

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

L. Casey Manning, Circuit Court Judge

RECEIVED

FEB 12 2013

S.C. Supreme Court

JEREMY MCPHAIL,

PETITIONER,

V

STATE OF SOUTH CAROLINA,

RESPONDENT

APPENDIX

2012-212750

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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
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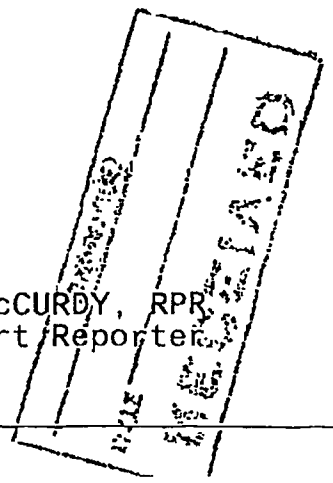
STATE OF SOUTH CAROLINA,)
Plaintiff,)
vs.) TRANSCRIPT OF RECORD
JEREMY McPHAIL,)
Defendant.)

December 4, 2008
Columbia, South Carolina

B E F O R E:
THE HONORABLE J. MICHELLE CHILDS, JUDGE.

A P P E A R A N C E S:
DANIEL R. GOLDBERG, ASSISTANT SOLICITOR
Attorney for the Plaintiff
JOSEPH M. MCCULLOCH, JR., ESQ.
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter



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I N D E X O F W I T N E S S E S

(WHEREUPON, no witnesses were called during these proceedings.)

E X H I B I T S

(WHEREUPON, no exhibits were introduced during these proceedings.)

DECEMBER 4, 2008

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MR. GOLDBERG: The State would call Jeremy McPhail.

THE CLERK: Raise your right hand, please.
(Defendant complies.)

THE CLERK: Do you swear or affirm to tell the truth, the whole truth, and nothing but the truth, so help you God?

THE DEFENDANT: Yes, ma'am.

THE CLERK: Thank you.

THE COURT: Mr. McPhail, are you under the influence of any alcohol, drugs or medication?

THE DEFENDANT: No, ma'am.

THE COURT: Have you ever been evaluated for your mental health?

THE DEFENDANT: No, ma'am.

THE COURT: And just as a preliminary matter, this is called the armor heist case, and the Court is very familiar with the situation, and respectfully because I pled other Defendants in this case, so I do have background about the general nature of this case.

But particularly as to you, you are being charged with the offense of assault and battery of a high and aggravated nature, armed robbery,

1 kidnapping, as well as criminal conspiracy.

2 Do you understand that?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And these all have been
5 indictments that have been sent to the Grand Jury
6 and they have all been true-billed.

7 Do you understand that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. So as we're here today, the
10 State will give me some general information about
11 your alleged participation in the case, and then
12 also the Court will accept your plea today if you
13 so choose to plead guilty.

14 But is this also one of cases in which there
15 will be a deferred sentence?

16 MR. McCULLOCH: Yes, Your Honor.

17 THE COURT: And due to circumstances that the
18 lawyers are aware of, I may or may not be that
19 sentencing judge. I just want you all to be aware
20 that I can be, but of course due to some time
21 issues and all of that, then it may be another
22 judge, and that will be perfectly acceptable.

23 Okay, listen to the State as they tell me your
24 involvement in the case, okay? And you will have
25 any ability to challenge any of the facts and have

1 the attorneys speak to me as well, okay?

2 THE DEFENDANT: Yes, ma'am.

3 MR. GOLDBERG: May it please the Court, Your
4 Honor?

5 As Your Honor is aware, this incident did take
6 place May 10, 2007, here in Richland County.

7 Mr. McPhail, along with his Co-Defendants,
8 some of which have been before you, had talked
9 about and engaged in a plan to commit an armed
10 robbery of a Express Teller Service Armored Car.
11 That robbery did take place on May 10th.

12 There was actually an attempt to do so a week
13 prior that was abandoned. I believe Mr. McPhail
14 was there that night as well. That plan was
15 abandoned. They came back a week later where
16 Mr. Dominic Lide was involved.

17 When the robbery actually took place,
18 Mr. McPhail and Mr. Lide came up to the car, the
19 truck. It was at the gas station refueling. The
20 driver of the car, Mr. David Jones, the victim, had
21 gone inside to pay for the gas.

22 One of the Co-Defendants in this case,
23 Mr. Frierson, was still in the truck. He was the
24 driver for the service at that time.

25 And when Mr. Jones came back to the truck and

1 got in the truck, it is at that point Mr. Lide and
 2 Mr. McPhail approached with what appeared to be
 3 firearms in their possession, forced Mr. Jones into
 4 the truck, pushed him in, got them down, held Mr.
 5 Jones and Mr. Frierson at bay while the truck was
 6 driven off to a different location, at which point
 7 two other Co-Defendants met them and they unloaded
 8 some of the money.

9 While inside the truck, I believe that Mr.
 10 McPhail assisted somewhat in keeping Mr. Jones at
 11 bay and not allowing him to do anything to stop
 12 this from taking place.

13 Once they got to the field where the truck was
 14 abandoned, Frierson and Lide got out. They tied up
 15 Mr. Jones, the driver, and assaulted them.

16 Mr. McPhail is alleged to have participated in
 17 this in some degree. I know that there is some
 18 dispute as to how far he was involved in that. We
 19 can get into all that at the sentencing phase.

20 I think that about covers the basic facts of
 21 his involvement as it pertains to entering a plea.

22 I would be happy to go into more detail if it
 23 is required at this particular time, but would
 24 reserve the right to go back into it further at a
 25 later date.

1 As Your Honor stated, we are going to ask you
2 to hold sentence in abeyance at this time and just
3 accept the plea on this date until after the trial
4 of Mr. Lide, scheduled for January the 12th.

5 I would also ask Your Honor, as I did
6 yesterday, to make sure you indicate on the
7 sentencing sheet that he is to be held in custody
8 at the detention center until the sentencing
9 hearing is held just so that there is no mistake in
10 paperwork of any kind.

11 Again, as with the other pleas, Mr. Jones was
12 notified and did not wish to be here. And the
13 company as well was notified.

14 THE COURT: Okay. Mr. McPhail, do you agree
15 with those facts in support of these indictments?

16 THE DEFENDANT: I agree with the indictment,
17 Your Honor.

18 THE COURT: Okay. Is there anything you wish
19 to challenge?

20 THE DEFENDANT: (Nods negatively.)

21 MR. McCULLOCH: Your Honor, just to keep face
22 with Jeremy, we do have several factors and facts
23 that we will outline for you at sentencing. I
24 talked with the Solicitor about it. There are no
25 surprises there. Essentially I explained to Jeremy

1 that notwithstanding the mitigating factors that we
2 will be presenting, I did not believe and do not
3 believe today that they would have been sufficient
4 as an absolute defense.

5 We are entering this plea freely and
6 voluntarily in providing you with his plea. I have
7 been over all the information with him. He is
8 aware that we will present, hopefully to you, these
9 mitigating factors. I do believe they are very
10 important. And Mr. Goldberg has been very generous
11 with his time in discussing them.

12 So I have talked with Jeremy, I have spoken
13 with his family. They could not be here this
14 morning --

15 THE COURT: Sure.

16 MR. McCULLOCH: -- because they live out of
17 town in Society Hill. But I explained to them that
18 this was not the sentencing, that this was not a
19 critical component of the process, although it is
20 for your purposes.

21 THE COURT: Okay. All right, Mr. McPhail?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: Just listen carefully. You have
24 heard those facts. I just want to advise you of
25 your rights with respect to the plea today. This

1 is not a sentence today, just with respect to the
2 plea.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: Okay. You have every right to
5 challenge any of the State's evidence or witnesses
6 by your constitutional right to go to jury trial.
7 Do you understand that?

8 THE DEFENDANT: Your Honor, I don't want to go
9 to trial because I don't want to be disrespectful
10 to the State. And it is to the point where I
11 really didn't want nothing to do with it, but I was
12 in the wrong place. I'm not saying that I didn't
13 do anything wrong. I made some mistakes, but I
14 didn't know what was going on. I tried to avoid it
15 to the best of my ability. I was trying to do
16 something with myself and my life. I wasn't trying
17 to mess up my life with nothing stupid as that.
18 But I was there. And I tried to be honest and
19 cooperate hoping that I could protect myself and my
20 mother. But I wasn't trying to be disrespectful.
21 And I felt like if I went to trial because of the
22 extent of the crime I would still be found guilty.

23 So Mr. McCulloch has informed me what is going
24 on. It is just a lot on me because it has changed
25 my life. I ain't never been into nothing before.

1 THE COURT: Okay. And you understand that on
2 these particular offenses there are Co-Defendants,
3 and in our state we have what we call the hand of
4 one, hand of all?

5 THE DEFENDANT: Yes,, ma'am.

6 THE COURT: And to the extent that you were
7 aware of the plan -- that is the part that is
8 criminal conspiracy, you conspired with others and
9 were aware of this plan -- and that even if you
10 didn't participate in it, you were part of the
11 knowledge of it being acted out.

12 Do you understand that?

13 THE DEFENDANT: Could you explain what you
14 mean by conspiring?

15 THE COURT: Well, meaning planning or
16 participating in whatever the plan was going to be
17 with respect to the other person. Even if you
18 didn't have an outwardly open act yourself.

19 (Pause.)

20 THE COURT: You knew about it and you agreed
21 to it, essentially.

22 MR. McCULLOCH: Your Honor --

23 THE COURT: Go ahead.

24 MR. McCULLOCH: Just so that we have a good
25 sense of this.

1 THE COURT: Okay.

2 MR. McCULLOCH: As I explained to Jeremy, part
3 of what we would provide at sentencing is a picture
4 of a person who, according to Mr. Lake's
5 presentation to you in the original sentencing, he
6 said on May the 3rd they went to the location, the
7 robbery did not occur because one of the members
8 may have gotten scared.

9 What ultimately we will present as pertinent
10 to this concern that he has is that Jeremy is the
11 one who ran around the fence and blew the cover of
12 this developing offense.

13 And then a couple of weeks later he found
14 himself -- without knowledge, he found himself in
15 Columbia. He didn't know he was coming to Columbia
16 to commit another armed robbery. He had tried to
17 distance himself from the thing. But he found
18 himself in the company of these same people.

19 He will tell you, or the sentencing judge
20 ultimately, that he really didn't want to go along
21 with it, but he ultimately did to the extent that
22 he didn't escape from the plot.

23 And there is some evidence he will say that he
24 was coerced to a level by Mr. Lide, the gentleman
25 who may ultimately choose to go to trial.

1 But in my judgment, and I have talked with him
2 extensively about this, his reluctance is helpful
3 from a mitigation standpoint, but the fact that he
4 didn't extricate himself from this, that he did go
5 along, although there is evidence of some degree of
6 coercion, in my judgment, it does not rise to an
7 absolute defense to the extent that -- I mean, I
8 just felt that this plea was necessary.

9 The Solicitor's Office, obviously, because
10 they have statements from Jeremy that include his
11 participation, but include references to this, his
12 reluctance in the coercion, and all of that I think
13 is plenty of evidence that if he went to trial he
14 would be convicted.

15 THE COURT: Okay.

16 MR. McCULLOCH: So I advised him of all of
17 that. That is the problem for him, Your Honor.
18 And he recognizes the hand of one is the hand of
19 all. But he is not sophisticated in the law, of
20 course, as many folks who come in here.

21 So we have talked about all these issues with
22 Jeremy several times, with his parents. They have
23 spoken in the last several days, so I believe that
24 his -- the entry of the plea is valid --

25 THE COURT: Okay.

1 MR. McCULLOCH: -- based on my advice and
2 based on his and his family's advice.

3 THE COURT: Okay. And then you have also been
4 indicted for the armed robbery, which means that
5 you basically put somebody in fear and made them
6 believe that you had use of a weapon or threat of
7 the use of a weapon.

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Okay. And then the kidnapping,
10 holding somebody essentially against their will,
11 whether it be for two seconds or 20 hours or more.

12 Do you understand that?

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Okay. And then assault and
15 battery of a high and aggravated nature, meaning
16 there was an assault and battery committed against
17 an individual or more, okay? I just want you to
18 understand the underlying facts.

19 THE DEFENDANT: Yes, ma'am, I understand.

20 THE COURT: Okay. All right. And then with
21 respect to your plea as well, you need to
22 understand that for the offenses of the kidnapping,
23 the armed robbery, particularly those are
24 considered most serious offenses by category and
25 there would be strikes on your record.

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: And to the extent that you got
3 other strikes for a serious or most serious
4 category you would find yourself facing life
5 without the possibility of parole with no
6 discretion by the judge. That would be the only
7 sentence they could hand down.

8 MR. McCULLOCH: If you get in trouble after
9 this.

10 THE COURT: This is for after this. For any
11 type of offense that carries those categories of
12 serious or most serious.

13 THE DEFENDANT: Yes, ma'am.

14 THE COURT: Then the State would be seeking
15 life without the possibility of parole.

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: Okay. That is a consequence of
18 this plea because it will now be on your record and
19 you will have that strike on your record.

20 Do you understand that?

21 THE DEFENDANT: Yes, ma'am.

22 THE COURT: Do you also understand that
23 pleading here today, the offense of armed robbery
24 carries a minimum of ten years?

25 THE DEFENDANT: I understand.

1 THE COURT: Okay. So you are pleading today.
2 And then these other offenses, kidnapping, armed
3 robbery, and the criminal conspiracy would also be
4 felonies on your record.

5 THE DEFENDANT: Yes, ma'am, I understand.

6 THE COURT: Okay. So these are all
7 consequences of the plea. I just want you to make
8 yourself aware of that, that when you are pleading
9 you are giving up constitutional rights, physically
10 whether I mentioned them or not. Then you also
11 have other consequences of the plea, that you'll
12 have a strike on your record as well as a felony on
13 your record.

14 THE DEFENDANT: What you consider one strike?

15 THE COURT: Yes, for purposes of you doing it
16 all today.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right. And then with respect
19 to the plea, do you feel like you had enough time
20 to speak with your attorney about the nature of the
21 charge and the maximum possible punishment and your
22 constitutional rights?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And do you feel like he has
25 addressed any issues, questions or concerns that

1 you might have had along the way so that you can
2 make an informed and intelligent decision about
3 whether you should plead guilty or go to trial?

4 THE DEFENDANT: Yes, ma'am.

5 THE COURT: Okay. So you all have had
6 thorough discussions and you feel like this is in
7 your best interest?

8 THE DEFENDANT: Of course, ma'am.

9 THE COURT: Okay. All right. Has anyone
10 forced you or threatened you to plead?

11 THE DEFENDANT: Myself.

12 THE COURT: Okay. All right. And you are
13 doing so voluntarily then?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. And that is after having
16 enough consultation with your attorney and having
17 legal representation, correct?

18 THE DEFENDANT: Yes, ma'am.

19 THE COURT: Okay. Do you have any complaints
20 against any of the arresting officers, the
21 Solicitor's Office, or any governmental agency
22 involved with this matter?

23 THE DEFENDANT: It just that I think in
24 looking, it is totally different from my character.

25 THE COURT: Okay. And you understand that

1 we're here for the plea today. At sentencing I'm
2 sure your attorney will do an outstanding job about
3 trying to mitigate and convince the Court about any
4 sentencing issues with respect to you.

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: Okay. I do understand that as
7 part of this plea the reason that your sentencing
8 is deferred is because you intend to cooperate at
9 the trial of Dominic Lide?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Okay. It is not -- that is
12 totally your decision. But I don't know anything
13 about what the potential negotiations are with
14 respect to your sentencing through the Solicitor's
15 Office or Mr. McCulloch. That is not for me to
16 know today. I just need to know whether or not
17 this is a knowing, voluntary and intelligent plea.

18 I just need to warn you that should you decide
19 not to somehow cooperate or cooperate to the extent
20 that they are asking, then they are also going to
21 be presenting to the Court what they believe should
22 be any potential sentence against whatever
23 mitigation that Mr. McCulloch might have, okay?

24 So in other words, Mr. McCulloch gets to --
25 the State gets to make their presentation about the

1 facts, and what they believe the evidence would show
2 if you had gone to trial.

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: With respect to convincing me of
5 the particular sentence.

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: Mr. McCulloch also will have the
8 opportunity to try to mitigate and do what you have
9 asked him to do, to show your limited role --

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: -- in the proceeding.

12 THE DEFENDANT: Yes, ma'am.

13 THE COURT: If you choose not to cooperate by
14 testifying at Mr. Lide's trial, of course the
15 State, whatever negotiations that you all have
16 going on, they are going to be hard pressed to
17 really try to get more time in this regard. That
18 is part of why your sentence is deferred, because I
19 could sentence you today.

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Okay. So I just want you to
22 understand that is part of the reason why it is
23 deferred because they are expecting your
24 cooperation to convict Mr. Lide, who chooses to go
25 to trial.

1 THE DEFENDANT: I have always been willing to
2 testify. I was just -- I have a mother that is by
3 herself out there. I'm just kind of hesitant
4 because I don't want nothing to happen to her.

5 THE COURT: Okay. And that is fine. I just
6 want you to understand that was part of why your
7 sentence is deferred is because they are expecting
8 you to cooperate.

9 THE DEFENDANT: Yes, ma'am, I understand.

10 THE COURT: Whatever negotiations are going on
11 I don't know about that, but that is between the
12 State and your attorney and that will be brought
13 out at a later time. But the reason you are not
14 getting sentenced today is because they are
15 expecting you to cooperate, and then will try to
16 get you sentenced after that trial.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay. All right. So, and then
19 again that is your choice as to whether you decide
20 to cooperate or not. That has nothing to do with
21 the Court, that is between the State and you and
22 your attorney.

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: Okay. Do you have any questions
25 of the Court?

1 THE DEFENDANT: I'm at a loss, Judge.

2 THE COURT: Have all the questions that I
3 asked you today, have you understood them?

4 THE DEFENDANT: Yes, ma'am, for the most part.

5 THE COURT: Okay. Is there anything you
6 haven't understood that you need me to re-explain?

7 THE DEFENDANT: No, ma'am.

8 THE COURT: Okay. And have your answers been
9 truthful?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: And so I can accept today that you
12 understood my questions and that your answers have
13 been truthful?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Do you need any more time with
16 your attorney at this time?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: Okay. And you are satisfied with
19 his representation?

20 THE DEFENDANT: For the most part.

21 MR. McCULLOCH: That is a lukewarm
22 endorsement, isn't it?

23 THE COURT: He has to play the cards with the
24 hand he was dealt with and deal with the facts he
25 has got and try to do the best job that he can. Do

1 you understand that?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: Okay. But to the extent that he
4 has presented everything to you, he has let you
5 know what evidence the State has, and he has given
6 you various scenarios and opportunities for you to
7 make a decision as to what your options are?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: And you feel like he has
10 thoroughly gone over that?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: Okay. Go ahead.

13 (Pause.)

14 MR. McCULLOCH: Mr. McPhail wants me to ask
15 the Court that if it is possible -- and I already
16 know the answer, but he wanted to know if it is
17 possible that his mother can be provided protection
18 if and when he testifies against Mr. Lide.

19 That is something the Court doesn't have the
20 power to do. But I will speak with the Solicitor
21 and see if there is a chance of that.

22 THE COURT: Sure.

23 MR. McCULLOCH: But that is a great concern of
24 his, which he has mentioned to me repeatedly.

25 THE COURT: Okay.

1 MR. McCULLOCH: And I don't know how realistic
2 it is. In our system it is unusual that there
3 would be any retribution, but it is not unheard of,
4 unfortunately.

5 THE COURT: Right. Mr. McCulloch will do a
6 great job with that. And to the extent that the
7 Court needs to intervene and issue any type of
8 order, I'll be happy to do so, okay?

9 THE DEFENDANT: Okay.

10 THE COURT: And thank you for hearing and
11 having that concern for your mother realizing what
12 is at issue for you to actually participate in the
13 proceedings against Mr. Lide.

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: Okay. All right, anything further
16 at this time?

17 THE DEFENDANT: No, ma'am.

18 THE COURT: By the State or Mr. McCulloch?

19 MR. McCULLOCH: Your Honor, the only thing I
20 would mention is that, as with other Defendants who
21 have entered pleas recently, there have been
22 discussions about the sentencing parameters.

23 THE COURT: Right.

24 MR. McCULLOCH: And in this instance we have
25 talked about and have agreed to a not less than 15

1 years and not more than 28 years. And the
2 sentencing parameters are in the form I guess of a
3 negotiated sentence that we will present to the
4 sentencing judge. And I'm confident based on the
5 facts that we'll be towards the lower end of that,
6 I hope. But I have explained all that to Jeremy.
7 He understands there is a not greater than and a
8 not less than, and that the sentencing judge will
9 have the authority to sentence anywhere in that
10 range, that it becomes up to me to present a
11 sufficient set of facts to persuade the judge what
12 the sentence we believe should be given. The
13 Solicitor will present the facts and I will present
14 our facts and the judge will make the decision.
15 And Jeremy understands that.

16 THE COURT: Okay.

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Okay. Anything else at this time?

19 MR. GOLDBERG: Nothing from the State.

20 THE COURT: Okay, I wish you well, sir.

21 MR. McCULLOCH: Thank you, Your Honor.

22 (WHEREUPON, the proceedings were concluded.)
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(END OF TRANSCRIPT)

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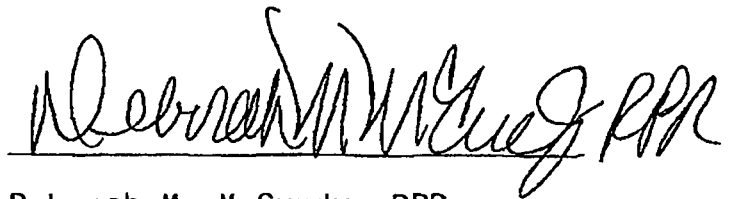
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA }
 }
COUNTY OF RICHLAND }

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 4th day of December, 2008.

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

May 3, 2011



Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

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AUGUST 10, 2009

1
2 THE COURT: The Court had before it one later
3 media request, but I just got here, so I'm just
4 acknowledging that I'm signing off on that. And
5 this is from the prior hearing. Madam Clerk, if
6 you will take those.

7 All right, Mr. Goldberg.

8 MR. GOLDBERG: May it please the Court, Your
9 Honor? Dan Goldberg, for the State. We are before
10 you for sentencing purposes in the cases of State
11 v. Dominic Lyde, Darryl Frierson, Jeremy McPhail,
12 Paul Whitaker; and two motions to reconsider
13 sentences on State v. Kelby Blakney and Domonique
14 Blakney.

15 Counsel for each individual is present in the
16 courtroom. Mr. Charlie Johnson, for Kelby Blakney;
17 Deon O'Neil, Public Defender's Office, for Darryl
18 Frierson; Mr. Hemphill Pride is present for
19 Mr. Paul Whitaker -- he is actually seated behind
20 Mr. Pride; Josh Kendrick here on behalf of Dominic
21 Lyde; Mr. Joe McCulloch here on behalf of Jeremy
22 McPhail; and Tav Swarat here on behalf of Domonique
23 Blakney.

24 Your Honor has accepted guilty pleas on four
25 of the six and deferred sentencing until today.

1 You have sentenced, as I indicated, the two
2 Blakneys previously, and they have filed their
3 motions to reconsider.

4 THE COURT: Okay. All right, just so that we
5 have kind of a plan given that we have
6 multi-Defendants in this regard, we will ask --
7 first of all, I will discuss with the Defendants
8 the fact that they have pled guilty and ask them
9 some questions about their understanding of their
10 rights when they pled.

11 Then I think it is best to next proceed by
12 allowing the State to present the case on the facts
13 collectively of all the individuals here.

14 In that presentation we will hear from any
15 victims or other persons who wish to speak that are
16 connected with the State.

17 After that we will allow Defense counsel in
18 their presentation to just go in the order of the
19 indictment to come forward with their client with
20 respect to any mitigation at that time.

21 And during this proceeding, then, I'm going to
22 request that all persons stay in the box as they
23 are indicated there. And we will proceed in that
24 fashion.

25 So for each of you, all Defendants, if you

1 will please rise at this time because I would like
2 to question you about your specific rights.

3 (Defendants comply.)

4 THE COURT: But first of all I'd like to be
5 introduced to you individually, I know we have all
6 met because I have pled everyone, but I need to
7 just put a face with a name.

8 So who is Mr. Dominic Lyde?

9 THE DEFENDANT LYDE: Me.

10 THE COURT: Okay. And Darryl Frierson?

11 THE DEFENDANT FRIERSON: Right here.

12 THE COURT: Okay. And then Jeremy McPhail?

13 THE DEFENDANT McPHAIL: Me.

14 THE COURT: Okay. And then Domonique Blakney?

15 THE DEFENDANT DOMONIQUE BLAKNEY: Here.

16 THE COURT: Okay. And then Paul Whitaker.

17 THE DEFENDANT WHITAKER: Right here.

18 THE COURT: Okay. All right, gentlemen, as to
19 these questions that I will ask you, I want you to
20 answer individually and in the order as we have
21 just indicated. Our court reporter has to take
22 down everything that is said, and so I want to make
23 sure that we have clear and direct responses on the
24 record.

25 You all do recall that sometime ago at various

1 stages over the last couple of years that I spoke
2 with each of you about your rights to plead or to
3 go to trial.

4 You all have already pled guilty, but I just
5 want to make sure that you all have a clear
6 understanding of your rights and that you are here
7 because you understand that we are dealing with
8 some sentencing issues. So I want to make sure
9 that there are no issues with respect to your plea.

10 So my first questions would be, did you and
11 your attorney go over the nature of your charges,
12 your maximum possible punishment, including any
13 negotiations by the Solicitor's Office, as well as
14 your constitutional rights?

15 Mr. Lyde?

16 THE DEFENDANT LYDE: Yes, ma'am.

17 THE COURT: Mr. Frierson?

18 THE DEFENDANT FRIERSON: Yes, ma'am.

19 THE COURT: Mr. McPhail?

20 THE DEFENDANT McPHAIL: Yes, ma'am.

21 THE COURT: Mr. Kelby Blakney?

22 THE DEFENDANT KELBY BLAKNEY: Yes, ma'am.

23 THE COURT: And I apologize, I should have
24 gone with Mr. Paul Whitaker next.

25 THE DEFENDANT WHITAKER: Yes, ma'am.

1 THE COURT: And then Mr. Kelby Blakney?

2 THE DEFENDANT KELBY BLAKNEY: Yes, ma'am

3 THE COURT: And then Domonique Blakney?

4 THE DEFENDANT DOMONIQUE BLAKNEY: Yes, ma'am.

5 THE COURT: Okay. Did you understand all
6 conversations with your attorney insofar as they
7 discussed your options with respect to whether you
8 should plead or go to trial?

9 Mr. Lyde?

10 THE DEFENDANT LYDE: Yes, ma'am.

11 THE COURT: Mr. Frierson?

12 THE DEFENDANT FRIERSON: Yes, ma'am.

13 THE COURT: Mr. McPhail?

14 THE DEFENDANT McPHAIL: Yes, sir.

15 THE COURT: Mr. Whitaker?

16 THE DEFENDANT WHITAKER: Yes, ma'am.

17 THE COURT: Mr. Kelby Blakney?

18 THE DEFENDANT KELBY BLAKNEY: Yes, ma'am.

19 THE COURT: And Mr. Domonique Blakney?

20 THE DEFENDANT DOMONIQUE BLAKNEY: Yes, ma'am.

21 THE COURT: And did your attorney address any
22 issues, questions or concerns that you might have
23 with regard to whether it was better for you to
24 plead or to go to trial?

25 Mr. Lyde?

1 THE DEFENDANT LYDE: Yes, ma'am.

2 THE COURT: Mr. Frierson?

3 THE DEFENDANT FRIERSON: Yes, ma'am.

4 THE COURT: Mr. McPhail?

5 THE DEFENDANT McPHAIL: Yes, ma'am.

6 THE COURT: Mr. Whitaker?

7 THE DEFENDANT WHITAKER: Yes, ma'am.

8 THE COURT: And Mr. Kelby Blakney?

9 THE DEFENDANT KELBY BLAKNEY: Yes, ma'am.

10 THE COURT: And Mr. Domonique Blakney?

11 THE DEFENDANT DOMONIQUE BLAKNEY: Yes, ma'am.

12 THE COURT: Did you understand all

13 conversations with your attorney so that you could

14 make an informed and an intelligent decision about

15 whether you should have pled guilty or gone to

16 trial?

17 Mr. Lyde?

18 THE DEFENDANT LYDE: Yes, ma'am.

19 THE COURT: Mr. Frierson?

20 THE DEFENDANT FRIERSON: Yes, ma'am.

21 THE COURT: Mr. McPhail?

22 THE DEFENDANT McPHAIL: Yes, ma'am.

23 THE COURT: Mr. Whitaker?

24 THE DEFENDANT WHITAKER: Yes, ma'am.

25 THE COURT: Mr. Kelby Blakney?

1 THE DEFENDANT KELBY BLAKNEY: Yes, ma'am.

2 THE COURT: And Mr. Domonique Blakney?

3 THE DEFENDANT DOMONIQUE BLAKNEY: Yes, ma'am.

4 THE COURT: Do any of you need any additional
5 time to speak with your attorney at this time about
6 any issues arising from this proceeding?

7 Mr. Lyde?

8 THE DEFENDANT LYDE: No, ma'am.

9 THE COURT: Mr. Frierson?

10 THE DEFENDANT FRIERSON: No, ma'am.

11 THE COURT: Mr. McPhail?

12 THE DEFENDANT McPHAIL: No, ma'am.

13 THE COURT: Mr. Whitaker?

14 THE DEFENDANT WHITAKER: No, ma'am.

15 THE COURT: Mr. Kelby Blakney?

16 THE DEFENDANT KELBY BLAKNEY: No, ma'am.

17 THE COURT: And Mr. Domonique Blakney?

18 THE DEFENDANT DOMONIQUE BLAKNEY: No, ma'am.

19 THE COURT: As you stand here today are you
20 sure of your decision about going to -- pleading
21 guilty as opposed to going to trial?

22 Mr. Lyde?

23 THE DEFENDANT LYDE: Yes, ma'am.

24 THE COURT: Mr. Frierson?

25 THE DEFENDANT McPHAIL: Yes, ma'am.

1 THE COURT: Mr. McPhail?

2 THE DEFENDANT McPHAIL: Yes, ma'am.

3 THE COURT: Mr. Whitaker?

4 THE DEFENDANT WHITAKER: Yes, ma'am.

5 THE COURT: Mr. Kelby Blakney?

6 THE DEFENDANT KELBY BLAKNEY: Yes, ma'am.

7 THE COURT: And Mr. Domonique Blakney?

8 THE DEFENDANT DOMONIQUE BLAKNEY: Yes, ma'am.

9 THE COURT: Okay. The Court will stand by the
10 Defendants and their respective pleas today, and so
11 those pleas have been accepted. And I am further
12 reassured that those pleas were entered voluntarily
13 and intelligently and that they did so with the
14 advice and consent of their attorneys.

15 At this time I would like to ask you one
16 further question. Are you satisfied with the
17 representation of your attorney?

18 Mr. Lyde?

19 THE DEFENDANT LYDE: Yes, ma'am.

20 THE COURT: Mr. Frierson?

21 THE DEFENDANT FRIERSON: Yes, ma'am.

22 THE COURT: Mr. McPhail?

23 THE DEFENDANT McPHAIL: Yes, ma'am.

24 THE COURT: Mr. Paul Whitaker?

25 THE DEFENDANT WHITAKER: Yes, ma'am.

1 THE COURT: Mr. Kelby Blakney?

2 THE DEFENDANT KELBY BLAKNEY: Yes, ma'am.

3 THE COURT: And Mr. Domonique Blakney?

4 THE DEFENDANT DOMONIQUE BLAKNEY: Yes, ma'am.

5 THE COURT: And the record so reflects that
6 they indicate their satisfaction as well.

7 Each of you would have ten days to appeal any
8 guilty plea and/or sentence. Are you understanding
9 of those rights?

10 Mr. Lyde?

11 THE DEFENDANT LYDE: Yes, ma'am.

12 THE COURT: Mr. Frierson?

13 THE DEFENDANT FRIERSON: Yes, ma'am.

14 THE COURT: Mr. McPhail?

15 THE DEFENDANT McPHAIL: Yes, ma'am.

16 THE COURT: Mr. Whitaker?

17 THE DEFENDANT WHITAKER: Yes, ma'am.

18 THE COURT: Mr. Kelby Blakney?

19 THE DEFENDANT KELBY BLAKNEY: Yes, ma'am.

20 THE COURT: And Mr. Domonique Blakney?

21 THE DEFENDANT DOMONIQUE BLAKNEY: Yes, ma'am.

22 THE COURT: Okay. We shall proceed then.

23 Mr. Goldberg?

24 MR. GOLDBERG: Thank you, Your Honor. If it
25 pleases the Court?

1 Your Honor, this all took place beginning
2 on -- late in the evening on May the 10th of 2007
3 here in Richland County.

4 Deputy Cameron Brown of the Sheriff's
5 Department was dispatched over to the Bluff Road
6 area in response to an armed robbery that had taken
7 place. He had a victim there waiting for him.

8 When he arrived on Bluff Road, he encountered
9 the victim in this case, David Jones, who is
10 actually seated in the first row here in front of
11 you in the striped shirt.

12 Mr. Jones indicated that the armored car that
13 he had been driving on behalf of Express Teller
14 Service had been robbed while he was refueling at
15 the Circle K gas station, [REDACTED] here in
16 Richland County.

17 Deputy Brown immediately observed some
18 significant injuries to Mr. Jones' face at that
19 time. He listened to him give him some preliminary
20 information.

21 Mr. Jones told him off the bat about how he
22 had been entering the car after refueling. He had
23 been assaulted from behind, forced into the truck
24 by an individual wielding a handgun, possibly more
25 than one individual, and that he was overpowered,

1 pushed into the truck and held down against his
2 will as the truck was driven away.

3 And just for Your Honor's reference so you
4 will know what we are talking about here general
5 area-wise, this is a map of this area of Richland
6 County. You have I-77 right here, Shop Road coming
7 across, and Bluff Road coming across here. The
8 Express Teller Service was located here on Shop
9 Road.

10 When the car came in to get refueled before it
11 returned to Express Teller, it came to fuel right
12 here at the corner of Bluff Road and Atlas Road.
13 This is where the actual assault on the vehicle
14 took place.

15 Once the truck was overtaken, it was driven up
16 Bluff Road and then they turned here on Whitehouse
17 Road, drove a couple of miles down this -- to what
18 becomes a dirt road on Whitehouse Road where
19 another vehicle was awaiting to empty out the
20 contents of the truck.

21 This will give you an idea of where this all
22 took place.

23 Your Honor, as soon as Mr. Jones provided
24 Deputy Brown with this information, he told the
25 deputy that there was another driver who was

1 actually also there with him named Darryl Frierson.

2 At that point Deputy Brown took Mr. Jones,
3 they go to Whitehouse Road where they find the
4 truck, and they find Mr. Frierson located at the
5 truck.

6 At this point Mr. Frierson, it was assumed
7 that he was just another victim in the case as he
8 was the co-driver of the car with Mr. Jones.

9 He claimed to Deputy Brown that he had
10 suffered some neck and shoulder injuries. There
11 were no apparent injuries at this time, no visible
12 injuries.

13 There was a -- Mr. Jones indicated that he had
14 tried to call the Express Teller Service and tell
15 them what happened, but his cell phone had been
16 taken from him.

17 Express Teller actually did receive a call at
18 about 12:30 that night, a very short call that was
19 hung up immediately.

20 As the story goes, Mr. Jones, who had been
21 tied up, was able to free himself from being tied
22 up, and he was able to walk from this dirt road a
23 couple of miles in on Whitehouse Road all the way
24 up to Bluff Road to a club there to call the
25 police. Several miles, while injured.

1 Mr. Frierson had told Mr. Jones he was too
2 injured to walk at that time.

3 At this point that is about the extent of the
4 information that Deputy Brown gathered. EMS
5 responded to that area, took Mr. Jones and
6 Mr. Frierson immediately to the hospital to the
7 emergency room to get checked out.

8 This is when an investigator from the
9 Sheriff's Department, Richland County Sheriff's
10 Department, got involved. Sergeant Kevin
11 Isenhoward, who is present with me today, was the
12 lead investigator on the case. He, along with
13 other individuals from the Sheriff's Department,
14 responded to the hospital, began trying to gather
15 evidence of what took place.

16 Back at --

17 THE COURT: Excuse me.

18 MR. GOLDBERG: Yes, ma'am.

19 THE COURT: Gentlemen, you all can sit down.
20 I apologize.

21 (Defendants comply.)

22 MR. GOLDBERG: While they responded to the
23 hospital, crime scene units and other investigators
24 went out to the scene of where the truck was found
25 to see what kind of evidence they could gather.

1 Just to give you a brief idea of what it looks
2 like, this is a picture of the truck kind of how
3 the contents had been emptied out, strewn about the
4 road after it had been robbed.

5 Sergeant Scott McDonald, of the Sheriff's
6 Department, actually made contact with Mr. Frierson
7 at the hospital, began trying to get his account of
8 what happened:

9 He indicated at that time that he and Mr.
10 Jones drive this armored car for Express Teller
11 Services on a daily basis from Columbia to
12 Charleston where they pick up a load of money and
13 then they return back to Columbia in the same day.
14 And that is exactly what they had done on this day.

15 He proceeded to tell Sergeant McDonald a story
16 of events basically stating that the car had
17 been -- the truck had been overpowered while they
18 had been refueling, that it had been taken -- he
19 had been taken hostage as well as Mr. Jones, that
20 he had been assaulted. He described the incident
21 at that time.

22 Now, this drew red flags to Sergeant
23 Isenhoward at that time, primarily because it was
24 quite a detailed description of not only the
25 suspects, but the vehicle they were in.

1 And you have to realize that this incident
2 took place in a dark, deserted area. It was
3 basically in a strawberry field. No lights. And
4 he was providing extremely detailed descriptions of
5 what had taken place. This raised a bit of a flag
6 to investigators.

7 He described how Mr. Jones had freed himself
8 and that how he was unable to go. He didn't have
9 any visible injuries to him at that time, even
10 though he had told Mr. Jones that he was too
11 injured to walk.

12 At that point he was no more than a witness in
13 the case. Weren't sure about his involvement. He
14 was asked to come to Richland County Sheriff's
15 Department headquarters, talk to investigators
16 more. A statement was taken from him at that time
17 under the theory that he was still a victim of the
18 case.

19 Again, another red flag went up based upon the
20 statement that he gave at the Sheriff's Department,
21 he being Mr. Frierson. He was overly descriptive
22 with his recollection of what took place. I
23 believe Sergeant Isenhoward described that in his
24 experience in law enforcement that a victim who had
25 been -- a victim who had been in that sort of

1 environment, that traumatic of event in that
2 setting would not have been able to provide the
3 kind of details he was providing.

4 He wasn't able to describe how he was
5 restrained that night. There was no evidence of
6 any duct tape or residue on him; whereas, with Mr.
7 Jones, there actually was visibly residue on his
8 arms and hands showing where he had been tied up
9 and had actually gotten the tape off of him.

10 Additionally, Mr. Frierson agreed to take a
11 polygraph, which he failed. He was also seen
12 during a break in the interview through a 2-way
13 mirror actually moving his arm and shoulder around
14 that he had a sling on. He had claimed to have
15 injured his shoulder at that time, and he was able
16 to freely move it around and was observed doing so.
17 All these things raised some red flags for the
18 Sheriff's Department.

19 They placed a GPS locator on his vehicle when
20 he was allowed to leave that day. He stopped very
21 briefly once he left the department. He went by
22 Benedict College and then over the next I believe
23 24 hours or so, he traveled to Sumter, Hartsville,
24 Darlington, Florence, various places around the
25 State. Another red flag to the Sheriff's

1 Department.

2 Mr. Jones was released from the hospital the
3 following day, the 11th of May. He came into
4 headquarters at Richland County, provided a
5 statement. Doctors had diagnosed him with a broken
6 orbital socket, a broken nose, damage to several of
7 his teeth, and his eye was actually completely
8 swollen.

9 And I believe counsel has seen all these
10 photos. They were provided in discovery. This is
11 just a larger version of what his face looked like
12 on that day when he came to the Sheriff's
13 Department.

14 And actually, Your Honor, if I may, I've got
15 some photographs that were provided in discovery as
16 well of Mr. Jones. It is a couple of photos of how
17 he appeared that day. If I might hand those up at
18 this time.

19 THE COURT: You may.

20 (Mr. Goldberg hands photos to Court.)

21 THE COURT: I'm sure counsel has seen all of
22 these exhibits?

23 MR. PRIDE: I have, Your Honor.

24 THE COURT: Okay. Thank you.

25 MR. GOLDBERG: Yes, ma'am. Your Honor,

1 despite the significant injuries readily apparent
2 to the naked eye, Mr. Jones did come to the
3 Sheriff's Department that day. He gave a
4 statement. He wanted to help out as best he could,
5 despite his condition. He gave a statement to law
6 enforcement of what he believed to have happened.

7 All the while, crime scene units were still
8 back at the truck collecting evidence. An
9 important item of evidence they collected, among
10 other things, was a blue latex glove found at the
11 scene. And I'll get back to the importance of that
12 here after a little while.

13 Investigators consulted with Wayne Cook, who
14 was the Director of Corporate Security for the
15 Express Teller Service, along with the owners of
16 the company, the Davis family, as well as the
17 insurance investigator for Express Teller Service,
18 a Andre Yudo.

19 They determined at that time that there was
20 approximately \$18 million on the vehicle at the
21 time that it was traveling from Charleston to
22 Columbia, I believe it was \$18.2 million. At that
23 time, as best they were able to make out,
24 approximately \$9.8 million had been taken from the
25 truck and was unaccounted for, give or take a few

1 hundred dollars.

2 Mr. Yudo was an expert in armored car
3 robberies at that time, having worked these kinds
4 of cases with the insurance company. He deemed at
5 that time it to be one of the top five armored car
6 robberies in the United States history based upon
7 the amount taken.

8 The money that was actually traveling on the
9 armored car came from a number of banks down in the
10 Myrtle Beach and Charleston area, Bank of America,
11 Wachovia, NBSC, and it was from various branches in
12 that area and was actually being transported back
13 here, with some of that money heading en route to
14 the Federal Reserve in Charlotte, North Carolina.

15 Based upon the information they had, at this
16 point investigators pretty much deemed that Darryl
17 Frierson was in fact a suspect in this case and not
18 just a witness and victim, based most significantly
19 upon things I mentioned previously. His alleged
20 injuries at the time were nothing compared to what
21 Mr. Jones suffered. That was obvious just by
22 looking at him. He failed the polygraph
23 examination he took. And his actions leaving the
24 Sheriff's Department the following day once he was
25 released weren't really consistent with someone who

1 had just been the victim of a horrific event the
2 way that Mr. Jones had.

3 So based on that, Investigators Isenhoward as
4 well as Sergeant John Ewing, who is actually
5 currently the Chief of Police in Bishopville,
6 focused their investigation on Mr. Frierson. They
7 went to I believe his residence. There had been
8 some trash abandoned out on the street. They
9 searched through it and actually found a blue glove
10 in the trash, one that was nearly identical to the
11 ones found at the scene where the truck was
12 recovered on Whitehouse Road. Another piece of the
13 puzzle, so to speak.

14 At this point they turned their attention,
15 investigators, to Paul Whitaker. They had been
16 informed earlier that Mr. Whitaker also worked for
17 Express Teller Service, that he was friendly with
18 Mr. Frierson. I believe Mr. Frierson might have
19 actually recommended him for a job at the Express
20 Teller Service. They went to speak to him.

21 When Sergeant Isenhoward first encountered Mr.
22 Whitaker at the Express Teller Service, it was
23 apparent to them that he had information but was
24 somewhat reluctant to share it. He seemed to be
25 upset, kind of tearing up, shaking, so they decided

1 to give him a few minutes, told him, give us a
2 call, come in and talk to us when you are able.
3 And they left the room and he left the room.

4 A few minutes later, Sergeant Isenhoward went
5 out to the parking lot and he encountered
6 Mr. Whitaker again. And at this time Mr. Whitaker
7 was actually beginning to cry, he was staring up at
8 the sky, seeming like he had something he wanted to
9 say. And he did decide at that point that he did
10 want to talk to investigators about what he knew.

11 They returned to the Sheriff's Department. He
12 provided a statement. And he proceeded to tell
13 them all about his friendship with Mr. Frierson and
14 how actually Mr. Frierson had been talking about
15 all the money and robbing the truck for some time,
16 for several months in fact.

17 At this point it wasn't known the scope of Mr.
18 Whitaker's involvement. He told them about how he
19 had been instructed to answer a telephone in the
20 vault. It is common procedure when these armored
21 cars return from trips like this that they make a
22 phone call to their home base operation when they
23 are about ten minutes out to let them know, all
24 right, we'll be there in about ten minutes, get
25 ready, here is where we are.

1 He had been instructed -- he being Whitaker --
2 by Mr. Frierson to answer that phone call so that
3 since the car was being robbed they would have time
4 to take the money, flee the scene before anyone at
5 Express Teller even knew the truck was even close
6 to arriving.

7 He also had told investigators how Frierson
8 had confessed to him that he had been a part of the
9 robbery and that it was actually originally
10 supposed to have taken place the week before but
11 that it had been cancelled.

12 At this point investigators went to search the
13 residence that Mr. Whitaker was residing in at that
14 time in Hopkins. They found a fair amount of cash
15 at that location, as well as some receipts
16 belonging to Darryl Frierson from some money he had
17 spent at the Magnolia Mall the previous weekend in
18 Florence.

19 At this point arrest warrants were obtained.
20 On May 16th, 2007 Mr. Frierson was actually
21 arrested here in Columbia of driving his car. In
22 the car with him was Domonique Blakney, as well as
23 several thousand dollars' worth of cash.

24 Mr. Frierson was advised of his rights at that
25 time. He waived them. He initially denied being

1 involved in the robbery. Investigators actually
2 noticed -- noted that he actually began to laugh
3 uncontrollably, I believe was the way it was
4 stated, while telling investigators that he didn't
5 care what they said because they didn't have
6 anything on him.

7 At this time Paul Whitaker was brought in for
8 another interview. He admitted to a little more
9 culpability at this time. He admitted to being
10 present during the planning of this robbery, to
11 having knowledge of how it was going to happen and
12 when it was going to happen, and that he had
13 actually agreed to field the phone call to the
14 vault that I mentioned earlier so that they could
15 gain some more time for the truck to be -- for
16 Express Teller Service to find out before the truck
17 returned.

18 All of this you have to kind of picture it in
19 your mind. Investigators are talking to Whitaker,
20 Frierson and Mr. Blakney all kind of at the same
21 time in different places of the Sheriff's
22 Department.

23 Mr. Blakney also agreed to speak to --
24 Domonique Blakney -- agreed to speak to
25 investigators, but he initially denied his

1 involvement as well. Got information.
2 Investigators got information that Mr. Blakney may
3 have some photographs on his phone of money, of
4 bags of money, things of this nature.

5 They confronted him about it. He showed them
6 the phone. And, sure enough, there were photos on
7 his cell phone of large bags of money. It had
8 numbers on it written in millions. I think one of
9 the bags a photograph was taken of actually said
10 Federal Reserve on it.

11 At this point Mr. Blakney immediately
12 implicated Darryl Frierson as being involved in the
13 robbery. He admitted at that time to being present
14 and assisting with unloading the money from the
15 armored car into another vehicle, which in fact I
16 believe was his parents' vehicle.

17 At that point the cell phone was taken to show
18 to Mr. Frierson, who was in a holding cell.
19 Mr. Frierson was told -- he was shown the
20 photographs. He was told that Mr. Blakney was
21 telling law enforcement what happened.

22 At this point his body language changed
23 significantly. He kind of slumped down, shoulders
24 slumped, and went down to the floor and looked like
25 he knew something was wrong.

1 At that point Sergeant Isenhoward just left
2 him for a few moments and would come back a few
3 minutes later after that. Meanwhile, Mr. Blakney
4 is still telling investigators that Frierson was
5 the mastermind of the robbery, so to speak, that he
6 had been talking about robbing the truck since
7 February.

8 Mr. Blakney confirmed that this was supposed
9 to have taken place a week prior to the actual
10 incident; however, that it had been called off.
11 There was -- one of the original conspirators in
12 the case, Delayne Sadler, who pled guilty in front
13 of Your Honor, I believe to conspiracy, was
14 supposed to be involved. According to who you ask,
15 it may change a little bit, but according to
16 Mr. Blakney she got scared and backed out of the
17 incident that week prior, which is why it didn't go
18 forward.

19 As a result, Dominic Lyde was recruited to
20 come in and join this group to go commit this
21 offense a week later.

22 On the night of the incident, Mr. Blakney said
23 that he and his brother were driving I believe
24 their father's Jeep Cherokee. They dropped
25 Mr. Jeremy McPhail and Mr. Dominic Lyde off at a

1 building next to the Circle K, where the actual
2 taking of the truck took place. They dropped them
3 off, drove off, and eventually wound up on
4 Whitehouse Road to meet the truck at a later time.

5 He indicated that Mr. Lyde was actually the
6 one that tied up Mr. Jones and that once all the
7 money was loaded up in the Jeep they drove straight
8 to the hotel in the Florence area, began dividing
9 the money up, and that Mr. Frierson actually
10 arrived in Darlington the next day to get his share
11 of the money.

12 Meanwhile, while this is going on, Sergeant
13 Isenhoward again gets word that now Mr. Frierson
14 wants to talk to him. He was advised of his rights
15 again. He waived them. A statement was taken.
16 And he admitted to setting up the entire robbery.
17 He admitted to planning it with Delayne Sadler,
18 Jeremy McPhail, the Blakney brothers and
19 Mr. Whitaker. He also corroborated that statement
20 about how it was cancelled a week prior, the
21 original robbery; however, he said it was because
22 Ms. Sadler was acting kind of crazy and so they had
23 to cut her out. And eventually she was replaced
24 with Mr. Lyde.

25 In Mr. Frierson's rendition to investigators

1 of what happened that night, he said -- and if you
2 recall, Mr. Frierson was the co-driver of the
3 vehicle with Mr. Jones. They had been working
4 together for quite some time, I believe, riding
5 together on these trips. He was in the vehicle
6 waiting for Mr. Jones to come out of the gas
7 station, having paid for the fuel.

8 As Mr. Jones walked up to the vehicle, Dominic
9 Lyde approached him from behind. He had a pistol.
10 He assaulted Mr. Jones, tried to force him into the
11 truck. There was a struggle. Mr. Jones tried to
12 fight back.

13 At this point Mr. McPhail was also armed with
14 a firearm. He came up and assisted Lyde as they
15 both overpowered Mr. Jones, forced him into the
16 truck, to the point that I believe Mr. McPhail
17 actually got on top of Mr. Jones and held him down
18 or sat on him while Mr. Frierson then moved over to
19 the driver's seat to drive the truck.

20 In fact, I believe that Mr. McPhail suffered a
21 bite mark on his hand from when Mr. Jones was
22 trying to get himself free and was unable to during
23 this time.

24 Frierson went on to talk about how they then
25 drove the car out to Whitehouse Road. The Blakneys

1 were there. They unloaded the money. Mr. McPhail,
2 by all accounts, stayed in the cab of the car
3 presumably with the firearm that he had holding Mr.
4 Jones at bay while the two Blakneys, Lyde and
5 Frierson unloaded all the money into the Jeep.

6 After this information was gathered,
7 Mr. McPhail was actually arrested and confessed to
8 his involvement in the robbery. He admitted to
9 getting in the truck while being armed. He
10 admitted to participating in subduing Mr. Jones
11 inside the truck while the others unloaded most of
12 the money and put it in the Jeep. He admitted to
13 various other things. Buying a Cadillac. He
14 actually gave some money to a friend to buy a
15 Cadillac for him, as well as giving various amounts
16 of money to two other individuals to hold for him
17 or hide for him.

18 Also around this time Mr. Kelby Blakney was
19 arrested. He confessed to his involvement and he
20 confessed to meeting the truck out on Whitehouse
21 Road helping to unload it and take the money back
22 to the Pee Dee area.

23 He indicated again that Mr. McPhail stayed in
24 the cab with Mr. Jones while all the money was
25 being unloaded.

1 At this point money is being tallied up that
2 had been recovered. There were -- some money was
3 recovered from various people's houses, from their
4 parents' houses, from friends, through search
5 warrants, by all means available to the Sheriff's
6 Department. I believe within a couple of days
7 \$2.7 million had been recovered.

8 Additionally, Darlington County located some
9 more money in the Blakneys' residence. I believe
10 it was about \$700,000.

11 Also contact was made with the individuals
12 that Jeremy McPhail had given money to. Money was
13 collected from them, approximately \$550,000.

14 Now, all this time, these gentlemen were
15 arrested, they were charged with armed robbery,
16 assault and battery of a high and aggravated
17 nature, kidnapping and conspiracy. That would be
18 Mr. Frierson, Mr. McPhail, the two Blakney
19 brothers. Mr. Whitaker was originally charged with
20 criminal conspiracy only. At a later time he was
21 indicted for the additional charges as well. The
22 one missing from all this was Mr. Lyde. Mr. Lyde
23 could not be found for some nine months after
24 everyone else was arrested. He was not found until
25 February of 2008. He was located in Fayetteville,

1 North Carolina.

2 Once he was taken into custody, he provided a
3 statement to law enforcement. He admitted his
4 involvement. I believe he tried to downplay it a
5 little bit, but he did admit being involved in the
6 robbery.

7 Another individual that he was with, a
8 Kendrick King, had been enlisted to assist him in
9 hiding large portions of money, some of that by
10 burying it on friends' property and land.

11 Mr. King provided a statement about Mr. Lyde's
12 actions, how Mr. Lyde had called him, told him that
13 law enforcement was looking for him and that he
14 needed help. He told them about how Mr. Lyde gave
15 him \$20,000 to give to Lyde's mother, how he gave
16 Mr. King \$20,000 to hold for his bail in case he
17 got caught. He also told -- Mr. Lyde told Mr. King
18 that he had committed the offense and that no one
19 was going to find out because it happened in
20 Columbia and they weren't going to be able to
21 figure it out.

22 Interestingly enough, later a swab was taken
23 of Mr. Lyde's DNA. It was compared to one of the
24 blue latex gloves found at the crime scene. And it
25 was a match for his DNA both on the outside of the

1 glove and the inside of the glove, which was
2 extremely important in this case because that
3 indicated there wasn't a situation where somebody
4 picked up a glove he was wearing and came and
5 dropped it at the scene, it was from the inside of
6 the glove as if he had been wearing it at that
7 time.

8 Your Honor, as I showed you before, the impact
9 on Mr. Jones and the truck. This is just a picture
10 investigators have of what just a portion of the
11 money looked like once it had been gathered in
12 their office during the collection phase.

13 As I indicated, there was approximately \$9.8
14 million taken. To this date I believe just over
15 \$4 million has been recovered by the Sheriff's
16 Department. There is approximately \$5.7 million
17 that is unaccounted for. And I'll let Sergeant
18 Isenhoward address this a little bit later on. He
19 can go into greater detail about how some of that
20 money, while it was unaccounted for, we know it has
21 been spent on various things, we just don't
22 necessarily know by who and when.

23 Your Honor, I believe that is the basic
24 factual scenario here. There are a few other
25 comments that I would like to add at the

1 appropriate time. There is also some victim impact
2 that I think Your Honor would like to hear.

3 I believe first, on behalf of Mr. David Jones,
4 Mr. Jones is present, along with his wife and his
5 sister. Here on his behalf is Mario Pacella, who
6 is his attorney, and he is here to provide Your
7 Honor with some victim impact on behalf of Mr.
8 Jones, who asked Mr. Pacella to do it on his
9 behalf.

10 MR. PACELLA: Your Honor, Mr. Jones has asked
11 me to speak on his behalf. And as I get briefly
12 into my presentation you will understand why he has
13 asked me to do it instead of standing up and
14 speaking before the Court.

15 Mr. Jones is 56 years old. Career
16 correctional officer till about 2001, I believe,
17 when he started doing -- following other pursuits.
18 He was employed as an armored car driver with
19 Express Teller Service. Typically throughout his
20 adult life he worked two jobs.

21 At the time of this robbery, Mr. Jones and the
22 Defendant Frierson were partners. He spent a lot
23 of time in the car going back and forth. And Mr.
24 Jones took it upon himself to be sort of a father
25 figure to Defendant Frierson, and I guess Defendant

1 Frierson was looking to go to college, mentally he
2 had some problems with his family life, and Mr.
3 Jones tried to be a mentor to him to help him, you
4 know, emotionally in that regard.

5 Mr. Jones is still having difficulty believing
6 that his partner had anything to do with this and
7 actually was involved in attacking him, given the
8 relationship he believed he had with Defendant
9 Frierson.

10 You have seen some pictures. Mr. Jones
11 received physical injuries, a fractured nose, the
12 bone above his eye was broken, he had pain and
13 swelling in his left eye, broken nose, broken
14 teeth, hurt his hip, his hip is still causing him
15 some pain. And that is really just the tip of the
16 iceberg, because it is not the physical injuries,
17 though, that are the ones that are lasting for
18 Mr. Jones.

19 Mr. Jones had some serious mental health
20 problems as a result of this. He was diagnosed
21 with major depressive disorder, post-traumatic
22 stress disorder, he has sleep problems, he can't
23 make it through the night sleeping; even with
24 medication. He has nightmares regarding this
25 incident. He has no sex drive. He has bowel

1 problems. He had been treating for some time with
2 a psychologist, Robert Hellams, who is a Ph.D., and
3 a psychiatrist, Dr. Morthala. I should note that
4 recently he has changed treating psychologist and
5 treating psychiatrist because I do represent Mr.
6 Jones in a Workers' Compensation action, and he had
7 all the symptoms, according to Dr. Morthala, of a
8 traumatic brain injury. And that the Workers' Comp
9 hearing had agreed to have him evaluated for a
10 traumatic brain injury. And the evaluation was to
11 be done by the United -- the University of South
12 Carolina School of Medicine. And the practitioner
13 who was to do the testing said he needs to be
14 further along in his mental health treatment for
15 her to have any valid testing. And she suggested
16 changing therapists, changing psychiatrists in
17 order to try to get him to the point to be able to
18 be tested.

19 Those symptoms for traumatic brain injury
20 include memory loss, he has difficulty sustaining
21 his attention and concentrating, he continues to
22 suffer blurred vision and pain above his eye from
23 where he was hit, he lacks motivation, suffers
24 depression, he is unable to become sexually
25 aroused, he has chronic pain, he has serious

1 problems sleeping, even with medication. And all
2 of those, according to Dr. Morthala, are indicative
3 of a traumatic brain injury.

4 I should note that he is also -- hasn't worked
5 since this incident. He -- I think Your Honor
6 knows he is receiving Workers' Compensation, but if
7 he doesn't have a traumatic brain injury, that is
8 going to run out someday, and he still may never be
9 able to work given the serious mental health
10 conditions that he now is faced with.

11 This isn't a case where, having come here
12 today, that Mr. Jones is going to have closure. A
13 lot of times victims comes to court and they are
14 able to have closure. We're not even close to
15 being on the road to closure. He is not close to
16 being released to go to work or to be at MMI or
17 have any idea what his long-term -- long-term
18 effects of this incident are going to be.

19 Thank you, Your Honor.

20 THE COURT: Thank you.

21 MR. GOLDBERG: Thank you. Your Honor, next we
22 have Mr. Tripp Davis, on behalf of the Express
23 Teller Service.

24 MR. DAVIS: Your Honor, good to see you again,
25 I guess. I'm not crazy about being here. It is a

1 bad deal all around for everyone involved.

2 I just want to take a minute and address the
3 serious nature of these sorts of events to our
4 industry and talk a little bit more in detail about
5 the facts and the timing of this event.

6 And we just call this a very bad time, there
7 is never a good time for something like this, but
8 especially this. This was -- this event happened,
9 as I think I mentioned last time I was before you,
10 on the event of our sale -- excuse me, on the eve
11 of our sale. I am going to say that had a
12 tremendous negative impact on two companies and the
13 employees of those companies.

14 We have subsequently sold the business. The
15 business had been in the process of being sold and
16 was scheduled to close the following Friday
17 morning.

18 So I guess the good news there is we were able
19 to get the sale through. The bad news is that this
20 event impacted not only our company and its
21 employees, but the employees of another company as
22 well. And I would number that easily into the
23 hundreds of employees that were involved in that
24 transaction. I would say that ranks very low on
25 the list of impacts of this events.

1 Speaking to the impact that this has on our
2 industry, our industry is a dangerous industry. It
3 is a necessary industry. We do have to move money.
4 Money is something everybody wants. It is
5 something we take very seriously. We put policies
6 and procedures in place to prevent things like this
7 happening. Something that hurts everyone in this
8 business is when someone from the inside takes
9 advantage of their knowledge of the business.

10 So, you know, I ask the Court to take that
11 into consideration when sentencing those involved
12 because there are still good men and women out
13 there like Mr. Jones who take great pride in what
14 they do and put their lives on the line in many
15 cases.

16 You know, not a year goes by that we don't
17 have a fatality in our industry. I'm thankful that
18 didn't happen in this case. Needless to say, we
19 need good men and women in our business. And like
20 I said, everybody needs our service, whether they
21 know it or not. Money has to get from Point A to
22 Point B. It relies on good people like Mr. Jones.

23 So I ask you to take into consideration the
24 impact this has on our industry because there are a
25 number of people big and small that were involved.

1 Again, our underwriters, insureds involved in this
2 are still out over \$5 million. That is nothing to
3 sneeze at.

4 So with that I would just ask that be taken
5 consideration. And, again, on behalf of all the
6 employees and the companies involved, I thank you.

7 THE COURT: Thank you.

8 MR. GOLDBERG: Your Honor, at this time
9 Sergeant Kevin Isenhoward, of the Richland County
10 Sheriff's Department.

11 SERGEANT ISENHOWARD: Ma'am, I'll try and be
12 brief. I know we are getting kind of lengthy here.

13 One, I want to point out how extremely taxing
14 this investigation was on law enforcement in the
15 state and obviously especially the Richland County
16 Sheriff's Department. We had dozens of
17 investigators working on this case for weeks at a
18 time taking them away from Richland County and
19 working in Florence, Darlington, Chesterfield
20 Counties, basically the Pee Dee region of the
21 state. I made several trips to Myrtle Beach,
22 Conway. I mean, basically all over the state on
23 this investigation, which went -- it went on for
24 about a year, consistently for a year. We
25 appreciate everyone's assistance. I want to point

1 that out, that it was other Sheriff's Departments
2 like Darlington and Florence also involved in it.

3 The exact numbers I don't think you have
4 heard. I want to point out that as well.
5 \$9,867,955. Okay? \$9,867,955 was stolen. We
6 still are missing \$5,787,926.

7 Now, that money left with these Defendants and
8 went back to their hometowns and their areas in
9 Darlington and Florence. And it is somewhere. We
10 didn't recover it. I would like that to be taken
11 into consideration here. That money is still in
12 that area somewhere. We are just unable to find it
13 at this point.

14 You know, this was probably one of the most
15 difficult investigations I have ever had a part in.
16 We're talking 20-hour days, driving back and forth.
17 And it was all to help both citizens of Richland
18 County, to protect them, to protect Mr. Jones, and
19 the company. I really felt that this was a
20 dangerous thing for Mr. Jones, and throughout it I
21 could tell how it affected him. And it was a real
22 effect. And I'm not sure if it will ever be right.
23 I'm glad he came here today and pointed that out to
24 you.

25 But basically we want you to take all this

1 into consideration. I would also like to point out
2 that as a result of the investigation the Sheriff's
3 Department has stored dozens, I think at least
4 three vehicles, electronics, clothing, jewelry,
5 everything you can imagine that is basically
6 ill-gotten gains.

7 I would ask that you forfeit any claim that
8 any of those Defendants have to these items seized
9 during the investigation so that the Sheriff's
10 Department can coordinate with the insurance
11 investigators and agencies in liquidating those
12 assets in maybe recovering some money. Basically
13 we're at this point responsible for the costs of
14 storing it this whole time, so we'd be anxious to
15 be able to liquidate it and return the money to
16 those that deserve it.

17 And that's it. I appreciate your time.

18 THE COURT: Thank you.

19 MR. GOLDBERG: Your Honor, along those lines,
20 I'd like to take this opportunity to thank the
21 Richland County Sheriff's Department for their
22 efforts in this case. I know that it was an
23 extremely high amount of work that it required to
24 get to this point. Sergeant Isenhoward, as well as
25 the other members of his staff, Sergeant Scott

1 McDonald, Investigator Matt Ellis, Captain Stan
2 Smith, John Ewing, he is now the Bishopville Police
3 Chief, Investigator Chris Lindler, all of them
4 working these kinds of hours, and I just want to
5 thank them for the efforts that they put in that
6 actually enabled us to be standing before you
7 today, because we certainly wouldn't be doing it
8 had they not trusted their instincts, followed them
9 and put this case together in such a quick, quick
10 manner. I think that was the key to putting this
11 whole thing together. They were on it right away.
12 I think that is important and they should be
13 commended for that.

14 I want to thank Mr. Jones for coming here
15 today. I know it is very difficult for him to be
16 present to see these individuals, the ones that he
17 worked with, the ones he didn't know, to relive
18 this experience in a way, listening to me re-tell
19 what took place. I know it is a difficult thing
20 for him. And I think it is important that he is
21 here. And I'm glad he is here. And I appreciate
22 him being able to muster up the strength to be
23 here, as well as Mr. Davis coming here on behalf of
24 the Express Teller Service. I know it was a scary
25 time there for them and their business, having to

1 put the sale of the company off as a result of
2 this, uncertainty of whether or not their
3 livelihoods would be able to be sustained as a
4 result of this.

5 Your Honor, just a few more notes, and then I
6 will turn it over to the Defense.

7 Just for the record, Mr. Domonique Blakney and
8 Mr. Kelby Blakney pled guilty in front of Your
9 Honor January 10th, 2008. They each pled to armed
10 robbery and kidnapping, assault and battery of a
11 high and aggravated nature, and criminal
12 conspiracy.

13 Your Honor sentenced them each to 25 years on
14 those charges. Obviously we are here today for the
15 motion -- their motion to reconsider their
16 sentence.

17 As far as prior records for each of those
18 individuals:

19 Mr. Domonique Blakney had no prior record
20 before this incident.

21 Mr. Kevin Blakney had a conviction in 2006 for
22 public disorderly conduct. He also was charged
23 with armed robbery and assault and battery with
24 intent to kill in Darlington County. I actually
25 made a -- my understanding is that it is still

1 pending; however, I believe that it may have been
2 dismissed, according to Mr. Johnson, I'm not sure
3 what the status is of that. But in any event, it
4 took place before this event.

5 Also, Mr. Darryl Frierson pled guilty in front
6 of Your Honor on December 3rd, 2008. Again, the
7 armed robbery, kidnapping, assault and battery of a
8 high and aggravated nature and criminal conspiracy.
9 You deferred sentencing.

10 Jeremy McPhail's plea was accepted on December
11 the 4th, 2008, again as charged, to conspiracy,
12 ABHAN, armed robbery and kidnapping.

13 Mr. Lyde pled guilty on July the 1st of this
14 year, 2009. Again, armed robbery, kidnapping,
15 ABHAN and conspiracy.

16 Mr. Paul Whitaker pled guilty on December the
17 2nd, 2008 to the original charge that he was
18 arrested for, criminal conspiracy. And that is the
19 only charge he pled to. His sentence was also
20 deferred until this date.

21 I'm sorry, I skipped over their records as
22 well. Mr. Frierson, Mr. McPhail and Mr. Whitaker
23 all have no prior records.

24 Mr. Lyde had a prior conviction for assault
25 and battery of a high and aggravated nature, I

1 believe a second degree assault. He received a
2 split sentence, some active time and some
3 probation.

4 Your Honor, I understand that counsel will now
5 have the opportunity to address you in their
6 mitigation.. Obviously I would like to reserve the
7 right to make some comments at the end, but at this
8 time I just would like to say that on behalf of
9 everybody here, we appreciate you taking the time
10 to get this matter done.

11 I would like to say that this is not your
12 typical armed robbery. This is not a standard
13 armed robbery. This isn't two guys that knocked
14 over grandad's liquor store. It is a lot more to
15 it than that. It was a well thought out,
16 calculated plan. Each person involved had their
17 own roles. They had their own jobs to do. And
18 they executed them, from being the one that
19 answered the phone, from being the one that was the
20 driver, the inside man, so to speak, the assailants
21 at the gas station, the ones responsible for
22 getting the Jeep to the dirt road to unload the
23 money. They each had their role, they each carried
24 it out, and they each did what they were supposed
25 to do.

1 And as a result, there was a far-reaching
2 impact, as you have already heard today, from their
3 actions. This isn't just a typical armed robbery
4 where the clerk gets a gun stuck in his face and a
5 few dollars are taken and he goes back to work the
6 next day.

7 I think -- my words can't do justice what this
8 has done, specifically to Mr. Jones. Express
9 Teller Service, all the people associated with
10 their business, hundreds of people clearly
11 invest -- clearly affected by this incident. The
12 Sheriff's Department as well.

13 I just want to make that distinction. I know
14 an armed robbery is sometimes referred to as just
15 another armed robbery. This is a far-different
16 scenario. And I'd like you to take that into
17 consideration as you sentence these individuals.

18 And I believe that is all I have at this time;
19 however, if need be I would like to reserve the
20 right for some comments at the end.

21 THE COURT: Absolutely.

22 MR. GOLDBERG: Thank you.

23 THE COURT: Okay. All right, as I indicated
24 earlier, we would go in the order that is listed on
25 the indictment, so we will begin with counsel for

1 Mr. Dominic Lyde.

2 MR. KENDRICK: Do you want Mr. Lyde to come
3 around?

4 THE COURT: You are welcome to do so.

5 (Defendant Lyde approaches.)

6 THE COURT: You can proceed.

7 MR. KENDRICK: Thank you, Your Honor.

8 Your Honor, I'm Josh Kendrick, on behalf of
9 Mr. Lyde.

10 Obviously you have heard a lot about the
11 facts. And I don't think we dispute anything that
12 the State just said. So what I want to concentrate
13 on is giving you a little bit of background on
14 Mr. Lyde and talk to you in general about what I
15 would ask you to consider an appropriate sentence
16 in this matter.

17 Your Honor, Mr. Lyde is 24 years old. He
18 spent most of his life in Darlington, South
19 Carolina, living down there with his mother. And
20 he has one sister. His sister is here in court
21 today, Your Honor, and I have lost them in the
22 crowd. His sister and an aunt and his father have
23 come here. Mr. Lyde's mother unfortunately passed
24 away during the time he was in prison with cancer.
25 I did get the opportunity to meet with her, I guess

1 last fall when we thought this case might go to
2 court. I had spoke to her for a long time at her
3 house. She was very concerned about her son. She
4 was a very fine woman. And I remember her calling
5 me quite a bit before her passing to see what was
6 going on. Mr. Lyde has had a lot of family
7 support.

8 Your Honor, Mr. Lyde, the only time he hasn't
9 lived in Darlington, South Carolina is when he
10 moved to Maryland. He went up there to live with a
11 cousin and actually worked for the NSA, the
12 National Security Agency, in their building. That
13 is where this assault arose is the only thing on
14 his record. I spoke with him about that at length.
15 Quite simply, he got into a fight with his cousin.
16 It had been an ongoing dispute. The fight turned
17 rather violent. He ended up doing a little bit of
18 jail time and some probation up there, Your Honor.

19 But I wanted to kind of put that in front of
20 you that it was a family dispute. It was something
21 that, from him telling me the facts, obviously had
22 been brewing for some time. It wasn't a random act
23 of violence. It wasn't him doing anything outside
24 of a normal family conflict, other than it got far
25 out of control, Your Honor. That is the only time

1 he has ever been in trouble.

2 He came back to Darlington after that. He
3 lived down here again with his mother. I wanted to
4 mention he does have a high school degree, Your
5 Honor, graduated from Darlington. Has no kids.
6 Not married. Single. He was working at the Blue
7 Beacon when this happened, which is a truck stop --
8 wash down in the Darlington area.

9 Your Honor, one thing I think is important,
10 Mr. Lyde gained some notoriety at the beginning of
11 this case from I guess the national media that gave
12 him some attention. I think that that -- Your
13 Honor, that is probably less relevant today than we
14 would maybe have originally thought. Mr. Lyde is
15 apparently, from what the State said, and this was
16 my position, came into this plan very late. He
17 was -- actually just became involved in the day
18 before the robbery, the actual professed robbery.
19 It doesn't appear that he was involved in the
20 planning or any of the extensive preparation that
21 went into this.

22 I say that, Your Honor, like I always do in
23 this courtroom, not to offer an excuse for what he
24 has done or say that it lessens somehow the
25 culpability, but it does mitigate, Your Honor. And

1 I think that is what your job is today is you have
2 a number of people in front of you all charged with
3 essentially the same thing, but all in different
4 positions.

5 I think it should cut in Mr. Lyde's favor that
6 he did come into this at the last minute. It was
7 certainly a terrible decision, but he was
8 approached by some childhood friends of his, you
9 know, in a few days we are going to go rob this
10 armored truck, everybody is going to make a lot of
11 money, would you like to join us, and he does. A
12 terrible decision, Your Honor, and one that I know
13 he regrets, but again I think it does play into
14 your consideration of what he did, that he wasn't
15 involved in the long-term planning like some of the
16 others.

17 Your Honor, the other thing I want to address
18 is that Mr. Lyde was the very last person to plead
19 guilty. But I do want to point out that he pled
20 guilty well before we actually had to start a
21 trial. It wasn't something where I think the State
22 had begun the trial, had begun putting their
23 witnesses together. And I think that is important
24 because a lot of times people I guess are looked on
25 in a negative manner for waiting that long to plead

1 guilty. I think in this case, Your Honor, Mr. Lyde
2 did the right thing.

3 If you will remember, he came in front of you
4 towards the end and addressed some concerns he had
5 with me and with the case. I guess those can be
6 frustrating days for attorneys, Your Honor, but
7 looking back, that is the right thing to do because
8 those have all been aired. He has had a chance to
9 consider things and go over with Your Honor what
10 some of his problems were in the case and make a
11 fully informed plea of guilty. I would prefer all
12 my clients do that, Your Honor, so that they would
13 have that knowledge, the fact they considered what
14 was going on, they thought about everything
15 carefully. And he has. Mr. Lyde has certainly not
16 been delaying or playing games with the system at
17 all. Ultimately he did the right thing. Your
18 Honor can imagine how difficult it is to come into
19 this courtroom, especially under this intense
20 scrutiny, and say, yes, I committed this crime. So
21 I think he ultimately did the right thing, and I
22 ask that you give him credit for that, Your Honor.

23 One of the problems, again, Your Honor, I
24 think we run into here is with the amount of media
25 scrutiny in this case, with the amount of money

1 involved, there is some I guess favor what the
2 State says that this is not just another armed
3 robbery, but what I want to point out to Your Honor
4 is that while that may be the case, I don't know
5 that that is entirely what we look at when we are
6 coming up with sentencing.

7 My client certainly wouldn't be given a break
8 if he had stolen \$1 in that gas station robbery,
9 and Your Honor knows that those people get
10 sentenced too. There is no break, there is no
11 going easy on somebody. A robbery I think is the
12 elements of stealing, and then the fact that you
13 have stolen from an actual person, those are what
14 go then to that conviction, Your Honor. I mean,
15 the armored truck adds a lot of, I guess flash to
16 this case, it adds a little bit of glamor, but it
17 doesn't add anything to the bottom line, that this
18 was an armed robbery. And I certainly would ask
19 Your Honor not to sentence my client to a greater
20 sentence because of the amount of money involved,
21 just like I don't think you would take me seriously
22 if I came in asked for a lesser sentence because of
23 the small amount of money that is involved in most
24 armed robberies.

25 I would ask you to instead concentrate on,

1 Number One, his culpability, Your Honor,
2 in planning and preparation of this. I think that
3 is probably one of the biggest concerns in this
4 courtroom is the amount of work that went into the
5 pulling this caper off. My client wasn't involved
6 in the majority of that, Your Honor. And I would
7 ask that he receive some credit for that.

8 I think the range we're dealing with
9 recommended by the State is 15 to 28. Your Honor,
10 I guess I have the ability to see that you have
11 already sentenced some people at a similar level of
12 culpability to 25 years, and those people are
13 asking you to reconsider their sentence, which I
14 hope you do, Your Honor, because I think 25 years
15 satisfies I guess our retribution portion of
16 sentencing in that it is a serious punishment for a
17 crime of such magnitude, but as far as the
18 rehabilitation, I think it fails there, Your Honor,
19 I think it is too long. My client is not someone
20 who can't benefit at all from this system. He has
21 the one assault on his record, which I have
22 explained to you. Other than that he was hard
23 working. He finished high school. He took care of
24 his mom. He got great support from his family. I
25 think all the Defendants are in that situation,

1 Your Honor. These aren't the typical people that
2 would be in your courtroom for an armed robbery. I
3 don't think that warrants more punishment, I think
4 it warrants less.

5 Armed robbery is a serious crime, which is why
6 our legislature set it at 10 years is pretty much
7 the minimum you'll get. The State is recommending
8 15, and I wouldn't realistically ask Your Honor to
9 go under that, but I don't think much over 20 years
10 is an appropriate sentence in this case. I think
11 somewhere in the 15 to 20 year range would
12 certainly serve all the purposes that you have to
13 be aware of, Your Honor, because it is a long time.
14 It is a long time in prison, it is as long as my
15 client has been alive almost.

16 So, again, I think just pointing out the fact
17 that he wasn't involved in any extensive planning.
18 I agree this isn't a typical armed robbery, but I
19 think our concerns for sentencing are to treat it
20 like we would other armed robberies. And I have
21 been in front of Your Honor in this courtroom on
22 cases of people robbing, people stealing, people
23 getting killed. And I think based on the wide
24 experience in this situation somewhere around 15 to
25 18 years would be a more appropriate sentence.

1 Just because the State has recommended that range
2 and that is the low end certainly doesn't make it a
3 low sentence or an insignificant one. As Your
4 Honor knows, it is a very serious sentence of which
5 my client will serve almost all of.

6 I think my client does have something to say
7 to Your Honor very shortly, and then he had an aunt
8 that was with him that wanted to address the Court
9 if she is still in here. If I could ask the Court
10 to hear from her a minute too, Your Honor.

11 THE COURT: You will need to step down to the
12 microphone and state your name, please.

13 THE DEFENDANT LYDE'S AUNT: Hi, Your Honor.
14 Dominic is my nephew by marriage.

15 THE COURT: I need to hear your name, please.

16 MS. GADSON: Rose Gadson. He is my nephew by
17 marriage. And his father, my brother, really loves
18 him. He is from a family that loves him. We are
19 not underestimating the seriousness of what has
20 happened. It is terrible. You know, you make a
21 bad decision, you pay for the consequences of those
22 decisions. But, Your Honor, we just ask that you
23 have some mercy on this case and give him a chance
24 to rehabilitate.

25 The young men here, you know, I think all of

1 them probably have realized the seriousness and the
2 mistakes they have made, but, Your Honor, we just
3 ask for Dominic that you show some mercy to him,
4 please.

5 THE COURT: Thank you. All right, Mr. Lyde.

6 THE DEFENDANT LYDE: I can't remember. I
7 just -- I'm just saying I'm here entering a guilty
8 plea, and I'm asking for the mercy of the Court for
9 you to please be lenient for the crime I have
10 accepted the responsibility for committing. And I
11 hope whatever sentence you give me will allow me to
12 return back to society as a law-abiding and
13 productive citizen.

14 And that is all I have to say.

15 THE COURT: Okay.

16 MR. KENDRICK: Your Honor, just in conclusion,
17 again I want to say that you have had the
18 opportunity to address my client on a number of
19 occasions. And I hope you won't look at it in a
20 negative manner that he wanted to come in front of
21 you back in the beginning of July and speak with
22 you about his plea. I was all for that, Your
23 Honor, and I think that it ultimately was a good
24 thing for him. So I guess I really want to make
25 sure that is not something when you look at him

1 saying --

2 THE COURT: I will let you know on the record
3 I will not take that into consideration.

4 MR. KENDRICK: Thank you.

5 THE COURT: All parties have the right to come
6 before the Court and address certain issues with
7 the Court. And I felt like we definitely dealt
8 with that issue and we're here today with you still
9 representing him.

10 MR. KENDRICK: Thank you, Your Honor. And,
11 again, as I said, I think that Mr. Lyde is very
12 sorry about what happened. I think that he got
13 involved in it at the last minute on a stupid,
14 stupid whim. And now even if Your Honor grants
15 what we are asking for, he is still going to serve
16 a very, very significant sentence.

17 THE COURT: Okay. Thank you. We are going to
18 take a short break. We have been going at it for
19 quite some time, so we'll take a short break, and
20 we'll be back in about ten minutes or so.

21 (Pause.)

22 THE COURT: Now we will continue on with
23 Mr. Darryl Frierson.

24 Okay, Mr. O'Neil.

25 MR. O'NEIL: Thank you, Your Honor. May it

1 please the Court?

2 We have probably spent about the last hour
3 here, we have been hearing about the individual I
4 guess that has been referred to as Defendant
5 Frierson. But I want to spend my time here
6 introducing to you the man I have known the last
7 two and a half years as Darryl "DJ" Frierson, Your
8 Honor.

9 He is a son, he's a cousin, he's a nephew,
10 he's a hard worker, he is a student, and he is
11 actually more importantly a father himself, Your
12 Honor.

13 I just want to introduce you first to I guess
14 some of the people here that is here to support him
15 and his family is here on his behalf. If they
16 could stand for me, please.

17 (Defendant Frierson's family stands.)

18 THE COURT: Okay.

19 MR. O'NEIL: Your Honor, you'll hear from some
20 of them a little bit later on, Your Honor.

21 Darryl was 23 years old when -- he was
22 originally from New York -- he came here to South
23 Carolina because he met a young lady that he became
24 involved with and they later on had a little girl,
25 Shania, who is five years old at this point, Your

1 Honor. He was attending Benedict College. He was
2 a junior there. And he was, from all accounts, a
3 very successful student. He was making good
4 grades. No problem, Your Honor.

5 And I pass up to Your Honor a booklet that I
6 made in mitigation. I hope Your Honor has an
7 opportunity to look through that. But in that
8 booklet, Your Honor, we have at least 20 letters of
9 references in character on behalf of Darryl from
10 various individuals or people from church,
11 employees, families, school.

12 And I want to call Your Honor's particular
13 attention to some of those letters. One was from
14 Benedict College, Your Honor. It is a letter from
15 a retention specialist there and a letter from a
16 professor there who described Darryl as being
17 polite, always putting forth a good effort, an A
18 and B student, Your Honor.

19 And basically, Your Honor, all -- he was an A
20 and B student until the spring of 2007 when he fell
21 into some small problems there, Your Honor.

22 You have letters there from his family, from
23 his sister, from his cousins. And I guess one
24 common theme from all these letters from his family
25 is this is not the Darryl or the DJ that they know,

1 Your Honor. They said he wasn't raised this way
2 and this is totally out of his character.

3 Here today is Darryl's mother and his
4 biological father. Darryl's mother and father I
5 guess split when Darryl was younger, and Darryl
6 essentially had to become the man of his house. He
7 had an older sister and two younger brothers that
8 he kind of took under his wing, his shoulder, and
9 kind of became that father figure for his younger
10 siblings, Your Honor.

11 And Your Honor has as a part of that
12 mitigation package Darryl's prior work history.
13 He's been working almost his whole life. As a
14 teenager from working at Wal-Mart to cashiers to
15 UPS. He was working essentially straight since he
16 was 13 years old, Your Honor. He has always had a
17 job and he has always been active in sports. He
18 has his high school records there, Your Honor,
19 which shows he made Who's Who Among High School All
20 Americans. Back in high school in New York, Your
21 Honor, he was a productive student, worked all the
22 time and he kept good grades at the same time.

23 More importantly we have letters from
24 Ms. Sawyer, who is the mother of his child, Your
25 Honor. And she described Darryl as a great father,

1 a hard worker, somebody who was always there for
2 their daughter, Your Honor. At this point their
3 daughter is five years old. And from her mother,
4 she is a well-adjusted young lady, a good student.
5 I think she kind of takes after her father in that
6 regard, Your Honor.

7 And one of the important things I guess me and
8 Darryl has talked about about this situation,
9 probably in the last two or so years, he probably
10 talked more about his family and his daughter than
11 anything about this case, Your Honor. He indicates
12 to me that he wants to be a role model for his
13 daughter and be a father for his daughter and to be
14 there for important events in her life, like her
15 first date, her graduation, and her prom, things of
16 that nature, Your Honor.

17 He has been incarcerated on this charge since
18 May 16th of 2007. And during that time out at the
19 jail I think he has been very productive, Your
20 Honor. One of first things he has done, and you
21 have records there in that mitigation package as
22 well that he has been a leader in Bible studies
23 classes, he has formed a choir for some of the
24 churches that have come through there. He actually
25 has taken some correspondence courses as it relates

1 to religion as well, Your Honor. He is also being
2 a tutor for other inmates who have taken the GED
3 classes. I think one of the inmates that Darryl
4 helped out and has since gotten out of the jail,
5 one of them is here today, Mr. Brian Watson here
6 that Darryl helped him get his GED and he actually
7 got -- utilized his GED and actually helped I guess
8 better himself once he got out of the jail system,
9 Your Honor.

10 Also, probably the most important thing Darryl
11 has done while being down at the jail is the Scared
12 Straight Program. That is the program that I think
13 Sheriff Lott has included here. And it is a
14 program where youth come into the jail, Your Honor,
15 and do jail meetings. And I have been down there a
16 couple of times when these visits actually have
17 taken place. And these young people are paraded
18 inside the jail and they go out there and talk to
19 the inmates in the jail, I think. The institute,
20 he's been in that program talking to young people,
21 showing them about how he got in this situation and
22 how to prevent them from getting in situations like
23 this and similar situations, Your Honor. I think
24 that probably has been the best time -- the best
25 thing he has done during his time out there is to

1 try to prevent other people from falling down the
2 same path that he fell down, Your Honor.

3 He's also -- I guess factually what I want to
4 talk about, I don't have too many disputes about
5 the facts as the State related, but only Darryl has
6 maintained to me and it has always been our
7 position that Darryl was not the sole mastermind of
8 this situation that has been portrayed by
9 discovery, Your Honor. I guess in my investigation
10 of the facts and talking with Darryl and the whole
11 situation, Your Honor, I think it is a situation
12 that kind of -- an idea got thrown out there and it
13 kind of snowballed, Your Honor. During this time I
14 think Darryl was probably suffering from one of the
15 darkest periods of his life, I think. His mother
16 was sick. And I think he had broken up with the
17 mother of his daughter, Your Honor. They took a
18 great toll on Darryl, and he kind of spiraled from
19 that point, Your Honor. He kind of turned to
20 substance abuse and that kind of led him to do
21 things that were totally out of his character, Your
22 Honor.

23 I know his mother, his stepfather, his sister
24 and some other family individuals would like to
25 speak on his behalf.

1 Your Honor, I would first ask his biological
2 father here to speak on his behalf.

3 State your name for the record.

4 MR. FRIERSON, SR.: My name is Darryl
5 Frierson, Sr.

6 Right now I'm kind of overwhelmed a little bit
7 because I just got the full nature of this case.
8 My son is not no criminal. I make sure of that.
9 He ain't played with no guns when he was little.
10 He went to school. He played sports. He graduated
11 from high school on time when he was behind,
12 because I was in his behind. If I was down there
13 he wouldn't be going through this. This wouldn't
14 have never happened. And as far as him planning
15 it, he didn't plan nothing, he just fell into it.
16 He is a very emotional young man, just like I am.
17 He lives with his emotion instead of his heart.
18 And this is what happened to him. He broke up with
19 his girl so it kind of made him go off. He went
20 exactly the way I went. And I wish I was here,
21 Darryl, because you wouldn't be standing there
22 right now. And I'm asking, Your Honor, don't take
23 my son's life. If you got to take his life, you
24 take mine. I'll do his time. Let him live his
25 life. He made one mistake. He is entitled to

1 another chance. And, please, on the ones that this
2 is their first time, give them another chance. I
3 know he learned his lesson. I know he did. He
4 will never see the inside of another jail cell
5 again in his life, I know this. I'll do his time.
6 Don't take him from his daughter. Don't let his
7 daughter grow up like he did. Please. I can't see
8 it. He is better than this. I know all of them
9 are better than this. And if I was here, none of
10 them would have did it. They would have had to
11 beat my behind because I would have been in all
12 their heads. What's wrong with y'all throwing your
13 lives away? It is just crazy, man.

14 MR. O'NEIL: Your Honor, I will ask you to
15 hear from Darryl's stepfather.

16 Please state your name for the record.

17 THE COURT REPORTER: I'm sorry, Your Honor, I
18 didn't hear it.

19 THE COURT: Cyrus Murphy, is that correct?

20 MR. MURPHY: Yes.

21 THE COURT: Okay.

22 MR. MURPHY: Your Honor, over the past few
23 years the thing that happened to DJ that, like you
24 heard before, it is just not him at all. Very
25 emotional, liked to play. Planning a crime, it is

1 just -- it wouldn't be his thing. All I'm
2 asking -- when he do wrong, he pays the price. I
3 expect him to learn from it. And I'm asking you to
4 have some mercy on him. Give him a chance by
5 taking a chance to make it right. I quite believe
6 he will learn from his mistakes. He has never been
7 in this position, being away from his family and
8 his kids and his little brother. I'm sure that is
9 more than what you could do to him right now. My
10 neighbors are here to tell you, they pray for him
11 every day. Pray for him. Give him a chance.

12 MR. O'NEIL: Your Honor, I would ask that you
13 hear from Darryl's sister.

14 THE COURT: Thank you all.

15 MS. SMITH: My name is Dena Smith. And we
16 weren't raised this way. God instilled a gift in
17 my brother. He has the ability to inspire people.
18 He just turns the worst situations into something
19 positive. He always has. And we have been
20 surrounded by our family all of our lives and we
21 were not raised this way. We were taught to love
22 people. And he has the biggest heart. He may look
23 tough, but he is a big old teddy bear, I swear. He
24 has a heart of gold. Even his worst enemies, he
25 became friends with his worst enemies and treated

1 them like they were his brother. And people we
2 couldn't believe him being friends with he was
3 friends with and we couldn't understand it, but he
4 always told us it is about forgiveness and it is
5 about love because that is how we were raised.

6 He was just put in a position in his life
7 where some of us know how to deal with it, but some
8 of us can't. And at that point in his life he
9 couldn't deal with it. He didn't know how to deal
10 with it. He didn't know. And he is so young. He
11 is so young.

12 And I'm sure that whatever you make the
13 sentence to him he will learn from it. He will
14 learn from it probably within the first stages. He
15 doesn't need his life taken away from him. He
16 still has a whole life ahead of him. He still has
17 a chance.

18 All we ask is that you just take that into
19 consideration because we know he is suffering right
20 now. He can't talk to his family the way he wants
21 to. He can't see us. And we're all over all over
22 the place so it is hard for us to really write him
23 and keep in touch with him. And I know that hurts
24 him because he used to keep in touch with his
25 family no matter what. I can't say anymore.

1 MR. O'NEIL: Your Honor, I will just ask you
2 to hear from his grandmother of his child.
3 Ms. Sawyer?

4 MS. SAWYER: I would like to thank you. And I
5 want you to take into consideration DJ because he
6 has a little girl Shania. You know, it is very,
7 very hard because, you know, she has grown up with
8 her father and just be easy on him and Kelby and
9 Domonique, please, because they are so young. And
10 I love him very much. And he does anything for
11 Shania.

12 MR. O'NEIL: And the last family member, Your
13 Honor, I would ask you to hear from is Darryl's
14 mother.

15 MS. BROWN: My name is Danita Brown. And for
16 a short time --

17 THE COURT REPORTER: I'm sorry, you need to
18 speak up, please.

19 MS. BROWN: For a short time I was a single
20 parent. Darryl was always a positive model, always
21 a mentor, never criminal-minded. The most he got
22 in trouble in school for was being disruptive, for
23 being a class clown, never had problems with him
24 participating in anything, in any gang activities,
25 none of that problems with him fighting, getting in

1 trouble. He was always into working, going to
2 school. When they got out of school for the
3 summer, he got two jobs. Never had a problem with
4 him being on the street. I always knew where my
5 son was at. When he wasn't at work he was always
6 home.

7 He is a loving child. I'm asking that you
8 have mercy. He has learned his lesson, Your Honor.
9 He is not what they say he is. The crime he
10 committed is not a reflection of his character. He
11 just made a big mistake. They all made a big
12 mistake. They did something not knowing the
13 magnitude of what they were doing.

14 I want to say that I'm sorry to Mr. Jones.
15 Darryl would come home and talk about Mr. Jones.
16 They were very close. There was a time that Mr.
17 Jones was very sick and Darryl was very concerned
18 about him being ill. So he pleaded for him to
19 please make this certain remedy, home remedy
20 medicine that we take to get him well while he was
21 sick. And he made it and gave it to Mr. Jones.
22 And he made sure that he reminded me each day to
23 please make this stuff, Mr. Jones, he is very sick
24 and I'm very concerned, I feel bad for him.

25 And I just wanted to say to Mr. Jones that

1 that relationship they had was true, because he
2 talked about him, he looked up to him. He just
3 made a mistake.

4 And he apologized to me after this was done.
5 I'm sorry to Mr. Jones, I feel sorry for him. He
6 couldn't get it out of his head. He talked about
7 it all the time.

8 I just want to say I'm sorry to the other
9 family members, to the other victims of this,
10 because we're all victims of this, we are all
11 serving this time, we all have to serve this time.

12 And, Your Honor, I can't serve this time for a
13 long time. I can't. So please have mercy on my
14 son. He have two brothers that look up to him,
15 that need him. He has a daughter that needs him.
16 Just have mercy, please.

17 Thank you.

18 MR. O'NEIL: And, Your Honor, lastly I would
19 ask that you hear from DJ himself, and then I'll
20 have some brief procedural just closing remarks.

21 THE COURT: Okay.

22 THE DEFENDANT FRIERSON: Your Honor, I'm
23 Darryl Frierson, formerly known as DJ by my family
24 members here today.

25 The first thing I think that is most

1 impressive is that I want to sincerely apologize to
2 the State of South Carolina, Benedict College, and
3 also my family and most importantly Mr. Jones.

4 Your Honor, I have always been a law-abiding
5 citizen. As my family members said, I'm not
6 criminal-minded. I'm rebellious to it.

7 My initial plan was to just impress my mother,
8 you know, to please her and to just do what she
9 asked me to do and, you know, grant her wishes as
10 far as going to college. And also my goal was to
11 be an athletic person, go pro football, baseball,
12 some kind of sport. I just liked sports at home.

13 When I first found out about this Express
14 Teller -- I never knew about Express Teller before
15 that, prior to that. I was eager to find a job
16 because I was supporting, helping so many. I was
17 trying to help my mom with her bills, you know, and
18 take care of my daughter, just like my most main
19 priority. I love my child. I love her with all my
20 heart. I would die for her at any minute, you
21 know. But I know there is one thing that I would
22 never do is take from somebody. I'm always a
23 giving person.

24 I love my biological father to death, you
25 know. Yes, he's been absent a lot, but he tries

1 his best, you know. Everybody has speed bumps in
2 the road that they come across and sometimes they
3 turn away from them instead of just overcoming
4 them, you know, so we all got our mistakes.

5 And my mom separating was just like, he was
6 there and we were there. I became overprotective
7 of my mother because my mom used to be abused from
8 him. And I was overprotective. And I would -- I
9 was able to move on my own at the age 17 because I
10 was well-rounded with society, you know. I worked,
11 paid bills. My responsibility was like Number One.
12 My mom raised me to be that way, and my father and
13 my stepfather.

14 But I just couldn't leave my mom. I just --
15 it is a trust thing. I had a hard problem trusting
16 people. I'm very emotional, I will admit that.
17 And I been through a lot, you know, but I never let
18 excuses, you know, I don't replace excuses for my
19 misfortune because everybody makes mistakes and you
20 live, you learn.

21 But, Your Honor, prior to the case I was just
22 going through so much. Like my mother and my
23 grandmother and my sister, like those are the
24 shoulders I leaned on when I needed help, advice,
25 you know.

1 My daughter's mother, I love her to death.
2 She means everything to me, my world. You know,
3 when we had our daughter that was like a must, you
4 know. Don't get me wrong, like I said before, I
5 love my father, but his absence motivated me to be
6 the best father I could be to my daughter.
7 Working. I always help a hand in need, always, you
8 know, because I know people sometimes, when I
9 needed people, you know, to help me out, I couldn't
10 find them sometimes, you know. And I know how it
11 feels. So I'm always willing to help.

12 When I -- my initial plan was to move out here
13 just to be close to my daughter. I was going to
14 college, my mom wishes. When I graduated high
15 school I worked three jobs. I worked at a camp, I
16 worked at Sam's Club, and I worked at UPS. I
17 always was a basketball coach for the youth. And I
18 was just really trying to set up for the future.
19 My plan was to move down here to be close to my
20 daughter because I couldn't see my daughter growing
21 up without me, you know. It is just something that
22 I would never do. I would always be there for her.
23 I never missed an event in her life.

24 When I came down here, me and my fiancée, we
25 didn't really have -- we didn't have a real good

1 plan, you know. She wasn't ready to move from out
2 of Darlington, and I didn't really want to move in
3 the country because I'm not used to it, you know.
4 So I moved to Columbia and went to school.

5 Everything was all right in the beginning.
6 You know, I was working and going to school and,
7 you know, be there when I can for my daughter. My
8 free time was only my daughter and my mother.

9 Down the line, you know, it is like my sister,
10 my brothers, my little brothers, my nieces, my
11 little brother and my niece and my daughter, they
12 are my world. They are my kids too. That's how I
13 see them. I'm always there for them, Number One,
14 you know, because I want to direct their future. I
15 want to provide a better future for them, you know.

16 And I started working more because I needed to
17 help my mother and my sister with their bills and,
18 you know, but it never came across my mind to go
19 rob something or steal from somebody.

20 Working two jobs and going to school really
21 put a distance between me and my daughter's mother.
22 And we ended up separating. And at the same time,
23 my mother and my grandmother was going up for their
24 surgeries. That killed me. I just wasn't myself.
25 It is like I couldn't think of anything else. When

1 I asked for people advice, it just didn't stick,
2 you know. And I needed help, you know, but I was
3 too embarrassed to go elsewhere.

4 Everything my mother was saying, everything
5 that Mr. Jones was saying, everything that
6 everybody I normally go to for help, it just wasn't
7 sticking. I was mostly detached. I was suffering
8 from anorexia nervosa. I couldn't sleep, couldn't
9 eat. It was just -- I just wasn't myself. I
10 turned my life to drugs, alcohol. I went from
11 being drug free to cocaine, marijuana. Alcoholic
12 free to drinking as if I was addicted to it, you
13 know. And I just wasn't myself.

14 I can't really explain it. You know, I was
15 studying psychology during my time ahead. And I
16 learned at the first thing they teach you is that
17 everybody has a peak. And from my understanding, I
18 think that that was my peak, you know.

19 Mr. David Jones, yes, I still love him. And
20 he was a good person. He still is a good person.
21 And I'm very sorry. I couldn't get over the fact
22 that the way things went down and the crime itself,
23 you know. I couldn't believe it.

24 My Co-Defendant, Paul Whitaker, he is my best
25 friend. He was my best friend. Not a day went by

1 where we didn't hook up and, you know, just as
2 regular home boys do, just hang out, you know. We
3 were sort of -- we had so many similarities. We
4 had many new friends. We were more leaders than
5 followers, made our own decisions. And we both had
6 goals and, you know, we just related.

7 So I just -- I just want to say I apologize,
8 you know. My whole two years being in -- being
9 detained, I was contemplating on what to say, you
10 know. And I don't want to justify anything, you
11 know, because that is not what I'm going to be. I
12 just want to say sorry for what went down.

13 And I want to say sorry to David Jones and to
14 my family and my daughter. There was an incident
15 where my daughter around Christmas was with her
16 family at the mall. And she so happened to creep
17 off and later on we found out she was with Santa
18 Clause, but she was unknown to where she was at,
19 her whereabouts were unknown, and I was calling and
20 nobody could tell me what happened, and they were,
21 you know, weren't stable and crying. And it just
22 killed me. I ran upstairs to my cell and got on my
23 knees and prayed that everything was all right.
24 But that incident right there really hurt me
25 because I can't be there for my daughter. I can't

1 be there to protect my daughter. I love my
2 daughter with all my heart. My number one goal is
3 to be a great father. I always been a mentor. I
4 always deal with kids, always, until this day.
5 Part Mr. Leon Lott's program, I love talking to
6 them, and I love being a role model. And it also
7 is a sign of redemption for me, you know. And I
8 try to tell them as part of my experience when you
9 have goals, just stick to your goals. Be a leader,
10 not a follower. Don't fall into temptation. And
11 don't let your emotions get the best of you,
12 especially to the females, you know. I tell them
13 that relationships come and go. And you just got
14 to stick with what is important.

15 That's all I want to say.

16 THE COURT: Thank you.

17 MR. O'NEIL: Your Honor, just procedure, I
18 thing I covered this at the guilty plea, but I want
19 to make sure that the Court in the kidnapping
20 charge makes a permanent finding that this was not
21 a sexual nature so there is no registry involved
22 upon Mr. Frierson for this.

23 He has been incarcerated since May 16th, 2007,
24 Your Honor. And I guess at a prior court hearing
25 concerning this case it was said that the Court

1 needed to send a message in this case. And I agree
2 that the Court does need to send a message. I
3 think the message that the Court needs to send is
4 that we don't give up on our youths, especially
5 youth that have potential and have the ability to
6 be rehabilitated, Your Honor.

7 Mr. Frierson was only 21 years old when this
8 happened and he had absolutely no prior record, not
9 even a speeding ticket, Your Honor. And I guess it
10 has always been said that true justice is
11 punishment tempered with mercy.

12 Your Honor, we are asking for the Court in
13 this case is mercy, Your Honor. I stood in front
14 of another Circuit Court judge in this very same
15 courtroom, and she said when judging an individual
16 she tries to determine the individuals who are
17 truly wicked from the individuals who are just
18 truly misguided. And I am confident that Darryl
19 Frierson is in the second category, just someone
20 who is just truly misguided.

21 Your Honor, this is a straight-up plea. There
22 has been no negotiation by the State. We would ask
23 Your Honor to consider something on -- close to the
24 minimum range on the armed robbery, Your Honor. I
25 think that would be adequate enough to serve both

1 justice and give rehabilitation, Your Honor.

2 Thank you.

3 THE COURT: Okay. Thank you. We will next
4 proceed with Jeremy McPhail.

5 MR. McCULLOCH: Jeremy.

6 (Jeremy McPhail approaches.)

7 MR. McCULLOCH: Your Honor, good afternoon.

8 The shadows are gathering. We'll try to be brief.

9 We had earlier provided you with a sentencing
10 memorandum and addressed several issues, and I will
11 not -- or I'll try not to go back through all of
12 that copy that was filed, a copy was provided to
13 the Solicitor's Office.

14 You have also been provided with what the
15 Solicitor referred to in his own filing as a
16 factual summary. We agree with the lion's share of
17 that. I think there are a couple of points that
18 are not mentioned, but I think they certainly are
19 pertinent to the role of Mr. McPhail in this.

20 First, sometime ago in January of 2008, you
21 may recall, Your Honor, in the taking -- in the
22 colloquy with Solicitor Lake, who started out
23 handling this prosecution with the Fifth Circuit
24 Solicitor's Office, when you took the pleas on the
25 Blakney brothers, there was reference made to the

1 aborted attempt which occurred a week or so prior
2 to this actual and an unfortunately successful
3 robbery.

4 Mr. McPhail told the Sheriff's Department when
5 he was contacted by them and asked about his
6 involvement, he fully cooperated at that point and
7 he told them that the first attempt was aborted
8 frankly because he got up and ran in the middle of
9 it.

10 Reference was made to that by Solicitor Lake
11 and it is obliquely mentioned in the factual
12 summary. It is also to some extent echoed by at
13 least one of the Co-Defendants here. I'm not
14 familiar with the Co-Defendant Sadler, or whoever
15 that is. But that is -- there is reference made in
16 the factual summary of that.

17 Secondly, there is not a mention of Jeremy's
18 cooperation from the inception of his contact with
19 the police. And I want to make mention of the fact
20 that from the time of my involvement in his
21 representation, his family -- and they are pretty
22 extensive, they are probably in the middle of this
23 section out here -- they, because Jeremy has been
24 incarcerated on -- and detained since he was taken
25 into custody by the police, they have made a rather

1 herculean effort to provide information to me,
2 which I personally provided to the Sheriff's
3 Department. Unfortunately, none of it I think
4 directly related to the apprehension of Mr. Lyde,
5 who I think was the -- I think it may have been two
6 Co-Defendants for a period of time who were not in
7 custody. But I think the Sheriff's Department
8 would confirm that there were efforts made by me
9 directly to Stan Smith and Investigator Isenhoward,
10 although I want to say again it did not directly
11 lead to the apprehension of anyone.

12 Thirdly, we have attached in the document
13 provided to you, Your Honor, a letter from one of
14 the Co-Defendants, which indicates what Mr. McPhail
15 indicated to the police, that on a level that in my
16 view was never sufficient to constitute a legal
17 defense, that he was coerced by one of the
18 Co-Defendants. And in fact a weapon was brandished
19 in his direction as a motivating device, shall I
20 say. But I believe it is fair to say that this
21 young man was a reluctant participant, but
22 nonetheless, Your Honor, a participant.

23 There were opportunities when he perhaps could
24 have disengaged himself by running. Certainly at
25 the end of this event he could have gone to the

1 police immediately. And now -- certainly before
2 now realized that that is exactly what he should
3 have done.

4 Your Honor, he has asked me, and I think he
5 intends to do this as well, but he has asked me to
6 express his very sincere apology and regret to Mr.
7 Jones. I don't think that any of these young men,
8 and certainly Mr. McPhail, had any idea of hurting
9 anyone in this.

10 Reference is made in the factual summary that
11 Jeremy was armed. He was armed with an air gun, at
12 least on the first occasion. But that doesn't make
13 any difference to a victim of a violent crime who
14 is confronted with a weapon that looks just as much
15 and just as deadly as a real weapon.

16 He is regretful and hopes that today will
17 represent for Mr. Jones a chance to begin his life
18 again, to put an end to this.

19 I regret personally that Mr. Jones has to be
20 here for a grueling afternoon, which hopefully we
21 can end soon.

22 Your Honor, I want to briefly -- and I have
23 talked with his rather extended family, they are
24 here, they would like to address the Court -- I
25 have asked -- kind of tried to be selective, there

1 are several people -- I have asked in fact his
2 father, Harold Grant, and his mother, Gail McPhail,
3 to come down together. If they will step up to
4 this microphone. And I have asked them to -- if
5 they could, for one of them to speak. And then,
6 Your Honor, I have several other folks who would
7 like to address the Court briefly, and then I will
8 conclude at the end.

9 THE COURT: That will be fine. Come forward
10 to the microphone.

11 MR. McCULLOCH: Your Honor, again, this is
12 Harold Grant, and the lady next to him is Jeremy's
13 mother, Gail McPhail.

14 MR. GRANT: First of all, I would like to
15 thank you for letting me come here and speak for my
16 son.

17 I have in the last couple of years since
18 Jeremy was incarcerated, I have seen my son grow up
19 so much. I have seen him mature more than I
20 probably ever could in such a short time.

21 I know that he regrets his involvement in
22 this, because he wasn't raised like this. I
23 haven't always been there for him myself, but his
24 mother has been by his side his whole life.

25 And, Your Honor, I guess I just want to ask

1 you to please give my son another chance. I just
2 want to ask you to please give him a chance to pay
3 his debt to society and give him a chance to get
4 out and get an education and have hisself a family
5 and a life. We only have one life, and I still
6 want him to have at least one more chance to make
7 his life good.

8 Thank you, Your Honor.

9 THE COURT: Thank you.

10 MR. McCULLOCH: Your Honor, we would next ask
11 Derick Haynes. Mr. Haynes, if you would come to
12 this microphone here. Mr. Haynes is a former
13 teacher of Mr. McPhail.

14 MR. HAYNES: Your Honor, I'm a teacher at
15 Choices Charter School. Ralph Porter, our chief of
16 police in Florence, does a school called Choices.
17 And certainly we make choices in life. And when we
18 make those -- some bad choices, we have to suffer
19 these consequences.

20 And I met Jeremy at that point, his mother
21 brought him out there. Somebody called me. The
22 school is in the middle of the woods. But he was
23 having some trouble entering school, but he got out
24 there, and what I'm learning about Jeremy, he is a
25 person, once he has recognized that he has made a

1 mistake, he quickly make changes in his life.

2 I coached him a little bit on football. And
3 he has made a big change in -- well, he has
4 impressed the school and everybody else and we got
5 him back into regular school. And he has done
6 great in sports.

7 I said that everybody deserves a second
8 chance. And I believe that everybody here is
9 affected by what happened. And everybody here has
10 an opportunity to pick up this and look at what we
11 have done and decide to make a change so we can
12 make an impact on society.

13 My job is always to cultivate the greatness in
14 everybody, and I believe that he has greatness in
15 him. And I believe that he can add to society.

16 Judge, I would ask you to take a look at a
17 young man that is willing to make a change in his
18 life, because I have worked with him and I have
19 seen him make a change and make impact on other
20 people life, to please grant him leniency in this
21 case.

22 Thank you.

23 THE COURT: Thank you.

24 MR. McCULLOCH: Thank you. Your Honor, we
25 would ask Dr. Brook McPhail, who is a family

1 member.

2 DR. McPHAIL: Your Honor, I have prepared a
3 statement. May I read it?

4 THE COURT: Sure. Just read into the
5 microphone. We are having trouble hearing from
6 that one.

7 DR. McPHAIL: My name is Dr. Brook McPhail,
8 and I'm a toxicologist at the Center for Disease,
9 Control and Prevention in Atlanta, Georgia.

10 I am here before you today to plea to the
11 Court for mercy for Jeremy McPhail. Jeremy and I
12 were both raised together by a loving and
13 supportive family in Society Hill, South Carolina.
14 Our hometown is an agricultural and rural area, but
15 such as myself, Jeremy received the opportunity to
16 better himself and attend college in Columbia,
17 South Carolina.

18 Jeremy has the potential to become a great
19 asset to society. He is an only child raised by a
20 very caring mother and the first male in our family
21 to attend college.

22 Prior to Jeremy beginning his collegiate
23 career, he was an active member at the Hopewell
24 Missionary Baptist Church. Jeremy has an
25 infectious personality that people gravitate to.

1 Our small rural community consists of a high number
2 of elderly persons. Jeremy was one of the few
3 males in the community whom the elderly admired and
4 encouraged to succeed. He was in the process of
5 aligning his life in the path of success, but as
6 all of us have done in some way, shape or form, he
7 has made a life-altering mistake. However, this is
8 not indicative of what he can still become.

9 Jeremy has a very supportive family who
10 desires to see him succeed. With his family
11 support, we will provide guidance and encouragement
12 that -- well, with our family support -- with his
13 family support -- I'm sorry -- we provided guidance
14 and encouragement that allowed him to see he could
15 make a difference in his life if he applied
16 himself.

17 At a young age Jeremy appointed me to become
18 his personal tutor. He never hesitated to call me
19 for any help on any of his work, especially math.
20 We would sit at the table or the kitchen counter
21 and I would explain fractions, decimals,
22 pre-algebra, algebra and et cetera. We maintained
23 this bond while I attended undergrad, graduate
24 school and even now.

25 For the past two years, in lieu of him asking

1 me for cards and letters, he has asked me to send
2 him math problems. Just as he took the initiative
3 to seek help to overcome his obstacles in
4 education, he will continue to persevere through
5 this challenge.

6 In closing, just as I came from Athens,
7 Georgia to attend his high school graduation and
8 again as he moved in his dorm in his college, I am
9 here before you today where I traveled from
10 Atlanta, Georgia to show support to Jeremy McPhail.

11 My desire is to see Jeremy succeed.
12 Therefore, I am committed to ensuring he
13 transitions back into society by providing
14 encouragement, support and guidance.

15 I am here before you today to plea to the
16 Court for mercy on Jeremy McPhail's behalf.

17 Thank you, Your Honor.

18 THE COURT: Thank you.

19 MR. McCULLOCH: Your Honor, when she returns
20 to her seat, I would like to ask Clarence Ings to
21 step to the microphone. And while he is headed to
22 the mic, if I can ask the family of Jeremy and
23 friends who are here today just to stand up. They
24 have driven a long way, Your Honor, from his home.

25 (Family and friends comply.)

1 THE COURT: Thank you.

2 MR. McCULLOCH: Mr. Ings?

3 MR. INGS: My name is Clarence Ings, and I'm a
4 family member of Jeremy McPhail. I've been knowing
5 Jeremy ever since he was born, and Jeremy has been
6 in and out my home most every day. And he was a
7 young man that need support and help, and we gave
8 him that love and support. And he was a person
9 that need to have something to do in the community.

10 In the community that we live in, Jeremy was
11 well known. He was well respected. He respected
12 his elders. And in his church he was involved in
13 Sunday School, Bible study. His mother made sure
14 that he was well equipped anything that he need to
15 be involved in to live a Christian life.

16 And I'm here today to ask mercy for Jeremy on
17 his behalf. And also that we ask that you consider
18 being very lenient in your defense or your decision
19 today.

20 Thank you.

21 MR. McCULLOCH: And, Your Honor, the last
22 person -- I -- it is sometimes the case that you
23 invite the family preacher. I have not made it a
24 past practice to do that, but Jeremy has asked to
25 allow his reverend's wife, she has a special

1 relationship with Jeremy, and he has especially
2 asked me to allow her to speak. So the reverend is
3 here, but he will not be heard from. I know that
4 is frustrating for him. His wife is in just a
5 moment, Your Honor.

6 THE COURT: Okay.

7 MS. DANIELS: Thank you, Your Honor. I'm not
8 an orator, so I'll read as well.

9 My name is Patricia Daniels. I attend the
10 Hopewell Missionary Baptist Church where my husband
11 of 41 years has been the pastor for 25 years.

12 During our tenure at New Hopewell, Jeremy
13 McPhail was born, so I have known Jeremy all of his
14 life. Jeremy's mom, along with his grandmother,
15 saw to it that Jeremy was in church attending
16 Sunday School, Bible study, attending regular
17 worship services, as well as activities that were
18 created for the young people in the church and the
19 community.

20 As a single mother, his mom understood that it
21 is really takes a village to raise a child. She
22 enlisted her pastor and me, as well as others to be
23 the other moms and dads for Jeremy.

24 Jeremy was loving, athletically competitive,
25 and very respectful to me and his pastor. He made

1 me laugh at times. He made me want to pull my hair
2 out at times. Yes, he acted just like my own
3 children at that age.

4 As I reflected on my own children's actions
5 and how they were able to overcome the obstacles
6 that were placed in their way as teens, I knew in
7 my heart that Jeremy would be fine as well.

8 When Jeremy graduated from high school, we
9 were all excited. When I as well as others
10 encouraged him to go to college, he struggled with
11 the decision but finally decided to attend Benedict
12 College in Columbia. I was truly elated. Jeremy
13 was doing well in college and I was so proud of
14 him.

15 When the news came that day of Jeremy's arrest
16 my heart was truly broken. I have cried for him, I
17 have prayed for him, I have written him, I have
18 spoken with him to encourage him.

19 Jeremy has been in the system now for over two
20 years, a system that was designed to rehabilitate.
21 I believe that the system has accomplished this
22 goal in meeting the need for rehabilitation for
23 Jeremy McPhail.

24 When released, Jeremy will continue to receive
25 the love and encouragement that he always knew that

1 he would get from Mama Ann -- that is what he
2 referred to me as -- and others that love him so
3 much.

4 I believe that this experience for Jeremy has
5 opened his eyes and will enable him to be positive
6 reinforcement for those young people who are trying
7 to find their way.

8 Your Honor, I solicit your mercy.

9 Thank you.

10 THE COURT: Thank you.

11 MR. McCULLOCH: Your Honor, at this time,
12 before I give a very brief conclusion here, I know
13 that Mr. McPhail wants to say a few words to you,
14 as well as to Mr. Jones.

15 THE COURT: Okay.

16 THE DEFENDANT McPHAIL: First of all, Your
17 Honor, I'd like to apologize to Mr. Jones. Never
18 ever in my life would I disrespect someone of his
19 age and his caliber ever in my life.

20 I would like to apologize to the company. I
21 know it has been a struggle with them, aggravation,
22 embarrassment as well.

23 I also would like to most importantly
24 apologize to my family, but out of all people I
25 would like to apologize to my mom.

1 Your Honor, to be quite frank with you, the
2 situation is big, the situation is huge. We make
3 mistakes in life. We do a lot of things that we
4 know we shouldn't do. We be stupid at times and we
5 be childish at times. And a lot of it is we just
6 have to go through it to get through to learn to
7 grow up.

8 Most people look at it and be like, that was
9 stupid. You boys know better. You should have did
10 this, you should have did that.' But, Your Honor, I
11 understand the caliber of the case. I understand
12 the amount of money that was taken. But what I'm
13 here today, I'm asking you to judge from your heart
14 and not from black and white. I'm asking you to
15 see that each and every one of us were trying to
16 become something in life, not just criminals, thugs
17 or somebody that you would tell your children not
18 to hang around or somebody to -- when you walk by
19 you grab your purse and bring it closer to you.
20 I'm asking that you just judge from your heart.
21 Put yourself in our position as far as see the
22 thing for how it really went.

23 And I'm not saying that I'm not guilty of any
24 parts of this situation, because there are some
25 things during the situation, as I told you in

1 December, that I done. But at the same time, there
2 are things that is relevant that they know that I
3 tried to avoid the situation. I literally ran. I
4 mean, I ran from the situation. The other things
5 occurred afterwards, so I don't know much more what
6 I should have done. Granted, that I could have
7 called the police afterwards. But the lady that
8 stood there, my mother, that is all I have, Your
9 Honor.

10 And with the amount of money being taken, I'm
11 not taking any type of risk to allow anything to
12 possibly happen. If you take the chance to try
13 something this big, then there is no telling what
14 else you will try. So therefore I did what I
15 thought was best and I waited on other law
16 enforcement to take their matters in their hands
17 and then I cooperated with them.

18 Basically, I'm willing to serve time because I
19 know that there is just a lot going on and a lot of
20 things that has been done wrong. But what I'm
21 asking, Your Honor, is judge, when you make your
22 decision upon me, I ask that you judge me for my --
23 for what I did do. I wasn't participating.
24 Basically what I'm telling you, I was there. And I
25 did know about it.

1 But I -- like I told Joe -- Mr. McCulloch,
2 excuse me -- as I told Mr. McCulloch, I didn't have
3 a gun. I wasn't going there for that situation.
4 It happened while I was there. But I knew about
5 it. And afterwards I took money. But that was
6 only for my protection. It wasn't to be -- because
7 I was a part of it and trying to plan it. It was
8 just things happened so fast I made the wrong
9 decision. I didn't know then what I knew now, what
10 I'm hearing.

11 I'm not asking you for leniency, Your Honor,
12 I'm asking for you to go out on a limb and just do
13 something out of the ordinary. I mean, I know it
14 might be crazy sounding coming from me, but I'm
15 begging you. I have done everything. I have beat
16 all odds. I have come from nothing to something.
17 I went to school, made my mom proud, the most
18 important thing in the world to me. I'm willing to
19 die for her right now today. Willing to do a life
20 sentence for her right now today.

21 So I'm just asking you to just go out on a
22 limb and be a blessing to my family. I have been
23 more of a burden since I have been down two years,
24 but I have grown mentally and I have matured as a
25 man. I have learned from my adult figures in my

1 life to stand up, man up.

2 So I'm here to do my time, Your Honor, but
3 what I'm asking you is to give me a chance to be a
4 man out on the streets. I messed up. But, Your
5 Honor, my parts in the situation was not as they
6 tried to explain it to me. I understand that is
7 Mr. Goldberg's job to prosecute, but at the same
8 time I wish he would look at each individual and
9 each situation as his own, because each case has a
10 case within itself. That's all I'm saying, Your
11 Honor.

12 I just ask that you go out on a limb and bless
13 my family to allow me to prove to people that this
14 here was not something that I would do again. This
15 here is not something that is going to hinder me.
16 Or if you were to allow me a second chance at life,
17 I promise you this right here would be a testimony
18 instead of a condemning.

19 So I am just asking that you just forgive me,
20 I ask Mr. Jones to forgive me, these families to
21 forgive us, I ask that each family with my
22 Co-Defendants and all, ask that they forgive us.
23 We messed up. Sorry for the embarrassment to the
24 State, to you Judge Childs, forgive us all. We
25 messed up. Young and dumb. But it has

1 rehabilitated us.

2 They are asking for 15 to 28. I signed a
3 plea, even though I don't agree with it, Your
4 Honor. I'm 21. I was starting school. That has
5 to account for something. I mean, I was striving
6 and thriving to become something. I made choices.
7 Some choices that I thought was right was wrong,
8 but in my eyes they were right because I was trying
9 to protect valuable things, such as my mother and
10 such as me.

11 But, Your Honor, I'm asking that you allow me
12 to be able to have a career as a young man, not
13 wait until I'm 39 or 40 years old before I can even
14 start. Then it is almost too late. I can't even
15 have kids or be married to the one I love.

16 So, Your Honor, I am just asking for your
17 leniency and ask that you go out on a limb and that
18 you just have mercy.

19 Thank you.

20 THE COURT: Okay.

21 MR. McCULLOCH: Your Honor, since the
22 commission of this crime, since this offense
23 occurred, repeatedly we have heard that this is one
24 of the top ten, top five crimes committed in the
25 country.

1 Today I hope will not be a sweepstakes for the
2 top punishment in those type of crimes or in this
3 county or this state. This crime doesn't belong in
4 any pantheon of crime except perhaps a pantheon of
5 the pathetic.

6 I would dispute the Solicitor in the sense
7 that this is not a well thought out crime. There
8 wasn't a whole lot of sophistication here. There
9 was an inside agent planted. There was an enforcer
10 brought in, who I think coerced and to some extent
11 intimidated a group of college kids who had, most
12 of whom had no prior records.

13 It was a fairly pathetic bumbling but
14 successful effort to take a great deal of money,
15 money beyond the wildest imagination of the people
16 involved, until the back end of that truck was
17 opened and they realized that they didn't have a
18 car large enough or enough garbage bags to take
19 away money.

20 If nothing else, the fact that almost
21 \$10 million were left in the back of that truck,
22 that should be an indicator that this was not a
23 well planned, well thought out and sophisticated
24 crime committed by people who are likely to be
25 career criminals. That just runs in the face of

1 everyone's instincts in that regard.

2 Today we measure justice in our courtrooms in
3 this country in units of deprivation. Unlike some
4 other countries today we don't lop off limbs, hands
5 for stealing, or other deprivations of a physical
6 nature. We take people's money and we take
7 people's freedom.

8 And today, Your Honor, you have a chance to be
9 the arbiter of what is proper here. We all respect
10 the role that you play. We have a real chance, all
11 of us, especially the lawyers who do what we all
12 do, to become jaded, to become insensitive to this
13 process. To many people what we do in here is
14 simply a file or a headline.

15 Sophocles in 409 BC said: There is a point
16 beyond which justice can become unjust. You
17 uniquely have to decide that point. We all have a
18 great deal of confidence and we all work with you
19 every day, we know you, and that is why we are here
20 before you.

21 Recently President Obama said that, in
22 reference to a bad situation, that it could be a
23 teachable moment. This could be a teachable moment
24 not only to these young men, but it can be a
25 teachable moment to the community. We can teach

1 the community that the reason that prosecutors
2 don't get to sentence and the reason that victims
3 don't get to sentence is that sentencing is an
4 important thing that involves an evaluation of
5 facts and an evaluation of proper punishment by
6 someone who is neutral, someone who is
7 dispassionate, someone who is not worried about the
8 glare of the public eye.

9 And I would hasten to add that this is not a
10 crime that has a great hue and cry in the
11 community. It has been an offense that was of
12 interest because of our friends in the media,
13 because it is an interesting case. It is a tragic
14 case and will have ripples in so many lives, not
15 only Mr. Jones, who is the most tragically
16 physically injured here, but in your determination
17 of the multiple goals of punishment, deterrence and
18 rehabilitation, this Court will be the first to
19 recognize that that third prong, we don't do that.
20 South Carolina, like so many other states, doesn't
21 provide any rehabilitation to people. That is a
22 fiction that we all accept, I guess. But what this
23 Court can do is recognize the proportionality of
24 the punishment.

25 With a 15 or a 20 year sentence to a person in

1 the prime of their life, such as many of these
2 young men, are looking at being deprived of the
3 flower of their youth, the heart of their life, in
4 one respect. And it may be the Court's -- it
5 certainly must be the Court's determination of how
6 much of that to take.

7 Whether these gentlemen -- whether any of
8 these gentlemen, but especially the ones who have
9 no prior record, deserve a lengthy sentence because
10 of the amount of money. I hope that will not be
11 the case, Your Honor. I hope that you will look at
12 the facts of this and look at the potential for
13 recidivism, which with respect to the ones who have
14 no prior record I would say is virtually not at
15 all.

16 We -- it is a tremendous responsibility that
17 all of us have in stepping into a courtroom like
18 this. The effort we have made, Your Honor, in the
19 sentencing memoranda -- and I won't go beyond
20 saying that we provided that after some thought
21 about how to not only illustrate to the Court, but
22 how to illustrate to the community the reason we
23 have judges is to try and reach a fair sentence,
24 one that is dispassionate, as I have said.

25 And I think it is important to note that under

1 the sentencing -- the South Carolina Sentencing
2 Commission Proposed Guidelines, which were never
3 formally adopted, Your Honor, there are recommended
4 sentences there in the 14 to 16 year ranges.

5 In the federal system, Your Honor, which you
6 are certainly familiar with, though you don't labor
7 under the federal sentencing guidelines, that is
8 generally a harsher forum, a forum in which the
9 same kinds of cases are handled by the federal
10 authorities and sentencing is done pursuant to the
11 federal sentencing guidelines which were, up until
12 several years ago, were mandatory. They are
13 invariably harsher, apples to apples type of a
14 comparison. You can always count on a federal
15 sentence being a little bit greater and a little
16 bit more.

17 And Your Honor would find, I think it is a Tab
18 E, the allegations that I made as a practitioner in
19 federal court, and I apologize, I may have given
20 you the wrong tab, Your Honor, but you'll see that
21 the federal sentencing guidelines include a variety
22 of offender characteristics, all of which,
23 virtually all of which results in adding time to a
24 sentence. And so I did not calculate based upon
25 some pie in the sky liberal reduced amount. I took

1 the worst scenario for Mr. McPhail in federal
2 court. And the worst scenario there was in that 17
3 to 21 range. And that took into account
4 essentially the facts of this case if it were in
5 federal court.

6 I would not deign to suggest to this Court
7 what the proper sentence should be. I do think --
8 I hope, Your Honor, that that information is of
9 some assistance in your review of this case. There
10 is a sentencing recommendation from the state of 15
11 to 28 years. I hope the Court will take into
12 account that not only has this been a tragedy for
13 Mr. Jones for which I'm sure everyone in this
14 courtroom is regretful, but it will have a tragic
15 and catastrophic impact on all of these young men
16 and their lives, choices that they made themselves
17 to some extent, and a result that they must now
18 suffer.

19 Thank you so much for your attention. And
20 this is -- excuse me one second.

21 (Pause.)

22 MR. McCULLOCH: Your Honor, that would
23 conclude what I have to say. And I think that
24 Mr. McPhail wants to say one more very brief thing.

25 THE COURT: Sure.

1 THE DEFENDANT McPHAIL: Your Honor, again,
2 before I sit down, I'm not trying to aggravate you
3 or get on your nerves, I know you have got things
4 to do, but before you make your decision, once
5 again, I'm just asking that you judge from the
6 heart and go out on a limb for me, give me a chance
7 to prove right. And before I sit down, the really
8 main thing I want to say is to again to apologize
9 to Mr. Jones and for his suffering. I'm terribly,
10 from the bottom of my heart, sorry that he is going
11 through what he is going through and had to suffer
12 what he had to suffer. I apologize again with
13 every bone in my body.

14 Thank you.

15 MR. McCULLOCH: Thank you.

16 THE COURT: Thank you. We shall now continue
17 with Mr. Paul Whitaker.

18 MR. PRIDE: Good evening, Judge.

19 THE COURT: Good evening. Okay, you can
20 proceed.

21 MR. PRIDE: Judge, as you very well know, I
22 represent Paul Whitaker. And I stood before you in
23 December and entered a plea in his behalf to
24 conspiracy.

25 Judge, I think it is important to reiterate to

1 you that when I was initially hired in this case,
2 Paul Whitaker had already cooperated with the
3 investigation in this case. Paul Whitaker is the
4 principal Defendant in this case that broke this
5 case. And Paul did it because Paul knew right from
6 wrong.

7 When I reviewed this case and his statement
8 that he gave to the Richland County Sheriff's
9 Department, Investigator Isenhoward, I sat down
10 with Paul and I went line by line by line and asked
11 him, are these the words you said.

12 I asked him about the environment that he was
13 around when he gave this statement. Looking for
14 whether or not the statement is a freely and
15 voluntarily statement and whether or not it is
16 given within the framework of what is required by
17 law enforcement to take a statement.

18 I could find no errors on the part of law
19 enforcement. Paul was just as straight with me as
20 he was with Mr. Isenhoward when he gave the
21 statement.

22 Paul entered jail on the 16th of May in 2006.
23 And in December of last year you allowed Paul to
24 enter this plea and gave him a recognizance bond.

25 At that time, Judge, I had reached a plea

1 agreement with the Solicitor and approved by the
2 Richland County Sheriff's Department that Paul
3 would get a sentence of time served. And I would
4 ask that this Court give sanction to that
5 agreement.

6 Your Honor, Mr. Lake, who at one time was the,
7 I think the original Solicitor on this case, if he
8 was still here he would tell you that when Paul
9 first came for a bond hearing, almost this entire
10 courtroom was filled with people from his community
11 and from his church.

12 Reverend Gadsden, who is the minister of
13 United Station AME Church in Sumter, South
14 Carolina, came forward and spoke in Paul's behalf.

15 And one of the most important things that I
16 think that came from all of the things he said was
17 that the community had always wrapped their hands
18 around Paul and his family and that Paul grew up
19 being involved in that church.

20 When Paul left Sumter -- excuse me a minute,
21 Judge -- when Paul left Sumter to come to Columbia,
22 South Carolina, to enter Benedict College as a
23 student, he came with the blessings of a minister
24 and the church and his family. His mother raised
25 him. Again, his mother and father are separated.

1 And Paul also has a sister. He came to Benedict
2 College in May of 2002. When these events occurred
3 he was a sophomore. He was a mathematic major. He
4 was an AB student at Benedict College.

5 And I think it is important to tell you a
6 little bit about what Paul has done since he has
7 been out on bond in December. He is living with
8 his mother. He is back in his church. He is
9 active in his community. He holds two jobs, one a
10 construction job, and a catering job. And he has
11 been admitted to Morris College in Sumter, South
12 Carolina, where he will enroll as a sophomore.

13 Your Honor, I would ask you to please give
14 credence to the agreement to give Paul a time
15 served sentence.

16 I would also like to apologize in Paul's
17 behalf to the State of South Carolina, to you, Your
18 Honor, the Solicitor's Office, Richland County, and
19 to his Co-Defendants and all of the families that
20 are involved in here. I mean, this is probably in
21 my career one of the most tragic crimes that I have
22 seen in terms of the number of people that have
23 been affected by it and to see so many Defendants
24 to be so young that are involved in this case.

25 Paul is now 23 years old. And again, Your

1 Honor, I would ask you to give sanctity to the
2 decision of granting him probation for time served.

3 Thank you very much.

4 THE COURT: Okay. Kelby Blakney.

5 MR. JOHNSON: Good afternoon, Your Honor. May
6 it please the Court?

7 Your Honor, just for the record, my name is
8 Charlie Johnson. I was appointed to represent
9 Kelby in the reconsideration of the sentence that
10 is brought before you today. I was not the
11 original attorney that represented Mr. Blakney when
12 he pleaded guilty back in, I think it was January
13 of last year before you.

14 During that sentencing phase he was
15 represented by Hans Pauling. Mr. Pauling has since
16 apparently taken a job with the Solicitor's Office,
17 which was a conflict, and it was conflicted out to
18 me. So I am actually getting in on representing
19 Kelby kind of on the back end, but it is also
20 giving me a unique prospective as to -- in looking
21 at this case.

22 Mr. Blakney, along with his brother, appeared
23 before you back in January of 2008. They received
24 a sentence of 25 years.

25 Unlike the other individuals that appeared

1 before you prior to this moment, Mr. Blakney and
2 his brother had actually been within the Department
3 of Corrections and are presently serving their
4 time. They are actually facing day for day the
5 results of their actions. And they have gotten
6 quite a good taste of it.

7 I went to see Mr. Blakney last week. He is
8 being held at Lee Correctional facility where it is
9 a high level of security facility where there are
10 murderers, rapists, other individuals there. And
11 he is dealing with that on a day-to-day basis.

12 So the reason I think my job would be not
13 necessary to explain the things that were brought
14 to you by some of the other Defendants today,
15 because they are appearing to you for the first
16 time. You have seen Mr. Blakney's family. They
17 appeared before you. I think it is my job to argue
18 why you should reconsider his sentence as it
19 relates to my client more so than argue lack of
20 culpability, or those things.

21 So in doing that, I think what I would like to
22 do is first to have his father, very briefly he
23 would like to address you concerning his son. He
24 is there in the back today. Mr. Blakney? He is
25 also here with his wife, his sister, and other

1 family members who are here.

2 THE COURT: Okay.

3 MR. BLAKNEY: How are you doing, Your Honor?

4 THE COURT: Fine. State your name for the
5 record, please.

6 MR. BLAKNEY: Don Blakney. I'm Kelby and
7 Domonique's father. I would just like to say that
8 emotional consideration is going to play a big part
9 in this situation right here.

10 I stood before you the first time with 25
11 years you sentenced to my boys. That is a long
12 time, Your Honor.

13 I'm back before you again for all of them,
14 because they all were mine, spend the night, play
15 the games, eat, sleep. We all did. I'm asking for
16 all of them, Your Honor, especially for mine,
17 leniency to all of them.

18 MR. JOHNSON: Your Honor, I think what I would
19 like to do is to have Kelby address you, then I
20 would like to address the Court.

21 THE COURT: Okay.

22 THE DEFENDANT KELBY BLAKNEY: First of all,
23 I'd like to say that I'm sorry to Mr. Jones for all
24 the injury he had went through.

25 And, Your Honor, another thing I would like to

1 say, sorry to my family for all the things they
2 been going through.

3 Another thing that I want you to think about
4 is, even though what we did as it is of everything,
5 I mean, we all are going to be targeted throughout
6 any situation there is. As soon as we get out of
7 jail, we still going to be targeted. Our family
8 will be targeted. That is going to follow us the
9 rest of our life. And I got to accept that. So I
10 just want you to think and look into that and to
11 have some remorse for us.

12 Again, I'm sorry to Mr. Jones and the company
13 for everything that they been going through.

14 MR. JOHNSON: Your Honor, as it relate to
15 Kelby, I think it would be my position to make the
16 Court aware, or to try to give the Court a reason
17 as to why you should reconsider his sentence.

18 In this case, Your Honor, I think it would go
19 to their participation in this matter as it relates
20 to my client.

21 Basically, Your Honor, my client's name, when
22 a synopsis of what happened was read out, my
23 client's name basically occurred one time. He
24 was -- met the truck, he unloaded the money from
25 the truck, and he drove it back to a location.

1 That was my client's only participation in this
2 matter. He had no weapon. He attacked or harmed
3 no one. He had nothing to do with the planning.
4 He was only contacted, Your Honor, the day before
5 the actual crime occurred. He was -- he returned
6 home. He did not flee. He returned home. When he
7 was actually apprehended he was at home. And he
8 was working on a day-to-day basis. He is guilty of
9 what he is charged with, but the same way that the
10 Court makes determination as to a person's
11 participation as to a higher range of charges, I
12 submit the Court should also give that
13 consideration in the lower range of the charges as
14 to a person's participation of a particular crime.
15 There is no one set of -- or amount of time that a
16 person gets that is not like armed robbery,
17 everybody gets 20 years. The statute goes from 10
18 to 25, I think, or 10 to 20. There is a certain
19 number of years and requirements. I think it gives
20 the Court leeway to make determinations as it
21 relates to each individual and their participation,
22 their past records, and things of that nature.

23 As relates to my client, there was some
24 mention about my client's past record. He has a
25 simple assault. He has no other convictions for

1 any other crime, Your Honor. There is some
2 discussion about an armed robbery. Your Honor, my
3 client has been within the Department of
4 Corrections for a year. Since your sentence he has
5 not been adjudicated or found guilty of any
6 charges. And in my investigation I have not made
7 any determination that that charge is even still in
8 effect. It may be, it may not, but I have not
9 found any indications of that and I have not seen
10 my client being charged or found guilty of that.
11 So I ask the Court not to consider that as one of
12 the factors that the Court would consider in
13 whether or not to reduce my client's time. And, if
14 so, what that time would be.

15 But there are other individuals that I submit
16 to the Court that are more culpable than my client.
17 And the same state which I will submit kind of
18 being disingenuous, my client received a 25 year
19 sentence, Your Honor, back in January. The State
20 has since made agreement with other individuals to
21 receive a 15 to 28 sentence range.

22 And it is my submission that while the
23 Court -- if the Court is considering giving
24 everyone a break, then I submit that my client
25 should also be considered to be given that break as

1 well.

2 There is no indication that any of these
3 young men, Your Honor, are the type of people that
4 the Courts see on a day-to-day basis. There is no
5 indication of any gang violence, there is no
6 indication of any past criminal record, or anything
7 of that nature. They made a mistake. They have to
8 pay for it.

9 I talked to my client. I explained to him one
10 of the important things about being a man is that
11 you could be given all kind of accolades when you
12 do good, but you also have to face whatever happens
13 when you do bad. And a man takes responsibility
14 for the things that he does. And he has indicated
15 he is willing to do that.

16 The only thing we ask the Court to do is to be
17 fair, to be -- it sends out a message, Your Honor,
18 to criminals when the Court gives a high sentence,
19 but it will also send out a message to the
20 community when the Courts give an unfair sentence.

21 I think that it should be just and fair. And
22 I think if it is done in such a way, not only will
23 the people that do bad notice it, but also the
24 people that are out here looking at the way our
25 justice system is done, but also make the same

1 determination that the justice system is fair.

2 And all we ask is that you consider this in
3 the sentencing, you consider my client's
4 participation, and I think that if you do that you
5 would see within your reason to reduce the
6 sentence.

7 Thank you, Your Honor.

8 THE COURT: Thank you. And Domonique Blakney.

9 MR. SWARAT: May it please the Court, Your
10 Honor?

11 THE COURT: Yes.

12 MR. SWARAT: For the record, I'm Tav Swarat.
13 I was appointed to represent Mr. Blakney.

14 Your Honor, he came before you in January of
15 2008. Just to remind you of some of the
16 circumstances at the time, the State made an
17 opportunity available for my client, Mr. Blakney,
18 and the others who had been apprehended at that
19 time to come before you and plead guilty.
20 Otherwise, all deals were going to be taken off the
21 table, that sort of thing.

22 Mr. Blakney, when I first met him shortly
23 after being appointed, always said, I want to take
24 responsibility for what I have done.

25 He did that from the very start. He did that

1 from the moment he was arrested and carried on
2 through. He has cooperated.

3 His cooperation led to the recovery of the
4 only substantial money in this case. His family's
5 house held approximately \$3.5 million dollars worth
6 of cash. Mr. Blakney and his brother Kelby put the
7 authorities on that money, and that is why it was
8 recovered.

9 Your Honor, as to Mr. Blakney, he had
10 absolutely no prior record. One of the things I
11 base my motion to reconsider on was the fact that
12 these charges on his brother, these pending charges
13 were mentioned during the plea of both my client
14 and his brother.

15 Your Honor, as the Court well knows, that sort
16 of information can be considered for a bond
17 hearing, any danger of the community these
18 individuals may host. However, at sentencing only
19 prior convictions should or can be considered. I
20 thought it was improper that that was injected into
21 the proceeding.

22 I believe Your Honor took a break and allowed
23 the Solicitor to contact Darlington. I believe
24 that is Jay Hodge's jurisdiction so they could find
25 out more about those charges. That information was

1 relayed to the Court and then the Court rendered a
2 sentence.

3 Your Honor, I don't think that should have
4 been considered at the time and I don't think it
5 should be considered today. I share Mr. Johnson's
6 concerns about that information.

7 Your Honor, at the time of this incident my
8 client was the absolute youngest of the bunch. He
9 was 19 years of age. He had come to Columbia to go
10 to Benedict College because of his mentor, Darryl
11 Frierson, who is his older cousin. He looked up to
12 him, he thought highly of him, he loved him very
13 dearly, still does. He understands that he himself
14 got involved in this, it was his choice, a very
15 poor choice, but he was following somebody that he
16 trusted, respected and loved.

17 He, in his participation, was at the very
18 bottom of the totem pole in this scenario. He
19 didn't hold a gun. He didn't do violence to
20 anybody.

21 And in apologizing to Mr. Jones, both in our
22 private conversations and in court when he had the
23 opportunity to do it back in January of 2008, he
24 never contemplated anybody would be injured in this
25 situation. It never crossed his mind. But he

1 didn't participate in it.

2 As was relayed to the Court by the prosecutor,
3 my client was about half a mile away by the
4 strawberry fields out on Whitehouse Road sitting in
5 a car waiting to see if this robbery would be
6 successful. Unfortunately for him it was
7 successful. And he entered into the only actions
8 that put him in this situation other than the
9 discussions with his cousin. He helped unload the
10 truck of the money. And he and his brother and
11 others drove away.

12 He was an accomplice, he was a getaway driver,
13 he was an accessory, but he was not present at the
14 scene. He did not hold a gun. He did not take
15 part in highjacking the armored car truck.

16 He is much lower on the totem pole I would
17 submit to Your Honor than some of the others in
18 this case, and should be considered as such if the
19 Court sees clear to give him a different sentence,
20 which I think is warranted based on his level of
21 participation.

22 In January of 2008, Your Honor was somewhat at
23 a disadvantage as you were seeing this in a brief
24 snapshot of two brothers who did participate in
25 this crime, granted they did. But there were

1 others on the run. If you remember, there was a
2 Mr. Benjamin and Mr. Lyde. Mr. Lyde, as has been
3 relayed to the Court, did most of the violence in
4 this situation. He is the one that has caused
5 irreparable damage to Mr. Jones. He was on the
6 run. Benjamin was on the run, who was an
7 accomplice of Lyde.

8 My client, at the time of his plea, made a
9 promise to the prosecution, to his family, and to
10 others that love and care for him that he would
11 continue to tell the truth and that he would
12 cooperate.

13 Based on that, his family has received
14 multiple threats, both in writing, late night phone
15 calls, there have been other actions that have
16 taken place prior to the guilty pleas of his
17 Co-Defendants. But he always stood fast that he
18 was going to do the right thing. If need be he
19 would have testified, he would have shared
20 information, he would have assisted the
21 prosecution.

22 But I submit to you, the promise he gave to do
23 that helped facilitate these pleas. But for his
24 agreement to cooperate, we might not be here today
25 with this case ended in total without a trial on

1 some of these Defendants.

2 Judge, since he has been incarcerated, he has
3 been faced with a full measure of what a 25 year
4 sentence can be. But he has remained optimistic.
5 He has taken advantage of every program available
6 in the Department of Corrections that he can
7 participate in. He already had his high school
8 education. He is taking steps to learn other
9 crafts, carpentry. He is going through the Work
10 Smart program. He has tried to mentor others. He
11 is trying to make the absolute best of a terrible
12 situation.

13 He understands that Your Honor doesn't need to
14 listen to me today, could have denied his motion to
15 reconsider, and he is very grateful that you have
16 given us this opportunity to make a pitch for him
17 having a lower sentence, which I think if you look
18 at this case in the hierarchy of the players
19 involved, he is somewhere near the bottom based on
20 his level of involvement.

21 Judge, one of the attorneys brought up the
22 kidnapping charge. He has also been placed on the
23 sex offender registry and is marked as a sex
24 offender while he is in the penitentiary. We would
25 ask that to be removed as there is no sexual

1 allegation in this offense. The kidnapping, as I
2 understand it, comes from the actions of Mr. Lyde
3 and also potentially Mr. McPhail based on the
4 prosecutor's recitation of the facts as to the
5 kidnapping Mr. Jones.

6 Certainly my client has entered a plea based
7 on the theory of accomplice liability, the hand of
8 one, even though he was not present he was
9 certainly involved in the first part of the
10 equation and hearing all these plans and agreeing
11 to participate, and he took the responsibility
12 under the law that he had to by pleading to that
13 charge and to the other charges that apply under
14 that legal theory.

15 Your Honor, you have been given a lot of
16 information. You heard information about
17 Mr. Blakney at his plea, his high school football
18 coach, basketball coach, one of the county
19 administrators came on his behalf. You have heard
20 from local members of his family both on behalf of
21 Domonique, also his brother, and also Mr. Frierson.
22 I mean, they are all family. About four rows back,
23 five rows back are all family of Mr. Blakney. I
24 know you have digested all that.

25 You have been given some legal arguments from

1 Mr. McCulloch, which I would also share in. If you
2 look at the sentencing guidelines as it relates to
3 Domonique Blakney, he would be lower even than
4 Mr. McPhail, because he had no firearm. He didn't
5 participate in the kidnapping.

6 I believe Mr. McCulloch indicated that the
7 sentencing guideline range in federal court for his
8 client would be 17 and a half years to somewhere
9 around 21 years.

10 In my research on Mr. Blakney's involvement,
11 it would be much lower. It is a range of about 9
12 to 11 years, Your Honor, based on his lack of prior
13 record and his level of involvement, even factoring
14 in the large amount of money involved, which is
15 considered in the federal system.

16 Judge, he is just -- he was somewhat a pawn in
17 this equation. But for his actions, this robbery
18 would have still gone on. You have Whitaker, who
19 helped delay the response of law enforcement, who
20 helped get rid of some of the protocols by Express
21 Teller, which allowed this operation to be
22 successful. You have his cousin, who knew the ins
23 and outs of the operation, who was the inside man
24 who was going to feign being a victim so that this
25 robbery could take place. You had the other young

1 lady who helped delay things that night so that
2 this operation could be successful.

3 My client was sitting down at the dirt road in
4 his parents' Jeep Cherokee, wet behind the ears, 19
5 years old, new to Benedict College, and he made a
6 horrible mistake. He realizes that.

7 He asks very simply for Your Honor to show
8 mercy, not leniency. He doesn't deserve leniency,
9 but he does deserve some mercy and some
10 understanding about his limited involvement in this
11 awful crime.

12 Your Honor, he would like to address the Court
13 at this time, and I may have a few more comments.

14 THE COURT: Sure.

15 THE DEFENDANT DOMONIQUE BLAKNEY: First of
16 all, I want to apologize to my family, and also to
17 the other families that have been affected by this.
18 I want to apologize to Mr. Jones and everyone else
19 that has been affected.

20 Since I been locked up -- since I have been
21 locked up, I have been affected so much through
22 this situation, but I just continue on and keep my
23 head held high and take full responsibility -- full
24 responsibility for my actions. And I'm just asking
25 you, Judge Childs, just that I'm sorry, and we all

1 are sorry for what we did and take full
2 responsibility of our actions. I just ask for
3 mercy. Thank you.

4 MR. SWARAT: Your Honor, one thing
5 Mr. McCulloch was planning to mention to the Court,
6 and I'll do so at this time on his behalf and mine,
7 you have been presented with a gigantic amount of
8 information this afternoon. This plea has taken
9 about nearly four hours by my calculation. I would
10 ask that the Court consider deliberating, taking
11 this matter under advisement and not rendering
12 sentence today, but digest this information, go
13 through your notes, consider the roles of each one
14 of these young men, and then pronounce the sentence
15 at a later date.

16 Thank you, Your Honor.

17 THE COURT: Thank you.

18 MR. JOHNSON: Your Honor?

19 THE COURT: Yes?

20 MR. JOHNSON: I just want to add as relates to
21 Kelby Blakney, I also would like to make the same
22 motion that he also has been found as a sexual
23 offender, and that I think it was a mistake that it
24 was done at the sentencing, and ask that that be
25 corrected.

1 THE COURT: Okay.

2 MR. PRIDE: Your Honor, I told the Solicitor I
3 was going to ask you could I approach the bench,
4 and he understands why.

5 THE COURT: Okay.

6 (WHEREUPON, a bench conference was held
7 in the presence of the jury but out of
8 the hearing of the jury.)

9 MR. McCULLOCH: Your Honor, may I say in
10 response to what Mr. Swarat mentioned about the
11 possibility of taking it under advisement, I
12 believe, Your Honor, that that would be of benefit
13 to all of these people, everyone in the courtroom,
14 frankly, to have your deliberation over what is not
15 a simple matter, what involves a great deal of
16 information.

17 I, on behalf of Jeremy, am willing, Your
18 Honor, to waive the presence, that is to say, I
19 don't believe -- I would accept the sentence in a
20 written order issued by you, which is not, you
21 know, a common event. If the Court feels it
22 necessary to bring all the parties back, we can
23 certainly -- we'll be here, we will make ourselves
24 available, but I don't know that the imposition of
25 the sentence -- I haven't reflected on that, but I

1 certainly would waive his presence for that
2 purpose. But that may be a factor to consider,
3 Your Honor.

4 THE COURT: Okay.

5 MR. McCULLOCH: Your Honor, I'm told the other
6 Defense counsel will similarly agree, but if the
7 Court determined it necessary to reassemble
8 everyone for the announcement of a sentence, if you
9 determine to take additional time, we don't object
10 to that and we'll, you know, perform our functions
11 however you direct us to do so.

12 THE COURT: Okay.

13 MR. McCULLOCH: Thank you.

14 THE COURT: I'll allow you to make some
15 concluding remarks.

16 MR. GOLDBERG: Thank you, Your Honor. May it
17 please the Court?

18 Judge, first of all, I would agree with
19 Defense counsel obviously as far as the kidnapping
20 goes, never been anything alleged to involve any
21 sexual activity, and we agree that there needs not
22 be any registry involved for any of the Defendants
23 involved, and especially those who are already
24 incarcerated, the Blakneys. If they are indeed
25 classified as such, then we agree that should be

1 removed. That is not appropriate in this case.

2 There are a number of things that have been
3 said over the last three hours that I would dispute
4 to some degree. The hour being as late as it is, I
5 don't feel that it is necessary to stand up here
6 and contest each one of them. I think Your Honor
7 has a supreme understanding of what this case is
8 about, of each person's role of what took place.
9 To stand here and dispute every little fact I don't
10 think is going to do anybody any good at this
11 point.

12 I would like to say, however, in regards to
13 the mitigation presented about sentencing
14 guidelines, I don't have to tell Your Honor,
15 obviously, I understand what Defense counsel is
16 trying to do to provide a framework for which to
17 ask for the sentences they are asking for.
18 However, as we all know, they are obviously not
19 applicable. Every case is different. Every case,
20 every set of facts is something that Your Honor has
21 to take all of the facts into consideration and
22 make a determination. And I would ask you to not
23 be swayed by what may or may not take place in
24 other courts, other jurisdictions. And to treat
25 this as though there were any other case here in

1 Richland County.

2 Your Honor, just briefly, what happened on
3 May the 10th, 2007 was, simply put, a horrific
4 event. It was a violent event. And it changed the
5 lives of literally hundreds of people, as you have
6 seen and heard here today.

7 And one man in particular is affected in a way
8 that I can't even possibly fathom. And again, I
9 have said it before, I will say it again, my
10 sincere appreciation for him being present here
11 today. I know how difficult it is for Mr. Jones to
12 sit through all this.

13 That being said, the nature of this event
14 speaks for itself. And I don't mean the flashy
15 nature of it, as one of the attorneys mentioned,
16 the media involvement, or anything like that. The
17 sheer violence of what happened, the scale and the
18 scope of this event. There was a plan that was put
19 in place. Each of these men before you today had a
20 choice. And they each made choices. And they
21 chose to participate in this plan. And they chose
22 to execute their role in this plan. And they each
23 had their own role. They each played that role.
24 They each carried them out. And I'm asking you to
25 punish each one of them for their roles. I'm not

1 asking you to establish a hierarchy between these
2 Defendants, which one carried out which act, to
3 what lengths, as compared to this one. There has
4 been a lot of talk comparing this case to other
5 armed robberies, to some of the literature that was
6 handed up to Your Honor, comparing it to other
7 armored truck cases, other robberies in general.
8 There has been a lot of talk comparing these
9 Defendants to one another.

10 I'm asking you, with the exception of
11 Mr. Whitaker, who has pled to the criminal
12 conspiracy charge only, as he was originally
13 charged, due to the fact that he was extremely
14 cooperative and basically helped law enforcement
15 break the case, I'm asking you to sentence each one
16 of these men to at least 25 years. I'm asking you
17 to deny the motions to reconsider.

18 I have -- I have not heard any information
19 presented to Your Honor that would merit a change
20 in sentencing. Both Blakney brothers indicated a
21 willingness to testify on behalf of the State if
22 need be at a trial, and I understand that.
23 Unfortunately for them it didn't get to that point.
24 I'm not saying that it would not have -- that they
25 would not have done what they said they were going

1 to do, we just don't know. It didn't happen.

2 But I'm asking you to deny the motions to
3 reconsider and sentence each of these individuals,
4 with the exception of Mr. Whitaker, to at least 25
5 years. And I don't mean 25 years, I mean at least
6 25, if not more. I will leave that obviously to
7 Your Honor's discretion.

8 And I don't say that because of the glamor or
9 the flash involved in this case or because of the
10 large amount of money involved in the case or
11 because of the media attention involved in this
12 case. I ask you to do that based on the totality
13 of this case, all of the factors involved in this
14 case. In this case. The brutal injuries sustained
15 by this man. The damage that this could have done
16 to Express Teller Service and everyone associated
17 with them. Even the collateral damage to everyone
18 in this courtroom, family members, even of these
19 Defendants.

20 For all of those reasons, for this whole
21 thing, I ask you to sentence them to at least 25
22 years, if not more.

23 And as far as the issue of sentencing today,
24 this matter has been scheduled for quite some time
25 now. Everyone knew we were coming here today for

1 sentencing. Guilty pleas have already been set
2 previously. Today was for sentencing purposes.
3 Your Honor was provided with information ahead of
4 time at your request so that you could be well
5 versed in the facts of the case. And we believe
6 that the time for sentencing is now while the
7 victim is here. Mr. Jones has come here. Express
8 Teller Service has sent their representatives, the
9 Sheriff's Department, everyone is here. And
10 respectfully I'm asking you to sentence these
11 Defendants at this time.

12 Thank you.

13 THE COURT: Anything further by anyone else?
14 Just a couple of questions. As to each person, you
15 know, who has the allegation or the charge or
16 offense for kidnapping, I would hereby find on the
17 record that there is no sexual registry required
18 because the kidnapping is not of a sexual offense.

19 And then the Court, to be sure I understand,
20 as to Mr. Whitaker, the maximum sentence for the
21 criminal conspiracy carried five years, and so that
22 is why he would have been given a time served
23 sentence?

24 MR. GOLDBERG: Yes, ma'am. I believe that
25 that is what Mr. Pride was asking for was time

1 served.

2 MR. PRIDE: That's correct.

3 MR. GOLDBERG: And he served approximately --

4 MR. PRIDE: Nineteen months.

5 THE COURT: Okay.

6 MR. PRIDE: Well, he didn't serve 19 months.
7 He was confined 19 months. He was confined from
8 May until December.

9 THE COURT: Okay. And was there any objection
10 by the State on that?

11 MR. GOLDBERG: Your Honor, we leave it up to
12 Your Honor.

13 THE COURT: Okay.

14 MR. GOLDBERG: If my math is accurate, I
15 believe the way the Department of Corrections
16 calculates their sentences, it is pretty close to
17 time served as it is.

18 THE COURT: Okay.

19 MR. GOLDBERG: On a five year sentence.

20 THE COURT: Okay. And then the reason I ask
21 is because Mr. Pride was indicating there had been
22 some discussion along that line, so --

23 MR. GOLDBERG: I don't think there was an
24 outright agreement upon the State recommending or
25 asking for time served. However, I did indicate to

1 Mr. Pride that if he were to ask for that, then I
2 would leave that solely up to Your Honor and not
3 argue against it.

4 THE COURT: Okay. All right. And then also
5 the negotiation with respect to the remainder is
6 the 15 to 28 years to run concurrent?

7 MR. GOLDBERG: Your Honor, for Mr. Lyde and
8 Mr. McPhail, it was a negotiated range of a minimum
9 of 15 years and a maximum of 28 with each side to
10 be allowed to obviously ask for whatever they want,
11 leaving it up to Your Honor to make a decision.

12 Mr. Frierson actually pled straight up. There
13 are no parameters on his sentencing. It is solely
14 in Your Honor's discretion.

15 And then as far as the Blakneys, you are aware
16 that they were sentenced to 25 years previously.

17 THE COURT: Okay. One moment. All right,
18 we're going to be on a short recess right now.

19 (Recess.)

20 THE COURT: Okay. I want you all to
21 understand that I have been involved in this case
22 since the beginning, and I have been involved
23 probably for at least a year and a half. I have
24 been hearing of the various matters where people
25 are pleading at different times, and so I have

1 received a lot of information along the way.

2 I had requested when we set this case for
3 trial, as well as for a sentencing hearing after
4 everyone had pled, to get certain items of
5 information from everybody.

6 Naturally attorneys are busy, and so some of
7 the information got to me as late as today, and all
8 of the information is extremely thorough. You all
9 have given me very thorough oral information, as
10 well as very thorough written information.

11 And I understand that people have come far
12 from various distances, but I believe at this time
13 it is in my best interest to take this matter under
14 advisement.

15 We have a significant case in front of us.
16 There are lots of issues with respect to what the
17 parties are asking of the Court. And it is my
18 practice to be fair and deliberate in anything that
19 I do. I take my job seriously and I do understand
20 that I'm affecting people's lives and liberties.

21 So to the extent that you all have come great
22 distances, I apologize for not being able to render
23 that decision right at this moment, but I do
24 believe that I need to take into consideration all
25 of my prior notes at the various pleas, in addition

1 to what was presented to the Court today. And I
2 have taken extremely detailed notes, but then I
3 also need to take into consideration what is being
4 asked of me from the Defense side and the various
5 details and attachments that they have given me as
6 well.

7 That having been said, I'd like to go ahead
8 and set a sentencing date here so that I can review
9 everything in detail.

10 We do not have court next week, and in fact
11 will be at a judicial conference. So I am going to
12 set it for Monday, August 24, at 2:00 p.m.

13 And at that time I understand that everything
14 is in. I don't believe that anybody else has
15 anything else to give me, so I am literally coming
16 that day to render my decision with maybe some very
17 few comments at that time, but to render decisions
18 and to have sentencing sheets prepared and to hand
19 down a sentence on Monday, August 24th, at 2:00
20 p.m.

21 Any questions of anyone?

22 MR. GOLDBERG: Just in response to one of the
23 requests of counsel. Are the Defendants themselves
24 to be transported on that date or --

25 THE COURT: I believe given the significance

1 of this matter that everyone needs to be present,
2 all counsel, as well as their clients need to be
3 present for the Court to hand down sentence so that
4 they are -- everyone is hearing it from myself for
5 themselves and it is something that is not being
6 translated to the parties.

7 So I would ask you to make your schedules
8 available. And to the extent I need to help you
9 with orders of protection in other courts, then I
10 will be happy to do so.

11 Okay.

12 MR. McCULLOCH: Thank you.

13 MR. JOHNSON: Thank you, Your Honor.

14 MR. O'NEIL: Thank you, Your Honor.

15 MR. PRIDE: Thank you, Your Honor.

16 MR. SWARAT: Thank you, Your Honor.

17 THE COURT: One moment. If you have a
18 question, just relay to whichever attorney who is
19 responsible.

20 MR. GOLDBERG: Obviously we would just ask
21 that bonds, you know, stated that the bonds remain
22 as is and the Defendants remain in custody --

23 THE COURT: Absolutely.

24 MR. GOLDBERG: -- at the Alvin S. Glenn
25 Detention Center until that date.

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THE COURT: And that will be fine because as to all Defendants who are incarcerated, my understanding is that all of them will have a period of incarceration, so there is no reason for bond to be lifted.

MR. GOLDBERG: Yes, ma'am. Thank you.

THE COURT: Okay.

(WHEREUPON, the proceedings were concluded.)

(END OF TRANSCRIPT)

STATE OF SOUTH CAROLINA)
) COURT OF GENERAL SESSIONS
 COUNTY OF RICHLAND) 07-GS-40-4365
) 07-GS-40-4368
) 08-GS-40-1180
) 07-GS-40-4358
) 07-GS-40-4359
) 07-GS-40-4362
) 07-GS-40-4364
) 07-GS-40-4429

THE STATE
 vs.) TRANSCRIPT OF RECORD
)
 DOMONIQUE BLAKENEY,)
 DOMINIC LYDE,
 JEREMY MCPHAIL,
 AND DARRYL FRIERSON.

August 24, 2009
 Columbia, South Carolina

B E F O R E:
 THE HONORABLE J. MICHELLE CHILDS, JUDGE.

A P P E A R A N C E S:
 DANIEL R. GOLDBERG, ASSISTANT SOLICITOR
 Attorney for the State
 CHARLIE JOHNSON, ESQ.
 Attorney for Defendant Blakeney

PRISCILLA NAY
 Official Court Reporter

I N D E X O F W I T N E S S E S

NONE

E X H I B I T S

NO.	DESCRIPTION	ID	EV
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NONE

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1 THE COURT: Before we proceed with the sentencing, at
2 the last hearing, I do recall Investigator Eisenhower had
3 asked about the fourth picture of the evidence. There has
4 been no formal motion filed at this time but had the
5 parties even discussed that issue with each other?

6 THE SOLICITOR: No, Your Honor.

7 THE COURT: Given that right now, I suggest you go
8 forward with the forfeiture proceedings as with the
9 sentencing of the defendants. As you all know, we've got
10 a serious matter here and I'm going to ask everybody
11 remain seated until the appropriate time of the sentence.
12 If you have been to these proceedings, you are obviously
13 aware there are very diverse views as to how I should
14 sentence the defendants in this matter. The only thing
15 that's going to satisfy this happening -- but if that's
16 the case and if you are not able to contain yourself, I
17 ask you leave now.

18 The deputies have been instructed that to the extent
19 there are any outbursts in the courtroom that they are to
20 immediately remove you from these proceedings as if
21 necessary they have the court's authority to take anyone
22 into custody for which you might be held in contempt and
23 either jailed or fined. I just need you to understand
24 that we have to observe courtroom decorum and for purposes
25 of security measures as well.

1 Now, I have reviewed all of the evidence in this case
2 that was presented by the Solicitor's office at the last
3 hearing as well as various documents by the counsel,
4 listened to your oral as well as reviewed your written
5 statements and various other documents in the case and I
6 am now ready to focus on the sentencing but first I want
7 to make a few remarks. I find this is a very serious and
8 significant crime and I find no justifiable executions or
9 explanations.

10 The defendants engaged in a well-thought-out plan
11 that was conceived well before the date of the incident.
12 Some of the defendants tried and attempted to commit this
13 crime the week before had an opportunity to reflect when
14 it didn't go well and then later on unfortunately were
15 successful. The defendants' families and their attorneys
16 have asked me to be lenient and to focus on the character
17 of these defendants and the lack of our no significant
18 prior record but I have to balance that with the depravity
19 of the issues in this case and their conduct both
20 individually and collectively and any sincere cooperation
21 with law enforcement's efforts to resolve the case among
22 other things.

23 I have considered the various roles in this case and
24 have ultimately concluded that this is a classic case of
25 why our state has the law of what we call the hand of one

5

1 is the hand of all. This case particularly fits that law
2 because each defendant had a succinct role that they had
3 to carry out their responsibilities, be aware of the
4 other's roles and let the plan go forward, including
5 specifically, and at a minimum, having knowledge that for
6 something of this magnitude to be able to be carried off
7 there either had to be an inside person or someone would
8 have to be brutally beaten or killed for this plan to be
9 successful.

10 After the incident, law enforcement expended
11 substantial resources to investigate this matter and bring
12 it to conclusion during which time many of the defendants
13 denied their involvement initially so now we're at the
14 point of sentencing and the defendants being punished for
15 their bad choices. The unanticipated and even unintended
16 consequences of the crime which at a minimum were the
17 armed robbery and kidnapping of an innocent and
18 hard-working citizens who suffered and continue to suffer
19 severe physical and mental injuries and for which the
20 defendants, particularly Darryl Friarson, showed no mercy
21 at the time of the incident, placing millions of
22 unaccounted for dollars in the community among friends,
23 relatives, and strangers and the damaging effects on
24 Express Teller Services as well as his employees.

25 Defendants Friarson's actions are particularly

1 troubling because you committed what I consider the
2 ultimate betrayal. You allowed a person who served as
3 your father-like figure, mentor, friend, a role model, and
4 a fellow employee to be seriously harmed despite that each
5 of you in this very dangerous occupation had to rely upon
6 each other for your safety and protection and you allowed
7 him to be beaten unnecessarily and did nothing to assist
8 in his help.

9 Now, my sentencing range is a minimum of ten years
10 for the armed robbery up to 75 years if these sentences
11 were to run consecutively. I will accept the State's
12 negotiated sentences with the counsel respectively which I
13 understand to be with defendants Jeremy McFail and
14 Domonique Lyde only, of 15 to 28 years. Is that correct,
15 Mr. Goldberg?

16 THE SOLICITOR: Yes, ma'am.

17 THE COURT: All right. At this time, I will proceed
18 with sentencing of certain of the individuals, as
19 indicated before there no registry by the State with the
20 sexual registry for the kidnapping offenses. We will
21 proceed with Mr. Paul Whittaker. Right here is fine. All
22 right. Given that, it appears to me at the last couple of
23 hearings that which Mr. Whittaker was involved that this
24 is the individual in which you believe there was some
25 initial cooperation and actually some assistance in you

7

1 breaking the case. I am going to need Mr. Goldberg to
2 assist me with the time for credit served with these
3 individuals. Do you have this information available?

4 THE DEFENDANT: Your Honor, I don't have the exact
5 information in front of me but I request gather it pretty
6 easily.

7 THE COURT: I'll go ahead and deal with the
8 sentencings.

9 THE DEFENDANT: I know he served 18 months prior to
10 being released on bond.

11 THE COURT: We have an exact date? That's what the
12 Department of Corrections would require I will find that
13 out but you are hereby sentenced to the offense of
14 criminal conspiracy to three years. All right.
15 Mr. Domonique Lyde, your sentences will run concurrent.
16 You're sentenced to the offense of criminal conspiracy for
17 five years, assault and battery of a high and aggravated
18 nature for ten years, and your armed robbery and
19 kidnapping, 28 years.

20 Mr. Jeremy McFail, your sentences shall also run
21 concurrent. Criminal conspiracy, five years, assault and
22 battery of a high and aggravated nature, ten years and,
23 your armed robbery and kidnapping, 25 years.

24 I have also considered on the motion for
25 reconsideration the offenses of Mr. Kelvey Blakeney and

1 Mr. Domonique Blakeney. There were issues with respect to
2 one of these individuals having a prior record. The Court
3 would note that there was an inquiry made into the arrest
4 because at all sentencing hearings I have to know what the
5 prior record is, whether it's an arrest or a conviction
6 for my consideration. The consideration was not given to
7 the fact that one of these individuals may have committed
8 an armed robbery as would be noted because one of them did
9 not have a prior record and I sentenced them to the same.
10 In that respect, a motion for reconsideration is
11 respectfully denied. The sentence will remain at 25
12 years.

13 And then lastly, Mr. Darryl Friarson. For the
14 offense of criminal conspiracy, Mr. Darryl Friarson, you
15 are sentenced to five years consecutive to that I will
16 sentence you to assault and battery of a high and
17 aggravated nature ten years and your armed robbery and
18 kidnapping 30 years. These particular sentences of the
19 assault and battery of a high and aggravated nature, your
20 armed robbery and kidnapping will run concurrent with each
21 other but consecutive to your criminal conspiracy. Are
22 there any other issues from this court?

23 THE SOLICITOR: Nothing from the State, your Honor.

24 THE COURT: From the defense?

25 MR. JOHNSON: No, Your Honor.

9

1 THE COURT: Proceedings are concluded.

2 (END OF REQUESTED TRANSCRIPT OF RECORD.)

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CERTIFICATE OF REPORTER

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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

I, Priscilla Nay, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 24th day of August, 2009.

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

January 24, 2010

Priscilla Nay, Court Reporter

2010CP4006266

STATE OF SOUTH CAROLINA

County of Richland

In the Court of Common Pleas

James McPhail #
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.

South Carolina Attorney General

2010 SEP 10 PM 1:15
J. ANNETTE W. COBRIDGE
C.C.P. & D.S.
RICHLAND COUNTY
FILED

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 it clear to which question any such continued answer refers.

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

If the 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 applicant was convicted.

- Place of detention: Lee Correction Institution; 990 Wisacky Highway; Bishopville, South Carolina
29010
- Name and location of Court which imposed sentence Richland County General Sessions
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - Armed Robbery
 - Kidnaping
 - Criminal Conspiracy
- The date upon which ^{4/3/78} sentence was imposed and the terms of the sentence:
 - 07-65-40-4528 Armed Robbery
 - 07-65-40-4359
 - 4360

- 11. Prior to this application have you filed with respect to this conviction
 - (a) any petition in a State Court under South Carolina Law? Yes
 - (b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? No
 - (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No
 - (d) any other petitions, motions or applications in this or any other Court? No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application.

- (a) the specific nature thereof:
 - i. Motion To Vacate Sentence
 - ii. _____
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. Richland County General Sessions
 - ii. _____
 - iii. _____
 - iv. _____
- (c) the disposition thereof:
 - i. Denied
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. N/A
 - iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?
No

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. n/a
- ii. _____

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

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

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) n/a
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? No
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Joseph M. McCulloch, Jr. ; 1426 Richland Street, Columbia, South Carolina
29211
- ii. _____
- iii. _____

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

- i. Plea Sentencing and motion to vacate sentence
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

vacate conviction

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

No

STATE OF SOUTH CAROLINA

VERIFICATION

County of Lee

I, Jeremy McPhail, 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.

Jeremy McPhail
Applicant

SWORN to and subscribed before me this 23
day of July, 2010
[Signature] (L.S.)
Notary Public

My-Commission Expires: 11-4-2015

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

FILED
RICHLAND COUNTY
2010 SEP 10 PM 1:11
JANINETTE W. HICBRON
C.C. & G.S.

I, Jeremy McPhail, 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 therefor.

Jeremy McPhail
Applicant

SWORN or affirmed to and subscribed before me this
23 day of July, 2010
[Signature]
Notary Public

My Commission Expires 11-4-2015

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

MCPHAIL Jeremy, # 336465,

2010-CP-40-06266

Applicant,

RETURN

v.

State of South Carolina,

Respondent.

The Respondent, making its Return to the application for post conviction relief (PCR) filed September 10, 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 Richland County Clerk of Court. The Applicant was true bill indicted at the September 2007 term of the Richland County Grand Jury for Criminal Conspiracy, Armed Robbery, Assault and Battery of a High and Aggravated Nature, and Kidnapping (2007-GS-40-04358/04359/04360/4361). He was represented by Joseph M. McCullouch, Esquire, on the charges. On December 4, 2008, the Applicant pled guilty before The Honorable J. Michelle Childs to the charges as indicted. On August 24, 2009, Applicant appeared again before Judge Childs with his co-defendants for sentencing, at which time he was sentenced to five (5) years imprisonment for Criminal Conspiracy, ten (10) years imprisonment for ABHAN and twenty-five (25) years imprisonment for each Armed Robbery and Kidnapping, all sentences running concurrently.

A Notice of Appeal was filed, but the appeal was dismissed by Order of the Court of Appeals on January 25, 2010, for failure to show any issue preserved for the Court to review under Rule 203(d)(B)(iv), SCACR. The Remittitur was issued February 17, 2010.

II.

Attached herewith and incorporated herein are the records of the Richland County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials or submit an amended Return to reflect any amended allegations and/or to provide a more detailed procedural history.

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

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance Of Counsel
 - (b) Violation Of Fourth Amendment Rights
 - (c) Guilty Plea was based on bad advice
10. State concisely and in the same order the facts which support each of the grounds set out in (9):
- (a) Counsel failed to investigate law and facts of case
 - (b) Arrest warrants not based on Probable Cause
 - (c) Counsel failed to Pursue defense based on facts of case

III.

For the purposes of this Return, Respondent interprets all of Applicant's allegations as ones of ineffective assistance of plea counsel. The Respondent contends that the Applicant's plea counsel rendered adequate assistance and provided representation within the range of competence required by attorneys in criminal cases.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process

that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

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

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied. The Respondent therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the Respondent moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held at which time the Court may pass on the credibility of witness testimony and make a final determination the validity of Applicant's claims.

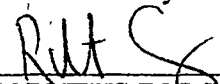
Respectfully submitted,

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April 27, 2012

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

)
) IN THE COURT OF COMMON PLEAS

2010-CP-40-6266

Jeremy McPhail, 336465

)
) Applicant,

)
) vs

) AFFIDAVIT OF SERVICE BY MAIL

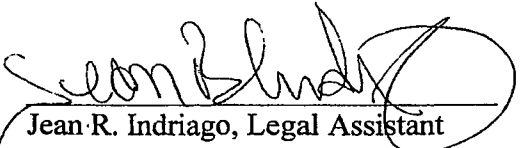
)
) State of South Carolina,

)
) Respondent.
)
)

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

Jeremy A. Thompson, Esquire
1612 Marion Street, Suite 210
Post Office Box 12891
Columbia, South Carolina 29211

DATED this 27th day of April, 2012.


Jean R. Indriago, Legal Assistant
For Respondent

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State of South Carolina)
County of Richland)
In the Court
Of Common Pleas

Docket No. 2010-CP-40-6266

Jeremy McPhail,
Applicant,

vs.

State of South Carolina,
Respondent.

Transcript of Record

May 22, 2012
Richland, South Carolina

B E F O R E:

The Honorable L. Casey Manning, Judge.

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

Jeremy Thompson, Esquire
Attorney for the Applicant

Rob D. Corney, Assistant Attorney General
Attorney for the Respondent

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I N D E X

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(There were no exhibits entered
during this hearing.)

1 MR. CORNEY: May it please the Court? Your Honor.

2 THE COURT: Yes, sir.

3 MR. CORNEY: Your Honor, the State calls PCR action
4 of Jeremy McPhail. It's docket number 2010-CP-40-6266.

5 THE COURT: All right.

6 MR. CORNEY: Mr. McPhail was true-bill indicted
7 September of 2007 term of the Richland County grand jury
8 for criminal conspiracy, armed robbery, assault and battery
9 of a high and aggravated nature and kidnapping. He was
10 represented by Mr. Joe McCulloch on the charges. He pled
11 guilty December 4th, 2008, before Judge Childs to the
12 charges as indicted. At that point in time sentencing was
13 deferred.

14 He appeared again August 24th, 2009, before Judge
15 Childs for sentencing, at which point he was sentenced as
16 far as a negotiated range of sentences between 15 and 28
17 years; and was ultimately sentenced to 25 years
18 imprisonment for each robbery and kidnapping; 10 years on
19 the assault and battery of a high and aggravated nature;
20 and 5 years on the criminal conspiracy; and those sentences
21 were all run concurrent, Your Honor.

22 He did not have a direct appeal from that. He
23 filed a timely PCR application September 10th, 2010. I
24 would just note, Your Honor, there are two transcripts that
25 are part of your packet -- actually, I believe there are

1 three. I'm sorry. There's a December 4th, which is the
2 actual entry of the plea; there's August 24th, which is the
3 sentencing; and there's an August 10th, 2009, which is, I
4 think, the mitigation and presentation to the Court before
5 sentencing, just so you know what you're flipping through
6 up there.

7 He's represented today by Mr. Jeremy Thompson on
8 the action. And I can bring you those transcripts if you
9 need them.

10 THE COURT: All right. Mr. Thompson?

11 MR. THOMPSON: May it please the Court, Your Honor.
12 For the record, my name is Jeremy Thompson, I am the
13 applicant's current counsel of record. Just generally, he
14 alleges that he received ineffective assistance of counsel
15 in violation of his Sixth and Fourteenth Amendment Rights,
16 as well as corresponding provisions of the South Carolina
17 Constitution, and that is the pleas of guilty were not
18 knowingly, voluntarily or intelligently entered..

19 Just by -- just basically, Your Honor,
20 Mr. McPhail's allegation here today is that he was not
21 sufficiently advised about presenting the defense of
22 coercion and duress had he proceeded to trial; and that
23 that is the -- basilically his sole allegation here today.

24 THE COURT: All right.

25 MR. THOMPSON: With that background in mind, Your

1 Honor, I would call the applicant as his own first witness.

2 THEREUPON,

3 JEREMY MCPHAIL,

4 after being duly sworn, testified as follows:

5 THE COURT: Please take a seat, Mr. Thompson --

6 Mr. McPhail. Too many Jeremys around here.

7 Spell your last name for the record, sir.

8 THE WITNESS: M-c-P-h-a-i-l.

9 **DIRECT EXAMINATION**

10 By Mr. Thompson:

11 Q And I feel weird calling other people Jeremy

12 because that's my name, so I'm going to call you

13 Mr. McPhail, all right?

14 A Okay.

15 Q Mr. McPhail, if you don't mind, speak up and speak

16 clearly so the nice lady sitting next to you can take down

17 everything that you're saying; so the judge can kind of

18 understand what you're testifying to, all right?

19 A Okay.

20 Q And one more thing, also don't just nod your head

21 and say uh-huh, huh-huh, something like that. Say yes or

22 no to the questions, all right?

23 A Okay.

24 Q Okay. Who represented you on these charges?

25 A The Honorable Joe McCulloch.

1 THE COURT: The Honorable?

2 THE WITNESS: The Honorable.

3 THE COURT: All right.

4 By Mr. Thompson:

5 Q Was he -- was he appointed to your case or did
6 somebody hire him to represent you?

7 A We -- we obtained him.

8 Q Who retained him?

9 A My family and I.

10 THE COURT: You need to speak up a little bit,
11 Mr. McPhail.

12 THE WITNESS: My family and I, I'm sorry.

13 THE COURT: That's all right.

14 By Mr. Thompson:

15 Q And how many codefendants did you have on this
16 case?

17 A Five, including me.

18 Q And we've talked about this before, you have the
19 tendency sometimes to just say he or -- you know, he did
20 this, he did this. Since you've got so many codefendants,
21 I want you to be specific about who you're talking about,
22 okay?

23 A Okay.

24 Q Who are your codefendants?

25 A Kelvin Blakely, Dominique Blakely, Dominique Lyde

1 and Daryl Friarson.

2 Q Okay. And what -- what was the substance for your
3 charges? What were y'all alleged to have done?

4 A Armed robbery, kidnapping, assault and battery of a
5 high and aggravated nature, and conspiracy.

6 Q Of what -- armed robbery of what?

7 A Of an armored truck.

8 Q Of an armored truck?

9 A Yes.

10 Q And who was the kidnapping of?

11 A Mr. Jones.

12 Q Who was?

13 A He was the driver of the truck.

14 Q Now, how early on in the proceedings did you retain
15 Mr. McCulloch?

16 A Pretty early. I'm not sure exactly, but pretty
17 early.

18 Q Within a month or two of being arrested?

19 A Yes.

20 Q And how long did he represent you for?

21 A The entire.

22 Q What?

23 A The entirety of the case.

24 Q How long would you say that was? A year, year and
25 a half, two years?

1 A Two years.

2 Q Two years. How many times would you say you met
3 with Mr. McCulloch, personally?

4 A Personally, maybe four times, four or five, I'm not
5 sure.

6 Q And were you out on bond or were you in the jail?

7 A I was detained in Alvin S. Glenn Detention Center.

8 Q The entire case?

9 A Yes.

10 Q Now, did you --

11 THE COURT: Who was the codefendant found in
12 Raleigh?

13 THE WITNESS: That was Lyde.

14 THE COURT: Okay. Go ahead.

15 By Mr. Thompson:

16 Q And did you discuss the facts of the case with
17 Mr. McCulloch?

18 A Yes.

19 Q Did you tell him what your role in the robbery was?

20 A Yes, yes, I did.

21 Q And initially were you looking to go to trial or
22 were you looking to plea?

23 A I really didn't know. I hadn't -- I never been in
24 trouble, so I was just going for whatever was best.

25 Q Now, I want to talk about the facts of the case a

1 little bit.

2 A Okay.

3 Q You were alleged to have robbed an armored car,
4 right?

5 A Correct.

6 Q How many attempts were there to rob a car?

7 A Two.

8 Q On the first attempt, what happened? Were you
9 there?

10 A Yes.

11 Q Who else was with you?

12 A Me, some girl, Daryl, Kelvin Blakely, Dominique
13 Blakely and Friarson was on the truck.

14 Q And how was -- how was the robbery supposed to go
15 down? To the best of your knowledge?

16 A (No response.)

17 Q Did somebody come up and talk to you about it
18 beforehand?

19 A It was mentioned about it, but it was a bunch of us
20 around. We was in front of the library at Benedict, where
21 we used to attend school.

22 Q And who was talking about it?

23 A Friarson.

24 Q Friarson. How did Friarson come up with this idea?

25 A I have no -- no --

1 Q Where did Friarson work at?

2 A He worked at the place where the -- the armory --
3 the robbery happened. He was driving the truck for the
4 teller place.

5 Q And so he came up with the idea to rob them?

6 A Yes.

7 Q Okay. And were you planning on participating in
8 this?

9 A Hell -- I mean no, no. I wasn't.

10 THE WITNESS: Excuse me, Your Honor.

11 THE COURT: That's all right.

12 By Mr. Thompson:

13 Q And so how did you end up in this first attempt
14 with the armored car? How did you get there?

15 A Really, I don't know. It's just -- we was sitting
16 around chilling. And he was telling me he wanted me to go
17 pick him up. We was supposed to be going, from my
18 knowledge --

19 Q Again, let's back up and talk about earlier. Who
20 is he?

21 A Dominique was telling me that he wanted to go pick
22 Friarson up from work that night. So when he came to the
23 dorm room, I was out running around playing -- we was
24 running around playing and stuff. He came and got me and
25 we went and got Friarson. So we get to the gas station;

1 Kelvin was in the driver seat. Dominique gets in and goes
2 into the store. So the truck pulls up. I really ain't
3 paying no attention. So when they get to saying, Okay,
4 let's rob this truck.

5 Q Who is that? Who is they?

6 A The brothers, Dominique and Kelvin.

7 Q Blakely?

8 A Yes.

9 Q And they tell you they want to rob this truck?

10 A That was the plan. And the girl -- I can't
11 remember her name. I don't know.

12 Q Did you know her?

13 A No.

14 Q That the only time you ever seen her?

15 A I seen her once before at the restaurant, but
16 before that; no, I never seen her before.

17 Q So when the Blakely's said they wanted to -- they
18 want to rob the --

19 A And her.

20 Q And her. They all said they wanted to rob the
21 truck?

22 A I started laughing.

23 Q What do you do?

24 A I began to laugh. I'm like, Yeah, right. You know
25 what I'm saying?

1 Really, to be in that situation, you have to be
2 there. You would be like whatever. You don't really
3 believe no one's going to ask you to try this. So when I
4 realize they were serious, they pulled the gun. They was
5 like, We going to do this for real. It was crazy.

6 We was out playing with these air guns, so I still
7 had mine with me. But when they was talking about robbing
8 the armored truck, I take off. I get out of the car and I
9 go. I run. I call my friends. They came and got me from
10 down the street. I started walking down Bluff Road.

11 Q So you, you -- I just want to make sure, you see
12 them get guns out?

13 A She had a gun.

14 Q She had a gun?

15 A She the only one I seen with a gun.

16 Q She's the only one with a gun?

17 A Yes.

18 Q Okay. You see her get a gun out, you realize
19 they're serious about robbing this truck?

20 A I really wasn't trying to stick around to find out.

21 Q So you got out of the car and you ran?

22 A Yes.

23 Q You got a friend to come pick you up and you left?

24 A Yes.

25 Q Did you have any further discussion with the

1 Blakely's, Friarson, anybody about the robbery afterward?

2 A Dominique came in contact with me at my dorm room
3 and was like, Bro, to be honest with you, I ain't have
4 nothing to do with that. I thought he was just tripping.
5 It ain't nothing serious. Don't pay that junk no
6 attention. I been knowing them since they be young, so I
7 know they ain't the type of people to do nothing like that,
8 you know what I'm saying. So I just went with it. I was
9 like, Okay, that's cool forget about it.

10 Q So did there come another time where you were, you
11 know, basically hanging out with the Blakely brothers?

12 A Other than the day he came to the dorm room after
13 the first attempt, no.

14 Q And that day, what ended up happening?

15 A What --

16 Q Did you -- did you get -- did you get together with
17 the Blakely's again?

18 A Not, not after -- after the first attempt, he came
19 to the dorm room and he was apologizing to me, telling me
20 it was nothing, don't worry about it. It ain't happen no
21 more. We was just tripping. I was like, I let --

22 Q So how did you end up back at -- with the second
23 attempt?

24 A His brother Kelvin called me the day of the
25 robbery. He was like, Well, I just wanted to holler at

1 you, man. I was going to go pick Dominique up from our
2 house to come to school and I supposed to be meeting
3 some -- if I recall he had met when he was down there the
4 week prior. He said, I was supposed to be meeting her at
5 Benedict. So I was like, All right. I'll ride with you.
6 So after we riding, we go pick up Dominique Lyde. I don't
7 know where he comes in and we ride. And the whole time we
8 coming down there, he just steady apologizing, apologizing.
9 I didn't mean that, Bro. You know I ain't nothing like
10 that. We was just tripping. It was supposed to be a joke.

11 So we get to Friarson's house, pick up his brother,
12 leave there, and we go to Benedict to meet the female we
13 was supposed to go meet.

14 Q So how did you end up at the location where the
15 truck was robbed?

16 A Well, we left -- we left to go eat -- after we left
17 Benedict, we left to go get something to eat. After we go
18 get something to eat, we go ride -- I mean, I'm under the
19 impression we're on our way home because I'm on the phone
20 with a female friend of mine. She had just lost her uncle
21 the same night to be in fact. She had lost her uncle so
22 I'm like, I'm on my way home. She was fussing and cussing.

23 So we pull into the place right beside the gas
24 station. So -- you can tell it's a gas station beside it,
25 but, you know, I ain't really paying it no attention. So

1 as she's -- we're talking in the car, I was talking to her
2 at the same time, so she getting to saying, you know, You
3 ain't even paying me no attention. Why ain't you paying me
4 no attention. So I get out of the car. So when I get out
5 of the car, I'm talking to her. So when I get ready to
6 come back to the car, I see the truck a few minutes later
7 just pulling up.

8 Q You see what truck?

9 A The armored car.

10 Q The armored car?

11 A Yes.

12 Q Pull up to the gas station?

13 A Correct.

14 Q And is this the same gas station you were at the
15 first time?

16 A I ain't -- I think so. I think so.

17 Q Close to the same location?

18 A Yes.

19 Q So you see the truck pull up, the armored car, and
20 what do you do?

21 THE COURT: Is this trying the case again on the
22 facts or -- help me out.

23 MR. CORNEY: Your Honor, I believe I have to
24 present the facts.

25 THE COURT: I just wanted an explanation.

1 MR. CORNEY: Yes, for duress, in order to show --

2 THE COURT: All right. Go ahead. Go ahead.

3 By Mr. Thompson:

4 Q So you see the armored car and what do you do?

5 A I begin to leave the scene again.

6 Q You begin to leave the scene again?

7 A Yes.

8 Q And what happens to stop you from leaving the
9 scene?

10 A Lyde comes -- when I was going back to the truck,
11 he was getting out of the truck. I seen them putting on
12 gloves. I was like, Hell, no.' So when I go -- I walk off.
13 I turn around, I began to walk away again, getting ready to
14 pull out my cell phone. I don't have nothing,, so I get
15 ready to pull my cell phone to call somebody else to come
16 pick me up because I had a cousin that was living in
17 Columbia at the time.

18 Q So you were going to do what you did the last time,
19 which is run away and get somebody to come pick you up?

20 A Yes. Now, I'm at the point where I'm upset because
21 I ain't trying to play. They really trying to play me. So
22 I felt I like I needed to get away from the situation
23 before we got into anymore trouble from us getting into it
24 as far as each person --

25 Q So why do you not leave this time?

1 A When I was getting ready to walk off, Lyde comes
2 running up behind me. He's like, Bro what's up, you ready
3 to do this. I was like, I ain't -- what I tell you about
4 last time, I ain't got nothing to do with this. I'm not --
5 I ain't even know this was going on. He proceeded to tell
6 me, he was like, you going to have to do this, Bro, I'm
7 trying to get this money in, so many words. I can't
8 remember. But he was like, you got to do this. If not, I
9 can't risk you telling. You know what I'm saying, if you
10 tell, that's going to get us in trouble.

11 So he say, you either going to help me get in this
12 truck and get this money. You ain't even really got to do
13 nothing. You going to help us or I'm going to have to
14 leave you here. So at that time, I'm like, Man, you do
15 what you have to do, I'm getting ready to go. I leave to
16 walk -- when I turn around, that's when he grab me by the
17 arm, not hard or rough, he just grabbed me by the arm and
18 pointed a pistol at me.

19 Q And he had a firearm?

20 A Yes.

21 Q And you saw it?

22 A Yeah.

23 Q And he pointed it at you?

24 A Yes.

25 Q And what did he tell you?

1 A He told me if I didn't help him, he was going to
2 leave me there.

3 Q He was going to leave you there?

4 A Yes.

5 Q What did you take that to mean?

6 A He was going to shoot me or he was going to pistol
7 whip me, one or the other. I don't know what he mean.

8 Q You were afraid he was going to shoot you --

9 A Yes.

10 Q -- if you didn't go along?

11 A Right.

12 Q And so is that why you went along and helped them?

13 A The only reason.

14 Q The only reason?

15 A Yeah.

16 Q You went along and helped them?

17 A Yeah.

18 Q Were you with Lyde for pretty much the duration of
19 the robbery?

20 Let me backtrack. How do you get in the -- what
21 happens with the car?

22 A We get into the car --

23 Q Who's we?

24 A Lyde and I. They're sitting on -- Mr. Jones is
25 sitting on the driver side. So when I get into the truck,

1 Mr. Jones, of course, he reacts and grabs me. He bites me.
2 So I snatch away and Friarson and Lyde began to detain him.
3 Q And does Lyde still have a gun out at this point?
4 A I don't know.
5 Q You don't know. But he's got it on his person? He
6 didn't give it to anybody?
7 A Not to my knowledge.
8 Q And he's still waiting in the cab of the car with
9 you?
10 A Yes.
11 Q And what happens -- the truck -- do y'all drive the
12 truck somewhere?
13 A Friarson drives the truck to the location down the
14 street; and they proceed to get out and they go unload the
15 truck.
16 Q And they unload the truck what -- with the cash?
17 A Yes.
18 Q Where are you while they're unloading the truck?
19 A I'm still in the cab.
20 Q With whom?
21 A Mr. Jones.
22 Q And so it's just you and Mr. Jones?
23 A Yes.
24 Q Did you tell Mr. Jones anything?
25 A Telling him that I'm sorry; I didn't want nothing

1 to do with this; hate that he's in this position; is he
2 okay; is there anything I can do for him; he need me to
3 loosen the tape up; can you get out; are you straight; are
4 you okay; can you breathe. That's basically it.

5 Q So you basically got in the cabin of the truck
6 because Lyde's got a gun on you?

7 A Only reason.

8 Q And you don't participate in getting the money out
9 of the truck?

10 A No.

11 Q And do you feel like you can run at any point?

12 A Now, that I look back, I probably could have, but
13 it was dark and I didn't know where I was at. I don't know
14 the area. All I know is basically around Benedict and
15 that's about it.

16 Q And you wouldn't have been able to get far with
17 Lyde right there, would you?

18 THE COURT: Are you going to testify for him or are
19 you going to let him answer the question?

20 MR. THOMPSON: Thank you, Your Honor.

21 THE COURT: You're welcome. Don't lead too much.
22 Come on Mr. Thompson.

23 MR. THOMPSON: I'm just trying to get through it,
24 Your Honor.

25 THE COURT: That's beside the point. We have

1 rules.

2 MR. THOMPSON: I understand.

3 THE COURT: Ask him the question and let him give
4 the answer, please.

5 By Mr. Thompson:

6 Q Where did you go after the robbery took place?

7 A We proceeded to go to a hotel.

8 Q The hotel.

9 A Yes.

10 Q And how long after this did you get arrested?

11 A Few days.

12 Q Did you give a statement to the police?

13 A Yes.

14 Q Did you tell the police what happened?

15 A Yes.

16 Q And what's when -- after that, subsequently you got
17 arrested and you hired Mr. McCulloch?

18 A Yes.

19 Q Do you tell Mr. McCulloch all this?

20 A Yes.

21 Q Does Mr. McCulloch talk to you at all about
22 possible defenses if you went to trial?

23 A He just -- he told me that I didn't have much to go
24 on. I didn't have a defense, basically. It was -- I was
25 under the impression that I could -- I could go to trial,

1 but I would lose because don't have a defense. I don't
2 have enough to prove anything.

3 Q And on at least two occasions, Mr. McCulloch had
4 told Judge Childs the same thing --

5 MR. THOMPSON: And, Your Honor, I'm referring to
6 page -- on the December 4th, 2008 transcript, page 7, line
7 25, page 8, line 4, essentially explained to Jeremy that
8 not withstanding the mitigating factors we'll be
9 presenting, I did not believe and do not believe today that
10 they would have been sufficient as an absolute defense.

11 And again on August 10th, 2009, transcript, page 82,
12 lines -- I'd say 12 through 22, which indicate that
13 Mr. McPhail indicated to the police, at least in my view,
14 was never sufficient to constitute a legal defense that he
15 was coerced by one of the codefendants.

16 By Mr. Thompson:

17 Q Is that consistent with what he told you? What he
18 told the judge? Is that consistent with what he told you?
19 Did he tell you that you didn't have a complete defense?

20 A Yes. I didn't --

21 Q And you went -- I'm sorry. I didn't mean to
22 interrupt you.

23 A I was under the impression that coercion and duress
24 was something that you do in mitigation, but it wasn't a
25 complete defense. It wasn't something that I could go to

1 trial and have a defense on.

2 Q So he advised you that if you went to trial and
3 presented your testimony and presented the defense of
4 duress that you could be found not guilty?

5 A No. I would have lost.

6 Q You didn't understand that?

7 A (Witness shook head.)

8 Q Had you known that you could present the defense of
9 duress at trial, would you have pled guilty?

10 A Say that again.

11 Q If you would have known you could go to trial and
12 present a defense of duress would you have pled guilty?

13 A No, because I believe that somebody would have seen
14 the facts that I was trying to avoid the situation at all
15 costs.

16 Q All right. I believe -- well, let me take that
17 back. You understand that you were charged with
18 kidnapping, armed robbery, criminal conspiracy, and assault
19 and battery of a high and aggravated nature, correct?

20 A Yes.

21 Q And that combined, if all these sentences were run
22 consecutively that you'd be facing a total of seventy-five
23 years in prison?

24 A Yes.

25 Q And what is your current sentence?

1 A Twenty-five years.

2 Q And you understand that if you win this PCR here
3 today, the judge isn't giving you a sentence cut, you're
4 going back on these charges?

5 A Yes.

6 Q And that you could be facing up to seventy-five
7 years in prison?

8 A Yes.

9 Q Understanding that, do you still want to go forward
10 here today?

11 A Yes.

12 Q And what do you want this judge to do?

13 A I want him to give me a chance now that I
14 understand a little bit better, the law, to at least have a
15 chance to go to trial to prove -- like I told Mr. McCulloch
16 and Jeremy, I'm not saying -- I know now that I did
17 something wrong, by not going to the police and I know that
18 when I got into the truck I may -- when I jumped into the
19 truck and I scared Mr. Jones that may be some type of
20 assault, but as far as armed robbery and kidnapping, I
21 didn't have nothing to do with that. I wasn't
22 participating in that.

23 I tried -- it's in documents, it's in my
24 statements. I have letters from codefendants that --
25 saying that I was forced. I have another statement from

1 another codefendant that said I ran from this situation.
2 So if I'm going to get -- what I'm asking is I would go the
3 trial and risk my life again if I have to, but -- because
4 the only reason I went -- I plead and took money because I
5 was trying to protect me and my mother. Other than that, I
6 have -- I can't lose my mom and I can't put myself in
7 jeopardy.

8 If I would have known better, I didn't know --
9 where I'm from, you know, you don't go to the police with a
10 situation like that, Your Honor, you know, if they willing
11 to rob an armored truck, ain't no telling what they willing
12 to do. So I did what I thought was best for me and my mom.
13 If I was wrong for that, I apologize.

14 Q But had you known that you could go the trial and
15 present the defense of duress, would you have pled guilty?

16 A No.

17 Q I think I've covered everything you wanted to talk
18 about here today, but this is your one and only shot at PCR
19 hearing. Is there anything else you think I've left out?

20 A I'd like to tell the Court that I'm not -- I am not
21 trying to say that Joe McCulloch is a bad lawyer. I'm not
22 trying the say that. He was a very good lawyer. We can
23 all read, we can look at the transcript when it was
24 mitigated. He did his job. He said what he had to say.
25 He presented what he was supposed to present. All I'm

1 saying is if he would have gave me in a more profound depth
2 that coercion and duress was, in fact, a complete defense,
3 then I would have went to trial because I had Joe
4 McCulloch. You can't lose. You can't lose.

5 THE COURT: All right.

6 MR. THOMPSON: No further questions, Your Honor.

7 THE COURT: All right. Mr. Corney.

8 MR. CORNEY: I don't have any questions of the
9 applicant, Your Honor. Thank you.

10 THE COURT: No questions?

11 MR. CORNEY: No questions.

12 THE COURT: All right. You may step down.
13 Call your next witness.

14 MR. THOMPSON: We would call Joe McCulloch, Your
15 Honor.

16 THE COURT: All right.

17 THEREUPON,

18 JOE McCulloch,

19 after being duly sworn, testified as follows:

20 THE COURT: Please take a seat. Tell us your full
21 name and spell your last name for the record.

22 THE WITNESS: My name is Joseph Matthew McCulloch,
23 M-c-C-u-l-l-o-c-h.

24 THE COURT: All right.

25 ///

1 police began. He'd already given a statement; I think
2 several bags of money had already been found on his
3 property. All of that kind of eliminated the defense of
4 alibi or noninvolvement. Jeremy told me at the early
5 stages that he felt forced on some level and we talked a
6 lot about that. We did try or attempted to speak to the
7 other codefendants to try to verify the coercion that
8 Jeremy explained to me. There were a number of factors
9 that ultimately in my view made a trial, based upon the
10 defense of coercion and duress a very low percentage shot.
11 And not to dispute Mr. McPhail, but during our several
12 meetings, we talked about all of these facts.

13 We talked about his right to go to trial, his
14 ability to go to trial, what facts we were in possession of
15 in support of the defense of duress or coercion and what
16 facts stood and would be offered by the State against
17 those -- that kind of defense. And they included these
18 things: First, there was no question, as Mr. McPhail has
19 said, that he and a number of other young men either in or
20 out of Benedict were lured into this plot by this Friarson
21 character who worked at the armored car company. These
22 were young men. Most of them had no criminal records, like
23 Mr. McPhail, no prior involvement in crime and I think were
24 lured into this plot with the concept of getting some quick
25 money.

1 I don't think any of them had any sense of the
2 proportion of what they were involved in. Mr. McPhail
3 explained, as he testified on the instance of the first
4 attempted robbery of this truck that he became frightened,
5 changed his mind and he ran. He indicated to me that he
6 ran from a place of concealment behind a fence, if I
7 recall, across a parking lot. The problem is that
8 Mr. Jones, the person who was the victim in this crime or
9 whoever the other occupant of the truck was on that first
10 occasion, now that I think about it, it may not have been
11 Mr. Jones, there was no witness who would confirm that he
12 had bolted, that he had run.

13 So there was really no corroboration other than his
14 explanation that that's what happened and he, you know,
15 explained to me that he essentially, through his actions,
16 scuttled, prevented the first robbery. And thereafter, he
17 explained that he had very little to do, or nothing to do
18 with Mr. Friarson and these others. He did not go to the
19 police. He did not report the incident, and as I explained
20 to him at that time in the jail as we talked about these
21 things, that's what he should have done. And he agreed
22 with that.

23 On the occasion of the second robbery, the
24 successful robbery, if you call it a success, on that
25 occasion, he explained to me that he was at home; and I'm

1 sorry, Jeremy, I don't recall where you live, but it's not
2 in Columbia. He was picked up by a couple of fellows. He
3 says, When I got in the car headed to Columbia, I thought
4 we were going to see some girls. I did not know we were
5 going to be involved in a second robbery. He learned that
6 during that trip. I explained to him in the jail at that
7 time that that's when he should have, at the very next
8 traffic light, jumped out of that car and run like a
9 scalded dog. He agreed with that.

10 Once he got to the scene of the crime, several of
11 these fellows were placed strategically around this fence,
12 fenced area of the parking lot and a couple of other
13 codefendants went down a dirt road and sat near the
14 get-away vehicle. During the robbery, Jeremy explained to
15 me he did not want to go along with this. There was a
16 point at which I believe it was -- not Friarson, I forget
17 who, Lyde, I believe, who was the real thug in this bunch.
18 Friarson was the master mind, if you will, the employee of
19 the armored car company who planned all this, and he
20 essentially lured these young men into this plot, and he
21 enlisted the help of this Lyde guy, who was a genuine thug
22 with a long criminal record.

23 So to some extent, it made sense that Lyde would be
24 the enforcer. Jeremy indicated that Mr. Lyde, when he told
25 Lyde there just before it was time to rob this truck that

1 he really didn't want to do that. He said that Lyde
2 pointed a gun at him and forced him to do it. My problem
3 with that, and this was explained to Mr. McPhail prior to
4 the decision of whether to go to trial or not, is that he
5 could have run. I mean, I said, you know, it would be hard
6 in a defense, that in an effort to run and become
7 uninvolved, you might have been shot. But the problem is
8 that the way the evidence played out, several things became
9 very important. One, no one else would confirm or
10 corroborate by testimony known to me because he obviously
11 knew these defendants would not testify, they wouldn't talk
12 to me prior to trial or prior to the decision making
13 process.

14 In the sentencing memorandum which you saw and have
15 a copy of, we provided the sentencing judge with a letter
16 that Jeremy provided to me from one of the other
17 defendants, Dominique Blakely, I believe. Blakely says in
18 one sentence, You, McPhail, didn't -- we didn't know that
19 he was going to point a gun at you. So there was that.
20 The problem is that the counsel for Mr. Blakely, after
21 Jeremy received that letter in jail, provided to me and I
22 had to speak to that lawyer or my efforts in speaking to
23 that lawyer, led me to believe, first, that I wasn't going
24 to be permitted to talk to Blakely; and two that I had no
25 idea and some reason to believe that Blakely would not

1 stick to what was in that letter.

2 I explained to Jeremy that all of the codefendants
3 in this matter would basically testify for the prosecution
4 against him if he was the fellow who went to trial and no
5 one in this case went to trial to my knowledge, that they
6 would all testify against him in an effort to gain a
7 reduced -- reduction of sentence and none of them in my
8 knowledge were willing to confirm his reluctance.

9 The other factors that really operated in my
10 judgment and in my explanation to Jeremy why he should not
11 go the trial in my opinion, included the fact -- and I
12 explained to him that this was in the nature of the Patty
13 Hearst defense -- some you of you, maybe the judge
14 remembers that.

15 THE COURT: Somebody's older, Mr. McCulloch. Go
16 ahead.

17 THE WITNESS: It's a defense. It's an imperfect
18 defense, where -- that someone is compelled to participate
19 in a crime. And we talked about that. But here, the
20 problem was that Mr. McPhail, after the gun was pointed at
21 him and there were no witnesses available, no witnesses
22 present who would say that that occurred, who would say
23 that they saw him coerced or duressed into this robbery.
24 Mr. Jones, the victim said that there were two people armed
25 with weapons. Mr. McPhail had admitted to the police that

1 he had a weapon, though he said it was a BB gun. The --
2 Mr. Jones, the victim, was beaten, rather severely in the
3 front seat of the armored car truck. He was beaten, he
4 said by Mr. McPhail -- by Mr. McPhail, with a gun at a time
5 when the other person with the gun was not in the cab or
6 anywhere around, having gone to the back of the truck.
7 Unfortunately for Mr. McPhail, Mr. Jones said that the
8 fellow who beat me with the gun, which Mr. McPhail said he
9 did not do -- Mr. Jones, the victim said that he bit that
10 person on the hand, the person that was beating him with
11 the gun; and Mr. McPhail was the only person in the mix of
12 defendants who had a bite mark on his hand, which had been
13 fully documented by the police at the time of arrest.

14 So in my view, there were a number of factors that
15 would have made a defense of duress and coercion, given the
16 facts of the incident through that point, just a defense
17 that would not work. And as we talked about in jail, in
18 our run up to making a decision, I explained to him that
19 once this event was over, whether he helped unload the
20 truck or not, once he was out of the company of Mr. Lyde
21 and Mr. Friarson, that would have been the time to go to
22 the police and say I was forced into this. I was coerced,
23 I was duressed. And unfortunately, his judgments about
24 that were not the judgments that I think today in hindsight
25 he would make.

1 So ultimately our discussions were all about the
2 evidence, about the evidence against him, the evidence that
3 would have mitigated against the jury's belief and
4 acceptance of duress and coercion and the evidence that
5 would have been able -- would have been in our possession
6 to produce and that would have consisted of Mr. McPhail's
7 testimony and an inadmissible letter.

8 Q Why would the letter have been inadmissible?

9 A Well, I don't think that your average judge would
10 have admitted that letter unless Mr. Blakely could
11 authenticate it, because otherwise it could have been
12 written by anybody and sent to him as part of a plan to
13 produce evidence. So I think under the rules of evidence
14 it was likely, in my opinion that Blakely, because of his
15 desire to reduce the sentence through cooperation, would
16 not have adopted that letter.

17 And so, I felt that that letter, in and of itself,
18 while it suggested that at some point in the actual second
19 attempt, which was a completed event, there was some
20 evidence by Blakely that the gun shouldn't have been
21 pointed at -- and I have the reference here. I will remind
22 myself exactly what it was, but it was in my view: D.J.
23 thought that once you got there you would just go through
24 with it, but he wasn't supposed to pull the gun out on you.
25 I don't know that's what he meant when he said he had to

1 make you do it. But that standing alone, if we could have
2 gotten it in, and then Mr. McPhail's testimony in the grand
3 scheme of all of the other evidence, the bite marks, the
4 failure to run, the failure to report this immediately to
5 the criminal authorities, and the fact that all the other
6 defendants would have testified against him and would have
7 made a mockery of his defense; I felt that he, looking at
8 seventy-five years versus -- seventy-five plus, looking at
9 that, that his best judgment was to enter a plea and hope
10 based upon the sentencing memorandum and the other work we
11 did, which was pretty extensive, and the fact that the
12 judge was a well-regarded member of the State bench at that
13 time who was -- had a reputation for very fair sentences.
14 So I have no second thoughts about the judgment and advice
15 given to Jeremy.

16 Q With regard to -- you testified that you felt
17 concerned that Mr. McPhail did not run when -- when Lyde
18 pulled the gun on him, is he required to run to present a
19 defense of duress?

20 A I don't think he's required to run if it represents
21 an opportunity to get shot, but I think that the defense of
22 duress contemplates a reasonable person given an reasonable
23 alternative or an option to avoid further participation
24 should evacuate the premises or abandon the plot.

25 Q And do you believe that a reasonable person in this

1 situation who's involved in a second armed robbery and has
2 a gun pointed at him should run at this point? After being
3 told that he's going to be left there.

4 A No, it wasn't my judgment that when the gun is
5 pointed at him, that's the good time to run. It's my
6 judgment that he could have run before the gun was pointed
7 at him. He could have jumped out of the car before he ever
8 got to the scene of the second crime. Once inside the cab
9 when he was alone in the cab with Mr. Jones, the victim, he
10 could have pulled the door shut and locked them, then he'd
11 been inside a locked armored truck with the none the gun
12 outside the truck or immediately upon the end of the plot
13 when they all got in the get-away car and got away, he
14 separated from Mr. Lyde, that he could have, at that point,
15 gone straight to the police and made his involvement known
16 to them and explained that duress and coercion, thereby
17 kind of bringing full symmetry to that defense.

18 Q But he doesn't have to go to the police to present
19 a defense of duress, does he? It's not required? Duress
20 does not require that you go to the police?

21 A No, duress -- the classic instruction to juries
22 doesn't require that you immediately report to the police.
23 My point --

24 THE COURT: Gentleman, I think you're talking about
25 two different things. You're talking about a theoretical

1 defense. Mr. McCulloch is talking about a practical
2 possibility of being successful.

3 THE WITNESS: Yes, sir, Your Honor.

4 THE COURT: This back and forth between you two --
5 and since I'm the one hearing it, this is how I see it so
6 far. You may continue.

7 By Mr. Thompson:

8 Q And did you, in fact, tell -- obviously, I read
9 from the transcript, you did tell Judge Childs that you
10 felt that this was not a complete defense; is that
11 accurate?

12 A That's correct. And I think we said that in the
13 sentencing memorandum. We said that there was evidence to
14 the effect of his duress and coercion, but in my judgment
15 there was not sufficient evidence to go forward in an
16 effort to defend himself in a trial because of,
17 essentially, the absence of the actions that would have
18 corroborated or enforced it.

19 Q And going back to what Judge Manning just said
20 about technical versus practical, are you talking about
21 practically that there was no defense of duress or
22 technically there was no defense of duress?

23 A Oh, I agree there was a defense of duress. I don't
24 think it would have been successful because of the
25 practicalities of the evidence. How's that.

1 Q Did you advise Mr. McPhail that technically he
2 could present a defense of duress?

3 A Yes.

4 Q And that if his testimony would be believed he
5 would be found not guilty?

6 A Oh, I would never advise -- well, did I advise him
7 that if his testimony was believed -- I advised him that
8 the only evidence of his defense of duress would be his
9 testimony and the possibility of the admissibility of that
10 letter, but only if Mr. Blakely, in my opinion,
11 authenticated it or came forward and testified to that
12 effect. So I advised him that he had the right to go the
13 trial, he had a right to present a defense. He had the
14 right to testify about it, but that given the fact that
15 there was a great deal of evidence against his defense and
16 the fact that that would be his entire defense or all of
17 the evidence that supported it, that I did not feel that
18 that was a viable defense to be presented with any
19 realistic belief of success or expectation of being found
20 not guilty.

21 MR. THOMPSON: Beg the Court's indulgence.

22 THE COURT: Yes, sir.

23 (WHEREUPON there was a pause in the proceedings.)

24 MR. THOMPSON: No further questions of this
25 witness, Your Honor.

1 THE COURT: All right. Mr. Corney?

2 MR. CORNEY: Just one thing, Your Honor.

3 **CROSS-EXAMINATION**

4 By Mr. Corney:

5 Q Mr. McCulloch, if Mr. McPhail had insisted on going
6 to trial and presenting this duress defense or coercion
7 defense, is that something you would have done with him?

8 A Absolutely.

9 MR. CORNEY: That's all, Your Honor. Thank you.

10 THE COURT: Anything further of this witness?

11 MR. THOMPSON: Nothing further, Your Honor.

12 THE COURT: All right. You may step down,

13 Mr. McCulloch.

14 THE WITNESS: Thank you, Your Honor.

15 THE COURT: Anything further, Mr. Thompson?

16 MR. THOMPSON: Just a brief argument, Your Honor,
17 for the witnesses.

18 THE COURT: Let's ask the State if they have
19 anything to present.

20 MR. CORNEY: Nothing from the State, Your Honor.

21 THE COURT: Go ahead, Mr. Thompson.

22 MR. THOMPSON: Essentially, Your Honor, normally, I
23 am found in the position of having a witness or a
24 defendant, applicant, who has given testimony contrary to
25 what was said during the plea transcript. In this case,

1 Your Honor. Mr. McCulloch clearly told Judge Childs on two
2 occasions that, I do not believe that this was a legal
3 defense. I do not believe that what had happened was a
4 legal defense. And I understand the distinction that you,
5 Your Honor was drawing that between --

6 THE COURT: Mine was an observations not a
7 distinction.

8 MR. THOMPSON: Yes, sir. If there is a distinction
9 between practical and technical defenses of duress. But
10 technically what Mr. McPhail testified to was a defense of
11 duress and I believe that the advice as testified to by
12 Mr. McPhail and as indicated by Mr. McCulloch's statements
13 to Judge Childs during the plea and during the sentencing,
14 were that, that this was not a complete defense. That's
15 what he was advised of, that this was not a complete
16 defense, that he could not present this defense at trial
17 and he be found not guilty.

18 And because of that, Your Honor, my client has
19 testified here that he would have gone to trial had he
20 known that he could present a defense of duress, as
21 unlikely as it might have been, that that was his decision
22 to make, but he was told by Mr. McCulloch it was not a
23 complete defense. Had he been advised adequately, he would
24 have gone to trial. So we would ask Your Honor to vacate
25 his convictions and remand for a new trial.

1 THE COURT: Thank you, Mr. Thompson.

2 Mr. Corney?

3 MR. CORNEY: Your Honor, testimony -- I just rely
4 on the testimony in the record before the Court. The only
5 thing I would want to comment on, just briefly is that I
6 think there was some contradiction in the facts that were
7 presented between Mr. McPhail and Mr. McCulloch. There
8 were facts that Mr. McCulloch testified to that Mr. McPhail
9 clearly left out that are pertinent and very key to this
10 determination such as the fact that Mr. McPhail knew on the
11 ride down, found out at some point in time that the robbery
12 was going to take place. It's not like he was in the car
13 and showed up there and had no idea until the moment it
14 took place. Mr. McCulloch was under the impression that he
15 had found out on the ride there at some point in time and
16 that he had an opportunity to bail from this entire
17 scheme.

18 So I think that there was, although not direct
19 contradiction, there were things that were omitted from
20 Mr. McPhail's presentation as Mr. McCulloch's testimony.
21 So I wouldn't characterize their testimony as being
22 entirely harmonious on the facts of the case. But that's
23 all I have to add.

24 THE COURT: All right. Thank you both. I'll let
25 you know my decision.

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MR. CORNEY: Thank you, Your Honor.

* * * * * END OF TRANSCRIPT * * * * *

1 STATE OF SOUTH CAROLINA)
) CERTIFICATE OF TRANSCRIPTION
 2 COUNTY OF AIKEN)

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I, THE UNDERSIGNED, Brenda J. Sigwald, do hereby certify that I transcribed the proceedings in the captioned case that were reported by Crystal Holmes, Circuit Court Reporter for the State of South Carolina, in the Court of Common Pleas in and for the State of South Carolina on the 22nd day of May, 2012.

I FURTHER CERTIFY that the foregoing pages, numbered 1 through 42, constitute a true, accurate and complete transcript of said hearing.

I FURTHER CERTIFY that I am neither kin, counsel, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Aiken County, this 8th day of October, 2012.

Brenda J. Sigwald,
 Court Reporter and
 Notary Public for the
 State of South Carolina,
 My commission expires
 January 4, 2020

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS)
FOR THE FIFTH JUDICIAL CIRCUIT)

Jeremy McPhail, # 336465,)
Applicant,)

2010-CP-40-06266

v.)

ORDER OF DISMISSAL

State of South Carolina,)
Respondent.)

RICHLAND COUNTY
FILED
2012 JUN 27 AM 10:30
JEANETTE W. McBRIDE
C.C.P. & G.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed September 10, 2010. The Respondent made its Return on April 27, 2012. An evidentiary hearing into the matter was convened on Tuesday, May 22, 2012, at the Richland County Courthouse. The Applicant was present at the hearing represented by attorney Jeremy A. Thompson, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's plea counsel, Joseph McCullough, Esquire (hereafter "counsel"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Richland County Clerk of Court and the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Richland County Clerk of Court. The Applicant was true bill indicted at the September 2007 term of the

Richland County Grand Jury for Criminal Conspiracy, Armed Robbery, Assault and Battery of a High and Aggravated Nature, and Kidnapping (2007-GS-40-04358 through -0461). He was represented by Joseph McCullough, Esquire, on the charges. On December 4, 2008, Applicant appeared before the Honorable J. Michelle Childs where he pled guilty to the charges as indicted, and sentencing was deferred at that time. On August 24, 2009, the Applicant appeared again before Judge Childs for sentencing, at which time he was sentenced pursuant to a negotiated range with the State to twenty-five (25) years imprisonment each for Kidnapping and Armed Robbery, ten (10) years imprisonment for ABHAN and five (5) years imprisonment for Criminal Conspiracy, all to run concurrently.

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

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

- (a) Ineffective Assistance of Counsel
- (b) Violation of Fourth Amendment Rights
- (c) Guilty Plea was based on bad advice

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) Counsel failed to investigate law and facts of case
- (b) Arrest warrants not based on Probable Cause
- (c) Counsel failed to Pursue defense based on facts of case

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985)

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 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; 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating 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." Cherry, 300 S.C. at 117, 385 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.

Ineffective Assistance of Counsel

At the PCR hearing, Applicant alleged counsel was ineffective in his representation for failing to present a duress defense on his behalf where he was forced to participate in the robbery of an armored truck against his will.

Applicant testified there were two different attempts to rob the armored truck at issue in his case; the first of which was unsuccessful because Applicant himself "took off running" when he realized his co-defendants were serious about robbing the truck. Applicant went on to say that several days later, he was in the car with his co-defendants when they drove, unbeknownst to him, back to the same gas station where they had previously tried to rob the armored truck. Applicant went on to say that as they pulled in, he saw one of his co-defendants pulling on gloves and realized they are going to try to rob the truck again, at which time he tried to flee the scene again. However, Applicant said, this time one of his co-defendant's, Dominic Lyde ("Lyde"), pointed a gun at Applicant and told Applicant he had to help execute the robbery or he would be shot. Applicant testified he got in the armored truck with two of the co-defendants where they held the driver at gunpoint while they fled the scene. Applicant alleged he apologized to the driver of the truck during the incident, letting the driver know he "didn't want anything to do" with the robbery. Applicant went on to say he probably could have run from the situation, but didn't know where they were. He went on to say he relayed these same facts to police investigators upon his arrest, and told counsel the same, but alleged that counsel told him there was insufficient evidence based on the facts to support a complete duress defense to the crimes. Applicant said he had a letter from one of the co-defendants involved in the robbery that proved Lyde had forced him into participating in the robbery. Applicant finished by saying that had he

known he could present a duress defense at trial, he would not have pled guilty but rather insisted on proceeding to trial.

Counsel testified that, while the facts about the crime presented at the hearing were somewhat consistent with the facts he remembered, Applicant had left out details of the incident that were crucial to his prior evaluation of the case. Counsel said he investigated the case to prepare a potential duress defense at trial and discussed the potential defense with Applicant when reviewing Applicant's right to jury trial with him. He also noted that he reviewed the facts of the case, the indictments setting forth the charges and the materials contained in the discovery file with Applicant in their pre-plea meetings. Counsel said that there was substantial evidence pointing to Applicant's guilt in the case, including Applicant's own statement to police about his involvement in the robbery, money from the armored truck found on Applicant's property by police during their investigation and a bite mark on Applicant consistent with the victim's statement that he had bit a perpetrator that was beating him with a gun. Additionally, counsel said, each of the several co-defendants made it clear they were willing to testify against Applicant in exchange for a better plea offer if Applicant proceeded to trial.

Counsel testified he and Applicant discussed the possibility of a duress defense in depth during their meetings. He stated that he had investigated such a defense thoroughly, but ultimately found it had a "very low probability" of being successful at trial based on the facts and evidence. Specifically, counsel said, none of the co-defendants in the case would confirm Applicant had in fact been an unwilling participant in the robbery. The alleged letter from Blakney, counsel said, only proved that Lydc did in fact point a gun at Applicant, but would not be sufficient standing alone to meet the elements necessary to provide a duress defense. Further, counsel noted, authentication of the letter from Blakney would have been necessary at trial to

introduce it, which counsel had reason to believe Blakney refuse to do. Additionally, counsel said Applicant had made it clear that he knew of the plan to rob the armored truck on the night of the incident while he was riding in the car to the scene, after which he had ample opportunity to remove himself from the situation and failed to do so. Additionally, after heisting the truck and driving it to the field to unload, Applicant was left alone inside of the cab with the victim; at any point, Applicant could have locked the doors to the truck, protecting himself and victim inside of the bulletproof cab. Counsel also said Applicant could give no reason why he did not immediately go to the police after the robbery to let them know he had been unwillingly involved in a robbery. Counsel explicitly concluded that he believed there was not sufficient evidence to support the theory that Applicant was improperly coerced into participating in the robbery, but said he explained to Applicant there was a long-shot duress argument to be made if Applicant wished to proceed to trial. Ultimately, counsel said, it was Applicant's own decision to enter the plea rather than proceed to trial, and counsel was able to use the allegation of duress in sentence mitigation as a means of requesting a lesser sentence. Counsel finished by testifying that he had no second thoughts about the advice he had given Applicant in this case and that he certainly would have proceeded to trial with Applicant had Applicant wished to do so.

After a thorough review of the testimony presented and the record, this Court finds Applicant has failed to carry his burden in proving counsel was ineffective in this regard. As a preliminary matter, this Court finds Applicant's testimony to not be entirely credible, while conversely finding the testimony of counsel to be wholly credible. Counsel undertook a diligent investigation into Applicant's case in the hopes of preparing a coercion or duress defense, but ultimately made a reasonable conclusion that the facts and evidence would likely not support such a defense. He relayed this belief to Applicant and thereafter gave Applicant all the advice

and information necessary to make an intelligent and voluntary decision whether to plead guilty, or otherwise proceed to trial where the duress defense could be presented. Ultimately, it was Applicant's own voluntary decision that precluded counsel from presenting the duress defense which Applicant now complains of. Applicant has failed to convince this Court that counsel's performance was unreasonable under professional norms in this regard. Therefore, this Court finds no deficiency in counsel's performance.

Additionally, this Court finds Applicant has failed to prove resulting prejudice as there is no reasonable probability that had such a defense been presented at trial, the outcome of the case would have been different. "To excuse a criminal act, the degree of coercion must be present, imminent, and of such a nature as to induce a well-grounded apprehension of death or serious bodily harm if the act is not done." State v. Robinson, 294 S.C. 120, 121, 363 S.E.2d 104 (1988). "Coercion is no defense if there is any reasonable way, other than committing the crime, to escape the threat of harm." Id. at 122. In addition to counsel's credible and critical PCR testimony that Applicant had the ability to flee or otherwise insulate himself from the situation in at least two separate instances, Applicant himself plainly testified he "probably could have" escaped the situation if he wanted to, but said he didn't because he "didn't know the area" This Court cannot find any reasonable probability that the outcome of the case would have been different had it been presented to a jury at trial.

Further, Applicant was facing overwhelming evidence of guilt at trial including, among other things, his own statement to police, his co-defendants' testimonies against him at trial, forensic evidence of victim's bite mark on Applicant's body, and the victim's statement and/or testimony that Applicant had beat him with a gun while taking control of the armored truck. Therefore, Applicant cannot carry his burden in proving resulting prejudice from this alleged

deficiency. See Geter v. State, 305 S.C. 365, 409 S.E.2d 344 (1991)(reasonable probability of different result does not exist when there is overwhelming evidence of guilt); see also Ford v. State, 314-S.C. 245, 442 S.E.2d 604 (1994).

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise all additional allegations raised in his application at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BML, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address any other issues at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

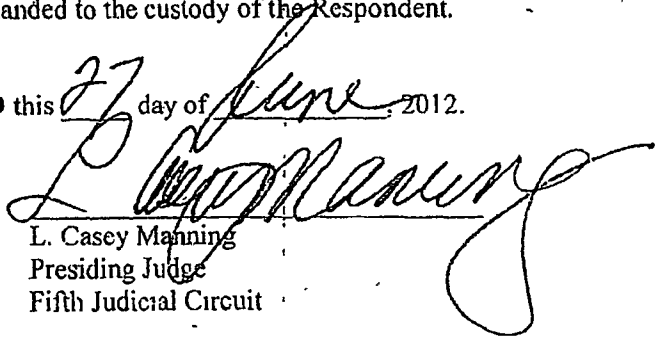
This Court notes Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR

counsel must serve and file a Notice of Appeal on the Applicant's behalf Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 27 day of June, 2012.



L. Casey Manning
Presiding Judge
Fifth Judicial Circuit

Colu, South Carolina.

237

WITNESSES

(S) INV. KEVIN ISENHOWARD R0SD

DOCKET NO. 2007-GS-40-4358

The State of South Carolina
County of Richland

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2007

106

I hereby appear in my own proper person and plead guilty to the within indictment or to

ARREST WARRANT NUMBER

J557204

Defendant

THE STATE
vs.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

JEREMY MAURICE MCPHAIL

Sharon Wilson

For person of Grand Jury

Date: SEP 12 2007

VERDICT

Indictment for

ARMED ROBBERY

SC Code: 16-11-0330(A)

GDR Code: 0139

Class: FEL A(V)

Foreperson of Petit Jury

Date:

FILED TRUE COPY OF ORIGINAL FILED
C.C.C. PLS. AND G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Jeremy M. McPhail

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on September 12, 2007, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

That JEREMY MAURICE MCPHAIL did in Richland County on or about May 10, 2007, commit an armed robbery by feloniously taking from the person or presence of David Jones, by means of force or intimidation goods or monies of Express Teller Services such goods or monies being described as U.S. Currency, with the intent to deprive the owner permanently of such property, while armed with a pistol, rifle, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, all in violation of §16-11-330(A), Code of Laws of South Carolina, (1976, as amended).

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


 WARREN B. GIESE, SOLICITOR

SOUTH CAROLINA)
COUNTY OF Richland)
STATE)

IN THE COURT OF GENERAL SESSIONS 2040239

VS
Jeremy McPhail
AKA: _____)
Race: B Sex: M Age: 26)
DOB: _____ SS#: _____)
Address: _____)
DL# _____ SID# _____)

INDICTMENT/CASE#: 2007-GS-40-4358
AW#: J-557204
Date of Offense: 5.10.07
S.C. Code §: 16-11-330(A)
CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Armed Robbery

in violation of § 16-11-330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS §17-25-45
(CSC w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury, _____ (defendant Initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant SC Bar # _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2007-GS-40-4360
 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. from 5/16/07 and 8-21-09 awarded
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-136

SPECIAL CONDITIONS:
 RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____
Total: \$ _____ plus 20% fee. \$ _____ days/hours Public Service, Employment _____

Payment Terms: _____ Obtain GED
 set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____

Recipient: _____ May serve W/E beginning _____ Substance Abuse Counseling

*Fine. \$ _____
§14-1-206 (Assessments 107 5%) \$ _____
§14-1-211(A)(1) (Conv Surcharge) \$100 \$ _____
§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____
§56-5-2995 (DUI Assessment) \$12 \$ _____
§35.13 (Public Def/Prob) \$500 \$ _____
§73.3, 1B TP (Law Enforce. Funding) \$25 \$ _____
§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) \$ _____
§90.11 TP (SCCJA Surcharge) \$5 \$ _____
TOTAL \$ _____

Random Drug/Alcohol Testing
Fine may be pd. in equal, consecutive weekly/monthly pmts of \$ _____ Beginning _____ paid to Public Defender Fund
Other: Remain in custody until sentencing hearing 12-7-08 Judge Childs
 Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation

Jessette McBrade Clerk of Court/ Deputy Clerk
Amy McCurdy / P. Nany Court Reporter

PRESIDING JUDGE [Signature]
Judge Code: 2146
Sentence Date: 12-7-08
C.C.P.R.G.S.
RICHLAND COUNTY
SOUTH CAROLINA

WITNESSES

(S) INV. KEVIN ISENHOWARD RCSD

ARREST WARRANT NUMBER

557196

TRACTION OF GRAND JURY
TRUE BILL

Sharon Wilson
a member of Grand Jury

SEP 12 2007

VERDICT

representative of Petit Jury
ate:

DOCKET NO. 2007-GS-40-4359

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2007

106

THE STATE
vs.

JEREMY MAURICE MOPHAIL

Indictment for
ASSAULT AND BATTERY
OF A HIGH AND
AGGRAVATED NATURE
SC Code 17-25-30 C/L
CDR Code 0019
Class MIS/UNC

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

hereby appear in my own proper person and plead
guilty to the within indictment or to

Defendant

Witness

C.C.C. PLS. AND G.S.

CERTIFIED TRUE COPY
OF ORIGINAL FILED,
Jury to 11/13/07
C.C.C. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

Jeremy M Mophail

STATE OF SOUTH CAROLINA)
 COUNTY OF RICHLAND)

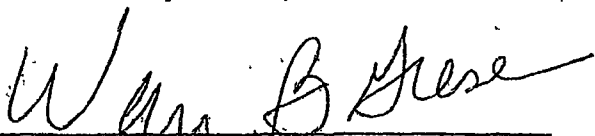
INDICTMENT

At a Court of General Sessions, convened on September 12, 2007 the Grand Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

That JEREMY MAURICE MCPHAIL did in Richland County on or about May 10, 2007, commit an assault and battery upon the victim, David Jones, constituting an unlawful act of violent injury to the person of the said victim accompanied by circumstances of aggravation, to wit: the infliction of serious bodily injury and/or the use of a deadly weapon, all in violation of §17-25-30 (Common Law), Code of Laws of South Carolina, (1976, as amended).

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


 WARREN B. GIESE, SOLICITOR

COUNTY OF Richland
STATE

INDICTMENT/CASE#: 2007-GS-40-4359

VS
Jeremy McPhail

AW#: J-557196

AKA: _____

Date of Offense: 5.10.07

Race: B Sex: M Age: 21

S.C. Code §: C/L

DOB: [REDACTED] SS#: [REDACTED]

CDR Code #: 0 0 1 3

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL# _____ SID# _____

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: ABHAN

in violation of § C/L of the S.C. Code of Laws, bearing CDR Code # 0 0 1 3

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

The charge is: As indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (defendant initial)
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant SC Bar # _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 10 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*, the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2007-65-40-4360
 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. from 5/16/07
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135 Amended

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms _____

Obtain GED

set by SCDPPPS _____

Attend Voc. Rehab. or Job Corp. _____

Recipient _____

May serve W/E beginning _____

Substance Abuse Counseling

*Fine:	\$	_____
§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ _____
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§35.13 (Public Def/Prob)	\$500	\$ _____
§73 3, 1B TP (Law Enforce. Funding)	\$25	\$ _____
§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)	\$	\$ _____
§90.11 TP (SCCJA Surcharge)	\$5	\$ _____
TOTAL	\$	\$ _____

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/monthly

pmts of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other: _____

Remain in Custody until sentencing hearing Judge Childs

Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation.

[Signature] Clerk of Court/ Deputy Clerk
[Signature] PRESIDING JUDGE

Court Reporter D. McCurdy / P. Way

Judge Code: 214
Sentence Date: August 20, 2009

RICHLAND COUNTY
SOUTH CAROLINA

243

WITNESSES

(S) INV. KEVIN ISENHOWARD RCSD

ARREST WARRANT NUMBER

1557199

ACTION OF GRAND JURY
TRUE BILL

Sharon Wilson
Foreperson of Grand Jury

SEP 12 2007

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2007-GS-40-4360

The State of South Carolina
County of Richland

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2007

106

THE STATE
vs.

JEREMY MAURICE MCPHAIL

Indictment for
KIDNAPPING

SC Code: 16-3-910
CDR Code: 0095
Class FEL/A(V)

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness

C.C. PLES AND G.S.

FILED TRUE COPY
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)


INDICTMENT

At a Court of General Sessions, convened on September 12, 2007 the Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That JEREMY MAURICE MCPHAIL did in Richland County on or about May 10, 2007, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away any person, to wit: David Jones, by force and arms, to wit: firearms, by any means whatsoever without authority of law. All in violation of §16-3-910, Code of Laws of South Carolina (1976) as amended.

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


Warren B. Giese, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Richland)
STATE)

Deferred per J. Childs
IN THE COURT OF GENERAL SESSIONS 20488

vs.
Jeremy McPhail

INDICTMENT/CASE#: 2007 -GS- 40 - 4360

AKA: _____)
Race: B Sex: M Age: 21)
DOB: _____ SS#: _____)
Address: _____)
City, State, Zip: _____)
DL# _____ SID# _____)

AW#: J-557199
Date of Offense: 5.10.07
S.C. Code §: 16.3.910
CDR Code #: 0095

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS TO: Kidnapping

in violation of § 16.3.910 of the S.C. Code of Laws, bearing CDR Code # 0095

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. _____ (defendant initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State

ATTEST D. J. Salby Solicitor Jeremy McPhail Defendant John Callow Attorney for Defendant SC Bar # _____

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center, for a determinate term of 25 days/months/years or under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2007-65-40-4358 (no sexual)
 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. from 5/16/07
 The Defendant is to be placed on Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135 Amended

SPECIAL CONDITIONS:
 RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment _____

Payment Terms: _____

Obtain GED

set by SCDPPPS _____

Attend Voc. Rehab or Job Corp. _____

Recipient: _____

May serve W/E beginning _____
Substance Abuse Counseling

*Fine:	\$	_____
§14-1-206 (Assessments 107.5%)	\$	_____
§14-1-211(A)(1) (Conv Surcharge)	\$100	\$ _____
§14-1-211(A)(2) (DUI Surcharge)	\$100	\$ _____
§56-5-2995 (DUI Assessment)	\$12	\$ _____
§35.13 (Public Def/Prob)	\$500	\$ _____
§73.3, 1B TP (Law Enforce. Funding)	\$25	\$ _____
§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)	\$	\$ _____
§90 11 TP (SCCJA Surcharge)	\$5	\$ _____
TOTAL	\$	\$ _____

Random Drug/Alcohol Testing
Fine may be pd in equal, consecutive weekly/monthly pmts. of \$ _____ Beginning _____
\$ _____ paid to Public Defender Fund

Other: Remain in custody until sentencing hearing Judge Childs

Appointed PD or appointed other counsel, §35.13 TP
 Requires \$500 be paid to Clerk during probation

John Callow Presiding Judge
Jeanette McBride Clerk of Court Deputy Clerk

PRESIDING JUDGE John Childs
JUDGE CODE: 2146
SENTENCE DATE: August 24, 2009

Court Reporter: D. M. Curdy / P. Nay

C.C.P. & G.S.
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

Amended

Entered per J. Childs
IN THE COURT OF GENERAL SESSIONS 120408

COUNTY OF Richland
STATE

INDICTMENT/CASE#: 2007 -GS- 40 - 4361

vs.
Jeremy McPhail

AW#: J-557200

AKA:

Date of Offense 5-10-07

Race: B Sex: M Age: 21

S.C. Code §. 16-17-410

DOB: [redacted] SS#: [redacted]

CDR Code #: 0049

Address: [redacted]

City, State, Zip: [redacted]

DL# [redacted] SID# [redacted]

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was CONVICTED OF or PLEADS

TO: Criminal Conspiracy

in violation of § 16-17-410 of the S.C. Code of Laws, bearing CDR Code # 0049

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

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentation to Grand Jury. (defendant initial)

The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST:

[Signature]
Solicitor

[Signature]
Defendant

[Signature]
Attorney for Defendant SC Bar #

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____, provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation,
which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: 2007-GS-40-4360

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 from 5/16/07 to 8/21/07 8/21/07 8/21/07

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: Deferred Def. Waives Hearing Ordered PTUP _____

Total \$ _____ plus 20% fee: \$ _____

_____ days/hours Public Service Employment

Payment Terms: _____

Obtain GED

set by SCDPPPS _____

Attend Voc Rehab. or Job Corp. _____

Recipient: _____

May serve W/E beginning _____

Substance Abuse Counseling

*Fine: \$ _____

Random Drug/Alcohol Testing

§14-1-206 (Assessments 107.5%) \$ _____

Fine may be pd in equal, consecutive weekly/monthly

§14-1-211(A)(1) (Conv Surcharge) \$100 \$ _____

pmts. of \$ _____ Beginning _____

§14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

\$ _____ paid to Public Defender Fund

§56-5-2995 (DUI Assessment) \$12 \$ _____

Other _____

§35 13 (Public Def/Prob) \$500 \$ _____

Remain in custody 12-7

§73 3, 1B TP (Law Enforce. Funding) \$25 \$ _____

Attending hearing Judge Childs

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

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

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

Appointed PD or appointed other counsel, §35 13 TP

3% to County (if paid in installments) \$ _____

Requires \$500 be paid to Clerk during probation.

§90.11 TP (SCCJA Surcharge) \$ _____

TOTAL \$ _____

[Signature]
Clerk of Court/ Deputy Clerk

PRESIDING JUDGE [Signature]

Court Reporter [Signature]

Judge Code: 2146

Sentence Date: August 24, 2009