

ORIGINAL

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

CERTIORARI FROM DORCHESTER COUNTY
Court of Common Pleas

Carmen T. Mullen, Circuit Court Judge

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S.C. Supreme Court

BRYAN L. MULLIGAN,

RESPONDENT.

v.

STATE OF SOUTH CAROLINA,

PETITIONER.

Appellate Case No. 2013-002130

APPENDIX

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS

COUNTY OF DORCHESTER 2008-GS-18-1107
2008-GS-18-1109
2008-GS-18-1113
2008-GS-18-1121
2008-GS-18-1108
2008-GS-18-1112
2008-GS-18-1120

STATE OF SOUTH CAROLINA)

-vs-)

BRYAN LEON MULLIGAN,
JOSHUA MONROE, and COREY
LARKIN,)

Defendants.)

TRANSCRIPT OF RECORD

February 3, 2011

Charleston, South Carolina

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

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Circuit Court Reporter

1 (February 3, 2011.)

2 THE COURT: All right. Are you Bryan Leon
3 Mulligan?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. Mr. Mulligan, you got
6 a number of charges here against you, and I understand
7 that you want to plead guilty to these charges today, so
8 let's work through them one by one.

9 First of all, we have indictment
10 2008-GS-18-1108 is an indictment out of Dorchester County
11 for kidnapping. You can get up to 30 years in prison for
12 that. I'm told you want to plead guilty to that
13 indictment; is that correct?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Do you understand this Dorchester
16 County charge, you have the right to have it resolved in
17 Dorchester County. Do you want to waive your right to
18 have this resolved in Dorchester County?

19 THE DEFENDANT: Yes, sir, Your Honor.

20 THE COURT: All right. These are all
21 sentencing sheets. Is there more than one Dorchester
22 County charge here? I only have one from Dorchester
23 County.

24 MR. HILTON: I passed up six, I believe, Your
25 Honor.

1 THE COURT: All right. Next is an indictment
2 out of Dorchester County, indictment 2008-GS-18-1121.
3 It's for armed robbery. You could get ten to 30 years
4 for that. Do you want to waive your right to have this
5 treated in Dorchester County and plead guilty here today?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: I hate being so slow, but there
8 are a lot of indictments, and none of them are in order,
9 so I want to make sure we get this right so we only have
10 to do this once.

11 Next, we've got indictment 2008-GS-18-1120,
12 another Dorchester County indictment for kidnapping, zero
13 to 30 years. You want to waive your right to have this
14 handled in Dorchester County and plead guilty to it
15 today?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Next is indictment
18 2008-GS-18-1112, a Dorchester County indictment for armed
19 robbery. Again, 10 to 30 years. You want to waive your
20 right to have this treated in Dorchester County and plead
21 guilty to it today?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Next is Dorchester County
24 indictment 2008-GS-18-1113. It is for kidnapping, zero
25 to 30 years. Do you want to waive your right to have

1 this treated in Dorchester County and plead guilty to it
2 today?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And I think the last one out of
5 Dorchester County is indictment 2008-GS-10 -- or
6 GS-18-1107, Dorchester County indictment for assault and
7 battery of a high and aggravated nature, zero to ten
8 years. You want to waive your right to have this handled
9 in Dorchester County and plead guilty to it today?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. Now, now we'll do the
12 Charleston County ones. I got seven sentencing sheets
13 and many more indictment. You got charges you're
14 dropping?

15 MR. WETMORE: Yes, sir. He's pleading to
16 seven indictments in Charleston.

17 THE COURT: Hold on.

18 MR. WETMORE: I'll give you the indictment
19 numbers, if that helps.

20 THE COURT: Let me go through the ones I got,
21 and then what's left over, I assume, will be the ones
22 we'll go through those in a minute so we can get those in
23 order.

24 All right. Here is what I got sentencing
25 sheets for: Indictment 2008-GS-10-8072 is an indictment

1 for kidnapping, zero to 30 years. You want to plead
2 guilty to that indictment?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Indictment 2008-GS-10-8073 is an
5 indictment for attempted armed robbery, zero to 20 years.
6 You want to plead guilty to that indictment?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Indictment 2008-GS-10-8126 is an
9 indictment for armed robbery, 10 to 30 years. You want
10 to plead guilty to that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Indictment 2008-GS-10-8127,
13 kidnapping, zero to 30 years. You want to plead guilty
14 to that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Indictment 2008-GS-10-8135,
17 criminal sexual conduct first degree, zero to 30 years.
18 You want to plead guilty to that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Indictment 2008-GS-10-8137,
21 kidnapping, zero to 30 years. You want to plead guilty
22 to that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And then the last one I have a
25 sentencing sheet on is 2008-GS-10-8141, armed robbery, 10

1 to 30 years. You want to plead guilty to that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. That leaves me with
4 the following indictments, and we'll go along with these
5 and make sure these are all being dismissed. All
6 2008-GS-10-8074, 8075, 8124, 8125, 8128, 8136, 8138,
7 8139, 8140, and 8142. Are all of those being dismissed?

8 MR. WETMORE: Yes, sir.

9 THE COURT: All right. Well, let me go
10 through a few things with you, because I'm told you want
11 to plead guilty to each of these. You're going to give
12 up some rights, and I need to make sure you understand
13 some things that you do that have consequences that go
14 beyond today.

15 First of all, I think with the exception of
16 the assault and battery of a high and aggravated nature,
17 each of these are strike offenses. I'm sure Mr. Savage
18 has gone over those with you, but I will go over it with
19 you on the record to make sure you understand what strike
20 offenses are.

21 We have classifications of crimes in this
22 state where if you get enough of them you go to jail for
23 the rest of your life without the possibility of parole.
24 We have two classifications of those in the state, three
25 strike offenses and two strike offenses. Two strike

1 offenses are called most serious offenses, and if you get
2 two of those, you go to jail for the rest of your life
3 without the possibility of parole. Three strike offenses
4 are called serious offenses, and if you get three of
5 those, you go to jail for the rest of your life without
6 the possibility of parole.

7 It goes without saying today that you have
8 gotten all the strike offenses you're ever going to get
9 in this life without going to jail for the rest of your
10 life, because the state is not seeking life without
11 parole against you today or they would have served you
12 notice on these. They are all being treated for
13 sentencing purposes as one strike, but after today, if
14 you ever get convicted of another strike offense, you'll
15 go to jail for the rest of your life without the
16 possibility of ever getting out.

17 Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. You also have the
20 consequences. These are no parole offenses. Except for
21 the assault and battery of a high and aggravated nature,
22 you have to serve at least 85 percent of these before you
23 are eligible to get out, and because of the nature of
24 that classification of violent no parole offense, once
25 you get out after you serve 85 percent, you still have

1 two years of community supervision, and you have to
2 basically meet with parole officers, not get involved in
3 any more crimes, not use drugs, that sort of thing. If
4 you do, you'll get sent up before a hearing officer and
5 ultimately a judge and if they determine you violated the
6 terms of your community supervision, you'll go back and
7 finish out the balance of whatever you have left on the
8 15 percent of your sentence.

9 Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Also, one of the charges is
12 criminal sexual conduct of the first degree, and that is
13 going to trigger a collateral consequence of having the
14 sexually violent predator program take a look at you when
15 all this is said and done. We have a sexually violent
16 predator program in this state.

17 It's a civil commitment process, but it does
18 come about as a result of a criminal conviction, and, at
19 least as it's currently set up, you go into the sexually
20 violent predator program. They house those folks at the
21 Broad River Correctional Institute, which is, of course,
22 a prison, but what happens is at the end of the time,
23 they'll look at these charges.

24 They'll look at the fact that one of them was
25 a criminal sexual conduct, and there will be a couple of

1 committees that take a look at it, determine whether or
2 not they think that based on your prior convictions and
3 the circumstances surrounding that, they think that it is
4 a possibility that you might reoffend, and they will ask
5 the Attorney General's office to bring the case in
6 circuit court and ask to have a judge or a jury have you
7 adjudicated to be a criminal sexual -- sexually violent
8 predator, and if you are adjudicated to be a sexually
9 violent predator, then you would be housed, again,
10 currently at Broad River Correctional. Who knows where
11 it will be in a couple of decades, and you could go to
12 jail. You could be in there the rest of your life.

13 You have to, basically, if adjudicated to be
14 a sexually violent predator, convince them that you will
15 no longer be a threat to reoffend, but that is down the
16 road, but that is a consequence of your plea today, that
17 it is not an automatic thing, but it is very likely they
18 will stake a strong, hard look at it.

19 Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: All right. Understanding those
22 things, do you still want to plead guilty today to these
23 charges?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Let me explain to you that you

1 have some rights that you are waiving when you enter a
2 guilty plea. First of all, you have the right to a jury
3 trial, so if you change your mind and decide you want a
4 jury trial, all you have to do is let me know, and we'll
5 arrange that for you. The state then has to present
6 enough evidence to convince 12 jurors you're guilty
7 beyond a reasonable doubt. All 12 jurors have to agree
8 you're guilty in order to convict you, and, if convicted,
9 you have the right to appeal.

10 You can challenge the admissibility of the
11 evidence the state offers against you, you can put up
12 evidence of your own, you can testify, if you want, and
13 tell the jury your side of the story, and if you don't
14 want to testify, the judge will tell the jury they're not
15 to hold that against you while they are deliberating.

16 Do you understand all of those rights?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And you want to give up all those
19 rights and enter these guilty pleas today?

20 THE DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: All right. So this indictment,
22 I'm going to read through these and ask you about them,
23 2008-GS-18-1107 says on June 2, 2008 you did violent
24 injury to the person of Guy Ahlstrom with circumstances
25 of aggravation struck him in the head again.

1 Did you do that?

2 THE DEFENDANT: As far as I can remember, no,
3 sir, Your Honor.

4 THE COURT: As far as you can remember, no?

5 THE DEFENDANT: No, sir.

6 THE COURT: Well, then why are you pleading
7 guilty to it? I'm going through each of these, and if
8 you're going to give me the, I don't remember it, then
9 you're going to go to trial.

10 THE DEFENDANT: You said was I involved, Your
11 Honor?

12 THE COURT: Yeah. Were you involved in doing
13 this?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All right. You understand -- I'm
16 sure your lawyers have told you that even if you didn't
17 necessarily do it yourself, you were involved with others
18 and at least somebody did it, and under the hand of one,
19 hand of all theory, you're just as guilty as the person
20 that struck the person or did it, but you were involved
21 in it, and you could be convicted of it and you're saying
22 that is exactly what you did; is that right?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right. 2008-GS-18-1113 is
25 the kidnapping out of Dorchester County, May 14, '08. It

1 says you kidnapped Timothy Rabang. Did you do that?

2 THE DEFENDANT: Yes, sir, Your Honor.

3 THE COURT: 2008-GS-18-1112 says on May the
4 14th, 2008 in Dorchester County, you used force and
5 intimidation armed with a deadly weapon robbed employees
6 of Applebee's restaurant in Charleston County. Did you
7 do that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: 2008-GS-18-1120 says that on May
10 the 10th, 2008, you kidnapped Ferdinand Lopez in
11 Dorchester County. Do you admit to that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. 2008-GS-18-1121 says
14 that on May the 10th, 2008 in Dorchester County, this is
15 an armed robbery indictment, says that you used a deadly
16 weapon, force, and intimidation, robbed person Ferdinand
17 Lopez of goods and money. Do you admit to that?

18 THE DEFENDANT: Yes, sir, Your Honor.

19 THE COURT: And on 2008-GS-18-1108,
20 Dorchester County indictment for kidnapping says that you
21 kidnapped Guy Ahlstrom in Dorchester County.

22 Do you admit to that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right.

25 MR. SAVAGE: Judge, to be clear, jurisdiction

1 of those indictments were in Dorchester County. He
2 admits to committing those crimes in Dorchester County.

3 THE COURT: Okay. Well, I thought I covered
4 that, but --

5 MR. SAVAGE: One of them was -- I think one
6 of them you said Charleston County.

7 THE COURT: Did I misspeak? I'm sorry.

8 MR. SAVAGE: The Applebee's restaurant.

9 THE COURT: Okay. I know this all took place
10 in the area where Applebee's and Chuck E. Cheese and
11 Noisy Oyster, so I may have had this in my head.

12 Okay. Let's go on to the next indictment in
13 Charleston County, 2008-GS-10-8126 is armed robbery. It
14 says on April 28, 2008, Charleston County, that
15 Applebee's on Rivers Avenue, you used a deadly weapon to
16 rob the employees at Applebee's.

17 Do you admit to that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And then June the 2nd, 2008,
20 Charleston County, Chuck E. Cheese, Rivers Avenue, you're
21 charged with attempted armed robbery, in which you
22 represented you had a deadly weapon and attempted to rob
23 the Chuck E. Cheese, Guy Ahlstrom, at Chuck E. Cheese.

24 Do you admit to that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: 2008-GS-10-8072, Charleston
2 County says you kidnapped Guy Ahlstrom on or about June
3 2, 2008.

4 Do you admit to that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: 2008-GS-10-8127, kidnapping
7 indictments says that on or about April 28, 2008 in
8 Charleston County, you kidnapped Jonathan Walker, an
9 Applebee's employee. Do you admit to that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: 2008-GS-10-8135, an indictment
12 for criminal sexual conduct first degree says May the
13 25th, 2008 you committed sexual battery upon a Noisy
14 Oyster employee, Barbara Carter without her consent,
15 using aggravated force. Do you admit to that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: 2008-GS-10-8137, indictment for
18 kidnapping, Charleston County, May the 25th, 2008 says
19 that you kidnapped a Noisy Oyster employee, Justin
20 Carter.

21 Do you admit to that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And, finally, 2008-GS-10-8141 is
24 armed robbery indictment, says that on or about May 25,
25 2008, at the Noisy Oyster on Rivers Avenue in Charleston

1 County, you robbed Noisy Oyster's employees representing
2 you had a deadly weapon.

3 Do you admit to that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. Now, are you under
6 the influence of any drugs or alcohol today?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Do you take any kind of
9 prescription medications?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Do you know of any physical,
12 emotional, or mental conditions which keep you from
13 understanding what you're doing today?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Now, you're standing next to your
16 lawyers. Have you had enough time to talk with them
17 about this case?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. You all set down and
20 talked about the evidence the state has against you?
21 Y'all talked about that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And they explained to you about
24 the law that applies to each of these charges?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Did they explain to you about how
2 sometimes you can go into court and try to have evidence
3 suppressed, such as DNA evidence, photographic lineups,
4 statements that either you or other people made, that
5 sort of thing. Did y'all talk about things like that,
6 trying to have evidence suppressed?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And you talked about whether or
9 not you could present any kind of defenses. Did y'all
10 talk about that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Did you talk about whether or not
13 you could get up and tell the jury your side of the
14 story?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And based on all of those
17 discussions, you decided ultimately that you didn't want
18 to pursue any of that and you just wanted to go ahead and
19 plead guilty; is that correct?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: All right. Now, you've had all
22 this time to talk with your lawyers, and their job is to
23 advise you, but ultimately it's your decision and your
24 decision alone on whether or not to plead or go to trial
25 because ultimately you're the one that does the time, and

1 it's your convictions.

2 These decisions to waive all those rights
3 that I told you about and whether or not you were going
4 to try to suppress any evidence or put up a defense or
5 testify, all that sort of thing, and you didn't want to
6 do that, is that your decision and your decision alone?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Did anybody promise you anything
9 or threaten you in any way in order to get you to plead
10 today?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: All right. Other than they have
13 agreed that they were going to dismiss some charges that
14 were pending against you; is that correct?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Nobody has promised you anything
17 about what your sentence would be?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: All right. How old are you?

20 THE DEFENDANT: Twenty-two.

21 THE COURT: How far did you get in school?

22 THE DEFENDANT: High school education.

23 THE COURT: All right. Do you work?

24 THE DEFENDANT: I been working since I bonded
25 out, up until about -- around the time that our case was

1 coming to an end.

2 THE COURT: Are you married?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any children?

5 THE DEFENDANT: Two, two daughters.

6 THE COURT: Yeah? All right. Well,
7 Mr. Savage, you and your office has been representing
8 this gentleman now for a while on it, I take it. In your
9 opinion, does he understand what he is doing when he
10 waives his right to a jury trial and enters his pleas
11 today?

12 MR. SAVAGE: There is no question in my mind
13 that he does, Your Honor. Because of his age, his
14 grandmother who is present, his wife who is present, his
15 mother, who is present, have all accompanied him on a
16 dozen or more occasions in our office when we reviewed
17 his rights and his options to go to trial of pleading
18 guilty. There is no question in my mind that he fully
19 comprehends the seriousness of the charges, the possible
20 penalties, and the rights that he's giving up.

21 Among those rights are his right not to
22 testify and that this Court would instruct the jury not
23 to hold that against him.

24 THE COURT: All right. Has Mr. Savage's
25 office done everything you've asked them to do?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And you're fully satisfied with
3 their representation?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And you don't need any more time
6 with him?

7 THE DEFENDANT: No, sir, Your Honor.

8 THE COURT: All right. I find his plea is
9 freely, voluntarily and intelligently made.

10 Why don't we do this: We have some other
11 people that were codefendants. They've already pled. I
12 took their pleas some time ago. I took one, I think
13 Judge Nicholson took one, and I'll hear then from the
14 state, the recitation of the facts, and then we'll hear
15 any mitigation and any statements from the victims at
16 that time. So let's bring out the other guys.

17 MR. WETMORE: May we approach, sir?

18 (Sidebar discussion held.)

19 THE COURT: We're going to take about a
20 ten-minute break right now while one of the codefendants
21 needs a little bit of time with his lawyer, so we'll just
22 stand down and take about ten minutes. Go ahead.

23 (Recess taken.)

24 THE COURT: All right. We have everybody
25 back in that was in? All right.

1 So where we left off is I took Mr. Mulligan's
2 plea. I have previously have taken Mr. Larkin's plea.
3 Mr. Larkin, that is you?

4 DEFENDANT LARKIN: Yes, sir.

5 THE COURT: All right. And Mr. Joshua
6 Monroe, is that you?

7 DEFENDANT MONROE: Yes, sir.

8 THE COURT: I took your pleas previously,
9 accepted them, deferred sentencing until later time, that
10 being now. I still need to hear from the record the
11 recitation of the facts for Mr. Mulligan, so,
12 Mr. Solicitor, when you're ready, go ahead.

13 MR. WETMORE: Yes, sir, Judge. May it please
14 the Court: These three individuals were involved in a
15 series of aggravated armed robberies in North Charleston
16 restaurants.

17 The first one that Mr. Mulligan participated
18 in to our knowledge took place April 28, 2008 at the
19 Applebee's with these other two individuals, armed with
20 handguns. It was about 2:40 in the morning. The
21 employees were closing and exiting the restaurant. The
22 defendants met them in the parking lot and pointed guns
23 at them and at gunpoint forced them back into the
24 Applebee's. They disarmed an alarm, made them open up a
25 safe. \$5,500 was taken.

1 The next incident happened, once again, North
2 Charleston, May 25, 2008 at the Noisy Oyster. Once
3 again, all individuals here participated, armed with
4 handguns, and at this time also stun guns. This was
5 about 3:20 in the morning. Once again, employees were
6 closing up shop and met in the parking lot by the
7 defendants who had guns and at gunpoint they were forced
8 back into the restaurant.

9 They took the night deposit bag. They opened
10 up the safe. They took \$6,700 and some personal property
11 as well. It did not end there, unfortunately, at the
12 Noisy Oyster.

13 At gunpoint, they forced -- one of the
14 defendants forced a female employee to take her clothes
15 off and to perform oral sex on him. The other two
16 watched, and they actually Tased the male employee while
17 they watched. They forced female employee to wash her
18 mouth out in the kitchen sink. The other defendants
19 sexually assaulted her, touched her, groped her. Then
20 they forced both employees into the walk-in refrigerator,
21 and at that time they forced the female employee to
22 perform sex on the male employee, all the time watching
23 and making comments. They left both of them naked and
24 closed up in the cooler.

25 It's difficult to tell which of the masked

1 individuals was the one that initiated the CSC.

2 According to co-defendants Larkin and Monroe, it was
3 Mulligan, but our position is they're all armed, they're
4 all there, the hand of one is the hand of all.

5 Finally, June 2, 2008 at the Chuck E. Cheese
6 in North Charleston, once again all three individuals
7 participated, armed with handguns and stun guns. This
8 time it was about 12:50 at night, and the employees were
9 closing and exiting. This time the employee actually got
10 to his car and left.

11 They followed him to his home in Dorchester
12 County, and at gunpoint they assaulted him, they
13 kidnapped him, and they put him back in his own car, and
14 another individual followed them in their car, and along
15 the way, the victim's car ran out of gas and broke down
16 on the interstate.

17 They abandoned it and they forced the
18 employee into Mulligan's car, took him back to the Chuck
19 E. Cheese at gunpoint, and they forced him to disarm the
20 alarm, tried to open the safe. He could not do it. It
21 was on a time delay, so no money was taken. That is the
22 attempted part of the armed robbery. He was left tied up
23 in that restaurant.

24 Now, that victim was able to identify
25 Mulligan's vehicle. North Charleston located the

1 vehicle. Inside it they found evidence of the armed
2 robberies. They found Mulligan's identification. In
3 fact, Mulligan had asked his girlfriend to report it
4 stolen, and she had done that.

5 Mulligan turned himself in first, I believe,
6 and he gave a confession. He gave a statement verbally
7 to being involved in the Chuck E. Cheese case. He would
8 not put it down in writing, but he did make a statement
9 to the investigating officer.

10 The girlfriend further assisted the police,
11 and she directed them to the apartment where these two
12 live, Larkin and Monroe. Now, they stopped the car
13 Mr. Larkin was in, leaving the apartment in, and inside
14 they found more evidence of the armed robberies, and at
15 that point, Mr. Larkin confessed to all the incidents and
16 he actually gave a written statement, and he implicated
17 these other two.

18 After that, Monroe turned himself in, and he
19 gave a written statement confessing to the Applebee's
20 incident in Charleston and to the Chuck E. Cheese
21 incident in Charleston. He did not admit initially the
22 Noisy Oyster but later confessed to our office in meeting
23 with them.

24 Judge, all these individuals are young. They
25 have no criminal history, and we make no recommendation

1 as to sentence, Judge. I know that Dorchester has some
2 facts for you as well.

3 MR. HILTON: May it please the Court, Your
4 Honor, as to the Dorchester County charges, backing up a
5 little bit in time to May 10, 2008, the three defendants
6 went over to the Frankie's Fun Park, which is located at
7 5000 Ashley Phosphate Road, and in all the Dorchester
8 events, it's a similar set of facts where these were
9 businesses that were closing up.

10 The defendants waited outside where employees
11 from Frankie's Fun Park were coming out at the end of the
12 day. At that time they rushed on them with guns, forced
13 them back inside of the building, and there they ended up
14 taking cell phones, some car keys worth about \$100, and
15 they fled after the alarm had sounded on that building.

16 That was the armed robbery and kidnapping.
17 As for the May 14, 2008 incident, this occurred at the
18 Applebee's restaurant at 4910 Ashley Phosphate Road in
19 Dorchester County where, again, employees were closing up
20 the restaurant, headed out to their vehicles to leave
21 when they were confronted by three black defendants with
22 handguns and stun guns in their possession. They forced
23 them back into the store, ordered them to shut off the
24 alarm, and open the safe. There they were forced to lay
25 down on the floor while the defendants fled.

1 As for the final incident, that was one that
2 Mr. Wetmore alluded to. That is actually the Chuck E.
3 Cheese episode. It began at the Chuck E. Cheese in North
4 Charleston. They were unable to get to Mr. Ahlstrom
5 there at the restaurant because of an individual parked
6 in the adjacent parking lot, so they followed him back to
7 500 Woodward Boulevard in the Corey Woods subdivision in
8 Dorchester County.

9 When he pulled up in his driveway, a car
10 pulled in behind him. It was the three defendants, and
11 they rushed on him, again, armed, masked, ordered him
12 back into his car. One of them got into the car with him
13 and ordered him to drive back to the Chuck E. Cheese
14 restaurant.

15 Actually, I think one of the defendants was
16 driving, and he was riding in the car. On his way back,
17 he hesitated to give them some information they wanted.
18 They Tased him there and ended up striking him with a
19 pistol. That forms the basis for the assault and battery
20 of a high and aggravated nature charge that they have.

21 When they got back to the Chuck E. Cheese
22 restaurant in North Charleston, that's where the
23 Charleston facts pick up again, and then ultimately they
24 were apprehended on all these charges.

25 THE COURT: All right. There is certainly a

1 substantial factual basis for the pleas. I'll accept it.
2 What is Mr. Mulligan's prior record?

3 MR. WETMORE: Judge, I don't know that any of
4 them have any prior record.

5 THE COURT: This is a first offense for
6 everybody?

7 MR. WETMORE: That's my understanding, yes,
8 sir.

9 THE COURT: All right. Do any of the victims
10 want to be heard? I see there is a large number of
11 people here.

12 MR. WETMORE: Yes, Your Honor. We have some
13 of the victims from the Noisy Oyster in Charleston
14 County. I know they would like to address the Court.

15 THE COURT: All right. Whoever wants to
16 speak, move down towards the center there and identify
17 yourself for the record.

18 THE WITNESS: I'm Barbara Carter. I just
19 want to express that the events of May 25th have greatly
20 affected me, emotionally, physically, financially, and I
21 very much would like them to go to jail forever. And
22 they're obviously dangerous, and I think they're just a
23 threat and they should spend the rest of their life in
24 jail.

25 Thank you.

1 THE COURT: All right. Your name?

2 THE WITNESS: My name is Justin Carter. I
3 was a victim from the Noisy Oyster. It's been a long
4 couple of years. We spent a lot of time trying to get
5 over what happened, trying to get better with each other,
6 and just trying to put this behind us. We've looked
7 forward to this day for a long time, knowing that these
8 gentlemen, these guys, are going to go to jail and
9 hopefully do so for a long time.

10 We have had no control over this situation
11 since day one, and it's probably -- excuse me -- the only
12 thing that justice is going to be served is probably the
13 most gratifying thing that we've heard in a long time and
14 a step to putting this behind us and hope that they go
15 away for a while, sir.

16 Thank you.

17 THE COURT: Anyone else?

18 THE WITNESS: Your Honor, I'm Chandler
19 Carter, Barbara's father. The last almost three years
20 have been extraordinarily difficult for us, very painful,
21 very hard to deal with, as you can tell. We ask that you
22 do what is right for the victims and society as a whole.
23 We would personally like to see sentencing at the max and
24 consecutive so that my daughter, who is still going to
25 counselling and her boyfriend, who is still going to

1 counselling, can continue with the rest of their lives
2 and once again feel safe at night and not suffer from the
3 emotional and mental anguish of these events, and for
4 that we ask you to do what is the best thing to do for
5 the victims and for society as a whole. Thank you.

6 THE COURT: Thank you. Anyone else from the
7 state?

8 MR. WETMORE: I don't believe so, Judge. I
9 appreciate it.

10 THE COURT: All right. Well, let's go with
11 Mr. Mulligan first.

12 MR. SAVAGE: Judge, Mr. Mulligan has asked
13 that he be given an opportunity to respond to the
14 statements of the victims. He wanted to provide them his
15 thoughts about what he admits that he did.

16 THE COURT: He wants to respond to what?

17 MR. SAVAGE: He would like to respond to the
18 victims and tell the victims how he feels about --

19 THE COURT: He'll get a chance. I'm just
20 giving you the opportunity to speak first and then him
21 and then we'll go down the line.

22 MR. SAVAGE: Judge, we provided you with a
23 packet of information containing some background
24 information about Bryan, along with some 33 character
25 witnesses of people who know him best, ranging from

1 relatives to former teachers to pastors to employees.
2 Bryan was born in Charleston on the 7th day of January
3 1989. He graduated by obtaining a GED through Job Corps
4 in Bamberg where he attended from March of 2007 to
5 February of 2008.

6 He has always been gainfully employed in a
7 number of different types of occupations, most of them
8 blue color labor situations, including Pegasus Steel.
9 He's been a warehouse technician in the past for
10 Pearlstein Distributors and for Coca-Cola as well.

11 I think the most interesting job that he's
12 had and reflects on the inconsistency of his upbringing
13 and his youth and what he could be, had he chosen not to
14 be what he chose to be on these occasions, is contained
15 in the package under D-2.

16 There is a letter there from restoration,
17 Marion Morton, the owner of Restoration Home Care Sitting
18 Service. I've been in business for nine years serving
19 the Charleston and surrounding areas. I manage the
20 restoration ministry conference along with my staff.
21 Bryan has been an excellent employee, has always
22 exhibited the highest degree of professionalism in the
23 time he's been with me. He's also meticulous,
24 disciplined as well as caring and compassionate. I found
25 Bryan to be an honest individual who truly has his

1 family's best interest at heart.

2 Bryan still works with Restoration Home Care
3 Sitting Service three nights out of the week, along with
4 his full-time day job, and still maintains his family
5 life, and he goes on. What speaks louder than his letter
6 are these photographs of this accused, convicted,
7 admitted armed robber, rapist, and kidnapper.

8 In caring for the elderly of Charleston
9 County, these pictures speak volumes as to what
10 compassion he could have had, and did have, except on the
11 occasions which bring us here today.

12 There are a number of people here on his
13 behalf. Not to excuse his conduct in any way, nor does
14 he seek to excuse his conduct, but to explain to you that
15 these acts, these continuous series of acts, were an
16 aberration from the Bryan Mulligan that they raised and
17 that they had in the family.

18 First of all, his wife is present. She
19 chooses not to speak, but if you would raise your hand.
20 His mother is present. His mother works at the Medical
21 University of South Carolina and had not determined
22 whether or not she wanted to speak when I last spoke with
23 her, yes, no? You have a letter you want me to provide
24 to the Court? Would you like to do that in writing or
25 read it? Now is your chance.

1 THE WITNESS: Thank you. Thank you, Your
2 Honor, for letting me have this time to talk. I would
3 like the victims to know that we, as a family are sorry
4 for all your pain and suffering. We are sorry for
5 whatever happened to you, but we ask you to give us
6 another chance, and I ask you, Your Honor, to please have
7 mercy on my son and all involved.

8 And my family and I want you to know whatever
9 the sentence is today, you are sentencing a whole family.
10 My son's two daughters, ages four and nine months, his
11 wife, his pastor, myself, his father and his brother and
12 his sister, his grandmother and his great-grandmother,
13 his grandfather, his mother-in-law, his sister and
14 brother-in-law, his nieces and nephews and cousins and
15 friends. So I beg you, please have mercy today.

16 Have mercy in knowing that you are not just
17 sentencing my son and the others involved, but with all
18 of them, you are sentencing a whole family. In closing I
19 would like you to know that it doesn't take a whole lot
20 of time to know that you have done some things wrong.

21 It doesn't take 30 years, 20, 15, or even 10
22 years to know that you have messed up badly. And my son,
23 along with our family, knows that he has to be punished,
24 but I beg you, please, show mercy in his punishment.
25 Please allow him to come back to us, to his daughters,

1 most of all, and I beg you, please, not to let them spend
2 most of their lives in the correctional institution going
3 back and forth visiting their father.

4 Please allow them to have a life with him
5 outside of prison and we, the family, would like to
6 thank -- really, we thank you for showing mercy today,
7 and we will continue to pray for all who are involved,
8 and thank you and may God bless you.

9 MR. SAVAGE: Judge, that is the mother of
10 Bryan, and I must say that this family has come united on
11 dozens of occasions to my office. I also did want to
12 point out that Bryan knows that the Court is not
13 sentencing his family. Bryan accepts responsibility for
14 sentencing his family, his own family, based on the
15 actions which he alleged to have conducted himself in, so
16 you will hear from Bryan, but I want his family to know
17 that it's not the Court that is sentencing them, it's
18 their own child that's sentencing them.

19 The dad is present. I'm not sure he wants to
20 say anything, and I know the grandmother, who I have
21 known for many, many, many years, is extremely troubled
22 by Bryan's actions, and I know she wants to say to the
23 Court her love for her grandson.

24 THE WITNESS: Yes, I do. Your Honor, my name
25 is Lenora Fulton. I'm Bryan's grandmother. I'm so

1 distraught about this. I had two heart attacks since
2 this happened. It -- what has happened is I just -- I
3 can't believe that Bryan did this. I just can't. In my
4 heart, I feel in my heart that, they -- he's a good
5 child. We never had one problem out of Bryan, not one
6 time, not even in school.

7 I mean, he never give us no problems. In the
8 nighttime, sometime he used to work at the place in Mount
9 Pleasant, the beer distributor place, and he be working
10 every night, so I don't know. How could he did this?
11 How could he did this? I mean, every night this boy is
12 working. He worked all the time, and I am so sorry for
13 the victims who had to go through this, but, Your Honor,
14 in my heart, I feel in my heart, I can't help the way I
15 feel.

16 My grandson is a good young man, very smart
17 young man, and just like I always tell him, tell him,
18 telling the truth sometimes, it will set you free.
19 Telling the truth, you'll be free in your heart. You'll
20 be free in your spirit when you tell the truth. I have
21 always taught him, Bryan, I don't care what happens, you
22 hold on to the truth and don't lie, and Bryan -- you can
23 look at him.

24 Bryan was raised very well. I've been a
25 minister for 14 years, but what I have learned, I instill

1 it in my grandson. He's a good young man. He's a good
2 father. And, I mean, if he ain't doing landscaping in
3 the day, landscaping, cleaning people's yards, helping
4 out older people, he's a good boy, and if he did this,
5 this is very surprising to me.

6 He's a good child. He's a good young man. I
7 mean, I know y'all say all grandmothers would feel this
8 way, but I can tell you this, in the name of Jesus,
9 that's a good child there. I partly raised him. I
10 remember when he come out of his mother's womb. He's a
11 good boy.

12 MR. SAVAGE: Thank you, Mrs. Fulton. I think
13 Bryan can appreciate the harm to his own family, the type
14 of harm that has been caused to the victim's families as
15 well.

16 Your Honor, there are a number of other
17 people who are here on Bryan's behalf to show their
18 support and -- do you want to say something? Briefly,
19 please.

20 THE WITNESS: I'm not going to take much of
21 y'all's time, but on my behalf, I want to apologize for
22 anything that may have happened. Knowing that my
23 children's father could have done these things hurts me,
24 because I didn't grow up with a father and I don't want
25 them to, so I'm asking the judge to please show mercy,

1 knowing that he has gone through punishment for what he
2 have done or what he was involved in, so on behalf of
3 myself and my daughters, I want to apologize for Bryan.

4 MR. SAVAGE: Judge, there are a number of
5 other people in the community that wanted to speak. Most
6 of them wrote you a letter. You have those letters
7 available. I think it's time for Bryan to address the
8 people he has so grievously harmed.

9 THE COURT: Do you want to say anything?

10 THE DEFENDANT: Yes, sir. To the victims,
11 I'm sorry. And I was young, I made some mistakes and I
12 apologize. I'm sorry for all the pain and trouble I
13 caused you and I ask for your forgiveness. That's all.

14 MR. SAVAGE: Bryan was released on bond, and
15 since he was out on bond, he's led a productive life. He
16 worked. He took care of his family. He's regretted the
17 actions that he's had since he turned himself in. His
18 grandmother talks about telling the truth.

19 Well, he surrendered to authorities, admitted
20 his misconduct, and has been living with the terrible
21 acts that he committed, series of acts, ever since. We
22 would ask the Court to show some mercy on Mr. Mulligan.

23 THE COURT: All right. Let's go down next to
24 Mr. Monroe. Mr. Stratos, do you want to say anything?

25 MR. STRATOS: Your Honor, in joining

1 Mr. Savage in representing to the Court that the time
2 period spent with each one of these kids would reveal to
3 the person experiencing that visit that there is truly an
4 aberration of the conduct they had exhibited prior to
5 your seeing them here today. The acts that they engaged
6 in are just so against the grain of everything that they
7 were taught to be. As Mr. Savage is saying, my client
8 comes from a decent family of hardworking people, of
9 educated people.

10 He's an educated child. His mother tells me
11 he had the ability in his youth to be in the gifted and
12 talented programs. One thing this case really reminds me
13 of is on the ride to court today, there is a thing my
14 father would always tell us, I'm sure your father said
15 the same thing, and that is life is short, and when you
16 and I look back on our lives, I think most of us would
17 look back and think of the days after we turned 18 and we
18 experienced some of the first things for the first times
19 in our lives, and the realization that we have today,
20 that these young men are not going to experience those
21 things.

22 We know they're going to be in jail for a
23 substantial period of time, and not only a substantial
24 period of time, but the time which each one of them would
25 probably agree was probably the essence of our existence

1 and it defined us, and their definition for the rest of
2 their lives will be here today, unfortunately, for each
3 one of them.

4 I'm going to plead for the mercy of my
5 client, because that's all I can do. I know him better
6 than you know him, because I've had the opportunity to
7 spend so much more time with him, just as Mr. Savage has
8 had time to spend with his client, and we know for a
9 fact, I think we believe if we had to bet everything
10 we've earned till this day, obviously, Mr. Savage would
11 have more on the line, but if we put everything on the
12 line we would bet that these young men would not ever
13 engage in the activities they engaged in, and my client
14 is remorseful.

15 He's been in prison and we would ask for the
16 credit of 37 months. His 20th birthday, his 21st
17 birthday, his 22nd birthday have all been spent behind
18 bars, time that he will never, ever, get back.

19 Now, I also want to bring out to the Court's
20 attention that there were promises made from the onset to
21 my client. Nothing that we're going to have any
22 negotiated settlement, but promises made that cooperation
23 would render him, or grant him, certain leniency with
24 this Court, and I think you've been apprised of the fact
25 of his cooperation in this matter, and it would go even

1 further with the solicitor, because he met with him, and
2 in order to give this family closure, my client should be
3 credited with that because here today, all the parties
4 are together.

5 I also want to bring out the fact that there
6 are two individuals here that are involved in the most
7 heinous of the crime here, and that is the sexual assault
8 upon that little girl, and that shakes the grounds of all
9 of us that stand on it, but I'm here to tell you, that
10 albeit they were involved in that, they weren't the
11 perpetrators, and they should be given credit for that.

12 And hand of one, hand of all, they were
13 involved to the degree that they were there, they kept --
14 you know, they kept the enforcement, but in watching the
15 video, the individual was in the room was not them, and I
16 would ask the Court to consider that as well when we're
17 talking about how much of the youth of this child we're
18 going to have extract in order to impose retribution for
19 the things that he's done.

20 Meet some of his family members. Would y'all
21 please step forward? His grandmother is here. His
22 father is here. Would you like to address the Court?

23 THE WITNESS: My name is Lorraine White, and
24 I raised Josh from when he was two years old, between
25 going back and forth to me and his mother, and I taught

1 him the values of right and wrong, so whatever he did, I
2 don't know what happened, but something went very wrong.

3 And he's not violent like an animal or
4 anything like that, but he's not. He's a loving child,
5 and like I said, I don't know what went wrong, but please
6 have mercy on them, all three of them, Lord, and I
7 apologize to you people for what happened, but Jesus said
8 forgive, and forgive me love and give people loving
9 because if you were in that situation, would you want
10 them to take your life away? Thank you.

11 THE WITNESS: My name is Chanel Germany, and
12 Joshua is my brother. My brother is not a bad person.
13 This has destroyed my family. My kids don't know their
14 uncle. They know him from meeting in jail. My brother
15 made a mistake. I don't know what happened, but please
16 don't take my brother away.

17 THE COURT: All right. Anyone else? Is that
18 it? All right.

19 MR. STRATOS: Mr. Monroe, would you like to
20 say anything?

21 THE DEFENDANT: Yes, sir.

22 DEFENDANT MONROE: Yes, sir.

23 THE COURT: Go ahead.

24 DEFENDANT MONROE: To the victims, I do truly
25 apologize, and my sincerest apologies to your family as

1 well as the other parties involved in these series of
2 crimes, because as a young man I know that each and every
3 one of y'all who have been in our lives, to bring you
4 here today is just a drastic measure, and to know that
5 what's about to occur is just hard.

6 I mean, it's hard to y'all and it's hard to
7 us because we put ourselves in the situation as well as
8 y'all, who are here for us, and I just want to appreciate
9 each and every one who has said something on all of our
10 behalfs, and Your Honor, I do just want to say I
11 apologize for having to even be present in a place like
12 this, to even have been involved in any of these things
13 that occurred.

14 I do accept responsibility for my actions,
15 and I just ask upon all three of us as well as myself
16 that you have mercy.

17 THE COURT: All right. Let's hear then from
18 Mr. Larkin.

19 MR. HASELDEN: Thank you, Judge. Corey
20 Larkin is 20 years old today. He was 18 when these
21 events occurred. He has a large family, multiple of them
22 are here today. He is one of seven kids here in the
23 Charleston County, born and raised. At 14 years old he
24 was turned out by his mother and just sent to an
25 orphanage for two months. With time his grandmother came

1 in and rescued him from that where he lived with her up
2 until just before these incidents occurred. He did at
3 the end of his ninth grade year in North Charleston
4 realize that he was not destined for scholarship and
5 enrolled in Job Corps in Bamberg to learn a trade as a
6 forklift operator. He had hoped to be licensed in that
7 but was sent home through no fault of his own.

8 There were threats made to people from
9 Charleston there, Job Corps, and he was sent home. He
10 did gain some employment working in various restaurants
11 as a cashier and things of that nature, Your Honor. He
12 was a church-going young man, with his grandmother at
13 Joshua Baptist church, and pastors continued to meet with
14 him at the jail to help provide some strength and
15 guidance to him in this.

16 He is, a, you know, very remorseful young
17 man. He's ashamed and embarrassed, not so much for the
18 fact that he's going to do a substantial amount of time
19 in jail, but for the hurt and pain that he has put the
20 victims through.

21 I know it's, you know, three defendants, same
22 crimes, you know, it's easy to feed them out of the same
23 pot, but there is a distinction up here. The
24 codefendants on the left and the right would not be here
25 had it not been for the statement. They would not have

1 been apprehended. The truth has been talked about in
2 here, and there was one truthful and honest statement
3 given and it led to the arrest of the other people here.

4 He does have aspirations for when he gets to
5 the other side of this. He wants to be a family man,
6 wants to have a family, wants to help to try and pay back
7 some of the love his grandmother has given him. She's
8 been a guiding influence in his life since he came to
9 live with her and while in prison as well.

10 It's shock. I remember Ms. Runey sent a
11 letter to present to you, and she has had a lot longer
12 relationship with this young man than I have, but to echo
13 some of the things she said, it's shocking when I got to
14 meet him the first time. I was expecting -- I don't know
15 what I was expecting, but I wasn't expecting a polite,
16 humble, respectful young man the first day I met him.

17 I was expecting something totally different,
18 and I think because of that, he recognizes, you know,
19 what his actions have done, what they have done, the pain
20 they have caused to the victims. That is a lot of what
21 he wanted to talk about was his regret and remorse for
22 what he's put them through.

23 He has no children, hopes to one day, Your
24 Honor. Like I said, he did give an honest and accurate
25 statement to police. Detective Krametz, Detective Watson

1 both speak of his statement being the one that, you know,
2 was truthful, honest, helped apprehend some of the other
3 codefendants, some of which were more culpable of some of
4 the offenses than he is.

5 With that, Your Honor, we would ask that you
6 take into consideration his cooperation, his
7 truthfulness, and honesty when speaking with these
8 officers to gain closure to this case for them and these
9 victims, and that can be done multiple ways, lesser time,
10 a split sentence, a suspended sentence because we hope
11 you take that into account when rendering center, Your
12 Honor.

13 THE COURT: Would you like to say anything,
14 Mr. Larkin?

15 DEFENDANT LARKIN: Yes, sir. First I would
16 like to apologize to my family, the victims and their
17 families for the pain and grief I have caused. I was
18 young and under the wrong influence at the time, but now
19 sitting in the county for 30 months it taught me a
20 valuable lesson. I got a chance to find God and find
21 myself, and I do actually be at the mercy, myself and all
22 three, of this. I do apologize for all these charges.

23 THE COURT: All right. Okay. Well, I've
24 heard a lot today. This is -- I've been doing this job
25 for going on, I guess, about eight years now, and,

1 without a doubt, the worst part of the job is putting
2 young people in prison. I remember when I first started,
3 I had lunch with an older colleague, and I said, What is
4 the worst part of the job?

5 He didn't bat an eye. He said, Sending young
6 people to prison, because, you know, nothing good comes
7 out of it, not one good thing comes out of sending
8 somebody to prison, especially when you do it for a long
9 period of time, because there is a lot of loss that goes
10 on, and in a case like this, we haven't had any loss of
11 actual life in that nobody died on this, but there is a
12 lot of loss on a lot of different levels.

13 The victims, first and foremost, lost the
14 innocence of the life that they had going on, and their
15 lives are never going to be the same. Families on both
16 sides, their lives are never going to be the same, and
17 these fellows are going off to a place where I assure you
18 nobody in this room wants to go to, and their lives are
19 going to be forever changed.

20 There is just not anything good that comes
21 out of this at this point, but it's my job, it's what I
22 signed on for, and this one gentleman said, You got to be
23 the god that figures out what's good for the victims, for
24 the defendants, and for society.

25 And so that is what I do. I sit and listen,

1 listen to all this, try to figure it all out, because I
2 assure you there is not a little secret book that you get
3 when you become a judge hat says, Here is all the right
4 answers.

5 They didn't teach this in law school.
6 Everybody has been keeping it a secret. They only give
7 this to judges it's got the right answers in it, and it's
8 in the back. That book does not exist. You take that
9 information and then you try to do what you think is best
10 for everybody involved in the case.

11 So here is the way I see it: You know, when
12 you hear a case like this, your first thought is
13 everybody goes to jail for the rest of your life. That
14 what you deserve. That is the easy thing to do, and,
15 under the facts and circumstances of this case, is what
16 you easily deserve. I very seldom hear anything that is
17 quite as awful.

18 If you took aside the criminal sexual conduct
19 component of it, it's bad, and you go, what is the matter
20 with young people that they do this? And, it would be
21 bad enough, you deserve a lot of years, just for the
22 robberies and what that does to the victims and they no
23 longer feel safe and you have to protect society from
24 people that are out there doing violent crimes.

25 And then you throw in that component of it,

1 which just takes it to a different level, and you just
2 go, There is something wrong with you people to do
3 something like that.

4 And so there's that component of it. That's
5 a big factor. You weigh that against what would happen
6 if these guys did not come in here and plead, and this is
7 just a part of the job where I guess I just have to ask
8 you to trust me a little bit on having done this for a
9 while and having some experience to go, if these guys
10 don't come in here and plead guilty, and they do so
11 ultimately, because they think it's in their best
12 interest, they think, well, if I come before the judge,
13 I've talked with my lawyers. This is bad. If I go to
14 trial, there's no question, I'm going to go to jail
15 probably for the rest of my life, but if I go and plead
16 guilty and take responsibility, try to make amends, try
17 to own up to it, apologize to the victims, show remorse,
18 show I got family support, maybe I won't go to jail for
19 the rest of my life, and so that's an expectation of what
20 happens when you come in and plead guilty, and you got
21 people that plead guilty and cooperate with the police
22 sooner than other people and you take that into
23 consideration.

24 What happens if you go to trial? Well,
25 realistically, on a case like this, you probably got

1 three separate trials that you got to go through, and as
2 awful as it has been so far and as bad as today is, you
3 know, you're talking about probably a week long, close to
4 a week long trial on every single one of these guys,
5 separately, and we would have to live through it.

6 And, you know, these lawyers, they're good
7 people. I know them. They try, but their job is to
8 represent their client, and to represent their client,
9 they have to protect their client's rights, challenge
10 every single bit of evidence that comes in, cross-examine
11 victims, make sure your identifications are right,
12 challenge the admissibility of evidence, and let's just
13 assume that every single thing gets done right in a trial
14 and the state gets in all of their evidence and -- I will
15 never forget a trial I had just before Christmas a couple
16 years ago where there were two employees of a fast food
17 restaurant, not far from where we're talking about here.

18 They had an inside job. They staged an armed
19 robbery with another guy. Two people were involved with
20 it. They came forward, like these two guys did,
21 cooperated against the other guy who didn't go to trial,
22 said he did it, they had photographic evidence, they had
23 everything you could do. Jury wasn't out 30 minutes and
24 they said not guilty. I still don't know how that
25 happened, so you go, well, you just never know what

1 happens when you go before a jury.

2 Most of the time, I'm telling you, 99 percent
3 of the time, juries do the right thing, but you never
4 know. Pleading guilty takes that element of uncertainty
5 off the table, because if a jury would not see it and
6 they get hung up on one little strange thing that nobody
7 sees, these guys walk.

8 So there is an expectation of, well, we
9 cooperate, we want to throw ourselves on the mercy of the
10 Court, and please don't give us the rest of our lives in
11 prison and all I can say is that while I know that you
12 would like to have them go to jail for the rest of their
13 lives in prison, the facts could easily do that and I
14 could see if they went to trial and got convicted they
15 get it, they take that uncertainty of trial off, and you
16 don't have to go through a trial, and it's just not a
17 pleasant thing to be the victim of a crime and testify on
18 facts like this. That's off the table. That's a big
19 factor.

20 The two things stand out to me about the
21 case, one is the heinous nature of what these guys did
22 and was involved in, but it's also equal troubling to me
23 is the fact that we're on the opposite end of the
24 spectrum. You have three guys who don't have any
25 criminal record. That is so unusual in a case where you

1 have violent crimes and stuff like this, where they have
2 no prior record that I can't even begin to express to you
3 how, one, unusual it is; and, two, how unexplainable it
4 is, because normally you have a juvenile record.

5 You have priors and they build up. Very few
6 people jump into the deep end of the pool like these guys
7 did, with no warning shots off to anybody else that, Hey,
8 I got a troubled character. You got no criminal record.
9 You seem to be doing pretty well, you know, jobs -- I
10 don't know what went on that night. That explanation
11 about how this all got concocted hasn't come out, but it
12 is totally baffling that it is out of character for these
13 fellows to be involved in a crime like this and have no
14 prior record. That is an extraordinarily unusual factor.

15 And so when you're sentencing people who have
16 never been in court before, you take that into
17 consideration as well, and probably one of the biggest
18 things is you go, Well, these are very, very, very young
19 people, especially when you consider how old they were at
20 the time.

21 So we go, well, do we throw them away or do
22 we give them a chance to pay their debt to society and
23 come out the other end and have some chance at a life as
24 well? Because they're going to end up, you know, as part
25 of our society. Either they'll spend it behind bars or

1 they'll spend part of it behind bars and come back out on
2 the other end of it or some combination in between there,
3 so that is kind of what the calculus is that I'm trying
4 having to go through in the sentence.

5 The lawyers came back and talked to me a
6 little bit before and reminded me -- it's been a long
7 time since I had taken the plea, several months ago since
8 Monroe and Martin, refreshed me on it, and I told them, I
9 said, Well, you know, I have sentenced a number of people
10 to life without parole. I have yet to sentence somebody
11 to consecutive sentences where it wasn't asked for by the
12 state. I'll listen to the facts. I won't make any
13 promises. I want to hear what these folks have to say.
14 I want to hear what the victims have to say. I want to
15 hear the package, but I won't make any promises on what
16 I'll do, but none of these guys should expect that they
17 will walk out of here with 30 years, but to the extent
18 that it is anything less than that, well, I take into
19 consideration that Mr. Monroe and Mr. Larkin were first
20 on board with cooperating and that, you know, had some,
21 you know, factor in making the state's investigation
22 easier, which then they were able to present Mulligan
23 with this is it, pal. We're going to go to trial and
24 we're going to convict you and we're going to ask for a
25 lot more time than you get if you went to plead guilty.

1 So, you know, maybe they deserve a little bit
2 of credit for this.

3 MR. SAVAGE: Your Honor, may I be heard on
4 that?

5 THE COURT: Yeah.

6 MR. SAVAGE: Mr. Mulligan turned himself in.

7 THE COURT: I understand.

8 MR. SAVAGE: He was not caught red handed
9 like his codefendant was with the guns.

10 THE COURT: I figured that, and I knew you
11 would jump on that. There was not a full confession.

12 MR. SAVAGE: He did not delay the plea from
13 October. The reason the plea was delayed is because --

14 THE COURT: You were waiting on DNA. I
15 understand that. But there was a sequence of events in
16 which people cooperated and investigations get easier. I
17 got that. The thing that I do -- that is troublesome to
18 me, and again it comes back to this criminal sexual
19 conduct, there is a big differentiator between the three
20 perpetrators here, and everything points to Mulligan
21 being involved as an active participant in that awful
22 event and these other two basically were, you know, not
23 involved in a physical sense, but still involved in the
24 eyes of the law under the hand of one, hand of all
25 theory.

1 That is still troublesome to me. I explained
2 to him here in the preliminary part of the plea about how
3 the sexually violent predator program works. Each of
4 these fellows have pleas to criminal sexual conduct.
5 They don't rubber stamp those programs. They look at
6 them hard, they look at them long, and each of these
7 fellows, because of pleas to the criminal sexual conduct,
8 will be looked at hard when they come out on the end, but
9 I suspect Mr. Mulligan is going to get a lot harder of a
10 look and will very likely get a recommendation for
11 prosecution of that.

12 Whether or not these other two do because
13 they weren't actively involved in the physical aspect of
14 the rape, I suspect that that is -- for somebody else to
15 decide down the road, but it wouldn't surprise me if they
16 didn't since they were not involved in that.

17 So that is something to keep in mind, that,
18 you know, it's possible Mr. Mulligan may spend more time
19 beyond whatever I sentence him to off the streets if he
20 is not able to convince these folks that he's made
21 efforts toward rehabilitation in prison and that he's not
22 likely to reoffend to a sexually violent crime.

23 But that is for another day. The bottom line
24 is there is no question in my mind he deserves every day
25 of the 30 years I'm giving him. I'll give Mr. Monroe and

1 Mr. Larkin a little bit of a break, and I will give them
2 25 years on their charges. They will all run concurrent
3 and you'll get credit for any time you've already served.
4 Good luck to you.

5 MR. HILTON: Your Honor, if I may put on the
6 record, for Mr. Monroe's case, he has not pled to his
7 Dorchester County charges yesterday, and that has been
8 through no fault of Mr. Monroe. That is for scheduling
9 issues. My intention is to have him transported to
10 Dorchester County where he will then plead and we will
11 recommend the concurrent sentence to those charges.

12 THE COURT: On Mulligan, his indictment for
13 attempted armed robbery is 20 years. His assault and
14 battery of a high and aggravated nature is ten years, and
15 everything else was thirty. And on Monroe, his attempted
16 armed robbery was 20 years. Everything else was 25. And
17 then on Larkin, his ABHAN was 10 years, and everything
18 else -- he had an attempted armed robbery of 20 years,
19 and everything else was 25.

20 - - -

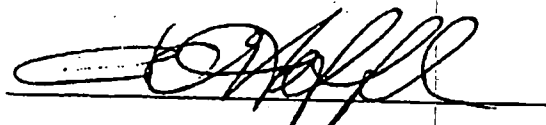
21 (Whereupon, the proceedings were concluded.)

22 - - -
23
24
25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth 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 evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 3rd of February 2011.

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

September 20, 2011


Circuit Court Reporter

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

BRYAN LEON MULLIGAN, 344736)
 Applicant,)

2011-CP-18-1416

v.)

APPLICATION FOR
 POST-CONVICTION RELIEF

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

FILED - RECORD
 2011 JUL 20 AM 9:
 CLERK OF COURT
 DORCHESTER COUNTY

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant 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 applicant was convicted.

1. Place of detention: McCormick Correctional Institution, 386 Redemption Way
McCormick, SC 29899
2. Name and location of Court which imposed sentence: Dorchester County General Sessions
Court, 201 Johnston Street, St. George, South Carolina, 29477
3. Name(s) of co-defendant(s) (if any) : Corey Nelson Larkin and Joshua Andrew Monroe.
4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) 2008-GS-18-1107 - Assault and Battery of a High and Aggravated Nature.
 - (b) 2008-GS-18-1108 - Kidnapping
 - (c) 2008-GS-18-1109 - Poss. Of a Weapon during the Commission of a Violent Crime
 - (d) 2008-GS-18-1112 - Armed Robbery
 - (e) 2008-GS-18-1113 - Kidnapping
 - (f) 2008-GS-18-1120 - Kidnapping
 - (g) 2008-GS-18-1121 - Armed Robbery

5. The date upon which sentence was imposed and the terms of the sentence:

- (a) February 3, 2010 - 10 years concurrent
- (b) February 3, 2010 - 30 years concurrent
- (c) Nol prossed per plea
- (d) February 3, 2010 - 30 years concurrent
- (e) February 3, 2010 - 30 years concurrent
- (f) February 3, 2010 - 30 years concurrent
- (g) February 3, 2010 - 30 years concurrent

6. Check whether a finding of guilty was made

- (a) after a plea of guilty YES
- (b) after a plea of not guilty
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence? NO

8. If you answered "yes" to (7), list

(a) the name of each Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

(b) the result in each such Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) A direct appeal from a guilty plea would have been pointless. Collateral review through Post-Conviction Relief presents the first appropriate forum to raise the issues addressed herein.

(b) N/A

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) The Applicant received Ineffective Assistance of Counsel prior and during his plea in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

(b) The Applicant's Plea of Guilty was not Voluntary and Intelligently entered. The judgments and sentences against the Applicant were entered in violation of his right to due process of law and effective assistance of counsel.

(c) _____

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

(a) Trial Counsel failed to give the Applicant adequate legal advise prior to the Applicant's guilty plea proceeding. Trial counsel failed to advise the Applicant of the potential consequences of delaying the acceptance of a plea bargain until after the discovery process was completed.

(b) Counsel failed to provide client effective assistance of counsel prior to and during his guilty plea proceeding. The Applicant's ability to optimize the benefits available to him through plea negotiations with the State were irreparably prejudiced by counsel's failure to sufficiently advise the Applicant of the likely consequences of delaying his acceptance of a plea bargain until after all the discovery process was completed.

(c)

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

- (a) any petitions in a State Court under South Carolina law? n/a
- (b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? n/a
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? n/a
- (d) any other petitions, motions or applications in this or any other Court? n/a

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. n/a
- ii. n/a
- iii. n/a
- iv. n/a

(b) the name and location of the Court in which each was filed:

- i. n/a
- ii. n/a
- iii. n/a
- iv. n/a

(c) the disposition thereof:

- i. n/a
- ii. n/a
- iii. n/a
- iv. n/a

(d) the date of each such disposition:

- i. n/a
- ii. n/a
- iii. n/a

iv. n/a

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

i. n/a

ii. n/a

iii. n/a

iv. n/a

14. Has any ground set forth in (10) been previously presented to this or any other Court, State of 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. n/a

ii. n/a

iii. n/a

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

i. n/a

ii. n/a

iii. n/a

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) Collateral review through PCR represents the first appropriate opportunity the Applicant has had to raise these issues.

(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? NO

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No

(e) preparation, presentation or consideration of any petitions, motions, or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Andrew J. Savage, III, Esquire, P. O. Box 1002, Charleston, SC 29402.
- ii. n/a
- iii. Andrew J. Savage, III, Esquire, P. O. Box 1002, Charleston, SC 29402.

(b) the proceedings at which each such attorney represented you:

- i. arraignment and plea
- ii.
- iii. guilty plea proceeding

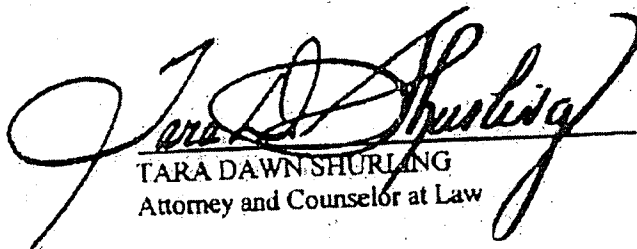
19. State clearly the relief you seek in filing this application. Vacation of judgments and sentences. Applicant seeks a new trial.

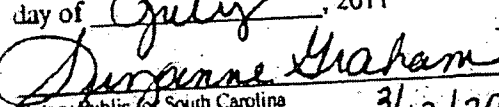
20. Are you now under sentence from any other court that you have not challenged? No

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

VERIFICATION

I, Tara Dawn Shurling, retained counsel for the Applicant, 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.


TARA DAWN SHURLING
Attorney and Counselor at Law

SWORN to and subscribed before me this 5th
day of July, 2011

Notary Public for South Carolina
My Commission Expires: 3/12/2013

FILED - RECORDED
2011 JUL 20 PM 3:01
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

BRYAN LEON MULLIGAN, 344736

☒ Applicant,

v.

The State Of South Carolina

☐ Respondent.

IN THE COURT OF COMMON PLEAS

CASE NO.

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

2011-CP-18-1416

FILED - RECORDED
2011 JUL 20 AM 9:47
DORCHESTER COUNTY

Plaintiff's Attorney:
Tara Dawn Shurling, Bar No. 5099
Address:
3614 Landmark Drive Suite D
Columbia, South Carolina 29204
phone: 803-738-8622 fax: 803-738-1600
e-mail: other:

Defendant's Attorney:
Robert Comey, Bar No.
Address:
P.O. Box 11549 Columbia, South Carolina
phone: 803-734-3752 fax:
e-mail: other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion:

Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Applicant / ☐ Respondent

Date submitted 7/5/11

SECTION III: Motion Fee

☐ PAID - AMOUNT:

- ☒ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☒ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE _____

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED - AMOUNT DUE: _____

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2011-CP-18-1416

Bryan Leon Mulligan, #344736,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

(Appointment of Counsel Requested)

In response to the post-conviction relief application filed July 20, 2011, the Respondent would show this Court:

I.

The Applicant is currently incarcerated with the South Carolina Department of Corrections pursuant to the Dorchester County Clerk of Court's orders of commitment. Applicant was true bill indicted at the December 2008 term of the Dorchester County Grand Jury for Assault and Battery of a High and Aggravated Nature ("ABHAN"), Possession of a Weapon During the Commission of a Violent Crime, two (2) counts of Armed Robbery and three (3) counts of Kidnapping (2008-GS-18-1107/1108/1109/1112/1113/1120/1121). He was represented by Andrew J. Savage, Esquire, on the charges. On February 3, 2010, Applicant appeared before the Honorable Roger Young where he pled guilty to and was sentenced on the charges as follows:

- ABHAN: ten (10) years imprisonment;
- Three (3) counts of Kidnapping: thirty (30) years imprisonment on each charge;

- Two (2) counts of Armed Robbery: thirty (30) years imprisonment on each charge.

All sentences were to run concurrently. The Possession of a Weapon charge was *nolle prossed* as part of the plea. Applicant did not appeal his plea or sentences.

Attached herewith and incorporated herein by reference are the records of the Dorchester 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.

II.

In his application for post-conviction relief the Applicant alleges he is being held in custody unlawfully for the following reason:

1. Ineffective Assistance of Counsel prior and during plea in violation of Sixth and Fourteenth Amendments, as well as Article 1, Section 14 of the SC Constitution.
 - a. "Trial counsel failed to give the Applicant adequate legal advice prior to the guilty plea proceeding. Trial counsel failed to advise the Applicant of the potential consequences of delaying the acceptance of a plea bargain until after the discovery process was complete."
2. Involuntary Guilty Plea
 - a. "The Applicant's ability to optimize the benefits available to him through plea negotiations with the State were irreparable prejudiced by counsel's failure to sufficiently advise the Applicant of the likely consequences of delaying his acceptance of a plea bargain until after all the discovery process was completed."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

Applicant has alleged he received ineffective assistance of plea counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his 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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he

would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the

Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

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

ROBERT D. CORNEY
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

October 18, 20 11.

STATE OF SOUTH CAROLINA)

COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

2011-CP-18-1416

BRYAN LEON MULLIGAN, 344736.)

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:

Tara Dawn Shurling, Esquire
 Law Office of Tara Dawn Shurling, PA
 3614 Landmark Drive, Ste. D
 Columbia, SC 29204

DATED this 18th day of October, 2011.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

BRYAN LEON MULLIGAN, 344736)
Applicant,)

2011-CP-18-1416

v.)

**AMENDED APPLICATION FOR
POST-CONVICTION RELIEF**

THE STATE OF SOUTH CAROLINA,)
Respondent.)

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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant 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 applicant was convicted.

1. Place of detention: McCormick Correctional Institution, 386 Redemption Way
McCormick, SC 29899
2. Name and location of Court which imposed sentence: Dorchester County General Sessions
Court, 201 Johnston Street, St. George, South Carolina, 29477
3. Name(s) of co-defendant(s) (if any): Corey Nelson Larkin and Joshua Andrew Monroe.
4. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

5.

DORCHESTER COUNTY INDICTMENTS

- (a) 2008-GS-18-1108 - Kidnapping
- (b) 2008-GS-18-1121- Armed Robbery.
- (c) 2008-GS-18-1120- Kidnapping
- (d) 2008-GS-18-1112 - Armed Robbery
- (e) 2008-GS-18-1113 - Kidnapping

- (f) 2008-GS-18-1107- Assault and battery of high and aggravated nature

CHARLESTON COUNTY INDICTMENTS

- (g) 2008-GS-10-8072 - Kidnapping
 (h) 2008-GS-10-8073- Attempted armed robbery.
 (i) 2008-GS-10-8126- Armed robbery.
 (j) 2008-GS-10-8127 - Kidnapping
 (k) 2008-GS-10-8135 - Criminal Sexual Conduct 1st degree
 (l) 2008-GS-10-8137 - Kidnapping
 (m) 2008-GS-10-8141 - Armed Robbery

NOLLE PROSSED INDICTMENTS

- (n) 2008-GS-10-8074 - Burglary 2nd Degree
 (o) 2008-GS-10-8075 - Possession of a Weapon during the Commission of a Violent Crime
 (p) 2008-GS-10-8124- Possession of a Weapon during the Commission of a Violent Crime
 (q) 2008-GS-10-8125 - Burglary 2nd Degree
 (r) 2008-GS-10-8128 - Kidnapping
 (s) 2008-GS-10-8136 - Possession of a Weapon during the Commission of a Violent Crime
 (t) 2008-GS-10-8138 - Kidnapping
 (u) 2008-GS-10-8139 - Armed Robbery
 (v) 2008-GS-10-8140 - Armed Robbery
 (w) 2008-GS-10-8142 - Burglary 2nd Degree

5. The date upon which sentence was imposed and the terms of the sentence:

DORCHESTER COUNTY INDICTMENTS:¹

- (a) February 3, 2010 - 30 years concurrent
 (b) February 3, 2010 - 30 years concurrent
 (c) February 3, 2010 - 30 years concurrent
 (d) February 3, 2010 - 30 years concurrent
 (e) February 3, 2010 - 30 years concurrent
 (f) February 3, 2010 - 10 years concurrent

CHARLESTON COUNTY INDICTMENTS:

- (g) February 3, 2010 - 30 years concurrent
 (h) February 3, 2010 - 20 years concurrent
 (i) February 3, 2010 - 30 years concurrent

¹ Original Application filed on July 20, 2011 only listed the seven Dorchester County charges pleaded to on this date. The transcription of the February 3, 2011 plea lists *only* these seven (7) charges on its cover. To further complicate matter, the SCDC summary sheet for this Applicant list seven (7) charges and sentences as well. All thirteen charges listed herein from Dorchester and Charleston County were pleaded to before the Honorable Roger M. Young, Sr., on February 3, 2011 and concurrent sentences were imposed on all counts.

- (j) February 3, 2010 - 30 years concurrent
- (k) February 3, 2010 - 30 years concurrent
- (l) February 3, 2010 - 30 years concurrent
- (m) February 3, 2010 - 30 years concurrent

6. Check whether a finding of guilty was made

- (a) after a plea of guilty YES
- (b) after a plea of not guilty
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence? NO

8. If you answered "yes" to (7), list

(a) the name of each Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

(b) the result in each such Court to which you appealed:

i. N/A

ii. N/A

iii. N/A

(c) the date of each such result:

i. N/A

ii. N/A

iii. N/A

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. N/A

ii. N/A

iii. N/A

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) A direct appeal from a guilty plea would have been pointless. Collateral review through Post-Conviction Relief presents the first appropriate forum to raise the issues addressed herein.

(b) N/A

(c) N/A

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) The Applicant received Ineffective Assistance of Counsel prior and during his plea in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.

(b) The Applicant's Plea of Guilty was not Voluntary and Intelligently entered. The judgments and sentences against the Applicant were entered in violation of his right to due process of law and effective assistance of counsel.

(c) _____

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

(a) Trial Counsel failed to give the Applicant adequate legal advise prior to the Applicant's guilty plea proceeding. Trial counsel failed to advise the Applicant of the potential consequences of delaying cooperating with the State and/or delaying the acceptance of a plea bargain until after the discovery process was completed.

(b) Counsel failed to provide client effective assistance of counsel prior to and during his guilty plea proceeding. The Applicant's ability to optimize the benefits available to him through plea negotiations with the State were irreparably prejudiced by counsel's failure to sufficiently advise the Applicant of the likely consequences of delaying cooperation with the State and/or his acceptance of a plea bargain until after all the discovery process was completed.

(c) Trial Counsel was ineffective for neglecting to adequately explain the law of accomplice liability to the Applicant as it applied to the charge of Criminal Sexual Conduct, 1st Degree.

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

(a) any petitions in a State Court under South Carolina law? n/a

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief? n/a

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? n/a

(d) any other petitions, motions or applications in this or any other Court? n/a

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. n/a

ii. n/a

iii. n/a

iv. n/a

(b) the name and location of the Court in which each was filed:

i. n/a

ii. n/a

iii. n/a

iv. n/a

(c) the disposition thereof:

i. n/a

ii. n/a

iii. n/a

iv. n/a

(d) the date of each such disposition:

i. n/a

ii. n/a

iii. n/a

iv. n/a

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

i. n/a

ii. n/a

iii. n/a

iv. n/a

14. Has any ground set forth in (10) been previously presented to this or any other Court, State of 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. n/a

ii. n/a

iii. n/a

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

i. n/a

ii. n/a

iii. n/a

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) Collateral review through PCR represents the first appropriate opportunity the Applicant has had to raise these issues. PCR on Dorchester and Charleston charges filed together in Dorchester since pleas to all charges were entered at the same time in Dorchester County on February 3, 2011.

(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? NO

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No

(e) preparation, presentation or consideration of any petitions, motions, or applications with respect to this conviction, which you filed?

18. If you answered "yes" to one or more parts of (17), list:

(a) the name and address of each attorney who represented you:

- i. Andrew J. Savage, III, Esquire, P. O. Box 1002, Charleston, SC 29402.
- ii. n/a
- iii. Andrew J. Savage, III, Esquire, P. O. Box 1002, Charleston, SC 29402.

(b) the proceedings at which each such attorney represented you:

- i. arraignment and plea
- ii.
- iii. guilty plea proceeding

19. State clearly the relief you seek in filing this application. Vacation of judgments and sentences. Applicant seeks a new trial.

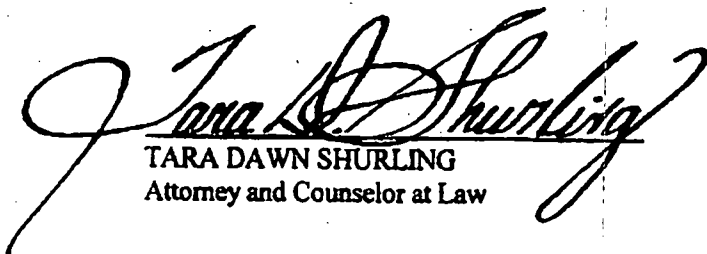
20. Are you now under sentence from any other court that you have not challenged? No

STATE OF SOUTH CAROLINA

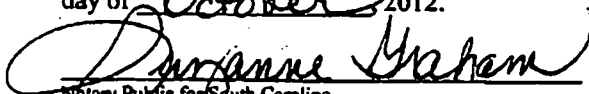
VERIFICATION

COUNTY OF DORCHESTER

I, Tara Dawn Shurling, retained counsel for the Applicant, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing amended 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.


TARA DAWN SHURLING
Attorney and Counselor at Law

SWORN to and subscribed before me this 29th
day of October 2012.


Notary Public for South Carolina
My Commission Expires: 3/12/2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

BRYAN LEON MULLIGAN, 344736)
 Applicant,)

2011-CP-18-1416

v.)

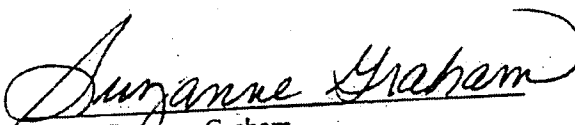
CERTIFICATE OF SERVICE

THE STATE OF SOUTH CAROLINA,)
 Respondent.)

The undersigned hereby certifies that a true copy of the Amended Post-Conviction Relief Application in the above matter has been served on opposing counsel this the 29th day of October, 2012, by email and mailing one (1) copy in a stamped envelope properly addressed to:

Megan Harrigan
 Assistant Attorney General
 Office of the Attorney General
 P. O. Box 11549
 Columbia, SC 29211

The original having been sent to the Dorchester County Clerk of Court for filing.


 Suzanne Graham
 Paralegal to Tara Dawn Shurling

SWORN TO BEFORE ME this 29th day of
 October, 2012.

 (L.S.)
 Notary Public for South Carolina

My Commission Expires: Jan. 16, 2017

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF DORCHESTER 2011-CP-18-1416

BRYAN LEON MULLIGAN)

Applicant,)

-vs-)

STATE OF SOUTH CAROLINA,)

Respondent.)

TRANSCRIPT OF RECORD

November 1, 2012

St. George, South Carolina

B E F O R E:

The Honorable Carmen T. Mullen, Judge.

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

Tara Dawn Shurling, Esquire
Attorney for the Applicant

Salley Elliott, Esquire
Megan Harrigan, Esquire
Attorney for the Respondent

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1	I N D E X				
2	WITNESS	DIRECT	CROSS	REDIRECT	RECROSS
3	Andrew Savage	6	67	76	--
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E X H I B I T S

NO.	DESCRIPTION	ID.	EV.
Respondent's 1	Providency form	68	68
Respondent's 2	Letter	71	71
Respondent's 3	Motion for continuance	73	73
Respondent's 4	Letter	74	74
Petitioner's 3	E-mails	39	39
Petitioner's 4	E-mails	39	39

1 (November 1, 2012.)

2 MS. HARRIGAN: May it please the Court: The
3 next matter is Bryan Mulligan versus State of South
4 Carolina, docket number 2011-CP-18-1416.
5 Applicant was indicted by the Dorchester County grand
6 jury for three counts of kidnapping, two counts of armed
7 robbery, and assault and battery of a high and aggravated
8 nature.

9 Applicant was also indicted by the Charleston
10 County grand jury for three counts of kidnapping, two
11 counts of armed robbery, one count of attempted armed
12 robbery, and one count of criminal sexual conduct in the
13 first degree.

14 All charges stem from a string of armed
15 robberies in the North Charleston area, spanning both
16 Dorchester and Charleston Counties. Andrew J. Savage,
17 III represented the Applicant on all charges.

18 On February 2, 2010, the Applicant appeared
19 before the Honorable Roger M. Young, Sr. in Charleston
20 County. Applicant waived any jurisdictional issues
21 regarding the Dorchester County charges and pled guilty
22 as indicted to all 13 charges. Ten additional charges
23 dismissed pursuant to a plea agreement with the State.

24 Judge Young sentenced the Applicant to an
25 aggregate term of 30 years on all charges. Applicant did

1 not appeal his guilty plea or sentence; however,
2 applicant did file a timely application for
3 post-conviction relief on July 20, 2011 originally only
4 challenging the six Dorchester County charges.

5 The State made its return on October 18,
6 2011. On October 30 of 2012, applicant filed an amended
7 application through his counsel, Tara Shurling,
8 challenging the additional seven Charleston County
9 charges. Applicant's specific allegations for
10 post-conviction relief are that counsel was ineffective
11 for the following reasons: Trial counsel failed to give
12 applicant adequate legal advice prior to applicant's
13 guilty plea proceeding; by failing to advise applicant of
14 the potential consequences of delaying cooperation with
15 the State and/or delaying acceptance of a plea bargain
16 until after the discovery process is complete. The
17 Applicant alleges that this negatively impacted the
18 ability to optimize the benefits available through plea
19 negotiations with the State.

20 The second allegation is that trial counsel
21 was ineffective -- or plea counsel, excuse me, was
22 ineffective for any neglecting to adequately explain law
23 of accomplice liability to the Applicant as it applied to
24 the charge of criminal sexual conduct in the first
25 degree.

1 THE COURT: All right. Ms. Shurling?

2 MS. SHURLING: Thank you, Your Honor. At
3 this time, I would call Mr. Any Savage, who was trial
4 counsel in this case, as our first witness.

5 THE COURT: Please come forward to be sworn,
6 Mr. Savage.

7 Good morning. Would you state your name for
8 the record.

9 THE WITNESS: Good morning. I'm Andrew
10 Savage.

11 ANDREW SAVAGE,
12 having been first duly sworn,
13 was examined and testified as follows:

14 DIRECT EXAMINATION

15 BY MS. SHURLING:

16 Q. In the interest of full disclosure, as I have
17 advised my client and his family, you and I have known
18 one another for quite some time, haven't we, Mr. Savage?

19 A. Actually, we have. I think my client called me to
20 ask me to represent him at this proceeding, and we
21 probably referred them to you.

22 Q. I actually do recall a referral was from your
23 office. Do you recall the facts and circumstances
24 surrounding your representation of Bryan Mulligan?

25 A. I do.

1 Q. And there were a lot of charges in this case, but
2 is it fair to say that they all basically stemmed from
3 four scenarios, four basic crimes with multiple charges
4 arising out of each scenario?

5 A. Yeah. It was a well publicized case involving the
6 robbery of various restaurants and entertainment
7 locations. There was an arrest made of the codefendants
8 that led to the arrest of our client. For a long time
9 the federal government expressed an interest, federal
10 crime task force, on indicting them under federal
11 statutes which delayed, I guess, the State from
12 processing the case in the beginning, and we did not seek
13 a bond in Bryan's case on the theory that if we got him
14 out on the state charges the feds were going to indict
15 him and then the family would have to double dip as far
16 as the bonding companies go.

17 Q. Sure. This case was somewhat unusual in that
18 there were multiple very serious felonies involved with a
19 client with no prior criminal record, correct?

20 A. That is correct.

21 Q. And despite the fact that there -- there were two
22 codefendants involved in this case, correct?

23 A. That is correct.

24 Q. The crimes were sufficiently separated in time
25 that you had to be worried about the recidivist statute

1 in South Carolina being applied to this client, correct?

2 A. Life without parole was a potential option.

3 Q. Clearly you were dealing with charges in each
4 incident that would have been most serious offenses, and
5 he could have been the subject of an effort to give him
6 life without parole, based on --

7 A. That was, I'm sure -- I don't have it in front of
8 me, but that was certainly outlined in the original
9 letter of representation at the commencement of our
10 representation.

11 Q. I understand. I bring that up only to note that
12 in the guilty plea proceeding, at one point it indicates
13 that they are agreeing to dismiss quite a few other
14 charges but that that was the only agreement on the
15 table.

16 MS. SHURLING: Your Honor, that's on page 17
17 of the plea record.

18 THE COURT: And I'm looking at this, and I
19 have read the plea sheets and it looks like the only
20 recommendation of the State was concurrent sentences, is
21 my understanding; is that correct, Ms. Shurling?

22 MS. SHURLING: At least initially the
23 indication on page 17 of the record is that the only
24 concession was that they were dropping quite a few
25 charges.

1 THE COURT: Okay.

2 BY MS. SHURLING:

3 Q. But, Mr. Savage, from the beginning, you were able
4 to negotiate this as a cross county deal, correct? You
5 were able --

6 A. I don't think that was from the beginning. We
7 worked mostly with Burns Wetmore in Charleston County.
8 We thought that would drive the case. Russell Hilton was
9 representing Dorchester County. The main contacts were
10 always with Charleston. That was the driving force. We
11 theorized that if we could get the case resolved in
12 Charleston, Dorchester would fall in line.

13 To be clear, at the time of my representation of
14 Bryan, there were two separate plea offers to him, both
15 came from the Charleston solicitor's office in writing,
16 which you should have.

17 Q. I do. Let me back up for a second. I think I was
18 somewhat less than articulate in the way I phrased that
19 question. Imposition of a life without parole sentence
20 and the fact that you had most serious charges arising
21 out of two different counties early on, you would have
22 had as one of your targeted goals to work out a deal that
23 would encompass both counties' charges to be resolved at
24 one time; is that fair to say?

25 A. Yeah. I think what we -- I mean, the intent would

1 have been -- in a case like this would be to make sure
2 they don't get double hammered, so I can't say
3 specifically that there -- you know, that I did something
4 in furtherance of that, but certainly that was a theory.
5 If we worked out a plea, that would obviously be a
6 theory.

7 Q. I understand.

8 A. I also don't overemphasize that LWOP, because if
9 he had received a sentence of 100 or 90 years, there is
10 really no difference, and I think we took the threat of
11 the prosecutor to file an LWOP notice -- it just didn't
12 mean a whole lot to me.

13 It's really a prosecutorial tool that's toothless
14 in terms of a threat. If Bryan had been given 30 years,
15 which was the kidnapping, armed robbery, CSC sentence, as
16 a class A felony, all of them, and certainly if he had
17 gone to trial, we would risk the very real danger of
18 consecutive sentences because of the nature of the crimes
19 and the community outrage and the high publicity of the
20 case.

21 So I can't really say. Although I kept Bryan
22 informed, I never really took LWOP as something that --
23 it really didn't have a whole lot of effect on how we
24 handled the case.

25 Q. Okay. As a practical matter, though, your client

1 was in his early 20's.

2 A. Yes.

3 Q. And with a 30-year sentence, he would be in his
4 early 50's when he would complete a 30-year sentence, if
5 you were able to get it.

6 A. We discussed that with both the client, his
7 family, and with the prosecutor.

8 Q. Certainly. I'll move on. I'm really not trying
9 to be tricky. I'm trying to lay some groundwork here.

10 A. You know, I like Bryan. I feel like he got
11 shafted. I don't mind saying that. I have great respect
12 for him and his family.

13 Q. Now, as you noted, your file reflects that there
14 were two written plea offers from the Charleston County
15 solicitor's office, correct?

16 A. Yes.

17 Q. And the initial plea offer was made on October 19,
18 2010, and then after some back and forth, there was a
19 second one on November 24th, 2010.

20 A. The Court needs to know about this, because the
21 Court needs to know why I think he got shafted.

22 THE COURT: And that was my question, and I
23 apologize. I was getting ready to interrupt you and ask
24 you why you think he got shafted.

25 MS. SHURLING: I was setting it up.

1 THE WITNESS: You know, the rule the Supreme
2 Court has issued in terms of when plea offers are made is
3 two years down the road. A plea offer was made, and we
4 were given less than 30 days to act on it. The Supreme
5 Court also has said, through Judge Toal's order, that no
6 plea offer should be made until the discovery process is
7 complete.

8 Bryan Mulligan was charged with being the
9 perpetrator engaged in criminal sexual conduct with the
10 victim. Not a witness to that, but he was charged with
11 being the perpetrator.

12 Seven samples of DNA were taken from the
13 crime scene, seven. Two years later, when that plea
14 offer was given to us, despite four written motions for
15 that DNA result, that had not been provided. Now, why is
16 that important?

17 Number one: The two codefendants said he was
18 the perpetrator. They anticipated testifying against
19 him. If the DNA result had come back and it was one of
20 their DNAs, obviously, the cross-examination of them
21 would have been huge.

22 Two: Almost every judge I've been in front
23 of in which there has been an accomplice liability
24 theory, the perpetrator themselves gets hammered more at
25 sentencing than the codefendants.

1 BY MS. SHURLING:

2 Q. And that is, in fact, a fairly universal things in
3 criminal trials, isn't it, Mr. Savage?

4 A. Material or evidence of that material is
5 essential, one, for the trial; two, for mitigation of the
6 plea.

7 THE COURT: Why didn't you get the DNA?

8 THE WITNESS: I'm not in a position to answer
9 that. I can tell you that it became a huge issue as you
10 can see from the motions we filed and the correspondence
11 that you had on Bryan's behalf. It was an outrage. The
12 initial plea was withdrawn because it wasn't accepted
13 within the time frame in which the solicitor dictated
14 that it should be, which was a very -- I don't know
15 whether it was a week or two weeks or three weeks, but
16 mind you, now, this is two years after the arrest, and we
17 were given a very short fuse on the plea.

18 If you go back through the records I've
19 provided you with, we met with Bryan when he was
20 incarcerated at least three or four times a month. When
21 he got out, the people you see behind you, the family, we
22 met with them on a regular monthly basis to go over the
23 evidence. I explained over and over and over again with
24 him how critical this DNA was.

25 Bryan didn't determine he was going to plead

1 guilty until November, as is documented in the notes that
2 I gave you. He did that out of the presence of his
3 family, who had appended every meeting and, in fact,
4 attended the meeting in which we had a very
5 heart-to-heart discussion about what happened.

6 Bryan always insisted to me that he was not
7 the perpetrator, and I believe him.

8 THE COURT: Of the CSC?

9 THE WITNESS: Yes.

10 THE COURT: Okay.

11 THE WITNESS: There was really no reason for
12 him to lie about that, because he admitted culpable
13 conduct that would end up in life imprisonment, but he
14 was very particular about the CSC, that he was not the
15 perpetrator. I thought that was essential for the
16 reasons I've said to cross-examine the codefendants and
17 also for mitigation at sentencing.

18 Now, why I do think he got screwed? Because
19 I think Judge Young, at the urging of the solicitor, made
20 him pay five years for exercising his right to review the
21 discovery, and Judge Young effectively says that in the
22 transcript.

23 BY MS. SHURLING:

24 Q. He does indeed.

25 A. And I urged Bryan to file an appeal, which is

1 highly unusual, as you know, in today's world in state
2 court, from a guilty plea because I thought the
3 sentencing reasoning, which Judge Young put in the
4 record, was wrong, and it was wrong for a legal reason;
5 that is, Bryan was held and given five years extra for
6 exercising his right at his attorney's urging to wait and
7 review all the facts of the case that the State had to
8 present, and he got five years extra for that.

9 THE COURT: Mr. Savage, I need to back up for
10 a second. What did each of the codefendants get and was
11 it an offer from the solicitor's office in exchange for
12 the two of them testifying against your client?

13 THE WITNESS: No, you would think that. I
14 think a close analysis of the record would be they were
15 all offered the exact same thing.

16 THE COURT: Okay.

17 THE WITNESS: There was no recommendation
18 from the State for any specific sentence or any
19 differentiations in the sentence. Judge Young singularly
20 made that distinction.

21 THE COURT: Were these guilty pleas given
22 contemporaneously? Were all these done in the same term
23 of court or did some go first --

24 THE WITNESS: No, all three went on a
25 separate occasion. Mr. Mulligan entered his guilty plea

1 the day that all three were sentenced. I don't remember
2 the order. The two codefendants entered pleas at
3 different times, but, again, they weren't named as the
4 perpetrator of the CSC, so you know, they were in
5 different circumstances.

6 There was really no collusion in preparing
7 for the defense between the three attorneys that were
8 involved. Martha Kent represented one and --

9 THE COURT: Were all three charged with the
10 CSC first or just your client?

11 THE WITNESS: All three.

12 THE COURT: Did all three of them plead to
13 the CSC first under accomplice liability, under the hand
14 of one is the hand of all?

15 THE WITNESS: I believe so.

16 THE COURT: Was it clear at the time -- and I
17 will tell you, I have not read the entire transcript,
18 although I've read a good portion of it, it was clear to
19 Roger Young at the time that your client was not the
20 person under the DNA analysis that finally came out that
21 committed this CSC?

22 THE WITNESS: If you read what Young said, he
23 believed that Mulligan was the perpetrator. He could
24 have only gotten that through the solicitor's office, and
25 contrary to -- and I'm speaking about Judge Young, who I

1 have respect for, but Judge Young called the attorneys
2 back. I did not participate, as Bryan will tell you,
3 because I thought it was wrong. He wanted a prehearing,
4 back room explanation of the deal that I did not
5 participate.

6 And, clearly, as he says on the record, he
7 was mad at Bryan for not cooperating early on. He was
8 mad at him for being the perpetrator of the CSC, and you
9 can read it in the transcript. It's very unusual that he
10 would say that, but that's what he did. It's very clear
11 that Bryan got punished because Judge Young didn't like
12 the fact that he delayed the process.

13 Mind you, now, these codefendants had pled
14 months before, but what is incredible to me is this case
15 was delayed for years. We didn't get discovery for a
16 year, yet this judge has a burr in his saddle that within
17 two weeks we got to make this decision of what to do from
18 the State.

19 And, you know, nobody said, Why, State,
20 haven't you provided discovery in a timely fashion?

21 THE COURT: The solicitor never said to you
22 that SLED is dragging their feet or we've been pushing
23 them? That's what I want to know. I'm assuming at that
24 point it was sent to SLED, or was it done locally?

25 THE WITNESS: I turned over to the Attorney

1 General's office and to, I assume, Bryan's current
2 counsel --

3 MS. SHURLING: Your Honor, respectfully, I
4 appreciate all this information, but there is some
5 specific inquiries that I need to make, and we're getting
6 it out piecemeal. If I could ask Mr. Savage some
7 specific questions --

8 THE COURT: Certainly. I'm just trying to
9 understand it in its entirety, and I am happy if y'all
10 would like to take about a 20 minute break. I'll go read
11 the entire file, but you all know how PCR works. It was
12 handed to me five minutes ago, and, of course, I want to
13 do the right thing with all the right information, and
14 unless I ask the questions I need to ask to be able to
15 understand -- I still at this point don't know if there
16 was an offer at the time this man pled guilty and if it
17 was concurrent or not or if there was anything on the
18 table yet. In my mind, that's important for me to piece
19 it all together, and --

20 MS. SHURLING: Yes, Your Honor.

21 THE COURT: Forgive me, and as you know, I
22 have a lot of criminal experience prior to coming on the
23 bench, so these are all questions I have, and I don't
24 want to make, as Mr. Savage put it, any assumptions like
25 the assumption that you made that the idea of these being

1 separate incidents that could have triggered this for
2 LWOP, clearly that wasn't a concern of his and how he
3 dealt with this, and I don't want to make any of those
4 leaps or any of those assumptions.

5 You can go ahead and ask him whatever you
6 need to, and forgive me, but I may interrupt you, but you
7 can go back, certainly, but I need to understand in full
8 as well.

9 MS. SHURLING: Absolutely, Your Honor, and I
10 meant no disrespect.

11 THE COURT: Oh, I know.

12 MS. SHURLING: I thoroughly intend to develop
13 and ask the vast majority of what Your Honor has inquired
14 concerning would be developed sequentially in my
15 examination of Mr. Savage, and I think I can make it very
16 clear.

17 THE COURT: Okay. And I'm going to ask one
18 last question, and I'm going to let you go.

19 Mr. Savage, was it at the very end during the
20 sentencing that Judge Young explained what he was doing?

21 THE WITNESS: If you give me just a moment --

22 MS. SHURLING: Page 49 and 50, Your Honor.

23 THE COURT: Thank you. That's all I need to
24 know, and you're welcome to go ahead and ask him whatever
25 you need to. I know we need to make a full record.

1 BY MS. SHURLING:

2 Q. Thank you. Mr. Savage, you, in fact, engaged in a
3 very detailed pattern of written communication, not only
4 with the assistant solicitor, but with the head solicitor
5 for Charleston County, Scarlett Wilson, about the manner
6 in which discovery was being handled in this case, didn't
7 you?

8 A. Excuse me. The judge asked me where in the
9 sentencing transcript, and you said 49 and 50.

10 Q. Correct.

11 A. It's actually on page 51, where the Court said,
12 You were waiting on DNA, I understand that, but there was
13 a sequence in events in which people cooperated and
14 investigations get easier. I got that.

15 The thing that I do that's troublesome to me, and
16 again it comes back to this criminal sexual conduct,
17 there is a big differentiator between the three
18 perpetrators here, and everything points to Mulligan
19 being involved as an active participant in that awful
20 event and these other two were basically, you know, not
21 involved in a physical sense, but still involved in the
22 eyes of the law.

23 Q. I understand that. I was intending to give us a
24 starting place to go forward from where that colloquy
25 began.

1 THE COURT: And I apologize, but I do have to
2 ask one more question. At the time of this plea, did you
3 not have the DNA?

4 THE WITNESS: Yes, I did.

5 THE COURT: I did. And did the DNA clearly
6 show it was not your client?

7 THE WITNESS: The DNA was inconclusive.

8 THE COURT: Okay. So my question is, where
9 did Roger Young get the idea that your client was the
10 culpable person other than somebody else's?

11 THE WITNESS: My theory is it came from the
12 solicitor. I have no idea where else he could have
13 gotten it.

14 THE COURT: In conversations from previous
15 plea. All you can do is surmise.

16 THE WITNESS: Yeah, I have no idea, but he
17 was pretty certain about his position. You can see where
18 I tried to contest that.

19 THE COURT: And I apologize. I'm going to
20 ask one more question, and then, Ms. Shurling, I'm going
21 to let you go, I promise.

22 Was the victim able to identify which person
23 had sexually assaulted her?

24 THE WITNESS: No.

25 THE COURT: Okay. Thank you.

1 BY MS. SHURLING:

2 Q. Thank you. So we've resolved the fact that you,
3 after this admittedly ridiculous delay and all the
4 contention back and forth with the solicitor's office
5 about the discovery and getting the DNA, you did finally
6 have it before this plea proceeding?

7 A. Yeah. I think I provided you with 26 pages of
8 typewritten single spaced notes of conversations with the
9 assistant solicitor who was handling the case, Burns
10 Wetmore --

11 Q. You did, Mr. Savage. I'm just trying to get the
12 basics on the record. I don't want to have to read your
13 20 page summary for the Court.

14 A. I can summarize it, if you like.

15 Q. But, Mr. Savage, I'm not trying to be difficult.
16 May I establish for the record that you did finally have
17 the DNA results at the time of the plea?

18 A. That's what I told the judge.

19 Q. So my question is, when we go over to the part of
20 the plea that you were just referencing on page 51, is
21 when Judge Young says specifically, The thing that I do
22 that is troublesome to me, and, again, it comes back to
23 the criminal sexual conduct -- again, I'm starting on
24 line 17 -- he goes on beginning -- going through to about
25 line 20 and says, Everything points to Mulligan being

1 involved as an active participant in that awful event.

2 At that point, Mr. Savage, what, if any evidence,
3 other than the self-serving statements of the
4 codefendants, was there in light of the fact that the
5 DNA did not yield any direct evidence of Mr. Mulligan
6 being an active participant, the victim couldn't identify
7 him, was there any other direct evidence of Bryan
8 Mulligan being the active perpetrator of the CSC or was
9 the only evidence the self-serving statements of the
10 codefendants?

11 A. In context, the victim was not the only potential
12 identifier. If this were done in a group, there were a
13 number -- off the top of my head, I don't remember how
14 many alleged witnesses there would have been. There was
15 no testimony from anyone other than the two codefendants.

16 Q. Okay. So at the point when Judge Young makes it
17 clear that his primary focus is on this terrible
18 CSC event and that there is a big differentiator between
19 your client and the codefendants based on everything
20 pointing to your client as being the active participant
21 with regard to this CSC, at that juncture why didn't you
22 respond and remind His Honor on the record that there --
23 that everything pointing to your client was not accurate,
24 that there was no eyewitness identification of your
25 client in that regard, that there was no DNA connecting

1 your client as an active participant, and that really the
2 only thing they had were the self-serving statements of
3 the very people he was about to cut a break in
4 sentencing?

5 A. If you look on page 51, he says, so, you know,
6 maybe they deserve a little bit of credit, and he is
7 referring to the two codefendants. Will you read the
8 next line?

9 Q. Yes.

10 A. I said, Your Honor, may I be heard on that?
11 That's exactly what I was doing, was contesting the fact
12 of the differentiation between the three. I pointed out
13 that Mr. Mulligan had turned himself in while the other
14 two got caught, red-handed.

15 You see his response. I figured that. I knew you
16 would jump on that. There was not a full confession. I
17 started saying he did not delay the plea from October.
18 The reason the plea was delayed is because he cut me off.
19 You were waiting on DNA. I understand that because the
20 sequence of events -- it goes on and on and on.

21 The bottom line, he says, on the bottom of page
22 52, There is no question in my mind he deserves every day
23 of the 30 years.

24 You know, clearly he had made up his mind, and he
25 believed, for whatever reason, he didn't state, that

1 Bryan was the perpetrator.

2 The Court asked me, Where do you get that
3 information? There is nothing in that record that would
4 have provided that to him. The only explanation is that
5 it was a conversation with the solicitor or somebody from
6 the State.

7 Q. Well, let's back up for a moment. You mentioned
8 the fact that Judge Young had called for a pre-plea
9 conference at which he wanted to review what the terms of
10 the plea were going to be?

11 A. Yes.

12 Q. And that you elected not to participate in that --

13 A. Somebody from my office participated in that.

14 Q. I didn't understand that.

15 A. Breen Stevens participated in that.

16 Q. So you sent a representative from your office to
17 be present at that proceeding?

18 A. Yes. It was done immediately prior to the
19 hearing. I did not go back there, and I made it clear
20 that I didn't think it was appropriate to go back and
21 engage the judge in plea discussions.

22 On the other hand, I was concerned about whether
23 or not this was a straight up plea, and I was concerned
24 whether Judge Young would go outside the 30 years because
25 that would defeat the whole purpose of a plea.

1 There was absolutely no risk to Bryan Mulligan to
2 go to trial if there wasn't any cap on the potential
3 sentence, and my theory was, at his age, as young as he
4 was, at least 30 years or below, he would have a life
5 when he got out. If it was a triple consecutive of 30,
6 30, and 30, you know, he would die in prison.

7 Q. I understand, but backing up for a moment, your
8 earlier testimony you had indicated that this pre-plea
9 conference took place and that you did not think it was
10 proper?

11 A. Correct.

12 Q. And he had elected not to participate. It was not
13 clear from the earlier portion of your testimony that
14 there was someone from your office present.

15 A. All you got to do, Ms. Shurling, is to ask me the
16 question. I'll be glad to answer any questions you ask.

17 Q. That's all I wanted to clarify. So you have
18 indicated that you were of the opinion that Judge Young
19 got his information from somewhere, possibly from some
20 sort of discussion --

21 MS. HARRIGAN: Your Honor, the State would
22 object. This is all speculation, and prosecutorial
23 misconduct is not one of the grounds that was raised in
24 his application, so any speculation as to where Judge
25 Young got this information is not part of this

1 application and we would object to that line of
2 questioning. We didn't bring a prosecutor here to
3 testify as to what the conversations were.

4 THE COURT: Okay. Well, regardless, it
5 doesn't matter because whatever effect it had would
6 affect how, as his attorney, he acted, so regardless if
7 there is any prosecutorial misconduct, if he thinks
8 something happened or believed something happened, that
9 would affect his ability to represent the man.

10 So I think you can answer the question.

11 Overruled.

12 BY MS. SHURLING:

13 Q. In response to Mr. Savage's earlier testimony that
14 there had been a conference that he had elected not to
15 participate in, my concern was establishing for the
16 record whether not participating in that conference had
17 created an opportunity for the codefendants' lawyers to
18 have an audience with Judge Young in which he was not a
19 participant and wasn't present to hear what happened,
20 that concern is readily clarified by his additional
21 information that someone from his office was present.
22 That certainly takes care of that.

23 On line 14 of page 51, Andy, Mr. Savage, it says
24 you were waiting on DNA. To your knowledge, do you have
25 any reason to believe that Judge Young had been made

1 aware of the results of the DNA test? I mean, there is
2 nothing in the record about it, but do you have any
3 knowledge about Judge Young being made aware of the
4 results of the DNA test?

5 A. I have no idea. I have no idea what he knew or
6 didn't know. I know what he knew was an issue. I know
7 he knew that if the State didn't say the DNA came back
8 positive and it was Bryan Mulligan's, I mean, common
9 sense would tell if you they had that that that would
10 have been brought to hamper Bryan or whoever's DNA it
11 was.

12 Q. Certainly. My concern being his clear indication
13 that the big differentiator in his mind between the three
14 perpetrators is who was an active participant in the
15 CSC and his just flat-out claim on the record that
16 everything pointed to Mr. Mulligan, and I am trying to
17 clarify if you had any information, again, as to what
18 Judge Young knew and didn't know that led him to make
19 that statement in court.

20 A. Well, you know, what's not here and what I didn't
21 attend are the two pleas that were taken by Judge Young
22 months earlier from the codefendants, so, you know, I say
23 the solicitor had to provide the information.

24 Every one was to have the information. The
25 insinuation then was it was done surreptitiously. It

1 could very well have been done at the prior plea hearings
2 that Judge Young heard. I don't know whether that was
3 done or not, but Judge Young didn't receive all the
4 information about this case.

5 Q. I understand.

6 A. Unless it's reflected in this report.

7 THE COURT: It clearly states on page 19 --
8 he states he took one of the earlier codefendant's plea,
9 and he believes Judge Nicholson, Buddy Nicholson, took
10 the other one, so of course at that point he would have
11 had to hear a recitation of facts. He would have had to
12 go through his typical plea colloquy to be able to accept
13 those pleas.

14 THE WITNESS: I haven't read the whole thing,
15 but doesn't it say somewhere in here that -- it was
16 pretty wild at that sentencing hearing. I wouldn't be
17 surprised if he hammered home the fact that Bryan was the
18 one.

19 BY MS. SHURLING:

20 Q. Okay. Backing up to the subject of the plea
21 agreements and taking another look at Judge Young's
22 comments from the bench, on page 50, once again, he's
23 indicating that one of the things he's considering is the
24 fact that the other two codefendants were early on
25 cooperating with the State and indicates that their

1 cooperation was able to be used against your client to
2 get him to plea as opposed to going to trial.

3 Was that a fair summary of Judge Young's comments,
4 starting about the middle of page 50, and, of course,
5 culminating in the line you've already noted at the top
6 of line 51, so, you know, maybe they deserve a little bit
7 of credit for this.

8 A. Yeah.

9 Q. Okay.

10 A. They were also caught red-handed. Bryan wasn't,
11 and Bryan turned himself in, and Bryan, the day he turned
12 himself in, had a conversation with an FBI agent who was
13 interested in the case, yeah.

14 Q. I understand. Did you consider raising as an
15 objection at this juncture that it appeared that His
16 Honor was taking into consideration the fact that your
17 client had at least initially planned to exercise his
18 right to trial by jury and pointing out that there is
19 case law in South Carolina that that is a factor that a
20 judge is not to be -- not to hold against a defendant in
21 determining the appropriate penalty?

22 A. That wouldn't have been honest. The truth is that
23 we were seeking a acceptable resolution of this case from
24 day one.

25 Q. Okay.

1 A. We were prepared to go to trial if that became a
2 necessity, and, again, that necessity would have been
3 dictated by potential sentence. Why wouldn't you go to
4 trial if it was a LWOP? Why wouldn't you go to trial if
5 you were looking at 100 years? There was a downside to
6 that.

7 Q. Let's go back to the other pleas, because we
8 narrowed down a little while earlier, there were two plea
9 offers in November, I believe one on the 19th and one on
10 the 24th. You said the one on the 19th expired because
11 it had been given to you with a very short shelf life, as
12 I understand it; is that correct?

13 A. The solicitor's office took the position, and the
14 docket controlled, that they had been jerked around by a
15 number of attorneys who would not respond to a plea offer
16 in a reasonable period of time, and they gave a deadline
17 and they withdrew it. That was done by deputy solicitor,
18 not by the solicitor handling this case. When I found
19 that out, I contacted the elected solicitor. She
20 reversed that decision.

21 Q. And I believe that you voiced your opinion that
22 while they had had such problems with other attorneys
23 they certainly could not say that was true of you and
24 your practice; isn't that accurate?

25 A. Actually, I said I do not blame you referencing

1 your position, but my client is being punished by your
2 office and particularly by your deputy who apparently has
3 administrative problems with other counsel.

4 Beyond the discovery issue, I was offered an
5 agreement in this matter that had concluded on or about
6 the 29th, and that is just part of pages of
7 correspondence back and forth. They could get mad at me,
8 but they shouldn't take it out on Bryan.

9 THE COURT: Is this e-mail correspondence
10 back and front or letters, Mr. Savage?

11 THE WITNESS: E-mail correspondence that I
12 believe Ms. Shurling and the Attorney General has,
13 extensive.

14 THE COURT: You understand, also, y'all, that
15 that is not part of my packet, so I want to make sure
16 y'all know that.

17 THE WITNESS: Could I just summarize it? It
18 was two years down the road. A plea offer was made. It
19 was made with a very short fuse. I didn't have a
20 complete discovery.

21 We wanted to facilitate a resolution of this
22 case that Bryan would get home some day. I thought it
23 was very important for him to know whether the
24 DNA identified a third party and who that third party
25 was. If it was a codefendant, obviously, it would have a

1 major impact.

2 The solicitor's rule was that if you don't
3 accept a plea by a certain date the plea is off. They
4 sent another plea agreement, which included a gun charge.
5 The gun charge really had no effect on the time to be
6 served, but, atmospherically, it was a problem for me
7 because it would go into his SCDC record as being an
8 armed perpetrator, and atmospherically it would make a
9 difference, and I thought it was wrong.

10 But the plea, as it was finally carried out,
11 was as originally offered, and I had the DNA results.
12 What is troubling at the point of sentencing is not the
13 whole history for the solicitor, but that the judge took
14 that in consideration in giving him an extra five years.

15 I think the codefendants were actually
16 involved in more armed robberies and kidnappings than
17 Bryan was, significantly more, and Bryan got the longer
18 sentence.

19 Q. Okay. Mr. Savage, in the plea offers that were
20 extended to you in November, while the exact nature of
21 the plea is, I must confess, in my mind somewhat
22 convoluted, at one point the assistant solicitor does
23 indicate basically it's a 10 to 30 plea, correct?

24 A. Yes. My impression was initially that that was
25 the offer, based on the language he employed in his

1 e-mail.

2 Q. A moment's indulgence, Your Honor.

3 A. When I questioned him specifically about that --

4 MS. SHURLING: May I approach, Your Honor?

5 THE COURT: Please.

6 BY MS. SHURLING:

7 Q. This appears to be an e-mail from Mr. Wetmore on
8 10/19. Can you identify that?

9 MS. HARRIGAN: Your Honor, the State intended
10 to introduce both e-mail chains and correspondence, so if
11 you would like --

12 THE COURT: Any objection to me following
13 along as Mr. Savage is reading them out loud?

14 MS. SHURLING: Not at all. I intend,
15 actually, to move to introduce the entire chain of
16 e-mails, Your Honor.

17 MS. HARRIGAN: This is the chain from the
18 solicitor and the deputy solicitor.

19 THE COURT: Thank you.

20 BY MS. SHURLING:

21 Q. Mr. Savage, all I'm seeking to make clear at this
22 point is at the time of the plea offer on the 19th, as
23 evidenced by that e-mail, it was a 10- to 30-year plea
24 offer, correct?

25 A. Yes. The language is -- this became an issue, as

1 you'll see later. No LWOP -- I dropped a lot of
2 indictments basically 10 to 30 years. I'm not making a
3 recommendation within that range. It goes on to other
4 stuff, but the key words were I am not making a
5 recommendation within that range.

6 Well, I interpreted that to be that the sentence
7 would be somewhere between 10 and 30 as determined by the
8 Court. That's how I determined that.

9 Q. And were you -- let me -- were you subsequently
10 able to clarify with him at any point that that is, in
11 fact, what he meant as a sentence, of somewhere between
12 10 and 30 years?

13 A. I wrote to him to have clarity for communications
14 with the client, and he then said that's not what he met.

15 Q. He said it was not what he meant?

16 A. Correct.

17 Q. And what did he indicate at that time he did mean?

18 A. That it was a straight up plea. In other words,
19 he didn't mean it was consecutive or concurrent. That
20 was a Court decision.

21 Q. At that time, did you point out to him his earlier
22 e-mail transmission that appeared to indicate something
23 to the contrary?

24 A. Yeah. It should all be in here, documented by
25 e-mails. But anyway, yeah. Speaking without reference

1 to any particular notes, but that became an issue.
2 That's what resulted in the pretrial conference with the
3 judge because the only purpose I understood at that time
4 of the pretrial conference is whether the judge was going
5 to give an indication of whether it would go beyond the
6 30 years, and you see Judge Young's summary in the
7 transcript where he references the pretrial conference.

8 He talks about, you know, LWOP or -- I forget
9 exactly what he said, but a clear indication that he
10 would do concurrent sentences.

11 Q. And was it your understanding from your
12 communication with your associate who did attend that
13 conference that the assurances from Judge Young were such
14 that you felt comfortable that it would be a concurrent
15 sentence?

16 A. Yes.

17 Q. And did you convey that to your client?

18 A. Yes.

19 Q. Now --

20 A. And I conveyed most of this prior to that day in
21 writing to the client, and you should have copies of that
22 correspondence.

23 Q. Moving along, the second offer that is dated
24 November 24th, 2010 you said differed from the initial
25 offer in the addition of the weapons charge. Is that

1 correct?

2 A. Yeah. Let me -- do you have it -- it was in
3 writing. Do you have a copy of that?

4 MS. SHURLING: Yes. Let me -- Your Honor, at
5 this time, without objection further, I'll go ahead and
6 move into evidence --

7 THE COURT: Let's go ahead and mark it.

8 MS. HARRIGAN: No objection from the State.

9 BY MS. SHURLING:

10 Q. I'm handing up to you what is marked in
11 handwriting on the right-hand side first offer and second
12 offer from solicitor Burns Wetmore. Were these plea
13 offers extended to you in this format? Did this come to
14 you from him, written just this way, or is that your
15 documentation of what you had been offered orally?

16 A. I'm a little confused here. They're both dated
17 October 19th.

18 Q. I understand, but in the top right-hand corner it
19 indicates that one is the first offer and has the 19th
20 date, and then the other one, which is in typewriting, is
21 also dated the 19th, has in the top right corner that
22 it's the second offer, and it's dated to the 24th.

23 A. Yeah. That's obviously some ministerial mistake.
24 It looks like both these look the same to me.

25 Q. And do you still have the e-mail we were referring

1 to a moment ago that is dated October 19th in which he
2 indicates that this is basically a 10 to 30 year deal?

3 A. I think, now that I have a chance to look at it,
4 the document that's dated October 19th, Petitioner's
5 Exhibit No. 1, which says first offer, was the e-mail
6 that went from a solicitor to all three defense counsel.

7 Q. And my question is, on this e-mail, it says
8 attached is my offer.

9 A. Okay. That is something different. This isn't in
10 evidence.

11 Q. It's in the packet of e-mail correspondence that
12 Her Honor already has.

13 MS. HARRIGAN: This isn't in evidence at this
14 time, so the State would ask it that it be moved in if
15 he's going to testify to that.

16 MS. SHURLING: I'll be happy to make them a
17 plaintiff's exhibit. If I could clarify for the record,
18 I had my own packet of those e-mails. Mr. Savage
19 provided you a complete packet of all --

20 MS. HARRIGAN: He has in regards to both the
21 chains of the solicitor and assistant solicitor.

22 MS. SHURLING: In that case, Your Honor, if
23 he identifies those as that, I will be happy to move them
24 in as a Plaintiff's Exhibit, no problem.

25 MS. HARRIGAN: No objection.

1 THE COURT: Let's go ahead and mark them, and
2 if you don't mind, giving them back to me.

3 (Petitioner's Exhibit Nos. 3 and 4 were
4 marked for identification and admitted into evidence.)

5 BY MS. SHURLING:

6 Q. All I was trying to get straight in my mind is
7 that this e-mail communication from Assistant Solicitor
8 Wetmore is dated 10/19/2010, and it says attached is my
9 offer. Is the attachment that he's referring to the text
10 which follows that notation, or was this separate
11 document that we've discussed, which is dated October
12 19th and bears his name at the bottom, was that the
13 attachment to this e-mail? Do you know? If you don't
14 remember, it's fine.

15 A. I have no idea, but let me -- so the record is
16 clear, what is the exhibit number for the document you're
17 referring to?

18 Q. We now have the complete package of all of the
19 e-mails between you and Wetmore and all of the e-mails
20 between you and elected Solicitor Wilson marked as
21 Plaintiff's 3 and 4. Here they are.

22 A. So out of Petitioner's Exhibit 4, one page of
23 correspondence from the assistant solicitor that you've
24 referred to is page five of six, and that has on it that
25 there is an attachment. There are two potential

1 attachments, both dated 10/19, petitioner's Exhibit
2 No. 1, which is addressed to Martha Kent Jenkinson, Andy
3 Savage, and Milton Stratus. That provides a plea offer
4 to all three.

5 There is another e-mail dated Petitioner's
6 Exhibit -- or identified as Petitioner's Exhibit No. 2,
7 dated October 19, same day, that's only addressed to
8 Bryan Mulligan and Andy Savage, so I don't know whether 2
9 or 1, Petitioner's Exhibit, was attached to that e-mail.
10 I have no idea.

11 Q. I could move on to something else, because my
12 question is, or at least my starting place, is that on
13 the October 19th offer, which we've characterized as the
14 first offer, you said you were given a really short
15 period of time to respond to it. Do you recall?

16 A. Uh-huh.

17 Q. How long you were given to respond?

18 A. Yeah, but I'm not sure whether that was the first
19 offer or the second offer.

20 Q. That you were given the short time to respond on?

21 A. No. I'm not certain whether the documents that
22 you have called first offer was the first offer or the
23 second offer, but I can figure that out if you give me a
24 minute.

25 Q. Allow me to clarify. The documents as handed to

1 you are as they were given to me from your file. That's
2 not my handwriting in the top right-hand corner.

3 A. I have no idea.

4 Q. Okay.

5 A. I don't know your handwriting. If you want to
6 write a check, I'll be glad to identify.

7 Q. What I'm trying to figure out, we have what appear
8 to be these written plea offers but I don't see anywhere
9 on them any verbiage like is sometimes seen in plea
10 offers, like this offer is good till next Friday or if
11 your client doesn't take this by the 12th, we're putting
12 it on the docket for trial.

13 I mean, how did Assistant Solicitor Wetmore convey
14 to you the fact that there was a short leash, if you
15 will, on any of these offers?

16 A. It is pretty well expressed, and you have -- let's
17 see. If you look at Petitioner's Exhibit No. 3, on
18 November 24th, I wrote to Scarlett Wilson, and it says I
19 spoke to Burns late this afternoon regarding a case that
20 Burns and I see eye to eye. Your deputy, who has a
21 history with me in which civility was not his strongest
22 attribute, overruled your team captain's agreement with
23 me and forced a change in a plea offer late today.

24 The case is over 30 months old and a plea offer
25 was presented within the last month or so despite our

1 regular well-documented constant communication with your
2 office. I e-mailed you earlier today about this matter,
3 never to get it resolved. I have not heard back from
4 you. I understand you have since approved your deputy's
5 position without consideration of my input.

6 I'm more than disappointed in your apparent action
7 in not willing to hear my position for disregarding the
8 suggestion of your highly regarded, well-respected team
9 captain. That would be referencing Burns Wetmore. Your
10 deputy knows little about this case, he has never spoken
11 to me about it, and apparently wants to punish attorneys
12 and their clients who fail to immediately accept a plea
13 offer which is presented in the 29th or 30th month your
14 office has had the case yet before dispositive material
15 discovery is provided to the defense.

16 I request that you reread the chief judge order
17 regarding pleas and mandatory provision for full
18 discovery. Your office in particular your deputies
19 attempting to punish my client for exercising his
20 absolute right to discovery. You're asking to plead
21 guilty to a crime CSC without the benefit of receiving
22 the DNA lab analysis. DNA was taken at the time of the
23 crime. Again, your office has had this case for 30 plus
24 months.

25 The rest of it --

1 Q. Again, I am --

2 A. I don't understand.

3 Q. Maybe I'm being dense. I'm trying to figure out
4 where in that we're supposed to know how long you had to
5 respond to that plea offer.

6 THE COURT: What are the letters to Scarlett
7 Wilson? If you don't mind handing it out, Mr. Savage.
8 That's No. 3? If you'll look at this, Mr. Savage, I see
9 it's referenced -- it says, If you would look,
10 Ms. Wilson, at today's date, of this e-mail.

11 THE WITNESS: I am looking at page four of
12 Petitioner's Exhibit No. 3. I just didn't continue
13 reading sufficiently. I'll pick up where I say, You've
14 had this case for 30 plus months.

15 Have you censored anyone in your office for
16 their failure to follow up on our
17 two-and-one-half-year-old discovery motion? Have you
18 intervened with SLED to find out why the unreasonable
19 delay? Your office tried to pass this case off two years
20 ago to the feds and it was rejected, and I think
21 that's -- I failed to say that, but that has a lot of
22 oomph, because the feds were -- in the very beginning,
23 they were participants in the arrest and the debriefing
24 of the defendants, and they rejected the adoption of this
25 case, which was a very high profile case, which they

1 don't typically do.

2 As a defense attorney, knowing that, I said,
3 Hmmm, I wonder why they're doing that, and one of the
4 questions that arose in my mind was the truthfulness, the
5 credibility, the believability of the two codefendants
6 who were testifying against my client, and maybe his
7 forensic evidence would cement the fact they were lying
8 or whatever.

9 So that's just for background, and please be
10 assured if your office persists in bringing this case in
11 violation of chief judge's longstanding order regarding
12 plea agreements and discovery. I will use every means to
13 insure that disciplinary action is filed and processed
14 for all those responsible who act in contravention of a
15 standing Court order. If your office has some angst
16 about lawyers who jerk your office around by rejecting
17 plea offers, forcing trials, or accepting plea offers at
18 the last minute for whatever, good luck in taking action
19 against them.

20 I do not blame you, but I am not one of them,
21 and I challenge your office to show that my actions have
22 ever been that way. I resent that my client, and I'm
23 referring to Bryan, is being punished by your office, and
24 particularly by your deputy who apparently has
25 administrative problems with other counsel. Beyond the

1 discovery issue, I was offered an agreement in this
2 matter that had to be concluded on or before the 19th by
3 plea or trial. Please note today's date, which was the
4 29th, so I apparently had ten days to respond to that, at
5 the very best, for a happy Thanksgiving.

6 BY MS. SHURLING:

7 Q. I understand. And you managed to find and publish
8 the portion of an e-mail I had recalled and referenced
9 earlier where you reminded the solicitor's office that
10 your office was not, in fact, guilty of the conduct they
11 were claiming to be trying to avoid in terms of other
12 lawyers having jerked them around and so forth.

13 Thank you for that. My question is, at the time
14 of this plea proceeding, was it your understanding that
15 the plea offer that had been extended was still on the
16 table?

17 A. At the time of the sentencing hearing, everything
18 had been recharged. We went back to the original plea.
19 Once Scarlett got in, I had an opportunity to explain my
20 position. She then stopped everything, as the elected
21 solicitor. We went from a drop dead deadline of November
22 29th to the actual sentencing hearing, which was some two
23 or three months later, and in the meantime, I had an
24 opportunity to see or hear about -- I forget how it came
25 to my attention. I had the time to look at the

1 DNA result, consult with Bryan and his family, and
2 determine the best course of action for him.

3 Q. Okay.

4 A. So Scarlett intervened and brought us back to
5 where we should have been. Burns Wetmore and I never had
6 a disagreement. The deadline was imposed by an
7 administrative deputy who felt like I was interfering
8 with the administration of justice as he saw it.

9 Q. I understand. If you look at -- and do you have a
10 copy of the plea proceeding up there with you, the guilty
11 plea proceeding?

12 A. Yes.

13 Q. Okay. Looking at page 17, beginning at about line
14 eight, the Court is inquiring as to whether or not your
15 client was promised anything or threatened in any way to
16 get him to plead and whether or not there had been --
17 other than they have agreed that they're going to dismiss
18 some charges that were pending against you, nobody's
19 promised you anything about what your sentence would be,
20 and your client says, No, sir.

21 And my question is, where in this proceeding was
22 the Court made aware that there was an agreement that the
23 sentence in this case would be 10 to 30 years concurrent?

24 A. It was never that agreement. Maybe I slept
25 through my previous testimony, but I want to be clear,

1 the pretrial meeting, prehearing meeting with Judge
2 Young, in that meeting, as is reflected in his statement
3 on the record, is when he said that he had never
4 sentenced anybody to LWOP and gave a very clear, as he
5 says in his own words, that it was going to cap at 30.

6 The solicitor would not do that, despite repeated
7 requests.

8 Q. So despite the language in the earlier e-mail that
9 the offer was basically 10 to 30 --

10 A. That's our interpretation. I think that's a very
11 fair interpretation. That was not the interpretation of
12 the author.

13 Q. The author subsequently disputed --

14 A. Yeah, when I wrote back to him for clarification
15 to make sure what we were doing -- again, 30 years, long
16 time of his life after 30 years. There is no life after
17 60, 90, 120 years, so I wanted to be sure I wasn't
18 getting hooked into a consecutive sentence situation, and
19 that's the whole idea of why LWOP was not a threat to me.

20 Q. Let's move on and talk for a few minutes if we can
21 about the criminal sexual conduct charge and the
22 significance of the DNA evidence. Moving forward to the
23 plea proceeding, the State makes it clear that they don't
24 believe it really matters who actually physically
25 sexually assaulted the victim because they were all

1 present and participating and armed and watching each
2 other and egging the participant on.

3 Do you recall that?

4 A. Yes.

5 Q. Were you aware prior to this plea proceeding that
6 the State was prepared to go forward on a theory of
7 accomplice liability, the hand of one being the hand of
8 all, even on the charge of CSC first if this matter went
9 to trial?

10 A. I had numerous discussions with the client and the
11 family about accomplice liability. That is a trial,
12 trial issue. It's not a plea issue.

13 My experience has been that a plea -- at
14 sentencing, not at trial -- at sentencing that accomplice
15 liability plays a different position, and there is a
16 differentiation made by every judge I've been in front of
17 at sentencing on how the sentence is handled by a Court.

18 I cannot recall the case I was involved in where
19 the perpetrator and accomplice were given the same
20 sentence. Now, can it happen? Yes, it can happen, but
21 that's a trial issue, much more than it is a sentencing
22 issue.

23 Q. And I understand that from your earlier testimony,
24 but what I'm trying to get clarified here is you knew and
25 had made your client aware prior to the plea proceeding

1 that regardless of what the results of the DNA test were
2 that in terms of a guilt or innocence question, if the
3 case proceeded to trial, that the State was going to
4 proceed on accomplice liability even as it regarded the
5 CSC charge anyway, and so the DNA --

6 A. I don't think that's really accurate. Again, my
7 client, our client, repeatedly told me, and I think would
8 tell me today, that he wasn't engaged in any sexual
9 misconduct, so I knew that there were three people who
10 were defendants in that case, and if it wasn't his DNA,
11 it's going to be the codefendant who made a statement
12 against him that he was the perpetrator.

13 It would have destroyed it. It would have
14 destroyed the credibility of that person, and it would
15 have had a spillover effect to that codefendant because
16 that was the evidence. So, you know, DNA was usually
17 important, and accomplice liability really wasn't that
18 big a deal.

19 Q. I understand.

20 A. But he knew that. I think Bryan will tell you.
21 He was very aware of what that meant, but think through
22 it, and what's the evidence against him? Two
23 codefendants. DNA comes back, and it's one of theirs
24 that destroys their credibility, and there is a spillover
25 effect because it looks like they're in cahoots with each

1 other.

2 Q. I understand. Mr. Savage, all I'm trying to do is
3 make clear whether at the time you were waiting on the
4 DNA evidence had you clarified with your client that the
5 reason you thought it was important to wait for the
6 DNA evidence was probably more important as the
7 sentencing consideration than a factor that would go to
8 guilt or innocence if you were debating the strength of
9 the State's case for trial purposes.

10 A. On November 17th, I wrote by e-mail and U.S. mail
11 a letter to my client. Dear Bryan: I've been in
12 constant contact with Burns Wetmore, the assistant
13 solicitor who is handing the prosecution of your case. I
14 had previously advised you of our trial date of the week
15 of November 29th. My objection to that date was a lack
16 of discovery that I believe we are entitled to prior to
17 counselling you regarding the appropriateness of a plea
18 decision.

19 I am enclosing the most recent e-mails with him
20 concerning the statements of the codefendants as well as
21 anticipated DNA results. So, I mean, that's where we
22 were.

23 Q. I understand.

24 A. DNA we wanted at that time because we wanted to
25 challenge the codefendants' truthfulness, the credibility

1 and believability. Then when we got past that, it became
2 an issue at sentencing. If he was not the perpetrator, I
3 don't believe he would receive a sentence.

4 Now, there was a risk involved to that. We
5 discussed that. I said, you know, we've asked for DNA.
6 We made a big issue out of it, and if it comes back and
7 it's yours, we're going to get spanked, and he insisted
8 it wouldn't and I believed him.

9 Q. I understand, and I really do have a point. My
10 question is, if your purpose in waiting for the
11 DNA result was, as I think your file is beautifully
12 documented illustrates that you felt it was very
13 important that you have those results so that you would
14 know whether or not it either inculpated or exculpated
15 your client before he made a decision about a plea and
16 your DNA -- I mean, pardon me, your e-mail and other
17 correspondence conveys that, doesn't it? Okay.

18 A. It's your interpretation.

19 Q. My question is, if the solicitor's office was
20 pushing you to enter a plea, and if, as you've said today
21 you thought that ultimately one of the primary reasons
22 you wanted that DNA result in hand is because, in your
23 vast experience, you've seen that judges do differentiate
24 between the active participant versus the other hands, if
25 you will, in sentencing, did you consider asking whether

1 your client could agree to the terms, enter a plea but
2 have sentencing deferred until after the DNA results were
3 available?

4 A. No, no, I didn't.

5 Q. Okay. Would that not have been a reasonable
6 compromise that would have resolved --

7 A. No, I don't think so. What I asked was for them
8 to take out the CSC charge, which would have been very
9 easy to do. It wouldn't have had any effect on the
10 maximum sentence. There was no social purpose -- or just
11 his purpose for including the CSC, which was contested.
12 He was admitting his involvement in everything else, and
13 the 30 years for this CSC was basically an add-on.

14 It was a kidnapping charge, so the SOR was in
15 play. Whether the CSC was admitted or denied, it just
16 didn't really make any difference, and I to this day have
17 a hard time understanding what their motivation was,
18 unless they felt this particular victim needed to have
19 that done, for whatever reason she needed.

20 But it had no meaningful sentencing effect in
21 favor of the State. You saw how many charges there were.
22 Most of them carried 30 years.

23 Q. I understand. My question is --

24 A. The kidnapping charge carries an SOR penalty, so
25 it was a meaningless charge, from my perspective, but

1 obviously the State saw it otherwise.

2 THE COURT: Do you think they were trying to
3 do that just based on the sexually violent predator act
4 because he would actually have been an active
5 participant? When you go and look under the SVP statute,
6 there has to be two separate incidents. Do you think --

7 THE WITNESS: It's interesting that the
8 SVP came up in Judge Young's colloquy at sentence,
9 because there is no mental deficit. There is no illness
10 that Bryan Mulligan had any indication of suffering from
11 some deficit, so I think the SVP, although we talked
12 about, it was a pretty low risk.

13 THE COURT: Okay.

14 THE WITNESS: And Young makes a big deal of
15 it.

16 BY MS. SHURLING:

17 Q. So if I understand you correctly, he would have
18 been subject to the requirements of the sex offender
19 registry, whether or not he pled to the CSC, that based
20 on pleading to a kidnapping that involved sexual
21 overtones, he would still have to register?

22 THE COURT: Yes.

23 THE WITNESS: Yes.

24 BY MS. SHURLING:

25 Q. And he would still have been potentially exposed

1 to the threat of civil commitment under the violent
2 sexual predator act?

3 A. I think that's a real stretch. I think that's
4 used as a negotiating tool leveraged by the State. I
5 don't view it the same way the State does. I think I'm a
6 little more realistic about that. There was no
7 indication of Bryan suffering from any mental illness or
8 deficit that would trigger the SVP.

9 Q. And I understand that, and, you know, not a
10 question, but --

11 THE COURT: Unless it was a first offense, as
12 well.

13 MS. SHURLING: I've handled many SVP cases.
14 I'm just trying to get the record straight that in terms
15 of the presence or the absence of the CSC first charge,
16 whether or not they would have -- it really wouldn't --
17 as you say, from the State's perspective, it wouldn't
18 have impacted the sentencing very much, if any, if they
19 would have been willing to drop the CSC, but they
20 wouldn't.

21 And my question is, why would it not have
22 been beneficial, if you knew that the State was going to
23 go with a theory of accomplice liability, to charge all
24 three men with CSC, regardless of who the actual
25 recipient of the oral sex was? Then why would it not

1 have been an acceptable compromise for you to allow your
2 client to plead with the understanding that sentencing
3 would be deferred until after you got the DNA results
4 since, as you say, it was sentencing where you thought
5 the DNA was going to make such a big difference, or
6 might?

7 THE WITNESS: If you look through
8 Petitioner's Exhibit No. 4, you'll know exactly my
9 position and my fear of a PCR. What I said to Burns
10 Wetmore was, I'm subjecting myself to a PCR. If I plead
11 this guy and it comes back as a codefendant's DNA, what
12 do you think would happen? What you would be saying to
13 me today? What the hell are you doing pleading a guy
14 when the DNA is pending when it could have been a
15 codefendant's, you knew could have been, your client
16 denied it was his? Explain to me why you pled him.
17 That's why you would be asking me today, and that's what
18 I say in my notes to Burns Wetmore, that I'm concerned
19 about a potential PCR.

20 THE COURT: And malpractice, I believe you
21 pointed out as well. My coverage isn't high enough for
22 that.

23 BY MS. SHURLING:

24 Q. And for the record, my client and his family have
25 been made amply aware of the fact that I'm speaking to a

1 lawyer for whom I have tremendous respect, both for your
2 talent and intellect --

3 A. Well, I want the best for Bryan, of course.
4 That's who I want the best for.

5 Q. But my question is, if you were doing such a plea,
6 could you not have put on the record that your client had
7 consistently denied any sexual, physical contact with the
8 victim and that he was pleading only on the theory of
9 accomplice liability, that he was pleading only based on
10 the State's theory that he was equally responsible for it
11 because he was there and witnessed it as opposed to
12 pleading because he admitted being a physical
13 participant? Couldn't you have put that on the record at
14 the plea?

15 A. But he didn't. He didn't say somebody else had
16 oral sex with her. He said it didn't happen. That's
17 what he was telling me. He said, I don't know anything
18 about this.

19 Q. All right. So couldn't you have put on the record
20 that he was pleading guilty in recognition of the State's
21 theory of accomplice liability but that he was not
22 acquiescing to the allegation that he had physically
23 sexually assaulted the woman?

24 A. No, I don't do that. I'm pretty straight up with
25 the Court what we're doing, why we're doing it. I always

1 encourage a client, don't go in and make excuses. If
2 he's pleading guilty, he's pleading guilty, and that has
3 to be a clean, sterile guilty plea.

4 In those cases in which this situation called for
5 an Alford plea, you know, if the State would have said
6 that they're capping it at 30 maybe, they could have gone
7 in with an Alford case. This wasn't that type of case.

8 This is a pretty straightforward disagreement
9 between the State and the defense and how to proceed.
10 That is what we do every day.

11 Q. And you just mentioned the magic A word. You
12 mentioned Alford. Did you ever approach the subject of a
13 possible Alford plea on the CSC charge?

14 A. Because it doesn't fit. It doesn't fit. You got
15 to have some quid pro quo in order to go for an Alford
16 plea. If he was -- if he was going to be capped at 30,
17 then I have my quid quo pro, but they wouldn't do that.
18 This was a straight up plea. There was no benefit to it.

19 Q. How about the fact that the State was agreeing to
20 call all four cases with all the pending charges on the
21 same day in the same county thereby avoiding any possible
22 application of the LWOP statute?

23 A. Who cares about the LWOP? That's what I'm trying
24 to say. That's not a realistic threat. LWOP, the State
25 says, I'm going to get you guys life without parole.

1 If he gets 120 years at 85 percent, does that
2 really make a difference to me? No. That's an empty
3 threat. That's just leverage that the State tries to
4 employ if you don't think through it, I guess. Right?
5 Wouldn't you be concerned about 120 years, 85 percent?

6 Q. Well, there is, however, a pretty big difference
7 between walking out of prison at 52 and leaving in a pine
8 box, isn't there? I mean, if he could get 30 years and
9 he was in, 22 years old, he would -- you and I are both
10 over 52, and we're not dead yet.

11 A. I'm 65 the day after tomorrow. Happy birthday.

12 Q. Happy birthday. Okay.

13 Let's move on back to the conclusion of this and
14 try to wrap it up. Would you agree that it's clear from
15 the record that Judge Young zinged your client, stuck it
16 through him, threw the book at him, whatever euphemism
17 we're going to use based on two basic things: One is
18 that the other two guys that stepped up and cooperated
19 and put their cases to bed a whole lot sooner than your
20 client had and that everything pointed to your client as
21 the active participant in the CSC, is that fair to say
22 that those were the two things Judge Young harped on?

23 A. I would agree with the first one. I would say as
24 to the second one, when you say everything pointed, the
25 judge pointed -- based on what I felt was insufficient

1 evidence, but the judge is convinced that Bryan was the
2 one who was the perpetrator.

3 Q. I understand, and my question was, does the record
4 reflect that the things Judge Young -- not what you
5 thought was important, but the things Judge Young was
6 zooming in on as the reason for differentiating between
7 your client and the other two codefendants in determining
8 what was the fair and appropriate sentence, was, number
9 one, that the other two guys had ponied up and put their
10 cases to bed, so to speak, a lot earlier than your guy;
11 and, number two, that -- and these are his words, not
12 mine, that everything pointed to your client as the
13 active participant in the CSC?

14 Is it fair to say those are the two things that
15 Judge Young used to justify, not that he's required to
16 justify, but to explain why he was differentiating
17 between your client and his codefendants in sentencing?

18 A. The transcript speaks for itself.

19 Q. Okay. And, again, just for the record, did you
20 consider, based on His Honor's remarks -- and I, like
21 you, have no problem with Judge Young. I respect him,
22 but did you consider pointing out to His Honor that his
23 comments indicated that he was punishing your client for
24 at least initially exercising his right --

25 MS. HARRIGAN: Your Honor, the State would

1 object. That's not a ground that was raised in this
2 application.

3 MS. SHURLING: It's one that has been
4 developed by the testimony of Mr. Savage here today, that
5 with leave of the Court we've been allowed to hear a lot
6 of narrative testimony, and some of that has given rise
7 to the development of additional issues that I would ask
8 Your Honor to allow.

9 THE COURT: You need to amend your
10 application, and I'll move to grant it.

11 MS. SHURLING: Thank you.

12 BY MS. SHURLING:

13 Q. So, again, why didn't you object to the fact that
14 he was openly holding it against your client that he had
15 not pled earlier and that he had ramped up, so to speak,
16 for a trial? Or at least that's what the judge was
17 saying, that the other two cooperated and that they were
18 able to use his -- their cooperation --

19 MS. HARRIGAN: Objection. Leading.

20 BY MS. SHURLING:

21 Q. All right. Let me rephrase.

22 If you look specifically at page 50 and you look
23 at -- starting at line 18 where he is talking about the
24 factors he's taking into consideration with Mr. Monroe
25 and Mr. Larkin, and he says, and I quote, that they were

1 able -- which then they, being the State, were able to
2 present Mulligan with, This is it, pal. We're going to
3 go to trial and we're going to convict you and we're
4 going to ask for a lot more time than you get if you went
5 to plead guilty, et cetera. That's the quote from the
6 record.

7 At that point, did you consider objecting to the
8 fact that Judge Young was clearly being punitive against
9 your client for at least initially not pleading guilty
10 and leaving the door open to a jury trial?

11 A. All you have to do is read page 51.

12 Q. Okay. My next question: You have indicated, and,
13 in fact, the e-mails that have been introduced into
14 evidence document that it was your position with the
15 solicitor's office consistently that this case was never
16 going to trial? You say, in your communications with the
17 solicitor's office, this wasn't ever going to be a crime.
18 This was always a case that we were working to work out.
19 Isn't that fair to say?

20 A. It's fair to say that it was my intent to get the
21 best possible result for Bryan Mulligan. It was a
22 parallel track of preparing for trial and preparing for
23 sentencing from day one, and it would be fair to say that
24 either track was conditioned upon the DNA for the reasons
25 I've already testified to.

1 Q. I understand, but if your e-mail communication
2 with the solicitor's office indicates that you were not
3 jerking them around, that this was always going to be the
4 case that you were planning on working out --

5 A. They said he was the perpetrator. They said that
6 he had seven DNA exemplars. I assume they're telling me
7 the truth. That's a plea. If the DNA had come back and
8 it was a codefendant's, that's a trial.

9 Q. I'm sorry. Let's look at an e-mail --

10 A. You don't have to be sorry.

11 Q. -- dated 11/29/2010.

12 A. To Scarlett?

13 Q. To Scarlett. And it would be in -- which one --

14 A. Three.

15 Q. If you look at the e-mail dated --

16 THE COURT: I've read it. Let me finish
17 reading it.

18 He stated in here it was never intended for
19 it not to be a plea.

20 MS. SHURLING: That's all I was asking.

21 THE WITNESS: Assuming that the State would
22 provide what they said they had.

23 BY MS. SHURLING:

24 Q. I understand. I am not trying to be difficult.

25 A. No, you're not at all.

1 Q. But you're on the record as saying to the elected
2 solicitor in the county, in Charleston, that this was
3 never intended not to be a plea. And my question is, so
4 when the judge is saying --

5 A. You know, you're just not realistic. You really
6 must do academic work. This is trial work. You know,
7 this is communications back and forth that challenge you
8 to find anybody that has this type of communication in
9 their file.

10 So what I was saying to the solicitor was, maybe
11 not in the way you would phrase it, but this shouldn't be
12 a trial. This shouldn't be a big issue. This is getting
13 blown out of shape, you know. You offer a plea. You've
14 had the case for 30 months. You offer a plea. You give
15 me ten days to do it. You know, you're making something
16 out of something that shouldn't be made a big deal.

17 That's what I was saying. If they had the
18 information that they claim they had, this would have
19 been a plea. There is no question about that.

20 THE COURT: Mr. Savage, do you mind me
21 asking, did your client admit or give any kind of
22 statement to police or any of investigators in this case
23 that he did, in fact, participate in everything else
24 except for the criminal sexual conduct?

25 THE WITNESS: He gave an initial statement to

1 the FBI that didn't go into a whole lot of detail because
2 they didn't have the big picture at that time, so I don't
3 think that inquiry was ever made of him at that time.

4 THE COURT: Okay.

5 BY MS. SHURLING:

6 Q. If I can get back to the point I was trying to
7 make, when Judge Young indicates that one of the reasons
8 he's giving the codefendants a break in sentencing is
9 that the State was able to use their cooperation
10 basically to threaten your client and get him to plead,
11 did you consider, at that point, informing the Court
12 that, Your Honor, this was never going to be a trial. We
13 have been from the beginning trying to work this out?

14 A. No.

15 Q. Okay. And I believe you may have answered this
16 already, but when the judge, to our mind, your mind, and
17 mine, incorrectly said that everything pointed out Bryan
18 Mulligan as the active participant in the criminal sexual
19 conduct charge, why didn't you point out, Your Honor,
20 there is no evidence other than the codefendants'
21 statements, that the victim didn't ID him, and the DNA
22 results, as Your Honor knows, do not tie my client to
23 that assault? Because, as read, it appears that the
24 judge thinks --

25 A. Have you read page 51?

1 Q. Many, many times.

2 A. Well, when he said that, I come back and I said,
3 Well, the other guy is getting caught red-handed. Bryan
4 turned himself in there.

5 I don't remember whether I reflect there he was
6 interviewed by the FBI at that time. He was not caught
7 red-handed like his codefendant with the guns. The Court
8 says, I figured that, and I knew you would jump on it.

9 You can tell the tone of the Court at that time.
10 There was not a full confession. He's blaming me that
11 the -- you know, he's telling me that Bryan didn't
12 immediately make a full confession. Well, there is a
13 Fifth Amendment right, even in Charleston County.

14 He didn't -- I say he did not delay the plea from
15 October. The reason the plea was delayed is -- he cuts
16 me off.

17 Now, maybe the inference and the tone of the Court
18 is not reflected in the transcript, but when I started
19 making an explanation for his situation, not an excuse
20 for his conduct, but an explanation of what happened, he
21 didn't want any part of it.

22 Q. I understand, and I've certainly been on the
23 receiving respect of being cut off by -- no disrespect
24 intended, Your Honor, but people in black robes, so I
25 know what a difficult spot that is, but the colloquy

1 you're referring to actually happened before Judge Young
2 said that your client -- that everything pointed to your
3 client being the principal active participant in the CSC.
4 And my only question was, why didn't you straighten him
5 out?

6 Why didn't you say, Well, actually, Your Honor,
7 respectfully, that isn't accurate. They don't have DNA.
8 They don't have eyewitness testimony. All they've got is
9 the testimony of these codefendants, since Judge Young
10 appeared to be placing such significance on that?

11 A. I don't have an answer to that.

12 Q. Okay.

13 MS. SHURLING: Moment's indulgence?

14 THE COURT: I know you said you talked about
15 filing an appeal. Did you discuss with him a motion to
16 reconsider?

17 THE WITNESS: Let me go back in my notes
18 because that was an issue. I know there is documentation
19 somewhere in this file about a motion to reconsider.

20 On February 4th, I want to think about the
21 grounds for an appeal. There may be some wiggle room.
22 Meantime, we should file a motion under rule 28 to
23 reconsider. Let's put three smart heads to review.
24 Bring reflective thoughts, ideas, and recommendations. I
25 agree with Virginia's appraisal. Not a bad result given

1 the fact the process was terrible. We have ten days by
2 deadline to file this next Wednesday.

3 So this was a consideration in documenting
4 thoughts that I had following the plea. Then, on that
5 same day, later in the day, Breen Stevens went to -- put
6 a note in here that he went to CCDC last night and spoke
7 with Bryan and Bryan is the one that made the decision
8 that he didn't want -- he didn't want to do anything
9 else.

10 MS. SHURLING: Okay. Now may I have a quick
11 moment with my client?

12 THE COURT: Of course.

13 MS. SHURLING: Your Honor. Thank you very
14 much for allowing me such latitude and this lengthy
15 examination.

16 Mr. Savage, thank you for being here, and I
17 have no further questions at this time.

18 THE COURT: Well, if you don't mind, before
19 we go ahead and allow the State, if we can all just take
20 a five-minute break, a strict five-minute break.

21 Mr. Savage, you are welcome to go refresh
22 yourself, sir, and come right back up and we'll be back
23 in five minutes.

24 (Recess taken.)

25 CROSS-EXAMINATION

1 BY MS. HARRIGAN:

2 Q. Good afternoon, Mr. Savage.

3 A. Good afternoon.

4 Q. Prior to Mr. Mulligan's guilty plea, did you fully
5 discuss with him all the elements of the various charges
6 he was facing and what the State was going to be required
7 to prove?

8 A. On numerous occasions, both him and his family
9 members. We actually go through a colloquy with him and
10 have him sign it. The reason for that is so that he's
11 comfortable in the courtroom knowing what the judge is
12 generally going to ask so there is no last minute fear of
13 what is the judge going to ask me? What should I say?

14 Q. In the form that you're referencing, would that be
15 the providency form that was in your file?

16 A. Yes, it is.

17 MS. HARRIGAN: And the State would move this
18 into evidence. I believe it's without objection.

19 MS. SHURLING: Your Honor, I previously had
20 the opportunity to look at that and I have no objection
21 to it.

22 (Respondent's Exhibit No. 1 was marked for
23 identification and admitted into evidence.)

24 BY MS. HARRIGAN:

25 Q. If you'll take a look at that, Mr. Savage, does

1 that go over all the various crimes that your client was
2 charged with in both Dorchester and Charleston County?

3 A. Yes, and basically what it does is it tries to
4 provide the client with the type of questions that the
5 judge would ask at a sentencing and also reviews the
6 agreement with the government in terms of what the plea
7 is, what he can expect, and it tells him that he is
8 assured that he has a right to an appeal, but that
9 decision has to be made within ten days.

10 So we go through that, usually with the family and
11 in our presence, and he signs his acknowledgement that
12 he's been advised of his rights and responsibilities.

13 Q. And did your client review that form after you
14 reviewed it with him?

15 A. Yes.

16 Q. Did he ever indicate there was something he didn't
17 understand?

18 A. No, but the intent is not to jam him, the intent
19 is to make sure he is fully aware of what is happening in
20 a sentencing. We do that in advance. We do that early
21 on and then, as it gets close to the day of the
22 sentencing, we do it in writing.

23 We role play. I like to be the judge and have
24 somebody act as the prosecutor and as the attorney, and
25 we go through the sentencing in the office.

1 Q. Is it fair to say that that form, which has been
2 marked as Defendant's Exhibit 1, is a culmination of
3 numerous discussions you had with your client and his
4 family members regarding his decision to enter a plea?

5 A. Yeah. And, again, it's not intended for a
6 PCR deal. It's intended to make sure he's comfortable
7 and has -- you know, that he doesn't walk into court that
8 day and not knowing what's going on.

9 So in advance of Court to reduce his anxiety,
10 family anxiety, well, what's the judge going to ask me?
11 What should I say? The judge is going to ask me if I
12 have had any alcohol or taken any pills. How do I answer
13 that?

14 So you eliminate all that, so whoever the client
15 is, is in the courtroom. They can, without a whole lot
16 of rigamarole, give a succinct, immediate answer to the
17 judge's inquiry.

18 Q. In regards to Applicant's allegation that he was
19 prejudiced by the delay and you advising him to wait for
20 the DNA evidence, did you ever discuss with your client
21 why it was so important to wait for DNA to come before
22 entering a plea?

23 A. Repeatedly. He was in on that decision, but we
24 don't do anything in the dark. We keep clients fully
25 informed of what we're doing and why we do it.

1 Obviously, the client is -- they're fully informed and if
2 it's transparent, they can challenge that. His
3 grandmother was the main liaison with our office, but
4 Bryan was there with his mother, who is present in the
5 courtroom today, and other family members.

6 You know, we meet in a case this serious on a
7 pretty regular basis, even when nothing is going on in
8 the case.

9 MS. HARRIGAN: Your Honor, the State would
10 move into evidence what is premarked Respondent's Exhibit
11 2 a letter from Mr. Savage's file to his client.

12 MS. SHURLING: Again, I have a copy of that,
13 and I have no objection to it being introduced.

14 THE COURT: Okay.

15 (Respondent's Exhibit No. 2 was marked for
16 identification and admitted into evidence.)

17 BY MS. HARRIGAN:

18 Q. Would this be an example of one such letter you
19 sent to your client in regards to the DNA and needing to
20 receive that before entering the guilty plea?

21 A. Yeah. And I like them to know what the State's
22 theory is as well, and, yeah, that's the purpose of this
23 letter. Again, transparency, fully informed, know what's
24 going on, serious matter.

25 You know, as I recall that particular e-mail from

1 the solicitor was that they were trying for weeks now to
2 get the DNA result. They had the case for 30 months, you
3 know.

4 Q. Did you ever make a motion to the Court regarding
5 holding off the trial or plea until the DNA evidence was
6 obtained and given to your office?

7 A. Yeah. We made a number of motions. One that
8 hasn't been mentioned today is that we were successful in
9 getting Bryan out on bond. That motion was heard, I
10 forget who the judge was, but it was a very contentious,
11 probably 30 victims in the courtroom, very hostile
12 environment, so he knew the family knew -- the reason I
13 bring that up is that was the atmosphere in which we
14 were -- a high publicity case.

15 Ronnie Boals owned the Noisy Oyster. That is
16 where this particular thing happened. There are other
17 people, but it was very loud, very vociferous, very -- a
18 lot of advocacy by the witness victim program, and he got
19 out, so I thought that was pretty terrific. I forget
20 what you're asking me. The motion?

21 Yes, the motion that we had to file, and I think
22 it was in November maybe, was for a continuance. That
23 motion pretty much lays out the questions that the
24 present counsel was asking me about the reasons that we
25 were doing what we were doing, why we were doing it,

1 pretty well laid out in the facts of that motion.

2 MS. HARRIGAN: And Your Honor, the State
3 would introduce and move into evidence into Respondent's
4 Exhibit 3. This has been premarked without objection.

5 MS. SHURLING: Once again, Your Honor, no
6 objection.

7 (Respondent's Exhibit No. 3 was marked for
8 identification and admitted into evidence.)

9 BY MS. HARRIGAN:

10 Q. Do you recognize this as that motion for
11 continuance that came from your file, Mr. Savage?

12 A. Sure do.

13 Q. And that lays out the various points for the State
14 and the Court, the importance of receiving the
15 DNA evidence before advising your client to enter a
16 guilty plea, correct?

17 A. I shouldn't say this, but, you know, motions are
18 often for educational purposes, and I understood that the
19 solicitor didn't get it with our position, but it's also
20 for the Court's education. I don't know why we are
21 taking the position we did, and the chief justice and
22 discovery is ignored constantly, and it's something that
23 only the Courts can address.

24 Q. And following your client's guilty plea, did your
25 office -- I think you stated during Ms. Shurling's direct

1 that your office associate went and visited with
2 Mr. Mulligan during his guilty plea.

3 A. We do, as a general practice, go out to the jail
4 that night, sort of go over what happens. Young men like
5 Bryan, it's a bit of a shell shock to be given 30 years,
6 so it's a visit for social purposes, reassurance. It's
7 not the end of the world, but to also educate him on what
8 the next step is, sort of get his take and then follow it
9 up with correspondence.

10 MS. HARRIGAN: And the State would move into
11 evidence Respondent's 4 that that has been premarked, a
12 letter from your file on February 4th.

13 MS. SHURLING: Yes.

14 (Respondent's Exhibit No. 4 was marked for
15 identification and admitted into evidence.)

16 THE WITNESS: That sort of reviews what
17 happened that day, you know, talks about expungements.
18 Even if you have this many convictions, expungements
19 still count when it comes to classification in the
20 department of corrections, so it is important.

21 And then you also remind him, because if he
22 is emotionally upset at the time of the meeting or at the
23 time of the plea, that he only has ten days to consider
24 an appeal.

25 So we do that in the providency ahead of the

1 appeal. We do it that night at the jail, and then we
2 confirm that in writing before he leaves the detention
3 center in Charleston, before he gets into state system.

4 Q. And does that letter confirm Mr. Mulligan's
5 decision not to pursue a direct appeal in regards to this
6 guilty plea?

7 A. Yes.

8 MS. HARRIGAN: Court's indulgence.

9 BY MS. HARRIGAN:

10 Q. And, just briefly, and I know we went over this
11 painstakingly during direct. There was never any sort of
12 specific range of sentences for any of the three,
13 Mr. Mulligan and his two codefendants, involved in this
14 case and any sort of numerical offer from the State.

15 A. No. I think the statute provides 10 to 30 on the
16 armed robbery. That was what was driving it. The others
17 don't have a mandatory minimum, so 10 to 30 has some
18 importance to tell the client.

19 You can't go in there thinking he's going to get
20 nine, but there was no agreement on whether, you know,
21 the three indictments or whatever they were would be
22 consecutive or concurrent. My concern was we get a judge
23 who is outraged because of the publicity and the violence
24 employed during the course of these criminal acts, very
25 vocal victims, very community concern, publicity in terms

1 of the fear that people in the restaurant business had
2 exhibited during this period.

3 So, yeah, we were pretty tuned into it was a very
4 serious matter.

5 MS. HARRIGAN: Court's indulgence. No
6 further questions, Your Honor.

7 THE COURT: Ms. Shurling?

8 REDIRECT EXAMINATION

9 BY MS. SHURLING:

10 Q. You were asked a moment ago about whether or not
11 the defendant made a plea agreement as to some exact
12 numerical number, I believe, was the question. Harkening
13 back to the e-mails between you and Burns Wetmore, I'm
14 still confused.

15 If we look at his e-mail dated October 19th, he
16 indicates no LWOP, that he's dropped a lot of
17 indictments, basically 10 to 30. I'm not making a
18 recommendation within that range. Dorchester indictments
19 to run concurrent.

20 And I understood you to say that later the
21 solicitor was indicating that he was sorry there was some
22 confusion. There is actually an entry from your
23 associate, Mr. Breen, that records -- he said he's sorry
24 if there was any confusion caused by the language of his
25 e-mail, but he was not offering to cap the sentence at 30

1 years; rather, he expects the judge to sentence within 10
2 to 30 years.

3 Do you recall that?

4 A. Uh-huh. Yes, sorry.

5 Q. You had a lot of discussion with Solicitor Wilson
6 about the handling of this case and adherence or,
7 properly, I should say non-adherence to certain orders of
8 the Court. Did you ever discuss with her the offer that
9 had been made to her in writing by Wetmore and then the
10 assertion that that wasn't what he said at all?

11 A. No. Because, you know, my interpretation of that
12 is similar to yours, but he gave his explanation that I
13 knew his intent -- after discussing with him, I knew his
14 intent, perhaps poorly crafted e-mail, but yeah, I did
15 challenge him on that, and he explained what his intent
16 was and how satisfied with his explanation. I wasn't
17 satisfied with what it meant, but I was satisfied with
18 what his intent was in communication, and, again, as I
19 have testified before, that was my concern.

20 Q. And I am just trying, like you, to understand how
21 the assistance solicitor's e-mail of October 19th could
22 be construed as the -- what was subsequently conveyed to
23 you in the telephone conference, but --

24 THE COURT: May I see that e-mail once again?
25 Do you mind?

1 MS. SHURLING: Certainly. Your Honor,
2 there's the e-mail and then at the top is the telephone
3 entry from an associate.

4 THE COURT: Okay.

5 BY MS. SHURLING:

6 Q. And, just briefly, what was the resolution on the
7 discussion about the potential motion for reconsideration
8 of sentence?

9 A. The position of Bryan was that he just wanted to
10 go do his time. That was his decision, and that was made
11 after the hearing. He didn't want to do anything. His
12 decision.

13 Q. In the providency form that's been introduced on
14 page six, you cover the elements of criminal sexual
15 conduct first degree, the fact that it's a class A felony
16 and that it's a violent and most serious offense. Is
17 there -- and I may have missed it, but is there somewhere
18 in this document where the client acknowledges having had
19 the concept of accomplice liability and its application
20 to criminal sexual conduct discussed with him?

21 A. No. This is a document for sentencing purposes.

22 Q. Okay.

23 A. That's what this is. It's all about sentencing.

24 Q. I just wanted to cover that one point. One
25 question -- one moment, rather.

1 MS. SHURLING: Nothing further, Your Honor.

2 THE COURT: Anything further?

3 MS. HARRIGAN: Nothing further from the
4 State.

5 THE COURT: Any objection to Mr. Savage being
6 excused, or does he need to be here for possible rebuttal
7 if you do call your client?

8 MS. HARRIGAN: We would like him to remain,
9 unfortunately. I'm sorry.

10 THE COURT: Sounds like you're remaining with
11 us, Mr. Savage, for just a bit. Ms. Shurling, how long
12 do you need to speak with your client?

13 MS. SHURLING: Five minutes will do it.

14 MR. SAVAGE: Just give him 25 years, and
15 everyone will be happy. It's a long time.

16 MS. SHURLING: For the record, I would have
17 voted to let you go home, Mr. Savage.

18 THE COURT: All right. Let's go ahead and
19 take about a five-minute break, y'all.

20 (Recess taken.)

21 MS. SHURLING: I appreciate being given time
22 to consult with my client concerning this matter. My
23 client -- Your Honor, at this time, we would move to
24 amend our prayer for relief to request the grant of a new
25 sentencing proceeding as opposed to vacation of the

1 underlying judgments. The Applicant, by way of the
2 testimony today and the issues that have been developed
3 today, we very reluctantly would allege that essentially
4 any claim of ineffective assistance of counsel would be
5 addressed toward things that trial counsel could and
6 should have done during the sentencing proceeding to
7 disabuse Judge Young of what were clearly some
8 misconceptions about the interaction between the
9 codefendants and the prosecution and the circumstances
10 and facts of the case.

11 So we amend our prayer for relief to request
12 not a vacation of the judgments, but a vacation of the
13 sentence and a remand for a resentencing proceeding based
14 on the simple finding of ineffective assistance of
15 counsel in the sentencing portion of the plea proceeding.

16 And, Your Honor, to the extent that the
17 allegations as previously pled in the written
18 documentation are not clear, we are, of course, alleging
19 that Mr. Savage was ineffective for neglecting to point
20 out to the Court in clearer terms that what appeared to
21 be a significant delay between his client's acceptance of
22 responsibility to use federal court terms and his
23 codefendants was directly more clearly tied to failures
24 in the discovery process, not potential foot dragging or
25 anything else by his client, failure to point out to the

1 Court that the client had, from the beginning as
2 documented by correspondence and e-mails and telephone
3 log information that's been introduced today that this
4 had clearly never been headed for trial, to use
5 Mr. Savage's words from an e-mail, this was never not
6 going to be a plea.

7 Also, in that regard, failure to point out to
8 the Court that the State had not, as has was suggested,
9 been able to -- pardon me, the codefendants as the big
10 stick to beat my client into -- obviously descriptive,
11 perhaps poor choice of words, but to coerce or encourage
12 my client, push my client, into pleading rather than
13 going to trial when it had never been my client's intent
14 that from the beginning, according to Mr. Savage's own
15 documentation, this was never not going to be a plea,
16 again, to use his words.

17 And I think most significantly that it is
18 apparent from the record that Judge Young was focussed as
19 a primary sentencing factor on the heinous nature of the
20 criminal sexual conduct charge in this case, and as Judge
21 Young stated on the record that it was clear to him that
22 everything, quote unquote, pointed to Mr. Mulligan being
23 the active participant in the CSC first charge.

24 Where the whole delay in this case had come
25 about as a result of some, in my view, inexplicable delay

1 in getting the DNA evidence in this case that Mr. Savage
2 had certainly been diligently trying to get that where
3 the whole delay had been for that DNA evidence to be
4 obtained and it was finally there and it did not point to
5 Mr. Mulligan, we would submit that where that is a factor
6 and there is no eyewitness identification that it was
7 incumbent upon defense counsel to point out to Judge
8 Young that, Your Honor, respectfully, you say everything
9 points to my client.

10 There is no everything. The only thing
11 pointing to my client would be the self-serving
12 statements of the codefendants who understandably are
13 going to say that it was anybody other than themselves.

14 Those factors were being very heavily
15 weighted. It's apparent by Judge Young in sentencing,
16 and therefore we would respectfully ask for a finding
17 that he is entitled to a new sentencing proceeding. I'd
18 like to state for the record a couple of things.

19 One is that from the beginning I have made
20 clear to my client and his family that I have known Andy
21 Savage for many years and that he is not only a prominent
22 attorney, but a very skillful one and one who is
23 well-known, at least to me, and I believe to most people,
24 for being very thorough and diligent in documenting his
25 files, probably better than anyone I know.

1 I've also made it clear to them that when you
2 hire a lawyer of his stature, you get perceived benefits
3 from doing so, but you also then often run up on problems
4 when you're then in the position of claiming ineffective
5 assistance of counsel for the same reason, two-edged
6 sword, as my mother would say, but as I also told him, in
7 my experience Mr. Savage was an honest and forthcoming
8 man and that the chips would fall where they may, that I
9 believe the record would demonstrate whatever we allege
10 the record would be what the record would be, and we
11 could count on him to be forthcoming. I've appreciated
12 his testimony here today.

13 I believe, Your Honor, that it's important to
14 know that I made this relationship with Andy Savage in
15 terms of my longstanding professional acquaintance with
16 him, the fact that we have known each other for a long
17 time, he's referred cases to my office, known to the
18 family and known to my client before they hired me. I
19 also made it clear that I would not hesitate to do my
20 duty as an officer of the court and pursue with
21 appropriate zeal any allegations that deserved pursuing,
22 and I hope respectfully that the record will reflect that
23 I have indeed done my job in that regard today, but I
24 just want it to be clear they were advised of that in
25 advance.

1 The other thing is that I have made it very
2 clear to Bryan Mulligan that if you win a post-conviction
3 relief based on a prayer for the extreme relief of having
4 the whole thing set aside that there are no guarantees
5 with regard to any outcome on remand.

6 Specifically, I've told him that although
7 there is a right to trial by jury, there is,
8 interestingly, no constitutional right to plea bargain.
9 While you can insist on pleading straight up, you cannot
10 make the State plea bargain with you; therefore, if he
11 were to win a post-conviction relief in which he was
12 seeking to completely start over, there would be no way
13 to guarantee that the State would engage in further
14 negotiations with him, no way to guarantee that
15 Charleston and Dorchester Counties would once again
16 cooperate with regard to entering a cross county plea, no
17 way to ensure that the State would go along with
18 concurrent sentences being received in these matters.

19 In addition to that, I have made very certain
20 he understands that even if limiting our prayer for
21 relief, which we're now doing, to a prayer for a finding
22 of ineffective assistance of counsel only in context of
23 the sentencing portion, that in asking for a new
24 sentencing proceeding, technically the presiding judge at
25 the resentencing would have the right to go up or down.

1 I have told him that in my experience that is
2 rarely the outcome in a situation where there's been a
3 remand for resentencing, however, that it was important
4 that he understand that technically and legally a judge
5 could do that.

6 I have also explained to him the particular
7 facts of this case. The sentencing of the codefendants,
8 the originally sentencing received, and the interaction
9 between those factors and what the basis for our
10 PCR claim is and the fact that I believe that on
11 resentencing it would be unlikely for him to receive a
12 greater sentence than he originally received, unless the
13 judge could demonstrate some reason other than him
14 prevailing in a PCR for doing so.

15 Lastly, I have certainly explained to him his
16 right to testify at this proceeding here today. I've
17 explained that he has every right to do so and that this
18 is his PCR. This is likely to be the only one -- barring
19 some very unusual circumstances, likely to be his only
20 PCR, and he has a right to testify and no one but him can
21 make that decision.

22 I have, however, advised him -- and I'll put
23 on the record that I believe that the allegations we're
24 pursuing here today have been developed through the
25 testimony of Mr. Savage and that they are essentially

1 legal issues, which unlike so many other PCR issues do
2 not require that I put up testimony from him saying that
3 he would have done something differently but for the
4 errors of counsel.

5 So for that reason, I have advised him, not
6 that I think there is any reason why I would not want to
7 put him on the stand. He is, frankly, a well-spoken man,
8 but I just don't think I need him to testify. That being
9 said, I would like for the Court to question him as to
10 whether the decision not to take the stand has been
11 voluntarily and knowingly made for the record. Thank
12 you.

13 THE COURT: Mr. Mulligan, if you don't mind,
14 sir, if you would just stand in your place and raise your
15 right hand, sir.

16 (Whereupon, the Applicant was duly sworn.)

17 THE COURT: Sir, you may go ahead and be
18 seated at this time. I'm just going to ask you a few
19 questions. I gave you an opportunity to speak with your
20 attorney, Ms. Shurling, about whether or not you wish to
21 testify.

22 Sir, I want to make sure that while you
23 understand she is your counsel and I expect you to speak
24 with her and receive legal advice, I want to make sure
25 you appreciate and understand that whether or not to

1 testify is up to you. It is a personal right that you
2 have and only you can make that decision, and I want to
3 make sure, sir, you're comfortable and that you, in fact,
4 have chosen not to testify here at your post-conviction
5 relief hearing; is that correct, sir?

6 The Applicant: Yes, ma'am, I think. Ms.
7 Shurling has covered everything.

8 THE COURT: All right, sir. And you're
9 comfortable with that decision; is that correct, sir?

10 The Applicant: Yes, ma'am.

11 THE COURT: And you're confident there isn't
12 anything further that you need to tell me that
13 Mrs. Shurling hasn't already?

14 The Applicant: Yes, sir.

15 THE COURT: Yes?

16 MS. SHURLING: Your Honor, since he's already
17 been placed under oath, I would appreciate the record
18 verifying that he has been given the advice that I have
19 put on the record with regard to possible consequences in
20 sentencing if the case were remanded for a new sentencing
21 proceeding.

22 THE COURT: And, again, you understand, sir,
23 the possible repercussions that if this does get sent
24 back down, you can be tried again. You could be facing
25 complete punishment as to each of the charges. Do you

1 understand that, sir?

2 The Applicant: Yes, sir.

3 THE COURT: You understand a judge could
4 sentence you to more or less. Do you understand that as
5 well?

6 The Applicant: Yes.

7 THE COURT: Because, obviously, one of the
8 big issues in this case is Mr. Savage's main concern was
9 that you did not get consecutive sentences that would
10 lead you to have, in effect, a life in prison sentence
11 where you would die there. Do you understand that, sir?

12 The Applicant: Yes, ma'am.

13 THE COURT: All right, sir. And,
14 Ms. Shurling, I need to ask you a quick question.
15 Whether or not someone has the right to plead guilty
16 straight up, do you have any case law that states that?

17 Because I have been told in the past that you
18 don't have a right to plead guilty, even straight up.
19 The solicitor's office has the right to, in fact, try you
20 if they so choose.

21 I just want to make sure we are clear for the
22 record. You and I both know in all practical
23 circumstances it would be incredibly rare, and I've never
24 heard of it, that they would insist on trying someone if
25 they wished to plead guilty straight up as charged, but I

1 can tell you that I have once in the past been corrected,
2 and, ironically, it was on my judicial exam because I
3 truly believed in practical purposes and answered the
4 question, if someone wanted to plead guilty to everything
5 as charged, this isn't a solicitor in this state that
6 would insist on a jury trial, but I was told that they
7 can and will.

8 Do you have any case law that states
9 otherwise?

10 MS. SHURLING: I do. If I might back up for
11 just a second, there is a point rattling in my brain I'm
12 afraid I'm going to forget.

13 One is I would say for the record that it
14 would be my position that there was an agreement in place
15 at the time of the sentencing that the Dorchester and
16 Charleston cases would be disposed of at the same time,
17 and it's my understanding that there was an agreement
18 that the sentences would be concurrent.

19 So in asking for a new sentencing proceeding,
20 it would be our position that we would certainly argue
21 that the agreement that the sentences would be concurrent
22 would be in place at the time of the resentencing.

23 THE COURT: I can tell you that I have read
24 the e-mails between Mr. Savage and Mr. Burns, and when
25 Scarlett Wilson, the head solicitor came in, I can

1 understand where the disconnect came in, just as
2 Mr. Savage stated.

3 He said I understand that Mr. Burns could not
4 agree that his sentences would be concurrent. What I saw
5 is that the Dorchester solicitor, Mr. Hilton, agreed that
6 his sentences would be concurrent, but what I am
7 seeing -- and that goes back to the whole question of the
8 cap of 30 years.

9 None of these sentences carried more than 30
10 years in prison, but in effect, a cap of 30 years would
11 say they can't run consecutively. That's what he was
12 trying to say, and I appreciate that, and, clearly, at
13 the end, Mr. Savage understood and knew that because if
14 you read his providency agreement, it states exactly
15 that.

16 MS. SHURLING: I understand, and I'm not
17 suggesting -- I was not suggesting, nor asking that Your
18 Honor's order limit resentencing in that regard. I was
19 just noting for the record that that would certainly be
20 an argument I would make on behalf of the Applicant at a
21 resentencing proceeding, whether it would prevail or not,
22 and I certainly explained to the Court that it might not
23 would.

24 I actually have done some research on this,
25 and, unfortunately, old timer's disease is setting in. I

1 can get Your Honor the cases. There is obviously a
2 constitutional right to a jury trial. There is no
3 constitutional right to a plea bargain under any
4 circumstances.

5 The right to trial by jury is something that
6 the defendant, who has been charged by the grand jury,
7 has a right to exercise, a right to a trial by jury of
8 his peers or by the bench. There is nothing in the case
9 law to prohibit someone, however, from pleading guilty as
10 long as there is no quid pro quo for the plea, however,
11 if you are -- for example, if someone says, I'm charged
12 with first degree burglary, kidnapping, and CSC. I want
13 to plead guilty to the burglary, because I did that, but
14 I'm not pleading to the kidnapping and the CSC.

15 THE COURT: But that's the quid pro quo.
16 That's the difference, though.

17 MS. SHURLING: That's the quid pro quo. If
18 there is no -- if the defendant wants to plead to exactly
19 what he's charged with, everything he's charged with,
20 with no deals on the table, no recommendations, no
21 consideration whatsoever, there is no case law that
22 prohibits him doing so; however, where the urban -- legal
23 urban legend, if you will, that they can't comes into
24 play is, as Your Honor knows, in South Carolina, the
25 solicitor's office controls the docket, and what happens

1 is defendants say, I want to plead, but they don't just
2 want to plead straight up. They want to pick the time
3 and place, and, most importantly, the person on the bench
4 before whom they plead, and because the solicitor's
5 office under our current system, anyway, controls the
6 docket, the secondary issue is not whether or not they
7 have a right to plead, but whether they get to plead when
8 they want to in front of the judge they want to plead in
9 front of.

10 So that's what -- where the real sticking
11 point comes in, is if someone says, I don't want a trial,
12 bench or otherwise, don't want a jury trial, don't want a
13 bench trial, I'm going to plead. Any time you call it in
14 front of any judge you want to call it in front of, I
15 will plead guilty.

16 I don't think there is anything in the case
17 law, and I've done extensive research on it, to stop it,
18 but if the defendant tries to control the timing of the
19 plea, that's what stops it, is because --

20 THE COURT: Help me out, because, again, I
21 actually think -- and truth be told, I debated this with
22 Ms. Shurling because I will tell you, it is the one
23 question I missed on my exam, and I was not pleased about
24 it, because in all practical purposes, you and I both
25 know that if I say I'm going to plead straight up any

1 time -- and I agree with you, and I thought the same
2 thing, but they actually -- and I know Ms. Shurling -- I
3 know -- I'm sorry --

4 MS. SHURLING: In the violent sexual predator
5 statute, for example, there is an express provision that
6 says both the State and the defendant have a right to
7 trial by jury, and with that express language in the
8 violent sexual predator act, the State is able to enforce
9 their right to a trial by jury, regardless of the
10 defendant's position that he would not choose to have a
11 trial by jury, but that is specifically provided for by
12 the code.

13 I'm unaware of any specific provision to the
14 contrary, as Sally Elliott and I have been arguing
15 against each other for 30 years.

16 MS. ELLIOTT: And I don't know the case off
17 the top of my head, Johnny Bay Bray comes up, but
18 criminal procedural Rule 14(b) says that a defendant may
19 waive his right to a jury trial only with approval of the
20 solicitor and the judge.

21 THE COURT: That's what Ms. Shurling pointed
22 out to me, and she was absolutely correct, so it's by
23 rule, is my understanding, and, again, truthfully I was
24 ignorant of it, and it was one that I was surprised.
25 But, anyway, that's an argument. Just needed to know

1 that.

2 MS. SHURLING: I'm sorry if I was unclear.
3 There has been -- there's no case law that I'm aware of
4 where our Court has enforced that rule when someone has
5 wanted to enter a plea.

6 THE COURT: All right. Thank you. I need to
7 hear from you, and you are welcome to comment on the
8 facts but, obviously, I've heard everything and this has
9 been lengthy testimony. I want to hear your position on
10 her wanting to amend, to request a new sentencing
11 proceeding. That's what I need to hear.

12 MS. HARRIGAN: Yes, ma'am. The State would
13 object both to amending her allegations regarding
14 sentencing, and, peripherally, we were not put on notice
15 this was going to be a new issue or a new prayer for
16 relief. We never spoke to our witness regarding this.
17 We weren't able to fairly develop any testimony, and we
18 think it prejudices the State.

19 THE COURT: Who would be your witness?

20 MS. HARRIGAN: The trial -- we could ask the
21 trial attorney more questions about this. We haven't
22 done any research regarding this issue to prepare for
23 this, to know what questions to ask.

24 THE COURT: So just I'm clear, because -- and
25 Ms. Elliott knows this. About a month ago, I did just

1 this. The attorney wasn't skilled enough in PCRs to
2 actually ask to amend it, to remand for sentencing, but
3 my issue was I had a Jasper public defender who did not
4 advise his client on the change in YOA status and that he
5 thought and told his client that he still was going to
6 get a ten-month sentence under YOA although it had been
7 changed. He was going to get the three years, and he got
8 on the stand and told me -- and, as you know, I sent it
9 back to Ashleigh Wilson of your office and I said, Just
10 resentence him. Again, really had had no practical
11 effect, and I got a letter back from Ashleigh Wilson
12 saying, No, Judge, you can't do that. You either got to
13 completely overturn it or you got to keep it as it is.

14 And, again, I know that an attorney flat out
15 told this man incorrectly. It wasn't fair, straight up,
16 and my hope was since it wasn't amended that it was -- if
17 I overturned it, the solicitor's office would do the
18 right thing.

19 But, again, I can't always count on that, so
20 that was my hope, but is there any reason other than you
21 did not have an opportunity to speak about that or
22 cross-examine that with Mr. Savage? Because I think at
23 the very end, he had just piped in, why don't y'all just
24 give him 25 years and everyone will be happy, and that's
25 testimony I heard.

1 Mr. Savage is still here as well, and I'm
2 sure you could cross-examine him and ask him those
3 questions. Yes, ma'am?

4 MS. SHURLING: May I respond?

5 THE COURT: Sure.

6 MS. SHURLING: One, I would note that the
7 general allegation is ineffective assistance of counsel
8 prior to entering the plea proceeding, so, really, what I
9 have done is narrow my prayer for relief, as opposed to
10 changing it in the regard that we have alleged
11 ineffective assistance of counsel prior to enduring the
12 plea proceeding.

13 We are now narrowing it to say only
14 ineffective during the sentencing proceeding. There's
15 case law that certainly says that the defendant -- that
16 the Sixth Amendment right to effective assistance of
17 counsel extends to the plea -- I mean, pardon me, the
18 sentencing portion of a trial or a plea, and there is
19 also case law that clearly says that the relief should be
20 tailored to the allegations and the findings of the Court
21 and that more relief should not be granted than what is
22 asked for.

23 So that if you're only alleging he was
24 ineffective in sentencing and in no other regard, then
25 properly tailored relief would be to remedy only that

1 portion of the proceeding in which you say he was
2 ineffective.

3 THE COURT: So you're withdrawing your
4 request for me to overturn the entire thing based on any
5 of the grounds prior to sentencing, just so we're clear.

6 MS. SHURLING: Clear.

7 MS. ELLIOTT: And the only ground she's
8 proceeding on then is allegations of ineffective
9 assistance of counsel as to sentencing, and here and on
10 behalf of Ms. Harrigan, this is what I would like to
11 point out for the judge. And I understand you're in a
12 bad spot, but Ms. Shurling has had this case for a long
13 time. It's been continued I don't know how many times
14 before, but I know it's been continued before.

15 She's had all this material. We, as the
16 State, repeatedly come into court and get blind-sided by
17 new issues that we cannot prepare for, and if I'm not
18 here or someone else is not here, we have lawyers who
19 haven't done the research, who haven't talked to
20 witnesses about the claims, who really don't know -- it's
21 not on notice that it's even being litigated in the
22 middle of a hearing when it's being litigated.

23 She doesn't know what questions to ask, how
24 to develop the record because we're being blind-sided by
25 issues and we don't find out until the end of the hearing

1 that that's what's going on.

2 We could stand up and object every time
3 somebody wanders off course, but then the hearings would
4 take forever, and that's kind of what happened here. And
5 Ms. Harrigan is here. She has not done any research on
6 this issue. She has not talked to Mr. Savage about it.
7 She did not know what to develop, does not know what to
8 develop, and does not know what to argue to Your Honor
9 today. That's the prejudice to the State, is you can't
10 allege ineffective assistance of counsel.

11 We used to have cases summarily dismissed if
12 that was all that was alleged because the statute
13 requires you to argue these cases, or the allegations,
14 with specificity, with grounds to support the claims not
15 only to put us on notice, but to put the Court on notice
16 about what needs to be ruled on in the order because when
17 these hearings start taking on other issues, you don't
18 know if that's what is being alleged or if you're just
19 going off a side track.

20 You don't know what to put in the order. We
21 don't know what to write in the order if you're writing
22 them, and we can prepare and the witnesses don't know,
23 will not know, what the issues are that they need to be
24 prepared to testify about.

25 So that's the prejudice to the State, and at

1 this point, Ms. Harrigan has not talked to Mr. Savage
2 about these particular claims. We were not on notice as
3 to the issue. She has not been able to develop or
4 explore any off it because she hadn't done the research,
5 and we have a record that is one sided.

6 THE COURT: Before you jump in, obviously,
7 these are civil proceedings, and because it's a civil
8 proceeding, any time she should be able to make a motion
9 to amend her petition -- and I may be wrong, so correct
10 me if I'm wrong -- to amend her petition to conform to
11 the evidence.

12 MS. ELLIOTT: Only if it doesn't prejudice
13 the other party.

14 THE COURT: I agree with you, and my question
15 becomes this: And I'm almost less concerned -- this is a
16 civil proceeding as opposed to a criminal proceeding. I
17 see that being a heightened problem, but I think just in
18 simply reading the transcript of Judge Young -- and
19 that's usually how I start PCRs. Truthfully, I don't
20 look at the application. I would rather read the
21 transcript, and it's pretty obvious, from reading this
22 transcript, what the attorney's concern is, additionally
23 given -- and again, I hate to note -- we have excellent
24 lawyers throughout the State doing criminal defense work,
25 but undoubtedly Mr. Savage is an excellent, excellent

1 criminal lawyer, and in reading this, it's blatantly
2 clear what the problem is, and I would think that someone
3 from your office would be able to see that and to see
4 where maybe he was upset or there was a question.

5 And I say this being a judge, and I can tell
6 you this has been a wonderful lesson for me today, and,
7 ironically, after listening to all this, the first thing
8 I think of is I should keep my mouth shut, and of course
9 what am I doing? Running on right now, and I am.

10 So I understand that, but I also can look at
11 it, and this really has nothing to do with this. We want
12 to, as judges, get it right. That's the most important
13 thing at the end of the day. We want to get it right.
14 And if for some reason Judge Young missed something or he
15 cut off Mr. Savage, which he clearly did, and I'm going
16 to say every last judge does that.

17 If there is an opportunity for him to go in
18 and look at it, he may not correct it, but I'm going to
19 tell you as a judge, I guarantee you he would like the
20 opportunity to look at it. Because, again, at the end of
21 the day, we want to do what's right.

22 He may not change it one bit. He might say I
23 don't care, but, again, just based on -- we would like to
24 have a second look. There are plenty of judges out there
25 I can tell you that wish down the line they could have a

1 second chance. It doesn't happen very often, but every
2 once in a while it does, and you really wish you had that
3 opportunity, particularly when something may have just
4 caught you wrong. We're all human, and so -- for what
5 it's worth, those are my two cents.

6 MS. SHURLING: The only thing I was going to
7 point out is that the specific things that I'm saying
8 should have been addressed in the sentencing were
9 discussed with Mr. Savage on the stand. He was
10 questioned ad nauseam, I'm sure he would agree with that
11 adjective, about each of those things while he was on the
12 stand.

13 We spent a very long time talking about every
14 aspect of that three- or four-page portion of the plea
15 transcript. We delved into it in great detail in my
16 examination, and the State had the opportunity to cross
17 on any of those issues that I raised.

18 Your Honor is correct that there is even a
19 case -- I believe it's Simmons V State that says that the
20 Court -- the allegations may be amended to include things
21 that are developed from the testimony as it unfolds
22 through the hearings.

23 THE COURT: And Ms. Harrigan very
24 intelligently did not release Mr. Savage, which was very
25 smart, obviously.

1 MS. SHURLING: And that is either by consent
2 of the Respondent and leave of the Court, and that's what
3 we're asking for, is leave of Court.

4 Thank you.

5 THE COURT: Well, Mr. Savage is still here.
6 And, Ms. Harrigan, you're here and obviously your boss,
7 who is the head of PCRs who probably knows more than
8 anyone in the state on the issue of PCR is here to help
9 assist you.

10 I am certainly happy to allow Ms. Elliott, if
11 she would like to -- both of you together, whomever, if
12 you would like to question Mr. Savage as to this issue,
13 you are welcome to do it, Ms. Elliott, Ms. Harrigan.
14 Whoever wants to do it, you are more than welcome to call
15 him back. Again, just in an effort of completeness and
16 fairness. And I understand -- I will have to say that I
17 note your objection that it is prejudicial to the State.

18 MS. ELLIOTT: I haven't read the record, so I
19 don't really know what is in there, and we can talk to
20 Mr. Savage and maybe there would be no questions right
21 now, but I'm not familiar with the record so --

22 THE COURT: Also, to cure that -- and I don't
23 need to prolong anything, but I could also hold this over
24 until another term -- and it doesn't have to be a
25 PCR term. Y'all can come to Beaufort or I can come to

1 Charleston, wherever y'all want me to come, I can come,
2 and if you do have further questions and you do want to
3 further investigate this, I would be certainly welcome to
4 do that.

5 MS. ELLIOTT: That would be a good
6 resolution, Your Honor.

7 MS. SHURLING: The only response would be if
8 we have a transcript of today's proceedings, it would
9 demonstrate that every allegation I've made was discussed
10 in detail, that Mr. Savage was questioned about each of
11 them and given an opportunity to respond to questions
12 about each of those things.

13 My suggestion would be, Your Honor, that
14 we -- that the transcript of today's proceeding be
15 ordered and that both sides be allowed to submit proposed
16 orders and that at that point if Your Honor felt you
17 needed additional testimony, you could request it.

18 MS. ELLIOTT: We would like to leave the
19 record open just for a very short period of time to
20 discuss this information with Mr. Savage.

21 We may decide we don't need to do anything
22 else. We don't need the transcript. We took notes, so
23 we're ready to try to wrap this up pretty quickly.

24 THE COURT: I appreciate that.

25

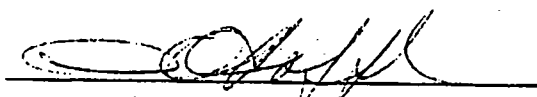
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(Whereupon, the proceedings were concluded.)

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth 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 evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Dorchester County, South Carolina, on the 1st of November 2012.

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

March 26, 2013


Circuit Court Reporter

STATE OF SOUTH CAROLINA,)
)
 COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS
 FOR THE JUDICIAL CIRCUIT

INDICTMENT NOS: 2008-GS-1008072, 110
 2008-GS-1008073, 2008-GS-1008074 X
 2008-GS-1008075, 2008-GS-1008124 X
 2008-GS-1008125, 2008-GS-1008126, X
 2008-GS-1008127, 2008-GS-1008128 X
 2008-GS-1008135, 2008-GS-1008136 X
 2008-GS-1008137, 2008-GS-1008138 X
 2008-GS-1008139, 2008-GS-1008140 X
 2008-GS-1008141, 2008-GS-1008142 X

STATE OF SOUTH CAROLINA,)
)
 Plaintiff,)
)
 -versus-)
)
 BRYAN L. MULLIGAN,)
)
 Defendant.)

PROVIDENCY FORM

A. Swearing of Defendant and Preliminary Questions.

1. Mr. Mulligan, the court is informed that you wish to plead guilty. Is that correct?
2. Before accepting your guilty plea, there are a number of questions I will ask you to assure that it is a valid plea. If you do not understand any of the questions, or at any time wish to consult with your attorney, please say so, since it is essential to a valid plea that you understand each question before you answer.
3. The clerk will please swear the defendant.

4. Do you understand that, having been sworn, your answers to my questions will be subject to the penalties of perjury or of making a false statement if you do not answer truthfully?

B. Competence of Defendant to Plead

1. Mr. Mulligan, how old are you?
2. How much formal education have you had?
3. Do you have any problems understanding your purpose for being here or difficulty understanding the questions I am asking you?
4. Where are you currently employed?
5. Have you taken any drugs or medication or consumed any alcoholic beverages in the past twenty-four hours or are you now under the influence of any drugs or alcohol?
6. Have you ever been treated for mental illness or addiction to alcohol or narcotic drugs of any kind? Do you understand what is happening today?
7. Tell me in your own words what is happening.
8. Have you been mistreated in any way by the police, officers at the jail, or anyone in

the Solicitor's Office?

9. State finding on record of Defendant's competence to plead.

C. Defendant's Right to Counsel (Attorney Competence)

1. Have you had ample opportunity to discuss your case with Mr. Savage or other attorneys in his firm?

2. Are you satisfied with Mr. Savage's representation?

3. Has Mr. Savage done everything you have asked him to do?

4. Has he failed to do anything you have asked him to do?

5. Is there anything that you would like for him to do at this time?

D. Defendant's Right to a Trial and the Nature Thereof

1. Do you understand that, under the Constitution and laws of the United States as well as the laws and Constitution of the State of South Carolina, you are entitled to a trial by a jury during which you would have the right to the assistance of counsel for your defense:

- a) On the charges from Charleston County contained in Indictment Numbers 2008-GS-1008072 (Kidnapping), 2008-GS-1008073 (Attempted Armed

Robbery), 2008-GS-1008074 (Burglary, Second Degree), 2008-GS-1008075 (Possession of a Firearm During the Commission of a Violent Crime), 2008-GS-1008124 (Possession of a Firearm During the Commission of a Violent Crime); 2008-GS-1008125 (Burglary, Second Degree), 2008-GS-1008126 (Armed Robbery), 2008-GS-1008127 (Kidnapping), 2008-GS-1008128 (Kidnapping), 2008-GS-1008135 (Criminal Sexual Conduct, First Degree), 2008-GS-1008136 (Possession of a Firearm During the Commission of a Violent Crime), 2008-GS-1008137 (Kidnapping), 2008-GS-1008138 (Kidnapping), 2008-GS-1008139 (Armed Robbery), 2008-GS-1008140 (Armed Robbery), 2008-GS-1008141 (Armed Robbery), 2008-GS-1008142 (Burglary, Second Degree), and

- b) On the charges from Dorchester County contained in Indictment Numbers 2008-GS-181107 (Assault and Battery of a High and Aggravated Nature), 2008-GS-181108 (Kidnapping), 2008-GS-181109 (Possession of a Firearm During the Commission of a Violent Crime), 2008-GS-181110 (Possession of a Firearm During the Commission of a Violent Crime), 2008-GS-181111 (Armed Robbery), 2008-GS-181112 (Armed Robbery), 2008-GS-181113 (Kidnapping), 2008-GS-181114 (Kidnapping), 2008-GS-181115 (Burglary, Second Degree), 2008-GS-181116 (Kidnapping), 2008-GS-181117 (Possession of a Firearm During the Commission of a Violent Crime), 2008-GS-181118 (Attempted Armed Robbery), 2008-GS-181119 (Burglary, Second Degree), 2008-GS-181120 (Kidnapping), and 2008-GS-181121

(Armed Robbery)?

2. Do you understand that, at a trial, you would be presumed to be innocent and the State would be required to prove you guilty by competent evidence and beyond a reasonable doubt before you could be found guilty, and you would not have to prove that you were innocent?

3. Kidnapping is a Class A Felony and is a violent, most serious offense. Do you understand that, at a trial, the State would have to prove the following elements beyond a reasonable doubt in order to obtain a conviction for the crime of Kidnapping:

- a) Unlawfully seize, confine, inveigle, decoy, kidnap, or carry away by any means whatsoever;
- b) any person,
- c) without the authority of law (except where a minor is seized or taken by his parent)?

4. Armed Robbery is a Class A Felony and is a violent, most serious offense. Do you understand that, at a trial, the State would have to prove the following elements beyond a reasonable doubt in order to obtain a conviction for the crime of Armed Robbery:

- a) Taking or attempted taking and carrying away of the personal property,
- b) of a person, place, or business,
- c) with the intent to deprive the owner of possession,
- d) by use of force, threats, or intimidation,

- c) while armed with a deadly weapon or possession of an object which the victim reasonably believed to be a deadly weapon and alleging by actions or words that one is armed?

5. Attempted Armed Robbery is a Class C Felony and is a violent, most serious offense. Do you understand that, at a trial, the State would have to prove the following elements beyond a reasonable doubt in order to obtain a conviction for the crime of Attempted Armed Robbery:

- a) Taking or attempted taking and carrying away of the personal property,
- b) of a person, place, or business,
- c) with the intent to deprive the owner of possession,
- d) by use of force, threats, or intimidation,
- e) while armed with a deadly weapon or possession of an object which the victim reasonably believed to be a deadly weapon and alleging by actions or words that one is armed?

6. Criminal Sexual Conduct, First Degree is a Class A Felony and is a violent, most serious offense. Do you understand that, at a trial, the State would have to prove the following elements beyond a reasonable doubt in order to obtain a conviction for the crime of Criminal Sexual Conduct, First Degree:

- a) Sexual battery,
- b) of a victim who is also the victim of a forcible confinement, kidnapping, robbery, or burglary?

7. Burglary, Second Degree is a Class D Felony and is a violent, serious offense. Do you understand that, at a trial, the State would have to prove the following elements beyond a reasonable doubt in order to obtain a conviction for the crime of Burglary, Second Degree:

- a) Entering a building,
- b) without consent,
- c) with the intent to commit a crime therein, and either:
 - 1) when, in effecting entry or while in the dwelling or immediate flight, he or another participant in the crime:
 - a) Is armed with a deadly weapon or explosive,
 - b) Causes physical injury to a person who is not a participant in the crime, or
 - c) Uses or threatens the use of a dangerous instrument, or
 - d) Displays what appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm, or
 - 2) The burglary is committed by a person with a prior record of two or more convictions for burglary or housebreaking or a combination of both, or
 - 3) The entering or remaining occurs in the nighttime?

8. Possession of a Firearm During the Commission of a Violent Crime is a Class F Felony. Do you understand that, at a trial, the State would have to prove the following elements

beyond a reasonable doubt in order to obtain a conviction for the crime of Possession of a Firearm

During the Commission of a Violent Crime:

- a) Committing or attempting to commit a violent crime, and
- b) while in possession of a firearm, or possession of an object with which the victim reasonably believed to be a firearm?

9. Assault and Battery of a High and Aggravated Nature is an Unclassified Misdemeanor. Do you understand that, at trial, the State would have to prove the following elements beyond a reasonable doubt in order to obtain a conviction for the crime of Assault and Battery of a High and Aggravated Nature:

- a) An unlawful act;
- b) of violent physical injury;
- c) to the person of another; and
- d) accompanied by circumstances of aggravation?

10. Do you understand that, in the course of trial, the witnesses for the State would have to come to court and testify in your presence, and Mr. Savage could cross-examine the witnesses for the State; object to evidence offered by the State, and offer evidence on your behalf?

11. Do you understand also that, at a trial, while you would have the right to testify if you chose to do so, you also would have the right not to testify, and no inference or suggestion of guilt could be drawn from the fact that you did not testify?

12. Do you understand that, at a trial, you would have the right to the issuance of subpoenas or compulsory process to compel the attendance of witnesses to testify in your defense?

13. Do you understand that, at trial, Mr. Savage would have the right to move before the Court to suppress evidence that may have been gathered by law enforcement in violation of your Constitutional Rights? These rights include, among other things, your right to remain silent. Did you provide anyone from law enforcement with a statement about your involvement in this case?

14. If you plead guilty and I accept your plea, do you understand that you will waive your right to a trial and the other rights I have just discussed, there will be no trial, and I will enter a judgment of guilty and sentence you on the basis of your guilty plea?

15. If you plead guilty, do you understand that you will also have to waive your right not to incriminate yourself, since I may ask you questions about what you did in order to satisfy myself that you are guilty as charged, and you will have to acknowledge your guilt?

16. Do you fully understand that if you plead guilty and I accept your plea, you may be required to make restitution to the victim or victims of your acts, either by payment of money or in personal services, as may be directed by this Court? Do you understand that if restitution or personal service is ordered, failure to comply may be the basis for revoking your probation or parole?

17. Do you understand that offenses to which you are pleading guilty are felonies, that if your plea is accepted you will be adjudged guilty of these offenses, and that such adjudication *may* deprive you of valuable civil rights, such as the right to vote, the right to hold public office, the right to serve on a jury, and the right to possess any kind of firearm?

18. Having discussed your rights with you, do you still want to plead guilty?

E. Nature of Charges and Possible Consequences of Plea

1. Have you received a copy of the indictments and warrants, that is, the written charges made against you in this case? Have you discussed with your counsel the charges in the indictments and warrants and the case in general?

2. Do you understand each charge?

3. Do you understand that the maximum possible penalty under Indictments 2008-GS-1008127, 2008-GS-1008128, 2008-GS-1008137, 2008-GS-1008138, 2008-GS-1008072, and Warrants I-102146, I-102116, I-102118, I-102122, and J-092912 for each charge of Kidnapping is a period of incarceration not to exceed thirty (30) years? Do you also understand that conviction for this offense will require you to be registered on the sex offender registry unless the sentencing court makes a finding on the record that the offense did not include a criminal sexual offense or attempted criminal sexual offense? Do you also understand that this crime is a violent, most serious offense making you ineligible for parole, and, should the State serve proper notice, expose you to the

punishment of life imprisonment without the possibility of parole if you are also convicted on a separate occasion(s) of at least one (1) other most serious crime, or two (2) other serious crimes?

4. Do you understand that the maximum possible penalty under Indictments 2008-GS-1008126, 2008-GS-1008139, 2008-GS-1008140, 2008-GS-1008141, and Warrants I-102147, I-102105, and I-102109 for each charge of Armed Robbery is a period of incarceration of a mandatory minimum of ten (10) years, not to exceed thirty (30) years, no part of which may be suspended or probation granted? Do you also understand that this crime is a violent, most serious offense making you ineligible for parole, and, should the State serve proper notice, expose you to the punishment of life imprisonment without the possibility of parole if you are also convicted on a separate occasion(s) of at least one (1) other most serious crime, or two (2) other serious crimes?

5. Do you understand that the maximum possible penalty under Indictment 2008-GS-1008073, and Warrant I-102143 for each charge of Attempted Armed Robbery is a period of incarceration not to exceed twenty (20) years? Do you also understand that this crime is a violent, most serious offense making you ineligible for parole, and, should the State serve proper notice, expose you to the punishment of life imprisonment without the possibility of parole if you are also convicted on a separate occasion(s) of at least one (1) other most serious crime, or two (2) other serious crimes?

6. Do you understand that the maximum possible penalty under Indictments 2008-GS-1008125, 2008-GS-1008142, 2008-GS-1008074, and Warrants I-102144 and I-102120 for each

charge of Burglary, Second Degree (violent) is a period of incarceration not to exceed fifteen (15) years? Do you also understand that this crime is a violent, serious offense, and, should the State serve proper notice, expose you to the punishment of life imprisonment without the possibility of parole if you are also convicted on a separate occasion(s) of at least two (2) other most serious crimes; or two (2) other serious crimes?

7. Do you understand that maximum possible penalty under Indictment 2008-GS-1008135 for the charge of Criminal Sexual Conduct, First Degree is a period of incarceration not to exceed thirty (30) years? Do you also understand that conviction for this offense will require you to be registered on the sex offender registry? Do you also understand that this crime is a violent, most serious offense, and, should the State serve proper notice, expose you to the punishment of life imprisonment without the possibility of parole if you are also convicted on a separate occasion(s) of at least one (1) other most serious crime, or two (2) other serious crimes?

8. Do you understand that the maximum possible penalty under Indictments 2008-GS-1008124, 2008-GS-1008136, 2008-GS-1008075, and Warrants I-102148, I-102112, and J-092913 for each charge of Possession of a Firearm During the Commission of a Violent Crime is a period of incarceration for five (5) years?

9. Do you understand that the maximum possible penalty under Arrest Warrant J-092911 for the charge of Assault and Battery of a High and Aggravated Nature is a period of incarceration of up to ten (10) years?

F. Voluntariness of Plea and Plea Agreement

1. Has anyone threatened you or anyone else or forced you in any way to plead guilty?

A. Mr. Savage, I understand that there have been plea negotiations in this matter.

....
Your Honor, Bryan Mulligan was charged with the following offenses in Charleston County:

Kidnapping (5 counts); Armed Robbery (4 counts); Attempted Armed Robbery; Criminal Sexual Conduct, First Degree; Burglary, Second Degree (3 counts); Possession of Firearm During the Commission of a Violent Crime (3 counts). The dates and charging documents of each offense are as follows:

1. Indictment Number 2008-GS-1008124 for the charge of Possession of a Firearm During the Commission of Violent Crime, in violation of section 16-23-490 of the South Carolina Code on April 28, 2008;
2. Indictment Number 2008-GS-1008125 for the charge of for the charge of Burglary, Second Degree, in violation of section 16-11-312 of the South Carolina Code on April 28, 2008;

3. Indictment Number 2008-GS-1008126 for the charge of Armed Robbery, in violation of section 16-11-330 of the South Carolina Code on April 28, 2008;
4. Indictment Number 2008-GS-1008127 for the charge of Kidnapping, in violation of section 16-3-910 of the South Carolina Code on April 28, 2008;
5. Indictment Number 2008-GS-1008128 for the charge of Kidnapping, in violation of section 16-3-910 of the South Carolina Code on April 28, 2008;
6. Indictment Number 2008-GS-1008135 for the charge of Criminal Sexual Conduct, First Degree, in violation of section 16-3-652 of the South Carolina Code on May 25, 2008;
7. Indictment Number 2008-GS-1008136 for the charge of Possession of a Firearm During the Commission of a Violent Crime, in violation of section 16-23-490 of the South Carolina Code on May 25, 2008;
8. Indictment Number 2008-GS-1008137 for the charge of Kidnapping, in violation of section 16-3-910 of the South Carolina Code on May 25, 2008;
9. Indictment Number 2008-GS-1008138 for the charge of Kidnapping, in violation of section 16-3-910 of the South Carolina Code on May 25, 2008;

10. Indictment Number 2008-GS-1008139 for the charge of Armed Robbery, in violation of section 16-11-330 of the South Carolina Code on May 25, 2008;
11. Indictment Number 2008-GS-1008140 for the charge of Armed Robbery, in violation of section 16-11-330 of the South Carolina Code on May 25, 2008;
12. Indictment Number 2008-GS-1008141 for the charge of Armed Robbery, in violation of section 16-11-330 of the South Carolina Code on May 25, 2008;
13. Indictment Number 2008-GS-1008142 for the charge of Burglary, Second Degree, in violation of section 16-11-312 of the South Carolina Code on May 25, 2008;
14. Indictment Number 2008-GS-1008075 for the charge of Possession of a Firearm During the Commission of a Violent Crime, in violation of section 16-23-490 of the South Carolina Code on May 25, 2008;
15. Indictment Number 2008-GS-1008072 for the charge of Kidnapping, in violation of section 16-3-910 of the South Carolina Code on June 2, 2008;

16. Indictment Number 2008-GS-1008073 for the charge of Attempted Armed Robbery, in violation of section 16-11-330 of the South Carolina Code on June 2, 2008; and
17. Indictment Number 2008-GS-1008074 for the charge of Burglary, Second Degree, in violation of section 16-11-312 of the South Carolina Code on June 2, 2008.

Your Honor, Bryan Mulligan, was also charged with the following offenses in Dorchester County:

Kidnapping (5 counts); Armed Robbery (3 counts); Attempted Armed Robbery; Burglary, Second Degree (2 counts); Possession of Firearm During the Commission of a Violent Crime (3 counts); Assault and Battery of a High and Aggravated Nature. The dates and charging documents of each offense are as follows:

1. Indictment Number 2008-GS-181118, for the charge of Attempted Armed Robbery, in violation of section 16-11-330 of the South Carolina Code on May 10, 2008;

2. Indictment Number 2008-GS-181119 for the charge of Burglary, Second Degree, in violation of section 16-11-312 of the South Carolina Code on May 10, 2008;
3. Indictment Number 2008-GS-181120 for the charge of Kidnapping, in violation of section 16-3-910 of the South Carolina Code on May 10, 2008;
4. Indictment Number 2008-GS-181121 for the charge of Armed Robbery, in violation of section 16-11-330 of the South Carolina Code on May 10, 2008;
5. Indictment Number 2008-GS-181117 for the charge of Possession of a Firearm During the Commission of a Violent Crime, in violation of section 16-23-490 of the South Carolina Code on May 10, 2008;
6. Indictment Number 2008-GS-181112 for the charge of Armed Robbery, in violation of section 16-11-330 of the South Carolina Code on May 14, 2008;
7. Indictment Number 2008-GS-181111 for the charge of Armed Robbery, in violation of section 16-11-330 of the South Carolina Code on May 14, 2008;

8. Indictment Number 2008-GS-181110 for the charge of Possession of a Firearm During the Commission of a Violent Crime, in violation of section 16-23-490 of the South Carolina Code on May 14, 2008;
9. Indictment Number 2008-GS-181113 for the charge of Kidnapping, in violation of section 16-3-910 of the South Carolina Code on May 14, 2008;
10. Indictment Number 2008-GS-181114 for the charge of Kidnapping, in violation of section 16-3-910 of the South Carolina Code on May 14, 2008;
11. Indictment Number 2008-GS-181119 for the charge of Burglary, Second Degree, in violation of section 16-11-312 of the South Carolina Code on May 14, 2008;
12. Indictment Number 2008-GS-181116 for the charge of Kidnapping, in violation of section 16-3-910 of the South Carolina Code on May 14, 2008;
13. Indictment Number 2008-GS-181107 for the charge of Assault and Battery of a High and Aggravated Nature, in violation of South Carolina Common Law on June 2, 2008;

14. Indictment Number 2008-GS-181108 for the charge of Kidnapping, in violation of section 16-3-910 of the South Carolina Code on June 2, 2008; and
15. Indictment Number 2008-GS-181109 for the charge of Possession of a Firearm During the Commission of a Violent Crime, in violation of section 16-23-490 of the South Carolina Code on June 2, 2008.

In accordance with our discussions with Assistant Solicitor Burns Wetmore (Charleston County) and Assistant Solicitor Russell Hilton (Dorchester County), Mr. Mulligan will enter a guilty plea to the following:

1. For the April 28, 2008 incident in Charleston County:
 - a. Armed Robbery in violation of section 16-11-330 of the South Carolina Code, which carries a minimum penalty of ten (10) years incarceration and a maximum possible penalty of thirty (30) years incarceration; and
 - b. Kidnapping in violation of section 16-3-910 of the South Carolina Code, which carries a maximum possible penalty of thirty (30) years incarceration.

2. For the May 25, 2008 incident in Charleston County:
 - a. Armed Robbery in violation of section 16-11-330 of the South Carolina Code, which carries a minimum penalty of ten (10) years incarceration and a maximum possible penalty of thirty (30) years incarceration;
 - b. Kidnapping in violation of section 16-3-910 of the South Carolina Code, which carries a maximum possible penalty of thirty (30) years incarceration; and
 - c. Criminal Sexual Conduct, First Degree in violation of section 16-3-652 of the South Carolina Code, which carries a maximum possible penalty of thirty (30) years.

3. For the June 2, 2008 incident in Charleston County:
 - a. Attempted Armed Robbery in violation of section 16-11-330 of the South Carolina Code, which carries a maximum possible penalty of twenty (20) years incarceration; and
 - b. Kidnapping in violation of section 16-3-910 of the South Carolina Code, which carries a maximum possible penalty of thirty (30) years incarceration.

4. For the May 10, 2008 incident in Dorchester County:
 - a. Armed Robbery in violation of section 16-11-330 of the South Carolina Code, which carries a minimum penalty of ten (10) years incarceration and a maximum possible penalty of thirty (30) years incarceration; and
 - b. Kidnapping in violation of section 16-3-910 of the South Carolina Code, which carries a maximum possible penalty of thirty (30) years incarceration.
5. For the May 14, 2008 incident in Dorchester County:
 - a. Armed Robbery in violation of section 16-11-330 of the South Carolina Code, which carries a minimum penalty of ten (10) years incarceration and a maximum possible penalty of thirty (30) years incarceration; and
 - b. Kidnapping in violation of section 16-3-910 of the South Carolina Code, which carries a maximum possible penalty of thirty (30) years incarceration.
6. For the June 2, 2008 incident in Dorchester County:
 - a. Kidnapping in violation of section 16-3-910 of the South Carolina Code, which carries a maximum possible penalty of thirty (30) years incarceration; and

- b. Assault and Battery of a High and Aggravated Nature in violation of South Carolina Common Law, which carries a maximum possible penalty of ten (10) years incarceration.

All other charges and potential charges now known to the authorities against Mr. Mulligan for the same or similar offenses in Charleston and Dorchester Counties will be dismissed.

Finally, the State has agreed to recommend the following:

1. That all other charges against Bryan Mulligan are dismissed;
2. 10 - 30 years, with no recommendation of sentencing within that range;
3. That the sentences for the Dorchester County charges also run concurrently and concurrent with the sentences for the Charleston County charges.

.....

2. Has anyone made any promise other than the plea agreement that induced you to plead guilty?

3. Has anyone made any prediction, prophesy, or promise to you as to what your sentence will be?

4. (If answer is affirmative): What was it and who made it?

G. Determining Factual Basis for Guilty Plea

1. Did you, as charged, commit the offenses of Kidnapping (3 Counts), Armed Robbery (2 Counts), Attempted Armed Robbery, and Criminal Sexual Conduct, First Degree in Charleston County, and Armed Robbery (2 Counts), Kidnapping (3 Counts), and ABHAN in Dorchester County?
2. Tell me, in your own words, what you did with regard to the allegations of these counts.
3. The Solicitor or State case agent will summarize the evidence concerning the facts they would be prepared to prove at trial in order to establish an independent factual basis for the offenses.
4. Do you agree with the Solicitor's summary of what you did? If no, with what do you disagree? Are there any questions you want to ask the prosecution or case agent?

BM

I have read and I understand the questions presented in the preceding document.

BM

I have reviewed in detail the evidence in my case and all possible defenses that I might employ. It is my desire to enter a guilty plea as outlined in Paragraph F on Pages 13 through

BM I understand that I have a right to appeal the sentence imposed upon me, and it is further my understanding that if I desire to appeal, that I must request my attorney to do so within a limited time period. I understand that my notice of intent to appeal must be filed within ten (10) days of my plea and sentencing.

AWazford

WITNESS

2/3/11

DATE

Ben T. Jones

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15 PRIOLEAU STREET
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ANDREW J. SAVAGE, III
Certified Criminal Trial Advocate - NBTA
DAVID E. SAVAGE

VIRGINIA K. MURRAY
BREEN R. STEVENS

November 17, 2010

VIA E-MAIL AND U.S. MAIL

Mr. Bryan L. Mulligan
2235 Dallerton Circle
Charleston, SC 29414

RE: State vs. Bryan L. Mulligan

Dear Bryan:

I have been in constant contact with Burns Wetmore, the Assistant Solicitor who is handling the prosecution of your case.

~~I have previously advised you of our trial date of the week of November 29th. My objection to that date was the lack of discovery that I believe that we are entitled to receive prior to counseling you regarding the appropriateness of a plea decision.~~

~~I am enclosing the most recent e-mails from him concerning the statements of the co-defendants as well as anticipated DNA results.~~

With best wishes, I remain

Sincerely,

Andrew J. Savage, III

AJS,III/clc

Enc.: E-mails from Burns Wetmore; (2 pages)

Savage, Cheryl L.

From: Burns Wetmore
 Sent: 11/16/2010 10:19 AM
 To: Andrew J. Savage; Thomas Walters
 CC: Breen R. Stevens; Virginia Murray; Heather C. Hill; Lauren E. Pearson; Cheryl L. Savage
 BCC:

Attachments:

Priority: Normal
 Request: None
 Security: Normal
 Deliver After: 0 days(s)
 Subject: RE: MULLIGAN

Andy;

SLED was asked to compare swabs from Defendants and victims with swabs from the Noisy Oyster sink and Mulligan's SUV in June 2008. We have been requesting their report for several weeks. I'm not sure why they are having such a hard time getting this done.

I personally spoke to the SLED agent who is doing the DNA testing, and he says that he will have this done before Thanksgiving.

The witnesses from the 4/28/08 incident at Applebees on Rivers have been subpoenaed for the 11/29/10 trial term. There is no DNA evidence in that case, but I understand that you are considering the bigger picture.

BURNS WETMORE
www.scsolicitor9.org

-----Original Message-----

From: Andrew J. Savage [mailto:Andy@savlaw.com]
 Sent: Monday, November 15, 2010 5:57 PM
 To: Burns Wetmore
 Cc: Breen Stevens; Virginia Murray; Heather Hill; Lauren Pearson; Cheryl L. Savage
 Subject: Re: MULLIGAN

Please let us know where we stand on our Discovery requests. Toal has issued an Order about this. We are not looking for anything special.

Best

Andy:

Sent from my iPhone

On Nov 15, 2010, at 3:35 PM, "Burns Wetmore" <wetmoreb@scsolicitor9.org> wrote:

> MONROE is being transported THU AM for a guilty plea to the same deal.

> that I offered everybody. Do you want to bring MULLIGAN to plead THU
AM

> too? If not, I will defer sentencing on MONROE so that he and LARKIN
> can testify against MULLIGAN. Thanks;

>

> BURNS WETMORE

> www.scsolicitor9.org

>

>

> -----Original Message-----

> From: Andrew J. Savage [mailto:Andy@savlaw.com]

> Sent: Wednesday, November 10, 2010 10:46 AM

> To: Burns Wetmore

> Subject: Re: MULLIGAN

>

> Thanks Burns.

>

> Sent from my iPad

>

> On Nov 10, 2010, at 10:44 AM, "Burns Wetmore"

> <wetmoreb@scsolicitor9.org> wrote:

>

>> My investigator spoke with SLED this morning and they should have a

>> DNA

>> report for us this week. I would be surprised if there was DNA in a

>> stainless commercial kitchen. However, I would expect MULLIGAN's DNA

>> to

>> be on his own SUV, for whatever that would be worth.

>>

>> Attached are statements of LARKIN, MONROE (under proffer) and SIMMONS

>> implicating MULLIGAN, as well as the report of MULLIGAN's verbal

>> statement. All of these docs (except maybe the proffer) should have

>> been sent to you with initial discovery.

>>

>> LARKIN plead guilty to the deal that I emailed all the parties. He

> was

>> not sentenced and will be called as a witness at trial.

>>

>> MONROE is going to be brought over to plead guilty to the same deal

> next

>> week. He will not be sentenced either, and will also be called as a

>> witness at trial.

>>

>> Let me know if you want to try to plead MULLIGAN to the same deal

next

>> week too.

>>

>> Thanks;

>>

>> BURNS WETMORE

>> www.scsolicitor9.org

>>

>>

>> -----Original Message-----

>> From: Solicitor@scsolicitor.org [mailto:Solicitor@scsolicitor.org]

>> Sent: Tuesday, November 09, 2010 10:03 PM

>> To: Burns Wetmore

>> Subject: [Image File] Burns., #708

>>

>> FROM:

>> Image data has been attached to

>> the E-Mail.

>> <20101109220253.pdf>

>

STATE OF SOUTH CAROLINA,)
)
 COUNTY OF CHARLESTON)

IN THE COURT OF GENERAL SESSIONS
 FOR THE JUDICIAL CIRCUIT
 INDICTMENT NOS: 2008-GS-1008072;
 2008-GS-1008073; 2008-GS-1008074;
 2008-GS-1008075; 2008-GS-1008124;
 2008-GS-1008125; 2008-GS-1008126;
 2008-GS-1008127; 2008-GS-1008128;
 2008-GS-1008135; 2008-GS-1008136;
 2008-GS-1008137; 2008-GS-1008138;
 2008-GS-1008139; 2008-GS-1008140;
 2008-GS-1008141; 2008-GS-1008142; AND
 ARREST WARRANTS: I-102143; I-102144;
 I-102146; I-102147; I-102148; I-102105; I-102109;
 I-102112; I-102116; I-102118; I-102120; I-102122;
 J-092911; J-092912; J-092913.

STATE OF SOUTH CAROLINA,)
)
 Plaintiff,)
)
 -versus-)
)
 BRYAN L. MULLIGAN,)
)
 Defendant.)

MOTION FOR CONTINUANCE

Bryan L. Mulligan moves this Honorable Court for an Order continuing this matter until all discovery materials have been produced by the State that are necessary and material to the preparation of his defense. Specifically, Mulligan has been denied access to the DNA samples and lab results from the Noisy Oyster crime scene of May 25, 2008, the production of which is necessary to either ethically accept a plea offer from the State, or fully prepare his defense. See U.S. Const. amends V, VI, and XIV; S.C. Const. Art. I, § 3; Brady v. Maryland, 373 U.S. 83 (1963) and its progeny; Rule 5 SCRCrimP; Rules 3.4 and 3.8 of the South Carolina Rules of Professional Conduct under Rule 407, SCACR; and Memorandum from Chief Justice Jean Hoefer Toal, to All Solicitors (Mar. 1, 2004) (on Plea Agreements and Discovery).

FACTS

On May 25, 2008, North Charleston Police took seven (7) sample swabs of DNA material from the sink at the Noisy Oyster as part of its investigation into the robbery and sexual assault occurring there on the same date. Law enforcement took the DNA samples after the sexual assault victim stated she was ordered by her assailant to spit-out the residue of the assault into the sink. The samples were subsequently sent to the State Law Enforcement Department (SLED) Laboratory as SLED LAB # L08-08871, under case number 2008023157.¹

On June 2, 2008, Mulligan was arrested for the robbery of a different location. However, statements by his co-defendants, Corey Larkin and Joshua Monroe, averred that Mulligan perpetrated the sexual assault on May 25, 2008.

On October 19, 2010, the prosecutor sent an offer to Mulligan for a plea, which included the offense of Criminal Sexual Conduct in the First Degree (CSC 1st) for the incident occurring on May 25, 2008.² A new plea offer was sent to Mulligan on November 24, 2010, which also included the offense of CSC 1st.

Mulligan already filed several discovery motions pertaining to the DNA material and results

¹ This SLED Laboratory Request is also referenced on the bottom of the second page in a later SLED Laboratory Request as well. This later SLED Request included SLED DNA Suspect Kits from co-defendants Larkin, Monroe, and Mulligan, and specifically requested to "compare their DNA with the DNA recovered from the armed robbery/rape under SLED LAB# L08-08871 (OCA# 2008023157)."

² Pursuant to the Cooperative Case Management Administrative Order for the Court of General Sessions, filed October 30, 2006, final plea offers and negotiations are to be concluded 120 days after arrest. In the present case, the plea offer was not made until over two years after arrest.

from the report.³ After more than twenty-nine (29) months, despite Mulligan's best efforts to ensure the evidence was preserved and the lab results produced, neither the DNA material nor any reports have been produced to Mulligan for independent third-party testing, or examination of the results, or even for comparison of the results with the co-defendants' statements in preparation for his defense against this charge, as well as all other charges where the State intends to use the co-defendants' as witnesses against him.

Counsel for Mulligan carefully explained the legal and ethical concerns to the prosecution, yet the State steadfastly demands that Mulligan either accept the plea offer (which includes the charge of CSC 1") and relinquish his right to discovery of the DNA results, or else face trial starting with the November 29, 2010, trial docket.

LAW/ANALYSIS

Demanding Mulligan accept a plea offer at the expense of relinquishing his right to material discovery is unethical, and weakens the certainty of judicially accepted plea agreements.

As stated by Chief Justice Toal in her Memorandum to All Solicitors on March 1, 2004, it is unethical to premise a plea agreement on the defendant relinquishing the right to discovery in criminal cases. Moreover, such practices will likely "have adverse consequences in the future with claims of ineffective assistance of counsel" Together, these reasons are precisely why, in the

³ The following discovery motions pertaining to the DNA evidence were filed as follows:

- (1) Filed 07/17/2008, Motion for Discovery;
- (2) Filed 10/16/2008, Motion to Require the State to Produce Samples of All Evidence Undergoing Scientific and Forensic Examination;
- (3) Filed 10/16/2008, Motion to Preserve Evidence;

same Memorandum, the Chief Justice implored "any and all solicitors who are currently pursuing this practice to stop immediately."

The view espoused by Chief Justice Toal is likewise supported by the rules and law governing discovery in criminal cases. First, Rule 5(a)(1)(c) of the South Carolina Rules of Criminal Procedure (SCRCrimP) grants the defendant the right to inspect and copy tangible objects in the possession, custody, or control of the prosecution that are material to the preparation of his defense or intended for use by the prosecution as evidence in chief at the trial. Additionally, Rule 5(a)(1)(d) of the SCRCrimP specifically grants a defendant the right to inspect and copy any results or reports of scientific tests or experiments within the possession, custody, or control of the prosecution, "the existence of which is known, or by the exercise of due diligence may become known," and are material to the preparation of the defense or intended for use by the prosecution in its case in chief. In both Rule 5(a)(1)(c) and (d), the discovery sought does not have to be for use in the State's case in chief; rather, it is also discoverable under these rules if it is material to the preparation of the defense.

Second, the DNA and test results constitute material evidence discoverable under Brady v. Maryland, 373 U.S. 83 (1963), and its progeny as well. As made clear in United States v. Bagley, 473 U.S. 667, 676 (1985), there is no distinction between impeachment evidence and exculpatory evidence. Additionally, "when the reliability of a given witness may well be determinative of guilt or innocence, nondisclosure of evidence affecting credibility falls within the general rule [of Brady]." Giglio v. United States, 405 U.S. 150, 154 (1972) (internal quotations omitted).

In the present case, Mulligan invoked his discovery rights under both Rule 5 and Brady over

two (2) years ago. He seeks examination of either the DNA samples themselves, or the documents regarding the results of the test before he accepts or rejects the plea offer, as it is material to the preparation of his defense. At a minimum, the DNA test results go directly to the credibility of statements made by the two co-defendants who are now State witnesses, and without whom the State would have no case against Mulligan. Simply stated, if the co-defendants lied about who perpetrated the CSC 1st on May 25, 2008, then their credibility regarding their other statements is grossly suspect, as well, regardless of whether they pertain to the CSC 1st charge or for different offenses. Therefore, the DNA and test results represent material evidence necessary for preparation of Mulligan's defense, not only because they could be exculpatory for the charge of CSC 1st, but also because they are vital for purposes of cross-examination of the State's two key witnesses, "the reliability of whom may well be determinative of guilt or innocence." Id.

Additionally, because the discovery is material to the preparation of Mulligan's defense, it is irrelevant whether the State is going to use the DNA results in its case in chief. See Rule 5(a)(1)(c) and (d). It is likewise irrelevant whether the DNA evidence or reports regarding it are within the prosecutor's actual possession or still with SLED. As stated by the United States Supreme Court, "the individual prosecutor has a duty to learn of any favorable evidence known to the others acting on the government's behalf in the case, including the police." Kyles v. Whitley, 514 U.S. 419, 437, 115 S. Ct. 1555 (1995). Further, "since, then, the prosecutor has the means to discharge the government's Brady responsibility if he will, any argument for excusing a prosecutor from disclosing what he does not happen to know about boils down to a plea to substitute the police for the prosecutor, and even for the courts themselves, as the final arbiters of the government's obligation to ensure fair trials." Kyles v. Whitley, 514 U.S. 419, 438, 115 S. Ct. 1555, 1568, (1995). In sum,

it is not only irrelevant that the State might not use the DNA evidence in its case in chief, but it is also irrelevant that SLED is in possession of the information instead of the solicitor. What is entirely relevant is that the evidence is material and in the State's possession, yet the State refuses to disclose it.

CONCLUSION

The State is forcing Mulligan to make a forbidden choice. More than two (2) years after Mulligan's arrest and requests for discovery, the State made a plea offer to him, which includes the charge of CSC 1st for the incident of May 25, 2010. If Mulligan does not accept the plea, the State intends to begin trial on other related charges, using as its key evidence the direct testimony of the same co-defendants from the May 25, 2010 incident. However, the State has yet to produce the material evidence of the DNA samples or test results. In short, the State is forcing Mulligan to either forego material discovery rightfully due him pursuant to Rule 5, SCRCrimP and Brady, and accept the plea offer, or face trial. Such a choice is expressly proscribed by Chief Justice Toal's Memorandum to All Solicitors on March 1, 2004, regarding Plea Agreements and Discovery. Accordingly, Mulligan Respectfully requests this Honorable Court to Order a continuance permitting the State the requisite time it needs to produce the discovery necessary for Mulligan to properly make the choice presented by the prosecutor's office.

Respectfully submitted,

SAVAGE & SAVAGE, P.A.

15 Prioleau Street

Post Office Box 1002

Charleston, SC 29402

Telephone: (843) 720-7470

BY: _____

ANDREW J. SAVAGE, III

SC Bar Number: 4946

ATTORNEY FOR DEFENDANT

Charleston, South Carolina

November 29, 2010

SAVAGE & SAVAGE, P.A.**ATTORNEYS AT LAW**

15 PRIOLEAU STREET

POST OFFICE BOX 1002

CHARLESTON, SC 29402

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ANDREW J. SAVAGE, III
 Certified Criminal Trial Advocate - NBTA
 DAVID L. SAVAGE

VIRGINIA K. MURRAY
 BREEN R. STEVENS

February 4, 2011

LEGAL MAIL - TO BE OPENED IN PRESENCE OF INMATE

Mr. Bryan L. Mulligan
 c/o Charleston County Detention Center
 3841 Leeds Avenue
 North Charleston, SC 29405

RE: State vs. Bryan L. Mulligan

Dear Bryan:

I am writing to confirm what took place when you appeared yesterday before the Honorable Roger M. Young in the Charleston County Court of General Sessions.

In accordance with the plea agreements with Assistant Solicitors Burns Wetmore of Charleston County, and Russell Hilton of Dorchester County, you waived venue to permit Judge Young to accept your plea for the charges from both counties, and then pled guilty to the following offenses:

<u>Charge</u>	<u>Indictment Number</u>
Armed Robbery	2008-GS-1008126
Armed Robbery	2008-GS18-1121
Armed Robbery	2008-GS-1008141
Armed Robbery	2008-GS18-1112
Kidnapping	2008-GS-1008127
Kidnapping	2008-GS-1008137
Kidnapping	2008-GS-1008072
Kidnapping	2008-GS18-1113
Kidnapping	2008-GS18-1120
Kidnapping	2008-GS18-1108

Mr. Bryan L. Mulligan
 February 4, 2011
 Page Two

Criminal Sexual Conduct, First Degree	2008-GS-1008135
Attempted Armed Robbery	2008-GS-1008073
Assault and Battery of a High and Aggravated Nature	2008-GS18-1107

Judge Young sentenced you to thirty (30) years imprisonment for each count of Armed Robbery, Kidnapping, and Criminal Sexual Assault, First Degree. Judge Young also sentenced you to twenty (20) years imprisonment for Attempted Armed Robbery, and ten (10) years imprisonment for Assault and Battery of a High and Aggravated Nature. All of your sentences are to run concurrently.

A rough estimate of the amount of time that you will have to spend in prison as a result of these convictions will be approximately twenty-four and one half (24 ½) years. This amount of time considers that you will receive the maximum good time available, as well as being given credit for the time you were in jail prior to your plea (approximately 391 days). While I think this sentence is lengthy, given all of the possibilities, I believe this result maintains the hope of returning to your family and a life after incarceration.

In return for your plea of guilty, Assistant Solicitors Burns Wetmore and Russell Hilton dismissed all other charges against you, which are as follows:

<u>Charge</u>	<u>Indictment Number</u>
Armed Robbery	2008-GS-1008139
Armed Robbery	2008-GS-1008140
Armed Robbery	2008-GS18-1111
Kidnapping	2008-GS-1008128
Kidnapping	2008-GS-1008138
Kidnapping	2008-GS18-1116
Kidnapping	2008-GS18-1114
Attempted Armed Robbery	2008-GS18-1118
Burglary, Second Degree	2008-GS-1008125
Burglary, Second Degree	2008-GS-1008142
Burglary, Second Degree	2008-GS-1008074
Burglary, Second Degree	2008-GS18-1115
Burglary, Second Degree	2008-GS18-1119

Mr. Bryan L. Mulligan
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Possession of a Weapon During the Commission of a Violent Crime	2008-GS-1008124
Possession of a Weapon During the Commission of a Violent Crime	2008-GS-1008136
Possession of a Weapon During the Commission of a Violent Crime	2008-GS-1008075
Possession of a Weapon During the Commission of a Violent Crime	2008-GS18-1110
Possession of a Weapon During the Commission of a Violent Crime	2008-GS18-1117
Possession of a Weapon During the Commission of a Violent Crime	2008-GS18-1109

You are entitled to have all records of your arrest on the dismissed charges expunged. There is a cost associated with the expungement process. This process typically takes somewhere between sixty (60) to ninety (90) days to complete.

We are still receiving invoices for services by those involved in your case who are not employees of our office. Your escrow account balance is currently One Thousand Eight Hundred (\$1880.00) Dollars. We will pay James Randolph for the work he recently performed, as well as the costs needed to file Expungement Orders for the dismissed charges, so long as sufficient funds are present in your account.

Breen told me he visited you on the night of Thursday, February 3rd after your plea hearing. He told me that he specifically reviewed your right to appeal, which we also discussed prior to your hearing, and you have elected not to pursue an appeal.

Mr. Bryan L. Mulligan
February 4, 2011
Page Four

Bryan, please write to me once you arrive at your ultimate institution so that I can continue to communicate with you. We will keep in touch with you throughout your incarceration.

With best wishes, I remain

Sincerely,

Andrew J. Savage, III

AJS,III/brs

Encl.: Sentencing sheet for Indictment Number 2008-GS-1008126; (1 page)
Sentencing sheet for Indictment Number 2008-GS-1008127; (1 page)
Sentencing sheet for Indictment Number 2008-GS18-1121; (1 page)
Sentencing sheet for Indictment Number 2008-GS18-1120; (1 page)
Sentencing sheet for Indictment Number 2008-GS18-1112; (1 page)
Sentencing sheet for Indictment Number 2008-GS18-1113; (1 page)
Sentencing sheet for Indictment Number 2008-GS-1008141 ; (1 page)
Sentencing sheet for Indictment Number 2008-GS-1008137; (1 page)
Sentencing sheet for Indictment Number 2008-GS-1008135; (1 page)
Sentencing sheet for Indictment Number 2008-GS-1008073; (1 page)
Sentencing sheet for Indictment Number 2008-GS-1008072; (1 page)
Sentencing sheet for Indictment Number 2008-GS18-1107; (1 page)
Sentencing sheet for Indictment Number 2008-GS18-1108; (1 page)

Note - Burns Wetmore (843-958-1926)

Burns Wetmore (843-958-1926)

Type: **Prosecutor Contact**

Primary Matter:

Matter No.:

Author/User: **Proctor, Crystal M.**

Other:

02/02/2011 04:47 PM (MARTI) TC to Mr. Wetmore, I advised that I was trying to get Bryan Mulligan's plea package to him before the COB and I wanted to know the best place to find him. He said that it was fine if we got him the package first thing in the am, he wasn't going to read it tonight.

02/02/2011 10:29 AM (CLS)

Burns

~~We have received permission from our client to move forward with the pre-plea conference with Judge Young tomorrow. The intent of the conference from our standpoint is to receive reasonable assurance from you and/or the Judge that the sentence imposed will all be concurrent and that no sentence will be consecutive. We have been assured by the solicitor in Dorchester County that the imposition of a sentence for the charges will be concurrent with Charleston's.~~

~~I have told Breen that we want to move forward but that we would be setting ourselves up for a PCR if we recommend that our client goes forward without this assurance. LWOP is not much of a consideration if he is going to subject himself to 100 years or more (or even less). With thirty years he will be spending all of his productive years in prison and will not be released until he is more than twice the age he is now. We were also told that the Citadel case involving similar charges resulted in a plea with a thirty year cap. I know it is not all in your hands and we have always respected your viewpoint but please understand the quandary we are in if we were to recommend an unlimited amount of time per a plea.~~

~~I am heading to St George shortly but Breen will be in the office to handle any details regarding this matter. Breen will also be delivering a mitigation package for your review and the Court's review today.~~

~~I look forward to seeing you tomorrow and hopefully getting this difficult case behind us.~~

~~Best,~~

~~Andy~~

02/02/2011 07:43 AM (HCH)

Breen

I take it that Burns is not in a position to determine the parameters of the agreement. It sounds to me like

10/30/2012 08:53 AM

Note - Burns Wetmore (843-958-1926)

someone else is involved. All previous advice to the client was based on the October 19, 2010 memo. To me, there is no question regarding your interpretation, an interpretation I agree with. To interpret it otherwise makes little sense unless there is an agreement for concurrent sentences. What is said now about the agreement is known by all criminal attorneys including prosecutors as a straight up plea. That is not what was said. It makes no sense.

I think it is important for Burns to know that it is my position that it is ethically impermissible to recommend to a client to plead guilty regardless of his culpability proven or admitted when the plea will or likely will result in the same punishment as a post trial sentence. I cannot in good conscience recommend that he plea as the agreement currently stands. Perhaps the pre plea conference will make a difference. A PCR is a given when there is no difference between a sentence by plea or a sentence post trial. If the plea sentence is open ended someone needs to educate me why this is a benefit. Criminal justice is not a lottery. If this young man without a prior record is facing hundred of years this Thursday in a plea v a EWOP threat post future trial I will take my chances at trial any day. What is the difference between 100 years and EWOP? I have been told the Citadel football crowd that engaged in similar conduct were capped at 30. Not sure that is true but what am I missing?

Sent from my iPad

On Feb 1, 2011, at 8:21 PM, "Breen R. Stevens" <breen@savlaw.com <mailto:breen@savlaw.com>> wrote:
Good evening Burns,

To answer your question, Bryan Mulligan has quite a lot to think about. I expect him to call with a decision by tomorrow afternoon, and will notify you once we know whether we will need to schedule a pre-hearing in chambers conference with Judge Young.

Best,
Breen

On Feb 1, 2011, at 7:47 PM, "wetmoreb@scsolicitor9.org <mailto:wetmoreb@scsolicitor9.org>" <wetmoreb@scsolicitor9.org <mailto:wetmoreb@scsolicitor9.org>> wrote:

>
> Sent via BlackBerry by AT&T

02/01/2011 10:16 AM (BREEN) TC to Burns (843-958-1926). He reiterated his apology for miscommunication. I asked him how he intended to proceed at the plea hearing if Bryan still decided to plea on Thursday afternoon. Burns responded that Bryan would first plea before anyone was sentenced; this is because sentencing for the 2 co-defendants is being held off until Bryan's case is resolved in case they are needed to testify at trial. He also said that the co-defendants seem to be hoping that Bryan pushes his case to trial because they will likely get credit for their help in testifying against him at each trial (5 possible trials total). After speaking with Milton Stratos yesterday, I think Burns' assessment of the co-defendants' desire for Bryan to go to trial is correct. He further stated that if pushed to trial and a guilty verdict found, he expects consecutive sentences would be likely; they would then try the additional cases and seek EWOP.

I asked whether the defendants can/will be sentenced together if Bryan chooses to accept the offer. Burns said that, if Bryan chooses to accept the plea offer, he proposes the attorneys meet with Judge Young in his chambers immediately prior to the hearing. All defendants will likely have a preference on how to proceed at sentencing, so it is best to see how the Judge wants to proceed in a way that is most efficient for the court.

10/30/2012 08:53 AM

Page 2

Note - Burns Wetmore (843-958-1926)

I will contact Burns again later this afternoon and let him know whether to ask J. Young for an appointment before the hearing.

02/01/2011 10:12 AM (BREEN)
From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]
Sent: Tuesday, February 01, 2011 10:03 AM
To: Breen R. Stevens
Cc: Andrew J. Savage
Subject: RE: Mulligan providency form

The other attorneys asked for clarification too. They wanted a recommendation of concurrent sentencing, but I made no recommendation at their guilty pleas.

Again, I apologize for any miscommunication. I attribute it to my experience that Judge Young is inclined to sentence concurrently at a guilty plea, especially when the Defendant has no prior convictions.

I met with LARKIN and MONROE at the jail, and they are standing by to testify if needed. However, I discussed the cases with Scarlett, and she approved the original attached offer for MULLIGAN again this week.

I believe that I have gotten everybody moved to THU PM to accommodate Andy's meeting with Rep. Clyburn. Hopefully we can resolve these cases at that time.

BURNS WETMORE
www.scsolicitor9.org <<http://www.scsolicitor9.org>>

02/01/2011 09:29 AM (BREEN)
From: Breen R. Stevens
Sent: Tuesday, February 01, 2011 9:28 AM
To: 'Burns Wetmore'
Cc: Andrew J. Savage
Subject: RE: Mulligan providency form

Good morning Burns,

Indeed, the parenthetical explaining the terms of the agreement was taken to mean 10-30 with no recommendation within that range, as that was the language used. I understand that this was not made part of the plea in court for the other two defendants, but I do not see how our clients should be prejudiced for someone else's lack of attention to detail. Regardless, we are speaking to Mulligan this afternoon to apprise him of the development. I have to say, although I would truly like to resolve his case, I cannot say I am confident he will accept the terms as redefined; simply stated, exposure to 360 years imprisonment (for the Charleston and Dorchester County charges to which he is asked to plea) under the facts alleged in this case may nullify the carrot of taking LWOP off the table. For a young man and new father like Mulligan, the prospect of consecutive sentences may well be as disheartening as LWOP: both remove the hope of ever regaining his life. The main strength of sentencing within the range of 10 - 30 years was maintaining that hope-even if it took 30 years, that hope would still be alive.

I appreciate your help and what you can do. I will keep you posted on our progress as well.

10/30/2012 08:53 AM

Note - Burns Wetmore (843-958-1926)

Best regards,
Breen

01/31/2011 11:25 AM (BREEN)

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]

Sent: Monday, January 31, 2011 11:16 AM

To: Breen R. Stevens

Cc: Andrew J. Savage

Subject: FW: Mulligan providency form

Breen,

The original offer that was sent as an attachment on 10/19/10 is reattached to this email. As you see, it says NO REC for all Defendants and all cases.

I apologize if my parenthetical comments in the body of the email caused confusion. I anticipate that Judge Young will sentence concurrently, so I guess that is what I was thinking.

As detailed in the original attached offer, I didn't make a recommendation for LARKIN and MONROE when they plead last year.

Scarlett approved the original attached offer for MULLIGAN again this week, and I hope that we can resolve these cases.

I am working on moving the hearing to THU PM to accommodate Andy's meeting with Rep. Clyburn, and I will keep you posted on my progress.

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

01/31/2011 10:24 AM (BREEN)

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]

Sent: Monday, January 31, 2011 10:23 AM

To: Breen R. Stevens

Cc: Andrew J. Savage

Subject: RE: Mulligan providency form

The Charleston charges look correct.

I made no recommendation as to sentence when LARKIN and MONROE plead. Likewise, I am not making a recommendation as to sentence for MULLIGAN - the 10-30 range is what I was identifying as the range on the ARs, which I see as the controlling indictments. I would expect that Judge Young will sentence concurrently, but I am not recommending that because I did not do so for the others.

As we discussed, the benefits of the plea deal are avoiding the possibility of LWOP and the nolleprossing of numerous indictments.

10/30/2012 08:53 AM

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Note - Burns Wetmore (843-958-1926)

Let me contact the other attorneys and victims to see if we can move this to Thursday afternoon. I will let you know.

01/31/2011 10:11 AM (BREEN) TO: Burns (843-958-1926). He said he is sorry if there was any confusion caused by the language of his email (from October 19, 2010), but he was not offering to cap the sentence at 30 years; rather, he expects the judge to sentence within 10-30. He also said the other co-defendants already plead with absolutely no recommendation for a cap, and he wants to remain consistent.

I told him that's a problem, as exposure to over 100 years is basically the same as LWOP, and makes the offer to take LWOP off the table a hollow one. I also explained that the hope of starting life again after even 30 years plays a large part in a client's decision, and that if such a possibility doesn't exist in the plea, then the client may well choose to shake the dice with a trial anyway. He would not move from this position in our conversation.

01/31/2011 09:58 AM (BREEN)
Good morning Burns,

Please find the Providency Form for Bryan Mulligan attached to this email. It contains the terms of the initial offer made October 19, 2010 (see email below). I plan on speaking with Bryan again ASAP, and at this point I expect to go forward on Thursday.

Finally, Andy has a unmovable scheduling conflict on Thursday morning, but will be ready to handle the plea Thursday afternoon.

Thanks again for your help in brining this case to final resolution.

Sincerely,
Breen

Breen R. Stevens, Esq.
Savage & Savage, P.A.
15 Prioleau St.
Charleston, SC 29401
Tel: (843) 720-7470
Fax: (843) 720-7478
email: breen@savlaw.com <<mailto:breen@savlaw.com>>

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]

Sent: Tuesday, October 19, 2010 12:23 PM

To: Martha Runey; Andrew J. Savage; milton_stratos@yahoo.com; estrato@comcast.net; estratos@comcast.net; Russell Hilton

Subject: RE: Defendants Larkin, Mulligan, Monroe

Attached is my offer.

(No LWOP, I dropped a lot of indictments. Basically, 10-30 years. I am not making a recommendation within that range. Dorchester County indictments to run concurrent. Obviously, they have a lot of credit for time served.)

I would like to try to resolve these cases by way of Guilty Pleas prior to the scheduled trial date of 11/29/10.

I will schedule for the 11/8/10 plea term with Judge Young. As below, I believe that Assistant Solicitor Hilton is agreeable to attend the hearing to resolve all Dorchester County indictments at the same time.

10/30/2012 08:53 AM

Note - Burns Wetmore (843-958-1926)

If this offer is not accepted, it is my plan to begin trying these cases, implementing the LWOP statute if they are convicted.

Please let me know ASAP how they intend to proceed. Thanks,

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

01/31/2011 07:25 AM (HCH)

Get your final form done and over to Burns for his approval of language 1st thing Monday morning. Then let's get client in as soon as we can.

Sent from my iPad

On Jan 28, 2011, at 6:25 PM, "Breen R. Stevens" <breen@savlaw.com <<mailto:breen@savlaw.com>>> wrote:
Andy, below is the email from Burns regarding the initial offer. You are right about the language: "Basically, 10-30 years. I am not making a recommendation within that range." I will redraft the Providence form to mirror the proper language (10-30 years with no recommendation from the State within that range).

01/27/2011 12:07 PM (BREEN)

From: Burns Wetmore [<mailto:wetmoreb@scsolicitor9.org>]

Sent: Thursday, January 27, 2011 11:53 AM

To: Russell Hilton; Breen R. Stevens; Martha Dicus; David A. Haselden; Andrew J. Savage

Subject: FW: LARKIN, MULLIGAN, MONROE

Russ, I believe that we can resolve MULLIGAN and LARKIN next week. They are scheduled for THU 9 AM. Thanks,

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

From: Burns Wetmore

Sent: Tuesday, January 25, 2011 12:26 PM

To: 'Russell Hilton'

Subject: LARKIN, MULLIGAN, MONROE

I anticipate that MULLIGAN will plead and be sentenced and LARKIN will be sentenced next week with Judge Young.

I anticipate that MONROE will be sentenced during our 2/21 term with Judge Nicholson.

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

01/27/2011 11:59 AM (BREEN) TC from Burns (843-958-1926). He said Scarlett finally O.K.'d him to go forward with the initial plea. Burns said he had to beg and pull hard to get it. Scarlett apparently warned that if Mulligan backs out or asks for more time, then all offers are off the table and they will seek LWOP. Burns reiterated that the State will not make any recommendations for sentencing at all (not even for them to run concurrently).

10/30/2012 08:53 AM

Page 6

Note - Burns Wetmore (843-958-1926)

I asked whether Russ Hilton will be present for the Dorchester County charges, and he said he did not know. He said he believes Hilton wants his Dorchester charges to run concurrently with the Charleston County charges, and will put that on the record. We need to contact Russ Hilton about this.

01/26/2011 04:57 PM (BREEN)

Thanks Burns, I appreciate it.

Breen

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]

Sent: Wednesday, January 26, 2011 4:53 PM

To: Breen R. Stevens; Andrew J. Savage

Subject: RE: (Matter No.[2807108]){State vs. Bryan Mulligan (AJS/HCH)} Burns Wetmore (843-958-1926)

Still no word from Scarlett on this matter. I will follow up and let you know ASAP.

Our docket was just published, and MULLIGAN has been scheduled for THU 9AM 2/3/11.

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

01/24/2011 11:02 AM (BREEN)

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]

Sent: Monday, January 24, 2011 10:52 AM

To: Breen R. Stevens

Subject: RE: (Matter No.[2807108]){State vs. Bryan Mulligan (AJS/HCH)} Burns Wetmore (843-958-1926)

Breen,

Scarlett is reviewing this right now. I will let you know as soon as I hear back from her.

BURNS WETMORE

01/24/2011 09:42 AM (BREEN)

Good morning Burns,

I am meeting with Bryan Mulligan soon, and need to know whether the State is sticking with its initial offer to plea. Since he was not able to accept the initial offer when it was offered due to the lack of SLED's DNA report from the State, I would like to be able to counsel him that the same offer is now available to him. Please contact me at your earliest convenience. I think we are all nearly ready to bring this case to final resolution.

Very respectfully,

Breen

01/24/2011 09:41 AM (BREEN) TC to Burns this morning (843-958-1926). LM on VM to please call back re: Mulligan to discuss the terms of the offer.

01/19/2011 05:28 PM (HCH) Emails from Breen and Andy.

Is the second offer what has been offered? Push for the first

From: Breen R. Stevens

Sent: Wednesday, January 19, 2011 4:25 PM

To: Heather C. Hill

10/30/2012 08:53 AM

Note:- Burns Wetmore (843-958-1926)

Cc: Andrew J. Savage; Cheryl L. Savage; Virginia Murray; Dora L. Bell; Lauren E. Pearson
Subject: RE: {Matter No.[2807108]}{State vs. Bryan Mulligan (AJS/HCH)}Burns Wetmore

I will revise the Provency Form to comport with the second plea offer. We need to schedule Bryan to come in and discuss the DNA results and plea. Heather, I can call Bryan tomorrow morning to set a meeting, but I do not know Andy's schedule for either this weekend or Monday.

Breen

Breen has been tasked to handle this. I do not know if he has already called the client. Wait for his input please

01/19/2011 03:53 PM (HCH) Rceived plea notice for Bryan Mulligan set for week of January 31st before Judge Young. Scanned into PM and placed copy on ledge for Andy and in Breen's box as well. Andy - do you want me to send a copy of the notice to the client?

From: Shamika Smith [mailto:smiths@scsolicitor9.org] <mailto:[mailto:smiths@scsolicitor9.org]>
Sent: Wednesday, January 19, 2011 3:17 PM
To: Receptionist Desk
Subject: Bryan Leon Mulligan

Attached please find a plea notice for the above referenced.

Shamika Smith
Legal Assistant to:
Trip Rjesen
James P. Stack
Burns Wetmore
9th Circuit Solicitor's Office
101 Meeting Street, 4th Floor
Charleston, SC 29401
Tel: (843) 958-1900
Fax: (843) 958-1905
smiths@scsolicitor9.org <mailto:smiths@scsolicitor9.org>

01/19/2011 09:55 AM (HCH)

Let me know if you are going to be able to stay on top of this with clients, hearing etc.

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org] <mailto:[mailto:wetmoreb@scsolicitor9.org]>
Sent: Tuesday, January 18, 2011 12:36 PM
To: Breen R. Stevens; Thomas Walters
Cc: Andrew J. Savage; Virginia Murray; Heather C. Hill; Dora L. Bell
Subject: RE: {Matter No.[2807108]}{State vs. Bryan Mulligan (AJS/BRS)}Burns Wetmore

My understanding is that SLED didn't find anything. Tommy, please get us a copy of this report ASAP. I'd like to schedule this during the 1/31/11 term with Judge Young. Thanks,

10/30/2012 08:53 AM

Note - Burns Wetmore (843-958-1926)

BURNS WETMORE
www.scsolicitor9.org <<http://www.scsolicitor9.org>>

01/17/2011 04:29 PM (BREEN) Good afternoon Burns,
 I hope and trust the holidays treated you well. I am writing to follow-up on whether SLED has released the DNA results yet in the Mulligan case. Please let me know at your earliest convenience.
 Sincerely,
 Breen

12/20/2010 10:36 AM (HCH)

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]
Sent: Monday, December 20, 2010 9:02 AM
To: Andrew J. Savage; Thomas Walters
Subject: RE: {Matter No.[2807108]}{State vs. Bryan Mulligan (AJS/BR5)}Burns Wetmore

Tommy, please follow up with the SLED agent to check on DNA results in this case. Thanks,

BURNS WETMORE
www.scsolicitor9.org <<http://www.scsolicitor9.org>>

12/20/2010 08:24 AM (HCH)

Thanks Burns.

Sent from my iPad.

On Dec 18, 2010, at 4:41 PM, "wetmoreb@scsolicitor9.org <<mailto:wetmoreb@scsolicitor9.org>>" <wetmoreb@scsolicitor9.org <<mailto:wetmoreb@scsolicitor9.org>>> wrote:
 I will see where we are with SLED next week before the holidays. Thanks, BMW
 Sent via BlackBerry by AT&T

12/18/2010 12:54 PM (AJS) Burns

We remain ready to plead upon receipt of the DNA if the results are as expected. Or you could always drop the CSC. SOR remains under kidnapping.

If not before Christmas... Merry Christmas to you and your family.

Best,

Andy

11/29/2010 04:52 PM (BREEN)

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]
Sent: Monday, November 29, 2010 4:43 PM
To: Breen R. Stevens
Subject: RE: {Matter No.[2807108]}{State vs. Bryan Mulligan (AJS/BR5)}Burns Wetmore

10/30/2012 08:53 AM

Note - Burns Wetmore (843-958-1926)

That is the Guilty Plea that I originally offered. However, there was no recommendation other than that the Dorchester County sentence run concurrent with the Charleston County sentence - practically, I think that ASOL Hilton will come to Charleston County to handle at the same time.

As you know, I was advised to change that offer last Wednesday (adding the POSS FA COMM VIOL CRIME indictments), and I was advised to continue the matter this morning.

Let's get the DNA results from SLED and then schedule.

Thanks,

BURNS WETMORE.

11/29/2010 03:06 PM (BREEN) Good afternoon Burns,
Attached below is a copy of Bryan Mulligan's Providency Form. We will accept the plea offer according to these terms: Receipt of the SLED Report of no DNA, or of Mulligan's DNA.

In order to make this happen without any further delay, we will waive any analysis by our own DNA expert, as well as any motion for continuance predicated on such an analysis.

11/29/2010 12:34 PM (BREEN)

From: wetmoreb@scsolicitor9.org [mailto:wetmoreb@scsolicitor9.org]
Sent: Monday, November 29, 2010 11:32 AM
To: Andrew J. Savage
Subject: Mulligan

I discussed the cases with Scarlett and will consent to a continuance until SLED DNA testing is completed. They have promised verbal results this week.

11/29/2010 12:33 PM (BREEN)

From: Breen R. Stevens
Sent: Monday, November 29, 2010 11:35 AM
To: Andrew J. Savage
Subject: RE: State V Mulligan

I think he feels he's getting pinched from both sides. So I reassured him we appreciated working with him, and that SLED needs to get its act together (i.e. it's not his fault).

From: Andrew J. Savage
Sent: Monday, November 29, 2010 11:31 AM
To: Breen R. Stevens
Subject: RE: State V Mulligan

Who threw him under the bus....not us for sure.

From: Breen R. Stevens
Sent: Monday, November 29, 2010 11:17 AM
To: Andrew J. Savage
Subject: Re: State V Mulligan

Burns came up to me after general Jury Selection. He said he feels like he's getting thrown under the bus, but

10/30/2012 08:53 AM

Note - Burns Wetmore (843-958-1926)

From: Andrew J. Savage
Sent: Monday, November 29, 2010 11:31 AM
To: Breen R. Stevens
Subject: RE: State V Mulligan

Who threw him under the bus....not us for sure.

From: Breen R. Stevens
Sent: Monday, November 29, 2010 11:17 AM
To: Andrew J. Savage
Subject: Re: State V Mulligan

Burns came up to me after general Jury Selection. He said he feels like he's getting thrown under the bus, but since Scarlett would give to approve of the deal anyway, then maybe the direct discussions between her and you are for the better.

I let him know that a copy of the motion to continue is in his box, and that it pretty much spells out our position. Thanked him and let him know it was good working with him on this case.

11/27/2010 11:57 AM (AJS) Burns

We met again with our client and his family. I think we have a way to resolve our current dilemma. If the CSC is withdrawn from the Plea offer we will withdraw our request for a continuance. If the plea includes the CSC and we know a DNA swab was taken and we do not have the results then surely a PCR will bring us all back to court. We can live with three additional gun charges if that is what it takes. We would also want to be sentenced with the co defendants as originally offered.

Best,

Andy

11/24/2010 02:51 PM (BREEN)

From: Breen R. Stevens
Sent: Wednesday, November 24, 2010 2:31 PM
To: 'Burns Wetmore'; Andrew J. Savage
Subject: RE: MULLIGAN

Burns,

Thanks again. I will be sure to contact you after we speak with Bryan.

Very best,

Breen

Breen R. Stevens, Esq.
 Savage & Savage, P.A.
 15 Prioleau St.
 Charleston, SC 29401
 Tel: (843) 720-7470
 Fax: (843) 720-7478

10/30/2012 11:44 AM

Note - Burns Wetmore (843-958-1926)

email: breen@savlaw.com

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]
Sent: Wednesday, November 24, 2010 2:25 PM
To: Breen R. Stevens; Andrew J. Savage
Subject: MULLIGAN

Breen:

Andy said that you were working on the details of the offer in this case. I have attached the updated offer. Sorry for the back and forth on that.

~~I have 2 victims, 2 co-Defendants and 2 police officers standing by for trial on the 4/28/10 Applebees case.~~ Please keep me posted as you discuss the situation with your client over the next few days.

Thanks,

BURNS WETMORE
www.scsolicitor9.org <<http://www.scsolicitor9.org>>

11/24/2010 01:55 PM (LAURENP) Email from AJS:
 Burns

This is what we deal with on the other side.

11/24/2010 12:33 PM (AJS) SCARLETT

I have a case with your office in Charleston (Burns Wetmore) that I would like to talk to you about.

The case was being resolved until Bruce got involved today. I would like you to talk to Burns to get his side of the story as I believe that Burns and I are on the same side.

Very best,

Andy

11/23/2010 03:44 PM (DORA)

I had hoped to lightly oppose your continuance and get her ruling, but no such luck.

~~I spoke to the SLED chemist after we talked and he should be able to tell me on Wednesday if there is any DNA is present on the crime scene swabs. He said that a comparison to several suspects and victims would take longer.~~

~~I will let you know.~~

BURNS WETMORE
www.scsolicitor9.org <<http://www.scsolicitor9.org>>

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]
Sent: Monday, November 22, 2010 9:54 AM
To: Harrington, Kristi L. Law Clerk (Yancey A. McLeod, III); Andrew J. Savage; Breen R. Stevens; Virginia Murray; Cheryl L. Savage
Subject: Brief conference call requested this week

10/30/2012 11:44 AM

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Note - Burns Wetmore (843-958-1926)

Yancey,

I am writing to request a brief conference call with Judge Harrington on Monday - Wednesday of this week in her capacity as GS Administrative Judge.

Defendant Bryan Mulligan is represented by Andy Savage in three Charleston County Armed Robbery cases, and one of these cases is scheduled on the 11/29/10 Charleston GS Trial Roster.

The Defendant has requested a continuance, and I hope that the Judge can rule on this motion prior to this travel / holiday weekend.

Please let me know if we can call in - thanks,

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

11/22/2010 04:06 PM (AJS)

Burns

Thanks for the phone call and the attempt to get a ruling from JDJ. She is such a peach. I believe this will work out but you will certainly help me accelerate a decision if you can give me a heads up Wednesday on the DNA testing. I suggest we keep the heat on and we will try to get this resolved next week before Judge Young. It is a nasty case and I expect that Mulligan is going to be facing close to if not thirty years and I want to be sure I have all my due diligence accomplished.

Thanks again,

Andy

11/23/2010 04:02 PM (DORA)

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]

Sent: Monday, November 22, 2010 9:42 AM

To: Breen R. Stevens

Cc: Andrew J. Savage; Cheryl L. Savage; Virginia Murray

Subject: RE: {Matter No.[2807108]}{State vs. Bryan Mulligan (AJS/BRS)} Burns Wetmore

I understand. As of today, LARKIN and MONROE are sticking with their original statements. I will continue to press SLED for DNA results.

I am going to ask GS Administrative Judge Harrington to rule on your continuance motion this week via conference call - just so we all know where we stand heading into this travel / holiday weekend.

Thanks,

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

11/19/2010 12:10 PM (BREEN)

Good afternoon Burns,

Andy asked that I give you an update on where we stand with the Mulligan case. We are currently working with the client and his family regarding the evidence arrayed against him. Although his grandmother believes the entire case is a conspiracy, the client appears open to the idea of pleading. Once we get and process the DNA results from SLED, and hopefully any new statements of his co-defendants, we will be able to meet with him again and properly counsel him with

10/30/2012 11:44 AM

Note - Burns Wetmore (843-958-1926)

all that he is facing. However, we are going to have to ask for a continuance in Mulligan's case until we can obtain and process the discovery needed to ethically and competently counsel him per GU Toal's Memorandum from March 1, 2004. I think all concerned would truly like to get this done, but we need to make sure it is done right. If you have any questions or concerns, please do not hesitate to contact me at your earliest convenience.

Very respectfully,

Breen

11/17/2010 05:54 PM (HCH)

Burns,

We met with Mulligan and his family again today. Lots of family including their minister. Grandmother who raised him says he such a sweet boy. Mother more realistic. So is client but he has significant pressure from grandma. Please see if you can get me any new statements of the co defendants. I understand that the April 28 robbery does not have any forensic or eye witness testimony so the co defendants are critical. Also the DNA will nail him on destroy the credibility of those who would testify that he is the one. I think if we can get the DNA results either way it will result in a plea. Would sure like to get it done.

Best

Andy

11/16/2010 10:34 AM (HCH)

Andy,

SLED was asked to compare swabs from Defendants and Victims with swabs from the Noisy Oyster sink and Mulligan's SUV in June 2008. We have been requesting their report for several weeks. I'm not sure why they are having such a hard time getting this done.

I personally spoke to the SLED agent who is doing the DNA testing and he says that he will have this done before Thanksgiving.

The witnesses from the 4/28/08 incident at Applebees on Rivers have been subpoenaed for the 11/29/10 trial term. There is no DNA evidence in that case, but I understand that you are considering the bigger picture.

BURNS-WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

11/15/2010 06:06 PM (HCH)

Please let us know where we stand on our Discovery requests. Toal has issues an Order about this. We are not looking for anything special.

Best

10/30/2012 11:44 AM

Note - Burns Wetmore (843-958-1928)

Andy

Sent from my iPhone

On Nov 15, 2010, at 3:35 PM, "Burns Wetmore" <wetmoreb@scsolicitor9.org>
<<mailto:wetmoreb@scsolicitor9.org>>> wrote:

- > MONROE is being transported THU AM for a guilty plea to the same deal,
- > that I offered everybody. Do you want to bring MULLIGAN to plead THU
- > AM too? If not, I will defer sentencing on MONROE so that he and
- > LARKIN can testify against MULLIGAN. Thanks,
- >
- > BURNS WETMORE
- > www.scsolicitor9.org <<http://www.scsolicitor9.org>>

11/10/2010 11:11 AM (LAURENP) Placed a copy of Larkin, Simmons and Monroe's statements in BRS's box and AJS's ledge, scanned into pm as well

From: Andrew J. Savage
Sent: Wednesday, November 10, 2010 10:47 AM
To: Lauren E. Pearson; Breen R. Stevens; Heather C. Hill
Subject: Fwd: MULLIGAN

Lauren please print X2 for me and Breen. Also place in PM.

Sent from my iPad

11/10/2010 11:10 AM (LAURENP)
Lauren please print X2 for me and Breen. Also place in PM.

Sent from my iPad

11/10/2010 10:57 AM (LAURENP):
From: "Burns Wetmore" <wetmoreb@scsolicitor9.org>
To: "Andrew J. Savage" <Andy@savlaw.com>
Subject: MULLIGAN
My investigator spoke with SLED this morning and they should have a DNA report for us this week. I would be surprised if there was DNA in a stainless commercial kitchen. However, I would expect MULLIGAN's DNA to be on his own SUV, for whatever that would be worth.

Attached are statements of LARKIN, MONROE (under proffer) and SIMMONS implicating MULLIGAN, as well as the report of MULLIGAN's verbal statement. All of these docs (except maybe the proffer) should have been sent to you with initial discovery.

LARKIN plead guilty to the deal that I emailed all the parties. He was not sentenced and will be called as a witness at trial.

10/30/2012 11:44 AM

Note - Burns Wetmore (843-958-1926)

MONROE is going to be brought over to plead guilty to the same deal next week. He will not be sentenced either, and will also be called as a witness at trial.

Let me know if you want to try to plead MULLIGAN to the same deal next week too.

Thanks,

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

11/10/2010 08:24 AM (HCH)

Thanks Burns. This is helpful.

Sent from my iPad

On Nov 9, 2010, at 6:58 PM, "wetmoreb@scsolicitor9.org" <<mailto:wetmoreb@scsolicitor9.org>> wrote:
 <wetmoreb@scsolicitor9.org <<mailto:wetmoreb@scsolicitor9.org>>> wrote:
 Andy,

It appears that DNA testing was requested regarding the Noisy Oyster and Chuck E. Cheese cases. I have not seen any reports, and I have asked my investigator to get them ASAP.

As to statements, Larkin's full statement implicating himself, Monroe and Mulligan in all incidents was sent in the initial discovery. Do you need me to resend? Mulligan verbally admitted to being involved in the Chuck E. Cheese incident only.

Larkin plead guilty today to the same deal that I sent everybody. Sentencing was deferred to see if his testimony is needed. There was no further agreement.

Thanks, Burns

Sent via BlackBerry by AT&T

From: "Andrew J. Savage" <Andy@savlaw.com <<mailto:Andy@savlaw.com>>>
 Date: Tue, 9 Nov 2010 18:33:43 -0500
 To: Burns Wetmore <wetmoreb@scsolicitor9.org <<mailto:wetmoreb@scsolicitor9.org>>>;
 <estratos@comcast.net <<mailto:estratos@comcast.net>>>; <milton_stratos@yahoo.com
 <mailto:milton_stratos@yahoo.com>>
 Cc: Breen R. Stevens <breen@savlaw.com <<mailto:breen@savlaw.com>>>; Heather C. Hill
 <heather@savlaw.com <<mailto:heather@savlaw.com>>>; Lauren E. Pearson <lauren@savlaw.com>

10/30/2012 11:44 AM

Note - Burns Wetmore (843-958-1926)

<mailto:lauren@savlaw.com>>
 Subject: RE: MULLIGAN, MONROE

Burns,

I met with our client today and brought him up to speed. I do not apparently have all the Discovery. Please shoot me the DNA results so I can put him over the top. Can you also send me the plea agreement with LARKIN along with any statement he may have made regarding Mulligan?

Best,

Andy

From: Burns Wetmore [mailto:wetmore@scsolicitor9.org]

Sent: Tuesday, November 09, 2010 5:18 PM

To: Andrew J. Savage; estratos@comcast.net <mailto:estratos@comcast.net>; milton_stratos@yahoo.com

<mailto:milton_stratos@yahoo.com>

Subject: MULLIGAN, MONROE

LARKIN plead guilty this afternoon and is standing by to testify against MULLIGAN and MONROE if needed at trial.

Would you like for me to transport MULLIGAN and MONROE to attempt guilty pleas next week before Judge Nicholson? If so, I can probably get Dorchester County here again to take care of everything.

Both are scheduled on the 11/29/10 trial docket. Fair warning - if I have to start trying these cases, I will have to seek LWOP if they are convicted.

Let me know. Thanks,

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

11/08/2010 01:06 PM (CMF)
 Understood.

Judge, then I hope that you can accept guilty pleas from LARKIN and MONROE, deferring sentencing to a later date so that they can testify against MULLIGAN if needed.

Thanks,

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

10/30/2012 11:44 AM

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Note - Burns Wetmore (843-958-1926)

11/08/2010 12:55 PM (CMF)

Mulligan will not be pleading tomorrow as we have not had an opportunity to thoroughly review his plea with him and his family. He is not "backing out" as he just has not had sufficient time to consider the offer.

Very best,

Andy

-----Original Message-----

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]

Sent: Monday, November 08, 2010 12:34 PM

To: Young, Roger; Young, Roger Law Clerk (Frances Daniel); Martha Runey;

milton_stratos@yahoo.com; estratos@comcast.net; Andrew J. Savage

Subject: TUE PM GPs - CO-DEFS LARKIN, MULLIGAN, MONROE

Judge Young,

I wanted to give you a heads up about my plea that is scheduled for TUE PM. These 3 co-Defendants are scheduled to plead guilty in 6 incidents occurring across Charleston and Dorchester Counties.

I apologize for the amount of paperwork, but I am not pressing for more indictments.

I would ask you to take their guilty pleas as a group. If any of these co-Defendants backs out, I would ask you to defer sentencing on the others so that they can be called on to testify.

In an effort to make this situation a little easier, I have attached your guilty plea forms to this email so that you and Francie can review in advance.

Thank you,

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

11/04/2010 09:30 AM (HCH)

Burns we are just a little behind in getting this rolling. I am on my way to Colorado but this is on the top of our list next week.

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]

Sent: Wednesday, November 03, 2010 5:16 PM

To: Andrew J. Savage

Subject: RE: Brian Mulligan

Bruce scheduled this case on his priority trial docket for 11/29/10. Do you think that this guy really wants a trial or just needs more time to plead? If any of these cases are tried, I know that the victims will be understandably adamant about going for LWOP. Let me know what you think.

10/30/2012 11:44 AM

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Note - Burns Wetmore (843-958-1926)

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

From: Andrew J. Savage [mailto:Andy@savlaw.com]

Sent: Wednesday, November 03, 2010 4:55 PM

To: Russell Hilton; Breen R. Stevens; Heather C. Hill; Lauren E. Pearson; Crystal Proctor; Burns Wetmore

Subject: RE: Brian Mulligan

Right now we are not on a plea track. Working on it though but we will not be able to meet the deadline of next week. We have another major AR case that we have just got the client on board with to dispose of next week and we are trying to hold on to it despite the parents' objections.

Best,

andy

From: Russell Hilton [mailto:rhilton@scsolicitor1.org]

Sent: Wednesday, November 03, 2010 4:52 PM

To: Andrew J. Savage

Subject: Brian Mulligan

Andy,

I understand your guy is scheduled for a plea or trial in Charleston on his charges there. I would like to dispose of the Dorchester cases as well if we can arrange something. Burns Wetmore tells me he hasn't heard either way as to what your guy is going to do. Please let me know if we can work out an arrangement.

Russ

Russell D. Hilton, Assistant Solicitor

First Judicial Circuit

5200 E. Jim Bilton Blvd., St. George, SC 29477

rhilton@scsolicitor1.org <<mailto:rhilton@scsolicitor1.org>>

ph: 843-832-0150 fax: 843-832-0155

10/21/2010 05:04 PM (MARTI)

Attached please find a plea notice for the above referenced.

Shamika Smith

Legal Assistant to:

Peter McCoy

Trip Riesen

James P. Stack

Burns Wetmore

9th Circuit Solicitor's Office

101 Meeting Street, 4th Floor

10/30/2012 11:44 AM

Note - Burns Wetmore (843-958-1926)

Charleston, SC 29401

Tel: (843) 958-1900

Fax: (843) 958-1905

smiths@scsolicitor9.org <<mailto:smiths@scsolicitor9.org>>

10/19/2010 01:43 PM (HCH)

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]

Sent: Tuesday, October 19, 2010 12:23 PM

To: Martha Runey; Andrew J. Savage; milton_stratos@yahoo.com; estrato@comcast.net; estratos@comcast.net; Russell Hilton

Subject: RE: Defendants Larkin, Mulligan, Monroe

Attached is my offer.

(No LWOP. I dropped a lot of indictments. Basically, 10-30 years. I am not making a recommendation within that range. Dorchester County indictments to run concurrent. Obviously, they have a lot of credit for time served.)

I would like to try to resolve these cases by way of Guilty Pleas prior to the scheduled trial date of 11/29/10.

I will schedule for the 11/8/10 plea term with Judge Young. As below, I believe that Assistant Solicitor Hilton is agreeable to attend the hearing to resolve all Dorchester County indictments at the same time.

If this offer is not accepted, it is my plan to begin trying these cases, implementing the LWOP statute if they are convicted.

Please let me know ASAP how they intend to proceed. Thanks.

BURNS WETMORE:

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

From: Burns Wetmore:

Sent: Monday, October 18, 2010 2:39 PM

To: Martha Runey; 'Andrew J. Savage'; milton_stratos@yahoo.com; estrato@comcast.net; estratos@comcast.net; 'Russell Hilton'

Subject: Defendants Larkin, Mulligan, Monroe

As you know, these Defendants are charged with a string of aggravated AR's in Charleston and Dorchester Counties.

The Solicitor has asked us to run these types of cases by her, and I have submitted a proposed Guilty Plea offer for the Charleston cases that does not seek LWOP and not process numerous indictments. I will send you the details if the offer is approved.

It is my understanding that Assistant Solicitor Hilton intends to dispose of the Dorchester cases concurrently with the Charleston cases, likely at the same Guilty Plea hearing.

Because of the age of these cases, the Solicitor has scheduled them on the 11/29/10 trial docket. However, I hope that we can resolve the cases by way of Guilty Pleas prior to trial - 10/25/10 plea docket with Judge Harrington? 11/8/10 plea docket with Judge Young? 11/15/10 plea docket with Judge Nicholson?

Let me know your thoughts and thank you for your patience.

BURNS WETMORE

10/30/2012 11:44 AM.

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Note - Burns Wetmore (843-958-1926)

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

04/29/2010 04:16 PM (KKN) Hi Burns, Bryan Mulligan's mother called us and asked if we would see if Bryan can go on a family reunion cruise with their entire extended family in September. The cruise leaves from Charleston and goes to the Bahamas. I have attached the itinerary for your review (it is on the second page of the attachment). If you can let me know as soon as possible his mother would appreciate it. Thank you! Kristen

04/28/2010 09:11 AM (CMF) TC from Charleston County Solicitor's Office- additional discovery is ready for pickup.

07/02/2009 08:54 AM (KKN) Email with Burns:

You too!

Please thank everyone for their patience in this case. I hope you guys know that I'm never one to sit on cases!

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

From: Kristen K. Nettles [mailto:Kristen@savilaw.com]

Sent: Thursday, July 02, 2009 9:47 AM

To: Burns Wetmore

Subject: RE: (Matter No.[2807108])(State vs. Bryan Mulligan)Burns Wetmore

Thanks Burns.

I hope you have a great 4th!

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]

Sent: Thursday, July 02, 2009 9:44 AM

To: Kristen K. Nettles

Subject: RE: (Matter No.[2807108])(State vs. Bryan Mulligan)Burns Wetmore

Kristen,

The only news that I have on this case is that Mulligan bonded out, but I'm sure you know that. The victim family called us ... not very excited.

FBI Agent Paul Fravel presented these cases to AUSA Sean Kittrell a while ago. Sean anticipated indicting in May 2009, but the cases were reassigned to AUSA Nick Bianchi. I talked to Nick 2 weeks ago, and I sent him some additional materials from NCPD. Apparently, the FBI and USAO are working to document disruption of interstate commerce.

As soon as I have more news, I will let you know.

Hi Burns, Any updates on a Federal Indictment? Russell Hilton in Dorchester County seemed to think that he would not be indicted federally. Thanks, Kristen

06/17/2009 11:18 AM (KKN) Email:

10/30/2012 11:44 AM

Note - Burns Wetmore (843-958-1926)

Brett,

1. The restructuring of the bond seems reasonable, given the length of time that it has taken the US Attorney's Office to indict, but I cannot consent without the great number of victims being on board.
2. These victims have already been given notice for Friday AM because a co-defendant, MONROE, is also scheduled for a bond hearing at that time, and I am sure that they would like the opportunity to be heard.

For these reasons, I asked Andy to present the matter to Judge Harrington Friday AM. Whatever she thinks is fair sounds good to me!

Thanks,

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

06/16/2009 09:51 AM (KKN) Email:

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]

Sent: Monday, June 15, 2009 11:25 AM

To: Andrew J. Savage; Alex Jenkins

Subject: RE: {Matter No.[2807108]} {State vs. Bryan Mulligan} Nick Bianchi

Alex,

Andy is going to ask Judge Harrington to modify this Defendant's bond. I told him that we could probably add the hearing to this Friday's docket. As this is a modification, Defendant does not need to be transported.

Thanks,

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

06/11/2009 04:49 PM (KKN) Email:

Thanks Burns.

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]

Sent: Thursday, June 11, 2009 4:39 PM

To: Andrew J. Savage

Subject: RE: {Matter No.[2807108]} {State vs. Bryan Mulligan}

Andy,

This seems reasonable to me since the USAO is proceeding slowly, but I can't consent without notice to all of

10/30/2012 11:44 AM

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Note - Burns Wetmore (843-958-1926)

the numerous victims (and I can already predict their very negative reaction). Can we present this to Judge Harrington on 6/19/09 at 10 AM? She will likely set a bond for co-defendant Monroe at that time too.

Thanks,

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

06/11/2009 03:17 PM (KKN) Email from Andy:

Burns,

I have encouraged this family (grandmother took care of my mother for many years) to take their time in this case especially about getting Bryan out on bond. They have been patient but it is running out. Could you consider splitting half the 300K bond with half 150K surety and 150K @ 10% so that they do not lose all of their hard earned money? This is a large extended family and I am sure they will keep him under control until his court hearing. We have been waiting for the Feds to do something since late last year and I need to do something to try to get him out. He still has a 200K surety bond in Dorchester on top of this one.

Very best,

Andy

06/04/2009 10:04 AM (KKN)

Thanks Burns.

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]

Sent: Thursday, June 04, 2009 10:01 AM

To: Kristen K. Nettles

Subject: RE: (Matter No.[2807108])-(State vs. Bryan Mulligan)Burns Wetmore

nobody by that name was charged in connection with bryan mulligan in charleston county. i do remember that the cops erroneously filed some warrants in charleston that were supposed to be in dorchester, but i don't remember the names.

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

From: Kristen K. Nettles [mailto:Kristen@savlaw.com]

Sent: Thursday, June 04, 2009 9:52 AM.

10/30/2012 11:44 AM

Note: - Burns Wetmore (843-958-1926)

To: Burns Wetmore

Subject: RE: {Matter No.[2807108]}{State vs. Bryan Mulligan}Burns Wetmore.

Hey Burns,

Can you tell me anything about Antonio Simmons? It is my understanding the he received 12 years in Dorchester this week. I believe he is one of Bryan Mulligan's co-defendant (at least on the Frankie's Fun Park robbery), but we do not have copies of any of his arrest warrants and he was not arrested at the same time as the other defendants.

In looking at the Clerk's Website it appears that he had charges in Charleston County that were transferred to Dorchester. Can you tell me if these were related to Bryan Mulligan's case?

Thanks,

Kristen

06/03/2009 11:54 AM (KKN)

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]

Sent: Wednesday, June 03, 2009 11:31 AM

To: Kristen K. Nettles

Subject: RE: {Matter No.[2807108]}{State vs. Bryan Mulligan}Burns Wetmore

no news. AUSAs kitrell and bianchi know that we are waiting and will update me as soon as they have their indictment(s).

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

06/03/2009 11:27 AM (KKN) Burns, Have you heard any more about a Federal Indictment in this case? Thanks, Kristen

05/20/2009 09:09 AM (KKN)

I don't want to consent to a change in the bond unless all the victims are in agreement. There are a great number of them, and I am pretty sure that most will oppose, since this will make his release more likely. Sorry,

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

From: Kristen K. Nettles [mailto:Kristen@savlaw.com]

Sent: Wednesday, May 20, 2009 8:54 AM

To: Burns Wetmore

10/30/2012 11:44 AM

Note - Burns Wetmore (843-958-1926)

Subject: RE: (Matter No.[2807108])(State vs. Bryan Mulligan)Charleston County Solicitor's Office

Hi Burns,

Bryan Mulligan's family is trying to post his bond. Since it is taking so long for the Feds to indict would you consent to modifying the bond to allow two different bondsmen to post the surety?

Thank you,

Kristen.

05/19/2009 03:45 PM (KKN)

From: Burns Wetmore [mailto:wetmoreb@scsolicitor9.org]

Sent: Tuesday, May 19, 2009 3:43 PM

To: Kristen K. Nettles

Subject: RE: (Matter No.[2807108])(State vs. Bryan Mulligan)Charleston County Solicitor's Office:

No news. I have been in touch with AUSA's Sean Kittrell and Nick Bianchi who are handling the federal prosecution. They are aware that we are waiting on them to indict, and they will let me know.

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

05/19/2009 03:31 PM (KKN) Hi Burns, I just wanted to check in and see if you have heard anything further from the US Attorney's office regarding Bryan Mulligan being indicted this month. Please let me know when you have a moment. Thanks, Kristen

03/30/2009 09:52 AM (LMB) RTC from Burns for ABW, advised you are OOO. He said he talked with US Atty's office, slated for May Grand Jury. 958-1926

03/05/2009 05:10 PM (CMF) TC from ABW, she just rec'd an e-mail from Burns asking if hearing was still going forward tomorrow, she told him yes. He wanted to give us the heads up that all of the victims will be there. He asked that we please let him know if for some reason we do not plan to move forward so he can call off the victims.

03/05/2009 02:37 PM (LMB) TC from Ms. Jenkins at Sol. Office for ABW. Just a reminder about bond hearing tomorrow at 9:00, courtroom 3B. Said she also sent KKN an email with the information.

02/24/2009 11:25 AM (KKN) Email from Burns:

you can resend your motion to charlie mckinney / alex jenkins to schedule.

i just talked to AUSA sean kittrell friday. he is waiting on one last report from the FBI before he indicts these guys in federal court.

BURNS WETMORE

www.scsolicitor9.org <<http://www.scsolicitor9.org>>

10/30/2012 11:44 AM.

Note - Burns Wetmore (843-958-1926)

02/24/2009 09:46 AM (KKN) Hi Burns, Andy wants to go ahead and get Bryan Mulligan on the bond list next week (I believe Harrington is the judge). Do I need to file another motion? Thank you, Kristen

12/18/2008 03:15 PM (ABBY) TCF Burns on my cell. He said teh Feds are meeting Wednesday, December 24th, to discuss this case and that all paperwork in order for Feds to adopt. US Atty Sean Cattrell (sp?) wants the case. He said grand jury in January. Just wanted to let us know.

12/18/2008 11:19 AM (ABBY) TCF Burns. He got a call from the FBI. They are taking Bryan Mulligans case and have spoken with the US Attorney's Office. They have the case ready to go before the Grand Jury the first full week in January and expect to have US Marshalls take custody of Bryan shortly thereafter. He is going to call US Attorney's office and get a better timeline for me. Andy, do you still want to go forward tomorrow OR should we let the family decide what they want to do? If he gets out after they post bond they will lose that money and he will be picked up 2 weeks later by the Feds. Please advise.

12/17/2008 3:15 PM (ABBY) TCF Burns. The CSC victim, her father and officer Sean Patrick will all be present tomorrow at the bond hearing. He is going to just present case and let them all speak.

12/15/2008 02:24 PM (ABBY) TCT Burns. Bryan Mulligan is on the bond modification hearing schedule for Friday, December 19th at 9:00 am. He said he would not take that before Harrington as she is too unpredictable and will likely keep him on NO BOND. I asked him what he thought she would knowing Judge Williams consolidated his 15 charges in Dorchester County for a \$100,000 bond. He said she might do the same thing if we gave her something to hang her "hat" on BUT he would not count on it. He was actually laughing thinking what she might say and do with 17 charges. He cannot consent to any bond b/c too many victims. The most vocal is alleged CSC victim's father who wants to "kill the defendant" for making her give him a BJ and calls Burns often. I looked at judges for January 5th, 12th and 26th and February 2nd - they are Harrington, Steven John, Jefferson, and Young, respectively. He said it is our call and he will keep it on the docket or pull it.

10/07/2008 11:23 AM (CMF) Retrieved R5 from the Solicitor's Office and placed in KKN's chair.

Note - Scarlett Wilson

Scarlett WilsonType: **Prosecutor Contact**

Primary Matter:

Matter No.:

Author/User: **Savage, Cheryl L.**

Other:

11/29/2010 10:11 AM (CLS)

Thanks Scarlett.

We dropped off a motion this morning that should detail our position. This should be a plea. I do not want a PCR as I know he will be getting substantial time. ~~We never intended for it to not be a plea, but I still needed to perform our due diligence. Although not at all likely it would not be appropriate to plea someone to a CSC without looking at the DNA analysis and later discovering the DNA belonged to someone else.~~ My malpractice insurance does not go that high.

Andy,

I think we are on the same page which is why I didn't think there was a "fire" on Wednesday. I'm not sure how we will resolve this but I am interested in hearing more about it. I thought that we had the whole picture from Burns but apparently, there is a difference in perspective as to some of the highlights. Nothing unusual about that-ASOLs and defense attorneys often find different aspects more or less important. I'm sure this is why you wanted to speak with me directly.

This isn't about you and it never was. Regardless of past disagreements, nobody can argue that you ever run from a trial or wreak havoc on our dockets. That said, we have a policy that I must implement fairly, whether Burns agrees with it or not. No policy is iron-clad or carved in stone and often times there are reasons to make exceptions. This may or may not be one of those instances.

Before I spoke with you last week, I wanted to speak with Burns and Bruce, first. I had limited cell services after speaking to them and then saw that things had escalated and that it probably wasn't going to do anybody any good to discuss this while tempers were flaring.

I imagine you are in jury qual. I have to be out of the office for a couple of hours this morning but could meet with you around 11 to see if there is a way for us to resolve this.

Thanks,
SW

Scarlett A. Wilson
Ninth Circuit Solicitor
101 Meeting Street, Suite 400
Charleston, SC 29401
wilsons@scsolicitor9.org <<mailto:wilsons@scsolicitor9.org>>

10/30/2012 11:43 AM

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Note - Scarlett Wilson

343-958-1900

From: WilsonScarlett (mailto:wilsonscarlett@aol.com)

Sent: Monday, November 29, 2010 8:47 AM

To: Scarlett Wilson

Subject: Fwd: State V Mulligan

Scarlett Wilson

Begin forwarded message:

From: "Andrew J. Savage" <Andy@savlaw.com <mailto:Andy@savlaw.com>>

Date: November 24, 2010 9:14:45 PM EST

To: "WilsonScarlett" <wilsonscarlett@aol.com <mailto:wilsonscarlett@aol.com>>

Cc: "Burns Wetmore" <wetmoreb@scsolicitor9.org <mailto:wetmoreb@scsolicitor9.org>>, "Bruce Durant" <bruce@scsolicitor9.org <mailto:bruce@scsolicitor9.org>>, "Breen Stevens" <breen@savlaw.com <mailto:breen@savlaw.com>>, "Virginia Murray" <virginia@savlaw.com <mailto:virginia@savlaw.com>>, "Cheryl Savage" <Cheryl@savlaw.com <mailto:Cheryl@savlaw.com>>, "Dora L. Bell" <dora@savlaw.com <mailto:dora@savlaw.com>>, "Heather Hill" <heather@savlaw.com <mailto:heather@savlaw.com>>

Subject: Re: State V Mulligan

Inflammatory was not the intent. Transparency was. I have never been a party to screwing with the docket or disrespecting the need to have a sound policy in the orderly disposition of cases. I believe in that. Attorneys who disrupt the process should suffer the consequences. Not their clients. I have never and I am not now trying to disrupt the docket. I am seeking the Discovery I am entitled to in order to properly advise my client about what he should do. Burns repeatedly has agreed with that position. That is why I copied all parties concerned. I am not attempting to go behind anyone's back. I have never heard from or spoken to Bruce yet I am told that late this afternoon he overruled a well respected experienced prosecutor's position in one of my cases, a very serious one. As I said civility has not been a hallmark of our professional relationship. In light of Bruce's previous dealings with me I assumed and I continue to assume it was personal. To me the issues seemed clear, very clear but perhaps I was wrong. I believe that Bruce was ignoring two foundational matters: the Order of the C J regarding pleas and Discovery and the fact that the plea offer for Mulligan was presented as open until next week.

I do not mean to be inflammatory but I want you to know how I see it. I have always been a strong supporter of your office but I am also very dedicated to the plight and rights of my clients, guilty or not. We will get through this as we have in so many other situations. This is all about advocacy for my client while preserving and presenting respect for you and the system in which we operate. My respect for you is undiminished. I do wish you a very Happy Thanksgiving.

Best

Andy

Sent from my iPad

10/30/2012 11:43 AM

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Note - Scarlett Wilson

On Nov 24, 2010, at 8:49 PM, "WilsonScarlett" <wilsonscarlett@aol.com <[<mailto:wilsonscarlett@aol.com>>](mailto:wilsonscarlett@aol.com)>> wrote:

Andy,

I am out of the office with spotty cell service and no access to a "real" computer.

I am happy that you understand our need to preserve the docket's integrity.

When I spoke to Bruce (with Burns), I did not get the impression that you and Burns were on the same page. In fact, it was my understanding that Burns believed this case fit squarely within our office policy. It's not so much a "Bruce" decision as a good, sound policy decision. Burns did not inform me of anything out of the ordinary.

As always, I am willing to discuss the matter with you but did not have the opportunity today and will not have the opportunity until Monday. I am confused as to Burns' position as your representation is different from what I understood earlier today.

The tone of your email is unnecessary and I trust that you will not be so inflammatory if you decide you would like to meet with me on Monday.

Happy Thanksgiving!

SW

Scarlett Wilson

On Nov 24, 2010, at 8:06 PM, "Andrew J. Savage" <Andy@savlaw.com <[<mailto:Andy@savlaw.com>>](mailto:Andy@savlaw.com)>> wrote:

I spoke to Burns late this afternoon regarding a case that Burns and I seem to see eye to eye. Your Deputy, who has a history with me in which civility was not his strongest attribute, overruled your team Captains' agreement with me and forced a change in a plea offer late today. The case is over 30 months old and the plea offer was presented within the last month or so, despite our regular, well documented, constant communication with your office. I emailed you earlier today about this matter in an effort to get it resolved. I have not heard back from you. I understand you have since approved your Deputy's position without any consideration of my input. I am more than disappointed in your apparent action in not being willing to hear my position, and for disregarding the suggestion of your highly regarded, well respected team captain. Your Deputy knows little about this case, has never spoken to me about it and apparently wants to punish attorneys and their clients who fail to immediately accept a plea offer which is presented in the 29th or 30th month your office has had the case yet before dispositive, material Discovery is provided to the defense.

I request that you re-read the Chief Judge's Order regarding pleas and the mandatory provision for full Discovery. Your office and in particular your Deputy is attempting to punish my client for exercising his absolute right to Discovery. You are asking him to plead guilty to a crime (CSE) without the benefit of receiving the DNA lab analysis. DNA was taken at the time of the crime. Again your office has had this case.

Note - Scarlett Wilson

~~for thirty plus months~~ Have you censured anyone in your office for their failure to follow on our two and one half year old Discovery Motion? Have you intervened with SLED find out why the unreasonable delay? You office tried to pass this case off two years ago to the Feds and it was rejected. Perhaps that is the reason why.

Please be assured that if your office persists in bringing this case in violation of the Chief Judges long standing Order regarding plea agreements and discovery I will use every means to insure that a Disciplinary action is filed and processed for all those responsible who act in contravention of a standing Court Order. If your office has some angst about lawyers who jerk your office around by rejecting plea offers, forcing trials or accepting plea offers at the last minute or whatever good luck in taking action against them. I do not blame you but I am not one of them and I challenge your office to show that my actions have ever been that way. I resent that my client is being punished by your office and particularly by your Deputy who apparently has administrative problems with other counsel. Beyond the Discovery issue I was offered an agreement in this matter that had to be concluded on or before the 29th by plea or trial. Please note today's date.

Very best for a happy thanksgiving;

Andy.

Sent from my iPad

In The Matter Of:
Bryan Leon Mulligan vs
State of South Carolina

Andrew Savage, III, Esquire
January 25, 2013

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Original File Savage_III_Esquire_Andrew_-_130125.TXT
New-4-Script08

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF DORCHESTER FIRST JUDICIAL CIRCUIT

BRYAN LEON MULLIGAN,

Applicant,

vs.

CASE NO. 2011-CP-18-1416

STATE OF SOUTH CAROLINA,

Respondent.

COPY

DEPOSITION OF: ANDREW J. SAVAGE, III, ESQUIRE

DATE: January 25, 2013

TIME: 11:33 AM

LOCATION: SAVAGE LAW FIRM
15 Prioleau Street
Charleston, SC

TAKEN BY: Counsel for the Respondent

REPORTED BY: Roxanne M. Easterwood, RPR

A. WILLIAM ROBERTS, JR., & ASSOCIATES

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2

1 APPEARANCES OF COUNSEL:

2
3
4 ATTORNEYS FOR APPLICANT
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6 BY: TARA DAWN SHURLING
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10 ATTORNEYS FOR RESPONDENT
STATE OF SOUTH CAROLINA:11 OFFICE OF THE ATTORNEY GENERAL STATE
12 OF SOUTH CAROLINA
13 BY: MEGAN E. HARRIGAN
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14 1000 Assembly Street, Room 501
Columbia, SC 29210
(803) 734-3319
15 mharrigan@scag.gov
sellott@scag.gov16
17
18
19 (INDEX AT REAR OF TRANSCRIPT)

Andrew Savage, III, Esquire - January 25, 2013

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STIPULATION

It is stipulated by and among Counsel that this deposition is being taken in accordance with the Federal Rules of Civil Procedure; that all objections as to Notice of this deposition are hereby waived; that all objections except as to form are reserved until the time of trial; and that the deponent does waive reading and signing of this deposition.

* * * * *

ANDREW J. SAVAGE, III, ESQ.

being first duly sworn, testified as follows:

MS. HARRIGAN: I'm Megan Harrigan of the South Carolina Attorney General's Office. Also present is Sally Elliott from the Attorney General's Office and Tara Shurling, counsel for Applicant, Bryan Mulligan.

We're here in regard to case number 201-CP-18-1416, Bryan Mulligan versus the State of South Carolina. The purpose of this deposition is to take additional testimony from Andrew J. Savage, III.

An evidentiary hearing into this matter was held November 1, 2012 in St. George before the Honorable Carmen T. Mullen. At the

Andrew Savage, III, Esquire - January 25, 2013

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1 hearing, Applicant's counsel amended her
2 postconviction relief application to include the
3 new allegation and prayer for relief alleging that
4 plea counsel, Andy Savage, was ineffective for
5 failing to object to Judge Young's comments prior
6 to sentencing regarding Applicant's delayed
7 acceptance of the state's plea offer.

8 Following Ms. Shurling's redirect
9 examination of Mr. Savage, Judge Mullen left the
10 record open to allow the state to depose Mr.
11 Savage regarding this new allegation and relief
12 sought.

13 EXAMINATION

14 BY MS. HARRIGAN:

15 Q. Mr. Savage, would you describe the
16 written offers from the state that your client
17 received?

18 A. The plea offer was essentially to
19 recommend a 30 year cap, as I recall. I don't
20 remember all the details. I can get it for you
21 certainly.

22 Q. I believe that Ms. Shurling introduced
23 as Plaintiff's 1 and 2 at the prior hearing the
24 plea offers. Do you recall whether it was in
25 writing that there was a cap of 30 or concurrent?

Andrew Savage, III, Esquire - January 25, 2013

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1 A. I don't recall.

2 Q. Do you recall any email correspondence
3 with the prosecuting assistant solicitor regarding
4 confusion?

5 A. I'm sure there's plenty. I'd be glad
6 to -- yeah, there was an issue whether they were
7 bound by that or whether that was still up to the
8 Court. Yes, I do remember that now.

9 Q. To your recollection, was there
10 anything in writing from the State that it was a
11 30 year cap or concurrent sentences?

12 A. I guess that these -- the key issue
13 that I should know, but I don't remember. I don't
14 think that there was, but I'd really like to look
15 at my notes. I'm sure that I -- can I take a look
16 at this?

17 Q. Yes.

18 A. I should have a Providency Form. Do
19 you have a Providency Form?

20 Q. I do have the two offers from the
21 State.

22 A. The Providency Form would have been my
23 communication with the client.

24 Q. The Providency Form was introduced at
25 the prior hearing I believe as 6. I think we

Andrew Savage, III, Esquire - January 25, 2013

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1 covered most of the documents.

2 MS. SHURLING: Off the record.

3 (A brief recess was taken.)

4 MS. HARRIGAN: Back on the record.

5 BY MS. HARRIGAN:

6 Q. Was there was a firm offer from the
7 State for a 30 year cap or for concurrent versus
8 consecutive?

9 A. With reference to the Providency Form
10 which is in evidence I believe in this matter,
11 page 22 states that: The State has agreed to
12 recommend the following -- it's a recommendation.
13 It's not binding on the Court -- that all other
14 charges against Bryan Mulligan are dismissed and
15 it's 30 years with no recommendation of sentencing
16 within that range, that the sentence for
17 Dorchester County charges also run concurrently
18 and concurrent with the sentences for the
19 Charleston County charges.

20 This list controls the charges. So
21 that was agreed to. But as to sentence, 10 to 30
22 is the statutory range. I don't know why I would
23 even refer to that as being part of a plea because
24 that's the statutory minimum and maximum, and
25 again it's a recommendation.

Andrew Savage, III, Esquire - January 25, 2013

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1 So the charges were the plea
2 agreement, the range is a recommendation, but the
3 Court is not bound. Does that make sense?

4 Q. Yes. Do you recall confusion with the
5 prosecuting Assistant Solicitor Burns Wetmore
6 regarding whether it was a consecutive
7 recommendation for his time?

8 A. Yes. And as I recall, the solicitor
9 would not agree to the 30 years, all of them
10 running concurrent. That was a decision for the
11 Court to make.

12 Q. Did that ultimately lead to a pre-plea
13 conference?

14 A. Yes, it did.

15 Q. Could you describe?

16 A. Yes. We wanted some assurance that
17 the Court wasn't -- you know, you have to be
18 careful because the Court is not supposed to
19 participate in plea discussions, but it's often
20 the case where we try to get a feel for making
21 sure the judge is aware of the facts and not
22 making an instant decision on the bench.

23 And the result of that we felt, not
24 guaranteed, but more comfortable that it would be
25 within the statutory range of one sentence.

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1 That's the 10 to 30 years. Discussed that with
2 the client, tell him my gut feeling is it's going
3 to be a 30-year sentence.

4 Q. To your recollection, this was never a
5 recommendation from the State?

6 A. No.

7 Q. Ultimately Mr. Mulligan plead to 13
8 different charges, correct?

9 A. Whatever the record says, yes.

10 Q. And a number were dismissed?

11 A. Yes.

12 Q. That stemmed from Charleston and
13 Dorchester County?

14 A. That is correct.

15 Q. Do you recall how much exposure he was
16 facing in prison if Judge Young had ran them
17 consecutively?

18 A. It would have effectively been a life
19 sentence.

20 Q. What sentence did Mr. Mulligan
21 ultimately receive?

22 A. I believe he received 30 years.

23 Q. Did Judge Young run his sentences
24 concurrently?

25 A. Yes, he did.

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1 Q. Do you recall the sentences of his two
2 codefendants?

3 A. They received less time. I think it
4 may have been 25 years, or at least in that range.

5 Q. Did Judge Young state any reason
6 during the plea for the discrepancy between Mr.
7 Mulligan and his two codefendants?

8 A. Well, there was a difference in
9 opinion that we had with the judge in terms of his
10 cooperating and the delay in the sentence. I felt
11 strongly that the defense had not delayed the
12 processing of the case, but the delay was a result
13 of the failure of the State to provide material
14 evidence through discovery, which particularly
15 delayed our case.

16 Our client was accused of being the
17 perpetrator of a sex act. We had been asking for
18 DNA for many, many, many, many months, and it was
19 provided shortly before the plea. I think the
20 judge was upset with that. But he also was upset
21 with what he perceived to be Mr. Mulligan's
22 culpability in the sex offense.

23 Q. Could you expound on what you mean by
24 culpability for the sex offense?

25 A. Yes. The hand of one, the hand of all

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1 is pretty solid law in South Carolina, but judges
2 often look at who the perpetrator was as opposed
3 to somebody who was merely present. And while
4 liable, culpable for the act, the perpetrator them
5 self, the judge indicated that he thought that my
6 client was the perpetrator. We disagreed with
7 him, but that was the judge's thoughts.

8 The only evidence I believe the State
9 had was the testimony of the codefendants. The
10 victim of the crime did not in any way identify
11 Mr. Mulligan as the perpetrator.

12 Q. Did Mr. Mulligan ever admit to you
13 that he was the perpetrator?

14 A. Always denied it.

15 Q. Did he tell you whether one of his
16 codefendants had perpetrated the act?

17 A. He denied his role in it. I really
18 don't recall whether he identified somebody else
19 or not.

20 Q. Judge Young's comment prior to
21 sentencing regarding the delay in the plea and
22 that Mr. Mulligan was the perpetrator, did you try
23 to interject during the sentencing to explain the
24 delay to Judge Young?

25 A. Yes. It was one of those situations

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1 that that had been an ongoing problem. As I
2 recall, Deputy Brewster Rant forced Burns Wetmore
3 to withdraw the offer at one point because I
4 hadn't taken advantage of the offer within the
5 timeframe allowed by the solicitor.

6 So going back for some time, I had
7 this issue with them about, look, the delay is not
8 my fault, the delay is your fault because you
9 didn't give me what I'm entitled to and may have
10 sent him the chief justice's memo on plea
11 agreements and the lack of discovery.

12 So there was some history of that. I
13 felt that the Court actually picked up on that and
14 was somewhat unpleasant for me and for my client
15 to think that because the attorney said we
16 shouldn't accept this plea until we knew what all
17 of the material facts are, that the client was
18 getting punished for my invoking his rights to
19 see that discovery.

20 Q. Directly before Judge Young handed
21 down his sentence he specifically commented on Mr.
22 Mulligan being the actual perpetrator of the CSE,
23 correct?

24 A. That is correct.

25 Q. Did you attempt to interrupt Judge

Andrew Savage, III, Esquire - January 25, 2013

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1 Young and tell him there was no DNA evidence
2 supporting the conclusion that Mr. Mulligan was
3 the perpetrator?

4 A. I'm sorry?

5 Q. Did you interrupt Judge Young and let
6 him know that there was no DNA evidence showing
7 that Mr. Mulligan was the perpetrator of the CSE?

8 A. Actually, I said to the Court that my
9 client did not delay the plea, that the reason the
10 plea was delayed. And he cut me off and he said
11 you're waiting on the DNA, I understand that, but
12 there was a sequence of events in which people
13 cooperating in investigation get easier.

14 He believed that there was a big
15 difference between the three perpetrators, and he
16 interpreted the evidence that it was all pointing
17 to Mulligan being involved as an active
18 participant and the other two were there but not
19 participating. He said that was very troubling to
20 him.

21 But, you know, that was his opinion.
22 I guess his opinion is the one that counts. But I
23 don't believe there's any evidence to support that
24 other than the self-serving statement of a
25 codefendant.

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1 Q. Do you believe that that is a possible
2 reason for the discrepancy between Mr. Mulligan's
3 sentence and that of his codefendants?

4 A. That's what he expressed. So I would
5 have to assume that that's what he was thinking.
6 Our whole point was hoping that the DNA would come
7 back and it would have supported that theory and
8 it would have totally discredited the codefendant
9 or two codefendants. I never seemed to be able to
10 convince Judge Young of the basis for that.

11 Q. Would you say it was a strategic
12 decision not to interrupt Judge Young in
13 additional time during his comments directly
14 before sentencing?

15 A. I don't remember the particulars of
16 it, but I know that I made my position pretty
17 clear. What the transcript doesn't reveal in any
18 of these cases is the nonverbal communications
19 between the Court and the defendant or the Court
20 and defense counsel.

21 It was clear to me that I was on the
22 verge of going too far with the Court in terms of
23 arguing with the Court. No Court likes you to
24 argue with them once they have made a decision. I
25 think the Court probably made this decision and my

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1 arguments really didn't have an impact on him at
2 all.

3 Q. Following Mr. Mulligan's plea did you
4 visit him in the detention center?

5 A. A lawyer in my office did, yes.

6 Q. Did you discuss with him the
7 possibility to file a motion to reconsider or an
8 appeal based on Judge Young's comment?

9 A. Yes, we did. In fact, I thought --
10 and it's very unusual in a guilty plea situation
11 to have any room for an appeal. And I thought we
12 had a little opportunity in this case that would
13 be able to affect an appeal. I certainly thought
14 it was appropriate to do a Rule 29 at least, let
15 everybody calm down and reflect on this a little
16 bit more. And Mr. Mulligan's position was he got
17 the time, he wanted to do the time, he was ready
18 to move on.

19 Q. He voluntarily elected not to pursue a
20 motion to reconsider?

21 A. Or to file an appeal.

22 MS. HARRIGAN: I have no further
23 questions.

24 EXAMINATION

25 BY MS. SHURLING:

Andrew Savage, III, Esquire - January 25, 2013

15

1 Q. I won't have but a few then. Do you
2 have your copy of the transcript? On page 50,
3 roughly starting line 18, the judge specifically
4 says he's going to take into consideration that
5 Monroe and Larkin were the first on board with
6 cooperating, recall?

7 A. Uh-huh.

8 Q. As I read the record, if I look on
9 page 51, you were attempting to address what the
10 judge said at lines 8 and 9. And going on over
11 down to 12 and 13 when you were explaining that
12 your acceptance of the plea -- why your acceptance
13 of the plea was delayed, right?

14 A. Yes, but also to give some further
15 foundation for the disparity in cooperation.
16 Mulligan's codefendants were caught red-handed.
17 Mulligan voluntarily turned himself in. Huge
18 difference in that from my perspective, which most
19 judges would interpret as usually different.

20 He did not want to hear about the
21 delay about the sex act. Mind you now that the
22 two codefendants were the only link between
23 Mulligan and being a participant. So it was
24 important for me to get the DNA to either confirm
25 or discredit the codefendants' testimony.

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1 I tried to explain that to the Court.
2 The Court was going down a different path in terms
3 of what the Court thought an appropriate sentence
4 would be.

5 Q. I certainly understand. But after
6 your remarks on page 51 at lines 12 and 13, after
7 that is when Judge Young goes on to say that, the
8 big differentiator between the three perpetrators
9 here, that everything points to Mulligan as being
10 an active participant in that awful event and
11 these other two basically were, you know, not
12 involved in a physical sense but were involved in
13 the eyes of the law, hand of one. After that
14 there is nothing on the record, no further
15 discussion about what evidence other than the
16 codefendants' statements, of course, pointed to
17 Mulligan as being the primary offender on the CSE,
18 is there?

19 A. The judge used the term everything.
20 You know, everything consisted of codefendants'
21 statements.

22 Q. I understand that. My point and my
23 concern is the DNA did not come back as a match to
24 Bryan Mulligan, correct?

25 A. Correct.

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17

1 Q. So the only --

2 A. I'm not sure there was any DNA
3 recovered. I think that was the issue.

4 Q. There was no DNA evidence indicating
5 culpability on Bryan Mulligan's part with regard
6 to the CSE, and the victim was not able to
7 identify --

8 A. Correct.

9 Q. -- which of the three had committed
10 this act. So the only evidence was the
11 self-serving position put forth by each of the
12 codefendants?

13 A. Correct.

14 Q. And my question is once the judge
15 interjected in sentencing that in his mind the big
16 differentiator between your client and the other
17 two was that everything pointed to Mulligan as
18 being the active participant and being involved in
19 a physical sense, why did you not feel it
20 necessary and appropriate to point out to the
21 judge that, Your Honor, the only thing that says
22 that it was Bryan Mulligan that was physically
23 involved and not one of the others is their word
24 against his?

25 A. Why didn't I say that?

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18

1 Q. Why didn't you point that out before
2 His Honor decided on the final sentence?

3 A. It was pretty clear. I don't think I
4 had to point out the obvious. The whole idea
5 behind getting the DNA was to get some objective
6 testimony. I don't think anybody involved in the
7 case thought otherwise and that it was the two
8 codefendants. It wasn't something that needed be
9 pointed out.

10 Q. Weren't you concerned based on His
11 Honor's comments on the record that somehow he had
12 been given the impression that all of the evidence
13 and that being an undefined term, everything
14 points to your client, that there was some
15 misconception on the judge's part that there was
16 some evidence other than codefendant testimony?

17 A. No. There wasn't any evidence of any
18 other testimony or, you know, witnesses. There
19 was no testimony there.

20 Q. I understand that you knew that, but
21 my question is didn't His Honor's comments give
22 you reason to be concerned that somehow he either
23 had arrived at an erroneous conclusion or had been
24 given from some source an erroneous impression
25 that there was evidence other than the

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1 codefendant's statements pointing to your client's
2 physical culpability?

3 A. No, I don't think there was any
4 misconstruing that. I think the judge made the
5 decision. That was the decision that he was going
6 to give, and that's the basis for the decision. I
7 mean, it is evidence. It is competent evidence.
8 We didn't have an opportunity to cross-examine
9 him, but I think the Court knew full well that the
10 whole sex act hinged on the codefendants'
11 statement. There wasn't anything else.

12 Q. What would be the basis for Judge
13 Young's familiarity with all of the evidence in
14 the case at this point? He hasn't reviewed all of
15 the discovery like the trial lawyers have?

16 A. Uh-huh.

17 Q. He's going, if he's like the presiding
18 the judge in most pleas, only on what has been
19 presented to him as a factual basis for the plea
20 during the proceeding, correct?

21 A. In this case he knew more than that.
22 You know, there was a pretrial or pre-plea
23 conference. I don't know what was detailed by Mr.
24 Wetmore and the basis for the plea.

25 Q. Let me back up for just a second.

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20

1 With regard to His Honor's statement on the record
2 that he was giving credit to Monroe and Larkin
3 because they were the first ones on board, so to
4 speak, did you consider raising a constitutional
5 objection to that being used as a sentencing
6 factor arguing that your client had a
7 constitutional right to adequately review all of
8 the discovery, a due process right to review all
9 of the discovery before making a decision about a
10 plea, and that taking the time to do so should not
11 be held against him as a factor in sentencing?

12 A. I raised an issue. I don't know
13 whether I put it in those terms or not. I raised
14 an issue that the delay was caused by the State's
15 failure to provide material discovery.

16 Q. You mentioned that Mr. Mulligan
17 voluntarily waived his right to a direct appeal,
18 and you also said -- which you and I both have
19 been practicing long enough to know direct appeal
20 from a guilty plea is rarely a successful avenue
21 to follow; isn't that true?

22 A. That is true. But, you know, we're
23 required to file an affidavit with the Court now,
24 and I was willing to do that.

25 Q. Sure. My next question would be in

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21

1 your mind if Bryan Mulligan had said let's go for
2 it and, Mr. Savage, let's do that, let's pursue
3 the direct appeal, what issues did you think you
4 had preserved in terms of contemporaneous
5 objection and legal argument supporting the
6 objection in the record in the guilty plea?

7 A. You know, Tara, it never came to that.
8 I don't know that we ever went back and read the
9 transcript. It didn't exist at that time.
10 Generally what we do is file a motion of intent to
11 appeal, go back and read the transcript, see what
12 we had, work with it.

13 MS. SHURLING: I don't have any further
14 questions.

15 EXAMINATION

16 BY MS. HARRIGAN:

17 Q. You did speak with your client about,
18 or someone from your office spoke with your client
19 about pursuing a motion to reconsider, correct?

20 A. Yes.

21 Q. And he declined to pursue that avenue?

22 A. Yeah. Actually, we discussed that in
23 the office, and we thought that it would be --
24 what that would allow us to do is let everybody
25 calm down. This was a pretty highly emotional

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22

1 case. You know, any sex case is a bit more
2 emotional. This was a pretty violent act. Yeah,
3 he had a very firm, he wanted to move on. He
4 didn't want to -- he wanted to just go and do his
5 time. We didn't think that was the right answer,
6 but that's the answer he gave us.

7 MS. ELLIOTT: No further questions.

8 EXAMINATION

9 BY MS. SHURLING:

10 Q. I was just going to ask,
11 differentiating between the two issues, the motion
12 to reconsider sentence and the appeal for a
13 moment, in your -- you have been practicing
14 criminal defense for how long? Let's just say
15 over three decades?

16 A. More than that, '75, however long ago
17 that was. Actually, I did prosecution for the
18 first six years.

19 Q. That's right. I forget you were on
20 the other side. In your experience, are motions
21 to reconsider sentence very often fruitful?

22 A. I've had some success on them. I
23 haven't had successes with Judge Young, but I have
24 had success with other judges. Yeah. I think,
25 yeah, particularly when there's an emotional --

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23

1 when people get all ginned up in the courtroom,
2 sometimes the judge catches that fever, and upon
3 reflection they can change their mind. I have had
4 success on that, a felony DUI case in particular
5 by Judge Houston not too long ago.

6 Q. What's on the table when you make a
7 motion to reconsider? Can the judge go up and
8 down or just down?

9 A. The judge can do whatever he wants to
10 do. He's reconsidering. Given what he said at
11 the time of sentencing, he couldn't have gone up
12 because he was up as far as the elevator would go.
13 He said that he's never given concurrent
14 sentences, I think is what he said in the plea.
15 So it was a pretty safe bet.

16 MS. SHURLING: Nothing further.

17
18 (The deposition was concluded at 12:02 PM.)
19
20
21
22
23
24
25

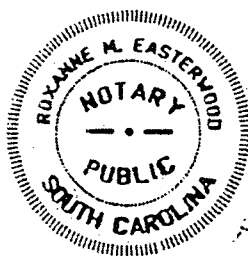
24

1 CERTIFICATE OF REPORTER

2 I, Roxanne M. Easterwood, Registered
3 Professional Reporter and Notary Public for the
4 State of South Carolina at Large, do hereby
5 certify that the foregoing transcript, pages 1
6 through 25, is a true, accurate, and complete
7 record.

8 I further certify that I am neither
9 related to nor counsel for any party to the cause
10 pending or interested in the events thereof.

11 Witness my hand, I have hereunto
12 affixed my official seal this 25th day of January
13 2013 at Charleston, Charleston County, South
14 Carolina.



22 Roxanne M. Easterwood, RPR
23 My Commission expires
24 February 1, 2015
25

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FORM 4

OF SOUTH CAROLINA
 COUNTY OF DORCHESTER
 THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
 CASE NUMBER 2011CP1801416

Bryan Leon Mulligan

2013 AUG -6 PM 4:02

South Carolina State of

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: ☐ Plaintiff ☐ Defendant
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other: _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other: _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Carmen T. Mullen
 Circuit Court Judge

Judge Code

8/6/2013

Date

For Clerk of Court Office Use Only

This judgment was entered on 8/6/2013, and a copy mailed first class or placed in the appropriate attorney's box on 8/6/2013, to attorneys of record or to parties (when appearing pro se) as follows:

Tara Dawn Shurling 3614 Landmark Drive Suite A
Columbia, SC 29204

ATTORNEY(S) FOR THE PLAINTIFF(S)

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ATTORNEY(S) FOR THE DEFENDANT(S)

Cheryl Graham

Cheryl Graham - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS

BRYAN LEON MULLIGAN, 344736)
Applicant,)

2011-CP-18-1416

v.)

ORDER

THE STATE OF SOUTH CAROLINA.)
Respondent.)

THIS MATTER comes before the Court by way of an Application for Post-Conviction Relief filed on July 20, 2011. The State filed its Return on October 18, 2011. An evidentiary hearing was convened on November 1, 2012 during which the Applicant was present and represented by Tara Dawn Shurling, Esquire and the State was represented by Assistant Attorney General, Megan Harrigan and Senior Assistant Deputy Salley W. Elliott. The Applicant's original Application, filed on July 20, 2011, only listed the seven (7) Dorchester County charges pleaded to on this date. The transcript of the February 3, 2011 plea lists *only* these seven (7) charges on its cover. To further complicate matter, the SCDC summary sheet for this Applicant list seven (7) charges and sentences as well. All thirteen charges addressed below from Dorchester and Charleston County were pleaded to before the Honorable Roger M. Young, Sr., on February 3, 2011 and concurrent sentences were imposed on all counts. The Applicant filed an Amended Application for Post-Conviction Relief on October 30, 2012, adding the Charleston County judgments and sentences to this collateral action.

PROCEDURAL HISTORY

The Applicant was indicted by the Dorchester County Grand jury, along with his two co-defendants, for one (1) count of Assault and Battery of a High and Aggravated Nature (ABHAN)

(2008-GS-18-1107), one (1) count of Possession of a Weapon During the Commission of a Violent Crime, two (2) counts of Armed Robbery (2008-GS-18-1121, 2008-GS-18-1112), and three (3) counts of Kidnapping (2008-GS-18-1108, 2008-GS-18-1120, 2008-GS-18-1113). He was additionally indicted by the Charleston County grand jury for three (3) counts of Kidnapping (2008-GS-10-8072, 2008-GS-10-8127, 2008-GS-10-8137), two (2) counts of Armed Robbery (2008-GS-10-8126, 2008-GS-10-8141) one (1) count of Attempted Armed Robbery (2008-GS-10-8073) and one (1) count of First Degree Criminal Sexual Conduct (2008-GS-10-8135).

The Applicant was represented by Andrew J. Savage, Esquire on these charges. On February 3, 2010, Applicant appeared before the Honorable Roger Young and pleaded guilty to all the charges listed above with the exception of the charge of Possession of a Weapon During the Commission of a Violent Crime; that charge was dismissed as part of the Applicant's plea agreement with the State.

- ABHAN: ten (10) years imprisonment;
- Six (6) counts of Kidnapping: thirty (30) years imprisonment on each charge;
- Four (4) counts of Armed Robbery: thirty (30) years imprisonment on each charge.
- Attempted Armed Robbery, twenty (20) years imprisonment.
- Criminal Sexual Conduct, First Degree, thirty (30) years imprisonment.

All sentences were ordered to run concurrently giving the Applicant an aggregate term of 30 years. The Applicant's co-defendant's received ten (10) years for ABHAN. Twenty (20) years for Attempted-Armed Robbery and twenty-five (25) years on each of their other judgments for an aggregate term of twenty-five (25) years. The Applicant did not appeal his pleas or sentences.

In his Application for Post-Conviction Relief filed July 20, 2011, the Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. The Applicant received ineffective assistance of counsel prior and during his plea in violation of his rights pursuant to the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14 of the South Carolina Constitution.
2. The Applicant's pleas of guilty were not voluntary and intelligently entered. The judgments and sentences against the Applicant were entered in violation of his rights to due process of law and effective assistance of counsel.

In support of those allegations, the Applicant specifically alleged that:

1. Trial Counsel failed to give the Applicant adequate legal advice prior to the Applicant's guilty plea proceeding. Trial counsel failed to advise the Applicant of the potential consequences of delaying the acceptance of a plea bargain until after the discovery process was completed.
2. Counsel failed to provide client effective assistance of counsel prior to and during his guilty plea proceeding. The Applicant's ability to optimize the benefits available to him through plea negotiations with the State were irreparably prejudiced by counsel's failure to sufficiently advise the Applicant of the likely consequences of delaying his acceptance of a plea bargain until after all the discovery process was completed.
3. Trial Counsel was ineffective for neglecting to adequately explain the law of accomplice liability to the Applicant as it applied to the charge of Criminal Sexual Conduct, 1st Degree.

During the Applicant's PCR hearing on November 1, 2012, the Applicant elected to waive all his allegations with the exception of his claim that he received ineffective assistance of counsel during his sentencing. He waived his previous request for a new trial and asked only for a new sentencing proceeding. The Applicant was thoroughly questioned by the Court concerning this decision. This Court found that the Applicant was making a knowing and voluntary decision to narrow the focus of his PCR action and therefore, granted his request to amend. In addition, the Applicant was advised that if he won a new sentencing proceeding, it was possible for the presiding judge to give him a more severe sentence than which he originally received. Notwithstanding this advice, the Applicant indicated that he wished to go forward with his claims related to his Defense

Attorney's failure to provide him effective assistance of counsel during the sentencing phase of his plea proceeding. PCR Tr. P. 79, l. 21 – p. 80, l. 15.

EVIDENCE BEFORE THE COURT

In addition to the testimony presented during the evidentiary hearing held in this case and the exhibits introduced during that proceeding, in deciding this collateral action this Court also has before it a copy of the plea record, a copy of the deposition of Andrew Savage, III, dated January 25, 2013, the Applicant's records from the South Carolina Department of Corrections and the records of the Dorchester and Charleston County Clerks of Court regarding the subject judgments and sentences. What follows below are this Court's findings of fact and rulings of law as required by S.C. Ann. §17-27-80.¹

STANDARD OF REVIEW

This Application for Post-Conviction Relief raises numerous specific allegations of ineffective assistance of counsel. The Sixth Amendment to the United States Constitution guarantees a defendant the right to effective assistance of counsel. *U. S. Const. Amend. VI; Lomax v. State*, 379 S.C. 93, 665 S.E.2d 164(2008). The burden of proof is on the Applicant in a Post-Conviction Relief proceeding to prove the allegations raised in his Application for Relief and at his Post-Conviction Relief hearing. *Suber v. State*, 371 S.C. 554, 558, 640 S.E. 2d 884, 886 (2007); *Thompson v. State*, 340 S.C. 112, 531 S.E.2d 294 (2000); *Rule 71.1(e), SCRPC*. In evaluating an Application for Post-Conviction Relief, the moving party must demonstrate that Trial Counsel (1) failed to provide him with reasonable professional assistance of counsel under the prevailing standards for attorneys representing clients in criminal matters; and (2) that he was prejudiced by the errors and omissions of counsel such that he was deprived of a fair trial.

¹ For purposes of supporting this Order on appeal, the findings of fact and rulings of law contained herein may be viewed as interchangeable as may be necessary to affirm the ruling of this Court on any appeal which may follow.

Strickland v. Washington, 466 U.S. 668 (1984); *Speaks v. State*, 377 S.C. 396, 399, 600 S.E.2d 512, 514 (2008). In other words, the Applicant must show that, but for counsel's errors and omissions, there is a reasonable probability that the result at trial would have been different. *Id.*; *Johnson v. State*, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). A reasonable probability has been defined by our Supreme Court as a probability sufficient to undermine confidence in the outcome of the trial. *Edwards v. State*, 392 S.C. 449, 459, 710 S.E.2d 60, 66 (2011); *Ard v. Cutog*, 372 S.C. 318, 330, 642 S.E.2d 590, 596 (2007); *Rhodes v. State*, 349 S.C. 25, 31, 561 S.E.2d 606, 609 (2002).

On the one hand, where Trial Counsel articulates a valid reason for employing certain trial strategies, such conduct should not be deemed ineffective assistance of trial counsel. *Roseboro v. State*, 317 S.C. 292, 294, 454 S.E.2d 312, 313 (1995); *Stokes v. State*, 308 S.C. 546, 419 S.E.2d 778 (1992). In order to satisfy the first prong of the Strickland standard, a PCR applicant must show that counsel's performance fell below an objective standard of reasonableness. *Franklin v. Cutog*, 346, S.C. 563, 570-571, 582 S.E.2d 718, 722 (2001). On the other hand, counsel may not explain away errors and omissions which acted to prejudice his client's ability to receive a fair trial simply by labeling them matters of trial strategy or tactics. In the case of *Ingle v. State*, 348 S.C. 467, 470, 560 S.E.2d 401, 402 (2002), the Supreme Court of South Carolina found that

Counsel must articulate a valid reason for employing a certain strategy to avoid a finding of ineffectiveness. Where counsel articulates a strategy, it is measured against an objective standard of reasonableness.

RELEVANT FACTS

The testimony and exhibits introduced during the Applicant's PCR proceeding, as well as the subsequent deposition of trial counsel, Andrew J. Savage, III, document the fact that extensive plea negotiations preceded the Applicant's pleas in this case. The evidence before the Court documents that a spirit of animus developed between Defense Counsel and the State during these lengthy plea negotiations. At the heart of the discord was the insistence of an Administrative Assistant Solicitor that a plea offer extended to the Applicant be accepted or rejected before the Applicant received the results of DNA testing conducted as part of the investigation of this case. Defense Counsel took the position that this requirement violated a long standing Supreme Court Order directing that the discovery process be complete before a defendant is required to respond to a plea offer. Ultimately, after intervention from Solicitor Scarlett Wilson, the Applicant pleaded guilty to the same charges as his co-defendants and had the same charges dismissed in exchange for his pleas to both Charleston and Dorchester County charges. PCR Tr. p. 16 ll. 10-20; Deposition of Defense Counsel, Plaintiff's PCR Exhibits 1-4. Other than the dismissal of the charges discussed above, the State made no further concessions in exchange for the pleas entered by the Applicant or his co-defendants. The State made no recommendations concerning sentencing for the Applicant or his co-defendants. Plea Tr. P. 23, l. 25- p. 24, l. 1. Neither the Applicant, nor his co-defendants, had any prior criminal history. Plea Tr. p. 23 ll. 24-25 and Plea Tr. p. 26, ll. 2-8.

In his comments on the record before imposing sentences in this case, the presiding judge remarked on the difficult task of sentencing and noted that *"you got people that plead guilty and cooperate with the police sooner than other people and you take that into consideration."* Plea Tr. p. 46, ll. 20-23. The Court also emphasized that none of the three defendants had a prior record

and acknowledged the fact that they were all "very, very, very young people" at the time of these crimes as a consideration in sentencing. Plea Tr. p. 48, l. 20- p. 49, l. 20.

Before pronouncing sentence on the Applicant and his co-defendants the presiding judge went on to specifically state,

I want to hear the package. but I won't make any promises on what I'll do. but none of these guys should expect that they will walk out of here with 30 years, but to the extent that it is anything less than that, well, *I take into consideration that Mr. Monroe and Mr. Larkin were first on board with cooperating and that, you know, had some, you know, factor in making the state's investigation easier, which then they were able to present Mulligan with this is it, pal. We're going to go to trial and we're going to convict you and we're going to ask for a lot more time than you get if you went to plead guilty.* So you know, maybe they deserve a little bit of credit for this.

Plea Tr. p. 50, l. 15- p. 51, l. 2. (Emphasis added).

After an attempt by Defense Counsel to explain the reason why the Applicant was not responsible for the delay of his plea, Plea Tr. p. 51, ll. 3-13, the Court went on to state,

You were waiting on DNA. I understand that. But there was a sequence of events in which people cooperated and investigations get easier. I got that. *The thing that I do - that is troublesome to me, and again it comes back to this criminal sexual conduct, there is a big differentiator between the three perpetrators here, and everything points to Mulligan being involved as an active participant in that awful event* and these other two basically were, you know, not involved in a physical sense, but still involved in the eyes of the law under the hand of one, hand of all theory.

Plea Tr. p. 51, ll. 14-25. (Emphasis added).

But that is for another day. The bottom line is there is not question in my mind he deserves every day of the 30 years I'm giving him. I'll give Mr. Monroe and Mr. Larkin a little bit of a break, and I will give them 25 years on their charges. They will all run concurrent and you'll get credit for any time you've already served. Good luck to you.

Plea Tr. p. 52, l. 23- p. 53, l. 4.

The Applicant received twenty (20) years for attempted armed robbery, ten (10) years for assault and battery of a high and aggravated nature. He received a sentence of thirty (30) years on each of his other charges. All his sentences were ordered to be served concurrently. Plea Tr. p. 53, ll. 12-15. The Applicant's co-defendants however, each received aggregate terms of twenty-five (25) years.

Emails between Defense Counsel and the Solicitor's Office confirmed that the Applicant always intended to plead on his charges rather than go to trial. PCR Tr. p. 62, ll. 1-20, and email to Solicitor Scarlett Wilson dated November 29, 2010. Despite this position, Defense Counsel acknowledged in his PCR testimony that he never considered informing the Court of this fact when the sentencing judge noted that the Applicant's co-defendants had cooperated early on and the State had been able to use their cooperation to threaten the Applicant and get him to plead guilty rather than go to trial by jury. PCR Tr. p. 62, ll. 6-14. When asked to explain why he didn't respond to the remarks of the presiding judge concerning the Criminal Sexual Conduct charge *"I don't have an answer to that."* PCR tr. p. 64, l. 15- p. 66, l. 11. Thus, Defense Counsel offered no explanation for failing to clarify for the Court that there was no evidence, except the self-serving statements of the co-defendants, that supported the Court's finding that *"there is a big differentiator between the three perpetrators here, and everything points to Mulligan being involved as an active participant in that awful event"* Defense Counsel acknowledged that when the DNA test results finally came back, they were inconclusive. PCR. Tr. p. 21, l. 1-7. The victim was not able to identify which of the defendants sexually assaulted her. PCR Tr. p. 21, ll. 19-24.

In his PCR testimony, Defense Counsel testified that there were a number of other potential witnesses to the circumstances surrounding the sexual assault and yet, the co-defendant's self

reasonable professional assistance of counsel during the sentencing portion of his guilty plea proceeding. For all the following reasons, this Court finds that the Applicant is entitled to the vacation of all his sentences entered on February 3, 2011 and the remand of his case for a new sentencing proceeding.

It is clear to this Court that the Applicant received a harsher sentence than that imposed upon his co-defendants based upon several factors which could, and should, have been clarified for the Court before the final decision as to the appropriate sentences to impose for each of these three young men was made. It is apparent that the sentencing court gave the Applicant's co-defendants a break in sentencing based upon conclusions which were not supported by the facts in this case. As the PCR testimony of Defense Counsel verifies, any delay in the Applicant's cooperation with law enforcement and his decision to enter pleas of guilty was directly attributable to delays in the discovery process. Defense Counsel did not object on the record to the delay in the Applicant's plea being taken into account in sentencing on the ground that the Applicant, as a matter of due process, had the right to review all the discovery in his case before being forced to make a decision concerning a plea. While the presiding judge initially appeared to acknowledge that the Applicant was waiting on the DNA test results, he went on to point to the fact that the State was able to use the cooperation of the codefendants to pressure the Applicant into entering his pleas rather than go to trial by jury. Defense Counsel failed to correct this misimpression by the Court by informing the Court, as the exhibits in this case document, that the Applicant always intended to plead to his charges and had never intended to go to trial. Defense Counsel indicated that he wanted the DNA results before he asked the Applicant to agree to a plea bargain with the Solicitor and additionally, that he felt the Applicant would be likely to get a better sentence if the DNA results proved he wasn't the principal in the Criminal Sexual Conduct involved in this case. This Court is persuaded

that the outcome of the Applicant's sentencing may have been different had the presiding judge been made aware that the codefendant's cooperation had not influenced him to waive his right to trial by jury. Defense Counsel was ineffective for failing to point out the Court's important misunderstanding on this point. Likewise, this Court finds that Defense Counsel was deficient for failing to object to the Court holding the Applicant's exercise of his right to see all the discovery materials in this case before accepting a plea agreement against him in determining the appropriate sentences on his charges.

In his PCR testimony, Defense Counsel testified that he urged the Applicant to appeal his sentencing because *"he thought the sentencing reasoning, which Judge Young put in the record, was wrong, and it was wrong for a legal reason..."* PCR Tr. p. 14, l. 25 - p. 15, l. 4. He went on to state that his associate had visited with the Applicant at the jail after sentencing and that the Applicant had conveyed his decision not to appeal or to ask the Court to reconsider his sentences. PCR Tr. p. 66, l. 14 - p. 67, l. 9. When asked what issues were preserved for appellate review during the plea proceeding, Defense Counsel indicated that he did not know at the time the Applicant made the decision because he had not read a transcript of the plea proceeding. Depo Tr. p. 20, l. 1 - p. 21, l. 12. The record of the Applicant's pleas and sentencing reflects that there were no issues preserved for appellate review during that proceeding. Issues that are not raised, argued and ruled upon on the record are not available for review on direct appeal. Clearly, despite Defense Counsel's best intentions, his failure to object to the erroneous factors taken into account in the Applicant's sentencing left the Applicant without any preserved claims for a direct appeal.

It is equally apparent that the presiding judge believed that *"everything points to Mulligan being involved as an active participant"* in the criminal sexual battery that was reported by the victim in this case. As noted above, the evidence simply did not support that belief. Aside from

the self-serving statements of the co-defendants, there was no evidence that the Applicant committed what the sentencing judge referred to as "*that awful event*." Defense Counsel has admitted that he isn't even certain whether, at the time of the sentencing, the presiding judge had been informed that the results of the DNA test were inconclusive. This Court is constrained to find that Defense Counsel was ineffective for failing to point out to the sentencing judge that there was in fact no evidence supporting the conclusion that the Applicant was the "*active participant*" in the sexual battery other than the self-serving statements of the co-defendants in this case. Once again, this Court finds that there exists a reasonable probability that the outcome of the Applicant's sentencing would have been different had the Court been reminded of the limited nature of the State's evidence against the Applicant on the Criminal Sexual Conduct charge. Absent all of these considerations, this Court concludes that the sentencing court may well have found no basis for distinguishing between the appropriate penalties to be imposed against the Applicant and those given to his co-defendants.

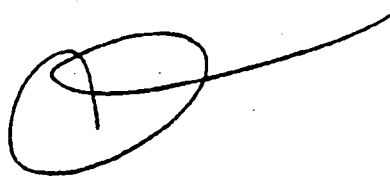
This Court finds that the Applicant's alleged waiver of his right to file a Motion to Reconsider Sentence in no way constitutes a procedural bar to the relief sought and granted in this case. Defense Counsel did not personally visit with the Applicant at the time of his alleged waiver. When the presiding judge made comments during sentencing which revealed that erroneous information was being taken into account by the Court in deciding the penalty to be imposed against the Applicant, Defense Counsel did nothing to correct the Court's obvious misunderstanding of the facts in the Applicant's case. Defense Counsel has admitted that at the time he didn't know what issues were available for a possible appeal or a Motion to Reconsider Sentence. There is no indication that Defense Counsel himself ever discussed the comments made by the sentencing judge with his client after this sentencing or that he ever explained to him how he, as the Applicant's

lawyer, might seek to correct the Court's misunderstanding of the facts and evidence in his case through a Motion to Reconsider Sentences. On the facts of this case, this Court is not prepared to find that the Applicant waived his right to effective assistance of counsel during his sentencing proceeding by not instructing Defense Counsel to pursue a Motion to Reconsider.

CONCLUSION

For all the reasons set forth above, this Court finds that the Applicant has met his burden of proof with regard to his claim that he received ineffective assistance of counsel during his sentencing. This Court finds that there is a reasonable probability that the outcome of the Applicant's sentencing would have been different but for the errors and omissions of Defense Counsel addressed herein. Accordingly, all the sentences entered against the Applicant on February 3, 2011, are hereby vacated and the Applicant's judgments are remanded to the Dorchester County Court of General Sessions for re-sentencing. Inasmuch as the Applicant's pleas to both the Dorchester and Charleston County charges addressed herein were entered in Dorchester County, this matter is remanded for a new sentencing hearing all these charges in Dorchester County.

IT IS SO ORDERED.



Carmen T. Mullen
Presiding Circuit Court Judge
Fourteenth Judicial Circuit

This 1 day of Aug, 2013

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

Bryan L. Mulligan, #344736,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

Case No. 2011-CP-18-1416

RESPONDENT'S MOTION TO
RECONSIDER, ALTER OR AMEND
PURSUANT TO RULE 59, SCRCP

Respondent, by and through undersigned counsel, making its Motion to Reconsider, Alter or Amend, pursuant to Rule 59, SCRCP, would respectfully show unto this Court:

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed July 20, 2011. The Respondent made its Return on October 18, 2011. An evidentiary hearing into the matter was convened on November 1, 2012, at the Dorchester County Courthouse. Applicant was present at the hearing and was represented by Tara Dawn Shurling, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office and Senior Assistant Deputy Attorney General Salley W. Elliott. At the hearing, the Court heard testimony from Applicant's plea counsel, Andrew J. Savage, III, Esquire (hereafter "Counsel").

Following Counsel's testimony, Applicant orally moved to amend his application with the new allegation that Counsel was ineffective for failing to object to the plea court's comments during sentence and requested the Court grant him a new sentencing hearing; Applicant abandoned all other allegations and his original prayer for relief – new trial. At the conclusion of the hearing, this Court left the record open to allow additional testimony from Counsel regarding

this late amendment. A deposition of Counsel was taken on January 25, 2013 in Charleston, South Carolina.

Thereafter, this Court instructed counsel for Applicant to prepare a proposed Order Granting Resentencing. This Order was signed August 1, 2013 and filed on August 6, 2013. Respondent received a copy of the Order on August 12, 2013. This Motion to Reconsider follows.

ARGUMENT IN SUPPORT OF RECONSIDERATION

Respondent moves this Court to reverse its earlier decision and deny post-conviction relief where Applicant failed to meet his burden as set forth in Strickland v. Washington, 466 U.S. 668 (1984). Under Strickland, an applicant must first prove that counsel's performance was deficient as measured by its "reasonableness under professional norms." Id. Second, an applicant must establish that counsel's deficient performance prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, an applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52 (1985). Respondent asserts that Applicant has failed to carry his burden in regards to each prong, as set forth below:

Applicant Failed to Establish Deficiency

In the Order, this Court found that Counsel was "deficient for failing to object to the Court holding the Applicant's exercise of his right to see all the discovery materials in this case before accepting a plea agreement against him in determining the appropriate sentences on his charges." Additionally, in the Order, this Court found that Counsel was deficient "for failing to

point out to the sentencing judge that there was in fact no evidence supporting the conclusion that Applicant was the '*active participant*' in the sexual battery other than the self-serving statements of the co-defendants in this case. (emphasis in Order). Respondent asserts that Applicant has failed to establish that Counsel's performance fell below a standard of "reasonableness under professional norms." Strickland, 466 U.S. 668. In support of this position, Respondent would respectfully direct this Court's attention to the following portions of the record:

1. THE [PLEA] COURT: I want to hear the packages, but none of the guys should expect to walk out of here with 30 years, but to the extent that it is anything less than that, well, I take into consideration that Mr. Monroe and Mr. Larkin were first on board with cooperating and that, you know, had some, you know, factor in making the State's investigation easier, which then they were able to present to Mulligan with this is it, pal. We're going to trial and we're going to conviction you and we're going to ask for a lot more time than you get if you went to plead guilty. So, you know, maybe they deserve a little bit of credit for this.

MR. SAVAGE: *Your Honor, may I be heard on that?*

THE COURT: Yeah.

MR. SAVAGE: He was not caught red handed like his codefendant with the guns.

THE COURT: I figured that, and I knew you would jump on that. There was not a full confession.

MR. SAVAGE: *[Mulligan] did not delay the plea from October. The reason the plea was delayed was because - - -*

THE COURT: *You were waiting on DNA. I understand that . . .*

Tr. p. 51 lines 12-15.

Based on the above exchange, the plea court clearly understood that Applicant's plea was delayed through no fault of his own and was waiting on full discovery before entering his guilty plea. Additionally, it shows that Counsel actively took steps to correct

any misstatements regarding the delay, and was thwarted by the Court. Counsel's performance was not deficient.

2. THE [PCR] COURT: Okay. So my question is, where did Roger Young get the idea that your client was the culpable person other than somebody else's?

THE WITNESS [COUNSEL]: My theory is it came from the solicitor. I have no idea where he could have gotten it.

THE COURT: In conversations from previous plea. All you can do is surmise.

THE WITNESS: Yeah, I have no idea, but he was pretty certain about his position. *You can see where I tried to contest that.*

PCR Tr. p. 21 lines 8-18.

Again, Counsel testified that he actively tried to contest the plea court's comments during sentencing and was abruptly stopped by the plea court. Additionally, a review of the rest of the plea transcript shows that the plea court did not give Counsel, or any other party, an opportunity to be heard for the remainder of the proceeding. Tr. p. 51 - 53. Counsel was not deficient in this regard.

3. Q [APPLICANT'S COUNSEL]: Okay, So at the point when Judge Young makes it clear that his primary focus is on this terrible CSC event and that there is a big differentiator between your client and the codefendants based on everything pointing to your client as being the active participant with regard to the CSC, at that juncture why didn't you respond and remind His Honor on the record that there -- that everything pointing to your client was not accurate, that there was no eyewitness identification of your client in that regard, that there was no DNA connecting your client as an active participant, and that really the only thing they had were the self-serving statements of the very people he was about to cut a break in sentencing?

A [COUNSEL]: If you look on page 51, he says, so, you know, maybe they deserve a little bit of credit, and he is referring to the two codefendants. Will you read the next line?

Q. Yes.

A. I said, Your Honor, may I be heard on that? *That's exactly what I was doing, was contesting the fact of the differentiation between the three.* I pointed out that Mr. Mulligan had turned himself in while the other two go caught red handed. You see his response. I figured that. I knew you would jump on that. There was not a full confession. I started saying he did not delay the plea from October. The reason the plea was delayed is because he cut me off. You were waiting on the DNA. I understand that because the sequence of events – it goes on and on and on. The bottom line, he says, on the bottom of page 52, there is no question in my mind that he deserves every day of the 30 years. You know, *clearly [Judge Young] had made up his mind, and he believed, for whatever reason, he didn't state, that Bryan was the perpetrator.* The [PCR] Court asked me, where do you get that information? There is nothing in the record that would have provided that to him. The only explanation is that it was a conversation with the solicitor or somebody from the State.

PCR Tr. p. 23 line 16- p. 25 line 6.

Counsel again testified that he was contesting the plea court's differentiation between the three codefendants and highlighting to the plea court that his client alone came forward and cooperated with law enforcement in mitigation on Applicant's behalf. Counsel's performance was reasonable based on professional norms.

4. Q [APPLICANT'S COUNSEL]: On line 14 of page 51, Andy, Mr. Savage, it says you were waiting on DNA. To your knowledge, do you have any reason to believe that Judge Young had been made aware of the results of the DNA test? I mean, there is nothing in the record about it, but do you have any knowledge about Judge Young being made aware of the results of the DNA test?

A [COUNSEL]: I have no idea. I have no idea what he knew or didn't know. I know that he knew it was an issue. *I know he knew that if the State didn't say the DNA came back positive and it was Bryan Mulligan's, I mean, common sense would tell if you they had that that would have been brought to hamper Bryan or whoever's DNA it was.*

PCR Tr. p. 28 line 23 – p. 28 line 11.

Counsel testified that the plea court was well aware DNA testing had been performed and that the only logical and rational conclusion to be drawn from State's omission of DNA evidence was that the DNA testing was inconclusive and did not implicate, or exonerate, Applicant or either codefendant. Counsel was not deficient for pointing out something that the plea court already knew by reasonable inference.

5. Q [APPLICANT'S COUNSEL]: But my question is, if you were doing such a plea, could you not have put on the record that your client had consistently denied and sexual, physical contact with the victim and that he was pleading only to the theory of accomplice liability, that he was pleading only based on the State's theory that he was equally responsible for it because he was there and witnessed it as opposed to pleading because he admitted being a physical participant? Couldn't you have put that on the record at the plea?

A [COUNSEL]: *But he didn't. He didn't say somebody else had oral sex with her. He said it didn't happen.* That's what he was telling me. He said, I don't know anything about this.

Q: All right. So couldn't you have put on the record that he was pleading guilty in recognition of the State's theory of accomplice liability but that he was not acquiescing to the allegation that he had physically sexually assaulted the woman?

A: No, I don't do that. I'm pretty straight up with the Court what we're doing, why we're doing it. *I always encourage a client, don't go in and make excuses.* If he's pleading guilty, he's pleading guilty, and that has to be a clean, sterile guilty plea.

PCR Tr. 56 line 5- p. 57 line 3.

Counsel's testimony reveals that Applicant informed his counsel that the sex act never occurred, not that he only witnessed the act. This is an important distinction, because all other witnesses involved, including the victims, testified that the sex act did occur. Both codefendants identified Applicant as the perpetrator, while Applicant denied that the act ever took place. Counsel testified that he did not object to say that his client was only a

passive observer because this was not congruent with what his client had informed him.

Counsel was not deficient in this regard.

6. Q [APPLICANT'S COUNSEL]: Okay, And I believe you may have answered this already, but when the judge, to our mind, your mind, and mine, incorrectly said that everything pointed out Bryan Mulligan as the active participant in the criminal sexual conduct charge, why didn't you point out, Your Honor, there is no evidence other than the codefendants' statement, that the victim didn't ID him, and the DNA results, as Your Honor knows, do not tie my client to that assault? Because, as read, it appears that the judge thinks –

A [COUNSEL]: Have you read page 51?

Q: Many, many times.

A: Well, when he said that, I come back and I said, Well, the other guy is getting caught red handed. Bryan turned himself in there. I don't remember whether I reflected there he was interviewed by the FBI at that time. He was not caught red-handed like his codefendant with the guns. The Court says, I figured that, and I knew you would jump on it. *You can tell the tone of the Court at that time.* There was not a full confession. He's blaming me that the – you know, he's telling me that Bryan didn't immediately make a full confession. Well, there is a Fifth Amendment right, even in Charleston County. He didn't – I say he did not delay the plea from October. The reason he plea was delayed is – *he cuts me off. Now, maybe the inference and the tone of the Court is not reflected in the transcript, but when I started making an explanation for his situation, not an excuse for his conduct, but an explanation of what happened, [the plea court] didn't want any part of it.*

PCR-Tr. p. 64 line 15 – p. 65 line 21.

Counsel again testifies that he tried to interject during the plea court's sentencing colloquy, but was cut off by the Court. Counsel's testimony is that the Court was getting agitated with him (and possibly his client) at this time, and Counsel made the decision, based on decades of criminal law experience, not to interrupt the Court further, especially considering that the plea was a "straight-up plea" with no assurance that the plea court would give Applicant concurrent sentences.

7. Q [ASSISTANT ATTORNEY GENERAL]: Would you say it was a strategic decision not to interrupt Judge Young an additional time during his comments directly before sentencing?

A [COUNSEL]: I don't remember the particulars of it, but *I know that I made my position pretty clear. What the transcript doesn't reveal in any of these cases is the nonverbal communications between the Court and the defendant or the Court and defense counsel. It was clear to me that I was on the verge of going too far with the Court in terms of arguing with the Court. No Court likes you to argue with them once they have made a decision. I think the Court probably made this decision and my arguments didn't really have an impact on him at all.*

Deposition of Andrew Savage, III, p. 12 line 5 – p. 14 line 2.

Counsel testifies that he made a strategic decision not to interrupt the Court further, citing that he was "on the verge of going too far." Counsel testified several times that the plea was "straight-up" without a negotiation or recommendation for concurrent time. See PCR Tr. p. 46 line 21 – p. 47 line 7. It is reasonable for Counsel to make such a strategic decision when his client is not bound by any plea negotiation and is wholly at the mercy of the plea court.

8. Q [APPLICANT'S COUNSEL]: And my question is once the judge interjected in sentencing that in his mind the big differentiator between your client and the other two was that everything pointed to Mulligan as being the active participant and being involved in a physical sense, why did you not feel it necessary and appropriate to point out to the judge that, Your Honor, the only thing that says that it was Bryan Mulligan and not one of the others is their word against his?

A [COUNSEL]: Why didn't I say that?

Q: Why didn't you point that out before His Honor decided on the final sentence?

A: *It was pretty clear. I don't think I had to point out the obvious.* The whole idea behind getting the DNA was to get some objective testimony. *I don't think anybody*

involved in the case thought otherwise and that it was the two codefendants. It wasn't something that needed to be pointed out.

Q: Weren't you concerned based on His Honor's comments on the record that somehow he had been given the impression that all of the evidence and that being an undefined term, everything points that your client, that there was some misconception on the judge's part that there was some evidence other than codefendant testimony?

A: *No.* There wasn't any evidence of any other testimony or, you know, witnesses. There was no testimony there.

Q: I understand that you knew, but my question is didn't His Honor's comments give you reason to be concerned that somehow he either had arrived at an erroneous conclusion or had been given from some source an erroneous impression that there was evidence other than the codefendant's statement pointing to your client's physical culpability?

A: *No, I don't think there was any misconstruing that.* I think the judge made the decision. That was the decision that he was going to give, and that's the basis for the decision. I mean, *it is evidence. It is competent evidence.* We didn't have an opportunity to cross-examine him, but *I think that the Court knew full well that the whole sex act hinged on the codefendants' statement.* There wasn't anything else.

Deposition of Andrew Savage, III, p. 17 line 14 – p. 19 line 11.

Counsel testimony reveals that it was obvious to the plea court and all parties involved that the codefendants' statements were the evidence which implicated Applicant as the active participant in the CSC. Counsel cannot be deficient for failing to interrupt the plea court to state something that is readily apparent to all participants in the proceeding.

9. Milton Stratos (Counsel for Co-Defendant Joshua Monroe): I also want to bring out the fact that there are two individuals here that are involved in the most heinous of the crime here, and that is the sexual assault upon that little girl, and that shakes the ground of all of us that stand on it, but I'm here to tell you, that albeit they were involved in that, *they weren't the perpetrators, and that they should be given credit for that.* And hand of one, hand of all, they were involved to the degree that they were there, but *in watching*

the video, they individual was in the room was not them, and I would ask the Court to consider that as well as when we're talking about how much of the youth of this child we are going to have to extract in order to impose retribution for the things that he's done.

Tr. p. 38 lines 5-19.

This portion of the guilty plea transcript reveals that there was a video of the incident giving rise to the CSC charges, and codefendants (and their counsel) argued to the plea court that the video supported codefendants' assertions that Applicant was actively involved in the CSC. The finding that codefendants' statements were the only evidence on which the plea court made its decision is incorrect.

Based on the above passages along with the record in its entirety, Respondent submits that Applicant has failed to meet his burden on establishing that Counsel was deficient during the sentencing phase of his guilty plea.

Applicant Failed to Establish Prejudice

In the Order, this Court found that a reasonable probability exists that the outcome of Applicant's sentencing would have been different had Counsel reminded the plea court that the delay in his plea was through no fault of his own and that the only evidence that Applicant was the active participant in the CSC was statements from codefendants. Respondent respectfully submits that Applicant failed meet his burden of showing prejudice from Counsel's alleged deficiencies. Counsel testified several times throughout the evidentiary hearing and deposition that Applicant was seeking a favorable plea offer from the beginning and did not want to go to trial. See PCR Tr. p. 30 line 14 – 24. Additionally, testimony from Counsel and the various exhibits entered into evidence, including both plea offers from the State and the email correspondence between Counsel and various members of the Ninth Circuit Solicitor's office, reveal that Applicant intended to plead guilty with full knowledge that the State refused to make

a recommendation for concurrent sentences or a cap of thirty years. Testimony establishes that even once Counsel received assurances from the plea court that Applicant would receive concurrent sentences, effectively capping his exposure at thirty years imprisonment, Applicant still readily pled guilty. Respondent submits that Applicant cannot prove prejudice from Counsel's alleged deficiencies when he intended to plead guilty all along with a full understanding that he was facing a sentence of thirty years or more. See Thompson v. State, 30 S.C. 112, 531 S.E.2d 294 (2000) (holding that applicant established prejudice necessary for post-conviction relief stemming from counsel's failure to object during sentencing where he was unsure if he would plead guilty and was under the impression that the state would not make a sentencing request). As Applicant intended to reach an "acceptable resolution of this case from day one," he has failed to establish prejudice when he received a sentence that he was fully aware he would likely receive if he pled guilty.

Furthermore, Counsel testified that his associate visited with Applicant immediately following his guilty plea to inquire as to whether Applicant wanted to pursue an appeal or a motion to reconsider. Counsel testified that he believed the plea court was "wrong for a legal reason" and that he "urged Bryan to file an appeal, which is highly unusual . . . in today's world in state court, from a guilty plea . . ." PCR Tr. p. 14 line 25 - p. 15 line 5. Counsel testified that he was prepared to file the necessary affidavits to appeal a guilty plea on Applicant's behalf. Deposition of Andrew Savage, III, p. 20 lines 22-24. Counsel elaborated:

"We discussed [whether to file an appeal or a motion to reconsider] in the office, and we thought that it would be - - what that would allow us to do is let everybody calm down. This was a pretty highly emotional case. You know, any sex case is a bit more emotional. This was a pretty violent act. Yeah, he had a

very firm, he wanted to move on. He didn't want to - - he wanted to just go and do his time. We didn't think that it was the right answer, but that is the answer he gave us."

Deposition of Andrew Savage, III, p. 21 line 22 - p. 22 line 6. Based on the above, Applicant has failed to prove prejudice, where he voluntarily elected to forego the proper avenue for relief - an appeal or motion to reconsider, as the purported error was a legal one based on Counsel's testimony, not one of ineffective assistance of counsel.

CONCLUSION

Based on all the foregoing, this Respondent requests that this Court reconsider its prior ruling and deny Applicant post-conviction relief. Respondent requests a hearing to fully argue this 59(e) motion and address each of the raised issues before this Court.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By:


Attorneys for Respondent
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August 20, 2013

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-18-1416

BRYAN L. MULLIGAN, #344736

STATE OF SOUTH CAROLINA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: THE HONORABLE CARMEN T. MULLEN

Attorney for: ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: The Court respectfully denies Respondent's Motion to Reconsider, Alter, or Amend Pursuant to Rule 59 without a hearing.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

Judge Code

Date

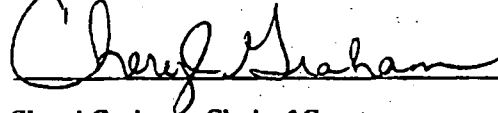
This judgment was entered on 9/19/2013, and a copy mailed first class or placed in the appropriate attorney's box on 9/19/2013, to attorneys of record or to parties (when appearing pro se) as follows:

Tara Dawn Shurling 3614 Landmark Drive Suite A
Columbia, SC 29204

ATTORNEY(S) FOR THE PLAINTIFF(S)

Megan E. Harrigan PO Box 11549 Columbia, SC 29211

ATTORNEY(S) FOR THE DEFENDANT(S)



Cheryl Graham - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

Consent time

311

Up 1.10

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester
STATE VS
Bryan Leon Malligan
AKA:
Race: g Sex: M Age: 22
DOB: [REDACTED] SS#: [REDACTED]
Address: [REDACTED]
DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS18-1107
AW#: J092911
Date of Offense: 6/2/2008
S.C. Code § Common Law
CDR Code #: 0013

SENTENCE SHEET

CDL: Yes ☐ No ☐ CMV: Yes ☐ No ☐ Hazmat: Yes ☐ No ☐

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

TO: Assault and Battery of a High and Aggravated Nature

☐ CONVICTED OF or ☒ PLEADS

In violation of § Common Law of the S.C. Code of Laws, bearing CDR Code # 0013

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

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant Initial)

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

ATTEST: Hilton, Russell D. 73946 SC Bar# Bryan Leon Malligan Attorney for Defendant 79788 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 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 Dept. of Corrections

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

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

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1)(Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 73.3, 1B TP (Law Enforce. Funding)	\$25	\$ 25.00
§ 33.7, 1B TP (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 173.90

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ Beginning

\$ paid to Public Defender Fund

Other:

☐ Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to disposition.

☐ Appointed PD or appointed other counsel § 47-12 requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2134

Sentence Date: 2/3/10

SCCA/217 (08/2010)

Court Reporter: Amanda Haffenden

Clerk of Court/ Deputy Clerk

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

INDICTMENT
2008GS18-1107

At a Court of General Sessions, convened on December 01, 2008 the Grand Jurors of
Dorchester present upon their oath:

ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

That the defendant Bryan Leon Mulligan, did in Dorchester County on or about
June 02, 2008 commit the an unlawful act of violent injury to the person of
Graisom Ahlstrom with circumstances of aggravation in that the defendant did
stiking the victim several times in the head with a gun. This offense in violation of
the Common Law of South Carolina.

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



Russell Hilton, Solicitor

WITNESSES

C. Williams

Summerville Police Department

08-051921

ARREST WARRANT NUMBER
J082911

Arrested: June 9, 2008

ACTION OF GRAND JURY

TRUE BILL

DATE

12/1/08

Foreperson of Grand Jury
Date: December 01, 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008GS18-1107

The State of South Carolina
County of DORCHESTER

COURT OF GENERAL SESSIONS

December 01, 2008 TERM

THE STATE
vs.

Bryan Leon Mulligan

Indictment for

ASSAULT AND BATTERY OF A HIGH
AND AGGRAVATED NATURE

SC Code: Common Law

After being fully advised as to my legal
rights, I hereby waive presentment to the
Grand Jury.

Defendant

I
hereby appear in my own proper person
and
plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

RECORDED
2008 DEC -2 AM 9:47
CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

J-092911

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
SUMMERVILLETHE STATE
against

MULLIGAN, BRYAN LEON

Address: 575 TIGER ST

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 508 Weight: 185

DL State: SC DL#: 0100615902

DOB: [REDACTED] Agency ORI #: [REDACTED]

Prosecuting Agency: SUMMERVILLE

Prosecuting Officer: CASSANDRA WILLIAMS

Offense: ASSAULT & BATTERY HIGH &

Offense Code: 13

Code/Ordinance Sec. COMMON LAW

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of

DORCHESTER

The Accused
is to be arrested and brought before me to be
dealt with according to law._____
(L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to
defendant on _____
on __________
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

T.M. FINUCAN

300 W. 2ND N. ST.

SUMMERVILLE SC 29483

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
SUMMERVILLEPersonally appeared before me the affiant DET WILLIAMS, C who
being duly sworn deposes and says that defendant MULLIGAN, BRYAN LEONdid within this county and state on 06/02/2008

State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of

SUMMERVILLE

in the following particulars:

CHERYL GRAY
CLERK OF COURT
DORCHESTER COUNTY

DESCRIPTION OF OFFENSE:

ASSAULT & BATTERY HIGH & AGGRAVATED - COMMON LAW

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

PLEASE SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

SUMMERVILLE

Affiant's Address 300 W 2ND NORTH ST

SUMMERVILLE SC 29483

Affiant's Telephone [REDACTED]

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 06/02/2008 defendant MULLIGAN, BRYAN LEON

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of SUMMERVILLE

) as set forth below:

DESCRIPTION OF OFFENSE:

ASSAULT & BATTERY HIGH & AGGRAVATED - COMMON LAW

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.Sworn to and subscribed before me
on _____Judge's Address 300 W. 2ND N. ST.

SUMMERVILLE SC 29483

Judge's Telephone [REDACTED]_____
Signature of Issuing JudgeJudge Code: 101

Issuing Court:

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

FILED - RECORDED

2008 JUN 19 AM 10:07

STATE OF SOUTH CAROLINA)
 COUNTY OF DORCHESTER)
 TOWN OF SUMMERVILLE)

CHERYL GRAHAM
 CLERK OF COURT
 DORCHESTER COUNTY

CASE #08-051921

AFFIDAVIT

WARRANT #J-092911

Personally appeared before me, one DET. C.E. WILLIAMS, first being duly sworn, deposes and says that

BRYAN LEON MULLIGAN

did within this town, county and state on the 2ND day of June, 2008, violate the common law of the of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

ASSAULT AND BATTERY OF A HIGH AGGRAVATED NATURE

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

THAT ON JUNE 2ND, 2008, LOCATED AT [REDACTED] COREY WOODS, WITHIN THE TOWN, COUNTY AND STATE AFORESAID, THE DEFENDANT, BRYAN LEON MULLIGAN, DID WILLFULLY, UNLAWFULLY AND KNOWINGLY VIOLATE THE COMMON LAW OF THE SOUTH CAROLINA CODE OF LAWS, ASSAULT AND BATTERY OF A HIGH AGGRAVATED NATURE IN THAT THE DEFENDANT DID WHILE ACCOMPANIED WITH CO-DEFENDANTS, COREY NELSON LARKIN AND JOSHUA ANDREW MONROE DID ASSAULT THE VICTIM, GRAISORN AHLSTROM IN HIS HEAD WITH A HANDGUN AND STING HIM WITH A STUN GUN SEVERAL TIMES ABOUT HIS BODY DURING THE COMMISSION OF A KIDNAPPING. FACTS TO PROVE THE ABOVE ARE A STATEMENT FROM THE VICTIM WHEREIN HE DESCRIBED THAT AFTER ARRIVING HOME FROM WORK, A DARK COLORED SUV DROVE BEHIND HIM AND TURNED ONTO THE STREET NEXT TO HIS RESIDENCE. THAT WHILE SITTING IN HIS VEHICLE IN HIS DRIVEWAY HE WAS APPROACHED BY TWO ARMED MEN WEARING A MASK WHO CAME FROM THE DIRECTION IN WHICH THE DARK COLORED SUV HAD DRIVEN. THAT ONE OF THE GUNMEN STRUCK HIM IN THE HEAD WITH THE HANDGUN AND FORCED HIM INTO THE BACKSEAT OF HIS (THE VICTIM'S) VEHICLE WHERE HE SAT WITH HIM AS THE OTHER GUNMAN DROVE THEM AWAY. THAT ONCE IN THE VEHICLE THE GUNMEN DEMANDED THAT HE PROVIDE THEM DIRECTIONS TO HIS PLACE OF BUSINESS (CHUCK E. CHEESE) TO OPEN THE SAFE AND STUNNED HIM WITH THE STUN GUN WHEN HE HESITATED TO RESPOND. WHILE IN ROUTE TO THE BUSINESS THE VICTIM'S VEHICLE RAN OUT OF GAS ALONG THE INTERSTATE WHERE A THIRD MALE PICKED THEM UP IN A DARK COLORED SUV AND CONTINUED TO DRIVE THEM TO HIS BUSINESS TO CONDUCT THE ROBBERY. AFTER THE OBSERVING THE GUNMEN RUNNING FROM THE BUSINESS AND GETTING INTO THE DARK COLORED SUV. THE SUV (2005 FORD EXPLORER, BEARING SC LICENSE 492WSR) WAS LOCATED BY LT. WIDMER OF THE NORTH CHARLESTON POLICE DEPARTMENT AND DURING THE INVESTIGATION IT WAS LEARNED THAT THE DEFENDANT AND TWO CO-DEFENDANTS (BRYAN MULLIGAN AND LARKIN) WERE IN POSSESSION OF THE VEHICLE DURING THE TIME OF THE INCIDENT. AFTER BEING MIRANDIZED LARKIN PROVIDED A STATEMENT TO DET. WATSON OF THE NORTH CHARLESTON POLICE DEPARTMENT DETAILING THE EVENTS OF HIM AND THE CO-DEFENDANTS CONDUCTING THE KIDNAPPING IN THIS INCIDENT ALL OF WHICH IS AGAINST THE FORM OF THE STATUTE OF SUCH CASES MADE AND PROVIDED.

Sworn to Subscribed before me
 this 19 day of June, 2008.

(L.S.)
 Signature of Judge

Affiant

Address: 300 W 2nd North St.
 Summerville, SC 29483
 Phone: (843) 851-4100

Concurrent Time

U, 7. 70

STATE OF SOUTH CAROLINA

COUNTY OF DorchesterSTATE VS
Bryan Leon Mulligan

AKA:

Race: B Sex: M Age: 22DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]CDL: Yes ☐ No ☐ CMV: Yes ☐ No ☐ Hazmat: Yes ☐ No ☐

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

TO: Kidnappingin violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act) ☐ § 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Hilton, Russell D.

SC Bar#

Bryan Leon Mulligan

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 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 Dept. of Corrections☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

Fine:

14-1-208 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 58-5-2995 (DUI Assessment)

§ 56-1-288 (DUI Breath Test)

Proviso 47.9 (Public Def/Prob)

§ 73.3, 1B TP (Law Enforce. Funding)

§ 33.7, 1B TP (Drug Court Surcharge)

§ 50-21-114 (BUI Breath Test Fee)

§ 58-5-2942(J) (Vehicle Assessment)

Proviso 90.5 (SCCJA Surcharge)

§ 44-53-450(C) (Conditional Discharge)

3% to County (if paid in installments)

TOTAL

	\$
	\$
\$100	\$ 100.00
\$100	\$
\$12	\$
\$25	\$
\$500	\$
\$25	\$ 25.00
\$150	\$
\$50	\$
\$40/ea	\$
\$5	\$ 5.00
\$350	\$
	\$ 3.90
	\$ 133.90

Robert Bohmstedt
Clerk of Court/ Deputy Clerk

Court Reporter:

Amanda Haffenden

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS18-1108AW#: J092912Date of Offense: 8/2/2008S.C. Code § 16-3-910CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to disposition.☐ Appointed PD or appointed other counsel § 47.12 requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 213Sentence Date: 2/3/11

SCCA/217 (06/26/10)

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

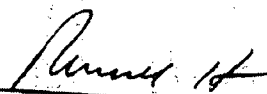
INDICTMENT
2008GS18-1108

At a Court of General Sessions, convened on December 01, 2008 the Grand Jurors of
Dorchester present upon their oath:

KIDNAPPING

That in Dorchester County, South Carolina, on or about June 2, 2008, the
Defendant, Bryan Leon Mulligan, unlawfully did seize, confine, inveigle, decoy,
kidnap, abduct or carry away the victim, Graison Ahlstrom, without authority of
law. This offense in violation of Section 16-03-910, of the South Carolina Code of
Laws, as amended.

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



Russell Hilton, Solicitor

WITNESSES

C. Williams

Summerville Police Department

08-051921

ARREST WARRANT NUMBER
J092912

Arrested: June 9, 2008

ACTION OF GRAND JURY

TRUE BILL

DATE 12/1/08

Foreperson of Grand Jury
Date: December 01, 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008GS18-1108

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

December 01, 2008 TERM

THE STATE
vs.

Bryan Leon Mulligan

Indictment for
KIDNAPPING

SC Code: 16-3-910

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person
and
plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

RECORDED
688 DEC -2 AM 9:47
CHERYL GRAY-AM
CLERK OF COURT
DORCHESTER COUNTY

ARREST WARRANT

J-092912

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
SUMMERVILLE

THE STATE

against

CHERYL GRAMM
CLERK OF COURT
DORCHESTER COUNTY

MULLIGAN, BRYAN LEON

Address

Phone:

SSN:

Sex: M Race: B Height: 508 Weight: 185

DL State: SC DL#: 0100615902

DOB:

Agency ORI#:

Prosecuting Agency: SUMMERVILLE

Prosecuting Officer: CASSANDRA WILLIAMS

Offense: KIDNAPPING - 16-3-910

Offense Code:

Code/Ordinance Sec. 16-3-910

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of

DORCHESTER

The Accused
is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

T.M. FINUCAN

300 W. 2ND N. ST.

SUMMERVILLE SC 29483

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
SUMMERVILLEPersonally appeared before me the affiant DET WILLIAMS, C
being duly sworn deposes and says that defendant MULLIGAN, BRYAN LEONdid within this county and state on 06/02/2008

State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of

violate the criminal laws of the

SUMMERVILLE

DESCRIPTION OF OFFENSE:

KIDNAPPING - 16-3-910

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

PLEASE SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
SUMMERVILLEAffiant's Address 300 W 2ND NORTH ST

SUMMERVILLE SC 29483

Affiant's Telephone 843-875-2010

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that
on 06/02/2008 defendant MULLIGAN, BRYAN LEON

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of SUMMERVILLE

DESCRIPTION OF OFFENSE:

KIDNAPPING - 16-3-910

) as set forth below:

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me on

Signature of Issuing Judge

Judge Code: 101

Judge's Address 300 W. 2ND N. ST.

SUMMERVILLE SC 29483

Judge's Telephone

Issuing Court:

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 618

AFFIDAVIT

DC# 08-05421

FILED RECORDED

JUN 19 AM 10:07

319

FILED-RECORDED

2008 JUN 19 AM 10:07

STATE OF SOUTH CAROLINA)
 COUNTY OF DORCHESTER)
 TOWN OF SUMMERVILLE)

CHERYL GRAHAM
 CLERK OF COURT
 DORCHESTER COUNTY

CASE #08-051921
 AFFIDAVIT
 WARRANT #J-092912

Personally appeared before me, one DET. C.E. WILLIAMS, first being duly sworn, deposes and says that

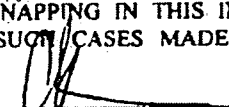
BRYAN LEON MULLIGAN

did within this town, county and state on the 2ND day of June, 2008, violate section 16-3-910 of the criminal laws of the State of South Carolina in the following particulars:

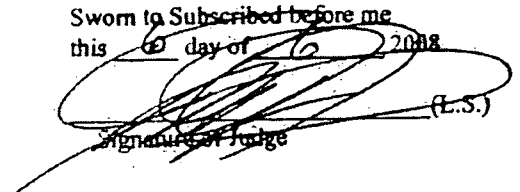
**DESCRIPTION OF OFFENSE
 KIDNAPPING**

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

THAT ON JUNE 2ND, 2008, LOCATED AT [REDACTED] COREY WOODS, WITHIN THE TOWN, COUNTY AND STATE AFORESAID, THE DEFENDANT, BRYAN LEON MULLIGAN, DID WILLFULLY, UNLAWFULLY, AND FELONIOUSLY VIOLATE SECTION 16-3-910 OF THE SOUTH CAROLINA CODE OF LAWS, KIDNAPPING, IN THAT THE DEFENDANT DID ACCOMPANY TWO ARMED CO-DEFENDANTS (COREY NELSON LARKIN AND JOSHUA ANDREW MONROE) TO CONFINED THE VICTIM, GRAISORN AHLSTROM, IN HIS VEHICLE AND DRIVE HIM TO ANOTHER LOCATION, AGAINST HIS WILL. FACTS TO PROVE THE ABOVE ARE A STATEMENT FROM THE VICTIM WHEREIN HE DESCRIBED THAT AFTER ARRIVING HOME FROM WORK, DARK COLORED SUV DROVE BEHIND HIM AND TURNED ONTO THE STREET NEXT TO HIS RESIDENCE. THAT WHILE SITTING IN HIS VEHICLE IN THE DRIVEWAY HE WAS APPROACHED BY TWO ARMED MEN WEARING A MASK WHO CAME FROM THE DIRECTION IN WHICH THE DARK COLORED SUV HAD DRIVEN. THAT ONE OF THE GUNMEN STRUCK HIM IN THE HEAD WITH THE HANDGUN AND FORCED HIM INTO THE BACKSEAT OF HIS (THE VICTIM'S) VEHICLE WHERE HE SAT WITH HIM AS THE OTHER GUNMAN DROVE THEM AWAY. THAT ONCE IN THE VEHICLE THE GUNMEN DEMANDED THAT HE PROVIDE THEM DIRECTIONS TO HIS PLACE OF BUSINESS (CHUCK E. CHEESE) TO OPEN THE SAFE AND STUNNED HIM WITH THE STUN GUN WHEN HE HESITATED TO RESPOND. WHILE IN ROUTE TO THE BUSINESS THE VICTIM'S VEHICLE RAN OUT OF GAS ALONG THE INTERSTATE WHERE THE THIRD MALE PICKED THEM UP IN THE DARK COLORED SUV AND CONTINUED TO DRIVE THEM TO HIS BUSINESS TO CONDUCT THE ROBBERY. AFTER THE ROBBERY A WITNESS CONTACTED THE NORTH CHARLESTON POLICE DEPARTMENT AFTER OBSERVING THE GUNMEN RUNNING FROM THE BUSINESS AND GETTING INTO THE DARK COLORED SUV. THE SUV (2005 FORD EXPLORER, BEARING SC LICENSE 492WSR) WAS LOCATED BY LT. WIDMER OF THE NORTH CHARLESTON POLICE DEPARTMENT AND DURING THE INVESTIGATION IT WAS LEARNED THAT THE DEFENDANT AND TWO CO-DEFENDANTS (COREY NELSON LARKIN AND JOSHUA MONROE) WERE IN POSSESSION OF THE VEHICLE DURING THE TIME OF THE INCIDENT. AFTER BEING MIRANDIZED LARKIN PROVIDED A STATEMENT TO DET. WATSON OF THE NORTH CHARLESTON POLICE DEPARTMENT DETAILING THE EVENTS OF HIM THE DEFENDANT AND MONROE CONDUCTING THE KIDNAPPING IN THIS INCIDENT. ALL OF WHICH IS AGAINST THE FORM OF THE STATUTE OF SUCH CASES MADE AND PROVIDED.


 Affiant

Sworn to Subscribed before me
 this 19 day of June, 2008


 Signature of Judge

(L.S.)

Address: 300 W 2nd North St.
 Summerville, SC 29483
 Phone: (843) 851-4100

General Sessions Tracking Sheet
Indictment # 0000GS18

Name: Mulligan, Bryan Leon

AKA: [REDACTED]

Addr: [REDACTED]

SSN# [REDACTED]

Sex: M Race: B

DOB: [REDACTED]

DL# 70100615902

Warrant/Ticket # J092913

Date of Arrest: 06/09/2008

Date of Offense: 06/02/2008

Date Rcv by Clerk 06/23/2008

Magistrate: Clerk Of Court C P, G S, And Family Court

Counts: Code: 0549/Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

Indictment # ~~0000GS18~~ 2008-1109

Disposition Information

1. Transmitted to SOL & SCCA:

2. Disp Received by Clerk:

3. Date of Disposition: 7-3-11

- Disposition
- ☐ 1. Guilty plea
 - ☐ 2. Trial -- guilty
 - ☐ 3. Trial -- not guilty
 - ☒ 4. Dism/Not Pros/Pros Ended
 - ☐ 5. Judicial Commitment
 - ☐ 6. Judicial Dismissal
 - ☐ 7. Remanded
 - ☐ 8. Dismissed at Prelim
 - ☐ 8. No Bill
 - ☐ 9. Failure to Appear
 - ☐ 10. Other

Explain:

Explain:

Explain:

Explain:

Explain:

Judge: _____

Defense Atty: _____

Counts: _____ Code: _____

Sentence: _____

Court Reporter: _____

Solicitor: _____

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

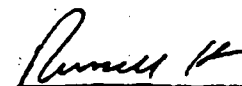
INDICTMENT
2008GS18-1109

At a Court of General Sessions, convened on December 01, 2008 the Grand Jurors of
Dorchester present upon their oath:

POSS. OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That in Dorchester County on or about June 2, 2008, the defendant, Bryan Leon
Mulligan did visibly display or have in his possession a firearm during the
commission of a violent crime. This offense in violation of Section 16-23-490, of
the South Carolina Code of Laws, as amended.

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



Russell Hilton, Solicitor

WITNESSES

C. Williams

Summerville Police Department

08-051921

ARREST WARRANT NUMBER

J082913

Arrested: June 9, 2008

ACTION OF GRAND JURY

TRUE BILL

DATE 12/1/08

Foreperson of Grand Jury
Date: December 01, 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008GS18-1109

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

December 01, 2008 TERM

THE STATE

vs.

Bryan Leon Mulligan

Indictment for

POSS. OF A WEAPON DURING THE
COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-490

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

RECORD
2008 DEC -2 AM 9:47
CHERYL GRAY-AM
CLERK OF COURT
DORCHESTER COUNTY

ARREST WARRANT

J-092913

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
SUMMERVILLE

 THE STATE
against

 CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

MULLIGAN, BRYAN LEON

Address: [REDACTED]

Phone: [REDACTED] SSN: [REDACTED]

Sex: M Race: B Height: 508 Weight: 185

DL State: SC DL#: 0100615902

DOB: [REDACTED] Agency ORI #: [REDACTED]

Prosecuting Agency: SUMMERVILLE

Prosecuting Officer: CASSANDRA WILLIAMS

Offense: POSS OF FIREARM DURING VIOLENT

Offense Code: 549

Code/Ordinance Sec. 16-23-490(a)

This warrant is CERTIFIED FOR SERVICE in the

☒ County/ ☐ Municipality of
DORCHESTER The Accused
is to be arrested and brought before me to be
dealt with according to law.

 _____ (L.S.)
Signature of Judge

Date: _____

RETURN

 A copy of this arrest warrant was delivered to
defendant on _____

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

T.M. FINUCAN

300 W. 2ND N. ST.

SUMMERVILLE SC 29483

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
SUMMERVILLE

 Personally appeared before me the affiant DET WILLIAMS, C who
being duly sworn deposes and says that defendant MULLIGAN, BRYAN LEON

 did within this county and state on 06/02/2008 violate the criminal laws of the

 State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of SUMMERVILLE)

in the following particulars:

DESCRIPTION OF OFFENSE:

POSS OF FIREARM DURING VIOLENT CRIME - 16-23-490(a)

 I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

PLEASE SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
SUMMERVILLE

 Affiant's Address 300 W 2ND NORTH ST
SUMMERVILLE SC 29483
Affiant's Telephone 843-875-2010

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
on 06/02/2008 defendant MULLIGAN, BRYAN LEON

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of SUMMERVILLE) as set forth below:

DESCRIPTION OF OFFENSE:

POSS OF FIREARM DURING VIOLENT CRIME - 16-23-490(a)

 Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to
the defendant at the time of its execution, or as soon thereafter as is practicable.

 Sworn to and subscribed before me
on _____

 _____ (L.S.)
Signature of Issuing Judge

Judge Code: 101

 Judge's Address 300 W. 2ND N. ST.
SUMMERVILLE SC 29483
Judge's Telephone 843-875-2010
 Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

 AFFIDAVIT
DCU # 08-051901

FILED - RECORDED

2008 JUN 19 AM 10:07

STATE OF SOUTH CAROLINA)
 COUNTY OF DORCHESTER)
 TOWN OF SUMMERVILLE)

CASE #08-051921
 CHERYL GRAHAM
 CLERK OF COURT AFFIDAVIT
 DORCHESTER COUNTY WARRANT #J-092913

Personally appeared before me, one DET. C.E. WILLIAMS, first being duly sworn, deposes and says that

BRYAN LEON MULLIGAN

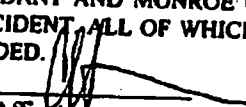
did within this town, county and state on the 2ND day of June, 2008, violate section 16-23-490 of the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

THAT ON JUNE 2ND, 2008, LOCATED AT [REDACTED], COREY WOODS, WITHIN THE TOWN, COUNTY AND STATE AFORESAID, THE DEFENDANT, BRYAN LEON MULLIGAN, DID WILLFULLY, UNLAWFULLY, AND FELONIOUSLY VIOLATE SECTION 16-23-490 OF THE SOUTH CAROLINA CODE OF LAWS, POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME, IN THAT THE DEFENDANT DID ACCOMPANY CO-DEFENDANTS, COREY NELSON LARKIN AND JOSHUA ANDREW MONROE WHO WERE ARMED WITH A HANDGUNS DURING THE COMMISSION OF THE KIDNAPPING OF THE VICTIM, GRAISORN AHLSTROM. FACTS TO PROVE THE ABOVE ARE A STATEMENT FROM THE VICTIM WHEREIN HE DESCRIBED THAT AFTER ARRIVING HOME FROM WORK, A DARK COLORED SUV DROVE BEHIND HIM AND TURNED ONTO THE STREET NEXT TO HIS RESIDENCE. THAT WHILE SITTING IN HIS VEHICLE IN HIS DRIVEWAY HE WAS APPROACHED BY TWO ARMED MEN WEARING A MASK WHO CAME FROM THE DIRECTION IN WHICH THE DARK COLORED SUV HAD DRIVEN. THAT ONE OF THE GUNMEN STRUCK HIM IN THE HEAD WITH THE HANDGUN AND FORCED HIM INTO THE BACKSEAT OF HIS (THE VICTIM'S) VEHICLE WHERE HE SAT WITH HIM AS THE OTHER GUNMAN DROVE THEM AWAY. THAT ONCE IN THE VEHICLE THE GUNMEN DEMANDED THAT HE PROVIDE THEM DIRECTIONS TO HIS PLACE OF BUSINESS (CHUCK E. CHEESE) TO OPEN THE SAFE AND STUNNED HIM WITH THE STUN GUN WHEN HE HESITATED TO RESPOND. WHILE IN ROUTE TO THE BUSINESS THE VICTIM'S VEHICLE RAN OUT OF GAS ALONG THE INTERSTATE WHERE THE THIRD MALE PICKED THEM UP IN THE DARK COLORED SUV AND CONTINUED TO DRIVE THEM TO HIS BUSINESS TO CONDUCT THE ROBBERY. AFTER THE ROBBERY A WITNESS CONTACTED THE NORTH CHARLESTON POLICE DEPARTMENT AFTER OBSERVING THE GUNMEN RUNNING FROM THE BUSINESS AND GETTING INTO THE DARK COLORED SUV. THE SUV (2005 FORD EXPLORER, BEARING SC LICENSE 492WSR) WAS LOCATED BY LT. WIDMER OF THE NORTH CHARLESTON POLICE DEPARTMENT AND DURING THE INVESTIGATION IT WAS LEARNED THAT THE DEFENDANT AND TWO CO-DEFENDANTS (BRYAN MULLIGAN AND JOSHUA MONROE) WERE IN POSSESSION OF THE VEHICLE DURING THE TIME OF THE INCIDENT. AFTER BEING MIRANDIZED LARKIN PROVIDED A STATEMENT TO DET. WATSON OF THE NORTH CHARLESTON POLICE DEPARTMENT DETAILING THE EVENTS OF HIM, THE DEFENDANT AND MONROE CONDUCTING THE KIDNAPPING OF THE VICTIM WHILE ARMED IN THIS INCIDENT ALL OF WHICH IS AGAINST THE FORM OF THE STATUTE OF SUCH CASES MADE AND PROVIDED.


 Affiant

Sworn to Subscribed before me
 this 16 day of June, 2008.


 Signature of Judge

(L.S.)

Address: 300 W 2nd North St.
 Summerville, SC 29483
 Phone: (843) 851-4100

326

10-30

Concerned time

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester
STATE VS Bryan Leon Mulligan

AKA: _____

Race: B Sex: M Age: 22

DOB: _____ SS#: _____

Address: _____

OL#: _____ SID#: _____

CDL: Yes ☐ No ☐ CMV: Yes ☐ No ☐ Hazmat: Yes ☐ No ☐

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

TO: Armed Robberyin violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lowd Act) ☐ § 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.ATTEST: Hilton, Russell D. 73945 Bryan Leon Mulligan Attorney for Defendant 79788
SC Bar# SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 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 Dept. of Corrections
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.
SPECIAL CONDITIONS:☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED ☐☐ set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____

Fine: \$ _____ Substance Abuse Counseling ☐§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol Testing ☐§ 14-1-211(A)(1)(Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ Beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-1-288 (DUI Breath Test) \$25 \$ _____ Other: _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 58-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

§ 44-53-450(C) (Conditional Discharge) \$350 \$ _____

3% to County (if paid in installments) \$ 3.90TOTAL \$ 133.90_____
Clerk of Court Deputy ClerkCourt Reporter: Amanda Haffenden

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS18-1112A/W#: 1102109Date of Offense: 5/14/2008S.C. Code § 16-11-330(A)CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS☐ Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to disposition.☐ Appointed PD or appointed other counsel, § 7-12 required \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2134Sentence Date: 2/3/11

SCCA/217 (08/2010)

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

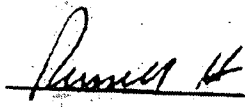
INDICTMENT
2008GS18-1112

At a Court of General Sessions, convened on September 08, 2008 the Grand Jurors of
Dorchester present upon their oath:

ARMED ROBBERY

That on or about May 14, 2008, in Dorchester County, the defendant, Bryan Leon Mulligan did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, employee's of the Applebee's Restaurant, with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon described as a handgun and a stun gun. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

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



Russell Hilton, Solicitor

WITNESSES

Tamara Diczno

NCPD

2008-021228

ARREST WARRANT NUMBER

1102109

Arrested: June 11, 2008

ACTION OF GRAND JURY

BILL

[Signature] 9/4/08

Foreperson of Grand Jury
Date: September 04, 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008GS18-1112

The State of South Carolina

County of DORCHESTER

COURT OF GENERAL SESSIONS

September 04, 2008 TERM

THE STATE
vs.

Bryan Leon Mulligan

Indictment for
ARMED ROBBERY

SC Code: 16-11-330(A)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and
plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED RECORDS
CLERK OF COURT
DORCHESTER COUNTY
SEP - 8 AM 10:30

I-102109

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

North Charleston

2008021228

THE STATE

against

Bryan Leon Mulligan

Address:

Phone:

SSN:

Sex: M Race: B Height: 5 10 Weight: 185

DL State: SC DL #: 100615902

DOB: [REDACTED] Agency ORI #:

Prosecuting Agency: North Charleston Police Department

Prosecuting Officer: Tamara Diczno-Driggers #137

Offense: Armed Robbery 16-11-0330(A)

Offense Code: 00139

Code/Ordinance Sec: 16-11-0330A

This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on Bryan Mulligan
6-11-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

North Charleston Municipal Court
2536 Fourth St
North Charleston, SC 29406

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

North Charleston

Personally appeared before me the affiant

Tamara Diczno-Driggers #137

being duly sworn deposes and says that defendant

Bryan Leon Mulligan

did within this county and state on

05/14/2008

State of South Carolina (or ordinance of

☐ County/☒ Municipality of

North Charleston

in the following particulars:

DESCRIPTION OF OFFENSE:

Armed Robbery 16-11-0330(A)

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

OCA#2008021228

SEE ATTACHED AFFIDAVIT
M.N.

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

North Charleston

Affiant's Address 4900 Lacroix Road

North Charleston, SC 29419

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 05/14/2008

defendant Bryan Leon Mulligan

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/☒ Municipality of

North Charleston

) as set forth below:

DESCRIPTION OF OFFENSE:

Armed Robbery 16-11-0330(A)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 05/14/2008

Signature of Issuing Judge Samuel M. Coleman

(L.S.)

Signature of Issuing Judge

Judge Code: 003

Judge's Address 2536 Fourth Street

North Charleston, SC 29419

Judge's Telephone (843)740-2601

Issuing Court: ☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

329

330

I 102109

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF DORCHESTER
CITY OF NORTH CHARLESTON

OCA# 2008-02-1228

Personally appeared before me, a magistrate of this County, one Detective T. DiCenzo-Driggers who first being duly sworn, deposes and says that (name of the defendant)

BRYAN LEON MULLIGAN

did within this County and State on the 14th day of May 2008, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

ARMED ROBBERY

VIOLATION OF SECTION

16-11-330 (A)

ORIGINAL

FILED - RECORDED
2008 JUN 20 PM 4:51
CLERK OF COURT
DORCHESTER COUNTY

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on May 14, 2008, at approximately 0100 hrs, while at [REDACTED] (Applebee's Restaurant), which is located in the city of North Charleston, county of Dorchester and State of South Carolina, the defendant, **BRYAN LEON MULLIGAN** did commit the offense of **ARMED ROBBERY**, in violation of section 16-11-330 (A) of South Carolina Code of Laws of 1976, as amended. In that the defendant and two co-defendants did willfully and unlawfully participate in a robbery at gunpoint of the above aforementioned business. That the defendants forced witnesses/employees into the restaurant and while armed with handguns and a stun gun forced one of the employees to open the safe where they were able to take approximately \$3500 dollars in U.S. currency.

Facts to establish the above are that on the above dates and times the employees had finished work at 4910 Ashley Phosphate Road (Applebee's Restaurant) and headed out to the parking lot to their vehicles to leave. In the parking lot the employees were confronted by (3) three black males with handguns and a stun gun in their constructive possession who forced the employees to enter back into the business, shut the alarm off and then to open the safe. The employees were forced to lay face down on the floor and the defendants fled the area. When the employees felt it was safe to move and to look up, they called North Charleston Police via 911 and waited for officers to arrive. On 06-01-2008 due to another business being robbed and leads coming from that case and through detailed investigation detectives were able to positively identify the above defendant and two co-defendants. One of the defendants, after being advised of his rights and waiving them, gave a signed written statement to detectives implicating him and the other two co-defendants. Detective Sgt. E. Jourdan, Detectives Patrick, DiCenzo-Driggers, Mr. L. Hampton, Mr. T. Rabang and Mr. M. Preston are witness to prove the same. All against the law, peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 5th day of June
2008.

Samuel M. Coleman
Signature of Judge

[Signature] # 118
(AFFIANT)

Address: _____

Phone: _____

Concurrent fine

331

0-30

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Dorchester

VS
Bryan Leon Mulligan

AKA:

Race:

B

Sex: M

Age:

22

DOB:

SS#:

Address:

DL#:

SID#:

CDL: Yes ☐ No ☐ CMV: Yes ☐ No ☐ Hazmat: Yes ☐ No ☐

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

TO: Kidnapping

in violation of § 16-3-910 of the S.C. Code of Laws, bearing CDR Code #

0095

☐ NON-VIOLENT

☒ VIOLENT

☐ SERIOUS

☒ MOST SERIOUS

☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)

☐ § 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense,

☐ Defendant Waives Presentment to Grand Jury.

(Defendant Initial)

The plea is: ☐ Without Negotiations or Recommendation,

☐ Negotiated Sentence,

☒ Recommendation by the State.

ATTEST

Hilton, Russell D.

73945
SC Bar#

Bryan Leon Mulligan

Attorney for Defendant

72788
SC Bar#

WHEREFORE, the Defendant is committed to the

for a determinate term of

30

days/months/years

☒ State Department of Corrections,

☐ under the

Youthful Offender Act

☐ County Detention Center,

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 Dept. of Corrections

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCDPPPS

Recipient:

*Fine:

14-1-206 (Assessments 107.5 %)	\$
14-1-211(A)(1)(Conv. Surcharge)	\$100
14-1-211(A)(2) (DUI Surcharge)	\$100
56-5-2995 (DUI Assessment)	\$12
56-1-288 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 73.3, 1B TP (Law Enforce. Funding)	\$25
§ 33.7, 1B TP (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
§ 44-53-450(C) (Conditional Discharge)	\$350
3% to County (if paid in installments)	\$3.90
TOTAL	\$133.90

Clerk of Court/ Deputy Clerk

Court Reporter:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2008GS18-1113

A/W#:

1102116

Date of Offense:

5/14/2008

S.C. Code §

16-3-910

CDR Code #:

0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol Testing ☐

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

pmts. of \$ Beginning

\$ paid to Public Defender Fund

Other:

☐ Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to disposition.

☐ Appointed PD or appointed other counsel § 44-12 requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code:

Sentence Date:

SCCA/217 (08/2010)

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

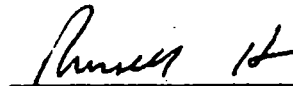
INDICTMENT
2008GS18-1113

At a Court of General Sessions, convened on September 08, 2008 the Grand
Jurors of Dorchester County present upon their oath:

KIDNAPPING

The defendant, Bryan Leon Mulligan, did in Dorchester County on or about May 14, 2008, willfully and unlawfully seize, confine, inveigle, decoy, kidnap, abduct, or carry away one Timothy Rabang, without authority of law. This offense being a violation of Section 16-3-910 of the South Carolina Code of Laws, as amended.

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



Russell Hilton, Solicitor

WITNESSES

Dicenzo, Tamara

NCPD

Agency Case #: 2008-021228

ARREST WARRANT NUMBER

1102116

Arrested: Jun 11, 2008

ACTION OF GRAND JURY

BILL

9/4/08

Foreperson of Grand Jury
Date: September 04, 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008GS18-1113

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

September 08, 2008 TERM

THE STATE

vs.

Bryan Leon Mulligan

Indictment for

KIDNAPPING

SC Code: 16-03-910
Class: FEL-A

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and
plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CLERK OF COURT
DORCHESTER COUNTY
2008 SEP - 8 AM 10:30

I-102116

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

North Charleston

2008021228

THE STATE

against

Bryan Leon Mulligan

Address:

Phone: SSN: [REDACTED]

Sex: M Race: B Height: 5 10 Weight: 185

DL State: SC DL #: 100615902

DOB: [REDACTED] Agency ORI #:

Prosecuting Agency: North Charleston Police Department

Prosecuting Officer: Tamara Dicenzo-Driggers #137

Offense: Kidnapping 16-3-910

Offense Code: 00095

Code/Ordinance Sec: 16-3-910

This warrant is CERTIFIED FOR SERVICE in the

☐ County/ ☐ Municipality of

The accused

is to be arrested and brought before me to be
dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

North Charleston Municipal Court
2536 Fourth St
North Charleston, SC 29406

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

North Charleston

Personally appeared before me the affiant

Tamara Dicenzo-Driggers #137

who

being duly sworn deposes and says that defendant

Bryan Leon Mulligan

did within this county and state on

05/14/2008

violate the criminal laws of the

State of South Carolina (or ordinance of

☐ County/☒ Municipality of

North Charleston

in the following particulars:

DESCRIPTION OF OFFENSE:

Kidnapping 16-3-910

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts:

OCA#2008021228

SEE ATTACHED AFFIDAVIT
M.N.

ORIGINAL

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

North Charleston

Affiant's Address 4900 Lacross Road

North Charleston, SC 29419-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 05/14/2008

defendant Bryan Leon Mulligan

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/☒ Municipality of

North Charleston

) as set forth below:

DESCRIPTION OF OFFENSE:

Kidnapping 16-3-910

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 05/14/2008

Samuel M. Coleman

(L.S.)

Signature of Issuing Judge

Judge Code: 003

Judge's Address 2536 Fourth Street

North Charleston, SC 29419-

Judge's Telephone (843)740-2601

Issuing Court: ☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

334

335

I 102116

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER
CITY OF NORTH CHARLESTON

AFFIDAVIT

OCA# 2008-02-1228

Personally appeared before me, a magistrate of this County, one Detective T. DiCenzo-Driggers, who first being duly sworn, deposes and says that (name of the defendant)

BRYAN LEON MULLIGAN

did within this County and State on the 14th day of May 2008, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

KIDNAPPING
VIOLATION OF SECTION
16-3-910

ORIGINAL

CLERK OF COURT
DORCHESTER COUNTY
2008 JUN 20 PM 4:51
RECORDED

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on May 14, 2008, at approximately 0100 hrs, while at [REDACTED] (Applebee's Restaurant), which is located in the city of North Charleston, county of Dorchester and State of South Carolina, the defendant, **BRYAN LEON MULLIGAN** did commit the offense of **KIDNAPPING**, in violation of section 16-3-910 of South Carolina Code of Laws of 1976, as amended. In that the defendant and two co-defendants did willfully and unlawfully participate in the kidnapping of the victim, Mr. Timothy Rabang, along with two other employees while burglarizing and robbing the business Applebee's. The defendants abducted the victim from the parking lot area and took control of the victim by force with a handgun and stun gun thus depriving the victim of his freedom and without the authority of law.

Facts to establish the above are that on the above dates and times the employees had finished work at 4910 Ashley Phosphate Road (Applebee's Restaurant) and headed out to the parking lot to their vehicles to leave. In the parking lot the employees were confronted by (3) three black males with handguns and a stun gun in their constructive possession who forced the employees to enter back into the business, shut the alarm off and then to open the safe. The employees were forced to lay face down on the floor while the defendants went through their pockets and took their wallets and any money that they had. The victim was not allowed to leave the restaurant and was illegally confined by the defendants. The defendants then fled the area. When the employees felt it was safe to move and to look up, they called North Charleston Police via 911 and waited for officers to arrive. On 06-01-2008 due to another business being robbed and leads coming from that case and through detailed investigation detectives were able to positively identify the above defendant and two co-defendants. One of the defendants, after being advised of his rights and waiving them, gave a signed written statement to detectives implicating him and the other two co-defendants. Detective Sgt. E. Jourdan, Detectives Patrick, DiCenzo-Driggers, Mr. L. Hampton, Mr. T. Rabang and Mr. M. Preston are witness to prove the same. All against the law, peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 5th day of June
2008.

Samuel M. Coleman

Signature of Judge

(AFFIANT)

Address: _____

Phone: _____

120 (Lancient Time)

0-30

STATE OF SOUTH CAROLINA

COUNTY OF Dorchester
STATE VS
Bryan Leon Mulligan

AKA:

Race: B Sex: M Age: 22DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]DL#: [REDACTED] SID#: [REDACTED]CDL: Yes ☐ No ☐ CMV: Yes ☐ No ☐ Hazmat: Yes ☐ No ☐

In disposition of the said Indictment comes now the Defendant who was:

TO: Kidnappingin violation of § 18-3-910 of the S.C. Code of Laws, bearing CDR Code #: 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, (Defendant Initial)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Hilton, Russell D. 73945 Bryan Leon Mulligan 77785
SC Bar# SC Bar# Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 30 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 Dept. of Corrections☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C. Section 922, it is unlawful for a person convicted of a violation of Section 18-25-20 or 18-25-65
(Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-208 (Assessments 107.5 %)

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

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 58-5-2995 (DUI Assessment) \$12 \$

§ 58-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 73.3, 18 TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 18 TP (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 58-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

§ 44-53-450(C) (Conditional Discharge) \$350 \$

3% to County (if paid in installments) \$ 3.90TOTAL \$ 313.90Robert Bohntemel
Clerk of Court/Deputy ClerkCourt Reporter: Amanda Haffenden

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GS18-1120A/W#: 1102146Date of Offense: 5/10/2008S.C. Code § 18-3-910CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

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

pmts. of \$ _____ Beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Conditional Discharge § 44-53-450(C) requires \$350 be
paid to the Clerk prior to disposition.☐ Appointed PD or appointed other counsel § 47.2
requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE _____

Judge Code: 2134Sentence Date: 2/3/11

SCCA211 (06/2010)

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

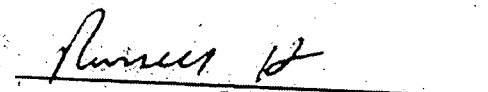
INDICTMENT
2008GS18-1120

At a Court of General Sessions, convened on September 08, 2008 the Grand Jurors of Dorchester County present upon their oath:

KIDNAPPING

The defendant, Bryan Leon Mulligan, did in Dorchester County on or about May 10, 2008, willfully and unlawfully seize, confine, inveigle, decoy, kidnap, abduct, or carry away one Ferdinand Lopez, without authority of law. This offense being a violation of Section 16-3-910 of the South Carolina Code of Laws, as amended.

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



Russell Hilton, Solicitor

WITNESSES

Patrick, Det.

NCPD

Agency Case #: 2008-020610

ARREST WARRANT NUMBER

H02146

Arrested: Jun 11, 2008

ACTION OF GRAND JURY

JOE BILL

9/4/08

[Signature]

Foreperson of Grand Jury
Date: September 04, 2008

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2008GS18-1120

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

September 08, 2008 TERM

**THE STATE
vs.**

Bryan Leon Mulligan

**Indictment for
KIDNAPPING**

SC Code: 16-03-910
Class: FEL-A

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and
plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

RECORDED
CLERK OF COURT
DORCHESTER COUNTY
SEP - 8 AM 10:36

I-102146

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

North Charleston

2008020810

THE STATE

against

Bryan Leon Mulligan

Address:

Phone:

Sex: M Race: B Height: 5 10 Weight: 185DL State: SC DL #: 100615902DOB: [REDACTED] Agency ORI #:Prosecuting Agency: North Charleston Police DepartmentProsecuting Officer: Shawn Patrick #178Offense: Kidnapping 16-3-910Offense Code: 00095Code/Ordinance Sec: 16-3-910This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☐ Municipality ofThe accused
is to be arrested and brought before me to be
dealt with according to the law.

Signature of Judge

(L.S.)

Date:

RETURN

A copy of this arrest warrant was delivered to
defendant on Bryan Mulligan
12-11-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

North Charleston Municipal Court
2536 Fourth St
North Charleston, SC 29406☐ County/ ☒ Municipality of
North CharlestonPersonally appeared before me the affiant Shawn Patrick #178being duly sworn deposes and says that defendant Bryan Leon Mulligan whodid within this county and state on 05/10/2008

State of South Carolina (or ordinance of

in the following particulars:

☐ County/ ☒ Municipality of

North Charleston

violate the criminal laws of the

DESCRIPTION OF OFFENSE:

Kidnapping 16-3-910

I further state that there is probable cause to believe that the defendant named above did commit
the crime set forth and that probable cause is based on the following facts.

OCA#2008020610

SEE ATTACHED AFFIDAVIT
M.N.

ORIGINAL

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

North Charleston

Affiant's Address 4900 Lacross Road
North Charleston, SC 29419

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 05/10/2008defendant Bryan Leon Mulligan

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/ ☒ Municipality of

North Charleston

) as set forth below:

DESCRIPTION OF OFFENSE:

Kidnapping 16-3-910

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or
her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as
soon thereafter as is practicable

Sworn to and subscribed before me

on 06/18/2008Samuel M. Coleman

Signature of Issuing Judge

(L.S.)

Judge Code: 003Judge's Address 2536 Fourth StreetNorth Charleston, SC 29419Judge's Telephone (843)740-2601

Issuing Court:

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

339

340

I 102146

STATE OF SOUTH CAROLINA

AFFIDAVIT

COUNTY OF DORCHESTER
CITY OF NORTH CHARLESTON

OCA# 2008-02-0610

Personally appeared before me, a magistrate of this County, one Detective S. Patrick
who first being duly sworn, deposes and says that (name of the defendant)

BRIAN MULLIGAN

did within this County and State on the 10th day of May 2008, violate the criminal laws of the State of South Carolina
in the following particulars:

DESCRIPTION OF OFFENSE
KIDNAPPING ORIGINAL
VIOLATION OF SECTION
16-3-910

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on May 10, 2008, at approximately 0510 hrs, while at [REDACTED] (Frankie's Fun Park), which is located in the city of North Charleston, county of Dorchester and State of South Carolina, the defendant, **BRIAN MULLIGAN** did commit the offense of **KIDNAPPING**, in violation of section 16-3-910 of South Carolina Code of Laws of 1976, as amended. In that the defendant and three co-defendants did willfully and unlawfully participate in a robbery at gunpoint of the victim, Ferdinand Lopez and business Frankie's Fun Park. The defendant and co-defendants forced the victim against his will to walk across the parking lot at gun point and to enter into the business.

Facts to establish the above are that on the above dates and times the victim arrived to start work. As the victim disarmed the rear maintenance shed alarm he was approached by the defendant and three co-defendant wielding handguns and and stun guns. The defendants walked the victim across the parking lot and forced him to disarm the alarm to the main building. The defendants took the victims cell phone and car keys valued at approximately \$100.00. Once inside the defendants kicked in two office doors gaining access to the safe. The office alarm sounded and the defendants fled the business.

During the investigation of a similar armed robbery a co-defendant provided a signed written statement implicating himself, the defendant and two co-defendants as the perpetrators of the above crime.

Detectives Patrick, DiCenzo-Driggers, Cpl. S. Wyant and Sgt. E. Jourdan are witness to prove the same. All against the law, peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 11th day of May
2008.

Seamus M. Coleman

Signature of Judge

[Signature]
(AFFIANT)

Address: _____

Phone: _____

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Dorchester

VS.
Bryan Leon Mulligan

AKA:

Race: B

Sex: M

Age: 22

DOB: [REDACTED]

SS#: [REDACTED]

Address: [REDACTED]

DL#:

SID#:

CDL: Yes ☐ No ☐ CMV: Yes ☐ No ☐ Hazmat: Yes ☐ No ☐

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

TO: Armed Robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

2008GS18-1121

A/W#:

1102147

Date of Offense:

5/10/2008

S.C. Code §

16-11-330(A)

CDR Code #:

0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

In violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code #

0139

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lowd Act)☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

Hilton, Russell D.

SC Bar# 73945

Bryan Leon Mulligan

Attorney for Defendant

SC Bar# 29

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 30 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 Dept. of Corrections
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ set by SCOPPPS

Recipient:

Fine:

14-1-206 (Assessments 107.5 %)	\$	
14-1-211(A)(1) (Conv. Surcharge)	\$100	\$100.00
14-1-211(A)(2) (DUI Surcharge)	\$100	\$
58-5-2995 (DUI Assessment)	\$12	\$
58-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
73.3, 1B TP (Law Enforce. Funding)	\$25	\$25.00
33.7, 1B TP (Drug Court Surcharge)	\$150	\$
50-21-114 (BUI Breath Test Fee)	\$50	\$
58-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$5.00
44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$3.90
TOTAL		\$133.90

Robert Bohmstengel
Clerk of Court/Deputy Clerk

Court Reporter:

Amanda Haffenden

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol Testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ Beginning

\$ paid to Public Defender Fund

Other:

☐ Conditional Discharge § 44-53-450(C) requires \$350 be paid to the Clerk prior to disposition.☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 2139

Sentence Date: 2/3/11

SCCA217 (06/2010)

STATE OF SOUTH CAROLINA)
)
COUNTY OF DORCHESTER)

INDICTMENT
2008GS18-1121

At a Court of General Sessions, convened on September 08, 2008 the Grand Jurors of Dorchester County present upon their oath:

ARMED ROBBERY

The defendant, Bryan Leon Mulligan, did in Dorchester County on or about May 10, 2008, feloniously take from the person or presence of the victim, Ferdinand Lopez, by means of force or intimidation and while armed with a deadly weapon being a handgun and a stun gun or while alleging, either by action or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, goods or monies of the said victim, being described as personal goods and US Currency. This offense being a violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

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



Russell Hilton, Solicitor

WITNESSES

Patrick, Det.

NCPD

Agency Case #: 2008-020610

ARREST WARRANT NUMBER

I102147

Arrested: Jun 11, 2008

ACTION OF GRAND JURY

RUE BILL

DATE

9/4/08

Foreperson of Grand Jury

Date: September 04, 2008

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2008GS18-1121

The State of South Carolina

County of

DORCHESTER

COURT OF GENERAL SESSIONS

September 08, 2008 TERM

THE STATE

vs.

Bryan Leon Mulligan

Indictment for

ARMED ROBBERY

SC Code: 16-11-330

Class: FEL-A

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and
plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

RECORDED
2008 SEP -8 AM 10:30
CLERK OF COURT
DORCHESTER COUNTY

I-102147

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

North Charleston

2008020610

THE STATE

against

Bryan Leon Mulligan

Address:

Phone:

SSN

Sex:

M

Race:

B

Height:

5'10"

Weight:

185

Dt. State:

SC

DL #:

100615902

DOB:

Agency ORI #:

Prosecuting Agency:

North Charleston Police Department

Prosecuting Officer:

Shawn Patrick #178

Offense:

Armed Robbery 16-11-0330(A)

Offense Code: 00139

Code/Ordinance Sec:

16-11-0330A

This warrant is

CERTIFIED FOR SERVICE in the

☐ County/☐ Municipality of

The accused

is to be arrested and brought before me

to be

dealt with according to the law.

(L.S.)

Signature of Judge

Date:

RETURN

A copy of this arrest warrant was delivered to

defendant

on

Bryan Mulligan
12-11-08

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

North Charleston Municipal Court
2536 Fourth St
North Charleston, SC 29406☐ County/ ☒ Municipality of

North Charleston

Personally appeared before me the affiant

Shawn Patrick #178

being duly sworn deposes and says that defendant

Bryan Leon Mulligan

did within this county and state on

05/10/2008

State of South Carolina (or ordinance of

☐ County/☒ Municipality of

North Charleston

in the following particulars:

DESCRIPTION OF OFFENSE:

Armed Robbery 16-11-0330(A)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

OCA#2008020610

SEE ATTACHED AFFIDAVIT
M.N.

ORIGINAL

Signature of Affiant

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of

North Charleston

Affiant's Address

4900 L across Road

North Charleston, SC 29419-

Affiant's Telephone

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 05/10/2008

defendant Bryan Leon Mulligan

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County/☒ Municipality of

North Charleston

) as set forth below:

DESCRIPTION OF OFFENSE:

Armed Robbery 16-11-0330(A)

Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on 06/10/2008

Samuel M. Coleman

(L.S.)

Signature of Issuing Judge

Judge Code: 003

Judge's Address

2536 Fourth Street

North Charleston, SC 29419-

Judge's Telephone

(843)740-2601

Issuing Court:

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

Form Approved by
S.C. Attorney General
April 21, 2003
SCCA 518

344

I 102147

STATE OF SOUTH CAROLINA

COUNTY OF DORCHESTER
CITY OF NORTH CHARLESTON

AFFIDAVIT

OCA# 2008-02-0610

Personally appeared before me, a magistrate of this County, one Detective S. Patrick who first being duly sworn, deposes and says that (name of the defendant)

BRIAN MULLIGAN

did within this County and State on the 10th day of May 2008, violate the criminal laws of the State of South Carolina in the following particulars:

DESCRIPTION OF OFFENSE

ARMED ROBBERY
VIOLATION OF SECTION
16-11-330

ORIGINAL

The affiant states there is probable cause to believe that the defendant named above did commit the crime(s) set forth, and that such probable cause is based on the following facts:

That on May 10, 2008, at approximately 0510 hrs, while at [REDACTED] (Frankie's Fun Park), which is located in the city of North Charleston, county of Dorchester and State of South Carolina, the defendant, **BRIAN MULLIGAN** did commit the offense of **ARMED ROBBERY**, in violation of section 16-11-330 of South Carolina Code of Laws of 1976, as amended. In that the defendant and three co-defendants did willfully and unlawfully participate in a robbery at gunpoint of the victim, Ferdinand Lopez and business Frankie's Fun Park. The defendant and co-defendants forced the victim against his will to walk across the parking lot at gun point and to enter into the business.

Facts to establish the above are that on the above dates and times the victim arrived to start work. As the victim disarmed the rear maintenance shed alarm he was approached by the defendant and three co-defendant wielding handguns and and stun guns. The defendants walked the victim across the parking lot and forced him to disarm the alarm to the main building. The defendants took the victims cell phone and car keys valued at approximately \$100.00. Once inside the defendants kicked in two office doors gaining access to the safe. The office alarm sounded and the defendants fled the business.

During the investigation of a similar armed robbery a co-defendant provided a signed written statement implicating himself, the defendant and two co-defendants as the perpetrators of the above crime.

Detectives Patrick, DiCenzo-Driggers, Cpl. S. Wyant and Sgt. E. Jourdan are witness to prove the same. All against the law, peace and dignity of the State of South Carolina.

Sworn to and Subscribed before me
this 11th day of June
2008.

Samuel M. Coleman
Signature of Judge

[Signature]
(AFFLANT)

Address: _____

Phone: _____

OCT-29-2012 13:02 From:CLERK OF COURT

843 958 5020

To:803 738 1600

P.1/21

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Charleston

VS.

BRYAN LEON MULLIGAN

AKA:

Race: B

Sex: M

Age: 21

DOB: [REDACTED]

SSN: [REDACTED]

Address:

City, State, Zip:

NORTH CHARLIES, SC 294140000

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Kidnapping

(2-30)

in violation of § 16-03-0910

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

☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ Mandatory GPS(CSC☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is:

☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment☐ Defendant Waives Presentment

(defendant's initials)

he pleads:

☒ Without Negotiations or Recommendation, ☐ Negotiated Settlement, ☐ Recommendation by the State.☐ Negotiated Settlement☐ Recommendation by the State.

ATTEST:

[Signature]

17241

SC Harb

[Signature]

Defendant

[Signature]

Attorney for Defendant

17241

SC Harb

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of

30

days/months/years

☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$

; provided that upon the service of

_____ days/months/years and/or payment

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

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

probation, which are incorporated by reference.

☒ CONCURRENT, or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

by the State Department of Corrections.

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

Pursuant to 18 U.S.C Section 922JJ 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

PTUP

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

Payment Terms:

☐ Set by SCJPPPS

Recipient:

*Fines:

§ 14-1-206 (Assessments 107.5%)

\$

§ 14-1-211(AH1) (Conv. Surcharge)

\$100

\$100.00

§ 14-1-211(AH2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$300

\$

§ 14-1-212 (Law Enforcement Funding)

\$25

\$25.00

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 30-21-114(BU) Breath Test Fee

\$50

\$

§ 56-3-2942(J) (Vehicle Assessment)

\$400

\$

Proviso 90.5 (SCJA Surcharge)

\$5

\$5.00

§ 14-53-450(C) (Conditional Discharge)

\$350

\$

*to County (if paid in installments)

\$

\$3.90

TOTAL:

\$

\$133.90

Clerk of Court/ Deputy Clerk

Robert Rohnstergel

Court Reporter:

A. Haffenden

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008CS1008072

A/W#: K300689

Date of Offense: 6/2/2008 CHUCK E. CHEESE

S.C. Code §: 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS☐ Mandatory GPS(CSC☐ §17-25-45

w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment

(defendant's initials)

he pleads: ☒ Without Negotiations or Recommendation, ☐ Negotiated Settlement, ☐ Recommendation by the State.☐ Negotiated Settlement☐ Recommendation by the State.

ATTEST:

[Signature]

17241

SC Harb

[Signature]

Defendant

[Signature]

Attorney for Defendant

17241

SC Harb

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of

30

days/months/years

☐ under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$

; provided that upon the service of

_____ days/months/years and/or payment

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

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

probation, which are incorporated by reference.

☒ CONCURRENT, or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

by the State Department of Corrections.

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

Pursuant to 18 U.S.C Section 922JJ 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

PTUP

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

Payment Terms:

☐ Set by SCJPPPS

Recipient:

*Fines:

§ 14-1-206 (Assessments 107.5%)

\$

§ 14-1-211(AH1) (Conv. Surcharge)

\$100

\$100.00

§ 14-1-211(AH2) (DUI Surcharge)

\$100

\$

§ 56-5-2995 (DUI Assessment)

\$12

\$

§ 56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$300

\$

§ 14-1-212 (Law Enforcement Funding)

\$25

\$25.00

§ 14-1-213 (Drug Court Surcharge)

\$150

\$

§ 30-21-114(BU) Breath Test Fee

\$50

\$

§ 56-3-2942(J) (Vehicle Assessment)

\$400

\$

Proviso 90.5 (SCJA Surcharge)

\$5

\$5.00

§ 14-53-450(C) (Conditional Discharge)

\$350

\$

*to County (if paid in installments)

\$

\$3.90

TOTAL:

\$

\$133.90

Clerk of Court/ Deputy Clerk

Robert Rohnstergel

Court Reporter:

A. Haffenden

SCCA/217 (06/2010)

days/hours Public Service Employment

Obtain CLEP ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/F beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

payments of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition (Discharge, § 14-53-450(C)) requires

\$350 be paid to the Clerk prior to case disposition

☐ Appointed PID or appointed other counsel

§ 47-12 requires \$500 be paid to Clerk

during probation

Presiding Judge

Judge Code:

Sentence Date:

2/3/11

2/3/11

2/3/11

347

OCT-29-2012 13:02 From:CLERK OF COURT

843 958 5020

To:803 738 1600

P.2/21

BMW200X0703910

WITNESSRN

North Charleston Police Department

AGENCY CASE NUMBER

2008024382

ARREST WARRANT NUMBER

K300689

DATE OF ARREST

June 2, 2008

ACTION OF GRAND JURY

Forfeiture of Grand Jury

Date

OCT 07 2008

VERDICT

TRUE BILL

Forfeiture of Petit Jury

Date

INDICT

DOCKET NO. 2008GS1008072

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

THE STATE,

vs.

BRYAN LEON MULLIGAN

DOB: 1989-01-07

N/M

Indictment for

KIDNAPPING

FILED
2008 OCT 10 10:21:39

CLERK OF COURT

BY

08-3548-3

OCT-29-2012 13:02 From:CLERK OF COURT

843 958 5020

To:803 738 1600

P.3/21

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

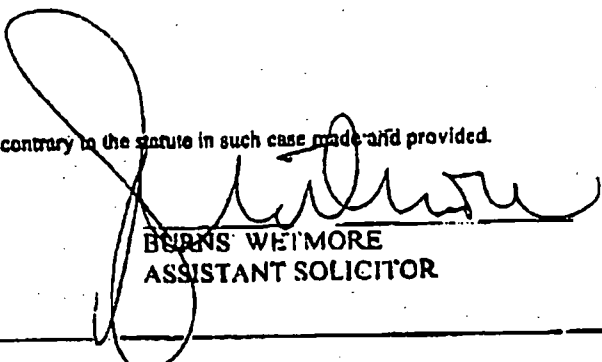
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

KIDNAPPING

That in Charleston County, South Carolina, on or about June 2, 2008, the Defendant, BRYAN LEON MULLIGAN, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Guy Ahlstrom, without authority of law; all in violation of Section 16-3-910 of the South Carolina Code of Laws (1976) as amended.

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


BURNS WETMORE
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.

DRYAN LEON MULLIGAN

AKA:

Race: B Sex: M Age: 21

DOB: SSN:

Address:

City, State, Zip: CHARLES, SC

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hznital Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Attempted Armed Robbery (0-20)

in violation of § 16-11-0330(B) of the S.C. Code of Laws, hearing CDR Code # 0026

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST-SERIOUS ☐ Mandatory GPS (CSC) 16-17-25-45

The charge is ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, ☐ (defendant's initials)

He/she is ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

Attorney: [Signature] SC Bar# [Number] Defendant: [Signature] SC Bar# [Number] Attorney for Defendant: [Signature] SC Bar# [Number]

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

for a determinate term of 20 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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

by the State Department of Corrections.

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

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

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

SPECIAL CONDITIONS:

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

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)

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

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2905 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47-9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforcement Funding) \$25 \$37.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (DUI Breath Test Fee) \$50 \$

§ 56-5-2942(1) (Vehicle Assessment) \$40/ea \$

Proviso 90-5 (SCCJA Surcharge) \$5 \$5.00

§ 44-53-150(C) (Conditional Discharge) \$350 \$

3% to County (if paid in installments) \$9.90

TOTAL \$133.90

Clerk of Court/Deputy Clerk: Robert Bohntel

Court Reporter: A. Haffenden

SCA-217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008GNT008073

A/W#: K100690

Date of Offense: 6/2/2008 CHUCK E. CHASE

S.C. Code § 16-11-0330(B)

CDR Code #: 0026

SENTENCE SHEET

CONVICTED OF or XPLEADS

Presiding Judge: [Signature]
Judge Code: 2134
Sentence Date: 2/2/11

350

OCT-29-2012 13:02 From:CLERK OF COURT

843 958 5020

To:803 738 1600

P.5/21

RMW20080703910

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008024382

ARREST WARRANT NUMBER

K300690

DATE OF ARREST

June 2, 2008

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

OCT 07 2008

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1008073

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

THE STATE

vs.

BRYAN LEON MULLIGAN

DOB: 1989-01-07

R/M

Indictment for

ATTEMPTED ARMED ROBBERY

FILED
2012 OCT 10 10 2 25

CLERK OF COURT

BY

08-3548-1

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

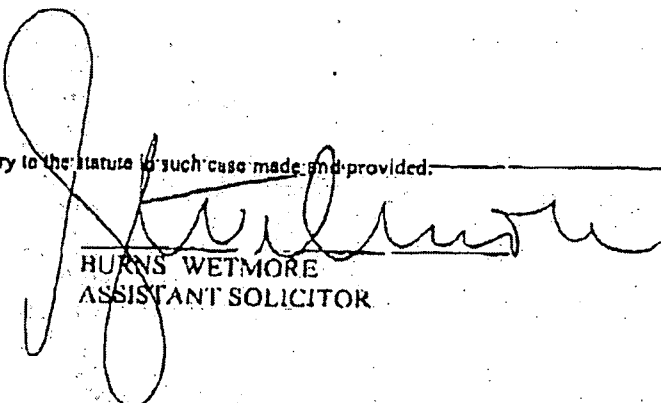
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED ARMED ROBBERY

That on or about June 2, 2008, in Charleston County, South Carolina, Chuck E. Cheese located at [REDACTED] the Defendant, BRYAN LEON MULLIGAN, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the attempted robbery reasonably believed to be a deadly weapon, did attempt to take and carry away goods or monies from the person or immediate presence of Guy Ahlstrom a employee of Chuck E Cheese with the intent to permanently deprive him of possession thereof, in violation of Section 16-11-330(B) of the South Carolina Code of Laws, 1976, as amended

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


HURNS WETMORE
ASSISTANT SOLICITOR

OCT-29-2012 13:02 From:CLERK OF COURT

843 958 5020

To:803 738 1600

P.7/21

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.

BRYAN LEON MULLIGAN

AKA:

Race: B Sex: M Age: 21

DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

DL#:

SI334

*CDL Yes [] No [] CMV Yes [] No [] Hazard Yes [] No []

In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery (10-30)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008UG1000126

A/W#: K350023

Date of Offense: 4/28/2008

S.C. Code § 16-11-0330(A)

CDR Code 4: 0139

SENTENCE SHEET

[] CONVICTED OF [] EXPLEADS

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

[] NON-VIOLENT [X] VIOLENT [] SERIOUS [X] MOST SERIOUS [] Mandatory GPS(CSC

w/minor 1st or Lewd Act)

§ 17-23-45

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury (defendant's initials)

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

ATTEST:

Wellmore, Burns

SC Bar# 17241

Defendant

Attorney for Defendant

SC Bar# 77988

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center.

For a determinate term of 30 days/months/years [] 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.

[X] CONCURRENT or [] CONSECUTIVE to sentence on:

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

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

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

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

[] Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments) (07.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforcement Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(1) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.3 (SCCA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$150	\$
3% to County (if paid in installments)		\$ 3.90
TOTAL:		\$ 133.90

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

PTUP

days/hours Public Service Employment

Obtain GED []

Attend Voc Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling []

Random Drug/Alcohol testing []

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

[] Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition

[] Appointed PD or appointed other counsel.

§ 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date

2/13/11

2/13/11

353

OCT-29-2012 13:02 From:CLERK OF COURT

843 958 5020

To:803 738 1600

P.8/21

HMW20080603518

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008018508

ARREST WARRANT NUMBER

K350023

DATE OF ARREST

June 5, 2008

ACTION OF GRAND JURY

M. J. [Signature]
Foreperson of Grand Jury
Date: OCT 07 2008

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1008126

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

THE STATE

vs.

BRYAN LEON MULLIGAN

DOB: 1989-01-07

M/M

Indictment for

ARMED ROBBERY

FILED
2008 OCT 10 PM 2:35

CLERK OF COURT

BY

08-3629-5

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

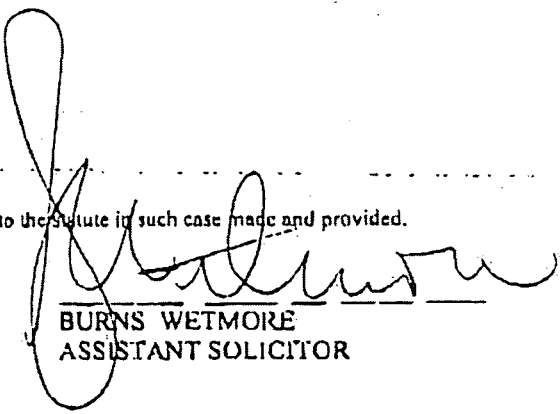
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

ARMED ROBBERY

That on or about April 28, 2008, in Charleston County, South Carolina, the Defendant, BRYAN LEON MULLIGAN, at Applebee's located at [REDACTED] North Charleston, South Carolina, by use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of employees of Applebee's with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

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


BURNS WETMORE
ASSISTANT SOLICITOR

OCT-29-2012 13:03 From:CLERK OF COURT

543 558 5020

To:803 738 1600

P.10/21

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.

BRYAN LEON MULLIGAN

AKA:

Race: B Sex: M Age: 21

DOB: SS#:

Address:

City/State/Zip:

DL#:

SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Kidnapping (0-30)

in violation of § 16-03-0910

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

[] NON-VIOLENT [X] VIOLENT [] SERIOUS [X] MOST SERIOUS [] Mandatory GPS(CSC) [] 17-25-45

within 1st or 1st or 1st Act)

(defendant's initials)

The charge is: [X] As Indicted. [] Lesser Included Offense.

[] Defendant Waives Presentment to Grand Jury.

The plea is: [X] Without Negotiations or Recommendation.

[] Negotiated Sentence.

[] Recommendation by the State.

TEST:

Wetmore, Burns

SC Barr

Defendant

Attorney for Defendant

SC Barr

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center,

for a determinate term of 30 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.

[X] CONCURRENT or [] CONSECUTIVE to sentence on:

[X] The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

by the State Department of Corrections

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

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

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

SPECIAL CONDITIONS:

[] RESTITUTION: [] Deferred [] Def. Waives Hearing [] Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

[] Set by SCDPPPS:

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47-9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (RUI Breath Test Fee)	\$50	\$
§ 56-5-2942(1) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$150	\$
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008CS1008127

A/W#: K350024

Date of Offense: 8/28/2008

S.C. Code § 16-03-0910

CDR Code #: 0095

SENTENCE SHEET

[] CONVICTED OF or [X]PLEADS

Presiding Judge

Judge Code:

Sentence Date:

2/3/11

356

OCT-29-2012 13:03 From:CLERK OF COURT

843 958 5020

To:803 739 1600

P.11/21

BMW20080603518

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008018508

ARREST WARRANT NUMBER

K350024

DATE OF ARREST

June 5, 2008

ACTION OF GRAND JURY

Mulligan
Foreperson of Grand Jury Date: OCT 07 2008

VERDICT

[Signature]
Foreperson of Petit Jury Date:

INDICT

DOCKET NO. 2008GS1008127

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

THE STATE

vs.

BRYAN LEON MULLIGAN

DOR: 1989-01-07

B/M

Indictment for

KIDNAPPING

FILED
2008 OCT 10 11 23 AM

CLERK OF COURT

BY

08-3629-8

OCT-29-2012 13:03 From: CLERK OF COURT

843.958 5020

To: 803 738 1600

P.12/21

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

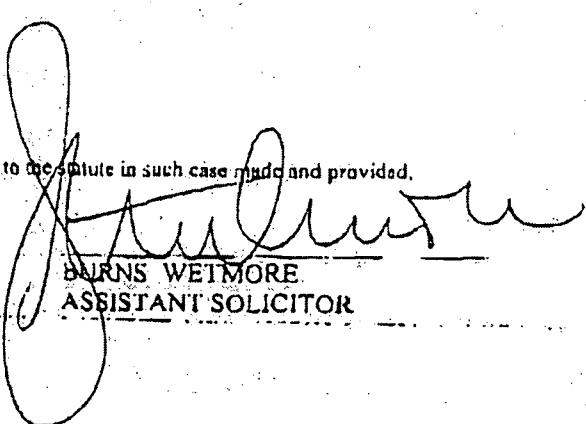
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

KIDNAPPING

That in Charleston County, South Carolina, on or about April 28, 2008, the Defendant, BRYAN LEON MULLIGAN, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Applebee's employee Jonathan Walker without authority of law; all in violation of Section 16-3-910 of the South Carolina Code of Laws (1976) as amended.

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



BURNS WETMORE
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VSBRYAN LEON MULLIGAN

AKA _____

Race: B Sex: M Age: 21DOB: [REDACTED] SS#: [REDACTED]Address: [REDACTED]City, State, Zip: [REDACTED]DL#: SIL04*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Criminal Sexual Conduct - 1st Degree (0-30)INDICTMENT/CASE#: 2008GSI008113A/W#: K300725Date of Offense 5/25/2008 Noisy OysterS.C. Code § 16-03-0652CDR Code # 0160

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-03-0652 of the S.C. Code of Laws, bearing CDR Code # 0160☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS/CSC ☐ 17-25-45

w/minor 1st or 2nd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Prosecution to Grand Jury, ☐ (defendant's initials)the basis: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the StateAttorney [Signature] 17241 [Signature] 29788
Webster, Burns SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years

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

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

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135

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

SPECIAL CONDITIONS:

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

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

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____

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

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

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 36-3-299.5 (DUI Assessment) \$12 \$ _____

§ 36-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$300 \$ _____

§ 14-1-212 (Law. Entrance, Fines) \$25 \$ 25.00

§ 14-1-211 (Drug Court Surcharge) \$150 \$ _____

§ 30-21-114(BUI Breath Test Fee) \$30 \$ _____

§ 36-3-294(2) (Vehicle Assessment) \$400 \$ _____

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

§ 44-53-450(C) (Conditional Discharge) \$350 \$ _____

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

TOTAL \$ 33.90
\$ 133.90Clerk of Court/ Deputy Clerk Robert RobertsonCourt Reporter: A. Henderson

SCCA-217 (06/2010)

PTUP

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

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

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires

\$350 be paid to the Clerk prior to case disposition

☐ Appointed PD or appointed other counsel,

§ 47-12 requires \$500 be paid to Clerk during probation.

Presiding Judge 2/13/11

Judge Code: _____

Sentence Date: 2/13/11

OCT-29-2012 13:03 From:CLERK OF COURT

843 958 5820

To:803 738 1600

P.14/21

BMW20080703909

WITNESS

North Charleston Police Department

AGENCY CASE NUMBER

2008023157

ARREST WARRANT NUMBER

K300725

DATE OF ARREST

June 5, 2008

ACTION OF GRAND JURY

Person of Grand Jury OCT 07 2008

VERDICT

TRUE BILL

Person of Petit Jury

Date

INDICT

DOCKET NO. 2008GS1008135

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

THE STATE

vs.

BRYAN LEON MULLICAN

DOB: 1989-01-07

B/M

Indictment for

CRIMINAL SEXUAL CONDUCT FIRST
DEGREE

OCT 10 11 23 AM

CLERK OF COURT

BY

08-3629-14

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

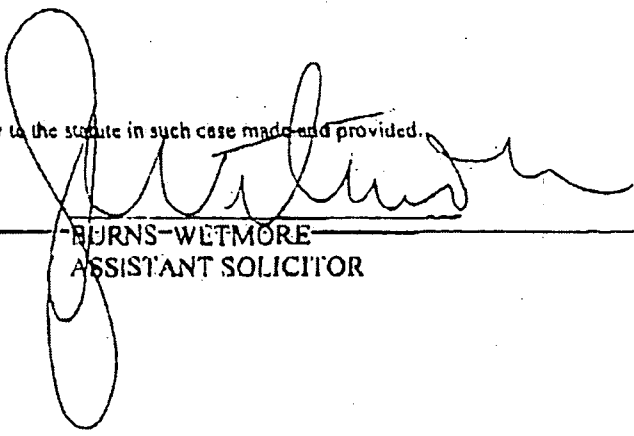
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County
present upon their oath:

CRIMINAL SEXUAL CONDUCT FIRST DEGREE

That in Charleston County, South Carolina, on or about May 25, 2008, the Defendant, BRYAN LEON
MULLIGAN, did commit a sexual battery upon the victim, Nelsy Oyster employee Barbara Carter, without her
consent, and with the use of aggravated force, to wit: the defendant force the victim to perform oral sex and fondled
her about her breasts and vaginal area; all in violation of Section 16-3-652, Code of Laws of South Carolina, (1976,
as amended).

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


BURNS-WETMORE
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Charleston
STATE VS.RYAN LEON MULLIGAN

AKA:

Race: B Sex: M Age: 21DOB: [REDACTED] SS#: [REDACTED]

Address:

City, State, Zip:

ID#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

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

TO: Kidnapping (6-30)in violation of § 16-03-0910of the S.C. Code of Laws, bearing CDR Code # 0095☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC 1617-25-45
w/minor 1st or 2nd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury, ☐ Defendant's initialsThe plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the StateATTORNEY: [Signature] 17241
Wendell Burns SC Bar#[Signature]
Defendant[Signature] 79797
Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 30 days/months/years or ☐ under the Youthful Offender Act not to exceed yearsand/or to pay a fine of \$; provided that upon the service of days/months/years and/or paymentof \$; 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 in sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUPTotal: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(B)(1) (Breath Test Fee)	\$50	\$
§ 56-5-2942(1) (Vehicle Assessment)	\$4000	\$
Proviso 9B.5 (SCCA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

Presiding Judge

Judge Code:

Sentence Date:

213
2/3/14
☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition
☐ Appointed PID or appointed other counsel.
 § 47.12 requires \$500 be paid to Clerk during probation.

362

OCT-29-2012 13:04 From:CLERK OF COURT

843 958 5020

To:803 738 1600

P.17/21

BMW20080703909

WITNESS

North Charleston Police Department

AGENCY CASE NUMBER

2008023157

ARREST WARRANT NUMBER

K300727

DATE OF ARREST

June 5, 2008

ACTION OF GRAND JURY

Forfeiture of Grand Jury
Date

OCT 07 2008

VERDICT

TRUE BILL

Forfeiture of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1008137

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

THE STATE

vs.

BRYAN LEON MULLIGAN

DOB: 1989-01-07

II/M

Indictment for

KIDNAPPING

2008 OCT 10 PM 2:39

CLERK OF COURT

BY

08-3629-10

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

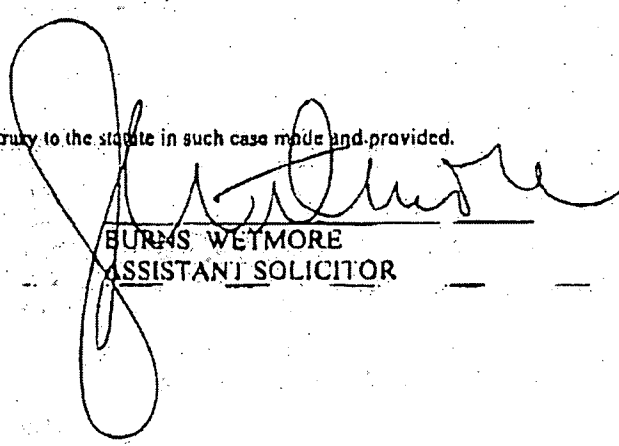
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County
present upon their oath:

KIDNAPPING

That in Charleston County, South Carolina, on or about May 25, 2008, the Defendant, BRYAN LEON MULLIGAN,
unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Noisy Oyster employee
Justin Carter, without authority of law; all in violation of Section 16-3-910 of the South Carolina Code of Laws
(1976) as amended.

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



BURNS WETMORE
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston

STATE VS.

BRYAN LEON MULLIGAN

AKA:

Race: B Sex: M Age: 21

DOB: [REDACTED] SSN: [REDACTED]

Address:

City, State, Zip:

DL#:

CDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery (10-30)

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

[] NON-VIOLENT [X] VIOLENT [] SERIOUS [X] MOST SERIOUS [] Mandatory GPS (SC

w/minor 1st or 1ewd Act)

17-25-13

The charge is: [X] As Indicted [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury (defendant's initials)

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

ATTEST: [Signature] 17241 [Signature] [Signature] 29207
Wetmore, Burns SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center.

for a determinate term of 30 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.

[X] CONCURRENT or [] CONSECUTIVE to sentence on:

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

[] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code 217-25-135.

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. Waiver Hearing [] Ordered PTUP

Total: \$ plus 20% fee: \$ days/hours Public Service Employment

Payment Terms:

[] Net by SCIDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharges)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharges)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-5-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharges)	\$150	\$
§ 50-21-114 (DUI Breath Test Fee)	\$50	\$
§ 56-5-2942(1) (Vehicle Assessment)	\$400ea	\$
Proviso 90.5 (SCCA Surcharges)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
10% to County (if paid in installments)		\$ 3.90
TOTAL:		\$ 179.90

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2008CS1008141

A/W#: K300731

Date of Offense: 5/25/2008 Noisy, Unsettled

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

[] CONVICTED OF or [X] PLEADS

[] Mandatory GPS (SC w/minor 1st or 1ewd Act)

(defendant's initials)

[] Negotiated Sentence, [] Recommendation by the State.

[Signature] [Signature] [Signature] 29207
Attorney for Defendant SC Bar#

[X] State Department of Corrections, [] County Detention Center.

[] under the Youthful Offender Act not to exceed years

[] days/months/years and/or payment

[] 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.

[] CONSECUTIVE to sentence on:

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

[] The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code 217-25-135.

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. Waiver Hearing [] Ordered PTUP

[] days/hours Public Service Employment

Obtain GED []

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling []

Random Drug/Alcohol Testing []

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other

[] Condition Discharge. § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition

[] Appointed DW or appointed other counsel. § 47-12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code:

Sentence Date:

2/3/11

365

OCT-29-2012 13:04 From:CLERK OF COURT

843 958 5820

To:803 738 1600

P.20/21

BMW20080703909

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008023157

ARREST WARRANT NUMBER

K300731

DATE OF ARREST

June 5, 2008

ACTION OF GRAND JURY

For person of Grand Jury

Date:

OCT 07 2008

VERDICT

TRUE BILL

For person of Petit Jury

Date

INDICT

DOCKET NO. 2008GS1008141

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

THE STATE

vs.

BRYAN LEON MULLIGAN

DOR: 1989-01-07

B/M

Indictment for

ARMED ROBBERY

2008 OCT 10 PM 2:35

CLERK OF COURT

BY

08-3629-4

OCT-29-2012 13:04 From:CLERK OF COURT

643 958 5220

To:803 738 1600

P.21/21

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

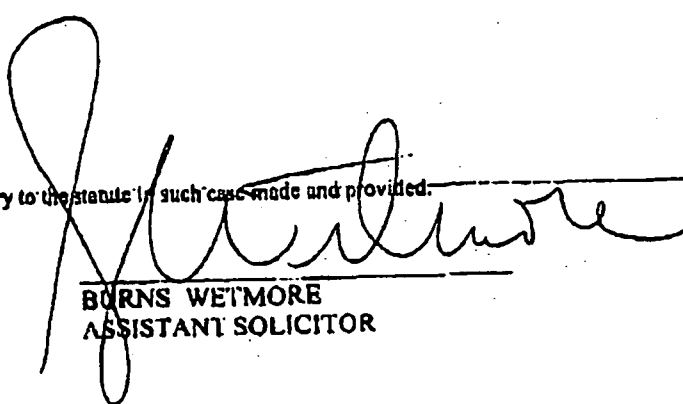
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

ARMED ROBBERY

That on or about May 25, 2008, in Charleston County, South Carolina, the Defendant, BRYAN LEON MULLIGAN, at Nolsy Oyster located at [REDACTED] use of force, threats or intimidation and while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon or other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Nolsy Oyster employees with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

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


BURNS WETMORE
ASSISTANT SOLICITOR