

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

TRAVIS T. TRACY,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000408

APPENDIX

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

STATE OF SOUTH CAROLINA,) TRANSCRIPT
PLAINTIFF,) OF
vs.) RECORD
TRAVIS TYRONE TRACY,) 2011-GS-42-1128(A)
DEFENDANT.)

September 19th, 2011
Spartanburg, South Carolina

B E F O R E :

THE HONORABLE ROGER L. COUCH, Judge.

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

RYAN McCARTY and DANNY FULMER
ASSISTANT SOLICITOR
Attorney for the State

ROBERT HALL
ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

PAMELA E. GREEN
Circuit Court Reporter
Seventh Judicial Circuit

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THE COURT: Call the names of those who are here today for pleas this morning please.

SOLICITOR MCCARTY: Labiran Dawkins.

(Defendant stands.)

SOLICITOR MCCARTY: Antyone Evans.

(Defendant stands.)

THE COURT: When your name is called, stand, remain standing. Thank you.

SOLICITOR MCCARTY: Jamie Kates.

(Defendant stands.)

SOLICITOR MCCARTY: Kelsey Littlejohn.

(Defendant stands.)

SOLICITOR MCCARTY: Luther Starnes.

(Defendant stands.)

SOLICITOR MCCARTY: Curtis Thompson.

(Defendant stands.)

SOLICITOR MCCARTY: Travis Tracy.

(Defendant stands.)

SOLICITOR MCCARTY: And then, Your Honor, Mr. Dawkins is represented by Mr. Brown.

THE COURT: He's not present?

SOLICITOR MCCARTY: He's representing him, yes, sir.

THE COURT: All right. Sir, you just remain seated

1 right now. Your attorney's not here. So, we'll deal with
2 you in a, a little while.

3 All right.

4 SOLICITOR McCARTY: Your Honor, I'm sorry. Mr.
5 Littleton or Mr. Littlejohn?

6 THE COURT: Yes.

7 SOLICITOR McCARTY: He's represented by Mr. Singleton.
8 He needs to have a seat. I'm sorry.

9 THE COURT: All right. Thank you.

10 SOLICITOR McCARTY: Thank you. I'm sorry, Your Honor.

11 THE COURT: That's okay.

12 Madam Clerk, swear the defendants that are standing
13 please.

14 (WHEREUPON, all defendants were placed under oath at
15 this time.)

16 THE COURT: You can be seated.

17 (Defendants comply.)

18 THE COURT: Now, if any of you either failed or refused
19 to take that oath that was just administered by the clerk,
20 please stand.

21 (No response.)

22 THE COURT: The record then will reflect that all
23 defendants whose names were called for pleas has, have now
24 been sworn.

25 I'm going to go over matters with you at this time that

1 would be common to your cases should you later decide to
2 plead guilty. I'm informed that you're here for a guilty
3 plea. And, so, we're going to go over some things to
4 determine whether or not you're in a position to offer a
5 plea or, in other words, qualified to go forward with a
6 plea.

7 Now, your attorney is present in the courtroom, and if,
8 at anytime during my discussion, you feel that you need to
9 consult with your lawyer about any matter, please let me
10 know. I'll be glad to stop and allow you to do so. You
11 have every right to consult with your attorney before you
12 respond to any question that I might ask.

13 Also, I will tell you, at this point in time, I've not
14 seen the paperwork that's involved in your case. Under the
15 Constitution you have a right to have a Grand Jury consider
16 your case before it comes to this Court to be disposed of
17 either by a plea or a trial.

18 Mr. Brown's now present.

19 Do you want to go ahead and qualify this defendant?

20 SOLICITOR McCARTY: If we can, Your Honor. If I may
21 have Lorin Williams from back here.

22 THE COURT: Come forward, sir.

23 SOLICITOR McCARTY: As soon as I---

24 THE COURT: And the gentleman in the box?

25 SOLICITOR McCARTY: And Mr. Dawkins, am I correct?

1 THE COURT: If you'll stand, Mr, Dawkins.

2 And, sir, once you get in there, if you'll stand as
3 well.

4 Madam Clerk, swear these two defendants for me.

5 (WHEREUPON, the defendants were placed under oath at
6 this time.)

7 THE COURT: All right. Please be seated.

8 I observed that both of the defendants did take the
9 oath.

10 I was going over with you the fact that I've not yet
11 seen the paperwork in your case, and the fact that you have
12 a right to have your case considered by a Grand Jury.

13 Now, the Grand Jury does not determine your guilt or
14 innocence. They decide whether or not the State has enough
15 evidence to justify the case moving forward to this Court to
16 be disposed of.

17 Now, neither you or your lawyer is allowed to be
18 present in Grand Jury proceedings. Those are conducted in
19 secret. I can not take up your case for a guilty plea
20 unless the Grand Jury has considered the case and issued a
21 true bill on the indictment or you decide that you want to
22 give up that right to have the Grand Jury consider the case
23 and want to go forward today.

24 Now, when I see the paperwork in your case I will
25 discuss with you your Grand Jury status and whether, whether

1 or not it would be necessary for you to waive presentment to
2 go forward today.

3 Also, when you come in front of me individually, and
4 we'll be calling you up individually to go over your case, I
5 will go over your relationship with your lawyer with, with
6 you at that time to be sure you're satisfied with your legal
7 representation.

8 I'm going to ask you a series of questions now. They
9 would apply to each of your cases should you later decide to
10 plead guilty. If you have a response to my questions I'll
11 be asking that you stand and I'll need to get your name on
12 the record before we discuss the question.

13 The first question I have, do any of you currently
14 suffer from any mental, physical, nervous conditions, drug
15 problems, any conditions that would in anyway affect your
16 ability to reason, to make good decisions, or to be able to
17 handle your plea today, if that's true, please stand.

18 (No response.)

19 THE COURT: Have any of you taken or used any drugs or
20 other substances that would have any affect on your ability
21 to reason, make good decisions, or to be able to handle your
22 plea today, if that's true, please stand.

23 (No response.)

24 THE COURT: Now, if anyone has done anything to you
25 such as threaten you, coerce you, put pressure on you, try

1 to intimidate you or done any other acts to try to get you
2 or force you to offer a plea, please stand.

3 (No response.)

4 THE COURT: Now, your plea must be freely and
5 voluntarily given. That means it's something that you've
6 thought about and you've decided it's the best way to handle
7 your case and proceed with a plea so that it's your free
8 decision.

9 Now, if any of you were to be brought in front of me
10 today to offer a guilty plea, if it would be your feeling or
11 belief that somehow that would be something you didn't want
12 to do, or something that you weren't doing freely or
13 voluntarily, please stand.

14 (No response.)

15 THE COURT: If any of you feel that you haven't had
16 enough time in which to consider your case or prepare a
17 defense to the charges, please stand.

18 (No response.)

19 THE COURT: If anyone has made any promises,
20 guarantees, or assurances to you about any matters
21 whatsoever in connection with your plea today, please stand.

22 (No response.)

23 THE COURT: Now, specifically I want to be sure that no
24 one has made any promises, guarantees, or assurances about
25 such things as pardon, parole, probation, early release, or

1 length of sentence. So if anyone's made any assurances or
2 promises in connection with those matters, please stand.

3 (No response.)

4 THE COURT: Now, later on if you offer a guilty plea
5 and I accept the plea you will be giving up or, in effect,
6 waiving most of your Constitutional rights as they relate to
7 the charges that would be before the Court. I have to be
8 sure that you've done that knowingly and intelligently. In
9 other words, you know what your rights are and you've made a
10 decision or intelligent decision to proceed with a plea in
11 spite of the fact that you're giving up those rights.

12 So, I have to be sure that you understand the rights
13 you're giving up. So, I'm going to explain them to you.
14 When I finish I'll give you an opportunity to ask any
15 questions you'd like to ask about these rights.

16 First of all, I've explained you have a right to have
17 your case considered by a Grand Jury. We'll discuss that
18 when I see your paperwork. You have a right to an attorney
19 and I've already told you that you have the right to speak
20 with your attorney at all stages and at anytime during this
21 process.

22 You have a right to request or demand a trial by a
23 jury. At that trial you would be presumed to be innocent
24 until the state proved your guilt beyond a reasonable doubt.
25 The State has the only burden of proof in criminal cases. A

1 defendant has nothing to prove. There's nothing required
2 that you prove because you're presumed to be innocent.

3 At the trial, and under the Constitution, there's
4 several things that you would have the right to do. You
5 could have subpoenas issued to witnesses to require that
6 they attend the hearings. You would have the right to
7 question or confront anyone who testified during the trial.
8 You would have the right to present all the defenses that
9 you have to the charges during your trial, and also, at the
10 trial, you'd be given the opportunity to try to suppress any
11 and all evidence the State may have against you including
12 statements that you might have made prior to that time.

13 You, at all times, have the right to remain silent, and
14 if you chose to remain silent during the trial, the judge is
15 required to instruct the jury that your silence could not be
16 used against you. Those are your rights under the
17 Constitution.

18 If you have any questions about any of those rights,
19 please stand.

20 (No response.)

21 THE COURT: If you feel that you need additional
22 explanation concerning any of those rights, please stand.

23 (No response.)

24 THE COURT: Now, if you decide to plead guilty, and
25 then I decide to accept the plea, you'll be giving up all of

1 those rights as they relate to the charges that are before
2 the Court with the exception of the right of having your
3 lawyer represent you until your plea is completed.

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

7 (No response.)

8 THE COURT: I'll advise each of you that you have ten
9 days from the date that you enter a guilt plea and receive
10 your sentence in which to file an appeal of that plea if you
11 choose to do that.

12 I'll declare that these defendants are qualified to
13 proceed with a plea in the case.

14 The three gentlemen that are not custody, you can step
15 out and have a seat back out in the gallery.

16 (WHEREUPON, other guilty pleas were completed at this
17 time.)

18 THE COURT: All right. Go ahead, Mr. Fulmer.

19 SOLICITOR FULMER: Your Honor, before you is Travis
20 Tyrone Tracy. He's here with his attorney, Mr. Robert Hall.
21 Here on Indictment Number 2011-GS-42-1128. That's a true
22 billed indictment for armed robbery. He's pleading guilty
23 to the same. I'm also handing up an order of restitution,
24 Your Honor.

25 As part of this plea or following this plea the State

1 will be dismissing two other armed robbery charges against
2 the defendant as well as some drug charges, Your Honor.

3 THE COURT: All right, sir. Your name is Travis Tyrone
4 Tracy?

5 DEFENDANT: Yes, sir.

6 THE COURT: Mr. Tracy, you're before me today on a
7 charge of armed robbery. Now, that particular offense
8 carries a potential sentence of a minimum of ten years up to
9 30 years. It is classified as a violent and serious
10 offense.

11 under the law of this state, that means that it, it
12 would constitute or be one of your, what is commonly known
13 as strikes under the law. That means that, in the future,
14 if you were found guilty of or pled guilty to other crimes
15 that were classified as either violent, serious, or most
16 serious, that your plea in this case could be used in
17 connection with those future convictions to enhance the
18 sentences in the future. What that means is that you could
19 receive a sentence of life imprisonment without the
20 possibility of ever receiving a parole.

21 Do you understand that that would be a possibility?

22 DEFENDANT: Yes, sir.

23 THE COURT: All right, sir. Now, your case has been
24 indicted by the Grand Jury. It's properly before the Court.
25 You're here today with your attorney, Mr. Hall.

1 Are you satisfied with his services?

2 DEFENDANT: Yes, sir.

3 THE COURT: Is there anything else you feel that he
4 ought to do for you at this time?

5 DEFENDANT: No, sir.

6 THE COURT: Is there anything else you'd like to
7 discuss with him before we go forward?

8 DEFENDANT: No, sir.

9 THE COURT: All right, sir. Now, as to the charge of
10 armed robbery, you have the right to plead either guilty or
11 not guilty in this case.

12 How do you wish to plead?

13 DEFENDANT: Guilty.

14 THE COURT: Mr. Hall, have you discussed this plea---

15 MR. HALL: Yes, sir.

16 THE COURT: ---with your client?

17 MR. HALL: Yes, I have, Your Honor.

18 THE COURT: Are you satisfied that he understood the
19 discussions and advice you've given him?

20 MR. HALL: Yes, I am.

21 THE COURT: I would suspect that, among the many things
22 you would of discussed with him, you would of discussed the
23 charges that he faces, the statutes under which he was
24 charged, the elements of that crime, the potential penalties
25 that are involved, the limited possibility that he would

1 receive parole on this, he's to serve a minimum length of
2 time before he is eligible, any defenses he may of had to
3 the charges as well as his rights under the Constitution?

4 Are those some of the things you've talked about?

5 MR. HALL: Yes, we did, Your Honor.

6 THE COURT: He tells me that he's made the decision to
7 offer a guilty plea.

8 Do you agree with the decision he made?

9 MR. HALL: Yes, I do, Your Honor.

10 THE COURT: And has he had the ability to assist in his
11 own defense?

12 DEFENDANT: Yes, sir.

13 THE COURT: Mr. Tracy, do you agree that the things
14 I've mentioned to your lawyer are matters that you and he
15 have discussed?

16 DEFENDANT: Yes, sir.

17 THE COURT: And have you discussed the possibility or
18 the fact that you have limited availability for parole on
19 this offense?

20 DEFENDANT: Yes, sir.

21 THE COURT: So, you understand that?

22 DEFENDANT: Yes, sir.

23 THE COURT: All right, sir.

24 MR. HALL: Your Honor, I think you said -- I think
25 this -- well, I told him this was a most serious offense. I

1 think you said serious offense.

2 THE COURT: It's a, it's a violent and most serious
3 offense, that's correct.

4 MR. HALL: Yes, sir.

5 THE COURT: Okay. Now, Mr. Tracy, I'm going to have
6 the solicitor go over your facts in the case that they're
7 alleging. If you'll listen I'm going to ask you about those
8 in a minute.

9 Mr. Fulmer.

10 SOLICITOR FULMER: Thank you, judge.

11 This occurred back on October 18th of 2010 at the
12 Family Video Store on the corner of Powell Mill Road and
13 Ezell Boulevard in the Spartanburg, in the City of
14 Spartanburg.

15 DEFENDANT: Yes, sir.

16 SOLICITOR FULMER: The defendant is one of four people
17 charged in the armed robbery of that business. This
18 defendant and his codefendant, Adrian Grayson, entered the
19 store that night. This defendant was armed with a handgun.
20 They demanded cash from the registers of that store as well
21 as cash from the two clerks that were working that night.
22 During the course of the robbery this defendant discharged
23 that handgun into the ceiling of the, of the business there.

24 They were able to escape with money. They ran to their
25 apartments, which where they were living at that point in

1 time was Crown Point Apartments just behind the Family Video
2 Store there off of Powell Mill Road. The police did bring a
3 dog out, but were not able to locate the men that night.

4 They viewed this security video of the robbery and were
5 able to determine that one of the men was wearing a Lander
6 sweatshirt and a distinctive symbol on the chest, asked
7 around the apartment complex, and the business manager there
8 said she had rented an apartment to a girl wearing that
9 sweatshirt a few days before. So, they were able to locate
10 the apartment, got a search warrant, and were able to find
11 some stolen items in that apartment from a separate robbery.

12 They did interview -- all three of the boys -- there
13 was a third man who stood outside the store as a lookout who
14 was also charged as well as the girlfriend of this defendant
15 who was one of the tenants on the lease at that apartment.
16 They all confessed to some knowledge of what had happened.

17 THE COURT: I believe I've sentenced her before maybe
18 in this case.

19 SOLICITOR FULMER: Not yet, Your Honor. You may of
20 heard her bond hearing.

21 THE COURT: I have heard bond hearings, yes, sir.
22 That's where I've heard this before.

23 SOLICITOR FULMER: Her, her involvement was she entered
24 the store briefly before they went in with a cell phone as
25 though she was casing it to determine who was in the store.

1 His codefendant, Adrian Grayson, admitted fully his
2 involvement. He named Tracy here as his, as the other man
3 with the gun. His girlfriend is prepared to testify against
4 him that she can identify him on security video based on his
5 tennis shoes and sweatshirt at the time. And, so, that's
6 how we would of made the ID at trial had it, had it been
7 necessary to go to trial, Your Honor.

8 THE COURT: All right. Mr. Tracy, did you hear the
9 facts as related by the solicitor in this matter?

10 DEFENDANT: Yes, sir.

11 THE COURT: Did you understand what he said?

12 DEFENDANT: Yeah.

13 THE COURT: Is that information the truth?

14 DEFENDANT: Yes, sir.

15 THE COURT: Have you told me the truth today?

16 DEFENDANT: Yes, sir.

17 THE COURT: Did anyone tell you how to answer any
18 question that I've asked?

19 DEFENDANT: No, sir.

20 THE COURT: So, the answers that you've given to me,
21 those were your own answers?

22 DEFENDANT: Yes, sir.

23 THE COURT: Is that right?

24 DEFENDANT: Yes, sir.

25 THE COURT: Now, is there any part of what we discussed

1 now or when you were in the box that you want to change
2 anything you've told me?

3 DEFENDANT: No, sir.

4 THE COURT: So, if I were to ask those same questions
5 again at this time that I asked earlier, would I get the
6 same answers verbally at this time?

7 DEFENDANT: Yes, sir.

8 THE COURT: And are you pleading guilty to this charge
9 because you are guilty of this charge?

10 DEFENDANT: Yes, sir.

11 THE COURT: I'm going to accept the plea. It's freely,
12 voluntarily given. The defendant is aware of the charge,
13 the penalties, and had the advice of counsel. He's
14 satisfied with the legal advice that he's received. It's my
15 further finding that there's a factual basis or reason for
16 the plea.

17 Counselor.

18 MR. HALL: If it please the Court, Your Honor.

19 Travis is 24 years old. He turned 24 this past
20 February in jail. His life before that was unfortunately
21 typical for certain segments of our community. He did not
22 complete school. I think he went to the eleventh grade. He
23 was, in large part, raised by a grandmother. His mother had
24 some health issues. She was diagnosed about ten years ago
25 with one of our slow killers and wasn't always able to be

1 there for him.

2 At the time that all these things occurred, his
3 attitude, again, was a lot like a lot of young people in
4 certain parts of our community that you have a gun, you have
5 power, and you get what you want.

6 while he's been sitting in jail the grandmother that
7 raised him passed away. He had a brother who passed away
8 earlier this year in I think January or February. But what
9 really brought things home to him sitting in jail, he had
10 cousins who were killed in an armed robbery, and he's had
11 time to reflect and realize how dangerous what they were
12 doing was. It's not a TV. It's real life and it impacts
13 people.

14 He's felt the loss of having loved ones die, but also
15 having close family members that he cares a great deal about
16 die in the exact thing, same thing he was involved in. When
17 we were discussing this over the past couple meetings, he
18 has told me that he wants -- he understands that, at best,
19 he could get is a ten year sentence, and he wants to take
20 advantage of what opportunities there are to get his GED
21 while he's in jail, to get training.

22 He understands how hard it's gonna be to get a job with
23 this, with this on his record. But he wants to be a
24 productive citizen. We even talked about, being a good
25 while down the road if the programs are still there, to even

1 talk to young people that come to the prison, I think they
2 still have the programs that will do that, about what
3 violence is done to him. Being, taken part in this. What
4 it's done to take it out of his life, and how it impacted on
5 his family where he's lost family members to this type
6 thing.

7 Your Honor, he is asking or asserting to you that he is
8 a changed individual than the person last October. He's had
9 these things happen in his life. It's -- he's changed his
10 attitude. He wants to be on the right side of the law now,
11 but he understands he has to pay a penalty for this.

12 Now, he does have three family members here that I'm
13 not sure which ones may want to speak, but his mother,
14 Jessica, is here.

15 One at a time. We can only do one at a time. If
16 you'll step up.

17 THE COURT: Your name is?

18 MRS. BRANNON: My name's Jessica Brannon.

19 THE COURT: Yes, ma'am.

20 MRS. BRANNON: And this is my son. And if he did it,
21 yes, he got to do, do what he got to do cause he know better
22 than no one child to go out there and kill someone or sell
23 drugs. I'm sick and I think that, that had a whole lot to
24 do with him, you know, thinking negative. I said one time I
25 wanted to give up, but I know I got to be there for my

1 children.

2 So, I just want you to be merciful, merciful on him. I
3 mean I'm not saying he don't suppose to do what he suppose
4 to do cause he done it. I mean he done it. And like I say,
5 I got three boys and I got another one in jail too. So, all
6 I can do is write them, send them money, and pray for them.
7 That's all I can do for them.

8 THE COURT: Thank you, ma'am.

9 MRS. BRANNON: Okay.

10 THE COURT: Other family members wish to be heard, come
11 forward.

12 MR. HALL: Veronica Brannon.

13 THE COURT: Your name please?

14 MRS. VERONICA BRANNON: My name's Veronica Brannon.

15 THE COURT: Yes, ma'am.

16 MRS. VERONICA BRANNON: I'm Travis' aunt. I'm kind of
17 choked up a little bit, but Travis, we always stayed in
18 Jonesville, Jonesville, South Carolina, and Travis, he
19 wasn't the type to get in trouble. But like I said, you
20 know, when he found out about his mother health and he
21 changed. You know, he changed and he moved to Spartanburg
22 with his girlfriend. They always knew -- he was staying in
23 Spartanburg with his girlfriend and all this time and just
24 seemed like when, you know -- I mean I'm not excusing what
25 he did, but as long as he was in Union County we didn't have

1 a problem with him, and then when he moved to Spartanburg
2 and met them people whatever, you know, I guess things
3 changed.

4 But just like I said, my sister, Travis a good boy.
5 He's my favorite nephew, my favorite nephew, and have mercy
6 on him because he need to see his mama. He don't -- he
7 don't need to be a lot of time to where he come back, and he
8 gonna have another death on his hands.

9 Thank you.

10 THE COURT: Thank you, ma'am.

11 Anyone else from the family wish to be heard?

12 MR. HALL: I don't believe so, Your Honor. She's not
13 standing up.

14 THE COURT: Thank you.

15 MR. HALL: Your Honor, I did fail to mention she has,
16 he has a daughter who's four or five years old and lives
17 with the grandmother in Union County.

18 THE COURT: All right. Prior record.

19 SOLICITOR FULMER: 2006, he has malicious injury to
20 personal property and ABHAN.

21 2007, grand larceny.

22 2005, five forgeries.

23 2009, public disorderly conduct.

24 THE COURT: Mr. Tracy, Tracy, a couple things concern
25 me about the case that's before me.

1 First of all, in listening to your prior record, you're
2 building a pretty good record before you did this. I think
3 we had an ABHAN in there, assault and battery high and
4 aggravated nature, and then we're looking at this situation
5 where you went into a store armed with a gun, and then
6 discharged the gun within the store.

7 Particularly of concern -- particular concern to this
8 Court. It's bad enough that you put people's lives in
9 jeopardy by going in and armed, but then to be discharging a
10 gun in the store. My time to talk. Not yours.

11 Sentence of the Court in this case is that you be
12 confined to the State Department of Corrections for a period
13 of 25 years. I've suspended that to service of 20 with
14 probation for two. I've ordered restitution of \$700,
15 obtaining of GED, and random alcohol and drug testing. I
16 have signed the restitution order.

17 Good luck to you, sir.

18 DEFENDANT: All right.

19 SOLICITOR FULMER: Thank you, judge.

20

21 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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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 19th day of September, 2011.

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

May 20th, 2012

Pamela E. Green

PAMELA E. GREEN, Court Reporter

2125

FORM 5

STATE OF SOUTH CAROLINA)
)
 County of Spartanburg)
)
Travis Tyrone Traey 347877)
 Full name and prison number (if any) of Applicant)
)
 v.)
)
 State of South Carolina)
)
)
)

IN THE COURT OF COMMON PLEAS

2012-CP-42-083

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 McCormick Correctional Institute
386 Redemption Way McCormick, S.C 29899
2. Name and location of Court which imposed sentence Spartanburg General
Sessions Court
3. Name(s) of co-defendant(s) (if any) Adryan Terrell Grayson, Marion Douglas
Garnett, Tierra Chantell Young
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2011-GS-420118
 (b) _____

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 CLERK OF COURT
 SPARTANBURG COUNTY
 2012 FEB 24 AM 11:26
 M. JOPE BEACKLEY

- (c) _____
- 5. The date upon which sentence was imposed and the terms of the sentence:
 - (a) September 19, 2011 25 years Provided that upon the service of
 - (b) 20 years Probation for 2 years
 - (c) _____

- 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?
Yes

- 8. If you answered "yes" to (7), list:
 - (a) the name of each Court to which you appealed:
 - i. South Carolina Court of Appeals
 - ii. _____
 - iii. _____
 - (b) the result in each such Court to which you appealed:
 - i. Appeal Dismissed
 - ii. _____
 - iii. _____
 - (c) the date of each such result:
 - i. December 15, 2011
 - ii. _____
 - iii. _____
 - (d) if known, citations of any written opinion or orders entered pursuant to such results:
 - i. The following matter are dismissed Pursuant to Key v.
 - ii. Currie, 305 S.C. 115, 406 S.E. 2d 356 (1991) because no
 - iii. extraordinary reason exists to entertain them in this Court's
Original Jurisdiction.

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

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 SPARTANBURG COUNTY
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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) Ineffective Assistance of Counsel, violation of the

(b) ~~14th~~ 14th amendment, 9th, 5th

(c) _____

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

(a) _____

(b) _____

(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? _____

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

(c) the disposition thereof:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

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

- i. _____
- 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?

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

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

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

- i. _____
- ii. _____
- iii. _____

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 SPARTEA COUNTY
 2012 FEB 24 AM 11:26
 M. HOPE BLACKBERRY
 Received 3/20/03

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) Ineffective Assistance of Counsel this is first
- (b) opportunity to raise this issue
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? _____
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

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

- (a) the name and address of each attorney who represented you:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings at which each such attorney represented you:
 - i. Guilty Plea and sentencing
 - ii. _____
 - iii. _____

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 CLERK OF COURT
 SPANISH FORG COUNTY
 2012 FEB 24 AM 11:26
 M. HOPE BLACKLEY

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

New Trial on Indictment / sentence vacated ~~and~~

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

NO

STATE OF SOUTH CAROLINA)
County of Spartanburg)

VERIFICATION

I, Travis Tyrone Tracy, 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.

Travis Tyrone Tracy

SWORN to and subscribed before me this _____ day of _____.

Notary Public (L.S.)

My Commission Expires: _____

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 FEB 24 AM 11:26
M. HOPE BLACKLEY

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

I, Travis Tyrone Tracy, 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.

Travis Tracy
applicant

SWORN or affirmed to and subscribed before me this
_____ day of _____, _____.

Notary Public

My Commission Expires: _____

FILED
CLERK OF COURT
SPRINGFIELD COUNTY
2012 FEB 24 AM 11:26
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Travis Tyrone Tracy, #347877,)
)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2012-CP-42-0893

RETURN

The Respondent, making its Return to the application for post-conviction relief (PCR) filed February 24, 2012, and amended March 12, 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 during the February 2011 term by the Spartanburg County Grand Jury for armed robbery and possession of a weapon during the commission of a violent crime (2011-GS-42-1128, count 1 and count 2). The Applicant was represented by Robert B. Hall, Esquire. On September 19, 2011, the Applicant pled guilty as indicted to count 1, armed robbery. The charge of possession of a weapon during the commission of a violent crime, count 2, was dismissed. Applicant was sentenced by The Honorable Roger L. Couch to a sentence of twenty-five years, provided upon the service of twenty years; the balance is suspended to two years of probation. However, the sentence was amended on September 22, 2011, to reflect a sentence of twenty years.

A timely Notice of Appeal was filed on Applicant's behalf. The appeal was dismissed by the South Carolina Court of Appeals on December 19, 2011, for Applicant's failure to show that any issue was preserved for appeal.

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, the plea transcript, and Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel;
2. Prosecutorial misconduct; and
3. Trial court error.

III.

In a post-conviction relief proceeding, the Applicant bears the burden of proving the allegations in their application. Id. 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, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 80 L.Ed.2d 674. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

A two-pronged test is used in evaluating allegations of ineffective assistance of counsel. 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.

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 cannot be conclusively refuted by the record. **The Respondent requests an evidentiary hearing to fully resolve this issue.** See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Applicant also alleges prosecutorial misconduct and trial court error. Neither of those claims are issues for post-conviction relief. Rather, both allegations are direct appeal issues that are procedurally barred by S.C. Code Ann. § 17-27-20(b) (2003). Post-conviction relief is not a substitute for an appeal. Simmons v. State, 264 S.C. 417, 423, 215 S.E.2d 883, 885 (1974). A post-conviction relief application cannot assert any issues that could have been raised at trial or on appeal. Drayton v. Evatt, 312 S.C. 4, 8, 430 S.E.2d 517, 520 (1993). The Applicant could have raised this issue on appeal. The failure to do so has waived this allegation as grounds for relief. Regardless, it is Applicant's burden to prove actual prosecutorial misconduct. Alabama v.

Smith, 490 U.S. 794, 109 S. Ct. 2201 (1989). Therefore, the Court should summarily dismiss this allegation.

V.

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

VI.

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

December 30, 2012

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Travis Tyrone Tracy,

) 2012-CP-42-0893
)
)

) Applicant,
)

) v.
)

) CERTIFICATE OF SERVICE BY MAIL
)

) State of South Carolina,
)

) Respondent.
)

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

Christopher D. Brough, Esquire
The Brough Law Firm
175 Magnolia Street, Suite 202
Spartanburg, South Carolina 29306



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 30th day of November, 2012.

1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) IN THE COMMON PLEAS COURT
 3
 4 Travis Tyrone Tracy,)
 Applicant,) TRANSCRIPT OF RECORD
 5 v.) 2012-CP-42-0893
)
 6 The State.) October 3, 2013
) Spartanburg, South Carolina

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B E F O R E :

HONORABLE J. DERHAM COLE, JUDGE

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

CHRISTOPHER D. BROUGH, ESQUIRE
Attorney for the Applicant

SUZANNE H. WHITE, ESQUIRE
Attorney for the State

Linda D. Moffitt
Circuit Court Reporter

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WITNESSES

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ROBERT B. HALL (SW)

Direct examination by Ms. White

33

Cross-examination by Mr. Brough

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	<u>EXHIBITS</u>			
	<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
1				
2				
3	A-1	Incident report	4	8
4	A-2	Incident report	4	9
5	A-3	Pre-interrogation waiver form	4	10
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16	A-14	Additional narrative	4	20
17	A-15	Additional narrative	4	
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1 (Incident report marked Applicant's Exhibit No. 1 for
2 Identification; incident report marked Applicant's Exhibit
3 No. 2 for Identification; pre-interrogation waiver form
4 marked Applicant's Exhibit No. 3 for Identification;
5 pre-interrogation waiver form marked Applicant's Exhibit No.
6 4 for Identification; photographs marked Applicant's
7 Exhibits Nos. 5 through 9 for Identification;
8 pre-interrogation waiver forms marked Applicant's Exhibits
9 Nos. 10 through 13 for Identification; additional narratives
10 marked Applicant's Exhibits Nos. 14 and 15 for
11 Identification.)

12 THE COURT: All right. Next is Travis Tracy.

13 MS. WHITE: Yes, Your Honor.

14 THE COURT: Okay.

15 MS. WHITE: Thank you, Your Honor.

16 This is the case of Travis Tyrone Tracy. It's case
17 No. 2012-CP-42-0893. He's represented today by Mr. Chris
18 Brough.

19 Mr. Tracy was indicted February of 2011 on an armed
20 robbery charge and possession of a weapon during the
21 commission of a violent crime. That charge was ultimately
22 dismissed, and he pled guilty represented by Robert Hall to
23 the armed robbery, received a sentence of 25 years
24 suspended to 20 years and two years probation.

25 It was amended, later amended, to an actual 20-year

Travis Tyrone Tracy
Direct examination by Mr. Brough

1 sentence, I believe.

2 And two other armed robbery charges and several drug
3 charges I believe were dismissed in accordance with that.

4 He has filed this alleging ineffective assistance of
5 counsel, prosecutorial misconduct, trial court error, and I
6 believe involuntary guilty plea.

7 I'll turn it over to Mr. Brough at this time.

8 THE COURT: Mr. Brough.

9 MR. BROUGH: Thank you, Your Honor. May it please the
10 Court.

11 Your Honor, we would also like to orally amend the
12 petition to include allegations of an involuntary guilty
13 plea. It's my understanding the state is going to consent
14 to that amendment.

15 MS. WHITE: Yes, Your Honor.

16 THE COURT: Okay.

17 MR. BROUGH: The applicant calls Travis Tracy to the
18 stand.

19 TRAVIS TYRONE TRACY, having
20 been first duly sworn, testified as follows:

21 THE COURT: Before you sit down you need to pull your
22 britches up to your waist.

23 THE WITNESS: I got on a pair of thermals up under.
24 That's why it looked like that.

25 THE COURT: Huh?

Travis Tyrone Tracy
Direct examination by Mr. Brough

1 THE WITNESS: A pair of thermal leggings and --

2 THE COURT: Thermal underwear makes your pants on top
3 fall below your buttocks?

4 THE WITNESS: No, no. I'm saying it looks like that.
5 But they up.

6 THE COURT: Oh, really. I thought you just pulled
7 them up.

8 Thank you. Be seated.

9 DIRECT EXAMINATION BY MR. BROUGH

10 Q Mr. Tracy, you filed an application alleging among
11 other things ineffective assistance of counsel for
12 Mr. Hall. Do you know him, sir?

13 A Yes.

14 Q Okay. And how do you know him?

15 A I was represented by him on my charges of --

16 THE COURT: You need to speak up a little bit so we
17 can hear you.

18 A I was represented by him on my charge of armed robbery
19 and trafficking.

20 Q Okay. And you understand that if the Court grants
21 your application you would receive a new trial on all
22 charges including the ones that were dismissed.

23 A Yes, sir.

24 Q Okay. Now, the armed robbery, one of the armed
25 robbery, allegations and the one that you ultimately pled

Travis Tyrone Tracy
Direct examination by Mr. Brough

1 on was that for robbing the Family Video store.

2 A Yes.

3 Q Okay. And was that on October 18th of 2010?

4 A Yes.

5 Q Okay. Is it your contention that you were, in fact,
6 innocent of that charge?

7 A Yes.

8 Q why then did you plead to that charge?

9 A On the advice of Mr. Robert Hall that I should plead
10 guilty because I had codefendants on that charge also and
11 to my -- from his advice he was saying they was going to
12 come and testify against me.

13 Q Okay. Mr. Tracy, I'm going to hand you what's been
14 already premarked for identification as Applicant's Exhibit
15 No. 1.

16 would you agree with me, sir, that that is an
17 investigative report by Investigator Jay Gardner?

18 A Yes.

19 Q Okay. And if you could, sir, does this reflect a copy
20 of the report that was included in your discovery?

21 A Yes.

22 Q Okay.

23 MR. BROUGH: I'd like to move this into evidence as
24 Applicant's 1.

25 MS. WHITE: No objection, Your Honor.

Travis Tyrone Tracy
Direct examination by Mr. Brough

1 THE COURT: Admitted.

2 (Incident report marked Applicant's Exhibit No. 1.)

3 Q Sir, if you could, read on the supplemental report at
4 2330. If you could, read what it says there on Applicant's
5 1 for me, sir.

6 A "Upon -- upon my arrival I spoke with two -- the two
7 employees who were robbed by two unknown black males, one
8 carrying a handgun which he discharge -- discharged as he
9 was leaving the business according to Joshua Jackson, white
10 male, date of birth 2/5/84. He was working behind the
11 counter when the second subject entered the store. One
12 subject was waving a gun yelling give me all of your money.
13 Mr. Jackson emptied both cash registers into a black book
14 bag that the other subject was holding according to Jeremy
15 Johnson, white male, date of birth 1/25/89."

16 Q All right. Thank you.

17 So there were two subjects that entered into the Family
18 Video?

19 A Yes.

20 Q And one had a gun?

21 A Yes.

22 Q And one was holding a bag.

23 A Yes.

24 Q I'm going to show you what's been premarked for
25 identification as Applicant's Exhibit No. 2. Would you

Travis Tyrone Tracy
Direct examination by Mr. Brough

1 agree with me that's a supplemental report from westfall
2 Forensics?

3 A Yes.

4 Q Okay.

5 MR. BROUGH: At this time I'd like to admit
6 Applicant's 2 into evidence.

7 MS. WHITE: No objection.

8 (Incident report marked Applicant's Exhibit No. 2.)

9 Q All right. If you could on Applicant's 2, read this
10 last portion here starting with "approximately".

11 A "Approximately one to three minutes later two subjects
12 entered the store and committed the robbery. Both subjects
13 had their faces covered and each appeared to be wearing one
14 black glove like they had split a pair of gloves between
15 the two of them. One subject had the gun while the other
16 one had a black and gray backpack." Yeah, backpack. "The
17 subject with the backpack was wearing a gray hoody -- gray
18 hooded sweatshirt that had blue lettering and a logo
19 underneath it. Upon further inspection Investigator
20 Gardner and I determined that it was a Lander University
21 shirt with the bobcat logo."

22 Q Okay. Thank you.

23 Mr. Tracy, I'm going to hand you Applicant's Exhibit 3.
24 Would you agree with me it's a pre-interrogation waiver form
25 you signed, sir?

Travis Tyrone Tracy
Direct examination by Mr. Brough

1 A Yes.

2 MR. BROUGH: I would like to have that moved into
3 evidence.

4 MS. WHITE: Without objection.

5 THE COURT: Admitted.

6 (Pre-interrogation waiver form marked Applicant's
7 Exhibit No. 3.)

8 Q Okay. What was the time on this?

9 A 1340.

10 Q And would you agree with me that you did not issue any
11 sort of written statement?

12 A Yes.

13 Q Okay. And the date on that, what was the date on
14 that?

15 A 10/22/2010.

16 Q Okay. And would you agree with me that's the first
17 time you were talked to by law enforcement regarding this
18 case?

19 A That was the first time.

20 Q And was there a second time later that day?

21 A Yes, when we made our way to the detention center.

22 Q Okay. And I want to hand you what's been premarked
23 for I.D. as Applicant's 4. And is that the second time
24 they spoke to you, the waiver form and a copy of your
25 statement attached to it?

Travis Tyrone Tracy
Direct examination by Mr. Brough

1 A Yes.

2 MR. BROUGH: I'd like to move Applicant's 4 into
3 evidence.

4 MS. WHITE: No objection, Your Honor.

5 THE COURT: It's admitted.

6 (Pre-interrogation waiver form marked Applicant's
7 Exhibit No. 4.)

8 Q And, sir, in reviewing Applicant's Exhibit 4 would you
9 agree with me in that statement that at no point in time
10 did you admit guilt in this crime?

11 A Yes.

12 Q Okay. And, in fact, did you maintain your innocence
13 to law enforcement the entire time?

14 A Yes.

15 Q Okay. I want to hand you what's been marked for I.D.
16 as Applicant's Exhibits 5 through 9.

17 Do you agree with me those are photographs taken from
18 surveillance at the Family Video store, sir?

19 A Of my knowledge, yes.

20 Q Okay. I'd like to have 5 through 9 admitted if I can.

21 MS. WHITE: Without objection, Your Honor.

22 THE COURT: They are admitted.

23 (Photographs marked Applicant's Exhibits Nos. 5 through
24 9.)

25 Q will you agree with me that in those exhibits that the

Travis Tyrone Tracy
Direct examination by Mr. Brough

- 1 face of the robber is covered by a mask --
- 2 A Yes.
- 3 Q -- and is not identifiable?
- 4 A Yes.
- 5 Q Now, when you were charged with this crime you had a
- 6 couple of codefendants, didn't you?
- 7 A Yes, yes.
- 8 Q Okay. And what were their names?
- 9 A One was named Adrian Grayson. The other one was
- 10 Marion Garnett, and the other one was Tierra Young.
- 11 Q Okay. Now, do you recall that your codefendants also
- 12 gave statements, sir?
- 13 A Yes.
- 14 Q And I believe you stated it was based on the
- 15 statements of your codefendants that you were advised to
- 16 plead to this charge.
- 17 A Yes.
- 18 Q Okay. I'm going to hand you what's been premarked for
- 19 I.D. as Applicant's Exhibit No. 10. Would you agree with
- 20 me that that is a statement of Marion Garnett?
- 21 A Yes.
- 22 Q And what is the date on that statement?
- 23 A 10/22/2010.
- 24 Q And what is the time recorded on that statement?
- 25 A 11:15.

Travis Tyrone Tracy
Direct examination by Mr. Brough

1 MR. BROUGH: I'd like to have Applicant's 10 entered
2 into evidence.

3 MS. WHITE: Without objection.

4 THE COURT: It's admitted.

5 (Pre-interrogation waiver form marked Applicant's
6 Exhibit No. 10.)

7 Q I'll show you what's been premarked for I.D. as
8 Applicant's Exhibit No. 11. Would you agree with me that
9 that is also a statement of Marion Garnett?

10 A Yes.

11 Q Okay. And what is the date on that statement?

12 A 10/22/2010.

13 Q And what is the time?

14 A 8:21.

15 Q So approximately nine or so hours after this statement
16 given in Applicant's No. 10.

17 A Yes.

18 Q Okay. Now, in Applicant's Exhibit No. 10 if you
19 could, please, go through what that statement says for the
20 Court.

21 A "The following -- the following is a written statement
22 as told by Marion Garnett to Investigator Jay Garner on
23 10/22/2010 in regards to the armed robbery of Family -- of
24 the Family Video on two -- on 10/18/2010. I was told that
25 the store was hit by Tracy, Travis. I don't know where the

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1 gun's at. I'm innocent. Checky had the bag. I didn't
2 know Tierra was on the pictures. They -- Tracy told me he
3 robbed the store. I had nothing to do with the robbery.
4 The marijuana found in the bedroom was mine. They were in
5 little clear bags."

6 Q Okay. And that's his first statement that he
7 indicates.

8 A Yes.

9 Q Okay. So as to this he claims that he is innocent in
10 his first statement.

11 A Yes.

12 Q Okay. Now, in his second statement in Applicant's No.
13 11, if you would, go through that statement for the Court,
14 sir.

15 A "A couple of days before the hit on the video store
16 me, Chucky and Trap was, were together talking. We started
17 talking about we needed some money. Then we started
18 talking that Family Video was close and that we could do
19 that and come home. Trap already -- already had the black
20 handgun with the red at the tip. We started walking
21 towards Family Video. And when we got there I seen a
22 yellow Mustang. Tierra was -- Tierra was in it being
23 dropped off from work in the parking lot. We asked her how
24 many people was in the store. She said two. She then got
25 the house key and went home. She didn't know what was

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1 going on when she walked up the street. Trap and Chucky
2 went into the store. I was standing in the parking lot
3 behind Family Video. I heard the shot, and in the parking
4 lot behind the family. I heard the shot and thought they
5 really robbing the store. They came out running, and I ran
6 with them home. Chucky was panicking because he was
7 scared. Trap went into his room and shut the door, and
8 Chucky stayed in the kitchen with me. We saw the police
9 come over and walk the dog around, so I stayed in my room.
10 The next day me, Chucky and Trap -- and Trap were talking
11 some more about needing more money. I needed some money
12 for a C.D.V. charge about -- about maybe paying for anger
13 management. We started walking, and we walked through a
14 pass in the woods that leads to the dentist office. We saw
15 two people on the porch at the dentist office. Trap pulled
16 out the rifle from his pants and pointed it at them and
17 said where the money at. I had the pistol, and I followed
18 behind him. I didn't say anything. Chucky then went
19 through the car and took a G.P.S. system. Trap then shot
20 one time and we ran."

21 Question: "How did Ashley Meadows get the guns?"

22 "We put them in the car. She didn't know about the
23 robbery. She was just looking out for me, her brother.

24 "Do you know Chucky's real name?"

25 "Adrian."

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1 "Do you know Trap's real name?

2 "Tracy.

3 "Are the drugs your drugs?

4 "The weed is mine, but the crack and pot is not. It's
5 Tracy's.

6 "Is there anything else you would like to add to this
7 statement?

8 Tierra didn't know."

9 Q So the first time that they talked to your codefendant
10 he lies and he says he's innocent.

11 A Yes.

12 Q And then the second time all of a sudden he points the
13 finger at you.

14 A Yes.

15 Q Who is Ashley Meadows?

16 A That's his sister.

17 Q Okay. And is it not true that they ultimately
18 recovered the handguns used in the robbery from Marion's
19 sister's car?

20 A Not her car. Her house.

21 Q Her house. Okay. So they recovered that from her
22 house.

23 Now, I'm also going to show you -- show you Applicant's
24 12 if you could. Would you agree with me that's a statement
25 from Adrian Grayson?

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1 A Yes.

2 Q Okay. What is the time and date on that statement?

3 A 10/22/2010, 1300 hours.

4 Q Okay. And I'd like to also show you Applicant's
5 Exhibit No. 13 that's been premarked for I.D. Is that also
6 a statement of Adrian Grayson?

7 A Yes.

8 Q And what is the time and date on Applicant's 13?

9 A 10/22/10 -- two -- 1035.

10 MR. BROUGH: At this time I'd like to move Applicant's
11 12 and 13 into evidence.

12 MS. WHITE: No objection, Your Honor.

13 THE COURT: They're admitted.

14 (Pre-interrogation waiver form marked Applicant's
15 Exhibit No. 12; pre-interrogation waiver form marked
16 Applicant's Exhibit No. 13.)

17 Q Sir, on -- if you could go through on Applicant's 12,
18 what it is that -- which is Mr. Grayson's first story --
19 what his first story was.

20 A "Travis, Adrian and Marion was on the side of the
21 building. Travis went in first with a -- with a four-five
22 Hi-Point pistol. I came in after with a bag to get the
23 money. After being in the store a few seconds Travis let
24 off a shot. He told me it was to let the people -- let the
25 store clerks know the robbery was real. After hearing the

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1 shots the two clerks laid on the ground fearing for their
2 life. I ran out first. Travis followed and Marion was on
3 the side of the store as a lookout. We ran behind the
4 dentist office around Crown Point to the building -- to the
5 "A" building into Tierra's apartment. She knew about it,
6 but after clearing the business she walked home and got
7 into the shower. I got a hundred -- a hundred; Marion got
8 a hundred, and Travis kept the rest. I don't know where
9 the guns is or where Travis hid the weapons. The dope and
10 marijuana in the closet was Travis'. I had nothing to do
11 with that. I admit to the robbery, but I had nothing to do
12 with the drugs that was found -- that were found."

13 Q And that -- that's his first version of events.

14 A Yes, sir.

15 Q Okay. If you could, go through with me in Applicant's
16 13, Mr. Grayson's later second version of events.

17 A "I was with Trap and Marion when we robbed the
18 Mexican. Trap was holding the A.K. and Marion was holding
19 the Hi -- the four-five Hi-Point. I came up after them
20 searching the surrounding, took two phone, two cell phones,
21 and a G.P.S. system. When leaving Trap shot the A.K. When
22 robbing Family Video I walked in after Travis. I gave the
23 store clerk the bag after he said give it up inside a few
24 seconds. Travis let off a shot, almost hit me in the head.
25 I then ran out the store meeting Marion who was on the side

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1 of the store. Trap came out. We all began to run behind
2 the building towards Crown Point. Tierra came by Family
3 Video, but she had nothing to do with what went down that
4 night."

5 Q Okay. Now, ultimately Tierra was determined to be on
6 some of the video surveillance, correct?

7 A Yes.

8 Q So do you feel like your trial counsel could have
9 demonstrated that portions of these statements were not
10 true?

11 A Yes.

12 Q Okay. Now, in Mr. Grayson's second statement he goes
13 through everything, but he never indicates what type of
14 weapon the person, you, allegedly were holding, does he?

15 A No.

16 Q Okay. And, in fact, his second statement is
17 substantially different than his first statement.

18 A Yes.

19 Q Now, tell me about where you were living at the time
20 of these events.

21 A At the time of the events I was living in Union, South
22 Carolina, but I was dating a Ms. Jones. And she had
23 apartment at Crown -- Crown Point Apartments. And I used
24 to come up there from time to time.

25 Q Okay. And is that at 201 Powell Mill Road, Building

Travis Tyrone Tracy
Direct examination by Mr. Brough

1 A, Apartment 302?

2 A Yes.

3 Q Okay. So you didn't live at the apartment that any of
4 these items were recovered from from the robbery.

5 A No.

6 Q Did anyone else besides Tierra live there?

7 A The apartment was leased to her and a friend of hers
8 named Mercedes Par -- Parley, I think, Parham.

9 Q Okay. Did Marion stay there a good bit?

10 A Yes. Mercedes Parham was his girlfriend.

11 Q Okay. Did Marion also have other relatives in that
12 same area?

13 A Yes. His sister stayed in the apartment complex.

14 Q Okay. Show you Applicant's 14 for I.D. Would you
15 agree with me that's a supplemental report from Officer J.
16 Kirby?

17 A Yes.

18 MR. BROUGH: I'd like to have 14 moved into evidence.

19 MS. WHITE: Without objection, Your Honor.

20 THE COURT: It's admitted.

21 (Additional narrative marked Applicant's Exhibit No.
22 14.)

23 Q If you could for me, go through the last two
24 paragraphs for the Court on Applicant's 14.

25 A "While still at city hall speaking with the subject

Travis Tyrone Tracy
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1 information was received that the possible weapon used
2 during the armed robbery was located on the roof of the "A"
3 building 201 Powell Mill Road. Investigator Burgess,
4 Investigator Edwards and myself responded back to this
5 location in attempt to locate the gun. Upon arrival back
6 at the apartment complex the property manager was on scene
7 at building A-302 as was two black males and two black
8 females. We -- we were entering the -- were -- were
9 entering the apartment and looked on the roof and was
10 unable to locate the weapon. However, we did locate
11 several items that belonged inside the apartment outside
12 such as clothing that was inside a bag and a play station.
13 These items were returned back inside the apartment. And
14 the apartment was res -- resecured by management. I then
15 spoke to one of the black females on scene identified as
16 Ashley Simone Meadows Garnett, witness No. 1. Ms. Garnett
17 indicated that her brother, Marion Garnett, lived in
18 building A-302 and she was down there to see what was going
19 on. I advised her that someone had entered the apartment
20 and possibly tampered with evidence and could potentially
21 be charged with the crime. The management advised that
22 Ms. Garnett was a -- was a key holder to the apartment
23 since her brother Marion lived there. After speaking with
24 Ms. Ashley Garnett for a few minutes I was -- I was able to
25 obtain a consent to search form which she signed for her

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1 apartment located at 201 Powell Mill Road, building C-301
2 inside the same complex. Once inside the apartment Ashley
3 advised -- Ashley advised that her brother asked her --
4 asked if he could leave something in her apartment. And
5 she allowed him to do so. She then pointed investigators
6 in the direction of the living room closet as -- as the
7 location where the items were located. Located inside a
8 large cardboard box was an assault rifle -- assault style
9 rifle which was wrapped inside a red towel. Located down
10 inside the large cardboard box was a smaller cardboard box
11 which contained a black in color handgun. Investigator
12 Burgess recovered these items and took a statement from
13 Ms. Ashley Garnett concerning her involvement with the guns
14 located in her apartment. At this time no charges was
15 filed on Ashley Meadows Garnett."

16 Q Okay. So the weapons referred to were recovered from
17 your codefendant's sister.

18 A Yes.

19 Q And your codefendant lived at the apartment that
20 everybody went back to that was traced back to from the
21 robberies.

22 A Yes.

23 Q Do you feel like at trial a jury based on the
24 inconsistencies of your codefendants' statements would have
25 most probably found you not guilty?

Travis Tyrone Tracy
Direct examination by Mr. Brough

1 A Yes.

2 Q Where were you at the time of the incidents?

3 A At the time of the incident I was with another female.
4 Her name is Keyona Fagan. We were at the Zaxby's on
5 Reidville Road. We was there at the time.

6 When I -- when I came back to the house I noticed
7 police was everywhere. When I got out of the car the
8 police asked me where was I coming from. And they searched
9 me right there. And when he -- when they finished
10 searching me they let me go into the apartment.

11 Q Was there any investigation done during the course of
12 Mr. Hall's representation of you into potentially obtaining
13 video surveillance or anything like that from the Zaxby's?

14 A No.

15 Q What about finding Keyona Fagan?

16 A No.

17 Q Okay. Now, there was -- your other codefendant
18 Tierra, I believe you stated she was your girlfriend.

19 A Yes.

20 Q Okay. Subsequent to these charges did she find out
21 that -- that you were running around on her with Keyona
22 Fagan?

23 A Yes.

24 Q And do you feel like that's the reason she would have
25 lied in terms of trying to point you as being guilty of

Travis Tyrone Tracy
Direct examination by Mr. Brough

1 this crime?

2 A Yes, dealing off emotional discretion and at the time
3 that her being in the county so long, yes.

4 Q Do you feel like you went over this information
5 sufficiently with Mr. Hall prior to the time of your plea?

6 A I didn't really get to see Mr. Hall like that. When
7 Hall would come I would ask him questions and tell him
8 peoples I needed him to go talk to. He would always tell
9 me I'm coming back, I'm coming back.

10 I sat in the county approximately nine months. At the
11 most I probably seen Mr. Hall two times. The first time I
12 seen him when he introduced me for saying I was going for a
13 bond. The last time when he advised me of the plea.

14 Q Okay. Is there a reason you chose to plead rather
15 than going to trial?

16 A Actually I -- I pleaded on the advice of my -- my
17 counselor. I asked him that I wanted to go to trial. But
18 he came to me later saying that when he came to me with the
19 plea -- he came to me saying that Ms. Young is going to
20 testify against me and Mr. Garnett was going to testify
21 against me and that Ms. Young was going to identify me by
22 my shoes and my pants that I had on.

23 Q Okay. Were any of the -- are you aware of anything in
24 your case where the victims of the case positively
25 identified you out of any sort of lineups?

Travis Tyrone Tracy
Direct examination by Mr. Brough

1 A I wasn't unaware that they identified anybody, because
2 in their statement they say two unidentified black males
3 came in tonight. And they just gave the height and the
4 approximate weight then.

5 Q And you would agree with me in light of Applicant's 5
6 through 9 it's really pretty much impossible to determine
7 based on the video surveillance the identity of the
8 robbers, correct?

9 A Yes.

10 Q Okay. So the only evidence against you essentially
11 was that of your codefendants --

12 A Yes.

13 Q -- who gave inconsistent stories.

14 A Yes.

15 Q Okay. Is there anything that you wish the Court to
16 know other than what we've gone over about your post
17 conviction relief application? Is there anything you want
18 the judge to consider?

19 A I would like the judge to consider the facts as are in
20 evidence that I was an innocent man just in -- I was just
21 caught up in a situation where you got teenagers. They was
22 kids. Some wasn't even over 20 that got caught up in a bad
23 crime and used me as a scapegoat knowing that I am
24 convicted felon, which I got a -- I got a prior. They seen
25 that as a chance to -- we'll put it on him and we won't

Travis Tyrone Tracy
Cross-examination by Ms. white

1 have to go do no time.

2 Q Have I gone over everything that you wished me to?

3 A Yes.

4 Q And have I visited you when you were in prison, sir?

5 A Yes.

6 Q Please answer any of Ms. white's questions.

7 CROSS-EXAMINATION

8 BY MS. WHITE

9 Q Mr. Tracy, you testified that Mr. Hall came to you
10 with a plea offer sometime before you were supposed to go
11 to trial.

12 A He came to me two days before I come in.

13 Q But do you recall if you were already on the trial
14 docket at that time or --

15 A I don't -- I don't recall if I was on the trial
16 docket. He just came to me with the plea and said we'll go
17 Monday.

18 Q Okay. And that plea involved dismissing several other
19 charges, is that right?

20 A Yes.

21 Q Some other armed -- the armed robbery charges I
22 imagine related to the -- the incident near the dentist's
23 office and some drug charges.

24 A Yes.

25 Q Okay. And from your understanding was that the extent

Travis Tyrone Tracy
Cross-examination by Ms. White

1 of the plea offer?

2 A Mr. Hall -- he didn't let me know all of this until I
3 got here when I talked to the solicitor. And I didn't even
4 know the other charge was getting dropped until me and him
5 was talking.

6 Q So what made you decide to go ahead and enter the plea
7 at that time when you said you were anti plea?

8 A At the time I had told Mr. Hall also that I had lost a
9 grandmother and a cousin. I lost a cousin in the same
10 charges -- armed robbery. He got killed during armed
11 robbery. And at that time when he -- my mama was sick.
12 Well, my mama got cancer. So she was sick. So when she
13 came to see me when she -- he talked to her and she said --
14 she gave me the eyesight -- go ahead. He said you ain't
15 going to be done gone for a long time, just go ahead and
16 plead.

17 So at the time I'm dealing with all of this and I was
18 so emotionally disrupt, I just plead guilty just -- just to
19 really get out of jail because I wanted to go back home and
20 take care of my mama.

21 Q Okay. But you do recall the Court going over the
22 facts of the case with you. And you said that they were
23 true and that you had pled guilty because you were guilty.

24 A Yes. Off the advice of my counsel.

25 Q Okay. So you -- that wasn't the truth when you said

Travis Tyrone Tracy
Cross-examination by Ms. White

1 you were guilty and you agreed with the facts?

2 A No.

3 Q Okay. And the fact is there are -- there are
4 different statements, but each of them identify you as
5 being involved and the one with the gun that shot in the
6 ceiling, is that right?

7 A Yes.

8 Q Okay. And isn't it true that the -- they were able to
9 even get the search warrant and figure out based on that
10 Lander's sweatshirt that Keyona actually said was hers
11 that -- or she had given you or that you were wearing hers
12 or something?

13 A The Lander's shirt, it wasn't mine, and it was hers.

14 Q But that's how they identified based on the -- the
15 apartment complex saying we just rented something to a girl
16 wearing that?

17 A Yes. That's how they identified.

18 Q Okay. And you said you only talked to Mr. Hall twice,
19 once about bond and once about the plea, is that right?

20 A Yes.

21 Q Did you have a chance to look at the statements of
22 your codefendants and talk about the fact that there were
23 different statements?

24 A When I -- when I got my motion discovery -- the first
25 one that I got from him, some of the paperwork was missing.

Travis Tyrone Tracy
Cross-examination by Ms. White

1 I told him that.

2 I wrote a -- a grievance form to let him know. And
3 when I read the statement I told him that also when he came
4 to me with the plea, because I tried -- I told him to try
5 to advise the Court that can he get the charge dropped to a
6 less -- a lesser charge because I said I didn't rob the
7 store. The only thing about it I knew what happened after
8 the fact, after it went down.

9 Q And do you recall the -- the judge telling you though
10 that if you plead guilty you're giving up the right to
11 present any kind of defense like an alibi defense or a
12 defense that you were innocent of the charge?

13 A Yes.

14 Q Okay. And you said you didn't need any further time
15 and you were willing to go ahead and plead guilty that day.

16 A Yes, on the advice of my counsel.

17 Q Okay.

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

20 MR. BROUGH: No redirect, Your Honor.

21 THE COURT: Let me ask you something, Mr. Tracy.

22 I've got a copy of the transcript of your plea. And
23 the Court asked the solicitor to tell him about the facts,
24 and the solicitor said that you, the defendant, was one of
25 four that was charged with armed robbery in that case, that

Travis Tyrone Tracy

1 you and the codefendant, Mr. Grayson, entered the store at
2 night, that you were armed with a handgun, that you and
3 Mr. Grayson demanded cash from the clerks, and that you
4 discharged a handgun into the ceiling, and that you and
5 Mr. Grayson escaped with money.

6 The Court then asked you, "Did you hear the facts as
7 related by the solicitor?"

8 And you said, "Yes, sir."

9 "Did you understand what he said?"

10 You said, "Yeah."

11 "Is that information the truth?"

12 You said, "Yes, sir."

13 "Have you told me the truth today?"

14 You said, "Yes, sir."

15 "Did anyone tell you how to answer any question that
16 I've asked?" That being the Court.

17 You said, "No, sir."

18 The Court said, "So the answers you've given me, those
19 were your own answers?"

20 You said "Yes, sir."

21 Now, you -- did I understand you earlier when
22 Ms. White asked you if when you said that, why did you say,
23 you said because your lawyer told you to say that even if
24 it wasn't true? Are you representing to me now that your
25 lawyer told you to lie to a judge in order to plead guilty?

Travis Tyrone Tracy

1 THE WITNESS: No. What I'm saying is when I asked
2 my -- when my attorney was telling me about the plea he was
3 like if I was to object to anything they were saying they
4 would not accept my plea. So going off his advice, I just
5 agreed with everything.

6 THE COURT: Okay. So I'll ask you again.
7 Are you telling me that your lawyer told you to lie to
8 this judge so that this plea could be entered?

9 THE WITNESS: He told me to say I agree with
10 everything, to agree with whatever they say.

11 THE COURT: Have you got any reason? Can you think of
12 any reason in the world why he would want you to do that if
13 it wasn't true?

14 THE WITNESS: No.

15 THE COURT: I can't either.

16 Can you -- can you explain to me -- have you got any
17 reason to me why you would lie about committing an armed
18 robbery if you didn't commit one?

19 THE WITNESS: With my record that I have and me being
20 in the county nine months, losing a cousin and a grandma at
21 the same time, Your Honor, really I was just -- just tired
22 of sitting. And with my mama being sick, diagnosed with
23 cancer, I was just so overcome with emotional distress I
24 just said, you know what, because I wanted to go to trial.
25 I wanted to go.

Travis Tyrone Tracy

1 THE COURT: Then why didn't you?

2 THE WITNESS: With all of that going on I was like the
3 longer I sit in here, I ain't going to be able to get back
4 to my mother. Like I say, I'm the only one that take care
5 of my mother.

6 THE COURT: well, I understand. But you knew you had
7 to get at least ten years on an armed robbery, didn't you?

8 THE WITNESS: That's -- when I talked to Mr. Hall
9 that's what he was feeding me.

10 THE COURT: My question is did you know that you had
11 to get at least ten years on an armed robbery charge.

12 THE WITNESS: I knew -- I knew the minimum was ten
13 years.

14 THE COURT: All right. well, so that wouldn't get you
15 home to mama, would it?

16 THE WITNESS: I mean, compared to 10 to 20.

17 THE COURT: Oh, you just mean you thought you'd get
18 home sooner to mama after ten instead of 20.

19 THE WITNESS: That after -- after talking.

20 THE COURT: okay. I think I've heard enough.
21 Anything else y'all need to ask him?

22 MS. WHITE: Nothing, Your Honor.

23 MR. BROUGH: Nothing, Your Honor.

24 THE COURT: okay. You can step down.

25 MR. BROUGH: That would be the applicant's showing,

Robert B. Hall
Direct examination by Ms. White

1 Your Honor.

2 THE COURT: Okay.

3 MS. WHITE: We will briefly call Mr. Hall.

4 THE COURT: All right.

5 ROBERT B. HALL, having been
6 first duly sworn, testified as follows:

7 DIRECT EXAMINATION BY MS. WHITE

8 Q Mr. Hall, do you recall your representation of
9 Mr. Tracy?

10 A Yes, I do.

11 Q And is it accurate that you represented him on the
12 charge of armed robbery and also maybe a trafficking
13 charge?

14 A He had criminal conspiracy, three armed robberies, two
15 trafficking, I think one meth, one crack, or one cocaine,
16 one crack, or cocaine, and possession with intent within
17 half mile of a school. And represented him on all of those
18 charges.

19 Q And when he pled on all of those, as you said, all of
20 those were dismissed except for one armed robbery?

21 A That's correct.

22 Q Is it accurate that you met with him once or twice?

23 A No. If he's talking about right before the plea, I
24 met with him towards the end of August because he was on
25 the September 19th trial docket.

Robert B. Hall
Direct examination by Ms. White

1 We went over everything. He -- like he had been in
2 our other meetings, asserted that he was guilty of
3 accessory after the fact of armed robbery. He knew about
4 them after the fact and not before the fact. And denied
5 the drug charges. That's what he said from bond,
6 preliminary hearing, all along.

7 I had talked to him that it was my understanding in an
8 August 24th meeting that all of the people he had said were
9 going to alibi him I had -- I remember one or two people I
10 tried to get in touch with. I let him know I never -- they
11 never returned my calls. You'd leave a voice mail or try
12 to call them and get nowhere.

13 But Marion Garnett was definitely testifying. Adrian
14 Grayson was probably testifying, and that his girlfriend
15 was going to be testifying.

16 On -- because of the policies at the jail it's
17 sometimes hard to get a computer in to show videos. And I
18 was able to on September 13th, to get the okay -- 12th or
19 13th -- to take the computer to show him the videos.

20 And on that day I have in my notes that we had gotten
21 an offer that, yes, everybody was, as other people were
22 testifying, against him. The offer was to plead to one
23 armed robbery. They would dismiss all the other charges.
24 No recommendation. We discussed it being a violent, no
25 parole, 85 percent, a most serious offense. Another one of

Robert B. Hall
Direct examination by Ms. White

1 this type of thing once he gets out would be life
2 imprisonment.

3 Having the breakdown of just so he would know the very
4 minimum of ten years would mean eight and a half; 20 -- 17;
5 30 -- 25 and a half.

6 At that point's when he started talking about, okay,
7 I'll plead, I want I think Tierra to have -- he was
8 concerned about her and being able to take care of their
9 child, that he would plead, take the plea offer. He -- he
10 was concerned about her not having any more time to be able
11 to get out and raise their child.

12 That's when we discussed the fact that he had a
13 brother and grandmother, had died, passed away, in January
14 of 2011, that he had cousins -- he told me cousins, more
15 than one -- killed in an armed robbery in Gaffney, that he
16 wanted to turn his life around.

17 He was going to take advantage of education and any
18 training while in prison so he could be productive. That
19 he even thought that he would be a good candidate for the
20 scared straight type programs and keeping kids from doing
21 what he had been involved in.

22 But that his concern was Tierra and the child. And
23 that he wanted his I think mother and aunt and whoever else
24 that they could get to show up for the plea.

25 And then I went back a few days later and went over

Robert B. Hall
Direct examination by Ms. White

1 everything again and let him know that I'd spoken with his
2 mother, that they were going to be there, that my plan was
3 to try to plea him before the other people who were
4 pleading, that everybody else was lined up to plea on
5 Monday morning. In case he did not plea, they were going
6 to plea and then testify against him.

7 Again, I told him that it was a most serious and that
8 another most serious such as armed robbery, burglary first,
9 those type things, would result in life imprisonment.

10 And we discussed briefly the -- I have a note here --
11 80 percent. I put that down because people say, well, I
12 heard it got changed to 80 percent. I said I've heard that
13 too but I don't think that's the case. But we did discuss
14 that, that it's -- I tell them 85 percent.

15 Q Let me ask you about the -- the discovery materials,
16 the witness statements and investigative reports that have
17 been placed into evidence.

18 Did you have a chance to talk with him about the fact
19 that there were several multiple statements, that you could
20 possibly attack those if you went to trial?

21 A Yes, and also I did that and talked with him about
22 that it's not uncommon for people to first say, well, you
23 think you got me, well, I know about it but I wasn't
24 involved into the involvement. But what was consistent in
25 this is that they said that he was involved.

Robert B. Hall
Direct examination by Ms. White

1 He at one point had told me that Chucky or Adrian was
2 on our side now. And everything I got back from the
3 solicitor -- and I think the other people in the office
4 might have had some of the codefendants -- and they got
5 conflicted out, which they don't tell me why but it's -- I
6 don't have to be a mind reader to know why when we have
7 codefendants they get conflicted out and attorneys
8 appointed.

9 Q And when it comes to the day of the plea did you
10 have -- did you tell him how to answer the questions?

11 A No, I did not. I said the judge is going to ask some
12 questions. The only thing I tell clients is I prefer for
13 them to say yes, sir, and no, sir, if they can do it
14 without being disrespectful basically, but you answer yes,
15 sir, and no, sir.

16 Q Did you have any concerns on the day of the plea that
17 he was entering this plea based on information he had
18 received and making a voluntary decision to do so?

19 A None at all. If I'm not mistaken, Mr. Cheek and I
20 actually spoke with him. And he expressed his concern that
21 Tierra was not going to get an active sentence behind what
22 she had done and that she would be able to take care of the
23 children and he was going to get this behind him and move
24 on with his life.

25 Q Thank you, Mr. Hall. That's all I have.

Robert B. Hall
Cross-examination by Mr. Brough

1 MR. BROUGH: May it please the Court.

2 CROSS-EXAMINATION

3 BY MR. BROUGH

4 Q Mr. Hall, would you agree with me that based on the
5 exhibits that have been into evidence there was a good
6 argument to be made that potentially Marion was the most
7 responsible of the parties?

8 A Yeah. But the problem is they're both there together
9 to do the robbery. And Tierra had said that's my Landrum
10 shirt that he was wearing. And I think the shoes and maybe
11 the pants that he had on she had bought for him the day or
12 so before. So she was absolutely certain that he was the
13 one, he was the one in there.

14 Q Because of the shoes and the --

15 A I think it was the shoes and/or pants. I can't
16 remember exactly how it broke down. I haven't gone into
17 that, but that's what she was according to the solicitor
18 and whoever was representing her at the time of the plea.
19 She was cooperating and going to identify him through what
20 he was wearing including her shirt and the pants or shoes
21 that she had just bought for him.

22 Q All of the stuff was actually found in Marion's room
23 in the apartment though, wasn't it?

24 A That's what I recall, yes.

25 Q okay. So all of the items were found in Marion's room

Robert B. Hall
Cross-examination by Mr. Brough

1 and not in -- where Mr. Tracy would have been staying.

2 A Well, I -- I have no knowledge of who was staying in
3 which bedroom, but that's my understanding of it. But
4 if -- I don't -- I don't know which couple was staying in
5 which room, but the way they identified it, yes.

6 Q And you were unable to locate any of the witnesses he
7 was referring to you?

8 A I know there's one or two he gave me numbers for, and
9 I know in one of my letters to him in sending him something
10 I refer to -- if you -- if you know anybody -- I haven't
11 been able to get in touch with him. I've been trying and
12 trying, and I can't get in touch with him. But in the end
13 he did not indicate that I am pleading guilty even though
14 I'm not guilty. He said, yes, I did it, I'm just concerned
15 about Tierra, that she can stay out and raise our child.

16 Q What were your reasons besides -- were there any
17 reasons other than the codefendants that you advised him to
18 plead, other than the fact his codefendants were going to
19 testify against him? Is that the sole basis for your
20 advising him to plead?

21 A Well, if they did not have codefendants they really
22 wouldn't have a whole lot against him. So I guess that's
23 accurate.

24 But I thought that given the testimony of the three
25 out of the four people that were going to say, yes, he did

Robert B. Hall
Cross-examination by Mr. Brough

1 it, he was involved in it, basically he was the one whose
2 idea it was, yeah. That's --

3 Q According to the codefendants.

4 A Yeah.

5 Q But no one from the victim's standpoint was ever able
6 to identify Mr. Tracy, correct?

7 A That's correct. But I've also tried murder cases the
8 victim never could identify them. They're in prison.

9 Q But the items were not recovered from a place where
10 Mr. Tracy was staying at as well.

11 In fact, the guns were recovered from Marion's sister's
12 residence, correct?

13 A If I recall correctly, that's what the testimony was.
14 But as the people involved -- whether you and I go in with
15 guns and I take the guns or you take the guns, that doesn't
16 change the fact of robbery.

17 MR. BROUGH: May I have one moment, Your Honor?

18 THE COURT: Yes.

19 (Pause.)

20 MR. BROUGH: No further questions.

21 MS. WHITE: Nothing further from the state, Your
22 Honor.

23 THE COURT: You may step down.

24 THE WITNESS: Thank you.

25 MS. WHITE: The state has no other witnesses.

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THE COURT: Anything further?

MR. BROUGH: No, sir.

THE COURT: I'll review the evidence submitted and the transcript and issue an order.

END OF REQUESTED TRANSCRIPT OF RECORD

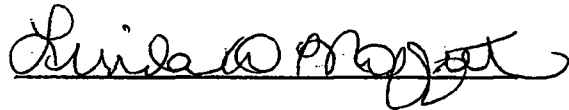
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CERTIFICATE

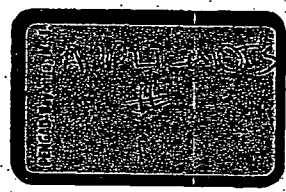
I, the undersigned Linda D. Moffitt, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all the proceedings had and evidence introduced in the trial of the captioned cause, relative to appeal, in the Common Pleas Court for Spartanburg County, South Carolina, on the 3rd day of October 2013.

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

April 21, 2014



Linda D. Moffitt
Circuit Court Reporter



Entered By: J E GARDINER, on 10/19/2010 9:40:36 AM
Edited By: J E GARDINER, on 10/23/2010 9:19:52 AM
Jurisdiction: SC0420100
Case Number: 10054310
Supplement: No
Source Table: RMS_Case

Title: INV J GARDINER-10054310-SUPPLEMENTAL

ON 10-18-10 @ 2315 RECIEVED A CALL FROM LT L McDONALD THAT SGT MABRY WAS REQUESTING CID TO RESPOND TO AN ARMED ROBBERY AT THE FAMILY VIDEO LOCATED ON WO EZELL BLVD.

@ 2330 UPON MY ARRIVAL I SPOKE W/ THE TWO EMPLOYEES WHO WERE ROBBED BY 2 UNKNOWN B/M'S, ONE CARRYING A HANDGUN, WHICH HE DISCHARGED AS HE WAS LEAVING THE BUSINESS. ACCORDING TO JOSHUA JACKSON (W/M DOB 2/5/84) HE WAS WORKING BEHIND THE COUNTER WHEN THE 2 SUBJECTS ENTERED THE STORE. ONE SUBJECT WAS WAIVING A GUN WHILE YELLING GIVE ME ALL YOUR MONEY. MR JACKSON EMPTIED BOTH CASH DRAWERS INTO A BLACK BOOK BAG THAT THE OTHER SUBJECT WAS HOLDING. ACCORDING TO JEREMY JOHNSON (W/M DOB 1/25/89), HE WAS IN THE BACK OF THE STORE WHEN THE SUBJECT WITH THE GUN NOTICED HIM AND TOLD HIM TO COME UP FRONT AND TO EMPTY HIS POCKETS. MR JOHNSON STATED THAT AS THE TWO SUBJECTS LEFT THE STORE, THE ONE WITH THE GUN PULLED THE TRIGGER AND NOTHING HAPPENED, HE THEN EJECTED A ROUND AND SHOT A SECOND TIME, DISCHARGING A ROUND INTO THE CEILING. BOTH SUBJECTS WERE THEN SEEN RUNNING BEHIND THE STORE TOWARD CROWN POINTE APARTMENTS. VIDEO SHOWED THAT BOTH SUBJECTS WERE WEARING GLOVES. THE FIRST SUBJECT, WITH THE GUN, WAS SLIGHTLY TALLER AND A LITTLE HEAVIER THAN THE SECOND. BOTH WORE A HOODIE AND HAD DO-RAGS COVERING THEIR FACES. VIDEO WAS UNAVAILABLE AT THE TIME TO BE COLLECTED. A TRACK WAS CONDUCTED BY THE SCSO, WHICH LED INTO CROWN POINTE, HOWEVER IT ENDED NEAR THE "A" BUILDING WITH NO SPECIFIC SUSPECT LOCATION. TAKEN DURING THE ROBBERY WAS APPROX \$700 IN CASH. PHOTOS WERE GATHERED ALONG WITH A WRITTEN STATEMENT FROM BOTH MR JACKSON AND MR JOHNSON, WHICH WERE PLACED INTO EVIDENCE AT CITY HALL.

ON 10-19-10 @ 0920 SPOKE W/ INV WESTFALL BY PHONE. SHE WILL ATTEMPT TO RECOVER THE BULLET FROM THE CEILING OF THE FAMILY VIDEO.

@ 1600 COLLECTED VIDEO FROM THE STORE.

ON 10-20-10 @ 1500 GATHERED STILL PHOTOS FROM THE VIDEO W/ INV WESTFALL. ABLE TO IDENTIFY A SPECIFIC GREY HOODIE WORN BY THE BAGMAN. IT HAS THE WORD "LANDER" ABOVE A CIRCLE DESIGN OF A BOBCAT. THE OTHER HOODIE WORN BY THE GUNMAN IS TWO TONE GREY W/ BLUE SLEEVES AND HOOD.

ON 10-21-10 @ 0800 RECIEVED A SUPPLEMENTAL FROM INV A PATTON THAT MANAGEMENT AT CROWN POINT HAD SEEN A RESIDENT WEARING A LANDER HOODIE W/ A BOBCAT DESIGN.

@ 1145 COLLECTED A WRITTEN STATEMENT FROM CROWN POINT MANAGEMENT STATING THAT MS TIERRA YOUNG WORE A LONG SLEEVE GREY HOODIE WITH LANDER WRITTEN ON IT AND A BOBCAT DESIGN BELOW IT, WHEN SHE RENTED HER APARTMENT (A-302) ON 10/14/10.

@ 1500 OBTAINED A SEARCH WARRANT FOR APT A-302 CROWN POINT WITH JUDGE C JONES.

ON 10-22-10 @ 0915 EXECUTED THE SEARCH WARRANT W/ INV J BURGESS, SGT A BLEDSOE, AND OFC L SMITH. FOUND WITHIN THE APARTMENT WAS THE LANDER HOODIE, THE GREY AND BLUE HOODIE, THE GREY AND BLACK BOOK BAG, A BOX OF .45 CALIBRE BULLETS, CASH AND ROLLED COINS, ALL RELATING TO THE ARMED ROBBERY OF FAMILY VIDEO. ALSO FOUND WITHIN THE APARTMENT WAS A GARMIN GPS SYSTEM AND A CELL PHONE, BELIEVED TO BE INVOLVED IN ANOTHER RECENT ROBBERY (#10-504-10) NEARBY.

FOUND WITHIN A SHOEBOX IN THE REAR RIGHTSIDE BEDROOM, ON THE CLOSET SELF WAS A SUM OF WHAT APPEARED TO BE CRACK COCAINE. THERE WAS ALSO SOME POWDER COCAINE IN THE SAME AREA. THESE ITEMS WERE FOUND WHILE CONDUCTING OUR SEARCH AND DUE TO THEIR PRESENCE, WE IMMEDIATELY STOPPED SEARCHING THE BEDROOM CLOSET UNTIL A SECOND SEARCH WARRANT COULD BE OBTAINED IN ORDER TO WIDEN THE SCOPE OF THE SEARCH TO INCLUDE OTHER DRUGS. INV BURGESS SOUGHT ASSISTANCE W/ THE NARCOTICS UNIT TO GATHER THE ADDITIONAL SEARCH WARRANT. ALL ITEMS SEIZED FROM WITHIN THE APARTMENT WAS PHOTOGRAPHED AND ACCOUNTED FOR AND PLACED INTO EVIDENCE AT CITY HALL BY INV WESTFALL AND NARCOTICS.

@ 1115 BEGAN MY INTERVIEWS W/ MARION GARNETT. HE GAVE A WRITTEN STATEMENT EXPLAINING HE WAS NOT INVOLVED. I THEN SPOKE W/ TIERRA YOUNG WHO CLAIMED SHE WAS NOT INVOLVED AND DID NOT GIVE A WRITTEN STATEMENT. I THEN SPOKE W/ ADRIAN GRAYSON WHO GAVE A WRITTEN STATEMENT ADMITTING TO HIS INVOLVEMENT. I THEN SPOKE W/ TRAVIS TRACY WHO REFUSED TO GIVE A WRITTEN STATEMENT AND CLAIMED HIS INNOCENCE AS WELL. ALL FOUR INDIVIDUALS COMPLETED A PRE-INTERROGATION WAIVER AND THE INTERVIEWS WERE ALL VIDEO TAPED. THE WAIVERS, STATEMENTS AND VIDEO WERE ALL PLACED INTO EVIDENCE.

@ 1420 INV BURGESS AND INV KI LOCATED THE HANDGUN USED IN THE ARMED ROBBERY AS WELL AS THE AK-47 WHICH WAS BELIEVED TO BE IN THE APARTMENT BEFORE WE ARRIVED.

@ 1500 BASED ON THE INTERVIEWS AS WELL AS THE CONFESSION, ALONG W/ THE RECOVERED ITEMS INVOLVED IN THE ACTUAL ROBBERY, WARRANTS WILL BE SOUGHT AGAINST ALL FOUR SUSPECTS FOR ARMED ROBBERY AND CONSPIRACY TO COMMIT ARMED ROBBERY, WITH A MAGISTRATE.

@ 1530. OBTAINED WARRANTS W/ JUDGE PASLEY AS FOLLOWS:

TIERRA YOUNG M-123497 (ARMED ROBBERY) & M-123504 (CONSPIRACY)

MARION GARNETT M-123499 (ARMED ROBBERY) & M-123501 (CONSPIRACY)

ADRYAN GRAYSON M-123498 (ARMED ROBBERY) & M-123502 (CONSPIRACY)

TRAVIS TRACY M-123496 (ARMED ROBBERY) & M-123506 (CONSPIRACY)

ALL WARRANTS WERE SERVED ON EACH SUBJECT AT THE COUNTY JAIL BY THE SCSO. CASE CLOSED BY ARREST (4X).

11/09/2010 Page 8 of 185

Entered By: Courtney P. Westfall, on 10/19/2010 1:04:48 PM
Edited By: Courtney P. Westfall, on 10/21/2010 9:11:13 AM
Jurisdiction: SC0420100
Case Number: 10054310
Supplement: No
Source Table: RMS_Case

Title: WESTFALL FORENSICS 10-0543-10

On 10/19/10 at approximately 0950 hrs, I responded to Family Video (1392 W. O. Ezell Blvd) in reference to recovering a bullet from the ceiling.

I observed a light in the ceiling that had several holes in it. The bullet entered the light, traveling through several panels of the fixture, and into the drop tile ceiling. I removed numerous ceiling tiles and searched for the bullet, however, it was not located. There were several different levels of duct work/ insulation in the ceiling that the bullet may have become lodged in.

The damage was photographed.

On 10/20/10, Inv. Gardiner and I viewed 2 DVD videos (from Family Video) in reference to this case. One of the videos was a camera angle that showed the door and cashier area. The other video showed the camera angle from behind the counter towards the back of the store.

Upon viewing the video, we observed a B/F subject wearing a red collared shirt and glasses enter the store. The subject was talking on a cell phone. She entered the store, looked around, and quickly exited.

Approximately 1-3 minutes later, 2 subjects entered the store and committed the robbery. Both subjects had their faces covered and each appeared to be wearing one black glove, like they had split a pair of gloves between the two of them. One subject had the gun while the other had a black and gray backpack. The subject with the backpack was wearing a gray hooded sweatshirt that had blue lettering and a logo underneath. Upon further inspection, Inv. Gardiner and I determined that it was a Lander University shirt with the Bearcat logo.

Using the Starwitness software, I was able to isolate several still photos of all three subjects (both males and the female). The images were forwarded to Inv. Gardiner. The videos were returned to Inv. Gardiner.



PUBLIC SAFETY DEPARTMENT

CITY OF SPARTANBURG
P.O. BOX 1746 - 145 W. BROAD ST.
SPARTANBURG, S.C. 29304

CASE NUMBER
10-543-10

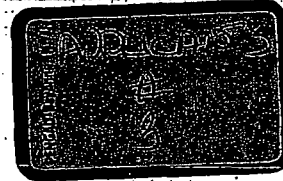
Pre-Interrogation Waiver Form

Name: Travis Tyrone Tracy Address: [Redacted]
Telephone Number: [Redacted] Social Security Number: [Redacted]
Date of Birth: [Redacted] Today's Date: 10-22-10 Time: 1340

STATEMENT OF RIGHTS

Before any questions are asked of you, you must understand your rights.

- Initial TT (✓) 1. You have the right to remain silent.
- TT (✓) 2. Anything you say can and will be used against you in a court of law.
- TT (✓) 3. You have the right to talk to a lawyer and to have a lawyer present with you while you are being questioned.
- TT (✓) 4. If you cannot afford to hire a lawyer, a lawyer will be appointed, free of any costs, to represent you before any questioning begins.
- TT (✓) 5. You have the right to stop answering questions at any time.



The above rights have been read to me by Inv Gardiner
I have read the above rights, and I understand them fully.
Witness [Signature] Signed [Signature]

WAIVER OF RIGHTS

Fully understanding my rights as they have been explained to me, I wish to waive (give up) my rights and talk to officer Inv. GARDINER in reference to Armed Robbery
I have waived my rights freely and voluntarily, without being threatened or coerced; and without being promised any leniency or reward.

Signed [Signature] Witness _____

Time interview Began: _____ m. Time (Statement/Interview) was completed: _____ m.

I have made this statement freely and voluntarily, without being threatened or coerced; and without being promised any leniency or reward.

I have read this statement consisting of _____ page(s), and I swear or affirm that the facts contained therein are true and correct.

I further state that I have received a copy of this statement.

SWORN TO AND SUBSCRIBED TO BEFORE ME

THIS _____ DAY OF _____, 20____ Signed: Refused
Witness: _____

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: _____ Witness: [Signature]

No statement taken Video Only

VOLUNTARY STATEMENT

PAGE 2 OF 2

CASE NUMBER
10-0543-10
10-0504-10

NAME: Travis Tyrone Tracy

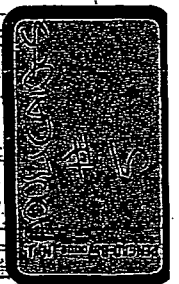
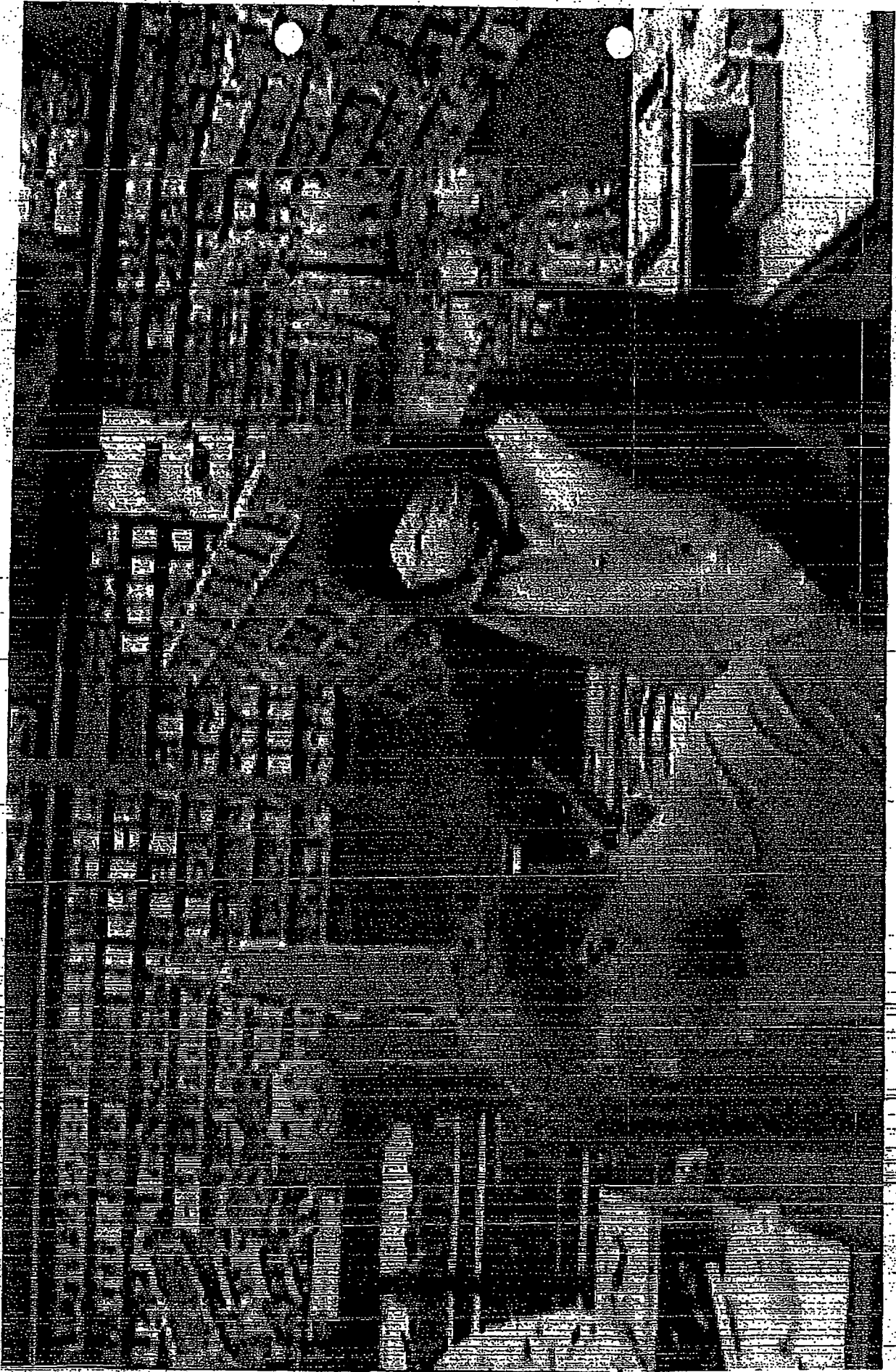
This is the statement of Travis Tracy given to
 Inv. Patton on 10-22-10 at 9:43pm at the county jail.
 I was at home Tierra Young my girlfriend called me and
 told me she was getting dropped off at family video
 so I told her I'll meet you in and see ~~it~~ what
 time they close as she was leaving she told
 me she seen Marion Gannett and his partner
 behind the store and I told her to come home
 and I turn around right as I open the door
 Marion and his crew beat my girlfriend Tierra
 name. Shortly after Marion and his group tried
 to rob a male in the H. buildin in Crown point
 he also brought Dope and weed to the house which
 was his.

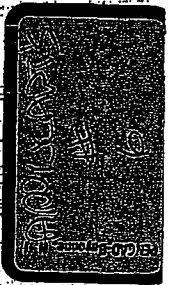
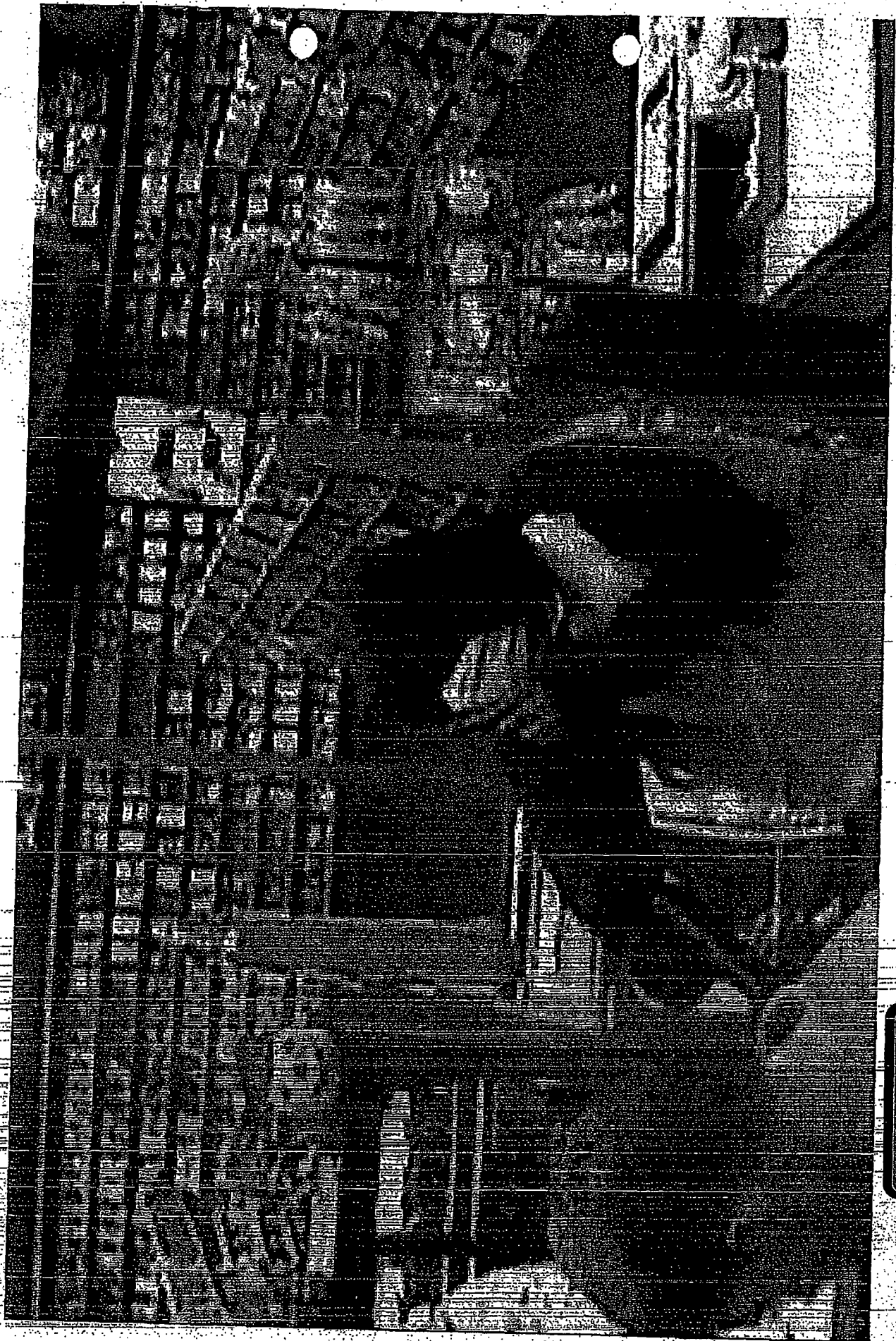
End of statement on 10-22-10 at 10:28pm at the
county jail

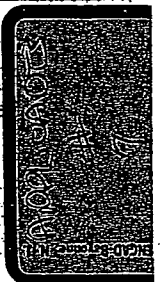
WITNESS: Marion T. Patton

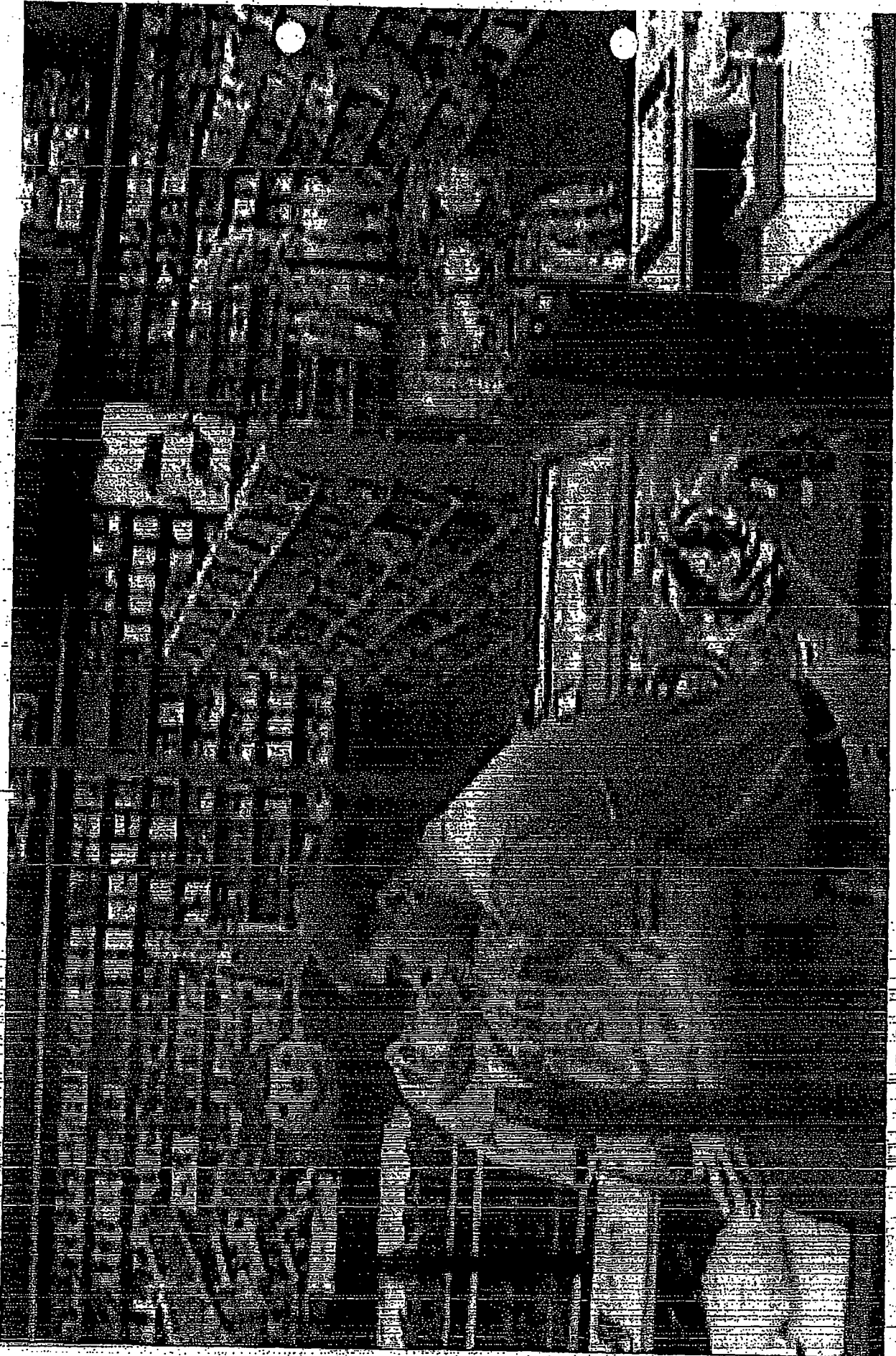
Travis Tracy
Signature of person giving voluntary statement

WITNESS:

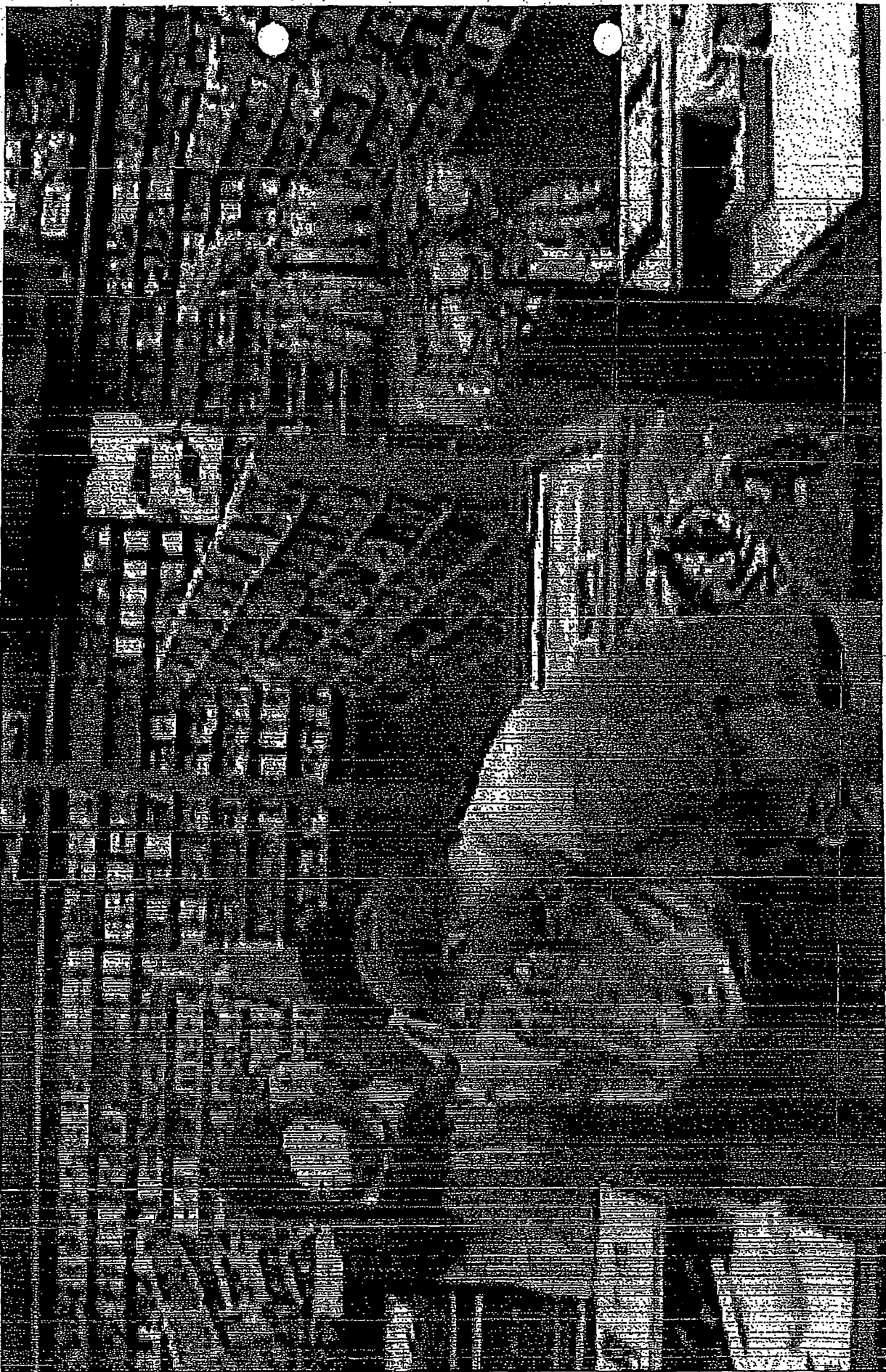








PHOTOGRAPH
NO. 100-100000
APR 15 1964



PUBLIC SAFETY DEPARTMENT

CITY OF SPARTANBURG
P.O. BOX 1746 - 145 W. BROAD ST.
SPARTANBURG, S.C. 29304

CASE NUMBER
10-543-10

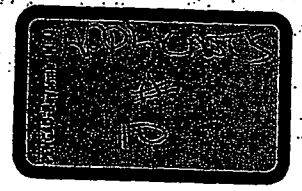
Pre-Interrogation Waiver Form

Name: Marion D. Garnett Address: [REDACTED]
Telephone Number: [REDACTED] Social Security Number: [REDACTED]
Date of Birth: [REDACTED] Today's Date: 10-22-10 Time: 1115

STATEMENT OF RIGHTS

Before any questions are asked of you, you must understand your rights.

- Initial MG (✓) 1. You have the right to remain silent.
- MG (✓) 2. Anything you say can and will be used against you in a court of law.
- MG (✓) 3. You have the right to talk to a lawyer and to have a lawyer present with you while you are being questioned.
- MG (✓) 4. If you cannot afford to hire a lawyer, a lawyer will be appointed, free of any costs, to represent you before any questioning begins.
- MG (✓) 5. You have the right to stop answering questions at any time.



The above rights have been read to me by IW Gardner

I have read the above rights, and I understand them fully.

Witness _____ Signed X Marion Garnett

WAIVER OF RIGHTS

Fully understanding my rights as they have been explained to me, I wish to waive (give up) my rights and talk to

officer GARDNER in reference to Armed Robbery

I have waived my rights freely and voluntarily, without being threatened or coerced, and without being promised any leniency or reward.

Signed X Marion Garnett Witness [Signature]

Time Interview Began: 1115 A.m. Time (Statement/Interview) was completed: 1215 p.m.

I have made this statement freely and voluntarily, without being threatened or coerced, and without being promised any leniency or reward.

I have read this statement consisting of 1 page(s), and I swear or affirm that the facts contained therein are true and correct.

I further state that I have received a copy of this statement.

SWORN TO AND SUBSCRIBED TO BEFORE ME

THIS _____ DAY OF _____ 20____

Signed: X Marion Garnett

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: _____

Witness: [Signature]

VOLUNTARY STATEMENT

PAGE 1 OF 1

NAME: Marion D. Garnett

CASE NUMBER
10-543-10

The following is a written statement as told by Marion Garnett to Low. J. Gardner on 10-22-10 in regard to the Armed Robbery of the Family Video on 10/12/10: I was told that the store was hit by Tracy (Travis). I don't know where the gun's at. I'm innocent. Chucky had the bag. I didn't know Tierra was on the pictures. Tracy told me he robbed the store. I had nothing to do with the robbery. The marijuana found in the bedroom was mine. They were in little clear bags.

WITNESS: _____

WITNESS: _____

[Signature]

[Signature]

 Signature of person giving voluntary statement

CASE NUMBER
10-0543-10
10-0504-10

PUBLIC SAFETY DEPARTMENT

CITY OF SPARTANBURG
P.O. BOX 1746 - 145 W. BROAD ST.
SPARTANBURG, S.C. 29304

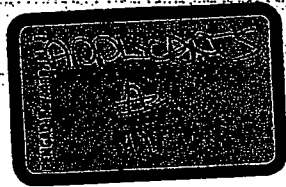
Pre-Interrogation Waiver Form

Name: Marion Douglas Garnett Address: [REDACTED]
 Telephone Number: [REDACTED] Social Security Number: [REDACTED]
 Date of Birth: [REDACTED] Today's Date: 10-22-10 Time: 8:21pm

STATEMENT OF RIGHTS 11 years

Before any questions are asked of you, you must understand your rights.

- MCG (4) 1. You have the right to remain silent.
- MCG (4) 2. Anything you say can and will be used against you in a court of law.
- MCG (4) 3. You have the right to talk to a lawyer and to have a lawyer present with you while you are being questioned.
- MCG (4) 4. If you cannot afford to hire a lawyer, a lawyer will be appointed, free of any costs, to represent you before any questioning begins.
- MCG (4) 5. You have the right to stop answering questions at any time.



The above rights have been read to me by: Ink Patton

I have read the above rights, and I understand them fully.

Witness: Adrian T. Patton Signed: Marion Garnett

WAIVER OF RIGHTS

Fully understanding my rights as they have been explained to me, I wish to waive (give up) my rights and talk to officer Ink Patton in reference to Robberies & Drugs. I have waived my rights freely and voluntarily, without being threatened or coerced, and without being promised any leniency or reward.

Signed: X Marion Garnett Witness: Adrian T. Patton

Time Interview Began: 8:21 p.m. Time (Statement/Interview) was completed: 9:35 p.m.

I have made this statement freely and voluntarily, without being threatened or coerced, and without being promised any leniency or reward.

I have read this statement consisting of 1 page(s), and I swear or affirm that the facts contained therein are true and correct.

I further state that I have received a copy of this statement.

SWORN TO AND SUBSCRIBED TO BEFORE ME

THIS 22 DAY OF October 2010

Signed: X Marion Garnett
Witness: Adrian T. Patton

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: _____

Witness: _____

VOLUNTARY STATEMENT

PAGE 2 OF 4

CASE NUMBER
10-0543-10
10-0504-10

NAME: Marion Douglas Garnett

This is the statement of Marion Douglas Garnett given to Inv. Patton on 10-22-10 at 8:21pm at the county jail.
The statement is in reference to robberies and drugs.

A couple days before the hit on the video store me, Chucky, and Trap were together talking. We started talking about we needed some money. Then we started talking that Family Video was close and that we could do that and come back home. Trap already had the black handgun with the red at the tip. We started walking towards family Video and when we got there I seen a yellow mustang. Tierra was in it being dropped off from work, in the parking lot. We asked her how many people was in the store. She said "Two people." She then got the house key and went home. She didnt know what was going on. When she walked up the street Trap and Chucky went into the store. I was standing in the parking lot behind family video. I heard the shot and through they really robbing the store. They came out running and I ran with them home. Chucky was panicking because he was scared. Trap went in his room and shut the door and Chucky stayed in the kitchen with me. We saw the police come over and walk the dog around so I stayed in my room.

The next day me, Chucky, and Trap were talking some more.

WITNESS: [Signature]

Marion Garnett
Signature of person giving voluntary statement.

WITNESS:

VOLUNTARY STATEMENT

PAGE 3 OF 4

CASE NUMBER
10-0543-10
10-0504-10

NAME: Marion Douglas Garnett

about needing more money, I needed some money for a CDV charge about maybe paying for anger management. We started walking and walked through a pass in the woods that leads to the Dentist office. We saw two people on the porch at the Dentist office. Trap pulled out the rifle from his pants and pointed it at them and said "Give where the money at." I had the pistol and I followed behind him. I didn't say anything. Chucky then went through the car and took a GPS system. Trap then shot one time and we ran.

Q: How did Ashley Meadows get the guns?

A: We put them in da car. She aint know about the robbery. She was just loaned out for me her brother.

Q: Do you know Chucky's real name?

A: Adrian

Q: Do you know Trap's real name?

A: Tracy

Q: Are the drugs your drugs?

A: The weed is mine but the cocaine and powder is not mine is it Tracy's

WITNESS:

Chun T. Park

Marion Garnett

Signature of person giving voluntary statement

WITNESS:

VOLUNTARY STATEMENT

PAGE 4 OF 4

CASE NUMBER
10-0543-10
10-0504-10

NAME: Marion Douglas Garnett

Q: Is there anything else you would like to add to this statement?

A: ~~Yes~~
Tierra didnt know

End of Statement on 10-22-10 at 9:35 pm
at the county jail.

WITNESS:

[Handwritten signature]

[Handwritten signature]

Signature of person giving voluntary statement

WITNESS:

PUBLIC SAFETY DEPARTMENT

CITY OF SPARTANBURG
P.O. BOX 1746 • 145 W. BROAD ST.
SPARTANBURG, S.C. 29304

CASE NUMBER
10-543-10

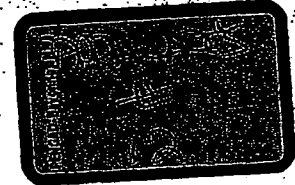
Pre-Interrogation Waiver Form

Name: Adryan Terrell Grayson Address: [REDACTED]
Telephone Number: [REDACTED] Social Security Number: [REDACTED]
Date of Birth: [REDACTED] Today's Date: 10-22-10 Time: 1300

STATEMENT OF RIGHTS

Before any questions are asked of you, you must understand your rights.

- Initial AG 1. You have the right to remain silent.
- AG 2. Anything you say can and will be used against you in a court of law.
- AG 3. You have the right to talk to a lawyer and to have a lawyer present with you while you are being questioned.
- AG 4. If you cannot afford to hire a lawyer, a lawyer will be appointed, free of any costs, to represent you before any questioning begins.
- AG 5. You have the right to stop answering questions at any time.



The above rights have been read to me by Im Gardner

I have read the above rights, and I understand them fully.

Witness [Signature] Signed Adryan Grayson

WAIVER OF RIGHTS

Fully understanding my rights as they have been explained to me, I wish to waive (give up) my rights and talk to

officer GARDNER in reference to Armed Robbery

I have waived my rights freely and voluntarily, without being threatened or coerced, and without being promised any leniency or reward.

Signed Adryan Grayson Witness [Signature]

Time Interview Began: 1300 p.m. Time (Statement/Interview) was completed: 1330 p.m.

I have made this statement freely and voluntarily, without being threatened or coerced, and without being promised any leniency or reward.

I have read this statement consisting of 1 page(s), and I swear or affirm that the facts contained therein are true and correct.

I further state that I have received a copy of this statement.

SWORN TO AND SUBSCRIBED TO BEFORE ME

THIS 20 DAY OF 20

Signed: Adryan Grayson

Witness: _____

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: _____

Witness: [Signature]

VOLUNTARY STATEMENT

PAGE 1 OF 1


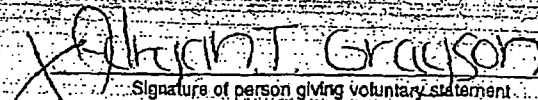
NAME: Adryan T. Grayson

CASE NUMBER
10-543-10

The following is a written statement as told by Adryan Grayson to Inv. J. Gardner on 10-22-10 while at City Hall in regard to an Armed Robbery of the Family Video on 10-18-10: Travis, Adryan (me) and Marion was on the side of the building. Travis went in first with a 45 Highpoint pistol, I came in after with a bag to get the money. After being in the store a few seconds, Travis let off a shot. He told me it was to let the store ~~the~~ clerks know the robbery was real. After hearing the shots the two clerks laid on the ground fearing for their life, I ran out first, Travis followed and Marion was on the side of the store as a look-out. We ran behind the Dentist office around Crown Point to the A Building into Terra's apartment. She knew about it ~~but~~ but after clearing the business she walked home and got into the shower. I got \$100, Marion got \$100 and Travis kept the rest. I don't know where the gun is or where Travis had the weapons. The dope and marijuana in the closet was Travis'. I had nothing to do with that I admit to the robbery but I had nothing to do with the drugs that were found.

WITNESS:

WITNESS:

Signature of person giving voluntary statement

PUBLIC SAFETY DEPARTMENT

CITY OF SPARTANBURG
P.O. BOX 1746 - 145 W. BROAD ST.
SPARTANBURG, S.C. 29304

CASE NUMBER
10-0543-10
10-0504-10

Pre-Interrogation Waiver Form

Name: Adryan Terrell Grayson Address: [REDACTED]
 Telephone Number: [REDACTED] Social Security Number: [REDACTED]
 Date of Birth: [REDACTED] Today's Date: 10-22-10 Time: 10:35 pm

STATEMENT OF RIGHTS

Before any questions are asked of you, you must understand your rights. 19 years

- AG (4) 1. You have the right to remain silent.
- AG (4) 2. Anything you say can and will be used against you in a court of law.
- AG (4) 3. You have the right to talk to a lawyer and to have a lawyer present with you while you are being questioned.
- AG (4) 4. If you cannot afford to hire a lawyer, a lawyer will be appointed, free of any costs, to represent you before any questioning begins.
- AG (4) 5. You have the right to stop answering questions at any time.

The above rights have been read to me by Ink. Patton

I have read the above rights, and I understand them fully.

Witness Adrian Patton Signed Adryan Grayson

WAIVER OF RIGHTS

Fully understanding my rights as they have been explained to me, I wish to waive (give up) my rights and talk to officer Ink. Patton in reference to Robberies/ Drugs. I have waived my rights freely and voluntarily, without being threatened or coerced; and without being promised any leniency or reward.

Signed Adryan Grayson Witness Adrian Patton

Time Interview Began: 1035 p.m. Time (Statement/Interview) was completed: 11:00 p.m.

I have made this statement freely and voluntarily, without being threatened or coerced; and without being promised any leniency or reward.

I have read this statement consisting of 2 page(s) and I swear or affirm that the facts contained therein are true and correct.

I further state that I have received a copy of this statement.

SWORN TO AND SUBSCRIBED TO BEFORE ME

THIS 22 DAY OF October 2010

Signed: Adryan Grayson
Witness: Adrian Patton

NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: _____

Witness: _____

VOLUNTARY STATEMENT

PAGE 2 OF 2

CASE NUMBER
10-0543-10
10-0564-10

NAME: Adryan Terrell Grayson

This is the statement of Adryan Grayson given to Inv. Patton on 10-22-10 at 1035pm at the county jail. I was with trap + marion when we robbed the mexicans. trap was holding the AK, Marion was holding the 45 high point, i came up after them searching the surroundings. I took the cell fones + a GPS system. When leaving trap shot the AK. When robbing family video, i walked in after travis i gave the store clerk the bag after he said give it up inside a few seconds travis let off a shot, almost hitting me in my head, I then ran out the store meeting marion who was on the side of the store trap came out we all begin to run behind the buildings towards crown point. Tierra came by family video but she had nothing to do with what went down that night.

End of statement on 10-22-10 at 11:00pm

WITNESS: [Signature]

[Signature]
Signature of person giving voluntary statement

WITNESS:

ADDITIONAL NARRATIVE

Agency Name: SPARTANBURG PUBLIC SAFETY DEPARTMENT	ORI #: SC0420100	Report Date/Time: 10/22/2010 9:00:00 AM	OCA #: 10076610
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SUPPLEMENTAL - KIRBY, J

ON 10/22/10 I WAS CONTACTED BY INVESTIGATOR BURGESS REGARDING A SEARCH WARRANT THEY HAD EXECUTED AT [REDACTED] IN REFERENCE TO LOCATING A HANDGUN AND CLOTHING USED DURING AN ARMED ROBBERY. WHEN THEY ENTERED THE APARTMENT TIERRA YOUNG (SUSPECT #1), TRAVIS TRACY (SUSPECT #2) AND MARION DOUGLAS (SUSPECT #3) WERE ALL LOCATED INSIDE THE APARTMENT. DURING THEIR SEARCH FOR THE GUN AND CLOTHING, THEY LOCATED WHITE POWDER AND AN OFF WHITE ROCK SUBSTANCE INSIDE A SHOE BOX WHICH WAS CONSISTENT WITH COCAINE. AT THIS TIME INVESTIGATORS STOPPED THEIR SEARCH, AND NOTIFIED NARCOTICS. I SECURED A SEPARATE SEARCH WARRANT FOR THE APARTMENT TO FURTHER SEARCH FOR ILLEGAL NARCOTICS.

ONCE ON SCENE, INVESTIGATOR BAGWELL RECOVERED THE OFF WHITE POWDER AND THE OFF WHITE ROCK SUBSTANCE FROM THE SHOE BOX. THE OFF WHITE POWDER WEIGHED 34.7 GRAMS AND FIELD TESTED POSITIVE FOR COCAINE USING VALTOX. THE OFF WHITE ROCK LIKE SUBSTANCE WAS PACKAGED IN 2 SEPARATE BAGS AND HAD A TOTAL WEIGHT OF 38.1 GRAMS AND FIELD TESTED POSITIVE FOR COCAINE USING VALTOX. ALSO LOCATED IN THE APARTMENT WAS GREEN PLANT MATERIAL WHICH IS CONSISTENT WITH MARIJUANA AND WAS PACKAGED INTO SEPARATE BAGS WITH A TOTAL WEIGHT OF 10.6 GRAMS. A SET OF DIGITAL SCALES WAS ALSO LOCATED INSIDE THE APARTMENT. INV BAGWELL RECOVERED ALL ITEMS LOCATED DURING THE SEARCH AND PLACED THEM INTO EVIDENCE AT CITY HALL. 201 POWELL MILL RD IS LOCATED 0.5 MILES FROM JESSE BOBO ELEMENTARY SCHOOL, LOCATED AT 495 POWELL MILL RD.

I RESPONDED TO CITY HALL AND SPOKE WITH ALL PARTIES INVOLVED CONCERNING THE ILLEGAL NARCOTICS LOCATED INSIDE THE APARTMENT. EACH PERSON INVOLVED WAS ADVISED OF THEIR RIGHTS AS DEFINED UNDER "MIRANDA" AND ALL ADVISED THEY HAD NO KNOWLEDGE OF THE ILLEGAL NARCOTICS LOCATED.

WHILE STILL AT CITY HALL SPEAKING WITH THE SUBJECTS, INFORMATION WAS RECEIVED THAT THE POSSIBLE WEAPON USED DURING THE ARMED ROBBERY WAS LOCATED ON THE ROOF OF THE "A" BUILDING AT 201 POWELL MILL RD. INV BURGESS, INV EDWARDS AND MYSELF RESPONDED BACK TO THIS LOCATION IN AN ATTEMPT TO LOCATE THE GUN. UPON OUR ARRIVAL BACK AT THE APARTMENT COMPLEX, THE PROPERTY MANAGER WAS ON SCENE AT BUILDING [REDACTED] AS WAS 2 BM AND 2 B/F. WE RE-ENTERED THE APARTMENT AND LOOKED ON THE ROOF AND WAS UNABLE TO LOCATE THE WEAPON. HOWEVER WE DID LOCATE SEVERAL ITEMS THAT BELONGED INSIDE THE APARTMENT, OUTSIDE, SUCH AS CLOTHING THAT WAS INSIDE A BAG AND A PLAYSTATION. THESE ITEMS WERE RETURNED BACK INSIDE THE APARTMENT AND THE APARTMENT WAS RE-SECURED BY MANAGEMENT.

I THEN SPOKE TO ONE OF THE B/F'S ON SCENE IDENTIFIED AS ASHLEY SAMONE MEADOWS-GARNETT (WITNESS #1). MS. GARNETTE INDICATED THAT HER BROTHER, MARION GARNETT LIVED IN BUILDING [REDACTED] AND SHE WAS DOWN THERE TO SEE WHAT WAS GOING ON. I ADVISED HER THAT SOMEONE HAD ENTERED THE APARTMENT AND POSSIBLY TAMPERED WITH EVIDENCE AND COULD POTENTIALLY BE CHARGED WITH A CRIME. THE MANAGEMENT ADVISED THAT MS. GARNETT WAS A KEY HOLDER TO THE APARTMENT SINCE HER BROTHER, MARION LIVED THERE. AFTER SPEAKING WITH MS. ASHLEY GARNETT FOR A FEW MINUTES I WAS ABLE TO OBTAIN A CONSENT TO SEARCH FORM WHICH SHE SIGNED FOR HER APARTMENT LOCATED AT 201 POWELL MILL RD, BUILDING [REDACTED] INSIDE THE SAME COMPLEX. ONCE INSIDE THE APARTMENT ASHLEY ADVISED THAT HER BROTHER ASKED IF HE COULD LEAVE SOMETHING IN HER APARTMENT AND SHE ALLOWED HIM TO DO SO. SHE THEN POINTED INVESTIGATORS IN THE DIRECTION OF THE LIVING ROOM CLOSET AS THE LOCATION WHERE THE ITEMS WERE LOCATED. LOCATED INSIDE A LARGE CARDBOARD BOX WAS AN ASSAULT STYLE RIFLE WHICH WAS WRAPPED INSIDE A RED TOWEL. LOCATED DOWN INSIDE THE LARGE CARDBOARD BOX WAS A SMALLER CARDBOARD BOX WHICH CONTAINED A BLACK IN COLOR HANDGUN. INV BURGESS RECOVERED THESE ITEMS AND TOOK A STATEMENT FROM MS. ASHLEY GARNETT CONCERNING HER INVOLVEMENT WITH THE GUNS LOCATED INSIDE HER APARTMENT. AT THIS TIME NO CHARGES WERE FILED ON ASHLEY MEADOWS-GARNETT.



11/09/2010 Page 16 of 185

ADDITIONAL NARRATIVE

Agency Name: SPARTANBURG PUBLIC SAFETY DEPARTMENT	ORI #: SC0420100	Report Date/Time: 11/22/2010 9:00:00 AM	OCA #: 10075510
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ORIGINAL - EDWARDS, B

ON 10-22-2010 AT 1015 HRS I ASSISTED WITH A NARCOTIC SEARCH WARRANT AT 201 POWELL MILL ROAD APT [REDACTED]. OUR OFFICE WAS NOTIFIED BY INVESTIGATORS THAT THEY EXECUTED A SEARCH WARRANT EARLIER THIS MORNING. INVESTIGATORS STATED THAT THEY WERE IN SEARCH OF A GUN USED IN A ROBBERY WHEN THEY DISCOVERED NARCOTICS. INVESTIGATORS STATED THAT UPON THIS DISCOVERY THEY THEN CEASED THEIR SEARCH AND CONTACTED OUR OFFICE. AT THIS POINT ANOTHER SEARCH WARRANT WAS PRODUCED TO INCLUDE NARCOTICS AND TAKEN TO THEIR LOCATION. UPON OUR ARRIVAL I WAS TASKED WITH SEARCHING THE RESIDENCE. I CONDUCTED A SEARCH OF THE RIGHT REAR BEDROOM WHERE I LOCATED TWO IDENTIFICATION CARDS IN THE WINDOW FRAME AND A SINGLE 7.62 BULLET FOR A RIFLE IN THE FLOOR OF THE CLOSET. I CONDUCTED A SEARCH OF THE LEFT REAR BEDROOM WHERE I LOCATED A SILVER SET OF DIGITAL SCALES INSIDE A CLEAR PLASTIC TUB IN THE CLOSET OF THIS BEDROOM. I ALSO LOCATED A BLACK GLOVE THAT WAS FOUND THE CLOSET FLOOR ON THE LEFT. I THEN LOCATED AN ADDITIONAL IDENTIFICATION CARD IN THE PANTS POCKET OF A PAIR OF PANTS LOCATED BESIDE THE BED. I THEN CONDUCTED A SEARCH IN THE RIGHT FRONT BEDROOM WHERE I LOCATED A CELL PHONE INSIDE A YELLOW AND BLUE JERSEY BOOK BAG. I NOTIFIED INV. BAGWELL OF MY FINDINGS AND HE RECOVERED THESE ITEMS. I DID NOT LOCATE ANY FURTHER ITEMS OF EVIDENTIARY VALUE.

ONCE BACK AT CITY HALL INV. GARDNER WAS IN THE PROCESSING OF INTERVIEWING THE SUSPECTS LOCATED INSIDE THE RESIDENCE WHEN THE INITIAL SEARCH WARRANT WAS EXECUTED. INV. KIRBY, BURGESS, AND I RESPONDED BACK TO 201 POWELL MILL ROAD [REDACTED] AFTER WE WERE INFORMED OF THE POSSIBLE LOCATION OF THE TWO WEAPONS INVOLVED IN THE ROBBERY. UPON OUR ARRIVAL WE OBSERVED TWO BLACK MALES AND TWO BLACK FEMALES IN FRONT OF THE BUILDING BY A RED FORD TRUCK. THE PROPERTY MANAGER WAS OBSERVED AT THE BUILDING HEADING TOWARDS [REDACTED]. SHE WAS NOTIFIED THAT WE NEEDED TO GAIN ACCESS BACK INTO THE APARTMENT WHEN SHE INFORMED US THAT SHE HAD JUST ARRIVED TO SECURE THE RESIDENCE FROM OUR EARLIER DEPARTURE. SHE ALSO STATED THAT THE TWO BLACK FEMALES WERE RELATED TO ONE OF THE SUSPECTS IN CUSTODY. INV. BURGESS AND I RESPONDED DOWNSTAIRS AND SPOKE WITH THE TWO FEMALES. MERCADES PARHAM WAS DRIVING THE RED FORD TRUCK AND ARRIVED TO SECURE THE APARTMENT WHEN SHE WAS APPROACHED BY ASHLEY MEADOWS-GARNETT WHO RESIDES IN [REDACTED]. MERCADES PARHAM IS THE GIRLFRIEND TO SUSPECT MARION GARNETT AND ASHLEY MEADOWS-GARNETT IS THE SISTER TO MARION GARNETT. INV. BURGESS CONDUCTED A BRIEF INTERVIEW WITH MS PARHAM AND A SEARCH OF THE RED FORD WAS CONDUCTED WITH NOTHING LOCATED. ASHLEY GARNETT STATED THAT SHE ARRIVED TO HER BROTHER'S APARTMENT AND OBSERVED TWO BLACK MALES TAKING TWO BLACK TRASH BAGS OUT OF THE APARTMENT. SHE STATED SHE SPOKE WITH MS PARHAM AND WAS ASKING WHO THE BLACK MALES WERE. THE TWO BLACK MALES WE OBSERVED WHEN WE ARRIVED WERE NOW GONE. INV. KIRBY RESPONDED AND SPOKE FURTHER WITH MS GARNETT. I SPOKE WITH ONE OF THE BLACK MALES IDENTIFIED AS DAVID BENNETT (D.O.B. [REDACTED]) WHO WALKED BACK TO MY LOCATION. MR BENNETT STATED THAT HIS "HOMEBOY" IDENTIFIED AS "T" CAME AND GOT HIM AND THEY WENT TO [REDACTED] TO GET MR GARNETT'S CLOTHS AND SECURE THEM. HE ALSO STATED THAT "T" LIVED NEAR HIM AND WAS STILL IN THE AREA. "T" WAS CONTACTED BY PHONE AND RESPONDED TO MY LOCATION. "T" WAS IDENTIFIED AS TAVARIS J DEWBERRY (D.O.B. [REDACTED]) AND STATED THAT HE WAS MARION GARNETT'S COUSIN. ASHLEY GARNETT STATED THAT SHE DID NOT KNOW WHO DEWBERRY WAS AND WAS NOT FAMILIAR WITH HIM. DEWBERRY STATED THAT HE WAS TOLD BY MARION GARNETT YESTERDAY TO COME GET HIS BELONGINGS IF ANYTHING HAPPENS TO HIM. HE STATED THAT HE WOKE UP TODAY AND DISCOVERED THAT MARION HAD BEEN ARRESTED AND RESPONDED TO HIS APARTMENT TO GET HIS CLOTHS. AS I CONTINUED MY INTERVIEW I WAS INFORMED THAT INV. KIRBY AND BURGESS WERE INSIDE ASHLEY GARNETT'S RESIDENCE AT [REDACTED] AND HAD SECURED THE TWO GUNS INVOLVED IN THE ROBBERY. I THEN COMPLETED MY INTERVIEW AND RESPONDED TO THIS LOCATION. OFFICER SMITH CHECKED WARRANTS ON BOTH DAVID BENNETT AND TAVARIS DEWBERRY AND FOUND THAT DEWBERRY HAD AN OUTSTANDING WARRANT FOR HIS ARREST IN FLORIDA. BENNETT WAS RELEASED WITHOUT INCIDENT AND DEWBERRY WAS TRANSPORTED TO THE SPARTANBURG COUNTY JAIL. PARHAM WAS ALSO RELEASED WITHOUT INCIDENT.



STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 Travis Tyrone Tracy, #347877,)
)
 Applicant,)
)
 v.)
)
 State of South Carolina,)
)
 Respondent.)

IN THE COURT OF COMMON PLEAS
 SEVENTH JUDICIAL CIRCUIT

2012-CP-42-0893

ORDER OF DISMISSAL

CLERK OF COURT
 SPARTANBURG
 2014 FEB 28 PM 4:19
 H. HOFF

This matter comes before the Court by way of an Application for Post-Conviction Relief filed February 24, 2012, and amended March 12, 2012. The Respondent made its Return on or about November 30, 2012. An evidentiary hearing into the matter was convened on October 3, 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. Robert B. Hall, 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 indicted during the February 2011 term by the Spartanburg County Grand Jury for armed robbery and possession of a weapon during the commission of a violent crime (2011-GS-42-

1128, count 1 and count 2). The Applicant was represented by Robert B. Hall, Esquire. On September 19, 2011, the Applicant pled guilty as indicted to count 1, armed robbery. The charge of possession of a weapon during the commission of a violent crime, count 2, was dismissed. Applicant was sentenced by The Honorable Roger L. Couch to a sentence of twenty-five years, provided upon the service of twenty years; the balance is suspended to two years of probation. However, the sentence was amended on September 22, 2011, to reflect a sentence of twenty years.

A timely Notice of Appeal was filed on Applicant's behalf; however, the appeal was dismissed by the South Carolina Court of Appeals on December 19, 2011, for Applicant's failure to show that any issue was preserved for appeal.

ALLEGATIONS

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

1. Ineffective assistance of counsel;
2. Prosecutorial misconduct; and
3. Trial court error.

At the hearing, the Applicant, over the State's objection, orally amended his application to include the allegation of involuntary guilty plea.

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, 385 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 he was represented by Robert Hall ("Counsel") on charges of

armed robbery and trafficking. Applicant testified that the armed robbery charge followed the robbery of a Family Video store on October 18, 2010. Applicant testified that he met with Counsel twice over nine months, with the first time being a bond hearing and the second time at the plea. Applicant testified that he did receive some of the discovery materials. Applicant's girlfriend, Tiara, was one of those co-defendants and the Applicant had visited her at her apartment behind the Family Video. However, Applicant testified that there were several inconsistencies in the co-defendant's statements regarding who knew about the robbery and who was involved and Counsel could have attacked the co-defendants at trial about those inconsistencies. Additionally, Applicant testified that the guns were recovered from the apartment of Ashley Meadows, who was the sister of co-defendant Marion Garnett. Applicant testified that the video and photos show that the person robbing the store was wearing a mask. The Applicant testified that he was with another female, Kenyatta, at the time of the robbery and believes that Tiara implicated him in the robbery because she was made that he was with Kenyatta. There was also a second robbery in which Applicant was implicated in and the items stolen during that robbery were discovered in the apartment of Tiara and Mercedes, co-defendant Marian's girlfriend. Applicant introduced the following exhibits in support of his claims; #1, investigative report; #2, supplemental investigative report; #3, waiver of rights form; #4, the second waiver form and Applicant's statement; #5-#9, still photos from the video of the crime; #10 and #11, statements of Marion Garnett; #12 and #13, statements of Adrian Grayson; #14, supplemental report regarding the search warrant; and #15, supplemental report regarding narcotics found.

Counsel testified that the Applicant faced three armed robbery charges, two trafficking in crack cocaine charges, possession with intent to distribute, and a distribution within the

proximity of a park or school charge. Counsel testified that the Applicant claimed he was only guilty of accessory after the fact related to the armed robberies and was not guilty of any drug charges. Counsel testified that he tried to get in touch with the alibi witness, but was unable to contact her. Counsel was unable to locate any witnesses based on the phone numbers given to him by the Applicant. Counsel agreed that the victims were unable to identify Applicant as the robber because a mask was worn. However, the State indicated that Tiara would identify Applicant by the clothing he was wearing at the time of the robbery. Counsel testified that he did discuss the inconsistent statements with the Applicant, but each statement consistently said that Applicant was involved in the robberies.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. The Applicant's allegation that Counsel did not meet enough with Applicant or conduct an adequate investigation is without merit. Following testimony and review of the transcript, it is clear that Counsel had reviewed the facts and evidence, as well as the options that Applicant faced. The "brevity of time spent in consultation, without more, does not establish that counsel was ineffective." Easter v. Estelle, 609 F.2d 756, 759 (5th Cir. 1980). 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 been more fully prepared. Counsel testified that he attempted to interview witnesses provided by the Applicant, but the contact information

was not correct. Counsel reviewed discovery materials with the Applicant and discussed possible issues with the identification or statements. Furthermore, the Applicant failed to show any prejudice that may have resulted from Counsel's alleged inadequate preparation or consultation. Accordingly, this allegation is 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).

Applicant testified that he was innocent of the crime, but pled guilty on the advice of Counsel based upon the fact that Counsel informed him that the co-defendants were planning on testifying against Applicant if he went to trial. Applicant also acknowledged that some additional charges were dismissed as part of the plea and he was aware that the minimum sentence he could receive was ten years. Applicant testified that he wanted to proceed to trial, but pled when

Counsel came to him with the plea offer and the fact that Tiara and Marian would testify against him. However, Applicant testified that he lied to the court when he said he was guilty and agreed with the facts of the case. Applicant testified that he lied on the advice of Counsel.

Counsel testified that he met with the Applicant around August 24 and then September 13. In September, Counsel testified that he showed the Applicant the video evidence and presented an offer to plead to one armed robbery, violent and most serious, with no recommendation. Counsel testified that he saw the Applicant a few days later and the Applicant indicated that he wanted to plead guilty before the other co-defendants. Counsel testified that he did not tell the Applicant what to say at the plea, other than to be respectful.

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. 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 chose to plead guilty when faced with the prospect of his co-defendants testifying against him. Therefore, this claim is denied and dismissed.

Trial Court Error and Prosecutorial Misconduct

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 of ineffective assistance of counsel and

involuntary guilty plea, 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 Hessier *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

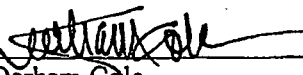
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CLERK OF COURT
SPARTANBURG, SOUTH CAROLINA
2014 FEB 20 PM 4:43

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, 2013.



 J. Derham Cole
 Presiding Judge

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 SPARTANBURG COURT
 2014 FEB 20 PM 4:49
 M. BOGGS, CLERK

WITNESSES

Spartanburg Public Safety Department

[Signature]

ARREST WARRANT NUMBER

M123496- Count One

Direct Indictment- Count Two

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

VERDICT

1. SENTENCE MADE

Computer

2. REPORT MADE

3. CARD FILED

Foreperson of Grand Jury

Date:

7. ASSESSMENT AND FINE CARO MADE

Computer

DOCKET NO.

11-GS-42-1128(A)

The State of South Carolina

County of Spartanburg

BARRY J. BARNETTE, ACTING SOLICITOR

COURT OF GENERAL SESSIONS

TERM

THE STATE
vs.

Travis Tyrone Tracy

Dismissed as to count two

Barnette Jr 9/19/11

Indictment for

ARMED ROBBERY AND POSSESSION OF WEAPON DURING COMMISSION OF A VIOLENT CRIME

SC Code: 16-11-330 (A): 16-23-490

CDR Code: 139: 549

Class: FEL/A: FEL/F

*△ pled guilty to count one.
Computer*

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2011 FEB 28 PM 1:11
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

SEP 18 2011

At a Court of General Sessions, convened on _____, the Grand Jurors of Spartanburg County present upon their oath:

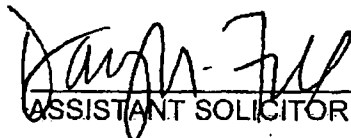
COUNT ONE---ARMED ROBBERY

That Travis Tyrone Tracy, did in Spartanburg County on or about October 18, 2010, while armed with a deadly weapon, being a gun, did feloniously take from the person or presence of Joshua Jackson, by means of force, violence, and/or intimidation, goods or monies, such goods or monies being described as follows: a sum of money belonging to Family Video, with intent to deprive the owner permanently of such property, in violation of §16-11-330 (A), *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

COUNT TWO---POSSESSION OF WEAPON DURING COMMISSION OF A VIOLENT CRIME

That Travis Tyrone Tracy, did in Spartanburg County on or about October 18, 2010, possess or visibly display a gun during the commission of a violent crime, to-wit: ARMED ROBBERY, in violation of Code §16-23-490, *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.



ASSISTANT SOLICITOR