

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

NOV 17 2014

APPEAL FROM CHESTET COUNTY
Court of Common Pleas

S.C. Supreme Court

The Honorable Ernest J. Kinard, Circuit Court Judge

Lower Court Case No. 2013-CP-12-0523
Appellate Case No. 2013-0002465

William David Dove,

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

Tristan Shaffer
4701 Oleander Drive
Myrtle Beach, South Carolina 29577
(843) 916-9300
Attorney for Petitioner

Croom Hunter
Assistant Attorney General
P.O. Box 11549
Columbia, SC 29211
(803) 734-3737
Attorney for Respondent

INDEX

Index.....	i
Plea Transcript.....	1
Indictments.....	70
Notice of Appeal.....	86
Final <u>Anders</u> Brief.....	87
Opinion of the Court of Appeals	100
Remittitur.....	102
Application for Post-Conviction Relief.....	103
Return.....	108
PCR Hearing Transcript.....	115
Order of Dismissal.....	181

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COURT OF GENERAL SESSIONS
COUNTY OF CHESTER
2010-GS-12-204 AND OTHERS

STATE OF SOUTH CAROLINA
VS.
WILLIAM DAVID DOVE

CHESTER, SOUTH CAROLINA
FEBRUARY 10, 2011
BEFORE THE HONORABLE WILLIAM JEFFREY YOUNG

APPEARANCES
FOR THE STATE: CHRIS TAYLOR
FOR THE DEFENDANT: TYREE LEE
REPORTED BY: MICHAEL C. WATKINS
OFFICIAL COURT REPORTER

1	VOIR DIRE:	3
2	JACKSON V. DENNO:	15
3	GUILTY PLEAS:	35
4	CERTIFICATE:	69

5

6

7

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

VOIR DIRE

1 THE COURT: Solicitor, are we ready to proceed?

2 MR. TAYLOR: Yes, sir, Your Honor.

3 THE COURT: All right.

4 MR. TAYLOR: Your Honor, State calls the case of David
5 William Dove, 20009-GS-12-205 and 206 indictments, he is
6 represented by Mr. Tyree Lee.

7 THE COURT: Thank you. Does the State have a list of
8 witnesses, and Mr. Lee, do you have a list of witnesses?

9 MR. LEE: Yes, sir, Your Honor.

10 THE COURT: All right. Ladies and gentlemen, we are
11 about the to start the trial of the State versus David
12 William Dove. I'll need to put you under oath again.
13 Madam Clerk, would you please swear the jury?

14 (At this time the jury panel was sworn.)

15 THE COURT: Now, ladies and gentlemen, again as I told
16 you the other day the reason that you are under oath as I
17 ask you these questions is because this is such a crucial
18 stage of the trial, and just like a building must have a
19 firm foundation to protect those who live in it, the jury
20 is the firm foundation on which this trial will be
21 conducted and it is important that you answer these
22 questions truthfully and honestly. Now, ladies and
23 gentlemen, the indictments in this case read first,
24 burglary in the first degree, it says that David William
25 Dove did in Chester County on or about January 12, 2010

VOIR DIRE

1 enter the dwelling of Larry Dewayne Kearse without consent
2 and with the intent to commit a crime in the dwelling; to
3 wit, entering a dwelling at nighttime, and/or the defendant
4 entered the dwelling and had two prior convictions of
5 burglary, or -- and the second indictment is that David
6 William Dove did in Chester County on or about January 12th
7 of 2010 take and carry away the personal property, to wit,
8 a purse and cash value totaling \$1,000 or more of Margie
9 Kearse with the intent to the deprive the owner of
10 possession of the property and to convert the property to
11 the use of the defendant's, and the value of the property
12 being more than \$1,000 but less than \$5,000. Now, ladies
13 and gentlemen, the first question I have, is anyone on the
14 jury panel related by blood or marriage or have a business
15 or social relationship with the defendant, David William
16 Dove who is sitting at the table with Mr. Tyree Lee? If
17 so, please stand. Yes, sir, state your name -- ma'am,
18 sorry, I don't have my glasses on.

19 THE JUROR: He's my nephew.

20 THE COURT: He is your nephew. And I would imagine
21 the fact that he -- and state your name, ma'am?

22 THE JUROR: Mary McMahan.

23 THE COURT: I would imagine the fact that he would be
24 your nephew would make it so that you probably couldn't be
25 fair and impartial to the State or to the defendant, could

1 you?

2 THE JUROR: That's true.

3 THE COURT: Thank you, ma'am, I will excuse you for
4 cause of this trial. Okay. Is anyone --

5 THE JUROR: Yeah, I grew up with David.

6 THE COURT: Name and number, please?

7 THE JUROR: Lori Messer, 101. And I grew up with
8 David and one of the places he was accused of going into is
9 a cousin of mine.

10 THE COURT: So you don't think you could be fair and
11 impartial?

12 THE JUROR: No, sir.

13 THE COURT: Thank you, ma'am, just remain here. Yes,
14 sir, in the back?

15 THE JUROR: Lannie Bigham, number eight. I grew up
16 around David, too.

17 THE COURT: And do you not think you could be fair and
18 impartial in this case?

19 THE JUROR: No.

20 THE COURT: Thank you, sir. The alleged victims in
21 this case are Margie Kearse and Larry Dewayne Kearse. Is
22 any member of the jury panel related by blood or marriage
23 or have a social or business relationship with either of
24 these people? Please stand at this time. Thank you, no
25 one is standing. Ladies and gentlemen, this is a list of

VOIR DIRE

1 possible witnesses in this case. Of course, we have
2 Mr. Larry Kearse, Brian Sanders, Michael Young, Kelly
3 Crock?

4 MR. TAYLOR: Yes.

5 THE COURT: Kelly Crock. Nancy Kutno, and the
6 Honorable Sue Carpenter. We have Jackie Pressler, Reid
7 Clark, Judy Dove, David Dove, and Pauline Farrell.

8 MR. LEE: It's Farrell, Your Honor, and the other name
9 was Clack.

10 THE COURT: Clack. Is anyone related by blood or
11 marriage or have such a close personal or business
12 relationship that they couldn't be fair and impartial to
13 the State or defense in this case? If so, please stand.
14 Now, ladies and gentlemen, the attorneys who are trying
15 this case are Mr. Christopher Taylor for the solicitor's
16 office and Mr. Tyree Lee with the public defender's office.
17 Is any member of the jury panel related by blood or
18 marriage or ever been represented by either of these
19 attorneys in this case? If so, please stand. Thank you.
20 Has any member of the jury panel formed or expressed an
21 opinion about any issue or matter involved in this case?
22 If so, please stand. Thank you. Is there any member of
23 the jury panel that was a member of the grand jury which
24 issued the indictments? If so, please stand. Is there any
25 member of the jury panel who is a member of or contributor

1 to any group which has as its primary concern the promotion
2 of law enforcement or victims' rights? Such groups would
3 be Mothers Against Drunk Drivers, Students Against Drunk
4 Drivers or Citizens Against Violent Crime? Of course,
5 those would not be the exclusive groups but any other group
6 such as that? If so, please stand. Does any member of the
7 jury panel know of any reason whatsoever why he or she
8 should not serve as a juror in this case with particular
9 emphasis being placed on your ability to be fair and
10 impartial to both the State and the defendant? If so,
11 please stand. Does the State have any additional questions
12 they would like for me to ask?

13 MR. TAYLOR: No, Your Honor.

14 THE COURT: Does the defense have any additional
15 questions?

16 MR. LEE: Your Honor, we would ask if the Court would
17 inquire if any member of jury panel has been the victim of
18 what we might call a burglary, house breaking, store
19 breaking, anything of that nature.

20 THE COURT: Has any member of the jury panel been the
21 victim of a home break-in or store break-in? If so, please
22 stand. Yes, sir, in the front, state your name and number.

23 THE JUROR: 106, Ira Morrison, we did have someone
24 break --

25 THE COURT: Why don't you come up here and tell me

VOIR DIRE

1 about it.

2 (Conference with the juror.)

3 THE COURT: Yes, sir, state your name and number
4 please.

5 THE JUROR: Ira Morrison, 106. We did have somebody
6 come into our house about a year and a half ago, broke in
7 the house on an October night and then the following month
8 somebody came back and --

9 THE COURT: Would the fact that happened, would that
10 make it so you couldn't be fair and impartial to the State
11 and the defense?

12 THE JUROR: I don't believe so, it won't make me feel
13 impartial.

14 THE COURT: Thank you, sir. Next lady? State your
15 name and juror number.

16 THE JUROR: Juror number 84, and I have been robbed
17 twice, they are both on record with the Chester County
18 Police and State Detectives.

19 THE COURT: The fact that you have been robbed in
20 those situations, would it make it so you couldn't be fair
21 and impartial to the State and the defense in this case?

22 THE JUROR: I can't say that.

23 THE COURT: Any objection to her being struck for
24 cause?

25 MR. LEE: No, Your Honor.

VOIR DIRE

1 THE COURT: You are dismissed for cause, take a seat.

2 Yes, ma'am, state your name and number, please.

3 THE JUROR: Lisa Walker, 137. I was victim of a
4 robbery, it has been I think ten years ago but it was at
5 gun point.

6 THE COURT: Would the fact that you were a victim of
7 an armed robbery 19 years ago make it so you couldn't be
8 fair and impartial to the State or the defense in this
9 case?

10 THE JUROR: No.

11 THE COURT: You can't be?

12 THE JUROR: I cannot be.

13 THE COURT: No. All right. Strike her for cause
14 then. Thank you, go ahead and have a seat. Thank you,
15 ladies and gentlemen. All right, ladies and gentlemen, as
16 I said before they will -- your name will be called, when
17 your name is called come up with all of your personal
18 items, face towards the back of the room, the State will
19 then have an opportunity to strike you and the defendant
20 will also have an opportunity to strike you. Please do not
21 take it personally if you are stricken from the jury, each
22 of these attorneys have an idea of what they want the jury
23 to look like, they can strike you for any reason or no
24 reason, but they can't strike you for your race or your
25 gender. Is the State ready to proceed?

VOIR DIRE

1 MR. TAYLOR: Yes, Your Honor.

2 THE COURT: Is the defense ready?

3 MR. LEE: Yes, sir, Your Honor.

4 THE COURT: Let me see you up at the bench.

5 (A bench conference was held.)

6 THE CLERK: Juror number 133, Rebecca G. Terry. What
7 says the State?

8 MR. TAYLOR: Please present Ms. Terry.

9 THE COURT: What says the defendant?

10 MR. LEE: Please swear the juror.

11 THE CLERK: Juror number 81, Sandra K. Jensen. What
12 says the State?

13 MR. TAYLOR: Please present Ms. Jensen.

14 THE CLERK: What says the defendant?

15 MR. LEE: Swear Ms. Jensen, please.

16 THE CLERK: Juror 66, Gregory A. Hawkins. What says
17 the State?

18 MR. TAYLOR: Please present Mr. Hawkins.

19 THE CLERK: What says the defendant?

20 MR. LEE: Excuse the juror in this case.

21 THE CLERK: Number 16, Janisha Boulware. What says
22 the State?

23 MR. TAYLOR: Please present Ms. Boulware.

24 THE CLERK: What says the defendant?

25 MR. LEE: Swear Ms. Boulware, please.

VOIR DIRE

1 THE CLERK: Number 131, Parrish S. Starnes. What says
2 the State?

3 MR. TAYLOR: Please present Ms. Starnes.

4 THE CLERK: What says the defendant?

5 MR. LEE: Excuse the juror in this case.

6 THE CLERK: Juror number 111, Cynthia A. Nolan. What
7 says the State?

8 MR. TAYLOR: Please present Ms. Nolan.

9 THE CLERK: What says the defendant?

10 MR. LEE: Swear Ms. Nolan, please.

11 THE CLERK: Juror number 95, Travis L. McCree. What
12 says the State?

13 MR. TAYLOR: Please present Mr. McCree.

14 THE CLERK: What says the defendant?

15 MR. LEE: Swear the juror in this case.

16 THE CLERK: Juror number 138, Jason L. Walters. What
17 says the State?

18 MR. TAYLOR: Please present Mr. Walters.

19 THE CLERK: What says the defendant?

20 MR. LEE: Excuse the juror.

21 THE CLERK: Juror number 39, Matthew L. Cousar. What
22 says the State?

23 MR. TAYLOR: Please present Mr. Cousar.

24 THE CLERK: What says the defendant?

25 MR. LEE: Swear Mr. Cousar, please.

VOIR DIRE

1 THE CLERK: Juror number 52, Nancy S. Ford. What says
2 the State?

3 MR. TAYLOR: Please present Ms. Ford.

4 THE CLERK: What says the defendant?

5 MR. LEE: Swear Ms. Ford, please.

6 THE CLERK: Juror number 151, Karen J. Belue. What
7 says the State?

8 MR. TAYLOR: Please -- may we approach for just
9 second?

10 THE COURT: You may.

11 (A bench conference was held.)

12 MR. TAYLOR: Please present Ms. Belue.

13 THE CLERK: What says the defendant?

14 MR. LEE: Swear Ms. Belue, please.

15 THE CLERK: Juror number 108, Therone L. Murphy. What
16 says the State?

17 MR. TAYLOR: Please present Mr. Murphy.

18 THE CLERK: What says the defendant?

19 MR. LEE: Swear the juror please.

20 THE CLERK: Juror number 73, Deborah D. Howze. What
21 says the State?

22 MR. TAYLOR: Please present Ms. Howze.

23 THE CLERK: What says the defendant?

24 MR. LEE: Please excuse the juror in this case.

25 THE CLERK: Juror number 52, Patsy D. Farrell. What

VOIR DIRE

1 says the State?

2 THE JUROR: I am juror 51, are you still calling me?

3 THE CLERK: Yes, ma'am. What says the State?

4 MR. TAYLOR: Please present Ms. Farrell.

5 THE CLERK: What says the defendant?

6 MR. LEE: Excuse the juror on this case, please.

7 THE CLERK: Juror number 91, Christy McCluney-Bowman.

8 What says the State?

9 MR. TAYLOR: Please present Ms. McCluney-Bowman.

10 THE CLERK: What says the defendant?

11 MR. LEE: Swear the juror, please.

12 THE CLERK: Juror number 76, Margaret V. Hunt. What

13 says the State?

14 MR. TAYLOR: Please present Ms. Hunt.

15 THE CLERK: What says the defendant?

16 MR. LEE: Excuse the juror in this case.

17 THE CLERK: Number 15, Angelina S. Boulware. What

18 says the State?

19 MR. TAYLOR: Please present Ms. Boulware.

20 THE CLERK: What says the defendant?

21 MR. LEE: Excuse the juror in this case, please.

22 THE CLERK: Juror number 83, Nebraska Johnson, Jr.

23 What says the State?

24 MR. TAYLOR: Please present Mr. Johnson.

25 THE CLERK: What says the defendant?

VOIR DIRE

1 MR. LEE: Excuse the juror in this case.

2 THE CLERK: Juror number 142, Diane J. Wilkins. What
3 says the State?

4 MR. TAYLOR: Please present Ms. Wilkins.

5 THE CLERK: What says the defendant?

6 MR. LEE: Swear the juror, please.

7 THE CLERK: Juror number 49, Ernest Dickerson, Jr.
8 What says the State?

9 MR. TAYLOR: Please present Mr. Dickerson.

10 THE CLERK: What says the defendant?

11 MR. LEE: Excuse the juror in this case.

12 THE CLERK: Juror number 32, Gabriel Chisholm. What
13 says the State?

14 MR. TAYLOR: Please excuse Mr. Chisholm from the trial
15 of this case.

16 THE CLERK: Juror number one, David R. Barber. What
17 says the State?

18 MR. TAYLOR: Please present Mr. Barber.

19 THE CLERK: What says the defendant?

20 MR. LEE: Swear Mr. Barber.

21 THE COURT: One alternate.

22 THE CLERK: Juror number 144, Amanda E. Winters. What
23 says the State?

24 MR. TAYLOR: Please present Ms. Winters.

25 THE CLERK: What says the defendant?

VOIR DIRE

1 MR. LEE: Excuse the juror in this case.

2 THE CLERK: Juror number 92, Felix L. McClurkin. What
3 says the State?

4 MR. TAYLOR: Please present Mr. McClurkin.

5 THE CLERK: What says the defendant?

6 MR. LEE: Swear the juror in this case.

7 THE COURT: Thank you, Ms. Carpenter. All right,
8 ladies and gentlemen, y'all have been selected as the jury
9 for the case of State versus Dove. At this time I am going
10 to send you back into the jury room for a few minutes while
11 we take up a few matters of law, please do not discuss
12 anything about this case at this time. Thank you very
13 much.

14 (The jury left the courtroom.)

15 THE COURT: Are there any objections to the jury that
16 has been selected or the manner in which it has been
17 selected from the State?

18 MR. TAYLOR: No Your Honor.

19 THE COURT: From the defense?

20 MR. LEE: No Your Honor.

21 (The remaining panel was excused.)

22 THE COURT: Are there any motions from the State or
23 from the defense at this time? Mr. Lee, are you ready to
24 proceed with your motions?

25 MR. LEE: Yes, sir, Your Honor. Your Honor, we would

JACKSON V. DENNO HEARING

1 challenge the statement in this particular case and would
2 request a Jackson v. Denno hearing.

3 THE COURT: All right. The State can call its first
4 witness.

5 MR. TAYLOR: Thank you, Your Honor. State would call
6 Detective Gene Gilmore.

7 The witness, GENE GILMORE, was first duly sworn and
8 testified as follows, on:

9 DIRECT EXAMINATION

10 BY MR. TAYLOR:

11 Q Detective Gilmore, who are you employed with?

12 A Chester City Police Department.

13 Q How long have you been with the police department?

14 A Since 1996.

15 Q What are your job duties at the police department?

16 A Lieutenant in investigations.

17 Q Did you have an occasion to be called out on a
18 burglary case on January 12, 2010?

19 A The next morning I did, I did a follow-up.

20 Q Okay. And whose residence was that -- the location
21 you went to, whose residence was it?

22 A Larry and Margie Kearse.

23 Q Did you talk with either Larry or Margie Kearse?

24 A Yes, I talked to both of them.

25 Q And from your conversations with them were you able

1 to develop a suspect in the case?

2 A Yes.

3 Q Who was that suspect that you developed?

4 A David Dove.

5 Q Do you know David Dove?

6 A Yes.

7 Q Do you see David Dove in the courtroom today?

8 A Yes.

9 Q Can you point him out, please?

10 A Right there sitting beside --

11 Q What color shirt does he have on?

12 A Green.

13 Q After speaking with Larry or Margie Kearse, what was
14 your understanding about how this -- just briefly how this
15 crime actually took place?

16 A Over in the early morning hours of the morning Ms.
17 Kearse heard a window break and once she heard the window
18 break she looked up and she seen David and asked him what
19 he was doing in her residence.

20 Q And did Mr. Kearse say anything about what he saw or
21 what he heard?

22 A He said once he heard his mama holler and the window
23 break he come in the living room, when he come in there
24 and he seen a white male with a light brown jacket, David
25 Dove, who he had seen three days prior in his mom's house,

JACKSON V. DENNO HEARING

1 running out the door.

2 Q He had on a jacket that he had seen on Mr. Dove
3 several days beforehand?

4 A Yes, sir.

5 Q But he had that same jacket on that night?

6 A Yes, sir.

7 Q Once you got this information from Larry and Margie
8 Kearse, did you speak to David Dove?

9 A Yes.

10 Q Where did you speak to him? How did y'all come to
11 have a conversation?

12 A Once he was arrested we read him his rights and he
13 gave us a voluntary recorded statement.

14 Q Did he understand what he was being arrested for?

15 A Yes, sir.

16 Q And this was regarding a break-in at the Kearse
17 residence?

18 A Yes, sir.

19 Q Now, when you talked to Mr. Dove, did he indicate a
20 willingness to give you a statement about this?

21 A Yes.

22 Q Now, when you interview a witness, what procedure do
23 you follow before you start the interview process?

24 A We read them their rights and on every line that we
25 ask them, we make sure they initial and ask them do they

1 understand what their rights are and are they willing to
2 give me a statement at this time.

3 Q I'm going to show you what is marked as State's
4 Exhibit Number 1. Can you identify this, please?

5 A Yes, it's the rights form.

6 Q Who is that rights form for?

7 A William David Dove.

8 Q Is Mr. Dove's signature on that form?

9 A Yes.

10 Q Was there another officer who was with you to see
11 that form being executed?

12 A Yes, sir.

13 Q Can you read out what you told Mr. Dove his rights
14 were?

15 A Yes, sir. Before we ask you any questions you must
16 understand your rights, and he initialed. You have the
17 right to remain silent, he initialed it. Anything you say
18 can be used against you in court, he initialed it. You
19 have the right to talk to a lawyer for advice before any
20 questioning and to have him with you during questioning,
21 he initialed it. If you cannot afford a lawyer one will
22 be appointed before any questioning if you wish, he
23 initialed it. If you decide to answer the question now
24 without a lawyer present you will still have the right to
25 talk -- to stop answering at any time until you talk to a

JACKSON V. DENNO HEARING

1 lawyer, he initialed it.

2 Q Did he have any problems understanding your
3 questions?

4 A No, sir.

5 Q Did he -- did you find out whether or not he could
6 read or write?

7 A Yes, sir.

8 Q Could he read?

9 A He said he could.

10 Q I'm sorry?

11 A He said he could a little bit.

12 Q Can he write?

13 A Yes, sir.

14 Q So initials on that form are from his own
15 handwriting; is that right?

16 A Yes, sir.

17 Q During your questioning did he have any problems
18 understanding the questions?

19 A No, sir.

20 Q Did he ask you to repeat anything?

21 A No, sir.

22 Q Did you have to ask him a lot of questions in order
23 to get him to say anything to you?

24 A No. We just asked him a couple of questions and he
25 just started telling everything without even stopping,

1 just continued to tell us what he did.

2 Q At any time did he indicate he would like to talk to
3 a lawyer?

4 A No, sir.

5 Q At any time did he tell you he did not want to talk
6 to you any further?

7 A No, sir.

8 Q Do you remember about how long this conversation was?

9 A I don't remember how long it lasted.

10 Q Did he ask to use the telephone?

11 A No, sir.

12 Q Were any promises made to him in order for him to
13 give you a statement?

14 A No, sir.

15 Q Were any threats or coercion made against him?

16 A No, sir.

17 Q And did you say it -- I'm going to jump ahead -- you
18 say this interview took place where?

19 A At the jail.

20 Q Once the interview was over, what happened with
21 Mr. Dove?

22 A He was taken back to the jail cell.

23 Q And was Officer Kutno in the room with you the entire
24 time this interview took place?

25 A Yes, sir.

JACKSON V. DENNO HEARING

1 MR. TAYLOR: Your Honor, I would like to offer in
2 State's Exhibit Number 1.

3 THE COURT: For the purposes of this?

4 MR. LEE: No objection, Your Honor.

5 THE COURT: Without objection for the purpose of the
6 Jackson v. Denno hearing only. Are you finished?

7 MR. TAYLOR: Yes, Your Honor, I'm sorry, I apologize.

8 THE COURT: All right, Mr. Lee.

9 MR. LEE: May it please the Court, Your Honor?

10 CROSS EXAMINATION

11 BY MR. LEE:

12 Q Lieutenant Gilmore, you've dealt with Mr. Dove for
13 some time, would that be a correct statement?

14 A Yes, I have in the past.

15 Q And you said you thought he could read and write?

16 A A little bit.

17 Q Have you -- isn't it a fact that he has always said,
18 "I can't read and write?"

19 A He says it a little bit but he does, he can write.

20 Q He can sign his name but there's no indication that
21 he could read or you don't know of any, do you?

22 A I've never seen him just take a book and read it.

23 Q Have you asked him to read something back to you?

24 A No, sir.

25 Q And you say you read him his rights.

1 A Yes, sir.

2 Q And that at each point he initialed it, did you point
3 to the point or run your finger across what you were
4 reading him or anything?

5 A We read every line and once we read the lines to the
6 person we point to where they're going to initial it.

7 Q So you point to where he's going to initial it at so
8 he doesn't initial the wrong line.

9 A We do that with every witness.

10 Q But what you do is you point to the point, "this is
11 what this says," and you point there.

12 A Yes. After every one we go to we point them out.

13 Q But you don't have him read the line back to you.

14 A We ask them do they understand their rights or do
15 they have any questions to ask us and we will go over it.

16 Q And did he ask you any questions or anything?

17 A No, sir.

18 Q And like I said, you didn't have him read anything
19 back to you.

20 A No. We asked him every line and I asked him did he
21 understand it and he said yes and he initialed it.

22 Q Let me ask you this: Shortly after he gave you your
23 statement -- or let me back up a minute and say, before he
24 gave the statement, solicitor said did you make any
25 promises to him.

JACKSON V. DENNO HEARING

1 A No, sir.

2 Q Isn't it true you said, "We will help you get a
3 \$10,000 bond?"

4 A I don't discuss the bond, that's up to the judge.

5 Q Okay. But did you make any statement to him, "I'll
6 give you a \$10,000 bond," or, "We will get you out and we
7 will get you a \$10,000 bond?"

8 A No, sir. I don't have an objection but I didn't make
9 no statements that I would give him a \$10,000 bond.

10 Q After he gave the statement did y'all at some point
11 take him into the judge?

12 A No, I didn't take him into a judge.

13 Q How about anybody with you take him in front of the
14 judge?

15 A No. The jailers take him in front of the judge, we
16 don't.

17 Q All right. Isn't it true that he was given a \$10,000
18 bond?

19 A I really don't know what his bond was.

20 Q But he got out, though, right? He got out of jail?

21 A I think so.

22 Q Then at a later time the solicitor's office or
23 somebody in authority called and said that the judge
24 didn't have the authority to set a bond on him, do you
25 recall that happening?

1 A I know he went back but I don't know what were the
2 stipulations.

3 Q You have been a police officer I think you said since
4 1996.

5 A With the city.

6 Q Were you longer with somebody else?

7 A Yes.

8 Q So you've been a police officer a good many years?

9 A Yes, sir.

10 Q Don't you know that only a circuit judge can get a
11 bond for a burglary?

12 A I didn't set the bond, the magistrate court did.

13 Q I understand that. But it was a city case, they
14 wouldn't have set the bond, would they?

15 A No, I didn't tell them to set bond.

16 Q But first degree burglaries aren't set at that level,
17 they have got to come to the circuit court; is that
18 correct?

19 A Yeah, but that would be up to the judge. I
20 understand it but I didn't have nothing to do with that.

21 Q And you say you didn't tell him he would get a bond,
22 but if I told you he got out on a \$10,000 bond, would you
23 dispute me saying that?

24 A No, I wouldn't dispute that but that would be the
25 judge that do it.

JACKSON V. DENNO HEARING

1 Q All right.

2 MR. LEE: Your Honor, if I might have just a moment.

3 (Break in proceedings.)

4 Q After he gave a statement did you have any
5 communications with the city judge?

6 A No, sir.

7 MR. LEE: That's all.

8 THE COURT: Any redirect?

9 MR. TAYLOR: No, Your Honor.

10 THE COURT: Thank you, you may step down.

11 MR. TAYLOR: That's the only witness.

12 THE COURT: Okay, Mr. Lee?

13 MR. LEE: Your Honor, we would call Mr. Dove.

14 THE COURT: For the limited purpose of this hearing.

15 MR. LEE: Yes, sir, just for the purposes of
16 voluntariness of the statement.

17 The witness, WILLIAM DAVID DOVE, was first duly sworn

18 And testified as follows, on:

19 DIRECT EXAMINATION

20 BY MR. LEE:

21 Q Mr. Dove, I'm going to ask you to state your full
22 name for the record.

23 A William David Dove.

24 Q Where do you live, Mr. Dove?

25 A in Chester.

1 Q That's in Chester County?

2 A Yes, sir.

3 Q It's been brought -- you've had some problems with
4 the law, but other than any time you were incarcerated
5 have you always lived here in Chester County?

6 A Yes, sir.

7 Q Let me ask you this: What happened -- I believe this
8 was January 13th of 2010 when the police picked you up and
9 they brought you, would you tell us what happened from the
10 point that they picked you up and took you to the jail?

11 A They locked me up. They come to the -- they locked
12 me up, took me to the jail, and when I got to the
13 jailhouse the officer that was just on the stand read me a
14 warrant that stated that I had broke into my Aunt Margie's
15 house, and I can't read and write that good, I can spell
16 my name and a few other things. But he read me the
17 warrant and put me back in the holding cell, the warrant
18 that they read me was second degree burglary, he had the
19 officer over there in the yellow shirt with him, I can't
20 recall his name, but they read a second degree burglary
21 warrant to me, I think they had messed up and it was
22 supposed to be first degree so they put me back in the
23 holding cell then left, I don't know how long it was but
24 they come back. He had -- that officer there wasn't with
25 him then, he come back and had the other officer there

JACKSON V. DENNO HEARING

1 with him, they took me in the office, tried to get me to
2 give them a statement, I wouldn't, I told them I haven't
3 done it. So they put me back in the holding cell, they
4 left, I don't know how long it was before they come back
5 but they come back. They come in there, they said they
6 knowed me for a long time, we sat there and cut up for a
7 few minutes and then he said, "Can you give me anything
8 that will help me in this case?" And I said, "I can't
9 give you nothing." And he said, "I tell you what I will
10 do, we know that you have been in trouble before with the
11 law, you have a long record," which I do and I'm not proud
12 of it but I have always been pled guilty what I have been
13 accused of and done my time. After about 30 or 45 minutes
14 of us sitting there talking he said, "Look, Mr. Dove, I
15 can get you a low enough bond where you can get out of
16 here today or tomorrow." I said, "If you can get me a
17 bond where I can get out I will give you a statement." I
18 give the gentleman a statement, the statement I give him
19 was bogus, I lied to the officer. If you listen to the
20 statement the statement has got everything but what
21 happened at 911. Later on that evening I went out there
22 and the -- I think it was the city judge, it was a lady I
23 have never seen before give me a \$10,000 bond on a first
24 degree burglary and grand larceny and my mother and my two
25 sisters the next day got me out. Four days later they

JACKSON V. DENNO HEARING

1 revoked my bond and said that I would have to go in front
2 of a high court judge to get a bond set on a first degree
3 burglary. On the mistake that they made is what they said
4 they made a mistake and set the bond, but it wasn't a
5 mistake. I give a statement to get a bond because every
6 time that I have been locked up if you look at the charges
7 that I have I got a \$50,000 bond that says my shoes
8 appeared to be a match and they keep setting my bond so
9 high that I can't get out. And where the officer said he
10 would give me a bond where I thought I could get out, yes,
11 sir, I give them a statement.

12 Q Let me ask you this: Are you saying the only reason
13 you gave a statement was the fact that they promised you a
14 \$10,000 bond?

15 A Yes, sir.

16 Q And that you did get a bond?

17 A That day I got a \$10,000 bond.

18 Q And you actually got out --

19 A Yes, sir.

20 Q -- until somebody said, wait, this isn't right, and
21 you got picked back up again.

22 A I turned myself in. A officer come to the house, I
23 was not there, I was at my girlfriend's house. My mother
24 called me and told me, said, "David, they've got a bench
25 warrant." I said, "Mama, what for? I don't have to be in

JACKSON V. DENNO HEARING

1 court for nothing yet." And she said, "They've got a
2 bench warrant for you for the bond that you are out on,
3 \$10,000 bond, they said that the city judge was not
4 supposed to set it." My father come and picked me up, I
5 went back to the house and when I got to the house it was
6 an officer there waiting on me. I had talked to my mother
7 on the phone, like I said and I told her when I hung up to
8 go ahead and call the officer and tell him to be at the
9 house, I can't remember the officer's name.

10 Q Now, let me ask you, there was a form that they had
11 you sign; is that correct?

12 A What you mean a form?

13 Q Before they talk to you about all of these things,
14 did they have a form that they had you sign before they
15 started talking to you?

16 A The only thing I signed was they read me my rights
17 and they didn't read one paragraph and say sign here, he
18 read the whole thing and then slid me the paper and said
19 initial all of the blocks, all of lines and then sign at
20 the bottom.

21 Q Again your ability to read --

22 A I can read and hear but after that right there I --

23 Q So you don't have the ability to pick up a book and
24 read a page or something like of that nature?

25 A No, sir.

1 Q And as far as writing goes, what is that limited to?

2 A Sir?

3 Q Your ability to write, what is that limited to?

4 A My mother and my two sisters helped me spell my name,
5 that's it.

6 Q And so really you can't read or write?

7 A I can spell my name and -- it's hard for me to spell
8 William because it's got too many letters, but I can spell
9 David and Dove.

10 Q Do you remember, did you ever ask for an attorney
11 before you talked to them?

12 A Yes, sir, I did.

13 Q Tell us about that. When did you first ask for an
14 attorney?

15 A When I realized that the charge had been -- when he
16 read me the first warrant it was second degree, when they
17 come back and read it to me the second time and I realized
18 it was first degree I asked to speak to a lawyer at that
19 time.

20 Q And were you ever -- didn't they come back and talk
21 to you again?

22 A They put me back in the bull pen -- in the holding
23 cell and a few minutes later they called me out to talk to
24 me in the office and they never said nothing else about a
25 lawyer and I didn't either, I don't recall.

JACKSON V. DENNO HEARING

1 Q And do you believe that -- well, let me ask you this,
2 the statement that you gave, it was recorded; is that
3 correct.

4 A Yes, sir.

5 Q Was there any videotaping or anything of that nature?

6 A No, sir.

7 Q And again, you gave the statement why?

8 A To get a bond. The officer promised me, he said --
9 he didn't say Mr. Dove he said David because the officers
10 know me. He said, "David, if you give me a statement and
11 tell me what happened and who was with you I will make
12 sure that you get a bond." And I said, "Well, how high
13 will the bond be?" And he said, "I will get it at low as
14 \$10,000." That day I got a \$10,000 bond, the next morning
15 my sisters and my mother got me out.

16 Q But that was your reason for giving him the
17 statement?

18 A Yes, sir.

19 Q And were any comments made to you about anybody?

20 A They wanted Joe B. Nelson involved, they said that he
21 was doing a lot of stuff on the street, they couldn't
22 prove it and they wanted him locked up and so I added
23 Mr. Nelson into the statement that I give. They locked
24 Mr. Nelson up but Mr. Nelson is not here, they're not
25 trying him.

1 MR. LEE: I want you to answer any questions the
2 solicitor may have for you.

3 Q Yes, sir.

4 THE COURT: Mr. Taylor.

5 MR. TAYLOR: Your Honor, I just have a few questions.

6 CROSS EXAMINATION

7 BY MR. TAYLOR:

8 Q I just want to make sure I'm clear, Mr. Dove. Did
9 you say you don't deny giving a recorded statement to the
10 police?

11 A I didn't hear you, sir.

12 Q You don't deny giving a recorded statement to the
13 police.

14 A No, sir.

15 Q When was it that you talked to the police, was that
16 when you thought it was a second or when you thought it
17 was a first?

18 A They had read me both warrants, I didn't -- when he
19 read me the second degree burglary warrant the officer
20 realized it was second degree, he put me back into the
21 holding cell and left, they didn't give me a chance to
22 talk to them. They come back and read me the first degree
23 burglary warrant and then after they read it to me they
24 put me back in the holding cell and left again and then
25 they come back the third time.

JACKSON V. DENNO HEARING

1 Q And it's on the third time when you talked to them.

2 A Yes, sir.

3 Q And you've been in trouble before, right?

4 A Yes, sir.

5 Q And you understand what it meant when you told the
6 police or gave a statement to the police about what
7 happened.

8 A I thought I was just giving them a statement to get a
9 bond.

10 MR. TAYLOR: Your Honor, I don't have any further
11 questions.

12 THE COURT: Any redirect?

13 MR. LEE: No, Your Honor.

14 THE COURT: Thank you, you may step down.

15 MR. TAYLOR: Your Honor, I apologize, I'm not trying
16 to holdup the Court, just to clarify for the record, His
17 Honor listened to the recording yesterday and I did not
18 have Detective Gilmore introduce that at this point. I
19 think that some of the concern was more about whether or
20 not there was a waiver signed, if it's necessary that we --

21 THE COURT: I have listened to it with the consent of
22 both of the attorneys and I have reviewed the consent.
23 Anything further, Mr. Lee?

24 MR. LEE: No, Your Honor, I don't have any further
25 witnesses.

1 THE COURT: In order to introduce a statement made by
2 a custodial interrogation the prosecution must establish
3 the voluntariness, a knowing and intelligent waiver of the
4 Miranda Rights. I have listened to the tape, I have also
5 reviewed the document, I have listened to the testimony
6 this morning, I find that the defendant has knowingly
7 waived his Miranda Rights and did so after these were read
8 to him, therefore the statement will be admitted into
9 evidence, whether the jury wants to believe it or not will
10 be up to the jury but the statement is coming into
11 evidence. Thank you.

12 MR. TAYLOR: I'm going to give a couple of items to
13 the court reporter to mark.

14 (A break was taken.)

15 THE COURT: Do I understand the defendant has decided
16 to change his plea?

17 MR. TAYLOR: For paperwork purposes I will explain it
18 on the record, I agreed to let Mr. Dove plead to the 15
19 years on the charge that he was going to trial today on.

20 THE COURT: Which will be the burglary first, it
21 carries life?

22 MR. TAYLOR: Yes, sir. We're going to roll all of his
23 other cases into that but if we have to do separate pleas
24 on them, maybe better, more efficient to take the plea on
25 the case that he is doing today, we would be leaving in

GUILTY PLEAS

1 place today and then we can bring him over here tomorrow
2 and finish up everything on the --

3 THE COURT: Or we can do it this afternoon.

4 MR. LEE: I have explained to him --

5 THE COURT: What I anticipate that we will do is we
6 could take this plea, I will sentence him on this plea then
7 I am going to release the jury and then we will come right
8 back and finish it up.

9 MR. LEE: I think his main concern is that what the
10 agreement is that we get it all done at the same time so
11 there isn't anything hanging out there.

12 THE COURT: I anticipate before he leaves this
13 courtroom and before I leave this courtroom that we will
14 have it done that way.

15 MR. LEE: Okay.

16 THE COURT: Place the defendant under oath, please.

17 (The defendant was sworn.)

18 THE COURT: Mr. Lee, you represent Mr. David William
19 Dove; is that correct?

20 MR. LEE: That is correct, Your Honor, his full name
21 is William David Dove.

22 THE COURT: And have you explained to your client the
23 charges contained in the indictment, the possible
24 punishment that he faces and his constitutional rights?

25 MR. LEE: I have, Your Honor.

1 THE COURT: And do you believe he has understood what
2 you have told him?

3 MR. LEE: I believe that he does, Your Honor.

4 THE COURT: At this time does he wish to plead guilty
5 or not guilty to the charge of first degree burglary and
6 grand larceny valued more than 1,000 but also than 5,000, a
7 third or subsequent property offense?

8 MR. TAYLOR: That would be the petty larceny, we were
9 going to -- that would be third or more petty larceny.

10 MR. LEE: Your Honor, he has indicated that he wishes
11 to enter a guilty plea to that.

12 THE COURT: Do you agree with his decision to plead
13 guilty?

14 MR. LEE: Your Honor, I have looked at this case, I
15 have spent I don't know how many hours on it particularly
16 the last week or so and this is a case that they could find
17 him -- I feel easily they could find him guilty on it.
18 There is a possibility that they could find him not guilty
19 but it's a toss-up and I believe that he is making the best
20 decision that he could make and that is to plead guilty.

21 THE COURT: Thank you. Now, Mr. Dove, I need to ask
22 you a series of questions to make sure that you're entering
23 this plea freely, voluntarily, knowingly and intelligently
24 to the charges contained in the indictment. The first
25 question that I have is are you under the influence of

GUILTY PLEAS

1 alcohol or drugs?

2 THE DEFENDANT: No, sir.

3 THE COURT: Are you taking any medication that would
4 cloud your judgment in any way?

5 THE DEFENDANT: No, sir.

6 THE COURT: Are you aware of any physical, emotional
7 or nervous condition that would keep you from understanding
8 what is happening in this courtroom today?

9 THE DEFENDANT: No, sir.

10 THE COURT: Now, it's my understanding that now you
11 want to plead guilty to the charge of burglary in the first
12 degree and petty larceny which is the lesser-included
13 offense of the indictment, and third or subsequent offense;
14 is that correct?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, let me read what's is the burglary
17 indictment. Under indictment 2010-GS-12-206, that William
18 David Dove did in Chester County on or about January 12th
19 of 2010 enter the dwelling of Larry Dewayne Kearse without
20 consent and with the intent to commit a crime in the
21 dwelling, to wit, entering the dwelling at nighttime, or
22 the defendant has two or more prior convictions for
23 burglary all in violation of section 16-11-311A1A of the
24 South Carolina Code. Is what's stated in this indictment
25 the truth?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: And as to indictment 2010-GS-12-205, it
3 says David William Dave -- should be William David Dove,
4 did in Chester County on or about January 12th of 2010 take
5 and carry away the personal property, to wit, a purse with
6 a cash value totaling \$1,000 or more of Margie Kearse with
7 the intent to deprive the owner of possession of the
8 property and convert the property to the use of the
9 defendant, the value of property being more than \$1,000 but
10 you have reduced it to below \$1,000, this being the third
11 or subsequent conviction for a property offense where a
12 term of prison -- that is contingent upon the value of
13 property in violation of section 16-13-30AB1 of the South
14 Carolina Code of Laws. Is what is stated in this
15 indictment the truth?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: Solicitor, what are the facts?

18 MR. TAYLOR: Your Honor, just briefly, I think the
19 Court has already heard Mr. Dove's statement previously and
20 through some of the pretrial testimony. The victim in the
21 case is Mr. Larry Kearse, he is present in the courtroom.
22 His mother, Margie Kearse, is 89 years old and she's
23 suffering various ailments and was not able to be here
24 today. Mr. Dove, it's my understanding, is related to the
25 Kearses through his mother. The morning that this

GUILTY PLEAS

1 happened, it was January 12, 2010, Ms. Margie Kearse stays
2 in a chair basically most of the day is what she told me
3 which sits kind of catercornered to the kitchen area and
4 the back door leading into that kitchen. Late that
5 night -- or excuse me, early that morning some glass
6 apparently had broken out and it startled Ms. Kearse, she
7 woke up, Mr. Kearse also woke up, Mr. Kearse came to the
8 kitchen area, saw Mr. Dove in the kitchen, he was wearing a
9 jacket that Mr. Kearse had seen on David some days before,
10 also Ms. Kearse apparently had seen Mr. Dove as he was
11 leaving out of the kitchen. There was a pocketbook that
12 belonged to Ms. Kearse that contained a certain amount of
13 money, in the beginning we thought it may have been over
14 1,000 but when subsequent statements came up after the
15 investigation it appears it was less than \$1,000 in this
16 pocketbook, but this pocketbook was taken in this burglary.
17 When the city detectives interviewed Ms. Kearse she gave
18 them the name of David Dove. Police went and interviewed
19 Mr. Dove, he gave a fairly lengthy statement about this
20 particular incident, went into a lot of details, some of
21 his facts differ slightly from what the police report says.
22 But I think most of the material fact and the most
23 important fact is he said he went into the house, his
24 object was to take an item from the house, I believe it was
25 pills, the pocketbook wasn't necessarily his target but he

1 wound up taking the pocketbook and he used the money inside
2 to purchase crack cocaine. He didn't have permission to
3 come into the house or take anything from the Kearses that
4 night. It was based on his statement and the photographs
5 showing forcible entry into the house as well as the
6 identification by Mr. Larry Kearsse and Margie Kearsse that
7 formed the basis of the burglary first indictment, this
8 happened again shortly after midnight. Also a second
9 aggravating circumstance against Mr. Dove is he has several
10 prior burglary convictions. Just for purposes of the
11 record he had a burglary conviction in 2002 and also in
12 1997, and property crimes, value crimes in '02, '07, and
13 also '97.

14 THE COURT: Mr. Dove, do you agree with the statements
15 made by the solicitor?

16 MR. LEE: Your Honor, I talked with Mr. Dove about
17 this, certainly as to the elements of burglary we agree
18 with those. There's a dispute as to whether the Kearses
19 could have seen what they actually saw, of course, he has a
20 statement.

21 THE COURT: But he's either going to admit to it or
22 not admit to it.

23 MR. LEE: And he's not trying to not admit to it,
24 there may be some little peripheral things he --

25 THE COURT: Well, then he better get those straight

GUILTY PLEAS

1 because unless he is going to admit that what the State was
2 saying was the true he can have a trial.

3 MR. LEE: Yes, sir, and he doesn't want to do that.
4 He wants to -- I'm just saying there may be --

5 THE COURT: Well, let me hear him say that. Mr. Dove,
6 is what the solicitor stated the truth?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Are you, in fact, guilty of the crime of
9 burglary in the first degree and petty larceny third or
10 subsequent offense?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, you understand that on the burglary
13 charge -- it's my understanding there has been a 15 year
14 cap on all of the charges; is that correct?

15 MR. TAYLOR: Yes, sir. I talked with Solicitor
16 Barfield and we are agreeing to a 15 year sentence to
17 resolve --

18 THE COURT: To encompass everything.

19 MR. TAYLOR: Yes, sir.

20 THE COURT: And you realize that's their
21 recommendation.

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You realize I'm not required to take that
24 recommendation.

25 THE DEFENDANT: Yes, sir.

GUILTY PLEAS

1 THE COURT: If I choose to on the first degree
2 burglary, I could sentence you to life in prison.

3 THE DEFENDANT: Yes, sir.

4 THE COURT: And you understand on the petty larceny,
5 the subsequent property offense, I can sentence you to ten
6 years for that.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You understand that the burglary is a
9 violent or most violent offense, it's also an offense that
10 you will have to serve 85 percent.

11 THE DEFENDANT: Yes, sir.

12 THE COURT: So with a 15 year sentence you will serve
13 approximately 12 years before you would even be eligible to
14 be released, do you understand that?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: You understand that this burglary charge,
17 if you should be convicted of any other offense from this
18 point forward that you would receive life without the
19 possibility of parole?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you're looking at a life sentence on
22 the burglary now, so if you get anything else after this
23 you are looking at the rest of your life in jail.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: And I mean the rest of your life, not when

GUILTY PLEAS

1 you turn 60, this will be -- you will be an old man and die
2 in prison, do you understand that?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: So you physically understand the nature of
5 the charges against you and the range of punishment that
6 you can receive.

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Now, you understand that when you plead
9 guilty you will also waive certain constitutional rights.
10 The first right you waive is the right against self
11 incrimination. I tell you that either in this court or any
12 other court in this land you will never be required to
13 testify against yourself, however when you plead guilty you
14 will be doing exactly that, do you understand?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Now, do you wish to waive your right
17 against self incrimination at this time?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Now, you also understand that you are
20 waiving your right to have a jury trial, and we've got a
21 jury sitting in the back room that is ready, willing and
22 able to -- they have been screened and qualified and they
23 have been selected or stricken and you have a jury that you
24 and your attorney went through and they're ready to try
25 this case. If you went to trial and if you decided not to

1 testify I will instruct the jury they could not hold that
2 against you, and Mr. Lee would have the opportunity to
3 cross examine the witnesses presented by the State and if
4 you thought it was in your best interest he could call
5 witnesses on your behalf. But you also understand that any
6 defenses you might have had and any challenges to the
7 statements coming in or to the warrants are given up now
8 that you are pleading guilty, do you understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: So you wish to waive your right to have a
11 jury trial and confront the witnesses against you?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Has anybody threatened you in any way to
14 get you to plead guilty?

15 THE DEFENDANT: No, sir.

16 THE COURT: Has anybody promised you anything to get
17 you to plead guilty?

18 THE DEFENDANT: No, sir.

19 THE COURT: Is the only reason you are pleading guilty
20 to petty larceny value -- third or subsequent offense is
21 because you are in fact guilty of stealing Margie Kearse's
22 pocketbook with a value of less than \$1,000?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Is the reason -- only reason that you're
25 pleading guilty to burglary in the first degree is because

GUILTY PLEAS

1 you went into the dwelling of Larry Dewayne Kearse without
2 consent and with the intent to commit a crime either being
3 after dark or the fact that this would be your third
4 burglary conviction; is that correct?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, are you satisfied with the services
7 of Mr. Lee?

8 THE DEFENDANT: Yes, sir.

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

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Has he had sufficient time to review the
13 facts and the circumstances in order to properly represent
14 you?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Do you need any more time to speak to
17 Mr. Lee?

18 THE DEFENDANT: No, sir.

19 THE COURT: Have you understood all of my questions?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Do you have any questions for the Court?

22 THE DEFENDANT: No, sir.

23 THE COURT: Do you understand that if you go back in
24 chambers or back in your cell and you change your mind
25 about whether you want to plead guilty or the sentence that

1 I may give you that you will only have ten days in which to
2 file an appeal?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Under indictment 2010-GS-12-206 for the
5 charge of burglary in the first degree, how do you plead,
6 guilty or not guilty?

7 THE DEFENDANT: I plead guilty.

8 THE COURT: Under indictment 2010-GS-12-205, for the
9 charge of petty larceny a lesser-included of the indictment
10 in an amount of less than \$1,000 or a third or subsequent
11 property offense, how do you plead, guilty or not guilty?

12 THE DEFENDANT: Guilty.

13 THE COURT: I find there's a substantial factual basis
14 for the plea. I find that the defendant has entered his
15 pleas freely and voluntarily, he's had the advice of
16 counsel which he says he is satisfied and I will accept the
17 plea. What is his criminal record?

18 MR. TAYLOR: DUS in 1988. DUS also in 1990,
19 distribution of marijuana in 1990. Breach of peace in
20 1990. Destruction of real property in 1991. Strong armed
21 robbery in '92. Grand larceny and burglary third in '92.
22 Criminal domestic violence in '95. Forgery, burglary
23 second -- forgery, two counts of burglary second and petty
24 larceny in 1997. Forgery in 2001. Obtaining goods by
25 false pretences in 2001. In 2002 he had multiple

GUILTY PLEAS

1 convictions for burglary second, forgery, grand larceny,
2 malicious injury to property and forgery. And breach of
3 trust in 2007.

4 THE COURT: Mr. Dove, do you agree with that? Is that
5 the correct rendition of your criminal history?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: All right, Mr. Lee. Excuse me, does the
8 victim want to say anything?

9 MR. TAYLOR: No, sir.

10 THE COURT: All right. Thank you. Mr. Lee?

11 MR. LEE: Thank you, Your Honor. May it please the
12 Court? Your Honor, Mr. Dove is 39 years of age, he lived
13 here in Chester in his mother's household. He is single,
14 he does have three children, Your Honor, I believe they're
15 either all adults or getting close to being adults and as
16 he said, he was living with his parents. He has about a
17 tenth grade education, Your Honor, but as he testified on
18 the witness stand he actually cannot read or write. He
19 just has this problem and I think that contributed to his
20 not completing school, just the fact that's as far as he
21 could go in the school system, but he does have that
22 particular problem. He does have the ability to remember
23 things that were told him and he did well but he does have
24 some problems, he can't read or write, he can pick out a
25 few words. Of course, he has learned to sign his name. In

1 fact, his mother has a power of attorney but only in
2 signing things. In other words, I guess what I'm saying he
3 has not been declared not able to do any of that with the
4 probate court or anything that nature, she just does that
5 to facilitate things that he has to do. I will say this
6 about Mr. Dove, I've known him for a long period of time,
7 he has always -- every time I have dealt with him he has
8 been courteous to me. He -- the other offenses are all
9 actually store break-ins or that kind of burglary, there's
10 no other houses on there, this is the first time that he
11 has been charged with the offenses that involved a house.
12 Your Honor, we would just ask the Court to be as lenient as
13 possible and go along with the recommendation that has been
14 made.

15 THE COURT: Actually the 15 years is the minimum for
16 this.

17 MR. LEE: Yes, sir. And that's what we would ask the
18 Court to do that, to give him that sentence. He
19 understands that and he would have some other cases that
20 would be brought before the Court but they would be wrapped
21 up in this, but we could ask the Court to go along with
22 that recommendation.

23 THE COURT: Would he like to say anything or would his
24 family like to say anything?

25 THE DEFENDANT: No, sir.

GUILTY PLEAS

1 MR. LEE: They have some complaints against the system
2 but not --

3 THE COURT: All right. As to the petty larceny third
4 or subsequent, sentence of the Court under indictment
5 2010-GS-12-205, that you be committed to the state
6 department of corrections for a period of ten years. As to
7 the charge of burglary in the first degree, sentence of the
8 Court is that you be committed to the state department of
9 corrections for a period of 15 years. Okay.

10 MR. LEE: Those would be concurrent, Your Honor?

11 THE COURT: Absolutely.

12 MR. LEE: Your Honor, he has some significant, of
13 course, jail time, I understand he's going to get credit
14 for that.

15 THE COURT: Yes. He will get it as long as it is
16 related to this case he will get credit for it.

17 MR. LEE: And I don't know if the Court would do it or
18 not but shortly after he was released on the second warrant
19 he was put on house arrest, he was to remain on house
20 arrest we would ask the Court to consider --

21 THE COURT: Now?

22 MR. LEE: He's been until --

23 THE COURT: No, sir. He has been convicted of
24 burglary first.

25 MR. LEE: No, sir. What I'm saying is after he got

1 arrested on that he had for --

2 THE COURT: No, I'm not going to credit him for time
3 served -- I can't give him credit for time served when he
4 has been in his house and he has not been in the jail.

5 MR. LEE: Okay. We would just ask that the Court
6 consider that.

7 THE COURT: All right. Thank you.

8 (The jury was released and a break was taken.)

9 MR. TAYLOR: Back on the record in the case of State
10 versus William Dove, I apologize in advance to the Court, I
11 think he has been kind of in the system so long his name is
12 kind of put in different arrangements, but it is William
13 David Dove. Obviously, Your Honor, he's already pled
14 guilty to his trial case today and we are trying to clear
15 up the remainder of the pending cases against him, he is
16 represented by Mr. Lee. And these next charges
17 2010-GS-12-204, charge of purse snatching, he's pleading
18 guilty as charged to that case. 2010-GS-12-208, burglary
19 in the second degree violent, he is pleading guilty as
20 charged to that case.

21 THE COURT: What are the --

22 MR. TAYLOR: The burglary second degree carries 15 and
23 purse snatching carries three. 2010-GS-12-523, burglary in
24 the second degree violent, and 2010-GS-12-524, malicious
25 injury to personal property more than 1,000 less than

GUILTY PLEAS

1 5,000. And waiver indictments 2011-GS-12-160, burglary in
2 the second degree violent, and 2011-GS-12-161, malicious
3 injury to personal property \$2,000 or less, he's pleading
4 as charged to those cases. It's our understanding that the
5 sentences imposed on these cases will run concurrent to
6 what he has already received.

7 THE COURT: Let me ask you some general questions and
8 then we will get into the specifics. Mr. Dove, you have
9 Mr. Lee as your attorney on all of these cases as well as
10 the other ones; is that correct?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And you are still not under the use of
13 alcohol or drugs.

14 THE DEFENDANT: No, sir.

15 THE COURT: Are you taking any medications that would
16 cloud your judgment?

17 THE DEFENDANT: No, sir.

18 THE COURT: Are you aware of any physical, nervous or
19 emotional conditions that would keep you from understanding
20 what is happening today?

21 THE DEFENDANT: No, sir.

22 THE COURT: You understand that in this court as any
23 other court you would never be required to testify against
24 yourself?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: When you plead guilty you are doing
2 exactly that, you understand?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you wish to waive your right against
5 self incrimination at this time?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: You are also waiving your right to have a
8 jury trial on these charges, you have waived it on the
9 other two but you would have a right to have these cases
10 presented before a jury, when you plead guilty you
11 understand that you waive that right.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Have you been satisfied with the services
14 of Mr. Lee?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Has he done everything you've asked him to
17 do?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Do you have any questions of this Court
20 about the general understanding of what you're doing here
21 today?

22 THE DEFENDANT: No, sir.

23 THE COURT: Under indictment 2010-GS-12-204, the
24 indictment says it is for purse snatching, it has been true
25 billed, and it says that William Dove did in Chester County

GUILTY PLEAS

1 on or about January 12th of 2010 snatch suddenly and carry
2 away from another Tammy Goins, a purse, and other things of
3 value that belonged to Tammy Goins with the intent to
4 deprive the owner of its possession of the article in
5 violation of section 16-13-150. Is what's stated in this
6 indictment the truth?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Mr. Solicitor, what are the facts?

9 MR. TAYLOR: Your Honor, this offense occurred on
10 January 12, 2010, this was actually later on in the morning
11 after the burglary that the Court had heard about earlier
12 in the guilty plea. Mr. Dove was in the Wal-Mart store, he
13 took a pocketbook that was in a buggy belonging to miss
14 Tammy Goins. Unfortunately for Mr. Dove there were police
15 officers already in Wal-Mart, Ms. Goins yelled out someone
16 had taken her purse, pointed in the direction of the person
17 that was running out of the store, one of the officers
18 chased after Mr. Dove, Mr. Dove made it out of the store
19 but he was caught in a wooded area close by Wal-Mart.
20 Clothing that Mr. Dove had on was the same description
21 given by Ms. Goins and also Ms. Goins' wallet was in
22 Mr. Dove's hand when he was caught.

23 THE COURT: Mr. Dove, were the statements made by the
24 solicitor concerning the purse snatching the truth?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Are you, in fact, guilty?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: You understand this carries up to three
4 years in jail?

5 THE DEFENDANT: Yes, sir..

6 THE COURT: You understand as well this is another one
7 that would go as far as -- well no -- and you understand
8 that I could sentence you up to three years?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: It's your understanding as well that all
11 of these will run concurrent?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You understand that you would have up to
14 ten days to file an appeal should you change your mind
15 about the plea?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: And we've already gone over about the
18 waiver of your right to testify against yourself and
19 against self incrimination and your right to have a jury
20 trial.

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And you wish to waive that right?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Thank you. What is the next one? The
25 next one is burglary in the second degree under indictment

GUILTY PLEAS

1 2010-GS-12-523, and the indictment says that William David
2 Dove did in Chester County on or about January 20th of 2010
3 enter the building of the Hair Gallery without consent with
4 the intent to commit a crime and remaining in the nighttime
5 and that William David Dove has two or more prior burglary
6 convictions in violation of section 16-11-320B2 of the
7 South Carolina Code of Laws. Is what is stated in this
8 indictment the truth?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Mr. Solicitor, what are the facts?

11 MR. TAYLOR: Your Honor, this offense occurred between
12 3:00 p.m., January 19, 2010 and 7:45 a.m. January 20th of
13 2010. This took place at 611 McCord Street, that's also
14 known as the Hair Gallery Beauty Salon. Someone had broken
15 into the beauty salon through a back door, while they were
16 in the beauty salon some drawers with cash in them had been
17 opened, some money had been taken. There was also a Pepsi
18 drink machine that was inside of the salon, someone had
19 taken some type of bladed metal object attempting to break
20 open the machine, in the process of doing that appeared to
21 have cut themselves and there were droplets of blood right
22 in front of where the machine was located. When the
23 Chester County Sheriff's Office came out and investigated
24 it they were able to collect samples from the those blood
25 drops and they were sent down to SLED for analysis and a

1 profile was developed from the samples, that profile was
2 compared in the CODIS system which keeps on file the DNA
3 profiles of the past convicted felons, the profile from the
4 samples was matched up with CODIS and Mr. Dove was the hit
5 from law enforcement. That was sent back to law
6 enforcement that his profile, in fact, matched the sample
7 that was found near the drink machine, and based on that
8 DNA match Mr. Dove was charged with the burglary. He did
9 not have permission to be in that store from the owner.

10 THE COURT: Let me go ahead and do the other
11 indictments. They said that William David Dove did in
12 Chester County in January 19-20 of 2010 willfully and
13 maliciously injured the personal property of the Hair
14 Gallery, the property being door file cabinets, drink
15 machines and the injury to the property or property loss
16 was more than \$1,000 and less than \$5,000. Is what is
17 stated in this indictment the truth?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Is what was stated by the solicitor
20 concerning the burglary in the second degree and the
21 malicious injury to personal property the truth?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Are you, in fact, guilty of burglary in
24 the second degree under indictment 2010-GS-12-523 and
25 malicious injury to personal property under indictment

GUILTY PLEAS

1 2010-GS-12-524?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: No one has threatened you in any way to
4 get you to plead guilty?

5 THE DEFENDANT: No, sir.

6 THE COURT: The only reason you are pleading guilty is
7 because you are, in fact, guilty?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: What is the next one? What is the maximum
10 on malicious injury to personal property 1,000 to 5,000?

11 MR. TAYLOR: Five years.

12 THE COURT: You may proceed.

13 MR. TAYLOR: Thank you, Your Honor. The next incident
14 occurred at Campbell's Truck Stop, that occurred on
15 July 20th of 2009. Mr. Dove apparently and at least one
16 other codefendant went into the Campbell's Truck Stop,
17 cigarettes and money were taken from the truck stop. There
18 had been a series of break-ins and burglaries in the area
19 and Mr. Dove was suspected by police as being involved in
20 this and I believe he gave a statement and at least one
21 codefendant gave a statement indicating his involvement in
22 the break-in at Campbell's Truck Stop and this occurred in
23 the nighttime.

24 THE COURT: And Mr. Dove, you heard the solicitor's
25 statement concerning indictment 2010-GS-12-208, is what he

1 stated correct?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: So the indictment says that William David
4 Dove did in Chester County on or about July 20th of 2009
5 enter the building of Campbell's Truck Stop without consent
6 and with the intent to commit a crime, enter or remain and
7 it occurred in the nighttime, and/or the defendant had a
8 record of two or more burglary convictions in violation of
9 section 16-11-312B3 of the South Carolina Codes. Is what
10 is stated in this indictment the truth?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: You understand on these burglaries that
13 these are violent, serious crimes and if you get caught for
14 anything from this point forward you will probably be
15 sentenced to life without the possibility of parole, do you
16 understand that?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And no one has threatened you to get you
19 to plead guilty on these?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you understand you could have had a
22 trial on these and you could have not testified and I would
23 have instructed the jury they could not hold that against
24 you?

25 THE DEFENDANT: Yes, sir.

GUILTY PLEAS

1 THE COURT: Are you satisfied with the services of
2 Mr. Lee?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you understand on all of these you
5 would have ten days in which to file an appeal?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: The next one.

8 MR. TAYLOR: Your Honor, this offense occurred on
9 January 13th of 2011 and the victim is the Jordan Fishing
10 Supply. There was an alarm call from the business, when
11 officers arrived they discovered that someone had broken in
12 through the heating and air unit in the back of the
13 building, it had snowed that day or recently and they
14 followed a set of footprints from the unit back through the
15 wooded area back to which is where Mr. Dove
16 lived, actually led back to the trailer that he lived in.
17 Officers knocked on the door, David Dove answered the door,
18 he had on no shirt, did have a pair of blue jeans on, his
19 pants looked wet around the lower end as though he'd been
20 out in the snow. They got his shoes that he had been
21 wearing and there was some fresh print marks near the
22 business on the carpet, inside of the business there were
23 some fresh footprints, shoes were compared to the print
24 they found inside of the business and it appeared to be a
25 match. There was a small amount of change that was taken

1 from the business and some damage to the property according
2 to the fishing supply.

3 THE COURT: Now, Mr. Dove, these two indictments have
4 not gone before the grand jury, do you understand that?

5 THE CLERK: Yes, sir.

6 THE COURT: Do you wish to waive your presentment to
7 the grand jury?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: The first one, the indictment concerning
10 burglary second degree says that William David Dove did in
11 Chester County on or about January 13th of 2011 enter the
12 building of Jordan's Fishing Supply without consent and in
13 order to commit a crime and remain, it was in the nighttime
14 in violation of section 16-11-312B3 of the South Carolina
15 Code. Is what is stated in this indictment the truth?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: On the other indictment, malicious injury
18 to personal property less than \$2,000, it says that William
19 David Dove did in Chester County on or about January 13,
20 2011 willfully and maliciously injure the personal property
21 of Jordan's Fishing Supply, the property being an air
22 condition unit, and the injury to the property -- or the
23 property loss was in the amount of \$2,000 or less in
24 violation of section 16-11-520AB3 of the South Carolina
25 Code. Is what's stated in this indictment true?

GUILTY PLEAS

1 THE DEFENDANT: Yes, sir.

2 THE COURT: Are you, in fact, guilty of burglary
3 second degree and malicious injury to personal property
4 concerning the events of January 13th of 2011 at Jordan's
5 Fishing Supply?

6 THE DEFENDANT: Yes.

7 THE COURT: Has anybody threatened you to get you to
8 plead?

9 THE DEFENDANT: No, sir.

10 THE COURT: Is the reason you are pleading guilty is
11 because you are, in fact, guilty?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: And you understand again that second
14 degree burglary carries up to 15 years in jail?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: It's a violent crime, and malicious injury
17 I believe that's five years as well, isn't it?

18 MR. TAYLOR: Yes, sir.

19 THE COURT: It carries five years.

20 THE DEFENDANT: Yes, sir.

21 THE COURT: And you understand if you commit another
22 crime in this state of a violent nature you will be
23 sentenced to life without the possibility of parole.

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Are you satisfied with the services

1 rendered to you by Mr. Lee?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And you understand that you only have ten
4 days in which to file an appeal?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Are you still wishing to waive your right
7 to have a jury trial?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And you wish to waive your right against
10 self incrimination?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: What is the next one?

13 MR. TAYLOR: That's it.

14 THE COURT: Now Mr. Dove, is there any questions in
15 your mind concerning all of these charges that you have
16 been pleading guilty?

17 THE DEFENDANT: No, sir.

18 THE COURT: You are, in fact, guilty of everything we
19 have been over this afternoon?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: Nobody has forced you into pleading
22 guilty?

23 THE DEFENDANT: No, sir.

24 THE COURT: Anybody promise you anything to get you to
25 plead guilty?

GUILTY PLEAS

1 THE DEFENDANT: No, sir.

2 THE COURT: The only reason that you are pleading
3 guilty to all of these crimes is because you are, in fact,
4 guilty.

5 THE DEFENDANT: Yes, sir.

6 THE COURT: And on all of these crimes are you
7 satisfied with the services of Mr. Lee?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: He has done everything that you have asked
10 him to do?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And on all of these you understand that
13 you only have ten days in which to file an appeal?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: And on all of these you understand you
16 could have had a jury trial but you wanted to waive that.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Anything else from the State?

19 MR. TAYLOR: No, Your Honor.

20 THE COURT: Mr. Lee?

21 MR. LEE: Your Honor, you've heard his background
22 previously on that, the only other thing, Your Honor, is we
23 had a couple of collateral matters, we would ask the Court
24 if the Court could help us on to do so. In a number of
25 these occasions clothing -- and he says, of course, he

1 understands that he can't wear these clothes right now but
2 he does hope when he serves his time and he gets out of the
3 penitentiary he would need them and he would ask that they
4 be returned to him. I have told him that they may have to
5 wait awhile until any appeal time limits have expired or
6 anything of that nature, but he -- and all of these items,
7 whatever entered into evidence, we would just ask the Court
8 if they could direct those items be made available for his
9 family to pick up.

10 THE COURT: Solicitor?

11 MR. TAYLOR: Your Honor, I know of the most recent
12 case we talked about the shoes are actually pretty relevant
13 to that case.

14 THE COURT: The problem you've got, Mr. Lee, is he may
15 get down to the correctional center and try to file a PCR
16 saying you did a crummy job for him and then those would be
17 up for trial and these items would be relevant.

18 MR. LEE: Yes, sir. That's why I told him he might
19 have to wait until all of those time limits had expired
20 before he can get them back. He would like to get them
21 back because I know that -- particularly that his shoes
22 are -- it's a little difficult for him to find shoes that
23 actually fit him but that's -- we were just trying to ask
24 the Court.

25 THE COURT: If they're available he can have them, I'm

GUILTY PLEAS

1 sure that nobody else would want to have his shoes.

2 MR. LEE: And I think there's one other -- he was
3 charged -- not charged, never charged, there was some car
4 break-ins, he had some money on him and the money was
5 seized and he would like to get that money back. We're not
6 talking about a lot of money, we're talking about \$65 or
7 \$70 or something like that. I don't know.

8 THE COURT: I guess it all depends on whether the
9 solicitor's office wants to bring an action to seize it.

10 THE DEFENDANT: I was locked up for improper parking,
11 the officer -- when I got back to the truck I went to they
12 locked me up for improper parking.

13 THE COURT: I don't know.

14 THE DEFENDANT: But they seized my money, it's been
15 two years.

16 THE COURT: You can always file an action and get it
17 back.

18 MR. LEE: I told him he can do a claim and delivery.

19 THE COURT: Anything further?

20 MR. LEE: Your Honor, we would just ask the Court to
21 go along with that.

22 THE COURT: On indictment 2010-GS-12-524, charge of
23 malicious injury to personal property of Hair Gallery,
24 sentence of this Court is that you be committed to the
25 state department of corrections for a period of five years.

1 Under indictment 2010-GS-12-523 charging you with burglary
2 in the second degree violent concerning the Hair Gallery,
3 sentence is that you be committed to the state department
4 of corrections for a period of 15 years. As to the
5 indictment 2010-GS-12-2008, burglary violent second degree
6 concerning the Campbell's Truck Stop, sentence of the Court
7 you be sentenced to the state department of corrections for
8 a period of 15 years. Under indictment 2011-GS-12-160,
9 sentence of the Court -- burglary in the second degree
10 violent, and this would be concerning Jordan's Fishing
11 Supply, sentence of the Court is that you be committed to
12 the state department of corrections for a period of 15
13 years. Under indictment 2011-GS-12-161 concerning
14 malicious injury to personal property under \$2,000,
15 sentence of the Court is that you be committed to the state
16 department of corrections for a period of five years.
17 Under indictment 2010-GS-12-2004 concerning purse snatching
18 of the purse of Tammy Goins it's the sentence of the Court
19 that you be committed to the state department of
20 corrections for a period of three years. All of these will
21 run concurrent with the prior crimes that he has already
22 pled to and he is to be given credit for time served in
23 jail, not under house arrest.

24 MR. TAYLOR: Your Honor, I would -- I think I may have
25 misspoke, I apologize, I think there was one indictment

GUILTY PLEAS

1 there for malicious injury to personal property under
2 \$2000, that is actually a 30 day -- that was after the
3 change and --

4 THE COURT: Okay, I've got you.

5 MR. TAYLOR: That's where the 30 day charge --

6 THE COURT: This was the 2001. He is sentenced to 30
7 days.

8 MR. LEE: Thank you, Your Honor.

9 (END OF THE HEARING.)

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I, the undersigned, Michael C. Watkins, Official
2 Court Reporter for the Sixth Judicial Circuit of the State
3 of South Carolina, do hereby certify that the foregoing is
4 a true, accurate and complete transcript of record of the
5 proceedings had and evidence introduced in the trial of
6 the captioned case, relative to appeal, in the Court of
7 General Sessions for Chester County, South Carolina, on
8 the 10th day of February, 2011.

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

11

12

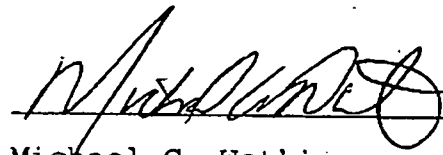
May 4, 2011.

13

14

15

16


Michael C. Watkins
Court Reporter

17

18

19

20

21

22

23

24

25

WITNESSES

J Mitchell (Chester County Sheriff)

The State of South Carolina
County of Chester

COURT OF GENERAL SESSIONS

April TERM 2010

ARREST WARRANT NUMBER DOA

M250719

1/12/2010

THE STATE

VS.

ACTION OF GRAND JURY

WILLIAM DOVE

TRUEBILL

Person of Grand Jury

Date: 1/13/2010 J. Mitchell 2nd Person

VERDICT

Indictment for
Purse snatching.

SC Code: 16-13-0150

CDR Code: 0129

Class: Class A Misdemeanor

Foreperson of Petit Jury

Date:

INDICT

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

INDICTMENT

2010 GS.12.204

At a Court of General Sessions, convened on April 13, 2010, the Grand Jurors of Chester County present upon their oath:

Purse snatching.

That WILLIAM DOVE did in Chester County on or about January 12, 2010, snatch suddenly and carry away from another, Tammy Going, a purse or other thing of value, purse belonging to Tammy Going with the intent to deprive the owner or person lawfully in possession of the article in violation of § 16-13-0150, *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.



Douglas A. Barfield
Solicitor

WITNESSES

Telly Crockett (Chester Police Department) ✓

DOCKET NO. 2010-GS-12-205

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

April TERM 2010

ARREST WARRANT NUMBER 0A

D. ACT IN RE: K289008

1/13/2010

THE STATE

VS.

ACTION OF GRAND JURY

DAVID WILLIAM ROVE

TRIPLE

Forfeiture of Grand Jury

Date: 11/13/2010

VERDICT

Indictment for

Grand Larceny, Value more than \$2,500 but less than \$5000, 1st or Subsequent Property Offense

SC Code: 16-13-0030(B)(1), 16-1-67

CDR Code: 0478, 2367

Class: E Felony

Forfeiture of Petit Jury

Date:

INDICT

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF CHESTER)

2010.GS.12.205

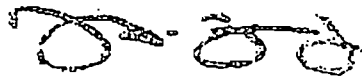
At a Court of General Sessions, convened on April 13, 2010, the Grand Jurors of Chester County present upon their oath:

Grand Larceny, Value more than \$1,000 but less than \$5,000, 3rd or Subsequent

Property Offense

That DAVID WILLIAM DOVE did in Chester County on or about January 12, 2010, take and carry away the personal property, to wit: purse with cash, value totaling \$1,000 or more, of Margie Kearse with the intent to deprive the owner of possession of the property and to convert the property to the use of the defendant, the value of the property being more than \$1000.00 but less than \$5000.00, and this being the 3rd or Subsequent conviction for a property offense where the term of imprisonment is contingent upon the value of the property involved, in violation of 16-1-57, and in violation of §16-13-30(A), (B)(1), 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.



Douglas A. Barfield
Solicitor

WITNESSES

Telly Crockett (Chester Police Department)

DUCKETT NU. 2010-05-14-200

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

April TERM 2010

ARREST WARRANT NUMBER/DOA

9009

1/13/2010

THE STATE

VS.

ACTION OF GRAND JURY

DAVID WILLIAM DOVE

TRUEBILL

Foreperson of Grand Jury
Date: 4/13/2010 *David L. Thomas*

VERDICT

Indictment for

Burglary (After June 20, 1985) - First degree

SC Code: 16-11-0311

CDR Code: 0079

Class: Felony

Forfeiture of Petit Jury

Date:

INDICT

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF CHESTER)

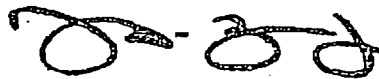
2010.GS.12.206

At a Court of General Sessions, convened on April 13, 2010, the Grand Jurors of Chester County present upon their oath:

Burglary (After June 20, 1985) - First degree

That DAVID WILLIAM DOVE did in Chester County on or about January 12, 2010, enter the dwelling of Larry Dewayne Kearse without consent and with intent to commit a crime in the dwelling, to wit: entered dwelling at nighttime, and/or defendant entered dwelling and has two or more prior convictions for burglary, all in violation of §16-11-311(A)(1)(a), *Code of Laws of South Carolina, (1976), as amended*.

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



Douglas A. Barfield
Solicitor

DOCKET NO. 2010-GS-12-208

Phillip Perry (Chester County Sheriff)

J. M. TCHEN

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

April TERM 2010

ARREST WARRANT NUMBER/DOA

1250747

1/25/2010

THE STATE

vs.

ACTION OF GRAND JURY

WILLIAM DAVID DOVE

TRIPLE

one person of Grand Jury

Companion of Grand Jury
Date: 4/13/2010 Edward L. Mancini

VERDICT

Indictment for

Burglary (Violent) (After 06/20/85) - Second degree

SC Code: 16-11-0312(B)

CDR Code: 0086

Class: D Felony

Foreperson of Petit Jury

Date:

INDICT

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF CHESTER)

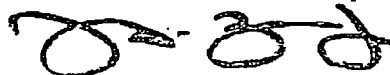
2010.GS.12.208

At a Court of General Sessions, convened on April 13, 2010, the Grand Jurors of Chester County present upon their oath:

Burglary (Violent) (After 06/20/85) - Second degree

That WILLIAM DAVID DOVE did in Chester County on or about July 20, 2009, enter the building of Campbells Truck Stop without consent and with intent to commit a crime in the building and the entering or remaining occurred in the nighttime, and/or defendant has a record of two or more burglary convictions; all in violation of §16-11-312(B)(3), *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.



Douglas A. Barfield
Solicitor

WITNESSES

C. Henry (Chester Co. Sheriff's Office) 10-0755

S. MITCHELL

DOCKET NO. 2010-GS-12-523

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2010

ARREST WARRANT NUMBER DOA

M251169 (DOA:6-15-10)

THE STATE
vs.

WILLIAM DAVID DOVE

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
a: 9/17/2010 David L. Mowbray

VERDICT

Indictment for

Burglary, Second Degree
(Violent)

SC Code: §16-11-312(B),(2),(3)

CDR Code: 0086

Class: Felony, D

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHESTER)

INDICTMENT
2010-GS-12-523

At a Court of General Sessions, convened on September 7, 2010, the Grand Jurors of Chester County present upon their oath:

BURGLARY, SECOND DEGREE (VIOLENT)

That WILLIAM DAVID DOVE did in Chester County on or about January 20, 2010, enter the building of The Hair Gallery without consent and with intent to commit a crime in the building and the entering or remaining occurred in the nighttime and that William David Dove has two or more prior burglary convictions in violation of §16-11-312(B),(2),(3), *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.



Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

C. Henry (CSD) ID - 0755

S. Mitchell

DOCKET NO. 2010-GS-12-524

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

SEPTEMBER TERM 2010

ARREST WARRANT NUMBER DOA

M251170 (DOA-6-15-10)

THE STATE
VS.

William David Dove

ACTION OF GRAND JURY

TRUEBILL

Person of Grand Jury
e: *William David Dove*

VERDICT

Indictment for

Malicious Injury to Personal Property
More than \$1,000 but less than \$5,000

SC Code: § 16-11-0510(A), (B)(2)

CDR Code: 0493

Class: Felony, F

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
COUNTY OF CHESTER)

INDICTMENT

At a Court of General Sessions, convened on September 7, 2010, the Grand Jurors of Chester County present upon their oath:

MALICIOUS INJURY TO PERSONAL PROPERTY

MORE THAN \$1,000 BUT LESS THAN \$5,000

That William David Dove did in Chester County on or about January 20, 2010, wilfully and maliciously injure the personal property of The Hair Gallery, the property being door, file cabinets, drink machine, and the injury to the property or the property loss being worth more than \$1,000.00 but less than \$5,000.00 in violation of § 16-11-510(A), (B)(2), *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.



Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

Burley McDaniel (CSD)

DOCKET NO. 2011-GS-12-160

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

APRIL TERM 2011

ARREST WARRANT NUMBER/DOR

ARREST 1-14-11

THE STATE

VS.

WESLEY DAVID DOWD

ACTION OF GRAND JURY

Indictment of Grand Jury

Date:

VERDICT

I DO HEREBY WAIVE PRESENTMENT
BEFORE THE GRAND JURY.

William David Dowd
DEFENDANT
DATE

Indictment for

Burglary, Second Degree
(Violent)

SC Code: §16-11-312(B)(3)
CDR Code: 0086
Class: Felony, D

Forfeiture of Petit Jury
Date:

STATE OF SOUTH CAROLINA
COUNTY OF CHESTER

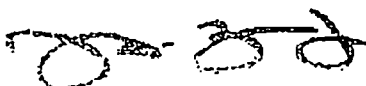
INDICTMENT

At a Court of General Sessions, convened on April 5, 2011, the Grand Jurors of Chester County present upon their oath:

BURGLARY, SECOND DEGREE

That William David Dove did in Chester County on or about January 13, 2011, enter the building of Jourdan's Fishing Supply without consent and with intent to commit a crime in the building and the entering or remaining occurred in the nighttime in violation of §16-11-312(E)(3), *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.



Douglas A. Barfield, Jr., SOLICITOR

WITNESSES

Burley McDaniel (CSD)

DOCKET NO. 2011-GS-12-161

The State of South Carolina

County of Chester

COURT OF GENERAL SESSIONS

APRIL TERM 2011

ARREST WARRANT NUMBER DOA

M251660 (DOA-1-14-11)

THE STATE

vs.

William David Dove

I DO HEREBY WAIVE PRESENTMENT
BEFORE THE GRAND JURY.

ACTION OF GRAND JURY

For person of Grand Jury

VERDICT

William David Dove
DEFENDANT
DATE

Malicious Injury to Personal Property
\$2000 or less

For person of Petit Jury
Date:

SC Code: §16-11-0510(A), (B)(3)
CDR Code: 3415
Class: Misdemeanor, Unclassified

INDICTMENT

MALICIOUS INJURY TO PERSONAL PROPERTY LESS THAN \$2000

३३

Douglas A. Barfield, Jr., SOLICITOR

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHESTER COUNTY
Court of General Sessions

Hon. W. Jeffrey Young, Circuit Court Judge

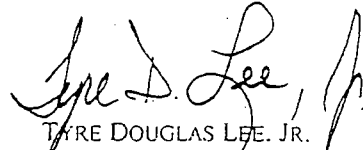
Case Nos. 2010-GS-12-204, -205, -206, -208, -523, -524, 2011-GS-12-160, & -161

The State, ... Respondent
v.
William David Dove.....Appellant.

NOTICE OF APPEAL

William David Dove appeals his conviction and sentence in this case. The sentence was imposed by the Honorable W. Jeffrey Young, on February 10, 2011.

February 16, 2011.



TYRE DOUGLAS LEE, JR.
Chester County Public Defender
P.O. Box 118, 140 Main Street
Chester, South Carolina 29706
(803) 385-3232
Attorney for Appellant
S.C. Bar No. 3175
Email: tylee@alumni.clemson.edu

Other Counsel of Record:

Douglas A. Barfield, Jr., Solicitor
Christopher D. Taylor, Deputy Solicitor
P.O. Box 728, 140 Main Street
Chester, South Carolina 29706
(803) 377-1141
Attorney for Respondent

FILED
CLERK OF COURT
CHESTER COUNTY S.C.

2011 FEB 16 P 2:04

FILED

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM DAVID DOVE,

APPELLANT

FINAL ANDERS BRIEF OF APPELLANT

SUSAN B. HACKETT
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, SC 29211-1589
(803) 734-1343

ATTORNEY FOR APPELLANT

TABLE OF CONTENTS

TABLE OF CONTENTS.....	1
TABLE OF AUTHORITIES.....	2
STATEMENT OF ISSUE ON APPEAL.....	3
STATEMENT OF THE CASE.....	4
ARGUMENT.....	6
CONCLUSION.....	9
PETITION TO BE RELIEVED AS COUNSEL.....	10

TABLE OF AUTHORITIES

Cases

<u>Jackson v. Denno</u> , 378 U.S. 368 (1964)	4, 6
<u>Miranda v. Arizona</u> , 384 U.S. 426 (1966)	6
<u>State v. Goodwin</u> , 384 S.C. 588, 683 S.E.2d 500 (Ct. App. 2009).....	6
<u>State v. Miller</u> , 375 S.C. 370, 652 S.E.2d 444 (Ct. App. 2007).....	6
<u>State v. Moses</u> , 390 S.C. 502, 702 S.E.2d 395 (Ct. App. 2010)	6

STATEMENT OF ISSUE ON APPEAL

Did the lower court err in ruling Appellant's statement to police officers was knowingly, voluntarily, and freely given in light of Appellant's inability to read and write and the officers' promise to obtain a \$10,000 bond for Appellant so that he could be released from detention?

STATEMENT OF THE CASE

On February 10, 2011, Chris Taylor, Esquire on behalf of the State of South Carolina called Appellant's case to trial on the charges of burglary in the first degree pursuant to indictment number 2009-GS-12-206 and grand larceny pursuant to indictment number 2009-GS-12-205. (R. p. 3 lines 4-5). Appellant was represented by Tyree Lee, Esquire. After jury selection, the Honorable William Jeffrey Young presided over a hearing pursuant to Jackson v. Denno, 378 U.S. 368 (1964) concerning a statement Appellant made to law enforcement. (R. p. 16 line 10 – p. 34 line 25). At the conclusion of the hearing, Judge Young ruled Appellant's statement was admissible. (R. p. 35 lines 1-11).

Shortly thereafter, Appellant changed his plea to guilty on the charges of burglary in the first degree and petty larceny, a lesser included offense of the indicted charge. (R. p. 35 lines 15-16; R. 39 lines 10-15). The state recommended a fifteen-year cap on these charges and others to be addressed at a later time. (R. p. 42 lines 12-19). At the conclusion of the colloquy, Judge Young sentenced Appellant to ten years on the petty larceny charge, third or greater and fifteen years on the burglary charge. (R. p. 50 lines 3-9). Judge Young ordered the sentences to be served concurrently. (R. p. 50 lines 10-11). Following the guilty plea, Judge Young excused the jury.

Thereafter, the state called the following cases against Appellant: purse snatching pursuant to indictment number 2010-GS-12-204; burglary in the second degree pursuant to indictment number 2010-GS-12-208; burglary in the second degree pursuant to indictment number 2010-GS-12-523; malicious injury to personal property pursuant to indictment number 2010-GS-12-524; burglary in the second degree pursuant to indictment number 2011-GS-12-160; and malicious injury to personal property pursuant to indictment number

2011-GS-12-161. (R. p. 51 line 17 – p. 52 line 4). After engaging in a colloquy with Appellant and obtaining factual bases, Judge Young accepted the guilty pleas. Judge Young imposed the following sentences:

Charge	Indictment number	Sentence	Citation to transcript
Malicious injury to personal property	2010-GS-12-524	Five years	R. p. 66 lines 23-25
Burglary in the second degree	2010-GS-12-523	Fifteen years	R. p. 67 lines 1-4
Burglary in the second degree	2010-GS-12-208	Fifteen years	R. p. 67 lines 4-8
Burglary in the second degree	2011-GS-12-160	Fifteen years	R. p. 67 lines 8-13
Malicious injury to personal property	2011-GS-12-161	Thirty days	R. p. 68 lines 6-7
Purse snatching	2010-GS-12-204	Three years	R. p. 67 lines 17-20

Judge Young ordered all of the sentences to run concurrently. (R. p. 67 lines 20-23).

Appellant timely filed his Notice of Appeal on February 17, 2011.

ARGUMENT

The lower court erred in ruling Appellant's statement to police officers was knowingly, voluntarily, and freely given in light of Appellant's inability to read and write and the officers' promise to obtain a \$10,000 bond for Appellant so that he could be released from detention.

In Jackson v. Denno, 378 U.S. 368, 376 (1964), the United States Supreme Court held that "a defendant in a criminal case is deprived of due process of law if his conviction is founded, in whole or in part, upon an involuntary confession, without regard for the truth or falsity of the confession." To introduce a statement produced during custodial interrogation, the prosecution must prove by a preponderance of the evidence that the statement was made freely and voluntarily, and taken in compliance with Miranda v. Arizona, 384 U.S. 426 (1966). State v. Goodwin, 384 S.C. 588, 601, 683 S.E.2d 500, 507 (Ct. App. 2009); State v. Miller, 375 S.C. 370, 378, 652 S.E.2d 444, 448 (Ct. App. 2007). In South Carolina, a court must examine the totality of the circumstances surrounding the custodial statement. The examining court must answer the question: did totality of the circumstances surrounding the custodial statement defeat the defendant's will? State v. Moses, 390 S.C. 502, 513, 702 S.E.2d 395, 401 (Ct. App. 2010).

Courts have recognized appropriate factors that may be considered in a totality of the circumstances analysis: background; experience; conduct of the accused; age; maturity; physical condition and mental health; length of custody or detention; police misrepresentations; isolation of a minor from his or her parent; the lack of any advice to the accused of his constitutional rights; threats of violence; direct or indirect promises, however slight; lack of education or low intelligence; repeated and prolonged nature of the questioning; exertion of improper influence; and the use of physical punishment, such as the deprivation of food or sleep.

Id. at 513-514, 702 S.E.2d at 401 (internal citations omitted).

An examination of the totality of the circumstances reveals Appellant did not provide a knowing, voluntary, and free statement to police officers. Shortly after arresting Appellant for burglary in the first degree and grand larceny, Detective Gene Gilmore with the Chester City Police Department interrogated Appellant concerning his involvement in the burglary and theft. (R. p. 18 lines 12-21). Detective Gilmore testified that he advised Appellant of his rights upon arrest. (R. p. 18 lines 12-13). According to Detective Gilmore, before he asked Appellant any questions he orally advised him of his rights and Appellant wrote his initials beside each statement of his rights. (R. 19 line 13 – p. 20 line 1). When asked by the prosecutor if he had found out whether Petitioner could read or write, Detective Gilmore testified he had and Appellant could read “a little bit” and could write. (R. 20 lines 5-13). According to Detective Gilmore, Appellant then gave an inculpatory statement. (R. p. 20 line 24 – p. 21 line 1). During cross examination, Detective Gilmore admitted that Appellant has said he cannot read and write. (R. 22 lines 17-19). Although Detective Gilmore stated that Appellant can write (R. 22 line 19), he admitted that he has not seen Appellant “just take a book and read it” (R. 22 lines 20-22). Detective Gilmore also admitted he had never asked Appellant to read something back to him. (R. 22 lines 23-24). Detective Gilmore denied making any promises to Appellant or discussing a bond with Appellant. (R. p. 23 line 22 – p. 24 line 4). However, Detective Gilmore did not dispute that immediately after giving the custodial statement Appellant received a \$10,000 bond from a magistrate, who lacked jurisdiction to set the bond. (R. p. 24 line 22 – p. 25 line 25).

Appellant testified as well. Appellant testified that he was approached by officers while he was in the county jail. (R. p. 27 line 11 – p. 28 line 2). When the officers initially asked Appellant for a statement, he refused to provide one. (R. p. 28 lines 1-3). Officers

approached Appellant again with an inducement. Officers promised to get Appellant a low enough bond that he could be released quickly. (R. p. 28 lines 14-16). In light of that promise, Appellant provided a statement. (R. p. 28 lines 17-18; R. p. 29 lines 12-15; R. p. 32 lines 7-15). Later that same day, Appellant went before a city judge who set a \$10,000 bond on his charges of burglary in the first degree and grand larceny. (R. p. 28 lines 21-24). Appellant was released the next day. (R. p. 28 lines 24-25). Appellant's bond was revoked four days after his release because the judge who set the bond did not have jurisdiction to do so. (R. p. 28 line 25 – p. 29 line 5). Appellant also testified that his ability to read and write is severely limited. Specifically, he testified that he cannot pick up a book and read a page. (R. p. 30 lines 23-25). Appellant stated he has the ability to write his name: "it's hard for me to spell William because it's got too many letters, but I can spell David and Dove." (R. p. 31 lines 7-9). Additionally, Appellant testified he asked for an attorney, but despite that request, officers continued to interrogate him. (R. p. 31 lines 10-25).

Appellant's very limited ability to read and write coupled with the officer's promise to secure a very low bond for Appellant rendered his statement unknowing, involuntary, and compulsory. Thus, the lower court erred in finding the statement admissible. The court's holding concerning the admissibility of Appellant's statement forced Appellant to plead guilty to the charged offenses.

CONCLUSION

The lower court erred in ruling Appellant's statement to police officers was admissible in light of Appellant's inability to read and write and the officers' promise to obtain a \$10,000 bond for Appellant so that he could be released from detention, which induced Appellant to enter guilty pleas to his charges.

Respectfully submitted,

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of December, 2011.

IN THE COURT OF APPEALS

Appeal from Chester County

William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM DAVID DOVE,

APPELLANT

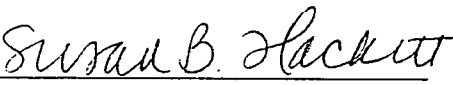
PETITION TO BE RELIEVED AS COUNSEL

Counsel for William David Dove states:

1. She is Appellate Defender for the South Carolina Office of Appellate Defense, and was appointed to represent appellant.
2. She has reviewed the record of appellant's trial before Judge William Jeffrey Young, which was held on February 10, 2011, and, in her opinion, the appeal is without legal merit sufficient to warrant a new trial.
3. She has, pursuant to Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967), briefed an arguable legal issue which arose during the course of the trial.

WHEREFORE, she asks the Court to relieve her as counsel for William David Dove.

Respectfully submitted,


Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

This 29th day of December, 2011.

CERTIFICATE OF COUNSEL

The undersigned certifies that to the best of my ability this Final Brief of Appellant complies with Rule 211(b), SCACR, and the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

December 29th, 2011

Susan B. Hackett

Susan B. Hackett
Appellate Defender

S.C. Commission on Indigent Defense
Division of Appellate Defense
1330 Lady Street, Suite 401
Post Office Box 11589
Columbia, South Carolina 29211-1589

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Chester County
William Jeffrey Young, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

WILLIAM DAVID DOVE,

APPELLANT

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Salley W. Elliott, Esquire, at Rembert Dennis Building, 1000 Assembly Street, Room 519, Columbia, SC 29201; and a copy of the Final Anders Brief of Appellant and Record on Appeal have been served on William David Dove, #293245 at McCormick Correctional Institution, this 29th day of December, 2011.

Susan B. Hackett

Susan B. Hackett
Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 29th day of December, 2011.

[Signature] (L.S.)

Notary Public for South Carolina

My Commission Expires: October 2, 2013

**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State, Respondent,

v.

William David Dove, Appellant.

Appellate Case No. 2011-186347

Appeal From Chester County
W. Jeffrey Young, Circuit Court Judge

Unpublished Opinion No. 2012-UP-491
Submitted August 1, 2012 – Filed August 22, 2012

APPEAL DISMISSED

Appellate Defender Susan B. Hackett, of Columbia, for
Appellant.

Attorney General Alan Wilson, Chief Deputy Attorney
General John W. McIntosh, and Senior Assistant Deputy
Attorney General Salley W. Elliott, all of Columbia; and
Solicitor Douglas A. Barfield, Jr., of Lancaster, for
Respondent.

PER CURIAM: Dismissed after review pursuant to *Anders v. California*, 386 U.S. 738 (1967). Counsel's motion to be relieved is granted.

APPEAL DISMISSED.¹

FEW, C.J., and WILLIAMS and PIEPER, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.



RECEIVED

102

SEP 11 2012

CL/SS

ATTORNEY GENERALS
The South Carolina Court of Appeals

JENNY ABBOTT KITCHINGS
CLERK

V. CLAIRE ALLEN
DEPUTY CLERK

POST OFFICE BOX 11629
COLUMBIA, SOUTH CAROLINA 29211
1015 SUMTER STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1890
FAX: (803) 734-1839
www.sccourts.org

September 07, 2012

The Honorable Sue K. Carpenter
PO Drawer 580
Chester SC 29706-0580

REMITTITUR

Re: The State, v. Dove, William David
Lower Court Case No. 2010GS1200205, 2010GS1200204,
2010GS1200523, 2010GS1200524, 2010GS1200206, 2010GS1200208
Appellate Case No. 2011-186347

Dear Clerk of Court:

The above referenced matter is hereby remitted to the lower court or tribunal. A copy of the judgment of this Court is enclosed.

Very truly yours,

V. Claire Allen, Deputy

CLERK

cc: Susan Barber Hackett
Salley W. Elliott

True and correct copy of original paper
on file in this office
Jul B. Carpenter
Clerk of Court
Chester County, SC
Date 11/2/2012

103

FORM 5

STATE OF SOUTH CAROLINA)

County of Chester)

William David Dove #293245)

Full name and prison number (if any) of Applicant)

v.)

State of South Carolina)

IN THE COURT OF COMMON PLEAS

APPLICATION FOR
POST-CONVICTION RELIEF

FILED

2012 OCT 17 P 1:16
CLERK OF COURT
CHESTER CO S.C.

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention McCormick Correctional Institution
2. Name and location of Court which imposed sentence Chester
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) M250719- Larceny 3 years
 - (b) M250747, M251169, M251659 - Burglary 1st Degree 15 years

- (c) M251170 - MIPP - 5 years
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 2/11/2011
- (b) _____
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty X
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- yes
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. South Carolina Court of Appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Appeal Dismissed
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. August 22, 2012
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. 2012-UP-491
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____

FILED
2012 OCT 17 P 11:16
CLERK OF COURT
DISTRICT CO S.C.

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) In effective assistance of counsel
- (b) Involuntary Guilty Plea
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Failed to adequately advise on likelihood of success at trial
- (b) Coerced Applicant
- (c) _____
12. Prior to this application have you filed with respect to this conviction:
- (a) any petition in a State Court under South Carolina Law? No
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? No
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? _____
- (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. _____

FILED
2012 OCT 17 PM 11:18
CLERK OF COURT
SOUTH CAROLINA

(c) the disposition thereof:

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

(d) the date of each such disposition:

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

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

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

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

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

(a) which grounds have been presented:

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

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

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

FILED
 2012 OCT 17 PM 1:16
 CLERK OF COURT
 DISTRICT CO S.C.

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?
18. If you answered "yes" to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i.
- ii.
- iii.
- (b) the proceedings at which each such attorney represented you:
- i.
- ii.
- iii.

FILED
2012 OCT 17 P 1:16
CLERK OF COURT
DISTRICT COURT
S.C.

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

New Trial

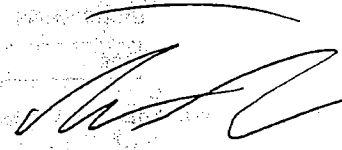
20. Are you now under sentence from any other court that you have not challenged?

No

APPLICATION TO PROCEED WITHOUT PAYMENT

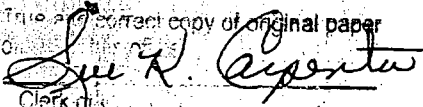
Based to information obtained from the Applicant I believe the applicant is indigent and unable pay for filing fees or costs associated with this application

Respectfully Submitted,


Tristan Shaffer
Attorney for Applicant
P.O. Box 176
Chapin, SC 29036
(803) 575-0384
SC Bar # 77565

FILED
2012 OCT 17 P 1:13
CLERK OF COURT
CRASTER CO S.C.

True and correct copy of original paper


Sue K. Carpenter

Clerk of Court
Craster County, SC

Date 11/1/2012

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

William David Dove, #293245,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

2012-CP-12-0523

RETURN

The Respondent, making its Return to the application for post conviction relief (PCR) filed October 17, 2012, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Chester County Clerk of Court. The Applicant was indicted at the April 2010 term of the Chester County Grand Jury for purse snatching (10-GS-12-0204), grand larceny between \$1,000 and \$5,000 – 3rd or subsequent offense (10-GS-12-0205), burglary – 1st degree (10-GS-12-0206), and burglary – 2nd degree (10-GS-12-0208). He was then indicted at the September 2010 term of the Chester County Grand Jury for burglary – 2nd degree (10-GS-12-0523) and malicious injury to personal property between \$1,000 and \$5,000 (10-GS-12-0524). He was represented by Tyre D. Lee, Jr., Esquire.

On February 11, 2011, following the beginning of a trial on the charges of burglary – 1st degree and grand larceny between \$1,000 and \$5,000 – 3rd or subsequent offense, and the subsequent loss of a pre-trial motion regarding the admissibility of the Applicant's statement, the Applicant pled guilty to the lesser-included offense of petit larceny – 3rd or subsequent offense (10-0205) and pled to

burglary – 1st degree as indicted. He was sentenced by the Honorable W. Jeffrey Young to confinement for concurrent terms of fifteen years for burglary – 1st degree and ten years for petit larceny – 3rd or subsequent offense. Applicant then pled to all other charges as indicted and waived presentment to the Grand Jury for charges of burglary – 2nd degree (11-GS-12-0160) and malicious injury to personal property under \$2,000 (11-GS-12-0161). Judge Young sentenced Applicant to confinement of concurrent terms of ten years for each charge of burglary – 2nd degree, five years for malicious injury (10-0524), three years for purse snatching, and thirty days for malicious injury (11-0161).

The Applicant filed a timely notice of appeal. An Anders brief was filed on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Dove, Op. No. 2012-UP-491 (filed August 22, 2012). The Remittitur was returned on September 7, 2012.

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

II.

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

1. Ineffective assistance of counsel, in that;
 - a. Counsel failed to adequately advise on the likelihood of success at trial,
2. Involuntary guilty plea, in that;
 - a. Applicant was coerced into pleading guilty.

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.

Respondent submits that the Applicant's allegation that his guilty plea was involuntary is without merit. In PCR cases, a defendant asserting a constitutional violation must frame the issue as one of ineffective assistance of counsel. Al-Shabazz v. State, 338 S.C. 354, 527 S.E.2d 742 (1999). A defendant who pleads guilty on the advice of counsel may collaterally attack the plea only by showing that (1) counsel was ineffective and (2) there is a reasonable probability that but for counsel's errors, the defendant would not have pled guilty and would have insisted on going to trial. Roscoe v. State, 345 S.C. 16, 546 S.E.2d 417 (2001). A defendant alleging that his guilty plea was induced by ineffective assistance of counsel must prove that counsel's advice was not "within the competence demanded of attorneys in criminal cases." Hill v. Lockhart, 474 U.S. 52, 56, 106 S. Ct. 366, 369 (1985). A guilty plea is a solemn, judicial admission of the truth of the charges against the defendant. Statements made during the plea should be considered conclusive unless the defendant presents reasons why he should be allowed to depart from the truth of those statements. Crawford v. U.S., 519 F.2d 347 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact that is not conclusively refuted by the record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305

S.E.2d 247.

V.

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

VI.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Senior Assistant Deputy Attorney General

SUZANNE H. WHITE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

January 29, 2013.

SATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHESTER) SIXTH JUDICIAL CIRCUIT
CASE NO.: 2013-CP-12-0523

WILLIAM DAVID DOVE)

vs.)

TRANSCRIPT OF RECORD

STATE OF SOUTH CAROLINA)

FEBRUARY 4, 2013
LANCASTER, SOUTH CAROLINA

BEFORE THE HONORABLE ERNEST KINARD

APPEARANCES:

TRISTAN M. SHAFFER, ESQUIRE
LEXINGTON, SOUTH CAROLINA

ATTORNEY FOR THE APPLICANT

SUZANNE H. WHITE, ASSISTANT ATTORNEY GENERAL
COLUMBIA, SOUTH CAROLINA

ATTORNEY FOR THE STATE

SHIRLEY BROOM
16TH Circuit Court Reporter

I-N-D-E-X

WITNESSES:	DIRECT	CROSS	RE-DIRECT	RE-CROSS
Laura Clack				
By Mr. Shaffer	6			
Tyree Lee				
By Mr. Shaffer	9			
By Ms. White		28		
Judy Dove				
By Mr. Shaffer	30			
Jackie Price				
By Mr. Shaffer	39			
David Dove				
By Mr. Shaffer	43			
By Ms. White		53		
By Mr. Shaffer			59	
By Ms. White				61
By Mr. Shaffer	62			

E-X-H-I-B-I-T-SNO.DESCRIPTIONID.

EVD.

NO EXHIBITS

1 MS. WHITE - May it please the Court, Your Honor.
2 This is the case of William David Dove versus the State.
3 It is case number 2012-CP-12-0523. He is represented today
4 by Mr. Tristan Shaffer but was represented at -- at what
5 began as a trial for charges of burglary first and grand
6 larceny, ended in a plea to burg first and petty larceny
7 third or subsequent February 11, 2011. Subsequent to that
8 plea the remaining charges for purse-snatching, burglary
9 second, another burglary second and malicious injury to
10 property, as well as waiving presentment to another
11 burglary second and malicious injury to property, those
12 were all handled as well at the guilty plea following the
13 first one. He ended up with a 15 year aggregate sentence
14 and he's alleged ineffective assistance of counsel and
15 involuntary guilty plea based upon counsel's failure to
16 adequately advise him as to the likelihood of success at
17 trial and that he was forced into pleading guilty. So I
18 will turn it over to Mr. Shaffer at this time.

19 THE COURT - All right, Mr. Shaffer.

20 MR. SHAFFER - Thank you, Your Honor. Briefly
21 about the charges, there were several -- Mr. Dove was
22 charged with several different offenses. He was charged
23 with multiple burglaries involving the businesses and one
24 burglary involving his aunt's residence. He ended up
25 pleading guilty to that one as a burg first and getting 15

1 years, Your Honor. I -- we'll go ahead and I -- generally
2 I like to lay a foundation of the background, but what I'll
3 do and expedite things, I think I'm going to go ahead and
4 call one of his sisters who was present with Tyree Lee and
5 David during the conversation that they had at the plea.

6 THE COURT - All right, now, I have a -- since I
7 just opened it -- I haven't read anything, but it looks
8 like they started a trial and then he pled. Is that ---

9 MR. SHAFFER - Yes, Your Honor, that's correct.
10 They had a Jackson v. Denno hearing on his statement. The
11 substance of the Jackson v. Denno hearing, because it is
12 rather lengthy, essentially Mr. Dove stated or his position
13 was that -- that the police had offered him a bond in
14 exchange for testimony. Now, he did end up getting a
15 \$10,000 bond on the burglary first in front a Magistrate
16 Court Judge or a Municipal Court Judge. Somehow the
17 Municipal Court Judge down in Chester gave him the bond
18 even though it was a burg first. Right after he ended up
19 giving a statement, they then brought him back on it
20 several minutes later saying, well, obviously, that bond's
21 no good after they had let him out and he was on the street
22 again, they ended up saying that bond's no good and brought
23 him back in front of a Circuit Court Judge who set another
24 bond for that. So he did have some support that's
25 documented to support that as well. Now, the statement was

1 not suppressed. After that he ended up taking a plea after
2 consulting with his family and his attorney.

3 THE COURT - All right.

4 MR. SHAFFER - The Applicant first calls Laura
5 Clack, Your Honor.

6 THE COURT - Okay, come forward.

7 LAURA CLACK, AFTER BEING FIRST DULY SWORN,
8 TESTIFIES AS FOLLOWS -

9 THE COURT - Now, I didn't catch her name.

10 MR. SHAFFER - Your Honor, it's Tristan Shaffer.

11 THE COURT - Shaffer?

12 MS. WHITE - Her name.

13 MR. SHAFFER - Her name?

14 THE COURT - Her name. I know your name.

15 MR. SHAFFER - Oh, I apologize, Your Honor. Her
16 name is Laura Clack, Your Honor.

17 THE COURT - Okay.

18 DIRECT EXAMINATION

19 BY MR. SHAFFER -

20 Q Ms. Clack, can you please spell your last name for the
21 Judge?

22 A C-L-A-C-K.

23 Q You're the sister of the Applicant. Correct?

24 A That's correct.

25 Q Okay. Your brother is David Dove?

1 A That's right.

2 Q And you were present the morning that he pled.

3 A Yes, I was.

4 COURT REPORTER - She needs to speak up.

5 Q Please speak up, ma'am.

6 A Yes, I was.

7 Q And that morning you had gone there, what did you
8 think was going to happen that day?

9 A I really didn't know. I was thinking he was not going
10 to be charged with it.

11 Q Did you think he was going to go to trial?

12 A I really didn't know. I thought they was going to try
13 him, yes.

14 Q Okay. What happened whenever you got there?

15 A We were took in the back with David's lawyer, Mr. Lee.

16 Q Now, was this before or after the jury was picked?

17 A This was before the jury was picked.

18 Q Okay. And what did you discuss with Mr. Lee?

19 A The charges that they had and what David's chances
20 was, and he said that David with the charges and stuff they
21 had on him, that if David would plead guilty, that they
22 would take that and he would get 12 years; he would be
23 looking at 12, but if David pled not guilty and would pick
24 a jury and if he was found guilty, he had already heard
25 that Judge say that he was going to give David life, so he

1 advised David to plead guilty and take the 12 years or he
2 was risking getting life.

3 Q And what did -- what was the response of David to
4 that?

5 A He was crying. He didn't know what to do. He didn't
6 know what -- he kept asking us what to do.

7 Q What was your advice?

8 A My advice? I told him to go for the jury trial.

9 Q Okay. What happened after y'all left that room?

10 A After the -- after the Court was over and done,
11 everything, or ---

12 Q Or no, after you left the back room.

13 A No, after we left that back room we come out and they
14 picked the jury, then we ended up and took another break
15 and David kept saying he didn't know what to do, he didn't
16 know what to do, and my mother and my sister and me were
17 sitting behind him. My mother was hollering at him to take
18 the plea.

19 Q Well, what was your advice?

20 A My -- my advice was go to jury.

21 Q He ended up taking a plea?

22 A He took the plea, because he know he's going to get 12
23 years.

24 Q And --

25 MR. TRISTAN - No further questions, Your Honor.

1 THE COURT - All right.

2 MS. WHITE - The State has no questions for this
3 witness, Your Honor.

4 THE COURT - You can step down.

5 MR. SHAFFER - Your Honor, at this time the
6 Applicant calls Tyree Lee.

7 THE COURT - Okay.

8 TYREE LEE, AFTER BEING FIRST DULY SWORN,

9 TESTIFIES AS FOLLOWS -

10 DIRECT EXAMINATION

11 BY MR. SHAFFER -

12 Q Good morning, Mr. Lee. How are you doing?

13 A Just fine, thank you.

14 Q You're a public defender in the Sixth Circuit.

15 A That's correct.

16 Q What's your main responsibilities?

17 A Right now my main responsibility is to represent
18 juveniles within the Circuit. I represent all juveniles
19 unless there's a conflict in the three counties.

20 Q At the time -- well, first of all, you represented
21 David Dove for this case. Right?

22 A That is correct.

23 Q At that time what were your responsibilities?

24 A At that time I was the public defender for Chester
25 County. I only handled cases in Chester County.

1 Q Okay. And you handled all the General Sessions in
2 Chester County?

3 A That's correct.

4 Q Okay. In -- when was the first time that -- or when
5 were you appointed in to this case?

6 A I've looked through my files to see whether -- when I
7 actually got an appointed and I can't find an appointment
8 slip. My recollection is that Mr. Dove got arrested, got
9 out on bond. We didn't get appointed initially. Then he
10 got rearrested again on one or more charges, and it was
11 that -- at that point in time that we got appointed. My
12 records reflect I talked to him the first time in August of
13 2010 I guess it was and so we had to be appointed sometime
14 shortly before that, and that would've been ---

15 Q And that's related to these charges that we're here
16 for today. Right?

17 A That's -- that's my recollection, yes. And there were
18 a number of other charges, too.

19 Q And there's several charges he was charged with.

20 A That's correct.

21 Q Okay. What were the charges that he ended up pleading
22 to, that you pled him guilty to?

23 A He pled to the burglary charge that we had, actually
24 pled to all the charges. That was part of the agreement
25 was, that he had to plead to all the charges, all the

1 sentences would be concurrent and they'd run concurrent,
2 and just basically get rid of all the cases. That was the
3 condition the solicitor had.

4 Q And what was your understanding of the plea agreement?
5 Was it ---

6 A The plea agreement was that he would get 15 years on
7 the burglary and that he would -- and the solicitor was
8 insistent that it had to be a violent crime, that the other
9 charges -- it was probably the max, but none of them were
10 more than 15 years, then they ran concurrent with -- they
11 were going to run concurrent to those charges.

12 Q And do you remember the first time that you spoke to
13 him about these charges?

14 A That would've been our first meeting. I normally have
15 a checklist I go through and set out what the charges are,
16 what the maximum is, what the minimum is for all the
17 charges and then go down, advise them of their rights,
18 things of that nature; I check them off as we talk to them.
19 A couple of places I have the client initial, things like
20 notice -- that they're noticed that they have a right to
21 appeal if they want to file an appeal and I have them
22 initial that, and one or two other places they initial,
23 then I have them sign it at the end.

24 Q Okay. And -- but -- but you go over this all with him
25 the first meeting.

1 A Generally the first meeting before we even really talk
2 about what -- what happened in the particular case.

3 Q Okay. Do you recall how many times you met him prior
4 to the plea that you're discussing?

5 A I don't know. We got him out on bond, and then we had
6 to go back and get the bonds changed; Mr. Dove had a drug
7 problem and he wanted to get help with that, and we had to
8 get his bond amended so that he could go -- I think
9 initially he went to Greenville and then there was somebody
10 in that program that knew him or a family member knew him
11 or something and they were creating problems for him, and
12 so we then had to get him into -- or actually his mother
13 did most of this -- got him into I think a place in
14 Florence, but we had to get the bond amended and then we
15 would've had appearances and preliminary hearings which
16 would've been short discussions and things of that nature,
17 but he -- for most of this time he was out on bond, so he
18 came into the office, came in to see me I'm sure a couple
19 of times. I don't know how many.

20 Q Okay. Do you -- the first charge, the primary charge
21 that he pled to, the burglary first, do you remember -- do
22 you recall the facts in that case?

23 A Yes.

24 Q Okay. Safe to say he was alleged to have broken into
25 his aunt's house and stealing a purse?

1 A That's correct.

2 Q Okay. How many people were -- do you recall how many
3 people were with him at the time or how many people alleged
4 to have been with him?

5 A There was alleged to be one other person. My
6 recollection is the aunt said she saw two white people come
7 him; one was David. David gave a confession on this. When
8 he did, he named an African American person who actually
9 got arrested based on what David said, but I'm not sure the
10 police really believed that that was the person that was
11 with him, but there was supposedly two people who went into
12 the house.

13 Q Okay. And you said that there were several bonds. In
14 the burglary first, do you recall the first bond that was
15 set?

16 A I'm not sure. I know we worked on it with the
17 solicitor. At some point in time -- and I had forgotten --
18 this was a little -- through the notes -- I think Mr.
19 Lifsey actually stood with him at the bond hearing and made
20 motions for the bond, because I evidently had a conflict
21 and I was someplace else.

22 Q Okay. But is it safe to say that it's true that his
23 first bond was actually set -- for the burglary first, was
24 set by a Municipal Court Judge? Do you recall that?

1 A My recollection is I think it is. We -- you know --
2 and I think this is before we got appointed on the case.

3 Q Yes.

4 A But I think there was something to -- well, if I --
5 why he did do this, he couldn't set that level of bond and
6 -- and I don't know if they picked him back up -- I can't
7 really recall, because we didn't have him then -- whether
8 they picked him back up or whether he just never got out.
9 But we had to go through the procedures to take him, you
10 know, in front of a Circuit Court Judge.

11 Q Is that a common occurrence in Chester Municipal
12 Court?

13 A It occasionally happens, and we have some Magistrates
14 set bonds that are outside their jurisdiction, but
15 generally -- I don't want to comment on the Judges. I'm
16 just saying ---

17 Q Oh, I'm not saying that, but generally it doesn't
18 happen. Right?

19 A It's not unknown to happen.

20 Q Okay. Now, whenever you first met with him or
21 actually the second time you met with him, did you discuss
22 the likelihood of success at trial?

23 A Well, we talked about -- I'm sure we talked about it.
24 I would've had some of the -- I think some of the discovery
25 by then. Again, I can't tell you exactly when that was,

1 because he was out and in this rehab center. I can't
2 pinpoint exactly when we did sit down and talk about it.
3 At some point I got a copy of the confession. It was an
4 oral confession recorded, and it's about maybe 45 minutes
5 or longer on it where the officer is talking to him and he
6 is telling him about all these other places he broke into,
7 and actually the officer was rather skillful. He wanted to
8 talk to him about these other cases, and David started
9 talking to him and somehow or another he slipped in the
10 aunt's case, and David told him what happened on that case.
11 The only difference was that he said he had an individual
12 by the name of Joe Nelson, I think it was, who was with him
13 on that occasion. Joe Nelson swore he wasn't with him on
14 that occasion.

15 Q Did you have -- did you discuss with him whether or
16 not the aunt would be a credible witness?

17 A We talked about that, and the aunt was an elderly
18 lady. She -- if I recall correctly, his mother told me
19 that his aunt had some type of a growth over her eye and so
20 there was a question could she have really seen clearly
21 what was seen. There was also her son who lived in the
22 house who came in when he heard his mother scream. The
23 mother -- the aunt I guess like some elderly people was not
24 comfortable laying in bed sleeping, and she would sleep in
25 a chair that was sort of set in the living room but it

1 allowed her to view into the kitchen, and she heard glass
2 break, looked up, saw David come in, saw this other person
3 with him, and she screamed something like, what are you
4 doing in here, David, get out, or something of that nature.
5 The son jumped up out of bed and ran in there and claimed
6 he saw David too. There was a question on him, too,
7 because he supposedly had lost his right to drive because
8 he had diabetes and he had lost vision because of that, and
9 so as a consequence that would've been something we
10 would've tried to pick if we could as to how he could've
11 seen clearly what was going on.

12 Q So you formulated a trial strategy in this.

13 A That was -- that was -- that would be if we went to
14 trial, that that -- we would pick -- try to pick the
15 witnesses apart. Now, just prior to trial, the solicitor
16 informed me he was not going to call the aunt. He was just
17 going to go strictly with the -- David's cousin I guess it
18 would be, her son. Her son had some criminal convictions,
19 but they were not -- they were past ten years and not of a
20 nature that I could bring up to try to impeach him with.

21 Q Okay. Did -- did you discuss with him the likelihood
22 of success in the other charges?

23 A I did. On one of the other charges they had some DNA.
24 Of course, David had a story that, you know, officer had
25 come up and he cut his hand somewhere else, and the officer

1 got the sample of blood from him from that sore and that
2 was where they made the connection, but if I'm not
3 mistaken, I think when they got -- when we got the DNA
4 report back, it said that they didn't use that sample; they
5 used a CODIS or -- basically if you're convicted of certain
6 offenses you have to give a DNA sample, and that's actually
7 how they made the initial match-up. I mean that would've
8 been an issue. That was not going to be one of the cases
9 we were going to try at that point in time.

10 Q Okay. Did you know if they had any other evidence
11 other than the DNA? That's a hair salon. Right?

12 A Yes. They had a foot print in the mud. I mean, you
13 know, that's something that's subject to attack I think,
14 you know, something that you can carry some weight with a
15 jury on sometimes, but they had -- they had a number of
16 other little things, you know, like that, no other -- the
17 aunt's case was the best case they had because of the fact
18 that supposedly we have -- there were eyewitnesses who saw
19 him do it.

20 Q Did you have any discussion about a plea offer with
21 the solicitor prior to the trial?

22 A Initially another solicitor other than Mr. Taylor was
23 handling the case. He sent us a written plea offer, I
24 guess, with the discovery. We still laugh at -- a little
25 bit because he was rather new and naïve and the offer was

1 plead to the burglary and plead to the larceny that went
2 along with it, and the offer was -- the State's offer was
3 life without parole. And we said, well, nobody's going to
4 take that, you know. And finally when that person left the
5 solicitor's office, Mr. Taylor got the case who's the
6 deputy solicitor. Essentially what his offer was 15 years,
7 it's got to be a violent crime, and we'll roll everything
8 else up in there, and that was based on his offer.

9 Q Okay. And you conveyed that to David?

10 A Yes.

11 Q How far prior to trial do you believe that that offer
12 was made?

13 A It was not right at trial, I mean right before trial.
14 It was some time earlier than that, and I can't exactly
15 when it was, because I don't think -- I think he gave that
16 to me verbally. I don't find a record where he gave me
17 written thing, but it would've been somewhere along there.
18 This went along a couple of terms of Court that, okay, this
19 is one we're going to try, we're going to try this one,
20 they didn't try it, and so I'm not -- that's why I was
21 unclear exactly when -- when he gave it to us, but that was
22 the offer that was basically 15 years.

23 Q And approximately -- and a 15 year violent crime
24 approximately how much time do you do?

1 A Well, I'm guessing you'd had to serve 85 percent of
2 it. I'm not sure, but it would -- it was a significant
3 amount, but the solicitor -- David wanted 12 years, and
4 David asked me to go to the solicitor and say if I plead,
5 will you recommend 12 years, and there were two problems
6 with that. First of all, on first degree burglary, you
7 can't get a 12 year sentence. The minimum is 15. The
8 second part of it was -- the solicitor's response back to
9 me was, I gave him 12 the last time, and I'm not going to
10 give him the same time - same thing this time that I gave
11 him last time, and so -- offered him 15, which considering
12 David's record, I thought was a pretty good offer.

13 Q Okay. You said was the offer he had to plead to
14 burglary first, or was the offer he had to plead to a
15 violent crime, 15?

16 A Well, it -- solicitor wanted it a violent crime.
17 There was some talk, I think, at maybe reducing it to a
18 second degree burglary but making it a violent crime, but
19 that -- that's what the solicitor wanted -- wanted him to
20 serve the violent crime portion of that of whatever
21 sentence he got.

22 Q He didn't want him to 65 percent?

23 A No, no. He's looked back some three years earlier or
24 some time earlier when David had pled to a string of
25 burglaries, and he'd gotten out in such a short period of

1 time that the solicitor said, you know, I'm not going to be
2 this generous with him this time.

3 Q Okay.

4 MR. SHAFFER - Court's indulgence just a moment.

5 THE COURT - Sure.

6 Q Now, whenever you generally tell people 85 percent of
7 15, do you ever say 12 years or approximately 12 years?

8 A Sometimes I -- I do. You know, looking back I can't
9 right now remember if I told him, you're going to have to
10 do 85 percent of this. I knew -- I mean David's had a lot
11 of experience and I think he probably knows if it's a
12 violent crime he's going to have to do 85 percent, but I
13 can't honestly to be honest with you tell you, yes, I told
14 him 85 percent. I think I checked it off on my form where
15 I probably talked a little bit about that. Give me just a
16 minute. I put it down a felony, but I don't think -- I
17 don't see anything other than just a check. Okay, I talked
18 to him about certain violent crimes, first violent crime,
19 second violent crimes, no parole; if you get a third
20 conviction for a violent crime, it's life without parole,
21 and I think I probably -- but I don't think I specifically
22 -- and I can't recall right now that I specifically said
23 that means you've got to serve -- and I'm not sure when I
24 first talked to him, we didn't have that offer of 15 years,
25 so, you know, ---

1 Q Okay.

2 A --- I'm sure I didn't tell him that then, because it
3 was only later that that time we got the offer -- that
4 crazy offer of life without parole.

5 Q And the offer was -- the second offer obviously -- the
6 second offer was cap of 15. Right?

7 A That's right.

8 Q And a violent crime?

9 A Fifteen, would be a violent crime, everything else
10 would roll into that, and he -- he would get no more than
11 15 years on all of them.

12 Q Okay. So no more than 15 on everything.

13 A That's correct.

14 Q Okay. And you ended up pleading him guilty to the cap
15 of 15 on burg first?

16 A That's correct.

17 Q Going up to trial, whenever -- or the morning of trial
18 whenever it got placed in the docket, do you remember
19 having a conversation with the Judge?

20 A If I had any conversation, it may have been something
21 to the effect of the solicitor and I sitting down and
22 talking to him about this is what this case is about and,
23 you know, this is what the solicitor has offered, and, you
24 know, my client doesn't want to do that and that sort of

1 thing, but I don't -- that's all I had with the Judge -- I
2 don't know -- just regular trial-type conversations.

3 Q Okay. Do you remember hearing the Judge commenting
4 that he would likely get life if he went to trial and got
5 convicted?

6 A Well, this is where that came in. After the case was
7 over with and after he had pled guilty and I was leaving
8 the courtroom -- whether it was the end of the day or the
9 lunch break, whenever it was -- the Judge was standing in
10 the Judge's chamber's doorway, and he basically said, you
11 know, Mr. Lee, if your client went to trial on that case, I
12 was going to give him life, and I wouldn't have batted an
13 eye.

14 Q Did you convey that to Mr. Dove or ---

15 A I said something to him about that. Now, whether he
16 was still in the lock-up which is past that door -- whether
17 I told him that then or whether he wanted to appeal and I
18 went out to talk to him about the appeal, whether I told
19 him that at that point in time -- at some point in time I
20 did convey, you know, basically along the lines of, well,
21 you know, if you had gone to trial, the Judge said he
22 would've given you life. You know, the Judge -- the Judge
23 never said that to me prior to trial.

24 Q But the Judge gave him the minimum on the burg first.
25 Right?

1 A He gave him the minimum on that and gave him what the
2 agreement was on it. Now, I may have said to Mr. Dove,
3 based on Judge Young's reputation and he had been to
4 Chester one or two terms of Court before this, you know, if
5 you get convicted, he's going to give you the maximum
6 sentence, you know, based on your record and, you know, and
7 this, but the Judge never told him that.

8 Q Okay. Did you tell him that he would get tried for
9 the other charges as well?

10 A That they could just do it piece mill. You know, even
11 if he won this one, they would bring him back and try him
12 on the others. There were a number of other charges, and,
13 in fact, Mr. Dove was in jail at the time because he had
14 gotten arrested on an additional charge when he was out on
15 bond for these other charges, so he was actually in the
16 detention center at that time.

17 Q Do you think that he would -- did you tell him that
18 you thought he would likely get convicted of one of the
19 other ones if he didn't get convicted of this one?

20 A Well, I told him the DNA case looked like their
21 strongest case, that they would -- you know, the question
22 would come down to whether they believed the sheriff's
23 deputy, that, no, we took this -- I got this sample in a
24 legitimate way or whether they believed him as to whether
25 she took a Kleenex and dabbed it on my hand that -- her and

1 I had been working in somebody's -- underneath somebody's
2 house doing some plumbing work and I had skinned my
3 knuckles or something like that, you know, so that's --
4 it's a question of believability, who you think they're
5 going to believe, you know, but I don't know that we
6 talked, you know, that much about the other cases. The
7 last one that he got arrested on while he was out on bond
8 was a fairly good case, too. That's the one where he was
9 accused of going into a sporting goods store that was close
10 to his house and we'd had a snow, and a SLED agent noticed
11 that around the building that there were a set of tracks
12 that went off and left, and actually they followed the
13 tracks over into his back yard, so that would've been a
14 pretty good case I think if they'd tried him. You know,
15 David said it wasn't him, he -- supposedly had people that
16 he hadn't been out of the house and that sort of thing, but
17 most of David's break-ins -- this house case was not
18 typical of David. Most of times David when he's broken
19 into something, it's been a business, and so this has sort
20 of followed his M O, and you know, I think they could've
21 tried that one and they might've been successful on that
22 one.

23 Q Do you remember telling any of the family members
24 about his likelihood of getting a life sentence?

1 A I think we -- I talked to them. David and I had two
2 conversations the day of trial. There was one where his
3 two sisters were there. I can't remember. There was
4 another witness who would be subpoenaed who was not
5 connected to the family. They all went towards the
6 credibility of the aunt and the cousin as to whether they
7 would be credible. You know, I can't remember if that
8 third party was in there, but I did sit down with David's
9 mother, with his two sisters. It seems to me one sister
10 was saying you ought to take the deal, the other sister
11 said, well, if you didn't do it, you know, you ought to go
12 to trial, that sort of thing. That was the first time that
13 we talked. And I think I -- I laid it out to them that,
14 you know, if he gets convicted, he may very well get life
15 and I believe David's position was that record-wise he
16 would fall into the no-parole which means if he got life,
17 he would get life without parole, and I tried to emphasize
18 that, you know, you're -- you've got more to lose than most
19 people would have to lose on this. The second time we had
20 a conversation it was just David and myself. That was one
21 where we'd had the Jackson v. Denno hearing, we drew the
22 jury; while the jury was out of the room, I asked the Judge
23 if I could have a few more minutes to talk with David; we
24 went back into the grand jury room which was right off the
25 courtroom, and we talked, you know, about, mainly, I think

1 probably questioned about, you know, David, you know, your
2 record's going to come in; if you get on the witness stand
3 and testify, you know, basically that sort of thing, and I
4 said, you know, your statement is what's killing you, you
5 know, and it's already in now and the Judge has ruled on
6 that. I could make a motion, you know, again that it not
7 be allowed in, but he's already ruled on it, and that's
8 going to be it, and I said we need to go back into the
9 courtroom again, and as I turned to go out the door, David
10 said, so you don't think you could win this one, and I
11 said, no, I don't, David, and he said, well, go see if that
12 deal is still on the table. And so I went out and much to
13 my surprise, when I approached the solicitor about it, he
14 said, yes, I'll do it, we've got to plead to everything,
15 and so I went back and told that to David. And I remember
16 asking David, do you want to bring your family in so you
17 can tell them your decision; he said, no, let's just go get
18 it out of the way. And so they didn't know he'd changed
19 his mind, but my obligations are to David and not to the
20 family, so -- but I would preferred that they knew what was
21 going on, but they -- they didn't know, but we went out and
22 he did the plea.

23 Q Okay. Did you speak to him after the plea?

24 A I'm sure I did. You know, they didn't understand. In
25 fact, I think his mother started to say something during

1 the plea. They did not come up to the front. I asked
2 David did he want them to come up and stand, you know, by
3 him, and he said no. And, you know, they said what, you
4 know, what happened, and I said, well, David made that
5 choice. I said it was David's choice. You know, I don't
6 remember what else, but his mother came by and picked up
7 some stuff by the office, you know, and I tried to
8 emphasize to her it was David's choice. David knows more
9 about what's going on than somebody who's not been in the
10 system, and he knew what he was facing; he knew what -- you
11 know, he made this choice, you know.

12 Q The plea deal that he pled to was a cap of 15 and the
13 violent ---

14 A Cap of 15, yes.

15 Q Okay.

16 A Like I said, the only time I knew anything about a 12
17 year was David asked if he could get the 12, and I
18 approached the solicitor and the solicitor said no. That
19 12 was never in the offer for these charges.

20 Q Okay. And you ended up appealing this?

21 A Well, I filed a Notice of Intent to Appeal, and of
22 course, Appellate Defense picked it up and took it after
23 that.

24 MR. SHAFFER - Your Honor, I have no further
25 questions.

1 THE COURT - Okay.

2 MS. WHITE - Just real quick, Mr. Lee.

3 CROSS EXAMINATION

4 BY MS. WHITE -

5 Q Had you ever handled any case with Mr. Dove prior to
6 this?

7 A I've known David since he was a juvenile, and I've
8 handled a number of cases.

9 Q So you had a past relationship with him in regards to
10 representing him?

11 A That's true; I think starting out in Juvenile Court.

12 Q Okay. And did you feel like you had a good rapport
13 with him in discussing the options and the potential
14 sentence?

15 A I think so. David's not an unintelligent person. He
16 knows when it comes down to it what he's actually facing,
17 and like a lot of people who spend a lot of time in jail,
18 he knew what different things meant, so it was easier to
19 talk to him about it than it was to somebody who really had
20 never been in trouble before or just minimal trouble, that
21 sort of thing. David really knew what was going on.

22 Q Based upon the evidence that you understood the State
23 was going to probably present at trial, including his
24 confession, what was your feeling as to whether or not this

1 plea offer was a good deal for David to take knowing what
2 he was facing?

3 A My -- and I may have used these words -- was he needs
4 to take it an run, because it was really good based on what
5 he -- the potential for what he was facing.

6 Q And you testified that you did obviously argue some
7 facts at the Jackson v. Denno hearing that the Judge ruled
8 against y'all?

9 A That is correct.

10 Q And are you aware as to if that was the issue on
11 appeal as well?

12 A I don't really know. You know, the way it works with
13 us, is we file a Notice of Intent to Appeal, ship off some
14 of the documentation to Appellate Defense and they may call
15 us back and ask us some questions, and they may not.

16 Q Okay.

17 MS. WHITE - Your Honor, I think that's all the
18 questions I have of this witness.

19 MR. SHAFFER - No further questions, Your Honor.

20 THE COURT - You can step down.

21 MR. SHAFFER - Your Honor, the Applicant calls
22 Judy Dove to the stand.

23 THE COURT - All right.

24 JUDY DOVE, AFTER BEING FIRST DULY SWORN,

25 TESTIFIES AS FOLLOWS -

1 MR. SHAFFER - Your Honor, you'll have to forgive
2 Ms. Dove, she had a stroke a little less than two weeks ago
3 and she's actually -- it left her blind in one eye.

4 THE COURT - All right.

5 DIRECT EXAMINATION

6 BY MR. SHAFFER -

7 Q Good morning, Ms. Dove.

8 A Good morning.

9 Q If you could, please state your full name for the
10 record.

11 A Sir?

12 Q Could you please state your full name for the record?

13 A Oh. Judith Ann Dove.

14 Q And you're the mother of David Dove.

15 A Yes, sir.

16 Q Where are you from, ma'am?

17 A I was born in Gaffney, but I've been in Chester since
18 I was four.

19 Q And how many kids do you have?

20 A Three.

21 Q What do you do -- what's your occupation?

22 A I'm retired now, but I worked for Springs for 27
23 years, then I had my own restaurant for a while until I
24 retired and now we run a produce stand.

1 Q Okay. Now, I'm going to ask you about David and his
2 incarceration, not now, but prior to him being released and
3 committing or allegedly committing the crimes that he's
4 charged with today, or that he -- we're discussing today.
5 Prior to that did the -- did you ever had a situation where
6 the police came to investigate at your home?

7 A Yes, sir. David stayed like six and a half years the
8 last time he went to jail, and then he had to go to six
9 months ATU program and he still stayed where he was at at
10 Bishopville to go through the ATU program, and during that
11 six months the store got broke into down below the house
12 and the police actually -- they came to my house. They
13 said the dog led them to my house, and it was already going
14 around -- we got two stores me and my husband goes to and
15 um they're right down below the house. One's below the
16 house and one's up on a hill. Anyway, we had already been
17 going in the stores, and they said the crime rate in
18 Chester had broke out strongly right in the last two months
19 and said David Dove must be out of jail, and I got on to
20 one of the policeman, and he said, well, anybody can say
21 what they want to say. And anyway, I waited -- it was two
22 or three days later -- well, I called Robbie Benson; he was
23 the sheriff then, and I couldn't get him on the phone. So
24 two or three days later I went back to the store and Dale
25 Miller, a different policeman, was in the store at that

1 time, and he said, Judy, when is -- has David done gone out
2 of jail; he said y'all done went and picked him up; I said,
3 no. I said David's got a little over five more months. I
4 said David's not out of jail yet, and I said I'm tired of
5 y'all polices going around saying -- I said you and Lester
6 and ---

7 Q Ma'am ---

8 A --- Odom, I said y'all need to keep your mouth shut; I
9 said y'all need to give him a chance when he gets home, so
10 when he does get home, maybe he'll have a chance. I said
11 give him a chance. I said I'm getting old and his daddy's
12 get old; I said give him a chance, so it went on ---

13 Q Ma'am. I hate to cut you off. What I was going to
14 ask you about, is it safe to say that the police in Chester
15 and the sheriff's department knew David's M-O or had a
16 preconceived notion about David and investigated him
17 whenever charges -- whenever crimes occurred in Chester?

18 A Yes.

19 Q Okay. Even whenever there might not necessarily be
20 any evidence pointing to him.

21 A Yes.

22 Q Okay. Now, with this charge that we're discussing
23 here today, and I'm talking about Margie, Margie's Hut. Is
24 that the purse-snatching inside the home? That's your
25 sister. Correct?

1 A That's my aunt.

2 Q Oh, that's your aunt.

3 A That's my mama's baby sister.

4 Q Okay. And when we're discussing this, whenever the

5 police picked David up for this, did they -- did you end up

6 getting a bond for him?

7 A Yes.

8 Q What was the bond?

9 A They gave him -- Gilmore told him that um ---

10 Q Well, I don't -- I can't ---

11 A It was two \$5,000 bonds, and they set the two bonds,

12 and I got David out on bond.

13 Q Okay. And that was the City Court Judge that set that

14 bond?

15 A Yes. Well, yes, it was the City Court Judge that set

16 the bond, but then about three weeks later -- it might've

17 not been quite that long -- Calvin Reynolds came back to

18 the house and told us that they needed David at the

19 jailhouse at once, that they was going to take him to

20 Winnsboro, because they had to set a different bond because

21 it was a higher court judge had set the bond, so they said

22 they was going to take him straight that day and then

23 they'd go ahead and set the bond and if I could get him

24 back out, I could go ahead and get him back out that day.

25 They said probably they'd be back within an hour, hour and

1 a half. And Calvin Reynolds took David and left, and when
2 he took David and left, David didn't get out for three
3 weeks, and they had to take him to Lancaster, and Judge
4 Goldsmith, he set the bond. Then David had to go back to
5 Chester and stay til I could get him back out.

6 Q And he ended up -- you ended up bonding him out a
7 second time to the same charge?

8 A Yes.

9 Q Okay.

10 A They didn't even drop the charge -- \$10,000 -- \$5,000
11 bond. They didn't even take it off of it. I had to go --
12 it still ain't off of it.

13 Q You still had to pay the bondsman for it?

14 A Yes.

15 Q And you're still paying on the bondsman. Right?

16 A Yes.

17 Q For that. Okay. And the -- whenever he went -- went
18 up for Court the day that he pled, do you remember that
19 morning having a conversation with Mr. Lee and David?

20 A David was in jail and I didn't really talk to David,
21 but -- I didn't say but a few words to David, because the
22 store down below us had got broke back into and I had woke
23 David up at 8:30 that night and told David to get up, David
24 had a dog named Bull and he had got off his chain, and I
25 told David to get up and go get Bull, and David got up and

1 Bull had gone down towards the store and David went down
2 there and got Bull and brought him back, and the alarm
3 didn't go off down there at the store, because I was
4 standing on the outside. It was snow on the ground.
5 Because David's feet print led to that store he's the one
6 that did it.

7 Q And this is why he got locked back up?

8 A Yes, it's why he got locked back up.

9 Q Okay. And then he was in jail until he pled. Right?

10 A Yes, and he was in jail until it went to Court.

11 Q Okay. And when he went to Court, do you remember --
12 do you remember going to Court that morning ---

13 A Yes, sir.

14 Q --- that he pled guilty? Did you speak to Mr. Lee?

15 A Only thing Tyree Lee came back there and he said he
16 was going to try to get the 12 years. They started off
17 with 18 years, and then it came down to 16 years, then they
18 came down to 15 years, and then Tyree came down to 12
19 years, and uh ---

20 Q Okay, and this discussion took place in the back of
21 the courtroom?

22 A No, this discussion took place at different times when
23 we went to see Mr. Lee.

24 Q Okay.

1 A And um -- so anyway, David told him he'd take the 12
2 if they'd give me 12, but Tyree said nothing about violent.
3 David had never hurt anybody.

4 Q But he said that he would let him plead to -- you're
5 saying he's -- he said they would be 12 ---

6 A Would let him plead to 12 years, 12 years.

7 Q Okay. And that was in the discussion in the back of
8 the courtroom?

9 A In his office at one time and in the back of the
10 courtroom.

11 Q Okay. Discussion in the back of the courtroom the
12 morning of trial.

13 A Yes.

14 Q Do you remember him telling David about his likelihood
15 of success or whether he would -- whether he'd win if he
16 went to trial?

17 A I didn't quite understand you.

18 Q Oh, I'm sorry. Did Tyree Lee tell him anything about
19 whether he would win or lose if he went to trial?

20 A He told him he was going to lose and he was going to
21 get life.

22 Q Okay. Did he tell him anything about what the Judge
23 said?

24 A No, he didn't say nothing about what the Judge said.
25 If the Judge said that, he said it after all of us left the

1 courtroom. Nobody was saying nothing about life except
2 Tyree Lee and Mr. Taylor. And Mr. Taylor wanted to give
3 David life, and they was blaming things on David, that he
4 was at home. He slept -- his daddy's crippled and he slept
5 in a recliner in our room a lot, and David would be at
6 home. David had to carry me out to the hospital one night,
7 and when we come home the church in front of the house had
8 been broke into, and we pulled up in the yard, and when we
9 pulled up in the yard -- they had gave me a shot because my
10 back was hurting so bad -- anyway, David helped me get up
11 the steps and I said I wonder how -- where all them police
12 come from; David said I don't know. Okay, me and David set
13 down on the steps because it was warm, and he said, mama,
14 you want me to go get you a drink; I said, yes, so he went
15 and got me a drink and he come back down there -- out there
16 and sat down and me and him set there for a few minutes.
17 Okay, by the time we got in the house and David went in
18 there and turned the T.V. on and got on the couch, by the
19 time we got in there, here come one of the policemen across
20 the street wanting to know -- wanting to talk to David. I
21 said you can't blame that on David. I said y'all can call
22 out to the hospital and talk to Dr. Lomen (phonetic); I
23 said David was in the room with me the whole time I was out
24 there. I said he carried me to the hospital and he never
25 left me, and he didn't.

1 Q Now, related to Margie's charge or the charge at your
2 Aunt Margie's home ---

3 A Yes.

4 Q --- did the conversation -- did David want to go to
5 trial in that or do you think he wanted to plead guilty?

6 A He wanted to go to trial.

7 Q What was your advice?

8 A I'm the one that told him just to plead guilty,
9 because they -- they got it in for David in Chester. They
10 was -- like -- right now -- this ain't got nothing to do
11 with this and you can tell me to shut-up. Right now they
12 got all kind of warrants over there throwed back in a box,
13 and they was only after David. Like three people in a
14 truck over at Margie's -- two people went in my aunt's
15 house. She said it was David and a black man. Then she
16 told the police it was two white men. Then she said it
17 wasn't but one person.

18 MS. WHITE - Your Honor, I'd just ask that we
19 could stay on the case at hand.

20 Q Ms. Dove, David ended up pleading guilty obviously.
21 Is that correct?

22 A Yes, he was crying. I told him to plead guilty,
23 because Tyree Lee kept telling him he was going to get
24 life.

25 Q Okay. And you think that's the reason he pled guilty?

1 A He pled guilty because I told him to.

2 Q All right.

3 MR. SHAFFER - Thank you, Ms. Dove. I have no
4 further questions.

5 MS. DOVE - The police in Chester has got it in
6 for David and they would lock -- they locked him up when
7 they didn't lock nobody else up.

8 MR. SHAFFER - Hold on one second. Please answer
9 any questions the State has for you.

10 MS. WHITE - The State has no questions, Your
11 Honor.

12 THE COURT - You can step down.

13 MR. SHAFFER - Your Honor, the Applicant calls
14 Jackie Price.

15 THE COURT - All right.

16 JACKIE PRICE, AFTER BEING FIRST DULY SWORN,
17 TESTIFIES AS FOLLOWS -

18 DIRECT EXAMINATION

19 BY MR. SHAFFER -

20 Q Hi, Ms. Price. How are you doing?

21 A Fine.

22 Q Could you please state your full name for the record?

23 A Jackie Dove Price.

24 Q And you are David Dove's sister. Right?

25 A Yes.

1 Q Okay. If you could, do you -- were you there the
2 morning that he pled guilty?

3 A Yes, sir.

4 Q Were you -- did you have a chance to speak with Tyree
5 Lee and David about the charges?

6 A We was in another room and the only thing that it was
7 -- it was a plea bargain and life.

8 Q Okay. So he told him that he would likely get life?

9 A (Indicating yes)

10 Q Please say yes or no. I'm sorry.

11 A Oh, I'm -- yes, yes.

12 Q And the plea bargain -- what did he tell you about the
13 plea bargain?

14 A My understanding it was 12 years from what he said,
15 but I told David that the whole time when he -- before he
16 even went to Court go for a jury trial.

17 Q Okay. At some point did you change your mind about
18 that?

19 A About him taking a jury trial?

20 Q Yes.

21 A No.

22 Q Okay. Did David change his mind?

23 A I think David changed his mind when we was setting in
24 the courtroom. They had done picked the jury and all and
25 mama got -- mama was nervous and had got scared that, you

1 know, he was going to have to, you know, go like -- well,
2 without parole, life without parole or whatever they called
3 it and mama was sort of -- I was setting behind David and
4 mama was setting on the other side and she told David take
5 -- take the plea bargain, and he turned around and looked
6 at me, and when he looked at me I just dropped my head, and
7 next thing I know they went, him and Tyree Lee went to the
8 back and they come back out here -- out there and that's
9 when David told them he would do the plea bargain, but my
10 understanding it was supposed to be in 12 years.

11 Q And did -- Tyree Lee he said he thought he would get
12 life. Did he give you any indication as to why he thought
13 he would get life?

14 A Mainly because of -- if he done -- it basically
15 narrowed down the way I understood it is if he didn't take
16 this plea bargain, then the charges they had on him they
17 would run them all concurrent and he would end up with life
18 without parole.

19 Q Okay. And do you think -- did he tell you anything
20 about what the Judge would end up doing?

21 A The Judge?

22 Q Yes, did he mention anything about hearing anything
23 from the Judge?

24 A I did not hear that.

1 Q Okay. But he ended up pleading guilty? Did you speak
2 with Mr. Lee anytime after this?

3 A No, sir, not -- I do not remember. When they give him
4 everything and all, I thought that Mr. Lee was going to,
5 you know, see if we had anything to say, but when we come
6 in the courtroom, they had everything set up to one side
7 and they had us setting on that side, and I mean we had no
8 chance to say nothing. They -- they didn't ask us anything
9 or anything like that, and so when they did that I just got
10 up and I had walked out of the courtroom, because as I told
11 him to take the jury trial.

12 MR. SHAFFER - Your Honor, I have no further
13 questions.

14 THE COURT - Okay.

15 MS. WHITE - The State has nothing for this
16 witness, Your Honor.

17 THE COURT - All right, Ms. Price, you can step
18 down.

19 MR. SHAFFER - Court's indulgence just a moment.

20 THE COURT - All right.

21 MR. SHAFFER - Your Honor, Applicant calls David
22 Dove to the stand.

23 THE COURT - All right.

24 DAVID DOVE, AFTER BEING FIRST DULY SWORN,
25 TESTIFIES AS FOLLOWS -

1 DIRECT EXAMINATION

2 BY MR. SHAFFER -

3 Q Mr. Dove, you're currently serving a sentence of 15
4 years for burglary first. Right?

5 A Yes, sir.

6 Q Okay. And the -- you pled to that. Right?

7 A Yes, sir.

8 Q Okay. And right now you're -- you filed an
9 application for post conviction relief or had me do it.

10 A Yes, sir.

11 Q Okay. And what you're hoping out of this -- and I've
12 advised you that what's going to occur if we're successful
13 is you'll -- it'll be like your plea never happened.
14 Right?

15 A Yes, sir.

16 Q And I advised you that there's a chance that you could
17 get a life sentence still ---

18 A Yes, sir.

19 Q -- if we're successful.

20 A Yes, sir.

21 Q Okay. And do you still want to go forward with this?

22 A Yes, sir.

23 Q Okay. Tell me briefly -- you're -- well, you're
24 charged with -- or you're serving the sentence partially
25 for allegedly breaking into your aunt's house.

1 A Yes, sir.

2 Q Okay. And stealing a purse?

3 A Yes, sir.

4 Q Okay. Regarding that one charge, when did you get
5 picked up? How far after the charge did you get arrested
6 for that?

7 A The very next morning.

8 Q Okay. And what occurred whenever you got arrested?

9 A They picked me up, took me to the jailhouse and two
10 officers talked to me and asked me to give them a
11 statement. They read a warrant to me, second degree
12 burglary. I was on drugs real bad and I was trying to get
13 out of jail, so the officer down there talked to me -- I
14 can't remember his name -- I think it was Gilmore -- told
15 me if I gave him a statement and told him what happened, he
16 would get me a bond and I'd get out. I refused to give
17 them a statement. They went around and talked to the
18 Judge; the Judge took me around there and give me a bond.
19 I called -- I couldn't get in touch with my mother at the
20 time so I called my sister. He give me a -- I give them a
21 statement that day. That evening I got out. My mother got
22 me out, and I think it was three or four days later they
23 locked me back up.

24 Q What Judge gave you the bond?

25 A It was a City Judge. I can't remember her name.

1 Q And was it for burglary first degree or second degree?

2 A Burglary first.

3 Q Okay. So they locked you back up. What did they tell
4 you when they locked you back up?

5 MS. WHITE - Your Honor, I'd object to hearsay.

6 MR. SHAFFER - I apologize.

7 Q You went back in front of a Judge?

8 A Yes, sir.

9 Q Okay. And you went back in front of a Judge for
10 another bond?

11 A Yes, sir.

12 Q Was that in the burglary first again?

13 A Yes, sir.

14 Q Okay.

15 A But I still thought it was burglary second because the
16 warrant ended up being burglary second.

17 Q And that was in the jail that they ---

18 A Yes, sir.

19 Q --- read you a burglary second.

20 A Yes, sir.

21 Q Okay. Was that prior to giving a statement?

22 A Yes, sir.

23 Q Okay. And the statement you gave was false. Right?

24 A Yes, sir.

1 Q Okay. Now, tell us about the -- some of the other
2 charges you had. You were charged with several other
3 offenses that you pled to.

4 A Yes, they locked me up, said my shoes -- they locked
5 me up for a haircutting place, said my shoes appeared to be
6 a match. That wasn't the only charge that they had that
7 said my shoes appeared to be a match. They had two or --
8 it was either two or three charges they said my shoes
9 appeared to be a match. They locked me up for breaking
10 into the store down behind my mother's where I lived at,
11 and the only reason why they locked me up, they said my
12 pants was wet, that I had run through the creek, but I had
13 a dog that had got out of the pen, and I was trying to get
14 him back into the pen, and it was a foot and a half of snow
15 on the ground, so my shoes and pants was going to be wet
16 because I was out there chasing the dog in the snow.

17 Q But it's safe to say you had several charges. Right?

18 A Yes, sir.

19 Q And it's safe to say that you -- you believe that they
20 had it out for you. Right?

21 A Yes, sir.

22 Q The police had it out for you.

23 A Yes, sir.

24 Q Okay.

25 A They had locked me up for improper parking.

1 Q Okay. And so they locked you up. Actually they put
2 you in jail for an improper parking charge?

3 A Yes, sir. The fuel pump had went out on the truck I
4 was driving, so I had to pull over, so I walked to a friend
5 of mine's house and knocked on the door, couldn't get him
6 to the door, so I walked back to the vehicle. They tackled
7 me in the mud and throwed me in the back of the car and
8 locked me up for improper parking. Later on down the road
9 they locked me up for receiving stolen goods. They got
10 something from somebody and he told them he got it from me,
11 and he charged me with it, but they didn't never get
12 nothing from it.

13 Q Okay. Now, you were represented by Tyree Lee for all
14 of these charges. Right?

15 A Yes, sir.

16 Q Okay. And when was the first time you met with Tyree
17 Lee regarding these charges?

18 A I'm going to say two months after they charged me with
19 the first degree burglary. I can't recall the month.

20 Q Okay. Were you out at the time ---

21 A Yes, sir. Yes, sir. I was out at the time. I was on
22 house arrest and I was trying to get into a rehab, so it
23 was after I had went to rehab that I had talked to Tyree
24 Lee, so I had been out for say five or six months before I
25 talked to Tyree Lee, because I had done been to rehab and

1 back before I talked to him. The police had it in for me
2 so bad that I cut -- went to the property line and cut some
3 cane poles down to stake tomato plants and they locked me
4 up, said I walked off my property.

5 Q For the house arrest.

6 A Yes, sir. That's how bad that the police -- he would
7 set in the woods and watch me. That's how bad he had it in
8 for me.

9 Q Now, how many times prior to pleading -- well, first
10 of all, you've known Tyree Lee for quite a long time prior
11 to this. Right?

12 A All my life.

13 Q Okay. And how many times prior to -- from this arrest
14 and until your plea how many times do you think you spoke
15 with him about your charges?

16 A Two times.

17 Q Okay. When were those?

18 A Right after I come out of rehab and the morning I went
19 to Court.

20 Q Okay. And the morning you went to Court what did you
21 think was going to occur that day?

22 A I was thinking a jury trial because I'm not guilty.

23 Q Okay. And did you have a discussion with Tyree Lee
24 before the trial?

25 A Yes, sir.

1 Q What did he tell you about your chances of success?

2 A Mr. Lee said that I got a -- I got a long record
3 starting back from juvenile, and he said if I went in there
4 and got on the stand, my prior record would convict me even
5 if I was guilty or not guilty. I told I didn't care and
6 pick 12. We picked a jury; the Judge took a five minutes
7 recess; Mr. Lee took me back to the -- I'm going to say the
8 hearing room and told me that the Judge had told him if I
9 was -- if I took a jury trial and was found guilty, he was
10 going to give me a life sentence. I come back out; my
11 mother and two sisters was setting behind me; I got scared
12 and I took the plea.

13 Q Okay. And at any time in those two times that you
14 spoke to him prior to your plea, did you discuss the other
15 possible -- or the other charges against you?

16 A I tried, but he said that he hadn't had the -- I'm
17 going to call it the evidence -- that whoever supposed to
18 let him get the evidence on the cases had not give him the
19 evidence, and he didn't get the evidence until three days
20 before the Court hearing. Like I went to Court on Monday;
21 he didn't get it til Friday, so he had not a clue about
22 n'ar (phonetic) case, about nothing. Only thing he knowed
23 is what me and him had discussed.

24 Q Okay. And did you -- did you have a chance to go
25 through that evidence with him that morning?

1 A No, sir, no, sir. Had no chance to go through no
2 evidence with Mr. Lee, no way shape or form.

3 Q And the -- did he discuss that morning of trial what
4 would occur with the other charges if you went to trial?

5 A He said if I was found not guilty on this charge, that
6 when I went back to Court if I took a jury trial they was
7 going to try me one by one; they wasn't going to let me go
8 up there and plead guilty and run them all together the way
9 that they did this here. You know, when I pled guilty,
10 they run them all together and run them current. If -- he
11 said Mr. Taylor had said if I was found not guilty on this
12 charge, that he would take me and I would have to go in
13 front of the Judge on each charge one by one; even if he
14 give me 15 years or a life sentence, I would have to serve
15 my time and then he would bring me back to Court and could
16 take me up in front of the Judge on another charge.

17 Q Did he say what you would likely get or that you would
18 likely succeed or lose on those other charges?

19 A He said to his knowledge that my prior record would
20 convict me whether if I was guilty or not guilty; my prior
21 record would convict me.

22 Q Okay.

23 A That's all he kept saying. Only thing to me -- only
24 thing Mr. Lee wanted to do was get out of the courtroom.
25 He didn't want to go through with the jury trial, anything

1 he could do to get me a strike for Mr. Taylor that I was
2 guilty that would make his job easier, he was doing, he was
3 pushing it.

4 Q All right. And you previously commented that at some
5 point he had told you that the Judge told him you would get
6 life.

7 A If I was found guilty he was going to give me the
8 maximum, it's a life sentence without possibility of
9 parole.

10 Q Was that before or after you pled guilty?

11 A Sir?

12 Q Was that before or after you pled guilty?

13 A That was after I picked the jury and the Judge took a
14 five minute recess. He give Mr. Lee a five minute recess
15 to talk to me again, and that's when Mr. Lee told me that
16 if I was found guilty of on the jury trial that the Judge
17 told him that I would get a life sentence without the
18 possibility of parole.

19 Q And -- but that was before you pled guilty?

20 A Yes, sir.

21 Q Okay. And did that have anything to do with your
22 decision to plead guilty?

23 A Yes, sir, a whole lot.

24 Q Okay. If you hadn't known that, would you have gone
25 forward with your trial?

1 A Yes, sir.

2 Q Okay. You were prepared to go forward with your
3 trial.

4 A Yes, sir.

5 Q Now, Mr. Lee appealed your case. Right?

6 A Yes, sir.

7 Q Okay. And in the direct appeal you were appointed an
8 attorney?

9 A Yes, sir.

10 Q And you were briefly appointed me for about three
11 months before I left Appellate Defense. Right?

12 A Yes, sir.

13 Q And then you had spoken with another Attorney, Tricia
14 Blanchett. Right?

15 A Yes, sir.

16 Q And then you spoke to me again.

17 A Yes, sir.

18 Q Tricia after I had left Appellate Defense.

19 A Yes, sir.

20 Q Okay. But I didn't do your appeal. Correct?

21 A No, sir.

22 Q Susan Hackett did your appeal?

23 A I think so. Yes, sir.

24 MR. SHAFFER - Court's indulgence. (Pause) No
25 further questions, Your Honor.

1 THE COURT - Okay.

2 MR. SHAFFER - Thank you.

3 CROSS EXAMINATION

4 BY MS. WHITE -

5 Q Mr. Dove, when you met with Mr. Lee prior to going to
6 trial, had he already told you that you were facing a
7 potential of a life sentence on the burglary first?

8 A Only thing Mr. Lee told me was that they had a new
9 solicitor and the new solicitor had offered me a life
10 sentence. He -- that was the only thing that he said that
11 the new solicitor -- and I quote his exact words, the
12 solicitor was out of his mind.

13 Q Okay. So your testimony is that you never sat down
14 and talked with Mr. Lee about the fact that burglary first
15 carried a minimum of 15 to a maximum of life?

16 A No, no, ma'am.

17 Q Okay. And when the Court swore you in and told you
18 and the solicitor stated on the record that it's a 15 year
19 cap on all charges, you don't recall them saying that?

20 A I -- I won't -- I heard the solicitor say that; I
21 didn't hear Tyree Lee say that.

22 Q And you hear the Court say, I understand there's been
23 a 15 year cap on all charges.

24 A No, ma'am.

25 Q You don't recall that?

1 A No, ma'am.

2 Q Okay. If the transcript reflects that the Court said
3 they understood that and Mr. Taylor said, yes, sir, I've
4 talked of that, we're agreeing to the 15 year sentence,
5 would you agree that that's probably what happened?

6 A Yes, ma'am.

7 Q And the Judge told you that if he chose to on the
8 first degree burglary, he could sentence you to life in
9 prison. Correct?

10 A If that's what the transcript says.

11 Q Okay. So you knew when you were facing when you went
12 in to plead guilty, that you were choosing to take a 15
13 year sentence compared to risking getting life in prison.
14 Correct?

15 A Regardless what they said if I was facing -- only
16 reason why I pled guilty is because of what Mr. Lee told
17 me.

18 Q But my question is, you knew that you could
19 potentially get a sentence of life, therefore, the option
20 of 15 years sounded a lot better. Right?

21 A No, ma'am.

22 Q Okay. You'd rather have life?

23 A No, ma'am.

24 Q All right. So when the Court said, you understand
25 your burglary's a violent, most violent offense, it's an

1 offense that you'll have to serve 85 percent, you said yes,
2 sir. Do you recall that?

3 A Yes, ma'am.

4 Q Do you recall the Judge saying that a 15 year sentence
5 you might serve approximately 12 years before you could be
6 released?

7 A Yes, ma'am.

8 Q Okay. And you're looking at a life sentence on this
9 burglary now, so if you get anything after this, you could
10 face life.

11 A Yes, ma'am.

12 Q Okay, so you recall that.

13 A (No response)

14 Q And your testimony is during all the conversation
15 before you had with Mr. Lee, he never mentioned anything
16 about potential sentence other than the Judge says he's
17 going to give you life?

18 A Only thing Mr. Lee said was they offered me 12 years,
19 and he talked to the Judge and the Judge says if I went
20 ahead with my jury trial and I was found guilty, he would
21 make sure I got a life sentence.

22 Q Now, you've been in prison for burglaries before.

23 A Yes, ma'am.

24 Q So were you not aware that 15 years was the minimum
25 for burglary?

1 A No, ma'am.

2 Q So you didn't question Mr. Lee when he said -- you
3 claim he said that he (sic) could get 12 years? You
4 thought was a possible sentence?

5 A I thought 20 years was the cap. That's what I
6 thought.

7 Q You thought 20 years was a maximum?

8 A Yes, ma'am.

9 Q Okay, so when the Judge told you 15 to life, did you
10 not think, all right, never mind, I'm going back to trial?

11 A No, ma'am.

12 Q The Judge said, anybody threatened you or promised you
13 anything to get you to plead guilty?

14 A They said that in every case.

15 Q Right. And you answered no sir.

16 A That's right.

17 Q Were you lying to the Court or were you telling the
18 truth?

19 A I was -- I reckon I was telling the truth, because Mr.
20 Lee said that they was going to give you 12; I thought I
21 was going to get 12 years.

22 Q When the Court said, are you satisfied with the
23 services of Mr. Lee, has he done everything you asked, do
24 you need any more time, you said, no, that you were
25 satisfied.

1 A They was going so fast in the courtroom that morning I
2 was confused.

3 Q Now, you had previously served time for multiple
4 burglaries ---

5 A Yes, ma'am.

6 Q --- in the past.

7 A Yes, ma'am.

8 Q But you were confused as to how this plea was being
9 handled?

10 A I was -- I was confused about what Mr. Lee was telling
11 me, that he was telling me that the offer would be 12 and
12 then after I get out there and say, yes, Mr. Lee's done
13 everything I wanted him to do and everything I asked him to
14 do, yes, that the -- both of them was lying, because Mr.
15 Lee kept saying 12 years the whole time, until I said, yes,
16 sir, I'm guilty.

17 Q Okay, and the Judge and the solicitor spoke on the
18 record about the fact that it was a 15 year sentence before
19 you even told the Court you were happy with Mr. Lee. So
20 you don't recall that?

21 A No, ma'am.

22 Q And you don't recall saying that you're guilty of the
23 charge -- charges?

1 A Yes, I said I was guilty of the charges, because I was
2 told that -- what Mr. Lee had told me that I was going to
3 get a life sentence.

4 Q And Mr. Lee spoke on the record and acknowledged and
5 said that he's talked with you, known you for a long period
6 of time and that this is the first time that you've been
7 charged with the offense that included a house and asked
8 for the minimum which was the 15 years, did he not?

9 A Yes, ma'am.

10 Q Okay. And also that all the rest of the charges be
11 wrapped up in there.

12 A I don't remember that.

13 Q Okay. And you were facing at least two burglary
14 second -- I think it might be three. You waived
15 presentment on the third, the grand larceny and two or
16 three malicious injury to property. Is that not correct?

17 A Yes, ma'am.

18 Q Okay. And ultimately you got the minimum on the
19 burglary first.

20 A Yes, ma'am.

21 Q Okay. Do you recall meeting with your attorney and
22 going over advice of rights or sentencing at all?

23 A I -- one time.

1 Q Okay. And where he has written down and talked with
2 you about the charges you're facing and the potential
3 sentences?

4 A Yes, ma'am.

5 Q Okay. Because previously you just testified he never
6 talked with you about anything.

7 A I talked to him one time before I went to Court.

8 Q About the potential sentences and the charges you were
9 facing.

10 A Yes, ma'am. Yes, ma'am.

11 Q Okay. All right, ---

12 MS. WHITE - Your Honor, that's all I have.

13 THE COURT - All right.

14 RE-DIRECT EXAMINATION

15 BY MR. SHAFFER -

16 Q Mr. Dove, did -- prior to your plea you said that --
17 well, you first said that they were going fast. Tell us
18 about your education.

19 A I can't read and write.

20 Q Okay.

21 A I made it to the ninth grade in high school before
22 anybody in Chester County knowed I couldn't read and write.

23 Q Okay. And even though you'd been locked up, did you -
24 - do you understand or did you have the ability to go and
25 look up in the law library what the law was?

1 A No, sir.

2 Q Okay. You were relying on Mr. Lee?

3 A Yes, sir, 100 percent.

4 Q And prior to pleading guilty, did Mr. Lee tell you
5 that the Judge would likely ask you -- ask you questions
6 relating to the guilty plea?

7 A Yes, sir.

8 Q Okay. And what did he tell you to do whenever they
9 asked you those questions?

10 A Just to just say yes.

11 Q And what would -- did he tell you what would've
12 happened if you said no?

13 A They would -- they would fire him and give me another
14 attorney, and my case would be put off and I would have to
15 set in the county jail longer.

16 Q Okay. And -- but you ended up saying yes to all the
17 questions.

18 A Yes, sir.

19 Q Are you guilty of the crime?

20 A No, sir.

21 MR. SHAFFER - No further questions, Your Honor.

22 MS. WHITE - Just briefly, Your Honor.

23 RE-CROSS EXAMINATION

24 BY MS. WHITE -

1 Q You testified that you said yes, sir, to all the
2 question?

3 A Yes, ma'am.

4 Q So when the Judge said, has anybody threatened you and
5 you said, no, sir, do you recall that?

6 A Yes, ma'am.

7 Q Okay, so, has anybody promised you anything, you said,
8 no, sir?

9 A Yes, ma'am.

10 Q Okay, so nobody told you to say yes to all the
11 questions and you just followed that, because you did
12 answer yes and no to the questions. Correct?

13 A Well, let me see how I can say this. When I said I
14 didn't -- wasn't going to take a jury trial, I was going to
15 plead to when he said -- Mr. Lee said that I was going to
16 get a life sentence if I was found guilty, when Tyree Lee
17 said, Mr. Lee said when the Judge asks you these questions,
18 just say, yes, so I went along with what Mr. Lee said.

19 Q Correct. And I'm asking you, because you said no to
20 some of these questions.

21 A Yes, ma'am.

22 Q So Mr. Lee told you to say yes to them; if you went by
23 what he said, why didn't you say yes to all the questions?

24 A Read me one of the questions I said no to.

1 Q Is it because maybe you were listening and answered
2 properly? Has anybody threatened you in any way to get you
3 to plead guilty, and you said no, sir. Has anybody
4 promised you anything to get you to plead guilty? No, sir.
5 Do you have any questions for the Court?

6 A That's a question, you know, that they asked, you
7 know. I'm just going by what Mr. Lee said, just go about
8 what he asked.

9 Q So Mr. Lee told you to answer the question ---

10 A Yes.

11 Q --- as to what the Judge asks.

12 A Yes, ma'am.

13 Q He didn't tell you to lie and say yes to everything.

14 A No, ma'am, no, ma'am, no, ma'am. No, ma'am, he did
15 not do that.

16 Q Okay. All right. Thank you.

17 MS. WHITE - That's all I have, Your Honor.

18 MR. SHAFFER - Your Honor, can I ask one brief
19 follow-up?

20 THE COURT - Go ahead.

21 RE-DIRECT EXAMINATION

22 BY MR. SHAFFER -

23 Q But you understood that if you would've said, no,
24 someone threatened me, that he wouldn't have allowed you to
25 plead guilty. Right?

1 A That's right.

2 Q Okay.

3 MR. SHAFFER - No further questions, Your Honor.

4 THE COURT - You can step down.

5 MR. SHAFFER - Applicant rest, Your Honor.

6 MS. WHITE - The State has no witnesses, Your
7 Honor.

8 THE COURT - All right, what do y'all want to do?

9 MR. SHAFFER - Your Honor, if possible, I'd like
10 to submit something in writing.

11 THE COURT - Well, you can submit it. Just so
12 everybody understands, the legislature classifies things as
13 crimes that are violent. They don't have to involve
14 violence. I mean you can sell so many ounces of controlled
15 substance and they call that a violent crime. It goes on
16 your record and after you commit two violent crimes, you
17 can be held for life without parole. If he had pled guilty
18 to any of these other burglaries other than this and he
19 pled to two others I think at the same time, they could've
20 been classified as violent because of the number of
21 burglaries that he had apparently, so he's looking at
22 massive time even if I set it cross if he goes forward on
23 any of these trials, and I don't see -- I'll consider
24 anything you send in, but it's not like -- even though he
25 can't read and write, he had in excess of 24 crime

1 convictions and he served substantial time in jail; he's
2 talked to people that's been in there, so he knows about
3 court procedures as well as anybody that appears in front
4 of me even though he can't read and write, because he's
5 been there so many times. And it is true, if he testified
6 during any trial, they could bring out, not all, but most
7 of his prior record and the Judge is going to tell the jury
8 not to consider it, but he's been around, he knows that
9 they do take that into account. It works against you when
10 you've got a bad record like that. Burglary first does
11 carry 15 to life. The sentencing Judge don't know what he
12 would've given him, but he does tend to sentence on the
13 high side as ruling has it from prior times here and his
14 option if he was guilty was 15 to life, so sounds like if
15 he didn't do it, I can understand that he wants a new
16 trial, so prepare something and see, but I don't see from
17 right now, having read the whole record a couple of times
18 that there's any basis, but maybe you can convince me by
19 preparing me and Order and you prepare an Order.

20 MR. SHAFFER - Thank you, Your Honor.

21 MS. WHITE - Thank you, Your Honor.

22 THE COURT - All right.

23 MS. WHITE - Thank you, Your Honor.

24 THE COURT - And, of course, 12 years is what you
25 serve on a 15 year sentence. When people are talking, they

1 hear, you know, you'll have to serve 12. I don't know. I
2 wasn't there; I don't know what Tyree Lee told him, but he
3 couldn't have told him that he's going to get 12 when the
4 minimum sentence, as the Judge reflected in the record, is
5 15.

6 MR. SHAFFER - Yes, Your Honor. Thank you.

7 MS. WHITE - Thank you, Your Honor.

8 (END OF TRANSCRIPT)

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

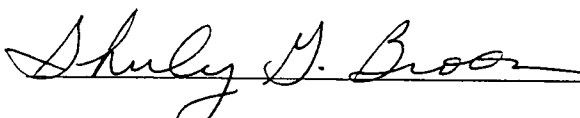
24

25

C E R T I F I C A T E

I, Shirley Broom, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing 66 pages is a true, accurate and complete Transcript of Record of the proceedings had and the evidence introduced in the proceedings of William David Dove v. State of South Carolina, as taken by me in the Court of Common Pleas for the Sixth Judicial Circuit on the 4th day of February, 2013, and provided by me this the 23rd day of May, 2014.

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



Shirley Broom, CVR-M
Official Court Reporter,
Certified Verbatim Reporter, In and
for the State of South Carolina.

64n
181

STATE OF SOUTH CAROLINA

COUNTY OF CHESTER

William David Dove, #293245,

Applicant,

v.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
SIXTH JUDICIAL CIRCUIT

2012-CP-12-0523

ORDER OF DISMISSAL

CLERK OF COURT
CHESTER CO. S.C.
2013 SEP 25 A 11:10
FILED

This matter comes before the Court by way of an Application for Post-Conviction Relief filed October 17, 2012. The Respondent made its Return on or about July 17, 2012. An evidentiary hearing into the matter was convened on February 4, 2013, at the Lancaster County Courthouse. The Applicant was present at the hearing and was represented by Tristan M. Shaffer, 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, along with his mother and two sisters. Tyre D. Lee, Jr., Esquire, also testified. This Court also had before it a copy of the records of the Chester County Clerk of Court regarding the subject convictions, Applicant's records from the South Carolina Department of Corrections, the Return, the Appellate Court records, 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 Chester County Clerk of Court. The Applicant was indicted at the April 2010 term of the Chester County Grand Jury for purse snatching (10-GS-12-

0204), grand larceny between \$1,000 and \$5,000 – 3rd or subsequent offense (10-GS-12-0205), burglary – 1st degree (10-GS-12-0206), and burglary – 2nd degree (10-GS-12-0208). He was then indicted at the September 2010 term of the Chester County Grand Jury for burglary – 2nd degree (10-GS-12-0523) and malicious injury to personal property between \$1,000 and \$5,000 (10-GS-12-0524). He was represented by Tyre D. Lee, Jr., Esquire.

On February 11, 2011, following the beginning of a trial on the charges of burglary – 1st degree and grand larceny between \$1,000 and \$5,000 – 3rd or subsequent offense, and the subsequent loss of a pre-trial motion regarding the admissibility of the Applicant's statement, the Applicant pled guilty to the lesser-included offense of petit larceny – 3rd or subsequent offense (10-0205) and pled to burglary – 1st degree as indicted. He was sentenced by the Honorable W. Jeffrey Young to confinement for concurrent terms of fifteen years for burglary – 1st degree and ten years for petit larceny – 3rd or subsequent offense. Applicant then pled to all other charges as indicted and waived presentment to the Grand Jury for charges of burglary – 2nd degree (11-GS-12-0160) and malicious injury to personal property under \$2,000 (11-GS-12-0161). Judge Young sentenced Applicant to confinement of concurrent terms of ten years for each charge of burglary – 2nd degree, five years for malicious injury (10-0524), three years for purse snatching, and thirty days for malicious injury (11-0161).

The Applicant filed a timely notice of appeal. An Anders brief was filed on Applicant's behalf. The South Carolina Court of Appeals dismissed Applicant's appeal. State v. Dove, Op. No. 2012-UP-491 (filed August 22, 2012). The Remittitur was returned on September 7, 2012.

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 adequately advise on the likelihood of success at trial,
2. Involuntary guilty plea, in that;
 - a. Applicant was coerced into pleading guilty.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony and arguments presented at the PCR hearing. This Court has further had the opportunity to observe each witness who testified at the hearing, and to closely pass upon their credibility. This Court has weighed the testimony accordingly. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. § 17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCPP). 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).

The Applicant alleged that Counsel was ineffective for failing to adequately advise the Applicant on the likelihood of success at trial. Applicant acknowledged that he has known Counsel all of his life. Applicant testified that he met with Counsel several months after he got out of jail and rehab. Applicant testified that he spoke with Counsel only twice, right after rehab and on the day of trial. In regards to the burglary – 1st charge and his alleged confession, Applicant claimed that he gave a false statement to police. Applicant also testified that he was being charged with a couple of charges in which they claimed to have a shoe print match to him. Applicant claimed that the State had no evidence on any of the other charges until three days before he started the trial for burglary – 1st. Applicant testified that on the day of trial, following the jury selection, Counsel informed Applicant that he was going to receive a life sentence. Applicant testified that he would have proceeded with the trial had he not heard that he was going to receive a life sentence. Applicant also testified that he believed he was pleading guilty for a sentence of twelve years.

Laura Clack, Applicant's sister, testified that she recalls meeting with Counsel and her brother prior to the plea. Clack claimed that Counsel informed her brother that if he did not take

the Solicitor's plea offer for twelve years, the judge would give Applicant a life sentence. Clack testified that her brother pled because he believed he was receiving a sentence of twelve years.

Jackie Price, Applicant's sister, testified that she was present on the day of her brother's guilty plea and believed his options to be either pleading guilty or receive a life sentence. Price testified that she did not overhear Counsel say anything as to what the judge would give Applicant if he proceeded to trial.

Judith Ann Dove, Applicant's mother, testified that her son received plea offers from the Solicitor of first eighteen years, then sixteen, then fifteen, but then Counsel told them he would get Applicant a twelve year offer. Mrs. Dove testified that she never heard Counsel mention prior to the plea that the judge would give her son life if did not accept the plea.

Counsel testified that he has known the Applicant since Applicant was a juvenile and he has represented Applicant previously. Counsel testified that the public defender's office was appointed to represent the Applicant following an initial arrest, bonding out, and then second arrest. Counsel testified that his first meeting with the Applicant was August 2010 and it was his standard practice at the first meeting with a client to review a checklist that he then has them sign regarding their charges, the possible sentences, and their rights to appeal. Counsel testified that the Applicant would often come to see him at the office because the Applicant was out on bond. Counsel testified that he began preparing for trial on the burglary - 1st degree charge; however, the State had a forty-five minute recorded confession from the Applicant and had two eyewitnesses, Applicant's Great-Aunt and her son. Counsel testified that there were some issues that could have been raised regarding their identification of the Applicant because of issues with their eyes and vision. Counsel also testified that there were some other issues that could be raised on some of the other charges, but the Applicant was facing a substantial amount of time

and the possibility of a life sentence because of the burglary – 1st charge. In addition, Counsel testified that he advised the Applicant that the Solicitor would most likely try most of the cases separately.

Counsel testified that the first offer he received from the Solicitor was for the Applicant to plead to all charges and they would ask for life without parole. However, Counsel testified that he continued to negotiate and the Solicitor later offered a sentence of fifteen years, violent, and all charges would be run concurrent, which Counsel believed was a very good deal. Counsel testified that this offer was received sometime prior to trial, but the Applicant did not want to accept because he wanted a twelve year sentence. Counsel testified that the Solicitor informed him that he had given a twelve year sentence previously and the Applicant continued to commit crimes, so that was out of the question. Counsel also testified that following their loss at the Jackson v. Denno hearing, Counsel met with Applicant and advised that Counsel did not believe they would win at trial. At that time, Counsel testified that the Applicant asked if Counsel could get the fifteen year deal back. Counsel testified that he did have two conversations with the Applicant in between the pre-trial motions and the plea, one of which was also attended by Applicant's mom and two sisters. Following the end of the case and guilty plea, Counsel testified that he saw the plea judge, who stated that if the case had gone to trial, "[he] would have given [Applicant] life and not batted an eye." However, unlike testimony presented by Applicant and his family, Counsel did not have a conversation with the judge prior to the plea and did not tell Applicant or his family that the judge had indicated to him that Applicant would receive a life sentence if he proceeded to trial.

This Court finds the testimony of Counsel to be more credible than the testimony of the Applicant or his witnesses. First, this Court does not find it credible that Counsel promised a

sentence of twelve years to Applicant or Applicant's family. This Court finds that Counsel is experienced in criminal law, knew the minimum sentence for burglary -1st degree and advised Applicant of that fact. Furthermore, Counsel specifically recalled conversations with the Solicitor about the offer and why the Solicitor would not reduce the charge or offer twelve years.

This Court also finds that Counsel was prepared to proceed to trial on the two charges Applicant faced, but advised the Applicant as to the likelihood of success at trial and the benefits of pleading guilty to all charges at one time with the offer for concurrent sentencing.

Applicant has failed to offer any testimony or evidence as to anything that Counsel could have discovered or used to assist at trial had they met more or more investigation had been completed. 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). When claims of ineffective assistance of counsel are based on lack of preparation time, an Applicant challenging his conviction must also show specific prejudice resulting from counsel's alleged lack of time to prepare. United States v. Cronin, 466 U.S. 648, 104 S.Ct. 2039 (1984); U. S. v. LaRouche, 896 F.2d 815 (4th Cir. 1990).

This Court finds it credible that Counsel reviewed all of the charges and potential sentences with the Applicant, as well as advised the Applicant that they could not win at trial once the pre-trial motion was lost. The Applicant's allegation that Counsel did not properly advise him as to the likelihood of success at trial is without merit. Further, the Applicant failed to point to any specific matters Counsel failed to discover, or any defenses that could have been

pursued had Counsel been more fully prepared. Furthermore, the Applicant failed to show any prejudice that may have resulted from Counsel's alleged inadequate preparation, discussions with Applicant or lack of meetings. Accordingly, this allegation is dismissed.

Involuntary Guilty Plea

The Applicant alleges that he did not plead guilty freely and voluntarily. This Court finds that he has failed to meet his burden of proof as to this claim. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709, 23 L.Ed.2d 274 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

This Court finds that the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea to each charge. Boykin, supra; Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors,

the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Again, this Court finds that Counsel's testimony regarding this issue is more credible than the other witnesses. Furthermore, the Applicant has failed to meet his burden of proof as to this claim. The Applicant has failed to offer any evidence or testimony which would cause this Court to consider questioning the voluntariness of Applicant's plea. This Court finds that the Applicant was not coerced into pleading guilty by the threat of a life sentence, when that was a definite possibility based upon the charges he faced and his prior record. It may be that the Applicant pled guilty so that he would not have to face that risk, but that does not indicate that he was coerced by Counsel into pleading guilty. Therefore, this claim is denied and dismissed.

Summary

This Court finds that, in regards to the allegations of ineffective assistance of counsel and involuntary guilty plea, the testimony of Counsel was most credible. This Court further finds Counsel adequately conferred with the Applicant, conducted a proper investigation, was thoroughly competent in his representation, and that Counsel's conduct does not fall below the objective standard of reasonableness.

Accordingly, this Court finds the Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of the Applicant.

This Court also finds the Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes the Applicant has not met his burden of proving Counsel failed to render reasonably effective assistance. See Frasier

supra. Therefore, this allegation is denied.

CONCLUSION

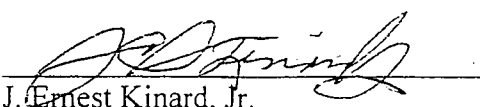
Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court cautions Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, 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 19 day of Sept, 2013.


J. Ernest Kinard, Jr.
Presiding Judge

FILED
2013 SEP 25 A 11:11
CLERK OF COURT
CHESTER CO S.C.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Certiorari to Chester County
Ernest Kinard, Special Circuit Court Judge

WILLIAM DAVID DOVE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

CERTIFICATE OF SERVICE

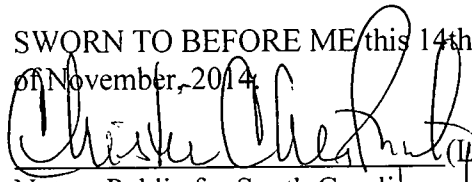
I certify that a true copy of the petition for writ of certiorari and a copy of the appendix and a copy of the supplemental appendix in this case have been served on Croom Hunter via U.S. Mail at P.O. Box 11549, Columbia, SC 29211.



Tristan M. Shaffer

ATTORNEY FOR PETITIONER

SWORN TO BEFORE ME this 14th day
of November, 2014.



(U.S.)
Notary Public for South Carolina

My Commission Expires: 01/09/2016