

VOLUME 2 OF 2

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

---

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

---

RECEIVED

JUL - 6 2012

S.C. Supreme Court

THOMAS JERMAINE EVANS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

---

APPENDIX

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Appellate Defender

South Carolina Commission on Indigent  
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ATTORNEYS FOR RESPONDENT

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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 21 day of May, 2010

Debra Sims L.S.

Notary Public for South Carolina

My Commission Expires 11-4-2015

**APPLICATION TO PROCEED WITHOUT PREPAYMENT  
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 or 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 proceeding or give security therefor.

Thomas Evans  
Applicant

Sworn to and subscribed before me

This 21 day of May, 2010

Debra Sims L.S.

Notary Public for South Carolina

My Commission Expires: 11-4-2015

## FORM 5

STATE OF SOUTH CAROLINA )

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON )

THOMAS JERMAINE EVANS )

Full name and prison number (if any) of Applicant. )

v. )

AMENDED APPLICATION FOR

State of South Carolina )

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 Institute, 990 Wisacky Highway, Bishopville, SC 29010-1775
2. Name and location of Court which imposed sentence Charleston County, South Carolina, General Sessions
3. Name(s) of co-defendant(s) (if any) \_\_\_\_\_
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
  - (a) 2007-GS-10-7477
  - (b) \_\_\_\_\_
  - (c) \_\_\_\_\_
5. The date upon which sentence was imposed and the terms of the sentence:

- (a) October 8, 2008; life without parole
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty \_\_\_\_\_
- (b) after a plea of not guilty X
- (c) after a plea of nolo contendere \_\_\_\_\_
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
Yes.
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed.
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (c) the date of each such result:
- i. Submitted January 4, 2010; filed February 11, 2010
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. Unpublished Opinion 2010-UP-123
- ii. \_\_\_\_\_
- iii. \_\_\_\_\_
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) \_\_\_\_\_
- (b) \_\_\_\_\_
- (c) \_\_\_\_\_

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

- (a) Ineffective assistance of counsel
- (b) Violations of 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup> and 14<sup>th</sup> Amendment Rights
- (c) The sentence exceeds the maximum authorized by law.

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

(a) Counsel was ineffective inasmuch as he: failed to make proper and necessary objections on the record on multiple occasions throughout the trial; failed to adequately consult with applicant and to fully inform him on important issues and decisions regarding his defense; failed to move the court to hold a hearing outside of the presence of the jury to determine the voluntariness of the statements given; failed to obtain impaneling documents; failed to provide applicant with a copy of his indictment; failed to investigate Mr. Evans' mental and emotional state; failed to move the court to hold a hearing to determine whether the statements were given in violation of the mandates of Miranda v. Arizona; failed to retain an investigator to interview witnesses; failed to perform his duties by allowing Mr. Evans to be tried without an indictment; failed to attack the prosecutor's case fully; failed to object to and act on Mr. Evans' warrantless arrest; failed to object to and act on Mr. Evans' wrongful arrest.

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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?

Yes

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

(a) which grounds have been presented:

i. Grounds for Post Conviction Relief have also been set forth in a PCR application

with regard to his conviction for a separate charge not tried in the same court proceeding.

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

i. Thomas Jermaine Evans v. State of South Carolina; 2010-CP-10-10353

ii. \_\_\_\_\_

iii. \_\_\_\_\_

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

(a) \_\_\_\_\_

(b) \_\_\_\_\_

(c) \_\_\_\_\_

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

(a) your arraignment and plea? \_\_\_\_\_

(b) your trial, if any? Yes

(c) your sentencing? \_\_\_\_\_

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? \_\_\_\_\_

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

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. William Runyon

ii. Robert Pachak

iii. Donna K. Taylor

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

i. Trial (Runyon and Taylor)

ii. Appeal (Pachak)

iii. \_\_\_\_\_

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

All charges vacated; in the alternative, a new trial; in the alternative, re-sentencing

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

yes

STATE OF SOUTH CAROLINA )

County of )

## VERIFICATION

I, \_\_\_\_\_, 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 22  
day of July, 2011  
Stacy Ann (L.S.)  
Notary Public

My Commission Expires: 5-16-14

|                                 |   |                              |
|---------------------------------|---|------------------------------|
| STATE OF SOUTH CAROLINA         | ) |                              |
|                                 | ) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF CHARLESTON            | ) |                              |
|                                 | ) | 2010-CP-10-4552              |
|                                 | ) |                              |
| Thomas Jermaine Evans, #328618, | ) |                              |
|                                 | ) |                              |
| Applicant,                      | ) |                              |
|                                 | ) |                              |
| v.                              | ) | RETURN                       |
|                                 | ) |                              |
| State of South Carolina,        | ) |                              |
|                                 | ) |                              |
| Respondent.                     | ) |                              |

---

The Respondent, making its Return to the Application for post-conviction relief filed June 3, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the 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-10-7477). William Runyon, Esquire, represented the Applicant. The Applicant proceeded to trial on October 6-8, 2008, after which a jury found him guilty as indicted. The Honorable Thomas W. Cooper, Jr. sentenced the Applicant to confinement for life without parole (LWOP).

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Dudek of the South Carolina Commission on Indigent Defense filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). The South Carolina Court of Appeals subsequently dismissed the appeal. State v. Evans, Op. No. 2010-UP-123 (S.C. Ct. App. filed February 11, 2010). The Remittitur was issued on March 1, 2010.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Record on Appeal, the Final Anders Brief, the Court of Appeals' opinion dismissing the appeal, and the Remittitur dated March 1, 2010.

## II.

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

1. Ineffective assistance of trial counsel in that counsel
  - a. Failed to perform his duties by allowing Applicant to be tried without indictment.
  - b. Did not attack prosecutor's case fully.
  - c. Did not find out about Applicant's warrantless arrest by the U.S. Marshals.
2. Violations of 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendment Rights.

## III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in the application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, 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.

Applicant alleges a 4<sup>th</sup> Amendment violation. This allegation raises a direct appeal issue that is procedurally barred by S.C. Code Ann. §17-27-20(b) (2003). Post-conviction relief is not a substitute for a direct appeal. Simmons v. State, 264 S.C. 417, 215 S.E.2d 883 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on direct appeal. Ashley v. State, 260 S.C. 436, 196 S.E.2d 501 (1973). The Applicant could have raised this issue at trial or on appeal. His failure to do so has waived this allegation as a ground for relief. Therefore, the Court should summarily dismiss this allegation.

#### V.

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

## VI.

WHEREFORE, having made its Return, the Respondent requests that an evidentiary hearing be held on the issue of ineffective assistance of counsel.

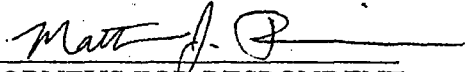
Respectfully submitted,

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  
(803) 734-3737

10/9, 2010.

COURT OF GENERAL SESSIONS  
2010-CP-10-04552

Plaintiff

TRANSCRIPT OF RECORD

Defendant.

September 14, 2011  
Charleston, South Carolina

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

Ms. Samia Hanafi Nettles, Esquire  
Representing the Defendant

Anne Bouley Meyer, RPR  
Circuit Court Reporter.

I N D E X  
WITNESSES

ALL WITNESSES: PAGE:

Ms. DONNA K. TAYLOR:  
Direct Examination by MS. NETTLES 7:23

MR. WILLIAM RUNYON, JR.:  
Direct Examination by MS. NETTLES 10:23  
Cross-Examination by MR. FRIEDMAN 19:11  
Redirect Examination by MS. NETTLES 22:1

MR. THOMAS JERMAINE EVANS:  
Direct Examination by MS. NETTLES 23:13

EXHIBITS

NO.: DESCRIPTION: PAGE:

For Court:

1 Proffer/Plea agreement:  
In Evidence 5:5

2 Hearing Transcript from 2010-CP-10-10353 appended  
to the end of this record.

1 THE COURT: This is 2010-CP-10-04552. It is an  
2 application for post-conviction relief. He is  
3 represented by Ms. Hanafi. His trial counsel was Mr.  
4 Runyon. Mr. Friedman is here on behalf of the State.

5 He was convicted of armed robbery on  
6 2007-GS-10-7477. Proceeded to trial on October 6,  
7 2008. The jury found him guilty. Judge Cooper  
8 sentenced him to life without parole.

9 An appeal was perfected and filed. An Anders  
10 brief was done. And it was dismissed on February 11,  
11 2010 and a remittitur issued.

12 And his allegations are that counsel failed to  
13 perform its duties by allowing applicant to be tried  
14 without indictment. Did not attack the prosecutor's  
15 case fully. Did not find out applicant's warrantless  
16 arrest by the U.S. Marshals. Then also alleging very  
17 vaguely and generally violations of the 4th, 5th, 6th,  
18 8th and 14th Amendments.

19 The State's return was filed October 5th. And  
20 his application for post-conviction relief was filed  
21 June 30th, 2010.

22 Okay. I need to disclose for the record that  
23 Ms. Hanafi was my law clerk, or Ms. Nettles. I always  
24 still call her Ms. Hanafi instead of Ms. Nettles, her  
25 married name.

1           Is there any exception by the State for me  
2 hearing the case?

3           MR. FRIEDMAN: No, Your Honor.

4           THE COURT: okay, just wanted to make sure.

5           MS. NETTLES: Your Honor, I'd like to make a  
6 part of the record, if it's not already, the transcript  
7 in this trial.

8           THE COURT: We have all of it. I already have  
9 it.

10          MS. NETTLES: Then I'd like to just make a part  
11 of the record by reference the transcript from the  
12 previous guilty plea which has relevance to the  
13 sentencing issue which is almost identical to what we  
14 just heard.

15          THE COURT: okay.

16          MR. NETTLES: I have an extra copy if you'd like  
17 to put it in.

18          THE COURT: Let me make sure we don't already  
19 have it.

20          MS. NETTLES: I also have a dismissal of the  
21 appeal that was filed and the Anders brief that was  
22 filed.

23          THE COURT: We have that. We have the  
24 dismissal. Let me make sure we don't have the Anders  
25 brief as well.

1           We have that Anders brief and the dismissal and  
2 the unpublished opinion and the remittitur. We don't  
3 have the guilty plea, however, if you want to make that  
4 part of the record. Which also should include the  
5 written proffer. So we need another copy of that as  
6 well.

7           MS. NETTLES: Your Honor, I don't want to repeat  
8 all the sentencing arguments you just heard. It's  
9 almost six o'clock. That certainly is a large basis  
10 for our PCR today.

11          THE COURT: Which was the same, that he didn't  
12 understand that he had LWOP exposure based on his  
13 proffer?

14          MR. NETTLES: That's right. That's exactly it.

15          THE COURT: If you want I can take judicial  
16 notice of those arguments and you can move forward with  
17 anything else that you feel bears on his application,  
18 which deals with the warrantless arrest, I believe, and  
19 the indictment.

20          MS. NETTLES: That's right.

21          And, Your Honor, I'd like to call Ms. Taylor  
22 first.

23          THE COURT: Sure. Mr. Taylor if you will come  
24 take the stand. I remind you that you are still under  
25 oath.

1 I think we have covered that extensively. And  
2 what we can do is we can simply make that testimony a  
3 part of this record.

4 MS. NETTLES: And, Your Honor, I will represent  
5 to you that we also have an issue with the indictment  
6 presentment which is similar to what we have just  
7 discussed. I will keep it brief --

8 THE COURT: Do what you need to do. But as it  
9 regards the sentencing issue and his understanding of  
10 the proffer and agreement, I think we've covered that  
11 extensively.

12 And what we can do is make that testimony a part  
13 of this record.

14 MS. NETTLES: Thank you, Judge. I appreciate  
15 that. Do you want me to get the case number for you  
16 for the record?

17 THE COURT: We have it.

18 MS. NETTLES: Okay.

19 THE COURT: What we will do, because I am  
20 certain it will be -- we will just basically make it a  
21 part of this record. So that when there is a reference  
22 to it for appellate purposes, it would just be  
23 transcribed at the same time and made a part of this  
24 record as to his testimony.

25 MS. NETTLES: I agree, Your Honor.

1 THE COURT REPORTER: Would you like me to  
2 include the prior testimony or the entire prior  
3 hearing?

4 THE COURT: Which do you want?

5 MS. NETTLES: The entire prior hearing would be  
6 great because I think they bring up the same arguments.

7 THE COURT: That's what we will do. We will do  
8 the entire prior hearing. We will make it an exhibit.

9 And by reference to this hearing indicate that  
10 we are incorporating that entire prior testimony so  
11 that we don't have to repeat it. Because it wouldn't  
12 serve any purpose but be cumulative. Because he would  
13 testify to the same things again regarding his  
14 understanding.

15 MS. NETTLES: Right. And just for the record  
16 it's Case No. 2010-CP-10-10353.

17 THE COURT: Right. You may proceed.

18 MS. DONNA K. TAYLOR,  
19 after having previously been duly sworn to state the  
20 truth, the whole truth and nothing but the truth,  
21 testified on her oath as follows:

22 DIRECT EXAMINATION

23 BY MS. NETTLES:

24 Q Ms. Taylor, were you given the indictment prior  
25 to trial?

1 A Yes.

2 Q Okay. And did you see anything wrong with the  
3 indictment in order to challenge the indictment itself?

4 A I don't believe I did. I know we didn't  
5 challenge it, so I am assuming I didn't see that there  
6 was a problem with it. I must have missed it.

7 Q Was the indictment true billed?

8 A Yes.

9 Q Did you show the indictment to Thomas Evans?

10 A Yes.

11 Q Why not? Oh, you did, okay. Did you show it to  
12 him at trial in the guilty plea case or?

13 A No. This is not unusual, in our circuit the  
14 indictments rarely come with the initial package of  
15 discovery, so I have to get the indictments from  
16 Nathan. So it would have been some time prior,  
17 obviously prior to trial, but it wasn't at the same  
18 time that we got the bulk of the actual discovery.

19 Q And you represented Mr. Evans leading up to the  
20 trial, but not at the trial of this matter, right?

21 A Not in your trial.

22 Q That's right.

23 A Right. We started a trial in my case, but not  
24 in this.

25 Q Got it. Did you listen to Thomas Evan's request

1 to investigate witnesses and possible defenses leading  
2 up to trial?

3 A In my case, yes.

4 Q I'm talking about the trial for which we are  
5 here at this PCR application now.

6 A Would that be 82 Queen?

7 Q Yes, ma'am.

8 A We talked about all of the cases in the two to  
9 three years that I was involved with him. But we  
10 didn't talk specifically about this trial because we  
11 didn't know, except for very quickly, very briefly,  
12 that this was the next one that was going to be tried.

13 So certainly not anything elaborate and specific  
14 immediately prior to the trial.

15 Q Okay. And do you feel like you could have done  
16 something different to prepare as far as investigating  
17 witnesses and defenses in preparation for this trial?

18 A Of 82 Queen?

19 Q Of 82 Queen.

20 A No. I'm not sure I understand your question.  
21 But what happened initially was obviously he had a lot  
22 of cases. We looked at them all. We talked about  
23 potential defenses to them all.

24 We went through some that he started out with.  
25 And when they either wouldn't work or didn't work we

1 abandoned those and moved forward.

2 Q Great. And I will skip the sentencing issue as  
3 we are incorporating the previous hering into the  
4 present.

5 I think that's all I have for, Ms. Taylor,  
6 appreciate it.

7 A Thank you

8 MR. FRIEDMAN: Your Honor, assuming that we are  
9 making the prior hearing transcript a part of the  
10 record, then I don't have any questions for Ms. Taylor.

11 THE COURT: I assume you have --

12 MS. NETTLES: No more, thank you.

13 THE COURT: You may step down.

14 Is Mr. Runyon your next witness?

15 MS. NETTLES: Yes, ma'am.

16 MR. WILLIAM RUNYON, JR.,  
17 after having first been duly sworn to state 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 MS. NETTLES: Thank you.

22 DIRECT EXAMINATION

23 BY MS. NETTLES:

24 Q Good afternoon, Mr. Runyon. You represented  
25 Mr. Evans at the trial of this case, right?

1 A At the trial of this case, 82 Queen, yes, ma'am.

2 Q Right. And when were you retained or appointed  
3 to represent him?

4 A I was appointed, I sent my whole file to Mr.  
5 Evans when he requested it so I don't recall the  
6 precise date. You may have the date, I don't know.

7 Q Okay. How many weeks, approximately, before the  
8 trial were you appointed?

9 A Eight weeks at the most probably.

10 Q All right. Were you given the indictments?

11 A Yeah. We had the indictments, we had the  
12 warrants, we had everything at that point in time. I  
13 think I gave things to Mr. Evans that he asked me for.

14 Q So you think you showed the indictment to Mr.  
15 Evans?

16 A I think so, yes.

17 Q Did you investigate the witnesses and defenses  
18 that Mr. Evans asked you to do?

19 A Yes. As a matter of fact I even wrote him a  
20 letter.

21 Q Specifically what were those, if you recall?

22 A Well I wrote him a letter and asked him in light  
23 of his 28-page confession, what are our defenses. And  
24 he was ultimately brought back down to Charleston and  
25 we were able to meet.

1           He raised the issue of the warrantless arrest in  
2 Maryland. And I made sure to research that, and I was  
3 also familiar with that since I do a lot of federal  
4 work. And I was able to explain why that was -- there  
5 were several reasons why that was not a basis for a  
6 defense.

7           He was arrested by the United States Marshals  
8 under the interstate fugitive act, I believe it's 18  
9 U.S.C. 1073. And that that was an act that was upheld  
10 by the Supreme Court, it's a felony, and it doesn't  
11 need -- they don't need to have a warrant in their hand  
12 when they say, come here, you are under arrest.

13           In addition to that he was extradited from  
14 Maryland. And even though Maryland is a member of the  
15 uniform extradition act states, there are 48 states  
16 that do that that are uniform act states, South  
17 Carolina and Missouri are the only non-uniform act  
18 states, you still have the right to raise your  
19 custodial status as a defense for extradition under the  
20 uniform act.

21           That apparently wasn't done, so there was a  
22 question of waiver, number one. There was a question  
23 of res judicata since they had make a decision that he  
24 was lawfully in their custody before they sent him back  
25 to South Carolina.

1           So then at that point in time that issue, such  
2 as it was, I deemed not to be an issue. If it is an  
3 issue, then that's up to the Court to make that  
4 decision.

5       Q     Did you discuss all those issues with the  
6 warrantless arrest with Mr. Evans?

7       A     Yes, once we got him back to Charleston.

8       Q     Did you raise this issue of warrantless arrest  
9 with the Court in any way?

10      A     Absolutely not. I just explained to you the  
11 basis of my legal analysis that, A, the warrantless  
12 arrest was a lawful arrest under the interstate  
13 fugitive act, and also under the law of Maryland.

14           And there was also the question of waiving  
15 contesting his custodial status, and/or res judicata in  
16 the Maryland judicial system.

17      Q     Did you do anything yourself to investigate the  
18 matter of warrantless arrest?

19      A     Yes. I had the information about it, and I made  
20 some phone calls. I have done enough federal work in  
21 my 44 years to be familiar with interstate fugitive  
22 cases.

23           So it didn't take me a whole lot of time, for  
24 example, to -- you see any prosecution for interstate,  
25 being an interstate fugitive has to be done in the

1 jurisdiction in which the fugitive's alleged acts took  
2 place.

3         So the information about the, or the origination  
4 of his status as a fugitive was here with the United  
5 States Marshal.

6         Q     Thank you. Did you raise the issue of  
7 voluntariness of his statement with the court ever?

8         A     I think I did. I think it's in the transcript.

9         Q     You recall raising that issue with the Court?

10        A     Well, I didn't recall it before I read the  
11 transcript, but I did. And we were also able to get  
12 substantial portions of his statement -- we had a Denno  
13 hearing. Obviously we weren't successful in that  
14 because for several reasons.

15         But we also were able to successfully get a  
16 large or substantial portions of the statement  
17 redacted. That was also reflected in the transcript.  
18 That hearing was held prior to the selection of the  
19 jury.

20         They called the case, we did the Denno hearing,  
21 then we selected a jury down the road.

22         Q     Did you move -- okay. Did you call two  
23 particular witnesses as requested by Mr. Evans during  
24 the trial?

25         A     I think I tried to do everything Mr. Evans

1 wanted to do. The problem we had was his 28-page  
2 confession, his backing the wagon over the state on his  
3 agreement. I mean we were left in a pretty train-wreck  
4 status so far as defending him in this matter quite  
5 frankly.

6 His transcript reflects which of his  
7 codefendants testified against him. I mean we did the  
8 best we could with what we had to work with.

9 Q Did you make a motion for a mistrial based on  
10 the codefendant's statements about the other robbery  
11 that took place?

12 A I'm not sure what motions I made. The  
13 transcript will speak for itself.

14 Q Okay.

15 A I don't mean to be evasive.

16 THE COURT: Can you be more specific, Ms.  
17 Hanafi, as to what you're referring to and give Mr.  
18 Runyon a point of reference.

19 MS. NETTLES: Absolutely. I'm just wondering if  
20 Mr. Runyon recollects making a motion for a mistrial  
21 based on any codefendant's statements. And certainly I  
22 understand the transcript is part of the record.

23 THE WITNESS: And I'm not trying to be evasive.  
24 But when you've tried as many cases as I have had to  
25 try --

1 THE COURT: Let me ask a question that may make  
2 it more clear. Are you talking about a written  
3 statement that the codefendant made? Or are you  
4 talking about him testifying?

5 MS. NETTLES: A written statement. That's a  
6 good question, thank you.

7 THE COURT: And that came in? Or was he simply  
8 using that to refresh his memory? And what page and  
9 line in the transcript are you referring to? So that  
10 Mr. Runyon can review that and we can have some point  
11 of reference as to exactly what we are talking about.

12 MS. NETTLES: May I approach the witness?

13 THE COURT: Yes.

14 Q (By Ms. Nettles) All right. Can I point you to  
15 Page 362 of the trial transcript. If you would just  
16 read that highlighted portion, line 3 through 5, I  
17 think.

18 A Mr. Runyon timely made a motion for mistrial at  
19 the sidebar and we will now hear that motion in full.

20 Q Okay. Does that refresh your recollection as to  
21 whether you made a motion for mistrial?

22 A Yes, it does. And this was a -- and the reason  
23 why it was done this way and it was made at the sidebar  
24 and but Judge Fields, quite frankly, taught us a long  
25 time ago not to trust sidebars and to always remember

1 to put it on the record and that's one reason it was  
2 made, to be quite frank. We vouch for the record for  
3 what we had done.

4 Q Okay.

5 A And --

6 Q So is it your recollection that you did make a  
7 motion for mistrial?

8 A Well it is now that I have seen that. And the  
9 transcript speaks for itself.

10 Q Appreciate it. All right. On the sentencing  
11 issues, just briefly, I don't want to rehash everything  
12 from the previous hearing.

13 You weren't the lawyer that represented him  
14 during the plea deal, right?

15 A Absolutely not. That was Ms. Taylor who I took  
16 over from.

17 Q All right. Did you raise any issue with the  
18 sentencing after the jury found Mr. Evans guilty?

19 A No, I didn't. Not the way Mr. Evans or your  
20 memo or your position would suggest I maybe should  
21 have.

22 The simple fact was that under the agreement, as  
23 I recall, he had voided the agreement. And under  
24 Thrift, and Santobello, and a couple of other cases, I  
25 didn't think he had a meritorious position to suggest

1 to the court that they couldn't impose what the State  
2 was seeking.

3 We were kind of hung out to dry when Mr. Evans  
4 voided his -- I said we were hung out to dry, he hung  
5 himself out to dry. What I had done before was I had  
6 gone to Mr. Williams prior to this trial getting  
7 started trying to negotiate a reinstatement of Mr.  
8 Evans' situation.

9 And he hadn't agreed to it, but I kind of  
10 thought he would if Mr. Evans would plead.

11 Q Did you make any objections to the jury charges  
12 made by the Judge to the jury?

13 A I haven't the foggiest notion.

14 THE COURT? Instead of being general, I need you  
15 to be specific with him as to what jury charge you are  
16 referring to.

17 MS. NETTLES: Absolutely.

18 Q (By Ms. Nettles) As to the hand of one is the  
19 hand of all. Did you make any objection to that?

20 A I don't think I did.

21 Q Why not?

22 A Because that's a tried and true objection -- I  
23 mean a tried and true charge to the jury in this state.  
24 I have been hearing it for so many years, I sometimes  
25 hear it in my sleep in the course of a trial.

1           And I didn't object to it because my  
2           recollection is that the Judge's charge was in keeping  
3           with the charge on that issue that is recognized in  
4           this state by our state Supreme Court.

5           MS. NETTLES: I appreciate that, Mr. Runyon. I  
6           have no further questions for you at this time. I may  
7           have some follow-up after.

8           THE COURT: Mr. Friedman.

9           MR. FRIEDMAN: Thank you.

10                           CROSS-EXAMINATION

11           BY MR. FRIEDMAN:

12           Q       Mr. Runyon, how long have been practicing law?

13           A       Since September 13, 1967. About 44 years.

14           THE COURT: So you had an anniversary yesterday.

15           THE WITNESS: I did, didn't I.

16           THE COURT: Uh-hum, you did.

17           THE WITNESS: Fortunately I didn't forget my  
18           wedding anniversary.

19           Q       (By Mr. Friedman) Do you recall if you had  
20           enough times to meet with the applicant prior to trial?

21           A       Yes. I was appointed -- to clarify that. I was  
22           appointed, and this is kind of a special situation.

23                   I was appointed, and I was basically informed  
24           that this case was going to be brought to trial and  
25           wasn't going to be delayed unless I absolutely couldn't

1 get ready. Ms. Taylor's file was very, very complete  
2 after two years. And my so-called marching orders was  
3 to get ready and that's why I jumped right on it. I  
4 got familiar with it.

5           They told me 82 Queen was the first one that we  
6 would be facing, and probably the only one if he was  
7 convicted quite frankly. And so -- and once again, I'm  
8 not making light of a serious case, but it was kind of  
9 a yellow-pad case when you stop and consider who's made  
10 what statements, his confession, and things of that  
11 sort, and who would be testifying against him.

12       Q     Did you have a chance to discuss his confession  
13 with him?

14       A     Yes, sir, I did. And as a matter of fact I even  
15 wrote him a letter prior to him being brought down  
16 here. I believe it was dated -- some of the few things  
17 I got left came out of my computer. I wrote him a  
18 letter on September 29th.

19           I have reviewed your 28-page confession and have  
20 yet to uncover a defense. So please advise me of any  
21 defenses you think you might have. Lightening can  
22 strike the same person more than once, but that is not  
23 a common happening.

24           And then when they brought him down we were able  
25 to get together. The transcript speaks for itself as

1 far as how his statement was taken, Detective Osborne  
2 interviews, things of that sort.

3 Q Now after you sent him that letter, did he give  
4 you any possible defenses to argue?

5 A No, I was still -- I was still searching in the  
6 record. Mr. Evans was in a bit of a pickle.

7 Q Did you discuss with him the LWOP statute prior  
8 to the trial?

9 A Yes, sir. I sent him -- prior to discussing it  
10 with him, I sent him a letter. I sent him a letter:  
11 By now you have been served with the State's notice of  
12 seeking life without parole. As you know they can  
13 accomplish the same goal if they can convict you in  
14 successful trials and achieve consecutive sentencing.  
15 This notice is self-explanatory. I will be back in  
16 touch as soon as I have some news about your situation.

17 As soon as he was served with that, because they  
18 drove to the institution to serve him with it and gave  
19 me notice the same date. I started working on that.  
20 And when he came down we had a face-to-face about life  
21 without parole.

22 MR. FRIEDMAN: I have nothing further.

23 THE COURT: Any redirect, Ms. Nettles?

24 MS. NETTLES: Just briefly, Your Honor.

25 REDIRECT EXAMINATION

1 BY MS. NETTLES:

2 Q Were you aware of any other plea agreements or  
3 other agreements between Mr. Evans and the State during  
4 the trial?

5 A Mr. Evans and the State, I was aware of the one  
6 agreement that was made an exhibit to the initial plea  
7 in the other case which Mr. Evans had reneged on and  
8 voided out.

9 Q Were you aware of any agreements between Mr.  
10 Evans and Detective Osborne?

11 A Well I think we addressed that in the Denno  
12 hearing. Because my concern in when I initially got in  
13 the file, I think I wrote Mr. Evans about it, was that  
14 he seemed to have been promised certain things by Mr.  
15 Osborne.

16 And I realize it was a conversation about, in  
17 his statement, about the possibility of parole or  
18 probation or what have you, or probation. And I wrote  
19 and said, who made that representation to you. Because  
20 if Mr. Osborne had done that with the permission of the  
21 State, then obviously there might be a further  
22 agreement. But obviously that wasn't done.

23 Q Okay.

24 MS. NETTLES: Thank you, Mr. Runyon, nothing  
25 further.

1 MR. FRIEDMAN: Nothing further, Your Honor.

2 THE COURT: Sir, you may step down.

3 MS. NETTLES: Your Honor, at this time we call  
4 Mr. Evans.

5 THE COURT: Sir, I remind you that you are still  
6 under oath.

7 MR. THOMAS JERMAINE EVANS,  
8 after having previously been duly sworn to tell the  
9 truth, the whole truth and nothing but the truth  
10 testified on his oath as follows.

11 THE COURT: You may proceed.

12 DIRECT EXAMINATION

13 BY MS. NETTLES:

14 Q Mr. Evans, you were convicted of armed robbery  
15 on October 8, 2008 after a three-day trial, right?

16 A Yes, ma'am.

17 Q All right. Were you presented with your  
18 indictment?

19 A No, ma'am.

20 Q Was your lawyer presented with your indictment?

21 A I believe he said no. And I brought up the --

22 Q You brought that up with the Court at the trial,  
23 right?

24 A Yes, ma'am.

25 Q And were you shown the indictment at the trial?

1       A       I don't believe I did. I remember the judge  
2       said billed, but I don't recall seeing it.

3       Q       Do you know what you were indicted for?

4       A       Says armed robbery and that's why I say I didn't  
5       understand the indictment. Because from my  
6       understanding it says in orders for you to have armed  
7       robbery you have to have a gun. And in this situation  
8       I didn't have one.

9               THE COURT: You don't have to have a gun. You  
10       were misinformed. Ordinary objects can be deadly  
11       weapons. Your fist can be a deadly weapon. A wrench  
12       can be a deadly weapon. You can have a representation  
13       of a deadly weapon. You don't have to have a gun.

14              Just wanted to make you aware of that. At the  
15       end of the case I will advise you exactly what's  
16       required, but I don't want to be under that  
17       misapprehension. You don't have to have a gun for  
18       armed robbery.

19              All you have to do is threaten force and take  
20       somebody's property. Even for an instance under force.

21       MS. NETTLES: Thank you, Judge.

22       THE COURT: You're welcome.

23       Q       (By Ms. Nettles) You made an allegation in your  
24       PCR application that Mr. Runyon failed to attack the  
25       prosecutor's case fully.

1           And how did he fail to attack the prosecutor's  
2 case fully?

3           A     Dealing with the situation where about the  
4 statement. Detective Osborne gave me his word, he  
5 shook on it. He admitted in my transcript. So when I  
6 looked under the dictionary and the thesaurus and I  
7 looked under word, and the fourth definition is  
8 promise.

9           So I looked at promise and the synonym for  
10 promise was word. So that's my understanding, once you  
11 give me your word that's a promise to me.

12          Q     So by virtue of Mr. Runyon's failing to bring up  
13 the issue with you working out an agreement or promise  
14 with the Detective Osborne, he has failed to attack the  
15 prosecutor's case fully?

16          A     Yes. That's part of it because that statement  
17 should have been involuntary because he promised to  
18 bring my cooperation to the State but still said  
19 otherwise..

20          Q     All right. Did Mr. Runyon or Ms. Taylor call  
21 various witnesses that you suggested they call?

22          A     No. The reason why he didn't call my other two  
23 witnesses, he stated that he felt that my two witnesses  
24 didn't have anything to do with it and they would have  
25 lied.

1 But my purpose was on calling them because the  
2 situation that Detective Osborne already questioning  
3 both of them, and how did I ask for an attorney and he  
4 still proceeded with the questioning and I asked for an  
5 attorney when I was in Georgia. Not Maryland, Mr.  
6 Runion, I was arrested in Georgia.

7 But I asked for an attorney the second day that  
8 some officer or U.S. Marshal, I don't know who he was,  
9 tried to question me. So my rights was violated then.

10 Q Who were the two witnesses you were going to  
11 call? Or you wanted Mr. Runyon to call?

12 A My two witnesses was Darrell Lewis and James  
13 Blanding, Junior.

14 Q And just generally, what would they have said?

15 A The purpose was about the questioning. Darrell  
16 Lewis said that Detective Osborne questioned him. And  
17 when he asked for an attorney he still tried to proceed  
18 with it. But once he see that he wasn't get anything  
19 out of him, he wrote a supplemental report that Darrell  
20 Lewis asked for an attorney.

21 And James Blanding was the first one that got  
22 arrested. And this paperwork dealing with the Cool  
23 Line situation, Darrell -- I mean James Blanding, he  
24 asked for an attorney, they got it in a supplement  
25 report.

1           They asked several times if he could give a  
2 different statement. And they said the proffered  
3 agreement was into the Charleston County Solicitor's  
4 office. So dealing with that they admit that he asked  
5 for an attorney, and a plea agreement was made later  
6 on. That it proceeded without an attorney. I mean  
7 they proceeded without him making an initiating contact  
8 with them.

9           Q     Okay. All right. On your warrantless arrest  
10 issue, what led to your arrest in Georgia?

11          A     What led to my arrest was my codefendant, Curtis  
12 Burns -- well James Blanding was the first one. He  
13 mentioned Curtis Burns, he mentioned my name.

14                But Curtis Burns actually told him that I was in  
15 Georgia for Mother's Day at my unborn daughter's  
16 mother's house. So I wasn't actually on the run, I  
17 just went up there on the weekend like I do back and  
18 forth.

19                I told Ms. Taylor that I was always driving back  
20 and forth. She told me that I was lying. And I have  
21 the U.S. Marshal's report that indicate that my phone  
22 records indicate that I was going back and forth.

23           Q     Thank you. Did you give a statement to the  
24 police?

25          A     Yes, ma'am.

1 Q And did your lawyer make a motion to suppress  
2 that statement?

3 A Mr. Runyon?

4 Q Yes.

5 A We did a Jackson v Denno hearing. But I didn't  
6 get on the stand or anything, I don't know why. But he  
7 didn't call me to the stand.

8 Q Okay. Did your lawyer make an objection to the  
9 jury charges, specifically to the hand of one is the  
10 hand of all jury charge?

11 A No, he didn't. Also that's why I don't  
12 understand it because the solicitor, Mr. Williams, and  
13 the Judge both was giving jury instruction on the hand  
14 of one is the hand of all.

15 And I don't know the whole understanding, but  
16 from what he said if this codefendant got this much  
17 time, you are supposed to get the same thing. That's  
18 what I understand.

19 I could be wrong if Ms. Jefferson want to  
20 correct me on it, I don't know.

21 THE COURT: Actually it's Judge Jefferson.

22 THE DEFENDANT: I apologize, Judge Jefferson.

23 Q (By Ms. Nettles) You have concern about the  
24 statement of a coconspirator's?

25 A Yes, ma'am. Because dealing with this one right

1 here, Curtis Burns, Mr. Runyon didn't attack his  
2 statement, and he didn't attack John Reaves' statement,  
3 which I never received. So to this day I still don't  
4 have John Reaves' statement, but I have Curtis Burns'  
5 statement.

6 And the third statement that he made I presented  
7 to Mr. Runyon when Curtis Burns was on the stand. And  
8 he asked Mr. Burns did he make any statement to anybody  
9 else, and Mr. Burns answered no.

10 And it shows in the transcript that on Page 335,  
11 in the second part of my transcript it says: As it  
12 relates to 82 Queen Street, did you give anyone than  
13 Mr. Osborne a written statement? My codefendant  
14 answered no.

15 But right on Line 7 it says, Mr. Runyon reviews  
16 document. And this is the document that he reviewed  
17 that I presented to him. And Mr. Curtis Burns in his  
18 statement in his handwriting says: I, Curtis E. Burns,  
19 Junior, did not willfully and feloniously commit the  
20 above crimes of South Carolina that I am currently  
21 being charged of. In fact, I was compelled, coerced  
22 into a false confession that violated my constitutional  
23 rights.

24 This led to -- led to not only incriminating  
25 myself, but the arrest of other innocent people said to

1 be my codefendants. I go to move before the judge of  
2 general sessions to testify accordingly. This  
3 statement is provided by my own will.

4 so he didn't attack it but he should have. And  
5 he could have brought up two other statements that my  
6 codefendant signed by Detective Osborne, and plus the  
7 polygraph test that he passed that he wasn't involved  
8 with it, he didn't know who did it, and nobody told him  
9 about it.

10 But Mr. Runyon didn't attack it. And I  
11 presented all this to his attention. He didn't bring  
12 it to the Court's attention.

13 Q Thank you. Was there an appeal made after the  
14 trial?

15 A Yes, ma'am.

16 Q And there was an appeal brief submitted by your  
17 appellate attorney, right?

18 A Yes, ma'am, Robert Pachak.

19 Q What happened with that appeal?

20 A He only offered the issue that my codefendant,  
21 John Reaves, made an indication that the duffle bag was  
22 used in other robberies. But they dismissed it.

23 And that was not the situation that Mr. Runyon  
24 did not objected to, nor was there a time when we was  
25 in front of the jury and or he did something else, if

1 I'm not mistaken to, when we was in front of the jury,  
2 Mr. Runyon -- I mean Detective Osborne, he was thinking  
3 that he was talking to Curtis Burns and that the -- it  
4 was right here.

5 At some point warrants were issued out for Mr.  
6 Evans. They keep on saying warrants, and we are only  
7 supposed to be talking about one robbery. So dealing  
8 with this situation, the jury only knows about one  
9 robbery, they don't know about my other multiple crimes  
10 that I was being charged with.

11 So then when they presented the statement on the  
12 overhead projection, when you could review it on the  
13 screen, you could see the other information about other  
14 robberies on the screen, so I felt that that prejudiced  
15 my case too.

16 So once my codefendants say that the duffle bag  
17 was used in other robberies, Detective Osborne stated  
18 that at some point warrants were issued for Mr. Evans,  
19 and then he said -- I mean Mr. Williams stated, and  
20 once those warrants were issued Mr. Evans, what had  
21 been arrested on them for something. And that's my  
22 transcript on Page 260.

23 So dealing with those, I felt that he was  
24 ineffective and it prejudice me because I didn't have a  
25 fair trial because we are only supposed to be talking

1 about one robbery, not two or three.

2 So he was ineffective for that. And I felt that  
3 was prejudice towards me too.

4 Q Do you know if that matter was appealed?

5 A No, that -- he -- on the situation about the  
6 appeal part was only that the duffle bag was used in  
7 other robberies which John Reaves said, not the rest of  
8 the information that I just mentioned to him.

9 Q Okay. So the appeal was only on the duffle bag  
10 issue that was mentioned in court, instead of all the  
11 other information that was mentioned?

12 A Yeah, that's the only thing he objected to, he  
13 didn't object to the rest of them. All he did is said,  
14 Judge, can I speak to you instead he made an objection  
15 in front of the jury.

16 And then later on the Judge keep going, put it  
17 in the jury's head saying, block that out when he said  
18 about the duffle bag and about the other robberies.  
19 That planted inside the jury's head that they're  
20 talking about more than one robbery.

21 Dealing with that and the fact that my statement  
22 was on the overhead projection, you could see the other  
23 robberies behind a white piece of paper. So you  
24 actually could read the rest of the statement that they  
25 wasn't supposed to bring out.

1 Q Is there anything else that you are alleging is  
2 ineffective of counsel or a violation of your  
3 constitutional rights?

4 A Yeah, also the solicitor, Mr. Williams, he asked  
5 my codefendant Curtis Burns, I haven't made you any  
6 promises about what that might be. He said, no, sir.  
7 So this is about -- about the -- if there was any deals  
8 made for my codefendants.

9 So then at the end once they found me guilty on  
10 Page 464 of my transcript, Mr. Williams stated, so I  
11 understand he is going to be upset about going to  
12 prison for life. But he had a very real impact on  
13 making people come in to testify, and then also in a  
14 very real way required the state to go to codefendants  
15 and make negotiations that they wouldn't ordinarily  
16 make.

17 So when he questioned my codefendant Curtis  
18 Burns and asked if he made any -- was there any deals  
19 made, Curtis Burns answered no, the solicitor didn't  
20 correct Curtis Burns right then and there. But once  
21 the jury found me guilty, he came and said that I  
22 required the state to go to codefendants and make  
23 negotiations that they wouldn't ordinarily make. How  
24 can I make you go to other people --

25 THE COURT: Because they make deals later. They

1 deliberately don't make deals before they testify. So  
2 he probably testified truthfully that there was no  
3 deal. That's the way the game is played.

4 THE DEFENDANT: But this is what I don't  
5 understand. At the beginning before it was stating  
6 that he was getting 15 years, I was in the cell with  
7 him twice, he's my codefendant.

8 THE COURT: I understand that. What he said to  
9 you and what actually happened, I doubt he would have  
10 told you the truth.

11 THE DEFENDANT: But he didn't. That's what he  
12 received.

13 THE COURT: I don't know if he told you the  
14 truth. He could have told you anything. I am sure he  
15 wouldn't have wanted you to know, since he was your  
16 friend, that he was going to testify against you.

17 THE DEFENDANT: But I mean I understand all  
18 that. Like I'm saying --

19 THE COURT: But the way it's done, is they don't  
20 put a deal in place when he testifies so that when he  
21 says he didn't have a deal, it's truthful. But they  
22 know all along the end result that he hopes for some  
23 leniency.

24 THE DEFENDANT: I mean --

25 THE COURT: But you have to -- it's your burden

1 of proof to show that they had some deal in place. Do  
2 you have some objective proof that there was in fact a  
3 deal in place with your codefendant?

4 THE DEFENDANT: The fact that there was deal?

5 THE COURT: Uh-hum.

6 THE DEFENDANT: He said --

7 THE COURT: That statement is not enough in and  
8 of itself. You'd have to go beyond that. You'd have  
9 to prove that there was some deal in place or some  
10 assurance or promise made.

11 THE DEFENDANT: All right then, so you are  
12 basically talking about if he was going to receive  
13 leniency?

14 THE COURT: No, if he had received a promise  
15 that he was going to get something, like a negotiated  
16 plea.

17 MS. NETTLES: At that time.

18 THE DEFENDANT: At that time? Then this  
19 situation?

20 THE COURT: When he testified.

21 THE DEFENDANT: All right. So if he was to  
22 mention that he's hoping for leniency, is that --

23 THE COURT: Everybody hopes for leniency, that's  
24 why they come and testify against somebody.

25 THE DEFENDANT: All right then, so.

1 THE COURT: That doesn't mean a deal was in  
2 place.

3 They all hope for leniency, or you wouldn't be  
4 doing it. That's common sense.

5 THE DEFENDANT: What I mean is -- I guess I  
6 don't understand because --

7 THE COURT: I watch the defendants that plead  
8 guilty, have no sentence come and testify hoping for  
9 leniency and there is no deal in place.

10 And they come forward and the State doesn't ask  
11 for leniency. Because they come back and say, guess  
12 what, we really didn't need you. We appreciated you  
13 testifying, but we still want you to get the maximum.

14 Or sometimes they come in and after they testify  
15 they negotiate a range of penalty if the testimony has  
16 been beneficial to them.

17 So I need to know if you have some independent  
18 proof that a deal in fact was in place where he was  
19 getting some promise, other than his hope. Every  
20 defendant or person hopes for leniency if they testify  
21 against somebody, otherwise they wouldn't be doing it.  
22 I mean, that's common sense.

23 THE DEFENDANT: All right. Can I show you a  
24 part that they say that dealing with the first  
25 situation about my codefendant being arrested. They

1 said that a proffer agreement was sent to the  
2 Charleston County Solicitor's Office.

3 THE COURT: A proffer agreement doesn't mean he  
4 was offered a sentence. A proffer agreement simply  
5 says that we are going to be cooperative, we are going  
6 to be truthful, we are going to take a polygraph. If  
7 something comes of this we will work out a deal.  
8 That's what a proffer agreement is.

9 Sometimes proffer agreements are more extensive  
10 than that, like yours. Which agreed to what you were  
11 going to plead guilty to and what your range of penalty  
12 was going to be. But I would imagine if they knew he  
13 was going to testify against you, that proffer  
14 agreement is completely silent as to sentence.

15 THE DEFENDANT: Like I said, he told me, he said  
16 he was going to get a deal for 15 years.

17 THE COURT: People lie all the time. That's  
18 like when somebody comes up to me and says, you know,  
19 so-and-so said they got \$100,000 in settlement on a  
20 case. I said, did you see the check?

21 People lie all the time. People exaggerate,  
22 they embellish.

23 THE DEFENDANT: You know Judge Jefferson, you  
24 are right about that, people do lie. Apparently in  
25 this case he was telling the truth because that's what

1 he received.

2 THE COURT: Not necessary unless he can read a  
3 judge's mind. Because I don't ever know what I'm going  
4 to do until I do it.

5 So if anybody says that they can predict what a  
6 judge is going to do, they're lying. Unless it's a  
7 negotiated plea. We change our minds about 20 times  
8 while we're hearing something about what we're going to  
9 do.

10 THE DEFENDANT: And that's why I tried to get  
11 this plea that he pleaded out to. But for some  
12 apparent reason --

13 THE COURT: Mr. Runyon, do you have any  
14 indication that -- I have read the transcript and it  
15 appears that you thoroughly examined him on his bias,  
16 prejudice, whether he had some motivation to fabricate  
17 testimony based on what he believed he was going to  
18 receive from the State.

19 Do you have any indication that there was a  
20 written proffer agreement in place that promised him  
21 some range of penalty?

22 MR. RUNYON: No, Your Honor. I did not have any  
23 written agreement, other than my experience tells me  
24 that that's what they hope for.

25 THE COURT: But do you have any indication that

1 there was some plea agreement in place at the time, or  
2 that the witness answered untruthfully when he said  
3 that there was no promise in place?

4 MR. RUNYON: I can't say that my recollection  
5 said that he was answering untruthfully when he said  
6 there was no agreement in place.

7 THE COURT: Thank you, I appreciate you  
8 answering that question.

9 You may continue, Ms. Nettles. I apologize for  
10 interrupting you.

11 I think sometimes there is a misunderstanding,  
12 and I wanted him to understand that normally the way it  
13 operates is that they will have an agreement for him to  
14 plead guilty, but they don't agree to a sentence.  
15 Because that then destroys the witness's credibility.

16 They don't want Mr. Runyon to be able to say,  
17 isn't it true you've agreed with the State to get 15  
18 years in consideration for your testimony. So they  
19 leave them in limbo deliberately so that they testify  
20 that I want leniency, of course, that's why I'm here.  
21 I wouldn't be doing this if I didn't think it was going  
22 to benefit me.

23 But I just wanted to make sure for the record  
24 that the record was clear so whether there was some  
25 written proffer agreement out there that I needed to

1 consider.

2 MR. RUNYON: Judge, one of the -- and I don't  
3 mean to jump in here.

4 THE COURT: No, not at all. For clarity's sake.

5 MR. RUNYON: One of the problems -- one of the  
6 burdens we were laboring under, if you can refer to the  
7 transcript, was that we had a good portion of his  
8 statement redacted.

9 But there is a colloquy that I recall reading in  
10 there about Judge Cooper made it very clear to me that  
11 if I open some doors, anybody on the other side of that  
12 door is going to come walking through.

13 And so we had to deal with these folks fairly  
14 gingerly to make sure that they didn't say something  
15 that would --

16 THE COURT: Exactly, that would implicated the  
17 rest of the statement that would give the State the  
18 right to rehabilitate the witness. I understand.

19 MS. NETTLES: Thank you for that. I appreciate  
20 that.

21 THE COURT: You're welcome.

22 Q (By Ms. Nettles) And, Mr. Evans, please tell me  
23 what you're concerned about with Page 335 of your  
24 transcript?

25 A Well Mr. Runyon just said that he didn't know

1 anything. But when he asked my codefendant, he said on  
2 Page 335 on Line 15, he said, and in preparation for  
3 coming here today -- I mean Line 13. He said: And of  
4 course you spoke with Mr. Williams? Yes, sir.  
5 And in preparation for coming here today? Yes, sir.

6 And so you know that as a practical matter you  
7 have to perform well in order to get some relief from  
8 the court? And my codefendant answered: Not  
9 necessarily, sir. And Mr. Runyon said: I beg your  
10 pardon? He said: Not necessarily. Because I'm just  
11 here to tell the truth on exactly what happened.

12 So he said: as a practical matter you have to  
13 perform well in order to get some relief. So that's  
14 indicating to me that Mr. Runyon already knew that  
15 there is a deal going on between them. But I --

16 THE COURT: Mr. Runyon knows how the system  
17 operates because he has been practicing law a long  
18 time, and he knows the personalities of who he is  
19 dealing with.

20 THE DEFENDANT: Yeah, so like I'm saying to me  
21 that sounds like a deal's in the wind, you know what  
22 I'm saying. I don't know --

23 THE COURT: A deal is always in the wind. It's  
24 just not going to be put on paper or articulated.

25 THE DEFENDANT: So that's against like what Ms.

1 Taylor said --

2 THE COURT: But there is still no guarantee.  
3 The State can't guarantee anything.

4 THE DEFENDANT: I understand that. Like I said,  
5 10 to 15 years, I would have jumped on it right then  
6 and there.

7 THE COURT: They would never offer you that.

8 THE DEFENDANT: But remember she said that --

9 THE COURT: They were never going to offer you  
10 that. It was never a possibility. Unless you  
11 testified against all your codefendants, and you  
12 reneged on that. And they were smarter than you, they  
13 got in the first boat and you didn't.

14 You were loyal and they were not. And that is  
15 the proclivity -- that is the perplexity of the  
16 situation you find yourself in. Because you were in a  
17 cell with them and they lied to you. They basically  
18 said they were going to hang out with you and everybody  
19 was going to stay true to each other. And that's not  
20 what happened.

21 THE DEFENDANT: No, to be honest he told me he  
22 was. But like I said, it's not my right to go ahead  
23 and put hands on you. I can't force you to do  
24 something that you want to do.

25 THE COURT: You're better than me. I would have

1       been in the first boat.

2               THE DEFENDANT: I wasn't trying the case. I  
3       would have looked back --

4               THE COURT: I'm not trying to be silly, but I'm  
5       just being honest. I wouldn't have had a bit of  
6       loyalty. What's that quote, no loyalty among thieves.  
7       I would have been in that first boat. I don't care if  
8       they ever spoke to me again.

9               THE DEFENDANT: See that's what I'm saying,  
10       Judge Jefferson, if that was the fact 10 or 15 years I  
11       could receive for testifying, and me going home to see  
12       my kids --

13              THE COURT: But there's a very short shelf life  
14       for that. You got to do that in the first few weeks.  
15       It doesn't linger for a long time.

16              THE DEFENDANT: And that's the whole thing, all  
17       right. When you said early. There was only five  
18       charges, but then the arrest came about. So that was  
19       what Mr. -- Detective Osborne promised me.

20              THE COURT: Well he wasn't in a position to  
21       promise you anything.

22              THE DEFENDANT: Well his word, and like I said,  
23       his word was a promise to me, we shook on it.

24              THE COURT: Yeah, but he doesn't have any  
25       authority to do anything for you.

1 THE DEFENDANT: So I --

2 THE COURT: And they can use reasonable  
3 deception and lie to you to get you to do what they  
4 want you to do. And that's what they do.

5 THE DEFENDANT: So he had the right to give his  
6 word to me?

7 THE COURT: Absolutely.

8 THE DEFENDANT: Okay, that's what was lost. So  
9 that's the only reason --

10 THE COURT: He doesn't have any authority to  
11 bind the solicitor's office as to how they're going to  
12 prosecute their case. His function in the process is  
13 to gather evidence. It is their function to determine  
14 who is charged and how.

15 He can tell them what he wants. He can give --  
16 and he may well have given you his word in good faith,  
17 I don't want to case any dispersions on him. I don't  
18 know him, I didn't hear the case.

19 And he may well have gone to the solicitor and  
20 said, listen, I really want you to cut this gentleman a  
21 break because I gave him my word. And the solicitor  
22 probably said to him, that's real nice. But we got a  
23 bunch of burglaries and we going to take whoever comes  
24 to us first. And we appreciate your input, but we're  
25 not going to do that.

1 THE DEFENDANT: All right.

2 Q (By Ms. Nettles) Is there anything else you want  
3 to mention before we conclude this hearing?

4 A Yeah, also that Mr. Runyon, he only saw me once  
5 before my trial, and that was on Sunday. So I didn't  
6 feel that he was prepared all the way for my case.

7 And that's dealings with Lounds versus State,  
8 same situation, I didn't see him until the morning of  
9 the trial began and admitted on the record. Mr. Runyon  
10 did the same thing on page -- I stated that on Page 377  
11 from Line 10 to 18, and 21 through -- on Page 377 he  
12 admitted that, he only saw me that Sunday before my  
13 trial.

14 I felt that was unfair to even bring me up in  
15 trial and he talked to me in one day. He didn't have  
16 enough time to prepare for it, but he said he was only  
17 appointed for eight weeks before trial. I believe he  
18 didn't have enough time.

19 Q Thank you, Mr. Evans, anything else?

20 A That's it.

21 Q All right. Do you allege that all these facts  
22 and circumstances that you've testified about today  
23 rise to the level of ineffective assistance of counsel  
24 and a violation of your constitutional rights by Mr.  
25 Runyon and Ms. Taylor in regards to this particular

1 charge and trial?

2 A Yes, ma'am.

3 MS. NETTLES: Your Honor, that's all I have for  
4 right now.

5 THE COURT: Mr. Friedman, any questions for the  
6 witness?

7 MR. FRIEDMAN: No questions, Your Honor.

8 THE COURT: Any further witnesses, Ms. Nettles?

9 MS. NETTLES: No, Your Honor.

10 THE COURT: Any witnesses from the State?

11 MR. FRIEDMAN: No witnesses, Your Honor.

12 THE COURT: Is there any argument?

13 MS. NETTLES: Briefly, Your Honor.

14 My client would like for me to mention, in  
15 addition to the memo that I have handed up, three or  
16 four cases, Custodial versus State, Reed versus Baca  
17 (phonetic) and Martinez versus State, Rainey versus  
18 State.

19 And with regard to the first two I mentioned, I  
20 do not have citations and I apologize. The second two  
21 are Martinez versus State is 403 S.E.2d 113. And  
22 Rainey versus State is 414 S.E.2d 131.

23 I have got another one that he wants me to point  
24 out, Matthews versus State, 565 S.E.2d 766. And then  
25 he wants me to reiterate the case he mentioned, Lounds

1       versus State which is 670 S.E.2d 646.

2               Your Honor we believe that the facts that Mr.  
3       Evans has stated, including the failure to make  
4       appropriate objections during trial; failure to present  
5       him with his own indictment; failing to call two  
6       witnesses as Mr. Evans asked Mr. Runyon to do; and  
7       failure to make an objection to the jury charges,  
8       particularly the hand of one/hand of all jury charge,  
9       all rise to ineffective assistance of counsel and  
10      violation of his constitutional rights.

11              And also on the appeal of the matter, the appeal  
12      should have included additional matters that were  
13      raised and not objected to by Mr. Runyon, and further  
14      not appealed by appellate counsel.

15              We would also like to incorporate the sentencing  
16      arguments from the previous hearing. Mr. Runyon was  
17      under -- operating under the perception that he would  
18      get the plea agreement deal as we talked about in the  
19      first hearing.

20              And for those reasons, Your Honor, we would like  
21      to ask you to vacate the conviction and remand for a  
22      new trial, or vacate the sentence and remand for  
23      re-sentencing. Appreciate it.

24              THE COURT: You're welcome.

25              Anything from the State?

1 MR. FRIEDMAN: Thank you, Your Honor.

2 THE COURT: You're welcome.

3 MR. FRIEDMAN: Briefly. With the sentencing  
4 issue, the State would have the same argument from the  
5 first hearing, that he signed the written plea  
6 agreement and he was aware of what he needed to do to  
7 avoid life without parole.

8 As for the trial preparation, the State would  
9 submit that there is nothing to suggest that Mr. Runyon  
10 or Ms. Taylor were ineffective. There was nothing else  
11 they could have done.

12 Mr. Runyon testified that after the 28-page  
13 confession, and after he voided the plea agreement,  
14 there was really no defense that he could find. He  
15 wrote a letter to the applicant asking him to indicate  
16 any defenses that he could think of, and he never heard  
17 from the applicant.

18 As for the appeal issue, there was an Anders  
19 brief. Appellate counsel is not required to raise  
20 every potentially meritorious issue. In this case they  
21 clearly did not see any issue with merit and filed an  
22 Anders brief.

23 The Court or Appeals makes a thorough review of  
24 the record after an Anders brief.

25 THE COURT: And actually they have the right to

1 raise anything, even if it hasn't been raised. Whether  
2 it was preserved by objection or not, they have the  
3 right to, once they comb through the record, to raise  
4 it on their -- sua sponte basically. And requires that  
5 it be briefed.

6 MR. FRIEDMAN: Right, they could have required a  
7 brief on any issue that they saw with merit. And  
8 instead they dismissed the appeal.

9 So we would ask the Court to deny and dismiss  
10 the application.

11 THE COURT: The Court would find for the record  
12 that the applicant has failed to meet his burden of  
13 proof. And I apologize, I don't want there to be any  
14 misapprehension that I was interjecting myself into the  
15 trial.

16 But I feel like Mr. Evans needed a basic  
17 understanding of some things. And I felt like I needed  
18 to strike, so to speak, while the iron was hot instead  
19 of in hindsight. Because I wanted him to understand  
20 the nature of the process.

21 So I think sometimes in large part people's  
22 feelings about the system is because they really  
23 misunderstand it, and they don't really know the  
24 mechanics of it. And sometimes we don't do the best  
25 job in explaining that to them.

1           And I also promised him I would let him know  
2 regarding the elements of armed robbery. Sir, to prove  
3 armed robbery beyond a reasonable doubt -- and I'm sure  
4 you heard this at the time the case was instructed --  
5 the state only has to prove that you took property with  
6 the intent to permanently deprive the owner of it, even  
7 a slight removal is sufficient; and that you used the  
8 threat of great bodily harm; and a deadly weapon.

9           It doesn't have to be a gun. There are a whole  
10 list of things that can be a deadly weapon. And in  
11 fact an ordinary object, including a fist, can be a  
12 deadly weapon depending on the facts and circumstances  
13 of the case. So the state does not have to prove that  
14 you had a gun.

15           THE DEFENDANT: Yes, ma'am.

16           THE COURT: So I wanted to clarify that for you  
17 as well because I promised that I would.

18           The Court finds the testimony of Mr. Runyon to  
19 be wholly and completely competent and credible.  
20 Especially on the issue of the warrantless arrest in  
21 Maryland and the interstate fugitive act.

22           There is absolutely no good faith basis for him  
23 to challenge that arrest pursuant to the federal law.  
24 And to raise it would have been completely baseless. A  
25 lawyer is not required to raise something just for the

1 purpose of raising it. There has to be some good faith  
2 basis to believe that it is viable, and that it will  
3 result in some relief to the applicant or defendant.  
4 And in this case it would not have.

5 The voluntariness of his statement, frankly, was  
6 an excellent result, and I have reviewed the record.  
7 Mr. Runyon was successful in having a large portion of  
8 the statement redacted. I can't think of a better  
9 result for the defendant or the applicant under those  
10 circumstances in light of the fact that it was a  
11 lengthy confession with a lot of detail.

12 So the fact that he was successful in the  
13 Jackson versus Denno in having a large portion of that  
14 redacted I think speaks volumes to his performance.  
15 There would have been no basis, at least based on what  
16 I can tell from the record, for a motion for mistrial  
17 based on the codefendant's statement.

18 As regards sentencing, and without belaboring  
19 the hour because I've already -- and I'm going to  
20 incorporate all my findings regarding the written  
21 proffer and all, and his range of penalty and all that  
22 from the previous hearing in this hearing.

23 In short, Mr. Evans entered into a proffer  
24 agreement with the State to be cooperative, and  
25 basically provide evidence, credible evidence, against

1 his codefendants. And that he would plead guilty to  
2 all of his offenses if he -- and he had a whole range  
3 of them. And basically what he did was he welshed on  
4 that agreement. And the agreement was very clear that  
5 once you do that, everything is fair game. It all  
6 comes back on the table.

7 And basically what they decided to do, because  
8 they felt they had a strong enough case with his  
9 codefendant's testimony, is they figured they would get  
10 a conviction and then they would not pursue any other  
11 indictments. And that is precisely what happened.

12 And to some extent, and I don't say this  
13 lightly, he was really the architect of his own malady.  
14 He fully had complete control of how his case would  
15 play out, and he just made some very poor decisions in  
16 terms of how he was going to honor his proffer  
17 agreement, how he was going to cooperate and be  
18 truthful and honest with the State, and it really  
19 worked to his detriment.

20 Because his codefendants cooperated with their  
21 proffer agreement, and they followed through on what  
22 they were going to do, and it was fruitful for the  
23 State because it resulted in his conviction.

24 There is no evidence in the record that there  
25 was some agreement in place, or that his codefendant

1 testified dishonestly when he said there was no deal in  
2 place at the time that he testified.

3 And I have reviewed the record. And their  
4 credibility was appropriately attacked. And Mr. Evans'  
5 interests zealously protected within the confines, and  
6 of course dealing with the redaction of the statement,  
7 in terms of exploring their credibility, and whether  
8 they had a motive to fabricate and fabricated this  
9 information. Or that they had some motive to testify  
10 against him.

11 And jurors are incredibly smart. They have a  
12 lot of common sense. It is not lost on them if  
13 somebody -- if parties are involved in something  
14 together and one person testifies against the other,  
15 that they expect to get something for it. And that  
16 that bears on their credibility.

17 And the jury is always going to consider that.  
18 That that's glaring. That's going to be the first  
19 thing that they are going to talk about whether you  
20 raise it or not.

21 That then brings into issue the indictments.  
22 The indictments were in order. They are notice  
23 documents. They were true billed. There is no basis  
24 to challenge those. There was some mention of there  
25 was evidence of other robberies, the record reflects

1 there was a curative instruction, so there would have  
2 been no basis for Mr. Runyon to have objected to that.

3 The facts in this case support the charge of  
4 accomplice liability, there would have been -- which is  
5 commonly referred to as the hand of one is the hand of  
6 all. There would have been no basis for Mr. Runyon to  
7 have objected to that charge. And even if he had, the  
8 Court still would have charged it under the facts and  
9 circumstances of this case.

10 Now there has been some indication he said that  
11 you could see some other stuff while some things were  
12 on the overhead. But there is nothing in the record  
13 that reflects that. But even if there were, let's just  
14 say for argument's sake that there was, there is  
15 overwhelming evidence in the record to support the  
16 conviction. And there is no indication that that in  
17 any way tainted or affected the ultimate outcome in  
18 this case.

19 There is no evidence in the record that Mr.  
20 Runyon was not adequately prepared for trial, that he  
21 had not met sufficient times with his client to have  
22 tried this case. Especially as seasoned a trial lawyer  
23 as he is.

24 The other thing that is really very telling is  
25 the knowing the significance of the situation, he went

1 to Mr. Williams and said, I want you to reinstate this.  
2 I want you to try to give him the benefit of his  
3 situation and we are going to try to fix this.

4 But knowing the state as I do, and I know Nathan  
5 Williams well, tried a lot of cass with him, he is not  
6 a vindictive fellow. But I know that based on the  
7 posture of this case he would have said no. And  
8 apparently did. And I don't know that that would have  
9 been an unreasonable posture in light of the proffer  
10 agreement.

11 I think those were all the issues that were  
12 raised, other than the other ones dealing with his  
13 sentencing and his being subject to LWOP notice.  
14 Clearly it was served on him pursuant to the statute as  
15 it was required.

16 Once the proffer agreement was breached there  
17 was no -- the State was not bound in any way not to  
18 seek that ultimate penalty against him. He was given  
19 adequate notice of it.

20 And I think we have already covered the  
21 appellate issues with Anders. Because the Appellate  
22 Court can, and they have, I've had a case where they  
23 combed a record, found something nobody ever objected  
24 to and required everybody to brief it and reverse the  
25 case.

1           so it happens all the time. They are entitled  
2 to do it. They are not bound by an Anders brief. They  
3 comb through that record. And apparently they did and  
4 they didn't find anything objectionable in it that they  
5 felt needed to be briefed or otherwise.

6           And Mr. Friedman is correct. Appellate counsel  
7 is not required to raise everything possible in a  
8 record in their professional judgment that they think  
9 that -- just for the sake of raising it. So there is  
10 no indication that appellate counsel was ineffective.

11           In the interest of time, because it is 6:38 and  
12 I'm sure everyone is exhausted, I'm not going to go any  
13 further in terms of findings of fact and conclusions of  
14 law. But I'm going to give Mr. Friedman the ability to  
15 make any other finds of fact and conclusions of law  
16 consistent with the record.

17           And to submit that order within 20 days, both to  
18 the Court and to Ms. Nettles. And if there is anything  
19 that you feel you need to add to it or otherwise,  
20 please make Mr. Friedman aware of it and maybe you all  
21 can work that out before it gets to me. Or if you  
22 don't, of course you know I will always consider any  
23 input that you'd like in the order.

24           Thank you all very much. You all have been  
25 troopers.

1 MS. NETTLES: Thank you.

2 THE COURT: I appreciate it.

3 MS. NETTLES: Very brief, Georgia arrest, not  
4 Maryland. Just for the record.

5 THE COURT: I'm sorry. Did I say Georgia?

6 MS. NETTLES: You said Maryland.

7 THE COURT: I think that's what --

8 MR. RUNYON: You said Maryland, Judge, because I  
9 said Maryland.

10 THE COURT: I was wrong. It is Georgia.

11 I apologize for that oversight, the record needs  
12 to be accurate. And we will make sure your memo gets  
13 filed.

14 (Whereupon, the proceedings in the matter before  
15 the Court were adjourned.)

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C E R T I F I C A T E  
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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.

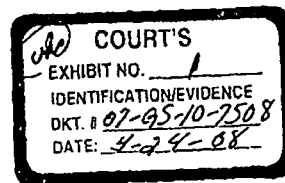
I do further certify that I am neither  
of kin, counsel, nor interest to any party hereto.

-----*Anne Bouley Meyer*-----

Anne Bouley Meyer, RPR  
Circuit Court Reporter

*Handwritten signature/initials*

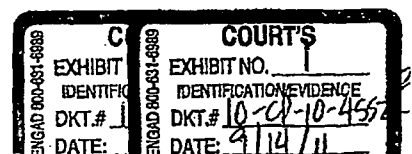
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|-------------------------|---|-------------------------------------------------|
| STATE OF SOUTH CAROLINA | ) | IN THE COURT OF GENERAL SESSIONS                |
|                         | ) |                                                 |
| COUNTY OF CHARLESTON    | ) | 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.                                        |
| STATE OF SOUTH CAROLINA | ) |                                                 |
|                         | ) |                                                 |
| v.                      | ) |                                                 |
|                         | ) |                                                 |
| THOMAS EVANS,           | ) |                                                 |
| Defendant.              | ) |                                                 |



AGREEMENT made this 24<sup>th</sup> 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

DATE

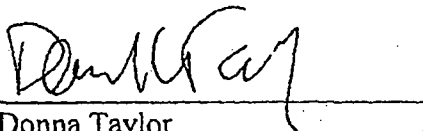
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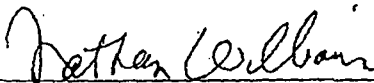
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4/24/08

DATE

X   
Thomas Evans, Defendant

  
Donna Taylor  
Attorney for the Defendant

BY:   
Nathan Williams  
Assistant Solicitor

COURT OF GENERAL SESSIONS  
2010-CP-10-10353

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TRANSCRIPT OF RECORD

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September 14, 2011  
Charleston, South Carolina

B E F O R E:

THE HONORABLE DEADRA L. JEFFERSON, JUDGE

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

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

Ms. Jennifer M. Stark, Esquire  
Representing the Defendant

Anne Bouley Meyer, RPR  
Circuit Court Reporter

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I N D E X  
WITNESSES

ALL WITNESSES:

PAGE:

MS. DONNA K. TAYLOR:

Direct Examination by MS. STARK  
Cross-Examination by MR. FRIEDMAN

6:9  
31:14

MR. THOMAS JERMAINE EVANS:

Direct Examination by MS. STARK  
Cross-Examination by MR. FRIEDMAN

38:22  
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 trial. 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, T just  
22 take the 30 years, I don't want to see you do life  
23 without parole. So by that time tears started came --  
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 in 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 them 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

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

STATE OF SOUTH CAROLINA, )

PLAINTIFF, )

VS. )

THOMAS JERMAINE EVANS, )

DEFENDANT. )



**ORIGINAL**

TRANSCRIPT OF RECORD

APRIL 24, 2008

CHARLESTON, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. FEW, JUDGE.

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

NATHAN WILLIAMS, ESQUIRE,  
 Attorney for the State.

DONNA TAYLOR, ESQUIRE,  
 LYNN BOWLEY, ESQUIRE,  
 Attorneys for the Defendant.

VIVIAN H. CROSS  
 OFFICIAL COURT REPORTER

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

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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

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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

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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

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.

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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 penalty did occur!*

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

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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.)

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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

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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

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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

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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.  
Why want to  
so  
back  
to  
start  
over.

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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.

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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.

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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.)

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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.

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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.

*Plead guilty that explain  
Chen TO G, Sen Union*

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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.)

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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

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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---

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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

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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

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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

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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

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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.

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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.



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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?

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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?

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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?

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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

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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 1<sup>st</sup> 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?

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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.

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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

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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.

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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

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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.

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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.

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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

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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.

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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.

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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

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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 --

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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 --

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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

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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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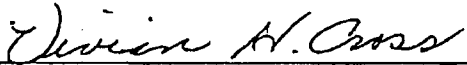
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF CHARLESTON )

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 23<sup>RD</sup> 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  
CIRCUIT COURT REPORTER

CC  
AG  
AT  
SOL  
CS

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-10-4552

ORDER OF DISMISSAL

FILED  
2011 OCT 10 AM 10:00  
JULIE J. ARMSTRONG  
CLERK OF COURT

Presiding Judge:  
Applicant's Attorney:  
Respondent's Attorney:  
Trial Counsel:  
Date of Hearing:  
Court Reporter:

Deadra L. Jefferson  
Samia Hanafi Nettles, Esq.  
Matthew J. Friedman, Esq.  
William Runyon, Esq.  
September 14, 2011  
Anne Meyer

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed June 3, 2010. The Respondent filed its Return on October 5, 2010. Applicant's memorandum in support of his application for PCR was filed September 15, 2011. 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 represented by Samia Hanafi Nettles, Esquire. Matthew J. Friedman, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's trial counsel, William Runyon, Esquire, and Applicant's counsel on a previous plea, Donna Taylor, Esquire, also testified at the hearing. This Court had before it the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the Department of Corrections, the Record on Appeal, the Final Anders Brief of Appellant, the Court of Appeals'

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opinion dismissing the appeal, the Remittitur dated March 1, 2010, the PCR application and amended application, the State's Return thereto, the written Plea Agreement, and the transcript from the prior guilty plea hearing (2007-GS-10-7508).<sup>1</sup> The testimony from the hearing on the Applicant's other PCR case (2010-CP-10-10353), also heard September 14, 2011, was incorporated into this case. This Court takes judicial notice of the arguments presented regarding sentencing from the prior hearing.

### PROCEDURAL HISTORY

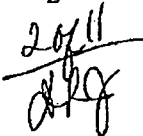
The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Charleston County. The Applicant was indicted at the June 2007 term of the Charleston County Grand Jury for armed robbery (2007-GS-10-7477). William Runyon, Esquire, represented the Applicant. The Applicant proceeded to trial on October 6-8, 2008, after which a jury found him guilty as indicted. The Honorable Thomas W. Cooper, Jr. sentenced the Applicant to confinement for life without parole (LWOP).

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Robert M. Pachak of the South Carolina Commission on Indigent Defense filed a brief pursuant to Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967). The South Carolina Court of Appeals subsequently dismissed the appeal. State v. Evans, Op. No. 2010-UP-123 (S.C. Ct. App. filed February 11, 2010). The Remittitur was issued on March 1, 2010.

### ALLEGATIONS

The Applicant alleges he is being held in custody unlawfully for the following reasons:

<sup>1</sup> Applicant entered into a written plea agreement with the State prior to his guilty plea to another armed robbery charge on April 24, 2008 (2007-GS-10-7508). At this time Applicant had approximately sixteen (16) pending armed robbery charges in Charleston, Berkeley, and Dorchester counties. Under the agreement, Applicant agreed to plead guilty on 2007-GS-10-7508 and all subsequent charges, and in exchange the State agreed to not seek LWOP.

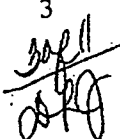
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1. Ineffective assistance of trial counsel in that counsel
  - a. Failed to perform his duties by allowing Applicant to be tried without indictment.
  - b. Did not attack prosecutor's case fully.
  - c. Did not find out about Applicant's warrantless arrest by the U.S. Marshals.
  - d. Failed to object to sentencing at trial and failed to inform the court of the agreement reached with the State prior to sentencing at trial.
  - e. Failed to make proper and necessary objections.
  - f. Failed to adequately consult with Applicant.
  - g. Failed to move the court to hold a hearing outside of the presence of the jury to determine the voluntariness of the statements given.
  - h. Failed to obtain impaneling documents.
  - i. Failed to provide Applicant with a copy of his indictment.
  - j. Failed to investigate Applicant's mental and emotional state.
  - k. Failed to retain an investigator to interview witnesses.
  - l. Allowed Applicant to be tried without an indictment.
2. Violations of 4<sup>th</sup>, 5<sup>th</sup>, 6<sup>th</sup>, 8<sup>th</sup>, and 14<sup>th</sup> Amendment Rights.
3. Ineffective assistance of appellate counsel for filing an Anders brief and not exploring all grounds for appeal.

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the 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 was not presented with the indictment, but he knew he was being charged with armed robbery. He asserted his statement to Detective Osborne was not voluntary, and he continued to be questioned after requesting an attorney. He testified he was not called to testify at his Jackson v. Denno hearing. He testified he wanted counsel to call Daryl Louis and James Blanding, Jr. to testify as to the alleged improper conduct by Detective Osborne. Applicant testified he was visiting family in Georgia when he was arrested without a warrant. He asserted counsel did not object to the hand of one is the hand of all jury charge.

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Applicant argued counsel did not attack the statements of the co-defendants, and he believes trial counsel knew a deal was being made between the State and the co-defendants. Applicant testified he only met with counsel once before trial and does not believe counsel was prepared. Applicant testified appellate counsel only raised one issue on appeal while, in his opinion, the appeal should have included additional matters.

Trial counsel, William Runyon, Esquire, testified he was appointed to represent Applicant approximately eight (8) weeks before trial after Donna Taylor, Esquire was relieved as counsel. He testified Ms. Taylor's file was very complete, and he was adequately prepared for trial. He testified, to his recollection, he showed the indictment to the Applicant and went over all discovery and investigated all viable defenses. Counsel testified he looked into the warrantless arrest and discussed it with the Applicant. Counsel did not address it with the court because it was a baseless issue in that it was a lawful arrest under the Interstate Fugitive Act. He asserted Applicant had no basis for a defense after he gave a 28-page confession. He testified he wrote a letter to Applicant asking him if he had any defenses, and Applicant never provided him with a defense. He testified he challenged the voluntariness of Applicant's statement in a Jackson v. Denno hearing, and while he was not ultimately successful, he was at least able to get a substantial portion of the statement redacted. Counsel testified he tried to do everything Applicant requested, but he was left in a "train wreck status" due to Applicant's statement and breach of the written plea agreement with the State. He asserted Applicant backed out of the plea agreement by proceeding to trial. He testified he discussed LWOP with Applicant and informed him that he had been served with LWOP notice. Counsel testified he moved for a mistrial when a co-defendant mentioned other robberies. The motion for a mistrial was denied, but the trial court gave a curative instruction. Counsel testified he did not see any basis to object

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to the standard hand of one jury charge as it recognized by the Supreme Court and is supported by the record. He asserted he did not raise an issue with sentencing, because the Applicant breached the written plea agreement and, thus, did not have a meritorious defense.

Plea counsel, Donna Taylor, Esquire, testified she did not see any basis to challenge the indictment. She testified the indictment was true billed, and she showed the indictment to Applicant after receiving it from Assistant Solicitor Nathan Williams. She testified she was relieved before this trial. She testified she spoke with Applicant about all of his cases in the two (2) to three (3) years she was involved, but she did not discuss this trial specifically. Ms. Taylor testified at the prior PCR hearing the terms of the written plea agreement were that Applicant must plead guilty to the first and second sets of charges to avoid LWOP.

#### Ineffective Assistance of Trial 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), SCRPC; 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 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

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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).

This Court finds Applicant's testimony is not credible while also finding trial counsel's testimony is credible. This Court finds counsel is a trial practitioner who has over forty-four (44) years of experience in the trial of serious offenses. The Court finds that although counsel was appointed just eight (8) weeks prior to trial, there is no indication in the record he was not prepared for trial. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, the discovery, Applicant's constitutional rights, and possible defenses or lack thereof.<sup>2</sup>

Regarding Applicant's claims of ineffective assistance of counsel, this Court finds Applicant has failed to meet his burden of proof. This Court finds counsel 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

<sup>2</sup> Even though the record reflects the elements of armed robbery were instructed at trial, this Court instructed Applicant on the elements again, placing particular emphasis on the fact a deadly weapon does not have to be a gun.

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S.C. at 442, 334 S.E.2d at 814. This Court further finds counsel adequately conferred with Applicant, conducted a proper investigation, and was thoroughly competent in his representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

This Court finds that counsel properly challenged Applicant's statement to law enforcement by requesting a Jackson v. Denno hearing. (Tr. 5:8-70:12.) Although the statement was admissible, counsel was successful in having a substantial portion of the statement redacted which speaks volumes of his ability. (Tr. 71:11-82:15.)

This Court finds counsel appropriately attacked the credibility of the co-defendants through cross-examination, and there was no basis for a mistrial based on the co-defendant's testimony. (Tr. 330:23-336:6, 355:17-360:17.) This Court finds that he had no basis to challenge the jury charge on the hand of one is the hand of all. (Tr. 434:3-435:4.) It was a standard jury charge and would have been charged despite an objection as it was factually applicable to this case.

This Court finds that counsel had no basis to challenge the indictment. The indictment was true-billed, and Ms. Taylor testified she showed the indictment to Applicant. This Court finds Applicant fully understood the nature of the charges against him. "[A]n indictment passes legal muster when it charges the crime substantially in the language of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." State v. Tumbleston, 376 S.C. 90, 98, 654 S.E.2d 849, 853 (Cl. App. 2007). Tumbleston establishes that an indictment is a notice document. Id. at 95, 654 S.E.2d at 852. Here, there is no indication the Applicant and counsel did not have adequate notice of the charges and ample time to prepare a defense.

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This Court finds trial counsel's testimony credible regarding the warrantless arrest issue. Counsel looked into the matter, discussed it with Applicant, and deemed it was not an issue since the arrest was lawful under the Interstate Fugitive Act.

This Court finds that counsel properly moved for a mistrial when a co-defendant referenced other armed robberies involving Applicant. (Tr. 344:19-23, 362:7-365:13.) The co-defendant mentioned there were two guns involved and there was a backpack which they used in another robbery. (Tr. 344:11-20.) Although the trial court denied the motion for a mistrial, the court gave a curative instruction to the jury. (Tr. 425:3-19.) The Court notes there is no evidence of the other robberies in the record that rises to the level of prejudice. The Court also notes the record is void of evidence of an agreement in place between the State and the co-defendants or that the co-defendants gave inaccurate testimony.

This Court finds Applicant knowingly backed out of his plea agreement. At his first plea hearing, it was clear Applicant was concerned about his pending charges and was well aware he would need to plead guilty to a second set of charges to avoid LWOP. This Court finds Applicant had control of avoiding a sentence of life without parole, but he made a bad decision. This Court finds counsel was not ineffective for failing to object to the sentence at trial, as there was no basis to do so given that Applicant breached the written plea agreement by failing to plead guilty to the second set of charges.

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 his representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. This Court also finds the

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Applicant has failed to prove the second prong of Strickland, specifically that he was prejudiced by counsel's performance. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

**Ineffective Assistance of Appellate Counsel**

Applicant alleges ineffective assistance of appellate counsel for filing an Anders brief and failing to explore other grounds for appeal. A defendant is constitutionally entitled to effective assistance of appellate counsel. Evitts v. Lucey, 469 U.S. 387, 105 S. Ct. 830 (1985). "However, appellate counsel is not required to raise every non-frivolous issue that is presented by the record." Thrift v. State, 302 S.C. 535, 539, 397 S.E.2d 523, 526 (1990). Appellate counsel has a professional duty to choose among potential issues according to their merit. See Jones v. Barnes, 463 U.S. 745, 103 S. Ct. 3308 (1983). Where the strategic decision to exclude certain issues on appeal is based on reasonable professional judgment, the failure to appeal all trial errors is not ineffective assistance of counsel. Id. at 752-53, 103 S. Ct. at 3313.

The Applicant must show that appellate counsel's performance was deficient and that he was prejudiced by the deficiency. Thrift, 302 S.C. at 537, 397 S.E.2d at 525; Gilchrist v. State, 364 S.C. 173, 178, 612 S.E.2d 702, 705 (2005); Anderson v. State, 354 S.C. 431, 434, 581 S.E.2d 834, 835 (2003). "In order to show that he was prejudiced by appellate counsel's performance, a PCR applicant must show that 'there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.'" Bennett v. State, 383 S.C. 303, 309-10, 680 S.E.2d 273, 276 (2009) (quoting Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625).

In this case, appellate counsel filed an Anders brief. In Anders v. California, the United States Supreme Court announced the procedure an appointed attorney should follow if the

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attorney believes the client's appeal is frivolous and without merit. Anders v. California, 386 U.S. 738, 87 S. Ct. 1396 (1967). The United States Supreme Court held the attorney could petition for permission to withdraw from the case, but that the petition for withdrawal must be accompanied by a brief "referring to anything in the record that might arguably support the appeal." Id. at 744, 87 S. Ct. 1400. Under Anders, the defendant must be given time to respond and to raise any additional points after his attorney submits the Anders brief. Id. The Court is then obligated to conduct a "full examination" of the record to determine whether the appeal is "wholly frivolous." Id. According to Anders, if the reviewing court finds the appeal is frivolous, "it may grant counsel's request to withdraw and dismiss the appeal insofar as federal requirements are concerned, or proceed to a decision on the merits, if state law so requires." Id.; State v. McKenndy, 348 S.C. 270, 279, 559 S.E.2d 850, 855 (2002).

Here, appellate counsel filed an Anders brief with the South Carolina Court of Appeals. "Upon the receipt of the *pro se* brief or the expiration of the period to file a *pro se* brief, this Court will then proceed to review the record as required by Anders. If no issue of arguable merit is discovered, the appeal will be dismissed and counsel's petition to be relieved will be granted." State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991). In light of Anders and Williams, this Court finds that there can be no legitimate allegation of ineffective assistance of appellate counsel because the reviewing court also conducted a full review of the record and found no issue of arguable merit.

#### 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

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waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

### CONCLUSION

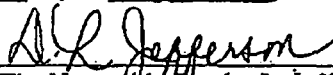
Based on the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his trial, sentencing, or appeal proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this PCR application 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 7<sup>th</sup> day of October, 2011.

  
 The Honorable Deadra L. Jefferson  
 Presiding Judge, Ninth Judicial Circuit

Charleston, South Carolina.

## ARREST WARRANT

H- 913136

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of  
CHARLESTONTHE STATE  
against

THOMAS JERMAINE EVANS

Address

Phone: \_\_\_\_\_ SSN: \_\_\_\_\_  
Sex: M Race: B Height: 5-9 Weight: 189DL State: \_\_\_\_\_ DL #: 06-08-82

DOB: \_\_\_\_\_ Agency ORI#: \_\_\_\_\_

Prosecuting Agency: CPDProsecuting Officer: COOPEROffense: ARMED ROBBERY WITH A  
HANDGUNOffense Code: \_\_\_\_\_  
Code/Ordinance Sec. 16-11-330This warrant is CERTIFIED FOR SERVICE in the  
☐ County/ ☐ Municipality ofThe accused  
is to be arrested and brought before me to be  
dealt with according to law.\_\_\_\_\_  
Signature of Judge (L.S.)

Date: \_\_\_\_\_

## RETURN

A copy of this arrest warrant was delivered to  
defendant THOMAS EVANSon 6-7-06\_\_\_\_\_  
Signature of Constable/Law Enforcement Officer.

RETURN WARRANT TO:

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of  
CHARLESTON

## AFFIDAVIT

Form Approved by  
S.C. Attorney General  
April 21, 2003  
SCCA 618Personally appeared before me the affiant INV M ANDREW COOPER who  
being duly sworn deposes and says that defendant THOMAS JERMAINE EVANS  
did within this county and state on 03-25-06 violate the criminal laws of the  
State of South Carolina (or ordinance of ☒ County/ ☐ Municipality of CHARLESTON)  
in the following particulars:  
DESCRIPTION OF OFFENSE: ARMED ROBBERY WITH A HANDGUN  
16-11-330I further state that there is probable cause to believe that the defendant named above did commit  
the crime set forth and that probable cause is based on the following facts:

SEE ATTACHED AFFIDAVIT

Signature of Affiant

STATE OF SOUTH CAROLINA

☒ County/ ☐ Municipality of  
CHARLESTON

Affiant's Address

180 LOCKWOOD DRIVE  
CHARLESTON, SC 29403

Affiant's Telephone

843-577-7434

## ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that  
on 03-25-06 defendant THOMAS JERMAINE EVANS  
did violate the criminal laws of the State of South Carolina (or ordinance of☒ County/ ☐ Municipality of CHARLESTON ) as set forth below:

DESCRIPTION OF OFFENSE:

ARMED ROBBERY WITH A HANDGUN16-11-330Having found probable cause and the above affiant having sworn before me, you are empowered and directed to arrest the said  
defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to  
the defendant at the time of its execution, or as soon thereafter as is practicable.

Sworn to and subscribed before me

on May 30, 2006\_\_\_\_\_  
Signature of Issuing JudgeJudge Code: 5627/hes

Judge's Address

1720 SAM RITTENBERG BLVD.  
CHARLESTON, SC 29407

Judge's Telephone

843-766-6531

Issuing Court:

☒ Magistrate☐ Municipal☐ Circuit

ORIGINAL

## STATE OF SOUTH CAROLINA

## AFFIDAVIT

## COUNTY OF CHARLESTON

Personally appeared before me, a magistrate of this county, one Inv. M. Andrew Cooper, first being duly sworn, deposes and says that the Defendant Thomas Jermaine Evans did within this County and State on 25-March-2006 violate the criminal laws of the State of South Carolina in the following particulars:

## DESCRIPTION OF OFFENSE

Armed Robbery with a Handgun

16-11-330

The affiant states that there is probable cause to believe that the defendant named above did commit the crime(s) set forth and that such probable cause is based on the following facts:

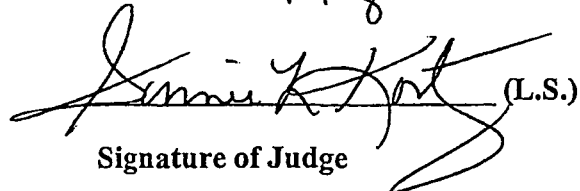
That on 25-March-2006 at approximately 2340hrs, while at the 82 Queen restaurant located at 82 Queen Street, in the City of Charleston, South Carolina, the defendant Thomas Jermaine Evans (b/m, 06/08/1982) did knowingly, willingly, and unlawfully violate South Carolina Code of Laws 16-11-330, Armed Robbery with a Handgun in the following particulars:

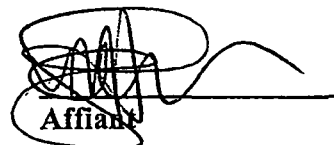
That the above named defendant along with co-defendants John Tyrone Reaves, Daryl Keith Louis, and Curtis Emory Burns, did enter 82 Queen under the cover of darkness, ordered all employees from the rear of the business and forced them to the front bar at gunpoint. The Defendant and Co-defendants next removed currency from the above business totaling \$868.00 dollars.

During the course of the investigation, Charleston Police Investigators interviewed Thomas Jermaine Evans who gave a confession to being one of the subjects that robbed the above business. Mr. Evans statements were consistent with the statement of victims and witnesses to the robbery.

The above statement is true and believable based on the statements by the victims, witnesses, co-defendant, and the investigation of the Charleston Police Department.

Sworn to and Subscribed before me  
this 30<sup>th</sup> day of May, 20 06.

 (L.S.)  
Signature of Judge

  
Affiant

Inv. M. Andrew Cooper  
180 Lockwood Blvd  
Charleston, SC 29403  
(843) 577-7434

Form 157A  
Complaint #: 0605982

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WITNESSES

RONALD HULL

Charleston City Police Department

AGENCY CASE NUMBER

0605982

ARREST WARRANT NUMBER

H913136

DATE OF ARREST

2006-06-07

ACTION OF GRAND JURY

TRUE BILL  
JUN 9 4 2007

Foreperson of Grand Jury

Date: *M. H. H.*

VERDICT

Foreperson of Petit Jury

Date:

INDICT.DOT

DOCKET NO. 2007GS1007477

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

June Term 2007

THE STATE

vs.

THOMAS JERMAINE EVANS

06-3250(3)

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 )

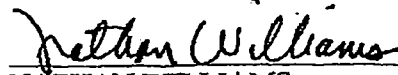
## INDICTMENT

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 March 25, 2006, in Charleston County, South Carolina, at 82 Queen Street, Charleston, by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, the Defendant, THOMAS JERMAINE EVANS, alone or 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 82 Queen Restaurant 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 OF SOUTH CAROLINA )

v. )

Thomas Jermaine Evans,  
Defendant. )

IN THE COURT OF GENERAL SESSIONS  
OF THE NINTH JUDICIAL CIRCUIT  
INDICTMENT NO.: 2007-GS-10-07477

**VERDICT FORM**

AS TO INDICTMENT NO.: 2007-GS-10-07477

We, the jury, by unanimous consent find the Defendant:

☒ Guilty of Armed Robbery.

☐ Not Guilty.

Please sign and date.

  
Foreperson

October 8, 2008

Please let the bailiffs know when you have finished your deliberations.

## STATE OF SOUTH CAROLINA

## IN THE COURT OF GENERAL SESSIONS

727

COUNTY OF Charleston  
 STATE VS.  
THOMAS EVANS

AKA: \_\_\_\_\_

Race: B Sex: M Age: 25DOB: 06-08-1982 SS#: 67

Address: \_\_\_\_\_

DL#: \_\_\_\_\_ SID#: \_\_\_\_\_

INDICTMENT/CASE#: 2007GS1007477A/W#: H913136Date of Offense: 3/25/2006S.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 Robbery

in 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, Nathan

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,  
 for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed \_\_\_\_\_ years  
 and/or to pay a fine of \$ 250.00; 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: Armed Robbery☒ 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)

\$

3.75

§ 90.11 TP (SCCJA Surcharge)

\$5

\$

5.00

TOTAL

\$

133.75

Clerk of Court/ Deputy Clerk

Court Reporter: B. CooleyPRESIDING JUDGE James W. CooleyJudge Code: 21Sentence Date: 10/8/08

SCCA/217 (07/2008)