

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. Supreme Court

Appeal from Jasper County

Perry M. Buckner, Circuit Court Judge

ABRAHAM KELTY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-001113

APPENDIX

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STATE OF SOUTH CAROLINA
COUNTY OF JASPER

COURT OF GENERAL SESSIONS
2006-GS-27-0302

STATE OF SOUTH CAROLINA,

vs.

TRANSCRIPT OF RECORD

ABRAHAM KELTY,
DEFENDANT.

COPY

February 12, 2007
Ridgeland, South Carolina

B E F O R E:

THE HONORABLE CARMEN T. MULLEN, JUDGE.

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

DARRELL T. JOHNSON, JR., ESQ.
Assistant Solicitor

DUDLEY B. RUFFALO, ESQ.
Attorney for the Defendant

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

P R O C E E D I N G S

MR. JOHNSON: May it please the Court?

Indictment 2006-GS-27-0302, the State v. Abraham Kelty charged with armed robbery. The State has accepted a plea to common law robbery, the lesser included offense. And there have been plea negotiations.

THE COURT: Thank you, sir.

Mr. Ruffalo, does your client understand the charges against him, the possible punishment, and his Constitutional rights?

MR. RUFFALO: Yes, ma'am, he does.

THE COURT: And how does he wish to plead?

MR. RUFFALO: He wishes to plead guilty.

THE COURT: Is that correct, Mr. Kelty?

DEFENDANT KELTY: Yes, Your Honor.

THE COURT: Thank you, sir.

Based on your investigation, Mr. Ruffalo, does the State have adequate evidence to prove Mr. Kelty's guilt on this charge beyond a reasonable doubt?

MR. RUFFALO: More than sufficient, Your Honor.

THE COURT: Thank you, sir.

Mr. Kelty, have you taken any medication or drank any alcohol in the last 24 hours?

DEFENDANT KELTY: Yes, I have.

1 THE COURT: What have you taken, sir, or drank?

2 DEFENDANT KELTY: I took my blood pressure pill and
3 Prozac.

4 THE COURT: All right, sir. The fact that you've
5 taken blood pressure medication, as well as Prozac, does
6 that, in fact, help you maintain your health so you can
7 understand what we're doing here today?

8 DEFENDANT KELTY: Yes, it has.

9 THE COURT: All right, sir. Do you suffer from any
10 mental or physical infirmities that would prevent you from
11 understanding what we're doing here today?

12 DEFENDANT KELTY: To prevent me from understanding?

13 THE COURT: Yes, sir.

14 DEFENDANT KELTY: No, I don't.

15 THE COURT: All right, sir. You're charged in
16 indictment #2006-GS-27-302 with armed robbery. However,
17 the Solicitor's Office is allowing you to plead to a
18 lesser included offense, which is common law robbery.

19 Sir, this indictment states that you did in Jasper
20 County on or about December 27 of 2005, while armed with a
21 deadly weapon, in fact, a .25 caliber handgun feloniously
22 take from the person or presence of a Ms. Sonya Jenkins,
23 who was an employee of Tiger Stop Exxon, by means of force
24 or intimidate goods or money of, I'm assuming, Tiger Stop
25 Exxon or Ms. Jenkins, and that your intent was to deprive

1 her of that money personally -- permanently. I apologize,
2 sir.

3 Do you understand the charge contained in this
4 indictment?

5 DEFENDANT KELTY: Yes, I do.

6 THE COURT: And how do you wish to plead to it,
7 Mr. Kelty?

8 DEFENDANT KELTY: Guilty as charged.

9 THE COURT: Thank you, sir.

10 Sir, do you understand that while --

11 And we might as well go ahead and put the
12 negotiations on the record.

13 MR. JOHNSON: 10 years, Your Honor. And we will also
14 nolle pross any related warrants, which include a rather
15 outrageous blue light charge and possession of a deadly
16 weapon during the commission of a violent felony.

17 MR. RUFFALO: If Your Honor please, it's my
18 understanding that it would be a cap of 10. And that was
19 part of the offer. And that is correct that they're going
20 to dismiss the blue light and the use of a weapon during
21 the commission of a violent offense.

22 THE COURT: And, additionally, he was charged with
23 armed robbery, but you're allowing him to plead to the
24 strong armed robbery --

25 MR. JOHNSON: That is correct.

1 THE COURT: -- the lesser included; is that correct?

2 MR. RUFFALO: Yes, ma'am.

3 THE COURT: That is also part of the deal; is that
4 correct?

5 MR. RUFFALO: Yes, ma'am.

6 THE COURT: Mr. Kelty, I need you to understand that
7 while the Solicitor's Office has recommended a cap of 10
8 years -- and I'm going to tell you that I'm going to honor
9 that, unless there is something that I hear that makes me
10 not be able to do that -- what you need to appreciate and
11 understand is that strong armed robbery carries zero to 15
12 years. And if you didn't have a negotiated sentence, I'd
13 be allowed to sentence you up to 15 years on that charge.

14 Do you understand that, Mr. Kelty?

15 DEFENDANT KELTY: Yes, ma'am, I do.

16 THE COURT: All right, sir. When you plead guilty,
17 you give up certain important Constitutional rights. For
18 instance, you have the right to a jury trial.

19 Mr. Kelty, at a jury trial, I would instruct 12
20 people in the jury box that you would be presumed innocent
21 until the jury found you guilty. Additionally, at a jury
22 trial, sir, you have the right to testify or not testify
23 on your behalf. And if you chose not to testify at your
24 jury trial on your own behalf, I would instruct that same
25 jury of 12 people that they couldn't hold it against you.

1 Additionally, sir, at a jury trial, your attorney,
2 Mr. Ruffalo, would have the opportunity to cross-examine
3 the State's witnesses, as well as present witnesses in
4 your defense.

5 Sir, do you understand that by pleading guilty here
6 today, you are not going to get a jury trial?

7 DEFENDANT KELTY: Yes, ma'am. I understand that.

8 THE COURT: And understanding that, sir, do you still
9 wish to plead guilty?

10 DEFENDANT KELTY: Yes, ma'am, I do.

11 THE COURT: All right, sir. Are you completely
12 satisfied with how Mr. Ruffalo has represented you in this
13 matter?

14 DEFENDANT KELTY: Yes.

15 THE COURT: Has he done everything you've asked him
16 to do, sir?

17 DEFENDANT KELTY: No, not everything.

18 THE COURT: What have you asked him to do that he's
19 not done, sir?

20 DEFENDANT KELTY: Well, ma'am, I've asked that all
21 extenuating circumstances in this situation be considered.
22 And, to my knowledge, they haven't. I mean, Your Honor,
23 I'm 49 years old. I've never been in trouble with the law
24 before. I mean, I've served my country. I'm an honorably
25 discharged veteran of the Marine Corp. For the past eight

1 years, I've been going to school and working supporting my
2 family and getting my education.

3 Before all this happened, I was getting ready to
4 relocate to Saint Petersburg, Florida, to join my family
5 and start my life all over again. Unfortunately, here I
6 am today, Your Honor, before you with charges leveled
7 against me in a crime.

8 And, Your Honor, I'll be honest with you, I can't
9 recollect whether I did it or not. Because I've been -- I
10 am being seen by a psychologist through the VA program for
11 mental depression. And my medication -- I was on several
12 medications at the time when this occurred.

13 THE COURT: Okay. What medications were you taking,
14 Mr. Kelty, at the time --

15 DEFENDANT KELTY: I was taking Zoloft at the time,
16 Zocor, pain medication, because I have degenerative bone
17 disease. I have a damaged AC in my left knee,
18 chondromalacia in my right knee. These are part of my
19 injuries from the military and back pains. That's it.

20 And I just can't recall that incident that day.

21 THE COURT: All right. Mr. Kelty, very well.
22 Because you cannot recall the incident, unless we can get
23 something else resolved with your attorney and the
24 Solicitor's Office, I'm going to ask you to step down,
25 sir. And I'm not going to accept your plea.

1 But I appreciate you all being here.

2 Mr. Ruffalo, you are excused. I understand you need
3 to be back in court in Beaufort, sir.

4 MR. RUFFALO: Yes, ma'am.

5 THE COURT: If y'all can get this resolved and want
6 to bring it back in front of me this week or any other
7 time, I'm happy to accommodate y'all.

8 Thank you, Mr. Kelty.

9 MR. RUFFALO: Thank you very much, Your Honor.

10 I appreciate it.

11 MR. JOHNSON: Your Honor, if it's not inappropriate,
12 I would like the record to reflect that the Solicitor's
13 Office has a policy that when plea negotiations are not
14 accepted --

15 THE COURT: They are withdrawn.

16 MR. JOHNSON: -- they are withdrawn. And I just
17 don't want any --

18 THE COURT: Misunderstanding.

19 MR. JOHNSON: -- misunderstanding. I'm not saying
20 that we wouldn't do it later in the week. I'm not -- I
21 just want it to be clear to -- that we're not being
22 vindictive if it comes up some other time and we say that
23 offer was then and this is now.

24 THE COURT: I appreciate that, Mr. Johnson. It's
25 noted for the record.

1 MR. RUFFALO: Thank you very much, Your Honor.

2 THE COURT: I'm sure Mr. Ruffalo will let his client
3 know.

4 MR. RUFFALO: I appreciate it very much.

5 THE COURT: Thank you.

6 *****END OF TRANSCRIPT OF RECORD*****
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STATE OF SOUTH CAROLINA	)	COURT OF GENERAL SESSIONS
	:	
COUNTY OF JASPER	)	FOURTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,	)	
	:	
PLAINTIFF,	)	
	:	
VERSUS	)	TRANSCRIPT OF RECORD
	:	06-GS-27-205
ABRAHAM KELTY,	)	06-GS-27-302
	:	06-GS-27-303
DEFENDANT.	)	

APRIL 2, 2007
RIDGELAND, SOUTH CAROLINA

BEFORE:

THE HONORABLE HOWARD P. KING, JUDGE

APPEARANCES:

FOR THE STATE:
THOMAS JOHNSON, ESQ., ASSISTANT SOLICITOR

FOR THE DEFENSE:
DUDLEY RUFFALO, ESQ.

PHYLLIS S. BARRETT
CIRCUIT COURT REPORTER

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1 THE COURT: THE MATTER BEFORE THE COURT THIS MORNING IS THAT
2 OF THE STATE VERSUS ABRAHAM KELTY. WE HAVE SOME MOTIONS, I
3 BELIEVE?

4 MR. RUFFALO: YES, YOUR HONOR. THERE'S TWO MOTION. ONE, I
5 BELIEVE IS MR. KELTY'S MOTION, I BELIEVE, FOR ME TO BE RELIEVED. THE
6 SECOND IS HE IS ASKING ME TO REQUEST THAT HE BE FORENSICALLY
7 EVALUATED. I HAVE A COPY, FINALLY, OF HIS VA RECORD FOR YOU.

8 THE COURT: BRING MR. KELTY FORWARD, PLEASE.

9 (WHEREUPON DEFENDANT WAS BROUGHT BEFORE THE BAR)

10 THE MATTER BEFORE THE COURT THIS MORNING ARE SOME MOTIONS
11 ON BEHALF OF MR. ABRAHAM KELTY. THE CASES ARE THE STATE VERSUS
12 ABRAHAM KELTY, IN 06-GS-27-302, 302, AND 205. THE COURT ALSO HAS A
13 COPY OF SOME RECORDS FROM THE VETERAN'S ADMINISTRATION WHICH I
14 WILL LOOK OVER IN JUST A FEW MINUTES.

15 BUT, AS I UNDERSTAND IT, MR. KELTY IS PRESENT WITH MR. RUFFALO.
16 MR. RUFFALO, YOU SAY THERE ARE TWO MOTIONS; ONE BY HIM TO HAVE
17 YOU RELIEVED AS COUNSEL, AND THE OTHER IS FOR A MENTAL
18 EVALUATION. IS THAT CORRECT?

19 MR. RUFFALO: THAT'S CORRECT, SIR.

20 THE COURT: MR. JOHNSON, ARE YOU HERE ON BEHALF OF THE STATE?

21 MR. JOHNSON: YES SIR.

22 THE COURT: ALL RIGHT, THEN. GIVE ME JUST A FEW MINUTES TO
23 LOOK OVER THESE RECORDS AND THEN I WILL GET BACK TO YOU.

24 MR. RUFFALO: THANK YOU, SIR.

25 (WHEREUPON THE COURT WAS IN RECESS TO PERUSE MEDICAL RECORDS)

1 THE COURT: MR. RUFFALO, I'LL BE GLAD TO HEAR FROM YOU WITH
2 REGARD TO EITHER OF THE MOTIONS. OR IF YOU WANT TO THE MOTION TO
3 BE PRESENTED BY MR. KELTY, I'LL BE GLAD TO HEAR FROM HIM.

4 MR. RUFFALO: IT'S MY UNDERSTANDING THAT MR. KELTY WISHES TO
5 SPEAK TO YOU ABOUT MY POSITION AS HIS COUNSEL.

6 THE COURT: ALL RIGHT. MR. KELTY.

7 MR. KELTY: WELL, THE ONLY THING I WANTED TO SPEAK ABOUT WAS
8 I FEEL UP TO THIS POINT HE'S DONE CERTAIN THINGS THAT I HAVE ASKED OF
9 HIM AND THERE ARE CERTAIN THINGS THAT HE SAYS HE WILL NOT DO FOR
10 CERTAIN REASONS OF HIS OWN. AND I FEEL LIKE I'M BEING INEFFECTIVELY
11 COUNSELED AT THIS POINT. AND I WISH THAT I CAN HAVE HIM REMOVED
12 BECAUSE I HAVE SOME MOTIONS THAT I HAVE PRESENTED TO HIM THAT I
13 WANT TO HAVE BROUGHT BEFORE THE COURT AND HE HE'S NOT GONNA DO
14 IT, THERE'S NO NEED FOR IT, THERE'S NO BASIS FOR IT.

15 THE COURT: WELL, YOU KNOW, THAT'S WHAT HE'S TRAINED TO DO.
16 HE'S NOT SUPPOSED TO BRING FRIVOLOUS MOTIONS BEFORE THE COURT.
17 HE'S ONLY SUPPOSED TO BRING THOSE THAT HE FEELS LIKE HAVE MERIT.
18 YOU UNDERSTAND THAT, DON'T YOU?

19 MR. KELTY: YES SIR. I FULLY AGREE WITH THAT. THESE MOTIONS, TO
20 ME, IN MY MIND THEY HAVE MERIT BECAUSE IN HERE---

21 THE COURT: DO YOU HAVE ANY LEGAL TRAINING.

22 MR. KELTY: LEGAL TRAINING?

23 THE COURT: YES SIR.

24 MR. KELTY: NO SIR, NONE.

1 THE COURT: SO, YOU WOULD AGREE WITH ME, WOULDN'T YOU, THAT
2 IT'S INCUMBENT FOR YOU TO RELY ON THE JUDGMENT OF YOUR COUNSEL
3 WHO DOES HAVE LEGAL TRAINING AS TO WHAT SHOULD BE BROUGHT TO
4 THE COURT'S ATTENTION. WOULD YOU AGREE WITH THAT?

5 MR. KELTY: TO SOME EXTENT, YES SIR. WHAT I'M SAYING-- OKAY. IN
6 REFERENCE-- OKAY. I'VE ASKED HIM TO FILE A MOTION FOR SELECTIVE
7 PROSECUTION. HE SAID NO. I ASKED HIM TO FILE A MOTION BECAUSE I WAS
8 NOT GRANTED A SPEEDY TRIAL. HE SAID NO. AND IN EACH ONE I'VE STATED
9 MY CASE AND I'VE TOLD HIM WHAT I UNDERSTOOD FROM THESE CASE
10 STUDIES.

11 THE COURT: WELL, I UNDERSTAND THE STATE IS READY TO GO
12 FORWARD AT THIS POINT. SO, THE MOTION FOR A SPEEDY TRIAL WOULD BE
13 MOOT, WOULD IT NOT?

14 MR. KELTY: IT WOULD BE. YES SIR, I WOULD AGREE THAT IT WOULD
15 BE MOOT. BUT FROM MY READING ON IT, AT LEAST IT WOULD BE ON
16 RECORD THAT I ASKED FOR IT. AND WITH THE SELECTIVE PROSECUTION,
17 FROM MY UNDERSTANDING, I THINK THAT I HAVE A VALID POINT.

18 THE COURT: MY UNDERSTANDING OF THIS MATTER FROM WHAT THE
19 SOLICITOR HAS ADVISED ME EARLIER, OR IN CONNECTION WITH THIS, I
20 BELIEVE HE HAD ONE COUNSEL THAT WAS RELIEVED. IS THAT CORRECT,
21 MR. JOHNSON?

22 MR. JOHNSON: THAT IS CORRECT. THIS IS THE THIRD SUCCESSIVE
23 TERM OF COURT THAT WE WERE READY TO PROCEED WITH HIS TRIAL. AND
24 EACH TIME HE'S WANTED SOMETHING OTHER THAN TO GO TO TRIAL. AND
25 JUDGE KINARD GAVE RELIEF. MR. PLEXICO HAD BEEN HIS LAWYER FOR

1 SOME TIME WITHOUT ANY COMPLAINTS OR MOTIONS THAT WE KNOW OF
2 UNTIL COURT, OR RIGHT BEFORE. AND JUDGE KINARD THEN GAVE HIM A
3 NEW LAWYER. AND THEN HE WAS FOR TRIAL BEFORE JUDGE MULLEN LAST
4 TERM AND PROCEDURALLY MANIPULATED HIMSELF OUT OF THAT, IF I
5 REMEMBER RIGHT. SO, HERE WE ARE AGAIN.

6 THE COURT: I UNDERSTAND. ALL RIGHT. I UNDERSTAND WHAT YOUR
7 MOTION IS, MR. KELTY, AS FAR AS ASKING THAT MR. RUFFALO BE RELIEVED.
8 I'M GOING TO RULE ON THAT IN JUST A MOMENT. BUT I UNDERSTAND WHAT
9 YOU'RE SAYING. YOU'RE SAYING THAT THERE ARE CERTAIN THINGS THAT
10 HE HASN'T DONE THAT HE SHOULD HAVE DONE AND THAT'S THE REASON
11 FOR YOUR MOTION. I UNDERSTAND THAT.

12 ALL RIGHT, MR. RUFFALO. I UNDERSTAND THERE'S ALSO A MOTION
13 WITH REGARD TO EVALUATION?

14 MR. RUFFALO: YES SIR, THAT'S CORRECT. JUST FOR THE COURT'S
15 RECORDS, YOUR HONOR, ABRAHAM WAS ARRESTED ON DECEMBER 22, '05,
16 AND I WAS APPOINTED IN LATE DECEMBER OF '06. MR. KELTY HAS JUST
17 RECENTLY ASKED ME TO MOVE THAT HE BE FORENSICALLY EVALUATED UP
18 AT MUSC. AND IN THAT REGARD--

19 ORIGINALLY I HAD A PROBLEM WITH GETTING HIM TO SIGN A
20 RELEASE ORDER FOR ME TO LOOK AT HIS RECORDS. EVENTUALLY HE
21 SIGNED IT AND THE VA FAXED THESE RECORDS TO ME, WHERE HE HAD BEEN
22 GOING, AND I'VE GIVEN THEM TO YOU FOR YOU TO USE IN YOUR BASIS IN
23 MAKING THIS DECISION. AND, AS YOU LOOK THROUGH THEM, I'VE
24 HIGHLIGHTED A LOT OF THINGS AND THEY'RE KIND OF SELF-EVIDENT. IT
25 LOOKS LIKE AN MDD AND ALCOHOL DEPENDENCE. HE HAS TALKED ABOUT

1 HEARING SOME VOICES IN THE PAST. HE WAS ON A SIGNIFICANT AMOUNT OF
2 PRESCRIPTION DRUGS FOR HIS INJURIES THAT HE RECEIVED IN THE MARINES,
3 HIS KNEES AND HIS BACK.

4 BUT MOSTLY, IT'S ALCOHOL ABUSE. AND HE DOES HAVE SOME, IT
5 SAYS SUICIDAL THOUGHTS, BUT NO PLAN FOR SUICIDE. THERE IS SOME
6 IDEATION THERE, IN REGARDS TO HEARING VOICES, THAT IS IN THE RECORD.
7 YOUR HONOR CAN CONDUCT AN EXAMINATION YOURSELF. AND
8 CONTROLLING, OF COURSE, WOULD BE THE WHITE CASE, THE COURT OF
9 APPEALS CASE.

10 THE COURT: ALL RIGHT. I UNDERSTAND THAT A MOTION HAS BEEN
11 MADE FOR AN EVALUATION. I TAKE IT THAT WHAT YOU'RE MOVING FOR IS,
12 MR. RUFFALO, THE McNAUGHTON EVALUATION, ABILITY TO KNOW THE
13 DIFFERENCE BETWEEN RIGHT AND WRONG, AND TO CONTROL HIS CONDUCT
14 TO THE STANDARDS OF SOCIETY AT THE TIME OF COMMISSION OF THESE
15 CRIMES RATHER THAN HIS ABILITY AND COMPETENCY TODAY TO STAND
16 TRIAL. IS THAT WHAT YOU'RE...?

17 MR. RUFFALO: YES SIR.

18 THE COURT: ALL RIGHT. MR. KELTY, LET ME ASK YOU A COUPLE OF
19 QUESTIONS. WHERE ARE YOU FROM ORIGINALLY?

20 MR. KELTY: GREELEYVILLE, SOUTH CAROLINA.

21 THE COURT: GREELEYVILLE?

22 MR. KELTY: YES SIR.

23 THE COURT: ALL RIGHT. AND WHAT KIND OF WORK HAVE YOU DONE
24 IN YOUR LIFETIME?

1 MR. KELTY: I'VE BEEN IN THE MILITARY FOR SIXTEEN YEARS, AND
2 CAME OUT ON DISABILITY RETIREMENT.

3 THE COURT: WHAT KIND OF MILITARY SERVICE?

4 MR. KELTY: MARINE CORPS.

5 THE COURT: WHEN DID YOU GO IN THE MARINES?

6 MR. KELTY: OCTOBER 5, '77.

7 THE COURT: WHEN WERE YOU DISCHARGED?

8 MR. KELTY: APRIL 30, OF '95.

9 THE COURT: OF '95?

10 MR. KELTY: YES.

11 THE COURT: WHAT KIND OF DISCHARGE DID YOU GET?

12 MR. KELTY: MEDICAL.

13 THE COURT: WHAT WAS THE BASIS FOR YOUR MEDICAL DISCHARGE?

14 MR. KELTY: CHRONIC KNEES, DAMAGES TO MY ATL LIGAMENTS,
15 CARTILAGE, MENISCUS TEAR, BACK.

16 THE COURT: DO YOU GET PAYMENTS FROM THE MILITARY FOR YOUR
17 SERVICE?

18 MR. KELTY: I GET IT FROM THE VA.

19 THE COURT: THAT'S WHAT I MEAN, VA BENEFITS.

20 MR. KELTY: YES.

21 THE COURT: ALL RIGHT. LET'S GO BACK. AFTER YOU GOT OUT OF THE
22 MILITARY, WHAT HAVE YOU DONE SINCE YOU GOT OUT OF THE MILITARY?

23 MR. KELTY: I'VE WORKED AT BRIDGESTONE, FIRESTONE, AS A
24 SUPERVISOR AT ONE POINT.

25 THE COURT: WHERE WAS THAT?

1 MR. KELTY: IN A PLACE CALLED KINGSTREE, SOUTH CAROLINA.

2 THE COURT: I KNOW EXACTLY WHERE KINGSTREE IS, MR. KELTY.

3 THAT'S FROM MY CIRCUIT. MY CIRCUIT IS THE THIRD JUDICIAL CIRCUIT,
4 AND KINGSTREE, WILLIAMSBURG COUNTY IS ONE OF THE COUNTIES IN MY
5 CIRCUIT. HOW LONG DID YOU WORK THERE?

6 MR. KELTY: EIGHTEEN, BETWEEN EIGHTEEN AND TWENTY-FOUR
7 MONTHS.

8 THE COURT: WHAT HAPPENED TO THAT JOB?

9 MR. KELTY: PRETTY MUCH, I RESIGNED BECAUSE I WAS GOING TO
10 SCHOOL FULL-TIME AND GOING TO SCHOOL AND WORKING A TWELVE-HOUR,
11 ROTATING SHIFTS.

12 THE COURT: WHERE WERE YOU GOING TO SCHOOL?

13 MR. KELTY: WILLIAMSBURG TECHNICAL COLLEGE.

14 THE COURT: RIGHT.

15 MR. KELTY: WHICH WAS THERE ALSO.

16 THE COURT: HOW LONG DID YOU GO TO WILLIAMSBURG TECH?

17 MR. KELTY: TWO YEARS.

18 THE COURT: DID YOU GET ANY KIND OF A DEGREE?

19 MR. KELTY: AN ASSOCIATE IN GENERAL BUSINESS AND THEN I MOVED
20 ON TO LIMESTONE COLLEGE.

21 THE COURT: SO, YOU GOT AN ASSOCIATES IN GENERAL BUSINESS
22 FROM WILLIAMSBURG TECH AND THAT WAS WHEN?

23 MR. KELTY: I THINK IT WAS THE SPRING OF '98.

24 THE COURT: '98?

25 MR. KELTY: YES.

1 THE COURT: AND THEN AFTER YOU FINISHED THAT YOU WENT ON TO
2 LIMESTONE IN ANDERSON?

3 MR. KELTY: GAFFNEY.

4 THE COURT: IN GAFFNEY?

5 MR. KELTY: I THINK THAT'S WHERE THE COLLEGE IS LOCATED, BUT I
6 WAS GOING THROUGH THE VIRTUAL CAMPUS PROGRAM IN KINGSTREE.

7 THE COURT: ALL RIGHT.

8 MR. KELTY: IN FLORENCE, COLUMBIA, AND CHARLESTON.

9 THE COURT: SO, HOW LONG DID YOU GO TO LIMESTONE?

10 MR. KELTY: LET'S SEE... I GRADUATED IN MAY OF 2005.

11 THE COURT: ALL RIGHT. WHEN YOU SAY YOU GRADUATED, WHAT
12 KIND OF A DEGREE DID YOU GET?

13 MR. KELTY: A BACHELOR IN BUSINESS MANAGEMENT.

14 THE COURT: THAT WAS IN MAY OF 2005?

15 MR. KELTY: IF I'M NOT MISTAKEN, IT WAS MAY OF 2005.

16 THE COURT: WHAT DID YOU DO SINCE THEN?

17 MR. KELTY: WELL, I WAS PUTTING IN APPLICATIONS. I WORKED FOR A
18 PERIOD AT A PLACED CALLED CLIENT LOGIC.

19 THE COURT: WHERE WAS THAT?

20 MR. KELTY: IT'S IN KINGSTREE,

21 THE COURT: IN KINGSTREE. OKAY.

22 MR. KELTY: I WORKED THERE FOR A PERIOD OF TIME AND THEN I WAS
23 PUTTING APPLICATIONS IN AND GETTING READY TO ACTUALLY TRANSFER
24 FROM HERE TO FLORIDA.

1 THE COURT: FROM HERE, YOU MEAN FROM SOUTH CAROLINA TO
2 FLORIDA?

3 MR. KELTY: RIGHT.

4 THE COURT: OKAY. I'M NOT ASKING YOU TO TELL ME ABOUT THE
5 CHARGES IN CONNECTION WITH THIS, BUT I JUST NEED TO KNOW SOME
6 BASICS. DID YOU END UP IN JASPER COUNTY IN DECEMBER OF '05?

7 MR. KELTY: YES SIR.

8 THE COURT: AND YOU UNDERSTAND THAT YOU ARE CHARGED WITH
9 THE CRIME OF ARMED ROBBERY OF A TIGER EXXON STATION HERE IN
10 JASPER COUNTY ON DECEMBER 27, OF '05?

11 MR. KELTY: YES SIR.

12 THE COURT: DO YOU UNDERSTAND THAT'S A CHARGE AGAINST YOU?

13 MR. KELTY: YES SIR.

14 THE COURT: AND DO YOU UNDERSTAND FOR THAT CRIME YOU COULD
15 GET FROM A MINIMUM OF TEN YEARS TO A MAXIMUM OF THIRTY YEARS IN
16 PRISON, IF YOU WERE FOUND GUILTY OR PLEAD GUILTY TO THOSE CRIMES?

17 MR. KELTY: YES SIR.

18 THE COURT: YOU'RE ALSO CHARGED ON DECEMBER 27, OF '05, OF
19 HAVING A WEAPON, SPECIFICALLY A KNIFE. THE CHARGE ON THE KNIFE
20 AGAINST YOU IS BEING IN POSSESSION OF A WEAPON DURING THE
21 COMMISSION OF A VIOLENT CRIME. DO YOU UNDERSTAND THAT'S ALSO A
22 CHARGE AGAINST YOU?

23 MR. KELTY: WELL, THE WARRANT I HAVE ONLY SAY POSSESSION OF A
24 FIREARM.

1 THE COURT: OKAY. THE INDICTMENT CHARGES THE STATUTE, OR THE
2 LAW, WHICH IS POSSESSION OF ONE OR THE OTHER. THE WARRANT YOU'VE
3 GOT CHARGES YOU WITH POSSESSION OF A FIREARM. DO YOU UNDERSTAND
4 THAT?

5 MR. KELTY: YES SIR.

6 THE COURT: AND FINALLY, YOU ARE ALSO CHARGED ON THAT SAME
7 DATE WITH FAILING TO STOP FOR A BLUE LIGHT. DO YOU UNDERSTAND
8 THAT CHARGE?

9 MR. KELTY: YES SIR.

10 THE COURT: AND I ASSUME, THEN, THAT YOU WERE THEREAFTER
11 ARRESTED HERE IN JASPER COUNTY AND HAVE BEEN INCARCERATED HERE
12 IN JASPER COUNTY SINCE DECEMBER OF '05. IS THAT CORRECT?

13 MR. KELTY: WELL, I'VE BEEN INCARCERATED SINCE DECEMBER OF '05,
14 BUT I'VE BEEN IN JASPER COUNTY, I THINK, I CAME HERE DURING THE
15 MONTH OF FEBRUARY.

16 MR. RUFFALO: IF YOUR HONOR PLEASE. BY WAY OF FACTUAL, IT'S
17 ALLEGED THAT THERE WAS A HIGH SPEED CAR CHASE WITH A BLUE LIGHT
18 THAT WENT ACROSS THE STATE INTO THE STATE OF GEORGIA. SO, FOR SOME
19 TIME HE WAS OVER IN THE CHATHAM COUNTY JAIL.

20 THE COURT: I UNDERSTAND. THANK YOU. MR. RUFFALO, YOU'VE
21 HAD A CHANCE TO REVIEW THESE RECORDS FROM THE DEPARTMENT OF
22 VETERANS AFFAIRS. HAVE YOU RULED OUT THE POSSIBILITY OF A GUILTY
23 BUT MENTALLY ILL DEFENSE IN THIS CASE?

1 MR. RUFFALO: YES SIR, I HAVE. JUST FOR COMPLETENESS OF THE
2 RECORD, THERE IS SOME QUESTION ABOUT MR. KELTY'S ABILITY TO
3 REMEMBER THE EVENTS.

4 THE COURT: I UNDERSTAND.

5 MR. RUFFALO: BASED ON VARIOUS THINGS HE'S TOLD ME.

6 THE COURT: JUST FOR MY INFORMATION, MR. KELTY. I DON'T THINK
7 THERE'S A QUESTION ABOUT THIS, BUT I WANT TO ASK YOU, DO YOU KNOW
8 WHERE YOU ARE TODAY?

9 MR. KELTY: YES SIR.

10 THE COURT: WHERE ARE YOU?

11 MR. KELTY: IN JASPER COUNTY.

12 THE COURT: WHEREABOUTS IN JASPER COUNTY?

13 MR. KELTY: IN THE COURTROOM.

14 THE COURT: DO YOU KNOW WHAT DATE TODAY IS?

15 MR. KELTY: THE FIRST OR THE SECOND, I THINK.

16 THE COURT: OF WHAT?

17 MR. KELTY: APRIL.

18 THE COURT: OF WHAT YEAR?

19 MR. KELTY: 2006, I MEAN, '07.

20 THE COURT: DO YOU KNOW WHO THE PRESIDENT OF THE UNITED
21 STATES IS?

22 MR. KELTY: YES.

23 THE COURT: WHO IS IT?

24 MR. KELTY: MR. BUSH, PRESIDENT BUSH.

1 THE COURT: THE COURT HAS A CHANCE TO INTERVIEW AND TALK
2 WITH THE DEFENDANT IN THIS CASE. I'VE ALSO HAD AN OPPORTUNITY TO
3 OBSERVE HIS DEemeanOR AND HIS ANSWERS AND HAVE REVIEWED HIS
4 ANSWERS IN CONNECTION WITH THE CASE OF THE STATE VERSUS WHITE, 364
5 SC 143 611 SE 2ND 627.

6 I'VE ALSO HAD AN OPPORTUNITY TO REVIEW HIS MENTAL HEALTH
7 RECORDS FROM- OR, ALL HIS RECORDS FROM THE DEPARTMENT OF
8 VETERANS AFFAIRS. I FIND NO HISTORY OF MENTAL ILLNESS, ALTHOUGH I
9 DO SEE THAT THERE ARE SOME QUESTIONS ABOUT EXCESSIVE DRINKING
10 AND SOME REPORTING BY HIM OF HEARING VOICES.
11 HOWEVER BASED UPON WHAT HE'S PRESENTED TO THE COURT, IT APPEARS
12 THAT HE IS INTELLIGENT, RESPONSIVE TO THE QUESTIONS POSED BY THE
13 COURT. HE IS ORIENTED AS TO TIME AND PLACE. HE HAS A GOOD
14 RECOLLECTION OF HIS PAST HISTORY. HE IS EDUCATED. AND I WOULD SAY
15 THAT THE COURT FOUND, THAT THE REPORT INDICATES THERE MAY BE A
16 DEPRESSIVE DISORDER BASED UPON ALCOHOL ABUSE, BUT THERE'S
17 NOTHING IN THE RECORD TO INDICATE A MAJOR MEDICAL, MENTAL
18 ILLNESS.

19 IN INTERVIEWING HIM EXTENSIVELY, HE IS EDUCATED. HE IS VERY
20 ARTICULATE AND I FEEL THAT THERE IS NO QUESTION OF HIS MENTAL
21 COMPETENCE TO STAND TRIAL, AS WELL AS HIS COMPETENCE TO
22 UNDERSTAND THE NATURE OF THE CHARGES AGAINST HIM, HIS ABILITY TO
23 DISTINGUISH RIGHT FROM WRONG, AND HIS ABILITY TO CONFORM HIS
24 CONDUCT TO THE STANDARDS OF SOCIETY, AS A RESULT OF WHICH, THE
25 COURT IS GOING TO DENY THE MOTION FOR A MENTAL EVALUATION.

1 I'M ALSO GOING TO DENY THE MOTION, MR. KELTY, TO HAVE YOUR
2 COUNSEL RELIEVED. WHEN YOU GET COURT-APPOINTED COUNSEL, YOU
3 DON'T GET YOUR CHOICE. YOU'RE ALREADY ON YOUR SECOND COUNSEL.
4 MR. PLEXICO ALREADY HAD YOU FOR A YEAR, I BELIEVE. MR. RUFFALO IS
5 AN EXPERIENCED ATTORNEY. HE KNOWS WHAT HE IS DOING AND HE
6 KNOWS WHAT IS THE APPROPRIATE WAY TO REPRESENT YOU IN
7 CONNECTION WITH THIS CASE.

8 SO, I AM GOING TO DENY THE MOTION FOR RELIEF OF MR. RUFFALO,
9 AS WELL AS THE MOTION FOR A MENTAL EVALUATION. THE MATTER CAN
10 GO FORWARD AS CALLED BY THE SOLICITOR.

11 MR. RUFFALO: THANK YOU, SIR.

12 MR. JOHNSON: IF YOUR HONOR PLEASE. IF MR. KELTY WANTS TO
13 MAKE ANY SORT OF A PROFFER ON SELECTIVE PROSECUTION, WE ARE
14 HONORED TO HAVE ALL THE POLICY MAKERS AND DECISION MAKERS - AND I
15 DON'T INCLUDE MYSELF - HERE IN THE COURTROOM.

16 THE COURT: NO SIR. I WOULD DEFER TO HIS ATTORNEY. IF HIS
17 ATTORNEY THINKS IT'S GOT MERIT, THEN HE CAN MAKE A MOTION. IF HE
18 DOESN'T THINK IT HAS MERIT, THEN HE HAS AN OBLIGATION NOT TO MAKE
19 THE MOTION.

20 READ YOUR INDICTMENTS, MR. JOHNSON. WE'LL HAND THIS BACK TO
21 MR. RUFFALO.

22 MR. RUFFALO: YOUR HONOR, MAY I HAVE A MOMENT WITH MY
23 CLIENT?

24 THE COURT: YES SIR.

25 MR. RUFFALO: THANK YOU. THIS SHOULD JUST TAKE A FEW MINUTES.

1 (PAUSE TO CONFER WITH CLIENT)

2 THE COURT: MR. RUFFALO, MR. JOHNSON.

3 MR. RUFFALO: IF YOUR HONOR PLEASE. YOU KNOW THERE'S BEEN A
4 LOT GOING ON WITH THIS PRE-TRIAL OVER THE LAST COUPLE OF MONTHS. I
5 JUST WANTED TO MAKE SURE THAT ABRAHAM UNDERSTANDS THAT WHEN
6 HE GOES BACK THERE TODAY ALL OFFERS, ANYTHING ELSE, ALL
7 SUGGESTIONS FOR A PLEA ARE OFF.

8 THE COURT: ALL RIGHT. HAVE OFFERS BEEN MADE, MR. JOHNSON? IS
9 THERE A DEADLINE FOR THE EXPIRATION OF THEM? WHERE DO YOU STAND
10 ON THAT?

11 MR. JOHNSON: YOUR HONOR, I DON'T KNOW HOW MUCH DETAIL YOU
12 WANT. I'M GOING TO BE SORT OF CRYPTIC UNLESS YOU ASK A SPECIFIC
13 QUESTION.

14 THE COURT: I WANT YOU TO BE CRYPTIC.

15 MR. JOHNSON: YOUR HONOR, WHAT WE FELT WERE VERY GENEROUS
16 PLEA OFFERS WERE EXTENDED. UNDER A POLICY OF VERY LONG-STANDING
17 WITH THE CURRENT SOLICITOR WE GIVE A CERTAIN EXPIRATION, A
18 REASONABLE TIME TO ACCEPT OR REJECT THE PLEA OFFER, AND THEN
19 THOSE OFFERS ARE GONE.

20 THE COURT: I THINK THAT IS ALSO THE CURRENT POLICY OF THIS
21 COURT.

22 MR. JOHNSON: IT CERTAINLY HELPS THE SOLICITORS NOT WASTE
23 SUNDAY AFTERNOON GETTING READY, AMONG ALL THE OTHER REASONS
24 FOR THAT. BUT, ANYWAY, WE MADE A VERY GENEROUS PLEA OFFER. IT

1 WAS-- THE POLICY WAS SOMEWHAT RELAXED IN MR. KELTY'S CASE, IF I
2 RECALL RIGHT, BASED ON HIS CHANGE OF ATTORNEYS, AND I AM---

3 THE COURT: WHERE DOES THAT OFFER STAND AS OF TODAY, MR.
4 JOHNSON?

5 MR. JOHNSON: AS OF TODAY, THERE IS NO OFFER---

6 MR. RUFFALO: THERE IS A-- GO AHEAD.

7 MR. JOHNSON: THERE IS---

8 THE COURT: LET ME HEAR FROM HIM FIRST.

9 MR. JOHNSON: AS OF TODAY, THE ONLY OFFER IS FOR HIM TO PLEAD
10 GUILTY TO ARMED ROBBERY AND I WILL STATE THE FACTS AND MAKE NO
11 PARTICULAR ARGUMENT OR PRESS NO PARTICULAR OPINION. THAT POINT
12 WILL BE JUST BETWEEN MR. KELTY AND HIS LAWYER.

13 THE COURT: WHAT ABOUT---

14 THE COURT: WE DID OFFER TO NOL PROS HIS OTHER CASES IF HE
15 PLEAD TO THAT. THAT OFFER, OF COURSE, WOULD BE LIMITED TO A PLEA
16 SITUATION.

17 THE COURT: ALL RIGHT. SO, THE OFFER THAT IS OPEN RIGHT NOW AS
18 FAR AS TO PLEAD GUILTY, BASICALLY, STRAIGHT UP, TO ARMED ROBBERY
19 IN RETURN FOR WHICH THE STATE WOULD DISMISS THE WEAPONS AND THE
20 BLUE LIGHT CHARGE. IS THAT CORRECT?

21 MR. JOHNSON: PRECISELY, YOUR HONOR.

22 THE COURT: AND THAT IS OPEN UNTIL WHEN? THE END OF THE DAY?

23 MR. RUFFALO: THE REASON WE'RE ON THE RECORD IS BECAUSE THE
24 MINUTE HE WALKS THROUGH THAT DOOR, IT'S OFF.

1 MR. JOHNSON: I WOULD SAY UNTIL WE ADJOURN FOR LUNCH WOULD
2 BE A GOOD EXPIRATION TIME.

3 THE COURT: ALL RIGHT.

4 MR. JOHNSON: THE REASON BEING WE HAD HOPED TO---

5 THE COURT: THE OFFER IS OPEN UNTIL ONE O'CLOCK. THAT'S FORTY-
6 FIVE MINUTES. I'LL GIVE YOU A CHANCE TO TALK TO HIM, MR. RUFFALO.

7 MR. RUFFALO: YES SIR, AND I THANK YOU FOR THAT.

8 THE COURT: IT WILL BE OPEN UNTIL ONE O'CLOCK AFTER WHICH THE
9 CASE IS SUBJECT TO TRIAL, TO BEING CALLED ON ALL THREE CHARGES.

10 MR. JOHNSON: YES SIR. AND WE HOPE TO PICK A JURY ON THAT
11 TODAY.

12 THE COURT: I UNDERSTAND.

13 MR. RUFFALO: THANK YOU FOR GOING THROUGH THAT WITH ME,
14 YOUR HONOR.

15 THE COURT: YOU'RE WELCOME.

16 (WHEREUPON THE VETERANS AFFAIRS RECORDS WERE MARKED AS
17 COURT'S EXHIBIT ONE. THE CASE WAS IN RECESS AT 12:15 P.M.)

18 COURT IN SESSION - 12:55 P.M.

19 THE COURT: MR. KELTY, WE'RE BACK ON THE RECORD IN THE MATTER
20 OF STATE VERSUS KELTY. AN OFFER WAS TENDERED BY THE STATE ABOUT
21 FORTY-FIVE MINUTES AGO AND THE STATE INTENDS TO CALL THE CASE FOR
22 TRIAL THIS AFTERNOON. IS THAT CORRECT, MR. JOHNSON?

23 MR. JOHNSON: THAT IS CORRECT, SIR.

24 THE COURT: THAT BEING THE CASE, MR. KELTY, SO THAT THE STATE
25 WILL KNOW HOW TO PROCEED, AND SO YOUR LAWYER WILL KNOW HOW TO

1 PROCEED, IS IT YOUR INTENTION TO ACCEPT THE OFFER THAT WAS
2 TENDERED BY THE STATE, OR DO YOU WISH TO PLEAD NOT GUILTY AND GO
3 FORWARD WITH A TRIAL?

4 MR. KELTY: OKAY, YOUR HONOR. I'M GOING TO GO FORWARD WITH
5 THE OFFER. I JUST WANT TO EXPLAIN A FEW THINGS IF I CAN.

6 THE COURT: I'LL GIVE YOU AN OPPORTUNITY TO DO THAT. BUT, I'M
7 JUST TRYING TO FIGURE OUT-- WE'LL HAVE TIME TO PROCEED, AND YOU
8 WILL HAVE AS MUCH TIME AS YOU WANT TO TELL ME THIS AFTERNOON, IF
9 YOU ARE GOING TO ACCEPT THE OFFER AND PLEAD GUILTY TO ONE COUNT
10 OF ARMED ROBBERY AND THE OTHERS WILL BE NOL PROSSED. IS THAT
11 CORRECT?

12 MR. JOHNSON: THAT IS CORRECT.

13 THE COURT: BEFORE WE ADJOURN, DO YOU HAVE THE SENTENCING
14 SHEET?

15 MR. JOHNSON: YES SIR.

16 MR. RUFFALO: YES SIR.

17 THE COURT: GO AHEAD AND HAVE HIM SIGN THAT AND WE'LL TAKE
18 THE PLEA THIS AFTERNOON AFTER LUNCH.

19 MR. RUFFALO: THANK YOU, YOUR HONOR.

20 THE COURT: I'M CONCERNED ABOUT TAKING A PLEA IN FRONT OF THE
21 JURY PANEL, MR. JOHNSON.

22 MR. JOHNSON: YES SIR, YOUR HONOR. I'M NOT TRYING TO TELL THE
23 COURT HOW TO PROCEED, BUT IF YOU QUALIFY THE JURY FIRST, THEN WE
24 CAN GO FORWARD WITH THE PLEA.

1 THE COURT: THAT'S A GOOD IDEA. WE'LL DO THAT. WE'LL ADJOURN
2 NOW FOR LUNCH.

3 COURT IN SESSION - 3:00 P.M.

4 THE COURT: WE'RE BACK ON THE RECORD IN THE MATTER OF THE
5 STATE VERSUS KELTY. MR. JOHNSON, CALL YOUR CASE.

6 MR. JOHNSON: YES SIR, YOUR HONOR. MAY IT PLEASE THE COURT.
7 WE'RE READY TO PROCEED IN THE MATTER OF THE STATE VERSUS ABRAHAM
8 KELTY, INDICTMENT NUMBER 06-GS-27-302.

9 THE COURT: PLEASE BRING MR. KELTY FORWARD.

10 (WHEREUPON DEFENDANT WAS BROUGHT BEFORE THE BAR AND
11 PLACED UNDER OATH)

12 MR. RUFFALO, HAVING HEARD SOME OF THIS MATTER BEFOREHAND, I
13 WILL PLACE ON THE RECORD THAT YOU DO REPRESENT THE DEFENDANT BY
14 APPOINTMENT. IS THAT CORRECT?

15 MR. RUFFALO: THAT'S CORRECT, YOUR HONOR.

16 THE COURT: HAVE YOU EXPLAINED TO HIM THE CHARGES
17 CONTAINED, NOT ONLY IN THIS INDICTMENT, BUT THE OTHER CHARGES
18 WHICH THE STATE IS WILLING TO NOL PROS?

19 MR. RUFFALO: I HAVE, SIR.

20 THE COURT: IN YOUR OPINION, DOES HE UNDERSTAND THOSE THINGS?

21 MR. RUFFALO: IN MY OPINION, HE UNDERSTANDS THEM FULLY.

22 THE COURT: MR. KELTY, I'VE BEEN ADVISED THAT YOU WISH TO
23 ENTER A PLEA WITH REGARD TO THE CHARGE OF ARMED ROBBERY. I'M
24 GOING TO ASK YOU SOME QUESTIONS. IF YOU DON'T UNDERSTAND THE
25 QUESTIONS OR THE WORDS I USE, YOU TELL ME, AND I'LL BE GLAD TO

1 EXPLAIN THEM TO YOU. OR YOU MAY TALK WITH YOUR LAWYER AT ANY
2 TIME BEFORE WE GO THROUGH THIS PROCESS. DO YOU UNDERSTAND?

3 MR. KELTY: YES SIR.

4 THE COURT: HOW OLD ARE YOU?

5 MR. KELTY: FORTY-NINE.

6 THE COURT: AND I UNDERSTAND FROM OUR DISCUSSIONS THIS
7 MORNING, WITH REGARD TO MOTIONS, THAT YOU WENT TO TECH SCHOOL,
8 AND THEN WENT TO LIMESTONE COLLEGE, AND GOT A BACHELOR'S DEGREE.
9 IS THAT CORRECT?

10 MR. KELTY: YES SIR.

11 THE COURT: AND ALSO, I RECALL FROM OUR DISCUSSIONS THIS
12 MORNING, THAT YOU SERVED SIXTEEN YEARS IN THE MARINE CORPS?

13 MR. KELTY: YES SIR.

14 THE COURT: AND WHAT OTHER KIND OF WORK HAVE YOU DONE?

15 MR. KELTY: I WORKED AT BRIDGESTONE FIRESTONE. I WORKED AT TA
16 FOR A WHILE. I WORKED AT A PLACE CALLED CLIENT LOGIC. GEORGIA
17 PACIFIC. THIS WAS ALL DURING THE TIME THAT I WAS GOING TO SCHOOL.
18 SO, IN THE LAST-- PRIOR TO THIS, UP UNTIL 2005, THE LAST EIGHT YEARS.

19 THE COURT: OTHER THAN WHAT WAS PRESENTED TO THE COURT AT
20 THE HEARING THAT WE HAD THIS MORNING, INCLUDING THE VA MEDICAL
21 RECORDS-- AND I UNDERSTAND WHAT YOUR VA MEDICAL TREATMENT HAS
22 BEEN. I'VE READ THAT AND REVIEWED THAT. OTHER THAN THAT, HAVE
23 YOU BEEN TREATED FOR THE ABUSE OF ALCOHOL OR DRUGS OR FOR
24 MENTAL ILLNESS, OTHER THAN WHAT'S IN THE VA RECORDS?

1 MR. KELTY: WELL, WHILE I WAS AT CHATHAM COUNTY, PRIOR TO
2 COMING HERE. I THINK I WAS THERE ABOUT FIFTY DAYS. I WAS GETTING
3 GEODONE AND PROZAC. SINCE BEING HERE, PROZAC AND BLOOD PRESSURE
4 MEDICATION.

5 THE COURT: SO, YOU ARE TAKING SOME PRESCRIPTION MEDICATION
6 AT THE CURRENT TIME. IS THAT CORRECT?

7 MR. KELTY: YES SIR.

8 THE COURT: DOES THAT AFFECT YOUR ABILITY TO KNOW AND
9 UNDERSTAND WHAT YOU ARE DOING HERE TODAY?

10 MR. KELTY: NO SIR.

11 THE COURT: AGAIN, OTHER THAN WHAT WAS CONTAINED-- AND
12 WHAT YOU TOLD ME TODAY, EARLIER, AND NOW. AND ALSO, WHAT WAS
13 CONTAINED IN THE VA RECORDS, ARE YOU TODAY AWARE OF ANY
14 PHYSICAL, EMOTIONAL OR NERVOUS PROBLEMS THAT WOULD KEEP YOU
15 FROM UNDERSTANDING WHAT'S GOING ON?

16 MR. KELTY: NO.

17 THE COURT: YOU'VE HEARD MR. RUFFALO TELL ME THAT HE HAS
18 EXPLAINED TO YOU THE CHARGE AGAINST YOU, THE POSSIBLE PUNISHMENT,
19 AND YOUR CONSTITUTIONAL RIGHTS, AND THAT YOU UNDERSTAND THESE
20 THINGS. IS THAT CORRECT?

21 MR. KELTY: YES SIR.

22 THE COURT: THE INDICTMENT IN THIS CASE WHICH IS BEFORE THE
23 COURT, AND THE ONLY ONE THAT IS BEFORE THE COURT BECAUSE THE
24 STATE HAS INDICATED THEIR WILLINGNESS TO DISMISS THE FAILURE TO

1 STOP FOR A BLUE LIGHT. WHAT WAS THE OTHER CHARGE THAT WAS
2 DISMISSED?

3 MR. RUFFALO: POSSESSION OF A WEAPON.

4 THE COURT: POSSESSION OF A WEAPON. THE STATE HAS INDICATED
5 THAT THEY WILL DISMISS THOSE TWO CHARGES IF I ACCEPT THE PLEA TO
6 ARMED ROBBERY. SO, THE INDICTMENT THAT IS BEFORE THE COURT IS ONE
7 THAT ALLEGES THAT ON OR ABOUT DECEMBER 27, '05, THAT YOU, WHILE
8 ARMED WITH A TWENTY-FIVE CALIBER HANDGUN DID TAKE FROM THE
9 PERSON OR PRESENCE OF SONYA B. JENKINSON, AN EMPLOYEE OF TIGER
10 STOP EXXON, BY MEANS OF FORCE OR INTIMIDATION, MONEYS OR GOODS OF
11 THE VICTIM. ACTUALLY MONEY IN THIS CASE IS WHAT THE INDICTMENT
12 ALLEGES. SO, THE CHARGE IS ONE OF ARMED ROBBERY OF THE TIGER STOP
13 EXXON ON DECEMBER 7 OF 2005. DO YOU UNDERSTAND THE CHARGE OF THE
14 INDICTMENT?

15 MR. KELTY: YES SIR.

16 THE COURT: DO YOU UNDERSTAND THAT FOR THIS OFFENSE YOU CAN
17 GET FROM TEN YEARS TO THIRTY YEARS IN PRISON?

18 MR. KELTY: YES SIR, I DO.

19 THE COURT: AND YOU UNDERSTAND THAT THIS IS CONSIDERED A
20 MOST SERIOUS OFFENSE, WHICH MEANS THAT IF YOU WERE TO HAVE TWO
21 MOST SERIOUS OFFENSES, THAT YOU WOULD BE FACING A SENTENCE OF
22 LIFE IN PRISON, IF YOU WERE TO GET ANOTHER MOST SERIOUS OFFENSE. DO
23 YOU UNDERSTAND THAT?

24 MR. KELTY: YES SIR.

1 THE COURT: DO YOU ALSO UNDERSTAND THAT THIS IS CONSIDERED A
2 NO-PAROLE OFFENSE, WHICH MEANS THAT YOU WILL HAVE TO SERVE
3 EIGHTY-FIVE PERCENT OF WHATEVER I SENTENCE YOU TO BEFORE YOU
4 WOULD BE ELIGIBLE FOR ANY KIND OF RELEASE TO ANY KIND OF
5 COMMUNITY SUPERVISION. DO YOU UNDERSTAND THAT?

6 MR. KELTY: YES SIR.

7 THE COURT: MR. KELTY, WHEN YOU PLEAD GUILTY, YOU GIVE UP CERTAIN
8 IMPORTANT CONSTITUTIONAL RIGHTS. FIRST OF ALL, YOU GIVE UP YOUR
9 RIGHT TO REMAIN SILENT; THAT IS, YOUR PRIVILEGE AGAINST SELF-
10 INCRIMINATION, YOUR RIGHT TO SAY NOTHING AT ALL. YOU CANNOT BE
11 REQUIRED TO PROVIDE TESTIMONY OR EVIDENCE AGAINST YOURSELF.

12 YOU GIVE UP YOUR RIGHT TO HAVE A JURY TRIAL; THAT IS, YOUR
13 RIGHT TO HAVE JURY DECIDE WHETHER YOU ARE GUILTY BEYOND A
14 REASONABLE DOUBT. IN A TRIAL YOU WOULD BE PRESUMED TO BE
15 INNOCENT AND THE STATE WOULD HAVE TO PRESENT EVIDENCE THAT
16 WOULD CONVINCE ALL TWELVE MEMBERS OF THE JURY OF YOUR GUILT
17 BEYOND A REASONABLE DOUBT.

18 THIRD: YOU WOULD GIVE UP YOUR RIGHT TO CONFRONT THE
19 WITNESSES AGAINST YOU; THAT IS, THE RIGHT TO REQUIRE THE WITNESSES
20 AGAINST YOU TO COME INTO COURT AND TESTIFY, AND THE RIGHT TO
21 SUBPOENA AND CALL WITNESSES ON YOUR OWN BEHALF. DO YOU
22 UNDERSTAND THOSE CONSTITUTIONAL RIGHTS?

23 MR. KELTY: YES SIR.

1 THE COURT: DO YOU UNDERSTAND THAT WHEN YOU PLEAD GUILTY
2 YOU WAIVE OR GIVE UP THOSE CONSTITUTIONAL RIGHTS AND THERE WILL
3 BE NO JURY TRIAL?

4 MR. KELTY: YES SIR.

5 THE COURT: UNDERSTANDING, THEN, THE NATURE OF THE CHARGE
6 AGAINST YOU AND THE CONSEQUENCES OF A GUILTY PLEA, HOW DO YOU
7 WISH TO PLEAD TO THIS CHARGE, GUILTY OR NOT GUILTY?

8 MR. KELTY: GUILTY.

9 THE COURT: DO YOU UNDERSTAND THAT WHEN YOU PLEAD GUILTY
10 YOU ADMIT THE CHARGE AGAINST YOU IS TRUE?

11 MR. KELTY: YES SIR.

12 THE COURT: YOU MAY HAVE A DEFENSE TO THIS CHARGE. I DON'T
13 KNOW WHETHER YOU DO OR NOT. BUT, DO YOU UNDERSTAND THAT WHEN
14 YOU PLEAD GUILTY YOU WAIVE OR GIVE UP ANY DEFENSES THAT YOU
15 MIGHT HAVE TO THIS CHARGE?

16 MR. KELTY: YES SIR.

17 THE COURT: YOU ALSO MAY HAVE GIVEN AN INCRIMINATING
18 STATEMENT IN THIS CASE. AGAIN, I DON'T KNOW WHETHER YOU HAVE OR
19 NOT. BUT, DO YOU UNDERSTAND THAT WHEN YOU PLEAD GUILTY YOU
20 WAIVE OR GIVE UP ANY RIGHT YOU HAVE TO CHALLENGE OR CONTEST
21 WHETHER OR NOT THAT STATEMENT WAS FREELY AND VOLUNTARILY
22 GIVEN?

23 MR. KELTY: YES SIR.

24 THE COURT: PLEA NEGOTIATIONS, MR. JOHNSON, ARE NONE OTHER
25 THAN THE DISMISSAL OF THE OTHER TWO CHARGES?

1 MR. JOHNSON: THAT'S CORRECT, SIR.

2 THE COURT: THE STATE HAS INDICATED THERE ARE NO PLEA
3 NEGOTIATIONS EXCEPT THAT THE STATE IS WILLING TO DROP THE WEAPONS
4 CHARGE AND THE FAILURE TO STOP FOR A BLUE LIGHT.

5 HAS ANYONE PROMISED YOU ANYTHING OR HELD OUT ANY HOPE OF
6 A REWARD TO GET YOU TO PLEAD GUILTY?

7 MR. KELTY: NO SIR.

8 THE COURT: HAS ANYONE THREATENED YOU OR USED FORCE TO GET
9 YOU TO PLEAD GUILTY?

10 MR. KELTY: NO SIR.

11 THE COURT: HAVE YOU HAD ENOUGH TIME TO MAKE UP YOUR MIND
12 AS TO WHETHER OR NOT YOU WANT TO PLEAD GUILTY?

13 MR. KELTY: YES SIR.

14 THE COURT: AND ARE YOU PLEADING GUILTY OF YOUR OWN FREE
15 WILL AND ACCORD?

16 MR. KELTY: I AM.

17 THE COURT: EARLIER TODAY, YOU HAD INDICATED THAT YOU DIDN'T
18 THINK THAT MR. RUFFALO HAD DONE EVERYTHING THAT YOU FELT HE
19 SHOULD HAVE DONE IN THIS CASE. DO YOU STILL FEEL THAT WAY?

20 MR. KELTY: UNDER THE TERMS OF THIS PLEA, I FEEL THAT HE HAS
21 DONE EVERYTHING THAT....

22 THE COURT: HE COULD DO.

23 MR. KELTY: HE COULD DO.

24 THE COURT: ALL RIGHT. HAVE YOU UNDERSTOOD MY QUESTIONS?

25 MR. KELTY: YES SIR.

1 THE COURT: GOING BACK TO THAT FOR JUST A MINUTE. UNDER THE
2 TERMS OF THIS PLEA, THEN, YOU ARE SATISFIED WITH MR. RUFFALO'S
3 REPRESENTATION. IS THAT CORRECT?

4 MR. KELTY: YES SIR.

5 THE COURT: HAVE YOUR ANSWERS TO ME BEEN TRUTHFUL?

6 MR. KELTY: YES SIR.

7 THE COURT: IS THERE ANYTHING YOU WOULD LIKE TO ASK ME ABOUT
8 WHAT WE'VE BEEN OVER?

9 MR. KELTY: NO SIR.

10 THE COURT: DO YOU UNDERSTAND YOU HAVE THE RIGHT TO APPEAL
11 THE GUILTY PLEA AND THE SENTENCE OF THE COURT AND YOU MUST DO SO
12 WITHIN TEN DAYS?

13 MR. KELTY: YES SIR.

14 THE COURT: ALL RIGHT. MR. JOHNSON.

15 MR. JOHNSON: IF IT PLEASE THE COURT. ON THE DAY IN QUESTION
16 MR. KELTY ROBBED A CONVENIENCE STORE AT EXIT FIVE IN-- I'M SORRY.
17 EXIT EIGHT IN HARDEEVILLE. OFFICER MIDDLETON CAN GIVE YOU THE
18 EVIDENTIARY FACTS. SUFFICE IT TO SAY HE USED A PISTOL. WE HAVE
19 OVERWHELMING EVIDENCE IN THE FORM OF MULTIPLE EYE WITNESSES,
20 IDENTIFICATION OF THE CAR, VIDEO SURVEILLANCE TAPES, AND A
21 COMPLETE CHAIN OF VISUAL CONTACT UNTIL HE WAS RUN AGROUND IN
22 GEORGIA; AND THEREUPON, PHYSICAL EVIDENCE, INCLUDING
23 MERCHANDISE FROM THE STORE AND THE PISTOL IN QUESTION THAT WAS
24 RECOVERED.

25 OFFICER MIDDLETON CAN ADD ANYTHING THAT'S PERTINENT.

1 THE COURT: ANYTHING YOU'D LIKE TO ADD, SIR?

2 MR. MIDDLETON: JUST A FEW THINGS, YOUR HONOR. ON DECEMBER
3 27, 2005, AT THE TIGER STOP EXXON HERE IN HARDEEVILLE, MR. KELTY WENT
4 INTO THE STORE AND, AS SEEN ON THE VIDEO, ASKED THE CLERK FOR BAND-
5 AIDS. SHE POINTED OUT WHERE THEY WERE SELLING THE BAND-AIDS. HE
6 CAME BACK TO HER AND PRESENTED A TWENTY-FIVE CALIBER, BLACK IN
7 COLOR, PISTOL; TOOK THE MONEY. WE GOT A 911 CALL.

8 WE WERE THERE PROBABLY WITHIN, I'D SAY, THREE MINUTES,
9 ADVISED OF THE ARMED ROBBERY. CAME IN CONTACT WITH THE VEHICLE
10 ENSUING INTO A CHASE INTO GEORGIA, WHERE HE WAS APPREHENDED AND
11 THE NEW MALL, THE SAVANNAH MALL.

12 THEN, THEREAFTER, AFTER GEORGIA HAD FINISHED WITH THEM
13 CHARGING HIM WITH FAILURE TO STOP FOR A BLUE LIGHT, WE WENT AND
14 PICKED HIM UP AND BROUGHT HIM TO JASPER COUNTY.

15 THE COURT: MR. KELTY, IS THAT WHAT HAPPENED?

16 MR. KELTY: WHEN YOU ASK ME THAT, JUDGE, ARE YOU ASKING ME
17 EVERYTHING THAT HE SAID?

18 THE COURT: WELL, MAINLY, I'M ASKING YOU DID YOU ROB THE
19 STORE. I'M NOT TOO CONCERNED ABOUT THE OTHER MATTERS BECAUSE
20 THAT'S NOT PART OF THIS. THE MAIN THING I'M INTERESTED IN AS FAR AS
21 YOUR ARMED ROBBERY IS CONCERNED IS DID YOU GO IN THERE WITH A
22 PISTOL AND HOLD UP THE STORE?

23 MR. KELTY: YES, I'M PLEADING GUILTY TO THAT CHARGE, SIR.

24 THE COURT: DID YOU DO IT?

25 MR. KELTY: YES SIR.

1 THE COURT: ALL RIGHT. VICTIM NOTIFICATION, MR. JOHNSON?

2 MR. JOHNSON: YES SIR.

3 THE COURT: THEY DIDN'T WANT TO BE PRESENT?

4 MR. JOHNSON: NO SIR. WE'VE BEEN IN SUBSTANTIAL CONTACT WITH
5 THE VICTIMS BECAUSE WE THOUGHT EACH TIME WE WERE GOING TO TRY IT,
6 AS WE THOUGHT WE WOULD BE DOING THIS AFTERNOON.

7 THE COURT: ALL RIGHT. THE COURT FINDS THERE IS A SUBSTANTIAL
8 FACTUAL BASIS FOR THE PLEA. I FIND THE DEFENDANT'S DECISION TO
9 PLEAD GUILTY IS FREELY, VOLUNTARILY, KNOWINGLY AND INTELLIGENTLY
10 MADE. THAT HE HAS HAD AN ATTORNEY WITH WHOM HE SAYS HE IS
11 SATISFIED. THE COURT WILL ACCEPT THE PLEA. MR. RUFFALO.

12 MR. RUFFALO: THANK YOU FOR HEARING FROM US YET AGAIN, YOUR
13 HONOR. AND I APOLOGIZE, AND I WILL TRY NOT TO TAKE TOO MUCH OF THE
14 COURT'S TIME. BUT I DO WANT MAKE OUT A FEW IMPORTANT POINTS THAT I
15 THINK ARE NECESSARY ABOUT ABRAHAM HERE, WHICH I'VE HAD THE
16 PLEASURE OF KNOWING SINCE I WAS APPOINTED ON DECEMBER 27. WE'VE
17 HAD A LOT OF CONTACT TOGETHER.

18 IT IS REALLY DIFFICULT FOR PEOPLE TO UNDERSTAND WHY A PERSON
19 OF ABRAHAM'S INTELLIGENCE AND OBVIOUSLY, A CLEVER PERSON - AND AT
20 TIMES VERY PERSONABLE AND HUMOROUS AND WELL-SPOKEN - GETS
21 INVOLVED IN SOMETHING LIKE THIS.

22 YOU LOOKED AT HIS VA RECORD. AND AS YOU SEE, FROM THE FRONT
23 PART OF THE RECORD, WHICH IS THE MOST RECENT, YOU SEE A LOT OF
24 CANCELLED AND MISSED APPOINTMENTS. AND THEN AS YOU GO INTO THE
25 BODY OF IT, YOU SEE THERE'S A LOT OF TRAUMA GOING ON WITH ABRAHAM

1 ABOUT HIS ALCOHOL ABUSE AND A LITTLE BIT OF DEPRESSION, AND SO
2 FORTH.

3 I THINK ABRAHAM HAS REACHED A POINT IN HIS LIFE WHERE HE'S
4 VERY FRUSTRATED AND DOESN'T KNOW WHAT DIRECTION TO TAKE.

5 HE WAS A MARINE FOR SIXTEEN YEARS. HE WAS HONORABLY
6 DISCHARGED. HE DID VERY WELL. I HAVEN'T SEEN HIS 214, BUT I DON'T
7 KNOW IF HE HAD ANY PROBLEMS. I DON'T SUSPECT THAT HE DID. I THINK
8 HE WAS A PRETTY GOOD GUY IN THE MARINES.

9 OBVIOUSLY, A CONUNDRUM FOR ALL OF US. HOW DOES THIS HAPPEN?
10 I GUESS WHAT I'M SAYING HERE IS I WOULD REALLY LIKE FOR YOU TO
11 CONSIDER THE MINIMAL SENTENCE FOR ABRAHAM BECAUSE I THINK HE'S
12 SAVE-ABLE, WORKABLE, AND THERE'S SOMETHING THAT HE HAS IN HIS
13 MIND THAT SAYS THAT HE CAN ACHIEVE.

14 WHEN I SIT DOWN AND TALK TO HIM AND HE SMILES AND
15 UNDERSTANDS AND WE JOKE A LITTLE BIT ABOUT POP CULTURE OR THE
16 NEWS, I SEE A PERSON THERE THAT CAN SAVE HIMSELF.

17 I ASK YOUR HONOR TO CONSIDER AND SEPARATE SORT OF WHAT I
18 CALL THE TRULY MISGUIDED FROM THE TRULY WICKED. I DO NOT SEE
19 ABRAHAM AS A WICKED MAN. HE IS NOT A WICKED MAN. HE'S NOT AN EVIL
20 MAN. HE'S A MISGUIDED MAN. HE'S VERY INTELLIGENT. HE CAN SAVE
21 HIMSELF AND IT'S ENTIRELY UP TO HIM. I BEG YOU TO GIVE HIM THE
22 OPPORTUNITY BY SENTENCING HIM TO THE MINIMAL AMOUNT. THANK YOU,
23 SIR.

24 THE COURT: MR. KELTY, WHAT WOULD YOU LIKE TO TELL ME?

1 MR. KELTY: WELL, SIR, IT'S KIND OF DIFFICULT TO WRAP IT ALL UP ON
2 THE SPOT LIKE THIS. BUT, GOING BACK TO WHAT MR. RUFFALO SAID, I
3 SERVED SIXTEEN YEARS IN THE MARINE CORPS. AS HE SAID, YES, I HAVE AN
4 HONORABLE RECORD BECAUSE YOU DON'T SERVE THAT LONG IN MY
5 GOVERNMENT WITH THE MARINES, WHO ARE ONE OF THE FINEST, AND NOT
6 HAVE A GOOD RECORDS. BUT BECAUSE OF MY DEBILITATING INJURIES I
7 WAS FORCED TO COME OUT ON RETIREMENT.

8 SO, FROM THERE, I STARTED TO TRY TO PUT MYSELF BACK TOGETHER,
9 REINVENT MYSELF AND RE-IDENTIFY WITH MY NEW LIFE. SO, FROM 1995 TO
10 2005, I WAS ON THE COURSE FOR REHABILITATION AND READJUSTMENT,
11 GOING THROUGH THE PROPER CHANNELS, DOING THE THINGS THAT NEEDED
12 TO BE DONE TO GET MY LIFE TOGETHER.

13 AND FROM THE MILITARY RECORD, MEDICAL RECORD THAT YOU SEE
14 BEFORE YOU, THERE ARE IN THERE THINGS THAT I SPOKE ABOUT, AND
15 THINGS WITHIN THE DRUGS THAT I WAS TAKING. AND I WAS TOLD THAT
16 NONE OF THEM REALLY HAD ANYTHING TO DO WITH THE THINGS THAT I
17 WAS GOING THROUGH; BASICALLY IT WAS INSIDE OF ME AND NOT THE
18 MEDICATION ITSELF.

19 NOW, WHAT HAPPENED ON 2005, DECEMBER 27, I CAN'T EXPLAIN IT
20 BECAUSE THAT WAS NOT MY INTENTION TO END UP IN THAT SITUATION.
21 BECAUSE MY INTENTION WAS TO TRAVEL, TO VISIT MY FAMILY OVER THE
22 HOLIDAY AND SPEND SOME VACATION TIME DOWN THERE IN FLORIDA.

23 THE NEXT THING I PRETTY MUCH, BASICALLY KNOW, ALL OF THIS IS
24 COMING AT ME IN THE NEWS. AND AGAIN, LIKE MR. RUFFALO SAID, A MAN
25 OF MY INTELLIGENCE, WHY COME THROUGH HERE. AND IT MAY SEEM LIKE,

1 BE PERCEIVED THAT I HAVE BEEN WASTING THE COURT'S TIME TRYING TO
2 MANEUVER MYSELF AROUND. THE ONLY THING I WAS TRYING TO DO WAS
3 UNDERSTAND WHAT WAS GOING ON, UNDERSTAND THE FACTS THAT WAS
4 BEFORE ME, AND UNDERSTAND WHETHER OR NOT THIS WAS SOMETHING
5 THAT HAPPENED TO ME BECAUSE IT DIDN'T FEEL LIKE IT SHOULD HAVE
6 HAPPENED TO ME.

7 AND BY REMOVING MR. PLEXICO, IT WAS ONLY BECAUSE I WANTED TO
8 KNOW WHAT ARE THE FACTS, WHAT'S INVOLVED IN THIS THAT I DON'T
9 ALREADY KNOW, OR THAT IS MISSING IN MY MIND.

10 AND EVEN UP UNTIL THE TIME WHEN I VIEWED THE VIDEO, I MEAN,
11 IT'S STILL REFERENCED IN MY MIND, I STILL DON'T UNDERSTAND HOW THIS
12 ALL CAME ABOUT. THE VIDEO STILL DIDN'T ANSWER ALL MY QUESTIONS.

13 BUT, YET AND STILL, AS MR. RUFFALO SAID, I'M A GOOD GUY. I MEAN,
14 I'VE TRIED TO BE GOOD. I'VE RAISED MY KIDS TO DO RIGHT. AND I'VE GOT A
15 TEN-YEAR OLD SON THAT I WAS MOLDING IN THE SAME WAY. AND HERE IT
16 IS, THIS HAPPENED TO ME, NOW, IT'S A BIG DISAPPOINTMENT TO ME AND TO
17 MY FAMILY. AND I'M TRYING TO FIND A WAY TO SAVE MYSELF AGAIN.

18 AND ALL I'M REALLY HEARING IS THAT, MAN, YOU MESSED UP SO BAD,
19 YOU'VE GOT TO GO AND SPEND THE REST OF YOUR LIFE IN JAIL, PRETTY
20 MUCH. THAT PART I CAN'T GRASP. I MEAN, HERE I AM, I'M A LAW-ABIDING
21 CITIZEN, DISABLED VETERAN WHO SERVED HIS COUNTRY PROUDLY. AND
22 THIS UNFORTUNATE THING HAPPENED. I CAN'T TAKE IT AWAY. IT
23 HAPPENED. I CAN'T EXPLAIN WHY IT HAPPENED.

24 BUT WHY AM I BEING POUNDED SO HARD WHEN I LOOK AROUND AND
25 SEE REPEATED OFFENDERS BEING TREATED IN SUCH A WAY AND I'M BEING

1 TREATED THIS WAY? AND IT'S LIKE WHAT I DID WAS SO HIDEOUS THAT I
2 CAN'T BE FORGIVEN. BECAUSE IT'S NOT LIKE I CAN'T GO FROM HERE AND GO
3 ON.

4 I FELT, AND I STILL FEEL LIKE I DESERVE A SECOND CHANCE. TO ME A
5 SECOND CHANCE WAS POSSIBILITY OF PAROLE OR SOMETHING THAT WAS
6 GOING TO GIVE YOU, THE COURT, AND THE COMMUNITY THE CHANCE TO
7 SEE IF I WAS GONNA MESS UP. AND IF I MESSED UP, THEN I CAN SEE MYSELF
8 BEING PUT IN HERE BECAUSE I'M NOT ABLE TO FUNCTION, OBVIOUSLY, IN
9 SOCIETY.

10 BUT THAT IS NOT THE CASE. THAT'S NOT IN MY HEART. THAT'S NOT IN
11 MY MIND. I MEAN, LIKE, I UNDERSTAND THAT THIS IS A PLEA THAT'S BEING
12 GRANTED TO ME, AND IT'S GRACIOUS IN ITS OWN WAY. BUT, I'M LIKE, WHY
13 CAN'T IT BE REDUCED TO SOMETHING WHERE I CAN RECONNECT WITH MY
14 FAMILY? WHERE I'M NOT GOING TO GO SOMEPLACE AND I GONNA DIE.

15 BECAUSE IN PRISON, I'M GOING TO DIE FROM BEING DISCONNECTED
16 FROM EVERYONE THAT I KNOW. WHILE I'M IN THERE, I'M GONNA BE DEAD.
17 ONE DAY I MIGHT GET OUT IF MY HEALTH LASTS. BUT, STILL, AT THIS POINT
18 IN MY LIFE, AT FORTY-NINE YEARS OLD, I THINK THAT I SHOULD BE
19 GRANTED AT LEAST ANOTHER CHANCE.

20 AND I CAN'T TELL THE COURT WHAT TO DO. THE ONLY THING I CAN
21 DO IS PUT MYSELF ON THE MERCY OF THE COURT AND PLEAD WITH IT AND
22 ASK IT TO RECONSIDER ALL THAT HAS BEEN SAID ABOUT ME, THE NEGATIVE
23 AND THE POSITIVE. AND SEE IF SOMETHING CAN HAPPEN TO HELP SAVE MY
24 LIFE.

1 THAT'S ALL I'M ASKING FOR, JUST A CHANCE TO SAVE MY LIFE. AND IF
2 THE COURT WOULD DO IT, I WOULD BE FOREVER GRATEFUL. IF THEY DON'T,
3 WELL, I'LL HAVE TO DO WHAT I'VE ALWAYS DONE, YOU KNOW. PICK UP THE
4 PIECES AND MOVE ON.

5 THE COURT: THANK YOU, SIR. WHAT PRIOR RECORD DO YOU SHOW,
6 MR. JOHNSON?

7 MR. JOHNSON: NONE, SIR. THERE ARE ALMOST NO TRAFFIC
8 INFRACTIONS, EVEN.

9 THE COURT: OKAY. HOW LONG HAS YOUR CLIENT BEEN
10 INCARCERATED, MR. RUFFALO?

11 MR. RUFFALO: SINCE DECEMBER, 410 DAYS.

12 THE COURT: THANK YOU. MR. KELTY, UNDER OUR LAW, OBVIOUSLY,
13 ARMED ROBBERY IS A VERY SERIOUS OFFENSE. IN FACT, IT'S CLASSIFIED AS
14 MOST SERIOUS. I'M SURE THAT THE YOUNG LADY WHO WAS IN THIS STORE
15 WHEN YOU CAME IN THERE AND PULLED A GUN ON HER WAS VERY MUCH
16 INTIMIDATED BY YOUR ACTIONS. IT COULD HAVE RESULTED IN A LOT
17 WORSE SITUATION.

18 THE ONLY REASON THE SENTENCE IS NOT MORE SEVERE THAN IT IS, IS
19 DUE TO THE FACT THAT YOU DON'T HAVE A PRIOR RECORD, AND THAT YOU
20 DID SERVE IN THE MARINE CORPS FOR SOME SIXTEEN YEARS. THAT'S THE
21 ONLY REASON THE SENTENCE IS NOT GOING TO BE MORE SEVERE.

22 HOWEVER, I DON'T THINK THAT BECAUSE OF THE VERY NATURE OF HOLDING
23 UP A STORE LIKE THIS WHERE SOMEBODY COULD HAVE VERY EASILY
24 GOTTEN KILLED IS DESERVING OF THE MINIMUM SENTENCE.

1 THE SENTENCE OF THE COURT ON 05-GS-27-205 IS THE DEFENDANT IS
2 COMMITTED TO THE STATE DEPARTMENT OF CORRECTIONS FOR A PERIOD OF
3 FIFTEEN YEARS. HE WILL BE GIVEN CREDIT FOR 410 DAYS JAIL TIME.

4 MR. RUFFALO: THANK YOU, YOUR HONOR.

5 MR. JOHNSON: THANK YOU, YOUR HONOR.

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1 CERTIFICATE

2 I, THE UNDERSIGNED PHYLLIS S. BARRETT, OFFICIAL CIRCUIT COURT
3 REPORTER FOR THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT
4 THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF
5 RECORD OF THE HEARING HELD IN THE CAPTIONED CASE, RELATIVE TO
6 APPEAL, IN THE COURT OF GENERAL SESSIONS FOR THE FOURTEENTH
7 JUDICIAL CIRCUIT, JASPER COUNTY, SOUTH CAROLINA ON THE 2ND DAY OF
8 APRIL, 2007.

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

11
12
13 
PHYLLIS S. BARRETT

STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

COURT OF GENERAL SESSIONS

2006-GS-27-0205

2006-GS-27-0302

2006-GS-27-0303

STATE OF SOUTH CAROLINA)

vs.)

TRANSCRIPT OF RECORD

ABRAHAM KELTY)

DEFENDANT)

April 26, 2007
Beaufort, South Carolina

B E F O R E:

THE HONORABLE HOWARD P. KING, JUDGE.

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

DARRELL THOMAS JOHNSON, ASSISTANT SOLICITOR
Attorney for the State

DUDLEY BRADSTREET RUFFALO, ESQ.
Attorney for the Defendant

CAROL M. THUEME, RPR
Official Court Reporter

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I N D E X

3

DEFENDANT:

PAGE

4

ABRAHAM KELTY

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(There were no witnesses produced.)

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EXHIBITS

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(There were no exhibits marked.)

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1 THE COURT: This is the matter of State versus
2 Kelty, and I will hear that first.

3 If you'll bring Mr. Kelty over, please.

4 And, Madam Court Reporter, for the record, this
5 is the matter of State versus Abraham Kelty. It is
6 Indictment numbers 2006-GS-27-0205, 2006-GS-27-302,
7 2006-GS-27-0303, and is a Jasper County matter that I
8 heard by way of a guilty plea and is actually before the
9 Court originally on motions by Mr. Kelty for I think
10 withdrawal of the guilty plea and then there was some
11 other documents filed.

12 The defendant, Mr. Kelty, is represented by
13 Dudley Ruffalo and the State is represented by Mr. Tom
14 Johnson.

15 Mr. Ruffalo, I'll hear from you. I believe
16 there was a motion originally made or there was a motion
17 made by you to ensure that these matters were timely.

18 MR. RUFFALO: Yes, your Honor. And I don't
19 remember the exact dates, and I apologize, but it was a
20 Monday that Mr. Kelty pled guilty to armed robbery up in
21 Jasper General Sessions.

22 THE COURT: Right.

23 MR. RUFFALO: And that following Sunday I
24 discovered in my fax tray some fax letters that Mr. Kelty
25 had sent to Mr. Johnson and Clerk Bostic that were timed

1 at 14:15, so just before Friday ended. And essentially
2 what he was saying, although he did not use the exact
3 language, it looked like he was asking for a motion to
4 reconsider, and as an overabundance of caution to assist
5 Mr. Kelty, what I did was I put together that I call a
6 motion to accept as timely filed and sent it around to
7 everybody, including yourself, and so that would be the
8 first matter that we would hear today to ensure that
9 Mr. Kelty has an opportunity to either have a motion to
10 reconsider, or in the alternative, of course, essentially
11 a notice of appeal.

12 THE COURT: All right. And I did receive your
13 motion and thereafter then I received from Mr. Johnson, I
14 believe, a consent that the State would not contest the
15 timeliness of the filing; isn't that right?

16 MR. JOHNSON: That's correct, sir.

17 You taught me some law this morning. I thought
18 the rule was it had to be filed before the Court adjourned
19 sine die, but I think you said it was --

20 THE COURT: I believe it's ten days from the
21 time that the motion must be filed. I wouldn't swear to
22 it, I haven't looked it up, but my recollection is that it
23 is within ten days.

24 MR. JOHNSON: But I actually received the motion
25 at the courthouse from the Clerk by some manner, so I

1 think he's timely either way.

2 In any event, I'm -- to the extent it's up to
3 me, I am not contesting that and ask you to hear the
4 matter on its merits.

5 THE COURT: All right. And I'm going to do that
6 in just a moment. Let's see if I can put my hands on
7 this.

8 MR. RUFFALO: I may be incorrect, your Honor,
9 but it was my understanding that the old traditional
10 method was is that before the close of court sine die if
11 you wanted to reconsider your sentence, that had to be
12 done before the gavel was banged.

13 THE COURT: You may both be right. Let me just
14 check.

15 All right. Rule 29 of the Rules of Criminal
16 Procedure: Except for motions for new trial based on
17 after-discovered evidence, post-trial motions shall be
18 made within ten days after the imposition of the sentence.

19 In cases involving appeals from convictions or
20 magistrates or municipal courts, post-trial motions shall
21 be made within ten days after receipt of written notice or
22 entry of the order of judgment disposing of the appeal.

23 The time for appeal for all parties shall be
24 stayed by a timely post-trial motion and shall run from
25 receipt of written notice of entry of the order granting

1 or denying the motion.

2 The time within which to make a motion shall not
3 be affected by the ending of the term of court or
4 departure of the judge from the circuit, and the circuit
5 judge shall retain jurisdiction of the action for the
6 purpose of hearing and disposing of the motion if not
7 heard and disposed of during the term.

8 Except by consent of the parties, argument of
9 the motion shall be heard in the circuit where the trial
10 or hearing was held.

11 The motion may at the discretion of the Court be
12 determined on briefs filed by the parties without oral
13 arguments.

14 So I think that it is covered by the ten-day
15 rule. So even without Mr. Johnson's consent, I think that
16 it is timely.

17 MR. RUFFALO: Thank you, sir.

18 THE COURT: All right.

19 MR. RUFFALO: And, of course, the second matter
20 is my motion, which this will be the first time that it
21 will be heard or proposed is my motion to be relieved as
22 counsel. I believe that I have fulfilled everything that
23 I can possibly do for Abraham. I don't think that Abraham
24 considers that I will be of any help to him in the future.
25 In fact, I believe he had a motion to relieve me sometime

1 ago and feels, I think, that I would be a hindrance to his
2 case, and I would ask to be relieved at this point.

3 THE COURT: Mr. Kelty, do you object to the
4 Court relieving Mr. Ruffalo of any further responsibility
5 for representation of you in this matter?

6 THE DEFENDANT: No, sir.

7 THE COURT: All right. The Court will so order
8 then that Mr. Ruffalo has and is hereby relieved of
9 representing Mr. Kelty in this matter.

10 The only thing that I would ask that you do is
11 that -- the only concern I want to make sure is that his
12 appeal rights are protected, and that's the only concern
13 that I have.

14 MR. RUFFALO: I understand that to be a concern
15 of him. And I think our relationship is so broken, and
16 the basis of Abraham's complaint and request for an appeal
17 or new hearing is that I have coerced him and that I have
18 been the leading problem in all of this and I would --

19 THE COURT: Well, I'm not so concerned, and of
20 course it depends on what I do with the motion, but I'm
21 not so concerned with -- I'm just really concerned
22 procedurally.

23 MR. RUFFALO: Yes, sir, I understand.

24 THE COURT: Not so much what the merits of it
25 are, but procedurally. But I guess -- I want you to

1 understand, Mr. Kelty, that if I relieve Mr. Ruffalo, from
2 this point on any appeal you make from any rulings of the
3 Court, including the ruling today, you will be on your own
4 and that you will have to take the proper steps according
5 to the South Carolina Rules of Appellate Procedure to make
6 sure that your appeal is perfected correctly. Do you
7 understand that? Because I'm not going to appoint
8 somebody to represent you from here out. You'll have to
9 take the steps.

10 Now, if you perfect your appeal correctly and
11 send notice to the Office of Appellate Defense, Appellate
12 Defense will take over the appeal, but it's going to be up
13 to you -- they're not going to file the notice of appeal
14 for you. The notice of appeal has to be filed by you and
15 you're going to have to do that correctly. Do you
16 understand that?

17 THE DEFENDANT: I understand what you're saying,
18 but as far as actually filing the motion and things like
19 that, legal --

20 THE COURT: I'm sorry, what?

21 THE DEFENDANT: I said I'm understanding what
22 you're saying and at the same time I'm only a layman, I
23 wouldn't really know what to do as far as the appeal
24 process goes from this point. I would need legal
25 representation. I would need time to get legal

1 representation.

2 THE COURT: What is the public defender
3 situation in Jasper County, Mr. Johnson? How do you all
4 normally handle that?

5 MR. JOHNSON: Normally the Clerk goes through
6 the list through some sort of a rotation and then under
7 the new rule, when that's exhausted, it goes in to
8 Beaufort. The reason I say that --

9 THE COURT: You all don't have a public
10 defender?

11 MR. JOHNSON: We do have a public defender, but
12 they have already been relieved also, I think.

13 MR. RUFFALO: I was appointed because the public
14 defender's office, Mr. Kelty had sought to have them
15 relieved as his counsel because he was dissatisfied with
16 them. I was appointed because we're a pour-over county.

17 I can provide Mr. Kelty with the address of the
18 Appellate Defender's office.

19 THE COURT: Well, they won't file the notice of
20 appeal for him, that's the thing.

21 MR. RUFFALO: No, but they're pretty liberal
22 about accepting a pro se motion up there.

23 THE COURT: Well, they'll take over the case, I
24 don't have any problem with that, and I'm sure
25 Mr. Kelty -- well, it depends on what I rule on the

1 motion, but they will take over the handling of the
2 appeal. What they don't do is take care of the filing of
3 the appeal and perfection of the appeal.

4 MR. RUFFALO: I have a suggestion.

5 THE COURT: All right.

6 MR. RUFFALO: The public defender's office
7 generate those documents and have them on forms and
8 there's just a couple of pages that they fill out with
9 pen. I would suggest to your Honor --

10 THE COURT: Well, I don't see any -- here's the
11 way I was thinking about it. I don't see any conflict
12 with the public defender's office from a procedural aspect
13 of the helping Mr. Kelty file an appeal if that's what he
14 wants. And they may have had a conflict with regard
15 to representation of him on the merits, but if it gets to
16 the point, that's going to be beyond that at this point.

17 MR. RUFFALO: They could file it.

18 THE COURT: So I will take care of that at the
19 appropriate time.

20 All right. Mr. Ruffalo, you will be relieved of
21 any further responsibility for this matter as of now.

22 MR. RUFFALO: Thank you, sir. May I stand down?

23 THE COURT: Yes, sir.

24 MR. RUFFALO: Thank you.

25 THE COURT: All right. Mr. Kelty, I have your

1 motion which you made from the standpoint and the way you
2 phrased it in the matters that were before the Court to
3 withdraw your plea. I don't know whether that's exactly
4 what you want or whether you're seeking a reconsideration
5 of your sentence, but I will hear from you with regard to
6 whatever you want to do, whatever you wish for me to
7 consider.

8 THE DEFENDANT: Your Honor, the day of that
9 plea, I played it back in my head after I remembered
10 everything, but I was confused at the time when I took the
11 plea. I was not really thinking clearly. I was thinking
12 that my case could go to trial and I was pretty much being
13 told I was going to -- I was going to be able to take it
14 to trial. So going before you for that plea and then how
15 it all turned out, I mean, like I said --

16 THE COURT: Well, let me mention a couple of
17 things to you. First of all, we went through a long
18 colloquy where I asked you a number of questions regarding
19 your plea. Do you recall that?

20 THE DEFENDANT: Yes, sir, I do.

21 THE COURT: Do you recall me asking if you were
22 pleading guilty freely and voluntarily?

23 THE DEFENDANT: Yes, sir, I remember your
24 questions.

25 THE COURT: Do you remember you telling me that

1 you were pleading freely and voluntarily?

2 THE DEFENDANT: Well, at that point I'll be
3 honest, I thought that was the only way you get through
4 this.

5 THE COURT: Well, I understand that, but you
6 still -- I've got to rely on what you -- you were sworn,
7 you were put under oath before we went through the
8 questioning process and you told me that you were pleading
9 guilty freely and voluntarily.

10 THE DEFENDANT: Yes, sir, but let me state this,
11 if I may. I wasn't able to do it at the last time, but
12 that day in question that I was sentenced for, I have no
13 recollection of it. My lawyer knew that. I told him that
14 over and over again. But he said the only way I was going
15 to get through that was to say that I had a recollection
16 of everything that took place.

17 THE COURT: You realize, Mr. Kelty, that if I
18 were to grant your motion to withdraw your plea, and
19 generally it's my policy that I don't allow withdrawal of
20 pleas -- in fact, I can't think of a single situation in
21 11 years where I have allowed the withdrawal of a plea
22 that's been completed -- that you would be back at Square
23 A facing 30 years in prison instead of the 15 years that
24 you got and that you would be -- that if you were
25 sentenced and found guilty and given the 30 years, that

1 you would have to serve 85 percent of that or 27 of those
2 30 years?

3 THE DEFENDANT: Yes, sir, I realize that
4 possibility by going to trial I'm taking that chance, but
5 at the same time I was seeking legal counseling before
6 this all occurred because that's one of my reasons for
7 asking that Mr. Ruffalo be removed so that I could have a
8 lawyer appointed.

9 THE COURT: Well, do you also recall that I
10 asked you at that plea about your satisfaction with your
11 lawyer and you told me that you were satisfied with him?
12 Do you recall me asking you that?

13 THE DEFENDANT: Yes, sir, I recall all of that.

14 THE COURT: And that was also under oath.

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Give me a moment to
17 review what you've written here.

18 Mr. Johnson, I'll hear from you, anything you
19 would like to offer on behalf of the State.

20 MR. JOHNSON: Very little, your Honor, except to
21 observe that the absence of a recollection is not a
22 defense and, in fact, would make the defense of the matter
23 more difficult.

24 The evidence in the case that the State was
25 prepared to present was overwhelming. We had been

1 prepared for this twice. The victims, the law enforcement
2 from two states were all accounted for, so to speak. It's
3 not like some of our cases where we don't know whether the
4 people are going to show up or whether they're not. But
5 we had contact with everybody and all the chain of
6 evidence, the chain of the two-state car chase. We had
7 video, we had the gun, we had the Band-Aids that were used
8 as a ruse to distract the clerk. Of course, evidence of
9 flight is evidence of guilt. All that makes it a
10 factually-overwhelming case. And the fact that there's no
11 recollection doesn't -- has no legal significance. It's
12 just a handicap for his attorney, whoever it might be.

13 The other thing is, this case had been prepared
14 once, and I think twice, and Mr. Kelty dodged one term of
15 court by asking his attorney be relieved, another term of
16 court by signing a plea sheet and then halfway through his
17 plea withdrawing. So I'm not unsympathetic with his
18 plight. He is an educated intelligent person with a
19 decent background, but I can't unrob the store.

20 And he was given every consideration at the plea
21 bargaining stage. Even after, even before you, the
22 Solicitor's policy was probably bent by me, if not broken
23 by the recommendation and by dropping the indictment for
24 use of a firearm in an armed robbery.

25 So I feel like everybody has bent over backwards

1 to help Mr. Kelty and that help has been rejected. And
2 his intelligence, that makes it sad what his predicament
3 also is obvious in that he's smart enough to be
4 manipulating the nuances of the system even by this
5 motion.

6 THE COURT: Thank you, sir.

7 Mr. Kelty, anything else you'd like to add?

8 THE DEFENDANT: Yes, sir. I mean, like, I'm not
9 trying to manipulate anything. I'm looking at my
10 situation for what it is and I'm hearing what the
11 Solicitor's office is saying about the evidence and I'm
12 recalling everything that I've gone through in dealing
13 with this situation.

14 And even at the last General Sessions, sir, I
15 stood there after I got through speaking and I heard
16 Officer Barnville made a statement that the robber went
17 into the store wielding a gun, frightening the clerk, and
18 taking the money. And it took me almost three to four
19 months from October General Sessions to actually see that
20 video; that that General Sessions was told to have me to
21 see it at the end of that court day and all motions of
22 discovery, and which I was not given a chance to see. And
23 even in seeing that, I don't see where his statement was
24 correct. That was not an accurate statement. If you were
25 to see that video yourself, sir, you would see that all he

1 was doing was adding kerosene to the fire in that case;
2 that it was not like he was helping me or speaking the
3 truth. He wasn't. He wasn't speaking the truth about the
4 situation.

5 And like I said the last time, I have been a law
6 abiding citizen all of my life. I mean, like, I got this
7 situation that I got involved in with the depression and
8 medication and everything, but before all that, I mean,
9 I've had an upstanding life and an upstanding record.
10 Served 16 honorable years in the Marine Corps. I've
11 worked and provided for my family. I retrained myself,
12 educated myself through the college programs that were
13 provide for me through voc rehabilitation. And I'm
14 charged with armed robbery. And I stand before the Court
15 and the only think I ask for is a little mercy.

16 If this is what's going to happen to me, this is
17 what's going to happen to me, and I'm being told to rot in
18 jail pretty much is what I'm being told. And I don't see
19 where I'm trying to manipulate the system if by trying to
20 pay a lawyer to see if there's something there that I'm
21 not seeing or tell me that everything that is here is
22 really what it is and not what I think it is.

23 THE COURT: All right, sir. I was just making
24 some notes as you talked, but I was listening.

25 Mr. Johnson, the public defender is Mr. Plexico?

1 MR. JOHNSON: Yes, sir. Although we do have
2 a -- Mr. Bryant is technically a contract attorney.

3 THE COURT: Mr. J.D. Bryant, Mr. John Bryant?

4 MR. JOHNSON: Yes, sir. If he wants a different
5 lawyer, then Mr. J.D. Bryant would be a different
6 individual even though he works by contract with the
7 public defender's office.

8
9 THE COURT: All right. Madam Reporter, I'd like
10 to put my ruling on the record. And what I'm going to ask
11 you to do, if you would, please, is to type this up as the
12 ruling of the Court and we'll file it with the Jasper
13 County Clerk of Court's office and have a copy sent to
14 Mr. Kelty, and when he receives this copy, that will be
15 the ruling. When he receives the written copy of the
16 ruling, that will be the ruling of the Court from which
17 the time will start to run. I'm going to tell him what my
18 ruling is now and then he'll have it in writing.

19 MR. KELTY: Your Honor?

20 THE COURT: Yes, sir.

21 MR. KELTY: Just one more thing before you make
22 your ruling.

23 The Solicitor said that the last time I withdraw
24 my plea. That's not exactly as I recall it. I recall the
25 judge asked me, as you asked me before, was I satisfied

1 with everything that my counsel had done for me, and then
2 when I started to speak and I spoke to her and told her
3 about my mental defect, she told me that she could not
4 accept my plea. She withdrew that plea herself. I did
5 not withdraw from that plea myself. I don't know that I
6 really understand that plea at the time. I don't know
7 that I understand what was being done.

8 THE COURT: All right, sir. Again, I think that
9 that's not something that I can consider because that
10 wasn't before me and I don't know anything about that.
11 That would be a matter properly raised at the appellate
12 stage.

13 Also it appears to me -- well, let me put this
14 on the record.

15 As the ruling of the Court is that this is a
16 motion to withdraw the plea in the way that it is phrased.
17 The order of the Court is that the motion to withdraw the
18 plea is denied. I find that the defendant freely and
19 voluntarily entered into the plea as shown on the record
20 where he indicated he was freely and voluntarily entering
21 into the plea in response to questioning from the Court,
22 and further, that he was satisfied with his counsel. He
23 has now indicated some dissatisfaction with counsel, but
24 there is a procedure for that that is not for this Court
25 to consider at this stage.

1 There was also a clear factual basis for the
2 plea as indicated by the Solicitor's office at the time
3 that the plea was made, and so the Court would therefore
4 deny the motion to withdraw the plea.

5 To the extent that the motion can be considered
6 as a motion for a new trial, that motion is also denied.

7 Furthermore, if the motion is considered as one
8 for reconsideration, the Court has carefully considered
9 the sentence that was imposed for reconsideration of the
10 sentence, the Court has carefully considered the sentence
11 that was imposed, and my recollection at the time is that
12 there were four factors that the Court considered in
13 mitigation that reduced the sentence from the mandatory
14 30-year sentence down to what I gave of 15 years. I
15 considered these four factors and these are the things
16 that did result in my sentencing Mr. Kelty to only 15
17 years as opposed to 25 to 30 years which he could have
18 received under the statute. Those included his age, the
19 lack of a substantial criminal record, his education where
20 he had obviously brought himself up and obtained his
21 education by going back to school on his own, and his 16
22 years of military service. All of those were considered
23 as mitigating factors in his favor to reduce the sentence
24 from the 25 to 30-year range which I thought this crime
25 would probably justify on merit and reduced it down to 15

1 years. So to the extent that the motion can be considered
2 one for reconsideration of the sentence, that motion is
3 also denied.

4 Finally, the Court will appoint Mr. J.D. Bryan
5 of the Public Defender's office in Jasper County for the
6 purposes only of taking and advising Mr. Kelty on the
7 necessary steps to file the appropriate documents to get
8 the matter perfected for an appeal. As soon as Mr. Bryan
9 has taken care of making sure that the necessary documents
10 are filed to perfect an appeal, then Mr. Bryan will be
11 relieved -- and notifying the Office of Appellate Defense,
12 then Mr. Bryan would be relieved of any further
13 responsibility for this matter. But I want Mr. Bryan to
14 advise him on the steps for taking an appeal and also make
15 sure that Appellate Defense takes this matter over at the
16 appropriate time.

17 I'm going to ask the court reporter at her
18 earliest convenience to just type up this portion of the
19 transcript of this which will become the written order of
20 the Court. I'll file a copy of this with the Jasper
21 County Clerk's office and a copy will be sent to Mr. Kelty
22 and that will become the written order of the Court.

23 The hearing is concluded.

24 (The excerpt of proceedings was concluded.)

25 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Abraham Kelty,

Appellant.

Appeal From Jasper County
Howard P. King, Circuit Court Judge

Unpublished Opinion No. 2010-UP-057
Submitted January 4, 2010 – Filed January 28, 2010

AFFIRMED

Appellate Defender LaNelle DuRant, of Columbia,
for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
and Assistant Attorney General Deborah R.J. Shupe,

all of Columbia; Solicitor I. McDuffie Stone, III, of Beaufort, for Respondent.

PER CURIAM: Abraham Kelty appeals his guilty plea and sentence for armed robbery. On appeal, Kelty maintains the plea court erred by denying his motion for a mental evaluation and then accepting his guilty plea. We affirm¹ pursuant to Rule 220(b)(1), SCACR, and the following authorities: State v. Passaro, 350 S.C. 499, 505, 567 S.E.2d 862, 866 (2002) ("[A] guilty plea generally constitutes a waiver of non-jurisdictional defects and claims of violations of constitutional rights."); State v. Munsch, 287 S.C. 313, 314, 338 S.E.2d 329, 330 (1985) ("Guilty pleas act as a waiver of all non-jurisdictional defects and defenses."); Id. (holding a guilty plea "leaves open for review only the sufficiency of the indictment and waives all other defenses"); Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000) ("In order for a defendant to knowingly and voluntarily plead guilty, he must have a full understanding of the consequences of the plea.").

AFFIRMED.

SHORT, THOMAS, and KONDUROS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

COUNTY OF JASPER)

) CIVIL ACTION COVERSHEET

Abraham Kelty #321472)

Plaintiff(s))

VS.)

State of South Carolina)

Defendant(s))

(Please Print)

Submitted By: Abraham Kelty #321472

Lieber Corr. Inst.

Address:

P.O. Box 205

Ridgeville, SC. 29472

SC Bar #:

Telephone #:

Fax #:

Other:

E-mail:

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
- ☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | ☐ Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20____-CP-_____ | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☒ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Other (899) | ☐ Worker's Comp (960) |
| | ☐ Other (799) | | ☐ Zoning Board (970) |
| Special/Complex /Other | | | ☐ Administrative Law Judge (980) |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | | ☐ Public Service Commission (990) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | ☐ Other (999) |
| ☐ Other (699) | ☐ Sexual Predator (510) | | |

Submitting Party Signature:

Abraham Kelty

Date: 6 July 2010

FORM 5

STATE OF SOUTH CAROLINA)

County of JASPER)

IN THE COURT OF COMMON PLEAS

Abraham Kelty #321472)

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

v.)

State of South Carolina)

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lieber Corr. Inst. P.O. Box 205, Ridgeville
South Carolina, 29472
2. Name and location of Court which imposed sentence Jasper County Court
of General Sessions
3. Name(s) of co-defendant(s) (if any) none
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2006-GS-27-0302 (armed robbery)

- (b) 06-GS-27-0205; and 0303 were nolle prossed
- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) April 2, 2007, (15-years) confinement
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty plea of guilty
- (b) after a plea of not guilty n/a
- (c) after a plea of nolo contendere n/a
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. denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. January 28, 2010
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. U.P.Op.No. 2010-UP-057
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) n/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) involuntary guilty plea
- (c) see attached memorandum in support
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) see attached memorandum of law in support.
- (b) same as above
- (c) same as above
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. n/a
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. n/a
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. n/a

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. n/a

ii. _____

iii. _____

iv. _____

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

i. n/a

ii. _____

iii. _____

iv. _____

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

no

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

(a) which grounds have been presented:

i. n/a

ii. _____

iii. _____

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

i. n/a

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) first filing for post conviction relief
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? yes
- (b) your trial, if any? n/a
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? yes
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. Dudley B. Ruffalo, Esq.
- Jasper County Bar
- ii. _____
- iii. same as above
- Lanelle C. Durant
- (b) the proceedings at which each such attorney represented you:
- i. plea and sentencing
- ii. _____
- iii. direct appeal

STATE OF SOUTH CAROLINA
IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER

Abraham Kelty #321472 -- Petitioner,

-VS-

State of South Carolina -- Respondent,

MEMORANDUM OF LAW IN SUPPORT OF
APPLICATION FOR POST CONVICTION RELIEF
PURSUANT TO S.C. CODE ANN.
§§ 17-27-20 THROUGH 17-27-160

Respectfully Submitted,

/s/ Abraham Kelty
Abraham Kelty

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER)

Abraham Kelly) Indict.No. 2006-GS-27-302
Petitioner,)
 -V-) MEMORANDUM OF LAW IN SUPPORT OF
State of South Carolina) APPLICATION FOR POST CONVICTION
Respondent,) RELIEF PURSUANT TO S.C.CODE ANN.
_____) §§ 17-27-20 THROUGH 17-27-160

COMES NOW, Abraham Kelly, pro-se, herein after, petitioner, respectfully seeking relief in this Honorable Court pursuant to S.C. Code Ann. §§ 17-27-20 through 17-27-160, claiming that his constitutional rights were violated in a number of ways, including but not limited to his Sixth Amendment right to the effective assistance of trial counsel and his Fourteenth Amendment right to due process of law that is protected under the Federal Constitution.

Petitioner, through the issues presented, statement of facts and citations of authorities relied on will show unto this Honorable Court that he is entitled to the requested relief sought herein.

Respectfully Submitted,

/s/ Abraham Kelly
Abraham Kelly

STANDARD OF REVIEW

In Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.E.2d 674 (1984), the United States Supreme Court set forth a two-part standard for evaluating claims of ineffective assistance of counsel. The first part of the test requires that a defendant show that his counsel's performance was deficient, such that it falls below an objective standard of reasonableness.

The second part of the test requires that a defendant show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different.

This second part of the Strickland test has also been referred to as the "prejudice" requirement. Although the Supreme Court decision in Strickland dealt with ineffective assistance of counsel in a capital sentencing proceeding, and was premised in part on the similarity between such a proceeding and the usual criminal trial, the same two-part standard was extended so as to apply to ineffective assistance claims arising out of the plea process in Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.E.2d 203 (1985).

STATEMENT OF CASE

On May 22, 2006, Petitioner was indicted by the Jasper County Grand Jury for the charges of armed robbery, failure to stop for a blue light, and possession of a firearm during the commission of a violent offense. On February 12, 2007, Petitioner appeared before the Honorable Carmen T. Mullen to enter a guilty plea to the lesser included offense of common law robbery. Petitioner was represented by Dudley B. Ruffalo, Esquire.

Pursuant to negotiations, Petitioner was going to plead guilty to the lesser included offense of common law robbery under a cap of 10 years and the State agreed to dismiss the failure to stop for a blue light and the weapons charge. Ultimately because Petitioner told Judge Mullen he couldn't remember all the facts surrounding the incident, Judge Mullen refused to accept Petitioner's plea at that time.

On April 2, 2007, Petitioner was taken before the Honorable Howard P. King and entered a plea of guilty to armed robbery and the failure to stop for a blue light and the weapons charged were nolle prossed. Judge King sentenced Petitioner to 15-years.

On April 26, 2007, Petitioner appeared before Judge King a second time for a hearing on Petitioner's Motion to reconsider the Sentence and Motion to Withdraw the Plea and Attorney Ruffalo's Motion to be relieved as Petitioner's attorney. Judge King denied both of Petitioner's motions and granted Ruffalo's motion to be relived.

ISSUE (A) WAS COUNSEL INEFFECTIVE FOR FAILING TO MOVE THE ENFORCE
THE 10-YEAR PLEA AGREEMENT, AS EXPRESSED BY THE PROSECUTION?

ISSUE (B) IS PETITIONER ENTITLED TO A SPECIFIC SENTENCE
PERFORMANCE BASED ON HIS DETRIMENTAL RELIANCE OF THE STATE'S
10-YEAR PLEA AGREEMENT?

To save the Court's time, Petitioner will address these
issues together since the facts of one encompass the other.

FACTS

Counsel advised Petitioner to plead guilty pursuant to a
negotiated plea agreement of 10-years. During the plea the
following colloquy was recorded:

THE COURT: And we might as well go ahead and
put the negotiations on the record.

MR. JOHNSON: 10 years Your Honor. And we will
also nolle pross any related warrants, which
include a rather outrageous blue light charge
and possession of a deadly weapon during the
commission of a violent felony.

MR. RUFFALO: If Your Honor please, it is my
understanding that it would be a cap of 10.
And that was the offer. And that is correct
that they're going to dismiss the blue light
and the use of a weapon during the commission
of a violent offense.

THE COURT: And, additionally, he was charged
with armed robbery, but you're allowing him to
plead to strong armed robbery --

MR. JOHNSON: That is correct. [Tr.p.5, L.11-25].

During the taking of the plea, Petitioner told Judge Mullen he couldn't remember all the facts surrounding the incident and the following was recorded:

THE COURT: All right. Mr. Kelty, very well. Because you cannot recall the incident, unless we can get something resolved with your attorney and the Solicitor's Office, I'm going to ask you to step down sir. And I'm not accepting your plea. [Tr.p.8, L.21-25].

THE COURT: If y'all can get this resolved and want to bring it back in front of me this week or any other time, I'm happy to accommodate y'all.

MR. JOHNSON: You Honor, if it's not inappropriate, I would like the record to reflect that the Solicitor's Office has a policy that when plea negotiations are not accepted --

THE COURT: They are withdrawn.

MR. JOHNSON: -- they are withdrawn. And I just don't want any --

THE COURT: Misunderstanding.

MR. JOHNSON: -- misunderstanding. I'm not saying that we wouldn't do it later in the week. [Tr.p.9, L.5-20].

Petitioner asserts that the underlined portions show the state entered a 10-year agreement with Petitioner and that all though Judge Mullen wouldn't accept Petitioner's plea at that time the State still agreed to the 10-year plea later in the week. Petitioner asserts that counsel was ineffective for failing to move to enforce the 10-year agreement based up Petitioner's

detrimental reliance of the State's offer. It was not Petitioner's fault that Judge Mullen wouldn't accept the plea at that time, and as was seen Mr. Johnson even stated that the State "wasn't saying they wouldn't do it later that week." [Tr.p.9, L.19-20].

It was Petitioner's understanding and belief that he was still going to get the 10-years as offered for his plea of guilty. Petitioner's asserts that he is entitled a specific sentence performance of 10-years.

DISCUSSION

A plea agreement is only an "offer" until the defendant enters a court-approved guilty plea. A defendant accepts the offer by pleading guilty. thus, until a formal acceptance of the plea by the court has occurred, the plea binds no one, not the defendant and not the state, or the court. See Harden v. State, 453 So.2d 550 (Fla.Dist.Ct.App.1984)(until formal acceptance of plea has occurred, plea binds no one, not defendant, state of court, formal acceptance of plea occurs when trial court affirmatively states to the parties; in open court and for the record, court accepts the plea).

However, this general rule is subject to a detrimental reliance exception. Absent a plea of guilty, a defendant may only enforce an oral agreement upon a showing of detrimental reliance. Even if the agreement is not finalize by the court, a defendant's detrimental reliance on a prosecutorial promise in plea

bargaining could make a plea agreement binding. United State v. Savage, 978 F.2d 1136 (9th.Cir.1992) See also Caldwell v. State, 295 Ark. 149, 747 S.W.2d 99 (1998)(absent showing of acceptance of plea of guilty based upon agreement and absent showing of other detrimental reliance upon agreement, defendant is not entitled to enforcement of it), in the instant case the State clearly stated on the record that the State had no problem with the offer later in the week. Petitioner was under the belief that the State was still offering Petitioner 10-years in exchange for a plea of guilty.

A defendant relies upon a solicitor's plea offer by taking some substantial step or accepting serious risk of an adverse result following acceptance of the plea offer. See State v. Vixamar, 687 So.2d 300 (Fla.Dist.Ct.App.1997). Detrimental reliance may be demonstrated where the defendant performed some part of the bargain. State v. O'Leary, 128 N.H. 661, 517 A.2d 1174 (1986).

Analyzing this issue, the North Carolina Supreme Court, in State v. Collins, 300 N.C. 142, 265 S.E.2d 172 (1980), explicated: The State may withdraw from a plea bargain arraignment any time prior to, but not after, the actual entry of the guilty plea by the defendant or any other change of position by him constituting detrimental reliance upon the agreement. The rational behind these decisions is that plea bargain arrangements are not binding upon the prosecutor, in absence of prejudice to a defendant resulting from reliance thereon, until they receive judicial sanction, anymore [sic] than they are binding on the

defendant. When viewed in light of the analogous laws of contracts, it is clear that plea agreements normally arise in the form of unilateral contracts. The consideration given for the prosecutor's promise is not defendant's corresponding promise to plead guilty, but rather is defendant's actual performance so by pleading.

Relying on State v. Gates, 299 S.C. 92, 382 S.E.2d 886 (1989) and Jordan v. State, 297 S.C. 52, 374 S.E.2d 683 (1988), maintains "South Carolina case law clearly recognizes that a defendant has a right to enforce a plea agreement." In the instant matter counsel should have moved the Court to enforce the 10-year plea bargain based upon Petitioner's detrimental reliance of the State's offer. This Court should rule that the State is bound by the agreement and this case should be resolved with a specific sentence performance to comply with the 10-year plea.

For the aforementioned, Petitioner respectfully prays this Court will issue a specific sentence performance in the instant matter.

CONCLUSION

WHEREFORE, Petitioner respectfully pray that this Court will issue a specific sentence performance in the instant matter.

Respectfully Submitted,

/s/ Abraham Keity

Abraham Keity

STATE OF SOUTH CAROLINA
 IN THE COURT OF COMMON PLEAS
 COUNTY OF JASPER

CERTIFICATE OF SERVICE

I, Abraham Kelty, do hereby swear and declare that I have mailed the Original and (1) one copy of the enclosed application for post conviction relief and memorandum of law in support to the Jasper County Clerk of Court's Office.

This was done by placing the aforesaid documents in a properly addressed, sufficient postage affixed envelope and placed in the U.S mailroom here at Lieber Correctional Institution in Ridgeville, SC. 29472.

SWORN TO AND SUBSCRIBED BEFORE ME

THIS 6th DAY OF July, 2010

Sylvia Jones
 NOTARY PUBLIC

MY COMM. EXPIRES 1/24/2018

Respectfully Submitted,

/s/ Abraham Kelty
 Abraham Kelty

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

specific sentence performance

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

no

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Dorchester)

VERIFICATION

I, Abraham Kelty, 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.

Abraham Kelty

SWORN to and subscribed before me this 16th
day of July, 2010.

Sylvia Jones (L.S.)
Notary Public

My Commission Expires: 1/24/2013

2010 JUL -3 PM 5:20
CLERK OF COURT
JASPER COUNTY SC

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

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

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

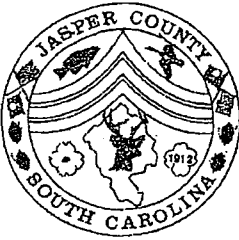
Abraham Kelty
Applicant

SWORN or affirmed to and subscribed before me this
10th day of July, 2010.

Sylvia Jones
Notary Public

My Commission Expires: 1/24/2018

2010 JUL -3 PM 3:55
CLERK OF COURT
JACOB J. JACOBSON



Margaret Bostick
Clerk

Jasper County Clerk of Court

Post Office Box 248 • Ridgeland, South Carolina 29936

Phone: (843) 726-7710 • Fax: (843) 726-7782

SC Attorney General
RECEIVED

July 8, 2010

JUL 13 2010

Referred to

M. Friedman

CERTIFICATE OF TRANSMITTAL

Answered

TO: OFFICE OF THE ATTORNEY GENERAL
FROM: JASPER COUNTY CLERK OF COURT'S OFFICE

WE HAVE ENCLOSED A COPY OF THE PAPERWORK WHICH WAS SUBMITTED
TO US IN THE BELOW LISTED CASE.

CASE NO.: Application For Post-Conviction Relief
2010-CP-27-414

Abraham Keltz #321472 vs. State of South Carolina

RECEIPT OF THE ABOVE FILE IS HEREBY ACKNOWLEDGED THIS THE
____ DAY OF _____, 20____.

BY: _____
(NAME AND TITLE)

**PLEASE RETURN THE SIGNED COPY TO THE JASPER COUNTY CLERK OF
COURT AT THE ABOVE ADDRESS**

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF JASPER	)	
	)	
Abraham Kelty, #321472,	)	2010-CP-27-414
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed July 8, 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 Jasper County Clerk of Court. The Applicant was indicted at the July 2006 term of the Jasper County Grand Jury for armed robbery (2006-GS-27-302). Dudley B. Ruffalo, Esquire, represented the Applicant. On April 2, 2007, the Applicant pled guilty as indicted. The State dismissed charges for failure to stop for a blue light and possession of a firearm during the commission of a violent crime in exchange for the plea. The Honorable Howard P. King sentenced him to confinement for fifteen (15) years. The Applicant subsequently filed a timely motion for reconsideration. After a hearing on April 26, 2007, Judge King denied the motion for reconsideration.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. Lanelle C. Durant, Esquire, of the South Carolina Office of Appellate Defense, represented Applicant on appeal. After full briefing by both sides, the South Carolina Court of Appeals

affirmed the conviction and sentence. State v. Kelty, Op. No. 2010-UP-057 (S.C. Ct. App. filed January 28, 2010). The Remittitur was issued on February 16, 2010.

Attached herewith and incorporated herein are the records of the Jasper County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, the guilty plea transcript, the motion for reconsideration transcript, the Record on Appeal, the Court of Appeals opinion affirming the conviction and sentence, and the Remittitur dated February 16, 2010.

II.

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

1. Ineffective assistance of counsel in that counsel failed to move to enforce the 10-year plea agreement as expressed by the prosecution.
2. Involuntary guilty plea.

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, 80 L.Ed.2d 674, 692 (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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability

that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

V.

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

VI.

WHEREFORE, having made its Return, the State requests an evidentiary hearing be held.

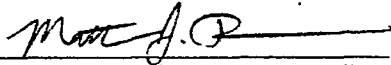
Respectfully submitted,

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

_____, 2010.

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

ABRAHAM KELTY, 321472,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

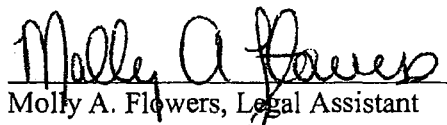
2010-CP-27-414

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return of the Respondent in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Deborah Ann Malphrus, Esquire
P.O. Box 1749
Ridgeland, SC 29936-1749

DATED this 14th day of October, 2010.


 Molly A. Flowers, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA
COUNTY OF JASPER
IN THE COURT OF COMMON PLEAS

C/A No. 10-CP-27-414

ABRAHAM KELTY, #321472, APPLICANT,

VS.

STATE OF SOUTH CAROLINA, RESPONDENT.

**AMENDED AND SUPPLEMENTAL POST CONVICTION RELIEF
APPLICATION PURSUANT TO RULE 15, SCRCF
(INCLUDING MEMORANDUM OF LAW)**

To: South Carolina Attorney General's Office, Counsel for Respondent:

COMES NOW, Abraham Kelty, the Applicant in the above captioned case, by and through the undersigned counsel, who respectfully moves in the above captioned case to amend and supplement his Original and prior Amended PCR Applications pursuant to Rule 15, SCRPC.

In addition to grounds contained in his previous applications, Petitioner asserts that he was denied the effective assistance of counsel when trial counsel failed to specifically enforce Applicant's plea agreement based upon the *detrimental reliance* doctrine expressed by the South Carolina Supreme Court in *Custodio vs. South Carolina* 644 S.E.2d 36 (S.C. 2007).

MEMORANDUM OF LAW

Applicant's two-pronged burden under *Strickland v. Washington*, 466 U.S. 667 (1984) and its progeny is met in this case as follows:

Prong I – Deficient Performance - Trial counsel's performance was deficient under *Custodio* because during this case there was a plea agreement inducing the Applicant to provide beneficial information to the State before a trial judge. Such plea agreement expired/withdrawn, but not until after the said information was transmitted on the record.

Prong II – Reasonable Probability of a Different Outcome – But for trial counsel's error, the above plea agreement would have been enforced giving the Applicant a 10 year rather than a 15 year sentence.

Items in the record to support Prong I of the above position are as follows:

1. Agreement Existed – (Tr.P5, L.11 to L.15)
2. Applicant provided beneficial information to State with detrimental reliance (Tr.P5, L.8)
3. Pleas Agreement withdrawn by State AFTER information was given (Tr.P.9, L. 15-16)

Prong II is supported by the absence of any extraordinary facts in the transcript because:

- a. South Carolina trial courts generally accept Plea Bargains under the Separation of Powers Doctrine contained in the South Carolina Constitution;
- b) Although a defendant has no constitutional right to a plea bargain, it is public policy and tradition that such agreements are treated under contract law by the courts; and,

c) The State has absolute prosecutorial discretion to *nolle pros* all charges if the Courts did not accept plea bargains. Further, any rejection of a plea bargains may only be made under sound judicial discretion which could only be based upon extraordinary circumstances not apparent in the transcript or on the record in this case). *Reed v. Becka* 511 S.E.2d 396 (S.C. App. 1999).

The beneficial information provided by Applicant to law enforcement is found in the Transcript (Tr.P 3-5). There is a colloquy in the record with various preliminary questions and answers between the Applicant and the Court regarding the actual details of the factual activities of the Applicant as described in the indictment. Finally, all of these factual assertions and the Applicants competence to make the plea are summed up on the record (Tr.P5, L.8) when the court asked the ultimate question of the Applicant in open court:

THE COURT: Do you understand the charge contained in this indictment?

DEFENDANT KELTY: Yes, I do.

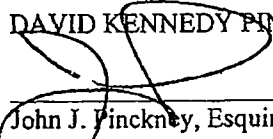
THE COURT: And how do you wish to plead to it, Mr. Kelty?

DEFENDANT KELTY: Guilty as charged.

It would defy reason to say that having Mr. Kelty admit the facts of the indictment and thereafter announce his guilt to the charges against him before a criminal court was not at least "beneficial to law enforcement" under *Custodio*. These admissions are by definition detrimental to the Applicant. See also *Reed v. Becka*, 511 S.E.2d at 403, cited with approval by *Custodio*.

RESPECTFULLY SUBMITTED,

DAVID KENNEDY PINCKNEY, LLC

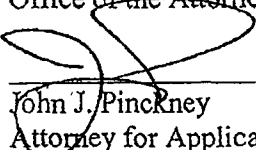

John J. Pinckney, Esquire
14 WESTBURY PARK WAY, SUITE 200
BLUFFTON, SOUTH CAROLINA 29910
TEL 843.819.2661 FAX 888.308.1021
E-MAIL: JOHN@DKPLAW.NET

ATTORNEYS FOR APPLICANT

Bluffton, South Carolina
August 23, 2012

Certificate of Service

I certify that on August 23, 2012, I caused to be mailed or delivered a copy of the foregoing document(s) to its counsel as follows: Ashleigh R. Wilson, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211



John J. Pinckney
Attorney for Applicant

STATE OF SOUTH CAROLINA
COUNTY OF JASPER
IN THE COURT OF COMMON PLEAS

C/A No. 10-CP-27-414

ABRAHAM KELTY, #321472, APPLICANT,

VS.

STATE OF SOUTH CAROLINA, RESPONDENT.

**2nd SUPPLEMENTAL POST CONVICTION RELIEF
APPLICATION PURSUANT TO RULE 15, SCRPC
(INCLUDING MEMORANDUM OF LAW)**

To: South Carolina Attorney General's Office, Counsel for Respondent:

COMES NOW, Abraham Keltz, the Applicant in the above captioned case, by and through the undersigned counsel, who respectfully moves in the above captioned case to further supplement his PCR Application pursuant to Rule 15, SCRCP.

ADDITIONAL GROUNDS

In addition to grounds contained in his previous Application, Applicant asserts that he was denied the effective assistance of counsel when trial counsel failed to protect his rights as set forth in two (2) separate letters of the Applicant:

Letter #1 – addressed to the undersigned and dated August 8, 2012, itemizing five (5) separate grounds for his PCR Application and requesting, inter alia, other items of evidence therefor. This letter is attached as Exhibit A hereto; and,

Letter #2 – addressed to the Honorable Chief Justice Jean Hofer Toal of the South Carolina Supreme Court and dated August 25, 2012, requesting, inter alia, that the undersigned amend the PCR Application to include an argument under Nicholas Boan v. State, 295 S.E.2d 850 (S.C. 2010), (holding that where an oral pronouncement of a sentence controls over a conflicting sentencing order the oral pronouncement controls) and requesting other items of evidence therefor. This letter is attached as Exhibit B hereto.

The undersigned respectfully submits Exhibits A and B to comply with the spirit and letter of Rule 71.1, POST CONVICTION RELIEF ACTIONS: Rule 71.1(d) providing that "... Counsel shall insure that all available grounds for relief are included in the application and shall amend the application if necessary." Accordingly, all grounds contained in Exhibits A and B are hereby preserved for appellate review.

RESPECTFULLY SUBMITTED,

DAVID KENNEDY PINCKNEY, LLC



John J. Pinckney, Esquire
14 WESTBURY PARK WAY, SUITE 200
BLUFFTON, SOUTH CAROLINA 29910
TEL 843.819.2661 FAX 888.308.1021
E-MAIL: JOHN@DKPLAW.NET

ATTORNEYS FOR APPLICANT

Bluffton, South Carolina
March 13, 2013

8 August 2012

Mr. John J. Pinckney
14 Westbury Park Way
Suite 200
Bluffton, SC 29910

Dear Sir:

I just received your letter today dated 1 August 2012, because it was sent to Lieber Corrections, at Ridgerville, S.C. I am now at Manning Corrections, Ward-7 B-1-B, 502 Beckman Drive, Columbia, SC 29203. I would like for you to investigate/research the following:

1. Did the court or my lawyer err in denying me a mental evaluation then accepting my plea?
2. GBMI (R12 L. 20-23 my transcript) did my lawyer err in denying me a GBMI plea?
3. Shouldn't my plea be challenged because my lawyer pressured me into accepting, knowing that I was not taking my medications, as my medical records with S.C.D.C. indicates.
4. Store video never shows me pulling a gun on the clerk, nor forcing the clerk to give me money. Her statements contradicts what the store video shows.
5. Was it proper for Mr. Buffalo to step down as my lawyer when I requested to withdraw my plea; after he refused to remove himself so that I could seek paid counsel at my April 2, 2007 court appearance?

I would also like to request a copy of my medical records from the South Carolina Department of Corrections. It will show that I was not taking my medications Zoloft for my depression on the date I took my plea. Will you also request a copy of my Veterans file from my appeals lawyer Mrs. Durant? There is a video of the incident at the time that I was arrested. Would you please get a copy of the video and a copy of the police report in its completion and statements made by Capt. White during the preliminary hearing also stating that there was no gun seen in the video. Please send me a copy of the video and police report in its entirety.

Can you request an evaluation (MRI) of me to see if there is any permanent damage done to me, because of the different medications I was given? When I was arrested I had \$405.00 on me at the time. The robbery report stated \$60.00 was taken. I've made several attempts to retrieve my money from Harderville Police Department, but they have not responded. Can you help me get my money?

There is a case: Nicholas Boan V. State of South Carolina (July 12, 2010) I want to use as part of my argument that Mr. Ruffalo should have argued for my ten year with a cap plea agreement with the state. Please do an amendment for me.

(A₃)

Can you tell me how and when I'll be hearing from you? I'll try calling your office number on the letter head tomorrow. Who is going to be the judge for the week of my hearing? I will be looking forward to hearing from you very soon. Thanking you in advance.

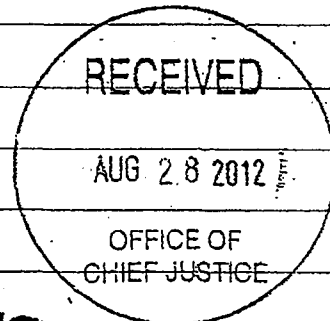
ABRAHAM KELTY 321472

~~Abraham Kelly~~

Exhibit B,

25 August 2012

Honorable Judge Jean H. Toal
 Chief Justice
 South Carolina Supreme Court
 P.O. Box 11330
 Columbia, SC 29211



RECEIVED
 AUG 28 2012

Judge Toal

I've asked my PCR lawyer Mr. John J. ^{S.C. SUPREME COURT} ~~Boan~~ to do an amendment to my case; Nicholas Boan v. State 7-12-10, but he has refused. I asked him to get a copy from my SCD medical records; showing that I was not taking my zoloft medication at the time I took my plea on 4-2-07, and my lawyer was aware of this again he has refused. I asked him to get me a copy of my police report and a copy of the preliminary hearing which shows Captain White the arresting officer stated there was no gun in the store video of the robbery he still refused. During court session for the week in October 2006, the judge stated that I should be given a complete copy of the police report and photo-copy of the video tape. Everything I've asked for my lawyer has refused to do. According to South Carolina Supreme Court Rules 50(3) and 71.1(d) make it mandatory that post conviction attorneys make sure that all available grounds are raised in post conviction proceedings.

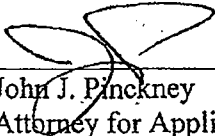
The burden of proof for my case lies on me to present my case. I need my lawyers cooperation on this matter. Any assistance you can give me I will appreciate. Thanking you in advance.

ABRAHAM KELTY 32/472

~~Abraham Kelly~~

Certificate of Service

I certify that on March 13, 2013, I caused to be mailed or delivered a copy of the foregoing document(s) to its counsel as follows: Ashleigh R. Wilson, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211



John J. Pinckney
Attorney for Applicant

STATE OF SOUTH CAROLINA
COUNTY OF JASPER
IN THE COURT OF COMMON PLEAS

C/A No. 10-CP-27-414

ABRAHAM KELTY, #321472, APPLICANT,

VS.

STATE OF SOUTH CAROLINA, RESPONDENT.

**3rd SUPPLEMENTAL POST CONVICTION RELIEF
APPLICATION PURSUANT TO RULE 15, SCRCP
(INCLUDING MEMORANDUM OF LAW)**

To: South Carolina Attorney General's Office, Counsel for Respondent:

COMES NOW, Abraham Kelty, the Applicant in the above captioned case, by and through the undersigned counsel, who respectfully moves in the above captioned case to further amend and supplement his PCR Application pursuant to Rule 15, SCRPC.

In addition to grounds contained in his previous Amended and Supplemental Applications, Applicant asserts that he was denied the effective assistance of counsel when trial counsel failed to specifically enforce Applicant's plea agreement of record based upon the *detrimental reliance* doctrine expressed by the South Carolina Supreme Court in *Custodio vs. South Carolina* 644 S.E.2d 36 (S.C. 2007).

MEMORANDUM OF LAW

Applicant's two-pronged burden under *Strickland v. Washington*, 466 U.S. 667 (1984), and it's progeny is met in this case as follows:

Prong I – Deficient Performance - Trial counsel's performance was deficient under *Custodio* because during this case there was a plea agreement inducing the Applicant to provide beneficial information to the State in open court and before a trial judge. The State's position is that such a plea agreement was expired/withdrawn. The Applicant agrees that the State attempted to withdraw the plea agreement and that the State ordinarily has such a right of withdrawal. But the State's right of withdrawal evaporated the moment the said beneficial information in favor of the State was transmitted and exposed on the record, and at the same moment the plea agreement became binding at the option of the Applicant.

Prong II – Reasonable Probability of a Different Outcome – But for trial counsel's error, the above plea agreement would have been enforced giving the Applicant a 10 year rather than a 15 year sentence with an extremely high probability.

Items in the record to support Prong I of the above position are as follows:

1. Agreement Existed – (Tr.P5, L.11 to L.15)
2. Applicant provided beneficial information to State with detrimental reliance (Tr.P5, L.8)
3. Plea Agreement withdrawn by State AFTER beneficial information was given (Tr.P.9, L. 15-16)

Prong II is supported by the absence of any extraordinary facts in the transcript because:

- a) South Carolina trial courts generally accept Plea Bargains under the Separation of Powers Doctrine contained in the South Carolina Constitution;
- b) Although a defendant has no constitutional right to a plea bargain, it is public policy that such agreements are treated under contract law by the courts; and,
- c) The State has absolute prosecutorial discretion to *nolle pros* all charges if the Courts did not accept plea bargains.

Accordingly, any rejection of a plea bargain agreement may only be made under sound judicial discretion which could only be based upon extraordinary circumstances not apparent in the transcript or on the record in this case. *Reed v. Becka* 511 S.E.2d 396 (S.C. App. 1999).

The beneficial information provided by Applicant to law enforcement is found in the Transcript (Tr.P 3-5). There is a colloquy in the record with various preliminary questions and answers between the Applicant and the Court regarding the actual details of the factual activities of the Applicant as described in the indictment.

Finally, all of these factual assertions and the Applicants competence to make the plea are summed up on the record (Tr.P5, L.8) when the court asked the ultimate question of the Applicant in open court:

THE COURT: Do you understand the charge contained in this indictment?

DEFENDANT KELTY: Yes, I do.

THE COURT: And how do you wish to plead to it, Mr. Kelty?

DEFENDANT KELTY: Guilty as charged.

It would defy reason to say that having Mr. Kelty admit the facts of the indictment and thereafter announce his guilt to the charges against him before a criminal court was not at least "beneficial to law enforcement" under *Custodio*. These admissions are by definition, detrimental to the Applicant. See also *Reed v. Becka*, 511 *S.E.2d* at 403, cited with approval by *Custodio*.

This court should therefore remand this case for entry of a conviction under the terms of and to enforce the agreement that still exists of record: (Tr.P5, L.11 to L.15).

RESPECTFULLY SUBMITTED,

DAVID KENNEDY PINCKNEY, LLC



John J. Pinckney, Esquire
14 WESTBURY PARK WAY, SUITE 200
BLUFFTON, SOUTH CAROLINA 29910

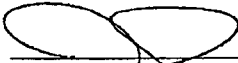
TEL 843.819.2661 FAX 888.308.1021
E-MAIL: JOHN@DKPLAW.NET

ATTORNEYS FOR APPLICANT

Bluffton, South Carolina
March 13, 2013

Certificate of Service

I certify that on March 13, 2013, I caused to be mailed or delivered a copy of the foregoing document(s) to its counsel as follows: Ashleigh R. Wilson, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211



John J. Plackney
Attorney for Applicant

STATE OF SOUTH CAROLINA
COUNTY OF JASPER
IN THE COURT OF COMMON PLEAS

C/A No. 10-CP-27-414

ABRAHAM KELTY, #321472, APPLICANT,

VS.

STATE OF SOUTH CAROLINA, RESPONDENT.

**NOTICE OF MOTION, MOTION
TO BE RELIEVED AS COUNSEL FOR APPLICANT**

To: South Carolina Attorney General's Office, Counsel for Respondent:

COMES NOW, Abraham Keltz, the Applicant in the above captioned case, by and through undersigned counsel, who respectfully moves in the above captioned case for an order relieving undersigned as counsel for the Applicant pursuant to Rule 1.16 of the South Carolina Rules of Professional Conduct and Rule (SCACR) and Rule 11(b) of the South Carolina Rules of Civil Procedure (SCRCP).

In support of this Motion, undersigned counsel shows the Court the following:

MANDATORY WITHDRAWAL

1. Undersigned counsel was discharged by the Applicant on December 15, 2012, as indicated by the Applicant's letter of the same date, a copy of which is attached hereto as Exhibit A.

2. Pursuant to Rule 1.16(a) and 1.16(a)(3), SCACR:

(a) Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if:

* * *

(3) the lawyer is discharged.

PERMISSIVE WITHDRAWAL

3. The Applicant insisted that undersigned counsel take actions with which the undersigned has a fundamental disagreement: to wit, see letters of Applicant attached as Exhibits A and B to Applicant's 2nd Supplemental PCR Application.

4. Pursuant to Rule 1.16(b) and 1.16(b)(4), SCACR:

(a) Except as stated in paragraph (c), a lawyer may withdraw from representing a client if:

* * *

(4) the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement;

5. With reference both to the 2nd Supplemental Application filed contemporaneously herewith by the undersigned on behalf of the Applicant and to Rule 1.16, SCACR, Mandatory Withdrawal, Comment [3]:

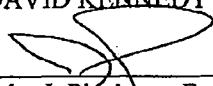
a) the undersigned has encountered difficulty based upon the Applicant's demands, some of which are confidential; and,

b) this motion should be granted because the undersigned hereby states that professional considerations of the undersigned requires termination of the undersigned's representation of the Applicant.

WHEREFORE, for all of the above reasons, the undersigned respectfully moves before this court for an order terminating the undersigned as PCR counsel for the Applicant and thereafter appointing new counsel in place of the undersigned.

RESPECTFULLY SUBMITTED,

DAVID KENNEDY PINCKNEY, LLC



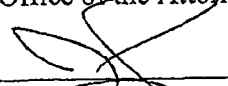
John J. Pinckney, Esquire
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ATTORNEYS FOR APPLICANT

Bluffton, South Carolina
March 13, 2013

Certificate of Service

I certify that on March 13, 2013, I caused to be mailed or delivered a copy of the foregoing document(s) to its counsel as follows: Ashleigh R. Wilson, Assistant Attorney General, Office of the Attorney General, P.O. Box 11549, Columbia, SC 29211



John J. Pinckney
Attorney for Applicant

Exhibit A

15 December 2012

Mr. John J. Pinckney
14 Westbury Park Way
Suite 200
Bluffton, SC 29910

I am writing to inform you that I filed a request with the Circuit Court Fourteenth Judicial Circuit to have you relieved of duty as my attorney. I've lost all faith and trust in your efforts.

ABRAHAM KELTY 321472
Abraham Kelly

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF JASPER
COURT OF COMMON PLEAS
CASE NO. 2010-CP-27-00414

ABRAHAM KELTY

APPLICANT

VERSUS

APRIL 2, 2013

TRANSCRIPT OF POST-CONVICTION

RELIEF HEARING

BEAUFORT, SOUTH CAROLINA

STATE OF SOUTH CAROLINA

RESPONDENT

B E F O R E:

HON. PERRY M. BUCKNER, JUDGE.

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

ON BEHALF OF THE STATE:

HON. ASHLEIGH R. WILSON

ON BEHALF OF APPLICANT:

HON. JOHN J. PINCKNEY

ORIGINAL

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

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HON. DUDLEY BRADSTREET TAFT RUFFALO

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EXHIBITS

No exhibits were admitted as evidence.

1 BEGINNING 10:00 A.M.

2 BY THE COURT:

3 THE COURT: All right, Wanda, this is 2010 at 414.
4 This is a Jasper County case. This is Abraham Kelty
5 versus the State of South Carolina. Mr. Kelty is
6 present now in the courtroom with his attorney, John J.
7 Pinckney. Also present is Ashleigh Wilson for the State
8 of South Carolina.

9 I've reviewed the first, second, and third amended
10 applications. I have also reviewed the State's return.
11 I have also briefly looked at a portion of the
12 transcript of the -- a portion of the transcript in
13 front of Judge Mullen, and a portion of the transcript
14 in front of Judge King.

15 I see that there is an outstanding motion to be
16 relieved of counsel, Mr. Pinckney. Do you wish to
17 pursue that motion and be heard on it?

18 MR. PINCKNEY: We withdraw that motion, your Honor.

19 THE COURT: Very well. Mr. Pinckney, I'm ready to
20 proceed. You may call your first witness.

21 MR. PINCKNEY: Thank you, your Honor. Mr. Dudley
22 B. Ruffalo.

23 THE COURT: Mr. Ruffalo, come around and please be
24 sworn by the clerk of court.

25 WITNESS SWORN.

1 THE COURT: Thank you, Madam Clerk.

2 MADAM CLERK: You're welcome.

3 THE COURT: It's a pleasure to have you here.

4 Have a seat. Make yourself comfortable. Pull up a
5 chair. Adjust the microphone. State your full name and
6 spell your last name for the court reporter.

7 MR. RUFFALO: My full name is Dudley Bradstreet
8 Taft Ruffalo. My last name is spelled R/u/f/f/a/l/o.

9 THE COURT: Your witness, Mr. Pinckney. John J.
10 Pinckney.

11 MR. PINCKNEY: Thank you, your Honor.

12 HON. DUDLEY BRADSTREET TAFT RUFFALO

13 DIRECT EXAMINATION, MR. PINCKNEY:

14 Q. Mr. Ruffalo, you're here today because you were
15 trial counsel for the applicant, Mr. Kelty. Is that
16 right?

17 A. That's correct. Well, I -- I -- at his plea.
18 There was no trial.

19 Q. Correct. You were his defense counsel.

20 A. Yes, sir.

21 Q. And that was around April 2007?

22 A. I believe that's correct.

23 Q. And that was the first in front of Judge Mullen?

24 A. Yes. The -- the original plea had begun in front
25 of Judge Mullen.

1 Q. Okay. The original plea. So, when you talk about
2 the word plea, there was an agreement?

3 A. Yes, there was.

4 Q. And do you recall what the terms of that agreement
5 were?

6 A. Mr. Kelty was charged with armed robbery; failure
7 to stop for a blue light; and use of a weapon during the
8 commission of a violent offense. And I believe the
9 agreement was, at that time, to plead him to either
10 strong arm robbery, I believe, for ten years, and to
11 drop the other two charges.

12 Q. And that plea hearing before Judge Mullen did not
13 go on very long. It's only ten pages of transcript.
14 You may have a copy. The State has a copy. I believe
15 Judge Buckner --

16 THE COURT: I have a copy. Ask a question,
17 Counsel.

18 Q. The terms of that plea agreement were clearly
19 spelled out. Ten years, and like you say, nol pros the
20 other charges. Why did that agreement not get enforced?

21 A. Well, the agreement was specifically was a cap of
22 ten or a recommendation of a maximum of ten. And we
23 began the plea. It gets quite complicated. I'll be
24 happy to go into it at great length if you like.

25 Q. Not at great length.

1 A. What had happened was, during the course of the
2 plea, Abraham began this sort of voluntary twitching and
3 emanations that were highly exaggerated, and attempted
4 to convince the judge that he was suffering from a
5 mental illness, of which I would not take any
6 cognizance.

7 And so, she stood the plea down.

8 Q. Okay. Before she took that action, however, she
9 asked him on the record what he wanted to do after going
10 through some of the questions, you know, the customary
11 question and answers; are you inebriated; are you this;
12 are you that; are you being forced; under the influence;
13 all that sort of thing. She asked him how he wanted to
14 plea. He said guilty. Is that correct?

15 A. That is correct, yes.

16 Q. So, in front of the prosecution, he made that
17 admission. Correct?

18 A. Yes, that's correct.

19 Q. And you didn't stop the plea bargaining or the
20 recitation of the plea agreement yourself. The judge
21 took some action.

22 A. That is correct.

23 Q. And the State didn't withdraw the plea at that
24 juncture.

25 A. Well, the State had informed us earlier that that

1 plea was open for 24 hours, because we'd had such
2 difficulty with Mr. Kelty.

3 Q. Okay. But they didn't withdraw the plea before he
4 made the announcement that he was pleading guilty. He
5 was trying to plead guilty in front of this judge by
6 saying I plead guilty, in essence.

7 A. I'm not following you. I'm so sorry. Forgive me.

8 Q. Well, the court hearing was not stopped by counsel
9 for the State or yourself.

10 A. That's correct.

11 Q. The judge took that action.

12 A. Yes.

13 Q. So, there was no rejection of the plea agreement,
14 so to speak.

15 A. I don't understand your term of rejection of the
16 plea agreement.

17 Q. Okay. Let's do it another way. The agreement was
18 that he plead guilty.

19 A. That's correct.

20 Q. Did he try to plead guilty?

21 A. Yes, he did.

22 Q. Thank you.

23 A. However, I was -- it would be impossible for me to
24 stop the plea because of what Mr. Kelty had disclosed to
25 me previous to the plea.

1 Q. Okay. I understand that.

2 A. Okay.

3 Q. So, was the solicitor's office authorized to make
4 that sort of a plea? In your experience, have you seen
5 that done? Correct?

6 A. Apparently, they were -- I mean, that was --

7 Q. It's customary. Plea agreements are customary.

8 A. That is correct, yes.

9 Q. Of this nature, of this type.

10 A. That's correct.

11 Q. Capping a sentence to ten years, et cetera. And
12 the reasoning of that is that the State could not pros
13 all charged altogether, and the court wouldn't have
14 anything before it.

15 A. I can't comment on what they were thinking. I
16 mean, I -- I know there was --

17 Q. The judge doesn't have to accept the plea
18 agreement.

19 MS. WILSON: Excuse me, your Honor. Can counsel
20 let Mr. Ruffalo finish before he asks the next question.

21 THE COURT: Don't cut him off, Mr. Pinckney. Have
22 you finished your answer yet? I'll let you explain the
23 last question. Wait until he finishes his answer before
24 you ask a subsequent question, Mr. Pinckney. I'll give
25 you all the questions you need, but let the witness

1 respond in full. Proceed.

2 BY MR. PINCKNEY:

3 A. I think your question was could have the State nol
4 prossed every charge if they wanted to. I believe they
5 have that power, yes.

6 Q. Right. And the judge doesn't -- on the other side,
7 the judge doesn't have to accept the plea as agreed by
8 the parties.

9 A. I believe that is within a judge's purview to do or
10 not.

11 Q. Most of the time in this type of a case, they would
12 accept the plea agreement.

13 A. That's speculation under which I can't --

14 Q. Was there any extraordinary circumstance in this
15 case that would make you think that it wouldn't have
16 been acceptable?

17 A. Well, the problem was, Mr. Kelty was always sort of
18 playing back and forth. And by explanation, I mean he
19 would say things like: I can't remember anything that
20 happened, but if I get a six-year deal, I can remember
21 everything; I'm going to go through with this plea today
22 in front of Judge Mullen.

23 And these aren't his words, but in effect, what he
24 was saying was, but I might decide not to go through
25 with it, because I'll show them that I'm mentally ill.

1 Mr. Kelty would tell us that he had mental problems, but
2 then he wouldn't let us get his 214 discharge from the
3 Army, which he -- from the Marines, which he finally
4 did. He would say he was on this drug, but then the
5 records disclosed that he wasn't.

6 And he was -- the first day that I was appointed to
7 him, and when I went to visit him, he wanted to plead
8 guilty that day. I think Mr. Kelty was -- there wasn't
9 anything that I believe -- to me, it would have been a
10 fraud on the court to -- to try and enforce that plea
11 again.

12 Q. But at the time, he was making a valid plea of
13 guilty to the judge in your presence.

14 A. Yes, he was. And after discussions with Professor
15 Freeman about this whole thing, I determined that there
16 was no possibility of going back and forcing the State
17 to say give me back that plea, because, in my mind, you
18 were walking a fine line with Mr. Kelty all the time
19 between being his advocate and committing a fraud on the
20 court.

21 In my mind, I believe that the exhibition of
22 exaggerated symptoms during the plea was made up. I'm
23 so sorry. I don't have another way of putting it.

24 Q. Okay. So, you did not enforce the plea agreement,
25 even though it was on the record, the terms.

1 A. Well, we were advised, and Mr. Kelty knew
2 beforehand, by the solicitor's office that this plea was
3 available only today.

4 Q. All right.

5 A. Okay. And then, when everything broke down, as you
6 saw on the transcript, I was immediately advised that
7 that ten-year plea was gone forever. I did a lot of
8 begging and pleading to try to get it back, but to no
9 avail.

10 Q. Okay. Were you aware at the time about the case
11 law in South Carolina about interpreting plea agreements
12 as contracts and their enforceability as contracts?

13 A. I had -- I had some knowledge of it, but my opinion
14 always was that the solicitor's office can do anything
15 they like.

16 Q. As anything they like?

17 A. Well, of course, within reason. But in terms of a
18 plea, they have a right to offer what they want; they
19 have the right to withdraw what they want.

20 Q. Would you disagree if your client got up on the
21 stand and says he's guilty, and gave all sorts of
22 evidence to the prosecution, helping them and hurting
23 him, that, under contract law, that would be detrimental
24 and reliance on his part?

25 A. I'm not sure I'm qualified to interpret contract

1 law.

2 Q. And so, after this hearing in front of Judge
3 Mullen, how did he get 15 years?

4 A. If you'll give me one second.

5 Q. Did you come back in front of Judge Mullen?

6 A. No, we did not.

7 Q. Why not?

8 A. Because the case was next heard by Judge King in
9 Beaufort.

10 Q. Okay.

11 A. After discussions with Abraham, he wanted to
12 re-institute a plea to these charges. And I informed
13 him, if I recall correctly, that the ten-year plea was,
14 of course, gone, and that the only thing that the State
15 was offering was 15 years; and he said he wanted to take
16 that.

17 Q. Did you try to re-schedule the plea hearing again
18 in front of Judge Mullen?

19 A. No, I did not.

20 Q. And did you try to re-institute the original ten-
21 year plea?

22 A. Well, re-institute is -- I'm not sure that's the
23 correct word. I went back to the solicitor's office and
24 begged and pleaded for it, but to no avail.

25 Q. You made no motion to enforce it, based on his

1 prior efforts?

2 A. I believe that would have been a fraud on the
3 court. After discussions with a number of people in
4 hypothetical, and particular, with Professor Freeman. I
5 found myself kind of trapped in a situation where I
6 believed earnestly that his manifestations were
7 completely exaggerated and fake. So, if I went to
8 enforce that, based upon that, I found myself trapped in
9 a situation of being his advocate, but also not trying
10 to commit a fraud on the court. So, it was a very
11 difficult situation. He was a very difficult client.

12 Q. Regardless of his behavior, we discussed a moment
13 ago that he did, in fact, make a valid -- the plea had
14 been accepted by the court at that juncture. He said I
15 plead guilty. And if you read the transcript, I think
16 it's pretty clear.

17 A. Pretty clear, yeah.

18 MR. PINCKNEY: Thank you. That's all I have.

19 THE COURT: Cross-examination.

20 MS. WILSON: Thank you, your Honor.

21 HON. DUDLEY BRADSTREET TAFT RUFFALO

22 CROSS-EXAMINATION, MS. WILSON:

23 Q. Let's kind of step back from the beginning, Mr.
24 Kelty [sic]. About how long have you been practicing
25 law?

1 A. I will reach the 30-year mark on April 28th. I
2 believe at that time, it was somewhere around 25 or
3 something like that.

4 Q. Okay. And do you have experience trying serious
5 cases, serious criminal cases, with charges like this?

6 A Yes, ma'am.

7 Q And you were retained in this case or appointed?

8 A. I was appointed. The original appointment was to
9 Mr. Plexico. There was some difficulty there between
10 Mr. Plexico and Mr. Kelty. I was appointed from the
11 Bench. And the day I was appointed, the assistant
12 solicitor, Tameaka Leggette, called me and asked me if I
13 -- since I was just appointed an hour ago, could I drive
14 up and plead him guilty, which, of course, I could not
15 do, because the obvious reasons. Investigation and
16 meeting with the client and so forth.

17 Q. Well, how many times were you able to meet with Mr.
18 Kelty before he pled guilty?

19 A. Oh, I -- I haven't counted them up, but numerous
20 times. I would say at least ten. Eight, nine.

21 Q. And did you file *Brady* or *Rule 5* motions on his
22 behalf?

23 A Yes, ma'am.

24 Q And did you receive documents from the State?

25 A Yes, ma'am.

1 Q And did you review the documents that you received
2 with Mr. Kelty?

3 A Yes, ma'am.

4 Q Prior to his plea, did you discuss the elements of
5 the charges against him and what the State was required
6 to prove?

7 A Yes, ma'am.

8 Q Did you discuss his version of the facts?

9 A Mr. Kelty, at first he did not want to give his
10 version. He would kind of sit there kind of stone faced
11 and let you do all the talking. And then, you would try
12 to engage him to get him to talk, and he would a little
13 bit, but he would switch back and forth. I -- I -- my
14 best example is that he would do things though the
15 representation. He -- he kept talking about this
16 mysterious six-year deal that never existed. And he
17 would say, I can remember anything that happened, but if
18 I get the six-year deal, I can remember everything; I
19 have severe mental problems; well, may I -- would you
20 sign this HIPAA waiver so I can get your 214 discharge
21 and your V.A. records; no.

22 Well, finally, we got it, and he said I've been on
23 Zoloft for years. Well, there was an indication in the
24 records he had been on Zoloft for a week or two, and
25 that his only diagnosis was anger issues and alcoholism.

1 It was just -- it was very difficult to deal with Mr.
2 Kelty.

3 Q. And did you discuss any possible defenses that you
4 could present if you were to proceed to trial?

5 A. I did. I informed him that I didn't think a trial
6 would be in his best interest, because, in my
7 professional opinion, I thought that there was very
8 little he'd be able to present. The -- there was no gap
9 in the action when he's alleged to have robbed a
10 convenience store in Ridgeland, and then immediately
11 fled in his car.

12 He's alleged to have gone into a convenience store,
13 bought a pack of Band-Aids as a pretext to open the
14 cashier drawer. Robbed them, and jumped in his car.
15 And there was an immediate police chase into Georgia,
16 where his vehicle had to be disabled by some mechanical
17 device. I don't know how they do that. I think it's a
18 grid they put on the -- on the floor.

19 And there was very little -- I mean, there was a
20 film of him in the convenience store. Very little in
21 the way of trial. That's why I thought the ten-year
22 deal was such a significant break for him.

23 Q. Did he give you any particular witnesses or leads
24 to investigate?

25 A No, ma'am.

1 Q And so, what kind of investigation did you do with
2 the facts and information presented in his case?

3 A. I mean, the only thing you could do is read
4 thoroughly through the file. You visited the location.
5 Talked to the police officers. I talked to Mr. Plexico.
6 That really was kind of as much as you could do.

7 Abraham would work with you, and then the next
8 moment, he wouldn't work with you. It was a very
9 difficult situation.

10 Q. And you testified earlier that you entered plea
11 negotiations on behalf of Mr. Kelty. That's correct?

12 A Yes, ma'am.

13 Q And can you kind of walk us through the different
14 negotiations with the State.

15 A. Well, originally, they were interested in giving
16 Mr. Kelty 15 years, and dropping -- dropping the charge
17 of the use of the weapon, and also, the blue light
18 offense. We managed to talk a lot. They understood the
19 problems, some of the problems. And after talking with
20 them for some weeks, they -- my recollection is they
21 said, okay, we'll offer ten years; we're going to do it
22 on this date; come on up. And there was a little bit of
23 interruption, because I had to find out whether I could
24 keep representing Mr. Kelty, because he had filed a
25 grievance against me. And I had -- I called the ethics

1 professor, Professor Freeman, and said do I have to
2 withdraw. And he said no. Well, I don't want to --
3 that's hearsay.

4 The result of the conversation was, is I did not
5 have to withdraw, and then put this burden on some other
6 lawyer. So, there was a little interruption there. And
7 then, we went that day. And we'd had so much trouble
8 with Mr. Kelty that the solicitor's office made it very
9 plain this is the day. This is only open this day. And
10 he wanted to go through with the plea. And then, just
11 before we went into the plea, he began this discussion,
12 well, I mean, you know, I might let them know how
13 mentally ill I was. Kind of wink, wink kind of thing.
14 It just -- he was -- he was a very difficult person to
15 work with.

16 Q. And you communicated all offers with Mr. Kelty?

17 A. Oh, yes.

18 Q. And did you talk about the consequences of his
19 pleading guilty?

20 A. I talked with him about it. We met in the holding
21 cells, in the jail -- I mean in the courthouse. We met
22 at the detention center. He made a lot of phone calls
23 to my office. We talked at length about all this. And
24 I told him, in my professional opinion, I thought the
25 offer of ten years was really the best he was going to

1 do.

2 Q. And after the State took that offer of ten years
3 off the table, at the end of the attempted plea with
4 Judge Mullen, was it Mr. Kelty's decision to plead
5 guilty the second time before Judge King?

6 A. Yes. Yes, ma'am.

7 Q. And did he ever indicate he wanted to go to trial?

8 A. You couldn't get a straight answer out of him. I
9 remember prepping him for trial, and we asked for a
10 special room in the detention center in Jasper County.
11 And spent hours in there trying to prep him for a
12 potential trial if the plea fell apart in front of Judge
13 Mullen. He just -- it was -- you couldn't get him to --
14 to do anything. I mean, he just -- sometimes he would
15 talk to you. Sometimes he would just completely
16 stonewall you.

17 Q. Okay. And it's your testimony today that the
18 State's offer of the ten years was withdrawn after the
19 unsuccessful plea with Judge Mullen. That's correct?

20 A. Yes, ma'am.

21 Q. Mr. Pinckney kind of went into some questioning
22 about detrimental reliance. Did Mr. Kelty provide any
23 information, any tips, any cooperation to the police to
24 help them with other matters in exchange for this plea?

25 A. No, ma'am.

1 MS. WILSON: Nothing further, your Honor.

2 THE COURT: Re-direct.

3 MR. PINCKNEY: Yes, your Honor.

4 HON. DUDLEY BRADSTREET TAFT RUFFALO

5 RE-DIRECT EXAMINATION, MR. PINCKNEY:

6 Q. Mr. Ruffalo, wouldn't you say it's helpful to the
7 State of South Carolina and the prosecution, in front of
8 a judge, to have the defendant accused announce his
9 guilt?

10 A. I wouldn't characterize it as helpful.

11 Q. Not helpful?

12 A. I'm not sure that's the word I would use. It's
13 just part of the process.

14 Q. To say you're guilty when you could say you're not
15 guilty?

16 A. That's correct. You can say you're guilty or not
17 guilty. It's --

18 Q. After having the judge recite the facts or listen
19 to the facts recited about the crime, and your, in
20 essence, agreeing and admitting them in front of the
21 prosecution, you wouldn't agree that that's helpful to
22 the prosecution? Beneficial?

23 A. Well, I don't see how it would be helpful, because
24 it couldn't be used against him at a resulting trial. I
25 mean, I don't -- I don't understand the question. I'm

1 not -- I'm not sure I'm following you on that.

2 Certainly, that's what the prosecution believed,
3 and they already believe that to be true. To have Mr.
4 Kelty come up and say, yes, it is true, I'm not sure how
5 much of a help that is in terms of -- I'm not following
6 you. I'm sorry.

7 Q. Well, it confirms their case; does it not?

8 A. It's a pretty cut-and-dried case.

9 Q. It's in agreement with their case; is it not?

10 A. The evidence against him was overwhelming.

11 Q. Rather than --

12 THE COURT: Just a moment. You don't cut him off,
13 and you finish your answer.

14 MR. PINCKNEY: Yes, sir.

15 THE COURT: You understand, Mr. Pinckney?

16 MR. PINCKNEY: Yes, sir.

17 THE COURT: Second time, now. Let him finish.
18 Proceed.

19 BY MR. PINCKNEY:

20 A. The evidence against him was overwhelming.

21 Q. And the plea that he made was unequivocal when he
22 said guilty as charged. How do you plead; guilty as
23 charged.

24 A. I guess you would characterize that as unequivocal.

25 MR. PINCKNEY: Thank you.

1 THE COURT: Re-cross limited to re-direct.

2 MS. WILSON: Briefly, your Honor.

3 HON. DUDLEY BRADSTREET TAFT RUFFALO

4 RE-CROSS-EXAMINATION, MS. WILSON:

5 Q. Mr. Ruffalo, admission of guilt is required to
6 plead guilty with some exceptions. For example, in
7 Alford. That's correct, right?

8 A Yes, ma'am.

9 Q And it was the defendant's desire to plead guilty.

10 A Yes, ma'am.

11 MS. WILSON: Thank you.

12 THE COURT: You may step down. Call your next
13 witness, Mr. John J. Pinckney.

14 MR. PINCKNEY: I have no other witnesses, your
15 Honor.

16 THE COURT: Very well. Ms. Wilson?

17 MS. WILSON: Nothing from the State.

18 THE COURT:

19 THE COURT: All right. Now, there's a pretty
20 lengthy transcript in here, which I have not reviewed,
21 but I have reviewed all three of your petitions.

22 I'm going to ask you both to submit me proposed
23 orders.

24 MR. PINCKNEY: Excuse me, Judge.

25 THE COURT: Please submit --

1 MR. PINCKNEY: Excuse me. Your Honor, my client's
2 trying to speak. I'll ask him to speak when it's
3 appropriate. Sorry for the interruption.

4 THE COURT: Well, if you want to talk to your
5 client, I'll certainly allow you to do so. But the
6 record is now closed, Mr. Pinckney. You understand
7 that?

8 MR. PINCKNEY: Yes, sir.

9 THE COURT: Per your request from the Court, and
10 from Ms. Wilson.

11 APPLICANT KELTY: Sir, I did not get a chance to
12 speak.

13 THE COURT: Well, Mr. Kelty, the purpose of this
14 hearing is you to put up evidence, and your lawyer says
15 he has no other evidence.

16 APPLICANT KELTY: I have.

17 THE COURT: No, sir. Not another word, now. It's
18 closed.

19 I'm going to ask you both to submit proposed orders
20 to me.

21 THE COURT: Please submit them to me at P.O. Drawer
22 470, Walterboro, 29488. That's P.O. Drawer 470,
23 Walterboro, 29488. Copy opposing counsel on your
24 proposed orders. You can do it by email. That's
25 pbucknerj@sccourts.org. Copy opposing counsel on that.

1 I have with me the entire transcripts, both in
2 front of Judge Mullen and in front of Judge King. I
3 have all three amended petitions. I have the return. I
4 have the opinion of the Court of Appeals, and I have the
5 indictments in my packet, which I'll be taking with me.

6 Please include a self-addressed envelope with
7 sufficient postage affixed thereto for the return of the
8 proposed orders. Make sure there is sufficient postage.
9 You can email me the orders. You still have to send me
10 the proposed envelope with sufficient postage affixed
11 thereto.

12 I will expect your orders within ten days of today
13 at that mailing address or by email. I will expect your
14 envelope with return postage. Any questions about the
15 proposed order procedures from counsel for the Applicant?

16 MR. PINCKNEY: No, your Honor.

17 THE COURT: Any questions about the proposed
18 procedure from counsel for the State of South Carolina?

19 MS. WILSON: No, your Honor.

20 THE COURT: Very well. I'm taking the entire
21 packet with me so I can review the transcript. I'll
22 look forward to getting your proposed orders.

23 Thank you very much.

PROCEEDING ENDS 10:32 A.M.

CERTIFICATE OF REPORTER
APRIL 2, 2013 TRANSCRIPT OF
POST-CONVICTION RELIEF HEARING

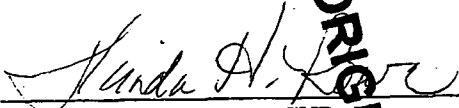
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

I, Wanda H. Rowe, CVR-M, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing April 2, 2013 Transcript of Post-conviction Relief Hearing is a true, accurate, and complete record of the proceedings had on said date at said proceeding in the case of Abraham Kelty versus State of South Carolina, Jasper County, Court of Common Pleas, Case Number 2010-CP-27-00414; that no exhibits were admitted.

I further certify that I am of neither kin, counsel, or interest to any party hereto.

The original of this transcript, nor any copy of same, is not certified, nor authorized for use by me, to be true, accurate, and complete without my original signature and stamp affixed hereto.

Witness my signature August 19, 2013.


Wanda H. Rowe, CVR
Official Court Reporter

ORIGINAL

140
STATE OF SOUTH CAROLINA)

COUNTY OF JASPER)

Abraham Kelty, #321472,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS

2010-CP-27-0414

RECEIVED

MAY 22 2013

ORDER OF DISMISSAL
SS Court of Appeals

#1
PMB
This matter comes before the Court by way of an application for post-conviction relief (PCR) filed July 3, 2010. The Respondent made its Return on October 14, 2010. An evidentiary hearing into the matter was convened on April 2, 2013 at the Beaufort County Courthouse. The Applicant was present at the hearing and represented by John J. Pinckney, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

Applicant's plea counsel, Dudley B. Ruffalo, Esquire, was present and testified at the hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR application and amendments, and Respondent's Return thereto.

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 Jasper County. The Applicant was indicted at the May 2006 term of the Jasper County Grand Jury for failure to stop for a blue light (2006-GS-27-0205), possession of weapon during the commission of a violent crime (2006-GS-27-0303), and armed robbery (2006-GS-27-0302). Dudley B. Ruffalo, Esquire, represented the

POSTED
MAY 22 2013

Applicant. The Applicant pled guilty to armed robbery and the remaining charges were *nolle prossed*. On April 2, 2007, the Honorable Howard P. King sentenced the Applicant to confinement for 15 years. The Applicant did not appeal the plea or sentence.

ALLEGATIONS

In his original application for post-conviction relief, the Applicant alleged he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Failure to move to enforce the 10 years plea agreement.
2. Involuntary guilty plea.

In his first amended application for post-conviction relief, the Applicant alleged the following:

1. "Applicant asserts that he was denied the effective assistance of counsel when trial counsel failed to protect his rights as set forth in two (2) separate letters of the Applicant."

In his second amended application for post-conviction relief, the Applicant alleged the following:

1. "Applicant asserts that he was denied the effective assistance of counsel when trial counsel failed to specifically enforce Applicant's plea agreement of record based upon the *detrimental reliance* doctrine expressed by the South Carolina Supreme Court in *Custodio vs. South Carolina*, 644 S.E.2d 36 (S.C. 2007)."

At the hearing, the Applicant only pursued the allegation presented in his second amended application for post-conviction relief.

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 PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon his or

her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Summary of Testimony¹

Trial counsel, Dudley B. Ruffalo, was present and testified he has been practicing law for over 30 years. Counsel testified he was appointed to represent the Applicant. Counsel testified he met with the Applicant at least ten times prior to his plea. Counsel testified he filed Brady and Rule 5 motions on the Applicant's behalf. He testified he reviewed the discovery material he received with the Applicant and discussed with him the elements of the charge and what the State was required to prove.

43
PMB
Counsel testified it was often difficult to engage with the applicant because his story about the incident would change. Counsel testified the Applicant frequently discussed a "6 year plea deal" that was never offered. Counsel testified the Applicant would also fake mental health issues and claim he was on medications. Counsel testified the Applicant provided no potential witnesses or leads for investigation. Counsel testified his investigation included a review of the file, visiting the location, and speaking with the Applicant's former attorney, Stephen T. Plexico.

Counsel testified further he entered into plea negotiations on the Applicant's behalf. Counsel testified that originally the State offered a plea to 15 years for the armed robbery with a dismissal of all the remaining charges. Counsel testified he was able to get the plea down to 10 years for the armed robbery with dismissal of all the remaining charges. Counsel testified he communicated the offer to the Applicant and informed him of the consequences of his plea.

Counsel testified that before the Applicant went before Judge Mullen to plead to the 10

¹ The Applicant was present, but did not testify on his own behalf at the evidentiary hearing.

year negotiated sentence, the Applicant indicated he would fake a mental illness during the plea. Counsel testified that during the plea, the Applicant started twitching and tried to convince the Court he was suffering from a mental illness. Counsel testified he was not aware the Applicant suffered from any mental illness and he believed the exaggerated symptoms during the plea were made up. Counsel also testified he did not stop the Applicant's plea, but Judge Mullen would not accept the Applicant's plea to the 10 year sentence.

#4
Pr-B
Counsel testified that after the initial plea before Judge Mullen, he advised the Applicant that the State's plea offer to 10 years was only available that day. He testified that after everything broke down with the plea, he told the Applicant the offer was withdrawn by the State and no longer available. Counsel testified further that the Applicant wanted him to request the 10 year offer be reinstated by the State. Counsel testified that any attempt he made to enforce the 10 year plea offer would have been a fraud on the Court.

Counsel testified that after the original plea offer of 10 years was withdrawn by the State, a second plea offer of 15 years for armed robbery and the remaining charges dismissed was made by the State. Counsel testified the Applicant wanted to accept the plea. He also testified that when the Applicant went before Judge King to plead guilty it was the Applicant's decision to plead guilty.

Lastly, counsel testified the Applicant gave no assistance to the State in exchange for a guilty plea. Counsel testified the Applicant's admission of guilt is a part of the guilty plea process and was not beneficial to the State because his admission was not used against him and the State already believed the Applicant was guilty. Counsel testified the evidence against the Applicant was overwhelming and it was ultimately the Applicant's desire to plead guilty.

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCPP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (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 (1984); Butler, 334 S.E.2d 813.

#5
PMB
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, 386 S.E.2d 624.

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 professional norms." Id. at 625 (citing Strickland, 466 U.S. 668). 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 625. A reasonable probability is a probability sufficient to undermine confidence in the outcome of the trial. Johnson v. State, 325 S.C. 182, 480 S.E.2d 733 (1997). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and

that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may only be attacked through a claim of ineffective assistance of counsel. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2002) (citations omitted).

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PmB

This Court finds counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, Applicant's constitutional rights, Applicant's version of the facts, and possible defenses or lack thereof. The record reflects that Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. Applicant acknowledged that he was guilty of these offenses. Applicant told the plea court that he was satisfied with his attorney and that no one had threatened him or promised him anything to plead guilty. This Court finds that Applicant understood the terms of the negotiated sentence.

This Court finds the Applicant has failed to carry his burden of proving plea counsel

should have tried to enforce the 10 year plea deal originally offered to the Applicant on the basis of detrimental reliance. A criminal defendant has "no right to be offered a plea... nor a federal right that the judge accept it." Lafler v. Cooper, 132 S. Ct. 1376, 1387, 182 L. Ed. 2d 398 (2012). The State may withdraw a plea bargain offer before a defendant pleads guilty, provided the defendant has not detrimentally relied on the offer. Reed v. Becka, 333 S.C. 676, 690, 511 S.E.2d 396, 404 (Ct. App. 1999). Absent an actual plea of guilty, a defendant may enforce an oral plea agreement only upon a showing of detrimental reliance on a prosecutorial promise in plea bargaining. Id. at 688, 511 S.E.2d at 402. A defendant relies upon a solicitor's plea offer by taking some substantial step or accepting serious risk of an adverse result following acceptance of the plea offer. Id. at 689, 511 S.E.2d at 403. For example, a defendant who provides beneficial information to law enforcement can be said to have relied to his detriment. Id.

#7

Pm/s

This Court finds counsel was not ineffective for failing to enforce the State's original 10 year plea offer. This Court finds and the record reflects that after the Applicant told Judge Mullen about his medications and began twitching as indicated by counsel, the Court refused to accept the Applicant's plea of guilty. (Mullen T. 8). The record also reflects that immediately after the Court rejected the Applicant's plea, the State put on the record their office policy to withdraw plea offers that are not accepted by the Court and that the Applicant's plea offer was withdrawn. (Mullen T. 9). Counsel gave credible testimony that he advised the Applicant that his 10 year plea offer was withdrawn and that in good conscious he could not ask the Court to enforce the 10 year plea offer when it's rejection was based upon the Applicant's fraudulent behavior before the Court. This Court finds the Applicant's plea was rejected due to the Applicant's behavior and feigned mental illness.

This Court finds further the State was within its discretion to withdraw the plea offer for 10 years after the Court refused to accept the Applicant's guilty plea due to his behavior. This Court finds further the Applicant has failed to show detrimental reliance. The record reflects and counsel's credible testimony confirms, the Applicant did not provide any benefit to the State in exchange for a plea offer of 10 years. During the Applicant's initial plea, the State indicated on the record the negotiations were for 10 years with any related warrants *nolle prossed*. (Mullen T. 5). Counsel also provided credible testimony that no assistance was given by the Applicant to help the State. The Applicant has failed to provide any evidence showing he provided beneficial information to law enforcement or took some substantial step or accepted a serious risk of an adverse result after accepting the State's plea offer.

#8
PAB
The Applicant argues he provided a benefit to the State for purposes of detrimental reliance during the initial plea before Judge Mullen when he admitted his guilt. Most pleas of guilty consist of a waiver of trial and an express admission of guilty. N. Carolina v. Alford, 400 U.S. 25, 37, 91 S. Ct. 160, 167 (1970). This Court finds the Applicant's admission of guilt at the initial plea proceeding was a standard part of the guilty plea proceeding. This Court finds further the Applicant's admission of guilty provided no benefit to law enforcement sufficient to establish detrimental reliance.

The Applicant also alleges the facts in Custodio v. State, are analogous to this case. 373 S.C. 4, 644 S.E.2d 36 (2007). This Court finds Custodio is distinguishable from this case. In Custodio the defendant provided beneficial information by helping law enforcement solve several burglary crimes and return over a half million dollars in stolen property. In this case, the Applicant has failed to prove he provided such substantial assistance to law enforcement. This

Court finds this allegation is without merit and counsel did not provide ineffective assistance of counsel.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

#9
PMB
As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any evidence regarding such allegations. Accordingly, this Court finds the Applicant waived such allegations and failed to meet his burden of proof regarding them. Therefore, they are hereby denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner, nor was the Applicant prejudiced by counsel's representation. Therefore, this application for PCR must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty

(30) days from the receipt of written notice of entry of this Order to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely served and filed.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief be denied and dismissed with prejudice; and
2. That the Applicant be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 30 day of April, 2013



Perry M. Buckner
Presiding Judge
14th Judicial Circuit

Waltham, South Carolina.

WITNESSES

Sgt. Middleton

ARREST WARRANT #:

46611DN

Arrested on February 16, 2006

ACTION OF GRAND JURY

TRUE BILL True Bill

NO BILL

FOREMAN Patricia B. BostickDATE 5/1/2006

Foreman:

Grand Jury

VERDICT

Foreman:

Petit Jury

Date:

DOCKET #: 06GS27-0205

THE STATE OF SOUTH CAROLINA
County of Jasper

COURT OF GENERAL SESSIONS

Term: May, 2006

THE STATE

vs.

Abraham Kelty

INDICTMENT FOR

0065

FAILURE TO STOP FOR A BLUE LIGHT/SIREN

(56-5-750)

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SCBY: [Signature]DATE: 5-23-07Not P605
See inside

STATE OF SOUTH CAROLINA

County of Jasper

INDICTMENT #06GS27-0205

At a Court of General Sessions, convened on May 22, 2006,
the Grand Jurors of Jasper County present upon their oath:

COUNT: FAILURE TO STOP FOR A BLUE LIGHT/SIREN
(56-5-750)

That Abraham Kelty did in Jasper County on or about December 27, 2005, did wilfully and unlawfully, while driving a motor vehicle on a state highway, fail to stop when signaled to do so by an Officer of the Law, after signals by means of a siren and a flashing light were given.

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

SOLICITOR

Nelle Kasse

A large, stylized handwritten signature or set of initials, possibly reading "D.H.K.", written in black ink over the bottom half of the page. The letters are highly cursive and interconnected.

WITNESSES

Capt. J. White
 LT. Martin

ARREST WARRANT #:

H881015

Arrested on February 16, 2006

ACTION OF GRAND JURY

TRUE BILL *In the Bill*

NO BILL

FOREMAN *Peter Bostick*DATE *9-23-06*

Foreman: _____

Grand Jury

VERDICT

Foreman: _____

Petit Jury

Date: _____

DOCKET #: 06GS27-0302

THE STATE OF SOUTH CAROLINA
 County of Jasper

COURT OF GENERAL SESSIONS

Term: July, 2006

THE STATE

VS.

Abraham Keltz

INDICTMENT FOR

0139

ARMED ROBBERY

(16-11-330)

TRUE COPY
 MARGARET BOSTICK
 CLERK OF COURT
 JASPER COUNTY, SC
 BY: *G. Bostick*
 DATE: *5-23-07*

STATE OF SOUTH CAROLINA)
County of Jasper)

INDICTMENT #06GS27-0302

At a Court of General Sessions, convened on July 31, 2006,
the Grand Jurors of Jasper County present upon their oath:

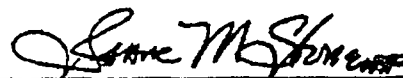
COUNT:

ARMED ROBBERY
(16-11-330)

That Abraham Kelty did in Jasper County on or about December 27, 2005,
while armed with a deadly weapon, or while alleging or representing, by action
or words, that he was armed with a deadly weapon, or other object that a person
present, reasonably believed to be a deadly weapon, to wit: .25 caliber
handgun, feloniously take from the person or presence of the victim, Sonya B.
Jenkins an employee of Tiger Stop Exxon , by means of force or intimidation
goods or monies of said victim, such goods or monies being described as
follows: money.

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

SOLICITOR



WITNESSES

Capt. J. White

LT. DAN J. MARTIN

DOCKET #: 06GS27-0303

THE STATE OF SOUTH CAROLINA
County of Jasper

COURT OF GENERAL SESSIONS

Term: July, 2006

THE STATE

vs.

Abraham Kelty

ARREST WARRANT #:

H881481

Arrested on February 16, 2006

ACTION OF GRAND JURY

~~TRUE BILL~~

NO BILL

FOREMAN

DATE

True Bill

Peter Bostick

9-25-06

Foreman:

Grand Jury

VERDICT

INDICTMENT FOR

0039

POSSESSION OF FIREARMS DURING THE
COMMISSION OF CERTAIN CRIMES (16-23-490)

Foreman:

Petit Jury

Date:

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC

BY:

DATE:

9-25-07

NOT
FILED
- 22 inside

✓

STATE OF SOUTH CAROLINA)

County of Jasper)

INDICTMENT #06GS27-0303

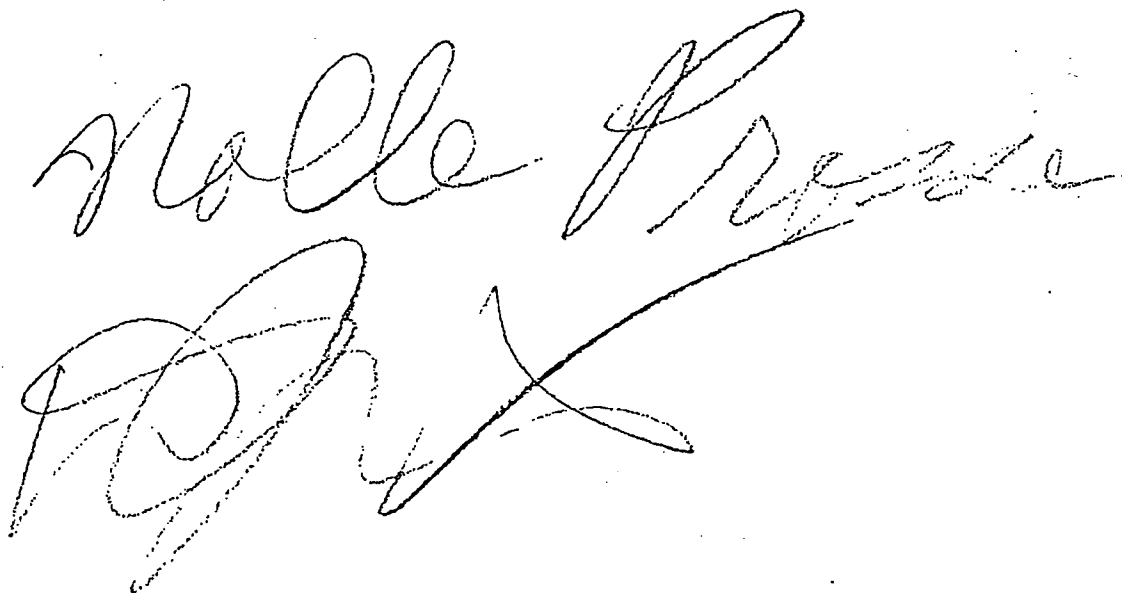
At a Court of General Sessions, convened on July 31, 2006,
the Grand Jurors of Jasper County present upon their oath:

COUNT: POSSESSION OF FIREARMS DURING THE
 COMMISSION OF CERTAIN CRIMES (16-23-490)

That Abraham Kelty did in Jasper County on or about December 27, 2005,
while committing the violent crime of Armed Robbery, have in his possession
and/or did visibly display a firearm or knife during the commission of the
aforementioned crime, this being in violation of Section 16-23-490, Code of
Laws of South Carolina.

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

SOLICITOR



STATE OF SOUTH CAROLINA

COUNTY OF Jasper
STATE ABRAM Keltz
AKA: _____
Race: B Sex: M Age: 49
DOB: _____ SS#: _____
Address: _____
City, State, Zip: Greenville, SC 29606
DL# _____ SID# _____

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 06-GS-27-0205
AW#: 46611-DNE H881015
Date of Offense: 12-27-2005
S.C. Code §: 16-11-330
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 § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS (CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)
The pleas is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____
Solicitor Defendant Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 410 days under the Youthful Offender Act not to exceed 410 years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____ plus costs and assessments as applicable, the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____
☒ The Defendant is to be given credit for time served pursuant to S.C. Code §24-13-40 to be calculated and applied by the State Department of Corrections. 410 days
☐ The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____
*Fine: _____
\$14-1-208 (Assessments 107.5%) \$ _____
\$14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00
\$14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
\$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
TOTAL \$ 128.75

PTUP _____ days/hours Public Service Employment
Obtain GED _____
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
\$ _____ paid to Public Defender Fund
Other: _____
☐ Appointed PD or appointed other counsel. \$35.13 TP
Requires \$500 be paid to Clerk during probation.

Court Reporter: Margaret Bostick
Clerk of Court/ Deputy Clerk

PRESIDING JUDGE Howard P. King
Judge Code: 7
Sentence Date: April 2, 2007

SCCA 217 (9 2006)

TRUE COPY
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY, SC
BY: M. Bostick
DATE: 3-23-2007

POSTED
BY: M. Bostick DATE: 4-10-07