

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

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S.C. Supreme Court

THOMAS JERMAINE EVANS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

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INDEX

INDEX.....	i
TRIAL TRANSCRIPT	1
INDICTMENT AND SENTENCING SHEET	55
APPLICATION FOR POST-CONVICTION RELIEF 09-CP-10-2012.....	58
RETURN AND MOTION TO DISMISS WITHOUT PREJUDICE.....	65
ORDER OF DISMISSAL WITHOUT PREJUDICE.....	68
APPLICATION FOR POST-CONVICTION RELIEF 10-CP-10-10353.....	70
MEMORANDUM IN SUPPORT OF APPLICATION FOR POST-CONVICTION RELIEF	77
RETURN AND MOTION TO DISMISS	84
MEMORANDUM IN OPPOSITION TO MOTION TO DISMISS	89
POST-CONVICTION RELIEF HEARING TRANSCRIPT.....	95
ORDER OF DISMISSAL	177
COURT’S EXHIBIT 1, PLEA AGREEMENT	189

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) COURT OF GENERAL SESSIONS
) 07-GS-10-7508

STATE OF SOUTH CAROLINA,)
)
PLAINTIFF,)
)
VS.) TRANSCRIPT OF RECORD
)
THOMAS JERMAINE EVANS,)
)
DEFENDANT.)

 ORIGINAL

APRIL 24, 2008
CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. FEW, JUDGE.

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VIVIAN H. CROSS
OFFICIAL COURT REPORTER

I-N-D-E-X
APRIL 24, 2008
(PLEA HEARING - STATE v. THOMAS EVANS)
(07-GS-10-7508)

	<u>PAGE</u>
COLLOQUY	3
REPORTER'S CERTIFICATE	53

E X H I B I T S

<u>IDENTIFICATION</u>	<u>ENTERED</u>
STATE'S EXHIBIT 2/TAPE	47
COURT'S EXHIBIT 1/PLEA AGREEMENT	47

STATE VERSUS THOMAS EVANS
PLEA HEARING

P R O C E E D I N G S

(CASE NO.: 07-GS-10-7508)

(APRIL 24, 2008 - 2:41 P.M.)

(NOTE: FOLLOWING IS THE PLEA TAKEN IN THIS MATTER ONLY,
AS REQUESTED BY THE OFFICE OF THE ATTORNEY GENERAL.)

THE COURT: Ms. Taylor, you and your client are standing
before me now presumably because your client has decided to
change his plea; is that correct?

MS. TAYLOR: Yes, sir.

THE COURT: Now you -- I -- I know this because as -- as
we said right before lunch that you have had -- taken a lot
of time in the last few hours and overnight last night to
talk to your client about this.

Um -- from those discussions that -- that you have had,
are you satisfied that his decision to plead guilty is
voluntarily made?

MS. TAYLOR: Yes, sir.

THE COURT: Have you explained to him, uh, the crucial
elements that The State would have to prove in order to
convict him of this crime?

MS. TAYLOR: Yes, sir.

THE COURT: Have you explained to him the maximum and
minimum punishment that he faces, not only on this crime but
on the others that he faces, uh, charges for here in
Charleston County?

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 MS. TAYLOR: Yes, sir; we've talked about it on -- on
2 several occasions.

3 THE COURT: And have you -- have you explained to him
4 all of his constitutional rights?

5 MS. TAYLOR: Yes, sir.

6 THE COURT: And does he understand all of that?

7 MS. TAYLOR: I believe that he does.

8 THE COURT: Okay now, are there any -- is there anything
9 that I need to know about concerning his voluntariness, uh --
10 uh, the -- the -- or the voluntariness of the decision to
11 enter a plea today?

12 MS. TAYLOR: I don't believe so, sir.

13 THE COURT: Mr. ...

14 MS. TAYLOR: Evans.

15 THE COURT: Evans, raise your right hand, please. Now,
16 be- -- before we go forward, look -- put your hand down and
17 look at me.

18 If you -- I'm not going to monkey around with this. If
19 you want to plead guilty, I'll take your guilty plea.

20 But, if you're gonna -- if we're gonna go through a
21 whole bunch of drama where you're giving me all this, uh --
22 uh, looking like you're not sure you want to do this, then
23 we're gonna go ahead and finish the trial.

24 I'm gonna -- I'm gonna -- we're gonna take one shot at
25 trying to go through the plea. If that's what you want to do

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 then we'll do it. If you -- if -- if -- if that's not what
2 you want to do, and if I'm not convinced that's what you want
3 to do, then we're gonna finish the trial.

4 Look at me. Do you understand?

5 MR. EVANS: Yes.

6 THE COURT: I can't hear you.

7 MR. EVANS: I do.

8 THE COURT: Sir?

9 MR. EVANS: Yes, sir.

10 THE COURT: I -- I need to be able to hear you.

11 MR. EVANS: I understand.

12 THE COURT: All right; raise your right hand.

13 (WHEREUPON, THOMAS JERMAINE EVANS WAS DULY SWORN AND
14 TESTIFIED AS FOLLOWS:)

15 THE COURT: All right now -- now, let -- let me make
16 myself clear. How old are you?

17 MR. EVANS: Twenty-five.

18 THE COURT: Twenty-five. You're old enough to stand up
19 straight and look at me and speak loudly enough for me to
20 hear you. All right?

21 MR. EVANS: (No response.)

22 THE COURT: All right?

23 MR. EVANS: I understand.

24 MS. TAYLOR: Speak louder.

25 MR. EVANS: I understand.

STATE VERSUS THOMAS EVANS

PLEA HEARING

1 MS. TAYLOR: Can I get him a glass of water? He asked
2 for one.

3 THE COURT: That'd be fine.

4 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
5 CONFERENCE, OFF THE RECORD.)

6 (WHEREUPON, COURT RESUMED.)

7 DEPUTY: Go ahead and step right there by the
8 microphone.

9 THE COURT: He doesn't need a microphone.

10 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
11 CONFERENCE, OFF THE RECORD.)

12 (WHEREUPON, COURT RESUMED.)

13 THE COURT: Mr. Evans, is it true that you want to
14 change your plea and enter a plea of guilty on this charge
15 that we've been trying here today and yesterday?

16 MR. EVANS: Yeah.

17 THE COURT: All right now, within the last twenty-four
18 hours, have you taken any medication, drugs, or alcohol?

19 MR. EVANS: Yeah.

20 THE COURT: What have you taken?

21 MR. EVANS: Antibiotics.

22 THE COURT: Antibiotic?

23 MR. EVANS: (No response.)

24 THE COURT: Is that correct?

25 MR. EVANS: Yes, sir.

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 THE COURT: All right; that was, uh, given to you at the
2 jail?

3 MR. EVANS: Yes, sir.

4 THE COURT: The antibiotic was prescribed to you by a
5 doctor?

6 MR. EVANS: Yes, sir.

7 THE COURT: In the last several days, when you took that
8 antibiotic did you take it exactly as the doctor told you to
9 take it?

10 MR. EVANS: Yes, sir.

11 THE COURT: That antibiotic does not interfere with your
12 ability to understand what you're doing, does it?

13 MR. EVANS: No, sir.

14 THE COURT: Are you thinking clearly today?

15 MR. EVANS: Yes, sir.

16 THE COURT: Have you ever had any type of mental
17 illness, uh, history, sir? You ever been treated for mental
18 illness?

19 MR. EVANS: No, sir.

20 THE COURT: Have you ever taken any medication for
21 mental illness?

22 MR. EVANS: No, sir.

23 THE COURT: Are there medications that you are supposed
24 to be taking that you're not taking?

25 MR. EVANS: No, sir.

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 THE COURT: All right now, Mr. Evans, you are charged
2 with armed robbery. Armed robbery carries a minimum of ten
3 years in prison and a maximum of thirty years in prison. Do
4 you understand that?

5 MR. EVANS: Yes, sir.

6 THE COURT: Now, it's my understanding that, uh, you and
7 The State have entered into a plea agreement in which you
8 will plea to this crime and you will get thirty years. Is
9 that correct? Is that your understanding, Mr. Evans?

10 MR. EVANS: Yes, sir.

11 THE COURT: And in exchange for that, is it true that
12 The State has agreed not to seek a life sentence under the
13 two strikes law -- or, three strikes law? Is that correct,
14 Mr. Williams?

15 MR. WILLIAMS: That's correct, Your Honor.

16 THE COURT: All right. There are other charges here in
17 Charleston and also in Berkeley---

18 MS. TAYLOR: And Dorchester.

19 THE COURT: ---and have you -- have you worked this
20 agreement out with the Solicitor in Dorchester County as
21 well?

22 MR. WILLIAMS: Yes, Your Honor; I spoke to Mr. Sorenson
23 back when he was there. I have also spoken with Mr. Alfaro
24 in Berkeley and we've -- all are under agreement on these
25 cases.

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 THE COURT: Okay, so -- so the Defendant can rely on the
2 representation that Dorchester County will not seek a life
3 sentence on any of the charges he faces up there?

4 MR. WILLIAMS: That's correct, Your Honor.

5 THE COURT: And of course Berkeley County won't because
6 it's the same Solicitor's office.

7 MR. WILLIAMS: Correct, Your Honor.

8 THE COURT: All right. Um -- Mr. Evans, when you plead
9 guilty, you give up very important constitutional rights;
10 including the right to a trial by jury.

11 You also have the right to remain silent; the right
12 against self-incrimination.

13 You're entitled to the presumption of innocence. And
14 that means that if you were to continue with the trial in
15 this case, that you will remain to be presumed innocent and
16 in order to convict you of the crime, The State would have to
17 prove you guilty beyond a reasonable doubt.

18 And at -- during this trial, um, you have the right to
19 con- -- to confront the witnesses that The State will call to
20 testify against you, which of course means that your lawyers
21 will continue to have the right to cross-examine those
22 witnesses as they testify. Do you understand all those
23 rights?

24 MR. EVANS: Hold on a second.

25 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 CONFERENCE, OFF THE RECORD.)

2 (WHEREUPON, COURT RESUMED.)

3 MS. TAYLOR: He just asked me, Judge, what was
4 said about Dorchester, and I am telling him -- now on the
5 record -- that Your Honor just put on the record and
6 Mr. Williams just agreed to that our plea agreement
7 includes Dorchester County as well, so -- and Berkeley and
8 Charleston -- so that the plea agreement he has entered
9 into today would prevent a life without parole sentence in
10 Dorchester, Berkeley, or Charleston on -- on these charges.
11 He would not be in jeopardy.

12 Um -- the agreement is on the record; Mr. Williams has
13 stated that on the record. Uh -- that is our mutual
14 understanding of how the case would proceed.

15 THE COURT: Okay; well, let me ask this. Um -- well,
16 you've made that clear. And do you understand it Mr. Evans?

17 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
18 CONFERENCE, OFF THE RECORD.)

19 (WHEREUPON, COURT RESUMED.)

20 THE COURT: You -- you're not going to face a life
21 sentence under the two strikes or three strikes law in either
22 Charleston or Berkeley or Dorchester County.

23 But what about the other -- what's the agreement in here
24 about sentencing on the other charges?

25 MS. TAYLOR: The only agreement is that, um -- there

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 really isn't other than that. He could face concurrent or
2 consecutive sentencing; that will be left up to the Judge who
3 ultimately sentences.

4 THE COURT: Okay. You understand that, Mr. Evans?

5 MR. EVANS: Who will be the Judge?

6 THE COURT: It---

7 MS. TAYLOR: We don't know.

8 THE COURT: ---it -- we don't know. It won't be me,
9 uh -- uh, unless you plead guilty to some of the Charleston
10 cases tomorrow, which apparently is possible. Um -- but, uh,
11 it'd be some other Judge. So...

12 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
13 CONFERENCE, OFF THE RECORD.)

14 (WHEREUPON, COURT RESUMED.)

15 THE COURT: Uh -- there -- there's -- there's no --
16 there's no silver lining here for you really. This is not --
17 you're not in a good situation. Because, even though you --
18 The State is agreeing not to give you -- to seek a life
19 sentence---

20 MR. EVANS: I know; that's why I saying. (SIC)

21 THE COURT: ---it's possible they -- that -- that, uh --
22 um -- I mean, is The State agreeing to make a recommendation
23 if he testifies truthfully?

24 MR. WILLIAMS: Your Honor, we are not.

25 THE COURT: Or are you agreeing just to tell that to the

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 sentencing Judge?

2 MR. WILLIAMS: Exactly, Your Honor; we're giving him a
3 chance to cooperate in the other trials. And we certainly
4 will represent what he does, but you know, Your Honor, I'm
5 not going to tie the hands of my victims---

6 THE COURT: Okay.

7 MR. WILLIAMS: ---and I'm not going to---

8 THE COURT: Well let -- let me -- let me -- let me see
9 if I can explain it correctly. And you lawyers listen
10 carefully, and if I mis- -- if I misstate it, you correct me.

11 Um -- you're pleading guilty here today; you're gonna
12 get thirty years.

13 All right, so then some of these other codefendants that
14 have not yet gone to trial yet -- people you committed these
15 other armed robberies with -- they're either gonna go to
16 trial or they're gonna plead guilty.

17 If they go to trial, you are expected to be available to
18 testify truthfully in those cases.

19 Now, if you testify truthfully, uh, the Judge who -- who
20 sentences you on your later guilty pleas will know that.
21 And, the Judge will do with it as the Judge sees fit. But,
22 the Judge will be the one who makes the decision about what
23 your sentence will be.

24 You, uh, face how many armed robbery charges?

25 MS. TAYLOR: Sixteen total.

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 THE COURT: Sixteen.

2 MR. WILLIAMS: Something -- something around sixteen,
3 Your Honor.

4 THE COURT: Okay, so the Judge could give you thirty
5 years consecutive on every one of those charges.

6 That's fifteen other charges, that'd be what? Four
7 hundred and fifty years that the Judge could give you. It's
8 up to the Judge.

9 And, of course, if you get four hundred and fifty years,
10 you're not gonna get out. You're gonna be, uh -- that's
11 the -- the equivalent of a life sentence. *Sounds like the security did open!*

12 Now, um -- all right, you understand?

13 MR. EVANS: (No response.)

14 THE COURT: On the other -- you know, the -- the
15 decision is up to the Judge as to what your sentence is gonna
16 be. You understand that?

17 MR. EVANS: Yes, sir.

18 THE COURT: Now, understanding that, do you want to go
19 forward and enter this guilty plea today as -- as you agreed
20 to do in this -- in this agreement?

21 You don't have to; do you want to?

22 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
23 CONFERENCE, OFF THE RECORD.)

24 (WHEREUPON, COURT RESUMED.)

25 MR. EVANS: What's the possibility of my charge

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 consecutive? (SIC)

2 THE COURT: I -- I -- I -- I don't have an answer to
3 that. You asked, what's the possibility that you might get
4 consecutive time?

5 MR. EVANS: Yes, sir. There is a possibility of it?

6 THE COURT: Oh; there is a possibility, yes.

7 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
8 CONFERENCE/CRYING BREAKDOWN OF DEFENDANT AND GALLERY MEMBERS,
9 OFF THE RECORD.)

10 (WHEREUPON, COURT RESUMED.)

11 THE COURT: Mr. Evans, realistically -- realistically,
12 you face a very strong possibility of getting some
13 consecutive time.

14 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
15 CONFERENCE/ATTEMPT TO RECOMPOSE DEFENDANT, OFF THE RECORD.)

16 (WHEREUPON, COURT RESUMED.)

17 THE COURT: Who -- who all is out here from his family?
18 You're his sister, right?

19 SISTER: (Nod.)

20 THE COURT: And -- and you are the cousin?

21 COUSIN: (Nod.)

22 THE COURT: Anybody else? Okay, I just -- I just wanted
23 to know who was there. All right.

24 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
25 CONFERENCE/ATTEMPT TO RECOMPOSE DEFENDANT, OFF THE RECORD.)

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 (WHEREUPON, COURT RESUMED.)

2 MR. EVANS: Go ahead.

3 MS. TAYLOR: He said, go ahead; he's obviously having.
4 trouble speaking, Judge.

5 THE COURT: All right. Um -- we're -- we're talking
6 about the plea agreement and I want to make sure that you
7 understand what's going on in this plea agreement.

8 Um -- Ms. Taylor, you have -- let me ask this question.
9 When was this document prepared?

10 MS. TAYLOR: Uh -- that particular document I believe is
11 today, Judge. But, we have had a series of plea agreements
12 with minor changes.

13 THE COURT: Okay, so -- so this document, with some
14 minor changes, has been in existence for some time?

15 MS. TAYLOR: Yes, sir.

16 THE COURT: Like weeks?

17 MS. TAYLOR: Um -- at -- definitely weeks. And---

18 THE COURT: And he has -- has he made up---

19 MS. TAYLOR: ---we have -- I---

20 THE COURT: ---in the period of time of several weeks
21 ago were you meeting with him and discussing this with --
22 this potential plea agreement with him?

23 MR. EVANS: April 18.

24 MS. TAYLOR: Yes, sir.

25 THE COURT: And -- and are you satisfied that Mr. Evans

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 understands, uh, the plea agreement?

2 MS. TAYLOR: Yes, sir---

3 THE COURT: All right.

4 MR. TAYLOR: ---I -- I do.

5 THE COURT: And so now, Mr. Evans, you've read the
6 agreement; correct?

7 MS. TAYLOR: I read it to him, Your Honor.

8 THE COURT: You read it to him?

9 MS. TAYLOR: He also has a copy of a prior one that he
10 has read himself and I actually gave to him a -- a couple
11 weeks ago. It's just slight changes, but the essential
12 contents of the plea agreement as far as his obligations are
13 the same.

14 THE COURT: Okay. Well, the long and the short of it
15 really is that you're pleading guilty today and you're gonna
16 get a thirty-year sentence.

17 You're -- if you choose to plead guilty later, then the
18 sentence you get is going to be decided by the Judge in that
19 case. And, it could be a consecutive sentence that goes up
20 as high as four hundred and fifty years if my math is
21 correct.

22 It could be a concurrent sentence that goes no higher
23 than thirty years. It's not up to you, it's not up to
24 Mr. Williams, it's not up to Ms. Taylor, it's up to the Judge
25 who hears the plea at that time to make the decision as to

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 what your sentence is gonna be.

2 You understand?

3 MR. EVANS: I got a question.

4 THE COURT: Ask the question.

5 MR. EVANS: How can a man do four hundred and something
6 years?

7 THE COURT: I don't have an answer to that question.
8 The -- but the obvious -- the obvious answer to that is that
9 it is very unlikely that somebody would live long enough to
10 get out of jail if they got a sentence of four hundred and
11 fifty years.

12 But the point of it is, you're looking at more jail time
13 possibly if -- even though you plead guilty here today. And
14 I want to make sure you understand that.

15 Do you understand?

16 MR. EVANS: Ain't got no choice.

17 THE COURT: Do you understand?

18 MR. EVANS: I understand; I still ain't got no choice. 

19 THE COURT: Now look -- I -- I want you to -- I want you
20 to look at me, I want you to speak clearly, and I want you to
21 give me straight answers; okay?

22 MR. EVANS: (No response.)

23 THE COURT: Do you understand?

24 MR. EVANS: Yes, sir.

25 THE COURT: All right. Um -- we had a great deal of

STATE VERSUS THOMAS EVANS

PLEA HEARING

1 discussion over yesterday and today about the statement that
2 you gave to Detective Osborne. Um -- and you, through your
3 lawyer, have challenged the admissibility of that statement
4 in various respects, arguing that it was not voluntarily
5 given, and that you had previously invoked your right to have
6 an attorney, and that you had been made promises of a
7 sentence of probation or some -- some other type of promise.

8 I want to make sure you understand that if you plead
9 guilty today, you give up the right to ever challenge that
10 statement.

11 Do you understand that?

12 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
13 CONFERENCE, OFF THE RECORD.)

14 (WHEREUPON, COURT RESUMED.)

15 THE COURT: In other words, you will not be able to come
16 back later this year or some other time and claim that your
17 statement was involuntary or that you had asked for an
18 attorney. It'll be too late then.

19 Do you understand?

20 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
21 CONFERENCE, OFF THE RECORD.)

22 (WHEREUPON, COURT RESUMED.)

23 MR. EVANS: Yes, sir.

24 THE COURT: All right. Now, this crime that you are
25 pleading guilty to, as I said, carries the maximum of thirty

NO
understand. All
Why want to
go
back
to
start
over.

STATE VERSUS THOMAS EVANS

PLEA HEARING

1 years in prison. Now, we've already discussed the fact that
2 you can't get a life sentence under the two strikes law for
3 any crimes that you have already committed.

4 However, if you ever were to get out of jail or if you
5 were to ever commit a most serious crime while you're in jail
6 in the future, you already will have one strike against you
7 and you could then get a life sentence.

8 Now, do you understand what I'm saying? This -- this --
9 I'm talking about for crimes that you might commit in the
10 future.

11 Do you understand?

12 MR. EVANS: Yes, sir.

13 THE COURT: All right. And this crime is one that is
14 classified under South Carolina law as a violent crime.

15 And, because of that and because it carries a maximum
16 penalty of thirty years, you will not be eligible for parole
17 on the sentence that you get here today. You will have to
18 serve at least eighty-five percent of the sentence, which is
19 twenty-five-and-a-half years. So, you will have to serve at
20 least twenty-five-and-a-half years before you will be
21 eligible for release.

22 Do you understand that?

23 MS. TAYLOR: Answer the question.

24 MR. EVANS: (Mumbling response/crying) Yes, sir.

25 THE COURT: Answer me.

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 MS. TAYLOR: He did answer.

2 THE COURT: I didn't hear him.

3 MS. TAYLOR: Clearly say it; you've got to say it.

4 MR. EVANS: (No response.)

5 THE COURT: Look here -- look here -- look at me.

6 MR. EVANS: Man, I just answer you, sir. How many times
7 you want me to answer?

8 THE COURT: Look at -- look at me -- look at me. Now,
9 how do you think those folks felt in that grocery store when
10 you were in there robbing them? Do you think they were
11 scared?

12 MR. EVANS: You think I ain't got feelings to it? You
13 know, I know I was guilty.

14 THE COURT: All right, well why don't you---

15 MR. EVANS: I felt remorse.

16 THE COURT: ---why don't you sit up straight and answer
17 me like you expected those people to do what you told them to
18 do there in that grocery store that day? Answer me like a
19 man.

20 MR. EVANS: I did one. (SIC)

21 THE COURT: Answer me like a man.

22 MR. EVANS: I answer you like a man. (SIC)

23 THE COURT: Do you understand me?

24 MR. EVANS: Well, what to tell you? I ain't said
25 nothing wrong to them.

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 MS. TAYLOR: Stand up straight -- stand up straight.

2 THE COURT: All right, now listen.

3 MR. EVANS: I didn't demand anything from them.

4 THE COURT: Listen to me. I'm gonna ask you some
5 questions, and you're gonna give me straight answers.

6 Do you understand that?

7 MR. EVANS: Man, just give me my sentence.

8 MS. TAYLOR: You've got to answer his questions.

9 MR. EVANS: I---

10 MS. TAYLOR: Listen.

11 THE COURT: Do you understand---

12 MS. TAYLOR: Settle down.

13 MR. EVANS: I am answering the questions.

14 MS. TAYLOR: Settle down, okay? Just settle down.

15 THE COURT: Do you understand, Mr. Evans, that if --
16 that you will have to serve at least eighty-five percent,
17 which is twenty-five-and-a-half years, before you will be
18 eligible to be released from prison?

19 MR. EVANS: I already say yes, sir.

20 MS. TAYLOR: Say yes, sir in a polite way, okay? Stop
21 that Thomas---

22 MR. EVANS: Yes, sir.

23 MR. SMITH: ---stop that.

24 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
25 CONFERENCE, OFF THE RECORD.)

1 (WHEREUPON, COURT RESUMED.)

2 THE COURT: Now, other than the promises that The State
3 has made to you in the plea agreement that we have discussed
4 already and the dis- -- that -- that you have signed, other
5 than that, has anybody promised you anything or held out any
6 hope of reward in order to get you to plead guilty?

7 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
8 CONFERENCE, OFF THE RECORD.)

9 (WHEREUPON, COURT RESUMED.)

10 MR. EVANS: No, sir.

11 THE COURT: Has anybody threatened you or used force or
12 pressure or intimidation in order to get you to plead guilty?

13 MR. EVANS: No, sir.

14 THE COURT: Did you say no, sir?

15 MR. EVANS: No, sir.

16 MS. TAYLOR: Speak clearly.

17 MR. EVANS: No, sir.

18 THE COURT: Now, we're -- we are, uh -- are -- are you
19 completely satisfied with your attorney?

20 MR. EVANS: Yes, sir.

21 THE COURT: Is there anything that your attorney has
22 done or that she has not done that you are dissatisfied with?

23 MR. EVANS: I satisfied.

24 THE COURT: Excuse me?

25 MS. TAYLOR: You have to say yes or no.

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 MR. EVANS: Uh -- I satisfied -- I satisfied.

2 THE COURT: You're satisfied? All right. Um -- now,
3 Mr. Evans---

4 MR. EVANS: Yes, sir?

5 THE COURT: ---one of the responsibilities that I have
6 is to make sure that you are -- that you are pleading guilty
7 because you want to. That you're pleading guilty
8 voluntarily.

9 MR. EVANS: Yes, sir.

10 THE COURT: Now, I realize that this is a difficult
11 situation for you. Uh -- but I still have to talk to you
12 about whether or not this really is what you want to do. So
13 now, I'm gonna ask you some questions about that.

14 Obviously, we are right here in the middle of trial, and
15 if you're gonna plead guilty, you have to do it quick. But,
16 do you feel as though you're being pressured into pleading
17 guilty because you are in trial?

18 MR. EVANS: Right now, to be honest Your Honor, I'm
19 confused.

20 THE COURT: Sir?

21 MR. EVANS: I'm confused of my life; I just don't want
22 to do a life sentence.

23 MS. TAYLOR: Speak up.

24 MR. EVANS: I'm confused and I'm lost; I just don't want
25 to do no life sentence.

*Plea on G. that Evans
Plea to G. 4. Sent to
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STATE VERSUS THOMAS EVANS
PLEA HEARING

1 THE COURT: All right; well, I think we're going to have
2 to go ahead with the trial.

3 And part of the reason for that is that he's not
4 answering my questions and he is, um---

5 MR. EVANS: You asked me a question; I going truthfully.

6 THE COURT: Well then I -- you -- and you did answer
7 that question; I appreciate it.

8 But, that was -- that was not what I was talking about.
9 For the last five minutes I've been trying to get the answers
10 out of you that I could hear, that were clear, that would
11 satisfy me that you're doing this voluntarily. And I'm --
12 and I'm -- I'm -- I'm seeing a bunch of childish melodrama
13 coming out of you.

14 MR. EVANS: Well -- well -- well, can I speak to you, my
15 lawyer, and the Solicitor one on one?

16 THE COURT: No, sir; it has to be done right here in
17 Court.

18 MR. EVANS: Then, um, then go ahead and give me my
19 guilty plea, Your Honor.

20 MS. TAYLOR: Judge, he wants to enter the guilty plea.
21 And it is difficult with his family here and the situation.

22 MR. EVANS: My family ain't got nothing to do with this.

23 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
24 CONFERENCE, OFF THE RECORD.)

25 (WHEREUPON, COURT RESUMED.)

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 THE COURT: Mr. Evans do you want to go forward with the
2 guilty plea?

3 MS. TAYLOR: Look at him and answer the question.

4 MR. EVANS: I already said yes, sir.

5 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
6 CONFERENCE, OFF THE RECORD.)

7 (WHEREUPON, COURT RESUMED.)

8 MR. EVANS: You expect me to be happy?

9 MS. TAYLOR: No, nobody expects you to be happy, but we
10 do expect you to---

11 THE COURT: All right, hold on. Let's -- we're gonna --
12 I'm gonna bring a little order to this.

13 If you want to have a conversation with him, you tell me
14 you want to have a conversation with him and I will let you
15 talk to him.

16 MS. TAYLOR: Could I have a moment?

17 THE COURT: But -- but for -- but for right now, I'm
18 gonna talk to him.

19 MS. TAYLOR: Okay.

20 THE COURT: All right? Now, if Mr. -- Mr. Evans, if you
21 want to talk to your lawyer, all you have to do is say, I
22 want to talk to my lawyer and I'll give you a chance to talk
23 to Ms. Taylor. All right?

24 MR. EVANS: Yes, sir.

25 THE COURT: But I'm gonna ask you some questions; I want

1 you to answer me. And if you've already answered the
2 question, I don't want you to tell me that you've already
3 answered the question.

4 MR. EVANS: All right.

5 THE COURT: You haven't answered the question
6 satisfactorily to me or I wouldn't be asking -- asking you
7 that question again.

8 MR. EVANS: Okay.

9 THE COURT: All right? Now, are you satisfied with your
10 attorney?

11 MR. EVANS: Yes, sir.

12 THE COURT: Has she done everything that you feel that
13 she could have done or that she should have done?

14 MR. EVANS: Yes, sir.

15 THE COURT: Has she done anything in this case that you
16 feel she should not have done?

17 MR. EVANS: Not to my knowledge. Possibly everything's
18 correct.

19 THE COURT: Okay. Now, understanding that this is a --
20 this is a pressure moment for you, do you feel as though
21 you've had all the time you need to make up your mind as to
22 whether or not you want to plead guilty?

23 MR. EVANS: I did, but I wasn't using it wisely.

24 THE COURT: I'm sorry?

25 MS. TAYLOR: He said he wasn't---

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 MR. EVANS: I did -- I did -- I did, but I wasn't using
2 it wisely.

3 THE COURT: I still didn't hear you.

4 MS. TAYLOR: He said, I did, but I wasn't using it
5 wisely.

6 THE COURT: You weren't using the time wisely?

7 MS. TAYLOR: He's talking about previously; yes, sir.

8 THE COURT: All right. Are -- all right.. (After pause.)
9 Now---

10 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
11 CONFERENCE, OFF THE RECORD.)

12 (WHEREUPON, COURT RESUMED.)

13 MS. TAYLOR: He's -- he's asked if he could talk to me
14 for a moment.

15 THE COURT: All right.

16 MS. TAYLOR: Thank you.

17 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
18 CONFERENCE, OFF THE RECORD.)

19 (WHEREUPON, COURT RESUMED.)

20 MS. TAYLOR: We're ready.

21 THE COURT: Now, um, the question I was asking you was,
22 understanding this -- that this is a pressure moment for you,
23 um, do you -- are you -- do you still want to plead guilty?

24 MR. EVANS: Yes, sir.

25 THE COURT: Now, do you -- do you feel as though you

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 have had all of the time you need in order to make up your
2 mind about whether or not to plead guilty?

3 MR. EVANS: Yes, sir.

4 THE COURT: Now---

5 MR. EVANS: Can I ask you a question?

6 THE COURT: Yes, sir.

7 MR. EVANS: If I was to say no, sir, we would have
8 continue (SIC) the trial?

9 THE COURT: Well, let -- let me -- the next question --
10 the next question would be this.

11 You don't have to plead guilty; you know that. But, if
12 you don't plead guilty---

13 MR. EVANS: We continue.

14 THE COURT: ---we're gonna continue with the trial. Now
15 I -- I -- I -- so -- so you -- the question really comes down
16 to, do you want to plead guilty? Because, we can't control
17 the timing of it anymore. You either plead guilty now or we
18 finish the trial.

19 But it's -- the important thing---

20 MR. EVANS: Right.

21 THE COURT: ---is for you to understand -- and this --
22 this is -- I'm not -- you -- I'm speaking directly -- I'm
23 speaking, uh, frankly with you.

24 But I also want you to understand that I'm -- I'm trying
25 to get to the bottom of it. I'm trying to make sure -- I've

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 got to make a decision as to whether or not you were doing
2 this voluntarily. So, I'm trying to get to the point where
3 you and I are speaking frankly with each other. I want you
4 to be frank with me. I want you to tell me, honestly, the
5 truth to all these questions that I'm asking you.

6 MR. EVANS: That's why I want to talk to you one on one,
7 but you won't allow me.

8 THE COURT: Well, unfortunately we can't do that. We
9 can't -- you can't talk to me one on one. It has to be a
10 conversation that is on the record.

11 MR. EVANS: All four us right there, but it doesn't
12 matter anymore.

13 THE COURT: Is there something that you want to tell me
14 that you feel like you can't tell me right there as you stand
15 there now?

16 MR. EVANS: Uh-huh.

17 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
18 CONFERENCE, OFF THE RECORD.)

19 (WHEREUPON, COURT RESUMED.)

20 MS. TAYLOR: He says he wants you, me, and Mr. Williams,
21 is that right?

22 MR. EVANS: With all of us.

23 THE COURT: Well, we -- we can walk right now here
24 and -- and -- and be -- now, we're not gonna do the whole
25 plea right there, but if you have something you want to tell

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 me, you can tell me right down here in front of the Court
2 Reporter. It'll be on the record. Now, there'll be some law
3 enforcement officers up there with us.

4 MR. EVANS: I don't care.

5 THE COURT: It'll be you and Ms. Taylor and Mr. Williams
6 and me and however many officers feel like they need to be
7 down there and the Court Reporter.

8 MR. EVANS: Oh no, it ain't no -- I mean like just the
9 others in the courtroom.

10 THE COURT: Is that okay?

11 MR. EVANS: Yeah, I got no problem with that.

12 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
13 CONFERENCE, OFF THE RECORD.)

14 (WHEREUPON, COURT RESUMED.)

15 (INDICATED PARTIES FORWARD.)

16 MR. WILLIAMS: Is this supposed to be on the record?

17 THE COURT: Yeah, it's gonna be on the record.

18 COURT REPORTER: I can't hear him.

19 THE COURT: You got to speak where she can hear you.
20 Where's the microphone? Right there.

21 MR. EVANS: Like, I was like -- all right, the plea
22 situation. There's a lot of things I was confuse (SIC) in
23 the beginning and I didn't have no knowledge. What I ain't
24 had knowledge about I didn't understand it.

25 So like when I was at the pretrial I was lost on the

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 situation, you know? And I didn't really know how to go
2 about it and I didn't really have -- think I had time to go
3 talk to my attorney about it.

4 So I -- I mean, when you asking me about the statement,
5 the reason why I didn't know it was 'cause of -- at the trial
6 I would have been truthful about the whole situation you
7 know? So I -- that right there I -- messed me up on my -- on
8 my, um -- it mess with my statement.

9 So and I -- how do I get that out in the open Court?
10 And if I really understand what was really -- what really was
11 going on.

12 THE COURT: All right; well, now you do, right?

13 MR. EVANS: Yeah; and now it's too late, you know?

14 THE COURT: Okay; well here we are. So you -- you --
15 you and I have been at this point for a long time and I'm
16 gonna ask you this question one more time.

17 Understanding all of that, do you want to plead guilty
18 or do you want to continue with your trial? It's up to you.

19 MR. EVANS: Nobody saying they're willing to go ahead
20 and start over, so therefore I go ahead and take the plea.

21 COURT REPORTER: I didn't hear that.

22 THE COURT: I didn't hear the first part.

23 MR. EVANS: I say there's no way to start over, so go
24 ahead and take the plea.

25 THE COURT: There's no way to start the trial over.

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 MR. EVANS: Yeah, I know.

2 THE COURT: And there's no way to go back to the point
3 where you admitted these crimes.

4 MR. EVANS: Yeah, I know.

5 THE COURT: But, you don't have to plead guilty. It's
6 your decision.

7 MR. EVANS: I mean, I -- I'm trying to come home to my
8 family, but that's a long time. I mean I -- there's another
9 thing about the plea for me to prepare to understand it, it
10 ain't up to him or my lawyer, it's up to the Judge on the
11 second part?

12 THE COURT: To -- to do the sentence, that's right.

13 MR. EVANS: All right; well, can I ask these two a
14 question?

15 THE COURT: Sure.

16 MR. EVANS: Would you-all be like recommending
17 something?

18 MS. TAYLOR: He would recommend something and I would
19 recommend something, but the Judge would determine it.

20 THE COURT: Well, they're -- they're -- they're going
21 to -- your attorney is gonna have an opportunity to argue as
22 long as the -- as she can and as best as she can that you
23 should get a con- -- a con- -- a concurrent sentence;
24 meaning, no more than thirty years. No additional time.

25 Mr. Williams is not limited as to what he's gonna do.

1 He might sit -- he might choose to sit there and be quiet and
2 say nothing; let -- and -- and not argue for more time.

3 On the other hand, he might come in and say, Judge, we
4 really think the guy needs to get more time. That's his
5 decision, and he can make that decision sometime later down
6 the road. He's not making that decision now.

7 Then it becomes the Judge's decision as to what sentence
8 to impose.

9 MR. EVANS: In other words, the Judges, like they listen
10 to what the Solicitor wants?

11 THE COURT: They're gonna listen, but it's the Judge's
12 decision.

13 MR. EVANS: All right.

14 THE COURT: All right.

15 MR. EVANS: We could proceed. I appreciate that.

16 THE COURT: Now -- excuse me?

17 MS. TAYLOR: He said he appreciates it.

18 MR. EVANS: I said you could proceed.

19 THE COURT: Okay now, one more time. Do you want to
20 continue with the plea---

21 MR. EVANS: Yes, sir.

22 THE COURT: ---or do you want to continue with the
23 trial?

24 MR. EVANS: No trial.

25 THE COURT: No trial, meaning you want to plead guilty?

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 MR. EVANS: Yes, sir.

2 THE COURT: All right.

3 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BENCH
4 CONFERENCE, OFF THE RECORD.)

5 (WHEREUPON, COURT RESUMED.)

6 (WHEREUPON, ALL PARTIES RETURNED TO THEIR TABLES.)

7 THE COURT: Now, Mr. Evans, you've had a lot of time
8 over the last, uh, two years to talk with your lawyer.

9 And you've been representing him pretty much the whole
10 time?

11 MS. TAYLOR: Yes, sir.

12 THE COURT: Okay; over the last two years to talk to
13 Ms. Taylor and to Ms. Bowley about, uh, your case. In those
14 conversations, have you understood the things that they have
15 explained to you?

16 MR. EVANS: Some things I was confused on; but
17 everything's -- everything's pretty much clear, Your Honor.

18 THE COURT: Everything's pretty much clear now?

19 MR. EVANS: Yes, sir.

20 THE COURT: All right. Um -- now, in terms of -- of
21 what would happen during the rest of the trial if we were to
22 do that -- if you were to decide you wanted to go ahead with
23 the trial -- are you satisfied that Ms. Taylor and Ms. Bowley
24 are sufficiently prepared to adequately and effectively
25 represent you in the rest of the trial?

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 MR. EVANS: Huh?

2 THE COURT: Are they -- do you think they're prepared to
3 defend you in this trial?

4 MS. TAYLOR: If we went forward.

5 MR. EVANS: Oh; yes, sir.

6 THE COURT: All right; now, so far in the trial, are you
7 satisfied with the way in which they have defended you?

8 MR. EVANS: Yes, sir.

9 THE COURT: You and I have had some frank discussions
10 here today, and I've asked you a lot of questions and -- and
11 for some of those questions initially you did not understand
12 what I was asking you.

13 Are you satisfied now that you have understood all of
14 the questions that I have asked you?

15 MR. EVANS: Yes, sir.

16 THE COURT: And when you have answered my questions,
17 have -- have you answered my questions truthfully?

18 MR. EVANS: Yes, sir.

19 THE COURT: (After pause.) Are you guilty of the armed
20 robbery that you are accused of committing in the indictment
21 that we're trying here today?

22 MR. EVANS: Yes, sir.

23 THE COURT: You -- you were in here this morning when we
24 played the statement of the -- recorded statement, um, which
25 is marked as State's Exhibit what?

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 MR. WILLIAMS: I don't believe we actually marked it,
2 Your Honor.

3 THE COURT: All right, well let's -- we'll go -- let's
4 mark it; we'll mark it in a moment.

5 But, we played the audio tape of your statement, and in
6 that audio tape, uh, Detective Osborne read the account of
7 what happened in the Doscher robbery. Is everything that he
8 read from your statement true?

9 MR. EVANS: Yes, sir.

10 THE COURT: You have had a chance to go over the
11 indictment in this case, have you not?

12 MR. EVANS: (No response.)

13 THE COURT: You've seen the indictment?

14 MR. EVANS: (No response.)

15 THE COURT: Ms. Taylor, I'm sure you've gone over the
16 indictment with him?

17 MS. TAYLOR: Yes, sir -- yes, Your Honor.

18 THE COURT: Okay; show him the indictment to make sure
19 he knows what we're talking about. You can show him the
20 original or if you have a copy there you can show him a copy.

21 MR. TAYLOR: I have a copy.

22 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
23 CONFERENCE, OFF THE RECORD.)

24 (WHEREUPON, COURT RESUMED.)

25 THE COURT: Now, Mr. Evans, I'm going to go over the

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 indictment with you. I'm gonna read you the indictment and
2 after I've read you the indictment I'm gonna ask you two
3 questions.

4 First, I want to know whether or not you understand that
5 that's what The State would have to prove in order to convict
6 you of armed robbery.

7 And second, I want to know whether or not what is
8 alleged in the indictment is true.

9 Those are the two questions I'm gonna ask you, but I'm
10 gonna read it to you first.

11 The indictment alleges that on or about April 1st 2006,
12 in Charleston County South Carolina, at 1133 Savannah
13 Highway, Charleston, by the use of force, threats, or
14 intimidation and while armed with a deadly weapon, to wit a
15 handgun, the Defendant, Thomas Jerrain (phonetic/sic) --
16 Jermaine Evans, while acting in concert with another or
17 others did take and carry away goods and or monies from the
18 person or immediate presence of the employees of Doscher's
19 Grocery Store with the intent to permanently deprive them of
20 possession thereof in violation of Section 16-11-330(a) of
21 the South Carolina Code of Laws.

22 Now, do you understand that that's what The State would
23 have to prove in order to convict you of this crime?

24 MR. EVANS: Yes, sir.

25 THE COURT: And is all that true?

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 MR. EVANS: Yes, sir.

2 THE COURT: (After pause.) Now, um, because we're in the
3 middle of trial and because the factual basis of the plea has
4 already been testified to by several witnesses, uh, perhaps
5 we can shorten that by me just asking him a few questions
6 about the testimony of these witnesses. Would that suit you
7 Ms. Taylor?

8 MS. TAYLOR: Whatever you think, Your Honor.

9 THE COURT: All right, well let me -- let me, um --
10 would that suit you Mr. Williams?

11 MR. WILLIAMS: Yes, Your Honor.

12 THE COURT: All right now; Mr. Evans, you've heard
13 the -- the three or four or maybe it was even five witnesses
14 who came in and testified about the robbery, right?

15 MR. EVANS: Yes, sir.

16 THE COURT: And you saw the videotape from the various
17 cameras that were inside the Doscher Grocery Store that --
18 that night; right?

19 MR. EVANS: Yes, sir.

20 THE COURT: And you saw on those films the -- the three
21 men who were masked inside the store that night; correct?

22 MR. EVANS: Yes, sir.

23 THE COURT: And is it true that one of those three men
24 was you?

25 MR. EVANS: Yes, sir.

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 THE COURT: Which one?

2 MR. EVANS: The one in the blue.

3 THE COURT: The one in the blue. And so, when the
4 witnesses came in to testify, uh, about the robbery, would --
5 did they all testify truthfully?

6 MR. EVANS: To be honest with you, I didn't like pay no
7 attention.

8 THE COURT: You weren't listening all that carefully?

9 MR. EVANS: No, sir.

10 THE COURT: All right. But you -- you did watch the
11 film?

12 MR. EVANS: Yes, sir.

13 THE COURT: And you were the guy in the blue -- blue in
14 the film who was in there robbing the store with a gun?

15 MR. EVANS: Yes, sir.

16 THE COURT: All right. Um -- I think that that's a
17 sufficient factual basis for the plea. Mr. Williams, do you
18 agree?

19 MR. WILLIAMS: Yes, sir.

20 THE COURT: And Ms. Taylor, do you agree?

21 MS. TAYLOR: I -- I do, Your Honor.

22 THE COURT: (After pause.) Okay now, Mr. Evans, we've
23 covered pretty much everything that we have to cover in order
24 to do this guilty plea.

25 But, I want to go back and talk to you a little bit more

STATE VERSUS THOMAS EVANS

PLEA HEARING

1 about whether or not this is really what you want to do.

2 Now, do you feel like I have pressured you into pleading
3 guilty here today?

4 MR. EVANS: No, sir.

5 THE COURT: Has Ms. Taylor pressured you into pleading
6 guilty here today?

7 MR. EVANS: No, sir.

8 THE COURT: Has Ms. Bowley pressured you into pleading
9 guilty here today?

10 MR. EVANS: No, sir.

11 THE COURT: Have any of the law enforcement officers who
12 have been back there with you in the jail or anywhere else,
13 have they pressured you into pleading guilty here today?

14 MR. EVANS: No, sir.

15 THE COURT: Has the Solicitor pressured you into
16 pleading guilty here today?

17 MR. EVANS: No, sir.

18 THE COURT: Sir?

19 MR. EVANS: No, sir.

20 MS. TAYLOR: No, sir.

21 THE COURT: All right. Is there anyone who has
22 pressured you into pleading guilty here today?

23 MR. EVANS: No, they just been honest with me.

24 THE COURT: Speak -- you---

25 MS. TAYLOR: No, they've just been honest with me.

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 THE COURT: okay. Now, do you -- do -- are -- are
2 you -- and you still want to go ahead and plead guilty?

3 MR. EVANS: (No response.)

4 THE COURT: I know I've asked you that a bunch of times,
5 but I want to make sure that -- that I am correct when I --
6 when I rule that you're doing this voluntarily.

7 MR. EVANS: I wish I could-a get a lower sentence.

8 THE COURT: I know you do. But you understand -- you
9 know -- frankly, you understand that's not gonna happen?

10 MR. EVANS: Yes, sir.

11 THE COURT: You're gonna get thirty years. You
12 understand that?

13 MR. EVANS: Yes, sir.

14 THE COURT: (After pause.) Ms. Taylor, are there any
15 other, uh, potential defenses that you are aware of that I
16 perhaps have not become aware of thus far in the trial?

17 MS. TAYLOR: No, sir.

18 THE COURT: (After long pause.) Now, um, Mr. Evans,
19 you -- you -- especially when you testified yesterday, uh,
20 you made a lot of accusations against, uh -- um, Detective
21 Osborne and, uh, others really, uh, about things that --
22 that -- that would -- had been threatened to be done to your
23 family about, um, a variety of different -- of accusations.
24 The -- the record will reflect what those are.

25 Um -- is there anything now that is being threatened

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 against you by anybody -- other than possibly placing a life
2 sentence on a two strikes, uh, sentence if you don't plead
3 guilty -- is there?

4 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
5 CONFERENCE, OFF THE RECORD.)

6 (WHEREUPON, COURT RESUMED.)

7 MR. EVANS: No -- no, sir.

8 THE COURT: Now, is -- for example, is -- and -- and --
9 and some of your family members are here. Has anybody, to
10 your knowledge, threatened any of your family members?

11 MR. EVANS: No, sir.

12 THE COURT: Is there anything that you and I have
13 discussed that you feel you don't understand?

14 MR. EVANS: I don't understand the question.

15 MS. TAYLOR: Speak up loudly.

16 MR. EVANS: I don't understand the question.

17 THE COURT: Is there anything else that you want to ask
18 me before we go forward?

19 MR. EVANS: There's only one for here?

20 THE COURT: Okay now, and I'm gonna -- let me -- let me
21 stop and make sure you understand that. That decision---

22 MR. EVANS: It's not you.

23 THE COURT: ---it's not gonna be me---

24 MR. EVANS: Okay.

25 THE COURT: ---and it's not gonna be made today.

1 MR. EVANS: Okay.

2 THE COURT: All right? Today, if we finish this plea,
3 you'll get a thirty-year sentence.

4 At some point in the future, some other Judge -- I mean,
5 it could conceivable be me, but I -- I don't have any Court
6 scheduled down here in the -- in the coming months, so it's
7 probably not going to be me -- but some other Judge is gonna
8 make a decision about whether or not you get more time.

9 And you -- you got that clear -- clearly in your mind,
10 right?

11 MR. EVANS: Yes, sir.

12 THE COURT: Okay. Now, is there anything else that you
13 want to ask me before we go forward?

14 MR. EVANS: I ain't going in front of Judge Jefferson,
15 am I?

16 THE COURT: Um -- I -- I -- I really -- I really -- I
17 don't know if you said that jokingly or not, but I really am
18 not able to answer that question because I don't know what
19 Judge you'll be appearing in front of.

20 Nobody can let -- look -- look, nobody can make you any
21 promises about what Judge you're going in front of, okay?

22 MR. EVANS: Just as long as it ain't her.

23 THE COURT: It might be her; she's from Charleston, she
24 holds a lot of Court here.

25 MR. EVANS: She sentence her own son.

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
2 CONFERENCE, OFF THE RECORD.)

3 (WHEREUPON, COURT RESUMED.)

4 THE COURT: Now, you're -- you're -- I still can't tell
5 if you're joking. You -- your mood has lightened up a lot in
6 the last fifteen minutes, but we can't joke about this, all
7 right?

8 MR. EVANS: I'm not---

9 THE COURT: All right, but we can't joke about this.

10 MR. EVANS: ---I be serious about it, but I'm all right.

11 THE COURT: Well, all right. Then -- then I want to
12 make sure you understand that it might be Judge Jefferson.
13 Okay? You understand that?

14 MS. TAYLOR: We cannot control who the sentencing Judge
15 is.

16 MR. EVANS: Oh man; all -- all right.

17 THE COURT: You understand?

18 MR. EVANS: Yes, sir.

19 THE COURT: all right. Um -- do you want to talk to
20 your lawyer about anything else right now before we complete
21 this plea?

22 MR. EVANS: I appreciate all she done.

23 COURT REPORTER: I didn't get that.

24 MS. TAYLOR: He appreciates all I've done.

25 THE COURT: Okay. All right; but now, answer my

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 question. Do you want to talk to her any more right now
2 before we complete this plea?

3 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
4 CONFERENCE, OFF THE RECORD.)

5 (WHEREUPON, COURT RESUMED.)

6 MS. TAYLOR: But you have to tell him yes or no.

7 MR. EVANS: No, sir.

8 THE COURT: All right. Ms. Taylor, is there anything
9 else you want to say?

10 MS. TAYLOR: No, sir.

11 THE COURT: And now, you having been more closely
12 involved with this than anybody else has. Uh -- do you feel
13 as you stand there now, uh, that your client is, uh,
14 voluntarily making the decision to plead guilty?

15 MS. TAYLOR: Yes, sir.

16 THE COURT: Is there anything else that you think we
17 need to discuss before we go forward?

18 MS. TAYLOR: No, sir.

19 THE COURT: Now I notice that, uh, Mr. Champaign has
20 just walked into the courtroom. Do you -- do you think you
21 need to speak -- does he understand what's going on?

22 MS. TAYLOR: I spoke with his father, um, before lunch
23 break, Your Honor, and -- and discussed what the options
24 were. And his father did actually, uh -- recommended that he
25 take this plea.

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 THE COURT: All right

2 MS. TAYLOR: He knows what's happening.

3 THE COURT: Okay. Um -- and I -- I'll give all the
4 members of -- of -- of Mr. Evans' family a chance to speak in
5 a -- in a few minutes.

6 Um -- so if there's nothing further regarding the plea,
7 then I find that there is a substantial factual basis to
8 support the plea.

9 That his decision to plead guilty is knowingly and
10 voluntarily and intelligently made.

11 And I accept the plea.

12 Now, I'm gonna take a short break. And before we -- we
13 complete the sentencing, I'm gonna -- I'll come back out
14 here, I'm bring the jury out in the courtroom to allow them
15 to watch the sentencing procedure -- procedure -- proceeding.

16 All right? So we'll be right back.

17 MS. TAYLOR: Thank you, Your Honor.

18 (WHEREUPON, COURT RECESSED AT 3:30 P.M.)

19 (WHEREUPON, COURT RESUMED AT 3:39 P.M.)

20 BAILIFF: Order; all rise please.

21 THE COURT: All right, be seated. All right, bring in
22 the jury.

23 (WHEREUPON, JURY ENTERED THE COURTROOM AT 3:39 P.M.)

24 BAILIFF: All present, Your Honor.

25 THE COURT: All right, bring him around please.

STATE VERSUS THOMAS EVANS

PLEA HEARING

1 Mr. Williams, is there anything else from The State?

2 MR. WILLIAM: No, Your Honor. I just have to ask The
3 Court to accept the negotiation. (Next sentence
4 incomprehensible.)

5 THE COURT: Sir?

6 MR. WILLIAMS: Do you want his prior record, Your Honor?

7 THE COURT: Uh -- I'd like to hear his prior record.
8 I -- also, before I forget, did you make the tape as an
9 exhibit?

10 MR. WILLIAMS: I haven't; it's in the machine of
11 Ms. Taylor.

12 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
13 CONFERENCE IN THE PRESENCE OF THE JURY BUT OUTSIDE THE
14 HEARING OF THE JURY, OFF THE RECORD.)

15 (WHEREUPON, COURT RESUMED.)

16 THE COURT: And this -- this is the original plea
17 agreement?

18 MR. WILLIAMS: Yes, Your Honor.

19 THE COURT: And mark that as a Court's Exhibit as well.

20 (WHEREUPON, STATE'S EXHIBIT NUMBER 2 WAS ADMITTED INTO
21 EVIDENCE.)

22 (WHEREUPON, COURT'S EXHIBIT NUMBER 1 WAS ADMITTED INTO
23 EVIDENCE.)

24 THE COURT: Tell me his prior record.

25 MR. WILLIAMS: Thank you, Your Honor; may it please The

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 Court.

2 He had a conviction in 1999 for possession with intent
3 to distribute cocaine, the first offense.

4 A 2002 criminal domestic violence.

5 A 2003 possession of cocaine, criminal domestic
6 violence, and then another count of criminal domestic
7 violence.

8 And, a 2005 shoplifting.

9 THE COURT: All right, uh, anything else Mr. Williams?

10 MR. WILLIAMS: No, Your Honor. I -- I spoke with the
11 victims from the store. Uh -- they were here earlier. I
12 told them that if this did happen what the circumstances were
13 and they were satisfied with not being here. But, I told
14 them I would contact them and let them know the result.

15 THE COURT: All right. Uh -- Detective Osborne, is
16 there anything you'd like to say?

17 DETECTIVE OSBORNE: Uh -- Your Honor, not at this point.
18 I'll talk at one of his later pleas.

19 THE COURT: Sir?

20 DETECTIVE OSBORNE: I'll speak at one of his later
21 pleas.

22 THE COURT: Okay. Well, I want to tell you that I
23 appreciate the way in which you recorded the end of the
24 statement. That has -- that -- that simplified a lot of
25 things. If we had -- if you had not done that, then, um --

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 uh, the creativity of, uh, Mr. Evans in coming up with, um,
2 misrepresentations about what had happened would have been
3 more difficult for The State and more difficult for The Court
4 to -- to contend with.

5 Uh -- all right; Ms. Taylor?

6 MS. TAYLOR: Um -- Your Honor, we have entered the
7 plea -- the negotiated sentence in this matter. Um -- I
8 would have nothing further at this point to, um, say. I
9 don't know whether any of his family -- uh, Thomas is from
10 here, his family is in the Courtroom -- whether any of them
11 wish to speak or not at this time.

12 THE COURT: Would anybody like to speak? I know, ma'am,
13 you indicated earlier you would like to say something. And,
14 uh, if you would like to say something now I'll be happy to
15 hear from you. If you'll just tell me your name, and then
16 speak.

17 MS. TOLBERT: My name is, uh, Nicole Tolbert. I am, uh,
18 one of his sisters.

19 Um -- it's hard to say that, um -- contrary to what
20 everyone is hearing today, we know him as a totally
21 different. (SIC) And the way that he even made you smile,
22 you know, just by his little, you know, quirkiness is how he
23 is, is how we know him.

24 And it's just very unbelievable -- truly, truly
25 unbelievable that he would be involved in this. It's just --

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 it just -- it baffles all of us because that's not how we
2 know him. We know him as T. J. We know him -- I know him as
3 my brother and they know him as a nephew or a cousin.

4 You know, he didn't have, you know, the best of an
5 upbringing, you know. Um -- you know, how -- however, you
6 know, we all make choices. We all have consequences and we
7 understand that.

8 You know, we just ask that, you know, he isn't looked at
9 as not being human because he is -- he is. And we just want
10 him to know that we love him and we support him and we think
11 that this is the best thing for you to do.

12 We love you, T. J.

13 MR. EVANS: I love you too.

14 THE COURT: Mr. Champaign, would you like to speak?

15 MR. CHAMPAIGN: No, sir.

16 THE COURT: Anyone else?

17 (NO RESPONSE.)

18 THE COURT: All right, Mr. Evans, is there anything you
19 would like to say?

20 MR. EVANS: I apologize for what I done; it was stupid.

21 THE COURT: I can't hear you.

22 MR. EVANS: I apologize for what I done; it was stupid.

23 MS. TAYLOR: He apologizes for what he did he said.

24 MR. EVANS: I apologize for what I did; it was stupid,
25 and you never see me do it again. I know what's about to

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 happen.

2 I just want to apologize for the jury for wasting
3 you-all time and, um, taking this time from your life to be
4 here. I appreciate it, but I ain't gonna disagree because
5 I'm guilty.

6 I apologize for everyone that was here (inaudible)---

7 COURT REPORTER: I -- I can't hear, Your Honor.

8 THE COURT: All right.

9 MR. EVANS: --- (inaudible.)

10 THE COURT: All right now, Mr. Evans, uh, you -- just so
11 I can clear up the record, uh, because most of us in the
12 courtroom were having difficulty hearing what you were
13 saying, you were -- you were essentially turning around to
14 all the people in the courtroom, the jury, the prosecutors,
15 law enforcement, and your family and apologizing for
16 everybody having to be here because of what you did. Is that
17 correct?

18 MR. EVANS: Yes, sir.

19 THE COURT: (After pause.) All right; anything else,
20 Mr. Evans?

21 MR. EVANS: Just one more remark on me to my family.
22 Please take care of my kids; tell 'em I love 'em.

23 THE COURT: Mr. Evans, anything else?

24 MR. EVANS: That's all.

25 THE COURT: Ms. Taylor, anything else?

STATE VERSUS THOMAS EVANS
PLEA HEARING

1 MS. TAYLOR: No, sir.

2 MR. WILLIAMS: No, sir.

3 THE COURT: All right; the sentence is thirty years.

4 MS. TAYLOR: Thank you, Your Honor.

5 (WHEREUPON, HEARING ENDED AT 3:47 P.M.)

6 *****END OF REQUESTED TRANSCRIPT*****
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STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

CERTIFICATE OF REPORTER

I, THE UNDERSIGNED VIVIAN H. CROSS, 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 THOSE PROCEEDINGS REQUESTED AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR CHARLESTON COUNTY, SOUTH CAROLINA, ON THE 23RD DAY OF APRIL 2008.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

June 18, 2011

Vivian H. Cross
 VIVIAN H. CROSS
 CIRCUIT COURT REPORTER

NSW20060500354

WITNESSES

RONALD HULL

Charleston City Police Department

AGENCY CASE NUMBER

0606539

ARREST WARRANT NUMBER

H913145

DATE OF ARREST

2006-06-07

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: 6/11/07

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2007GS1007508

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2007

THE STATE

vs.

THOMAS JERMAINE EVANS

06-325061

Indictment for

Armed Robbery

FILED

2007 JUN -7 PM 2:35

JULIE J. ARMSTRONG
CLERK OF COURT

Sar

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions, convened on June 4, 2007 the Grand Jurors of Charleston County present upon their oath:

Armed Robbery

That on or about April 1, 2006, in Charleston County, South Carolina, at 1133 Savannah Highway, Charleston, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, the Defendant, THOMAS JERMAINE EVANS, while acting in concert with another or others, did take and carry away goods and/or monies from the person or immediate presence of the employees of Doschers Grocery Store with the intent to permanently deprive them 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.


NATHAN WILLIAMS
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
STATE VS.

THOMAS EVANS

AKA: _____

Race: _____ Sex: _____ Age: _____

DOB: _____ SS#: _____

Address: _____

DL#: _____ SID#: _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2007GS1007508A/W#: H913145

Date of Offense: _____

S.C. Code § : 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Armed Robberyin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ 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 to Grand Jury. (Defendant initial)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Nathan Williams
Williams, NathanX S. Evans
DefendantDebra K. Gay
Attorney for DefendantWHEREFORE, 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.

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 \$

§ 35.13 (Public Def/Prob) \$500 \$

§ 73.3. 1B TP (Law Enforce. Funding) \$25 \$25.00

§ 33.7. 1B TP (Drug Court Surcharge) \$100 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

3% to County (if paid in installments) \$3.75TOTAL \$128.75Callahan
Clerk of Court/ Deputy ClerkCourt Reporter: V. Cross

PRESIDING JUDGE

Judge Code: 12723Sentence Date: 4/24/08

SCCA/217 (10/2007)

STATE OF SOUTH CAROLINA

09-CP-10-2012
IN THE COURT OF COMMON PLEASCounty of CharlestonTHOMAS EVANS #328618

Full name and prison number (if any) of Applicant

APPLICATION FOR

State of South Carolina

POST-CONVICTION RELIEF

JULIE J. ARNSTRONG
CLERK OF COURT

2009 APR -1 PM 4:30

FILED

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE CORRECTIONAL INSTITUTION
990 WISACKY HWY Bishopville, S.C. 29010-1775
2. Name and location of Court which imposed sentence NINTH Judicial
Circuit, County of Charleston
3. Name(s) of co-defendant(s) (if any) John Reaves, Curtis
Burns, JR., Darryl (Lewis) Louis
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) WT # H-913145 (Have no indictment)
 (b) _____



The date upon which sentence was imposed and the terms of the sentence

- (a) April 24th, 2008
- (b) Sentenced to thirty (30) years imprisonment
- (c) _____

c. Check whether a finding of guilty was made:

- (a) after a plea of guilty I Plead Guilty
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

7. Did you appeal from the judgment of conviction or the imposition of sentence?

lawyer failed To file, I wrote The Court of Appeals in

8. If you answered "yes" to (7), list: July of 2008.

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

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

(c) the date of each such result:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

(a) Lawyer failed To file appeal

(b) I wrote Court of Appeals To see if this Had Been done for me

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

- (a) Ineffective Assistance of Counsel (I.A.C.)
 (b) Violations of my 4th & 8th Amendment Rights
 (c) Violations of my 5th & 14th Amendment Rights

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

- (a) The fact that Attorney allowed me to be tried w/out indictment
 (b) Attorney did not attack Prosecutors Case fully
 (c) Attorney did not find out the times of my Arrest, Detention; G.A., the times of transport, or warrantless arrest issues.

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

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? NO

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:

- i. _____
 ii. _____
 iii. _____
 iv. _____

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

- i. _____
 ii. _____
 iii. _____
 iv. _____

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

No

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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

(a) Lawyer Failed To File Appeal on Time
 (b) My only option now is to file P.C.R.
 (c) My Attorney Failed the 6th U.S.C.A. Obligations.

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

(a) your arraignment and plea? Attorney Donna K. Taylor
 (b) your trial, if any? No Trial (Plead)
 (c) your sentencing? Same as above
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No Appeal Filed
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?
Attorney Donna K. Taylor

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

(a) the name and address of each attorney who represented you.
Attorney Donna K. Taylor 39 Broad Street
Suite #101 Charleston, S.C. 29401

ii. _____

 iii. _____

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

i. Trial/Plea Hearing

 ii. _____

 iii. _____

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

For the Sentence To be Vacated, or Remanded
For a New Trial For Reasons Stated.

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

I Am under direct Appeal on another
Charge at the Time.

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, THOMAS EVANS, 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.

Thomas Evans

SWORN to and subscribed before me this 31
 day of Mar., 2019.

Shirley Ann (L.S.)
 Notary Public

My Commission Expires: 5/16/12

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

I, THOMAS EVANS, hereby apply for leave to
proceed in this action without prepayment of fees or costs or security therefor. In support of my
application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give
security thereof.

Thomas Evans
Applicant

SWORN or affirmed to and subscribed before me this

31 day of May, 2009

Shirley J. Jones
Notary Public

My Commission Expires: 5/16/11

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	2009-CP-10-2012
Thomas Evans, #328618,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN AND MOTION TO DISMISS
	)	WITHOUT PREJUDICE
State of South Carolina,	)	
	)	
Respondent.	)	

In response to the post-conviction relief (PCR) application filed April 1, 2009, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the June 2007 term of the Charleston County Grand Jury for armed robbery (2007-GS-10-7508). Donna K. Taylor, Esquire, represented the Applicant. On April 24, 2008, Applicant pled guilty as indicted. Pursuant to a negotiated plea agreement, the Honorable John C. Few sentenced the Applicant to confinement for thirty (30) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The matter is presently pending before the South Carolina Court of Appeals. Therefore, jurisdiction is now in the South Carolina Court of Appeals.

II.

In his current application for post-conviction relief, the Applicant alleges the following grounds for relief:



1. Ineffective assistance of counsel in that counsel
 - a. Allowed Applicant to be tried without an indictment.
 - b. Did not attack prosecutor's case fully.
 - c. Did not find out the times of Applicant's arrest, detention in GA, the times of transport, or warrantless arrest issues.
2. Violations of 4th, 5th, 8th, and 14th Amendments.

III.

The Applicant's direct appeal is still pending. Post-conviction relief is not a substitute for direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Rule 71:1(b), SCRPC states that "[a]n application for post-conviction relief cannot be made while an appeal from the conviction or sentence is pending or during the time in which an appeal may be perfected." Post-conviction relief is unavailable to the Applicant at this time. Since the direct appeal is pending, the Court should deny and dismiss the post-conviction relief application without prejudice.

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

WHEREFORE, Respondent moves to summarily dismiss the application without prejudice because the Applicant's direct appeal is still pending.

Respectfully submitted,

HENRY DARGAN MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

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

August 13, 2009.

SC
AG
GS
DL
AT

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Thomas Evans, #328618,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2009-CP-10-2012

ORDER OF DISMISSAL
WITHOUT PREJUDICE

FILED
2009 AUG 28 PM 2:47
JULIE K. CLARK
CLERK OF COURT

This matter comes before this Court by way of an application for post-conviction relief filed April 1, 2009. The Respondent made its Return and Motion to Dismiss on August 13, 2009, requesting that this Court deny and dismiss the application without prejudice.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the June 2007 term of the Charleston County Grand Jury for armed robbery (2007-GS-10-7508). Donna K. Taylor, Esquire, represented the Applicant. On April 24, 2008, Applicant pled guilty as indicted. Pursuant to a negotiated plea agreement, the Honorable John C. Few sentenced the Applicant to confinement for thirty (30) years.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The matter is presently pending before the South Carolina Court of Appeals. Therefore, jurisdiction is now in the South Carolina Court of Appeals.

In his current application for post-conviction relief, the Applicant alleges the following grounds for relief:

1. Ineffective assistance of counsel in that counsel
 - a. Allowed Applicant to be tried without an indictment.

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209



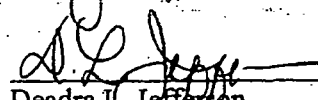
- b. Did not attack prosecutor's case fully.
 - c. Did not find out the times of Applicant's arrest, detention in GA, the times of transport, or warrantless arrest issues.
2. Violations of 4th, 5th, 8th, and 14th Amendments.

The Applicant's direct appeal is still pending. Post-conviction relief is not a substitute for direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). Rule 71.1(b), SCRPC states that "[a]n application for post-conviction relief cannot be made while an appeal from the conviction or sentence is pending or during the time in which an appeal may be perfected." Post-conviction relief is unavailable to the Applicant at this time. Since the direct appeal is pending, the Court should deny and dismiss the post-conviction relief application without prejudice.

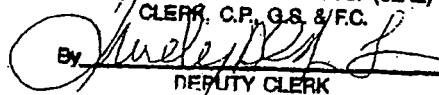
Upon review of the pleadings in this matter, this Court does not see the need to appoint counsel to represent Applicant and expresses its intent to dismiss the matter without prejudice.

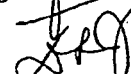
IT IS THEREFORE ORDERED THAT the application for post-conviction relief is denied and dismissed without prejudice based on Applicant's pending direct appeal.

AND IT IS SO ORDERED this 27th day of August, 2009.


 Deadra L. Jefferson
 Administrative Judge
 9th Judicial Circuit

Charleston, South Carolina.

ATTEST A TRUE COPY
 JULIE J. ARMSTRONG (SEAL)
 CLERK, C.P., G.S. & F.C.
 By 
 DEPUTY CLERK

2012
 2


FORM 5

STATE OF SOUTH CAROLINA

County of CHARLESTONTHOMAS JERMAINE EVANS #328618

Full name and prison number (if any) of Applicant

v.

State of South Carolina

2010-CP-10-10353
IN THE COURT OF COMMON PLEASFILED
JULIE H. HARRIS
CLERK OF COURT
DEC 17 PM 2:03

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly handwritten or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make clear to which question any such continued answer refers.

Since every application must be sworn under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicants should, therefore, exercise care to assure that all answers are true and correct.

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention LEE CORRECTIONAL INSTITUTION
990 WISACKY HWY BISHOPVILLE, S.C. 29010-1775
2. Name and location of Court which imposed sentence NINTH JUDICIAL
CIRCUIT, COUNTY OF CHARLESTON
3. Name(s) of co-defendant(s) (if any) CURTIS BURNS, DERRYL LOUIS, TRAVIS HIGGINS
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) WARRANT # H-913145 (HAVE NO INDICTMENT)

- (b) _____
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) APRIL 24th, 2008
- (b) SENTENCED TO THIRTY (30) YEARS IMPRISONMENT
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty I WAS FORCED TO PLEA GUILTY
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
LAWYER failed to file, I wrote the Court of Appeals in July 2008.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) LAWYER failed to file appeal

- (b) I wrote Court of Appeals to see if this had been done for me
 (c) _____

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

- (a) Ineffective Assistance of Counsel (I.A.C.)
 (b) Violations of my 4th & 8th Amendment Rights
 (c) Violations of my 5th & 14th Amendment Rights

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

- (a) The fact that attorney allowed me to be tried without indictment because I never saw
 (b) Attorney did not attack Prosecutors case fully
 (c) Attorney did not find out the time of my arrest, detention in G.A. the time of transport or warrantless arrest issues.

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

- (a) any petition in a State Court under South Carolina Law? NO
 (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
 (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
 (d) any other petitions, motions or applications in this or any other Court? YES

13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:

- (a) the specific nature thereof:
 i. had two separate charges. I was tried two separate charge
 ii. PCR was dismiss about prejudice
 iii. _____
 iv. _____
 (b) the name and location of the Court in which each was filed:
 i. Charleston County Clerk of Court (same)
 ii. _____
 iii. _____

iv. _____

(c) the disposition thereof:

i. Dismiss w/out Prejudice

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. AUGUST 28th, 2009

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

N/A

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) Lawyer failed to file Appeal on time
- (b) My only option now is to file P.C.R.
- (c) My attorney failed the 6th U.S.C.A. Obligations

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

- (a) your arraignment and plea? Attorney Donna K. Taylor
- (b) your trial, if any? trial, then forced to plea to 30 years
- (c) your sentencing? Same as above
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No Appeal filed
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Attorney Donna K. Taylor

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. Attorney Donna K. Taylor
39 Broad Street Suite #101 Charleston, S.C. 29401

ii. _____

iii. _____

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

- i. Trial / Plea Hearing

ii. _____

iii. _____

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

For the sentence to be vacated, or Remanded for a new
trial for Records Stated

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

No other court, just this one

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Charleston)

VERIFICATION

I, THOMAS JERMAINE EVANS, 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.

Thomas Evans

SWORN to and subscribed before me this 15
 day of Dec 2010.

Braunee Ann (L.S.)
 Notary Public

My Commission Expires: 5-16-11

76

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

I, THOMAS JERMAFALIS EVANS, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Thomas Evans

Applicant

SWORN or affirmed to and subscribed before me this

15 day of Dec, 2010.

J. Bracey Simon
Notary Public

My Commission Expires: 5-16-11

Copy

77

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO:2010-CP-10-10353

THOMAS JERMAINE EVANS
#328618

WARRANT: H-913145
CHARGE: ARMED ROBBERY

-versus-

MEMORANDUM OF THE APPLICANT
FOR POST CONVICTION RELIEF

STATE OF SOUTH CAROLINA,
Defendant.

COMES NOW the Applicant and pleads for post conviction relief as follows based on ineffective assistance of counsel, that his plea was not knowingly and intelligently entered and failure to file an appeal:

BACKGROUND

The Applicant, Thomas Jermaine Evans, was accused of several offenses including armed robbery pursuant to an indictment presented to the Grand Jury in June 2007, his initial arrest for the occurred on or about June 7, 2007. The indictment, charged him with an armed robbery which occurred on or about April 1, 2006, in Charleston County at Doschers Grocery Store, and allegedly involved several coconspirators. Evans was also indicted for his alleged involvement in several other armed robberies (16) in Dorchester County, Berkeley County and Charleston County. Upon information and belief many of the same individuals were involved all relevant incidents. That there was more than one incident is relevant with regard to the eventual sentencing and understanding of the guilty plea which are at issue herein.

The Applicant began his trial on and a significant amount of testimony was taken. He was

represented by Attorney Donna Taylor. A contentious issue at trial was the validity of a statement given, by Mr. Evans, and his arrest and extradition from Georgia. A plea offer had been presented to Evans prior to trial, and discussed again on April 23, 2008. April 24, 2008 a hearing was held to take Evans' guilty plea. Judge Few took the plea and imposed a 30-year sentence. The Applicant, also had apparently --prior to this plea --accepted another plea agreement on related charges, such that by accepting this plea he now had "two strikes." Applicant understood that his plea agreement would prevent him from getting a life sentence on the other pending charges in Charleston, Dorchester and Berkeley Counties.

Mr. Evans subsequently went to trial on other charges in Charleston County, involving the same codefendants. He was represented at that trial by Bill Runyon having terminated the representation of Donna Taylor. As Mr. Evans will testify at his PCR hearing that he choose not to plead guilty, and received a life sentence without parole. That PCR petition is also currently pending wherein he is represented by Samia Nettles, Esquire. As such Evans contends that he did not fully understand the nature of his plea or the sentencing implications that he was agreeing to, ultimately ending up with a life sentence.

Following the guilty plea, no appeal was filed by the applicant's attorney, Donna Taylor. Applicant wrote to the Court of Appeals in July 2008 regarding his appeal, without success. This matter is now before the Court attacking the validity of the guilty plea to armed robbery and the sentence of 30 years. The applicant further asserts that Taylor failed to file an appeal to protect the applicant's rights. Applicant further asserts that during the trial of the case, prior to the plea Taylor failed to follow-up on leads and act aggressively to attack the prosecutor's case, especially with regard to Applicant's alleged confession and his extradition from Georgia.

THE GUILTY PLEA WAS NOT KNOWINGLY AND INTELLIGENTLY ENTERED

In our country, the law of due process requires that a guilty plea entered as against a criminal defendant, may only be done voluntarily and intelligently. Cite the case of *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L. Ed. 2d 274 (1969). Prior to entering a plea Defendants must be advised of their privilege against self-incrimination, their right to trial by jury, and the right to confront their accusers. The trial record must **clearly** establish a waiver of those Constitutional rights in order for the guilty plea and waiver to be valid. See *State v. Patterson*, 278 S.C. 319, 295 S.E.2d 264 (1982). Defendants must be given adequate warning of the consequences of their plea, including a full explanation of their Constitutional rights and a realistic picture of sentencing possibilities. *State v. Armstrong*, 263 S.C. 594, 211 S.E.2d 889 (1975).

Mr. Evans asserts that the Court and counsel failed to adequately explain his rights and his counsel therefore was ineffective. But for Evan's counsel's errors leading to his lack of understanding of the guilty pleas he would not have pled guilty and would have insisted upon continuing his trial. At the time of the guilty plea applicant contends that a substantial portion of the trial had already taken place. At the time he was presented with the guilty plea he contends he was extremely confused, uncertain and was essentially coerced and pressured into taking a guilty plea, and was also mislead and confused as to the consequences of the plea. The Court is referred to the transcript of the plea which covers 50 pages and over an hour of discussion, and there were at least 16 breaks in the testimony for Attorney Taylor to discuss the plea and/or for the applicant to compose himself. The applicant only has a 9th grade education and no legal training and was clearly upset, confused and unable to make a intelligent and knowledgeable choice as to the entry of the plea.

The record of this case clearly indicates that at the plea hearing, the trial Court via Judge Few and counsel via Ms. Taylor, failed to adequately advise Mr. Evans of his Constitutional rights such that he could waive those rights knowingly and intelligently. Further the record of evidence shows that the applicant was deprived of his right to understand the nature and consequences of potential sentencing.

A realistic picture of sentencing is mandated by *Boykin and* its South Carolina progeny including *State v. Armstrong, supra*. Counsel must adequately advise the defendant prior to the entrance of a plea. *Turner v. State*, 517 S.E.2d 442 (S.C. 1999). Where plaintiff's counsel fails to adequately advise the defendant on the effects of the guilty plea PCR a post-conviction review and new trial have been permitted. See also *Alexander v. State*, 402 S.E.2d 44 (S.C. 1991), *Ray v. State*, 401 S.E.2d 151 (S.C. 1991) and *Hinson v. State*, 377 S.E.2d 338 (S.C. 1989).

The Applicant maintains that neither counsel nor the Court via Judge Few adequately advised Evans of the dire consequences of his plea or gave him a full understanding of the rights he was foregoing. A review of the transcript reveals a record littered with hesitation and lack of comprehension. Page 2-6 reveals that the Applicant had months to consider a plea and had discussed it with counsel but still remained uncertain and confused. Page 9-10 seems to indicate that Mr. Williams, representing the State and Ms. Taylor articulated an agreement that in subsequent related matters the State would not seek a life sentence. However the Applicant (also at pages 10-11) does not seem to understand the difference between a life sentence and consecutive sentencing possibilities. Mr. Williams for the State then seems to state at page 12 that there are no guarantees as to sentencing on the yet to be resolved Charleston County matters. The record is interrupted again and again with emotional outburst, crying and requests by the Applicant for explanations from the Judge and his Attorney. At page 17, the Applicant articulates

that he does not understand the difference between 450 years as a potential and life, and states, "I ain't got no choice", except to accept the plea. A bench conference with the Applicant is necessitated such that Evans can have the sentencing implications explained again. The record clearly reveals that the Applicant feels pressured and has a lack of understanding of how the acceptance of the 30 year sentence and pleading guilty will impact the outcome of future charges. The applicant subsequently ended up with life without parole in a related Charleston County matter.

There are similar cases to Evans in South Carolina where the Applicant was granted post-conviction relief. In *Clark v. State*, 468 S.E.2d 653 (S.C. 1996), promises were made regarding federal and state sentences running concurrently. However, as the defendant, applicant was placed in a South Carolina prison, not federal prison, the federal sentence was not running concurrently as promised. Given that difficulty and the lack of knowing an intelligent result of the guilty plea, the court indicated that should they not be able to get the applicant to a prison where the sentences run concurrent; the defendant will be able to effectively withdraw his guilty plea because the state could not fulfill its agreement with regard to sentencing. In *Brown v. State* an examination of the facts revealed that the guilty plea was not made knowingly and voluntarily where a judge misinformed the defendant regarding eligibility for parole. A third case *Dover v. State*, 205 S.E.2d 391 (S.C. 1991) dealt with a plea considered not to have been voluntarily and understandingly made because the defendant did not understand and was not made aware that he could be sentenced to an effective life sentence of 200 years.

Applicant submits that the evidence set forth above and to be heard at the evidentiary hearing is sufficient to show that the plea was not knowingly and intelligently entered and that such amounts to ineffective assistance of counsel as related to the guilty plea, as well as

violations of the Fourth, Eighth, Fifth and Fourteenth Amendment rights of the applicant.

FAILURE TO APPEAL

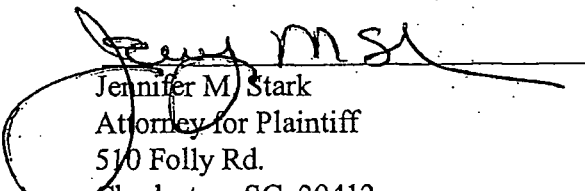
In addition to the foregoing Post Conviction Relief should be granted as Attorney Taylor failed to file an appeal. That defendant has been denied a direct appeal amount to the ineffective assistance of counsel. Here, Evans was denied the opportunity of having an appeal filed in his underlying criminal case, evidence at the hearing will show that no appeal was filed or taken by Ms. Taylor.

In Wilson v. State , Wilson was convicted of armed robbery and sentenced to 30 years. There was no appeal. He alleged that he instructed his attorney to file the appeal but the lawyer did not do so. Application for PCR was filed two years approximately after the initial Conviction. The Supreme Court held that the statute of limitations may not apply where the applicant did not knowingly and intelligently waive his right to a direct appeal. Here, as in Wilson a full hearing is needed to determine if Evans knowingly and intelligently waived his right to a direct appeal from the criminal matter. Where counsel is instructed to file an appeal, counsel will be found ineffective if they fail to file same. *See, e.g. Frasier v. State*, 410 S.E.2d 572 (SC 1991).

Here there are clearly non-frivolous grounds for appeal, including the sentencing issues and the admissibility and voluntary nature of the confession which was admitted prior to the acceptance of the plea. Applicant asserts that he reasonably demonstrated to Ms. Taylor that he desired an appeal. As such Applicant requests that he be permitted to file an appeal at this time and that his petition for relief be granted.

Respectfully Submitted

JENNIFER MUNTER STARK, LLC

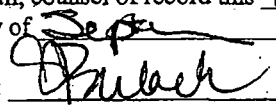

Jennifer M. Stark
Attorney for Plaintiff
510 Folly Rd.
Charleston, SC 29412
(843) 795-2525

Charleston, South Carolina

Dated: September 14 2011

CERTIFICATE OF SERVICE

I certify that I have mailed and/or
delivered a true and correct copy of
the within Motion/Pleading/Document
to all, counsel of record this 14th
day of Sept, 2011.

By: 

Legal Assistant

Mathew J. Friedman, Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

Thomas Germaine Evans

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
Thomas Jermaine Evans, #328618,)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS

2010-CP-10-10353

RETURN AND PARTIAL
MOTION TO DISMISS

FILED
2011 JUN 29 AM 11:49
JULIE J. ARNSTRONG
CLERK OF COURT

The Respondent, making its Return and Partial Motion to Dismiss to the application for post-conviction relief (PCR) filed December 17, 2010, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the June 2007 term of the Charleston County Grand Jury for armed robbery (2007-GS-10-7508). Donna Taylor, Esquire, represented Applicant. On April 24, 2008, Applicant pled guilty as indicted. Pursuant to a negotiated plea agreement, the Honorable John C. Few sentenced him to confinement for thirty (30) years. Applicant did not appeal his plea or sentence.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript.

II.

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

1. Counsel failed to file an appeal.
2. Ineffective assistance of counsel in that counsel
 - a. Allowed Applicant to be tried without an indictment because Applicant never saw it.
 - b. Did not attack prosecutor's case fully.
 - c. Did not find out the times of the arrest, detention in GA, the time of transport, or warrantless arrest issues.

III.

Respondent asserts that Applicant is not entitled to a belated appeal pursuant to White v. State. The United States Supreme Court has rejected a bright-line rule that counsel must always file an appeal in a criminal case. Roe v. Flores-Ortega, 528 U.S. 470, 120 S.Ct. 1029 (2000). The Court went on to hold that a professionally reasonable attorney should, in most cases, consult with the defendant regarding an appeal. Id.

In determining whether an attorney should consult with the criminal defendant concerning an appeal, the totality of the circumstances must be considered. Id. In examining the totality of the circumstances, courts should consider: (1) whether a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal); or (2) whether this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). See Rule 243 (i), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

Trial counsel is not required to file a notice of appeal without specifically being asked to do so. Roe, 528 U.S. 470. Here, there is no indication that Applicant asked counsel to file an appeal. 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.

As to any and all other issues, including the allegation of ineffective assistance of counsel, the Respondent submits that they should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §§ 17-27-10, et. seq. (2003). South Carolina Code Ann. § 17-27-45(a) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. See Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant pled guilty on April 24, 2008. The Applicant was therefore required to file his PCR application on or before April 24, 2009. This application was filed on December 17, 2010, which was nearly twenty (20) months after the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. See McDonnell v. Consolidated Sch. Dist. of Aiken, 315 S.C. 487, 489, 445 S.E.2d 638, 639 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (2003) authorizes the Court to “grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law.” Therefore, the Respondent requests that this Court summarily dismiss the application for post-conviction relief for failure to file within the time mandated by the Uniform Post-Conviction Procedure Act.

V.

Respondent denies each allegation that is not expressly admitted, qualified, or explained.

VI.

WHEREFORE, having made its Return and Partial Motion to Dismiss, the State requests an evidentiary hearing solely on the belated appeal issue.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MATTHEW J. FRIEDMAN
Assistant Attorney General

By: Matthew J. Friedman
ATTORNEYS FOR RESPONDENT

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

June 28, 2011.

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

THOMAS JERMAINE EVANS, #328618)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2010-CP-10-10353

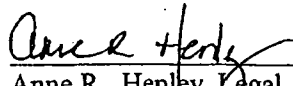
AFFIDAVIT OF SERVICE BY MAIL

FILED
2011 JUN 29 AM 11:50
JULIE J. ARMSTRONG
CLERK OF COURT

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 and Partial Motion to Dismiss** in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Jennifer Munter Stark, Esquire
501 Folly Rd
Charleston, SC 29412

DATED this 28th day of June, 2011



Anne R. Henley, Legal Assistant
For Respondent

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NO:2010-CP-10-10353
	)	
	)	
THOMAS JERMAINE EVANS	)	WARRANT: H-913145
#328618	)	CHARGE: ARMED ROBBERY
	)	
	)	
-versus	)	OPPOSITION
	)	TO MOTION TO DISMISS
STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	
	)	

OPPOSITION TO MOTION TO DISMISS

COMES NOW, the Applicant Thomas Jermaine Evans and hereby opposes the State's Motion to Dismiss as follows:

STATUTE OF LIMITATIONS

The State has recommended that the above-captioned Post Conviction Relief matter be dismissed as the Applicant allegedly failed to file his Petition for Post Conviction Relief within the alleged limitation period.

The matter before the court was filed by a pro se Applicant, Thomas Evans, on or about 12/15/2010, arising from 2007-GS-10-7508. However, the Public Index for the Charleston County Clerk of Court, when searched, reveals that a Post Conviction Relief petition related to the same underlying case number 2007-GS- 10-7508 was filed with the Court on or about 4/1/2009 by the Applicant Thomas Jermaine Evans. Documentation from the Clerk of Court website is attached hereto. This initial PCR action was dismissed without prejudice August 28, 2009. The original disposition of the criminal case, the date of the entry of the plea of guilty was

April 24, 2008. The initial PCR action was dismissed without prejudice and was filed within the one year statute of limitations pursuant to S.C. Code Section 17-27-10 et. seq. (2003). See attached exhibits PCR Application, Return, Dismissal. As his initial PCR matter was dismissed without prejudice, Evans understood that it could be refiled without penalty.

Pursuant to the statute the PCR petition must be filed within one year of the last event: the entry of a judgment or conviction; the sending of a remitter to the lower court from an appeal; or a final decision upon an appeal. In the case before the court the original PCR action was filed within a year of the guilty plea. The Order of Dismissal without Prejudice references that an appeal had been perfected. The applicant later discovered that an appeal had not apparently been filed by counsel. Counsel has found no record of any disposition of alleged appeal on the Court of Appeals records/website. Plaintiff's only notice of the lack of appeal was his own correspondence with the Court of Appeals. Given the lack of an appeal and the lapse of the one year statute while the first PCR was pending, rendered it unclear what the statute of limitations would have been to re-file the action.

**THE APPLICANT IS ENTITLED TO
EQUITABLE TOLLING OF THE STATUTE**

Equitable tolling is a fact specific doctrine generally applied in two types of cases. The first is where a plaintiff is prevented from asserting a claim by the wrongful conduct of another. The second deals with extraordinary circumstances. The doctrine is also utilized where it would be unconscionable to enforce limitations against the party as a gross injustice would result. In the case before the Court the Applicant did not miss the initial filing deadline. However by the time the action was dismissed without prejudice, the one year statute had arguably passed. He did refile the PCR petition, and did not relinquish his rights to do so. Here there is evidence as to

the existence of an appeal, as represented by the State. As such it would be unfair, inequitable and a gross miscarriage of justice to deny the applicant the opportunity to present the substantive issues addressed in his PCR petition to the Court.

THE “DISCOVERY RULE”

In addition to equitable tolling argument, this matter qualifies for a more lenient statute of limitations under the “discovery rule.” Pursuant to the “discovery rule” if an applicant contends that there is evidence of material facts not previously presented that require vacation of a conviction or sentence, the application may be filed within one year after the date of discovery of facts or after the date when the facts were reasonably discoverable with due diligence. See, South Carolina Code Annotated § 17-27-45C (2003), see also Coats v. State, 575 S.E.2d 557 (S.C. 2003). Coats alleged that counsel at the trial level was ineffective, by recommending a guilty plea based on eligibility for parole within a certain time. As a result of this advice he pled guilty, was sentenced and declined to pursue an appeal. After the one-year statute of limitations expired Coats learned he was not eligible for parole. The South Carolina Supreme Court ruled that Coats’ PCR claim fell within the discovery rule given that the PCR applicant’s understanding of parole eligibility affected the validity of his underlying plea. Because the petition was filed within a year of the discovery of the sentencing advice or error and his full understanding thereof the petition was ruled timely filed and Mr. Coats was permitted to go forward. See, Coats v. The State of South Carolina, 575 S.E.2d 557-559 (S.C. 2003).

Evans’ situation is similar. Mr. Evans plead guilty to armed robbery and was sentenced to 30 years. The transcript is agonizing reading and very confusing (even to Counsel) regarding the sentencing repercussions, given that Evans had multiple related charges pending in other counties and in Charleston. Subsequent to the plea, Evans had a jury trial in Charleston County

on one of the related charges. That PCR application is currently before the court at 2010 CP 10-4552. One of the allegations of ineffective assistance of counsel in both actions is that Mr. Evans failed to receive proper advice and to understand the consequences of his guilty plea. Only after his sentence and appeal in the related criminal case in Charleston County did he obtain full understanding of the effect of this guilty plea and the 30 year sentence. Evans received life in the case that was tried in Charleston County. Attached- Order of Court of Appeals. Hence Evans only fully came to understand the effect of his plea and the arguably insufficient advice that he received on the guilty plea following the sentencing and appeal on the related matter. As such this matter should not be dismissed for failure to file within the statute and the case should move forward to a full hearing on the substantive issues.

DISMISSAL WITHOUT PREDJUDICE

Pursuant to South Carolina law there is yet another exception to the strict application of the statute of limitations. That occurs where a PCR action is dismissed without prejudice, but the statute runs prior to refileing. In the case of Norris v. State, 515 S.E.2d 523, 524-525 (S.C. 1999) the State consented to a motion for voluntary dismissal without prejudice. But, the statute ran prior to the granting of the dismissal. The State was estopped from claiming the defense of a statute of limitations. In the case before the Court the initial PCR on this matter was filed 4/1/2009. The statute of limitations would have run on or before 4/24/09. The initial filing was within the statute of limitations. However, the Order of Dismissal Without Prejudice was filed 8/28/09 after the statute would have run for Mr. Evans. As the State presumably consented to the dismissal of the PCR application it is arguable that the State agreed to allow Mr. Evans to re-file his application after the purported appeal was resolved. As we have no evidence to the contrary,

the Applicant submits that the State should be estopped from asserting the statute of limitations now as a defense to this PCR application.

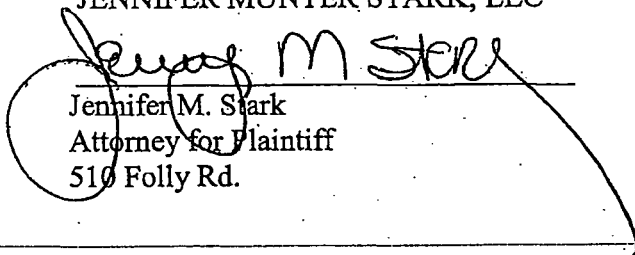
FAILURE TO APPEAL

In addition to the foregoing there is an additional category of exceptions to the rigorous application of the statute of limitations which has been utilized by the State of South Carolina. The statute of limitations also should not be applied where the defendant has been denied a direct appeal due to the ineffective assistance of counsel. In this case, there is conflicting evidence as to the existence of an appeal. Here, as in Odom v. State, 523 S.E.2d 753, 756 (SC 1999), the plaintiff was denied the opportunity of having an appeal filed in his underlying criminal case. In Wilson v. State, Wilson was convicted of armed robbery and sentenced to 30 years. There was no appeal. He alleged that he instructed his attorney to file the appeal but the lawyer did not do so. Application for PCR was filed two years approximately after the initial Conviction. The Supreme Court held that the statute of limitations may not apply where the applicant did not knowingly and intelligently waive his right to a direct appeal. Here, a full hearing is needed to determine if Evans knowingly and intelligently waived his right to a direct appeal from the criminal matter, and if an appeal did exist, when resolution occurred.

As such and in the interests of justice any perceived failure to comply with the statute of limitations should be waived and Mr. Evans' PCR application should be permitted to go forward without delay.

Respectfully Submitted

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Dated: Sept 9, 2011

CERTIFICATE OF SERVICE

I certify that I have mailed and/or delivered a true and correct copy of the within Motion/Pleading/Document to all, counsel of record this 2 day of September, 2011.

By: Deilach
Legal Assistant

Mathew J. Friedman, Assistant Attorney General
Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211-1549

Thomas Germaine Evans

1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
2010-CP-10-10353

3 THOMAS JERMAINE EVANS,)

4 Plaintiff)

5 V.)

TRANSCRIPT OF RECORD

6 STATE OF SOUTH CAROLINA,)

7 Defendant.)

8
9 September 14, 2011
10 Charleston, South Carolina

11
12
13 B E F O R E:

14 THE HONORABLE DEADRA L. JEFFERSON, JUDGE
15
16
17

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

19 Mr. Matthew Friedman, Asst. Attorney General
20 Representing the State

21 Ms. Jennifer M. Stark, Esquire
22 Representing the Defendant

23
24 Anne Bouley Meyer, RPR
25 Circuit Court Reporter

I N D E X
WITNESSES

ALL WITNESSES:

PAGE:

MS. DONNA K. TAYLOR:

Direct Examination by MS. STARK

6:9

Cross-Examination by MR. FRIEDMAN

31:14

MR. THOMAS JERMAINE EVANS:

Direct Examination by MS. STARK

38:22

Cross-Examination by MR. FRIEDMAN

58:3

EXHIBITS

1 For Court:
Proffer/Plea agreement

1 THE COURT: Thomas Evans, 2010-CP-10-10353 which
2 is Ms. Stark and the witness is Ms. Taylor. Then
3 2010-CP-10-4552 which is Mr. Runyon and Ms. Smith; is
4 that correct?

5 MS. STARK: That's correct. And, Your Honor,
6 Ms. Taylor was just added to the amended application a
7 couple weeks ago.

8 THE COURT: Is she here?

9 MS. STARK: She is here.

10 THE COURT: 2010-CP-10-4552, Ms. Nettles is
11 representing him on 4552. Ms. Stark is representing
12 him on 10353.

13 On 10353 the applicant was indicted and pled
14 guilty on indictment 2007-GS-7508 which was a
15 negotiated plea of armed robbery, he was sentenced to
16 30 years. He did not appeal this plea or sentence.

17 And on 2010-4552, he went to trial on indictment
18 2007-GS-10-7477 which was armed robbery, which went to
19 trial October 6 through 8 of 2008 after which he was
20 found guilty. Judge Thomas Cooper sentenced him to
21 life without parole.

22 That matter was appealed and an Anders brief was
23 filed and it was dismissed in an unpublished opinion,
24 2010-123 on February 11th, 2010.

25 why don't we deal with them individually. We

1 will do the plea first, and then we'll move to the
2 trial. Okay.

3 MS. STARK: Your Honor, I have one brief
4 preliminary matter.

5 THE COURT: Sure.

6 MS. STARK: It came to my attention when
7 reviewing notes I received from counsel that I
8 represented in two other PCR's a gentleman by the name
9 of Allen Capers who appears to be also peripherally
10 related to the same multiple armed robberies that my
11 client today --

12 THE COURT: Have you disclosed that to him?

13 MS. STARK: I just disclosed that to him while
14 we were sitting here. He indicates that he does not
15 remember Mr. Capers.

16 THE COURT: Does he any objection to you
17 proceeding with the case?

18 MS. STARK: Do you have any objection to me
19 proceeding to present the case?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: There was a motion for dismissal of
22 this based on statute of limitations?

23 MR. FRIEDMAN: Yeah, Your Honor, I withdraw that
24 motion. When I originally thought the appeal was from
25 this case, but there was never a trail. So there was a

1 timely application.

2 THE COURT: That will be marked withdrawn.

3 MR. FRIEDMAN: Thank you.

4 THE COURT: You're welcome.

5 MS. STARK: Your Honor, in addition, he withdrew
6 his motion regarding the statute of limitation. I had
7 filed a lengthy brief which hopefully has made it to
8 the file.

9 I did do a little supplement just breaking out
10 the two basic issues we are here on, on the failure to
11 appeal, and the litany of the guilty plea.

12 THE COURT: Say that one more time.

13 MS. STARK: The only issues we kind of -- now
14 that the statute of limitations motion has been
15 withdrawn, the issues before the Court are really the
16 validity of the guilty plea and the representation, and
17 the failure to appeal.

18 THE COURT: When you say validity of the guilty
19 plea, what do you mean?

20 MS. STARK: Knowing and intelligent waiver.

21 THE COURT: Okay. Are we ready to proceed?

22 MS. STARK: I am, Your Honor.

23 THE COURT: Is Ms. Taylor here?

24 MS. STARK: She is.

25 THE COURT: I assume that's your first witness?

1 MS. STARK: That is.

2 THE COURT: Ms. Taylor, please come forward to
3 be sworn.

4 DONNA K. TAYLOR,
5 after having first been duly sworn to state the truth,
6 the whole truth and nothing but the truth, testified on
7 her oath as follows:

8 DIRECT EXAMINATION

9 BY MS. STARK:

10 Q Good morning, Ms. Taylor. My understanding is
11 that you represented Thomas Jermaine Evans in several
12 matters back in 2007; is that correct?

13 A That is.

14 Q How many charges did you represent him on?

15 A How many changes? There were multiple charges.
16 There were a series of armed robberies of grocery
17 stores, restaurants and fast food restaurants in three
18 counties. Some of them had multiple counts in each
19 case.

20 I think, at least from reviewing the transcript
21 in this guilty plea, there were 16 cases.

22 Q And you represented him on all 16 counts, cases?

23 A I represented him on the Charleston and Berkeley
24 cases. There was one in Dorchester that I was not his
25 attorney on. But we ended up bringing that in when we

1 reached what we thought would be the ultimate
2 resolution.

3 Q The case that we are before the Court on with
4 regard to this was an armed robbery; is that correct?

5 A Yes.

6 Q And that was at the Doscher's Grocery Store?

7 A It was Doscher's or Food Lion. I'm sorry, I
8 don't remember which one.

9 Q If I said Doscher's?

10 A I would trust you, absolutely.

11 Q Thank you.

12 When preparing for this matter, did you have
13 occasion to meet with your client prior to going to
14 trial?

15 A Yes.

16 Q And on how much occasions did you meet?

17 A Unfortunately I don't have the full list of
18 those meetings. I think it was almost two years of
19 representation of Thomas and I saw him fairly
20 regularly. So somewhere between 10 and 30 times.

21 Q And were you aware of his educational
22 background, Ms. Taylor?

23 A We would have discussed all about his personal
24 life. So, yes, I would have been then. I no longer
25 am.

1 Q Are you aware that he did not complete the 9th
2 grade and dropped out of school?

3 A Again I would have been then. I believe he
4 would be telling me that now.

5 Q Did there come a time when you discussed the
6 alternatives between going to trial and having a plea
7 arrangement?

8 A Yes.

9 Q Do you remember when that decision came to the
10 forefront?

11 A I have no doubt that that would have started the
12 initial conversation that we had in light of his having
13 given a 20-some page statement.

14 Q And with regard to the statement, was that akin
15 to a confession?

16 A Yes.

17 Q To whom did he give that statement?

18 A He was in the guilty plea but I'm sorry, I can't
19 remember his name right now.

20 Q But somebody in Charleston County?

21 A Would have been Charleston County or North
22 Charleston.

23 Q When you began to discuss the possibility of a
24 plea versus going to trial, do you remember what you
25 discussed with the client?

1 A Well we had several discussions initially. The
2 first thing I generally do, I don't remember
3 specifically doing this with Thomas, but I go through
4 what the options are.

5 Then fairly quickly we began discussing, because
6 there were multiple codefendants, Nathan Williams was
7 prosecuting the case. And early on Nathan had
8 indicated to me that he intended to, anyone who didn't
9 cooperate and had multiple cases, seek life without
10 parole option. So I knew it was serious.

11 Because of his statement, which not only was
12 lengthy, but painfully specific and it was taped. So I
13 knew that we had a very serious problem going to trial.
14 so we would have begun fairly quickly discussing what
15 his options would have been.

16 There was an early conversation where anyone who
17 -- because other guys had made statements. And one
18 person at least had -- one person had made a written
19 statement, that I remember, before Thomas made his.
20 And then someone was already sort of in the deal for
21 corporation, but we didn't know who that was.

22 So we began talking about his options which were
23 the only way he was going to get a deal, which is what
24 he initially wanted, was to cooperate which meant
25 testify and he did not want to do that.

1 There were stages where he wanted to enter a
2 plea, but he didn't want to testify. Then there were
3 stages where we discussed certain defenses that he
4 believed might be applicable to him.

5 Q And can you articulate what his viable defenses
6 were that you explained to him?

7 A Well I can articulate for you what he discussed
8 with me as defenses. I would not agree that they were
9 necessarily viable.

10 One -- well the first one started with I didn't
11 do it at all. The police officer fed me the
12 information. The statement that I gave was false.
13 Along those lines.

14 And the initial problem with that was that
15 unfortunately when Thomas gave this, he gave a very
16 specific and lengthy statement. He gave specific
17 information about criminal offenses which occurred out
18 of the jurisdiction of the detective that he was
19 talking to.

20 The next defense was that he was guilty, that he
21 had participated but he had done so under duress. That
22 he had been threatened by a codefendant who pulled a
23 pistol on him, pointed it at him, threatened to injure
24 I think it was more his family than Thomas, but that he
25 was afraid of this individual and that's why he engaged

1 in this criminal activity.

2 We had discussions about the difficulty of
3 proving duress, especially in criminal activity, takes
4 a period of time in which it all unfolds. Again there
5 were multiple cases here with the crew performing these
6 pretty somewhat sophisticated series of armed
7 robberies.

8 Q So with regard to the threats that he received,
9 did you have occasion to investigate the threats for
10 their credibility?

11 A Well there was not threats. There was he told
12 me a story that he and this guy were in a car and the
13 guy pulled a gun on him. I did ask his attorney, this
14 other guy's attorney, whether there was any possibility
15 that I might inquire of her client whether this was
16 true. That did not happen, nor was she able to confirm
17 from him that he was ever going to say, yes, I did
18 that.

19 So other than that, no.

20 Q Did there come a time when a deal was ultimately
21 negotiated prior to when the a trial started?

22 A There was a conversation and almost reaching
23 agreements. There were written plea agreements
24 tendered and reviewed. We would come close to getting
25 there, but it never happened.

1 This was not a case where we scheduled a series
2 of attempts to plead guilty and he backed out. He and
3 I never got to the point where he said, that's a deal,
4 I'm willing to take. He always wanted a better deal.
5 He wanted less time until after the trial when we went
6 through one or two days.

7 Q With regard to the client's understanding of the
8 sentencing options that were being presented, what were
9 the sentencing options with regard to Mr. Evans?

10 A As it related to?

11 Q As it related to the charge that we are talking
12 about right now.

13 A Well he went to trial. I think that this was a
14 case where it was literally only an armed robbery
15 charge, not the assaults, or the kidnappings or the
16 other assorted things.

17 Q Correct.

18 A So he was looking at 30 years.

19 Q On this particular charge?

20 A Yes.

21 Q And since there were 16 other armed robbery
22 charges, how did you explain to him, if you can
23 articulate, what he was in for or what the consequence
24 of pleading guilty to and accepting the 30 years?

25 A Well it started fairly early on after Nathan had

1 told me if we didn't work something out, he would be
2 seeking life without parole against Thomas.

3 At that point in time, I think this started back
4 in '07 when I met and represented him, but I was not
5 primarily practicing in state court and had not done so
6 in several years. My practice was in the federal
7 system. And I was not that familiar with our life
8 without parole statute fully.

9 And it was my belief when Nathan said that to me
10 that it required a conviction prior to the subsequent
11 act for which he got convicted to get the strike. So I
12 was overly confident that he would not do that, until I
13 researched the law and found out that he could do that.

14 So from that moment on we then began to talk
15 about how he could avoid life without parole. Again,
16 he had multiple cases, multiple charges, some of which
17 included people being unpleasantly messed with in the
18 course of the armed robberies and/or kidnappings.

19 And that was a sticking point for a while, too,
20 as to who was the individual who had done this one
21 particular act in another armed robbery.

22 So it was never going to be what he wanted, and
23 I explained that to him repeatedly. He wanted
24 probation, it wasn't going to happen. Once we knew he
25 was looking at life without parole, then the best he

1 could have hoped for would have probably been 15 if he
2 had cooperated fully. Though we tried to get 10 at one
3 point and we almost did early on, but then Thomas
4 backed out.

5 But at the stage where we ultimately got to
6 where we went to trial, the best he could hope for was
7 to get out of life without patrol. And, if he
8 cooperated, a 30-year cap on everything. He would have
9 to enter a plea to another offense, but he could
10 potentially get 30 years period on all the cases.

11 Q This is all discussion that occurred prior to
12 the beginning of the trial?

13 A Yes.

14 Q You articulated that Mr. Evans thought he should
15 be able to get probation, was that based on his lack of
16 criminal record prior to that time?

17 A No. Well he didn't have a bad record, but he
18 did not have a lack of criminal record. He thought
19 that he should get probation because initially told me
20 that that's what the detective, whose name I haven't
21 found yet, said he thought he could get.

22 So he didn't understand why he couldn't get
23 probation since he had given a confession. So we
24 talked about the statutory requirements. And I did not
25 believe that there was any way that I would be able to

1 get him to plead to strong armed robbery or anything
2 less than armed robbery which had a statutory minimum
3 that he again didn't want to accept.

4 Q By you saying he did not want to accept because
5 he did not understand the implications or?

6 Q He did not want to go to prison.

7 Q There comes a time when you started the trial?

8 A Yes.

9 Q And during the course of the trial, Mr. Evans
10 decided to take a plea; is that correct?

11 A Yes.

12 Q How did that come about?

13 A We had been discussing it for about a month to a
14 month and a half prior with these written proposals.

15 The issue in this case involved a Jackson v.
16 Denno hearing because of the confession we had gone
17 around and around about how that was going to work out.
18 He made certain decisions about what he was going to
19 testify to. He did so.

20 And I believe it was the next afternoon, I'm
21 pretty sure it wasn't the same day of the hearing, we
22 went and came back. And the trial was progressing with
23 the witnesses. And he leaned over and asked me if he
24 could have a word with the judge, which lead to a
25 conversation between he and I, which led to a problem.

1 And sometime shortly after that he began to see
2 the reality of where he was very clearly.

3 Q When you say led to a problem, what was the
4 problem?

5 A That he perjured himself in the Jackson v.
6 Denno hearing and he wished to admit that to the judge.

7 Q And at that time you made a decision to go ahead
8 and do the plea?

9 A I did not make a decision to go ahead and do the
10 plea, Thomas made a decision. It was a slow process to
11 get him there, including his family. But he made that
12 decision, not me.

13 Q And was that based on -- that was based on the
14 confession issue and the perjury issue?

15 A It wasn't really based on the perjury. That was
16 a bigger problem for him frankly than for me. It was
17 based on the fact that he was going to get life without
18 parole in all likelihood.

19 I told him that repeatedly that I did not see
20 how he could escape getting two convictions with the
21 evidence they had on these cases when he was facing 16
22 options by a prosecutor who was more than willing to
23 try them one after another until he got two.

24 And if that happened he was going to end up with
25 life without parole, he would never see his family on

1 the outside again.

2 Q And based on his desire to avoid the life
3 without parole he agreed to the plea?

4 A Yes.

5 Q Did you have a copy of the transcript?

6 A I do.

7 Q Okay. Just makes it a little easier.

8 with regard to the plea, he was allowed to think
9 about it overnight, I believe, and then came back the
10 next day and did it before Judge Few?

11 A There was a lot of thinking and taking time even
12 during the course of that day. The Judge gave us a
13 little time to talk and have the family talk with him
14 and think it through.

15 Q I believe that's reflected on Page 3 that the
16 judge gave him some time to think about it.

17 There is a reference in the transcript on Page 4
18 where Judge Few indicates that he wants to go forward
19 with the plea without drama. Was there a lot of
20 emotion and crying and drama involved in this plea?

21 A Yes.

22 Q And this plea seems to have taken well over an
23 hour and there is 50 pages of transcript. I believe I
24 counted 17 breaks because of emotion and crying?

25 A There was a lot of extraneous activity.

1 Q Can you be a little more specific about the
2 extraneous activity?

3 A The judge was upset, Thomas was upset, and they
4 were butting heads.

5 Q Was Mr. Evans crying during?

6 A At one point he actually cried, I believe, yes.
7 It was more -- and I hate to categorize -- attitude
8 issues than actual tears. But at one point he appeared
9 to be actually crying.

10 Q Was he very emotional?

11 A Generally?

12 A During the plea was he emotional?

13 A Yes.

14 Q Was his family present during the plea?

15 A Yes.

16 Q Do you think this affected his mindset, his
17 ability to understand what was going on?

18 A No, I believe he understood what was going on.
19 He didn't like it, but I believe that he understood.

20 Q But he was upset throughout?

21 A He was definitely upset about going to prison
22 for 30 years.

23 Q Would you say that he was angry during the plea?

24 A He got testy a few times.

25 Q Since he had to take 17 breaks to either get his

1 composure or discuss things with you, does that
2 indicate to you that he was not fully understanding the
3 consequences of accepting the plea?

4 A No. Again I don't have any doubt in my mind
5 that he understood the consequences of accepting the
6 plea.

7 THE COURT: Let me interpret because I don't
8 want the record to be mischaracterized. There was only
9 one break for emotion, the rest of the breaks were for
10 him to talk with her.

11 So the record speaks for itself. So if you want
12 to make reference to it, that's fine. But I don't want
13 it characterized that 17 breaks were taken because he
14 didn't understand what was going on.

15 Because the breaks, as I read the transcript,
16 were for him to specifically speak with his lawyer or
17 ask the Court questions.

18 There was one break where the court reporter
19 notates that there is crying from the gallery. And
20 quite frankly, to her credit, most times they don't do
21 that. She very specifically articulated what that
22 break was for.

23 So you may continue to answer the question, Ms.
24 Taylor.

25 THE WITNESS: I forgot where I was.

1 THE COURT: I apologize.

2 MS. STARK: Maybe I can clarify.

3 Q (By Ms. Stark) With regard to the breaks, were
4 they for emotion or to ask a question?

5 A I think the Judge is absolutely right. There
6 was one time when there was tearfulness. There was one
7 time when he actually like made a joke and there was
8 some laughter.

9 Most of them were because again Judge Few was
10 clearly displeased with Thomas's attitude at the plea.
11 Thomas was not speaking clearly, or respectfully or
12 sometimes not at all.

13 A lot of the breaks are me telling him to settle
14 down or to speak up or you have to answer the question.
15 And Judge Few clearly was again a little testy as well.
16 And he would ask the same question over and over
17 because he wanted to make sure that the answer was
18 correct.

19 And Thomas would talk back to him basically and
20 say, I already answered that, or, I said that, how many
21 times do I have to say that. That kind of stuff. So
22 it was not a smooth plea, no question about it.

23 Q Turning your attention to Page 8 of the record,
24 it indicates that you had talked to Mr. Sorensen, Mr.
25 Alfaro, and I believe Mr. Williams, and they had agreed

1 not to seek a life sentence?

2 A Yes.

3 Q And that for the other charges that had yet to
4 be dealt with?

5 A That would have included all of his currently
6 and pending charges in Berkeley and Dorchester and
7 Charleston.

8 Q Okay. Is there any discussion that you recall
9 about, or any written document that was presented, that
10 indicates that if he failed to go forward with another
11 plea he would get life in prison?

12 A There was filed, and again unfortunately I don't
13 have a copy of it now, but it was made an exhibit with
14 the plea and filed with the court, a written plea
15 agreement that Nathan prepared and Thomas would have
16 signed.

17 But what my recollection of our agreement was,
18 and what I would have explained to Thomas and his
19 family, was that he -- if he was going to plead now he
20 would get 30 years. If he would enter a plea
21 subsequently to a second case, he would be given an
22 opportunity to cooperate and testify against any
23 remaining codefendants.

24 And if he did that, then he would have the
25 option of getting concurrent time, perhaps even less

1 than 30 to the subsequent one, but he would get no more
2 than 30 years. But that that was not even guaranteed.

3 The only guarantee given to him if he entered a
4 subsequent plea and if he was cooperative was that they
5 would not seek life without parole.

6 Q So was it explained to him the opposite way
7 around, that if he failed to enter a plea, that all
8 deals were off and he was exposing himself to -- that
9 the deal was off with regards to the life without
10 parole?

11 A Yes. It was explained to him before he entered
12 this plea because it was clear to me that he had issues
13 regarding the time he was facing.

14 And while I don't believe that Thomas had any
15 legally relevant impairments, he would frequently
16 communicate with me in not the most intelligent manner.
17 So I was very careful to articulate. And that's why I
18 almost had with me when I spoke with him one of my
19 partners who would take notes of the conversation.

20 Yes, we talked about that in order to get this
21 deal, which at least meant no life without parole, is
22 that he would have to plea to this case, and he would
23 have to plea to the second case. And if he didn't
24 enter that second plea and he wanted a trial, then
25 there was no deal.

1 Q okay. With regard to the plea agreement that is
2 on the record with Judge Few, if we review the
3 transcript there is a lot of discussion about whether
4 he could face concurrent or consecutive sentencing and
5 that was up to the judge or to the attorneys. Did you
6 explain to him the difference between concurrent -- the
7 difference between the concurrent and the consecutive
8 sentencing?

9 A Yes.

10 Q Did he understand that a judge in the future
11 might sentence him to a consecutive sentence rather
12 than it all being one 30-year sentence to run
13 concurrently?

14 A I believe that he did.

15 Q I believe that if you look at Page -- it's 11
16 and 12 of the transcript that talks about the fact that
17 he -- actually, it's Page 13 -- 450 years if the
18 sentences went concurrently, I mean consecutively?

19 A Yes.

20 Q If that was explained -- if it says that there
21 is a discussion about that being the equivalent of a
22 life sentence, did he understand the difference between
23 a life sentence and a concurrent sentence? I mean a
24 consecutive sentence?

25 A I think he did. I can only tell you what we

1 discussed and what was discussed a lot between him and
2 Judge Few on this record. And that he clearly knows
3 the difference between what concurrent and consecutive
4 means because he's talking about it.

5 He clearly knew that life without parole in our
6 state system meant that, that he would live the rest of
7 his natural life in prison. He was at the time of this
8 a relatively young man.

9 So if he could get that 30 years, he was looking
10 at 25 years, he had already served about 2, so he had
11 the option to come out -- he wouldn't call it a young
12 man -- but he would have been still a young man and he
13 could have had a life.

14 Q Did he understand the difference between the
15 consecutive sentences and the life without the
16 possibility of parole, the difference between those two
17 and was that explained?

18 A It was explained to him, and there was no
19 guarantee that it would be concurrent. That was, and
20 what I told him, was that would be entirely dependant
21 on what you do from today through the major remainder
22 of these cases.

23 We knew who at least one of the judges would not
24 be. We knew he would not be back in front of Judge
25 Few. So I did not know who the other judge would be,

1 but I was fairly confident that had he gone through
2 with his end of the bargain, that he would have stood a
3 very good chance of getting concurrent time because he
4 didn't have -- he had a couple of criminal domestic
5 violence, but he didn't have a very violent history, he
6 had a very good, strong, supportive family.

7 I don't think he had really served any time
8 significant like he did pretrial on this. And I think
9 he would have had a good shot at getting the 30 years.

10 But it would have required him to not only enter
11 a plea -- if he had just entered a plea and not
12 cooperated or testified, then he might have gotten some
13 consecutive time. But certainly had he done what was
14 discussed that he would do, I think there was an
15 excellent chance that he would the gotten only 30
16 years. That's a significant sentence.

17 Q Ms. Taylor, if you could take a minute to look
18 in the transcript and point me, I might have missed it,
19 as to where it's discussed that should he fail to
20 complete a second plea that he leaves himself open to
21 life without the possibility of parole?

22 A I don't know that it's in the plea.

23 THE COURT: It's at the beginning when the
24 negotiation is placed on the record. Where the
25 solicitor says what his agreement is, and if he fails

1 to cooperate what he exposes himself to.

2 MS. STARK: Your Honor, I don't mean to be
3 dense. Honestly, I don't believe that --

4 THE COURT: I can't say that I remember seeing
5 that in the course of entering this plea. And again, I
6 don't have a copy of the written plea agreement which
7 the judge made an exhibit so I don't know whether you
8 all have that and it's in there or not.

9 Maybe I didn't understand the question. Can you
10 restate the question? I don't think I'm understanding
11 what you're asking her. And I apologize. I want to
12 make sure I understand what you're asking.

13 MS. STARK: I'm asking, because I made the
14 representation that I have reviewed the transcript and
15 I have not found an articulation by the judge or
16 counsel or the solicitor's office that should he fail
17 to enter a guilty plea in any of the subsequent
18 charges, that he would expose himself to life without
19 the possibility of parole.

20 Your Honor, just to proffer briefly. There is
21 quite a bit of discussion about the concurrent versus
22 consecutive sentences.

23 THE COURT: There is also a full colloquy with
24 the judge about him not being able to make any
25 guarantees about the other things he has pending, isn't

1 there?

2 MS. STARK: Yes, ma'am. Then I think that goes
3 to the possibility of -- I keep wanting to say 740
4 years, but that's the consecutive versus the
5 concurrent option. But they cannot guarantee that
6 given the other counties, that it will all be
7 consecutive. And trying to get the client to
8 understand which I'm not saying --

9 THE COURT: I think that was prompted by the
10 questions that the applicant was asking. But I'm
11 talking about what the judge said at the beginning, in
12 other words that there are no guarantees about what's
13 going to happen in another county.

14 In other words, there were no assurances made to
15 him that they could bind another county to what they
16 were going to do regarding his subsequent charges.

17 But you may continue your questioning. I will
18 go back and find where I read it.

19 MS. STARK: Yes, ma'am.

20 Q (By Ms. Stark) Ms. Taylor, to clarify. Did you
21 understand that there were guarantees by the other
22 counties that you negotiated?

23 A Absolutely.

24 Q What were those?

25 A Mr. Williams got those agreements, but yes, that

1 he would not face life without parole. That if he
2 entered this plea and a subsequent plea, that would
3 resolve all the cases, including Dorchester County and
4 Berkeley County, and he would not get life without
5 parole. That was taken off the table if he entered
6 pleas to resolve the matter.

7 If he didn't, if after this subsequent, after
8 our plea, he withdrew and didn't do -- and went to
9 trial, then the deal was done.

10 The rest of it was sort of contingent entirely
11 on him. He could have pled to mine, pled to the
12 subsequent one, and he would have gotten whatever
13 sentence he got and he did not need to cooperate.
14 Cooperation was not a contingency on no life without
15 parole.

16 But entering a subsequent plea so that Mr.
17 Williams did not have to try another case with him was.

18 Q Right. And is that -- I think that's the heart
19 of my question is. Can you point to me in the record
20 where it's articulated to the client, so he
21 understands, Mr. Evans, that should he fail to enter
22 that second plea he will receive, or could be exposed
23 to life without parole?

24 A And I don't recall seeing it in here either. If
25 you want me to read the whole thing right now. But I

1 don't remember seeing that particular thing in here
2 either.

3 Q Yes, ma'am.

4 A I do, unfortunately, remember discussing it with
5 Thomas both before our plea and subsequently after the
6 second attempt to plea, which he did not enter the
7 plea.

8 I had met with him after this plea to get the
9 details for him on that plea. Then I did not appear in
10 court because I was in federal court, but one of my
11 partners who had been with me for two years with him
12 and in the trial, and we had already worked it all out,
13 we thought everything was smooth, he was going to
14 simply go in with Ms. Gators' client, who was the
15 codefendant, and they were both going to enter a plea
16 to armed robbery, sentencing to be delayed.

17 And at that point he did not do so. I think
18 neither of them that day, they both said, no, we are
19 not going to do it. So after that, when I came back
20 and heard about that, then I spoke with him again and
21 we went over what was he doing and what the
22 consequences were going to be.

23 Then sometime shortly thereafter, right before
24 we were getting ready to try the second trial was when
25 the conflict arose with my continuing to represent him

1 and I was relieved.

2 Q And at that point you were relieved as counsel?

3 A Yes.

4 Q So you did not participate in the second trial?

5 A I did not.

6 Q Following this trial, did you discuss the appeal
7 options with the client?

8 A You know, honestly, I don't really recall. I
9 know we talked about that he could appeal. But in the
10 initial stages after he had no interest in appealing
11 because that was the point where he was still going to
12 work to try to get 30 concurrent and enter the second
13 plea, maybe cooperate, maybe not.

14 That was always a huddle for Thomas, the whole
15 testifying thing. But to get 30 without life without
16 parole was still where he was. And I cannot remember,
17 and I don't have the documents to look at to see if our
18 ten days had expired before the other one or not.

19 The only thing I can tell you is that had he
20 told me he wanted to appeal his sentence, I would have
21 filed a notice of intent to appeal and sent it to
22 appellate defense. So if that wasn't done, I certainly
23 don't remember him telling me he wanted to appeal this
24 sentence.

25 Q Did you initiate the conversation and ask him if

1 he wanted to appeal?

2 A You know generally speaking that is something
3 the judge mentions and we talk about it very briefly.
4 But I have no independent recollection of me having a
5 conversation with him about an appeal. We had
6 conversations about what the next steps were to get him
7 concurrent sentencing. Those I remember.

8 MS. STARK: I don't have anything more at this
9 time.

10 THE COURT: Mr. Friedman, any questions for the
11 witness?

12 MR. FRIEDMAN: Thank you, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. FRIEDMAN:

15 Q Ms. Taylor, how long have you been practicing
16 law?

17 A Since 1983.

18 Q Were you appointed or retained in this case?

19 A Appointed.

20 Q Do you recall if you discussed the elements of
21 the charge and what the State was required to prove?

22 A I'm sure that we did. I don't have an
23 independent recollection of it.

24 Q Did you inform the applicant of the consequences
25 of a guilty plea?

1 A Yes.

2 Q This was a negotiated sentence; is that right?

3 A Yes.

4 Q Did you explain to him what that meant?

5 A Yes.

6 Q Whose decision was it to plead guilty?

7 A Thomas.

8 Q You testified about the plea agreement. Were
9 the only terms that he would not face life without
10 parole in a subsequent plea if he pled guilty to this
11 and a second set of charges?

12 A Yes, that he would not face life without parole
13 on any of these charges if he entered one more plea.

14 Q Was there any agreement about the sentence or
15 just that he would not face life without parole?

16 A No guarantee about the sentence.

17 Q And you originally represented him on a second
18 set of charges; is that right?

19 A I represented him on 16 set of charges for a
20 year or two. I had all of them except for the
21 Dorchester which I think was a single case.

22 Q Can you explain what happened after this guilty
23 plea, he was going forward for the second guilty plea?

24 A He went to court and didn't mention any
25 problems. But when the judge asked him if he wanted to

1 plead guilty, he and his codefendant advised both
2 attorneys said that no.

3 I don't have a transcript from that and I wasn't
4 present so I don't know. But I did speak to Ms.
5 Gators, who is a long-time colleague of mine, as well
6 as my partner who handled the plea. And what I was
7 told was that they had decided that they would agree to
8 ride it out, they were going to go to trial, they
9 weren't going to worry about who was going to testify
10 against them.

11 Q Was there a reason you were relieved as counsel
12 on that case?

13 A Yes. It became pretty clear after that that our
14 relationship had deteriorated. And there were
15 concerns. It was clear he was going to pursue this
16 avenue of attempted relief to get out of this plea.

17 And when we discussed that, it was pretty much
18 the agreement of everyone, including our judge at the
19 time, that it would be better to give him a different
20 attorney.

21 Q Do you remember him asking you to file an
22 appeal?

23 A I do not remember him asking me to file an
24 appeal. And there is -- I can't imagine any
25 circumstances, especially in a case like this, where

1 you understand the seriousness and what is coming; that
2 had he said, file an appeal, I would not have done it.

3 It's a three-minute process for me to file a
4 notice and send it to appellate defense, which I have
5 done routinely whenever asked for the last 28 years.

6 Q At that point, immediately after the first plea,
7 was it still your goal to go forward with the second
8 plea?

9 A Yes.

10 THE COURT: I'm sorry, what was the question?

11 Q (By Mr. Friedman) At the point after the first
12 plea was it still your goal to go forward with the
13 second plea?

14 THE COURT: And the answer was yes?

15 A Yes, ma'am.

16 Q (By Mr. Friedman) Did you have any reason to
17 believe he wanted to appeal the first plea?

18 A No.

19 MR. FRIEDMAN: I have nothing further.

20 THE COURT: Any redirect?

21 MS. STARK: One moment, Your Honor.

22 That's all I have.

23 THE COURT: Any objection to the witness being
24 excused?

25 MS. STARK: No, Your Honor.

1 THE COURT: Anything further from the applicant?

2 MS. STARK: Yes, Your Honor, I'd like to call --

3 THE COURT: Let me interject just a quick
4 moment. Have you explained to your client what is
5 happening here and what he is subjecting himself to?
6 And that all of these other things that have been
7 dismissed can come back from all these other counties
8 and what he is really facing?

9 MS. STARK: Initially, but I was going to go
10 over it again on the record.

11 THE COURT. I think you need to. Because all I
12 can give him is a new trial. And I can tell you right
13 now, the State's posture is not going to be nice if he
14 gets a new trial. And all those other things are just
15 going to come back.

16 I hate to say not nice, I hate to characterize
17 it like that. But they feel like they have already cut
18 you a break and if you don't want it they're going to
19 take it back from you. That's the way they're going to
20 look at it.

21 So all of the charges you had in Berkeley,
22 Dorchester, they're all going to come right back. So
23 really as a practical matter you just start at square
24 one. And I can tell you based on my experience with
25 them, they are going to try them one at a time until

1 they get LWOP. That's what they're going to do.

2 THE DEFENDANT: I respect that.

3 THE COURT: So I just want you to be aware of
4 that. So this is really a no win kind of situation.
5 You are just between the proverbial rock and a hard
6 place. And I have read the transcript very thoroughly
7 on both cases.

8 And sometimes applicants have the impression
9 that somehow the Court can twist the arm of the State
10 and say -- the typical response I get is, I really just
11 want them to offer me my old deal. Or I want them to
12 offer me something better.

13 And I just don't want you under the
14 misapprehension that that's what happens because it's
15 not.

16 THE DEFENDANT: I never got a deal except for
17 life without parole.

18 THE COURT: Well they were never inclined to
19 offer you one. They didn't have any incentive to do
20 it.

21 THE DEFENDANT: That's what I was saying. It
22 was always life without parole, until there was a
23 minimum 10 to 15.

24 THE COURT: Actually, there would have been no
25 basis for them to have ever offered you a strong arm.

1 And on this record they never intended to offer that to
2 you at all.

3 THE DEFENDANT: Yeah, that's why I don't
4 understand the whole situation came from because it was
5 always life without parole. That's what I'm not
6 getting.

7 THE COURT: What she's saying -- I don't want
8 you to get into the merits of the case. I need to make
9 sure that you understand that the only relief I can
10 grant you is a new trial, and that all these other
11 charges are going to come back.

12 THE DEFENDANT: I'll take that.

13 THE COURT: Okay.

14 MS. STARK: So, Mr. Evans, you understand that
15 if you do win, you will start from scratch and then you
16 can be tried on all the other counts that were still
17 out there. And you might still end up with life
18 without parole, and most probably will if you are found
19 guilty?

20 THE DEFENDANT: Yes. Like I just wanted my
21 charges to plead guilty anyway instead of going to
22 trial.

23 THE COURT: They're not going to begin there.
24 They are going to try them in every county one at a
25 time.

1 THE DEFENDANT: I respect that. I'm going to go
2 through it. I'm not trying to be rude to you, but
3 that's why I want to proceed with it.

4 THE COURT: It doesn't matter to the Court, I
5 just need to make sure you are clear.

6 THE DEFENDANT: Yes, ma'am.

7 MS. STARK: You understand that you have
8 separate charges in Dorchester County, and they will go
9 one at a time. Berkeley, one at a time. Then back to
10 Charleston?

11 THE DEFENDANT: Yes, ma'am.

12 MS. STARK: And you still want to go forward?

13 THE DEFENDANT: Yes, ma'am.

14 MS. STARK: Okay, sir. I'm going to have you
15 use the microphone.

16 MR. THOMAS JERMAINE EVANS,
17 after having first been duly sworn to tell the truth,
18 the whole truth and nothing but the truth testified on
19 his oath as follows:

20 THE COURT: You may proceed.

21 DIRECT EXAMINATION

22 BY MS. STARK:

23 Q Sir, what is your educational background?

24 A Right now I just got my GED recently at the
25 institution.

1 Q When you were involved in the plea of this
2 matter several years ago, what grade had you completed?

3 A Eighth grade.

4 Q And you dropped out in the ninth grade?

5 A Yes, ma'am.

6 Q When you initially were arrested for these
7 crimes, did you understand what you were indicted for
8 and what the warrants were for?

9 A No, ma'am. I actually, when the U.S. Marshals
10 arrested me, the deal with the warrants they had I
11 never received them. I went to my bond hearing and
12 never still received them. So they proceeded to bring
13 out the other charges to me.

14 And as far as me understanding, no, all that was
15 the first time me being arrested for armed robbery.

16 Q So it was your first time being arrested for
17 armed robbery?

18 A Yes, ma'am.

19 Q Did you ever eventually see copies of the
20 warrants and the indictments?

21 A After my first trial and Mr. Runyon, he got all
22 the material from Ms. Taylor and he mailed it to me at
23 the institution. That's when I saw it, I saw that my
24 warrants weren't even signed off and served to me.

25 Q So your warrants weren't signed and they weren't

1 delivered to you?

2 A No, ma'am. I got the evidence right here if you
3 want to see it.

4 Q Did Ms. Taylor -- did you discuss those problems
5 with Ms. Taylor?

6 A Yes. I do recall that I asked her about it.
7 And she said she had it at her office, but she never
8 brought them to me.

9 Q Did you go over them before the guilty plea?

10 A No, ma'am.

11 Q What was your understanding of the charge that
12 you had represented by Ms. Taylor? What did you
13 understand that you were going to plead guilty to?

14 A You talking about when I was at my trial?

15 Q Yeah. When you came to trial and did the guilty
16 plea.

17 A All right. Well actually I didn't want to plea
18 out, I wanted to go through with it. So when there was
19 a recess she told me that she wanted to see me in the
20 booth.

21 So my sister came in there crying saying, I just
22 take the 30 years, I don't want to see you do life
23 without parole. So by that time tears started come --
24 coming out of my eyes and I was angry so I boxed the
25 glass.

1 So I didn't want to cop out. So by me seeing my
2 sister crying, and when I walked back in the room the
3 rest of my family crying, they told me, T, take the
4 deal. So basically I was under a lot of pressure so
5 that's why during that guilty plea phase I was kind of
6 not really -- I didn't really wanted to plead guilty
7 because I was confused that I was going to receive
8 life.

9 But knowing what I know now, I should have went
10 through it all because I could have only received 30
11 years instead of life without parole down the line.

12 Q So it was your understanding that had you
13 completed the trial you could have only gotten a
14 30-year sentence?

15 A Yes, ma'am.

16 Q How did you come understand that? Who explained
17 that to you?

18 A One of my codefendants and the people at the
19 institution and at the county jail.

20 Q But with regard to Ms. Taylor, did she explain
21 to you what the consequences were and what they had to
22 prove for a guilty plea before you took it?

23 A What the consequences?

24 Q What would happen if you -- what you gave up if
25 you went forward with your guilty plea?

1 A All right. I know that the jury stated that I
2 was giving up my rights towards everything else.

3 Q I will go back. Did Ms. Taylor come and meet
4 with you at the jail?

5 A Yeah. I wrote a grievance on her too.

6 The first one I met with her in April, and I
7 think she only came three or four times. I have the
8 paperwork. And after that it was a long period of time
9 before she came back. I think it was October.

10 So I would say the total amount of time, the two
11 years I was in the county, that Ms. Taylor probably
12 came to see me was ten or a little bit under ten times.
13 It wasn't ten or thirty time like she said.

14 Q So she came and saw you. Did she discuss with
15 you all of your options with regard to pleading or
16 going to trial?

17 A No, ma'am. Like 10 to 15 years she said? No.
18 She always came to me saying, you will testify to get
19 30 to 40 years, or it's going to give me life without
20 parole.

21 And the plea agreement that she tried to make me
22 sign, which I didn't sign, says 30 to 40 years
23 consecutive, they don't want me to testify. So dealing
24 with all 25 charges, that would have been like
25 700-something years. How can a man do 700-something

1 years?

2 Q So there was a plea agreement that she brought
3 before the one before Judge Few that asked you to do 30
4 to 40 years consecutive?

5 A Yeah, this one right here was in March of 2008.
6 Any other plea agreement, she didn't brought to me.
7 This is the only one.

8 Q So she showed you one written plea agreement
9 that you did not enter prior to the one with Judge Few?

10 A Yes, ma'am. I was in lock-up and she gave me
11 the plea agreement. She tried to ask for it back but I
12 didn't give it back to her. Because there was a little
13 argument between us. So she raised her voice at me, I
14 raised my voice at her.

15 Q Was there a promise that you would get a 15-year
16 sentence if you pled guilty to the Doscher's robbery?

17 A No, ma'am. That never came into the equation.

18 Q My understanding was that you just said that you
19 were promised 15?

20 A No, that's what she said, 10 to 15 years. But I
21 never heard anything about 10 to 15 years. That was
22 never brought to my attention.

23 Q Okay. Did Ms. Taylor discuss with you the
24 possible defenses that you had if you went to trial,
25 and how good or bad those defenses would be?

1 A I told her about the defenses. As a matter of
2 fact she brought this dude to me named Jack something,
3 an ex-solicitor or something for about 15 or 18 years,
4 and they tried to prep me for like five minutes.

5 So once they finished questioning me, she asked
6 -- I mean I said, how did I do? He said, you better
7 pray. I said, pray for what? So Ms. Taylor spoke to
8 me about it. I came to the understanding like, you
9 know, you basically like screwed over, you know.

10 Q Okay. So with -- what defenses did you ask Ms.
11 Taylor to present for you?

12 A The arrest warrant.

13 Q The warrantless arrest?

14 A Yes, ma'am.

15 Q Did you discuss that with Ms. Taylor?

16 A Yes, ma'am. I discussed that with her.

17 Q And did she present that at the trial?

18 A No, ma'am.

19 Q What else did you discuss?

20 A The next situation was I asked her about the
21 warrant. Then I asked her about the indictment because
22 one of the situations, too, she told me that they never
23 got it. They never gave her indictments.

24 I got the actual letter that she wrote to Judge
25 Pieper about the situation. And this was after I was

1 indicted in June. And this is a July 24, 2007 letter
2 that she told him that we were currently waiting on
3 more discovery.

4 And I told her to file certain motions that she
5 said -- I think she -- from my understanding that she
6 was saying that it would affect my case or Mr.
7 William's case, one of the two. So I'm still kind of
8 confused on that situation.

9 I also told her about my codefendants writing
10 multiple statements and passing a polygraph test.

11 Q Okay. So she didn't pursue the faulty
12 indictment?

13 A Uh-hum.

14 Q At trial?

15 A No, ma'am. I didn't --

16 Q Well then with regard to your codefendants, did
17 you discuss with Ms. Taylor the fact that they were
18 giving conflicting statements?

19 A I told her about it. She just never brought it
20 up at my pretrial. So we was basically focusing more
21 on my statement that I told Detective Osborne after he
22 initiated everything to me that he knew. So that's how
23 he got the information because of my other
24 codefendants.

25 So I was doing -- after he realized that I had

1 two kids, both of my daughters, and he -- I told him,
2 look, all I'm trying to do is just get home to see my
3 kids born. The other thing I was all pleading guilty,
4 yeah, I did that. You know what I'm saying?

5 Q Uh-hum.

6 A So he's like, all right, I give you my word. We
7 shook on it and everything. He said, I'm going to talk
8 to the solicitor, I'm going to get you home in time to
9 see your kids born. And after that is whatever.

10 Q So did you feel -- did Ms. Taylor bring up that
11 you felt like you had an agreement with the detective
12 and that you were coerced into giving a statement?

13 A Yeah. Because he provided him to me to come and
14 see me. And right before then he spoke to me, you know
15 like, don't let Ms. Taylor know that me and you spoke.

16 So either he called my older sister, and I have
17 my phone records from the county, he called my older
18 sister to tell me to call him collect, so which I did.
19 I'm like, what's the situation? You know, both my kids
20 are going to be born later on this year.

21 He's like, I'm still trying, TJ, but you need to
22 tell me about the guns and the masks. And I'm like,
23 man, you tell me this so you got the confession from
24 me. I want to go home to see my kids, it's that
25 simple.

1 Q Did Ms. Taylor address this at the trial?

2 A No. Well they addressed the situation about the
3 statement, but when I got up there when the solicitor
4 was asking me, Nathan Williams was asking me, did I
5 write the statement. I told him, no, I didn't write
6 the statement.

7 So he was basically saying I was lying. But I
8 didn't, Detective Osborne wrote the statement.

9 Q You had indicated that you felt forced to enter
10 a plea because you got some threats?

11 A Some threats?

12 Q Did you feel you were ever threatened to give a
13 statement or to enter a plea?

14 A No, I never got threatened by anybody. But to
15 give a plea, I felt I was forced into giving a plea.

16 Q Why did you feel you were forced into giving a
17 plea?

18 A Because when Judge Few, he told me that like --
19 I don't want to say it wrong. Repeat the question
20 again.

21 Q Did you feel that you were forced into giving --
22 entering a plea agreement?

23 A Yeah. I felt I was forced because he was
24 somewhat rushing me saying, do you want to plead. And
25 I said right then I wasn't saying anything because I

1 didn't want to plead. And.

2 THE COURT: The Court has reviewed the
3 transcript. I know every part of what Judge Few said
4 to him. I take judicial notice of it. Move on to your
5 next question.

6 MS. STARK: I will. Yes, ma'am.

7 Q (By Ms. Stark) When you decided to enter the
8 plea, what was your understanding of what you were
9 agreeing to?

10 A That I wasn't going to receive life without
11 parole. And that they can't hit me with a two-strike
12 law.

13 Q What do you mean hit you with a two-strike law?

14 A From what he was saying that the only way that I
15 could receive the two-strike law, he said, if I was to
16 go to jail/slash prison and commit another armed
17 robbery charge, and I was to get found of that, that's
18 a two-strike law.

19 I didn't know that they could bring up the rest
20 of these charges and hit me with the two-strike law and
21 give me life without parole. I didn't understand about
22 that. But apparently seems like he said it, but I'm
23 not quite so sure because I just didn't know.

24 Q So it was your understanding then that if you
25 got out of prison and at that time committed another

1 armed robbery, then you could be subject to life
2 without parole. But not for any of the charges, the 16
3 that you currently had pending?

4 A Yes, ma'am. That's my understanding of the
5 two-strike law. I would have to get out and commit
6 another charge and come back.

7 Q Okay. Did you understand that the prosecutors
8 in Berkeley, Charleston and Dorchester had agreed to
9 what? What was your understanding of what the
10 prosecutors agreed to?

11 A The Judge asked Mr. Williams like, is that the
12 understanding that Charleston, Berkeley and Dorchester
13 County agreed that if he plead to this that they, I
14 guess, drop the charges or run it together, that they
15 will just leave it alone and it will just be 30 years.
16 And he said, yes, if you plead out. If I'm correct,
17 so.

18 Q Okay. Did you think you could get more than 30
19 years on your other crimes, on the other 16 when those
20 were resolved?

21 A To be honest, no. Even though it says that --
22 the Judge said that he can't decide -- I mean, he can't
23 decide unless I plea in front of him that if there was
24 I think doing it consecutive or I could have -- he says
25 something about doing consecutive.

1 Q Or concurrent?

2 A He said, okay, so the Judge can give you 30
3 years consecutive on every one of these charges.

4 Q Do you understand what consecutive means?

5 A Yeah, now that I know that.

6 Q But at the time you did that plea, did you
7 understand --

8 A No, not at the time.

9 Q -- that concurrent means that you are doing the
10 30 years, all 30 years are one 30 years. And
11 consecutive means one 30 years after another?

12 A Yes, ma'am.

13 Q Did you understand that principle at the time
14 that you pled guilty?

15 A Nope. When he told me it was 450 years, I
16 couldn't imagine 450 years. So that's -- and I keep on
17 saying, I don't want to do life without parole, because
18 that's what Ms. Taylor and my sister had told me.

19 Q So your goal in entering the plea was not to
20 have to do life without parole?

21 A Yes, ma'am.

22 Q And that's what you thought you were getting by
23 entering this plea?

24 A Yeah, that's what I thought. That's what I
25 thought I was going to get, life without parole.

1 Q okay. And did you have any understanding that
2 if you didn't enter a guilty plea in your other case in
3 Charleston County, that you might get life without
4 parole if you didn't enter another plea?

5 A No. To be honest with you, I thought it was
6 over after that trial.

7 Q okay. Did you talk to Ms. Taylor about
8 appealing the sentence?

9 A She actually brought it up to me after the trial
10 that I could appeal it. So I'm like, all right, you do
11 it on me. Because she came and saw me at the county.
12 So I'm like, you do it because I don't know how to do
13 it, you know, write out an appeal. I don't know what
14 to do.

15 Q So she came and visited you and you instructed
16 her to file the appeal because you didn't know how to
17 do it?

18 A Yes, ma'am. Because she asked me about it, yes,
19 ma'am.

20 THE COURT: Let me interpret one second.

21 (Whereupon, a scheduling matter is discussed off
22 the record.)

23 THE COURT: Go ahead.

24 Q (By Ms. Stark) With regard to your appeal, how
25 did you find out that the appeal wasn't filed?

1 A I got to the institution in July. I wrote them,
2 I went to the law library, found the address. And they
3 responded back saying that no appeal, no appeal/motion
4 was filed with the courts.

5 THE COURT: Let me interrupt you one more
6 second.

7 (Whereupon, a scheduling matter is discussed off the
8 record.)

9 THE COURT: Go ahead.

10 Q (By Ms. Stark) Did you ever give up your right
11 to appeal, sir?

12 A You mean?

13 Q Did you ever tell Ms. Taylor, or any of your
14 other attorneys, not to appeal this case?

15 A No, ma'am.

16 Q Is there anything that you want to add that you
17 feel that I have missed?

18 A The fact that I believe she was ineffective.

19 Q You believe that and -- that's by not pursuing
20 your defenses, no advising you correctly on your plea,
21 not filing your appeal?

22 A Yeah, just like this letter that she faxed to
23 Mr. Nathan Williams stating that she's had enough.
24 Since it appears we will not be selecting a jury this
25 afternoon, do you think we will make it this week?

1 T's mother is flying into town tonight. We
2 should get past this week and she can talk some sense
3 into him, would there still be a possibility of --
4 right then and there that's telling me that she don't
5 want to represent me.

6 Q You felt like by having your mother and others
7 convince you to plead, that you were not -- you were
8 coerced into doing it?

9 A Yeah. I don't know that she talked to my mother
10 or not. But the fact that when she was at trial and my
11 sister and my mama and -- I don't know if she mentioned
12 it to my mama or my sister came back and mentioned it
13 to my mama.

14 So I can't actually say she actually directly
15 talked to my mama. But I know directly she talked to
16 my sister, my sister came into court.

17 A So it is your feeling that she did not want to
18 represent you and defend you in the case, so put
19 pressure on your family to push you into entering a
20 plea without your full knowledge is what you were
21 doing?

22 A Yes, ma'am.

23 Q Were you upset when you entered the plea?

24 A Yes, ma'am. I was even stated that in --

25 Q That was a yes?

1 A -- in the transcript that I was mumbling/slash
2 crying, so I need to point that line out.

3 THE COURT: I have already read it. I know what
4 it says.

5 THE DEFENDANT: Okay.

6 Q (By Ms. Stark) Were you so upset that you were
7 unable to realize what was going on?

8 A Yeah. By that time, you know, to be honest with
9 you, I was going to prison like the law, go ahead and
10 proceed with this because I can't get no more than 30
11 years. I still pleading. I still got 30 years.

12 Q Did you ever see a written copy of the plea, the
13 final one that is referenced in the transcript?

14 A No, ma'am. I only saw this.

15 Q And that was the only one?

16 A Yes, it --

17 THE COURT: Is there any indication it was
18 reduced to writing? There is no indication in this
19 record that the plea agreement was reduced to writing.

20 They published the agreement for the record. Or
21 did I miss something?

22 MS. TAYLOR: I think it is, Your Honor.

23 THE COURT: Tell me, did I miss it? And I hate
24 to intervene but that was never asked of you.

25 Was there in fact a written, a final written

1 plea agreement?

2 MS. TAYLOR: There is -- no, actually. There is
3 the part where the Judge said Exhibit 2, which I
4 entered into the court exhibit is the plea agreement.

5 THE COURT: Then we need to find that exhibit to
6 this plea.

7 MS. STARK: Your Honor, I have not seen a copy
8 of that.

9 THE COURT: I'm going to have the clerk find it.
10 It should be in the evidence file. The original
11 indictment number is 2007-GS-10-7508.

12 THE CLERK: Okay.

13 Q (By Ms. Stark) Mr. Evans, anything else you
14 want to add?

15 A The fact that we -- my codefendant are like.

16 Q And your codefendants got a lesser sentence; is
17 that correct?

18 A Yes, ma'am. The first, Clarence, he pled guilty
19 to the same charges too that I got 30 years and a life
20 without parole. And he had a whole different type of
21 statement.

22 He passed the polygraph test, and that's on
23 April 6, 2006. Then he gave a statement May 17, '06
24 indicating that he wasn't involved in the situation.
25 Then on May the 30th, '06 he said that he was

1 implicated and that he was involved in the robbery.

2 Then on May -- March 2007, he wrote a statement
3 in the county jail saying that the police officer in
4 fact compelled him and caused him to a false
5 confession.

6 Q So what you are saying --

7 THE COURT: I hate to interrupt you, but none of
8 that is germane. I don't know why he pled guilty.
9 Ms. Taylor has already indicated that he probably got a
10 lesser sentence because he was going to cooperate and
11 testify against the applicant. And absent that record,
12 the rest of that is conjecture.

13 So I need for you all to sort of fast-forward to
14 those elements that affect the deficient performance.
15 Because whatever he got, whether somebody else got a
16 lesser sentence has no bearing on the ineffective
17 assistance of counsel.

18 There are many variables as to why he may have
19 gotten a lesser sentence. And the indication, at least
20 so far of what I've heard, is that he was going to
21 testify against your client, and that's probably what
22 happened.

23 But I have to pull that record to know whether
24 it was negotiated and what the terms of that plea were.

25 MS. STARK: Yes, ma'am.

1 THE COURT: And it appears -- and whether he had
2 any records because that all has a bearing on.

3 But I suspect, if my gut is correct, it probably
4 was a negotiated plea based on his substantial
5 cooperation with the state. I'd have to look that up
6 to make sure that that's accurate.

7 THE DEFENDANT: I got proof from my other
8 transcript.

9 THE COURT: It wouldn't matter, sir, whether he
10 got a lesser sentence than you. It has no bearing on
11 whether your lawyer was effective or not.

12 THE DEFENDANT: Okay.

13 Q (By Ms. Stark) Ms. Taylor, did she give you the
14 opportunity to testify against your codefendants if you
15 pleaded guilty?

16 A Yes, ma'am. And at that time between 30 to 40
17 years to life without parole.

18 Q Okay.

19 MS. STARK: I think that's all I have at this
20 time.

21 THE COURT: Any questions for the witness, Mr.
22 Friedman?

23 MR. FRIEDMAN: Just a few.

24 THE COURT: You may proceed when you're ready.
25 sir, if you would answer Mr. Friedman's

1 questions.

2 CROSS-EXAMINATION

3 BY MR. FRIEDMAN:

4 Q Sir, during your guilty plea do you remember
5 telling the Court that you understood the nature of the
6 charges and the possible punishment?

7 A Yes, I do remember that part.

8 Q Do you remember telling the Court that you
9 understood the terms of the negotiated sentence?

10 A Do I remember telling the Court?

11 Q That you understood the terms of the negotiated
12 sentence?

13 THE COURT: Sir, do you understand the question?
14 Do you need it repeated?

15 A Yeah, can you repeat it?

16 Q (By Mr. Friedman) Yeah, I'll simplify it a
17 little bit. Do you remember that this was a negotiated
18 sentence?

19 A That this wasn't?

20 Q It was a negotiated sentence?

21 A All right. When you stating that, you are
22 talking about that me plea offer?

23 Q That first 30, do you remember that you had a
24 negotiated sentence agreed to ahead of time on that
25 first plea?

1 A All right.

2 Q The plea that we're here for right now?

3 A Yeah, the 30 years?

4 Q The 30 years.

5 A The 30 years and nothing else?

6 Q Right, on this first charge. Do you remember
7 telling the Court that you understood that negotiation?

8 A Yeah because the Judge was like real pissed off
9 at me. I'm like, yeah, whatever.

10 THE COURT: I hate to interject again. The
11 Judge was not upset. I have read the transcript. He
12 was trying to make sure, as I would have done, that you
13 were making a free and voluntary decision. He prompted
14 you to correct your attitude toward the Court and your
15 posture to speak clearly. But there is no indication
16 that he was upset or angry.

17 And normally I wouldn't interject myself into it
18 except that I have been in this position before. And
19 reading a cold record is very difficult. But there is
20 no indication that he was angry, upset or had any other
21 temperament issues dealing with this defendant.

22 He says over and over again, I want to make sure
23 that your plea is voluntary. I'm not going to take it
24 unless I'm sure you are doing this because you want to
25 do it. And if you don't want to do it, we are going to

1 continue with the trial.

2 And that's what the record reflects. So I don't
3 want there to be any misapprehension that somehow --
4 because it has been said several times and it's just
5 not accurate based on this record. If he wants -- I
6 will note for the record that it is his perception that
7 the Judge was upset with him. But there is nothing in
8 the record that supports that.

9 So you may proceed with your next question. I
10 just couldn't let that linger in the air as being
11 accurate because it's not.

12 MR. FRIEDMAN: Thank you.

13 Q (By Mr. Friedman) Do you remember telling the
14 Court that no one had threatened you or promised you
15 anything to get you to plead guilty?

16 A Do I remember telling that Court the no one
17 threatened? No one did threaten.

18 Q No one had threatened. Did anyone coerce you?

19 A You mean like while I said the situation with
20 Ms. Taylor told my sister? If you want to call that
21 coercion, yeah, that was.

22 Q Did you tell the Court about that?

23 A No, I didn't.

24 Q Do you remember telling the Court that you were
25 completely satisfied with your attorney?

1 A I did say that just to get on through it. If I
2 was in fact satisfied with her, in that case I would
3 have never wrote the grievance order in the first
4 place.

5 Q Do you remember telling the Court that you were
6 in fact guilty of this armed robbery?

7 A Yeah, I do remember saying that.

8 Q Do you remember the Court asking your attorney
9 if she had gone over the indictment with you and she
10 indicated she had?

11 A I don't remember that part.

12 Q All right.

13 A If you want to point it out to me, I can correct
14 myself. But I do not recall that.

15 Q Page 36, Line 15.

16 A All right. It don't say anything about me
17 saying that she's going over with me.

18 Q 36, Line 25. Is that where the Court is asking
19 you, telling you that he wants to go over the
20 indictment with you?

21 A Did Ms. Taylor go over the indictment with me?
22 No, sir.

23 Q Is that what the Judge said?

24 A Yeah, the Judge did like in the middle of the
25 trial when I was forced into the plea, yeah, he did

1 about Ms. Taylor, ask me the question. No, sir, she
2 didn't.

3 Q Do you recall telling Judge Few that no one had
4 pressured you to plead guilty?

5 A Yeah, I remember saying that.

6 Q What was your understanding of the plea
7 agreement? I was a little bit confused about what you
8 thought you were pleading to.

9 A See my understanding that I could never receive
10 life without parole. Just like I was stating in there,
11 I did not want to receive life without parole because
12 that was my whole understanding saying that I didn't
13 want to receive life without parole.

14 So from my understanding I was going to receive
15 30 years and that was going to be it.

16 Q So is it your testimony that you did not know
17 that there was going to be a subsequent or a second
18 plea, you did not know that?

19 A No, sir.

20 Q Do you remember discussing anything about a
21 second plea with Ms. Taylor after this first plea?

22 A Do I remember discussing the second plea? There
23 wasn't a second plea.

24 Q Do you remember discussing the possibility of a
25 second plea with Ms. Taylor after the first plea?

1 A Do I remember discussing the first plea
2 agreement after the second? The second plea agreement
3 after --

4 Q I will start over. After the first plea that we
5 are here for right now, you got 30 years. After that,
6 did you have any discussions with Ms. Taylor about your
7 other charges?

8 A My other charges? All right, so the previous
9 question was before that?

10 Q Don't worry about the previous question. I'm
11 asking after the first plea, do you remember any
12 discussions with Ms. Taylor about your other charges?
13 Because you had 16 other charges.

14 A She didn't discuss with me about a second plea.
15 Again the situation came up they talking about carrying
16 me to court later on about pleading out, testifying.
17 No it wasn't on the record that way because they said
18 30 years. They didn't say anything about me going to
19 testify about nothing.

20 Q Did you ask Ms. Taylor to file an appeal on the
21 first plea?

22 A She brought the appeal to my attention. She
23 asked if I was going to file it or she was going to
24 file it. I told her she was going to file it.

25 Q She asked you if you were going to file it or if

1 she should file it?

2 A That's what I said.

3 MR. FRIEDMAN: I have nothing further, Your
4 Honor.

5 THE COURT: Any redirect?

6 MS. STARK: No, Your Honor, I don't have any
7 redirect.

8 THE COURT: Any further witnesses?

9 MS. STARK: No, Your Honor.

10 THE COURT: Anything from the State?

11 MR. FRIEDMAN: No, Your Honor.

12 THE COURT: You all bear with me one moment.
13 Glad to hear any argument.

14 MS. STARK: Your Honor, I don't want to belabor
15 the hearing. I have -- I'm not sure if my supplemental
16 memorandum has made it up to your desk or not, but I
17 have an additional copy that goes through our
18 arguments.

19 Essentially what this boils down to is a failure
20 to file appeal which amounts to ineffective assistance
21 of counsel when Mr. Evans directed counsel to file an
22 appeal with regard to the sentence.

23 The second part of it is the ineffective
24 assistance of counsel with regard to a knowing and
25 understanding entry of a plea agreement. And I think

1 that -- I can talk now, getting down to the essential
2 elements of it.

3 The client, based on the transcript, which is
4 long and broke up and filled with a lots of
5 contradictions, did not understand that by entering
6 this plea he was still being exposed, potentially, to
7 life without parole which is what he was trying to
8 avoid.

9 THE COURT: Would you agree with me that his
10 written agreement and proffer with the State is the
11 totality of his negotiated plea?

12 He signed it and he knew what the terms of it
13 were, which was he was to plead to everything to get 30
14 years. I'm about to give you a copy. That's what it
15 says.

16 MS. STARK: Having not seen it and not shown it
17 to the client, I don't --

18 THE COURT: It was available to you all. It's
19 in the record. It's an exhibit to the plea. It says
20 he is to plead to everything. And in exchange for
21 that, he gets 30 years.

22 And it covers the range of every armed robbery
23 he would have committed. It has the dates of when they
24 would have started and when they would have ended. The
25 proffer is very clear.

1 MS. STARK: Without showing it my client, I
2 don't think that I can in good faith represent --

3 THE COURT: Well he signed it so he read it.
4 His signature is on it, along with Ms. Taylor and the
5 State. And it was made an exhibit for the record.

6 THE DEFENDANT: Can I see it, please?

7 THE COURT: I'm getting a copy for you right now.

8 MS. STARK: Thank you. On the record, though,
9 and the transcript --

10 THE COURT: That plea agreement is a part of the
11 record. It was made an exhibit of the record.

12 MS. STARK: And just -- yes, ma'am. With regard
13 to the transcript though, as I was explaining, it's
14 very convoluted, there is a lot of discussion about
15 concurrent versus consecutive sentencing options of
16 future pleas. But nowhere in that transcript --

17 THE COURT: The agreement is very clear that he
18 signed that he has no assurances as to what his
19 sentence is going to be.

20 MS. STARK: Yes, ma'am

21 THE COURT: And it's clear in the record that he
22 had no assurances. The Court was very clear. And he
23 went through an entire colloquy of, well, who's going
24 to sentence me.

25 MS. STARK: Yes, ma'am.

1 THE COURT: And who is it going to be, because
2 I'd like to know. And he has enough experience with
3 the system to know what concurrent means and what
4 consecutive means.

5 THE DEFENDANT: May I speak? I mean --

6 THE COURT: No, sir, not while the Court is
7 talking.

8 You may continue with your argument.

9 MS. STARK: My argument would be, Your Honor,
10 that in the transcript as it has been explained to
11 someone with an eighth grade education, there is not
12 clarity with regard to what he's opened himself up to,
13 which was the life without parole.

14 I think Your Honor is correct in that there was
15 a discussion of the length of the concurrent sentences
16 and the consecutive sentences, but not that ultimate
17 basically what my client viewed as a death penalty,
18 life with no possibility of parole, which was what was
19 imposed upon him when he did not go through with the
20 subsequent guilty plea.

21 And I think that is where the lack of
22 understanding and explanation was.

23 MR. FRIEDMAN: Thank you, Your Honor, just
24 briefly. As far as the appeal issue, counsel testified
25 that he did not ask her for an appeal. And State would

1 submit that it's credible, her testimony that she would
2 have appealed if he had asked her to do so.

3 As for the involuntary guilty plea issue.
4 Counsel testified that she believed he understood the
5 written plea agreement; that he would have to plea to
6 this charge and to a subsequent charge in order to get
7 LWOP off the table.

8 And it's clear from the record that he was
9 concerned about his other charges. He went back and
10 forth with Judge Few several times about who would be
11 his judge, how his other charges would be disposed of.
12 And the Judge made sure that his plea was voluntary.
13 It's one of the longest guilty pleas I have seen.

14 It's clear that he understood the consequences
15 of the plea. We would ask the Court to deny and
16 dismiss the application.

17 THE COURT: I was concerned about whether he had
18 a full understanding, that is why I asked Mr. Michel to
19 go pull his file and find this exhibit, which is his
20 written proffer which is what he is bound to.

21 It is the totality of his agreement with the
22 state. It is not altered by what is published for the
23 record. I have no concern that he is clear as to what
24 his agreement was with the State and what the
25 conditions were.

1 The first page of that agreement is very clear.
2 It says that he agrees to plead guilty to all charges in
3 connection with a series of armed robberies beginning
4 in January of 2006, and ending in May of 2006. He
5 agrees to plead guilty to all charges in connection
6 with a series of armed robberies beginning in January
7 of 2006, and ending in May of 2006. And he agrees to
8 plead guilty to all charges.

9 In exchange for that, they have negotiated a
10 minimum sentence of not less than 30 years. It always
11 provides that the State may argue for a greater
12 sentence, and/or for consecutive sentences. And that
13 the determination of whether the sentences will run
14 consecutive or concurrent, and the extent to which this
15 may happen, will be left to the discretion of the
16 sentencing judge.

17 It also goes on to say, and I'm going to
18 paraphrase it. There are some conditions of course for
19 this plea. That means his cooperation with the State,
20 testifying truthfully in some other things, which are
21 typical parts of a proffer agreement.

22 But it also specifies that the attorneys for the
23 State may argue for a maximum sentence for the offenses
24 to which the defendant has pled guilty. Any and all
25 additional charges known to the attorneys for the State

1 may be filed in the appropriate jurisdiction. The
2 defendant's guilty plea will be rescinded if the
3 defendant has not been sentenced and the State may
4 resume its prosecution. That is if he fails to
5 cooperate as he has already agreed.

6 Paragraph three deals with him taking a
7 polygraph, and the failure to pass a polygraph.
8 Paragraph four deals with self-incriminating
9 information that may have been provided as a result his
10 cooperation and how that is to be handled.

11 And paragraph six is what is dispositive. The
12 defendant, Thomas Evans, understands that the matter of
13 sentencing is within the sole discretion of the court.
14 And that sentence applicable to defendant's case will
15 be imposed in conformity with the laws of South
16 Carolina.

17 He also understands that his sentence has not
18 yet been determined by the Court. And that any
19 estimate of a probable sentence within the negotiated
20 concurrent sentencing range that the defendant may have
21 received from the defendant's attorney or anyone else
22 is only a prediction, not a promise, and is not binding
23 on the attorneys for the State or the Court.

24 He further understands that the attorneys for
25 the State retain the right to inform the Court of any

1 relevant facts to address the Court with respect to the
2 nature of the offense, to respond to questions raised
3 by the Court, to respond to any statements made to the
4 Court by or on behalf of the defendant, and to
5 summarize all evidence which would have been presented
6 at trial to establish a factual basis for the plea.

7 He of course understands the conditional nature
8 of the agreement. And that -- what is dispositive is
9 this first paragraph which clearly articulates that he
10 agrees to plead to everything. So when he failed to do
11 that, that constituted a violation of this agreement
12 which left him open to be prosecuted by the State as
13 they saw fit, which is what they did.

14 There is -- without belaboring the hour,
15 normally I would go through page and line. I have read
16 the transcript. I read in advance of court because I
17 don't like taking things under advisement. I like to
18 be able to rule so that people can go on with however
19 they want to proceed with a case.

20 But this record is very clear. It is not
21 convoluted. He was incredibly patient and did exactly
22 what I have done many times, which is to make sure that
23 someone is doing what they want to do; which is to
24 enter a plea freely, voluntarily and intelligently.

25 It is not unusual for folk to cry when they have

1 to swallow a bitter pill. It happens every day. It
2 doesn't mean that you don't understand where you are.
3 It doesn't mean you don't understand what you're doing.
4 It just means you are coming to the recognition that
5 I'm not going home today, and I have a long sentence
6 that I have to face.

7 And that's a hard pill to swallow. And it would
8 be unrealistic to think that human beings, which we are
9 emotional beings, that you would not respond to that in
10 some way.

11 Especially when his whole family was here. They
12 apparently were emotional as well. And were, I think,
13 more emotional, based on what I read in the transcript,
14 at the possibility of him facing life without parole
15 and not coming to the recognition of the benefit of the
16 deal he was being offered, and then trying to persuade
17 him that it was in his best interest to take the deal,
18 and the fact that he might not go along with them.

19 That is really, based on the record, what comes
20 forward real clearly through the pages and the lines.
21 And what the court reporter indicates, because and
22 based on the testimony, is that they probably, at least
23 based on what has been articulated in this court, were
24 afraid he was going to reject the deal and he was going
25 to face life without parole and the possibility of them

1 not being able to see him anymore.

2 There is absolutely no indication in the record
3 that he advised Ms. Taylor to file an appeal and she
4 failed to do it. She is a seasoned trial lawyer. It
5 would have taken her five minutes to file an appeal if
6 he'd asked her to. I find her credible that he did not
7 ask her to do it.

8 I think hindsight is 20/20. I think now he
9 wishes he asked her to do it. But even if she -- let's
10 just say for argument's sake she had. It is unlikely
11 that that appeal would have been fruitful based on this
12 record. So there really can be no prejudice shown to
13 him by him indicating some failure to have filed an
14 appeal.

15 But again, without belaboring the hour, the
16 record is very clear that he was -- that the Court
17 inquired of Ms. Taylor whether she had advised him of
18 the elements of the offense, his rights and potential
19 punishment, and that he was satisfied -- that being the
20 court -- that she had done that.

21 That he understood the nature of the offense,
22 his potential punishment, and the nature of his
23 negotiated plea, as well as the potential for
24 punishment. And it is unrealistic for this Court to
25 consider the nature of his negotiated plea has to be

1 read in conjunction with the proffer. They are not two
2 separate things, they are to be read together.

3 That's why it was made an exhibit, otherwise
4 there would be no purpose. The summary of their
5 agreement, which will be made a Court's exhibit in this
6 case, is very clear what the nature of their agreement
7 was, and it was signed by Mr. Evans, Ms. Taylor and Mr.
8 Williams on the date of the guilty plea.

9 That in and of itself is an indication to me
10 that he fully understood what the nature of his
11 agreement was. The State -- and I listened very
12 intently to his testimony. He said he wanted to go
13 home. It is unlikely that was ever going to happen.

14 A bond under these circumstances was not going
15 to be set. And if it was set, it would have been set
16 so high out of his range, he wouldn't have been able to
17 make it. Not under these facts and circumstances.

18 So it is unlikely that he ever would have been
19 out pre-detention to have seen the birth of his
20 children. So it's just an unrealistic expectation on
21 his part. However, I understand it. I understand
22 wanting to do those things. But under the
23 circumstances that he found himself in, it was an
24 unrealistic expectation on his part.

25 I find the testimony of Ms. Taylor to be

1 credible. And in her assessment and her strategic
2 approach to the preparation of the case, as well as the
3 history of the case, and what appeared to be his lack
4 of cooperation, and what appeared her -- at least
5 against his codefendants, and what appeared to be -- an
6 attorney senses when codefendants are going to turn on
7 their clients.

8 It's never going to come right out initially.
9 But they know, they have a sense that it's percolating.
10 And I, under these circumstances, especially in light
11 of his testimony that they got lesser sentences, it's
12 clear that that is exactly what was going on under
13 these circumstances.

14 But he got the benefit of what he was doing in
15 this first case, which was taking the life without
16 parole off the table and the benefit of the negotiated
17 plea of 30 years, consistent with that written proffer
18 which was published for the record.

19 I find credible Ms. Taylor's assessment that his
20 recorded statement was a major issue, and a major
21 hurdle in the case in terms of going forward in the
22 trial. I find for the record that the notation
23 regarding crying and other emotions does not in any way
24 reflect the inability of him to understand where he was
25 or what he was doing.

1 As a matter of fact, the Court made inquiry just
2 to make sure that that was in fact not what was going
3 on. And I read, again, the record very clearly. And
4 Judge Few did exactly what all of us would do whenever
5 we want to make sure someone is doing what they want to
6 do.

7 Because we are great believers in the trial
8 system. And whether we are trying this case or another
9 case, we are going to be trying a case. So it doesn't
10 matter to us whether that person's case goes forward,
11 or somebody else's case goes forward. We just want to
12 make sure that the person is pleading because that's
13 what they want to do.

14 And what it appears was going on, which is what
15 a lot of defendants do, they have a very difficult
16 decision to make. They're between -- as I often say,
17 there is option A and B but they want option C, which
18 is not available, which is to go home. And he was
19 caught between that proverbial rock and hard place.

20 And what I read in the record is Judge Few
21 simply making sure, one, that he knew where he was.
22 That he knew what he was doing. And that he was doing
23 it free and voluntarily and of his own will, fully
24 advised that if he didn't want to do it, they'd go
25 forward with the trial.

1 And when Judge Few said that to him, he said, I
2 just think we need to go forward with the trial, his
3 posture changed. And he was like, no, no, I really
4 want to do this. Of course I'm paraphrasing it, it's
5 several pages, compressing it into one statement.

6 It is clear from the record with the colloquy
7 with the Court that he understood there were no
8 guarantees as to what time he was going to receive.
9 And the proffer agreement reflects that the State could
10 have argued for more, and they could have argued for
11 consecutive time. And it is clear that he understood
12 that because he attested to it by signing and affixing
13 his name and signature to the document.

14 I find for the record credible that Ms. Taylor
15 did in fact fully explain to him the range of penalty.
16 That he understood the nature of consecutive and
17 concurrent sentences. That the main crux of this
18 negotiation was to get life without parole off the
19 table.

20 And so based on what has been presented to the
21 Court, I have no indication that he did not understand
22 the system, that he did not understand the mechanics of
23 the system. Based on what I have heard, I think I'm
24 accurate, he had 25 cases pending. That was a
25 substantial deal that he worked out. Frankly, one that

1 I have never seen worked out for any defendant.

2 Normally what they would have done is try them
3 one after the other, win, lose or draw. They didn't
4 have anything to lose or gain by trying him. And they
5 had absolutely no incentive to offer him anything
6 unless he was willing to turn on his codefendants.

7 And they did exactly what they normally do.
8 They throw everybody in the same barrel and see who's
9 going to turn first. It appears that he's the only one
10 that did not want to cooperate against his
11 codefendants, and they cooperated against him. They
12 got the benefit of that, and he didn't.

13 And that's a decision of course that he made, I
14 would have to imagine, freely and voluntarily and of
15 his own will and for reasons that were satisfactory to
16 him.

17 The record is not as torture or convoluted as it
18 has been represented. To me it's clear and
19 straightforward. And there is no evidence of
20 involuntariness in the record. It is clear that the
21 Court advised him of the range penalty, gave him the
22 ability to allocute to the underlying facts and
23 circumstances of the offense. He was clearly advised
24 there was no guarantee on sentence.

25 And I believe there was -- I don't know who made

1 the -- whether it was the Court or -- I'm pretty sure
2 it was the Court who said it was just a bad situation
3 that he found himself in. And there really was just a
4 no win all the way around, as bad as that was to
5 accept.

6 As regards the issue on the warrantless search,
7 I do not -- based on my review of the case law, a
8 warrantless search can always -- arrest can always be
9 made where there is probable cause for arrest. And
10 clearly it appears under these circumstances that that
11 was not a viable issue.

12 And as it regards the indictments, they were all
13 true billed. So I don't see any basis for which she
14 would have challenged the indictments. And as we know,
15 the indictments are notice documents. They only put
16 you on notice of what you are being charged and what
17 you have to defend.

18 So that would not have been anything viable that
19 would have resulted in his charges being dismissed.
20 And even if they were, they simply would have directly
21 indicted him. As we know in South Carolina there are
22 no statute of limitations on any offenses, so it would
23 not have mattered as a practical matter.

24 But I have reviewed the record, and all the
25 indictments -- at least that he pled to -- were true

1 billed. So there is no indication there is anything
2 improper with the indictments.

3 There is no evidence in the record that Ms.
4 Taylor or anyone else placed undue pressure on his
5 family. But ultimately, it's his decision whether he
6 pled. But again what I was able to glean from the
7 record is that they were upset at the possibility of
8 him facing life without the possibility of parole, and
9 not having the insight to take what was a really good
10 deal that was being offered to him under the best of
11 worst circumstances, which was just the large amount of
12 charges he was facing.

13 And there is no evidence that his ability was
14 impaired in any way. There is absolutely no evidence
15 in the record that the State was going to offer him
16 anything less, that being any lesser included offenses,
17 that that was never an option, so that was never
18 available to him.

19 There is no indication that there were threats
20 or promises or coercion or duress or otherwise that
21 would have forced him to plead guilty.

22 Again I'm going to make a copy of the plea
23 agreement an exhibit for this record as well. And
24 without again belaboring the point, because we all know
25 what the case law is that is applicable, I find that he

1 has failed to meet his burden of proof.

2 Mr. Friedman will do an order within 20 days.
3 He'll send that to me by e-mail. Ms. Stark, he can
4 submit it to you as well. If you have any input on the
5 order, please feel free to make him aware of that.

6 Please make sure he has your e-mail address
7 because he'll send it to you at the same time he sends
8 it to me. And I'm giving him leave to make any finding
9 of fact and conclusions of the law that are consistent
10 with this record.

11 We will go forward with his next hearing.

12 Thank you all very much your patience. I
13 appreciate it.

14 (Whereupon, the proceedings in this matter
15 before the Court were adjourned.)

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C E R T I F I C A T E

I, the undersigned, ANNE BOULEY MEYER, 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, and of all the proceedings had and evidence introduced in the above captioned case, relative to appeal, in the Circuit Court for South Carolina, on the indicated date.

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

--- Anne Bouley Meyer ---

Anne Bouley Meyer, RPR
Circuit Court Reporter

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cc
AG
AT
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GS

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Thomas Jermaine Evans, #328618,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2010-CP-10-10353

ORDER OF DISMISSAL BY

2011 OCT 10 PM 3:16
JULIE J ARMSTRONG
CLERK OF COURT

FILED

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Plea Counsel:
Date of Hearing:
Court Reporter:

Deadra L. Jefferson
Jennifer M. Stark, Esq.
Matthew J. Friedman, Esq.
Donna Taylor, Esq.
September 14, 2011
Anne Meyer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed December 17, 2010 and amended on September 14, 2011. The Respondent filed its Return on June 29, 2011.¹ An evidentiary hearing into the matter was convened on September 14, 2011 at the Charleston County Courthouse. The Applicant was present at the hearing and was represented by Jennifer M. Stark, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Applicant and plea counsel, Donna Taylor, Esquire, testified at the PCR hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application and amended application, Respondent's Return thereto, and a copy of the Plea Agreement dated April 24, 2008.

¹ Respondent also filed a Motion to Dismiss with its Return on the ground the petition was filed after the one-year statute of limitations expired. After the case was called on September 14, 2011, Respondent withdrew this Motion.

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PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Charleston County Clerk of Court. Applicant was indicted at the June 2007 term of the Charleston County Grand Jury for armed robbery (2007-GS-10-7508). Donna Taylor, Esquire, represented Applicant. On April 24, 2008, Applicant plead guilty as indicted. Pursuant to a negotiated plea agreement, the Honorable John C. Few sentenced him to confinement in the State Department of Corrections for a period of thirty (30) years. Applicant did not appeal his plea or sentence.

ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

1. Counsel failed to file an appeal.
2. Ineffective assistance of counsel in that counsel
 - a. Allowed Applicant to be tried without an indictment because Applicant never saw it.
 - b. Did not attack prosecutor's case fully.
 - c. Did not find out the times of the arrest, detention in GA, the time of transport, or warrantless arrest issues.
3. Involuntary guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court had the opportunity to review the record in its entirety and hear the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

The Applicant testified he did not want to plead guilty on his first armed robbery charge.²

² At the time of this plea, Applicant had a total of approximately sixteen (16) armed robbery charges pending in Charleston, Berkeley, and Dorchester counties. (Tr. 12:24-13:3.)

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He testified his family pressured him to take the plea so he would not receive life without parole (LWOP). He asserted it was his understanding he could only get thirty (30) years if he was found guilty at trial. He testified he told counsel that U.S. Marshals arrested him without a warrant. Applicant testified he thought he had an agreement with the detective and he felt coerced to give a statement. Applicant testified his warrants were not signed or delivered to him, and counsel never went through the warrants with him prior to the plea. He also testified he asked counsel to argue as defenses warrantless arrest, faulty indictment, and co-defendant's multiple written statements; however, counsel failed to argue these defenses.

He contended his understanding of the plea agreement was the State would not pursue LWOP, and he did not think he would face any more time if he plead to the subsequent charges. Applicant testified he did not know the State could use his subsequent pending armed robbery charges as strikes. He testified it was his understanding if he was convicted of a future armed robbery after he was released from prison, he could then receive an additional strike; he did not know his current armed robbery charges could be counted toward the two strike law. Applicant also argued he did not understand the principle of consecutive versus concurrent sentences. He testified his goal in entering the guilty plea was to avoid LWOP, but he did not know he could get LWOP if he did not plea to his subsequent armed robbery charges.

He testified counsel brought up the subject of appeal, and he instructed her to file the appeal. Applicant asserted he never told counsel he did not want to appeal.

Plea counsel testified she represented Applicant on a series of armed robberies in three (3) counties. She testified she met with Applicant ten (10) to thirty (30) times over a two (2) year span and fully explained the elements of the charge, range of penalty, and the consequences of a guilty plea. She asserted the solicitor Nathan Williams indicated anyone who did not

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cooperate would face LWOP. Counsel recalled Applicant did not want to testify against the co-defendants. She testified they discussed potential defenses, including the theory he did not do it and his statement was false and the theory he was under duress from a co-defendant. She testified the co-defendant's attorney would not let her talk to his client, and she discussed with Applicant the difficulty in proving duress. She further testified Applicant's recorded statement was a major issue in the case.

Counsel testified they came close to a plea agreement several times, but Applicant always wanted a better deal. She testified the best he could hope for was fifteen (15) years with cooperation. There was an offer of ten (10) years at one point, but Applicant backed out. She stated at that point the best he could hope for was to avoid LWOP and accept an offer of thirty (30) years on all charges. She asserted Applicant requested probation, but she advised him that was not going to happen. The trial on the armed robbery started before Applicant decided to plead guilty. Counsel testified that during the trial, Defendant leaned over and asked her if he could have a moment with the judge. Counsel testified Applicant admitted to the judge that he perjured himself during the Jackson v. Denno hearing. She asserted it was Applicant's decision to subsequently plead guilty. Counsel testified she told Applicant she did not think he could go to trial without getting LWOP. She testified the judge allowed Applicant to think about it overnight. She testified she explained the negotiated sentence, and while Applicant was not completely happy about pleading guilty and had some attitude issues during the plea hearing, he understood the consequences of the plea. She testified Applicant got emotional and cried at one point during the plea, but she believes he understood what was going on. She testified the terms of the plea agreement were that if Applicant would plead guilty to one count of armed robbery for thirty (30) years and pleads guilty in the subsequent cases, he would not get LWOP. Counsel

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asserted she explained to Applicant before the first plea hearing, and afterwards during discussions about the second plea, that he would have to plead guilty now and on a subsequent plea, and that if he did not plead guilty on the subsequent cases there was no deal. She testified the written plea agreement was made a court's exhibit at the plea hearing.³ She testified there was no guarantee about concurrent versus consecutive sentences, but she believes he would have received thirty (30) years concurrent on everything if he had plead guilty to the subsequent charges. She further testified she explained the differences between concurrent, consecutive, and life sentences, and she believes Applicant understood.

Counsel testified she does not recall Applicant asking her to file an appeal. She testified she discussed the next steps and what issues Applicant could appeal. She asserted she does not think Applicant would have asked for an appeal, but she would have filed an appeal if asked to do so. Counsel testified she had no reason to believe that Applicant wanted to appeal the first plea. She testified the goal after the first plea was to enter a plea on the second set of charges and avoid LWOP. Counsel testified a conflict arose after this plea and she was relieved as counsel. She testified she did not participate in the second trial.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial

³ For purposes of this PCR hearing, the written plea agreement, entered into between the State and Applicant on April 24, 2008, was marked as Court's Exhibit No. 1.

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cannot be relied upon as having produced a just result.” Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

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. at 690, 104 S. Ct. at 2066. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel’s performance was deficient. Under this prong, attorney performance is measured by its “reasonableness under prevailing professional norms.” Id. at 117, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). 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.” Id. at 117–18, 386 S.E.2d at 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997). When there has been a guilty plea, the applicant must prove that counsel’s representation was below the standard of reasonableness, and that, but for counsel’s unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58–59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243–44, 89 S. Ct.

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1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). "When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the PCR hearing." Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 650 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe, 345 S.C. at 20, 546 S.E.2d at 419.

This Court finds Applicant's testimony is not credible while also finding that counsel's testimony is credible. This Court finds counsel is a trial practitioner who has approximately twenty-eight (28) years of experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, discovery, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. (Tr. 3:18-4:7.)

This Court finds the record reflects Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. (Tr. 46:6-11.) The Applicant was informed of his right to a jury trial and the constitutional rights given up by pleading guilty. (Tr. 9:8-23.) The Court also explained that by pleading guilty, Applicant waived his right to ever challenge his statement given to Detective Osborne, and Applicant acknowledged that he understood. (Tr. 17:25-18:23.) Applicant acknowledged that he understood the nature of the charges and the possible punishments for armed robbery. (Tr. 8:1-5, 18:24-19:24, 21:15-19.) He told the court he had taken an antibiotic in the last twenty-four (24) hours but it does not interfere with his ability to think clearly or understand what he is doing. (Tr. 6:17-7:15.) He also stated he has never had

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nor treated for any type of mental illness. (Tr. 7:16-22.) He told the court no one threatened him or promised him anything to get him to plead guilty. (Tr. 22:2-17, 40:2-23.) He admitted he was, in fact, guilty of this offense. (Tr. 20:12-13, 35:19-22, 51:4-5.) The Court advised Applicant of the terms of the plea agreement, that he could face concurrent or consecutive sentences to be left up to the sentencing judge, and if the co-defendants go to trial, he will be expected to be available to testify truthfully in those cases; Applicant acknowledged he understood. (Tr. 8:6-7, 10:15-17.) Plea counsel informed the court there were a series of plea agreements with minor changes that had been in existence for weeks, and during this time period she met with Applicant to discuss the agreement. (Tr. 15:9-24.) The Court advised Applicant of the two (2) and three (3) strike law, and the Applicant acknowledged he understood.⁴ (Tr. 18:24-19:24.) The Court also clearly advised Applicant there was no guarantee on sentencing in subsequent pleas, that he was not in a good situation, and he realistically faced a very strong possibility of receiving consecutive sentences. (Tr. 11:15:19, 13:4-14:13.) Applicant advised the court he understood the terms of the negotiated sentence. (Tr. 41:8-13.) Applicant further advised he was satisfied with his attorney. (Tr. 22:18-23:2, 26:9-18.)

This Court finds it was Applicant's decision to plead guilty with a full understanding of the consequences of the plea. The Court notes the plea court was extraordinarily patient with the Applicant and took care that he was entering the plea voluntarily, often advising Applicant he would resume trial if there was any indication the plea was involuntary. (Tr. 23:5-17, 25:20-24, 28:11-18, 33:19-34:2.) This Court also finds no evidence the alleged pressure placed on Applicant's family to get him plead guilty in any way impaired his ability to enter the plea freely and voluntarily. The court adequately inquired whether anyone threatened any of Applicant's

⁴ The Court notes the record does not support the Defendant's interpretation of the 2 and 3 strike law.

family members, and he responded in the negative. (Tr. 42:8-11.)

This Court finds Applicant understood the terms of the written plea agreement. Throughout the plea hearing, Applicant expressed his concern over a possible life or consecutive sentences and asked the plea court about which judge he would go in front of in subsequent pleas. (Tr. 10:3-14, 11:5-11, 13:14-14:13, 17:5-15, 23:21-25, 43:14-44:18.) He was clearly concerned about his pending charges. This Court finds Applicant was aware that he would have to plead guilty to a second set of charges to avoid LWOP as specified in the written plea agreement.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 5, 239 S.E.2d 750, 752 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814. Applicant alleges counsel failed to review the indictment with him. This Court finds the record bears out that counsel discussed the facts of the case with Applicant and advised him of the elements of armed robbery and the range of penalty. This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. The Court finds there is no viable issue on warrantless search. Applicant gave a statement to an investigator, and because of this, he had no viable defenses.⁵ Counsel obtained a favorable plea agreement for Applicant considering the circumstances in this case and the number of additional pending charges. This Court finds that counsel's representation did not fall below an objective standard

⁵ Ms. Taylor testified the statement was challenged pursuant to Jackson v. Denno, which proved to be unsuccessful.

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of reasonableness.

This Court also finds that Applicant is not entitled to a belated direct appeal. The United States Supreme Court has rejected a bright-line rule that counsel must always file an appeal in a criminal case. Roe v. Flores-Ortega, 528 U.S. 470, 120 S. Ct. 1029 (2000). The Court held that a professionally reasonable attorney should, in most cases, consult with the defendant regarding an appeal. Id. at 479, 120 S. Ct. at 1035.

The South Carolina Supreme Court has adopted the holding, "absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." Weathers v. State, 319 S.C. 59, 61, 459 S.E.2d 838, 839 (1995). In determining whether an attorney should consult with the criminal defendant concerning an appeal, the totality of the circumstances must be considered. Id. at 480, 120 S. Ct. at 1036. In examining the totality of the circumstances, courts should consider: (1) whether a rational defendant would want to appeal (for example, because there are non-frivolous grounds for appeal); or (2) whether this particular defendant reasonably demonstrated to counsel that he was interested in appealing. Id. Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). See Rule 243(i), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

Trial counsel is not required to file a notice of appeal without specifically being asked to do so. See Roe, 528 U.S. 470, 120 S. Ct. 1029. In the present case, this Court finds counsel's testimony credible that she discussed with Applicant the next steps and what he could appeal, but she does not recall Applicant telling her he wanted to appeal. The Court also finds it credible

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that counsel would have filed an appeal if Applicant asked her to do so. Counsel testified she had no reason to believe Applicant wanted to appeal since he received the benefit of a negotiated sentence and a written plea agreement. This Court denies this allegation.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by plea counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

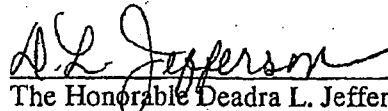
Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 6th day of October, 2011.


The Honorable Deadra L. Jefferson
Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina.

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STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

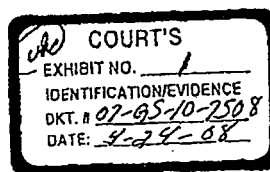
STATE OF SOUTH CAROLINA)

v.)

THOMAS EVANS,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS

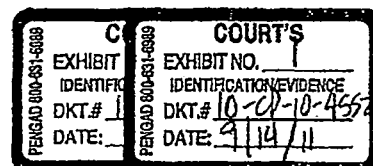
Warrant Numbers: I099295, 96, 97, 98, 99, 300,
303, 310; K022419; I596770, 771, 772, 773, 774;
H913136, 145; I596810; K022376, 77, 78, 79, 80;
K022447.



AGREEMENT made this 24th day of April 2008, between and among the State of South Carolina, as represented by Assistant Solicitor Nathan Williams, the Defendant, Thomas Evans; and Defendant's Attorney, Donna Taylor, Esquire.

IN CONSIDERATION of the mutual promises made herein, the parties hereto agree as follows:

1. The Defendant, Thomas Evans, agrees to plead guilty to all charges in connection with a series of Armed Robberies beginning in January of 2006 and ending in May of 2006. The Defendant, Thomas Evans, agrees to plead guilty to all charges in connection with a series of Armed Robberies beginning in January of 2006 and ending in May of 2006. The Defendant, Thomas Evans, agrees to plead guilty to all charges. The defendant and the attorneys for the State agree to a negotiated minimum sentence of not less than thirty years. The State may argue for a sentence greater than thirty years and for consecutive sentences. The determination as to



whether sentences will run consecutive or concurrent, and the extent to which this may happen, will be left to the discretion of the sentencing Judge.

2. In exchange for the Attorneys for the State allowing the Defendant, Thomas Evans, to plead guilty to these offenses and for the above sentencing negotiation the Defendant, Thomas Evans, agrees to be fully truthful and forthright with the Attorneys for the State and law enforcement agents in their investigation of armed robberies and any other unlawful activities, to include, but not limited to, truthful and complete debriefings of the Defendant's knowledge concerning these and other unlawful activities. Also, the Defendant understands that he must fully disclose and provide truthful information to the Attorneys for the State including any books, papers, or documents or any other items of evidentiary value to the investigation. The Defendant must also testify fully and truthfully at any trials or other proceedings if called upon to do so by the Attorneys for the State, subject to prosecution for perjury for not testifying truthfully. The failure of the Defendant to be fully truthful and forthright at any stage will, at the sole election of the Attorneys for the State, cause the obligations of the Attorneys for the State within this Agreement to become null and void. The failure of the Defendant to provide information and cooperation that is deemed by the Attorneys for the State as substantial assistance in the investigation or prosecution of another person who has committed an offense will, at the sole election of the Attorneys for the State, cause the obligations of the Attorneys for the State within this Agreement to become null and void. Further, it is expressly agreed that if the obligations of the Attorneys for the State within this Agreement become null and void due to the lack of truthfulness or a failure to provide substantial assistance on the part of the Defendant, the Defendant understands that: (1) the Defendant will not be permitted to withdraw his plea of

guilty to the offenses described above without consent of the Attorneys for the State; (2) the Attorneys for the State *may argue for a maximum sentence* for the offenses to which the Defendant has pleaded guilty; (3) any and all additional charges known to the Attorneys for the State may be filed in the appropriate jurisdiction; (4) at the sole election of the Attorneys for the State, the Defendant's guilty plea will be rescinded if *the Defendant has not been sentenced*, and the State may resume its prosecution of the Defendant on all charges; and (5) the Attorneys for the State may use any and all information and testimony provided by the Defendant in the prosecution of the Defendant of all charges.

3. The Defendant, Thomas Evans, agrees to submit to such polygraph examinations as may be requested by the Attorneys for the State and agrees that any such examinations shall be performed by a polygraph examiner selected by the Attorneys for the State. Defendant, Thomas Evans, further agrees that his failure to pass any such polygraph examination to the State's satisfaction will result, at State's sole discretion, in the obligations of the Attorneys for the State within the Agreement becoming null and void.

4. The Attorneys for the State agree that any self-incriminating information provided by the Defendant, Thomas Evans, as a result of the cooperation required by the terms of this Agreement, although available to the Court, will not be used against the Defendant, Thomas Evans. The provisions of this paragraph shall not be applied to restrict any such information:

- (A) known to the Attorneys for the State prior to the date of this Agreement;
- (B) concerning the existence of prior convictions and sentences in determining;
- (C) in a prosecution for perjury or giving a false statement; or
- (D) in the event there is a breach of the cooperation provisions of this Plea

by federal and state laws, complying with the terms and conditions of any bond executed in this case and complying with the provisions of this Plea Agreement.

8. The parties hereby agree that this Plea Agreement contains the entire agreement of the parties; that this Agreement supersedes all prior promises, representations and statements of the parties; that this Agreement may be modified only in writing signed by all parties; and that any and all other promises, representations and statements, whether made prior to, contemporaneous with or after this Agreement, are null and void.

4/24/08

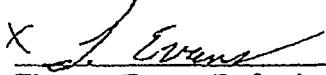
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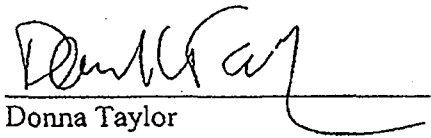
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X 
Thomas Evans, Defendant


Donna Taylor
Attorney for the Defendant

BY:


Nathan Williams
Assistant Solicitor