

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

J. Derham Cole, Circuit Court Judge

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S.C. Supreme Court

EDDIE J. PILCHER,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000406

APPENDIX

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**THE FOLLOWING EXHIBIT IS ON FILE WITH THIS COURT:
APPLICANT'S EXHIBIT #8 (CD)**

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) COURT OF GENERAL SESSIONS

3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5)
6 PLAINTIFF,) OF
7)
8 vs.) RECORD
9 EDDIE JAMES PILCHER, JR.,) 2011-GS-42-01790
10) 2011-GS-42-01791
11 DEFENDANT.)

12
13
14 June 21st, 2011
15 Spartanburg, South Carolina

16 B E F O R E:

17 THE HONORABLE ROGER L. COUCH, Judge.

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

19 DERRICK BULSA
20 DEPUTY SOLICITOR
21 Attorney for the State

22 JAMES CHEEK
23 ASSISTANT PUBLIC DEFENDER
24 Attorney for the Defendant

25 PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

ATTORNEY GENERAL'S OFFICE

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I N D E X O F W I T N E S S E S

WITNESSES

PAGE

(There were no exhibits marked during this hearing.)

P R O C E E D I N G S

THE COURT: All right. If you'll call the names of those who are here to offer pleas.

If you're in the box and your name is called, please stand up and remain standing.

If you're in the gallery when your name is called, I want you to come forward and stand in the jury box to my right.

Mr. Hunter, call the roll.

SOLICITOR HUNTER: We have Robert Beason.

(Defendant stands.)

THE COURT: Come forward, sir.

SOLICITOR HUNTER: Michael Ruiz.

(Defendant stands.)

SOLICITOR HUNTER: In the box we have Alice Young.

(Defendant stands.)

SOLICITOR HUNTER: Larry Coffey.

(Defendant stands.)

SOLICITOR HUNTER: Marquet Gentry.

(Defendant stands.)

SOLICITOR HUNTER: Johnathon Goss.

(Defendant stands.)

SOLICITOR HUNTER: Eddie Pilcher.

(Defendant stands.)

1 SOLICITOR HUNTER: Rodney Williams.

2 (Defendant stands.)

3 SOLICITOR HUNTER: Shantrese Young.

4 (Defendant stands.)

5 SOLICITOR HUNTER: And Jerry Grayson.

6 (Defendant stands.)

7 THE COURT: All right. One gentlemen -- Jerry Grayson,
8 is he here?

9 SOLICITOR HUNTER: What's your name, sir?

10 DEFENDANT: Jerry Ledford.

11 SOLICITOR HUNTER: Jerry Ledford.

12 THE COURT: Is that who you meant to call?

13 SOLICITOR HUNTER: And what's your name, sir?

14 DEFENDANT: Boyce Joshua Foster.

15 SOLICITOR HUNTER: And Joshua Foster.

16 THE COURT: I thought Mr. Grayson was brought in, but
17 Mr. Foster can stand as well.

18 THE COURT: Stand up please.

19 (Defendant stands.)

20 THE COURT: Do you have a complete list?

21 SOLICITOR HUNTER: I'll give her a copy of it in a
22 second.

23 THE COURT: All right. All right. Let's go ahead and
24 get it complete before we do this.

25 (Parties comply.)

1 THE COURT: All right. Mrs. Camp, please swear the
2 defendants who are standing.

3 (WHEREUPON, all defendants were placed under oath at
4 this time.)

5 THE COURT: Have a seat please.

6 (Parties comply.)

7 THE COURT: Now, if any of you either failed or refused
8 to take the oath just administered by the clerk I'd ask that
9 you now please stand.

10 (No response.)

11 THE COURT: All right. It appears that everyone who's
12 present today to offer pleas has been sworn.

13 I'm going to go over some matters at this time that
14 would be common to all of your cases should you later on
15 offer a guilty plea to the Court. I've been informed that's
16 why you are here.

17 I'm not asking for your plea at this time. Later on
18 we'll call your name, you'll come in front of me with your
19 attorney, and we'll go over the matters that are specific to
20 your case at that time.

21 Now, your attorney is present in the courtroom at this
22 time, and if at anytime you feel that you need to discuss
23 any matter with your lawyer before you respond to anything I
24 ask you, please let me know. You have every right to
25 consult with your attorney before you respond to any

1 question that this Court asked you.

2 Now, the first thing I'll discuss with you is that,
3 under the Constitution, you have a right to have your case
4 considered by a Grand Jury before that case is sent to this
5 Court for either a trial or a plea. I won't know the status
6 of your indictments, whether or not they've gone to the
7 Grand Jury or not, until they're handed to me when we're
8 ready to accept your plea.

9 I will tell you that I can not take your plea unless
10 the Grand Jury has issued a true bill on your indictment or
11 you decide to waive or give up that step of the proceedings
12 and go directly to a guilty plea without Grand Jury
13 presentment. Now, I will tell you the Grand Jury does not
14 decide your guilt or innocence. They decide whether or not
15 the State has sufficient evidence to justify the case being
16 sent to this Court for either a trial or a plea.

17 Now, neither you or your lawyer is allowed to be
18 present at Grand Jury proceedings. Those are conducted in
19 secret. However, I will go over with you the status of your
20 indictment when I see those, that paperwork, and we'll
21 discuss that situation at that time.

22 Now, I am going to ask you a series of questions. Now,
23 those questions have to do with your ability or your
24 qualifications to offer a plea later on. I'll be asking you
25 to stand if you have a response specifically to the

1 questions that I'm asking. I'll need to get your name on
2 the record before we discuss those matters.

3 The first question I have for you, do any of you
4 currently suffer from any mental, physical, nervous
5 conditions, or any other problems that would, in anyway,
6 affect your ability to reason, make good decisions, or to
7 handle your plea today, if that's true, please stand.

8 (No response.)

9 THE COURT: Have any of you taken any drugs or any
10 other substances that would, in anyway, affect your ability
11 to reason, make good decisions, or to handle your plea
12 today, if that's true, please stand.

13 (No response.)

14 THE COURT: Has anyone threatened you, coerced you, put
15 pressure on you, tried to intimidate you, or done anything
16 else to you to try to get you to offer a plea or force you
17 to offer a plea, if that's true, please stand.

18 (No response.)

19 THE COURT: Now, if you offer a plea it must be done
20 freely and voluntarily. That means it's something that you
21 have thought about and you've decided that's the best way to
22 proceed in your case.

23 If any of you have a feeling or a belief that, if you
24 were brought in front of me today to offer a plea, that
25 somehow that would be done against your wishes or be

1 something that you didn't want to do or had not decided to
2 do, now, if that's true, please stand.

3 (No response.)

4 THE COURT: If any of you feel that you haven't had
5 enough time in which to think about your case or prepare a
6 defense to the charges, please stand.

7 (No response.)

8 THE COURT: If anyone has made any promises,
9 guarantees, or assurances to you about anything in
10 connection with your plea, please stand.

11 (No response.)

12 THE COURT: If anyone has specifically made any
13 promises, guarantees, or assurances about any matters such
14 as pardon, parole, probation, early release, or length of
15 sentence in an effort to get you to offer a plea, I'd ask
16 that you now please stand.

17 (No response.)

18 THE COURT: Now, if you offer a guilty plea to this
19 Court you be will waiving or giving up most of your rights
20 under the Constitution, and I have to be sure that you're
21 doing, do that knowingly and intelligently. In other words,
22 you know what your rights are, you know what you're giving
23 up when you offer your guilty plea, and you've made an
24 intelligent decision to proceed with a guilty plea. For
25 that reason I have to be sure that you understand your

1 Constitutional rights, that you understand what you're
2 giving up.

3 So, I'm going to explain your Constitutional rights to
4 you, and when I finish, I'll give you an opportunity to ask
5 any questions you would like to ask or have me offer
6 additional explanation if that's necessary.

7 First of all, I've already told you that you have a
8 Constitutional right to have your case presented to the
9 Grand Jury. I'll discuss that with you when you come in
10 front of me and I look at your indictment.

11 You have a Constitutional right to, to representation
12 by a lawyer, and I've already told you your lawyer is
13 available to you at all stages of this proceeding.

14 You have a right to demand a trial by a jury. At that
15 trial you would be presumed to be innocent until the State
16 proved your guilt beyond a reasonable doubt. You see a
17 defendant has no burden of proof in criminal trials. You're
18 presumed to be innocent. The State has the only burden of
19 proof, and that is the burden to prove you guilty beyond a
20 reasonable doubt.

21 At the trial and under the Constitution there are
22 several things that you could do. First of all, you have
23 the right to have subpoenas issued to require witnesses to
24 come to Court to testify. You have the right to question or
25 confront anyone who might testify during the trial. You

1 would have the right to present all the defenses that you
2 have to the charges that are before the Court during the
3 trial.

4 Also, at the trial, you'd be given the opportunity to
5 try to suppress any and all evidence the State may have
6 against you, and that includes any statements that you might
7 have made prior to the time of the trial. You, at every
8 stage of a criminal proceeding, have the right to remain
9 silent, and, at a trial, if you chose to remain silent, the
10 judge would instruct the jury, he's required to instruct the
11 jury that your silence could not be used against you in any
12 fashion whatsoever.

13 Now, those are your rights under the Constitution. If
14 you have any questions about the rights that I just
15 explained, please stand.

16 (No response.)

17 THE COURT: If you would like for me to offer
18 additional explanation concerning any of those rights,
19 please stand.

20 (No response.)

21 THE COURT: It appears to the Court that you understand
22 your rights, and I will tell that, if you plead guilty, you
23 give up or waive all of those rights as they relate to the
24 charges that are before the Court with the exception of the
25 right of having your lawyer represent you until your plea is

1 completed.

2 Now, if there's any of those rights that you do not
3 wish to give up in connection with a plea today, please
4 stand.

5 (No response.)

6 THE COURT: I will advise each of you that you have ten
7 days from the date that you enter a guilty plea and receive
8 a sentence in which to file an appeal of that plea should
9 you choose to do that.

10 I'm going to declare that these defendants are
11 qualified or in a position to proceed with a plea.

12 (WHEREUPON, other guilty pleas were completed at this
13 time.)

14 SOLICITOR BULSA: Please the Court, Your Honor?

15 THE COURT: Yes, sir, Mr. Bulsa. You may proceed.

16 SOLICITOR BULSA: Thank you, Your Honor.

17 This is State versus Eddie James Pilcher, Junior.

18 Indictment 11-GS-42-1791. It's for attempted burglary in
19 the first degree. That is a true billed indictment.

20 11-1790 is for armed robbery. It's also a true billed
21 indictment. There's a matter of restitution that he's
22 agreed to. He's represented by Mr. Cheek.

23 Your Honor, these are two separate instances even
24 though they have the same offense date.

25 THE COURT: I see. Thank you.

1 THE COURT: Your name is Eddie James Pilcher, Junior?

2 DEFENDANT: Yes, sir, Your Honor.

3 THE COURT: You don't have to lean over. Just stand in
4 front of the microphone and talk. You're gonna be fine.

5 Now, Mr. Pilcher, I'm gonna remind you that the oath
6 that I put you under earlier that you're still under that
7 oath at this time.

8 Do you understand that, sir?

9 DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: Now, you're in front of me on two charges.
11 The first charge I'll go over with you is Case Number
12 11-GS-42-1790. That is for armed robbery. That particular
13 crime carries a sentence of a minimum of ten years up to a
14 maximum of 30 years. It is classified as a violent and most
15 serious offense.

16 That means, in the future, if you were found guilty of
17 or pled guilty to other crimes similarly classified, it
18 could result in a sentence of life imprisonment without the
19 possibility of ever being paroled.

20 You understand that charge?

21 DEFENDANT: Yes, sir, Your Honor.

22 THE COURT: Do you understand the penalties?

23 DEFENDANT: Yes, sir, Your Honor.

24 THE COURT: And do you understand the enhancement
25 feature I just described?

1 DEFENDANT: Yes, sir, Your Honor.

2 THE COURT: The other crime is attempted burglary,
3 attempted burglary in the first degree. That carries a
4 potential sentence of 15 years to life. It also is
5 classified as a violent and most serious offense, and I will
6 tell you, again, the same situation applies to that. In
7 future, if you have similarly classified offenses, those
8 future offenses could result in a sentence of life
9 imprisonment without the possibility of ever being paroled.

10 Are you aware of that, Mr. Pilcher?

11 DEFENDANT: Yes, sir, Your Honor.

12 THE COURT: You're here with Mr. Cheek.

13 Is he your lawyer in both cases?

14 DEFENDANT: Yes, sir, Your Honor.

15 THE COURT: Have you had enough time to talk with him?

16 DEFENDANT: Yes, sir, Your Honor.

17 THE COURT: Are you satisfied with what he's done?

18 DEFENDANT: Yes, sir, Your Honor.

19 THE COURT: Is there anything else you want to ask him?

20 DEFENDANT: No, sir, Your Honor.

21 THE COURT: Anything else you feel he ought to do for
22 you at this time?

23 DEFENDANT: No, sir, Your Honor.

24 THE COURT: All right. Now, Mr. Pilcher, I'm going to
25 tell you and advise you that both of these cases, the

1 indictments have gone to the Grand Jury, and they are
2 properly before the Court.

3 Now, as to these charges, Mr. Pilcher, do I need to
4 read the indictments to you?

5 DEFENDANT: NO, sir, Your Honor.

6 THE COURT: You understand what they allege?

7 DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: How do you plead to those?

9 DEFENDANT: Guilty, Your Honor.

10 THE COURT: On both cases?

11 DEFENDANT: Yes, sir, Your Honor.

12 THE COURT: Now, Mr. Cheek, I would assume that among
13 the many things you would of discussed with Mr. Pilcher, you
14 would of discussed the nature of these charges or the
15 elements of the crimes, the penalties that are involved, any
16 defenses that he might of had to any of the charges, the
17 limited availability for parole in these cases, his rights
18 under the Constitution, as they apply to both of the
19 charges.

20 Is that a correct statement?

21 MR. CHEEK: That's correct, Your Honor.

22 THE COURT: And are you satisfied that Mr. Pilcher
23 understood the advice and consultations you've had with him?

24 MR. CHEEK: Yes, sir.

25 THE COURT: He tells me that he's made the decision to

1 offer a guilty plea in these cases.

2 Do you agree with the decision Mr. Pilcher made to do
3 that?

4 MR. CHEEK: I do, Your Honor.

5 THE COURT: And has he been able to assist you in his
6 own defense?

7 MR. CHEEK: Absolutely, Your Honor.

8 THE COURT: Sir, my information concerning you is that
9 you are 27.

10 Is that true?

11 DEFENDANT: Yes, sir, Your Honor.

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

13 DEFENDANT: Ninth grade, Your Honor.

14 THE COURT: Did you ever get a GED?

15 DEFENDANT: No, sir, Your Honor.

16 THE COURT: Are you married?

17 DEFENDANT: No, sir, Your Honor.

18 THE COURT: Any children?

19 DEFENDANT: No, sir, Your Honor.

20 THE COURT: And were you employed when you got
21 arrested?

22 DEFENDANT: No, sir, Your Honor.

23 THE COURT: And did you have a job prior to that?

24 DEFENDANT: Yes, sir, Your Honor.

25 THE COURT: And where was the last place you worked?

1 DEFENDANT: Columbia Farms and Brown Packing Company.

2 THE COURT: And how long ago was that?

3 DEFENDANT: A couple days before I committed the crime,
4 Your Honor.

5 THE COURT: All right. I'm going to ask that the
6 solicitor go over the facts in this case.

7 Mr. Pilcher, listen carefully. I'll be asking you
8 about those facts.

9 DEFENDANT: Yes, sir, Your Honor.

10 THE COURT: Yes, sir.

11 SOLICITOR BULSA: Thank you, Your Honor.

12 The attempted burglary occurred first. That was on
13 September the 9th at approximately 12:30 in the morning,
14 early morning hours. The victim by the name of Dorothy
15 Howard lived on King Street in the Greer community.

16 She was awoken about 12:30 when someone kicked in her
17 door. She had an alarm system that went off, which, of
18 course, she investigated. When the alarm went off the
19 individuals fled the scene. She actually had a video camera
20 system in her house as well, and it caught the three
21 subjects at the house and leaving. It was not good enough
22 to identify them, but the police did know the three
23 individuals were involved.

24 It was during the investigation of that case, plus the
25 second case, the defendant was arrested and Mr. Pilcher

1 admitted to the Greer detective that he was involved in that
2 attempted burglary, and also named the other people that
3 were involved with him.

4 That same day, it was basically the evening of
5 September 9th about 10:30, a lady by the name of Danny
6 Lewis had some friends over, along with their children.
7 They were having a cookout in their backyard. She states
8 when three black males approached her they were all wearing
9 masks. Two had a black cloth mask. One had a black GI Joe
10 mask. Each of them had weapons. Two had long guns, and one
11 had a handgun.

12 These three men accosted her and her friends. Actually
13 forced them in the house demanding money. They obtained Ms.
14 Lewis's wallet with all her bank cards and credit cards and
15 cell phones. They then fled the scene.

16 The case was investigated by Greer Police as well.
17 Mr. Pilcher, during the flight, contacted his girlfriend,
18 and had her meet, meet him and his friends. Basically pick
19 them up. He then told her what he had done. She called the
20 police, and then actually had one of the cell phones that
21 Mr. Pilcher and his cohorts had stolen from Ms. Lewis.

22 She turned that cell phone over to the police. It
23 actually had the defendants, Mr. Pilcher's fingerprint on
24 that cell phone. So, he was identified in that fashion as
25 committing that armed robbery.

1 The State -- there's no agreement as to sentence.
2 we've charge bargained one scheme in this case. He's
3 pleading to one count involving each incident.

4 THE COURT: Codefendants been apprehended?

5 SOLICITOR BULSA: Yes, sir, one codefendant, Curtis
6 Wilkey, pled back before Judge Hayes a few weeks ago. He
7 had been in Court in Greenville, had been sentenced to a
8 Greenville offense, and then was brought back to
9 Spartanburg, and Judge Hayes gave him 25 years on these
10 incidents.

11 THE COURT: All right. Mr. Pilcher, did you hear the
12 solicitor go over the facts in your case?

13 DEFENDANT: I beg your pardon?

14 THE COURT: Did you hear him go over the facts in this
15 matter, what happened?

16 DEFENDANT: Yes, sir, Your Honor.

17 THE COURT: Did you understand what he said?

18 DEFENDANT: Yes, sir, Your Honor.

19 THE COURT: Is that information true?

20 DEFENDANT: No, sir, Your Honor.

21 THE COURT: Tell me how it's wrong.

22 DEFENDANT: The victim stated that three of us had
23 weapons. However, I didn't have a weapon, but---

24 THE COURT: Would you agree -- this is at the, at the
25 cookout?

1 DEFENDANT: Yes, sir, Your Honor.

2 THE COURT: Would you agree that someone in the group
3 of perpetrators had the weapon?

4 DEFENDANT: Yes, sir, Your Honor.

5 THE COURT: Okay, sir. Is your lawyer explained hand
6 of one hand of all?

7 DEFENDANT: Yes, sir, Your Honor.

8 THE COURT: All right. Any other disagreements with
9 the facts?

10 DEFENDANT: No, sir, Your Honor.

11 THE COURT: All right. Now, Mr. Pilcher, did you --
12 have you told me the truth today?

13 DEFENDANT: Yes, sir, Your Honor.

14 THE COURT: Do you agree that the advice that I went
15 over with your counsel that he had given to you that he has
16 given you that advice?

17 DEFENDANT: Yes, sir, Your Honor.

18 THE COURT: And is that the advice that you're
19 satisfied with?

20 DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: Now, is there anything that I've asked you
22 today that you'd like to reconsider or go back over, change
23 any response you've given to me?

24 DEFENDANT: No, sir, Your Honor.

25 THE COURT: So, if I were to ask you all the same

1 questions I asked earlier to, right now, verbally, would you
2 give me the same answers you gave me verbally this time.

3 DEFENDANT: Yes, sir, Your Honor.

4 THE COURT: Are you pleading guilty to these offenses
5 because you are guilty of these offenses?

6 DEFENDANT: Yes, sir, Your Honor.

7 THE COURT: All right. I'm gonna accept the plea as
8 having been freely and voluntarily given. The defendant is
9 aware of the charges, penalties, and had the advice of
10 counsel. He's satisfied with that advice and there's a
11 factual basis for this plea.

12 Mr. Cheek.

13 MR. CHEEK: Your Honor, Mr. Pilcher has served 261 days
14 toward sentencing in this matter. We'd ask the Court to
15 credit that towards both of the offenses, Your Honor.

16 We'd ask the Court to further take several things into
17 consideration regarding Mr. Pilcher and his involvement in
18 these crimes. Your Honor, Mr. Pilcher has affiliations or
19 friends from Cherokee County as well as in Greenville
20 County, and the association in Greenville County certainly
21 were 180 degrees from the associations he had over in
22 Cherokee County.

23 Your Honor, the Court would learn that Mr. Pilcher got
24 out of prison. For an entire year he did very well. He
25 actually was in a very good relationship, very close

1 relationship with Denise, who is a friend of mine, Rufus
2 Foster over in Cherokee County. Rufus is on County Council.
3 Rufus is well respected in that community, a business owner
4 for many many years, and Rufus -- he went over the Boy
5 Scouts for the entire Piedmont District. That's the kind of
6 people he had the opportunity to affiliate himself with.

7 Rufus Foster helped him get a job, took him to United
8 Youth Company over there. That gentleman hired Mr. Pilcher.
9 Mr. Pilcher was persistent. He came back three days in a
10 row, stood out there and told the man that he wanted a job
11 and they hired him. Then he got a second job over in
12 Cherokee County, and because he also was involved with a
13 woman named Yvonne Bishop, Yvonne, Yvonne Mitchell rather,
14 Yvonne Mitchell over in Cherokee County, I'm sorry, over in
15 Greer. He decided he'd move back over to Greer, and at that
16 time Yvonne Mitchell introduced him to a young man named
17 Curtis Wilkey.

18 Curtis knew everybody over there. Said he knew the
19 first victim, and that she had over a hundred thousand
20 dollars because she was a big drug dealer and she had the
21 money, and that excited Mr. Pilcher and others, and they
22 decided to go over there and peek in her door and try to get
23 that money. But as the State has informed the Court, she
24 had security. The alarm went off. They ran. They hadn't
25 really thought that thing through, Your Honor, hadn't really

1 investigated, and listening to Mr. Wilkey who's already in
2 trouble over in Greenville County on similar charges, and
3 Mr. Wilkey did cooperate with the State and pled guilty over
4 there and I think he got ten years, and he came back over
5 here and he pled to these charges.

6 Your Honor, Mr. Wilkey orchestrated everything.

7 THE COURT: And he got 25 years over there?

8 MR. CHEEK: He got 25 years over there, Your Honor.
9 We're just asking the Court to consider that Mr. Wilkey
10 appears to be the person that is amendable to everybody in
11 that community, introduced these two young men, one who will
12 come before you very briefly, Your Honor, to also enter a
13 plea, into this whole situation and they followed him.

14 Your Honor, he had such a good life going over in
15 Cherokee County, and decided he'd move over to Greer I think
16 for all the wrong reasons. But was working at Columbia
17 Farms, had a good job over there, and two days prior to this
18 incident.

19 Your Honor, the Court has heard Mr. Pilcher speak today
20 in answering the questions of the Court. I explained to him
21 Mr. Pilcher, I don't know what you were thinking about. You
22 needed to work at Columbia Farms. You had a good career
23 ahead of you. God blessed you with a good voice, a good
24 mind, you're talented.

25 He was housed in Pod 5, Your Honor, because he got in a

1 fight with a young man named William Patrick Henry. William
2 Patrick Henry is a prolific writer, excellent artist, the
3 two young men with great abilities fighting each other
4 instead of fighting their way upward and outward.

5 Mr. Henry said this about Mr. Pilcher, and as part of
6 their investigation to the conflict between them when they
7 housed both of them under great security. He said once upon
8 a time there was a man with a big deep voice who thought he
9 was bad, but then he confronted a real man and he found out
10 he wasn't as bad as he thought he was, and now we're both in
11 Pod 5, and I have reduced him from the big Rottweiler voice
12 that he has to a little puppy, and I told Mr. Pilcher that
13 that is where he's gonna wind up in his life if he doesn't
14 understand that you can not continue to violate the rights
15 of others.

16 This is terrible, Your Honor. He acknowledges it was
17 terrible what they did. But they ran the first time, and
18 then they saw people having a cookout, and I said Mr.
19 Pilcher, the average families having a cookout have spent
20 all their money on their beverage and their food. There's
21 nothing left to steal. But he's willing to pay whatever
22 restitution is owed in the cases, Your Honor.

23 I go into all of this detail to ask the Court to please
24 distinguish his involvement, his planning, his knowledge of
25 everything from the sentence that Mr. Wilkey got, Your

1 Honor. We respectfully ask the Court to consider sentencing
2 him on the armed robbery charge and consider a suspended
3 sentence on the attempted burglary charge.

4 That's all I can do for my client is ask. He
5 understands the situation. He understands what he could be
6 facing, and I told him I would do all I could to try to
7 distinguish his involvement, his planning, his knowledge,
8 his prior associations, and what he was doing before he made
9 these, these decisions, Your Honor, that put him before the
10 Court today.

11 THE COURT: Mr. Pilcher, you want to speak about this?

12 DEFENDANT: Yes, sir, Your Honor.

13 THE COURT: You may go ahead.

14 DEFENDANT: If the victim's in the Court, Your Honor, I
15 would like to apologize to them for my stupidity, and
16 violating them in their home. And, Your Honor, I should of
17 been more of a man instead of allowing some younger
18 individuals to coerce me into something I knew was better,
19 and I have a codefendant in the box, Your Honor, and I just
20 pray and ask that you just look out for him.

21 I mean if I got to take all the load, just be lenient
22 on him, Your Honor, cause I should of stopped him. I mean I
23 was the one had the car. I could of said I don't want to
24 go, I'm not taking y'all. So, I blame myself, Your Honor,
25 and I apologize. I should of been a better man. I should

1 of been thinking and using the knowledge that I do have for
2 the good instead of something foolish, for something I ain't
3 even know was even there.

4 THE COURT: Prior record.

5 SOLICITOR BULSA: Yes, sir, Your Honor.

6 In 2002, trespassing and disorderly conduct, false
7 information to the police. Also breaking into motor vehicle
8 and grand larceny.

9 Threatening a public employee in 2003.

10 Burglary third, petit larceny, indecent exposure,
11 threatening a public official, grand larceny, and burglary
12 second degree. All those were in 2004.

13 In 2005, assault and battery of a high and aggravated
14 nature and malicious injury to the jail.

15 THE COURT: Victims have any comments?

16 SOLICITOR BULSA: Your Honor, Mrs. Lewis filled out a
17 victim impact statement pretty extensively. She comments
18 primarily upon the trauma she and her young children
19 suffered. They were -- she lists their ages as five and
20 eight years old.

21 THE COURT: Those are the ones at the cookout?

22 SOLICITOR BULSA: Yes, sir.

23 MR. CHEEK: Your Honor, I just reiterate that he did
24 turn himself in and he did cooperate with the authorities.

25 THE COURT: Mr. Pilcher, you probably are aware or know

1 the seriousness of these particular events. Bashing in
2 peoples' doors, going in someone's backyard when they're
3 having a cookout, armed and forcing them into a home with
4 guns, can't tolerate that in this society. Whether or not
5 you planned it, whether or not you provided the car,
6 whatever your involvement is, it's not tolerable conduct.
7 Can't have people running around bashing in doors and
8 herding up people and taking them in their houses with guns
9 to rob them. No, sir.

10 Your record indicates that this is, you know, that
11 that's not out of the realm of possibilities for you.
12 You've been involved in other burglaries and other matters
13 involving such conduct.

14 Sentence in the cases are 25 years, run concurrent.
15 Good luck to you, sir. I've ordered the restitution for
16 whatever that's worth.

17 SOLICITOR BULSA: Thank you, Your Honor.

18

19 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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C E R T I F I C A T E

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I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 21st day of June, 2011.

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

September 25th, 2012



PAMELA E. GREEN, Court Reporter

FORM 5

STATE OF SOUTH CAROLINA)

County of Spartanburg)

Eddie S. Pritchett #30366)
Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

2011-CP-42-5117

APPLICATION FOR

POST-CONVICTION RELIEF

INSTRUCTIONS - 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 Perry Cor. Institution - Oaklawn Rd. Petzer SC 29669
2. Name and location of Court which imposed sentence Spartanburg Co. Clerk of Court Spartanburg SC.
3. Name(s) of co-defendant(s) (if any) Jonathan A. Gossett Carlos A. Wilkie
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) 11-GS-42-1971
 - (b) 11-GS-42-1970

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CLERK OF COURT
SPARTANBURG COUNTY
2011 NOV 21 PM 3:26
M. HOPE BLACKLEY

DM

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) Sentenced on 6/21/11
- (b) Received 25 years on both charges
Running Concurrent.
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ☒
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
NO
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. NO
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. NO
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. NO
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. NO
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Lawyer never advised me of that right
- (b) _____

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- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Conflict of Interest
- (b) Prosecution misconduct
- (c) Ineffective assistance of Counsel
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Please review the attached sheet
- (b) page number 68
- (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? NO
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NO
- (d) any other petitions, motions or applications in this or any other Court? NO
13. If you answered "yes" to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. NO
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. NO
- ii. _____
- iii. _____
- iv. _____

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(c) the disposition thereof:

- i. NO
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. NO
- ii. _____
- iii. _____
- iv. _____

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

- i. NO
- ii. _____
- iii. _____
- iv. _____

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

NO

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

(a) which grounds have been presented:

- i. NO
- ii. _____
- iii. _____

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

- i. NO
- ii. _____
- iii. _____

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SPARTANBURG COUNTY
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Revised 3/2008

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 MY FIRST TIME FILING.
 (b) _____
 (c) _____

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

- (a) your arraignment and plea? ☒
 (b) your trial, if any? _____
 (c) your sentencing? ☒
 (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 "yes" to one or more parts of (17), list:

- (a) the name and address of each attorney who represented you:
 i. J. Roger Poole
366 N. Church St. Suite 3000 Spartanburg SC 29303
 ii. JAMES CHEEKS
366 N. Church St. Suite 3000 Spartanburg SC 29303
 iii. _____
 (b) the proceedings at which each such attorney represented you:
 i. J. Roger Poole
WAS ASSIGNED TO MY WHOLE CASE BUT,
 ii. JAMES CHEEKS
ONLY HANDLE MY GUILTY PLEA
 iii. _____

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 SPARTANBURG COUNTY
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 Reviser 3/2011

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

Case Dismissed w/out prejudice

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

No

STATE OF SOUTH CAROLINA)

VERIFICATION

County of _____)

I, EDDIE JAMES PILCHER JR, 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.

Eddie J Pilcher Jr

SWORN to and subscribed before me this 14th
day of November, 2016.

Steven M. McCloud (S.S.)
Notary Public

My Commission Expires: November 7, 2016

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 NOV 21 PM 3:26
M. HOPE BLACKLEY
Revised 1/2000

357M

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

I, EDDIE JAMES P. LEBLANC JR., 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.

Eddie James P. LeBlanc Jr.
Applicant

SWORN or affirmed to and subscribed before me this
14th day of November, 2011.

Steven T. McLaurie
Notary Public

My Commission Expires: November 7, 2016

FILED
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SPARTANBURG COUNTY
2011 NOV 21 PM 3:26
M. HOPE BLACKLEY

Revised 3/2003

CONTINUED ANSWER TO QUESTION #10 JM

MY Case numbers are 11-GS-42-1791, and 11-GS-42-1790. I was represented by the Spartanburg Co. Public Defenders Office. Two Public Defenders Represented me, MR. S. Roger Poole and MR. James Cheeks. MR Poole was originally assigned to me, But Mr. Cheeks handled MY, and MY Co-Defendants Guilty Plea on 6/21/11. MY Solicitor name was Derrick Bulsa, and MY Judge name was S. Couch. MY Co-Defendants name was Johnathan A Goss. MY Charges are Attempted Burglary 1st Degree Common Law and Robbery/Armed Robbery. I was sentenced to 25 years on both Charges running Concurrent in the South Carolina Dept. of Corrections. I was also sentenced as a violent offender. The reason for this P.C.R. is to address the Conflict of Interest, Prosecution misconduct, and Ineffective Assistance of Counsel. MY Grounds are as following. As stated above I was represented by the Spartanburg Co. Public Defenders Office, and the attorney's name were MR. Poole, and MR. Cheeks. MY Co-Defendant was also represented by this same office, not only that But the attorney's who represented him were also MR. Poole, and MR. Cheeks. This is where the Conflict of Interest comes into play, either MY Co-Defendant or MYSELF should have a Pro bono lawyer, and not underhandedly give the same Public Defender. I do not feel that MR. Poole nor MR. Cheeks had MR. Goss or MY best interest at heart. nor did that MR. Goss or MY defense was handled at the office of MR. Poole or MR. Cheeks, because MYSELF along with MY Co-Defendant gave a statement and the Public Defender office and the Solicitor knew it because the Solicitor sent MY Co-Defendants and MY Plea to the same Public Defender. At no time did they notify the Judge or Courts that it would be a Conflict of the represented us both. we was railroaded and therefore had our 4th and 14th ~~amendment~~ amended. Violated. thus also made the herein mentioned lawyers Ineffective.

(Page 6) Respectfully submitted

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
Eddie Jo Pilcher, 303616,	)	
	)	
Applicant,	)	AMENDED APPLICATION FOR
	)	POST CONVICTION RELIEF
vs.	)	
	)	
State of South Carolina,	)	Case No.: 2011-CP-42-5117
	)	
<u>Respondent.</u>	)	

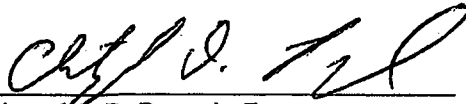
The Applicant, by and through his undersigned attorney, amends his Application for Post-Conviction Relief as follows:

1. Anything not specifically amended by this filing is incorporated herein as amended verbatim.
2. Paragraph 10 is amended to add the following facts to support Applicant's grounds:
 - (a) Prosecutorial Misconduct – The State failed to disclose an audio copy of the Applicant's Statement that contained exculpatory information despite the filing of a Rule 5 / Brady Motion by the Applicant's trial counsel.
 - (b) Ineffective Assistance of Counsel – The Applicant's trial counsel failed to exercise due diligence in the representation of the Applicant.
 - (c) Conflict of Interest – Applicant's trial counsel represented applicant's co-defendant Jonathon Goss as well even though Applicant did not waive this conflict.
 - (d) Involuntary Guilty Plea – Defendant's plea of guilty was not freely and voluntarily given.

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 SPARTANBURG COUNTY
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(e) Jurisdiction – The Court lacked subject matter jurisdiction to hear Defendant's case.

Respectfully submitted,



Christopher D. Brough, Esq.
THE BROUGH LAW FIRM
175 Magnolia Street, Suite 202
Spartanburg, South Carolina 29306

September 16, 2013

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2013 SEP 17 AM 10:04
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
Eddie J. Pilcher, #303616,	)	2011-CP-42-5117
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed November 21, 2011, but received by Respondent on May 17, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was indicted at the August 2011 term of the Spartanburg County Grand Jury for armed robbery (11-GS-42-1790) and attempted burglary – 1st degree (11-GS-42-1791). Applicant was represented by James A. Check, Esquire. On June 21, 2011, the Applicant pled guilty as indicted. Applicant was sentenced by the Honorable Roger L. Couch to confinement for concurrent terms of twenty-five years on each charge. The Applicant did not appeal his conviction or sentence.

Attached herewith and incorporated herein are the records of the Spartanburg County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel;
2. Conflict of interest, in that;
 - a. Mr. Cheek represented both the Applicant and his co-defendant;
3. Prosecutorial misconduct, in that;
 - a. The Solicitor's office knew of the conflict of interest, but failed to notify the Judge.

III.

Respondent interprets all claims as claims of ineffective assistance of counsel. 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, 466 U.S. 668. 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 plea 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).

The Respondent submits that the 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, the 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.

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

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

Respectfully submitted,

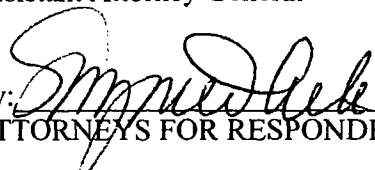
ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By:


ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

February 20, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

)
)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Eddie J. Pilcher,

)
)

2011-CP-42-5117

Applicant,

)
)

v.

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)

CERTIFICATE OF SERVICE BY MAIL

State of South Carolina,

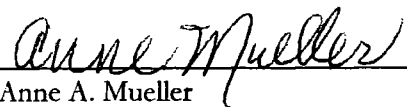
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Respondent.

)
)

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

R. Patrick Martin, Esquire
Lazenby Law Firm, LLC
P.O. Box 6099
Spartanburg, South Carolina 39304



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 20th day of February, 2013.

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
3
4 Eddie Pilcher,)
5 Applicant,) TRANSCRIPT OF RECORD
6 v.) 2011-CP-42-5117
7 The State.) October 1, 2013
Spartanburg, South Carolina

8
9 B E F O R E:

10 HONORABLE J. DERHAM COLE, JUDGE
11

12
13 A P P E A R A N C E S:

14 CHRISTOPHER D. BROUGH, ESQUIRE
Attorney for the Applicant

15 SUZANNE H. WHITE, ESQUIRE
Attorney for the State
16
17
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19

20 Linda D. Moffitt
Circuit Court Reporter
21
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1	<u>EXHIBITS</u>			
2	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
3	A-1	Transcript	8	8
4	A-2	Rights	12	12
5	A-3	Letter	13	14
6	A-4	Letter	13	15
7	A-5	Request for discovery and notice of	17	17
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10	A-7	Report	18	19
11	A-8	C.D.	19	20
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13	A-10	Letter	25	26
14	A-11	E-mail	41	41
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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	Report	37	38
S-2	Advisement of rights	48	

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1 MS. WHITE: Thank you, Your Honor.

2 This is the case of Eddie J. Pilcher v. the State.

3 It's case No. 2011-CP-42-5117.

4 Mr. Pilcher was originally indicted August of 2011 on
5 a count of armed robbery, attempted burglary first degree.

6 There are also additional charges that were ultimately
7 dropped, I believe several kidnapping and other related
8 charges.

9 He ultimately pled to the two, the armed robbery and
10 attempted burglary first, before -- on June 21st of 2011.
11 He was represented by Mr. James Cheek. And he received
12 concurrent sentences of 25 on each.

13 He's alleged various claims of ineffective assistance
14 of counsel, prosecutorial misconduct and involuntary guilty
15 plea, as well as a lack of subject matter jurisdiction,
16 mainly focusing on a conflict of interest alleged because
17 his attorney represented both he and a codefendant, also
18 that there was -- the state failed to disclose that there
19 was an audio copy of the applicant's statement which he
20 believes is exculpatory.

21 And so at this time I will turn it over to Mr. Brough.

22 THE COURT: Mr. Brough.

23 MR. BROUGH: Thank you, Your Honor. May it please the
24 Court.

25 The applicant would call Eddie Pilcher to the stand.

Eddie J. Pilcher
Direct examination by Mr. Brough

1 EDDIE J. PILCHER, having been
2 first duly affirmed, testified as follows:

3 DIRECT EXAMINATION BY MR. BROUGH

4 Q Mr. Pilcher, we're here on your application for post
5 conviction relief, sir.

6 Could you tell me who you were represented by, sir?

7 A I was originally apparented -- appointed Roger Poole,
8 but James Cheeks handled my guilty plea.

9 Q And you've alleged that there was a conflict of
10 interest, sir. Could you tell me why you believe there was
11 a conflict?

12 A I believe that there was a conflict of interest
13 because my attorney represented myself and my codefendant.

14 Q And which codefendant was that, sir?

15 A Jonathan Goss.

16 Q Now, could you tell me why -- well, let me ask you
17 this. Did your story match that of your codefendant?

18 A No. It does not.

19 Q Okay. Tell me what you thought the problem was with
20 your lawyer representing the both of you.

21 A Well, for starters, my attorney never had myself nor
22 my codefendant sign the release or a waiver waiving a
23 conflict of interest.

24 Q Were you aware at the time that you pled that your
25 attorney was representing your codefendant?

Eddie J. Pilcher
Direct examination by Mr. Brough

1 A No, I was not. I didn't find out until during the
2 guilty plea hearing and after I got my transcript.

3 Q Do you feel like your attorney favored one of you over
4 the other?

5 A Most certainly.

6 Q Okay. And who do you feel that Mr. Cheek favored?

7 A I feel as though Mr. Cheeks favored my codefendant
8 Goss.

9 Q Why do you say that, sir?

10 A For one, he does not have a criminal record; and for
11 two, I was told by individuals in the county jail that they
12 heard from my codefendant --

13 MS. WHITE: Your Honor, I'd object to hearsay.

14 Q Don't say what you heard or what somebody else told
15 you.

16 Just indicate to me why you feel in reviewing
17 everything for your post conviction relief hearing that
18 your attorney favored Mr. Goss over you.

19 A I feel as though he favored Mr. Goss because in the
20 transcript, in my codefendant's key transcript, it's noted
21 where James Cheeks told the judge that I threatened to harm
22 my codefendant's family -- his mother, grandmother, etc.,
23 if he don't go through with the lick, or robbery so to
24 speak.

25 MR. BROUGH: I'd like this marked as Applicant's

Eddie J. Pilcher
Direct examination by Mr. Brough

1 Exhibit No. 1.

2 (Transcript marked Applicant's Exhibit No. 1 for
3 Identification.)

4 Q Sir, I'm handing you what's been marked as Applicant's
5 Exhibit No. 1. Do you recognize that document, sir?

6 A Yes, sir, I do -- yes, sir, I do.

7 Q What is that document?

8 A The transcript of Jonathan Antonio Goss.

9 Q Okay. And does it appear to be an official court
10 transcript?

11 A Yes, sir, it do.

12 MR. BROUGH: I'd like to move it into evidence as
13 Applicant's Exhibit 1.

14 MS. WHITE: No objection, Your Honor.

15 THE COURT: It's admitted.

16 (Transcript marked Applicant's Exhibit No. 1.)

17 Q Sir, in looking at Applicant's Exhibit No. 1 you
18 indicate that Mr. Cheek made statements against your
19 interest in favor of Mr. Goss' interest, is that correct?

20 A Yes, sir.

21 Q Now, I want you to direct your attention on the
22 transcript to the part in mitigation where Mr. Cheek spoke
23 on behalf of Mr. Goss starting on page 19 of Applicant's 1,
24 line 19, continuing until you -- page 22.

25 A Would you like for me to read that, sir?

Eddie J. Pilcher
Direct examination by Mr. Brough

1 Q Could you just tell me what statements in there that
2 you feel like were detrimental to you, sir?

3 A If you'll look at page 21, starting at line seven, you
4 will see where James Cheeks tried to make my codefendant
5 seem like I guess he had nothing to do with the crimes.

6 He tried to use his youth -- and supposedly says his
7 involvement -- in his absolute remorse out of all of this,
8 which is much different from mine.

9 Q And are you referring -- if you could read on page 21,
10 I guess that's starting at line --

11 A Line seven.

12 Q Why don't you start at line three if you can read that
13 for me, sir?

14 A All right. Starting at page 21 on line three it
15 states, "He got almost to the point of graduation. He let
16 that escape him and did not graduate. But he also allowed
17 himself to get caught up with this guy, Eddie Pilcher, the
18 one they call Cornbread and who was before the Court most
19 recently, Your Honor. I just ask the Court to please take
20 into account Jonathan's youth -- Jonathan Goss' youth, his
21 involvement, his absolute remorse out of all of this, which
22 is much different. I'm sure the Court can sumis -- I guess
23 that's how you pronounce it -- S-U-R-M-I-S -- from other
24 people's involvement in this situation he got himself
25 involved with. Wilkie and Pilcher came by my -- by his

Eddie J. Pilcher
Direct examination by Mr. Brough

1 house. His girlfriend told him I do not feel good about
2 those guys, you shouldn't leave with them. He left with
3 them. It was his choice to leave with them, but he left
4 with them. And once they discussed what was going to
5 happen as far as the break-in where there was supposed to
6 be a hundred thousand dollars over there -- but this lady
7 was known to provide a drug stash house which wasn't
8 actually a drug -- which -- which wasn't actually a dealer
9 herself but she had people she associated with who
10 supposedly left drugs in the house and left money in the
11 house. And Wilkie and Pilcher said just it's all over
12 drugs, it's all over the money. And then this young man
13 right here allowed himself to be drawn into this scheme.
14 Your Honor, we just plead mercy for him. We know that the
15 Court has got to sentence him, Your Honor. Again we ask
16 the Court to take into consideration there are two charges
17 here. We ask the Court to consider the possibility of
18 sentencing him to the active time of armed robbery and
19 sentence -- sentence all or a portion of the time on the --
20 on the burglary, Your Honor. We're just asking for the
21 Court to consider the wide range in sentencing given prior
22 criminal history, or lack thereof, prior involvement and
23 the level involved he had in this, Your Honor, and for his
24 youthfulness. He tells me and he told his family members
25 that once he wanted to back out of the situation that the

Eddie J. Pilcher
Direct examination by Mr. Brough

- 1 comments were made to him we know where you live, we know
2 who you are, we know your family and we will make sure you
3 don't tell nobody about this. You go with us. You're
4 either with us or against us and -- and a lack of judgment
5 he went with them, Your Honor. We ask the Court to take
6 all of this into consideration."
- 7 Q Okay.
- 8 A And then the Court went to Mr. Goss.
- 9 Q Okay. Now, it's through page 22, line 17, of
10 Applicant's 1, correct?
- 11 A Yes, sir, Your Honor, I mean, yes, sir.
- 12 Q Okay. Now, if you look on Applicant's 1, sir, could
13 you tell me if you could what date that plea took place,
14 sir?
- 15 A June the 25th of 2011.
- 16 Q Okay. Do you remember what day you went through?
- 17 A June the 25th of 2011.
- 18 Q So you went to court the same day.
- 19 A Yeah. The 21st of 2011.
- 20 Q 21st?
- 21 A Yeah.
- 22 Q A couple of days before?
- 23 A The same day. I pled guilty first, and then he came
24 right behind me, or two or three people behind me.
- 25 Q Did you ever have a chance to review your discovery?

Eddie J. Pilcher
Direct examination by Mr. Brough

- 1 A Partially.
- 2 Q Okay.
- 3 MR. BROUGH: Have this marked as Applicant's 2 for
- 4 I.D.
- 5 (Rights marked Applicant's Exhibit No. 2 for
- 6 Identification.)
- 7 Q Mr. Pilcher, I'm going to hand you what's been marked
- 8 as Applicant's Exhibit No. 2 for identification purposes.
- 9 Can you identify what that is, sir?
- 10 A Yes, sir.
- 11 Q And what is it?
- 12 A This is a Greer Police Department advisement of rights
- 13 form.
- 14 Q Okay. And what's on the -- following that advisement
- 15 of rights on the subsequent two pages?
- 16 A A statement given by Jonathan Goss.
- 17 MR. BROUGH: At this time we'd like to move
- 18 Applicant's 2 into evidence.
- 19 MS. WHITE: No objection, Your Honor.
- 20 THE COURT: It's admitted.
- 21 (Rights marked Applicant's Exhibit No. 2.)
- 22 Q Had you previously seen what's been entered into
- 23 evidence as Applicant's 2 before your plea?
- 24 A No, I haven't.
- 25 Q Okay. And in Applicant's 2 would it be fair to say

Eddie J. Pilcher
Direct examination by Mr. Brough

1 there are statements in there made by Mr. Goss about your
2 involvement in these crimes?

3 A Yes, sir.

4 Q Okay. And in there does Mr. Goss' statement indicate
5 that you had a gun?

6 A Yes, sir, it does.

7 Q Is it not true that you always maintained that you
8 did, in fact, not have a gun?

9 A Yes, sir. I never had a gun. I don't own a gun.

10 Q And did you maintain that you were not armed at the
11 time of these offenses?

12 A Yes, sir.

13 Q And is that what you told Detective Arterburn?

14 A Yes, sir.

15 (Letter marked Applicant's Exhibit No. 3 for
16 Identification; letter marked Applicant's Exhibit No. 4 for
17 Identification.)

18 Q I'm going to hand you what's been marked for I.D. as
19 Applicant's Exhibit No. 3 if you can tell me what that is.
20 Do you recognize that?

21 A Yes, sir, I do.

22 Q What is that?

23 A It's a letter that I wrote to Roger Poole, received
24 December the 8th of 2010.

25 Q Prior to the time of your plea.

Eddie J. Pilcher
Direct examination by Mr. Brough

1 A Yes, sir.

2 MR. BROUGH: I'd like to move Applicant's 3 into
3 evidence.

4 MS. WHITE: No objection, Your Honor.

5 THE COURT: It's admitted.

6 (Letter marked Applicant's Exhibit No. 3.)

7 Q And what is the substance of Applicant's Exhibit 3,
8 sir?

9 A I explained to Poole that I wanted to give a statement
10 on my codefendant.

11 Q In other words, you wished to testify against your
12 codefendants?

13 A Yes, sir.

14 Q And just so that I'm clear, when you initially met
15 with Detective Arterburn did you give statements to him on
16 the codefendants in that interview?

17 A I can't remember if I actually said a name. I can't
18 remember.

19 Q Okay. But you were asked about others' involvement.

20 A Yes, sir, I was.

21 Q Okay. I'm going to show you Applicant's Exhibit 4
22 marked for identification, sir. Do you recognize that?

23 A Yes, sir, I do.

24 Q And what is that document?

25 A It is a letter that I wrote to Roger Poole.

Eddie J. Pilcher
Direct examination by Mr. Brough

1 Q And on what date?

2 A May the 7th of 2012, I mean, April the 7th of 2012.

3 Q Okay.

4 MR. BROUGH: And at this time I'd like to move that
5 into evidence as Applicant's 4.

6 MS. WHITE: With no objection, Your Honor.

7 THE COURT: Admitted.

8 (Letter marked Applicant's Exhibit No. 4.)

9 Q And what is the substance of Applicant's Exhibit 4,
10 sir?

11 A I explained to Mr. Poole that I never received my Rule
12 5 Brady motion.

13 Q Okay. So you were unaware of the contents of that
14 motion, correct?

15 A Yes, sir, I was. I never received it until after I
16 pled guilty.

17 Q And when you say motion, you're referring to the
18 state's response to the motion that was filed, correct?

19 A Yes, sir.

20 Q Okay. Now, do you have anything else that you'd like
21 the Court to consider in reference to the conflict of
22 interest?

23 A Yes, I do.

24 Q Okay. Will you please tell me what that is?

25 A I feel as though I was betrayed by my plea attorney's

Eddie J. Pilcher
Direct examination by Mr. Brough

1 representation due to the fact that he never even told me
2 that he was representing my codefendant. I never knew. So
3 I feel like he was taking what I was saying to him and
4 using it to hurt me instead of helping me.

5 I feel like that I really never had this man's
6 loyalty, because once my codefendant told this man that,
7 hey, this man threatened to harm my family -- my
8 codefendant don't have a record, and I have a record.

9 So I believe being, you know, a man of good
10 intelligence that he will be more inclined to believe a man
11 with no record before he believed me. And I have a long
12 record.

13 Q Okay. Is there anything else on that, just on that,
14 issue?

15 A Not that I can think of right now.

16 Q Okay. Now, all right. I would like to direct your
17 attention to the issue regarding you claim that there is a
18 Brady issue.

19 A Yes, sir.

20 Q Okay. Tell me what you feel like that issue is, sir.

21 A My attorney, J. Roger Poole, requested for certain
22 discoveries under Rule 5 in Brady vs. Maryland in which the
23 state withheld, and it was in their possession. They never
24 turned it over. And I believe it was exculpatory to my
25 sentence and punishment.

Eddie J. Pilcher
Direct examination by Mr. Brough

1 Q Okay.

2 A I believe that it could have showed that certain facts
3 could have been disputed.

4 Q Okay.

5 MR. BROUGH: Have these marked as a group as
6 Applicant's 5 consisting of four pages.

7 (Request for discovery and notice of appearance marked
8 Applicant's Exhibit No. 5 for Identification.)

9 Q Mr. Pilcher, I'm going to hand you what's been marked
10 for identification as Applicant's Exhibit No. 5. Do you
11 recognize this, sir?

12 A Yes, sir, I do.

13 Q Would you please tell me what they look like they are?

14 A A request for discovery and a notice of appearance.

15 Q Okay.

16 MR. BROUGH: At this time we'd like to move
17 Applicant's 5 into evidence.

18 MS. WHITE: No objection, Your Honor.

19 THE COURT: It's admitted.

20 (Request for discovery and notice of appearance marked
21 Applicant's Exhibit No. 5.)

22 MR. BROUGH: Have this marked as group consisting of
23 three pages as Applicant's 6.

24 (Affidavits marked Applicant's Exhibit No. 6 for
25 Identification.)

Eddie J. Pilcher
Direct examination by Mr. Brough

1 Q Mr. Pilcher, I'm going to hand you what's been marked
2 for I.D. as Applicant's Exhibit No. 6. Could you identify
3 that document for me, sir?

4 A Yes, sir. It's the affidavit of the discovery showing
5 everything that was turned over to my attorney, Roger
6 Poole.

7 MR. BROUGH: At this time we'd like to move
8 Applicant's 6 into evidence.

9 MS. WHITE: No objection, Your Honor.

10 THE COURT: It's admitted.

11 (Affidavits marked Applicant's Exhibit No. 6.)

12 Q Mr. Pilcher, is there any part of the three pages
13 consisting of Applicant's Exhibit No. 6 where it indicates
14 that an audio recording or a C.D. recording of your
15 statement that you made to Detective Arterburn of the Greer
16 Police Department was at any point given over to the
17 defense?

18 A No, sir. It wasn't.

19 Q Okay.

20 MR. BROUGH: Have this marked as Applicant's 7
21 consisting of two pages.

22 (Report marked Applicant's Exhibit No. 7 for
23 Identification.)

24 Q Mr. Pilcher, I'm going hand you what's been marked for
25 identification as Applicant's Exhibit No. 7. Please

Eddie J. Pilcher
Direct examination by Mr. Brough

1 identify that document for me, sir.

2 A This is a Greer Police Department supplemental report
3 prepared by Dale Arterburn.

4 Q Okay.

5 MR. BROUGH: Like to move that into evidence as
6 Applicant's 7.

7 MS. WHITE: No objection, Your Honor.

8 THE COURT: It's admitted.

9 (Report marked Applicant's Exhibit No. 7.)

10 Q Mr. Pilcher, in the beginning of that supplemental
11 incident report and in Applicant's Exhibit No. 7 is there a
12 statement indicating in there that your statement to law
13 enforcement was audio recorded?

14 A Yes, sir. It is.

15 Q And is it your testimony that your attorney never
16 obtained that document?

17 A Correct.

18 Q Okay. Nor was it disclosed to him to your knowledge.

19 A That's correct.

20 MR. BROUGH: Have this marked for I.D. as Applicant's
21 Exhibit No. 8.

22 (C.D. marked Applicant's Exhibit No. 8 for
23 Identification.)

24 Q I'll hand you this. It's been marked for I.D. as
25 Applicant's Exhibit 8. Do you know what that document is,

Eddie J. Pilcher
Direct examination by Mr. Brough

1 sir?

2 A It appears to be a C.D. labeled Pilcher's statement.

3 Q Okay. And does it appear to be the same C.D. that I
4 played for you at Perry Correctional with your statement on
5 it, sir?

6 A Yes. It do.

7 Q Okay.

8 MR. BROUGH: At this time I'd like to move Applicant's
9 8 into evidence.

10 MS. WHITE: No objection, Your Honor.

11 I do -- I'm wanting to clarify. I think -- I don't
12 know that he actually gave a statement. I don't know if it
13 was more -- I think it was considered an interview or it
14 was written an interview, so for clarification purposes
15 instead of statement. I just want to make sure it's
16 referenced as an interview.

17 MR. BROUGH: I have no problem with referencing it as
18 an interview. That's fine.

19 THE COURT: Okay.

20 (C.D. marked Applicant's Exhibit No. 8.)

21 Q Do you remember that conversation, sir?

22 A Vaguely.

23 Q Okay. Would you agree with me that the audio
24 recording is of somewhat poor quality, sir?

25 A Yes, sir, very.

Eddie J. Pilcher
Direct examination by Mr. Brough

- 1 Q And that is approximately an hour and a half long?
- 2 A Yes, sir. Hidden.
- 3 Q I'm sorry?
- 4 A Which was hidden I guess under the table in his pocket
- 5 or something or other.
- 6 Q Okay. In that statement -- and I'll leave it to the
- 7 Court's discretion. I think we're admitting it as
- 8 Applicant's 8, is that correct?
- 9 A Yes, sir, it is.
- 10 Q Okay. If not, then different.
- 11 We can play portions of it as we get to it. But do
- 12 you recall specifically talking to Detective Arterburn in
- 13 that interview and denying that you were wearing shorts?
- 14 A Yes, sir.
- 15 Q And why is that relevant?
- 16 A Because the people indicated that I was wearing shorts
- 17 that was on the D.V.D. showing, I guess, a light-skinned
- 18 male or mulatto wearing shorts, white shorts.
- 19 Q And what did those individuals do on that? When you
- 20 say D.V.D. are you talking a home surveillance video?
- 21 A Yes, sir, I am.
- 22 Q Okay. And what did they do, the individuals that
- 23 they're referring to?
- 24 A I guess they kicked down somebody's door, it appears.
- 25 Q And you expressly deny being that individual on that,

Eddie J. Pilcher
Direct examination by Mr. Brough

1 in that interview, correct?

2 A Yes, sir. I did.

3 Q Now, you also denied having a gun in that interview.

4 A Yes, sir. I did.

5 Q Repeatedly, correct?

6 A Yes, sir, multiple times.

7 Q Okay. Now, is there anything else regarding the
8 failure to disclose any sort of Rule 5 Brady material that
9 we have not covered?

10 A Not right now at this time. I might think of
11 something later on, but right now, no. I mean, I have
12 other documents that they did not submit to me, but I don't
13 know if they could be exculpatory or impeachable documents
14 right now.

15 Q Well, why don't you tell me what those are?

16 A Yvonne Mitchell's phone records, and which I have a
17 subpoena from Dale Arterburn, and the subpoena specifically
18 requests the phone records of Ms. Dana Lewis. And the
19 subpoena states that somebody made calls from this phone,
20 in which my exgirlfriend stated that she broke this phone.
21 Well, I broke the phone up, and she threw it away late at
22 night. But if you look at the phone records it will show
23 that I guess somebody did make a call for 23 minutes or
24 seconds or whatever.

25 Q Okay.

Eddie J. Pilcher
Direct examination by Mr. Brough

1 A And I feel if I went to trial it would've showed that
2 somebody's lying, because the phone was broke up that
3 night. There's no way possible somebody could have been
4 talking on this phone the following day. And I had two
5 phones myself, so I wouldn't have needed the phone talking.

6 Q Okay. Now, I'm going to do my best to try to publish
7 a portion of Applicant's 8. And I think you would agree
8 with me that the audio recording is not of that great of
9 quality. But I'm going to do my best to publish the
10 portion that you're talking about where you indicated that
11 it was not you on the shorts. Okay?

12 A Yes, sir.

13 (Whereupon, the C.D. was played.)

14 Q And would you agree that the interview continues in
15 that sort of fashion for a while, sir?

16 A Yes, I do.

17 Q And would you agree with me that the portion of
18 Applicant's Exhibit No. 8, you indicated that one of the
19 individuals that committed a crime that they were trying to
20 identify as you, you specifically stated it was not you?

21 A It was not me. And the man kept on as you could hear
22 telling me that's you, I know that's you, trying to pin the
23 charge on me.

24 And then the individual if you've got -- I don't know
25 if you've got the photos from the place. I got them if you

Eddie J. Pilcher
Direct examination by Mr. Brough

- 1 ain't got them. The individual, the tall individual,
2 that's walking away, how could he be armed when I seen the
3 picture that y'all sent me? The man's swinging his arms
4 walking. He ain't got no gun. Do you want me to show you
5 the picture?
- 6 Q Sure.
- 7 A I don't know who this man is. It wasn't me though.
8 (Pause.)
- 9 A I might not have it.
- 10 Q But it's your contention that it was not you, that it
11 was the individual that being asked that, correct?
- 12 A I got one of the pictures right here.
- 13 Q Okay.
- 14 A If you could find an AK47 in his hands, then you
15 better than me. I still don't know who that is.
- 16 MR. BROUGH: Applicant's 9 for I. D.
17 (Photograph marked State's Exhibit No. 9 for
18 Identification.)
- 19 A That's the picture of the surveillance.
- 20 Q Okay. And this is a picture you're referring to as
21 being asked that on Applicant's 8, the portion we just
22 played?
- 23 A Yes, sir, one of them.
- 24 Q Okay.
- 25 A I can't find the other one.

Eddie J. Pilcher
Direct examination by Mr. Brough

1 MR. BROUGH: I'd like to move to move that in into
2 evidence as Applicant's 9.

3 MS. WHITE: No objection, Your Honor.

4 THE COURT: It's admitted.

5 (Photograph marked State's Exhibit No. 9.)

6 Q Now, in light of all of this you've also alleged a
7 couple of other things.

8 You've alleged that your trial counsel was
9 ineffective. What specifically do you think that they
10 failed to do other than the things that we've already
11 discussed?

12 A I feel as though he was -- Mr. Cheeks was ineffective
13 for allowing me to enter into a guilty plea on some charges
14 in which he never had my indictments. He never had the
15 indictments that he had me plead guilty to.

16 So he don't know whether my indictments was valid,
17 invalid, insufficient. He don't know none of that. He
18 just had me enter a plea, I guess. Threw me under the
19 bus, I guess.

20 And I have a letter from Mr. Poole if you want to put
21 it into exhibits saying that he don't have my indictments.

22 Q Okay.

23 MR. BROUGH: Have this marked as Applicant's 10 for
24 I.D.

25 (Letter marked Applicant's Exhibit No. 10 for

Eddie J. Pilcher
Direct examination by Mr. Brough

1 Identification.)

2 Q And is this, what's been marked as Applicant's 10, the
3 letter you were referring to, sir?

4 A Yes, sir.

5 MR. BROUGH: I'd like to have that entered into
6 evidence as Applicant's Exhibit 10.

7 A Would you like for me to read it too?

8 MS. WHITE: No objection, Your Honor.

9 THE COURT: It's admitted.

10 (Letter marked Applicant's Exhibit No. 10.)

11 Q Yes. You may read it, sir.

12 A This is a letter from Attorney J. Roger Poole dated
13 August the 14th of 2013. And it states as following:

14 "Dear Mr. Pilcher: I am responding to your letter
15 dated July the 29th of 2013. I do not have a copy of your
16 alleged recorded statement. Mr. Allen told you that there
17 are five C.D.s and one C.D. -- one D.V.D. in your file."

18 Excuse me. "See his letter of May the 15th of 2013. I do
19 not recall if a recorded statement was in those formats.

20 Also, I do not have the indictments in your cases."

21 Q And did you feel that there might have been something
22 wrong with the indictments, sir?

23 A Yes. I do.

24 Q Okay. Is that why you allege the lack of subject
25 matter jurisdiction?

Eddie J. Pilcher
Direct examination by Mr. Brough

- 1 A Yes, sir.
- 2 Q Okay.
- 3 A And I feel as though the best way to bring their claim
4 would be through ineffective assistance of counsel because
5 I believe it falls upon my lawyer. If he would have had it
6 he could have went about it a whole different way instead
7 of, you know.
- 8 Q And did you wish to present anything on the
9 subject-matter-jurisdiction claim?
- 10 A I had planned to, but I think it might be a little
11 weak, and I don't want to waste the judge's time. I'll
12 just disregard it.
- 13 Q Okay. So you would like to withdraw that issue.
- 14 A Yes, sir. I don't want to waste no time on nothing
15 that might be fruitless.
- 16 Q Okay. Is there anything that I have not covered that
17 you feel should be covered in your application?
- 18 A Nothing I could think of at this time. I might come
19 up with something or think of something, you know.
- 20 Q Okay. Have I given you all of the documents you've
21 asked for, sir?
- 22 A Most definitely.
- 23 Q Okay. And have I met with you multiple times at Perry
24 Correctional?
- 25 A Yes, sir.

Eddie J. Pilcher
Cross-examination by Ms. White

1 Q Okay. All right. Thank you. No further questions,
2 sir. Please answer any of the state's questions.

3 MS. WHITE: Thank you.

4 CROSS-EXAMINATION

5 BY MS. WHITE

6 Q I want to start off, Mr. Pilcher, with the actual
7 guilty plea on the day you pled guilty, June 21st of 2011.
8 Do you recall that day?

9 A Yes, ma'am.

10 Q And you testified that you pled first before Mr. Goss,
11 but y'all both pled the same day.

12 A Yes, ma'am.

13 Q Okay. Do you remember the Court swearing you in to
14 tell the truth?

15 A I do.

16 Q Okay. And do you remember them asking you some
17 questions?

18 A I do.

19 Q All right. You agree that you said you wanted to
20 plead guilty to the charges on that day.

21 A I agreed that I wanted to plead guilty based on what
22 my attorney was telling me. And I see now that after I
23 received my full transcript he was giving me erroneous
24 advice. So I can only plead guilty or say I do only to
25 what this man was telling me at the time.

Eddie J. Pilcher
Cross-examination by Ms. White

1 Q Now, when the Court asked you where you had been
2 working and the last place you worked, pages 15 and 16, you
3 said Columbia Farms and Brown Packing.

4 "And how long was that, how long ago was that?"

5 You stated, "A couple of days before I committed the
6 crime, Your Honor."

7 Is that correct?

8 A I didn't say what crime.

9 Q Okay. So you were admitting to committing a crime,
10 but you're saying that it didn't necessarily reference the
11 two that you were pleading guilty to.

12 A It didn't say what crime. It said before I committed
13 the crime. It didn't say before I committed this crime.

14 Q Okay. When the Court went through the facts of the
15 case and they said is that information true, you said, "No,
16 sir, Your Honor. The victim stated three of us had
17 weapons. However, I didn't have a weapon."

18 But you agreed that the rest of that was all true, is
19 that right?

20 A Yes.

21 Q You also agreed that someone in your group had a
22 weapon. And you said that your lawyer had explained to you
23 what the concept of hand of one, hand of all was.

24 A I would also like to say that before my guilty plea --

25 Q Let me just -- will you answer my question first? Did

Eddie J. Pilcher
Cross-examination by Ms. White

1 you agree that your lawyer had explained to you hand of
2 one, hand of all?

3 A Yes. I believe so.

4 Q Okay. All right. Now, in regards to the statements
5 you're saying obviously you felt your attorney had a
6 conflict predominantly because you claimed you never had a
7 gun. And that was different than what Mr. Goss had stated.

8 A In the simple fact that my codefendant told Attorney
9 Cheeks that I threatened to harm his family. I mean, if I
10 threatened to harm your client's family, why you going to
11 represent me and him? That don't make sense. Where the
12 loyalty going -- where the loyalty at?

13 Q You did acknowledge that the victim stated to the
14 police, and in their statements, that all three of the men
15 that entered the home had guns.

16 A I've read that.

17 Q Okay. And the document -- I'm going to make sure I
18 give you the right --

19 A Can I say something?

20 Q No, sir. I'm going to go through and figure out what
21 other questions here we have.

22 The typed statement incident report that you
23 referenced was of your interview -- Applicant's No. 7.
24 It's true that you went through here and multiple times, at
25 least twice, stated that you didn't have a gun, is that

Eddie J. Pilcher
Cross-examination by Ms. White

1 right?

2 A Correct.

3 Q Okay. So that was in this statement. It was also in
4 the statement that you admitted to your involvement in the
5 case and identified Curtis Wilkie and Jonathan Goss as the
6 people that were with you, is that right?

7 A I never stated their name, I don't believe.

8 Q Okay. So when it says stated that Tony identified by
9 pictures of Curtis Antonio Wilkie and John-John, identified
10 as Jonathan Antonio Goss had committed the robbery with
11 him --

12 A What you are reading is something that Dale Arterburn
13 typed in his own handwriting and he wanted to put --
14 there's not a transcribe of that tape. That is what --

15 Q And so I'm asking you. Did you identify them?

16 A No, ma'am, I didn't.

17 Q Okay. And so you disagree with what's in this
18 incident report.

19 A Yes, ma'am, I do.

20 Q Okay. Do you disagree with the fact that it says that
21 you had driven around the car that they had an AK47 and
22 other one had a pistol?

23 A I can't remember that.

24 Q Okay. Do you disagree that you stated that you saw --
25 y'all saw the people on Old Woodruff having a cookout and

Eddie J. Pilcher
Cross-examination by Ms. White

- 1 they thought you'd have money and that items were borrowed
2 from Tony's baby-mama house to hide your faces and that you
3 walked in and robbed them?
- 4 A No. I don't recall that.
- 5 Q Okay. You also don't recall that when you went up you
6 approached the people in the cookout, other guys did? When
7 you approached the people the white girl tried to use her
8 phone. You covered up her face with a hand, tried to bite
9 you, and you said somebody shoot that bitch?
- 10 A Say that one more time. Say that again.
- 11 Q Do you recall telling the investigator that when you
12 went up to the robbery the white girl tried to use her
13 phone, you put her [sic] hand over her face? When she
14 tried to bite you, you said somebody shoot that bitch.
- 15 A Is this the same incident where three people had a gun
16 and I told somebody to shoot her?
- 17 Q I'm asking --
- 18 A why I didn't shoot her if I had a gun?
- 19 Q Did you say that?
- 20 A No, I didn't.
- 21 Q Okay. Did you also not say that you had forced
22 everyone in the house, demanded money, took their phones,
23 ran out after the robbery, called your exgirlfriend Yvonne
24 Mitchell to come and get you?
- 25 A No, I didn't. The tape right there.

Eddie J. Pilcher
Cross-examination by Ms. White

1 Q Okay. So how did the investigator know who Yvonne
2 Mitchell was?

3 A Because, for one, this is -- this is what I believe,
4 and I have a strong reason why I believe this.

5 This young lady, Yvonne Mitchell, had to be pulled
6 over the next day. And I say this because -- this is why I
7 say this. I say this because I got a printout of my
8 N.C.I.C. report and my driver's record. And they printed
9 out my driver's record, ran my name through N.C.I.C. the
10 next day. How you going to know who I am the next day
11 unless you pulled this lady over and fingerprinted her car?

12 Q And speaking of your N.C.I.C., I ran that as well.

13 A I know.

14 Q Now, before you pled to this charge you stated several
15 times you had a long record.

16 A Yes, ma'am. I do.

17 Q You had previously been incarcerated for threatening
18 the life of a public official three times?

19 A In the county jail.

20 MR. BROUGH: Object. That's not relevant to this
21 proceeding.

22 THE COURT: Overruled.

23 Q Assault and battery of a high and aggravated nature,
24 assault and battery, grand larceny, breaking into a motor
25 vehicle, petty larceny, grand larceny and two counts of

Eddie J. Pilcher
Cross-examination by Ms. White

1 burglary second degree?

2 A Yes, ma'am.

3 Q Also burglary first degree. Oh, excuse me. That's
4 this charge. A malicious injury to real property, also in
5 Greenville, is that right?

6 A Yes, ma'am.

7 Q And it's true that you pled a year later to similar
8 charges that happened the same time in Greenville County,
9 is that right?

10 A It is.

11 Q And received concurrent 25 years.

12 A No, ma'am. Fifteen.

13 Q Fifteen on those.

14 Okay. And when the Court asked you if you're pleading
15 to these offenses because you were guilty, and you said,
16 "Yes, sir," was that a lie?

17 A Partially.

18 Q So you were sworn to tell the truth before the Court,
19 but you lied.

20 A I pled -- I did what James Cheeks told me to do.
21 James Cheeks told me when you go in here all you got to
22 do -- I want you to do is say yes. If you say anything
23 other than yes, you're going to piss the judge off.

24 Q Well, now, you said when the judge asked you if that
25 information was true, you said, "No, sir, Your Honor." And

Eddie J. Pilcher
Cross-examination by Ms. White

1 then you explained what you thought. So that -- was that
2 going against what Mr. Cheek said?

3 A I kept looking at Cheeks getting ice cycles. And if
4 he didn't give me the right signal, I just said yeah. I
5 mean --

6 Q So he had an eye signal for no and an eye signal for
7 yes?

8 A He looked at me, kept looking at me. I looked at him
9 like you done told me to say yeah. So, I mean, I tried to
10 use my better judgment, you know.

11 Q Now, when you apologized to the victim and you said,
12 "I'm sorry for violating them in their home," was that a
13 lie?

14 A I didn't say I went in their home.

15 Q "I would like to apologize to them for my stupidity
16 and violating them in their home."

17 A Okay.

18 Q Did you say that?

19 A If it's in writing I had to say it in the transcript
20 guilty plea.

21 Q Okay. You said, "I mean, I was the one who had the
22 car."

23 A Okay.

24 Q So you agreed you participated in this.

25 A I had a car.

Eddie J. Pilcher
Cross-examination by Ms. White

1 Q My question is did you agree in the transcript that
2 you participated in these two crimes.

3 A In the transcript, yes, I did.

4 Q And that was at the date of your guilty plea under
5 oath.

6 A Yes, ma'am.

7 Q And so today you're giving us a different story. But
8 you're under oath today. Why should we believe you today?

9 A I have a -- I mean, I have plenty of evidence that you
10 could read for yourself that totally goes against what
11 Cheeks said.

12 If you look at the same transcript you will see where
13 the judge asked Cheeks did he advise me of all of the
14 rights or the -- any -- any -- I forgot the words he used.
15 But he asked Cheeks did he tell me, you know, like -- did
16 he tell me like what other options I had and what laws I
17 violated or not. And Cheek said yeah. He never had my
18 transcript. So he lied under oath.

19 Do you want me to read out of the transcript?

20 Q My question was did you lie under oath.

21 A I feel like I did what my attorney told me to do at
22 the time.

23 Q Did you lie under oath? Yes or no?

24 A Did I? Regarding what?

25 Q At your plea once you were sworn to tell the truth did

Eddie J. Pilcher
Cross-examination by Ms. White

1 you lie under oath to the Court?

2 A I went off my attorney's erroneous advice. I don't
3 call it a lie.

4 Q The answer is yes.

5 A I didn't say that. You said that.

6 Q I'm trying to get you to answer, but you won't answer.
7 Yes or no?

8 A I did what my attorney told me to do to a certain
9 extent. I mean, if he give me erroneous advice, what more
10 do you want me to do?

11 Q I'm sorry.

12 MS. WHITE: Your Honor, if we could mark this for
13 identification as State's 1.

14 (Report marked State's Exhibit No. 1 for
15 Identification.)

16 Q If you could, just look at this. Have you seen this
17 before?

18 A Yes, ma'am. I think -- yeah. I think my attorney --
19 yeah, I think I done seen it before.

20 Q And this says what at the top?

21 A Greer Police Department supplemental report.

22 Q Okay. This is not the one though that we had entered
23 in as Applicant's No. 7.

24 A No, ma'am, no, ma'am, no, ma'am.

25 Q This was on the other charge, is that right?

Eddie J. Pilcher
Cross-examination by Ms. White

1 A Yes, ma'am.

2 Q Okay.

3 MS. WHITE: Your Honor, if we could enter this into
4 evidence as State's 1.

5 MR. BROUGH: No objection.

6 THE COURT: It's admitted.

7 (Report marked State's Exhibit No. 1.)

8 Q I was just going to ask you about this as well.

9 This is in reference to the attempted robbery or
10 burglary of the drug stash house.

11 "Subject stated he went to the door, kicked in the
12 door, but the alarm went off and they ran and left.
13 Subject Pilcher was shown a video of the surveillance at
14 the residence in question and stated that was him on the
15 porch doing the kicking of the door."

16 Do you disagree?

17 A I disagree. You just heard the statement when they
18 said somebody was on the porch in white. And he asked me
19 is that you kicking. I said I don't know who that is. You
20 just heard the tape just a few minutes ago --

21 Q Okay.

22 A -- on that recording right there.

23 Q So you -- you say that you did not say that that was
24 you --

25 A No. I didn't.

Derrick B. Bulsa
Direct examination by Mr. Brough

1 Q -- at any time.

2 A Right there on that recording. We just heard it.

3 MS. WHITE: Your Honor, that's all the questions I
4 have at this time for this witness.

5 MR. BROUGH: No redirect.

6 THE COURT: You may step down.

7 MR. BROUGH: The applicant would call Derrick Bulsa to
8 the stand.

9 DERRICK B. BULSA, having been
10 first duly sworn, testified as follows:

11 DIRECT EXAMINATION BY MR. BROUGH

12 Q Mr. Bulsa, what is your position with the solicitor's
13 office?

14 A I'm the deputy solicitor.

15 Q And were you the person who is responsible for
16 prosecuting Mr. Pilcher and his codefendants?

17 A I was.

18 Q First I ask you if I can about what's already been
19 introduced into evidence as Applicant's Exhibit No. 8, sir,
20 the audio statement of the interview with Mr. Pilcher and
21 Detective Arterburn.

22 A Okay.

23 Q At the time of Mr. Pilcher's and his codefendant's
24 trial was that in your specific possession?

25 A It was not.

Derrick B. Bulsa
Direct examination by Mr. Brough

- 1 Q You've never received that prior to when they pled.
2 A Prior to their guilty plea, no.
3 Q Ultimately, did you become aware of its existence?
4 A Well, it was referenced in Detective Arterburn's
5 reports.
6 Q Yes, sir.
7 A And his interview was recorded. So I don't -- I don't
8 know if I recall reading that before the plea. I imagine I
9 would have read it. I did not attempt to get it however
10 because there was a summary of that interview in Detective
11 Arterburn's report.
12 Q Okay. Were you at some point contacted by Mr. Lazenby
13 who was originally representing Mr. Pilcher on his
14 application?
15 A I was.
16 Q And was that taped interview inquired about?
17 A It was.
18 Q And what did you do after receiving that inquiry?
19 A I ordered the file from archives and refreshed my
20 memory and saw that Detective Arterburn had referenced it
21 being recorded. And then I called him and asked him to get
22 me a copy of it.
23 Q Okay. And ultimately you turned that over to
24 Mr. Lazenby's office, I guess.
25 A Correct. I did.

Derrick B. Bulsa
Direct examination by Mr. Brough

1 MR. BROUGH: I will have this marked as Applicant's
2 11, I believe.

3 (E-mail marked Applicant's Exhibit No. 11 for
4 Identification.)

5 Q Sir, I'm going to show you what's been marked for
6 identification as Applicant's Exhibit No. 11. Do you
7 recognize that document, sir?

8 A I do.

9 Q And what is that?

10 A An e-mail that I sent to Roger Poole and Robert Hall
11 and copied Clay Allen regarding the three codefendants.
12 And I was extending a plea offer, which would have been
13 prior to their second appearance.

14 Q Okay.

15 MR. BROUGH: At this time I'd like to move Applicant's
16 11 into evidence.

17 MS. WHITE: No objection, Your Honor.

18 THE COURT: It's admitted.

19 (E-mail marked Applicant's Exhibit No. 11.)

20 Q Is it your policy to carbon copy Mr. Allen on e-mails?

21 A No.

22 Q Okay. And what is his position? What is it he does?

23 A He's the chief public defender.

24 Q Why did you copy Mr. Allen on that e-mail?

25 A Because when I was reviewing these files I noticed

Derrick B. Bulsa
Cross-examination by Ms. White

1 that his office had Roger Poole representing two of the
2 defendants.

3 Q Okay. And you deemed that to be a conflict?

4 A Not necessarily. I deemed that as odd, and I wanted
5 to let him know because he might want to pass one of those
6 defendants to another one of his attorneys, which he
7 subsequently did. My records show that Dick Wheelchel was
8 substituted as counsel for Mr. Goss.

9 Q Okay.

10 MR. BROUGH: No further questions.

11 CROSS-EXAMINATION

12 BY MS. WHITE

13 Q Mr. Bulsa, from your conversation with the detective
14 and once you received the summary of the interview did you
15 feel like you had the complete information that was a
16 proper and complete summary of the interview of
17 Mr. Pilcher?

18 A I had no reason to doubt there was more.

19 Q Okay. And after you received the tape and listened to
20 it was it -- did you consider it audible?

21 A No.

22 Q And at the time that you e-mailed Clay Allen, Mr.
23 Poole and Mr. Hall the cases were still set at that time to
24 proceed to trial, is that right?

25 A No. We were in the negotiations stage. We had second

Derrick B. Bulsa
Cross-examination by Ms. White

1 appearances four months after the incident dates. I
2 believe these occurred in September.

3 Q Yes.

4 A I made an offer January 31st of 2011. I believe
5 the -- I don't remember when the second appearance would
6 have been. It might have been actually after the second
7 appearance.

8 Q Okay.

9 A Hold on. It would have been right around the time of
10 second appearances.

11 Q And so at this point they were still represented by
12 other folks, not Mr. Cheek.

13 A Correct, yeah. Mr. Cheek works at the jail, and he
14 speaks with jail defendants when the other attorneys -- I
15 don't know if they request or he's requested to speak to
16 them somehow. I don't know how that works in their office.
17 But James would have spoken to him because he was in jail.

18 Q Okay.

19 MS. WHITE: I think that's all the questions I have of
20 Mr. Bulsa.

21 A Actually, can I clarify? I did put it in my -- the
22 last line of this. Says, "Thank you for giving me an
23 answer at the second appearance this month so I can know
24 how to proceed with these cases." So I think this would
25 have been before second appearances.

Dale Arterburn
Direct examination by Mr. Brough

1 Q Thank you, Mr. Bulsa.

2 MR. BROUGH: No redirect. The witness can be accused.

3 THE WITNESS: Does Your Honor want to see it?

4 MR. BROUGH: The applicant would call Detective
5 Arterburn to the stand.

6 DALE ARTERBURN, having been
7 first duly sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. BROUGH

9 Q Detective Arterburn, were you the investigating
10 officer that investigated Mr. Pilcher's case?

11 A Yes, I was.

12 Q And during the course of that investigation did you
13 interview Mr. Pilcher?

14 A Yes, sir, I did.

15 Q And there's an audio recording of that interview
16 that's been entered in as Applicant's 8?

17 A That's correct.

18 Q Did you disclose Applicant's 8 to Mr. Bulsa prior to
19 when he asked you for a copy of what evidence you had?

20 A I'm sorry?

21 Q Did you disclose Applicant's 8 at the time Mr. Bulsa
22 and the solicitor's office had asked for a copy of the
23 evidence so they could prosecute the case?

24 A Correct. When he requested the C.D. I did burn a copy
25 of that C.D., and it was turned over.

Dale Arterburn
Direct examination by Mr. Brough

1 Q Was that -- was that before or after this was filed,
2 this application? Had Mr. -- Mr. Pilcher already been
3 sentenced at that point?

4 A Before he actually received the C.D.?

5 Q Yes.

6 A The C.D. was turned over when I had received the call
7 from Mr. Bulsa. I don't remember. I wasn't at the plea.
8 I did not know. I think he already had a copy of that
9 prior to or somewhere around that time. I do not know.

10 Q Okay.

11 A I can't reflect back that far as to when I actually
12 gave him a copy of it.

13 Q But you would agree with me that it was when Mr. Bulsa
14 testified that he called you that he turned it over.

15 A Yes. As soon as I spoke with him there was a -- there
16 was a copy that had been burned from my desktop from the
17 audio recorder to a C.D. copy for Mr. Bulsa, that's
18 correct.

19 Q Okay. But prior to that you had not disclosed that
20 information to the solicitor's office, prior to receiving
21 the phone call from Mr. --

22 A Normally, no. On -- on my report, yes. But not
23 formally. There was a -- that there was a recording, no.

24 Q So you just referenced it in your report, but you did
25 not send it to the solicitor's office with your reports

Dale Arterburn

Direct examination by Mr. Brough

1 initially.

2 A That's correct. And I did listen to the audio. It
3 was very distorted as we heard some parts today. And there
4 are clear parts as well. But it was very mumbled, shall we
5 say.

6 Q There was a lot of microphone interference or
7 something, correct? would that be fair to say?

8 A Well, it'd be fair to say if you listened to the
9 entire C.D. you hear phone ringing. You hear people
10 talking. It was very close to where we were sitting on the
11 desktop in visible view. So you could hear things all
12 around. It wasn't like it was in another room or something
13 like that. We were at my desk.

14 Q And you would agree with me that Mr. Pilcher always
15 maintained that he was not armed, correct, and that he
16 didn't carry a gun?

17 A Throughout the interviews?

18 Q Yes.

19 A Throughout the interview, yes.

20 Q Okay.

21 A He did not -- he did not ever state that he had a gun.

22 Q And when you were going through pictures from
23 surveillance with him he did, in fact, deny that he was
24 that individual wearing shorts you asked him about,
25 correct?

Dale Arterburn
Cross-examination by Ms. White

- 1 A Denied that he was wearing shorts?
- 2 Q Yes, sir.
- 3 A I think he denied he was wearing shorts, but he did
- 4 admit that he kicked the door, is what I heard first. I
- 5 don't know if I could hear that on your audio, but that is
- 6 what it stated just before you started playing -- "I kicked
- 7 the door."
- 8 Q But he did deny he was the individual that you
- 9 referenced --
- 10 A Reference shorts, yes.
- 11 Q Yes. Okay. All right.
- 12 MR. BROUGH: No further questions.
- 13 CROSS-EXAMINATION
- 14 BY MS. WHITE
- 15 Q Detective, you -- you had a chance to review the two
- 16 supplemental reports that have been placed into evidence?
- 17 A Is that going to be seven?
- 18 Q Seven, and then State's Exhibit 1.
- 19 A Yes, we did.
- 20 Q And were you -- were you the one that prepared those
- 21 reports?
- 22 A I am.
- 23 Q And can you give me a timeframe in reference to the
- 24 interview with Mr. Pilcher as to when the reports were
- 25 prepared -- within hours, within days, weeks? Do you have

Dale Arterburn
Cross-examination by Ms. White

1 any idea?

2 A I'm not sure if Miranda was -- was that introduced as
3 an exhibit?

4 Q I don't believe so at this point. I believe Mr. Goss'
5 was introduced.

6 MS. WHITE: You didn't put in -- no.

7 A That was moved in on the -- okay. I'm sorry. Go
8 ahead.

9 Q I was going to have this marked for State's 2 for
10 Identification.

11 (Advisement of rights marked State's Exhibit No. 2 for
12 Identification.)

13 Q If you can, look at that and tell me if you recognize
14 that document.

15 A I do.

16 Q And what is that document?

17 A That's an advisement of rights form, Miranda rights,
18 Greer Police Department, form that we use, standard form.

19 Q And who was that -- who signed that form?

20 A That form -- that form was signed on October the
21 4th of 2010 by Eddie Pilcher.

22 Q So that was signed on October the 4th of 2010, and
23 these supplemental reports of incidents were prepared the
24 next day, the very next day.

25 A They show October 5th, yes, ma'am.

Dale Arterburn
Cross-examination by Ms. White

- 1 Q So at that point in both of the statements it appears
2 to indicate in the longer statement, Applicant's No. 7,
3 that in agreement with Mr. Pilcher he stated several times
4 he didn't have a gun.
- 5 A On Exhibit 7?
- 6 Q On, yes, Applicant's No. 7.
- 7 A That's correct. He stated that he did not have a gun,
8 correct.
- 9 Q So there's no disagreement that he --
- 10 A No.
- 11 Q -- said during his interview that he didn't have a
12 gun.
- 13 A No, ma'am.
- 14 Q But he also did state that the two codefendants had
15 gun, is that right?
- 16 A He did -- he did. He described them.
- 17 Q And how did you have the names of the codefendants in
18 your report?
- 19 A Those names were -- were brought about by the
20 interview with Mr. Pilcher. We had pieces and parts that
21 we were trying to put together with the puzzle, and I
22 wasn't quite right on Mr. Goss' first name. And I believe
23 that through the interview as I listened to it yesterday I
24 kept reflecting on the name change. And he -- he said
25 that's not right, it's not right, it's not right. And we

Dale Arterburn
Cross-examination by Ms. White

1 finally got around to John-John being the gentleman's name
2 and where he lived to an exact tee, and where they went and
3 got the guns and how that all played out. He -- he
4 provided me with a lot of information in that interview.

5 Q So the information that's included in these incident
6 reports was provided directly as a result of your interview
7 with Mr. Pilcher.

8 A Absolutely.

9 Q Okay. So the statement where it says that they robbed
10 them, somebody, he told somebody to shoot that bitch.

11 A That's correct. That is also heard on the audio.

12 Q Okay. And on the State's Exhibit 1 when it states
13 that he reviewed -- I believe it's near the bottom where he
14 reviewed either surveillance video and identified himself
15 as the one kicking the door?

16 A Yes. That's correct.

17 Q Okay.

18 A He -- if I can rephrase that, he did state as in the
19 fact that he did not -- he did not remember wearing shorts.

20 Now, the incidents that we're talking about today did
21 not occur on the same day. There was a Greenville County
22 charge that he had wore shorts that previous night that
23 he's also been -- that we -- I believe he talked that he
24 pled to after the fact but that is -- these were on two
25 separate -- it was after midnight. So it was on two

Dale Arterburn
Cross-examination by Ms. White

1 separate dates per se, not on the same day.

2 Q Okay. And therefore the timeframe was not immediately
3 following one incident after another.

4 A That is -- that is correct. I -- I don't know the --
5 I'd have to go back and look at the file -- the time of the
6 9-1-1 calls.

7 But I do know that the case reflecting three victims
8 that were robbed at the barbecue happened on a day by
9 itself as opposed to the attempted burglary that happened
10 the same evening as the Greenville County
11 burglary-kidnapping.

12 I can't remember the charges on that, but I do know
13 there was a separate incident. That was -- those were
14 together, and this was by itself on one day.

15 Q And one of the only things I can hear on the audio
16 mentioned a hotel. That's not any of these incidents.

17 A It is not, ma'am.

18 Q Okay. And that was referencing the Greenville one.

19 A That is correct.

20 Q Okay.

21 MS. WHITE: Just one moment, please, Your Honor.

22 (Pause.)

23 MS. WHITE: Your Honor, I think that's all the
24 questions I have for Detective Arterburn.

25 MR. BROUGH: Just briefly.

Dale Arterburn
Redirect examination by Mr. Brough

1 REDIRECT EXAMINATION

2 BY MR. BROUGH

3 Q Detective Arterburn, did Mr. Pilcher during the course
4 of that interview indicate to you that he was driving the
5 car but that he didn't go into one of the residences?

6 A You'll need to be more specific. We're talking about
7 three here, if you don't mind. I do know he drove in the
8 Greenville County one.

9 Q Let me ask you this.

10 When the interview started before you read him Miranda
11 rights would you agree with me that you read him his
12 Miranda rights about eight minutes and 30-some-odd seconds
13 into that tape?

14 A Yes. His Miranda rights are read during that
15 interview.

16 Q Before you read him his Miranda rights was one of the
17 first things he told you was that he was an accessory?

18 A I remember the word accessory being used, but I don't
19 remember if it was used in the context that he knows it to
20 be defined as.

21 Q But he did indicate that he was an accessory. That
22 was one of the initial things that he told you.

23 A I believe at the tail end of that video he says, "I am
24 a man going down, an accessory, I'm probably going to get
25 30 years or something like that." I do know that. I don't

Dale Arterburn
Redirect examination by Mr. Brough

1 know that's at the beginning of the audio if that's what
2 you're asking me.

3 Q You reviewed the audio?

4 A Oh, yeah. I listened to the audio yesterday with
5 speakers, ear phones. And it probably is an hour and 45
6 minutes. I listened to it for seven hours yesterday
7 slowly.

8 Q Yes, sir.

9 A Very quiet room. I was able to understand the entire
10 interview with a few exceptions. I'm not sure a
11 transcriber could -- could put those into place. But I did
12 understand 98 percent of that interview.

13 Q You would agree with me it's easier to hear with ear
14 phones though, correct?

15 A I would agree it would be extremely easier with proper
16 ear phones as I did yesterday.

17 Q I understand. I'm going to play --

18 A As it's coming to those speakers it gets so distorted
19 it's unbelievable.

20 Q Well, I'm going to ask you to try as best having
21 previously reviewed it. I'm going to play the portion of
22 Applicant's 8. That's about five minutes and 17 seconds
23 in. Just one second.

24 (Pause.)

25 A Possible to turn that down?

Dale Arterburn
Redirect examination by Mr. Brough

- 1 Q What's that?
- 2 A Is it possible the volume could be turned down?
- 3 Q I can turn it down, yes, sir. You realize I have a
- 4 set of ear phones if you need them.
- 5 A I wouldn't need those. Just turn it down where
- 6 there's not such distortion.
- 7 Q I will do my best.
- 8 A Thank you.
- 9 Q If you could, step down and step around so you could
- 10 see the time mark if you could, sir.
- 11 A Sure.
- 12 (Whereupon, the witness left the stand.)
- 13 Q Do you agree with me the time mark on that is about
- 14 five minutes and 15 seconds?
- 15 A Yes, sir.
- 16 Q Okay.
- 17 A That's fine, yes, sir.
- 18 (Whereupon, the C.D. was played.)
- 19 Q The initial thing he tells you about five minutes in
- 20 is he's an accessory, is that correct?
- 21 A I believe he says it twice, that's correct.
- 22 Q Okay. Does that show up anywhere in any of your
- 23 supplemental reports either --
- 24 A That he's an accessory?
- 25 Q Yeah.

Dale Arterburn
Redirect examination by Mr. Brough

1 A I don't know that it would need to. I mentioned that
2 he was involved with two other codefendants.

3 Q Okay.

4 A I believe that is the definition of accessory. He's a
5 willing participant --

6 Q Well.

7 A -- in a crime.

8 Q That's the definition, but I'm not going to argue with
9 you about that. But that did not make its way into the
10 reports, correct?

11 A No. I didn't type that in there, no, sir.

12 Q Okay.

13 A I didn't type everything that was in that interview.

14 Q Only the parts that you wanted, is that right?

15 A I'm sorry?

16 Q Only the parts that you deemed to be relevant,
17 correct?

18 A The parts that I felt to be relevant, and I believe it
19 to be understood. I -- I heard him audibly. I do take a
20 lot of information in without the recording. I had to sort
21 of -- I don't know that I actually went back and listened
22 to that recording before I typed this report out.

23 I actually used what I had heard from him during the
24 interview. I didn't take any notes. I told him I don't
25 think I take notes. If you'll listen to that audible at

Dale Arterburn
Recross-examination by Ms. White

1 the beginning if that's okay I don't take a lot of notes,
2 but I make a few notes.

3 Q But you didn't forward this report in the solicitor's
4 office initially.

5 A No, no.

6 MR. BROUGH: No further questions.

7 A It was not. I never referenced it until it was asked
8 for to be honest with you. I didn't need to.

9 MS. WHITE: Just one brief followup.

10 RECROSS-EXAMINATION

11 BY MS. WHITE

12 Q why -- why is there no written statement as to
13 Mr. Pilcher?

14 A He did not offer one.

15 Q Okay. He was not willing to write one or did not, do
16 you recall?

17 A I don't recall -- and honestly I don't recall.

18 I offer everyone the opportunity that I interview.
19 I've been doing this almost 17 years -- the opportunity to
20 write their own statement, or I write them for them. And
21 neither one of those has taken place for this. So I
22 believe he refused to give a written statement.

23 Q And at this point was he under arrest for the crimes,
24 or were you just interviewing him?

25 A You know, I don't recall that Miranda was in effect.

J. Roger Poole
Direct examination by Mr. Brough

1 I knew I was going to question him about crimes. I don't
2 remember if he had already been --

3 Q Okay.

4 A It says has been arrested on the charges according to
5 my supplement. So he was in custody, yes, ma'am.

6 Q All right. Thank you very much.

7 MS. WHITE: That's all I have, Your Honor.

8 MR. BROUGH: The witness can be excused, Your Honor.

9 THE COURT: You may step down.

10 THE WITNESS: Thank you.

11 (Whereupon, the witness was excused.)

12 MR. BROUGH: The applicant would call Roger Poole,
13 Your Honor.

14 J. ROGER POOLE, having been
15 first duly sworn, testified as follows:

16 DIRECT EXAMINATION BY MR. BROUGH

17 Q Mr. Poole, what was your involvement with Mr. Pilcher
18 and Jonathan Goss in this case?

19 A I'll have to refer to my notes, so bear with me.
20 okay.

21 Q Yes, sir.

22 A Or at least the file, not all of my notes.

23 I recall dealing primarily with Mr. Pilcher. I don't
24 have Mr. Goss' file so I -- with me today.

25 Q Yes, sir.

J. Roger Poole
Direct examination by Mr. Brough

1 A So we opened the file on Mr. Pilcher on October 8th of
2 2010.

3 Q Yes, sir.

4 A And he was charged with three counts of kidnapping,
5 burglary first degree and three counts of armed robbery.

6 I spoke with him in my notes on November 6th of 2010
7 at a preliminary hearing.

8 Q Yes, sir.

9 A And I received -- I reviewed the discovery with the
10 defendant, and the preliminary hearings were waived.

11 In the initial interview Mr. Pilcher admitted to our
12 investigator his involvement in these two charges, these
13 two crimes.

14 He's always denied that he had a gun. He wanted -- I
15 went to see him when he was in the jail also and gave him
16 the discovery in this case, and we talked. And his
17 interest was basically to try to get the best possible deal
18 that he could.

19 He didn't like the sound of the kidnappings, and when
20 those were in my conversations with Mr. Bulsa when we could
21 make those go away and plead to one charge of armed robbery
22 and burglary, then Mr. Pilcher said he would go that way.

23 So that in a nutshell is how it came to pass, that
24 James Cheek received the case. As you know, he works the
25 jail. And then he did the plea ultimately on June 21 of

J. Roger Poole
Direct examination by Mr. Brough

1 2011.

2 Q I'm going to ask you about an e-mail that was sent to
3 you if I can.

4 A Sure.

5 Q I believe it's Applicant's 11. It's an e-mail from
6 Mr. Bulsa to you. Could you tell me what happened after
7 you received that e-mail?

8 A Well, I've got some notes on the e-mail that shows the
9 sentence ranges on the charges.

10 Q Yes, sir.

11 A And I make those notes to go to Mr. Pilcher and talk
12 to him about the offer.

13 Q Okay.

14 A I don't know whether he accepted it right then and
15 there or not.

16 Q Okay.

17 A But ultimately he agreed to the plea.

18 Q Was one of the cases reassigned after that e-mail?

19 A I don't know when it was reassigned. I do know that
20 Jonathan Goss had been assigned to me. And I don't know
21 how it came to Mr. Allen's attention, if I brought it to
22 his attention, if Mr. Bulsa brought it to his attention. I
23 don't remember. But ultimately Mr. Goss' case was
24 reassigned within our office.

25 Q Okay. So you weren't representing both of them

J. Roger Poole
Cross-examination by Ms. White

1 after -- do you recall having any specific conversations
2 with Mr. Goss?

3 A I do not have any independent recollection of that. I
4 could have. Like I say, I don't have the file of Mr. Goss
5 with me.

6 Q Okay. All right. Thank you, sir. No further
7 questions.

8 CROSS-EXAMINATION

9 BY MS. WHITE

10 Q Just -- just to clarify, Mr. Poole. You were the one.
11 You were able to work with the state to get the kidnapping
12 charges dropped?

13 A Yes.

14 Q And ultimately get it to where Mr. Pilcher would plead
15 to one armed robbery and attempted burglary?

16 A That's right.

17 Q Okay. And at that point your representation ended and
18 Mr. Cheek took over at the plea, is that right?

19 A That's right.

20 Q Okay.

21 MS. WHITE: That's all I have, Your Honor.

22 MR. BROUGH: The witness may be excused Your Honor.

23 THE COURT: Step down.

24 (Whereupon, the witness was excused.)

25 MS. WHITE: Your Honor, could we take a quick break to

James A. Cheek
Direct examination by Ms. White

1 talk to you about scheduling for other cases? I've got
2 some people waiting. I'm trying to figure out. I hate to
3 do this, but so that we don't have --

4 THE COURT: Okay.

5 (Whereupon, a recess was taken.)

6 MR. BROUGH: The applicant would rest.

7 MS. WHITE: Okay. Your Honor, the state would call
8 James Cheek.

9 THE COURT: Okay.

10 JAMES A. CHEEK, having been
11 first duly sworn, testified as follows:

12 DIRECT EXAMINATION BY MS. WHITE

13 Q Mr. Cheek, do you recall representing Mr. Pilcher at
14 his plea?

15 A I do.

16 Q And had you met with him prior to the day of the plea?

17 A I had.

18 Q And do you recall what conversations you had with him
19 when you met with him prior to the plea?

20 A I do.

21 Q Can you tell us a little bit about what his, I guess,
22 version of the facts were for these incidents?

23 A Mr. Pilcher informed me that he along with the
24 codefendants had initially been informed a -- a woman in
25 Greer who essentially operated a stash house both for money

James A. Cheek
Direct examination by Ms. White

1 and drugs for some people that one of them that Mr. Wilkie
2 knew -- and that they had gotten good authority that she
3 had a hundred thousand dollars hidden in that house. And
4 they decided they would go over there and get the hundred
5 thousand dollars.

6 They got there. He kicked the door. The alarm went
7 off. The other two guys had guns. He said he didn't have
8 a gun.

9 They were basically all going to go in and find the
10 hundred thousand dollars that Mr. Wilkie assured them was
11 hidden in that house. He knew exactly where it was hidden.

12 They went over there. They left. They were all in
13 pretty much confusion when they left as to what they were
14 going to do because they needed money.

15 And so they went back to one of them's girlfriend's
16 houses, and they got some -- at this time they decided they
17 needed to have some masks and some other items. And I
18 think Mr. Pilcher at that time indicated he had changed his
19 clothing and that he -- they went on over to this other
20 location.

21 They spotted some people having a cookout. And I
22 explained to them that most people having cookouts have
23 spent every time they had having, getting the cookout
24 together. But they decided they were going to stop on the
25 side of the road -- they saw these people -- and they were

James A. Cheek
Direct examination by Ms. White

1 going to go in. They were going to rob them.

2 And they went and they forced them into the house, and
3 there was a confrontation. One of the women -- a white
4 girl -- about her cell phone, I guess because they thought
5 she meant to call 9-1-1 or something. And so he instructed
6 his two minions that they would shoot that bitch if she
7 didn't turn the -- after she bit him over that cell phone.

8 And they got -- they got it and they left. That's
9 what happened.

10 Q Did he ever deny to you that he was involved or
11 present at these crimes?

12 A Never, never at either location.

13 Q And you said that he denied he had a gun.

14 A He always denied that he had a gun.

15 Q Okay. And did you talk with him about the concept of
16 hand of one, hand of all?

17 A I did.

18 Q And --

19 A He was already made aware of that by Mr. Poole also.

20 Q Okay. And at that point did you feel like based on
21 your conversations that he understood the fact that even if
22 he claimed he didn't have a gun the other folks having a
23 gun if he'd gone to trial, he could still be convicted?

24 A Yes. Mr. Pilcher made it very aware that he was the
25 man in control of everything that happened over there, both

James A. Cheek
Direct examination by Ms. White

1 locations.

2 Q And in your representation did you ever have a chance
3 to talk with him about the fact that Mr. Goss was going to
4 plead, plead guilty, as well and that you were representing
5 him that same day?

6 A I told him that Mr. Goss was thinking about entering a
7 plea. I was not sure I'd be entering a plea for Mr. Goss.
8 Mr. Goss was not that comfortable with me entering his
9 plea.

10 I think that Mr. Hall or someone was going to enter
11 that plea but after I represented Mr. Pilcher. And after
12 the outcome of Mr. Pilcher's sentencing Mr. Goss decided
13 he's go ahead and enter a plea. So I took some time and
14 prepared him for his plea.

15 Q And, in fact, he pled several people later, but he did
16 plead that same day.

17 A That same day. Several people later.

18 Q And during Mr. Pilcher's mitigation you talked about
19 the fact that Mr. Wilkie kind of was the one who connected
20 them with all of these people.

21 A Yeah. Mr -- Mr. Pilcher had just recently moved to
22 that community. He had actually lived over in Cherokee
23 County, was associated with a very good friend of mine's
24 relative and was dating her and had a good job over there,
25 a very impressive recovery effort after he got out of

James A. Cheek
Direct examination by Ms. White

1 prison the previous time and had a good job. He talked
2 about how he had gone over and restood and waited at the
3 meat market or one of those locations to get a good job.
4 And he'd done real well and was really on a good path. And
5 then he met Antonio Wilkie and things went sour after that
6 for him.

7 Q And the information that he did not have a gun or
8 claimed he did not have a gun, that was presented to the
9 Court before the plea or during the plea.

10 A During the plea, especially by himself. He -- he
11 interrupted and told the judge, "I did not have a gun."
12 And the judge acknowledged that. And the judge asked him
13 had we had a conversation about the hand of one being the
14 hand of all. He acknowledged that we did.

15 Q And just to follow up on some of the things he said,
16 did you inform him how to answer the questions at the plea?

17 A No, I did not.

18 Q Did you tell him during the plea what to say?

19 A No, I did not.

20 Q Okay. What about the indictments? Mr. Pilcher has
21 claimed that you had never seen or did not have the
22 indictments for the charges that he pled to.

23 A I think he referenced Mr. Poole not having copies in
24 his file.

25 Prior to entering the plea I went over the indictment

James A. Cheek
Direct examination by Ms. White

1 with him, as well as the sentencing sheet, reviewed the
2 information on the sentencing sheet for accuracy, showed
3 him the information regarding the charges he'd pleading to,
4 whether or not he had been indicted or not indicted. I
5 went over the indictments with him. And then he signed the
6 sentencing sheets and we went into the plea.

7 Q And tell me a little bit about the file, the
8 information that you use when you go to a plea. Where do
9 you obtain that information?

10 A In this case, as in most cases, I used the state's
11 file.

12 Q And that had the statements from his codefendants. Do
13 you recall?

14 A It did, as well as the supplemental statements. All
15 of the information was presented --

16 Q Okay.

17 A -- to Mr. Pilcher prior to the entry of the plea.

18 Q And ultimately at the -- at the plea did you have any
19 concern or did Mr. Pilcher ever express that he would
20 rather go to trial than proceed with the plea?

21 A No. Mr. Pilcher was very much aware of the
22 consequences of the likelihood of being convicted of
23 kidnapping and the burglaries and what the state would
24 proceed, under the theory of sentencing in that case. And
25 so he did not want to go forward with the plea ever, or not

James A. Cheek
Cross-examination by Mr. Brough

1 go forward with a trial, that he preferred to accept the
2 plea.

3 Q Okay. Thank you.

4 MS. WHITE: That's all I have at this time, Your
5 Honor.

6 MR. BROUGH: May it please the Court.

7 CROSS-EXAMINATION

8 BY MR. BROUGH

9 Q Mr. Cheek, I'm confused about one thing.

10 You stated in your direct testimony that Mr. Pilcher
11 made you very aware that he was in charge of this incident.

12 A Yes.

13 Q But during his plea mitigation you argued that
14 Mr. Wilkie influenced him to do this.

15 A I did.

16 Q Okay. So which is true?

17 A Both.

18 Q Now, if he denied having a gun, it's your position
19 that the person that didn't have a gun was in charge of the
20 situation. Is that what he's told you?

21 A Mr. Pilcher gave me the impression that he felt -- and
22 I think if you check he said he felt -- he was in charge of
23 the situation. But Mr. Wilkie gave all of the information
24 as to what to do and how to get it done.

25 Q Is he --

James A. Cheek
Cross-examination by Mr. Brough

1 A But Mr. Pilcher was the one who had the wherewithal,
2 the knowledge and experience on how to get it done. He
3 made it very clear that he felt that the guys he was
4 associated with were not as guilty as he was in many
5 regards.

6 Q Before you entered Mr. Pilcher's plea were you talking
7 with Mr. Goss as well?

8 A I think I saw Mr. Goss in the jail room. I may have
9 seen him at the -- at the -- at the jail also. He may have
10 asked and approached me about his case, but as far as any
11 specifics, no.

12 Q Well, in review you said you reviewed Mr. Pilcher's
13 file with him.

14 A I did.

15 Q Okay. And in reviewing that file did you notice that
16 Applicant's Exhibit 2 -- did you review that with him as
17 well?

18 A Is that Mr. Goss' statement?

19 Q It is.

20 A Yes, I did.

21 Q Okay. So you were aware that while you were speaking
22 with both of them Mr. Goss' sworn statement indicated
23 Mr. Pilcher was armed.

24 A Yes.

25 Q And Mr. Pilcher, as you indicated, always maintained

James A. Cheek
Cross-examination by Mr. Brough

1 that he was not armed.

2 A That's right. I believe Mr. Pilcher was not armed.

3 In fact, Mr. Pilcher pointed out why he was very
4 careful to say that it was not he with those shorts on in
5 that picture. But any fool could see that the person in
6 that picture did not have a gun. He kept referring to the
7 person in the shorts not having a gun, nowhere to hide a
8 gun.

9 As for the impression that that person in those shorts
10 did not have a gun, he would seem very -- he just kept
11 referring to that over and over in our conversations, and
12 to give me the impression that was him in the picture but
13 he didn't have a gun.

14 Q Would you agree with me that he and Mr. Goss had two
15 different stories as to what occurred?

16 A I would agree that in their original statements they
17 both had different and varying stories. But my
18 conversation with Mr. Pilcher indicated to me he did not
19 have a gun, that the other two had guns.

20 Q Did you argue during Mr. Pilcher's mitigation that
21 Mr. Pilcher was not one of the main people responsible and
22 that Mr. Goss was?

23 A I don't recall. Do you have a copy of the mitigation
24 statement?

25 Q Yes, sir.

James A. Cheek
Cross-examination by Mr. Brough

1 A You talked about the mitigation, right?

2 Q Yes, sir.

3 A Okay.

4 Q I believe this starts on page 20 of the transcript.
5 It should already be in the Court's file.

6 A Do you want me to read my entire statement?

7 Q If you would, yeah. If you could review it and let me
8 know whether or not you argued that Mr. Pilcher was the
9 least responsible person involved, as he stated in his
10 interview with Detective Arterburn that he was an
11 accessory.

12 A I don't recall using the term accessory. Could you
13 refer to a specific line for me? I'll be glad to review
14 it.

15 Q Is there anywhere in there where you argued that he
16 was the least responsible person out of the codefendants?

17 A I'm pretty confident I would have tried to craft my
18 comments to the Court to try to impress upon the Court that
19 he was probably the least of those.

20 I don't think I would have come in court and told the
21 Court. Even if my client had told me that I'd have been
22 very careful not to say to the Court my client is
23 braggadocious about all of this and he considered the
24 people he was with fools. I don't think I would have said
25 that.

James A. Cheek
Cross-examination by Mr. Brough

1 I think I would have tried to say something that would
2 have tried to impress the Court that my client was an
3 intelligent man who had fallen into a bad situation.

4 That was based upon information and contacts given by
5 Mr. Wilkie since I was not representing Mr. Wilkie at any
6 point.

7 But I don't recall using the term accessory. If
8 you'll give me a moment I'll be glad to read the entire
9 matter and see if I used the term accessory.

10 (Pause.)

11 A I don't. I don't see where I used the term accessory
12 at all. I'm sorry.

13 Q Okay. I'm going to show you. This is Applicant's
14 Exhibit 1, which is Mr. Goss' transcript.

15 Starting on page 20 and line 25, if you could read
16 through the following page on about line six or seven. If
17 you could, do that out loud, sir, please.

18 A Line six?

19 Q Starting on page 20, line 25.

20 A "He cried. I got his mother's number. This was
21 Michelle Brook's phone number. I called her to tell her
22 that I was kind of concerned about him and I felt like when
23 people were on the edge that we should let the authorities
24 know at the jail and had he ever had any suicidal ideations
25 or tendencies or anything like that, because I was

James A. Cheek
Cross-examination by Mr. Brough

1 concerned for his behavior. She said no. But, again, my
2 conversation with her -- and she would ask to address the
3 Court today also, Your Honor -- is one of the moments that
4 took my breath away because she said, 'My son's in trouble,
5 do what you can for him, he got a real hard head, he's got
6 to face the facts. And we're sorry. We're sorry for what
7 happened. But he's got to pay a price for what he did.'
8 Your Honor, his grandmother's also here, and other
9 relatives and friends. We're just asking the Court to
10 allow his grandmother also to address the Court at the
11 appropriate time."

12 Q If you could -- I'm sorry. That must have been --
13 starting right here. "Your Honor, consistent with my
14 assessment of Jonathan."

15 A "Your Honor, consistent with my assessment of Jonathan
16 Goss I found out in my discussions with him that he did
17 attend Blue Ridge High School. He got almost to the point
18 of graduation. He let that escape him. He did not
19 graduate. He also allowed himself to get caught up with
20 this guy Eddie Pilcher, the one they called Cornbread and
21 who was before the Court most recently, Your Honor. I just
22 ask the Court to please take into account Jonathan Goss'
23 youth, his involvement, his absolute remorse out of all of
24 this, which is much different. I'm sure the Court can
25 surmise his involvement in the situation. He got himself

James A. Cheek
Cross-examination by Mr. Brough

1 involved with this. Wilkie and Pilcher came by his home.
2 His girlfriend told him, 'I don't feel good about those
3 guys. You shouldn't leave with them.' He left with them.
4 It was his choice to leave with them, but he left with
5 them. And once they discussed what was going to happen as
6 far as the break-in, that there was supposed to be a
7 hundred thousand dollars over there, because this lady was
8 known to provide a drug stash house. She wasn't actually
9 doing it herself, but she had people she associated with
10 who supposedly left drugs in the house and left money in
11 the house. And Wilkie and Pilcher said just it's all over
12 drugs, it's all the money. And then this young man right
13 here allowed himself to be drawn into this scheme."

14 Q And would you agree with me that in Mr. Goss' plea
15 transcript you compared the involvement between him and
16 Mr. Pilcher?

17 A Ask me the question again. Let me make sure I
18 understand your question.

19 Q Would you agree with me that in Mr. -- in the
20 transcript portion you just read from Mr. Goss' plea
21 transcript that you compared the involvement level of
22 Mr. Goss to that of Mr. Pilcher who you also represented?

23 A Yes.

24 Q And that was to the benefit of Mr. Goss.

25 A The word "that" doesn't allow me to properly respond.

James A. Cheek
Cross-examination by Mr. Brough

1 If you could rephrase the question I'd appreciate any
2 efforts you could.

3 Q The statement you made in mitigation, was it for
4 Mr. Goss' benefit in order to get the judge to sentence him
5 more leniently?

6 A In order to make an effort to try to get the judge to
7 sentence him more appropriately.

8 Q At any point in time did you have Mr. Pilcher and
9 Mr. Goss sign a written waiver of conflict?

10 A I didn't see a conflict.

11 Q Did Mr. Goss ever tell you that his family -- and his
12 family after he was in the county detention center -- that
13 their lives were threatened by Mr. Pilcher or by somebody
14 other than him?

15 A He told me that about two minutes before we came in
16 here to enter the plea. Mr. Pilcher had already been
17 entered before the Court.

18 Q Now, you said you reviewed his case file with
19 Mr. Pilcher prior to his plea.

20 A I did.

21 Q Okay. Did you catch the existence of the audio
22 recorded statement?

23 A Did I catch the existence of the audio recorded
24 statement? Yes.

25 Q Did you review that since it wasn't disclosed?

James A. Cheek
Redirect examination by Ms. White

1 A I did -- I did not review the audio tape. Mr. --
2 Mr. Pilcher agreed with the supplemental. He did not make
3 any kind of questioning about the supplemental reports.

4 He insisted he did not have a gun. He said he told
5 Mr. Arterburn he did not have a gun. And we all agreed he
6 did not have a gun. And, in fact, the man in the shorts in
7 the picture could not have had a gun, could not have an
8 AK47. And we all agreed he did not have a gun.

9 MR. BROUGH: No further questions.

10 MS. WHITE: Just briefly, Your Honor.

11 REDIRECT EXAMINATION

12 BY MS. WHITE

13 Q In regards to the question about whether or not you
14 used the word accessory for Mr. Pilcher, isn't it true that
15 you told the Court that because Mr. Pilcher had started
16 dating Yvonne Mitchell she introduced him to Curtis Wilkie,
17 Curtis Wilkie knew everyone over there, he's the one that
18 told them about the first victim?

19 A Yes.

20 Q And you also said, "Your Honor, Mr. Wilkie
21 orchestrated everything."

22 A Yes.

23 Q And you're asking the Court to consider that
24 Mr. Wilkie appears to be the person amenable to everyone
25 in that community, introduced these two young men, one

James A. Cheek
Redirect examination by Ms. White

1 who's coming before you briefly to also enter in the plea,
2 and they followed him.

3 A Correct.

4 Q And you also told the court about his intelligence,
5 his work history, his connections with positive people,
6 even connection with someone in the prison that talked
7 about how talented and how intelligent he was.

8 A Mr. -- Mr. William Patrick Henry and Mr. Pilcher had
9 had a confrontation, and Mr. William Patrick Henry wrote a
10 sterling inmate statement as part of the investigation
11 about their conflict. And I read that, and I was impressed
12 that Mr. Henry even so said good things about Mr. Pilcher
13 in that statement, although they had a physical
14 confrontation, required both of them to be penalized inside
15 the prison facility.

16 Q And you also at the end of your mitigation said go
17 into all of this to ask the court to please distinguish his
18 involvement, planning, knowledge of everything from the
19 sentence Mr. Wilkie got, asking for a possibility of a
20 suspended sentence on the burglary.

21 A I did that.

22 Q Okay. Thank you.

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

24 MR. BROUGH: Nothing further.

25 THE COURT: You may step down.

1 THE WITNESS: Thank you.

2 MS. WHITE: Your Honor, that's the only witness the
3 state has. We have no further witnesses.

4 THE COURT: Anything further?

5 MR. BROUGH: No, Your Honor.

6 THE COURT: I'll review the transcript and the
7 evidence presented and issue an order.

8 END OF REQUESTED TRANSCRIPT OF RECORD

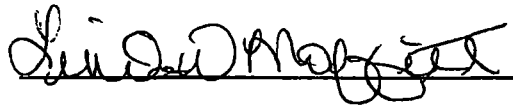
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CERTIFICATE

I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 1st day of October 2013.

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

April 9, 2014

A handwritten signature in cursive script, appearing to read "Linda D. Moffitt", written over a horizontal line.

Linda D. Moffitt
Circuit Court Reporter

1 STATE OF SOUTH CAROLINA } COURT OF GENERAL SESSIONS
 2 COUNTY OF SPARTANBURG }

3
 4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
 5 PLAINTIFF,) OF
 6 vs.) RECORD
 7 JOHNATHON ANTONIO GOSS,) 2011-GS-42-02198
 8 DEFENDANT.) 2011-GS-42-02199
 9

10 June 21st, 2011
 11 Spartanburg, South Carolina
 12

13 B E F O R E:

14 THE HONORABLE ROGER L. COUCH, Judge.
 15

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

17 DERRICK BULSA
 18 DEPUTY SOLICITOR
 Attorney for the State

19 JAMES CHEEK
 20 ASSISTANT PUBLIC DEFENDER
 Attorney for the Defendant
 21



22
 23
 24 PAMELA E. GREEN
 Circuit Court Reporter
 25 Seventh Judicial Circuit

ASSOCIATION GENERAL COUNCIL

DATE: OCT-01-2012

TIME: 10:00 AM

BY: [Signature]

FOR: [Signature]

TO: [Signature]

FROM: [Signature]

OTHER: [Signature]

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I N D E X O F W I T N E S S E SWITNESSESPAGE

(There were no exhibits marked during this hearing.)

P R O C E E D I N G S

THE COURT: All right. If you'll call the names of those who are here to offer pleas.

If you're in the box and your name is called, please stand up and remain standing.

If you're in the gallery when your name is called, I want you to come forward and stand in the jury box to my right.

Mr. Hunter, call the roll.

SOLICITOR HUNTER: We have Robert Beason.

(Defendant stands.)

THE COURT: Come forward, sir.

SOLICITOR HUNTER: Michael Ruiz.

(Defendant stands.)

SOLICITOR HUNTER: In the box we have Alice Young.

(Defendant stands.)

SOLICITOR HUNTER: Larry Coffey.

(Defendant stands.)

SOLICITOR HUNTER: Marquet Gentry.

(Defendant stands.)

SOLICITOR HUNTER: Johnathon Goss.

(Defendant stands.)

SOLICITOR HUNTER: Eddie Pilcher.

(Defendant stands.)

1 SOLICITOR HUNTER: Rodney Williams.
2 (Defendant stands.)
3 SOLICITOR HUNTER: Shantrese Young.
4 (Defendant stands.)
5 SOLICITOR HUNTER: And Jerry Grayson.
6 (Defendant stands.)
7 THE COURT: All right. One gentlemen -- Jerry Grayson,
8 is he here?
9 SOLICITOR HUNTER: What's your name, sir?
10 DEFENDANT: Jerry Ledford.
11 SOLICITOR HUNTER: Jerry Ledford.
12 THE COURT: Is that who you meant to call?
13 SOLICITOR HUNTER: And what's your name, sir?
14 DEFENDANT: Boyce Joshua Foster.
15 SOLICITOR HUNTER: And Joshua Foster.
16 THE COURT: I thought Mr. Grayson was brought in, but
17 Mr. Foster can stand as well.
18 THE COURT: Stand up please.
19 (Defendant stands.)
20 THE COURT: Do you have a complete list?
21 SOLICITOR HUNTER: I'll give her a copy of it in a
22 second.
23 THE COURT: All right. All right. Let's go ahead and
24 get it complete before we do this.
25 (Parties comply.)

1 THE COURT: All right. Mrs. Camp, please swear the
2 defendants who are standing.

3 (WHEREUPON, all defendants were placed under oath at
4 this time.)

5 THE COURT: Have a seat please.

6 (Parties comply.)

7 THE COURT: Now, if any of you either failed or refused
8 to take the oath just administered by the clerk I'd ask that
9 you now please stand.

10 (No response.)

11 THE COURT: All right. It appears that everyone who's
12 present today to offer pleas has been sworn.

13 I'm going to go over some matters at this time that
14 would be common to all of your cases should you later on
15 offer a guilty plea to the court. I've been informed that's
16 why you are here.

17 I'm not asking for your plea at this time. Later on
18 we'll call your name, you'll come in front of me with your
19 attorney, and we'll go over the matters that are specific to
20 your case at that time.

21 Now, your attorney is present in the courtroom at this
22 time, and if at anytime you feel that you need to discuss
23 any matter with your lawyer before you respond to anything I
24 ask you, please let me know. You have every right to
25 consult with your attorney before you respond to any

1 question that this Court asked you.

2 Now, the first thing I'll discuss with you is that,
3 under the Constitution, you have a right to have your case
4 considered by a Grand Jury before that case is sent to this
5 Court for either a trial or a plea. I won't know the status
6 of your indictments, whether or not they've gone to the
7 Grand Jury or not, until they're handed to me when we're
8 ready to accept your plea.

9 I will tell you that I can not take your plea unless
10 the Grand Jury has issued a true bill on your indictment or
11 you decide to waive or give up that step of the proceedings
12 and go directly to a guilty plea without Grand Jury
13 presentment. Now, I will tell you the Grand Jury does not
14 decide your guilt or innocence. They decide whether or not
15 the State has sufficient evidence to justify the case being
16 sent to this Court for either a trial or a plea.

17 Now, neither you or your lawyer is allowed to be
18 present at Grand Jury proceedings. Those are conducted in
19 secret. However, I will go over with you the status of your
20 indictment when I see those, that paperwork, and we'll
21 discuss that situation at that time.

22 Now, I am going to ask you a series of questions. Now,
23 those questions have to do with your ability or your
24 qualifications to offer a plea later on. I'll be asking you
25 to stand if you have a response specifically to the

1 questions that I'm asking. I'll need to get your name on
2 the record before we discuss those matters.

3 The first question I have for you, do any of you
4 currently suffer from any mental, physical, nervous
5 conditions, or any other problems that would, in anyway,
6 affect your ability to reason, make good decisions, or to
7 handle your plea today, if that's true, please stand.

8 (No response.)

9 THE COURT: Have any of you taken any drugs or any
10 other substances that would, in anyway, affect your ability
11 to reason, make good decisions, or to handle your plea
12 today, if that's true, please stand.

13 (No response.)

14 THE COURT: Has anyone threatened you, coerced you, put
15 pressure on you, tried to intimidate you, or done anything
16 else to you to try to get you to offer a plea or force you
17 to offer a plea, if that's true, please stand.

18 (No response.)

19 THE COURT: Now, if you offer a plea it must be done
20 freely and voluntarily. That means it's something that you
21 have thought about and you've decided that's the best way to
22 proceed in your case.

23 If any of you have a feeling or a belief that, if you
24 were brought in front of me today to offer a plea, that
25 somehow that would be done against your wishes or be

1 something that you didn't want to do or had not decided to
2 do, now, if that's true, please stand.

3 (No response.)

4 THE COURT: If any of you feel that you haven't had
5 enough time in which to think about your case or prepare a
6 defense to the charges, please stand.

7 (No response.)

8 THE COURT: If anyone has made any promises,
9 guarantees, or assurances to you about anything in
10 connection with your plea, please stand.

11 (No response.)

12 THE COURT: If anyone has specifically made any
13 promises, guarantees, or assurances about any matters such
14 as pardon, parole, probation, early release, or length of
15 sentence in an effort to get you to offer a plea, I'd ask
16 that you now please stand.

17 (No response.)

18 THE COURT: Now, if you offer a guilty plea to this
19 Court you be will waiving or giving up most of your rights
20 under the Constitution, and I have to be sure that you're
21 doing, do that knowingly and intelligently. In other words,
22 you know what your rights are, you know what you're giving
23 up when you offer your guilty plea, and you've made an
24 intelligent decision to proceed with a guilty plea. For
25 that reason I have to be sure that you understand your

1 Constitutional rights, that you understand what you're
2 giving up.

3 So, I'm going to explain your Constitutional rights to
4 you, and when I finish, I'll give you an opportunity to ask
5 any questions you would like to ask or have me offer
6 additional explanation if that's necessary.

7 First of all, I've already told you that you have a
8 Constitutional right to have your case presented to the
9 Grand Jury. I'll discuss that with you when you come in
10 front of me and I look at your indictment.

11 You have a Constitutional right to, to representation
12 by a lawyer, and I've already told you your lawyer is
13 available to you at all stages of this proceeding.

14 You have a right to demand a trial by a jury. At that
15 trial you would be presumed to be innocent until the State
16 proved your guilt beyond a reasonable doubt. You see a
17 defendant has no burden of proof in criminal trials. You're
18 presumed to be innocent. The State has the only burden of
19 proof, and that is the burden to prove you guilty beyond a
20 reasonable doubt.

21 At the trial and under the Constitution there are
22 several things that you could do. First of all, you have
23 the right to have subpoenas issued to require witnesses to
24 come to Court to testify. You have the right to question or
25 confront anyone who might testify during the trial. You

1 would have the right to present all the defenses that you
2 have to the charges that are before the court during the
3 trial.

4 Also, at the trial, you'd be given the opportunity to
5 try to suppress any and all evidence the State may have
6 against you, and that includes any statements that you might
7 have made prior to the time of the trial. You, at every
8 stage of a criminal proceeding, have the right to remain
9 silent, and, at a trial, if you chose to remain silent, the
10 judge would instruct the jury, he's required to instruct the
11 jury that your silence could not be used against you in any
12 fashion whatsoever.

13 Now, those are your rights under the Constitution. If
14 you have any questions about the rights that I just
15 explained, please stand.

16 (No response.)

17 THE COURT: If you would like for me to offer
18 additional explanation concerning any of those rights,
19 please stand.

20 (No response.)

21 THE COURT: It appears to the Court that you understand
22 your rights, and I will tell that, if you plead guilty, you
23 give up or waive all of those rights as they relate to the
24 charges that are before the Court with the exception of the
25 right of having your lawyer represent you until your plea is

1 completed.

2 Now, if there's any of those rights that you do not
3 wish to give up in connection with a plea today, please
4 stand.

5 (No response.)

6 THE COURT: I will advise each of you that you have ten
7 days from the date that you enter a guilty plea and receive
8 a sentence in which to file an appeal of that plea should
9 you choose to do that.

10 I'm going to declare that these defendants are
11 qualified or in a position to proceed with a plea.

12 (WHEREUPON, other guilty pleas were completed at this
13 time.)

14 THE COURT: Mr. Bulsa.

15 SOLICITOR BULSA: Thank you, Your Honor.

16 May it please the Court.

17 This is State versus Johnathon Antonio Goss. It's
18 Indictment 11-GS-42-2198, true billed indictment for
19 attempted burglary in the first degree.

20 11-GS-42-2119, true billed indictment for armed
21 robbery.

22 Your Honor, this is the codefendant to Mr. Pilcher. He
23 also has restitution that he's agreed to pay should it be
24 appropriate. Represented by Mr. Cheek as well.

25 THE COURT: Thank you.

1 Sir, your name is -- is it Johnathon or Johnathon?
2 DEFENDANT: Johnathon.
3 THE COURT: Johnathon Antonio Goss, is that right?
4 DEFENDANT: Yes, sir.
5 THE COURT: Mr. Goss, you're in front of me on two
6 charges. They are armed robbery. That carries a minimum of
7 ten years up to 30, and attempted first degree burglary,
8 burglary in the first degree. That carries 15 years to
9 life. Both are classified as violent and most serious
10 offenses.
11 Do you understand that these qualify as strikes---
12 DEFENDANT: Yes, sir.
13 THE COURT: ---against you?
14 That, in the future, if you pled guilty to or were
15 found guilty of other similarly classified crimes that you
16 could receive a sentence as severe as life imprisonment
17 without the possibility of ever being paroled.
18 Do you understand that, sir?
19 DEFENDANT: Yes, sir.
20 THE COURT: Now, you're here today with Mr. Cheek.
21 Does he represent you on both of the charges?
22 DEFENDANT: Yes, sir.
23 THE COURT: Are you satisfied with what he's done?
24 DEFENDANT: Yes, Your Honor.
25 THE COURT: Is there anything else you feel that he

1 have the authority, therefore, to sentence you up to the
2 full extent allowed by law, and in the case of the armed
3 robbery, that would be 30 years. In the case of the
4 burglary first that would be up to life.

5 Do you understand that, sir?

6 DEFENDANT: Yes, sir.

7 THE COURT: Now, do I need to read these charges to
8 you?

9 DEFENDANT: No, Your Honor.

10 THE COURT: How do you plead?

11 DEFENDANT: Guilty, Your Honor.

12 THE COURT: On both charges?

13 DEFENDANT: Yes, sir.

14 THE COURT: Mr. Cheek, I would assume that among the
15 many things you would of discussed with Mr. Goss you would
16 of discussed the nature of the charges, and the elements of
17 the crimes, the potential penalties that are involved, any
18 defenses that they might, that he might of had to these
19 charges, as well as the limited possibility of a parole in
20 these cases. Also of his rights under the Constitution.

21 Is that a correct statement, Mr. Cheek?

22 MR. CHEEK: Yes, sir, Your Honor. We spent a
23 considerable amount of time talking about coercion, and
24 then, after my discussion, Your Honor, and going through the
25 situation, he decided he would enter a plea, and I will tell

1 the Court that, of the three defendants, he signed a long
2 time ago to enter his plea.

3 THE COURT: All right.

4 MR. CHEEK: We're just now making it forward with the
5 charge.

6 THE COURT: Now, Mr. Goss -- well, do you, do you agree
7 with the decision he's made, Mr. Cheek?

8 MR. CHEEK: I do, Your Honor.

9 THE COURT: And has he been able to assist you in this
10 defense if that had been necessary?

11 MR. CHEEK: Yes, sir.

12 THE COURT: Now, Mr. Goss, you are 19 years of age?

13 DEFENDANT: Yes, sir, Your Honor.

14 THE COURT: And how far did you go in school?

15 DEFENDANT: I've reached the twelfth grade, sir.

16 THE COURT: Are you married?

17 DEFENDANT: No, sir.

18 THE COURT: Any children?

19 DEFENDANT: One on the way.

20 THE COURT: All right, sir. And were you employed when
21 you got arrested?

22 DEFENDANT: I wasn't employed, but I put in
23 applications for a job, and the week that I was in the
24 Spartanburg County Detention Facility I called home and
25 Columbia Farms had called my house for me to come up for an

1 interview, but I was incarcerated at the time.

2 THE COURT: All right. I understand.

3 Mr. Solicitor, I think you've gone over the facts in
4 the previous case with me.

5 Are there any things that you need to go over in this
6 situation?

7 SOLICITOR BULSA: Yes, sir, I would like to add that
8 Mr. Goss, upon apprehension by the Greer Police, he did, he
9 did give a full statement and his statement helped identify
10 the other individuals.

11 THE COURT: All right. Now, Mr. Goss, do you want me
12 to have the solicitor go over all those facts again?

13 You were in the courtroom when he did that earlier.

14 Do you -- do we need to go over those facts again?

15 DEFENDANT: No, Your Honor.

16 THE COURT: Do you agree with the facts that he related
17 earlier to me?

18 DEFENDANT: Not all of them, Your Honor.

19 THE COURT: And tell me how you disagree.

20 DEFENDANT: The, the incident about the door kicking,
21 Your Honor --

22 THE COURT: Yes, sir.

23 DEFENDANT: -- I know -- I do understand that it's the
24 hands of one the hands of all, but it was a fourth man
25 involved with the incident. I stayed in the car while they

1 ran up the street. They kicked the door. They came back
2 and said that the alarm had went off and they had came back.

3 THE COURT: So, you were waiting in the car for them?

4 DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. And as to the other incident,
6 any other differences in the facts?

7 DEFENDANT: The other incident I didn't have a gun.
8 Eddie Pilcher had a gun.

9 THE COURT: Uh-huh. (Affirmative).

10 DEFENDANT: He had an assault rifle, and Curtis Wilkey,
11 he had a handgun.

12 THE COURT: All right.

13 DEFENDANT: The only reason I went with the two fellows
14 is because they came, they presented the opportunity to
15 me---

16 THE COURT: Well, I'll hear from you in a minute, and
17 you can tell me your slant. I just want to know though -- he
18 indicated to me that, that you, along with the other two
19 gentlemen, approached somebody who was having a cookout.
20 They were basically ordered into a home, robbed at that
21 point in time.

22 Is that a correct statement?

23 DEFENDANT: Yes, Your Honor.

24 THE COURT: And at least one of the, one of you had a
25 gun at that time --

1 DEFENDANT: Yes, Your Honor.

2 THE COURT: -- was armed?

3 All right. Any other differences in the facts?

4 DEFENDANT: No, Your Honor.

5 THE COURT: Okay. And I'm not trying to put words in
6 your mouth. If there's anything that you think that I need
7 to know about the facts, tell me now.

8 DEFENDANT: The only difference really is that the kids
9 wasn't outside during the cookout.

10 THE COURT: Okay.

11 DEFENDANT: When we first run up on them they was in
12 the house. Then Pilcher and Curtis had ordered them inside
13 the house. That's when we first seen sight of any children.

14 THE COURT: I understand.

15 All right. Anything else you need to tell me?

16 DEFENDANT: No, Your Honor.

17 THE COURT: All right. Now, Mr. Goss, have you told me
18 the truth in this matter?

19 DEFENDANT: Yes, Your Honor.

20 THE COURT: Did anyone tell you how to answer---

21 DEFENDANT: No, Your Honor.

22 THE COURT: ---the questions?

23 So, the answers I've received were all answers that you
24 gave me, is that right?

25 DEFENDANT: Yes, Your Honor.

1 THE COURT: Now, is there any part of what we've
2 discussed now or when you were over in the box and I asked
3 you questions that you wanted to change any response that
4 you gave to any question that I asked?

5 DEFENDANT: No, Your Honor.

6 THE COURT: So, if I were to ask all those questions I
7 asked earlier again right now, would I receive the same
8 responses I received earlier except verbally this time?

9 DEFENDANT: Yes, Your Honor.

10 THE COURT: And are you offering a guilty plea because
11 you are guilty?

12 DEFENDANT: Yes, Your Honor.

13 THE COURT: I'm gonna accept your plea, Mr. Goss, as
14 having been freely and voluntarily given. You're aware of
15 the charge, the penalties. You've had the advice of an
16 attorney that you're satisfied with. There's a factual
17 basis for this plea.

18 Mr. Cheek.

19 MR. CHEEK: Your Honor, Mr. Goss has been in custody
20 254 days. Your Honor, I always try to relate something of
21 my contacts with my client to try to give the Court an
22 additional insight into those persons.

23 Mr. Goss is one of the few people I've had in my
24 initial interview where they didn't care who saw them cry.
25 This man cried. I told him that I read somewhere that life

1 is not measured by the number of moments we breathe, but the
2 moments that take our breath away. That was a moment that
3 took my breath away, seeing this young man come in and not
4 try to be so hard and tough and worried of what the other
5 inmates up there in the cell were thinking or anything like
6 that. He cried.

7 I got his mother's number. This is Michelle Brooks
8 phone number. I called her to tell her that I was kind of
9 concerned about him, and I felt like when people were on the
10 edge that we should let the authorities know at the jail,
11 and had he ever had any suicidal ideations or tendencies or
12 anything like that cause I was concerned for his behavior.
13 She said no.

14 But, again, my conversation with her, and she would ask
15 to address the Court today also, Your Honor, is one of the
16 moments that took my breath away because she said my son's
17 in trouble, do what you can for him. He got a hard head.
18 He's got to face the facts, and we're sorry. We're sorry
19 for what happened, but he's got to pay a price for what he
20 did.

21 Your Honor, his grandmother's also here and other
22 relatives and friends. We're just asking the Court to allow
23 his grandmother also to address the Court at the appropriate
24 time.

25 Your Honor, consistent with my assessment of Johnathon

1 Goss, I found out, in my discussion with him, that he did
2 attend Blue Ridge High School. He got almost to the point
3 of graduation. He let that escape him, did not graduate,
4 but he also allowed himself to get caught up with this guy,
5 Eddie Pilcher, the one they called Cornbread and who was
6 before the Court most recently, Your Honor.

7 I just ask the Court to please take into account
8 Johnathon Goss' youth, his involvement, his absolute remorse
9 out of all of this, which is much different, I'm sure the
10 Court can surmise, from other people's involvement in the
11 situation. He got himself involved with this.

12 Wilkey and Pilcher came by his home. His girlfriend
13 told him I don't feel good about those guys, you shouldn't
14 leave with them. He left with them. It was his choice to
15 leave with them, but he left with them. And once they
16 discussed what was gonna happen, as far as the break-in,
17 where there was supposedly a hundred thousand dollars over
18 there, because this lady was known to provide a drug stash
19 house, she wasn't actually a dealer herself, but she had
20 people she associated with who supposedly left drugs in the
21 house, and left money in the house and Wilkey and Pilcher
22 said just it's all over drugs, it's all the money, and then
23 this young man right here allowed himself to be drawn into
24 this scheme.

25 Your Honor, we just plead mercy for him. We know that

1 the Court has got to sentence him. Your Honor, again, we
2 ask the Court to take into consideration they're two charges
3 here. We ask the Court to consider the possibility of
4 sentencing him to the active time on the armed robbery, and
5 sentence, sentence all or a portion of the time on the, on
6 the burglary, Your Honor.

7 We're just asking for the Court to consider the wide
8 range in sentencing, given prior criminal history or lack
9 thereof, prior involvement, and for the level involved he
10 had in this, Your Honor, and for his youthfulness.

11 He tells me and he told family members that once he
12 wanted to back out of the situation that the comments were
13 made to him we know where you live, we know who you are, we
14 know your family, and we will make sure you don't tell
15 nobody about this. You go with us. You're either with us
16 or you're against us, and in a lack of judgment he went with
17 them, Your Honor.

18 We ask the Court to take all that into consideration.

19 THE COURT: Mr. Goss, anything you want to say to me?

20 DEFENDANT: Your Honor, Eddie Pilcher, which we do call
21 him Cornbread on the street, him and Wilkey did come to me
22 like I want to say the third week in August, and they had
23 told me about this. I was with my girlfriend at the time.
24 We was going to one of my friend's house. We was just going
25 to watch a movie, do a little couples night. He had his

1 girlfriend over, and she was right there with me, but she's
2 not around at this present time.

3 I even asked her do she feel safe for me to go and she
4 said no. I asked her why. She said cause one of two things
5 gonna happen. Either you gonna go and get killed or you
6 gonna go and go to jail.

7 Like Mr. Cheek done already stated, when I turned
8 around and told them that I didn't feel that comfortable
9 going from, my girlfriend didn't want me to go, that's when
10 Wilkey and Cornbread told me that, hey, we know where you
11 stay at. Cornbread done met my family or whatnot. He done
12 been in the house. So, he know where I sleep, my mom sleep
13 in there and whatnot.

14 The car at the time that he had, he told me to look
15 inside of it. When I looked in the back seat, that's where
16 the guns was laying there. During the course of that whole
17 day, people they know and I know as well was coming up to me
18 and asking me was I gonna go through with it, is you talking
19 to anybody, you planning to call the police or whatnot, and
20 some of them even threatened me as well, Your Honor.

21 So, I felt like, to keep my family out of harms way, I
22 put myself in this predicament because I ain't see that it
23 was necessary to put my family in the line of fire when it
24 was all behind me and my choice of friends.

25 I know I made bad decisions of friends. I know I made

1 bad choices in life period, Your Honor, and I'm just asking
2 for a second chance, a chance to succeed or fail. I throw
3 myself at your mercy in your courtroom, Your Honor.

4 THE COURT: Prior record.

5 SOLICITOR BULSA: Nothing, Your Honor.

6 MR. CHEEK: Please the Court, Your Honor?

7 THE COURT: Yes, sir.

8 MR. CHEEK: Is the Court interested in hearing from his
9 family members at all?

10 THE COURT: Well, if there's someone here to speak,
11 absolutely.

12 MR. CHEEK: Yes, Your Honor. His mother and his
13 grandmother.

14 THE COURT: Come forward. One at a time please.
15 State your name please, ma'am.

16 MS. WILEY: Diane Wiley.

17 THE COURT: Yes, ma'am, you are his --?

18 MS. WILEY: Grandmother.

19 THE COURT: All right. Yes, ma'am.

20 MS. WILEY: I just thank God for my grandson,
21 Johnathon, and what he said about this guy name Cornbread, I
22 felt that it was something wrong because he use to call the
23 house all the time and demand to know where Johnathon was,
24 and he did upset at me and at one time I started to tell him
25 don't call there no more because he was a very disrespectful

1 person. And, Johnathon, he was raised in the church, and I
2 knew that he had got caught up in some bad stuff cause he
3 had started acting different, and every time Cornbread would
4 call he would like jump out of his skin and he just run out
5 of the house.

6 But I can say that he never bought no money in the
7 house. He never bought no kind of merchandise in the house
8 cause I been with them since 2009. And the day that they
9 came and picked Johnathon up, he was real nervous cause he
10 knew something was about to happen, that they was gonna come
11 and get him. And I had talked to him about he was doing
12 something wrong, and I felt like it was something -- the
13 Lord had let me know that he was caught up in something,
14 and, and I told him, I said, son, whatever it is, you need
15 to, you need to stop, and then that Monday they come and got
16 him.

17 But he's a -- he's, he's always been a loving son. He
18 just got, got out there with the wrong crowd, and got caught
19 up, and in something that he didn't have no control over.
20 And after, after Johnathon was arrested and he told
21 Mr. Cheek that Cornbread had threatened him, I believed it.
22 I believe it because Johnathon was not no violent person.
23 He never been a violent person. He was hard headed cause he
24 was a teenager, but as far as him doing something like that,
25 to take, take him away from us, he would of never done it on

1 his own.

2 THE COURT: Thank you, ma'am.

3 MS. WILEY: That's all I have to say.

4 THE COURT: And I believe his mother wants to speak.
5 Come forward please, ma'am.

6 MS. BROOKS: I like to say that after---

7 THE COURT: Just, just get on up here first and then
8 we'll talk.

9 Your name is?

10 MRS. BROOKS: Michelle Brooks.

11 THE COURT: Yes, ma'am.

12 MRS. BROOKS: I am a CNA of 12 years. I am Johnathon's
13 mother, and, first of all, I want to say that I apologize to
14 the Court and to the victims that are not here, and I love
15 my son, and I know that God is in control of his situation.
16 And whatever the outcome is I accept. And I just pray that
17 you'll have mercy upon him, your Honor, and that you'll give
18 him a second chance to prove himself cause he is a good son.

19 He's the only child that I have. I can't have anymore
20 kids, and he knows I love him. But when it comes to doing
21 wrong, I do not approve of that.

22 He was raised in the church. He has a praying family.
23 My father is a minister, and I'm just, you know, I trust God
24 and I know that everything's gonna be all right regardless
25 of the outcome.

1 Thank you.

2 THE COURT: Thank you, ma'am.

3 MR. CHEEK: Thank you, Your Honor.

4 THE COURT: Yes, sir.

5 Mr. Goss, your lack of prior record, your cooperation
6 with the police in the investigation in this matter, your
7 apparent lack of leadership in this endeavor, as well as
8 even the words of your prior defendant have all been weighed
9 by the Court, and they've all weighed in your favor in this
10 situation. But, again, I can -- I'll repeat that to carry
11 guns, to break down doors, to gather up families in
12 cookouts, to order them into homes, to rob them are actions
13 that can't be tolerated under circumstances at all.

14 And, so, for that reason I've tried to craft a sentence
15 that recognizes your, your willingness to address your, your
16 fault or your willingness to try to assist in the
17 investigation. So, I've taken those things into
18 consideration.

19 Now, as to the armed robbery, the sentence is 12 years.
20 As to the burglary, it's 20 years suspended to 12, with four
21 years of probation. Restitution of \$977.60 is ordered,
22 payment of Public Defender's fees has been ordered.

23 Mr. Goss, I hope you continue to approach this thing in
24 the mature manner that you've shown so far. I hope you're
25 able to come out of this and become a productive member of

1 society. You've got a family that's still willing to help
2 you. I would assume they'll be there when this is over.

3 Good luck to you, sir.

4 MR. CHEEK: Thank you, Your Honor.

5 Your Honor, did I give the number of days served?

6 I'm not sure. I can't remember.

7 THE COURT: You gave me 254 and I did give credit for
8 those, those days.

9 MR. CHEEK: Thank you, Your Honor.

10 THE COURT: Yes, sir.

11

12 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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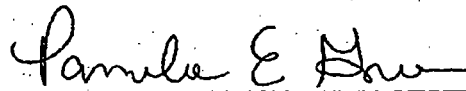
25

C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 21st day of June, 2011.

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

September 25th, 2012



PAMELA E. GREEN, Court Reporter

Schiller 6033

GREER POLICE DEPARTMENT
ADVISEMENT OF RIGHTS FORM

Page 43 of 73 11/23/2010

YOUR MIRANDA RIGHTS

Before we ask you any questions, you must understand your rights.

You have the right to remain silent.

Anything you say can be used against you in court.

You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning.

If you have no money to pay a lawyer's fee, the court will appoint one to

represent you without cost if you wish.

If you decide to answer questions now without a lawyer present, you will still

have the right to stop answering at any time. You also have the right to stop

answering at any time until you talk to a lawyer.

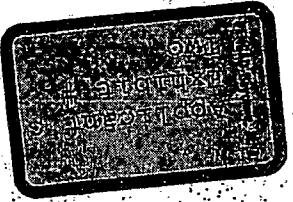
WAIVER OF RIGHTS

I have read this statement of my rights and I understand what my rights are. I am willing to make a statement and answer questions. I do not want a lawyer at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure or coercion of any kind has been used against me.

Signature: *[Signature]*
Date: 10/11/2010

Witness: *[Signature]*
Witness: *[Signature]*

Case #(s): 016074, 6210, 016067, 6210 - 016151
Time of interview: 1600



GREER POLICE DEPARTMENT

Date 10/1/2010Page No. 1 of 2

STATEMENT OF:

Johnathon EossDOB [REDACTED]

ON SEPT 5 2010 MYSELF, TONY, AND ELLIE (CORNBEAD),
 DROVE UP OVER AT OAKVIEW. TONY WANTED TO GO ON A LICK (ROBBERY)
 SO WE DROVE OVER TO GREER TO THE QUALITY INN MOTEL. WE DROVE
 TO THE BACK AND PARKED. TONY SCOOPED OUT THE MEXICANS GOING
 TO THE ROOM. WE ALL GOT OUT OF THE CAR AND WALKED UP
 TO THEIR ROOM. TONY HAD THE MINICHOPPER, AND ELLIE HAD THE .25
 PISTOL. WE KNOCKED ON THE DOOR AND THEN OPENED THE DOOR I FORCED
 IT OPEN, THEN ^{ELLIE TONY} TOLD EVERYONE TO GET ON THE GROUND AND
 DON'T MOVE. ^{GO} ONE AT A TIME ELLIE TOLD THEM TO GIVE THEM
 THEIR WALLETS, and even stomped on one of them. I got the wallets,
 and a phone, and ELLIE and TONY ASKED THE KEYS, and phones. ASKED
 THAT WE LEFT. WE THEN DROVE TO BRADFORD APTS, and stayed
 there awhile and then hooked up with one of TONY'S friends
 and we drove down to a house that TONY'S ^{friend} SAID THE OLD WOMAN
 HAD \$100,000. IN THE HOUSE WE PARKED THE CAR AND I STAYED IN
 THE CAR AND THE OTHER GUYS WENT TO THE HOUSE. THEY WERE NOT
 GONE TOO LONG AND CAME BACK AND SAID THAT THE ALARM
 WENT OFF, AND THEY DIDN'T GET IN. AFTER THAT WE LEFT AND
 I WENT HOME. THE NEXT NIGHT ELLIE and TONY PICKED ME
 UP AND TONY SAID HE WANTED TO GO ANOTHER LICK. WE DROVE BACK
 TO GREER AND PARKED THE CAR AT TONY'S BROTHER ANTHONY'S HOUSE,
 AND THEN WE WALKED OVER TO THE WHITE GIRL'S HOUSE WHO WAS
 HAVING A COCKOUT. TONY A GUN AND ELLIE HAD A GUN. THERE WAS
 A WHITE GUY AND MEXICAN GUY and the white girl. ^{ELLIE, TONY} ~~THE~~ ^{ORANGE} ~~GUYS~~
 THEM TO THE INSIDE HOUSE AND TOLD THEM TO

GREER POLICE DEPARTMENT

Date 10/11/10

Page No.

2 of 2

STATEMENT OF:

X.J.G.
 give us the money, they gave us their wallets/pockets
 books after that we left. we walked up the road and left
 the car. Eddie's girlfriend came and picked us up and drove
 us back to Oakview. After we got back we split up the money.

X J.G.
 Jonathan Ross

END OF STATEMENT

THIS STATEMENT WAS
 WRITTEN BY DET. D.A. ARTERDAWN
 BY MY REQUEST. X.J.G.

THIS STATEMENT WAS GIVEN FREELY
 AND VOLUNTARILY WITH CORRECTION X.J.G.

RECEIVED

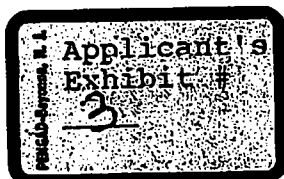
DEC 08 2010

**PUBLIC DEFENDER
OFFICE**

Roger Poll

When do you want me
to give you that statement
on my co-defendant's and
do you think the state will
drop them from the charges?

Eddie Pichec



Dear Roger Poole,

4/17/12

I've submitted you numerous request on several occasion concerning my Role's Brady motion, But for some odd reason I haven't received a reply. At this time I'm respectfully requesting once again a copy of any and all documents that you'll have in your possession regarding my case. I have ~~made~~ tried to obtain my motion of discovery from you and James Checks before my plea but all I've gotten thus far is an deaf ear, Both of you have failed to accommodate me. Thanks in advance for your help, assistance and understanding.

Case # 158243 /
158230

I was sentenced on 6/21/11

before Judge Couch

for: Armed robbery + Att. / Attempt Murder 1st
Publish as to Principal Offense Bur. 1st
Arrested Oct. 2010

CC Office of Disciplinary
Counsel, SC. Supreme Court
Files.

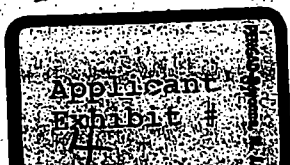
Correctional Institution
Eddie Jones Pitcher #303616
Perry C.I. Max D-X-6
430 Oak Lawn Rd
Pelter, SC

RECEIVED

29669

APR 11 2012

ALIC DEFENDER
OFFICE



THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

State of South Carolina

vs.

Eddie James Pilcher

Defendant

) IN THE COURT OF GENERAL SESSIONS
) SEVENTH JUDICIAL CIRCUIT
)

) INDICTMENTS:
)

) WARRANTS: 1582362; 1582364; 1582366; 1582357;
) 1582360; 1582363; 1582365

**NOTICE OF APPEARANCE
AND REQUEST FOR DISCOVERY**

The Defendant respectfully requests that the Solicitor produce or otherwise make available to the Defense statements of the Defendant, the Defendant's prior record, all documents, tangible objects, reports of examination and tests, witness statements, physical evidence and any other information subject to disclosure pursuant to Rule 5 and 6 of the South Carolina Rules of Criminal Procedure.

The Defendant further requests the Solicitor to produce all evidence favorable to the Defendant subject to disclosure pursuant to Brady v. Maryland, 373 U.S. 83 (1963), Kyles v. Whitney, 514 U.S. 419 (1995), and their progeny. This includes all information which may tend to exculpate the Defendant and which may tend to mitigate any punishment should he be found guilty.

This request is a continuing request for all such discoverable information as it becomes known to the prosecution or any prosecution agents or which, by the exercise of due diligence, may become known to the prosecution.

The Defendant hereby asserts his Fifth Amendment right to remain silent and does not wish to be questioned in the absence of counsel, pursuant to McNeil v. Wisconsin, 111 S. Ct. 220 (1991) and Edwards v. Arizona, 451 U.S. 477 (1981).

Furthermore, pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure, Defendant objects to the introduction of a chemist's or analyst's report without such person being personally present at trial. Defendant also requests the appearance in Court of all persons within the chain of custody of all physical evidence.

Respectfully Submitted

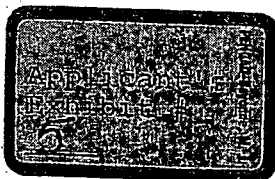
J. Roger Poole

Bar Number: 4499

Seventh Judicial Circuit Public Defender Office

Spartanburg, South Carolina

Dated: October 18, 2010



2010 OCT 20 PM 1:55
CLERK OF COURT
SPARTANBURG, SC
FILE NO. 2010-000430

THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF GENERAL SESSIONS
) SEVENTH JUDICIAL CIRCUIT
)

State of South Carolina

) Indictment(s):

) Warrant(s): I582362; I582364; I582366; I582357;
I582360; I582363; I582365
)

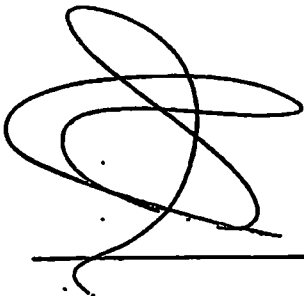
vs.

EDDIE JAMES PILCHER,

CERTIFICATE OF SERVICE

Personally appeared before me, Shelia Childers who being duly sworn, deposes and says that she is employed by the Spartanburg County Public Defender's Office, and is a person of such age and discretion as to be competent to serve papers.

That on 10-20, 2010, she served a copy of the Notice Of Appearance And Request For Discovery, by delivering a copy of same to the person herein after named at the address given below:



ADDRESSEE: Trey Gowdy
Solicitor, Seventh Judicial Circuit
Spartanburg County Judicial Center
180 Magnolia Street
Spartanburg, SC 29306

Sworn to before me this

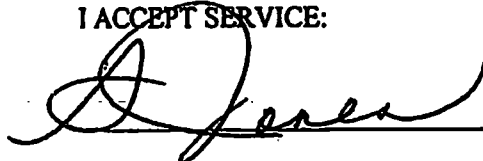
20 day of Oct., 2010.

Shelia A. Madden

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires: 10-7-2017

I ACCEPT SERVICE:



Seventh Judicial Circuit Solicitor's Office

Date: 10-20-10

M. HOPE BLOOMLEY

FILED
CLERK OF COURT
SPARTANBURG COUNTY
OCT 20 PM 2:27
10040007

THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF GENERAL SESSIONS
) SEVENTH JUDICIAL CIRCUIT
)

State of South Carolina

) INDICTMENTS:

vs.

) WARRANTS: 1582434
)

Eddie James Pilcher

) NOTICE OF APPEARANCE
) AND REQUEST FOR DISCOVERY
)

Defendant)

The Defendant respectfully requests that the Solicitor produce or otherwise make available to the Defense statements of the Defendant, the Defendant's prior record, all documents, tangible objects, reports of examination and tests, witness statements, physical evidence and any other information subject to disclosure pursuant to Rule 5 and 6 of the South Carolina Rules of Criminal Procedure.

The Defendant further requests the Solicitor to produce all evidence favorable to the Defendant subject to disclosure pursuant to Brady v. Maryland, 373 U.S. 83 (1963), Kyles v. Whitney, 514 U.S. 419 (1995), and their progeny. This includes all information which may tend to exculpate the Defendant and which may tend to mitigate any punishment should he be found guilty.

This request is a continuing request for all such discoverable information as it becomes known to the prosecution or any prosecution agents or which, by the exercise of due diligence, may become known to the prosecution.

The Defendant hereby asserts his Fifth Amendment right to remain silent and does not wish to be questioned in the absence of counsel, pursuant to McNeil v. Wisconsin, 111 S. Ct. 220 (1991) and Edwards v. Arizona, 451 U.S. 477 (1981).

Furthermore, pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure, Defendant objects to the introduction of a chemist's or analyst's report without such person being personally present at trial. Defendant also requests the appearance in Court of all persons within the chain of custody of all physical evidence.

Respectfully Submitted

J. Roger Poole

Bar Number: 4499

Seventh Judicial Circuit Public Defender Office

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 NOV 15 PM 1:15
J. ROGER POOLE

Spartanburg, South Carolina

Dated: November 12, 2010

File No.: 42a10-00064304

THE STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF GENERAL SESSIONS
) SEVENTH JUDICIAL CIRCUIT
)

State of South Carolina

) Indictment(s):

vs.

) Warrant(s): I582434
)

EDDIE JAMES PILCHER

) **CERTIFICATE OF SERVICE**

Personally appeared before me, Shelia Childers who being duly sworn, deposes and says that she is employed by the Spartanburg County Public Defender's Office, and is a person of such age and discretion as to be competent to serve papers.

That on 11-15, 2010, she served a copy of the Notice Of Appearance And Request For Discovery, by delivering a copy of same to the person herein after named at the address given below:

ADDRESSEE: Trey Gowdy
Solicitor, Seventh Judicial Circuit
Spartanburg County Judicial Center
180 Magnolia Street
Spartanburg, SC 29306



Sworn to before me this

15 day of Nov., 2010.

Shelia Childers

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires: 11-9-2017

I ACCEPT SERVICE:

CB Boone

Seventh Judicial Circuit Solicitor's Office

Date: 11-15-10

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2010 NOV 15 PM 1:48
M. HOPE BLANCHET
File No. 42a10-00064304

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

The State of South Carolina,

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUITFILED
2010 NOV 24 PM 12:50
CLERK OF COURT
SPARTANBURG COUNTY

M. HOPE BLACKLEY

AFFIDAVIT OF DISCOVERY

Indictment No(s):

Warrant No(s):

I 582434

Eddie Pilcher

Defendant.

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:

☐ HARD COPY: ☐ ELECTRONICALLY (e-mail): ☒ MEDIA (CD DVD)

everything is on CD

DOCUMENT	Page No.	DOCUMENT	Page No.
☒ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☒ Incident Report(s)		☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☒ Photograph(s)	
☒ Supplemental Report(s)		☐ Line-up(s)	
☒ Waiver of Rights Form(s)		☐ Video/DVD	
☒ Voluntary Statement(s):		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)		☐ Bond Sheet	
☒ Defendant's NCIC (Rap)		☐ Hospital Records	
☐ Consent to Search Form(s)		☐ EMS Records	
☐ Search Warrant and Return		☒ Mug Shot	
☐ Drug Report(s)		☒ Driver Records	
☐ SLED Lab Report(s)		☐ Affidavit of Photograph Identification	
☒ Booking Report(s)		Warrant request	
☒ Solicitor's Reciprocal Rule 5			

☒ Other

CD-911

TOTAL COPIED/NUMBERED: _____ DATED: 11-23-10

I, Roger Poole

attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 24 day of Nov, 2010.

K. Poole

Attorney or Designee

Wendy Attomell

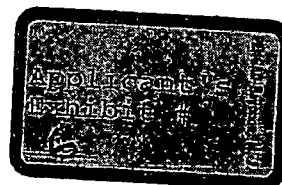
SOLICITOR'S OFFICE

SWORN to before me this 24 day

of Nov, 2010

Notary Public for South Carolina

My commission expires: 12-23-19



DBB

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

The State of South Carolina,

v.

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

AFFIDAVIT OF DISCOVERY

Indictment No(s):

Warrant No(s):

I 582357, I 582360 I 582362
366Eddie Pilcher
Defendant.

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:

☒ HARD COPY; ☐ ELECTRONICALLY (e-mail); ☐ MEDIA (CD, DVD)

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☒ Incident Report(s)	1-1	☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☐ Photograph(s)	
☐ Supplemental Report(s)		☐ Line-up(s)	
☐ Waiver of Rights Form(s)		☐ Video/DVD	
☐ Voluntary Statement(s)		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)		☐ Bond Sheet	
☒ Defendant's NCIC (Rap)	5-23	☐ Hospital Records	
☐ Consent to Search Form(s)		☐ EMS Records	
☐ Search Warrant and Return		☐ Mug Shot	
☐ Drug Report(s)		☐ Driver Records	
☐ SLED Lab Report(s)		☐ Affidavit of Photograph Identification	
☐ Booking Report(s)			
☒ Solicitor's Reciprocal Rule 5			
☐ Other			

TOTAL COPIED/NUMBERED: 23 DATED: 11-23-10

I, Roger Poole

, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 23 day of NOV, 2010.

Donald E. Hays
Attorney or DesigneeWendy A. Howell
SOLICITOR'S OFFICE

SWORN to before me this _____ day

of _____, 20____

Notary Public for South Carolina
My commission expires: _____

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

The State of South Carolina,)

v.)

Eddie Pilcher
Defendant.

IN THE COURT OF GENERAL SESSIONS
SEVENTH JUDICIAL CIRCUIT

AFFIDAVIT OF DISCOVERY

Indictment No(s):

Warrant No(s):

I 582434, I 582355
I 582360, I 582362 - 366

DBB
2010 DEC 20 AM 11:05
M. HOPE BLANK
FILED

PERSONALLY APPEARED BEFORE ME, the undersigned deponent who being duly sworn, says that he/she copied the following materials and provided same to the Defendant's attorney of record by:

☐ HARD COPY; ☐ ELECTRONICALLY (e-mail); ☒ MEDIA (CD, DVD)

DOCUMENT	Page No.	DOCUMENT	Page No.
☐ Warrant(s) or Ticket(s)		☐ Forensic Report(s) (ID Reports)	
☐ Incident Report(s)		☐ Evidence Sheet(s)	
☐ Investigation Report(s)		☐ Photograph(s)	
☐ Supplemental Report(s)		☐ Line-up(s)	
☐ Waiver of Rights Form(s)		☒ Video/DVD witness Tronne Mitchell	
☐ Voluntary Statement(s):		☐ SLED Request Form(s)	
☐ Witnesses Written Statement(s)		☐ Bond Sheet	
☐ Defendant's NCIC (Rap)		☐ Hospital Records	
☐ Consent to Search Form(s)		☐ EMS Records	
☐ Search Warrant and Return		☐ Mug Shot	
☐ Drug Report(s)		☐ Driver Records	
☐ SLED Lab Report(s)		☐ Affidavit of Photograph Identification	
☐ Booking Report(s)			
☐ Solicitor's Reciprocal Rule 5			

☒ Other

3 CD's - case file, 911 radio + 911 calls dispatch

TOTAL COPIED/NUMBERED: _____ DATED: 12-13-10

I, Roger Poole

, attorney for the Defendant(s) or his/her designee, have reviewed the above-referenced Affidavit and/or documents and accept them as the response to the Rule 5/Brady Motion in this matter. I also accept service of the Solicitor's Reciprocal Rule 5.

Signed/Accepted this 14 day of Dec, 2010.

Donald E. Steg
Attorney or Designee

Wendy Attwell
SOLICITOR'S OFFICE

SWORN to before me this 14 day

of December, 2010.

Roger Poole

Notary Public for South Carolina

My commission expires: 3-23-2018

GREER POLICE DEPARTMENT SUPPLEMENTAL REPORT

Agency Id:
SC0230300

Case Number

032010016151

☐ Original Report	☐ Status Change	☐ Additional Victims	☐ Additional Stolen Property	Incident Type: ROBBERY: ARMED ROBBERY W/A DEADLY WEAPON
☒ Supplemental Report	☐ Other Report	☐ Additional Offenders	☐ Additional Recovered Property	

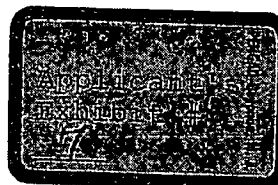
Patrol District 4 Page of Pages

INCIDENT NARRATIVE

IN REFERENCE TO THE ABOVE LISTED CASE I/O WAS ADVISED THAT DEFENDANT EDDIE JAMES PILCHER JR. HAD BEEN ARRESTED ON I/O'S CHARGES, AND THAT HE REQUESTED TO SPEAK TO I/O ABOUT THE CASE. I/O MET WITH SUBJ. AND ESCORTED HIM TO CID OFFICE. THE INTERVIEW WAS AUDIO TAPED. I/O ADVISED SUBJ. OF HIS MIRANDA RIGHTS AND SUBJ. SIGNED HIS NAME TO THE WAIVER AND AGREED TO SPEAK TO I/O ABOUT THE CASE. SUBJ. ADMITTED TO HIS INVOLVEMENT IN THE CASE AND ALSO STATED THAT (TONY) IDENTIFIED BY PICTURE'S CONTAINED IN THE FILE AS CURTIS ANTONIO WILKIE, AND (JON-JON) IDENTIFIED AS JOHNATHON ANTONIO GOSS, HAD COMMITTED THE ROBBERY ON [REDACTED] IN GREER, SC. WITH HIM. SUBJ. STATED THAT HE DID NOT HAVE A GUN BUT TONY AND JON-JON BOTH HAD GUNS ONE HAD AN AK-47 AND THE OTHER HAD A PISTOL. SUBJ. STATED THAT THEY HAD DROVE AROUND IN THE CAR THAT HE WAS BORROWING FROM YVONNE MITCHELL HIS EX-GIRLFRIEND. SUBJ. STATED THAT HE NEEDED MONEY FOR THE RENT, AND THE OTHER GUYS NEEDED MONEY ALSO. SUBJ. STATED THAT THEY DROVE AROUND LOOKING TO DO A LICK/ ROBBERY TO GET SOME MONEY. SUBJ. STATED THAT (TONY) SPOTTED THE PEOPLE ON OLD WOODRUFF HAVING A COOKOUT AND SAID THAT THEY WOULD HAVE MONEY SO THEY PARKED THE CAR A FEW HOUSES DOWN AT TONY'S BABY MOMMA'S HOUSE AND BORROWED ITEMS TO HIDE THEIR FACES FROM THAT HOUSE AND THEN WALKED TO THE VICTIMS HOUSE FROM BEHIND AND ROBBED THEM. SUBJ. STATED THAT HE DID NOT HAVE A GUN AND THAT THE OTHER GUYS DID. SUBJ. STATED THAT WHEN THEY APPROACHED THE PEOPLE HAVING THE COOKOUT THEY ROBBED THEM AND HE STATED THAT A WHITE GIRL TRIED TO USE HER PHONE WHILE THEY WERE BEING ROBBED AND HE COVERED UP HER FACE WITH HIS HAND AND SHE TRIED TO BITE HIM AND HE STATED "SOMEBODY SHOOT THAT BITCH." SUBJ. STATED THAT THEY FORCED EVERYONE IN THE HOUSE AND DEMANDED MONEY AND TOOK THEIR PHONES. SUBJ. STATED THAT THEY ALL RAN OFF AFTER THE ROBBERY, AND HE CALLED HIS EX-GIRLFRIEND YVONNE MITCHELL TO COME PICK THEM UP IN GREER, AND GET HER CAR BECAUSE THEY LEFT IT AT TONY'S GIRLFRIEND HOUSE. SUBJ. STATED THAT THEY HID THE GUNS BEHIND TONY'S GIRLFRIENDS HOUSE AND WALKED TO ANOTHER STREET WHERE YVONNE CAME AND PICKED THEM UP. SUBJ. ALSO PROVIDED STATEMENTS REGARDING CASE #S GR10-15067, AND GR10-15074, OTHER ACTIVE CASES OF ROBBERY AND BURGLARY. *** SEE SUPPLEMENTAL REGARDING THOSE STATEMENTS. I/O WILL SEEK WARRANTS FOR THE BELOW LISTED SUBJ.'S FOR ARMED ROBBERY, KIDNAPPING AND BURGLARY.

CASE STATUS ACTIVE.

SUBJ. CURTIS ANTONIO WILKIE
ADDRESS: [REDACTED] GREER, SC 29651
DOB: [REDACTED]
BLACK MALE



SUBJ. JOHNATHON ANTONIO GOSS
ADDRESS: [REDACTED] TAYLORS, SC 29687
DOB: [REDACTED]
BLACK MALE

ADMIN	Subject Identified	Subject Located	☒ Active ☐ Admin. Closed	☐ Arrived Under 18	☐ Ex-Cleared Under 18
	☒ Yes ☐ No	☐ Yes ☒ No	☐ Unfounded	☐ Arrested 18 and Older	☐ Ex-Cleared 18 and Older
	Reason for exceptional clearance: 1 ☐ Offender death 2 ☐ No prosecution 3 ☐ Extradition denied 4 ☐ Victim declines cooperation 5 ☐ Juvenile no arrest				
	Reporting Officer(s)	Date	Unit/Shift	Applying Officer	Date
ARTERBURN, DALE	10/05/2010	504/0	FORTENBERRY, PATRICK	10/05/2010	502/00

Page 11 of 73 11/23/2010

GREER POLICE DEPARTMENT SUPPLEMENTAL REPORT

Agency Id
SC02M300

Case Number

032010016151

☐ Original Report	☐ Status Change	☐ Additional Victims	☐ Additional Station Property	Incident Type: ROBBERY: ARMED ROBBERY W/A DEADLY WEAPON
☒ Supplemental Report	☐ Other Report	☐ Additional Offenders	☐ Additional Recovered Property	

Patrol District 4 Page 2 of 2 Pages

INCIDENT OVERFLOW ITEMS

Offense Line 01 => Offense Type: ROBBERY: ARMED ROBBERY W/A DEADLY WEA, Offense Completed: Yes, Forced Entry: Yes, Premise Type 1: RESIDENCE/HOME

ADMIN	Subject Identified ☒ Yes ☐ No		Subject Located ☐ Yes ☒ No		☒ Active ☐ Admin. Closed	☐ Arrested Under 18	☐ Ex-Cleared Under 18
					☐ Unfounded	☐ Arrested 18 and Older	☐ Ex-Cleared 18 and Older
	Reason for exceptional clearance: 1 ☐ Offender death 2 ☐ No prosecution 3 ☐ Extradition denied 4 ☐ Victim declines cooperation 5 ☐ Inmate no arrest						
	Reporting Officer(s)		Date	Unit/Star	Reporting Officer		
	ARTERBURN, DALE		10/05/2010	504/0	FORTENBERRY, PATRICK		
				Date		Unit/Star	
				10/05/2010		502/00	
Follow Up Investigation? ☐ Yes ☒ No							



SEVENTH JUDICIAL CIRCUIT PUBLIC DEFENDER

CLAY T. ALLEN
CIRCUIT PUBLIC DEFENDER

366 NORTH CHURCH STREET
SUITE 3000
SPARTANBURG, SC 29303



Telephone: (864) 596-2561
Fax: (864) 596-2284

August 14, 2013

Dear Mr. Pilcher,

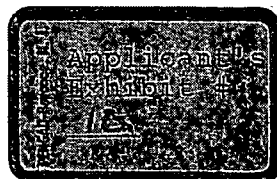
I am responding to your letter dated July 29, 2013.

I do not have a copy of your alleged recorded statement. Mr. Allen told you that there are five CDs and one DVD in your file. See his letter of May 15, 2013. I don't recall if a recorded statement was in those formats.

Also, I do not have the indictments in your case.

Sincerely,

J. Roger Poole
J. Roger Poole



Poole, J

From: Bulsa, Derrick
Sent: Monday, January 31, 2011 12:23 PM
To: Poole, J; Hall, Robert
Cc: Allen, Clay
Subject: Eddie Pilcher, Jonathan Goss, Curtis Wilkie

Roger and Robert,

This e-mail is to extend plea offers for these co-defendants. I show that Roger currently represents Mr. Pilcher and Mr. Goss. Robert represents Mr. Wilkie.

My reading of the case file shows two incidents in Spartanburg County and one in Greenville County. Defendant statements were instrumental in the solving of the cases.

For the two Spartanburg County incidents, I can offer:

Attempted Burglary 1st for the incident involving Dorothy Howard's residence on [REDACTED], and

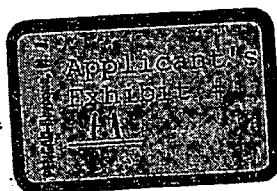
One count of Armed Robbery for the incident involving the victims at the cookout on [REDACTED]

I believe each defendant is still in jail.

Thank you for giving me an answer at the second appearance this month so I can know how to proceed in these cases.

Derrick

at Burg 1st 15. life
AR = 10-30
1st g- 30



STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

Eddie J Pilcher, #303616

2011-CP-42-5117

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2014 FEB 20 PM 4:51
K. JONES, B. JONES

This matter comes before the Court by way of an Application for Post-Conviction Relief filed November 21, 2011, but received by Respondent on May 17, 2012, and amendment filed September 17, 2013. The Respondent made its Return on or about February 20, 2013. An evidentiary hearing into the matter was convened on October 1, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Christopher D. Brough, Esquire. Suzanne H. White, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, the Applicant testified on his own behalf. Derrick Bulsa, Esquire, Detective Dale Arterburn, J. Roger Poole, Esquire, and James A. Cheek, Esquire, also testified. This Court also had before it a copy of the records of the Spartanburg County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the plea transcript and Applicant's exhibits.

PROCEDURAL HISTORY

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Spartanburg County Clerk of Court. The Applicant was

07 [Signature]

[Signature] Page 1 of 12

indicted by the Spartanburg County Grand Jury for armed robbery (11-GS-42-1970) and attempted burglary – 1st degree (11-GS-42-1971). The Applicant was represented by James A. Cheek, Esquire. On June 21, 2011, the Applicant was sentenced by The Honorable Roger L. Couch to concurrent sentences of twenty-five years on each charge. The Applicant did not appeal his conviction or sentence.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to exercise due diligence in his representation of the Applicant,
2. Involuntary guilty plea;
3. Lack of subject matter jurisdiction;
4. Conflict of interest, in that;
 - a. Counsel represented both the Applicant and his co-defendant and Applicant did not waive the conflict,
5. Prosecutorial misconduct, in that;
 - a. Solicitor's office was aware of the conflict of interest, but did not inform the court,
 - b. Solicitor's office failed to disclose an audio copy of the Applicant's statement, which contained exculpatory information in violation of Rule 5/Brady requests.

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2014 FEB 20 PM 4:51
 MARIE B. BRYANT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRPC). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

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

First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured 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. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of trial." Johnson v. State, 325 S.C. 182, 186, 480 S.E.2d 733, 735 (1997) (citing Strickland).

Applicant testified that Counsel never had copies of the indictments for the charges that

Applicant pled guilty to. Applicant introduced Exhibits #3 and #4, letters to Roger Poole dated December 8, 2010, and April 7, 2012, respectively. Applicant also testified that he received a letter from Roger Poole indicating that Poole did not have the indictments. Applicant introduced the letter as Exhibit #10. Applicant testified that the State obtained the phone records of Yvonne Mitchell, Applicant's ex-girlfriend, and subpoenaed the phone records of Dana Lewis, one of the victims. The Applicant also testified that although the Detective indicated that he received the names of the co-defendant from Applicant, Applicant could not remember if he gave the Detective any names.

Detective Arterburn testified that he was the investigating officer who interviewed Applicant on these cases. Arterburn testified that he gave Applicant his Miranda warnings on October 4, 2010, and interviewed him on that date, but completed the summary of the interview on October 5, 2010. Arterburn testified that the two events occurred on two separate dates.

J. Roger Poole, Esquire, original attorney appointed to Applicant's case testified that he recalled Applicant's case. Poole indicated that Applicant was charged with three counts each of burglary, armed robbery, and kidnapping. Poole testified that Applicant's preliminary hearing was scheduled for November 6, 2010, but the hearing was waived. Poole testified that he reviewed discovery materials with Applicant on that date. Poole testified that the Applicant admitted his involvement in the crimes to the investigator/interviewer from the public defender's office and indicated that he wanted the best possible deal. Poole testified that Applicant wanted to plead guilty when the State dropped all of the kidnapping charges and allowed Applicant to plead to one count of armed robbery and burglary - 1st degree.

Counsel testified that he met with Applicant, who informed Counsel that Applicant and his co-defendants had tried to rob a stash house. Applicant told Counsel that he kicked the door,

but denied ever having a gun. Applicant also told Counsel that he left to get masks when they were unsuccessful and then changed clothing before the attempt at the second location the next day. Counsel testified that Applicant also told him that Applicant was in charge of the crimes, but co-defendant Wilkie provided information as to what was going on. Counsel testified that he explained the concept of "hand of one, hand of all" to Applicant in the event that even if Applicant did not have a gun, the others participating in the armed robbery did have guns. Counsel also testified that prior to the plea he reviewed the indictments and sentencing sheets with the Applicant. Counsel testified that he never received any indication from Applicant that he wished to proceed with anything other than a plea.

This Court finds the testimony of Applicant to lack credibility. Other than alleging that Counsel did not have copies of the indictments, Applicant has failed to offer any other testimony or evidence to support his claim that Counsel was ineffective. To establish counsel was inadequately prepared, an Applicant must present evidence of what counsel could have discovered or what other defenses could have been pursued had counsel been more fully prepared. Jackson v. State, 329 S.C. 345, 495 S.E.2d 768 (1998); Skeen v. State, 325 S.C. 210, 481 S.E.2d 129 (1997) (applicant not entitled to relief where no evidence presented at PCR hearing to show how additional preparation would have had any possible effect on the result at trial). The Applicant failed to point to any specific matters Counsel failed to discover, or any defenses that could have been pursued had Counsel "exercised due diligence" in his representation of Applicant. Furthermore, the Applicant failed to show any prejudice that may have resulted from Counsel's alleged inadequate preparation. Accordingly, this allegation is dismissed.

Conflict of Interest

The mere possibility of a conflict of interest is insufficient to challenge a criminal conviction. Langford v. State, 310 S.C. 357, 426 S.E.2d 793 (1993). "In order to establish a violation of the Sixth Amendment, a defendant who raised no objection at trial must demonstrate that an actual conflict of interest adversely affected his lawyer's performance." Duncan v. State, 281 S.C. 435, 438, 315 S.E.2d 809 (1984). The Applicant must show that his attorney actually owed duties to a party whose interests were adverse to the Applicant. Id; Thomas v. State, 346 S.C. 140, 551 S.E.2d 254 (2001).

Applicant testified that attorney Roger Poole was originally appointed to represent him, but James Cheek ("Counsel") represented Applicant at his guilty plea. Applicant testified that Counsel also represented Applicant's co-defendant, Jonathan Goss. Applicant testified that his story did not match the story of Goss. However, Applicant testified that Counsel never had Applicant sign a waiver of conflict. Additionally, Applicant testified that Counsel favored Goss during the guilty plea because Goss had no criminal record and because Goss indicated that the Applicant threatened him. Applicant introduced Applicant's Exhibit #1, Goss' guilty plea transcript. Applicant testified that he and Goss pled on the same day, although Applicant pled first and then Goss pled after Applicant. Applicant introduced Exhibit #2, a copy of Goss' statement to police and waiver of rights form. Applicant testified that he never saw a copy of Goss' statement prior to his plea, but he should have because Goss stated that Applicant had a gun. Applicant testified that he felt betrayed by Counsel's representation of his co-defendant. Counsel testified that he also reviewed Goss' statement with the Applicant prior to the plea. Counsel testified that he met with Goss a few minutes prior to his plea, at which time Goss informed Counsel of Applicant's threats. However, Counsel testified that the Applicant had already pled and been sentenced at that time, so Counsel was not concerned about any potential

of conflict. Poole testified that originally the co-defendant Goss was assigned to Poole, but then reassigned.

As the testimony and record indicated, both Applicant and Goss wanted to plead guilty and Applicant pled guilty prior to Goss on the same day. Applicant failed to demonstrate that any alleged conflict interest adversely affected Counsel's performance. Not only did the Applicant fail to raise any objection to Counsel representing both Applicant and Goss, but because he pled first, nothing that Counsel said at Goss' plea affected the outcome of Applicant's plea. Therefore, this claim is denied and dismissed.

Involuntary Guilty Plea

In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

In Hill v. Lockhart, 474 U.S. 52 (1985), the United States Supreme Court held that the

two-part standard adopted in Strickland v. Washington, *supra*, for evaluating claims of ineffective assistance of counsel applies, as well, to guilty plea challenges based on ineffective assistance of counsel. To meet the Court's "prejudice" requirement, a criminal defendant must show that there is a reasonable probability that, but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. Hill at 59. Not only did the Applicant fail to establish that Counsel was deficient in his representation of Applicant in any manner, but the Applicant has failed to establish that he would have proceeded to trial, but for, these alleged deficiencies of Counsel. Applicant's own testimony indicated that he always wanted to plead guilty. Further, the record is clear that the Applicant informed the court that he "committed the crime," and although he asserted that he did not have a gun, he acknowledged that others participating had a gun. (Tr. p. 16; 18-19). The testimony and record are clear that the Applicant pled guilty freely and voluntarily. Therefore, this claim is denied and dismissed.

Prosecutorial Misconduct

The Applicant alleged that the State failed to inform the court of the conflict of interest and failed to disclose exculpatory information in violation of Brady. In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching. Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268.

Applicant testified that he believed that the State had exculpatory information that was never turned over to Counsel. Applicant offered Exhibit #5, a copy of Applicant's Rule 5/Brady Motions; Exhibit #6, affidavit of discovery from Solicitor's office; Exhibit #7, incident report and copy of typed statement from Detective Arterburn regarding his interview with Applicant; and Exhibit #8, CD of Applicant's interview with police. Applicant testified that he denied wearing shorts in the interview and denied having a gun in the interview. However, Applicant testified that person alleged to be him in still photos from a surveillance camera showed a man in white shorts. Applicant introduced the photo as Exhibit #9.

Arterburn testified that he did not prepare and submit a copy of the audio recording of the interview, but indicated on the report that there was an audio recording. However, Arterburn testified that the recording was very distorted and muffled sounding. Arterburn testified that throughout the interview Applicant maintained that he did not have a gun and denied that he was wearing shorts. Applicant also declined to offer a written statement. Arterburn testified that during the interview, Applicant also indicated to Arterburn that perhaps Applicant was involved, but only as an accessory.

Derrick Balsa, Deputy Solicitor for the Seventh Judicial Circuit, testified that he was the prosecutor in charge of this case. Balsa stated that he did not have a copy of the audio recording of Applicant's interview with police at the time of the plea. Balsa stated that he did not attempt to get a copy because he was provided with a summary of the interview on paper. Balsa testified that he requested the file from archives when PCR Counsel requested a copy of the recording and there was not a copy in the file, so he called the Detective and requested a copy.

This court finds that the Applicant's Brady rights were not violated. The Applicant's guilty plea was knowing and voluntary, and he waived any defense or attacks to the sufficiency

of the evidence. The Applicant's primary claim is that he told the Detective that he was not wearing shorts, did not have a gun, and suggested that he merely an accessory. As the testimony indicates, the information about the shorts and gun was also provided to Poole and Counsel. However, as the testimony also indicates, the Applicant acknowledged his participation in the crimes as well, which contradicts any claims that Applicant was an accessory and not principal. The interview was not withheld from the Applicant because clearly the Applicant was aware of the interview and of what he said. Even if the Applicant did not have a copy of the audio recording of the interview prior to entering his plea, it is clear that he was entirely aware of the information contained in the interview and had seen the Detective's summary before the court accepted his guilty plea. Furthermore, this Court finds that the recording contained no material, favorable evidence that would have changed the result of the proceeding. Therefore, this allegation is dismissed.

Lack of subject matter jurisdiction

Although raised in his application, the Applicant failed to pursue these claims at his hearing. Therefore, this Court finds that the Applicant voluntarily abandoned these claims.

Summary

This Court finds in regards to the allegations presented at the hearing, the Applicant's testimony is not credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that

Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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.

This Court cautions Applicant that he 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 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 20 day of February, 2014.


J. Derham Cole
Presiding Judge

CLERK OF COURT
CLERK OF COURT
2014 FEB 20 PM 4:51
M. HOPE BLANCHET

WITNESSES

Greer PD

[Signature]

ARREST WARRANT NUMBER

1582360

ACTION OF GRAND JURY

True Bill

[Signature]
Foreperson of Grand Jury

Date:

VERDICT

Computer

INDEXED

FILED

Foreperson of Petit Jury

80
1 Foreperson of Petit Jury
Date of Assessment and
Fine Card Made

Computer

DOCKET NO

11-GS-42-1790

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE

vs.

Eddie James Pilcher Jr

Indictment for

ARMED ROBBERY

SC Code: 16-11-330 (A)

CDR Code: 139

Class FEL/A

2011 MAR 29 AM 9:52
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on SEP 23 2010 the Grand
 Jurors of Spartanburg County present upon their oath:

ARMED ROBBERY

That the Defendant, Eddie James Pilcher Jr, did in Spartanburg County on or about September 9, 2010, while armed with a pistol, dirk, slingshot, metal knuckles, razor, knife or other deadly weapon or while alleging, either by actions or word, he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon feloniously take from the person or presence of Dana Lewis, by means of force or intimidation goods or monies of Dana Lewis, described as follows: personal property, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 (A), Code of Laws of South Carolina (1976, as amended).

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


 DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG

STATE VS.

Eddie James Pilcher Jr

AKA:

Race: B Sex: M Age: 27

DOB: SS#: [REDACTED]

Address: [REDACTED]

City, State, Zip: [REDACTED]

DL#: SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

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

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

BULSA, DERRICK

SC Bar# 15214

Defendant

Attorney for Defendant

SC Bar# 1257

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 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: 6/21/11☒ 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. 261 days☐ 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: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 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	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter: P. Green

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 11-65-42-1790

A/W#: 1582360

Date of Offense: 9/9/2010

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS10-30 years

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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:

BULSA, DERRICK

SC Bar# 15214

Defendant

Attorney for Defendant

SC Bar# 1257

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 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.

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SPECIAL CONDITIONS:

☒ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☒ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
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§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Presiding Judge

Judge Code: 2135Sentence Date: 6/21/11

WITNESSES

Greer PD

[Signature]

ARREST WARRANT NUMBER

1582434

ACTION OF GRAND JURY

Foreperson of Grand Jury *[Signature]* Date: MAR 25 2011

VERDICT

Computer

Forfeiture of Right to Jury
Date: *[Signature]*

ASSESSMENT AND
FINE CARD MADE

Computer

TRAFFIC VIOLATION COPY

11-6S-42-1791

The State of South Carolina

County of Spartanburg

Barry Barnette, Solicitor

COURT OF GENERAL SESSIONS

TERM

THE STATE

VS.

Eddie James Pilcher, Jr.

Indictment for
ATTEMPTED BURGLARY,
FIRST DEGREE

SC Code: 16-11-311 & 16-1-80
CDR Code: 1151

Class

RECEIVED
SOUTH CAROLINA COUNTY
CLERK'S OFFICE

2011 MAR 29 AM 9:52

M. ROBERT BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

*45 75 100

At a Court of General Sessions, convened on _____ the
Grand Jurors of Spartanburg County present upon their oath:

ATTEMPTED BURGLARY, FIRST DEGREE

That the Defendant, Eddie James Pilcher, Jr., did in Spartanburg County on or about September 9, 2010, attempt to enter the dwelling belonging to Dorothy Howard at [REDACTED], Greer, SC without consent and with the intent to commit a crime therein, and either:

- 1) while attempting to effect entry, or in immediate flight, he did one of the following:
 - a) was armed with a deadly weapon; or
 - b) caused physical injury to a person who was not a participant in the crime; or
 - c) used or threatened to use a dangerous instrument; or
 - d) displays what appears to be a knife, pistol, revolver, rifle, shotgun, machine gun, or other firearm; or
- 2) attempted to enter the dwelling in the nighttime

in violation of §16-11-311 and 16-1-80, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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


DEPUTY SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF SPARTANBURG
STATE VS.

Eddie James Pilcher Jr

AKA:

Race: B Sex: M Age: 27

DOB: [REDACTED] SS#: [REDACTED] 6

Address:

City, State, Zip:

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Attempt / Attempt, Common Law, Punish as to principal offense (Burglary 1st)

IN THE COURT OF GENERAL SESSIONS

185

INDICTMENT/CASE#: 11-65-42-1790

A/W#: 1582434

Date of Offense: 10/22/2010 9/9/10

S.C. Code §: C/L

CDR Code #: 0019

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Attempt / Attempt, Common Law, Punish as to principal offense (Burglary 1st) 15 yrs - life

in violation of § C/L, 16-01-0 of the S.C. Code of Laws, bearing CDR Code # 1151

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The 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.ATTES: BULSA, DERRICK 15264 EDDIE J. PILCHER [Signature] 1207
SC Bar# Defendant Attorney for Defendant SC Bar#WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 25 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: 6/21/11☒ 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. 261 days☐ 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: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 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	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk

Court Reporter: P. Green

SCCA/217 (06/2010)

_____ days/hours Public Service Employment

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: _____

☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.Presiding Judge [Signature]Judge Code: 2135Sentence Date: 6/21/11