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STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY

Brooks P. Goldsmith, Circuit Court Judge

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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHN DECARLO,

APPELLANT

APPELLATE CASE NO. 2013-001232

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
)
 COUNTY OF BEAUFORT) CASE NO.: 2011-GS-07-1744,
 2011-GS-07-1758 and
 2011-GS-07-1813

THE STATE OF SOUTH CAROLINA,)
)
)
 v.) TRANSCRIPT OF RECORD
)
 JOHN DECARLO,)
)
 DEFENDANT.)

MAY 21st, 2013
 COMMENCING AT
 BEAUFORT COUNTY COURTHOUSE, SOUTH CAROLINA
 BEFORE THE HONORABLE BROOKS GOLDSMITH, JUDGE.

APPEARANCES:

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ORIGINAL

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 Official Court Reporter

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| <u>NO.</u> | <u>DESCRIPTION</u> | |
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1 SOL. STONE: May it please the Court, Your Honor?
2 Standing before you is John DeCarlo. Mr. DeCarlo is
3 standing with his lawyer, Mr. Tom Taylor. My understanding
4 is he is wishing to enter a plea of guilty to the following
5 charges: 2011-GS-07-1744, charging him with burglary in the
6 first degree. 2011-GS-07-1813, charging him with armed
7 robbery. 2011-GS-07-1758, charging him with possession of a
8 weapon during the commission of a violent crime.

9 My understanding is he is wishing to plead guilty. We
10 have handled the guilty plea of three of the five
11 individuals. Just for background, one of the defendants, I
12 told the judge at the very beginning was what I considered
13 the ringleader. That defendant received a 20-year sentence.
14 Two others have pled guilty; one received an 18-year
15 sentence and the other a 17-year sentence.

16 I believe the sentence range at the base of this is 15
17 years because of the burglary in the first degree, and I am
18 standing here, Your Honor, at this point with a
19 recommendation -- or a negotiation to you that this sentence
20 range fall between the 15 years and the 18 years, with the
21 18 being what the non-trigger, the non-ringleader received,
22 and the 15 being the base of the mandatory minimum of 15
23 years for burglary in the first degree.

24 MADAME CLERK: Would you raise your right hand, please?
25 (Whereupon, the defendant, Mr. John "Jack" DeCarlo is

1 duly sworn.)

2 SOL. STONE: And if I may interrupt the process for
3 just a moment, I have handed you in the back, two
4 evaluations that were performed; do you still have those,
5 Your Honor?

6 THE COURT: I do.

7 SOL. STONE: I would move at this time to make those
8 Court's exhibits. They were both state evaluations. One
9 was by the Department of Disabilities and Special Needs.
10 The concern there was whether or not the defendant, with his
11 IQ, fell under the level of mental retardation; he did not.
12 He received a verbal IQ of 103 and a performance IQ of 80.
13 That would be the first I would ask to be made as Court's
14 Exhibit. That is a report dated February 21st, 2013.

15 (Court Exhibit Number One, Department of Disabilities
16 and Special Needs evaluation of John DeCarlo, is received
17 into evidence.)

18 The second report is from the Medical University of
19 South Carolina, dated March 29th, 2013. The purpose there
20 is to determine competency to stand trial. That report, by
21 Amanda Harrigan (sic), who is the doctor who performed that
22 evaluation and found that he was competent to stand trial.
23 That I would also make as a part of the Court's record as
24 well.

25 (Court Exhibit Number Two, Medical University of South

1 Carolina evaluation dated March 29, 2013, of John DeCarlo,
2 is received into evidence.)

3 THE COURT: Is there anything else the State wishes to
4 add concerning the issue of competency to stand trial?

5 SOL. STONE: There is not, Your Honor.

6 THE COURT: And from the defense?

7 MR. TAYLOR: No, sir, Your Honor, we agree that the
8 defendant, DeCarlo, has been found competent, and we also
9 agree that he is competent.

10 THE COURT: And the Court so finds; and I'll need to
11 sign an Order to that effect.

12 SOL. STONE: I'll hand it up, Your Honor. If it's not
13 correct, I'll be glad to change that.

14 THE COURT: Have y'all seen this?

15 MR. TAYLOR: Your Honor, may I? I have not seen that.

16 THE COURT: Yes.

17 (Reviews documents.)

18 MR. TAYLOR: Yes, sir, it is appropriate, Your Honor.

19 THE COURT: All right. Did you explain to your client
20 the charges contained in these indictments, the possible
21 punishment, and have you explained to Mr. DeCarlo his
22 constitutional rights?

23 MR. TAYLOR: I have, Your Honor.

24 THE COURT: And do you believe that he has understood
25 the discussions that you have had with him?

1 MR. TAYLOR: I do, Your Honor.

2 THE COURT: Do you agree with his decision to plead
3 guilty to these three charges?

4 MR. TAYLOR: I do, Your Honor.

5 THE COURT: Based on your investigation of the facts
6 and circumstances of these cases, do you believe it likely
7 that the State could convince a jury of his guilt related to
8 the charges beyond a reasonable doubt?

9 MR. TAYLOR: Yes, sir.

10 THE COURT: Mr. DeCarlo, how old are you, sir?

11 MR. DECARLO: Nineteen years old.

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

13 MR. DECARLO: To Eleventh grade.

14 THE COURT: Were you living with family or friends, or
15 by yourself, or what?

16 MR. DECARLO: I was living by myself at the time.

17 THE COURT: Have you ever been in criminal court
18 before?

19 MR. DECARLO: No, sir.

20 THE COURT: Have you ever been treated for the abuse of
21 alcohol, the abuse of drugs, or treated for any mental
22 illness?

23 MR. DECARLO: Yes, sir.

24 THE COURT: Tell me about that.

25 MR. DECARLO: I've been going to Coastal Empire Mental

1 Health since I moved to South Carolina, and then before
2 then, I have been seeing mental health people since I was
3 about eight years old.

4 THE COURT: The last time was approximately how long
5 ago?

6 MR. DECARLO: Right before this; right before I came in
7 here.

8 MR. TAYLOR: That would have been August of 2011 is the
9 arrest date, Your Honor.

10 THE COURT: In the past 24 hours, have you taken any
11 medication, any drugs, or have you consumed any alcohol?

12 MR. DECARLO: No, sir.

13 THE COURT: Are you aware today of any physical,
14 nervous, or emotional problem you might have that would
15 interfere with your ability to understand what is going on
16 here today?

17 MR. DECARLO: No, sir.

18 THE COURT: Mr. DeCarlo, your attorney and the
19 Solicitor both tell me they believe you wish to plead guilty
20 to the charges. As I understand that charges that you wish
21 to plead guilty to are burglary in the first degree, armed
22 robbery, and possession of a weapon during the commission of
23 a violent crime; is that correct?

24 MR. DECARLO: Yes, sir.

25 THE COURT: Do you wish to plead guilty to each of

1 those charges?

2 MR. DECARLO: Yes, sir.

3 THE COURT: I'm going to ask the Solicitor if he will
4 give me some facts about each of these charges. Please
5 listen to what he says.

6 SOL. STONE: May it please the Court, Your Honor. This
7 happened August the 14th, 2011. It happened in the town of
8 Port Royal, which is in Beaufort County; it's actually right
9 down the street from the courthouse. The victim in this
10 case, Christopher O'Brien, was living in that apartment; it
11 was a two-story. He was actually in his bedroom. It was in
12 the early morning, around 1:00 in the morning, I want to
13 say. He was actually on the computer playing a video game
14 when this took place and he was playing with another person
15 that apparently you can go in through the internet and talk
16 to each other while you're playing this game. And that's
17 important, because he becomes a pretty important witness to
18 all of this. In fact, the person that he is playing the
19 game with is the one that initially called 9-1-1 to get law
20 enforcement to go over there.

21 As the victim is upstairs, he hears some noise
22 downstairs. He reaches over to his door handle to open it,
23 and about that time what he describes as a number of people
24 burst into his room and start beating him.

25 As he describes it, and this is the written statement

1 from Christopher O'Brien, which is obviously in the
2 discovery packet, "I started to open my door upstairs to
3 say, "Hey," and then I saw a figure coming at me and it was
4 dark and I couldn't tell who it was. Once he came into my
5 room, I saw that it was Zach Finley.

6 Now, Zack Finley is the first individual who has pled
7 guilty and received a 20-year sentence. He is, as I
8 described in the past, the ringleader. "He started hitting
9 me and some other people came up the stairs and started
10 hitting me, too. They were yelling a lot of things. There
11 was a lot of confusion. I'm not sure of the things they
12 were yelling, but they continued to hit me over and over and
13 over. Then, they started to split up and look for things
14 they could steal. They tore the house apart a pretty good
15 bit. Then, there was a big guy who came up behind me."

16 I think most of the people in this case would recognize
17 that DeCarlo, John DeCarlo, the one standing before you now
18 is the person they refer to as "the big guy." At that time
19 -- I think he's lost weight since he's been in the detention
20 center, but at that time, he was 6'4, 280-285. "There was a
21 big guy who came up behind me and wrapped his arms around me
22 and started choking me out. I remember he hit me a few
23 times, but it seemed like there was something else keeping
24 him from hurting me worse."

25 He then describes how they went through the house,

1 ransacked it, and stole items. Before they had done this,
2 as it was described by most of the co-defendants, these five
3 individuals had gathered at Zach Finley's apartment, which
4 was, I believe, just a few doors down from where John
5 DeCarlo lived, and decided they were going to -- as one of
6 the witnesses referred to it, "Go ride on somebody."

7 Finley was the one who came up with Christopher O'Brien
8 as the target. The other four went along and all played
9 particular roles in the event. At least two of the
10 witnesses established that DeCarlo had a gun in his
11 apartment. He went to get it and brought it back. They
12 took that gun with them when they all piled into the car.
13 They took red bandanas and put over their face so they
14 wouldn't be seen when they broke in.

15 I'll hand up a couple of photographs that we have at
16 the scene. This also was obviously in the discovery packet.
17 This is a photograph of the backseat of the car as it was
18 when the law enforcement officers caught them. You can see
19 the bandanas in the back. These are the ones that all of
20 them wore when they went into the house.

21 DeCarlo was in the passenger seat. A photograph of the
22 passenger seat when law enforcement got it, you can see
23 underneath is the gun that he had taken with them when they
24 went. When they got to the house, DeCarlo kicks in the
25 bottom door. Apparently, all of the doors were locked in

1 the apartment. They couldn't get in the first place they
2 were trying, so they ended up -- DeCarlo actually kicked the
3 front door open. When he did, he kicked it with so much
4 force that it actually broke the door paneling off, and you
5 can tell from this photograph that I'm handing up, the rim
6 of the door as it was shoved further into the room.

7 This is the noise that Christopher O'Brien was
8 describing when he was about to open the door when they
9 stormed in.

10 As I told you earlier, they beat him pretty severely.
11 He ended up, very fortunately, only having a broken nose,
12 but I will show you the photograph of how his face appeared
13 that night; the second photograph I showed you of him. When
14 he came out of his apartment, the individual who he was
15 playing the video game with, called 9-1-1. He said he could
16 actually hear the victim calling for help and it sounded
17 like he was being strangled at the time he was calling for
18 help. The other guy calls 9-1-1, describes it, and law
19 enforcement gets over there pretty quickly, and the victim
20 meets them at the door. The officers then describe how he
21 looked when he got to the door. And this asphalt photograph
22 that I show you is the blood that was actually pooling at
23 the bottom from his face being beaten.

24 When the car was stopped, it was stopped by a law
25 enforcement officer -- the Port Royal police officer and the

1 Beaufort County Sheriff's Officers were both on the lookout
2 for a car with multiple people in it. When the car was
3 stopped, and this is a next day photograph, but these are
4 the items that were found in the car that were stolen out of
5 the apartment. DNA results came back positive on DeCarlo's
6 shirt, both on the front and the back, which is consistent
7 with the description that the victim gives of him being
8 choked out.

9 As I told you earlier, three have already pled guilty.
10 The prior record of this particular individual, we have a
11 juvenile record of an assault and battery third, and a
12 possession with intent to distribute of a Scheduled IV
13 narcotic. I'm not exactly sure what it is; I think it's
14 lorazepam, but I'm not sure what the drug was. Again, this
15 was a Family Court disposition.

16 The family members and the victims are here today, Your
17 Honor, as are the law enforcement officers who were working
18 that case. If you have any questions of them, I certainly
19 would at some point allow the victims to speak to you, if
20 you would, sir.

21 THE COURT: Thank you, Mr. Stone.

22 SOL. STONE: Thank you.

23 THE COURT: Mr. DeCarlo, you've heard the Solicitor's
24 statement of the facts concerning each of these charges. Do
25 you agree with what he just told me?

1 MR. DECARLO: Yes, sir.

2 THE COURT: Are you guilty of burglary in the first
3 degree?

4 MR. DECARLO: Yes, sir.

5 THE COURT: And are you guilty of the charge of armed
6 robbery?

7 MR. DECARLO: Yes, sir.

8 THE COURT: And are you guilty of the charge of
9 possession of a weapon during the commission of a violent
10 crime?

11 MR. DECARLO: Yes, sir.

12 THE COURT: Did your attorney explain to you your right
13 to have a jury trial on these charges?

14 MR. DECARLO: Yes, sir.

15 THE COURT: Do you understand that by entering these
16 pleas that you will be giving up, or waiving, your right to
17 have a jury trial?

18 MR. DECARLO: Yes, sir.

19 THE COURT: Is that what you wish today?

20 MR. DECARLO: Yes, sir.

21 THE COURT: Have you ever had a jury trial?

22 MR. DECARLO: No, sir.

23 THE COURT: Bear with me just one minute. If you were
24 to have a jury trial, even as you stand there, you're
25 entitled to have one; but if you were to have a jury trial,

1 among other things, the Court would instruct the jury that
2 you are presumed innocent and the burden would be upon the
3 State to prove your guilt to the jury beyond a reasonable
4 doubt.

5 You would have the right to have your lawyer cross
6 examine any witnesses that the State might call to testify
7 against you. You could have your own witnesses testify for
8 you. You could testify yourself or not, and if you decided
9 not to testify, the Court would instruct the jury that they
10 could not hold that against you because you have a
11 constitutional right not to testify.

12 If you had made any incriminating statements,
13 confessions, things such as that, you would have the right
14 to challenge the State's right to use that evidence against
15 you, and of course, you would have the right to challenge
16 the State's right to use any evidence against you. Do you
17 understand you have all of these rights?

18 MR. DECARLO: Yes, sir.

19 THE COURT: By entering this plea, you would be giving
20 up these rights as to these charges?

21 MR. DECARLO: Yes, sir.

22 THE COURT: And once again, that's what you wish to do?

23 MR. DECARLO: Yes, sir.

24 THE COURT: Have you had enough to discuss these
25 matters with your attorney?

1 MR. DECARLO: Yes, sir.

2 THE COURT: Has he answered all of your questions?

3 MR. DECARLO: Yes, sir.

4 THE COURT: Are you satisfied with his services?

5 MR. DECARLO: Yes, sir.

6 THE COURT: Mr. DeCarlo, has anyone threatened you or
7 coerced you in any way to make you, or to cause you, to
8 plead guilty to these three charges?

9 MR. DECARLO: No, sir.

10 THE COURT: Has anybody promised you anything or held
11 out any hope of reward as an inducement to get you to plead
12 guilty to these three charges?

13 MR. DECARLO: No, sir.

14 THE COURT: Are you pleading guilty to these three
15 charges freely and voluntarily?

16 MR. DECARLO: Yes, sir.

17 THE COURT: Finally, are you pleading guilty to these
18 charges because you are guilty of each of these charges?

19 MR. DECARLO: Yes, sir.

20 THE COURT: The Court finds that there is a sufficient
21 factual basis for each of the pleas. The decision to enter
22 the plea has been made freely, voluntarily, knowingly, and
23 intelligently, and he has had the advice of an attorney with
24 whom the defendant is satisfied, and the Court accepts the
25 pleas. Be glad to hear from you.

1 MR. TAYLOR: Your Honor, thank you. Judge Goldsmith,
2 this is a very difficult day for not only, obviously, the
3 O'Brien family to be here again, but also for the DeCarlo
4 family and the Foster family are here. Your Honor, this is
5 a young man who is 19 years old today, who was 17 years old
6 at the time of the crime, and who has had a very tough last
7 seven years. And not by way of excuse, but so that the
8 Court can understand, I would like to take a few moments to
9 tell you a little bit about Mr. DeCarlo's background, and
10 then I'd like, if it pleases the Court, to ask a couple of
11 family members to speak for just a minute.

12 THE COURT: Sure.

13 MR. TAYLOR: Your Honor, John "Jack" DeCarlo was born
14 to Martha Foster and Chuck DeCarlo in Connecticut back in
15 1993. And grew up in a fairly stable environment in
16 Connecticut and was blessed with an incredibly athletic
17 body; was always big, was always taller than everybody else,
18 and learned how to focus that energy that he was blessed
19 with, also, into the wrestling area, and was actually the
20 State Champion in Connecticut in Junior Wrestling for three
21 years running. Jack had a good life, good parent -- at
22 least a good mother watching out for him at that point in
23 time, and had a relatively stable environment.

24 He moved to Beaufort at about 5th Grade around 11 years
25 old. At that point in time, Your Honor, began to get into a

1 problem with alcohol and drugs from the age of 11, when he
2 first got into some marijuana, when he and a friend of his
3 found some marijuana at a friend's house, and then got into
4 some alcohol at age 12.

5 Jack had been diagnosed at age 8, Your Honor, with
6 attention deficit hyperactivity disorder and had been seeing
7 some mental health professionals for that, again, since he
8 was 8. He had been on psychotropic drugs of Adderall,
9 Concerta, since he was age 8, and had been pretty much
10 pegged as being a child who was going to have some attention
11 deficit disorder problems, but was managing well until an
12 incident that first got involved with some drugs and with
13 some alcohol.

14 Then, Your Honor, as candidly as I can say, in 2007, a
15 very, very bad situation evolved where after his parents had
16 split, Jack was staying with his father and his father
17 became very physically abusive to him late at night when
18 Jack had fallen asleep with his cell phone, apparently
19 against his father's best wishes, and his father ended up
20 beating him, Your Honor, not only with his fists, but with a
21 cowboy boot.

22 The extent of the beating was so obvious that the next
23 morning teachers pulled him out of class in school, called
24 the police, and an investigation proceeded from there. And
25 as you will hear from statements from not only his mother,

1 but a close family friend, this began a spiral downhill for
2 Jack at age 15 that culminated in where we are standing
3 today. Because Jack became involved with drugs, he lost
4 interest in school. He just kind of gave up, Your Honor,
5 not only on family, but on society and on school, and this
6 spiral of drugs getting into cocaine, xanax, a number of
7 other legal and illegal drugs, illegally obtained legal
8 drugs, Jack dropped out of school in the 11th grade.

9 Your Honor, he was diagnosed early on with what would
10 be described as bipolar disorder. That was not followed up
11 on from Coastal Empire Mental Health, but what we have, the
12 bottom line as the Court can see, is a young man who got
13 involved with drugs and alcohol and it took over his life.
14 He dropped out of school, again, in the 11th grade, Your
15 Honor, went to work. Ultimately, as his mother tried hard
16 to find some guidance for him, he said he was going to move
17 out and get an apartment with his girlfriend, and she, like
18 all parents would do at age 17, laughed and said, "Nobody's
19 going to rent you an apartment; have at it." And lo and
20 behold, found an apartment. And what he also found, Your
21 Honor, was Zack Finley who lived right down the hall from
22 him who was involved as a major player in apparently the
23 drugs and violence.

24 Your Honor, everything the solicitor told you factual-
25 wise is true, but if Mr. DeCarlo was to have gone to trial,

1 I do think it's important that the Court understand that,
2 first, Jack DeCarlo didn't know who Chris O'Brien was that
3 night; he had no idea. Finley came up with the idea of
4 going and "riding on somebody" as they talked about. They
5 thought there were going to be able to score some drugs, and
6 Jack went along. Your Honor, he had started with Adderall
7 that afternoon. He had had cocaine, he had had xanax to
8 take off the effects of cocaine, he had drank heavily. He
9 was only ready to go along to get along in this very, very
10 hyper state that he was in at that point in time. It is
11 true that they could not get into the apartment, and that
12 Jack being big, they said, "Jack, kick it," and he did, and
13 there's no doubt there's a footprint on the door that is
14 Jack's footprint.

15 Importantly, Your Honor, Jack's testimony would be that
16 he was trying to knock out Mr. O'Brien by the extent of
17 basically putting what wrestlers call a sleeper hold on him
18 to try to keep them from beating him any worse, and that
19 would be his testimony, Your Honor, and I don't think the
20 witness's statements disagree with that, because Mr.
21 O'Brien's statement had said "The big guy was trying,
22 basically, to knock me out." And we would contend that Jack
23 was at least, to some extent, trying to show some mercy for
24 him at that point in time.

25 Your Honor, this was a very, very violent incident; we

1 understand that. But it was also a one-time incident in
2 which Jack was involved with. He was heavily involved with
3 drugs at that point in time. We believe, Your Honor, that
4 if the Court can find any way to show some mercy on him,
5 that it would be an appropriate thing to do at his age.

6 Your Honor, we have handed up -- and I'd like to make
7 sure that it is part of the Court's record, is the
8 psychological evaluation performed by Dr. David Price dated
9 May 7th of 2013. The Court, I believe, has seen this. Part
10 of the findings of Mr. Price, a statewide and nationally
11 recognized psychologist, was that Mr. DeCarlo, who had been
12 treated with psycho-stimulant medication since the age of 6
13 and who had used recreational drugs since the age of 11,
14 alcohol at age 12, and numerous other drugs at age 15. At
15 the time of the event, he had consumed cocaine and alcohol
16 and had taken Adderall, Xanax, and marijuana. The cocaine
17 and Adderall could contribute and precipitate manic
18 behavior, which in the hypo-manic stage could contribute to
19 him being irritable and aggressive and acting impulsively
20 without any regard to the consequences of his behavior.

21 Your Honor, this is a young man who obviously has had a
22 troubled background, and what we are asking for is the
23 Court's mercy is the only word I can find, Your Honor, to
24 try not to make another loss in the system with a young man
25 who was 17 years old.

1 Your Honor, with the Court's permission, I would like
2 to first ask a couple members of his family to speak; would
3 that be permissible?

4 THE COURT: Sure. Be glad to hear from them.

5 MR. TAYLOR: First off, would everyone who is here on
6 behalf of Jack DeCarlo, please stand just to let the Court
7 know of the family support that is here.

8 (Many people stand in the courtroom.)

9 MR. TAYLOR: Your Honor, I'd like to start with Ms.
10 Foster, Jack's mother. The rest of y'all can sit down.
11 Martha, if you would like to be heard, please do. You can
12 speak from right there, Martha; is that okay, Judge?

13 THE COURT: Sure.

14 MR. TAYLOR: Thank you.

15 MS. MARTHA FOSTER: Thank you, Your Honor. Nothing can
16 prepare you for something like today. No classes, no novel,
17 nothing. I have four kids. Jack is the third of the four.
18 His older brother, Chase, is here. His sister, Ellie, the
19 nurse. Jack is my 19 year old, and I also have a 12 year
20 old.

21 Jack is the sweetest child out of the four -- sorry,
22 Chase, but I mean, wouldn't hurt a fly. He started
23 wrestling because he was so active I had to find something
24 for him to do, and in the very, very beginning when he would
25 wrestle, he would take people down so fast and then he would

1 give them a hand up, he'd say, "C'mon." They would be like,
2 "What are you doing? You got him pinned." And he would let
3 them back up.

4 When we moved here in the 6th grade -- well, we moved
5 in the 5th grade, but Jack only was there for only like two
6 weeks and went to Lady's Island Intermediate, and the first
7 week of school, Jack was standing in the lunch line and a
8 bully in the 8th grade just kept pushing him and pushing him
9 and pushing him, and Jack told him, "Don't hit me. Don't
10 push me." And the kid did it again, and Jack never hit him,
11 but took him by the arm and did what the wrestler's call an
12 arm drag and flipped him and put him on his back in a
13 headlock and waited for the teachers to come to help.

14 The principal called every day and was like, we can't
15 believe this kid. He never, ever, raised a fist to anyone.
16 And that is the first question I asked him, I said, "Did you
17 hit him?" And he said, "No." He did put a sleeper hold on
18 him, and I'm like, as a mother, I know it sounds crazy, but
19 that was Jack's way of protecting him through a very, very
20 chaotic and very manic situation. Jack did not know Chris
21 O'Brien. I had no idea in the world that when I said, "Go
22 ahead, try and find an apartment," that he would actually --
23 someone would actually rent an apartment to four 17 year
24 olds. And I was just waiting for them to get tired of
25 playing out.

1 When he met some pretty bad people, he had a good job.
2 Jack had mental issues of severe depression. He was
3 diagnosed very early on with bipolar disorder. We didn't
4 really know what that meant. We kept saying he's going to
5 outgrow it or something, but he never did. Things just
6 escalated and got worse. I begged the Court for their help
7 when Jack got caught with tools at Water Festival. And we
8 got some help; Jack ended up going to the McCord Drug Center
9 and then they released him to his dad, with the thought that
10 Jack would go and have a fresh start. And the promise that
11 they had already worked everything out, that Jack would be
12 able to start school. He would be able to play football;
13 the athletic director was waiting for him to come. They
14 were so excited that he was coming, but none of that was
15 true. He wasn't allowed to play football. None of his
16 grades transferred. He was never enrolled in any of the
17 psychotherapy that the judge had ordered. Nothing that was
18 ordered was done. He ran away. It took me almost a month
19 and a half to find him.

20 When I finally found him, I begged the Court to
21 reinstate through court-ordered behavior that he has to be
22 in school, he has to be in therapy, has to go to alcoholics
23 anonymous, has to be clean, and they said, "No, we're sorry,
24 but that case has been expunged." And I had lost him to
25 drugs and alcohol and I was hoping that he would outgrow it

1 and he didn't.

2 His judgment, Your Honor, was horrible, and what he did
3 was no mother would want to say that their child did, and
4 it's kind of crazy you're speaking and begging for mercy for
5 someone who has done something so heinous, but he is my son
6 and he is salvageable. He has done more good than bad, and
7 I just hope that you can see it your way.

8 Whatever the Court says, we will obviously go by, but
9 Jack needs help. Jack doesn't need to be put away for 15
10 years or 20 years. Jack needs to be helped, finally, and
11 not thrown away, because he's not disposable. We all love
12 Jack and we all know that we're here for him and we want the
13 Court to know that. We also want the family to understand
14 that we in no way think that what Jack did was right. We
15 don't do things like that. But Jack also doesn't do things
16 like that, but he was out of his mind on drugs. That's not
17 an excuse, but it's reality, and with help, Jack would never
18 do this, ever. Thank you.

19 MR. TAYLOR: Thank you.

20 THE COURT: Thank you, ma'am.

21 MR. TAYLOR: Kristin. Your Honor, this is a family
22 friend who has known the DeCarlo's and Jack for quite a long
23 time, Kristin Weidenhall.

24 MS. WEIDENHALL: Good evening, Your Honor. I have a
25 paper I will be reading. "When I hear the words, fun,

1 outgoing, athletic, and competitive, I think of Jack
2 DeCarlo. I've known the DeCarlo's for seven years and I've
3 been so lucky to grow up with them. I met Jack in my 6th
4 grade year and ever since then I've been considered family
5 by Jack and his family. I also consider myself family.

6 Jack was always great into sports and excelled in them
7 outstandingly, whether it was football or wrestling, he did
8 great. He is a wonderful, intelligent and caring guy who
9 wants nothing but to make someone proud. No matter if it's
10 his mom, siblings, friends, anyone. All he wants is someone
11 to be there for him and for him to give someone a reason to
12 be proud.

13 I was good friends with Jack in the 6th grade in 2007
14 when his dad beat him with a cowboy boot. Before this
15 incident, he was outgoing and full of life. However, after
16 the incident with his father, he went into a cave and he
17 never came out. His attitude toward everything changed. He
18 became withdrawn, listless, and distracted. He did not want
19 to go to school or participate in the sports that he loved
20 so much. I felt like he gave up on life. He began turning
21 to drugs and alcohol, starting small and gradually
22 increasing into heavier drugs. He said that he wanted to
23 drown them out with what had happened with his dad.
24 Although I stayed in touch with Jack, we developed totally
25 different groups of friends. We stopped hanging out

1 together. However, we continued to talk and I followed what
2 he was doing.

3 About one to two weeks before this incident with Zach
4 Finley and Chris O'Brien, Jack contacted me by Facebook and
5 text. He was begging me to help him get out of the crowd he
6 was in. He wanted to change, not just be in the crowd he
7 was in, but also change his style and attitude towards
8 things.

9 He felt stuck where he was and that he could not get
10 out of this situation. Jack has always been a follower. To
11 me, he was always a sweet, loving, and caring guy; the one
12 who is always there for you and will stand up for you no
13 matter what. He's protective over his family, but he
14 wouldn't hurt a fly. He is someone you can go to for
15 anything and he doesn't ask questions. Jack has always been
16 there for me, whether it was a shoulder to cry on, someone
17 to talk to, or even to laugh. I just pray that the Court
18 will give him a chance to change his life that he wanted."
19 Thank you.

20 THE COURT: Thank you.

21 MR. TAYLOR: Your Honor, his grandmother, briefly, Ms.
22 Foster.

23 COURT REPORTER: What is her first name, please?

24 MR. TAYLOR: Ms. Foster, what's your first name?

25 MS. GAM FOSTER: My name is Gam.

1 MR. TAYLOR: It really is. I thought that was
2 "Grandma", Gam. I'm sorry.

3 MS. GAM FOSTER: My mother did that to me.

4 MR. TAYLOR: Thank you.

5 MS. GAM FOSTER: Your Honor, my name is Gam Foster and
6 I am Jack's maternal grandmother. I am here to attempt to
7 acquaint the Court with the true nature of my grandson. My
8 hope is that the Court will regard Jack in a different light
9 than the light that might illuminate someone other than a
10 17-year-old boy who has traveled a terribly difficult path
11 and did so in the months leading up to that terrible night
12 in August of 2011.

13 But, first, please let me state, categorically, that at
14 no time since that terrible night back in August of 2011
15 have I or any member of our family ever felt that there was
16 any excuse whatsoever for Jack's actions or any actions of
17 the other boy and men involved. We are so very sorry for
18 the anguish caused the young man into whose home they went.
19 We are so very sorry for the anguish caused his family as
20 well.

21 As Jack's older sister explained once that it was an
22 evening of missed opportunities to do the right thing, to
23 make different choices, time after time we see examples of
24 opportunities to make different choices, beginning with the
25 choice of not going in the first place.

1 My prayer today is that the Court would recognize that
2 Jack and one other boy were underage that night. There are
3 events in Jack's background that contributed to his not
4 being fully capable of making the right decisions that
5 night.

6 Professionally, I've spent 28 years as a classroom
7 teacher. His grandfather spent 36 years as a teacher, and
8 as a coach, and as a school administrator. We were totally
9 cognizant of Jack's learning difficulties and his emotional
10 problems, and now the two are interwoven. What we weren't
11 cognizant of was the solution.

12 I am very much aware of the difference, also, in reason
13 and excuses. This afternoon I simply an asking that the
14 Court listen to our reasons for asking that Jack be viewed
15 with compassion. When I look at my grandson, I do not see a
16 man who is 6'5" and he wears a prison jumpsuit. I see a
17 blonde, suntanned boy who once waited for three hours in the
18 broiling summer sun with a gift for his favorite cousin,
19 Sarah Grace, who had come to visit with their family. He
20 wanted to be the first person that Gracie saw as their
21 family drove up.

22 I see a joyful child on a bicycle riding with me at the
23 beach. Jack's comments to me that afternoon will never
24 leave me. He said, "Nana, you look like an angel in a white
25 dress laughing at the sun." I will always see a boy, a

1 child, in a wet bathing suit sitting in a rocker on a beach
2 house porch with his cousins listening to stories that his
3 grandfather was telling, begging for more.

4 Then, there is the young teen who spent his Christmas
5 money on diamond earrings for me, but was too anxious for me
6 to wait until Christmas morning to open them; and Jack, I
7 have them on this afternoon. And yes, I see the other boy
8 who could have been the varsity standout had he been able to
9 succeed in the classroom. I also see the boy who was
10 reluctant to go to school, because he knew before he even
11 got there that he would succeed.

12 I see the teen who attended the Ducks Unlimited Banquet
13 and had to ask his grandfather for a ride home because his
14 own father was wasted. This is the same boy who endured a
15 beating from his father who used a cowboy boot on Jack's
16 bare arm to make a point. And this is the same boy who
17 turned to drugs and alcohol when his life rocketed out of
18 control, but surrounding him are the family members who
19 watched and warned the leaving of the son's boy and the
20 arrival of a confused teen who needed help from the system,
21 from his family, from his teachers, from his counselors,
22 from his coaches, and his friends; all of them tried and
23 were unsuccessful.

24 I am asking that the system not fail this child again.
25 Please make a decision today that will prevent Jack from

1 entering the adult penal system, but will allow him to be
2 able to take advantage of whatever help there might be for a
3 young man who at 17 did a terrible thing, but who could
4 possibly be helped in becoming an adult who might be
5 equipped to make better choices.

6 If the decision that is he be remanded to a prison
7 facility for hardened criminals, my fear is that another
8 irrevocable choice will be made. I would ask to understand,
9 I would seek to understand the purpose of this proceeding.
10 Is it to seek vengeance or is it to seek justice and repair
11 life? Thank you.

12 THE COURT: Thank you.

13 MR. TAYLOR: Your Honor, please, Bill Foster who is a
14 practicing attorney, has been assisting us, and Your Honor,
15 just to close out what our portion is, may I have Bill
16 address the Court?

17 THE COURT: Sure.

18 MR. TAYLOR: Thank you.

19 MR. FOSTER: Thank you, Your Honor. May it please the
20 Court? Your Honor, as a son of two school teachers, I've
21 spent my life surrounded by words, and I came here today
22 knowing that words are going to fail me, because words can't
23 repair what happened. I can't, today, go back in time and
24 make that terrible event not happen. I can't protect the
25 victim of that crime from what happened; something that

1 should never have happened. All I can do is come before
2 this Court and with my words urge the Court to do what we
3 can do today, which is help this young man.

4 Your Honor, we've already submitted the report for Dr.
5 Price, which we believe merely follows the reports that the
6 State is offering and confirms the challenges that Jack has.
7 Your Honor, we've handed up the decision, and we've
8 discussed the decision in chambers, the Jacob decision,
9 which we believe, Your Honor, still leaves this Court with
10 the discretion to fashion a remedy that takes into
11 consideration all that you've heard today, all that you've
12 heard more eloquently than I can say.

13 Your Honor, we believe that if the Court applies the
14 reasoning, the words in that decision, the Jacob's decision,
15 and construes that statute to be in a manner against the
16 State, strictly against the State in favor of the defendant,
17 and addresses the underlying circumstances of this case,
18 this Court will find the ability to avoid giving Jack what I
19 believe, Your Honor, to be quite honestly and sincerely a
20 sentence that would deprive him of having a meaningful life.

21 I thank you for the Court's consideration today and
22 this afternoon, and I thank Mr. Stone, also, for his time
23 and consideration.

24 THE COURT: Thank you.

25 MR. TAYLOR: Your Honor, if the Court please, Mr.

1 DeCarlo would like to say a couple of words to the O'Brien
2 family if that would be admissible with the Court.

3 THE COURT: Any objection?

4 SOL. STONE: I don't have any objection.

5 THE COURT: Yes, sir.

6 MR. TAYLOR: Thank you, Your Honor.

7 MR. DECARLO: I didn't know Christopher O'Brien. I'm
8 sorry for what happened. There is no excuse. But if I
9 would have been in my right state of mind, none of this
10 would have happened. I'm sorry for it. I truly am.

11 MR. TAYLOR: Your Honor, Mr. DeCarlo has been
12 incarcerated since August 14th of 2011.

13 We certainly would ask the Court, of course, to take
14 into account that and any time served and any type of
15 recommendation that the Court would have.

16 SOL. STONE: I have the victims here. Christopher
17 O'Brien is here, Francis O'Brien, his father, and Lisa
18 O'Brien are here. I think at least two of them would like
19 to address you. I don't know if you can hear very well in
20 here with this, but I will ask if they could, Christopher,
21 if you would like to speak first.

22 MR. CHRISTOPHER O'BRIEN: Your Honor, my name is
23 Christopher O'Brien.

24 THE COURT: Yes, sir.

25 MR. CHRISTOPHER O'BRIEN: Firstly, I would like to

1 thank you, Your Honor. There's a lot that I can say about
2 what's happened and about the time that has transpired since
3 that night. A lot of people that have been involved in this
4 that have done this to me have liked to have claimed that
5 they were trying to do things to prevent me from feeling
6 harm. One man said that he tried to hit me as hard as he
7 could to knock me out so that I would not feel anymore pain.
8 And Jack says that he would have liked to have put me to
9 sleep so that I would not feel anymore pain. I am not an
10 animal to be put out of my misery. I did not deserve what
11 happened to me. I did not ask for what has happened to me.

12 Since the past -- it's almost going on close to two
13 years now, I have had to come back and forth between a three
14 and a half drive of where I lived and worked in Columbia,
15 and now have to take off from work every day that I have to
16 come here for something that I did not support. I can say,
17 personally, that I have also been diagnosed with ADD, and I
18 would like to say that I have not been through the things
19 that Jack has been through. Unfortunately, I have, to what
20 I would deem as a greater extent, not by one man drunken,
21 but five.

22 There are several different ways that I could have gone
23 after that night, but as you well know, being in your seat,
24 life is based on the choices that we make as a man or as a
25 woman, and I have not chosen to go down the road of drugs to

1 try and forget what has happened. I have chosed to try to
2 dig myself out of the hole that I was put in not by my own
3 choice, and that is the decision that I have made and I have
4 been working to try and get myself out of that and there
5 have been a lot of difficulties on that road, and I have yet
6 had the chance to begin the mental recovery. I know that
7 after that night, it took me about two months to recover
8 physically and I was out of work that whole time and I've
9 had bills stacking up and those I've actually managed to pay
10 off with the help of my family and the hard work of myself.

11 But I didn't ask for this. I did not deserve this.
12 And Jack, when he came up behind me that night, all that was
13 going through my mind was that if I do start blacking out,
14 which I did, I knew that if I was going to go to sleep that
15 what was going to happen was those boys are going to come
16 back up in that room when I was out on the floor and they
17 were going to continue to beat me. There was not going to
18 be any stopping them. I knew that if I were to have been
19 knocked out, I knew the chances were greater that I was more
20 likely gonna die, being on the ground helpless, and so I
21 chose to fight back, and those things are in the record.
22 That is really all that I have to say, Your Honor. Thank
23 you.

24 THE COURT: Thank you.

25 SOL. STONE: Your Honor, this is Frances O'Brien, this

1 is his father.

2 MR. FRANCIS O'BRIEN: You know, it's hard for me to sit
3 back and hear the testimonies on behalf of Jack and the
4 timeline of things that occurred and have gone on, because
5 I've come across Jack personally myself with my middle son,
6 and Jack and my middle son had played football together when
7 Jack was about 14 years old. I used to work a little bit
8 with his mother, Martha, and I know that during that time
9 that Scott Dennis was trying to help Jack through his rough
10 times in his life.

11 But I also know that before this occurred, that Jack
12 and his crew of guys attacked another man that was brought
13 before the Court in a DUI incident from New Jersey, and Jack
14 was typically named, and yet the police failed to follow up
15 on it and bring these guys to justice then. He even told
16 the police that he was fleeing for his life, and yet he was
17 charged with DUI, and they wanted to leave and not come
18 back.

19 So they didn't want to, you know, to -- so here we have
20 Jack that's been through a tough time in his life, but yet
21 he made the wrong choices. At the time that he was arrested
22 and time for him to have bail be set, whether he had to be
23 released on his own recognizance, his mother looked us in
24 the eyes and said, "Who are these people that he is with?"
25 She says that there were four people; she knew them.

1 Jack has struggled with drugs and alcohol. Mom and
2 boyfriend are always in the paper whooping it up at the
3 parties, the life of the party. You know, maybe some
4 enabling went on in his life that Jack had a choice to make
5 and if he would have chose on the sleeper hold, this could
6 have been a murder trial.

7 You know, I would just say we take into consideration
8 that him being removed from his family may be a better
9 choice for him. And you know, my heart goes out to him, it
10 really does, because the hard part from here now is in the
11 choice that he's going to have to make. He's going to now
12 be inside of an environment that is harsher than he's ever
13 been in and he's either going to come out well or harder.
14 And he really needs to take an inside look in his heart as
15 into who am I going to become out of this, and he can
16 prevail and he can become a good man, but he has to serve
17 the consequences so that justice will be served here today.

18 -~~THE COURT~~: Thank you.

19 SOL. STONE: Your Honor, this is Lisa O'Brien. This is
20 his mother.

21 THE COURT: Yes, ma'am.

22 MS. O'BRIEN: Your Honor, I'm Chris O'Brien's mother.
23 I just want to say that what my son had to endure that night
24 can't be relieved by the Court. I can come here and ask you
25 for mercy. I can ask a doctor for mercy, and I can ask

1 anybody for mercy, and no one can relieve my son of what he
2 endured, nor can our family be relieved. This is a crime of
3 a dramatic proportion. What this boy -- what this man did
4 to my son was extremely violent. My son told me that when
5 he was being choked to death, he saw his life flash before
6 him. He tried to remove his arm and he couldn't, and when
7 he grabbed in between his legs, then he was released. Then
8 he was thrown on the bed and beaten more by this individual.

9

10 I'm here to tell you, these crimes, the reason they
11 carry the time they carry is because you never get that
12 back. You can't ever go to bed and feel again. You can't
13 ever be alone in your home or in the shower and feel safe.
14 Once that box has opened up, no court and no person can
15 close it.

16 They opened it up. They wore masks. They knew what they
17 were doing was wrong. They did it in the middle of the
18 night. My son was home alone in his bedroom. There was no
19 alcohol or drugs on his premises. He was a full-time
20 working, hard working young man that endured depression and
21 other things in his life, and now without a choice, without
22 a phone call, without a warning, his door was broken down.

23 Our family has suffered tremendously. We're still
24 suffering. We haven't been able to move on to phase two or
25 recovery, and I would just ask the Court that the Court does

1 what the Court is supposed to do, and Your Honor, I would
2 ask that you look at this -- I know you know the law. I
3 know you know what it requires. This man, while he deserves
4 mercy from the Lord, and he needs a changed life, he needs
5 the consequences of his actions. This is why boys end up in
6 this Court because they don't get consequences. This is why
7 they end up back. Thank you.

8 THE COURT: Thank you, ma'am.

9 SOL. STONE: Thank you, Your Honor.

10 THE COURT: Anything else, Solicitor?

11 SOL. STONE: No, sir.

12 THE COURT: Mr. DeCarlo, Mr. Taylor, Mr. Foster, the
13 statements that have been made to the Court on behalf of Mr.
14 DeCarlo by his attorneys, by his family and friends, are
15 moving and compelling, and I would consider doing what the
16 defendant is asking me to do, but I don't think I have the
17 legal authority to do it. Consequently, Mr. DeCarlo, on the
18 charge of possession of a weapon during the commission of a
19 violent crime, I sentence you to the Department of
20 Corrections for a period of five years, concurrent, credit
21 for time served. As to the other two charges, I sentence
22 you to 15 years. Once again, all the sentences are
23 concurrent and credit for time served. Good luck to you.

24 MR. TAYLOR: Your Honor, thank you.

25

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of General Sessions

Brooks P. Goldsmith, Circuit Court Judge

Case No. 2011-GS-07-01813

Case No. 2011-GS-07-01758

Case No. 2011-GS-07-01744

The State

Respondent

v.

John DeCarlo

Appellant

SCACR 203(d)(1)(B)(iv) WRITTEN EXPLANATION
OF ISSUE THAT CAN BE REVIEWED ON APPEAL

Pursuant to SCACR 203(d)(1)(B)(iv), Counsel for the Defendant John DeCarlo hereby advises the Court that this appeal from guilty pleas and sentence of 15 years concurrent is based upon the legal argument that Judge Goldsmith had the ability to suspend a portion of the sentence for Burglary First (S.C. Code Section 16-11-311) in his discretion. Counsel advises the Court that Judge Goldsmith heard counsel and the Solicitor in chambers prior to the plea, and counsel provided Judge Goldsmith at the time with a copy of State v. Jacobs, 393 S.C. 584, 713 S.E.2d 621(2011). Counsel argued to Judge Goldsmith that Jacobs should be read strictly and restricted to its facts, which therein included a request to suspend a portion of the minimum 15 year sentence and place Mr. Jacobs on probation. In our case, we urged Judge Goldsmith to examine the numerous mitigating factors set forth in the Psychological Evaluation of John DeCarlo performed by David R. Price, Ph.D., (submitted as a Court's Exhibit and a true and correct copy being attached to this Written Explanation) and to give Mr. DeCarlo a sentence that would comport with the findings of Dr. Price, to include supervised home arrest and drug and alcohol counseling. Judge Goldsmith indicated on the record during the plea, that he found the factors surrounding Mr. DeCarlo's earlier drug and alcohol abuse, along with physical abuse he suffered at the hands of his father, to be compelling, but said he was constrained by Section 16-

11-311 and Jacobs to sentence Mr. DeCarlo to a minimum of 15 years in a South Carolina prison.

Counsel respectfully argues that the intention of the Legislature and the plain reading of the current statutes in South Carolina, allows our Circuit Court Judges discretion to craft a sentence to comport with the facts of the case and provide alternative time under supervised house arrest and treatment. Mr. DeCarlo requests that the Court so rule and remand the case for sentencing by Judge Goldsmith in conformity with his findings and conclusions.

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By: 

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PSYCHOLOGICAL EVALUATION

NAME: John Foster DeCarlo
DOB: ██████████
RACE/SEX: Caucasian/Male
EVALUATION DATE: 05/03/13
REPORT DATE: 05/07/13
EXAMINER: David R. Price, Ph.D.
REFERRAL SOURCE: Thomas C. Taylor, Esquire

REASON FOR REFERRAL:

Mr. DeCarlo was referred for a psychological evaluation related to mitigation in the criminal defense of current criminal charges of Armed Robbery With a Deadly Weapon, Assault and Battery by Violence Second Degree, Possession of a Weapon During a Violent Crime, and Burglary First Degree.

EVALUATION PROCEDURES:

Background Information

Behavioral Observations

Clinical Interview

Psychological Testing

Minnesota Multiphasic Personality Inventory-2 (MMPI-2)

Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV)

Wide Range Achievement Test: Fourth Edition (WRAT4)

Review of Medical Records:

Psychiatric Evaluation dated 03/29/13 by Mandy E. Horrigan, M.D.

Interview with mother, Martha Foster

Interview with uncle, William Foster

BEHAVIORAL OBSERVATIONS:

Mr. DeCarlo was seen in the Beaufort County Detention Center. He was evaluated in a visitation room. He wore prison issued clothing. At the time seen he was on no medications. He did not wear any glasses. He did not have hearing aids. He was neither manacled nor cuffed.

Prison attire included a green jumpsuit, flip-flops and socks. Mr. DeCarlo had a wristband that had his picture attached to it. He had some stubble across his chin but not to the degree of having a goatee. He had very short hair. He did not have any jewelry. There were no visible tattoos. He was right-handed. He was a tall and well-built young man. There were no visible scars other than a slight scar across the bridge of his nose. This was the result of falling at the age of two and needing 30 sutures to close that injury. He had very short nails which suggested that he bites them which he later admitted.

Mr. John Foster DeCarlo
Psychological Evaluation
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Mr. DeCarlo was seen alone. His ambulation was normal. The prison issued dress was casual. His grooming and hygiene appeared to be neat and normal. There were no grossly obvious motor abnormalities. His eye contact was normal. His speech volume, rate and prosody were within normal limits. No dysarthria was noted. His language was normal and his speech was coherent and fluent. His thought content was normal and his thought processes appeared to be linear and non-psychotic. His affect appeared to be normal with appropriate range.

Mr. DeCarlo appeared motivated to give good effort on testing. He was compliant with all tasks requested of him. Tests results should be a valid indicator of his current level of functioning.

Mr. DeCarlo was oriented to person, place, date and situation. His attention and concentration were within normal limits. He could recall five of five words immediately but could not recall any of them after a five minute delay with interference. It is related to distractibility. He could not perform a Serial 7's task counting 100, 92, 84, 76. He could spell "WORLD" correctly forward and in reverse. He could recall six digits forward and four digits backwards. He was able to abstract. When asked to interpret the proverb, "Don't cry over spilled milk," he replied "Not that big a deal." When asked to interpret the proverb "Strike while the iron is hot," he originally said "I don't know," but when prompted he said "Get it while you can." When asked what he would do if he was the first person to see smoke and fire in a movie theater, he replied "Tell everyone to get out." When asked what he would do if he found an envelope in the street that was sealed, addressed and had a new stamp on it, he replied "Shove it in the mailbox." This indicates some intact social judgment.

BACKGROUND INFORMATION:

Mr. DeCarlo reported he has a history of stress. He also has had a history of being treated for Attention Deficit Disorder and hyperactivity. He has been treated in the past on psychostimulant medications, including Ritalin, Adderall, Concerta and Clonidine.

Mr. DeCarlo, prior to incarceration, used to drink a 24-pack or more of beer every weekend. He would drink wine "but not a lot" every other weekend. His consumption of hard liquor varied and occurred predominantly on the weekends. He began the use of illegal drugs with the use of marijuana at the age of 11 when he and a friend found a stash of pot at the friend's father's home. Other drug consumption began at the age of 15. He also has used "shrooms, pills, acid, cocaine and marijuana." He used drugs to excess between the ages of 15 and his incarceration at age 17. Mr. DeCarlo was diagnosed by Mandy E. Horrigan, M.D. with:

| | |
|----------|---|
| "Axis I: | Attention Deficit Hyperactivity Disorder Conduct Disorder Marijuana Dependence in a Controlled Environment. |
| Axis II | No diagnosis |
| Axis III | Unknown." |

Mr. John Foster DeCarlo
Psychological Evaluation
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The records indicate that Mr. DeCarlo completed the 10th grade. He later quit school in the 11th grade. A prior evaluation by the Department of Juvenile Justice on 11/17/09 found Mr. DeCarlo to have a Verbal IQ of 103 and a Performance IQ of 80.

Prior mental health treatment indicates being placed in the John deLaHowe School for a year for treatment, placement at the Orangeburg Detention Home for Boys and Coastal Evaluation Center. He has had diagnoses in the past of Attention Deficit Hyperactivity Disorder, Disruptive Behavior Disorder Not Otherwise Specified, a Reading Disorder, a Mathematics Disorder and Cannabis Abuse. He was subsequently placed at the McCord Center. He has been on psychostimulant medication since the age of eight. He has been seen at the Coastal Mental Health Center for treatment.

CLINICAL INTERVIEW:

Mr. DeCarlo reported he was arrested on 08/13/11. He was able to recall the particulars of his arrest and alleged crime. He reported prior to the evening of the alleged crimes, he had been at work and had been paid. He reported that he, Denny and Robby decided that they would get "fucked up" and proceeded to acquire liquor, Xanax, marijuana and cocaine. He reported on the day of the event he had taken two Adderall pills at work. He said that started getting him "fired up". Then at home he did lines of cocaine and used Xanax. The Xanax is to buffer the effects of the cocaine. He reported that Zack, who he had known for three months at that time, lived in his apartment complex. Zack came over with a plan to steal three pounds of marijuana from a drug dealer. According to Mr. DeCarlo, Zack said "We kind of drive in and get it."

Mr. DeCarlo reported that he had had a pistol that was broken. He said that D. Smith Peters had gotten the pistol from him the day before. Mr. Smith Peters had apparently tucked the weapon in the waist of his pants. This was the violent weapon allegedly used. Zack reported that he was "out of it" and did not want to be "not cool" so he went along with the "decision". He reported that they all had bandanas on. He remembered the door was locked and someone tried to open the door with a credit card. They told Mr. DeCarlo to kick the door in at which he did. According to Mr. DeCarlo it was at that point "Zack shot upstairs". That was when Zack and the victim began to get in a fight. Mr. DeCarlo reported Zack and his brother, Chase, were beating the "shit" out of the individual. He reported that he grabbed the victim and put him in a hold to try to restrain him to protect him from the beating. The victim then tried to "grab his nuts" so he "threw him on the bed". He said at this time he got scared and ran. In their car the people had taken TV's, an Xbox, but no drugs or marijuana. He said after they left the apartment complex they were pulled over by police and detained.

Mr. DeCarlo was able to cite the charges against him and potential penalties for them.

Mr. DeCarlo was seen while incarcerated. He denied a history of mental abuse and/or sexual abuse. He did endorse a positive history of physical abuse. He said his father is a large man and

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he used to beat his children. He said on one occasion he had fallen asleep with the phone and when his father discovered that he beat him badly. In using this assault he also used a cowboy boot as a weapon. He went to school the next day where the bruises were noted and the school officials alerted the authorities. Mr. DeCarlo reported they all (his siblings) got beatings and his father was an alcoholic. Apparently charges were lodged against his father regarding this incident but somehow was not prosecuted.

Mr. DeCarlo acknowledged he had a history of ADHD, a Conduct Disorder and a Learning Disability. He also reported he had been diagnosed with depression by a D.C. Campbell and was seen at the Coastal Mental Health Center. He denied any history of anxiety.

Mr. DeCarlo reported a family history of diabetes in his brother, grandfather and aunt. There were no other significant physical disorders. There were no untimely deaths. Mr. DeCarlo had asthma as a young child. He apparently aspirated fluid at birth and was kept in the hospital. His parents divorced when he was either 12 or 13. He rotated between living with them. His father now lives in Atlanta. His father is a graduate from the University of Rhode Island and his mother is a graduate of Winthrop.

Mr. DeCarlo reported that the family's socioeconomic stature was low or middle class. He said his parents were healthy. He said his primary caregiver were both his parents for awhile but later just his mother.

As far as he knew, Mr. DeCarlo met his developmental milestones on time. His first memories were of a blue house. He started biting his nails as a child and still does. He denied any history of head banging or bedwetting. He did suffer from nightmares as a child. He fell against the windowsill at age two and had over 30 stitches. He likely also experienced a concussion. Mr. DeCarlo reported he has taken pills for as long as he could remember. He started Concerta at the age of six. When asked to describe himself as a student, he said he was a good "C" student. He said he did not like school. He should have repeated the seventh grade but because of his prior placement at John deLaHowe he was not. He quit school in the 11th grade. He never received a GED.

Mr. DeCarlo reported he got along "okay" with teachers and peers. He had school adjustment problems. He had behavior problems in school. He would often fight other students. He was using drugs. He moved while in the 5th grade from Connecticut to South Carolina which cost him some friends.

Mr. DeCarlo's performance at school fell as he grew older. For extracurricular activities Mr. DeCarlo played football and wrestling. He said his coaches would fix his grades for him.

Mr. DeCarlo denied being involved in gang activities while in high school. He did have difficulty in school with numerous suspensions for fighting but no expulsions. He was never in special classes.

Mr. John Foster DeCarlo
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Mr. DeCarlo began smoking marijuana at the age of 11 and had his first alcohol at the age of 12 stealing Makers Mark from his mother. He started smoking cigarettes at age 16 but was not really ever a "smoker".

Mr. DeCarlo is heterosexual. He denied homosexual experiences. He has never had a socially transmitted disease. He has never been sexually assaulted nor sexually assaulted anyone.

Mr. DeCarlo was raised Catholic. He said he tries to practice his faith the best he can while incarcerated. He denied any fantasies or daydreams.

The only criminal charges for Mr. DeCarlo are the current ones. He has not had any civil difficulties. When he was 14 he was charged with possession of Schedule II narcotic with intending to distribute. This was Lortab and Percocet. This resulted in him having a 30-day evaluation. Mr. DeCarlo reported he was seen at Coastal Evaluation Center in Charleston by the Department of Juvenile Justice. He was also at the John deLaHowe in 2005 for behavioral problems. He was placed in a group home in Orangeburg for six weeks. Additionally he was at the McCord Center for drug treatment at age 17 in 2010.

Mr. DeCarlo denied ever having any hospitalizations for physical reasons. He has never been in the military.

When asked to describe his current physical condition, Mr. DeCarlo said "Stressed out". He reported prior psychiatric treatment as stated above. He essentially began to be treated in the second grade with Concerta. He was seen at the Coastal Mental Health Center and he was also seen by a D.C. Campbell. He has never had a psychiatric admission.

Mr. DeCarlo said his mood was "iffy". He said his sleep was "bad" and he sleeps approximately four hours out of a 24-hour period. He said his energy level is "all right". For pleasure he likes to work out while incarcerated. When asked about his appetite he replied "I eat." He reported a loss of 85 pounds since his arrest. He is currently 230 pounds.

Mr. DeCarlo denied any current crying spells. He does not have any feelings of guilt or worthlessness. He has been treated for hyperactivity since the age of eight. He denied any pressured speech, flight of ideas or inflated self-esteem.

Mr. DeCarlo has been involved in activities with painful consequences he did not recognize nor with his narcotic use. He denied any significant symptoms of anxiety. He has not had any panic attacks. He has not had any problems with obsessions or compulsions.

Mr. DeCarlo denied any flashbacks or nightmares. He denied any phobias. He did not endorse any delusions. He denied any experiences of thought insertion or thought broadcasting phenomena. He denied any auditory, visual or olfactory hallucinations. He denied any current

Mr. John Foster DeCarlo
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suicidal ideation. He has not had any homicidal ideation. He denied any history of self-mutilation. He has never been anorexic. He has never been bulimic.

Mr. DeCarlo reported he has never been arrested for alcohol problems. He did go to Alcoholics Anonymous at the age of 14 upon court order. He has had one blackout while drinking. He has never had DT's. He has been in trouble for distribution for Lortab and Percocet.

TEST RESULTS AND INTERPRETATION:

Mr. DeCarlo completed the Minnesota Multiphasic Personality Inventory-2 (MMPI-2); the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV); and the Wide Range Achievement Test: Fourth Edition (WRAT4).

MINNESOTA MULTIPHASIC PERSONALITY INVENTORY-2 (MMPI-2):

The MMPI-2 is a personality inventory that assesses a wide variety of personality characteristics, as well as the presence of psychopathology or psychiatric distress.

The interpretive report of the MMPI-2 is as follows:

...PROFILE VALIDITY

This client's approach to the MMPI-2 was open and cooperative. The resulting clinical and content scale profiles are valid and are probably a good indication of his present level of personality functioning. This cooperative performance may be viewed as a positive indication of his involvement with the evaluation.

SYMPTOMATIC PATTERNS

...The client is likely to be impulsive and immature and tends to seek immediate gratification of his wishes, often without apparent concern for the consequences. Individuals with this profile tend to be very pleasure-oriented and may seek self-gratification at the expense of others' welfare. He may show an uncontrolled behavioral history with legal, school, work, or family problems.

Such clients are easily frustrated and may continue to engage in socially and/or legally problematic behavior even though they have been previously punished for it in the past. He may be aggressive and hostile at times...

He endorsed a number of items reflecting a high degree of anger. He appears to have a high potential for explosive behavior at times. He endorses statements that show some inability to control his anger. He may physically or verbally attack others when he is angry. He considers himself to be in good health and does not complain of somatic difficulties...

INTERPERSONAL RELATIONS

He may seem likable at first and may make a good impression on others; however, his relationships tend to be very superficial. His behavior is primarily hedonistic and self-centered,

Mr. John Foster DeCarlo
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 May 7, 2013
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and he is quite insensitive to the needs of other people, manipulating them for his own ends and feeling no guilt about it. He is likely to be experiencing some difficulty with family or personal relationships. His acting-out behavior is likely to put great strain on his relationships.

His social interests appear to be high and he seems to enjoy social participation. However, his interpersonal behavior may be problematic at times in the sense that he may lose his temper in frustrating situations. Personality characteristics related to social introversion-extraversion tend to be stable over time. The client is typically outgoing, and his sociable behavior is not likely to change if he is retested at a later time...

DIAGNOSTIC CONSIDERATIONS

...He appears to have a number of personality characteristics that have been associated with substance use or abuse problems. His scores on the addiction proneness indicators suggest that there is a possibility of his developing an addictive disorder. In his response to the MMPI-2, he acknowledged some problems with excessive use or abuse of addictive substances...

WECHSLER ADULT INTELLIGENCE SCALE-FOURTH EDITION (WAIS-IV):

On the Wechsler Adult Intelligence Scale-Fourth Edition (WAIS-IV) Mr. DeCarlo received the following:

| FACTOR | SCORE | PERCENTILE |
|----------------------|-------|------------------|
| Full Scale | 83 | 13 th |
| Verbal Comprehension | 93 | 32 nd |
| Perceptual Reasoning | 88 | 21 st |
| Working Memory | 83 | 13 th |
| Processing Speed | 79 | 8 th |

Mr. DeCarlo's Scaled Scores are as follows:

| <u>Subtest</u> | <u>Scaled Score</u> | <u>Percentile</u> | <u>Measure</u> |
|----------------|-------------------------|-------------------|--|
| Block Design | 5 | 5 th | It is designed to measure the ability to analyze and synthesize abstract visual stimuli. It also involves nonverbal concept formation and reasoning, broad visual intelligence, fluid intelligence, visual Perception and organization, simultaneous Processing, visual-motor coordination, learning, and the ability to separate figure-ground in visual stimuli. |
| Similarities | 7 | 16 th | It is designed to measure verbal concept formation and reasoning. It also involves crystallized intelligence, abstract reasoning, auditory |

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Psychological Evaluation
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| | | | |
|------------------|----|------------------|--|
| | | | comprehension, memory, associative and categorical thinking, distinction between nonessential and essential features, and verbal expression. |
| Digit Span | 7 | 16 th | The shift from one Digit Span task to another requires cognitive flexibility and mental alertness. Digit Span Forward involves rote learning and memory, attention, encoding, and auditory processing. Digit Span Backward involves working memory, transformation of information, mental manipulation, and visuospatial imaging. Digit Span Sequencing is similar to other tasks that are designed to measure working memory and mental manipulation. |
| Matrix Reasoning | 9 | 37 th | It involves fluid intelligence, broad visual intelligence, classification and spatial ability, knowledge of part-whole relationships, simultaneous processing, and perceptual organization. |
| Vocabulary | 11 | 63 rd | Vocabulary is designed to measure word knowledge and verbal concept formation. It also measures crystallized intelligence, fund of knowledge, learning ability, long-term memory, and degree of language development. |
| Arithmetic | 7 | 16 th | It involves mental manipulation, concentration, attention, short- and long-term memory, numerical reasoning ability, and mental alertness. It may also involve sequential processing; fluid, quantitative, and logical reasoning; and quantitative knowledge. |
| Symbol Search | 7 | 16 th | In addition to processing speed, the subtest involves short-term visual memory, visual-motor coordination, cognitive flexibility, visual discrimination, psychomotor speed, speed of mental operation, attention, and concentration. It may also measure auditory comprehension, perceptual organization, fluid intelligence, and planning and learning ability. |

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| | | | |
|----------------|----|------------------|---|
| Visual Puzzles | 10 | 50 th | It is a new subtest designed to measure nonverbal reasoning and the ability to analyze and synthesize abstract visual stimuli. Similar measures, such as Object Assembly, involve visual perception, broad visual intelligence, fluid intelligence, simultaneous processing, spatial visualization and manipulation, and the ability to anticipate relationships among parts. |
| Information | 8 | 25 th | It is designed to measure the ability to acquire, retain, and retrieve general factual knowledge. It involves crystallized intelligence and long-term memory. Other skills that may be used include verbal perception, comprehension, and expression. |
| Coding | 5 | 5 th | In addition to processing speed, the subtest measures short-term visual memory, learning ability, psychomotor speed, visual perception, visual-motor coordination, visual scanning ability, cognitive flexibility, attention, concentration, and motivation. It may also involve visual sequential processing and fluid intelligence. |

WIDE RANGE ACHIEVEMENT TEST: FOURTH EDITION (WRAT4):

The Wide Range Achievement Test: Fourth Edition is designed to measure Reading (Word Recognition and Comprehension), Spelling and Arithmetic. It is one of the most frequently used measures of academic achievement. Mr. DeCarlo has the following scores:

| SUBTEST | STANDARD SCORE | PERCENTILE RANK | GRADE EQUIVALENCY |
|------------------------|----------------|------------------|-------------------|
| Word Reading | 97 | 42 nd | 11.7 |
| Sentence Comprehension | 106 | 66 th | 12.9 |
| Spelling | 83 | 13 th | 6.4 |
| Math Computation | 77 | 6 th | 4.9 |

Mr. John Foster DeCarlo
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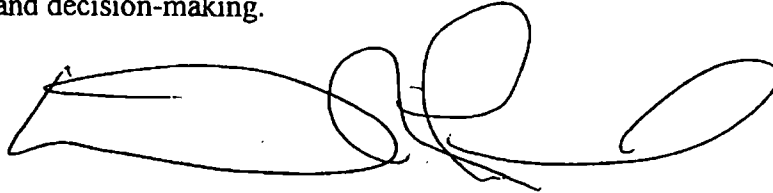
significant impairment socially, educationally and academically. The Attention Deficit Hyperactivity Disorder and the Bipolar I Disorder directly contribute to emotional lability and may contribute to aggressive behavior. These mental conditions contribute to Mr. DeCarlo participating in activities without consideration of possible consequences for himself and for others.

3. Mr. DeCarlo's Attention Deficit Hyperactivity Disorder, Combined Type has been a source of treatment since the age of six. Attention Deficit Hyperactivity Disorders often co-exist with mood disorders such as Bipolar Disorder or Major Depression. The mood disorders substantially contribute to feelings of irritability which can lead to aggressiveness.

4. Mr. DeCarlo has been treated with psychostimulant medications since the age of six and has used recreational drugs since the age of 11 with marijuana, alcohol at 12, and with numerous other drugs at age 15. At the time of the event, he had consumed cocaine, alcohol, had taken Adderall, Xanax, and marijuana. The cocaine and Adderall could contribute and precipitate manic behavior which in the hypomanic stage could contribute to him being irritable and aggressive and act impulsively without any regard to the consequences of his behavior.

5. Mr. DeCarlo likely had a pre-existing Conduct Disorder with Adolescent Onset (DSM-IV-TR 312.02) that was a precursor to the Bipolar I Disorder.

6. Mr. DeCarlo has a Learning Disorder NOS (DSM-IV-TR 315.9) which contributes to his difficulty with spelling and math and difficulty at school. This can also affect social judgment and decision-making.

A handwritten signature in black ink, appearing to read "David R. Price". The signature is fluid and cursive, with a long horizontal stroke at the end.

David R. Price, Ph.D.
Licensed Clinical Psychologist
The Forensic Network PA

WITNESSES

H. Light - Port Royal PD

ARREST WARRANT NUMBER

1261113

ACTION OF GRAND JURY

[Faint stamp]

Burt Wolfe SEP 15 2011
Foreperson of Grand Jury
Date: ~~AUG 15 2011~~

VERDICT

Foreperson of Petit Jury
Date:
INDICT.DOT

DOCKET NO. 2011GS0701744

**The State of South Carolina
County of Beaufort**

COURT OF GENERAL SESSIONS

September Term 2011

THE STATE

vs.

John Decarlo

Indictment for

Burglary / Burglary (After June 20, 1985) - First degree

SC Code: 16-11-0311
CDR Code:0079

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

52

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

WITNESSES

Suarez - PRPD

ARREST WARRANT NUMBER

1261121

ACTION OF GRAND JURY

True Bill

Becky Lee [SEP 15 2011]
Foreperson of Grand Jury - AUG 15 2011
Date:

VERDICT

Foreperson of Petit Jury
Date:
INDICT.DOT

DOCKET NO. 2011GS0701758

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

September Term 2011

THE STATE

vs.

John Decarlo

Indictment for

Weapons / Poss. weapon during violent crime

SC Code: 16-23-0490
CDR Code:0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

54

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

WITNESSES

Suarez - PRPD

ARREST WARRANT NUMBER

1261129

ACTION OF GRAND JURY

[Handwritten signature]

[Handwritten signature] SEP 15 2011
Foreperson of Grand Jury
Date: ~~AUG 15 2011~~

VERDICT

Foreperson of Petit Jury
Date:
INDICT.DOT

DOCKET NO. 2011GS0701813

The State of South Carolina

County of Beaufort

COURT OF GENERAL SESSIONS

September Term 2011

THE STATE

vs.

John Decarlo

Indictment for

**Armed Robbery, robbery while armed or
allegedly armed with a deadly weapon**

SC Code: 16-11-0330(A)
CDR Code:0139

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

56

Defendant

Hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. and G.S.

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

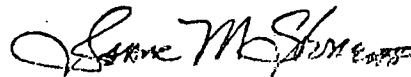
INDICTMENT
2011GS0701813

At a Court of General Sessions, convened on September 15, 2011, the Grand Jurors of Beaufort County present upon their oath:

Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

That on or about August 14, 2011, in Beaufort County, South Carolina, at [REDACTED] Port Royal by use of force, threats or intimidation and while armed with a deadly weapon, to wit: a handgun, the Defendant, John Decarlo, did take and carry away goods and/or monies from the person or immediate presence of Christopher O'Brien with the intent to permanently deprive him 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.



Solicitor

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 4, 2014

Robert M. Pachak

Robert M. Pachak
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

June 4, 2014

Robert M. Pachak

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Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
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Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT

RECEIVED

JUN 04 2014

SC Court of Appeals

STATE OF SOUTH CAROLINA

ORIGINAL

IN THE COURT OF APPEALS

Appeal from Beaufort County

Brooks P. Goldsmith, Circuit Court Judge

RECEIVED

JUN 04 2014

SC Court of Appeals

THE STATE,

RESPONDENT,

V.

JOHN DECARLO,

APPELLANT

APPELLATE CASE NO. 2013-001232

CERTIFICATE OF SERVICE

I certify that a true copy of the Record on Appeal in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201, this 4th day of June, 2014.

Brandon Hall

Brandon Hall
Administrative Specialist

SUBSCRIBED AND SWORN TO before me
this 4th day of June, 2014.

Palmer

(L.S.)
Notary Public for South Carolina
My Commission Expires: July 24, 2022.