll look it up later.

3 THE COURT: All right. Ms. Cleary?

4 MS. CLEARY: May it please the Court.

5 THE COURT: Yes, ma'am.

6 MS. CLEARY: First of all, I'd like to ask if we could
7 amend his application orally to withdraw the direct appeal
8 issue. He had raised that, that Ms. Sampson was ineffective
9 for failing to perfect that appeal, but we'd like to withdraw
10 that issue and we'd like to proceed on an allegation that plea
11 counsel was ineffective because she failed to submit
12 sufficient evidence in mitigation and he was prejudiced by
13 this ineffectiveness because he would likely have received a
14 lower sentence if she had introduced this evidence in
15 mitigation. So it's our position that the remedy would be
16 either a new trial or a new sentencing hearing depending on
17 what the Court would deem appropriate.

18 THE COURT: And of course, Mr. -- Mr. Boone realizes a
19 new sentencing hearing would expose him to more time than he
20 already has?

21 MS. CLEARY: We've discussed that, Your Honor.

22 THE COURT: He -- he understands that fully and
23 completely?

24 PLAINTIFF: Yes, sir.

25 MS. CLEARY: Yes, he does.

1 THE COURT: And he still wants to go forward?

2 MS. CLEARY: Yes, sir.

3 THE COURT: All right. Do you have any objections, Mr.
4 Attorney General, to amending the application to withdraw the
5 direct appeal issue?

6 MR. CORNEY: I don't, Your Honor. I mean I asked that
7 all -- all amendments to the application be made at least one
8 week prior to the term, but I'm prepared to go forward with
9 the case. It's a plea and I mean I know it fully so I'm ready
10 to go forward. I have no objection, Your Honor.

11 THE COURT: All right. I'll grant that, Ms. Cleary, and
12 you may proceed.

13 MS. CLEARY: Thank you. The applicant would like to call
14 Sandra Boone.

15 THE COURT: All right. Ms. Boone, if you'd come around
16 and be sworn, please.

17 BAILIFF: Do you swear them in, Your Honor?

18 THE COURT: Excuse me?

19 BAILIFF: Can you swear her in?

20 THE COURT: They don't have a clerk ---

21 BAILIFF: We don't have ---

22 THE COURT: --- in Richland County?

23 BAILIFF: Not in here we don't.

24 THE COURT: Okay. Ever?

25 BAILIFF: If it is, it's few and far between, Your Honor.

DIRECT EXAMINATION OF SANDRA BOONE BY MS. CLEARY

1 You might check with Mr. Truett on that.

2 THE COURT: I will. Thank you.

3 BAILIFF: I appreciate it.

4 THE COURT: Ma'am, place your left hand on the Bible and
5 raise your right.

6 BAILIFF: Face the judge for me.

7 THE COURT: Do you solemnly swear the testimony you give
8 before the Court today will be the truth, the whole truth, and
9 nothing but the truth, so help you God?

10 WITNESS: I do.

11 THE COURT: Thank you, thank you very much. If you will,
12 please be seated. Once you are seated comfortably, please
13 tell us your full name, spelling your last.

14 WITNESS: My name is Sandra Denise Boone, B-O-O-N-E.

15 THE COURT: All right and make sure you speak up where I
16 can hear you. Okay?

17 WITNESS: Yes, sir.

18 THE COURT: All right. Thank you. Ms. Cleary?

19 SANDRA BOONE, being first duly sworn,
20 testifies as follows:

21 DIRECT EXAMINATION

22 BY MS. CLEARY:

23 Q: Ms. Boone, what is your relationship to Sylvester Boone?

24 A: I'm his mother.

25 Q: Speak up very loudly.

DIRECT EXAMINATION OF SANDRA BOONE BY MS. CLEARY

- 1 A: I'm his mother.
- 2 Q: Okay and did you have contact with his appointed counsel,
3 April Sampson, before he pled guilty?
- 4 A: Yes.
- 5 Q: Okay and how many times did you talk to her?
- 6 A: Numerous times. I can't really remember exactly how many
7 times I spoke to her.
- 8 Q: Okay and at some point Sylvester agreed to plead guilty
9 to the charges; is that right?
- 10 A: Yes.
- 11 Q: Okay and he had admitted his involvement from the start?
- 12 A: Yes.
- 13 Q: And he told the police that from the start?
- 14 A: Yes.
- 15 Q: And how many other young men were involved?
- 16 A: Two.
- 17 Q: Okay and how old -- do you know how old they were at the
18 time?
- 19 A: They were 19. Both of them were 19 I do believe.
- 20 Q: Okay.
- 21 A: And Sylvester was 17.
- 22 Q: Okay and Sylvester was 17?
- 23 A: Yes.
- 24 Q: Okay and was he in high school?
- 25 A: Yes.

DIRECT EXAMINATION OF SANDRA BOONE BY MS. CLEARY

1 THE COURT: He was 17, Ms. Cleary?

2 MS. CLEARY: Yes, sir.

3 THE COURT: All right, thank you.

4 Q: And was he in high school?

5 A: He was in a night school.

6 Q: Okay.

7 A: For high school students.

8 Q: Okay, but it's a regular high school?

9 A: Yes.

10 Q: Part of the Richland District One?

11 A: Yes.

12 Q: And who was the prosecutor on the case?

13 A: Luck. I think it was Ms. Luck.

14 Q: Luck Campbell?

15 A: Oh, Luck Campbell, yes.

16 Q: Okay and when was Sylvester supposed to plead guilty?

17 A: The original court date ---

18 Q: Yeah, the original.

19 A: --- was August.

20 Q: In August?

21 A: It was supposed to have been August.

22 Q: 2010?

23 A: Yes.

24 Q: Okay and do you know why he pled sooner?

25 A: His attorney had informed that she had got a -- spoke to

DIRECT EXAMINATION OF SANDRA BOONE BY MS. CLEARY

1 I guess Judge James to come in and do the hearing, the trial
2 for him, and to my knowledge it was also because she had a
3 bigger case that she was working on at the time.

4 Q: All right and so Judge James was going to do the plea and
5 he started to take it on May 27th, 2010; right?

6 A: Yes.

7 Q: And how many defendants were pleading guilty then?

8 A: All three.

9 Q: All three? Okay and it was -- the plea was carried over
10 to May 28th, 2010?

11 A: Yes.

12 Q: And do you remember when the judge asked the defendants
13 who had a gun during the robbery?

14 A: Yes.

15 Q: And which defendant did he ask first?

16 A: Demond Griffin.

17 Q: Okay. He asked Mr. Griffin first?

18 A: Yes.

19 Q: Okay and what did Mr. Griffin say?

20 A: He ---

21 Q: Do you remember?

22 A: He stated that he did not have a gun.

23 Q: Okay and did he say anybody had a gun?

24 A: I can't remember.

25 Q: Okay, but he said he didn't have a gun?

DIRECT EXAMINATION OF SANDRA BOONE BY MS. CLEARY

1 A: Correct.

2 Q: Okay and so then next Judge James asked Sylvester; right?

3 A: Yes.

4 Q: And what did he ask Sylvester?

5 A: He asked Sylvester did he have a gun and he said no,
6 nobody had a gun.

7 Q: Okay and then it went on for a while where the judge
8 tried to figure out who had the gun?

9 A: Yes.

10 Q: Do you remember that? And the victim then said that both
11 Sylvester and Demond had a gun; is that correct?

12 A: Yes.

13 Q: Okay. Do you remember that -- do you remember when --
14 when neither Mr. Griffin nor Sylvester would admit to having a
15 gun, what did the judge do?

16 A: He -- he was -- I remember to my recollection it was like
17 why are they here on those charges if nobody had a gun.

18 Q: So he refused to take the plea?

19 A: Right.

20 MR. CORNEY: Your Honor?

21 Q: The first day?

22 A: Yes.

23 THE COURT: Yes, sir.

24 MR. CORNEY: Your Honor, the record is going to speak for
25 itself in regard to what happened at that plea hearing. I

DIRECT EXAMINATION OF SANDRA BOONE BY MS. CLEARY

1 don't know if this is really relevant question and reply to go
2 down when the record is going to speak for itself.

3 Q: Okay. So do you -- do you remember was the judge angry?

4 A: No.

5 Q: And you talked to Ms. Sampson after the plea fell
6 through?

7 A: Yes.

8 Q: And what did she say?

9 A: She said she was going -- they were going to come back
10 in. First, it was -- we didn't think he was going to redo it,
11 but then she said the judge agreed to come back the next day
12 because I explained that Sylvester really didn't understand.
13 He was following what the first victim had said. The first --
14 I'm sorry, not victim, but the first ---

15 Q: He was following Mr. Griffin?

16 A: Yes.

17 Q: And what -- and you told April that? I mean Ms. Sampson
18 that?

19 A: Yes.

20 Q: Okay and had you explained to -- to Ms. Sampson that
21 Sylvester had always been a follower?

22 A: Yes.

23 Q: Okay and then -- all right. So then the next day
24 Sylvester told the judge that he had a gun and and the judge
25 accepted the plea; right?

DIRECT EXAMINATION OF SANDRA BOONE BY MS. CLEARY

- 1 A: Yes.
- 2 Q: All right. Now, did you understand that this was a
3 straight up plea?
- 4 A: To my ---
- 5 Q: Do you know -- do you know what a straight up plea is?
- 6 A: No.
- 7 Q: Okay. Did you understand that he could get from 10 to
8 100 years possibly?
- 9 A: No. To my understanding, by him signing and going to the
10 plea, he would get 10 years.
- 11 Q: Who told you that?
- 12 A: That's what the lawyer had said.
- 13 Q: Ms. Sampson?
- 14 A: That -- with the prosecutors, yeah. It was for 10 years.
- 15 Q: Okay and -- but did you understand that his sentence was
16 going to depend on how the plea went?
- 17 A: Yes.
- 18 Q: And it turned out only Sylvester was pled that day?
- 19 A: Yes.
- 20 Q: Is that right?
- 21 A: Yes.
- 22 Q: Okay and who spoke other than the lawyers and the
23 defendants? Who spoke on -- on Sylvester's behalf?
- 24 A: Just me and his father.
- 25 Q: Okay.

DIRECT EXAMINATION OF SANDRA BOONE BY MS. CLEARY

1 A: Yeah.

2 Q: And did -- did Ms. Sampson tell the judge that Sylvester
3 only had a disorderly conduct and a breach of peace
4 conviction?

5 A: Not to my knowledge.

6 Q: All right, but did the State -- did the prosecutor tell
7 the judge his record?

8 A: I don't even -- I didn't even know any of that was in --
9 in it that day. I just learned that myself recently.

10 Q: Okay. So when you addressed the Court, what did you tell
11 the judge?

12 A: I explained to the judge that Sylvester had always been
13 -- he was an IEP student since the beginning of school and
14 that he really -- he was slow in school and he really to his
15 knowledge did not understand. When he was asked a question
16 following Demond, in his mind he was thinking, well, why would
17 I say I had a gun and Demond didn't. I'll be the one taking
18 the blame for everything.

19 Q: All right. Did -- and you said IEP. He was in Special
20 Ed classes?

21 A: Yes, ma'am.

22 Q: Okay and did Ms. Sampson ask you about whether he had
23 been in Special Ed classes?

24 A: Not prior to.

25 Q: Okay and did she ask you if he was a slow learner?

DIRECT EXAMINATION OF SANDRA BOONE BY MS. CLEARY

1 A: No.

2 Q: Did she obtain the education records ---

3 A: No.

4 Q: --- that show that? And so the only time the judge
5 learned that he was ---

6 (Whereupon, a telephone rings in the courtroom and there
7 is a pause in the proceedings.)

8 Q: I apologize. The only time the judge learned that he was
9 Special Ed then was from you?

10 A: Yes, ma'am.

11 Q: His mother?

12 A: Yes, ma'am.

13 Q: Okay. If Ms. Sampson had told you that Sylvester's
14 tendency to be a slow learner and a follower was important for
15 the judge to know, would you have gotten those school records?

16 A: Yes, ma'am.

17 Q: All right.

18 MS. CLEARY: Your Honor, may I approach the witness?

19 THE COURT: Yes, ma'am.

20 Q: I'm going to show you what's been pre-marked as
21 Plaintiff's Exhibit 1 for identification. Can you identify
22 that?

23 A: Yes. Yes, ma'am, those are his records from the school
24 county.

25 Q: All right.

DIRECT EXAMINATION OF SANDRA BOONE BY MS. CLEARY

1 MS. CLEARY: We'd like to move to admit Plaintiff's
2 Exhibit 1, the school records.

3 THE COURT: Any objection?

4 MR. CORNEY: No objection from the State, Your Honor.

5 THE COURT: Plaintiff's 1, the school records of the
6 applicant are admitted.

7 Q: I'm sorry. I'd ask you to look at the part I have marked
8 there. Do you see the sticky note?

9 A: Yes, ma'am.

10 Q: Do you see at the bottom of the page?

11 A: Yes, ma'am.

12 Q: Where -- and this is where the records explain why he was
13 dismissed from Special Education placement. Do you recognize
14 that?

15 A: Yes.

16 Q: Can you read what it says at the bottom of the page, the
17 determination of the experts?

18 A: Sylvester is able to orally recognize words at grade 4
19 level.

20 Q: Go down further.

21 A: Describe how the student disability affects involvement
22 and progress in the general curriculum. Sylvester can
23 participate in general curriculum at a rate lower than his
24 peers.

25 Q: Okay. So even though they took him out of Special Ed,

DIRECT EXAMINATION OF SANDRA BOONE BY MS. CLEARY

1 they determined that he was going to operate at a rate lower
2 than his peers?

3 A: Yes.

4 Q: Was that your understanding?

5 A: Yes, ma'am.

6 Q: And you participated in -- in the meetings with the
7 school?

8 A: Yes, ma'am.

9 Q: And you were part of the plan to decide what to do with
10 him?

11 A: Yes, ma'am.

12 Q: Okay. Now, let me -- let me ask you did you tell Ms.
13 Sampson that Sylvester was an active church member?

14 A: Yes, ma'am.

15 Q: Okay and did she ask you to bring your minister to vouch
16 for that?

17 A: No, ma'am.

18 Q: How long had he -- had he been going to church?

19 A: He's been -- that's -- his minister has been his minister
20 since he's been three years old.

21 Q: And did he -- before he was incarcerated, did he actively
22 participate in the church?

23 A: Yes, ma'am. He's been on the church choir since he's
24 been three.

25 Q: Okay and so you told the judge that he was a man of

DIRECT EXAMINATION OF SANDRA BOONE BY MS. CLEARY

1 faith, but was there any other source of that information
2 given to the judge?

3 A: No, ma'am.

4 Q: Okay and what -- did she submit any letter from a
5 minister ---

6 A: No, ma'am.

7 Q: --- that you know of to the judge? Okay and who did Ms.
8 Sampson tell you to bring to the plea?

9 A: Myself, his father and his family members.

10 Q: Okay. So she didn't tell you to bring anyone other than
11 family that could vouch for him?

12 A: No, ma'am.

13 Q: Okay.

14 MS. CLEARY: Your Honor, may I approach the witness?

15 THE COURT: Yes, ma'am.

16 Q: All right. Let me show you Plaintiff's Exhibit 2. Do
17 you recognize that?

18 A: Yes, ma'am.

19 Q: All right.

20 MS. CLEARY: This is an affidavit that we would like to
21 introduce pursuant to Section 17-27-80 and *Simpson v. Moore*
22 that allows the PCR court to receive evidence by affidavit.
23 It's a notarized affidavit.

24 THE COURT: Any objections?

25 MR. CORNEY: Your Honor, I am going to object to it on

DIRECT EXAMINATION OF SANDRA BOONE BY MS. CLEARY

1 the grounds that I don't know if the person that wrote that is
2 in the courtroom today for me to have an opportunity to cross
3 examine them. I don't have an opportunity to cross examine
4 this -- the person that wrote this affidavit so I would object
5 to its introduction, especially for the truth of the matter
6 asserted in it, Your Honor.

7 THE COURT: Did you say 17 ---

8 MS. CLEARY: 27-80.

9 THE COURT: --- 27-80, Ms. Cleary?

10 MS. CLEARY: Yes.

11 THE COURT: Let me look at that real quick. May I see
12 it, Ms. Cleary? The document?

13 MS. CLEARY: Yes, sir.

14 (Whereupon, there is a brief pause in the proceedings.)

15 THE COURT: I'm not going to allow Plaintiff's 2 into
16 evidence because it goes to -- it's dated May 23rd of 2012. It
17 doesn't go back to what may have been available to Judge James
18 at the time of the plea, which was May 27th and 28th of 2010.

19 MS. CLEARY: Your Honor, alternatively, can we submit it
20 to meet our burden to show what could have been given to the
21 judge if -- if Ms. Sampson had been effective and not for the
22 truth of the matter asserted, but to show what could have been
23 brought before the judge?

24 THE COURT: Well, my -- here's my thinking that it
25 couldn't have been given to the judge May of 2010 if it didn't

DIRECT EXAMINATION OF SANDRA BOONE BY MS. CLEARY

1 exist until May of 2012. He -- he may have said the same
2 thing. I don't know, but there's nothing contemporaneous that
3 compared -- you know, that -- in other words, he's saying,
4 well, release him from incarceration. That's what he's saying
5 in his letter. He's not saying -- he's not saying -- that's
6 not being critical of the pastor. I don't -- I don't mean it
7 like that at all, but he's not saying give him a minimum
8 sentence or a reduced sentence because he's -- he has these
9 characteristics.

10 That -- that's not -- the issue I have is it's remote by
11 two years from the -- from the time of the plea and I would
12 agree with the attorney general that they don't -- they don't
13 have the pastor here. I certainly understand your position
14 about not for the truth of the matter asserted. Of course,
15 you've asked Ms. Boone about him going to church and you can
16 certainly ask him about, well, could you have had Reverend -
17 what was the guy's -- Reverend Wilson present, but you can
18 mark it for identification purposes only. Plaintiff's 2 for
19 ID.

20 MS. CLEARY: All right. Thank you, Your Honor.

21 THE COURT: Yes, ma'am.

22 MS. CLEARY: I'm sorry. I beg the Court's indulgence.

23 THE COURT: Yes, ma'am.

24 MS. CLEARY: I have two more affidavits and I'm just kind
25 of looking at them.

DIRECT EXAMINATION OF SANDRA BOONE BY MS. CLEARY

1 THE COURT: Okay, all right. That's fine.

2 MS. CLEARY: May we approach?

3 THE COURT: Yes, ma'am.

4 (Whereupon, a bench conference is held off the record.)

5 Q: Ms. Boone, did -- did Ms. Sampson tell you to bring
6 Reverend Wilson to the plea?

7 A: No, ma'am.

8 Q: Okay and you could have asked him to come?

9 A: I'm sorry?

10 Q: You could have asked him to come to the plea?

11 A: Yes, ma'am.

12 Q: All right. Let me ask you to -- if you can identify --
13 oh, I'm sorry, I need to mark it -- if you can identify these
14 two affidavits that have been pre-marked as Plaintiff's
15 Exhibit 3 and 4. Do you recognize those?

16 A: Yes, ma'am.

17 Q: Okay and the first one, who is that from?

18 A: Mr. Lusk, a school -- former school teacher of his.

19 Q: Okay and he's not related to Sylvester?

20 A: No, ma'am.

21 Q: Okay, but he had taught Sylvester?

22 A: Yes, ma'am.

23 Q: And was he -- did Ms. Sampson ask you to bring anyone
24 like a former teacher to the plea?

25 A: No, ma'am.

DIRECT EXAMINATION OF SANDRA BOONE BY MS. CLEARY

1 Q: Okay and was Mr. Lusk willing to come and talk on
2 Sylvester's behalf at the plea?

3 A: Yes, ma'am.

4 Q: Okay and if you could just look at the third paragraph
5 and see what he says, if you could just read that third
6 paragraph?

7 MR. CORNEY: Your Honor, I'm going to object to that.
8 She's using the back door to get in the same information
9 that's in the affidavit. You might as well just introduce it
10 for the truth of the matter. I mean I'm okay for questioning
11 about subject matter what she's about to read, but to read it
12 right off the affidavit, you might as well have introduced the
13 affidavit as an exhibit.

14 THE COURT: Rephrase your question, Ms. Cleary.

15 MS. CLEARY: Okay.

16 Q: Okay and was Mr. Lusk willing to tell Judge James at the
17 plea that there were occasions in school where mature boys
18 would try and take advantage of Sylvester?

19 A: Yes, ma'am.

20 Q: Okay and why did he say they would take advantage of him?

21 MR. CORNEY: Your Honor, I'm still going to object unless
22 that's on her personal knowledge, something that she's
23 discussed with him. It's still coming right off the
24 affidavit. So I'm going -- I'm going to still object to that
25 line of questioning and the -- and the testimony she's given

DIRECT EXAMINATION OF SANDRA BOONE BY MS. CLEARY

1 in that regard, Your Honor, unless she has a personal basis of
2 knowledge outside of this as she's discussed with him outside
3 of this affidavit that was just handed to her.

4 THE COURT: What kind of child was your child in school,
5 Ms. Boone?

6 WITNESS: He was a good child in school. He just was a
7 follower when it came to outside the classroom. He was a
8 soft-hearted person that kind of wanted to fit in and so
9 basically he kind of -- whatever the older kids would -- would
10 tell him to do or whatever, he may follow their rules, but
11 within the classrooms he was a model student. He was -- he
12 was not a problem student inside the classrooms.

13 THE COURT: Do you think he could have gotten teachers to
14 come to court and say that if you'd have asked them?

15 WITNESS: Yes, sir.

16 THE COURT: Thank you. Go right ahead, Ms. Cleary.

17 MS. CLEARY: All right, thank you.

18 Q: And you also would have been able to get his bus driver
19 to come in and say that?

20 A: Yes, ma'am.

21 Q: Okay and you got an affidavit from her?

22 A: Yes, ma'am.

23 Q: Okay and what sentence did Sylvester get?

24 A: Twenty-seven years.

25 Q: All right and all of these people here today, are they

CROSS EXAMINATION OF SANDRA BOONE BY MR. CORNEY

1 here in support of Mr. Boone?

2 A: Yes, ma'am.

3 Q: And all these people would have been at the guilty plea
4 hearing if you had known to bring them?

5 A: Yes, ma'am.

6 Q: Okay.

7 MS. CLEARY: That's all I have. Thank you.

8 THE COURT: Thank you, thank you very much.

9 MR. CORNEY: Just very briefly, Your Honor.

10 THE COURT: Yes, sir.

11 CROSS EXAMINATION

12 BY MR. CORNEY:

13 Q: Ms. Boone, a moment ago or a couple of minutes ago I
14 suppose, you said that you were told by Ms. Sampson that he
15 would get 10 years if he entered the plea?

16 A: Yes, sir.

17 Q: Okay and you spoke on his behalf at the plea during the
18 mitigation; correct?

19 A: Yes, sir.

20 Q: And during your statement to the Court, you just -- your
21 plea to the Court was not to give him the maximum sentence on
22 it?

23 A: Yes, sir.

24 Q: So it was your understanding he was going to get 10
25 years, but you still stood up and asked the Court not to give

CROSS EXAMINATION OF SANDRA BOONE BY MR. CORNEY

1 him the maximum and have mercy on him?

2 A: Well, that was because right like five minutes before the
3 judge came in, the prosecutors pulled the deal off the table
4 so I knew then that they wasn't going to give him -- the plea
5 was taken away. That's why I asked for that at that moment.

6 Q: Okay and there were letters submitted to -- to Judge
7 James during the plea; correct?

8 A: I believe there were some letters submitted, yes.

9 Q: Okay and Judge James actually took a little recess to go
10 back in chambers and take the time to read those letters
11 before he actually sentenced Mr. Boone; correct?

12 A: Correct.

13 Q: All right. Any idea who those letters were from that
14 were submitted to him?

15 A: Right now off the top of my head I can't remember who
16 all's letters I gave them.

17 Q: But it wasn't any of these people that you just
18 discussed, the pastor, the teachers; you're certain of that?

19 A: I'm certain.

20 Q: Okay.

21 MR. CORNEY: That's -- that's all the questions I have,
22 Your Honor.

23 THE COURT: Redirect, Ms. Cleary?

24 MS. CLEARY: No, Your Honor.

25 THE COURT: Thank you, thank you very much, Ms. Boone.

DIRECT EXAMINATION OF RAMONA RICHARDSON BY MS. CLEARY

1 You may step down.

2 (Whereupon, the witness leaves the stand at 10:21 a.m.)

3 THE COURT: All right, you may call your next witness.

4 MS. CLEARY: May we approach, please?

5 (Whereupon, a bench conference is held off the record.)

6 MS. CLEARY: The plaintiff would like to call Ramona
7 Richardson.

8 THE COURT: All right. Ms. Richardson, if you'd come
9 around for us, please, and be sworn.

10 BAILIFF: If you would, place your left hand on the Bible
11 and raise your right hand and face the judge for me, please.

12 THE COURT: Do you solemnly swear the testimony you give
13 before the Court today will be the truth, the whole truth, and
14 nothing but the truth, so help you God?

15 WITNESS: Yes, sir.

16 THE COURT: Thank you very much.

17 WITNESS: Thank you.

18 THE COURT: Please have a seat and once you're
19 comfortably seated, please state your full name for the
20 record, spelling your last.

21 WITNESS: Okay. Ramona Lee Richardson, R-I-C-H-A-R-D-S-
22 O-N.

23 THE COURT: Thank you. Ms. Cleary?

24 RAMONA RICHARDSON, being first duly
25 sworn, testifies as follows:

DIRECT EXAMINATION OF RAMONA RICHARDSON BY MS. CLEARY

DIRECT EXAMINATION

1
2 BY MS. CLEARY:

3 Q: Ms. Richardson, how long have you known Sylvester?

4 A: I've known Sylvester about five and a half years.

5 Q: And how do you know him?

6 A: I know him through his mother.

7 Q: Okay and were you asked to speak at his sentencing
8 hearing?

9 A: No, I was not.

10 Q: And would you have been willing to speak at his
11 sentencing hearing?

12 A: Yes, I would.

13 Q: And very briefly, what would you have told the judge
14 about Sylvester?

15 A: In my presence, when I was around him he was a loving
16 child, very respectful, yes, ma'am, no, ma'am, attentive to
17 his mother, and just all around general guy.

18 Q: Do you -- do you know anything about how he interacts
19 with -- with older peers or with his peers at all?

20 A: He's a follower. He -- he just have passive tendencies.

21 Q: Okay.

22 MS. CLEARY: That's all I have.

23 THE COURT: Thank you, thank you very much. Mr. Attorney
24 General?

25 MR. CORNEY: Very briefly, Your Honor.

CROSS EXAMINATION OF RAMONA RICHARDSON BY MR. CORNEY

1 CROSS EXAMINATION

2 BY MR. CORNEY:

3 Q: Ms. Richardson, were you at Mr. Boone's plea hearing?

4 A: No, I was not.

5 Q: Okay. Was anything stopping you from going to that
6 hearing that day and showing up and supporting him on your --
7 on his behalf?

8 A: I was at work.

9 Q: But you knew the plea hearing was going forward that day?
10 Had you spoken to his family?

11 A: Yes.

12 Q: So you could have gone? I mean if you could have gotten
13 off of work, theoretically you could have gone to the -- to
14 the hearing and at least sat in the back to show support;
15 correct?

16 A: Yes, had I been asked to speak, yes.

17 MR. CORNEY: That's all the questions I have, Your Honor.

18 THE COURT: Redirect?

19 MS. CLEARY: No, no, Your Honor.

20 THE COURT: Thank you. Thank you so much, Ms.

21 Richardson.

22 WITNESS: And you're welcome, sir.

23 THE COURT: Yes, ma'am. You may step down.

24 WITNESS: Thank you.

25 (Whereupon, the witness leaves the stand at 10:24 a.m.)

DIRECT EXAMINATION OF APRIL OREE BY MS. CLEARY

1 MS. CLEARY: The State -- I mean the plaintiff/applicant
2 would like to call April Oree.

3 THE COURT: Miss -- Miss Oree, if you'd come around and
4 be sworn, please.

5 BAILIFF: If you would, place your left hand on the Bible
6 for me and raise your right hand and face the judge for me,
7 please.

8 THE COURT: Do you solemnly swear the testimony you give
9 before the Court today will be the truth, the whole truth, and
10 nothing but the truth, so help you God?

11 WITNESS: I do.

12 THE COURT: Thank you very much. Please be seated and
13 once you're comfortably seated, state your full name for the
14 record, spelling your last.

15 WITNESS: My name is April Denise Oree, O-R-E-E.

16 THE COURT: Thank you.

17 APRIL OREE, being first duly sworn,
18 testifies as follows:

19 DIRECT EXAMINATION

20 BY MS. CLEARY:

21 Q: April -- I mean Miss Oree, I'm sorry. How long have you
22 know Sylvester?

23 A: For like six years.

24 Q: Six years? And how do you know him?

25 A: We went to school together and we also lived in the same

DIRECT EXAMINATION OF APRIL OREE BY MS. CLEARY

1 neighborhood.

2 Q: Okay. Were you asked to come to the sentencing hearing?

3 A: No.

4 Q: Did Ms. Boone ask you?

5 A: No.

6 Q: Okay. So you did not attend?

7 A: No, I didn't.

8 Q: Okay. If you had been asked, would you be willing to
9 speak? Would you have been willing to speak at his sentencing
10 hearing?

11 A: Yes.

12 Q: All right and briefly, what would you have told the
13 judge?

14 A: That he was a good kid. I mean he went to school. He
15 did what he had to do. He was younger than most of everybody
16 who hung with him so he would just basically do what everybody
17 else did.

18 Q: He would do what everybody else wanted?

19 A: Yeah.

20 Q: Okay.

21 MS. CLEARY: That's all I have. Thank you.

22 MR. CORNEY: No questions for this witness, Your Honor.

23 THE COURT: Thank you, thank you very much, Ms. Oree.
24 You may step down.

25 WITNESS: You're welcome.

DIRECT EXAMINATION OF SYLVESTER BOONE BY MS. CLEARY

1 BAILIFF: Watch your step.

2 MS. CLEARY: I beg the Court's indulgence.

3 (Whereupon, the witness leaves the stand at 10:26 a.m.
4 and there is a brief pause in the proceedings.)

5 MS. CLEARY: Your Honor, if it would be -- if it would be
6 appropriate at this time, we would just ask that the record be
7 -- reflect that there are 14 people here who would have been
8 willing to testify or to talk to the judge on Sylvester's
9 behalf if they had been asked.

10 THE COURT: All right. Thank you, thank you very much.
11 The record will so reflect that. Thank you, Ms. Cleary.

12 MS. CLEARY: I'd like to call Sylvester Boone.

13 THE COURT: All right. Come around, please, Mr. Boone,
14 and be sworn.

15 BAILIFF: If you would, place your left hand on the Bible
16 and raise your right hand and face the judge for me.

17 THE COURT: Do you solemnly swear the testimony you give
18 the Court today will be the truth, the whole truth, and
19 nothing but the truth, so help you God?

20 PLAINTIFF: Yes, Your Honor.

21 THE COURT: All right, thank you. Please be seated.

22 BAILIFF: Watch your step for me.

23 THE COURT: And once you're comfortably seated, state
24 your full name, spelling your last.

25 PLAINTIFF: Sylvester Antario Boone, B-O-O-N-E.

DIRECT EXAMINATION OF SYLVESTER BOONE BY MS. CLEARY

1 SYLVESTER BOONE, being first duly
2 sworn, testifies as follows:.

3 DIRECT EXAMINATION

4 BY MS. CLEARY:

5 Q: Sylvester?

6 A: Yes, ma'am.

7 Q: How old are you?

8 A: I'm 20 now.

9 Q: Okay and how old were you when this robbery took place?

10 A: Seventeen.

11 Q: Okay and did you plan this robbery?

12 A: Yes, ma'am. No. You said did I plan it or did I play in
13 it?

14 Q: Did you plan it?

15 A: No.

16 Q: Plan.

17 A: Oh, no, ma'am.

18 Q: Okay and whose idea was it to commit the robbery?

19 A: It was a last minute thing.

20 Q: It was a -- it wasn't planned? Is that what you're
21 saying?

22 A: Not from the -- not from -- from where we was headed to
23 -- I was headed to Burger King to get an application, which my
24 mother had sent me to get, and you know just what was going on
25 with the money and we had soon ---

DIRECT EXAMINATION OF SYLVESTER BOONE BY MS. CLEARY

1 Q: All right.

2 A: --- followed through.

3 Q: And did you know Mr. Griffin, your co-defendant?

4 A: Yes, ma'am.

5 Q: And you knew Mr. Davis?

6 A: Yes, ma'am.

7 Q: Okay and how old are they?

8 A: They was 19 at the time.

9 Q: Okay. Did you -- what was your relationship with them?

10 A: We went to school together and from the same
11 neighborhood.

12 THE COURT: Speak up a little bit for me.

13 A: We went to school together and from the same
14 neighborhood.

15 Q: Did you feel like you needed to follow them?

16 A: They was just people I hung around.

17 Q: Okay.

18 A: You know.

19 Q: All right. Do you under -- you understand that if the
20 judge were to grant you a new sentencing hearing or a new
21 trial that -- that you could get at least -- well, it would be
22 a minimum of 10 years and I had calculated 80 years, but I
23 think it's maybe closer to 100 years?

24 A: Yes, ma'am.

25 Q: Okay, instead of the 27?

DIRECT EXAMINATION OF SYLVESTER BOONE BY MS. CLEARY

1 A: Yes, ma'am.

2 Q: You could go back and get more time; do you understand
3 that?

4 A: Yes, ma'am.

5 Q: Okay. Can you -- can you just tell us briefly what
6 you've done in the Department of Corrections since you've been
7 there?

8 A: Yes, ma'am. I came down in this month of 2010 and I was
9 mandatory -- I got enrolled in school in -- I started -- after
10 I got enrolled in school, I started carpentry trade and I got
11 -- I went through carpentry, you know, and got my certificates
12 from carpentry.

13 Q: Carpentry?

14 A: Yes, ma'am. I graduated in 2011 from -- with my GED and
15 I was being noticed on the institution yard by the chaplain
16 and he liked the way I carried myself and told me he would
17 like for me to work for him in the chapel. Then after that, I
18 got -- another chaplain came and offered me a job in the
19 infirmary working with the patients who are terminally ill,
20 who are dying, and, you know, I got certified for that and
21 took a test and made a 92 on my exam and I was in -- I went
22 full-time in medical. I started working in the chapel and
23 full-time in ---

24 Q: I'm sorry. Say that one more time?

25 A: I say I started working in the chapel and was full-time

DIRECT EXAMINATION OF SYLVESTER BOONE BY MS. CLEARY

1 working in medical and just been ministering, trying to
2 minister to other -- to the other fellows around me that we
3 can do positive things in the institution, you know, and not
4 be a part of a bad environment.

5 Q: And -- and you got a certificate in hospice care?

6 A: Hospice care, hospice, my GED, a few other -- so many I
7 can't think of them all right now, but my GED, carpentry, and
8 hospice are some of my main ones.

9 Q: All right. Can you identify these things that have been
10 marked Plaintiff's Exhibit 5 through 11?

11 A: Can I grab them?

12 Q: Okay. Oh, I'm sorry.

13 A: That's okay. This is a Certificate of Achievement. It
14 says to award a certificate of ---

15 THE COURT: Keep your voice up when you've got your head
16 down.

17 PLAINTIFF: Yes, sir.

18 THE COURT: I can't hear you.

19 PLAINTIFF: I'll speak to the mic.

20 Q: Okay. Please tell me if you can identify them. Don't
21 tell me what they are right now.

22 A: Oh, yes, ma'am.

23 Q: Okay.

24 MS. CLEARY: Your Honor, I'd like to introduce these.

25 PLAINTIFF: Yes, ma'am.

DIRECT EXAMINATION OF SYLVESTER BOONE BY MS. CLEARY

1 MR. CORNEY: Your Honor, I'd object to them just based on
2 relevance. I don't see that they have anything to do with
3 mitigation at -- this is all stuff that's happened since he's
4 been in the Department of Corrections. I don't see how that
5 goes to the claim that Ms. Sampson didn't present sufficient
6 mitigation on his behalf.

7 THE COURT: I'll allow it.

8 MS. CLEARY: Oh, thank you.

9 PLAINTIFF: Yes, sir.

10 Q: Could you just tell us what each of those certificates
11 are for?

12 A: The first one ---

13 Q: You need to speak up real loud and clearly so the judge
14 can hear you.

15 A: The first one is a Safety Orientation, 10 hours studying
16 safety in carpentry. The second one was my certificate in
17 Carpentry One that I completed. The third one is my GED. I
18 received my high school equivalent diploma. This is my score
19 sheet from my diploma. This is another Orientation Safety
20 test and another vocational test and Gospel Express Evangelist
21 Team Service certificate. I believe it was an eight hour
22 seminar I attended.

23 Q: And you just recently got a certificate in hospice care?

24 A: Yes, ma'am. I completed that in April. We had went
25 through a 70 -- a training class in which I made a 92 on my

DIRECT EXAMINATION OF SYLVESTER BOONE BY MS. CLEARY

1 exam and I'm full-time in medical.

2 Q: Okay.

3 A: Yes, ma'am.

4 Q: And I meant to ask you also do you remember saying that
5 we're waiving the direct appeal issue?

6 A: What do you mean? As in dismissing it?

7 Q: Right.

8 A: Yes, ma'am.

9 Q: Okay. Do you understand?

10 A: I don't understand why, but ---

11 Q: Okay. Is there anything else that you want to tell the
12 Court because this is your one chance?

13 A: Well, Your Honor, like I stated before about these
14 achievements right here, you know, it's not too much -- I
15 believe it's not too much about who you was, but who you are
16 today, you know. I've been -- I've been blessed with a second
17 chance to be delivered and make my -- do the best I can with
18 it, you know, as in going out there and ministering to the
19 youth, you know, stuff about -- because you get -- just like I
20 was a follower, I mean there is a lot of young followers out
21 there who need -- everybody's got a role model, whether it's
22 negative or positive, and I believe if they have a positive
23 role model, statistics will go down from 85 percent of
24 children being a product of their environment.

25 And, you know, if I had an opportunity to go home, sir, I

DIRECT EXAMINATION OF SYLVESTER BOONE BY MS. CLEARY

1 promise you the only time you'll ever see me going back is to
2 minister to the fellows that's back there. I started a
3 community -- brotherhood community, which is ministering to
4 the families in the community, you know, to help out a lot
5 because a lot in the low grade neighborhoods, which is going
6 on, they need help out there and if I had the opportunity to
7 go home, sir, I wouldn't let it -- I wouldn't let it pass me
8 by. I wouldn't let it pass me by, you know, and I made a
9 mistake.

10 Being a follower, I made a mistake and I had realized
11 that in the Department of Corrections, you know. Now, God has
12 made me a leader. God has made me a leader and I thank God
13 for that, for the way, you know, to carry myself and I got a
14 chance. I believe He ain't -- He ain't brought me this far to
15 turn me around and let me down, you know. He's prepared to
16 wait for me the whole time as long as I didn't get in no
17 trouble, no discipline, no disciplinary trouble, you know,
18 getting write-ups or anything, and the opportunity to work
19 under some chaplains, some -- some great men of God.

20 I got a chance to work with people who are dying, you
21 know, to help me grow a little bit and experience that and get
22 my trade, you know. I can get out and build houses. I can
23 get out, you know, to minister the Word of God. Like, I can
24 get out and do a lot, you know. I can do anything I put my
25 mind to it and, you know, I have learned that these three

CROSS EXAMINATION OF SYLVESTER BOONE BY MR. CORNEY

1 years incarcerated and I believe I could get out right now,
2 sir. I'm doing the work of the Lord. I know I'm doing the
3 work. Yes, sir, thank God.

4 Q: All right.

5 THE COURT: Thank you, thank you very much, Mr. Boone.

6 MS. CLEARY: That's all.

7 PLAINTIFF: Yes, sir.

8 THE COURT: All right. Mr. Attorney General?

9 CROSS EXAMINATION

10 BY MR. CORNEY:

11 Q: Mr. Boone, you knew you were facing up to 100 years on
12 these charges when you went in to enter the plea that day;
13 correct?

14 A: You said did I know? No, sir.

15 Q: The judge didn't tell you that on the record?

16 A: At first, I was aware when April told me it was 10 to 60.
17 That's when she came to see me in the county and then I got
18 there to the courthouse and it was 10 to 80 and now I'm
19 hearing about 10 to 100. So it is changing up on me three
20 times.

21 Q: Okay. So the judge didn't say right at the opening of
22 the ---

23 A: He said 10 to 80. The judge said 10 to 80.

24 MR. CORNEY: If I could approach the witness real
25 quickly, Your Honor?

CROSS EXAMINATION OF SYLVESTER BOONE BY MR. CORNEY

1 THE COURT: Yes, sir.

2 Q: This is a copy of the transcript from your plea hearing.
3 If you would, just look at the bottom right here.

4 MS. CLEARY: What page?

5 MR. CORNEY: This is going to be on page 6 at the bottom
6 starting at line 25.

7 A: Yes, sir.

8 Q: You were in the courtroom for all of these plea hearings;
9 correct?

10 A: Yes, sir.

11 Q: Okay and if you would, just start at page 25 [sic.].

12 A: I'll ---

13 Q: And I'll flip it for you.

14 A: Okay. Do you want me to read it aloud or just to myself?

15 Q: You can read it to yourself. Do you see that up there?

16 A: I ---

17 Q: Right there to line 2. The judge says: and you've
18 reviewed with them that the aggregate is a hundred years;
19 correct?

20 A: All right. I remember them saying 10. Well, I was -- I
21 was mistaken, but it must be 10 to 80. But that's not a big
22 deal from 80 to 100 years.

23 Q: Okay. The judge advised you that it was zero to -- or 10
24 to 100 years was the sentence that you were facing and you
25 entered your plea without recommendations or negotiations;

CROSS EXAMINATION OF SYLVESTER BOONE BY MR. CORNEY

1 correct?

2 A: I really ain't know what was going on.

3 Q: Okay. If the transcript ---

4 A: He started from ---

5 Q: I apologize. If the transcript reflects that the judge
6 advised you that -- or made mention that you were entering
7 without negotiations or recommendations, you wouldn't disagree
8 with that; would you?

9 A: Yeah. I mean I wouldn't disagree with that, but I'm not
10 a man who knew too much about big law words or anything like
11 that. So it could fly right by my head and I wouldn't know.

12 Q: Okay. So you just didn't understand when he was
13 explaining it to you?

14 A: Yeah, I didn't, but ---

15 Q: I'm sorry. You said you didn't understand when the Court
16 was advising you of these things?

17 A: About me getting -- I remember Ms. Sampson telling me
18 something about they would run concurrent and I wouldn't
19 really be getting that much.

20 Q: Okay, but the Court told you if you didn't -- if you
21 didn't understand something, make sure you stop him so you
22 could talk to your lawyer about it?

23 A: Yes, sir.

24 Q: Okay and that was a yes? I'm sorry. I just couldn't
25 hear you.

CROSS EXAMINATION OF SYLVESTER BOONE BY MR. CORNEY

1 A: Yes, sir. Yes, sir.

2 Q: You're guilty of all these crimes; correct?

3 A: That's -- that's -- that's what the paper say.

4 Q: Okay and you admitted that during the plea hearing? You
5 told the judge you were guilty of all these things: having the
6 gun, firing a shot, being part of this robbery? These are all
7 things you admitted to the judge at the plea hearing; isn't
8 it?

9 A: Yes, sir. That's what I plea to.

10 Q: Okay. Now, when you went in for your plea that day, you
11 knew that all these people that you wanted there for
12 mitigation, they weren't in the back of the courtroom. You
13 knew that; right?

14 A: I mean I didn't really talk to nobody to see who I could
15 have. This was -- to tell the truth, I found out about two
16 days before -- two or three days before going. I didn't know,
17 just not knowing I had a month to be aware of it. I believe I
18 found out two days before, not pretty much time for it.

19 Q: Okay, but when you walked in the courtroom, I mean you
20 knew who was back there from your family, your friends, the
21 pastor. I mean you knew that these people that you're talking
22 about, the pastor, the teacher, you knew they weren't in the
23 courtroom that day; right?

24 A: Right.

25 Q: And you still told the judge that you were satisfied with

CROSS EXAMINATION OF SYLVESTER BOONE BY MR. CORNEY

1 Ms. Sampson's representation of you and there was -- that she
2 -- you thought that she had done everything she could do to
3 help you out; right?

4 A: I mean, sir, it means like if I was telling you, well, I
5 believe I'll be able to get you this 10 right here, so
6 anything you say, I'm going to like agree with it because I
7 believed I was being all, you know, getting a lower sentence.

8 Q: So you just agreed with whatever you had to in order to
9 get this plea pushed through; is that what you're saying?

10 A: Sir?

11 Q: And that was because you wanted to plea and get this
12 behind you and you wanted to get a sentence imposed and you
13 just wanted to finish it up?

14 A: I mean I was young and scared at the time and I ain't
15 really knowed what was going on. I just know that I was --
16 you know, I can't really say too much, but like I say, I was
17 young, I was scared, and I just ain't wanted to be in a
18 courtroom at the time. I was nervous and I wasn't ready for
19 all that.

20 MR. CORNEY: That's all I have.

21 THE COURT: Redirect?

22 MS. CLEARY: No, Your Honor.

23 THE COURT: Thank you, thank you very much, Mr. Boone.
24 You may step down.

25 PLAINTIFF: You're welcome, Your Honor.

DIRECT EXAMINATION OF APRIL SAMPSON BY MR. CORNEY

1 (Whereupon, the witness leaves the stand at 10:40 a.m.)

2 MS. CLEARY: That's all the witnesses we have, Your
3 Honor.

4 THE COURT: All right. Mr. Attorney General?

5 MR. CORNEY: Yes, sir. The State would call Ms. April
6 Sampson, please.

7 THE COURT: All right. Ms. Sampson, if you would, come
8 around, please.

9 BAILIFF: Place your left hand on the Bible and raise
10 your right hand and face the judge.

11 THE COURT: Do you solemnly swear the testimony you give
12 before the Court today will be the truth, the whole truth, and
13 nothing but the truth, so help you God?

14 WITNESS: I do.

15 THE COURT: Thank you very much. Please be seated. Once
16 you're comfortably seated, state your full name for the
17 record, spelling your last.

18 WITNESS: April Woodard Sampson, S-A-M-P-S-O-N.

19 MR. CORNEY: May it please the Court, Your Honor.

20 APRIL SAMPSON, being first duly
21 sworn, testifies as follows:

22 DIRECT EXAMINATION

23 BY MR. CORNEY:

24 Q: Ms. Sampson, thank you for being here with us today. Do
25 you remember Mr. Boone's case?

DIRECT EXAMINATION OF APRIL SAMPSON BY MR. CORNEY

1 A: I do.

2 Q: Okay and how did you become involved in that case?

3 A: I was appointed. I don't remember the date. Oh, in
4 December, December 7th of 2009.

5 Q: Okay. Was that in your former capacity as a public
6 defender or ---

7 A: No.

8 Q: No?

9 A: I was in private practice and I would get court-appointed
10 cases when the Public Defender's Office had a conflict,
11 meaning they're -- usually that would be because more than one
12 defendant was charged with a crime so they can't handle co-
13 defendants. So they would conflict out a case and that's how
14 I received Mr. Boone's case.

15 Q: Okay. If you would, just very briefly just give the
16 Court a little bit of your background and what your position
17 is now at this point in time?

18 A: I started at the Public Defender's Office in 1999. I was
19 there until 2001. I was in private practice for a year, went
20 back to the Public Defender's Office from 2002 to 2006, was in
21 private practice from 2006 until 2010, and in January of 2011
22 I started at the Solicitor's Office where I am currently.

23 Q: Okay. Just -- do you remember meeting with Mr. Boone to
24 discuss the charges he was facing?

25 A: I do.

DIRECT EXAMINATION OF APRIL SAMPSON BY MR. CORNEY

1 Q: Okay. During those meetings, did you have a chance to
2 review indictments outlining charges and his constitutional
3 rights regarding those?

4 A: We went over his discovery and his charges, as well as
5 what he -- whether he could plea or go to trial and all the
6 things he could do.

7 Q: Okay. Did you review the -- the amount of time he was
8 facing on the charges potentially?

9 A: We did. We went over that. I will say that he seemed to
10 have -- it took a while for him to understand the difference
11 between running charges concurrent and running them
12 consecutive, but we went over that a couple of times and he
13 seemed to understand it.

14 Q: During your meetings, did you ever have any concerns with
15 his competency, his ability to understand or interact during
16 these discussions?

17 A: No. He always seemed to understand what we were talking
18 about. I did talk to his mom quite a few times. She was very
19 involved in his case and so we talked on the phone a lot and I
20 discussed with her that sometimes I seemed to have to explain
21 things a couple of times to him and she said that wasn't
22 necessarily out of the ordinary, but that he seemed to
23 understand what was going on.

24 Q: Okay and in the plea transcript, specifically on page 72
25 and I don't know if you have a copy in front of you or if you

DIRECT EXAMINATION OF APRIL SAMPSON BY MR. CORNEY

1 need one ---

2 A: I don't.

3 Q: But you mentioned that he had wanted to plead from the
4 very beginning of your representation. Is that your
5 recollection?

6 A: Yes. He'd always said he was involved. They were caught
7 pretty much red-handed. Basically, they robbed a victim
8 outside of an IGA. Then when they fled the scene, they get
9 into a car and are chased by an employee of a store near the
10 IGA and they shoot out of their car at the employee. They
11 then wrecked the car they were in and run and they are found.
12 He was found hiding in a shed not too far away from where the
13 car was wrecked and he had the -- some of the money that was
14 taken from the gentleman at the IGA on his person.

15 He then confessed so there wasn't a whole lot that could
16 be done with the case and so from the first time that I met
17 with him, he wanted to go ahead and plead. He didn't want to
18 go through a trial.

19 Q: And do you recall entering plea negotiations with the
20 State on his behalf?

21 A: As best I could. As Ms. -- as his mother has already
22 told you, Ms. Boone, he had Luck Campbell and in general when
23 she has a case -- and I'm saying in general, I don't know
24 every single case she's ever dealt with, but in general when
25 she has a case which is from her perspective a slam dunk

DIRECT EXAMINATION OF APRIL SAMPSON BY MR. CORNEY

1 meaning pretty much she's going to win, she doesn't give any
2 deals. So there were no deals coming and there were never any
3 deals in place. That's why I -- I say in general she does
4 that, but there was -- you asked about plea negotiations.
5 There never were any because when I went to her asking would
6 she do anything, the answer was always no, she would not
7 dismiss anything, she would not offer any caps.

8 Q: And did you discuss that with Mr. Boone?

9 A: I did discuss the fact that it was her. He knew who she
10 was and they'd had some dealings with her in the past due to a
11 relative who was in trouble, but, you know, the -- the only
12 choices in his case were to plead or to go to trial and a
13 trial just was not going to be a good choice.

14 Q: Okay and when you entered that day -- or you entered the
15 courtroom that day to go in and do this plea hearing, based on
16 your discussions with Mr. Boone, do you believe he was --
17 understood that he was going to have to enter the plea without
18 recommendations or negotiations and what that meant?

19 A: I do believe that mainly because there never were any
20 negotiations nor any deals. The best that we could do and I
21 explained this to him is to try to pick the judge that we went
22 in front of so that we would get a judge that would be more
23 likely to give him a lighter sentence than a judge that would
24 be more likely to give him the maximum. So the only thing we
25 could control was the judge.

DIRECT EXAMINATION OF APRIL SAMPSON BY MR. CORNEY

1 Q: Okay. Did you ever promise him any particular sentence?

2 THE COURT: Say that again, Ms. Sampson?

3 WITNESS: The only thing we could try to control -- not
4 control the judge, but the judge that we pled in front of. I
5 guess I should rephrase that. The judge that we went in front
6 of, not the -- what his sentence would be.

7 THE COURT: Thank you.

8 WITNESS: Sorry about that.

9 MR. CORNEY: Thank you.

10 Q: Did you ever promise him any particular sentence entering
11 the courtroom that day?

12 A: No. What I told him was we would be asking for the
13 minimum because he had no real record and because he was young
14 when this incident occurred. He was the youngest of the three
15 offenders. That I would be asking for the minimum and I was
16 thinking his range was 10 to 15 and that I did -- I did tell
17 him that I thought his charges would run concurrent mainly
18 because they all happened at the same time, but a judge could
19 give him consecutive time because that's allowable under the
20 rules.

21 Q: Okay and let's talk about the mitigation very briefly.
22 If you could, just give us a little bit of information about
23 the mitigation and who you went and spoke to, how you
24 developed that, and why -- why you did that?

25 A: Most of the conversations I had were with his mother and

DIRECT EXAMINATION OF APRIL SAMPSON BY MR. CORNEY

1 she gave me some people that I could talk to and that she
2 would get letters from and we talked about who those people
3 were and I have copies of the letters that we ended up giving
4 to the judge and I spoke with -- I'm trying to remember his
5 name.

6 I got a letter from a member who wanted him to go into a
7 program. I believe the name of the program was Coach and I
8 cannot remember his name. I'm trying to find it in this -- in
9 the file, but basically instead of sending him to prison for a
10 long amount of time, he wanted to try to put him into this
11 program that would benefit both him and the community as far
12 as what he could do there. Coaches is what it's called. It
13 was James Johnson. I actually spoke to him and then he also
14 provided me with a letter just explaining the program and the
15 different things that he could do with -- that he believed he
16 could do with Sylvester.

17 Q: Okay. As far as his pastor, school teachers, that sort
18 of thing, his educational records, were those things ever
19 looked into? Did you feel the need to look into them?

20 A: I didn't and the reason is the judges limit us into how
21 we -- whom we -- how many people we can present to them. I
22 can't present everybody in the community and allow them to
23 talk. They're only going to allow us two to three people
24 tops. You can bring in people to stand up for an individual,
25 but in my experience it's better to have the letters where

DIRECT EXAMINATION OF APRIL SAMPSON BY MR. CORNEY

1 they've had time to sit down and write what they want to say
2 because people get nervous when they have to talk in front of
3 a judge or two people so it's best to have the letters. So I
4 asked that she do that and his mother did get me several
5 letters that we presented to the judge and as you already
6 noted, the judge took time to actually go in chambers and read
7 those instead of bringing in people that he won't listen to.
8 We're not allowed to have that many people talk.

9 Q: Okay and just very briefly, sentencing is up to the
10 judge's discretion in an open-ended plea of that -- of that
11 nature; correct?

12 A: You mean the range of time?

13 Q: The sentence that he ---

14 A: Yes.

15 Q: --- imposes is in the judge's discretion when it's an
16 open-ended plea; correct?

17 A: Correct.

18 Q: Okay and he didn't sentence Mr. Boone outside of the
19 constitutional -- or the statutory limits for any of these
20 charges?

21 A: No and the co-defendant that -- they -- they all ended up
22 pleading at some point and the other co-defendant got 24
23 years, but he has to do 85 percent of those times. So they
24 got similar amounts of time.

25 MR. CORNEY: That's all the questions I have, Your Honor.

CROSS EXAMINATION OF APRIL SAMPSON BY MS. CLEARY

1 Thank you.

2 THE COURT: Thank you, thank you very much. Ms. Cleary?

3 MS. CLEARY: May it please the Court.

4 CROSS EXAMINATION

5 BY MS. CLEARY:

6 Q: Judge Sampson ---

7 A: (Laughs)

8 Q: Ms. Sampson ---

9 A: We're a little pre-eminent on that.

10 Q: You were surprised by the length of the sentence that
11 Sylvester got?

12 A: I was.

13 Q: And that was his first felony offense?

14 A: It was his -- yes. The only two priors he had were
15 related to he got upset when his brother got sentenced to some
16 prison time and he, if I remember correctly, may have kicked
17 the door at the plea and he got a disorderly conduct from that
18 and that was it.

19 Q: All right and you felt that his failure to admit to the
20 gun on the first day, was that what caused Judge James to give
21 him a harsher sentence?

22 A: Later, I was able to talk to Judge James. I wanted to
23 see if I should file a motion to reconsider and so we went and
24 spoke with him and he basically said what the problem he saw
25 is that when they came into court, neither he nor his co-

CROSS EXAMINATION OF APRIL SAMPSON BY MS. CLEARY

1 defendants would take responsibility for the gun.

2 We came back the next day and he did and I will say I was
3 surprised because Sylvester gave a very eloquent -- he cried.
4 He was very upset about the whole thing, but he turned around
5 to talk to the victims to apologize to them. His mother did a
6 good job. His father did a good job. He was going to look
7 for a job that day. His father explained how he felt like it
8 was his fault that this happened.

9 So I thought that the plea itself went as well as it
10 could be expected so I was kind of surprised about the
11 sentence. So when we went and talked to Judge James, it --
12 apparently lying to him on the record is not something he
13 takes light and that was the reason for his sentencing and he
14 was not going to change his mind on that.

15 Q: Okay. Do you remember that Demond Griffin was asked
16 about the gun first?

17 A: Yes.

18 Q: And -- and he denied having the gun?

19 A: He denied having a gun.

20 Q: And then after he denied having the gun, then Sylvester
21 said basically the same thing right after him?

22 A: Correct.

23 Q: And about Sylvester's educational records, you -- you
24 didn't see a need to get those records?

25 A: No, because I did not feel -- I thought the presentation

CROSS EXAMINATION OF APRIL SAMPSON BY MS. CLEARY

1 we were going to be able to give was going to show that he was
2 a follower and he -- this was not his plan, but he did
3 participate in it.

4 Q: All right and you understood he was facing 80 to 100
5 years?

6 A: Yes. When you calculate it off, it ran back to back to
7 back, it could be up to 100.

8 Q: Okay.

9 A: I think that's right. I'd have to look again to be sure.

10 Q: A whole lot of years?

11 A: Yes.

12 Q: Longer than his lifetime?

13 THE COURT: Ms. Cleary, let's -- let's get that clear on
14 the record.

15 A: I can't remember his exact charges. That's why I can't
16 remember.

17 Q: Okay, okay.

18 THE COURT: He was charged -- he was charged with two
19 counts of assault with intent to kill.

20 WITNESS: Right, which carry up to 20 a piece.

21 THE COURT: I disagree.

22 MS. CLEARY: I think it's 10.

23 WITNESS: Well, I can't -- is -- is it 10 now?

24 THE COURT: In *State v. Mims*, it's 335 S.E.2d 237, a 1985
25 case out of Edgefield County, in my opinion -- the Honorable

CROSS EXAMINATION OF APRIL SAMPSON BY MS. CLEARY

1 Judge Billy Keesley, who would have been the public defender
2 at that time. Judge Ballenger sentenced the gentleman to 20
3 years for assault with intent to kill and the Supreme Court
4 reversed it and said that it is -- assault with intent to kill
5 is a misdemeanor ---

6 WITNESS: And it's up to 10. You're right, Your Honor.

7 THE COURT: Since the General Assembly has not provided a
8 specific punishment for assault with intent to kill, the
9 maximum punishment for the offense is 10 years under 17-25-30.
10 When you look at the sentencing sheet, 17-25-30 is cited.
11 Also, the CDR code is 060768, which has now been retired, but
12 when you look at that code, it refers to 17-22-30. So I think
13 you could get 10 years on each assault with intent to kill.

14 WITNESS: I believe that's correct and assault and
15 battery with intent to kill is up to 20 and that's ---

16 THE COURT: Correct. I agree with that, but it looks
17 like he was only indicted for assault with intent to kill.

18 WITNESS: That's correct. They didn't hit anybody. They
19 shot out of the car and it hit two cars behind them.

20 THE COURT: And then the kidnapping carries 30 and then
21 the armed robbery carries 30.

22 WITNESS: Correct.

23 MS. CLEARY: Right.

24 THE COURT: So he -- he could have gotten up to 80 years.

25 WITNESS: Eighty years, that's correct.

CROSS EXAMINATION OF APRIL SAMPSON BY MS. CLEARY

1 THE COURT: All right. Thank you, Ms. Cleary. Thank
2 you, Ms. Sampson.

3 Q: Okay and, Ms. Sampson, this was a straight up plea?

4 A: That's correct.

5 Q: All right and so the sentence was going to depend
6 entirely on the sort of presentation that was made to the
7 Court at the plea?

8 A: Correct and I thought that it also depended on looking at
9 him versus his co-defendants. His co-defendant had a record
10 whereas he did not.

11 Q: All right and -- but you didn't tell the judge anywhere
12 that Sylvester was a follower?

13 A: I can't remember exactly what I said. If the transcript
14 doesn't have it in there, then I didn't say it.

15 Q: All right and you didn't explain to the judge that the
16 reason that Sylvester denied having the gun was because his
17 co-defendant had just denied it and he felt the need to follow
18 his co-defendant?

19 A: He told me that it was because he was scared so that's
20 what I told the judge.

21 Q: All right. Are you aware that he was slow or that slow
22 learners tend to be followers?

23 A: I know that they can be.

24 Q: And you didn't emphasize that Sylvester was -- was not
25 only the youngest, but that he had special needs in terms of

CROSS EXAMINATION OF APRIL SAMPSON BY MS. CLEARY

1 intelligence?

2 A: I do believe that we went over that he was the youngest.

3 I don't know that I went over that he had special needs.

4 Q: All right. You didn't think it was important to have his
5 -- his preacher, Reverend Wilson, there?

6 A: No. Again, we had seven or eight letters ---

7 Q: Okay.

8 A: --- and I thought those were better because, again, they
9 limit us into what we can present as far as people coming up
10 and testifying and they're not going to allow four, five, six
11 people to come up and talk about how great he is because --
12 and usually what the judge ends up doing even if you do that
13 is say, well, you had all those people behind you when you
14 committed this crime so it can sometimes work in the negative
15 when you have someone there doing that.

16 Q: Okay and how many letters did you submit to the judge?

17 A: I believe it was seven, but if you'll give me a second,
18 I'll count. We had a letter showing -- from Carrie Abel from
19 Richland One showing that he attended the dropout prevention
20 classes. We had a letter from Antonio Diaz, the school
21 monitor, about him attending those classes and how well he was
22 there. We had a letter from Faith Epps, who had known him a
23 good portion of his life and talked about how great he was and
24 that he was a follower. We had a letter from Brenda Williams,
25 who talked about how she -- he was one of her best customers

CROSS EXAMINATION OF APRIL SAMPSON BY MS. CLEARY

1 and that he was a great kid. We had a letter from Samuel
2 Galloshaw, his grandfather. We had the letter from James
3 Johnson talking about the Coaches program and what a good
4 program it was and that he would take Sylvester under his
5 wing.

6 We had a letter from the National Career -- he had
7 received a certificate while at the Detention Center so we had
8 a letter from them about that certificate and what it was. We
9 also had the certificate itself that he'd gotten. He was
10 recognized for his skill in applied mathematics, locating
11 information, and reading for information. So that is what we
12 handed up to the judge. I believe that's all the letters.

13 Q: Okay, but you didn't think it was important to have a
14 letter from his preacher that he'd been involved with for
15 fifteen years?

16 A: To be honest, it's been my experience, again, when --
17 when defendants are there and they have preachers or have that
18 going on, I've had so many judges say, well, you had that with
19 you when you committed the crime, didn't you, and you still
20 committed the crime. I've had that backfire so no, I did not.

21 Q: All right. Did you think it was important to have
22 anybody outside of his family speak at the plea hearing or
23 just the family?

24 A: Again, they limit us and I thought his family did a very
25 good job and could do a very good job at that and we had the

CROSS EXAMINATION OF APRIL SAMPSON BY MS. CLEARY

1 letters.

2 Q: All right and do you know how many people were there at
3 the plea hearing on his behalf?

4 A: I do not remember. Because we did it on two different
5 days, I don't remember.

6 Q: Okay. So if there had been a lot of people, you didn't
7 point that out to the judge if there were? I mean that's not
8 on the record.

9 A: I'd have to look at the transcripts. You sometimes say
10 could everybody stand if he had a bunch of people. If he
11 didn't and they all spoke, then they all spoke. I don't --
12 the transcript speaks for that, but I don't remember.

13 Q: All right and you -- you had said that you had to explain
14 things to Sylvester a couple of times?

15 A: And that's not necessarily unusual that you have to do
16 that with a defendant. Sometimes, they want to hear what they
17 want to hear and so the next time you talk to them again, you
18 have to start all over again. So I didn't necessarily think
19 that indicated he was slow. They just don't always listen to
20 you when you're talking to them about that.

21 Q: And you -- you heard earlier that his educational records
22 showed that he was slower than his peers?

23 A: Yes.

24 Q: Do you think that that would have influenced the judge in
25 his sentencing if he had realized that he was slower than his

CROSS EXAMINATION OF APRIL SAMPSON BY MS. CLEARY

1 peers and a follower?

2 A: I mean it could have had influence. I think he -- at
3 least at the time it happened, Judge James was more influenced
4 by the fact that he didn't take responsibility the first time
5 and had to come back and do it again. So I can't say how that
6 would have affected Judge James.

7 Q: All right.

8 MS. CLEARY: That's all I have. Thank you.

9 THE COURT: Redirect?

10 MR. CORNEY: Nothing from the State, Your Honor. Thank
11 you for clarifying the sentencing and I have nothing further.
12 I obviously agree with Your Honor and I apologize for putting
13 it on the record incorrectly before reading from the
14 transcript and putting 20 years on there from it. I apologize
15 for that.

16 THE COURT: Thank you, thank you very much, Ms. Sampson.

17 WITNESS: Thank you.

18 (Whereupon, the witness leaves the stand at 10:58 a.m.)

19 THE COURT: You may call your next witness.

20 MR. CORNEY: No further witnesses from the State, Your
21 Honor.

22 THE COURT: All right. Anything further, Ms. Cleary?

23 MS. CLEARY: Would you like me to make a closing argument
24 or ---

25 THE COURT: What's your preference?

1 MS. CLEARY: Just very briefly.

2 THE COURT: Yes, ma'am.

3 MS. CLEARY: If I may.

4 THE COURT: I'll be glad to hear from you.

5 MS. CLEARY: This was a straight up plea where he could
6 have gotten up to 80 years and I think in that -- in these
7 situations where you're basically talking about a life
8 sentence that it's incumbent on effective counsel to bring in
9 non-family members and some kind of written verification of
10 the things that the family is saying. In this case, only at
11 the very end did Ms. -- was Ms. Boone able to tell the judge
12 that he had learning deficits and that he had been Special Ed
13 and I don't think it was obvious to the judge at any point
14 until she said that -- that he is a follower and a slow
15 learner and I think, you know, just hearing it from the mother
16 is not sufficient and that's why we would argue that effective
17 counsel would have obtained his educational records and would
18 have clarified for the judge that he was, you know, not only
19 the youngest, but the most easily -- most impressionable
20 because of his slow learning and also that it was incumbent
21 upon her to explain to the judge that, you know, perhaps that
22 was why he was just following what his co-defendant said at
23 the plea.

24 And it's our position that this ineffectiveness led him
25 to get a greater sentence than both of his co-defendants even

1 though he was the youngest and also the most cooperative and
2 because of these reasons, we're asking for either a new
3 sentencing hearing or a new trial for Mr. Boone.

4 THE COURT: Thank you, thank you very much, Ms. Cleary.
5 Yes, sir, Mr. Attorney General?

6 MR. CORNEY: Your Honor, the State would just rest on the
7 testimony that has been brought before this Court. I think it
8 speaks for itself. Thank you.

9 THE COURT: All right. Thank you very much. I'll take
10 it under advisement. If y'all would, submit proposed orders.
11 Is 15 days sufficient?

12 MS. CLEARY: Yes, sir.

13 MR. CORNEY: Yes, sir.

14 THE COURT: All right, simultaneously to each other and
15 to my law clerk. Thank you very much.

16 MS. CLEARY: Thank you.

17 THE COURT: Good luck to you, Mr. Boone.

18 PLAINTIFF: Thank you, sir. I appreciate your time.

19 (Whereupon, the proceedings end at 11:00 a.m.)

20 --- END REQUESTED TRANSCRIPT ---

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1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4

5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 Common Pleas for Richland County, South Carolina, on the 13th
12 day of August, 2012.

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

15

16

Krystal J. Smith

17

Court Reporter

18

19 Florence, South Carolina

20 January 18, 2013

21

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23

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STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Sylvester Boone, #341082,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

2011-CP-40-02556

ORDER OF DISMISSAL

FILED
2012 OCT 30 AM 11:34
CLERK OF COURT
J. CHRISTIE W. NICBRIDE
C.C.P. & C.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed March 15, 2011. An evidentiary hearing into the matter was convened on Monday, August 13, 2012, at the Richland County Courthouse. The Applicant was present at the hearing with counsel, Eleanor Duffy Cleary, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, April Sampson, Esquire ("counsel"); as well as two witnesses for Applicant, Ramona Richardson and April Horry. This Court also had before it a copy of the transcript of the proceedings against Applicant, the records of the Richland County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. Applicant was true bill indicted at the February 2010 term of the Richland County Grand Jury for Kidnapping, Armed Robbery and two (2) counts of Assault with Intent to Kill ("AWIK") (2010-GS-40-10499 through 10502). April Sampson, Esquire, represented

BOONE Sylvester. #341082 – Order of Dismissal (2011-CP-40-02556)

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Applicant on the charges. On May 27, 2010, Applicant appeared before The Honorable George C. James for a plea hearing on the charges. Through the answers given by Applicant and his co-defendants, Judge James decided he could not accept the plea as given and stood the three men aside.

The next day, May 28, 2010, Applicant appeared without his co-defendants before Judge James where he entered a guilty plea to the charges as indicted without recommendation or negotiations from the State. Applicant was sentenced to twenty (20) years imprisonment each for the Kidnapping and Armed Robbery to run concurrently, and seven (7) years imprisonment on each AWIK to run concurrently to each other, but consecutively to the twenty year sentence, for an aggregate twenty-seven (27) year term of imprisonment.

A Notice of Appeal was filed, but later dismissed by the South Carolina Court of Appeals by order filed August 31, 2010. The Remittitur was issued September 27, 2010.

In his current Application, the Applicant alleged that he is being held in custody unlawfully for the following reasons:

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
 - (a) INEFFECTIVE ASSISTANCE OF COUNSEL
 - (b) INEFFECTIVE ASSISTANCE OF COUNSEL
 - (c) INEFFECTIVE ASSISTANCE OF COUNSEL
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
 - (a) Counsel's Failure to Solidify Plea Agreement
 - (b) Counsel's Failure to Perfect Direct Appeal - Appeal
 - (c) Counsel's Failure to request a Competency Hearing

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

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



but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

Failure to Present Evidence in Mitigation

At the PCR hearing, Applicant alleged counsel was ineffective for failing to effectively present evidence in mitigation during the sentencing phase of his plea hearing.

Applicant started by stating he was aware of the potential consequences of having his application granted, including going back to trial to face a substantial amount of jail time, but wanted to continue to pursue relief. Applicant testified he didn't plan the robbery that took place; rather, he said, it was a "last minute thing" that occurred without planning. He readily admitted he was aware his plea was entered without recommendation or negotiations, and that he potentially could have received essentially a life sentence under the plea. Applicant went on to identify several documents introduced into the record as certificates from the Department of Corrections showing various accomplishments he has achieved while incarcerated. He finished by stating he wanted to voluntarily waive the allegation in his application regarding counsel's failure to file/perfect a direct appeal on his behalf. On cross-examination, Applicant agreed he had told the plea judge he was guilty of the crimes charged and did have a gun on him at the time of the robbery. He also conceded he told the plea judge under oath that he was satisfied with counsel's representation of him, thought she had done everything he wanted her to do to prepare his case, and that he was entering the plea freely and voluntarily.

Also testifying at the hearing was Sandra Boone, Applicant's mother. Ms. Boone stated Applicant admitted his involvement in the crimes "from the start" after being arrested, and that he was the youngest of the suspects at seventeen (17) years old, while his two co-defendants were both nineteen (19) years old. Regarding the original plea hearing on May 27, 2010, Ms. Boone recalled Judge James asking Applicant's co-defendant first which one of them had the gun during the incident, thereafter turning to Applicant to ask the same question when co-defendant denied possessing a weapon. Ms. Boone said Judge James called off the plea hearing after none of the defendants would confess to carrying the gun used in the crime, but noted Judge James didn't appear to be angry or upset when he did so. She said counsel told her Applicant could come back the next day to complete the plea. Ms. Boone conceded Applicant entered the plea "straight up" the next day, but thought he would get a ten (10) year sentence on the plea. She went on to say she and Applicant's father spoke on Applicant's behalf at the plea hearing, but counsel did not introduce any of Applicant's school records, nor did she allow several people to speak on Applicant's behalf in mitigation including Applicant's minister. Ms. Boone stated Applicant was at a fourth grade reading level¹, but was a "model student". She also stressed the point that Applicant was "a follower". She finished by saying counsel should have brought in some of Applicant's school teachers to tell the court about Applicant as a good student. On cross-examination, Ms. Boone conceded she did request the plea judge "have some mercy" on Applicant and "don't give him to the maximum", despite alleging she believed Applicant was entering his plea for a ten year sentence. She also acknowledged that counsel handed up

¹ The records before this Court reflect this allegation of Applicant being at a "fourth grade reading level" to be without merit. While the "Special Education Committee Report" introduced as part of the record does note Applicant has the ability to "construct sentences that make sense at a grade level 4", this report was issued based on an evaluation performed August 24, 2003. The evaluation reflects his abilities at age eleven (11), more than six (6) years before the current crimes occurred.

numerous letters written by community members on Applicant's behalf to the plea judge during the plea, which the later said he read in chambers prior to sentencing.

Also testifying on Applicant's behalf were Ramona Richardson ("Richardson") and April Horry ("Horry"). Ms. Richardson testified she was not asked to speak on Applicant's behalf at his plea hearing, but would have told the plea judge that Applicant was a respectful child to his mother and a "follower" when it comes to his peers. She went on to say she was at work on the day of Applicant's plea, but knew the hearing was occurring and didn't attend. Ms. Horry testified she had known Applicant for six (6) years from their neighborhood and school. She, likewise, stated she was not asked by counsel to speak on Applicant's behalf at his plea, but if she had, she would have told the plea judge Applicant was a "good kid" but "a follower". Counsel then noted roughly fourteen (14) people in the courtroom at the PCR hearing who would have been willing to give testimony as to Applicant's good character at his plea hearing.

Counsel testified she was appointed to represent Applicant on the charges in December of 2009 after the Public Defender's Office was conflicted out of representing him. Counsel noted she had previously worked as the Deputy Chief Public Defender for the 5th Circuit, but at the time of Applicant's case was in private practice. She stated during her meetings with Applicant, she was able to review with him the charges he was facing, his constitutional rights, the potential jail time he was facing, the entirety of the discovery file, and Applicant's version of the facts leading to the charges. She also noted from the outset of her representation, Applicant admitted his guilt and did not want a trial, but rather wanted to plead guilty to the least amount of time possible. Counsel testified Applicant's mother was very involved and she spoke with his mother regularly.



Turning to the facts and evidence in the case, counsel said Applicant and his co-defendants were "caught red handed", pointing out a victim had followed the suspects' car from the scene while speaking with 911 operators giving a detailed description of the car; Applicant was caught by a law enforcement K-9 unit hiding in an abandoned shed with quantities of money stuffed in his pockets and waistband; and all three defendants gave full confessions to police upon their arrest. Counsel stated there were no plea negotiations entered into as the solicitor prosecuting the case made it well known no plea offers would be extended. Counsel said she explained this to Applicant, which she believed he fully understood. She went on to say she told Applicant she would request the minimum sentence when he pled, but fully advised Applicant of the range he was facing if the judge ran the sentences consecutively.

Regarding mitigation at the plea, counsel testified she introduced seven letters to the plea judge's consideration, including: two from Applicant's school; one from a close friend specifically noting Applicant was "a follower"; one from Applicant's grandfather; and one from James Johnson, the director of the "Coaches Program" for troubled youths, stating he would gladly accept Applicant into the program. Counsel said she believed introducing the letters was a stronger strategy than bringing all of the witnesses into the courtroom to present live statements since she had seen such mitigation backfire before, especially where judges see a defendant has a "great support system" but still chose to commit a crime. She noted the same to be true in bringing preachers/ministers in on a defendant's behalf. She also recognized that many judges limit the number of people who are allowed to give live statements on a defendant's behalf at a plea hearing so she likely could not have presented all of the witnesses who attended the PCR hearing. Counsel said she didn't feel the need to introduce Applicant's school records independently in mitigation as she felt the "presentation" given to the court fully encompassed



the same information. Counsel explicitly testified she "thought [Applicant] and his family did a great job" in mitigation.

Finally, counsel stated she was "shocked" at the sentence Applicant received under the plea, but said in hindsight she believed Judge James probably did not like Applicant's initial failure to admit he had been carrying a gun during the incident. Counsel said she tried to soften Applicant's failure to admit to the gun by stressing that Applicant was scared, but Judge James made it clear to her *after* the plea that he did not like Applicant's failure to take responsibility.

Based on the testimony presented at the hearing in conjunction with a thorough review of the plea transcript, this Court finds Applicant failed to carry his burden in proving counsel was ineffective in her representation. Further, this Court finds counsel's testimony to be credible, while conversely finding Applicant's testimony to be incredible.

First, counsel's performance was not objectively unreasonable in this regard. Counsel reviewed all pertinent materials related to the case with Applicant, and gave Applicant all the information and advice necessary to make an informed and voluntary decision on whether to enter a plea or proceed to trial. Applicant, having full knowledge of the potential consequences, made the willing decision to enter the plea as he did, without negotiations or recommendations from the State. Counsel undertook diligent and thorough preparations to present strong mitigation on Applicant's behalf at the plea, and was able to do so effectively with the statements and letters introduced. Based on her several years experience appearing before judges in the Fifth Circuit, she made a reasonable strategic decision *not* to present the Court with statements from every individual willing to speak about Applicant. Rather, she chose to introduce only a moderate number of diverse, compelling recommendations in an effort to make the strongest possible plea for leniency. See Whitehead v. State, 308 S.C. 119, 417 S.E.2d 530 (1992) (Where



counsel articulates valid reasons for employing a certain strategy, counsel's choice of tactics will not be deemed ineffective assistance). This Court finds counsel's tactics were well-considered and objectively reasonable. Accordingly, this Court finds Applicant has failed to carry his burden in proving counsel's performance fell outside of the wide range of reasonableness required of criminal defense attorneys based on professional norms.

Further, this Court finds Applicant has failed to prove resulting prejudice based on this alleged deficiency as he has failed to convince this court that, had counsel presented the items/witnesses in mitigation Applicant alleges she should have, Applicant would have received a lesser sentence than he did. Counsel's plain and credible testimony was the plea judge was "not happy" Applicant chose not to accept accountability at first for being one of the defendants in possession of a gun during the robbery. Counsel presented a thorough and effective statement in mitigation on Applicant's behalf, through which she presented Applicant's education, reputation as a student, willingness to accept responsibility from the outset of her representation, remorse for his actions, accomplishments since being incarcerated, and brief mental health issues since his arrest. She also introduced letters from various individuals, which the judge read in chambers prior to sentencing. This Court finds no reasonable probability that presenting the additional witnesses/items in mitigation would have affected the sentence Applicant received.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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.

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

This Court notes Applicant 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 (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 Respondent.

AND IT IS SO ORDERED this 18 day of Oct, 2012.



R. Knox McMahon
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina.

WITNESSES

(S) Investigator Chris Lindler, RCSD

DOCKET NO. 2010-GS-40-10500

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2010

42

ARREST WARRANT NUMBER

1236960

SYLVESTER BOONE

THE STATE
vs.

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
dated FEB 10 2010

VERDICT

Indictment for

ARMED ROBBERY

SC Code: 16-11-330(A)

CDR Code: 0139

Class FEL-A(V)

legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

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

Defendant

Witness:

C.C.C. PLS. AND G.S.

**CERTIFIED TRUE COPY
OF ORIGINAL FILED.**
J. W. McBride
C.C.C. P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

of Person of Petit Jury
after

After being fully advised as to my

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

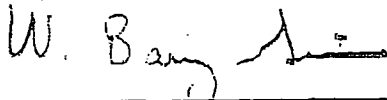
INDICTMENT

At a Court of General Sessions, convened on February 10, 2010, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That SYLVESTER BOONE did in Richland County on or about October 30, 2009, commit robbery by feloniously taking from the person or presence of Charles Humphries by means of force or intimidation goods or monies of IGA, such goods or monies described as US Currency and/or coins with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of §16-11-330(A), Code of Laws of South Carolina, (1976, as amended).

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


WARREN B. GIESE, SOLICITOR

WITNESSES

(S) Inv. Chris Lindler, RCSD

DOCKET NO. 2010-GS-40-10499

The State of South Carolina

County of Richland

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2010

42

ARREST WARRANT NUMBER

M236959

ACTION OF GRAND JURY

FILED

Seal of the Grand Jury
FEB 10 2010

VERDICT

Representative of Petit Jury
ate:

SC Code: 16-3-910
CDR Code: 0095
Class FEL(A)(V)

Indictment for
KIDNAPPING

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 of the Court of General Sessions, County of Richland, South Carolina.

FILED
CLERK OF COURT
JAN 20 2010
RICHLAND COUNTY

Defendant

Witness:

C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

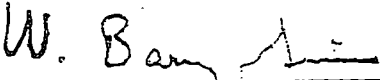
INDICTMENT

At a Court of General Sessions, convened on February 10, 2010, the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That SYLVESTER BOONE did in Richland County on or about October 30, 2009, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any person, to wit: Charles Humphries, by any means whatsoever without authority of law. All in violation of § 16-3-910, Code of Laws of South Carolina (1976) as amended.

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


Warren B. Giese, SOLICITOR