

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Appeal from Kershaw County
Robert E. Hood, Circuit Court Judge

S.C. Supreme Court

MARCUS GREENE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000720

APPENDIX

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State of South Carolina

Court of General Sessions

County of Kershaw

2012-GS-28-00272

2012-GS-28-00273

2012-GS-28-00274

The State of South Carolina :

-VS-

TRANSCRIPT OF RECORD

Marcus Greene :

February 27, 2012

Camden, South Carolina

B E F O R E:

The Honorable J. Ernest Kinard, Jr., Judge.

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

Brett Perry, Esquire
Attorney for the State

Charlie Johnson, Esquire
Attorney for the Defendant

Daphne D. Helms
Circuit Court Reporter

1 **The Clerk:** Mr. Greene, would you raise your right hand,
2 please?

3 Marcus Greene, after being duly sworn, testified as
4 follows:

5 **The Court:** Okay. What's he been up to?

6 **Mr. Perry:** Your Honor, Mr. Greene has been up to quite
7 a lot.

8 **The Court:** Looks like it.

9 **Mr. Perry:** We're here for pleas on four different
10 occurrences, Your Honor. The most recent is a failure to
11 stop for a blue light and resisting arrest. That occurred on
12 February the 13th, 2012. Your Honor, at that time Mr. Greene
13 was under bench warrant status for failure to appear. He had
14 been scheduled to be here in court to enter a plea. He was
15 not here. He was seen to be driving vehicle. The sheriff's
16 department deputies basically had to chase that vehicle down.

17 Ultimately whenever it did stop and he bailed out of the
18 vehicle, he resisted officers' efforts to take him into
19 custody. That was the one-year variety of resisting arrest
20 rather than the more serious, Your Honor. No officers were
21 really greatly injured in that occurrence.

22 Your Honor, he also had another failure to stop for a
23 blue light that took place on February the 10th, 2011. On
24 that occurrence, Corporal David Morales with the Camden
25 Police Department observed Mr. Greene to drive by the Camden

1 Police Department in a vehicle that -- that was a 2010 Dodge
2 Charger. He knew Mr. Greene to be under suspension.

3 Your Honor, at that time he got in his vehicle,
4 attempted to chase Mr. Greene down. After activating his
5 blue light and sirens, Mr. Greene continued to proceed at a
6 high rate of speed away from him, eventually jumping out of
7 the vehicle and fleeing on foot. He was not apprehended at
8 that time. He was later apprehended and actually charged
9 with these whenever he was found to be at the Kershaw Health
10 Hospital.

11 Your Honor, there is two drug charges: possession of
12 Schedule 1 to 5 and possession of crack second. Those
13 occurrences took place on September the 14th, 2011, Your
14 Honor. Basically what you've got there is agents with the
15 Kershaw County Sheriff's Department who conducted a raid on
16 Room 149 at the Mona Lisa Motel, and during the course of
17 that they found the defendant to be there in that room and in
18 possession of approximately five milligrams of Oxycodone for
19 which he did not have a prescription. That's the schedule
20 drugs, Your Honor, and that also they found him to be in
21 possession of approximately one gram of crack cocaine at that
22 time. And prior to that, Your Honor, he did previously have
23 a possession of crack offense, and so that is his second.

24 Your Honor, the most serious of these occurrences took
25 place on August the 1st, 2011. At that time the defendant

1 and at least one - as it appears, possibly multiple other
2 co-defendants - were involved in a home invasion and burglary
3 that took place here in Kershaw County. The defendant's
4 involvement with that was basically to go inside along with a
5 co-defendant and to try to find money to take. During the
6 course of that, his co-defendant is alleged to have digitally
7 penetrated a female who was there and one of the victims to
8 this occurrence.

9 Your Honor, the reason that we're here today on the plea
10 and making the offer that we're making is pretty quickly on,
11 after Mr. Greene was charged in that case, Mr. Johnson got
12 involved to represent him. Through Mr. Johnson, Mr. Greene
13 made overtures to law enforcement that he wanted to
14 cooperate. He wanted to come in and get right on this and
15 basically admit to his involvement in telling what all else
16 happened.

17 He came in and was extremely helpful, Your Honor. He
18 gave us information that we didn't have, not just about what
19 happened while they were inside the residence, but he also
20 gave information about a co-defendant that we didn't even
21 know was there. So his assistance was greatly helpful. He
22 was completely truthful and forthright with us on that, and
23 it actually helped to get warrants on that other co-defendant
24 we didn't even know was involved.

25 Your Honor, the plea offer or the negotiated plea that

1 we're here on today would also take into consideration his
2 continued cooperation as we go forward, and if the
3 co-defendants in this case either plead guilty as a result of
4 his willingness to cooperate or, in fact, if they go to trial
5 and he comes in and testifies, whether or not the State is
6 successful in convicting them, we agree to come back in and
7 ask the Court to reduce his sentence.

8 And the amount that he'd be pleading to today, Your
9 Honor, is a negotiated 20 years, and if he cooperates and if
10 these defendants either plead guilty or if we go to trial and
11 he comes in and testifies, whether we're successful or not,
12 we would ask the Court to reduce his sentence down to
13 13 years. So it's 20 years is what he's pleading to today,
14 and unless he just simply refuses to cooperate from this
15 point forward, we would come in at some point in time and ask
16 the Court to reduce the sentence down to 13 pursuant to the
17 new statute that allows us to do that.

18 **The Court:** Okay. Well, what he's pleading to though, I
19 can't sentence him to 20 unless I make something consecutive.

20 **Mr. Perry:** And that's what we're asking, Your Honor,
21 would be that---

22 **The Court:** Like I would give him, just for instance, 15
23 on a burglary and five consecutive on the strong arm robbery?

24 **Mr. Perry:** That's correct, Your Honor. I believe that
25 way none of them would -- it would not be -- he wouldn't run

1 into the 85 percent issue which was kind of the gist of what
2 we were trying to accomplish here.

3 The Court: Are we sure about that?

4 Mr. Johnson: For the record, Your Honor, my
5 understanding from looking at the record is that it would not
6 be -- it would be nonviolent charges even though it would be
7 ranked as a second, and I informed my client of that. I told
8 him I would make that a part of the record.

9 The Court: I don't recommend anything to him. I don't
10 tell him anything about that. The department treats things
11 like that. It's possible they could ask for 85 percent if I
12 cut it to -- or if somebody cuts it to 13. I don't have to
13 be the one to reduce it to 13, as I understand it. He can
14 just come back and say he did cooperate or they pled guilty.

15 Mr. Johnson: That's correct.

16 The Court: Is that what you've advised him?

17 Mr. Johnson: That's what I advised him. Your Honor,
18 our only concern is there is one co-defendant who has not
19 been arrested yet, and our only concern is that if that
20 co-defendant is never arrested, it's possible my client would
21 never be---

22 Mr. Perry: And I'll clarify that, Your Honor. We're
23 not -- we're not -- this is not depending on that
24 co-defendant being arrested or not being arrested. There is
25 a co-defendant, Mr. Jarvis Jones, who has been arrested and

1 charged, and that's the co-defendant that we're concerned
2 about. He's the one that's the most culpable in this case.
3 He's the one that we believe digitally penetrated the female
4 victim. He's the one we're concerned with. So we'll specify
5 that it will be his cooperation in either getting a plea or a
6 conviction or attempted conviction out of Jarvis Jones.

7 Examination by the Court

8 Q. Do you understand all that, Mr. Greene?

9 A. Yes, sir.

10 Q. Mr. Greene, how far in school did you go?

11 A. To the eleventh.

12 Q. You've got about seven charges out here. Looks like to
13 me only one has been presented to the grand jury. Are you
14 waiving presentment on all these charges that have not been
15 presented to the grand jury?

16 A. Yes, sir.

17 Q. You've discussed that with Mr. Johnson?

18 A. Yes, sir.

19 Q. Now, I could add up the time on you and give you a lot
20 more time than they have negotiated, but once something is
21 negotiated, I either can accept it or reject it. I can't
22 alter it. In other words, even if I really liked you and
23 said, well, probation would be better than 20 years, I
24 couldn't do it. The swap-off on that is I couldn't give you
25 40 years either by adding everything up. Do you understand

1 that?

2 A. Yes, sir.

3 Q. So what's been negotiated, I don't put that on here. I
4 sentence you -- for instance, a total of 20 years, that's a
5 separate -- that's a deal on the record that they will come
6 back and reduce it. I don't write that on there on the
7 sentence sheet. I can write it on there if the State
8 represented they would rather for me to.

9 Mr. Johnson: Yes, Your Honor. I explained to him that
10 it would be part of the record, that it's being transcribed
11 by the transcriber today and it's part of the record what our
12 negotiations are. So it's part of the record.

13 Mr. Perry: And Mr. Johnson has that in writing from our
14 office, too, Your Honor, that -- that -- the terms of that.

15 Mr. Johnson: That's correct, Your Honor.

16 By the Court:

17 Q. So, Mr. Greene, since you finished the eleventh grade,
18 you can read and write; right?

19 A. Yes, sir.

20 Q. With Mr. Johnson you went over the facts surrounding
21 these seven charges; is that right?

22 A. Yes, sir.

23 Q. You discussed with him any possible defenses you had,
24 and you agreed, after reviewing it all, that you would just
25 plead guilty to everything and waive a jury trial. Is that

1 right?

2 A. Yes, sir.

3 Q. Do you understand you could get separate trials where
4 things happened at different times? Like a burglary and an
5 armed robbery that occurred at the same time, that could be
6 tried together, but a driving under -- failure to stop for a
7 blue light that happened last year and one that happened this
8 year couldn't be tried at the same time. Do you understand
9 that?

10 A. Yes, sir.

11 Q. All right. And you've got a couple of drug charges in
12 here. Do you understand that?

13 A. Yes, sir.

14 Q. The State's going to go over the factual basis on each
15 of the charges, so -- and it's all listed on the indictment.
16 You've reviewed them with Mr. Johnson. I just need to make
17 sure you understand you'd be presumed innocent. The State
18 would have the burden of proof beyond a reasonable doubt in
19 any trial. You don't have to prove you're not guilty. You
20 can testify or not, put up a defense or not, call witnesses
21 to testify for you. Do you understand all that?

22 A. Yes, sir.

23 Q. Now, the drug charges are subject to enhancement which
24 means if you violate a subsequent narcotics law, the penalty
25 increases. Do you understand that?

1 A. Yes, sir.

2 Q. Right now you're pleading to two failure to stop for a
3 blue light first. The penalty for a first offense is up to
4 three years and, of course, you lose your driver's license.
5 Since you're pleading to two today, I can't sentence you to
6 the maximum of three years on both of those. However, if you
7 get caught violating the blue light in the future, the
8 penalty goes up.

9 A. Yes, sir.

10 Q. Do you understand that? Now, you were charged with a
11 burglary first degree. That, of course, carries 15 to life,
12 more or less. They've dropped it to a second degree
13 nonviolent. It carries up to 15. Do you understand that?

14 A. Yes, sir.

15 Q. Strong arm robbery carries like up to 15. Do you
16 understand that?

17 A. Yes, sir.

18 **The Court:** All right.

19 **Mr. Johnson:** Your Honor, for the record, the original
20 charge was armed robbery.

21 **The Court:** I got it in my hand; I'm about to tell him.
22 The original charge was armed robbery which is another crime
23 of violence, an 85 percent situation and a strike. Do you
24 understand that? That's not what you're pleading to. You're
25 pleading to strong arm which is not a crime of violence and

1 so forth.

2 **Mr. Perry:** Your Honor, also, too, the State will put on
3 the record we are dismissing the kidnapping that was
4 originally charged as part of that offense as well. That's
5 going to be dropped.

6 **The Court:** And the two drug charges, both of them are
7 like possession charges?

8 **Mr. Perry:** That's correct, Your Honor.

9 **Mr. Johnson:** We're good, Your Honor.

10 By the Court:

11 Q. All right. The two possession charges, one involved
12 crack cocaine and the other involved Percocet. Is that
13 right?

14 A. Yes, sir.

15 Q. The final charge, which just carries up to a year, is
16 resisting arrest. Do you understand that?

17 A. Yes, sir.

18 Q. Do you have any questions about anything concerning the
19 rights that you give up?

20 A. No, sir.

21 Q. I mean, you've got potential defenses - I don't know
22 anything about it - to all the charges. You know, failure to
23 stop for a blue light: The blue light came on. I went a
24 little ways. I didn't think it was for me. That's why I
25 didn't pull over.

1 Burglary: I wasn't even in the house or I had
2 permission to go in the house. Strong arm robbery: It
3 wasn't me; it was the other guy. I wasn't even helping the
4 person; I was shocked when he robbed her.

5 Anyway, if you plead guilty, you admit to those, at
6 least under the hand of one. You've discussed that with him.
7 If you're participating in a crime, it's just like you did
8 it---

9 A. Yes, sir.

10 Q. ---by yourself. Have you got any questions about any of
11 the rights you're giving up?

12 A. I've been -- I've been in prison before, and I see they
13 change a lot of peoples' sentences when they get there, but
14 they're gone. I just don't want -- I don't want it to be in
15 my paperwork like they changed my sentence to 85 percent.

16 Q. I've got no control over that. That's why I mentioned
17 all that to you. They have it marked on here: Both of them
18 nonviolent.

19 A. Yeah.

20 Q. All right. Assuming things go under your best case
21 scenario---

22 A. Yeah.

23 Q. ---you come back and it gets cut down to a maximum
24 period of exposure of 13 years. You do get credit for the
25 time that you've been in. I can't tell you whether they will

1 classify it because it's 20, but you've got to serve more
2 time than you think you might. You know, when I sentence
3 somebody to 20, it suits me for them to serve 20. The
4 department of corrections determines when they let you out,
5 and the legislature alters that all the time. There's no
6 guarantee on that.

7 They will make something like drug trafficking in
8 marijuana which is a first offense which just carries up to
9 seven years, they'll call that a violent crime, and all of a
10 sudden that's a strike and that carries 85 percent. All I'm
11 telling you -- and it's negotiated. I can't alter it. What
12 I give you today is a maximum of 20 -- I mean, I'll give you
13 20 years total.

14 A. Yeah.

15 Q. And then how long have you been incarcerated?

16 A. I just got locked up like two weeks ago.

17 Q. All right. So, you know, you get concurrent one year on
18 what you call it, the resisting arrest, three years on the
19 failure to stop. I'll just give you, say, a year on the two
20 possession things, everything concurrent, 15 on one of the
21 biggest, five years consecutive on another one. That makes
22 it 20, a total of 20. If you pled to burglary first, I could
23 just give you a flat 20 on that, but that would be a violent
24 crime and an 85 percenter automatically.

25 A. So the charges I'm pleading to, they're automatically

1 now violent.

2 Q. The burglary first would have been automatic. You
3 aren't pleading to that.

4 Mr. Johnson: You're pleading to nonviolent burglary.
5 By the Court:

6 Q. And it's your understanding and Mr. Johnson's
7 understanding and Mr. Perry's understanding that it's not
8 going to amount to 85 percent if it gets cut to 13. They
9 can't guarantee you that, and I can't either.

10 A. All right.

11 Q. That's the best -- you know, that's the best I... In
12 front me, y'all have worked out that you get 20. You get 20.
13 When you get out depends on how things go. Have you got any
14 other questions?

15 A. No, sir.

16 The Court: Okay. Give me the factual basis on all
17 these charges.

18 Mr. Perry: Your Honor, again the most recent failure to
19 stop for a blue light, that was the one that he was under
20 bench warrant status back on February the 13th, 2012. He was
21 seen to be operating a motor vehicle. Officers got in behind
22 him, turned on blue lights. He refused to stop, led them on
23 a chase for quite a ways, finally did stop the vehicle, got
24 out of the vehicle, struggled with the officers before they
25 were finally able to take him into custody.

1 The failure to stop for a blue light, Your Honor, from
2 February the 10th, 2011, that was the one where Sergeant
3 Morales of the Camden Police Department observed Mr. Greene
4 to be driving a 2010 Dodge Charger as he drove right by the
5 police department. Officer Morales knew that he either had
6 no license or that actually his license was under suspension.
7 He got in his vehicle there at the police department, turned
8 on his blue lights.

9 Rather than stop, Mr. Greene sped off at a high rate of
10 speed. He eventually did bail out of the vehicle and ran on
11 foot. Officers did not catch him at that time but eventually
12 served warrants on him or served a warrant on him for his
13 arrest when they found him at the Kershaw County or Kershaw
14 Health sometime thereafter.

15 The drug offenses, Your Honor, stem from the Kershaw
16 County Narcotics Division doing a -- executing a search
17 warrant at Room 149 at the Mona Lisa Motel on September the
18 14th, 2011. During the execution of that search warrant,
19 they found the defendant to be in that room. They found him
20 in possession of approximately five milligrams of Oxycodone -
21 that's a schedule drug - and also to be in possession of
22 approximately one gram of crack cocaine which is the
23 possession of crack cocaine second.

24 And then, Your Honor, the most serious offense is -
25 again being the home invasion took place back on August the

1 1st, 2011 - where Mr. Greene and other co-defendants,
2 including Jarvis Jones, entered a residence here in Kershaw
3 County, belonging -- the residence belonging to Alex English,
4 Your Honor. They went in there armed and looking for money
5 and other things of value.

6 During the course of that, Mr. Greene was involved in
7 actually rifling through things there in the house, trying to
8 find things of value. Mr. Jones was involved in securing a
9 female victim and a child that were there in the house with
10 Mr. English. During the course of that, Mr. Jones is alleged
11 to have digitally penetrated that female victim.

12 Again, Your Honor, the defendant that's here before you
13 today has been cooperative. He was debriefed by law
14 enforcement. He gave us all sorts of information about what
15 took place inside the house and also gave us information
16 about a third co-defendant, Mr. Syuab (phonetic) Beaufort,
17 who is related to this defendant. We didn't even know that
18 he was involved in it.

19 So he's been helpful. We anticipate that he'll continue
20 to be helpful, and based on that, the plea offer as it is,
21 20 years, with us coming back if he continues to be
22 cooperative with respect to defendant Jarvis Jones and ask
23 for the amount to be lowered down to 13 from 20.

24 **The Court:** Okay. What about it?

25 **Mr. Johnson:** Thank you, Your Honor. May it please the

1 Court? Your Honor, my client is 23 years old, lives here in
2 Camden. He has one child. He has worked on and off since he
3 got out of high school.

4 We ask that you accept the negotiated plea as
5 recommended by the -- as negotiated by the State, and if you
6 are not inclined or care for any other information, Your
7 Honor, I'll be happy to give it to you.

8 The Court: All right. Well, Mr. Greene, would you like
9 to add anything?

10 Mr. Greene: No, sir.

11 The Court: All right. You are helping out our stats
12 though; right?

13 Mr. Perry: Sir?

14 The Court: He's helping our statistics.

15 Mr. Perry: Yes, sir.

16 The Court: Getting rid of seven cases.

17 Mr. Perry: Yes, sir, very much so, and Mr. Wise was
18 11 cases, Your Honor. I thank Mr. Johnson for all his
19 efforts on this. Your Honor, we...

20 The Court: Okay. Mr. Greene, listen. On the failure
21 to stop for a blue light, you have two of them. I'll give
22 you three years on each of those. They are concurrent. Do
23 you understand that?

24 Mr. Greene: Yes, sir.

25 The Court: On resisting arrest, I sentence you to one

1 year. That's concurrent. Do you understand that?

2 Mr. Greene: Yes, sir.

3 The Court: On the two possession of drug situations, I
4 sentence you to one year on each, but they are concurrent.
5 Do you understand that?

6 Mr. Greene: Yes, sir.

7 The Court: That's just another failure to stop for a
8 blue light; I already told you what that is. Then you have
9 burglary nonviolent, and on that I sentence you to 15 years.
10 That's concurrent to the other sentences. All right? I
11 wrote on here: "On the record may be reduced if certain
12 events occur." I don't have to write all that down. That's
13 -- we've got a record of it.

14 On the robbery charge I sentence you to five years. I
15 wrote that that's consecutive to the sentence on the
16 burglary, and I wrote all those numbers out:
17 2011-GS-28-0753.

18 At the bottom I wrote: "The total sentence, negotiated
19 20 years, nonviolent. May be reduced if certain events
20 occur." That's all I can do. Do you have any questions?

21 Mr. Greene: No, sir.

22 The Court: With a little luck, they will convict or get
23 the co-defendant to plead guilty, and you'll get to come back
24 and get it cut to 13. I don't have to be the one to do that.

25 Mr. Johnson: Thank you, Your Honor.

1 **Mr. Perry:** Thank you, Your Honor.

2 **The Court:** All right.

3 (Whereupon, the proceedings were concluded. There were
4 no exhibits introduced.)

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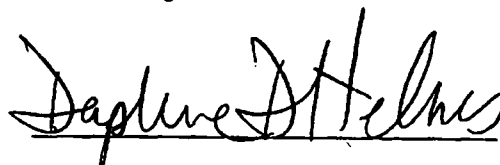
24

25

I, the undersigned Daphne D. Helms, official court reporter for the Fifth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the circuit court for Kershaw County, South Carolina, on the 27th of February, 2012.

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

February 16, 2013

A handwritten signature in cursive script, reading "Daphne D. Helms", written over a horizontal line.

Daphne D. Helms, court reporter



Received from
S. J. [illegible]
for [illegible]
6/24/13
56

FORM 5

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS)

County of Kershaw)Marcus Greene)

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

v.)

State of South Carolina)

APPLICATION FOR)

POST-CONVICTION RELIEF)

2012-CP-28-1034

JAMES H. HARRIS, JR.
CLERK OF COURT
KERSHAW COUNTY, S.C.

2012 NOV -6 PM 12:42

RECORDED

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention Lee Correctional Institution
990 Wilsack Highway Bishopville, South Carolina
2. Name and location of Court which imposed sentence Kershaw County
Judicial Center
3. Name(s) of co-defendant(s) (if any) Jarvis Bernard Jones
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) See attached sheet
 - (b) _____

ATTEST: True, Correct & Certified
Copy of Original on File in this
Court

James H. Harris, Jr.
Clerk of Court Kershaw County

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) February 27, 2012
- (b) plea agreement
- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty ✓
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____
7. Did you appeal from the judgment of conviction or the imposition of sentence?
- no
8. If you answered "yes" to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) Plea counsel did not advise me of my constitutional right to an appeal.
- (b) _____

FILED FOR RECORD
2012 NOV -6 PM 12:42
CLERK OF COURT
KERSHAW COUNTY, S.C.

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

(a) Ineffective assistance of plea counsel

(b) _____

(c) _____

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

(a) see attached sheet

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? no

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no

(c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no

(d) any other petitions, motions or applications in this or any other Court? no

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

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

2012 NOV - 6 PM 12:42
CLERK OF COURT
Kershaw County, S.C.
FILED FOR RECORD

(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?

no

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. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:

- (a) Ineffective Assistance of Counsel - Plea counsel to object and file an appeal.
 (b) _____
 (c) _____

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

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

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

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

i. Charlie Jay Johnson P.O. Box 11212 Cola, S.C. 29211

ii. _____

iii. _____

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

i. my plea hearing

ii. my sentencing

iii. _____

2012 NOV -6 PM 12:42

CLERK OF COURT
KERSHAW COUNTY, S.C.

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

I, Marcus Greene, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of said proceeding or give security thereof.

Marcus Greene
Applicant

SWORN or affirmed to and subscribed before me this

19 day of Oct, 2012.

Debra Seise
Notary Public

My Commission Expires: 11-4-2015

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

Sentence / Conviction vacated and/or plea vacated or
new trial.

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

no

STATE OF SOUTH CAROLINA)

County of Lee)

VERIFICATION

2012 NOV -6 PM 12:42
 JAMES H. HARRIS, JR.
 CLERK OF COURT
 Kershaw County, S.C.

I, Marcus Greene, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Marcus Greene

SWORN to and subscribed before me this 19
 day of Oct, 2012.

Debra Suris (L.S.)
 Notary Public

My Commission Expires: 11-4-2015

- 4: (a) 2nd degree Burglary - Warrant No.: M-099739
- (b) Armed Robbery - Warrant No.: M-099738
- (c) failure to stop for blue light ^{1st} - 2012 - GS - 28 - 0270
- (d) failure to stop for blue light - 2012 - GS - 28 - 0274
- (e) Resisting Arrest - 2012 - GS - 28 - 0271
- (f) Drug Possession of controlled substance - 2012 - GS - 28 - 0272
- (g) Drug Possession of less than One gram, ice crack or crack - 2012 - GS - 28 - 0273
11. (a) Plea counsel failed to file a direct appeal on the charges I was convicted of.
- (b) Plea Counsel conspired with the assistant solicitor to coerce me to plead guilty. Plea counsel violated lawyer rules of ethics by divulging confidential lawyer - client information. Plea Counsel informed me that my codefendant was writing statements on me and telling the authorities incriminating information pertaining to my charges, when in actuality, he was informing the assistant solicitor everything I told him.
- (c) Plea Counsel failed to inform the Court that it was without subject matter jurisdiction. A grand jury never convened to bring forth a true-billed indictment on the charges I was charged and convicted of.
- (d) Plea Counsel ~~was~~ failed to object to the defective arrest warrants: 1st degree Burglary M-099739; Armed Robbery M-099738, that was issued for my arrest. The affidavits supporting the arrest warrants did not contain sufficient detailed facts for the magistrate to determine probable cause. Furthermore, the affidavit did not contain a signed certification at the bottom of the Officer's affidavit.
- (e) Plea Counsel failed to object to the defective search warrant ~~which~~ which failed to satisfy the ~~search~~ affidavit requirement of the state statute. S.C. Code Ann § 17-13-740. The search warrant did not contain particularized detail facts for the magistrate to be provided a substantial basis for finding probable cause. It did not contain a description of the residence home to be searched in the affidavit supporting the search warrant. It failed to state the date and time the search warrant was executed on the Return. It failed to state the items that was confiscated at this residence. Furthermore, the Officer Executing Warrant did not sign the Return nor was it sworn before the magistrate.

16: (a) Ineffective assistance of Counsel - Plea Counsel did not appeal.

(b)

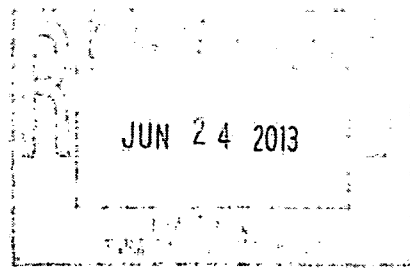
(c)

(d)

FILED FOR RECORD

2012 NOV -6 PM 12:42

JUDITH A. GUNALD
CLERK OF COURT
KERSHAW COUNTY, S.C.



STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Marcus Greene, #309647,

Case No. 2012-CP-28-1034

Applicant,

v.

RETURN

State of South Carolina,

Respondent.

Respondent, making its Return to the application for post-conviction relief filed November 6, 2012, would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Kershaw County Clerk of Court. Applicant was true bill indicted during the October 2011 term of the Kershaw County Grand Jury for Armed Robbery (2011-GS-28-0749) and Burglary in the First Degree (2011-GS-28-0753). Applicant waived presentment to the Grand Jury for two counts of Failure to Stop on Blue Light, First Offense (2012-GS-28-0270 and -0274), Resisting Arrest (2012-GS-28-0271), Possession of Schedule I-V Drug, First Offense (2012-GS-28-0272), and Possession/Attempt to Possess Crack Cocaine, Second Offense (2012-GS-28-0273). Charlie J. Johnson, Esquire, represented Applicant. On February 27, 2012, Applicant pled guilty as indicted before the Honorable J. Ernest Kinard, Jr., who sentenced Applicant to imprisonment in the following structure:

- | | |
|-------------------|----------------------|
| • 2011-GS-28-0749 | 5 years, consecutive |
| • 2011-GS-28-0753 | 15 years, concurrent |
| • 2012-GS-28-0271 | 3 years, concurrent |
| • 2012-GS-28-0271 | 1 year, concurrent |
| • 2012-GS-28-0272 | 1 year, concurrent |
| • 2012-GS-28-0273 | 1 year, concurrent |

• 2012-GS-28-0274

3 years, concurrent.

Applicant did not appeal his guilty plea or sentencing.

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

II.

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

1. Ineffective assistance of plea counsel
 - a. "Plea counsel failed to file a direct appeal"
 - b. "Plea counsel conspired with assistant solicitor to coerce me to plead guilty"
 - c. "Plea counsel failed to inform the Court that it was without subject matter jurisdiction"
 - d. "Plea counsel failed to object to the defective arrest warrants"
 - e. "Plea counsel failed to object to defective search warrant"

Any claims not specifically enumerated in the Application or amendments will be opposed by Respondent at an evidentiary hearing, and Respondent will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In his Application, Applicant alleges ineffective of assistance of plea counsel. In a post-conviction relief action, the applicant bears the burden of proving the allegations in his 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.

Where there has been a guilty plea, the applicant must prove prejudice by showing that, but for counsel's errors, there is a reasonable probability that he would not have pled guilty and instead would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 59, 106 S.Ct. 366, 370, 88 L.Ed.2d 203, 210 (1985); Jordan v. State, 297 S.C. 52, 54, 374 S.E.2d 683, 684 (1988). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the post-conviction relief hearing. Harres v. Leeke, 282 S.C. 131, 133, 318 S.E.2d 360, 361 (1984).

Respondent submits that 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, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

WHEREFORE, having made its Return, Respondent 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

MEGAN E. HARRIGAN
Assistant Attorney General

By: Megan E. Harrigan
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211

June 21, 2013.

STATE OF SOUTH CAROLINA)

COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS)

2012-CP-28-1034)

MARCUS GREENE, 309647,)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL)

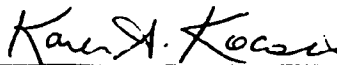
STATE OF SOUTH CAROLINA,)

Respondent.)

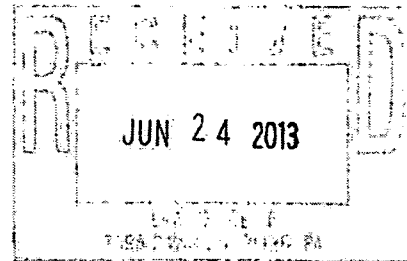
1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following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

**Tara Dawn Shurling, Esquire
3614 Landmark Place, Suite A
Columbia, South Carolina 29204**

DATED this 21st day of June, 2013.



Karen A. Kocsis, Legal Assistant
For Respondent



Document File Copy
Scan Date: 6/25/13
in File: 56

STATE OF SOUTH CAROLINA
COUNTY OF KERSHAW

Marcus Greene, 309647,
Applicant,

v.

State of South Carolina,
Respondent.

) IN THE COURT OF COMMON PLEAS
) FOR THE FIFTH JUDICIAL CIRCUIT
)

) Case No. 2012-CP-28-1034
)

) AMENDED APPLICATION FOR
) POST-CONVICTION RELIEF
)

2013 NOV 20 AM 11:27
JOYCE M. MOORE
CLERK OF COURT
KERSHAW COUNTY, S.C.

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The Post-Conviction Relief Application previously filed on November 6, 2012 under docket number 2012-CP-28-1034 is hereby amended to include the following additional allegations:

1. The Applicant alleges he received ineffective assistance of counsel in that Plea Counsel failed to provide him the opportunity to review the discovery materials in his case before requiring him to make a decision about waiving his right to a jury trial.
2. The Applicant alleges his pleas were not voluntarily and intelligently entered inasmuch as they were the product of ineffective assistance of counsel prior to and during his plea proceeding.
3. Plea Counsel was ineffective for advising the Applicant to enter pleas of guilty to charges on which he did not represent the Applicant and had not engaged in the investigation of and had not received discovery concerning.
4. The Applicant alleges that his pleas of guilty were not voluntarily and intelligently entered inasmuch as they were coerced by misrepresentations made by the State concerning evidence that would be presented against him if he went to trial by jury.
5. Plea Counsel was ineffective for advising the Applicant to plead guilty without disclosing and discussing the inconsistencies present in the victim's two statements with the Applicant, and without advising him how those inconsistencies might be used to his advantage at a trial by jury.
6. Plea Counsel was ineffective for failing to advise the Applicant of problems with the victim's pre-trial participation in a photo-lineup, and for failing to discuss with the Applicant how that evidence might be used in his defense at a trial by jury.
7. Plea Counsel was ineffective for failing to obtain a preliminary hearing for the Applicant.
8. Plea Counsel was ineffective for advising the Applicant to plead guilty to drug charges without first obtaining discovery concerning

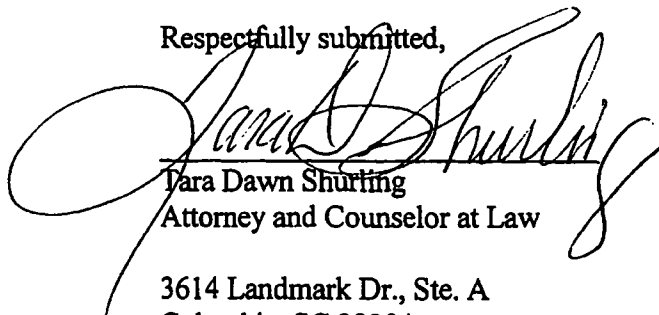
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the chemical analysis of the evidence alleged to be controlled substances.

9. The Applicant alleges that his pleas were entered in violation of his right to equal protection under the law where his co-defendants received the benefit of full disclosure of the discovery materials which resulted in their exercise of their right to trial by jury and their eventual acquittal.

The Applicant has no further amendments at this time. For the reasons set forth herein, as well as those set forth in his original application, the Applicant asserts that his right to effective assistance of counsel, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution, as well as Article I, Section 14, of the South Carolina Constitution, was violated prior to and during his trial proceeding in the Court of General Sessions. Copies of these amendments have been served on opposing counsel, Megan Harrigan, Assistant Attorney General, and Plea Counsel for the Applicant, Charlie Jay Johnson, Jr., Esquire.

Respectfully submitted,



Dara Dawn Shurling
Attorney and Counselor at Law

3614 Landmark Dr., Ste. A
Columbia, SC 29204
803-738-8622
803-738-1600 (Fax)

ATTORNEY FOR APPLICANT.

This 19th day of November, 2013.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS

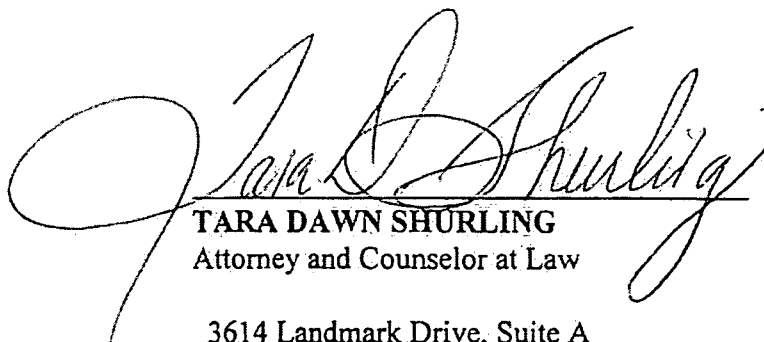
MARCUS GREENE, 309647,)
)
 Applicant,)
 v.)
)
 STATE OF SOUTH CAROLINA,)
)
 Respondent.)

Certificate of Service

2012-CP-28-1034

FILED FOR RECORD
 2013 NOV 20 AM 11:57
 JOYCE MCDONALD
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

The undersigned attorney hereby certifies that one copy of the Applicant's Amendment to Application for Post-Conviction Relief in the above-entitled cause has been served upon trial counsel, Charlie Johnson, Esquire, by e-mail at charlie@cjjlaw.com this 19th day of November, 2013.


TARA DAWN SHURLING
 Attorney and Counselor at Law

3614 Landmark Drive, Suite A
 Columbia, S.C. 29204
 (803) 738-8622
 (803) 738-1600 Fax
 690-4170 Digital Pager

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 19th day of

November, 2013.

Sharon H. McCallister (L.S.)
 Notary Public for South Carolina
 My Commission Expires: Jan. 16, 2017

STATE OF SOUTH CAROLINA)
)
 COUNTY OF KERSHAW)

IN THE COURT OF COMMON PLEAS

MARCUS GREENE, 309647,)
)
 Applicant,)
 v.)
)
 State of South Carolina,)
)
 Respondent.)
 _____)

Certificate of Service

2012-CP-28-10

JOYCE McDONALD
 CLERK OF COURT
 KERSHAW COUNTY, S.C.

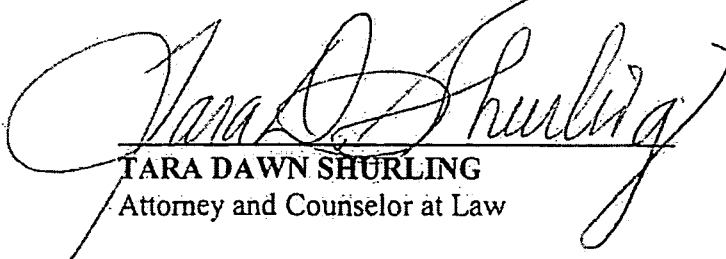
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FILED FOR RECORD

The undersigned attorney hereby certifies that a true copy of the Amended Petition for Conviction Relief Application in the above matter has been hand-delivered to opposing counsel on this 19th day of November, 2013 to:

Megan Harrigan
 Assistant Attorney General
 1701 Main Street
 Columbia, SC 29201

The original having been sent to the Kershaw County Clerk of Court for filing.


TARA DAWN SHURLING
 Attorney and Counselor at Law

3614 Landmark Drive, Suite A
 Columbia, S.C. 29204
 (803) 738-8622
 (803) 738-1600 Fax
 690-4170 Digital Pager

ATTORNEY FOR THE APPLICANT.

SWORN TO BEFORE ME this 19th
 day of November, 2013.

Sharon H. McCollister (L.S.)
 Notary Public for South Carolina
 My Commission Expires: Jan. 16, 2017

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1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF KERSHAW
4 2012-CP-28-01034
5

6 Marcus Greene
7 vs.
8 State of South Carolina
9

10
11 Columbia, South Carolina
12 November 20, 2013
13 Before the Honorable Robert E. Hood
14

15 APPEARANCES
16 For the State: Megan E. Harrigan
17 For the Applicant: Tara Dawn Shurling
18

19 Reported by: Michael C. Watkins
20 Official Court Reporter
21
22
23
24
25

1	Marcus Greene:	5
2	Charles J. Johnson:	70
3	Ron Moak:	98
4	Marcus Greene:	108
5	Brett Perry:	114
6	Certificate:	131

7

8 STATE'S EXHIBITS

9	1 - Bond Form	118
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10 APPLICANT'S EXHIBITS

11	1 - Letter	23
12	2 - Photo Array	24
13	3 - Statement	25
14	4 - Statement	26

15

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25

1 MS. HARRIGAN: This is the matter of Marcus Greene
2 versus the State of South Carolina, docket number 2011 --
3 excuse me, 2012-CP-28-104. Mr. Greene was indicted during
4 the October 2011 term of the Kershaw County Grand Jury for
5 armed robbery, burglary in the first degree. Thereafter he
6 waived presentment to the Kershaw County Grand Jury for two
7 counts of failure to stop for a blue light, resisting
8 arrest, possession of a scheduled drug first offense, and
9 possession of crack cocaine second offense. Charlie J.
10 Johnson, Jr. represented him on all seven charges. On
11 February 27, 2012 Mr. Greene appeared before the Honorable
12 J. Ernest Kinard, Jr. where he pled guilty to a
13 lesser-included offense of burglary in the second degree,
14 the lesser-included offense of strong armed robbery and the
15 remaining offenses as indicted. Judge Kinard sentenced the
16 applicant to an aggregate term of 20 years imprisonment
17 pursuant to negotiations with the State. Mr. Greene did not
18 appeal his guilty pleas or sentence. On November 6, 2012,
19 Mr. Greene filed an application for post conviction relief
20 alleging ineffective assistance of counsel, that plea
21 counsel failed to file a direct appeal. Plea counsel
22 conspired with the assistant solicitor to coerce him into
23 pleading guilty. Plea counsel failed to inform the Court
24 that there was no subject matter jurisdiction. Plea counsel
25 failed to object to defective arrest warrants, and plea

1 counsel failed to object to defective search warrants. The
2 State made its return on June 21st of this year requesting
3 an evidentiary hearing be held. He's represented in this
4 action by Tara Shurling. Yesterday late afternoon the State
5 received nine amended allegations for this case to go
6 forward today and the State at this time would object to any
7 motion to amend on behalf of the applicant.

8 THE COURT: Here is what we're doing with the
9 amendments, if something comes up that y'all need to respond
10 to I'll let Mr. Johnson do an affidavit to be filed with the
11 Court as to any issue that he's not prepared to answer today
12 or he believes he needs to more fully answer after learning
13 about any additional allegations. All right. Are you
14 ready, Ms. Shurling?

15 MS. SHURLING: Yes, Your Honor.

16 THE COURT: Okay.

17 MS. SHURLING: I would note just in the interest of
18 fairness that the substance of a good many of these
19 allegations were conveyed to the State well before yesterday
20 afternoon.

21 MS. HARRIGAN: One of the allegations was conveyed to
22 the State, I believe, last Thursday on the phone, however,
23 not all -- none of these were. I did not receive these
24 until I got back from court yesterday afternoon, and as Your
25 Honor knows, we were in court all day yesterday.

TESTIMONY OF MARCUS GREEN

1 MS. SHURLING: Thank you, Your Honor. At this time I
2 would call the applicant, Marcus Greene, to the stand.

3 THE COURT: All right. Come forward.

4 The witness, MARCUS GREEN, was first duly sworn
5 and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. SHURLING:

8 Q. State your full name for the record.

9 A. Marcus Greene.

10 Q. Do you have a middle name, Mr. Greene? What is it?

11 A. Antwan.

12 Q. Antwan. Okay. Mr. Greene, back when you were facing
13 the charges that you've just heard the State announce in
14 their opening, were you represented by court appointed
15 counsel or retained counsel?

16 A. Retained counsel.

17 Q. And who was that lawyer?

18 A. Mr. Charlie J. Johnson.

19 Q. What charges did you hire Mr. Johnson to represent you
20 on?

21 A. First degree burglary, armed robbery and kidnapping.

22 Q. Did those three charges all arise out of an incident
23 involving a gentleman named Alex English and his girlfriend?

24 A. Not all of the charges, just three.

25 Q. Those three, that's what I'm saying. Those three all

TESTIMONY OF MARCUS GREEN

1 arose out of the incident involving the home of Alex

2 English --

3 MS. SHURLING: Not the basketball player, Your Honor,

4 another Alex English.

5 Q. -- and his girlfriend, correct?

6 A. Yes, ma'am.

7 Q. Okay. Now, the other charges that you pleaded to as I

8 understand the record were two failure to stop for a blue

9 lights, a resisting arrest and a couple of drug charges,

10 right?

11 A. Yes, ma'am.

12 Q. And the drug charges involved a totally different

13 incident that occurred at the hotel room in Kershaw County

14 somewhere?

15 A. No. The drug charges, all of them came together, they

16 came at a hotel.

17 Q. That's what I just asked.

18 A. Oh, all right.

19 Q. The two drug charges occurred -- both arose out of a

20 single incident that occurred at a hotel room in Kershaw

21 County, correct?

22 A. Yes, ma'am.

23 Q. And then the two blue light charges were two separate

24 incidents, and one of those blue light charges involved a

25 resisting arrest charge as well.

TESTIMONY OF MARCUS GREEN

1 A. Yes, ma'am.

2 Q. So essentially you've got four factual scenarios that
3 you were dealing with; a home invasion, a running from the
4 law where they didn't catch you, a running from the law
5 where you tried to get away and they charged you with
6 resisting arrest.

7 A. Yes, ma'am.

8 Q. And the drug charges that arose out of an incident at a
9 hotel in Kershaw.

10 A. Yes, ma'am.

11 Q. Okay. And it's your testimony that you hired Mr.
12 Johnson to represent you on the most serious of those
13 charges, the kidnapping first degree, burglary and the armed
14 robbery; is that correct?

15 A. Yes, ma'am.

16 Q. Did there come a point in time when you ever amended
17 your original agreement with Mr. Johnson to have him
18 represent you on all of your charges?

19 A. No, ma'am.

20 Q. So your understanding from the time you hired him was
21 that he was only representing you on the -- and I'm going to
22 use the term home invasion loosely to encompass the armed
23 robbery, the burglary and the kidnapping charge.

24 A. Yes, ma'am.

25 Q. Okay. Well, from the time you were arrested, how long

TESTIMONY OF MARCUS GREEN

1 was it before you hired Mr. Charlie Johnson?

2 A. I would say about three or four days.

3 Q. Three or four days?

4 A. Yes, ma'am.

5 Q. And after you hired Mr. Johnson, did he request a
6 preliminary hearing on your behalf?

7 A. No, ma'am.

8 Q. Did you ask him to?

9 A. No, ma'am, I didn't ask him to. I wasn't ever
10 bringing -- he never brung me any paper to sign for a
11 preliminary hearing or anything being that I had to go to
12 general sessions to get a bond. I never went in front of a
13 magistrate court judge at all.

14 Q. Okay. Did Mr. Johnson ever discuss with you your right
15 to request a preliminary hearing?

16 A. No, ma'am.

17 Q. Did he discuss with you what the function of a
18 preliminary hearing would be and the reasons why you might
19 or might not want to bother having one?

20 A. No, ma'am, he didn't.

21 Q. Did Mr. Johnson file discovery motions on your behalf
22 on the three lead charges; the burglary, the armed robbery
23 and the kidnapping? To your knowledge did he file discovery
24 motions?

25 A. Not to my knowledge, I never seen a discovery ever.

TESTIMONY OF MARCUS GREEN

1 Q. Well, right now I'm talking about a motion. Did he
2 ever -- let me tell you something really important. The
3 nice lady sitting beside you has to write down every word
4 you say and she has a really hard job to do and it's even
5 worse when we talk over each other. So when I'm talking you
6 can't talk, you've got to wait until I finish and then
7 answer the question. Okay?

8 A. Yes, ma'am.

9 Q. Okay. To your knowledge did he file a request, a
10 motion asking for discovery materials in those charges?

11 A. Not to my knowledge.

12 Q. You never saw such a motion?

13 A. No, ma'am.

14 Q. Was there ever a time when Mr. Johnson -- prior to your
15 plea, was there ever a time when Mr. Johnson came to you and
16 said, "This is a bunch of evidence, these are a bunch of
17 documents, materials I've received from the solicitor's
18 office in your case that we need to go through together?"

19 A. No, ma'am.

20 Q. Was there ever an occasion when he met with you and
21 went over, for example, witness statements or other evidence
22 that the State had provided him in your case?

23 A. We discussed about my discovery materials. I asked
24 Mr. Johnson did he have my discovery materials and he said
25 yes. I said -- when I met to make a payment of Mr. Johnson

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1 he failed to bring my motion. I asked him several times
2 over the phone, "Can you bring my motion?" And he failed to
3 bring my motion. He said there wasn't nothing in there but
4 the codefendant gave a statement and was willing to testify
5 to go to trial. He said, "You can go to trial and get a
6 life sentence," because first degree burglary did carry a
7 life sentence, he said, "or you could take this plea and get
8 a non-violent sentence. If you give a statement I will make
9 sure that you get a non-violent sentence and I will drop
10 first degree to second, and I will drop armed robbery to
11 common law robbery, and I will drop the kidnapping
12 altogether and you'll get a 20 year non-violent sentence."
13 If Mr. Johnson, wouldn't have given that incorrect advice
14 about the evidence in my Brady material I would never have
15 took no plea.

16 Q. Remember the discussion we had before the hearing about
17 how you need to let me ask questions and you answer my
18 specific questions?

19 A. Yes, ma'am.

20 Q. Let's remember that rule. Okay?

21 A. Yes, ma'am.

22 Q. Now, so Mr. Johnson prior to your plea never went over
23 discovery materials with you concerning the three charges
24 that were related to what I'm calling the home invasion.

25 A. No, ma'am.

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1 Q. Okay. Now, you just testified that Mr. Johnson at some
2 point told you that your codefendant had given a statement
3 against you and that he had been advised that your
4 codefendant would testify against you if you went to trial.

5 A. Yes, ma'am.

6 Q. Is that correct?

7 A. Yes, ma'am.

8 Q. Now, you just said that Mr. Johnson said that he would
9 drop first degree burglary to second, and he would change
10 the armed robbery to strong armed. You understand that Mr.
11 Johnson is not a solicitor, he doesn't have the authority to
12 change charges, you understand that?

13 A. Can I speak now?

14 Q. Well, just first off, do you understand that a defense
15 attorney cannot change your charges?

16 A. Yes, ma'am.

17 Q. Okay. Did Mr. Johnson tell you he would change your
18 charges or that he thought if you were willing to plead that
19 he could get the State to agree to reduce the charges?

20 A. He said if I was willing to plead he would make sure,
21 guarantee that he would get that.

22 Q. Okay. And, in fact, he did get that, didn't he?

23 A. Yes, ma'am.

24 Q. And the record of your guilty plea, which is fairly
25 short, but it clearly indicates that you had fully

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1 cooperated with the prosecution and that you had given them
2 a lot of valuable information not only about your known
3 codefendant but also you helped them determine the name of a
4 second codefendant involved in the case, correct?

5 A. Yes.

6 Q. And in exchange for that cooperation the State put on
7 the record that they were not only reducing all of these
8 charges, but they had agreed to a negotiated 20 year
9 sentence with the stipulation that if you continued to
10 cooperate and if you either testified against Jarvis -- what
11 was Jarvis' last name?

12 A. Jones. Mr. Johnson gave --

13 Q. Let me finish. Is it correct that the stipulation was
14 that if you testified against Jarvis Jones and when he -- he
15 went to trial if you testified, whether he was convicted or
16 not or if he pleaded guilty, that they would bring you back
17 before the Court under that new law that they have now that
18 let's prosecutors ask for a Judge to reduce the sentence and
19 your sentence would be reduced and it was even already
20 agreed upon what it would be reduced to, right?

21 A. Yes, ma'am.

22 Q. It would be reduced to what?

23 A. I think a 13 year non-violent.

24 Q. Thirteen years non-violent. Okay. Picking up from
25 there, did you discuss with Mr. Johnson the procedures that

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1 would be involved if you went to trial on these charges?

2 Did he talk to you about presenting witnesses, about
3 potential defenses to the charges, anything about how the
4 case would go down, if you will, if you went to trial by
5 jury?

6 A. Yes, he did advise me, he did advise me something. He
7 advised me that if I went to trial I would get a life
8 sentence on my co-defendant's testimony, and that the
9 victim, Jessica Kyzer, gave a positive identification of me,
10 which was not true. Two persons were circled from the photo
11 array.

12 Q. Mr. Greene, I'm trying to present this testimony in an
13 orderly fashion, please allow me to do so. I will ask you a
14 question about that in a moment. But right now I'm asking
15 you at that point in time the agreement was for you to
16 testify if they needed you, and whether your codefendant was
17 convicted or not or if he folded and pled your charge would
18 be reduced to 13 years, right?

19 A. Yes, ma'am.

20 Q. Okay. Prior to reaching that agreement or when you
21 were considering that offer from the State -- when he
22 brought you the offer to plead for a negotiated 20 with the
23 opportunity to have it reduced to 13, did he at that point
24 tell you that it was also going to encompass your other
25 outstanding charges, that being two failure to stop for a

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1 blue lights, a resisting arrest and the two minor drug
2 charges?

3 A. No, ma'am.

4 Q. What, if anything, did he tell you about those other
5 outstanding drug charge -- I mean, other outstanding
6 charges?

7 A. Mr. Johnson advised me that when I take this plea that
8 those charges will be dismissed, thrown out, but when I got
9 in front of the Judge they were ran concurrent.

10 Q. Okay. So your understanding prior to entering the plea
11 was that you would be pleading to reduced charges on the arm
12 robbery and the burglary, correct?

13 A. Yes, ma'am.

14 Q. And the record reflects that they can also agree to
15 dismiss the kidnapping, right?

16 A. Yes, ma'am.

17 Q. Okay. So you were going to plead to second degree
18 burglary, and common law or strong armed robbery for a 20
19 year sentence with the opportunity to reduce it to 13, and
20 to the best of your understanding the other charges were
21 going to be dismissed.

22 A. Yes, ma'am.

23 Q. At what point did you discover that the other charges
24 were not being dismissed, that you were actually going to
25 receive concurrent sentences for those judgments, those

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1 charges as well?

2 A. I was in front of the Judge and he ran the charges
3 concurrent, but I asked Mr. Johnson and he said don't do
4 nothing to stop the plea being that I'm getting a
5 non-violent sentence, so I went along with the plea.

6 Q. So it wasn't until during the actual plea proceeding
7 that you realized that you were being required to plead to
8 those charges in addition to the main three that we're
9 talking about.

10 A. Yes, ma'am.

11 Q. But you did, in fact, still get the negotiated 20 that
12 you were promised.

13 A. Yes, ma'am.

14 Q. Before we go any further, I have covered with you the
15 potential penalties for first degree burglary, armed robbery
16 and kidnapping, haven't I?

17 A. Yes, ma'am.

18 Q. And you understand from talking to me what the elements
19 of those crimes are as well, don't you?

20 A. Yes, ma'am.

21 Q. Specifically you understand that kidnapping doesn't
22 require taking somebody and asking for ransom, it's just
23 holding them against their will for any period of time and
24 for any reason, you understand that?

25 A. Yes, ma'am.

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1 Q. And you understand why it would be first degree
2 burglary?

3 A. Yes, ma'am.

4 Q. Okay. And once again, armed robbery is a pretty easy
5 one, you know what armed robbery is, right? You understand
6 the elements of that. Okay. And you and I have gone over
7 the fact that first degree burglary carries a penalty of 15
8 years to what?

9 A. A life sentence.

10 Q. Life. Kidnapping carries up to what?

11 A. Thirty years.

12 Q. And armed robbery?

13 A. Thirty years.

14 Q. And armed robbery actually has a mandatory minimum,
15 doesn't it?

16 A. Ten.

17 Q. Okay. And I have also explained to you that each of
18 those offenses would be most serious offenses under South
19 Carolina law, correct?

20 A. Yes, ma'am.

21 Q. And that they require a service of a minimum of
22 85 percent of the penalty before you were even eligible to
23 get out, right?

24 A. Yes, ma'am.

25 Q. And I believe you went over with me what the statutory

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1 provisions for what I'm going to call the less serious
2 charges, I'm not making light of them, but the other charges
3 altogether, you had a sentencing exposure of like nine years
4 on them, right?

5 A. Yes, ma'am.

6 Q. Okay. So you were looking at a potential exposure of
7 life plus 69 years on all of these charges, violent and
8 85 percent, right?

9 A. Yes, ma'am.

10 Q. And your lawyer was able to negotiate that down to 20
11 years non-violent with an opportunity to get it reduced to
12 13?

13 A. Yes.

14 Q. Okay. Now, the thing I have to be very clear about on
15 the record, I have explained to you, have I not, that if we
16 were to be blessed with a favorable ruling in this PCR, if
17 we win in this PCR, the thing we win is an opportunity for
18 you to essentially have everything torn up and start over
19 again.

20 A. Yes, ma'am.

21 Q. You win the right to have a new trial on every single
22 one of those charges we've been talking about. And I have
23 explained to you, haven't I, that although there's a
24 constitutional right to a jury trial, there is no
25 constitutional right to a plea bargain, is there?

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1 A. Yes. Instead --

2 Q. Wait a minute. Did I explain to you that if you want a
3 new trial that there would be absolutely nothing to require
4 the solicitor's office to engage in any kind of negotiations
5 with you on remand?

6 A. Yes, ma'am, you did.

7 Q. And you expressed to me the fact that that was just
8 fine with you because you really wanted what?

9 A. To go to trial.

10 Q. You want to go to trial.

11 A. Yes, ma'am.

12 Q. And you want to go to trial on all of those charges.

13 A. On every last one.

14 Q. Just so the record clearly reflects, I've made certain
15 you understand what an incredible risk you're taking by
16 proceeding here today.

17 A. Yes, ma'am.

18 Q. Okay. 169 years potentially. Not saying you would get
19 that much time but you certainly could get a whole lot more
20 than 20.

21 A. Yes, ma'am.

22 Q. Okay. Currently because you have a non-violent
23 sentence you have a parole eligibility, don't you?

24 A. Yes, ma'am.

25 Q. In the early part of 2017, I believe?

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1 A. That's a long way.

2 Q. Is that accurate, sir?

3 A. Yeah. I mean --

4 Q. Is that accurate that you have parole eligibility in
5 2017?

6 A. 2017, that's accurate.

7 Q. And you max out when, sir?

8 A. 2024.

9 Q. Okay. All right. Let's go forward. From the time of
10 your plea, how much time passed before the prosecutor was
11 basically calling upon you to testify against Jarvis Jones?

12 A. I took a plea on February 27th, I was sentenced to 20
13 years, I was transferred to the department of corrections,
14 from February until April, I was called back to testify.

15 Q. When it was getting ready to be time for Jarvis Jones'
16 testimony -- I mean, pardon me, trial, they brought you to
17 the solicitor's office in Kershaw; is that correct?

18 A. Yes, ma'am.

19 Q. When they brought you there -- the first day they
20 brought you there, was it for Jarvis' trial or did they
21 bring you earlier to prepare for Jarvis' trial?

22 A. They brought me earlier to prepare for his trial.

23 Q. And your guilty plea proceeding indicates that the
24 State was represented by Mr. Perry, Brett Perry, the deputy
25 solicitor over in Kershaw. But when you went to Camden to

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1 meet at the solicitor's office to get ready for Jarvis
2 Jones' trial, who met with you that day to prepare for your
3 testimony?

4 A. Ron Moak.

5 Q. At that time were you given an opportunity to review
6 anything that you hadn't previously seen?

7 A. Yes, my Brady materials.

8 Q. Your Brady materials?

9 A. Yeah, my motion for discovery.

10 Q. Your discovery materials on those three charges; the
11 armed robbery, the kidnapping and the burglary.

12 A. Yes, ma'am.

13 Q. Was that the first time you had seen your discovery
14 materials?

15 A. Yes, ma'am.

16 Q. Was there anything in the discovery materials that
17 shocked or surprised you?

18 A. Yes, ma'am.

19 Q. Tell us what you saw in those discovery materials that
20 surprised you.

21 A. I saw that the victim circled two persons, not just me,
22 someone else in the photo identification, and she wrote a
23 statement which indicated my name in, it. But it was a
24 statement beforehand that was conflicting that she did not
25 say my name in. Difference in description. And something

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1 else that shocked me, it wasn't no statement from my
2 codefendant.

3 Q. Okay. Well, let's back up for a minute. Did you get
4 copies of those materials from Mr. Moak at that time?

5 A. No, ma'am.

6 Q. Did you subsequently request copies of all of your
7 discovery materials from your trial attorney, Mr. Charlie
8 Johnson?

9 A. Yes, ma'am.

10 Q. And do you know when it was that you requested those
11 materials from Mr. Johnson?

12 A. My first time requesting for my motion for Mr. Johnson
13 was right when I took my plea, but he failed to provide me
14 with it so I wrote him a couple of times to try to get my
15 motion but he failed. And I contact --

16 Q. Mr. Greene, you have to be more specific. You said the
17 first time was right about the time of your plea. Did you
18 request a copy of your discovery materials from your trial
19 attorney, Charlie Johnson, before you entered your plea or
20 was the first time after you entered your plea?

21 A. Before.

22 Q. And he didn't give them to you then.

23 A. No, ma'am.

24 Q. Okay. When is the next time you asked for it?

25 A. After.

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1 Q. After your plea?

2 A. Yes, ma'am.

3 Q. Was it before or after you met with Ron Moak at the
4 solicitor's office?

5 A. It was before that, too.

6 Q. Okay. Did you get a copy of your discovery materials
7 then?

8 A. No, ma'am.

9 Q. After you met with Assistant Solicitor Moak in the
10 Kershaw County Solicitor's Office and saw these materials,
11 did you then write Mr. Johnson and request a copy of your
12 discovery?

13 A. Yes, ma'am.

14 Q. And he then provided you a copy of those materials.

15 A. No, ma'am, he didn't then. I contacted the bar
16 association and they had to contact Mr. Johnson to send me
17 my motion for discovery, then he sent me my motion for
18 discovery.

19 Q. Okay.

20 MS. SHURLING: A moments indulgence, Your Honor.

21 (Break in proceedings.)

22 MS. SHURLING: May I approach, Your Honor?

23 THE COURT: Yes, ma'am.

24 Q. Can you identify this?

25 A. Yes, ma'am.

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1 Q. What is that?

2 A. That's when Mr. Johnson disclosed my discovery
3 materials.

4 COURT REPORTER: Could you repeat that, please?

5 A. That's when Mr. Johnson disclosed my discovery
6 materials.

7 Q. He sent them to you by mail?

8 A. Yes, ma'am.

9 Q. At Wisacky Highway. Those of us who have the pleasure
10 visiting it know that is Lee Correctional Institution,
11 right?

12 A. Yes, ma'am.

13 MS. SHURLING: Applicant's 1, Your Honor?

14 MS. HARRIGAN: No objection from the State.

15 (The letter was received as Applicant's 1.)

16 Q. You mentioned earlier in those discovery materials you
17 had a chance to review the -- a copy of photo array that had
18 been shown to the female victim in this case.

19 A. Yes, ma'am.

20 Q. Prior to seeing that, what had your defense attorney
21 told you about the victim's ability to identify you?

22 A. He said she gave a positive identification.

23 Q. Can you identify this document?

24 A. Yes, ma'am.

25 Q. And was this copy of a photo array in the discovery

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1 materials you received from Mr. Johnson?

2 A. Yes, ma'am.

3 Q. And is it the same photo array that you received
4 previously in the solicitor's file shown to you by Ron Moak?

5 A. Yes, ma'am.

6 Q. In this photo array there are two photos, number three
7 and number four are circled and initialed.

8 A. Yes, ma'am.

9 Q. Are either of those pictures you?

10 A. Yes, ma'am.

11 Q. Which one?

12 A. Number three.

13 MS. SHURLING: Applicant's Number 2, Your Honor?

14 MS. HARRIGAN: No objection from the State.

15 (The photo lineup was received as Applicant's
16 2.)

17 Q. Okay. Prior to viewing that photo array, did you have
18 any idea that the victim had actually -- had picked out two
19 photographs in the photograph lineup?

20 A. No, I didn't.

21 Q. In the discovery materials that you reviewed at the
22 solicitor's office you also mentioned seeing two different
23 statements that were issued per Jessica Kyzer. She was the
24 female victim in this case?

25 A. Yes, ma'am.

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1 MS. SHURLING: May I approach?

2 Q. Can you identify this?

3 A. Yes, ma'am.

4 Q. It's a statement given by Ms. Kyzer August 1st, 2011 at
5 1:43 a.m. is that correct?

6 A. Yes, ma'am.

7 MS. SHURLING: Move to introduce as Applicant's 3.

8 MS. HARRIGAN: Which one?

9 MS. SHURLING: The first one.

10 MS. HARRIGAN: The one page --

11 MS. SHURLING: The 1:43 a.m.

12 MS. HARRIGAN: Okay. No objection.

13 (The statement was received as Applicant's 3.)

14 Q. And did you also have the opportunity to view
15 Ms. Kyzer's second statement given at 2:16 p.m. on the same
16 date?

17 A. Yes, ma'am.

18 Q. Can you identify this two page document?

19 A. Yes, ma'am.

20 Q. Is that the same statement that you had the opportunity
21 to review at the solicitor's office?

22 A. Yes, ma'am.

23 Q. Or one of two that you reviewed at the solicitor's
24 office.

25 A. I seen both of them.

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1 Q. Okay. That's what I'm saying, this is the second one,
2 right?

3 A. Yeah.

4 Q. And when you received the discovery materials from Mr.
5 Johnson, was a copy of this 2:16 p.m. statement in these
6 discovery materials?

7 A. Yes, ma'am.

8 THE COURT: Did you say yes or no?

9 THE APPLICANT: Yes.

10 THE COURT: Thank you.

11 MS. SHURLING: Applicants 5, I think.

12 COURT REPORTER: Four.

13 MS. HARRIGAN: No objection from the State.

14 (The statement was received as Applicant's 4.)

15 Q. When you reviewed those statements, can you share with
16 us what was significant about them in your mind?

17 A. She went from saying that it was a brown-skinned man to
18 a dark-skinned man. She went from saying it was -- somebody
19 snatched her out the shower to she got out of the shower.
20 She went from saying not indicating my name in the first
21 statement to indicating my name in the second statement.
22 Her story was just conflicting, it didn't add up at all.

23 Q. So the thing that you noticed was that there were
24 significant differences between the first statement and the
25 second statement.

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1 A. Yes, ma'am.

2 Q. Had your defense attorney, Charlie Johnson, prior to
3 your pleas ever shown you these statements?

4 A. No, ma'am.

5 Q. Had he ever discussed with you the fact that the
6 victim's story had changed between her first and second
7 statement?

8 A. No, he never told me that.

9 Q. Did he ever discuss with you how if you went to trial
10 by jury you would have the opportunity to cross examine
11 witnesses against you?

12 A. No, ma'am.

13 Q. Did he explain to you what impeachment is and how it is
14 that a defense attorney might go about trying to impeach the
15 credibility of a witness?

16 A. No, ma'am.

17 Q. You also -- these are the things that you said you saw
18 in the file that you had never seen before that were
19 important to you, the photo array and these two statements,
20 correct?

21 A. Yes, ma'am.

22 Q. The other thing that you mentioned being important was
23 the absence of something. What wasn't in the file that you
24 expected to be?

25 A. My co-defendant's statement.

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1 Q. And that being Mr. Jones' statement?

2 A. Yes, ma'am.

3 Q. Why did you expect there to be statements incriminating
4 you written by Mr. Jones in that file?

5 A. Mr. Johnson advised me that there was statements from
6 my codefendant.

7 Q. So your lawyer told you that your codefendant, Mr.
8 Jones, had "given statements" on you?

9 A. Yes, ma'am.

10 Q. Did he say anything about the codefendant with regard
11 to his cooperation?

12 A. He said that my codefendant wrote a statement and was
13 willing to testify if I went to trial. I told Mr. Johnson I
14 wanted to go to trial and he advised me that wouldn't be the
15 right thing to do.

16 Q. After Mr. Johnson advised you that your codefendant had
17 given you up so to speak, had written statements on you and
18 was willing to testify against you, is that when you began
19 entertaining Mr. Johnson's advice to plead guilty?

20 A. Yes, ma'am.

21 Q. And if you had known that your codefendant, in fact,
22 had not given statements against you, would you have pleaded
23 guilty?

24 A. No, ma'am.

25 Q. If you had known that the victim in this case had shown

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1 some degree of uncertainty in her identification in the
2 pretrial photo identification procedure, would you have pled
3 guilty or would you have wanted to go to trial?

4 A. I would have wanted to go to trial.

5 Q. If you had known that her story had changed between her
6 first and second statements, would that have affected your
7 decision to plead versus going to trial?

8 A. Yes, ma'am.

9 Q. How would your decisions have been different?

10 A. I would have went to trial and received a quick resolve
11 due to the evidence.

12 Q. Well, first off -- let's stop. I have explained to you
13 that if you went to trial by jury that a defense attorney
14 could use the fact that the victim picked out two
15 photographs in what was called a Neil versus Biggers hearing
16 to challenge the reliability of the victim's identification,
17 correct?

18 A. Yes, ma'am.

19 Q. And I have told you that there would be an in-camera
20 proceeding at which the Court would decide whether the
21 victim's ability to identify you in court had been
22 irreparably tainted by a suggestive pretrial identification
23 procedure, or whether she had shown a degree of uncertainty
24 rising to a level that the Court could find that her ID was
25 not reliable?

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1 A. Yes, ma'am.

2 Q. I also explained to you that there's no way to know
3 what a Judge is going to do on such a motion, didn't I?

4 A. Yes, ma'am.

5 Q. All right. And that if the Judge allowed the
6 identification anyway and you were ultimately convicted,
7 that would be an issue that you would have available for an
8 appeal, correct?

9 A. Yes, ma'am.

10 Q. You and I have also had the opportunity to discuss
11 impeachment, haven't we?

12 A. Yes, ma'am.

13 Q. And what is your understanding of what impeachment is?

14 A. To cross-examine a witness.

15 Q. Okay. And you believe that Mr. Johnson could have used
16 the inconsistencies between the two statements to impeach
17 the credibility, the reliability of this young woman.

18 A. Yes, ma'am.

19 Q. Based on that if you had known of the existence of the
20 statements you would have wanted to go to trial.

21 A. Yes, ma'am.

22 Q. How big a factor was being told that Mr. Jones had
23 given statements on you and was going to testify against you
24 in your decision whether to plead guilty or go to trial?

25 A. If I wasn't told that my codefendant gave statements on

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1 me I was going to trial 100 percent.

2 Q. Was it your belief that your codefendant had given
3 statements incriminating you that made you make the decision
4 to give statements on him and agree to cooperate with the
5 State?

6 A. Yes. Mr. Johnson advised me that I would need to give
7 a statement so I can get a non-violent sentence instead of
8 going to trial and getting a life sentence with my
9 co-defendant's testimony. I went off Mr. Johnson's advice
10 and took the plea, if he would have never gave me
11 ineffective advice I never would have took the plea.

12 Q. Okay: The written record ends with your guilty plea
13 proceeding where you're being praised for being highly
14 cooperative and the Court is being told that you're going to
15 have a chance to get your sentence reduced to 13 years when
16 you testified against Mr. Jones. After your meeting with
17 Mr. Moak, did you eventually testify against Mr. Jones?

18 A. No, ma'am.

19 Q. What happened?

20 A. I refused.

21 THE COURT: You what?

22 THE APPLICANT: I refused.

23 Q. You refused to testify?

24 A. Yes, ma'am.

25 Q. Can you share with us why you refused to testify? What

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1 did you tell the State about why you wouldn't testify?

2 A. Because me and Mr. Johnson came to a conclusion to
3 testify on my codefendant and the story that I gave wasn't
4 even true, it just was a story so I could get a non-violent
5 sentence. It was not even a true story at all.

6 Q. And at the time you told the State that you were not
7 going to testify, you understood that if you didn't testify
8 you were going to lose your chance to get the 13 year
9 sentence they had stipulated to ask for for you if you
10 testified.

11 A. Yes, ma'am.

12 Q. But you refused to testify anyway.

13 A. Yes, ma'am.

14 Q. I have explained to you have I not, Mr. Greene, that
15 law enforcement officers are allowed to -- and I know this
16 is a concept that's terribly difficult for clients to
17 understand -- but I've explained to you that law enforcement
18 officers are actually allowed to lie to people that they are
19 interrogating and it's considered a legitimate legal
20 interrogation tactic, you understand that?

21 A. Yes, ma'am. But Mr. Johnson is not allowed to lie to
22 me and give me ineffective advice and advise me to plead
23 guilty. He's not allowed to coerce with the prosecution and
24 come together and both of them telling me that my
25 codefendant is writing statements on me and trick me in to

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1 pleading guilty, he's not allowed to do that, giving me
2 ineffective advice.

3 Q. Well, thus far you have not only accused Mr. Johnson of
4 telling you that, who else are you saying told you that your
5 codefendant was going to testify against you if you went to
6 trial?

7 A. Mr. Johnson and Brett Perry.

8 Q. Mr. Brett Perry, the deputy solicitor?

9 A. Yes, ma'am.

10 Q. Okay. Did they simply tell you that your codefendant
11 was going to cooperate and testify against you or did they
12 tell you he had given statements against you, which is it?

13 A. Both. He told me he gave a statement and was willing
14 to testify against me if I went to trial.

15 Q. And was it that representation that resulted in your
16 ultimately cooperating with the solicitor's office and
17 entering a plea?

18 A. Yes, ma'am.

19 Q. If I understand you correctly it was your testimony
20 here today that the reason you didn't ultimately testify is
21 you found out that representation didn't turn out to be
22 true.

23 A. Yes, ma'am.

24 Q. Looking at the other charges, the failure to stop for a
25 blue light -- I'm not going to repeat them all, but the

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1 others, not the big three but the others, did you ever get
2 discovery on those?

3 A. Never got my discovery on those to this day.

4 Q. So when Mr. Johnson sent you the discovery in response
5 to -- excuse me, with that letter that we introduced, it was
6 only on the three primary charges, the home invasion
7 charges.

8 A. Yes, ma'am.

9 Q. So to this day you've never seen the discovery on the
10 remaining charges.

11 A. No, ma'am.

12 Q. Had it not been for the representations that you have
13 been talking about in your testimony here today, would you
14 have pled on those other charges either?

15 A. No, ma'am. I would have went to trial on all of them
16 too.

17 Q. You actually had never been indicted on anything other
18 than the three major charges, right?

19 A. I wasn't indicted on anything but two, two of the
20 three.

21 Q. And what were they?

22 A. Burglary first and armed robbery.

23 Q. Okay. So the other -- the kidnapping was dismissed,
24 that doesn't matter as far as the indictment is concerned.
25 But with regard to the blue light charges, the resisting

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1 arrest and the two drug charges, you did what they call
2 waving grand jury presentment, right?

3 A. Uh-huh.

4 Q. Did you understand what the function of the grand jury
5 was at the time you did that?

6 A. No, I didn't. I thought I was waiving my rights to a
7 jury trial, I didn't know the importance of waiving my right
8 to a grand jury, I thought I was waiving a jury trial. Mr.
9 Johnson didn't advise me of that either.

10 Q. So Mr. Johnson never explained to you the function of
11 the grand jury versus a regular jury that decides guilt or
12 innocence?

13 A. No, ma'am.

14 Q. Did you have any prior record prior to these charges?

15 A. I had a drug conviction in 2005.

16 Q. Is that all?

17 A. Yeah. That's the only thing on record.

18 Q. And on that drug charge, did you enter a plea or did
19 you go to a jury trial?

20 A. A guilty plea.

21 Q. So in your experience you have never had a jury trial.

22 A. Never had a jury trial.

23 Q. Did Mr. Johnson explain to you that issues that you
24 might raise during the course of a jury trial could be
25 raised potentially on a direct appeal if you are convicted

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1 by a jury?

2 A. No, ma'am.

3 Q. The next question probably answers itself but just to
4 be safe, did he ever explain to you that if you entered a
5 plea of guilty to each of these offenses that you would be
6 waiving your right to appeal any legal issues that might
7 exist in those cases on those charges by the act of pleading
8 guilty?

9 A. No, ma'am.

10 Q. Did he ever discuss with you, for example, on the drug
11 charges you said that occurred in a hotel room in Camden?

12 A. Did he ever --

13 Q. The two drug charges, you got them at the same time,
14 right?

15 A. Yes, ma'am.

16 Q. And they both arose out of an incident at a hotel room
17 in Camden, correct?

18 A. Yes, ma'am.

19 Q. Was the hotel room rented in your name?

20 A. No, ma'am.

21 Q. Were there other occupants in the room at the time the
22 police arrived?

23 A. Yes, ma'am.

24 Q. And did your lawyer ever discuss with you any potential
25 Fourth Amendment challenges you might raise if you went to

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1 trial to the drugs that were seized from that hotel room?

2 A. No, ma'am.

3 Q. But for the errors and omissions that we have discussed
4 here today, would you have pleaded to any of the other
5 charges?

6 A. No, ma'am.

7 Q. Would you have waived grand jury presentment on those
8 charges in order to plead guilty?

9 A. No, ma'am.

10 MS. SHURLING: Moment's indulgence, Your Honor.

11 THE COURT: Sure.

12 (Break in proceedings.)

13 Q. Mr. Greene, did you get a chance to look over the
14 amended application that I drafted for you?

15 A. Yes, ma'am.

16 Q. You have previously given me a lengthy handwritten
17 document which I then had typed up and tried to translate.
18 Have I basically raised all of the issues that you wanted me
19 to raise here today?

20 A. Yes, you've raised all of the issues.

21 Q. Okay. I know there's a but coming, but let me ask one
22 thing before you do it. On number nine on the application
23 you have in front of you, number nine, the claim that your
24 right to equal protection under the law is violated.

25 A. Yes, ma'am.

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1 Q. Okay. What happened to the charges on Mr. Jones?

2 A. It was dismissed.

3 Q. And the other gentleman that you provided them the name
4 of, I'm sorry, I just misplaced my notes. Who is the other
5 codefendant?

6 A. Sioux.

7 Q. And his last name?

8 A. Beaufort.

9 Q. Okay. Mr. Beaufort, what happened to his charges?

10 A. Dismissed.

11 Q. They were dismissed after you refused to testify in the
12 Jones matter?

13 A. Yes, ma'am.

14 Q. Okay. It had been my understanding that you believed
15 their charges were dismissed because of the problems with
16 the pretrial ID and because of problems with the victim's
17 statement. That's not accurate, is it?

18 A. That's accurate.

19 Q. That is -- you're still saying that.

20 A. From inconsistent statements in the identification,
21 yeah.

22 Q. So it is your belief that the reason the other two
23 co-defendants' charges were dismissed was not solely because
24 you wouldn't testify at Mr. Jones' trial, but also because
25 of the problems with pretrial photo identification and the

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1 problems with the victim's statement.

2 A. If they charges were not dismissed -- if their charges
3 were dismissed because I refused to testify, how were they
4 indicted in the first place? How were they indicted in the
5 first place?

6 Q. I'm not going to go there, but let's just back up for a
7 minute. The third codefendant that you provided them the
8 name of, is he related to you in some kind of way?

9 A. Yes.

10 Q. Were you aware of any connection between him and the
11 people that lived in the house?

12 A. You said was I aware of any connection?

13 Q. Between him and the people that live in the house that
14 was where the burglary and armed robbery occurred.

15 A. Ms. Shurling, I just gave a statement off my lawyers's
16 advice because he told me that my co-defendants had given a
17 statement. I'm not saying the statement was true. Me and
18 my lawyer just came together and came up with a story just
19 to give the prosecutor so I could get a non-violent sentence
20 and get my charges dropped from first or second degree from
21 armed robbery to common law robbery. Mr. Johnson gave me
22 the advice to do this, if he wouldn't have gave me that
23 advice I wouldn't never have given that plea.

24 Q. I appreciate that, now do you want to answer my
25 question? Were you aware of any connection between that

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1 gentleman and the people that lived in the house?

2 A. I mean, what you mean by aware of any connection? I
3 don't know nothing about do they know each other or not.

4 Q. Okay. Then that answers my question, thank you very
5 much. That's all I have. Now, I have raised to the best of
6 my ability all of the issues that you went over with me, the
7 factual issues. At the end of the hearing His Honor will
8 either afford me the opportunity to argue the issues and why
9 I believe we have met the standard for ineffective
10 assistance of counsel under Strickland versus Washington and
11 Hill v. Lockhart. Right now is the time just to get the
12 factual evidence on the record, do you understand that? So
13 factually, have I covered these nine issues that you wanted
14 me to cover on your behalf? Have I covered all of those
15 issues with you?

16 A. Yes, ma'am.

17 Q. Is there anything else crucial -- and please listen to
18 me -- important to His Honor's decision in your case that
19 I've neglected to ask you questions about or give you an
20 opportunity to say?

21 A. No, you didn't. I just --

22 THE APPLICANT: Your Honor --

23 THE COURT: Yes.

24 THE APPLICANT: I've written a presentation, and I
25 didn't write this presentation for nothing not to come to

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1 court and read it, so I would like to read my presentation.

2 I have a copy of it for you and the attorney general also.

3 THE COURT: How long is it?

4 THE APPLICANT: It's seven pages.

5 THE COURT: You want to read the whole thing?

6 THE APPLICANT: I want to read the whole thing.

7 MS. HARRIGAN: A statement that we weren't provided
8 with.

9 THE APPLICANT: I want to get it on the record. I want
10 to get it on the record.

11 MS. HARRIGAN: He never provided this to our office. I
12 got a copy from your office late either beginning of this
13 week or late last week, so we're objecting at this time.

14 THE APPLICANT: But I still want to read my
15 presentation, Your Honor. I mean, she can object to it but
16 I want to read my presentation for the Court.

17 THE COURT: Does it say anything that hasn't already
18 been said?

19 THE APPLICANT: Yes, it is, it state the law.

20 THE COURT: I don't need you to tell me the law.

21 THE APPLICANT: That's backing everything that I'm
22 saying, though, it's backing my argument.

23 THE COURT: Well, I'll allow you and your attorney --
24 your attorney to make a closing summation on the law as it
25 applies to this case. My issue is, is there anything else

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1 factually you want to tell me about what happened?

2 THE APPLICANT: No, Your Honor. But what I'm asking
3 you is, are you saying I can't present my presentation?

4 THE COURT: No.

5 THE APPLICANT: All right.

6 THE COURT: Now, you will be allowed through your
7 attorney to make a closing summation to the Court at which
8 time you can tell me whatever law you want to as you think
9 it applies to the facts. I'm not going to let you
10 pontificate about the law on direct and cross examination.
11 If there's anything else factually about what happened in
12 your case, how you arrived at a plea or anything with Mr.
13 Johnson or Mr. Perry or Mr. Moak, now is your opportunity to
14 tell me.

15 THE APPLICANT: There's nothing else.

16 THE COURT: Very well.

17 MS. SHURLING: Your Honor, I have a copy of his
18 presentation as he refers to it that was provided to the
19 respondent, I believe, late Thursday of last week.

20 MS. HARRIGAN: It certainly wasn't by the time where we
21 made it very clear to Ms. Shurling that we were going to
22 object. I don't have my computer in front of me, it was
23 provided by email attachment, it wasn't directly sent by the
24 applicant and the State is objecting at this time.

25 THE COURT: If she wants to read it as a closing

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1 argument I'm not going to stop her.

2 MS. HARRIGAN: Thank you, Your Honor.

3 MS. SHURLING: I was seeking leave of the Court to
4 introduce it as an applicant's exhibit so Your Honor could
5 give it whatever weight you choose to in deciding the case.

6 THE COURT: If he wants to make that as his closing
7 argument he can, but we're not going to show up in court
8 with documents that nobody has ever seen prior to -- 72
9 hours prior to the hearing, that's not the way civil court
10 works.

11 THE APPLICANT: Well, I want to make it as my closing
12 argument.

13 MS. SHURLING: All I can do, Your Honor, is say it was
14 provided by email Thursday afternoon late.

15 THE COURT: And that's not the way civil court works.

16 MS. SHURLING: Thank you, sir.

17 THE COURT: All right. Cross examination.

18 MS. HARRIGAN: Thank you, Your Honor.

19 CROSS EXAMINATION

20 BY MS. HARRIGAN:

21 Q. Mr. Greene, I think your testimony was that Mr. Johnson
22 was retained to represent you just on the home invasion,
23 correct?

24 A. Yes, ma'am.

25 Q. Was he appointed on the other cases?

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- 1 A. No, ma'am.
- 2 Q. How did he become involved with those?
- 3 A. He took it upon his own will.
- 4 Q. So he just took it upon himself to take on five
- 5 additional charges that you had at the time.
- 6 A. Yes, ma'am.
- 7 Q. When you retained him, did you tell him you had these
- 8 other pending charges?
- 9 A. I caught them afterwards.
- 10 Q. And you actually picked up some of these charges after
- 11 the home invasion as it has been characterized today, after
- 12 the burglary in the first degree, the armed robbery and the
- 13 kidnapping, you picked up I think most of the other charges
- 14 afterwards, correct?
- 15 A. Yes.
- 16 Q. So at the time he was retained you only had those
- 17 original three charges, correct?
- 18 A. Uh-huh.
- 19 Q. How many times did you meet with Mr. Johnson before
- 20 your guilty plea?
- 21 A. About three times.
- 22 Q. And how long did he -- when did you retain him?
- 23 A. In the beginning of August.
- 24 Q. Of what year?
- 25 A. 2011.

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1 Q. And these four incidents that occurred, when was the
2 first one?

3 A. In September, that would be the second offense, crack
4 and --

5 Q. The drug charges, those were September 14th of 2011,
6 correct?

7 A. Yes, ma'am.

8 Q. And so you retained him at the time. But the both
9 failure to stop for blue lights and resisting arrest you had
10 before you retained him, correct?

11 A. I retained him for the three original charges; burglary
12 first, armed robbery and kidnapping.

13 Q. And your testimony is that in the time that he
14 represented you before your guilty plea you only met with
15 him three times.

16 A. Yes, ma'am.

17 Q. Did you ever meet with him at the courthouse as well in
18 addition to those three times to discuss your case?

19 A. No, I didn't. I only met Mr. Johnston for payments.

20 Q. So your testimony in court today is you only met with
21 Mr. Johnson three times and you only discussed payments with
22 him at those three times.

23 A. Yeah. We was never discussing no substantial evidence.

24 Q. But you discussed the co-defendant's statements,
25 correct?

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1 A. Yes.

2 Q. And you did discuss a part of discovery, I believe you
3 said, as to the three main charges, correct?

4 A. Yes.

5 Q. So it's not true that you only discussed payments with
6 him, you discussed more than that.

7 A. Well, no.

8 Q. Did you discuss payments or did you discuss evidence
9 with him?

10 A. I discussed that Mr. Johnson told me about my
11 codefendant -- told me about my co-defendant's statements,
12 but that is not substantial evidence, it's hearsay.

13 Q. But he did tell you about statements from your
14 codefendant, correct?

15 A. Yes, ma'am.

16 Q. And you knew about the photo lineup before you pled
17 guilty, correct?

18 A. No, I didn't.

19 Q. You didn't learn about that until --

20 A. Afterwards.

21 Q. -- you came to prepare for Jarvis Jones' trial?

22 A. Yes, ma'am.

23 Q. Had Mr. Johnson told you there was a photo lineup, just
24 not shown it to you?

25 A. He told me there was a positive photo lineup.

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1 Q. And it is a positive photo lineup, correct?

2 A. No, it's not.

3 MS. HARRIGAN: Do you have a copy of the exhibits?

4 THE COURT: I do.

5 MS. HARRIGAN: Your Honor, may I approach?

6 Q. Did you not tell the Court that this is you, number
7 three, circled?

8 A. Yes, that's me.

9 Q. So she did positively identify you, there's just two
10 people listed, correct?

11 A. But that is not --

12 Q. You're circled with her initials and the date, correct?

13 A. Yes.

14 Q. And there were two people who came into the home,
15 correct? Was that a yes or a no?

16 A. Yes, it is. But that array was for me, that wasn't for
17 no codefendant, that wasn't for my codefendant -- me and my
18 codefendant, it was just for me.

19 Q. And Mr. Johnson told you it was a positive ID, correct?

20 A. Yeah.

21 Q. And he told you there were statements from the
22 codefendant -- or not the codefendant, excuse me, there were
23 witness statements.

24 A. Uh-huh.

25 Q. And he told you the witness ID'd you, correct?

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1 A. Uh-huh.

2 Q. And in the exhibits that you've introduced here today
3 you are listed by name, Marcus Greene, in her second
4 statement later that same day, correct?

5 A. He did not advise me it was a conflicting statement to
6 that.

7 Q. What do you find to be conflicting about those
8 statements?

9 A. She didn't indicate my name in the first statement at
10 all.

11 Q. So the second statement has more detail, it's more
12 descriptive, correct?

13 A. No, it's different.

14 Q. Did she name someone different as the first?

15 A. No. She said she heard one loud boom, then in the
16 second statement she said she heard two loud booms. In the
17 first statement she said it was a brown-skinned man, in the
18 second statement she's saying it was a dark-skinned man. In
19 the first statement she's saying somebody grabbed her out
20 the shower, in the second statement she said she jumped out
21 the shower. It's two different -- it's different.

22 Q. But you would agree that she doesn't name anyone else
23 in the first statement, correct?

24 A. She don't name nobody at all.

25 Q. It's just the second statement where she names you and

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1 Jarvis, correct?

2 A. Yes, ma'am.

3 Q. And of this home invasion you also had a related
4 kidnapping charge, correct?

5 A. Uh-huh.

6 Q. And the State dismissed that against you, right?

7 A. Yes.

8 Q. And you were originally charged with burglary in the
9 first degree, correct?

10 A. Uh-huh.

11 Q. And Mr. Johnson, I believe you testified on direct,
12 advised you that that carried a mandatory minimum of 15
13 years, correct?

14 A. Mandatory minimum what?

15 Q. Up to life imprisonment, correct?

16 A. Yes. And he advised me that I would get a life
17 sentence off my co-defendant's testimony.

18 Q. He advised you that if you went to trial he felt you
19 would likely be convicted.

20 A. That I would be convicted.

21 Q. That you would be convicted, and you would receive a
22 life sentence?

23 A. Yes.

24 Q. And I believe you testified that you pled guilty
25 because you were afraid you might get life, correct?

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1 A. Uh-huh.

2 Q. So you pled because you --

3 THE COURT: Is that a yes or no?

4 THE APPLICANT: I pled guilty because my counsel
5 advised me that I would get a life sentence.

6 Q. So you pled guilty because you didn't want a harsher
7 penalty or punishment, right?

8 A. I pled guilty off my counsel's advice.

9 Q. Because you didn't want life, correct? Is that a yes?

10 A. I ain't said anything.

11 THE COURT: Well, you need to answer the question.

12 THE APPLICANT: If my counsel wouldn't have give me the
13 advice I wouldn't have ever took the plea at all.

14 Q. You also had an armed robbery charge originally, that's
15 what you were indicted for, correct?

16 A. Yes.

17 Q. And you pled to the lesser-included of strong armed
18 robbery, correct?

19 A. Common law robbery.

20 Q. Common law robbery. And did your attorney, Mr.
21 Johnson, explain to you there's a mandatory minimum of a ten
22 year sentence for armed robbery?

23 A. Uh-huh.

24 Q. Up to 30 years?

25 A. Yes.

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1 Q. So you did discuss the potential sentences and the
2 charges you were faced with, correct?

3 A. Yes.

4 Q. But before you testified you only ever discussed
5 payments with him; is that correct?

6 A. You're cross examining me. Listen, me and Mr. Johnson
7 talked --

8 MS. HARRIGAN: Your Honor, I would ask --

9 THE COURT: The answer to the question is yes or no,
10 then you're able to explain your answer.

11 A. Incorrect. It is no, no, no. You're putting words in
12 my mouth.

13 Q. You testified prior that you only ever discussed
14 payment with Mr. Johnson those three times you met, correct?

15 A. The first time Mr. Johnson ever seen me when he told me,
16 my codefendant wrote a statement, that's when he told me
17 that I needed to take this guilty plea.

18 Q. So the first time you ever met with him and you
19 retained him is when he told you the codefendant had given a
20 statement and that you needed to plead guilty.

21 A. Correct.

22 Q. And he had had no prior involvement in your case other
23 than this first meeting at that time when you retained him.

24 A. No.

25 Q. And he knew that your codefendant had already given a

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1 statement just when you walked in to retain him?

2 A. That's what he told me, which was not true. It's not
3 no statement in my Brady material.

4 Q. Did you give Mr. Johnson any potential witnesses such
5 as eye witnesses in preparation for trial for your defense?

6 A. No.

7 Q. Did you give him any other type of witnesses to talk
8 to?

9 A. No.

10 Q. And you testified that Mr. Johnson presented you with a
11 plea offer from the State for a 20 year total sentence,
12 correct?

13 A. Yes.

14 Q. For burglary second degree non-violent, correct?

15 A. Yes.

16 Q. For strong armed -- or common law robbery, correct?

17 A. Yes.

18 Q. And the kidnapping charge was dismissed, correct?

19 A. Yes.

20 Q. And that's the sentence you ultimately did receive from
21 the Court, correct?

22 A. Yes.

23 Q. You pled guilty before Judge Kinard, right?

24 A. Uh-huh.

25 Q. Did you fill out a waiver of rights form before you

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1 entered your guilty plea?

2 A. Yes, I did.

3 Q. And in that did you discuss that you were knowingly and
4 voluntarily waiving all of your constitutional rights by
5 entering your guilty plea?

6 A. No, Mr. Johnson didn't advise me.

7 Q. But you -- did you read that form?

8 A. No, they just told me to sign it. I thought I was
9 waiving my rights to a jury trial, not a grand jury.

10 Q. Have you seen your sentencing sheets since you've been
11 incarcerated?

12 A. Yes.

13 Q. And you acknowledge the signature --

14 MS. HARRIGAN: May I approach, Your Honor?

15 Q. Do you acknowledge that it's your signature on each of
16 the seven different sentencing sheets?

17 A. Yes.

18 Q. So when you testified before on direct that you thought
19 you were only pleading to the two charges related to the
20 home invasion, that's not correct, is it?

21 A. No. I said that when I was brought in front of the
22 Judge that Mr. Johnson told me that them charges would be
23 dismissed, but when I went in front of the Judge they ran
24 them all concurrent, they run them concurrent instead of
25 dismissing my charges.

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1 Q. So your testimony is you didn't sign these sentencing
2 sheets until you were in front of Judge Kindard, you didn't
3 do it before the plea?

4 A. No. I did it the same day of my plea.

5 Q. But before you went in front of the Judge, correct?

6 A. Yeah, I signed the waiver. But I thought I was waiving
7 my rights to a jury trial, not a grand jury.

8 Q. Do you recall during your guilty plea agreeing with the
9 facts as presented by Solicitor Perry?

10 A. Can you say that again?

11 Q. Do you recall when Solicitor Perry gave the Court the
12 recitation of the facts or reviewed the facts giving rise to
13 these four charges, do you recall agreeing with the State's
14 position on the facts, that that's what happened?

15 A. I don't recall.

16 Q. Do you recall -- were you under oath during your guilty
17 plea? Do you recall?

18 A. I don't recall.

19 Q. You don't know if you were sworn in like you were sworn
20 today?

21 A. No, I wasn't sworn in.

22 Q. And do you recall pleading guilty during that process?

23 A. Yes.

24 Q. But you don't know if you were under oath or not?

25 A. No. I know why I recall pleading guilty.

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1 Q. And you are under oath today, correct?

2 A. Yes, ma'am.

3 Q. And you testified before that you knowingly gave false
4 statements to law enforcement, correct?

5 A. Yeah.

6 Q. And I believe your testimony was that you talked to
7 Mr. Johnson and you agreed to come up with a story so you
8 could get the 20 year non-violent.

9 A. Yes.

10 Q. And you didn't really care what was in the statement,
11 you were just looking for that deal, correct?

12 A. Yes.

13 Q. So you knowingly lied to law enforcement and the State.

14 A. Yes.

15 Q. Are you lying here today in court?

16 A. No, ma'am.

17 Q. So you are guilty of these charges.

18 A. No, ma'am. I'm not guilty to any of the charges.

19 Q. But you came into court before and you admitted you
20 were guilty, correct?

21 A. Came into court -- talking about in a guilty plea?

22 Q. Yeah.

23 A. Yeah. Because my counsel advised me that's the best
24 thing to do, he said if I go to trial I would get a life
25 sentence off my co-defendant's testimony. See Strickland

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1 versus Washington, 466 U.S. 668 U.S. 1984.

2 Q. So Mr. Johnson advised you to lie to Judge Kinard
3 during your guilty plea?

4 A. He advised me to take this plea. He advised me to go
5 along with the guilty plea, to not do nothing to stop the
6 guilty plea being that I'm getting a non-violent sentence
7 instead of a violent sentence.

8 Q. But you're the one doing the time, not Mr. Johnson,
9 correct?

10 A. Correct.

11 Q. Your testimony is that he told you --

12 A. Mr. Johnson advised me if I went to trial I would get a
13 life sentence instead of a non-violent sentence off my
14 co-defendant's testimony which is not -- my codefendant do
15 not have a testimony in my motion of discovery at all.

16 Q. Did he tell you whether the statement was written or
17 perhaps it was a verbal statement or a video?

18 A. He said, "Your codefendant wrote a statement on you and
19 is willing to testify if you go to trial. If you go to
20 trial you're going to get a life sentence."

21 Q. And you didn't go to trial so you don't know if your
22 codefendant would have testified against you, do you?

23 A. Yeah. I know if he was willing to testify -- there's
24 no statement in my motion of discovery so I know --

25 Q. Do you have him here today to testify that he wouldn't

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1 have testified against you at trial? Is that a yes or a no.

2 A. Listen --

3 MS. HARRIGAN: Your Honor, I would ask that he respond
4 to the question.

5 THE COURT: Okay. Answer the question.

6 THE APPLICANT: Your Honor, there's no statement in my
7 motion of discovery at all saying that my codefendant is
8 going to testify.

9 THE COURT: That's not the question. The question
10 is --

11 Q. Do you have your codefendant here today to testify he
12 would have testified against you at trial?

13 A. No, he's not.

14 Q. Do you recall telling Judge Kinard that you wanted to
15 waive presentment to those five other charges?

16 A. Upon my counsel's advice.

17 Q. So yes, you do recall telling Judge Kinard that?

18 A. It was not knowingly, willingly and intelligently and
19 understandingly made.

20 Q. Do you recall during your guilty plea stopping Judge
21 Kinard and asking him whether or not it would be non-violent
22 or violent time?

23 A. Yes, I do.

24 Q. You were very concerned about whether or not you had
25 the 85 percent, do you recall that?

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1 A. Yes, ma'am.

2 Q. And I believe you stated during your guilty plea, which
3 the record will reflect that you told Judge Kinard you'd
4 been in prison before and you kind of knew how the system
5 worked and it was a few pages of you very concerned that you
6 wouldn't get your 85 percent, correct?

7 A. No, it wasn't. It wasn't a few -- it wasn't a few
8 pages long, it was a few sentences long saying that I just
9 wanted to make sure I was getting a non-violent sentence
10 instead of a violent sentence. Yes. Mr. Johnson advised me
11 that was part of the plea.

12 Q. But you felt comfortable interrupting the plea
13 proceeding and asking Judge Kinard that, correct?

14 A. No.

15 Q. You just didn't feel comfortable asking about anything
16 else?

17 A. He asked me a question.

18 Q. Do you recall telling Judge Kinard you were satisfied
19 with Mr. Johnson's representation?

20 A. Mr. Johnston told me --

21 Q. Was that a yes or no, do you remember telling Judge
22 Kinard that during your plea?

23 A. Yes, ma'am, but there's a reason for it. Mr. Johnson
24 said, "Don't do nothing to stop the plea, go along with the
25 plea being that you're getting a non-violent sentence and

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1 your charges are getting reduced."

2 Q. And part of your plea negotiations with the State was
3 that you had an option that if you provided substantial
4 assistance you could have gotten a 13 year sentence at a
5 later date, correct?

6 A. And I refused.

7 Q. Did you refuse to testify or did the State find out you
8 were lying in your statement?

9 A. No, I refused.

10 Q. Did you ever tell the State you were lying in your
11 statement? You admitted before you completely fabricated
12 the statement.

13 A. I refused to testify on my codefendant because my
14 counsel lied to me about my co-defendant's testimony against
15 me.

16 Q. So your testimony today is --

17 A. -- so we came --

18 THE COURT: Shhh, one at a time.

19 MS. HARRIGAN: I thought he was finished, Your Honor.

20 A. Me and Mr. Johnson came together and made a testimony
21 against my codefendant which was not true just for me to get
22 a plea, a non-violent plea.

23 THE COURT: Who did you tell that story to?

24 THE APPLICANT: Who did I tell that story to?

25 THE COURT: Yeah, the story about what happened --

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1 THE APPLICANT: Mr. Johnson.

2 THE COURT: No, hold on. The story that you told
3 somebody about about what happened to get your deal, what
4 law enforcement and/or solicitor did you tell that to?

5 THE APPLICANT: Mr. Johnson, Perry and Moak.

6 THE COURT: Okay.

7 Q. And so your testimony today is you refused to testify
8 against Jarvis and your other codefendant.

9 A. Yes, I did.

10 Q. And I believe your testimony on direct was you first
11 learned that your codefendant didn't give a written
12 statement when you were speaking with Assistant Solicitor
13 Moak, correct?

14 A. Yeah, after the plea of guilty. I never was issued my
15 Brady materials before the plea agreement.

16 Q. Have you attempted to contact Mr. Moak since arriving
17 at your institution?

18 A. Yes.

19 Q. How have you tried to contact him?

20 A. I contacted him through my family members.

21 Q. And one of your allegations in your pro se application
22 is that Mr. Johnson didn't file an appeal on your behalf,
23 correct?

24 A. He didn't.

25 Q. Is that one of your allegations that you're going

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1 forward on today?

2 A. No.

3 Q. So you want to waive any right to an appeal.

4 A. Yeah.

5 MS. HARRIGAN: Court's indulgence.

6 THE APPLICANT: Your Honor --

7 THE COURT: Hold on a minute. Do you have any further
8 questions?

9 MS. HARRIGAN: Court's indulgence, Your Honor.

10 (Break in proceedings.)

11 Q. And you testified previously that your cousin and
12 codefendant, Beaufort, his charges had been dismissed.

13 A. Yes.

14 Q. You don't know if they're pending or not, you think
15 they're definitely dismissed?

16 A. They're dismissed.

17 Q. And how do you know that?

18 A. Because he told me.

19 Q. When did he tell you that?

20 A. Couple of months ago, about two months ago.

21 MS. HARRIGAN: No further questions, Your Honor.

22 THE COURT: Redirect?

23 REDIRECT EXAMINATION

24 BY MS. SHURLING:

25 Q. Mr. Greene, when the Court questioned you about whether

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1 you were satisfied with the services of your attorney, at
2 that point in time did you know that your codefendant had
3 not written a statement against you?

4 A. Excuse me? What did you say?

5 Q. At the time of your plea, did you know that your
6 codefendant had not written a statement against you?

7 A. No, I did not.

8 Q. If you had known that he had not given a written
9 statement against you, would you have said you were
10 satisfied with your lawyer?

11 A. No, I wouldn't have.

12 Q. So your answer to the Court at that time was based on
13 your knowledge on the day of your plea, correct?

14 A. Yes, ma'am.

15 Q. Okay. Now, one thing I think I'm a little confused
16 about and I want the record to be clear about, the day that
17 the decision had to be made about you testifying against
18 Mr. Jones, did you at that point tell the State that the
19 story you had given them was not true and tell them what the
20 truth was?

21 A. Yes, ma'am.

22 Q. And were you willing to testify at Mr. Jarvis Jones'
23 trial if they would have used you as a witness and you told
24 the story that you at that time were telling them was the
25 truth?

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1 A. I didn't have nothing to do with nothing, I didn't do
2 anything.

3 Q. My question is this, did you simply say, "I'm done, my
4 lawyer lied to me. My codefendant didn't give a statement
5 against me, I'm not testifying," or did you change the story
6 that you had given the prosecution and made it clear that if
7 you did testify you were going to tell that story, that that
8 was what the truth was?

9 A. When I found out that my codefendant didn't write a
10 statement I refused to give the testimony being that he
11 didn't give a testimony against me so I didn't want nothing
12 else to do with the case at all. I would rather fight it in
13 PCR.

14 Q. I got that. What I'm trying to understand is in the
15 process of refusing to testify, did you give them another
16 statement? Did you tell them that the statement you had
17 given them was not the truth?

18 A. Yes, I did. I told Ron Moak that.

19 Q. You told Ron Moak that the statement you had given the
20 police was not -- the prosecution was not true.

21 A. Yes, ma'am.

22 Q. Did you then give them another statement that was what
23 you believed the truth to be?

24 A. Oh, no, ma'am.

25 Q. Okay. That's all I was trying to get to. So you told

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1 Mr. Moak that the story you had given them and the version
2 of the event that you had said you would testify was a lie.

3 A. Yes, ma'am.

4 Q. And that now that you knew that Jarvis had not given a
5 statement against you, you weren't going to get up and
6 testify to that.

7 A. Yes, ma'am.

8 Q. But you didn't give them any other -- a new statement
9 if you will.

10 A. No, ma'am.

11 Q. You know that the charges were dismissed against Jarvis
12 Jones.

13 A. Yes, ma'am.

14 Q. And you know that -- I believe you said he told you
15 himself?

16 A. They didn't have no evidence.

17 Q. Did you or did you not just testify that you said he
18 just told you a couple of months ago, who is he, Jarvis
19 Jones?

20 A. That was Sioux.

21 Q. Okay. So the third codefendant told you his charges
22 had been dismissed.

23 A. Yes, ma'am.

24 Q. How do you know that the charges were dismissed against
25 Jarvis Jones?

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1 A. Because Jarvis told me also that his charges was
2 dismissed in a suppression hearing, that his charges got
3 dismissed in a suppression hearing, he didn't even go to
4 trial.

5 Q. In a suppression hearing?

6 A. Yes, ma'am.

7 Q. Did he describe for you what the subject matter of the
8 discretion hearing was about -- I mean, pardon me, the
9 suppression hearing was about? Did he tell you what the
10 hearing was about?

11 A. To see what kind of evidence they had on him and he
12 said his charges got dismissed, he told me that.

13 Q. Okay. Have I covered everything you wanted me to cover
14 factually, Mr. Greene? Not legal arguments, but factually?

15 A. Yeah. But I have legal arguments I would like to
16 close --

17 THE COURT: We'll deal with that in just a little bit.
18 Anything?

19 MS. HARRIGAN: No, Your Honor.

20 THE COURT: All right. Here is my question, here is
21 what you've told me. You told me that you never -- no, let
22 me start over. You told me that Mr. Johnson never reviewed
23 the discovery materials with you, like sit down with the
24 paper, right?

25 THE APPLICANT: Yes.

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1 THE COURT: And Mr. Johnson, according to you, told you
2 your codefendant gave a statement on you and the victim
3 picked you out of a photo lineup, right?

4 THE APPLICANT: Yes.

5 THE COURT: Okay. And then you told me that your
6 meeting with Mr. Moak and Brett Perry or some combination of
7 it, and you and Mr. Johnson had, I'm going to use the word
8 come up with this story about what happened so you could get
9 a deal for a non-violent sentence.

10 THE APPLICANT: No, Your Honor, that was beforehand.
11 Me -- as soon as I caught these charges Brett Perry, Mr.
12 Johnson and Ron Moak came to me and told me that my
13 codefendant was writing statements on me.

14 THE COURT: I'm beyond that. What I want to know is
15 when did you tell anybody at the solicitor's office what you
16 have now admitted was a lie about what happened in the case?

17 THE APPLICANT: After they told me that my codefendant
18 was writing statements on me, so me and Mr. Johnson went
19 along and had a talk. Mr. Johnson advised me, he said,
20 "Look, off of your co-defendant's statement and his
21 testimony at trial you can get a life sentence."

22 THE COURT: I got that part. What I'm saying is --

23 THE APPLICANT: So he said, "I advise you to give a
24 statement --"

25 THE COURT: Stop. You've already said that ten times.

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1 THE APPLICANT: I'm answering your question.

2 THE COURT: No, you're not answering the question. The
3 question is when did you meet with the solicitor's office
4 and tell them your version of the facts which you have now
5 admitted to this Court that was a lie?

6 THE APPLICANT: I can't even tell you a date, I don't
7 know a date.

8 THE COURT: Okay. But you --

9 THE APPLICANT: Do they have a date?

10 THE COURT: You don't get to ask me questions. But you
11 have admitted that you never saw the discovery from Mr.
12 Johnson, right?

13 THE APPLICANT: No, I didn't.

14 THE COURT: And you didn't actually see the discovery
15 until you're in some meeting with Mr. Moak, right?

16 THE APPLICANT: Yes, sir.

17 THE COURT: So how did you know what to tell them
18 happened if you weren't there and you didn't do it?

19 THE APPLICANT: Because Mr. Johnson advised me, Mr.
20 Johnson advised me what was going on. He advised me what
21 was going on. He didn't show me in my face but he advised
22 me what was going on so he would advise me what story would
23 sound good to go with.

24 THE COURT: So you were able to give such a convincing
25 statement to the solicitor's office based off of discovery

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1 materials that you had never seen, based upon a
2 representation of Mr. Johnson that they were willing to come
3 in to court and say you were cooperating and would cut your
4 sentence by seven years, that's how convincing your story
5 was even though it was a complete and total lie?

6 THE APPLICANT: Because I guess Mr. Johnson really seen
7 what was in the motion of discovery, he had to, so he told
8 me what story would be good but he never showed it to me.
9 He also told me about my codefendant. He never showed this
10 to me, no substantial evidence, I was going off hearsay what
11 Mr. Johnson was saying was. He's saying if I do this, this
12 would happen. I went off my lawyer's advice.

13 MS. SHURLING: Your Honor, may I ask one follow-up
14 question to make a clear record, please?

15 THE COURT: As long as it's relevant.

16 MS. SHURLING: I just need to establish for the record.

17 BY MS. SHURLING:

18 Q. Do you remember me telling you, Mr. Greene, that when
19 you raise a claim of ineffective assistance of counsel
20 against a lawyer that's representing either that you've
21 retained or that were court appointed, that once you say
22 they were ineffective that that waives the attorney/client
23 privilege? Do you remember me telling you that?

24 A. That that waives attorney/client privilege?

25 Q. Right. Which means that -- I just want to be clear

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1 that you understand before we go any further, that any --
2 ordinarily things you tell your lawyer, your lawyer can't
3 repeat them, you understand that?

4 A. Uh-huh.

5 Q. They're bound by what's called attorney/client
6 privilege, they cannot repeat what you've confided in them.

7 A. Uh-huh.

8 Q. But I just want to be sure the record is clear. Do you
9 recall me advising you that one of the tricky things about
10 PCR is that you had to remember that once you raise a claim
11 of ineffective assistance of counsel against a lawyer, and
12 it doesn't matter whether he was retained or court
13 appointed, that barrier is gone, that attorney/client
14 privilege is gone.

15 A. I don't care about attorney/client privilege.

16 Q. Just do you recall me telling you that by virtue of
17 claiming ineffective assistance of counsel against Mr.
18 Johnson that -- I don't know what he's going to say, but
19 that now he has the right to testify to anything that he
20 says you told him in the course of the representation, you
21 understand that.

22 A. I mean, but anything he's saying that I told him, it's
23 not -- it's hearsay, though, it's not -- he don't have
24 nothing to sign.

25 THE COURT: It's not hearsay.

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1 THE APPLICANT: It's not a fact statement that I said
2 this, it's not facts, this is what he's saying.

3 THE COURT: All right, you're clear. That's that. Ten
4 minutes.

5 (A recess was taken.)

6 THE COURT: All right. Call your next witness.

7 The witness, CHARLES J. JOHNSON, JR. was first
8 duly sworn and testified as follows:

9 DIRECT EXAMINATION

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

11 THE APPLICANT: Charlie J. Johnson, Jr.

12 Q. Mr. Johnson --

13 MS. SHURLING: Your Honor, this is actually as good as
14 time as any to put something on the record that I should
15 have addressed with my client when he was on the stand. For
16 a short period of time, and my memory fails me when, it was
17 --

18 THE WITNESS: About six years ago.

19 MS. SHURLING: -- about six years ago Mr. Johnson was
20 of-counsel in my law firm and actually had an office in my
21 firm for not quite a year I believe, it might have been
22 close to a year. We were not partners and we maintained
23 separate business entities, but we had offices right next to
24 each other and saw each other in my office on a regular
25 basis. I was certain to disclose that to Mr. Greene when I

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1 first got this case and realized that Mr. Johnson would be
2 the object of the ineffective assistance of counsel claims
3 and he at that time indicated that he would waive any
4 potential conflict of interest that might would arise from
5 that prior business affiliation. I should have asked him
6 that while he was on the stand, but I would ask before the
7 proceeding ends today that Your Honor confirm that on the
8 record so that it doesn't become a problem at a later date.

9 Q. Mr. Johnson, do you remember representing Marcus
10 Greene?

11 A. Yes, I do.

12 Q. What were you hired to represent him on?

13 A. He was initially charged, I think, with first degree
14 burglary, kidnapping and armed robbery, and I was hired to
15 represent him on those three charges..

16 Q. Okay. And the records before the Court and the clerk
17 of court's records will indicate that those three acts were
18 alleged to have occurred on or about August 1, 2011. Does
19 that sound about right?

20 A. That sounds about right.

21 Q. Did you thereafter become aware of some additional
22 charges that were brought against Mr. Greene?

23 A. Yes. But see, the timeline that you've been discussing
24 is totally off on that. He was actually -- these charges
25 became involved, we went through the process and he got a

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1 bond and all of that, which I'm sure we'll get in to, then
2 he was charged with the other charges afterwards while he
3 was out on bond with the charges that I represented him on.

4 Q. Okay. Well, the records --

5 MS. SHURLING: -- again, Your Honor, in your packet --

6 Q. -- will reflect that the two drug charges arose out of
7 an incident on September 14, 2011, which would have been
8 about six weeks after. And then the first of the blue light
9 charges accompanying a resisting arrest charge was -- pardon
10 me, the first blue light charge was January 8, 2012,
11 followed by the second blue light charge with the
12 accompanying resisting arrest on February 13, 2012. Does
13 that sound about right?

14 A. That sounds about right.

15 Q. And those were basically the four incidents. So you've
16 got August 2011, the three main charges, the home invasion
17 charges if you will.

18 A. Yes.

19 Q. September of 2011, the two drug charges arising out of
20 the hotel, and then January of 2012, the first blue light
21 charge, and February of 2012, the second blue light charge
22 with the resisting arrest charge.

23 A. Correct.

24 Q. Okay. Did you modify your original agreement with Mr.
25 Greene to include those subsequent charges or not?

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1 A. No, I didn't.

2 Q. So at no point were you actually retained to represent
3 him on those other charges?

4 A. No, I wasn't.

5 Q. Okay. Did you file Rule Five and Brady motions on the
6 kidnapping, burglary and armed robbery charges?

7 A. Yes, I did.

8 Q. And in response to those motions, did you receive
9 discovery materials from the solicitor's office?

10 A. Eventually I did, yes.

11 Q. You said eventually, you peaked my curiosity. Do you
12 know how long before the plea you received them?

13 A. I'm not sure how long before the plea that I received
14 them, but I did receive them before the plea, maybe --
15 probably some time in I would say late September or October
16 after I got discovery.

17 Q. Now, your client made bond on the home invasion charges
18 when you were representing him, right?

19 A. Right. But there's an explanation behind that.

20 Q. And I will get there.

21 A. Okay.

22 Q. When you first were hired it was almost immediately
23 after his arrest on those charges, was it not?

24 A. Correct.

25 Q. And was there any particular reason why you didn't --

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1 or tell us if you did, but did you request a preliminary
2 hearing, and if not was there any reason why not?

3 A. All right. When I initially was retained I went to see
4 Marcus, he was at the jail, we talked. Marcus' initial
5 conversation with me was one he wanted to get a bond, that
6 he'd never been in anything like this, he knew it was
7 serious charges. I went over the charges he was charged
8 with and he informed me that he wanted me to look into the
9 case and see what we could do. I went back, talked with the
10 solicitor about the case because at that time there wasn't
11 no discovery, and the solicitor mentioned to me that it was
12 a hot case and they wanted to try to do something with it if
13 possible. I actually ran into the attorney that represented
14 the codefendant who was arrested, and the attorney in
15 conversation with me stated that his client was willing to
16 testify against Marcus. In talking to the State they
17 indicated they had been informed that the co-defendants was
18 either giving a statement or about to give a statement
19 against Marcus, but their thing was as anything the saying
20 about the first hog to the trough, they were saying the
21 first person to come in to give a statement, they would be
22 willing to give a deal to. I went back to Marcus within a
23 day or so and told Marcus that I was informed that the
24 co-defendants were willing to give statements against him,
25 and that he needed to think about giving a statement and

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1 then seeing if we could work some deal out and that we could
2 possibly even get a bond reduction, so Marcus had told me
3 that he would be willing to do it. I told Marcus that he
4 would have to meet with the police and give a statement, and
5 Marcus --

6 MS. SHURLING: One moment's indulgence, Your Honor.

7 (Break in proceedings.)

8 MS. SHURLING: Forgive me, Your Honor.

9 Q. Go ahead.

10 A. Marcus met -- me and Marcus then met with I think it
11 was Brett -- Brett breath was there as well as Mr. Moak, and
12 I think a police officer was there, an investigator, we met
13 at the police station. Marcus gave his statement to the
14 police, which they read and went over and said they were
15 satisfied. We then went into I think it was Judge Manning's
16 courtroom and we was able to get a reduced bond. The reason
17 I did not ask for a prelim hearing is because at that time
18 Marcus had informed me that he was involved in the crime,
19 and that he was -- that he was -- he went inside the house,
20 he told me that the other individual that he gave a
21 statement on went inside the house with him and there was
22 another individual outside, so therefore I did not feel the
23 need to request a prelim hearing because the question of
24 guilt I didn't think was an issue at the time, and because
25 Marcus gave a statement incriminating himself and other

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1 people there was no need to request a prelim hearing.

2 Q. Let me back up, you just gave me a lot of information.

3 You said when you initially talked to the lawyer that were

4 representing the codefendant --

5 A. I happened to run into him in the courtroom.

6 Q. Can you tell us which codefendant you're talking about,

7 Jarvis Jones or --

8 A. That would be Jarvis.

9 Q. Jarvis Jones?

10 A. Right.

11 Q. Do you remember who his lawyer was?

12 A. I see his face but I cannot remember his name. I can't

13 remember now. It should be on record, though.

14 Q. I understand. And did you tell Mr. Greene that that

15 lawyer had told you that the codefendant had given a

16 statement against him or that he was willing to, or that he

17 was going to? Can you remember exactly what you said?

18 A. I don't know if I said willing or going, but -- and

19 maybe Marcus misunderstood me. Because I told Marcus that

20 the attorney had informed me that the codefendant was going

21 to testify against him and would be giving a statement

22 against him, and I told him that if he wanted to do

23 anything -- Marcus wanted to get out of jail, he told me

24 that was his main concern was he wanted to get out, and that

25 if I could get the sentence down or reduced and I told him

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1 the best way to do that would have been for him to cooperate
2 with the police.

3 Q. Okay. And so to the best of your recollection what you
4 told Mr. Greene was not that the codefendant had given a
5 statement, but that he had indicated a willingness to give a
6 statement and willingness to testify.

7 A. Right, and -- because I had no discovery. There was
8 nothing that I was reading off of or no knowledge, I had no
9 knowledge of the case myself except for what Marcus told me
10 and that was basically it.

11 Q. Okay. And you said that Mr. Greene was anxiousness to
12 get out on bond.

13 A. Right.

14 Q. Did you discuss with Mr. Greene at all the danger in
15 giving a statement to the authorities concerning his
16 involvement in this case before he even saw the discovery in
17 this case?

18 A. I told him that if he wanted to cooperate that he would
19 have to make sure that his statement was truthful, and that
20 as long as his statement was truthful and we had a signed
21 agreement and understanding that I told him we would put on
22 the record where he would be aware exactly what was going on
23 that there was nothing to be concerned about.

24 Q. Were you told anything by anyone concerning the status
25 of Sioux I believe was his name, the other codefendant?

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1 A. No, I wasn't told anything about him. I actually met
2 him while he was still out. He was never arrested but I
3 actually met him when I was initially hired.

4 Q. Okay. And was it your understanding that he somehow
5 had a familial relationship to --

6 A. Yeah. I found out there was some relationship, some
7 kinship or something like that between Marcus and him.

8 Q. And when Marcus gave his statement at I believe you
9 said the sheriff's department?

10 A. Yes.

11 Q. Did you say it was recorded?

12 A. It was recorded. I don't know if it was on video or
13 whether it was written or on tape, because we actually met
14 in the interview room at the sheriff's department.

15 Q. And did he give this statement whatever form it took
16 before you had any kind of concrete agreement with the State
17 in terms of what his reward would be for cooperating?

18 A. No. We had a pretty good agreement before I walked in
19 because I was not going to let Marcus give a statement
20 without knowing exactly what we agreed on. And in talking
21 with Mr. Moak and Brett, they both indicated to me that they
22 would be willing to reduce his charges, because I told them
23 it would have to be something of a non-violence type since
24 he was cooperating that much and assisting them and they all
25 agreed to that, and they even met with Marcus and told him

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1 that. And they also told him that they would make sure that
2 he would get a bond, that he could get out and they would
3 talk to the Judge about it, and they did all of those
4 things.

5 Q. Okay.

6 A. I do want to clarify one thing, I did not sit down with
7 Marcus and tell him what to write. I wouldn't know what to
8 write, I had no discovery. I didn't know anything at all
9 about it.

10 Q. Okay. When you met Sioux if I'm pronouncing it
11 correctly, did you meet him with your client?

12 A. No. The family that -- I think it was his girlfriend
13 and some other members, they came and retained me and he was
14 with them. It was so long ago, I don't remember if he
15 called me -- I remember seeing him and speaking with him. I
16 think we met at the -- somewhere in Camden, McDonald's or
17 somewhere up there.

18 Q. So he was close enough with one of the co-defendants
19 for that codefendant to come with his family to your office
20 to hire you?

21 A. They didn't actually come to the office, I actually was
22 going to Camden. Because when they met me there then I went
23 to see Marcus at the jail, so I actually met them at
24 McDonald's in Camden.

25 Q. I'm sorry, you just said McDonald's or something, I'm

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1 sorry. But he was close enough to one of the co-defendants
2 for that codefendant to come with his family to meet with
3 you about retaining you.

4 A. Correct.

5 Q. Okay. You didn't get the discovery materials in this
6 case until after he gave his confession to the sheriff's
7 department?

8 A. Correct. Yes.

9 Q. Prior to receiving the discovery materials in this
10 case, had you been told that the victim positively
11 identified your client?

12 A. Yes. And even in the interrogation room they told
13 Marcus that while I was sitting there.

14 Q. When you received the discovery materials in this case,
15 were you surprised to see that she had only actually
16 narrowed it down to two pictures?

17 A. When I actually got it and looked at it -- well, it
18 didn't surprise me because there was two people that went in
19 the house, she never saw a third individual, and one of the
20 persons I saw that she identified was Marcus. I didn't know
21 who the other individual was, but at the time I didn't
22 really give it any thought at the time, because as I say, we
23 had an agreement with the State, it was a good agreement. I
24 saw that she had picked Marcus out and could identify him,
25 and therefore at the time I actually thought that was doing

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1 a pretty good job.

2 Q. I understand. My question is, though, were -- you've
3 testified that you were told and, in fact, your client was
4 told in your presence that the victim had positively
5 identified him, correct?

6 A. Right.

7 Q. And you also found out when you received discovery
8 materials that she had circled two pictures, not just your
9 client's.

10 A. Correct.

11 Q. Were you ever told that the other photograph that was
12 circled was one of the other co-defendants? Did you ever
13 find out who that other person was?

14 A. I never did. Because as I said, at that time my mind
15 was not on a trial, because as I said, Marcus had already
16 signed a written confession which would have been admissible
17 in trial. And if I was in a trial and I would have been
18 looking at that, that would have been something I thought
19 about being objectionable to. But at the time Marcus was
20 cooperating, everything was fine, he was out on bond. I had
21 no problem, didn't think anything was wrong in what we had
22 discussed, so I didn't follow it any further.

23 Q. What about the victim's statements? When you got the
24 discovery materials and had a chance to review her two
25 statements, did you make note of the changes between the two

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1 statements?

2 A. I don't remember seeing a second statement. I remember
3 the first statement she gave, that second statement she must
4 have wrote later, I didn't look at the dates on the one that
5 you're talking about today. But I didn't remember seeing a
6 second statement until later.

7 MS. SHURLING: May I see the exhibits, please? Thank
8 you.

9 Q. If I can ask you to take a look at those.

10 A. Okay. They was on the same day.

11 Q. Some hours apart but on the same day.

12 A. Uh-huh. But in looking at them now even if I would
13 have noticed the second one, it still was consistent with
14 the statement that Marcus gave so I wouldn't have been
15 concerned about it.

16 Q. In the second statement on the second page she actually
17 references the two people that committed the offense as
18 Jarvis and Gilbaby, aka, Marcus Greene. Do you see that?

19 A. Yes.

20 Q. To your knowledge you never saw the statement?

21 A. No. I don't remember seeing this statement. I could
22 have but I honestly don't remember seeing the statement.

23 Q. Do you recall ever being aware that the victim had
24 called the two perpetrators by name? Anybody ever tell you
25 that?

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1 A. No. But as stated, like I said, Marcus' statements
2 that he gave to the police was consistent with this
3 statement. He placed himself in the house with Jarvis, and
4 her statement says Marcus and Jarvis was the people in the
5 house.

6 Q. And again according to your testimony he made that
7 statement at a point in time where he'd been told -- you'd
8 been told and he had been told in your presence that the
9 victim had positively identified him.

10 A. Correct.

11 Q. Okay. And you had not been told about the victim
12 circling two photos in the photo lineup.

13 A. No, I did not, I had not seen it. When Marcus gave his
14 statement we had not had discovery, we had not had a prelim
15 hearing, it was within a few days of me being retained to
16 represent him. But his statement was consistent with
17 everybody else's statements after that, I had no reason to
18 think anything was wrong.

19 Q. Did you try to get a bond without him giving a
20 confession first?

21 A. No, I did not, his initial bond was denied. Because of
22 the severeness of it, first degree burglary, the kidnapping
23 and everything that went with it, with the victims being
24 present I thought it would be extremely hard for him to get
25 a bond, and if he did get one it would be a high bond which

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1 Marcus told me he could not make.

2 Q. To retract. You said -- I usually refer to the race to
3 the courthouse steps, you said the first hog to the trough,
4 I like that one better. You told him that you basically
5 believed based on your discussions that the first person to
6 cooperate was going to be the one to get the benefit from
7 cooperating?

8 A. That's correct.

9 Q. Okay. Once you got the discovery materials and they
10 did not contain any statements whatsoever from either
11 codefendant, were you surprised by that?

12 A. No, not really. Because I assumed because Marcus gave
13 his statement so early that the other individual was not
14 asked to give a statement.

15 Q. Okay. Did you ever review the discovery materials
16 received in this case with Mr. Greene?

17 A. We met, he asked me about the discovery. I basically
18 told him that I could give him discovery but there was
19 nothing in there that really connected him. See, at the
20 time that Marcus asked me about viewing discovery we were
21 past the point of no return as per -- as trial-wise. Marcus
22 already basically told me that he was involved in it which
23 means that I could not put Marcus up and let Marcus get on
24 the stand and say he didn't do it, as well as he had given a
25 sworn statement admitting to it which would have been part

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1 of the record, as well as far as I knew at that time the
2 victim had identified him as being there. So there was --
3 when I talked to Marcus about discovery, I told him I had
4 discovery but there was nothing in discovery that really was
5 relevant to him, and I told him that I would get it to him
6 if he eventually needed it and he told me he was fine with
7 it.

8 Q. Okay. Did the statement that Mr. Greene gave at the
9 sheriff's department --

10 A. Yes.

11 Q. -- do you have a copy of that in your file?

12 A. No. I don't think it was written, that's why I think
13 it had to have been recorded or something. I don't remember
14 seeing it in my file.

15 Q. Do you have a copy of a recording or a video or CD or
16 anything?

17 A. I never received it. As I said, this case did not
18 become a problem as I was aware of that there was a problem
19 with anything about this case. Marcus understood what was
20 going to happen, and everything happened until some time in
21 January, Marcus had some type of high speed chase with the
22 police, they arrested him, he was back in jail. Then I got
23 a call from the solicitor's office saying Marcus has told
24 them that everything he said was a lie and refused to
25 testify and that's when the case kind of like blew up. By

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1 the time I got there the Judge at that particular hearing, I
2 asked the Judge to still give Marcus the benefit of the
3 deal, and we actually had a hearing on it, and where I
4 argued adamantly that Marcus should get the initial plea
5 agreement of 13 years, and the solicitor argued that he
6 shouldn't because he refused to testify. And the Judge
7 agreed with the solicitor's office and informed me that
8 because Marcus has stated that his statements was not true
9 that he would not get the benefit of the 13 year sentence,
10 but they would still leave the 20 year sentence in place.
11 That's the first and only time that there was ever a
12 problem -- that was the first and only time that Marcus or
13 anybody, myself included, had a problem with what was going
14 on.

15 Q. Marcus was out on bond on the armed robbery and
16 burglary and kidnapping charge when he got the --

17 A. When he got the drug charge.

18 Q. -- the drug charge in September of 2011.

19 A. And he got out again.

20 Q. He got out again.

21 A. And was out.

22 Q. Okay. Then he got the first failure to stop for a blue
23 light charge. Is that when they quit his bond?

24 A. Actually he got out again.

25 Q. It was the second one when they --

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1 A. Well, I don't remember if he got -- he had the charge
2 and they were looking for him and then he ran a second time
3 and they arrested him, I think it was like that.

4 Q. So following the blue light charge where they managed
5 to catch him, the second one --

6 A. Right.

7 Q. -- at that point they put him in jail.

8 A. Correct.

9 Q. Okay. And you're saying that up until that point --

10 A. And even at that point we were still fine because I got
11 the solicitor's office to agree that they would just run
12 everything concurrent so it wouldn't affect any of the
13 agreement.

14 Q. And that second blue light charge was January 8, 2012
15 and his plea was February 27, 2012, so you got him in court
16 and got the plea done pretty quickly after that second blue
17 light charge.

18 A. Trying to make sure he didn't get in no more trouble.

19 Q. Okay. You knew that Sioux was related to him?

20 A. I didn't know. I mean, I know they were friends. I
21 think somebody might have mentioned they might have been
22 cousins but I didn't have any actual knowledge of it or
23 anything.

24 Q. Did you consider the possibility that his knowledge of
25 the facts surrounding the crime might have come from his

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1 cousin and not from being there?

2 A. That didn't cross my mind because Marcus told me that
3 he was there.

4 Q. And in his discussions with you, who did he say went in
5 the house and who stayed outside?

6 A. He told me he went inside the house and Jarvis went
7 inside the house, Sioux was outside in the car.

8 Q. And was Sioux eventually charged, caught and charged?

9 A. I don't think he was ever caught, he hasn't been caught
10 yet.

11 Q. Okay. Did you ever request discovery on the other
12 charges? Not the three -- not the home invasion charges as
13 I'm calling them, did you ever request discovery on any of
14 those other charges?

15 A. No. Because as you can tell the other charges came so
16 quick to the plea that I didn't really have time to. And I
17 only did that just -- as I said, I was only retained for the
18 three charges, but since he had the other charges and I
19 asked him did he want me to try to work something out on
20 those he told me yeah, that I worked them out, because
21 basically he admitted to me that he was involved in them
22 charges.

23 Q. Did you have any concern about letting him plead guilty
24 to those offenses without seeing discovery first?

25 A. At the time from my conversation with Marcus he

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1 informed me that he was -- within those charges, I was
2 trying to get a plea done so that we could run everything
3 together. I was not concerned as far as wondering as for
4 his guilt, he's never told me that he didn't do those
5 charges. One of the charges, I think he had gotten in an
6 argument with his girlfriend and actually struck her where
7 she identified him as being the person that they had the
8 disagreement with the police was following. So there wasn't
9 a question about -- to me at that time and in my mind it
10 wasn't a question about his guilt to those charges, he
11 didn't have a question about his guilt to those charges, it
12 was a question about what we could do about reducing those
13 charges and basically negating those charges. In the plea
14 that I already had in place and I could incorporate those
15 charges in that plea, it was my belief that it didn't hurt
16 him any way whatsoever. It didn't increase his sentence, it
17 didn't have anything to reduce his sentence, it didn't harm
18 him, they was all non-violent, they was all ran together in
19 the same thing, I didn't have a reason to do that.

20 Q. What kind of prior record did he have prior to these
21 pleas?

22 A. I think he might have had some drug charges. I don't
23 remember exact record but he had some small amount on his
24 record, some drug charges.

25 Q. These charges were for a first and a second drug charge

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1 without being reduced.

2 A. Correct, to be run concurrent.

3 Q. My point is they weren't for a third and above and then
4 reduced to a first and second, they originated as first and
5 second charges.

6 A. Correct.

7 Q. Did you think he had prior drug charges?

8 A. He did have prior drug charges.

9 Q. Did you discuss the fact with him that whether he got
10 concurrent time or not, that the number of drug charges was
11 stacking up and if he ever got any kind of drug charges
12 again that was going to make him be eligible for higher
13 penalties?

14 A. I discussed with Marcus that if he got in anymore
15 trouble ever again once this was over with, that he would be
16 looking at a considerable amount of time.

17 Q. When Mr. Greene testified earlier you were here in the
18 courtroom, were you not?

19 A. Yes.

20 Q. When he was brought from SCDC back to Camden to the
21 solicitor's office to get ready to testify at Jarvis Jones'
22 trial --

23 A. Right.

24 Q. -- why weren't you there?

25 A. I wasn't notified.

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1 Q. Normally if law enforcement or a prosecution was going
2 to interview your client, wouldn't you be present?

3 A. Normally.

4 Q. But you were not advised of the meeting?

5 A. No.

6 Q. Were you present at the time that the decision was
7 announced that they were going to use -- they were not going
8 to use Marcus Greene as a witness at Jarvis Jones' trial?

9 A. That was the same time. They called me over and said
10 there was some problems and I came straight over that same
11 day.

12 Q. And can you describe to the best of your recollection
13 what happened at that time?

14 A. I met with Marcus, he was in lockup, we talked. Marcus
15 was upset because he said that he deserved to get the plea
16 agreement that he'd made, and I asked -- I found out what
17 happened. And I think I talked to Ron Moak and Ron told me
18 that they couldn't go forward with the trial on Jarvis
19 because Marcus had stated that what he said wasn't true.
20 When I asked specifically what and he said that Marcus, once
21 he found out that Jarvis had not given a statement against
22 him, stated that he was not going to testify. I talked to
23 Marcus, and Marcus said that he thought -- that he gave a
24 statement because he thought that Jarvis was going to give a
25 statement against him, and that if he had known that Jarvis

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1 wasn't going to give a statement against him he wouldn't
2 have made the statement to the police. He also informed me
3 that he went forward on my advice to go forward, because I
4 told him -- and I told him, and I will say it today, that I
5 did tell them that it was my understanding that they were
6 going to be -- that Jarvis was going to testify against him
7 and that he needed to testify against Jarvis before Jarvis
8 testify against him, and he told me that based on me telling
9 him that that is the only reason that he gave the statement.

10 Q. Did he at that juncture give a new statement, a new
11 version of events?

12 A. He said that Jarvis was not the one that went in the
13 house, that it was Sioux -- or he didn't even say Sioux, he
14 said that Jarvis was not the one to go in the house and that
15 that was not true. And once he changed the statement then
16 Ron Moak, the solicitor, stated that he could not put his
17 statement up because then he had two separate statements, he
18 did not think he could win the case like that so they
19 decided not to go forward. Now, I still argued to them that
20 I still think that they could have took the two statements
21 and actually won a conviction against Jarvis under the
22 theory the hand of one is the hand of all, because all
23 Marcus was saying was that he did not go in the house but he
24 was in the car, but the solicitor decided they didn't want
25 to go forward.

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1 Q. So Mr. Greene at the time was saying -- was admitting
2 that he was present but simply that he was out in the car.

3 A. That Jarvis was in the car, right.

4 Q. That Jarvis was in the car.

5 A. Right. And it was my argument to the solicitor that
6 they had made an agreement for Marcus to tell the truth and
7 he was telling the truth. He still did not take himself out
8 of the deal and that under our agreement that he still was
9 in full agreement -- compliance with the agreement by
10 telling the truth and making a fact, and I argued to the
11 Judge that he still should have gotten the benefit of our
12 plea agreement and the Judge disagreed.

13 Q. And so what Mr. Greene was saying provided even at that
14 time a basis for them to prosecute Jarvis under the theory
15 of accomplice liability, or hand of one being the hand of
16 all.

17 A. That would be my belief but they decided they didn't
18 want to go forward, and they make the decisions.

19 Q. Did Mr. Greene indicate that he was willing to testify
20 to that, to what he had originally said except change the
21 part about who stayed outside and who went in?

22 A. It was my understanding that he was willing to do that,
23 but after the solicitors said that they were going to take
24 away the deal, that he wasn't going to get it then Marcus
25 locked up and said he wasn't going to cooperate at all. He

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1 got mad, which I understand because that's a big difference
2 between 13 and 20 years, and he got mad and he didn't want
3 to cooperate and he refused to cooperate, but that was only
4 after the solicitor say they wasn't going to give him this
5 deal.

6 Q. You mentioned a moment ago that at some point you tried
7 to enforce the deal and the Court went along and agreed with
8 the solicitor.

9 A. Yes.

10 Q. In what context did that happen? I don't have a
11 transcript of that hearing.

12 A. That was Jarvis' hearing -- Jarvis actually was the
13 hearing that was going on at the time, but it was before
14 Judge Cooper, he was the Judge at that time. And I made an
15 argument before Judge Cooper that the agreement should still
16 be enforced, and Judge Cooper informed me that because
17 Marcus had changed his statement and had stated that what he
18 said wasn't true, that that was a violation of the
19 agreement.

20 Q. And did you talk with Mr. Greene about his ability, if
21 he had chosen to, to appeal the ruling of Judge Cooper on
22 the enforceability of the plea bargain?

23 A. Well, at the time I didn't. And the reason I didn't is
24 because I didn't think of it at the time, that you could
25 appeal that. Because it's actually just me just having a

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1 quick hearing before Judge Cooper, we wasn't coming before
2 Judge Cooper with me making a motion. But Marcus was there
3 that day to testify for Jarvis, Judge Cooper was the trial
4 Judge on Jarvis' case. Jarvis actually, I think, pled to a
5 YOA, a resisting arrest or something before Judge Cooper and
6 I asked Judge Cooper if he would hear me on Marcus' behalf
7 to enforce the case and he listened to me but he said that
8 that would be something else that would have to be brought
9 up later. I never did bring it back up because Marcus
10 refused to cooperate and then admitted that he gave a false
11 statement, I didn't think I had standing to bring it back up
12 again.

13 Q. Okay. But at the time -- if I misstate what your
14 testimony is please correct me -- but at the time he changed
15 his story to say that Jarvis was the one that stayed in the
16 car and Sioux went inside instead of other way around.

17 A. Correct.

18 Q. But it's your understanding that he was still willing
19 to testify to that but with that modification.

20 A. It was my understanding that initially he was willing
21 to testify but the solicitor said that he had no worth to
22 them because they were prosecuting Jarvis and they didn't
23 have Sioux, they had never been able to arrest him and
24 therefore they didn't want to go forward.

25 Q. And after that point once your client believed that the

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1 State had gone back on their agreement he became
2 recalcitrant and wouldn't consider anything?

3 A. Yeah. I mean, I actually got in a heated argument with
4 the solicitor's office about it because I thought he still
5 should get our agreement.

6 Q. Well, you say you argued with the solicitor's office
7 about it. Why didn't you file a formal motion to enforce
8 the plea agreement under Santabello so there could be a
9 hearing and a record made?

10 A. Well as I say, I looked at the case and it was my
11 belief that I didn't have standing to file it, because
12 Marcus stated that he lied, as he stated today that he lied.

13 Q. I asked you earlier about the second statement that you
14 said you couldn't recall seeing. The fact that the victim
15 named Jarvis and Mr. Greene by name in it, did you ever have
16 any indication from your investigation in this case that the
17 female victim in this case knew any of the perpetrators of
18 this offense?

19 A. Later on in the case just in -- I didn't have anything
20 to put my finger on, but just by looking at her statements
21 and how she kind of went along with Jarvis going inside when
22 she found out that he didn't come inside, I kind of figured
23 that maybe the victim knew Sioux. I kind of had a feeling
24 that she could have been somehow involved in the robbery
25 side, but I didn't have anything to put my finger on it, it

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1 was just a feeling I had.

2 Q. Did you subsequently find out that she, in fact, used
3 to date Sioux?

4 A. I heard it but not like I had investigated into it, but
5 I had heard through the solicitor's office and stuff like
6 that. I think Brett told me that they found out later that
7 she dated him, but I didn't know it then.

8 Q. Did you ever contact Mr. Greene and tell him that you
9 had come in possession of new information, that the female
10 victim actually had dated Sioux?

11 A. No, I just found that out today. I actually went to
12 see Marcus about six or seven months ago, I went down to Lee
13 Corrections to see Marcus. Because Marcus had wrote me when
14 he thought that I was in with the solicitor's office to
15 trick him, and I went to see Marcus and let him know that I
16 don't do that, that that was never my intent. Maybe he
17 misunderstood but it was always my intent to try to
18 represent him and that I was not in coerce (sic) with the
19 solicitor's office nor did I ever try to trick him or lie to
20 him.

21 MS. SHURLING: Moment's indulgence, Your Honor.

22 (Break in proceedings.)

23 MS. SHURLING: No further questions, Your Honor.

24 MS. HARRIGAN: No cross examination from the State.

25 THE COURT: All right. Call your next witness.

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1 MS. SHURLING: Mr. Rob Moak, please.

2 The witness, RON MOAK, was first duly sworn and
3 testified as follows:

4 THE COURT: Please grab a seat.

5 THE WITNESS: Ron Moak, M-o-a-k.

6 DIRECT EXAMINATION

7 BY MS. SHURLING:

8 Q. Mr. Moak, back in February of 2012 where were you
9 employed?

10 A. At the Fifth Circuit Solicitor's Office in Kershaw
11 County.

12 Q. And do you recall working on Marcus Greene's case?

13 A. Well, the way it was, Jarvis got charged with a sexual
14 assault and I had all of the sexual assault cases, so I
15 think Brett Perry actually had Marcus' and I had Jarvis'.
16 When Jarvis -- when it came time to try Jarvis' case I was
17 the lead prosecutor on that, but by the time we did Jarvis I
18 think Mr. Perry and Mr. Johnson had already worked out a
19 plea deal with Marcus and already pled that part out.

20 Q. Do you recall earlier discussions with me in which you
21 told me that you were the lead prosecutor in Marcus Greene's
22 case?

23 A. I believe I was. In looking at the case file I would
24 not have agreed to the plea deal that Marcus got.

25 Q. At some juncture did Mr. Charlie Johnson go, I hate to

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1 say over your head, but over your head?

2 A. Mr. Johnson did all of his negotiations pretty much
3 with Mr. Perry because I wouldn't -- this was a home
4 invasion burglary, armed robbery. Mr. Greene was found in
5 close proximity to the home and had confessed so I really
6 wasn't interested in reducing the burglary first.

7 Q. But ultimately you became aware that Mr. Johnson had
8 negotiated a deal with Brett Perry?

9 A. And I believe actually at one point I was the lead on
10 Marcus' too and got removed because me and Charlie weren't
11 getting along too well.

12 Q. Okay. And after the guilty plea proceeding back before
13 Judge Kinard in February of 2012, did there come an
14 occasion -- I believe you said you were lead counsel in the
15 charges against Jarvis Jones?

16 A. Yes, ma'am.

17 Q. And did there come an occasion when you had Mr. Marcus
18 Greene brought from the department of corrections back to
19 the solicitor's office?

20 A. We actually didn't bring him to the solicitor's office,
21 we took him to the Kershaw County Detention Center and
22 myself and Eric Tisdale, an investigator, met with him over
23 there. And when we met with Mr. Greene, Mr. Greene was
24 already upset with Mr. Johnson, and -- I already -- I tried
25 to call Mr. Johnson to inform him we were bringing him over,

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1 and we met with Mr. Greene and there was some issue about
2 whether or not -- I think he was saying Mr. Johnson had in
3 Mr. Greene's mind lied to him. And Mr. Greene refused to
4 really speak with us unless I showed him my notebook with
5 all of the evidence.

6 Q. Well, let's back up.

7 A. Okay.

8 Q. Do you recall previous discussions with me concerning
9 this matter?

10 A. Yes, ma'am.

11 Q. And when you met with Marcus Greene initially his
12 attorney, Charlie Johnson, was not present, correct?

13 A. Right, yes.

14 Q. And isn't it true that he expressed displeasure over
15 the fact that he had not seen his discovery materials?

16 A. Yes, ma'am. And that's why Marcus wanted to -- because
17 I had them in my notebook -- organized in a notebook and he
18 wanted to review those before we even went forward with that
19 meeting.

20 Q. Okay. And you let him.

21 A. Uh-huh.

22 Q. And once he reviewed the discovery materials, that's
23 when he became upset and angry.

24 A. It actually took us probably about I would say around
25 15 minutes of Marcus venting before he got calm enough where

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1 we could actually talk to him.

2 Q. And at that point did he express his anger over the
3 fact that he had been told that his codefendant had given a
4 statement against him and there was no such statement in the
5 discovery?

6 A. Yes. That's what he was venting about during that 15
7 minute period.

8 Q. Okay. And that's when you called Mr. Johnson over?

9 A. No. We were still at the jail, and then I asked Marcus
10 do you remember what his plea agreement was, and was he
11 wanting to testify and he said no. And I asked him -- had a
12 short conversation with him in regards to if I brought him
13 over to the courthouse, put him on the stand would he tell
14 the truth, he said if the Judge made him testify he would
15 tell the truth. Then I went like a yes or no type format
16 over what I believed his testimony would have been, that
17 Jarvis went in the home with him, he indicated no, that
18 wouldn't be the truth.

19 Q. So at that juncture he told you that the truth was that
20 Jarvis had stayed in the car and Sioux had been the one that
21 went in the house.

22 A. He actually, I don't think, mentioned Sioux. I'd
23 already met with the victims, Mr. English and Ms. Kyzer, and
24 Ms. Kyzer actually is the first one who -- she'd already
25 switched from Jarvis being in the home to Sioux being in the

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1 home. And when Jarvis -- I'm sorry, Marcus indicated it was
2 not Jarvis, I asked him, "Well, if I asked you if it was
3 Sioux," he just wouldn't even respond to that question. So
4 he never told me that Sioux was the one in there with him.

5 Q. So when he got upset and told you that he gave this
6 statement saying Jarvis had gone in the house because he was
7 mad at Jarvis because he thought Jarvis had given a
8 statement against him.

9 A. Yeah.

10 Q. And now that he knew that Jarvis had not given a
11 statement against him, he was going to tell the truth and
12 say Jarvis stayed in the car.

13 A. Right.

14 Q. And that was a fact that you had already independently
15 corroborated with the female victim.

16 A. Yes, ma'am.

17 Q. So you knew at that juncture he was telling the truth.

18 A. Yes, ma'am.

19 Q. At that juncture with the female victim's story to
20 corroborate the change in Mr. Greene's story, why not
21 prosecute Jarvis Jones under a theory of accomplice
22 liability, the hand of one being the hand of all?

23 A. Because we didn't have any witness to the fact that
24 Jarvis knew what was going on. Jarvis' story at that
25 point -- and again, we could not communicate to him

TESTIMONY OF RON MOAK

1 directly, we were communicating through his attorney, which
2 was George Speedy, he was saying that Jarvis was just the
3 driver. And how actually Jarvis got arrested, when the call
4 came in there was a car which was essentially standing in
5 traffic near the home that was invaded, and we got lucky and
6 a deputy was in the area and he saw the car standing and
7 when he got to the scene the car took off and that was how
8 Jarvis got charged with failure to stop for a blue light,
9 and it was actually kind of around the corner, not actually
10 at the home, so we have somewhat of a problem tying Jarvis
11 and that car to this actual incident. We also had two white
12 females that were in a home across the street from the home
13 that was robbed that had said they had had somebody jumping
14 over the fence in the direction of where Marcus was
15 ultimately apprehended. And something else that didn't come
16 out earlier was not only did Marcus confess on video, Marcus
17 actually went with Captain Phillips, then Lieutenant
18 Phillips, and investigators and tried to attempt to locate
19 some of the items where he'd hid them when he was fleeing
20 the scene, that wasn't too fruitful. He did cooperate with
21 that.

22 Q. He didn't find any of items though, did he?

23 A. No, he didn't.

24 Q. So we -- he took them on a looking expedition but he
25 didn't -- wasn't able to actually show them where anything

TESTIMONY OF RON MOAK

1 was, was he?

2 A. No.

3 Q. Okay. Have you subsequently found out that the female
4 victim in this case actually used to date Sioux?

5 A. I've actually went -- I have met with her I believe the
6 dates I've heard -- I don't have access to the solicitor
7 files anymore, we're talking about April of last year, this
8 would have been the week ahead of that -- I think she
9 herself told me that Sioux was her ex-boyfriend, that's how
10 she knew who he was. And there was also some discussion
11 about -- y'all talking about the two statements and the
12 difference, the reason for that as was given to me by the
13 female victim was that the male victim instructed her not to
14 tell law enforcement the real names because he'd initially
15 planned on trying to actually deal with this himself, so
16 that's actually why the names were not in there. And also I
17 have seen Sioux since this incident and Sioux openly admits
18 this was his ex-girlfriend. Sioux was arrested -- the first
19 knowledge I had that Sioux was even charged was when he was
20 arrested for these charges. And to clear up something else
21 there was some issue about some charges being dismissed at a
22 suppression hearing, when the bond setting took place for
23 Jarvis Jones and Marcus Greene the very next hearing in
24 front of that Judge was a suppression hearing on a marijuana
25 charge against Sioux and his attorney was Jo Chaplain. So

TESTIMONY OF RON MOAK

1 we had a suppression hearing, his charges were suppressed,
2 were dismissed, because at the suppression hearing he was
3 actually in the courtroom present during their bond setting,
4 and I'm the one that was at the solicitor's office and I was
5 not at the solicitor's office when Sioux was arrested. It
6 was strange to me how they claim he was running when he was
7 in the courtroom during their bond setting and I had
8 knowledge that Sioux had been running a business over in
9 East Camden since then, actually has a business license, so
10 I'm not really sure what their evidence of him hiding was.

11 Q. So there was a suppression hearing but it was on a
12 marijuana charge against Sioux?

13 A. Yeah, it was unrelated to this.

14 Q. And that was the charge that was existing.

15 A. And I believe Sioux's charges are pending, and I
16 believe that Jarvis pled to, I think, failure to stop and
17 got an active YOA.

18 COURT REPORTER: I'm just having problems with both
19 speaking at the same time.

20 THE COURT: Don't speak at the same time.

21 Q. To your knowledge at any time has Charlie Johnson --
22 before today -- Charlie Johnson or Marcus Greene been
23 informed that the female victim has now admitted that she
24 knowingly withheld the name of Sioux and that she had a
25 prior personal relationship with him?

TESTIMONY OF RON MOAK

1 A. Marcus Greene actually, I'm not sure how he
2 accomplished it, called my office at least two or three
3 times in the last six months. And every time that he called
4 I tried -- I knew that you were his attorney, I tried to
5 call your office so you may be able to document what days
6 those were -- I actually informed Marcus of that myself
7 because he was trying to figure out what I would testify to
8 about this case.

9 Q. Okay.

10 A. And about the only thing that I could really say that
11 really helps him is I do remember how upset he got once he
12 found out that there was no statement in the discovery from
13 Jarvis Jones. I mean, it was a situation where we really
14 could not communicate to him until he got all of that out of
15 his system.

16 Q. And at that point he specifically communicated to you
17 that he had been told otherwise by his counsel?

18 A. Yes.

19 MS. SHURLING: A moment's indulgence.

20 (Break in proceedings.)

21 Q. Mr. Moak, did you ever hear Brett Perry tell Marcus
22 Greene that he had -- that Jarvis Jones had given a
23 statement against him?

24 A. The only time I could even imagine that could have took
25 place was initially when he was arrested. There was an

TESTIMONY OF RON MOAK

1 interview at the sheriff's office on video and both myself
2 and Mr. Perry were in the room with Charlie, Marcus and I
3 believe at least Chris Phillips at the sheriff's department,
4 maybe another investigator, and would not have come from
5 Brett Perry. If that was said on there -- and I haven't
6 reviewed the video so I can't be really 100 percent sure it
7 wasn't on there -- if that was said on there it would have
8 come from law enforcement and not myself, or Mr. Perry
9 because we didn't know what statements were -- we had no
10 knowledge of any statements at that point.

11 Q. Well, at the point in time when the statement was taken
12 by the sheriff's department, Charlie Johnson has just
13 testified he was present, was anybody from the solicitor's
14 office present?

15 A. At the sheriff's office?

16 Q. Correct.

17 A. Yeah. Both myself and Mr. Perry were there.

18 Q. But you can't remember what was said.

19 A. There's a video of it. There is a video, and if you
20 look in the video -- I'm actually trying to get up and get
21 out like in the back corner. I didn't say anything, Mr.
22 Perry I don't think said much at all. It was -- the people
23 that talked were Phillips, Charlie Johnson and Marcus,
24 that's the primary people that actually spoke on that video.

25 Q. I have never seen any sort of written statement signed

TESTIMONY OF RON MOAK

1 by Marcus Greene. To your knowledge, was that interview
2 reduced to writing?

3 A. I don't believe it was reduced to writing. But there
4 was a video statement, and then afterwards I think they went
5 around and went looking for the items he -- might have been
6 like some clothing or something he had gotten rid of when he
7 ran, I think. I mean, if you check the video, the video --
8 I'm operating on my memory of it, I haven't dealt with this
9 case really since April of last year, so --

10 Q. Well, when you showed the discovery and your discovery
11 notebook to Marcus Greene, did it have that video in it?

12 A. Yeah, it would've had the CD of it. I didn't have a
13 laptop or a computer with me when I went in there and met
14 with him.

15 Q. So you didn't show it to him.

16 A. No.

17 MS. SHURLING: No further questions, Your Honor.

18 MS. HARRIGAN: Court's indulgence.

19 (Break in proceedings.)

20 MS. HARRIGAN: No questions from the State.

21 MS. SHURLING: Your Honor, I call Mr. Greene.

22 THE COURT: This will be very limited.

23 The witness, MARCUS GREEN, remained under oath
24 and testified as follows:

25 DIRECT EXAMINATION

1 BY MS. SHURLING:

2 Q. Mr. Greene, when you wrote Mr. Johnson and requested a
3 copy of your discovery materials, did he provide you with a
4 copy of your videotaped or audio-taped statement?

5 A. No, ma'am.

6 Q. Has anyone ever provided you with a transcript of that
7 statement?

8 A. No, ma'am.

9 Q. Did you ever sign anything saying that you had listened
10 to it and verified it or you had been provided a copy of it?

11 A. No, ma'am.

12 Q. Before today have you ever heard anything about the
13 female victim in this case having acknowledged that she and
14 Sioux were former boyfriend and girlfriend?

15 A. No, ma'am.

16 Q. Did you have any knowledge of them having a previous
17 relationship before today?

18 A. No, ma'am.

19 Q. In the two statements that you've asked me to introduce
20 as exhibits for you, does she acknowledge in any way that
21 she knew Sioux before the break-in?

22 A. No, ma'am.

23 Q. And in the second statement she, in fact, claims that
24 it was you and Jarvis that came in the house, right?

25 A. Yes, ma'am.

TESTIMONY OF MARCUS GREEN

1 Q. When Mr. Johnson -- let me back up. Were you initially
2 denied bond?

3 A. No, ma'am. I was given a \$80,000 bond.

4 Q. When you hired Mr. Johnson, did you ask him to see if
5 he could get the bond reduced?

6 A. No, ma'am.

7 Q. Did Mr. Johnson ever tell you that if you went ahead
8 and gave a statement it might would aide him in getting your
9 bond reduced?

10 A. No, ma'am.

11 Q. Did Mr. Johnson advise you to give a statement to law
12 enforcement before you got discovery in this case?

13 A. Yes, ma'am.

14 Q. Did he discuss with you at all the potential dangers of
15 giving a statement to law enforcement without seeing the
16 discovery materials in this case?

17 A. No, ma'am.

18 Q. You've already testified that if you would have known
19 about the photo lineup and the discrepancies between the
20 female victim's first and second statements you would not
21 have pleaded guilty and would have exercised your right to a
22 trial by jury; is that correct?

23 A. Yes, ma'am.

24 Q. And likewise, had you not believed according to the
25 advice of counsel that Jarvis Jones had given a statement

TESTIMONY OF MARCUS GREEN

1 against you, you never would have given that first statement
2 to the sheriff's department.

3 A. Yes, ma'am.

4 Q. When you found out that Jarvis Jones had not, in fact,
5 given a statement against you, is that when you decided to
6 tell the truth?

7 A. When I didn't never -- after Jarvis -- after I found
8 out Jarvis ain't give a statement I didn't say nothing else.

9 Q. All right. Did Mr. Johnson ever discuss with you
10 whether or not you wanted him to file a motion in circuit
11 court asking for enforcement of your plea bargain with the
12 State?

13 A. No, ma'am.

14 Q. If you had known that he could have done that formally
15 and gotten a ruling on the record, would you have wanted him
16 to do so?

17 A. Yes, ma'am.

18 Q. Did he ever -- if he didn't discuss that with you then
19 I assumed he didn't discuss with you any vehicle for getting
20 that issue before a higher court, like an appellate court?

21 A. Mr. Johnson didn't advise me none of that.

22 Q. And since you have been incarcerated, have you received
23 any correspondence from the solicitor's office advising you
24 of a material change in the story of the female victim in
25 your case?

TESTIMONY OF MARCUS GREEN

1 A. No, ma'am.

2 Q. So no one ever advised you that she had given yet
3 another statement saying that when she said it was you and
4 Jarvis that came in the house she was lying?

5 A. I got all of them at one time, I finally got my motion.

6 Q. But no one has subsequently notified you that she has
7 given a third statement saying, "When I said it was Jarvis
8 and Marcus Greene I knew it wasn't them. I knew it was my
9 old boyfriend, Sioux, was one of them."

10 A. No, ma'am. She said that?

11 Q. Nobody has told you that before today? Yes or no, Mr.
12 Greene.

13 A. No, ma'am.

14 Q. All right. Have I now covered everything factually,
15 not legally, factually that you wanted me to raise?

16 A. Yes, facts, yes.

17 MS. SHURLING: Thank you. No further questions.

18 MS. HARRIGAN: Very briefly, Your Honor.

19 CROSS EXAMINATION

20 BY MS. HARRIGAN:

21 Q. This video statement, you're the one who was giving a
22 statement, correct?

23 A. Yes.

24 Q. The one you're claiming you never had a chance to see?
25 So you knew what was in the statement because it was

TESTIMONY OF MARCUS GREEN

1 yourself giving it, correct?

2 A. Yes, ma'am.

3 Q. And you admitted multiple times before and in court
4 today that you lied while giving the statement, correct?

5 A. Yes, ma'am.

6 Q. And Sioux, your codefendant, he's related to you
7 somehow, correct?

8 A. Yes, ma'am.

9 Q. And I believe you were in here when Mr. Johnson
10 testified, correct?

11 A. Yes, ma'am.

12 Q. You heard Mr. Johnson say that he actually came with
13 your family when Mr. Johnson was retained, correct?

14 A. Yes, ma'am.

15 Q. But you're now claiming that he didn't know the victim
16 dated him?

17 A. No, I didn't know that.

18 Q. You had no idea that someone so close to you that he
19 came with your family to retain your attorney in these
20 cases, you had no idea who he was dating.

21 A. It had to be years ago, I had no knowledge of it.

22 MS. HARRIGAN: No further questions, Your Honor.

23 REDIRECT EXAMINATION

24 BY MS. SHURLING:

25 Q. Mr. Greene, you said earlier that you had never seen

TESTIMONY OF MARCUS GREEN

1 the discovery prior to giving your statement, right?

2 A. Yes, ma'am.

3 Q. Did you have knowledge of the events because of things
4 that had been told to you by your cousin?

5 A. Ma'am?

6 Q. Did you have knowledge of the facts surrounding this
7 crime --

8 MS. HARRIGAN: Your Honor, this is outside cross.

9 THE COURT: We're outside of redirect.

10 MS. SHURLING: Nothing further, Your Honor.

11 THE COURT: All right. Grab a seat. Call your next
12 witness.

13 MS. SHURLING: Nothing further, Your Honor.

14 THE COURT: All right.

15 MS. HARRIGAN: Brett Perry on behalf of the State.

16 THE COURT: How long do you think you're going to take?

17 MS. HARRIGAN: Very briefly, Your Honor, not much to
18 cover.

19 The witness, BRETT PERRY, was first duly sworn
20 and testified as follows:

21 THE WITNESS: Brett Perry, P-e-r-r-y.

22 DIRECT EXAMINATION

23 BY MS. HARRIGAN:

24 Q. Mr. Perry, what was your involvement in Mr. Greene's
25 case?

TESTIMONY OF BRETT PERRY

1 A. I was the deputy solicitor in Kershaw County at that
2 time as I am still. I had just come to work there in
3 January of 2011 when Solicitor Johnson was elected. My
4 involvement in this case was -- I can't recall whether this
5 case was originally Ron Moak's, it would make sense in that
6 he had the codefendant. At some point I became involved in
7 it and I started handling at least Mr. Greene's part of the
8 case. Mr. Johnson and I discussed the case, Mr. Johnson
9 came to me and was not happy with Mr. Moak. Mr. Moak did
10 not want to back off the burglary first charge, the armed
11 robbery charge, Mr. Johnson came to me and prevailed upon me
12 to agree to do that. I want to add, too, real quick while
13 we do that, my agreement to back off of the burg. charges,
14 which is 15 to life, back off the armed robbery charge,
15 which is ten to 30, the kidnapping, very serious charges,
16 was based on the fact that Marcus Greene had already given a
17 voluntary confession and a statement against a codefendant
18 that we thought based on his statement was the other person
19 in the house. So the agreement that we had that was a huge
20 benefit to Mr. Greene was predicated upon the idea that Mr.
21 Greene had truthfully told law enforcement what happened.
22 If I had known that he was lying when he gave that statement
23 I never would have entered into such an agreement and he
24 would have been continuing to go forward on burg. first,
25 armed robbery and kidnapping charges.

TESTIMONY OF BRETT PERRY

1 Q. Do you recall what -- were you present when the
2 statement was given, the confession, the statement?

3 A. I was at the sheriff's department and I believe I may
4 have been in the interview room. I really had no idea what
5 was going on at that point, we didn't have anything from law
6 enforcement yet on this case.

7 Q. So you yourself didn't have any discovery.

8 A. I didn't have any discovery, no.

9 Q. When you say new, do you recall the date that what has
10 been characterized as the home invasion occurred?

11 A. It took place on August 1st, I believe, the early
12 morning hours of July 31st, August 1st, that type of time
13 frame.

14 Q. And when was the statement given?

15 A. I can't recall exactly what the date was, but I do know
16 this, it was before the date that the bond that you have the
17 form for was set up, I believe it was August 12th. The
18 reason that I know that was because based on Mr. Greene's
19 allegedly, and now we know false, truthful statement and his
20 cooperation, his agreement to continue to cooperate, we did
21 just exactly what Charlie Johnson asked us to do. We went
22 to Judge Manning and said, "Judge Manning, this guy is
23 really cooperating, it's great, he's telling us who else is
24 involved with this, we want him to have a bond that he can
25 make." And Judge Manning set an \$80,000 bond with a five

TESTIMONY OF BRETT PERRY

1 percent option. Up to that point he had no bond, because I
2 had gone to the original bond setting at the jail once he
3 was arrested and got the Magistrate Judge to deny the bond
4 which he, of course, could do because of the burg. first,
5 armed robbery and kidnapping charges, so at that point bond
6 had been denied. He would not have gotten a bond at all but
7 for the fact that he cooperated, and but for the fact that
8 based on his cooperation, his alleged truthfulness, we went
9 in and asked Judge Manning, "Judge, give him a bond he can
10 make." It would be absurd to think that someone charged
11 with a burg. first, an armed robbery and a kidnapping would
12 get an \$80,000 bond with a five percent option.

13 Q. And to the best of your recollection, the bond hearing
14 was very shortly after he gave the statement.

15 A. It was very shortly after. Because again, Charlie was
16 after us to get this done. In fact, we brought him over
17 here. We didn't even have a general sessions judge in
18 Kershaw County August 12th, we brought him over here before
19 Judge Manning to do that.

20 THE APPLICANT: For the record, y'all didn't bring me
21 over here, y'all didn't bring me to Richland County.

22 A. I'm pretty sure that's where it took place. But
23 regardless, that took place after he gave the statement and
24 our agreement --

25 THE APPLICANT: No it didn't.

TESTIMONY OF BRETT PERRY

1 MS. SHURLING: Your Honor, I apologize --

2 THE APPLICANT: We're disputing that because it didn't,
3 it didn't happen afterward. Where is it on file that it
4 happened after? Where is it in the record? I didn't happen
5 afterwards.

6 THE COURT: Are you through? Yes or no.

7 THE APPLICANT: I'm through.

8 MS. HARRIGAN: May I approach, Your Honor?

9 Q. Do you recognize this as the bond form from that bond
10 hearing Before Judge Manning on the 12th?

11 A. I do recognize it. And, in fact, it says that the
12 State was represented by me, Brett Perry, this is on
13 August 12th. And once again this bond, this \$80,000 bond
14 with a five percent option, which would allow him to get out
15 posting almost \$4,000, was based entirely on the fact that
16 he had given a videotaped confession and a statement against
17 the others that were allegedly involved in this.

18 Q. And his charges at that time again were for burglary in
19 the first degree, armed robbery and kidnapping?

20 THE COURT: I got it.

21 MS. HARRIGAN: At this time the State would move this
22 in as State's or Respondent's 1, please.

23 MS. SHURLING: Without objection.

24 (The bond form was received as State's 1.)

25 Q. When you entered into plea negotiations with Mr.

TESTIMONY OF BRETT PERRY

1 Johnson, did he ask for the 20 years, or how did you come up
2 with that number of 20 years?

3 A. Mr. Johnson had specifically requested something that
4 would be in a non-violent nature so that his client wouldn't
5 have to serve 85 percent of whatever it was. If he had pled
6 guilty to burglary first, 85 percent of that would have been
7 in excess of ten years. The notion of going with 20 years
8 non-violent was that a max out date on that would be ten
9 years, so ultimately we had to come up with something that
10 would work in order to do that, even a burglary second
11 violent, it was only up to 15. So, you know, as you can see
12 in the transcript from the plea Judge Kinard pointed that
13 out and we, in fact, did something that had consecutive
14 time. But again, all of that was done backwards from
15 arriving at the amount of how much time he was going to have
16 to do. And the agreement was -- again, when this agreement
17 was made, when he pled up to the point of the Jarvis Jones
18 trial, all of this was predicated upon the notion that he
19 was telling the truth. The State never would have entered
20 into any such agreement, certainly never would have agreed
21 to use the newly passed law that would allow us to go in
22 front of the Court and ask for that sentence to be reduced
23 after he cooperated and assisted us in either getting a
24 conviction or a plea out of this codefendant he had
25 implicated, the State never would have agreed to any of

TESTIMONY OF BRETT PERRY

1 that. Because I'm the one that agreed to it on behalf of
2 the State and I can tell you with certainty I never would
3 have agreed to it had I known that the story he was telling
4 was a bold-faced lie. So after the fact he's asking for the
5 benefit of the bargain that was based on a lie, I refused to
6 allow him to have the benefit of that bargain.

7 Q. Did you ever tell Mr. Johnson either before Mr. Greene
8 gave his statement or afterward that you actually had a
9 written statement from the codefendant?

10 A. No. Unequivocally, no. I never told anyone that. As
11 I understand it the statement that was made was made by
12 George Speedy, which was actually Jarvis Jones' attorney,
13 and as I understand the statement that was made Mr. Speedy
14 indicated to Mr. Johnson that his client, meaning Jarvis
15 Jones, intended to testify against Mr. Greene intended to
16 give a statement against Mr. Greene. And as I understand it
17 Mr. Johnson advised Mr. Greene, "Hey, your codefendant is
18 going to tell on you, you'd better tell on him first," that
19 happens all of the time. But I can tell you this, nobody
20 from the State had anything to do with that, my office had
21 nothing to do with that and I don't believe law enforcement
22 had anything to do with that. Because, in fact, Mr. Greene
23 never would have been taken over to the sheriff's department
24 to give a video statement had he not indicated a desire to
25 do so, and that desire, I believe, was based on the fact

TESTIMONY OF BRETT, PERRY

1 that his co-defendant's counsel had informed his attorney,
2 "Hey, my guy is getting ready to rat on your guy," so he
3 jumped the gun and went ahead and gave a statement.

4 Q. I'm going to hand you up a copy of Applicant's
5 Exhibit 2. Do you recognize this?

6 A. I certainly do.

7 Q. What is that?

8 A. It's basically what they call a six pack. It's a photo
9 lineup without actually bringing people in and lining them
10 up in a room the way you see is done on a movie.

11 Q. Can you clarify for the Court why there were two
12 individuals circled there?

13 A. Yes, I can. There were two people who entered the
14 home. As I understand it -- again, I was not there when
15 this was done, this was at about 3:00 in the afternoon on
16 the 1st of August.

17 Q. The day the event happen?

18 A. The day the event happened. The event happened at
19 roughly 1:00 in the morning. Anyway, as I understand it,
20 what happened here was this was presented to the victim, to
21 the female victim, Ms. Jessica Kyzer. Of course, there were
22 no markings or anything on it, at the time it was just,
23 "Here you go, here's six faces. Do you recognize any of
24 them as the people who came in your house?" There having
25 been two entrants, she designated two people. Clearly

TESTIMONY OF BRETT PERRY

1 number three, as already has been stated by the defendant
2 himself, is Marcus Greene.

3 Q. To the best of your knowledge what happened to the two
4 different co-defendants' charges?

5 A. Jarvis Jones, once it was found out that Mr. Greene was
6 lying and wouldn't do much good to put him on the stand --
7 this notion of hand of one, hand of all, the problem with
8 that was Jarvis' story was we'd gone there to buy some
9 drugs. And guess what? Alex English was a known drug
10 dealer. That makes perfect sense. Jarvis' story is, "We
11 went there to buy drugs, Marcus and Sioux go inside and next
12 thing you know law enforcement comes up and I take off. I
13 don't want to certainly be at the scene of a drug buy and
14 getting busted as part of some drug buy," that's the
15 position that he took. So I can't very well put a man on
16 the stand who has sworn up and down that it was Jarvis Jones
17 that went in the house and is now going to say no, it wasn't
18 Jarvis it was Sioux Beaufort. That's reasonable doubt right
19 there. But for the fact that he lied about who was in the
20 house with him -- if he would have told us the truth about
21 who was in the house with him all along we wouldn't be here
22 right now because he would probably have the benefit of his
23 bargain because we have since arrested Sioux Beaufort, his
24 charges are still pending. At this point I don't very well
25 know that I can use Mr. Greene against Mr. Beaufort because

TESTIMONY OF BRETT PERRY

1 he previously said it was Jarvis Jones that was in the house
2 with him.

3 Q. Your plea negotiations with the State were for 20
4 years, correct? The 13 was just under this new substantial
5 assistance statute.

6 A. Exactly, the notion was 20 years. And after you've
7 pled to 20 if you cooperate, continue to cooperate the way
8 that you've been cooperating and your cooperation leads to
9 the conviction or guilty plea of Mr. Jones who you have told
10 us all along was the guy who was in the house with you and
11 the guy who allegedly fondled this female, at that point,
12 yeah, we'll make a downward departure of the motion, we will
13 go before a Judge, well say, "Judge, you know, we wouldn't
14 have convicted this other guy, we wouldn't even have known
15 who it was if he hadn't told us, let's give him a downward
16 departure down to 13 years."

17 Q. So there was never any plea offer for 13 years, it was
18 just with the new statute.

19 A. No. It was, "If you continue to cooperate and if your
20 cooperation leads to the guilty plea or conviction of this
21 defendant on the charges that he's charged with based on you
22 having told us that he did all of these things and he was in
23 the house with you, at that point we'll make the motion."

24 MS. HARRIGAN: No further questions, Your Honor.

25 CROSS EXAMINATION

TESTIMONY OF BRETT PERRY

1 BY MS. SHURLING:

2 Q. Brett, the guilty plea transcript actually indicates
3 that the deal was if he testified against Jarvis he would
4 get the reduction to 13 years whether or not you convicted
5 Jarvis.

6 A. And that was at the time I thought he was telling the
7 truth.

8 Q. I understand, I'm just trying to clarify. Because you
9 just said the deal was it would be reduced to 13 if he
10 testified against Jarvis and Jarvis was convicted or if
11 Jarvis pled.

12 A. If he testified against him or if Jarvis pled we would
13 go forward and ask the Judge -- again -- and that was based
14 on his testimony was what he had been telling us which now
15 it wasn't going to be.

16 Q. I understand. I just --

17 MS. SHURLING: May I approach?

18 Q. This is from page five of the plea transcript. You, in
19 fact, say that if he testifies against Jarvis --

20 A. Yeah. "If we go to trial and he comes in and
21 testifies, whether or not the State is successful in
22 convicting him, we agree to come back in and ask the Court
23 to reduce his sentence." Correct.

24 Q. Just clarifying what the deal was.

25 A. Again, that was based on him having told the truth at

TESTIMONY OF BRETT PERRY

1 that time, which he didn't.

2 Q. I understand.

3 A. Which he didn't.

4 Q. Well, we're going to get to that in just a second, I
5 don't want to take long. But at the time he changed the
6 story, he said Jarvis -- he put Jarvis inside the house
7 because he was mad because he thought Jarvis had given
8 statements against him. And according -- well, you were
9 present for Mr. Moak's testimony, he said that it wasn't
10 Jarvis that went in, and it was Sioux, and I believe you
11 said that a moment ago, right?

12 A. Yes.

13 Q. And isn't it true that by then you had verification
14 from the female victim that she, too, changed her story and
15 said it wasn't Jarvis, it was Sioux, right?

16 A. I had never spoken to the female victim. I don't know
17 what her story is, I never have spoken to her. Mr. Moak was
18 prosecuting that case. I just knew that the story he had
19 told was no longer the story he was telling and the deal was
20 based on a lie, that's what I remember.

21 Q. Did Ron Moak, who was the chief prosecutor, or the lead
22 prosecutor I believe the proper term, against Jarvis Jones
23 in his trial, did Ron Moak share with you the fact that the
24 victim had also admitted that she lied about Jarvis Jones
25 being in the house? That it wasn't Jarvis, it was --

TESTIMONY OF BRETT PERRY

1 A. I don't recall if he told me that or not.

2 Q. Okay. Did you consider -- and I realize that Mr. Moak
3 has said he was the lead prosecutor on Jarvis Jones but you
4 were his supervisor, right?

5 A. I was.

6 Q. Did you consider going forward with the prosecution
7 against Jarvis Jones on the theory of accomplice liability?

8 A. No, I didn't. Because again, we had no way to show
9 that Jarvis knew that what was going to happen in that house
10 was what happened in that house. Jarvis' story was, and a
11 very believable one at that, that they were going there to
12 buy drugs, Alex English was a known drug dealer. There was
13 no way that we could show that Jarvis Jones knew that they
14 were going to go in that house and rob Alex English, and
15 certainly no way to show that he knew that this girl was
16 going to be fondled in the house or anything of that sort.

17 Q. Are you aware -- you said that -- please tell me
18 Sioux's last name is what?

19 A. It's Sioux Beaufort.

20 Q. Beaufort.

21 A. His first name a Fredrick.

22 Q. Sioux Beaufort.

23 A. Yes.

24 Q. He still has charges pending?

25 A. He does have charges pending.

TESTIMONY OF BRETT PERRY

1 Q. In this case?

2 A. In this case.

3 Q. And have you -- Mr. Moak is not in your office anymore,
4 right?

5 A. No, he's not.

6 Q. And so in evaluating the case against Mr. Beaufort,
7 have you now confirmed that the female victim lied about who
8 came in the house, that she now admits that it was Sioux
9 Beaufort?

10 A. I haven't been able to find the female victim, I have
11 no idea where she's at. I've tried multiple times to locate
12 her and have no idea where she's at.

13 Q. Have you received information from some source that she
14 has changed her story and has indicated that it wasn't
15 Jarvis Jones and Marcus Greene, that it was Marcus Greene --

16 A. I've heard the same thing here that everybody has
17 heard, and Mr. Moak may or may not have mentioned that to me
18 at the time that Jarvis Jones did, in fact, plead to
19 something whenever he was there, but at this point I have no
20 way to locate the victim. I'm trying to locate her now. I
21 have no idea where she is.

22 Q. And so other than the representations of Mr. Moak, you
23 don't have any firsthand knowledge of her having changed --

24 A. I have never spoken to her personally about that aspect
25 of the case.

TESTIMONY OF BRETT PERRY

1 Q. Are you aware of anyone in law enforcement having
2 taking a changed statement from her?

3 A. No. I've never seen any changed statement, I have
4 never heard of any changed statement, I just know what
5 Mr. Moak had said. And again, I cannot recall whether or
6 not he said something at the time that we had already picked
7 the jury and were prepared to go forward with Jarvis Jones'
8 case. And I can't remember whether it was a failure to stop
9 for a blue light or resisting arrest that he pled to, but he
10 pled to one of those two things, which under the
11 circumstances at the time in my opinion was pretty much all
12 we could have convicted him of. I mean, let's face it, I've
13 got two people, the alleged victim and a coconspirator, or
14 the victim and the coconspirator, or the codefendant, and
15 both of them have told varying stories and their stories are
16 back and forth. I mean, that's pretty much the definition
17 of reasonable doubt.

18 Q. What about -- you said you had never spoken with the
19 victim -- the female victim yourself, but were you aware
20 before today that there was information that she had changed
21 her story about who came in the house and that she had
22 revealed that she had a former romantic relationship with
23 one of the co-defendants?

24 A. Like everybody else here, I've heard things. I don't
25 have anything officially to confirm any of that. I don't

TESTIMONY OF BRETT PERRY

1 have any idea what she's going to say because I can't find
2 her.

3 Q. So Mr. Moak's testimony confirming that she told him
4 that today is the first concrete evidence you have.

5 A. And even then I can't put Mr. Moak on the stand to say
6 she said this. But the one thing that is certain seems to
7 me out of everything, we've heard Mr. Greene was in the
8 house. Mr. Greene was involved in an armed robbery,
9 kidnapping and burglary first, he pled to much lesser
10 charges, got one hell of a deal. And now being that
11 everything else seemed to fall apart against his
12 co-defendants he's got a bad case of buyers remorse and he's
13 not real happy about it, but sometimes that happens.

14 Q. I certainly understand the State's position. But we
15 now know that at the time Mr. Greene gave his statement to
16 law enforcement --

17 A. It was a lie.

18 Q. -- and he believed that his codefendant had given a
19 statement against him.

20 A. And not at any fault of the prosecutor's office or of
21 law enforcement. And quite frankly I believe that
22 Mr. Johnson's testimony was quite clear, he never said that
23 he had seen a statement, he never said that he had read a
24 statement, he never said anything at all to that affect.
25 Mr. Johnson's testimony was that the co-defendant's attorney

TESTIMONY OF BRETT PERRY

1 had told him that the codefendant was going to give a
2 statement.

3 Q. I understand.

4 A. I think they just tried to beat him to the punch quite
5 frankly.

6 Q. And we also know that the female victim based on the
7 testimony of -- Ron Moak was assistant solicitor at the
8 time, he was prosecuting Mr. Jones and his sworn testimony
9 here today is that the female victim admitted to him that
10 she lied in her statement about who came in the house.

11 THE COURT: Why are we going back over this? This
12 horse is dead, it's ridden.

13 MS. SHURLING: No further questions.

14 MS. HARRIGAN: Nothing further. The State has no
15 additional witnesses to call.

16 THE COURT: All right. Closing summations?

17 MS. SHURLING: Your Honor, given the hour could we
18 submit proposed orders and make arguments in a proposed
19 order?

20 THE COURT: Sure. How long do you need?

21 MS. SHURLING: We may can do it after we get back from
22 Christmas, the first week in January?

23 THE COURT: Sixty days?

24 MS. HARRIGAN: Sounds great, Your Honor.

25 MS. SHURLING: Thank you, Your Honor.

TESTIMONY OF BRETT PERRY

1 THE COURT: Thank you very much.
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1 I, the undersigned, Michael C. Watkins, Official Court
2 Reporter for the Sixth Judicial Circuit of the State of South
3 Carolina, do hereby certify that the foregoing is a true,
4 accurate and complete transcript of the proceedings (reported
5 by Elizabeth Harris and transcribed by Michael Watkins) had
6 and evidence introduced in the trial of the captioned case
7 relative to appeal, in the Court of Common Pleas for Kershaw
8 County, South Carolina, on the 20th day of November, 2013.

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

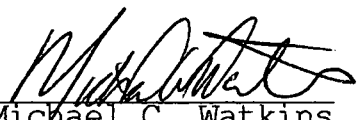
11

12

June 19, 2014

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Michael C. Watkins
Court Reporter

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(Reported by Elizabeth Harris)

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A black and white photograph of a dark, textured book cover, likely leather or faux leather, showing signs of wear and a small label at the top center.

IN THE COURT OF GENERAL SESSIONS
FOR THE FIFTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA)
-VS-)
MARCUS ANTWON GREENE)
DEFENDANT)

ORDER TO SET BOND

WARRANT NUMBERS: M099738; 739 & M099740

This matter comes before the Court on 08.08.2011 for the purpose of setting bond.

The Defendant was present. The following attorney appeared on behalf of the Defendant: Charlie J. Johnson, Jr.

The State was represented by **BRETT PERRY**
of the Solicitor office.

The Defendant is charged with the following offense(s):
ARMED ROBBERY; BURGLARY 1ST & KIDNAPPING

After hearing from the Defendant and the State, the Court finds it appropriate, and IT IS THEREFORE ORDERED, THAT:

_____ Bond is denied at this time with leave for defense counsel to file a written Motion for bond.

A Personal Recognizance Bond in the amount of \$_____ is set at this time.

✓ A surety Bond in the amount of \$ 50,000 is set at this time; and the Defendant

Is ☐ Is Not ☒ (Circle One) allowed to post ~~10%~~ 5%

Motion **granted** **denied** to revoke bond.

AND IT IS SO ORDERED.

SPECIAL CONDITIONS OF BOND

Dated:

Camden, SC

Honorable

Presiding Judge – General Sessions
Fifth Judicial Circuit

CHARLIE JAY JOHNSON, JR.
ATTORNEY AT LAW, LLC

Charlie J. Johnson, Jr.

1928 Barnwell Street
Columbia, South Carolina 29201
(803) 673-9197

charlie@cjjlaw.com

MAILING ADDRESS
P.O. Box 11212
Columbia, SC 29211
FAX (803) 771-4233

October 7, 2012

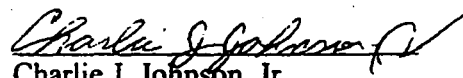
Marcus Greene
SCDC ID 309847
990 Wisacky Highway.
Bishopville, South Carolina 29010

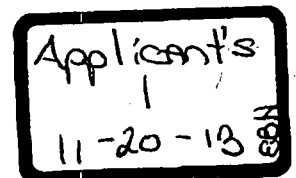
Dear Marcus,

As per our last conversation, I have enclosed a copy of your Discovery materials as you requested.

If you have any questions, please contact me.

Sincerely,

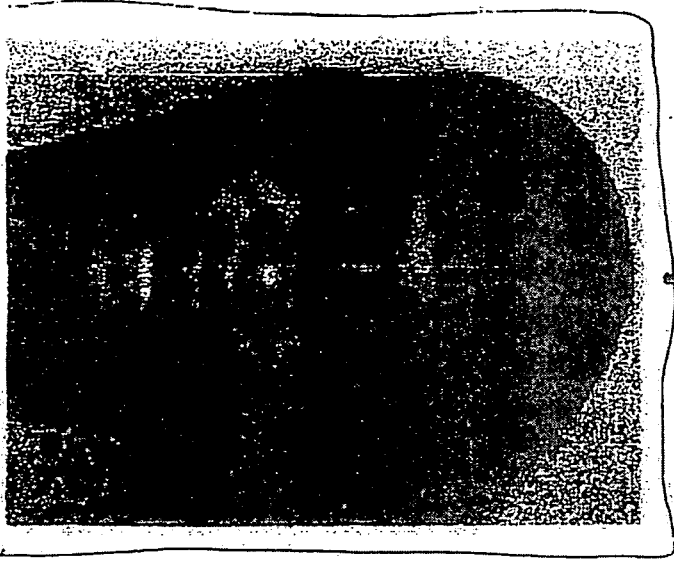

Charlie J. Johnson, Jr.
Attorney At Law



Applicant's
2
11-20-13
EBH



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8.1.11 2:52

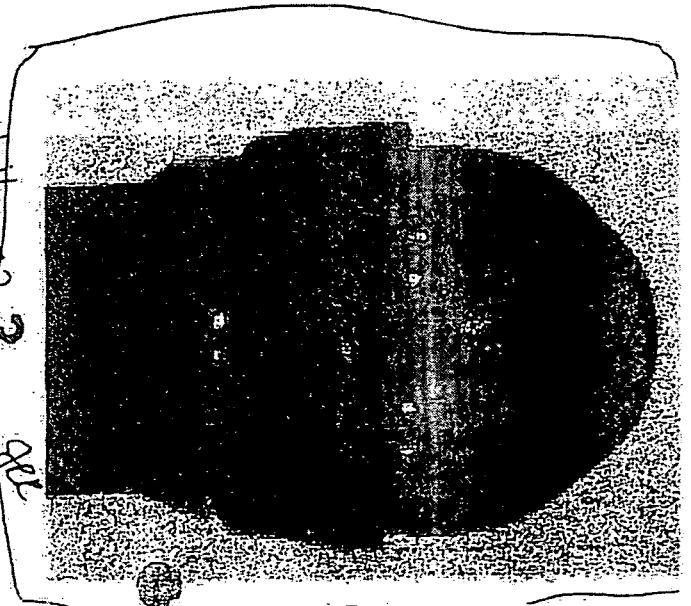
Q&A



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8.1.11 2:58 PM

Q&A



6

Case # 386DApplicant's
3
11-20-13
HOBJessica Kyzer
Name of Person Giving Statment[REDACTED]
Social Security NumberAug 1, 2011 1:43 Am
Current Time and DateCamden SC 29020
City, State, and Zip Code[REDACTED]
Date of Birth / Age[REDACTED]
Phone Number Home / Work / Cell

I was in the shower when I heard a loud boom I jumped out the shower a ^{brown skin} man was looking at me with a handgun he grabbed my hair and pulled me to the room and threw me on the bed he layed across my back and touched me while the other guy was telling my boyfriend to give him the money he told alex to get up and get the DVD The first time felon. They got the movie and we just stayed down until we thought they was gone then we called 911

~~JRK~~~~JRK~~~~JRK~~~~JRK~~

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 1 pages and a true copy has been given to me this date.

Jessica Kyzer
Signature of Person Giving StatementDeputy [Signature]
Witness of SignaturePages 1 of 1 Pages[REDACTED]
Witness of Signature

Case #

11-20-13

Applicant's

4

11-20-13

11-20-13

JESSICA KILZER

Name of Person Giving Statment

[REDACTED] Social Security Number

Address

8.1.2011 2:16 pm
Current Time and Date

Camden SC 29020

City, State, and Zip Code

[REDACTED] Date of Birth / Age

Phone Number Home / Work / Cell

I was in the shower when I heard two loud booms so I yelled to my boyfriend Alex English "yall OK babe" I heard loud talking so I pulled the shower curtain back I saw the 1st guy very briefly but he was tall, light skin and had a big nose he then pulled me out the shower hit me with the gun and pulled me by my hair to the back bedroom then threw me ^{on} the bed I layed over my son and the guy layed on my back the Dark skin guy was beating my boyfriend and telling him to give him the money. The guy who was on my back was penetrating my vagina with his fingers. The Dark skin black guy kept hitting Alex and

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 2 pages and a true copy has been given to me this date.

Jessica Kilzer

Signature of Person Giving Statement

[Signature]

Witness of Signature

Pages 1 of 2 Pages

Witness of Signature

told him he was going to kill him if he didn't find the money. Alex told him it was in the DVD case. First time Felon he hit him again and told him to get up and get the money. Alex did what he asked they then left running out our front door. The guy who hit me and sexually assaulted me was Jarvis. The 2nd guy who was doing all the killing was Gilhady AKA Marcus Green.

I have made the foregoing statement freely and voluntarily, without fear, threat, promise of reward or hope of reward of any kind. This is to certify that I have read or had read to me the foregoing statement consisting of 2 pages and a true copy has been given to me this date.

Jessica Riser
Signature of Person Giving Statement

Wendy E. Smith
Witness of Signature

Pages 2 of 2 Pages

Witness of Signature

FILED IN RECORD
 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF KERSHAW) JAN 10: 26
 FOR THE FIFTH JUDICIAL CIRCUIT

Marcus Greene, #309647,

Case No. 2012-CP-28-1034

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed November 6, 2012. Respondent made its Return on June 21, 2013, requesting an evidentiary hearing be held. Thereafter, Applicant amended his application on November 19, 2013. An evidentiary hearing was convened November 20, 2013, at the Richland County Courthouse. Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Kershaw County Clerk of Court. Applicant was indicted during the October 2011 term of the Kershaw County Grand Jury for Armed Robbery (2011-GS-28-0749) and Burglary in the First Degree (2011-GS-28-0753). Thereafter, Applicant waived presentment to the Kershaw County Grand Jury for: two counts of Failure to Stop on Blue Light - First Offense (2012-GS-28-0270, -0274), Resisting Arrest (2012-GS-28-0271), Possession of Schedule I-V Drug - First Offense (2012-

ATTEST True, Correct & Certified
 Copy of Original on File in this
 Court

[Signature]
 Clerk of Court Kershaw County

GS-28-0272), and Possession/Attempt to Possess Crack Cocaine – Second Offense (2012-GS-28-0273). Charlie J. Johnson, Jr., Esquire, represented Applicant. On February 27, 2012, Applicant appeared before the Honorable J. Ernest Kinard, Jr., where he pled guilty to Burglary in the Second Degree (Non-Violent), Resisting Arrest, Possession of Schedule I-V Drug – First Offense, Possession/Attempt to Possess Crack Cocaine – Second Offense, two counts of Failure to Stop for a Blue Light, and Strong Armed Robbery. Judge Kinard sentenced Applicant to an aggregate sentence of twenty years imprisonment pursuant to negotiations between Applicant and the State. No direct appeal was taken.

In his application for post-conviction relief, Applicant alleges he is being held in custody unlawfully for the following allegations of ineffective assistance of counsel:

1. Plea Counsel failed to file a direct appeal;
2. Plea counsel conspired with the State to coerce Applicant to plead guilty;
3. Plea counsel failed to inform the court that it lacked subject matter jurisdiction;
4. Plea counsel failed to object to defective arrest warrants;
5. Plea counsel failed to object to defective search warrants.

In his amended application, filed by his counsel on the eve of the evidentiary hearing¹, Applicant alleges:

1. "Plea counsel failed to provide him the opportunity to review the discovery materials in his case before requiring him to make a decision about waiving his rights to a jury trial;"
2. "Applicant alleges his pleas were not voluntarily and intelligently entered inasmuch as they were the product of ineffective assistance of counsel prior to and during his plea proceeding;"

¹ Respondent objected to these amendments, citing a lack of notice to both the State and trial counsel, Charlie J. Johnson, Jr. This Court agrees that Applicant's late amendments, served only hours before the hearing, prejudiced Respondent, but in an interest of justice, allowed the late amendments with leave for Respondent to submit an affidavit from trial counsel if necessary following the hearing. Respondent ultimately decided an affidavit from trial counsel was not necessary following the hearing.

3. "Plea counsel was ineffective for advising Applicant to enter pleas of guilty to charges on which he did not represent Applicant and had not engaged in the investigation of and not received discovery concerning;"
4. "Applicant alleges that his pleas of guilty were not voluntarily and intelligently entered inasmuch as they were coerced by misrepresentations made by the State concerning evidence that would be presented against him if he went to trial by jury;"
5. "Plea counsel was ineffective for advising Applicant to plead guilty without disclosing or discussing inconsistencies present in the victim's two statements with the Applicant, and without advising him how those inconsistencies might be used to his advantage at a trial by jury;"
6. "Plea counsel was ineffective for failing to advise the Applicant of problems with the victim's pre-trial participation in a photo-lineup, and for failing to discuss with the Applicant how that evidence might be used in his defense at a trial by jury;"
7. "Plea counsel was ineffective for failing to obtain a preliminary hearing for the Applicant;"
8. "Plea counsel was ineffective for advising the Applicant to plead guilty to drug charges without first obtaining discovery concerning the chemical analysis of the evidence alleged to be controlled substances;" and
9. "The Applicant alleges that his pleas were entered in violation of his right to the equal protection of the law where his co-defendants received the benefit of full disclosure of the discovery materials which resulted in their right to jury trial and their eventual acquittal."

At the evidentiary hearing, Applicant proceeded forward on the nine allegations as set forth in his amended application.

TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf. Respondent presented testimony from plea counsel Charlie J. Johnson, Jr., Esquire (hereafter "Counsel"), as well as former Assistant Solicitor Ron Moak and prosecuting Assistant Solicitor Brett Perry. This Court

also had before it a copy of the Applicant's plea transcript, the records of the Kershaw County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

During the evidentiary hearing, Applicant testified that he retained Counsel in August of 2011 to represent him on the Burglary in the First Degree, Armed Robbery, and Kidnapping² charges from the first incident. He testified that he ultimately had four separate sets of charges stemming from four different incidents and he pled to all of these charges on the same day. He testified that he never formally retained Counsel to represent him on the other three sets of charges, but that Counsel undertook representation on all pending charges and another attorney was never appointed for the additional charges. Applicant testified that he met with Counsel three times prior to his guilty plea, as well as discussed the case by telephone and through written correspondence. Applicant initially testified that he only discussed payment with Counsel, but later testified that he reviewed discovery and witness statements with Counsel. Applicant testified that Counsel never requested a preliminary hearing and never discussed the reasons why he would want a preliminary hearing with him. He testified that to his knowledge, Counsel never filed any discovery motions for the other three incidents and never reviewed any discovery materials with him for these other three events. He testified that his attorney told him that he had been identified by the victims from a photo lineup and that his co-defendant had given a statement that would be used against him at trial. Applicant testified that Counsel advised him that he would likely be convicted at trial, as his co-defendant would likely testify against him.

He testified that Counsel told him that he could plead guilty and get a non-violent sentence of twenty years, or he could go to trial and risk getting a life sentence. He testified that Counsel informed him that if he pled guilty, the State would allow him to plead to the lesser

² The Kidnapping charge was dismissed pursuant to the plea agreement with the State.

included offenses of strong armed robbery and burglary in the second degree, as well as the dismissal of other charges. He acknowledged that he did receive a twenty year sentence and was allowed to plead to these lesser included offenses per negotiations with the State. He testified that part of the plea negotiation was that if he testified against his co-defendant, the State would move to reduce his sentence to thirteen years based on his substantial assistance. He testified that in order to receive this plea negotiation, he gave several statements to law enforcement. He testified that he was lying in these various signed statements to law enforcement and that he lied upon Counsel's advice. He testified that instead of fulfilling this negotiation, the State dismissed the charges against his co-defendant because he refused to testify against his co-defendant.

Applicant testified that Counsel reviewed the maximum and minimum sentences he could receive with him, as well as the rights he would be waiving by pleading guilty. He acknowledged that Counsel reviewed a waiver of rights form with him and that he signed this form. He acknowledged that he told the plea court while under oath that he was guilty and agreed with the facts presented by the State. He testified that he is guilty of all offenses from all four instances. He testified that he told the plea court he was satisfied with Counsel's representation. He testified that it was his decision to accept this plea offer and that he did not want to proceed to trial.

He testified that he is now dissatisfied with Counsel's representation, as Counsel did not inform him that the victim gave two different statements and identified more than one perpetrator when shown the six person line-up. He also testified that Counsel was lying to him when he told him his co-defendant had given a statement against him, because no such statement is in his discovery materials. He testified that this is why he refused to testify at his co-defendant's trial.

Following Applicant's testimony, Counsel testified. Counsel testified that he was retained to represent Applicant on the home invasion set of charges that occurred in August 2011. He testified that Applicant then got the new charges while out on bond for the home invasion charges. He testified that he did not modify his agreement with Applicant to include the new charges, but that Applicant was aware that Counsel was representing him on all pending charges. He testified that the home invasion charges were by far the most serious charges, carried the most sentence exposure, and were of primary concern to both himself and Applicant. He testified that he filed appropriate discovery motions on the first three sets of charges and reviewed this material with Applicant. He testified that he also reviewed the elements of the offenses and what the State would be required to prove with Applicant, as well as minimum and maximum sentences. He testified that he did not request a preliminary hearing because Applicant told him that he was involved in all the crimes and there was no question of guilt. He testified that a preliminary hearing would have been fruitless, as there was no possibility that Applicant's charges would have been dismissed at a preliminary hearing. He elaborated that Applicant freely admitted his guilt for all four incidents to him.

He testified that after his initial meeting with Applicant, he spoke with the prosecuting Assistant Solicitor, who told him this was a "hot case." Counsel testified that shortly thereafter, he ran into counsel representing co-defendant, who told Counsel that co-defendant was willing to give law enforcement a statement and testify against Applicant. Counsel testified that the "first hog at the trough" usually gets the best deal, so he advised Applicant that it would be favorable for him to give a statement first and testify against his co-defendant if required by the State. He testified that he never told Applicant that his co-defendant had already given a statement or that

the State said co-defendant had given a statement. He testified that after advising Applicant of this, Applicant agreed to give a statement. He testified that he and Applicant met with prosecuting Deputy Solicitor Brett Perry, former Assistant Solicitor Ron Moak, who was prosecuting co-defendant's case, and an investigator. At this meeting, Applicant gave a statement implicating himself and his co-defendant. He testified that he never told Applicant to lie and had no reason to believe Applicant was lying in this statement. He testified that in exchange for this statement, the State offered an extremely favorable plea deal for an aggregate sentence of twenty years imprisonment for non-violent offenses, which would require Applicant to serve significantly less time. He testified that the State also agreed to file a motion based on substantial assistance to further reduce Applicant's sentence if he testified against his co-defendant at trial.

Counsel testified that he reviewed the victim's two statements, given a few hours apart. He testified that while one of the statements contained more detail than the other, the statements were consistent and named Applicant as one of the perpetrators. He also testified that he was not surprised that the victim had circled two suspects in the photo-line up, as there were two perpetrators. The suspects she identified were Applicant and his co-defendant.

He testified that the evidence against Applicant was overwhelming, including the victim's statements naming Applicant as the perpetrator, the victim's identification of Applicant, and Applicant's own statements. He testified that he advised Applicant that he would not likely be successful if he proceeded to trial and he should accept the State's advantageous plea offer. Counsel testified that the State's plea offer would allow Applicant to resolve all pending charges,

which he felt was in Applicant's best interest. He testified that he advised Applicant of this, and Applicant was eager to accept the State's offer.

Counsel testified that following Applicant's plea, Applicant was supposed to testify against his co-defendant. He testified that shortly before the hearing, the prosecuting assistant solicitors called Counsel and advised him that they were unable to proceed forward on the charges against Applicant's co-defendant, as Applicant had lied in all of his previous statements. He testified that as a result, the charges against Applicant's co-defendant had to be dropped.

Following Counsel's testimony, former Assistant Solicitor Ron Moak testified. Moak testified that he was formerly with the Fifth Circuit Solicitor's office and prosecuted Applicant's co-defendant's case. He testified that Deputy Solicitor Brett Perry was prosecuting Applicant's case, and he was surprised with the favorable plea offer that Applicant received, as he would have pushed for a harsher sentence. He testified that he worked closely with Perry on the two cases and is certain that neither he nor Perry ever told Applicant or his Counsel that the co-defendant had given a statement. He testified that as part of his plea agreement, Applicant was supposed to assist with the prosecution of his co-defendant. He testified that he had Applicant transported from SCDC to prepare for the co-defendant's trial, and when Applicant arrived, he was upset with Counsel and refused to speak with anyone until he saw a complete copy of his discovery materials. He testified that he allowed Applicant to see his discovery, and Applicant was very agitated that there was not a statement from his co-defendant in his discovery materials. He elaborated that Applicant told him he was upset because Counsel had told him his co-defendant had given a statement to law enforcement. He testified that after learning there was no statement from his co-defendant, Applicant changed his story and stated that he had lied to law

enforcement in his previous statements. Moak testified that based on Applicant's inconsistencies, he was forced to dismiss the charges against Applicant's co-defendant because Applicant's statements and credibility were crucial to his prosecution of the co-defendant. He testified that Applicant has contacted him multiple times while incarcerated asking for him to testify at his post-conviction relief hearing.

Moak testified that in regards to the victim's two statements, her second statement contained more detail because law enforcement initially instructed her to give a brief statement without much detail. He elaborated that the second statement contains much more detail, but is consistent with the first statement.

Respondent called Deputy Solicitor Brett Perry to testify. He testified that he prosecuted Applicant's cases. He testified that Applicant was originally arrested for the charges stemming from the home invasion. He testified that he met with Counsel several times and Counsel wanted him to reduce or drop several charges to reduce Applicant's sentence exposure. He testified that he reached an agreement with Counsel for an aggregate sentence of twenty years of non-violent time in exchange for Applicant's full cooperation. He testified that Applicant gave a voluntary confession and statement implicating his co-defendant. He testified that based on Applicant's statement and cooperation, he recommended that Applicant have a reduced bond, which allowed Applicant to be released on bond. He testified that while Applicant was released on bond, the three other incidents occurred and Applicant was re-arrested. He testified that because Applicant was still cooperating with law enforcement, he informed Counsel that Applicant could plead to all of the newly acquired charges for concurrent sentences. Additionally, he testified that in order to secure Applicant's continued cooperation, he agreed to

file a motion to reduce Applicant's sentence based on substantial assistance if Applicant testified at his co-defendant's trial. He testified that when it was time for Applicant to testify, the State had to dismiss all charges against his co-defendant because they discovered Applicant had been lying.

He testified that he never informed Counsel that Applicant's co-defendant had provided a written statement to law enforcement. He testified that the victim gave two statements to law enforcement, with the second statement containing more detail, but that the two statements were consistent. He testified that the victim identified two people on the photo line-up, because two perpetrators entered her home and she identified both from the line-up.

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 at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

Ineffective Assistance of Counsel

In a post-conviction relief action, an applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). When an applicant 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 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813.

The proper measure of performance is whether an 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, 286 S.C. 441, 334 S.E.2d 813. The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 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. 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 (1985).

"A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a 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." Holden v. State, 393 S.C. 565, 572, 713 S.E.2d 611, 615 (2011), citing Rolen v. State, 384 S.C. 409, 413, 683 S.E.2d 471, 474 (2009).

After careful review based on the standard discussed above, this Court finds that Applicant has failed to meet his burden in this action. Specifically, this Court finds that Counsel's testimony, along with the testimony of former Assistant Solicitor Ron Moak and Deputy Solicitor Brett Perry, is very credible while Applicant's testimony is not credible. Below are the specific findings of this Court in regards to each of Applicant's allegations of ineffective assistance of counsel:

Counsel's alleged failure to provide discovery materials before requiring him to make a decision regarding whether to plead guilty

Applicant alleges that Counsel was ineffective for failing to review discovery materials with him prior to his guilty plea. Counsel testified that he filed the appropriate discovery motions and reviewed the discovery materials with Applicant prior to his guilty plea. Additionally, the uncontroverted testimony from Applicant and Counsel is that Applicant readily admitted to his guilt involving all four instances and that Applicant wanted Counsel to secure a favorable plea offer from the beginning of his representation. This Court rejects Applicant's assertion that he was unable to make an informed decision as to whether or not to plead guilty based on a lack of discovery review, when Applicant testified that he was guilty of all crimes charged, did not want to proceed to trial, and wanted Counsel to secure a favorable plea deal on his behalf. This Court finds that Counsel performed within the competency required based on the circumstances and Applicant has failed to satisfy his burden of establishing a deficiency of counsel.

Additionally, this Court finds that Applicant has failed to establish any resulting prejudice from Counsel's alleged deficiency. Applicant failed to present any evidence that but for Counsel's alleged failure to show him all discovery materials, he would not have pled guilty.

Additionally, as there was overwhelming evidence of guilt, including Applicant's confession and the statement and identification by the victim, Applicant cannot establish any prejudice. See Ford v. State, 314 S.C. 245, 442 S.E.2d 604 (1994) (holding where there is overwhelming evidence of guilt, a trial counsel's deficient representation will not be prejudicial); See also Humbert v. State, 345 S.C. 332, 548 S.E.2d 862 (2001). Therefore, this allegation must be denied and dismissed with prejudice.

Counsel's alleged deficiency in advising Applicant to plead guilty on charges for which he did not represent Applicant and had not received discovery

Applicant alleges that Counsel was ineffective for advising him to plead guilty to the charges arising out of the three subsequent events following the home invasion, as he was not retained to represent Applicant on those charges and did not have discovery for these charges. This Court finds that Applicant has failed to meet his requisite burden of proof in establishing that Counsel was deficient. Counsel testified that although he was only formally retained to represent Applicant on the home invasion charges, when Applicant received the subsequent charges, it was understood by both Applicant and Counsel that Counsel was representing him on all pending charges. Counsel testified that the home invasion charges were of paramount concern for both him and Applicant, and he was able to secure an extremely favorable plea deal for Applicant on these charges. Counsel testified that once Applicant subsequently received charges for the three other instances, the State agreed to allow him to plead to concurrent time for the new charges to secure Applicant's continued cooperation. This Court finds that Counsel's performance in advising Applicant to accept a highly advantageous plea offer from the State that would resolve all pending charges was prudent and proficient. As Applicant has failed

to meet his burden of establishing any deficiency of Counsel in regards to this allegation, it must be denied and dismissed with prejudice.

Additionally, as discussed prior, this Court finds that Applicant has failed to establish any resulting prejudice, as there was overwhelming evidence of guilt, Applicant readily admitted his guilt, and stated that he never wanted to proceed to trial. Therefore, this allegation must be denied and dismissed with prejudice.

Alleged coercion by Counsel and the State to get Applicant to plead guilty

Applicant alleges that Counsel and the State intentionally misrepresented evidence, particularly a written statement made by Applicant's co-defendant, to coerce him to plead guilty. However, the credible testimony from Counsel, Deputy Solicitor Perry and former Assistant Solicitor Moak all strongly refute this allegation. Counsel testified that after a chance meeting, counsel for Applicant's co-defendant informed him that his client was *willing* to testify against Applicant. Counsel testified that he relayed this information to Applicant and informed him that if he wanted to receive a favorable offer, he would have to cooperate with law enforcement. Both Perry and Moak testified that they never informed Applicant or Counsel that they had any statements, written or otherwise, from Applicant's co-defendant. Counsel testified that Applicant asked him to secure a favorable plea offer from the State and readily admitted his guilt. This Court finds that Applicant has failed to meet his burden of proof, and this allegation must be denied and dismissed with prejudice.

Counsel's alleged deficiency in advising Applicant to plead guilty without disclosing and discussing alleged inconsistencies in the victim's statements.

Applicant alleges that Counsel was ineffective for failing to review and discuss alleged inconsistencies in the victim's two statements with him and how these inconsistencies could be

used to his benefit at trial. This Court finds that Applicant has failed to meet his required burden of proof. After hearing the testimony from the witnesses and reviewing the two statements given by the victim, which were introduced into evidence by Applicant, this Court finds that while the second statement contains more detail, there are no striking inconsistencies that have any significant impact on Applicant's case. This is supported by the testimony from Counsel, Perry, and Moak. This Court finds that as there were no considerable inconsistencies between the two statements, Counsel's performance was reasonable and this allegation must be denied and dismissed with prejudice.

Counsel's alleged deficiency in advising Applicant to plead guilty without disclosing and discussing alleged problems with the photo line-up

Applicant alleges that Counsel was ineffective for failing to review and discuss alleged problems with the photo line-up, particularly that the victim identified two individuals. Counsel, Perry, and Moak all testified that the victim circled two individuals because there were two perpetrators that broke into the victim's home. It is uncontroverted that one of the individuals selected is Applicant and that the other individual is Applicant's co-defendant. This Court finds that Counsel's performance was reasonable and that Applicant has failed to establish any resulting prejudice. Therefore, this allegation must be denied and dismissed with prejudice.

Counsel's alleged deficiency in failing to request a preliminary hearing for Applicant

Applicant alleges that Counsel was ineffective for failing to obtain a preliminary hearing on his behalf. When questioned as to why he did not request a preliminary hearing, Counsel testified that Applicant fully admitted his guilt to all crimes and gave a confession for the home invasion charges. Counsel testified that he did not see any benefit that could be derived from a preliminary hearing, because there was no likelihood that the charges would have been

dismissed. This Court agrees with Counsel and finds that his performance was reasonable based on the facts of Applicant's case. Therefore, this allegation must be denied and dismissed with prejudice.

Counsel's alleged deficiency in advising Applicant to plead guilty to drug charges without first obtaining discovery concerning the chemical analysis of the substances

Applicant alleges that Counsel was ineffective for advising him to plead guilty to drug charges without obtaining discovery regarding the chemical analysis of the substances. However, Applicant testified he was guilty of the drug offenses. Additionally, Counsel testified that after discussing the offenses with Applicant, Applicant admitted he was guilty and that the substances were indeed illegal drugs. This Court finds that Counsel was reasonable in advising Applicant to take advantage of a favorable plea offer for concurrent sentences for the drug charges when Applicant freely admitted to him that the substances were drugs. As Applicant has failed to establish any deficiency, this allegation must be denied and dismissed with prejudice.

Counsel's alleged deficiency in advising Applicant to plead guilty without seeing discovery when his co-defendant's charges were dismissed.

Applicant alleges that Counsel was ineffective for advising him to plead guilty without reviewing discovery when his co-defendant's charges were dismissed. However, the testimony from Perry and Moak, the prosecutors handling the case, both testified that the co-defendant's charges were only dismissed because Applicant's repetitive lying and inability to be a reliable witness. This Court finds that Applicant has failed to establish his burden of proof of either deficiency of counsel or prejudice in regards to this allegation, which must be denied and dismissed with prejudice.

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 notes that Applicant must file and serve a Notice of Appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the applicant's behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That this application for post-conviction relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to and remain in the custody of the State

AND IT IS SO ORDERED this 6th day of March, 2014.



ROBERT E. HOOD
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

STA 200 SOUTH CAROLINA

COUNTY OF Kershaw
STATE VS.

Marcus Antwon Greene

AKA:

Race: Sex: M Age: 24

DOB: SS#:

Address:

City, State, Zip: Camden, SC 290200000

DL#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Robbery / Common law robbery, strong arm robbery

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011-GS-28-0749

A/W#: M09973S

Date of Offense: 8/1/2011

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

In violation of § 16-11-0325 of the S.C. Code of Laws, bearing CDR Code # 0137

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted ☐ Lesser Included Offense ☐ Defendant Waives Presentment to Grand Jury (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation ☒ Negotiated Sentence ☐ Recommendation by the State

ATTEST: Mdak, Ron SC Bar# 6991 Defendant Marcus Antwon Greene Attorney for Defendant Charles S. [unclear] SC Bar# 9021

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 5 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 2011 GS 28 0753

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-3-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-3-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 3.90
TOTAL	\$	\$ 133.90

Clerk of Court/ Deputy Clerk:

Court Reporter:

SCCA/217/06/20101

 days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp:

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: TOTAL SENTENCE

NEG. FV SUM. V. [unclear]
MAY BE REDUCED IF

☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition

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

ATTEST: Copy of Original on file in

Presiding Judge:

Judge Code:

Sentence Date: 2/27/15

WITNESSES

10 (S) W Nesbit - Kershaw County Sheriff
2

DOCKET NO. 2011-GS-28-0749

The State of South Carolina

County of

Kershaw

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

K98
OCTOBER TERM 2011

Defendant

THE STATE

vs.

Marcus Antwon Greene

Witness:

C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

M099738

ACTION OF GRAND JURY

FILED

Foreperson of Grand Jury

Date:

VERDICT

Indictment for
ARMED ROBBERY

SC Code: 16-11-0330(A)
CDR Code: 0139

Foreperson of Petit Jury
Date:

At Test Here: Entered & Certified
Copy of Indictment on file in files
Court

County Clerk
Kershaw County

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

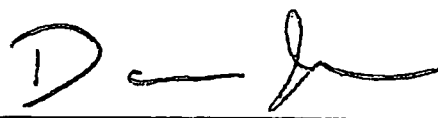
INDICTMENT

At a Court of General Sessions, convened on OCTOBER 12, 2011,
the Grand Jurors of Kershaw County present upon their oath:

ARMED ROBBERY

That Marcus Antwon Greene did in Kershaw County on or about August 1, 2011, commit robbery by feloniously taking from the person or presence of ALEX ENGLISH, by means of force or intimidation, goods or monies of ALEX ENGLISH, such goods or monies being described as MONEY, with the intent to deprive the owner permanently of such property, while armed with a pistol, dirk, slingshot, metal knuckles, razor, or other deadly weapon, or while alleging, either by actions or words, that he or she was armed while using a representation of a deadly weapon or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon. All in violation of §16-11-330(A), SC Code of Laws (1976, as amended)

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Kershaw
STATE VS.
Marcus Antwon Greene

AKA:

Race: Sex: M Age: 24

DOB: SS#:

Address:

City, State, Zip: Camden, SC 290200000

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Burglary / Burglary (Non - Violent) (After June 20, 1985) - Second degree

IN THE COURT OF GENERAL SESSIONS 203

INDICTMENT/CASE#: 2011-GS-28-0753

A/W#: M099739

Date of Offense: 8/1/2011

S.C. Code §: 16-11-0311

CDR Code #: 0079

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-11-0312 of the S.C. Code of Laws, bearing CDR Code # 0080

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Moak, Ron SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114(BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCJA Surcharge)	\$5
§ 44-53-450(C) (Conditional Discharge)	\$350
3% to County (if paid in installments)	\$
TOTAL	\$ 13346

Clerk of Court/ Deputy Clerk

Court Reporter:

PTUP

days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other: CM BEHOLD MAY

IS REQUIRED IF CERTAIN EVENTS OCCUR

☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition

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

Clerk of Court Kershaw County

Presiding Judge

Judge Code:

Sentence Date:

WITNESSES

(S) W Nesbitt - Kershaw County Sheriff

DOCKET NO. 2011-GS-28-0753

The State of South Carolina

County of

Kershaw

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

OCTOBER TERM 2011

K98

Defendant

THE STATE

vs.

Marcus Antwon Greene

Witness:

C.C.C. PLS. AND G.S.

ARREST WARRANT NUMBER

M099739

ACTION OF GRAND JURY

2011-10-07

Foreperson of Grand Jury

Date:

2011-10-07

VERDICT

Indictment for
BURGLARY 1ST DEGREE

SC Code: 16-11-0311

CDR Code: 0079

ATTEST True Correctly Certified
Copy of Indictment on file in this
Court

Check of Court Secretary Count

Foreperson of Petit Jury
Date: 2011-10-07

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

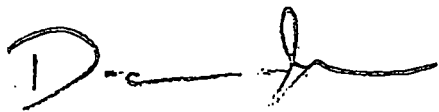
INDICTMENT

At a Court of General Sessions, convened on OCTOBER 12, 2011,
the Grand Jurors of Kershaw County present upon their oath:

BURGLARY, 1ST DEGREE

That Marcus Antwon Greene did in Kershaw County on or about August 1, 2011, enter the dwelling of Alex English located at [REDACTED] STREET, CAMDEN SC [REDACTED], without consent and with the intent to commit a crime therein and when, in effecting entry or while in the dwelling or in immediate flight, the defendant did enter the dwelling in the nighttime hours and armed with a gun, in violation of Section 16-11-0311(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.


DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA)
COUNTY OF Kershaw)
STATE VS.)
Marcus Antwon Greene)
AKA:)
Race: Sex: M Age: 24)
DOB: SS#:)
Address:)
City, State, Zip: Camden, SC 29020-0000)
DL#: SID#:)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012-GS-28-0270
A/W#: 84796EL
Date of Offense: 2/13/2012
S.C. Code §: 56-05-0750(B)(1)
CDR Code #: 0065

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Traffic / Failure to stop for a blue light, no injury or death - 1st offense

☐ CONVICTED OF or ☒ PLEADS

in violation of § 56-05-0750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0065
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Moak, Ron SC Bar# 6991 Defendant Michael J. [Signature] Attorney for Defendant Charles C. [Signature] SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 4.00
TOTAL	\$	\$ 32.00

Clerk of Court/ Deputy Clerk [Signature]

Court Reporter: [Signature]

SCCA/217 (06/2010)

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition.

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

Presiding Judge [Signature]

Judge Code: 2017

Sentence Date: 2/27/12

WITNESSES

20 (s) D Handy - Kershaw County Sheriff

DOCKET NO. 2012-GS-28-0270

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2012

K98

ARREST WARRANT NUMBER

84796EL

THE STATE

vs.

Marcus Antwon Greene

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Indictment for

FAILURE TO STOP BLUE LIGHT/SIREN
1ST OFFENSE

SC Code: 56-05-0750(B)(1)

CDR Code: 0065

Foreperson of Petit Jury

Date:

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

Direct & Confession
File in this
Court

Clerk of Court

Justiciary County

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

INDICTMENT

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

FAILURE TO STOP FOR BLUE LIGHT/SIREN - 1ST OFFENSE

That Marcus Antwon Greene did in Kershaw County on or about February 13, 2012, while operating a motor vehicle on a road, street, or highway of the State of South Carolina, fail to stop his/her motor vehicle when signaled to do so by a law enforcement vehicle, by means of a siren and/or flashing light, in violation of Section 56-05-0750(B)(1), S. C. Code of Laws, 1976, as amended

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


DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Kershaw
STATE VS.Marcus Antwon Greene

AKA:

Race: Sex: M Age: 24DOB: SS#: Address: City, State, Zip: Camden, SC 29020-0000DL#: SID#: *CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Resisting / Resisting Arrest; Oppose, resist, or assault law enforcement officer serving processin violation of § 16-09-0320(A) of the S.C. Code of Laws, bearing CDR Code # 0326☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Moak, Ron

SC Bar#:

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>5.25</u>
TOTAL	\$	\$ <u>133.40</u>

Clerk of Court/ Deputy Clerk: Court Reporter:

SCCA 217 (06/2010)

IN THE COURT OF GENERAL SESSION **209**INDICTMENT/CASE#: 2012-GS-28-0271A/W#: 84795ELDate of Offense: 2/13/2012S.C. Code § : 16-09-0320(A)CDR Code #: 0326

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-09-0320(A) of the S.C. Code of Laws, bearing CDR Code # 0326☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Moak, Ron

SC Bar#:

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$ Payment Terms: ☐ Set by SCDPPPS Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ <u>5.25</u>
TOTAL	\$	\$ <u>133.40</u>

Clerk of Court/ Deputy Clerk: Court Reporter:

SCCA 217 (06/2010)

Presiding Judge: Judge Code: Sentence Date:

WITNESSES

(S) D Handy - Kershaw County Sheriff

DOCKET NO. 2012-GS-28-0271

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2012

K98

ARREST WARRANT NUMBER

84795EL

Defendant

Witness:

C.C.C. PLS. AND G.S.

THE STATE
vs.

Marcus Antwon Greene

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

Indictment for
RESISTING ARREST

SC Code: 16-09-0320(A)

CDR Code: 0326

After being fully advised as to my
legal rights, I hereby waive presentment
to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead
guilty to the within indictment or to

ATTEND Line Entered & Certified
Copy of Original on file in this
Court

Clerk of Court

Kershaw County

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

INDICTMENT

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

RESISTING ARREST

That Marcus Antwon Greene did in Kershaw County on or about February 13, 2012, knowingly and willfully oppose or resist an arrest being made by one whom the defendant knew or reasonably should have known was a Law Enforcement Officer, in violation of Section 16-09-0320(A), S. C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

212
STATE OF SOUTH CAROLINA

COUNTY OF Kershaw
STATE VS.
Marcus Antwon Greene

AKA:
Race: Sex: M Age: 24
DOB: SS#: [REDACTED]
Address: [REDACTED]
City, State, Zip: Camden, SC 29020-0000
DL#: [REDACTED] SID#: [REDACTED]

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
TO: Drugs / Poss. of other controlled sub. in Sched. I to V - 1st offense

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012-GS-28-0272

A/W#: M099938

Date of Offense: 9/14/2011

S.C. Code § : 44-53-0370(d)(2)

CDR Code #: 0179

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 44-53-0370(d)(2) of the S.C. Code of Laws, bearing CDR Code # 0179

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] SC Bar# 1691 Defendant [Signature] Attorney for Defendant 2011 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 1 day/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ 150.00
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$ 35.00
TOTAL	\$	\$ 385.00

Clerk of Court/ Deputy Clerk: [Signature]

Court Reporter: [Signature]

SCCA 117 (06/2010)

PTUP days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Condition Discharge, § 44-53-450(C) requires
\$350 be paid to the Clerk prior to case disposition

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

Presiding Judge [Signature]

Judge Code: 2011

Sentence Date: 2/27/12

WITNESSES

3
29 Kirk Wilks - Kershaw County Sheriff

DOCKET NO. 2012-GS-28-0272

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

K96
FEBRUARY TERM 2012

ARREST WARRANT NUMBER

M099938

Defendant

THE STATE

vs.

Marcus Antwon Greene

ACTION OF GRAND JURY

Witness:

C.C.C. PLS. AND G.S.

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Marcus Antwon Greene
Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Foreperson of Grand Jury
Date:

VERDICT

Indictment for
POSSESSION SCHEDULE I-V DRUG -
1ST OFFENSE

SC Code: 44-53-0370(d)(2)
CDR Code: 0179

Foreperson of Petit Jury
Date:

ATTEST True, Correct & Enrolled
Copy of Original on file in Court

Cheryl B. Edwards
Clerk of Court

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

INDICTMENT

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

POSSESSION OF SCHEDULE I – V DRUG

That Marcus Antwon Greene did in Kershaw County on or about SEPTEMBER 14, 2011, knowingly and intentionally possess a quantity of PERCOCET, a Schedule II controlled substance under provisions of Section 44-53-0110, S.C. Code of Laws, 1976, as amended, such possession not having been authorized by law, in violation of Section 44-53-0370(d)(2), S.C. Code of Laws, 1976, as amended.

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Kershaw

VS.

Marcus Antwon Greene

AKA:

Race: Sex: M Age: 24

DOB: SS#

Address:

City, State, Zip: Camden, SC 29020-0000

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Drugs / Possession of less than one gram of ice crack or crack cocaine 2nd offense

in violation of § 44-53-0375(A) of the S.C. Code of Laws, bearing CDR Code # 3017

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Perry, Brett

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 1 days/months/years or ☐ under the Youthful Offender Act not to exceed years
and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment
of \$; plus costs and assessments as applicable*; the balance is suspended with probation for months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☐ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ OrderedTotal: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)	\$	
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ <u>100.00</u>
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$ <u>100.00</u>
§ 56-5-2995 (DUI Assessment)	\$12	\$ <u>12.00</u>
§ 56-1-286 (DUI Breath Test)	\$25	\$ <u>25.00</u>
Proviso 47.9 (Public Def/Prob)	\$500	\$ <u>500.00</u>
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ <u>25.00</u>
§ 14-1-213 (Drug Court Surcharge)	\$150	\$ <u>150.00</u>
§ 50-21-114(BUI Breath Test Fee)	\$50	\$ <u>50.00</u>
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$ <u>40.00</u>
Proviso 90.5 (SCCA Surcharge)	\$5	\$ <u>5.00</u>
§ 44-53-450(C) (Conditional Discharge)	\$350	\$ <u>350.00</u>
3% to County (if paid in installments)	\$	\$ <u>42.00</u>
TOTAL	\$	\$ <u>2654.00</u>

Clerk of Court/Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

215

INDICTMENT/CASE#: 2012-GS-28-0273

A/W#: M099939

Date of Offense: 9/14/2011

S.C. Code § : 44-53-0375(A)

CDR Code #: 3017

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

PTUP

 days/hours Public Service EmploymentObtain GED ☐Attend Voc. Rehab. or Job Corp. May serve W/E beginning Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ beginning \$ paid to Public Defender FundOther:

☐ Condition Discharge § 44-53-450(C) requires Certified
\$350 be paid to the Clerk prior to case disposition
☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Clerk of Court, Kershaw County

Presiding Judge

Judge Code:

Sentence Date:

WITNESSES

(S) Kirk Wilks - Kershaw County Sheriff

DOCKET NO. 2012-GS-28-0273

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

FEBRUARY TERM 2012

K96

ARREST WARRANT NUMBER

M099939

THE STATE

vs.

Marcus Anthony Greene

ACTION OF GRAND JURY

Foreperson of Grand Jury

Date:

VERDICT

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

Indictment for
POSSESSION/ATTEMPT TO POSSESS
CRACK COCAINE- 2ND OFF

SC-Code: 44-53-0375(A)

CDR Code: 3017

ATTEST True, Correct & Certified
Copy of Original on file in this

Court

Check of Court Kershaw County

CO

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

INDICTMENT

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

POSSESSESSION/ATTEMPT TO POSSESS CRACK COCAINE – 2ND
OFFENSE

That Marcus Antwon Greene did in Kershaw County on or about September 14, 2011, knowingly, willfully and intentionally, possess or attempt to possess a quantity of Crack Cocaine, a controlled substance under provisions of Section 44-53-110, et. seq., Code of Laws of South Carolina, (1976), as amended, such possession not having been authorized by law [and such being the defendant's second or subsequent offense] and being in violation of Section 44-53-375(A), S. C. Code of Laws, 1976, as amended

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



DAN JOHNSON, SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF
STATE

Kershaw

VS.

Marcus Antwon Greene

AKA:

Race: Sex: M Age: 24

DOB: SS#: 3

Address:

City, State, Zip: Camden, SC 29020-0000

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Traffic / Failure to stop for a blue light, no injury or death - 1st offense

in violation of § 56-05-0750(B)(1) of the S.C. Code of Laws, bearing CDR Code # 0065

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☐ As Indicted, ☐ Lesser Included Offense, ☒ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Perry, Brett

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,for a determinate term of 3 days/months/years or ☐ under the Youthful Offender Act not to exceed years and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

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

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

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

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$
TOTAL		\$ 3,490

Clerk of Court/ Deputy Clerk:

Court Reporter:

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012-GS-28-0274

A/W#: 80314FV

Date of Offense: 1/8/2012

S.C. Code § : 56-05-0750(B)(1)

CDR Code #: 0065

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

PTUP

days/hours Public Service Employment

Obtain GED ☐Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition.

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

Clerk of Court

Kershaw County

Presiding Judge

Judge Code:

Sentence Date:

WITNESSES

(s) F. Myers - Kershaw County Sheriff
N

DOCKET NO. 2012-GS-28-0274

The State of South Carolina

County of

Kershaw

COURT OF GENERAL SESSIONS

K96
FEBRUARY TERM 2012

ARREST WARRANT NUMBER

80314FV

ACTION OF GRAND JURY

Marcus Antwon Greene

THE STATE

vs.

Foreperson of Grand Jury
Date:

VERDICT

Indictment for
FAILURE TO STOP BLUE LIGHT/SIREN
1ST OFFENSE

SC Code: 56-05-0750(B)(1)
CDR Code: 0065

Foreperson of Petit Jury
Date:

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I hereby appear in my own proper person and plead guilty to the within indictment or to

Marcus Antwon Greene
Defendant

Witness:

C.C.C. PLS. AND G.S.

ATTEST Here, Correct & Certified
Copy of Original on File in this
Court

Kerishaw County
Court of Court

STATE OF SOUTH CAROLINA)
COUNTY OF KERSHAW)

INDICTMENT

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

FAILURE TO STOP FOR BLUE LIGHT/SIREN – 1ST OFFENSE

That Marcus Antwon Greene did in Kershaw County on or about January 8, 2012, while operating a motor vehicle on a road, street, or highway of the State of South Carolina, fail to stop his/her motor vehicle when signaled to do so by a law enforcement vehicle, by means of a siren and/or flashing light, in violation of Section 56-05-0750(B)(1), S. C. Code of Laws, 1976, as amended

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


DAN JOHNSON, SOLICITOR