

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Greenville County
Robin B. Stilwell, Circuit Court Judge

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S.C. Supreme Court

RAKEEM JOHNSON,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002407

APPENDIX

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STATE OF SOUTH CAROLINA)	COURT OF GENERAL SESSIONS
)	
COUNTY OF GREENVILLE)	TRANSCRIPT OF RECORD
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State of South Carolina,)	
)	
Plaintiff,)	Case No(s) .: 2010GS2303317;
)	2010GS2303319;
-VS-)	2010GS2303321;
)	2010GS2303364;
Michael Ellis Evans,)	2010GS2303366
)	
Defendant.)	
<hr/>		
State of South Carolina,)	
)	
Plaintiff,)	Case No(s) .: 2010GS2303353;
)	2010GS2303355;
-VS-)	2010GS2303357;
)	2010GS2303359;
Rakeem Johnson,)	2010GS2303514
)	
Defendant.)	

May 17, 2011
Greenville, South Carolina

B E F O R E:

HONORABLE G. EDWARD WELMAKER, Judge.

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

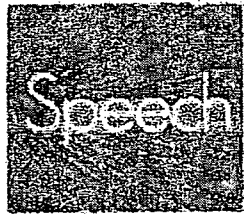
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NO.

DESCRIPTION

ID EV

PLAINTIFF EXHIBITS

(No exhibits offered.)

DEFENSE EXHIBITS

(No exhibits offered.)

COURT EXHIBITS

(No exhibits offered.)

P R O C E E D I N G S

(WHEREUPON, the proceedings begin on the 17th day of May, 2011 at approximately 1:03 a.m.)

THE CLERK: Your Honor, in the case of 2010-GS-23-3319, the State versus Michael Ellis Evans indicted for Conspiracy, pleading to the same. In the case of 200-317 -- 2000 -- excuse me, 2010-GS-23-3317, 3321, 3364, and 3366, Mr. Ellis is indicted to Armed Robbery and pleading to the same.

Mr. Ellis, please raise your right hand.

(WHEREUPON, Mr. Ellis is duly sworn.)

THE CLERK: All right. And then, Your Honor, in the case of 2010-GS-23-3359, the State versus Rakeem R. Johnson indicted for Conspiracy, pleading to the same. Then in the case of 2010-GS-23-3353, 3355, and 3357, Mr. Johnson is indicted for Armed Robbery and pleading to the same. In the case of 2010-GS-23-3514, Mr. Johnson is indicted for Armed Robbery and Possession of a Weapon during the Commission of a Crime. He's pleading the same to both.

Mr. Johnson, please raise your right hand.

(WHEREUPON, Mr. Johnson is sworn.)

THE COURT: Mr. Singleton, you represent

1 Mr. Evans in this matter?

2 MR. SINGLETON: Yes, Your Honor.

3 THE COURT: Mr. Patel, you represent Mr.
4 Johnson?

5 MR. PATEL: Yes, Your Honor.

6 THE COURT: Have each of you attorneys had
7 an opportunity to discuss with your clients the
8 charges pending against them, the possible
9 punishments they face and their constitutional
10 rights?

11 MR. SINGLETON: Yes, Your Honor.

12 MR. PATEL: I have, Your Honor.

13 THE COURT: You believe your client
14 understands those discussions you've had with
15 them?

16 MR. SINGLETON: Yes, Your Honor.

17 MR. PATEL: He has, Your Honor.

18 THE COURT: Have you had a chance to
19 review with your individual clients the State's
20 evidence?

21 MR. SINGLETON: Yes, Your Honor.

22 MR. PATEL: Yes, Your Honor. He was
23 afforded a copy of discovery as well.

24 THE COURT: Based upon your investigation
25 of the facts and circumstances surrounding the

1 case against your client, Mr. Singleton, do you
2 believe the State could produce sufficient
3 evidence to convince a jury of his guilt beyond
4 a reasonable doubt?

5 MR. SINGLETON: Yes, Your Honor.

6 THE COURT: Mr. Patel, do you believe the
7 State could produce sufficient evidence against
8 your client to convince a jury of his guilt
9 beyond a reasonable doubt if the trial were to
10 go --

11 MR. PATEL: I do, Your Honor. I do, Your
12 Honor. I'm sorry.

13 THE COURT: Mr. Evans, how old are you
14 please, sir?

15 MR. EVANS: 22, sir.

16 THE COURT: Are you married?

17 MR. EVANS: No, sir.

18 THE COURT: Do you have children?

19 MR. EVANS: Yes, I have son.

20 THE COURT: How old is your son?

21 MR. EVANS: He's two.

22 THE COURT: How far did you go in school?

23 MR. EVANS: 11th grade.

24 THE COURT: Where did you attend?

25 MR. EVANS: Wade Hampton High School.

1 Wade Hampton.

2 **THE COURT:** Wade Hampton? Since you been
3 out of high school, have you done any sort of
4 work?

5 **MR. EVANS:** Yes, sir.

6 **THE COURT:** What kind?

7 **MR. EVANS:** Cleaning buildings and stuff.

8 **THE COURT:** When did you last work, Mr.
9 Evans?

10 **MR. EVANS:** The night of the last robbery,
11 sir.

12 **THE COURT:** Okay. That would have been in
13 February?

14 **MR. EVANS:** Yes, sir.

15 **THE COURT:** Okay. Have you, uh, ever been
16 treated for alcohol or drug abuse?

17 **MR. EVANS:** No, sir.

18 **THE COURT:** You ever been treated for any
19 sort of mental illness?

20 **MR. EVANS:** No, sir.

21 **THE COURT:** You have any alcohol, drugs,
22 prescriptive drugs in your system today that
23 would affect your ability to understand what
24 we're doing?

25 **MR. EVANS:** No, sir.

1 **THE COURT:** You understand why we are here
2 and what we're here about?

3 **MR. EVANS:** Yes, sir.

4 **THE COURT:** Mr. Johnson, how old are you,
5 sir?

6 **MR. JOHNSON:** 19, sir.

7 **THE COURT:** Are you married?

8 **MR. JOHNSON:** No, sir.

9 **THE COURT:** Do you have any children?

10 **MR. JOHNSON:** Yes, sir.

11 **THE COURT:** How many children do you have?

12 **MR. JOHNSON:** Two.

13 **THE COURT:** And how old are your children?

14 **MR. JOHNSON:** 2 and 1.

15 **THE COURT:** How far did you go in school?

16 **MR. JOHNSON:** 9th grade.

17 **THE COURT:** Where did you attend, sir?

18 **MR. JOHNSON:** Carolina.

19 **THE COURT:** Since you been out of high
20 school, did you work anywhere?

21 **MR. JOHNSON:** No, sir.

22 **THE COURT:** Mr. Johnson, you ever been
23 treated for alcohol or drug abuse?

24 **MR. JOHNSON:** No, sir.

25 **THE COURT:** You ever been treated for any

1 mental illness?

2 **MR. JOHNSON:** No, sir.

3 **THE COURT:** You have any prescriptive
4 drugs, alcohol, anything in your system today?

5 **MR. JOHNSON:** No, sir.

6 **THE COURT:** You aware of why we are here
7 and what these charges are about then?

8 **MR. JOHNSON:** Yes, sir.

9 **THE COURT:** Mr. Evans, uh, I have an
10 indictment before me that says on or about
11 January the 20th, 2010, you were armed with a
12 deadly weapon or otherwise presenting an object
13 which a person of reasonable, uh, -- could
14 reasonably believe was a weapon, and you took,
15 by means of force or intimidation, goods or
16 monies belonging to the Sphinx, that being from
17 a Rosemary Blackmond. Are you here to plea
18 guilty today to that armed robbery that took
19 place here in Greenville County?

20 **MR. EVANS:** Yes, sir.

21 **THE COURT:** Mr. Johnson, I have an
22 indictment that says on that same date again,
23 January the 20th, 2010, you also were
24 committing an armed robbery again with a weapon
25 or using force or intimidation take money from

1 Rosemary Blackmond at the Sphinx. Are you
2 pleading guilty to that armed robbery as well?

3 **MR. JOHNSON:** Yes, sir.

4 **THE COURT:** I have another indictment
5 before me, Mr. Evans, that says on or about
6 January the 21st, 2010, you also committed an
7 armed robbery, this again at a Sphinx business,
8 again using a deadly weapon. That time, it was
9 from the person or in the presence of a Dale
10 Hall. Are you pleading guilty to that armed
11 robbery today as well?

12 **MR. EVANS:** Yes, sir.

13 **THE COURT:** Mr. Johnson, uh, you pleading
14 guilty to that same offense of January the 21st
15 here in Greenville County to taking, uh, money
16 by using a deadly weapon by force or
17 intimidation from a Dale Hall?

18 **MR. JOHNSON:** Yes, sir.

19 **THE COURT:** You pleading guilty to that
20 armed robbery?

21 **MR. JOHNSON:** Yes, sir.

22 **THE COURT:** I have an indictment that says
23 that, Mr. Evans, on or about the 26th of
24 January 2010, again by means of a deadly weapon
25 or showing what reasonably could be deemed to

1 be a deadly weapon by force or intimidation
2 took money belonging to a Li'L Cricket, that
3 being from a Diane Thorton. Are you pleading
4 guilty to that armed robbery today?

5 **MR. EVANS:** Yes, sir.

6 **THE COURT:** Mr. Johnson, on that same day
7 of January the 26th, 2010, uh, you participated
8 in an armed robbery of a Diane Thorton at a
9 Little Cricket, again taking money belonging to
10 Little Cricket. You pleading guilty to that
11 armed robbery?

12 **MR. JOHNSON:** Yes, sir.

13 **THE COURT:** Mr. Evans, I have an
14 indictment before me that says on or about
15 February the 23rd of 2010 you again committed
16 an armed robbery, this time taking money
17 belonging to the Citgo here in Greenville
18 County, that being taken from the person or
19 other presence of Ronald Arnell and/or Samuel
20 Burnhart. Are you pleading guilty to that
21 armed robbery, sir?

22 **MR. EVANS:** Yes, sir.

23 **THE COURT:** On that same date, I have an
24 indictment that says that you conspired with
25 Rakeem Johnson for the purpose of accomplishing

1 an unlawful act, that being an armed robbery.
2 Are you pleading guilty to conspiracy of that
3 armed robbery also?

4 **MR. EVANS:** Yes, sir.

5 **THE COURT:** Mr. Johnson, I have an
6 indictment that says on or about the 23rd of
7 February of 2010, you took some property, uh,
8 uh, that being an armed robbery, you took some
9 property belonging to the Citgo from the person
10 or in the presence of Ronald Arnell and/or
11 Samuel Burnhart. Are you pleading guilty to
12 that, uh, armed robbery?

13 **MR. JOHNSON:** Yes, sir.

14 **THE COURT:** I also have a count 2 of that
15 indictment that says on that particular date
16 that you visibly displayed a firearm during the
17 commission of an armed robbery, that being in
18 violation of the law of South Carolina and that
19 you were in possession of a weapon during the
20 commission of a violent crime. Are you
21 pleading guilty to that today?

22 **MR. JOHNSON:** Yes, sir.

23 **THE COURT:** The indictment on that same
24 date of February the 23rd, 2010 also charges
25 you with conspiring with Michael Evans for the

1 purpose of accomplishing an unlawful object,
2 that being an armed robbery. Are you pleading
3 guilty to that conspiracy today of the armed
4 robbery?

5 **MR. JOHNSON:** Yes, sir.

6 **THE COURT:** Solicitor, I'll be glad to
7 hear about the background facts surrounding
8 these matters.

9 **MR. MOYER:** Thank you, Your Honor. May it
10 please the Court. There are four separate
11 robberies as Your Honor has noted. I'll begin
12 with the first one that took place on January
13 the 20th of 2010. On that date, the defendants
14 entered a Sphinx convenience store on White
15 Horse Road both wearing masks.

16 One of the defendants pulled out a pistol
17 and demanded cash from the clerk. They told
18 the -- two of the customers who were in the
19 store at the time to lie down on the floor face
20 down. The clerk handed the defendants about
21 \$100. The defendants then ran out of the, uh,
22 of the convenience store at that time.

23 The second incident happened the following
24 day. It was January the 21st of last year.
25 These two defendants and a third person who has

1 not been identified entered the Sphinx on Allen
2 Street in Greenville. Again, both wearing
3 masks. One had a pistol. They demanded money
4 and cigarettes from the clerk. The defendants
5 left on that particular incident with about
6 \$330 worth of cash.

7 On January the 26th of last year, the
8 defendants and, once again, an unidentified
9 third person entered a Little Cricket
10 convenience store on White Horse Road again
11 wearing masks. One of them had a pistol
12 pointed at the clerk. Demanded money. The
13 clerk gave the defendants money from the cash
14 register and the defendant fled.

15 The final incident, Your Honor, is the one
16 that was on the trial docket for today. That's
17 the one that took place on February the 23rd of
18 last year. That happened at a corner mart on
19 Easley Bridge Road in Greenville County. This
20 -- on this particular incident, it was just
21 these two defendants who were involved in the
22 robbery.

23 They both entered the convenience store
24 that evening. Both of them again had masks.
25 One pulled out a pistol, pointed it at the

1 clerk and demanded money. The clerk got
2 somewhere around \$150 out of the cash register.
3 Put it down on the counter. Mr. Evans reached
4 out and grabbed the majority of the money. Mr.
5 Johnson than reached out and grabbed a couple
6 of other loose bills that were on the counter.
7 The defendants ran out of the corner market
8 store at that time.

9 It just so happened that a Greenville
10 County deputy was driving along Easley Bridge
11 Road right about that time. He was aware of
12 all these armed robberies that were taking
13 place in the area. In fact, he knew that that
14 very convenience store had been robbed a few
15 weeks prior and it had been an armed robbery.

16 The deputy pulled up just as he saw these
17 two defendants running out of the store. He
18 pulled his patrol car around the side of the
19 building. He saw the defendants run around
20 behind the convenience store and go down some
21 very steep steps. The deputy began following
22 them and chased them through several yards
23 without the defendants knowing he was behind
24 them. He watched them get into a vehicle that
25 was parked back in a dark area in a

1 neighborhood back behind the convenience store.

2 He approached the driver's side, uh, of the
3 vehicle where this defendant was seated. The
4 deputy, uh, told the two defendants to show
5 their hands. Uh, this defendant made some
6 movements that the deputy interpreted as
7 threatening. The deputy fired three times.
8 Two of the bullets struck this defendant which
9 resulted in his condition here today which I
10 believe Mr. Singleton will inform you more
11 about. But he is paralyzed.

12 At that time, the co-defendant, Mr.
13 Johnson, got out of the vehicle. Other
14 deputies arrived. The two defendants were
15 arrested at that time. Money was found in the
16 vehicle totaling the amount of money that was
17 stolen from the convenience store. A firearm
18 was found.

19 The defendant, Rakeem Johnson, gave a
20 statement to law enforcement, uh, admitting his
21 guilt in this incident and also the other cases
22 that are before the court. He implicated this
23 defendant as being involved also. Mr. Johnson
24 said that he was the one who was holding the
25 pistol on the January the 20th incident and the

1 February 23rd incident, the final incident. He
2 said on the other two cases that are before
3 you, the unidentified third person was holding
4 the pistol on those two occasions. So Your
5 Honor, those are essentially the facts as they
6 would come out at trial.

7 **THE COURT:** Where is this Citgo located on
8 Easley Bridge Road?

9 **MR. MOYER:** I don't have the exact --

10 **UNIDENTIFIED SPEAKER:** 784.

11 **MR. MOYER:** 784.

12 **THE COURT:** It is Washington Avenue or --

13 **UNIDENTIFIED SPEAKER:** Prior to Washington
14 Avenue on the right, sir. Across from Judson
15 Mill.

16 **THE COURT:** Okay. All right. I know
17 where you are talking about now.

18 **MR. MOYER:** The victim from the incident
19 that's on the trial docket is present and, I
20 believe, would like to address the court when
21 Your Honor would see fit to hear it.

22 **THE COURT:** All the other victims have
23 been notified?

24 **MR. MOYER:** The others have been. Yes,
25 Your Honor.

1 **THE COURT:** Mister, uh, Evans, you heard
2 the facts recited by the Solicitor surrounding
3 each of these incidences. Are those
4 substantially the facts that you are here to
5 plea guilty today?

6 **MR. EVANS:** Yes, sir.

7 **THE COURT:** Mr. Johnson, you've heard the
8 facts as well. Are those the facts to which
9 you are pleading guilty today?

10 **MR. JOHNSON:** Yes, sir.

11 **THE COURT:** Now, each of you understand
12 that by entering a plea of guilty, you are
13 giving up substantial rights you enjoy. You
14 give up your right to have a trial by jury. If
15 a jury were to be assembled, the State of South
16 Carolina would have to prove your guilt beyond
17 a reasonable doubt. They would have to
18 convince that jury unanimously of your guilt.

19 You would have a chance in a trial to
20 confront those witnesses against you and let
21 your attorneys ask them questions under oath.
22 You'd have an opportunity to call witnesses in
23 your own behalf if you chose to do so. In a
24 trial, you'd have an opportunity to challenge
25 incriminating statements you may have made

1 during the course of the investigation. You'd
2 have an opportunity to challenge the evidence
3 the state tries to put in.

4 Obviously, you'd have a right to remain
5 silent. You wouldn't have to say anything at
6 all because the State would have the full
7 burden of proving your guilt beyond a
8 reasonable doubt. You understand, gentlemen,
9 those rights that you're giving up by pleading
10 guilty? You understand that, Mr. Evans?

11 **MR. EVANS:** Yes, sir.

12 **THE COURT:** Mr. Johnson, you understand
13 that?

14 **MR. JOHNSON:** Yes, sir.

15 **THE COURT:** You want to give these rights
16 up?

17 **MR. EVANS:** Yes, sir.

18 **MR. JOHNSON:** Yes, sir.

19 **THE COURT:** Now, are each of you satisfied
20 with the attorney's representation that you
21 had? You satisfied with Mr. Singleton's
22 representation?

23 **MR. EVANS:** Yes, sir.

24 **THE COURT:** And Mr. Johnson, you satisfied
25 with Mr. Patel?

1 **MR. JOHNSON:** Yes, sir.

2 **THE COURT:** Have these lawyers met with
3 you as long and as often as you feel necessary?

4 **MR. EVANS:** Yes, sir.

5 **MR. JOHNSON:** Yes, sir.

6 **THE COURT:** Have you understood the
7 discussions you've had with them?

8 **MR. EVANS:** Yes, sir.

9 **MR. JOHNSON:** Yes, sir.

10 **THE COURT:** Have they done everything to
11 defend you that you've asked them to do?

12 **MR. EVANS:** Yes, sir.

13 **MR. JOHNSON:** Yes, sir.

14 **THE COURT:** Are each of you completely
15 satisfied then with your attorney's
16 representation?

17 **MR. EVANS:** Yes, sir.

18 **MR. JOHNSON:** Yes, sir.

19 **THE COURT:** Has there been anyone that has
20 promised you anything by way of reward or
21 otherwise or held out any hope of a reward to
22 get you to, entice you to plea guilty here
23 today, Mr. Evans?

24 **MR. EVANS:** No, sir.

25 **THE COURT:** Mr. Johnson, has anybody

1 promised you anything to get you to plead
2 guilty?

3 MR. JOHNSON: No, sir.

4 THE COURT: Has anybody threatened either
5 one of you in any way to cause you to plea
6 guilty today, be it intimidation or otherwise?

7 MR. EVANS: No, sir.

8 MR. JOHNSON: No, sir.

9 THE COURT: Mr. Evans, are you pleading
10 guilty then of your own free will?

11 MR. EVANS: Yes, sir.

12 THE COURT: Are you pleading guilty
13 because you are guilty?

14 MR. EVANS: Yes, sir.

15 THE COURT: Mr. Johnson, are you pleading
16 guilty of your own free will?

17 MR. JOHNSON: Yes, sir.

18 THE COURT: You doing so because you are
19 guilty?

20 MR. JOHNSON: Yes, sir.

21 THE COURT: Have each of you understood
22 the questions I've asked you?

23 MR. EVANS: Yes, sir.

24 MR. JOHNSON: Yes, sir.

25 THE COURT: Have you been truthful in your

1 answers to me?

2 **MR. EVANS:** Yes, sir.

3 **MR. JOHNSON:** Yes, sir.

4 **THE COURT:** Now, do you understand that by
5 entering a plea of guilty to Armed Robbery that
6 you could be sentenced up to 30 years in jail.

7 **MR. EVANS:** Yes, sir.

8 **THE COURT:** You understand that, Mr.
9 Johnson?

10 **MR. JOHNSON:** Yes, sir.

11 **THE COURT:** You are pleading guilty to
12 four armed robberies. You understand that you
13 can receive a sentence of well over 100 years?

14 **MR. JOHNSON:** Yes, sir.

15 **THE COURT:** Plus you'll be pleading guilty
16 to conspiracy and, in your case, a weapons
17 charge. You understand you could get five
18 years on each of those. Mr. Johnson, you
19 understand that?

20 **MR. JOHNSON:** Yes, sir.

21 **THE COURT:** On the conspiracy too, Mr.
22 Evans, you understand that?

23 **MR. EVANS:** Yes, sir.

24 **THE COURT:** You still want to plea guilty,
25 both of you?

1 **MR. EVANS:** Yes, sir.

2 **MR. JOHNSON:** Yes, sir.

3 **THE COURT:** Do you understand that if you
4 meet our appellate court rules, the law would
5 give you a right to appeal this proceeding
6 within 10 days. If you could not afford an
7 attorney, one could be appointed for you. Each
8 of you understand that right ---

9 **MR. EVANS:** Yes, sir.

10 **MR. JOHNSON:** Yes, sir.

11 **THE COURT:** --- if you meet the
12 requirements? So I find there is a substantial
13 factual basis for the plea, that it has been
14 freely, voluntarily, knowingly and
15 intelligently made by Mr. Evans and by Mr.
16 Johnson with the advice of competent legal
17 counsel with whom each expressed their
18 satisfaction. So I will accept their plea,
19 Gentlemen.

20 Mr. Singleton, I'll be glad to hear from
21 you, and Mr. Patel. I certainly be glad to hear
22 from each of your clients.

23 **MR. SINGLETON:** May it please the Court.
24 Uh, as stated earlier, Mr. Evans is 22 years
25 old. This is, uh -- by all accounts aside,

1 we've got a 19-year-old, Mr. Johnson, and a 22-
2 year-old, Mr. Evans, that are pleading guilty
3 to some very serious charges. Uh, Mr. Evans
4 has no prior adult record before these charges,
5 before he was served with these warrants and
6 got these charges.

7 Uh, as a result of the robbery on February
8 the 23rd, uh, Mr. Evans was shot twice, once in
9 the leg and once in the back. I mean, once in
10 the arm, the left arm, and once in the back.
11 Since that date, he has been paralyzed
12 basically from the waist down. Exactly, I
13 think a T-9 and from down.

14 He has had numerous health problems since
15 that date. He spent almost two months in the
16 hospital before he was released, but he's been
17 in and out of the hospital since then, even
18 though he's been on home detention since his
19 release from the hospital. He's been in and
20 out of the hospital numerous times for various
21 medical procedures, one including surgery to,
22 uh, correct or to help take care of the
23 bedsores that he had that had gotten so bad
24 that they had to go in and basically dig out
25 the infections.

1 He has also had -- he's not able to do
2 therapy because of his condition in his hips.
3 His hips, uh, because he's had to lay in the
4 bed basically 24 hours a day since this
5 incident, his hips have started to grow bones
6 where they are not supposed to be growing
7 bones. So that does not allow him to do any
8 kind of physical therapy.

9 He's basically bedridden. He has to have
10 catheters to help him go to the bathroom.
11 That's the only way he can go to the bathroom.
12 He basically -- he wrote me down his daily
13 schedule. His daily schedule consists
14 basically of him waking up in the morning. Uh,
15 what he calls cure catheter which is taking the
16 catheter out and putting one back in. Takes
17 his medication. Gets a sponge bath. Eats
18 breakfast. Does another catheter. He has to
19 do it every two to four hours. He tries to do
20 some exercises with his arms that he can.
21 That's basically all he can move. From the T-9
22 up, he can move his arms and stuff. So he
23 tries to do some exercises to help keep his
24 arms from going limp or unuseful.

25 After he does some exercises, he changes

1 his dressing. Then he tries to do a little bit
2 more movement with his arms. He takes more
3 medication, does the catheter again and then
4 basically lays there. He's taking 1, 2, 3, 4
5 -- 4 medications to help control his bowel
6 movements. He has to wear -- I know this is
7 embarrassing for him, but he has to wear
8 basically adult diapers to help every part of
9 the day.

10 He takes pain pills, such as Loratabs, to
11 help control the pain. He has some pain in his
12 back. He also takes some urinary tract
13 infection pills because he has a urinary tract
14 infection at least about once a month if not
15 more often.

16 We are here today. He's in this condition
17 because he and Mr. Johnson made stupid
18 mistakes. Decided something very stupid. I
19 told Mr. Evans that when I came in here today,
20 I would probably say some things that he might
21 not like, but that's the point of it. They
22 committed four robberies. You know, probably
23 got a total of less than \$6-700. He would give
24 anything to turn back the clock and go back to
25 the beginning of January 2010 and never had

1 done the first robbery.

2 Obviously, he's in this condition and he'll
3 never be the same. There's no hope. There's
4 no prognosis that he's every going to gain the
5 use of his legs again. He's classified as a
6 paraplegia. Uh, this is a -- obviously very
7 expensive. I've looked -- did some research.
8 And according to the University of Alabama, uh,
9 National Institute of Spinal Cord -- University
10 of Alabama Spinal Cord Institute, it's going to
11 cost to take care of him for the rest of his
12 life almost \$2.2 million just to take care of
13 him. And that's on average based on their
14 research.

15 We're asking -- he's very sorry for what
16 he's done. I mean, he's got a two-year-old son
17 that he's never going to be able to run around
18 with. He's going to have -- he's never going
19 to be able to have children again. He's lost
20 everything just about. He does have -- his
21 spirits are high. He's a very quiet individual
22 since I've known him, but he's a very smart
23 individual even though he made some stupid
24 mistakes back in January of 2010. All these
25 incidents that occurred are about a month's

1 time.

2 It's affected his family very much. His
3 mother is in the third row. She is not able to
4 basically listen to what's going on or take in
5 what's going on. She did write you a letter,
6 Your Honor. She did not want to speak. She
7 did want to write -- give you this letter.

8 **THE COURT:** Did you review it?

9 **MR. SINGLETON:** I've already given it to
10 Mister -- to Solicitor Moyer. Also, in
11 addition to the medication that he takes on a
12 daily basis, he also has a nurse that comes to
13 his house three hours a day to help him to take
14 care of himself. He also gets supplies sent to
15 his house that consists of protective
16 underwear, the blue pads they put on the bed,
17 catheters, wipes and also he gets meals
18 delivered to his house from Meals on Wheels.

19 Obviously, what has happened to him is --
20 we're in a touchy situation because obviously
21 he's committed four robberies. We're asking
22 that you give him some sort of sentence. If he
23 goes to jail, I'm not sure if the jail, you
24 know, can take care of him there. I don't --
25 we don't know what type of system they have

1 down there. He's going to be staying in the
2 medical infirmary. In and out. And they are
3 going to have to brunt the most of the bills
4 for the next 10 or so years, however long you
5 give him. We're asking that you give him some
6 sort of sentence that will allow him to stay in
7 his home and be on home detention because he
8 can't go anywhere.

9 The only time he leaves his house is to go
10 to the hospital. He's scheduled to have
11 surgery -- or they want him to have surgery on
12 his hips to help try to correct the bone growth
13 on his hips so that he can start doing therapy.
14 But that's all in accordance to what you decide
15 here today, Your Honor. He's postponed that
16 doctor's visit to see what happens today.

17 You know, the goals, they say, of sending
18 people to the Department of Corrections is for
19 punishment and also for rehabilitation. You
20 know, he's got a lifetime punishment in my
21 mind, Your Honor. I know, I'm not trying to
22 make light of what he's done or anything like
23 that. But he's going to be paralyzed for the
24 rest of his life. He would give anything, I
25 think, to change positions with Mr. Johnson

1 right now or anybody else in this courtroom if
2 he could stand up and one day be able to play
3 with his two-year-old son. I have a three-
4 year-old. I couldn't imagine not playing with
5 him.

6 He's going to have a lifetime sentence of
7 sitting in that bed basically 24 hours a day
8 except for maybe when he gets -- has to go to
9 the hospital and has to have his friend who is
10 like his brother pick him up from the bed, put
11 him in the wheelchair, roll him to the car and
12 pick him up and put him in the car like he did
13 this morning.

14 Uh, obviously, you have to give him some
15 sort of punishment. And I'm not saying he
16 doesn't need to be punished. But we're asking
17 that you form some sort of sentence that will
18 allow him to not have to go to the Department
19 of Corrections for a very long time, if at all,
20 and let him be on strict home detention because
21 he's not going anywhere, Your Honor, like I
22 said.

23 He's been rehabilitated in my mind. He
24 would give anything to change what happened.
25 He's basically -- I would call him -- usually,

1 when people do this type of stuff -- you know,
2 both of these individuals are young. I'm going
3 to go ahead and say it. They were young punk
4 kids who thought they could get away with it.
5 But if he could do anything, he would change
6 it.

7 Unfortunately, that's what a lot of
8 defendants say at the point in time. But
9 obviously, this is very true in this situation.
10 I mean, he's never going to be in trouble with
11 the law again. He has no prior adult record.
12 His medical condition, I believe, if he goes to
13 the Department of Corrections will only get
14 worse. Here, he's, you know, I think he lives
15 two or three miles from the Greenville Memorial
16 Hospital where they take him. So we're asking
17 that you form some sort of sentence that takes
18 all that into account.

19 His cousin is here that would like to
20 address the Court at the appropriate time.

21 **THE COURT:** I'll be glad to hear from the
22 cousin.

23 If you would, state your name please.

24 **SPEAKER:** It's Gwendolyn Miller.

25 **THE COURT:** All right. Ms. Miller, I'll

1 be glad to hear from you.

2 **SPEAKER:** I just want to say he's a --
3 Michael has always been a good child. He's
4 quiet. And he's influenced a lot. I just
5 think he made wrong choices. They both made
6 wrong choices. But I feel like he's suffering
7 in that wheelchair. Y'all don't know the pain
8 and the suffering that the whole family's going
9 through because of them wrong choices that he
10 made.

11 I just feel like he's suffering now for
12 what he's done. That's jail right there, not
13 being able to walk. You know, we take for
14 granted that we just walked in this courtroom.
15 Somebody had to roll him in. I just want you
16 to take into consideration of that.

17 **THE COURT:** Thank you, ma'am.

18 **MR. SINGLETON:** Your Honor, in doing
19 research on his condition, one of the major
20 problems that he also has as far as bedsores
21 and stuff like that is also developing
22 pneumonia. And I'm not trying to say the
23 Department of Corrections is a horrible place
24 to go. I'm sure it's a horrible place to go,
25 but as far as medical-wise, I've had lots of

1 clients who come out of there with infections
2 and stuff. I'm just afraid that if he goes
3 there, he may get sicker.

4 You're in a tough position because you got
5 to punish him. We're asking you to take his
6 medical condition into account. He can't go
7 back and change what happened. And the
8 officers responded to this accordingly. We
9 just ask you to take his no prior -- his lack
10 of prior record as an adult, his current
11 medical condition, his age, that he's 22 years
12 old and form some sort of sentence that you
13 feel is appropriate for him.

14 **THE COURT:** All right. Thank you, Mr.
15 Singleton.

16 Mr. Patel, I'll be glad to hear from you.

17 **MR. PATEL:** Judge, just briefly. Just
18 briefly. Rakeem, he's now 19 years old, Judge.
19 When these incidents happened, I believe he was
20 two months -- a little bit over two months past
21 his 18th birthday. When I met him, he was 18,
22 Judge. I met him on March the 11th of 2010,
23 Judge, and just want to give you some idea of
24 how we got here too. The day that I met him, I
25 was looking over my notes. Immediately, he

1 said, you know, Mr. Patel, I'm guilty. I did
2 this. I don't want a trial. Just see what
3 type of plea offer you could give me. I don't
4 want to spend the rest of my life in prison.
5 And that's basically -- that's what we been
6 working for, Judge, trying to get him some sort
7 of offer.

8 The case has just gotten old and was placed
9 on the trial docket, I think Mark had told me
10 back in February that it was ready -- Mr.
11 Moyer, excuse me -- ready to go on the trial
12 docket. We tried to get him up here and for
13 some reason or another, we just couldn't get
14 him pled by then. But that's why we're here,
15 Judge.

16 As for Rakeem himself, Judge, from the day
17 I met him, like I said, he's always been up
18 front with me that he did this. He's never
19 tried to minimize his responsibility even with
20 the police. When he gave his statement to him,
21 he said on this robbery, this robbery, on A, B,
22 and C, I was holding the gun; on C, D, and F,
23 he was holding the gun. He was always upfront,
24 cooperated with them.

25 On the times that I've met with him, I've

1 had good talks with him. His talks, as well,
2 as Mr. Evans', his spirits -- his spirits have
3 been up. He's been telling me what he wants to
4 do with the rest of his life once he gets done
5 with his sentence. He understands that he's
6 going to get a sentence and it's going to be a
7 significant amount of time. It's going to be a
8 violent sentence. He understands what it all
9 entails now. I think at the time they were
10 committing these robberies, speaking with him,
11 I don't think they clearly understood what -- I
12 -- they knew what they were doing was wrong.
13 Uh, they just didn't realize how serious it
14 actually was.

15 Uh, as soon as he was arrested, he gave a
16 statement that night or the next night. I
17 don't know. Some time soon after, he gave a
18 statement. Cooperated. Mr. Moyer said that.
19 He gave details of each -- of each incident
20 that -- of each incident that they had done
21 even in the past. He basically closed these
22 cases for the Solicitor's office.

23 One thing -- I was reading a statement in
24 preparation for this. And one thing that came
25 out was the last line of the statement. I'm

1 just going to read that out loud. I think that
2 what we did was stupid. I'm hoping that if I
3 cooperate I can have another chance and I don't
4 go to prison for a very long time. He, at that
5 time, knew that, by giving the statement, he's
6 in trouble. He's going to prison. But I think
7 he did what was right in giving that statement,
8 Judge, and cooperating. I'll ask that you take
9 all that into consideration. His age at the
10 time.

11 Uh, he has been -- he has been incarcerated
12 since then. So he's been incarcerated a little
13 over 14 months now. I don't know the exact
14 number of days, but I'm sure Mr. Moyer will let
15 you know. I do know that Rakeem would like to
16 address the court at the appropriate time.

17 **THE COURT:** Mr. Johnson, be glad to hear
18 from you if you'd like to address the court.

19 **MR. JOHNSON:** Yes, sir. I want to say
20 that I apologize to the victims for what I did.
21 I want to let everybody know that there ain't a
22 day that went by since I been incarcerated and
23 I ain't thought about what I did, what I put
24 them through. I'm sorry that it took for this
25 to -- I'm sorry that it took for this to happen

1 for me to change my ways. There's a lot of
2 anger inside of me because of what I did, not
3 because I got caught, but because I did
4 something to jeopardize my freedom and
5 everything I love.

6 At the time, I was weak-minded. I was
7 immature. I've learned from this. This is not
8 the lifestyle that I want to continue. I'm
9 better than that. I do have potential. I plan
10 to use the time that I have to serve to educate
11 myself and become a better person so that when
12 I get out, I can do something positive.

13 I just want you to know that I really
14 learned from this. I made a serious mistake.
15 It won't happen again. I got two kids and I
16 got a family that love me. I wasn't thinking
17 at the time. I'm sorry my homeboy had to be
18 like that. I just ask that you be lenient on
19 me and give me a chance. Give both of us a
20 chance please.

21 **THE COURT:** Thank you, Mr. Johnson.

22 **MR. MOYER:** Your Honor, please --

23 **THE COURT:** Mr. Evans, anything you'd like
24 to tell me, sir?

25 **MR. EVANS:** No, sir.

1 **THE COURT:** Solicitor?

2 **MR. MOYER:** Yes, sir. Oh, I was going to
3 say I believe --

4 **THE COURT:** You have a victim or --

5 **MR. MOYER:** I believe the victim may want
6 to address the court and the investigating
7 officer is also in the courtroom, he may or may
8 not want to address the court as well.

9 **THE COURT:** Is there a prior record on Mr.
10 Johnson?

11 **MR. MOYER:** Uh, Mr. Johnson has an adult
12 record of Criminal Domestic Violence and
13 Loitering to Engage in Drug Activity.

14 **THE COURT:** I'll be glad to certainly hear
15 from the victim and the officer if he'd like to
16 address me in any way.

17 **SPEAKER:** Certainly. Hi, Your Honor, my
18 name is --

19 **THE COURT:** State your name please, sir.

20 **SPEAKER:** My name is Ronald Arnell.

21 **THE COURT:** Yes, sir, Mr. Arnell.

22 **SPEAKER:** And I worked at the gas station.
23 Frankly, I don't think -- I don't feel like
24 they're sorry. They are sitting there saying
25 they are sorry to the business, well, what

1 about the victims? My daughter turned four
2 months the day after I got robbed. That night,
3 when they had a gun to my head, I felt like,
4 you know, I was going to be fatherless. I have
5 two kids myself. I'm married. You know, I
6 don't have my family down here. They are all
7 up north.

8 To do that, rob a store that's like right
9 there in your neighborhood. Not a day goes by
10 I don't go by a gas station where I can't go in
11 afraid that they're going to get robbed or
12 something. I'll sit out there on the cell
13 phone and my wife would go in just in case the
14 same people that's on the video is sitting
15 there when it happened just driving away as he
16 ran out the store. You know, I don't want to
17 see something like that happen to somebody else
18 and you're just sitting out there and they get
19 robbed and they just drive away and don't do
20 nothing. I'm terrified to go in a store. I
21 don't feel they are sorry for what they did.
22 That's it. Thank you very much.

23 **THE COURT:** Thank you, Mr. Arnell.

24 **MR. MOYER:** Investigator Weiner also, I
25 believe, would like to say something to the

1 Court.

2 **THE COURT:** Yes, sir, Investigator Weiner.

3 **SPEAKER:** Just briefly, Judge, uh, on
4 behalf of the Sheriff. I think all too often,
5 we see too many young males in here making what
6 they call stupid mistakes. First time, shame
7 on me. Second -- or first time, shame on them.
8 Second time, shame on me. This was four times.
9 Uh, I've heard Mr. Johnson express some apology
10 or sympathy. I've heard nothing from Mr. Evans
11 except for that we should have pity on his
12 condition, which was caused by his actions in
13 the confrontation with the officer giving him
14 verbal commands that he chose to ignore.

15 And, uh, in each of these four incidents, a
16 real live firearm was used. Just a four and a
17 half pound trigger pull away from putting any
18 one of these clerks in that same wheelchair. I
19 think that needs to be considered.

20 **THE COURT:** All right. Thank you, sir.

21 **MR. SINGLETON:** Your Honor, may I speak
22 for one second?

23 **THE COURT:** Yes, sir, Mr. Singleton.

24 **MR. SINGLETON:** Uh, I respectfully -- you
25 know, I respect the officer and the victim for

1 what they said. Maybe this should be coming
2 from Mr. Evans, but I've -- in meeting with Mr.
3 Evans, he's -- he told me from the get-go about
4 what happened. He is truly sorry for what
5 happened. For them to say that he's not sorry
6 for what happened, I think -- in my numerous
7 times in meeting with him, I know he's sorry
8 for what happened.

9 You know, he may not be willing to say it
10 here in front of the court. That's his
11 prerogative. But I don't want it to go through
12 the court's mind that he's not sorry just
13 because he hasn't said it. I know he's sorry
14 not for the -- not only for the condition that
15 he's in, but also for what happened. He's seen
16 the videos. He saw what happened. He saw what
17 he put this store clerk through. He truly is
18 sorry.

19 **THE COURT:** I have no doubt that both of
20 these gentlemen are sorry for what they did.
21 It's just a tragedy of our time. Prison --
22 there's so many prisons around. There's one
23 prison that I can send people to and there's
24 the other that folks get themselves involved
25 in. Drugs or wanting money or whatever it may

1 be, they are imprisoned in activities they're
2 in.

3 **MR. SINGLETON:** Your Honor, I don't think
4 there's any indication that drugs are involved
5 in these cases.

6 **THE COURT:** I haven't heard anything about
7 drugs. But whatever it is, there's the prison
8 of self-indulgence or whatever it may be. Not
9 caring about other people, selfishness.

10 **MR. SINGLETON:** Yes, sir.

11 **THE COURT:** They all have different bars.
12 Some have physical bars. Some have mental
13 bars. We can all put ourselves in those
14 situations.

15 (WHEREUPON, there is a pause.)

16 **THE COURT:** It's a tragedy that we so
17 often see. I wish I didn't, uh, have to see
18 it. I wish the choices were different that
19 were made. It's unfortunate for the families
20 of these fine young men. The choice they made
21 was so critical for their lives.

22 This is case 2010-GS-23-3321, Mr. Michael
23 Ellis Evans. The sentence of the court on that
24 case be committed to the State Department of
25 Corrections for a period of 185 months. Case

1 3317, sentence is 185 months concurrent. Case
2 3366, 185 months concurrent. 3364, same
3 sentence, 185 concurrent. Case 3319, 5-year
4 sentence concurrent to that previously imposed.

5 As to Mr. Johnson, Case 2010-GS-23-3514,
6 the sentence is committed to the State
7 Department of Corrections for a period of 185
8 months. Case 3514, second indictment is for 5-
9 year on the weapon charge concurrent. Case
10 3353, 3355, 3357, all 185 months again to be
11 concurrent. Case 23-3359, 5-year sentence to
12 be concurrent. Wish the best to both of you
13 young men and certainly to the victims.

14 **MR. PATEL:** Thank you, Your Honor.

15 **MR. MOYER:** Thank you, Your Honor.

16 **(WHEREUPON,** the proceedings conclude at
17 approximately 2:05 p.m.)

18

19

20

21

CERTIFICATE

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

I, the undersigned, Teresa B. Johnson, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for Greenville, South Carolina, on this 17th day of November, 2011.

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

Teresa B. Johnson

Official Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)
County of GREENVILLE)

IN THE COURT OF COMMON PLEAS

HAKEEM B. JOHNSON #345999
Full name and prison number (if any) of Applicant)

2012-CP-23-03621

v.)

APPLICATION FOR

State of South Carolina)

POST-CONVICTION RELIEF)

FILED
2012 MAY 21 PM 12:49
CLERK OF COURT

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention BROAD RIVER CORRECTIONAL INST.
4460 BROAD RIVER RD. COLUMBIA SC, 29210
2. Name and location of Court which imposed sentence GREENVILLE COUNTY
COURT OF GENERAL SESSION, 305 E. NORTH STREET GREENVILLE, SC
3. Name(s) of co-defendant(s) (if any) MICHAEL EVANS.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) 2010BS2303359: CONSPIRACY

- (b) 2010652303514: POSSESSION OF A WEAPON DURING VIOLENT CR.
- (c) 2010652303514: ARMED ROBBERY

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

- (a) MAY, 17th, 2011: 5 YEARS
- (b) MAY, 17th, 2011: 5 YEARS
- (c) MAY, 17th, 2011; 185 months

6. Check whether a finding of guilty was made:

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

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

NO

8. If you answered Ayes@ to (7), list:

- (a) the name of each Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the result in each such Court to which you appealed:
 - i. _____
 - ii. _____
 - iii. _____
- (c) the date of each such result:
 - i. _____
 - ii. _____
 - iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. _____
 - ii. _____
 - iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) My PUBLIC DEFENDER DID NOT TELL ME I COULD APPEAL.

(b) _____

(c) _____

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

(a) INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL

(b) GUILTY PLEA WAS NOT KNOWINGLY, INTELLIGENTLY, AND VOLUNTARILY GIVEN.

(c) _____

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

(a) GUilty PLEA FAILURE TO PREPARE AND INVESTIGATE PRIOR

(b) COUNSEL FAIL TO ADVISE APPLICANT. THE CIRCUMSTANCES

(c) AND CONSEQUENCES OF PLEA.

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

(a) any petition in a State Court under South Carolina Law? NO

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO

(d) any other petitions, motions or applications in this or any other Court? NO

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

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

- (a) PCR IS THE PROPER FORM
- (b) _____
- (c) _____

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

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

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

- (a) the name and address of each attorney who represented you:
 - i. NIHAR PATEL 305 E. NORTH ST. GREENVILLE SC, 29601
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. PRIOR TO PLEA
 - ii. _____
 - iii. _____

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

NEW TRIAL

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

NO.

Revised 3/2003

STATE OF SOUTH CAROLINA)
County of Richland)

VERIFICATION

I, Barry B. Johnson, 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.

Barry B. Johnson

SWORN to and subscribed before me this _____ day of _____.

Notary Public (L.S.)

My Commission Expires: _____

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

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

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

Raymond R. Johnson
Applicant

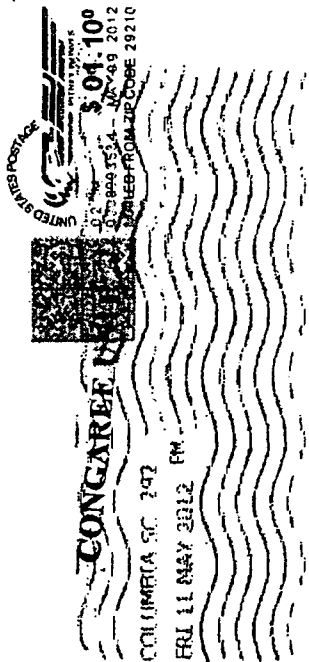
SWORN or affirmed to and subscribed before me this
8th day of May, 2012.

Susan H. Frye
Notary Public

My Commission Expires

My Commission Expires: March 5, 2018

4460 Beams River Rd
Columbia, SA 29210



Paul Wikstrom
Greenville County Clerk of Court
305 E North St
Greenville, SC 29601

2012-CP-23- 03621

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STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	C.A. No. 2012-CP-23-3621
COUNTY OF GREENVILLE)	
)	
Rakeem R. Johnson,)	
S.C.D.C. No. 345999,)	
)	
Applicant,)	
)	RETURN
v.)	
)	
State of South Carolina,)	
)	
Respondent.)	
_____)	

In response to the post-conviction relief application filed May 31, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Greenville County Clerk of Court's orders of commitment. The Greenville County Grand Jury indicted the Applicant at the June 2010 term of General Sessions for four (4) counts of armed robbery (2010-GS-23-3353, count 1, -3355, -3357, -3514, count 1), two (2) counts of possession of a weapon during commission of a violent crime (2010-GS-23-3353, count 2, -3514, count 2), and conspiracy (2010-Gs-23-3359). Nihar Patel, Esquire represented the Applicant.

On May 17, 2011, the Applicant pled guilty. The Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of 185 months for each count of armed robbery, five years for one count of possession of a weapon during commission of a violent crime,¹ and five years for conspiracy. The Applicant did not appeal.

¹ 2010-GS-23-3514, count 2. The State not prossed 2010-GS-23-3353, count 2.

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

II.

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

1. Ineffective assistance of counsel:
 - a. Failure to prepare.
 - b. Failure to investigate.
2. Involuntary guilty plea.

III.

The Respondent asserts the Applicant's allegation that his attorney was ineffective is without merit. The Respondent asserts the Applicant's attorney rendered effective assistance well within the standard of "reasonableness within professional norms" for a defense attorney.

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 on as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The Applicant must overcome this presumption in order to receive relief. See Cherry v. State, 300 S.C. 115, 118, 386

S.E.2d 624, 625 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Cherry v. State, 300 S.C. at 117, 386 S.E.2d at 625 (quoting Strickland, 466 U.S. at 688, 104 S. Ct. at 2065). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997).

The Respondent submits the Applicant cannot satisfy either requirement of the Strickland v. Washington test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that cannot be conclusively refuted by the record. The Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 265, 305 S.E.2d 247, 248 (1983) (citing Norman v. State, 276 S.C. 278, 277 S.E.2d 707 (1981)).

IV.

The Applicant's assertion that his guilty plea was involuntary is without merit. In post-conviction relief cases, an applicant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. See Al-Shabazz v. State, 338 S.C. 354, 363, 527 S.E.2d 742, 747 (1999). An Applicant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the Applicant would not have pled guilty and would

have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citations omitted). An Applicant alleging his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the range of competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985); Bennett v. State, 371 S.C. 198, 204, 638 S.E.2d 673, 675 (2006).

To find a guilty plea is voluntarily and knowingly entered into, the record must establish the applicant had a full understanding of the consequences of his plea and the charges against him. See Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969). In Boykin, the United States Supreme Court held that before a court can accept a guilty plea, a criminal defendant must be advised of the constitutional rights he is waiving. Id. at 243, 89 S. Ct. at 1712. Specifically, the accused must be aware of the privilege against self-incrimination, the right to a jury trial, and the right to confront one's accusers. Id. Moreover, a criminal defendant entering a guilty plea "must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the constitutional rights being waived." Pittman v. State, 337 S.C. 597, 599, 524 S.E.2d 623, 624 (1999) (citation omitted). A criminal defendant's knowing and voluntary waiver of statutory or constitutional rights in a guilty plea "must be established by a complete record, and may be accomplished by colloquy between court and defendant, between court and defendant's counsel, or both." Roddy v. State, 339 S.C. 29, 34, 528 S.E.2d 418, 421 (2000).

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke,

282 S.C. 131, 318 S.E.2d 360 (1984)).

The Respondent submits the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. at 265, 305 S.E.2d at 248 (1983).

V.

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

VI.

WHEREFORE, having made its Return, the Respondent requests that a hearing be held and counsel appointed to represent the Applicant.

Respectfully submitted,

ALAN WILSON
Attorney General

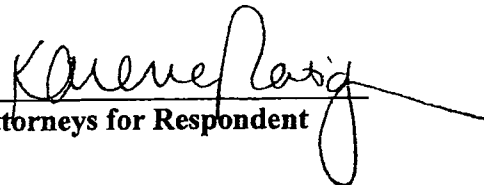
JOHN W. McINTOSH
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KAREN C. RATIGAN
Assistant Deputy Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By:


Attorneys for Respondent

August 31, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)
)
)
)
RAKEEM R. JOHNSON, 345999)
)
)
Applicant,)
)
)
vs)
)
STATE OF SOUTH CAROLINA,)
)
)
Respondent.)
_____)

IN THE COURT OF COMMON PLEAS


2012-CP-23-3621

AFFIDAVIT OF SERVICE BY MAIL

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

**Rakeem R. Johnson, 345999
Broad River Correctional Institution
4460 Broad River Road
Columbia SC 29210**

DATED this 31st day of August, 2012.


Judy A. Carey, Legal Assistant
For Respondent

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NIHAR PATEL

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There were no exhibits.

Certificate of Reporter 20

1 THE COURT: Okay, yes, ma'am.

2 MS. RATIGAN: Thank you, Your Honor, may it please
3 the Court. This is the case of Rakeem Johnson vs. The
4 State of South Carolina, docket number is 2012-CP-23-3621.
5 I would note that this is actually the co-defendant of the
6 case we did this morning, Michael Evans. And they
7 actually pled together so that the facts should seem
8 somewhat familiar.

9 THE COURT: Okay.

10 MS. RATIGAN: Mr. Johnson was indicted for four
11 counts of armed robbery, two counts of possession of a
12 weapon during the commission of a violent crime, one count
13 of conspiracy. He was represented on these charges by
14 Mr. Patel. On May 17th, 2011 he pled guilty before Judge
15 Welmaker. He received concurrent sentences of 85 months
16 for each count of armed robbery. That translates to 15
17 years and five months. He then received five years for
18 one count of possession of a weapon during the commission
19 of a violent crime. And five years for conspiracy. The
20 second weapons charge has been nolle prosequere by The State.
21 Mr. Johnson did not appeal and The State is ready to
22 proceed.

23 THE COURT: All right, Ms. Horlbeck.

24 MS. HORLBECK: Judge, we would call Rakeem Johnson to
25 the stand.

1 THE COURT: Mr. Johnson, come on up, sir.

2 THE CLERK: Mr. Johnson, place your left hand on the
3 Bible, raise your right hand.

4 RAKEEM JOHNSON, after being duly sworn,
5 testified as follows:

6 THE CLERK: Thank you, you may be seated. State your
7 full name for the record.

8 THE WITNESS: Rakeem Johnson.

9 DIRECT EXAMINATION

10 BY MS. HORLBECK:

11 Q Mr. Johnson, who represented you at your plea?

12 A Nihar Patel.

13 Q How long had Mr. Patel been representing you?

14 A Almost 15 months.

15 Q All right. Did you and he -- or you and your
16 attorney have a chance to review discovery in this case?

17 A Yes, ma'am.

18 Q All right. Did you and Mr. Patel talk about any
19 potential defenses that you might have in this case?

20 A No, ma'am.

21 Q All right. One of your -- one of the issues that you
22 listed in your petition is that you wanted to pursue a
23 suppression hearing, is that correct?

24 A Yes, ma'am.

25 Q All right. Were you and Mr. Patel able to discuss

RAKEEM JOHNSON-DIRECT BY MS. HORLBECK

1 that issue before you pled guilty?

2 A No, ma'am.

3 Q All right. Did you know -- well, let me back up a
4 little bit. Why do you believe that there was a potential
5 suppression issue in this case? Tell the Court a little
6 bit about that.

7 A Okay. I was seized -- well me and my co-defendant,
8 we both was seized with deadly force.

9 Q Where were you when this happened?

10 A When we was seized with deadly force?

11 Q Yes.

12 A We was in a neighborhood off of South Street.

13 Q Okay. Were you on foot?

14 A No, I was inside the vehicle, ma'am.

15 Q Okay, who was driving?

16 A My co-defendant.

17 Q All right.

18 A Well, nobody was actually driving. The car wasn't in
19 drive or nothing, when we was inside in the car when this
20 was happening.

21 Q Okay. And while you and your co-defendant were
22 inside the car, did anybody come up to you or walk up to
23 you or run up to you?

24 A Yes, ma'am.

25 Q Who?

RAKEEM JOHNSON-DIRECT BY MS. HORLBECK

1 A The police officer.

2 Q All right. And what happened next?

3 A Well, when we was sitting inside the car, the car
4 lights was on. The police officer approached the driver's
5 side of the car where my co-defendant was. He was
6 screaming at the top of his lungs. I know he was asking
7 us to stop, which we weren't going anywhere or nothing.
8 And he immediately discharged his firearm twice inside the
9 car. The car wun't [verbatim] moving or in gear or
10 nothing, it just --

11 Q Okay.

12 A As soon as he appeared he shot twice. And right
13 after that the car put in gear automatically. My
14 co-defendant, he managed to put it in gear and he kind of
15 drove off a little bit.

16 Q Okay.

17 A And the police officer shot again inside the car. My
18 co-defendant was immediately paralyzed and he lost control
19 of the car and he wrecked the vehicle.

20 Q Okay.

21 A And that's when I realized that was a police officer
22 and that's when I surrendered.

23 Q Okay. Now, did you and Mr. Patel, were you and he
24 able to discuss whether there was a basis for or a grounds
25 for the police officer to follow you to your car?

RAKEEM JOHNSON-DIRECT BY MS. HORLBECK

1 A Can you break that question down like?

2 Q Did you and Mr. Patel talk about the facts
3 surrounding why the police arrived at your car, you and
4 your co-defendant's car, did you and Mr. Patel discuss any
5 of that? Did y'all talk about it?

6 A We talked somewhat about it.

7 Q Okay.

8 A Basically, I mentioned -- I mentioned something to
9 Mr. Patel about it, asking like was this legal or not.

10 Q Right.

11 A Did he have probable cause to do this.

12 Q Right.

13 A He basically told me once on a visit that even if it
14 was illegal for them to do that, it still wouldn't have
15 nothing to do with what I did.

16 Q Okay.

17 A And that he would probably represent the same police
18 officer and get him off of the charges.

19 Q Okay. All right. So, but in your mind you believe
20 there's still a basis to make that argument that the
21 police have no grounds or no probable cause to approach
22 y'all or to try to stop y'all and talk to y'all? Or
23 detain y'all, correct?

24 A Yes, ma'am.

25 Q Okay. Did you try to explain that to Mr. Patel?

RAKEEM JOHNSON-DIRECT BY MS. HORLBECK

1 A No, ma'am because I had -- I didn't really know it.

2 Q Okay. Have you since realized this issue or come to
3 a better understanding of this issue after your
4 sentencing?

5 A Yes, ma'am.

6 Q Okay. All right. And if you'd known that you could
7 have pursued this defense or had a suppression hearing,
8 would you have still pled guilty?

9 A No, ma'am.

10 Q What would you have done differently?

11 A I would have moved to suppress evidence.

12 Q Okay.

13 A And pursued to trial now.

14 Q Okay. And Mr. Patel never made any kind of written
15 or verbal motion concerning a suppression hearing or
16 illegal search and seizure, right?

17 A No, he didn't feel that the police did anything out
18 of the ordinary.

19 Q Okay. What was his advice then?

20 A Well, Mr. Patel, he advised me of the evidence that
21 was stacked against me. And that we was on the trial
22 docket. And that we was not -- we was not going to go to
23 trial. And that it was in my best interest to plead
24 guilty. And that I would most likely wouldn't get no more
25 than 16 years.

RAKEEM JOHNSON-DIRECT BY MS. HORLBECK

1 Q Okay. All right. And based on that advice, what did
2 you do?

3 A I pled guilty.

4 Q All right. And what -- well, nevermind scratch that
5 question. What else did your attorney fail to do while he
6 represented you?

7 A There was no response.

8 Q Did you give him any names of witnesses to contact?

9 A That's just about it, ma'am.

10 Q Okay.

11 A That's it.

12 Q All right. Okay. Do you understand that this is
13 your chance to put it all out there on the record, so is
14 there anything else before I hand you over to the AG so
15 that she can ask you some questions?

16 A Yes, I would like to establish this for the record.
17 The reason why I feel that this holds-- this holds merit
18 is because the officer did not have no knowledge of fact
19 what was going on at this time. He just seen two people
20 running at nighttime and he got out of his car and
21 pursued. He didn't know what was going on. When this
22 officer approached this vehicle, this vehicle was not in
23 motion, nobody was threatening him. And it was not
24 necessary for him to do that because we were not -- we
25 were not trying to get away from him. We was unaware of

RAKEEM JOHNSON-DIRECT BY MS. HORLBECK

1 him. And when he approached the vehicle, he just
2 immediately discharged his firearm, not giving us a fair
3 opportunity to identify him and stop and see what was
4 going on.

5 Q Okay. Okay. Is that all then?

6 A I just want to say that it was not necessary for the
7 police officer to do that. And under the reasonable
8 requirements and the Fourth Amendment, it has to be
9 necessary to prevent the escape. Or he had to have
10 probable cause to believe that we had committed a crime
11 and inflicting somebody with physical serious harm or
12 threatening. And he -- like I said, the police officer
13 had no knowledge of fact of what was going on, so. And we
14 was not going anywhere when he approached the vehicle.
15 So, it wasn't necessary for him to do that. So, that's
16 why I feel this has merit. And that my lawyer should
17 have -- he should have investigated that further and
18 advised me.

19 Q Okay. Are you asking the Court today to grant your
20 petition for post-conviction relief?

21 A Yes, ma'am.

22 MS. HORLBECK: Okay, that's all I have, please answer
23 any questions that Ms. Ratigan may have for you.

24 MS. RATIGAN: Just a couple of quick questions.

25

CROSS-EXAMINATION

RAKEEM JOHNSON-CROSS BY MS. RATIGAN

1 BY MS. RATIGAN:

2 Q How many times did you say you met with Mr. Patel, do
3 you remember?

4 A Probably like four times.

5 Q Okay. And I think you said that you guys had gone
6 over the State's evidence, the discovery materials?

7 A Yes, ma'am.

8 Q Okay. And did you tell Mr. Patel what had happened
9 that day?

10 A Yes, ma'am.

11 Q And did you review with him the fact that you had
12 given a confession?

13 A Yes, ma'am.

14 Q And did he tell you that was going to hurt your case?

15 A Yes, ma'am.

16 Q Okay. And are you saying that you wanted a trial at
17 that time or just that you want a new trial now?

18 A I want a new trial now.

19 Q Okay. So, at that time you didn't want a trial, you
20 wanted to plead guilty?

21 A Because I was not advised of what the police officer
22 had done.

23 MS. RATIGAN: That's all I have, Your Honor.

24 THE COURT: Any redirect, ma'am?

25 MS. HORLBECK: No, Judge.

RAKEEM JOHNSON-CROSS BY MS. RATIGAN

1 THE COURT: Okay.

2 MS. HORLBECK: And we rest our case.

3 THE COURT: Okay, you can stand down. Thank you, for
4 being here, sir.

5 THE WITNESS: Yes, sir.

6 THE COURT: All right, anything from the State?

7 MS. RATIGAN: Yes, Your Honor, we call Mr. Patel.

8 THE CLERK: Mr. Patel, please place your left hand on
9 the Bible, raise your right hand.

10 NIHAR PATEL, after being duly sworn, testified
11 as follows:

12 THE CLERK: Thank you, please be seated. State your
13 full name for the record.

14 THE WITNESS: Nihar Patel.

15 DIRECT EXAMINATION

16 BY MS. RATIGAN:

17 Q Mr. Patel, do you recall representing Mr. Johnson on
18 these charges?

19 A I do.

20 Q Were you appointed or retained?

21 A Appointed.

22 Q Did you file discovery motions?

23 A We did. Or I did.

24 Q Did you receive those materials?

25 A I did.

NIHAR PATEL-DIRECT BY MS. RATIGAN

1 Q Did you review them with Mr. Johnson?

2 A I did. I reviewed it with Mr. Johnson and I believe
3 he got a copy of his discovery as well.

4 Q And the plea transcript indicates that he gave a
5 confession, is that accurate?

6 A He did.

7 Q Did you discuss that with him?

8 A I did.

9 Q Did you tell him about the impact that would have on
10 your ability to defend him?

11 A Yeah, I certainly did that. From meeting
12 Mr. Johnson, I think the end goal in my representation was
13 trying to get him the best recommendation or best offer
14 possible.

15 Q I believe you stated at the plea hearing that this
16 was a guilty plea from the start, is that...

17 A That's correct.

18 Q You just kind of immediately jumped to that posture?

19 A Yeah, I'm looking back over my notes from when I met
20 with him and that's what it indicates as well.

21 Q Did The State ever make you any kind of a plea offer?

22 A I believe the offer was for 20 years or a straight up
23 plea.

24 Q Okay. In reviewing the evidence and preparing the
25 case, did you see any issues with how the officers

NIHAR PATEL-DIRECT BY MS. RATIGAN

1 approached your client and how things progressed from
2 there I should say?

3 A I did not.

4 Q Okay.

5 A I didn't see anything wrong with it. From my
6 recollection of the case.

7 Q And did Mr. Johnson tell you his version of what
8 happened on that day in particular?

9 A Yeah, it was -- it was pretty much what he had
10 written in his confession.

11 Q And I believe based on the facts in the plea
12 transcript, he and his co-defendant were caught -- were
13 spotted running from the convenient store and that's how
14 the police became involved, does that sound right?

15 A That sounds about right.

16 Q Did Mr. Johnson ever convey to you his concerns about
17 the probable cause the officers had to approach him in the
18 vehicle, did y'all ever talk about that?

19 A To be honest with you, I can't recall if he did that
20 or not. He very well could have.

21 Q In your opinion, did you have any valid basis to make
22 a motion to suppress?

23 A No, I don't believe so.

24 MS. RATIGAN: That's all I have, Your Honor.

25 THE COURT: Cross-examination?

NIHAR PATEL-DIRECT BY MS. RATIGAN

1 MS. HORLBECK: Just a few questions, Judge.

2 CROSS-EXAMINATION

3 BY MS. HORLBECK:

4 Q Mr. Patel, was this case on the trial docket when the
5 plea was entered?

6 A It was.

7 Q Okay. And you testified just a moment ago that the
8 case was always a plea right from the beginning, is that
9 correct?

10 A That's correct.

11 Q Okay. Do you recall how the case got scheduled for
12 trial? Do you recall how that happened?

13 A Yeah. It was actually -- I was appointed -- we
14 opened the file on March the 2nd of 2010. The plea took
15 place looks like May 17th of 2011.

16 Q Okay.

17 A Went through the regular motions, discovery that
18 took -- while there's multiple charges, I believe, five
19 armed robberies in all, five conspiracies. So, it was a
20 great deal of discovery that we got.

21 Q Okay.

22 A A lot of it was negotiation. I was trying to get
23 Mr. Moyer to reduce the charges down to strong armed
24 robbery. I believe at the time Mr. Johnson had no prior
25 record.

NIHAR PATEL-CROSS BY MS. HORLBECK

1 Q Okay.

2 A If I remember correctly. That went back and forth
3 for a couple of months and finally it was no -- he's got
4 to plead to the armed robbery, there's too many of them.

5 Q Okay.

6 A So then, it was basically trying to get a number on
7 the sentence.

8 Q Okay.

9 A So, that negotiation went on for a couple of months.
10 I was trying to get Mr. Moyer to recommend the minimum
11 which would have been 10 years.

12 Q Uh-huh.

13 A Based on his age and lack of prior record. And
14 Mr. Moyer said he had to think about it and talk to
15 officers and victims and that took some time.

16 Q Okay.

17 A Going back through my emails and everything, I think
18 that he finally came to me and said, I'll let you pick the
19 plea Judge and I'm not going -- if you want a
20 recommendation it will be 20 years.

21 Q Okay.

22 A You know, we had talked about maybe trying to get in
23 front of a favorable plea Judge at the time. And I
24 believe, if I remember correctly, Mr. Johnson was up here
25 maybe a couple of months before the actual case went on

NIHAR PATEL-CROSS BY MS. HORLBECK

1 the docket.

2 Q Uh-huh.

3 A I believe we had Judge Miller. And we were trying to
4 get a plea done but it was -- he just didn't get reached
5 that day. I believe that, if I remember correctly on this
6 case, it might have happened twice on two different
7 occasions where he was transported but we just never got
8 reached before the Judge. Then finally--

9 Q Was he signed up to your recollection?

10 A I can't remember if he was signed up. Mark Moyer
11 knew it was a plea. Like I said, I think he was
12 transported, I know at least once, maybe twice.

13 Q Okay.

14 A But we never got reached so it was put on the docket
15 and we went in front of Judge Welmaker.

16 MS. HORLBECK: Okay. All right. That's all I got,
17 thank you.

18 MS. RATIGAN: I have no further questions, The State
19 would rest. And Mr. Patel has to be in Family Court so
20 we'd ask that he be excused.

21 THE COURT: Sure.

22 Thank you, I appreciate it.

23 MR. PATEL: Thank you, Judge.

24 THE COURT: Okay. I think this morning I heard

25 Mr. Evans case and I took that under advisement. And I've

1 got some notes with respect to Mr. Evans case. And I'll
2 look at these in conjunction with one another. And I'll
3 take this one under advisement as well.

4 Mr. Johnson, I want to tell you that I hear what
5 you're saying, and I hear that you take some exception to
6 the way -- the way the arrest was effected. That is the
7 way it went down. And the officer, from your perspective
8 was overly aggressive. And I'm sorry that it happened
9 like that. You know, I wish that there was something that
10 I could do to go back in time and make it not happen so
11 aggressively. Ultimately, and I want you to know that I
12 hear you. Ultimately, I'm not going to make a decision
13 based on whether the officers were too aggressive or
14 weren't too aggressive. Because that really is beside the
15 point in this hearing. Because what I'm here to determine
16 is whether your attorney was -- his representation of you
17 was deficient. But for his deficiency, the outcome could
18 have been different, okay? So, that's what I'm looking
19 at. But I want to make sure that you understand that I
20 heard you, okay?

21 MR. JOHNSON: Yes, sir.

22 THE COURT: All right, good luck to you.

23 MS. RATIGAN: Thank you, Your Honor.

24 MS. HORLBECK: Thank you, Judge.

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(WHEREUPON, the proceedings were concluded.)

CERTIFICATE OF REPORTER

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3

4 STATE OF SOUTH CAROLINA)

5 COUNTY OF GREENVILLE)

6

7

8 I, APRIL P. HERRON, Official Court Reporter for the
 9 Thirteenth Judicial Circuit of the State of South
 10 Carolina, do hereby certify that the foregoing is a true,
 11 accurate and complete Transcript of Record of the
 12 proceedings had and evidence introduced in the trial of
 13 the captioned case, relative to appeal, in the Court of
 14 Common Pleas for Greenville County, South Carolina, on the
 15 28th day of August, 2013.

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

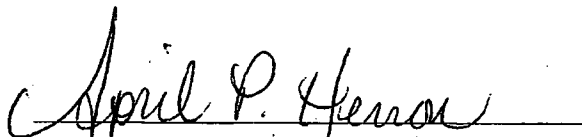
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February 17, 2014

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APRIL P. HERRON, Court Reporter

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 Rakeem R. Johnson,)
 S.C.D.C. No. 345999,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-23-3621

FILED-CLERK OF COURT
 GREENVILLE CO S.C.
 PAUL B. WICKENS/STP
 2013 OCT 10 AM 10:11

ORDER OF DISMISSAL

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed May 31, 2012. The Respondent made its return on August 31, 2012. An evidentiary hearing into the matter was convened on August 28, 2013 at the Greenville County Courthouse. The Applicant was present at the hearing and represented by Caroline Horlbeck, Esquire. Karen C. Ratigan, Esquire of the South Carolina Office of the Attorney General represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Also testifying was the Applicant's plea counsel, Nihar Patel, Esquire. The Court had before it the transcript of the guilty plea hearing, the Greenville County Clerk of Court records, the Applicant's South Carolina Department of Corrections records, the PCR application, and the return.

PROCEDURAL HISTORY

The Applicant is confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Greenville County Clerk of Court. four (4) counts of armed robbery (2010-GS-23-3353, count 1, -3355, -3357, -3514, count 1), two (2) counts of possession of a weapon during commission of a violent crime (2010-GS-23-3353, count 2, -3514, count 2),

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and conspiracy (2010-GS-23-3359). He was represented by Nihar Patel, Esquire.

On May 17, 2011, the Applicant pled guilty. The Honorable G. Edward Welmaker sentenced the Applicant to concurrent terms of 185 months for each count of armed robbery, five years for one count of possession of a weapon during commission of a violent crime,¹ and five years for conspiracy. The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel:
 - a. Failure to prepare.
 - b. Failure to investigate.
2. Involuntary guilty plea.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly.

Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel/Involuntary Guilty Plea

The Applicant alleges his guilty plea was involuntary and that he received ineffective assistance of counsel. In a PCR action, “[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence.” Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d

¹ 2010-GS-23-3514, count 2. The State not prossed 2010-GS-23-3353, count 2.

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172, 174 (2002).

For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. See Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984); Porter v. State, 368 S.C. 378, 383, 629 S.E.2d 353, 356 (2006). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 58-59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001).

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 243-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991). When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the post-conviction relief hearing. Anderson v. State, 342 S.C. 54, 57, 535 S.E.2d 649, 657 (2000) (citing Harres v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984)).

The Applicant stated he met with plea counsel four times before the plea hearing. The Applicant stated they reviewed the State's evidence, his version of events, and the impact his statement had upon the case. The Applicant stated he wanted to have a suppression hearing but plea counsel did not discuss it. The Applicant stated they discussed if the police officer had a valid reason to follow him that night but that plea counsel did not feel the police did anything out of the ordinary. The Applicant stated he did not believe the officer had probable cause to

approach his vehicle. The Applicant stated he would not have pled guilty if he could have had a suppression hearing.

Plea counsel testified he filed discovery motions, received those materials, reviewed them with the Applicant, and provided him with a copy. Plea counsel testified they discussed the Applicant's confession and the impact it had upon the case. Plea counsel testified this case was a guilty plea case from the beginning. Plea counsel testified the Applicant ultimately pled guilty after the case was on the trial docket because there were several negotiations with the State regarding reducing the number of armed robbery charges or allowing the Applicant to plead guilty to strong arm robbery. Plea counsel testified the Applicant told him what happened on the day he was apprehended. Plea counsel testified the officers saw the Applicant and co-defendant running from the store and became involved at that point. Plea counsel testified there was no valid basis to file a motion to suppress in this case.

Regarding the Applicant's claims of ineffective assistance of counsel, this Court finds the Applicant has failed to meet his burden of proof. This Court finds the Applicant's testimony is not credible, while also finding plea counsel's testimony is credible. This Court further finds plea counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in his representation.

The Applicant admitted to the plea judge that he was guilty. (Plea transcript, p.21). The Applicant also told the plea judge that he understood the trial rights he was waiving in pleading guilty, was satisfied with counsel, and had not been coerced in any way. (Plea transcript, pp.18-21). This Court finds there is no evidence in the guilty plea transcript to support the Applicant's assertion that he was pressured into entering a guilty plea; therefore the transcript has refuted this allegation. See Stalk v. State, 375 S.C. 289, 300, 652 S.E.2d 402, 407 (Ct. App. 2007); see also

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Rayford v. State, 314 S.C. 46, 48-49, 443 S.E.2d 805, 806 (1994) (where transcript of guilty plea proceeding refuted applicant's claim that he did not understand the terms of a plea bargain, grant of PCR was inappropriate notwithstanding applicant's claim lawyer misadvised him). This Court finds the Applicant entered a knowing and voluntary guilty plea. See Boykin v. Alabama, 395 U.S. at 243-44, 89 S. Ct. at 1712.

This Court finds the Applicant failed to meet his burden of proving plea counsel did not properly advise the Applicant about filing a motion to suppress in this case. The Applicant failed to prove plea counsel provided incorrect or deficient advice. The Applicant and plea counsel both testified they discussed the Applicant's version of what happened on the day he was arrested. This Court agrees with plea counsel that there was no valid basis to file a motion to suppress in this case. The facts set forth in the plea transcript indicate a deputy was on the road outside the location of one of the armed robberies and saw the Applicant and co-defendant running from the store. (Plea transcript, p.15). The deputy then followed these individuals without their knowledge and saw them enter a vehicle. (Plea transcript, p.15). The deputy approached the vehicle, asked the defendant to show his hands, and ultimately fired his weapon three times. (Plea transcript, p.16). The Applicant got out of the vehicle and was arrested. (Plea transcript, p.16). The Applicant admitted his guilt and did not dispute the State's factual recitation. (Plea transcript, p.18; p.21). This Court finds the Applicant was advised of his rights, including the right to challenge the State's evidence, and specifically waived those rights. (Plea transcript, p.19). Regardless, this Court finds that, given the undisputed facts in this case, the Applicant cannot prove he was prejudiced by the lack of a suppression motion because such a motion would have been unsuccessful. See Sikes v. State, 323 S.C. 28, 30, 448 S.E.2d 560, 562 (1994) ("When the defendant claims that counsel's failure to articulate a Fourth Amendment

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claim was ineffective assistance, defendant must show that such claim is meritorious and that the verdict would have been different absent the evidence that should have been excluded.”) (citation omitted).

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that plea counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that plea counsel committed either errors or omissions in his representation of the Applicant. This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by plea counsel’s performance.

This Court concludes the Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. This Court also concludes the Applicant has failed to meet his burden of proving his guilty plea was not knowing and voluntary. See Frasier v. State, 351 S.C. at 389, 570 S.E.2d at 174.

All Other Allegations

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this Order, this Court finds the Applicant failed to present any testimony, argument, or evidence at the hearing regarding such allegations. Accordingly, this Court finds the Applicant has abandoned any such allegations.

CONCLUSION

Based on all the foregoing, this Court finds and concludes the Applicant has not established any constitutional violations or deprivations before or during his guilty plea and sentencing proceedings. Counsel was not deficient in any manner and the Applicant was not prejudiced by counsel’s representation. Furthermore, the Applicant’s guilty plea was entered

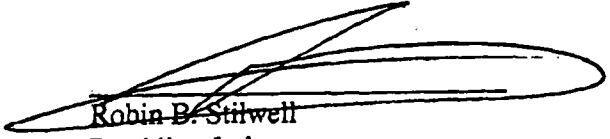
knowingly and voluntarily within the mandates of Boykin. Therefore, this PCR application must be denied and dismissed with prejudice.

This Court advises the Applicant that he must file a notice of intent to appeal within thirty (30) days from the receipt of this Order if he wants to secure appropriate appellate review. His attention is also directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of intent to appeal has been timely filed.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 4 day of OCT, 2013.


Robin B. Stilwell
Presiding Judge
Thirteenth Judicial Circuit

Giville, South Carolina.

WITNESSES

Alvin King *ASB*

Greenville County Sheriff's Office

2/24/2010

DOCKET NO. 2010-GS-23- **003353**

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June TERM 2010

5-17-11 THE STATE

VS.

RAKEEM R. JOHNSON

ARREST WARRANT NUMBER
M179077, M179078

ACTION OF GRAND JURY
TRUBBELL
Wm J. Trubbell

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for
0139, 0549

ARMED ROBBERY AND POSSESSION OF A
WEAPON DURING THE COMMISSION OF A
VIOLENT CRIME
VIOLATION § 16-11-0330 and § 16-23-0490

Foreperson of Petit Jury

Date:

RECEIVED

MAY 04 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY AND POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on **JUN 22 2010**

the Grand Jurors of Greenville

County present upon their oath:

COUNT ONE

ARMED ROBBERY

That RAKEEM R. JOHNSON did in Greenville County, on or about the 20th day of January, 2010, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: Money, belonging to SPINX, from the person or presence of Rosemary Blackman. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That RAKEEM R. JOHNSON did in Greenville County, on or about the 20th day of January, 2010, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

WITNESSES

Avin King *BB*

Greenville County Sheriff's Office

2/24/2010

DOCKET NO. 2010-GS-23-

LMM

003357

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June TERM 2010

5-17-11 THE STATE

vs.

RAKEEM R. JOHNSON

ARREST WARRANT NUMBER
M179101

ACTION OF GRAND JURY

TRIE BIL
Ann Spodarko

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for
0139

ARMED ROBBERY

VIOLATION § 16-11-0330

Foreperson of Petit Jury

Date:

RECEIVED

MAY 04 2010

Clerk of Court
Greenville County

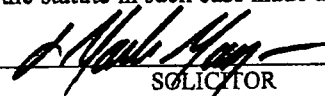
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on **JUN 22 2010** the Grand Jurors of Greenville
County present upon their oath:

That RAKEEM R. JOHNSON did in Greenville County, on or about the 26th day of January, 2010, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: Money, belonging to Lil Cricket from the person or presence of Diane Fortin. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

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



SOLICITOR

WITNESSES

Alvin King *(Signature)*

Greenville County Sheriffs Office

2/24/2010

DOCKET NO. 2010-GS-23-

003355

LAMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June TERM 2010

5-17-11

THE STATE

vs.

RAKEEM R. JOHNSON

ARREST WARRANT NUMBER
M179097

ACTION OF GRAND JURY

TRIP BILL
(Signature)

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

0139

Indictment for

ARMED ROBBERY

VIOLATION § 16-11-0330

Foreperson of Petit Jury

Date:

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MAY 04 2010

Clerk of Court
Greenville County

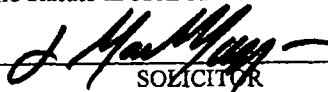
STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY

At a Court of General Sessions, convened on **JUN 22 2010** the Grand Jurors of Greenville
County present upon their oath:

That RAKEEM R. JOHNSON did in Greenville County, on or about the 21st day of January, 2010, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: Money, belonging to SPINX, from the person or presence of Dell Hall. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

David Weiner

RB

Greenville County Sheriffs Office

2/24/2010

DOCKET NO. 2010-GS-23-

LMM

The State of South Carolina

County of Greenville

003514

COURT OF GENERAL SESSIONS

June TERM 2010

5-17-11

THE STATE

VS.

RAKEEM R. JOHNSON

ARREST WARRANT NUMBER

M179060, M179066

ACTION OF GRAND JURY

TRUE BILL

Ann M. Pederseth

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

0139, 0549

Indictment for

ARMED ROBBERY AND POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

VIOLATION § 16-1-0330 and § 16-23-0490

Foreperson of Petit Jury

Date:

RECEIVED

MAY 07 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
ARMED ROBBERY AND POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

At a Court of General Sessions, convened on **JUN 22 2010** the Grand Jurors of Greenville
County present upon their oath:

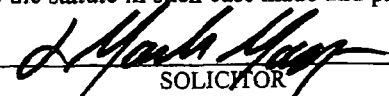
COUNT ONE
ARMED ROBBERY

That **RAKEEM R. JOHNSON** did in Greenville County, on or about the 23rd day of February, 2010, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery would reasonably believe to be a deadly weapon, take by means of force or intimidation, goods or monies described as: Money, belonging to Citgo, from the person or presence of Ronald Ardale and/or Samuel Bernhardt. This is in violation of §16-11-0330 of the South Carolina Code of Laws (1976) as amended.

COUNT TWO
POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That **RAKEEM R. JOHNSON** did in Greenville County, on or about the 23rd day of February, 2010, possess or visibly display a firearm during the commission or attempted commission of a violent crime, to wit: Armed Robbery. This is in violation of §16-23-0490 of the South Carolina Code of Laws (1976) as amended.

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


SOLICITOR

WITNESSES

David Weiner

DS

Greenville County Sheriffs Office

2/23/2010

DOCKET NO. 2010-GS-23-

003359

LMM

The State of South Carolina

County of Greenville

COURT OF GENERAL SESSIONS

June TERM 2010

5-17-11

THE STATE

VS.

RAKEEM R. JOHNSON

ARREST WARRANT NUMBER

M179061

ACTION OF GRAND JURY

TRUE BILL

Wm J. Federoff

FOREMAN GRAND JURY

Foreperson of Grand Jury

VERDICT

Indictment for

6049

CONSPIRACY

VIOLATION § 16-17-0410

Foreperson of Petit Jury

Date:

RECEIVED

MAY 04 2010

Clerk of Court
Greenville County

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

INDICTMENT FOR
CONSPIRACY

At a Court of General Sessions, convened on **JUN 22 2010** the Grand Jurors of Greenville
County present upon their oath:

That RAKEEM R. JOHNSON did in Greenville County, on or about the 23rd day of February, 2010, willfully
and unlawfully combine with Michael Evans for the purpose of accomplishing an unlawful object or a lawful
object by unlawful means, to wit: Armed Robbery. This is in violation of §16-17-0410 of the South Carolina
Code of Laws (1976) as amended.

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



SOLICITOR