

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Florence County

William H. Seals, Jr., Circuit Court Judge

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S.C. Supreme Court

DONTE L. CAPERS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000097

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE) GENERAL SESSIONS COURT

STATE OF SOUTH CAROLINA)
STATE,)

v.)

DONTE LAQUAWN CAPERS,)

DEFENDANT.)

TRANSCRIPT OF RECORD

11-GS-21-0012

11-GS-21-0014

11-GS-21-0015

June 16, 2011
Florence, South Carolina

B E F O R E :

THE HONORABLE MICHAEL G. NETTLES, JUDGE;

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

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Assistant Solicitor

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(There were no exhibits submitted.)

1 MR. DEBERRY: Before you pleading guilty
2 today is Mr. Donte Capers. He's pleading guilty to
3 three separate indictments, Your Honor. The first
4 is 2011-GS-21-12. The second is 2011-GS-21-14, and
5 the third one being 15, Your Honor, 2011-GS-21-0015.
6 Your Honor, as a result of this plea all three of
7 these pleas are for burglary in the first degree,
8 Your Honor. At the appropriate time we'll give the
9 facts and circumstances of this case. As a result
10 of these pleas the State has agreed to nol pros
11 other indictments which include all burglary first
12 charges, Your Honor. Also, there's a safe cracking
13 charge and a pointing and presenting charge, Your
14 Honor. It's indictment number 2011, number 1, 3, 4,
15 5, 6, 7 through 11, 13, 16 and 17, Your Honor.

16 Your Honor, in this case there is a
17 recommendation from the State for a 25 year
18 sentence. We feel that that sentence is very
19 appropriate in this matter. There are victims here
20 in the courtroom. At the appropriate time I'll
21 address them, or have the Court address them, Your
22 Honor, if they wish to speak. I know that one or
23 two of them at least do. At that time we'd like for
24 that to be heard.

25 THE COURT: Very good. The sentence range

1 on this is 15 to life?

2 MR. DEBERRY: That's right.

3 THE COURT: Is it minimum mandatory 15?

4 MR. FLOYD: Yes, Your Honor.

5 THE COURT: No part of which can be
6 suspended.

7 MR. FLOYD: That's right.

8 THE COURT: So it's minimum mandatory 15?

9 MR. FLOYD: Minimum mandatory 15, Your
10 Honor.

11 THE COURT: That was my thinking. All
12 right. And this is a violent offense as well; isn't
13 it?

14 MR. FLOYD: And it's most serious, Your
15 Honor.

16 THE COURT: I notice in the sentencing
17 sheet it's not marked violent. Does everyone agree
18 it is indeed violent?

19 MR. DEBERRY: Violent and most serious is
20 marked there, Your Honor.

21 THE COURT: Most serious is, but the
22 violent is not. I will indeed mark it.

23 Mr. Floyd, do you represent Mr. Capers?

24 MR. FLOYD: I do, Your Honor.

25 THE COURT: Have you explained to him the

1 offense of burglary first degree, the fact that he
2 could receive a minimum mandatory 15 years, maximum
3 life on each of these three separate and distinct
4 offenses?

5 MR. FLOYD: Yes, sir, Your Honor.

6 THE COURT: Does he understand what a most
7 serious offense is and the importance of that
8 designation?

9 MR. FLOYD: Yes, Your Honor.

10 THE COURT: Does he know it falls subject
11 to the two strike rule?

12 MR. FLOYD: Yes, Your Honor.

13 THE COURT: And does he understand that a
14 violent offense adversely affects his custody
15 status, does he understand that?

16 MR. FLOYD: Yes, Your Honor.

17 THE COURT: Does he also understand that
18 this is a non-paroleable offense. He will serve
19 what I give him day for day.

20 MR. FLOYD: Yes, Your Honor.

21 THE COURT: Does he understand that?
22 Subject to the 85 percent rule?

23 MR. FLOYD: Yes, Your Honor.

24 THE COURT: But for all practical purposes
25 he needs to understand he'll serve it day for day.

1 He understands that?

2 MR. FLOYD: Yes, Your Honor.

3 THE COURT: Is that true, Mr. Capers?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: All right. Does he understand
6 the elements of burglary, potential defenses, and
7 his constitutional rights?

8 MR. FLOYD: Yes, Your Honor.

9 THE COURT: How does he wish to plead?

10 MR. FLOYD: Guilty, Your Honor.

11 THE COURT: Do you agree with his decision
12 to do so?

13 MR. FLOYD: I do, Your Honor.

14 THE COURT: Do you feel if called upon to
15 do so the State could prove him guilty beyond a
16 reasonable doubt?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Let's place Mr. Capers under
19 oath if we could.

20 CLERK OF COURT: Please raise your right
21 hand.

22 WHEREUPON,

23 **DONIE CAPERS,**

24 having been duly sworn by the Clerk of Court,
25 testified as follows:

1 THE COURT: Mr. Capers, are you under the
2 influence of any drugs or alcohol here today?

3 THE DEFENDANT: No, sir.

4 THE COURT: Are you experiencing any
5 physical or mental problem that could prevent you
6 from understanding what's going on here today?

7 THE DEFENDANT: No, sir.

8 THE COURT: All right. I want you to pay
9 very close attention as the State summarize the
10 facts that bring us here today. Pay very close
11 attention 'cause I'm gonna ask you about them.

12 MR. DEBERRY: Thank you, Your Honor. On
13 indictment number 2011-0014, that crime happened at
14 the home of Mr. Franklin Altman who is here present
15 in the courtroom here today, Your Honor. I know he
16 wants to address the Court at the appropriate time.
17 That happened on January 7th, 2010 at his home on
18 [REDACTED] in Florence County. Mr. Donte Capers
19 along with Vernell Harris did break into that home
20 there that day, Your Honor. Two guns, a 20-gauge
21 shotgun and also a 270 rifle were stolen. Your
22 Honor, there was also a safe that was stolen that
23 contained an amount of money, also some jewelry.

24 Your Honor, pursuant to a search warrant
25 where Mr. Capers and a co-defendant Ms. Gloria

1 Kerrigan were stopped by Florence Police Department
2 and in possession of some stolen items there at that
3 time, Your Honor. There was a search warrant that
4 led to the discovery of some of Mr. Altman's
5 property in the home of Mr. Capers who was at that
6 time living with Ms. Kerrigan. Your Honor, there
7 was a great amount of stolen goods that were
8 recovered there that day that linked them to
9 multiple burglaries that had happened that were
10 unsolved at the time. Your Honor, pursuant to that
11 Ms. Kerrigan did agree to give statements against
12 Mr. Capers as well as Vernell Harris who was a
13 co-defendant also in these crimes, Your Honor; that
14 giving us the ammunition so to speak or the goods
15 that we needed to be able to prosecute this case in
16 particular. Some of Mr. Altman's goods were
17 returned -- or maybe he didn't get anything back,
18 Your Honor. They still may be in the possession of
19 the Sheriff's Office; some of the things were. I
20 know that there were some money that was unique to
21 that safe. Also some personal checks were recovered
22 that linked them to this house also, Your Honor.

23 For indictment 2011-GS-33-0012, that was
24 the residence of Scottie Lee. Your Honor, he lived
25 on [REDACTED] in Florence County. Donte

1 Capers here, standing here today, and Vernell Harris
2 entered that residence by kicking in the side door.
3 At that time they were operating out of a black
4 Explorer, Ford Explorer, Your Honor. A neighbor of
5 Mr. Scottie Lee saw that car there at his residence
6 about the time that the break-in occurred. Your
7 Honor, as a result, when the individuals Mr. Capers
8 and Mr. Harris left that house that day that
9 neighbor did later in a photo lineup positively
10 identify Mr. Capers as being the one who he saw
11 leaving that house that day. I think they came
12 close in proximity as the car was leaving and as the
13 neighbor was paying attention. Out of that house
14 things that were taken were a 50-inch TV, Your
15 Honor, also some guns, firearms, jewelry, and some
16 silver, Your Honor. Some of those things were
17 recovered.

18 In all these cases, Your Honor, I don't
19 think any guns were ever recovered. That gives the
20 victims in those cases great concern for two
21 reasons, that these guns may be in the hands of
22 criminals presenting a danger to the community.
23 They also -- for everybody a firearm may mean
24 something different. There's a lot of sentimental
25 value in a lot of these pieces that were stolen that

1 have not been recovered. As I say, he was
2 positively identified in that crime. Also, two
3 co-defendants have given statements against
4 Mr. Capers in that crime as well.

5 Your Honor, in indictment 2011-15, that
6 was the home of Ms. Andrea Cartwright. And I think
7 out of all these crimes this is the most troubling
8 one that we have. Ms. Cartwright and her daughter
9 are in the courtroom here today. Also, her father
10 Mr. Andy Munn is there. The morning of
11 January 16th, 2009, it was on [REDACTED] in
12 Timmons ville which is in Florence County,
13 Ms. Cartwright and her daughter left home that
14 morning. They traveled a short distance down the
15 road to her father's house, and when they got there
16 the three of them got back in the car together and
17 had to go back home to Ms. Cartwright's residence.
18 And when they arrived there there was a car backed
19 up to the front door, a gold GMC Jimmy I believe,
20 Your Honor. And Ms. Cartwright didn't know who it
21 may have been. They weren't alarmed to start with,
22 but she went to the front door. And as she went to
23 the front door Mr. Capers and Mr. Harris were
24 inside, and they noticed that they had some company
25 there. They went out the back door. Your Honor,

1 the backyard of that house is fenced in. And they
2 decided that they needed to get back to their car to
3 get away. And so they jumped the fence and both
4 were armed with handguns. So at that time
5 Ms. Cartwright was inside. Well, Ms. Cartwright's
6 daughter was going around the side of the house to
7 look in the backyard for whatever reason. She came
8 in contact with them no further than, maybe closer
9 than I am to you. Masked men, armed and dangerous,
10 and apparently ready and willing to use their
11 weapons if they needed to, Your Honor. And I say
12 that because as they came to the car, Mr. Munn who's
13 here in the courtroom, was just standing there
14 looking in their car confused about what may be
15 going on, the situation. As they approached him he
16 was held at gunpoint, and they told him that they
17 would blow his head off in not so nice terms, Your
18 Honor, if he didn't get out of their way and let
19 them go.

20 Mr. Munn says that he wishes that he could
21 have done something different. He realizes that he
22 probably did the right thing that day by not
23 avoiding a confrontation and saving his life, but he
24 says that he was just most concerned about the life
25 of his grandchild who was standing right there

1 witnessing this whole thing. And Your Honor, at the
2 appropriate time I know he would like to talk to
3 you.

4 They did speed away from that. As a
5 result of that Mr. Munn decided, you know, at the
6 pressure of gunpoint to yield to their directions
7 and a short time later is when they were stopped at
8 a traffic stop and this whole thing began to
9 uncover. Gloria Kerrigan who's a sus— codefendant
10 in these cases, Your Honor, she was present at some
11 of these and she was not present at others. She was
12 not present at [REDACTED] that day. She tells us
13 though, Your Honor — and we have it in
14 statements -- that every time Mr. Capers enters a
15 house he was armed and that he, that he would use
16 that gun if he ever needed to. Thank God that that
17 type of situation never did come to fruition. We
18 know how close it came. We know that this could be
19 a whole totally different situation if that had
20 happened.

21 Your Honor, the damage is done. These
22 people are very traumatized. It's changed their
23 lives, forever, Your Honor. I just, there are some
24 victims that are not here because they told me they
25 just could not confront these people and I'd like to

1 speak for them now if that's appropriate.

2 THE COURT: Certainly.

3 MR. DEBERRY: Your Honor, Mr. Onkyle (ph)
4 who is a victim of a crime that's being nol prossed
5 here today, he says he just can't be here. He
6 doesn't want to -- he doesn't think he can control
7 his emotions. He doesn't want to confront these
8 people. He's happy with what we're doing. He
9 thinks the 25 years is appropriate, if anything that
10 it's on the low end. At the time, Your Honor, it
11 was -- his wife was pregnant and now she can't feel
12 comfortable in her house. She's scared to live
13 there. We also have Ms. Cooper who is here in the
14 audience today as a victim as well. She had to sell
15 her home in these troubling times with the economy
16 and everything else just because she was a single
17 woman who is living alone, and she couldn't return
18 there to her house to live there anymore because of
19 the things that had happened there. She just
20 couldn't sleep, has trouble doing everything in
21 life. As I say, all these victims' entire lives
22 have changed as a result of their actions.

23 A common theme that was used by these
24 criminals, Your Honor, was they were breaking in
25 around January and just before the first of the year

1 they would steal all Christmas presents from under
2 Christmas trees. We all know how hard it is to
3 provide in those times of giving and for those items
4 just to be stolen, and they didn't even know what
5 they were stealing. They were just stealing wrapped
6 up Christmas presents, Your Honor. Your Honor, they
7 were very meticulous. They were very careful. They
8 would -- they had a -- we know this from the
9 co-defendants, that they had a laundry list of
10 things that they would look for when they were out
11 looking for the perfect houses to break into. And
12 that's how we believe they were so successful before
13 they wound up getting caught. They were looking for
14 nice houses, short driveways. They would have time
15 periods that they would have to be in and out. And
16 it all worked for a while; but now they're here
17 today, Your Honor, and they're facing up to life in
18 prison for these crimes. We think that 25 years is
19 more than appropriate, and if anything, it's on the
20 low end.

21 Your Honor, also some of the items that
22 have been gone, the victims asked me to let the
23 Court know that although that they may not have been
24 very valuable to everybody, that they were valuable
25 for sentimentally or for other reasons, cannot ever

1 get them back, can't enter their houses the same.
2 Their children are scared. Ms. Cartwright says her
3 daughter is scared to even stay in their house
4 anymore. I think that's a common theme throughout
5 all of the victims, Your Honor.

6 I explained the 85 percent of the 25 years
7 to the victims as our recommendation. They're for
8 the most part are in agreement with the 25 years.
9 They wish it could be more. In the interest of
10 judicial economy and just compromise, Your Honor, we
11 think that that's appropriate. We ask that you not
12 go any lower at all and that you consider going
13 above that. I'd like for you to hear from law
14 enforcement as well as the victims at the
15 appropriate time.

16 THE COURT: All right. We will hear from
17 everybody with regard to sentencing, but let me stop
18 at this juncture and talk with Mr. Capers.

19 You've heard the factual allegations of
20 these offenses. Are you indeed guilty of three
21 separate and distinct counts of burglary in the
22 first degree?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: With regard, Mr. Deberry said
25 a bunch of things, but with regard to the facts that

1 give rise to these criminal offenses, are those
2 facts that give rise to it true?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Okay. You're standing before
5 me pleading guilty, but you don't have to plead
6 guilty to anything. You could exercise your right
7 to a jury trial. In that process the jury would
8 determine whether or not the State could actually
9 prove you guilty beyond a reasonable doubt. I would
10 charge the jury as a matter of law that you're
11 presumed to be innocent. No one could require that
12 you take the witness stand. However, if you wanted
13 to you could. You could subpoena witnesses on your
14 own behalf. In addition to that you and your lawyer
15 could cross-examine the State's witnesses, have an
16 opportunity to eyeball them and confront them as
17 they testified against you. You realize by pleading
18 guilty you're giving up all these rights?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Still wish to plead guilty?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Are you indeed guilty?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Plea negotiation I understand
25 is a recommendation, not a negotiation, but a

1 recommendation of 25 years?

2 MR. DEBERRY: That's correct.

3 THE COURT: Concurrent?

4 MR. DEBERRY: Yes, sir.

5 THE COURT: Concurrent. Is that your
6 understanding, Mr. Floyd?

7 MR. FLOYD: That's correct, Your Honor.

8 THE COURT: Is that your understanding,
9 Mr. Capers?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Mr. Capers, are you satisfied
12 with your lawyer?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Has he done everything that
15 you've asked him to do?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: You understood all your
18 conversations with him?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You understand the elements of
21 burglary, the elements of the crime of burglary
22 first degree?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: You understand potential
25 defenses?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: You understand your
3 constitutional rights?

4 THE DEFENDANT: Yes, sir, Your Honor.

5 THE COURT: You understand the collateral
6 ramifications would include but not limited to the
7 fact this is a most serious offense subject to the
8 two strike rule and has adverse consequences with
9 regard the three strike rule, the fact this is a
10 violent offense, non-paroleable offense subject to
11 the 85 percent rule. Do you understand all those
12 things and have you talked with that -- talked with
13 those things to your lawyer?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You understood all your
16 conversations with him?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Any complaints with him
19 whatsoever?

20 THE DEFENDANT: No, sir.

21 THE COURT: You need any additional time
22 to confer with him?

23 THE DEFENDANT: No, sir, Your Honor.

24 THE COURT: All right. Has anybody
25 promised you anything, threatened you, pressured

1 you, mistreated you in any way, shape, or form in an
2 effort to get you to plead guilty here today?

3 THE DEFENDANT: No, sir.

4 THE COURT: Has it been your decision to
5 plead guilty?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Are you indeed guilty?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: You understood all my
10 questions?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have your answers been
13 truthful?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You understand that you have
16 ten days to appeal any decision I might render here
17 today?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Based on your testimony I find
20 there's a substantial factual basis for your plea;
21 that your decision was freely and voluntarily
22 entered into, knowingly and intelligently with
23 consent of competent counsel with whom you say
24 you're satisfied. I will indeed accept the plea and
25 be glad to hear from law enforcement at this time.

1 Yes, sir.

2 THE INVESTIGATOR: Your Honor, some facts
3 we'd like for you to take into consideration.

4 THE COURT: Just for the record could you
5 state your full name, sir.

6 THE INVESTIGATOR: Warren Poston.

7 THE COURT: Very good, Mr. Poston.

8 THE INVESTIGATOR: Your Honor, from my
9 investigation we've found that these burglaries
10 occurred between October 2009 until March 2010 when
11 they were actually arrested. I believe in October
12 of 2009 they had shortly been released from Florence
13 County Detention Center where they had, him and his
14 co-defendant Vernell Harris in this case, pled
15 guilty to other burglaries that had occurred back in
16 '08. From what the co-defendant Vernell Harris told
17 me, they needed money for probation fees so they
18 started back breaking into houses again. Like the
19 Solicitor discussed, there was a set of rules they
20 actually went by, Your Honor. This is not just a
21 driving by a house, see something. They actually
22 went out working. They actually went out looking
23 for what they wanted, and they didn't stop until
24 they found what they wanted. According to the
25 co-defendants they would get on the interstate, they

1 would drive for an hour, get off, hit the houses,
2 get back on the interstate, the next day they would
3 drive around an hour-and-a-half. The cases here in
4 Florence County are nothing but a tip of the
5 iceberg. I think we've got him on 15 indictments,
6 which there's actually 42 cases that we could go
7 forward with in that vicinity of 42 just in Florence
8 County. We've linked them through search warrant
9 that I did and related them to burglaries in North
10 Carolina, I think Kershaw County, and other counties
11 as well. This -- they took this serious; this was
12 their job. And I think 25 years is on the low end,
13 but I think as a matter of justice it is warranted.

14 THE COURT: I'll be glad to hear from
15 anybody who would like to speak.

16 MR. DEBERRY: Thank you, Your Honor. I'll
17 introduce them and at the appropriate time I'd like
18 to read his record as well.

19 THE COURT: Very good.

20 MR. DEBERRY: Mr. Altman. Come forward.
21 Tell the court reporter your name for the record and
22 address the judge.

23 VICTIM ALTMAN: Franklin Altman.

24 THE COURT: Mr. Altman, I'll be glad to
25 hear anything that you got to say.

1 VICTIM ALTMAN: Your Honor, I went home.
2 No one was home when this burglary happened at my
3 residence. I can only imagine, you know, what these
4 other people went through that were home and were
5 held at gunpoint, and you know, the ones that had
6 Christmas stolen from them. I had a lot of stuff
7 stolen. I got a ten year old that I still have. My
8 family has problems with this child coping with, you
9 know, wanting to come in, wanting to stay. Never
10 will the child stay and the door be closed. My
11 parents are old; they live with me. It's been a --
12 you know, this happened January 7th, you know, in
13 2010. It's been over a year, and we just maybe seem
14 to be mending a little bit. We've gotten nothing
15 back from Florence County or anything; anything that
16 was stolen is still stolen.

17 I think if these Capers or whoever else is
18 involved, get 25 years, every day it's my opinion
19 that that's a very, very short time. It's -- if
20 anybody's never been in my shoes where you've been
21 robbed and vandalized, it's awful feeling. And I
22 don't -- like I mentioned a while ago, the ones that
23 were held at gunpoint, I've never been held at
24 gunpoint so I don't know that feeling, but it's got
25 to be greater than what I know now. I've never come

1 home and my Christmas was stolen. It's got to be
2 greater than what I know. What I'm simply asking
3 and begging is that this not be taken as a cake walk
4 so to speak, but it be taken serious, serious enough
5 to go on record and to be known; public knowledge
6 that if, regardless of who does crimes of this
7 nature or even more, that the punishment would be
8 extremely great.

9 I think, you know, we -- I'm a working
10 person; nobody gives me nothing. And then to have
11 it taken away, and I still don't have it. You can
12 fight a insurance company, but you don't get but a
13 portion. And then what do I do? I go back to work
14 and I try to start over. But, and you give someone
15 a little bit of time in a jail that's not so bad.
16 I've been to jail and it ain't so bad. My point is,
17 25 years, 30 years, 35 years, whatever, I want the
18 sky to be the limit; it's not enough.

19 Now my -- you let me voice my opinions and
20 my thoughts. I'm appreciative to you and the court,
21 and I would ask that you really consider what I've
22 asked you by 25 years. Having served every day of
23 25 years is not even close, just what I've been
24 through. And we talk, I think I heard someone
25 mention 15 here or maybe a total up to 42. Where do

1 you draw the line? Where do you, you know, it's
2 bad, it's bad. Thank you, Your Honor.

3 THE COURT: Thank you.

4 MR. DEBERRY: Your Honor, for the record
5 this is Andy Munn.

6 THE COURT: Mr. Munn, I'll be glad to hear
7 from you.

8 VICTIM MUNN: This young man is very
9 dangerous. He put a pistol right up here to my
10 neck. Guy that was with him pulled one right across
11 the car and said move M-F or I'll blow your G-D
12 brains out. My little granddaughter was standing
13 about like where he's at. She just about went into
14 convulsions. She's even scared to go home down
15 there. It didn't unnerve me too much except for my
16 family there. I was scared if I didn't move he'd
17 have shot me and he'd have to shoot them. So we
18 appreciate everything you can do for us. The man
19 don't need to be on the street like that.

20 THE COURT: All right, very good.

21 VICTIM MUNN: Thank you very much.

22 THE COURT: Thank you.

23 MR. DEBERRY: I think that will be it from
24 the victims, Your Honor.

25 THE COURT: All right. Anything else from

1 the State?

2 MR. DEBERRY: Your Honor, I'd just like to
3 read into the record that I don't think this is the
4 first time that these type crimes have been
5 committed by these individuals, and that in 2003
6 looks like he pled guilty to a burglary second or
7 two counts maybe. It looks -- he was charged with
8 burglary first degree and received a YOA sentence.
9 Your Honor, there's a drug sentence from 2004.
10 There's a receiving stolen goods, two counts of
11 guilty pleas in 2008. And there also are some
12 charges that were dismissed. I can only imagine
13 those are larceny, grand larcenies, and a burglary
14 probably pursuant to those pleas, Your Honor.

15 THE COURT: All right.

16 MR. DEBERRY: I'd just like to finish up,
17 Your Honor, by saying that we really feel like this
18 is an appropriate amount of time. We'd ask you if
19 you deviate at all to go up. These people are truly
20 changed and hurt to their detriment for the rest of
21 their lives, Your Honor. It really affects people
22 in different ways and none of them deserve it at
23 all. They're random acts of burglaries, but they're
24 really not that random. As the investigator told
25 the Court, these people are going out -- it's not

1 like they just decided, hey, let's stop and do this
2 and then they got in trouble as a result of
3 something they didn't really think about or didn't
4 really plan, it was just an impulse thing that
5 happened. But that's not what we're dealing with.
6 And he told you that they're implicated in maybe up
7 to 42 crimes just here in this county. And then he
8 also told you that they get on the interstate and
9 they drive for an hour, hour-and-a-half, they're not
10 in Florence County so there's untold amounts of
11 crimes that maybe have been committed at hands of
12 these people. And we ask that you follow the
13 recommendation, Your Honor.

14 THE COURT: Okay, all right. I understand
15 and appreciate what you're saying with regard to
16 these other undefined crimes. Of course, for the
17 record my consideration with regard to his sentence
18 are only going to be with regard to these three
19 offenses. It'd probably be unfair for him to have
20 to defend, you know, just inebulous accusation of
21 things taking place in other counties. So we
22 really, as far as my sentence it's going to be based
23 on these three offenses.

24 Mr. Floyd, I'll be glad to hear from you.

25 MR. FLOYD: Thank you, Your Honor, may it

1 please the Court. Your Honor, standing here with
2 Mr. Donte Capers, his mother Ola Mae Hannah was up
3 here a little earlier. She had to have a seat back
4 there, but she is present in the courtroom. Your
5 Honor, I first started representing Mr. Capers, I
6 believe, back in April of 2010 shortly after he was
7 arrested in March so I've been representing him now
8 for over a year. He and I have had a lot of
9 conversations about what happened with these
10 incidents. We've had a lot of visits down at the
11 detention center, and one thing I appreciate about
12 Donte is he always -- he asked a lot of questions,
13 and I actually appreciated that in a client because
14 he understands what's going on and what he's doing.
15 I don't feel like he doesn't understand the
16 significance of what he did and the significance of
17 what he's doing here today. I think he completely
18 understands it. We talked certainly about the
19 seriousness of each of these offenses that he's
20 pleading to. He knows very well when he has an open
21 plea like this that he could get a life sentence on
22 each one. I mean, he knows that. He knows what the
23 recommendation is. He knows that whatever sentence
24 you give him, Your Honor, if you give him 25 years
25 or 20 years or 30 years or whatever it is, he knows

1 he's going to have to serve every day of that time
2 and that's what he should assume he's going to serve
3 subject the 85 percent rule.

4 But Your Honor, we talked a lot about what
5 happened. Mr. Capers has, you know, expressed to me
6 that he's sorry for what he did. He understands
7 that he's inflicted a lot of pain on a lot of
8 people, the victims of these crimes, his mother over
9 there, his family. He's got a child that's three
10 years old that he supported, and obviously that's
11 not gonna happen for a very long time. His child is
12 going to basically grow up without a father. He's
13 inflicted pain on a child that's completely innocent
14 and he understands that as well. And he's very
15 sorry for what he did, Your Honor.

16 Certainly we understand that he can't
17 replace the things that were taken. He can't
18 replace that sense of security that the victims
19 lost; he knows that. The only thing he can do is
20 stand here and take responsibility for what he's
21 done, and that's what he's here to do. He knows
22 he's gonna be sentenced to the Department of
23 Corrections for a significant period of time, Your
24 Honor.

25 He is 25 years old now. He grew up here

1 in Florence County, pretty much lived here his whole
2 life in between Lake City and Florence. He's worked
3 in the past in HVAC field with Wayne Turner I
4 believe. Your Honor, before I forget, he has been
5 in the detention center for 451 days which is
6 continuously since March 23rd, 2010, I believe is
7 the day he went in there. By my computations that
8 would be 451 days up to today. Your Honor, he's,
9 you know, once again has not made any excuses.
10 Whatever sentence you give him, Your Honor, whether
11 it's 15 years or 20 years or whatever it is, he's
12 gonna have a long time to think about it because it
13 is day for day. It is a long time. 15 years is a
14 long time. 20 years is a long time and he's gonna
15 have a long time to think about it. He understands
16 that. And he's gonna have to make amends the way
17 society says he has to. And it's a tough, tough
18 thing to swallow. He's a very young man, but
19 hopefully when he gets out he'll still have some
20 life left and hopefully he'll put it to good. Your
21 Honor, we would ask if you would consider giving
22 him, you know, minimum sentence on these; but if
23 not, we just ask you to be as merciful as possible.
24 And I believe Mr. Capers wanted to speak to Your
25 Honor.

1 THE COURT: Mr. Capers, you can address
2 me. I don't want you talking to directly to any of
3 the victims here today. You can talk directly to
4 me. I'll be glad to hear anything that you got to
5 say.

6 THE DEFENDANT: I'd like to apologize to
7 the victims and everybody I hurt in this case. And
8 I'd like to ask you if it's possible if you would
9 please have mercy on me and if possible you grant me
10 mandatory minimum. 15 years, that's a long time,
11 Your Honor. It's going to be hard. Whatever you
12 sentence me to I'll be thankful for it. I ask you
13 to have mercy on me. I have a little son and he'll
14 be three Saturday, you know, and I want to have a
15 chance to get back in his life and make things
16 right. I want to be a -- I know once I go to prison
17 I want to try to change my life, get things good,
18 hopefully get my GED and find some kind of trade or
19 something I can do so I can come home and hope I can
20 have another life and start over. So I ask you
21 again please have mercy on me.

22 THE COURT: All right.

23 MR. FLOYD: Your Honor, Ms. Hannah's back
24 up on her feet. She was having a little back
25 trouble. If she sat down can she speak to you?

1 THE COURT: Certainly. Yes, ma'am, your
2 full name.

3 MS. CAPERS: Sorry about sitting down. I
4 had major back surgery. I can't stand up for so
5 long. Ola Mae Capers.

6 THE COURT: Ms. Capers, I'll be glad to
7 hear from you.

8 MS. CAPERS: My son is not all bad. He's
9 probably got with the wrong crowd and strayed away,
10 but when he was coming up he was the only son.
11 Donte was by my side as what I call as a son and a
12 husband. He helped me raise my two other kids. I
13 mean, he was very good. When I was in day care he
14 was my backbone for that. I mean, it's one thing to
15 know a person, but it's another thing to judge a
16 person. And I know for myself and I'm not saying
17 that my son is, you know, not guilty because he know
18 right from wrong. I trained him and I taught him
19 right from wrong. And he know he was wrong for what
20 he done; I know. And when you sentence my baby
21 today you're sentencing me too. And he -- I'm all
22 he got, and he know that. And I tell him that now
23 all the years I am all you got son. I been with him
24 from day one to this day here, and I'm going to
25 stand until I can't stand no more with him. I might

1 be an old lady when he finish these years, but I'm
2 still going to be there if God see fit. But I'm
3 just asking you to please have mercy on my baby.
4 That's just what I ask you.

5 THE COURT: Very good.

6 PROBATION OFFICER: Judge, he's on
7 probation.

8 THE COURT: Okay, I'll be glad to hear
9 from probation at this time.

10 PROBATION OFFICER: Mr. Capers was
11 sentenced in Florence County by you on December the
12 1st, 2008, for receiving stolen goods valued over a
13 thousand dollars, four counts of those. He received
14 a sentence of ten years suspended nine months and
15 five years probation. A warrant was issued by Agent
16 Byrd for failure to remain in stable resident,
17 failing to work diligently at a lawful occupation,
18 failing to contact his agent. Yeah, failing to
19 notify his agent of contact with law enforcement,
20 failing to pay his supervision fees, his
21 restitution, and surcharge fines as ordered by the
22 Court, and failing to perform his public service
23 employment hours and by him entering into this plea
24 is also a violation.

25 THE COURT: Mr. Capers, do you agree you

1 hadn't done what you're supposed to on probation?

2 THE DEFENDANT: Some of what she said is
3 true and some ---

4 THE COURT: Just by virtue of the fact
5 you're entering this plea you understand that you
6 violated the terms and conditions of your probation?

7 THE DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: Based on that and that alone I
9 do indeed find there's a substantial and willful
10 violation. I'll be glad to hear anything further
11 with regard to the probation violation or anything
12 else.

13 MR. FLOYD: Your Honor, obviously we would
14 just ask if you would run whatever time you revoke
15 concurrent with your sentence here today. Thank
16 you.

17 THE COURT: How much time is over him with
18 regard to the previous?

19 PROBATION OFFICER: About nine years.

20 THE COURT: Okay. With regard to the
21 probation violation I'm gonna revoke five years on
22 each of those. Each of those are to run concurrent
23 with the sentence here today. Terminate probation
24 in all respects. Any financial obligations that
25 have not been satisfied reduced to a civil judgment.

1 Mr. Capers, with regard to indictment
2 2011-GS-21-0012, one thing that you probably need to
3 be grateful before I issue sentence here is
4 something that I'm not sure if everybody in the
5 courtroom is aware of it but, all it would have
6 taken -- sounds like there's overwhelming evidence
7 with regard to a lot of these offenses,
8 co-defendants' statements, eyewitness testimony.
9 And you, when you lay your head down on a pillow at
10 night better be grateful for your lawyer, the fact
11 he was able to work out these negotiations because
12 all it would have taken would be the State to try
13 these one at a time, and it wouldn't take but just a
14 short period of time where you would have gotten
15 life without parole. You understand that? I know
16 you talked to your lawyer about that. But you ought
17 to be thankful for the mercy that's been shown to
18 you here today and the work of your lawyer.

19 With regard to indictment 2011-GS-21-0012,
20 burglary first degree, the sentence of the Court is
21 that you be committed to the State Department of
22 Corrections for a period of 25 years, the sentence
23 to run concurrent, credit for 451 days. With regard
24 to indictment 2011-GS-21-0014, burglary first
25 degree, the sentence of the Court is that you be

1 committed to the State Department of Corrections for
2 a period of 25 years. Sentence to run concurrent
3 with other sentences here today and the probation
4 violation. Credit for 451 days. With regard to
5 indictment 2011-GS-21-0015, burglary first degree,
6 the sentence of the Court is that you be committed
7 to the State Department of Corrections for a period
8 of 25 years. The sentence is to run concurrent with
9 other sentences here today and the probation
10 violation. Credit for 451 days. Good luck to you.

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13 * * * END OF REQUESTED TRANSCRIPT OF RECORD * * *
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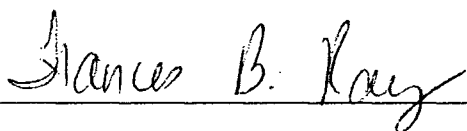
C E R T I F I C A T E O F R E P O R T E R

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

I, FRANCES BAKIS-RAY, Registered Professional Reporter (RPR), court reporter for the State of South Carolina, Twelfth Judicial Circuit, do hereby certify that the foregoing proceeding is a stenographic report and was transcribed through computer-aided transcription; that the foregoing transcript contains a true record of the proceedings.

I further certify that I am neither counsel for, nor related to nor employed by any of the parties connected to the action, nor am I financially interested in the action.

Witness my hand at Florence, South Carolina, this 13th day of June, 2012.


FRANCES BAKIS-RAY, RPR

FORM 5

STATE OF SOUTH CAROLINA

County of FlorenceDonte' Lequawn Capers # 296357

Full name and prison number (if any) of Applicant

v.

State of South Carolina

IN THE COURT OF COMMON PLEAS

2012 CP 21 967

APPLICATION FOR
POST-CONVICTION RELIEF2012 APR 11 PM 2:58
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

FILED

INSTRUCTIONS B READ CAREFULLY

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

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

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

1. Place of detention Kirkland Correctional Institution
2. Name and location of Court which imposed sentence Florence County 12th
Circuit Court of General Session
3. Name(s) of co-defendant(s) (if any) Vernell Harris, Gloria Carrigan
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) N/A

CERTIFIED: A TRUE COPY
Clerk of Court
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

- (b) N/A
- (c) N/A
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) I was sentenced on June 20, 2011.
- (b) I was sentenced to 25 years.
- (c) _____
6. Check whether a finding of guilty was made:
- (a) ☒ after a plea of guilty Yes
- (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?
Yes
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeal.
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. My attorney Scott P. Floyd stated to me by letter that he filed
- ii. notice of intent to appeal at my request after my guilty plea and
- iii. that he was not aware of any arguable basis that there are issues
- (c) the date of each such result: preserved for appeal.
- i. I recieved the letter from my attorney on August 22, 2011
- ii. stating that he didn't see any arguable basis that there
- iii. are issues preserved for appeal.
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. N/A
- ii. N/A
- iii. N/A
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) N/A

Facts which support grounds set out in number (10.)

(A) Evidence seized from my home by officers without a warrant to seize the items.

I requested to my attorney several time by mail and orally that I would like to have a suppression hearing to have the evidence suppressed but he fell to file a motion to suppress the illegally seized evidence that was used to convict me of Burglary 1st degree. This is a violation of my Fourth Amendment Right (illegal search & seizure.)

(B) I was not allowed a chance to inspect statements made by my co-defendant upon my request. Both my attorney and the solicitor along with the investigators in my case stated that my co-defendant Vernell Harris made statements against me but when I asked my attorney to have them turned over to me he never did which is a violation of the Brady Law rules

- (b) N/A
- (c) N/A
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assist of Counsel.
- (b) _____
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Counsel fell to file a motion to suppress evidence in my case.
- (b) Counsel fell to turn over all material subject to disclosure under Rule 5.
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? N/A
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? N/A
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? N/A
- (d) any other petitions, motions or applications in this or any other Court? N/A
13. If you answered Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. N/A
- ii. N/A
- iii. N/A
- iv. N/A
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. N/A
- iii. N/A

iv. N/A

(c) the disposition thereof:

i. N/A

ii. N/A

iii. N/A

iv. N/A

(d) the date of each such disposition:

i. N/A

ii. N/A

iii. N/A

iv. N/A

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

i. N/A

ii. N/A

iii. N/A

iv. N/A

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?

N/A

N/A

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

(a) which grounds have been presented:

i. N/A

ii. N/A

iii. N/A

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

i. N/A

ii. N/A

iii. N/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) This is the first time I ever presented my case.
 (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? _____
 (c)✓ your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

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

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

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

i. Scott Preston Floyd Twelfth Circuit Public Defender
City-County Complex Room 703
 ii. 180 North Tryon Street, MSC-N
Florence, South Carolina 29501
 iii. _____

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

i. Arraignment and Plea

 ii. Sentencing

 iii. _____

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

Suppression Hearing, Evidentiary Hearing, For PCR counsel to amend
this Pro se Application, Grant PCR, Reverse and/or Remand case to
Reconsider lesser sentence.

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 Florence)

VERIFICATION

I, Dante Loggawyn Capers, 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.

Dante Capers

SWORN to and subscribed before me this 6th
 day of April, 2012.

[Signature] (L.S.)
 Notary Public

My Commission Expires
 My Commission Expires: October 8, 2014

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

I, Donte' Loquawn Capers, 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.

Donte' Capers
Applicant

SWORN or affirmed to and subscribed before me this
6th day of April, 2012.

Lyle W. [Signature]
Notary Public

My Commission Expires

My Commission Expires: October 8, 2014

FILED
2012 APR 11 PM 2:58
CONNIE REEL-SHEARIN
CCCP & GS
FLORENCE COUNTY, SC

CERTIFIED: A TRUE COPY
[Signature]
CLERK OF COURT CCP & GS
FLORENCE COUNTY, S.C.

STATE OF SOUTH CAROLINA
COUNTY OF FLORENCE

FILED

2013 SEP 16 PM 4:10

IN THE COURT OF COMMON PLEAS
TWELFTH JUDICIAL CIRCUIT

Donte' Laquawn Capers, # 296357 Case Number: 2012-CP-21-967

Applicant,)
FLORENCE COUNTY, SC)

**AMENDED APPLICATION FOR
POST-CONVICTION RELIEF**

-vs-

State of South Carolina,

Respondent.)

1. Applicant is detained at the McCormick Correctional Institution, 386 Redemption Way, McCormick, South Carolina 29899.
2. The sentence was imposed by the Florence County Court of General Sessions.
3. Applicant's Co-Defendants were Vernell Harris and Gloria Carrigan.
4. Applicant was indicted pursuant to indictment numbers 2011-GS-21-0012 (Burglary 1st Degree), 2011-GS-21-0014 (Burglary 1st Degree), and 2011-GS-21-0015 (Burglary 1st Degree).
5. Applicant was sentenced on June 20, 2011 to a concurrent term of twenty-five (25) years.
6. A finding of guilty was made after a plea of guilty.
7. Applicant appealed from the judgment of conviction and sentence.
8. (a) The Court to which Applicant appealed:
 - (1) The South Carolina Court of Appeals.
- (b) The result in each Court to which Applicant appealed:
 - (1) Upon information and belief, Applicant's appeal was dismissed.
- (c) The date of each result:
 - (1) October 13, 2011.

CERTIFIED: A TRUE COPY
Clerk of Court C.P. & G.S.
FLORENCE COUNTY, S.C.
Carrie York Capers

(d) Citations of any written opinion or orders entered pursuant to such results:

(1) None.

9. Not Applicable.

10 & 11

GROUND FOR RELIEF WITH SUPPORTING FACTS

10(a). Applicant was denied the effective assistance of counsel guaranteed by South Carolina law and the Sixth and Fourteenth Amendments to the United States Constitution in that plea counsel failed to file a motion to suppress the evidence obtained pursuant to the search warrant executed at the apartment shared by Applicant and his Co-Defendant, Gloria Carrigan.

11(a). The apartment where the Florence County Sheriff's Office executed the search warrant was a shared residence of the Applicant and his Co-Defendant girlfriend, Gloria Carrigan. The search warrant obtained by Investigator Warren Poston identified the property in the "Description of Property" section as "Dark wood grain jewelry box with two drawers and flip open top, a pearl necklace, one karat diamond ring, one gold ring with blue sapphire stone, one pinkie ring with blue sapphire stone and diamonds, pink luggage, and silver trinket jewelry box". According to the return and a detailed report, the Florence County Sheriff's Office did not recover any of the items listed in the search warrant. However, they did seize seventy-eight (78) items from the residence.

Applicant maintains that because the search warrant failed to specifically list any of the seventy-eight (78) other items recovered or contain a general catch-all provision expanding the search warrant, the search and seizure in this case violated the Fourth Amendment. Further, Applicant contends that the investigators who executed the search warrant had, in a best-case

scenario, reasonable suspicion that the seventy-eight (78) items seized were connected to other burglaries which is a far stretch from the probable cause requirement of the Fourth Amendment.

Therefore, Applicant contends that plea counsel's failure to file and be heard for an order suppressing the seized items from the apartment was deficient pursuant to Strickland v. Washington, 466 U.S. 668 (1984). Further, the Applicant was prejudiced as the motion to suppress would have been granted had it been presented to a circuit court judge.

10(b). Applicant was denied the effective assistance of counsel guaranteed by the South Carolina Constitution and the Sixth and Fourteenth Amendments to the United States Constitution in the following particulars:

11(b)(1). Applicant's plea counsel improperly and erroneously informed Applicant that if he were to be found guilty at trial he would receive a life sentence.

11(b)(2). Applicant's plea counsel failed to fully inform Applicant of all the evidence gathered during the investigation to the extent that the Applicant's guilty plea was not knowingly entered into.

11(b)(3). Applicant's plea counsel improperly and erroneously informed Applicant that he and his co-defendants would receive the same sentence if Applicant pled guilty.

11(b)(4) Applicant's plea counsel failed to properly and adequately inform Applicant of the applicable law in his case to the extent that Applicant's guilty plea was not made freely, voluntarily and with sufficient knowledge to render it valid.

10(c). Applicant was denied the effective assistance of counsel guaranteed by South Carolina law and the Sixth and Fourteenth Amendments to the United States Constitution in that plea counsel failed to adequately investigate Applicant's criminal history, failed to

properly advise Applicant of the law applicable to Applicant's case and erroneously allowed Applicant to plead guilty to three (3) counts of Burglary First Degree for which he could not be convicted of.

11(c). On June 16, 2011 Applicant pled guilty to the following indictments and counts:

2011-GS-21-0012 (Count One) – That Donte Laquawn Capers did in Florence County on or about January 20, 2010, willfully and unlawfully entered the dwelling of Scotty Lee located at [REDACTED] [REDACTED] in Scranton, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S.C. Code of Laws, 1976, as amended.

2011-GS-21-0014 (Count One) – That Donte Laquawn Capers did in Florence County on or about January 7, 2010, willfully and unlawfully entered the dwelling of Brenda Altman located at [REDACTED] [REDACTED] in Johnsonville, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S.C. Code of Laws, 1976, as amended.

2011-GS-21-0015 (Count Two) – That Donte Laquawn Capers did in Florence County on or about January 16, 2009, willfully and unlawfully entered the dwelling of Andrea Cartwright located at [REDACTED] [REDACTED] in Timmons ville, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S.C. Code of Laws, 1976, as amended.

According to the Applicant's criminal history, Applicant was arrested by the Florence County Sheriff's Office on or about May 20, 2003 for one (1) count of Burglary First Degree and one (1) count of Burglary Second Degree Non-Violent. On September 16, 2003, Applicant pled guilty to a reduced charge of Burglary Second Degree Non-Violent (from Burglary First Degree) and received a Youthful Offender Sentence not to exceed six years. Additionally, Applicant pled guilty on September 16, 2003 to Burglary Second Degree and received a sentence of five years

and five years probation. According to Applicant's criminal history, Applicant has no other convictions for burglary.

Applicant asserts that section 17-25-50 of the South Carolina Code of Laws applies to his case. Section 17-25-50 states that "[i]n determining the number of offenses for the purpose of imposition of sentence, the court shall treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense, notwithstanding under the law they constitute separate and distinct offenses." Appellant contends that both of his prior burglary offenses occurred on the same date (May 20, 2003) and his convictions resulting from the same occurred on the same date (September 16, 2003). In light of section 17-25-50, Applicant's two prior convictions occurred at times so closely connected in point of time that they may be considered one offense.

Lastly, Applicant contends that his plea counsel failed to properly review Applicant's indictments and criminal history and advise him of the applicable law. Applicant asserts that had he been properly advised that he only had one (1) prior conviction for burglary, Applicant would have proceeded to trial as indicted. As a result of plea counsel's ineffective assistance of counsel, Applicant is entitled to have his convictions pursuant to indictments 2011-GS-21-0012, 0014 and 0015 vacated and remanded for trial.

12. (a) Petitions filed in State Court under South Carolina Law:

(1) Applicant appealed to the South Carolina Court of Appeals.

(b) Petitions in State or Federal Courts for habeas corpus or post-conviction relief:

(1) Not applicable.

(c) Petitions to the United States Supreme Court for certiorari:

(1) Not applicable.

(d) Any other petitions, motions or applications in this or any other Court:

(1) Not applicable.

13. Applicant refers to Question Number Seven (7).
14. None of the grounds set forth in Question Number Ten (10) has been previously presented to this or any other Court, State or Federal.
15. Not applicable.
16. These grounds rely on additional facts outside the record which was before the previous courts and this is Applicant's first opportunity to collaterally attack his conviction and sentence.
17. Applicant was previously represented by counsel at his arraignment, trial, sentencing, on his appeal and for the preparations, presentation and/or consideration of any petitions, motions or applications with respect to his conviction.
18. Applicant was represented at his guilty plea by Scott Poston Floyd, Esquire, 180 N. Irby Street, Florence, South Carolina, 29501. On appeal, Applicant was represented by Robert Dudek, Esquire, Office of Appellate Defense, 1330 Lady Street, Suite 401, Columbia, South Carolina 29201.
19. Applicant seeks the vacation of his convictions and sentences.
20. Applicant is not under sentence of another court.

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September 16, 2013

Florence, South Carolina

Respectfully submitted,



JOSHUA A. BAILEY
Attorney for the Applicant

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STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS

2012-CP-21-967

Donte Laquawn Capers, 296357

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

FILED
2012 JUN 13 PM 12:04
CLERK OF COURT
FLORENCE COUNTY, S.C.

Respondent, making its Return to the Application for post conviction relief (PCR) filed April 11, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Florence County Clerk of Court. Applicant was indicted at the January 2011 term of the Florence County Grand Jury for, on information, twelve counts of burglary first degree (2011-GS-21-3, 4, 5, 6, 7, 8, 12, 13, 14, 15, 17,18), safecracking (2011-GS-21-14) and pointing and presenting a firearm (2011-GS-21-15) Scott Floyd, Esquire, represented Applicant.

On June 16, 2011, the Applicant pled guilty to three counts of burglary first as indicted, with the remaining charges nolle prossed. (On information, Applicant pled guilty to 2011-GS-21-12, 14 and 15). The Honorable Michael Nettles sentenced Applicant to twenty-five years imprisonment. Applicant filed a notice of intent to appeal from the guilty plea on June 23, 2011. The South

Carolina Court of Appeals dismissed the appeal for failure to comply with SCACR Rule 203(d)(1)(B)(iv). The Remittitur was issued November 17, 2011.

Attached herewith and incorporated herein are the records of the Florence County Clerk of Court regarding the subject conviction, and Applicant's SCDC records, and the guilty plea transcript will be forwarded upon receipt. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective assistance of counsel"

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

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

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

IV.

The State therefore requests that this Court convene an evidentiary hearing solely on the issue of ineffective assistance of counsel. As to all other allegations, the State moves for summary dismissal pursuant to S.C. Code Ann. § 17-27-70 on the basis that there is no genuine issue of material fact which would necessitate an evidentiary hearing and that those allegations should be dismissed as a matter of law.

V.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

VI.

WHEREFORE, having made its Return, the State requests that the Application be denied and the matter dismissed with prejudice.

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

TYSON ANDREW JOHNSON, SR.
Assistant Attorney General

By: 

ATTORNEYS FOR RESPONDENT

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6/12, 2012.

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	CASE NO. 2012-CP-21-967
	)	
DONTE L. CAPERS,	)	
	)	
Plaintiff,	)	
	)	
-vs-	)	TRANSCRIPT OF RECORD
	)	
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Defendant.	)	
	)	

October 8, 2013
Marion, South Carolina

B E F O R E:

THE HONORABLE WILLIAM H. SEALS, JR., Judge

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

JOSHUA A. BAILEY, Esquire
Attorney for the Plaintiff

JOSHUA THOMAS, Esquire
Attorney for the Defendant

KRYSTAL J. SMITH
Court Reporter

I N D E X

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1	<u>E X H I B I T S</u>			
2				
3	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
4	P-1	2003 Indictment		16
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1 OCTOBER 8, 2013

2 (WHEREAS this matter was scheduled for a post-conviction
3 relief hearing, the applicant appeared along with his
4 counsel of record. The hearing began at 1:03 p.m.)

5 THE COURT: If you would, go ahead and swear in the
6 witness.

7 THE CLERK: Sir, if you would, raise your right hand as
8 much as you can. Do you solemnly swear or affirm to give the
9 truth, the whole truth, and nothing but the truth, so help you
10 God?

11 THE PLAINTIFF/APPLICANT: I do.

12 THE CLERK: Thank you. You may be seated.

13 THE COURT: Thank you.

14 MR. THOMAS: May it please the Court. The next case
15 today is Donte Capers versus the State of South Carolina in
16 Case Number 2012-CP-21-967. Mr. Capers was indicted in
17 January of 2011 for seven counts of burglary first degree. He
18 was represented on those charges by Scott P. Floyd. He pled
19 on June 16th, 2011, to three counts of burglary first degree.
20 The Honorable Michael G. Nettles sentenced him to twenty-five
21 years on each count, all to run concurrently.

22 He did file an appeal. Mr. Floyd filed a notice of
23 appeal for him and the Court of Appeals dismissed that by
24 written order and remittitur returned on November 17th, 2011.
25 This PCR was filed April 11th, 2012. Mr. Capers is present in

DONTE CAPERS - DIRECT EXAMINATION BY MR. BAILEY

1 court with his attorney, Joshua Bailey, and the State is ready
2 to proceed.

3 THE COURT: All right. Mr. Bailey, I'd be glad to hear
4 from you.

5 MR. BAILEY: Thank you, Your Honor. May it please the
6 Court.

7 THE COURT: Sure.

8 MR. BAILEY: Judge, I would ask, do you want to see a
9 copy of my amended PCR application as we proceed or do you --
10 you may have a copy in the file.

11 MR. THOMAS: There should be a copy in the file.

12 THE COURT: We've got it.

13 MR. BAILEY: Okay.

14 THE COURT: We've got it. Thank you.

15 DONTE CAPERS, being first duly sworn,
16 testifies as follows:

17 DIRECT EXAMINATION

18 BY MR. BAILEY:

19 Q: Mr. Capers, you are in the Department of Corrections;
20 correct?

21 A: Yes, sir.

22 Q: And where are you currently housed?

23 A: McCormick Correctional Institution.

24 Q: All right. And what is the sentence that you are
25 serving?

DONTE CAPERS - DIRECT EXAMINATION BY MR. BAILEY

- 1 A: Twenty-five years.
- 2 Q: And that is to how many counts of burglary?
- 3 A: Three counts.
- 4 Q: Are those consecutive or concurrent sentences?
- 5 A: Concurrent.
- 6 Q: And at the time you pled guilty to this charge, who was
- 7 your attorney?
- 8 A: Mr. Scott Floyd.
- 9 Q: Did you retain Mr. Floyd?
- 10 A: No, sir. He was appointed.
- 11 Q: Okay. He represented you through his capacity at the
- 12 Public Defender's Office?
- 13 A: Yes, sir.
- 14 Q: Now, Mr. Capers, we have filed an application for post-
- 15 conviction relief on your case and you're seeking to have a
- 16 new trial ordered in this matter; correct?
- 17 A: Yes, sir.
- 18 Q: And in our application, we've presented basically two
- 19 main issues?
- 20 A: Yes, sir.
- 21 Q: One involves the suppression of evidence that was
- 22 obtained by way of a search warrant?
- 23 A: Yes, sir.
- 24 Q: And the other has to do with the indictments that the
- 25 State obtained against you?

DONTÉ CAPERS - DIRECT EXAMINATION BY MR. BAILEY

1 A: Yes, sir.

2 Q: Okay. Mr. Capers, when were you arrested on these
3 charges?

4 A: March the 23rd, 2010.

5 Q: 2010? Okay. Were you -- were you released on bond after
6 your arrest?

7 A: No, sir.

8 Q: Okay. You remained in the detention center?

9 A: Yes, sir.

10 Q: And what detention center did you stay at?

11 A: Florence County.

12 Q: Okay. And when did you plead guilty to these counts of
13 burglary?

14 A: June the 16th, 2011.

15 Q: Okay. So you spent about a year and a half ---

16 A: Yes, sir.

17 Q: --- in the detention center? When was -- do you recall
18 the first time that you met Mr. Floyd in connection with this
19 case?

20 A: It was in the month of May I think.

21 Q: Of 2010?

22 A: 2010.

23 Q: Okay. It was a few months after you were arrested?

24 A: Yes, sir.

25 Q: Between March 2010 and your guilty plea in June of 2011,

DONTE CAPERS - DIRECT EXAMINATION BY MR. BAILEY

1 how many times would you say you met with Mr. Floyd?

2 A: Maybe five or six times.

3 Q: Okay. And all of those were held at the detention center
4 or were you ever transported to the courthouse to meet with
5 him?

6 A: At the detention center. I think I seen him a couple of
7 times at the courthouse.

8 Q: Okay. Now, Donte, what I want to do is I want to talk a
9 little bit about those meetings that you and Mr. Floyd had.
10 Okay? When he would sit down and discuss your case with you,
11 did you guys discuss the evidence in your case?

12 A: Yes, sir. We talked about the evidence.

13 Q: Did he provide you with a copy of your Rule 5 discovery
14 that he received from the State of South Carolina?

15 A: He gave me some, but a lot of it was missing.

16 Q: Okay. And at the time that you pled guilty to these
17 charges in June of 2011, do you have -- did you have a full
18 copy of everything the State had that they would prosecute you
19 with?

20 A: No, I didn't.

21 Q: Okay. You have since received most of that material at
22 least through my office and what I have been able to obtain on
23 your behalf; correct?

24 A: Yes, sir.

25 Q: Okay. And we've discussed that thoroughly; correct?

DONTE CAPERS - DIRECT EXAMINATION BY MR. BAILEY

- 1 A: Yes, sir.
- 2 Q: Okay. During those meetings with Mr. Floyd, did you guys
- 3 discuss the law as it pertains to burglary first degree?
- 4 A: No, we didn't.
- 5 Q: Okay. He never reviewed the elements with you?
- 6 A: No, he didn't.
- 7 Q: Okay. Did he ever explain to you the requirement that
- 8 burglary first degree requires an aggravating circumstance?
- 9 A: No, sir.
- 10 Q: Okay. Throughout the course of those discussions, Mr.
- 11 Capers, did Mr. Floyd ever discuss with you the possibility of
- 12 asserting any defenses should you elect to go to trial?
- 13 A: No, sir.
- 14 Q: Did he review any co-defendant statements with you?
- 15 A: No, sir. I asked him for them, but he never gave them to
- 16 me.
- 17 Q: Okay. Mr. Capers, did you review the indictments?
- 18 A: No, sir.
- 19 Q: Now, at some point in time, Mr. Capers, you went in front
- 20 of I think Judge Nettles for a bond hearing; correct?
- 21 A: Yes, sir.
- 22 Q: Did you also make any other specific requests of Mr.
- 23 Floyd as your attorney?
- 24 A: I asked for a suppression hearing.
- 25 Q: A suppression hearing?

DONTE CAPERS - DIRECT EXAMINATION BY MR. BAILEY

1 A: Yes, sir.

2 Q: And what was it that you were wanting to suppress?

3 A: All the evidence that the police seized from my house.

4 Q: And do you know if a motion to suppress that evidence was
5 filed?

6 A: He said he filed one, but I never got a copy of it.

7 Q: You never received a copy of a motion to suppress?

8 A: No, sir.

9 Q: Let me ask you this, Mr. Capers. Did you ever have a
10 hearing on a motion to suppress the evidence?

11 A: No, sir.

12 Q: Okay. And, Mr. Capers, I want to be specific with you
13 and so the Court understands. When we talk about suppression
14 and evidence, you're specifically referring to the evidence
15 that was seized by way of a search warrant; correct?

16 A: Yes, sir.

17 Q: Okay. Do you recall any information about the issuance
18 of that search warrant?

19 A: I don't understand the question.

20 Q: Well, did you review the search warrant?

21 A: Yes, sir.

22 Q: Okay. So you understand exactly what they were going
23 into your house to look for?

24 A: Yes, sir.

25 Q: Okay. Mr. Capers, the address that they went in to

DONTÉ CAPERS - DIRECT EXAMINATION BY MR. BAILEY

1 execute the search warrant ---

2 MR. BAILEY: Judge, Court's indulgence for one moment.

3 Q: [REDACTED] [REDACTED] [REDACTED]?

4 A: Yes, sir.

5 Q: Who resided at that apartment?

6 A: Me and my girlfriend, Gloria Carrigan.

7 Q: Gloria Carrigan, she's your girlfriend?

8 A: Yes, sir.

9 Q: Was she involved in this case at all, Mr. Capers?

10 A: Yes, sir.

11 Q: How was she involved in this case?

12 A: She was my co-defendant.

13 Q: So she was arrested and she faced charges in connection
14 with this as well?

15 A: Yes, sir.

16 Q: Okay. Mr. Capers, what do you recall as being the
17 specific items and the specific nature of the search warrant
18 that the law enforcement executed on your apartment?

19 A: They came to my apartment looking for jewelry.

20 Q: Okay. And that search warrant, it listed specific items;
21 correct?

22 A: Specific items.

23 Q: Do you recall if there was any language in that search
24 warrant that would leave it open-ended or what I call a catch-
25 all phrase?

DONTE CAPERS - DIRECT EXAMINATION BY MR. BAILEY

- 1 A: No, sir.
- 2 Q: So there was nothing like anything that has to do with
3 burglaries?
- 4 A: No, sir.
- 5 Q: Just specific items in the search warrant?
- 6 A: Seven specific items.
- 7 Q: There was seven specific items?
- 8 A: Seven specific.
- 9 Q: Okay. Did you -- did you receive and review a copy of
10 the return to the search warrant that law enforcement filed?
- 11 A: Yes, I did.
- 12 Q: Do you recall how many items were specifically listed on
13 that return?
- 14 A: Seventy-eight.
- 15 Q: Seventy-eight items? Okay. Mr. Capers, do you recall of
16 those seventy-eight items that were returned -- or that were
17 seized in the warrant, the seven items specifically
18 identified, were they listed?
- 19 A: They were not listed.
- 20 Q: Did law enforcement recover those seven items from your
21 apartment?
- 22 A: No, they didn't.
- 23 Q: Were you home at that apartment at the time that you --
24 at the time law enforcement executed that search warrant?
- 25 A: No, I wasn't.

DONTE CAPERS - DIRECT EXAMINATION BY MR. BAILEY

1 Q: Okay. Was Gloria Carrigan?

2 A: Yes, she was.

3 Q: Okay. Did you and Mr. Floyd discuss what goes into the

4 filing of a motion to suppress?

5 A: No, we didn't.

6 Q: Did you and Mr. Floyd discuss any law pertaining to

7 suppression and particularly the Fourth Amendment to the

8 Constitution?

9 A: No, we didn't, but I brought up something about filing an

10 Arizona v. Hicks case I brought to his attention, but he

11 didn't do nothing about it.

12 Q: Did -- did you and Mr. Floyd review that case?

13 A: No, sir. Yeah. I sent it to him, but I sent it to the

14 courts -- to the Supreme Court of South Carolina and they sent

15 him a copy of it.

16 Q: All right. After he received a copy of it, did he ever

17 come out and discuss that case with you?

18 A: No. He just told me that it didn't concern to my case.

19 Q: Okay. Now, Mr. Capers, I want to focus your attention

20 and move into the other issue that we have filed for in

21 connection with your relief you're seeking today and that's

22 regarding your indictments.

23 A: Yes, sir.

24 Q: Okay. Mr. Capers, you pled guilty to three counts of

25 burglary first degree; correct?

DONTÉ CAPERS - DIRECT EXAMINATION BY MR. BAILEY

- 1 A: Yes, sir.
- 2 Q: You have since had an opportunity to review those
3 indictments; correct?
- 4 A: Yes, sir.
- 5 Q: At the time that you pled guilty in June of 2011, had you
6 reviewed those indictments?
- 7 A: Yes, sir.
- 8 Q: You reviewed them before you pled guilty in June?
- 9 A: No.
- 10 Q: You did not review them?
- 11 A: I got a copy of them when you sent them to me.
- 12 Q: Okay.
- 13 A: From my evidence you sent to me.
- 14 Q: So the first time you saw the indictments was when I sent
15 them to you as your PCR attorney?
- 16 A: Yes, sir.
- 17 Q: Okay. In reviewing these indictments, Mr. Capers, what
18 is the aggravating circumstance that the State has alleged
19 against you?
- 20 A: That I had two prior convictions of burglary.
- 21 Q: That you have two prior convictions of burglary; right?
- 22 A: Yes, sir.
- 23 Q: Okay. Mr. Capers, do you, in fact, have two prior
24 convictions for burglary?
- 25 A: Yes, sir.

DONTE CAPERS - DIRECT EXAMINATION BY MR. BAILEY

1 Q: Let's talk about that just for a second. Okay? Do you
2 recall when those burglaries occurred?
3 A: I think it was in May of 2003.
4 Q: Okay. Mr. Capers, what I'm going to do is I'm going to
5 show you a copy of these -- the indictment. There was one
6 indictment; correct?
7 A: Yes, sir.
8 Q: You were indicted for two burglaries in that indictment?
9 A: Yes, sir.
10 Q: Let me show this to you. Is that your name contained in
11 that indictment?
12 A: Yes, sir.
13 Q: And what is that indictment number?
14 A: This number at the top right here?
15 Q: That is correct, Mr. Capers.
16 A: 2003-GS-21-00902.
17 Q: Okay. Were you indicted for burglary first degree or
18 second degree in that indictment?
19 A: Burglary second degree.
20 Q: Okay. One count or two counts?
21 A: In this? In just this one indictment?
22 Q: Yeah.
23 A: Burglary first degree and burglary second degree.
24 Q: Okay. So you were indicted for two counts of burglary
25 back in 2003; right?

DONTÉ CAPERS - DIRECT EXAMINATION BY MR. BAILEY

1 A: Yes, sir.

2 MR. BAILEY: Judge, I'd like to have this marked as ---

3 THE COURT: All right.

4 MR. BAILEY: --- Petitioner's Exhibit Number 1.

5 MR. THOMAS: No objection.

6 Q: Now, Mr. Capers, you previously testified that those
7 burglaries happened in May of 2003?

8 A: Yes, sir.

9 Q: Can you give us just a brief synopsis as to the factual
10 allegations of those?

11 A: Well, on that day, the two burglaries that happened, me
12 and my co-defendants, we saw two houses that we wanted to
13 break in that was in the neighborhood. We went and broke in
14 one and within three to five minutes we went and broke in the
15 other one and took stuff to the pawn shop and when the police
16 went to the pawn shop, they found -- they got a pawn slip
17 saying that they got something from both houses.

18 Q: Okay.

19 A: And that's how they connected me to the crime.

20 Q: So both of those burglaries happened within five minutes
21 of each other on one day?

22 A: Yes, sir.

23 Q: Okay. Now, you pled guilty in connection with that
24 indictment; correct, Mr. Capers?

25 A: Yes, sir.

DONTE CAPERS - DIRECT EXAMINATION BY MR. BAILEY

1 Q: Do you recall when you pled guilty to it?

2 A: I pled guilty to two counts of burglary second degree
3 non-violent.

4 Q: Okay. Let me show you these documents, Mr. Capers, and I
5 want to ask you do you recognize the signature on the
6 defendant line on both of those sentencing sheets?

7 A: Yes, sir. That's my signature.

8 Q: That's your signature; correct?

9 A: Yes, sir.

10 Q: Pleading guilty to two counts of burglary second degree
11 in 2003?

12 A: Yes, sir.

13 MR. BAILEY: Judge, I'd like to have this marked as
14 Petitioner's Number 2.

15 MR. THOMAS: No objection.

16 Q: Now, Mr. Capers, this goes back into our indictment
17 allegation in your application. Okay?

18 A: Yes, sir.

19 Q: Did you and Mr. Floyd ever discuss your prior
20 convictions?

21 A: No, we didn't.

22 Q: Okay. Did Mr. Floyd ever explain to you that there's a
23 statute that addresses prior convictions that are committed
24 closely in nature and time?

25 A: No, he didn't.

DONTE CAPERS - DIRECT EXAMINATION BY MR. BAILEY

1 Q: Okay. When is the first time that you learned of that
2 statute?

3 A: When I got to SCDC.

4 Q: Okay. And as it relates to those prior two burglaries,
5 what is your opinion as to whether or not they are aggravating
6 circumstances?

7 A: What do you mean?

8 Q: Whether -- those prior two burglaries that you had?

9 A: Mm-hmm.

10 Q: Is it your opinion that they constitute two burglaries
11 for aggravating circumstance?

12 A: No, they don't.

13 Q: Okay.

14 MR. THOMAS: Objection, Your Honor. He's giving opinion
15 testimony. He's not an expert.

16 THE COURT: I'll overrule it.

17 Q: Now, Mr. Capers, had you have known at the time you pled
18 guilty that you under the law would not have had two prior
19 convictions, would you have pled guilty to these three counts
20 of burglary?

21 A: No, sir. I would have went to trial.

22 Q: I'm sorry?

23 A: No, sir. I would have went to trial.

24 Q: Okay. You would have -- you would have insisted on going
25 to trial; is that correct?

DONTE CAPERS - DIRECT EXAMINATION BY MR. BAILEY

1 A: Yes, sir.

2 Q: Now, the last thing I want to talk to you about, Mr.
3 Capers -- and the State is going to question you about this
4 when I finish up -- is your plea colloquy with Judge Nettles
5 in the year of 2011.

6 A: Yes, sir.

7 Q: Judge Nettles asked you a bunch of questions at that plea
8 hearing; correct?

9 A: Yes, sir.

10 Q: Do you recall Judge Nettles asking you that if you were
11 satisfied with the services of Mr. Floyd as your attorney?

12 A: Yes, sir.

13 Q: You recall him asking you that?

14 A: Yes, sir.

15 Q: How did you answer that question?

16 A: I said I was. The reason why I said I was because I felt
17 like he did everything he could to help me because everything
18 I asked him, he said he did everything he could do in that to
19 do what I wanted done. But when I got to SCDC and I started
20 doing law work and reading books, I found out he didn't do
21 everything he was supposed to do and stuff.

22 Q: Do you recall Judge Nettles asking you if Mr. Floyd had
23 done everything that you had asked him to do?

24 A: Yes, sir.

25 Q: And how did you answer Judge Nettles' question at that

DONTÉ CAPERS - DIRECT EXAMINATION BY MR. BAILEY

1 hearing?

2 A: I said yes, I did.

3 Q: Okay.

4 A: The reason why I answered that is because when I asked
5 him like for the suppression hearing, number one, he told me
6 that he filed for a suppression hearing and then he told me
7 that the judge said I couldn't have it because after my bond
8 hearing we was supposed to have a suppression hearing and he
9 said that the judge said that he wasn't going to have it. So
10 I felt like that's all I could do is request of my lawyer what
11 I want and it was supposed to get done, but it didn't get
12 done.

13 Q: Okay. Knowing what you know now, did you enter that plea
14 voluntarily and knowingly with all the evidence against you?

15 A: No, I didn't.

16 Q: Did you enter that knowing any defense that you could
17 have raised at trial regarding the indictment issue?

18 A: No, I didn't.

19 Q: Okay. And again, Mr. Capers, the last question I have
20 for you is would you have pled guilty knowing all this
21 information?

22 A: No, I wouldn't.

23 Q: Okay.

24 MR. BAILEY: Please answer any questions that the
25 Attorney General's Office might have for you.

DONTÉ CAPERS - CROSS EXAMINATION BY MR. THOMAS

CROSS EXAMINATION

1
2 BY MR. THOMAS:

3 Q: Good afternoon, Mr. Capers. You said you met with your
4 attorney five or six times before pleading guilty?

5 A: Yes, sir.

6 Q: And at that time, y'all did go over the discovery
7 responses that the State provided?

8 A: Everything that he showed me.

9 Q: You said that some items were missing from the discovery.
10 What items didn't he give you at that time?

11 A: It was a lot of the indictments missing. It was
12 statements missing. It was basically the indictments and the
13 statements -- and the statements mostly that was missing.

14 Q: There was only one indictment in this case though; right?

15 A: In ---

16 Q: For the -- for the crimes you're in jail for, there was
17 only one indictment, but ---

18 A: Three indictments.

19 Q: Three indictments? Did you give him any possible
20 witnesses or leads to investigate?

21 A: No, sir.

22 Q: Did you discuss with him any possible defenses you might
23 have to the burglary charges?

24 A: Yes, I did.

25 Q: And what were those defenses?

DONTE CAPERS - CROSS EXAMINATION BY MR. THOMAS

1 A: I wanted to have a suppression hearing.

2 Q: Did you discuss with him any plea offers that the State
3 made?

4 A: He told me that the only offer they had was twenty-five
5 years and they wasn't budging.

6 Q: And that twenty-five years, is that what you ultimately
7 pled to?

8 A: Yes, sir.

9 Q: And that was your decision to plead guilty; wasn't it?

10 A: It was my decision on everything he told me. I felt like
11 I was doing the right thing.

12 Q: And at your plea hearing, the State read off the facts of
13 the three burglary indictments; didn't they?

14 A: Yes, they did.

15 Q: And you agreed with the facts the solicitor read?

16 A: Yes, I did.

17 Q: And you remember telling Judge Nettles that you were
18 guilty of the burglaries?

19 A: Yes, I do remember that.

20 Q: In regards to the search warrant, they searched your
21 girlfriend's apartment; isn't that right?

22 A: Me and my girlfriend's apartment, yes.

23 Q: But your name wasn't on the lease for that apartment?

24 A: No, my name wasn't.

25 Q: And you said that they -- the search warrant listed seven

DONTE CAPERS - CROSS EXAMINATION BY MR. THOMAS

1 items. Do you -- what were some of those items?

2 A: Rings and -- rings. Mostly like four or five rings and a
3 pearl necklace and a little jewelry box with a flip-open top.

4 Q: And you said they recovered seventy-eight items. What
5 was the nature of those items? What were some of those items
6 that they actually found?

7 A: Electronics, money, pots and pans, pictures off the wall,
8 ink pens, glue ---

9 Q: And those items were ---

10 A: --- a diary.

11 Q: And as far as your prior burglary convictions, you agree
12 that you broke into Dominic Sauls' house; correct?

13 A: My prior?

14 Q: Yes, sir. You burglarized an individual's house in 2003?

15 A: Yes, sir.

16 Q: And then you also broke into Teresa Townsend's house in
17 2003?

18 A: Yes, sir.

19 Q: And you pled to both of those burglaries?

20 A: Yes, sir.

21 Q: And you were represented I believe by Hank Anderson?

22 A: Yes, sir.

23 Q: On those charges? On both of those?

24 A: Yes, sir.

25 Q: Do you recall Judge Nettles at the plea hearing going

DONTE CAPERS - CROSS EXAMINATION BY MR. THOMAS

1 over all your constitutional rights?

2 A: In that case?

3 Q: No. In the ones you're in jail for now.

4 A: Yes, sir.

5 Q: And do you remember waiving those constitutional rights?

6 A: Yes, sir.

7 Q: And do you remember waiving any defenses you may have to
8 the charges?

9 A: Yes, sir.

10 MR. THOMAS: No further questions.

11 THE COURT: Redirect?

12 MR. BAILEY: Judge, I have none.

13 THE COURT: All right. Go ahead and have a seat with
14 your lawyer. You can call your next witness, if you have one.

15 MR. BAILEY: Judge, the petitioner would rest at this
16 time.

17 THE COURT: Thank you.

18 MR. THOMAS: We'd call Mr. Floyd to the stand.

19 THE CLERK: Mr. Floyd, would you let me swear me in? Do
20 you solemnly swear or affirm to tell the truth, the whole
21 truth, and nothing but the truth, so help you God?

22 THE WITNESS: I do.

23 THE CLERK: Thank you.

24 SCOTT P. FLOYD, being first duly
25 sworn, testifies as follows:

SCOTT P. FLOYD - DIRECT EXAMINATION BY MR. THOMAS

DIRECT EXAMINATION

1

2 BY MR. THOMAS:

3 Q: Good afternoon, Mr. Floyd.

4 A: Good afternoon.

5 Q: I hate to ask this question again, but how long have you
6 been practicing law?

7 A: I think about twenty-four years.

8 Q: And were you appointed or retained in Mr. Capers' case?

9 A: Appointed.

10 Q: Did you -- let me rephrase that. Did you file any
11 motions in terms of discovery and Rule 5, Brady?

12 A: Yes.

13 Q: And could you just sort of -- based on the evidence the
14 State gave you back in that, could you just give us a brief
15 overview of the State's case against Mr. Capers?16 A: Well, they had multiple cases. I don't remember exactly
17 how many indictments there were. It was more than the three
18 that were actually involved with the plea, but if I recall,
19 there was incident reports basically for each charge,
20 indictment, investigators' notes, the typical type thing you
21 receive from the solicitor that comes from the Sheriff's
22 Department, witness statements, that sort of thing.

23 Q: Did you go over all of that evidence with Mr. Capers?

24 A: Yes. I took my -- my file down to the detention center.

25 After all the indictments were actually issued, Mr. Capers and

SCOTT P. FLOYD - DIRECT EXAMINATION BY MR. THOMAS

1 I actually sat down there one day and we -- I had already
2 received the Rule 5s prior to the issuance of the indictments
3 and so we actually sat down with the indictments and went
4 through the different packets of discovery and matched the
5 incident reports and so forth with the correct indictment.

6 Q: And what was the nature of your discussions regarding the
7 elements of the crimes he was charged with?

8 A: Well, as far as burglary first and -- I mean I think he
9 was also charged with some other -- I don't have all the -- I
10 don't even have the indictments here, but he had other counts.
11 I think he only pled to burglary first, but I mean we went
12 through each one of the charges that he was charged with and,
13 in fact, the day that I actually took all of my documents down
14 there, you know, Donte or Mr. Capers -- excuse me -- was --
15 you know, he asked a lot of questions, which was good. I
16 actually always prefer, you know, to have clients who are
17 inquisitive and don't just sit there and don't talk to me. He
18 actually would talk to me. But that particular day, you know,
19 my general practice is to take the Code with me when I go down
20 there and, in fact, I believe we actually went through all the
21 different statutes as far as what he was charged with, you
22 know, in the indictments. And like I said, it was more than
23 just burglary first. I don't remember. I think it was grand
24 larceny counts. There were maybe burglary second counts. I
25 can't remember.

SCOTT P. FLOYD - DIRECT EXAMINATION BY MR. THOMAS

1 Q: At any point, what was his version of the facts of each
2 event?

3 A: I mean certainly he -- I mean do you mean whether or not
4 he admitted it?

5 Q: Well, no. I'm not going to ask you if he admitted it.
6 Just did he give you any sort of investigation that he wanted
7 you to do? Any possible defenses? What was your discussion
8 about how you were going to defend the case?

9 A: Well, certainly we discussed -- for instance, we did
10 discuss the search warrant issue. He asked me about that
11 specifically. I told him that I did have some concerns based
12 on standing because the lease-hold interest belonged to his
13 girlfriend. It didn't -- it didn't belong to him. I wasn't
14 sure whether he actually had standing to complain about the
15 search warrant. We discussed that. I do recall that and
16 also, you know, as far as the breadth of the search, I do --
17 as he said, I think the search warrant named rings and things
18 of that nature, but I think the search warrant gives them the
19 authority to search in places where a ring could possibly be
20 and I think a lot of stuff they found was in plain view when
21 they got in there to search.

22 I do recall discussing that with him, you know, and as
23 far as actually not filing a suppression motion, I did not
24 file a suppression motion and never told him I did. We talked
25 about it, but I also told him that typically the practice was

SCOTT P. FLOYD - DIRECT EXAMINATION BY MR. THOMAS

1 if he went to trial that I would file the motions pre-trial
2 and we would have the motions held pre-trial, which is
3 basically common practice, at least in this circuit. That's
4 the way we pretty much have always done it. In other words,
5 at the time we pick the jury, we'll have pre-trial motions and
6 then maybe they'll come back the following day to be sworn and
7 that sort of thing. So, you know, I did not file that motion
8 because he ended up basically pleading. So I mean that's why
9 I didn't file.

10 Q: And I guess that's the next thing I want to talk to you
11 about. Did he ever indicate to you that he wanted to go to
12 trial?

13 A: I mean we discussed whether or not to go to trial. I
14 mean eventually he decided to plead. I mean that was, you
15 know, his decision. I didn't tell him he had to. I told him
16 he could do either one I mean, but he made the decision to
17 plea.

18 Q: And as far as the -- I guess the prior burglaries go, why
19 didn't you ever explain to him 17-25-50, the section regarding
20 closely connected offenses?

21 A: Well, in my view when you read that statute, if I recall,
22 the wording of it actually says when you consider prior
23 convictions in connection with or the imposition of sentence.
24 In other words, that statute is tied to the two strikes, three
25 strikes statute, and also when you consider whether to enhance

SCOTT P. FLOYD - DIRECT EXAMINATION BY MR. THOMAS

1 a sentence for like a drug offense, a second or third drug
2 offense, but this -- the two prior convictions didn't deal
3 with the sentence enhancement. It dealt with an element of
4 burglary first and in my view, the statute just doesn't apply.

5 Q: As far as -- as far as the indictment goes, was that the
6 only sort of element that they used to bump it up to a
7 burglary first?

8 A: As far as actually being printed in the indictment, I
9 believe so.

10 Q: Do you think the State had any other evidence? What
11 other evidence could the State have used to bump it up to a
12 burglary first?

13 A: Well, he -- they had evidence that he was armed. I mean
14 -- I mean they could -- they could have used that in the
15 printed indictment. They didn't, but they could have.

16 Q: Did you ever get any plea offers from the State?

17 A: I think eventually they -- I mean they recommended the
18 twenty-five years that he got -- I mean that he was actually
19 sentenced to. I mean that was really the only offer that they
20 made.

21 Q: And ultimately, whose decision was it to plead guilty?

22 A: Well, I mean it was Mr. Capers' decision.

23 MR. THOMAS: That's all I have. Thank you.

24 THE COURT: All right. Mr. Bailey?

25 MR. BAILEY: Thank you, Judge.

SCOTT P. FLOYD - CROSS EXAMINATION BY MR. BAILEY

1 CROSS EXAMINATION

2 BY MR. BAILEY:

3 Q: Mr. Floyd, how are you?

4 A: Fine. How about you?

5 Q: Good to see you.

6 A: You, too.

7 Q: You heard Mr. Capers testify that y'all met about five or
8 six times throughout the course of a year -- year and a half?

9 A: Yes.

10 Q: Do you have -- do you have any different recollection of
11 how many times that y'all met?

12 A: I don't. That's -- you know, that's probably close to it
13 I would think. I know we met out at the detention center a
14 number of times and, like he said, we also met at the complex
15 maybe a couple of times.

16 Q: Okay.

17 A: So that's probably about right.

18 Q: And you know, Mr. Floyd, we're here on two primary
19 issues?

20 A: Yes.

21 Q: And the first deals with suppression of evidence and the
22 search warrant. You were gracious enough and allowed me to
23 copy your entire file so I had everything that you had the
24 luxury of seeing. You reviewed the search warrant in this
25 case; correct?

SCOTT P. FLOYD - CROSS EXAMINATION BY MR. BAILEY

1 A: Yes.

2 Q: Okay. And, Mr. Floyd, what I'm going to do is I'm going
3 to let you take a look at this search warrant that the State
4 talked about.

5 A: Thank you.

6 Q: Mr. Floyd, what I specifically would like to ask you is
7 in the property that the law enforcement was seeking when they
8 executed that search warrant, is there any type of catch-all
9 provision or was it specifically limited to certain items?

10 A: On the description of property sought, is that what
11 you're talking about?

12 Q: Yeah, yeah.

13 A: Yeah. I mean it -- it listed specific items.

14 Q: Okay. That's ---

15 A: It's like a jewelry box and a necklace and a ring and
16 that sort of thing.

17 Q: Do you recall if any of those items were seized from the
18 residence?

19 A: You know, I don't know if any of these specific items
20 were or not.

21 Q: Okay. But you would agree that the law enforcement
22 seized approximately seventy-eight other items which are
23 detailed to the search warrant?

24 A: Correct.

25 Q: Now, Mr. Floyd, you testified regarding the search

SCOTT P. FLOYD - CROSS EXAMINATION BY MR. BAILEY

1 warrant that you questioned whether or not Mr. Capers had
2 standing to challenge?

3 A: Right.

4 Q: And is it your opinion that you questioned that because
5 he was not on the lease and that was the sole reason?

6 A: Well, that he had no -- right. That was my primary
7 reason is he was not a lease-hold owner in the premises,
8 right.

9 Q: Okay. Mr. Floyd, are you aware of any case law that
10 allows even an overnight guest in a residence to challenge a
11 search as being unconstitutional?

12 A: Well, certainly there may be some. I'm not going to sit
13 here and cite cases to you ---

14 Q: Sure.

15 A: --- because I can't right now.

16 Q: Yeah. Was that ever discussed with Mr. Capers?

17 A: We discussed -- yeah, we discussed that in the context
18 that I testified to earlier.

19 Q: Okay.

20 A: I told him I had some concerns about whether or not he
21 had standing ---

22 Q: Okay.

23 A: --- and that sort of thing, but I had not fully
24 researched it.

25 Q: Sure. Okay. So at the time that Mr. Capers pled guilty,

SCOTT P. FLOYD - CROSS EXAMINATION BY MR. BAILEY

1 you had not fully researched the issue of standing for the
2 search warrant?

3 A: No, I did not.

4 Q: So he pled guilty not knowing if he had standing to
5 challenge?

6 A: I think so and, if you would allow me, we -- we can also
7 talk about some other things that Mr. Capers and I talked
8 about in connection with that. I talked to -- I think it was
9 Mr. McLaughlin, who was representing his girlfriend, Ms.
10 Carrigan, I believe and it was my understanding based on my
11 conversations with him and law enforcement that she was
12 providing information to them and that she was going to
13 testify against him. Regardless of whether any of these items
14 were actually admitted into evidence, I mean she was going to
15 make herself available to say I was at these locations with
16 him on these days and he burglarizes houses and he was armed I
17 mean. So regardless of whether any of these specific items
18 were entered into evidence, I mean we still had the problem
19 with her.

20 Q: Right. And I understand that..

21 A: Right.

22 Q: I knew in reviewing your file, but you would agree with
23 me that had the specific items been suppressed by a trial
24 judge, that would have bolstered your position at trial to
25 some degree?

SCOTT P. FLOYD - CROSS EXAMINATION BY MR. BAILEY

1 A: Well, it's possible.

2 Q: Okay.

3 A: I mean depending on how the jury viewed Ms. Carrigan I
4 mean.

5 Q: Sure. Okay. Did you ever discuss with Mr. Capers the
6 warrant requirements for a search warrant and the standard
7 that law enforcement had to meet to obtain a search warrant?

8 A: I don't remember how much detail we went into the search
9 warrant discussion. You know, I remember that we went over it
10 and I remember talking about it, but I can't remember
11 specifically if we discussed that or not.

12 Q: Okay. And I know you testified for the attorney general
13 about plain view?

14 A: Right.

15 Q: Did you explain plain view to Mr. Capers?

16 A: I'm almost positive we discussed that, but I mean I don't
17 have, you know, my file here with me, unfortunately.

18 Q: Are you aware of any case law that supports the premise
19 that law enforcement has to have probable cause to seize items
20 in plain view?

21 A: Well, I can't cite -- sit here and cite cases to you
22 right now, no, because I didn't ---

23 Q: Okay.

24 A: I didn't research it before I came up here for my
25 hearing.

SCOTT P. FLOYD - CROSS EXAMINATION BY MR. BAILEY

1 Q: Now, Mr. Floyd, let me talk to you about the indictment
2 issue.

3 A: Yeah. Okay.

4 Q: Steven Deberry was the prosecutor; correct?

5 A: He was.

6 Q: And he presented three indictments to the Florence County
7 Grand Jury for three counts of burglary first degree?

8 A: Yes.

9 Q: And the aggravating circumstance in those indictments was
10 two prior convictions?

11 A: That's correct.

12 Q: All right. And Mr. Capers has alleged that his prior
13 convictions fall underneath the closely connected statute?

14 A: Right.

15 Q: Was that ever discussed prior to Mr. Capers pleading
16 guilty?

17 A: I don't recall discussing that with him, no.

18 Q: Okay. Do you recall reviewing his criminal history with
19 him?

20 A: Well, we had his rap sheet in the discovery and, yes, we
21 went over the NCIC.

22 Q: Okay. Now, Mr. Floyd, the issue with the indictments,
23 you could have filed a motion to suppress those indictments;
24 correct?

25 A: Certainly. I mean I can always file a motion to suppress

SCOTT P. FLOYD - CROSS EXAMINATION BY MR. BAILEY

1 any indictment.

2 Q: Yeah. And that would have clarified the issue as to
3 whether or not those two prior convictions that occurred on
4 the same day fall within this closely connected statute?

5 A: Yes. Certainly, a judge could have ruled on that.

6 Q: And you didn't do that in this case?

7 A: I did not.

8 Q: Okay.

9 MR. BAILEY: Thank you, Mr. Floyd. I don't have any
10 further questions.

11 THE COURT: All right. Mr. Thomas?

12 MR. THOMAS: Briefly.

13 REDIRECT EXAMINATION

14 BY MR. THOMAS:

15 Q: If Mr. Capers had asked for a trial, what would you have
16 done in regards to the search warrant suppression issue?

17 A: Oh, we would have had a suppression hearing had he gone
18 to trial.

19 Q: As far as the items that were seized at the search, was
20 there any significance to those items in relation to his
21 pending charges?

22 A: You mean the charges that he actually pled to?

23 Q: Or to any of his pending charges.

24 A: I mean I think some of the indictments that he was
25 charged under, I believe that some of this property could have

SCOTT P. FLOYD - REDIRECT EXAMINATION BY MR. THOMAS

1 belonged to some of those victims. I mean I can't tell you
2 which ones, but ---

3 Q: But what was your assessment sort of of the nexus between
4 the items that were seized and the reason they were seized?

5 A: Could you repeat the question, please?

6 Q: Why do you think the police seized the items that they
7 did seize?

8 A: I -- if I recall, it seems like I talked to Warren
9 Poston, who was the investigator, and it seems that he had a
10 picture of a lamp and it was kind of a different looking lamp
11 from one of the victims or a victim in a burglary, and it
12 seems like it might have been him or it might have been one of
13 the other officers who was there. I can't remember, but it
14 seems like he said when he walked in, he saw this very
15 distinct lamp and he remembered the description of it from a
16 victim in a prior burglary and he just said that's got to be
17 that lamp, you know, in his mind and then he started looking
18 at the other items that were -- that were there because of
19 that. And eventually, if I recall, it was, in fact, one of
20 those lamps.

21 Q: And in regards to the indictment, what's the State's
22 normal practice when an indictment is quashed on a
23 technicality?

24 A: Well, certainly if they want to pursue the case, they can
25 -- I don't think there's anything to prevent them from

SCOTT P. FLOYD - REDIRECT EXAMINATION BY MR. THOMAS

1 representing.

2 MR. THOMAS: Thank you.

3 THE COURT: Mr. Bailey, anything?

4 MR. BAILEY: If I could just ask one ---

5 THE COURT: Sure.

6 MR. BAILEY: --- brief follow-up question?

7 RECROSS EXAMINATION

8 BY MR. BAILEY:

9 Q: Mr. Floyd, if you would please be so kind as to review
10 the -- I think it's two and a half pages that are attached to
11 that search warrant to see if any lamps were seized?

12 A: I don't see one on this one.

13 MR. BAILEY: Judge, I have no further questions.

14 THE COURT: All right. Thank you very much. Call your
15 next witness.

16 MR. THOMAS: That's the State's case.

17 THE COURT: All right. I'll take the matter under
18 advisement and let you know something very soon.

19 MR. BAILEY: Judge, can I just put something on the
20 record ---

21 THE COURT: Sure.

22 MR. BAILEY: --- for stipulation?

23 THE COURT: I'll be glad for you to.

24 MR. BAILEY: Judge, I know our application cites a
25 statute for the closely connected offenses.

1 THE COURT: Mm-hmm.

2 MR. BAILEY: Specifically, a reference to the suppression
3 issue. Judge, our position is, is that we're relying on the
4 United States Supreme Court case of Arizona v. Hicks. It's a
5 1987 case, Judge, and just briefly in terms of the facts, law
6 enforcement got a call to come to an apartment. I think there
7 had been a shooting or something so they were lawfully in the
8 apartment under the exigent circumstances warrant exception.
9 Judge, the responding officer noticed some very nice stereo
10 equipment for that type of apartment and what he did was he
11 moved the stereo equipment in the apartment, wrote down the
12 serial numbers, and left. Okay?

13 The defendant in the case challenged the search and the
14 Supreme Court held that that constituted a search and a
15 seizure for purposes of the Fourth Amendment. And the State
16 submitted the argument that the stereo equipment was in plain
17 view so the officer being lawfully present had the authority
18 to check that equipment out. The Supreme Court disagreed with
19 that position because it constituted a completely different
20 search from what they were there for. They should have went
21 and got a search warrant essentially and they also laid out in
22 this case the requirement that in order for there to be a new
23 search, law enforcement has to have probable cause that those
24 items are specifically connected to another crime.

25 In this case, Judge, law enforcement had a search warrant

1 for seven or eight specific items that they were looking for.
2 They were lawfully present in the apartment because of that.
3 They did not recover any of those seven or eight items. They
4 saw all these other things. Law enforcement immediately
5 gathered them up, took them back to the department, and
6 started sorting it out. They had no probable cause at that
7 time and pursuant to Arizona v. Hicks, we believe that a
8 suppression motion would have been granted and that evidence
9 would not have been admissible at trial.

10 THE COURT: All right. Response to that?

11 MR. THOMAS: Your Honor, we would just say that case is a
12 little distinguishable because they were in the apartment
13 lawfully not on a search warrant, but under exigent
14 circumstances based on the gunshots. In this case, they were
15 in the apartment to look for small trinkets, jewelry, rings,
16 things like that. They had a right to search anywhere that
17 those items could have been. While they were in the
18 apartment, they happened to also see all of these other items
19 that they seized, which I believe from the transcript and from
20 counsel's testimony they -- the police had probable cause to
21 believe that those items were also stolen property connected
22 to another crime.

23 The only case I can cite to you is Beckham -- State v.
24 Beckham, and that's a case where they had a search warrant for
25 a gun and they were looking through drawers looking for a gun.

1 They also found some latex gloves. There was some evidence
2 that the latex gloves were used in a crime so they seized the
3 gloves, and the Court said that those were -- the police were
4 in a place they had a right to be and initial intrusion was
5 lawful to search for the gun. The fact that they found other
6 incriminating evidence of crime doesn't make the search
7 invalid.

8 THE COURT: All right. I'll take it under consideration.

9 MR. BAILEY: Thank you, Judge.

10 (Whereupon, the proceedings end at 1:50 p.m.)

11

12 --- END REQUESTED TRANSCRIPT ---

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1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE
3 COUNTY OF FLORENCE)
4

5 I, the undersigned, Krystal J. Smith, Official Court
6 Reporter for the Twelfth Judicial Circuit of the State of
7 South Carolina, do hereby certify that the foregoing is a
8 true, accurate, and complete Transcript of Record of all the
9 proceedings had and evidence introduced in the hearing of the
10 above captioned case, relative to appeal, in the Court of
11 Common Pleas for Florence County, South Carolina, held in
12 Marion County on the 8th day of October, 2013.

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

15
16 Krystal J. Smith

17 Court Reporter

18
19 Florence, South Carolina

20 March 25, 2013
21
22
23
24
25

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

Donte L. Capers, #296357,)

Case No. 2012-CP-21-967

Applicant,)

v.)

State of South Carolina,)

Respondent.)

ORDER OF DISMISSAL

FILED
2013 DEC 11 PM 4:38
CONNIE REEL-SHEPARD
CLERK OF COURT & G.S.
FLORENCE COUNTY, S.C.

This matter comes before the Court by way of an Application for Post-Conviction Relief ("PCR") filed April 11, 2012. Respondent made its Return on or about June 12, 2012. The Court convened an evidentiary hearing into the matter on October 8, 2013, in Marion County. Applicant was present at the hearing and represented by Joshua A. Bailey, Esquire. Joshua L. Thomas, Esquire, of the South Carolina Attorney General's Office, represented Respondent.

Applicant testified on his own behalf at the PCR hearing. Applicant's plea counsel, Scott P. Floyd, Esquire, also testified. The Court had before it a copy of the plea transcript, the records of the Florence County Clerk of Court, Applicant's records from the South Carolina Department of Corrections, the applications, the return, and the exhibits introduced at the PCR hearing. The Court finds as follows:

I. PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment from the Florence County Clerk of Court. In January 2011, the Florence County Grand Jury indicted Applicant for safecracking (2011-GS-21-14 (Count 2)), pointing and presenting a firearm (2011-GS-21-15 (Count 1)), and twelve (12) counts of first

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CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.
Connie Reel-Shepard

degree burglary (2011-GS-26-3, -4, -5, -6, -7, -8, -12, -13, -14 (Count 1), -15 (Count 2), -17, and -18). He was represented by Scott P. Floyd, Esquire ("plea counsel"). On June 16, 2011, Applicant entered a plea to three counts of first degree burglary (2011-GS-21-12, -14, and -15). In exchange for his plea, the State dismissed the remaining indictments and recommended a twenty-five (25) year sentence. The Honorable Michael G. Nettles accepted the State's recommendation and sentenced Applicant to incarceration for a period of twenty-five (25) years.

Applicant filed a timely notice of appeal. The South Carolina Court of Appeals dismissed the appeal pursuant to Rule 203(d)(1)(B)(iv) on October 13, 2011. The remittitur was returned to the circuit court on November 17, 2011.

II. ALLEGATIONS

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

1. "Ineffective Assit of counsel."
 - a. "Counsel fell to file a motion to suppress evidence in my case"
 - b. "Counsel fell to turn over all material subject to disclosure under Rule 5"

On September 16, 2013, Applicant, through counsel, filed an amended application. The amended application alleged the search warrant in Applicant's case failed to specifically list any of the items seized from the co-defendant's apartment. The amended application also alleged plea counsel was ineffective in the following regards:

1. Plea counsel erroneously informed Applicant he would receive a life sentence.
2. Plea counsel failed to inform Applicant of the evidence against him.
3. Plea counsel informed Applicant the co-defendants would receive the same sentence as Applicant.
4. Plea counsel failed to inform Applicant of the Applicable law.

The amended application further alleged plea counsel was ineffective for challenge the

indictments for first degree burglary based on two prior burglary convictions when Applicant's prior convictions occurred on the same date. At the PCR hearing, Applicant proceeded on only the allegations relating to the search warrant and the indictment.

III. SUMMARY OF TESTIMONY

Applicant testified met with plea counsel five (5) or six (6) times while detained on these charges. He testified plea counsel did not give him a full copy of the evidence against him, and he did not have a full discovery response when he pled. Applicant further testified plea counsel never discussed the elements of burglary, any possible defenses, or the witness statements. On cross-examination, Applicant admitted the only defense he proposed to plea counsel was to have the seized evidence suppressed.

Applicant also testified he requested plea counsel file a motion to suppress the evidence seized in a search of his co-defendant's apartment. He testified his co-defendant was his girlfriend, and he lived in her apartment with her. Applicant stated plea counsel informed Applicant he would file a motion to suppress, but never did. Applicant was concerned the search warrant only listed seven (7) items to be seized, but the police seized seventy-eight (78) items. He further testified he was not at the co-defendant's apartment at the time it was searched. On cross-examination, Applicant admitted he was not the leaseholder of the apartment but maintained he lived there.

Regarding the indictments, Applicant testified he did not review them with plea counsel before the plea. He testified he did not discuss his prior burglary convictions with plea counsel. Applicant further testified he was unaware the two prior convictions were an element of the crime of first degree burglary. Applicant claims he would not have pled had he known there was

a statute requiring closely connected offense to be treated as one offense for sentencing purposes.¹

Plea counsel testified he filed the standard Rule 5/Brady motions after being appointed. He further testified he reviewed the State's discovery response with Applicant. Plea counsel recalled taking the case file to the detention center and reviewing the entire file, including the indictments and the search warrant. He also recalled taking a copy of the code of laws to the detention center and reviewing with Applicant the elements of first degree burglary and his other charges.

Plea counsel testified he discussed the search warrant with Applicant. Trial counsel recalled he had concerns about Applicant's standing to challenge the warrant because the apartment was leased to the co-defendant. He also testified he explained to Applicant suppression of the seized items did not necessarily absolve him of the burglary charges. Plea counsel spoke to the investigators and the co-defendants' attorneys, and the co-defendants were willing to testify to Applicant's role in the crimes. Plea counsel also testified he was worried the seized items would not be excluded because they were sitting in plain view in the apartment, and he discussed the plain view exception with Applicant. Plea counsel testified he never told Applicant a suppression motion had been filed; rather, he told Applicant he would file the motion

¹ Applicant refers to S.C. Code Ann. § 15-25-50, which provides that:

"In determining the number of offenses for the purpose of imposition of sentence, the court shall treat as one offense any number of offenses which have been committed at times so closely connected in point of time that they may be considered as one offense, notwithstanding under the law they constitute separate and distinct offenses."

if the case were to go to trial. Plea counsel maintained he would have filed a motion to suppress if Applicant had desired a trial, but Applicant ultimately made the decision to plead guilty.

Regarding the indictment, plea counsel testified he never discussed section 17-25-50 with Applicant. Plea counsel did discuss Applicant's prior record, but they did not discuss the timing of the prior burglaries because plea counsel did not believe section 17-25-50 applied. Plea counsel testified that statute concerns sentencing under the three strikes law, but the prior burglaries were an element of the crime, not a sentence enhancement. Plea counsel further testified a motion to quash the indictment would have been futile because the State had evidence Applicant was armed with a gun during each burglary, and could have used this information to re-indict Applicant for the same crime

IV. FINDINGS OF FACT AND CONCLUSIONS OF LAW

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

A. Ineffective Assistance of Plea Counsel

In a post-conviction relief action, the applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 442, 334 S.E.2d 813, 814 (1985) (citing Griffin v. Martin, 278 S.C. 620, 300 S.E.2d 482 (1983)). Where the application alleges ineffective assistance of counsel as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be

relied upon as having produced a just result." Id. at 442, 334 S.E.2d at 814 (citing Strickland v. Washington, 466 U.S. 668 (1984)).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Id. (citing Strickland, 466 U.S. at 687; Turner v. Bass, 753 F.2d 342 (4th Cir. 1985); Marzullo v. Maryland, 561 F.2d 540 (4th Cir. 1977)). Courts presume counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Id. (citing Strickland, 466 U.S. at 690). 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 in evaluating allegations of ineffective assistance of counsel. Id. at 117, 386 S.E.2d at 625. First, the applicant must prove counsel's performance was deficient. Id. Under this prong, courts measure an attorney's performance by its "reasonableness under prevailing professional norms." Id. (citing Strickland, 466 U.S. at 688). Second, any 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. With respect to guilty plea counsel, the Applicant must show there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59 (1985).

1. Search Warrant

The Court finds Applicant failed to carry his burden of proof regarding his allegation plea counsel was ineffective for failing to file a motion to suppress the evidence seized from the co-

defendant's apartment. Regarding this allegation, the Court finds plea counsel's testimony to be credible, and Applicant's testimony to be not credible. Specifically, the Court finds plea counsel investigated the circumstances surrounding the search warrant and advised Applicant of the possible outcomes of a motion to suppress. Plea counsel advised Applicant there were two legal grounds for which the evidence could be admissible even if there was a defect with the warrant. Plea counsel advised Applicant either Applicant lacked standing to challenge the search, or the evidence could be admissible under a plain view exception to the search warrant exception. The Court finds plea counsel properly advised Applicant the State would likely have been successful in claiming the evidence was seized pursuant to the plain view exception. See State v. Wright, 391 S.C. 436, 443, 706 S.E.2d 324, 327 (2011) ("Hence, the two elements needed to satisfy the plain view exception are: (1) the initial intrusion which afforded the authorities the plain view was lawful and (2) the incriminating nature of the evidence was immediately apparent to the seizing authorities.").

Furthermore, a knowing and voluntary guilty plea waives any non-jurisdictional defects and defenses, including challenges to the sufficiency of the evidence. See Whetsell v. State, 276 S.C. 295, 297, 277 S.E.2d 891, 892 (1981) (citing Rivers v. Strickland, 264 S.C. 121, 213 S.E.2d 97 (1975); State v. Fuller, 254 S.C. 260, 174 S.E.2d 774 (1970)). The Court finds especially credible plea counsel's testimony that he would have certainly filed a suppression motion if Applicant had chosen to go to trial. Because Applicant chose to plead guilty, he cannot now challenge the admissibility of the seized evidence.

Applicant likewise cannot show he was prejudiced by not having the evidence suppressed. Applicant's co-defendants cooperated with police and implicated Applicant in a

string of break-ins. Even without the seized evidence, those witnesses' testimony could still support a first degree burglary conviction. Furthermore, Applicant was identified by a witness to one burglary (Plea Tr. 9:6-11) and was arrested fleeing the scene of another (Plea Tr. 12:4-9). In light of this overwhelming evidence, Applicant has not shown he was prejudiced by plea counsel's advice to accept the plea. See Stalk v. State, 383 S.C. 559, 563, 681 S.E.2d 592, 594 (2009). (applicant must show "something that would have affected counsel's advice to [the applicant] to accept the plea bargain offered or that would have caused [the applicant] to decline to accept it").

2. Indictment

The Court finds Applicant has failed to meet his burden of proving trial counsel ineffective for failing to challenge Applicant's indictment for first degree burglary. Specifically, the Court finds section 17-25-50 is not applicable in this case. Applicant was charged with first degree burglary, which is defined as the entering of a dwelling without consent, with intent to commit a crime in the dwelling, by a person with a prior record of two or more convictions for burglary. S. C. Code Ann. §16-11-311(A)(2). Thus, "two prior burglary [...] convictions are an element of first degree burglary." State v. Simmons, 352 S.C. 342, 356, 573 S.E.2d 856, 864 (Ct. App. 2002). The prior convictions are not used for sentencing purposes. In contrast, section 17-25-50 addresses situations where the State uses a prior conviction to enhance a sentence under the recidivist statute. See S.C. Code Ann. § 17-25-50 ("In determining the number of offenses *for the purpose of imposition of sentence*, [...]" (emphasis added)); cf. State v. Boyd, 288 S.C. 206, 209, 341 S.E.2d 144, 146 (Ct. App. 1986) (two or more counts under the Controlled Substance Act which arose out of acts committed in the course of a single incident

should count as one *for the purpose of sentencing*.” (emphasis added)). This section only applies when the State seeks to enhance a sentence to life without parole under the recidivist statute.

Applicant’s two prior burglary convictions were not used to enhance his sentence. Rather, they were presented as an element of the crime of first degree burglary. Although first degree burglary carries a harsher penalty than lesser degrees of burglary, the sentence is greater because of the offense itself. Thus, the “closely connected offenses” provision of the recidivist statute has no application in a prosecution for first degree burglary where, as here, the State has not sought a sentence enhancement under the recidivist statute.² Therefore, plea counsel was not ineffective for not challenging the indictment.

B. 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, the Court finds Applicant failed to present sufficient evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

V. CONCLUSION

Based on the foregoing, the Court finds and concludes Applicant has not established any constitutional violations or deprivations that would require this Court to grant his application. Therefore, this application for post-conviction relief must be denied and dismissed with prejudice.

² The Court also notes Applicant cannot show he was prejudiced by the indictment. The State possessed evidence Applicant was armed with a handgun while committing the burglaries. (Plea Tr. 11:15-19; 12:12-16). Even if plea counsel successfully quashed the indictments, the State could have re-indicted for first degree burglary based on Applicant being armed with a deadly weapon. S.C. Code Ann. § 16-11-311(A)(1)(a).

The Court notes that Applicant must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453, 409 S.E.2d 395 (1991), an applicant has a right to appellate counsel's assistance in seeking review of the denial of post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a notice of appeal on the applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED THAT:

1. The Application for Post-Conviction Relief is denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 25 day of Nov., 2013.



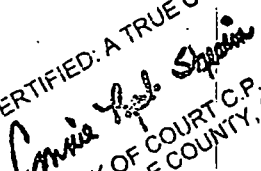
THE HONORABLE WILLIAM H. SEALS,
Presiding Judge

CONNIE REEL-SHEARIN
CCP & GS
FLORENCE COUNTY, SC

2013 DEC 11 PM 4:38

FILED

Main, South Carolina

CERTIFIED: A TRUE COPY

CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

WITNESSES

Emmanuel Graham Florence County Sheriff

DOCKET NO. 2011-GS-21-0012

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY TERM 2011

THE STATE

vs.

DONTE CAPERS

GLORIA SUE CARRIGAN Nol Resse 1-4-2011 *JS*

H. STEVEN DEBERRY, IV
ARREST WARRANT NUMBER

M266329 M266327

ACTION OF GRAND JURY

TRUE BILL

Donald Lee
Forfeiture of Grand Jury
Date: 1-13-2011

VERDICT

Indictment for

BURGLARY FIRST DEGREE
(TWO COUNTS)

CERTIFIED: A TRUE COPY
Chris Noel Quinn
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

DONNIE REEL-SHEARIN
C.C.P. & G.S.
FLORENCE COUNTY, SC

2011 JAN 13 PM 1:55

FILED

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

INDICTMENT FOR
BURGLARY FIRST DEGREE
(TWO COUNTS)

At a Court of General Sessions, convened on JANUARY 13, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BURGLARY FIRST DEGREE

That DONTE LAQUAWN CAPERS did in Florence County on or about January 21, 2010, willfully and unlawfully entered the dwelling of Scotty Lee located at [REDACTED] in Scranton, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and /or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

COUNT TWO- BURGLARY FIRST DEGREE

That GLORIA SUE CARRIGAN did in Florence County on or about January 21, 2010, willfully and unlawfully entered the dwelling of Scotty Lee located at 2808 McAllister Mill Road in Scranton, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. 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.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

WITNESSES

Russell Cox Florence County Sheriff

DOCKET NO. 2011-GS-21-0014

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY TERM 2011

THE STATE

vs.

GLORIA SUE CARRIGAN No 1 *Arrest 1-4-2012* *JS*

DONTE LAQUAWN CAPERS

VERNELL WALTER HARRIS

CONNIE REEL-SHEARIN

CCCP & GS

FLORENCE COUNTY, SC

2011 JAN 13 PM 1:55

FILED

CERTIFIED A TRUE COPY
Connie Reel-Shearlin
CLERK OF COURT C.P. & G.S.
FLORENCE COUNTY, S.C.

ACTION OF GRAND JURY

TRUE BILL

Russell Cox
Foreperson of Grand Jury
Date: *1-13-2011*

VERDICT

BURGLARY FIRST DEGREE

(THREE COUNTS)

AND

SAFECRACKING

(THREE COUNTS)

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

INDICTMENT FOR

BURGLARY FIRST DEGREE

(THREE COUNTS)

AND

SAFECRACKING

(THREE COUNTS)

At a Court of General Sessions, convened on JANUARY 13, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- BURGLARY FIRST DEGREE

That DONTE LAQUAWN CAPERS, GLORIA SUE CARRIGAN and VERNELL WALTER HARRIS did in Florence County on or about January 7, 2010, willfully and unlawfully entered the dwelling of Brenda Altman located at [REDACTED] in Johnsonville, without consent and with the intent to commit a crime therein, and the defendants have two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

COUNT TWO- SAFECRACKING

That DONTE LAQUAWN CAPERS, GLORIA SUE CARRIGAN and VERNELL WALTER HARRIS did in Florence County on or about January 7, 2010, use tools, explosives, or other implements in or about the safe used for keeping money or other valuables owned by the Brenda Altman located at [REDACTED] in Johnsonville, with intent to commit Larceny, or any other crime, in violation of Section 16-11-0390, S. C. 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.



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR

WITNESSES

Thomas McFadden Florence County Sheriff

DOCKET NO. 2011-GS-21-0015

The State of South Carolina

County of

FLORENCE

COURT OF GENERAL SESSIONS

JANUARY TERM 2011

THE STATE

VS.

DONTE LAQUAWN CAPERS

GLORIA SUE CARRIGAN No 1 Ross 1-4-2012 *ST*

H. STEVEN DEBERRY, IV.
ARREST WARRANT NUMBER

M271737 M271738 M271739

ACTION OF GRAND JURY

TRUE BILL

Donald E. Due

Foreperson of Grand Jury

Date: 1-13-2011

VERDICT

Indictment for

POINTING AND PRESENTING A FIREARM,
BURGLARY FIRST DEGREE
AND
ACCESSORY AFTER THE FACT

CERTIFIED: A TRUE COPY
Connie Reel Shearin
CLERK OF COURT C.P. & G.
FLORENCE COUNTY, S.C.

2011 JAN 13 PM 1:55
CONNIE REEL-SHEARIN
COPP & GS
FLORENCE COUNTY, SC

FILED

1 Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)

COUNTY OF FLORENCE)

INDICTMENT FOR

POINTING AND PRESENTING A FIREARM,
BURGLARY FIRST DEGREE

AND

ACCESSORY AFTER THE FACT

At a Court of General Sessions, convened on JANUARY 13, 2011 the Grand Jurors of FLORENCE County present upon their oath:

COUNT ONE- POINTING AND PRESENTING A FIREARM

That DONTE LAQUAWN CAPERS did in Florence County on or about December 16, 2009, point or present a loaded or unloaded firearm, to wit: a handgun, at one Andrew Munn, in violation of Section 16-23-0410, S. C. Code of Laws, 1976, as amended.

COUNT TWO- BURGLARY FIRST DEGREE

That DONTE LAQUAWN CAPERS did in Florence County on or about December 16, 2009, willfully and unlawfully entered the dwelling of Andrea Cartwright located at [REDACTED] in Timmonsville, without consent and with the intent to commit a crime therein, and the defendant has two or more prior convictions of burglary and/or housebreaking, in violation of the Common Law and Section 16-11-311, S. C. Code of Laws, 1976, as amended.

COUNT THREE - ACCESSORY AFTER THE FACT

That GLORIA SUE CARRIGAN did in Florence County on or about December 16, 2009, violate Common Law and Section 17-25-0030 of the Code of Laws of South Carolina (1976) as amended in that knowing of the commission and completion of the felony of Burglary First Degree by the principal felon, Donte Laquawn Capers, harbor or assist such felon after the fact with the intention of enabling the felon to escape detection or arrest or otherwise avoid the consequences of the crime, in violation of the Common Law crime of Accessory After the Fact in commission of a felony.

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



E.L. Clements, III
TWELFTH CIRCUIT SOLICITOR