

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Spartanburg County

Robin B. Stilwell, Circuit Court Judge

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OCT 14 2014

S.C. Supreme Court

DELONTE CARROLL,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000503

APPENDIX

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1 STATE OF SOUTH CAROLINA)
 2 COUNTY OF SPARTANBURG) IN THE COURT OF GENERAL SESSIONS
 3
 4 The State,)
 5 -vs-) TRANSCRIPT OF RECORD
 6 Andrea White and) 2010-GS-42-4315
 7 Delonte Barnard Carroll,) 2010-GS-42-4268
 8 Defendants.) August 22, 2011
 9 Spartanburg, South Carolina
 10

11 B E F O R E :

12 HONORABLE J. DERHAM COLE, JUDGE
 13
 14

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

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 17 Attorney for the State

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 21 Attorney for Defendant Carroll

22 Linda D. Moffitt
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 SPARTANBURG, SC

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Guilty plea -- page 3.

No sworn testimony; no exhibits entered into evidence.

1 THE COURT: All right. These are Delonte Bernard
2 Carroll and Andrea White.

3 Mr. Carroll, you are present and represented by Robert
4 Hall.

5 Ms. White is present represented by Dick Welchel.

6 Each of you have indicated an intention to plead
7 guilty to the charge of armed robbery.

8 Before I can accept your plea I've got some questions
9 to ask each of you. The purpose of the questions is for me
10 to determine whether or not your decision to plead guilty
11 is freely and voluntarily made, that you understand fully
12 what you're doing and you understand the consequences of
13 that decision.

14 So as these questions are asked I need you to respond
15 to them. If you don't understand a question, you need to
16 let me know, and I'll try to rephrase it or ask it in such
17 a way that you'll be certain to understand it.

18 Mr. Carroll and Ms. White, each of you are charged
19 with having committed the crime of armed robbery, the state
20 alleging that each of you did on or about May the 27th of
21 2010 while armed with a deadly weapon or while alleging
22 either by actions or words that you were armed with a
23 representation of a deadly weapon or some object which a
24 person present during the commission of the robbery
25 reasonably believed to be a deadly weapon, that you took,

1 stole and carried away the personal property of Jasman
2 Pearson.

3 They allege that that property was a purse, and/or a
4 cell phone, and/or jewelry, and/or keys, and/or a sum of
5 money, and that you committed that robbery by the use of
6 force, violence, and/or intimidation and with an intent to
7 deprive the true owner of use and possession of her
8 property and that you did that while armed with a deadly
9 weapon or a representation of one.

10 If those facts were proven in court to the
11 satisfaction of a jury beyond a reasonable doubt you could
12 receive a sentence up to 30 years in jail.

13 It requires a mandatory minimum sentence of not less
14 than ten years in jail.

15 Count two of the indictment alleges that you did on or
16 about May the 27th of 2010 possess or visibly display a
17 firearm or what appeared to be a firearm during the
18 commission of the crime of armed robbery.

19 MR. ELLIS: Your Honor, I'm sorry. The count two on
20 each indictment they're not pleading guilty to. It's only
21 the count one.

22 THE COURT: Okay. And if you were convicted of count
23 two of the indictment you could receive an additional
24 sentence of up to five years in jail.

25 The solicitor has indicated that upon my acceptance of

1 your plea of guilty in count one of the indictment, which
2 is armed robbery, he intends to dismiss count two of the
3 indictment, which is possession of a firearm during the
4 commission of a violent crime.

5 Now, as I ask these questions, Mr. Carroll, I'm going
6 to ask you to respond first.

7 Ms. White, I'll ask you to respond secondly.

8 Understand your answers are not going to necessarily
9 be the same. So don't just reply upon what the other says
10 as being your answer. You have to answer the question
11 based upon your own knowledge and how the facts and
12 circumstances apply to you individually.

13 Do you understand that, Mr. Carroll?

14 DEFENDANT CARROLL: Yes, sir.

15 THE COURT: Do you understand that, Ms. White?

16 DEFENDANT WHITE: Yes, sir.

17 THE COURT: Mr. Carroll, Mr. Hall is representing you.
18 How long has he been representing you?

19 DEFENDANT CARROLL: Been representing me for right at
20 15 months now.

21 THE COURT: And have you been in jail those 15 months?

22 DEFENDANT CARROLL: Yes, sir.

23 THE COURT: And did he go over the indictment with you
24 that I just read?

25 DEFENDANT CARROLL: Yes, sir.

1 THE COURT: Did he explain to you what the state has
2 accused you of having committed?

3 DEFENDANT CARROLL: Yes, sir.

4 THE COURT: Do you understand the crime and charge of
5 armed robbery?

6 DEFENDANT CARROLL: Yes, sir.

7 THE COURT: Did he explain to you what the state would
8 have to prove in Court before you could be found guilty of
9 that charge?

10 DEFENDANT CARROLL: Yes, sir.

11 THE COURT: Did you explain to him all of the facts
12 and circumstances as you understand them to be that relate
13 to the allegations?

14 DEFENDANT CARROLL: Yes, sir.

15 THE COURT: Did you and he discuss whether or not you
16 have a defense to the charge of armed robbery?

17 DEFENDANT CARROLL: Yes, sir.

18 THE COURT: Do you know of any defense that you have
19 to it?

20 DEFENDANT CARROLL: No, sir.

21 THE COURT: Are you satisfied with his representation?

22 DEFENDANT CARROLL: Yes, sir.

23 THE COURT: Do you need to talk with him any further
24 before we continue with this guilty plea?

25 DEFENDANT CARROLL: No, sir.

1 THE COURT: All right. Ms. White, Mr. Welchel
2 represents you. How long has he been representing you?

3 DEFENDANT WHITE: Fifteen months, sir.

4 THE COURT: And those 15 months have you been in jail?

5 DEFENDANT WHITE: Yes, sir.

6 THE COURT: And has he been over the indictment with
7 you that I just read and explained to you the charge and
8 what the state accuses you of having committed?

9 DEFENDANT WHITE: Yes, sir.

10 THE COURT: Did he explain to you what the state would
11 have to prove in court before you could be convicted or
12 found guilty of armed robbery?

13 DEFENDANT WHITE: Yes, sir.

14 THE COURT: Did you tell him everything you know about
15 the facts and circumstances that relate to the allegations?

16 DEFENDANT WHITE: Yes, sir.

17 THE COURT: Did you and he discuss whether or not you
18 have a defense to the charge?

19 DEFENDANT WHITE: Yes, sir.

20 THE COURT: Do you know of any defense that you have
21 to the charge of armed robbery?

22 DEFENDANT WHITE: No, sir.

23 THE COURT: Are you satisfied with his representation?

24 DEFENDANT WHITE: Yes, sir.

25 THE COURT: Do you need any additional time to talk

1 with him before we continue with this guilty plea?

2 DEFENDANT WHITE: No, sir.

3 THE COURT: Mr. Carroll and Mr. [sic] White, have your
4 lawyers explained to you each of the constitutional rights
5 that you must give up if you want to plead guilty to armed
6 robbery?

7 DEFENDANT CARROLL: Yes, sir.

8 DEFENDANT WHITE: Yes, sir.

9 THE COURT: Those rights include your right to remain
10 silent. Do you understand that if you choose to plead
11 guilty you'll have to give that right up? But you do have
12 a right to remain silent and not to say anything about the
13 case, not to answer any questions, even the ones I'm asking
14 you right now, because you have a right to remain silent
15 and to require the State to come into court with sufficient
16 evidence to establish your guilt to the satisfaction of a
17 jury beyond a reasonable doubt.

18 And you don't have to assist the state in their
19 efforts to prove your guilt by you taking the witness stand
20 and testifying or answering questions or making statements
21 that might tend to prove your own guilt. So you do have an
22 absolute right to remain silent if you wish to. If you
23 want to plead guilty you have to give that right up.

24 Mr. Carroll, do you understand that right?

25 DEFENDANT CARROLL: Yes, sir.

1 THE COURT: Do you wish to give it up?

2 DEFENDANT CARROLL: Yes, sir.

3 THE COURT: Ms. White, do you understand the right?

4 DEFENDANT WHITE: Yes, sir.

5 THE COURT: Do you wish to give it up?

6 DEFENDANT WHITE: Yes, sir.

7 THE COURT: Each of you also have a right to confront
8 any witness that would offer evidence against you. That
9 simply means that you have a right to require the state to
10 prove your guilt in court and do so by calling their
11 witnesses into the courtroom, having those witnesses take
12 the witness stand and testifying in your presence under
13 oath so that you can see each witness, you can hear what
14 the witness says. And your lawyers can examine those
15 witnesses on their testimony in order to test those
16 witnesses' credibility and the reliability of the
17 information they're providing.

18 Now, when you plead guilty there may be some person
19 who will come to court. There may be some person who would
20 be a witness. There may be some person who is going to
21 provide me with some information about the case. But that
22 witness will not take the witness stand and that witness
23 will not testify under oath. And you and your lawyer will
24 not be able to cross-examine them on their statements.

25 Do each of you understand your right to confront any

1 witness offering evidence against you?

2 Mr. Carroll?

3 DEFENDANT CARROLL: Yes, sir.

4 THE COURT: Ms. White?

5 DEFENDANT WHITE: Yes, sir.

6 THE COURT: And do you understand that when you plead
7 guilty you give up your right to that confrontation?

8 Mr. Carroll?

9 DEFENDANT CARROLL: Yes, sir.

10 THE COURT: Ms. White?

11 DEFENDANT WHITE: Yes, sir.

12 THE COURT: And do each of you wish to give that right
13 up?

14 Mr. Carroll?

15 DEFENDANT CARROLL: Yes.

16 THE COURT: Ms. White?

17 DEFENDANT WHITE: Yes, sir.

18 THE COURT: Do each of you also understand that you
19 have a right to have a jury trial and have a jury decide
20 whether or not you're guilty or not?

21 If you elect to have a jury decide your guilt you help
22 select the jury. Twelve are chosen from a larger panel or
23 pool of jurors. And once those 12 are selected they sit
24 over there in the jury box. They listen to all of the
25 testimony. They consider all of the evidence in the case.

1 They decide the facts and they apply the law. They
2 determine whether or not you're guilty.

3 You can have a jury trial in this case and still not
4 give up your right to remain silent. In other words, you
5 can put the state to the test of proving your guilt, but
6 you don't have to take the witness stand and testify or
7 answer any questions.

8 The burden is not upon you to prove that you're not
9 guilty. The burden is on the state to prove that you are
10 guilty.

11 Now, before a jury can find you guilty all 12 jurors
12 have to be convinced of your guilt beyond a reasonable
13 doubt. In other words, the verdict has to be unanimous.
14 And all must be convinced beyond a reasonable doubt.

15 Do each of you understand your right to have a jury
16 trial?

17 DEFENDANT CARROLL: Yes, sir.

18 THE COURT: Mr. Carroll?

19 DEFENDANT CARROLL: Yes, sir.

20 THE COURT: Mr. [sic] White?

21 DEFENDANT WHITE: Yes, sir.

22 THE COURT: Do you understand if you plead guilty you
23 give that right up?

24 Mr. Carroll?

25 DEFENDANT CARROLL: Yes, sir.

1 THE COURT: Ms. White?

2 DEFENDANT WHITE: Yes, sir.

3 THE COURT: And do each of you wish to give that right
4 up?

5 Mr. Carroll?

6 DEFENDANT CARROLL: Yes, sir.

7 THE COURT: Ms. White?

8 DEFENDANT WHITE: Yes, sir.

9 THE COURT: Other than the fact that the state has
10 agreed to dismiss count two of this indictment in return
11 for your pleading guilty to count one of the indictment,
12 were you promised anything other than that that induced you
13 to make your decision to plead guilty?

14 Mr. Carroll?

15 DEFENDANT CARROLL: No, sir.

16 THE COURT: Ms. White?

17 DEFENDANT WHITE: No, sir.

18 THE COURT: Has anyone threatened you, coerced you or
19 pressured you in any fashion whatsoever that resulted in
20 your decision to plead guilty?

21 Mr. Carroll?

22 DEFENDANT CARROLL: No.

23 THE COURT: Ms. White?

24 DEFENDANT WHITE: No, sir.

25 THE COURT: Are each of you pleading guilty freely and

1 voluntarily understanding the consequences? Because you
2 are guilty of the crime as it is described in the
3 indictment?

4 Mr. Carroll?

5 DEFENDANT CARROLL: Yes, sir.

6 THE COURT: Ms. White?

7 DEFENDANT WHITE: Yes, sir.

8 THE COURT: Now, as I have told each of you, the
9 charge carries up to 30 years in jail. In other words, I
10 can impose a sentence of 30 years if I deem it appropriate.

11 It requires a mandatory minimum sentence of not less
12 than ten years in jail whether I think you ought to get ten
13 years or not. I can't sentence you to anything less than
14 ten years in jail. But I could sentence you to anything
15 between ten years and 30 years, whatever I think is
16 appropriate.

17 Do each of you understand that that is the sentencing
18 range and that is my decision to make?

19 Mr. Carroll?

20 DEFENDANT CARROLL: Yes, sir.

21 THE COURT: Ms. White?

22 DEFENDANT WHITE: Yes, sir.

23 THE COURT: Do each of you understand that armed
24 robbery is classified as a violent offense?

25 Mr. Carroll?

1 DEFENDANT CARROLL: Yes, sir.

2 THE COURT: Ms. White?

3 DEFENDANT WHITE: Yes, sir.

4 THE COURT: Do each of you understand that armed
5 robbery is classified as a most serious offense?

6 Mr. Carroll?

7 DEFENDANT CARROLL: Yes, sir.

8 THE COURT: Ms. White?

9 DEFENDANT WHITE: Yes, sir.

10 THE COURT: Do each of you understand that armed
11 robbery is classified as a no-parole offense?

12 Mr. Carroll?

13 DEFENDANT CARROLL: Yes, sir.

14 THE COURT: Ms. White?

15 DEFENDANT WHITE: Yes, sir.

16 THE COURT: And do each of you understand the
17 significance of the designations of violent, most serious
18 and no-parole.

19 Mr. Carroll?

20 DEFENDANT CARROLL: Yes, sir.

21 THE COURT: Ms. White?

22 DEFENDANT WHITE: Yes, sir.

23 THE COURT: Have either you ever been convicted or
24 found guilty of a violent offense or a most serious
25 offense?

1 Mr. Carroll?

2 DEFENDANT CARROLL: No, sir.

3 THE COURT: Ms. White?

4 DEFENDANT WHITE: Yes, sir.

5 THE COURT: What have you been convicted of that is a
6 violent offense or is a most serious offense?

7 DEFENDANT WHITE: Assault of aggravated nature.

8 THE COURT: Well, assault and battery of a high and
9 aggravated nature is not a violent offense nor is it a most
10 serious offense.

11 DEFENDANT WHITE: Oh, well, no, sir.

12 THE COURT: All right. Mr. Carroll, you're 28 years
13 old.

14 DEFENDANT CARROLL: Yes, sir.

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

16 DEFENDANT CARROLL: The 8th -- 8th grade.

17 THE COURT: Are you able to read and write?

18 DEFENDANT CARROLL: Yes, sir.

19 THE COURT: Do you understand fully what you're doing
20 here today?

21 DEFENDANT CARROLL: Yes, sir.

22 THE COURT: Have you understood all of the questions
23 I've asked you up to this point?

24 DEFENDANT CARROLL: Yes, sir.

25 THE COURT: Have you understood all of your

1 discussions with your lawyer in preparation for your case
2 coming to court?

3 DEFENDANT CARROLL: Yes, sir.

4 THE COURT: And in preparation for you pleading
5 guilty?

6 DEFENDANT CARROLL: Yes, sir.

7 THE COURT: Are you married?

8 DEFENDANT CARROLL: No.

9 THE COURT: Do you have children?

10 DEFENDANT CARROLL: No.

11 THE COURT: Do you work?

12 DEFENDANT CARROLL: No, not right now, no.

13 THE COURT: Well, were you working before the 15
14 months that you have been in jail?

15 DEFENDANT CARROLL: Off and on.

16 THE COURT: What were you doing?

17 DEFENDANT CARROLL: Postal work.

18 THE COURT: Working at the -- well, what? Doing what?

19 DEFENDANT CARROLL: As a mail clerk. I worked in a
20 mail -- a mailroom sorting mail, stamping, shipping them
21 out.

22 THE COURT: All right. Have you ever been treated for
23 any type of substance abuse or addiction?

24 DEFENDANT CARROLL: Yeah.

25 THE COURT: When?

1 DEFENDANT CARROLL: Like before I came down here, like
2 15 months ago. That was before I came down here.

3 THE COURT: Before you came down where?

4 DEFENDANT CARROLL: South Carolina.

5 THE COURT: Where were you before?

6 DEFENDANT CARROLL: Washington, D. C.

7 THE COURT: Is that where you were treated?

8 DEFENDANT CARROLL: Yes, sir.

9 THE COURT: What were you treated for?

10 DEFENDANT CARROLL: Depression.

11 THE COURT: And did you finish with the treatment?

12 DEFENDANT CARROLL: Yeah. I took my medicine.

13 THE COURT: Sir?

14 DEFENDANT CARROLL: I took my medicine.

15 THE COURT: Are you taking it now?

16 DEFENDANT CARROLL: No. They haven't -- they -- I
17 told -- I talked to the psychiatrist, and he's supposed to
18 be calling trying to get my medicine now.

19 THE COURT: Well, does the lack of taking medication
20 for what you say is a depressive disorder, does that affect
21 your ability to understand fully what you're doing here
22 today?

23 DEFENDANT CARROLL: No, sir.

24 THE COURT: What kind of drug treatment did you have?

25 DEFENDANT CARROLL: It's a new type of drug.

1 THE COURT: well, I asked you if you were -- if you
2 had ever been treated for any type of substance abuse or
3 addiction, and you said yes.

4 DEFENDANT CARROLL: You talking about --

5 THE COURT: And then you got into that depressive
6 disorder.

7 DEFENDANT CARROLL: You talking about like drinking
8 and stuff like that?

9 THE COURT: Drinking alcohol, smoking marijuana,
10 snorting cocaine, smoking crack, anything.

11 DEFENDANT CARROLL: No, sir.

12 THE COURT: You've never been treated for that?

13 DEFENDANT CARROLL: No. I mean, when I was little,
14 but not recently, no.

15 THE COURT: well, do you have any addiction to any
16 type of a drug?

17 DEFENDANT CARROLL: well, I don't think so.

18 THE COURT: well, have you had any drugs in the last
19 15 months?

20 DEFENDANT CARROLL: Yeah.

21 THE COURT: what have you had?

22 DEFENDANT CARROLL: Marijuana, pills and alcohol.

23 THE COURT: And where did you get those drugs?

24 DEFENDANT CARROLL: No. Talking about before I --

25 MR. HALL: He thought you meant before this past.

1 THE COURT: I said within, so that would mean from
2 today back 15 months, within the last 15 months. In other
3 words, since the day that you went into the Spartanburg
4 County Detention Facility --

5 DEFENDANT CARROLL: No, sir.

6 THE COURT: -- have you taken any drugs?

7 DEFENDANT CARROLL: No, sir.

8 THE COURT: Okay. And you said you had been treated
9 for some type of mental illness or emotional disturbance,
10 that being depression?

11 DEFENDANT CARROLL: Yes.

12 THE COURT: But you're not being treated for that now?

13 DEFENDANT CARROLL: No.

14 THE COURT: You're not taking your medication now.

15 DEFENDANT CARROLL: No.

16 THE COURT: But you say the lack of medication is not
17 affecting your ability to understand what you're doing here.
18 today?

19 DEFENDANT CARROLL: No, sir.

20 THE COURT: All right. Ms. White, you are 25 years
21 old?

22 DEFENDANT WHITE: Yes, sir.

23 THE COURT: And y'all need to complete the sentencing
24 sheet.

25 The purpose of a form is to provide information, and I

1 don't know how many times I have to say it. Y'all should
2 be educated enough to know it.

3 (Pause.)

4 THE COURT: All right. Ms. White, you are 25 years
5 old. How far did you go in school?

6 DEFENDANT WHITE: Eleventh grade.

7 THE COURT: And are you married?

8 DEFENDANT WHITE: No, sir.

9 THE COURT: Do you have children?

10 DEFENDANT WHITE: No, sir.

11 THE COURT: And did you work before you went to jail
12 15 months ago?

13 DEFENDANT WHITE: Yes, sir.

14 THE COURT: Where?

15 DEFENDANT WHITE: At R.P.I. on Reidville Road.

16 THE COURT: What did you do there?

17 DEFENDANT WHITE: Put together and distribute vacuum
18 cleaners, sir.

19 THE COURT: Put together and distribute what?

20 DEFENDANT WHITE: Vacuum cleaners.

21 THE COURT: What kind of vacuum cleaner?

22 DEFENDANT WHITE: Kirby.

23 THE COURT: Kirby?

24 DEFENDANT WHITE: Yes, sir.

25 THE COURT: Are they any good?

1 DEFENDANT WHITE: Yes, sir.

2 THE COURT: Where are they sold?

3 DEFENDANT WHITE: Where? They take us out to -- it's
4 like commission.

5 THE COURT: You sell them yourself.

6 DEFENDANT WHITE: Yes, sir.

7 THE COURT: Okay. Have you ever been treated for any
8 type of substance abuse or addiction?

9 DEFENDANT WHITE: No, sir.

10 THE COURT: Do you suffer from any addiction to drugs
11 today?

12 DEFENDANT WHITE: No, sir.

13 THE COURT: Have you ever been treated for any type of
14 mental illness or emotional disturbance?

15 DEFENDANT WHITE: No, sir.

16 THE COURT: Do you suffer from any such condition
17 today?

18 DEFENDANT WHITE: No, sir.

19 THE COURT: All right. Mr. Carroll and Ms. White, I'm
20 going to ask the solicitor to tell me about the facts that
21 relate to this charge of armed robbery, that is what they
22 contend each of you did that would make you guilty of armed
23 robbery and what they would tend to show or prove if your
24 case went to court before a jury.

25 So listen to what they tell me because when he's

1 through I'll ask you if you agree or disagree with his
2 version of those facts.

3 He'll also tell me about any prior criminal history
4 that you have. So I need to know if that's accurate also.
5 Mr. Ellis.

6 MR. ELLIS: Thank you, Your Honor.

7 This occurred May 27th of 2010. On that date Ms.
8 Terica Mayes that with me today, Your Honor -- Ms. Jasman
9 Pearson who is also present -- were driving back to
10 Ms. Pearson's residence which is at Crown Point Apartments
11 located [REDACTED] Powell Mill Road in the city and county of
12 Spartanburg.

13 Your Honor, once they arrived there in Ms. Mayes' car
14 they were sitting in the parking at Ms. Pearson's building,
15 and basically Mr. Carroll first approached them and asked
16 for a cigarette. They said they did not have one. He then
17 walked away.

18 He came back, and Ms. White came with him.
19 Mr. Carroll went to Ms. Pearson's door, to the passenger
20 door. Ms. White went to the driver's-side door.

21 And, Your Honor, basically the doors were basically
22 opened by the defendants. And Ms. White pointed a gun at
23 Ms. Mayes, the driver's, head. Mr. Carroll then began to
24 search Ms. Pearson and her bag and her vehicle. They also
25 I believe stole some items from Ms. Mayes.

1 Your Honor, this went on for some amount of time as
2 they went through the car. Your Honor, once they had
3 finished taking items they wanted, which were numerous,
4 Your Honor, they then left the scene on foot.

5 Ms. Mayes followed the defendants a short distance and
6 basically saw the direction they were headed, and a 9-1-1
7 officer was called. Officers with the city police
8 department responded to the robbery, Your Honor.

9 Officer Ash Smith who is also present responded and
10 set up basically to see if she could see anyone that
11 resembled the defendants or the suspects in that area, Your
12 Honor.

13 She saw these two individuals, Mr. Carroll and
14 Ms. White, walking down a street just a short distance from
15 Crown Point Apartments, all within minutes of the robbery,
16 Your Honor.

17 At that point she approached them in her vehicle and
18 asked them to stop and speak to her. After ignoring her
19 for a couple of requests, Your Honor, the defendants then
20 began across a yard and went over a small wall basically,
21 Your Honor.

22 Mr. Carroll continued on into the back yard of the
23 residence located where they responded. Ms. White briefly
24 stayed near Officer Smith, however Officer Smith asked her
25 to basically give herself up.

1 Ms. white then got up and also went into the back yard
2 which was very overgrown area, Your Honor, a lot of kudzu
3 and trees and things of that nature. It was very dark out
4 that night.

5 officer Smith began to approach and said that she
6 heard what sounded like a small caliber gun being fired or
7 possibly even a C-02 cartridge. And an object came by her
8 leg, Your Honor, near her knee and struck the ground next
9 to her at which point she called "shots fired". And other
10 officers very quickly, Your Honor, and set up a perimeter.

11 A K-9 tracking team from the city police department
12 then went into basically this kind of wooded and overgrown
13 area in the back yard of this residence, Your Honor, near
14 Crown Point Apartments and first located Mr. Carroll hiding
15 in some tall grass.

16 With him were several items taken from the robbery
17 including a small, black purse, Your Honor, change purse,
18 belonging to Ms. Pearson, Ms. Pearson's car keys, I believe
19 her I. D.s and some other items of that nature, Your Honor.

20 There also with him was a green bandanna which was
21 described by both victims as being worn by him during the
22 robbery.

23 When he first approached the vehicle he had the
24 bandanna around his neck. When he came back and actually
25 committed the robbery the bandanna was at that point pulled

1 up over his lower half of his face, Your Honor. That was
2 also located where he was found.

3 The K-9 team then began to track again, Your Honor,
4 and they located Ms. White. Basically, she was hiding
5 underneath a log. And once she was located she also was
6 brought out, Your Honor.

7 In the course of this track the K-9s, units, also
8 discovered two hats, one of which matched the description
9 worn -- of the hat worn by Ms. White during the robbery.
10 The other hat is one of the items that was stolen from Ms.
11 Mayes' car.

12 Also, Mr. Carroll had a black shirt which also matched
13 the description of what he wore during the robbery,
14 basically tucked in his pants when he was found hiding in
15 the grass, Your Honor.

16 At that point they were arrested, taken in for
17 questioning. They did not give statements to the police,
18 Your Honor. They were arrested at that time.

19 They were charged with two counts of armed robbery and
20 one count of assault with intent to kill. There are also
21 direct indictments for the count twos on each armed robbery
22 indictment, Your Honor, with the possession of a weapon
23 during a violent crime.

24 The other charges will be dismissed following their
25 guilty pleas to these armed robbery charges.

1 And, Your Honor, they do have a record. Mr. Carroll
2 in 2004, his record appears to be all in Maryland, Your
3 Honor -- resisting arrest, possession of marijuana, use of
4 vehicle without consent, transporting a handgun.

5 In 2006, resisting arrest, public disorderly contact,
6 hindering officers, assault second degree.

7 In 2008, possession of a dangerous weapon.

8 Your Honor, Ms. White also has a prior record in South
9 Carolina.

10 In 2005, disturbing schools, simple assault and
11 battery.

12 In 2007, receiving stolen goods.

13 In 2009, assault and battery of a high and aggravated
14 nature, resisting arrest and what appears to be a probation
15 revocation.

16 Like I said, Your Honor, the victims are present
17 today. I believe they would like to address the Court at
18 the appropriate time.

19 THE COURT: Okay. Mr. Carroll and Ms. White, each of
20 you have heard what the solicitor has told me about the
21 facts that relate to the charges themselves.

22 Do you agree, Mr. Carroll, or disagree with what the
23 solicitor has stated?

24 DEFENDANT CARROLL: I agree.

25 THE COURT: And you heard me -- you heard him say what

1 your previous criminal history is. Is that also accurate?

2 DEFENDANT CARROLL: Yes, sir.

3 THE COURT: Ms. White, you heard what the solicitor
4 said about the facts that relate to your charge. Do you
5 agree or disagree?

6 DEFENDANT WHITE: I agree, sir.

7 THE COURT: You heard what he told me about your
8 previous criminal history. Is that accurate?

9 DEFENDANT WHITE: Yes, sir.

10 THE COURT: And do each of you still wish to plead
11 guilty?

12 Mr. Carroll?

13 DEFENDANT CARROLL: Yes, sir.

14 THE COURT: Ms. White?

15 DEFENDANT WHITE: Yes, sir.

16 THE COURT: All right. I will hear's from Ms. Pearson
17 and Ms. Mayes.

18 VICTIM MAYES: My name is Terica Mayes. And prior to
19 this incident -- I would like to see them get the max if
20 possible because I do not feel safe in Spartanburg County
21 any more.

22 They took away my pride when they deprived me of my
23 items and put the gun to my head. So I just want -- and
24 spent 15 months and back and forth with them pleading
25 guilty at first and then pleading not guilty. So I just

1 want this to be over with but wanting them to also serve
2 the sentence that is for, say, for them to have the longest
3 time possible.

4 THE COURT: All right. Ms. Pearson.

5 VICTIM PEARSON: My name is Jasman Pearson, and I just
6 wanted to -- whatever you thought was maximum for them to
7 receive, for them to get that. And that's all.

8 THE COURT: Okay. Thank you.

9 And did I understand correctly there was one gun and
10 Ms. White had it?

11 MR. ELLIS: Yes, sir. That's correct. The gun was
12 not located. The dog team searched for it for quite an
13 extensive amount of time following the location of the two
14 defendants. They never not find the gun however.

15 Ms. White was alleged to have the gun to Ms. Mayes'
16 head during the robbery, yes, sir.

17 I believe Officer Smith wishes to speak as well, Your
18 Honor.

19 THE COURT: Okay.

20 OFFICER SMITH: Your Honor, in reference to the event
21 as well and -- I'm sorry. My name is Officer Ash Smith.

22 I was the one that found them on Dover Road. They
23 matched close to the BOLO. When I got out with them they
24 did acknowledge that I was trying to speak to them at which
25 time Mr. Carroll turned around immediately. They kept

1 walking.

2 After chasing them when we went over -- they went over
3 a yard and jumped down off a ledge. Mr. Carroll casually
4 walked into a back yard.

5 Ms. White actually sat on the ground smoking a
6 cigarette, at which time I was telling her to put her hands
7 up and basically give herself up. She refused to do that.
8 She had plenty of time to smoke her cigarette and stand up
9 and walk away, jump over the fence.

10 By the time I made it from the road to where they shot
11 the fire -- or fire -- excuse me -- shots were fired, they
12 had had plenty of time to get out of that back yard and
13 continue to flee, and which they did not. I did see Mr.
14 Carroll in that back yard after at least two or three
15 minutes after that shot was fired.

16 THE COURT: And do you know which one fired the shot?

17 OFFICER SMITH: I cannot be positive who shot -- fired
18 the shot.

19 Ms. Carroll -- Ms. Carroll -- she -- excuse me --
20 Ms. White when she walked, she went straight back and
21 straight over the fence. She had -- she had plenty of time
22 to turn around and shoot directly back at me.

23 Mr. Carroll had been in the back yard for quite some
24 time. At that point I could hear him moving around in the
25 background and had plenty of time to set up as well. So

1 I'm not able to give exactly who shot.

2 THE COURT: And the weapon was not located?

3 MR. ELLIS: No, sir.

4 OFFICER SMITH: No, sir.

5 THE COURT: Ms. Mayes, the gun was held to your head?

6 VICTIM MAYES: Yes, sir.

7 THE COURT: And was it Ms. White that held the gun to
8 your head?

9 VICTIM MAYES: Yes, sir.

10 THE COURT: All right. I'll accept y'all's pleas and
11 hear from each of you and your lawyers.

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

13 If I can explain his record to you, the last charges
14 he had from 2006, 2008, I think the record will reflect
15 that he got a 1-day sentence. So it was basically down to
16 resisting arrest on a disorderly conduct.

17 The other was basically use of vehicle without owner's
18 consent where he received an 18-month sentence. And after
19 the second set of things he came down here.

20 He had gone into Job Corps. And, as I said, he had
21 some issues with depression. He basically come down here
22 to start over before this happened. I don't think he had
23 been down here very long at all.

24 Your Honor, I have -- just a little before we came in
25 here -- I thought that the issue was something, some

1 restitution. They certainly wanted to make -- Mr. Carroll
2 and Ms. White wanted to make -- the victims whole at the
3 appropriate time if that was an issue, but apparently
4 they've changed their mind on that.

5 Your Honor, he does not have a substantial record.
6 And on behalf of Mr. Carroll we're asking that you consider
7 the 10-year sentence.

8 He is -- does have issues with the depression. He's
9 done fairly well in jail in the time he's been there.

10 Mr. Welchel and I did calculations. They've been in
11 jail for 453 days as of today, Your Honor.

12 There was gunshot residue tests done. They all came
13 back negative on both of these individuals. The report
14 that the officer, Officer Smith, did says, "I heard what
15 sounded like a C-02 cartridge shot." From the start I
16 assumed what we're talking about here was a C-02 pellet or
17 B.B. gun, type gun.

18 Even though she was -- said she felt the bullet go
19 past her and hit the ground, that bullet was never
20 recovered.

21 Your Honor, we are asking you on behalf of Mr. Carroll
22 to be as lenient as you can. He has expressed to me that
23 he is sorry for taking the property and he wants to get
24 this behind him. And he wanted to apologize to the
25 victims.

1 THE COURT: All right. Mr. Carroll, anything you want
2 to add?

3 DEFENDANT CARROLL: I just want -- can I turn around
4 and look at them?

5 THE COURT: No. You can't talk to them. You just
6 talk to me. But you can tell me what you would tell them
7 if you wish to.

8 DEFENDANT CARROLL: I just want to tell the victims
9 that I'm sincerely sorry for what happened on that day and
10 all the pain they're suffering that I might have caused
11 them and that all I want to hear is someone committed a
12 crime -- I just want to hear somebody made a mistake and
13 get my life back. And that's it.

14 THE COURT: well, if you feel bad about it why did you
15 do it to start with?

16 DEFENDANT CARROLL: Some of us do stupid things that
17 change our life forever, and, I mean, this is one thing
18 that changed my life forever.

19 So all I could do is deal with the consequences and
20 keep moving and try not to make this mistake -- not make
21 this mistake, not try. Never make this mistake again.

22 THE COURT: well, who had the gun after the robbery
23 occurred?

24 DEFENDANT CARROLL: Wasn't no gun.

25 THE COURT: There wasn't a gun?

1 MR. HALL: I think he said he didn't have a gun.

2 DEFENDANT CARROLL: I don't know nothing about no gun.

3 THE COURT: You didn't know there was a gun involved
4 in the robbery?

5 DEFENDANT CARROLL: I don't know nothing about no gun.

6 THE COURT: You didn't know anything about it. You
7 didn't know Ms. White had a gun?

8 DEFENDANT CARROLL: I ain't seen no gun.

9 THE COURT: You never saw a gun?

10 DEFENDANT CARROLL: No.

11 THE COURT: You ever shoot one?

12 DEFENDANT CARROLL: No.

13 THE COURT: So she did the shooting?

14 DEFENDANT CARROLL: I didn't -- I didn't say that.

15 THE COURT: Well, was somebody else out there?

16 DEFENDANT CARROLL: No, I ain't -- nobody didn't shoot
17 no gun.

18 THE COURT: Nobody shot a gun.

19 DEFENDANT CARROLL: No. Nobody shot.

20 THE COURT: Officer Smith was mistaken about that?

21 DEFENDANT CARROLL: Yes.

22 THE COURT: She made that up?

23 DEFENDANT CARROLL: Yes. I think she did.

24 THE COURT: You do?

25 DEFENDANT CARROLL: Yes, to be honest with you.

1 THE COURT: Well, what about -- what about Ms. Pearson
2 and Ms. Mayes? Did they make that up too?

3 DEFENDANT CARROLL: I don't know -- I don't know.

4 THE COURT: You don't know? You were there.

5 DEFENDANT CARROLL: Yeah, I was there, but it happened
6 so fast.

7 THE COURT: It did?

8 DEFENDANT CARROLL: Yes, sir.

9 THE COURT: Okay. All right. Mr. Welchel, I'll hear
10 from you and Ms. White.

11 MR. WELCHEL: Your Honor, as you already know,
12 Ms. White is 25.

13 What you do not know -- and because of her age I was
14 asking her these questions. She quit school in the
15 eleventh grade at Spartanburg High School.

16 She was at Spartanburg High School about the same time
17 as my step-daughter and your law clerk. While they were
18 running cross country she was a guard on the women's
19 basketball team.

20 Had she been able -- she tells me that had she been
21 able to stay playing guard for the basketball team she may
22 have had or would have gotten some division one offers to
23 play basketball. Unfortunately, because of family problems
24 she was unable to do that.

25 Her mother worked for the federal government for the

1 U.S. customs. She developed leukemia. My client quit high
2 school. Or when my client was 15 her mother had to quit
3 work because of the leukemia.

4 When she was, when my client was, 16 her mother passed
5 away. She quit and started taking care of her little
6 sister and took care of her younger sister while her
7 younger sister actually completed and graduated from high
8 school.

9 They got social security benefits, Your Honor, and
10 some help from local family.

11 Once she got her little sister through high school she
12 was able to start looking after herself and taking care of
13 herself, Your Honor.

14 She cooked and cleaned and cared for both of them.
15 They had help from a maternal aunt and uncle or they tried
16 to get some help from a maternal aunt and uncle, but they
17 really had no interest in helping the girls.

18 Her younger sister graduated from high school and got
19 married. And I think that's when my client's trouble
20 began, when she didn't have to take care of her younger
21 sister.

22 After her younger sister moved out or graduated and
23 moved out my client moved in with her dad. She tried to
24 establish a relationship with her father that she had never
25 had before.

1 At one point she returned to Maryland where she was
2 born. She came to South Carolina when she was five years
3 old, Your Honor, and has lived here since that time.

4 And as she's already told you, before this happened,
5 the last job she had before this happened, Your Honor, was
6 she was a sales person, distribution person. And they
7 actually put the vacuum cleaners together for R.B.T. which
8 is a distributor for Kirby vacuums, Your Honor.

9 I think she also would like to address the Court and
10 the victims.

11 THE COURT: All right. Ms. White.

12 DEFENDANT WHITE: I'd just like to apologize to the
13 victims and to the Court. And this is a mistake that I
14 would never make again. I'm very remorseful. And I just
15 sincerely apologize.

16 But this is not me. This is not my character, but I
17 did make the mistake and I'm willing to confess up to what
18 I did. And that's it.

19 THE COURT: All right. Well, you've heard what the
20 solicitor told me. You said you agreed to the facts.

21 Mr. Carroll is having some forgetfulness as it relates
22 to the gun. He doesn't remember seeing one. But did you
23 have a gun?

24 DEFENDANT WHITE: Yes, sir.

25 THE COURT: What kind of gun was it?

1 DEFENDANT WHITE: It was a revolver.

2 THE COURT: What type?

3 DEFENDANT WHITE: I can't really tell you what type,
4 sir.

5 THE COURT: You don't know who made it?

6 DEFENDANT WHITE: No, sir.

7 THE COURT: Was it blue steel or nickel?

8 DEFENDANT WHITE: It was silver.

9 THE COURT: It was chrome?

10 DEFENDANT WHITE: Yes, sir.

11 THE COURT: Chrome-plated. And do you know what
12 caliber it was?

13 DEFENDANT WHITE: No, sir. But it wasn't a big
14 caliber. It was small enough for me to put in my pocket.

15 THE COURT: And where did you get the weapon?

16 DEFENDANT WHITE: I got it off the streets.

17 THE COURT: Where?

18 DEFENDANT WHITE: I can't really say where. I just
19 came upon it one day.

20 THE COURT: Just laying on the street?

21 DEFENDANT WHITE: No, sir, it wasn't just laying
22 there, I mean.

23 THE COURT: You bought it from somebody?

24 DEFENDANT WHITE: Yes, sir.

25 THE COURT: Who did you buy it from?

1 DEFENDANT WHITE: I can't really say that, Your Honor.

2 THE COURT: Why not?

3 DEFENDANT WHITE: I just can't.

4 THE COURT: Why can't you?

5 DEFENDANT WHITE: I mean, I actually don't know who I
6 bought it from.

7 THE COURT: Oh really? You're just walking down the
8 street and asked somebody if they might have a gun for sale
9 and didn't know who they were and just bumped into somebody
10 and they just happened to have one?

11 DEFENDANT WHITE: It really didn't occur like that.

12 THE COURT: Well, how did it occur? Tell me how it
13 did occur.

14 DEFENDANT WHITE: Someone introduced me to another
15 person.

16 THE COURT: Who introduced you to the person selling
17 the gun?

18 DEFENDANT WHITE: A friend.

19 THE COURT: Who?

20 DEFENDANT WHITE: I don't know him by name.

21 THE COURT: You don't know their name either?

22 DEFENDANT WHITE: The nickname, yes, sir.

23 THE COURT: Yeah. Do you remember your codefendant's
24 name?

25 DEFENDANT WHITE: Yes, sir.

1 THE COURT: What's his name?

2 DEFENDANT WHITE: Delonte Carroll.

3 THE COURT: Yeah. Did you tell him you had a gun when
4 y'all went out there to rob Ms. Pearson and Ms. Mayes?

5 DEFENDANT WHITE: No, sir.

6 THE COURT: You didn't tell him? Did he see the gun
7 when you pulled it out?

8 DEFENDANT WHITE: No, sir.

9 THE COURT: He didn't know you had a gun?

10 DEFENDANT WHITE: I mean, I wasn't paying attention if
11 he was looking at me or not. So I don't know if he was
12 looking or not.

13 THE COURT: Well, was it pretty obvious that you had a
14 gun stuck to Ms. Mayes' head?

15 DEFENDANT WHITE: Probably to her now. I can't say it
16 was obvious to him, because he was doing what he was doing.

17 THE COURT: What was he doing? How did y'all end up
18 committing this robbery? What discussions did y'all have
19 about it?

20 DEFENDANT WHITE: Actually we didn't have a
21 discussion. We just knew that we needed money in our
22 pocket.

23 THE COURT: Well, y'all had to come to some agreement.
24 I mean, you can't -- you didn't do it by mental telepathy.

25 DEFENDANT WHITE: It wasn't planned.

1 THE COURT: It wasn't?

2 DEFENDANT WHITE: No, sir.

3 THE COURT: It was an accident?

4 DEFENDANT WHITE: No, sir, it wasn't an accident.

5 THE COURT: All right. Well, then it was planned.

6 DEFENDANT CARROLL: It was like --

7 THE COURT: Wait just a minute. You've had your turn.
8 We'll come back to you if you need to, but right now it's
9 Ms. White's turn.

10 DEFENDANT WHITE: No, sir. It wasn't planned. It was
11 just a one-time thing.

12 THE COURT: So you and Mr. Carroll didn't know y'all
13 were committing an armed robbery, y'all just kind of
14 stumbled on it?

15 DEFENDANT WHITE: No, sir. I mean, we just -- it
16 was -- just came to mind, and we just did it, sir. It
17 wasn't like --

18 THE COURT: It just came to your mind. That's what I
19 am saying. So y'all had to say, well, look, we need a
20 commit a robbery here. Otherwise, the other one wouldn't
21 know what was going on.

22 DEFENDANT WHITE: I mean, it was just like one person
23 took the initiative and then the other one followed, sir.
24 It wasn't like --

25 THE COURT: Who took the initiative -- who took the

1 initiative?

2 DEFENDANT CARROLL: I did, sir.

3 THE COURT: Mr. Carroll, I've already told you it's
4 not your turn to speak.

5 DEFENDANT WHITE: Mr. Carroll did, sir.

6 THE COURT: Mr. Carroll took the initiative?

7 DEFENDANT WHITE: Yes, sir.

8 THE COURT: And what did he do that constitutes his
9 taking of the initiative?

10 DEFENDANT WHITE: He opened up the passenger-side door
11 of the victim's car.

12 THE COURT: All right. And what did he say to you?

13 DEFENDANT WHITE: He didn't say anything to me.

14 THE COURT: He didn't say anything. He just opened
15 the victim's door up in a car.

16 DEFENDANT WHITE: Yes, sir.

17 THE COURT: And what did he do?

18 DEFENDANT WHITE: Proceeded to get what he wanted.

19 THE COURT: And what were you doing?

20 DEFENDANT WHITE: I was getting what I wanted from the
21 person that was in the driver's seat.

22 THE COURT: So you and -- you and Mr. Carroll had no
23 discussions about robbing these two ladies sitting in the
24 car. Y'all just both at the same moment in time had this
25 urge to rob somebody. So one went to one door and one went

1 to the other. Neither knew what the other was doing. And
2 y'all committed a double armed robbery. Is that what
3 you're telling me?

4 DEFENDANT WHITE: We was -- sir, it didn't happen --
5 we was walking down the street and we just happened to see
6 them sitting in the car.

7 THE COURT: Right.

8 DEFENDANT WHITE: And that's how it happened.

9 THE COURT: That doesn't tell me anything. You
10 happened to see them sitting in a car, and what?

11 DEFENDANT WHITE: And he walked up to the passenger
12 side of the car --

13 THE COURT: Right.

14 DEFENDANT WHITE: -- and proceeded to get what he got,
15 and I did what I did.

16 THE COURT: So y'all weren't even acting together.
17 Y'all just acting separately? Y'all just on a log of your
18 own?

19 DEFENDANT WHITE: Yes, sir.

20 THE COURT: And it just happened -- just happenstance
21 you had a gun in your pocket when you were walking down the
22 street. How long had you had that gun?

23 DEFENDANT WHITE: I had that gun for about two years,
24 sir.

25 THE COURT: And you just happened to have it with you

1 on that day?

2 DEFENDANT WHITE: I always have it with me, sir.

3 THE COURT: You always carry it with you. And so what
4 did you do with it when you saw the car with the two ladies
5 sitting in it?

6 DEFENDANT WHITE: Excuse me, sir?

7 THE COURT: When y'all were walking down the street
8 and Mr. Carroll walked over to the car to open the door to
9 take whatever he wanted to take and you walked to the other
10 side of the car to take whatever you wanted to take, what
11 did you do with the gun?

12 DEFENDANT WHITE: I put it to her head, sir.

13 THE COURT: Did you say anything?

14 DEFENDANT WHITE: Just demanded everything that she
15 had, sir.

16 THE COURT: Okay. And after y'all took everything
17 they had what did you do?

18 DEFENDANT WHITE: We ran.

19 THE COURT: You ran?

20 DEFENDANT WHITE: Yes, sir.

21 THE COURT: And you saw Officer Smith out there that
22 night?

23 DEFENDANT WHITE: Yes, sir. She pulled up behind us.

24 THE COURT: Okay. And you still had the gun?

25 DEFENDANT WHITE: Yes, sir.

1 THE COURT: Are you the one that fired the shots?

2 DEFENDANT WHITE: No, sir.

3 THE COURT: Who did?

4 DEFENDANT WHITE: Nobody, sir, because I threw it. So
5 no shot was fired.

6 THE COURT: Officer Smith just made that up?

7 DEFENDANT WHITE: Yes, sir. She must have heard it
8 when it landed.

9 THE COURT: Heard it when it landed?

10 DEFENDANT WHITE: Yes, sir.

11 THE COURT: Oh, it went off when it landed?

12 DEFENDANT WHITE: I don't know what happened but it --

13 THE COURT: Where did it land? Where did you throw
14 it?

15 DEFENDANT WHITE: In the woods where I was at.

16 THE COURT: You threw it out there in the woods, and
17 they looked for it and nobody could ever find it.

18 All right. Anything else you need to tell me about
19 it?

20 DEFENDANT WHITE: No, sir.

21 THE COURT: Or does that just about cover everything?

22 DEFENDANT WHITE: Yes, sir.

23 THE COURT: Okay. Good. Mr. Carroll, do you want to
24 say something else?

25 DEFENDANT CARROLL: No, sir. I don't to say nothing.

1 That's it.

2 THE COURT: That's all?

3 DEFENDANT CARROLL: That's it.

4 THE COURT: Okay. Sentence on the indictments, on
5 2010-4268, that's Mr. Carroll's indictment, and 2010-4315,
6 that's Ms. White's indictment, the Sentence of the Court is
7 as to each of you that you be confined to the South
8 Carolina Department of Corrections for a period of 20
9 years.

10 MR. HALL: Thank you, Your Honor.

11 MR. WHELCHER: Thank you, Your Honor.

12 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 Court of General Sessions for Spartanburg County, South Carolina, on the 22nd day of August 2011.

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

October 12, 2012

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

Linda D. Moffitt
Circuit Court Reporter

2012-CP-42-3628

FORM 5

STATE OF SOUTH CAROLINA

County of SPARTANBURG S.C.

DELOUÉ B. CARROLL 347422

Full name and prison number (if any) of Applicant

State of South Carolina

IN THE COURT OF COMMON PLEAS

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 AUG 27 AM 9:58
MHOPE BLACKLEY

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 LEE CORRECTIONAL INSTITUTION
DARLINGTON (NORTH) 1122
2. Name and location of Court which imposed sentence SPARTANBURG S.C.
3. Name(s) of co-defendant(s) (if any) WAYLSKA WHITE
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
(a) INDICTMENT(S) # UNKNOWN
(b) WARRENT(S) # M121040, M121041

FILED
IN COURT
TAMM HALL
AUG 27 AM 9:58
HOPE BLACKLEY

(c) AND M121047

5. The date upon which sentence was imposed and the terms of the sentence:

(a) AUG 22, 2011

(b) _____

(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~~ Both

8. If you answered "yes" to (7), list:

(a) the name of each Court to which you appealed:

i. THE SOUTH CAROLINA COURT OF APPEALS

ii. _____

iii. _____

(b) the result in each such Court to which you appealed:

i. IT'S NOT IN THERE JURISDICTION NO LONGER

ii. IT WAS REMITTED NOV. 29 2011 FROM THE

iii. _____

(c) the date of each such result:

i. AUG 14, 2012

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. EXPLANATION OF APPEAL FOR MR. ROBER
ii. HALL STATED HE TOLD ME "NOT LIKING YOUR SENTENCE"
iii. IS NOT A PROPER GROUND. CUTTING OFF ALL MY
MERTT I TOLD HIM TO FILE INEFFECTIVE ASSISTANT CAUSE

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

(a) _____

(b) _____

INEFFECTIVE ASSIST. COUNSEL
6-AMEND U.S.C.

(c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) MENTALLY INCOMPETENT MEDICAL RECORDS
(b) FEEL TO INVESTIGATE MY CASE ALSO
(c) FEEL TO COMMUNICATE & PROPERLY ~~ADD~~ LOAR

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

- (a) MEDICAL RECORDS in Baltimore MD
(b) Children Hospital, Johns Hopkins
(c) Hospital 1989-1990 RECORDS

12. Prior to this application have you filed with respect to this conviction:

- (a) any petition in a State Court under South Carolina Law? _____
(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? UNKNOWN
(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? ~~YES~~ _____
(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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CLERK OF COURT
SPARTANBURG COUNTY
2012 AUG 27 AM 9:58
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(c) the disposition thereof:

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

(d) the date of each such disposition:

- i. unknown
- 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?

unknown

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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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) _____
 (b) _____
 (c) _____

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

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

INEFFECTIVE
 ASST
 Counselor

18. ~~Aug~~ ND" CAME 2x JUNE 2010 & TELL ME HE'S APPOINT.
 AUG 21-2011 TELL ME MY PLEA
 If you answered "yes" to one or more parts of (17), list:

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

i. MR. ROBERT B. HALL - 366 N Church St
 Suite 3000, Spartanburg S.C. 29303
 ii. _____
 iii. _____

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

i. MR. ROBERT B. HALL
 ii. _____
 iii. _____

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TIME REDUCTION

State clearly the relief you seek in filing this application:

A NEW TRIAL, TO CHANGE THE VERDICT FROM
ARMED ROBBERY TO COMMON LAW OR STRONG ARM
DO TO STATUS ~~BECAUSE~~ OF EVIDENTS IN THE CASE

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

NO

STATE OF SOUTH CAROLINA

County of SPARTANBURG S.C.

VERIFICATION

I, Delonte B. Carrall SCOC# 347422 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.

Delonte B. Carrall

SWORN to and subscribed before me this 21
day of Aug 2012.

Debra Sines (L.S.)
Notary Public

My Commission Expires: 11-4-2015

FILED
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SPARTANBURG COUNTY
2012 AUG 27 AM 9:58
M. HOPE BLACKLEY

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

I, Debra B. Carrall CD# 347422 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.

Debra B. Carrall
Applicant

SWORN or affirmed to and subscribed before me this

21 day of Aug, 2012

Debra Surles
Notary Public

My Commission Expires: 11-4-2015

FILED
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SPARTANBURG COUNTY
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M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	2012-CP-42-3628
Delonte B. Carroll, #347422,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed August 27, 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. He was indicted at the July 2010 term of the Spartanburg County Grand Jury for assault with intent to kill (2010-GS-42-4266), and two charges of armed robbery and possession of weapon during commission of a violent crime (2010-GS-42-4267, and -4268, counts one and two). The Applicant was represented by Robert B. Hall, Esquire. On August 22, 2011, the Applicant pled guilty before the Honorable J. Derham Cole and was sentenced to confinement for twenty years for armed robbery¹.

Applicant appealed his conviction and sentence, but the South Carolina Court of Appeals dismissed the appeal for a failure to demonstrate any issues raised and ruled upon by the plea judge. The Remittitur was issued on December 1, 2011.

¹ Indictment 2010-GS-42-4267, count two of 2010-GS-42-4268, and the charge of assault with intent to kill were *nolle prossed* pursuant to Applicant's plea agreement.

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

II.

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to investigate;
 - b. Counsel failed to communicate and properly advise;
 - c. Counsel failed to request Applicant's mental health records to establish mental incompetency.

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

August 19, 2013.

STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURG

) IN THE COURT OF COMMON PLEAS
) SEVENTH JUDICIAL CIRCUIT

Delonte B. Carroll,

2012-CP-42-3628

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:

Lauren W. Barnwell, Esquire
Talley Law Firm, PA
2500 Winchester Place, Suite 100
Spartanburg, South Carolina 29301



Anne A. Mueller
Legal Assistant for the Respondent

DATED this 19th day of August, 2013.

COURT OF COMMON PLEAS
2012-CP-42-3628

Delonte Carroll,

Applicant,

-VS-

The State of South Carolina,

Respondent.

TRANSCRIPT OF RECORD

November 15, 2013
Spartanburg, South Carolina

Ordered: March 25, 2014

Delivered: May 26, 2014

BEFORE:

The Honorable Robin B. Stilwell, Presiding Judge.

APPEARANCES:

Ms. Suzanne H. White, Esquire
Assistant Attorney General Appearing for the State

Ms. Lauren W. Barnwell, Esquire
Attorney Appearing for the Applicant

Pamela Faucette
Circuit Court Reporter

Pamela S. Faucette, CVR - (home) 864-574-9534 (cell) 336-260-2864

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EXHIBITS

Applicant's Exhibits:	Marked:	Received:
(None)		
Respondent's Exhibits:	Marked:	Received:
(None)		
Court's Exhibits:	Marked:	Received:
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Reporter's Note: This transcript may contain quoted material. Such material is reproduced as read or quoted by the speaker.

November 15, 2013

9:41 A.M.

(Off-the-Record Comments)

(Brief pause while the applicant is brought into the courtroom.)

THE COURT: Okay.

MS. WHITE: Thank you, Your Honor. This is the case of
Delonte Carroll vs. The State, case number 2012- CP-42-3628.

Mr. Carroll was indicated July 2010 for assault with intent to kill, two charges of armed robbery, and possession of a weapon during the commission of a violent crime.

He was represented — (coughs) excuse me — by Mr. Robert Hall. On August 22nd, 2011, he pled guilty before Judge Cole to one charge of armed robbery. The other charges were nol prosequi according to his plea agreement.

He received a sentence of 20 years. There was an appeal, but for failure to demonstrate any issues that were ruled upon by the judge, it was dismissed.

He filed an application alleging ineffective assistance of counsel in that counsel failed — failed to investigate, counsel failed to communicate and properly advise, and counsel failed to request mental health records to establish mental in — incompetency.

So at this time I'll turn it over to his attorney, Ms. Lauren Barnwell.

THE COURT: All right. Ms. Barnwell?

MS. BARNWELL: Yes, sir. Good morning.

THE COURT: Good morning.

MS. BARNWELL: I'm Lauren Barnwell. I'm here for Delonte Carroll,

1 Your Honor.

2 THE COURT: Yes, ma'am.

3 MS. BARNWELL: If I may approach ----

4 THE COURT: Sure.

5 MS. BARNWELL: — I have a hearing brief just laying out our case
6 today.

7 (Document handed up.)

8 THE COURT: Okay.

9 MS. BARNWELL: It includes pertinent case law, Your Honor, and a
10 copy of the transcript, which I believe you are in receipt of already ----

11 THE COURT: Yes, ma'am.

12 MS. BARNWELL: — but, just out of an abundance of caution. So,
13 Your Honor, I just reiterate what the Attorney General just said. And we shall
14 call Delonte Carroll to the stand.

15 THE COURT: All right. Mr. Carroll, if you'll come up, please, to
16 the stand.

17 (The witness stepped forward to be sworn.)

18 (Off-the-Record Comments)

19 (Whereupon,

20 Delonte Carroll

21 having been first duly sworn, testified as follows:)

22 THE COURT: All right. Have a seat, Mr. Carroll, and state your
23 full name for the record, if you would, please.

24 THE WITNESS: Delonte Demonte Carroll (phonetic).

25 THE COURT: All right.

1 THE WITNESS: Delonte Demonte Carroll.

2 THE COURT: All right. Ms. Barnwell, your witness, ma'am.

3 MS. BARNWELL: Thank you, Your Honor.

4 Direct Examination by Ms. Barnwell:

9:43 A.M.

5 Q. Mr. Carroll, where are you currently incarcerated?

6 A. Lee County Correctional.

7 Q. Okay. And where is that located?

8 A. Bishopville, Maryland ---

9 Q. All right.

10 A. --- I mean, Bishopville, South Carolina.

11 Q. Now, you were in the courtroom just a minute ago, but did you clearly
12 hear what the Attorney General said about the procedural history about basically
13 your plea?

14 A. Nah, I mean, he [sic] was fast talking. I didn't really understand what
15 he was saying though.

16 Q. No, the Attorney General this morning, when she went over the
17 procedural history, what had happened as far as you pleading guilty back in August
18 of --- no, let's see, when was it --- as --- as you were indicted in July of 2010 and
19 pled guilty in August of 2011?

20 A. Yes.

21 Q. Okay. And so you're in agreement with that?

22 A. Yes.

23 Q. Okay. So, at that point in time, August 22nd, 2011, when you did plead
24 guilty, who was your attorney at that time?

25 A. Robert Hall.

1 Q. And do you see him here in the courtroom today?

2 A. Yes.

3 Q. All right. Okay. When did you first meet Robert Hall? Or when did he
4 first come to you as your attorney?

5 A. I think sometime in June when he first — he came to tell me that he
6 was represent — he was representing me.

7 Q. Okay. So in June in 2011?

8 A. Yes.

9 Q. Okay. In that first meeting, how long was he in there with you for? Do
10 you remember?

11 A. Like five (5) minutes at the most.

12 Q. Okay.

13 A. Probably five (5) , seven (7) minutes.

14 Q. Okay. And where were you guys? I mean, where were you located at
15 that time?

16 A. Oh, I was located at a segre — a segregated dorm, Pod 6, in — in
17 Spartanburg County.

18 Q. So you were in jail here in Spartanburg County?

19 A. Yes.

20 Q. He visited you there?

21 A. Yes.

22 Q. And you said for five (5) minutes?

23 A. Yes.

24 Q. And what did you discuss in those five (5) minutes? Do you
25 remember?

1 A. He — he just told me he was representing me. And he basically told
2 me what I was alleged with and — and that's it. He said he could come back and
3 talk to me and let me know what was going on.

4 Q. At that point, did see any of your warrants?

5 A. No, he didn't have the warrants.

6 Q. Did you see any of your indictments?

7 A. Well, hold up, hold up. The affidavit warrants?

8 Q. Your arrest warrant.

9 A. I don't think he had them with him.

10 Q. Did you see your indictments?

11 A. No, I didn't because I didn't have a motion (phonetic) then.

12 Q. Did you —

13 A. Yeah, I didn't see none of that.

14 Q. Did you — did he show you an arrest report or an incident report or
15 anything that the officer would have drawn up about what had happened that — that
16 night?

17 A. Nah.

18 Q. Okay.

19 A. He just told what they were alleging me with.

20 Q. Okay. And when is the next time you saw Mr. Hall?

21 A. The day of — the day — Friday. The trial was Monday, so he seen me
22 that Friday to tell me about my plea.

23 Q. Okay.

24 A. Or he came and brought me a motion.

25 Q. Okay. So that's the second time he visited you. And where were you

1 at that point?

2 A. I was at -- still in Spartanburg County.

3 Q. Okay. And how long was that visit?

4 A. That visit was like -- not that long. That was like probably like five (5)
5 minutes. He just came and told me what the plea they had came to offer.

6 Q. Okay. Did you, at that point, see any of your warrants?

7 A. No, he didn't have any warrants.

8 Q. Did you see your indictment?

9 A. Nah.

10 Q. So --

11 A. I seen -- hold up. I -- I did see -- I seen warrants that was in my first
12 motion. But I asked him to give me another motion because I didn't see any
13 indictments. And there wasn't no indictments in my other motion ---

14 Q. So was any --

15 A. -- as for he trial.

16 Q. Okay. Was any of that paperwork explained to you by Mr. Hall?

17 A. No.

18 Q. Did you understand what those documents were or what they could
19 mean for you as far as incarceration?

20 A. No.

21 Q. Okay. Did you send him any letters or anything while you were in jail?

22 A. I think I might have sent -- well, yeah, for a motion. That's about it. I
23 think I sent him like -- like in the County you -- you write it on a request form, you
24 know what I'm saying, it's...

25 Q. Okay. So, then, I think you said before that the next time you saw him

1 was right before your plea; is that correct?

2 A. Yes, ma'am.

3 Q. And is that the second time you meet with him or the third time you
4 meet with him just to be clear?

5 A. What are you saying, before I came — well, that's the second time.

6 Q. Okay. And how long was that meeting? You said five (5) minutes?

7 A. Yes.

8 Q. Okay. And you didn't see any of your reports. Did you understand
9 what was happening at that point?

10 A. No, nah. He was just telling me — he was telling me that they were
11 charging me with armed robbery. And he was telling me — well, the — and I was
12 telling him that I didn't have a gun and I didn't know nothing of the gun.

13 But he telling — he told me that it don't matter if they don't have a gun
14 and it don't matter if they find the bullet shell, they're still going to convict me if I take
15 it to trial.

16 Q. So this dis...

17 (Brief Pause)

18 Q. So, at this point, during this discussion, he is explaining to you a — a
19 plea that the solicitor is bringing to you and to your co-defendant possibly about
20 pleading guilty ---

21 A. Yes.

22 Q. --- is that correct?

23 A. Yes.

24 Q. All right. And just clarify again what did he tell you, you were going to
25 be pleading to?

1 A. He told me that they was offering me to plead to armed robbery with
2 no recommendation and I wouldn't — nothing — there was nothing he could do.

3 Q. Okay. Did you — so, at that point, have you seen any of your
4 documents; your indictments or -- or anything, your — your warrants?

5 A. No, I never seen — I never seen the indictment. But I seen the — the
6 forensics. And they said that me or my co-defendant didn't have any gun residue on
7 us. I told him that. He said that didn't matter.

8 Q. So you did know — or he made you aware that there was no gun
9 residue?

10 A. No, he didn't make it aware; I made him aware.

11 Q. Okay. And, Mr. Carroll, let me ask you, just for the court reporter's
12 sake, could you just lean back a little bit because I think there's some friction going
13 on with the microphone.

14 (The witness complied with the request.)

15 Q. Okay. So, when — when he was explaining to you about your plea,
16 did you understand what was happening at this point, during this conversation?

17 A. Nah, no, I never under — I never understanding why I getting charged
18 with armed robbery in that robbery.

19 Q. Did you maintain to Mr. Hall that you had never seen a gun?

20 A. Yes, ma'am.

21 Q. Did he, to your knowledge, do any further investigation on — as to that
22 point?

23 A. No, ma'am.

24 Q. But, when you got up in front of the judge, you pled to armed robbery?

25 A. I — I — I pled -- at the end — at the end of it, I pled to robbery. I told

1 him, I'm not — I'm not pleading — he asked me what I was pleading to, I told him
2 robbery. But she didn't add that — she didn't add that to the end of the transcript.

3 Q. So it was your understanding, when you were up for your plea, that
4 you were pleading to not armed robbery but just a plain robbery charge?

5 A. Yes.

6 Q. Okay. Did you — did Mr. Hall ever mention anything about the
7 restitution that was involved in your plea?

8 A. Yes. He — he said that the solicitors and the victims were seeking
9 restitution. So...

10 Q. And how did that play into your decision to plea or not plea?

11 A. I mean, that played a — a major part because restitution, I mean, I
12 could pay. And he said they weren't looking for the full amount of time.

13 Q. So he — he explained to you that, with the restitution, they weren't
14 going to ask for the full amount of time at ---

15 A. Yeah, he said they would show some sort of leniency.

16 Q. And did that have an effect on your decision to plea?

17 A. Yes, it did.

18 Q. And did that, in fact, happen at the plea as was explained to you?

19 A. No. And my transcript also verified that he said they — they asked
20 about the restitution, but they sort of changed their mind. That's what he said. But,
21 then, they — they never asked for restitution. They wanted the full max ----

22 Q. Okay.

23 A. --- both.

24 Q. Did you and Mr. Hall talk about your depression issues or your mental
25 health?

1 A. Yeah, I had told him about that I was taking medicine and that —
2 apprised him (phonetic) of everything.

3 Q. And, when you — and does that — did that have an effect on you? Or
4 do you believe that, that issue had an effect on your understanding of issues and
5 especially complex issues?

6 A. Yeah.

7 Q. Did Mr. Hall explain that to the judge?

8 A. No.

9 Q. Okay. Did you actually tell the judge that you had some issues with
10 depression when he — he asked you a line of questioning about that? Did you
11 answer him truthfully?

12 A. Yes, but he was asking me was I on any drugs and stuff, but I thought
13 he meant my — my problem that I had. And so I was getting into that and he wasn't
14 talking about that, but...

15 Q. Okay. As far as the gun, and your discussion about not knowing there
16 was a gun and your discussion about telling Mr. Hall that fact, do you remember the
17 day of the plea? Did you hear what the victim said about who was in possession of
18 the gun?

19 A. Yes.

20 Q. And who did she say?

21 A. She said Ms. White (phonetic).

22 Q. And is that your co-defendant?

23 A. Yes.

24 Q. And was that reflected in the transcript that I handed to the judge?

25 A. Yes.

1 Q. And what did, in fact, Ms. White testify to when she was asked about
2 possession of the gun?

3 A. That she had the gun.

4 Q. Okay. Did she say anything about your involvement with the gun?

5 A. No, ma'am. She said actually, I didn't know anything about a gun.

6 Q. Is that what she told the judge at the plea?

7 A. Yes, ma'am.

8 Q. Is that reflected in your transcript as far as you know?

9 A. Yes, ma'am.

10 Q. Okay.

11 (Brief Pause)

12 Q. What happened after the plea, Mr. Carroll?

13 A. After the plea, I asked Robert Hall, if there wasn't no gun, why did he
14 let herself — incriminate herself like that? He — he told me that she had already
15 explained that to her lawyer.

16 So that means that he knew about that and he never told me. If he
17 would had told me that, I would have took it to trial. I would have never pleaded.

18 Q. So there were important issues that were not discussed between you
19 and Mr. Hall and that had an effect on your decision to plea and, then, what
20 happened at the plea itself?

21 A. Yes, ma'am.

22 Q. Okay. Mr. Carroll, did you — after you pled and were handed down
23 your sentence and were put on the record as pleading guilty, what steps did you
24 take — what did you discuss with Mr. Hall about after that point?

25 A. I asked Mr. Hall to — to — to file — file me a direct appeal on that

1 grounds that they didn't have a gun and, then, on the grounds that my co-defendant
2 — I told him the truth that I didn't even know anything about a gun. And the victim
3 said I didn't have a gun.

4 Q. Okay. And what did he say?

5 A. He said he would file it, but later on, when I got sent to Kirkland
6 (phonetic) for R&E or Broad River for R&E, he sent — I got a letter in the mail telling
7 me that I had 20 days to file grounds.

8 And he also — I got a letter saying that he told me not liking my
9 sentence is not enough grounds for a merit for a direct appeal. But I already told
10 him.

11 Q. To your knowledge, did he file any grounds for your appeal?

12 A. No, ma'am.

13 Q. Okay. And did you feel like that was an appropriate way to handle that
14 situation?

15 A. Yes.

16 Q. You — you did think that, that was appropriate, filing an appeal ---

17 A. I think that wasn't appropriate.

18 Q. Okay.

19 A. Not appropriate. He's a lawyer. I mean, that -- that's what he
20 supposed to. I think that's — I think that's unprofessional to file no ground — to file a
21 direct appeal and not have any grounds.

22 See I was -- well, they sent — see, I was — I was — when I was in
23 R&E, I was in a place I had no money so I couldn't file all of my letters. So I -- I -- I
24 sent a letter but I don't think it made it on time because it re-omitted (phonetic), so...

25 Q. Okay. Did you understand, from your discussion with Mr. Hall initially,

1 the severity and — or do you understand now the severity of the — the first length of
2 charges, those five initial charges, how serious they were; how much time that those
3 charges carried? Do you understand that now?

4 A. Yes, ma'am.

5 Q. Did Mr. Hall do a good job of explaining that to you?

6 A. No, ma'am.

7 Q. Do you think, considering the nature of those charges and the length
8 of time that those — that those sentences could have been brought down upon you,
9 do you feel like three meetings of five (5) minutes apiece was enough time to
10 adequately explain your situation or — or get a good line of communication going
11 with your attorney?

12 A. No, ma'am.

13 Q. Okay. Do you believe that Mr. Hall questioned you about your mental
14 health or handled that in front of the judge as — as you would have thought would
15 have been appropriate?

16 A. No, ma'am.

17 Q. All right. And, based on your explaining to Mr. Hall the fact that you
18 didn't think there was a gun and that being collaborated later by the victim and your
19 co-defendant, do you think he investigated that thoroughly and flushed that out to
20 your benefit?

21 A. No, ma'am, because if — if he had, some of that would have got
22 dropped at my preliminary hearing

23 Q. Okay. Were you at your preliminary hearing?

24 A. No, ma'am.

25 Q. Did you have a preliminary hearing?

1 A. Not to my knowledge.

2 Q. Okay. And who was your attorney at that point in time where you had
3 — or should have or could have had a preliminary hearing?

4 A. Robert Hall.

5 Q. Okay.

6 (Brief Pause)

7 A. I have documents right now stating that he had filed a preliminary
8 hearing for me.

9 Q. Okay. But, then, that preliminary hearing did not go forward; is that —
10 am I correct in —

11 A. Yes, ma'am.

12 MS. BARNWELL: Okay. Your Honor, I have no further questions.

13 THE COURT: Yes, ma'am.

14 MS. WHITE: Thank you, Your Honor.

15 Cross Examination by Ms. White:

9:59 A.M.

16 Q. Mr. Carroll, do you recall the day that you pled guilty in August of
17 2011?

18 A. What do you mean?

19 Q. Do you recall the process of pleading guilty that day with your co-
20 defendant before the judge?

21 A. Yeah.

22 Q. Okay. Do you recall the fact that the judge went over with you — he
23 asked you how long Mr. Hall had been representing you and you said about 15
24 months?

25 A. Yeah.

1 Q. He also said, "Has he gone over the indictment with you," and you said
2 yes.

3 A. Yeah, but that — that — I ain't really understand what he was saying. I
4 thought that he meant the affidavit. The indictment and affidavit warrant is two
5 different things I found out. So, I didn't understand that.

6 Q. So, when the judge asked you if you understood the crime and charge
7 of armed robbery, and you said, "Yes, sir," and "Did Mr. Hall explain to you what the
8 State would have to prove before you could be found guilty," you still said, "Yes, sir."

9 A. But he never — he never — he never --- he just told me that they was
10 going file — they was going to — he never told me — he never said I was alleged.
11 He said that I did that. And, I mean, I didn't do that.

12 Q. So Mr. Hall told you that they were charging you with the armed
13 robbery?

14 A. Yeah.

15 Q. But you're saying that he never put it to you like it was alleged?

16 A. No.

17 Q. Okay. When the judge asked you, if you had explained to him all the
18 facts and circumstances and you all had discussed whether or not you thought you
19 had a defense to the armed robbery, you said you had talked with him.

20 And, then, when the judge said, "Do you know of a defense," you said
21 "No, sir." Do you recall that?

22 A. Yeah, but you could tell I didn't understand it very clearly because I
23 didn't have — I didn't -- I didn't know nothing of the law. And me not having a gun is
24 more of a — of a defense of armed robbery than anything.

25 Q. Did Mr. Hall explain to you — talk with you about the concept of the

1 hand of one, hand of all, the fact that Ms. White had the gun at the time you both
2 robbed the victims?

3 (Brief Pause)

4 A. I mean, yeah, he — he said the hands of one, hands of all. I heard
5 him say that, but he never told — he never told me what's the principles and the
6 facts and he never broke it down to me.

7 He just said the hands of one, hands of all. I — my jail house lawyers
8 have shown me that the hands of one, hands of all have to be prove by a
9 reasonable doubt. And my — my co-defendant stated that I didn't know nothing of
10 the gun.

11 I didn't know nothing about no gun. I stated that to Mr. Hall when he
12 first came representing me.

13 Q. Okay. Now, you did state to the Court that you were satisfied with
14 Mr. Hall's representation on the day of your plea, didn't you?

15 A. Yes, because Mr. Hall told me to say yes to all them things.

16 Q. Okay. So Mr. Hall gave you the answers to all these questions?

17 A. Yeah, he told me that the judge was going to ask me a couple of
18 questions and just say "yes."

19 Q. So, when you said, "No, sir," you heard the question and responded
20 correctly though, didn't you?

21 A. Know what?

22 Q. He asked you several questions. And you didn't answer "yes" to every
23 one. You answered appropriately for all the questions?

24 A. What was the questions, ma'am?

25 Q. "Do you know of any defense that you have to armed robbery," and

- 1 you said, "No, sir. " "Do you need to talk to him any further," "No, sir."
- 2 A. (No Response)
- 3 Q. You swore to tell the truth that day, didn't you?
- 4 A. Did I swear to tell the truth?
- 5 Q. Yes, sir.
- 6 A. Not that I know of. We didn't get sweared in ----
- 7 Q. Okay.
- 8 A. --- in the plea.
- 9 Q. So you weren't telling the truth to the Court that day?
- 10 A. What do you mean? I didn't understand the question,, so, I wouldn't.
- 11 Q. All right. When the Court asked you if you understood you had a right
- 12 to a jury trial, that -- which you could attack the charges and had anybody promised
- 13 you anything other than the fact that they were dropping additional charges, they
- 14 said, "Are you pleading freely and voluntarily, understanding the consequences
- 15 because you're guilty of the crime, Mr. Carroll," and you said, "Yes, sir."
- 16 A. (No Response)
- 17 Q. And the judge went over with you again the fact that this was an armed
- 18 robbery requiring a mandatory minimum of not less than 10 and up to 30; is that
- 19 right?
- 20 A. Yes.
- 21 Q. Okay. And, when the judge asked you if you had understood
- 22 everything and had you understood the discussions with your lawyer preparing for
- 23 court, you said you had. But today you're saying that, that's not accurate?
- 24 A. No, that's not accurate.
- 25 Q. Okay. It was true that -- that the co-defendant said that she had the

1 gun at the trial — I mean, at the plea; is that correct?

2 A. Yes.

3 Q. And it was presented to the judge as well that neither of you had
4 gunshot residue on your hands?

5 A. Yes.

6 Q. But it is true that the judge really didn't believe that neither one of you
7 knew of each other was doing at the time you simultaneously robbed the victims?

8 A. Well, I don't know whether he believed or not. That — that — I mean, I
9 was just telling the truth.

10 Q. Okay. All right. And, ultimately the State did dismiss an additional
11 armed robbery and an ABWIK charge and allowed you to plead to one armed
12 robbery; is that right?

13 A. Yes.

14 MS. WHITE: Okay. Thanks. That's all I got, Your Honor.

15 THE COURT: Okay. Any redirect?

16 MS. BARNWELL: Just one last question, Your Honor.

17 Redirect Examination by Ms. Barnwell:

10:16 A.M.

18 Q. Based on what Ms. White just asked you, Mr. Carroll, when Mr. Hall
19 apparently explained the plea agreement to you, did he put to you in a way that you
20 thought you had to any other options? Or did he put it to you that this was your only
21 option?

22 A. Yes, ma'am. Yeah, he put it basically that was my only option. He
23 said, if I go to trial, they will — they will move on all counts of everything, which was
24 not true.

25 Q. So you felt like you had to answer x, y, and z, the way he had

1 explained it to you?

2 **A.** Yes, ma'am. I had to because I had no defense. He wasn't — he
3 wasn't representing — because he wasn't going to represent me. And I didn't know
4 no nothing other though.

5 Like he said I was facing true indeed (phonetic) — if what he said was
6 correct, they were going to find me guilty of all them counts, it would have been like
7 a hundred (100) years, like he said.

8 But the assault with intent to kill carries 20 years I found out. But, I — I
9 didn't have no gun to shoot, so, that would have ruled that out.

10 **Q.** So you went forward — forward and answered the judge's questions
11 based on that coercive conversation with Mr. Hall?

12 **A.** Yes, ma'am.

13 **MS. BARNWELL:** I have nothing further, Your Honor.

14 **THE COURT:** Recross?

15 **MS. WHITE:** The State has nothing further, Your Honor.

16 **THE COURT:** Okay. All right. Thank you. Thank you, Mr.
17 Carroll. You may step down, sir.

18 **(Witness complied with the Court's request.)**

19 **THE COURT:** Anything further for the Applicant?

20 **MS. BARNWELL:** Your Honor, that's all we have for you. We just
21 ask that you look over that trial memo ----

22 **THE COURT:** Okay.

23 **MS. BARNWELL:** --- the hearing brief. But that's all, Your Honor.

24 **THE COURT:** Anything further from the State?

25 **MS. WHITE:** Your Honor, we would like to briefly call Robert

1 Hall.

2 THE COURT: Okay.

3 (The witness stepped forward to be sworn.)

4 (Off-the-Record Comments)

5 (Whereupon,

6 Robert B. Hall, Esquire

7 having been first duly sworn, testified as follows:)

8 THE COURT: All right. Thank you, sir. You may sit down.

9 (The witness complied with the request.)

10 THE COURT: Please, state your name for the record.

11 THE WITNESS: Robert Hall.

12 Direct Examination by Ms. White:

10:21 A.M.

13 Q. Mr. Hall, I just want to ask you about some of the things that Mr.

14 Carroll stated. Do you recall how many times you met with him prior to the plea?

15 A. I don't recall details of the meeting with him in June. I could have
16 because we're at the jail quite a bit to with people.

17 Q. And before you start, June of what year?

18 A. Two thousand and ten (2010).

19 Q. Okay.

20 A. I may have and probably did talk to him before the bond hearing to go
21 over with him that Mr. Poole would be doing that bond hearing.

22 At that point, I may have had a file folder with a interview sheet in it
23 and that's pretty much it. And Mr. Poole would have taken that and gone and
24 interviewed him in more detail for the bond hearing.

25 His case was presented to the grand jury just over a month after his

1 arrest I think. And by the time the prelim was set on July the 29th of 2010, he had
2 already been indicted, which meant we don't have a preliminary hearing.

3 I went to the jail on August the 10th where I have notes. I actually have
4 notes that I stayed there from 4:30 to 5 o'clock and went over the discovery that I
5 had gotten.

6 (Brief Pause)

7 A. I have notes that, after our conversation and going over everything,
8 that we — I mean, I made a check to see if there were any videos, if they did any
9 line-ups. We didn't have the gunshot residue results.

10 At that point, I went over the charges and explained that armed
11 robbery was most serious — and serious and violent and those type things and,
12 then, where armed robbery fell in that.

13 And that the reason there's not a preliminary hearing was because of
14 the indictment; it had already been presented to the grand jury. Therefore, the
15 Court couldn't hear anything and couldn't do anything.

16 On — in August — excuse me — in November of 2010, I went to the
17 jail and took — and myself took the discovery to him, went over everything at that
18 point and — including his record because I had some questions because his record
19 is from Maryland and it's a little difficult to read than a South Carolina criminal
20 history.

21 He had indicated that he came down here to start a new life because
22 he had some troubles up there. And I told them that they had not made any offer.

23 I didn't know when they would make an offer, but they had — at some
24 point, they would make an offer, I said, "Generally, at the anniversary of an arrest,
25 they start considering a different offer sometimes after somebody had been in jail for

1 a year.

2 And I think, for the next several months, we didn't have any more
3 contact other maybe than in a brief meeting. And we did let him know that he — he
4 was on the docket.

5 I had told him, like I tell all my clients at the jail, if they get a notice
6 from us on the docket, and I don't come, that means we have — I have other cases
7 higher on the docket and we're not going to be able to get to the case that week
8 unless they come up with a new offer.

9 His case, in 2011, was coming up higher on the docket. And in August
10 — probably at the end of July we got notice of the docket. When I went to the jail,
11 on August 5th, we went over everything again, including the fact they found the gun
12 and both victims said that she had a gun. And the officer says that she was shot at.

13 This was a case where the police responded very quickly. I think the
14 victims in the case, the persons that got robbed, I think reacted pretty well and they
15 stayed calm. And when the people — when the robbers left, they contacted the
16 police; went into the house and contacted the police and did that type of thing.

17 And the police just happened to be there, close in the area, so they
18 were all over. And the officer claimed that she heard the gunshot and had dirt
19 beside her foot had blown up where the bullet had hit it.

20 Q. Let me stop you right there and ask you a quick question.. In regards
21 to the possession of a gun during this, and whether or not this would be an armed
22 robbery versus a common law robbery, do you recall if you discussed with him hand
23 of one hand of all and the fact that whether or not he had the gun or knew of the
24 gun?

25 A. Yes, I did. I told him that, if — if a co-defendant has a gun, it does

1 make it armed robbery under South Carolina law most of the time. And it's going to
2 come down to a issue of believability; you know, do they believe him, that he didn't
3 know he had a gun — that she had a gun — or believe the victims about the gun
4 because he said he didn't see a gun and didn't know anything about a gun.

5 And we did discuss that. And, at that point, still in early August, we
6 had no offer in the case except they would think about dropping the assault with
7 intent to kill and plead to two armed robbery.

8 And, at that point, you know, it was geared up for trial. We had talked
9 about the gunshot residue. I — I know how to read those reports. It's — it's not that
10 difficult. It's — it's, you know, metal found but you can't say whether or not it was
11 gunshot residue; those type things.

12 We were gear — gearing up for trial for the week I think of August 22nd.
13 I went back and talked with — contacted Mr. Ellis. I think Mr. Whelchel had a co-
14 defendant and he was doing the same thing. And we got the offer; one count of
15 armed robbery and they would dismiss the other things.

16 Back in — at that point, there were some solicitors who were of the
17 opinion that you could somehow spilt a armed robbery sentence and do restitution.
18 And that's what I think he was talking about. And I was telling him you can't do that.

19 That's good for us that they're saying they want restitution. It makes it
20 a little less serious if, you know, the victims are just saying, "Put them in prison
21 forever." And he was going to be sentenced to a straight sentence.

22 And I went down 30 years, 20 years, and what the sentences would
23 mean as far as time that he would actually have to serve given that it's a violent and
24 most serious offense. And the — let's see....

25 (Brief Pause)

1 A. And his concern at the meeting on August 16th was what she was
2 going to do. And I believe I actually met and got with Mr. Whelchel and he said,
3 "She's accepting." And, then, I went back and we finished our conversation and
4 said, "Yes, she's accepting the plea."

5 I went over, at that point, violent crimes again, most serious and
6 serious and the two strike and three strike. And he said that he wanted to accept
7 the plea.

8 I think he indicated that as up to the plea date he would have 453 or
9 452 days of credit at that point. And he wanted another copy of his discovery.

10 I think something happened to some of it. And I believe I went back
11 and copied everything again and hand delivered it back to him the next day.

12 Q. Did he ever talk with you about any mental health concerns or issues
13 that would cause you to be concerned that he couldn't understand what was going
14 on?

15 A. No, he never did.

16 Q. And, ultimately, did you have any questions or concerns, at the day of
17 the guilty plea, that he was unaware of what he was pleading to?

18 A. No, I did not.

19 Q. And did you ever have any concern that he was pleading solely
20 because he felt: coerced or that he had been threatened or that he felt he had no
21 other options?

22 A. The only threat he had was, he pled to the offer of one armed
23 robbery, or we were going to trial for two counts of armed robbery and assault with
24 intent to kill.

25 And I don't know if Ms. White would have turned and testified against

1 him or not before she got sentenced. I don't know.

2 Q. But that was ----

3 A. That was his only threat in any case; if you don't accept the plea, they
4 can try you. And they were going to try him.

5 Q. Okay.

6 MS. WHITE: Thank you. That's all I got, Your Honor.

7 THE COURT: Cross examination?

8 MS. BARNWELL: I just have a few questions for Mr. Hall.

9 Cross Examination by Ms. Barnwell:

10:16 A.M.

10 Q. Mr. Hall, I've -- I've been trying to take notes on when you said these
11 meetings were. So I might ---

12 A. Okay.

13 Q. Correct me if I'm wrong. But I think I capped -- counted one, two,
14 three -- three meetings that you said you had with him prior to the trial date; is that
15 correct?

16 A. No.

17 Q. No?

18 A. Probably in June, 2010, I had a brief meeting at the times when -- the
19 way our office works, we have the General Sessions lawyers split into a probation
20 team and a bond team.

21 I'm not on the bond team. In cases like this, where there is no bond
22 and we have to go to a Circuit Court judge to seek a bond, it's assigned to a bond
23 team member in most cases because quite often, on the day they're doing bond
24 hearings, I'm in probation.

25 Mr. Poole was assigned the case. Sometime -- he says I met with him

1 in June and that could be that I went and said, "Mr. Poole is going to be talking to
2 you about bond."

3 Q. Well, just ----

4 A. Then, in August of 2010 ----

5 Q. Okay, one.

6 A. ---- November of 2010 ----

7 Q. Okay, two.

8 A. ---- August 5th, 2011 ----

9 Q. Three.

10 A. ---- August 16th, 2011, and I believe August 17th, 2011, I took -- we
11 took the other copy of discovery to him. And, then, we met before the plea up here
12 in the jail room.

13 Q. Okay. So it's your testimony that you met him five (5) times before the
14 actual trial week. And when did you get the offer from Mr. Ellis? Was it the week
15 before, the week prior to the trial week?

16 A. It was the week before. Until -- I don't have a copy of the memo of
17 August 16th. I can't tell you exactly which day we -- we got the offer.

18 But, on August 5th, we did not have -- on August 5th, 2011, we had no
19 offer except they would drop the assault with intent to kill, plead to two armed
20 robberies.

21 Q. Okay. But from ----

22 A. But sometime in that 11-day period we got a -- a different offer. I can't
23 tell you if I got the offer and went directly over there, but it was -- I know Mr.
24 Whelchel apparently got the offer at the same time and we literally went to the jail at
25 the same time.

1 So I assume it was probably the 15th or 16th of August 2011 when we
2 got the offer.

3 Q. But from — from the moment you basically got the file on him and saw
4 his warrant, you, as a public defender, knew that these charges he was looking at
5 were serious, most serious, violent charges; that's — that's correct?

6 A. Absolutely.

7 Q. And, even though you knew the veracity of the charges, you only met
8 with him five (5) times prior to the at least 11 days before the trial; is that correct?

9 A. That's correct.

10 Q. Okay. And did you have a discussion with him about him explaining to
11 you the fact that he did not know that there was a gun, he thought there was no gun,
12 and he did not have a gun? He explained that to you?

13 A. Yes.

14 Q. And did your investigation unveil that the co-defendant would also
15 testify that he didn't have a gun?

16 A. I don't know that Mr. Whelchel ever told me that his client would say
17 that she did or did not have a gun. I know what the evidence was. And we talked
18 about two things; about the issue of whether or not he knew she had a gun comes
19 down to credibility and believability of him versus whatever Ms. White might say
20 because Mr. Whelchel was representing his client and would not tell me everything.

21 And second is, if she had a gun, during — while involved in a robbery
22 together, the jury could find him guilty under the theory she had a gun. And he's
23 stuck with the fact she had a gun.

24 Q. Did you investigate or look — I'm assuming from the incident report
25 and that discovery, that the victim, in fact, would testify to the fact that Ms. White

1 was the one that had the gun?

2 A. That's clear that -- that -- once, again, that doesn't really change a
3 whole lot if the hand of one is the hand of all. And I don't know -- until she said, "he
4 didn't know I had a gun," that's the first time I had that information because I can't
5 talk to her.

6 I can't make Mr. Whelchel tell me what she's going to say. It wasn't
7 until everything was -- was settled that, that came out.

8 Q. And you testified that you explained the hand of one, the hand of all to
9 Mr. Carroll. And he testified that you, in fact, did in a qualified manner.

10 But did you explain to him that, that doesn't always -- that there are
11 defenses against that and that you could move forward even under that umbrella
12 with a trial and -- and counteract that hand of one, hand of all business?

13 A. Yes. Until the -- we got that offer, in the middle of August, we were
14 going to trial.

15 Q. Okay.

16 A. So, you know....

17 Q. And, when it was time to discuss the plea with him, did you disting --
18 or at any point, frankly, did you distinguish with him clearly between armed robbery
19 and robbery and what the differences were in that -- in those charges and
20 sentencing and what have you?

21 A. Yes.

22 Q. You believe you did?

23 A. I know I did.

24 Q. And, when you were talking to him about the plea, again, you said that
25 he seemed to freely accept the plea and understand what you were talking about.

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1 But, at any point, did he feel unsure or reticent (phonetic) about accepting the plea
2 and moving forward?

3 A. No, he did not until the — I think the part of the transcript where he
4 seemed a bit confused. No, he — he understood it.

5 We had — I think, before we got the plea offer, we made his offer of
6 purse snatching. He said he would plead to purse snatching. And that's — after
7 that point is when Mr. Ellis came back with one armed robbery.

8 But we did discuss purse snatching, common law robbery, strong
9 armed robbery, robbery, whatever you want to call it, the 15-year statute. We — we
10 went over all of that.

11 MS. BARNWELL: I beg the Court's indulgence for just a moment ---

12 THE COURT: Yes, ma'am.

13 MS. BARNWELL: — so I can confer with my client.

14 THE COURT: Uh-huh (affirmative).

15 (Off-the-Record Discussion)

16 MS. BARNWELL: I have no further questions.

17 THE COURT: All right.

18 MS. WHITE: The State has nothing further, Your Honor.

19 THE COURT: Okay. Thank you, Mr. Hall. You may step down.

20 THE WITNESS: Thank you.

21 (Witness complied with the Court's request.)

22 THE COURT: Any — anything further from the State?

23 MS. WHITE: No, Your Honor. No more witnesses.

24 **COURT'S RULING**

25 THE COURT: Okay. All right. I have had the opportunity to — to

1 review the brief that has been handed up by the Applicant. I've look at it all
2 the various allegations and have had the opportunity to look, in a cursory
3 fashion, at the — at the case law attached thereto.

4 And, Mr. Carroll, I've also had the opportunity to hear your testimony
5 and the testimony of Mr. Hall. And I'm going to respectfully deny your
6 application for post-conviction relief. And I'm going to tell you why, okay?

7 **MR. CARROLL:** Yes, sir.

8 **THE COURT:** I listened to all the evidence. It sounds to me like
9 Mr. Hall gave you good advice.

10 I know — and I don't expect you to be satisfied with the results of your
11 plea. It would be naive — naive for me to think that you would walk away
12 from a sentence of 20 years thinking, "Boy, that was a really good deal." I
13 don't expect you to think that.

14 But you suggested that Mr. Hall had told you that you really don't have
15 any other choice. The fact of the matter is, you did have other choices; they
16 just weren't good options.

17 As a practical matter, you really didn't have much other choice. You
18 have — you're operating under some assumption that the fact that you didn't
19 have the gun or that you didn't know about the gun is a defense and would
20 have been relevant to your defense in this case.

21 Let me dispel that notion. I don't know who is telling you that, that
22 makes a difference, but that doesn't make a difference. He was right; the
23 hand of one is the hand of all.

24 And, if you'll indulge me for a second, I'm going to read to you what I
25 read to the jury about the hand of one is the hand of all and I want you to

1 listen to it, okay? I want you to listen to it.

2 "If a crime is committed by two or more people who are acting together
3 in committing a crime, the act of one is the act of all. A person who joins with
4 another person to commit an unlawful act is criminally responsible for
5 everything done by the other person which happens as a probable or natural
6 consequence of the acts done in carrying out the common plan and purpose.

7 "For example, two people can be guilty of killing another person when
8 only one of the two had a gun; there was only one bullet and only one of the
9 two fired the shot that caused the death.

10 "If two or more people are — are together, acting together, assisting
11 each other in committing the offense, the act of one is the act of all or, as it is
12 sometimes said, the hand of one is the hand of all."

13 So you could have gone to trial and you could have argued to the jury,
14 "I didn't know she had a gun." The question presents itself: So what?

15 Because, under the law the hand of one is the hand of all, no matter
16 whether you knew at all because, once you set — once you talked to her
17 about or you all decided — and I know it was very impromptu because I've
18 read the transcript — once you all decided, when you were walking past that
19 car that, "We're going to do this," everything that happened as a natural
20 consequence of the crime that you all set out to commit together, is what you
21 are responsible for.

22 So, if she pulled a gun out — if you decided, "Hey, we're going to rob
23 these people," and she pulled a gun out, then, you're responsible for that. It
24 doesn't matter whether she — you knew whether she had the gun or not.

25 You also have the question of, okay, would the jury believe you in any

1 event whether you had a gun? If there is an argument out there — and I'm —
2 and I'm dubious about it — but, if there is an argument that it matters whether
3 you knew or not, the jury — 12 people would have to believe that you didn't
4 know that there was a gun.

5 But it's very difficult, under the factual scenario that was set forth, that
6 you all stopped, asked for cigarettes, she pulled a gun. And, then, after
7 having pulled the gun, you went into the car or you started — you started
8 trying to get things from the Defendants [sic].

9 I know you take exception to that, but that's the way that — that's the
10 way the State would have presented it, okay? That's the way the State would
11 have presented it.

12 That's how the evidence would have come out. So it doesn't matter. It
13 — it really doesn't matter. And I don't know who is telling you otherwise, but
14 --- but it wouldn't.

15 And the reason I'm telling you all of this is this: Mr. Hall was telling you
16 things that were in your best interest because you were looking at what,
17 between 80 and 90 years? Am I right about that?

18 **MR. HALL:** I think eighty (80).

19 **THE COURT:** Eighty (80) years, and you came away with 20.
20 Like I said, I don't expect you to be satisfied with that, but the alternative
21 would have been a lot worse, particularly if you had gone to trial because
22 your sentence in that regard may have been significantly worse too.

23 It's easy for an — an attorney to — to take a risk with something like —
24 with the defense like the hand of one is the hand of all because all the
25 attorney has to do is stand up and argue it.

1 You're the one who has to suffer the consequences for presenting a
2 bad offense. And I'm telling you right now, you would have suffered the
3 consequences of presenting a bad defense.

4 I don't expect you to like it, but I do expect you to understand the
5 process and the consequences of actually presenting a bad defense, which
6 would have been a lot more time than you're serving now.

7 I know you had some issues with communication with your attorney
8 and you — you believe that he didn't talk to you enough; but based on my
9 experience, both representing criminal defendants, which I did a good bit of,
10 practicing law in other types of cases and being on the bench, it's my
11 experience that, that was not an inadequate amount of time to discuss the
12 facts of a case like this and the law attending thereto.

13 Your mental health records, I don't have any evidence before the
14 Court that you actually do suffer from any type of mental illness that would
15 have affected your ability to understand and appreciate what was going on at
16 the time.

17 I don't have that before — I don't have that in evidence before this
18 Court. I do have evidence you suffered from some depression;
19 understandably. I get that, okay? But there's no evidence which would
20 suggest to me that, that was — it was deficient in any way, shape, or form for
21 — for the attorney not to — not to have asked for a psychological evaluation.

22 And, having heard you on the stand, I would suggest to you that, after
23 that evaluation, the expert witness would have determined that you are
24 competent and capable of testifying. So I don't think that, that's — that, that
25 would have any effect and it would prejudice you in any way.

1 Again, I'm going to deny your — your application, Mr. Carroll. I —
2 again, I don't — I know you don't like what happened to you, but, under the
3 circumstances, it was the best option that was available to you. And Mr. Hall
4 gave you good advice.

5 You want to say something to me?

6 **MR. CARROLL:** Yes. I wanted to say that — well, I was going to
7 ask for a continuance today to get my medical records because I have facts
8 and I could prove it to you.

9 But, like you said, I didn't know if you'd grant — I didn't know if you
10 would grant my continuance or not.

11 **THE COURT:** Well, I probably wouldn't have, but I can tell you all
12 of your medical records that you would have sent up, they still would have to
13 have been fairly striking; that is, in order to meet the test for incompetency
14 and insanity under McNaughton, you really have to be significantly impaired.

15 And I've had the opportunity to listen to you, and you're a smart guy.
16 You're able to convey fairly complex notions. You're able to understand
17 these concepts of law. You're able to understand what we're doing in the
18 courtroom today.

19 So it would have been very difficult for you to have convinced the
20 Court, at the first hearing, or a jury that you are incompetent. And I think it
21 would have been doubly as difficult to convince me today even if you would
22 have had all of those — all of that evidence.

23 It wouldn't have been enough to have given me the records. You
24 would have had to have an expert witness come in here, swear and take the
25 stand, say he or she had evaluated you and that you did not have

1 competency. That's what she would have had to have done.

2 (Mr. Carroll indicates he wants to speak.)

3 THE COURT: Sure?

4 MR. CARROLL: If I initiate a robbery, and we didn't even plan or
5 nothing, and I initiate that I wanted to take something off somebody, which is
6 a robbery, and somebody come up behind me and robs the other person,
7 that's not corresponding (phonetic).

8 How — Is that still the hand of one, the hand of all, if I — if I committed
9 a robbery and somebody come up behind me with something I don't know
10 nothing about?

11 THE COURT: It could be. It depends on the facts and the
12 circumstances. It depends on what the jury believes. It depends on the
13 credibility of the evidence that's presented.

14 It's very difficult to speak to hypothetical situations. Yeah, but that —
15 you could — you could; there are defenses to you. But, under this factual
16 scenario, you would have been hard pressed to — to present those defenses
17 based on what I've read; based on everything you said, based on everything
18 that Ms. White said, it would have been very, very difficult.

19 And let me just tell you: I mean, I — I know that you sit in — in the
20 Department of Corrections and you can think it over and think it over and
21 think it over, but it's a completely different matter when you get into court.
22 And you've got — you have witnesses who are testifying against you.

23 And, then, you have a jury charge like that, which doesn't benefit you
24 in any way, shape, or form. You know, chances are -- 99% chance you're
25 going to get convicted of that. And you would have been in for a lot more

1 time if you had been convicted of that.

2 **MR. CARROLL:** Even if that is the truth?

3 **THE COURT:** Even if that's true, even if it's true, because, then,
4 it comes down to a matter of believability. I'm just telling you — and I'm —
5 I'm taking this much time to explain it to you because you made the right
6 decision. And Mr. Hall gave you good advice.

7 I'm just telling you that because, if you hadn't taken that advice, it
8 would have been a lot worse, okay? I've seen it. All right?

9 **MR. CARROLL:** So I would have got — I would have got assault
10 with intent to kill when nobody ain't shoot at nobody?

11 **THE COURT:** You could have.

12 **MR. CARROLL:** I would have got ---

13 **THE COURT:** That — that was a possibility.

14 **MR. CARROLL:** — possession of a weapon when I never had —
15 there was only one weapon there and I never had it. And I would have got
16 both armed robbery when I only took off of one person?

17 **THE COURT:** Let's say it's a distinct possibility. And the
18 chances of you're having been convicted are greater than the chances of you
19 having been acquitted. And, then, you would be in a lot worse position.

20 You don't have to believe me; it doesn't matter. But I'm just telling
21 you. And I don't have any reason to tell you something that's not true
22 because I don't have a stake in it, okay? I don't have a stake in it.

23 I'm just telling you, based on my experience over two decades of
24 doing this, you made the right decision. Don't second guess yourself
25 anymore, okay? All right. Good luck to you.

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MS. WHITE: Thank you, Your Honor.

(Whereupon, the proceeding concluded.)

**(Whereupon, Court's Exhibit 1 was marked for identification and
admitted into the record.)**

REPORTER'S CERTIFICATE

I, the undersigned **PAMELA FAUCETTE**, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that I acted as the court reporter at the foregoing proceeding; that the foregoing pages, numbered 1 through 39, were transcribed by me and represent a true and accurate transcript of said proceeding to the best of my knowledge and belief.

I do further certify that I am not of counsel for or in the employment of either of the parties to this action, nor am I interested in the results of this action.

May 3, 2014

A handwritten signature in cursive script, appearing to read 'Pamela S. Faucette', is written over a horizontal line.

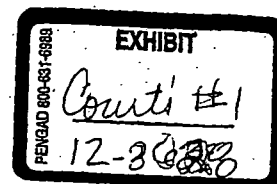
Pamela S. Faucette
Official Court Reporter
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SEVENTH JUDICIAL CIRCUIT
COUNTY OF SPARTANBURG	)	
	)	
	)	
Delonte B. Carroll, #347422	)	
	)	Case No. 2012-CP-42-3628
	)	
Applicant,	)	
	)	
V.	)	HEARING BRIEF IN SUPPORT OF
	)	POST CONVICTION RELIEF
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

**MEMORANDUM OF APPLICANT
DELONTE B. CARROLL**

I. INTRODUCTION

Delonte Carroll was indicted at the July 2010 term of the Spartanburg County Grand Jury for assault with intent to kill (2010-GS-42-4266) and two charges of armed robbery and possession of a weapon during the commission of a violent crime (2010-GS-42-4267, 4268, counts one and two). Delonte was represented by public defender Robert Hall. On August 22, 2011, Delonte pled guilty before the Honorable J. Derham Cole and was sentenced to confinement for twenty years for armed robbery; indictment 2010-GS-42-4267, count two of 2010-GS-42-4268, and the charge of assault with intent to kill were *nolle prossed* pursuant to Delonte's plea agreement.



Delonte and his co-defendant, Andrea White (who was represented by public defender Richard Whelchel) were brought before the judge for a simultaneous plea to their charges. A transcript was made of the plea by Linda D. Moffitt, Circuit Court Reporter (*Exhibit A*). Delonte appealed his conviction and sentence, but the South Carolina Court of Appeals dismissed the appeal for a failure to demonstrate any issues raised and ruled upon by the plea judge.

II. ARGUMENT

Under Strickland v. Washington, 466 U.S. 668, 104 S. Ct. 2052, 2064 80 L.Ed.2d 674, 692 (1984), the Applicant of a post-conviction relief action, when alleging ineffective assistance of counsel as a ground for relief, 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.”

Delonte has alleged ineffective assistance of counsel, in that:

- a. Counsel failed to investigate;
- b. Counsel failed to communicate and properly advise;
- c. Counsel failed to request Applicant’s mental health records to establish mental incompetency.

These points are extrapolated below.

A. Counsel failed to investigate.

Delonte pled guilty to the charge of Armed Robbery, but as evidenced in the transcript from the plea, he was unaware at any point during the robbery there was a gun. On page 30, line 7 of the transcript, the Court asks Victim Maye’s “And was it Ms. White that held the gun to your head?” and Victim Maye’s answers “Yes, sir”. On page 32, lines 22-23, the Court asks Delonte “Well, who had the gun after the robbery occurred?” to which Delonte responds (line 24) “Wasn’t no gun” and (page 33, line 2) “I don’t know nothing about no gun”. Throughout page 33 of the transcript Delonte and the Court continue to discuss the fact that at no point did Delonte see a gun and in fact had no idea that a gun was brandished. Delonte’s assertion that he did not know there was a gun is further evidenced by Codefendant White’s testimony with the judge (page 39, lines 3-21). Co-defendant White tells the judge that Delonte didn’t know she had a gun and that the two co-defendants never discussed a weapon or conspire to commit the

robbery beforehand. Robert Hall himself tells the judge on page 31, lines 12-13 that “there was gunshot residue tests done. They all came back negative on both of these individuals.” The fact that Delonte did not have any idea that a gun existed and that that assertion was backed up by evidence from the Victim and the co-defendant should have been expertly investigated by Robert Hall, along with the lack of physical evidence (gunshot residue tests) to procure a plea agreement to a charge other than Armed Robbery. Delonte contends that Mr. Hall did not at any time discuss these weaknesses in the State’s case, or any other weakness the State might have had in their case and thus, failed himself, to properly investigate or correctly explain the situation in its entirety to Delonte. A defendant should be entitled to post conviction relief when a defendant’s guilty plea is not made knowingly and voluntarily, or when he is misinformed of the nature of his charges, Brown v. State, 412 S.E.2d 399 (S.C. 1991).

B. Counsel failed to communicate and properly advise.

The lack of investigate being the first prong, we believe Mr. Hall was ill equipped and lack sufficient information to thoroughly explain Delonte’s situation, the second prong would be that Mr. Hall did not devote an adequate amount of time to communication with Delonte considering the nature of the charges and the jail time at stake. Roughly calculating the three original charges, with two charges having two counts a piece, Delonte’s sentence could have resulted in a sentence in excess of 100 years. Armed Robbery itself is classified as a “most serious” offense. Robert Hall should have given Delonte time and attention to match the severity of the charges. Delonte contends that Mr. Hall only visited him two brief times during his incarceration in the Spartanburg County Detention Center, and one very brief moment prior to the plea, at which point Mr. Hall inadequately explained the plea agreement with him.

Due to this lack of communication, Delonte was ill advised and misinformed when entering the courtroom for his plea. Brown v. State.

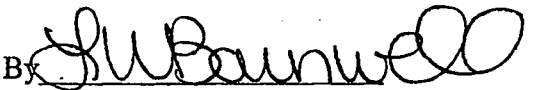
C. Counsel failed to request Applicant’s mental health records to establish mental incompetency.

Delonte suffered a traumatic brain injury at a young age. Since that time Delonte has had limited cognitive function and deals with severe depression. He is under a doctor’s care at present for mental health. While his current diagnosis does not prevent him from understanding

the basics of life, it does hinder him in understanding anything of complexity. Mr. Hall made scant reference to this fact telling the judge simply "he had some issues with depression" (transcript: page 30, line 21).

III. CONCLUSION

In conclusion we believe that Mr. Hall did not adequately represent Delonte Carroll and that post conviction relief should be granted on the grounds elucidated in this brief.

By 

Lauren W. Barnwell

TALLEY LAW FIRM, P.A.

Attorney for Delonte Carroll

306 S.C. 381 (1991)
412 S.E.2d 399

Paul S. BROWN, Petitioner
V.
STATE of South Carolina, Respondent.

23519

Supreme Court of South Carolina.

Submitted October 22, 1991.
Decided December 9, 1991.

Asst. Appellate Defender, Daniel T. Stacey, of S.C. Office of Appellate Defense, Columbia, for petitioner.

Atty. Gen. T. Travis Medlock, Chief Deputy Atty. Gen. Donald J. Zelenka, and Asst. Atty. Gen W. Teresa Nesbitt, Columbia, For Respondent.

Submitted October 22, 1991.

Decided December 9, 1991.

*382 HARWELL, Justice:

We Granted petitioner Paul S. Brown's application for writ of certiorari to determine whether the postconviction relief (PCR) judge erred in finding petitioner's guilty plea was made knowingly and voluntarily even though the trial judge misinformed petitioner that he was eligible for parole when he is ineligible for parole. We reverse and remand for trial.

I. FACTS

Petitioner was charged with attempted burglary, burglary in the first degree^[1] and aggravated assault and battery. Petitioner pled guilty to all charges and was sentenced to eighteen years incarceration. At the guilty plea hearing, the trial judge twice stated that petitioner would have to serve at least one-third of his sentence before he would be eligible for parole. After petitioner was incarcerated, he discovered that because he previously had been convicted of a violent crime,^[2] he was not eligible for parole. The trial judge was aware of petitioner's prior conviction.

Petitioner applied for and received a PCR hearing. The PCR judge found that petitioner had knowingly and voluntarily entered a guilty plea.

II. DISCUSSION

Petitioner asserts his guilty plea was not made knowingly and voluntarily because the trial judge misinformed him that he would be eligible for parole after serving one-third of his sentence, when in fact petitioner is ineligible for parole. We agree.

A defendant desiring to plead guilty must have a full understanding of what the plea connotes and the consequences of the plea. *Boykin v. Alabama*, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed. (2d) 274 (1969). The imposition of a sentence may have a number of collateral consequences, however, and a plea of guilty is not rendered involuntary in a constitutional sense if the defendant is *not* informed of the collateral *383 consequences. *Strader v. Garrison*, 611 F. (2d) 61, 63 (4th Cir.1979) (emphasis added). Parole eligibility typically is a collateral consequence of sentencing about which a defendant need not be specifically advised before entering a Guilty plea. *Garris v. Cook*, 278 S.C. 622, 300 S.E. (2d) 483 (1983). This is because parole eligibility is not a matter within the jurisdiction of the trial court, but falls within the province of the Board of Probation, Parole, and Pardon Services (the Board).^[3] S.C. Code Ann. § 24-21-610 (1989). However, the Board has no power to grant parole to "any prisoner serving a sentence for a second or subsequent conviction, following a separate sentencing for a second or subsequent conviction, for violent crimes as defined in Section 16-1-60." S.C. Code Ann. § 24-21-640 (Supp. 1990). Petitioner falls within the class of prisoners to whom the legislature has denied any possibility of parole.

We think that when a trial judge misinforms a defendant that he is eligible for parole when in fact he is ineligible for parole, his plea does not represent "a voluntary and intelligent choice among alternative courses of action" available to him. *North Carolina v. Alford*, 400 U.S. 25, 91 S.Ct. 160, 27 L.Ed. (2d) 162 (1970). We hold that petitioner's guilty plea was not knowingly and voluntarily made because the trial judge misinformed him that he would be eligible for parole when he is ineligible for parole.

We will not uphold a PCR judge's findings if there is no evidence of probative value in the record to support those findings. *High v. State*, 300 S.C. 88, 386 S.E. (2d) 463 (1989). We reverse the order of the PCR judge and remand for trial.

Reversed and remanded.

GREGORY, C.J., and CHANDLER, FINNEY and TOAL, JJ., concur.

NOTES

[1] Burglary in the first degree is a violent crime as defined by S.C. Code Ann. § 16-1-60 (Supp. 1990).

[2] Petitioner was convicted in 1985 of criminal sexual conduct in the first degree, a violent crime as defined by S.C. Code Ann. § 16-1-60 (Supp. 1990), and was on probation when the events leading to his arrest occurred.

[3] After a prisoner has served one-fourth of his sentence, the Board evaluates the prisoner's record to determine whether the prisoner is eligible for parole. S.C. Code Ann. § 24-21-620 (1989). The Board considers such factors as whether the prisoner has shown a disposition to reform, whether the prisoner will probably obey the law in the future, whether the prisoner merits a lessening of the rigors of confinement, whether parole will impair societal interests, and whether suitable employment has been secured for the prisoner. S.C. Code Ann. § 24-21-640 (Supp. 1990).

308 S.C. 143 (1992)

417 S.E.2d 543

Darrell E. MURDOCK, Petitioner

v.

STATE of South Carolina, Respondent.

23623

Supreme Court of South Carolina.

Submitted February 19, 1992.

Decided April 6, 1992.

*Asst. Appellate Defender Daniel T. Stacey, of South Carolina Office of Appellate Defense, Columbia, for petitioner.**Atty. Gen. T. Travis Medlock, Chief Deputy Atty. Gen. Donald J. Zelenka, and Staff Atty. Lisa G. Jefferson, Columbia, for respondent.*

Submitted Feb. 19, 1992.

Decided April 6, 1992.

CHANDLER, Justice:

- 144 *144 Petitioner Darrell E. Murdock (Murdock) pled guilty to possession of counterfeit LSD with intent to distribute and was sentenced to fifteen years. We vacate the plea and remand.

Murdock was originally indicted for possession with intent to distribute LSD pursuant to S.C. Code Ann. § 44-53-370(b) (1) (Supp. 1990). At the guilty plea proceeding, the indictment was amended to charge Murdock with possession of counterfeit LSD with intent to distribute pursuant to S.C. Code Ann. § 44-53-370(a)(2) (Supp. 1990). This amended indictment was not presented to the grand jury nor was presentment waived.

Except for certain minor offenses, the Circuit Court does not have jurisdiction to hear a guilty plea unless there has been an indictment, a waiver of indictment, or unless the charge is a lesser included offense of the crime charged in the indictment. *State v. Beachum*, 288 S.C. 325, 342 S.E. (2d) 597 (1986). The test for determining when a crime is a lesser included offense is whether the greater of the two offenses includes all the elements of the lesser offense.

Here, possession of counterfeit LSD with intent to distribute is not a lesser included offense of possession of LSD with intent to distribute. A counterfeit controlled substance is one which, without authorization, bears the label or trademark of a manufacturer other than the person who, in fact, manufactured the drug. S.C. Code Ann. § 44-53-110 (1976). Therefore, possession with intent to distribute a counterfeit substance contains an additional element which possession of the actual drug lacks, to wit, that the drug be counterfeit.

Since there was no indictment for possession with intent to distribute counterfeit LSD, the Circuit Court lacked jurisdiction to accept the plea. Accordingly, we vacate the plea and remand to the trial court for further proceedings.

Vacated and remanded.

HARWELL, C.J., and FINNEY, TOAL and MOORE, JJ., concur.

[Cite as *State v. Matthews*, 2013-Ohio-3482.]

IN THE COURT OF APPEALS
TWELFTH APPELLATE DISTRICT OF OHIO
BUTLER COUNTY

STATE OF OHIO,

Plaintiff-Appellee,

- vs -

SEAN BRYAN MATTHEWS,

Defendant-Appellant.

CASE NO. CA2012-09-175

OPINION
8/12/2013

CRIMINAL APPEAL FROM BUTLER COUNTY COURT OF COMMON PLEAS
Case No. CR2012-04-0614

Michael T. Gmoser, Butler County Prosecuting Attorney, Michael A. Oster, Jr., Government Services Center, 315 High Street, 11th Floor, Hamilton, Ohio 45011, for plaintiff-appellee

Charles M. Conliff, 5145 Pleasant Avenue, Suite 18, P.O. Box 18424, Fairfield, Ohio 45018-0424, for defendant-appellant

M. POWELL, J.

{¶ 1} Defendant-appellant, Sean Bryan Matthews, appeals his convictions in the Butler County Common Pleas Court for criminal child enticement, gross sexual imposition, and public indecency. For the reasons stated below, we affirm the convictions.

{¶ 2} On April 26, 2012, appellant was indicted on one count of criminal child enticement in violation of R.C. 2905.05 as to N.F., an 11-year-old boy (Count One), one

count of criminal child enticement in violation of R.C. 2905.05 as to W.B., a 13-year-old boy (Count Two), one count of criminal child enticement in violation of R.C. 2905.05 as to T.W., an eight-year-old boy (Count Three), one count of criminal child enticement in violation of R.C. 2905.05 as to N.W., a 10-year-old boy (Count Four), one count of gross sexual imposition in violation of R.C. 2907.05(A)(4) as to N.W. (Count Five), and one count of public indecency in violation of R.C. 2907.09(A)(1) as to N.W. (Count Six). The criminal child enticement charges arose out of allegations that, on separate occasions from October 2011 until March 2012, appellant attempted to coax or entice the victims into a vehicle in Hamilton, Butler County, Ohio. The gross sexual imposition and public indecency charges arose out of allegations that appellant touched N.W.'s penis and exposed his penis to N.W.

{¶ 3} In June 2012, appellant moved to suppress statements he made to detectives while under arrest as well as the pretrial photo-identification of appellant by N.W. and W.B. Appellant also sought to sever the six counts of the indictment into three trials. After a hearing held July 18, 2012, the trial court denied all three motions.

{¶ 4} Consequently, on August 3, 2012, appellant entered no contest pleas on all six counts of the indictment. Appellant was found guilty of all counts and sentenced to 180 days for each criminal child enticement conviction, 48 months for the gross sexual imposition conviction, and 30 days for the public indecency conviction, all sentences to be served concurrently with one another.

{¶ 5} From his convictions, appellant appeals, raising three assignments of error.

{¶ 6} Assignment of Error No. 1:

{¶ 7} THE TRIAL COURT ERRED TO THE PREJUDICE OF APPELLANT BY OVERRULING HIS MOTION TO SUPPRESS STATEMENTS MADE DURING A CUSTODIAL INTERROGATION.

{¶ 8} In his first assignment of error, appellant argues the trial court erred by denying

his motion to suppress, thereby admitting statements detectives obtained in violation of appellant's constitutional right against self-incrimination. Essentially, appellant contends that his constitutional rights were violated when he was questioned by detectives without having waived his *Miranda* rights and the trial court deemed these statements admissible. See *Miranda v. Arizona*, 384 U.S. 436, 86 S.Ct. 1602 (1966).

{¶ 9} "An appellate court's review of a motion to suppress presents a mixed question of law and fact." *State v. Gray*, 12th Dist. Butler No. CA2011-09-176, 2012-Ohio-4769, ¶ 15, citing *State v. Burnside*, 100 Ohio St.3d 152, 2003-Ohio-5372, ¶ 8. "When considering a motion to suppress, the trial court assumes the role of trier of fact and is, therefore, in the best position to resolve factual questions and evaluate the credibility of witnesses." *Id.*; *State v. Bird*, 12th Dist. Butler No. CA2002-05-106, 2003-Ohio-2541, ¶ 9; *State v. Mills*, 62 Ohio St.3d 357, 366 (1992). Consequently, an appellate court may not disturb a trial court's ruling on a motion to suppress where it is supported by substantial, credible evidence. *Bird* at ¶ 9; *State v. McNamara*, 124 Ohio App.3d 706, 710 (4th Dist.1997). "Accepting these facts as true, the appellate court must independently determine, without deference to the trial court, whether the trial court's conclusions of law are correct." *Gray* at ¶ 15, citing *Bird* at ¶ 9.

{¶ 10} "It is well-established that before law enforcement officials question a suspect in custody, the suspect must be advised of his *Miranda* rights and make a knowing and intelligent waiver of those rights before any statements obtained during the interrogation will be admissible as evidence." *State v. Hernandez-Martinez*, 12th Dist. Butler No. CA2011-04-068, 2012-Ohio-3754, ¶ 8, citing *State v. Treesh*, 90 Ohio St.3d 460, 470, 2001-Ohio-4. However, "the duty to advise a suspect of constitutional rights pursuant to *Miranda* *** arises only when questioning by law enforcement rises to the level of a custodial interrogation." *In re J.S.*, 12th Dist. Clermont No. CA2011-09-067, 2012-Ohio-3534, citing *In re J.B.*, 12th Dist. Butler No. CA2004-09-226, 2005-Ohio-7029, ¶ 53. *Miranda* defines custodial interrogation

as any "questioning *initiated by law enforcement officers* after a person has been taken into custody or otherwise deprived of his freedom of action in any significant way." (Emphasis added). *Miranda*, 384 U.S. at 444.

{¶ 11} In this case, Detective Paul Davis of the Hamilton Police Department (the "Police Department") spoke with appellant on two separate occasions regarding the allegations against him: once at appellant's residence and again at the Police Department. During the first discussion at appellant's residence, Davis sought to discuss the allegations with appellant's roommate, who owned the vehicle involved in the incidents. During the visit, appellant indicated to Davis that he had not driven the vehicle in several months.

{¶ 12} During the second discussion at the Police Department, appellant was under arrest and being booked for the charges upon which he was subsequently indicted. Davis explained at the suppression hearing that, during this booking process, Davis read appellant his *Miranda* rights, but appellant refused to sign a card waiving those rights. Nonetheless, Davis testified that appellant "continued to talk" and "state[d] that he hadn't done anything." At some point during the booking process, appellant admitted that he had driven his roommate's vehicle on the days that the incidents occurred but denied doing "anything" to the victims. Davis then asked appellant "why he had lied to [Davis] the first time about driving and [appellant] indicated because he was [driving] under suspension[.]"

{¶ 13} The trial court determined, and appellant concedes, that Davis' first conversation with appellant at appellant's residence was not a custodial interrogation subject to *Miranda*. The trial court further found that appellant had been properly Mirandized before the second discussion at the Police Department. However, the trial court suppressed appellant's response to Davis' question of "why did you lie to me" because appellant had not waived his *Miranda* rights. Finally, the trial court determined that appellant's remaining statements made during the booking process, including that he used his roommate's vehicle,

were admissible as the statements were "not in response to an interrogation" and were made after appellant "had been properly Mirandized."

{¶ 14} While the parties argue extensively about whether appellant waived his *Miranda* rights prior to making statements regarding use of his roommate's vehicle, we find that whether appellant waived his *Miranda* rights is immaterial to the case at hand, as all but one statement made by appellant was voluntary and unprovoked by police conduct.

{¶ 15} "The requirements of *Miranda* do not affect the admission of volunteered statements made without police coercion or inducement." *State v. Becherer*, 12th Dist. Warren No. CA99-07-085, 2000 WL 190039, *3 (Feb. 14, 2000), citing *State v. Tucker*, 81 Ohio St.3d 431, 435 (1998). A defendant's voluntary, unprovoked statements to police do not fall within the protections of *Miranda*, even though the defendant was placed under arrest. *Id.*, citing *State v. Williams*, 12th Dist. Butler No. CA92-07-133, 1993 WL 185611, *4 (June 1, 1993); *State v. Jaradat*, 8th Dist. Cuyahoga No. 88290, 2007-Ohio-1971, ¶ 28 ("voluntary, spontaneous statements made without police coercion or inducement do not fall within the protection of *Miranda* even if the defendant was under arrest and in custody").

{¶ 16} In this case, testimony at the suppression hearing revealed that, although appellant refused to sign a waiver of his *Miranda* rights, appellant continued to make statements during the booking process. There is no evidence these statements were provoked by police coercion or inducement or were not otherwise voluntary. The only statement which was elicited by police concerned why appellant had lied to Davis about using the vehicle and this statement was excluded by the trial court.

{¶ 17} Based upon our review of the record, we find that appellant's constitutional rights were not violated by the trial court's denial of the motion to suppress. All but one of the statements in question were voluntary, unprovoked statements made by appellant, and the sole statement actually elicited by police was excluded from evidence.

{¶ 18} Accordingly, appellant's first assignment of error is overruled.

{¶ 19} Assignment of Error No. 2:

{¶ 20} THE TRIAL COURT VIOLATED APPELLANT'S DUE PROCESS RIGHTS BY FINDING THAT THE STATE COMPLIED WITH THE STATUTORY IDENTIFICATION PROCEDURES.

{¶ 21} In his second assignment of error, appellant argues that the trial court erred in denying his motion to suppress evidence of two photo lineups shown to W.B. and N.W., from which he was identified as the perpetrator. Specifically, appellant contends that the photo lineup procedure utilized by the Police Department did not substantially comply with the requirements of R.C. 2933.83 by failing to utilize the "folder system." Therefore, appellant asserts that the identifications of appellant by W.B. and N.W. should have been suppressed. We reject this contention and affirm the trial court's determination that the Police Department complied with R.C. 2933.83 in conducting the photo lineup and in overruling appellant's motion to suppress his identification.¹

{¶ 22} As stated above, an appellate court may not disturb a trial court's ruling on a motion to suppress where it is supported by substantial, credible evidence. *State v. Bird*, 2003-Ohio-2541 at ¶ 9.

{¶ 23} At the July 18, 2012 motions hearing, Detective Donald Taylor recalled conducting two lineups of six photographs—referred to as the "six-pack" photo array—which were separately shown to W.B. and N.W. Taylor testified that he acted as a "blind

1. Before the trial court, appellant sought only the suppression of his identification based upon the photo lineups. Appellant now concedes that suppression is not a remedy for noncompliance with R.C. 2933.83. Therefore, rather than seeking suppression of his identification, appellant now seeks remand of this issue with direction that the trial court permit him to submit evidence of noncompliance with R.C. 2933.83 and instruct the jury that it may consider such noncompliance in determining the reliability of his identification. These were not remedies sought before the trial court and, therefore, are not properly preserved for appeal. Additionally, these remedies were waived by appellant's no contest plea. Our discussion of this matter will be confined to the trial court's ruling on the motion to suppress regarding compliance with R.C. 2933.83.

administrator" during the lineups, meaning that he had not created the photo lineups, was unaware who the suspect was in the case, and did not know whether the suspect was even depicted in one of the six photographs. Taylor additionally testified concerning the "investigative photo array procedure checklist" that he followed in administering the photo lineup. He explained that the checklist "documents the requirements of what you're trying to accomplish with the photo array" and "describes who the assigned investigator is; who the blind administrator is; a statement indicating that the suspect may or may not be included; [and] photos." Taylor testified that, when presenting the photo lineup to each victim, he would read statements verbatim from the checklist and follow all the necessary steps. Taylor then showed the six-pack photo lineup to W.B. and N.W. on separate occasions and both witnesses identified appellant "very quickly" out of the lineup.

{¶ 24} "R.C. 2933.83(B) requires any law enforcement agency or criminal justice entity that conducts live lineups and photo lineups to adopt specific procedures for conducting the lineups," and to comply with minimum requirements outlined in the statute. *State v. Ruff*, 1st Dist. Hamilton No. C-110250, 2012-Ohio-1910, ¶ 5.

{¶ 25} Appellant does not contend that the Police Department failed to satisfy the requirements of R.C. 2933.83(B). In fact, appellant acknowledges that the trial court determined that the six-pack photo array was not unreliable or impermissibly suggestive. Rather, appellant's argument is that the six-pack photo array used in this case was improper under R.C. 2933.83 simply because it was not the folder system detailed in R.C. 2933.83(A)(6). Specifically, appellant contends that R.C. 2933.83 mandates that only the folder system or, at a minimum, a substantially similar system, can be used to identify a perpetrator through a photo lineup and, as the folder system was not used by the Police Department, the case must be reversed.

{¶ 26} We find appellant's argument unpersuasive. After a thorough review of R.C.

2933.83, we can find no indication that the folder system or a substantially similar system *must* be utilized by law enforcement agencies or criminal justice entities in performing a photo lineup. See *State v. Henry*, 6th Dist. Lucas No. L-11-1157, 2012-Ohio-5552, ¶ 41 ("The statute does not require the use of the folder system"). On the contrary, R.C. 2933.83(B) requires only that a law enforcement agency or criminal justice entity "adopt specific procedures for conducting" lineups which meet the minimum requirements outlined in the statute. The statute neither expressly nor impliedly mandates the sole use of the folder system or a substantially similar system. Even R.C. 2933.83(D), which allows a law enforcement agency or criminal justice entity to adopt a different type of lineup procedure so long as it is considered "more effective" by the "scientific community," does not mandate the use of the folder system. Rather, R.C. 2933.83(D) provides that systems utilizing requirements other than those enumerated in R.C. 2933.83(B) may be permissible in conducting live or photo lineups.

{¶ 27} Thus, as the Police Department in this case established a procedure wherein Taylor, a blind administrator, made separate written records for each witness that included the signatures of the witnesses and the identification of appellant, and otherwise complied with R.C. 2933.83(B), we find that the trial court did not err in denying appellant's motion to suppress.

{¶ 28} Even if the Police Department failed to comply with R.C. 2933.83 by not using the folder system or a substantially similar system, the trial court still did not err in denying appellant's motion to suppress, as suppression is not the remedy for a violation of R.C. 2933.83. Although R.C. 2933.83(C)(1) provides that evidence of any failure to comply with the statute "shall be considered by trial courts in adjudicating motions to suppress eyewitness identification resulting from or related to the lineup," the statute "does not provide an independent ground for suppression" and "noncompliance with R.C. 2933.83(B) alone is

insufficient to warrant suppression." See *Ruff*, 2012-Ohio-1910 at ¶ 6-8; *State v. Simpson*, 2d Dist. Montgomery No. 25069, 2013-Ohio-1072 ("the 'penalty' for failure to comply with the statute is not suppression, but the other remedies provided for in the statute"); *State v. Jackson*, 4th Dist. Pickaway No. 11CA20, 2012-Ohio-6276, ¶ 25 ("failure to comply with R.C. 2933.83 does not, by itself, warrant the suppression of evidence"); *State v. Parks*, 7th Dist. Columbiana No. 11 CO 20, 2012-Ohio-3010, ¶ 17 ("the statute does not provide for automatic exclusion of a line-up conducted in a manner different than that provided thereunder"); *State v. Alexander*, 8th Dist. Cuyahoga No. 98941, 2013-Ohio-2533, ¶ 27 ("R.C. 2933.83(C)(1), however, does not provide an independent basis upon which to suppress evidence, and a trial court errs in solely relying on the statute in suppressing an identification"). "Indeed, the 'penalty' for failure to comply with R.C. 2933.83 is not suppression, but that 'the jury shall be instructed that it may consider credible evidence of noncompliance in determining the reliability of any eyewitness identification.'" *State v. Stevenson*, 2d Dist. Montgomery No. 24821, 2012-Ohio-3396, ¶ 16, quoting R.C. 2933.83(C)(3).

{¶ 29} In order to seek suppression of a photo lineup, a defendant must argue that the procedure of the photo lineup did not comply with R.C. 2933.83 *and* that the photo lineup was a violation of his constitutional rights. *Ruff* at ¶ 8 (noting that the defendant expressly declined to argue that the photo lineups were impermissibly suggestive under the Fourteenth Amendment). In the case at hand, appellant does not raise a constitutional issue, stating that constitutional considerations "are not at issue here." Rather, appellant solely asserts that the statutory requirements of R.C. 2933.83 are not satisfied by the six-pack photo array system and, therefore, the identifications of appellant by W.B. and N.W. should have been suppressed.

{¶ 30} For the foregoing reasons, we find that the trial court did not err in denying appellant's motion to suppress.

{¶ 31} Accordingly, appellant's second assignment of error is overruled.

{¶ 32} Assignment of Error No. 3:

{¶ 33} APPELLANT'S RIGHT TO A FAIR TRIAL WAS VIOLATED BY THE MISJOINDER OF UNRELATED CRIMINAL OFFENSES.

{¶ 34} In his third assignment of error, appellant argues that the trial court committed plain error by permitting the joinder of unrelated offenses. Specifically, appellant argues that the trial court should have granted his motion to sever the six counts into three trials: one trial on Count One, one trial on Count Two, and one trial on Counts Three through Six. Appellant contends that a consolidated trial on all six counts would have resulted in the admission of "other acts" evidence that would be inadmissible in separate trials and that the jury would hear "inflammatory" testimony regarding T.W. and N.W. that would adversely affect the charges relating to N.F. and W.B. Thus, appellant claims that he was prejudiced by the trial court's decision denying his request for severance.

{¶ 35} "The decision to grant or deny a motion to sever is a matter in the trial court's discretion, and therefore, we review the trial court's decision under an abuse of discretion standard." *State v. Rose*, 12th Dist. Butler No. CA2011-11-214, 2012-Ohio-5607, ¶ 11, citing *State v. Moshos*, 12th Dist. Clinton No. CA2009-06-008, 2010-Ohio-735, ¶ 76. "An abuse of discretion implies that the trial court's decision was unreasonable, arbitrary, or unconscionable." *Id.*, citing *State v. Hancock*, 108 Ohio St.3d 57, 2006-Ohio-160, ¶ 130.

{¶ 36} "The law favors joining multiple offenses in a single trial under Crim.R. 8(A) if the offenses charged 'are of the same or similar character.'" *Id.* at ¶ 12, quoting *State v. Lott*, 51 Ohio St.3d 160, 163 (1990); *State v. Torres*, 66 Ohio St.2d 340 (1981). "However, a defendant is allowed, under Crim.R. 14, to move to sever offenses that have otherwise been properly joined where it appears that joinder would be prejudicial." *Id.*, citing *State v. Schaim*, 65 Ohio St.3d 51, 58 (1992).

{¶ 37} To prevail on a claim that the trial court erred in denying a motion to sever, the appellant must affirmatively demonstrate that "(1) his rights were prejudiced, (2) he provided the trial court with sufficient information enabling it to weigh the consideration favoring joinder against the defendant's right to a fair trial, and (3) the trial court abused its discretion in refusing to separate the charges for trial." *Schaim* at 59; *Rose* at ¶ 13.

{¶ 38} "The state may negate a claim of prejudice in one of two ways." *Rose* at ¶ 14. "The first is through the 'other acts' test, where the 'state must demonstrate it could have introduced evidence of the joined offenses at separate trials, pursuant to the 'other acts' provision of Evid.R. 404(B).'" *Id.*, citing *Lott* at 163. "Alternatively, under the 'joinder test' the state can refute a claim of prejudice by showing 'that evidence of each crime joined at trial is simple and direct.'" *Id.*, citing *Moshos* at ¶ 79. If the state can establish that the evidence is "simple and direct," then there is no need to meet the more strict "other acts" test. *Id.*, citing *State v. Hensley*, 12th Dist. Warren No. CA2009-11-156, 2010-Ohio-3822, ¶ 40. In other words, a demonstration by the state "that the evidence relating to each crime is simple and direct negates any claims of prejudice and renders joinder proper." *Moshos* at ¶ 80.

{¶ 39} In this case, the trial court determined that the evidence relative to each count of the indictment is simple and direct and that appellant failed to meet his burden of demonstrating that joinder of these counts is prejudicial. We find no abuse of discretion in the trial court's determination.

{¶ 40} "Ohio appellate courts have upheld joinder in sex abuse cases involving multiple child victims where the evidence as to each offense is separate, uncomplicated and sufficient to support a conviction without necessitating the use of evidence relating to other offenses." *State v. Ashcraft*, 12th Dist. Butler No. CA2008-12-305, 2009-Ohio-5281, ¶ 19, citing *State v. Eads*, 8th Dist. Cuyahoga No. 87636, 2007-Ohio-539, ¶ 50-53; *State v. Campbell*, 11th Dist. Lake No. 2004-L-126, 2005-Ohio-6147, *5-6 (reversed on other

grounds); *State v. Owens*, 2d Dist. Montgomery No. 17394, 2000 WL 217219, *10-11 (Feb. 25, 2000); *State v. Strobel*, 51 Ohio App.3d 31, 32-33 (3d Dist.1988).

{¶ 41} At the July 18, 2012 motions hearing, the trial court heard evidence that the charges alleged in this case involved four different victims, occurred at different times, and occurred in different places. Although appellant drove the same vehicle during each offense, he approached different victims at different locations. In addition, there is no indication in the record that appellant would have defended the charges differently had they been tried separately as opposed to jointly. See *Ashcraft* at ¶ 25; *State v. Franklin*, 62 Ohio St.3d 118, 123 (1991).

{¶ 42} Based upon the foregoing, and after a thorough review of the record, we find the trial court did not err in denying appellant's request for severance where the evidence concerning each offense was separate and distinct, and simple and direct. See *Ashcraft* at ¶ 27. Because our analysis as to this issue is determinative, we need not address the issue of whether evidence of each offense would have been admissible at separate trials pursuant to Evid.R. 404(B). See *Lott*, 51 Ohio St.3d at 163.

{¶ 43} Accordingly, appellant's third and final assignment of error is overruled.

{¶ 44} Judgment affirmed.

RINGLAND, P.J., and PIPER, J., concur.

250 Ga. 209 (1982)
296 S.E.2d 710

DOVER
v.
THE STATE.

38923.

Supreme Court of Georgia.

Decided November 2, 1982.

Rehearing Denied November 16, 1982.

Cook & Palmour, Bobby Lee Cook, Vaughan & Tilley, David N. Vaughan, Jr., Velma C. Tilley, for appellant.

Darrell E. Wilson, District Attorney, Mickey R. Thacker, Assistant District Attorney, Michael J. Bowers, Attorney General, Victoria H. Soto, Staff Assistant Attorney General, for appellee.

WELTNER, Justice.

Larry Dover was convicted by jury of murdering his estranged wife, Linda Dover, by stabbing her, and sentenced to life imprisonment.

Linda Dover's mother, Mamie Jo Rowland, testified that Linda had been married to Dover for approximately ten years, and had separated from him on prior occasions, the last being on December 15, 1980. On that night, Linda had fled to her mother's house, distraught, dressed in a nightgown and housecoat. For the next ten days, Linda and her eight-year-old son, Todd, remained at the homes of her mother or her sister.

Mrs. Rowland further testified that on December 26, 1980, Linda went to the marital home and telephoned her mother from there at about 6:45 p. m., saying she would come by her mother's house in a few minutes. Linda failed to appear. Mrs. Rowland called the police late that night, met the police at the Dovers' house, unlocked the door with her key, talked to Dover and Todd, and searched through the house, looking under a bed and in a closet without finding Linda.

The next morning, December 27, Mrs. Rowland and several of her relatives arrived at the Dovers' house. Linda's brother saw blood spots on the back patio and found Linda's body in the crawl space beneath the house, wrapped in a bedspread. She had been stabbed six times.

That morning Lt. Detective Abernathy from the Cartersville Police Department was called to the Dovers' house, where he met two other officers. Mrs. Rowland stated in court that she instructed her son to give Detective Abernathy her key to the Dovers' house, and that she was particularly concerned about locating young Todd.

Mrs. Rowland testified that Dover had given her a key to the house after it was built, some eight months before the murder; that she entered the house whenever she wished, day or night; that the Dovers often entered her house at their pleasure; and that she had taken her friends to the Dovers' house when the Dovers were not at *210 home.

Detective Abernathy testified that he found no one in the house when he entered; that he saw a single bed in the rear bedroom covered only by a blanket; and that he cut out the section of the mattress with a bloodstain. He saw Linda's automobile parked in the carport. Dover's truck was missing.

Detective Abernathy left the house around noon, instructing another officer to secure the crime scene. About 4:00 p. m. he returned with investigators from the state crime laboratory, entered the house without a warrant, searched the house thoroughly, and seized a number of items which were later introduced at trial.

That evening an arrest warrant was issued for Dover, and he turned himself in to the police the following day. His truck was recovered in a secluded area of Paulding County.

The child, Todd, testified that after eating supper with his mother and father on December 26, he and his father drove down the road to deliver a present; that his father realized that he did not have the present with him, and returned to the driveway; that his father stepped into the house and left him waiting for a long time; that he tired of waiting and knocked on the locked door of the house, but could not enter; that his father came back to the truck and took him to visit several relatives; that his mother was not in the house when they returned that night; and that early the next day, his father drove him to his paternal grandmother's house.

A forensic serologist stated at the trial that the blood samples from Linda Dover belonged to International Blood Group A, as did blood on a mattress and a pillow from the Dovers' house. That blood of human origin was found on the patio and on the bedroom curtain; and that blood of indeterminate origin was found on gloves and lint material recovered from the dryer in the Dovers' house, from scrapings from the sink and bathtub, and from inside the pocket of trousers worn by Dover when he was taken into custody.

Linda's sister stated that she went to the Dovers' home on November 16, 1980, after Linda had telephoned her crying; that she assisted Linda moving out of the house; and that she heard Dover curse Linda and threaten to kill her.

A friend of Linda's testified that she had seen Dover argue with Linda and knock her to the floor. Other witnesses were permitted to testify over objection that Linda had recounted to them that Dover had abused her sexually, and attempted to choke and smother her.

211 Dover testified that after supper on December 26, he left the house with Todd to deliver a present; that he drove back home and walked into the house with Todd after he discovered he did not have the gift; that he picked up the present and immediately left to visit his *211 relatives; that Linda was not in the house when he returned that night; and that he did not worry about her, because she often did not spend the night there. He explained that early the following morning, he left Todd at his mother's house; that he checked into a hotel under a fictitious name, because he planned to meet an unnamed woman there; that while driving around town he saw his brother, who told him that the police were looking for him; that he hid his truck on the advice of his brother; and that he had no knowledge of the circumstances of Linda's death. He agreed with Mrs. Rowland, that he had given her the key, and that "[s]he was welcome to [his] house anytime she wanted to come."

1. Dover does not dispute that the police may make a prompt warrantless search of the scene of a homicide to see if there are other victims, or to take other emergency action. Mincey v. Arizona, 437 U. S. 385 (98 SC 2408, 57 LE2d 290) (1978); Gilreath v. State, 247 Ga. 814 (279 SE2d 650) (1981). However, he argues that during such searches, only evidence discovered in plain view may be seized. He contends that Mrs. Rowland lacked authority to consent to a further search of the premises.

Dover admitted in court that he had given the house key to his mother-in-law, and that she was welcome in his house at any time. No evidence was presented to contradict Mrs. Rowland's assertion that she enjoyed unrestricted access to the house.

The placing of a house key in the hands of one outside the household is not an unrestricted authorization to enter at will, but must be viewed in the light of common practice. It includes the authority of the holder of the key to enter the dwelling, in the absence of the householders, when circumstances reasonably indicate that such entry might be necessary in the interest of the householders, or of safeguarding the dwelling.

The discovery of the dead body of the daughter, and the unaccounted for absence of the young grandson, are undeniably within the ambit of such an authorization. Under these circumstances, Mrs. Rowland's authority properly could be delegated to the police. See United States v. Matlock, 415 U. S. 164 (94 SC 988, 39 LE2d 242) (1974); State v. Kellam, 48 N. C. App. 391 (269 SE2d 197) (1980). The trial court did not err in denying the motion to suppress.

2. Dover contends that the State refused to allow his attorneys to interview Todd in private. The trial court denied Dover's motion relative to this interview, apparently finding that the State was not hindering access to the witness. The record shows that the child's guardian, Mrs. Rowland, decided not to submit Todd to an interview without the State also being present. A witness may refuse to be interviewed prior to trial, Rutledge v. State, 245 Ga. 768, 770 (2) (267 SE2d 199) (1980); and when the witness is a child, the child's guardian may make this decision.

3. Dover contends that his right to a fair trial and effective assistance of counsel were denied by an order of the Cartersville Police Department barring police from discussing with attorneys any case under investigation. The district attorney labeled this order an "administrative blunder." Although this type of ban might potentially violate a defendant's constitutional rights, Dover has failed to show that he was harmed by the order. This enumeration of error is without merit.

4. The State called Dover's mother as a witness. Claiming surprise at one of her answers, the prosecution sought to impeach the witness based on her prior statement to the police. Defense counsel moved for production of the statement, and the court took the motion under advisement. Dover failed to invoke a ruling of the court as to this motion, and thus waived the issue for the purposes of appeal. See Timberlake v. State, 246 Ga. 488 (3) (271 SE2d 792) (1980).

5. Dover asserts that the court improperly admitted the hearsay declarations of Dover's prior abuses of Linda.

Linda's sister testified that she heard Larry threaten to kill Linda. This testimony is not hearsay, as it is not an out-of-court statement offered to prove the truth of the matter asserted. See Momon v. State, 249 Ga. 865 (294 SE2d 482) (1982). The sister witnessed the incident itself, which was properly admitted to show Dover's state of mind and motive. See Nicholson v. State, 249 Ga. 775 (294 SE2d 485) (1982).

In Momon v. State, supra, at pp. 2-4, we clarified Code Ann. § 38-302, regarding the admissibility of evidence to explain conduct: "Code § 38-302 provides: 'When, in a legal investigation, information, conversations, letters and replies, and similar evidence are facts to explain conduct and ascertain motives, they shall be admitted in evidence, not as hearsay, but as original evidence.'..."

"To prevent an overly broad interpretation of Code § 38-302, we adopt the following: When, in a legal investigation, the conduct and motives of the actor are matters concerning which the truth must be found (i.e., are relevant to the issues on trial), then information, conversations, letters and replies, and similar evidence known to the actor are admissible to explain the actor's conduct. Green, Ga. Law of Evidence, § 300 (1957); Brewer v. Henson, 96 Ga. App. 501, 502 (100 SE2d 661) (1957). But where the conduct and motives of the actor are not matters concerning which the truth must be found (i.e., are irrelevant to the issues on trial) then the information, etc., on which he or she acted shall not be admissible under Code § 38-302."

*213 Several witnesses testified that Linda told them that she moved out of her house, contacted an attorney about divorce proceedings, or took other actions, because of her husband's violence and threats. Here, however, Linda's conduct was not at issue, and her declarations regarding Dover's actions are not admissible to explain *his* conduct. Momon v. State, supra.

Although the hearsay declarations of Linda were improperly admitted, this evidence was cumulative. Direct testimony was offered by her sister as to Dover's violence and threats toward Linda. Furthermore, Mrs. Rowland testified about Linda's frantic flight to her house in the middle of the night, from which abuse could be inferred circumstantially.

We find that the evidence properly admitted is overwhelming as to Dover's guilt, and that the error in allowing the hearsay is harmless beyond a reasonable doubt. Harrington v. California, 395 U. S. 250 (89 SC 1726, 23 LE2d 284) (1969). Accordingly, we need not address the issue of whether Dover's Sixth Amendment right to confront witnesses was violated.

6. Dover's assignment of error to the admissibility of the photographs is without merit.

Judgment affirmed. All the Justices concur, except Marshall, P. J., who concurs in the judgment only, and Bell, J., not participating.

STATE OF SOUTH CAROLINA)

COUNTY OF SPARTANBURG)

Delonte Carroll, #347422,)

Applicant,)

v.)

State of South Carolina,)

Respondent.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRCUIT

2012-CP-42-3628

ORDER OF DISMISSAL

This matter comes before the Court by way of an Application for Post-Conviction Relief ("PCR") filed August 27, 2012. The Respondent made its Return on or about August 19, 2013. An evidentiary hearing into the matter was convened on November 15, 2013, at the Spartanburg County Courthouse. The Applicant was present at the hearing and was represented by Lauren W. Barnwell, 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 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, and the plea transcript.

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. He was indicted at the July 2010 term of the Spartanburg County Grand Jury for assault with intent to kill (2010-GS-42-4266), and two charges of armed robbery and possession of weapon during commission

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M. HOE BLACKLEY

of a violent crime (2010-GS-42-4267, and -4268, counts one and two) . The Applicant was represented by Robert B. Hall, Esquire. On August 22, 2011, the Applicant pled guilty before the Honorable J. Derham Cole and was sentenced to confinement for twenty years for armed robbery¹.

Applicant appealed his conviction and sentence, but the South Carolina Court of Appeals dismissed the appeal for a failure to demonstrate any issues raised and ruled upon by the plea judge. The Remittitur was issued on December 1, 2011.

ALLEGATIONS

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to investigate;
 - b. Counsel failed to communicate and properly advise;
 - c. Counsel failed to request Applicant's mental health records to establish mental incompetency.

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,

¹ Indictment 2010-GS-42-4267, count two of 2010-GS-42-4268, and the charge of assault with intent to kill were *nolle prossed* pursuant to Applicant's plea agreement.

"[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), SCRCF). 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).

At this hearing, Applicant testified that he met with Counsel twice. Applicant testified that their first meeting lasted only five to seven minutes and their second meeting was right before trial was scheduled. Applicant testified that he was never given a preliminary hearing.

Applicant testified that he never had an opportunity to review any discovery materials. However, he testified that he did see the forensic report and knew that no gunshot residue was found on his hands. Applicant testified that he never saw the indictment and never understood why he was being charged with armed robbery since the victim said that his co-defendant, Ms. White, had the gun. Applicant testified that Counsel told him the State offered to let Applicant plead to armed robbery with no recommendation. However, Applicant testified that he believed the plea was to a robbery charge, not armed robbery. Applicant testified that Counsel informed him that if they went to trial, Applicant would be found guilty on all charges. Applicant testified that he told Counsel of a prior car accident and mental health issues to look into. Applicant also testified that he asked Counsel to file a direct appeal based upon the fact that Applicant had no gun and no awareness that Ms. White had a gun.

Counsel testified that he was unsure of the date of his first meeting with the Applicant, but believes they met before a bond reduction hearing. Counsel testified that Applicant did not have a preliminary hearing and had been indicted within a month of his arrest. Counsel testified that his notes indicate he met with Applicant on August 10, 2010, and discussed issues regarding the gunshot residue, videotape evidence, and issues with lineups. Counsel testified that he then has notes indicating that he went to visit Applicant in November 2010, at which time he took discovery materials and reviewed them with Applicant. Counsel testified that he discussed the options of trial versus plea with Applicant and reviewed the charge of armed robbery with Applicant. At the time, Counsel testified that there were no offers. Counsel testified that the case was set for trial sometime in July or August 2011. Counsel testified that he met with Applicant on August 5, 2011, at which time they reviewed discovery materials again, including the fact that both of the victims stated that his co-defendant had the gun. Counsel testified that

he explained the concept of "hands of one, hands of all" with Applicant. Once the case was set for trial, Counsel testified that he approached the State again to see if they had an offer and even approached them with an offer to plead to purse snatching. Counsel testified that the case was going to be a trial until the State made their offer in mid-August 2011. Counsel testified that he discussed the issue of whether the court or jury would believe that Applicant did not know there was a gun at the time of the robbery. Further, Counsel testified that he explained the difference between a common law robbery and armed robbery to Applicant.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant. First, this Court finds that Applicant's allegation that Counsel did not meet with him enough or review discovery materials with him is not credible. After reviewing the transcript of the hearing, this Court finds it clear that Counsel had reviewed and explained the facts and evidence, as well as the options that Applicant had in terms of how the Applicant wanted continue. This Court notes that the Applicant did have options other than pleading guilty, but this Court also recognizes that none of the other options were likely satisfactory in the eyes of the applicant. Therefore, this court finds that, "[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 spent more time with

Applicant or conducted any additional investigation. Furthermore, the Applicant failed to show any prejudice that may have resulted from Counsel's alleged inadequate preparation. Accordingly, this allegation is dismissed.

This Court also finds that the Applicant failed to meet his burden of proof of establishing that Counsel should have investigated his mental status. This Court finds that there was no evidence of mental health issues or incompetency presented during Applicant's testimony and responses to questions during the hearing indicates that he had no issues understanding what was happening at the plea or PCR hearing. Therefore, this claim is dismissed.

Applicant alleged that Counsel provided incorrect advice as to the charge Applicant was pleading guilty to. 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 alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill at 59. Not only did the Applicant fail to establish how Counsel offered incorrect advice, but the Applicant has failed to establish that he would have proceeded to trial, but for, these alleged deficiencies of Counsel. This Court finds that Counsel provided sound advice to Applicant, in particular as it relates to the law of "hands of one, hands of all," and the fact that the Applicant did not have a reasonable defense. Therefore, this claim is denied and dismissed.

Summary

This Court finds in regards to the allegation of ineffective assistance of counsel, the Applicant's testimony is not credible. This Court further finds Counsel adequately conferred

with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier supra. Therefore, this allegation is denied.

CONCLUSION

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), SCRCR, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal

IT IS THEREFORE ORDERED:

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

AND IT IS SO ORDERED this 5 day of March, 2014.



Robin B. Stilwell
Presiding Judge

FILED
CLERK OF COURT
SPARTANBURG DISTRICT
2014 MAR -6 PM 3:10
M. HOPE BLACKLEY

WITNESSES

Spartanburg Public Safety Department

1. SENTENCE MADE

2. REPORT ENDED

3. CARD PULLED

4. INDEXED

5. CHECKED WARRANTS

6. CHECKED SIGNATURE

ARREST WARRANT COMPLETED
FINE CARD MADE

M121040 & OAGRE ORATION COPY
Direct Indictment - Count Two

ACTION OF GRAND JURY

VERDICT

Foreperson of Grand Jury
Date: 7/23/10

Foreperson of Petit Jury
Date:

DOCKET NO.

10-GS-42-426810

The State of South Carolina

County of Spartanburg

Trey Gowdy, Solicitor

COURT OF GENERAL SESSIONS

JUL 26 2010

TERM

THE STATE
vs.

DELONTE BERNARD CARROLL

FILED
CLERK OF COURT
SPARTANBURG COUNTY

2010 JUL 27 PM 3:45

M. HOPE BLACKLEY

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

STATE OF SOUTH CAROLINA)
)
COUNTY OF SPARTANBURG)

INDICTMENT

At a Court of General Sessions, convened on III 22 2010, the Grand Jurors of Spartanburg County present upon their oath:

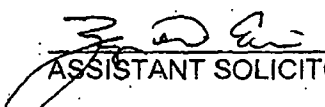
COUNT ONE - ARMED ROBBERY

That Delonte Bernard Carroll did in Spartanburg County on or about May 27, 2010, while armed with a deadly weapon, or while alleging either by action or words he was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take property and/or currency from the person or presence of Jasmine Pearson, to wit: a purse and/or a cell phone and/or jewelry and/or keys and/or a sum of currency, by means of force, violence, and/or intimidation with the intent to deprive her 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 Delonte Bernard Carroll did in Spartanburg County on or about May 27, 2010 possess or visibly display a firearm or what appeared to be a firearm during the commission of a violent crime, to wit: ARMED ROBBERY, in violation of Code § 16-23-490, *THE CODE OF LAWS OF SOUTH CAROLINA*, (1976), as amended.

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



ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

133

COUNTY OF SPARTANBURG

STATE VS.

Delonte Bernard Carroll

AKA:

Race: BLACK Sex: M Age: 28

DOB: SS#:

Address:

City, State, Zip: Seaford, Delaware 20743

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Armed Robbery (10 - 30 years)

INDICTMENT/CASE#: 2010GS4204268

A/W#: M121040

Date of Offense: 5/27/2010

S.C. Code § 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

ELLIS, ZACHARY D

71919 SC Bar#

Defendant

Attorney for Defendant

2596 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 20 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$ provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5%)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114(BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/cn	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther: ☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (03/2011)

Presiding Judge

Judge Code: Sentence Date: 8/22/11

2053