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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DETAVIOUS LAMON CUNNINGHAM,

APPELLANT.

APPELLATE CASE NO. 2023-001718

RECORD ON APPEAL

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 4 STATE OF SOUTH CAROLINA, *
 *
 5 Plaintiff, *
 *
 6 vs. * Case No. 2023-GS-24-00360
 *
 7 DETAVIOUS L. CUNNINGHAM, *
 *
 8 Defendant. *
 -----X

9 May 23, 2023

10 B E F O R E:

11 The Honorable Frank R. Addy, Jr., Presiding Judge

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

13 Andrew Hodges, Esq.
 14 Assistant Solicitor for the State

15 Colie Stancil, Esq.
 16 Attorney for the Defendant

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 22 Recorded by: Court Monitor/DCRP

23 Transcribed by: Bobbi Fisher, RPR
 24 SC Official Court Reporter III
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E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

1 P R O C E E D I N G S

2 (The following proceedings started at 10:40 a.m.):

3 MR. HODGES: Detavious Cunningham.

4 THE COURT: All right, Solicitor.

5 MR. HODGES: Your Honor, standing before you is
6 Detavious Cunningham. And if I could give a little bit of
7 procedural history. What we're here for today is a couple
8 of things, Judge. Initially, our intent was to bring this
9 matter before the Court to make it clear on the record
10 what the State's offer is and the expiration of that
11 offer.

12 It's my understanding that, additionally this
13 morning, that the defendant has a motion to relieve
14 counsel. But I think it would be helpful to the Court to
15 have a little bit of a procedural history just to know how
16 we got where we are.

17 THE COURT: Please go ahead.

18 MR. HODGES: So, Judge, the defendant has got four
19 separate sets of pending charges. The first set is from
20 August the 16th of 2020. The allegations in that incident
21 are that he was passed out behind the wheel of a car with
22 the car in gear. He had marijuana and over a gram of
23 pressed pills on his person and was arrested and charged
24 with that.

25 The second set of incidents were January the 31st of

1 2021. This was a traffic stop by the Highway Patrol for
2 crossing the center line. The trooper noted the odor of
3 alcohol and could see a gun in his hoodie pocket. He was
4 detained. They found marijuana in his crotch. And then
5 they took the handcuffs off of him to do field sobriety
6 tests, and he fled on foot and was then caught.

7 The third set of charges were from 1/31 of '21.
8 That's the same incident; I apologize.

9 The third set of charges are his most recent set.
10 Those are from 9/16 of '22. Essentially, the allegations
11 are that the victim in the case was having sexual
12 relations with a female who was Mr. Cunningham's
13 girlfriend or fiancée, that sort of thing, and ended up
14 firing shots at that person. When law enforcement came to
15 investigate, they found him outside of the female's
16 apartment in a pickup truck. As part of that, they ended
17 up finding blue pills, blue powder that all tested
18 positive for fentanyl, about 47 grams of crack. He took
19 off running but was caught.

20 He has got a pretty significant prior record: A
21 couple of PWID convictions. Most significantly, he's got
22 a voluntary manslaughter conviction from 2010 for which he
23 served a 15-year sentence.

24 We had a hearing on this matter. At that time, the
25 defendant was represented by Billy Nicholson of the

1 private bar. That hearing was back last fall. That was
2 on October the 18th. There was a hearing on the
3 defendant's motion to set bail on that newest set of
4 charges. The State's cross-motion to revoke bond on the
5 previous bonds that he was out on and also the State
6 served the defendant with life without parole notice based
7 on the prior conviction for voluntary manslaughter and his
8 current charge of attempted murder. The judge at that
9 point denied bond on the new charges and revoked bond on
10 his older set of charges.

11 The defendant was back in front of the Court last
12 week in front of Judge Gibbons on a renewal motion to set
13 bail on all of these pending charges. Judge Gibbons found
14 that the defendant was a danger to the community and
15 continued to deny bond on the charges that he is facing.

16 Judge, we have gotten the SLED analysis back on this
17 latest drug case, so we are on the way to being ready to
18 try this case. This will likely be on the trial docket
19 for the June term of court. We have had significant plea
20 negotiations in this matter, and we have offered to take
21 the life without parole notice off of the table and
22 negotiate a 17-year sentence on a variety of charges in
23 this matter. Obviously, he is facing a minimum mandatory
24 just on the -- 25 -- just on the trafficking if he was
25 convicted of that, and then, obviously, facing life

1 without parole if he was convicted of the attempted murder
2 or a lesser included assault and battery high and
3 aggravated nature.

4 So certainly he is in a difficult position in terms
5 of the charges that he is facing. I wanted him to be
6 assured that this offer was made, but it is expiring at
7 the end of this term of court. If he does not accept that
8 17-year offer by the end of this term of court, we will be
9 placing the case on the trial docket and moving forward
10 with the life without parole notice. So I wanted to make
11 sure that the record was clear about all of those things.

12 And then, as I understand it, he is now seeking to
13 relieve Mr. Stancil, who is his second attorney involved
14 in these cases.

15 THE COURT: All right. So 17 on trafficking or PWID
16 or what is it?

17 MR. HODGES: He would have to be on a reduced level
18 of trafficking to be able to get out of the minimum 25,
19 and we have talked about reducing the attempted murder
20 down to something that, again, would be eligible under
21 those terms. And he's got a variety of other charges from
22 the other incidents, but it would collectively be a
23 17-year/85 percent sentence on charges that would fit
24 within that category.

25 THE COURT: So it would be -- the trafficking

1 second, I guess, is where he would have to go or PWID
2 something second or -- yeah, you could go a PWID second,
3 that would be non-85. How many -- 47 grams?

4 MR. HODGES: 47 grams of crack and then it's --

5 THE COURT: And what happened? He shot at the
6 boyfriend of --

7 MR. HODGES: It was kind of a love triangle
8 situation, I guess. It was another guy that was having
9 relations with --

10 THE DEFENDANT: Can I say something?

11 THE COURT: Let him finish talking, and then I'm
12 going to talk to your attorney real quick, and we'll have
13 a further discussion.

14 MR. HODGES: Basically, the allegations are, he
15 chased him out of the apartment and shot at him. And then
16 law enforcement came to investigate and found him in a
17 truck with a bunch of drugs.

18 THE COURT: Gotcha.

19 MR. HODGES: That's the short of it.

20 THE COURT: Well, I'm a little bit surprised the
21 State is willing to come off of the LWOP and go with the
22 17, but I guess that's your own business.

23 Mr. Stancil, what's happening with this case?

24 MR. STANCIL: Thank you, Your Honor. Just to clear
25 up the record, I believe, after that bond hearing in

1 October, that there was a motion made to relieve
2 Mr. Nicholson that was granted. He was given to our
3 office. I have taken over representation, relayed the
4 offer to him. I think -- actually, the initial offer was
5 more than 17 but it's now come down to 17.

6 THE COURT: That's true.

7 MR. STANCIL: Mr. Cunningham has basically said that
8 he's just -- I'll let him explain it in his own words --
9 not going to take it and wishes for me to be relieved and
10 to get new counsel, Your Honor.

11 THE COURT: Okay. But there's no doubt in your mind
12 that he's been fully -- well, let me back up a little bit.
13 So Mr. Nicholson had been retained, I assumed, and then
14 moved to be relieved due to disagreements between him and
15 his client? Was that your understanding?

16 MR. HODGES: It was basically after his bond was
17 revoked and bond was denied, he relieved Mr. Nicholson and
18 got the public defender.

19 THE COURT: Okay. Well -- but you have explained to
20 Mr. Cunningham the ramifications of all this, the pitfalls
21 in proceeding to trial?

22 Where were the drugs discovered?

23 MR. HODGES: In his truck. The truck that he was
24 in.

25 THE COURT: All right. And you have gone over all

1 that with him?

2 MR. STANCIL: Your Honor, I have gone over the
3 fact -- what the State would be seeking at trial, what
4 their lower negotiation is for the offer, and the risk he
5 runs if he wishes to go forward.

6 THE COURT: Okay. Mr. Cunningham, one quick
7 question and then I'm going to let you have the floor, but
8 how old are you, sir?

9 THE DEFENDANT: 35.

10 THE COURT: 35? All right.

11 Mr. Cunningham, let's start with the -- let's start
12 with the offer. You understand that the State doesn't
13 have to make you an offer of any kind, and quite honestly,
14 based on the allegations involved in this case, I'm kind
15 of surprised that they are making any sort of an offer,
16 but that's between -- that's between the solicitor, I
17 guess, and pleasing his boss, but I'm a little bit
18 surprised that your attorney has been able to get it down
19 to a 17-year offer with the prior stent that you did on
20 that voluntary manslaughter, and I'm hearing there's
21 gunplay and drugs alleged in this case. So you need to be
22 careful about what you say because, of course, everything
23 is being taken down by this lady right here. And if you
24 say something about the facts, obviously, it can be used
25 against you if they decide to take you to trial and put

1 you away for the rest of your life.

2 What's the problem here with you and your attorney?

3 THE DEFENDANT: He hasn't been representing me to my
4 ability, Your Honor.

5 THE COURT: To your ability? Well, you don't have
6 any ability to represent yourself. You don't -- you
7 haven't been to law school. So he has full ability to
8 represent you, Mr. Cunningham.

9 THE DEFENDANT: He hasn't filed for my motion or
10 discovery or nothing. I have asked for it, and he still
11 hasn't done it.

12 THE COURT: Have you filed a Rule 5 and Brady?

13 MR. STANCIL: Yes, Your Honor.

14 THE COURT: He's filed a Rule 5 and Brady.

15 THE DEFENDANT: I haven't gotten it. I have been
16 here eight months and still haven't got it.

17 THE COURT: Do you want to speak to that?

18 MR. STANCIL: Yes, Your Honor, Rule 5 and Bradys
19 were filed. In speaking with him today, he was asking for
20 a copy of all of his discovery. Basically, I just wanted
21 to go in front of you first for the motion to be relieved
22 since he wants me relieved, Your Honor.

23 THE COURT: Well, he'll give you a copy of your
24 discovery, Mr. Cunningham.

25 Look, sometimes the job of a lawyer is to get you

1 through something, and there's -- sometimes you're just
2 between a rock and a hard place, and he's not a miracle
3 worker. But I'll tell you, he's appeared in front of me
4 hundreds of times, if not over a thousand, and the deals
5 that he gets for his clients are -- in this case, it's a
6 really good deal for you, in my personal opinion, but the
7 deals he typically gets for his clients are very, very
8 reasonable and very, very satisfactory to all concerned.

9 So when you're telling me, Mr. Cunningham, that you
10 and Mr. Stancil -- you're wanting to get rid of him, I'm
11 viewing that with somewhat of a jaundiced eye because,
12 like I said, he's worked with me on numerous occasions and
13 he's more than capable to represent you on these charges,
14 however you choose to go.

15 Now, he'll get you the discovery. Any other
16 problems other than you don't like the offer?

17 THE DEFENDANT: I don't like the offer because, in
18 fact, somebody was actually in my home with a gun, coming
19 out my closet and shot at me, and they want to throw the
20 book at me because of my record. I don't feel like that's
21 right.

22 MR. STANCIL: Court's indulgence.

23 (Mr. Stancil and the defendant confer off the
24 record.)

25 THE DEFENDANT: 17 years is life already.

1 MR. STANCIL: Your Honor, I just explained that
2 anything he says can be used against him and --

3 THE DEFENDANT: You're crazy, man.

4 MR. STANCIL: -- he's continuing to speak.

5 THE COURT: All right. If you want to raise that
6 defense, you have every right to go to trial. And if
7 you're saying that somebody was in your home and that you
8 only discharged this gun because you were acting in self--

9 THE DEFENDANT: They're trying to look over that
10 fact.

11 THE COURT: I'm sorry?

12 THE DEFENDANT: They're trying to look over that
13 fact, including my attorney. He -- he trying to look over
14 that.

15 THE COURT: Well, if that's -- if that's what
16 happened, then certainly you can go to trial and you can
17 try and win that at trial, and if you lose at that trial,
18 that's fine. You may have self-defense on the attempted
19 murder charge, Mr. Cunningham, but understand, the
20 trafficking charge is also going to be problematic for
21 you. I'm sure that Mr. Stancil's had this conversation
22 with you, but even if you beat the attempted murder charge
23 and if you're still convicted of the trafficking, it's
24 still a life without the possibility of parole sentence
25 against you. Do you understand that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: So they have got basically two shots to
3 convict you. You could convince a jury that, yeah, I was
4 acting in self-defense, but self-defense and trafficking
5 in cocaine, those two, you know, there's no self-defense
6 to trafficking in cocaine. So if that jury concludes that
7 you had 46 grams or whatever, 47 grams of cocaine in your
8 possession and they find you guilty of trafficking, your
9 35-year-old self is going to be going away for the rest of
10 your life, and there's not a thing that anybody can do
11 about it. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you want to think about whether you
14 want to take this very good offer that's on the table? Do
15 you want to put some more thought into it? I mean, I
16 don't want to see -- I don't want to see -- I don't want
17 to see you go down. Let's assume for a moment that you're
18 right about the assault charge. All right? About the
19 attempted murder. If they prove that those drugs were
20 yours, it's still end of story, game over for you. And
21 I'm just giving you the straight scoop on things. Okay?

22 Mr. Stancil is going to be continuing to represent
23 you because I'm not hearing there's any breakdown in
24 communication. He's going to do a good job for you. And
25 at this late of date, with a trial date in June, you know,

1 we're looking at trying this next month, there's not going
2 to be enough time for some other lawyer to get up to speed
3 on this. So he's going to continue to represent you
4 because this relationship hasn't broken down.

5 And Mr. Cunningham, if you want to take that offer,
6 I'd suggest strongly you give it some serious
7 consideration for the reasons I have said here on the
8 record, but if you want to take the offer, understand it's
9 got an expiration date of Friday, so you need to make up
10 your mind and relay whatever you decide to your attorney.
11 And if you decide to reject the offer, certainly that's
12 your option. That's certainly your option and you are
13 free to do that. And if that is the case, then we'll move
14 for a trial -- we'll move forward with trial sometime in
15 June. Okay, sir? That's where we are.

16 But I wish you luck and you really need to consider
17 what you want to do on this, Mr. Cunningham.

18 MR. STANCIL: Thank you, Your Honor.

19 (The above matter concluded at 10:54 a.m.)
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CERTIFICATE OF TRANSCRIBER

CASE NAME/NUMBER: State v Detavious Cunningham

2023-GS-24-00360

DATE OF HEARING: 5-12-23

COURT REPORTER/MONITOR: DCRP

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information, and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

Bobbi Fisher

/s/ Bobbi Fisher_____

Bobbi Fisher, RPR and Certified Transcriber

Date Submitted: 3/19/24

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 2 COUNTY OF GREENWOOD * TRANSCRIPT OF RECORD

3 -----X
 4 STATE OF SOUTH CAROLINA, *
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 5 Plaintiff, *
 *
 6 vs. * Case No. 2023-GS-24-00360
 *
 7 DETAVIOUS L. CUNNINGHAM, *
 *
 8 Defendant. *
 -----X

9 October 31, 2023

10 B E F O R E:

11 The Honorable Frank R. Addy, Jr., Presiding Judge

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

13 Andrew Hodges, Esq.
 14 Assistant Solicitor for the State

15 Tristan Shaffer, Esq.
 16 Attorney for the Defendant

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E X H I B I T S

(None.)

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P R O C E E D I N G S

(The following proceedings started at 10:40 a.m.):

THE COURT: All right. Solicitor, I have the paperwork on Mr. Cunningham.

MR. HODGES: Thank you, Your Honor. Standing before you is Detavious Cunningham on true-bill indictment 23-GS-24-360. That charges him with trafficking in crack, 28 to 100 grams second offense. He is represented by Tristan Shaffer.

Judge, we have negotiated a 16-year sentence on that charge. In consideration for his plea on that indictment, the State will be dismissing the balance of his indictments in Greenwood County. And just so the record is complete, we'll be dismissing Indictments 22-1428, 1429, 1430, 1431, and 1548; also 23-361, 362, 363, 364, 365, and 366; and then the final indictments are 22-1311, 12, 13, and 14.

I believe Mr. Cunningham has been in jail for 410 days, so he'll be entitled to credit for those days served.

THE COURT: All right. And correct me if I'm wrong, Solicitor, this carries a minimum of seven and maximum of 30?

MR. HODGES: That's correct, Your Honor.

THE COURT: Seven to 30. It is classified as

1 violent. Is it also classified as serious or most
2 serious?

3 MR. HODGES: I believe it is serious and violent.

4 THE COURT: Is that your understanding?

5 MR. SHAFFER: That's correct, Your Honor.

6 THE COURT: All right.

7 MR. HODGES: I would also note, Your Honor, that the
8 State had served the defendant notice of intent to seek
9 life without parole on the associated attempted murder
10 charge that the State will be dismissing, obviously, by
11 dismissal of that indictment. That would come off the
12 table.

13 THE COURT: All right. Mr. Shaffer, you are
14 representing Mr. Cunningham. I know that Ms. McNeal has
15 also been involved in discussions today. The trafficking
16 charge, 28 to 100 grams, it does carry a minimum of seven
17 years, maximum of 30 years, it is an 85 percent offense as
18 well as a violent and a serious offense.

19 You have reviewed all of this with Mr. Cunningham?

20 MR. SHAFFER: I have, Your Honor.

21 THE COURT: All right. And a negotiated 16 years is
22 what's been agreed to here?

23 MR. SHAFFER: That's right.

24 THE COURT: All right. You have reviewed, then,
25 with Mr. Cunningham, the ramifications of this plea and

1 all his constitutional rights as well as the elements of
2 this charge and the penalties?

3 MR. SHAFFER: Yes, Your Honor.

4 THE COURT: And you agree with his decision to enter
5 this plea?

6 MR. SHAFFER: Yes, sir.

7 THE COURT: All right. Mr. Cunningham, if you would
8 just raise your right hand, please, sir.

9 DETAVIOUS CUNNINGHAM,
10 after having been duly sworn, was examined and
11 testified to as follows:

12 THE COURT: All right. Are you Detavious
13 Cunningham, sir?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now, Mr. Cunningham, this charge carries
16 a minimum of seven years and a maximum of 30 years. In
17 this case, I'm told that you, your attorney, and the State
18 have agreed upon a straight 16-year sentence, and this is
19 being presented to me as a negotiated plea. Do you
20 understand?

21 THE DEFENDANT: You're saying I agreed to a 16 years
22 straight?

23 THE COURT: Yes, sir.

24 THE DEFENDANT: So I'm going to serve 13?

25 THE COURT: It is an 85 percent offense, and you're

1 going to have to serve at least 85 percent before you get
2 out, minus credit for -- you know, they'll take the credit
3 for 410 days off the top and then calculate 85 percent.
4 That's kind of how I understand they do it. Do you
5 understand that, sir?

6 THE DEFENDANT: (Indiscernible) 410 days?

7 THE COURT: No, you will. You will.

8 Mr. Cunningham, because it's being presented as a
9 negotiated sentence, if I accept your plea, I have to
10 impose the 16-year sentence. Do you understand, sir? I
11 have no discretion. I cannot go above that. I cannot go
12 below it. If, at the end of this colloquy, I accept your
13 plea, you'll receive a 16-year sentence. Do you
14 understand?

15 THE DEFENDANT: (Indiscernible).

16 THE COURT: And, obviously, it's already been
17 explained to you that this is an 85 percent offense,
18 meaning you'll have to serve 85 percent of that 16 years.
19 It's also a violent offense. Being a violent offense
20 means that you're going to be more limited in terms of the
21 programs that you're eligible for in the Department of
22 Corrections. Do you understand that, sir?

23 THE DEFENDANT: (Indiscernible).

24 THE COURT: All right. He nods yes.

25 It also means you're prohibited from possessing a

1 gun from here on out. Being a serious offense means that,
2 if, in the future, you're convicted of additional serious
3 offenses, two more, they can seek life without the
4 possibility of parole against you. Do you understand
5 that?

6 THE DEFENDANT: (Indiscernible).

7 THE COURT: The solicitor indicates that he had
8 previously served LWOP notice on you for a prior -- I
9 guess it was a most serious offense.

10 MR. HODGES: Yes, Your Honor. He's got an assault
11 and battery with intent to kill and a voluntary
12 manslaughter on his record. So the attempted murder on
13 this would be a second most serious. This being a second
14 serious would be Strike No. 2.

15 THE COURT: Right. Okay. So, basically, this is
16 Strike No. 2 for you. You get and commit another serious
17 offense, LWOP is again on the table. Do you understand
18 that?

19 THE DEFENDANT: (Indiscernible).

20 THE COURT: In return for the plea today, though,
21 obviously, they are dismissing a number of the charges,
22 and they're backing off the LWOP notice and all of that
23 will be done if the Court accepts your plea. Do you
24 understand, Mr. Cunningham?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Now, in the last 24 hours, have you
2 taken any medication or any substance that affects your
3 thinking?

4 THE DEFENDANT: (Indiscernible).

5 THE COURT: No?

6 And have you ever been treated for any mental-type
7 illnesses?

8 THE DEFENDANT: (Indiscernible).

9 THE COURT: And are you guilty plea of this charge?

10 THE DEFENDANT: Yeah.

11 THE COURT: All right. I'm going to ask Mr. Hodges
12 to give me the facts. When he's done speaking, I'll ask
13 if that's what took place. Okay, sir?

14 Solicitor?

15 MR. HODGES: Thank you, Your Honor. This occurs on
16 September the 16th of 2022, at an apartment complex here
17 in Greenwood County. Law enforcement was called out to a
18 call about shots fired. A number of the callers who had
19 called in described a gentleman in jean shorts with dreads
20 connected to a tan pickup truck.

21 When law enforcement arrived, there were some of the
22 neighbors in this apartment complex who were pointing out
23 a tan pickup truck. Law enforcement officers approached
24 that vehicle and found Mr. Cunningham behind the driver's
25 seat. He did have dreads and was wearing jean shorts

1 matching the description that was given out over the radio
2 in response to those calls from other citizens.

3 Officers also noted the odor of marijuana when they
4 removed him from the truck. A search of that truck
5 revealed a cookie of crack cocaine. That cookie was sent
6 down to the South Carolina Law Enforcement Division for
7 analysis. And let me give you the exact weight. Tested
8 as being 40.51 grams of cocaine base. Law enforcement
9 also found a firearm associated with this shooting
10 incident in the vehicle. Obviously, the State, though, is
11 dismissing that charge.

12 As far as prior record, Your Honor, he does have a
13 prior distribution of -- I believe it's crack or cocaine
14 on his record. And as I mentioned, he's also got that
15 voluntary manslaughter and assault and battery with intent
16 to kill. He served a 15-year sentence on those back in --
17 I believe he was convicted in 2012 of those offenses.

18 THE COURT: All right. Mr. Cunningham, you heard
19 what the State alleges took place in September a year ago.
20 Is it true that you were in possession of this cocaine,
21 sir?

22 THE DEFENDANT: (Indiscernible).

23 THE COURT: All right. Mr. Cunningham, I need to
24 briefly review with you rights that you're giving up. If
25 you don't understand something, you can stop me and ask

1 your attorney to explain it, or you can ask me to explain
2 it. Okay?

3 Do you understand, obviously, Mr. Cunningham, you
4 don't have to plead guilty? You can have a jury trial on
5 this case, and we have the jury panel waiting right
6 outside even as we speak. They have been waiting there
7 for about an hour and 15 minutes or so. And if you
8 wanted -- at any point in time during our discussions, if
9 you want a trial, you just stop me, and I'll bring them in
10 here, and we'll pick 12 people from Greenwood. You'll
11 help in selecting them. They'll be the jury. And the
12 State will have to prove your guilt beyond a reasonable
13 doubt. Do you understand that, sir?

14 THE DEFENDANT: (Indiscernible).

15 THE COURT: All 12 members of the jury would have to
16 agree as to your guilt before you could be punished. The
17 State tries to meet this burden by calling witnesses, and
18 you and Mr. Schaefer would be able to see, confront,
19 question, and cross-examine those witnesses, meaning you'd
20 ask them any question relevant to any issue involved in
21 this case. Do you understand that, sir?

22 THE DEFENDANT: (Indiscernible).

23 THE COURT: Obviously, if you plead guilty, though,
24 the State doesn't have to bring those witnesses in.

25 Now, you have no burden of proof at trial,

1 Mr. Cunningham. The burden is always on the State, but if
2 you wanted to, you could certainly call your own witnesses
3 to testify. You could subpoena any reluctant witnesses,
4 and of course, you could take the stand in your own
5 defense. Do you understand that, sir?

6 THE DEFENDANT: (Indiscernible).

7 THE COURT: You'd be treated pretty much the same
8 way as any other witness, so if you chose not to testify,
9 Mr. Cunningham, I would instruct the jury that they
10 couldn't hold your failure to testify against you. They
11 couldn't discuss it in the jury room. They could not use
12 your assertion of your Fifth Amendment right in any way in
13 deciding whether you're guilty of this charge or not. Do
14 you understand that?

15 THE DEFENDANT: (Indiscernible).

16 THE COURT: Now, at trial, Mr. Cunningham, again,
17 the burden is always on the State. You would be presumed
18 innocent, and you'd be able to challenge all the State's
19 evidence in this case. You could, for example, challenge
20 the search. If you plead guilty, though, you waive your
21 right to challenge any of the State's evidence or the
22 manner in which it was gathered, and you'd waive your
23 right to present any defense.

24 I have no way of knowing if you have any potential
25 defense to this charge. I'm sure that's something you

1 have discussed with Mr. Shaffer and your other lawyers.
2 Do you understand that?

3 THE DEFENDANT: (Indiscernible).

4 THE COURT: If you plead guilty, though, you waive
5 your right to present any defense or do any of the things
6 I have just described. Do you want to give up these
7 rights and plead guilty, sir?

8 THE DEFENDANT: (Indiscernible).

9 THE COURT: All right. And, Mr. Shaffer, you and
10 the other lawyers involved in this case, y'all have had
11 enough time to review the discovery and review it with
12 Mr. Cunningham?

13 MR. SHAFFER: Yes, sir.

14 THE COURT: All right. And you believe that the
15 State does have enough evidence to proceed to trial, and
16 if they went to trial, his conviction would be likely?

17 MR. SHAFFER: Yes, sir.

18 THE COURT: Now, Mr. Cunningham, are you satisfied
19 with the way that Mr. Shaffer has represented you?

20 THE DEFENDANT: He only spoke with me, I mean, last
21 week and today. I ain't always spoke with him.

22 THE COURT: And I do understand from previous
23 hearings, Mr. Cunningham, that there's been some friction,
24 to put it mildly, perhaps, between your previous
25 attorneys, but I did hear that, for example, Mr. Nicholson

1 came in this morning and may have had a chance to speak
2 with you, and, obviously, Ms. McNeal has been in there
3 talking to you as well as Mr. Shaffer. So you have had a
4 number of attorneys on this talk to you several times.

5 THE DEFENDANT: (Indiscernible) my attorney, though,
6 but they done spoke with me.

7 THE COURT: Okay. So you have had -- you have had
8 enough time on this? Talked to them enough?

9 THE DEFENDANT: (Indiscernible).

10 THE COURT: All right. He's nodding yes.

11 Do you have any complaints to make against the
12 Solicitor's Office, law enforcement, anybody involved in
13 this?

14 THE DEFENDANT: (Indiscernible).

15 MR. SHAFFER: Your Honor, I'm sorry, I didn't mean
16 to interrupt him. I'll let him --

17 THE COURT: Sure.

18 MR. SHAFFER: I just didn't hear what he said.

19 THE DEFENDANT: I mean, I done wrote three letters
20 on behalf of Colie Stancil representing me, but I haven't
21 got any response back yet, so...

22 THE COURT: Okay. And I assume you sent those two
23 ODC or something like that?

24 THE DEFENDANT: (Indiscernible), the South Carolina
25 Bar, and The Civil Rights Division.

1 THE COURT: Okay. That probably doesn't really have
2 any affect on what's going on here today. You know, I'm
3 hearing you're accepting responsibility, which is
4 certainly to your credit, and, from what I'm hearing, it's
5 probably a wise thing that you do, but I realize you're
6 between a rock and a hard place. But as far as
7 Mr. Shaffer --

8 Mr. Shaffer, you're ready to proceed to trial if
9 need be?

10 MR. SHAFFER: Yes, sir.

11 THE COURT: Okay. Back to the other question,
12 Mr. Cunningham: Do you have any complaints to make
13 against the solicitor or law enforcement, anybody involved
14 in this?

15 THE DEFENDANT: (Indiscernible).

16 THE COURT: No?

17 And, Mr. Cunningham, you are pleading guilty of your
18 own free will?

19 THE DEFENDANT: (Indiscernible).

20 THE COURT: Very good.

21 I do find there's a basis for the plea. It's
22 freely, voluntarily, knowingly, and intelligently made.
23 Mr. Cunningham is satisfied with counsel. I will accept
24 his plea.

25 All right. Mr. Shaffer, obviously, it's a

1 negotiated plea, but I'm certain you may want to just put
2 on the record the lengths that you have gone to and that
3 your staff has gone to, to assist Mr. Cunningham, but I'm
4 certainly happy to hear anything else in mitigation.

5 MR. SHAFFER: Your Honor, we -- and, obviously, he's
6 doing this of his own free will.

7 THE COURT: Certainly.

8 MR. SHAFFER: I will say this, is that I did get
9 involved -- I think I may have spoke to him late
10 spring/early summer -- probably late spring -- briefly for
11 Mr. Stancil back before I really had any intention of
12 getting involved in the case.

13 I got involved in the case toward the end of last
14 week -- I think Friday of last week. Mr. Stancil has
15 represented him this entire time and is here today, who
16 would be ready to assist if this went forward; however,
17 there is friction between him and Mr. Stancil, and that's
18 the reason I said that I'll come up here and do this.

19 Your Honor, I think he's been well advised, and I
20 honestly think he knows that he's between a rock and a
21 hard place, and there's two bad choices -- there are two
22 not-great choices here.

23 THE COURT: And he's picking the least bad.

24 MR. SHAFFER: Yes, Your Honor.

25 And I -- just for defense purposes, I do want to say

1 this, is that the attempted murder charge, I don't think
2 that that was a real concern because we do have an
3 affidavit from the victim about that.

4 The attempted murder, we -- I don't think he's doing
5 this because of the LWOP sentence or the potential for an
6 LWOP. I think he's mainly doing this for the high
7 likelihood of a conviction on the other trafficking case,
8 which is what he's basically pleading to.

9 Today -- and just for the record, he was looking at,
10 I think 21 years -- up to 21 years on the charges that
11 they were going to go forward on today.

12 Here's the thing: Those 21 years, if he would have
13 gotten 21 -- up to 21 parolable time on those, that time
14 would have been a separate sentence and SCDC would not
15 have counted it toward anything he got convicted on on the
16 trafficking.

17 So, you know, I think that that has something to do
18 with it. He's had time to speak to his mother. I think
19 his mother really was the one encouraging him that, at
20 this point, he needs to do it.

21 Quite honestly, when I left the room, he was not 100
22 percent on board with pleading guilty, and we said,
23 "That's fine. We'll get ready for trial. I'm just going
24 to send voir dire out and get everything taken care of."

25 But I think his mother wants to make sure that he

1 does have a real good chance of getting out alive and
2 having a life outside of prison, which is, you know, to
3 his credit and to his mother's credit that she's looking
4 out for him that way.

5 So we ask that -- obviously, you can't do anything
6 but the 15 years. I will just say this: He seems like an
7 intelligent guy and a decent guy who probably has a drug
8 problem and definitely shouldn't -- shouldn't have had the
9 gun, but, you know, I don't think that he's necessarily
10 the worst criminal out there or anything like that. He
11 seems like a pretty decent guy, from my conversations with
12 him.

13 THE COURT: And I may have misheard you a moment
14 ago, but I thought you said 15, but I thought the
15 negotiations were 16.

16 MR. SHAFFER: I'm sorry. 16. You're right.

17 THE COURT: Okay.

18 MR. SHAFFER: I apologize.

19 And there's one other thing I need to put on the
20 record, Your Honor. The other issue is, we had talked
21 about that this morning; I don't think the State
22 intends -- and I think he's under the impression that the
23 State is not intending on asking the feds to come charge
24 him with anything related to any of these incidents that
25 are being dismissed --

1 MR. HODGES: We do not intend to refer anything to
2 the federal government.

3 I think one other thing that we had discussed that
4 was sort of the reality, we were not proceeding to trial
5 on the case that he's pleading to this afternoon. We were
6 actually proceeding on an earlier set of indictments from
7 2021. Were he convicted at trial of those today, that
8 would have made this trafficking he's pleading to a third.

9 THE COURT: I see.

10 MR. HODGES: And that's a mandatory 25 years.

11 THE COURT: It would have been an LWOP had you
12 succeeded in the prior -- earlier temporal --

13 MR. HODGES: Even if we had lost the LWOP, he would
14 still be facing a minimum of 25 on this trafficking being
15 a third if he were convicted on the other set today. And
16 I know Mr. Schaefer and I had discussed that, and I think
17 that may have also factored into their decision today to
18 take this sentence.

19 MR. SHAFFER: Your Honor, and that's how we advised
20 him that, you know, the trafficking that he was looking at
21 on that trial that was coming up down the road would have
22 been 25 years mandatory minimum.

23 THE COURT: I understand then. All right.

24 I appreciate his mother being here. Did she want to
25 address me? No?

1 MR. SHAFFER: She's shaking her head no, Your Honor.

2 THE COURT: Mr. Cunningham, was there anything that
3 you wanted to say, sir?

4 THE DEFENDANT: (Indiscernible).

5 THE COURT: Okay. Well, Mr. Cunningham, I'll tell
6 you that, based on everything that was said just a few
7 moments ago about the kind of time that you were looking
8 at, I believe, personally, that you have made a very wise
9 decision. And understand, I have been practicing law for
10 30 years, I have been a judge in this capacity for 13
11 years, I have had Mr. Hodges' job, I have had
12 Mr. Shaffer's job, and I have had clients who, quite
13 honestly, refused to follow my advice and insisted on
14 going to trial and, unfortunately, the State's hand was so
15 strong that there was pretty much nothing I can do. Some
16 of those people are still alive in the Department of
17 Corrections, others aren't.

18 So I think you're making a very wise decision,
19 especially for a gentleman who is only -- I guess you're
20 36, 37, based on your birthday. So you will have a
21 chance -- a very good chance and a very strong likelihood
22 of getting out after this sentence is served,
23 Mr. Cunningham, but please, for the sake of your mother
24 who loves you deeply and who is here in support of you,
25 you have got to stay away from the criminal conduct once

1 you get done with this time. Okay? Otherwise, they'll
2 LWOP you again and they're just going to say bye-bye,
3 Mr. Cunningham. Okay?

4 I followed your negotiations. I have sentenced you
5 to 16 years. Credit, 410 days in jail. And ask that you
6 be screened for ATU when you're close to having completed
7 that sentence.

8 Does this comply with y'all's negotiations,
9 Mr. Shaffer?

10 MR. SHAFFER: Yes, sir.

11 THE COURT: All right. Solicitor?

12 MR. HODGES: It does, Your Honor. Thank you.

13 THE COURT: Mr. Cunningham, good luck to you, sir.

14 Take care.

15 (The above matter concluded at 3:26 p.m.)
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CERTIFICATE OF TRANSCRIBER

CASE NAME/NUMBER: State v. Detavious Cunningham

2023-GS-24-360

DATE OF HEARING: 10-31-23

COURT REPORTER/MONITOR: DCRP

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information, and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

Bobbi Fisher

/s/ Bobbi Fisher_____

Bobbi Fisher, RPR and Certified Transcriber

Date Submitted: 3/19/24

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STATE OF SOUTH CAROLINA * GENERAL SESSIONS
*
COUNTY OF GREENWOOD * TRANSCRIPT OF RECORD

-----X
STATE OF SOUTH CAROLINA, *
*
Plaintiff, *
*
vs. * Case No. 2023-GS-24-00360
*
DETAVIOUS L. CUNNINGHAM, *
*
Defendant. *
-----X

November 2, 2023

B E F O R E:

The Honorable Frank R. Addy, Jr., Presiding Judge

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

Andrew Hodges, Esq.
Assistant Solicitor for the State

Tristan Shaffer, Esq.
Attorney for the Defendant

Recorded by: Court Monitor/DCRP

Transcribed by: Bobbi Fisher, RPR
SC Official Court Reporter III

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E X H I B I T S

(None.)

COURT REPORTER LEGEND

Dash (--)	Indicates an interruption in speech
Ellipses (...)	Indicates trailing off in speech
(ph)	Indicates phonetic word
[Verbatim]	Indicates the word is said as written
(Indiscernible)	[Transcription] Indicates word(s) is not known due to audio recording quality

P R O C E E D I N G S

(The following proceedings started at 3:44 p.m.):

THE COURT: We're going back on the record in Mr. Cunningham's case, and of course the Court recalls Mr. Cunningham entering his plea on Tuesday, October 31st, at around 3:05 in the afternoon.

Mr. Shaffer, you indicated that there was something you wanted to bring to the Court's attention or that he wanted to bring to the Court's attention?

MR. SHAFFER: Yes, Your Honor. Last night, he used the jail kiosk system to send a message that was -- got to Colie Stancill, who was his actual counsel of record for the majority of the time period of this case. That said that he would like a reconsideration. Or a motion to reconsider, I think it was.

Based off of that, I asked Colie if he would -- basically, I told Colie, the only thing that you can reconsider on a negotiated plea is to withdraw the plea. So you may want to bring him over here so that his time doesn't elapse for that.

He -- Colie asked me to come over and handle it, so I did. So I'm over here now. Whenever I got here, he indicated that he had previously -- or that he had talked to people at the jail, and it's his understanding, which he's saying that it was his understanding throughout

1 representation, that this should have been a -- each of
2 his drug offenses should have been first offenses. He
3 said he talked to somebody and based off of his reading of
4 the law, it should actually be a first offense.

5 Now, I quickly said it's my understanding -- and
6 this is what I advised him on prior to the plea -- is that
7 the time limit for a second or subsequent runs from the
8 date of release. He said -- he showed me something,
9 whenever I pulled up the statute, and he said, "No, it
10 should run from the date of conviction."

11 And what time talking about is 44-53-470, subsection
12 (a)(3), which seems to indicate it would be from the date
13 of conviction. Or it doesn't seem to indicate; it does
14 just date of conviction. And it says so -- clearly says
15 conviction.

16 44-53-470, Subsection C, is what he would believe to
17 be ambiguous in saying that that date of conviction could
18 be -- or the time period starts on the date of release.

19 That was my understanding of the law based off my
20 reading or my prior knowledge of 44-53-470 is that it's
21 from the date of release.

22 But after reading it, I would say, yeah, arguably,
23 it's not the clearest language in the world, and,
24 therefore, it should -- rule of lenity should apply. It
25 should go in his favor if that's the case, and it should

1 be treated as a first offense. And I know we talked about
2 that.

3 After doing that, I also was looking over his
4 record, which I had told you in chambers that he was
5 convicted in 2010 of a PWID and got a five-year sentence.
6 What I didn't realize at that point -- and maybe it was my
7 reading of the RAP sheet, but he would have essentially
8 had a time-served sentence on that.

9 It may not matter, to be honest with you, Judge. He
10 may have been -- his date of release off of that charge,
11 the date that he would have maxed out that sentence --
12 that five-year sentence, probably wasn't within ten years
13 of this conviction date.

14 So, because of that, we would ask that the Court
15 amend it to reflect a plea to trafficking first offense.
16 That's essentially what my understanding of what he wants
17 me to do as opposed to doing a -- withdrawing the entire
18 thing. So that's my understanding of it, but, obviously,
19 I would ask the Court to ask him whether or not he's
20 asking to withdraw the entire thing, because I just want
21 to make sure that's clear on the record that the relief
22 being sought by this motion would be for the Court to
23 treat it as a first offense or SCDC -- you know, for the
24 Court to reflect that it should have been a first offense.

25 THE COURT: I mean, candidly, because it was put up

1 as a negotiated plea, I can't alter it. The only thing
2 that I could do would be to entertain a motion to withdraw
3 it all and y'all start back at square one. I know the
4 State had filed LWOP notice on this, but I'm not really
5 sure that I have the ability to do what Mr. Cunningham is
6 asking of me.

7 Solicitor, what's your position on all this?

8 MR. HODGES: Thank you, Your Honor. Let me make
9 sure that the record is completely clear about what the
10 status of all this was on Tuesday.

11 So Mr. Cunningham had three separate sets of pending
12 charges, for lack of a better word. The first set of
13 pending charges were from about August the 15th of 2020,
14 and amongst those was a possession with intent to
15 distribute methamphetamine.

16 Then he had the case that we were actually going to
17 proceed to trial on, which was a combination of a highway
18 patrol and county charges. And those included possession
19 with intent to distribute eutylone and a possession with
20 intent to distribute marijuana.

21 And then he's got the most recent set of charges,
22 which were from -- so the one we were going to trial on
23 was from January of '21. The most recent set of charges,
24 then, were from September of 2022, and those charges
25 included trafficking in crack cocaine, 28 to 100 grams.

1 And so -- and some other lesser drug charges and an
2 attempted murder.

3 We had served life without parole notice on the
4 attempted murder charge because he's got prior convictions
5 for both voluntary manslaughter and assault and battery
6 with intent to kill.

7 You may recall that I made it very clear on the
8 record on Tuesday that what our plan was -- and I had made
9 this abundantly clear to the defense as well -- that our
10 plan was to proceed on the charges from January of 2021 on
11 the PWID eutylone. Had we secured a conviction on that at
12 trial, that would have been a second or subsequent
13 offense, which would then trigger that trafficking to be a
14 third offense trafficking.

15 So our plan was then to proceed to trial at a later
16 date on the attempted murder and a trafficking third,
17 assuming we had gotten the conviction on the PWID
18 eutylone. So he would have been facing a potential life
19 sentence if convicted of attempted murder. He would have
20 been facing a minimum mandatory 25 on the trafficking if
21 he were convicted of that and had a second or subsequent
22 offense on his record of the eutylone.

23 And I made it clear on the record during our plea
24 that I felt like the defense had factored all of that into
25 their decision to enter into the negotiations that we

1 entered into on Tuesday, which was for the 16-year
2 sentence on a trafficking second, which got him out of a
3 potential minimum mandatory 25 and got him out of the LWOP
4 notice.

5 I would also note that, in compliance with the
6 negotiation, the State has dismissed all of his other
7 indictments. That has been done. Those cases are over
8 and done with. We also dispensed with the jury that we
9 were prepared to go forward with on a trial.

10 It would be our position, Your Honor, the State has
11 complied with the negotiations. The sentence was
12 appropriate given the totality of the circumstances, the
13 totality of what he was facing, and, you know, he made an
14 informed and, frankly, intelligent decision to accept
15 those negotiations to avoid the consequences he may have
16 been facing had it played out the way the State had
17 planned.

18 THE COURT: All right. Mr. Shaffer, the posture we
19 were in on Tuesday is exactly -- my recollection is
20 actually as how the solicitor stated it. And the analogy
21 that I would use is you might have someone charged with
22 murder, but you would take a plea to voluntary
23 manslaughter, even though there's no sudden heat of
24 passion just as a matter of plea bargaining.

25 So I'm still where I was before Mr. Hodges even

1 started speaking. It was presented as a negotiated plea,
2 and everything happened with your client's eyes wide open.
3 And, again, because it was negotiated, I'm not in a
4 position to, all of a sudden go back and say this is a
5 trafficking first. That's simply not where we are, and,
6 obviously, you did an exceptional job and the members of
7 your staff did an exceptional job of getting
8 Mr. Cunningham out of a potential life sentence at the
9 worst and a 25-year sentence at best, which potentially,
10 you know, he may have never seen the light of day after
11 having done that 25 years, and, obviously, would have
12 never seen the light of day if he had gotten LWOP'd.

13 The only thing I can entertain at this point in time
14 is a motion to withdraw his sentence. If he wants to go
15 there, he does so at his peril. But I will tell you, the
16 fact that I have already taken the plea and the fact that
17 maybe he's gotten a little bit of buyer's remorse, the
18 fact that we no longer have a jury here, that certainly
19 weighs on the Court's mind and is concerning, but...

20 Do you want to tell your lawyer first what you want
21 to say, sir?

22 MR. HODGES: And I would, while they're talking,
23 say, Judge, we have also relied on the negotiations that
24 we entered into by dismissing a jury, by dismissing all
25 those other pending indictments, and there has been

1 reliance by the State on those negotiations.

2 (Defendant and his counsel confer off the record.)

3 MR. SHAFFER: Your Honor, there's -- he's asked me
4 to inform the Court of something which is that I did tell
5 him that that PWID that I thought was 2010 and a five-year
6 charge would have enhanced, I did tell him that.

7 He's asked me to inform that. However, I want to
8 make sure, before -- would you mind standing down, if you
9 have anything else going on? I just --

10 THE COURT: I imagine we have something else going
11 on, but please understand, I have afforded Mr. Cunningham
12 a great deal of time and kept the jury waiting an hour and
13 a half on Tuesday. I think that this case has been --
14 these cases have been talked to death based on previous
15 discussions I have had.

16 You can talk to him, though. I want to make sure
17 that, if he makes that motion, he knows that it's at his
18 peril. And, obviously, I think he needs to appreciate the
19 posture that the Court is in. Obviously, there has been
20 some measure of detrimental reliance on behalf of the
21 State.

22 But if y'all want to talk for a few minutes, that's
23 fine. I see Mr. Geoli sitting down, and he probably wants
24 to get some exercise and stand up. So, very good,
25 Mr. Shaffer.

1 MR. SHAFFER: Thank you.

2 (Break in the proceedings from 3:57 p.m. to
3 4:39 p.m.)

4 THE COURT: All right. We're back on the record
5 with Mr. Cunningham.

6 Where do we stand, Mr. Shaffer?

7 MR. SHAFFER: Your Honor, Mr. Cunningham -- we have
8 advised him that -- I think that you would be inclined,
9 based off of the confusion, to give him -- basically undo
10 the guilty plea and let him face trial on all of them;
11 however, he's indicated that he does not want to do that.
12 He has indicated that he would prefer just to appeal.

13 I have told him that I have sent a notice of appeal
14 and I will be providing a copy to the Clerk of Court right
15 now. And I think opposing counsel, Mr. Hodges, has a copy
16 as well.

17 So that's the end of our representation of him and
18 appellate defense will take over.

19 THE COURT: All right. Very good.

20 And because I didn't review it with you, obviously,
21 you're appealing now, but Mr. Cunningham, just so that you
22 know -- I'm sure you're probably already aware, but you
23 have one year -- after the exhaustion of that appeal, you
24 have one year to file any action for post-conviction
25 relief. Okay? You're time-barred if you fail to file

1 that one year after any appeal is resolved regardless of
2 how that appeal is resolved. Okay, sir?

3 Very good.

4 MR. SHAFFER: Thank you.

5 (The above matter concluded at 4:39 p.m.)
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CERTIFICATE OF TRANSCRIBER

CASE NAME/NUMBER: State v. Detavious Cunningham

2023-GS-24-00360

DATE OF HEARING: 11/2/23

COURT REPORTER/MONITOR: DCRP

I, Bobbi Fisher, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information, and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

Bobbi Fisher

/s/ Bobbi Fisher_____

Bobbi Fisher, RPR and Certified Transcriber

Date Submitted: 4/17/24

NOTE: PURSUANT TO RULE 607(h)(1)(B), SCACR, "A COURT REPORTER SHALL RECEIVE THE FEE OF \$1.00 PER PAGE FOR FURNISHING A COPY OF A PREVIOUSLY PREPARED TRANSCRIPT." ALL REQUESTS FOR COPIES OF THE ATTACHED TRANSCRIPT (FORM 800) FROM OPPOSING PARTY OR NON-PARTIES MUST BE SENT TO THIS REPORTER AT BFISHER@SCCOURTS.ORG.

RECEIVED**Nov 02 2023****SC Court of Appeals**

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of General Sessions

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2022GS2401428

The State of South Carolina,

Respondent,

v.

Detavious Cunningham,

Appellant.

EXPLANATION OF APPEAL

On October 31, 2023, Defendant plead guilty to a trafficking in cocaine base second offense for a negotiated 16-year sentence.

On November 2, 2023, Defendant moved for reconsideration of the Court's treatment of the sentence as a second offense. Defendant argued that the Court misinterpreted S.C. Code Ann. § 44-53-470 based on his 2010 conviction on 2007-GS-24-01107.

The Court overruled this motion to reconsider. Defendant appeals his sentence and ruling on the motion to reconsider.

s/ Tristan Shaffer
Tristan M. Shaffer (SC Bar # 77565)
6326 Saint Andrews Road
Columbia, SC 29212
(803) 626-0188
tristan@shafferlawsc.com

WITNESSES

DYAR ARCHIBALD
Greenwood Police Department

WARRANT NUMBER

2022A2420101169

TRUE BILL

Kevin Martin

Foreman of the Grand Jury

Date: 02/24/2023

VERDICT

Foreman

THE STATE OF SOUTH CAROLINA

COUNTY OF GREENWOOD

COURT OF GENERAL SESSIONS

February Term, 2023

Indictment # 2023GS24-0360

THE STATE

vs.

DETAVIUS LAMON CUNNINGHAM

INDICTMENT FOR

TRAFFICKING IN CRACK COCAINE

SC Code: § 44-53-375(C)

CDR: 0349

I hereby waive presentment to the Grand Jury.

Defendant

Witness:

ATTEST A TRUE COPY
Chastity Copeland
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

THE STATE OF SOUTH CAROLINA
COUNTY OF GREENWOOD

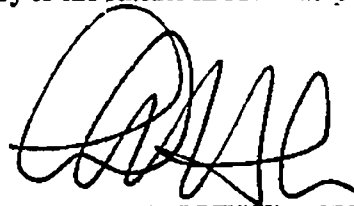
INDICTMENT FOR
TRAFFICKING IN CRACK COCAINE
§44-53-375(C)

ATTEST A TRUE COPY
(Credity [unclear])
CHASTITY COPELAND
CCCP AND GS
GREENWOOD COUNTY
S. C.

At a Court of General Sessions, convened on the 24th day of February, 2023, the Grand Jurors of Greenwood County present upon their oath:

The defendant, Detavius Lamon Cunningham, did on or about September 16, 2022, in Greenwood County, South Carolina, knowingly sell, manufacture, deliver, purchase, or bring into this State, or did provide financial assistance or otherwise aid, abet, attempt, or conspire to sell, manufacture, deliver, purchase, or bring into this State, or was knowingly in actual or constructive possession or knowingly attempted to become in actual or constructive possession of twenty-eight (28) grams or more of Crack Cocaine, a cocaine base, as defined and otherwise limited in Section 44-53-110, 44-53-210(d)(1), or 44-53-210(d)(2), all in violation of 44-53-375(C), South Carolina Code of Laws (1976, as amended).

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



Andrew M. Hodges
Senior Assistant Solicitor

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF GREENWOOD)

STATE)

INDICTMENT/CASE#: 2023GS24-0360

VS.)

DETAVIUS LAMON CUNNINGHAM)

A/W#: 2022A2420101169

AKA: DETAVIUS LAMON CUNNINGHAM)

Date of Offense: 09/13/2022

Race: Black Sex: M Age: 36)

S.C. Code §: 44-53-375(C)

DOB: 1987 SS#: [REDACTED])

CDR Code #: 0389

Address: Phoenix Street)

City, State, Zip: Greenwood, SC 29646)

DL#* [REDACTED] SID# [REDACTED])

ATTEST A TRUE COPY
CHASTITY COPELAND
CLERK OF COURT
CCCP AND GS
GREENWOOD COUNTY
S. C.
SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No

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

CONVICTED OF or PLEADS

TO: Traff Meth/Crack 28g but <100g 2nd offense

In violation of § 44-53-375(C) of the S.C. Code of Laws, bearing CDR Code # 0389

NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS § 17-25-45
(CSC w/minor 1st or CSC w/minor 3rd)

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (def.'s initials)

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

ATTEST:

[Signature]
Andrew M. Hodges, Senior
Assistant Solicitor

1713
SC Bar #

Defendant

[Signature]
Attorney for Defendant

77505
103026
SC Bar #

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

for a determinate term of 16 (sixteen) days/months/years/ Time Served Youthful Offender Act not to exceed ___ years

and/or to pay a fine of \$___; provided that upon the service of ___ days/months/years/Time Served 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.

The sentence shall run

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 SCDoc.

410 days/months

To include time spent on monitored house arrest prior to trial and sentencing.

The Defendant Shall be Released from County Detention Center.

Pursuant to 18 U.S.C. § 922 and § 16-25-30 it is unlawful for a person convicted of a violation of § 16-25-20 or § 16-25-65 (Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

- PTUP after _____ months/years
- Substance Abuse Counseling
- Attend Voc. Rehab. Or Job Corp
- Mental Health Counseling
- Sex Offender Registry pursuant to S.C. Code § 23-3-430
- Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.
- Completion of GED
- No Contact with Victim
- May serve W/E beginning: _____
- Public Service Employment _____ days/hours
- Random Drug/Alcohol Testing
- Domestic Violence Intervention Program

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Chastity Copeland
 CHASTITY COPELAND
 CCCP AND GS
 GREENWOOD COUNTY
 S. C.

Other: Screen for ATV

- RESTITUTION
- Deferred
- Def. Waives Hearing
- Ordered

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

Payment Terms: _____ Set by SCDPPPS

Recipient: _____

*Fine:	\$	Beginning	\$
Fine may be pd. in equal consecutive weekly/monthly pmts. of	\$	_____	_____
§14-1-206 (Assessments 107.5%)			\$
§14-1-211 (A)(1)(Conv. Surcharge)	\$100		\$100
§14-1-211 (A)(2)(DUI Surcharge)	\$100		\$
§56-5-2995 (DUI Assessment)	\$12		\$
§56-1-286 (DUI Breath Test)	\$25		\$
§14-1-212 (Law Enforce. Funding)	\$25		\$25
§14-1-213 (Drug Court Surcharge)	\$150		\$150
§34-11-70(b)and(c), and 34-11-90(c)and(d) (Admin Fraud Check Court Costs)	\$41		\$
§50-21-114 (BUI Breath Test Fee)	\$50		\$
§56-5-2942(J) (Vehicle Assessment)	\$40/ea		\$
3% to County (if paid in installments)	TBD		\$9.75
<input type="checkbox"/> Appointed PD or appointed other counsel. Proviso requires \$500 be paid to Clerk during probation and shall be collected before any other fees	\$500		\$
<input type="checkbox"/> § 17-3-30(B) Unpaid Application Fee to be paid to the Public Defender Fund	TBD		\$
TOTAL			\$ 283.25

Clerk of Court/Deputy Clerk: Chastity Copeland
 Court Reporter: DCBP

Presiding Judge: _____
 Judge Code: 2159
 Sentence Date: 10-31-2023

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SC Court of Appeals

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Breen Richard Stevens
Appellate Defender

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

This 3rd day of June, 2024.

ATTORNEY FOR APPELLANT

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SC Court of Appeals

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Greenwood County

Honorable Frank R. Addy, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

DETAVIOUS LAMON CUNNINGHAM,

APPELLANT.

CERTIFICATE OF SERVICE

Pursuant to Rule 262(a)(3) and Rule 262(c)(3), SCACR, the undersigned hereby certifies a true copy of the Record on Appeal in the above-referenced case has been served upon Mark R. Farthing, Esquire, at the primary e-mail address listed in the Attorney Information System (AIS), this 3rd day of June, 2024.



Breen Richard Stevens
Appellate Defender