

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Lexington County

Eugene C. Griffith, Jr., Circuit Court Judge

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S.C. Supreme Court

WENDELL G. DELARGE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELATE CASE NO 2012-213290

APPENDIX

KATHRINE H. HUDGINS
Appellate Defender

ALAN WILSON
Attorney General

South Carolina Commission on Indigent
Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589

JOHN WALT WHITMIRE
Assistant Attorney General

P. O. Box 11549
Columbia, SC 29211

ATTORNEY FOR PETITIONER

ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

COURT OF GENERAL SESSIONS

STATE	)	
	)	
V.	)	TRANSCRIPT OF RECORD
	)	09-GS-32-5187
WENDELL DELARGE	)	09-GS-32-5188
	)	
<u>DEFENDANT.</u>	)	

OCTOBER 14, 2009
LEXINGTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE ROBIN B. STILWELL, JUDGE.

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

DAVID SHAWN GRAHAM, ASSIST. SOLICITOR
ATTORNEY FOR THE STATE

FULTON CASEY DALE CORNWELL, ASSIST. PUBLIC DEFENDER
ATTORNEY FOR THE DEFENDANT

STACY L. SHEPPARD
CIRCUIT COURT REPORTER

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I N D E X

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WITNESSESDIRECTCROSSREDIRECTRECROSS

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(There were no witnesses.)

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E X H I B I T S

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NO.DESCRIPTIONID.EVD.

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(There were no exhibits.)

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1 (The following proceedings were held on
2 October 14, 2009.)

3 **THE CLERK:** Indictment 2009-GS-32-5187, State
4 versus Wendell DeLarge, indicted for kidnapping, he
5 is pleading as charged. Indictment 2009-GS-32-5188,
6 State versus Wendell DeLarge, indicted for criminal
7 sexual conduct first degree, he is pleading as
8 charged. Both indictments are true billed and he is
9 represented by Mr. Cornwell.

10 WENDELL DELARGE,
11 having been duly sworn, testified as follows:

12 **THE COURT:** All right. Mr. Cornwell, you
13 represent Mr. DeLarge in this matter, sir?

14 **MR. CORNWELL:** I do, Your Honor.

15 **THE COURT:** Have you had the opportunity to
16 discuss with him his constitutional rights to
17 include his right to a trial by jury and right
18 against self-incrimination, sir?

19 **MR. CORNWELL:** I have, Your Honor.

20 **THE COURT:** And have you also discussed with
21 him the maximum possible penalty and sentence that
22 he can receive under the charges, sir?

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

24 **THE COURT:** Is it your understanding that he
25 understands these rights and the maximum possible

1 penalty and wishes to proceed today, sir?

2 MR. CORNWELL: Yes, sir.

3 THE COURT: How does he wish to plead, sir?

4 MR. CORNWELL: Guilty, Your Honor.

5 THE COURT: And do you agree with that
6 decision, sir?

7 MR. CORNWELL: I do, Your Honor.

8 THE COURT: All right. Mr. DeLarge, you
9 recognize, sir, that you have a right to a jury
10 trial in this matter?

11 DEFENDANT: Yes, sir.

12 THE COURT: And you understand that if you were
13 to have a jury trial, a jury of 12 of your peers
14 would be impaneled. And in that proceeding, the
15 State would have the burden of proving you guilty
16 beyond a reasonable doubt. You would not have the
17 burden of proving yourself innocent. Do you
18 understand that?

19 DEFENDANT: Yes, sir, Your Honor.

20 THE COURT: And you understand that in that
21 proceeding, you would have a constitutional right
22 against self-incrimination, which means that you
23 wouldn't have to say anything. You could remain
24 silent throughout that trial and simply rely upon
25 the State meeting its burden of proving you guilty

1 beyond a reasonable doubt. Do you understand that,
2 sir?

3 **DEFENDANT:** Yes, sir, Your Honor.

4 **THE COURT:** However, notwithstanding the fact
5 that you have the right to remain silent, you could,
6 in your discretion, take the stand and testify and
7 you can tell the jury your side of the story. You
8 could also present witnesses in your defense. You
9 could present legal defenses to the allegations and
10 the charges. You could also cross-examine any of
11 State's witnesses to include the people who are
12 accusing you. Do you understand that, sir?

13 **DEFENDANT:** Yes, sir, Your Honor.

14 **THE COURT:** Knowing these rights as I've
15 explained them to you, do you wish to waive the same
16 and proceed this morning with a plea of guilty, sir?

17 **DEFENDANT:** Yes, sir.

18 **THE COURT:** All right, sir. Indictment
19 2009-5188, the State has charged you with criminal
20 sexual conduct first degree. And under that
21 statute, I could sentence you to...

22 **MR. GRAHAM:** Thirty years, Your Honor.

23 **THE COURT:** Thirty years in prison. Do you
24 understand that, sir?

25 **DEFENDANT:** Yes, sir, Your Honor.

1 **THE COURT:** And the State would allege that you
2 did in Lexington County on or about December 12,
3 2007, commit a sexual battery upon the victim
4 Courtney Price without her consent and such sexual
5 battery was accompanied by the use of aggravated
6 force. And the victim submitted to the sexual
7 battery while also the victim of forcible
8 confinement, kidnapping or similar offense in
9 violation of the law. Is that what happened, sir?

10 **DEFENDANT:** Yes, sir, Your Honor.

11 **THE COURT:** And how do you wish to plead to
12 that, sir?

13 **DEFENDANT:** Guilty, sir.

14 **THE COURT:** All right. And the State has also
15 charged you in indictment number 2009-5187 with
16 kidnapping. And under the law in the State of South
17 Carolina, I can sentence you up to...

18 **MR. GRAHAM:** Thirty years, Your Honor.

19 **THE COURT:** Thirty years for kidnapping. Do
20 you understand that, sir?

21 **DEFENDANT:** Yes, sir, Your Honor.

22 **THE COURT:** And the State would allege that you
23 did in Lexington County on or about December 12th,
24 2007, knowingly, willfully and unlawfully seize,
25 confine and kidnap Courtney Price without her

1 consent, specifically you did deprive the victim of
2 her freedom through the use of threats and physical
3 force, threat with the use of a weapon. Is that
4 what happened, sir?

5 MR. CORNWELL: Beg the Court's indulgence.

6 (Mr. Cornwell conferring with the
7 defendant.)

8 MR. CORNWELL: Your Honor, my client -- the
9 only issue my client has is with the part where it
10 says use of a weapon. He said he didn't have any
11 weapon.

12 THE COURT: Okay. I haven't heard the specific
13 facts yet, so I'll ask you, the State would allege
14 that you did deprive the victim of her freedom
15 through the use of threats or physical force; is
16 that what happened, sir?

17 DEFENDANT: Yes, sir, Your Honor.

18 THE COURT: Okay. And how do you wish to plead
19 to that, sir?

20 DEFENDANT: Guilty, sir.

21 THE COURT: All right, sir. Has anyone forced,
22 threatened, made or coerced you in any way into
23 entering into this plea?

24 DEFENDANT: No, sir, Your Honor.

25 THE COURT: Has anyone promised you anything in

1 connection with the plea?

2 DEFENDANT: No, sir, Your Honor.

3 THE COURT: Are you pleading guilty because you
4 are guilty, sir?

5 DEFENDANT: Yes, sir, Your Honor.

6 THE COURT: And is it your own free will and
7 volition, that is, is it your own decision to plead
8 guilty, sir?

9 DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: Are you under the influence of any
11 drugs or alcohol which would affect your ability to
12 make a decision today?

13 DEFENDANT: No, sir, Your Honor.

14 THE COURT: Do you suffer from any mental
15 infirmity or mental sickness which would affect your
16 ability to understand and appreciate what's going on
17 today, sir?

18 DEFENDANT: No, sir, Your Honor.

19 THE COURT: Mr. Cornwell has represented you in
20 this matter, sir?

21 DEFENDANT: Yes, sir.

22 THE COURT: Have you had the opportunity to
23 speak with him in as much length as you need and ask
24 him the questions that you need to ask him, sir?

25 DEFENDANT: Yes, sir, Your Honor.

1 **THE COURT:** Has he answered all of your
2 questions and done everything that you've asked him
3 to do?

4 **DEFENDANT:** Yes, sir, Your Honor.

5 **THE COURT:** Are you satisfied with his
6 services?

7 **DEFENDANT:** Yes, sir.

8 **THE COURT:** Do you understand all of the rights
9 as I've explained them to you and all of the
10 questions that I've asked you this morning?

11 **DEFENDANT:** Yes, sir, Your Honor.

12 **THE COURT:** Do you have any further questions
13 that you need to ask Mr. Cornwell or this Court
14 before we proceed, sir?

15 **DEFENDANT:** No, sir, Your Honor.

16 **THE COURT:** All right. Understand that after
17 I've handed down the sentence, you have ten days in
18 which to appeal the same. The same must be in
19 writing and filed with this Clerk of Court. Do you
20 understand, sir?

21 **DEFENDANT:** Yes, sir, Your Honor.

22 **THE COURT:** All right. I'll be happy to hear
23 from you, sir.

24 **MR. GRAHAM:** Thank you, Your Honor.

25 The incident occurred December 12th of 2007.

1 It began at approximately 12:15 a.m. At that time,
2 Your Honor, the victim had got off of work. She
3 worked at a shop in Columbia Mall and went to the
4 Shell Gas Station on Harbison Boulevard in Lexington
5 County to buy a pack of cigarettes and gum.

6 When she came out, she got back into her
7 vehicle and began to back out and drive down the
8 road to go to the I-26 eastbound ramp. At about
9 that time, she felt a hand come around her throat
10 from the back seat and a male voice told her to not
11 turn around or that he would kill her. At that
12 time, she was able to determine that it was a black
13 male from the color of his skin on the hand and arm.

14 The male reached around, which is the
15 defendant, and took the rearview mirror, I believe,
16 and pushed it down so that she would not be able to
17 see into the rearview mirror. She -- Mr. DeLarge
18 asked her if she had any money. She said that she
19 had \$60 in her purse. At that point, Mr. DeLarge
20 reached into her purse, which was on the front
21 passenger seat, and removed her wallet. He also
22 retrieved her ATM card at that time.

23 He then told her to proceed to an ATM to try to
24 get more money. She drove down I-26 to I-20 on
25 Broad River Road and stopped at an ATM on Broad

1 River Road. She withdrew \$260 giving it to him.
2 And I believe he asked her to complete another
3 transaction and she was able to withdraw another
4 hundred dollars at that time. That would have been,
5 that ATM transaction happened at 12:36 a.m., so
6 approximately 20 minutes after the kidnapping began.

7 He then told her to drive. He continued to
8 stay in the back seat. They went back out on I-26
9 toward Chapin, went -- at the Ballentine Exit, she
10 exited according to his orders and then he told her
11 to turn around. She now came back on I-26 toward
12 the Columbia -- Lexington area. When they came
13 back, he then told her to take the Lake Murray Exit
14 into Irmo and he had her go to a ATM in the Irmo
15 area of Lexington County as well and to make another
16 transaction, but was unable to retrieve anymore
17 money at that time.

18 He then told her to drive down Columbia Drive.
19 They turned into an apartment complex. He went to
20 the rear of the complex. He told her to pull into
21 the nonlighted parking lot of the Harbison West
22 Elementary School and parked.

23 At that time, he told her to disrobe and to
24 climb into the rear seat of the vehicle and she did
25 what he told her to do. She -- he told her to

1 continue to face the exterior of the car and to not
2 look at him and she complied with that. He then
3 took off his clothes. He made the statement, Have
4 you ever fucked a black man before? She said, no,
5 and began to cry.

6 At that time, he forcibly raped her vaginally.
7 She couldn't say how long that that happened. She
8 doesn't know whether he wore a condom or not. She
9 knows that he did pull out and that he ejaculated on
10 her back, in her lower back area. At that point,
11 the defendant took a piece of cloth and he wiped
12 down her back stating that he wasn't going to leave
13 any evidence for the police to find. He then told
14 her to get to the driver's seat and he threw her
15 clothes up at her. She got dressed again.

16 At that point, he began giving her directions
17 back to Harbison Boulevard. He threw her bra up at
18 her at that point. When they went to Harbison
19 Boulevard southbound, they crossed over Saint
20 Andrews Road. She didn't know where she was at this
21 point.

22 The defendant, Mr. DeLarge, told her to turn
23 around at an intersection near the Irmo High
24 baseball field. She doesn't know where she was at.
25 She ended up being in a neighborhood. And, at that

1 point, he told her to stop the vehicle.

2 As he began to exit the vehicle, he took her
3 driver's license, her cell phone and her iPod. And
4 having driver's license in hand, threatened her that
5 if she went to the police or told anyone about this,
6 that he would kill her and her family, told her not
7 to leave, told her to leave within ten seconds or he
8 would shoot her. He pushed the side view mirror
9 down so that she would be unable to see him when she
10 drove away.

11 She went directly from there to her boyfriend's
12 house. The Columbia Police Department was called.
13 Jurisdiction was determined to be in Lexington.
14 Lexington County was notified. She was eventually
15 taken to Palmetto Emergency Health where they
16 completed a sexual rape kit, that was rushed to
17 SLED.

18 And on December 15th of 2007, a SLED agent was
19 able to develop a DNA profile that hit in CODIS
20 identifying Mr. DeLarge as the contributor to the
21 DNA that was collected during the rape kit. A
22 warrant was then issued for Mr. DeLarge's arrest.

23 And later that day as they were looking for
24 him, officers found that he was in an apartment
25 complex at River Oaks Apartment on Bush River Road.

1 They went to a friend's house where they believed he
2 might be. He was not there and eventually went to
3 the girlfriend's house and found out that he was
4 there. Several officers went in. The girlfriend, I
5 believe, denied that he was there, but she looked
6 down at the floor.

7 The officers came in, they called out who they
8 were, identified themselves asking for Mr. DeLarge.
9 There was no response. After, I believe, three
10 times, he finally responded and officers found him
11 hiding under the kitchen sink. He stuck his arm
12 out, officers grabbed his arm. He was at gunpoint
13 and at Taser point at that time. And as he was
14 being taken out from underneath the sink, he
15 resisted and the officers had to fire a Taser to
16 subdue him. And then he continued to resist and
17 they used the Taser, what they call, a dry stun,
18 which is to make physical contact with the gun and
19 continue to use the Taser. He was taken into
20 custody and arrested.

21 There is a store video from the store that
22 shows a suspect looking like Mr. DeLarge that went
23 in. He was interviewed and confronted with evidence
24 and statements. And he made the following comments
25 during his initial interview:

1 He denied that he robbed her. He stated that
2 he did not kidnap her and that he did not rape her,
3 that it was consensual. He did, however, at that
4 time say that if he was going to rob someone, that
5 he would have gone into a BMW that drove up. And he
6 then went on to explain how there was a older white
7 woman who got out of a BMW that had a child in the
8 backseat and had gone in the store, obviously
9 acknowledging that he had been at the store and that
10 he was scoping out potential victims.

11 His prior record, Your Honor, he has got three
12 counts of burglary third that he was convicted on in
13 April 30th of 2004. He received a five year
14 sentence suspended on 90 days with two years
15 probation. August 15th of 2006, the probation was
16 revoked on that. And there were additional charges
17 for criminal conspiracy and unlawful carrying of a
18 weapon. He was released from the department of
19 corrections on June 29th of 2007, which would have
20 been five and a half months before this incident
21 occurred.

22 I know at the appropriate time, Your Honor,
23 that the victim and her parents would like to
24 address the Court.

25 **THE COURT:** All right. Mr. DeLarge, is that

1 what happened, sir?

2 **MR. CORNWELL:** Your Honor, we do have some
3 discrepancies in some of the allegations, some of
4 the facts, Your Honor, none of which go to the
5 principal matter, but there are some discrepancies
6 as far as some that was presented which we would
7 like to present during our mitigation, Your Honor.

8 **THE COURT:** I understand. Subject to those
9 exceptions, I do find that there is a substantial,
10 factual basis for the plea.

11 Mr. DeLarge, does -- he recited your prior
12 record into the record. Is that a fair and accurate
13 representation of your prior record, sir?

14 **DEFENDANT:** Yes, sir, Your Honor.

15 **THE COURT:** All right. In as much as Mr.
16 DeLarge acknowledged the allegations and the facts
17 alleged on the indictment and takes some exceptions
18 to the recitation of facts by the State, I still
19 find that there's a substantial, factual basis for
20 the plea and I'll accept the same. The same was
21 entered freely and voluntarily without threat or
22 coercion with competent counsel with whom he
23 indicates he is satisfied.

24 All right. Mr. Cornwell, I'll be happy to hear
25 from you, sir.

1 **MR. CORNWELL:** Your Honor, I would ask that we
2 be allowed to defer mitigation and allow the victim
3 to speak, Your Honor.

4 **THE COURT:** All right. I'll be happy to hear
5 from the victims.

6 **MR. GRAHAM:** Your Honor, this is Cathy Price.
7 She is the victim's mother.

8 **MRS. PRICE:** My name's Cathy Price and I am
9 Courtney's mother. As I stand here today, I wonder
10 if Wendell DeLarge has a problem sleeping or eating
11 or simply knowing how to begin his day. We've had
12 to deal with that, not only Courtney, but our entire
13 family. That man kidnapped, raped and robbed
14 Courtney on December 12th, 2007. From that day on,
15 our entire world changed.

16 Seven days after the rape, Courtney had a
17 birthday and turned 21. It should have been a
18 turning point in her life and a day to remember.
19 This day will forever be marred as a heartbreaking
20 occasion one of grief and sadness.

21 Six days after that, we were faced with
22 celebrating Christmas. We had so many decisions to
23 make, should we try to fake it with extended family,
24 should we tell them and ruin their holidays or could
25 we manage to be around other people and get through

1 these difficult days? Well, Christmas came and went
2 and the days did not get any easier.

3 We've had another December birthday. This past
4 year Courtney celebrated her second 21st birthday.
5 We had another Christmas, but time passing has not
6 made these events any easier. We still have to
7 wonder what the outcome of this horrific act will
8 be.

9 Wendell DeLarge took so much from Courtney, her
10 self-confidence, her outgoing personality, her love
11 and zest for life and her independence. She's dealt
12 with so much physical pain over the last 18 months.
13 She suffers from horrific migraines, anxiety
14 attacks, flashbacks, having to make visits to the
15 emergency room on several occasions and frequent
16 visits to her family physician. She has problems
17 sleeping and is battling depression. And these
18 physical problems are ongoing.

19 Courtney's afraid to take a shower in her own
20 home without someone being there with her. I'm
21 fearful of being too far away from her at any time
22 because of her needs. We have not been able to go
23 away for even a weekend for fear that Courtney needs
24 me. This is not only a lifelong sentence for
25 Courtney, but for all of us.

1 Courtney was working at the time and was to
2 become a key person at the retail establishment she
3 was employed with with the stipulation of turning
4 21. So during the timing of this crime, she was
5 unable to continue working. She was not able to
6 fulfill the duties and lost the opportunity that she
7 had worked for.

8 Courtney lost so much due to the selfishness of
9 this person. He wanted things that belonged to
10 someone else. He robbed Courtney of tangible items,
11 cash, cell phone, iPod, and in addition, the items
12 that she had with her, her purse, everything in it,
13 her wallet.

14 The clothes she wore were too painful to even
15 see again. The vehicle she was driving was mine.
16 We had to park it, couldn't drive it, couldn't look
17 at it and we no longer have that vehicle.

18 He obviously had no conscience of the robbery.
19 He uploaded several hundred dollars worth of songs
20 on her cell phone later that same evening which we
21 had to pay for to keep my credit. We continue to
22 pay for his crimes. We did not have these items
23 returned nor would we have wanted them, but they
24 were a loss and we had to replace them. The bank
25 had to replace the money that he withdrew from the

1 ATM.

2 As I said earlier, he took so much away from
3 Courtney and our family. He continues to be a
4 source of great pain and anguish. We ache for
5 Courtney and try to heal. We've had good people
6 surrounding us giving us support and for that, we
7 are thankful.

8 Our wish today, Your Honor, is that he be given
9 a sentence that is comparable to the one he gave
10 Courtney and her entire family. We do not go a day
11 without having to deal with some facet of his crime.
12 We search for healing, but want to be assured that
13 he will not be a threat to our family ever again nor
14 to another person he randomly chooses.

15 I would like to speak for those who never told,
16 those who never will and those who never got the
17 chance. This crime deserves a severe penalty and we
18 implore you to assess it as so. Thank you, Your
19 Honor.

20 **THE COURT:** Thank you, Mrs. Price. I
21 appreciate you being here today, ma'am.

22 Sir, I'd be happy to hear from you.

23 **MR. GRAHAM:** Your Honor, this is Bobby Price.
24 This is the victim's father.

25 **MR. PRICE:** Your Honor, I'm Courtney's father.

1 And Courtney is my youngest daughter. She's always
2 been a very special person. She was also
3 happy-go-lucky, outgoing, never met a person she
4 didn't like. She's always surrounded by her friends
5 and family. Courtney always showed a great love for
6 people and was very caring, loving and trusting.
7 She enjoyed her retail job at the mall because it
8 was a definitely a people job.

9 Since Wendell DeLarge raped my daughter, that
10 Courtney no longer exists. Now she's always looking
11 over her shoulder. She can no longer stay in her
12 home at night. She can rarely stay in her home
13 during the day. All the lights in our house must
14 remain on even overnight. All the closets have to
15 be closed and locked. In fact, she even wanted dead
16 bolts put on her bedroom closet doors. She can't
17 even take a shower at home alone. My wife must
18 leave work, come home for her to shower during the
19 day.

20 If she happens to be at home alone during the
21 day, then there -- and there's a breaking news story
22 with criminals that have not yet been apprehended,
23 she has to leave home and go stay with friends or go
24 to her mom's office. She cannot even look at, much
25 less drive the vehicle that the rape occurred in.

1 She's always terrified when entering her own vehicle
2 now.

3 She can no longer make eye contact to greet
4 people that she may know in passing them in a public
5 place. She had to give up her job at the mall
6 because she could not emotionally handle returning
7 to her work place.

8 The emotional turmoil that Courtney will
9 experience from this attack has also manifested
10 itself physically. She continues to suffer from
11 migraines, panic attacks. She also battles
12 depression. She has been in the emergency room on
13 countless occasions during the time the attack
14 occurred.

15 During the rape, Wendell DeLarge took
16 Courtney's driver's license. He told her that he
17 knew where she lived and if she went to the police,
18 when he got out of jail, he would find her and her
19 family and kill them. Her driver's license was
20 never returned, which only serves to remind --
21 reinforce fear that he'll make good on his threat.
22 No amount of reassurance from law enforcement,
23 family or professionals can convince her of that.

24 Although Wendell DeLarge has been without his
25 freedom for the last so many months, he has robbed

1 my daughter of her freedom for the rest of her life.
2 Please do not let the sentence for the victim in
3 this case be greater than the sentence of the
4 criminal.

5 As her father and on behalf of all women who
6 have suffered at the hands of a rapist, I implore
7 you to sentence Wendell DeLarge to the maximum
8 possible years in prison. Thank you.

9 **THE COURT:** Thank you, sir. I appreciate your
10 being here, Mr. Price.

11 **MR. GRAHAM:** Court's indulgence, Your Honor.

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

13 (Pause.)

14 **MR. GRAHAM:** This is Courtney Price, Your
15 Honor.

16 **MS. PRICE:** I will never be the same person I
17 used to be. I used to laugh so much and was so
18 outgoing. And I never met a stranger, just someone
19 that I was going to be a friend with. He took that
20 from me and I'm scared of everyone and I'm scared to
21 be in crowded places and around people I don't know.
22 I question everything that I do. And I've had so
23 much taken away because of this incident.

24 I would like for one day to forgive him for
25 what he did to me, but I just can't. I would like

1 justice to be served so I will at least be able to
2 try to be the person I was and the person that I am
3 capable of being.

4 THE COURT: Thank you, Ms. Price. I appreciate
5 that, ma'am.

6 MR. GRAHAM: Your Honor, there are several
7 members of friends and family that are present in
8 the courtroom and I would like to recognize them
9 today and ask them all to stand.

10 Thank y'all for coming.

11 THE COURT: Thank y'all for being here. I
12 appreciate it.

13 MR. GRAHAM: Your Honor, just in closing, I
14 would say because of the history of the defendant,
15 that as soon -- the occurrence of this, came out
16 proving that he was going to be a career criminal
17 with this happening within five months after release
18 of being in prison, the predatory nature of the
19 crime and on behalf of the family, I would ask that
20 you sentence him to consecutive time and to 60
21 years.

22 THE COURT: All right. Thank you, sir. I do
23 appreciate that.

24 All right. Mr. Cornwell, I'll be happy to hear
25 from you, sir.

1 MR. CORNWELL: Please the Court, Your Honor.

2 Crimes like this there are no winners. There
3 are no easy answers, no easy solution. All that I
4 know is that since I've had this job and had cases
5 like this, it's often our job to try to humanize our
6 client even though everything in the system seems to
7 be geared towards making them as beastual and
8 animal-like as possible even though the deck seems
9 stacked against us accomplishing that task.

10 I can't identify with the family, I can't,
11 because I've never been in that situation before.
12 I've never had a family member put in that situation
13 before. I do not doubt that they grieve, that they
14 hurt, that they're going through some changes as a
15 result of what happened to their daughter.

16 But there's more than one human involved in
17 this equation. There's more than two humans
18 involved in this equation as the family support for
19 the victim clearly demonstrates. It's not just Mr.
20 DeLarge. It's not just Ms. Price and her family.
21 It's Mr. DeLarge and his family and his children,
22 how that impacts them, how what you decide today
23 impacts everyone in this courtroom. That's why you
24 wear the robe because you make the important
25 decisions and you have to strike a balance between

1 what is punishment, what is justice, what is fair
2 and that's what we're asking you to do today, Your
3 Honor.

4 Mr. DeLarge is 23 years old. He spent about
5 the last two years of his life in prison in
6 Lexington County Detention Center. And the time
7 he's been there locked away from society, has that
8 done anything to diminish the pain of the victims,
9 has that done anything to impact the aftereffects of
10 what happened to her?

11 As you heard from her today, apparently not.
12 It's still going on. She still hurts, the family
13 still hurts. So I ask you today, Your Honor, what
14 would giving him 60 years in jail do? Would that
15 aid in that effort any? Obviously it hasn't aided
16 thus far.

17 Your Honor, standing in the courtroom today
18 with Mr. DeLarge is his mother, his brother and his
19 sister-in-law, Your Honor. They're all here to show
20 support for him.

21 One of the things that I kind of found out
22 quickly when I got this case in talking to Mr.
23 DeLarge and talking with his family and even in
24 talking to one of the investigating officers, he
25 just doesn't fit the profile. It's just out of

1 character for him to be standing here today accused
2 of these crimes. I understand that he has a
3 criminal record, however slight or major it may be,
4 but none of that has any relation to what he's
5 charged to today, Your Honor. And even the nature
6 of those crimes is not even the same, not on the
7 scale of what he's charged with today, Your Honor.

8 And in speaking with him, he'd be one of the
9 last people I would suspect of doing something or
10 even capable of doing something like this. He's a
11 lively guy. He's full of life, full of energy,
12 pleasant to talk to. He's intelligent. From what I
13 understand, he's a very giving person. I mean, he
14 just doesn't fit the bill of what I would expect of
15 someone charged with these crimes, Your Honor.

16 As I said earlier, Your Honor, we do dispute
17 some of the facts alleged by the prosecution. And
18 most of those have to do with the armed robbery,
19 which was dismissed as part of this plea, Your
20 Honor. The level of intimidation and threats that
21 they say occurred, he denies that. He did not have
22 a weapon. As a matter of fact, the victim in the
23 case stated in her statement that she didn't see a
24 gun. He never used a weapon.

25 He denies some other aspects of the armed

1 robbery such as the nature of going to the ATMs and
2 such, but that charge is dismissed, that's not
3 before the Court, but he does want the Court to know
4 that some of those things did not happen the way
5 they happened.

6 My client also informs me that he knew the
7 victim. This wasn't a situation where it was a
8 stranger and he just randomly picked somebody out.
9 He knew them -- her before. Apparently, they had at
10 least an acquaintance. They went to the same high
11 school.

12 When I talked to my client, as I said earlier,
13 he just doesn't fit the bill. And when you see
14 somebody like that, you try to figure out, well,
15 what happened? How did you go from this to here?
16 And the only thing I can think of, Your Honor, is
17 that there was some drug use that night. My client
18 admits that and that may have played a role in the
19 decision making. That's the only thing I can point
20 to that could be the source of this because nothing
21 else in his life, nothing else, if you get
22 information from his family, from people who know
23 him, would indicate that he would even be capable of
24 that, Your Honor.

25 I know what the family's asking for, Your

1 Honor. And I know that the easy thing for you to do
2 with cameras here, with victims here, with
3 Solicitor's office here, with support from the
4 community here advocating this position, would be to
5 give him 60 years, but as I said earlier, what would
6 that do? What would that accomplish?

7 I mean, it would salve a wound temporarily,
8 maybe. It would serve to put some temporary closure
9 on something, but when everybody leaves this
10 courtroom when this term of court is over and he
11 goes to the South Carolina Department of
12 Corrections, that 60 years ain't going to make her
13 feel better, that 60 years is not going to stop her
14 from being afraid, that 60 years is not going to
15 address any of the issues that she has as a result
16 of this. Therefore, we're left with making a
17 logical sentence that would serve to punish him and
18 give him the opportunity to reform in a fair way.

19 Your Honor, as I said earlier, he's been in
20 prison for about two years now. I've talked to my
21 client. We've been back and forth. This was
22 initially a trial case. We were going to try this
23 case. As a result of our conversations and talks
24 with the Solicitor, we're here before you today.

25 All I can ask, Your Honor, is that in crafting

1 your sentence, you craft a sentence that addresses
2 punishment, fair punishment, gives him the
3 opportunity to reform and not be swept up in
4 emotion.

5 I understand there's emotion involved in this,
6 there always is. I understand that there's a public
7 out there who's literally looking over your shoulder
8 as we speak. I would ask you to not consider that.
9 I would ask you to consider the facts, consider the
10 parties involved in crafting your sentence.

11 What we would request, Your Honor, is a
12 sentence in the range of 10 or 15 years. This is an
13 85 percent crime, Your Honor. He doesn't get
14 parole. He has to live with this for the rest of
15 his life whether he gets out of jail or he doesn't
16 because he's going to have to register as a sex
17 offender for the rest of his life, that's going to
18 follow him around for the rest of his life.

19 He's going to be away from his children, he has
20 three children, for a significant amount of time.
21 They're going to have to come see him through a
22 glass. And I can't stress what kind of impact that
23 has on not only my client, but on those children, on
24 his family.

25 Because of his actions, he's not created one

1 victim, he's created many victims and that weighs
2 heavily on him. He acknowledges that. And I would
3 suggest that Your Honor take that into consideration
4 as punishment within itself in addition to whatever
5 you sentence him, Your Honor.

6 So, at this time, I think the family would like
7 to speak. I know my client would like to speak,
8 address the Court if allowed to do so, Your Honor.
9 And I humbly ask that you grant our request, Your
10 Honor.

11 **THE COURT:** Thank you, Mr. Cornwell. I
12 appreciate that.

13 Ma'am, I'd be happy to hear from you. If you
14 would, please identify yourself for the record and
15 then I'd be happy to hear from you.

16 **MS. DELARGE:** Thank you, Your Honor. My name
17 is Gail DeLarge. I'm Wendell's mom.

18 As Mr. Cornwell has said along with everyone
19 else, this is extremely serious. But all of the
20 people that have known Girard for all of his life
21 can tell you this is not of character of him.

22 This is being blown way out of proportion for
23 whatever reason. I'm not understanding that at this
24 time.

25 Girard has made some mistakes in the past. I

1 do not deny that. Girard is not perfect. I do not
2 deny that. But rape and kidnapping is just not a
3 part of his makeup. Never has been -- I mean, he's
4 had a huge following as far as females go, so he's
5 never had a need to do something as hideous as that.
6 I really don't understand why this is like it is or
7 why it has to be this way, but I will ask that you
8 be lenient.

9 He does have three beautiful children that's
10 still wanting to know when daddy's coming home. We
11 try to pacify that because unfortunately he -- they
12 couldn't see him at Lexington, so we try to pacify
13 them as well as we can.

14 My heart goes out to the family of the victim,
15 but at the same time, my heart goes out to my son
16 because this is totally unjust. He is just not that
17 kind of person and that's not just as a mother, that
18 is just somebody that knows his character and have
19 known it all of his life, so I thank you.

20 **THE COURT:** Thank you, ma'am. I appreciate
21 your being here.

22 Anyone else?

23 **MR. DELARGE:** I'm his brother, Steven DeLarge.
24 Like my mom said, you know, it's just not like him
25 to even do anything like this, you know. And it's,

1 to me, it's crazy. I mean, I know he's not the most
2 perfect person. There's nobody not perfect, you
3 know, but this is just outrageous, you know. And I
4 just ask that you, you know, show some lenience
5 against him so that he would at least be able to
6 make it home to his kids, you know, before they get
7 too old.

8 **THE COURT:** All right. Thank you, sir. I
9 appreciate that.

10 Ma'am, anything you would like to say?

11 (There was no response.)

12 **THE COURT:** Mr. DeLarge, I'd be happy to hear
13 from you, sir, if there's anything you'd like to
14 tell me.

15 **DEFENDANT:** Yes, sir. Thank you, Your Honor.

16 To stand here before you and say that this
17 hasn't happened after I have pleaded guilty would be
18 illogical, you know, but to have charges as such
19 placed against me, accusations placed against me,
20 it's also greatly hampering, you know. I mean, like
21 I say, I wouldn't dare to make a mockery of this
22 courtroom to say that I'm an angel, you know, but at
23 the same time, I work hard, you know. And I'm an
24 active father for my kids. I take care of my home
25 and anybody else that needs anything, you know, Your

1 Honor.

2 And for everyone who feels, like I say, my
3 heart goes out to the family, you know, who doesn't
4 know the full extent of this, you know, and -- but I
5 just ask that you -- you use as much leniency in
6 this case, you know, because this isn't the way it
7 seems, you know.

8 But along the line between trial and a plea,
9 you know, things digressed along the way that you
10 feel that a plea would be a better option, so you --
11 you muster up to the mistakes in which you've made,
12 though they're not exactly as said, you know. I've
13 always been raised to take care -- to take my --
14 take responsibility for what I've done, you know.

15 And, yes, I have made mistakes mostly -- in
16 this situation mostly in affiliation. So by
17 affiliation, yes, I do take responsibility, but as
18 all things have been said, this is greatly a hamper,
19 you know, for someone to look at you and no longer
20 trust you, you know, or look at you in a very
21 different way than how they've looked at you before.
22 And for you to have to, in this case as it's been
23 explained to me, have to register as a sex offender
24 knowing that you can't go to PTA meetings for your
25 kids, that you can't go to parks with your kids, you

1 know. And as the family has said, it affects their
2 lives, it also affects mine.

3 So, I mean, with all things considered, you
4 know, I understand that you have to make your
5 judgment and I respect that greatly and your
6 position, but I just ask that you be considerate and
7 as lenient as you have been in your honorable --
8 your honorable presiding in the time that you've
9 been on the bench, sir. Thank you.

10 **THE COURT:** Thank you, Mr. DeLarge. I
11 appreciate that.

12 **MR. GRAHAM:** Your Honor, if I may, since
13 Mr. Cornwell wanted to go last, there are a couple
14 of things that I'd like to address of what was said.

15 **THE COURT:** Okay. I'll be happy to hear from
16 you.

17 **MR. GRAHAM:** Thank you.

18 There was a claim that they were friends or
19 acquaintances or something like that. The victim
20 and her family flatly deny that. They did go to the
21 same high school for a period of time. Mr. DeLarge
22 was at that high school for less than a semester and
23 he dropped out. Ms. Price at that time was a
24 cheerleader so she would have been known by everyone
25 there, but they deny that there was any friendship,

1 any acquaintanceship, any affiliation, as
2 Mr. DeLarge's words, at all.

3 And, additionally, and I'm not pointing out
4 anything to you, Your Honor, but there's more than
5 punishment here. There's also protecting society
6 and I would ask you to consider that in your
7 sentence as well.

8 **THE COURT:** All right, sir. Thank you very
9 much.

10 All right. I'm going to take a brief recess of
11 five minutes, collect my thoughts and I'll come back
12 in at 35 minutes past the hour and hand down the
13 sentence. Thank you.

14 (Brief recess.)

15 **THE COURT:** All right. Ladies and gentlemen, I
16 appreciate everyone being in the courtroom today.
17 And I appreciate the comments from friends and
18 family and I appreciate everyone being civil today.

19 And I've taken into consideration everything
20 that I've heard on the record today. And let me say
21 that I do believe that Mr. Cornwell is right. There
22 is no remedy and there's no sentence that I can
23 fashion which would appropriately address this
24 situation, or that I could go back in time and
25 change the facts and make it not happen, that's what

1 I would do. And I certainly and sincerely wish that
2 I could, but obviously I cannot.

3 Both the State and the defense have pointed out
4 very important things that I must consider in this
5 matter. I must consider the victim certainly. I
6 must consider the defendant. And as the State
7 points out, I must also consider society and that's
8 an important element of the sentencing as well.

9 I've heard mitigation and I've heard that this
10 is out of character for the defendant. And while
11 that may be true, I'm not in a position to judge the
12 character of defendants. I am tasked with holding
13 people accountable for their actions. And while it
14 may be out of character, I'm not in a position to
15 judge the defendant's character in this matter.

16 I do recognize that many people are affected by
17 the sentence that I hand down not only the
18 defendant, but his family. And what I would tell
19 you is that I am sensitive to those considerations
20 and I am sensitive to the innocent persons who are
21 affected by any sentence that I may hand down.

22 However, I'm also cognizant of the facts that
23 we would not be here but for the actions of Mr.
24 DeLarge in this action. Therefore, any sentence
25 that I hand down to the extent that it may affect

1 third persons is not the responsibility of this
2 Court. It is the responsibility of the defendant
3 for the actions on the night in question.

4 I would also tell you that I do consider
5 innocent third persons and paramount among those
6 innocent third persons and among those innocent
7 persons is the victim. And as we indicated, I can't
8 take this away and she's confined by the trauma of
9 this experience probably everyday for the rest of
10 her life.

11 I recognize that there were some suggestions
12 and hints of some other factual -- some other facts
13 in mitigation, but I'm confined by what I hear on
14 the record. And I don't know these other mitigating
15 circumstances that were either hinted or suggested,
16 therefore I'm not at liberty to speculate and to
17 just con -- speculate as to what those may be. I'm
18 confined by what I've heard.

19 And I, also, am sensitive to the fact that the
20 defense has pointed out that members of the
21 judiciary can certainly be affected and influenced
22 by the public. And we have members of the media and
23 lots of people from the community here today. And I
24 appreciate each and every one of you being here, but
25 the sentence I hand down will not be as a result of

1 any pressure that I feel from the public. Every
2 sentence that I hand down or any other circuit court
3 judge hands down is subject to the close scrutiny of
4 the public whether the media is in attendance or not
5 because it's all a matter of public record.

6 And let me also say that the sentence that I
7 hand down is not the product of any passion or
8 caprice or emotion on my part. The only emotion
9 that I feel is regret for having to be here and
10 having to make this very awesome decision which
11 affects the lives of people.

12 I have taken into consideration all of the
13 things which have gone -- have been put into the
14 record and those additional considerations that I've
15 stated this afternoon. And having considered all of
16 that, the sentence of the Court is that you be
17 confined to the South Carolina Department of
18 Corrections on each offense for 25 years. Each are
19 consecutive.

20 Thank you, sir, and good luck to you.

21

22

END OF PROCEEDINGS

23

24

25

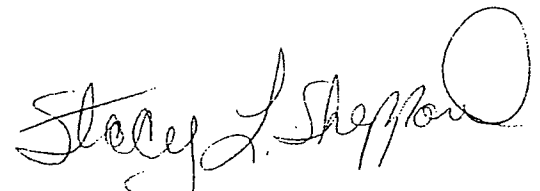
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the guilty plea of the captioned cause, relative to appeal in the Criminal Court for Lexington County, South Carolina, on the 14th of October, 2009.

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

January 11, 2011



Stacy L. Sheppard, RPR
Circuit Court Reporter

riminal laws of the

JCS

Lexington County Sheriffs Department

Edward Prestigiacomo

ARREST WARRANT NUMBER

DSG

J845885

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 1-12-09

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2009-GS-32-5188

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JANUARY TERM 2009

THE STATE
vs.

Wendell Girard Delarge

CDR #: 0160

Indictment for

Criminal Sexual Conduct 1st

§ 16-03-0652

DONALD V. MYERS, SOLICITOR

as charged
04 30 years
Voluntary
Mood Severe
No Parole
Sent Lifelong Prison
Sexually Violent Offender

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)

INDICTMENT FOR
 Criminal Sexual Conduct 1st

§ 16-03-0652

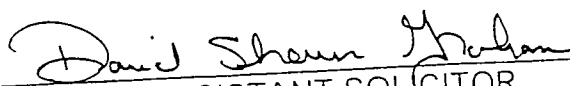
At a Court of General Sessions, convened on January, 2009, the Grand Jurors of Lexington County present upon their oath:

That **Wendell Girard Delarge**, did in Lexington County, South Carolina on or about December 12, 2007, commit a sexual battery upon the victim, Courtney Price, without her consent and (1) such sexual battery was accomplished by the use of aggravated force or (2) the victim submitted to the sexual battery while also the victim of forcible confinement, kidnapping, robbery or other similar offense or act, all in violation of Section 16-3-652, Code of Laws of South Carolina, (1976, as amended).

A TRUE COPY


 Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


 SR. ASSISTANT SOLICITOR

RETURN
arrest warrant was delivered
WENDELL
12/16/09
Signature of Constable/Law Enforcement Officer
Jiacomo

Center
Sheriff's Department

ARREST WARRANT NUMBER

J845887

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 1-12-09

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2009-GS-32-5187

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

JANUARY TERM 2009

THE STATE
vs.

Wendell Girard Delarge

CDR #: 0095

Indictment for

Kidnapping

§ 16-03-0910

DONALD V. MYERS, SOLICITOR

as charged

02 30 years

Violent

Most Serious

Sex Offender
Delarge (if

was kidnapping

what did

not involve

a sexual

offense)

No Parole

STATE OF SOUTH CAROLINA)
)
 COUNTY OF LEXINGTON)
)

INDICTMENT FOR
 Kidnapping
 § 16-03-0910

At a Court of General Sessions, convened on January, 2009, the Grand Jurors of Lexington County present upon their oath:

That **Wendell Girard Delarge** did in Lexington County, South Carolina on or about December 12, 2007, knowingly, willfully, and unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away Courtney Price by any means whatsoever without authority of law, and her consent, to wit: the defendant did deprive the victim of her freedom through the use of threats, and/or physical force, and/or the threat of the use of a weapon, in violation of § 16-3-910 of the Code of Laws of South Carolina, 1976, as amended.

A TRUE COPY
[Signature]
 Lex. Co. C.C.C.P., G.S. & F.C.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

[Signature]
 SR. ASSISTANT SOLICITOR

COUNTY OF Lexington
STATE

VS.
Wendell Girard Delarge

INDICTMENT/CASE#: 2009-65-32-5187

AW#: J845887

Date of Offense: 5/19/2008

S.C. Code §: 16-03-0910

CDR Code #: 0095

AKA: Race: B Sex: M Age: 23

DOB: 1/86 SS#:

Address:

City, State, Zip: Columbia, SC 29203

DL#: 011692082 SID#: SC01520875

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

☐ CONVICTED OF or ☒ PLEADS

SENTENCE SHEET

TO: Kidnapping / Kidnapping

In violation of § 16-03-0910

of the S.C. Code of Laws, bearing CDR Code # 0095

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS

☐ Mandatory GPS ☐ §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: ☒ As indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (defendants initials)

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

ATTEST:

Solicitor Dwight S. [Signature] SC Bar # 11650

Defendant [Signature]

Attorney for Defendant T. L. [Signature]

SC Bar # 73191

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections ☐ County Detention Center,
for a determinate term of 25 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are
incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: TD 09-5188

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

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

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-23-20 or 16-25-6 (Common
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

PTUP

Lex. Co. C.C.C.P., G.B. & P.C.

Total: \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

☐ Set by SCDPPPS _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Recipient: _____

Random Drug/Alcohol Testing ☐

Fine may be pd. In equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: SEXUAL REGISTER

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

*Fine:		\$
§14-1-206 (Assessments 107.5%)		\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100	\$100.00
§14-1-211 (A)(2)(DUI Surcharge)	\$100	\$
§56-5-2995 (DUI Assessment)	\$12	\$
§56-1-286 (DUI Breath Test)	\$25	\$
§47.12 (Public Def/Prob)	\$500	\$
§14-1-212 (Law Enforce. Funding)	\$25	\$85.00
§14-1-213 (Drug Court Surcharge)	\$100	\$
§50-21-114 (BUI Breath Test Fee)	\$50	\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
§90.7 (SCCJA Surcharge)	\$5	\$5.00
3% to County (if paid in installments)		\$
TOTAL		\$130.00

Presiding Judge [Signature]

Judge Code: 2158

Sentence Date 14 OCT 2008

Clerk of Court/Deputy Clerk Beth A. [Signature]

Court Reporter: S. Shippard

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

47

COUNTY OF Lexington
 STATE VS.
 Wendell Girard Delarge

INDICTMENT/CASE#: 2009-GS-32-5188

KA: _____
 Race: B Sex: M Age: 23
 DOB: _____
 Address: _____
 City, State, Zip: _____

AW#: J845885
 Date of Offense: 5/19/2008
 S.C. Code §: 16-03-0652
 CDR Code #: 0160

SENTENCE SHEET

Disposition of the said indictment comes now the defendant who was

☐ CONVICTED OF or ☒ PLEADS

Charge: Sex / Criminal sexual conduct - First degree

Violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS ☐ \$17-25-45
 (CSC w/minor 1st or Lewd Act)

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

TEST: _____
 Defendant: _____ Attorney for Defendant: T. L. R. L. _____ SC Bar # 23191

Solicitor _____ SC Bar # _____

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

for a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and or payment

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

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are

incorporated by reference.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: _____

☐ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department

of Corrections.

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

Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal

Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

* Fine: _____

§14-1-206 (Assessments 107.5%) \$100 \$100.00

§14-1-211 (A)(1)(Conv. Surcharge) \$100 \$100.00

§14-1-211 (A)(2)(DUI Surcharge) \$12 \$12.00

§56-5-2995 (DUI Assessment) \$25 \$25.00

§56-1-286 (DUI Breath Test) \$500 \$500.00

§47.12 (Public Def/Prob) \$25 \$25.00

§14-1-212 (Law Enforce. Funding) \$100 \$100.00

§14-1-213 (Drug Court Surcharge) \$50 \$50.00

§50-21-114 (BUI Breath Test Fee) \$40/ea \$40.00

§56-5-2942(J) (Vehicle Assessment) \$5 \$5.00

§90.7 (SCCJA Surcharge) \$ \$0.00

3% to County (if paid in installments) \$ \$130.02

TOTAL \$130.02

PTUP

A TRUE COPY

_____ days/months Public Service Employment

Lex. Co. C.C.C.P., G.S. & F.C.

Obtain GED ☐

Attend Voc. Rehab. Or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. In equal, consecutive weekly/monthly

pmts. of \$ _____ Beginning _____

\$ _____ Paid to Public Defender Fund

Other: REVIEW REQUIRED

☐ Appointed PD or appointed other counsel,

\$47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge _____

Judge Code: 2158

Sentence Date 14 OCT 2009

Clerk of Court/Deputy Clerk

Court Reporter: S. Sheppard

117mw

FORM 5

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

FILED

IN THE COURT OF COMMON PLEAS

2010 OCT 29 4:28

A TRUE COPY

Lex. Co. C.C.C.P., G.S. & F.C.

Full name and prison number (if any) of Applicant.
 WENDELL G. DELARGE # 316993
 v. APPLICANT

APPLICATION FOR

State of South Carolina
 ATTORNEY GENERAL OF SOUTH
 CAROLINA
 RESPONDENT

POST-CONVICTION RELIEF

2010CP 3204747

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 McCORMICK CORRECTIONAL INSTITUTION
2. Name and location of Court which imposed sentence COURT OF GENERAL SESSIONS, LEXINGTON COUNTY
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 2009-GS-32-5188 CRIMINAL SEXUAL CONDUCT 1ST DEGREE
 - (b) 2009-GS-32-5187 KIDNAPPING
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) 9-14-09 25 YEARS CONSECUTIVE
 - (b) 9-14-09 25 YEARS CONSECUTIVE

2010CP3204741

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2010 OCT 29 P 4:28

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒ _____
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
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. SOUTH CAROLINA COURT OF APPEALS - ^{UP}DISMISSED
DISMISSED
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. ~~12-7-10~~ 12-7-09
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

2010CP3204741

- (a) 5TH AMENDMENT ~~SEE ATTACHMENTS~~ ^{WD} SEE ATTACHMENTS
- (b) 6TH AMENDMENT SEE ATTACHMENTS
- (c) 14TH AMENDMENT SEE ATTACHMENTS

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

- (a) BRADY VIOLATION PROSECUTION MISCONDUCT
- (b) INEFFECTIVE ASSISTANCE OF COUNSEL
- (c) DUE PROCESS

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

- (a) any petition in a State Court under South Carolina Law? YES
- (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 ^{YES}

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. COURT OF APPEALS, 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. DIRECT APPEAL - DISMISSED

ii. _____

iii. _____

2010 OCT 29 3 4 29

FILED

2010CP 3204741

FILED

2010 OCT 29 3 4:29

iv. _____

(d) the date of each such disposition:

i. ~~4-2-7-10~~³⁻¹⁰ 12-7-09

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

No

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

(a) _____

(b) _____

(c) _____

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

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

2010CP3204741

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. F. CASEY D. CORNWELL LEXINGTON COUNTY PUBLIC DEFENDER
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. GUILTY PLEA
- ii. _____
- iii. _____

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

VACATE, OR GRANT NEW TRIAL

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

NO

2010 OCT 29 3 4:29

FILED

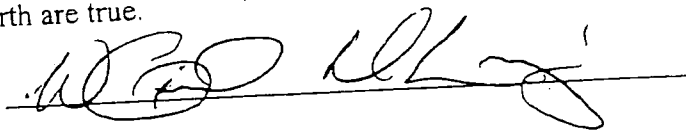
2010CP 3204741

STATE OF SOUTH CAROLINA

VERIFICATION

County of LEXINGTON

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



SWORN to and subscribed before me this 21
day of OCT., 2010.

J. C. Franken (L.S.)
Notary Public

My Commission Expires: 12.16.2019

2010 OCT 29 3 4 29

FILED

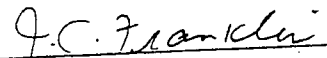
**APPLICATION TO PROCEED WITHOUT PAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, WED, 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.


Applicant

SWORN or affirmed to and subscribed before me this
21 day of Oct., 2002.


Notary Public

My Commission Expires: 12-16-2019

2009 OCT 29 3 44 29

FILED

2010CP3204741

Wendell G. DeLargé #316993
386 Redemption Way
McCormick SC 29889

FILED

Date: 10-21-10

2010 OCT 29 3:42 PM

PCR

ARGUMENT BRIEF

1. The respondent violated the applicant's fifth (5th) amendment right by withholding "exculpatory" Brady material, and his due process right in the applicant's case. In the applicant's case there is exculpatory evidence which is "material" most favorable to the applicant which was withheld by the respondents.

2010CP3204741

2. Trial counsel was ineffective for failing to prepare, and to conduct a proper pre - trial investigation. The petitioner submits that he received ineffective assistance of counsel prior to and, during his guilty plea. The sixth (6th) amendment to the United States constitution guarantees that every criminal defendant is entitled to effective assistance of counsel in presenting their defense: See also: S.C. Const., Art.1, Section 14.

3. Trial counsel was ineffective for erroneously advising the applicant in the pleading faze before, and during his guilty plea. Also counsel erroneously misadvised the applicant as to the sentencing outcome for trial.


Wendell G. DeLargé #316993

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

WENDELL DELARGE # 316993

2010 OCT 29

VS

STATE OF SOUTH CAROLINA

CASE#

2010CP3204741

4:29

PROOF OF SERVICE

To Respondent:

I certify that Wendell Delargé #316993, has severed a true copy of the post – conviction relief to the Lexington County Clerk of Court, Beth Carrigg, by placing a copy in the United States Mail at listed address, 205 Main Street, Lexington, SC 29072.

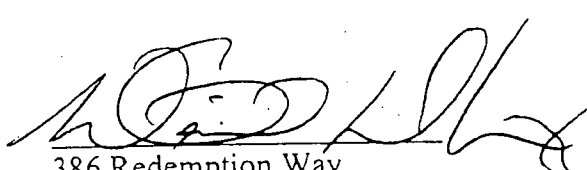
Sworn to and subscribed before

me this 21 day OCT 2010

J.C. Frankley

NOTARY PUBLIC

My Commission Expires: 12-16-2019


386 Redemption Way
McCormick, SC 29889

STATE OF SOUTH CAROLINA
COUNTY OF LEXINGTON

WENDELL DELARGE # 316993

VS

STATE OF SOUTH CAROLINA

FILED IN THE COURT OF COMMON PLEAS

CASE#

2010 OCT 29 3 4:29

SUMMONS

To Respondent:

2010CP3204741

You are hereby summoned and required to service upon the applicant
Wendell G. Delagré #316993, whose address is listed below, and
answer to the post – conviction relief included here served upon
you within sixty (60) days of service. If you fail to do so, judgment
by default will be taken against you in this action.

Date: 10-21-10


386 Redemption Way
McCormick, SC 29889

Wendell G. Delargé # 316993
386 Redemption Way
McCormick, SC 29889

FILED

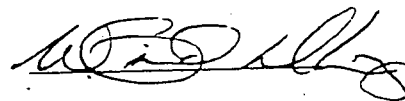
2010 OCT 29 3 4:29

Date: 10-21-10

2010CP3204741

In regards, please find for filing the original copy of my post – conviction relief.
I'm requesting a returned clock – date stamped copy: please find self-addressed
envelope for return.

Respectfully
Submitted



C: W.G.D.
B.A.C.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	ELEVENTH JUDICIAL CIRCUIT
COUNTY OF LEXINGTON	)	
	)	
	)	2010-CP-32-4741
	)	
Wendell G. DeLarge, #316993,	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 29, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Lexington County Clerk of Court. The Applicant was indicted at the January 2009 term of the Lexington County Grand Jury for Kidnapping (2009-GS-32-5187) and Criminal Sexual Conduct (2009-GS 32-5188). He was represented by Casey Cornwell, Esquire. On September 14, 2009, the Applicant pled guilty as charged. He was sentenced to confinement for consecutive periods of twenty-five (25) years.

A timely notice of appeal was filed on the Applicant's behalf. The South Carolina Court of Appeals subsequently dismissed the Applicant's appeal by order dated on or about December 7, 2009.

Attached herewith and incorporated herein are the records of the Lexington County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina

Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend and/or supplement this Return upon receipt with any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
 - a. "Trial counsel was ineffective for failing to prepare, and to conduct a proper pre-trial investigation."
 - b. "Trial Counsel was ineffective for erroneously advising the Applicant in the pleading phases before and during his guilty plea. Also Counsel erroneously advised the Applicant as to sentencing outcome for trial."
2. Prosecutorial Misconduct
 - a. Withholding exculpatory Brady material
3. Due Process

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 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, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance 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.

Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. Nevertheless, the allegation of ineffective assistance of counsel probably raises a question of fact which cannot be conclusively refuted by the record and, therefore, requires that an evidentiary hearing be held. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983); Delaney v. State, 269 S.C. 555, 238 S.E.2d 679 (1977).

IV.

Respondent submits that the Applicant's second and third allegations raise direct appeal issues that are procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised these issues at trial or on appeal. His failure to do so has waived these allegations as grounds for relief. Therefore, the Court should summarily dismiss these allegations.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

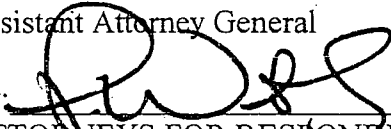
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

A. WEST LEE
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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

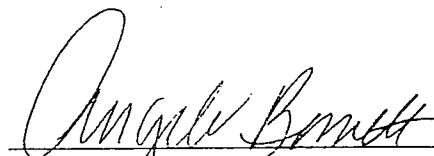
January 19, 2011

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
	)	2010-CP-32-4741
	)	
WENDELL G. DELARGE, #316993	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent.	)	

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

Jennifer Butler, Esquire
Post Office Box 849
Lexington, SC 29071

DATED this 19th day of January, 2011


 Angela Bennett, Legal Assistant
 For Respondent

1 State of South Carolina) In the Court
2 County of Lexington) Of Common Pleas
3
4 Docket No. 2010-CP-32-4741
5
6 Wendell G. DeLarge,)
7 Applicant,)
8 vs.) Transcript of Record
9)
10 State of South Carolina,)
11 Respondent.)

12 January 30 and February 2, 2012
13 Lexington, South Carolina
14

15 B E F O R E:

16 The Honorable Eugene C. Griffith, Jr., Judge.
17

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

19 Benjamin A. Stitely, Esquire
20 Attorney for the Applicant

21 Kaelon E. May, Assistant Attorney General
22 Attorney for the Respondent
23

24 Brenda J. Sigwald, Circuit Court
25 P.O. Box 206, Jackson, South Carolina 29831

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1 MS. MAY: Your Honor, we're ready.

2 THE COURT: All right.

3 MS. MAY: The next case we would like to call is
4 Wendell DeLarge v State, Case No. 2010-CP-32-4741. This
5 case comes from a PCR application filed October 29th, 2010.
6 Mr. DeLarge was charged with kidnapping and criminal sexual
7 conduct first degree. He -- on September 14, 2009, he pled
8 guilty and he was sentenced to confinement for fifty years,
9 consecutive periods of twenty-five. There was an appeal
10 filed in his behalf and Court of Appeals dismissed the
11 appeal by order dated December 7th, 2009.

12 And I'll hand it over to Mr. Stitely to stand on
13 his claims.

14 MR. STITELY: Yes, sir, may it please the Court?

15 THE COURT: Yes, sir.

16 MR. STITELY: Your Honor, just a couple more
17 clerical matters. This case was originally appointed to
18 Jennifer Butler in our office. She's one of our family
19 court lawyers and I took this case over for her. So the
20 record attorney would have been Jennifer Butler. I'm Ben
21 Stitely and I've introduced myself to the court reporter as
22 well. I just wanted to put that on the record for clerical
23 purposes.

24 Your Honor, our first witness in this case is
25 Mr. Waries.

Jerry Waries - Direct Examination by Mr. Stitely

1 THE COURT: All right. Come forward and be sworn
2 and then have a seat in the witness chair.

3 JERRY WARIES,

4 having been duly sworn, testified as follows:

5 THE CLERK: Please be seated and state your name
6 for the record.

7 THE WITNESS: My name is Jerry Waries.

8 DIRECT EXAMINATION

9 BY MR. STITELY:

10 Q Mr. Waries, would you please introduce yourself to
11 the Court, mainly in telling us what you do for a living?

12 A I'm a fraud investigator with First Citizen's Bank.

13 Q And I appreciate your being here. We've had an
14 opportunity to talk a couple of times via e-mail and cell
15 phone. The reason you came upon this case is, in
16 particular -- and correct me if I'm wrong -- is you're the
17 individual who would be contacted if there was a request
18 for footage from an ATM transaction for your bank, correct?

19 A Yes, sir.

20 Q Do you have any particular recollection of your
21 involvement with this case, specifically the event that
22 transpired back in December of 2007?

23 A The only recollection that I have is of the actual
24 photos themselves that I downloaded from our digital video
25 recording system.

Jerry Waries - Direct Examination by Mr. Stitely

1 Q All right. I'm going to show you something.

2 MR. STITELY: May I approach, Your Honor?

3 THE COURT: Yes, you may.

4 By MR. STITELY:

5 Q Do you recognize this by chance? It's the e-mail
6 conversation I had sent to you a couple of weeks ago.

7 A Yes, sir, I recognize the e-mail that I sent to
8 Detective Wofford.

9 Q And mainly what happens is a police detective would
10 contact you, tell you they're interested in something and
11 you would send a reply asking the specifics; and then you'd
12 provide them whatever information they needed, correct?

13 A Yes.

14 Q Is this a fair and accurate depiction of the e-mail
15 that was generated between you and the officer?

16 A Yes.

17 MR. STITELY: Your Honor, I would offer a copy of
18 that as Defendant's Exhibit 1. I have an additional copy.

19 THE COURT: Any objection?

20 MS. MAY: I have a copy. No objections.

21 (WHEREUPON Applicant's Exhibit 1 was marked and
22 entered into evidence.)

23 THE COURT: That's received as Defense 1.

24 MR. STITELY: Thank you, Your Honor.

25 ///

Jerry Waries - Direct Examination by Mr. Stitely

1 BY MR. STITELY:

2 Q In response back then, Mr. Waries, do you have any
3 independent recollection of being contacted by Mr. DeLarge
4 and his attorney or any investigator on behalf of
5 Mr. DeLarge?

6 A No.

7 Q Would you probably have had some kind of record if
8 other requests had been made like a paper trail?

9 A Yes, sir.

10 Q Okay. And, of course, in my response to a
11 subpoena, I'd asked for copies of the photos. I'm just
12 going to show you a stack of items.

13 MR. STITELY: If I may approach again?

14 THE COURT: Sure.

15 BY MR. STITELY:

16 Q You don't have to look at them all individually,
17 but if you could tell me, is that generally the stack of
18 photos and logs that you had sent me in response to my
19 request? It should just be a printout of the attachment
20 that you sent me over.

21 A It appears that the photos that you have here are
22 not the photos that I actually provided to Detective
23 Wofford, but the photos that I provided are a sampling of
24 these photos, though. I brought copies of the photos that
25 I provided; and I'm sure I can find them within this large

Jerry Waries - Direct Examination by Mr. Stitely

1 stack, but I did not pull all of these though.

2 Q But those are the photos that you sent me the other
3 day in response to my request for any photos you had
4 dealing with this particular ATM transaction, correct? Two
5 ATM transactions?

6 A If I recall, I sent you a copy of sixteen different
7 photos. The e-mail, is that --

8 Q Yes. Okay.

9 **MR. STITELY:** Your Honor, I would offer this
10 collectively group of photos as an Exhibit No. 2 for the
11 defendant.

12 **MS. MAY:** No objection.

13 **THE COURT:** No objection.

14 (WHEREUPON Applicant's Exhibit No. 2 was marked and
15 entered into evidence.)

16 BY MR. STITELY:

17 Q Mr. Waries, would these same photos requested
18 thereof been available to Mr. DeLarge's attorney had the
19 request been made back in 2007?

20 A Yes.

21 Q And just, once again, no similar requests or
22 further investigation was requested directly of you by
23 Mr. DeLarge prior to my conversations with you last month?

24 A That's correct.

25 **MR. STITELY:** No other questions.

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1 THE WITNESS: To the best of my knowledge, that's
2 correct.

3 MR. STITELY: No other questions, thank you.

4 THE COURT: Very well. Any questions Ms. May?

5 MS. MAY: No questions for this witness.

6 MR. STITELY: I'd ask he be excused, Your Honor.

7 THE COURT: Sure.

8 THE WITNESS: Thank you.

9 MR. STITELY: Your Honor, at this time we'd call
10 Mr. Casey Cornwell to the stand.

11 THE COURT: Come here and be sworn and then come to
12 the witness stand.

13 FULTON CASEY DALE CORNWELL,
14 having been duly sworn, testified as follows:

15 THE CLERK: Please be seated and state your name
16 for the record.

17 THE WITNESS: My name is Fulton Casey Dale
18 Cornwell.

19 DIRECT EXAMINATION

20 BY MR. STITELY:

21 Q Mr. Cornwell, how are you today?

22 A I'm fine.

23 Q Where were you -- where are you currently employed?

24 A York County Public Defender's Office, 16th Circuit.

25 Q And prior to that were you employed over in

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1 Lexington in the same capacity?

2 A Yes, I was.

3 Q How long were you at the Lexington County Public
4 Defender's Office? Why time frame?

5 A About four years.

6 Q Okay. And during those four years, you represented
7 Mr. DeLarge in this matter?

8 A I did.

9 Q Do you have an independent recollection of your
10 representation of Mr. DeLarge?

11 A I do, and I'm -- originally he was represented by
12 Mr. Bax and when he left, I inherited the case. I do
13 remember representing -- my representation of Mr. DeLarge
14 pretty well.

15 Q Okay. And Mr. Bax would have been Arie Bax, who
16 was with the public defender's office as well?

17 A Yes.

18 Q Okay. And I take -- just looking -- and you have a
19 copy of the file -- what you -- is that probably the sum
20 total of your representation file for Mr. DeLarge?

21 A It's probably missing some stuff, you know, but, I
22 think this is about the bulk of everything.

23 Q Okay. What -- I guess I have to ask you a couple
24 of specific questions. Ultimately, when you first spoke
25 with Mr. DeLarge, when you first got the case from Mr. Bax,

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1 is it not true that he was pretty much dead set on having a
2 trial?

3 A Yes, we had discussed a trial several times.

4 Q Okay. And from the beginning of his representation
5 he had always maintained that the interaction he had with
6 the victim in this case was a consensual interaction rather
7 than the way the State portrayed it, correct?

8 A Yes. That was what he told me.

9 Q All right. When did you first get -- when did you
10 first get this case? Do you know the date when you
11 received it?

12 A I don't know the exact date.

13 Q Okay. Had you already -- Mr. DeLarge already been
14 in jail for a significant amount of time at that point?

15 A I think so, because he had a pretty high bond from
16 what I remember.

17 Q I think it was like \$3 million or something.

18 A Yes.

19 Q Now, in this case, when you took it, did you prep
20 it for trial?

21 A Yeah. We actually -- I talked with -- as you
22 probably know, I talked with Mr. DeLarge several times
23 about his case; and we talked about trial strategy more
24 than plea up until the end there. And we'd investigated
25 some things for him. He pointed out -- he told us that

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1 they went to the same high school at one time. We looked
2 into that.

3 I asked him about phone records, asked him about
4 anybody else who may be able to vouch for a consensual
5 relationship between them and, you know, things of that
6 nature. We discussed several things that would be helpful
7 for us at trial.

8 Q Let's talk specifically about a few of the elements
9 in the case. Now, the judge, of course, having not heard
10 this -- the allegations by the State was that Mr. DeLarge
11 meets this girl in a parking lot, hops in the vehicle,
12 makes her travel around, forces a sexual act upon her after
13 getting some money out and then leaves, correct?

14 A That's correct.

15 Q And Mr. DeLarge disagreed with every element of
16 that from the beginning, correct?

17 A At the beginning, he was saying that it was a
18 consensual act. I don't want to incriminate him any
19 further, but there was another reason for them meeting each
20 other.

21 Q Right. They were going to buy some marijuana is
22 what he said, correct?

23 A That's correct.

24 Q Okay. That's fine. I'll put that out there. That
25 way it's not you.

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1 Specifically when the interaction between the two
2 individuals initially -- it happened at a Shell Station up
3 on Harbison Boulevard, correct?

4 A That's right.

5 Q By both his account and the State's account of the
6 details?

7 A That's right.

8 Q Were you able from your independent investigation
9 to uncover the individuals or the video tapes from the
10 actual Shell Station?

11 A I had stills from the inside of the Shell Station
12 that showed -- appeared to show a guy that appeared to
13 match Mr. DeLarge's description on the inside of the Shell
14 Station.

15 Q Because it was his position that he had been there
16 for a while. He actually saw her and she left and then
17 actually came back and picked him up a second time,
18 correct?

19 A Yes. We weren't able to obtain any kind of video
20 from the outside of the Shell Station.

21 Q Right.

22 A I think I talked to Mr. DeLarge about that because
23 he'd actually called to see if that would be available to
24 us and it wasn't.

25 **MR. STITELY:** May I approach, Your Honor?

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1 THE COURT: Yes, you may.

2 BY MR. STITELY:

3 Q Are these the -- I'm going to hand you some still
4 photos. Do those appear to be the still photos that we're
5 talking about?

6 A Yes.

7 Q Fair and accurate to the best of your knowledge the
8 photos that were turned over to you?

9 A Yes.

10 MR. STITELY: I would offer those as Exhibit No. 3
11 for the defendant, Your Honor.

12 THE COURT: Any objection?

13 MS. MAY: No objection.

14 THE COURT: All right. Without objection.

15 (WHEREUPON Applicant's Exhibit No. 3 was marked and
16 entered into evidence.)

17 BY MR. STITELY:

18 Q Mr. Cornwell, did you make any independent inquiry
19 into finding out the name of the clerk working at the store
20 that night?

21 A I don't remember right off the top of my head the
22 name of the clerk, but I think we -- that was a potential
23 witness for the State. I talked to Mr. Graham about that
24 in prepping the case for trial.

25 Q Do you know if he was ever subpoenaed?

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1 A I don't know that. I don't know that.

2 Q Do you know if -- now, you have an investigator
3 that works in your office as well -- you did at the public
4 defender's office in Lexington, correct?

5 A Well, we used to mostly hire out people to do that
6 kind of stuff for us. But on this case, I had my former
7 paralegal working -- basically in that investigator type
8 capacity, chasing down leads for me and stuff.

9 Q Do you know if her or you -- would it be fair to
10 say there was never any subpoena or the gentleman who was
11 the clerk of the store was ever brought --

12 A I never personally spoke to him. We didn't
13 subpoena him.

14 Q Okay. Were you able to procure any school records
15 in this case? Specifically to Airport High School?

16 A What we did do is we actually went down there to
17 check on a period of enrollment to see if there was any
18 overlap between him and the victim in this case. We got,
19 actually, pictures in the yearbook from that time period.
20 As a result of our investigation into that whole thing, we
21 did find out that they were in school at the same time, but
22 we weren't able to find any classes they had in common; and
23 on top of that, I think she was a freshman his senior year
24 and he ended up getting suspended for the rest of the year
25 pretty early on in the year -- according to our

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1 investigation. I don't know how -- it ended up being a
2 dead end for us.

3 Q Okay.

4 MR. STITELY: One second, Your Honor.

5 (WHEREUPON there was a pause in the proceedings.)

6 BY MR. STITELY:

7 Q Did y'all try to subpoena any teachers that may
8 have had them both as students or --

9 A No, we did not issue any subpoenas. They were kind
10 of gracious enough to let us peruse the records and stuff
11 just based on us saying it was part of an investigation,
12 so --

13 Q And one other thing I missed about the Shell. You
14 said that you did not get an outside video. Was the
15 request made and an attempt to FOIA or some kind of
16 subpoena to request video surveillance?

17 A We'd asked them -- I specifically remember asking
18 the people at the Shell Station how long they kept videos
19 and if they had outside videos and -- I'm going to be
20 honest with you, I can't remember if the issue was they
21 didn't have cameras on the -- video tape of the outside or
22 if the time period for how long they kept them had expired.
23 I can't remember right off the top of my head.

24 Q Would you happen to have any of the stuff you
25 recovered from the school? Any of that stuff with you?

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1 A I got some pictures from a yearbook that we took.
2 But nothing -- I mean nothing like --

3 Q Records, anything?

4 A Records, no. Basically what they did was let my
5 paralegal look through the records or whatever and I think
6 she actually talked to somebody.

7 Let me look through here.

8 Q But there aren't any actual records that she
9 printed out or anything?

10 A No. Let me look through here.

11 Q Yeah, absolutely. Take your time.

12 (WHEREUPON there was a pause in the proceedings.)

13 THE WITNESS: No, I don't believe we have any
14 school records. All we have are these printouts from the
15 yearbook.

16 BY MR. STITELY:

17 Q Okay. And no subpoena was done to the same?

18 A No, sir.

19 Q Okay. I apologize. I lost my train of thought.

20 Did you file a standard Rule 5 discovery or a Brady
21 request in this matter?

22 A We did..

23 Q Okay. Did you receive the return from the
24 solicitor's office?

25 A We did.

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1 Q Okay. Specifically, did you get a copy of the ATM
2 photos slash videos of the alleged transactions?

3 A We did have pictures -- I think from what I can
4 remember, it was kind of like -- it looked something like
5 that. I think there were like four photos or there may
6 have been two pages of like little block photos. I can't
7 remember right off the top of my head, but you couldn't
8 really see much in the photos.

9 MR. STITELY: May I approach the witness, Your
10 Honor?

11 THE COURT: You may.

12 BY MR. STITELY:

13 Q Casey, I'm going to show you the collective Exhibit
14 No. -- this is collectively what's already been put in as
15 Exhibit No. 2. And if you just want to take a look. Did
16 you ever get stills that looked like that?

17 A The stills we got were -- weren't of her actually
18 like leaning out of the car. It was more like a shot of
19 her and then the -- I don't know it was a different angle
20 than these. It seemed like any way. You couldn't really
21 see anything -- you basically could see what you can see in
22 these pictures, but she wasn't leaning out of the car.

23 Q All right. But to be fair, these are -- the
24 pictures in front of you are relatively clear and you can
25 definitely see the individual in them, correct?

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1 A Yes.

2 Q Okay. But you never had those particular pictures
3 when you represented Mr. DeLarge; is that fair?

4 A No, no, not these.

5 Q All right. All right. And you were here just a
6 moment ago when I asked Mr. Waries a few questions,
7 correct?

8 A Yes.

9 Q Did you ever do any followup with him?

10 A No. We -- I went by the pictures we received in
11 discovery. I did not follow up with the First Citizen's
12 Fraud Investigator.

13 Q Okay.

14 MR. STITELY: May I approach one more time, Your
15 Honor?

16 THE COURT: You may.

17 BY MR. STITELY:

18 Q This is the e-mail that we put in as No. 1. It was
19 actually enclosed in discovery. Do you remember that
20 e-mail?

21 A I think I do remember this.

22 Q And it pretty much says that as far as the
23 investigator could tell, it did not appear to see anyone
24 else in the vehicle at that time?

25 A That's actually something I brought to the

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1 prosecutor when I was defending Mr. DeLarge that the
2 pictures really didn't move or do anything to advance the
3 case whatsoever; but -- that would have -- I brought that
4 up. The pictures didn't help or hurt us at all.

5 Q But you didn't actually follow up with Mr. Waries
6 and get any more of his insight as to what he thought he
7 saw or didn't see, at least from these photographs,
8 correct?

9 A No, I didn't talk to him. But I had the same kind
10 of issues with the photos, that you couldn't see anybody
11 but the victim.

12 Q Did you ever receive any other photographs or
13 forensic evidence located from her actual vehicle?

14 A From her vehicle?

15 Q Yes.

16 A I'm not sure if I received any physical -- what are
17 you asking?

18 Q Any photos, a report, anything about the contents
19 or the condition of the alleged vehicle, automobile?

20 A Except for just like inventory sheets and things of
21 that nature. I guess that would be in there.

22 Q Do you know if anyone -- anyone being the police --
23 ever took pictures and followed up on the actual crime
24 scene as it were?

25 A I don't know. I don't think I received any

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1 pictures of the inside of the vehicle.

2 Q Okay. Because one of the issues that came up in
3 reading the reports was there was a big fight over whether
4 or not there was stuff in the front seat or not. But you
5 don't know if anyone ever took any pictures of that?

6 A No, I can't recall seeing any.

7 Q And you guys didn't do any independent requests
8 specifically or --

9 A Not specifically for that.

10 Q Okay.

11 MR. STITELY: I apologize, Your Honor. I'm looking
12 through my list here to make sure I don't miss anything.

13 (WHEREUPON there was a pause in the proceedings.)

14 BY MR. STITELY:

15 Q Did you ever -- now, Mr. DeLarge from the beginning
16 told you that -- and correct me if I'm wrong -- if he
17 didn't tell you this -- but that they were going to go and
18 procure marijuana to smoke that evening. He said the
19 individual that they were buying from was a guy named Rico.
20 Did y'all do any investigation into finding this person and
21 to confirm the story whether or not Mr. DeLarge and the
22 victim went to his place of business for the weed?

23 A I really wish we could have found Rico. I talked
24 to Mr. DeLarge about this Rico individual, but he didn't
25 give us a lot of information; and at one point he even said

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1 that he didn't want to bring him into it because my eyes
2 sort of lit up when he said -- I was thinking this is
3 another guy who can, you know, help us out. But he was
4 reluctant to bring the Rico fellow into it.

5 THE WITNESS: Can I beg the Court's indulgence,
6 please?

7 (WHEREUPON there was a pause in the proceedings.)

8 THE WITNESS: I was checking my notes and I think I
9 may have some additional notes that I didn't have with me,
10 but I remember specifically making a note that he didn't
11 want to bring Rico into it. But I do have actually in my
12 notes where he says -- I think he referred to him as
13 "Reek", said, check up friends and Reek. But we didn't
14 really have a lot of information to go on.

15 BY MR. STITELY:

16 Q He just described him as a weed guy that people
17 knew on the Street?

18 A Yeah, we had no luck with this.

19 Q Now, the victim in this case was taken to the
20 hospital for, I guess, a medical diagnostics after the
21 event. Did any request get put in to find if there was a
22 blood tox or blood screen done to confirm or deny whether
23 or not she had recently consumed marijuana?

24 A We didn't request that. I can't remember saying
25 anything about it. Because I think they did just like a

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1 standard rape kit or whatever.

2 Q Okay.

3 A So, no, I don't think there's anything on the
4 record.

5 Q Okay. Did y'all file any request to the hospital
6 requesting her medical records to make that determination?

7 A No. We had -- all we got was -- I guess was
8 what -- the rape kit.

9 Q Okay. Did you guys have a Schmerber hearing in
10 this case?

11 A I don't think we had a Schmerber hearing. I think
12 Mr. DeLarge consented to it because we never denied that
13 there was intercourse. We just denied that it was not
14 consensual.

15 Q Okay. At some point in time, did Mr. DeLarge
16 request that you pursue having a polygraph taken of him?

17 A I don't recall that, but to be honest, if he did, I
18 would have told him that's not a good idea.

19 Q Okay. But he still maintained that it was
20 consensual -- I mean even at the plea, there was a
21 discussion about the same thing?

22 A Yeah. And I'll tell you what happened. We were
23 actually standing up here during the plea and he said
24 something to me and I basically told him, I was like,
25 listen if you want to go to trial, you know, we haven't

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1 said I'm guilty yet. So I mean there was some talk even
2 before he officially entered the plea about standing down.

3 Q All right. Did you ever directly interview the
4 victim in this case?

5 A No, I did not.

6 Q Did anyone from your office?

7 A No, no one from my office directly interviewed her.
8 We wanted to reach out and talk to her, but, you know, that
9 was not successful.

10 Q Okay. This case ultimately ended in a plea. Let
11 me ask you a couple of questions about how we got to that
12 point. Initially, what was the best offer y'all had
13 received in this case?

14 A I can't recall right off the top of my head. I
15 think I got some communications between the solicitor and I
16 in here. Let me make sure.

17 (WHEREUPON there was a pause in the proceedings.)

18 THE WITNESS: I can't remember what the initial
19 offer was. I thought I had a --

20 BY MR. STITELY:

21 Q Did you ever take to him an offer for fifteen flat?
22 That's how he characterized it.

23 A I don't recall that.

24 Q Okay. Specifically in this case, was it his
25 position that he wanted to do a plea; he wanted to do an

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1 Alford plea? Do you recall that?

2 A We discussed that, yes.

3 Q Did you speak to the solicitor about the Alford
4 plea, for him to take an Alford plea?

5 A I did.

6 Q And what was the result of that conversation?

7 A That didn't go anywhere.

8 Q Okay. The solicitor said he couldn't plea under
9 Alford?

10 A No, if he wanted a deal, he had to plea as it was.

11 Q And you relayed that onto Mr. DeLarge?

12 A We talked about that.

13 Q Okay. Ultimately, the -- and do you have a copy of
14 the sentencing sheet by chance? I don't know that you
15 would even have that.

16 A Sometimes we get them, sometimes we don't. I think
17 there may actually be a copy in here.

18 MR. STITELY: May I approach?

19 THE COURT: Yes.

20 BY MR. STITELY:

21 Q Just take a look at those and -- does that appear
22 to be copies of the sentencing sheet in this case?

23 A This is.

24 Q And those are the two counts that Mr. DeLarge ended
25 up taking a plea on?

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1 A That's correct.

2 Q Signed by both of you?

3 A That's correct.

4 MR. STITELY: Your Honor, I'd offer those as --
5 together as Defense Exhibit No. 4, if it please the Court.

6 THE COURT: Defendant's 4 will be the sentencing
7 sheets.

8 (WHEREUPON Applicant's Exhibit 4 was marked and
9 entered into evidence.)

10 BY MR. STITELY:

11 Q Now, on the sentencing sheets, the way it pretty
12 much works is the top part is filled out ahead of time and
13 the bottom part is filled out by the judge and the clerk.
14 But on there, there's a box that says without
15 recommendations or negotiation, which is checked on both
16 sheets, correct?

17 A Yes.

18 Q How did you explain that situation to Mr. DeLarge?

19 A I basically said that the judge could sentence him
20 however he wanted to. When there's no recommendation, you
21 can get up to the max on each sentence.

22 Q Do you recall a conversation with Mr. DeLarge where
23 you told him that the solicitor would not be making a
24 recommendation and that's what that no recommendations or
25 negotiations meant?

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1 A I may have said that. I usually frame it in terms
2 of, The solicitor is not making a recommendation on the
3 sentencing. He's not going to -- when I say
4 recommendation, of course, I mean favorable
5 recommendations. So...

6 Q Okay. Is it possible that in your conversation
7 Mr. DeLarge understood that to be that the sentencing would
8 be straight up in front of the judge and there would be no
9 input from the solicitor as far as the solicitor getting up
10 and saying, We think he should get this?

11 A I can see that.

12 Q Just from the demeanor of your conversation with
13 Mr. DeLarge, is that a fair representation that he could
14 have been thinking at the time he went into the plea?

15 A Yes, I could see that.

16 Q Okay. And eventually at the plea, the solicitor
17 did stand up and ask the maximum; is that correct?

18 A I think he -- I can't remember, but I wouldn't be
19 surprised.

20 Q Okay. It's on page 25 -- I don't know if you have
21 a plea transcript either, do you?

22 A No, I don't think I do.

23 Q Well, it wouldn't surprise you if the solicitor
24 said, I would, in fact, ask you sentence him consecutive
25 time and give him the max, sixty years?

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1 A Yeah, the solicitor felt pretty strongly about this
2 case.

3 Q Okay. Did you ever speak to Mr. DeLarge's child's
4 mother prior to the plea about conversations that she had
5 with detectives in this case or the solicitor's office?
6 And her name is Shonda -- Shonda Roberts?

7 A That's who they -- where they found him?

8 Q Yes.

9 A I can't recall personally talking to her, but I
10 think the paralegal from our office did speak with her.

11 Q Did Mr. DeLarge let you know that she felt that she
12 had been threatened by the police officers to the fact that
13 if he didn't plea they were going to get DSS to come take
14 her children away?

15 A He did talk to us about that.

16 Q Do you know if any followup was ever done on that?

17 A As far as --

18 Q With her. Was she ever brought to court? Brought
19 in front of --

20 A She wasn't brought in front of the judge, no.

21 We -- Mary talked to her -- I'm sorry, my paralegal talked
22 to her, but she wasn't brought to court or subpoenaed or
23 anything like that.

24 Q But you do recall that, that that was part of the
25 reason that he pled is that she was told if he didn't plea

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1 that -- at least their story was that the police officer
2 told her that they would take away the children?

3 A Well, my understanding was that if she didn't -- I
4 guess testify or something like that, they were going to
5 take her children. Or write a statement or whatever,
6 cooperate. I didn't -- I don't recall any understanding
7 being that if he didn't plea they were going to take the
8 children.

9 Q Or if she didn't help the State or if she didn't
10 act in the State's manner, it was going to hurt her
11 children --

12 A Yeah.

13 Q -- is what the understanding was?

14 A Yeah.

15 Q Okay. Did you have a discussion with Mr. DeLarge
16 about the additional charge of armed robbery that was
17 brought in this case?

18 A I'm assuming I did. I wouldn't have a reason not
19 to.

20 Q But part of the problem with that is that the
21 events happened in Richland County? Do you --

22 A Yes, yes, we talked about that.

23 Q Do you remember any conversation with him about the
24 possibility of receiving an LWOP if he was to go to trial
25 on the multiple charges?

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1 A I don't recall.

2 Q Okay.

3 A I seem to think -- I can't recall specifics.

4 Q Okay. Okay.

5 MR. STITELY: Please the Court, Your Honor, one
6 second.

7 THE COURT: Sure.

8 (WHEREUPON there was a pause in the proceedings.)

9 BY MR. STITELY:

10 Q Did you ever give him the advice that if he refused
11 to plea and went to trial in Lexington then Richland could
12 turn around and try him on the armed robbery and since he'd
13 already have strikes, give him a life sentence? Do you
14 have any independent recollection of a conversation to that
15 effect?

16 A I'm not sure. I did -- I know I told him that they
17 could do that. They could try him again in Richland if he
18 went to trial here. But I don't know if I talked to him
19 about a life without patrol or whatever.

20 MR. STITELY: May I approach --

21 THE WITNESS: I can't remember.

22 MR. STITELY: -- one more time?

23 THE COURT: Sure.

24 BY MR. STITELY:

25 Q This is just a disposition sheet indicating an

F. Casey D. Cornwell - Direct Examination by Mr. Stitely

1 armed robbery. Is that what would have accompanied the
2 sentence sheets when you filled out the plea sheets
3 disposing of the other charge?

4 A Yes.

5 MR. STITELY: I'd ask to offer that as exhibit No.
6 -- 5 I apologize.

7 (WHEREUPON Applicant's Exhibit No. 5 was marked for
8 evidence.)

9 MS. MAY: No objection from the State.

10 THE COURT: Defendant's 5 without -- Petitioner's 5
11 without objection.

12 (WHEREUPON Applicant's Exhibit No. 5 was entered
13 into evidence.)

14 MR. STITELY: Yeah, I apologize. I always forget
15 that part, Judge, thank you.

16 BY MR. STITELY:

17 Q And it indicates that an armed robbery was
18 dismissed in Lexington as part of the plea?

19 A Yes. If I'm not mistaken, I think the armed
20 robbery was going to present a problem -- I think that may
21 have been the one where they had some jurisdictional
22 issues. So I don't know if I would really consider that to
23 be part of the plea bargain. I think we may have had some
24 problems with that. I'm not sure.

25 Q Okay. And the issue would have been the banks were

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1 actually in Richland County, even though the initial point
2 of contact between the two was in Lexington County?

3 A Yes. But I think there were -- they had -- that
4 would have definitely been a legal fight. Of course, there
5 could have been argument that it was a continuation of, you
6 know -- and so -- but they did dismiss it as part of the
7 plea -- long story short.

8 Q All right. Was the State ever trying to hold the
9 fact that he could have got -- he, the solicitor, could
10 have pursued some additional heavier sentence if you tried
11 the Richland case subsequent to it or if someone would have
12 tried the Richland case subsequent to it even though as you
13 said it was part of the same chain of events?

14 A I can't recall, but I do -- I just do remember that
15 being an issue.

16 Q Okay.

17 A You know, that that was a possibility. And I
18 usually try to discuss all possibilities.

19 Q Thank you Casey.

20 Do you recall a conversation with Mr. DeLarge
21 specifically heading into the plea time, again, that even
22 though he didn't want to and after your conversation with
23 the solicitor that they would not accept an Alford plea
24 that he would have to do some kind of stipulating that he
25 was guilty in order for the judge to take the plea to avoid

F. Casey D. Cornwell - Direct Examination by Mr. Stitely

1 him being LWOP'd or whatever?

2 A For some reason, I'm not recalling LWOP. You know,
3 they just -- that may just be my faulty memory, but I do
4 remember talking to him about what could happen if he
5 didn't plea, what could happen if he did; if he went to
6 trial what could happen, what couldn't happen. I don't
7 recall talking about LWOP specifically, but if that was --
8 I just -- I just don't recall specifically talking about
9 that.

10 Q Was there ever any other plea to your knowledge on
11 the table beside kidnapping and CSC first, what ultimately
12 went as a plea?

13 A I mean, of course plea to everything straight up,
14 you know, but that's not much of a deal. But -- not that
15 I -- we worked pretty hard to get it down to that actually.

16 Q Okay. And just a couple of other general -- I
17 apologize.

18 (WHEREUPON there was a pause in the proceedings.)

19 BY MR. STITELY:

20 Q Do you have any records that your paralegal,
21 investigator, anyone went to the jail while he was there
22 with an offer of CSC second in your file? And kidnapping?

23 A No, I can't recall -- I think there may have been
24 talk about trying to get a cap at some point, but I know
25 talking to him about what I was going to try to do and what

F. Casey D. Cornwell - Direct Examination by Mr. Stitely

1 actually happened are two different things. But I think
2 that was something that we talked about. I can't remember
3 if we ever got a cap on the table or not -- or in writing,
4 but I don't think we were ever able to get that far with
5 that.

6 Q Is it fair to say -- because a lot of those --
7 because Mr. DeLarge maintained the same story the whole
8 time that we was, in fact, not guilty as they charged him
9 and it was a consensual encounter?

10 A He did maintain that story.

11 Q Okay. And just a couple of just general questions.
12 How many times does your file or your recollection
13 indicate that you met with Mr. DeLarge during your
14 representation?

15 A One, two, three, four, five, six -- at least six
16 times I have here that I met with him. I know I met with
17 him more than that because I used to have a yellow legal
18 pad that I had in this file specifically, which is not in
19 here anymore.

20 Q Okay. And from when you received the file from Mr.
21 Bax -- I assume he had seen him as well?

22 A Yes.

23 Q And during those encounters, Mr. DeLarge maintained
24 his story, never waived, never changed; didn't vary what
25 his recounting the facts was?

F. Casey D. Cornwell - Direct Examination by Mr. Stitely

1 A Up until the end of my representation, he pretty
2 much wanted a trial. And then toward the end we started
3 talking a plea and that's how we ended up in court.

4 Q Were you prepared to go to trial had this been
5 called to trial? Was it a trial notice that brought y'all
6 to court on a plea date or was it a specific plea date?

7 A We'd received trial notice on this. I mean, it
8 would have -- I would have tried the case, you know. If
9 there's -- I want to -- it didn't matter to me, but it
10 wasn't a situation where I was unprepared.

11 Q Okay.

12 A You know, I was prepared to go forward.

13 Q So you felt you were prepared to go to trial had
14 the choice been to go forward with trial?

15 A We had explored, you know, all the avenues of the
16 investigation. We looked into stuff he told me about. You
17 know, we just had no luck investigating, but we had
18 everything -- we looked into everything that we could and
19 we were prepared to go.

20 Q Did Mr. DeLarge bring up some of the concerns he
21 had over the items that he felt were missing from
22 discovery? Videos, stuff from the clerk, pictures of the
23 car, that kind of stuff?

24 A Not -- he's -- I'm not sure. I can't remember him
25 talking about things that were missing.

F. Casey D. Cornwell - Direct Examination by Mr. Stitely

1 Q Okay.

2 A I know he talked about the video from the -- the
3 possibility of getting the video from outside the store,
4 but we weren't successful in doing that.

5 Q Did you give Mr. DeLarge all the discovery that you
6 received from the solicitor? A copy of it?

7 A He -- I thought -- I'm pretty sure he had a copy of
8 the discovery. If not, you know, I mean, we definitely
9 went over it enough. In other words, he knew everything I
10 knew.

11 Q Did you tell Mr. DeLarge that you felt the State
12 had sufficient factual evidence to link him to all of the
13 crimes?

14 A This is -- the main thing I told Mr. DeLarge, there
15 wasn't -- the most damning piece of evidence against him
16 was going to be the victim's testimony. You look at the
17 ATM pictures, you can't really see him in them. That's
18 nothing. I mean, even the -- I think the rape kit can't
19 definitively say there were signs of force. And we talked
20 about that too. And, of course, just because there was,
21 you know, DNA evidence present, we weren't denying that he
22 didn't do -- he didn't have sex with her, but the bottom of
23 the line -- the bottom of the line was, what I told
24 Mr. DeLarge was at the end of the day it's going to boil
25 down to whether twelve people believe him or twelve people

F. Casey D. Cornwell - Direct Examination by Mr. Stitely

1 believe her. And he kind of made his decision based on
2 that.

3 Q All right.

4 A It was just one of those cases, you know.

5 Q But you guys didn't actually ever interview -- you
6 guys being you or your defense team, did not actually
7 interview the victim at any point, correct?

8 A No, no, we did not.

9 Q And you said the evidence in the best light for the
10 State, most likely lined up to a he said/she said? Fair?

11 A In my opinion, that's what it added up to.

12 Q Okay. Did you file a motion for reconsideration of
13 sentence after the sentence was...

14 A I did.

15 Q And what was the ultimate outcome of that?

16 A The judge did not reverse his decision.

17 Q Okay. Was it a hearing held or just -- he informed
18 you, didn't he?

19 A I think he informed us in writing about that. I
20 don't think we ever --

21 Q Okay. At some --

22 MR. STITELY: Your Honor, if you could give me just
23 one moment so I can be sure we've covered everything that
24 we want covered.

25 (WHEREUPON there was a pause in the proceedings.)

F. Casey D. Cornwell - Direct Examination by Mr. Stitely

1 BY MR. STITELY:

2 Q Did you have a conversation with him where you
3 informed Mr. DeLarge that you felt that he really didn't
4 have anything as far as a defense and that the poking
5 little holes and little problems wasn't going to be enough
6 if you went to trial?

7 A I do remember telling him that our chances weren't
8 the best because of the -- the whole issue with it's going
9 to boil down to him versus her. And I do remember having
10 the conversations. I'm not -- I don't think I tied the two
11 together like that, but I do remember telling him that, you
12 know, they're were lots of issues that we could use to poke
13 holes, but he didn't really have a smoking gun like an ah
14 hah, you know. And it was going to be harder to overcome
15 once she got on the stand and told her story. I do
16 remember saying something like that, but never like,
17 necessarily tying them together as...

18 Q Okay.

19 MR. STITELY: I have no other questions at this
20 time. Thank you.

21 THE COURT: Ms. May?

22 MS. MAY: May it please the Court?

23 THE COURT: Yes, ma'am.

24 ///

25 ///

F. Casey D. Cornwell - Cross-Examination by Ms. May

CROSS-EXAMINATION

1
2 BY MS. MAY:

3 Q Mr. Cornwell, in your initial meetings with
4 Mr. DeLarge, did you discuss the charges that were against
5 him?

6 A Yes.

7 Q Okay. And did that -- and did y'all discuss the
8 elements of the indictments and the elements of the
9 offenses as well?

10 A Yes.

11 Q Okay. And did you review the possible punishments
12 for each charge?

13 A Yes.

14 Q So he was aware of the minimum and maximum that he
15 could be sentenced to?

16 A Yes.

17 Q Okay. And did you discuss the State's burden of
18 proving guilt beyond a reasonable doubt --

19 A Yes.

20 Q -- with Mr. DeLarge?

21 Okay. And did you discuss his version of the
22 facts?

23 A We -- we talked about his version of the facts.

24 Q Could you -- what did he tell you?

25 A Mr. DeLarge?

F. Casey D. Cornwell - Cross-Examination by Ms. May

1 Q Yes.

2 A Basically he told me that -- as you heard earlier,
3 that he'd known the victim from before, from school; they
4 met on a few occasions and they had a consensual sexual
5 relationship in the past; that day he was going to sell
6 marijuana to her; they had consensual sexual relations that
7 day in the car; he tells me that he was actually in contact
8 with her via phone sometime that day or earlier or at least
9 he had been before; that it was a situation where he was
10 trying to let her go and she was trying to hold on. And
11 that was kind of like the status of their relationship.

12 Q So did he ever deny that was not in the car?

13 A I can't remember if he denied it. I don't think he
14 denied he was in the car. I think he was basically saying
15 that it was consensual and she was just getting money to
16 give to him. I can't remember exactly.

17 Q Okay. And you filed a discovery motion. And do
18 you recall the specific items that were in the materials
19 aside from the pictures and what's already been entered
20 into evidence?

21 A Incident report, the rape kit report. I think we
22 got that later. Any kind of statements -- just --
23 everything was in there. I mean there wasn't anything -- I
24 think that some of the pictures that Mr. Stitely showed me,
25 we didn't have those.

F. Casey D. Cornwell - Cross-Examination by Ms. May

1 Q Right. Because I think Mr. Waries testified that
2 he just took a sampling of those pictures?

3 A Yes.

4 Q And handed them over?

5 A Yes.

6 Q Okay. So you wouldn't have seen all of those?

7 A No.

8 Q Okay. And you said that you reviewed the discovery
9 materials with Mr. DeLarge?

10 A Yes. We went over those things a lot.

11 Q Okay. So he was very engaged in --

12 A Yeah, he was very engaged.

13 Q And I believe y'all discussed about a witness named
14 Rico. Were there any other witnesses that Mr. DeLarge
15 informed you of that might have been beneficial to his
16 case?

17 A His baby's mother, Rico, and he talked about a cell
18 phone that he had at the time, but we weren't able to track
19 that down.

20 Q Okay. And was Mr. DeLarge found with the victim's
21 phone?

22 A I think he was. I think the victim -- he had given
23 it to the baby's mother or something like that.

24 Q Okay. And based on your preview of the discovery
25 and y'all's initial talks, did y'all discuss possible

F. Casey D. Cornwell - Cross-Examination by Ms. May

1 defenses?

2 A We did talk about possible defenses. I mean, like
3 I said before, we were in trial posture most of this case.
4 It wasn't until toward the end that we talked about -- you
5 know, entering a guilty plea. And I think that was because
6 some of this didn't pan out as far as the school and
7 everything. I can't really guess as to why, you know, he
8 changed his mind about that.

9 Q Okay. Based on the facts of the case, your review
10 of the discovery materials and your discussions with
11 Mr. DeLarge, did you develop an opinion about the State's
12 ability to prove guilt beyond a reasonable doubt?

13 A I mean, ego aside, they had some good
14 circumstantial evidence. They didn't have a smoking gun
15 either; but they also had a victim who was willing to get
16 on the stand and point my guy as the person to do it -- as
17 the person that did it. And, you know, I -- given the
18 conservative nature of juries in Lexington County, given
19 the facts that were already on the record, I had to inform
20 Mr. DeLarge what I thought was going to happen.

21 I mean, every client at some point is going to ask
22 you what do you think. I told them what I thought. I told
23 him that they would convict him.

24 Q But you were prepared to go to trial on this?

25 A Yeah, I mean, my opinion and what I actually do is

F. Casey D. Cornwell - Cross-Examination by Ms. May

1 do different things, you know, so...

2 Q Okay. And I believe Mr. Stitely asked you, but did
3 y'all try to -- attempt to see if the victim would speak
4 with you or your paralegal?

5 A We tried to reach out. I don't think they were --
6 they weren't interested.

7 Q Okay. And you feel you had sufficient time to
8 prepare Mr. DeLarge's case?

9 A I do. I -- I had sufficient time.

10 Q Okay. And you engaged in plea negotiations on his
11 behalf, correct?

12 A Yeah. Yes, Mr. Graham can attest to that, yes.

13 Q Okay. And were there any -- do you recall any
14 terms of the plea offers or were there any specific terms
15 of the years or was it just always --

16 A There was never a specific term of years. I think
17 I had tried to talk about a cap, but I -- there may have
18 even been a cap in the picture at some time, but it wasn't
19 anything that would have, you know, I don't -- I may have
20 talked to him about a cap, but I think the cap was -- and
21 I'm trying not to confuse this with another case, and I
22 can't even remember what the cap was; but I think I was
23 trying to get him to a fifteen, but that was a no-go on
24 that.

25 Q And you discussed all plea -- all your discussions

F. Casey D. Cornwell - Cross-Examination by Ms. May

1 with Mr. Graham with Mr. DeLarge about the plea
2 negotiations?

3 A Yes.

4 Q Okay.

5 A I would usually talk to Mr. DeLarge first before
6 talking to Mr. Graham about, you know, possible ways we
7 could dispose of the case, but...

8 Q Okay. And going back a little bit, Mr. Stitely
9 asked you about whether you interviewed any teachers at his
10 high school. Did Mr. DeLarge give you any teachers names
11 to specifically interview?

12 A No. There weren't any specific teachers he gave us
13 to talk to. It was just -- he told us that they went to
14 high school together, so my paralegal went down to check
15 and looked at, you know, times they were in school together
16 and if they -- I don't think they had any classes together
17 or anything like that. And I don't think they really --
18 based on our investigation, we couldn't prove that they
19 really knew each other from school.

20 Q Okay. And I guess just prior when Mr. DeLarge
21 decided to plea, did y'all discuss the options available to
22 him in terms of benefits and drawbacks of pleading versus
23 going to trial?

24 A Definitely, all that and we talked about options --
25 putting forth an Alford plea and things of that nature. We

F. Casey D. Cornwell - Cross-Examination by Ms. May

1 discussed all that.

2 Q Okay. And did Mr. DeLarge ultimately discuss this
3 with his family prior to pleaing?

4 A I'm not sure. I'm pretty sure they had talked
5 about this beforehand.

6 Q And was it ultimately Mr. DeLarge's decision to
7 plead guilty?

8 A Yes.

9 Q Okay. Did you ever put any pressure on him to try
10 to make him plead guilty?

11 A Just -- when I -- the only thing I would consider
12 pressure is when people ask me honestly what I think and I
13 tell them the truth and it's not what they want to hear,
14 you know. I don't know if you can construe that as
15 pressure, but -- I just try not to do that.

16 Q I guess going back a bit with regards to the
17 investigation that you conducted with your paralegal, were
18 y'all able to speak with any of the deputies or the
19 officers? Were y'all?

20 A On the case?

21 Q Yes.

22 A I actually talked with Prestigiacommo who I believe
23 was involved in this case -- several times about this
24 case --

25 Q Okay.

F. Casey D. Cornwell - Cross-Examination by Ms. May

1 A -- you know, as part of the investigation.

2 Q Okay. And going into, I guess, when it was
3 still -- when y'all decided to go to -- were trying to go
4 to trial prior to the plea, I believe you might have
5 touched on this, but what was the trial strategy -- y'all's
6 trial strategy going to be?

7 A Basically is that it was consensual, that he knew
8 her from school ahead of time. He had an independent basis
9 for knowing her. This wasn't a stranger rape. He was
10 there to sell her weed and that's how they knew each other.
11 That was going to be our defense.

12 Q And did you discuss that, and I guess, create that
13 defense with Mr. DeLarge?

14 A We discussed it. I mean, not in specific detail if
15 that's what you're asking, but that's the things that came
16 up when we talked about trial strategy and everything.

17 Q Okay. And did you ever promise Mr. DeLarge a
18 specific sentence in terms of years?

19 A No, I didn't.

20 Q And when the solicitor asked for the max during the
21 plea, do you recall Mr. DeLarge asking you to withdraw it
22 or kind of nudging at you or trying to...

23 A I can't recall, Mr. DeLarge did get my attention a
24 couple of times during that plea and I can't remember at
25 what points that was. But I do remember talking to him

F. Casey D. Cornwell - Cross-Examination by Ms. May

1 through the entirety of the plea, just talking back and
2 forth and during the plea even I remember just telling him,
3 just listen, you have a chance to step down here. You
4 know, we can step down. You haven't told the judge you're
5 guilty yet. I remember telling him that a couple -- at
6 least twice during the plea because he was pointing out
7 things; and you know, I'm like, listen if you do not want
8 to do this, you know...

9 Q And you did indicate to the Court what y'all
10 disagreed with, correct? During the plea?

11 A Yes.

12 Q Okay. And during those times when Mr. DeLarge was
13 asking questions, did he ever tell you that he wanted to
14 withdraw his plea?

15 A No, I don't think he ever said stand down because I
16 would have stood down.

17 Q Okay. And so you would have made a motion to
18 withdraw his plea if he had --

19 A Yes, if he would have asked me to withdraw, I would
20 have made a motion to withdraw.

21 Q Okay. Thank you.

22 MS. MAY: I have no further questions.

23 MR. STITELY: Just a couple of followups, Your
24 Honor.

25 THE COURT: That's all right. Go ahead.

F. Casey D. Cornwell - Redirect Examination by Mr. Stitely

REDIRECT EXAMINATION

1
2 BY MR. STITELY:

3 Q It sounds kind of small, but we'll get into it
4 later. Now, she asked you if Mr. DeLarge ever denied the
5 consensual thing about the car. Isn't in fact the story he
6 maintained that when he met with her at the Shell Station,
7 she then left, went and got money, then came back and got
8 him, then they went and bought the weed?

9 A That is correct. I apologize, he did say that.

10 Q So it was his position that he was never in her
11 vehicle at the time she went to the ATM?

12 A Yeah.

13 Q Okay. And that he never waived -- that was always
14 his position?

15 A No, no, he didn't say he was in her car. Like I
16 said, I can't remember specifically.

17 Q Do you have the birth dates of the two parties in
18 your stuff? She was asking about the school records.

19 A I have her birth date somewhere in here on the
20 incident reports, probably.

21 Q Is it fair that they were only six months apart in
22 age? He was twenty-one, she was twenty at the time of the
23 incident? At least that's what it looks like from the
24 police reports.

25 A I'm not sure.

F. Casey D. Cornwell - Redirect Examination by Mr. Stitely

1 Q No problem. It's not that big.

2 A She said she was nineteen.

3 Q You have a date of birth for her?

4 A I don't see one on here.

5 Q It's not that -- is it fair to -- Ms. May was
6 asking about why -- and you mentioned he kept nudging you
7 during the plea. Is it fair that one of those times when
8 he was nudging you was when the solicitor made the comment
9 about what he was recommending as far as or requesting as
10 far as a sentence -- he described it as, Yo, man, that's
11 not what we talked about it; and you said, Oh, don't worry
12 about it, we'll get our chance. Something along those
13 lines?

14 A I'm not sure if I did. Like I said, I don't
15 remember what times he nudged me or whatever, but I do
16 remember him getting my attention a couple of times during
17 the plea.

18 Q In the years you've been doing this, is it fair to
19 say he didn't -- standing next to you, he wasn't
20 comfortable with pleaing guilty that day and it definitely
21 was not something he was --

22 A No, which is why I kept saying what I said too him.
23 I could tell he was uncomfortable and I kept telling him
24 like, don't do it -- I specifically said, we don't have to
25 do this.

F. Casey D. Cornwell - Redirect Examination by Mr. Stitely

1 MR. STITELY: No other questions. Thank you.

2 MS. MAY: No further questions.

3 THE COURT: Thank you Mr. Cornwell. You may step
4 down.

5 MR. STITELY: Judge, I have a statement that's
6 written and notarized by a Shonda Roberts. Ms. Roberts is
7 the woman that you've heard about in testimony so far, she
8 was the mother of his child. She's in the Army and is
9 stationed up in New York. I couldn't get her here by
10 subpoena. I tried. I have a statement I'd like to offer.
11 Pretty much it's along those lines that she said the police
12 came to her and said that if she didn't play ball with them
13 they were going to have DSS take her kids away. This was a
14 witness who would have been available at the time. For
15 whatever it's worth. It's a notarized statement, Your
16 Honor.

17 We would offer it as Defendant's Exhibit No. 6. I
18 would call her as a witness, but for she's outside of the
19 subpoena power of the Court being she's in the military and
20 more than a hundred miles away.

21 MS. MAY: Your Honor, I would object to this. I
22 don't -- I don't -- I haven't had an opportunity to
23 cross-examine or speak with this witness.

24 THE COURT: Is that a victim?

25 MR. STITELY: No, Judge, this is his child's

1 mother. The one you heard testimony before that the law
2 enforcement was pushing on her that she needed to cooperate
3 with him and get him to plead guilty or else she would have
4 DSS taking away her children. She lived here at the time,
5 Judge. She was at Fort Jackson, but now she's deployed --
6 well, not -- I guess deployed is the wrong word; in service
7 in New York. But this would have been an individual who
8 Mr. Cornwell was aware of who they could have gotten at the
9 time.

10 THE COURT: And that goes to show the voluntariness
11 of the plea; is that right?

12 MR. STITELY: It's part of that. It also has
13 something to do with the investigation done into this by
14 possible threats of potential witnesses on his behalf,
15 alibi, and the like.

16 THE COURT: All right. Let me think about that.

17 MR. STITELY: Yes, sir.

18 THE COURT: I'm going to consider her objection for
19 a few minutes.

20 MR. STITELY: Can I offer it as a Court's Exhibit
21 then?

22 THE COURT: Sure.

23 MR. STITELY: Okay.

24 THE COURT: That's Court's Exhibit No. 1.

25 MR. STITELY: Thank you, Judge.

Shawn Graham - Direct Examination by Mr. Stitely

1 (WHEREUPON Court's Exhibit No. 1 was marked for
2 evidence.)

3 MR. STITELY: Your Honor, at this time we'd call
4 Shawn Graham to the stand.

5 SHAWN GRAHAM,
6 having been duly sworn, testified as follows:

7 THE CLERK: Please be seated and state your name
8 for the record.

9 THE WITNESS: David Shawn Graham, G-r-a-h-a-m.

10 DIRECT EXAMINATION

11 BY MR. STITELY:

12 Q Could you please tell the Court what you do for a
13 living, Mr. Graham?

14 A I'm a deputy solicitor with the Lexington County
15 Solicitor's Office.

16 Q And how long have you been with the solicitor's
17 office?

18 A Thirteen and a half years.

19 Q Okay. And it's fair to say that your job, you took
20 a good deal of the more serious of the crimes, several of
21 the more serious crimes that come into the solicitor's
22 office?

23 A Yes, sir.

24 Q Okay. Specifically, you were the solicitor who
25 received the file on Mr. DeLarge?

Shawn Graham - Direct Examination by Mr. Stitely

1 A Correct.

2 Q I just want to ask you a quick couple of questions
3 about potential plea bargains in this case. From the
4 beginning when Mr. Bax represented Mr. DeLarge, you have
5 any recollection of conversations you would have had with
6 Mr. Bax?

7 A No.

8 Q Okay. Mr. DeLarge actually sat in jail for a
9 couple of years though -- well, at least more than a year
10 and a half before it actually came to trial or plea time in
11 this case, correct?

12 A I believe so.

13 Q In representations that you received from his
14 counsel, either Mr. Bax or Mr. Cornwell, was it your
15 understanding that they intended to push forward for a
16 trial in this case?

17 A It was my understanding for the longest time that
18 he denied that he -- he said he was innocent.

19 Q Okay. Was there ever a firm offer given to Mr.
20 Cornwell to relay to Mr. DeLarge in this case? Like a
21 written offer from you or anything direct?

22 A I don't believe -- I don't remember.

23 Q Okay.

24 A I know that my thought was after I had met with
25 Courtney, the victim in this case, and her family was we

Shawn Graham - Direct Examination by Mr. Stitely

1 were willing to go into trial; and we weren't really going
2 to offer much of anything on the case.

3 Q Okay. There was never a negotiated reduction, a
4 negotiated sentence range?

5 A No, I don't believe so. I think that our -- after
6 talking with them that my thoughts and my representation
7 probably both Mr. Bax and to Mr. Cornwell was that he
8 needed to plead guilty to CSC first and kidnapping or go to
9 trial.

10 Q Did you previously prosecute Mr. DeLarge in 2004?

11 A I did.

12 Q And what kind of case was that?

13 A Those were burglary cases.

14 Q Did you have an independent recollection of him as
15 an individual from your previous representations?

16 A I did not.

17 MR. STITELY: One second, Your Honor. If it please
18 the Court?

19 (WHEREUPON there was a pause in the proceedings.)

20 BY MR. STITELY:

21 Q To your knowledge, were there ever any pictures
22 taken of the automobile in question, the crime scene as it
23 were? Do you have your file with you by chance?

24 A I don't have my -- I have a copy of the file here,
25 but the photographs would have been on a disk. So it

Shawn Graham - Direct Examination by Mr. Stitely

1 wouldn't be -- the only photos that are in that material
2 right there are, I believe, snapshots of the store video
3 from the convenient store.

4 Q You don't recall specifically one way or another
5 though if there was any of the actual vehicle?

6 A I know that there are ATM photographs of the
7 vehicle.

8 Q How about the inside of the vehicle where the
9 alleged sexual conduct took place?

10 A I don't have any independent recollection of those.

11 Q And one other thing, do you know in your
12 recollection of the file if a full hospital make up was
13 done of the victim in this case or simply like the SLED
14 rape kit? Or do you even know? Do you know if she went to
15 the hospital and they did a full blood screen and
16 everything?

17 A I don't remember there being a blood screen. I
18 remember there being a rape kit done where they had the
19 scope and they actually found she had two abrasions on her.

20 Q Okay. One second.

21 (WHEREUPON there was a pause in the proceedings.)

22 MR. STITELY: That's all I have. Thank you.

23 MS. MAY: I have no questions.

24 THE COURT: You may step down.

25 MR. STITELY: I'd ask Mr. Graham with excused.

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 THE COURT: All right.

2 MR. STITELY: Your Honor, I'd call Mr. DeLarge to
3 the stand.

4 THE COURT: All right. Mr. DeLarge come around
5 here and be sworn and come around to the witness stand.

6 MR. STITELY: Your Honor, I'm going to bring his
7 stuff up for him so he'll have it.

8 WENDELL G. DELARGE,
9 having been duly sworn, testified as follows:

10 THE CLERK: Please be seated and state your name
11 for the record.

12 THE WITNESS: Thank you, sir.
13 Wendell DeLarge.

14 DIRECT EXAMINATION

15 BY MR. STITELY:

16 Q Mr. DeLarge, can you tell the Court how old you are
17 and where you were born?

18 A Yes, I'm twenty-five and I was born in Columbia,
19 South Carolina, Richland Memorial Hospital.

20 Q Have you ever actually sat in that stand and
21 testified before?

22 A No, sir.

23 Q Okay. Don't be nervous. If you don't understand
24 anything I ask you, just ask me to ask it again.

25 A Yes, sir.

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 Q And if I skip anything, I'll give you a chance at
2 the end, just remind me that you have something else to
3 say?

4 A Yes, sir.

5 Q Let me ask you a couple of questions. Now, do you
6 understand why we're here today?

7 A Yes, sir.

8 Q Okay. What ultimately is the goal of your PCR
9 application?

10 A At this time the goal of my PCR application is
11 basically to receive a new trial, to receive my bite at the
12 apple, to prove my innocence, sir.

13 Q Now, you understand that if we're successful today,
14 your sentence is withdrawn. All three charges would go
15 back on and you'd be potentially facing seventy years in
16 prison, correct?

17 A Yes, sir.

18 Q And you understand that's greater than what -- the
19 fifty years you currently are serving?

20 A Yes, sir.

21 Q Okay. And that's a risk you want to accept and go
22 forward with your PCR today?

23 A Greatly.

24 Q Okay. Now, I obviously wasn't your trial counsel
25 at the time, but I work on your PCR now. What I'd like to

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 ask you at first are some questions about your
2 representation you had.

3 A Yes, sir.

4 Q Did you retain an attorney or were you appointed a
5 lawyer initially when you were arrested back in December
6 2007?

7 A Well, when I was arrested, I was going to attempt
8 to obtain a lawyer, but we were financially unable. So it
9 took about, approximately, three to four months and then I
10 was appointed a public defender, Mr. Arie Bax.

11 Q Okay. Did you stay in jail the entire time while
12 your case was pending?

13 A I did. I received a \$3 million bond, which I could
14 not post.

15 Q And did you ever go in front of the Court and ask
16 for a bond reduction?

17 A Mr. Arie Bax at one time did file for a motion to
18 reduce bond. I went before the Honorable Judge Johnson and
19 I was denied. Then Mr. Cornwell also stated that he filed
20 a motion to reduce bond, but there was never any result
21 from that, sir.

22 Q Okay. Mr. Bax -- we've heard mention of him. He
23 was a public defender of Lexington County?

24 A Yes, sir, that's correct.

25 Q And he was your first lawyer you had in this case?

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 A Correct, sir.

2 Q Okay. With your conversations with Mr. Bax, where
3 were you guys in a mindset as far as plea or trial?

4 A As far as me and Mr. Bax, we were definitely stuck
5 on trial. There was no discussion of any plea.

6 Q Okay.

7 A He felt that a trial would be sufficient, would be
8 okay.

9 Q And when Mr. Cornwell took over, that was because
10 Mr. Bax left the office; is that what you understand?

11 A Correct.

12 Q That wasn't that you asked that Mr. Bax be relieved
13 from your case, it was just a change in employees in the
14 office, correct?

15 A Correct.

16 Q Okay. Could you describe your relationship with
17 Mr. Cornwell from the start of your case?

18 A Mr. Cornwell came in. He was -- I'd say not so
19 much nonchalant, but more somewhat of a casual demeanor.
20 He came in, asked me some questions, you know. Wrote down
21 a couple of notes and he said that he would go over my case
22 a little more so he would be a little more -- I would say
23 inclined with my case and then he would get back with me.

24 Q Okay. When you had these initial consults with Mr.
25 Cornwell, was it still your intention to have a trial in

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 the case?

2 A Correct, sir.

3 Q And it maintained that way for more than a year and
4 a half, correct?

5 A For approximately two years sir.

6 Q Okay. Now, it's been talked about a little bit and
7 you're going to be the one to shed the light and I want to
8 remind you, we don't get to try your case today, but what
9 we need to put forward is how your representation in your
10 opinion went awry. How it deviated from what should have
11 been done.

12 In this case, it was the State's allegation that --
13 the theory you kidnapped the victim, forced her to go
14 withdraw money, committed a sexual crime with her and that
15 that was pretty much what the State's position was. Was
16 that ever what you told your lawyers what happened?

17 A No, sir.

18 Q Okay. What was your position regarding -- let's
19 separate it here. What was your position regarding your
20 initial meeting with the victim at the Shell gas station up
21 in Harbison?

22 A As I told Mr. Cornwell while we were up there, me
23 and Rico, I met with Courtney. It was talks about
24 marijuana. We smoked a little bit also. It was also more
25 talks about her purchasing some marijuana. She didn't have

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 the sufficient amount of funds on her. So she left to go
2 retrieve those funds and we stayed there. We continued to
3 smoke marijuana as the store clerk and store -- in the
4 window the whole time as I made Mr. Cornwell aware of.
5 When she came back, we purchased the marijuana, smoked a
6 little bit, then we took off and so forth and so on.

7 Q Okay. Let me stop you there.

8 A Yes, sir.

9 Q Okay. Is it your position that you remained at the
10 Shell gas station while she left and went to go get money?

11 A That is correct.

12 Q Okay. Is that the reason why you asked your lawyer
13 to procure video surveillance from the Shell Station that
14 night?

15 A Yes, sir. I asked him about the -- about pictures
16 of the Shell Station. And as it is shown in the records of
17 my discovery, there were pictures of the inside of the
18 store of me standing there at the counter; and I also asked
19 him about pictures of the outside, thinking that maybe he
20 could have caught some kind of footage of the actions on
21 the outside. But he informed me that there were no cameras
22 on the outside to capture the action.

23 MR. STITELY: May I approach him, Your Honor?

24 THE COURT: You may.

25 ///

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 BY MR. STITELY:

2 Q There's a sheet of pictures --

3 MR. STITELY: And I don't know where it is.

4 (WHEREUPON Exhibits were retrieved for the
5 witness.)

6 BY MR. STITELY:

7 Q This is Defendant's Exhibit No. 3. Is this, to
8 your knowledge, the only photographs from the Shell Station
9 your attorney obtained for you?

10 A When I was still represented by Mr. Arie Bax, I
11 received this -- I received discovery and yes, this was the
12 only photos that were in there concerning this matter.

13 Q Did you ask him to find more?

14 A I met with Mr. Bax at the county jail once and when
15 I met with him that one time, we discussed the matter of
16 the bond reduction primarily and the fact that I, in fact,
17 did not want to plead guilty, I wanted to go to trial; but
18 we never actually discussed getting any other pictures
19 because I haven't fully went through my discovery at that
20 time.

21 Q How about Mr. Cornwell? Did you tell him that you
22 wanted to get the video surveillance from the Shell
23 Station?

24 A Multiple times. The pictures are right there.

25 Q You told him that you wanted to get the video

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 surveillance?

2 A I asked him multiple times could he contact Mr.
3 Graham and/or the bank and retrieve these photos because I
4 knew that I was not in these photos.

5 Q Okay. Let's talk about the Shell Station only for
6 a couple more seconds.

7 A Yes, sir.

8 Q Did you ask your attorney to get in contact with
9 the individual who was working at the Shell Station that
10 night?

11 A Yes, sir. As I went through the discovery, it was
12 basically shown to -- brought to my attention that the
13 store clerk, it was only his first name mentioned in the
14 discovery. I can't remember his name right now. I'm a
15 little nervous, but I asked him then could he please go and
16 contact the store clerk and get his statement because he
17 could have some detrimental information concerning the
18 night in question, sir.

19 Q Did you ever see any additional photographs, any
20 videos, any statements from the store clerk or any proof of
21 any kind that your attorney had to followed up and
22 requested any of those items?

23 A No, sir, I did not.

24 Q Did you ask about it?

25 A Yes, sir, I did.

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 Q Multiple times?

2 A Multiple times.

3 Q Do you feel that that would have made a significant
4 difference in your position regarding guilt or innocence in
5 this case?

6 A Yes, sir because being that the store clerk -- if
7 it was shown, which it doesn't really show in the pictures
8 right here, there were two big pane windows in the store.
9 They gave the store clerk clear view of the parking lot.
10 So by him going and retaining a statement from the store
11 clerk, by maybe having some detrimental information
12 concerning the night in question that could indeed create a
13 reasonable doubt by the fact that this is -- I mean I'd say
14 a hoax. And also the pictures would show that I was not in
15 the vehicle with Ms. Price.

16 Q That you may -- that you stayed at the Shell
17 Station and that she left and returned is your story?

18 A Correct.

19 Q Okay. We'll go to the next step.

20 There's no doubt in your mind, is there, that
21 Ms. Price went and got some money, correct?

22 A Correct.

23 Q Okay. Why did she have to go get some money?

24 A Because she didn't have sufficient funds on her
25 person.

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 Q For what?

2 A Marijuana.

3 Q Okay. And -- I guess you were going to take her
4 to somebody you knew sold marijuana?

5 A Rico sold marijuana, sir.

6 Q Okay. Did you tell your attorney at the time?

7 A Yes, I did, sir.

8 Q Did you provide him every piece of information that
9 you could as far as a way to get in contact -- you said it
10 was a street person?

11 A Yeah, basically everybody that knew Rico, he was
12 just -- I don't want to incriminate anybody, but he was a
13 street dealer, you know, you know to purchase marijuana or
14 whatever, narcotics I guess of your choice.

15 Q To your knowledge, did your attorney make any
16 efforts to contact him?

17 A I would say no, but like I say, all I could give
18 him at the time was kind of a name or so. But I wouldn't
19 say that he made any effort to contact --

20 Q Do you think it could have been a relevant piece of
21 evidence to substantiate your claims in this case?

22 A Yes, sir, because he could have clearly said that
23 we were -- the whole intent was to purchase marijuana, I
24 was there with him and when she came back, that's when I
25 initially left with her.

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 Q Okay. Did you get in her vehicle at any point to
2 go to an ATM machine?

3 A No, I did not.

4 Q Okay. In this case it's been alleged there were
5 two ATM's specifically that she went to?

6 A To my knowledge, that is correct.

7 Q Okay. You were not in the vehicle at either time?

8 A No.

9 Q Okay. Now, you've heard some testimony while you
10 were sitting here regarding some ATM photos.

11 A Correct.

12 Q Were you ever shown any ATM photos in your case?

13 A Sir, the first -- I was never shown any photos.
14 The first time I saw the photos were when you retrieved
15 them, sir.

16 Q Okay. You say that. When was that?

17 A That was after my conviction after my --

18 Q Past month or two is what you're talking about?

19 A Approximately a month or so.

20 Q Okay. Did you make all the necessary requests in
21 your mind to ask your attorney for copies of any
22 photographs and all your discovery?

23 A Could you repeat that?

24 Q Did you ask your attorney for your discovery?

25 A Yes. When I was represented by Mr. Arie Bax, I did

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 receive a discovery. It were -- it was several pieces of
2 material which was missing, which I brought to Mr.
3 Cornwell's attention. He informed me that he did have the
4 complete discovery and that there was no evidence in there
5 basically to substantiate my claim of not guilty.

6 Q Okay. You never saw -- and they're right in front
7 of you, a large stack that's rubber banded together?

8 A Yes, sir.

9 Q Now, you've seen those now, correct?

10 A Yes, sir, I have seen them now.

11 Q Those are the documents, the pictures that I gave
12 you?

13 A Correct. Approximately a month or so ago.

14 Q Okay. Have you had an opportunity to look through
15 them thoroughly?

16 A Yes, sir. I have.

17 Q Okay. What I have in my hand are a couple of
18 excerpts from that.

19 MR. STITELY: Your Honor, for the Court's -- of
20 course, instead of pulling two hundred individually, I have
21 maybe twenty that we think may be more relevant. Your
22 Honor, I'd ask that I be able to show these or possibly be
23 able to put these in separately or as even 2A, 2B, 2C,
24 whatever's in the Court's --

25 THE COURT: Wouldn't it be separate exhibits?

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 THE COURT REPORTER: Separate would be fine with
2 me.

3 MR. STITELY: They're contained in that whole
4 packet, but these are just a couple specific ones.

5 THE COURT: Okay. We'll make them separate
6 exhibits then if there in there.

7 MS. MAY: No objection, Your Honor.

8 THE COURT: It will be easier to keep them
9 straight.

10 MR. STITELY: Thank you, Your Honor.

11 Can I approach him?

12 THE COURT: Sure.

13 BY MR. STITELY:

14 Q I'm going to show you three pictures. The first
15 one says ATM St. Andrews, 12:37 and 37 seconds.

16 (WHEREUPON Applicant's Exhibit No. 6 was marked and
17 entered into evidence.)

18 BY MR. STITELY:

19 Q The next one says the same time, it's a slightly
20 different image though. That's 12:37, 37 seconds.

21 MR. STITELY: That's to be No. 7.

22 (WHEREUPON Applicant's Exhibit No. 7 was marked and
23 entered into evidence.)

24 BY MR. STITELY:

25 Q The final one in this little grouping also says St.

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 Andrews. This one now says 41:23, so about
2 three-and-a-half minutes later.

3 MR. STITELY: I'd ask that to be No. 8.

4 (WHEREUPON Applicant's Exhibit No. 8 was marked and
5 entered into evidence.)

6 BY MR. STITELY:

7 Q Mr. DeLarge, have you seen these photos before I
8 gave them to you?

9 A No, sir, I did not.

10 Q Okay. In looking at them -- well, I guess you're
11 familiar with where they came from now, correct?

12 A Could you --

13 Q You're familiar with these ATM photos -- you've
14 seen the other ones that are around -- the individual --
15 the victim is not in those pictures, but you recognize
16 these as part of that same set, correct?

17 A Yes, sir, I do.

18 Q What specifically is significant about those three
19 pictures? First 6 and 7 and then 8. What appears to be
20 the case that you see in picture 6 and 7?

21 A Six and seven, you could see -- I want to say
22 that's the car wash on the other side of the road from the
23 ATM.

24 Q Okay.

25 A I'm familiar with that area.

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 Q Okay. And those two pictures numerically happen at
2 the very beginning of the sequence, when the ATM starts --
3 the pictures start rolling before a vehicle arrive,
4 correct?

5 A Correct. As you explained to me, once the vehicle
6 triggers the sensor, the camera started taking pictures and
7 that would be the beginning shots, if I'm not mistaken sir.

8 Q All right. And you can clearly see white arches
9 that -- I mean they look -- I'll ask the Court to take a
10 look at them, but you can clearly see white arches very
11 distinctly, correct?

12 A Yes, sir.

13 Q Okay. The last picture, it appears to be time
14 stamped about four minutes later and it's one of the very
15 last images taken as -- at the end of the sequence of
16 pictures. What do you see straight through the back
17 windows of the car?

18 A Through the back windows, sir, I see the same
19 images from the other two photos only a little tinted
20 because there through the window, but you can clearly see
21 the car wash on the other side of the road through the
22 vehicle.

23 Q Okay.

24 A Through the backseat.

25 Q Is there any silhouette of a man sitting there?

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 A There's no silhouette of anyone sitting there.

2 Q Okay. Not that we can try your case today, but
3 would you say in looking at these pictures they followup
4 with the exact same recalling you told your attorneys
5 regarding the fact that you were not in the vehicle?

6 A Correct, sir.

7 Q Do you think if these pictures had been available
8 to you at the time of your trial and/or plea, you could
9 have used them in your defense to support your position?

10 A Yes, sir. Had they been presented and I had the
11 privilege of my lawyer obtaining them and I had the
12 privileges of seeing them and we used them as factual
13 evidence, I would not have pled guilty but insisted on
14 going to trial.

15 Q I have one more in that series I would like to show
16 you.

17 MR. STITELY: May I approach; Your Honor?

18 THE COURT: You may.

19 BY MR. STITELY:

20 Q This one is of the St. Andrews ATM, time stamp of
21 38:13.

22 MR. STITELY: That is offered as No. 9.

23 (WHEREUPON Applicant's Exhibit No. 9 was marked and
24 entered into evidence.)

25 ///

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 BY MR. STITELY:

2 Q Can you identify this picture?

3 A Yes. This is a picture taken between -- it seems
4 like between the times of the initial arriving and the last
5 picture in which I've stated you could see the car wash
6 through the back window, sir.

7 Q And you can see the white columns through the front
8 window there --

9 A That's correct.

10 Q -- of the vehicle?

11 A Yes.

12 Q Is there any other individual that you can see in
13 the front of that car besides Ms. --

14 A There's no one I can see in this vehicle through
15 this picture.

16 Q Again, had this been made available to you prior to
17 your plea, would it have ultimately impacted your decision
18 making process?

19 A Yes. Had I been presented with these, there's a
20 reasonable probability that the outcome of this would have
21 been greatly different and I would have proceeded to go to
22 trial, sir, and not pled guilty.

23 Q Did you think these pictures didn't exist?

24 A To be honest with you, I -- the way Mr. Cornwell
25 led me, I was -- I really didn't. Because as I said, I

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 asked him about anything else and he stated to me that
2 there was no evidence that would substantiate my claim of
3 not guilty; and I would say in light of these pictures --

4 Q Okay. So would you, in fact, characterize it as
5 being kind of a surprise when they were able to produce
6 more than a hundred and something photographs?

7 A It greatly shocked me, sir.

8 Q Okay. During the course of the representation, did
9 you ever receive anything that looked like a subpoena or a
10 request for documents or any other request from the public
11 defender's office to the bank asking for similar
12 photographs?

13 A No, sir.

14 Q Okay.

15 A There were no requests as such.

16 Q Can you see these pictures fairly well? Those and
17 all the other ones in the stack?

18 A I believe that you -- that they hold a reasonable
19 view that you can see them quite well.

20 MR. STITELY: May I approach, Your Honor?

21 THE COURT: You may.

22 BY MR. STITELY:

23 Q Mr. DeLarge, I'm going to give you -- wait a
24 minute.

25 Okay. That's interesting. Looking back at No. 9

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 before we get into it, let me show you this. What -- in
2 looking at No. 9, what does she appear to have in her hand
3 at that time?

4 A She appears -- pardon me. She appears to have --
5 looks to be a cell phone in her hand, sir.

6 Q And at this time, from your understanding of the
7 State's knowledge, they accused that you had made it such a
8 way that you had kidnapped her at this point?

9 A That's correct, sir.

10 Q And you still refute those claims?

11 A I do.

12 Q Do you know if any of those cell phone logs were
13 subpoenaed by your attorney to find out who she was on the
14 phone with?

15 A To my understanding there were no subpoenas made,
16 but -- for her phone records from my attorney.

17 Q Okay. Did you ever see any?

18 A Any phone records?

19 Q Yes.

20 A I'm not quite sure. It's been a while since I
21 reviewed my discovery, but there might have been. I want
22 to say there were some downloads or something like that.
23 It might have been in that. I'm not quite sure. I don't
24 want to...

25 Q But you never got a specific copy where your

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 attorney requested and went through a series of phone
2 records that may have substantiated your claims that this
3 wasn't, in fact, a kidnapping?

4 A Could you repeat that?

5 Q Did you get anything from your attorney that you
6 went over with him that would have backed up your story
7 that it wasn't a kidnapping?

8 A No, sir.

9 Q Okay. These are the photographs I mentioned
10 previously. I apologize. These say the Irmo ATM. There's
11 three different time stamps on them, the first one being
12 1:06 zero seconds and that's going to be No. 10.

13 (WHEREUPON Applicant's Exhibit No. 10 was marked
14 and entered into evidence.)

15 BY MR. STITELY:

16 Q 1:06 and 5 seconds. That's going to be No. 11.

17 (WHEREUPON Applicant's Exhibit No. 11 was marked
18 and entered into evidence.)

19 BY MR. STITELY:

20 Q And then 1:06 and 6 seconds. And that's to be No.
21 12.

22 (WHEREUPON Applicant's Exhibit No. 12 was marked
23 and entered into evidence.)

24 BY MR. STITELY:

25 Q Mr. DeLarge, looking at those that I've given you,

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 which are marked 10, 11 and 12, does it appear to be a
2 relatively clear view in the first shot of the victim in
3 this case in her car?

4 A Yes, sir, it is.

5 Q Okay. And then the second two appear to be the
6 back seat and then the way back, I guess whatever you call
7 it -- the trunk of the SUV?

8 A That is correct.

9 Q Okay. Are you familiar with that e-mail that's
10 previously in as No. 1?

11 A I actually am, indirectly, because it was brought
12 to my attention that Mr. Waries did e-mail saying that he
13 did not see anyone in the front seat or the back seat, sir.

14 Q And you actually gave me a copy of that e-mail so I
15 could pursue Mr. Waries down and ask for some photographs,
16 correct?

17 A That's correct.

18 Q Was that e-mail part of the discovery that you
19 received from your solicitor or is that something you had
20 procured on your own?

21 A This is actually something that I procured --
22 obtained on my own. I want to say, if my memory serves me
23 correct because after my conviction, I wrote the clerk of
24 court to receive my entire case file and in that I received
25 discovery and different motions which was filed on my

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 behalf.

2 Q Okay. You filed along with your PCR, a request
3 from the clerk's office and the solicitor's office for a
4 copy of your file is what you're saying, correct?

5 A Yes. The clerk of court sent them.

6 Q Okay. And that e-mail was part of the discovery in
7 your case?

8 A Correct, sir.

9 Q Okay. When you were talking to Mr. Cornwell and --
10 I hate to be -- but you did ask him to get you the
11 pictures, correct?

12 A Multiple times, sir.

13 Q Did you ever see the pictures?

14 A I did not at all, sir.

15 Q Do you think they're incredibly relevant to your
16 case?

17 A I think that there very detrimental to my case
18 being it could show greatly that I'm innocent, sir. It
19 would prove innocent or guilt.

20 Q And I'm not going to talk in great detail about it,
21 but I am going to ask you, the sexual encounter that
22 occurred after -- what your position is that y'all got some
23 weed and their position is that you went to the ATM. Was
24 there anything about that relationship nonconsensual?

25 A No, sir. The whole, I would say interaction,

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 relationship, the whole thing was very much consensual,
2 sir.

3 Q Did you tell Mr. Cornwell and/or anyone from his
4 office that you had had a previous relationship with her,
5 the individual?

6 A I stated to Mr. Cornwell that we did have several,
7 I'd say respectful affiliations or associations. And that
8 this, in fact was not as it was said to be, that it was all
9 consensual.

10 Q When did you first meet?

11 A As in?

12 Q Period. When did you first meet her?

13 A At all?

14 Q Yes.

15 A I met Ms. Price in the 7th grade.

16 Q Okay. And y'all went to what high school?

17 A That was -- at that time it was Fulmer Middle
18 School.

19 Q Okay. And then did you go to the same high school?

20 A Yes, sir, for some period of time we did go the
21 Airport High School.

22 Q Okay. Did you ask your attorney to go procure the
23 records showing the times you guys were both enrolled in
24 that school?

25 A Say that again?

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 Q Did you ask your attorney to go get the records
2 showing the times that both of you were enrolled in
3 schools?

4 A I did, sir.

5 Q Did you get copies of those?

6 A No, sir. All I say, if I'm not mistaken, was some
7 yearbook pictures.

8 Q Okay. To your knowledge, were you ever provided as
9 part of either the discovery or your requests from your
10 attorney any verification as to the times that both of you
11 were in school?

12 A Could you repeat that?

13 Q Did they get your school records?

14 A No.

15 Q I'm sorry?

16 A I never saw any school records, sir.

17 Q Okay. Did you ask for them?

18 A I did. I asked them -- in fact, I was the one who
19 gave him the lead to go to the school to retrieve the
20 school records.

21 Q Now, it was told to his recollection that you may
22 have been a senior when she was a freshman; is that
23 accurate?

24 A That is incorrect.

25 Q And you guys were how many grades apart?

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 A We wasn't -- we were in the same grade, sir. Being
2 that I was a couple of months older, but if he would have
3 retrieved all of my records, sir, it would have shown that
4 in the fifth grade, I was held back one grade, which would
5 have placed me in the exact same grade. And that was at
6 Guinard Middle School in Calhoun County.

7 Q Okay. And again, these requests, to your
8 knowledge, nothing was produced to you prior to the time
9 when you went to trial and/or ultimately plea?

10 A Nothing was provided.

11 Q Okay. Did you relate to your attorney a
12 conversation that the police alledgedly had with
13 Ms. Roberts?

14 A Could you repeat that one more time?

15 Q Did you relay to your attorney a conversation that
16 was brought to your attention between the police and --

17 A Oh, yes, sir. I -- as I told them, they were
18 somewhat abrasive towards her and our position with our
19 kids concerning her cooperation with the State.

20 Q Okay. Where is Ms. Roberts now?

21 A Ms. Roberts is in Watertown, New York. She's
22 stationed there. She's in the United States Army.

23 Q Okay. How long has she been there?

24 A She's been there for quite some time. I can't
25 remember any exact amount of time, but it's been over a

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1 year.

2 Q Okay. Do you still have contact with her?

3 A Yes, I do.

4 Q Were -- during your time, were we able to make a
5 request of her to see if she would be available to come
6 testify in your hearing today?

7 A We did.

8 Q Okay. Ultimately what did we have to rely on to
9 get her word down here?

10 A We had to rely on a statement saying that she was
11 unable to be released to be here at this time, so we were
12 given a notarized statement.

13 Q Okay. And you've been here and I had previously
14 marked that as Court's Exhibit 1 is that's the letter -- is
15 that the letter that we've gone over?

16 A Yes, sir, it is.

17 Q Okay. Did you ever want to plead guilty in this
18 case?

19 A I did not, sir. Reason being, I asked him about an
20 Alford plea meaning I'm not guilty, but if I went to trial
21 at this time, I would be found guilty, sir.

22 Q Why do you think you'd have been found guilty if
23 you went to trial? Was is the evidence that you had
24 received to that point?

25 A It -- I would say more so the lack of evidence from

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1 my attorney and his investigation.

2 Q Do you feel confident about the limited time that
3 we've investigated it with me? I mean, we found these
4 pictures and all of the other items I've brought forward
5 today?

6 A I would say that you've done an upstanding job
7 and -- more so than I received in the time in which Mr.
8 Cornwell was representing me.

9 Q Ultimately that's not the standard we have to go
10 for. The standard is would that have changed your mind as
11 far as what action you would have taken back then?

12 A Greatly.

13 Q Okay. Do you feel that the lack of this
14 information led you to make an unfairly given plea?

15 A I would say so, because I didn't have a fair
16 assessment of the State's case against me, sir, being that
17 there were multiple items missing.

18 Q Okay.

19 MR. STITELY: Beg the Court's indulgence one
20 second.

21 (WHEREUPON there was a pause in the proceedings.)

22 BY MR. STITELY:

23 Q Were you ever told anything specifically regarding
24 sentencing and/or ranges of possible sentences in this
25 case?

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 A Once Mr. Cornwell -- me and Mr. Cornwell discussed
2 pleas, if I'm not mistaken, there were multiple requests --
3 I would say so. And I was on -- I was in confinement at
4 one time and I can't remember the guys name, but he came on
5 behalf of Mr. Cornwell with a written statement saying
6 that -- of the plea that was on the table at that time was
7 a second degree CSC and a kidnapping with dropping the
8 armed robbery. But I had a limited amount of time to act
9 on that offer.

10 Q Okay.

11 A And the jail records would also show that I did
12 receive a visit from such an individual.

13 Q I apologize, I just lost my train of thought.

14 Okay. Were you -- did you ever discuss the
15 possibility of LWOP during your plea negotiations or plea
16 discussions with your attorney?

17 A Yes, sir. Actually, the only discussions that we
18 had concerning the life without parole was when we were
19 discussing the trial and it was said that -- I mean, it was
20 brought to the attention of the armed robbery and I was
21 told that if I did proceed to trial and, in fact, the
22 jurisdiction matter was given to my -- was given in my
23 favor that I would be tried in Lexington County for the CSC
24 and the kidnapping and they would call Richland County and
25 that it would only be a miracle if Richland County did not

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1 prosecute the armed robbery. And being that I did have one
2 or two strikes of most violent offenses in Lexington County
3 on my record and armed robbery being a most serious
4 offense, I would receive a life without parole sentence.

5 Q You feel that that was part and parcel to how you
6 were held to plea in this case? At least an element of it?

7 A It was -- I would say it was an element.

8 Q Okay. I asked Mr. Cornwell -- at some point did
9 you ask that you be administered a polygraph in this case?

10 A I did stir, multiple times.

11 Q Okay. And you understand that it wouldn't have
12 been admissible either way?

13 A Yes, sir, but I just wanted to really place on any
14 record that I, in fact, took this polygraph test and I
15 would have passed.

16 Q Do you feel that your attorney didn't believe you
17 or didn't want to pursue your case? Is that what --

18 A After several conversations with Mr. Cornwell -- I
19 mean, several times in our conversation, you know, it
20 seemed a little -- he seemed a little humored, you know,
21 kind of had a nonchalant attitude towards it, but he
22 still -- in a sort of a semi-sense, maintained a
23 professional demeanor towards me.

24 Q Okay. Did you ever receive any pictures of the
25 actual alleged crime scene where the CSC took place, being

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 the jeep?

2 A I received no pictures, sir.

3 Q Did you get any copies --

4 A I received some inside the store.

5 Q I'm sorry. Those nine pictures, that's the only
6 pictures you say you received in this case?

7 A That's the only pictures I received, sir.

8 Q Did you ever receive any copies of her medical
9 records?

10 A I received some type of medical records. I think
11 that was the results from the rape kit if I'm not mistaken.

12 Q Did you ever receive any of the talked about blood
13 screens, about possible drug use?

14 A Pardon?

15 Q Did you ever see anything where they tested her
16 blood about possible -- where they did a blood draw where
17 it would have shown any possible drug use?

18 A I didn't see any in there -- like in the incident
19 report, they checked that there were no drugs used by the
20 victim, but I'm not quite sure if that was -- I'm quite
21 sure that was not accurate.

22 Q Did you ask your attorney to follow up on that?

23 A I did because I stated too that we were, in fact --
24 I'd say partaking in the -- in this drug, yes, sir.

25 Q Okay. Now, just give me one second. I'm going to

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 go through some of the issues that you've written down and
2 handed to me so I'm going to try to formulate questions out
3 of them for the Court to make it as easy as possible and I
4 just want to make sure I don't miss anything?

5 THE COURT: You want to take a break? We've been
6 going about an hour and a half.

7 MR. STITELY: I just like to talk, Judge.

8 THE COURT: I'll grant you that.

9 (WHEREUPON a recess was observed.)

10 MR. STITELY: Judge, I think we're good whenever
11 you are ready, sir.

12 THE COURT: All right. Ready to go.

13 MR. STITELY: Yes, sir.

14 BY MR. STITELY:

15 Q What -- I just want to ask you one other question
16 about something else on the side and then we'll get back
17 into that other stuff that we were at.

18 A Pardon. I want to clear something up on the record
19 for one second.

20 Q Okay.

21 A This e-mail -- I'm pretty sure it was in discovery.
22 We discovered it if I'm not quite sure.

23 Q Okay.

24 A I wanted to say it was in discovery if I'm not
25 mistaken. I don't want to take anything away from Mr.

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1 Cornwell in which he did. I want to say this e-mail was in
2 discovery, but I can't remember if it wasn't then I'm
3 wrong, but I think that it was, sir.

4 Q Okay. And what I want to ask is one other thing
5 and we're kind of going over it. I'm going to show you a
6 letter that was written on April 28. Think it will just
7 make life easier when we get to it. Do you recognize that?

8 A Yes, this was one of the cover sheets to my
9 discovery when I received it.

10 Q And that's when you received this letter?

11 A Yes, when I received my discovery when Mr. Bax was
12 my lawyer.

13 MR. STITELY: Defendant's No. 13, Judge.

14 (WHEREUPON Applicant's Exhibit No. 13 was marked
15 and entered into evidence.)

16 Q All right. Now, these are a couple of the issues
17 that you brought up and I just want to make sure we get
18 them on the record?

19 A Thank you, sir.

20 Q This is the only chance we have at doing a PCR.

21 First, just to clarify, did you receive from Mr.
22 Cornwell any photo's be it ATM, be it store surveillance,
23 aside from those nine stills that are already in the
24 record, of you, of the victim, of anything else in your
25 discovery?

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1 A No pictures from Mr. Cornwell, sir.

2 Q Do you feel that that was an abuse of your due
3 process and your Fifth Amendment right?

4 A I do, sir, because it deprived me of my right to
5 appraise a case and to have a fair appraisal of the case,
6 and I feel like he was greatly ineffective for that.

7 Q Do you feel that had this information been turned
8 over, being either exculpatory or greater it would have
9 altered your opinion on whether or not you would have pled
10 guilty?

11 A Yes, sir, it greatly would have.

12 Q Okay. Was any additional information ever procured
13 about the individuals who were at the Shell Station
14 including, but not limited to the clerk on that date?

15 A One more time, sir?

16 Q Was any investigation or information obtained of
17 any individuals who were at that Shell Station that night,
18 including, but not limited to the clerk during the
19 representation by Mr. Cornwell?

20 A No, sir, there was nothing provided from Mr.
21 Cornwell concerning anyone that was present at the Shell
22 Station.

23 Q Did you ask him to get such items?

24 A I did; sir.

25 Q Do you feel that they could have been potentially

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 exculpatory and/or Brady, helping your due process?

2 A I greatly believe so.

3 Q Do you believe they would have impacted your
4 decision on whether or not you should have pled guilty or
5 proceeded to trial?

6 A I do, sir. It would have greatly changed the
7 outcome of the proceeding.

8 Q Okay. This one I didn't cover, we just looked at
9 it. Your understanding when Mr. Cornwell brought the offer
10 to you without recommendation or negotiation, what did that
11 mean to you?

12 A As I spoke to Mr. Cornwell and we discussed the
13 matter several times and before I signed the sentencing
14 sheet, I was -- he was in my presence and I asked him
15 about -- because I read over the sentencing sheet. And he
16 said basically that the solicitor would not make a
17 recommendation that it was an open plea; and I would be
18 placed at the mercy of the Courts. It was up to the
19 Honorable Judge Stillwell to provide a reasonable sentence.

20 Q Okay. To your knowledge and your conversations
21 with your attorney part and parcel to signing that plea
22 agreement, was it your understanding that Mr. Graham would
23 not get up and put anything on the record as far as what he
24 was recommending your sentence to be?

25 A Yes, sir. It was my understanding that once I

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 admitted my guilt, which I state now that I'm not, that he
2 would take no position in the sentence that I would
3 receive, sir. That was my understanding.

4 Q Okay. When Mr. Graham -- I know we discussed
5 before page 24 and page 26, said that he was recommending
6 or suggesting to the judge -- requesting that the judge
7 impose the maximum sentence, at that point did you try to
8 bring up to Mr. Cornwell's attention that this was not the
9 deal you entered into?

10 A Yes, sir. Throughout the proceeding, as Mr.
11 Cornwell did -- well, he was -- he did concur that I nudged
12 him several times discussing several matters that I didn't
13 agree with. I was greatly uncomfortable pleading because I
14 really didn't want to, but being advised by Mr. Cornwell, I
15 did so, only under his advisement. And when it was said
16 that he -- he recommended that I receive sentences ran
17 consecutive and that I receive sixty years, I nudged Mr.
18 Cornwell and stated basically, that -- you know what's up
19 with this. That's kind of what my words were. And he said
20 hold on, I got this, I'll take care of it, kind of sort of.
21 So I just kind of laid it to rest and I would say in
22 reliance that he would handle this matter.

23 Q Okay. Is that different than how you understood
24 the proceeding to go forward with the solicitor making that
25 statement?

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 A Yes, sir, because it was my understanding that he
2 would take no position, make no -- ask for no specific
3 sentence, make no recommendations as to a specific sentence
4 in which I would receive.

5 Q Had you known the solicitor was going the get up
6 and say I recommend the maximum just as he would have if
7 you went to trial, would that have changed your position
8 regarding your willingness to enter a plea.

9 A Yes, sir, Mr. Cornwell explained to me basically
10 the open plea because he's charged with zero to thirty; and
11 like I say, it was just prior to that that I received the
12 written agreement, the second agreement in the kidnapping.
13 And it's -- I mean it's kind of logical to myself and it's
14 also true that had I known that Mr. Graham would have made
15 a recommendation period, because knowing the solicitor
16 being the opposition that they would recommend the max, I
17 would not have plead guilty, sir. I would have insisted on
18 going to trial and taking my chances there.

19 Q Being that the armed robbery was questionable in
20 what county it would have been into. In essence when the
21 solicitor made that recommendation was it your
22 understanding that was the exact same outcome that you
23 would have received had you went to trial -- let me
24 rephrase. That's a bad question --

25 Armed robbery aside because there was a

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 jurisdictional question --

2 A Correct.

3 Q -- just the CSC and the kidnapping, knowing that he
4 was going to ask the maximum, do you see any difference
5 between trying it and pleading guilty?

6 A No, sir. Being that there would have been no
7 difference, I would not have laid myself at the mercy of
8 the Courts; and also Mr. Graham, knowing that he would have
9 recommended the max, I would have greatly insisted on
10 continuing on to trial as I maintained my innocence through
11 the whole entire time.

12 Q And it's fair to say as I'm looking over the
13 transcript, you were reluctant, at best, to plead guilty
14 that day, correct?

15 A Yes, sir. As I -- when I was asked did I want to
16 say anything, as I said, just standing in front of the
17 Honorable Judge and plead guilty and say that I'm not would
18 be illogical. But throughout the course of time, something
19 got digressed where it would bring you to feel like this
20 might have been your best option because I was advised to
21 do so under the understanding that there would be no
22 recommendation, so I felt that was my best option under the
23 advisement of Mr. Cornwell.

24 Q Do you feel that your attorney at trial -- or at
25 the plea slash trial phase, appropriately prepared you for

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 trial?

2 A Mr. Cornwell did go and retrieve some yearbook
3 pictures so that would be somewhat of an investigation; but
4 he, to my understanding, did not go and do multiple things,
5 you know. But when he came with the idea of the plea and
6 he stated -- basically his reasons, I don't want to quote
7 or you know quote his words wrong, but stated this was my
8 better option, I felt as if being he spoke to me as a man
9 that he would work as an advocate in my behalf, so I felt
10 that his advisement would be upstanding, which I was
11 greatly disappointed.

12 Q Do you think he was ready for trial as
13 appropriately as he should have been?

14 A Absolutely not.

15 Q Do you feel that if you went to trial your
16 interests would have been fairly protected under due
17 process, Fifth Amendment, Fourteenth Amendment,
18 confrontation clause?

19 A Being that there was little to no investigation, I
20 didn't -- the pictures were withheld, I don't feel like
21 they would have been protected. I didn't feel he had my
22 best interest in mind as of protecting my rights as I'm
23 guaranteed by law, sir.

24 Q And I hate to backtrack just a second, but what you
25 were talking about earlier where you even seem hesitant

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 during the plea, it's on page 34 of your transcript --

2 MR. STITELY: Thirty-four and thirty-five for the
3 Court's record.

4 BY MR. STITELY:

5 Q -- where you make the comment, you know, I don't
6 want to plead guilty, but to say something would be
7 illogical?

8 A Yes, sir.

9 Q You had that on the record.

10 A Because as in there -- as me and you discussed, I
11 was basically advised by Mr. Cornwell, okay. I am
12 accepting this plea as it was said -- as he stated on page
13 30, lines 20 through 24, I talked to my client. We've been
14 back and forth. This was initially a trial case. We were
15 going to trial -- we were going to try this case. As a
16 result of our conversations and talks with the solicitor
17 we're here before you today. There were negotiations,
18 there were -- I would say stipulations being me admitting
19 my guilt because he would not accept the Alford plea of me
20 saying I am not guilty because I wasn't.

21 So I was -- I was not greatly -- I would say
22 appeased to plead guilty, but being that he advised me that
23 this was my better option, I took his advisement and went
24 forth with the proceeding.

25 Q What --

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 A Once --

2 Q Go ahead.

3 A Once I entered the other plea, as me and Mr.
4 Cornwell had conversations and he should be able to concur
5 the same, that if I said anything to contradict anything
6 that -- other than I am guilty directly, that the judge
7 would not accept my plea. And if the judge did not accept
8 my plea, then basically his advisement was out the window;
9 and being that he felt that that was my better option, I
10 didn't want to go against what he advised me being that I'm
11 not very inclined in the law.

12 Q I guess this is important: Were you ever out of
13 jail with an opportunity to investigate your case on your
14 own?

15 A I was never out of jail any time, sir.

16 Q Did you have any ability to conduct independent
17 investigation? Specifically, were you able to contact
18 Mr. Waries at the bank?

19 A I was not able to contact anyone at pay phones and
20 I basically -- I was not able to --

21 Q Were you able to go?

22 A -- locate.

23 Q Were you able to go to get any school records while
24 you were in jail?

25 A I wasn't able to do anything, sir.

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 Q Were you able to come to the courthouse and look
2 through the solicitor's file as it says they say they had
3 an open file policy to see what they had?

4 A No, sir, I was at the Lexington County Detention
5 Center with limited abilities.

6 Q Do you feel now, seeing all the information that is
7 available that the -- available in regards to your case
8 that an outcome -- as far as your decision to plea, would
9 have been different?

10 A It would have been greatly different, sir. I would
11 have never pled guilty had I had this -- the current
12 evidence that I'm presented with through you. I would not
13 have pled guilty but insisted on going to trial, sir.

14 Q Do you feel that this was, in fact, ultimately all
15 encompassing the ineffective assistance of counsel you
16 received at the time?

17 A Yes, sir. It would all fall under the umbrella of
18 ineffective assistance of counsel also being Mr. Cornwell's
19 erroneous advice to me on several issues.

20 Q Okay. Now, Wendell, I think I'm about good here.
21 Is there anything, specifically, that I have missed that we
22 need to talk about still?

23 MR. STITELY: And, Your Honor, I ask you give him a
24 moment to check his notes to see if there's anything I've
25 missed. I don't want him to lose his opportunity.

Wendell G. DeLarge - Direct Examination by Mr. Stitely

1 THE WITNESS: If I may address the record, sir? If
2 that's okay with you, Your Honor?

3 THE COURT: I don't -- tell him the issue, maybe
4 he'll understand what the issue is. But I don't want to
5 give you the floor on that.

6 THE WITNESS: I mean it's very short.

7 BY MR. STITELY:

8 Q What question did I miss?

9 A No questions exactly, sir. Basically, Mr. Cornwell
10 is against the demanded standard, you know. And if
11 compared to that standard, he would fall greatly
12 ineffective being that there was little investigation. I
13 relied upon Mr. Cornwell's advise and his duties being that
14 I felt that he was an advocate on my behalf. After the
15 investigation which you have greatly done, which I
16 appreciate, you've went passed the measures and all the
17 stuff that has been brought to my attention. Mr. Cornwell
18 did very little for me and he erroneously advised me on
19 several issues, you know, in which I felt -- in other
20 words, I feel that it's detrimental, that had I been
21 correctly advised and investigation had been -- had he
22 investigated properly, you know, the plausible defenses,
23 I'm one hundred percent sure that I would have never pled
24 guilty, sir; and I would have insisted in going to trial
25 because as I stated the whole time my innocence.

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1 So something -- as I said before, something had to
2 digress to the point where -- to make me change my opinion,
3 my decision of not pleading guilty to it. I sat in the
4 county for two years. And being sitting in the county for
5 two years, sir, it takes a toll on a person, as I can
6 witness to you, as being so. If this was the case, I would
7 have been pled out to these same charges because these same
8 charges in which I was indicted upon originally so,
9 therefore, it was only under Mr. Cornwell's erroneous
10 advice of the State's recommendation that he failed to
11 object; also by his failure to investigate, his erroneous
12 advice considering, I mean multiple things: The photos in
13 which he stated that he had actual evidence against me to
14 find me guilty as so. I mean -- I'm pretty sure each and
15 every person that is employed under the judicial system
16 should be upstanding, so you should uphold your job as so
17 and I relied on Mr. Cornwell to do so and he did not.

18 Q Okay.

19 A I thank him for what he did, but things that he
20 didn't do greatly overweighed what he did do, which, right
21 now, I'm faced with fifty years for something I did not do.
22 Had he properly performed his job, I would have never pled
23 guilty, sir. I would have went to trial.

24 Q And short, last question -- and that's what you
25 want, you want your opportunity to have your trial with all

Wendell G. DeLarge - Cross-Examination by Ms. May

1 the evidence that we actually have now that you didn't have
2 then?

3 A Yes. I mean because -- all I want is my fair bite
4 at the apple at a new trial, as I know that I am faced with
5 the original charges which it's greatly more time in which
6 I have received today and I'm willing to take that chance
7 because I know that with the evidence which was withheld
8 which he did not investigate to get, I can form a
9 reasonable doubt to find my innocence because, I mean, the
10 evidence as such, I would say is overwhelming being what
11 you have presented today and what is already on the record.

12 Q I have no other questions. Please answer anything
13 Ms. May has.

14 A Yes, sir.

15 CROSS-EXAMINATION

16 BY MS. MAY:

17 Q Mr. DeLarge.

18 A Yes, ma'am.

19 Q You understand that you've been told -- you've been
20 sworn to tell the truth today?

21 A Correct.

22 Q Okay. And you understand that at your guilty plea
23 you were sworn to tell the truth?

24 A Yes, ma'am.

25 Q And did you?

Wendell G. DeLarge - Cross-Examination by Ms. May

1 A Yes, I did.

2 Q You did? Okay. Do you recall the judge reciting
3 the facts of your criminal sexual conduct charge?

4 A Yes, sir. We basically stated what was on the
5 indictment.

6 Q Okay. And do you recall the plea judge asking you
7 if those facts were correct?

8 A Correct.

9 Q And you told the judge that that's what happened,
10 correct?

11 A I did because I was advised by Mr. Cornwell that if
12 I said anything contradicting that I'm guilty that my
13 guilty plea would not be accepted.

14 Q Okay.

15 A So I --

16 Q So the judge asked you the facts of the indictment
17 and he asked if you agreed with that?

18 A And I did agree with that because that was part of
19 the advisement and the agreement that me and Mr. Cornwell
20 and also through Mr. Graham was made, so I agreed to these
21 terms under this plea.

22 Q But he asked you about the facts of the indictment?

23 A Correct.

24 Q And you agreed that that's what happened?

25 A Correct. And that --

Wendell G. DeLarge - Cross-Examination by Ms. May

1 Q Was that the truth?

2 A At this time -- no, honestly it wasn't because it
3 was only the agreement of the guilty plea that I was
4 advised by Mr. Cornwell.

5 Q Okay. So it wasn't the truth what the judge -- the
6 facts that he recited?

7 A I was advised that if I stated anything other than
8 what we'd agreed upon which was I was admitting my guilt,
9 that my guilty plea was -- would not be accepted. And
10 being that Mr. Cornwell stated that this was my better
11 option, this is what I agreed to do.

12 Q So you're saying that you lied because that's what
13 you were advised to do?

14 A Mr. Cornwell advised me.

15 Q Okay. And do you recall the judge also reciting
16 the facts of the kidnapping charge?

17 A Correct.

18 Q Okay. And he asked you if those facts -- that's
19 what happened?

20 A Yes, he read off of the indictment, ma'am.

21 Q And you agreed that that was what happened,
22 correct?

23 A Under the advisement of Mr. Cornwell.

24 Q So that was not the truth then?

25 A I agreed to it because it was a part of the guilty

Wendell G. DeLarge - Cross-Examination by Ms. May

1 plea under the advisement of Mr. Cornwell.

2 Q Okay. But what the judge recited to you, was that
3 the truth, what happened?

4 A It was not, ma'am.

5 Q Okay.

6 A I maintained my innocence the whole time. Only
7 under the advisement did I enter into the guilty plea.

8 Q Okay. The judge asked you at your plea hearing if
9 you were satisfied with Mr. Cornwell's representation. Do
10 you recall that?

11 A I am.

12 Q Okay. And do you recall telling the judge that you
13 were satisfied with his representation?

14 A Because I felt that Mr. Cornwell was acting as an
15 advocate in my behalf, and being that he stated that this
16 was -- would be my better option, I took his word as so, so
17 I felt like he did -- he was working on my behalf to say
18 that -- take this plea because this is your better option
19 of being that we spoke about the life without parole being
20 the Richland County, Lexington County jurisdiction of the
21 armed robbery and so forth on.

22 Q Okay. With -- can I have you look at Exhibit No.
23 13, I believe it is up there. It's the letter dated April
24 28?

25 A It's the cover letter with the State of South

Wendell G. DeLarge - Cross-Examination by Ms. May

1 Carolina, Officer of the Solicitor 11th Judicial Circuit on
2 the letterhead.

3 Q Okay. Was that in your discovery materials?

4 A Yes, it was.

5 Q It was? Okay. And would I also -- the e-mail,
6 which I believe is Exhibit No. 1 --

7 A I have a copy -- oh, here it is. I have the
8 exhibits right here. Thank you.

9 Q Okay. And that was in your discovery materials as
10 well, correct?

11 A If I'm not mistaken, if my memory serves me
12 correctly, I think it is.

13 Q Okay. So you were?

14 A As read --

15 Q Where was it --

16 A I recanted --

17 Q I'm sorry?

18 A Excuse me, as I recanted after the break and said
19 that it was because I actually wanted to give Mr. Cornwell
20 the credit in which he deserves and state what it is on the
21 record.

22 Q So you were aware that there were ATM photos that
23 existed prior to your guilty plea, correct?

24 A Correct.

25 Q Okay. And if you hadn't seen those prior to your

Wendell G. DeLarge - Cross-Examination by Ms. May

1 guilty plea, why did you tell the judge that you were happy
2 with what Mr. Cornwell had done for you thus far?

3 A Because Mr. Cornwell stated that he had a copy of
4 the Rule 5, of the discovery. I asked him about the
5 pictures. He said that Mr. Graham had those pictures. I
6 asked why weren't they included in my discovery. He said
7 he didn't know, he would have to go confer with Mr. Graham.
8 I asked him multiple times could he -- could he retrieve
9 these photos, in which he never did. But when it got down
10 to the time as he said we received letters to prepare to
11 actually go to trial, very -- or very soon afterwards,
12 that's when we -- he started discussing the plea and
13 started advising me toward the plea.

14 As he convinced me that this was my better option,
15 this is what I basically went on because being that I'm not
16 inclined to the law. He's working on my behalf as my
17 advocate and as my facing the judicial system, I took his
18 advice, ma'am.

19 Q Okay. So, when the judge asked you if you were
20 satisfied with Mr. Cornwell, when he asked you if there was
21 anything else that he could do, that wasn't the truth when
22 you told him --

23 A At the time I felt like he was working, as I said,
24 as an advocate on my behalf being that he stated that this
25 was my better option, so --

Wendell G. DeLarge - Cross-Examination by Ms. May

1 Q Okay.

2 A -- I took his word saying that he was looking out
3 for my best interest.

4 Q Okay. If you -- but you were aware of these ATM
5 photos and you still wanted to see them, correct?

6 A I did. Yes, point-blank I did.

7 Q Okay. But you told the judge that you didn't need
8 more time to speak with Mr. Cornwell or had any problems
9 with his representation?

10 A I did because as me and Mr. Cornwell conferred, he
11 stated that, once again as I said, there was not any other
12 evidence that was substantial to solidify my claim that I
13 was not guilty. So I took his word that he was placed in
14 his position and basically appointed to me as my advocate,
15 as my facing the judicial. Being that he was my
16 representation, I took his word, being that -- him saying
17 that this was my better option.

18 Q Okay. But I'm asking you, when you told -- you
19 were aware of these ATM photos and you told the judge that
20 Mr. Cornwell represented you to the best of his ability,
21 did you feel that way?

22 A Ma'am, you're repeating the same question when I've
23 told you that he advised me that this was my better option,
24 admit the pictures -- he stated that there was no
25 evidence -- he stated he went back to Mr. Cornwell and

Wendell G. DeLarge - Cross-Examination by Ms. May

1 spoke to Mr. Cornwell multiple times as he said in the
2 transcript, on page 30, 21, 22, 23 and 24, that he
3 conferred back and forth with Mr. Graham and due to his
4 talks with Mr. Graham and our conference with Mr. Graham
5 that we're here before you today. So he stated that this
6 was my better option and I took his word.

7 Q I understand that. But this is your guilty plea,
8 this is your day.

9 A I understand.

10 Q Correct? The judge is asking you if you were --

11 A And --

12 Q -- satisfied with Mr. Cornwell's representation.

13 A At that time I was because I felt like he had my
14 best interest in mind, ma'am.

15 Q Okay.

16 THE COURT: Move on to something else. We can't
17 read the entire transcript. As part of the PCR
18 application, he wasn't satisfied and he didn't do it freely
19 and voluntarily, so I understand his answer would have been
20 different today as it were then. I got that.

21 MS. MAY: Okay.

22 THE COURT: All PCR pleas are that way.

23 BY MS. MAY:

24 Q Mr. DeLarge, with regard to -- let me go back to
25 that letter that's dated April 28th, Exhibit 13. It

Wendell G. DeLarge - Cross-Examination by Ms. May

1 references a disk; is that correct on there?

2 A Yes, it says, Enclosed please find discovery
3 material dated, stamped February 11, 2008, consecutively
4 numbered from 0001 and a CD labeled 07106795 on the above
5 referenced case as well as a plea offer. If you have any
6 questions please -- regarding this matter, please do not
7 hesitate to contact me.

8 Q And that was with your discovery; correct? That
9 letter?

10 A Yes, that was a letter with my discovery, ma'am.

11 Q Did you ask your attorney about that disk that's
12 referenced in there?

13 A Absolutely. I asked Mr. Cornwell about that disk
14 and Mr. Cornwell said the only thing that was on that disk,
15 I remember correctly, was the pictures from the -- from the
16 store, which were the nine photos that I have before me
17 right now of me standing at the counter. I did ask him.

18 Q Okay. Did you review or receive any photos from
19 Mr. Bax when he was representing you?

20 A Mr. Bax was only appointed me for a short period of
21 time.

22 Q Okay. But did you review or receive any photos
23 from him?

24 A I did not.

25 Q Okay. Did you ever ask your attorney, Mr.

Wendell G. DeLarge - Cross-Examination by Ms. May

1 Cornwell, to withdraw your plea during the plea hearing?

2 A Once Mr. Graham reneged on the verbal -- I would
3 say more so verbal agreement because Mr. Cornwell came to
4 me with this, and he stated that he asked that I receive
5 consecutive time and sixty years and as Mr. Cornwell
6 stated, I nudged him several times within the proceeding.
7 At that time, I nudged him and basically said, what's going
8 on with this right here and he said, Just hold on a second,
9 I got this. But there was no result afterwards and soon
10 there afterwards, the sentence was handed down which was
11 twenty-five years for the CSC first, twenty-five years for
12 the kidnapping, both ran consecutive.

13 Q So you didn't ask him to withdraw it during the
14 plea?

15 A I asked him what was going on because this wasn't a
16 part of what he told me it was. But being that he is
17 inclined in the law and knowing that Mr. Graham -- I don't
18 know whether it was intentional or basically a slip up or
19 whatever, reneged on this plea, being that he's my
20 representation, he is inclined in the law and knows if Mr.
21 Graham did renege on my plea agreement that he should act
22 in my behalf as my advocate and renege my plea -- I mean
23 withdraw my plea, excuse me.

24 Q Okay. Did you ask your attorney to drop the plea
25 and go to trial at any time during the plea?

Wendell G. DeLarge - Cross-Examination by Ms. May

1 A No, once again, I'm going to tell you the same,
2 ma'am, that I asked him what was going on. He stated that
3 he had it -- basically that he had it and I left it to him
4 to address the matter, but soon thereafter I was handed
5 down the sentence of fifty years.

6 Q And that fifty years, that wasn't the max, correct?

7 A The max at that time was sixty years. Ten years --
8 I received ten years less in a plea than I would have
9 received at trial.

10 Q Okay. And -- I'm sorry going back to that e-mail,
11 exhibit No. 1, the investigator stated that had he couldn't
12 see anybody in the backseat, correct?

13 A That's correct. As I said, he said, I did not see
14 anyone in the front passenger seat or the backseat.

15 Q And per Mr. Cornwell's testimony earlier, he said
16 y'all discussed the fact that you couldn't see anybody in
17 the backseat, correct?

18 A Semi-sort of. Mr. Cornwell -- as me and Mr.
19 Cornwell discussed this matter, though as it says a little
20 further down, although the glare on the rear window
21 prevented me from seeing into the backseat very well. He
22 said that that was kind of a toss up. In his words, I was
23 poking small holes in the picture and that I needed to
24 punch big holes in there.

25 Q But that e-mail was consistent with what you

Wendell G. DeLarge - Cross-Examination by Ms. May

1 discussed with Mr. Cornwell, that you couldn't really see
2 the backseat?

3 A It was, but once again, as I brought this to his
4 attention -- because I reviewed my discovery extensively --
5 as I brought it to his attention that several items were
6 missing and he said that I was poking small holes in the
7 picture and that I needed to poke big holes out.

8 Q Okay. I'm sorry can you state that one at the very
9 end what you stated, I missed it.

10 A Mr. Cornwell stated that I was poking small holes
11 in the picture --

12 Q Okay.

13 A -- and that I needed to bust big holes out. That
14 is in his words, if I'm stating correctly.

15 Q Okay. But it's more or less consistent with what
16 y'all discussed about not being able to see into the
17 backseat or see anyone there?

18 A I don't understand.

19 Q That e-mail where the investigator said that he
20 couldn't see anybody in the backseat, is that more or less
21 consistent with what Mr. Cornwell discussed with you?

22 A That's more consistent in what I discussed with Mr.
23 Cornwell stating that I am not guilty.

24 Q Okay. Do you have your high school records here
25 today with you?

Wendell G. DeLarge - Cross-Examination by Ms. May

1 A I don't have any records, ma'am, concerning my high
2 school.

3 Q Okay. Could I have you look at Exhibit 10, 11 and
4 12, individually?

5 A I don't have them at this time. If I'm privileged,
6 I will.

7 MS. MAY: May I approach, Your Honor?

8 THE COURT: Yes.

9 BY MS. MAY:

10 Q If I could have you look at Exhibit No. 10 to start
11 with. That one.

12 A Okay.

13 Q Exhibit No. 10, you can see what looks like, I
14 guess a light through the driver's-side window because it's
15 down?

16 A That is correct. That is correct. I'm not sure if
17 the window is down or not, but you can see a light.

18 Q You can still see a light. Okay. And then if you
19 look at No. 11, is that a picture of the backseat window?

20 A Yes, it appears to be.

21 Q Okay. Can you see that light through there?

22 A No, once again, as Mr. Waries stated, there's a
23 glare on the window that he couldn't see through the window
24 quite well.

25 Q Okay. And then again, as well on No. 12, you

Wendell G. DeLarge - Cross-Examination by Ms. May

1 can't -- can you see that light? Or might be that light
2 that it's passed?

3 A It might be, ma'am, but once again, there's a glare
4 on the window, but what you can't see right here, what
5 appears to be a light through the back window, if you look
6 in the other photos, you will see that light also once the
7 vehicle has passed.

8 Q Okay. But you would agree that there's a glare on
9 that window?

10 A I would agree that there's a glare on the window,
11 but I would also say that you can see a light through the
12 back window, ma'am, as you can also see.

13 Q Okay. And how -- when you were arrested, the
14 police arrested you hiding under the kitchen sink, is that
15 correct? Or a kitchen sink?

16 A At the time of my detainment, I had never
17 experienced such an occasion and --

18 Q What do you mean by that?

19 A I had never had the police come at me in such a
20 manner. I mean, I've been incarcerated before, but as Mr.
21 Graham was the solicitor in 2004, 3, 4, if I'm not
22 mistaken, but at that time, I did -- in the company of my
23 mother who was present also, I turned myself over to the
24 police at the Lexington County Detention Center, so I had
25 never had the police come at me in that manner so when that

Wendell G. DeLarge - Cross-Examination by Ms. May

1 happened, I kind of panicked and got scared because all I'm
2 hearing is a thousand police outside my door and they --
3 once my kids mother went to answer the door, as soon as she
4 answered the door, they kind of snatched her out of the
5 door, basically asked, is Wendell DeLarge here. Before she
6 even got a chance to say anything, they snatched her from
7 the threshold and threw her upon the cement balcony.

8 Q Okay. Well, you maintained your innocence
9 throughout, correct?

10 A That's correct.

11 Q If you were innocent, why did you hide under the
12 sink?

13 A I was scared, ma'am.

14 Q Okay?

15 A I mean, the human instinct does have that emotion.

16 Q So you -- and you read through your discovery; is
17 that correct?

18 A I went through my discovery, that is correct.

19 Q Okay. Okay. Real quick, how long did you and the
20 victim attend Airport High School together?

21 A I would say it wasn't a full semester. It wasn't a
22 full semester. It was for a short period of time, if I'm
23 not mistaken. I don't want to leave anyone -- it was for a
24 short period of time.

25 Q Okay.

Wendell G. DeLarge - Cross-Examination by Ms. May

1 A I was -- towards, I think, the end of a nine weeks
2 or so, I was expelled, kicked out from school, if I'm -- if
3 I'm stating this correctly.

4 Q Okay. And it's -- you've maintained that you were
5 never in a car; is that correct?

6 A That's also correct.

7 Q Okay.

8 MS. MAY: Your Honor, may I approach?

9 THE COURT: Yes.

10 BY MS. MAY:

11 Q Mr. DeLarge, this is a copy of the incident report
12 filed in this case.

13 A All right.

14 MR. STITELY: I'm actually going to object to the
15 hearsay of this document, Your Honor.

16 MS. MAY: Well, it's Mr. DeLarge's statements, so I
17 don't --

18 MR. STITELY: It's not. It's the police report of
19 what the police are saying he said. It's double hearsay
20 without the ability to confront on an investigative report.
21 If it was his statement it would be one thing. This is the
22 police recounting what they allege the statements to be.

23 THE COURT: What is it offered to prove today?

24 MS. MAY: It's just to contradict what he's said
25 from earlier testimony. Or not contradict, but not

Wendell G. DeLarge - Cross-Examination by Ms. May

1 inconsistent --

2 MR. STITELY: I'm going to clarify this on
3 redirect. She's asked -- it says that he went with her to
4 buy weed. I think the implication is he was never in the
5 car. He admits he was in the car, but not when she went to
6 the ATM. I think that's the snafu here.

7 THE WITNESS: The marijuana was actually --

8 THE COURT: Hold on. They're arguing about
9 something --

10 MS. MAY: He's maintained that he was never in the
11 car at all during this entire period and he was asked a
12 question if he went to an ATM with the victim and this is
13 inconsistent with what he's stated today.

14 MR. STITELY: I think we've already covered that on
15 direct. He was in the car. He said they went to buy some
16 marijuana and then the other acts took place. His denial
17 is at the time at the ATM. That's not what the statement
18 she's intending to show to impeaches, but -- you can look
19 at it judge. I just think it's a miscommunication more
20 than anything else.

21 THE COURT: I thought he said earlier he was in the
22 car and then she left to get money.

23 MR. STITELY: And that's the position we maintain.

24 THE COURT: And so him just answering the question
25 never in the car would be inconsistent with earlier

Wendell G. DeLarge, - Cross-Examination by Ms. May

1 statements if you say the entire time of the day of the
2 incident.

3 MR. STITELY: Right. Well, I think that's what
4 we're going to have to clarify later.

5 THE COURT: I don't think that's a -- I don't know
6 whether that's a factual dispute for a PCR hearing.

7 MR. STITELY: Sure.

8 THE COURT: She can go probably use it.

9 MR. STITELY: I'll withdraw.

10 THE COURT: These may be --

11 MS. MAY: I'll mark this as Exhibit 1, I believe.

12 (WHEREUPON Respondent's Exhibit No. 1 was marked
13 and entered into evidence.)

14 BY MS. MAY:

15 Q Mr. DeLarge, do you recall a Detective Chandler,
16 speaking with Detective Chandler after the incident?

17 A I'm not quite familiar with the name.

18 Q Okay.

19 A If you could refresh my memory, please.

20 Q If you would like to look over this. It looks like
21 you went with him at the jail and the sheriff's office?

22 A I met with Detective Edward Prestigiacomo.

23 Q Okay.

24 A And he was also accompanied by a female if I'm not
25 mistaken.

Wendell G. DeLarge - Cross-Examination by Ms. May

1 Q And they asked you a series of questions, I
2 believe, do you recall that?

3 A Actually, I recall speaking to them, and I recall
4 saying that I would write a statement, which I wrote a
5 statement and I'm pretty sure that you have a copy that I
6 did not rob, I did not kidnap and I did not rape anyone;
7 and afterwards, he became somewhat, sort of, I would say
8 belligerent toward me, so I ended the statement. He said,
9 well, could I ask you a couple of questions. I said yes
10 you could and he started harassing me with different
11 questions that really -- they weren't questions, they were
12 accusations, so I -- so I basically ended the whole
13 discussion and asked that I return to my cell.

14 Q Okay. Just to clarify real quick, do you deny that
15 you were ever in the car that night with her?

16 A I do not deny that. I was in the car at one period
17 of time.

18 Q Okay.

19 A But also, I was not in the car, ma'am, when she
20 went to the ATM I was still present at the Shell Station as
21 we stated earlier. She left from there, went and retrieved
22 the money and came back as if Mr. Cornwell would have did
23 his investigation to the store clerk, I'm pretty sure that
24 the store clerk would have said because he kept looking out
25 the window that I was still in the parking lot when the

Wendell G. DeLarge - Cross-Examination by Ms. May

1 maroon vehicle pulled back up.

2 Q Okay. Just a few more questions. After the
3 solicitor asked for sixty years, I believe that's at page
4 25, you were given an opportunity to address the judge,
5 essentially?

6 A I was?

7 Q Yes, I'll refer you to page 34 through 36?

8 A I don't have those pages in front of me at this
9 time.

10 MS. MAY: May I approach, Your Honor?

11 THE COURT: Sure.

12 THE WITNESS: All right. What am I looking at,
13 ma'am?

14 BY MS. MAY:

15 Q Thirty-four through thirty-six.

16 A All right.

17 Q After the solicitor had made a request for the
18 maximum, you were given an opportunity to address the
19 Court?

20 A Yes, I was.

21 Q Okay. Did you address the Court in regards to
22 anything about the solicitor asking for the maximum or that
23 that was not the deal that you thought you were pleading
24 to?

25 A I did not. And reason being, once again, as I

Wendell G. DeLarge - Redirect Examination by Mr. Stitely

1 stated earlier, Mr. Cornwell told me if I said anything
2 other than that I was guilty, saying anything contradicting
3 that -- other than I am guilty or anything other than what
4 was basically said, that my plea would not be accepted.
5 And at this point, I kind of felt like I had entered my
6 plea of guilty, that I had to continue on with this
7 proceeding.

8 Q Okay. Were you --

9 A So all I stated was basically that, well, somewhat
10 sort of, this was greatly hampering and I would say
11 somewhat of mitigating circumstances concerning this
12 matter.

13 MS. MAY: I have no further questions at this time.

14 MR. STITELY: I'll be very brief, I promise.

15 REDIRECT EXAMINATION

16 BY MR. STITELY:

17 Q Just to clarify, timeline as you put it, you were
18 at the gas station, correct?

19 A That is correct, sir.

20 Q You met Ms. Price at the gas station.

21 A That is correct.

22 Q She wanted -- y'all wanted to get some marijuana.
23 She goes to an ATM and comes back. You were not with her
24 at that time?

25 A Sir, I was in the parking lot the whole time and

Wendell G. DeLarge - Redirect Examination by Mr. Stitely

1 had Mr. Cornwell done his investigation, the store clerk
2 might have been able to say the same. I was not in the
3 vehicle at the ATM.

4 Q Okay. After that, y'all get in the car, get the
5 weed, have a consensual encounter?

6 A Yes, sir. After she came back from the ATM where
7 she purchased the marijuana, we smoked -- we hit the joint
8 a couple of times right there, then we left, smoked a
9 little bit and had a consensual encounter; and it was an
10 argument concerning our future association as of to say --
11 I would just say it wasn't agreed upon and I was just
12 placed outside the vehicle.

13 Q Okay. Looking back at everything you have now
14 versus everything you had at the actual date of your plea
15 and everything you got through your representation, is
16 there more to your case than was presented to you at the
17 time of your plea?

18 A Could you --

19 Q Looking at everything you have now versus what you
20 had at the time of your plea, is there more to your case
21 than you initially thought?

22 A There's greatly more to my case than what I was
23 presented prior to my plea.

24 Q Would that have changed your circumstances?

25 A That would have greatly changed my circumstances

Wendell G. DeLarge - Redirect Examination by Mr. Stitely

1 and I would not have pled guilty but insisted ongoing to
2 trial, being substantial evidence in which I was presented
3 by -- by yourself, and I thank you. Which states basically
4 my innocence.

5 Q Knowing all of that, do you feel that you would
6 have answered the question, Were you happy with his
7 services and you feel that everything that was done should
8 have been done the same way or would the answer have been
9 substantially different?

10 A Had I known Mr. Cornwell was not -- was not
11 advocating in my behalf, I would have greatly discussed my
12 displeasure with his actions and his work, but at that time
13 I was advised and semi-sort of lead to believe that he was
14 working as an advocate in my behalf.

15 Q Final question. And being in jail on a \$3 million
16 bond, you didn't have an opportunity to be out doing an
17 investigation on your own, correct?

18 A I had no opportunity to investigate no matters,
19 sir.

20 Q Okay.

21 MR. STITELY: I have no other questions, Your
22 Honor.

23 MS. MAY: No further questions.

24 THE COURT: You may step down.

25 THE WITNESS: Thank you, Your Honor.

Tara Grigsby - Direct Examination by Ms. May

1 MR. STITELY: Your Honor, I have no additional --
2 just for the record I wanted to point out his mother and
3 his brother are here and they have nothing to add
4 testimony-wise. I would just like to acknowledge that the
5 family is here.

6 THE WITNESS: Your Honor, this was presented to me
7 by --

8 THE COURT: I've got a copy of it right here.

9 THE WITNESS: Yes, sir.

10 MR. STITELY: That would be the petitioner's case,
11 Your Honor.

12 THE WITNESS: Thank you, sir.

13 THE COURT: All right.

14 MS. MAY: Your Honor, the State would like to
15 briefly call Tara Grigsby.

16 THE COURT: Ms. Grigsby, by come up here and be.

17 TARA GRIGSBY,

18 having been duly sworn, testified as follows:

19 THE CLERK: Please be seated and state your name
20 for the record.

21 THE WITNESS: My name is Tara Grigsby, T-a-r-a
22 G-r-i-g-s-b-y.

23 DIRECT EXAMINATION

24 BY MS. MAY:

25 Q Ms. Grigsby, where are you employed?

Tara Grigsby - Direct Examination by Ms. May

1 A The 11th Judicial Circuit Solicitor's Office.

2 Q Okay. And who do you work for directly?

3 A I work for Donnie Myers. I work for Deputy
4 Solicitor Shawn Graham, Deputy Solicitor Rick Hubbard,
5 Deputy Solicitor Dayton Riddle, Assistant Solicitor Rhonda
6 Patterson and Assistant Solicitor Kate Usry.

7 Q Okay. And what do you -- what are your normal
8 duties entail?

9 A I am a paralegal.

10 Q Okay. And do part of your duties in working with
11 the solicitors concern discovery materials?

12 A Yes, ma'am.

13 Q Okay. With regard to Mr. Shawn Graham, do you help
14 compile, put together discovery materials in cases?

15 A Yes, ma'am.

16 Q Okay. And what is the typical process that you go
17 through in doing that?

18 A Deputy Solicitor Graham tells me or gives me
19 discovery as we receive it and directs me to forward it to
20 the defense counsel; and I will make CD's, date stamp or
21 bait stamp discovery material, and note it for the record
22 so that we have -- we have a date of knowing when we sent
23 discovery out to defense counsel.

24 Q Okay. And do you recall Mr. Wendell DeLarge's
25 case? Do you recall working on that?

Tara Grigsby - Direct Examination by Ms. May

1 A Yes, ma'am.

2 Q Okay. And did you have an occasion to put together
3 discovery for Mr. Graham in that case?

4 A Yes, ma'am.

5 Q Okay. And did you put it together on a disk?

6 A Yes, ma'am.

7 Q Okay.

8 MS. MAY: May I approach, Your Honor?

9 THE COURT: You may.

10 BY MS. MAY:

11 Q Ms. Grigsby -- am I saying that correct?

12 A Yes, ma'am.

13 Q Is this a fair representation of the discovery disk
14 that you prepared for Mr. DeLarge's case for Mr. Graham?

15 A Yes, ma'am, because I put the date and I always
16 sent -- sent as discovery along with my initials, which is
17 T. K. G. and that's what it states on here, 2/11 of '08,
18 sent as discovery T. K. G.

19 Q Okay. And those are your initials?

20 A That is my initials and my handwriting; and it's
21 Defendant DeLarge; and it was copied on 2/7 of '08. That's
22 when Eddie Prestigiacomo, where it says Ed, he gave it to
23 Solicitor Graham.

24 Q Okay. And does it have the date of when you
25 provided the discovery to the defense in this case?

Tara Grigsby - Direct Examination by Ms. May

1 A The date would be 2/11 of '08 is when we sent it as
2 discovery.

3 Q Okay. And I believe that you reviewed this CD
4 recently?

5 A Yes, ma'am.

6 Q Okay. And I'm going to ask you to look at these
7 photos. Are those photos all contained on that disk?

8 A Yes, ma'am. I have had a chance to view that CD
9 and all of these photos that I see on -- that you've handed
10 me or are that disk.

11 Q And so these photos would have been handed over in
12 discovery?

13 A Yes, ma'am. On 2/11 of '08.

14 MS. MAY: Your Honor, I would like to enter these
15 into evidence, the disk and accompanying photos.

16 THE COURT: What are they?

17 MR. STITELY: I would like to see what's on the
18 disk. I'm not going to disbelieve her, but I have no
19 problem with it, but if there's any way we can look at the
20 disk real quick -- even if you can just see if that's all
21 that's on there. I've not seen the disk before today.

22 THE COURT: What's it purported to show? What does
23 it support.

24 MS. MAY: Discovery was sent and nothing was
25 withheld.

Tara Grigsby - Direct Examination by Ms. May

1 MR. STITELY: I have no problem with it, I just
2 don't know what's on the disk. That's all.

3 THE COURT: Okay. Well --

4 MR. STITELY: I have no way of once it's in
5 evidence pulling it up to see what was in there and what
6 wasn't. That's the only concern I have.

7 THE COURT: Why can't we -- discovery was sent via
8 disk and there's hard copies, it was just something that
9 was printed off of this; is that right?

10 MS. MAY: Yes.

11 MR. STITELY: I mean, she just printed -- that's
12 all that's on the disk? There's no written discovery on
13 the disk? It's just a picture disk?

14 THE WITNESS: No, there's more discovery on that CD
15 than just pictures.

16 MR. STITELY: Okay. I guess that's my problem. I
17 would like to know what -- if we're putting the evidence
18 in, I would like to have it in its entirety and I have no
19 idea what's on it, that's the only issue I have.

20 THE COURT: That seems fair. So everything that's
21 on this, do we print it out and admit it or --

22 MR. STITELY: Sure, I have no problem with that. I
23 mean, I just want to know what was on the disk. That was
24 all.

25 THE COURT: Okay.

Tara Grigsby - Direct Examination by Ms. May

1 MR. STITELY: I have no problem with them offering
2 it.

3 THE COURT: So it will be admitted, but what's not
4 printed, we'll print it out also.

5 MS. MAY: I'll print it out afterwards.

6 MR. STITELY: Thank you, Judge, I just wanted to
7 make sure the record is complete.

8 THE COURT: Yes, ma'am?

9 THE WITNESS: There's a video so that will not be
10 able to be printed.

11 MR. STITELY: Okay.

12 THE WITNESS: There's Word documents and there's
13 videos and there's pictures.

14 MR. STITELY: Okay. I'll take it up on cross.

15 THE COURT: All right.

16 THE COURT REPORTER: The disk is 2 and the paper
17 copies are 3.

18 THE COURT: When the paper copies that are on this
19 are printed, they'll be added to 3.

20 MS. MAY: Right. I have no further questions at
21 this time.

22 Thank you.

23 MR. STITELY: I guess I've got a bunch of
24 questions.

25 ///

Tara Grigsby - Cross-Examination by Mr. Stitely

CROSS-EXAMINATION

1
2 BY MR. STITELY:

3 Q This disk, was it delivered directly to
4 Mr. DeLarge?

5 A It was sent out as discovery on 2/11 of '08.

6 Q That's not fair, Tara. Let me hand it to you.

7 (WHEREUPON the witness was looking at the disk.)

8 THE WITNESS: On February 11, 2008, it was sent as
9 discovery to -- and there should be a cover letter
10 accompanying it.

11 Q Okay. Is that --

12 A So wherever the cover letter --

13 Q -- Exhibit No. 16, give or take -- no. There's a
14 cover letter in here.

15 A Yes.

16 Q The dates don't match. Is there going to be
17 another cover letter somewhere? I just want to make sure
18 because that letter's got 8/28 on it -- I'm sorry August
19 28th.

20 A It looks like all the discovery was originally sent
21 out to Lowell Bernstein on February 11, 2008, and then it
22 looks like Arie -- a copy was given to Arie on April 28, of
23 2008.

24 Q Okay. Now, here's my problem with it. If we sent
25 to Lowell Bernstein, who is not a member of the public

Tara Grigsby - Cross-Examination by Mr. Stitely

1 defender's office, what guarantees do we have that this
2 actually went out, a disk that's signed as being delivered
3 on 2/7 of 08 'to Mr. DeLarge or Casey Cornwell or Arie Bax
4 three months later?

5 A What I can testify to is I can testify that on 2/11
6 of 2008, I sent discovery out. The photographs that I've
7 been asked, they're on this CD and also 129 pages of
8 discovery was sent out --

9 Q Okay.

10 A -- on February 11, 2008.

11 Q Can you tell me who you -- with looking at that
12 letter, I think it's got a slash signature down at the
13 bottom like you created the document. Did it go to Casey
14 or Arie, Mr. Cornwell or Mr. Bax, or did it go to someone
15 else?

16 A By the appearance of the document, it looks like it
17 went to Lowell Bernstein.

18 Q Okay. Have you reviewed the videos and stuff on
19 that document, on that disk?

20 A No, sir.

21 Q Okay. Do you have any idea what they are?

22 A I didn't say they are -- I think -- it appears
23 there are Word documents, there is numerous pictures, and
24 there is a video of some sort.

25 Q Okay. Okay. And this is kind of a silly question,

1 but for the record, do you know even if the disk somehow
2 got to Mr. DeLarge if he has any ability to create pictures
3 off of a disk in jail?

4 A I can't answer that question. I do not know. I've
5 never been in jail.

6 THE COURT: Just so I'm clear. There's three
7 lawyers, Bernstein, Bax, and Cornwell...

8 MR. STITELY: We don't know how Lowell Bernstein's
9 name got on anything.

10 THE COURT: All right. Well, February 8th, who was
11 the lawyer of record?

12 MR. STITELY: He got a -- the first -- he was
13 appointed a public defender about March or April of that
14 year.

15 THE COURT: Of '07.

16 MR. STITELY: Of '08.

17 THE COURT: Of '08.

18 MR. STITELY: The events were December of '07. He
19 gets Mr. Bax -- they open the public defender's file in
20 March, April of 2008. We can ask -- I'll recall Casey -- I
21 can recall Casey and ask him about it, but -- he definitely
22 didn't retain Mr. Bernstein. Mr. Bernstein is a paid
23 lawyer out of Columbia. I mean, I know him. I can try to
24 get him here. I know Mr. DeLarge definitely never retained
25 private counsel.

1 **THE COURT:** He didn't make bond. He said he didn't
2 have any money.

3 **MR. STITELY:** Correct.

4 **THE COURT:** I mean that's -- I heard Ms. Grigsby
5 say she was uncertain -- she has a couple of -- she's
6 uncertain as to -- does it not match the date of February
7 8th?

8 **MR. STITELY:** Well, no, her cover -- Your Honor, if
9 you want to look at it, the CD, and the cover letter went
10 out on the same time. It looks like she copied this on --
11 I apologize -- on February when this letter went out and
12 then, I guess now it says Arie -- and, Your Honor, this --
13 and I apologize, this happens frequently if someone doesn't
14 have a lawyer; like if I'm retained after the fact, initial
15 discovery may have been sent and then I'll talk to the
16 solicitor and get a copy of whatever they sent out. So --
17 but it's his position -- I believe Mr. Cornwell can confirm
18 if we call him back up -- that he never got this disk as
19 part of his file.

20 So I think we have a problem that discovery never
21 made it to the defendant. And I guess I'll recall Mr.
22 Cornwell at the appropriate time.

23 **THE COURT:** Let's take a break and I want to talk
24 to the lawyers back in chambers.

25 (WHEREUPON a recess was observed.)

1 **THE COURT:** After having a conference in chambers,
2 I have directed Ms. May to procure a copy of the disk which
3 has been admitted into evidence, provide it to defense
4 counsel so that he can review it and reproduce copies of
5 whatever documents, videos, photographs and otherwise he
6 deems appropriate to hand to Mr. DeLarge. I'm asking that
7 the Department of Corrections leave Mr. DeLarge in
8 Lexington County for a day or two so that Mr. Stitely can
9 confer with him; and we'll reconvene this hearing Wednesday
10 or Thursday, as soon as he has an opportunity to go over
11 discovery because there was concern about what was on the
12 disk. I'm going to allow him to find out exactly what's on
13 there and go over that with Mr. DeLarge and perhaps that
14 will have an impact as to his decision on this PCR
15 application he has made.

16 Is that consistent with our discussions in
17 chambers, Ms. May?

18 **MS. MAY:** Yes, Your Honor.

19 **THE COURT:** And Mr. Stitely?

20 **MR. STITELY:** Yes, sir, Your Honor.

21 **THE COURT:** All right. So y'all will procure that
22 disk this afternoon for him and I'll be back in the
23 morning. So that will adjourn this hearing temporarily
24 until we reconvene it this week. Can we handle that,
25 Department of Corrections? Is that going to create a big

1 issue for y'all or y'all have to ride him back up the road?

2 THE OFFICER: It would be best for us to take him
3 back tonight and bring him back in the morning.

4 THE COURT: As long as he can be here in the
5 morning.

6 THE OFFICER: We'll notify them as soon as we get
7 out of here.

8 THE COURT: All right. If that's more efficient
9 for y'all, we'll just do it that way. Just hate for y'all
10 to take a ride.

11 THE OFFICER: That will eliminate a lot of
12 paperwork.

13 THE COURT: All right. Well, let's keep y'all's
14 paperwork simple.

15 MR. STITELY: Judge, I think we're going to have a
16 problem with that unless we can figure out some way to put
17 it in an order. They said they could have someone bring
18 him back here like to the courtroom, but they're not sure
19 how we would put him into Lexington County.

20 THE OFFICER: All we need is an order.

21 THE COURT: Draft me an order. They can bring him
22 back tomorrow and your order will have time to be getting
23 prepared while he's here.

24 MR. STITELY: Yes, sir.

25 THE COURT: All right.

1 **MR. STITELY:** I'll e-mail it to you as soon as I
2 can.

3 **THE COURT:** Good deal.

4 You can step down.

5 **THE WITNESS:** Thank you.

6 (WHEREUPON this hearing was temporarily adjourned
7 until later in the week.)

8 (WHEREUPON the following took place on February 2,
9 2012.)

10 **THE COURT:** Ms. May, where do we stand this
11 morning?

12 **MS. MAY:** Your Honor, I believe we're going to
13 readdress Wendell DeLarge v State. I believe we left off
14 on Monday with Mr. Stitely being provided a disk of
15 discovery to look through photos and I believe paper
16 documents as well.

17 Before we go forward this morning, I would just
18 like to make a request. Casey Cornwell, Mr. DeLarge's
19 public defender could not be here this morning. He has --
20 is scheduled for trial next week in York County and he is
21 visiting clients. He will be able to be here this
22 afternoon around 1:30. I would like to recall him to the
23 stand to preserve the record and make sure everything is
24 specified on the record. I just ask to have that
25 opportunity to present that.

1 **THE COURT:** All right. What else is left regarding
2 that hearing -- other than him, what else you got?

3 **MR. STITELY:** Can he come around, Judge?

4 (WHEREUPON the defendant was moved to the table
5 with his attorney.)

6 **THE COURT:** Y'all have got to bring me back to
7 speed.

8 **MS. MAY:** I have a few cases I'd like to present to
9 the Court. I'll hand you -- hope it will make more sense
10 after Casey testifies. I can give it to you at the closing
11 or if you'd like I can give you those --

12 **MR. STITELY:** I put some cases up there for you
13 too.

14 I guess without Casey -- and I think what he's
15 going to end up testifying is that he never had the disk.
16 The long and short of it is that's what he's going to tell
17 the Court. If the Court recalls, I had asked the
18 witness -- all of them, my client, Mr. Cornwell, Mr.
19 Graham -- I'd asked everyone about specific items that I
20 would have found relevant, you know, in getting this case.
21 Of course, Mr. DeLarge's testimony was very direct. The
22 only thing that his attorney ever showed him by way of
23 pictures and/or additional discovery -- and I can go to
24 everything that's on the disk in a moment because there's
25 actually a bunch of stuff that was not in the discovery

1 that Mr. DeLarge had in his possession, and I believe
2 what's comprehensibly in Mr. Cornwell's file. We can
3 confirm that, I guess, when he gets here.

4 There's pictures of the arrest of Mr. DeLarge.
5 There's pictures of the alleged clothing that he was
6 wearing during the incident. There's pictures of the
7 alleged cell phones that were mentioned during the case.
8 That's on one set of the photos.

9 There is a whole set of photos of the actual
10 victim's car, the crime scene, which I kept asking everyone
11 about. There's close ups, there's far away. I would
12 assume by the way these pictures were taken, they must have
13 done some kind of analysis on the scene, the alleged crime
14 scene. That wasn't covered in any of the discovery
15 Mr. DeLarge was given; and/or Mr. Cornwell testified he
16 even wasn't aware it existed. I have color versions of the
17 black and white one-page stills. There's actually more
18 stills than there was even on that sheet. There's a couple
19 more and they do come in color originally. There is a
20 video surveillance from the Shell Station that shows my
21 client there. It shows the victim there at a different
22 time, talking to a different black gentleman. It's about
23 five or six minutes long, a -- surveillance photos, or
24 video.

25 Obviously, he has no way of playing a CD in the

1 jail, but that wasn't provided to him. I think Mr.
2 Cornwell will agree that he never saw it. There was an
3 entire series of press releases and newspaper releases that
4 were conducted by the sheriff in this case, several.
5 Enough that would have given rise -- and I would argue, now
6 that I've seen them all that Mr. Cornwell maybe should have
7 made some kind of challenge to venue. I mean there's at
8 least six articles and releases done about Mr. DeLarge by
9 the sheriff.

10 There's some additional written discovery on there,
11 nothing that jumped out like it was overly important, but
12 it is something that is not contained in the discovery that
13 Mr. DeLarge had received. I think it further goes to my
14 position that you can't have someone plead guilty and rely
15 on you for advice if you haven't seen the evidence, let
16 alone not shown it to the client.

17 I have a memorandum. I've shown it to the
18 solicitor. It's kind of a different situation. It came
19 down from the chief justice a couple of years ago. It was
20 talking about the practice of the solicitor trying to get
21 off with pleas without turning over discovery. And it
22 pretty much says, It's come to my attention that some
23 solicitors in some circuits are offering plea agreements to
24 defendants with the condition they forego discovery.

25 That's not the situation here. Obviously, the

1 solicitor turned over the disk at some point. And I'm not
2 saying that it's is solicitor's fault, I'm not saying it's
3 Mr. Bax's fault. I'm not sure it's Mr. Cornwell's fault.
4 I'm not sure it's the public defender's agency's fault, but
5 Mr. DeLarge was represented by Lexington County Public
6 Defender's Office insufficiently in that they obviously
7 didn't know what discovery existed in this case and how Mr.
8 Cornwell can prepare for trial without knowing what
9 discovery exists -- I'm sorry, the two hundred pictures
10 from the ATM photos, those were on that disk too that
11 Mr. DeLarge had never seen before I subpoenaed them, so
12 that was another item. There was about three hundred
13 pictures give or take -- a whole bunch of other stuff on
14 the disk that he was never made aware of.

15 In her report, and I'll pass it up, it goes on: If
16 we keep doing this, I see this serious problem when we come
17 to PCR's where clients are going to be saying they received
18 ineffective assistance -- may I approach.

19 (WHEREUPON the report was given to the Court.)

20 MR. STITELY: And I think that it's not the
21 situation -- I don't mean that I'm saying Mr. Graham and
22 his office didn't turn it over, but you can't make a
23 knowing, willful, freely and voluntary plea with proper
24 advice from your counsel if you haven't seen your case --
25 or in this case if your attorney hasn't even seen all the

1 elements of your case. And where a lot of this comes in, I
2 think a lot of it is exculpatory, definitely Brady-type
3 material. I do have a couple of specific pictures I want
4 to add in that are in that group that I want to bring to
5 the attention to show why they'd be particularly relevant
6 in his defense. It's already into evidence. I would like
7 to recall a witness or I can just do it kind of like a
8 proffer like I'm doing it now.

9 THE COURT: I think the proffer will be fine.

10 MR. STITELY: This is another one of the
11 pictures --

12 THE COURT: This is what y'all presented before --
13 the discovery was sketchy.

14 MR. STITELY: And I would like this separated out.
15 This is just one of the pictures.

16 THE COURT REPORTER: This is 14, Your Honor.

17 THE COURT: Okay.

18 MR. STITELY: This is one from -- it says ATM, Irmo
19 at 1:05:55; and this one, the victim clearly has a cell
20 phone in her hand. The first one was fuzzy. This one you
21 can see her flip-style, slide-style cell phone in her hand
22 along with a number of other things that could have gone
23 into his defense. Obviously she'd been talking on her cell
24 phone, had her cell phone. If there was someone in her car
25 maybe something could have been done, calls could have been

1 made. I further asked and looked through everything again.
2 There was never a subpoena of her cell phone records done
3 to see if she had placed any calls during this period, see
4 if she'd been talking on her cell phone. That was just one
5 specific picture. And I guess I'll put the other pictures
6 that were on that disk into the record as well.

7 (WHEREUPON Applicant's Exhibit No.'s 15 through 19
8 were marked and entered into evidence.)

9 THE COURT REPORTER: These are 15 through 19, Your
10 Honor.

11 THE COURT: Okay.

12 MR. STITELY: And I guess, Your Honor, the rest
13 would be kind of argument; and I think Your Honor knows
14 what my argument is. If we want to wait to hear Mr.
15 Cornwell confirm or deny whether or not he had these items.
16 I think either way, he's already testified that he
17 definitely didn't provide them to Mr. DeLarge. If he
18 wasn't aware that they existed, I would say that's
19 ineffective assistance. I think it's your obligation as a
20 lawyer to meet all standards of practice that if discovery
21 is out there, you need to get it, especially in a situation
22 where for two years your client maintained innocence and
23 asked for; you know, you to fight and be ready for trial.
24 You can't be ready for trial if you don't have things that
25 clearly along with your client's position would be

1 exculpatory like pictures of the individual with no one
2 else in the car, using a cell phone.

3 I think that those are the kind of things you would
4 need to be aware of to properly advise your client of
5 whether or not they should go to trial or not. We can wait
6 and ask him if he'd ever seen the disk. I think he'll say
7 on the record he has no recollection of that disk ever
8 being in his file, but we can ask him.

9 THE COURT: He already said that, it was not
10 particularly clear. I think he already mentioned something
11 to that effect.

12 MR. STITELY: I don't know that it was done in
13 court, though, Judge.

14 THE COURT: All right.

15 MR. STITELY: I think it might have been done off
16 the record.

17 THE COURT: I'll let everybody make a record of
18 what they need to.

19 MR. STITELY: Okay. And then -- so I would just
20 have argument. So...

21 THE COURT: All right. Ms. May, what else do you
22 have other than Mr. Cornwell's follow up? Are there any
23 other witnesses we need to take up.

24 MS. MAY: Not other than Mr. Cornwell.

25 THE COURT: All right. Well, then, we'll wait for

1 Mr. Cornwell. You said he could be here at 1:30?

2 MS. MAY: He said he should be here between 1:30
3 and 2. So if Your Honor would like to do this after -- or
4 we may even have time before --

5 MR. STITELY: I don't think the other matter would
6 take more than an hour, Judge.

7 THE COURT: Well, I would rather do this one first.

8 (WHEREUPON there was discussion off of the record
9 dealing with scheduling.)

10 (WHEREUPON this case was adjourned until the
11 afternoon session.)

12 THE COURT: All right. We're back on the record
13 regarding the petition filed by Wendell G. DeLarge versus
14 the State, 2010-CP-32-4741.

15 When we adjourned, there was a discussion regarding
16 a small disk, compact disk, which has different items of
17 discovery which had been prepared by the Solicitor's Office
18 of the 11th Circuit and there was a question as to the
19 extent of the documents and files and photographs and/or
20 videos which were on that disk and so the Court was
21 adjourned, duplicates of that disk, which was made a part
22 of the record have been made and the parties have all been
23 afforded copies of the disk and allowed opportunity to
24 examine the contents thereof to compare with the evidence
25 which was presented in this post conviction relief action

Casey Cornwell - Direct Examination by Ms. May

1 and now we're reconvened.

2 Is that a fair summary of where we stand right now,
3 Ms. May?

4 MS. MAY: Yes, Your Honor.

5 THE COURT: All right. Mr. Stitely?

6 MR. STITELY: Yes, sir.

7 THE COURT: All right. Mr. Stitely, I believe you
8 had finished?

9 MR. STITELY: I think at the point now, Judge, in
10 speaking with the attorney general, we'd like to just put
11 Mr. Cornwell back on the stand. I'm not going to call me
12 calling him rebuttal or her -- we're recalling him just to
13 clarify whether or not he ever had that disk in his
14 possession and/or turned over its contents to Mr. DeLarge.

15 THE COURT: All right. Ms. May, is that right?

16 MS. MAY: Yes, sir, yes, Your Honor.

17 THE COURT: All right. Mr. Cornwell, come back up
18 and have a seat in the witness stand. I'll remind you
19 you're still under oath for purposes of this hearing.

20 DIRECT EXAMINATION

21 BY MS. MAY:

22 Q Mr. Cornwell, I believe your testimony earlier this
23 week, on Monday, is that you did not recall seeing a disk
24 in your case file?

25 A No, I don't remember having a disk myself, no.

Casey Cornwell - Direct Examination by Ms. May

1 Q Okay. Now, did you have a chance to -- prior to
2 Mr. DeLarge's plea, have a chance to review the ATM photos.

3 A Yes, we did have a sampling of the ATM photos and I
4 talked to him about those. That was one of the things that
5 both he and I agreed on is that you couldn't see him in the
6 photos, and I told him that would be a strong point for
7 him.

8 Q And you discussed the ATM photos with Mr. DeLarge?

9 A Yes.

10 Q So Mr. DeLarge was aware of the existence of these
11 ATM photos prior to his plea?

12 A Yes.

13 Q Okay. And he was aware of the contents of the ATM
14 photos prior to his plea?

15 A Yes.

16 Q All right. Do you recall --

17 MS. MAY: May I approach, Your Honor?

18 THE COURT: Yes.

19 (WHEREUPON exhibits were handed to the witness.)

20 BY MR. MAY:

21 Q Do you recall, specifically viewing this photo? It
22 looks like Defendant's Exhibit 14.

23 A I don't recall seeing this one.

24 Q Okay. And does it appear that the victim appears
25 to be holding a phone?

Casey Cornwell - Direct Examination by Ms. May

1 A She has something in her hand. I guess that can be
2 a phone.

3 Q Okay. And the discovery materials, do you recall
4 if the victim's cell phone records from that night were
5 included?

6 A I do remember seeing some cell phone records from
7 the victim in the discovery file.

8 Q And these records were contained on the disk --

9 MS. MAY: Your Honor, may I approach?

10 THE COURT: You may.

11 BY MS. MAY:

12 Q If you could look through these for me. You could
13 start with the one that is bait stamped 93 on the front
14 page.

15 A Okay.

16 MS. MAY: Your Honor, these are not on the disk,
17 but they were in the numbered discovery. They're bait
18 stamped, the copies. I guess I would like to enter these
19 into evidence after Mr. Cornwell has an opportunity to view
20 them.

21 THE COURT: Let me make sure I understand. These
22 were not on the contents of the disk?

23 MS. MAY: No, Your Honor.

24 THE COURT: They were separate?

25 MS. MAY: They are separate.

Casey Cornwell - Direct Examination by Ms. May

1 THE COURT: But made a portion of the discovery
2 provided by the State to Mr. Cornwell?

3 MR. STITELY: He had these records.

4 MS. MAY: Yes, sir.

5 THE COURT: Not on the disk, but part of discovery,
6 nonetheless hard copy additionally.

7 MS. MAY: That was my mistake.

8 THE WITNESS: I remember specifically this other
9 set that's showing the downloads on the phone, the songs
10 and stuff and that may be that was one of the times I was
11 going over it with Mr. DeLarge. I remember specifically
12 harping on this. I don't remember specifically these phone
13 calls on the one stamped 93, but I do remember seeing the
14 last couple of pages where it talks about -- kind of
15 explains the explanation for the text messaging records. I
16 do remember seeing this. So I don't doubt that I had this
17 stuff.

18 BY MS. MAY:

19 Q So did you discuss with Mr. DeLarge the --
20 specifically the records regarding the downloads of music
21 and whatnot?

22 A Yes, that's one of the things we talked about
23 because one of the ways they knew that he had been with her
24 that night because they found the phone and that's kind of
25 how that tracked him down, I think. And I'm kind of going

Casey Cornwell - Direct Examination by Ms. May

1 off memory here because there was downloads from the phone
2 and she knew she didn't have the phone.

3 Q And with regards to the phone records of the
4 victim's phone, I think you just described that or
5 alleging -- do you recall viewing those?

6 A I must have had them because I had -- I remember
7 specifically seeing this page. I don't -- I don't remember
8 a lot of specifics about the exact phone calls and
9 everything.

10 Q And you reviewed these records with Mr. DeLarge?

11 A What Mr. -- I don't remember exactly reviewing
12 these specific phone calls, but I do remember talking to
13 Mr. DeLarge about getting his cell phone information
14 because he had alleged that he'd been in contact with her
15 and everything and we had some trouble acquiring that
16 information.

17 Q But you did attempt to --

18 A Yes, we did.

19 Q -- acquire those?

20 A Yes.

21 Q Okay. So Mr. DeLarge was aware of these cell phone
22 records or the victim's cell phone records?

23 A Yes.

24 Q Okay. And he was aware basically -- just on your
25 discussions of the contents of what y'all discussed were in

Casey Cornwell - Direct Examination by Ms. May

1 the cell phone records?

2 A Yes.

3 Q Okay. And those records you have up there are they
4 number stamped?

5 A You mean the date and -- yes.

6 Q Okay. And they were in the discovery that you were
7 provided?

8 A Yes, ma'am.

9 Q Okay. And did you give him a copy of those
10 records; do you recall?

11 A Yes, he should have a copy because I think he has a
12 copy of the discovery I had.

13 MS. MAY: Your Honor, I'd like to move these
14 records into evidence.

15 MR. STITELY: No objection.

16 THE COURT: All right.

17 THE COURT REPORTER: No. four and five, Your Honor.

18 THE COURT: Four and five?

19 THE COURT REPORTER: Yes, sir.

20 BY MS. MAY:

21 Q Mr. Cornwell, do you recall viewing a video tape
22 that was obtained from the Shell Station.

23 A Yes.

24 Q Okay. Do you recall the contents of that video
25 tape?

Casey Cornwell - Direct Examination by Ms. May

1 A It showed one part my client going in and
2 purchasing some items and, you know, you could see him in
3 his clothing or whatever. And I think another part they
4 showed the victim in the case inside the Shell Station.

5 Q Okay. And it showed Mr. DeLarge and then later the
6 victim purchasing items?

7 A I can't remember specifically what they were doing,
8 but they were on the video, both of them.

9 Q Okay. Did you inform Mr. DeLarge of the contents
10 of that video tape?

11 A Yeah, and we also had stills. And you know I can't
12 remember exactly where I saw the video, but I remember
13 seeing the video and I know on top of that we had stills
14 that were printed out and then discovery; and basically I
15 was trying to tell him that's how they ID'd him as the
16 person they saw in the car.

17 Q So Mr. DeLarge was aware of this video tape?

18 A Yes.

19 Q And he was aware of this video tape prior to his
20 plea?

21 A Yes.

22 Q Do you recall reviewing the pictures inside of the
23 victim's car? Let me provide these for you. It looks like
24 this is Defendant's Exhibit No. 16. Do you recall viewing
25 those photos?

Casey Cornwell - Direct Examination by Ms. May

1 A No, I don't remember seeing the photos of the
2 inside of the car. I don't remember that.

3 Q Okay. If you could just take a moment to review
4 those for yourself right now.

5 A (Witness complied.)

6 Q And it's your testimony you don't recall reviewing
7 those photographs?

8 A No, I don't remember seeing these.

9 Q Okay. Reviewing those photographs now as you just
10 did, do you believe they would have helped in your defense
11 if y'all went to trial?

12 A I mean, it's -- I don't know exactly what you would
13 do with it. I guess you could make the argument that it
14 doesn't look disturbed, so there's no sign of struggle; but
15 all of that would depend on when this photograph was taken
16 and things of that nature, and if it was even in the same
17 condition as it was the night of the, you know, incident.
18 I don't think this would be something that would be a, you
19 know, a lynch pin or something that would make me change my
20 mind about it.

21 Q Okay. So reviewing those photographs, would they
22 have changed your recommendation as to the plea?

23 A No. No.

24 Q Okay. Would they have changed your advisement or
25 advice to Mr. DeLarge regarding pleading versus going to

Casey Cornwell - Direct Examination by Ms. May

1 trial?

2 A No, it may have affected how I negotiated on the
3 sentence, you know. But our main concern was the testimony
4 of the victim and, you know, the actual, whatever physical
5 evidence, mainly because there was no denying that sex had
6 taken place.

7 Q And if y'all had proceeded to trial, do you think
8 these photographs likely would have changed the outcome of
9 the trial?

10 A I'm not a juror, but I don't think so.

11 Q Do you recall --

12 MS. MAY: May I approach, Your Honor?

13 THE COURT: You may.

14 BY MS. MAY:

15 Q Do you recall reviewing these photographs of
16 Mr. DeLarge directly after he was arrested? Defense
17 Exhibit 17?

18 A For some reason, I remember seeing this picture
19 particularly before. Mr. DeLarge had informed me, you
20 know, about what happened when he got arrested and he
21 basically told me that they kind of roughed him up and he
22 told me that -- he actually told me they took pictures too,
23 you know, that was one of the things that he told me. So
24 you know, he was aware that there were pictures there.

25 Q So Mr. DeLarge informed you of those pictures.

Casey Cornwell - Direct Examination by Ms. May

1 A Yes.

2 Q Okay. So he -- so Mr. DeLarge was aware of these
3 photographs?

4 A Yes.

5 Q Okay. In viewing those photos now, do you think
6 they would have helped in your defense of -- if the case
7 went to trial?

8 A Not really. Something like this -- and once again,
9 I'm not a juror, but it kind of indicated he was trying to
10 hide or whatever, you know. I know that's how it would be
11 portrayed as anyway.

12 Q In viewing those photos now, would they have
13 changed the recommendation as to his plea? Your advice?

14 A No.

15 Q And would they have changed your advice to
16 Mr. DeLarge regarding pleaing versus going the trial?

17 A No.

18 Q And if y'all had proceeded to trial, do you think
19 these photographs of Mr. DeLarge's arrest likely would have
20 changed the outcome of the trial?

21 A Probably not.

22 Q And do you recall if you had an opportunity to view
23 the still photographs obtained from the Shell Station video
24 tape?

25 A Yes, I did get a chance to review those. I think

Casey Cornwell - Direct Examination by Ms. May

1 you gave me some of them.

2 Q Okay. Defense Exhibit 19?

3 A Yes, I've seen these.

4 Q You've seen those?

5 A Yes.

6 Q Did you review the still photos with Mr. DeLarge?

7 A Yes, he had a copy of those, I think.

8 Q Okay. So Mr. DeLarge was aware of these
9 photographs? He was aware of the contents of these
10 photographs?

11 A Yes.

12 Q Okay. And did you have the opportunity to view any
13 newspaper articles or press releases concerning
14 Mr. DeLarge's case?

15 A Yes, as a matter of fact, I think we -- when Mr.
16 Bax had first got the case, I think he printed out some
17 articles from the internet or whatever and I had talked to
18 Mr. DeLarge about the fact that it was in the press because
19 we had talked about bond hearing and things of that nature
20 and why the bond was so high and we discussed the press
21 coverage that it was getting, so... I was aware of the news
22 coverage there.

23 Q Would these reflect what you recall viewing from
24 the discovery?

25 A Yes.

Casey Cornwell - Cross-Examination by Mr. Stitely

1 Q And are those documents bait stamped as well?

2 A Yes, they are.

3 Q Okay. And did you receive those in the hard copy
4 discovery?

5 A Yeah, they were included in the file.

6 MS. MAY: Your Honor, I would like to enter these
7 into evidence as these were not on the disk, they were on
8 the hard copy.

9 THE COURT: Any objection?

10 MR. STITELY: Without objection.

11 (WHEREUPON Respondent's Exhibit No. 6 was marked
12 and entered into evidence.)

13 MS. MAY: I have no questions for Mr. Cornwell.

14 **CROSS-EXAMINATION**

15 BY MR. STITELY:

16 Q Mr. Cornwell, just very briefly. You said you saw
17 a sampling of the ATM photos. Did you ever get all two
18 hundred or so? Do you recall?

19 A No, I actually told them -- what I had was kind of
20 similar to this. It was like a couple of sheets and they
21 had some printouts of different shots from the ATM and
22 that's what I had to look at.

23 Q In particular, you don't recall this one with her
24 looking to have a cell phone in her hand?

25 A No, I've never seen that one.

Casey Cornwell - Cross-Examination by Mr. Stitely

1 Q And that's a separate -- Defendant's 14. You
2 didn't have or specifically recall any of the pictures of
3 the inside of the vehicle?

4 A No, sir.

5 Q So it would be fair to say you never turned those
6 over to Mr. DeLarge?

7 A That would be correct.

8 Q The rest of the ATM shots, including the ones with
9 the pillars in the background and the cell phone, if you
10 don't recall them, is it fair to say you never turned them
11 over?

12 A That's fair.

13 Q Same ones about the pictures of his house? If you
14 don't specifically recall them, you didn't turn them over
15 to him?

16 A I don't think I turned over the pictures of the
17 house to him.

18 Q Okay. There was some other press releases on the
19 CD. It's already into evidence, but pretty much, you've
20 double checked your file, correct?

21 A Yes.

22 Q Don't have the CD in your file?

23 A No, I looked and, I remember -- I don't remember
24 ever having a CD. I do remember pretty much everything
25 that was probably on the CD except -- for some reason I do

Casey Cornwell - Cross-Examination by Mr. Stitely

1 remember seeing the video. I maybe viewed that in the
2 solicitor's office, I'm not sure. But I do remember seeing
3 the video at some point and I don't know how I got the ATM
4 photos printed out. I got those somehow.

5 Q Okay. You've tried cases before, correct?

6 A Yes.

7 Q Just looking at that one picture in particular the
8 one sitting up there, No. 14. If the defendant's position
9 from the beginning, Mr. DeLarge's position was that he
10 wasn't in the car it was something else that happened,
11 would you think that a good argument of a defense attorney
12 when someone looks to have a cell phone at an ATM about
13 their ability to notify someone if there was something
14 wrong?

15 A Yeah, I mean, of course, you know, as a defense
16 attorney, I'd lean into that, you know.

17 Q It definitely is a trial tactic, something you
18 would like to have at trial?

19 A Yeah, I can see that.

20 Q As close to a corroboration that he wasn't there,
21 there wasn't duress as you could hope for?

22 A Well, I would definitely point out the fact that
23 she had a cell phone, she could have called 9-1-1, she
24 could have called somebody to help her or she had a cell
25 phone so she might not have been as scared as they say she

Casey Cornwell - Redirect Examination by Ms. May

1 was because she had a cell phone in her hand, you know.

2 Q Okay.

3 MR. STITELY: I have no other questions for Mr.
4 Cornwell. Thank you.

5 MS. MAY: Can I ask one more question, Your Honor?

6 THE COURT: Sure.

7 REDIRECT EXAMINATION

8 BY MS. MAY:

9 Q Mr. Cornwell, viewing that photo of the victim
10 holding her cell phone, do you think if y'all had gone to
11 trial it would have changed the outcome of the trial?

12 A I guess the thing about those kind of arguments, a
13 lot of it has to kind of depend on the kind of jury you
14 pick. You know, it's hard to call. I mean, you know, I --
15 I can't really say. I can't say, you know, honestly. If I
16 was to give my honest opinion, I don't think so. But maybe
17 I have a negative opinion of juries, I don't know.

18 Q Would that have changed your advice that you gave
19 to Mr. DeLarge regarding pleading or proceeding to trial?

20 A Probably not. I still would have probably leaned
21 toward the plea because of the -- because she was going to
22 get on the stand and basically testify to what she wrote
23 and, you know, it would have come down to his word against
24 hers. I mean, at the end of the day that's what kind of
25 case it was.

Casey Cornwell - Redirect Examination by Ms. May

1 Q Mr. Stitely mentioned the pictures of the cell
2 phones. Do you think that would have helped in
3 Mr. DeLarge's defense?

4 A The only thing with this picture, I tell you --

5 Q I'm sorry not that picture, the picture of the cell
6 phones and the --

7 A I'm sorry.

8 Q The pictures of his post arrest.

9 A I don't think that would have helped. The only
10 reason I say that is because it looks like he was
11 struggling and -- I say looks like, you know, to me it
12 doesn't look like that, but, you know they definitely would
13 portray it as that's what it is. You know, saying this is
14 a struggle and that's why he's -- he's hiding, which would
15 make him look guilty.

16 Q Thank you.

17 THE COURT: All right. You can step down, Mr.
18 Cornwell.

19 THE WITNESS: Okay.

20 THE COURT: All right. Anything else, Ms. May?

21 MS. MAY: Sir?

22 THE COURT: Anything else?

23 MS. MAY: Aside from closing, that is the State's
24 case.

25 THE COURT: All right. Summarize your positions

1 then.

2 MR. STITELY: Please the Court?

3 THE COURT: Yes, sir.

4 MR. STITELY: Judge, I think we're the moving
5 party, so we have the burden. I think the State v. Butler
6 case says that we have the burden. And pretty much the
7 burden at the PCR is twofold. One, you have to prove some
8 level of inadequate assistance and two, you have to prove
9 prejudice. Your Honor, I think this is kind of a unique
10 situation in this case. In this case, in --it's a plea,
11 which is always hard to overcome our burdens, but we have
12 to look at what went into getting there.

13 Your Honor, in this case, this is as close to a he
14 said/she said, even with all of the evidence you can find,
15 period. He was charged with crimes that carried ultimately
16 what involved sixty years and his plea resulted in a
17 fifty-year sentence. Going to trial, he wouldn't have been
18 facing much different, honestly.

19 In this case, from the very beginning -- and the
20 testimony is flushed out from every witness for more than
21 almost two years, Mr. DeLarge maintained completely his
22 side of the story. There was a consensual encounter after
23 Ms. Price went to go to the ATM to get some money to buy
24 marijuana. That story has never changed. Up to the plea,
25 he had plenty of conversations with Mr. Cornwell. It's not

1 a situation where Mr. Cornwell didn't talk to him. I think
2 the testimony's been out there that they had plenty of
3 conversations at the jail. It's not that they met once and
4 then he pled.

5 In getting ready for this trial, Mr. DeLarge relied
6 on Mr. Cornwell's opinion as to what they could prove or
7 disprove. The law is relatively clear, I believe, on what
8 you have to provide to your client to become reasonably
9 effective. Specific to this case, there are a number of
10 things that were not provided to Mr. DeLarge. This case
11 has two main questions. What happened -- well, I guess
12 three. But what happened at the gas station; what happened
13 at the ATM; what happened in her car -- three parts to this
14 story. Mr. DeLarge never got to see the evidence as it
15 relates to those parts. You cannot make a knowing,
16 willful, freely, voluntary plea when you've been not
17 afforded full knowledge. I mean knowing is one of those
18 standards.

19 It's not that we're saying I think the solicitor's
20 office didn't -- withheld information. That's not the
21 case. I think that Ms. Grigsby when she was on the stand
22 said they gave the disk to someone. They don't know when
23 it was. You did hear testimony that the file floated
24 between a couple of different attorneys at the public
25 defender's office before Mr. Cornwell ultimately got it.

1 Mr. Cornwell has told you he did not receive, to his
2 knowledge, that disk. I hate to say the disk is important,
3 but the disk had all the photographic evidence in this
4 case. Mr. Cornwell testified he'd seen a portion of the
5 ATM photos, but not the ones that a defense attorney -- I
6 would have loved to have had, which appears to be an
7 individual with a cell phone in her hand and a situation
8 where that the allegations are that you couldn't make any
9 contact. He said he never saw that one.

10 In there also, elements of the arrest, elements of
11 the crime scene. There's also -- they weren't directly put
12 in, the disk is in evidence if Your Honor wants to review
13 it. There's like four or five additional press releases by
14 the sheriff's department. Ones that were particularly
15 inflammatory, two of them, actually towards potential
16 jurors. Those are things that could have been used at a
17 trial, perhaps to ask for a different venue. We didn't get
18 to that point because Mr. DeLarge never got to review them.

19 When you come to a situation -- I don't know that
20 Mr. Cornwell is directly at fault for not doing that, but I
21 think that his effective assistance requires him to go that
22 extra mile, make sure he has all the discovery, everything
23 that could be exculpatory or Brady. In Mr. DeLarge's case,
24 that wasn't present. I don't think anyone's refuted that
25 he never received copies of all this stuff and I don't

1 think it's been refuted that he had an opportunity to go
2 over, even ask his attorney, well what does that mean for
3 me. I mean if he was never shown the pictures of the --
4 you know, the person in the ATM picture, how does he ask
5 his attorney, well what does that do for me at trial? If
6 he never saw pictures of the inside of the vehicle, how can
7 he say, Well, how does that help us refute their position
8 that there was force in the back of the car rather than a
9 consensual encounter.

10 If he hasn't had the opportunity to see the actual
11 store photo footage -- video store footage, how are we to
12 say that that person's matching the clothing they see in
13 the picture. If Your Honor watched the video, there's
14 another black individual who speaks to her in the store
15 whose wearing clothing much more similar to the clothing
16 found on the disk. I'm not saying that would be ultimately
17 trial strategy, but that would be something you would have
18 to talk to your lawyer about. And without seeing it, you
19 can't get to that point. And when you consider what you
20 have to put into a plea, specifically a plea of such
21 magnitude with such an outcome at risk, you need to have
22 knowing, intelligently waived your rights.

23 In this case, he relied on his representations from
24 his lawyer on what they saw. And what he saw was not the
25 whole picture. Had he seen everything and spoke to Mr.

1 Cornwell and they decided to go forward with the plea,
2 that's one story. But when you haven't read the entire
3 book, you can't judge what you have.

4 Mr. Cornwell testified they were ready for trial.
5 I would argue they weren't. Without all of this
6 information, it would not have been a good trial. I don't
7 think there's any question had we gone to trial and then
8 later his PCR attorney, being me, found a whole bunch of
9 evidence that wasn't around during trial, that would be a
10 major problem. It's a little bit different in the
11 situation of a plea, maybe, but I don't really think it is.
12 Because you have to give up those rights to a trial to have
13 your plea. And in all of the times that you see of a case
14 coming back with evidence after the fact, that was the
15 attorney's job at trial to make sure they had everything.
16 And if you're not ready to go to trial, you're not ready to
17 tell your client to have to take the plea.

18 I don't think his decision was knowingly and
19 intelligently made, thus, I don't think it's a voluntary
20 waiver; thus, ineffective assistance of counsel. As far as
21 prejudice, I guess it's hard to say what prejudice is and
22 what it isn't. Obviously, prejudice in this case would be
23 what would happen at trial. We don't know. It's a
24 circumstantial evidence case with one witness. With any
25 evidence to, you know, attack credibility, poke hole in the

1 story, we're better than we are a lot of times. There's
2 nothing in this case, not a confession, not a waiver in his
3 story, nothing that changes it. The discovery he didn't
4 have is probative in that it may have been exculpatory.

5 Now, how the jury would take it, I can't tell you
6 that. You know, we're all surprised when a jury does what
7 they do, but it's important and his prejudice came that he
8 didn't have to opportunity to take it in front of the jury
9 with all the facts. Without the facts, you can't make a
10 fair decision. And once again, I don't know that it's any
11 individual's problem; but I think as a whole, when you look
12 at the public defender's agency, Mr. Bax and then Mr.
13 Cornwell, miscommunication with the discovery, the long and
14 the short, he didn't get the whole picture. You can't take
15 on a knowing plea without getting the whole picture, it's
16 ineffective assistance.

17 **THE COURT:** Thank you very much.

18 Ms. May?

19 **MS. MAY:** May it please the Court, Your Honor?

20 **THE COURT:** All right.

21 **MS. MAY:** I believe based on the testimony
22 presented Monday and today, the record will bear out that
23 Mr. DeLarge was fully aware of the contents of the video
24 tape regardless of whether he viewed it or not. He was
25 fully aware of the stills of the video tape. He was fully

1 aware of the ATM photos. He was fully aware of the photos
2 from his post arrest, he even told his attorney about
3 those. He was fully aware of the phone records, he had
4 copies of these. He was fully aware of these press
5 releases, copies were given to him by Mr. Cornwell.

6 The only piece of evidence in question is the
7 photos of the inside of the car and the enlarged photo of
8 the victim with her cell phone. And the State would like
9 the offer the Court the following cases, Stalk v. State
10 Lockhart v Hill, United States v Ruiz, and Rickard v.
11 State; and the State would like to offer DeLong v. State,
12 it's our position that the attorney where there are any
13 alleged error inefficiency by counsel prejudiced the
14 defendant by causing him to plead guilty rather than go to
15 trial depends on the likelihood that discovery of evidence
16 would have led counsel to change his recommendation as to
17 the plea. Mr. -- the applicant is required to present some
18 evidence that had counsel found or viewed that would have
19 perfected counsel's advice to the defendant regarding
20 pleading guilty.

21 With regard to Hill v. Lockhart, that's the same
22 proposition as well as the prejudice prong requires more
23 than the defendant's assertion that but for counsel's
24 deficient performance that he would not have pled guilty
25 and would have proceeded to trial. I don't think

1 Mr. DeLarge has offered any testimony or evidence as to how
2 seeing the photographs complained of and the video would
3 have aided his defense had he gone to trial. Mr. Cornwell
4 testified his opinion had they gone to trial about the
5 specific evidence presented and whether it would have
6 changed his advice and he stated that it would not.

7 Hill v Lockhart also provides that the prejudice
8 test must be applied objectively without regard for, quote,
9 idiosyncrasies of the particular decision making. The
10 State would submit that objectively Mr. DeLarge's failure
11 to view certain photographs alledgedly, and the video tape,
12 did not prejudice him in any manner. Mr. DeLarge has
13 insisted that he would have gone to trial rather than plead
14 guilty without seeing, for instance, the ATM photos.
15 However, Mr. DeLarge pled guilty without seeing ATM photos
16 when he knew they existed. He was told of the contents of
17 these photos. Same with the video tape, same with the cell
18 phone records and the still photos.

19 Mr. DeLarge's actions that led to his guilty plea
20 and his decision to plead guilty completely contradicts PCR
21 testimony and we offer the case U.S. v Ruiz for the
22 proposition that the constitution with respect to
23 defendant's awareness of the relevant circumstances does
24 not require complete knowledge of the relevant
25 circumstances, but allows the Court to accept a guilty plea

1 despite various forms of misapprehension that the defendant
2 might have.

3 And last, for State v Rickard, we'd like to present
4 that to the Court for the proposition that reliance on a
5 sentencing sheet where the box for without negotiations or
6 recommendations is checked, that's not sufficient. The
7 guilty plea transcript reflects that Mr. DeLarge indicated
8 he understood the charges, the possible sentences and of
9 the plea was straight up. Either party is free to request
10 a favorable sentence.

11 The State would submit that Mr. DeLarge has failed
12 to show that Mr. Cornwell was deficient in his performance,
13 however, even if the Court does find that Mr. Cornwell was
14 deficient in his performance, the State would submit that
15 Mr. DeLarge certainly has not proved any prejudice in this
16 case and we would ask that the Court deny this application
17 for post conviction relief.

18 **THE COURT:** All right. I want to read your cases.
19 I will -- anything else?

20 **MR. STITELY:** Just very, very briefly, Your Honor.
21 Ms. May is saying all the case law talks about a slight
22 misrepresentation. We just want to point out, we think
23 this is different than a misrepresentation. In a case
24 where the entire basis of the State's case is one person's
25 testimony versus another, when you haven't seen exculpatory

1 evidence, it's different than a misrepresentation. Those
2 were material to his case. Material items are different
3 than just a misrepresentation or characterization. Mr.
4 Cornwell said specifically, I didn't even know that picture
5 existed, so of course he couldn't have told Mr. DeLarge
6 that it existed so they could have formed a trial strategy
7 or to know -- I mean, that's the difference. Them knowing
8 there's ATM photos versus saying, Hey look, there's this
9 one. There's a big difference.

10 THE COURT: All right. Fair enough. I'm going to
11 read the cases and let y'all know of my decision.

12 MR. STITELY: Thank you, Judge.

13 THE COURT: Anything else?

14 (WHEREUPON there was no response.)

15 THE COURT: Thank y'all very much.

16 * * * * * END OF TRANSCRIPT * * * * *

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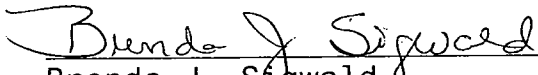
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1	State of South Carolina)	Certificate of Reporter
2	County of Aiken)	
3		
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5		
6	I, THE UNDERSIGNED, Brenda J. Sigwald,	
7	Official Court Reporter for the Fifth Judicial Circuit of	
8	the State of South Carolina, do hereby certify that I	
9	reported the proceedings in the captioned case in the Court	
10	of Common Pleas in and for the State of South Carolina on	
11	the 31st day of January and the 2nd day of February, 2012.	
12	I FURTHER CERTIFY that the foregoing pages,	
13	numbered 1 through 167 constitute a true, accurate and	
14	complete transcript of said hearing.	
15	I FURTHER CERTIFY that I am neither kin, counsel,	
16	nor of interest to any party hereto.	
17	IN WITNESS WHEREOF, I have hereunto set my hand and	
18	seal at Aiken County, this 26th day of January, 2013.	
19		
20		
21		
22	 Brenda J. Sigwald, Court Reporter and Notary Public For the State of South Carolina My commission expires January 4, 2020.	
23		
24		
25		

ORIGINAL

(2)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	FOR THE ELEVENTH CIRCUIT
Wendell G. DeLarge, #316993,	)	
Applicant,	)	
	)	
vs.	)	
	)	
State of South Carolina,	)	
Respondent.	)	

ORDER OF DISMISSAL

2010-CP-024741

PPB

2012 OCT 22 1:47

FILED

This matter comes before the Court pursuant to an application for Post-Conviction Relief (hereinafter "PCR") filed on October 29, 2010. Respondent made its Return on January 19, 2011. An evidentiary hearing was held on January 30, 2012 and February 2, 2012 at the Lexington County Courthouse. The Applicant was present at the hearing and was represented by Benjamin Stitely, Esquire. The Respondent was represented by Kaelon E. May, Esquire of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Additionally, the Applicant offered the testimony of Jerry Werries (hereinafter "Mr. Werries"). The following witnesses also testified: the Applicant's plea counsel, Casey Cornwell, Esquire (hereinafter "Mr. Cornwell"); Shawn Graham, Esquire (hereinafter "Mr. Graham"); and Tara Grigsby (hereinafter "Ms. Grigsby"). In addition to live testimony, this Court also had before it the records of the Lexington County Clerk of Court, the transcript of the previous proceedings against the Applicant, the Applicant's records from the South Carolina Department of Corrections, and the exhibits entered into evidence during the hearing.

JES

I. PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Lexington County Clerk of Court. The Applicant was indicted at the January 2009 term of the Lexington County Grand Jury for Kidnapping (Case Number 2009-GS-32-5187) and Criminal Sexual Conduct 1st Degree (Case Number 2009-GS-32-5188). On October 14, 2009, the Applicant pled guilty as charged; at that time, the Applicant was represented by Mr. Cornwell. The Honorable Robin B. Stilwell sentenced the Applicant to confinement for a period of twenty-five (25) years on each charge, to run consecutively.

A timely notice of appeal was filed on the Applicant's behalf. By an order dated on or about December 7, 2009, the South Carolina Court of Appeals subsequently dismissed the Applicant's appeal.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons: (1) Ineffective assistance of counsel; (2) Prosecutorial Misconduct; and (3) Lack of Due Process.

II. SUMMARY OF TESTIMONY AND EVIDENCE PRESENTED AT THE PCR

EVIDENTIARY HEARING

A. Mr. Werries's Testimony

Mr. Werries is employed by First Citizens Bank as a Fraud Investigator. On December 17, 2007, Detective Walker contacted Mr. Werries about footage from an ATM camera. Mr. Werries provided Detective Walker with a sampling of photographs from the ATM camera. These samplings were provided to the Applicant prior to his plea. Neither the Applicant nor Mr.

sen

Cornwell ever contacted Mr. Werries. Mr. Werries provided Mr. Stitely with all photographs and logs. However, the photographs Mr. Stitely received were not the same as those Detective Walker received from Mr. Werries. Mr. Werries testified that all the photographs were available prior to the Applicant's guilty plea.

B. Mr. Cornwell's Testimony

The Applicant was originally represented by Arie Bax (hereinafter "Mr. Bax"), of the Lexington County Public Defender's Office. However, Mr. Cornwell inherited the Applicant's case when Mr. Bax resigned from the Public Defender's Office. Mr. Cornwell met with the Applicant on at least six different occasions to discuss trial strategy, during which the Applicant always maintained the sexual intercourse with the victim was consensual. The Applicant told Mr. Cornwell that he knew the victim from school and, in the past, the Applicant had a consensual sexual relationship with the victim. In addition, the Applicant stated he was going to sell the victim marijuana and that he was never in the car. Mr. Cornwell utilized his paralegal to investigate the Applicant's case. Mr. Cornwell's paralegal visited the Applicant's high school to determine whether the victim was enrolled at the same time as the Applicant. The Applicant did not provide Mr. Cornwell with the names of any teachers, who could be interviewed. While checking the Applicant's high school records and examining year books, Mr. Cornwell discovered that the Applicant and the victim were enrolled simultaneously in high school for just one semester. In Mr. Cornwell's assessment, the high school's records were useless.

Mr. Cornwell filed a Discovery Motion. The State responded by providing the relevant discovery materials. Mr. Cornwell received inventory sheets of items recovered from the vehicle. Mr. Cornwell also received photographs from the ATM of the victim leaning out of the



vehicle. These photographs showed the victim from different angles than the Applicant's exhibit two showed. Then, Mr. Cornwell reviewed the ATM photographs and discussed their contents with the Applicant. During their conversation, the Applicant demonstrated his knowledge of the ATM photographs' existence and contents of the ATM photographs. Mr. Cornwell testified he could not specifically recall reviewing photographs with the Applicant in which the victim appears to be holding a phone. (Applicant's exhibits 15-19).

With regard to the victim's cell phone records, Mr. Cornwell testified that he remembered discussing downloads on the victim's phone with the Applicant. Mr. Cornwell stated he and the Applicant had also discussed obtaining the Applicant's cell phone records.

Mr. Cornwell testified that he did not recall viewing those photographs taken of the inside of the victim's car. Upon reviewing the photographs on the stand, Mr. Cornwell testified that he was unsure what he would have done with them at trial, but, in his opinion, the photographs did not look like a "linchpin." The photographs would not have changed Mr. Cornwell's recommendation to the Applicant to enter a guilty plea rather than proceeding to trial. Mr. Cornwell did not believe the photographs of the interior of the victim's car would have changed the outcome of a trial.

Mr. Cornwell stated that he remembered seeing photographs of the Applicant's face directly after the Applicant's arrest (Applicant's Exhibit 17). Mr. Cornwell discussed these photographs with the Applicant. Photographs were taken in the apartment where the Applicant was arrested. Mr. Cornwell did not believe that these photographs would have helped the Applicant's defense because the photographs made it look as if Applicant was trying to hide. Mr. Cornwell testified that the photographs would not have impacted his discussion with the



Applicant concerning trial strategy because the photographs were not likely to change the outcome of a trial.

Mr. Cornwell remembered reviewing the videotape obtained from inside the Shell Station. He stated that the videotape showed both the Applicant and, then, at a later time, the victim purchasing some items. Mr. Cornwell obtained still photographs from a video camera inside the Shell Station and reviewed the still photographs with the Applicant. Lastly, Mr. Cornwell testified that he did not have a disc in his file which the State claims to have produced to Mr. Bax in response to the discovery motion.

Mr. Cornwell viewed the newspaper articles and press releases concerning the Applicant's case. Then, he reviewed and discussed their contents with the Applicant.

The Applicant told Mr. Cornwell that, on the night of the incident, the Applicant and the victim were going to buy marijuana from an individual named Rico. However, the Applicant did not want to bring Rico into the case, so the Applicant did not provide Mr. Cornwell with sufficient information necessary to find Rico for an interview. Mr. Cornwell was also unable to interview the victim. Mr. Cornwell was able to speak with Deputy Jacamo about the investigation of the Applicant's case.

Mr. Cornwell gave a copy of the discovery materials to the Applicant and, then, reviewed the contents of all the discovery materials with the Applicant. Mr. Cornwell did not remember the Applicant mentioning that any items were missing from the discovery materials. In Mr. Cornwell's opinion, which he communicated to the Applicant, the most damaging evidence to be presented at trial would be the victim's testimony. Mr. Cornwell communicated to the Applicant that a trial was going to come down to a jury of twelve people, who either believed the

victim or Applicant. Mr. Cornwell and the Applicant discussed offering the Court an Alford plea. When Mr. Cornwell asked Mr. Graham, the solicitor assigned to the case, about the possibility of pleading under Alford, Mr. Graham informed Mr. Cornwell that the Applicant would have to plea straight up and not under Alford. The Applicant's sentencing sheet reflects that the plea was made without recommendations or negotiations, a fact which Mr. Cornwell had explained to the Applicant. Mr. Cornwell said that he could understand how Applicant may have thought that this meant that the solicitor was not going to make any requests concerning sentencing at the guilty plea hearing.

Mr. Cornwell's paralegal discussed the Applicant's case with Applicant's girlfriend, who is the mother of the Applicant's child. The Applicant informed Mr. Cornwell that his girlfriend was told that if she did not testify or cooperate that the Department of Social Services would take away her child.

Mr. Cornwell received trial notice of the Applicant's case and was prepared to go to trial. Mr. Cornwell explored all available avenues and spoke with the individuals whom the Applicant identified as witnesses to him. Mr. Cornwell filed a Motion for Reconsideration of the Applicant's sentence. The judge denied the Applicant's Motion for Reconsideration in writing.

C. Mr. Graham's Testimony

Mr. Graham was the solicitor who prosecuted the Applicant's case. Mr. Graham did not remember if he provided the Applicant with a written offer. Solicitor Graham never negotiated a reduction in charges or the sentencing range with Mr. Cornwell.

BETH A. CARRIGG
CLERK OF COURT
LEXINGTON, SC

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D. Ms. Grigsby's Testimony

Ms. Grigsby is employed in the Lexington County Solicitor's Office as a paralegal. Ms. Grigsby's job duties include compiling discovery materials as requested by the Deputy Solicitor. At the request of Solicitor Graham, Ms. Grigsby compiled the discovery materials for the Applicant's case and placed them onto a disc. On February 11, 2008, Ms. Grigsby included the disc and the photographs in the original discovery sent to a Lowell Bernstein, Esquire. On April 28, 2008, Ms. Grigsby provided a copy of the disc and the photographs to Arie Bax, Esquire, the public defender appointed to the Applicant.

E. The Applicant's Testimony

The Applicant asked Mr. Cornwell, his plea counsel, to obtain the photographs of the Shell Station, including the photographs from the exterior of the building. The Applicant asked Mr. Cornwell to contact the Shell Station, particularly the store clerk, who had a clear view of the parking lot. The Applicant also asked Mr. Cornwell to obtain the Applicant's school records, but the Applicant never saw his school records. The Applicant testified he did receive the email from Jerry Werries (Applicant's exhibit 1) in the discovery materials.

The facts, according to the Applicant were as follows: initially, the Applicant met the victim at the Shell Station, where the victim indicated that she wanted to buy marijuana. The victim left the Shell Station to get money, because the victim did not have enough money to purchase marijuana. The Applicant never got into the victim's vehicle or went to the ATM with the victim. After the victim returned from the ATM, the victim and the Applicant smoked marijuana together. Then, the Applicant got in the victim's car and had consensual sex with the victim.

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Mr. Cornwell never showed the Applicant any of the photographs from the ATM. The Applicant believed the ATM photographs should have been given to him. The Applicant would not have pled guilty if he had known about the existence of the ATM photographs. The Applicant stated he may have reviewed the victim's cell phone records. A letter dated April 28 (Applicant's exhibit 13) referred to a disc and the Applicant asked Mr. Cornwell to obtain the items referenced in the letter. The Applicant stated he provided Mr. Cornwell with Rico's information, because the Applicant believed Rico was important to Applicant's case. The Applicant asked his girlfriend, who lives in New York to testify, but she was unable to come to South Carolina.

The Applicant never wanted to plead guilty. The Applicant believes he was not given a fair assessment of the State's case. At some point, the possibility of life without parole was discussed with the Applicant. The Applicant asked Mr. Cornwell to explain what "without recommendations or negotiations" on the Applicant's sentencing sheet meant. Throughout the guilty plea hearing, the Applicant nudged Mr. Cornwell because the Applicant was uncomfortable during the plea. Mr. Cornwell explained to the Applicant that the plea was an open plea with a sentence range of zero (0) to sixty (60) years. In the Applicant's opinion, Mr. Cornwell failed to investigate the Applicant's case.

III. APPLICABLE LAW

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process



that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S.Ct. 2052, 2064, (1984).

The appropriate measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Due to the inherent difficulties in making such an evaluation, "a court must indulge a strong presumption that counsel's conduct falls within the wide range of reasonable professional assistance." Strickland, Id. The Applicant must "overcome the presumption that, under the circumstances, the challenged action 'might be considered sound trial strategy.'" Strickland, Id. (citing Michel v. Louisiana, 350 U.S. 91, 101 (1955)).

The reviewing court applies a two-pronged test from Strickland in evaluating allegations of ineffective assistance of plea counsel. Hill v. Lockhart, 474 U.S. 52, 58 (1985). First, the Applicant must "show that counsel's performance was deficient." Cherry v. State, 300 S.C. 115, 117, 386 S.E.2d 624, 625 (1989). Under this prong, "[t] proper measure of attorney performance remains simply reasonableness under prevailing professional norms." Strickland, 466 U.S. at 688. Second, the Applicant must show "the deficient performance prejudiced the defendant to the extent 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 (citing Strickland, 466 U.S. at 688). The Applicant must "overcome the presumption that counsel was effective in order to receive relief." Cherry, Id. at 118, 386 S.E.2d at 625. With respect to guilty plea counsel, in order to satisfy the second prong, the Applicant must show "that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Hill, 474 U.S. at 59.

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the testimony presented at the PCR evidentiary hearing, observed the witnesses presented at the hearing, passed upon their credibility, and weighed the testimony accordingly. Further, this Court also reviewed the Clerk of Court records regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the application for post-conviction relief, the transcripts and documents from the prior proceedings, the exhibits introduced into evidence at the hearing, and legal arguments of counsel. Pursuant to S.C. Code Ann. §17-27-80 (2003), this Court makes the following findings of fact based upon all of the probative evidence presented.

A. Ineffective Assistance of Counsel

The Applicant asserts that Mr. Cornwell was ineffective since he failed to properly investigate the Applicant's case. Specifically, the Applicant claims that Mr. Cornwell failed to provide the Applicant with the following materials: (1) the ATM photographs; (2) the close-up ATM photograph possibly showing victim with cell phone in hand; (3) the victim's cell phone records; (4) videotape from the Shell Station; (5) photographs of the inside of the victim's vehicle; (6) the photographs of Applicant and residence directly after Applicant's arrest; (7) the still photographs from the Shell Station videotape; and (8) the various newspaper articles and/or press releases concerning the Applicant's case.

With regard to the ATM photographs, Mr. Cornwell testified he reviewed the ATM photographs with the Applicant and that the Applicant was aware of both the existence and contents of these photographs. While the Applicant testified he never viewed the ATM photographs nor was even aware of the photographs existed, the Applicant did admit he received

a letter dated December 2007 from Jerry Werries in his discovery materials. In said letter, Mr. Werries references the ATM photographs. This Court finds the Applicant was fully aware of the ATM photographs and reviewed the photographs with Mr. Cornwell. This Court finds that the Applicant failed to show Mr. Cornwell's performance was deficient and resulted in any prejudice to the Applicant.

With regard to the close-up ATM photograph which possibly showed the victim with a cell phone in her hand, Mr. Cornwell testified the photographs he received in discovery appeared to be from different angles of the victim leaning out of her vehicle. Mr. Cornwell testified he did not recall specifically an ATM photograph of the victim with a cell phone in her hand. Even if this Court found Mr. Cornwell failed to review this particular photograph, the Applicant failed to show any resulting prejudice.

With regard to the victim's cell phone records, the Applicant admitted that he may have reviewed those records. Mr. Cornwell stated that he discussed the downloads made on the victim's phone with Applicant as well as the call and text message records. Mr. Cornwell testified that he and the Applicant discussed obtaining the Applicant's cell phone records to compare with those of the victim. This Court finds that the Applicant failed to meet his burden of proof.

With regard to the videotape from the Shell Station, Mr. Cornwell testified he reviewed the tape and its contents with Applicant. Additionally, Mr. Cornwell had the still photographs made from the videotape, which he reviewed with the Applicant. The Applicant was provided a copy of these stills. Mr. Cornwell testified that the videotape showed the Applicant inside the Shell Station and, later, showed the victim purchasing items at the counter. Mr. Cornwell stated

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that the Applicant was fully aware of the contents of the videotape. The second prong of the Strickland test requires "more than simply a defendant's assertion that but for counsel's deficient performance he would not have pled but would have gone to trial". Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 595 (2009). The Applicant did not offer any explanation as to how viewing the actual videotape would have aided the Applicant's defense had the Applicant proceeded to trial. This Court finds that Mr. Cornwell's performance was not deficient and that Applicant's failure to view the entirety of the videotape did not prejudice the Applicant in any manner.

With regard to the photographs taken of the inside of the victim's vehicle, this Court finds that the Applicant is unable to meet his burden of proof. Mr. Cornwell testified that he did not recall viewing those photographs, but, upon reviewing the photographs at the hearing, he explained that he was not sure what he would have done with the photographs at trial. Mr. Cornwell believed the photographs did not look like a "linchpin." Mr. Cornwell did receive the inventory sheets listing items recovered from the victim's vehicle. Whether any alleged error or deficiency by counsel "prejudiced" the defendant, causing him to plead guilty rather than go to trial, will depend on the likelihood that discovery of such evidence would lead counsel to change his recommendation as to the plea. Stalk, Id. Mr. Cornwell stated the photographs would not have changed his recommendation to the Applicant about entering a guilty plea or heading to trial. Mr. Cornwell believed if the Applicant had proceeded to trial, the photographs would not have likely changed the trial's outcome. Furthermore, the Applicant failed to show how viewing the photographs would have aided his defense at trial. See Hill, 474 U.S. 52. Therefore, this Court finds that the Applicant failed to show he was prejudiced.

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With regard to photographs of the Applicant directly after his arrest and those of the residence where the Applicant was arrested, Mr. Cornwell testified he reviewing these photographs and discussed them with the Applicant. This Court finds that the Applicant failed to show Mr. Cornwell's performance was deficient and any resulting prejudice therefrom.

With regard to the still photographs compiled from the Shell Station videotape, Mr. Cornwell was given these photographs in his discovery materials. Mr. Cornwell made a copy of the still photographs, which he provided to the Applicant, and, then, reviewed them with the Applicant. This Court finds that the Applicant failed to show that counsel's performance was deficient and any resulting prejudice.

In regard to the various newspaper articles and/or press releases concerning the Applicant's case, Mr. Cornwell discussed the press coverage with the Applicant. Additionally, some newspaper articles and/or press releases were found in the discovery materials provided to Mr. Cornwell and the Applicant. This Court finds that the Applicant failed to show Mr. Cornwell's performance was deficient and any resulting prejudice.

Next, the Applicant asserts Mr. Cornwell was ineffective for failing to obtain the Applicant's high school records. Mr. Cornwell's paralegal visited the Applicant's high school to determine if the Applicant and the victim attended the same high school at the same time. The Applicant did not provide counsel with the names of any teachers Mr. Cornwell could interview. Mr. Cornwell checked the Applicant's high school records and obtained pictures from a year book. In doing so, Mr. Cornwell discovered the victim and Applicant were enrolled in the same high school at the same time, but for only one semester. The high school records were a dead end. Mr. Cornwell's paralegal did not retain any copies of Applicant's high school records. The

paralegal spoke with a school administrator. Even if Mr. Cornwell was deficient in this regard, this Court finds that the Applicant failed to show Mr. Cornwell's deficiency prejudiced the Applicant. The Applicant did not present any records regarding the Applicant's high school enrollment or attendance at the PCR evidentiary hearing. This Court finds that the Applicant failed to present any evidence demonstrating how Mr. Cornwell's failure to obtain the high school records prejudiced the Applicant.

Finally, the Applicant asserts Mr. Cornwell was ineffective for failing to interview the Shell Station clerk, who was on duty the night of the incident, and the individual named Rico. The Applicant did not present the Shell Station clerk or Rico as witnesses at the PCR hearing. This Court finds that the Applicant failed to show that he suffered any prejudice from Mr. Cornwell's alleged failure to interview these witness (Applicant discouraged the involvement of Rico). A petitioner has failed to show any prejudice "even if the trial counsel was deficient in failing to interview and call all of these witnesses." Underwood v. State, 309 S.C. 560, 562, 425 S.E.2d 20, 22 (1992). The Applicant must "*must produce the testimony of a favorable witness or otherwise offer the testimony in accordance with the rules of evidence at the PCR hearing in order to establish prejudice from the witness' failure to testify at trial.*" Bannister v. State, 333 S.C. 298, 303, 509 S.E.2d 807, 809 (1998) (emphasis in the original); *see also* Glover v. State, 318 S.C. 496, 458 S.E.2d 538 (1995) (where witnesses applicant claimed could have provided an alibi defense did not testify at the PCR hearing, he could not establish any prejudice from counsel's failure to contact these witnesses). The burden of showing prejudice cannot be satisfied by "the applicant's mere speculation what the witnesses' testimony would have been." Glover, *Id* at 498-99, 498 S.E.2d at 540. At the PCR evidentiary hearing, the Applicant did not

present either such witness or records. This Court finds the Applicant has failed to meet his burden of proof. Based on the above, this Court finds that the Applicant failed to show that Mr. Cornwell was ineffective; therefore, the Applicant's allegations of ineffective assistance of counsel against Mr. Cornwell are denied and dismissed.

B. Prosecutorial Misconduct

The Applicant alleges that the State failed to provide Mr. Cornwell with numerous discovery materials, including certain photographs and a disc. The disclosure rule from Brady v. Maryland, 373 U.S. 83 (1963), requires the prosecution "to disclose evidence that is: 1.) in its possession; 2.) favorable to the accused; and 3.) material to guilt or punishment." State v. Kennerly, 331 S.C. 442, 452, 503 S.E.2d 214, 220 (Ct.App.1998)(aff'd, 337 S.C. 617, 524 S.E.2d 837 (1999)(citing Brady, 373 U.S. at 87).

Both impeachment and exculpatory evidence are considered to be "favorable" evidence. United States v. Bagley, 473 U.S. 667. The Applicant must also show the "favorable evidence was in the possession or control of the government." United States v. Erickson, 561 F.3d 1150, 1163 (10th Cir. 2009); see United States v. Gardner, 244 F.3d 784, 788 (10th Cir.2001), Coe v. Bell, 161 F.3d 320, 344 (6th Cir.1998) ("Brady obviously does not apply to information that is not wholly within the control of the prosecution."); United States v. Maldonado-Rivera, 489 F.3d 60, 67 (1st Cir.2007) ("For Brady to operate, the government not only must know about undisclosed evidence but also must have custody or control of that evidence.") In Bagley, the United States Supreme Court determined "evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine

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confidence in the outcome.” 473 U.S. at 682 (quotations in original). The Supreme Court reiterated this point in United States v. Agurs, 427 U.S. 97 (1976), by finding that “implicit in the required of materiality [in Brady] is a concern that the suppressed evidence might have affected the outcome of the trial.” *Id* at 104.

The prosecution has the duty, under certain circumstances, to disclose favorable and material evidence even in the absence of a request by the accused. *Id* at 106-107. Moreover, the Applicant is “not denied due process by the government’s nondisclosure of evidence if the defendant knew of the evidence anyways.” Erickson, 561 F.3d at 1163; *See* Spears v. Mullin, 343 F.3d 1215, 1256 (10th Cir.2003) (“[T]here can be no suppression by the state of evidence already known by and available to the defendant prior to trial.”) (brackets and internal quotation marks omitted); United States v. Quintanilla, 193 F.3d 1139, 1149 (10th Cir.1999) (“If a defendant already has a particular piece of evidence, the prosecution’s disclosure of that evidence is considered cumulative, rendering the suppressed evidence immaterial.”). A Brady violation has not occurred “when a defendant knew or should have known ‘the essential facts permitting him to take advantage of any exculpatory information or where the information is available. . . from another source’ because in such cases there is really nothing for the government to disclose.” Coe v. Bell, 161 F.3d 320, 343 (6th Cir. 1998) (citing United States v. Grossman, 843 F.2d 78, 85 (2d Cir.1988), *cert. denied*, 488 U.S. 1040 (1989) *cert. denied*, 502 U.S. 885, 112 S.Ct. 240, 116 L.Ed.2d 195 (1991)). In Coe, the defendant claimed “that the state committed a massive Brady violation by not turning over its investigative files to him. . . include[ing] contemporaneous testimony from witnesses who later said different; things at trial; inculpatory evidence about other suspect; and exculpatory laboratory results revealing a lack of physical



evidence.” *Id* at 41. This evidence was “not under the sole control of the government or improperly kept from Coe. . . [and] it is unclear whether the government did in fact deprive him of these materials.” *Id* at 43-44. Despite the fact that the state had no record of what was handed over to Coe’s defense, the burden remained on Coe to prove the evidence was not disclosed to him. *Id*.

Like the defendant in Coe, the Applicant has not met the burden of proving the photographs and the disc were not disclosed to him by the State. The evidence presented at the PCR hearing revealed that the discovery materials were sent by Ms. Grigsby to Lowell Bernstein on February 11, 2008. Mr. Bernstein was sent discovery materials because the Solicitor’s office knew that of Mr. Bernstein’s represented of the Applicant in another matter. Mr. Bernstein was not retained by the Applicant for this particular matter and, thereafter, the Public Defender was appointed to represent the Applicant. Additionally, Ms. Grigsby testified that a copy of the disc and photographs were provided to Arie Bax on April 28, 2008. Nevertheless, even if this Court assumes *arguendo* that this evidence was not disclosed to the Applicant, and even if this Court finds that it should have been, when the record is viewed as a whole, this Court cannot conclude that confidence in the plea has been undermined. This Court finds that there is not a reasonable probability that the Applicant would have proceeded to trial had this evidence been disclosed and that the Applicant has failed to meet his burden of proof; therefore this allegation is denied and dismissed.

C. All Other Claims

Except as discussed above, this Court finds that the Applicant affirmatively waived the remaining allegations set forth in his application at the hearing. A waiver is a “voluntary and



415 S.E.2d 384, 387 (1992). In general, a party who claims waiver "must show that the party against whom waiver is asserted possessed, at the time, actual or constructive knowledge of his rights or of all the material facts upon which they depended." *Id* at 387-88. In regard to implied waivers, "the distinction between waiver and estoppel is close, and sometimes the doctrines merge into each other with almost imperceptible gradations; so that it is difficult to determine the exact point where one doctrine ends and the other begins." 28 Am. Jur. 2d Estoppel and Waiver § 134, § 154 and 158. An implied waiver can be determined "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) (citing Pitts v. New York Life Insurance Company, 247 S.C. 545, 148 S.E.2d 369 (1966)). Therefore, finding a "party is barred by estoppel or waiver can only be determined in light of the circumstances of each case." Janasik, 307 S.C. at 344, 415 S.E.2d at 387-88. 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.

V. CONCLUSION

Based on the forgoing, 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 for post conviction relief. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

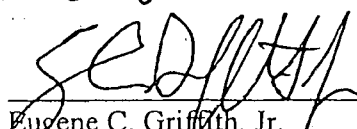
This Court notes that Applicant must file and serve a notice of intent to appeal within thirty (30) days from receipt of this Order to secure the appropriate appellate review. *See* Rule 203, SCACR. Rule 71.1(g), SCRCP; *see also* Bray v. State, 336 S.C. 137, 620 S.E.2d 743 (2005)

(the Applicant's counsel has the obligation to file and serve notice of appeal). The Court also directs the Applicant's attention to South Carolina Appellate Court Rule 243 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 18th day of October, 2012.


Eugene C. Griffith, Jr.
Presiding Judge

Newberry, South Carolina

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CLERK OF COURT
LEXINGTON, SC