

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Charleston County

Deadra L. Jefferson, Circuit Court Judge

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APR 25 2014

S.C. Supreme Court

COREY LARKIN,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2013-002254

APPENDIX

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STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS

COUNTY OF CHARLESTON 2008-GS-10-7831 2008-GS-18-0978
 2008-GS-10-7832 2008-GS-18-1071
 2008-GS-10-8063 2008-GS-18-1072
 2008-GS-10-8062 2008-GS-18-1080
 2008-GS-10-8114
 2008-GS-10-8117
 2008-GS-10-8151
 2008-GS-10-8153
 2008-GS-10-8157

STATE OF SOUTH CAROLINA)
 -vs-) TRANSCRIPT OF RECORD
) November 9, 2010
 COREY NELSON LARKIN,)
) Charleston, South Carolina
 Defendant.)

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

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

Burns Wetmore, Assistant Solicitor
 Russell Hilton, Assistant Solicitor
 Attorney for the State

Martha Runey, Esquire
 Attorney for the Defendant

Amanda K. Haffenden, RPR, CRR
 Circuit Court Reporter

1 (November 9, 2010.)

2 MS. RUNEY: This is the case we e-mailed you
3 about. I'm going to ask you to accept Mr. Larkin's pleas
4 but not sentence him at this point.

5 THE COURT: Just the one guy is all we're
6 doing today?

7 MR. WETMORE: Yes, sir. The other two
8 elected to go more towards their trial date.

9 Mr. Larkin is here to take advantage of the
10 plea. Also with me is the assistant solicitor from
11 Dorchester. This is Russell Hilton.

12 THE COURT: Cory Larkin?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: All right. Mr. Larkin, let's go
15 through what all your charges are here. Indictment
16 2008-GS-18-0978 , Dorchester County grand jury indicted
17 you for kidnapping. That carries a sentence of up to 30
18 years in prison.

19 I'm told you want to plead guilty to that; is
20 that right?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: All right. You want to waive
23 your right to have Dorchester County handle that case?

24 MS. RUNEY: The solicitor is here, but we
25 have decided --

1 THE COURT: Well, this ain't Dorchester
2 County here, so he's waiving his right to do it in
3 Dorchester County, is my question.

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Indictment
6 2008-GS-18-1080 is an indictment for armed robbery, 10 to
7 30 years on that. Minimum 10, up to 30. You want to
8 plead guilty to that?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: That is also Dorchester County.
11 You want to waive your right to have that handled in
12 Charleston County?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Indictment 2008-GS-18-1071 is
15 another indictment for kidnapping, zero to 30 years in
16 Dorchester County. You want to plead guilty to that
17 indictment?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you want to waive your right
20 to have it handled in Dorchester County?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Indictment 2008-GS-18-1072,
23 another indictment for armed robbery, minimum of ten, up
24 to 30. You want to plead guilty to that charge?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: And you want to waive your right
2 to have it handled in Dorchester County as well?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Indictment 2008-GS-10-7831,
5 Charleston County grand jury indicted you for armed
6 robbery. That is 10 years to 30 years. You want to
7 plead guilty to that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Indictment 2008-GS-10-7832,
10 assault and battery of a high and aggravated nature,
11 Charleston County grand jury indictment. You could get
12 up to ten years for that. You want to plead guilty to
13 that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Indictment 2008-GS-10-8117,
16 Charleston County grand jury indicted you for armed
17 robbery, 10 to 30 years. You want to plead guilty to
18 that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Indictment 2008-GS-10-8114,
21 Charleston County grand jury indicted you for armed
22 robbery -- kidnapping. You could get up to 30 years for
23 that. You want to plead guilty to that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Indictment 2008-GS-10-8157,

1 again, Charleston County grand jury indicted you for
2 armed robbery, 10 to 30 years. You want to plead guilty
3 to that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Indictment 2008-GS-10-8153,
6 kidnapping, zero to 30 years, Charleston County, you want
7 to plead guilty to that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Indictment 2008-GS-10-8151,
10 criminal sexual conduct, first degree, zero to 30 years
11 on that. You want to plead guilty to that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: All right. Indictment
14 2008-GS-10-8062, attempted armed robbery, you could get
15 up to 20 years for that. You want to plead guilty to
16 that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Indictment 2008-GS-10-8063,
19 kidnapping, zero to 30 years. You want to plead guilty
20 to that charge?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Okay. I don't recall that I've
23 ever had that many serious charges on one guy before, but
24 it might be the day for a record.

25 Now, from what I understand, you're here

1 today to do is to plead guilty to each of these charges.
2 The Court will not sentence you today because they want
3 you to plead guilty against some codefendants -- or
4 testify against some codefendants, should they desire to
5 go to trial.

6 Is that what you understand you're here for
7 today?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: It's just a plea?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Let me go over some things with
12 you.

13 First of all, each of these charges are what
14 we call strike offenses. Your lawyer has probably talked
15 with you about strike offenses, has she?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: All right. I'm going to go over
18 them with you just to make sure you understand. Baseball
19 has a saying about strikes and you're out, three strikes
20 and you're out. Do you understand that?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Same thing here. If you get
23 enough strikes, you're out. You go to jail for the rest
24 of your life without the possibility of parole.

25 We have two strike offenses and three strike

1 offenses. Two strike offenses are called most serious,
2 and if you get two of those, you go to jail for the rest
3 of your life without the possibility of parole.

4 Three strike offenses are called serious
5 offenses, and if you get three of those, you go to jail
6 without the possibility of parole.

7 Each of these that you're pleading guilty to
8 today are of the three strike category, with the
9 exception of the assault and battery of a high and
10 aggravated nature. However, I gather that as a result of
11 your plea today the State has elected to not seek to have
12 you put -- or have you sentenced to life without parole
13 as part of your plea arrangement, but you understand
14 after today, you will have one strike of the most serious
15 type against you, and if you ever get another strike
16 offense, you'll go to jail for the rest of your life
17 without the possibility of ever getting out.

18 Do you understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Understanding that, do you still
21 want to plead guilty today?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, you also have the right to a
24 jury trial on each single charge you have today. If you
25 want a trial, all you have to do is stop me and we will

1 arrange that for you. The State then has to present
2 enough evidence to convince 12 jurors that you're guilty
3 of each of the charges beyond a reasonable doubt. All 12
4 jurors would have to agree you're guilty in order to
5 convict you, and, if convicted, you still have the right
6 to appeal.

7 You can challenge the admissibility of the
8 evidence the State puts up. You can put up evidence of
9 your own. You can testify if you want. If you don't
10 want to testify, the judge will tell the jury they're not
11 to hold that against you while deliberating. You also
12 have the right to cross-examine any witnesses the State
13 has to testify against you, and you can also then put up
14 witnesses of your own. You also have the right to try to
15 have any evidence suppressed that they want to offer
16 against you.

17 Do you understand all those rights?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And understanding those rights,
20 you want to waive your rights and plead guilty to each of
21 these charges?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Are you pleading get to these
24 charges because you're guilty of each and every one of
25 these charges?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. So this charge,
3 kidnapping, June 2, 2008, kidnapping of Guy Ahlstrom,
4 Charleston County, you did that?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Attempted armed robbery at Chuck
7 E. Cheese, Guy Alstrom, you did that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Criminal sexual conduct, first
10 degree, May 25, 2008, you attempted -- or you
11 had criminal sexual conduct with a Noisy Oyster employee.
12 I won't read out her name, but you've seen the
13 indictment. You did that? You want to see that
14 indictment?

15 I don't want to embarrass the lady by reading
16 her name out. She's not here. Do you need to see that
17 indictment?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Are you okay with that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You did that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: May 25, 2008, Charleston County
24 says you kidnapped Justin Carter, an employee of the
25 Noisy Oyster. Did you do that?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. May 25, 2008,
3 Charleston County, you kidnapped, or you were involved in
4 a kidnapping, at the Noisy Oyster, Charleston County, on
5 Rivers Avenue.

6 Did you do that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: April 28, 2008, you kidnapped an
9 Applebee's employee, Jonathan Walker. That is what they
10 charged you with doing.

11 Did you do that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: April 28, 2008, they say you
14 robbed Applebee's on Rivers Avenue in Charleston County.
15 Did you do that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: March 23, 2008 says you struck a
18 fellow named Brian Hooper upside the head with a handgun
19 in Charleston County. Did you do that?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: March 23 of 2008 says you robbed
22 the Red Lobster Restaurant up on Mall Drive in North
23 Charleston..

24 Did you do that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: May 14, 2008 says you robbed a
2 fellow named Timothy Rabang at Applebee's in Dorchester
3 County. Did you do that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: May 14, 2008, it says you
6 kidnapped Mr. Rabang in Dorchester County. Did you do
7 that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: May 10, 2008, it says you robbed
10 a fellow named Ferdinand Lopez. Did you do that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: June 2, 2008 says you kidnapped
13 somebody named Guy Ahlstrom in Dorchester County.

14 Did you do that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: All right. Now, are you under
17 the influence of drugs or alcohol today?

18 THE DEFENDANT: No, sir.

19 THE COURT: You got any physical, mental, or
20 emotional conditions that keep you from understanding
21 what you're doing?

22 THE DEFENDANT: No, sir.

23 THE COURT: Are you taking any kind of
24 prescription medications today?

25 THE DEFENDANT: No, sir.

1 THE COURT: You're standing next to your
2 lawyer, Ms. Runey. Do you need any more time with her?

3 THE DEFENDANT: No, sir.

4 THE COURT: Are you satisfied with her
5 representation?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did she sit down with you and go
8 over all the evidence the State has?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: And she told you about what the
11 law is on all these charges?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Based on that, you guys had to
14 talk about whether or not you wanted to go to trial or
15 whether or not you wanted to plea; is that right?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You had that discussion with her
18 about going to trial, and you decided you didn't want to
19 call any witnesses?

20 THE DEFENDANT: I don't want to go to trial.

21 THE COURT: You don't want to put up any kind
22 of defense?

23 THE DEFENDANT: No, sir.

24 THE COURT: You don't want to try to suppress
25 any evidence?

1 THE DEFENDANT: No, sir.

2 THE COURT: You don't want to tell the jury
3 your side of the story?

4 THE DEFENDANT: No, sir.

5 THE COURT: This is your decision and your
6 decision alone?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Did she do everything you asked
9 her to do?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. Are you satisfied
12 with her representation?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you need any more time with
15 her?

16 MS. RUNEY: I think it's confusion.

17 THE COURT: Do you need to spend any more
18 time with her before we proceed right now?

19 THE DEFENDANT: No, sir.

20 THE COURT: All right. Now, the State is
21 asking me to take this plea and hold off sentencing you.
22 They haven't given me any indication of what they're
23 going to ask for a sentence later on, but I imagine it's
24 got something to do with whether or not you end up
25 testifying against these other folks and cooperating.

1 But other than that, has anyone promised you
2 anything or threatened you in any way in order to get you
3 to testify today, or to get you to plead guilty today?

4 THE DEFENDANT: No, sir.

5 THE COURT: All right. You're doing this of
6 your own free will?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: How old are you?

9 THE DEFENDANT: Twenty.

10 THE COURT: How far did you get in school?

11 THE DEFENDANT: Ninth grade.

12 THE COURT: Did you have a job before you got
13 arrested?

14 THE DEFENDANT: I was on leave from Job
15 Corps.

16 THE COURT: Are you married?

17 THE DEFENDANT: No, sir.

18 THE COURT: Do have you any children?

19 THE DEFENDANT: No, sir.

20 THE COURT: Ms. Runey, in your opinion, does
21 this gentleman know what he's doing waiving his right to
22 a jury trial?

23 MS. RUNEY: Yes, sir.

24 THE COURT: Does he know what he's doing
25 pleading guilty?

1 MS. RUNEY: Yes, sir, he does.

2 THE COURT: Do you have any question of
3 whether or not he has any mental condition which keeps
4 him from knowing what he's doing?

5 MS. RUNEY: No, sir.

6 THE COURT: Do you agree with his decision to
7 plea?

8 MS. RUNEY: I do.

9 THE COURT: I find his plea is freely,
10 voluntarily, and intelligently made. I accept that there
11 is a substantial factual basis.

12 What does the State want to tell me about the
13 case today?

14 MR. WETMORE: Thank you, Judge. The
15 defendant and two others participated in a series of
16 aggravated armed robberies across the Charleston County
17 and Dorchester Counties. They wore masks. They wore
18 gloves. They were armed with handguns and stun guns, and
19 at each incident, as employees were closing up for the
20 night, the defendants forced their way into these
21 businesses, and they threatened and kidnapped and
22 assaulted the employees, also taking money and personal
23 property.

24 The first event in Charleston County happened
25 March 23rd, '08 at the Red Lobster. Mr. Larkin

1 participated in this event. He was armed with a handgun.
2 It happened about midnight as employees were closing and
3 exiting the business.

4 He met them in the parking lot and presented
5 a gun and at gunpoint forced them back into the
6 restaurant. They tried to close the door and close him
7 out, but he struck them with the gun, forced his way into
8 the door, forced them to open up the safe, and took about
9 \$1,800 from the Red Lobster.

10 Second one in Charleston County was April 28,
11 2008, the Applebee's. Mr. Larkin and the other
12 defendants participated in this incident. They were
13 armed with handguns. This happened at about 2:40 in the
14 morning. Once again, employees were closing, exiting the
15 business. They were met by the defendant and others in
16 the parking lot who presented guns, forced them back into
17 the restaurant, once again forced them to open up the
18 safe, and took approximately \$5,500.

19 Judge, I will tell you at this point it
20 appears that the armed robberies became even more
21 aggravated.

22 The next one in Charleston was May 25th,
23 2008, the Noisy Oyster. Mr. Larkin and others
24 participated. They were armed with handguns and, in this
25 case, stun guns, like Tasers. They made contact about

1 3:20 in the morning as the employees were closing and
2 exiting the restaurant. The defendants met them in the
3 parking lot once again, and at gunpoint they forced them
4 back into the restaurant.

5 They took the night deposit bag. They forced
6 them to open up the safe, took \$6,700 in personal
7 property from the employees, but it didn't stop at the
8 money with the Noisy Oyster. At gunpoint, the defendants
9 forced a female employee to take off her clothes. They
10 forced -- one of the defendants forced the female
11 employee to perform oral sex on him. The other
12 defendants watched, and while they were watching, they
13 were Tasing the male employee.

14 After that, they forced the female employee
15 to go wash her mouth out in the sink. While she was at
16 the sink, the other defendants touched her, sexually
17 assaulted her, touching her vagina, her breasts. One of
18 them put a bag over her head.

19 Judge, it didn't stop there at the Noisy
20 Oyster. They at gunpoint once again forced the female
21 and the male employee into the walk-in refrigerator, and
22 there they took it a step further, and they forced the
23 female employee to perform oral sex on the male employee,
24 and they stood and watched and made comments while that
25 took place. They left both employees naked, shut up in

1 the cooler.

2 It's difficult to tell with certainty which
3 masked defendant was the one that initially forced the
4 female to perform oral sex, but per this defendant here,
5 it was Mr. Mulligan. He gave a statement. He said it
6 was Mr. Mulligan, but, Judge, I would submit to you that
7 all the defendants were armed. They all certainly took
8 part in the sexual assault. Hand of one is the hand of
9 all.

10 Finally, in Charleston County, June 2, 2008,
11 the Chuck E. Cheese. Once again, all defendants
12 participated, all three, armed with handguns, stun guns.
13 This happened about 12:50 a.m. Once again, the employees
14 were closing up shop, exiting. In this case, the
15 defendants actually missed catching the employee in the
16 parking lot. The employee got to his car and he was
17 driving off. Well, they followed him, all the way to his
18 home in Dorchester County.

19 And at gunpoint at his house, they assaulted
20 him with a gun. They hit him with a gun. They kidnapped
21 him and put him into the back seat of his own car, and
22 they drove him in his own car back to the Chuck E.
23 Cheese, and the defendants were following in the
24 codefendant Mulligan's car.

25 Well, the employee's victim's car ran out of

1 gas, and so they forced him out of his own car at
2 gunpoint and put him in their fellow codefendant's car
3 and from there on proceeded to take him back to Chuck E.
4 Cheese. He was Tased while he was in the car. He was
5 forced back into the restaurant, forced to disarm the
6 alarm, and he tried to get the safe open, but he couldn't
7 get the safe open. It was on some sort of a time delay;
8 hence attempted armed robbery. They left him tied up
9 inside the restaurant.

10 The final incident is how they were caught.
11 The victim employee in the Chuck E. Cheese case was able
12 to give a description of the car, the car that they used
13 to take him back to the store. North Charleston located
14 that car, and in that car they found evidence of the
15 armed robbery and they found codefendant Mulligan's
16 identification.

17 Turns out, in fact, too at that very same
18 point in time, codefendant Mulligan called his girlfriend
19 and had her report that car stolen, which is obviously
20 false. The police found the car. The codefendant
21 Mulligan turned himself in. He confessed to the Chuck E.
22 Cheese incident only verbally. He would not put that
23 down in writing; however, the girlfriend continued to
24 assist, and she pointed police to the apartment where
25 Mr. Larkin and another defendant were staying.

1 And so the police stopped Mr. Larkin leaving
2 that apartment, and in the car, they found further
3 evidence of the armed robbery, stun guns, that sort of
4 thing, and they arrested Mr. Larkin, and to Mr. Larkin's
5 credit, he was honest and confessed to everything, in
6 writing. He confessed to all these incidents, and he
7 gave them the information they needed regarding the other
8 two codefendants.

9 He implicated Brian Mulligan and Joshua
10 Monroe. The third codefendant later turned himself in.
11 He confessed to two of these incidents but not all of
12 them. All of these defendants are very young.
13 Mr. Larkin, I believe he was 18 when it happened, doesn't
14 have any prior adult record that I know of.

15 At this point we have no recommendation;
16 however, if he's needed to testify, we will certainly
17 apprise the Court of what he's done in that regard. I
18 know that Dorchester County has some facts as well.

19 THE COURT: Yes, sir.

20 MR. HILTON: If it please the Court, just
21 briefly, all this was a multi-jurisdictional thing. In
22 two of the robberies, burglaries that flowed over in
23 Dorchester County, they were charged with. It happened
24 on May 10, 2008. This is the GS-18-1080, which is at the
25 Frankie's Fun Park located almost at the corner of Ashley

1 Phosphate and Dorchester Road where they did a similar
2 robbery. The manager was securing the business where
3 they came up upon him, lured him back to the store in
4 order to open the safe where they got some money from
5 Frankie's Fun Park and some personal effects from that
6 victim, Mr. Lopez.

7 Second incident happened right next door to
8 that on May 14, a couple days later, which is at 4910
9 Ashley Phosphate Road, which is the Applebee's in
10 Dorchester County in that incident, similar conduct,
11 armed with Tasers and handguns they forced employees back
12 into the store at close where they were able to take
13 about \$3,500 in currency from the business at that point.

14 The third instance is where it all kind of
15 came together, which began at that Chuck E. Cheese
16 location on Rivers Avenue that Mr. Wetmore was talking
17 about.

18 The Dorchester element of that is where
19 Mr. Ahlstrom went back to his house. It was at his house
20 in Dorchester County where the defendants followed him
21 from Chuck E. Cheese. Once he got out of his car, they
22 rushed upon him, ordered him back into the car where they
23 drove him back to Chuck E. Cheese, Tasing him along the
24 way, and that is where they ran out of gas, which
25 ultimately led to the identification for the unique beach

1 ball that was found in Mr. Mulligan's car.

2 THE COURT: All right. Well, there is
3 certainly a substantial factual basis for the plea. We
4 will defer sentencing until a later date when the
5 solicitor notifies us they are ready to proceed with
6 sentencing.

7 So I find that the plea is freely,
8 voluntarily, and intelligently made. You can talk to me
9 about mitigation at that time. All right?

10 MS. RUNEY: Yes, sir. Thank you, Your Honor.

11

- - -

12 (Whereupon, the proceedings were concluded.)

13

- - -

14

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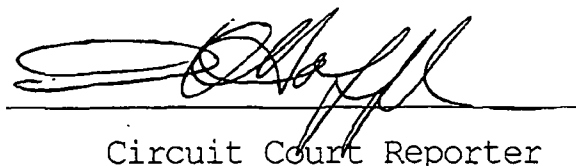
24

25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 9th of November 2010.

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

November 27, 2012



Circuit Court Reporter

STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS

COUNTY OF DORCHESTER 2008-GS-18-1107
 2008-GS-18-1109
 2008-GS-18-1113
 2008-GS-18-1121
 2008-GS-18-1108
 2008-GS-18-1112
 2008-GS-18-1120

STATE OF SOUTH CAROLINA)

-vs-)

BRYAN LEON MULLIGAN,)
 JOSHUA MONROE, and COREY)
 LARKIN,)

Defendants.)

) TRANSCRIPT OF RECORD

) February 3, 2011

) Charleston, South Carolina

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

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

Byrnes Wetmore, Assistant Solicitor
 Russell Hilton, Assistant Solicitor
 Attorneys for the State

Andrew Savage, Esquire
 Attorney for Defendant Mulligan

Milton Demetrios Stratos, Esquire
 Attorney for Defendant Monroe

David Haselden, Esquire
 Attorney for Defendant Larkin

Amanda K. Haffenden, RPR, CRR
 Circuit Court Reporter

1 (February 3, 2011.)

2 THE COURT: All right. Are you Bryan Leon
3 Mulligan?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. Mr. Mulligan, you got
6 a number of charges here against you, and I understand
7 that you want to plead guilty to these charges today, so
8 let's work through them one by one.

9 First of all, we have indictment
10 2008-GS-18-1108 is an indictment out of Dorchester County
11 for kidnapping. You can get up to 30 years in prison for
12 that. I'm told you want to plead guilty to that
13 indictment; is that correct?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Do you understand this Dorchester
16 County charge, you have the right to have it resolved in
17 Dorchester County. Do you want to waive your right to
18 have this resolved in Dorchester County?

19 THE DEFENDANT: Yes, sir, Your Honor.

20 THE COURT: All right. These are all
21 sentencing sheets. Is there more than one Dorchester
22 County charge here? I only have one from Dorchester
23 County.

24 MR. HILTON: I passed up six, I believe, Your
25 Honor.

1 THE COURT: All right. Next is an indictment
2 out of Dorchester County, indictment 2008-GS-18-1121.
3 It's for armed robbery. You could get ten to 30 years
4 for that. Do you want to waive your right to have this
5 treated in Dorchester County and plead guilty here today?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: I hate being so slow, but there
8 are a lot of indictments, and none of them are in order,
9 so I want to make sure we get this right so we only have
10 to do this once.

11 Next, we've got indictment 2008-GS-18-1120,
12 another Dorchester County indictment for kidnapping, zero
13 to 30 years. You want to waive your right to have this
14 handled in Dorchester County and plead guilty to it
15 today?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Next is indictment
18 2008-GS-18-1112, a Dorchester County indictment for armed
19 robbery. Again, 10 to 30 years. You want to waive your
20 right to have this treated in Dorchester County and plead
21 guilty to it today?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Next is Dorchester County
24 indictment 2008-GS-18-1113. It is for kidnapping, zero
25 to 30 years. Do you want to waive your right to have

1 this treated in Dorchester County and plead guilty to it
2 today?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And I think the last one out of
5 Dorchester County is indictment 2008-GS-10 -- or
6 GS-18-1107, Dorchester County indictment for assault and
7 battery of a high and aggravated nature, zero to ten
8 years. You want to waive your right to have this handled

9 in Dorchester County and plead guilty to it today?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. Now, now we'll do the
12 Charleston County ones. I got seven sentencing sheets
13 ~~and many more indictment. You got charges you're~~
14 dropping?

15 MR. WETMORE: Yes, sir. He's pleading to
16 seven indictments in Charleston.

17 THE COURT: Hold on.

18 MR. WETMORE: I'll give you the indictment
19 numbers, if that helps.

20 THE COURT: Let me go through the ones I got,
21 and then what's left over, I assume, will be the ones
22 we'll go through those in a minute so we can get those in
23 order.

24 All right. Here is what I got sentencing
25 sheets for: Indictment 2008-GS-10-8072 is an indictment

1 for kidnapping, zero to 30 years. You want to plead
2 guilty to that indictment?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Indictment 2008-GS-10-8073 is an
5 indictment for attempted armed robbery, zero to 20 years.
6 You want to plead guilty to that indictment?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Indictment 2008-GS-10-8126 is an
9 indictment for armed robbery, 10 to 30 years. You want
10 to plead guilty to that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Indictment 2008-GS-10-8127,
13 kidnapping, zero to 30 years. You want to plead guilty
14 to that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Indictment 2008-GS-10-8135,
17 criminal sexual conduct first degree, zero to 30 years.
18 You want to plead guilty to that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Indictment 2008-GS-10-8137,
21 kidnapping, zero to 30 years. You want to plead guilty
22 to that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And then the last one I have a
25 sentencing sheet on is 2008-GS-10-8141, armed robbery, 10

1 to 30 years. You want to plead guilty to that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. That leaves me with
4 the following indictments, and we'll go along with these
5 and make sure these are all being dismissed. All
6 2008-GS-10-8074, 8075, 8124, 8125, 8128, 8136, 8138,
7 8139, 8140, and 8142. Are all of those being dismissed?

8 MR. WETMORE: Yes, sir.

9 THE COURT: All right. Well, let me go
10 through a few things with you, because I'm told you want
11 to plead guilty to each of these. You're going to give
12 up some rights, and I need to make sure you understand
13 some things that you do that have consequences that go
14 beyond today.

15 First of all, I think with the exception of
16 the assault and battery of a high and aggravated nature,
17 each of these are strike offenses. I'm sure Mr. Savage
18 has gone over those with you, but I will go over it with
19 you on the record to make sure you understand what strike
20 offenses are.

21 We have classifications of crimes in this
22 state where if you get enough of them you go to jail for
23 the rest of your life without the possibility of parole.
24 We have two classifications of those in the state, three
25 strike offenses and two strike offenses. Two strike

1 offenses are called most serious offenses, and if you get
2 two of those, you go to jail for the rest of your life
3 without the possibility of parole. Three strike offenses
4 are called serious offenses, and if you get three of
5 those, you go to jail for the rest of your life without
6 the possibility of parole.

7 It goes without saying today that you have
8 gotten all the strike offenses you're ever going to get
9 in this life without going to jail for the rest of your
10 life, because the state is not seeking life without
11 parole against you today or they would have served you
12 notice on these. They are all being treated for
13 sentencing purposes as one strike, but after today, if
14 you ever get convicted of another strike offense, you'll
15 go to jail for the rest of your life without the
16 possibility of ever getting out.

17 Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. You also have the
20 consequences. These are no parole offenses. Except for
21 the assault and battery of a high and aggravated nature,
22 you have to serve at least 85 percent of these before you
23 are eligible to get out, and because of the nature of
24 that classification of violent no parole offense, once
25 you get out after you serve 85 percent, you still have

1 two years of community supervision, and you have to
2 basically meet with parole officers, not get involved in
3 any more crimes, not use drugs, that sort of thing. If
4 you do, you'll get sent up before a hearing officer and
5 ultimately a judge and if they determine you violated the
6 terms of your community supervision, you'll go back and
7 finish out the balance of whatever you have left on the
8 15 percent of your sentence.

9 Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Also, one of the charges is
12 criminal sexual conduct of the first degree, and that is
13 going to trigger a collateral consequence of having the

14 sexually violent predator program take a look at you when
15 all this is said and done. We have a sexually violent
16 predator program in this state.

17 It's a civil commitment process, but it does
18 come about as a result of a criminal conviction, and, at
19 least as it's currently set up, you go into the sexually
20 violent predator program. They house those folks at the
21 Broad River Correctional Institute, which is, of course,
22 a prison, but what happens is at the end of the time,
23 they'll look at these charges.

24 They'll look at the fact that one of them was
25 a criminal sexual conduct, and there will be a couple of

1 committees that take a look at it, determine whether or
2 not they think that based on your prior convictions and
3 the circumstances surrounding that, they think that it is
4 a possibility that you might reoffend, and they will ask
5 the Attorney General's office to bring the case in
6 circuit court and ask to have a judge or a jury have you
7 adjudicated to be a criminal sexual -- sexually violent
8 predator, and if you are adjudicated to be a sexually
9 violent predator, then you would be housed, again,
10 currently at Broad River Correctional. Who knows where
11 it will be in a couple of decades, and you could go to
12 jail. You could be in there the rest of your life.

13 You have to, basically, if adjudicated to be
14 a sexually violent predator, convince them that you will
15 no longer be a threat to reoffend, but that is down the
16 road, but that is a consequence of your plea today, that
17 it is not an automatic thing, but it is very likely they
18 will stake a strong, hard look at it.

19 Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: All right. Understanding those
22 things, do you still want to plead guilty today to these
23 charges?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Let me explain to you that you

1 have some rights that you are waiving when you enter a
2 guilty plea. First of all, you have the right to a jury
3 trial, so if you change your mind and decide you want a
4 jury trial, all you have to do is let me know, and we'll
5 arrange that for you. The state then has to present
6 enough evidence to convince 12 jurors you're guilty
7 beyond a reasonable doubt. All 12 jurors have to agree

8 you're guilty in order to convict you, and, if convicted,
9 you have the right to appeal.

10 You can challenge the admissibility of the
11 evidence the state offers against you, you can put up
12 evidence of your own, you can testify, if you want, and
13 tell the jury your side of the story, and if you don't
14 want to testify, the judge will tell the jury they're not
15 to hold that against you while they are deliberating.

16 Do you understand all of those rights?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And you want to give up all those
19 rights and enter these guilty pleas today?

20 THE DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: All right. So this indictment,
22 I'm going to read through these and ask you about them,
23 2008-GS-18-1107 says on June 2, 2008 you did violent
24 injury to the person of Guy Ahlstrom with circumstances
25 of aggravation struck him in the head again.

1 Did you do that?

2 THE DEFENDANT: As far as I can remember, no,
3 sir, Your Honor.

4 THE COURT: As far as you can remember, no?

5 THE DEFENDANT: No, sir.

6 THE COURT: Well, then why are you pleading
7 guilty to it? I'm going through each of these, and if
8 you're going to give me the, I don't remember it, then
9 you're going to go to trial.

10 THE DEFENDANT: You said was I involved, Your
11 Honor?

12 THE COURT: Yeah. Were you involved in doing
13 this?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All right. You understand -- I'm
16 sure your lawyers have told you that even if you didn't
17 necessarily do it yourself, you were involved with others
18 and at least somebody did it, and under the hand of one,
19 hand of all theory, you're just as guilty as the person
20 that struck the person or did it, but you were involved
21 in it, and you could be convicted of it and you're saying
22 that is exactly what you did; is that right?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right. 2008-GS-18-1113 is
25 the kidnapping out of Dorchester County, May 14, '08. It

1 says you kidnapped Timothy Rabang. Did you do that?

2 THE DEFENDANT: Yes, sir, Your Honor.

3 THE COURT: 2008-GS-18-1112 says on May the
4 14th, 2008 in Dorchester County, you used force and
5 intimidation armed with a deadly weapon robbed employees
6 of Applebee's restaurant in Charleston County. Did you
7 do that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: 2008-GS-18-1120 says that on May
10 the 10th, 2008, you kidnapped Ferdinand Lopez in
11 Dorchester County. Do you admit to that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. 2008-GS-18-1121 says
14 that on May the 10th, 2008 in Dorchester County, this is
15 an armed robbery indictment, says that you used a deadly
16 weapon, force, and intimidation, robbed person Ferdinand
17 Lopez of goods and money. Do you admit to that?

18 THE DEFENDANT: Yes, sir, Your Honor.

19 THE COURT: And on 2008-GS-18-1108,
20 Dorchester County indictment for kidnapping says that you
21 kidnapped Guy Ahlstrom in Dorchester County.

22 Do you admit to that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right.

25 MR. SAVAGE: Judge, to be clear, jurisdiction

1 of those indictments were in Dorchester County. He
2 admits to committing those crimes in Dorchester County.

3 THE COURT: Okay. Well, I thought I covered
4 that, but --

5 MR. SAVAGE: One of them was -- I think one
6 of them you said Charleston County.

7 THE COURT: Did I misspeak? I'm sorry.

8 MR. SAVAGE: The Applebee's restaurant.

9 THE COURT: Okay. I know this all took place
10 in the area where Applebee's and Chuck E. Cheese and
11 Noisy Oyster, so I may have had this in my head.

12 Okay. Let's go on to the next indictment in
13 Charleston County, 2008-GS-10-8126 is armed robbery. It
14 says on April 28, 2008, Charleston County, that
15 Applebee's on Rivers Avenue, you used a deadly weapon to
16 rob the employees at Applebee's.

17 Do you admit to that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And then June the 2nd, 2008,
20 Charleston County, Chuck E. Cheese, Rivers Avenue, you're
21 charged with attempted armed robbery, in which you
22 represented you had a deadly weapon and attempted to rob
23 the Chuck E. Cheese, Guy Ahlstrom, at Chuck E. Cheese.

24 Do you admit to that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: 2008-GS-10-8072, Charleston
2 County says you kidnapped Guy Ahlstrom on or about June
3 2, 2008.

4 Do you admit to that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: 2008-GS-10-8127, kidnapping
7 indictments says that on or about April 28, 2008 in

8 Charleston County, you kidnapped Jonathan Walker, an
9 Applebee's employee. Do you admit to that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: 2008-GS-10-8135, an indictment
12 for criminal sexual conduct first degree says May the
13 25th, 2008 you committed sexual battery upon a Noisy

14 Oyster employee, Barbara Carter without her consent,
15 using aggravated force. Do you admit to that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: 2008-GS-10-8137, indictment for
18 kidnapping, Charleston County, May the 25th, 2008 says
19 that you kidnapped a Noisy Oyster employee, Justin
20 Carter.

21 Do you admit to that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And, finally, 2008-GS-10-8141 is
24 armed robbery indictment, says that on or about May 25,
25 2008, at the Noisy Oyster on Rivers Avenue in Charleston

1 County, you robbed Noisy Oyster's employees representing
2 you had a deadly weapon.

3 Do you admit to that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. Now, are you under
6 the influence of any drugs or alcohol today?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Do you take any kind of
9 prescription medications?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Do you know of any physical,
12 emotional, or mental conditions which keep you from
13 understanding what you're doing today?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Now, you're standing next to your
16 lawyers. Have you had enough time to talk with them
17 about this case?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. You all set down and
20 talked about the evidence the state has against you?
21 Y'all talked about that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And they explained to you about
24 the law that applies to each of these charges?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Did they explain to you about how
2 sometimes you can go into court and try to have evidence
3 suppressed, such as DNA evidence, photographic lineups,
4 statements that either you or other people made, that
5 sort of thing. Did y'all talk about things like that,
6 trying to have evidence suppressed?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And you talked about whether or
9 not you could present any kind of defenses. Did y'all
10 talk about that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Did you talk about whether or not
13 you could get up and tell the jury your side of the
14 story?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And based on all of those
17 discussions, you decided ultimately that you didn't want
18 to pursue any of that and you just wanted to go ahead and
19 plead guilty; is that correct?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: All right. Now, you've had all
22 this time to talk with your lawyers, and their job is to
23 advise you, but ultimately it's your decision and your
24 decision alone on whether or not to plead or go to trial
25 because ultimately you're the one that does the time, and

1 it's your convictions.

2 These decisions to waive all those rights
3 that I told you about and whether or not you were going
4 to try to suppress any evidence or put up a defense or
5 testify, all that sort of thing, and you didn't want to
6 do that, is that your decision and your decision alone?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Did anybody promise you anything
9 or threaten you in any way in order to get you to plead
10 today?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: All right. Other than they have
13 agreed that they were going to dismiss some charges that
14 were pending against you; is that correct?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Nobody has promised you anything
17 about what your sentence would be?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: All right. How old are you?

20 THE DEFENDANT: Twenty-two.

21 THE COURT: How far did you get in school?

22 THE DEFENDANT: High school education.

23 THE COURT: All right. Do you work?

24 THE DEFENDANT: I been working since I bonded
25 out, up until about -- around the time that our case was

1 coming to an end.

2 THE COURT: Are you married?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any children?

5 THE DEFENDANT: Two, two daughters.

6 THE COURT: Yeah? All right. Well,

7 Mr. Savage, you and your office has been representing

8 this gentleman now for a while on it, I take it. In your
9 opinion, does he understand what he is doing when he
10 waives his right to a jury trial and enters his pleas
11 today?

12 MR. SAVAGE: There is no question in my mind
13 that he does, Your Honor. Because of his age, his
14 grandmother who is present, his wife who is present, his
15 mother, who is present, have all accompanied him on a
16 dozen or more occasions in our office when we reviewed
17 his rights and his options to go to trial of pleading
18 guilty. There is no question in my mind that he fully
19 comprehends the seriousness of the charges, the possible
20 penalties, and the rights that he's giving up.

21 Among those rights are his right not to
22 testify and that this Court would instruct the jury not
23 to hold that against him.

24 THE COURT: All right. Has Mr. Savage's
25 office done everything you've asked them to do?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And you're fully satisfied with
3 their representation?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And you don't need any more time
6 with him?

7 THE DEFENDANT: No, sir, Your Honor.

8 THE COURT: All right. I find his plea is
9 freely, voluntarily and intelligently made.

10 Why don't we do this: We have some other
11 people that were codefendants. They've already pled. I
12 took their pleas some time ago. I took one, I think
13 Judge Nicholson took one, and I'll hear then from the
14 state, the recitation of the facts, and then we'll hear
15 any mitigation and any statements from the victims at
16 that time. So let's bring out the other guys.

17 MR. WETMORE: May we approach, sir?

18 (Sidebar discussion held.)

19 THE COURT: We're going to take about a
20 ten-minute break right now while one of the codefendants
21 needs a little bit of time with his lawyer, so we'll just
22 stand down and take about ten minutes. Go ahead.

23 (Recess taken.)

24 THE COURT: All right. We have everybody
25 back in that was in? All right.

1 So where we left off is I took Mr. Mulligan's
2 plea. I have previously have taken Mr. Larkin's plea.
3 Mr. Larkin, that is you?

4 DEFENDANT LARKIN: Yes, sir.

5 THE COURT: All right. And Mr. Joshua
6 Monroe, is that you?

7 DEFENDANT MONROE: Yes, sir.

8 THE COURT: I took your pleas previously,
9 accepted them, deferred sentencing until later time, that
10 being now. I still need to hear from the record the
11 recitation of the facts for Mr. Mulligan, so,
12 Mr. Solicitor, when you're ready, go ahead.

13 MR. WETMORE: Yes, sir, Judge. May it please
14 the Court: These three individuals were involved in a
15 series of aggravated armed robberies in North Charleston
16 restaurants.

17 The first one that Mr. Mulligan participated
18 in to our knowledge took place April 28, 2008 at the
19 Applebee's with these other two individuals, armed with
20 handguns. It was about 2:40 in the morning. The
21 employees were closing and exiting the restaurant. The
22 defendants met them in the parking lot and pointed guns
23 at them and at gunpoint forced them back into the
24 Applebee's. They disarmed an alarm, made them open up a
25 safe. \$5,500 was taken.

1 The next incident happened, once again, North
2 Charleston, May 25, 2008 at the Noisy Oyster. Once
3 again, all individuals here participated, armed with
4 handguns, and at this time also stun guns. This was
5 about 3:20 in the morning. Once again, employees were
6 closing up shop and met in the parking lot by the
7 defendants who had guns and at gunpoint they were forced
8 back into the restaurant.

9 They took the night deposit bag. They opened
10 up the safe. They took \$6,700 and some personal property
11 as well. It did not end there, unfortunately, at the
12 Noisy Oyster.

13 At gunpoint, they forced -- one of the
14 defendants forced a female employee to take her clothes
15 off and to perform oral sex on him. The other two
16 watched, and they actually Tased the male employee while
17 they watched. They forced female employee to wash her
18 mouth out in the kitchen sink. The other defendants
19 sexually assaulted her, touched her, groped her. Then
20 they forced both employees into the walk-in refrigerator,
21 and at that time they forced the female employee to
22 perform sex on the male employee, all the time watching
23 and making comments. They left both of them naked and
24 closed up in the cooler.

25 It's difficult to tell which of the masked

1 individuals was the one that initiated the CSC.
2 According to co-defendants Larkin and Monroe, it was
3 Mulligan, but our position is they're all armed, they're
4 all there, the hand of one is the hand of all.

5 Finally, June 2, 2008 at the Chuck E. Cheese
6 in North Charleston, once again all three individuals
7 participated, armed with handguns and stun guns. This
8 time it was about 12:50 at night, and the employees were
9 closing and exiting. This time the employee actually got
10 to his car and left.

11 They followed him to his home in Dorchester
12 County, and at gunpoint they assaulted him, they
13 kidnapped him, and they put him back in his own car, and
14 another individual followed them in their car, and along
15 the way, the victim's car ran out of gas and broke down
16 on the interstate.

17 They abandoned it and they forced the
18 employee into Mulligan's car, took him back to the Chuck
19 E. Cheese at gunpoint, and they forced him to disarm the
20 alarm, tried to open the safe. He could not do it. It
21 was on a time delay, so no money was taken. That is the
22 attempted part of the armed robbery. He was left tied up
23 in that restaurant.

24 Now, that victim was able to identify
25 Mulligan's vehicle. North Charleston located the

1 vehicle. Inside it they found evidence of the armed
2 robberies. They found Mulligan's identification. In
3 fact, Mulligan had asked his girlfriend to report it
4 stolen, and she had done that.

5 Mulligan turned himself in first, I believe,
6 and he gave a confession. He gave a statement verbally
7 to being involved in the Chuck E. Cheese case. He would
8 not put it down in writing, but he did make a statement
9 to the investigating officer.

10 The girlfriend further assisted the police,
11 and she directed them to the apartment where these two
12 live, Larkin and Monroe. Now, they stopped the car
13 Mr. Larkin was in, leaving the apartment in, and inside
14 they found more evidence of the armed robberies, and at
15 that point, Mr. Larkin confessed to all the incidents and
16 he actually gave a written statement, and he implicated
17 these other two.

18 After that, Monroe turned himself in, and he
19 gave a written statement confessing to the Applebee's
20 incident in Charleston and to the Chuck E. Cheese
21 incident in Charleston. He did not admit initially the
22 Noisy Oyster but later confessed to our office in meeting
23 with them.

24 Judge, all these individuals are young. They
25 have no criminal history, and we make no recommendation

1 as to sentence, Judge. I know that Dorchester has some
2 facts for you as well.

3 MR. HILTON: May it please the Court, Your
4 Honor, as to the Dorchester County charges, backing up a
5 little bit in time to May 10, 2008, the three defendants
6 went over to the Frankie's Fun Park, which is located at
7 5000 Ashley Phosphate Road, and in all the Dorchester
8 events, it's a similar set of facts where these were
9 businesses that were closing up.

10 The defendants waited outside where employees
11 from Frankie's Fun Park were coming out at the end of the
12 day. At that time they rushed on them with guns, forced
13 them back inside of the building, and there they ended up
14 taking cell phones, some car keys worth about \$100, and
15 they fled after the alarm had sounded on that building.

16 That was the armed robbery and kidnapping.
17 As for the May 14, 2008 incident, this occurred at the
18 Applebee's restaurant at 4910 Ashley Phosphate Road in
19 Dorchester County where, again, employees were closing up
20 the restaurant, headed out to their vehicles to leave
21 when they were confronted by three black defendants with
22 handguns and stun guns in their possession. They forced
23 them back into the store, ordered them to shut off the
24 alarm, and open the safe. There they were forced to lay
25 down on the floor while the defendants fled.

1 As for the final incident, that was one that
2 Mr. Wetmore alluded to. That is actually the Chuck E.
3 Cheese episode. It began at the Chuck E. Cheese in North
4 Charleston. They were unable to get to Mr. Ahlstrom
5 there at the restaurant because of an individual parked
6 in the adjacent parking lot, so they followed him back to
7 [REDACTED] in the Corey Woods subdivision in
8 Dorchester County.

9 When he pulled up in his driveway, a car
10 pulled in behind him. It was the three defendants, and
11 they rushed on him, again, armed, masked, ordered him
12 back into his car. One of them got into the car with him
13 and ordered him to drive back to the Chuck E. Cheese
14 restaurant.

15 Actually, I think one of the defendants was
16 driving, and he was riding in the car. On his way back,
17 he hesitated to give them some information they wanted.
18 They Tased him there and ended up striking him with a
19 pistol. That forms the basis for the assault and battery
20 of a high and aggravated nature charge that they have.

21 When they got back to the Chuck E. Cheese
22 restaurant in North Charleston, that's where the
23 Charleston facts pick up again, and then ultimately they
24 were apprehended on all these charges.

25 THE COURT: All right. There is certainly a

1 substantial factual basis for the pleas. I'll accept it.
2 What is Mr. Mulligan's prior record?

3 MR. WETMORE: Judge, I don't know that any of
4 them have any prior record.

5 THE COURT: This is a first offense for
6 everybody?

7 MR. WETMORE: That's my understanding, yes,
8 sir.

9 THE COURT: All right. Do any of the victims
10 want to be heard? I see there is a large number of
11 people here.

12 MR. WETMORE: Yes, Your Honor. We have some
13 of the victims from the Noisy Oyster in Charleston
14 County. I know they would like to address the Court.

15 THE COURT: All right. Whoever wants to
16 speak, move down towards the center there and identify
17 yourself for the record.

18 THE WITNESS: I'm Barbara Carter. I just
19 want to express that the events of May 25th have greatly
20 affected me, emotionally, physically, financially, and I
21 very much would like them to go to jail forever. And
22 they're obviously dangerous, and I think they're just a
23 threat and they should spend the rest of their life in
24 jail.

25 Thank you.

1 THE COURT: All right. Your name?

2 THE WITNESS: My name is Justin Carter. I
3 was a victim from the Noisy Oyster. It's been a long
4 couple of years. We spent a lot of time trying to get
5 over what happened, trying to get better with each other,
6 and just trying to put this behind us. We've looked
7 forward to this day for a long time, knowing that these
8 gentlemen, these guys, are going to go to jail and
9 hopefully do so for a long time.

10 We have had no control over this situation
11 since day one, and it's probably -- excuse me -- the only
12 thing that justice is going to be served is probably the
13 most gratifying thing that we've heard in a long time and
14 a step to putting this behind us and hope that they go
15 away for a while, sir.

16 Thank you.

17 THE COURT: Anyone else?

18 THE WITNESS: Your Honor, I'm Chandler
19 Carter, Barbara's father. The last almost three years
20 have been extraordinarily difficult for us, very painful,
21 very hard to deal with, as you can tell. We ask that you
22 do what is right for the victims and society as a whole.
23 We would personally like to see sentencing at the max and
24 consecutive so that my daughter, who is still going to
25 counselling and her boyfriend, who is still going to

1 counselling, can continue with the rest of their lives
2 and once again feel safe at night and not suffer from the
3 emotional and mental anguish of these events, and for
4 that we ask you to do what is the best thing to do for
5 the victims and for society as a whole. Thank you.

6 THE COURT: Thank you. Anyone else from the
7 state?

8 MR. WETMORE: I don't believe so, Judge. I
9 appreciate it.

10 THE COURT: All right. Well, let's go with
11 Mr. Mulligan first.

12 MR. SAVAGE: Judge, Mr. Mulligan has asked
13 that he be given an opportunity to respond to the

14 statements of the victims. He wanted to provide them his
15 thoughts about what he admits that he did.

16 THE COURT: He wants to respond to what?

17 MR. SAVAGE: He would like to respond to the
18 victims and tell the victims how he feels about --

19 THE COURT: He'll get a chance. I'm just
20 giving you the opportunity to speak first and then him
21 and then we'll go down the line.

22 MR. SAVAGE: Judge, we provided you with a
23 packet of information containing some background
24 information about Bryan; along with some 33 character
25 witnesses of people who know him best, ranging from

1 relatives to former teachers to pastors to employees.
2 Bryan was born in Charleston on the [REDACTED] day of [REDACTED]
3 [REDACTED]. He graduated by obtaining a GED through Job Corps
4 in Bamberg where he attended from March of 2007 to
5 February of 2008.

6 He has always been gainfully employed in a
7 number of different types of occupations, most of them
8 blue color labor situations, including Pegasus Steel.
9 He's been a warehouse technician in the past for
10 Pearlstein Distributors and for Coca-Cola as well.

11 I think the most interesting job that he's
12 had and reflects on the inconsistency of his upbringing
13 and his youth and what he could be, had he chosen not to
14 be what he chose to be on these occasions, is contained
15 in the package under D-2.

16 There is a letter there from restoration,
17 Marion Morton, the owner of Restoration Home Care Sitting
18 Service. I've been in business for nine years serving
19 the Charleston and surrounding areas. I manage the
20 restoration ministry conference along with my staff.
21 Bryan has been an excellent employee, has always
22 exhibited the highest degree of professionalism in the
23 time he's been with me. He's also meticulous,
24 disciplined as well as caring and compassionate. I found
25 Bryan to be an honest individual who truly has his

1 family's best interest at heart.

2 Bryan still works with Restoration Home Care
3 Sitting Service three nights out of the week, along with
4 his full-time day job, and still maintains his family
5 life, and he goes on. What speaks louder than his letter
6 are these photographs of this accused, convicted,
7 admitted armed robber, rapist, and kidnapper.

8 In caring for the elderly of Charleston
9 County, these pictures speak volumes as to what
10 compassion he could have had, and did have, except on the
11 occasions which bring us here today.

12 There are a number of people here on his
13 behalf. Not to excuse his conduct in any way, nor does

14 he seek to excuse his conduct, but to explain to you that
15 these acts, these continuous series of acts, were an
16 aberration from the Bryan Mulligan that they raised and
17 that they had in the family.

18 First of all, his wife is present. She
19 chooses not to speak, but if you would raise your hand.
20 His mother is present. His mother works at the Medical
21 University of South Carolina and had not determined
22 whether or not she wanted to speak when I last spoke with
23 her, yes, no? You have a letter you want me to provide
24 to the Court? Would you like to do that in writing or
25 read it? Now is your chance.

1 THE WITNESS: Thank you. Thank you, Your
2 Honor, for letting me have this time to talk. I would
3 like the victims to know that we, as a family are sorry
4 for all your pain and suffering. We are sorry for
5 whatever happened to you, but we ask you to give us
6 another chance, and I ask you, Your Honor, to please have
7 mercy on my son and all involved.

8 And my family and I want you to know whatever
9 the sentence is today, you are sentencing a whole family.
10 My son's two daughters, ages four and nine months, his
11 wife, his pastor, myself, his father and his brother and
12 his sister, his grandmother and his great-grandmother,
13 his grandfather, his mother-in-law, his sister and
14 brother-in-law, his nieces and nephews and cousins and
15 friends. So I beg you, please have mercy today.

16 Have mercy in knowing that you are not just
17 sentencing my son and the others involved, but with all
18 of them, you are sentencing a whole family. In closing I
19 would like you to know that it doesn't take a whole lot
20 of time to know that you have done some things wrong.

21 It doesn't take 30 years, 20, 15, or even 10
22 years to know that you have messed up badly. And my son,
23 along with our family, knows that he has to be punished,
24 but I beg you, please, show mercy in his punishment.
25 Please allow him to come back to us, to his daughters,

1 most of all, and I beg you, please, not to let them spend
2 most of their lives in the correctional institution going
3 back and forth visiting their father.

4 Please allow them to have a life with him
5 outside of prison and we, the family, would like to
6 thank -- really, we thank you for showing mercy today,
7 and we will continue to pray for all who are involved,
8 and thank you and may God bless you.

9 MR. SAVAGE: Judge, that is the mother of
10 Bryan, and I must say that this family has come united on
11 dozens of occasions to my office. I also did want to
12 point out that Bryan knows that the Court is not
13 sentencing his family. Bryan accepts responsibility for

14 sentencing his family, his own family, based on the
15 actions which he alleged to have conducted himself in, so
16 you will hear from Bryan, but I want his family to know
17 that it's not the Court that is sentencing them, it's
18 their own child that's sentencing them.

19 The dad is present. I'm not sure he wants to
20 say anything, and I know the grandmother, who I have
21 known for many, many, many years, is extremely troubled
22 by Bryan's actions, and I know she wants to say to the
23 Court her love for her grandson.

24 THE WITNESS: Yes, I do. Your Honor, my name
25 is Lenora Fulton. I'm Bryan's grandmother. I'm so

1 distraught about this. I had two heart attacks since
2 this happened. It -- what has happened is I just -- I
3 can't believe that Bryan did this. I just can't. In my
4 heart, I feel in my heart that, they -- he's a good
5 child. We never had one problem out of Bryan, not one
6 time, not even in school.

7 I mean, he never give us no problems. In the
8 nighttime, sometime he used to work at the place in Mount
9 Pleasant, the beer distributor place, and he be working
10 every night, so I don't know. How could he did this?
11 How could he did this? I mean, every night this boy is
12 working. He worked all the time, and I am so sorry for
13 the victims who had to go through this, but, Your Honor,
14 in my heart, I feel in my heart, I can't help the way I
15 feel.

16 My grandson is a good young man, very smart
17 young man, and just like I always tell him, tell him,
18 telling the truth sometimes, it will set you free.
19 Telling the truth, you'll be free in your heart. You'll
20 be free in your spirit when you tell the truth. I have
21 always taught him, Bryan, I don't care what happens, you
22 hold on to the truth and don't lie, and Bryan -- you can
23 look at him.

24 Bryan was raised very well. I've been a
25 minister for 14 years, but what I have learned, I instill

1 it in my grandson. He's a good young man. He's a good
2 father. And, I mean, if he ain't doing landscaping in
3 the day, landscaping, cleaning people's yards, helping
4 out older people, he's a good boy, and if he did this,
5 this is very surprising to me.

6 He's a good child. He's a good young man. I
7 mean, I know y'all say all grandmothers would feel this
8 way, but I can tell you this, in the name of Jesus,
9 that's a good child there. I partly raised him. I
10 remember when he come out of his mother's womb. He's a
11 good boy.

12 MR. SAVAGE: Thank you, Mrs. Fulton. I think
13 Bryan can appreciate the harm to his own family, the type
14 of harm that has been caused to the victim's families as
15 well.

16 Your Honor, there are a number of other
17 people who are here on Bryan's behalf to show their
18 support and -- do you want to say something? Briefly,
19 please.

20 THE WITNESS: I'm not going to take much of
21 y'all's time, but on my behalf, I want to apologize for
22 anything that may have happened. Knowing that my
23 children's father could have done these things hurts me,
24 because I didn't grow up with a father and I don't want
25 them to, so I'm asking the judge to please show mercy,

1 knowing that he has gone through punishment for what he
2 have done or what he was involved in, so on behalf of
3 myself and my daughters, I want to apologize for Bryan.

4 MR. SAVAGE: Judge, there are a number of
5 other people in the community that wanted to speak. Most
6 of them wrote you a letter. You have those letters
7 available. I think it's time for Bryan to address the
8 people he has so grievously harmed.

9 THE COURT: Do you want to say anything?

10 THE DEFENDANT: Yes, sir. To the victims,
11 I'm sorry. And I was young, I made some mistakes and I
12 apologize. I'm sorry for all the pain and trouble I
13 caused you and I ask for your forgiveness. That's all.

14 MR. SAVAGE: Bryan was released on bond, and
15 since he was out on bond, he's led a productive life. He
16 worked. He took care of his family. He's regretted the
17 actions that he's had since he turned himself in. His
18 grandmother talks about telling the truth.

19 Well, he surrendered to authorities, admitted
20 his misconduct, and has been living with the terrible
21 acts that he committed, series of acts, ever since. We
22 would ask the Court to show some mercy on Mr. Mulligan.

23 THE COURT: All right. Let's go down next to
24 Mr. Monroe. Mr. Stratos, do you want to say anything?

25 MR. STRATOS: Your Honor, in joining

1 Mr. Savage in representing to the Court that the time
2 period spent with each one of these kids would reveal to
3 the person experiencing that visit that there is truly an
4 aberration of the conduct they had exhibited prior to
5 your seeing them here today. The acts that they engaged
6 in are just so against the grain of everything that they
7 were taught to be. As Mr. Savage is saying, my client

8 comes from a decent family of hardworking people, of
9 educated people.

10 He's an educated child. His mother tells me
11 he had the ability in his youth to be in the gifted and
12 talented programs. One thing this case really reminds me
13 of is on the ride to court today, there is a thing my

14 father would always tell us, I'm sure your father said
15 the same thing, and that is life is short, and when you
16 and I look back on our lives, I think most of us would
17 look back and think of the days after we turned 18 and we
18 experienced some of the first things for the first times
19 in our lives, and the realization that we have today,
20 that these young men are not going to experience those
21 things.

22 We know they're going to be in jail for a
23 substantial period of time, and not only a substantial
24 period of time, but the time which each one of them would
25 probably agree was probably the essence of our existence

1 and it defined us, and their definition for the rest of
2 their lives will be here today, unfortunately, for each
3 one of them.

4 I'm going to plead for the mercy of my
5 client, because that's all I can do. I know him better
6 than you know him, because I've had the opportunity to
7 spend so much more time with him, just as Mr. Savage has
8 had time to spend with his client, and we know for a
9 fact, I think we believe if we had to bet everything
10 we've earned till this day, obviously, Mr. Savage would
11 have more on the line, but if we put everything on the
12 line we would bet that these young men would not ever
13 engage in the activities they engaged in, and my client
14 is remorseful.

15 He's been in prison and we would ask for the
16 credit of 37 months. His 20th birthday, his 21st
17 birthday, his 22nd birthday have all been spent behind
18 bars, time that he will never, ever, get back.

19 Now, I also want to bring out to the Court's
20 attention that there were promises made from the onset to
21 my client. Nothing that we're going to have any
22 negotiated settlement, but promises made that cooperation
23 would render him, or grant him, certain leniency with
24 this Court, and I think you've been apprised of the fact
25 of his cooperation in this matter, and it would go even

1 further with the solicitor, because he met with him, and
2 in order to give this family closure, my client should be
3 credited with that because here today, all the parties
4 are together.

5 I also want to bring out the fact that there
6 are two individuals here that are involved in the most
7 heinous of the crime here, and that is the sexual assault

8 upon that little girl, and that shakes the grounds of all
9 of us that stand on it, but I'm here to tell you, that
10 albeit they were involved in that, they weren't the
11 perpetrators, and they should be given credit for that.

12 And hand of one, hand of all, they were
13 involved to the degree that they were there, they kept --

14 you know, they kept the enforcement, but in watching the
15 video, the individual was in the room was not them, and I
16 would ask the Court to consider that as well when we're
17 talking about how much of the youth of this child we're
18 going to have extract in order to impose retribution for
19 the things that he's done.

20 Meet some of his family members. Would y'all
21 please step forward? His grandmother is here. His
22 father is here. Would you like to address the Court?

23 THE WITNESS: My name is Lorraine White, and
24 I raised Josh from when he was two years old, between
25 going back and forth to me and his mother, and I taught

1 him the values of right and wrong, so whatever he did, I
2 don't know what happened, but something went very wrong.

3 And he's not violent like an animal or
4 anything like that, but he's not. He's a loving child,
5 and like I said, I don't know what went wrong, but please
6 have mercy on them, all three of them, Lord, and I
7 apologize to you people for what happened, but Jesus said
8 forgive, and forgive me love and give people loving
9 because if you were in that situation, would you want
10 them to take your life away? Thank you.

11 THE WITNESS: My name is Chanel Germany, and
12 Joshua is my brother. My brother is not a bad person.
13 This has destroyed my family. My kids don't know their
14 uncle. They know him from meeting in jail. My brother
15 made a mistake. I don't know what happened, but please
16 don't take my brother away.

17 THE COURT: All right. Anyone else? Is that
18 it? All right.

19 MR. STRATOS: Mr. Monroe, would you like to
20 say anything?

21 THE DEFENDANT: Yes, sir.

22 DEFENDANT MONROE: Yes, sir.

23 THE COURT: Go ahead.

24 DEFENDANT MONROE: To the victims, I do truly
25 apologize, and my sincerest apologies to your family as

1 well as the other parties involved in these series of
2 crimes, because as a young man I know that each and every
3 one of y'all who have been in our lives, to bring you
4 here today is just a drastic measure, and to know that
5 what's about to occur is just hard.

6 I mean, it's hard to y'all and it's hard to
7 us because we put ourselves in the situation as well as
8 y'all, who are here for us, and I just want to appreciate
9 each and every one who has said something on all of our
10 behalfs, and Your Honor, I do just want to say I
11 apologize for having to even be present in a place like
12 this, to even have been involved in any of these things
13 that occurred.

14 I do accept responsibility for my actions,
15 and I just ask upon all three of us as well as myself
16 that you have mercy.

17 THE COURT: All right. Let's hear then from
18 Mr. Larkin.

19 MR. HASELDEN: Thank you, Judge. Corey
20 Larkin is 20 years old today. He was 18 when these
21 events occurred. He has a large family, multiple of them
22 are here today. He is one of seven kids here in the
23 Charleston County, born and raised. At 14 years old he
24 was turned out by his mother and just sent to an
25 orphanage for two months. With time his grandmother came

1 in and rescued him from that where he lived with her up
2 until just before these incidents occurred. He did at
3 the end of his ninth grade year in North Charleston
4 realize that he was not destined for scholarship and
5 enrolled in Job Corps in Bamberg to learn a trade as a
6 forklift operator. He had hoped to be licensed in that
7 but was sent home through no fault of his own.

8 There were threats made to people from
9 Charleston there, Job Corps, and he was sent home. He
10 did gain some employment working in various restaurants
11 as a cashier and things of that nature, Your Honor. He
12 was a church-going young man, with his grandmother at
13 Joshua Baptist church, and pastors continued to meet with
14 him at the jail to help provide some strength and
15 guidance to him in this.

16 He is, a, you know, very remorseful young
17 man. He's ashamed and embarrassed, not so much for the
18 fact that he's going to do a substantial amount of time
19 in jail, but for the hurt and pain that he has put the
20 victims through.

21 I know it's, you know, three defendants, same
22 crimes, you know, it's easy to feed them out of the same
23 pot, but there is a distinction up here. The
24 codefendants on the left and the right would not be here
25 had it not been for the statement. They would not have

1 been apprehended. The truth has been talked about in
2 here, and there was one truthful and honest statement
3 given and it led to the arrest of the other people here.

4 He does have aspirations for when he gets to
5 the other side of this. He wants to be a family man,
6 wants to have a family, wants to help to try and pay back
7 some of the love his grandmother has given him. She's

8 been a guiding influence in his life since he came to
9 live with her and while in prison as well.

10 It's shock. I remember Ms. Runey sent a
11 letter to present to you, and she has had a lot longer
12 relationship with this young man than I have, but to echo
13 some of the things she said, it's shocking when I got to

14 meet him the first time. I was expecting -- I don't know
15 what I was expecting, but I wasn't expecting a polite,
16 humble, respectful young man the first day I met him.

17 I was expecting something totally different,
18 and I think because of that, he recognizes, you know,
19 what his actions have done, what they have done, the pain
20 they have caused to the victims. That is a lot of what
21 he wanted to talk about was his regret and remorse for
22 what he's put them through.

23 He has no children, hopes to one day, Your
24 Honor. Like I said, he did give an honest and accurate
25 statement to police. Detective Krametz, Detective Watson

1 both speak of his statement being the one that, you know,
2 was truthful, honest, helped apprehend some of the other
3 codefendants, some of which were more culpable of some of
4 the offenses than he is.

5 With that, Your Honor, we would ask that you
6 take into consideration his cooperation, his
7 truthfulness, and honesty when speaking with these
8 officers to gain closure to this case for them and these
9 victims, and that can be done multiple ways, lesser time,
10 a split sentence, a suspended sentence because we hope
11 you take that into account when rendering center, Your
12 Honor.

13 THE COURT: Would you like to say anything,
14 Mr. Larkin?

15 DEFENDANT LARKIN: Yes, sir. First I would
16 like to apologize to my family, the victims and their
17 families for the pain and grief I have caused. I was
18 young and under the wrong influence at the time, but now
19 sitting in the county for 30 months it taught me a
20 valuable lesson. I got a chance to find God and find
21 myself, and I do actually be at the mercy, myself and all
22 three, of this. I do apologize for all these charges.

23 THE COURT: All right. Okay. Well, I've
24 heard a lot today. This is -- I've been doing this job
25 for going on, I guess, about eight years now, and,

1 without a doubt, the worst part of the job is putting
2 young people in prison. I remember when I first started,
3 I had lunch with an older colleague, and I said, What is
4 the worst part of the job?

5 He didn't bat an eye. He said, Sending young
6 people to prison, because, you know, nothing good comes
7 out of it, not one good thing comes out of sending

8 somebody to prison, especially when you do it for a long
9 period of time, because there is a lot of loss that goes
10 on, and in a case like this, we haven't had any loss of
11 actual life in that nobody died on this, but there is a
12 lot of loss on a lot of different levels.

13 The victims, first and foremost, lost the
14 innocence of the life that they had going on, and their
15 lives are never going to be the same. Families on both
16 sides, their lives are never going to be the same, and
17 these fellows are going off to a place where I assure you
18 nobody in this room wants to go to, and their lives are
19 going to be forever changed.

20 There is just not anything good that comes
21 out of this at this point, but it's my job, it's what I
22 signed on for, and this one gentleman said, You got to be
23 the god that figures out what's good for the victims, for
24 the defendants, and for society.

25 And so that is what I do. I sit and listen,

1 listen to all this, try to figure it all out, because I
2 assure you there is not a little secret book that you get
3 when you become a judge hat says, Here is all the right
4 answers.

5 They didn't teach this in law school.
6 Everybody has been keeping it a secret. They only give
7 this to judges it's got the right answers in it, and it's
8 in the back. That book does not exist. You take that
9 information and then you try to do what you think is best
10 for everybody involved in the case.

11 So here is the way I see it: You know, when
12 you hear a case like this, your first thought is
13 everybody goes to jail for the rest of your life. That
14 what you deserve. That is the easy thing to do, and,
15 under the facts and circumstances of this case, is what
16 you easily deserve. I very seldom hear anything that is
17 quite as awful.

18 If you took aside the criminal sexual conduct
19 component of it, it's bad, and you go, what is the matter
20 with young people that they do this? And, it would be
21 bad enough, you deserve a lot of years; just for the
22 robberies and what that does to the victims and they no
23 longer feel safe and you have to protect society from
24 people that are out there doing violent crimes.

25 And then you throw in that component of it,

1 which just takes it to a different level, and you just
2 go, There is something wrong with you people to do
3 something like that.

4 And so there's that component of it. That's
5 a big factor. You weigh that against what would happen
6 if these guys did not come in here and plead, and this is
7 just a part of the job where I guess I just have to ask
8 you to trust me a little bit on having done this for a
9 while and having some experience to go, if these guys
10 don't come in here and plead guilty, and they do so
11 ultimately, because they think it's in their best
12 interest, they think, well, if I come before the judge,
13 I've talked with my lawyers. This is bad. If I go to
14 trial, there's no question, I'm going to go to jail
15 probably for the rest of my life, but if I go and plead
16 guilty and take responsibility, try to make amends, try
17 to own up to it, apologize to the victims, show remorse,
18 show I got family support, maybe I won't go to jail for
19 the rest of my life, and so that's an expectation of what
20 happens when you come in and plead guilty, and you got
21 people that plead guilty and cooperate with the police
22 sooner than other people and you take that into
23 consideration.
24 What happens if you go to trial? Well,
25 realistically, on a case like this, you probably got

1 three separate trials that you got to go through, and as
2 awful as it has been so far and as bad as today is, you
3 know, you're talking about probably a week long, close to
4 a week long trial on every single one of these guys,
5 separately, and we would have to live through it.

6 And, you know, these lawyers, they're good
7 people. I know them. They try, but their job is to
8 represent their client, and to represent their client,
9 they have to protect their client's rights, challenge
10 every single bit of evidence that comes in, cross-examine
11 victims, make sure your identifications are right,
12 challenge the admissibility of evidence, and let's just
13 assume that every single thing gets done right in a trial
14 and the state gets in all of their evidence and -- I will
15 never forget a trial I had just before Christmas a couple
16 years ago where there were two employees of a fast food
17 restaurant, not far from where we're talking about here.

18 They had an inside job. They staged an armed
19 robbery with another guy. Two people were involved with
20 it. They came forward, like these two guys did,
21 cooperated against the other guy who didn't go to trial,
22 said he did it, they had photographic evidence, they had
23 everything you could do. Jury wasn't out 30 minutes and
24 they said not guilty. I still don't know how that
25 happened, so you go, well, you just never know what

1 happens when you go before a jury.

2 Most of the time, I'm telling you, 99 percent
3 of the time, juries do the right thing, but you never
4 know. Pleading guilty takes that element of uncertainty
5 off the table, because if a jury would not see it and
6 they get hung up on one little strange thing that nobody
7 sees, these guys walk.

8 So there is an expectation of, well, we
9 cooperate, we want to throw ourselves on the mercy of the
10 Court, and please don't give us the rest of our lives in
11 prison and all I can say is that while I know that you
12 would like to have them go to jail for the rest of their
13 lives in prison, the facts could easily do that and I
14 could see if they went to trial and got convicted they
15 get it, they take that uncertainty of trial off, and you
16 don't have to go through a trial, and it's just not a
17 pleasant thing to be the victim of a crime and testify on
18 facts like this. That's off the table. That's a big
19 factor.

20 The two things stand out to me about the
21 case, one is the heinous nature of what these guys did
22 and was involved in, but it's also equal troubling to me
23 is the fact that we're on the opposite end of the
24 spectrum. You have three guys who don't have any
25 criminal record. That is so unusual in a case where you

1 have violent crimes and stuff like this, where they have
2 no prior record that I can't even begin to express to you
3 how, one, unusual it is; and, two, how unexplainable it
4 is, because normally you have a juvenile record.

5 You have priors and they build up. Very few
6 people jump into the deep end of the pool like these guys
7 did, with no warning shots off to anybody else that, Hey,
8 I got a troubled character. You got no criminal record.
9 You seem to be doing pretty well, you know, jobs -- I
10 don't know what went on that night. That explanation
11 about how this all got concocted hasn't come out, but it
12 is totally baffling that it is out of character for these
13 fellows to be involved in a crime like this and have no
14 prior record. That is an extraordinarily unusual factor.

15 And so when you're sentencing people who have
16 never been in court before, you take that into
17 consideration as well, and probably one of the biggest
18 things is you go, Well, these are very, very, very young
19 people, especially when you consider how old they were at
20 the time.

21 So we go, well, do we throw them away or do
22 we give them a chance to pay their debt to society and
23 come out the other end and have some chance at a life as
24 well? Because they're going to end up, you know, as part
25 of our society. Either they'll spend it behind bars or

1 they'll spend part of it behind bars and come back out on
2 the other end of it or some combination in between there,
3 so that is kind of what the calculus is that I'm trying
4 having to go through in the sentence.

5 The lawyers came back and talked to me a
6 little bit before and reminded me -- it's been a long
7 time since I had taken the plea, several months ago since

8 Monroe and Martin, refreshed me on it, and I told them, I
9 said, Well, you know, I have sentenced a number of people
10 to life without parole. I have yet to sentence somebody
11 to consecutive sentences where it wasn't asked for by the
12 state.. I'll listen to the facts. I won't make any
13 promises. I want to hear what these folks have to say.

14 I want to hear what the victims have to say. I want to
15 hear the package, but I won't make any promises on what
16 I'll do, but none of these guys should expect that they
17 will walk out of here with 30 years, but to the extent
18 that it is anything less than that, well, I take into
19 consideration that Mr. Monroe and Mr. Larkin were first
20 on board with cooperating and that, you know, had some,
21 you know, factor in making the state's investigation
22 easier, which then they were able to present Mulligan
23 with this is it, pal. We're going to go to trial and
24 we're going to convict you and we're going to ask for a
25 lot more time than you get if you went to plead guilty.

1 So, you know, maybe they deserve a little bit
2 of credit for this.

3 MR. SAVAGE: Your Honor, may I be heard on
4 that?

5 THE COURT: Yeah.

6 MR. SAVAGE: Mr. Mulligan turned himself in.

7 THE COURT: I understand.

8 MR. SAVAGE: He was not caught red handed
9 like his codefendant was with the guns.

10 THE COURT: I figured that, and I knew you
11 would jump on that. There was not a full confession.

12 MR. SAVAGE: He did not delay the plea from
13 October. The reason the plea was delayed is because --

14 THE COURT: You were waiting on DNA. I
15 understand that. But there was a sequence of events in
16 which people cooperated and investigations get easier. I
17 got that. The thing that I do -- that is troublesome to
18 me, and again it comes back to this criminal sexual
19 conduct, there is a big differentiator between the three
20 perpetrators here, and everything points to Mulligan
21 being involved as an active participant in that awful
22 event and these other two basically were, you know, not
23 involved in a physical sense, but still involved in the
24 eyes of the law under the hand of one, hand of all
25 theory.

1 That is still troublesome to me. I explained
2 to him here in the preliminary part of the plea about how
3 the sexually violent predator program works. Each of
4 these fellows have pleas to criminal sexual conduct.
5 They don't rubber stamp those programs. They look at
6 them hard, they look at them long, and each of these
7 fellows, because of pleas to the criminal sexual conduct,
8 will be looked at hard when they come out on the end, but
9 I suspect Mr. Mulligan is going to get a lot harder of a
10 look and will very likely get a recommendation for
11 prosecution of that.

12 Whether or not these other two do because
13 ~~they weren't actively involved in the physical aspect of~~
14 the rape, I suspect that that is -- for somebody else to
15 decide down the road, but it wouldn't surprise me if they
16 didn't since they were not involved in that.

17 So that is something to keep in mind, that,
18 you know, it's possible Mr. Mulligan may spend more time
19 beyond whatever I sentence him to off the streets if he
20 is not able to convince these folks that he's made
21 efforts toward rehabilitation in prison and that he's not
22 likely to reoffend to a sexually violent crime.

23 But that is for another day. The bottom line
24 is there is no question in my mind he deserves every day
25 of the 30 years I'm giving him. I'll give Mr. Monroe and

1 Mr. Larkin a little bit of a break, and I will give them
2 25 years on their charges. They will all run concurrent
3 and you'll get credit for any time you've already served.
4 Good luck to you.

5 MR. HILTON: Your Honor, if I may put on the
6 record, for Mr. Monroe's case, he has not pled to his
7 Dorchester County charges yesterday, and that has been
8 through no fault of Mr. Monroe. That is for scheduling
9 issues. My intention is to have him transported to
10 Dorchester County where he will then plead and we will
11 recommend the concurrent sentence to those charges.

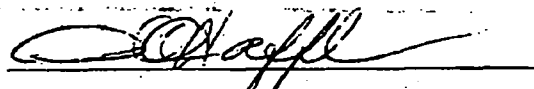
12 THE COURT: On Mulligan, his indictment for
13 attempted armed robbery is 20 years. His assault and
14 battery of a high and aggravated nature is ten years, and
15 everything else was thirty. And on Monroe, his attempted
16 armed robbery was 20 years. Everything else was 25. And
17 then on Larkin, his ABHAN was 10 years, and everything
18 else -- he had an attempted armed robbery of 20 years,
19 and everything else was 25.

20
21 (Whereupon, the proceedings were concluded.)
22
23
24
25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 3rd of February 2011.

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

September 20, 2011


Circuit Court Reporter

STATE OF SOUTH CAROLINA

County of Charleston2012-CP-10-633
IN THE COURT OF COMMON PLEASCorey Larkin #344934

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION REVIEWFILED
2012 JUN 27 PM 5:22
JUDGE J. ARDREY
CLERK OF COURTINSTRUCTIONS - 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 McCormick Corr. Inst. 386 Redemption Way
McCormick SC 29899
2. Name and location of Court which imposed sentence General Sessions
Charleston Co.
3. Name(s) of co-defendant(s) (if any) Joshua Monroe & Bryan
Mulluhigan
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: Ind.(s) unknown 5 counts Armed robbery
(a) Ind(s) unknown 5 counts Kidnapping / Ind.(s) Unknown

- (D) Attempted murder robbery
 (C) Ind. (S) unknown 1st degree CSC/Ind. (S) unknown A-B-HA-A.

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

- (a) _____
 (b) _____
 (c) _____

6. Check whether a finding of guilty was made:

- (a) after a plea of guilty X
 (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 "yes" to (7), list:

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

- i. N
 ii. _____
 iii. A

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

- i. N
 ii. _____
 iii. A

(c) the date of each such result:

- i. N
 ii. _____
 iii. A

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

- i. N
 ii. _____
 iii. A

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

- (a) N I A

(b)

N

(c)

A

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

(a)

Ineffective Assistance of Counsel

(b)

Guilty plea "was not" voluntarily nor intelligently made

(c)

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

(a)

(b)

(c)

SEE ATTACHED SHEETS 1-3

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

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

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

(a) the specific nature thereof:

i.

ii.

iii.

iv.

Motion for re-consideration ?

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

i.

ii.

iii.

General Sessions ?

iv. _____

(c) the disposition thereof:

i. Pending?

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. Unknown

ii. _____

iii. _____

iv. _____

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

i. Unknown

ii. _____

iii. _____

iv. _____

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

NO

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

(a) which grounds have been presented:

i. N

ii. _____

iii. A

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

i. N

ii. _____

iii. A

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) See 10(a) Applicant first time presenting ground
 (b) See 10(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? None
 (c) your sentencing? YES
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? None
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? YES

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

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

- i. Martha Kent Runey 101 Meeting St., 5th Floor
Charleston, SC 29401-2214
 ii. David Haselden (Same Office)

iii. _____

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

- i. Before plea & Sentence
 ii. Plea & Sentence - motion for re-consideration
 iii. _____

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

New trial, plea reversed and any other relief I may be
entitled to

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 McClintock)

VERIFICATION

I, Corey Larkin, 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.

Corey Larkin

SWORN to and subscribed before me this 24
day of January, 2012.

J. F. Rankin (S.)

Notary Public

My Commission Expires: 12-16-2019

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

I, Corey Larkin 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.

Corey Larkin
Applicant

SWORN or affirmed to and subscribed before me this

24 day of January, 2012.

J. Franklin
Notary Public

My Commission Expires: 12-16-2012

11 (a) Ineffective Assistance of Counsel

(1) Per. the Bill of Rights to the Federal Constitution

I was denied the right to effective assistance of counsel, as guaranteed by "BOTH" the 6th and 14th Amendments to the U.S. Const. and by S.C. Const. Article I Sec. 3 and Sec 14

Also see Strickland v Washington 104

S.Ct. 2052 and Will v Lockhart 106 S.Ct. 366

Counsel Haselden acts and or omissions including but not limited to the following prejudiced my plea

(2) Counsel failed to investigate or ask the court to continue my case because he hadn't had it but about a week and ~~half~~.

(3) Counsel prejudiced my plea because he never subpoenaed any witnesses I may have had or needed for my defense - "expert(s)".

(4) Counsel prejudiced my plea when he did not tell me that he could attack my alleged co-defendants' character and or credibility "if" they was going to testify for the State.

(5) Counsel prejudiced my plea when he failed to inform me that if the State wanted to try me and any of my alleged co-defendants, he could move for a severance, "separate trial". When there was a very serious risk that a joint trial would have compromise, and prevent the jury from making a reliable judgment about

whether I was guilty or not.

(6) Counsel prejudiced my whole case/plea when he did not talk to me on any kind of real defense level.

(6) Guilty plea "WAS NOT" voluntarily nor intelligently made

(1) I re-argue the above facts, and argue that if it was not for counsel Haselden prejudicial acts and or omissions but not limited to I would not have pled guilty. But would have insisted on going to trial see Boykin v Alabama 89 S.Ct. 1709 and Arrl v Lockheart 106 S.Ct. 366

Date: 1-24-12

Respectfully Submitted
Cecy Landon

The Hon. Charleston, Julie J. Armstrong
 Clerk of Ct. 100 Broad St. Suite 106
 Charleston, SC 29401-2258

Date Jan 24, 12

Dear Hon. Clerk.

Please find enclosed, my P.C.R. for filing.
 Would you please send the Pcty Gen Office a
 copy and return me a file copy back.

Thank you

Sincerely
Corey Larkin

PROOF OF SERVICE

I Corey Larkin certify that I have served my
 P.C.R. on the above clerk of Ct. By placing the above said
 in the Me Corr. Just. mail room on this 24 day of Jan 2012
 to be placed in the U.S. mail with postage prepaid

SWORN to and subscribed before me
 this 24 day of January 2012

Franklin
 Notary Public

My Commission Expires 12-16-2019

Corey Larkin
 Applicant

FILED
2013 MAY 10 PM 2:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON
County of Charleston	)	PLEAS
	)	
Corey Nelson Larkin	)	CA No. 2012-CP-10-00633
	)	
Applicant,	)	
vs.	)	
	)	AMENDED APPLICATION FOR
	)	
State of South Carolina	)	POST-CONVICTION RELIEF
	)	
Respondent.	)	

1. Place of Detention: McCormick Correctional Institution, 386 Redemption Way, McCormick, SC.

2. Name and location of Court which imposed sentence: Charleston County Court of General Sessions.

3. Name(s) of co-defendant(s) (if any):

Joshua Monroe

Bryan Leon Mulligan

4. The indictment number or numbers upon which and the offense or offenses for which sentence was imposed:

(a) First Degree Criminal Sexual Conduct: 2008-GS-10-8151

(b) Three (3) counts of Kidnapping: 2008-GS-10-8153, -8114, -8063

(c) Three (3) counts of Armed Robbery: 2008-GS-10-8157, -8117,

-7831

- (d) Assault and Battery of a High and Agg. Nature: 2008-GS-10-7832
- (e) Attempted Armed Robbery: 2008-GS-10-8062

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

- (a) First Degree Criminal Sexual Conduct: Twenty five (25) years on February 3, 2011.
- (b) Three (3) counts of Kidnapping: Twenty five (25) years on February 3, 2011.
- (c) Three (3) counts of Armed Robbery: Twenty five (25) years on February 3, 2011.
- (d) Assault and Battery of a High and Aggravated Nature: Ten (10) years on February 3, 2011.
- (e) Attempted Armed Robbery: Twenty (20) years on February 3, 2011.

6. A finding of guilty was made after a plea of guilty.

7. The applicant did not appeal from judgment of conviction or the imposition of sentence.

8. (a) The Courts to which applicant appealed:

Not applicable

(b) The result in each Court to which applicant appealed:

Not applicable

(c) The date of each result:

Not applicable

(d) Citations of any written opinion or orders entered pursuant to such results: Not applicable

9. If you answered "no" to (7), state your reasons for not so appealing: Applicant was interested in appealing his guilty plea, however, an appeal was not filed.

10. & 11. GROUND FOR RELIEF WITH SUPPORTING FACTS

10(a) Applicant's was denied his right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law and, as a result, the conviction and sentence received was in violation of the United States and state of South Carolina Constitutions. This was caused by counsel's failure to reasonably investigate the case, seek a continuance to allow time for a proper investigation, or discuss on a substantive level possible defense strategies.

11(a) Counsel has a duty via the Sixth Amendment of the United States Constitution to "investigate, because reasonably effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options." Strickland v. Washington, 466 U.S. 668, 680, 104 S.Ct. 2052, 2060 (1984). Counsel did not analyze or discuss with applicant possible defense strategies that could have been presented during a trial on the merits. In a guilty plea case "where the alleged error of counsel [106 S.Ct. 371] is a failure to investigate or discover potentially exculpatory evidence, the determination whether the error "prejudiced" the defendant by causing him to plead guilty rather than go to trial will depend on the likelihood that discovery of the evidence would have led counsel to change his recommendation as to the plea. This assessment, in turn, will depend in large part on a prediction whether the evidence likely would have changed the outcome of a trial." Id. at 59, 106 S.Ct. at 370-371. Without a proper investigation counsel could not have reasonably determined that accepting a plea offer and admitting guilt was in the applicant's best interest. "Strickland does not establish that a cursory investigation automatically justifies a tactical decision ... [r]ather, a reviewing court must consider the reasonableness of the investigation said to support that strategy." Wiggins v. Smith, 539 U.S. 510, 527, 123 S.Ct. 2527, 2538 (2003). But for counsel's lack of investigation, applicant would not have pled guilty and would have insisted on going to trial.

10(b) Applicant's was denied his right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law and, as a result, the conviction and sentence received was in violation of the United States and state of South Carolina Constitutions. This was caused by counsel's failure

to discuss potential defense strategies with applicant or identify important witnesses, including alibi and expert witnesses that would be able to testify on the applicant's behalf.

11(b) Defense attorneys are under a duty to "undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Edwards v. State, 710 S.E.2d 60, 64, 392 S.C. 449, 456 (S.C. 2011). The Fourth Circuit emphasizes the importance of investigating key witnesses by stating "[t]his and other courts have held an attorney's representation deficient when he failed to contact and interview important prospective witnesses, especially when they were readily available or had been identified by the defendant prior to trial[] . . . [m]ost of them involve alibi witnesses or eyewitnesses critical to the determination of guilt[.]" Huffington v. Nuth, 140 F.3d 572, 580 (4th Cir. 1998). "The duty to investigate a potential witness is even more critical when the witness might provide an alibi. Accordingly, the Sixth Amendment requires that criminal defense attorneys thoroughly investigate potential alibi witnesses." Walker v. State, 723 S.E.2d 610, 615, 397 S.C. 226, 235 (S.C.App. 2012).

Applicant provided PCR counsel with the name of a potential alibi witness to one or more of the incidents for which he is charged. There is no evidence that defense counsel conducted any alibi witness inquiry. If counsel had investigated the alibi defense, and decided that there was no strategic reason to pursue the matter rather than conduct no alibi inquiry then defense counsel would have made a reasonable strategic decision. See Walker 723 S.E.2d at 615, 397 S.C. at 236. Strickland states that "strategic choices made after thorough investigation of law and facts relevant to plausible options are virtually unchallengeable; and strategic choices made after less than complete investigation are reasonable precisely to the extent that reasonable professional judgments support the limitations on investigation. In other words, counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary." Strickland v. Washington, 466 U.S. 668, 690-691, 104 S.Ct. 2052, 2066 (1984). But for counsel's errors, applicant would not have pled guilty and would have insisted on going to trial.

10(c) Applicant's was denied his right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law and, as a result, the conviction and sentence received was in violation of the United States and state of South Carolina Constitutions. Counsel did not inquire into or cure applicant's state of confusion during the guilty plea hearing thereby rendering applicant's plea not knowing, intelligent, or voluntary.

11(c) The U.S. Supreme court states that "[s]everal federal constitutional rights are involved in a waiver that takes place when a plea of guilty is entered in a state criminal trial. First is the privilege against compulsory self-incrimination guaranteed by the Fifth Amendment and applicable to the States by reason of the Fourteenth." Boykin v. Alabama, 395 U.S. 238, 243, 89 S.Ct. 1709, 1712 (1969). At applicant's guilty plea hearing the court explained his privilege against self-incrimination by stating "You can testify if you want. If you don't want to testify, the judge will tell the jury they're not to hold that against you while deliberating." Transcript of Record November 9, 2010, Larkin guilty plea, at 8. At one point the court asked the applicant his level of education, the exchange was as follows: "THE COURT: How far did you get in school? THE DEFENDANT: Ninth grade." (Larkin tr. at 14.) Applicant argues that his counsel's performance was ineffective due to not asserting that in light of applicant's level of education the explanation given regarding his privilege against self-incrimination was insufficient to convey the essence of the constitutional right being waived.

A further analysis of Boykin was provided by State v. Lambert, where the South Carolina Supreme Court explained that "[t]he test established by Boykin v. Alabama ... is whether the record establishes that a guilty plea was voluntarily and understandingly made. If the record shows that the plea was so entered, then it is not silent as to the waiver of his constitutional rights: We do not read Boykin ... to require that the trial judge direct the defendant's attention to each and every constitutional[266 S.C. 579] right and obtain a separate waiver of each. ... We believe that an enumeration of specific rights waived is not required where the record otherwise reveals affirmative awareness of the consequences of a guilty plea. (citations

omitted). State v. Lambert, 225 S.E.2d 340, 342, 266 S.C. 574, 578-79 (S.C. 1976).

In State v. Armstrong the South Carolina Supreme Court recognized the conclusiveness of a plea of guilty if adequate assurances are in place that the applicant understands the rights being waived. "The judge must [sic] be certain that the defendant understands the charge and the consequences of the plea and that the record indicates a factual basis for the plea. The court must give the defendant adequate warning of the consequences of the plea in every case. The court's warning should include an explanation of the defendant's waiver of constitutional rights[.]" State v. Armstrong, 211 S.E.2d 889, 891, 263 S.C. 594, 598 (S.C. 1975).

Approximately mid-way through the guilty plea hearing, after the court's explanation of the constitutional rights that the applicant was waiving by pleading guilty, counsel stated that she believed the applicant to be confused. The following exchange was prompted by the court asking applicant if he needed more time with his attorney. "THE COURT: Do you need any more time with [Ms. Runey]? MS. RUNEY: I think it's confusion." (Larkin tr. at 13.) Counsel did not determine the reason for applicant's confusion, the hearing continued, and the court accepted a plea of guilty.

In McCarthy the U.S. Supreme court stated that "[t]o the extent that the district judge thus exposes the defendant's state of mind on the record through personal interrogation, he not only facilitates his own determination of a guilty plea's voluntariness, but he also facilitates that determination in any subsequent post-conviction proceeding based upon a claim that the plea was involuntary. Both of these goals are undermined in proportion to the degree the district judge resorts to "assumptions" not based upon recorded responses to his inquiries." McCarthy v. United States, 394 U.S. 459, 89 S.Ct. 1166, 1171 (1969), superseded on other grounds by United States v. Gochis, 256 F.3d 739, 746 (7th Cir. 2001). In response to questions asked of him at the guilty plea hearing, applicant said very little other than yes sir and no sir and was not required to expound on his level of understanding of the proceeding, or the constitutional rights he was waiving.

In order to satisfy the Boykin requirements South Carolina's Supreme Court has held that "[t]o knowingly and voluntarily enter a plea of guilty, all that is required is that a defendant have a full understanding of the consequences of his plea and of the charges against him. In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing[] ... this standard by necessity provides little guidance, because there are a multitude of factors that could affect a defendant's understanding of the consequences of a plea, and it is the trial judge's responsibility to expose and address those factors on the record." (citations omitted.) Simpson v. State, 455 S.E.2d 175, 176, 317 S.C. 506, 508 (S.C. 1995).

Applicant maintains that the colloquy at his guilty plea hearing does not reflect compliance with the Boykin rule and asserts that his guilty plea was accepted without an adequate understanding of the constitutional rights being waived, or a reasonable understanding of the consequences of his plea. Reality not ritual should determine whether a guilty plea is knowing, intelligent, and voluntary. See Kennedy v. United States, 397 F.2d 16, 17 (6th Cir. 1968). The Supreme Court found that the two-part Strickland v. Washington test is applicable to challenge the validity of a guilty plea when claiming ineffective assistance of counsel. See Hill v. Lockhart, 474 U.S. 52, 58, 106 S.Ct. 366, 370 (1985). "In the context of guilty pleas, the first half of the Strickland v. Washington test is nothing more than a restatement of the standard of attorney competence already set forth in Tollett v. Henderson, *supra*, and McMann v. Richardson, *supra*. The second, or "prejudice," requirement, on the other hand, focuses on whether counsel's constitutionally ineffective performance affected the outcome of the plea process. [I]n order to satisfy the "prejudice" requirement, the defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pleaded guilty and would have insisted on going to trial." Id. at 58-59, 106 S.Ct. at 370. Because of counsel's ineffectiveness applicant was forced to accept a plea offer and abandon his constitutional right to trial by jury and if not for counsel's errors, applicant would have pled not guilty and insisted on going to trial.

10(d) Applicant's was denied his right to effective assistance of counsel as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and South Carolina law and, as a result, the conviction and sentence received was in violation of the United States and

state of South Carolina Constitutions. Because of counsel's ineffectiveness applicant was denied his right to an appeal.

11(d) On August 29, 2011 applicant wrote Charleston County Assistant Public Defender Victoria L. Anderson asking the status of his direct appeal having been informed that Ms. Anderson was assigned to handle that appeal. On September 29, 2011 applicant wrote to his former counsel Ms. Martha Kent Runey stating that his grandmother was informed that he had a direct appeal filed and that a lawyer was appointed to represent him, but, as of yet had not received any official notification regarding filing of his appeal or appointment of an attorney. In that letter he asked Ms. Runey if she could find out if his appeal had been filed. On November 8, 2011 Ms. Runey asked her assistant Latasha if she could find out if an appeal was filed and if so, who was the attorney for the applicant. The answer came back that an appeal was not filed and Ms. Runey was listed as his attorney.

The South Carolina Supreme Court in the Weathers decision adopted "the holding of the majority of courts that, absent extraordinary circumstances, there is no constitutional requirement that a defendant be informed of the right to a direct appeal from a guilty plea." Weathers v. State, 459 S.E.2d 838, 839, 319 S.C. 59, 61 (S.C. 1995). The Court goes on to say that "[t]he bare assertion that a defendant was not advised of appellate rights is insufficient to grant relief. Instead, there must be proof that extraordinary circumstances exist such that the defendant should have been advised of the right to appeal." Id. at 839, 319 S.C. at 61. Further, the court explains that "[o]ne extraordinary circumstances which would require counsel to advise a defendant of the right to appeal from a guilty plea would arise when the defendant inquires about an appeal." Id. at 839, 319 S.C. at 61.

Here we have applicant concerned about his right to appeal and believing that an appeal had been filed tried to get information on its status when in fact the record shows that no appeal was filed on his behalf. This shows that applicant was seriously interested in his constitutional right to appeal his guilty plea. If applicant was interested in his right to appeal then

an appeal should have been discussed and acted on or discussed and knowingly and intelligently waived. The record shows no discussion of the right to appeal between applicant and his counsel or of any discussion of waiver of that right, however, the applicant's interest in appealing his guilty plea is documented by his letters of inquiry regarding this subject which can be found in his case file. Due to counsel's errors, applicant was denied his constitutional right to appeal.

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 petitioners, if any already specified in (8)? No
- (d) any other petitions, motions or applications in this or any other Court? Yes

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

- (a) the specific nature thereof:
 - i. Motion for reconsideration?
- (b) the name & location of Court in which each was filed:
 - i. General Sessions, Charleston County?
- (c) the disposition thereof:
 - i. pending?
- (d) the date of each such disposition:
 - i. not applicable
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. unknown

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. not applicable

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

i. not applicable

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) Failure to reasonably investigate the case, seek a continuance to allow time for a proper investigation, or discuss on a substantive level possible defense strategies.

First time presenting ground.

(b) Failure to discuss potential defense strategies with applicant or identify important witnesses, including alibi and expert witnesses that would be able to testify on the applicant's behalf.

First time presenting ground.

(c) Counsel did not inquire into or cure applicant's state of confusion during the guilty plea hearing thereby rendering applicant's plea not knowing, intelligent, or voluntary.

First time presenting ground.

(d) Applicant was denied his right to an appeal.

First time presenting ground.

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 trial.

(c) your sentencing? Yes.

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No appeal.

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

18. Applicant was represented by:

Martha Kent Runey before the plea and at the guilty plea hearing. Office location: 101 Meeting Street, 5th floor, Charleston SC 29401

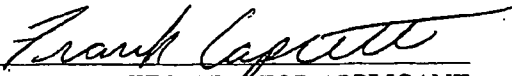
David Haselden at the sentencing hearing. Office location: 101 Meeting Street, 5th floor, Charleston SC 29401

19. Applicant seeks relief from his convictions and sentences, revocation/withdrawal of his guilty plea, a trial on the merits, an appeal of his guilty plea, as well as any other relief he may be entitled to.

20. Applicant is not under sentence from any other court.

Respectfully submitted,

FRANK CAPRETTI
The Capretti Law Firm, LLC
29 Gamecock Avenue, Suite 100
Charleston, SC 29407
Ph. 843-452-8496

BY: 

ATTORNEY FOR APPLICANT

May 9, 2013

STATE OF SOUTH CAROLINA)
)
 County of Charleston)
)
 Corey Nelson Larkin)
)
 Applicant,)
 vs.)
)
 State of South Carolina)
)
 Respondent.)

IN THE COURT OF COMMON
 PLEAS

CASE NO: 2012-CP-10-00633

CERTIFICATE OF SERVICE

FILED
 2013 MAY 10 PM 2:02
 JULIE J. ARMSTRONG
 CLERK OF COURT

I, Counsel for Corey Nelson Larkin, hereby certify that I have served upon the attorney for the respondent one (1) copy of applicant's Amended Application for Post-Conviction Relief in the above-captioned case by depositing a copy of same in the United States Mail, first class, postage pre-paid, addressed as follows:

The Honorable Alan Wilson
 South Carolina Attorney General's Office
 P.O. Box 11549
 Columbia, S.C. 29211


 COUNSEL FOR COREY NELSON LARKIN

Frank Capretti, Esq.
 The Capretti Law Firm, LLC
 29 Gamecock Avenue, Suite 100
 Charleston, SC 29407
 Ph. 843-452-8496

May 9, 2012

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

C.A. No. 2012-CP-10-0633

Corey Larkin,
S.C.D.C. No. 344734,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

RETURN

FILED

2012 NOV 13 PM 3:04

JULIE J ARMSTRONG
CLERK OF COURT

BY *[Signature]*

In response to the post-conviction relief application filed January 27, 2012, the Respondent would show this Court:

I.

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to the Charleston County Clerk of Court's orders of commitment. The Applicant was indicted at the October 2008 term of the Charleston County Grand Jury for first degree criminal sexual conduct (2008-GS-10-8151), five (5) counts of kidnapping (2008-GS-10-8153, -8154, -8114, -8115, -8063), five (5) counts of armed robbery (2008-GS-10-8155, -8156, -8157, -8117, -7831), assault and battery of a high and aggravated nature (2008-GS-10-7832), attempted armed robbery (2008-GS-10-8065), second-degree burglary (2008-GS-10-8116, -8158), and possession of a weapon during the commission of a violent crime (2008-GS-10-8066, -8118, -8152). The Applicant was also indicted by the Dorchester County Grand Jury for two (2) counts of armed robbery (2008-GS-18-1072, 1080) and two (2) counts of kidnapping (2008-GS-18-978, 1071). David Haselden and Martha Kent Runey, Esquires, represented the Applicant.

On November 9, 2010, the Applicant pled guilty. On February 3, 2011, the Honorable

Roger M. Young, Sr. sentenced the Applicant to concurrent terms of twenty-five (25) years imprisonment for first degree criminal sexual conduct, five (counts) of kidnapping, and five (5) counts of armed robbery. The Applicant was also sentenced to concurrent terms of ten (10) years imprisonment for ABHAN and twenty (20) years imprisonment for attempted armed robbery.¹ The Applicant did not appeal.

Attached herewith and incorporated herein by reference are the records of the Charleston County Clerks of Court regarding the subject convictions and the Applicant's records from the South Carolina Department of Corrections. The Respondent reserves the right to amend this Return if any further relevant information is obtained.

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. Counsel failed to conduct a proper investigation.
 - b. Counsel failed to subpoena witnesses.
 - c. Counsel failed to tell Applicant he would be able to attack co-defendants' credibility at trial.
 - d. Counsel failed to tell Applicant he could file a motion for separation, if he went to trial.
 - e. Counsel failed to properly communicate with Applicant.
2. Involuntary guilty plea.
 - a. Applicant would have gone to trial if counsel had adequately prepared and researched the case.

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

¹ The Applicant's second-degree burglary charges, possession of a weapon during the commission of a violent crime charges, two (2) counts of kidnapping, and two (2) counts of armed robbery were *nolle prossed* in exchange for the

well within the standard of "reasonableness within professional norms" for a criminal 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) (citing Strickland v.

Applicant's plea to the other charges.

Washington, 466 U.S. 668, 104 S. Ct. 2052 (1984)).

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) (citing Drayton v. Evatt, 312 S.C. 4, 9, 430 S.E.2d 517, 520 (1993)). 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) (citing State v. Ray, 310 S.C. 431, 437, 427 S.E.2d 171, 174 (1993)).

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).

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

COREY LARKIN, #344734

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

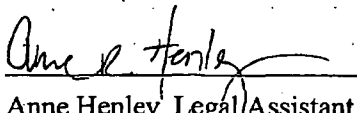
2012-CP-10-0633

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:

Frank Capretti, Esquire
 The Capretti Law Firm, LLC
 29 Gamecock Ave
 Ste 100
 Charleston, SC 29407-3366

DATED this 9th day of November 2012


 Anne Henley, Legal Assistant
 For Respondent

FILED
 2012 NOV 13 PM 3:04
 JULIE J ARMSTRONG
 CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Corey Larkin,)
 S.C.D.C. No. 344734,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

IN THE COURT OF COMMON PLEAS
 C.A. No. 2012-CP-10-0633

AMENDED RETURN

FILED
 2013 FEB -5 PM 1:15
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____

In response to the post-conviction relief application filed January 27, 2012, the Respondent would show this Court:

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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

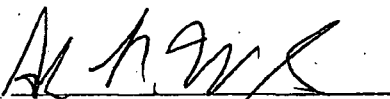
JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

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

By:


Attorneys for Respondent

January 31, 2013

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

2012-CP-10-0633

COREY LARKIN, #344734

Applicant,

vs

AFFIDAVIT OF SERVICE BY MAIL

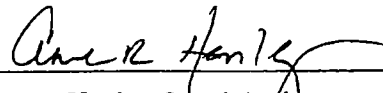
STATE OF SOUTH CAROLINA,
Respondent.

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

Frank Capretti, Esquire
The Capretti Law Firm, LLC
29 Gamecock Ave
Ste 100
Charleston, SC 29407-3366

FILED
2013 FEB -5 PM 1:15
JULIE J. ARMSTRONG
CLERK OF COURT

DATED this 1st day of February 2013



Anne Henley, Legal Assistant

For Respondent



ALAN WILSON
ATTORNEY GENERAL

February 1, 2013

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, SC 29401

Re: Corey Larkin, #344734 v. State of South Carolina
2012-CP-10-0633

Dear Ms. Armstrong:

Enclosed please find the original **Amended** Return of the Respondent, in the above-captioned case, for filing in your office.

Sincerely,

Ashleigh R. Wilson
Assistant Attorney General

ARW/arh

Enclosure

cc: Frank Capretti, Esquire

STATE OF SOUTH CAROLINA	)	
	)	COURT OF GENERAL SESSIONS
COUNTY OF CHARLESTON	)	
Corey Larkin,	)	
	)	
Applicant,	)	
	)	
v.	)	Case No. 12-CP-10-0633
	)	
State of South Carolina,	)	
	)	
Defendant	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on May 22, 2013, before The Honorable Deadra L. Jefferson, in Courtroom 3B of the Charleston County Courthouse, 100 Broad Street, Charleston, South Carolina; attended by counsel as follows:

APPEARANCES:

Ashleigh Wilson, Assistant Attorney General
OFFICE OF THE ATTORNEY GENERAL
.... Appearing for State

Frank Capretti, Esq.
...Appearing for Applicant

Deborah Garrison
Circuit Court Reporter – 9th Judicial Circuit
- P.O. Box 901 -
Johns Island, South Carolina 29457
dgarrison@sccourts.org

Corey Larkin v State of South Carolina

2

Case No. 12-CP-10-0633

Hearing of May 22, 2013

Before The Honorable Deadra L. Jefferson

INDEX OF TESTIMONY

Corey Larkin	20
Martha Kent Runey	46

INDEX OF APPLICANT'S EXHIBITS

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2	Letter	34

Corey Larkin v State of South Carolina

3

Case No. 12-CP-10-0633

Hearing of May 22, 2013

Before The Honorable Deadra L. Jefferson

1 THE COURT: This is Case Number 12-
2 CP-10-0633. It's an application for post-
3 conviction relief that was filed by the
4 Applicant on January 27, 2012. A return was
5 filed on November 15th, 2012 and an amended
6 return was filed on February 25th, 2013.

7 MS. WILSON: Your Honor, with regard
8 to that, I also would like to put on the
9 record.

10 THE COURT: Go ahead.

11 MS. WILSON: In this matter this
12 application for post-conviction relief is
13 only challenging the Charleston County
14 charges. Originally it was challenging the
15 Charleston and the Dorchester County
16 charges. So I communicated with Mr.
17 Capretti about going ahead and putting them
18 all together, but subsequent to that Mr.
19 Larkin filed a petition for post-conviction
20 relief in Dorchester County. It's kinda of
21 hard to merge the two separate counties, so
22 we are going to have separate applications
23 with the same circumstances, in two
24 different counties.

25 THE COURT: All right. Okay. It

Corey Larkin v State of South Carolina

Case No. 12-CP-10-0633

Hearing of May 22, 2013

Before The Honorable Deadra L. Jefferson

4

1 appears from the record that the applicant
2 was originally charged with first degree
3 criminal sexual conduct in 08-8151; five
4 counts of kidnapping: 08-8153, 8154, 8114,
5 8115 and 8063; five counts of armed robbery:
6 2008-8155, 8156 and 8157, 8117 and 7301;
7 assault and battery of a high and aggravated
8 nature 2008-7832; attempted armed robbery:
9 2008-8065; second degree burglary, 2008-8116
10 through 8158. So that was like how many
11 indictments? That's -- is it 8116 and 8158?
12 Or Indictments 8116 through 8155.

13 MS. WILSON: "And", Your Honor.

14 THE COURT: Okay. So it would be
15 second degree burglary, two counts: 8116
16 and 8158. Possession of a weapon during the
17 commission of a violent crime, three counts:
18 2008-8066, 8118 and 8152.

19 On November 9th he pled guilty, November
20 the 9th, 2010. On February 11th, 2011, Judge
21 Young sentenced him to concurrent terms of
22 twenty-five years for first degree criminal
23 sexual conduct, on three counts of
24 kidnaping, three counts of armed robbery.
25 He was also sentenced to concurrent terms of

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1 ten years for ABHAN and twenty years for
2 attempted armed robbery.

3 So it would appear then that two counts
4 of kidnaping were *nol prossed*, two counts of
5 armed robbery were *nol prossed*, -- so it
6 looks like two counts of kidnaping were *nol*
7 *prossed*, two counts of armed robbery were
8 *nol prossed* and -- I can't read this, just
9 need to make sure what this is. Okay, I
10 see.

11 And he pled guilty on one of the ABHAN,
12 which was as-charged, and one count of
13 attempted armed robbery, which also was as-
14 charged.

15 The two second degree burglaries were
16 *nol prossed*.

17 The possession of a weapon during the
18 commission of a violent crime, three counts
19 were *nol prossed*.

20 So that would be a total of what?
21 Three, five, eight - eight *nol prossed*.

22 Mr. Capretti, you represent Mr. Larkin,
23 is that correct

24 MR. CAPRETTI: Yes, Your Honor.

25 THE COURT: Have you explained to him

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1 the nature of what post-conviction relief
2 is?

3 MR. CAPRETTI: Yes, Your Honor.

4 THE COURT: Have you explained to him
5 that this is a civil proceeding? That the
6 court does not retry the case?

7 MR. CAPRETTI: Yes, I have.

8 THE COURT: Have you explained to him
9 that the best result that could be achieved
10 in such a case would be a new trial?

11 MR. CAPRETTI: Yes, Your Honor.

12 THE COURT: And have you explained to
13 him that if he were to receive a new trial
14 that all the charges that were *nol prossed*
15 the State could reinstitute against him?

16 MR. CAPRETTI: Yes, ma'am.

17 THE COURT: And have you explained to
18 him that that subjects him to life without
19 the possibility of parole?

20 MR. CAPRETTI: (Affirmative nod), we
21 have had that discussion.

22 THE COURT: Sir, stand for me and
23 raise your right hand to be sworn.

24 MR. CAPRETTI: Your Honor, before we
25 ---

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1 THE COURT: Yes, sir?

2 MR. CAPRETTI: Mr. Larkin mentioned
3 to me this morning that he would like a
4 continuance.

5 THE COURT: What is the basis of
6 that request?

7 MR. CAPRETTI: As I understand, it's
8 an issue that he would like to explore that
9 has not been explored and/or further
10 exploration of the issues needs discussion.

11 THE COURT: Are you ready to move
12 forward today?

13 MR. CAPRETTI: From the brief
14 discussion that we had this morning, and we
15 did discuss it at length at Kirkland. I
16 went out there about noon and we discussed
17 it for five or six hours or more. We talked
18 about all of his charges. We talked until
19 he was going to be late for dinner if we
20 talked any longer, so -- it was about a
21 five- or six-hour period that we covered.

22 But, like I said, in the brief time
23 that we had this morning -- and I couldn't
24 look at his paperwork through the glass.
25 But I believe -- I believe that it's an

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1 - issue that we talked about, but I will let
2 Mr. Larking explain.

3 THE COURT: Well, I -- you know, is
4 it -- is it something that you've already
5 gone over and you've already -- my question
6 is, are you ready to go forward? Because he
7 doesn't determine whether you're ready.

8 MR. CAPRETTI: Well, I am appearing
9 on the basis of what we discussed.

10 THE COURT: Have you been able to
11 look at the papers that he showed you
12 through the window, so that you can
13 determine if there is something or not.

14 MR. CAPRETTI: Well, we have been
15 making contact through the mail. I've sent
16 him about thirteen letters and he's sent me
17 letters in response.

18 THE COURT: Okay.

19 MR. CAPRETTI: The last communica-
20 tion was when I sent him the amended return.

21 THE COURT: Okay.

22 MR. CAPRETTI: I didn't hear any-
23 thing back after that until this morning.
24 So I am concerned ---

25 THE COURT: Well, you said that y'all

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1 were talking and he was trying to show you
2 something through the glass but that you
3 couldn't see it.

4 MR. CAPRETTI: Right.

5 THE COURT: If he could give that to
6 you now, so that you can look at it and see
7 if it is something new or if it something
8 that you've already investigated.

9 MR. CAPRETTI: Yes, ma'am.

10 APPLICANT: (Sidebar with Mr.
11 Capretti).

12 MR. CAPRETTI: Your Honor, I would
13 need to investigate the law on this issue.

14 THE COURT: What is the issue?

15 MR. CAPRETTI: Well, he's saying
16 that his conviction was involuntary, that he
17 was intoxicated at the time, that it was a
18 violation in the way that the, uh, ---

19 THE COURT: I guess I am trying to
20 figure out what you need to investigate
21 about that. You just need to ask questions
22 about whether or not he did in fact disclose
23 that, if his attorney had an opportunity to
24 investigate it and whether or not there were
25 grounds for a Motion to -- whether his plea

1 was freely and voluntary.

2 MR. CAPRETTI: Well, we did discuss
3 the issue of intoxication. At the time when
4 we were at the institution and having that
5 discussion, I couldn't find any evidence
6 presented that, uh, ---

7 THE COURT: That corroborated what he
8 was telling you?

9 MR. CAPRETTI: Yes.

10 THE COURT: I think that you should
11 be able to question Ms. Runey about that and
12 whether it came up. You know, this is about
13 ineffective assistance. It is not about --
14 you know, the issue is whether in fact if
15 Ms. Runey was told about that issue she
16 didn't have an opportunity to investigate
17 it. Whether there was an basis for a Motion
18 to suppress or she otherwise failed to
19 pursue that, not whether in fact he was
20 intoxicated when he gave his statement.
21 That is not going to be a basis for
22 invalidating the plea based on post-
23 conviction relief.

24 I am seeing what I find to be a
25 troubling trend of trying to -- because I

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1 can see this as dilatory in some ways. Not
2 on your behalf but -- as word spreads, you
3 know, at an institution, it's very interest-
4 ing how that happens. It's very expensive
5 to bring inmates three or four times and I
6 don't to do that. It's just too expensive.
7 Not when we don't have to.

8 So we can go forward today. Then I
9 want you to investigate, as much as
10 possible, that issue through Ms. Runey. We
11 will see if there is any need to go further
12 with it, if we need to supplement the record
13 with it. I'm not inclined to grant a
14 continuance.

15 MR. CAPRETTI: I understand,
16 Your Honor. If that is the case, we would
17 ask for an opportunity to supplement the
18 record at some point after investigation. I
19 am not sure that it would do Mr. Larkin
20 justice, a cursory viewing of this, uh, what
21 he brought today. I would like the chance
22 to supplement the record.

23 THE COURT: Once we investigate it
24 further, we will return to this and I'll
25 determine whether it is necessary to

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1 supplement the record. You know, this is a
2 very limited inquiry. It's about
3 ineffective assistance of counsel. It's not
4 a posture for him to retry the case.

5 MR. CAPRETTI: I understand, Your
6 Honor.

7 THE COURT: Sir, I need you to stand
8 for me and raise your right hand to be
9 sworn.

10 APPLICANT: (Complies).

11 THE COURT: Do you swear or affirm
12 that the testimony that you give will be the
13 truth?

14 APPLICANT: Yes.

15 THE COURT: Put your right hand down,
16 sir. State your full name for the record.

17 APPLICANT: Corey Larkin.

18 THE COURT: Sir, how old are you?

19 APPLICANT: Twenty-three.

20 THE COURT: How far did you go in
21 school?

22 APPLICANT: Ninth grade. I have my
23 GED.

24 THE COURT: Did you have a full
25 opportunity to meet with MR. Capretti?

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1 APPLICANT: Not really.

2 THE COURT: You met with him for four
3 to six hours in the institution. That's
4 longer than most folk get. Are you telling
5 me that you didn't have time to go over that
6 voluminous file with him?

7 APPLICANT: Not the information that
8 I ---

9 THE COURT: That was not my question.
10 Did you have an opportunity when he was at
11 the institution to go over everything that
12 he had available, with him, at that time?

13 APPLICANT: (No verbal response).

14 THE COURT: That is a yes or no.

15 APPLICANT: No.

16 THE COURT: Mr. Capretti, is that
17 accurate?

18 MR. CAPRETTI: Well, I brought the
19 entire file that's in this bag and ---

20 THE COURT: And you went over it with
21 him?

22 MR. CAPRETTI: Sat it on the table
23 and we went through -- in six hours we
24 couldn't look at every single sheet, ---

25 THE COURT: Exactly.

1 MR. CAPRETTI: --- but we did cover
2 the entire file.

3 THE COURT: Did you meet with Mr.
4 Capretti for six hours?

5 APPLICANT: Not for six hours.

6 THE COURT: He's not telling me the
7 truth, as an officer of the court?

8 APPLICANT: It was not six hours.

9 MR. CAPRETTI: It was five to six.

10 THE COURT: Well, I can tell you that
11 you met with him more hours than most folk
12 do. Most folk go up there for about an
13 hour, if they get to see their client, and
14 come back. They are not as meticulous as
15 you have been. So I find it a little
16 incredulous that -- I believe that you -- I
17 believe that you went over it as much as you
18 could with him.

19 So, sir, with that now being clear, did
20 Mr. Capretti go over all those documents
21 with you when he came to the institution?

22 APPLICANT: We're in agreement.

23 THE COURT: What do you mean we're in
24 agreement?

25 APPLICANT: We are in agreement.

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1 THE COURT: That is not my question.
2 Did you go over the documents with -- did he
3 sit down with you in a meeting room at the
4 institution, with that file, and go through
5 those documents with you?

6 APPLICANT: (No verbal response).

7 THE COURT: Please don't hedge your
8 answer. I need a direct answer.

9 APPLICANT: Yes.

10 THE COURT: Did he explain to you
11 what a post-conviction relief action is?

12 APPLICANT: Yes.

13 THE COURT: And do you understand
14 that this is a civil proceeding?

15 APPLICANT: Yes.

16 THE COURT: Do you understand that
17 this is not a criminal proceeding?

18 APPLICANT: Yes.

19 THE COURT: Do you understand that
20 the only thing that this court can do is not
21 to retry this case but -- do you understand
22 that?

23 APPLICANT: Yes.

24 THE COURT: Do you understand that
25 the only relief that you can get is that you

1 could get a new trial on all of the indict-
2 ments that you had, not just the ones that
3 you pled guilty to?

4 APPLICANT: Yes.

5 THE COURT: And do you understand
6 that court's inquiry on a post-conviction
7 relief hearing is limited to whether your
8 counsel was effective or ineffective?

9 APPLICANT: Yes.

10 THE COURT: Do you understand that if
11 I were to grant the relief that you
12 requested, that is to vacate your guilty
13 plea based on your representations in the
14 post-conviction relief application that it
15 was not voluntarily given or intelligently
16 made, that the only relief that you would
17 get would be a new trial or a new guilty
18 plea on all of the indictments that were
19 pending against you; which is:

20 Criminal sexual conduct, five
21 counts of kidnaping, five counts of robbery,
22 one count of assault and battery of a high
23 and aggravated nature, one count of
24 attempted armed robbery, one count of second
25 degree burglary, and three counts of

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1 possession of a weapon during the commission
2 of a violent crime.

3 Do you understand that?

4 APPLICANT: Yes.

5 THE COURT: Do you understand that
6 the CSC, the criminal sexual conduct, as
7 well as just one of the kidnappings are most
8 serious offense?

9 APPLICANT: Yes.

10 THE COURT: Let me check kidnapping.
11 I know that armed robbery is most serious,
12 that attempted armed robbery is most
13 serious, -- (reviewing) -- yes, it is most
14 serious.

15 Do you understand that it is this
16 Solicitor's Office's position, as well as
17 most solicitors in the state that if you
18 were to get a new opportunity, that they
19 would simply try you on each of these
20 indictments and would seek life without the
21 possibility of parole?

22 APPLICANT: Yes.

23 THE COURT: Do you understand that
24 life without the possibility of parole in
25 South Carolina means life? It means serving

1 a life sentence, day for day, until you
2 expire from this earth?

3 APPLICANT: Yes.

4 THE COURT: Do you still wish to
5 proceed with this post-conviction relief
6 application?

7 APPLICANT: What about ---

8 THE COURT: I didn't hear you.

9 APPLICANT: I wanted to -- I wish
10 to speak with you about on moving for a
11 continuance.

12 THE COURT: Sir, I have already ruled
13 on the continuance. Do you wish to go
14 forward with this post-conviction relief
15 application, understanding that if you were
16 granted the relief that you requesting, that
17 the State could go back and you'd start over
18 from square one. That means that you will
19 start with all of the original indictments
20 that you originally faced. The ones that
21 were dismissed, they will revive those, so
22 to speak, and they will be pending against
23 you. Which means that you will have more
24 significant exposure than that which you
25 pled to back in November of 2010.

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1 APPLICANT: Yes.

2 THE COURT: I need you to be clear
3 about that. Are you suffering from any
4 mental disabilities or are you under the
5 influence of any alcohol?

6 APPLICANT: No, ma'am.

7 THE COURT: Is anyone forcing you to
8 go forward with this application?

9 APPLICANT: Yes, I am being forced.

10 THE COURT: How?

11 APPLICANT: Because I have not stated
12 my case. Right now is not the time to
13 appear.

14 THE COURT: Sir, that is not your
15 call. That is the court's call and that's
16 Mr. -- you have a lawyer. We don't
17 recognize hybrid representation in South
18 Carolina. It's your job to tell him what
19 you need to tell him. It's his job to
20 handle the legal aspects of it. It's not
21 a joint case where you and he both are
22 proceeding on it. If you want to, you can
23 represent yourself. But he has said that he
24 is ready and at this point I perceive that
25 he is prepared to go forward.

1 My question is not whether we are to go
2 forward today. My question is whether or
3 not somebody forced you against your will,
4 knowing that you could face greater
5 exposure, that being life without the
6 possibility of parole, to go forward with
7 this application?

8 APPLICANT: No.

9 THE COURT: Okay. I am asking
10 these questions because I need a
11 contemporaneous record in the event that you
12 receive the relief that you are requesting
13 and you end up facing the worst case
14 scenario, the possibility of life without
15 parole. I don't want you to file a PCR
16 after the trial saying that someone forced
17 you to go forward with this, that you didn't
18 know that you were facing life without the
19 possibility of parole, that you didn't know
20 all these indictments would come back. Do
21 you understand?

22 APPLICANT: Yes.

23 THE COURT: Okay, you may take your
24 seat. Are you ready to call your first
25 witness?

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1 MR. CAPRETTI: Yes, Your Honor.

2 THE COURT: You may proceed.

3 MR. CAPRETTI: I call Corey Larkin
4 to the stand.

5 THE COURT: Sir, come around and be
6 sworn. Mr. Capretti, I should ask you if
7 there are any questions that you want to ask
8 as to your client being fully informed as to
9 the consequences of being granted relief.

10 MR. CAPRETTI: No, Your Honor. Just
11 to reestablish that we would like the
12 opportunity to supplement the record at some
13 point in time if we should ---

14 THE COURT: Obviously I will make
15 that determination at the time.

16 MR. CAPRETTI: Thank you, Your
17 Honor.

18 THE COURT: You're welcome.

19 (WITNESS TAKES STAND)

20 COREY LARKIN, having been sworn to tell
21 the truth, and nothing but the truth, testified
22 as follows:

23 DIRECT EXAMINATION

24 BY MR. CAPRETTI:

25 Q. Mr. Larkin, how many times did you meet

1 with your counsel, Ms. Runey, prior to your
2 plea?

3 A. About six times.

4 Q. And what aspects of the case did you
5 talk about?

6 A. I was trying to tell her that ---

7 Q. Speak clearly and into the microphone.

8 A. I was telling her that I was giving
9 Detective Alvarez (phonetic) my statement, but
10 she was telling me that she knew.

11 Q. Did you, yourself, in the back of your
12 mind ever consider the possibility of not
13 pleading guilty? Did you ever think that maybe
14 you wanted to go to trial on these issues?

15 A. Yes.

16 Q. Did Ms. Runey discuss with you any of
17 the investigation that she undertook or planned
18 to undertake into possible defenses in case you
19 decided to go to trial?

20 A. No.

21 Q. Are you aware of any investigation and
22 possible defenses against the charges against
23 you that Ms. Runey considered?

24 A. No.

25 Q. Mr. Larkin, why did you decide to plead

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1 guilty?

2 A. Because I was pretty much told that if
3 I didn't go to trial that I would be facing two
4 consecutive life sentences since they had over-
5 whelming evidence against me.

6 Q. I'm sorry? Repeat that. You decided
7 to go to trial because ---

8 A. I would receive two consecutive life
9 sentences since they had ---

10 Q. Two consecutive life sentences?

11 A. --- overwhelming evidence against me.

12 Yes.

13 Q. If Ms. Runey had investigated your case
14 and presented you with a defense strategy, would
15 you still have pled guilty?

16 A. No.

17 Q. Would you have gone to trial?

18 A. Yes.

19 Q. Mr. Larkin, is there anyone that you
20 know of that could truthfully say that you were
21 with them at the time that one or more of the
22 crimes that you were convicted of occurred?

23 A. Yes.

24 Q. What is the name of that person?

25 A. Tanisha Gibbes and Brandon Simmons

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1 (phonetic).

2 Q. Move the microphone a little closer to
3 you.

4 THE COURT: He can't move the
5 microphone, it's stationary.

6 MR. CAPRETTI: Okay, speak up as much
7 as you can. It's important that we hear what
8 you have to say.

9 DIRECT EXAMINATION CONTINUED

10 BY MR. CAPRETTI:

11 Q. All right. You said that there was a
12 person and that her name was Tanisha Gibbes?

13 A. Yes.

14 Q. Did Ms. Runey ask you the question that
15 I just asked you?

16 A. No, not that I recall.

17 Q. Approximately when did the crimes for
18 which you were convicted occur?

19 A. I think that it was around May -- May
20 to June.

21 Q. Of what year?

22 A. 2008.

23 Q. So mid 2008?

24 A. Yes, sir. I think.

25 Q. You mentioned Tanisha Gibbes, where did

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1 she live at the time?

2 A. Indigo Creek.

3 Q. And approximately when did you last see
4 or speak with Tanisha Gibbes?

5 A. About September 2008.

6 Q. September 2008?

7 A. Yes.

8 Q. So a couple of months, three or four
9 months after the crimes were committed?

10 A. Yes.

11 Q. When did you meet Ms. Runey?

12 A. November of 2011. 2010?

13 Q. Do you know where Tanisha is today?

14 A. No.

15 Q. Approximately when were you notified
16 that Ms. Runey was appointed to represent you?

17 A. I can't recall.

18 Q. Is there anything that might refresh
19 your recollection?

20 A. It's a possibility.

21 Q. This is the engagement letter from Ms.
22 Runey. Take a look at this. When you're done,
23 look up at me. Notice the date on the letter.

24 A. Okay.

25 Q. Can I have that back, please?

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1 A. (Tenders).

2 Q. Has your memory been refreshed?

3 A. Yes.

4 Q. Approximately when did you learn that
5 Ms. Runey had been appointed to represent you?

6 A. In June.

7 Q. Of what year?

8 A. 2008.

9 Q. Would you have been able to provide,
10 around the time of her appointment, information
11 that would have enabled Ms. Runey to locate
12 Tanisha Gibbes?

13 A. Yes. If Ms. Runey had located Tanisha
14 and Tanisha was willing to testify as an alibi
15 witness, would that have affected your decision?

16 A. Yes.

17 Q. In what way?

18 A. She would have been an alibi witness
19 that would confirm that I was with her during
20 these incidents.

21 Q. In what way would it have affected your
22 decision?

23 A. I would not have pled guilty.

24 Q. Now let's turn to the circumstances
25 surrounding the guilty plea. On page eight of

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1 your guilty plea, Judge Young asked you --
2 addressed you, rather, by saying that "You can
3 testify if you want. If you don't want to
4 testify, the judge will tell the jury that they
5 are not to hold that against you while
6 deliberating." At the time, did you understand
7 that does two sentences represented a
8 Constitutional right that you had and that you
9 were waiving that right?

10 A. Honestly, no.

11 Q. Did you have any access to legal
12 resources in prison such as a law library?

13 A. I do. Now I do.

14 Q. How much time have you spent studying
15 the law since you've been in prison?

16 A. A lot.

17 Q. Are you interested in the law as it
18 pertains to your case?

19 A. My case and in dealing with the
20 Constitution, period.

21 Q. You're interested in reading about the
22 law as it relates to your case?

23 A. Yes.

24 Q. Were you interested in studying the law
25 prior to your first arrest?

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1 A. No. Not really.

2 Q. How much time did you spend studying
3 the law prior to your guilty pleas?

4 A. I had access to the Constitutional in
5 cases, so I -- I -- (pause).

6 Q. How much time did you spend prior to
7 that ---

8 MS. WILSON: Objection, Your Honor.
9 Relevance.

10 THE COURT: Relevance?

11 MR. CAPRETTI: I am trying to determine
12 if he had enough of a background in the law to
13 understand what the importance was of the right
14 that he was waiving.

15 THE COURT: I don't think people have
16 to have a legal background to understand their
17 Constitutional rights. Basically I think that
18 the case law just says that you have to have a
19 tenth grade education or you -- I don't think
20 that you even need a tenth grade education. You
21 just need to be able to read, write and
22 understand the English language once it is
23 explained to you. So it's sustained as to
24 relevance.

25 DIRECT EXAMINATION CONTINUED

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1 BY MR. CAPRETTI:

2 Q. On page fourteen of your plea, you were
3 asked how far did you go in school. What was
4 your answer to that question?

5 A. Ninth grade.

6 Q. On page thirteen of your transcript,
7 Judge Young asked you if you needed any more
8 time and Ms. Runey responded, "I think that it
9 is confusion." Were you confused at the guilty
10 plea hearing?

11 A. Yes.

12 Q. Did anyone ask you why you were
13 confused?

14 A. No.

15 Q. Did you tell anyone why you were
16 confused?

17 A. I was just told to say "yes."

18 Q. Did you tell anyone why you were
19 confused?

20 A. (Negative gesture), I didn't have the
21 opportunity.

22 Q. Don't shake your head. You need to
23 answer the questions.

24 A. I wasn't given the opportunity. I was
25 just told to answer the questions.

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1 Q. Were you still confused after the
2 hearing ended?

3 A. Yes.

4 Q. Did you have any contact with Ms. Runey
5 after the guilty plea hearing?

6 A. I only remember one time or maybe
7 twice.

8 Q. At any time did you ask Ms. Runey if
9 there were any legal options available to you
10 beyond pleading guilty?

11 A. (No verbal response).

12 Q. Did you ask her, 'Is there anything
13 else that we can do with this case?' Or words
14 to that effect?

15 A. I was told that they had overwhelming
16 evidence so I was pretty much, like, ---

17 Q. Speak up.

18 A. I was pretty much informed that there
19 was overwhelming evidence, so there was no hope.

20 Q. You asked ---

21 A. Yes, I asked what was the evidence.

22 Q. Did she -- let me make this clear. Did
23 you ask, 'Are there any other options left for
24 me?' After you pled guilty, did you ask that?

25 A. No, I asked before I pled guilty.

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1 Q. You asked that before you pled?

2 A. Yeah.

3 Q. How soon after pleading guilty did you
4 begin the appeal process?

5 A. (No verbal response).

6 Q. Well, first let me ask you, did you
7 want to appeal the guilty plea?

8 A. Did I appeal?

9 Q. Did you want to appeal?

10 A. No.

11 Q. You did not want to appeal your guilty
12 plea?

13 A. (No verbal response).

14 Q. Do you now?

15 A. Do I now? The appeal, it was just
16 looking at my case really.

17 Q. It was what?

18 A. Looking at my case.

19 Q. I'm sorry?

20 A. The appeal would have just looked at my
21 case.

22 Q. You think that an appeal would have
23 just looked at your case?

24 A I would have had to do a PCR anyway.

25 Q. So you wanted to skip the appeal and

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1 proceed to PCR?

2 A. (Affirmative nod).

3 Q. Did Ms. Runey tell you that appealing
4 your guilty plea is a right that you have?

5 A. No.

6 Q. Did she discuss with you any other
7 grounds on which she might appeal your guilty
8 plea?

9 A. No.

10 Q. Did you know that you had a right to
11 appeal it?

12 A. No.

13 MR. CAPRETTI: Your Honor, I have
14 this document marked as Exhibit 1 for identify-
15 cation. This is a letter from Mr. Larkin to ---

16 THE COURT: Would you show it to
17 counsel, please.

18 MS. WILSON: I have a copy. No
19 objection.

20 THE COURT: Marked as Applicant's
21 Exhibit 1.

22 MR. CAPRETTI: Would Your Honor like
23 a copy?

24 THE COURT: I will look at the
25 exhibit.

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1 MS. WILSON: Your Honor, before this
2 is admitted into evidence, I would ---

3 THE COURT: Are you objecting?

4 MS. WILSON: No. I am not objecting.
5 I would just ask that it be authenticated by Ms.
6 Runey.

7 THE COURT: All right.

8 MR. CAPRETTI: I will be glad to do
9 that.

10 THE COURT: You may proceed. I am
11 sure that if you don't ask the questions of Ms.
12 Runey that she will.

13 MR. CAPRETTI: All right.

14 (SO ENTERED AS APPLICANT'S EXHIBIT 1)

15 DIRECT EXAMINATION CONTINUED

16 BY MR. CAPRETTI:

17 Q. Mr. Larkin, I am handing you this
18 document that has been marked as Exhibit 1.

19 A. Okay.

20 Q. Do you recognize that document?

21 A. Yes.

22 Q. What is it?

23 A. It's a letter.

24 MR. CAPRETTI: Your Honor, I would
25 ask that Exhibit 1 be admitted into evidence.

1 THE COURT: It has already been
2 marked and admitted, without objection.

3 DIRECT EXAMINATION CONTINUED

4 BY MR. CAPRETTI:

5 Q. Why did you write that letter to Ms.
6 Anderson?

7 A. Because I was concerned about my case
8 and my entitlement to appeal.

9 Q. Who told you that Ms. Anderson was
10 assigned your appeal?

11 A. My grandmother received a letter with
12 Ms. Anderson's name.

13 MR. CAPRETTI: Your Honor, I have a
14 document that I would like to have marked as
15 Exhibit 2.

16 THE COURT: Show it to Ms. Wilson.

17 MR. CAPRETTI: (Tenders)

18 MS. WILSON: (Upon review), no
19 objection.

20 (SO ENTERED AS APPLICANT'S EXHIBIT 2)

21 DIRECT EXAMINATION CONTINUED

22 By MR. CAPRETTI:

23 Q. Mr. Larkin, this is a document that's
24 been marked as Exhibit 2. Do you recognize it?

25 A. Yes.

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1 Q. What is it?

2 A. That was before my direct appeal.

3 Q. Who told you that Ms. Anderson was
4 assigned to handle your case?

5 A. My grandmother.

6 Q. And who told your grandmother?

7 A. She received a letter.

8 Q. She received a letter?

9 A. (Affirmative nod).

10 Q. Do you remember who from?

11 A. No, I don't recall.

12 Q. When did you first find out that no
13 appeal had ever been filed?

14 A. I think that it -- I think that I had
15 to write the Clerk of Court.

16 MR. CAPRETTI: No further questions,
17 Your Honor.

18 THE COURT: Any questions of the
19 witness?

20 CROSS EXAMINATION

21 BY MS. WILSON:

22 Q. Good morning, Mr. Larkin.

23 A. Good morning.

24 Q. You said that you met with Ms. Runey
25 about six times.

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1 A. Yes.

2 Q. Did she review with you discovery that
3 she'd received from the State, statements,
4 photos, any police reports and that type of
5 thing?

6 A. No.

7 Q. She didn't review that with you?

8 A. No.

9 Q. Do you recall her talking to you about
10 possible defenses if you went to trial?

11 A. No.

12 Q. Did you give her any leads or witnesses
13 to investigate, anybody to call up, anything to
14 look into?

15 A. Yes, Tanisha.

16 Q. What was Tanisha's last name?

17 A. Gibbes.

18 Q. Did you discuss with your attorney any
19 plea offers that the State was offering to you?

20 A. I only got one offer.

21 Q. So you discussed one offer?

22 A. I was told that this was it or we'd go
23 to trial

24 Q. So you did discuss it with her, is that
25 correct?

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1 A. She just told me about that.

2 Q. So that would be a 'yes'?

3 A. Yes.

4 Q. So was it your decision to plead
5 guilty?

6 A. Absolutely not.

7 Q. You said?

8 A. Absolutely not.

9 Q. Absolutely ---

10 A. --- not.

11 Q. Do you recall telling the plea judge
12 that you wanted to plead guilty?

13 A. I was just told to say "yes."

14 Q. So you did tell the judge that?

15 A. Yes.

16 Q. Do you recall telling the judge that
17 you were guilty?

18 A. Yes.

19 Q. Do you recall being sworn to tell the
20 truth that day?

21 A. I guess so.

22 Q. And do you recall hearing the facts
23 that the State presented about each incident
24 during the plea?

25 A. Yes.

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1 Q. Do you recall agreeing to those facts?

2 A. Yes.

3 Q. Do you recall waiving your Constitu-
4 tional rights at the guilty plea proceeding?

5 A. Yes.

6 Q. Okay. Today you told us that, you
7 know, had Ms. Runey looked further --
8 investigated your trial and looked at some stuff
9 that you wanted to go to trial; is that correct?

10 A. Yes.

11 Q. You would have gone to trial facing the
12 possibility of life without parole?

13 A. Yes.

14 Q. And you would have went to trial facing
15 the possibility of life when, according to you,
16 the State had overwhelming evidence of your
17 guilt?

18 A. That I was told of.

19 Q. But you still would have went to trial
20 with this overwhelming evidence?

21 A. I mean, if she had done a proper
22 investigation, the evidence would have been
23 fresh and I would have been able to prove my
24 alibi defense.

25 Q. So other than this alibi witness that

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1 you told Ms. Runey about, what else would she
2 have found if she had investigated it as you say
3 that she should have?

4 A. My incriminating statement that was
5 conducted of my due process.

6 Q. She would have discovered your
7 incriminating statement?

8 A. No, it was a violation. It wasn't
9 knowingly -- intelligently and knowingly made.

10 Q. Did you talk to Ms. Runey about that?

11 A. Yes.

12 Q. What did she say?

13 A. That she'd look into it. That was it.

14 Q. So while you were having these dis-
15 cussions with Ms. Runey, you always wanted to
16 pled guilty or did you always want a trial?

17 A. No, she never said anything. She never
18 come to see me until -- I'd say thirty-three
19 months. It wasn't until October 2010 that she
20 came up with the solution. I mean, the ten to
21 thirty, I mean the plea.

22 Q. So you didn't talk to her about going
23 to trial?

24 A. Yes, I did.

25 Q. And you told her about these alibi

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1 witnesses?

2 A. I had been telling her about it.

3 Q. And did you give her information about
4 where to find them?

5 A. West Ashley, (affirmative nod). Yes.

6 Q. So you just told her that -- did you
7 give her specific addresses and phone numbers?

8 A. I gave her the area.

9 Q. You said that you gave her the area?

10 A. (Affirmative nod).

11 Q. The area?

12 A. (Affirmative nod).

13 Q. So despite the fact that you felt like
14 you had an alibi witness, you still pled guilty?

15 A. Yes.

16 Q. You didn't call your friend and say,
17 'Hey, come tell the court that I wasn't even
18 present.' You didn't do that?

19 A. (No verbal response).

20 Q. You didn't call up your friend?

21 A. (No verbal response).

22 Q. Did you know that you could have
23 testified at trial if you'd wanted to?

24 A. (Negative gesture).

25 Q. You didn't know that you could have

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1 testified at trial?

2 A. Honestly, I cannot say that I was aware
3 of that when I pled guilty.

4 Q. So before you pled guilty, you didn't
5 know that you could have testified at any trial?

6 A. No.

7 Q. Do you recall the court telling you
8 that you could testify at trial?

9 A. Not until the plea.

10 Q. Sir?

11 A. Not until I pled guilty.

12 Q. So at the plea the court told you that
13 you could have testified?

14 A. Yeah.

15 Q. Did you talk to Ms. Runey about your
16 Constitutional rights? Did Ms. Runey tell you
17 that you could go to trial?

18 A. I asked her about it but she was like,
19 'they've got overwhelming evidence.'

20 Q. But you knew that you could go to
21 trial, though, instead of pleading guilty?

22 A. (No verbal response).

23 Q. Yes or no? If you could answer.

24 A. Yes.

25 Q. Okay. And you knew that you could call

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1 witnesses to testify on your behalf, is that
2 correct, if you went to trial? You knew that?

3 A. (No verbal response).

4 Q. You knew that you could question any
5 witnesses that the State presented, did you know
6 that, if you went to trial?

7 A. I didn't know that at the time.

8 Q. You don't have any legal background, is
9 that correct?

10 A. No.

11 Q. But you can read and write, ---

12 A. (Negative gesture).

13 Q. --- is that correct?

14 A. Yes.

15 Q. And so you indicated that during some
16 of the time during your plea proceeding that you
17 were confused, is that correct?

18 A. Yes.

19 Q. Did you speak up and tell the court,
20 'Hey, I don't know understand what is going on
21 here.'

22 A. I was advised against it.

23 Q. But what I am saying is, did you speak
24 up to tell the court 'I am confused here.'

25 A. No.

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1 Q. And it was your life that was being
2 affected by your pleading guilty, is that
3 correct?

4 A. Yes.

5 Q. So you didn't want to plead guilty, you
6 wanted a PCR; is that correct?

7 A. (Affirmative nod).

8 Q. Yes or no?

9 A. Yes.

10 Q. So you thought that PCR was the proper
11 vehicle for your issues?

12 A. Now, (affirmative nod).

13 Q. Now?

14 A. Yes.

15 Q. But you didn't talk to Ms. Runey about
16 an appeal?

17 A. No.

18 MS. WILSON: Nothing further from the
19 State. Thank you.

20 THE COURT: Any redirect?

21 MR. CAPRETTI: Yes, Your Honor.

22 THE COURT: You may proceed.

23 REDIRECT EXAMINATION

24 BY MR. CAPRETTI:

25 Q. Mr. Larkin, you said that you did not

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1 want to plead guilty?

2 A. No.

3 Q. But you did?

4 A. Yes.

5 Q. And you said that you gave them the
6 area to where Tanisha Gibbes could be found?

7 A. Yes.

8 Q. Please clarify that. You gave them
9 what?

10 A. The location, the area.

11 Q. And the name of ---

12 A. Indigo Creek, the neighborhood that she
13 lived in.

14 Q. --- where she lived? The name of the
15 apartments where she lived?

16 A. (Affirmative nod).

17 Q. Now, you mentioned that you didn't tell
18 the court why you were confused at your guilty
19 plea hearing. Did you -- somebody spoke on your
20 behalf. Who did you tell?

21 A. (No verbal response).

22 Q. Ms. Runey said, "I think that it's
23 confusion." She is not a mind reader. How did
24 she know?

25 A. The circumstances of the case, I guess.

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1 Q. How did she know that you were
2 confused?

3 A. Because she knew that I wasn't informed
4 of my case.

5 Q. Wasn't what?

6 A. That I wasn't informed of the depth of
7 my case, of the circumstances.

8 Q. But how were you confused? How did she
9 know that you were confused? Did you look
10 confused? Did you tell her that you were
11 confused?

12 A. Facial expression, I guess. The
13 answers.

14 Q. She saw from your facial expression
15 that you were confused?

16 A. (No verbal response).

17 MR. CAPRETTI: No further questions.

18 THE COURT: You may step down.

19 MS. WILSON: Your Honor, one ---

20 THE COURT: I'm sorry. Recross?

21 RECROSS EXAMINATION

22 BY MS. WILSON:

23 Q. Mr. Larkin, you didn't give Ms. Runey
24 an address or a phone number for Tanisha Gibbes;
25 is that correct?

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1 A. I don't recall.

2 Q. You just gave her her neighborhood.

3 A. (No verbal response).

4 Q. Yes or no?

5 A. Yes.

6 Q. And you didn't tell Ms. Runey that you
7 were confused during your plea, did you? You
8 didn't turn to her and say, "I am confused."

9 A. I don't remember.

10 Q. Did you say anything?

11 A. I said -- she just told me to answer
12 everything "yes."

13 Q. You told her that you were confused?

14 A. Yes.

15 Q. You told her that you were confused?

16 A. Yes.

17 MS. WILSON: Thank you.

18 THE COURT: Sir, you may step down.

19 (WITNESS STEPS DOWN)

20 THE COURT: Do you have another
21 witness?

22 MR. CAPRETTI: Yes, Your Honor.

23 At this time I would like to call Ms. Martha
24 Runey.

25 (WITNESS TAKES STAND)

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1 THE COURT: Y'all (visiting mock
2 trial class) need to leave at 12:00?

3 (RECESS TO ADDRESS MOCK TRIAL STUDENTS)

4 MARTHA KENT RUNEY, having been sworn
5 to tell the truth, and nothing but the truth,
6 testified as follows:

7 DIRECT EXAMINATION

8 BY MR. CAPRETTI:

9 Q. Ms. Runey, good afternoon.

10 A. Good afternoon.

11 Q. How many cases that had the potential
12 for life without parole had you defended prior
13 to Mr. Larkin?

14 A. When I represented Mr. Larkin, I -- I
15 began representing him in June of 2008. At that
16 time I had been with the public defender's
17 office for six years. It's hard to tell but I
18 had been doing felonies for those six years.
19 Depending on the number of clients with multiple
20 pending charges or the length of their record,
21 it could have been a potential life without
22 parole. I had at that time tried several cases
23 and had avoided life without parole on many
24 cases at pleas. So I could not give you an
25 exact number.

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1 Q. What investigation into defense
2 strategies would you have undertaken? What
3 would you have investigated had Mr. Larkin
4 insisted on going to trial?

5 A. Generally what I ---

6 Q. What did you do in this particular
7 case?

8 A. In this case, I met with Mr. Larkin
9 often. One of the things that we had to decide
10 at some point in his case is that after
11 reviewing the discovery, I told Mr. Larkin that
12 the solicitor may or may not give him an offer
13 in his case; that at that time we would assess
14 what he wanted to do.

15 When I received an offer in his case, I
16 sat down with him and explained that offer with
17 him and discussed what direction that I needed
18 to go in. What I mean by that is, do I work on
19 mitigation in this case or do I need to take
20 each one his cases, individually as they would
21 be tried, and investigate and prepare for trial.
22 The discovery was a lot of documents. What I
23 would have done is I would have needed to find
24 out which case was going to be tried first, so
25 that I could prepare that for trial, speak to

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1 the witnesses, uh, -- another issue that would
2 have been important for preparation of trial was
3 to find out whether or not the codefendants
4 would be testifying against Mr. Larkin; three
5 other men that were charged with the same
6 offenses as Mr. Larkin. That certainly would
7 have been an important factor in preparing for
8 trial.

9 Q. So if I understood correctly you'd
10 focus the main -- or the bulk of your time
11 preparing for his case was examining the offer
12 by the prosecution?

13 A. No, I would not say the bulk. When I
14 review my case log sheet, and that is just a log
15 that I keep in the front of my file with short
16 notes about what I have done in the file, it
17 appears that in June of 2008 I met him first,
18 then there were subsequent visits. While I was
19 still waiting on the discovery, it looks like I
20 received discovery, uh, -- I see a note in here
21 that I had not received discovery in December of
22 '08 and I'd left a message for the solicitor
23 regarding that discovery. Then after that, I
24 see seven more visits with Mr. Larkin at the
25 jail. That was before I was even discussing a

1 plea offer. So that would have been to go over
2 the discovery that I had from the solicitor.

3 Q. Did you analyze or discuss with Mr.
4 Larkin the possible defense strategies that
5 could have been presented at trial? Did you go
6 over that with Mr. Larkin? Did you set down and
7 talk about 'if we go to trial, this is what your
8 defense could be.'

9 A. I don't remember specific if we talked
10 about what his defense would be. Generally what
11 I do is that I go through each page -- my
12 practice is that I send each client of mine a
13 copy of that discovery, regardless of how long
14 it is. I ask them to review it and then I go to
15 the jail and sit down with them and we review it
16 together. Sometimes that has meant reading
17 every single page of it, if needed to. What we
18 said specifically, I did not make notes of,
19 other than I have notes from my visits. I can
20 tell you those, but generally my conversations
21 are ways that we can attack things that are in
22 discovery that we disagree with. But specific-
23 ally I do not remember what those defenses were
24 going to be. And they may have been different
25 in each set of charges.

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1 Q. Was your investigation more than
2 cursory?

3 A. I don't know that I had gone out --
4 what I do is I will, uh, send my investigator
5 out to try to find witnesses, good or bad. He
6 usually sends me a memo of that interview with
7 them. I do not have those. I must not have
8 sent him at the point in time when we received
9 the offer, to talk to those people.

10 Q. If not cursory, how would you describe
11 the extent of your investigation? Were it not
12 cursory, how would you describe the extent of
13 your investigation? Would you describe it as
14 thorough and in-depth.

15 A. I had not gotten to that point, no.

16 Q. So you had not ---

17 A. I had not sent my investigator to
18 interview each witness yet, no, I had not.

19 Q. Did you at some point?

20 A. No, we didn't get there.

21 Q. Did you ask Mr. Larkin if he knew of
22 any witnesses that might be helpful to his case?

23 A. I don't have any information about any
24 witnesses' name or contact information that Mr.
25 Larkin gave me, no.

1 Q. Just to be clear, you did not interview
2 any witnesses?

3 A. No.

4 Q. Would you say that you make an
5 independent investigation into the facts and
6 circumstances of the case?

7 A. I had not sent my investigator out.
8 No, I had not.

9 Q. The crimes for which Mr. Larkin was
10 convicted were committed or occurred in the May-
11 June 2008 timeframe. When were you appointed to
12 the case?

13 A. Mr. Larking was arrested June 3, 2008
14 and the file was opened to me on June 17th, 2008.

15 Q. Just a couple of weeks. Would you
16 agree with me or disagree with me that locating
17 witnesses becomes less likely as time goes by?

18 A. It does, definitely.

19 Q. Did you learn of the name Tanisha
20 Gibbes before today?

21 A. I do not remember that name and I do
22 not see it noted anywhere in my file. No.

23 Q. Did you at any time ask Mr. Larkin if
24 an alibi witness might exist?

25 A. No, I did not.

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1 Q. Did you ever believe that there was a
2 possibility that Mr. Larkin wasn't guilty of the
3 crimes that he was accused of?

4 A. I was surprised by the client that I
5 met at the jail, then I received his file and it
6 had twenty horrific charges. I was surprised by
7 the person that I had met. He was a nice
8 client, he was well-mannered towards me and, uh,
9 I hated to know that he was in this trouble.
10 But certainly the problem was a very detailed
11 confession that Mr. Larkin gave.

12 Q. Just to clarify, for my understanding,
13 you never really thought that there was a chance
14 that he might be innocent? I don't want to put
15 words in your mouth. I'll let you ---

16 A. Can you repeat the question?

17 Q. I don't want to put words in your mouth
18 but, to clarify my understanding, there was
19 never really a time when you thought that he was
20 innocent?

21 A. Well, I thought that we had some big
22 problems if we went to trial. But if he'd
23 wanted to go to trial, we certainly would have
24 regardless of what I thought about it. I would
25 have gone to trial for him regardless of what I

1 thought about it.

2 Q. Right. Would you be interested in the
3 fact -- would you be interested to know the fact
4 that Tanisha Gibbes lives in Charleston?

5 A. Yes.

6 Q. Would you say that your investigation
7 into the long facts relative to possible
8 strategic defenses in this case was thorough?

9 A. I would tell you that when I went to
10 Mr. Larkin -- I don't know the answer to that.
11 My -- I will tell you that when I went to Mr.
12 Larkin with the offer that took life without
13 parole off the table, I asked him if he wanted
14 me to prepare these cases or should I focus on
15 mitigation. So at that point, when Mr. Larkin
16 told me that he was entertaining the offer and
17 would likely take it, I focused on mitigation
18 that I would present to the judge at his plea.

19 Q. So would you say that your
20 investigation was thorough.

21 MS. WILSON: Your Honor, asked and
22 answered. Objection.

23 THE COURT: Sustained.

24 DIRECT EXAMINATION CONTINUED

25 BY MR. CAPRETTI:

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1 Q. When did you first learn that that Mr.
2 Larkin had a ninth grade education?

3 A. I would have learned that when I met
4 him the first time. I ask the same questions of
5 all my clients when I go to meet them. I first
6 met him on June 25th, 2008.

7 Q. Are you aware that the Supreme Court
8 has held that to knowingly and voluntarily enter
9 a plea that all is required is that the
10 defendant have a full understanding of the
11 consequences of his pleading guilty?

12 A. Yes, sir.

13 Q. Are you also aware that the Supreme
14 Court has held that the test is whether the
15 record established that the guilty plea was
16 understandingly made?

17 A. Yes.

18 Q. Were you concerned at all that the
19 "Yes, sir"/"no, sir" ritualistic answers offered
20 by Mr. Larkin throughout the plea were
21 symptomatic of an uneducated mind?

22 A. No. And I -- I'm always concerned with
23 people who are young, and he was so young. So
24 what I did was I met with him before the plea
25 hearing at the jail, instead of my general

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1 practice of going over those questions in lockup
2 before the trial. I noted in the file that I
3 met with him at the jail and -- I can just read
4 to you what my note says, (reading): "Went over
5 each charge he would be pleading to and what
6 each carries. Also went over that armed
7 robbery, kidnaping and criminal sexual conduct
8 charges were most serious offenses and what they
9 meant, especially if he went to trial and the
10 solicitor would be trying to..." -- my note says
11 "LWOP", which means life without parole.

12 Q. Were you at any time concerned that Mr.
13 Larkin, at any time during the proceeding, did
14 not expound on his level of understanding of the
15 Constitutional rights that he was waiving. Did
16 you ever consider -- other than the "yes/no
17 sir", he never really said anything else
18 explaining his understanding of what he was
19 doing.

20 A. I don't know. I don't remember being
21 concerned about that.

22 Q. On page thirteen of the guilty plea
23 transcript, you made a statement, you said "it's
24 confusion." Why did you not clarify for the
25 record the nature of the confusion of Mr.

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1 Larkin?

2 A. I don't specifically remember what the
3 confusion was or why I said that. The way that
4 I read it though is that the judge asked, "Do
5 you need any more time?" And, uh, I don't know
6 if he looked confused. I don't know if he asked
7 me anything, there's nothing in the record. But
8 his case was not over at that point because he
9 wasn't being sentenced that day, so he would
10 need more time with me. That's the way that I
11 read it, but I don't remember anything
12 specifically.

13 Q. Did Mr. Larkin at any time, before or
14 after the guilty plea hearing, express a doubt
15 to you about his decision to plead guilty?

16 A. Not that I remember. He was sentenced
17 on November 9th, and I met with him on November
18 17th, 2010. That was the last time that I met
19 with Mr. Larkin.

20 Q. So about a week after the plea?

21 A. Um-humm, yes.

22 Q. What was your schedule -- those two
23 weeks after the hearing, were you on vacation?
24 Were you at work?

25 A. I was at work. I was leaving on

1 maternity leave in February so, quite honestly,
2 I was probably trying to move a bunch of people
3 before I left.

4 Q. After he pled guilty, did Mr. Larkin
5 ask you if there were any other legal options
6 available to him?

7 A. No.

8 Q. Did Mr. Larkin ever ask you if pleading
9 guilty was the last and final stage of his ---

10 MS. WILSON: Objection, Your Honor,
11 asked and answered.

12 THE COURT: I am going to give them
13 a little legal latitude. You may answer the
14 question.

15 WITNESS: Did he?

16 DIRECT EXAMINATION CONTINUED

17 BY MR. CAPRETTI:

18 Q. Did Mr. Larkin ever ask you if pleading
19 guilty was the final legal option that he had?

20 A. No.

21 Q. Do you recognize this?

22 A. I do.

23 Q. What is that? Specifically what are
24 the notes at the bottom?

25 A. These are notes written that Mr. Larkin

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1 sent to me, in April of 2011, uh, I -- I
2 probably would not have gotten this letter until
3 I returned from maternity leave. I asked my
4 paralegal if -- the note on the right-hand side
5 is a note to my paralegal, Natasha. I asked her
6 if she could find out if an appeal was filed
7 and, if so, who was his lawyer.

8 She wrote a note back to me that "an appeal
9 has not been filed with the Clerk of Court" and
10 that I was in the system, that in the Clerk of
11 Court's system "you were listed as his
12 attorney."

13 Q. You mentioned earlier that -- I think
14 that you said that the last time that you had
15 contact with him was about two weeks after the
16 guilty plea hearing?

17 A. That's correct.

18 Q. So you didn't have any contact with him
19 -- that letter -- until you received that
20 letter?

21 A. Not that I am aware of. No.

22 Q. Do you typically inform your clients of
23 their right to appeal?

24 A. I do.

25 MR. CAPRETTI: No further questions,

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1 Your Honor.

2 THE COURT: Any questions for the
3 witness?

4 MS. WILSON: Yes, Your Honor.

5 CROSS EXAMINATION

6 BY MS. WILSON:

7 Q. Good afternoon, Ms. Runey.

8 A. Good afternoon.

9 Q. You said that you'd been practicing
10 about six years when you had Mr. Larkin's case;
11 is that correct?

12 A. I'd been in the public defender's
13 office for about six years. I was admitted to
14 the Bar in 2001.

15 Q. All right.

16 A. 2001 -- 2001.

17 Q. You were appointed to represent Mr.
18 Larkin?

19 A. I was.

20 Q. Do you recall about how many times that
21 you met with him before he pled guilty?

22 A. My case log indicates that I met with
23 him ten times before the plea and one time
24 after.

25 Q. Did you file Brady Rule 5 motions on

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1 his behalf?

2 A. I did.

3 Q. Did you review what you received from
4 the State with him?

5 A. I did.

6 Q. And did you discuss the elements of the
7 charges against him, what the State had to
8 prove?

9 A. I did.

10 Q. Did you discuss his version of the
11 facts?

12 A. I did.

13 Q. What was his version of the facts?

14 A. Mr. Larkin indicated to me that he was
15 involved with these crimes. His involvement
16 differed. That he did give a confession to the
17 detectives. He also told me that he had been
18 using marijuana laced with Ecstasy at the time,
19 so that was something important for me to look
20 into in mitigation as well -- as to what these
21 drugs could cause him to do, especially as it
22 was beyond his nature. As I said earlier, I was
23 so surprised what a mild-mannered man he was.

24 Q. And that drug use, did you present that
25 to the court in mitigation?

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1 A. I was not here for sentencing. I
2 did some research for mitigation and passed that
3 information along to the attorneys in my office
4 that handled sentencing for me.

5 Q. Did you discuss possible defenses with
6 Mr. Larkin?

7 A. I do not specifically remember
8 discussing defenses. But it would be something
9 that we'd talk about when we go over discovery.

10 Q. Could you briefly characterize the
11 State's evidence against Mr. Larkin?

12 A. I can. As far as the Charleston County
13 cases, Mr. Larkin was charged with an armed
14 robbery at the Applebee's on Rivers Avenue. Two
15 employees were closing the business when they
16 were approached by three defendants with hand-
17 guns. They were forced to disarm the system and
18 money was taken from that business.

19 There was an armed robbery from the
20 Noisy Oyster on Rivers Avenue. This also
21 occurred when, uh, the business was about to be
22 closed and there were several employees left
23 there. The defendants (sic) were leaving the
24 business and were confronted by men with stun
25 guns and handguns. Their things were taken and

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1 I think that they were forced to open the safe.
2 Cash was stolen from that incident. This was
3 the one that concerned me the most. Two -- a
4 male and female employees were forced to perform
5 sexual acts on each other. The female employee
6 was also sexually assaulted.

7 There was an armed robbery at the
8 Chucky Cheese. A man leaving the employ --
9 leaving that residence (sic) was forced to drive
10 his car to his home. I think that -- the men
11 were in the car with him and things were taken
12 from him. The car broke down and that led to
13 police responding, the car breaking down.

14 Codefendant Milligan, I believe, -- or
15 Monroe. I'm sorry. Brian Monroe, at first he
16 gave a statement to the police that implicated
17 Mr. Larkin. They picked out Mr. Larkin.

18 Q So do you think that the State had
19 overwhelming evidence against Mr. Larkin?

20 A. I do. The problem for Mr. Larkin is
21 that had he been tried separately on these
22 cases. Even if he won one at trial, or two at
23 trial, he could still be looking at life without
24 the possibility of parole. So the biggest
25 problem for him was the number of cases and how

1 serious they are.

2 Q. And did he give you any potential leads,
3 or witnesses to investigate?

4 A. As far as the alibi witness?

5 Q. Um-humm.

6 A. I don't remember that or have any
7 documentation of that that I've seen upon review
8 of my file.

9 Q. Does that mean that you would have
10 looked into it?

11 A. I would've.

12 Q. So your investigation of the case
13 consisted of reviewing all the discovery?

14 A. It did.

15 Q. And about when did you enter plea
16 negotiations with the State?

17 A. I received the offer from Burns
18 Wetmore, the solicitor, on Tuesday October 19th.

19 Q. Did you relate that to Mr. Larkin?

20 A. I did.

21 Q. Can you tell us what the substance of
22 the offer was?

23 MR. CAPRETTI: Your Honor, I object.
24 This is outside the scope of direct.

25 THE COURT: Anything is fair game

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1 when it comes to representation. So -- as to
2 whether or not she did her job, whether or not
3 she conveyed all offers is probative and
4 instructive. Your objection is overruled. You
5 may proceed, Ms. Wilson.

6 DIRECT EXAMINATION CONTINUED

7 BY MS. WILSON:

8 Q. Can you tell us what the substance of
9 the offer was?

10 A. I don't have the indictment numbers
11 listed. I think that it was a range of up to
12 thirty. I can go through the sentencing sheets
13 if you need me to. The range was ten to thirty.
14 Mr. Larkin also had indictments in Dorchester
15 County. The offer was that those Dorchester
16 County indictments would run concurrently. But
17 the solicitor here in Charleston County was not
18 willing to include in his offer that the charges
19 run concurrently. I do have noted that I called
20 him several times asking him to please
21 reconsider recommending that they run
22 concurrently.

23 Q. Did that offer also include the
24 dismissal of any charges?

25 A. It did.

1 Q. After you communicated these offers to
2 Mr. Larkin, did you inform him what the
3 consequences of his pleading would be, and go
4 over his Constitutional rights?

5 A. I did.

6 Q. And did he ever indicate that he didn't
7 understand something?

8 A. I don't specifically remember. If he
9 had told me that he didn't understand, I would
10 have gone over it again.

11 Q. Do you think that it was Mr. Larkin's
12 decision to plead guilty?

13 A. I do.

14 Q. Did he ever indicate that he wanted to
15 go to trial?

16 A. I don't remember.

17 Q. Had Mr. Larkin ever have indicated that
18 he wanted to go to trial, you would have further
19 investigated the charges in preparation for
20 trial; is that correct?

21 A. Yes.

22 Q. But after Mr. Larkin indicated that he
23 wanted to plead guilty, you didn't need to do
24 further investigation. You wanted to research
25 mitigation. Is that correct?

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1 A. I did. I focused on mitigation.

2 Q. And did you give Mr. Larkin advice
3 about whether he should take the State's offer?

4 A. I am sure that I did.

5 Q. Do you recall what your advice was?

6 A. My advice to him was to take the plea
7 offer. I didn't want him to face life without
8 parole at twenty years old.

9 Q. Did you feel like you had enough from
10 your discovery to properly advise him of that?

11 A. I did.

12 Q. You testified that after he told you
13 that he wanted to plead guilty that you started
14 preparing his mitigation. Do you recall what
15 you presented as mitigation on Mr. Larkin's
16 behalf?

17 A. I would not have had the opportunity to
18 present that in court but in preparation for
19 mitigation, I did a memo which outlined Corey's
20 history in regards to his family life. His
21 grandmother had raised him. She was there for
22 the guilty plea. Also I wanted to make sure
23 that she was there for sentencing. I researched
24 his job history as well as, uh, I had a pastor
25 that had been visiting him at the jail, who

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1 became involved in this case, uh, and he was
2 going to participate or speak in his sentencing
3 and he was also present for the guilty plea. I
4 also spoke to a girlfriend of Mr. Larkin's.

5 I also had Mr. Larkin evaluated by Dr. Bill
6 Burke at Southeastern Assessments. That was
7 based on my concern for the criminal sexual
8 conduct charge. He met with Mr. Larkin and
9 presented to me a thirteen-page report which
10 outlined his belief that it was unlikely that
11 Mr. Larkin would reoffend with any such behavior
12 as regards to the criminal sexual conduct
13 charge. So that was beneficial to us.

14 There was some reason to believe that there
15 may be some records from the Medical Univer-
16 sity's Institute of Psychiatry when Mr. Larkin
17 had -- Mr. Larkin's mother had attempted to have
18 him hospitalized.

19 I also wrote a letter to Judge Young that
20 Mr. Hazelton presented to Judge Young during
21 the sentencing. That letter just outlined the
22 relationship with Mr. Larkin and how I didn't --
23 how I felt that he had been involved with his
24 codefendants, who had gotten him involved with
25 this, and that this was normally not his nature.

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1 Q. Mr. Larkin -- there is some note in the
2 guilty plea transcript that at some point Mr.
3 Larkin was confused. Did you tell Mr. Larkin
4 how to answer during the guilty plea?

5 A. No, I did not.

6 Q. And had he indicated some type of
7 confusion, would you have looked into it and
8 possible have stood down to discuss whatever it
9 was that he had to discuss?

10 A. Yes.

11 Q. Is it standard for a defendant to
12 answer "yes" or "no" to the Court's questions at
13 a plea?

14 A. They generally answer yes or no.

15 MS. WILSON: Nothing further. Thank
16 you.

17 THE COURT: Any redirect?

18 MR. CAPRETTI: Yes, Your Honor.

19 THE COURT: You may proceed.

20 REDIRECT EXAMINATION

21 BY MR. CAPRETTI:

22 Q. Ms. Runey, did you read all of the
23 detectives' reports?

24 A. I did.

25 Q. Now, it is important for a defendant to

1 give you information as to what happened but
2 wouldn't you say that it is more important to
3 ask pertinent questions concerning other
4 witnesses? It is important for him to tell you
5 but wouldn't you say that it is equal or even
6 more important for you to ask that question?

7 A. Yes.

8 MR. CAPRETTI: No further questions.

9 THE COURT: You may step down.

10 (WITNESS STEPS DOWN)

11 THE COURT: Anything further from
12 the Applicant?

13 MR. CAPRETTI: No, Your Honor, just
14 closing argument.

15 THE COURT: Any witnesses from the
16 State?

17 MS. WILSON: Nothing from the State.

18 THE COURT: Actually I wanted to ask
19 Ms. Runey some questions. Ms. Runey, I
20 apologize but there was some questions that I
21 wanted to ask you. There has been some
22 indication from the Applicant that his
23 confession was involuntary because he was
24 impaired. Did he ever disclose that to you?

25 MS. RUNEY: I don't remember.

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1 THE COURT: Okay. Would it have
2 been, uh, -- let me put it -- let's see if I can
3 ask the questions. You indicated that once he
4 said that he was inclined to take the plea offer
5 you went into mitigation mode versus trial
6 preparation mode. Is that correct?

7 MS. RUNEY: I did.

8 THE COURT: Would it have made any
9 appreciable difference, those assertions, as you
10 proceeded to prepare for the guilty plea in this
11 case?

12 MS. RUNEY: I know that I used his
13 confession as mitigation, to say to the Court
14 that he was cooperative. I have notes in my
15 file that said he was friendly and helpful and
16 cooperative when getting arrested and in giving
17 his statement. I want to say that Corey had
18 told me that he had been drinking. He told me
19 that he'd used drugs when these things happen.
20 I don't remember that conversation specifically.
21 What I would have told him is certainly some-
22 thing that we would assert at trial and that I
23 would make a Motion before the trial started.
24 Whether we won or not, I couldn't tell him that.
25 At that point the offer that the solicitor had

1 extended to him would have been off the table.
2 So that would have been taken into
3 consideration.

4 THE COURT: Now, whether or not he
5 was impaired at the time of the confession, did
6 that make any appreciable difference in your
7 preparation for the guilty plea?

8 MS. RUNEY: Did it change my mind as
9 to whether he should take the plea (sic) or not?

10 THE COURT: Yes.

11 MS. RUNEY: No, ma'am.

12 THE COURT: And if he had indicated
13 to you that he wanted to go forward with the
14 trial, you would have investigated or further
15 investigated; because it appears that you had
16 all the information that you needed, because he
17 had discussed that to you. But you then would
18 have made a Motion to suppress the -- you would
19 have had a *Jackson v. Denno* hearing?

20 MS. RUNEY: Yes.

21 THE COURT: And you would have
22 made a Motion to suppress that information,
23 although you would have -- could have made no
24 guarantees about that.

25 MS. RNUNEY: That's correct.

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1 THE COURT: But since you were in
2 mitigation mode, there really was no -- because
3 suppressing the statement would not have made
4 any difference in a guilty plea. Correct?

5 MS. RUNEY: (Affirmative nod), not at
6 that time.

7 THE COURT: Any questions of Ms.
8 Runey as a result of the court's questions? From
9 the Applicant?

10 MR. CAPRETTI: Yes, Your Honor.

11 THE COURT: You may proceed.

12 MR. CAPRETTI: Ms. Runey, when you
13 heard from Mr. Larkin that he claims that he was
14 intoxicated or under the influence, did you
15 undertake any investigation -- did you do any-
16 thing to determine the truth or untruth of that
17 assertion?

18 MS. RUNEY: No.

19 MR. CAPRETTI: And if he had
20 provided some proof, would that have affected
21 your recommendation that he accept the plea
22 deal?

23 MS. RUNEY: No.

24 MR. CAPRETTI: No further questions.

25 THE COURT: Any questions from the

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1 State?

2 MS. WILSON: No, Your Honor.

3 THE COURT: I wanted to ask one other
4 question. The offer that he was extended by Mr.
5 Wetmore dealt with him testifying against his
6 codefendants; correct?

7 MS. RUNEY: He ---

8 THE COURT: Or was it not contingent?
9 Did they just offer it to all of them and figure
10 that he would come first or ---

11 MS. RUNEY: It was not contingent
12 upon his cooperation. After he entered the
13 plea, we sat down with Mr. Wetmore and his
14 investigator at the jail. Mr. Larkin did not
15 want to be in the position of testifying. One
16 of the codefendants was a cousin. His hope and
17 my hope was that they would plea too, so that
18 he wouldn't have to come into their trial and
19 testify against them. But it was an issue
20 addressed with Mr. Wetmore. I presented those
21 facts to the lawyer in my office who handled the
22 sentencing.

23 THE COURT: Yeah, I just wanted
24 clarity because it appears from the record that
25 there was an offer, that that offer probably was

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1 extended to everybody, that it became necessary
2 or hopefully necessary because Mr. Wetmore made
3 clear in the transcript that "we make no
4 assurances about anything"; which is their
5 policy, so it's not unusual for him to say that
6 or for any assistant solicitor to say that. But
7 that if it led to something assistive to the
8 State that they might take another posture with
9 that, but they were not assuring him of any-
10 thing. Is that correct?

11 MS. RUNEY: That's correct.

12 THE COURT: All right. Any questions
13 as a result of the court's questions, from the
14 Applicant?

15 MR. CAPRETTI: No, Your Honor.

16 THE COURT: Ms. Wilson, any further
17 questions?

18 MS. WILSON: No, Your Honor.

19 THE COURT: I will be glad to hear
20 your closing argument.

21 MR. CAPRETTI: Applicant asserts
22 that counsel failed to investigate the case on a
23 substantive level. Counsel has a duty via the
24 sixth amendment of the United States
25 Constitution to investigate, because a

1 reasonable, effective assistance must be based
2 on professional decisions and informed legal
3 choices that can only be made after investiga-
4 tion of the options. Without a proper investi-
5 gation, counsel could not have reasonably
6 determined that accepting a plea of guilty was
7 in the Applicant's best interest. *Strickland*
8 does not establish that a cursory investigation
9 automatically justifies a tactical decision,
10 rather a reviewing court must consider the
11 reasonableness of an investigation to support
12 that strategy. But for counsel's lack of
13 investigation, Applicant would not have pled
14 guilty instead of going to trial.

15 Counsel failed to discuss potential
16 defense strategies with Applicant and failed to
17 present important witnesses that could have
18 testified on Applicant's behalf. Defense
19 attorneys are under a duty to undertake
20 reasonable investigation, at a minimum including
21 interviewing potential witnesses and making an
22 independent investigation of the facts and
23 circumstances of a case.

24 The Fourth Circuit and other courts
25 have held that an attorney's representation is

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1 deficient when he fails to contact important
2 prospective witnesses. The duty to investigate
3 potential witnesses is even more critical when
4 a witness might provide an alibi. The sixth
5 amendment requires that attorneys thoroughly
6 investigate a potential alibi witness'
7 testimony. Applicant provided PCR counsel the
8 name of an alibi witness. There is no evidence
9 that defense counsel conducted any inquiry. If
10 it had investigated the alibi defense and then
11 decided that there was no strategic reason for
12 pursuing the matter, rather than conduct no
13 inquiry at all, defense counsel would have made
14 a reasonable strategic decision. Counsel has a
15 duty to make reasonable investigation in order
16 to form a decision that makes investigation
17 necessary.

18 Applicants asserts that but for
19 counsel's error, Applicant would not have pled
20 guilty and would have insisted on going to
21 trial.

22 Point number three, counsel did not
23 inquire into Applicant's state of confusion
24 during the guilty plea hearing, thereby
25 rendering the Applicant's plea to not be entered

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1 knowingly or intelligently.

2 The U.S. Supreme Court has held that
3 the privilege against compulsory self-
4 incrimination is a Constitutional remedy --
5 right. That right is waived by pleading guilty.
6 An applicant's guilty plea waiver of self-
7 incrimination is explained by the court in that,
8 one, the court will tell the jury that you
9 cannot consider the applicant's right to remain
10 silent.

11 The Applicant argues that his counsel's
12 performance was ineffective due to not asserting
13 that in light of the Applicant's ninth grade
14 education and his lack of involvement with the
15 court system prior to the events leading to his
16 arrest, that the explanation regarding his
17 privilege against self-incrimination was
18 insufficient to convey the essence of the
19 Constitutional right he was waiving.

20 The test established is whether the
21 record established a guilty plea is knowingly
22 and voluntarily made, an enunciation of the
23 rights waived is not required when the record
24 otherwise reveals affirmative awareness of a
25 guilty plea.

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1 The South Carolina Supreme Court
2 recognizes the conclusiveness of pleading guilty
3 is adequate assurances are in place that the
4 Applicant understands the rights being waived.
5 The judge must be certain that the defendant
6 understands the charge(s). The court must
7 independently adequately warn a defendant of the
8 consequences of a plea. The court's warning
9 should include an explanation of the waiver of
10 Constitutional rights.

11 About halfway through the guilty plea
12 hearing, there was a discussion of the
13 Constitutional rights that the defendant was
14 waiving by pleading guilty and counsel stated
15 that she believed the Applicant to be confused.
16 Counsel did not determine the defendant's reason
17 for confusion, the hearing continued and the
18 Court accepted his guilty plea.

19 The U.S. Supreme Court stated that to
20 the extent that the district judge exposed the
21 defendant's state of mind on the record to
22 personal interrogation, he not only facilitates
23 his own determination of the plea's
24 voluntariness but also facilitates the
25 determination in any subsequent post-conviction

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1 proceeding based upon a claim that the plea was
2 involuntary.

3 When these goals are undermined in
4 proportion to the degree that the district judge
5 resorts to assumptions not based on the recorded
6 responses to his inquiry. In response to
7 questions asked of him during the guilty plea,
8 Applicant said very little other than "yes, sir"
9 and "no, sir." He was not examined as to his
10 understanding of the proceeding as to the
11 consequence(s) of his Constitutional rights
12 being waived.

13 In order to satisfy the *Boykin*
14 requirements, the South Carolina Supreme Court
15 has held that to knowingly and voluntarily enter
16 a guilty plea all that is required is that the
17 defendant have a full understanding of the
18 consequence(s) of his plea and the charges
19 against him.

20 In determining guilty plea issues it
21 is proper to consider the transcript as well as
22 evidence presented at a hearing. This standard,
23 by necessity, provides little guidance to the
24 defendant's informed understanding of the
25 consequences of his plea. It is the trial

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1 judge's responsibility to expose and address
2 those factors on the record. Applicant
3 maintains that the colloquy of his guilty plea
4 hearing does not reflect such disclosure and
5 does not reflect the applicant's understanding
6 of the Constitutional rights he was waiving.
7 Reality and not ritual should determine whether
8 a guilty plea is intelligently and knowingly
9 made.

10 The U.S. Supreme Court found that the
11 two-prong *Strickland v. Washington* test
12 challenges the validity of a guilty plea or
13 claim of ineffective assistance of counsel.
14 Were it not for counsel's ineffective assistance
15 of counsel the defendant would not have pled
16 guilty and would have insisted on going to
17 trial.

18 Item four, the defense counsel's
19 ineffectiveness prejudiced the defendant's right
20 to appeal. On August 29th, 2011, Applicant's
21 counsel, Assistant Public Defender for
22 Charleston County, Victoria Anderson, was
23 assigned to handle the Applicant's appeal.
24 On September 29th, exactly one month later,
25 Applicant wrote his counsel Ms. Runey stating

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1 that his grandmother was informed that he had
2 a direct appeal filed and that a lawyer was
3 appointed to represent him, but as of yet he had
4 not received any official notification regarding
5 his notice of appeal. In that letter he asked
6 Ms. Runey if she could find out if the appeal
7 had been filed.

8 On February, 2011, Ms. Runey asked her
9 assistant Latasha if she could find out if an
10 appeal had been filed and, if so, who was the
11 attorney for the applicant. The answer came
12 back that the appeal was not filed and Ms. Runey
13 was still his attorney.

14 South Carolina adopted the holding of
15 the majority of courts that absent extraordinary
16 circumstances there is no constitutional right
17 for the defendant to be informed of his right to
18 appeal. The court goes on to say however that
19 the bare assertion that a defendant was not
20 advised of the right to appeal is insufficient.
21 There must be proof that extraordinary
22 circumstances existed that the defendant should
23 have been advised of his right to appeal. The
24 court says that an extraordinary circumstance
25 which would have required counsel to advise the

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1 defendant of the right to appeal would arise
2 when the defendant inquires about an appeal.
3 Here we have an applicant that inquired about
4 his right to appeal, believing that an appeal
5 had been filed. He tried to get information on
6 the status; when, in fact, the record shows that
7 no appeal was filed on his behalf. It shows
8 that the applicant was very interested in his
9 right to appeal his guilty plea. The appeal
10 should have been discussed, or discussed and
11 knowingly and intelligently waived. The record
12 shows no notice of the right to appeal was given
13 to the applicant, nor any discussion of a waiver
14 of that right. However, the applicant's
15 interest in appeal was documented by his letter.
16 Due to counsel's error he was denied his
17 Constitutional right to appeal.

18 THE COURT: Response?

19 MS. WILSON: May it please the Court,
20 Your Honor.

21 THE COURT: You may proceed.

22 MS. WILSON: It is the State's
23 position that the Applicant has failed to prove
24 deficiency in trial counsel's performance as
25 required by *Strickland v. Washington*.

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1 Allegations about counsel's failure to
2 investigate, Ms. Runey here today explained
3 strategic reasons they proceeded as they
4 proceeded in the case. She testified that she
5 reviewed discovery with the Applicant and, after
6 they received the plea offer and he expressed a
7 wish to plea that she shifted to mitigation.

8 Further, with regard to his allegation
9 that he had an alibi witness, Your Honor, to
10 prove ineffective assistance of counsel's
11 failure to call an alibi witness, you have to
12 produce the witness at the hearing -- and that
13 is from the South Carolina Supreme Court in
14 *Glover v. State* -- and it doesn't prejudice the
15 Applicant -- not even the proffer of a witness.
16 Here we don't know what Ms. Gibbes' testimony
17 would have been because she is not here to tell
18 it. We don't know if her testimony would have
19 accounted for his whereabouts during the time of
20 the incidents. Also, Your Honor, Ms. Runey gave
21 critical testimony that she did not know any-
22 thing about an alibi witness, that the Applicant
23 didn't tell her anything about that he had an
24 alibi.

25 With regard to the allegation that Ms.

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1 Runey didn't inquire as to any confusion on the
2 part of the defendant during the guilty plea and
3 that, as a result, the plea wasn't voluntary,
4 that he didn't understand what was going.
5 Specifically he said that the court's
6 explanation of the right to remain silent -- the
7 bare bones, boiled down, is that the court told
8 him that you can testify if you want or you
9 don't have to testify and the jury won't hold it
10 against you. That's reflected in the transcript
11 on page ten.

12 With regard to the level of Mr. Larkin's
13 education, that is not dispositive to determine
14 that his plea was voluntary or involuntary.
15 Especially in light of the fact that Ms. Larkin
16 (sic) testified that she discussed with Mr.
17 Larkin the plea, that she sat down with him and
18 told him what was going to happen, explained it
19 to him. Also the record clearly reflects that
20 Mr. Larkin's plea was voluntary. He was
21 examined by the court and, further, told that
22 these were three strike offenses and he also
23 told the Court that his plea was voluntary. Ms.
24 Runey testified that she didn't think that he
25 was confused, that he didn't seem to have any

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1 question about the proceeding and that if he
2 would have that she would have stood down to
3 answer any questions that he might have had.
4 Yes and no answers to questions in a guilty plea
5 are standard and the Applicant hasn't show any
6 reason why the State should depart from the
7 acceptance of his guilty plea.

8 With the alleged denial of Mr. Larkin's
9 right to appeal, the U.S. Supreme Court has a
10 bright line rule that the counsel always
11 consults with a defendant regarding an appeal.
12 So the applicant's attorney has a right to --
13 has to consult with him about an appeal if they
14 think a rational defendant wants to appeal or if
15 the defendant demonstrated a desire to appeal.
16 In this case, he talked to Ms. Runey and Mr.
17 Larkin said that he did not want to pursue an
18 appeal and that was an issue that is proper for
19 a PCR.

20 The Applicant hasn't carried the burden
21 of proving ineffective assistance of counsel.
22 Also, Your Honor, he has to show that -- to be
23 successful in his claim, he has to prove that
24 but for trial counsel's failure to consult with
25 him about an appeal that he would have appealed.

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1 The truth is that he didn't want to appeal.
2 With regard to the letter that he presented as
3 being sent to Ms. Runey and to Miss Anderson, at
4 the time that those letters were presented, it
5 was too late for counsel to have even filed a
6 notice of appeal on his behalf and it wasn't
7 sufficient for him to demonstrate his interest
8 in doing so. It's the State's position that Mr.
9 Larkin has failed to carry the burden of proof
10 and that any prejudice that may have resulted
11 from counsel's performance, should be
12 disregarded, because as Ms. Runey testified,
13 from the evidence there was overwhelming
14 evidence of Mr. Larkin's guilt. The State
15 requests that you deny this application.

16 THE COURT: Without belaboring,
17 because the hour is 12:30 and we are well into
18 the lunch recess, I think that we all know what
19 the law is regarding ineffective assistance of
20 counsel when dealing with a guilty plea, in that
21 the Applicant has the burden of proof in
22 establishing that his counsel was ineffective
23 and that but for that ineffective performance
24 that he would have insisted on going to trial
25 and would not have pled guilty.

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1 The Court finds that -- and I will say
2 preliminarily that there is no need to supple-
3 ment the record regarding whether -- regarding
4 his confession. Based on Ms. Runey's testimony,
5 she would have only gone to that extent in
6 investigation had he told her that he wanted a
7 trial. He did not. He told her that he wanted
8 to plead guilty and therefore she shifted into
9 mitigation mode. In mitigation mode, she
10 decided that strategically that the confession
11 that he gave benefitted him.

12 If you look at the recitation of
13 mitigation during the sentencing before Judge
14 Young, Mr. Hazelton very clearly articulates
15 that this was beneficial to Mr. Larkin, which
16 is consistent with that strategy that he was
17 cooperative with the police, that it benefited
18 him, his cooperation. That of all three of the
19 defendants that he was probably the most
20 cooperative, my parenthetical, not words from
21 the transcript. They determined to use that
22 confession in mitigation, so there was really --
23 the only reason that you would have moved to
24 suppress the statement would have been if he
25 went to trial.

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1 Once he indicated to her that he was
2 not interested in pursuing a trial and that he
3 wanted to plead guilty, then there really was no
4 reason for her to concentrate her efforts on a
5 *Jackson v. Denno* hearing. Knowing the policy of
6 this solicitor's office, if he had pursued the
7 trial, which would have been a whole different
8 shift in how the case was proceeding, all offers
9 would have been off and they would not have
10 offered anything further.

11 So it was sort of between a rock and
12 hard place to be in. You can't roll the dice on
13 it. If you decide that's what you are going to
14 do, you're fixed in that position. You don't
15 get to change it later. Once they offer you
16 something and you then decide that 'I want to
17 take the chance, I want to see if I can benefit
18 from a Motion to suppress', they withdraw all
19 offers and they do not give them back to you.
20 So it would have been an LWOP, he would have
21 been back in a life without the possibility of
22 parole situation if he had pursued a *Jackson v.*
23 *Denno* hearing and lost.

24 Based on what I have been able to
25 discern in this record, I have no idea why a

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1 judge would have granted a Motion to suppress.
2 But the circumstance of him facing life without
3 the possibility of parole, I do not find that it
4 is an unreasonable strategic choice to then
5 switch to mitigation where it is very clearly
6 articulated to you, after having gone over the
7 evidence and he has indicated that he wishes to
8 plead guilty.

9 The circumstances of this case, the
10 abhorrent behavior and the evidence, it was a
11 good decision for him to plead guilty. If he
12 had taken a chance and rolled the dice on the
13 motion to suppress, uh, having heard many
14 motions to suppress on a *Jackson v. Denno*, uh,
15 and of course not knowing all the circumstances,
16 at best it is a fifty/fifty call. So if he had
17 lost the *Jackson v. Denno*, all offers would have
18 been retracted and he would have then again been
19 facing life without the possibility of parole
20 where there were credible eyewitnesses, totally
21 impartial and unbiased, as well as the
22 statements of codefendants implicating him with
23 this behavior in a string of robberies of local
24 businesses as well as, of course, the other
25 allegations regarding kidnaping and criminal

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1 sexual conduct, uh, -- I don't know that that
2 would have been a reasonable chance to take with
3 a fifty/fifty shot. When you have a person that
4 young that is facing the possibility of life
5 without the possibility of parole, which we know
6 unlike other states there is no possibility of
7 parole and you serve it every day until you
8 expire. So I cannot say -- I think that it's
9 always easy to say in hindsight that you would
10 have done certain things. In other words, the
11 argument that the Applicant would make was,
12 'Well, I would have made a different decision
13 because she didn't really investigate whether I
14 was impaired and whether the statement would
15 have been suppressed. Therefore, I couldn't
16 have made an informed decision.' I just don't
17 know if that argument holds any weight.

18 At best, if she had rolled the dice and
19 they'd lost the suppression motion, if they were
20 forced into a position where he would have gone
21 to trial and gotten LWOP, he would just be
22 bringing the same application only saying that
23 it was an unreasonable risk for her to have
24 taken.

25 He didn't want to roll the dice,

1 knowing that all offers to him would have been
2 retracted. All things considered, looking at
3 the totality of the entire circumstance, that
4 being the relative relationship with his co-
5 defendants in terms of culpability, just the
6 sheer magnitude of these offenses as well as
7 what I am certain was the Solicitor's posture
8 in this case, meaning I know -- I know their
9 policy. So 'you either take the offer or we are
10 going to go to trial.' Once you head down that
11 road, there are no more offers. And I can tell
12 you that once you're on a trial roster that they
13 are not going to offer you anything else, and
14 that it is Ms. Wilson's policy that there will
15 be no other offers. Once you are on the trial
16 roster, they just take -- the chips just fall
17 where they fall. If they lose, they lose. If
18 they win, they win. But they are not going to
19 offer you anything else.

20 So he had something very significant
21 to lose, that being the life without the
22 possibility of parole exposure. And most
23 individuals in that situation, I am certain that
24 he hoped that his posture in this would have
25 worked in such a way that it would cause his

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1 codefendants to then do likewise, plead guilty.
2 Or if in fact he had to go to trial and provide
3 assistance such that it assisted in the State
4 obtaining conviction against these individuals,
5 that they may have taken a posture with him in
6 terms of sentencing. Certainly that would have
7 been a reasonable expectation on his part. But,
8 again, having had a great breadth of experience
9 with this Solicitor's office, their posture is
10 'You plead. If you help us, fine. If you don't
11 help us, fine. If your help helps us, fine, but
12 we still may take a very hard posture with you.'
13 Which is that even with you testifying and they
14 got a conviction, they might take the position
15 that, 'You really didn't help us that much. It
16 was a slam dunk case anyway. So it's great that
17 you helped us but we're still not going to help
18 your posture on sentencing."

19 So he was just between the proverbial
20 rock and a hard place in this case. I'm
21 convinced -- and I have had a great deal of
22 experience with Ms. Runey. I give credibility
23 to her assessment of his personality. I have no
24 reason to question her as an officer of this
25 court when she testified that he was meek -- my

1 words, not hers. That he was mild-mannered,
2 that she was surprised at the person that she
3 met that day, because that is not how she read
4 these facts in these indictments and that is not
5 what she expected to encounter. That he was
6 always respectful of her, I have no reason to
7 doubt her. Really, frankly, I believe her. I
8 believe that's true, that that is what she
9 encountered.

10 Unfortunately what happened to Mr.
11 Larkin is that he probably was "high", on some
12 variety of whatever, whether it was PCP,
13 marijuana or alcohol, I am not sure. But he was
14 with these other young gentlemen and as young
15 men will often do, they develop a pack mentality
16 and they do things which are completely aberrant
17 and outside their natural character, once
18 together, that they would not do separately. So
19 you end up with a string of behaviors that
20 really, again, put him again -- just as you
21 heard me talk to the young people (class
22 addressed during recess), changed and altered
23 course of his life.

24 I'm certain that as he looks back at
25 his life that he thinks, 'I made this really

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1 horrible -- I made this horrible decision. I
2 wish that there were a way out of it. I wish
3 that there was an option "C", probation or an
4 acquittal.' But under the facts in this record,
5 Option C was never available.

6 So I am faced with a situation where
7 I really don't believe that Ms. Runey's repre-
8 sentation of him was ineffective in any manner
9 on any level. But even if I were to grant what
10 he asks for today, and he does not have the
11 ability really to assess that because as human
12 beings it is only natural that we want to see
13 the glass as half full instead of half empty.
14 Then once he embarked upon that course of
15 behavior, that action, and he had a trial and
16 ended up with a life sentence, he would then be
17 filing a PCR action against his new counsel,
18 saying that it was unreasonable; that they
19 should have worked out a better deal for him;
20 that they shouldn't have taken it to trial. So
21 it is just a situation with no alternative.

22 But I think most persuasive to the
23 court is the contemporaneous record of the
24 proceedings. That means the guilty plea before
25 Judge Young on November -- and you are correct,

1 Mr. Capretti, that it is not to be a cursory
2 colloquy between the court and the defendant.
3 It never is. We look at many things. I think
4 that I can, with authority, speak for my
5 colleagues. We look at a lot of stuff. I look
6 at body language more than what comes out of
7 someone's mouth. If you say 'yes' to me but
8 your body language is equivocating, many times
9 I've not accepted a guilty plea because your
10 mouth is telling me one thing but your body is
11 telling me something else, which is also true in
12 a PCR.

13 So I feel I can tell -- and I tell
14 defendants all the time that I am a great
15 believer in the trial system and that if you
16 believe a trial is what you want, then that is
17 what you should have. I will accommodate you.
18 Of course, I've had people stand down because a
19 person has equivocated on a plea. I really
20 believe that a person has that right. When you
21 equivocate on entering a guilty plea, we're
22 wasting time -- both their time and the court's
23 resources. I believe that all of my colleagues
24 have the same mindset regarding that. So if
25 there was any equivocation or any hesitation

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1 before Judge Young, he would have explored that.
2 He would have seen that and made observations
3 like, 'Are you sure you really want to do this?
4 Are you sure that this is what you want to do?'
5 We all have different ways that we make that
6 assessment.

7 On November 9th, 2010, when Mr. Larkin
8 appeared with Ms. Runey the record -- of course
9 the court does not have the ability to see what
10 was happening at that time but it appears that
11 he was clear in his responses to the court.
12 Judge Young went into every single one of his
13 offenses. The solicitor for Dorchester County
14 was present as well. He went over the range of
15 penalty for each one of the indictments. Judge
16 Young even made the antidotal comment that he'd
17 never had that many serious charges on one
18 person before but that it might be the day for a
19 record, which really highlights the gravity of
20 the situation which Mr. Larkin found himself in,
21 as well as the number of charges that were *not*
22 *prossed* or dismissed. I am referring to pages
23 one, two and three for the observations that the
24 court has already made. Then page -- it goes on
25 to page four, as well as page five. Then Judge

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1 Young makes another observation, "The Court will
2 not sentence you today because they want to
3 begin" -- then he makes a misstatement --
4 "codefendants testify should they desire to go
5 to trial."

6 Then the question, "Is that what you
7 understand that you are here for today?" He
8 answered, "Yes, sir."

9 Then he went over some more things with
10 him, which was the enhancements, page six going
11 into page seven.

12 Then he also went over, covers -- then
13 he goes over with him the fact that all "these
14 things are strikes and that because of the plea
15 that the State has elected not to proceed or to
16 put you on notice of life without parole, as a
17 result of your plea arrangement. But that after
18 today you will be subject to those strikes."
19 And that he understands that.

20 Also as I am making this observation, I
21 find credible Ms. Runey's testimony that she did
22 in fact go out to the detention center and went
23 over each of these questions with him, as well
24 as his understanding of what each of these
25 questions entailed so that he could be ready

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1 when he went to court on the guilty plea.

2 Judge Young also covered with him his
3 right to a jury trial, beginning on page seven
4 and going onto page eight. As well as -- what I
5 found particularly probative was that "You can
6 challenge the admissibility of the evidence that
7 the State puts up, you can put on evidence of
8 your own..." -- which really clearly notes that he
9 had the right to challenge his statement and
10 that he understood what he was giving up -- he
11 understood that he had all those rights, that he
12 was giving up those rights. Again, that is page
13 eight.

14 Then he goes through some other things
15 about -- particularly he tells him about the
16 indictment on pages nine and ten regarding the
17 under underlying facts, which goes onto page
18 eleven.

19 Then he questions him regarding Ms. Runey's
20 representation, starting at page twelve and he
21 indicates that he is satisfied with her
22 representation. The court specifically asked,
23 "Did she sit down with you and go over all the
24 evidence that the State has?" He said, "Yes,
25 sir." I do find that credible. I do not find

1 his testimony today credible, that she did not
2 go over the discovery with him or that he did
3 not understand the charges against him or the
4 evidence against him. I find her testimony
5 credible that she did send him -- that her usual
6 practice would have been to send him a hard copy
7 of discovery, have him go over it and then she
8 went over to the jail and went over with him the
9 facts that specifically dealt with each if those
10 -- all of the evidence that the State had
11 against the client.

12 And he asked specifically, on page
13 twelve:

14 "Based on that, you guys talked about
15 whether or not you wanted to go to trial or
16 whether or not to plea. Is that right?"

17 Yes, sir.

18 You had that discussion with her about
19 whether or not you wanted to go to trial.
20 You decided whether or not you wanted to
21 call any witnesses?

22 And the defendant answered, "I don't
23 want to go to trial."

24 The court, "You don't want to put up
25 any kind of defense?"

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1 Defendant, "No, sir."

2 You don't want to try to suppress
3 any evidence?

4 No, sir.

5 You don't want to want to tell the
6 jury your side of the story?

7 No, sir.

8 This is your decision and your
9 decision alone?

10 Yes, sir.

11 Did she do everything that you
12 asked her to do?

13 Yes, sir.

14 Are you satisfied with her
15 representation?

16 Yes, sir.

17 Do you need any more time with her?

18 Then Ms. Runey says, "I think that
19 it is confusion."

20 Do you need to spend any more time
21 with her before we proceed right now?

22 No, sir.

23 And while there is that comment, I
24 really don't know what it referenced. From the
25 colloquy, there is no indication that he is

1 confused, that he didn't understand where he was
2 or what he was doing or that he didn't have the
3 ability to understand the questions that Judge
4 Young asked of him.

5 But he asked, "Do you need to spend any
6 more time with her before we proceed right now?"

7 No, sir."

8 Ms. Runey testified, and I find it
9 credible, that the only thing that she can
10 ascertain from the record is that her client was
11 confused. She meant that he understood it to
12 mean if he needed to spend more time with her
13 after the plea or, uh, before they continued
14 with the plea. I do find that testimony
15 credible.

16 The judge also goes over whether he has
17 been threatened in any way. That's at page
18 fourteen. He indicates that he has not.

19 He also goes through his education and
20 experience. And while he dropped out of school,
21 he was admitted to Job Corps. He was not
22 married, did not have any children.

23 The court then questioned Ms. Runey
24 whether she had advised her client of his rights
25 and whether she questioned any mental capacity,

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1 which goes onto page fifteen. Whether she
2 agreed with his decision, which she affirmative-
3 ly answered. The court then accepted the plea.

4 Mr. Wetmore then went into the
5 specifics of the facts of these incidents, which
6 expands onto to, really, the remainder of the
7 plea -- of the colloquy, which ends at page
8 twenty-two. The court specifically finds that
9 there is a substantial factual basis for the
10 plea and that it will defer sentencing; that the
11 plea was freely and voluntarily given and
12 intelligently made.

13 Based on that record, I cannot discern
14 that the plea was not voluntary given and
15 intelligently made.

16 Obviously there has been a great deal
17 of discussion about the suppression issue. I
18 have already addressed that, I believe,
19 adequately.

20 As regards -- there was substantial
21 mitigation presented on behalf of Mr. Hazelton.
22 I have to assume that was when Ms. Runey was out
23 on maternity leave. This took place on March
24 5th, 2012. That starts at page forty and goes
25 on, uh, -- and on page forty-two it makes

1 reference to the letter that Ms. Runey sent to
2 the court for consideration. Then it goes on
3 over to the defendant making a statement to the
4 court asking for leniency.

5 The court then begins to sentence on
6 page -- and that goes on through the rest of the
7 transcript, with statements from the victims and
8 things that are not really necessary for this
9 court to go through.

10 I find for the record that the State is
11 correct in its accurate summation of the case
12 law regarding the right to appeal. I do not
13 find Ms. Runey's counsel of the defendant
14 deficient in any manner regarding the advice of
15 his right to appeal.

16 The State is also correct that if this
17 witness were to be produced, that it was his
18 burden to produce her. Once again, strategically
19 when the defendant told Ms. Runey that he wanted
20 to plead guilty and take advantage of the offer
21 that was made to him by the State, it is
22 reasonable that she would not expend any more or
23 resources in a trial preparation mode versus a
24 mitigation mode for a plea.

25 So there are two different ways that a

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1 case could be handle. But I don't know that it
2 would have made any appreciable difference if
3 she had come forward and testified that he was
4 someplace else. Other witnesses, who would have
5 had more credibility, said that he was right
6 there. So I cannot discern that it would have
7 made any difference in the outcome of the plea
8 or of a trial. I think, again whether the glass
9 is half full or half empty, that he would have
10 liked to think that it would have made a
11 difference, but I don't know that it would have
12 considering the totality of his record.

13 MR. CAPRETTI: Your Honor, may I
14 just make a comment?

15 THE COURT: Sure.

16 MR. CAPRETTI: Regarding the
17 suppression issue, the fact that he was
18 cooperative during the interrogation might
19 indicate that he was under the influence ---

20 THE COURT: That has not been my
21 experience. People usually, under duress, --
22 not duress but under the stress of a situation
23 sometimes it is very cathartic for them to just
24 get it off their chest and tell the truth once
25 they have been Mirandized. People blurt it out

1 in the back of a car, on camera, when they
2 haven't even had a chance to be Mirandized.

3 MR. CAPRETTI: And, Your Honor, it
4 is very likely that he may have been on
5 something.

6 THE COURT: I don't believe voluntary
7 intoxication would have made that great a
8 difference. Even if they had suppressed his
9 statement, there were two other statements.
10 They already had other statements that
11 inculcated him, of his codefendants.

12 MR. CAPRETTI: The point that I want
13 to make, though, is that when the plea offer was
14 given it didn't have to be accepted immediately
15 but there was some time when he ---

16 THE COURT: It was probably about two
17 weeks.

18 MR. CAPRETTI: Two weeks?

19 THE COURT: Or less. It just
20 depends on each individual solicitor.

21 MR. CAPRETTI: It would have been
22 easy for counsel to request the in camera --

23 THE COURT: They would have had a
24 video of it. I don't know if it was a written
25 statement if he did it in his own hand or if he

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1 gave it orally and had the officer write it
2 down. He initialed it and signed it.

3 MR. CAPRETTI: Also I believe that my
4 client referred to an on-the-scene confession
5 and that's the one that he is concerned about.

6 THE COURT: I don't know that it
7 would have made a difference. Because once he
8 contested that statement, all deals would have
9 been off the table. I have already ruled that
10 the strategic or strategy -- and once,
11 ultimately, and the record supports, that it's
12 his decision. I think he had hoped that by his
13 cooperation that he would have gotten a lesser
14 sentence. But even if the State had made a
15 recommendation -- the only way that you can
16 control what the judge says is if you have a
17 negotiated sentence. Even then you can't
18 control the court, because we don't have to
19 accept it. If it's not acceptable to us, we can
20 reject it and then you're under an affirmative
21 obligation to tell every other judge that you
22 appear before that we rejected it.

23 I don't know that if -- really in the
24 grand scheme of this case -- to tell you the
25 truth, reading these allegations as true, it was

1 a very fair sentence. I can't say that I would
2 have done the same.

3 MR. CAPRETTI: One other point that I
4 would like to ---

5 THE COURT: So I don't know that I
6 -- I think that -- I think that Judge -- I say
7 that to say that Judge Young had the benefit of
8 all three of them appearing before him, hearing
9 all three of them, hearing from every lawyer in
10 mitigation about each of them regarding their
11 culpability and he made an informed decision.
12 I think he -- based on what your client asked
13 for, I think that he was treated very lenient.
14 He asked 'if you could, please, cut me some
15 slack in this because I was young, I was stupid
16 and I made a really bad mistake.' From his
17 record, I -- I can tell you that I believe Judge
18 Young gave credibility to that and that he gave
19 him -- because I can tell you the other side of
20 it would have been to run all of this stuff
21 consecutive and to have given him the maximum on
22 all of them. Apparently he gave weight to that
23 mitigation. Again, I would never second guess
24 a colleague because I wouldn't want them to
25 second guess me, but -- I don't have the benefit

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1 of being there, seeing everything that
2 transpired. But apparently he convinced him, so
3 -- he did give a more lenient sentence to Mr.
4 Larkin.

5 You know, judges give weight to a lot
6 of things: youth, maturity, experience, the
7 fact that you may have been impaired at the
8 time, impaired judgment.

9 Voluntary intoxication, there is no
10 break for that because that is something that
11 you did that impaired you, that caused you to
12 engage in illegal acts.

13 It is clear to me from the record that
14 it was a very difficult decision for him to
15 make, especially with the victims appearing and
16 saying how their lives -- how they were
17 struggling every day to cope, to get back on
18 track with their lives.

19 I think that he gave a great deal of
20 -- the fact that the sentences were not run
21 consecutive, were not the maximum, tells me that
22 he gave him some consideration for admitting his
23 culpability, that he gave -- that the mitigation
24 strategy worked and that it was a valid strategy
25 that was embarked upon in that he was able to

1 have a situation offered him where he was able
2 to plead guilty. Sometimes in situations like
3 this, the State takes the posture that 'we
4 believe that -- you can plead straight up' or
5 'we really don't care what you do because we
6 have a good case and we want to go to trial,
7 because we want to argue for the most severe
8 punishment that we can achieve.'

9 So I don't know if, really, in the
10 grand scheme of things that it would have made
11 any appreciable outcome in the grand scheme of
12 this case. I can't see any benefit that he
13 would have achieved by going to trial.

14 MR. CAPRETTI: Well, the plea offer
15 was out there for more than two weeks, so he had
16 nothing to ---

17 THE COURT: I don't know how long it
18 was before. Sometimes they say twenty-four
19 hours; sometimes they say two days. I don't
20 know what the timeframe was.

21 MR. CAPRETTI: Even if it was as
22 short as twenty-four hours there was some period
23 of time, a couple of hours at least, when some
24 investigation, whether it would have had any
25 effect on the outcome of the ---

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1 THE COURT: She would have gone -- I
2 mean, the responsibility to investigate, once he
3 said that he wanted a trial ---

4 MR. CAPRETTI: Well, ---

5 THE COURT: Otherwise, why would you
6 spend the resources?

7 MR. CAPRETTI: It could have taken
8 the defense in a whole different direction if
9 she ---

10 THE COURT: It has been my
11 experience that defendants are very articulate
12 about that. If he didn't want to plea, if he
13 did think that there was some benefit in that he
14 would have said, 'I want you to pursue this
15 suppression issue on my statement and I' --
16 whatever the stakes were. Defendants do this
17 every day, they say, 'Whatever the stakes are, I
18 want you to --- ' -- I see defendants, all the
19 time, roll the dice on suppression, lose it and
20 then they want the deal back. The State says,
21 'no, you can't get the deal back.' Then they
22 get convicted and get the mandatory minimum. So
23 I don't -- I've seen both sides of it. It is
24 believable to me that he told her that he wanted
25 to plead guilty. I think hindsight is twenty/

1 Mr. Monroe got twenty years on the
2 attempted armed robbery and everything else was
3 twenty-five.

4 Then Mr. Larkin, for the ABHAN he got
5 ten years and for everything else he got twenty.
6 Then everything else was twenty-five.

7 So there was some differentiation in
8 sentencing and I believe that was based on the
9 level of culpability.

10 Thank you all so much. I am going to
11 have Ms. Wilson provide the proposed Order for
12 the Court, have her provide that electronically
13 to the court within ten days. Mr. Capretti, she
14 will send you a copy of that. If you have
15 anything that you want to add to that Order or
16 that you want to share with Ms. Wilson, to amend
17 to that Order, just make her aware of it. In
18 most instances y'all can agree to any changes.
19 But I will tell you that I never sign anything
20 the way that it is sent me. I rewrite it. No
21 offense. I just like a way that I like things
22 done, so I generally rewrite it.

23 MR. CAPRETTI: Just a quick
24 question, as to any supplemental ---

25 THE COURT: I don't think that there

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1 is anything -- I think that those questions were
2 covered by Ms. Runey regarding the suppression.
3 I don't think that there is anything else that
4 would -- I know the case law on it and she's
5 already testified why she didn't pursue it. I
6 don't think that there is anything that would
7 benefit from -- there is no need to supplement
8 the record. Your client has indicated that he
9 was impaired, uh, that she didn't pursue it and
10 she doesn't contest that. Thank you so much.
11 Y'all have a good day.

12 (HEARING CONCLUDED)
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Case No. 12-CP-10-0633

Hearing of May 22, 2013

Before The Honorable Deadra L. Jefferson

STATE OF SOUTH CAROLINA)

)

CERTIFICATE

COUNTY OF CHARLESTON)

)

I, the undersigned Deborah Garrison,
Circuit Court Reporter for the 9th Judicial
Circuit, hereby certify that the foregoing is a
complete and accurate transcript of the hearing
held in the within action heard on May 22, 2013,
before the Honorable Deadre Jefferson;

I further certify that I am neither kin
nor counsel to any of the parties and have no
interest in the outcome of this action.



Deborah Garrison

Charleston, South Carolina
December 10, 2013

August 29, 2011
Monday

Ats Helene Anderson,

Hello, let me introduce myself, my name is Corey Larkin and I have been informed that you were assigned to my case involving a Direct Appeal. I would like to get with you and discuss matters dealing with this whole ordeal. I was sentenced unfairly and the counsel I had didn't represent me to the best of their capabilities. I hold no grudge but feel I was left out to dry. Now resulting in the outcome when I go back to court I want things to run smoothly. I have ^{been} studying my case & going to the law library in which I've come across some prejudices. I don't know how long you've been doing this (your job) but I would hope you treat this (your client) as if your job was on the line literally. I look forward to hearing from you and am willing to

help you help me. Ms. Anderson I
write this with no disrespect
this is my life I was bamboozled
once, & I won't let it happen it
again. So my 1st question to you
'is: How can I expect you to work
on my behalf, when you as my
appointed attorney didn't give me
anything informing me of this.

Respectfully,
Corey Jackson

4-29-11

R.E. Copres

Dear Mrs. Runney,

Hello this is Corey Larkin #344734 your old client that you represented since June 05 - Jan 11. I never really got a chance to Thank You for representing me. But to get to the point my grandmother was informed that I had a direct appeal filed and that I have a new lawyer representing me. But I have not received anything stating that the motion has been filed or whether assigning me a new lawyer. I was hoping that you can find it in your heart to find out if the direct appeal has been filed and about the new lawyer situation. If its not a problem could you send me my appendix cause I am going to file my P.C.R. myself. Time is of the essence so I would truly appreciate if you could help me out.

An appeal has NOT been
filed w/ the Clerk of Ct.
You were listed as his
Attney.

Latosna 11/8
Can you
please find
out if an appeal
was filed & if
so who is his
lawyer?
Thanks,
mkr

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Corey Larkin, #344734,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS

2012-CP-10-0633

ORDER OF DISMISSAL

FILED
2013 SEP 20 PM 4:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Presiding Judge:
Applicant's Attorney:
Respondent's Attorney:
Plea Counsel:

Date of Hearing:
Court Reporter:

Hon. Deadra L. Jefferson
Frank Capretti, Esq.
Ashleigh R. Wilson, Esq.
Martha K. Runey, Esq.
David Haselden, Esq.
May 22, 2013
Deborah Garrison

This matter comes before the Court by way of an application for post-conviction relief (PCR) filed January 27, 2012 and amended May 10, 2013. The Respondent made its Return on November 9, 2012 and amended its Return on January 31, 2013. An evidentiary hearing into the matter was convened on May 22, 2013 at the Charleston County Courthouse. The Applicant was present at the hearing and represented by Frank Capretti, Esquire. Ashleigh R. Wilson, Esquire, of the South Carolina Attorney General's Office represented the Respondent.

The Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Martha Kent Runey, Esquire, also testified at the hearing. This Court had before it the guilty plea transcript, the records of the Charleston County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections, the PCR applications, the Respondent's Return thereto, and the Applicant's hearing exhibits.

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[Signature]

PROCEDURAL HISTORY

The Applicant is incarcerated with the South Carolina Department of Corrections pursuant to orders of commitment from the Clerk of Court for Charleston County. The Applicant was indicted at the October 2008 term of the Charleston County Grand Jury for first-degree criminal sexual conduct (2008-GS-10-8151), five (5) counts of kidnapping (2008-GS-10-8153, 8154, 8114, 8115, and 8063), five (5) counts of armed robbery (2008-GS-10-8155, 8156, 8157, 8117, and 7831), assault and battery of a high and aggravated nature (ABHAN) (2008-GS-10-7832), attempted armed robbery (2008-GS-10-8065), two (2) counts of second-degree burglary (2008-GS-10-8116 and 8158), and three (3) counts of possession of a weapon during the commission of a violent crime (2008-GS-10-8066, 8118, and 8152). Martha Kent Runey, Esquire (1st chair) and David Haselden, Esquire, (2d chair) represented the Applicant.

On November 9, 2010, the Applicant pled guilty. On February 3, 2011, the Honorable Roger M. Young, Sr. sentenced the Applicant to concurrent terms of twenty-five (25) years imprisonment for one (1) count of first degree criminal sexual conduct, three (3) counts of kidnapping, and three (3) counts of armed robbery. The Applicant was also sentenced to concurrent terms of ten (10) years imprisonment for ABHAN and twenty (20) years imprisonment for attempted armed robbery.¹ The Applicant did not appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel.
 - a. Counsel failed to conduct a proper investigation.
 - b. Counsel failed to subpoena witnesses.
 - c. Counsel failed to tell Applicant he would be able to attack co-

¹ The Applicant's two (2) second-degree burglary charges, three (3) counts of possession of a weapon during the commission of a violent crime charges, two (2) counts of kidnapping charges, and two (2) counts of armed robbery charges were nolle prossed in exchange for the Applicant's plea to the other charges.

- defendants' credibility at trial.
- d. Counsel failed to tell Applicant he could file a motion for separation, if he went to trial.
- e. Counsel failed to properly communicate with Applicant.
- 2. Involuntary guilty plea.
 - a. Applicant would have gone to trial if counsel had adequately prepared and researched the case.

In his amended application for post-conviction relief filed May 10, 2013, the Applicant alleged:

- 1. Ineffective assistance of counsel.
 - a. Counsel failed to reasonably investigate the case or seek a continuance to allow time for proper investigation.
 - b. Counsel failed to discuss potential defense strategies or identify important witnesses, including alibi and expert witnesses that would be able to testify on the applicant's behalf.
 - c. Counsel did not inquire into or cure applicant's state of confusion during the guilty plea hearing thereby rendering applicant's plea not knowing, intelligent, or voluntary.
 - d. Applicant was denied the right to appeal.

At the hearing, the Applicant abandoned all grounds for relief except the ineffective assistance of counsel allegations as outlined in his amended application for post-conviction relief.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing and to closely pass upon his or her credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003):

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Summary of the Testimony

The Applicant testified he met with counsel six times prior to pleading guilty. He testified he told counsel that he was under the influence at the time of his confession. He testified they did not discuss her investigation of the case or any possible defenses prior to his plea. The Applicant testified had counsel investigated his case, he would not have pled guilty and would have gone to trial. He testified had counsel investigated further, she would have found his statement was not voluntary. He testified he felt the trial court would have granted a motion to suppress his statement.

The Applicant testified he has two alibi witnesses by the name of Tanisha Gibbs and Brandon Simmons. He testified Gibbs lived in Indigo Creek and he last spoke with her in September 2008. He testified counsel did not ask him about his alibi. The Applicant testified he told counsel about his alibi witnesses and the area in which she could find Gibbs. He testified he does not know where Gibbs is today and does not recall if he gave counsel an address or phone number to reach Gibbs. He testified prior to his guilty plea he could have provided counsel with information to locate Gibbs.

The Applicant testified he pled guilty because he was told if he went to trial, he would face life without the possibility of parole (LWOP) and the State had overwhelming evidence of his guilt. He testified he did not understand he was waiving his constitutional rights and was confused at his guilty plea. He testified he knew that he could go to trial and call witnesses to testify on his behalf. He further testified counsel told him to respond to the Court's questions with "yes". He also testified he did not tell the Court he was confused during his guilty plea.

The Applicant testified he did not want to appeal his plea and wanted to skip the appellate process to pursue post-conviction relief. He testified he was not advised of his right to appeal and

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did not discuss his grounds for appeal with counsel. He testified he found out no appeal had been filed in his case after writing the Clerk of Court.

Martha Kent Runey, Esquire, represented the Applicant at his guilty plea and also testified at the evidentiary hearing. Counsel testified that at the time she represented the Applicant she had been a public defender for six (6) years. She testified she had tried several LWOP cases and avoided that sentence with many guilty pleas. She testified she met with the Applicant often. Counsel testified the Applicant always admitted his involvement in the crime; however, the extent of his involvement sometimes differed. Counsel testified the Applicant's co-defendant gave a statement implicating him and the State had overwhelming evidence of the Applicant's guilt.

Counsel testified she filed Brady and Rule 5 motions on the Applicant's behalf. Counsel testified after reviewing the Applicant's discovery, the Applicant had to decide whether to go to trial or to plead guilty. She testified her notes reflected that she had seven (7) visits with the Applicant to go over the discovery. She testified she would have sent the discovery to the Applicant and then met with him to go over the discovery in detail to assess how to attack the deficiencies in the State's evidence and case issue by issue. She testified that after she received the plea offer from the State, she explained the offer to the Applicant and they discussed whether to pursue mitigation for a guilty plea or whether to investigate each individual charge for trial. Counsel testified that the State offered the Applicant a sentence ranging from ten (10) to thirty (30) years on all charges to be run concurrent with the Applicant's pending charges in Dorchester County and that several other charges would be dismissed. She testified she asked the Applicant if he wanted to prepare for trial or focus on mitigation for a guilty plea. She testified he told her he wanted to plead guilty, at which time she shifted her focus on mitigation to present

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at the guilty plea. Counsel testified the discovery in the case was paper intensive, consisting of many documents, and if the Applicant wanted to go to trial she would have shifted her efforts to trial preparation, determined which charges would go to trial first, prepared trial strategy, interviewed witnesses, and determined if the Applicant's co-defendants would testify against him.

Counsel testified she did not recall a specific defense they would have presented at trial. She testified she usually sends an investigator out to interview witnesses good or bad, but she did not have a memo from the investigator in her file because she did not send one out after receipt of the State's offer. She testified she did not receive any info on witnesses from the Applicant. Counsel testified she never knew of an alibi witness by the name of Tanisha Gibbs. She testified the Applicant did not tell her about any alibi witnesses and, had he done so, she would have investigated the alibi. Counsel further testified that since the Applicant indicated a decision to plead guilty versus demanding a jury trial she did not complete an independent investigation of the Applicant's case in the same manner as she would have done to prepare for trial. However, she testified she had enough information about the case to advise the Applicant on whether or not he should accept the State's plea offer. She further testified she was concerned about the Applicant's youth and the State's intention to pursue an LWOP sentence if he had pursued a trial. Counsel testified she thought the Applicant would have problems if he went to trial on the charges he was facing. She further testified one of the insurmountable elements for consideration was the detailed confession the Applicant had given to the police. However, she testified she would have gone to trial if the Applicant so desired, regardless of this issue.

Counsel testified that prior to the Applicant's guilty plea, she reviewed with the Applicant the questions he would be asked by the court during his guilty plea. She testified she

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advised the Applicant of the elements of each charge, his constitutional rights, the potential sentence(s), and the meaning of life without the possibility of parole. She testified in preparation for the Applicant's guilty plea she looked into his mental health records, wrote a letter to the judge about her relationship with the Applicant, had the Applicant's pastor come speak at the guilty plea, had the Applicant evaluated to determine his risk of re-offense for sexually violent crimes, researched his job history, and drafted a memo outlining his family life.

Counsel testified she looked into the Applicant's contention that he was intoxicated while giving his confession and thought it should be presented to the court as mitigation during sentencing. She testified the Applicant never indicated his confession was not voluntary. She testified she wanted the court to know that the Applicant was friendly and cooperative with police when questioned. Counsel testified she probably told the Applicant they would assert his involuntary confession if he wanted to proceed to trial. She further testified that the Applicant's alleged impairment during his confession did not change her advice to the Applicant about pleading guilty.

Counsel testified she did not recall the Applicant's alleged confusion during the guilty plea. She testified he did not express any doubt about his decision to plead guilty or indicate any hesitation at the time of the plea. She further testified had the Applicant indicated he was confused, she would have asked the court to stand down. She testified after the guilty plea, the Applicant did not ask her about other legal options. Counsel testified another public defender, David Haseldon, Esquire, represented the Applicant at the sentencing hearing while she was on maternity leave. She testified she received a letter from the Applicant after she returned from maternity leave. She testified she generally informs all clients of their right to appeal.

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[Signature]

Ineffective Assistance of Counsel

The Applicant alleges that he received ineffective assistance of counsel. In a post-conviction relief action, the applicant has the burden of proving the allegations in the application by a preponderance of the evidence. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 441, 334 S.E.2d 813, 814 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 686, 104 S. Ct. 2052, 2064 (1984); Butler, 286 S.C. at 442, 334 S.E.2d at 814.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel "rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment." Strickland, 466 U.S. at 690, 104 S. Ct. at 2066. The applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 118, 386 S.E.2d 624, 625 (1989).

Courts use a two-pronged test to evaluate allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Id. At 117, 386 S.E.2d at 625. Under this prong, attorney performance is measured by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688, 104 S. Ct. at 2065. Second, counsel's deficient performance must have prejudiced the applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Id. At 117-18, 386 S.E.2d at 625 (citing Strickland, 466 U.S. at 694, 104 S. Ct. at 2068). "A reasonable probability is a probability sufficient to undermine

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confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland, 466 U.S. at 694, 104 S.Ct. at 2068). 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, 59, 106 S. Ct. 366, 370 (1985); Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001) (citing Hill, 474 U.S. at 59, 106 S. Ct. at 370; Jackson v. State, 342 S.C. 95, 98, 535 S.E.2d 926, 927 (2000); Thompson v. State, 340 S.C. 112, 115, 531 S.E.2d 294, 296 (2000); Rayford v. State, 314 S.C. 46, 48, 443 S.E.2d 805, 806 (1994)).

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, 242-44, 89 S. Ct. 1709, 1712 (1969); Dover v. State, 304 S.C. 433, 434, 405 S.E.2d 391, 392 (1991) (citing State v. Hazel, 275 S.C. 392, 394, 271 S.E.2d 602, 602 (1980)). 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, 650 (2000) (citing Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984)). When a defendant pleads guilty on the advice of counsel, the plea may be attacked only through a claim of ineffective assistance of counsel. Roscoe, 345 S.C. at 20, 546 S.E.2d at 419 (citing Al-Shabazz v. State, 338 S.C. 354, 363-64, 527 S.E.2d 742, 747 (1999)).

This Court finds counsel is a trial practitioner who has extensive experience in the trial of serious offenses. Counsel conferred with the Applicant on numerous occasions. During conferences with the Applicant, counsel discussed the pending charges, the elements of the charges and what the State was required to prove, the Applicant's constitutional rights, the

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Applicant's version of the facts, and possible defenses or lack thereof. The record reflects that the Applicant's plea was entered freely, voluntarily, knowingly, and intelligently. The Applicant acknowledged that he was guilty of these offenses. The Applicant told the plea court that he was satisfied with his attorney and that no one had threatened him or promised him anything to plead guilty.

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 that the Applicant's attorney demonstrated the normal degree of skill, knowledge, professional judgment, and representation that are expected of an attorney who practices criminal law in South Carolina. State v. Pendergrass, 270 S.C. 1, 4-5, 239 S.E.2d 750, 751-52 (1977); Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65; Butler, 286 S.C. at 442, 334 S.E.2d at 814 (citing Strickland, 466 U.S. at 687-88, 104 S. Ct. at 2064-65; Turner v. Bass, 753 F.2d 342, 348 (4th Cir. 1985), *rev'd on other grounds*, Turner v. Murray, 476 U.S. 28, 106 S. Ct. 1683 (1986); Marzullo v. Maryland, 561 F.2d 540, 544 (4th Cir. 1977)). This Court further finds counsel adequately conferred with the Applicant, conducted a proper investigation, and was thoroughly competent in her representation. This Court finds that counsel's representation did not fall below an objective standard of reasonableness.

Failure to Investigate

This Court finds that trial counsel was not ineffective for failing to investigate the Applicant's case. "[C]riminal defense attorneys have a duty to undertake a reasonable investigation, which at a minimum includes interviewing potential witnesses and making an independent investigation of the facts and circumstances of the case." Walker v. State, 397 S.C. 226, 235, 723 S.E.2d 610, 615 (Ct. App. 2012) (citing Edwards v. State, 392 S.C. 449, 456, 710

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S.E.2d 60, 64 (2011)). "An attorney need not pursue an investigation that would be fruitless, much less one that might be harmful to the defense." Harrington v. Richter, 131 S. Ct. 770, 789–90 (2011) (citing Strickland, 466 U.S. at 691, 104 S. Ct. at 2066). "Failure to conduct an independent investigation does not constitute ineffective assistance of counsel when the allegation is supported only by mere speculation as to the result." Moorehead v. State, 329 S.C. 329, 334, 496 S.E.2d 415, 417 (1998) (citing Kibler v. State, 267 S.C. 250, 256, 227 S.E.2d 199, 202 (1976)). Counsel has a duty to make reasonable investigations or to make a reasonable decision that makes particular investigations unnecessary. In any ineffectiveness case, "a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, applying a heavy measure of deference to counsel's judgments." Wiggins v. Smith, 539 U.S. 510, 521–22, 123 S. Ct. 2527, 2535 (2003) (quoting Strickland, 466 U.S. at 690–91, 104 S. Ct. at 2066).

This Court finds counsel articulated a reasonable strategic basis for her decision to halt investigation of the facts of the Applicant's case once he indicated he wanted to plead guilty. Counsel gave credible testimony that once the Applicant indicated his desire to plead guilty, she shifted her focus to the mitigation evidence that would be presented at the Applicant's sentencing proceeding which she more than adequately investigated. This Court also finds that counsel's strategic decision benefitted the Applicant and resulted in substantial mitigation evidence being presented to the court and a more favorable sentence for the Applicant. The record reflects several family members were present to speak on the Applicant's behalf during sentencing, the court was made aware of the Applicant's cooperation with police, and counsel submitted a letter to the court on the Applicant's behalf.

This Court also finds the Applicant has failed to carry his burden of proving additional

investigation by counsel would have affected the outcome of the proceeding. The Applicant has provided the court no evidence of what would have been discovered had counsel continued her investigation of the Applicant's case. This Court finds it is unlikely further investigation would have aided the Applicant in light of counsel's characterization of the State's evidence against the Applicant as overwhelming. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to investigate his case.

Failure to discuss potential defense strategies or identify important witnesses

This Court finds that trial counsel was not ineffective for failing to discuss defense strategies or identify important witnesses. This Court finds counsel gave credible testimony that it is her general practice to discuss defenses while reviewing discovery with the client.

This Court also finds trial counsel was not ineffective for failing to investigate the Applicant's alleged alibi witnesses. In order to support a claim that trial counsel was ineffective for failing to interview or call potential alibi witnesses, a PCR applicant must produce the witnesses at the PCR hearing or otherwise introduce the witnesses' testimony in a manner consistent with the rules of evidence. "The applicant's mere speculation what the witnesses' testimony would have been cannot, by itself, satisfy the applicant's burden of showing prejudice." Glover v. State, 318 S.C. 496, 499, 458 S.E.2d 538, 540 (1995). This Court finds the Applicant failed to produce any witnesses to testify to his alleged alibi. The Applicant's mere speculation as to what the testimony of Tanisha Gibbs and Brandon Simmons would have been is merely speculative and not sufficient to support his claim of ineffective assistance of counsel for failing to interview potential alibi witnesses. This Court further finds credible the testimony of counsel that the Applicant never provided her with the names of any witnesses to pursue or

interview to establish an alibi defense. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to discuss defense strategies and possible witnesses.

Failure to inquire into or cure Applicant's state of confusion during the guilty plea

This Court finds that trial counsel was not ineffective for failing to inquire into or cure the Applicant's alleged state of confusion during the guilty plea. This Court finds the record is void of any equivocation from the Applicant during his guilty plea. This Court finds most persuasive the record and counsel's testimony that the Applicant was well aware of the consequences and nature of his guilty plea. The record reflects the Applicant was advised of the potential sentences for his charges (Tr. 2:14-5:21), his right to a jury trial (Tr. 7:23-8:22), his right to remain silent (Tr. 8:9-18), and his right to confront his accusers. (Tr. 8:11-18.) The Applicant told the court he did not wish to go to trial (Tr. 12:20), was not threatened or promised anything to plead guilty (Tr. 14:1-4), and that he was not under the influence of any alcohol or drugs and did not suffer from any mental illness. (Tr. 11:16-25.) This Court finds the Applicant's colloquy with the court was sufficient to advise him of the seriousness of the charges he was resolving by pleading guilty, his constitutional rights and the potential penalty. The record reflects further the Applicant had no interest in proceeding to trial and putting up a defense. This Court finds the Applicant's guilty plea was entered intelligently, freely, and voluntarily. This Court finds that this allegation is without merit and the Applicant has failed to carry his burden of proving counsel was ineffective for failing to cure his alleged state of confusion during the guilty plea.

Denial of the Applicant's right to appeal

This Court finds the Applicant has failed to carry his burden of proving he did not

voluntarily waive his right to appeal. The United States Supreme Court has rejected a bright-line rule that counsel must always consult with the defendant regarding an appeal. See Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036 (2000). Instead, counsel only has such duty "when there is reason to think either (1) that a rational defendant would want to appeal . . . or (2) that this particular defendant reasonably demonstrated to counsel that he was interested in appealing. In making this determination, courts must take into account all the information counsel knew or should have known." Id. "[T]o show prejudice in these circumstances, a defendant must demonstrate that there is a reasonable probability that, but for counsel's deficient failure to consult with him about an appeal, he would have timely appealed." Id. at 484, 120 S. Ct. at 1038.

This Court finds most persuasive the Applicant's own testimony that he wanted to skip the direct appeal process and pursue post-conviction relief. This Court finds counsel was not deficient for failing to advise the Applicant of his right to appeal. This Court finds further the Applicant has failed to carry his burden of proving he demonstrated to counsel that he was interested in appealing and that he would have timely appealed.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test, specifically that counsel failed to render reasonably effective assistance under prevailing professional norms. See Strickland, 466 U.S. at 688, 104 S. Ct. at 2065. The Applicant failed to present specific and compelling evidence that counsel committed either errors or omissions in her representation of the Applicant. The Applicant failed to show that counsel's performance was deficient. Therefore, this Court need not address prejudice. The Applicant's complaints concerning counsel's performance are without merit and are denied and dismissed.

All Other Allegations

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

CONCLUSION

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

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

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 17th day of Sept, 2013

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

Charleston, South Carolina.

1604 16
2013

BMW20080603518

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008018508

ARREST WARRANT NUMBER

K350026

DATE OF ARREST

June 5, 2008

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

OCT 07 2008

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1008114

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

08-3628(08)

THE STATE

vs.

COREY NELSON LARKIN
DOB: [REDACTED]
B/MIndictment for
KIDNAPPING

FILED

2008 OCT 10 PM 2:39

JULIA A. STRONG
CLERK OF COURT

BY:

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

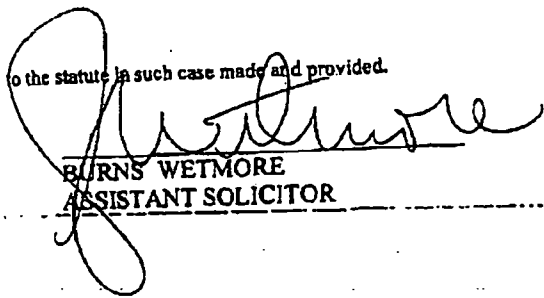
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

KIDNAPPING

That in Charleston County, South Carolina, on or about April 28, 2008, the Defendant, COREY NELSON LARKIN, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Applebee's employee Jonathan Walker, without authority of law; all in violation of Section 16-3-910 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.


BURNS WETMORE
ASSISTANT SOLICITOR

BMW20080603518

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008018508

ARREST WARRANT NUMBER

K350029

DATE OF ARREST

June 5, 2008

ACTION OF GRAND JURY

[Signature]
 Foreperson of Grand Jury OCT 07 2008
 Date:

VERDICT

TRUE BILL

Foreperson of Petit Jury Date:
 INDICT

DOCKET NO. 2008GS1008117

The State of South Carolina
 County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

08-3628(05)

THE STATE

vs.

COREY NELSON LARKIN
 DOB: [REDACTED]
 B/M

Indictment for
 ARMED ROBBERY

FILED

2008 OCT 10 PM 2:39

JULY 10 2008
CLERK OF COURT

BY _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

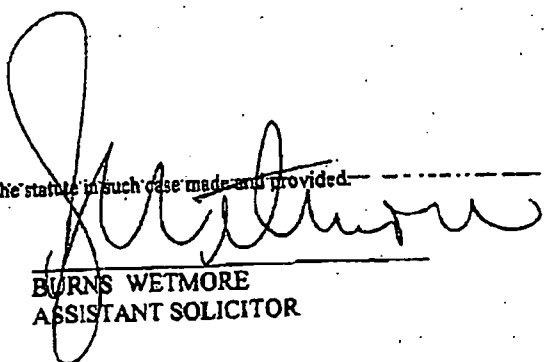
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

ARMED ROBBERY

That on or about April 28, 2008, in Charleston County, South Carolina, the Defendant, COREY NELSON LARKIN, at Applebee's located at 7818 Rivers Avenue, North Charleston, South Carolina, by use of force, threats or intimidation and 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 other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of employees of Applebee's with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

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


 BURNS WETMORE
 ASSISTANT SOLICITOR

BMW20080703909

WITNESSES

North Charleston Police Department

DOCKET NO. 2008GS1008151

The State of South Carolina
County of Charleston

FILED

2008 OCT 10 PM 2:39

CLERK OF COURT

AGENCY CASE NUMBER

2008023157

COURT OF GENERAL SESSIONS

BY

OCTOBER TERM 2008

08-3628(14)

ARREST WARRANT NUMBER

K300741

DATE OF ARREST

June 5, 2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date:

OCT 07 2008

VERDICT

Foreperson of Petit Jury

Date:

INDICT

THE STATE

vs.

COREY NELSON LARKIN
DOB: [REDACTED]

Indictment for

CRIMINAL SEXUAL CONDUCT FIRST
DEGREE

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

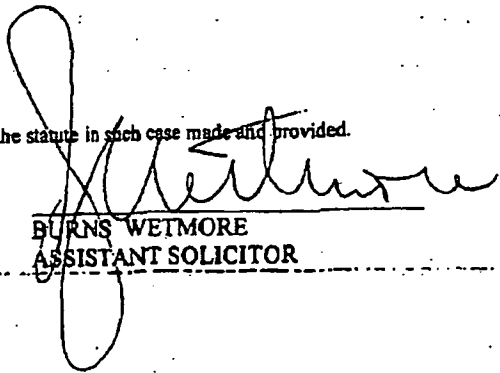
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

CRIMINAL SEXUAL CONDUCT FIRST DEGREE

That in Charleston County, South Carolina, on or about May 25, 2008, the Defendant, COREY NELSON LARKIN, did commit a sexual battery upon the victim, Noisy Oyster employee Barbara Carter, without her consent, and with the use of aggravated force, to wit: the defendant force the victim to perform oral sex and fondled her about her breasts and vaginal area; all in violation of Section 16-3-652, Code of Laws of South Carolina, (1976, as amended).

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


BURNS WETMORE
ASSISTANT SOLICITOR

BMW20080703909

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008023157

ARREST WARRANT NUMBER

K300743

DATE OF ARREST

June 5, 2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

OCT 07 2008

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1008153

The State of South Carolina
County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

08-3628(09)

THE STATE

VS.

COREY NELSON LARKIN
DOB: [REDACTED]Indictment for
KIDNAPPING

FILED

2008 OCT 10 PM 2:39

JULIA A. STRONG
CLERK OF COURT

BY

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

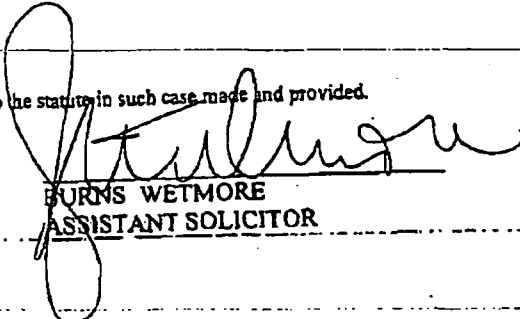
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

KIDNAPPING

That in Charleston County, South Carolina, on or about May 23, 2008, the Defendant, COREY NELSON LARKIN, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Nolsy Oyster employee Justin Carter, without authority of law; all in violation of Section 16-3-910 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.


BURNS WETMORE
ASSISTANT SOLICITOR

BMW20080703909

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008023157

ARREST WARRANT NUMBER

K300747

DATE OF ARREST

June 5, 2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

OCT 07 2008

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1008157

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

08. 3628 (24)

THE STATE

vs.

COREY NELSON LARKIN

DOB:

B/M

Indictment for
ARMED ROBBERY

FILED

2008 OCT 10 PM 2:35

JULIA A. STRONG
CLERK OF COURT

BY

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

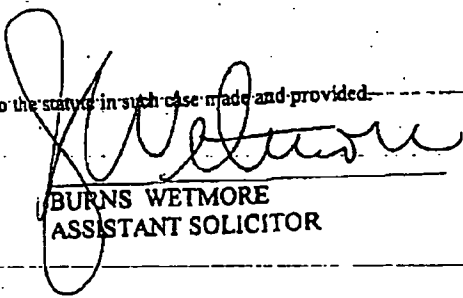
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

ARMED ROBBERY

That on or about May 25, 2008, in Charleston County, South Carolina, the Defendant, COREY NELSON LARKIN, at Nolsy Oyster located at 7842 Rivers Avenue, by use of force, threats or intimidation and 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 other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of employees of Nolsy Oyster with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

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


BURNS WETMORE
ASSISTANT SOLICITOR

258
B01820080603457

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008012427

ARREST WARRANT NUMBER

K300716

DATE OF ARREST

June 2, 2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date: OCT 07 2008

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1007831

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

THE STATE

vs.

CORY NELSON LARKIN

DOB: [REDACTED]

B/M

Indictment for

ARMED ROBBERY

FILED

2008 OCT 10 PM 2:39

JULIE J. ARMSTRONG
CLERK OF COURT

BY

08-3584(01)

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

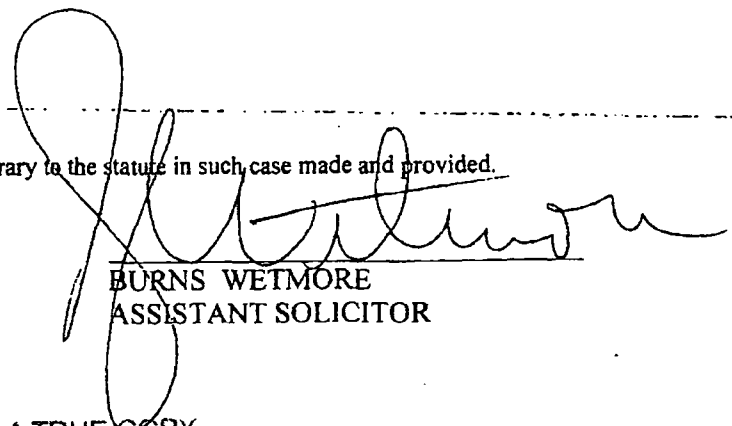
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

ARMED ROBBERY

That on or about March 23, 2008, in Charleston County, South Carolina, the Defendant, CORY NELSON LARKIN, at Red Lobster Restaurant located at 2460 Mall Drive, North Charleston, South Carolina by use of force, threats or intimidation and 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 other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of employees Brian Hooper and Torelyn Kendrick with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

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


 BURNS WETMORE
 ASSISTANT SOLICITOR

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

By _____
 DEPUTY CLERK

260 20080603457

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008012427

ARREST WARRANT NUMBER

K300717

DATE OF ARREST

June 2, 2008

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

OCT 07 2008

VERDICT

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1007832

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

08-3584(02)

THE STATE

vs.

CORY NELSON LARKIN

DOB: [REDACTED]

B/M

Indictment for

ASSAULT AND BATTERY OF A HIGH
AND AGGRAVATED NATURE

FILED

2008 OCT 10 PM 2:39

JULIE K ARMSTRONG
CLERK OF COURT

BY

ATTEST: A TRUE COPY
JULIE K ARMSTRONG (SEAL)
CLERK, C.P., C.S. & F.D.
By *Mark Beckett*
DEPUTY CLERK

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

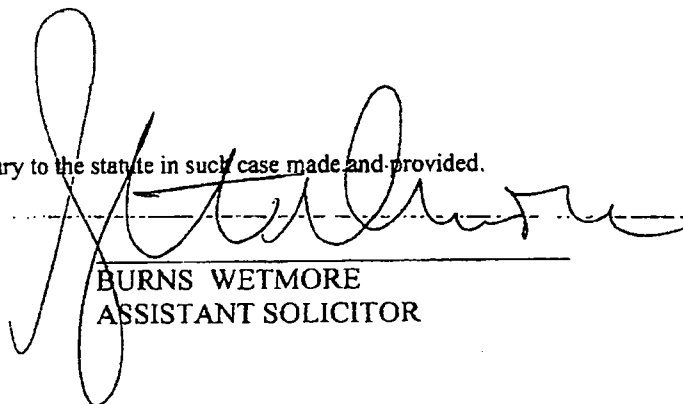
INDICTMENT

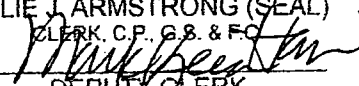
At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

ASSAULT AND BATTERY OF A HIGH AND AGGRAVATED NATURE

That in Charleston County, South Carolina, on or about March 23, 2008, the Defendant, CORY NELSON LARKIN, did commit an assault and battery constituting an unlawful act of violent injury to the victim, Brian Hooper, accompanied by circumstances of aggravation, infliction of serious bodily injury, use of a deadly weapon to wit: the defendant did place a handgun to the victim's head and struck the victim's hand multiple times with the handgun; all in violation of the Common Law of South Carolina and Section 17-25-30 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.


 BURNS WETMORE
 ASSISTANT SOLICITOR

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

262
20080703910

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008024382

ARREST WARRANT NUMBER

K300713

DATE OF ARREST

June 2, 2008

ACTION OF GRAND JURY

Matthew
Foreperson of Grand Jury
Date: OCT 07 2008

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1008063

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

08-3549(03)

THE STATE

vs.

CORY NELSON LARKIN

DOB: [REDACTED]
B/M

Indictment for

KIDNAPPING

FILED

2008 OCT 10 PM 2:39

JULIE J. ARMSTRONG
CLERK OF COURT

BY

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

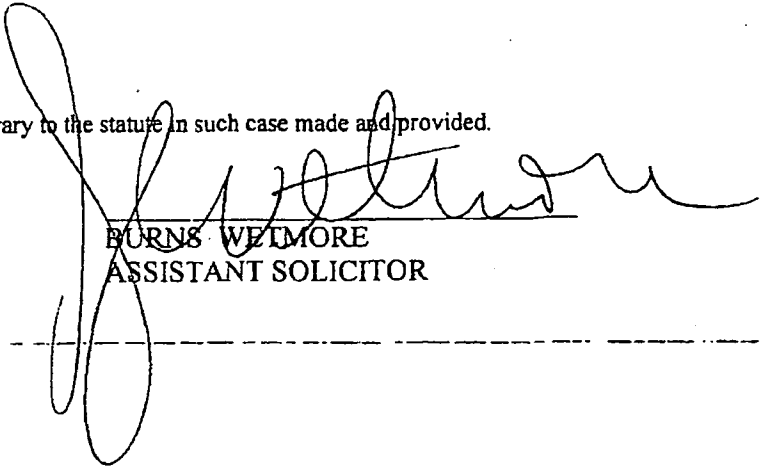
INDICTMENT

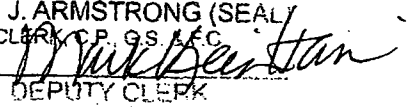
At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

KIDNAPPING

That in Charleston County, South Carolina, on or about June 2, 2008, the Defendant, CORY NELSON LARKIN, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Guy Ahlstrom, without authority of law; all in violation of Section 16-3-910 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.


 BURNS WETMORE
 ASSISTANT SOLICITOR

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

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008024382

ARREST WARRANT NUMBER

K300714

DATE OF ARREST

June 2, 2008

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

OCT 07 2008

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1008065

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

08-3549(01)

THE STATE

vs.

CORY NELSON LARKIN

DOB: [REDACTED]
B/M

Indictment for

ATTEMPTED ARMED ROBBERY

FILED

2008 OCT 10 PM 2:39

JULIE J. ARMSTRONG
CLERK OF COURT

BY _____

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

INDICTMENT

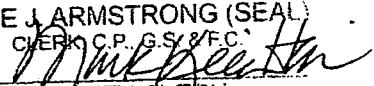
At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED ARMED ROBBERY

That on or about June 2, 2008, in Charleston County, South Carolina, Chuck E. Cheese located at 7250 Rivers Avenue, the Defendant, CORY NELSON LARKIN, by use of force, threats or intimidation and 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 other object which a person present during the commission of the attempted robbery reasonably believed to be a deadly weapon, did attempt to take and carry away goods or monies from the person or immediate presence of Guy Ahlstrom a employee of Chuck E Cheese with the intent to permanently deprive him of possession thereof; in violation of Section 16-11-330(B) 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.

BURNS WETMORE
 ASSISTANT SOLICITOR

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

WITNESSES

CERTIFIED COPY

Williams, C. 2014 FEB 25 PM 3:26

Cheryl Graham
CLERK OF COURT
DORCHESTER COUNTY

DOCKET NO. 2008GS18-0978

The State of South Carolina

County of

DORCHESTER

SPD

Agency Case #: 08-051921

ARREST WARRANT NUMBER

J092910

Arrested: Jun 06, 2008

ACTION OF GRAND JURY
JOE BILL

DATE 7/14/08

Foreperson of Grand Jury
Date: July 14, 2008

VERDICT

Corey Nelson Larkin

THE STATE

vs.

Indictment for

KIDNAPPING

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CHERYL GRAHAM
CLERK OF COURT
DORCHESTER COUNTY

2008 JUL 14 PM 4:11

RECORDED

Foreperson of Petit Jury

Date:

26

SC Code: 16-03-910

Class: FEL-A

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

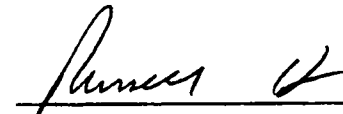
INDICTMENT
 2008GS18-0978

At a Court of General Sessions, convened on July 14, 2008 the Grand Jurors of
 Dorchester County present upon their oath:

KIDNAPPING

The defendant, Corey Nelson Larkin, did in Dorchester County on or about June 2, 2008, willfully and unlawfully seize, confine, inveigle, decoy, kidnap, abduct, or carry away one Graison Ahlström, without authority of law. This offense being a violation of Section 16-3-910 of the South Carolina Code of Laws, as amended.

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



 Russell Hilton, Solicitor

CERTIFIED COPY
 2014 FEB 25 PM 3:26
 Clerk of Court
 Dorchester County

WITNESSES

DOCKET NO. 2008GS18-1071

CERTIFIED COPY

Dicenzo, Tamara

2014 FEB 25 PM 3:26

The State of South Carolina

County of

Charles P. McNamee
CLERK OF COURT
DORCHESTER COUNTY

DORCHESTER

NCPD

Agency Case #: 2008-021228

ARREST WARRANT NUMBER

1102104

Arrested: Jun 11, 2008

ACTION OF GRAND JURY

Bill

9/4/08

Foreperson of Grand Jury

Date: September 04, 2008

VERDICT

Indictment for

KIDNAPPING

Corey Nelson Larkin

COURT OF GENERAL SESSIONS

September 08, 2008 TERM

THE STATE

vs.

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

CLERK OF COURT
DORCHESTER COUNTY

2008 SEP -8 AM 10:29

FILED-RECORDED

Foreperson of Petit Jury

Date:

26

SC Code: 16-03-910

Class: FEL-A

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

INDICTMENT
 2008GS18-1071

At a Court of General Sessions, convened on September 08, 2008 the Grand
 Jurors of Dorchester County present upon their oath:

KIDNAPPING

The defendant, Corey Nelson Larkin, did in Dorchester County on or about May 14, 2008, willfully and unlawfully seize, confine, inveigle, decoy, kidnap, abduct, or carry away one Timothy A. Rabang, without authority of law. This offense being a violation of Section 16-3-910 of the South Carolina Code of Laws, as amended.

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



Russell Hilton, Solicitor

CERTIFIED COPY
 FILED FEB 25 PM 3:26
 CLERK OF COURT
 DORCHESTER COUNTY

WITNESSES

DOCKET NO. 2008GS18-1072

Dicenzo, Tamara

2014 FEB 25 PM 3:26

The State of South Carolina

County of

DORCHESTER

CLERK OF COURT
DORCHESTER COUNTY

NCPD

Agency Case #: 2008-021228

ARREST WARRANT NUMBER

1102107

Arrested: Jun 11, 2008

ACTION OF GRAND JURY

FILED

Corey Nelson Larkin

9/11/08
J. H. Harts

Foreperson of Grand Jury
Date: September 04, 2008

VERDICT

ARMED ROBBERY

Indictment for

SC Code: 16-11-330

Class: FEL-A

Foreperson of Petit Jury

Date:

270

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED
2008 SEP -8 AM 10:29
CLERK OF COURT
DORCHESTER COUNTY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

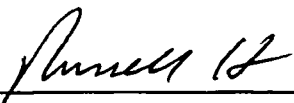
INDICTMENT
 2008GS18-1072

At a Court of General Sessions, convened on September 08, 2008 the Grand Jurors of Dorchester County present upon their oath:

ARMED ROBBERY

The defendant, Corey Nelson Larkin, did in Dorchester County on or about May 14, 2008, feloniously take from the person or presence of the victim, Timothy A. Rabang and/or Applebee's Restaurant, by means of force or intimidation and while armed with a deadly weapon being a handgun or while alleging, either by action or words, that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, goods or monies of the said victim, being described as US Currency. This offense being a violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

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



 Russell Hilton, Solicitor

CERTIFIED COPY
 2014 FEB 25 PM 3:26
 Clerk of Court
 DORCHESTER COUNTY

WITNESSES

DOCKET NO. 2008GS18-1080

S Patrick

CERTIFIED to The State of South Carolina
2014 FEB 25 PM 3:26 County of DORCHESTER

Cheryl Williams
CLERK OF COURT
DORCHESTER COUNTY

North Charleston Police Department

2008-020610

September 04, 2008 TERM

COURT OF GENERAL SESSIONS

ARREST WARRANT NUMBER

1102154

Arrested: June 11, 2008

ACTION OF GRAND JURY

1102154

9/4/08

Corey Nelson Larkin

Foreperson of Grand Jury
Date: September 04, 2008

VERDICT

Indictment for

ARMED ROBBERY

Corey Nelson Larkin

THE STATE

vs.

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED - RECORDED
2008 SEP -8 AM 10:30
CLERK OF COURT
DORCHESTER COUNTY

Foreperson of Petit Jury

Date:

2

SC Code: 16-11-330(A)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF DORCHESTER)

INDICTMENT
 2008GS18-1080

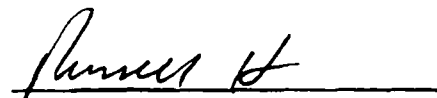
At a Court of General Sessions, convened on September 08, 2008 the Grand Jurors of
 Dorchester present upon their oath:

ARMED ROBBERY

That on or about May 10, 2008, in Dorchester County, the defendant, Corey Nelson Larkin did by use of force, threats or intimidation and while armed with a deadly weapon or while alleging either by words or action that he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, take and carry away goods and/or monies from the person or presence of the victim, Ferdinand Lopez, with the intent to permanently deprive the victim of possession of the goods or monies. Such weapon or alleged weapon described as a handgun and a stun gun. This offense in violation of Section 16-11-330 of the South Carolina Code of Laws, as amended.

CERTIFIED COPY
 2014 FEB 25 PM 3:26
 Cheryl H. Hilton
 CLERK OF COURT
 DORCHESTER COUNTY

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



Russell Hilton, Solicitor