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20734

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
General Sessions Court

The Honorable Roger L. Couch, Circuit Court Judge

Case Nos. 2011-GS-42-1414, 2011-GS-42-1415, and 2012-GS-42-0349

The State,

Respondent,

vs.

Charvus Tarrell Nesbitt,

Appellant.

AMENDED RECORD ON APPEAL

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Campbell & Shabel, Attorneys at Law
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Spartanburg, South Carolina 29306
(864) 583-0001
Attorneys for Appellant

Alan Wilson, Attorney General
John W. McIntosh, Chief Deputy Attorney General
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South Carolina Attorney General's Office
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Columbia, SC 29211
803-734-6305

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Solicitor, 7th Circuit Solicitor's Office
180 Magnolia Street
Spartanburg, SC 29306
864-596-2575
Attorneys for Respondent

RECEIVED

NOV 25 2013

SC Court of Appeals

INDEX

Sentencing Sheet 2011-GS-42-1414 (Signed February 13, 2012)	1
Sentencing Sheet 2011-GS-42-1414A (Signed February 13, 2012).....	2
Sentencing Sheet 2011-GS-42-1415 (Signed February 13, 2012)	3
Sentencing Sheet 2012-GS-42-349 (Signed February 13, 2012)	4
Order (Clocked May 24, 2012).....	5
Motion for Reconsideration And/Or New Trial (February 23, 2012)	7
Amended Motion for Reconsideration (March 7, 2012)	9
Transcript of Plea Hearing (February 13, 2012), pp. 1-30	11
Transcript of Motion Hearing (April 26, 2012), pp. 1-12.....	41
Certificate of Counsel	53

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

CITY OF SPARTANBURG

VS.

Charvus Tarrel Nesbitt

INDICTMENT/CASE#: 2011GS4201414

A/W#: M751483

Date of Offense: 12/7/2010

S.C. Code §: 16-03-0010

CDR Code #: 0116

Race: BLACK Sex: M Age: 23

DOB: [REDACTED] SS#: [REDACTED]

Address: 192 Gaines Dr.

City, State, Zip: Inman SC 29349

License #: [REDACTED] SID#: [REDACTED]

FDL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

Disposition of the said indictment comes now the Defendant who was

Convicted of: Murder / Murder

SENTENCE SHEET

Alford Plea

[] CONVICTED OF or [X] PLEADS No Contest

Violation of § 16-03-0010, of the S.C. Code of Laws, bearing CDR Code # 0116

[] NON-VIOLENT [X] VIOLENT [] SERIOUS [X] MOST SERIOUS [] Mandatory GPS(CSC [] §17-25-45

with/without 1st or Lewd Act)

Charge is: [X] As Indicted. [] Lesser Included Offense. [] Defendant Waives Presentment to Grand Jury. (defendant's initials)

Plea is: [] Without Negotiations or Recommendation [X] Negotiated Sentence, [] Recommendation by the State.

RESTITUTION: BULSA, DERRICK

15264 SC Bar#

Charvus T. Nesbitt Defendant

Attorney for Defendant

SC Bar#

HEREFORE, the Defendant is committed to the [X] State Department of Corrections, [] County Detention Center,

for a determinate term of 70 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: 2/13/12

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied

the State Department of Corrections. 12/10/10

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: \$ _____

4-1-206 (Assessments 107.5%) \$ _____

4-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

4-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

56-5-2995 (DUI Assessment) \$12 \$ _____

56-1-286 (DUI Breath Test) \$25 \$ _____

§10-47.9 (Public Def/Prob) \$500 \$ _____

4-1-212 (Law Enforce. Funding) \$25 \$ 25.00

4-1-213 (Drug Court Surcharge) \$150 \$ _____

§10-21-114 (BUI Breath Test Fee) \$50 \$ _____

6-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

§10-90.5 (SCCJA Surcharge) \$5 \$ 5.00

to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

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: _____

[] Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter: Shirley Brown

CA-217 (03/2011)

Presiding Judge

Judge Code: 2135

Sentence Date: 2/13/12

SOUTH CAROLINA

OF

SPARTANBURG

VS.

Charvus Tarrel Nesbitt

BLACK

Sex: M

Age: 23

SS#: [REDACTED]

Address:

City, State, Zip:

SID#:

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS4201414 A

A/W#: M751457

Date of Offense: 12/7/2010

S.C. Code §: 16-23-0490

CDR Code #: 0549

SENTENCE SHEET

DL Yes [] No [] CMV Yes [] No [] Hazmat Yes [] No []

Disposition of the said indictment comes now the Defendant who was

[] CONVICTED OF or [X] PLEADS

to: Weapons / Poss. weapon during violent crime, if not also sentenced to life without parole or death

In violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549

[X] NON-VIOLENT [] VIOLENT [] SERIOUS [] MOST SERIOUS [] Mandatory GPS(CSC §17-25-45 w/minor 1st or Lewd Act)

The charge is: [X] As Indicted, [] Lesser Included Offense, [] Defendant Waives Presentment to Grand Jury: (defendant's initials)

The plea is: [] Without Negotiations or Recommendation, [X] Negotiated Sentence, [] Recommendation by the State.

TEST: D.B. Bula 15264 SC Bar# Defendant Charvus T. Nesbitt Attorney for Defendant 5/165 SC Bar#

HEREFORE, the Defendant is committed to the [X] 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.

[X] CONCURRENT or [] CONSECUTIVE to sentence on: 2/13/12 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. 12/10/10 [] 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

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:

Table with 3 columns: Description, Amount, Total. Includes items like Assessments, Surcharges, and Fees.

[] Appointed PD or appointed other counsel. § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk: Chelona Jones Court Reporter: Shirley Malone

Presiding Judge: Judge Code: 2135 Sentence Date: 2/13/12

STATE OF SOUTH CAROLINA
 SPARTANBURG
 VS.
 Charvus Tarrel Nesbitt
 BLACK Sex: M Age: 23
 SS#: [REDACTED]
 Address: 192 Gainer Dr.
 Inman SC 29349
 DL#: [REDACTED] SID#: [REDACTED]

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS4201415
 A/W#: M751456
 Date of Offense: 12/7/2010
 S.C. Code §: 16-03-0029
 CDR Code #: 3410

SENTENCE SHEET

Alford Plea

*CDL Yes No CMV Yes No Hazmat Yes No
 In disposition of the said indictment comes now the Defendant who was
 TO: Murder / Attempted Murder

CONVICTED OF or PLEADS *No Contest*

in violation of § 16-03-0029 of the S.C. Code of Laws, bearing CDR Code # 3410
 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: B. B. B. B. 15264 Charvus T. Nesbitt S. H. S.
 BULSA, DERRICK 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 30 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: 2/13/12
 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. 12/10/10
 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: \$ _____ days/hours Public Service Employment

Payment Terms: _____ Obtain GED
 Set by SCDPPPS _____ Attend Voc. Rehab. or Job Corp. _____
 Recipient: _____ May serve W/E beginning _____
 Substance Abuse Counseling

*Fine:		\$
§ 14-1-206 (Assessments 107.5 %)		\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100	\$ 100.00
§ 14-1-211(A)(2) (DUI Surcharge)	\$100	\$
§ 56-5-2995 (DUI Assessment)	\$12	\$
§ 56-1-286 (DUI Breath Test)	\$25	\$
Proviso 47.9 (Public Def/Prob)	\$500	\$
§ 14-1-212 (Law Enforce. Funding)	\$25	\$ 25.00
§ 14-1-213 (Drug Court Surcharge)	\$150	\$
§ 50-21-114 (BUI Breath Test Fee)	\$50	\$
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea	\$
Proviso 90.5 (SCCJA Surcharge)	\$5	\$ 5.00
3% to County (if paid in installments)		\$ 3.90
TOTAL		\$ 133.90

Random Drug/Alcohol testing
 Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____ beginning _____
 \$ _____ paid to Public Defender Fund
 Other: _____

Appointed PD or appointed other counsel. § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk Christine Fink
 Court Reporter: Shirley Gerson
 SCCA/217 (03/2011)

Presiding Judge _____
 Judge Code: 2135
 Sentence Date: 2/13/12

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF SPARTANBURG

STATE VS.

Charvus Tarrel Nesbitt

AKA:

Race: BLACK Sex: M Age: 23

DOB: SS#:

Address: 192 Gaines St

City, State, Zip: Sumter SC 29349

DL#: SID#:

*CDL Yes No CMV Yes No Hazmat Yes No

In disposition of the said indictment comes now the Defendant who was TO: Robbery / Attempted armed, or allegedly armed, robbery

INDICTMENT/CASE#: 2012GS4200349

A/W#: 2012GS4200349

Date of Offense: 12/7/2010

S.C. Code §: 16-11-0330(B)

CDR Code #: 0026

SENTENCE SHEET

Alford Plea

CONVICTED OF or PLEADS No Contest

in violation of § 16-11-0330(B) of the S.C. Code of Laws, bearing CDR Code # 0026

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:

BULSA, DERRICK

15264 SC Bar#

Defendant

Attorney for Defendant

5765 SC Bar#

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center,

for a determinate term of 20 days/months/years or under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

CONCURRENT or CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. 12/10/10

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 \$

§ 50-21-114(BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCJA Surcharge) \$5 \$ 5.00

3% to County (if paid in installments) \$ 3.90

TOTAL \$ 133.90

PTUP

days/hours Public Service 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:

Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA#217 (03/2011)

Presiding Judge

Judge Code: 2135

Sentence Date: 2/13/12

STATE OF SOUTH CAROLINA)
)
 COUNTY OF SPARTANBURG)
)
 State of South Carolina,)
)
)
)
 vs.)
)
)
 Charvus Tarrel Nesbitt,)
)
 Defendant.)

IN THE COURT OF GENERAL SESSIONS
 FOR THE SEVENTH JUDICIAL CIRCUIT

ORDER

Case Numbers: 2011-GS-42-1414
 2011-GS-42-1415
 2012-GS-42-0349

FILED
 CLERK OF COURT
 SPARTANBURG COUNTY
 2012 MAY 24 PM 4:12
 M. HOPE BLANKLEY

This matter came before the Court on the Defendant's Motion to Reconsider his sentence received February 13, 2012. The State of South Carolina was represented by Derrick Balsa and the Defendant represented by Fletcher Smith at the plea hearing. The Honorable Roger L. Couch sentenced Defendant to forty (40) years for murder, thirty (30) years for attempted murder, twenty (20) years for attempted armed robbery, and five (5) years for possessing a weapon during the commission of a violent crime. The Court ran the sentences for attempted murder, attempted armed robbery, and possession of a weapon during the commission of a violent crime concurrent with the forty (40) year sentence for murder.

On February 23, 2012, Defendant filed a Motion to Reconsider his sentence. A hearing was held in Spartanburg, South Carolina on April 26, 2012. The State was represented by Derrick Balsa and Defendant was represented by Kenneth Shabel. Having considered the Motion and oral arguments of both parties, the Court makes the following findings:

1. The Defendant was removed from the Courtroom prior to the discussion of the charge of possession of a weapon during the commission of a violent crime. Tr. at 28:24.
2. The Court overlooked the charge of possession of a weapon during the commission of a violent crime and was reminded by the Solicitor following the Defendant's exit of the Courtroom. Tr. at 29:2-9.
3. The Defendant's attorney at the plea, Fletcher Smith, did not waive the Defendant's presence with regards to the discussion of that particular charge. Tr. at 29:11-13.
4. The Defendant was never questioned by the Court about his plea to the offense of possession of a weapon during the commission of a violent crime.
5. The plea deal that Defendant agreed to on the record was forty (40) years for murder, attempted

murder, and attempted armed robbery.

Pursuant to South Carolina case law, "all plea agreements must be on the record and must recite the scope, offenses, and individuals involved in the agreement." *State v. Thrift*, 312 S.C. 282, 295, 440 S.E.2d 341, 348 (1994). In other words, a plea agreement is made up of only that which a defendant agrees to on the record, regardless of communications prior to the hearing. In the case at bar, the Court only discussed three charges with the Defendant on the record- murder, attempted murder, and attempted armed robbery. The plea transcript indicates that the Court inquired as to whether the Defendant's plea under *North Carolina v. Alford* was on these particular charges. (Tr. at 9:10-11). The Defendant answered the Court in the affirmative. (Tr. at 9:12). The Court did not, however, question the Defendant about his plea to the offense of possession of a weapon during the commission of a violent crime. Consequently, the forty (40) year plea agreement was made up of only the murder, attempted murder, and attempted armed robbery charges. See *Thrift*, 312 S.C. at 296, 440 S.E.2d at 349.

Based on the foregoing, the Court hereby invalidates the five (5) year sentence that was imposed on the Defendant for the offense of possession of a weapon during the commission of a violent crime. Accordingly, that charge, Count Two of indictment number 2011-GS-42-1414, was not a part of the negotiated plea and is hereby reopened and subject to prosecution by the State. This decision has no bearing on the validity of the plea given by the Defendant on the other three charges. See *Phillips v. State*, 281 S.C. 41, 314 S.E.2d 313 (1984) (the invalidation of a defendant's guilty plea on one charge does not affect the validity of a guilty plea for a different charge taken at the same hearing).

Therefore, Defendant's Motion to Reconsider is granted in that the five (5) year sentence issued by this Court on the charge of possession of a weapon during the commission of a violent crime is hereby invalidated. The sentences imposed by the Court on the charges of murder, attempted murder, and attempted armed robbery are hereby affirmed.

IT IS SO ORDERED.

May 24, 2012
Spartanburg, South Carolina

M. HOPE BLACKLEY
2012 MAY 24 PM 4:12
SPARTANBURG COUNTY
CLERK OF COURT
FILED - 6 -


Roger L. Couch, Presiding Judge
Seventh Judicial Circuit

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
The STATE of SOUTH CAROLINA,)
Vs.)
CHARVUS TARREL NESBITT,)
Defendant.)

IN THE GENERAL SESSIONS COURT
SEVENTH JUDICIAL CIRCUIT

MOTION FOR RECONSIDERATION
AND/OR NEW TRIAL

Indictment Numbers:
2011-GS-42-01414
2011-GS-42-01414(A)
2011-GS-42-01415
2012-GS-42-00349

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 FEB 23 AM 11:42
M. HOPE BLACKLEY

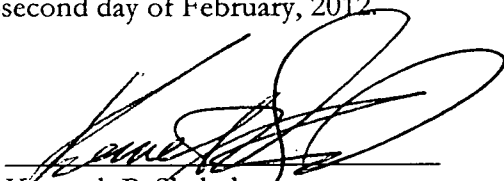
TO: THE HONORABLE ROGER L. COUCH, Circuit Court Judge
DERRICK B. BULSA, Assistant Solicitor for the Seventh Circuit Solicitor's Office

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through the undersigned attorney, hereby moves before the Court for a reconsideration of his sentence received on February 13, 2012 for the above-referenced indictments. The Defendant so moves based upon the following:

- (a) That, based on information and belief, the Court did not take into proper consideration the Defendant's lack of criminal record prior to his arrest on these charges;
- (b) That, based on information and belief, the Court did not take into proper consideration the significant criminal record of the co-defendants, who at the time of the Defendant's plea, still had charges pending;
- (c) That, based on information and belief and following the Defendant's plea, the state reduced all of the charges against the co-Defendants that, as a result, has them serving twenty-five fewer years than the Defendant;

- (d) That, based on information and belief, the Defendant, was unaware of separate plea negotiations with co-Defendants prior to agreeing to plea in these indictments and his knowledge of these plea negotiations would have materially affected his decision to plead in these indictments;
- (e) That, based on information and belief, the sentence is overly harsh and constitutes "cruel and unusual punishment";
- (f) That, based on information and belief, the plea colloquy was insufficient under the law of this state to ensure that the Defendant knew exactly what rights he was giving up by pleading guilty; and
- (g) That, based on information and belief, the Defendant did not knowingly and intelligently waive his right to a twenty-four hour waiting period between his guilty plea and his sentencing.

The Defendant so moves, this twenty-second day of February, 2012.


Kenneth P. Shabel
SC Bar #16136
Attorney for the Defendant
CAMPBELL & SHABEL, Attorneys at Law
104 North Daniel Morgan Avenue, Suite 201
Spartanburg, South Carolina 29306
864.583.0001
864.583.1199 (Fax)

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 FEB 23 AM 11:42
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA	)	IN THE GENERAL SESSIONS COURT
)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
)	
The STATE of SOUTH CAROLINA,	)	AMENDED
	)	MOTION FOR RECONSIDERATION
Vs.	)	AND/OR NEW TRIAL
)	
CHARVUS TARREL NESBITT,	)	Indictment Numbers:
	)	2011-GS-42-01414
	)	2011-GS-42-01414(A)
Defendant.	)	2011-GS-42-01415
	)	2012-GS-42-00349
)	

TO: THE HONORABLE ROGER L. COUCH, Circuit Court Judge
DERRICK B. BULSA, Assistant Solicitor for the Seventh Circuit Solicitor's Office

YOU WILL PLEASE TAKE NOTICE that the Defendant, by and through the undersigned attorney, hereby moves before the Court for a reconsideration of his sentence received on February 13, 2012 for the above-referenced indictments. The Defendant so moves based upon the following:

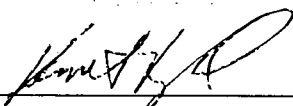
- (a) That, based on information and belief and following the Defendant's plea, the State reduced all of the charges against the co-Defendants that, as a result, has them serving twenty-five fewer years than the Defendant, thus making his negotiated sentence unjust and unfair;
- (b) That, based on information and belief, the Defendant, was unaware of separate plea negotiations with co-Defendants prior to agreeing to plea in these indictments and his knowledge of these plea negotiations would have materially affected his decision to plead in these indictments;
- (c) That, based on information and belief, the plea colloquy was insufficient under the law of this state to ensure that the Defendant knew exactly what rights he was giving up by pleading guilty;

FILED
CLERK OF COURT
SPARTANBURG COUNTY
2012 MAR - 7 AM 10:12
M. JOPE BLOCKLEY

RECEIVED
MAR 7 REC'D

- (d) That, based on information and belief, the Defendant did not knowingly and intelligently waive his right to a twenty-four hour waiting period between his guilty plea and his sentencing; and
- (e) That the Defendant was never questioned about his plea to one of his four charges and, based on information and belief, was not even present in the Courtroom for the discussion of that charge.

The Defendant so moves, this twenty-second day of February, 2012 and (as amended) this seventh day of March, 2012.



Kenneth P. Shabel
SC Bar #16136
Attorney for the Defendant
CAMPBELL & SHABEL, Attorneys at Law
104 North Daniel Morgan Avenue, Suite 201
Spartanburg, South Carolina 29306
864.583.0001
864.583.1199 (Fax)

FILED
CLERK OF COURT
SPARTANBURG, SOUTH CAROLINA
2012 MAR - 7 AM 10:12
M. HOPE BLACKLEY

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE CIRCUIT COURT OF THE
SEVENTH JUDICIAL CIRCUIT
2011-GS-42-1414, 1415
2012-GS-42-0349

State of South Carolina)
VS.)
Charvus Tarrel Nesbitt)

Transcript of Record

February 13, 2012
Spartanburg, South Carolina

B E F O R E:

The Honorable Roger Couch

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

Derrick Bulsa, Assistant Solicitor
Spartanburg, South Carolina

Attorney for the State

Fletcher N. Smith, Jr., Esquire
Greenville, South Carolina

Attorney for the Defendant

SHIRLEY G. BROOM
CIRCUIT COURT REPORTER
SIXTEENTH JUDICIAL CIRCUIT

I N D E X

WITNESS

DIRECT CROSS RE-DIRECT RE-CROSS

(No testimony taken)

E X H I B I T S

EXHIBIT NO.	DESCRIPTION	ID	EV
-------------	-------------	----	----

(No Exhibits)

1 Mr. Bulsa - May it please the Court, Your Honor.

2 The Court - Yes, sir, Mr. Bulsa.

3 Mr. Bulsa - This is State vs. Charvus Tarrel
4 Nesbitt. He has three indictments pending against him,
5 indicates by his signature wishes to plead guilty to those
6 charges, 2012-0349 true billed indictment for attempted
7 armed robbery, 2011-1414, that's a two-count indictment
8 for murder and possession of a firearm during the
9 commission of a violent crime, 2011-1415, an indictment
10 for attempted murder. He's represented by Fletcher Smith.
11 It is a negotiated sentence of forty years.

12 The Court - Please swear the defendant.

13 (Whereupon, Charvus Tarrel Nesbitt was duly
14 sworn by the Deputy Clerk)

15 The Court - If you would, Mr. Smith, move over
16 and let him get right over in front of the microphone.

17 (Mr. Smith complies)

18 The Court - Thank you very much.

19 Mr. Smith - Your Honor, this is an Alford plea.

20 The Court - On all charges?

21 Mr. Smith - Yes, sir.

22 The Court - All right. And did you agree with
23 the State concerning the negotiated nature of this
24 sentence?

25 Mr. Smith - Yes, sir, I have.

1 The Court - And did he state that negotiation
2 correctly? Mr. Bulsa.

3 Mr. Smith - He did, Your Honor.

4 The Court - All right. Sir, your name is
5 Charvarus Tarrel Nesbitt?

6 Mr. Nesbitt - No, sir, it's Charvus Tarrel
7 Nesbitt.

8 The Court - All right. And, Mr. Nesbitt, you're
9 in front of me today on three charges. I'm going to go
10 over the charges with you. When I finish, if you have any
11 questions I'll be more than happy to discuss those with
12 you. The first two cases I will talk about are 2011-GS-
13 42-1414 and 1415. Both of these are for -- One of them is
14 for murder, the other is for attempted murder. Now, both
15 of those cases have gone to the Grand Jury and a true bill
16 was issued in both cases. The more severe sentence in
17 this case is the sentence for murder. That carries a
18 sentence of thirty years to life. The attempted murder --
19 Mr. Bulsa, what is the maximum on that one?

20 Mr. Bulsa - Up to thirty years, Your Honor.

21 The Court - Up to thirty year. Do you
22 understand those two charges?

23 Mr. Nesbitt - Yes, sir.

24 The Court - Do you understand the potential
25 sentences in those cases?

1 Mr. Nesbitt - Yes, sir.

2 The Court - Now, Mr. Nesbitt, your attorney has
3 informed me that -- And the State has informed me as well
4 that there's a negotiated sentence in this case.

5 Mr. Nesbitt - Yes, sir.

6 The Court - That was forty years. And I will
7 tell you that while I was not a party to those
8 negotiations, I have the right to either accept them or
9 not accept them. What I will do is I will listen to your
10 plea and go over the circumstances, then I'll make a
11 decision as to whether or not I will accept the negotiated
12 sentence.

13 (Discussion being held between Mr. Smith and Mr.
14 Nesbitt.)

15 The Court - Pay attention to me, Mr. Nesbitt,
16 just a minute. I will inform you if I decide not to
17 accept the negotiations and at that time I would give you
18 an opportunity to withdraw your plea. Do you understand
19 how that works?

20 Mr. Nesbitt - Yes, sir.

21 The Court - Sir?

22 Mr. Nesbitt - Yes, sir.

23 The Court - Okay, is that how you understand
24 that we're going to proceed?

25 Mr. Nesbitt - Yes, sir.

1 The Court - All right. Now, Mr. Nesbitt, do you
2 suffer from any mental, physical, nervous conditions, any
3 conditions that would affect your ability to understand
4 what you're doing today or to make good decisions today?

5 Mr. Nesbitt - No, sir.

6 The Court - Now, you have to speak up because
7 this has to be on tape.

8 Mr. Nesbitt - No, sir.

9 The Court - Okay, thank you. Have you taken or
10 used any drugs or other substances that might have a
11 similar affect?

12 Mr. Nesbitt - No, sir.

13 The Court - So, Mr. Nesbitt, do you know what
14 you're doing?

15 Mr. Nesbitt - Yes, sir, I'm pleading not guilty
16 but to no content (sic).

17 The Court - Yes, sir, I understand that. Do you
18 understand the charges?

19 Mr. Nesbitt - Yes, sir.

20 The Court - And are you able to make good
21 decisions today?

22 Mr. Nesbitt - Yes, sir.

23 The Court - Now, you're here today with your
24 attorney, Mr. Smith. Are you satisfied with what he's
25 done so far?

1 Mr. Nesbitt - No, sir, but I'm just going to go
2 ahead and take the deal.

3 The Court - Well, is there something else you
4 feel that he ought to do for you before we go forward?

5 Mr. Nesbitt - No, uh -- No, sir.

6 The Court - Is there something else that you
7 feel that you need to consult with him about ---

8 Mr. Nesbitt - No, sir.

9 The Court - --- before we go forward?

10 Mr. Nesbitt - No, sir.

11 The Court - Well, you're indicating that you're
12 not satisfied with him. Are you not satisfied with ---

13 Mr. Nesbitt - Not with him, it's just the time,
14 not with him.

15 The Court - Okay. So you're satisfied with his
16 efforts.

17 Mr. Nesbitt - Yes, sir.

18 The Court - Okay. Now, Mr. Nesbitt, I will tell
19 you that in these cases, all three of these charges are
20 classified as violent and most serious offenses. ~~What~~
21 that means is that in the future if you were to be charged
22 with or found guilty of similarly classified crimes, such
23 as violent, serious or most serious, that your pleas in
24 these cases could be used in the future to make future
25 sentences more severe, could result in the future of a

1 sentence of life imprisonment without the possibility of
2 ever receiving a parole. Do you understand that that
3 would be a possibility if you were convicted of similar
4 offenses in the future?

5 Mr. Nesbitt - Yes, sir.

6 The Court - Now, Mr. Nesbitt, your attorney has
7 informed me that you are pleading in these cases a no
8 contest or an Alford plea.

9 Mr. Nesbitt - Yes, sir.

10 The Court - Is that how you're pleading to these
11 three charges?

12 Mr. Nesbitt - Yes, sir.

13 The Court - Now, that plea as a no contest plea
14 of course carries with it the same sentencing possibility
15 as a guilty plea. Do you understand that?

16 Mr. Nesbitt - Yes, sir.

17 The Court - Do you also understand that it will
18 also appear as a conviction on your record just like a
19 guilty plea would appear? Do you understand that as well?

20 Mr. Nesbitt - (No response)

21 The Court - Sir?

22 Mr. Nesbitt - Yes, sir.

23 The Court - Now, when someone tells me that
24 they're pleading under Alford or pleading no contest, what
25 that means to me is, if you'll listen to what I'm saying

1 and see if this agrees with your position, that means that
2 you and your attorney have reviewed the evidence that's in
3 the possession of the State as it relates to these
4 charges, and after reviewing that evidence you have come
5 to the conclusion that if that evidence were presented to
6 a jury during a trial, that it would more than likely
7 result in a conviction by a jury of those charges, and
8 therefore, while not admitting guilt, you are pleading no
9 contest as a result of your review of that evidence. Does
10 that correctly state your position in this matter?

11 Mr. Nesbitt - Yes, sir, he said if he took it to
12 trial would be charged with the hand of one is the hand of
13 all.

14 The Court - Well, yes, sir that's -- That is a
15 theory that exist in South Carolina. Your lawyer if he's
16 advised you of that fact has correctly advised you that
17 that is the law in this State. And You understand that
18 concept. Is that right, Mr. Nesbitt?

19 Mr. Nesbitt - Yes, sir.

20 The Court - All right. Now, counselor, I'm sure
21 that you've discussed this matter thoroughly with Mr.
22 Nesbitt. Is that correct?

23 Mr. Smith - I have, Your Honor.

24 The Court - Are you satisfied that he understood
25 the consultations you've had with him?

1 Mr. Smith - I am, Your Honor.

2 The Court - I would suspect that among the many
3 things you would have discussed with him during your
4 consultations would've been such things as the nature of
5 these charges, the potential penalties, any defenses that
6 he might've had to the charges or lack thereof, his rights
7 under the constitution as they relate to these charges, as
8 well as the fact that these are what are considered no
9 parole offenses and so his possibility of receiving a
10 parole on this will be very unlikely.

11 Mr. Smith - Yes, sir.

12 The Court - Have you discussed that with him?

13 Mr. Smith - I have, Your Honor.

14 The Court - And are you satisfied that Mr.
15 Nesbitt understood all those matters?

16 Mr. Smith - Yes, sir, he's very intelligent.

17 The Court - Now, he tells me that he has reached
18 a decision, that his decision is to offer a plea of no
19 contest to these charges. Is that your understanding of
20 his decision as well?

21 Mr. Smith - Yes, sir.

22 The Court - And do you agree with the decision
23 that he's made after reviewing the evidence?

24 Mr. Smith - I do, Your Honor.

25 The Court - Now, Mr. Nesbitt, my information in

1 this case is that you are twenty-three years of age. Is
2 that correct?

3 Mr. Nesbitt - Yes, sir.

4 The Court - How far did you go in your
5 education, sir?

6 Mr. Nesbitt - I was in college to be a dental
7 hygienist. I got a -- I went to high school and I
8 finished high school a year early.

9 The Court - Okay. And were you enrolled in any
10 school when you were arrested?

11 Mr. Nesbitt - Yes, sir.

12 The Court - Where were you enrolled?

13 Mr. Nesbitt - SCC, Spartanburg Community and I
14 worked for BMW.

15 The Court - Well, Mr. Nesbitt, are you married?

16 Mr. Nesbitt - I was engaged to be married.

17 The Court - And do you have any children?

18 Mr. Nesbitt - No, sir.

19 The Court - Now, Mr. Nesbitt, were you working
20 when you were arrested?

21 Mr. Nesbitt - Yes, sir, I was injured, but I was
22 like on workers' comp, but, yes, sir.

23 The Court - All right, and where did you have a
24 job? Where did you get injured?

25 Mr. Nesbitt - BMW. I was there for two years.

1 The Court - All right. Now, Mr. Nesbitt, has
2 anyone in any way threatened you or put pressure on you or
3 tried to intimidate you, in other words, done anything to
4 you to try to make you or force you offer (sic) the plea
5 that you offered?

6 Mr. Nesbitt - No, sir.

7 The Court - Have you offered this plea freely
8 and voluntarily?

9 (Discussion is held between Mr. Nesbitt and Mr.
10 Smith which was not reported.)

11 The Court - Sir?

12 Mr. Nesbitt - Excuse me.

13 The Court - I asked you if you've offered this
14 plea freely and voluntarily?

15 Mr. Nesbitt - I don't understand.

16 The Court - Well, is it -- Is it your decision
17 to --

18 Mr. Nesbitt - Oh, yes, sir.

19 The Court - --- offer this plea?

20 Mr. Nesbitt - Yes, sir.

21 The Court - Have you had time -- enough time to
22 think about this decision?

23 Mr. Nesbitt - I been thinking about it the last
24 two weeks, Your Honor.

25 The Court - Oh, I understand that. And so you

1 say you have had enough time?

2 Mr. Nesbitt - Yes, sir.

3 The Court - And -- Well, has anyone made any
4 promises, guarantees or assurances to you about anything
5 in connection with these pleas, other than the negotiated
6 sentence that's been worked out?

7 Mr. Nesbitt - Nothing but the negotiated.

8 The Court - All right, Mr. Nesbitt when you
9 offer a guilty plea, or excuse me, a no contest plea to
10 the Court, you are waiving or giving up most of your
11 constitutional rights as they relate to these charges.
12 It's my obligation to see to it that you do that knowingly
13 and intelligently and that you are -- have done it freely
14 and voluntarily. In order for me to establish that you've
15 done this knowingly and intelligently, I'm going to
16 explain to you your rights under the constitution as they
17 relate to these charges, and when I finish, I'll give you
18 a chance to ask any questions you'd like to ask. Do you
19 understand what I'm doing now?

20 Mr. Nesbitt - Yes, sir.

21 The Court - All right, sir. First of all, you
22 have a right to have a Grand Jury consider these
23 indictments, and that has already happened. A true bill
24 was issued in each case. You have a right to your
25 attorney and the services of your lawyer, and he's present

1 and available to you. Now, you have a right to a trial by
2 jury. At that trial, you'd be presumed to be innocent
3 until such time as the State proved your guilt beyond a
4 reasonable doubt. At the trial and under the
5 constitution, you'd have the right to do several things.
6 Now, Mr. Nesbitt, are you listening?

7 Mr. Nesbitt - Yes, sir.

8 The Court - You would have the right to have
9 subpoenas issued to witnesses to require that they attend
10 the trial. You would have the right to confront or
11 question anyone who might testify during the trial. You
12 would have the right at the trial to present any defense
13 that you have to the charges. You would be given the
14 opportunity to try to suppress any and all evidence the
15 State may have against you on constitutional grounds.
16 That includes any statements that you might have made
17 prior to the time of the trial. You at all times, Mr.
18 Nesbitt, have the right to remain silent. At the trial if
19 you chose to remain silent, the Judge conducting the trial
20 would be required to instruct the jury that your silence
21 could not be used against you. Now, Mr. Nesbitt, did you
22 understand the rights I just went over with you?

23 Mr. Nesbitt - Yes, sir.

24 The Court - Did you -- Do you have any questions
25 about them?

1 Mr. Nesbitt - No, sir.

2 The Court - Do you need any further explanation
3 about those rights?

4 Mr. Nesbitt - No, sir.

5 The Court - When you plead no contest, you give
6 up all of those rights except the right to have your
7 lawyer represent you until your case is completed. Do you
8 understand that you would be giving up those rights with
9 a no contest plea?

10 Mr. Nesbitt - Yes, sir.

11 The Court - And does the fact that you have to
12 give up those rights, does that cause you to want to
13 change your plea in any manner?

14 Mr. Nesbitt - No, sir.

15 The Court - Now, at this time I'm going to ask
16 the State to go over the facts that they're alleging in
17 your case. Mr. Nesbitt, I want you to listen to what he
18 has to say, because when he finishes, I'm going to ask you
19 some questions about those facts. Mr. Bulsa, at this time
20 I'd ask that you go over the facts with me.

21 Mr. Bulsa - Yes, sir, Your Honor. This incident
22 occurred on December the 7th of 2010 at approximately 5:45
23 in the evening. It was at a residence on Wrengate Drive.
24 That's a mobile home park in the Fairforest Community here
25 in Spartanburg. A lady by the name of Germicka (phonetic)

1 Rooker lived there with her two children. Her brother,
2 the victim in the murder case, Daniel Tremayne Landrum
3 lived there as well. On this occasion a phone call was
4 made to Mr. Landrum concerning the purchase of some
5 marijuana. Mr. Landrum sold marijuana actually from the
6 residence. A phone call was made by a man by the name of
7 Teddy Byers. Mr. Byers and Mr. Landrum had met working at
8 Great American Paper Company up in the Inman community.
9 They learned that each other dealt in marijuana. Mr.
10 Byers arranged a so-called drug-buy for some of his
11 friends or cousins to come by and make the buy. At about
12 5:45, Mr. Byers drives the car to the location. In the
13 car is Mr. Nesbitt who is actually his half brother, a
14 Hazel Stoudemire who is a young cousin, and a Johnathon
15 Petty who was a friend of theres. Mr. Nesbitt, Mr. Petty
16 and Mr. Stoudemire get out of the vehicle, walk a short
17 distance to where the trailer is located. Mr. Nesbitt,
18 Your Honor, owned two pistols. He had purchased some
19 pistols about a year earlier from the Inman Gun and Pawn.
20 They were legally registered to him. It's the State's
21 position that the evidence would show that Mr. Nesbitt had
22 one of the pistols which actually looked sort like a mini
23 machine gun, and the second pistol was in the possession
24 of Hazel Stoudemire. When the three men got to the
25 trailer, two of the three went inside, one being Mr.

1 Nesbitt and one being Hazel Stoudemire. They got inside
2 under the ruse that they were there to buy marijuana.
3 When -- It gets a little unclear because we've talked with
4 Hazel Stoudemire. He says they went in, he was actually
5 trying to make the buy. The plan was when the -- When the
6 victim pulled the money out -- or pulled the drugs out,
7 they were to take the drugs and whatever money he had with
8 the drugs. Mr. Stoudemire tells us when they began that
9 process, this defendant, Charvus Nesbitt began firing a
10 handgun he had brought. The State would've went to trial
11 on that premise that this was the actual gunman. He fired
12 multiple times. The physical evidence shows eight shell
13 casings recovered from the scene. It shows eight bullets
14 recovered from the scene. Three were actually from the
15 body of the victim, Daniel Tremayne Landrum. Your Honor,
16 they went to actually what's the back door of the trailer.
17 It opens into a small hallway. Pretty much directly in
18 front of the doorway is a laundry room. That is where the
19 transaction was taking place, in the laundry room and the
20 hallway. The back door had been closed once the two men
21 had got inside. There was another -- There was a lady
22 friend of Mr. Landrum's inside the laundry room. She was
23 not really paying attention. She said she had her phone
24 out, was messing with her phone. Ms. Rooker the main
25 resident of the house and her children and the friend of

1 theres was in the living area of the trailer. When the
2 shots began to be fired, Ms. Rooker went to the -- towards
3 the area to see what was going on. She got shot herself.
4 State's position is the man saw her coming towards the
5 area and fired at her. She actually got struck in the
6 neck and was fortunate she did not die. Mr. Stoudemire
7 who readily admits that he had one of the guns, claims he
8 never pulled his gun, panicked when Mr. Nesbitt began
9 firing, tried to get out the back door, but the back door
10 the way it closed, it was hard to get out, so he basically
11 left that area and went towards the back of the trailer
12 and dove out the master bedroom window, just dove right
13 through the glass, took the curtain with him. Mr.
14 Nesbitt, after he finished shooting, followed suit out the
15 same window. Mr. Stoudemire actually dropped the pistol
16 that he was carrying. He said he didn't realize it until
17 he got back to the car. The car was parked about one
18 street over, so they had to run back to the car. Mr.
19 Petty had been waiting outside the trailer, heard the
20 shots, took off to -- back to the car. They all met up
21 where Teddy Byers, the brother and Mr. Nesbitt was
22 waiting. They got in the car, drove off and began talking
23 about what had happened. That's when Mr. Stoudemire
24 realized he'd dropped his pistol. They began talking
25 about what they needed to do to cover that up, because

1 they knew the pistol would come back to Mr. Nesbitt. A
2 ruse was planned whereby he would report the pistol
3 stolen. They actually drove the vehicle to the Inman
4 community, left it on the side of the road and they
5 reported -- reported that he'd broken down and the pistol
6 had been stolen out of the glove box. The police working
7 with the individuals in the house along with the
8 information about the pistol, they knew they had a suspect
9 in Mr. Nesbitt, because it came back to him, began working
10 with line-ups, and they looked at the victim's phone and
11 learned that the number -- One of the last numbers that
12 had been called had come from a Teddy Byers, so the police
13 were looking at Teddy Byers and Charvus Nesbitt as the two
14 main perpetrators. Some of the line-ups, the
15 identifications from the actual persons in the trailer
16 were not that strong. The police picked up Mr. Byers,
17 began questioning him hard. He then essentially started
18 telling the police about setting up this deal, saying that
19 Mr. Nesbitt, his brother and Hazel Stoudemire his cousin
20 were the ones that went into the trailer. So the police
21 were focusing on that part of it. When Mr. Stoudemire
22 actually came to -- came to the police station, his family
23 brought him to the police station, he readily confessed to
24 his role in this. He, of course, denied being the
25 shooter, told pretty much the story I've told the Court.

1 We've met with Mr. Stoudemire and he was consistent with
2 us in his past statements and readily pointed the finger
3 at Charvus Nesbitt. We met with Johnathon Petty, the
4 gentleman who stood outside. He didn't give a statement
5 initially. He actually fled to Florida and was brought
6 back and questioned by us. He says it was Charvus Nesbitt
7 that fired the -- fired the weapon. Teddy Byers decided
8 to cooperate, initially not wanting to admit he set up a
9 drug deal that was supposed to be armed robbery. Finally
10 admitted that the shooter was his brother. So we've got
11 the three co-defendants all pointing the finger at the
12 defendant. There was a lady friend of Mr. Petty's who was
13 at the house where these -- where the men had gone to --
14 was actually the defendant's brother's house, she came
15 over and heard the defendants talking, heard Mr. Nesbitt
16 say he didn't mean to shoot the boy, basically heard an
17 admission by him that he had fired the gun. The police in
18 speaking to Mr. Nesbitt, he first denied it to the police.
19 They served the warrant on him, put him in the jail, and
20 then they learned that he wanted to speak to them. So
21 they went over to talk to him and he said I can take you
22 to the gun, wouldn't really admit that he fired it, but
23 admitted that the gun went off and actually went with the
24 police to try to find the gun that had been thrown out.
25 So all the evidence points to this defendant as being the

1 shooter. And that is how I would've proceeded at trial.
2 Those are the facts of the case. I'll have some more to
3 speak up to family in a minute.

4 The Court - Thank you. Now, Mr. Nesbitt, did
5 you hear what the Solicitor just went over with me?

6 Mr. Nesbitt - Yes, sir.

7 The Court - Is that the information that you and
8 your lawyer have reviewed in this case?

9 Mr. Nesbitt - Yes, sir.

10 The Court - Based on your review of that
11 evidence, it appears that you have made a decision to
12 plead no contest. Is that correct?

13 Mr. Nesbitt - Yes, sir.

14 The Court - So that again tells me that after a
15 review of that evidence, it's your belief that if that
16 evidence were presented to a jury during a trial, that it
17 would more than likely result in a conviction in this
18 matter, and that has led you to the decision to plead no
19 contest given the negotiated sentence. Have I corrected
20 stated your position?

21 Mr. Nesbitt - Sir?

22 The Court - Now, have you told me the truth
23 today, Mr. Nesbitt?

24 Mr. Nesbitt - Yes, sir.

25 The Court - Did anyone tell you how to respond

1 to my questions?

2 Mr. Nesbitt - No, sir.

3 The Court - So that means the responses I have
4 received to my questions were your own. Is that right?

5 Mr. Nesbitt - Yes, sir.

6 The Court - Is there any part of what you and I
7 have discussed that you'd like to reconsider or go back
8 over at this time?

9 Mr. Nesbitt - I just want to say no contents
10 (sic) to the facts that he's present with. No, sir.
11 That's it.

12 The Court - Well, you've already pled no contest
13 ---

14 Mr. Nesbitt - Okay.

15 The Court - --- and I'm in the process of being
16 sure that that's how you wish you plead. And is that how
17 you wish to plead?

18 Mr. Nesbitt - Yes, sir.

19 The Court - All right. Then it's my finding
20 that the plea has been freely and voluntarily given, the
21 defendant is aware of the charges, he's aware of the
22 potential penalties, and I'm not sure I went over with you
23 the armed robbery penalty, but it's a minimum of ten years
24 up to thirty years. Do you understand that, sir?

25 Mr. Nesbitt - Yes, sir.

1 Mr. Bulsa - And, just for the record, Your
2 Honor, that's attempted armed robbery, which ---

3 The Court - Oh, I'm sorry, it's attempted ---

4 Mr. Bulsa - --- and would be up to twenty years.

5 The Court - Up to twenty years. I'm sorry. All
6 right, so do you understand that Mr. Nesbitt?

7 Mr. Nesbitt - Yes, sir.

8 The Court - All right, now, it's my finding that
9 he's had the services of an attorney, that while he is not
10 necessarily happy with where he finds himself, he is
11 pleased with his attorney's efforts and what his attorney
12 has done, and it's my finding that the plea should be
13 accepted as freely and voluntarily given. So at this
14 point in time I'll allow Mr. Smith to discuss this matter
15 with the Court.

16 Mr. Smith - Thank you, Your Honor. May it
17 please the Court.

18 The Court - Yes, sir.

19 Mr. Smith - Mr. Nesbitt, as he's indicated, is
20 twenty-three years old. He has his mom here, his fiance
21 and other extended family members. His grandmother is
22 here and his grand-daddy's here and I'll ask them to stand
23 up right now.

24 The Court - If you would, please, stand, family
25 members for Mr. Nesbitt. Stand, please.

1 (Family members comply)

2 Mr. Smith - Thank you, Your Honor.

3 The Court - Okay. Thank you very much. You can
4 be seated.

5 Mr. Smith - Your Honor, this is a tragic
6 situation, because it's three members of family who was
7 involved in this situation. If we had gone to trial, Your
8 Honor, we believe that one of the witnesses in the house
9 would've pointed out that the other fellow named Hazel
10 Stoudemire was actually the shooter in the case, but then
11 the forensics was all confused, because the gun that was
12 not found was the gun that was actually had the ballistics
13 in tune with it and the gun that was actually dropped was
14 not fired, so looking at all the facts and circumstances
15 from that standpoint, Mr. -- I recommended to my client
16 here that he plead no contest to the offenses that are
17 charged in this case. And I did go over with him that the
18 hand of one is the hand of all, because his brother Teddy
19 Byers was on trial for the same offense today as well, and
20 whatever testimony he would've given -- or convictions --
21 They would've been fed out of the same spoon. That's what
22 I told him.

23 The Court - I understand.

24 Mr. Smith - So now he is -- He's a very educated
25 young man. He made some bad decisions in life. First of

1 all he made bad decisions in trusting his brother, because
2 here he's been a law-abiding citizen and he got involved
3 with his half brother who -- who set up this drug deal,
4 this cockamamie scheme to go rob somebody, and Mr. Nesbitt
5 got caught up with it with the little cousin who was a
6 teenager and according to Mr. Nesbitt, he was going to try
7 to stop it, but it didn't stop and it got out of hand and
8 somebody ended up losing their life, so he's sorry about
9 that family member over there that can't walk home and
10 can't be a part of their family anymore, and nobody wants
11 to lose a family member, so he understands that and he's
12 very compassionate toward the lady who was shot as well,
13 and he's sorry that that situation happened, but -- And
14 he's told me he -- He's very remorseful. So, Your Honor,
15 was ask that if the Court is so inclined to follow the
16 recommendation or the negotiations of the State and Mr.
17 Nesbitt and give him that sentence, Your Honor. I'm sorry
18 that we have another young man who is in a tragic -- two
19 young men, one that's passed away and this one right here
20 who's losing part of his life as a result of this crime.

21 The Court - Mr. Nesbitt, your opportunity to
22 speak to the Court. Anything you want to tell me?

23 Mr. Nesbitt - No, sir.

24 The Court - All right, Mr. Bulsa, prior record
25 for this individual?

1 Mr. Bulsa - Your Honor, he just has a
2 trespassing from March of 2010.

3 The Court - All right.

4 Mr. Bulsa - If I may put one other fact on the
5 record, I ---

6 The Court - Yes, sir.

7 Mr. Bulsa - Mr. -- What Mr. Smith had eluded to
8 it -- I meant to state it in my recitation. There were
9 forensics done on the shell casings as well as the rounds
10 recovered from the scene and the body. Eight bullets were
11 recovered -- Eight fired bullets were recovered. They
12 were determined to be all fired by the same weapon. Eight
13 shell casings were found. Seven of the eight were fired
14 by the same weapon. The other one was inconclusive. So -
15 - And the pistol found at the scene that was dropped did
16 not fire any of those. So we're convinced that the man
17 who fled the residence with the gun was the shooter and
18 that was the gun that was not recovered.

19 The Court - All right.

20 Mr. Bulsa - I don't know if any family members
21 want to speak.

22 The Court - Any of the victim's family wish to
23 be heard at this time, I'll be glad to hear from you.
24 Anyone wish to speak?

25 (No response)

1 Mr. Bulsa - For the record, we did discuss this
2 with the family in detail and they are in agreement with
3 the negotiations.

4 The Court - Thank you. Is there a specific time
5 credit that he's claiming?

6 Mr. Smith - Yes, sir, Your Honor. I think he's
7 been in the county jail for over a year I think.

8 The Court - Do you know what the date of his
9 incarceration was, date of arrest?

10 Mr. Bulsa - February the -- Excuse me, December
11 the 10th, ---

12 The Court - Of ---

13 Mr. Bulsa - --- 2010.

14 The Court - Okay. Mr. Nesbitt, it's the Order
15 of this Court on the attempted murder that you be confined
16 to the State Department of Corrections for a period of
17 thirty years. On the attempted -- On the armed robbery it
18 is twenty years and on the murder forty years, so I've
19 accepted the negotiated sentence. I've run those
20 concurrently, given credit for time since December 10th of
21 2010. Good luck to you, sir.

22 Mr. Smith - Thank you, Your Honor.

23 Mr. Bulsa - Thank you, Your Honor.

24 (Mr. Nesbitt exits the courtroom)

25 Mr. Smith - Your Honor, may I be excused now.

1 Wait one second.

2 Mr. Bulsa - There's a second count, pistol
3 count.

4 The Court - Beg your pardon?

5 Mr. Bulsa - The pistol count.

6 The Court - I didn't see that one in there.

7 Deputy Clerk - There's another sentencing sheet
8 under that one.

9 The Court - Oh, I see it.

10 Mr. Bulsa - That's up to five years, Your Honor.

11 The Court - You want him to come back in to get
12 that? I'll run it concurrent.

13 Mr. Smith - Yes, sir. Thank you.

14 The Court - It won't affect the sentence.

15 Mr. Smith - Thank you, Your Honor.

16 The Court - All right, thank you very much.

17 Mr. Bulsa - Thank you, Your Honor.

18 The Court - It is five years, run concurrent.

19 (End of Transcript)

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Certificate

I, Shirley G. Broom, the undersigned Court Reporter, hereby certify that the foregoing 30 pages constitute a true record of proceedings taken in the case of State of South Carolina vs. Charvus Tarrel Nesbitt, as taken by me at the time and place stated.

I do further certify that the persons were present as stated, that I am not of Counsel for, related to, or in the employee of any of the parties to this action and that I have no interest whatsoever in the outcome of this case.

This the 29th day of Feb., 2012.


Shirley G. Broom
Circuit Court Reporter
Sixteenth Judicial Circuit

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

3
4 STATE OF SOUTH CAROLINA,) TRANSCRIPT
5 PLAINTIFF,) OF
6 VS.) RECORD
7 CHARVUS NESBITT,) 2011-GS-42-1414 - 1415
8 DEFENDANT.)
9

10 April 26th, 2012
11 Spartanburg, South Carolina

12
13 B E F O R E:
14 THE HONORABLE ROGER L. COUCH, Judge, and a jury.

15
16 A P P E A R A N C E S :
17 DERRICK BULSA
18 DEPUTY SOLICITOR
19 Attorney for the State
20
21 KENNETH P. SHABEL
22 ESQ.
23 Attorney for the Defendant

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

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I N D E X

(There were no exhibits marked or testimony taken during this hearing.)

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P R O C E E D I N G S

THE COURT: All right. Mr. Shabel, I'll hear from you.

MR. SHABEL: May it please the Court?

THE COURT: Yes, sir, it's your motion I believe for me to reconsider a sentence.

MR. SHABEL: Yes, Your Honor.

I'm here with the unenviable task of asking you to reconsider not only the sentence, but a negotiated sentence.

THE COURT: Uh-huh. (Affirmative).

MR. SHABEL: And I recognize and my client recognizes this is a situation of be careful of what you wish for cause you just might get it, but if I could have a moment---

THE COURT: Sure.

MR. SHABEL: ---to explain my position.

THE COURT: All right.

MR. SHABEL: On February 13th of 2012 Mr. Nesbitt was before the Court on four different charges. All of them had been indicted. All of them presented to the Grand Jury.

Indictment number one was 2012-349 for attempted armed robbery. Indictment number two was a two prong indictment, 2011-1414. Prong one was for murder. Prong two was for possession of a firearm during the commission of a violent crime, and Indictment Number three, 2011-1415, was for attempted murder. He was represented at that trial by

1 Mr. Fletcher Smith.

2 They came before Your Honor on that date,
3 February 13th of 2012, and as these indicated in the
4 transcript, which I presented to the Court, there was a
5 negotiated sentence of forty years as to all four charges,
6 and, as you carefully explained, if you decided, at the
7 conclusion of the presentation of the facts that my client,
8 that you were not going to accept the negotiated sentence,
9 my client does, would have a Constitutional right to
10 withdraw his plea because, as the Court is well aware,
11 negotiated sentences are treated far differently than
12 recommendations by the State.

13 As the transcript goes on, to reflect the Court's
14 memory, on Page 5 of the transcript, the Court goes over two
15 of the indictments. The first prong of the 2011-1414
16 indictment, the murder, and the 2011-1415 indictment for
17 attempted murder, the Court then goes over the Boyken
18 questions, the questions making sure that he understands he
19 has a right to trial on all issues, et cetera. The Court
20 hears from the State, and at the conclusion of the State's
21 presentation of what the facts are, I believe it's on Page
22 23 of the record, my client is asked about the 2012
23 indictment for attempted armed robbery and is advised of the
24 years and that sort of thing. The Court accepts the plea
25 and sentences him in accordance with the negotiated

1 sentence.

2 As evidenced by Page 28 of the transcript, Mr. Nesbitt
3 proceeds to enter the courtroom. Then on Page 29 of the
4 transcript it shows and it references the possession of a
5 firearm in the commission of a violent crime. My client has
6 left the courtroom, and is not brought back in to discuss
7 the ramifications of that particular charge. He's not
8 advised by the Court that it can carry up to a certain
9 number of years, but the Court does, in fact, sentence him
10 to five years indicating it doesn't affect the sentence.

11 My argument, Your Honor, is this. Under Boyken, the
12 possession of a firearm charge, the second prong of the
13 2011-1414 indictment, is an invalid plea. He has not
14 knowingly, willfully, and freely given up his Constitutional
15 rights on that charge. Therefore, that plea should be
16 withdrawn.

17 But more importantly, this is a negotiated sentence.
18 It's a package deal, and if one charge, one plea is invalid,
19 my argument is it invalidates the entire plea.

20 I have two cases that I would like to submit to the
21 Court for its consideration.

22 If I may approach?

23 THE COURT: You may.

24 MR. SHABEL: And I will acknowledge that they are not
25 directly on point, but I do take the position that they are

1 in support of my argument today.

2 The first case, Your Honor, is State versus Thrift, 440
3 S.E.2d Reporter 341, and I'm quoting from Page 7 on my
4 hand-out about half-way down.

5 THE COURT: which one?

6 MR. SHABEL: State v. Thrift.

7 THE COURT: I'm there.

8 MR. SHABEL: Page 7, about a third of the way down,
9 where it says Page 349, which I think is the reporter page
10 number, today we underline the requirement of disclosure to
11 the Court of all aspects of the plea agreement, and we
12 specifically add the requirement that such disclosure must
13 be made on the record, and I also have presented to the
14 Court Reid v. Becka, 511 S.E.2d Reporter 396, which is a
15 Court of Appeals case from 1999, and I'm referring
16 specifically, for purposes of this argument, to Page 6,
17 two-thirds of the way down.

18 A plea agreement is only an offer until the defendant
19 enters a Court approved guilty plea. Defendant accepts the
20 offer by pleading guilty. Thus, until formal acceptance of
21 a plea by the Court has occurred, the plea binds no one, not
22 the defendant, the State, or a Court. Citations omitted for
23 purposes of this argument.

24 Your Honor, I would submit that because the plea for
25 the possession of the firearm, the second prong of that

1 indictment is invalid, and given the nature that this is a
2 negotiated sentence and negotiated package deal, it negates
3 the entire plea agreement, which gives my client the right
4 to plead guilty or for a trial. We, therefore, respectfully
5 request the Court vacate the plea, and allow this case to go
6 forward.

7 THE COURT: Is he aware that the potential sentence
8 could be life?

9 MR. SHABEL: Your Honor, my client is very aware. I've
10 explained to him, on several occasions, both in writing and
11 in face-to-face, that he could be facing life in prison and
12 I'll be, in all candor, Your Honor, he's indicated to me
13 he's already got forty.

14 THE COURT: Forty's not life.

15 MR. SHABEL: Forty is not life, but it's close to it.

16 THE COURT: Mr. Bulsa.

17 SOLICITOR BULSA: And forty is what he asked for, Your
18 Honor. There were extensive plea negotiations between the
19 State and his attorney. They were clearly regarding the
20 murder charge because that was the greatest offense.

21 Your Honor, he came to this Court and accepted that
22 forty years and now he's trying to back, back out of it, and
23 Your Honor, the State's argument is that the plea is valid.
24 The five year pistol charge was incorporated in the murder
25 indictment.

1 Your Honor, he was clearly aware of that charge, and
2 aware of what he was pleading to. The sentence is merely
3 five years. It does not have any impact on the sentence of
4 the Court. It's -- the State would ask that the Court deny
5 this motion and let this sentence be valid.

6 Your Honor, the family is expected closure at least
7 from this stage of the proceedings. We understood that
8 there was probably gonna be some sort of appeal based on the
9 defendant's nature and the seriousness of the charge.

10 But, Your Honor, the other codefendants have also pled
11 guilty and they deserve some closure as well, and by
12 reopening this case they're subject to being called back to
13 Court as well for possible testimony.

14 The -- I was upset, I don't mind telling the Court,
15 when I got this motion. I'm a little bit perplexed as to
16 why we're even here. This seems like a ludicrous argument
17 and it's merely an attempt by Mr. Nesbitt to undo what he
18 wished he hadn't done in the first place.

19 Your Honor, he clearly understood the ramifications.
20 He could of asked for a jury trial. He could of pled
21 straight up. He could of asked for a recommendation of the
22 State. He chose to request forty years, and we agreed to go
23 along with that. We ask the Court to deny this motion and
24 let that forty years stand.

25 THE COURT: Let me see if I understand your position,

1 Mr. Shabel.

2 MR. SHABEL: Yes, Your Honor.

3 THE COURT: what does he say the deal was?

4 MR. SHABEL: I'm not denying, Your Honor, that the deal
5 was forty years on all charges.

6 THE COURT: On all charges?

7 MR. SHABEL: On all four. But the question now we
8 have---

9 THE COURT: And the sentence as though, on the gun
10 charge, did not affect the forty years.

11 MR. SHABEL: It did not. It was part of the forty
12 years. We can sit here and debate ethically, morally,
13 logistically whether that meant he would of gotten 35 on
14 everything else and five on a gun, whether he'd of gotten 39
15 on everything else, and one on the gun. We can sit here for
16 hours. Nobody knows the answer to that, but the argument
17 was forty years, four charges.

18 SOLICITOR BULSA: Forty years for the murder charge,
19 Your Honor.

20 THE COURT: I couldn't sentence him to forty on the gun
21 charge.

22 MR. SHABEL: No, you couldn't. You did a package deal
23 on all four, and I -- and, yes, the murder charge is the
24 big---

25 THE COURT: That's the only one that carries that much.

1 MR. SHABEL: It's the only one that carries that. It's
2 the biggest one of the bunch, but it doesn't negate the fact
3 that there were three other charges as a part of the
4 negotiated sentence.

5 THE COURT: And he understood that?

6 MR. SHABEL: And he understood that.

7 THE COURT: But he's not denying that he understood
8 that?

9 MR. SHABEL: He's not denying that he understood that
10 there was, that that was the negotiation and that was the
11 offer.

12 THE COURT: Maybe I don't understand your position
13 then, and it was addressed in the, in the transcript, the
14 fact that he was not present: was offered -- he was -- the
15 attorney was offered a chance to bring him into court.

16 MR. SHABEL: And, Your Honor, I'm gonna read again
17 directly from Page 29 of the transcript. The Court says, at
18 the beginning of Line 1, you want him to come back to get
19 into that. I'll run it concurrent.

20 Yes, sir, thank you, was Mr. Smith's response.

21 There's no record to indicate that Mr. Smith did or did
22 not waive his presence for that.

23 THE COURT: Well, he was offered an opportunity to come
24 back before the Court.

25 Isn't that right, Mr. Shabel?

1 Am I missing something?

2 MR. SHABEL: He was, he was offered the opportunity to
3 come back into court. Clear from Line 11 of the transcript.
4 What's not clear from the, from the transcript is whether or
5 not that offer was accepted or rejected.

6 THE COURT: Well, I would suspect if he didn't come
7 back he didn't decide to come back.

8 MR. SHABEL: But if the record doesn't show, how is
9 that fair to my client's Constitutional rights?

10 THE COURT: There's no record that he came back to the
11 court and asked to be heard, and the Court denied him that
12 right either.

13 MR. SHABEL: That is correct, Your Honor.

14 THE COURT: Okay. Anything further?

15 MR. SHABEL: Not in this hearing, Your Honor. Thank
16 you.

17 THE COURT: Mr. Bulsa.

18 SOLICITOR BULSA: No, sir.

19 THE COURT: I'll take it under advisement. Thank you.

20 MR. SHABEL: Thank you, Your Honor.

21

22 * * *END OF REQUESTED TRANSCRIPT OF RECORD* * *

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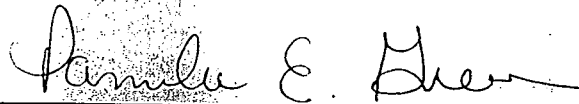
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C E R T I F I C A T E

I, Pamela E. Green, Official Court Reporter for the Seventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Spartanburg County, South Carolina, on the 26th day of April, 2012.

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

July 23rd, 2012



PAMELA E. GREEN, Court Reporter

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
General Sessions Court

The Honorable Roger L. Couch, Circuit Court Judge

Case Nos. 2011-GS-42-1414, 2011-GS-42-1415, and 2012-GS-42-0349

The State,

Respondent,

vs.

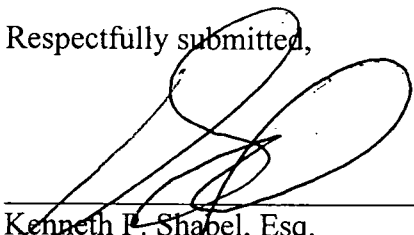
Charvus Tarrell Nesbitt,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted,



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April 25, 2012