

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF SUMTER) THIRD JUDICIAL CIRCUIT
10-GS-43-028
The State of South Carolina,)
Plaintiff,)
vs) **ORDER**
Andre Courtney Wallace,)
Defendant,)
_____)

FILED
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CLERK OF COURT
KINGSTREE, S.C.

This matter is before the court pursuant to the defendant's post-trial motions for judgment in arrest of verdict, or in the alternative, a new trial, and motion for reconsideration of sentence following the defendant's conviction and sentencing on May 20, 2011 in Williamsburg County for burglary in the first degree, possession of a weapon during a commission of a violent crime, and criminal conspiracy. The jury was unable to reach a verdict on a corresponding murder charge. A mistrial was declared on that charge. The defendant was sentenced to thirty-five (35) years, five (5) years, and five (5) years, respectively, on the charges to be served consecutively for a total of forty-five (45) years. A hearing was held on the defendant's post-trial motions at the Sumter County Courthouse on August 8, 2012. The State was represented by Assistant Solicitor Tyler Brown, Esquire. The defendant was present and represented by Charles David Barr, Esquire and Jonathan M. Milling, Esquire.



Photographs

The events leading to the defendant's indictment involved the shotgun shooting and killing of the victim, Mr. Prosser. The jury hung on the question of the defendant's guilt or non-guilt on the murder charge.

During trial, the court admitted into evidence photographs of the victim on the couch in his home. (State's Exhibits) These were taken several days after he died, because he was not found until then. As the court noted during trial, the victim is bloated and discolored; however, the court heard *in camera* testimony from Dr. Presnell, the State's expert pathologist, that the photos would assist her in explaining to the jury certain aspects of her opinion on the time and cause of death and the direction from which the shotgun was fired. This testimony was relevant to the State's effort to place the time of the shooting at a time when the defendant was allegedly present in the home. The photographs and Dr. Presnell's testimony also arguably corroborated the testimony of a testifying co-defendant concerning the direction from which the shotgun blast came. The court weighed the probative value of the photographs against their potential prejudice under Rule 403, SCRE, and concluded their probative value was not substantially outweighed by the danger of unfair prejudice. See State v Torres, 390 S.C. 618, 703 S.E. 2nd 226 (2010). The court concludes its ruling was sound.

Also, the jury did not reach a verdict on the murder charge, which was the charge immediately pertinent to the photographs. As such, the photographs had no bearing upon the issues in the other indictments for which the jury found the defendant guilty.

The motion pertaining to the admission of the photographs is denied.

Offer to Take Polygraph

The defendant claims he is entitled to a new trial due to the court's error in refusing to allow him to testify that he offered to take a polygraph. In State v Britt, 237 S.C. 293, 117 S.E. 2nd 379 (1960), (overruled on other grounds, State v Torrence, 305 S.C. 45, 406 S.E. 2nd 315 (1991)), our Supreme Court held that evidence of a defendant's willingness to take a lie detector test is inadmissible. This is the prevailing view among courts addressing the issue. (See People v Muniz, 190 O. 3d 774 (Colo. App. 2008) (a defendant's offer to take polygraph is *per se* inadmissible to show consciousness of innocence or to bolster credibility) (see numerous citations therein).

The defendant's motion on this ground is denied.

Allowing Tiffany Jones' Reply Testimony

The defendant claims the court erred in allowing Tiffany Jones to testify as to certain matters during the State's presentation of reply evidence. She testified that the defendant made statements to her after the crimes to the effect that he'd taken the murder weapon to his grandmother's house, and that he was going to keep his mouth shut, and she should do the same. The defendant now claims for the first time that the State violated Rule 5, SCRCrP, in that Rule 5 requires the State to provide the substance of any oral statement of the defendant. However, Rule 5(a)(1)(A) references oral statements made by a defendant to a "prosecution agent". Tiffany Jones was not a prosecution agent.

Rule 5(a)(2) provides that after a prosecution witness has testified on direct (or before, upon sufficient showing), "the court shall, on motion of the defendant, order the

prosecution to produce any statement of the witness in the possession of the prosecution which relates to the subject matter as to which the witness has testified". Here, there is no evidence that Tiffany Jones gave any written statements of this account, and, as such, there was nothing to produce.

The motion on this ground is denied.

Verdicts Against the Weight of the Evidence

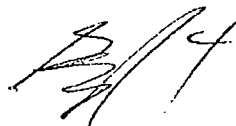
The motion on this ground is denied. There was ample evidence, if believed by the jury, to support guilty verdicts for all indicted charges.

Reconsideration of Sentence

The court sentenced the defendant to consecutive terms of thirty-five, five years, and five years for burglary, first degree, conspiracy to commit burglary, and possession of a weapon during the commission of a violent crime. The defendant moves the court to reconsider these sentences. The court grants the motion and does now sentence the defendant to concurrent terms of thirty-five years, five years, and five years.


Conclusion

Based upon the foregoing, the motions for judgment in arrest of verdict, or in the alternative for a new trial, are denied. The motion for reconsideration of sentence is granted, and the defendant is hereby committed to the State Department of Corrections for a period of thirty-five (35) years for burglary in the first degree, concurrently for five

A handwritten signature in black ink, appearing to be 'B. J. C.', is located in the bottom right corner of the page.

(5) years for criminal conspiracy, and concurrently for five(5) years for possession of a
weapon during commission of a violent crime.

AND IT IS SO ORDERED.



George C. James, Jr.
Circuit Court Judge

Sumter, South Carolina

August 20, 2012

STATE OF SOUTH CAROLINA)
 COUNTY OF Williamsburg)
 STATE VS.)
Andrea Courtney Wallace)
 AKA:)
 Race: 2 Sex: M Age: 24)
 DOB: SS#:)
 Address:)
 City, State, Zip: Kingstree, SC 29556)
 DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-45-0028
 A/W#: M061512
 Date of Offense: 10/27/2009
 S.C. Code § : 16-23-0490
 CDR Code #: 0549

RECEIVED

SENTENCE SHEET

SEP 11 2014

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Poss. weapon during violent crime, if not also sentenced to life without parole or death

CONVICTED OF or PLEADS
SC Court of Appeals

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45
 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST Ronnie A Sabb 8443 SC Bar# Defendant Charles D. Barr Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
 probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on Criminal conspiracy sentence of 5 yrs
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
 by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
 Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning _____
 Substance Abuse Counseling Carolyn F. Williams
 Random Drug/Alcohol testing **CARDOLYN F. WILLIAMS**
 Fine may be pd. in equal, consecutive weekly/monthly
 pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other By order dated 8/20/12,
All sentences imposed under
this indictment are now
concurrent. 8/20/12 [Signature]

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
§ 47.12 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$100
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
§ 90.7 (SCCJA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Clerk of Court/ Deputy Clerk Carolyn F. Williams
 Court Reporter: Margaret Bullum
 SCCA/217 (11/2009)

Presiding Judge _____
 Judge Code: 2149
 Sentence Date: 5/20/11

STATE OF SOUTH CAROLINA)
 COUNTY OF Williamsburg)
 STATE VS.)
Andrea Courtney Wallace)
 AKA:)
 Race: 2 Sex: M Age: 26)
 DOB: SS#)
 Address:)
 City, State, Zip: Kingstree, SC 29556)
 DL#: SID#:)
 *CDL Yes No CMV Yes No Hazmat Yes No

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2010-GS-45-0028
 A/W#: ~~2010-GS-45-0028~~ NO WARRANT
 Date of Offense: 10/27/2009
 S.C. Code § : 16-17-410
 CDR Code #: 0049

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SENTENCE SHEET SEP 11 2014

CONVICTED OF or PLEADS **SC Court of Appeals**

In disposition of the said indictment comes now the Defendant who was TO: Criminal Conspiracy

in violation of § 16-17-0410 of the S.C. Code of Laws, bearing CDR Code # 0049
 NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury. (defendant's initials)
 The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Kimberly V Barr 8443 Defendant Attorney for Defendant Charles D. Barr SC Bar# SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
 for a determinate term of 5 days/months/years or under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.
 CONCURRENT or CONSECUTIVE to sentence on: See Report + Burglary sentence of 35 years
 The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
 The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered
 Total: \$ _____ plus 20% fee: \$ _____
 Payment Terms: _____
 Set by SCDPPPS _____

PTUP _____ days/hours Public Service Employment
 Obtain GED
 Attend Voc. Rehab. or Job Corp.
 May serve W/E beginning Carolyn J. Williams
 Substance Abuse Counseling
 Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
A CERTIFIED TRUE COPY
CAROLYN F. WILLIAMS
CLERK OF COURT
WILLIAMSBURG COUNTY

Recipient: _____
 *Fine: _____ \$

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Other: By order dated 8/20/12, all sentences imposed under this indictment are now rescinded

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Carolyn J. Williams
 Court Reporter: Margaret Sullivan
 SCCA/217 (03/2011)

Presiding Judge: _____
 Judge Code: 2147
 Sentence Date: 5/2/11

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Williamsburg
STATE VS.
Andrea Courtney Wallace
AKA:
Race: 2 Sex: M Age: 26
DOB: SS#:
Address:
City, State, Zip: Kingstree, SC 29556
DL#: SID#:

INDICTMENT/CASE#: 2010-GS-45-0028
A/W#: M061508
Date of Offense: 10/27/2009
S.C. Code §: 16-11-0311
CDR Code #: 0079

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SC Court of Appeals

SENTENCE SHEET

*CDL Yes No CMV Yes No Hazmat Yes No
In disposition of the said indictment comes now the Defendant who was

CONVICTED OF or PLEADS

TO: Burglary in the first degree

in violation of § 16-11-311 of the S.C. Code of Laws, bearing CDR Code # 0079
NON-VIOLENT VIOLENT SERIOUS MOST SERIOUS Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.
The plea is: Without Negotiations or Recommendation, Negotiated Sentence, Recommendation by the State.

ATTEST: Kimberly V. Barr 8443 Defendant
Charles D. Barr Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,
for a determinate term of 35 days/months/years or under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*, the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on: SEE Below *
The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.
The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

RESTITUTION: Deferred Def. Waives Hearing Ordered PTUP
Total: \$ plus 20% fee: \$ days/hours Public Service Employment
Payment Terms:
Set by SCDPPPS

Table with columns for assessment type, amount, and total. Includes items like § 14-1-206 (Assessments 107.5%), § 14-1-211(A)(1) (Conv. Surcharge), § 14-1-211(A)(2) (DUI Surcharge), § 56-5-2995 (DUI Assessment), § 56-1-286 (DUI Breath Test), Proviso 47.9 (Public Def/Prob), § 14-1-212 (Law Enforce. Funding), § 14-1-213 (Drug Court Surcharge), § 50-21-114 (BUI Breath Test Fee), § 56-5-2942(J) (Vehicle Assessment), Proviso 90.5 (SCCJA Surcharge), 3% to County (if paid in installments), and TOTAL.

Obtain GED
Attend Voc. Rehab. or Job Corp.
May serve W/E beginning
Substance Abuse Counseling
Random Drug/Alcohol testing
Fine may be pd. in equal consecutive weekly/monthly pmts. of \$ beginning
paid to Public Defender Fund
Other:

CERTIFIED TRUE COPY
Carolyn J. Williams
ROLYN E. WILLIAMS
CLERK OF COURT
WILMINGTON COUNTY

* By order dated 8/20/12, all sentences imposed under this indictment are now concurrent.
Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Carolyn J. Williams
Court Reporter: Margaret Sullivan
SCCA/217 (03/2011)

Presiding Judge:
Judge Code:
Sentence Date: 8/20/11

 ORIGINAL



SCCID

SOUTH CAROLINA COMMISSION ON INDIGENT DEFENSE

Division of Appellate Defense
1330 Lady Street, Suite 401
Columbia, South Carolina 29201-3332
Post Office Box 11589
Columbia, South Carolina 29211-1589
Telephone: (803) 734-1330
Facsimile: (803) 734-1397

Robert M. Dudek, Chief Appellate Defender
Wanda H. Carter, Deputy Chief Appellate Defender

September 11, 2014

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SEP 11 2014
SC Court of Appeals


The Honorable Jenny Abbott Kitchings
Clerk, S.C. Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

Re: State v. Andre C. Wallace – Appellate Case No. 2012-212937

Dear Ms. Kitchings:

Please find enclosed the documents that the Court requested by letter dated September 9, 2014.

Sincerely,


Benjamin John Tripp
Appellate Defender