

**King Cutter  
Clarendon County Public Defender  
Post Office Box 339  
Manning, SC 29102  
803-433-0188**

December 6, 2013

Andrew Lee Blackmon  
SCDC # 00357777  
Kirkland Correctional Institution  
4344 Broad River Road  
Columbia, SC 29210

Re:

*State v. Andrew Lee Blackmon*

Indictment No(s): 2013-GS-14-70

Appeal Case No. 2013-002440

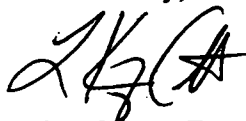
Dear Mr. Blackmon,

I hope you are doing well. I have included correspondence from the South Carolina Court of Appeals that I received on December 2, 2013. The Court stated that you have twenty (20) days from the date of this letter to inform the Court in writing of any arguable basis that there are issues preserved for appeal. I have included my explanation of the appealable issues. If you have any other arguable basis for appeal to add or delete to that explanation, you must do so within twenty (20) days from the date of this letter. The Court's address is:

South Carolina Court of Appeals  
PO Box 11629  
Columbia, SC 29211

If you have any other questions or comments, please feel free to contact me. Good luck to you.

Sincerely,



King Cutter, Esq.  
Bar Number: 100513

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**SC Court of Appeals**

**THE STATE OF SOUTH CAROLINA  
In the South Carolina Court of Appeals**

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**APPEAL FROM CLARENDON COUNTY  
Court of General Sessions**

**W. Jeffery Young, Third Circuit Court Judge**

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**Appellate Case No. 2013-002440**

The State of South Carolina,

Respondent.

v.

Andrew Lee Blackmon,

Appellant.

**Letter to Andrew Lee Blackmon**

Defendant, Andrew Lee Blackmon, appeals his negotiated guilty plea and sentence in this case. The following is the statement of facts required by Rule 203(B)(iv) of the South Carolina Appellate Court Rules.

Date: December 5, 2013



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Clarendon County Public Defender  
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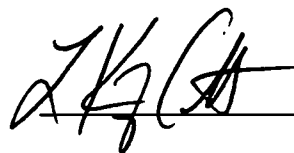
Andrew Lee Blackmon,

Appellant.

**Explanation for Negotiated Guilty Plea**

Defendant, Andrew Lee Blackmon, appeals his negotiated guilty plea and sentence in this case. The following is the statement of facts required by Rule 203(B)(iv) of the South Carolina Appellate Court Rules.

Date: December 5, 2013



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Pursuant to Rule 203 (B)(iv) of the South Carolina Appellate Court Rules, the Defendant, Andrew Lee Blackmon, is appealing a negotiated guilty plea in front of the Honorable W. Jeffrey Young on November 5, 2013. The Defendant contends that his guilty plea was not freely and voluntarily entered into because the Court did not allow the Defendant to proceed with an insanity defense at trial due to timely notice not being properly filed under Rule 5(f) of the South Carolina Rules of Criminal Procedure. The Defendant argues that the trial court erred by not allowing the Defendant to receive a second independent competency evaluation that may have aided the Defendant's insanity defense.

The Defendant along with his wife co-Defendant were arrested on January 25, 2013 for Entering a Bank with the Intent to Steal under Section 16-11-380 of the South Carolina Code. The State and Defendant consented to a M'Naughten competency evaluation on March 15, 2013. The Defendant received the evaluation on May 7, 2013. On May 30, 2013, South Carolina Department of Mental Health returned a report stating that the Defendant knew right from wrong at the time of the incident and was competent to stand trial. The Defendant produced a letter from Cynthia S. Carter MD who diagnosed him as Bipolar Disorder, Type I on December 29, 2009. During the evaluation period, Dr. Carter relocated her practice and boxed up her client's records making them unavailable for the evaluation. On October 14, 2013, the Defendant was one of 128 cases placed on the Clarendon County Trial Docket. On October 31, it was brought to the Court's attention the murder case going forward on November 4, 2013 could not proceed due to a severe medical diagnosis of that Defendant's counsel. On that day, this Defendant received a plea offer from the State. Counsel informed the Defendant of that plea offer and he refused to consider it citing the problems with the May 7<sup>th</sup> evaluation and that he needed a second

evaluation or a chance to argue Insanity as an affirmative defense. Defendant filed a Notice of Insanity Defense with the Court and upon the State on November 1, 2013.

On Monday November 4, 2013, the Defendant made a motion for continuance, a motion for an independent evaluation, a motion for another state evaluation, a motion to argue Insanity Defense for good cause under Rule 5(f) under the South Carolina Rules of Criminal Procedure and the Defendant personally made a motion to relieve counsel. The Court denied the Defendant's motion for continuance, but allowed the trial to start on Tuesday November 5, 2013. The court denied the motions for an independent evaluation and a motion for a separate state evaluation and took the motion to argue Insanity under advisement until November 5, 2013. The court gave the Defendant the option of proceeding to trial with present counsel or representing himself.

On Monday, the Defendant spent several hours discussing with counsel the advantages and disadvantages of pleading guilty and going to trial. The Defendant refused to focus on potential defenses with the trial, but continued to state that the May 7<sup>th</sup> evaluation was incorrect and accompanied by conspiracy and fraud. The Defendant's counsel was granted permission to speak with the co-Defendant, Virginia Blackmon, about the facts and circumstances of the crime alleged in addition to the Defendant's mental history. The co-Defendant accompanied Defendant's counsel to the Clarendon County Detention Center to meet with the Defendant. During this meeting, it was brought to the Defendant's attention that the Defendant's version of the events that took place were incorrect. The medicine the Defendant was taking during the time of the alleged incident was not the correct medicine according to his co-defendant, who is his caretaker and wife. Further, the Defendant had claimed ancillary activities that counsel knew could not have fit the timeline of events, but the Defendant refused to accept that until informed

by his co-Defendant wife. After several hours of communication, the Defendant, against the advice of counsel, wished to turn down a plea offer of ten years in the South Carolina Department of Corrections and proceed to trial. The next morning the Court informed counsel that he was not allowing the Defendant to argue insanity to the jury by the use of lay witnesses or potential expert witnesses for failure to comply with Rule 5(f) of the South Carolina Rules of Criminal Procedure as there was no good cause shown to the court.

The Defendant was made aware of the Court's ruling. After extended talks with the counsel, the co-defendant and co-defendant's counsel, the Defendant wished to take the State's offer of ten years in the South Carolina Department of Corrections. The State then informed Defense counsel that the ten year offer needed the victim's consent. The Victim did not consent and a fifteen year offer was extended. The Defendant accepted the offer and signed the plea sheet. However, during the plea, the Defendant did not agree with the facts alleged on the Indictment. Therefore, the Defendant proceeded to trial. Before breaking for lunch, the State produced five witnesses, three videos showing the Defendant give the teller a note and receive money and the note that was used. Further, the first witness was the teller who testified that she felt threatened and intimidated as required by the statute.

After lunch, the State allowed the Defendant to enter a guilty plea to the original fifteen years offered by the State due to a multitude of factors. The guilty plea would be a negotiated guilty plea as the Court typically controls punishment once the jury is sworn. The Defendant proceeded in the guilty plea stating that he was entering the plea freely and voluntarily. The Court accepted the plea and followed the recommendation of fifteen years with credit for time served.

The Defendant contends that because of the inability to argue insanity to the jury or receive a second or independent evaluations, he did not enter his plea freely and voluntarily. After Monday November 4, 2013, the Defendant had options of going to trial facing thirty years with a substantial amount of evidence of his guilt or pleading guilty to fifteen years. In *Ake v. Oklahoma*, 470 U.S. 68, 105 S. Ct. 1087, 84 L.Ed. 2d 53 (1985), (cited with approval by *Bailey v. State*, 309 S.C. 455, 424 S.E.2d 503 (1992)). When an indigent defendant seeks psychiatric assistance to establish an insanity defense, and there is evidence this is a potentially viable defense, the state is constitutionally mandated to provide the defendant with access to a competent psychiatrist who will conduct an appropriate examination and assist in evaluation, preparation and presentation of the defense. Further, under S.C. Statute 44-23-410 (C), the Court may order the Defendant to be examined by an additional independent expert and designate the time and conditions of the evaluation. Here, the Defendant was in the Clarendon County Detention Center, had no intentions of attempting to bond out of jail and simply wanted an opportunity to fully explore his mental issues. That was not allowed, thereby, forcing Mr. Blackmon to enter into a plea that was not freely and voluntarily given.

Date:



L. King Cutter  
Clarendon County Public Defender  
PO Box 339  
Manning, SC 29102  
(803) 433-0188  
Bar Number: 100513



# The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11629  
COLUMBIA, SOUTH CAROLINA 29211  
1015 SUMTER STREET  
COLUMBIA, SOUTH CAROLINA 29201  
TELEPHONE: (803) 734-1890  
FAX: (803) 734-1839  
[www.sccourts.org](http://www.sccourts.org)

November 26, 2013

Mr. Lewis King Cutter  
PO Box 339  
Manning SC 29102

Re: The State v. Andrew L. Blackmon  
Appellate Case No. 2013-002440

Dear Counsel:

This Court has received your explanation for appealing.

Please forward your explanation to your client, along with a statement that your client has twenty (20) days from the date of your transmittal letter to inform this Court in writing of any arguable basis that there are issues preserved for appeal. Please provide your client with the Court's address:

South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

Please send your letter to your client within ten (10) days, with a copy to this Court.

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**SC Court of Appeals**

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Salley W. Elliott, Esquire  
Christopher Ryan DuRant, Esquire  
Robert Michael Dudek, Esquire



## The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS  
CLERK

V. CLAIRE ALLEN  
DEPUTY CLERK

POST OFFICE BOX 11628  
COLUMBIA, SOUTH CAROLINA 29211  
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November 26, 2013

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Re: The State v. Andrew L. Blackmon  
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**SC Court of Appeals**

Dear Counsel:

This Court has received your notice of appeal, and the case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at [www.sccourts.org/courtreg](http://www.sccourts.org/courtreg). Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at [www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm](http://www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm). Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will *not* review filings for redaction or to determine if materials should be sealed.

Very truly yours,

*V. Claire Allen, Deputy*

CLERK

cc: Salley W. Elliott, Esquire  
Christopher Ryan DuRant, Esquire  
Robert Michael Dudek, Esquire

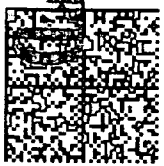
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