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S.C. Supreme Court

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Richland County

James R. Barber, III, Circuit Court Judge

ALVIN S. SAMUELS, II,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-000739

APPENDIX

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) COURT OF GENERAL SESSIONS
2011-GS-40-01806-09
2012-GS-40-03497-98

State of South Carolina,)
Plaintiff,)
vs.) TRANSCRIPT OF RECORD
Alvin S. Samuels,)
Defendant.)

July 12, 2012
Columbia, South Carolina

B E F O R E:

THE HONORABLE DEANDREA G. BENJAMIN, JUDGE.

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

RICHARD C.R. CATHCART, ASSISTANT SOLICITOR
Attorney for the Plaintiff

JAMES SHADD, III, ESQ.
Attorney for the Defendant

DEBORAH M. McCURDY, RPR
Official Court Reporter

INDEX OF WITNESSES

(WHEREUPON, no witnesses were called
during these proceedings.)

EXHIBITS

(WHEREUPON, no exhibits were introduced
during these proceedings.)

1 JULY 12, 2012

2 MR. CATHCART: Alvin Samuels.

3 THE CLERK: Do you swear or affirm to tell the
4 truth, the whole truth, and nothing but the truth,
5 so help you God?

6 THE DEFENDANT: (Nods affirmatively.)

7 THE COURT: Yes, sir?

8 MR. CATHCART: May it please the Court?
9 Standing before you is Alvin Stanley Samuels. He
10 is here pleading guilty to two counts of armed
11 robbery, kidnapping, possession of a weapon during
12 a violent crime, pointing and presenting a firearm,
13 and attempted murder, and assault and battery
14 first.

15 He is represented by Mr. Shadd, of the private
16 bar.

17 This is a case that we were preparing for next
18 week, but pursuant to negotiation with Mr. Shadd,
19 we have agreed to negotiate a cap of 25 years on
20 this case. He was looking at a total of all
21 together 145 years.

22 THE COURT: A total of seven, is that correct?

23 MR. CATHCART: Yes, Your Honor.

24 THE COURT: All right. And, Mr. Shadd, is
25 that your understanding of the negotiation?

1 MR. SHADD: Yes, Your Honor, a cap of 25
2 years.

3 THE COURT: All right. And have you explained
4 to your client the charges contained in the
5 indictment, the possible punishment, and his
6 constitutional rights?

7 MR. SHADD: I have, Your Honor.

8 THE COURT: And how does he wish to plead?

9 MR. SHADD: Guilty.

10 THE COURT: And do you agree with his decision
11 to plead guilty?

12 MR. SHADD: I do, Your Honor.

13 THE COURT: All right. And you are Alvin
14 Stanley Samuels?

15 THE DEFENDANT: The second.

16 THE COURT: The second. And how old are you,
17 sir?

18 THE DEFENDANT: Twenty-one.

19 THE COURT: And how far did you go in school?

20 THE DEFENDANT: Graduated from high school.

21 THE COURT: And, sir, are you on probation or
22 parole?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: All right. And who do you -- and
25 are you married?

1 THE DEFENDANT: I will say yes, but not
2 legally, but I feel that the person I'm with right
3 now I want to be with for the rest of my life.

4 THE COURT: All right. And do you have any
5 children?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And how old are your kids?

8 THE DEFENDANT: How old are they? I have one,
9 I have a daughter, but I claim all three because
10 with the woman I want to be with they come along
11 with those. Two more.

12 THE COURT: All right. And what type of work
13 do you do?

14 THE DEFENDANT: Currently, before this
15 happened, I had -- I had just finished school. It
16 was the summer of 2010. I was enrolled in
17 lifeguard, lifeguard for the City of Columbia
18 through Red Cross. I was waiting to get a job with
19 them, but I was waiting for the City to recommend
20 me to the place on Harden Street, which is Drew
21 Wellness Center, and that never came back before
22 this situation occurred.

23 THE COURT: And, sir, have you ever been
24 treated for the abuse of alcohol, drugs, or for
25 mental illness?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: Which one?

3 THE DEFENDANT: Drugs and alcohol.

4 THE COURT: All right. And when was that?

5 THE DEFENDANT: This is like '04, '05.

6 THE COURT: All right. And did you complete
7 that program?

8 THE DEFENDANT: Yes. Yes, ma'am.

9 THE COURT: And within the last 24 hours have
10 you taken any medication, drugs, or alcohol?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: All right. And do you know of
13 any -- and are you aware of any physical,
14 emotional, or nervous problem that might keep you
15 from understanding what you are doing today?

16 THE DEFENDANT: No, ma'am.

17 THE COURT: All right. And, once again, sir,
18 you are pleading to two counts of armed robbery,
19 kidnapping, one count of attempted murder, assault
20 and battery first degree, assault and battery of a
21 high and aggravated nature, possession of a weapon
22 during a violent crime, and pointing and presenting
23 a firearm; is that correct?

24 THE DEFENDANT: Assault and battery first
25 degree?

1 MR. CATHCART: It is assault and battery
2 first. You said assault and battery of a high and
3 aggravated nature as well?

4 MR. SHADD: No, it is just first degree, Your
5 Honor.

6 THE COURT: Let me make sure I didn't write
7 that down wrong. No, I have assault and battery of
8 a high and aggravated nature.

9 MR. CATHCART: May I approach? I'm sorry.
10 (WHEREUPON, a bench conference was
11 held.)

12 THE COURT: Assault and battery first. I said
13 two armed robberies, kidnapping, attempted murder,
14 assault and battery first, possession of a weapon
15 during a violent crime, and pointing and
16 presenting, which would be seven total?

17 MR. CATHCART: There shouldn't be two assault
18 and battery firsts. There should not be. There
19 should be attempted murder and -- so we just
20 changed this ABHAN to assault and battery first.

21 THE COURT: Okay. I think I wrote that down.

22 MR. CATHCART: Okay. Let me have that back.

23 THE COURT: So there is one assault and
24 battery first, no ABHAN?

25 MR. CATHCART: Correct.

1 THE COURT: Total of seven?

2 MR. CATHCART: Yes.

3 MR. SHADD: Your Honor, it is our collective
4 understanding that that assault charge carries zero
5 to ten years?

6 MR. CATHCART: That's correct.

7 THE COURT: I'll go through that in just a
8 second. I'll go back through it with him so we can
9 make sure he's clear on what --

10 MR. SHADD: Absolutely.

11 THE COURT: All right, so, sir, there is two
12 armed robberies, one kidnapping, an attempted
13 murder, an assault and battery first, and
14 possession of weapon during a violent crime, and
15 pointing and presenting a firearm. Is that the
16 seven that you are pleading guilty to?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right. Listen closely to the
19 Solicitor as he states the facts.

20 MR. CATHCART: May it please the Court, Your
21 Honor? This incident occurred back on July 22nd of
22 2010 on 2500 Booker Street, which was a business
23 called Hip Hop Wear.

24 At the Hip Hop Wear was Daniel Kual, who was
25 a -- and Carletta Williams and Nathaniel Irving.

1 Nathaniel Irving was working there, the other two
2 were just kind of hanging out.

3 At that point the Defendant came in the door
4 with two handguns. He started an armed robbery of
5 both Mr. Irving and Mr. Kual. Ms. Williams, who
6 was sitting right beside the door, attempted to
7 leave. He pistol-whipped her, made her sit back
8 down. He then proceeded to rob Mr. Irving of his
9 money and the money of the store. He then
10 proceeded to rob Mr. Kual and the money of the
11 store.

12 The owner of the shop walked in, who is a
13 Mr. Ogoubi, I guess, O-G-O-U-B-I. I'm not exactly
14 sure how to pronounce that. He walked in the
15 store, at which time Mr. Samuels pointed a pistol
16 at him and told him to get back out, this didn't
17 have anything to do with you.

18 When he did that, took his attention away from
19 everybody in the store, Ms. Williams attempted to
20 stand up again, pistol-whipped her one more time.
21 That would be the reason for the kidnapping and the
22 assault and battery first.

23 As he pistol-whipped her a second time,
24 Mr. Kual ran to the back of the store, went into a
25 restroom and locked the door.

1 Mr. Samuels then attempted to force the door
2 open, tried to beat it open, was unable to do so.
3 So he took one of those pistols, stuck it up to the
4 door and shot into it, striking Mr. Kual in the
5 face.

6 At that time, while he was shooting, everyone
7 else ran from the store. He then fled with the
8 money he received. And Mr. Kual made it out to the
9 parking lot where he finally collapsed and help
10 arrived.

11 The Defendant was subsequently picked up about
12 a month later on August 27th of 2010.

13 What is odd about this case, Your Honor, the
14 Defendant lived about half a block away from the
15 store. He has known Mr. Irving for ten years. He
16 knew the owner of the store for at least six years.
17 Everybody knew him at least by sight. Ms. Williams
18 has seen him in the store many times. Mr. Kual has
19 seen him there too. So ID was never an issue in
20 this case.

21 Mr. Kual is here. Ms. Williams is here as
22 well. And I believe they would like to address the
23 Court at the appropriate time.

24 The Defendant's prior record -- Your Honor, if
25 I may approach real quick with Defense counsel?

1 THE COURT: Yes, sir.

2 (WHEREUPON, a bench conference was
3 held.)

4 MR. CATHCART: He has two armed robberies,
5 Your Honor, one as to Mr. Irving, one as to
6 Mr. Kual. The kidnapping is, as I stated, Ms.
7 Williams, possession of a weapon during a violent
8 crime. He actually had two. The attempted murder
9 is shooting Mr. Kual in the face. And the pointing
10 and presenting a firearm is when he stuck the gun
11 in Mr. Ogoubi's face during the robbery.

12 THE COURT: And the possession of a weapon
13 carries?

14 MR. CATHCART: During the commission of a
15 violent crime, carries up to five years.

16 THE COURT: And the pointing and presenting?

17 MR. CATHCART: Up to ten years.

18 The grand total if convicted for all charges
19 if done consecutively would be 145 years.

20 THE COURT: All right. All right,
21 Mr. Samuels, do you agree with the facts as stated
22 by the Solicitor?

23 THE DEFENDANT: Yes, ma'am.

24 THE COURT: And what he has described as what
25 you did, is that what you are pleading guilty to?

1 Is that what you did, sir?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: I need you to speak up for me so
4 the court reporter can take down what you are
5 saying.

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And, sir, on the armed robbery,
8 sir, you understand that they carry from ten to 30
9 years in prison?

10 THE DEFENDANT: Yes, ma'am.

11 THE COURT: Both of them. The kidnapping
12 carries up to 30. The attempted murder carries up
13 to 30. The assault and battery first carries up to
14 ten years. The possession of a weapon during a
15 violent crime carries up to five. The pointing and
16 presenting carries up to ten years.

17 Sir, I could run those consecutive and you
18 would be looking at 145 years in prison. Do you
19 understand that, sir?

20 THE DEFENDANT: I was told that it was going
21 to be a negotiated cap.

22 THE COURT: It is negotiated, sir, but I have
23 to -- I have to decide if I will accept the
24 negotiations. If I don't, I'll let your attorney
25 know, okay?

1 THE DEFENDANT: Yes, ma'am.

2 THE COURT: But I'm going over this with you
3 so you understand how much time everything carries,
4 okay?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: All right. So you understand if I
7 decided not to accept the negotiation, after I told
8 your attorney, if you decided you still wanted to
9 go forward, I could sentence you up to 145 years in
10 prison based on running all of those consecutive.
11 That is the total amount of time that you are
12 looking at.

13 THE DEFENDANT: That means you -- even though
14 they said I was supposed to receive a cap, that
15 means I could still receive more than that today?

16 THE COURT: If I decide to give you more than
17 25 years, I will let your lawyer know and then give
18 him an opportunity to let you withdraw your plea.
19 Do you understand that, sir?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: All right. I'm just going -- I
22 have to go over everything with you, so, yes, sir,
23 to make sure you understand everything that you are
24 doing.

25 THE DEFENDANT: I also was told that with

1 pleading to this, that kidnapping, you got to
2 register for a sex offender. And I was told that
3 I'm not -- there was no sex offender act.

4 THE COURT: And I have to make that
5 determination. I don't know if that is part of the
6 negotiation.

7 MR. CATHCART: Your Honor, it is, because
8 there is absolutely no issue as to any kind of
9 sexual contact in this. This is just straight
10 trying to shoot somebody in the face and armed
11 robbery.

12 MR. SHADD: And at the appropriate time we
13 were going to address that with Your Honor.

14 THE COURT: Okay. And I have to make a note,
15 sir, that this is not sexual offender related, but
16 it is my understanding that is part of your
17 negotiations, but I have to get through the plea
18 first with you, so I have to ask you all of these
19 questions. And I'll be glad to answer any
20 questions that you have to make sure you have a
21 complete understanding as to what you are doing
22 here today. All right? But you understand that
23 these offenses carry up to 145 years in prison?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: All right. Knowing that -- I

1 understand you have a negotiated plea -- knowing
2 that, you still wish to plead guilty today, sir?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: All right. And, sir, were any of
5 these classified as --

6 MR. CATHCART: Four of the seven are
7 classified as violent, most serious. The
8 kidnapping --

9 THE COURT: Y'all didn't mark it on the
10 computer again.

11 MR. CATHCART: I apologize, Your Honor.

12 (Pause.)

13 THE COURT: Mr. Cathcart, he doesn't have
14 any --

15 MR. CATHCART: No priors, Your Honor. This is
16 his first strike, Your Honor.

17 THE COURT: All right, sir, the kidnapping is
18 classified as a violent, most serious offense,
19 meaning, sir, that you will have to serve
20 85 percent of the sentence. Do you understand
21 that, sir?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: On the most serious offense, all
24 of these will classify as your first strike under
25 the two-strike law. Do you understand that, sir?

1 THE DEFENDANT: That means --

2 THE COURT: That if you get out and you get
3 another most serious offense --

4 MR. SHADD: He is not going to do it.

5 THE COURT: All right. -- then the State
6 could move for life without parole. Do you
7 understand that, sir?

8 THE DEFENDANT: If I was to catch one more
9 felony?

10 THE COURT: Most serious offense. Do you
11 understand that, sir?

12 THE DEFENDANT: Yes.

13 THE COURT: Are you sure? I'll let you talk
14 to your lawyer real quick about it. Do you want to
15 explain it to him?

16 (Attorney confers with Defendant.)

17 THE COURT: Do you understand, sir, that if
18 you were to get back out -- your lawyer says you
19 are not going to get in any more trouble, but --
20 and you were to get another most serious offense,
21 that under the two-strike law, that the State could
22 proceed for life without parole. Do you understand
23 that, sir?

24 THE DEFENDANT: Yes, ma'am.

25 THE COURT: Knowing that, do you still wish to

1 plead guilty to these offenses? And that is the
2 armed robbery, the kidnapping, and the attempted
3 murder are classified as violent, most serious. Do
4 you understand that, sir?

5 THE DEFENDANT: Yes, ma'am.

6 THE COURT: And so you would have to serve
7 85 percent of those sentences. Do you understand
8 that, sir?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And, sir, I cannot tell you and
11 your attorney cannot tell you when and if you will
12 be parole eligible, sir. You are not -- you
13 understand that you must be prepared to serve all
14 of the sentence that I sentence you to today? Do
15 you understand that?

16 THE DEFENDANT: 85 percent of it?

17 THE COURT: You'll have to -- I can't tell you
18 when you'll be parole eligible, sir.

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: So for purposes of today, you have
21 to understand, sir, that you will have to serve all
22 of your sentence that I sentence you to today. Do
23 you understand that? Do you want to talk to lawyer
24 about that?

25 THE DEFENDANT: (Nods negatively.)

1 THE COURT: Are you sure?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: All right. Are you relying on any
4 information concerning possible parole or parole
5 eligibility in making your decision to plead guilty
6 today?

7 THE DEFENDANT: Say that again?

8 THE COURT: Are you relying on any information
9 concerning possible parole or parole eligibility in
10 making your decision to plead guilty today?

11 THE DEFENDANT: No, ma'am.

12 THE COURT: All right. Do you fully
13 understand the nature of the charges against you
14 and the range of possible punishment?

15 THE DEFENDANT: Yes, ma'am.

16 THE COURT: Sir, you understand when you plead
17 guilty you give up certain important constitutional
18 rights. You have the right to a jury trial. At a
19 jury trial I would instruct the jury that there is
20 a presumption that you are innocent. The State
21 would have the burden of proving you guilty beyond
22 a reasonable doubt. You would have the right --
23 you and your lawyer would have the right to
24 question any witnesses that they would present.
25 You yourself would not have to testify. You would

1 have the right to remain silent, sir. You would be
2 able to call any witnesses if you chose to call any
3 witnesses. If you did not choose, you would not
4 have to, sir. The burden would be solely upon the
5 State to prove you guilty beyond a reasonable
6 doubt. If you made any incriminating statements
7 about the charges, you would have the right to
8 challenge those statements.

9 Do you understand your constitutional rights,
10 sir?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: And do you wish to waive those
13 constitutional rights?

14 THE DEFENDANT: (Nods negatively.)

15 THE COURT: Do you wish to give up those
16 constitutional rights and plead guilty today, sir?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right. And you wish to give
19 up your right to a jury trial, is that correct?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: All right. And the negotiations,
22 once again?

23 MR. CATHCART: It is a cap of 25 years.

24 THE COURT: All right. And no sex offender
25 registry?

1 MR. CATHCART: That's correct, Your Honor.

2 THE COURT: All right. And, sir, is that your
3 understanding of the negotiation?

4 THE DEFENDANT: Yes, ma'am, that it was -- I'm
5 not going to have to register as a sex offender.

6 THE COURT: Yes, that is the negotiation.
7 That is what he just said. Is that your
8 understanding too?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: All right. And, sir, you
11 understand that I do not have to accept the
12 recommendation by the State. If I am not going to,
13 I will let your attorney know. He will speak with
14 you and give you an opportunity to withdraw your
15 plea. Do you understand that, sir?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: All right. And you are
18 represented by Mr. James Shadd of the private bar.
19 Are you satisfied with his representation?

20 THE DEFENDANT: Yes, ma'am.

21 THE COURT: Do you need any more time to talk
22 with him?

23 THE DEFENDANT: No, ma'am.

24 THE COURT: And have you talked with your
25 lawyer for as often and for as long as you feel is

1 necessary for him to properly represent you?

2 THE DEFENDANT: Yes, ma'am.

3 THE COURT: And I have allowed you to talk to
4 him here today. Do you need any more time to ask
5 him any questions?

6 THE DEFENDANT: No, ma'am.

7 THE COURT: All right. And have you
8 understood your conversation with your lawyer?

9 THE DEFENDANT: Yes, ma'am.

10 THE COURT: And has he done everything for you
11 that you feel he could have done or should have
12 done?

13 THE DEFENDANT: I believe so.

14 THE COURT: All right. And are you completely
15 satisfied with his services?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: All right. And is anyone forcing
18 you to plead guilty today?

19 THE DEFENDANT: No, ma'am.

20 THE COURT: And are you pleading guilty of
21 your own free will?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: And are you pleading guilty
24 because you are guilty?

25 THE DEFENDANT: Yes, ma'am.

1 THE COURT: And, sir, have you understood my
2 questions?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: And have you answered them
5 truthfully?

6 THE DEFENDANT: Yes, ma'am.

7 THE COURT: And I told you earlier -- you had
8 some questions for me. Do you have any other
9 questions about what we have just gone over?

10 THE DEFENDANT: I can't get more than 25
11 years, though, right?

12 THE COURT: I'm not going to give you more
13 than 25 years, okay? I am going to accept the
14 negotiations. I am going to follow the
15 recommendation of the State. Do you understand
16 that?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: All right.

19 MR. CATHCART: Your Honor, just out of
20 abundance of caution as well, you mentioned that it
21 was one of a two-striker, but it is also one of
22 three strikes as well. If he gets two more serious
23 offenses, we could also seek life without parole.

24 THE COURT: All right, thank you. I left that
25 out. Do you understand that, sir? It is also --

1 if you get -- you have serious offenses and most
2 serious offenses. You get two more -- under the
3 serious it is three strikes. Under most serious it
4 is two strikes. If you were to get two more
5 strikes under the serious, you could still be
6 looking at life without parole. Do you understand
7 that?

8 THE DEFENDANT: Yes, ma'am.

9 THE COURT: Knowing that, sir, do you still
10 wish to plead guilty today?

11 THE DEFENDANT: Yes, ma'am.

12 THE COURT: All right. And have you
13 understood all of my questions?

14 THE DEFENDANT: Yes, ma'am.

15 THE COURT: And have you answered them
16 truthfully?

17 THE DEFENDANT: Yes, ma'am.

18 THE COURT: Is there anything you would like
19 to ask me about what we have just gone over?

20 THE DEFENDANT: No, ma'am.

21 THE COURT: All right. And, sir, you
22 understand you have the right to appeal the guilty
23 plea and the sentence of this Court and that you
24 must do so within ten days. If you cannot afford
25 an attorney for that appeal, you will be appointed

1 an attorney at no cost to you. Do you understand
2 that, sir?

3 THE DEFENDANT: Yes, ma'am.

4 THE COURT: All right. I find that there is a
5 substantial factual basis for the plea. I also
6 find that the Defendant's decision to plead guilty
7 is freely, voluntarily, knowingly, and
8 intelligently made. That he is represented by
9 counsel to whom he has indicated to me he is
10 completely satisfied with. I will accept your
11 plea.

12 I will be glad to hear -- anything else from
13 the State? The victims wanted to speak?

14 MR. CATHCART: The victims would like to
15 address the Court.

16 THE COURT: And I will be glad to hear from
17 them.

18 MR. CATHCART: Step to the microphone, please.
19 Speak up so she can hear you. Identify yourself
20 for the record.

21 MR. KUAL: Daniel Kual.

22 THE COURT: What is your last name, sir?

23 MR. KUAL: Daniel Kual.

24 THE COURT: Can you spell your last name,
25 please, for my court reporter?

1 MR. KUAL: K-U-A-L.

2 THE COURT: K-U-A...

3 MR. KUAL: -L.

4 THE COURT: All right. All right, thank you.
5 I will be glad to hear from you, sir.

6 MR. KUAL: First of all, I want to thank God
7 for giving me an opportunity to be here and --

8 THE COURT REPORTER: I'm sorry, you need to
9 speak up.

10 THE COURT: Okay. Can you speak up for me,
11 sir?

12 MR. CATHCART: Would it be better if I just
13 bring him up here by me so he will be right there
14 by--

15 THE COURT: You have to ask the deputy.

16 MR. KUAL: Okay. First of all, I'm saying I
17 want to thank God for giving me an opportunity and
18 a chance to be here and be around to see my family,
19 close to my kids. If it wasn't for God, I believe
20 Mr. Alvin would have taken my life away.

21 And I just want to say for the Court to make
22 the right decision for Mr. Alvin. He is a danger
23 to society. And all I want to say is, I want the
24 Court to make the right decision on Mr. Alvin. He
25 doesn't deserve to be around in society. And I got

1 lucky. And the next victim might not be lucky with
2 his life.

3 So thank you for the Court, and I just want
4 the Court to make the right decision.

5 Thank you.

6 THE COURT: Thank you, sir, for being here.

7 MR. CATHCART: Your Honor, at the emergency
8 room they removed the bullet out of the mandible.

9 MS. WILLIAMS: I'm Carletta Williams.

10 THE COURT: Yes, ma'am.

11 MS. WILLIAMS: I just want Alvin to know the
12 impact that he had on my life. Because since then
13 I am not even able to even go in a small business
14 that only have one entrance in fear that the same
15 event might happen again.

16 Not only did I have a black eye for a week
17 that my kids had to see, but I also had to go to
18 work like that. I have reoccurring nightmares
19 about this, about that event that happened. And I
20 just feel as though that he should be able to get
21 the maximum amount that he can.

22 THE COURT: All right. Thank you, ma'am,
23 Ms. Williams, for being here.

24 MR. CATHCART: Your Honor, if may just also
25 approach? Defense counsel has these pictures. I

1 just want to show you basically how close he was to
2 that door when he shot.

3 (Complies.)

4 MR. CATHCART: You could see the pattern of
5 the gunpowder. He basically held it right up to
6 the door when he put a bullet in Mr. Kual's face.

7 THE COURT: All right. Anything else?

8 MR. CATHCART: No, Your Honor. We have
9 negotiated a cap of 25. I would recommend that it
10 be 25.

11 THE COURT: All right, thank you.

12 Yes, sir, Mr. Shadd?

13 MR. SHADD: Thank you, Your Honor. May it
14 please the Court? Standing before you is Alvin
15 Samuels. As he told you, he is a lifelong resident
16 of Richland County. Twenty-one years old.
17 Nineteen years old at the time of this incident.

18 Alvin has been -- ever since he was -- he
19 turned himself in on August 27th of 2010. He has
20 remained in jail. He and his family were unable to
21 make the \$500,000 bond that was issued to him for
22 the series of events. So since that time, as of
23 today, he has -- we believe he is eligible for that
24 684 days here at the Alvin S. Glenn Detention
25 Center.

1 As I stated, Alvin was 19 years old at the
2 time. He did graduate from high school. He was
3 assisted in doing that. He had a troubled history
4 coming up. He pretty much grew up in a single
5 parent home, although his mother and his father
6 were in his life, they just were no longer
7 together.

8 Present in court with him today is his father,
9 along with other members of Alvin's family and
10 extended family. I ask them to stand up.

11 (Complies.)

12 MR. SHADD: And I know Mr. Samuels would like
13 to address you regarding his son.

14 Thank you all.

15 (Seated.)

16 MR. SHADD: As well as the love of his life,
17 Ms. Tyresha Hopkins, who he shares a child with and
18 who actually ended up retaining me.

19 And Mr. Kerry Abel, who assisted Mr. Samuels
20 in obtaining his diploma -- he, I believe, had to
21 go through the Adult Ed program through Richland
22 One -- and Mr. Abel is here. He left. He was here
23 earlier. He had to go to the school. Of course he
24 still works for the district. But he was able to
25 make it back, thankfully, so that he could address

1 the Court as well.

2 Mr. -- I have known Mr. Samuels for several
3 years. He was -- he impressed me as being a young
4 man who had goals. He was, prior to this, he was
5 working with the navy and trying to enroll there or
6 enlist there so that he could make a way for his,
7 at the time, three-year-old daughter, as well as
8 what he considers his stepchildren along with
9 Ms. Hopkins.

10 Unfortunately, he never got to that point
11 because of what happened on -- in July of 2010. It
12 is true that Alvin -- and I call him Alvin, I'm
13 sorry -- he lived right around the corner. He has
14 known by Mr. Ogoubi, who is the owner of Hip Hop
15 Wear. Mr. Ogoubi is not here today, Your Honor,
16 but he has been interviewed by law enforcement as
17 well as Investigator, Mr. B.J. Watson, who was
18 hired initially by the Public Defender's Office to
19 speak to these witnesses.

20 And I have shared this with the State during
21 discovery of Mr. Ogoubi when he was asked by
22 Mr. Watson -- Mr. Watkins -- on his opinion, even
23 though he is not here today, his opinion on bond,
24 punishment, sentence.

25 He said, because -- and I quote -- because he

1 is young, I think they should try to help him
2 instead of focusing on incarceration time. But we
3 know he will have incarceration, Your Honor. I
4 have known him since he was eight years old. I
5 mentored him since that time. If they give him
6 some boot camp to help rehabilitate him, that would
7 be fine for me.

8 It is my understanding that the State did
9 reach out to Mr. Ogoubi with regard to us ending
10 this case on today. It was scheduled for a trial
11 on next week. We believe that we are saving the
12 Court's time as well as the jury time and the
13 citizens of Richland County with regard to avoiding
14 a trial because, in our estimation, it would be
15 fruitless. And so he is standing here before you
16 as a man and admitting to a lapse in judgment,
17 really, of what occurred back in 2010.

18 He is a different person now. Alvin,
19 unfortunately, has -- they tried to channel him in
20 the right way, but, unfortunately, on that
21 particular day, he really did something that was
22 clearly impulsive. It was not planned, obviously.
23 To go into a store where someone has known him for
24 eight years and the shop attendant, Mr. Irving, who
25 has known you for several years as well -- I

1 believe he even said in his statement that he knows
2 the family, knows the mother. I think his
3 girlfriend is friends with Ms. Page, who is his
4 mother.

5 Ms. Page could not be here, Your Honor,
6 because she suffers, unfortunately, from congestive
7 heart failure. She was here before you a few weeks
8 ago, if you recall, for a bond setting, and also
9 for his arraignment on the additional charges of
10 kidnapping and a couple of other ancillary charges
11 which he is pleading to today. She was here then,
12 but unfortunately she wasn't able to be here today
13 given her illness.

14 But Alvin tells me he was working with these
15 folks, too. I believe even Mr. Irving said that he
16 had given Alvin money over a period of time just to
17 try to keep him on a positive track, but, you know,
18 these gentlemen, they operate in the clothing
19 business, and some of the clothing that they get is
20 counterfeit. And Mr. Samuels has assisted them in
21 that. Mr. Samuels felt that he was owed by them
22 for the work that he had been doing. It is not
23 right, Your Honor, but we feel that the Court needs
24 to have a full picture of everything that occurred.
25 And part of that was why Alvin went in.

1 Another part of why that -- of why this
2 occurred, it is not an excuse, it is not a legal
3 defense or anything, is that he was -- he told you,
4 although he received drug and alcohol treatment, as
5 you can imagine, that was obviously when he was a
6 teenager, at least Mr. Irving, I believe, has
7 supplied Alvin and on that particular date supplied
8 him with alcohol. So we believe he was suffering
9 under intoxication at that time.

10 Like I say, it is not a legal defense as to
11 what occurred, but I just feel like we need to
12 explain to you the full picture.

13 And so while he went in, he was not himself,
14 he was not the Alvin that we all know and love, but
15 he did this. And he is sorry for that. He is
16 remorseful for what they will have to live with for
17 the rest of their lives. But he also has to live
18 with this and his family is going to have to live
19 with this as well, Your Honor, because it is
20 extremely disappointing when you have so many
21 people that are influencing you and you still go
22 the wrong way. It doesn't mean that he is a
23 failure because his life is still redeemable. And
24 we are asking Your Honor to mete justice with mercy
25 as well. We know that is your duty. I have a duty

1 to play. The State has a duty to play. They
2 brought these charges. And Alvin has addressed
3 them and has accepted them. So he is accepting
4 full responsibility for what has occurred.

5 Before I ask Your Honor the request that we
6 will make with regard to sentencing, I would like
7 for you to hear from -- well, Ms. Tyresha Hopkins
8 first.

9 THE COURT: All right. Yes, ma'am?

10 MS. HOPKINS: First, to the victims, I would
11 like to apologize to you. I do understand what you
12 all are going through because I have also been a
13 victim of a robbery at a gas station. They haven't
14 been able to find the person that did this to me,
15 but since then I have learned to forgive .

16 And to you, ma'am, I ask that you please have
17 mercy upon Alvin. We have a three-year-old
18 daughter together. And I don't want my daughter to
19 be a grown woman when her father come home. She
20 needs her father. Alvin has also helped me with my
21 other two children. And I just ask that you please
22 have mercy upon him.

23 Thank you.

24 THE COURT: Thank you.

25 MR. SHADD: Thank you, Your Honor. Next we

1 will have Mr. Alvin Samuels, Sr., who would like to
2 address the Court regarding his son.

3 MR. SAMUELS: Good afternoon, Your Honor.

4 THE COURT: Yes, sir.

5 MR. SAMUELS: How you doing? Your Honor, I
6 would like to say, first I would like to apologize
7 to the victims. I'm very sorry about what took
8 place that day.

9 Your Honor, that is not the way my child
10 normally would act or carry himself, but, Your
11 Honor, I have been to that place of business
12 because my son did work for them. I spoke to the
13 owner and I asked him to please not allow my child
14 to work at that place or come back around there
15 because I had got information that it was a lot of
16 drugs and other activity going on at that
17 particular place. Okay?

18 As well as the other victims, there is a lot
19 of illegal stuff going on that have not been
20 brought out. And what was going on, they had my
21 child up there without my knowledge, working for
22 them and promise to pay him with drugs or clothing
23 or, you know, these other types of stuff that was
24 just not right.

25 And, Your Honor, it had to been -- they had to

1 have been had him up under the influence of some
2 type of narcotic or alcohol beverage in order for
3 my child to had to go out there and outburst like
4 that. He has tried so hard, Your Honor. He did
5 not -- he dropped out of high school. He took it
6 upon his ownself and he strived hard to go back,
7 Your Honor. He went back to school to actually get
8 his diploma.

9 And once he done that, Your Honor, my child,
10 who should have just been trying to get into the
11 army or something, he was like, daddy, I don't want
12 to just go in the army. He said, I want to go into
13 the navy. Because he was very smart with his
14 books, Your Honor. He said, dad, I want to go into
15 the navy. I would like to become a navy seal, you
16 know, something that is more higher. You know, he
17 always reaches out, Your Honor, to try to do
18 better.

19 Your Honor, as a parent, I am telling you, my
20 child had to been up under the influence from some
21 adults that was not right during the course of this
22 time.

23 And, Your Honor, I'm asking you to please give
24 my child the minimum. He is already 20 years old,
25 Your Honor. We are looking at he will be actually

1 30 by the time he get out of here as a young black
2 male. Please be lenient on my child.

3 THE COURT: Thank you.

4 MR. SAMUELS: Thank you.

5 MR. SHADD: Your Honor, Mr. Kerry Abel would
6 like to address the Court as well.

7 MR. ABEL: Your Honor, my name is Kerry Abel,
8 from Richland School District One. I have known
9 Alvin for several years. He returned back to our
10 evening high school program to finish his high
11 school diploma.

12 I can say that this incident was totally
13 shocking to me because the behavior that he
14 displayed in Richland One was totally opposite of
15 the behavior of that particular day. I don't know
16 what happened. I don't know the particulars of the
17 situation that particular day. But the staff was
18 totally in shock when they heard about the
19 information.

20 He graduated. He did excellent. His grades
21 were excellent. And we were actually in the
22 process of assisting him in trying to get into the
23 navy, which we changed some of our direction since
24 that point in time. We are trying to get kids in
25 as soon as they finish because I think that dead

1 time gives them too much time in the street.

2 So whatever you can do. He is an excellent
3 young man. He made a bad mistake. And I will be
4 keeping in contact with him the entire time he
5 returns to the community because I have no
6 reservations about him. He has done a lot of
7 things for us up to that point in time, up until
8 that particular day. I wish him the best of luck.

9 THE COURT: Thank you.

10 MR. SHADD: Your Honor, very quickly, as Mr.
11 Abel said, and I have to rely on Alvin with the
12 notes he gave me, he did graduate from the drop-out
13 prevention program Mr. Abel spoke on on May 29th.
14 2010, really less than two months before this
15 incident occurred.

16 I appreciate Mr. Abel saying that they are
17 really trying to get these kids enlisted right
18 after so there is no idle time. You know what they
19 say about that being the devil's workshop.

20 He also actually -- I guess he had a back-up
21 plan, but he received an academic scholarship to
22 Allen University as well.

23 As he told you, he had completed the
24 certification with the American Red Cross, so he
25 was certified to be a lifeguard.

1 He reminds me that he was a volunteer on my
2 2010 campaign for Solicitor. He worked extremely
3 hard. Extremely hard while doing that. Like I
4 said, volunteer work. He didn't receive any
5 payment or anything.

6 While he has been at Alvin S. Glenn, he has
7 completed the WorkKeys Program. He received a
8 silver, I guess medal or certification, but he
9 actually re-enrolled so that he could try to
10 achieve the gold one. He went through the Visions
11 Program and got a certificate for that.

12 Because of the issues with the substance
13 abuse, he successfully completed the Substance
14 Abuse Program while at Alvin S. Glenn Detention
15 Center. I know Your Honor has the option of
16 ordering him to go through that at the Department
17 of Corrections as well.

18 THE COURT: They don't have it anymore, is
19 what they tell me. That is what Mr. Shealey says.
20 They don't have it anymore, is that correct?

21 MR. SHEALEY: Pardon me?

22 THE COURT: They don't have ATF anymore?

23 MR. SHEALEY: ATU. That's correct.

24 THE COURT: Yes.

25 MR. SHADD: I wasn't aware. Wow. Okay. He

1 has completed Anger Management Class as well. And
2 a Health Awareness Class.

3 I would hope the Court can appreciate from
4 both sides of what has occurred. And Alvin truly
5 is not just the person that you see in these
6 indictments or heard from Mr. Solicitor. He does
7 have a future. But how he goes in the future
8 depends on what you are about to say. I know you
9 realize the awesome duty and responsibility that
10 you have, Your Honor, with the future of this very
11 young man.

12 So he understands that he has to serve -- has
13 to be sentenced to at least ten years, that is out
14 of your discretion, the General Assembly has said
15 that for this particular charge, for the armed
16 robbery charge, at least ten years.

17 We are respectfully requesting that you give
18 him a sentence that takes into account the victims
19 but also takes into account this Defendant.

20 And so we are respectfully requesting that you
21 give him the minimum sentence.

22 Your Honor, Mr. Samuels would like to address
23 the Court as well.

24 THE COURT: I will be glad to hear from you.

25 THE DEFENDANT: Your Honor, I have been in

1 Alvin S. Glenn for 22 months. And every night I
2 thought about this incident and how I didn't
3 realize how much I had hurt everybody, the victims
4 and my family, until I stood here today.

5 But I just want to let the victims know that
6 I'm sorry, and I apologize for everything. But if
7 I get the opportunity to come home at a young age,
8 I just want to address young people, because it is
9 like everybody is afraid. Just like that lady said
10 before she leave, they be lost. And nobody wants
11 to guide them until it is too late. You don't know
12 how many people behind you until it is too late. I
13 just wish somebody would step forward and let the
14 younger generation know there is somebody out there
15 to help them before they make a mistake.

16 And Ms. Tyresha is my family and I just want
17 to see my daughter graduate. If you -- I
18 understand the time limit of this. I just want to
19 make it home to see my daughter graduate, because
20 my mama said that was the best day that I believe
21 she had when she seen me walk across that stage.

22 But I just want to let the victims know that I
23 apologize.

24 MR. SHADD: That's it, Your Honor.

25 THE COURT: Anything else?

1 MR. CATHCART: Yes, Your Honor. Just in reply
2 to the Defense's mitigation, and he talks about the
3 two people who aren't here, the person who had a
4 gun pointed at his face and the person who was
5 robbed, Mr. Irving and Mr. Ogoubi, and talks of
6 them as their fairness and as mentors to the
7 Defendant, and then he calls them drug dealers, the
8 reason why this young man did this thing.

9 The reason -- he wasn't in the shop. Nobody
10 was giving him alcohol on that day. He walked in
11 with two guns. And I point out, the two people
12 have nothing to do with that shop. If you want to
13 believe the slant that he put on about the ones who
14 got shot in the face and the lady who got
15 pistol-whipped two times by this man.

16 I know he is a son, but he was 19 years old
17 when he did this. He was not a little boy. He was
18 a man who came in there with two guns.

19 They talk about it is a horrible thing
20 occurred. It is not a horrible thing that
21 occurred, it is a horrible thing that he did.

22 They are asking for mercy. Your Honor, I
23 would point out that he was looking at 145 years.
24 The State has agreed to a limit of 25 years. I
25 think he has been shown mercy. And I would ask for

1 the 25 years.

2 MR. SHADD: Your Honor, the mercy comes from
3 you, okay? If you need to ask Mr. Kual, he works
4 in the clothing business. He was a silent partner,
5 whatever you want to say. So he was involved in
6 this clothing situation.

7 MR. CATHCART: And so he got shot in the face.

8 MR. SHADD: We don't deny that, Your Honor.
9 That is why is we are here. That is why we are
10 pleading guilty. He is accepting full
11 responsibility for what occurred.

12 THE COURT: All right, sir. On Indictment
13 Number -- for the armed robbery, attempted murder,
14 and kidnapping, Indictments Numbers
15 2011-GS-40-1806, 1807, 2012-3499, 2011-1809, you
16 will be sentenced to the State Department of
17 Corrections for 18 years. You will be given credit
18 for the 685 days that you have served. The
19 offenses will run concurrent.

20 On 2011-1808, you will be sentenced to the
21 State Department of Corrections for five years.
22 You will be given credit for the 685 days. That
23 will run concurrent.

24 2012-GS-40-3498 will run concurrent. 685
25 days.

1 And 2012-GS-40-3497, the sentence is ten
2 years. You will be given credit for the 685 days
3 that you served.

4 The sentences will all run concurrent one to
5 another.

6 Good luck to the victims who are here today.

7 And I would like to tell you good luck, sir.
8 You will -- I don't know how old you will be when
9 you are released from jail, but hopefully your
10 attorney is right in that you will not be back in
11 this courtroom again.

12 And, thank you, Solicitor, and Mr. Shadd.

13 MR. CATHCART: Thank you, Your Honor.

14 MR. SHADD: And no sex offender registry.

15 THE COURT: Oh, I didn't put that on the
16 kidnapping. And no sex offender registry on there.

17 MR. SHADD: Thank you, Your Honor.

18 THE COURT: Thank you.

19 (WHEREUPON, the proceedings were concluded.)

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(END OF TRANSCRIPT)

CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

I, Deborah M. McCurdy, 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 the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for Richland County, South Carolina, on the 12th day of July, 2012.

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

April 2, 2013



Deborah M. McCurdy, RPR
Fifth Circuit Court Reporter

\$	abuse [3] 5/24 38/13 38/14	arraignment [1] 31/9
\$500,000 [1] 27/21	academic [1] 37/21	arrived [1] 10/10
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8	American [1] 37/24	BENJAMIN [1] 1/14
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	appreciate [2] 37/16 39/3	boy [1] 41/17
	approach [3] 7/9 10/25 26/25	bring [1] 25/13
	appropriate [2] 10/23 14/12	brought [2] 33/2 34/20
	April [1] 44/19	bullet [2] 26/8 27/6
	aren't [1] 41/3	burden [2] 18/21 19/4
	armed [11] 3/10 6/18 7/13 8/12 9/4 11/4	business [5] 8/22 26/13 31/19 34/11
	12/7 14/10 17/2 39/15 42/13	42/4
	army [2] 35/11 35/12	
	around [4] 25/18 25/25 29/13 34/14	

FORM 5

2013 CP 400 1556

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

County of RichlandAlvin S. Samuels II 351567

Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR
POST-CONVICTION RELIEF

2013 MAR 14 AM 8:48
JEANETTE W. McBRIDE
Clerk, S.C. & G.S.
RICHLAND COUNTY
FILED

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 Broad River Correctional Institution of
Columbia, South Carolina
2. Name and location of Court which imposed sentence General Session Court
of Columbia South Carolina
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 11-GS-40-1806, 11-GS-40-1807, 11-GS-40-1808
 (b) 11-GS-40-1809, 12-GS-40-3497, 12-GS-40-3498, 12-GS-40-3499

- (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) July 12, 2012
- (b) One 695 days concurrent, One 5 years concurrent, One 10 years
- (c) concurrent, Four 18 years concurrent
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) Denied right to Direct Appeal violated my Due Process
- (b) Ineffective Assistance of Counsel

- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Due Process Violation, Involuntary Guilty Plea
- (c) Brady Violation
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached memorandum of law.
- (b) See attached memorandum of law
- (c) See attached memorandum of law
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. _____

(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, Due Process Violation
 (b) Ineffective Assistance of Counsel, Due Process Violation
 (c) Ineffective Assistance of Counsel, Due Process Violation

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

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

N/A

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. Public Defender Luke Shealey (Arraignment)
1701 Main Street Columbia, South Carolina
 ii. Private Attorney James Shadd, III (Guilty Plea)
1615 Barnwell St. Columbia, SC, 5000 Thurmond Mall
 iii. Suite 201 PO. Box 969

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

- i. Preliminary Hearing
 ii. Bond Reduction, Guilty Plea
 iii.

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

Specific Performance of Guilty Plea, Vacate and Dismiss
sentencing conviction, Vacate and Dismiss Armed Robbery
lacking "Asportation Element," Discharge

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

No

STATE OF SOUTH CAROLINA)

County of Richland)

VERIFICATION

I, Alvin S. Samuels, II, 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.

Alvin S. Samuels, II

SWORN to and subscribed before me this 4th
 day of March, 2013.

Susan H. Frye (L.S.)
 Notary Public

My Commission Expires: _____

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

I, Alvin S. Samuels II, 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.

Alvin S. Samuels II
Applicant

SWORN or affirmed and subscribed before me this

4th day of March, 2013
Dorson W. Frye
Notary Public

My Commission Expires: _____

NICHLAND COUNTY
FILED
2013 MAR 14 AM 8:48
JEANETTE W. McBRIDE
C.C.P. & G.S.

State of South Carolina
County of Richland

The State of South Carolina,

vs.

Alvin Stanley Samuels, II
Defendant.

In The Courts of Common Pleas

Warrant Numbers: K-668469,

K-668470, K-668471, K-668472,

DP-12137, DP-12138, DP-12139

Memorandum of Law In
Support of PCR Application

Case No.:

Comes now the above named Applicant, Alvin S. Samuels, II respectfully moving this court grant an evidentiary hearing on this matter expeditiously based on this PCR application, this PCR "Memorandum of Law in Support of PCR application" and all other material available to this court.

Issues

I. Ineffective Assistance of Counsel

(a) Applicant was denied the right to effective assistance of trial counsel under the U.S. Constitution and S.C. Constitution when trial counsel failed to conduct constitutionally "Reasonable" investigation thereby violating Hill Standard such that Applicant's plea is rendered involuntary.

(b) Applicant was denied the right to effective assistance of trial counsel under the U.S. Constitution and S.C. Constitution when trial

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CLERK OF COURT
C.C.P. & C.J.

counsel failed to investigate and procure exculpatory evidence regarding the "Asportation" element of the armed robbery charge violated Hill Standard such that Applicant plea is rendered involuntary.

(c) Applicant was denied the right to effective assistance of counsel under the U.S. Constitution and S.C. Constitution when trial counsel failed to investigate and procure evidence which demonstrates mitigation to Applicant's convictions and sentences to the trial courts violated Hill Standard such that Applicant's plea is rendered involuntary.

(d) Applicant was denied the right to effective assistance of trial counsel under the U.S. Constitution and S.C. Constitution when trial counsel failed to object and move to withdrawal of plea on grounds of "Breach of Plea Agreement" violated Hill Standard such that Applicant's plea is involuntary, where plea agreement called for no recommendation from the state as to Applicant's sentence but state solicitor recommended the trial court to sentence Applicant to the maximum sentence.

(e) Applicant was denied the right to effective assistance of counsel under the U.S. Constitution and S.C. Constitution when trial counsel failed to object to and to move to quash or dismiss the Armed Robbery charge for insufficient proof of the "Asportation" element of the Armed Robbery charge violated Hill Standard such that Applicant plea is rendered involuntary.

(f) Applicant was denied the right to effective assistance of counsel under the U.S. Constitution and S.C. Constitution when trial counsel's misrepresentation and gross misadvice in advising Applicant that the "Malice" element of Attempted Murder charge may be implied by a jury because the use of a deadly weapon violated Hill's Standard such that Applicant's plea is involuntary.

(g) Applicant was denied the right to effective assistance of counsel under the ~~U.S. Constitution and S.C. Constitution~~ when trial counsel failed to move for a continuance in order to secure the presence of victim Nathaniel Irvin and witness Kouassi Ogubi to attend the plea proceedings to testify on Applicant's behalf to mitigate Applicant's convictions and sentencing liabilities violates Hills Standard such that Applicant's plea is rendered involuntary.

(h) Applicant was denied the right to effective assistance of counsel under the U.S. Constitution and S.C. Constitution when trial counsel misadvised Applicant to the elements of "Asportation" regarding the Armed Robbery indictment violated Hills Standard such that Applicant plea is rendered involuntary.

II. Due Process Violation

(a) Applicant was denied the right to due process under the U.S. Constitution and South Carolina Constitution when State solicitor breached the plea agreement by recommending the trial court to sentence Applicant to the maximum term of negotiated plea, while the plea agreement clearly called for "No State Recommendation" from the state.

(b) Applicant was denied the right to due process under the U.S. Constitution and S.C. Constitution when trial counsel misadvised and lied to Applicant that if Applicant agreed to plea guilty the counsel promised to secure victim Nathaniel Irvin and witness Kouassi Ogubi attendance for the plea proceeding to testify on Applicant's behalf to mitigate Applicant's conviction and sentencing liabilities.

(c) Applicant was denied the right to due process under the U.S. Constitution and S.C. Constitution by trial counsel coercing and inducing Applicant to plea guilty through gross misadvice and misrepresentation.

(d) Applicant was denied the right to due process under the U.S. Constitution and S.C. Constitution by state solicitor procuring Applicant's plea of guilty through deceptive tactics.

III. Brady Violation

(a) Applicant was denied the right to Brady Rule(s) under the U.S. Constitution and South Carolina Constitution where applicant was denied constitutional right pursuant to Brady v. Maryland, 83 S.Ct. 1194 where state solicitor failed to fully and timely disclose Brady Material to Applicant.

(b) Applicant was denied U.S. Constitutional and South Carolina Constitutional rights pursuant to Brady v Maryland, when solicitor illegally suppressed favorable material and exculpatory evidence from the Applicant.

IV. Involuntary Guilty Plea

(a) Applicant's plea of guilty was involuntary, unknowingly and unintelligently under the U.S. Constitution and South Carolina Constitution when prosecution breached plea agreement.

Ineffective Assistance of Counsel

Supporting Facts I.A.C. (a):

Prior to applicant entering guilty plea, applicant insisted on going to trial, constantly insisting counsel conduct a reasonable investigation into the facts of the state's case. Which applicant innocence is contrary to state's evidence of armed robbery. *Thornes v. State*, 426 S.E.2d 764, As stated in *Strickland v. Washington*, 104 S.Ct. 2052, "The court agreed that the Sixth Amendment imposes on counsel a duty to investigate, because reasonable effective assistance must be based on professional decisions and informed legal choices can be made only after investigation of options. Applicant informed and showed counsel evidence corroborating his version of case that contradicted state's case and its witnesses. Quoting *Strickland*, "If there is only one plausible line of defense, the court concluded, counsel must conduct a 'Reasonable Investigation' into that line of defense." And *v. Coloe*, 372 S.C. 331, 642 S.E.2d 597. At a minimum counsel has the duty to interview potential witnesses and make an independent investigation of the facts and circumstances of cases.

If counsel would have conducted a reasonable investigation into Applicant's facts and circumstances, which is demanded of counsel's in criminal cases, in *McMann v. Richardson*, 377 U.S. 759, 771 n.14, 90 S.Ct. 1441, 1449 n.14, *Trapnell v. U.S.*, 725 F.2d 151, 152, investigation would have corroborated Applicant facts showing mitigating evidence, *Agurs v. U.S.*, 96 S.Ct. 2392, potential witness, who was willing to testify as to mitigation, contradicting impact state of witnesses, medical evidence, and witness and victim criminal record affecting their credibility, *Giglio v. U.S.*, 92 S.Ct. 763

Napue v. Illinois, 79 S.Ct. 1173. All which was mitigation towards Applicant's guilty plea, and voluntariness upon which Applicant's plea was made. Counsel failed to investigate state's case through discovery, relying solely on the state's case (merely identification) against Applicant advising Applicant to plea guilty. Counsel neither investigated nor made a reasonable decision not to investigate the State's case through discovery. Such a complete lack of pretrial preparation put at risk both the defendant's right to an ample opportunity to meet the case of prosecution, Strickland, 104 S.Ct. at 2063 (quoting Adams, supra, 317 U.S. at 275, 63 S.Ct. at 240) and the reliability of the adversarial testing process. See 446 U.S. at 688, 104 S.Ct. at 2065. Quoted from, Kimmelman v. Morrison, 106 S.Ct. 2574. Crandell v. Bunnell, 144 F.3d 1213

Supporting Facts I A.C. (b):

Trial counsel failed to investigate and procure the exculpatory evidence of the "Asportation" element of Armed Robbery charge in violation of Constitutional safeguards to effective assistance of counsel. Zant v. Hamilton, 307 S.E.2d 667. Counsel failed to investigate victim medical records, to corroborate applicants facts concerning the incident, nor did counsel conduct an independent reasonable investigation of state witnesses and their impact statement. Arnd v. Catoe, 372 S.C. 331, 642 S.E.2d 597, Lound v. State, 670 S.E.2d 646, which was contrary to Applicant's facts. Cobbs v. State, 408 S.E.2d 223. Furthermore the lack of investigation and pretrial preparation puts at risk both defendant's right to an ample opportunity to meet the case of prosecution Strickland v. Washington, 104 S.Ct. 2063 (quoting Adams, supra, 317 U.S. at 275, 63 S.Ct. at 240) and the reliability of the adversarial testing process, Id 104 S.Ct. at 2065, Hill v. Lockhart, 106 S.Ct. 366. Where medical records contained

exculpatory evidence, and victims impact statements displayed mitigation which they were willing to testify too.

Supporting Facts I.A.C. (c):

Applicant was denied effective assistance of counsel when trial counsel failed to investigate and procure evidence which demonstrates mitigation to Applicant's conviction and sentence. Counsel never investigated witnesses impact statements. *Ard v. Catoe*, 642 S.E.2d 597, which was contrary to state case. Furthermore failing to procure mitigation in favor of Applicant, *Zont v. Hamilton* 307 S.E.2d 667. When victims were willing to testify to mitigation for applicant, *Walker v. Lockhart*, 807 F.2d 136.

Supporting Facts I.A.C. (d):

On July 12, 2002 after being indicted for 3 cts. of Armed Robbery, Attempted Murder, Pointing and Presenting, Assault and Battery 1st Degree, Poss. of Firearm during the commission of a violent crime, and Kidnapping, applicant pled guilty to all charges against him except one count of Armed Robbery. The day before and moments before pleading guilty Applicant insisted on going to trial based upon counsel's failure to investigate and solicitor not dropping charges he did not commit. Finally Applicant decided to accept counsel's advice and entered the guilty plea. Applicant decision to plea because counsel stated, "He would get to pick the judge (Benjamin) which he was sure would impose the mandatory minimum, after hearing from victim Nathaniel Irvin and witness Kouassi Ogubi which were going to come to plea proceeding to testify as to mitigating circumstances in favor of Applicant, a cap of 25 year, and "No State Recommendation." Where counsel advised Applicant sentencing would be left to the Judge. Applicant and counsel both signed the plea

particular number of years nevertheless recommend the maximum sentence of the negotiated plea. To Applicant knowledge while entering the guilty plea was that the solicitor was not to stand up and say that the court had already shown enough leniency giving the cap when the charges amounted to 145 years, furthermore recommending to the court to impose the maximum sentence of the negotiated plea.

Prior to pleading and signing plea agreement Applicant insisted on going to trial, because solicitor was not going to drop certain charges, counsel informed Applicant he had nothing to worry about because he picked the judge and the state was not going to recommend a particular number of years and everything would be left up to the trial judge, which he was sure would impose the mandatory minimum after hearing victims mitigating testimony, Thompson v. State, 531 S.E.2d 284.

Supporting Facts I.A.C.(e):

Counsel was ineffective for failing to object to move quash or move to dismiss the Armed Robbery charge for Victim Daniel Kual on the basis of insufficient proof of the "Asportation" element of the Armed Robbery indictment. There is clear evidence in this case that the U.S. currency that victim Daniel Kual willingly turned over to the emergency ambulatory personnel who in turned documented this occurrence and secured the U.S. currency then returned these same U.S. Currency back to the possession of victim Daniel Kual upon his hospitalization release. See Ostrander v. Green, 46 F.3d 347, Hill v. Lockhart, 106 S.Ct. 366.

Supporting Facts I.A.C.(f):

Counsel misadvised and misrepresented to Applicant that

agreement clearly stating no recommendation from the state, and Applicant proceeded to plea guilty. In the plea hearing trial judge Benjamin went over plea agreement. The prosecutor after stating the facts of the case went into a state recommendation as of a particular set of years, which was the maximum of 25 years in violation of the negotiated plea. Counsel for Applicant never objected or moved for withdrawal of plea agreement or move for specific performance of plea agreement, when solicitor went into recommending the maximum sentence. Furthermore judge asked counsel if that was all and counsel stated, "Yes."

In PCR proceeding, the burden is on the Applicant to prove the allegation in his applicant, *Bell v. State* 321 S.C. 328, 467 S.E.2d 926 (1996). Applicant was uncertain as to accepting plea and going to trial, only until counsel discussed the terms of the plea agreement being state was not going to recommend a particular number of years. *Thompson v. State*, 531 S.E.2d 294. Solicitor breached the plea agreement when he went into recommending the maximum sentence of 25 years. (*Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 495). Even offering and showing the trial judge a exhibit of the crime scene. Counsel failed to object or draw trial judge attention to the plea bargain being no state recommendation. (*Jordan v. State*, 297 S.C. 52, 374 S.E.2d 683 (1988)). Counsel failed to protect Applicant's rights governed by the Sixth Amendment in enforcing the plea agreement with Solicitor office fell below prevailing professional norms. (*Strickland v. Washington* 466 U.S. 668, 104 S.Ct. 2052). It is not whether the trial judge was influence by the state recommendation or if Applicant was adequately informed of the 10-25. year sentencing. To establish prejudice is to determine where there was a reasonable probability that, absent, counsel unprofessional errors. the defendant would not have pled guilty and went to trial. In Applicant and counsel discussion prior pleading counsel advised Applicant that he did not have to worry about the solicitor recommending a

Applicant can be convicted of "Attempted Murder" based on the inference of "Malice Aforethought" being solely evidenced by the use of a firearm as a deadly weapon. The advice by counsel is contrary to South Carolina State Case law precedence and also is contrary to U.S. Supreme Court Constitutional precedence. Specifically, counsel's advice and representations are in direct conflict to, *State v. Belcher*, 685 S.E.2d 802, *Sandstrom v. Montana*, 442 U.S. 510 (1979) and *Mullaney v. Wilbur*, 421 U.S. at 684 (1975).

This misadvice and misrepresentations unconstitutionally induced Applicant's plea of guilty. See *Ostrander v. Green*, 46 F.3d 347, *Hill v. Lockhart*, 106 S.Ct. 366.

Supporting Facts I.A.C(g):

Counsel informed applicant that if he did decide to plea guilty to the charges against him, counsel would make sure victim Nathaniel Irvin and witness Kouassi Ogubi appear at the plea hearing to testify to mitigating testimonies as to establishing mitigating circumstances. Applicant informed Attorney just moments before plea hearing that he did not see victim or witness present in court room. Applicant asked counsel to move for continuance in order for counsel to secure witnesses. Counsel misrepresented Applicant and was untruthful to Applicant that Counsel had in fact secured the two witnesses presence for the plea proceedings.

Counsel failed to ask or move for continuance so victim and witness could be present and counsel failed to adhere to promise counsel made to defendant, these actions by counsel does not meet the standard guaranteed to a criminal defendant by the "Sixth Amendment" *McMann v. Richardson*, 397 U.S. 770, 771, 90 S.Ct. at 1448, 1449, *Cuyler v. Sullivan*, 446 U.S. at 344, 100 S.Ct. at 1716, *Trapnell v. U.S.* 725 F.2d, 151, 152, *Hill v. Lockhart*, 106 S.Ct. 366, *Strickland v. Washington* 104 S.Ct. 2052, *Walker v. Lockhart*, 807 F.2d 136.

Supporting Facts I.A.C. (b):

Counsel misadvised and misrepresented to Applicant that Applicant can be convicted of Armed Robbery charge against victim Daniel Kaul even if it is proven that the "Asportation" element is lacking. There clear evidence in this case that the U.S. Currency that victim Daniel Kaul alleged was stolen from him was actually the same U.S. Currency that victim Daniel Kaul willingly turned over to the emergency ambulatory personnel who in turned documented this occurrence and secured the U.S. Currency upon victim Daniel Kaul hospitalization. See *Ostrander v. Green*, 46 F.3d 347, *Hill v Lockhart*, 106 S.Ct.

Due Process Violation

Supporting Facts Due Process Violation (a)

In plea hearing for Applicant, the Solicitor breached the plea agreement it had with Applicant, by recommending the maximum of the negotiated sentence, counsel never objected to solicitor breach in plea agreement. Where Applicant, Solicitor, and Counsel all signed a document stating no state recommendation. Counsel and Solicitor both knew the agreement of the plea, but the Solicitor still failed to adhere to the terms of the plea agreement, by recommending the maximum sentence negotiated. (*Thompson v. State*, 340 S.C. 112, 531 S.E.2d 294.) A defendant constitutional rights are violated when prosecutor reneges on the consideration underlying the Defendant's plea of guilty, *Sprouse v. State*, 355 S.C. 335, 585 S.E.2d 278. Violating the

defendants due process rights by implicating the consideration and voluntariness upon which the plea was based. Applicant was advised while entering the guilty plea that counsel was sure the judge would impose the minimum sentence nothing close to 20 years or the cap of 25 years, after hearing mitigating testimonies from victim Nathaniel Irvin and witness Kouassi Ogubi, that Applicant had no criminal record and no recommendation from the state. So Applicant accepted counsel's advise and pled guilty on these terms. The prosecutor should have been bound by their agreement in the plea agreement as to "No State Recommendation". Entering a guilty plea a defendant voluntarily and knowingly surrender a plethora of constitutional right in exchange for a commitment by the prosecutor to do or not do certain things. When the prosecutor breaches that agreement, he or she violates the defendant's right to Due Process by implicating the consideration and voluntariness upon which that plea was based. (*Mobry v. Johnson*, 467 U.S. 504, 104 S.Ct. 2543, L.Ed.2d 437 (1984)) Applicant would have never considered accepting prosecutor's plea, if he had known they were not going to adhere to their agreement in the negotiated plea, *Santobello v. New York*, 404 U.S. 262, 92 S.Ct. 495.

Supporting Facts Due Process Violation(b):

Representation of a criminal defendant entail certain basic duties. Counsel's function is to assist the defendant and hence counsel owes the client a duty of loyalty. See *Cuyler v. Sullivan*, supra, 446 U.S. at 346, 90 S.Ct. at 1717, *Cronin v. U.S.*, 104 S.Ct. 2039. Upon Applicant accepting counsel's advise to plea guilty counsel stated that if Applicant decided to plea guilty he would secure Victim Nathaniel Irvin and witness Kouassi Ogubi to come to plea hearing to testify as to mitigation in favor of Applicant sentences, which

corroborated with there statement made is Public Defender Luke Shealey
~~Private investigator. Prior to signing plea agreement, counsel informed Applicant~~
 that he had made contact with both victim and witness, and they both
 agreed to testify as to mitigation in favor of Applicant at sentencing

Furthermore counsel never attempted to contact victim or witness,
 which he stated to Applicant were going to be present, Cronie v.
 U.S., 104 S.Ct. 2039. Fair administration of justice demands the judge
 will not act on mere surmise or suspicion, but will impose sentences
 with insight and understanding. Hence the judge is required to listen
 and give serious consideration to any information material to
 punishment. In this case, the trial judge denied to view victims
 affidavits and stoled she wanted to hear from the victims that were
 present. State v. Green, 67 S.E.2d 509, State v. Hardee, 197 S.C. 145,
 14 S.E.2d 698, Boykins v. Alabama, 395 U.S. 238, 89 S.Ct 1709.

Applicant had nothing to present to trial judge to establish
 mitigation in Applicant behalf besides Affidavits, when victim
 and witness were never even contacted to secure their present
 a sentencing. A prisoner must establish that his counsel's errors
 was so flagrant that a court can conclude that it resulted from
 neglect or ignorance rather than from informed profession
 deliberation, Marzullo v. Maryland, 561 F.2d 540, 544, Via v.
 Superintendent, Powhatan Correctional Center, 643 F.2d 167 (1981).

Applicant was furthermore induced to plea by gross misadvise
 of his Counsel, which Applicant Due Process rights were violated,
 then pled guilty on involuntariness, and unintelligent implication
 not to his knowledge, McMoran v. Richardson, 90 S.Ct. 1441, Brady v
 U.S., 90 S.Ct. 1463, being victim and witness were never even contacted
 or informed to be present at plea hearing

Supporting Facts Due Process Violation (c):

Counsel induced Applicant's plea of guilty through misadvice and misrepresentation and coercion that make Applicant plea involuntary, unknowingly and unintelligently. *Cronic v. U.S.*, 104 S.Ct. 2039. Counsel failed to secure victims for guilty plea which he promised to Applicant, also failing to object to state solicitor breaching plea agreement of "No State Recommendation" *Thompson v. State*, 531 S.E.2d 294, *Jordan v. State*, 374 S.E.2d 683 (1988).

Supporting Facts Due Process Violation (d):

The State Solicitor procured Applicant's plea of guilty through deceptive tactics by promising no recommendation yet the solicitor breached the plea agreement by in fact recommending the trial judge to sentence Applicant to the maximum sentence. *Thompson v. State*, 531 S.E.2d 294, *Santobello v. New York*, 92 S.Ct. 495, *Sprouse v. State*, 355 S.C. 335, 585 S.E.2d 278.

Brady Violation

Supporting Facts Brady Violation (a):

Upon request of Brady on numerous occasions to prosecutor for state to disclose victim Daniel Kaul medical records which were favorable material to the defendant and contained exculpatory evidence in favor to Applicant's preparation for trial, was not disclosed to the defendant until after the Applicant's plea of guilty. Victim's medical

record were a voluminous document that contained exculpatory evidence. If the request for Brady Motion been timely complied with, State v. Osborne, 289 S.C. 142, 345 S.E.2d 256, that was in possession, custody or control of the government, the existence of which is known or by the exercise of due diligence should become known to the Attorney for the government. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, prior to the day before Applicant's plea of guilty. Counsel for Applicant would have been able to corroborate Applicant's defense of incident through medical records that were contrary to the states version of facts of states witnesses. Furthermore establishing prejudice to the Applicant which material tended to mitigate any punishment should Applicant been convicted at trial, and counsel identifying any specific errors that occurred through the prosecutors conviction, violating Applicant right to Due Process. (U.S. v. Cronie, 104 S.Ct. 2039.)

Supporting Facts Brady Violation (b):

Applicant requested on numerous occasion to counsel and solicitor to provide Applicant with Brady Rule (5) to adequately review all evidence within the possession, custody, or control of the prosecution, the existence of which is known or by the exercise of due diligence may become known up to and during trial, to the Attorney for the prosecution, that the state tends to indicate the innocence of the defendant or tends to mitigate any punishment should defend be found guilty, whether it be inculpatory or exculpatory evidence to properly prepare Applicant's defense for trial. Furthermore prosecutor failed to disclose evidence to Applicant's request. Suppression of evidence by the prosecutor of evidence favorable to an accused upon request violates Due Process, where material is either innocence or guilt or to punishment, irrespective of the good or bad faith of the prosecution. Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194. Prosecutor did not disclose all material favorable to the defendant

even after motions were filed by counsel requesting such material not disclosed, which excluded victim and witness prior criminal record, where they were the state's two principal witnesses, *U.S. v. Bagley*, 105 S.Ct. 3375, *U.S. v. Agurs*, 96 S.Ct. 2392. The government is obliged to disclose pertinent material evidence favorable to the defense and this applies not only to matters substance, but to matters relating to the credibility of government witnesses, *Giglio v. United States*, 405 U.S. 150, 92 S.Ct. 763, *Napue v. Illinois*, 360 U.S. 264, 79 S.Ct. 1173. The principal witness and victims had an extensive prior criminal history greatly affecting their credibility giving them a greater incentive to lie, which was prejudice to Applicant and corroborated Applicant's defense of incident. Furthermore violating Applicant's right to Due Process.

Involuntary Guilty Plea

Supporting Facts Involuntary Guilty Plea:

Prosecutor breached Applicant's guilty plea agreement by making a state recommendation when state solicitor, trial counsel, and Applicant all signed plea agreement and through counsel's advice there would be no state recommendation. Violating Applicant's rights to U.S. CA Constitutional Amendment 14 (Violation of Due Process) A defendant's "Constitutional Rights" are violated when a prosecutor reneges on the consideration underlying the defendant's plea of guilty. (*Sprouse v. State*, 355 S.C. 335, 585 S.E.2d 278.) By entering into a plea agreement, a defendant voluntarily and knowingly surrenders a plethora of Constitutional Rights in exchange for a commitment by the prosecutor to do or not do certain things. When the

prosecutor breaches that agreement, he or she violates the defendant's rights to Due Process by implicating the consideration and voluntariness upon which that plea was based. (*Mabry v. Johnson*, 467 U.S. 504, 104 S.Ct. 2543, 81 L.E.2d 437 (1984).) It follows that when the prosecution breach its promise with respect to an executed plea agreement, the defendant pleads guilty on a false premise and hence his conviction cannot stand.

[When a plea rest in any significant degree on a promise or agreement of the prosecutor, so that it can be said to be part of a inducement or consideration, such promise must be fulfilled" (quoting *Santobello v. New York*, 404 U.S. 262, 92 S.Ct. 495). Especially when the prosecutor's promise is not binding on the court, the defendant does not bargain for a specific sentence, but for a lock on what the prosecutor can say or do at sentencing. That the sentencing does not follow the prosecutor's lead is irrelevant. A defendant's constitutional rights are violated when the prosecutor reneges on the consideration of a guilty plea. In (*Santobello v. New York*, 404 U.S. 257, 92 S.Ct. 495), The U.S.S.Ct established that state prosecutors are obligated to fulfill the promise they make to a defendant when those promises serve as an inducement to a defendant's guilty plea" quoted in *Sprouse v. State*, 585 S.Ct. 2d 278 (S.C. 2003). Question arise in *Santobello* on numerous occasions the Supreme Court applied what amounts to a per se prejudice analysis after it found the defendant plea agreement had not been fulfilled (404 U.S. at 262-63, 92 S.Ct. 495. The Court reasoned that "[W]e need not reach the question whether the sentencing judge would or would not have been influenced had he known all the details of the negotiation for the plea." *Id.*, at 262, 92 S.Ct. 495. Recognizing the interests of justice and the duties of the prosecution in relation to promises made in the negotiation of pleas" would be best served by the courts for remanding the case to the state court for one of

two dispositions the court indicated that the state court could either
~~(1) require specific performance of the plea agreement or allow petitioner~~
 to withdraw his guilty plea altogether and start over. Id. at 263-92
 S.Ct. 495. Quoted from *Spreause v. State*, 585 S.E.2d 278. As in *Dann*
v. Collieran 247 F.3d 450, the District Court have held that the
 doctrine that the government must adhere to its bargain in the
 plea agreement is so fundamental that even through the breach
 is inadvertent and the breach probably did not influence the judge
 in the sentence imposed, due process and equity requires that the
 sentence be vacated. Harmless error does not apply when government
 breaches a plea agreement, *U.S. v. Canada*, 960 F.2d 263 (1992)

Applicant was prejudiced when the prosecutor breached the
 plea agreement of no state recommendation. (*Santobello v. New York*,
 404 US 257, 92 S.Ct. 495), where defendant entered the guilty plea
 voluntarily and knowingly surrendered a plethora of Constitutional
 Rights in exchange for a commitment by the prosecutor to do or
 not do certain things and solicitor breached the agreement
 violating defendant Due Process right by implication of the
 consideration and voluntariness upon which that plea was based.
 State prosecutor had an obligation to fulfill their end of the
 plea agreement

Respectfully Submitted,

Alvin Samuels, II

Alvin Samuels, II

Date: 3/4/13

On the 4th day of March, 2013
Susan H. Frye

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

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

Alvin S. Samuels, II, #351567,
Applicant,

) Case No. 2013-CP-40-01556
)

) v.
)

) **RETURN**
)

) State of South Carolina,
) Respondent.
)
_____)

In response to the post-conviction relief application filed March 14, 2013, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for Richland County. The Applicant was true bill indicted at the June 2012 term of the Richland County Grand Jury for two counts of Armed Robbery (2011-GS-40-01806, -01807), Possession of a Weapon During the Commission of a Violent Crime (2011-GS-40-01808), Attempted Murder (2011-GS-40-01809), Assault and Battery – First Degree (2012-GS-40-03497), Pointing and Presenting a Firearm (2012-GS-40-03498), and Kidnapping (2012-GS-40-03499). He was represented by James Shadd, III, Esquire. On July 12, 2012, the Applicant appeared before the Honorable DeAndrea G. Benjamin, where he pled guilty as indicted. Pursuant to negotiations with the State, Judge Benjamin sentenced Applicant to eighteen years imprisonment for each count of Armed Robbery, five years imprisonment for Possession of a Weapon During the Commission of a Violent Crime, eighteen years imprisonment for Attempted Murder, ten years imprisonment for Assault and Battery – First, ten years imprisonment for Pointing and Presenting a Firearm, and eighteen years

imprisonment for Kidnapping; with the sentences to be served concurrently. The Applicant did not appeal his conviction and sentence.

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

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel;
 - a. "...trial counsel failed to conduct constitutionally 'reasonable' investigation thereby violating Hill Standard such that Applicant's plea is rendered involuntary."
 - b. "...trial counsel failed to investigate and procure exculpatory evidence regarding the 'Asportation' element of the armed robbery charge violated Hill Standard such that Applicant plea is render involuntary."
 - c. "...trial counsel failed to investigate and procure evidence which demonstrates mitigation to Applicant's convictions and sentences to the trial courts violated Hill Standard such that Applicant's plea is rendered involuntary."
 - d. "...trial counsel failed to object and move to withdrawal of plea on grounds of 'Breach of Plea Agreement' violated Hill Standard, such that Applicant's plea is involuntary, where plea agreement called for no recommendation from the state as to Applicant's sentence but state solicitor recommended the trial court to sentence Applicant to the maximum sentence."
 - e. "...trial counsel failed to object to and to move to quash of dismiss the Armed Robbery charge for insufficient proof of the 'Asportation' element of the Armed Robbery charge violated Hill Standard such that Applicant plea is rendered involuntary."
 - f. "...trial counsel's misrepresentation and gross misadvise in advising Applicant that the 'Malice' element of Attempted Murder charge may be implied by a jury because the use of a deadly weapon violated Hills Standard such as that Applicant's plea is involuntary."
 - g. "...trial counsel failed to move for a continuance in order to secure the presence of victim Nathan Irvin and witness Konassi Ogubi to attend the plea proceedings to testify on Applicant's behalf to mitigate

- Applicant's convictions and sentencing liabilities violates Hills Standard such that Applicant's plea is rendered involuntary."
- h. "...trial counsel misadvised Applicant to the elements of 'Asportation' regarding the Armed Robbery indictment violated Hills Standard such that Applicant pleas is rendered involuntary."
2. Due process violation;
 - a. "Applicant was denied the right to due process under the U.S. Constitution and South Carolina Constitution when State solicitor breached the plea agreement by commending the trial court to sentence Applicant to the maximum term of negotiated plea, while the plea agreement clearly called for 'No State Recommendation' from the state."
 - b. "Applicant was denied the right to due process under the U.S. Constitution and South Carolina Constitution when trial counsel misadvised and lied to Applicant that if the Applicant agreed to plea guilty the counsel promised to secure victim Nathan Irvin and witness Kouassi Ogubi attendance for the plea proceeding to testify on Applicant's behalf to mitigate Applicant's conviction and sentencing liabilities."
 - c. "Applicant was denied the right to due process under the U.S. Constitution and South Carolina Constitution by trial counsel coercing and inducing Applicant to plea guilty through gross misadvice and misrepresentation."
 - d. "Applicant was denied the right to due process under the U.S. Constitution and South Carolina Constitution by the state solicitor procuring Applicant's plea of guilty through deceptive tactics."
 3. Brady Violation; and
 - a. "Applicant was denied the right to Brady Rule (5) under the U.S. Constitution and South Carolina Constitution where applicant was denied constitutional right pursuant Brady v. Maryland, 83 S.Ct. 1194 where state solicitor failed to fully and timely disclose Brady Material to Applicant."
 - b. "Applicant was denied U.S. Constitutional and South Carolina Constitutional rights pursuant to Brady v. Maryland, when solicitor illegally suppressed favorable material and exculpatory evidence from the Applicant."
 4. Involuntary guilty plea.
 - a. "Applicant's plea of guilty was involuntary, unknowingly and unintelligently under the U.S. Constitution and South Carolina Constitution when prosecution breached plea agreement."

Any claims not specifically enumerated in the post-conviction application or amendments will be opposed by the State at an evidentiary hearing, and the State 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, SCRCP.

III.

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. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

Respondent submits that the record fully supports the knowing and voluntary nature of the Applicant's plea. However, allegations regarding ineffective assistance of counsel and the voluntariness of the plea may raise a question of fact which is not conclusively refuted by the

record. Accordingly, Respondent requests an evidentiary hearing on this allegation. Sharper v. State, 305 S.E.2d 247.

V.

The Applicant alleges that he was denied due process of law. The Applicant's allegation claims infringement of his rights under certain amendments to the United States Constitution. However, the Applicant fails to set forth with specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires that the Applicant must "... specifically set forth the grounds upon which the application is based." Section 17-27-50 of the Code of Laws of South Carolina (1976). In an application for post-conviction relief, it is incumbent upon the Applicant to make at least a prima facie showing which would entitle him to relief before an evidentiary hearing will be scheduled and held. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). Since the Applicant has failed to make even a prima facie showing, the Respondent would submit that this allegation should be dismissed for failing to meet the requirements of the Uniform Post-Conviction Procedures Act. This allegation is so vague that it is impossible for the State to respond.

VI.

The Applicant further alleges that the State withheld favorable evidence in violation of Rule 5, SCRCrimP and Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed. 2d 215 (1963). In evaluating post-trial Brady claims, the Applicant must show that (1) the prosecution suppressed evidence, (2) the evidence would have been favorable to the accused, and (3) the suppressed evidence is material. United States v. Wolf, 839 F.2d 1387 (10th Cir. 1988). A Brady violation does not warrant reversal if the evidence is merely cumulative or impeaching.

Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993). "Impeachment or exculpatory evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." Id., 434 S.E.2d at 268.

Respondent submits that this ground for relief is totally without merit. However, the allegation concerning a Brady violation probably raises questions of fact that are not conclusively refuted by the record. Respondent requests an evidentiary hearing on this ground for relief. Sharper, Id.

VII.

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

VIII.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY ELLIOTT
Senior Assistant Deputy Attorney General

MEGAN E. HARRIGAN
Assistant Attorney General

By:

Megan E. Harrigan
Attorneys for the Respondents
P.O. Box 11549
Columbia, S.C. 29211

June 21, 2013.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

ALVIN S. SAMUELS, II, 351567,

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

2013-CP-40-1556

AFFIDAVIT OF SERVICE BY MAIL

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:

Anna R. Good, Esquire
 Law Office of Anna Good, LLC
 1720 Main Street
 Ste. 303
 Columbia, SC 29201

DATED this 21st day of June, 2013.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

State of South Carolina)
)
County of Richland)

In the Court of Common Pleas
Fifth Judicial Circuit
2013-CP-40-1556

Alvin S. Samuels, II,

Applicant,

vs.

State of South Carolina,

Respondent.

Transcript of Record

October 2, 2013
Columbia, South Carolina

B E F O R E:

The Honorable James R. Barber, III, Judge

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

Anna R. Good, Esquire
Attorney for the Applicant

Megan E. Harrigan, Esquire, Assistant Attorney General
Attorney for the Respondent

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

I N D E X

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<u>No.</u>	<u>Description</u>	<u>ID.</u>	<u>EX.</u>
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1 MS. HARRIGAN: May it please the court?

2 THE COURT: All right, we are doing Mr. Samuels?

3 MS. HARRIGAN: Yes, Your Honor, docket number
4 2013-CP-40-01556. Applicant was true-bill indicted at the
5 June 2012 term of the Richland County Grand Jury for two
6 counts of armed robbery, possession of a weapon during the
7 commission of a violent crime, attempted murder, assault
8 and battery in the first degree, pointing and presenting a
9 firearm, and kidnapping. He was represent by James Shadd,
10 III.

11 On July 12, 2012, applicant appeared before the
12 Honorable DeAndrea Benjamin, where he pled guilty as
13 indicted. Pursuant to negotiations with the state, Judge
14 Benjamin sentenced applicant to eighteen years'
15 imprisonment for each count of armed robbery, five years'
16 imprisonment for possession of a weapon during the
17 commission of a violent crime, eighteen years' imprisonment
18 for attempted murder, ten years' imprisonment for assault
19 and battery in the first degree, ten years' imprisonment
20 for pointing and presenting a firearm, and eighteen years'
21 imprisonment for kidnapping, with all the sentences to be
22 served concurrently.

23 The applicant did not appeal his conviction of
24 sentence. He did, however, on March 14, 2013 ---

25 APPLICANT: I can -- excuse me, I can object? I can't

1 say none of that?

2 THE COURT: You've got a lawyer. Your lawyer can
3 object.

4 APPLICANT: Can she object?

5 THE COURT: Mr. Samuels, your lawyer is an experienced
6 lawyer. She knows what she's doing. She's done this a lot
7 of times; she knows what's permitted.

8 MS. HARRIGAN: He filed an action for post-conviction
9 relief on March 14, 2013, alleging ineffective assistance
10 of trial counsel for trial counselor's failure to conduct
11 constitutionally reasonable investigation, violating the
12 Hill standard, rendering his plea involuntary; for
13 counsel's failure to investigate and procure exculpatory
14 evidence regarding asportation element of the armed robbery
15 charge, rendering his plea involuntary; that trial counsel
16 failed to investigate and procure evidence that
17 demonstrates mitigation, thus rendering his plea
18 involuntary; that trial counsel failed to object and move
19 to withdraw his plea based on a breach in plea agreement,
20 therefore rendering his plea involuntary; that trial
21 counsel failed to object and move to quash the armed
22 robbery indictment for insufficient proof of the elements;
23 that he misrepresented and grossly misadvised him regarding
24 the malice element of attempted murder; that trial counsel
25 failed to move for a continuance in order to secure the

A. SAMUELS - DIRECT EXAMINATION BY MS. GOOD

5

1 presence of victims to testify in his behalf; that trial
2 counsel misadvised applicant as to the elements of
3 asportation for armed robbery, this rendering his plea
4 involuntary; numerous due-process violations, a Brady
5 violation, as well as an involuntary guilty plea.

6 The state made its return on June 21, 2013, and he is
7 represented in this action by Anna Good.

8 THE COURT: All right, Ms. Good.

9 MS. GOOD: Thank you. Call Alvin Samuels to the
10 stand.

11 THE COURT: Mr. Samuels, if you'll come up here.

12 APPLICANT: Excuse me.

13 THE COURT: Place your left hand on the Bible and
14 raise your right hand for me, please.

15 ALVIN S. SAMUELS, BEING DULY
16 SWORN, TESTIFIES AS FOLLOWS:

17 THE COURT: All right, if you'll have a seat in the
18 witness box and tell us your full name, please.

19 APPLICANT: Good morning, ladies and gentlemen of the
20 court. My name is Alvin Samuels.

21 THE COURT: All right. Thank you.

22 DIRECT EXAMINATION BY MS. GOOD:

23 Q. Mr. Samuels, where are you currently housed?

24 A. Broad River Correctional Institution.

25 Q. And before you went to prison, were you employed?

A. SAMUELS - DIRECT EXAMINATION BY MS. GOOD

6

1 A. No, ma'am.

2 Q. And do you have family?

3 A. Yes, ma'am.

4 Q. And they live here in the Columbia area?

5 A. Yes, ma'am.

6 Q. Okay. On July 12, 2012, you pled to two counts of
7 armed robbery, a possession of a weapon during a violent
8 crime, attempted murder, assault and battery first degree,
9 pointing and presenting a firearm, kidnapping, and received
10 eighteen years from Judge Benjamin, correct?

11 A. I pled guilty on, on July 12, 2012. I pled guilty to
12 multiple felony counts. These counts ---

13 THE COURT: Slow down. Slow down. The court reporter
14 has got to get what you say.

15 APPLICANT: Yes, sir. Can you work with me, Your
16 Honor? This is my first time going, and I just want to set
17 forth my issues on the record.

18 THE COURT: All right. Well, but you've got to talk
19 slowly because she has to take down what you're saying. If
20 you talk too fast, she can't take it down.

21 APPLICANT: Yes, sir.

22 BY MS. GOOD:

23 A. These counts -- meaning two counts of armed robbery,
24 one count of attempted murder, possession of a firearm
25 during the commission of a violent crime, kidnapping,

A. SAMUELS - DIRECT EXAMINATION BY MS. GOOD

7

1 pointing and presenting firearm, assault and battery first
2 degree -- I made a critical decision to plead guilty based
3 on the advice I received from counsel, wherefore at the
4 time of me making that decision to accept counsel advice, I
5 thought it was best for me and deliver.

6 Q. Alvin, can I stop you a minute? We'll, we'll get to
7 all that. But the fact that you pled to eighteen years --
8 or you pled and a got an eighteen years from ---

9 A. Yes, I did.

10 Q. --- Judge Benjamin?

11 A. I pled ---

12 Q. And your ---

13 A. --- based, based on the advice I received from my
14 counsel.

15 Q. And throughout the whole time that you had these
16 charges against you, who was your counsel?

17 A. I had two counselors over the whole period of time.

18 Q. Who did you originally have as your attorney?

19 A. When I pled guilty?

20 Q. No. Originally when you were first arrested.

21 A. Luke Shealey. I had public defender Luke Shealey.

22 Q. Okay, and eventually did another attorney become your
23 attorney during this case?

24 A. Yes.

25 Q. And who was that?

A. SAMUELS - DIRECT EXAMINATION BY MS. GOOD

8

1 A. James Shadd.

2 Q. Okay, and from the time that you were arrested to the
3 time of your plea, how long did you have Mr. Shadd? About
4 what time did he come into the picture?

5 A. I had -- it was approximately twenty-three or twenty
6 -- no. When -- what's your question?

7 Q. At what point after you were arrested did Mr. Shadd
8 become your attorney? How long after you were arrested?

9 A. From March 2011 to 2012.

10 Q. Okay, and in March 2011 when he became your attorney,
11 did you initially meet with him?

12 A. Yes, I did.

13 Q. And how long did this meeting last?

14 A. I'm not sure.

15 Q. Do you know approximately? Was it long?

16 A. I, I have ---

17 Q. Was it short?

18 A. I have some -- from the time he was on my case till
19 the time I pled guilty, I have some letters I would like to
20 submit that I wrote to him.

21 THE COURT: Wait a minute.

22 Q. Okay. we'll get here.

23 THE COURT: Your lawyer is going to ask you questions.
24 You have to answer them.

25 MS. GOOD: Yeah, we'll get there.

A. SAMUELS - DIRECT EXAMINATION BY MS. GOOD

9

1 APPLICANT: Yes, ma'am. Yes, sir, I'm trying.

2 THE COURT: All right. Well, just listen to Ms. Good.

3 BY MS. GOOD:

4 Q. Initially when you met him in March 2011, what did you
5 discuss with Mr. Shadd in your first meeting with him?

6 A. That's when he first initiated that if I pled guilty
7 -- which in I didn't want to plead guilty. I wanted to go
8 to trial. He kept promising me ten years. That's why I
9 hired him.

10 Q. Okay. So, you initially told him you wanted a trial
11 in this case?

12 A. Yes.

13 Q. Okay, and at that point, did he have any discovery?

14 A. He didn't have -- he had some loose papers he tried to
15 -- no. At the first meeting -- that was the second meeting
16 he had provided me with loose papers.

17 Q. Okay, the ---

18 A. But the first meeting he ain't have nothing, and I
19 informed him that I, that I didn't have a full discovery,
20 and I wanted to proceed with trial.

21 Q. Okay.

22 A. Because the, the state's case against me wasn't,
23 wasn't a armed robbery.

24 Q. Okay. At that meeting, did y'all also discuss a bond
25 reduction?

A. SAMUELS - DIRECT EXAMINATION BY MS. GOOD

10

1 A. Yes. That's basically all we really discussed because
2 he had to leave the, leave the meeting that day and go back
3 and withdraw the motion for a bond reduction.

4 Q. Okay.

5 A. The same day Luke Shealey was supposed to take me up
6 for a bond reduction.

7 Q. Okay, and that meeting was in March 2011. Did you
8 have a second meeting with Mr. Shadd in June or July of
9 2011?

10 A. Yes, we did.

11 Q. Okay, and approximately how long did that meeting
12 last? Do you remember?

13 A. June?

14 Q. Yes.

15 A. Probably a hour approximately. Case notes in his --
16 Mr. Shadd matter had a -- states the time on the top of it
17 if you want to submit that into evidence.

18 Q. At the time of that meeting ---

19 A. If -- you have the case notes, right?

20 Q. I do. We'll get to that, Mr. Samuels.

21 A. I mean, I ---

22 Q. At the time ---

23 THE COURT: Mr. Samuels, she will ask you the
24 questions. You answer them. You don't get to ask her
25 questions.

A. SAMUELS - DIRECT EXAMINATION BY MS. GOOD

11

1 BY MS. GOOD:

2 Q. In the second meeting, what did y'all discuss about
3 plea or trial?

4 A. In the second meeting?

5 Q. Yes.

6 A. We really, really just discussed the case. That's
7 when he initiated that he had a plea. He initiated that he
8 could get ten years. He would get me ten years.

9 Q. Okay.

10 A. But he was trying to get me to decide to plead guilty
11 before, before I even said that.

12 Q. Okay, and what exactly did he tell you about the ten
13 years?

14 A. That he would promise me I'll get nothing more than
15 ten years.

16 Q. Okay, and at that time, what did you tell him you
17 wanted to do?

18 A. I tell him that a thorough investigation need to be
19 done into the facts and circumstances of the case and give
20 me a ample opportunity to meet the versal test -- the
21 versus -- testing process of the prosecution.

22 Q. Okay, and do you know if he ever got an investigator
23 on your case?

24 A. No. He, he relied on the good faith of the state and,
25 and relied on somebody else investigation, which was Luke

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1 Shealey.

2 Q. Okay, and ---

3 A. Excuse me.

4 Q. --- at this meeting, did he have discovery yet?

5 A. Ard vs. Kato state that counselors have to conduct a
6 independent investigation of they own. They can't rely on
7 somebody else investigation.

8 Q. Mr. Samuels, answer my questions.

9 A. I am answering.

10 Q. At that meeting, did you have any -- did he have
11 discovery?

12 A. No. He had gave me some loose papers.

13 Q. Okay. So, at this point you didn't have a copy of
14 your entire discovery?

15 A. I did not have a copy of my entire discovery, and he
16 kept trying to make me plead guilty without doing a
17 thorough, a full and thorough investigation into the facts
18 and circumstances of the case.

19 Q. And during this meeting, did he go over any discovery
20 with you?

21 A. In the first meeting or just ---

22 Q. The second.

23 A. The second meeting?

24 Q. Yes.

25 A. We discussed the documents. I had an inconsistent

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1 statement saying that I ain't taken nothing from Daniel
2 Kual.

3 Q. Okay, and y'all left that meeting with you asking him
4 to please do investigation, correct?

5 A. Yes.

6 Q. Okay, and the third meeting you had was approximately
7 January of 2012, correct?

8 A. Yes, ma'am.

9 Q. All right, and in this meeting, can you tell the court
10 what happened in that meeting?

11 A. I met with him. That's when he then again stated that
12 he could -- he had secured the ten years, but I said how
13 can you secure the ten years but they wouldn't give you a
14 cap. So, it sounded kind of strange to me.

15 Q. Okay. So, you asked for him to get a cap?

16 A. Not initially. I kept telling him that I wanted to go
17 to trial.

18 Q. Okay.

19 A. But he kept forcing me and telling me that based upon
20 his advice, it was best that I consider his advice and go
21 to trial.

22 Q. And at this meeting, was this the first time that you
23 informed him that you no longer wanted him to be your
24 attorney?

25 A. That's not the first meeting.

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1 Q. Is this ---

2 A. No, this ---

3 Q. --- the first meeting that you had informed him about
4 him not being your attorney ---

5 A. No.

6 Q. --- anymore?

7 A. No, this is not. No, that's not.

8 Q. Okay. When did that occur?

9 A. That occurred in March, March 27th.

10 Q. Okay, and tell the court about why you did not want
11 him to be your attorney anymore.

12 A. Because he kept trying to advise me to plead guilty
13 without doing a thorough investigation when I kept telling
14 him that it was significant evidence that I didn't take
15 anything. It was inconsistent statements. It was
16 inconsistent statements. Then I didn't -- the decision to
17 make a client plead guilty before all the evidence is in,
18 that decision is difficult. How can you advise me to plead
19 guilty before you have all the evidence ---

20 Q. So ---

21 A. --- submitted in the trial -- I mean, submitted into
22 evidence?

23 Q. So, at this time in March 2012, you still did not have
24 a copy of your discovery?

25 A. No, I didn't. I had some loose papers.

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1 Q. Okay, and you filed a motion to relieve him in March
2 2012?

3 A. Yes.

4 Q. Okay, and when you filed that motion, did a judge end
5 up hearing that motion?

6 A. Yes. I withdrew that motion based, based upon that we
7 had a oral agreement. If I ---

8 APPLICANT: Excuse me, Your Honor, I could submit the
9 case notes that verify so I could have probative evidence
10 to support my issues.

11 THE COURT: Your lawyer can submit what she believes
12 ---

13 MS. GOOD: Well, I can do that later through Mr. Shadd
14 because there's -- it's his ---

15 APPLICANT: No, no, no, no. I need -- the burden of
16 proof is on the applicant to set forth ---

17 THE COURT: Mr. Samuels, this is your lawyer. She's
18 conducting the case.

19 APPLICANT: Yes. Excuse me, sir. I'm not trying to
20 be hard, but ---

21 THE COURT: I understand.

22 APPLICANT: I'm just trying to receive my full bite of
23 the apple.

24 THE COURT: You answer her questions. She's the one
25 that's running the case.

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1 APPLICANT: Yes, sir.

2 BY MS. GOOD:

3 Q. You were discussing that you had an oral agreement
4 with Mr. Shadd regarding withdrawing your motion to relieve
5 him as your attorney in March 2012. What was that oral
6 agreement?

7 A. He conduct a thorough investigation, stop advising me
8 to plead guilty.

9 Q. Okay, and was there also something regarding a bond
10 reduction hearing?

11 A. Yeah. He had, he had submitted a bond reduction that
12 day, a bond reduction motion that day.

13 Q. Okay, and as we discussed before, you're not aware
14 that he did any investigation on the armed robbery to your
15 knowledge?

16 A. He did not do investigation. If I could submit the
17 evidence, I could show that he didn't, which in I have a
18 affidavit from the victim saying that if he would have came
19 and investigated him, they would.

20 I had, I had that guy contact your office, which in
21 you told him to meet her down here. You ain't had a
22 reasonable time to meet with him. That guy was willing to
23 come to court, and I have a affidavit that I would like to
24 submit ---

25 Q. Mr. Samuels.

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1 A. --- showing that he was willing to come and testify in
2 my, in my behalf.

3 Q. Mr. Samuels, answer my questions, please.

4 A. I am.

5 Q. Don't go off on tangents; just answer my questions.
6 We will get to all of that, okay?

7 After March 2012 when you filed your motion to relieve
8 him as your attorney and y'all came to this oral agreement,
9 you had another meeting in which he discussed a different
10 plea agreement with you. Do you remember what that plea
11 agreement was?

12 A. What meeting?

13 Q. In March 2012 after you had withdrawn -- you'd
14 withdrawn your motion to relieve him as your counsel.

15 A. He just kept promising me ten years the whole time.

16 Q. Okay. At some point, did a cap become available?

17 A. I only found out about a cap later on when I pled
18 guilty July 12, 2012.

19 Q. Okay. So, in a meeting in March 2012, there wasn't a
20 cap of twenty?

21 A. I found out, I found out that after I had -- after I,
22 I received and requested a matter I had from Attorney
23 Shadd.

24 Q. Okay. So, in June ---

25 A. Which in that falls under *Missouri vs. Frye* in failure

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1 to advise me of more favorable plea agreement.

2 Q. In June 2012, you had a bond hearing, correct?

3 A. What month?

4 Q. June 2012.

5 A. I'm not sure; I don't recall.

6 Q. Okay, but at some point you had a bond hearing?

7 A. Yes, ma'am.

8 Q. Okay. Tell the court about your bond hearing. Did,
9 did your bond get reduced?

10 A. No. It did not.

11 Q. Okay, and as a result of the bond hearing, was a trial
12 set?

13 A. Yes, it was.

14 Q. And when was the trial set for?

15 A. I don't recall.

16 Q. Was it a month later, a week later?

17 A. I don't recall.

18 Q. Okay. Could it have been three days later?

19 A. I don't recall.

20 Q. Okay.

21 A. I ain't have no document stating the day that the
22 trial was supposed to proceed on.

23 Q. At this point, did you have any of the discovery yet
24 from Mr. Shadd?

25 A. I had some loose papers.

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1 Q. But you didn't have the full discovery ---

2 A. No, I did not have the full discovery to make my
3 decision voluntarily and knowingly to plead guilty.

4 Q. Prior to the trial, did you meet with Mr. Shadd for
5 any type of trial preparation to get prepared for the
6 trial?

7 A. No. He told me that a trial was fruitless.

8 Q. Okay, and so to the best of your knowledge, do you
9 know if he prepared for a trial since he did not come to
10 prepare with you?

11 A. From my knowledge, he did no, no investigation of the
12 case. Only thing he did was rely on the good faith of the
13 state to do everything that, that put me -- that denied me
14 of my right to due process and ineffective assistance of
15 counsel because of, because of his failure. But if he
16 would have did investigation, he would have found out
17 multiple things that wasn't true about ---

18 Q. And we'll ---

19 A. --- the state's case.

20 Q. And we'll get to that. Right before the trial, did he
21 discuss a plea with you again in the holding cell?

22 A. Say that, say that again.

23 Q. Right on the day of the trial that y'all came to the
24 courthouse for a trial, did he discuss pleading guilty with
25 you again while in the holding cell or in the jury box?

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1 A. Yes.

2 Q. Okay, and let the court know what that discussion
3 entailed.

4 A. On that day, he, he told me he had secured two
5 witnesses, Nathaniel Irvin and Kouassi Ogubi,
6 K-o-u-a-s-s-i.

7 Q. And who were ---

8 A. O-g-u-b-i.

9 Q. Yeah, and who were those two people?

10 A. Those two were victims in the case.

11 Q. Okay, and he told you that he had secured them, and
12 that they would be there on your behalf?

13 A. Yes, he did.

14 Q. Okay.

15 A. But I later found out through this affidavit that I
16 secured from K -- Kouassi Ogubi that he was never even
17 contacted, which in he said if he was contacted, that he
18 would have come to the proceeding -- I mean, the plea
19 hearing and testified in my behalf.

20 Q. Still prior to the plea, at that point did you tell
21 him you wanted to plead guilty or go to trial?

22 A. I told him I wanted to go to trial. He told me I
23 couldn't rely on a trial.

24 Q. And what did he ---

25 A. So, so, I feared of going to trial with his

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1 representation. But if I would -- knew that stuff I
2 learned now and his mis-advice and coercing me to plead
3 guilty, I would have never accepted his advice.

4 Q. And ---

5 A. I, I originally wanted to, but I ain't have -- I ain't
6 think that I could rely on trial.

7 Q. And prior ---

8 A. Based upon what he had said and discovery that he had
9 provided me and his ability to accept the facts that the
10 state, state was giving him. He never gave me a ample
11 opportunity to meet to reverse the process.

12 Q. And prior to your plea, did you discuss the discovery
13 again with him? What did you tell him ---

14 A. We didn't ---

15 Q. --- about discovery?

16 A. We didn't never discuss the whole entire discovery.

17 Q. What did you ---

18 A. Still to this day I don't have the whole entire
19 discovery. If you take -- with the documents I have right
20 there with the checklist the Columbia Police Department
21 sent, they contain more documents that I haven't procured
22 yet, which in I have asked you to procure and you have
23 failed to procure them yourself, denying me my full bite of
24 the apple. I'm just...

25 Q. I have received the discovery. I'm asking you. Prior

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1 to the plea ---

2 A. You ---

3 Q. --- did you say anything to him about the discovery?

4 APPLICANT: I, I have multiple documents I would like
5 to submit now from the time. I would like to submit this
6 into evidence.

7 THE COURT: Mr. Samuels, we're going to do this thing
8 through your lawyer. Don't ask me ---

9 APPLICANT: Submit ---

10 THE COURT: --- again.

11 BY MS. GOOD:

12 A. You would submit this?

13 Q. I'm getting to that, Mr. Samuels.

14 A. I ---

15 Q. I need you ---

16 A. I would like you to submit this.

17 Q. --- to answer my question.

18 THE COURT: Mr. Samuels.

19 A. So I can have my full bite at the apple.

20 THE COURT: You want to go forward with this hearing
21 today?

22 APPLICANT: Yes, ma'am -- yes, sir.

23 THE COURT: Then you're going to do what I tell you.

24 She will introduce whatever evidence that she thinks needs
25 to be introduced.

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1 BY MS. GOOD:

2 A. Well, I can get you to introduce this for me?

3 Q. I will look at it in just a minute, Mr. Samuels. I
4 need you to answer my questions first so I can lay the
5 foundation to introduce it into evidence.

6 Prior to your plea, did you say anything to him
7 regarding your discovery, that you would plead guilty if?

8 A. Say that again.

9 Q. Prior to your plea, when he was discussing pleading
10 guilty with you the day of the plea, did you say anything
11 to him about your discovery?

12 A. Yes, I did. That's, that's instituted in his matter I
13 had.

14 Q. And what did you say to him?

15 A. I said that I, I needed my discovery to make the
16 decision to plead guilty, which in he kept telling me if,
17 if I don't accept this plea today, I'm going to go to trial
18 with you. He wasn't going to enter no evidence, interview
19 no witnesses, and do none of that. So, I ain't, I ain't
20 believe that I could rely on trial based upon what he kept
21 telling me. Now, if I would have had competent ---

22 Q. We're getting there. Hold on. Before you pled
23 guilty, did you ever have a full copy of your discovery?

24 A. No, I did not.

25 Q. Did you ever get a copy of your discovery from Mr.

1 Shadd?

2 A. No, I did not. I got some loose papers.

3 Q. Okay. Did you get anything from him after the plea?

4 A. I received some, some -- the, the side indictments
5 alleging the -- each and every element set forth in the
6 indictment.

7 Q. Did you receive any medical records from him after the
8 plea?

9 A. Yes. I received that after I pled guilty, which in
10 that medical record's contained in documents state ---

11 Q. I'm getting there. I'm getting there. Hold on, but
12 you received discovery from him after the plea in the form
13 of some medical records?

14 A. Yes, I did.

15 Q. Okay. I'm going to show you.

16 (MEDICAL RECORD MARKED AS APPLICANT'S EXHIBIT NUMBER 1
17 FOR IDENTIFICATION.)

18 Q. I'm going to show you what's marked as Applicant's 1.
19 Do you recognize this piece of paper?

20 A. Yes, ma'am. That's a document I received after I pled
21 guilty.

22 Q. And is it a medical record?

23 A. Yes, it is a medical record of Palmetto-Health
24 Richland Emergency Department flow sheet showing and
25 indicating what I had priorly told the Counselor Shadd:

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1 that I did not take, deprive Dan Kual of any of his
2 personal possessions or U.S. currency.

3 Q. We're going to talk about it in just a minute, and
4 this is something that he gave you afterwards?

5 A. That's something I received after I pled guilty, which
6 is in his matter and all, dated July 12, 2012.

7 MS. GOOD: At this time I'd like to introduce this as
8 Applicant's 1.

9 MS. HARRIGAN: If we could wait and make sure that
10 Mr. -- that was in Mr. Shadd's file? The state would
11 object to proper foundation at this time.

12 THE COURT: Wait a minute. He, he's identified that
13 as something that ---

14 MS. HARRIGAN: Did it come directly.

15 THE COURT: --- that he, that he received from Mr.
16 Shadd. I'm going to admit it at this time.

17 (MEDICAL RECORD MARKED INTO EVIDENCE AS APPLICANT'S
18 EXHIBIT NUMBER 1.)

19 BY MS. GOOD:

20 Q. And on Applicant's 1, it has an inventory for this
21 particular patient who was considered a victim of the armed
22 robbery that you were accused of. Does it have anything
23 regarding inventory that he had on his body at the time
24 that he was at the emergency room?

25 A. Yes. It contains his personal possessions, in which

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1 he said I deprived him of which I was indicted for.

2 Q. Okay, and what did he have in his possession at the
3 emergency room that you were accused of taking from him but
4 was, in fact, on his person at the emergency room?

5 A. His -- what -- which, which that document states?

6 THE COURT: Hold on a minute.

7 Look, I don't want to lock these doors. I don't want
8 to have -- you can't have people coming in here and
9 disrupting everything. If we need to get another deputy
10 down here, let's do that, but they'll have to wait until we
11 take a break for anybody else coming in here.

12 BY MS. GOOD:

13 Q. If you could look at the medical records right next to
14 you, Applicant's 1. Is there something that was on Mr. --
15 on, on the victim's person that was indicated on the
16 medical record that you were accused of taking from him?

17 A. Yes, ma'am, the \$679 in U.S. currency, which in he
18 said in his statements...

19 Q. He had indicated that you had stolen that money from
20 him, correct?

21 A. He had -- no. He indicated that I physically robbed
22 and deprived him of his physical, but that...

23 Q. Okay.

24 A. You can submit this.

25 Q. I can't submit affidavits, Mr. Samuels.

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1 A. It's not evidence. It's statements saying that --
2 what he's saying I deprived him of, taking.

3 Q. Wait a minute, Mr. -- please. Look at the medical
4 record. He has on -- he says he had \$676. Is that what it
5 was?

6 A. Excuse me. Can you submit this into evidence?

7 Q. I can't at this time because it's got writing on it
8 that we do not have the person here.

9 I would like you to please look at the medical record
10 that I just gave you, Applicant's 1, showing what Mr. Kual
11 had on his body when he was at emergency room after the
12 robbery. If you can look right here that you indicated to
13 me.

14 A. If you could look right here, it says ---

15 THE COURT: Mr. Samuels.

16 APPLICANT: Yes, sir.

17 THE COURT: Answer her question.

18 APPLICANT: I'm answering her questions.

19 THE COURT: No, sir. You're ---

20 APPLICANT: In order for me ---

21 THE COURT: --- telling her to do something. You
22 answer her questions.

23 APPLICANT: No, I'm asking -- I'm, I'm trying to get
24 -- receive my full bite at the apple.

25 THE COURT: Mr. Samuels, do as I tell you. Answer her

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1 question.

2 APPLICANT: I am, sir. I'm trying to receive my full
3 bite of the apple, and this is evidence ---

4 THE COURT: Don't tell me what you're trying to
5 receive. I'm telling you to answer her question.

6 APPLICANT: Yes, sir, Your Honor.

7 THE COURT: You will -- she will do what needs to be
8 done in this case.

9 APPLICANT: And I'm answering the questions.

10 BY MS. GOOD:

11 Q. Look at the medical record on Applicant 1. Did Mr.
12 Kual have something on his body that was indicated at the
13 ER that he had in his pockets?

14 A. Yes, it does. It ---

15 Q. And what is it?

16 A. It is \$679 of U.S. currency.

17 Q. Okay.

18 A. Which in his statement right here saying I deprived
19 his of all of his money and possessions.

20 Q. Okay. So, you were accused of robbing him of his
21 money, but it's indicated on the applicant -- on
22 Applicant's 1 that he had \$676 on his person at the
23 emergency room?

24 A. Yes.

25 Q. Okay. After the plea -- when your plea date arrived

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1 and he started talking to you about the plea, when you
2 signed the paperwork, what did he tell you about the
3 conditions of the plea?

4 A. It was no state recommendation.

5 Q. Okay, and was there a cap of twenty-five years?

6 A. Yes.

7 Q. Okay, and is this the first time you had heard of that
8 cap?

9 A. If I could speak with you, I have a sentencing sheet
10 showing, showing that, that when, when he was relaying this
11 advice to me, that when he was telling me that it was no
12 state recommendation, I notified to him showing that on
13 four of these sentencing sheets, the recommendation box
14 wasn't checked, and then -- I mean, let me see. One, two,
15 on three of them it was checked, and I notified counsel. I
16 brung that to his attention, being that that was the
17 decision I was going to make based upon I wanted to plead
18 guilty if they wasn't going to make no state recognition.
19 Everything was going to be left up to the judge, being that
20 he picked the judge. And the judge, what was -- based upon
21 his advice to me, that I was going to get ten, ten years.

22 Q. Okay, but at this point, is this the first time you've
23 heard of the cap of twenty-five years?

24 A. Yes.

25 Q. Okay, and when you signed your paperwork, he told you

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1 ten years, you were still going to get ten years?

2 APPLICANT: I beg the courts for indulgence.

3 THE COURT: Answer the question.

4 BY MS. GOOD:

5 Q. Did he still tell you the day of the plea that you
6 were going to get ten years?

7 A. Yes.

8 Q. Okay, and before the plea, what was your state of
9 mind? How were you feeling at that time?

10 A. I didn't want to plead guilty.

11 Q. Okay, and during the plea and after the plea of
12 getting the eighteen-year sentence, did you go straight
13 back down to the holding cell, or did you go to the jury
14 box?

15 A. Went to the jury box.

16 Q. Okay, and did Mr. Shadd come over there to speak to
17 you while you were in the jury box?

18 A. Yes.

19 Q. Okay, and when he came over to speak with you, what
20 did you discuss with him? Did you discuss ---

21 A. I told ---

22 Q. --- an appeal?

23 A. I told him the terms and the conditions of the plea in
24 which I agreed to accept his advice to plead guilty wasn't
25 true and mis-advice, being that he told me that it was

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1 going to be no state recommendation. The two victims had
2 been secured in order to testify on my behalf where I have
3 two affidavits stating that they wanted leniency, and the
4 facts and circumstances of the case wasn't actually a armed
5 robbery.

6 Plus, plus there was no sex offender registry, and
7 basically the more -- the thing that really made me --
8 being that it wasn't no state recommendation, and the judge
9 and everything going to be left up to the judge, I decided
10 to accept that plea. But if, if I knew that the state
11 wasn't going to upheld its agreement to no state
12 recommendation, which I signed a sentencing sheet just as
13 *Hill vs. Lockhart* did saying that it wasn't, it wasn't
14 going to be no specific things in this document that you
15 sign supposed to be upheld.

16 Now, if I known that they, they was going to make a
17 recommendation, I wouldn't have never wavered my
18 constitutional rights. I wouldn't have never have
19 voluntarily and knowingly pled guilty.

20 Q. When he ---

21 A. Which in this document showing that it was -- it's a
22 recommendation by the state, which in I got them to strike
23 that out before I even signed this guilty plea, which in
24 it's, it's instituted on one, two, three, three of these
25 indictments -- I mean, three of these sentencing sheets

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1 that I signed after...

2 Q. Okay.

3 A. After he struck them out.

4 Q. I need you to answer my question. In the jury box
5 when he came over to speak with you, did you discuss an
6 appeal or motion to reconsider?

7 A. Yes, I did. I told him that he needed to appeal it
8 based upon the advice, advice he had told me, and it wasn't
9 -- it was not correct.

10 Q. So, at the time you told him to appeal?

11 A. Yes, I did.

12 Q. Okay.

13 A. He did not. He did not appeal; I sent him numerous
14 letters asking him to appeal it, and he still didn't.

15 Q. Okay.

16 A. Which in only issues that he later addressed and said
17 that he was going to get looking into was the sex offender
18 registry, which in was another term of the plea was no sex
19 offender registry, but that hasn't been fulfilled till this
20 day.

21 Q. Okay, and today are you asking the court to find Mr.
22 Shadd ineffective because he gave you the wrong information
23 regarding your plea and any other incidents, and not doing
24 a thorough investigation which would have shown that the
25 victim had \$675 on his body?

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1 A. State your question again, ma'am.

2 Q. Are you asking the court to find Mr. Shadd ineffective
3 today because he gave you the wrong information regarding
4 your plea, as well as failing to conduct investigation
5 showing that the victim had 700 -- \$676 on his body?

6 A. I plead -- state it -- you got to...

7 Q. Are you asking the judge to find Mr. Shadd ineffective
8 today?

9 A. I'm, I'm, I'm raising multiple allegations for
10 ineffective assistance of counsel for failure to object, to
11 withdraw when the state breached its plea agreement, to
12 mis-advice regarding the malice element of attempted
13 murder, failure to secure witness, failure to testify if I
14 plead guilty, for coercing me, violation of my due process
15 rights, and involuntary guilty plea where I pled guilty
16 based upon the advice I received from counsel that was
17 negligent and incompetent.

18 Q. And if you had known prior to your plea about the
19 information in the medical records about Mr. Kual having
20 \$675 on his body after the robbery, would you have pled
21 guilty that day?

22 A. I knew that this money was in his possession the whole
23 time. I informed my counsel of that, which in he never did
24 investigation. Why he never did it, I don't know, but
25 prior to me pleading guilty, I informed him, which is in

1 his case notes.

2 Q. All right, is there anything else you would like to
3 tell the judge today that we haven't talked about?

4 A. Yes. I would like to state forth each and every issue
5 and -- that I set forth in my PCR application.

6 Q. He's got a copy of your PCR.

7 A. No.

8 THE COURT: This is part of the record.

9 APPLICANT: Sir?

10 THE COURT: Your application is part of the record.

11 APPLICANT: Yes, sir. That's -- but I got to, I got
12 to submit certain documents that prove each allegation I
13 set forth in order to receive my full bite of the apple.

14 THE COURT: Well, affidavits are not, are not
15 admissible.

16 APPLICANT: Sir?

17 THE COURT: Affidavits are not admissible.

18 APPLICANT: They're not admissible?

19 THE COURT: Not admissible. Nobody can cross-examine
20 an affidavit. The other side has to have the right to
21 cross-examine whoever said what's in the affidavit.

22 APPLICANT: But, but I informed my present counsel
23 here that these two witnesses had wanted to come in here
24 and testify, or they ---

25 THE COURT: What does that ---

A. SAMUELS - DIRECT EXAMINATION BY MS. GOOD

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1 APPLICANT: They could have been subpoenaed. I
2 informed my counsel there.

3 THE COURT: I don't know what you told your counsel,
4 but I'm telling you affidavits are not admissible. Your
5 lawyer knows that. That's why that hasn't been ---

6 APPLICANT: My lawyer never met with me not but one
7 time, Your Honor.

8 THE COURT: What else you want to tell me?

9 APPLICANT: I want to tell you the issues that are set
10 forth in my application, Your Honor. I'm just trying to
11 set forth what I -- what -- my constitutional rights been
12 violated. I'm not trying to get on your bad side or none
13 of that, Your Honor.

14 THE COURT: What are you going to do? Read me what
15 your application says?

16 APPLICANT: Yes, sir.

17 THE COURT: All right. Well, your application is
18 already ---

19 APPLICANT: That's not the application I was talking
20 about. That's my memorandum of law. These are set forth
21 each issue and what I need to do to meet the burden of
22 proof.

23 THE COURT: You filed an application right here.
24 There's an application ---

25 APPLICANT: Yes.

A. SAMUELS - DIRECT EXAMINATION BY MS. GOOD

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1 THE COURT: --- in which you are required to set forth
2 your grounds.

3 APPLICANT: Yes, sir.

4 THE COURT: Are these something different from your
5 grounds here today?

6 APPLICANT: Yes, sir -- no, no, no, no. That's --
7 this, this is setting forth why I should have relief. This
8 is -- it's just meeting the burden of proof, what I need to
9 show you to have probative evidence for you to uphold and
10 find the findings of facts and conclusions of law in each
11 and every individual issue that I set forth in my
12 application.

13 THE COURT: I'm fully aware of what the burden of
14 proof is and what you're required to do in order to prevail
15 here today.

16 APPLICANT: Yes, sir. I only want to meet that by
17 letting you know and setting forth this on the record, Your
18 Honor. That's the only thing I want to do.

19 THE COURT: All right, you cannot admit, submit
20 affidavits. They will not be admitted here today. What
21 else you want to tell me?

22 APPLICANT: I want to just go through each and every
23 issue and present the evidence that support the issues.

24 THE COURT: The evidence that you can present is your
25 testimony.

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1 APPLICANT: Yes, sir, but I got to have something to
2 establish that they breach and the terms of the breach.

3 THE COURT: Well, so you're going to have to have some
4 witnesses.

5 APPLICANT: Have to have some witnesses? But I got
6 clear evidence of a document I signed just as Hill did in
7 *Hill vs. Lockhart*.

8 THE COURT: What witnesses?

9 APPLICANT: Which is the standard, the standard -- not
10 -- the sentencing sheets, Your Honor, the sentencing sheets
11 based upon what counsel advised me to plead guilty to.

12 THE COURT: Mr. Samuels, the sentencing sheet is in
13 the record.

14 APPLICANT: But I just want to -- I'm making sure that
15 it's preserved for a final ---

16 THE COURT: I have all the sentencing sheets.

17 Do y'all have any objections to making sentencing
18 sheet an exhibit in this case?

19 MS. GOOD: No, sir.

20 MS. HARRIGAN: No, Your Honor.

21 THE COURT: Here's all the sentencing sheets. They
22 will now be made an exhibit into the record.

23 APPLICANT: All seven?

24 THE COURT: All seven of them.

25 APPLICANT: 1806, indictment number 1807, 18 ---

A. SAMUELS - DIRECT EXAMINATION BY MS. GOOD

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1 THE COURT: I have 3497, 3498, 3499, 1806, 1807, 1808.

2 APPLICANT: Yes, sir. It's seven of them.

3 THE COURT: 1809, that's seven of them.

4 APPLICANT: Yes, sir.

5 THE COURT: We will mark this as Court -- I mean, as

6 Applicant's Exhibit Number whatever it is.

7 COURT REPORTER: 2.

8 THE COURT: 2.

9 (SENTENCING SHEETS MARKED INTO EVIDENCE AS APPLICANT'S
10 EXHIBIT NUMBER 2.)

11 THE COURT: They are all into evidence.

12 APPLICANT: Yes, sir, and why I wanted you to take a
13 look at those.

14 THE COURT: I've looked at them. I've looked at all
15 seven of them.

16 APPLICANT: Yes, sir, but it's, it's, it's the
17 specificness of, of this recommendation box right here.

18 THE COURT: I've looked at that. What, four of them
19 are checked with -- and then marked through.

20 APPLICANT: Marked through, and I pleaded guilty after
21 that was...

22 THE COURT: Indicated that they were negotiated
23 sentences.

24 APPLICANT: Negotiated sentence with no state
25 recommendation.

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1 THE COURT: That's correct.

2 APPLICANT: Yes, sir, so -- but when I got in the plea
3 hearing, and we viewed the transcript, the solicitor made
4 multiple, multiple breaches, which in he violated my
5 constitutional rights and the voluntariness of me pleading
6 guilty.

7 THE COURT: I ---

8 APPLICANT: Now had I known that they was to breach
9 the plea, which my lawyer failed to object to, I would have
10 never have pled guilty.

11 THE COURT: You've already testified to that.

12 APPLICANT: Yes, Your Honor, but these -- it's, it's
13 specific that these documents be as set forth on the record
14 that I only pleaded after these boxes were checked out by
15 recommendation by the state.

16 THE COURT: I understand that. You testified to that.

17 APPLICANT: Yes, sir, and that's -- now I can enter
18 something else?

19 THE COURT: I have no idea. You can't enter anything.
20 Only your lawyer can move that stuff.

21 APPLICANT: Okay. Now, that, that's with my breach.
22 That's the issue with my breach of the plea.

23 Now, counsel was ineffective for failure to
24 investigate when they breached the plea because in *Jordan*
25 *vs. State*, they're saying ---

A. SAMUELS - DIRECT EXAMINATION BY MS. GOOD

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1 THE COURT: Mr. Samuels, I don't need you to tell me
2 the law.

3 APPLICANT: Yes, sir.

4 THE COURT: You've testified ---

5 APPLICANT: But ---

6 THE COURT: --- that your counsel was ineffective for
7 failure to investigate. Your lawyer brought that out in
8 your examination.

9 APPLICANT: Yes, sir.

10 Now, the record shows that he ain't object and did
11 none of that, but which in -- and he had me sign a document
12 and he had the sentencing sheet scratched out by no
13 recommendation, which in I relied on that advice from him,
14 sir. Now, if he had ---

15 THE COURT: How many times do you need to tell me
16 that?

17 APPLICANT: I know. I just want it to be set forth on
18 the record, Your Honor.

19 THE COURT: You've told me that three times.

20 APPLICANT: It's, it's different. It's breach of the
21 plea. It's on -- breach of the plea is on the prosecutor.

22 THE COURT: Mr. Samuels.

23 APPLICANT: Which in failure to object is under
24 ineffective assistance of counsel, which in is two separate
25 issues.

A. SAMUELS - DIRECT EXAMINATION BY MS. GOOD

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1 THE COURT: I read the transcript of the plea.

2 APPLICANT: Yes, Your Honor.

3 THE COURT: I read the -- what you have submitted
4 today. I've read your sentence sheets. I've read your --
5 what came from the Department of Corrections showing when
6 you max out. I've read your application, your grounds in
7 your application, and your lawyer has reiterated ---

8 APPLICANT: Yes, but my, my ---

9 THE COURT: --- your grounds in your application.

10 APPLICANT: My lawyer hasn't been assisting me. Rule
11 71.1(e) saying that I have -- she supposed to assist me. I
12 have no right to ---

13 THE COURT: All right, so you telling me here today
14 you're not prepared to go forward?

15 APPLICANT: No. No, I'm not. The lawyer never met
16 with me, but I ain't going to sit there and keep say -- she
17 keep telling me -- I got a letter showing me saying that I
18 need to withdraw it. I move pro se. I'm sitting up here,
19 and I don't know how to enter all this stuff on my own.
20 I'm just trying to receive my full bite of the apple.

21 THE COURT: That's why you got a lawyer.

22 APPLICANT: That's -- she's not trying to assist me.
23 She's trying to make me file a motion for pro se, which I
24 don't know the rules of court to submit this evidence and
25 have a full bite at the apple, Your Honor.

1 THE COURT: Do you want to be a -- do you want to
2 represent yourself?

3 APPLICANT: No, I do not.

4 THE COURT: All right, then she's going to do it, and
5 if you don't do what I'm telling you here, you're going
6 back to the Department of Corrections, and we'll schedule
7 this thing at some point in time in the future. May be
8 soon, may be a long time.

9 APPLICANT: Yes, sir, but, but only thing I'm saying
10 ---

11 THE COURT: I understand.

12 APPLICANT: I can't ---

13 THE COURT: Mr. Samuels.

14 Do you want to find out what else it is he says that
15 he needs to have admitted in this case?

16 MS. GOOD: Your Honor, I've talked with him, I've met
17 with him, and anything else he has, we don't have a
18 foundation for to be able to present as evidence.

19 THE COURT: All right.

20 MS. GOOD: Legally.

21 THE COURT: What is it that he wants to admit? Do you
22 know what it is that he wants to have admitted?

23 MS. GOOD: Pretty much his entire ---

24 APPLICANT: No, she don't, Your Honor.

25 THE COURT: Hush.

A. SAMUELS - DIRECT EXAMINATION BY MS. GOOD

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1 MS. GOOD: Pretty much his entire discovery and
2 statements of all the witnesses, which we obviously can't
3 do without witnesses who are willing to come testify.

4 APPLICANT: Excuse -- can she say that again, the last
5 part?

6 THE COURT: She said that you want to admit statements
7 of witnesses.

8 APPLICANT: Yes.

9 THE COURT: All right, statements of witnesses are not
10 admissible. You have to have the witnesses here.

11 APPLICANT: Yes, sir.

12 THE COURT: Today.

13 APPLICANT: But what if I ---

14 THE COURT: To testify.

15 APPLICANT: What if I had a witness here that said
16 that, that ---

17 THE COURT: We would listen to that witness.

18 APPLICANT: That, just saying that, that, that they --
19 the, the victims had contacted her.

20 THE COURT: If you had a witness ---

21 APPLICANT: And she failed to secure them.

22 THE COURT: If you had a witness here today, we would
23 listen to anything that witness wanted to say that is
24 relevant.

25 APPLICANT: Yes, sir.

A. SAMUELS - CROSS-EXAMINATION BY MS. HARRIGAN

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1 THE COURT: Do you have a witness here today?

2 APPLICANT: I'm not sure if she want to say, say it,
3 but...

4 THE COURT: Do you have a witness here today?

5 APPLICANT: No, Your Honor.

6 THE COURT: All right.

7 MS. GOOD: At this time, I have no further questions,
8 Your Honor.

9 THE COURT: All right, anything from the ---

10 APPLICANT: Excuse me, Your Honor, I have -- I ain't
11 finished setting forth my -- each and every individual
12 issue.

13 THE COURT: You are finished.

14 APPLICANT: No, sir.

15 THE COURT: You are finished. Your lawyer has asked
16 you all the questions ---

17 APPLICANT: No, she didn't, Your Honor.

18 THE COURT: --- she wants to ask you.

19 APPLICANT: I need to receive my full bite of the
20 apple. I cannot get her for ineffective assistance of
21 counsel.

22 THE COURT: Mr. Samuels.

23 APPLICANT: On the, on the *Martinez vs. Ryan*.

24 THE COURT: All right.

25 APPLICANT: I'm not trying to have you -- go ahead,

A. SAMUELS - CROSS-EXAMINATION BY MS. HARRIGAN

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1 Your Honor. Go ahead. Go ahead. Go ahead. You can
2 proceed.

3 THE COURT: You got any questions?

4 MS. HARRIGAN: Briefly, Your Honor.

5 CROSS-EXAMINATION BY MS. HARRIGAN:

6 Q. I believe you testified on direct that you met with
7 Mr. Shadd four times, correct, before your plea?

8 A. My, my, my next issue of ineffective ---

9 THE COURT: Answer the question, Mr. Samuels.

10 APPLICANT: I'm answering the question.

11 THE COURT: The question is you met with Mr. Shadd
12 four times. Is that correct.

13 APPLICANT: This, this, this going to take me into it.

14 THE COURT: The answer is yes or no, is that correct,
15 and then you can explain it.

16 BY MS. HARRIGAN:

17 A. What's your question?

18 Q. How many times did you meet with Mr. Shadd before your
19 plea?

20 A. As to exact number, I do not recall.

21 Q. Can you give me an estimate?

22 A. I met with him multiple times.

23 Q. More than five?

24 A. I have no -- I don't recall. It's in -- instituted in
25 this matter. I had all that. We could submit that as

1 evidence.

2 Q. Were you incarcerated before your plea?

3 A. Yes.

4 Q. You discussed loose papers. What, what were these
5 loose papers? What documents were these papers?

6 A. Say what?

7 Q. You, you kept discussing you never got discovery. You
8 only got loose papers, correct?

9 A. Loose papers, these papers, because me -- of the
10 statements, statements.

11 Q. So, it was statements. What else?

12 A. I'm not sure; I just don't recall. I know it wasn't
13 entire discovery, what I received after I pled guilty.

14 Q. But it was parts of your discovery?

15 A. No. It was some loose papers. It wasn't the whole
16 discovery.

17 Q. Loose papers that were in the discovery you received
18 after your plea, correct?

19 A. Yes.

20 Q. So, it was part of your discovery, correct?

21 A. Yes, but it wasn't the critical, critical, critical
22 things of the, the -- of the discovery showing that -- this
23 right here showing I didn't take nothing from -- it wasn't
24 no intention, which is alleged in the indictment of
25 attempted murder showing that I attempted to kill Daniel

A. SAMUELS - CROSS-EXAMINATION BY MS. HARRIGAN

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1 Kual.

2 Q. You said on direct that you did give your attorney,
3 Mr. Shadd, some witnesses to investigate, correct?

4 A. Yes.

5 Q. And did you give him names and addresses of these
6 people?

7 A. Yes.

8 Q. Do you know if he was able to track them down before
9 ---

10 A. He ---

11 Q. --- your trial?

12 A. He did not do nothing to track them down.

13 Q. And you said he didn't hire a private investigator,
14 correct?

15 A. No. He relied on another investigator, which you
16 cannot do.

17 Q. What additional investigation did you want him to do
18 for your guilty plea?

19 A. I wanted him back -- investigate the facts and
20 circumstances of the case being a armed robbery.

21 Q. What ---

22 A. Being that I ---

23 Q. --- specifically did you want him to investigate?

24 A. I wanted ---

25 Q. I know you say you wanted more.

A. SAMUELS - CROSS-EXAMINATION BY MS. HARRIGAN

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1 A. I wanted him to investigate a witness who was willing
2 to cooperate and testify on my behalf saying that the
3 police had wrote in they statement and inquired more than
4 they actually saw or knew of the event.

5 Q. What ---

6 A. Which in we looked at his statement ---

7 Q. What is that witness's name?

8 A. What is that witness's name?

9 Q. The witness that you gave your attorney and wanted
10 present during ---

11 A. All four of them.

12 Q. Four? What were these four witnesses' names?

13 A. Carli -- Carlita Williams, Kouassi Ogubi,
14 K-o-u-a-s-s-i O-b -- no, O-g-u-b-i, Nathaniel Irvin, and
15 Daniel Kual.

16 Q. Do you have any of them here today?

17 A. No, I do not. I'm in prison. I have no way of
18 contacting them, but I do -- one source of contact has
19 verified that they, they did want to come here and testify.

20 Q. But they're not here today, correct?

21 A. My lawyer did nothing to secure them, and being that
22 she didn't secure them, I'm not going to have ---

23 Q. How do you know they're not here?

24 A. I'm, I'm, I'm not going to ---

25 THE COURT: Are they here? No, sir. He's already

A. SAMUELS - CROSS-EXAMINATION BY MS. HARRIGAN

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1 testified ---

2 APPLICANT: I'm not going to have my full bite at the
3 apple.

4 THE COURT: He's testified there are ---

5 BY MS. HARRIGAN:

6 Q. Regarding ---

7 THE COURT: --- no witnesses.

8 Q. --- Applicant's Number 1 that was introduced, the
9 medical records that say that -- I believe his name was Mr.
10 Kual had \$679 of U.S. currency at the time he was taken to
11 the hospital. Are you aware that the affidavit for your
12 warrant for armed robbery said that you robbed him and Mr.
13 Irvin of U.S. currency and personal property? So, it
14 wasn't just the U.S. currency.

15 A. If you, if you recall the discovery, it, it was, it
16 was nothing else saying -- it was, it was saying that, but
17 it -- they never found that I had possessed anything of
18 that.

19 Q. But you're aware that the ---

20 A. I had no knowledge of what, what is -- what else they
21 was talking about.

22 Q. But you're aware that the affidavit for your arrest
23 warrant showed that both U.S. currency and personal
24 property were taken, correct?

25 A. Okay. Now ---

A. SAMUELS - CROSS-EXAMINATION BY MS. HARRIGAN

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1 Q. Is that a yes or a no?

2 A. What's -- you got to be more specific when you asking
3 that question because the indictment alleges I took
4 something from both of them.

5 THE COURT: She didn't ask you about the affidavit --
6 I mean, the indictment. She asked you about the affidavit.

7 BY MS. HARRIGAN:

8 A. What affidavit?

9 Q. The affidavit ---

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

11 THE COURT: You may.

12 APPLICANT: The affidavit can't be submitted because
13 it can't be challenged.

14 THE COURT: The affidavit can be submitted ---

15 MS. HARRIGAN: This is a part ---

16 THE COURT: --- for purposes of an arrest warrant.

17 MS. HARRIGAN: This is part of Applicant's 2, which is
18 in Your Honor's packet.

19 BY MS. HARRIGAN:

20 Q. If you'll look at this affidavit. Does it show that
21 they were deprived of both personal property and U.S..
22 currency?

23 A. Yes, that what it says, but that -- there, there --
24 the state has to meet the burden of proof in that, which in
25 if, if they was called to court, would have had to prove

A. SAMUELS - CROSS-EXAMINATION BY MS. HARRIGAN

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1 that I actually took something or deprived them of, which
2 in I never did deprive them of anything.

3 Q. Your issue regarding the sex offender registry, you
4 claim that your attorney never got that resolved, correct?

5 A. No, he did not.

6 APPLICANT: Excuse me, Your Honor, I ain't set forth
7 all my issues on the record yet.

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

9 APPLICANT: And I'm not having my full bite of the
10 apple because they not letting me, letting me state my
11 issues on the record.

12 THE COURT: You didn't answer the question.

13 BY MS. HARRIGAN:

14 Q. Mr. Samuels, I'm going to show you your sentencing
15 sheet for your kidnapping indictment. If you'll look at
16 the other portion and read that into the record right here.

17 A. That's not the one I received. If, if ---

18 Q. If you could please read that ---

19 A. If ---

20 Q. --- into the record?

21 A. Miss, isn't...

22 Q. Does it say no sex offender registry?

23 A. That's, that's not what I'm challenging here today.

24 Q. Does this say no sex offender ---

25 A. That's not what ---

A. SAMUELS - CROSS-EXAMINATION BY MS. HARRIGAN

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1 Q. --- registry?

2 A. --- I'm challenging here today.

3 THE COURT: Answer the question.

4 APPLICANT: That is not what I'm challenging here
5 today.

6 MS. HARRIGAN: Your Honor, there ---

7 THE COURT: I read it.

8 MS. HARRIGAN: It will show that there's no sex
9 offender ---

10 APPLICANT: But listen, Your Honor. If you check the
11 sentencing sheet that you have and, and I have, it is not
12 on there, and I can show you letters that I received from
13 my counsel saying ---

14 THE COURT: Let me have the ---

15 APPLICANT: --- that he had to amend it.

16 THE COURT: Let me have the exhibit, please, Madame
17 Court Reporter.

18 APPLICANT: Exactly, Your Honor. I'm not trying to do
19 nothing but meet the burden of proof, which is on me, the
20 applicant, and I have probative evidence to uphold it.

21 BY MS. HARRIGAN:

22 Q. The day of your plea, do you recall agreeing with the
23 facts presented by the solicitor during the plea?

24 (A PAUSE.)

25 Q. Mr. Samuels, during your guilty plea.

A. SAMUELS - CROSS-EXAMINATION BY MS. HARRIGAN

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1 THE COURT: Answer the question.

2 A. Sir -- I mean, ma'am?

3 Q. Do you recall agreeing with the facts as presented by
4 the solicitor during your guilty plea?

5 A. Say that again.

6 Q. When the state told the court what happened, the facts
7 giving rise to all these charges, do you recall agreeing
8 with the state that this is what had indeed happened?

9 A. My, my, my attorney advised me to state that
10 everything that they said was correct, being if I didn't,
11 they was going to renege and deny.

12 THE COURT: There is the sentence sheet that says no
13 sexual offender registry. This is the official sentence
14 sheet on your kidnapping charge that is filed with the
15 clerk.

16 APPLICANT: That's not the one I got.

17 THE COURT: I don't know what you got, Mr. Samuels.

18 APPLICANT: I got this one, though, Your Honor. Look
19 at the one I received. You got a ---

20 THE COURT: Here.

21 APPLICANT: I don't have that.

22 THE COURT: All right, yours is wrong.

23 APPLICANT: I don't -- how can I know that, Your
24 Honor?

25 THE COURT: I told you it's wrong.

A. SAMUELS - CROSS-EXAMINATION BY MS. HARRIGAN

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1 APPLICANT: Okay, then. I accept that it's wrong, but
2 I -- that's not what I'm challenging here today.

3 THE COURT: All right.

4 APPLICANT: What I'm challenging is ineffective
5 assistance of counsel.

6 THE COURT: All right. So you, so you said you got up
7 and lied to the court when the court asked you all those
8 questions because your lawyer told you to get up and lie to
9 the court. Is that correct?

10 APPLICANT: No, I did not, but I'm saying that the
11 issues that I'm setting forth in my application ---

12 THE COURT: She asked you a question. When you pled
13 guilty, you admitted to the court that you were admitting
14 all of the allegations of the crime. And you said my
15 lawyer told me to say yes to whatever they asked.

16 APPLICANT: That's what he told me. I, I accepted my
17 lawyer's advice.

18 THE COURT: All right. So, you're saying you lied ---

19 APPLICANT: No, I didn't lie.

20 THE COURT: All right. Well, then you told the truth.

21 APPLICANT: Yes, I did told the truth.

22 THE COURT: All right.

23 BY MS. HARRIGAN:

24 A. But I'm saying here I ---

25 Q. So, you are ---

A. SAMUELS - CROSS-EXAMINATION BY MS. HARRIGAN

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1 A. --- I ain't have all of this before I pled guilty.

2 Q. So, you are guilty? You agree with the facts ---

3 A. This is not whether I'm guilty or not. It's here to
4 find out whether my lawyer was ineffective or not, which in
5 he was ineffective for advising me to plead to a charge
6 that could not be proven beyond a reasonable doubt in a
7 court of law.

8 Q. Do you recall telling ---

9 A. It was no ---

10 THE COURT: Answer her question.

11 APPLICANT: I'm answering her question.

12 THE COURT: Take him out of here.

13 APPLICANT: I need my full bite of the apple, Your
14 Honor.

15 DEPUTY: Stand up.

16 APPLICANT: You're denying me of my full bite of the
17 apple.

18 DEPUTY: Best thing to do right now ---

19 APPLICANT: I have no constitutional right to attorney
20 and PCR.

21 DEPUTY: Listen to me. Listen to me. Best thing you
22 can do right now, leave your papers right here and let's
23 go. They'll get your papers for you. Let's go.

24 APPLICANT: You denied me of my full bite of the
25 apple.

1 DEPUTY: Didn't I tell you best thing ---

2 APPLICANT: The only thing I'm trying to do ---

3 DEPUTY: Best thing you can do is keep walking out
4 this door. Let's go. Come on.

5 THE COURT: Take him downstairs and hold him
6 downstairs if you would, please.

7 (APPLICANT EXITS THE COURTROOM.)

8 THE COURT: Ms. Good, we're not going to go forward
9 with your client being this difficult.

10 MS. GOOD: I understand.

11 THE COURT: If he refuses to participate in the
12 matter. Do you want to go talk to him?

13 MS. GOOD: I don't know -- I can try to go talk to
14 him, but I don't know whether he would want to talk to me.

15 THE COURT: Well, I can't tell you it's going to do
16 any good either, but if not, then we will not go forward
17 with this and determine that it will be called again at
18 some point in time. I hate to do it to you, and I hate to
19 do it to Mr. Shadd.

20 MS. GOOD: I don't think me talking to him at this
21 point is going to help.

22 THE COURT: Well, I'm going to ask that you go down
23 there.

24 MS. GOOD: Okay.

25 THE COURT: And ask if he's going to come up here and

1 do what he needs to do, which is be responsive to the
2 lawyers, both you and the state. If he says that he's
3 going to continue to tell us what he wants to tell us and
4 not answer questions, then we will end this hearing.

5 MS. GOOD: Certainly.

6 THE COURT: Come back another day.

7 (OFF THE RECORD.)

8 (THE APPLICANT ENTERS THE COURTROOM.)

9 THE COURT: All right, Mr. Samuels, I sent you
10 downstairs because your behavior is something I'm not going
11 to put up with here. If you continue to act like that,
12 then I'm going to consider contempt of court.

13 APPLICANT: Yes, sir.

14 THE COURT: If you want more time added to what you
15 got now, we probably can assist you in that regard.

16 APPLICANT: No, sir.

17 THE COURT: If you want somebody to listen to this
18 case and ultimately make a decision on what it is that you
19 can appropriately put in front of the court, we'll do that,
20 but you're going to answer the questions. When this side
21 asks you look a question, you don't get to say what you
22 want to say. You answer the question.

23 APPLICANT: Yes, sir.

24 THE COURT: You have a lawyer who is, believe it or
25 not, is here in your best interest. But we have rules of

1 court that determine what she can and can't do.

2 APPLICANT: Yes, sir.

3 THE COURT: And what evidence is admissible and not
4 admissible.

5 Now, I've been told that you want to terminate your
6 lawyer. Is that right, you want to terminate Ms. Good?

7 APPLICANT: Not if I have to proceed pro se.

8 THE COURT: Well, I'm not going to let you pick your
9 lawyer. We have a lawyer who is a qualified lawyer who has
10 done a number of these PCRs before, knows what she's doing,
11 knows the rules of evidence.

12 APPLICANT: Yes, sir. I...

13 THE COURT: Knows the rules of procedure, but if you
14 want to, you want to represent yourself and you seem to
15 feel like you've got all the -- you know all the law and
16 have all the facts.

17 APPLICANT: No, sir, Your Honor.

18 THE COURT: Well, you ready to go forward?

19 APPLICANT: Yeah. I mean, I'm speaking as -- I'm not
20 trying to get on nobody's bad side, Your Honor.

21 THE COURT: Well, you're sure doing a good job of it.

22 APPLICANT: I apologize for that, Your Honor. I
23 apologize for what happened a few minutes ago. But only
24 thing I'm saying is these victims do want to be here today,
25 but they never was contacted, but I, if I ---

1 THE COURT: When did you give them an opportunity --
2 when did you give your lawyer the notice that they want to
3 be here?

4 APPLICANT: That, that, that was in our first meeting.
5 I told her about these victims that wanted to come and
6 testify.

7 THE COURT: Are you talking about the two people that
8 appeared at the sentencing hearing?

9 APPLICANT: That didn't appear and, and ---

10 THE COURT: Well, Ms. Williams, Ms. Williams appeared.

11 APPLICANT: And Ms. Williams, that's not the victim
12 I'm talking about.

13 THE COURT: The other, the other one that was
14 allegedly shot appeared.

15 APPLICANT: Yes, sir, and he could have been
16 subpoenaed here today to say that I physically took that
17 money from him, which is shown in that document saying that
18 I didn't take anything from him.

19 THE COURT: Well.

20 APPLICANT: And if he would have came today, he could
21 have been impeached at trial if he lied on that -- lied to
22 the police, told them that I took that \$670, which I did
23 not deprive him of that.

24 THE COURT: I hate to disappoint you, but that in and
25 of itself is not going to be sufficient for you. The fact

1 that, as was pointed out, the affidavit that was submitted
2 for the purposes of getting the arrest warrant says: Money
3 was taken and other personal property. You're trying to
4 say money wasn't taken.

5 APPLICANT: But, but what -- firstly -- excuse me, I
6 can say something?

7 THE COURT: Sure.

8 APPLICANT: All right. If we, if we can look at the
9 statements, Your Honor, is Your Honor saying the only thing
10 was taken from him was the \$700? I understand that the
11 thing, it say that, but that's not what the statement said.

12 THE COURT: All right. Well ---

13 APPLICANT: The statement he gave to the police
14 department said the only thing he was -- taken from him was
15 6 to \$700.

16 THE COURT: Well, I don't know about that.

17 APPLICANT: See, that's why I'm trying to get that in
18 and set it forth on the record. I got the statement that
19 he wrote to the police officer, and that's the only thing
20 I'm trying to prove here, Your Honor. They got all my
21 indictments. There's no significance in the indictments.
22 They got, got three victims on each indictment.

23 THE COURT: Do you understand that you're facing 145
24 years?

25 APPLICANT: I understand that.

1 THE COURT: You understand that if you're successful
2 here today, this case will get sent back for the purposes
3 of letting the state prosecute you on all these charges?

4 APPLICANT: I understand that.

5 THE COURT: Which you've admitted that you did?

6 APPLICANT: I didn't.

7 THE COURT: You did. When you pled guilty, you said I
8 did it.

9 APPLICANT: No, no. I plead guilty based upon the
10 advice I received from my counsel.

11 THE COURT: Mr. Samuels, you told the judge. I don't
12 know why you did it. I assume you did it because that's
13 the truth.

14 APPLICANT: I, I, I said that and pled guilty because
15 I didn't feel that I could rely on trial with Mr. Shadd's
16 representation.

17 THE COURT: You told the court that you were guilty
18 for whatever reason. I assume -- when people plead guilty
19 in front of me, I assume it's because they are admitting
20 that they did what the state alleges they did.

21 APPLICANT: Yes, sir.

22 THE COURT: That's generally what a guilty plea is.
23 Yes, Judge, I did it and I'm here to plead guilty because I
24 did it.

25 APPLICANT: And you -- I can say something else?

1 THE COURT: Sure.

2 APPLICANT: And you plead guilty based upon the advice
3 you, you, you receive from your counsel.

4 THE COURT: Well, I wouldn't expect anybody to plead
5 guilty that's not guilty.

6 APPLICANT: Yes, sir, but I pled guilty based upon the
7 counsel -- the advice I received ---

8 THE COURT: If you were not guilty ---

9 APPLICANT: --- from counsel.

10 THE COURT: -- I would not -- if your lawyer told you
11 to jump off a bridge, would you jump off a bridge?

12 APPLICANT: But if you, if you, if you -- if he was
13 advised -- I mean, you, you supposed to depend on your
14 lawyer, just like you're saying. She's supposed to do
15 everything correct. That's the same way I thought he was
16 supposed to do everything correct.

17 THE COURT: Well, that's what ---

18 APPLICANT: Which in he never investigated these
19 people, which in the police wrote a statement inquiring
20 more than what they actually saw or what actually happened.
21 The police wrote that statement.

22 THE COURT: Okay, I've been doing this a long time. I
23 understand how the system works.

24 APPLICANT: I understand that, but I'm here to say
25 that my lawyer was ineffective, and my constitutional

1 rights been violated by it.

2 THE COURT: Well, I realize that. I've read your
3 application; I know what you said.

4 APPLICANT: Yes, sir.

5 THE COURT: I know what you testified here today, and
6 that is the same thing: my lawyer was ineffective. He was
7 ineffective for a number of reasons.

8 APPLICANT: Yes, sir.

9 THE COURT: He failed to investigate. He got
10 erroneous plea sheets. He did not level with me as to what
11 the plea arrangement was. You've alleged all that here
12 today.

13 APPLICANT: But I ain't meet the burden of proof with
14 it, though.

15 THE COURT: I don't know whether you've met the burden
16 of proof or not; I haven't heard all the case.

17 APPLICANT: I told Your Honor. That's what I -- I
18 just, I just trying to receive that bite at the apple.

19 THE COURT: All right. Well, here's what we're going
20 to do. We're going to -- I hate to do that. I mean, I
21 wanted to let you conclude, y'all, what y'all need to do
22 with Mr. Samuels.

23 I'm going to let you finish your testimony. I'm not
24 terminating this lawyer, and then we will continue this
25 case so that he can attempt to bring whoever he thinks he

1 is necessary to come here.

2 APPLICANT: Thank you, Your Honor.

3 THE COURT: And then you can put the rest of your case
4 up, and then the state can come back and put up their case.

5 Is Mr. Shadd still here? I hate to say, Mr. Shadd, it
6 will probably be January before we can get back to this.

7 MR. SHADD: Yes, sir. That's fine.

8 THE COURT: But I'm going to conclude your testimony
9 so that we don't have to come back and do that again. You
10 hear me?

11 APPLICANT: Who, me?

12 THE COURT: You.

13 APPLICANT: So, later on I can't -- after these
14 witnesses come and testify, I can't say nothing regarding
15 what they say?

16 THE COURT: I don't know what that means, you can't
17 say anything. You're not going to testify again.

18 APPLICANT: Again? Why? Why is that?

19 THE COURT: You don't get but one chance to testify.

20 APPLICANT: And meet the burden of proof, right?

21 THE COURT: You get one chance to testify. We don't
22 keep bringing witnesses back and back and back.

23 APPLICANT: Oh, no, I'm not saying that.

24 THE COURT: You're a witness in this case.

25 APPLICANT: I understand.

1 THE COURT: You're going to do your -- you're going to
2 complete your testimony here today. We will then continue
3 the case and recess until January so that your lawyer can
4 attempt to bring whoever it is you think needs to come
5 here.

6 APPLICANT: Yes, sir, but I understand that, right.
7 You going to give me that -- I'm accepting the opportunity,
8 but what if my lawyer not willing to do that?

9 THE COURT: Do what?

10 APPLICANT: Do what I already advised her to do.

11 THE COURT: I'm going to tell her right now.

12 You need to see -- he gives you the names of some
13 witnesses.

14 I don't mean the day before the hearing.

15 APPLICANT: I know and ---

16 THE COURT: Hush.

17 He'll give you the list of who he thinks that you need
18 to call, and then you attempt to find these witnesses.

19 MS. GOOD: Yes, sir.

20 THE COURT: Interview those witnesses and bring them
21 in. If he wants them to -- even if they're adverse to what
22 he says, let's bring them in so that he can see that
23 they're going to get up and say he ain't Mr. Nice Guy like
24 he's trying to say he is.

25 APPLICANT: Exactly, Your Honor.

A. SAMUELS - CROSS-EXAMINATION BY MS. HARRIGAN

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1 THE COURT: But if she can't find them, nothing we can
2 do about that.

3 APPLICANT: Yes, sir. She has been provided with the
4 contacts, though.

5 THE COURT: I don't know about that.

6 MS. GOOD: Can I just put on the record we were given
7 a name yesterday, and we told him to be here at 9:00 this
8 morning. He's not here.

9 APPLICANT: Well, if she would have subpoenaed him
10 beforehand when I told her in the original, first meeting,
11 the only meeting she met with me, she would have subpoenaed
12 him and he wouldn't have had no choice. She had contact
13 then.

14 THE COURT: Well, I wouldn't count on that, Mr.
15 Samuels. We get lots of people who don't show up for
16 subpoenas.

17 APPLICANT: Yes, sir, but he's willing to.

18 THE COURT: Why wasn't he here today?

19 APPLICANT: She never contacted him.

20 THE COURT: I thought you said that ---

21 MS. GOOD: Yes, sir. My assistant talked to, I
22 believe, his girlfriend, and she said he was willing to
23 come. She did not give her the phone number. My assistant
24 told her, well, tell him to be here at 9:00 so Ms. Good can
25 talk to him before the hearing so she can know what he's

A. SAMUELS - CROSS-EXAMINATION BY MS. HARRIGAN

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1 going to say.

2 THE COURT: All right. Well, you get back up here and
3 finish your testimony. All right.

4 MS. HARRIGAN: May it please the court?

5 THE COURT: You're under oath from the previous
6 swearing.

7 APPLICANT: Yes, sir. That -- was that, talking about
8 all this happening, under oath, too, or report?

9 THE COURT: It's on the record.

10 APPLICANT: All right.

11 THE COURT: Everything you say in this courtroom is on
12 the record.

13 CROSS-EXAMINATION BY MS. HARRIGAN RESUMES:

14 Q. Mr. Samuels, before we took the recess, you stated
15 that you did remember agreeing with the assistant
16 solicitor's facts during your guilty plea, correct?

17 A. I, I based that, answering the question, on advice ---

18 Q. Is that a yes?

19 A. --- I received.

20 THE COURT: Is that a yes?

21 A. Received from my counsel.

22 THE COURT: You can say yes, I agree, but this is the
23 reason I did. You answer yes or no. Then you give your
24 explanation.

25 APPLICANT: Okay.

A. SAMUELS - CROSS-EXAMINATION BY MS. HARRIGAN

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1 BY MS. HARRIGAN:

2 A. Yes. I answered yes to that question because I
3 agreed. I answered that question based upon the advice I
4 received from my counsel.

5 Q. So, you are ---

6 A. Which ---

7 Q. --- you are guilty? You were under oath then,
8 correct, during your guilty plea?

9 A. I believe so.

10 Q. And you admitted you were guilty during your guilty
11 plea, correct?

12 A. I base that on ---

13 THE COURT: Is that yes?

14 APPLICANT: It's not about whether I'm guilty or not.
15 it's about ---

16 THE COURT: Answer the question, and then you can give
17 an explanation.

18 BY MS. HARRIGAN:

19 A. I don't recall.

20 Q. You don't recall whether you told the court you were
21 guilty or not?

22 A. I don't.

23 Q. During your guilty plea? If the record reflects you
24 did tell the court you were guilty, would you dispute that?

25 A. I don't recall.

A. SAMUELS - CROSS-EXAMINATION BY MS. HARRIGAN

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1 Q. Do you recall waiving your constitutional rights
2 during your guilty plea?

3 A. I don't recall.

4 Q. Do you recall telling the judge you were satisfied
5 with your attorney's representation?

6 A. I don't recall.

7 Q. You never told the judge that you didn't see your
8 discovery during the guilty plea, did you?

9 A. I don't recall.

10 Q. And you never told the court that you didn't have
11 adequate investigation with Mr. Shadd, did you?

12 A. Say that again?

13 Q. You never stopped your plea and told the court he
14 didn't do any investigation. I wanted these witnesses
15 present, correct?

16 A. I don't recall.

17 Q. You just told the court you were satisfied with what
18 he'd done for you, correct?

19 A. I don't recall.

20 Q. And one of your allegations is that you asked Mr.
21 Shadd for an appeal, correct, while you were in the jury
22 box?

23 A. Yes.

24 Q. Did you follow up with him?

25 A. Yes.

A. SAMUELS - CROSS-EXAMINATION / REDIRECT EXAMINATION

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1 Q. Regarding the appeal? When?

2 A. Yes, I did. I wrote him a letter, I think, on the
3 17th, on the 17th or the 19th. I received his letter while
4 I was still at the county jail, but I already had informed
5 him there was an inmate I wanted to appear.

6 Q. Before your plea or after in the jury box?

7 A. After.

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

9 THE COURT: Anything, Ms. Good?

10 MS. GOOD: Just one question, Your Honor.

11 REDIRECT EXAMINATION BY MS. GOOD:

12 Q. You said -- so, you told him in the jury box that you
13 wanted to appeal?

14 A. Yes.

15 Q. And then you followed up later with a letter to him
16 two days later to make sure he was going to appeal?

17 A. It was more than two days later. It was before the
18 ten days. It was before the ten-day deadline for a
19 post-considered -- post-conviction motion. I mean...

20 Q. To appeal, within the ten days to appeal?

21 A. Yes, it was.

22 Q. No further questions, Your Honor.

23 APPLICANT: That's it? Excuse me, Your Honor.

24 THE COURT: Anything?

25 MS. HARRIGAN: Just briefly.

A. SAMUELS - RECROSS-EXAMINATION BY MS. HARRIGAN

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1 RECROSS-EXAMINATION BY MS. HARRIGAN:

2 Q. Do you have a copy of that letter that you wrote Mr.
3 Shadd requesting an appeal?

4 A. It should be on file with the clerk of court. I got
5 another one that I wrote and -- following up with it saying
6 why, why I still was registered as a sex offender and all
7 of that.

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

9 THE COURT: All right, you may step down.

10 APPLICANT: I ain't finished testifying to all my
11 issues, Your Honor.

12 THE COURT: You're finished.

13 APPLICANT: I didn't. I have multiple issues.

14 THE COURT: You are finished.

15 APPLICANT: I didn't, I didn't finish.

16 THE COURT: Your lawyer asked you all the questions
17 your lawyer wanted to ask you.

18 APPLICANT: Well, that's why I ain't want to proceed
19 with her.

20 THE COURT: All right.

21 APPLICANT: But I ain't want to proceed pro se either.

22 THE COURT: This matter is now recessed until January.

23 APPLICANT: So, so, so I can't set forth my issues on
24 the record, Your Honor?

25 THE COURT: Your issues are on the record.

1 APPLICANT: Not every issue that I instituted in my
2 PCR application.

3 THE COURT: Your application is on the record.

4 APPLICANT: But I ain't testified. I got to testify
5 to that.

6 THE COURT: Your application, your issues are on the
7 record.

8 APPLICANT: But ---

9 THE COURT: Mr. Samuels, you say another word, it will
10 be a sad time for you.

11 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM 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 HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR RICHLAND COUNTY, SOUTH CAROLINA, ON
THE 2ND DAY OF OCTOBER, 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

S/Elizabeth B. Harris, CVR-M

COLUMBIA, SOUTH CAROLINA

OCTOBER 16TH, 2014

RECEIPT FOR EXHIBITS

Case No. 13-CP-40-1556
 Plaintiff: Alvin Samuel
 Defendant: State
 Date Trial Started: 10-2-13

Judge Barber, James R.
 Plt's Atty. Good, A.R.
 Def's. Atty. Harrigan, M.E.
 Date Trial Ended: 10-2-13

Received of Elizabeth Harris, Court Reporter for the above case, these exhibits:

		Clerk of Court Use
1	Applicant's 1: medical Record	☒ EV
2	Applicant's 2: Sentencing Sheet	☒ EV
3		
4		
5		
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20		

This 3rd day of Oct. 20 13.

Page 1 of 1

By: [Signature]

Richland County Clerk of Court

Clerk should retain white copy in Civil cases, yellow copy in Criminal cases.

153
MRN: R041924
FIN: R1020401

Applicant's
1 ~~10~~
10-2-13 88

KUAL, DANIEL
R1020401747

WATSON, CHRISTOPHER

33Y M

337

TRAUMA ALERT PAGED	TIME	N/A
TRAUMA NOTIFICATION PAGED	TIME	N/A
TRAUMA ATTENDING	PAGED	ARRIVED
TRAUMA SURG <i>Anderson</i>	PAGED	ARRIVED
TRAUMA SURG <i>Reeves</i>	PAGED	ARRIVED
OTHER	PAGED	ARRIVED
OTHER	PAGED	ARRIVED
OTHER	PAGED	ARRIVED

PHYSICIAN: ED Waller RESP. _____
Waller X-RAY _____
 NURSES Jenny PHARMACIST _____
Wendy H. Kathleen

PRIMARY SURVEY **TIME:** _____

Airway:	☐ Clear	☐ Obstructed	☐ Partially Obstructed
Breathing:	☐ Normal	☐ Labored	☐ Apneic
Circulation:	☐ Pulse Present	☐ Cardiac Rhythm _____	
Hemorrhage:	☐ None	☐ Location _____	
Neuro:	☐ Alert	☐ Responds to Verbal Stimuli	
	☐ Unresponsive	☐ Responds to Pain	

ARMS		LEGS			ARMS		LEGS		
L	R	L	R		L	R	L	R	
✓	✓	✓	✓	E PULSE	✓	✓	✓	✓	WARM
				T PULSE					COOL
				J PULSE					COLD
				E SENS					NORM
				T SENS					PALE
				J SENS					CYNATE
				MOVEMENT					

ANTERIOR

POSTERIOR

INJURIES:

R L

L R

1. ABRASION.
2. AMPUTATION
3. BLEEDING
4. BURN
5. FRACTURE
6. GUNSHOT
7. INTERNAL INJURY
8. LACERATION
9. PAIN
10. PARALYSIS
11. PENETRATING WOUND
12. SPRAIN
- 13.

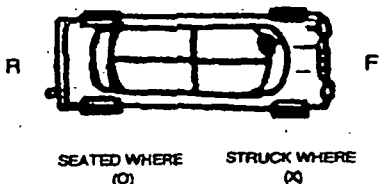
The diagram consists of two line drawings of a human figure. The left figure is an anterior (front) view, with the head at the top. Above it is the word 'ANTERIOR'. To the left of the figure is the word 'INJURIES:'. To the right of the figure are the letters 'R' and 'L', with 'L' being slightly higher and having a line pointing to the upper left arm. The right figure is a posterior (back) view, with the head at the top. Above it is the word 'POSTERIOR'. To the left of the figure is the letter 'L', and to the right is the letter 'R'. Between the two figures, the word 'INJURIES:' is repeated. To the left of the posterior figure is the letter 'L', and to the right is the letter 'R'. A list of 13 types of injuries is provided to the left of the anterior figure. The injuries are: 1. ABRASION., 2. AMPUTATION, 3. BLEEDING, 4. BURN, 5. FRACTURE, 6. GUNSHOT, 7. INTERNAL INJURY, 8. LACERATION, 9. PAIN, 10. PARALYSIS, 11. PENETRATING WOUND, 12. SPRAIN, and 13. (blank). The diagram is a simple line drawing with no shading or color.

LAST TIME ORAL INTAKE	TETANUS UTD _____ UNK _____	PAST MEDICAL HISTORY
ALLERGIES ☒ NKDA	CURRENT MEDICATIONS ☒ NONE	☒ NO CHRONIC ILLNESSES ☐ CARDIAC ☐ LUNG ☐ KIDNEY ☐ BOWEL ☐ HYPERTENSION ☐ DIABETES ☐ SEIZURES ☐ OTHER _____

DOCUMENTOR SIGNATURE Kathy J. Fisher, MD

PHYSICIAN IN CHARGE SIGNATURE _____ TIME _____

PHYSICIAN IN CHARGE SIGNATURE _____ TIME _____



A standard 1D barcode with vertical black bars of varying widths on a white background. Below the bars are the numbers 1, 1, 5, 0, 3, 6, 8, and 7.

154

STATE OF SOUTH CAROLINA

COUNTY OF Richland
 STATE VS.
Alvin Stanley Samuels
 AKA:

Race: AA Sex: M Age: 21
 DOB: 0 SS#: [REDACTED]
 Address: FARROW ROAD
 City, State, Zip: COLUMBIA, SC 29923-203
 DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
 In disposition of the said indictment comes now the Defendant who was
 TO: Assault & Battery of a High & Aggravated Nature

in violation of § 16-03-0600(1) of the S.C. Code of Laws, bearing CDR Code # 3412
☒ 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: CATHCART, RICHARD SC Bar# 66485 Defendant Alvin S. Samuels II Attorney for Defendant Indy H. H. SC Bar# 68622

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 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. 6035 days

☐ 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		\$

Clerk of Court/ Deputy Clerk Jeannette W. McBride

Court Reporter: D. McChay

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4003497

A/W#: DP12137

Date of Offense: 7/22/2010

S.C. Code § : 16-03-0600(1)

CDR Code #: 3412

SENTENCE SHEET

Applicant's
2
10-2-10

CONVICTED OF 1st PLEADS 1st

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
 prmts. 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 216

Judge Code: 216

Sentence Date: 7-15-2012

CERTIFIED COPY
 OF COURT FILED
 JUDGE
 COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

155

COUNTY OF Richland
 STATE VS.
Alvin Stanley Samuels

AKA:

Race: AA Sex: M Age: 21
 DOB: SS#
 Address: FARROW ROAD
 City, State, Zip: COLUMBIA, SC 29023 203
 DL#: SID#

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was
 TO: Weapons / Pointing and presenting firearms at a person

INDICTMENT/CASE#: 2012GS4003498A/W#: DP12138Date of Offense: 7/22/2010S.C. Code §: 16-23-0410CDR Code #: 0122

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

in violation of § 16-23-0410 of the S.C. Code of Laws, bearing CDR Code # 0122

☒ 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: CATHCART, RICHARD 66485 Shirley Samuels II 68622
 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 10 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. 685 days

☐ 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	\$	

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/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

Presiding Judge

Judge Code: 216

Sentence Date: 7-1

RICHLAND COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF Richland
 STATE VS.
Alvin Stanley Samuels

AKA: _____
 Race: _____ Sex: M Age: 21
 DOB: _____ SS#: [REDACTED]
 Address: FARROW ROAD
 City, State, Zip: COLUMBIA, SC 29203
 DL#: _____ SID#: _____

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

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4003499
 A/W#: DP12139
 Date of Offense: 7/22/2010
 S.C. Code §: 16-03-0910
 CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ 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: CATHCART, RICHARD 66481 Alvin S. Samuels II 68622
 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 18 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. 60 days

☐ 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/ca	\$
Proviso 90.5 (SCCA Surcharge)	\$5	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk Jeanette W. McBride

Court Reporter: D. McCurdy

SCCA/217 (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: _____

NO sex offender
registry
☐ 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 IF COPY
 during probation. CERTIFIED
OF ORIGINAL FILED

Presiding Judge Jessie P.

Judge Code: 210

Sentence Date: 7-18-12

RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

157

COUNTY OF Richland
 STATE VS.
Alvin Stanley Samuels

AKA:

Race: AA Sex: M Age: 21
 DOB: SS#
 Address: FARROW ROAD
 City, State, Zip: COLUMBIA, SC 29023 203
 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 / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

INDICTMENT/CASE#: 2011GS4001806 ✓

A/W#: K668469

Date of Offense: 7/23/2010

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

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

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:

CATHCART, RICHARD

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 18 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. 60 days

☐ 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		\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (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 to be paid to Clerk during probation.

Presiding Judge

Judge Code: 216

Sentence Date: 7-18-2011

RICHLAND COUNTY
SOUTH CAROLINA

COUNTY OF Richland
 STATE VS.
Alvin Stanley Samuels

AKA:

Race: A.A. Sex: M Age: 21DOB: SS#: [REDACTED]Address: FARROW ROADCity, State, Zip: COLUMBIA, SC 29623-203DL#: SID#: [REDACTED]*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

INDICTMENT/CASE#: 2011GS4001807A/W#: K668470Date of Offense: 7/23/2010S.C. Code §: 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

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:

CATHCART, RICHARD

SC Bar#

Defendant

Attorney for Defendant

SC Bar# 68622

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 10 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. 685 days

☐ 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		\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (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 counsel, § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code: 2161Sentence Date: 7-12-10

SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

159

COUNTY OF Richland
 STATE VS.
Alvin Stanley Samuels

AKA:

Race: AA Sex: M Age: 21DOB: SS#: [REDACTED]Address: FARROW ROADCity, State, Zip: COLUMBIA, SC 29023 203DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life withoINDICTMENT/CASE#: 2011GS4001808A/W#: K668471Date of Offense: 7/23/2010S.C. Code §: 16-23-0490CDR Code #: 0549

SENTENCE SHEET

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
The charge is: ☒ A. 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] 66485 Alvin S. Samuels II [Signature] 68622
 CATHCART, RICHARD 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 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:
☒ 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. 683 days
☐ 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	\$	\$

Clerk of Court/ Deputy Clerk

Court Reporter: [Signature]

SCCA/217 (06/2010)

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
 \$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: 2161Sentence Date: 7-12-12

STATE OF SOUTH CAROLINA

COUNTY OF Richland
 STATE VS.
Alvin Stanley Samuels

AKA:

Race: AA Sex: M Age: 21DOB: SS#: [REDACTED]Address: FARROW ROADCity, State, Zip: COLUMBIA, SC 29023 203DL#: SID#:*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

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS4001809A/W#: K668472Date of Offense: 7/23/2010S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin 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 pleas: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.
 ATTEST: [Signature] 66495 Alvin S. Samuels II [Signature] 68622
 CATHCART, RICHARD 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 18 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. 68622☐ 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		\$

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 OFFER counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.Presiding Judge [Signature]Judge Code: 2161Sentence Date: 7-12-12Clerk of Court/ Deputy Clerk Cheanette W. McBrideCourt Reporter: D. McCurdy

SCCA/217 (06/2010)

Alvin S. Samuels Jr.,)
)
 Plaintiff,)
)
 vs.) Transcript of Record
)
 State of South Carolina,)
)
 Defendant.)
)
)

January 22, 2014
Columbia, South Carolina

B E-911 f o r e:

The Honorable James R. Barber III, Judge

A p p e a r a n c e s:

Anna Good, Esquire
Attorney for the Plaintiff

Megan Harrigan, Esquire
Attorney for the Defendant

Bonnie H. Kelly, CVR
Circuit Court Reporter

I N D E X

<u>WITNESS/DESCRIPTION</u>	<u>PAGE NO.</u>			
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	Kouassi Ogoubi			
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E X H I B I T S

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1 (On the record at 10:12 a.m.)

2 MS. HARRIGAN: May it please the Court?

3 THE COURT: Yes, ma'am.

4 MS. HARRIGAN: This is the matter of Alvin Samuels vs.
5 the State of South Carolina; Docket No. 2013-CP-40-1556.
6 Applicant was indicted during the June 2010 term of the
7 Richland County grand jury for two counts of armed
8 robbery, possession of a weapon during the commission of a
9 violent crime, attempted murder, assault and battery in
10 the first degree, pointing and presenting a firearm, and
11 kidnapping.

12 He was represented by James Shadd III on July 12,
13 2012. The applicant appeared before the Honorable
14 DeAndrea Benjamin, where he pled guilty as indicted.
15 Pursuant to negotiations with the state, Judge Benjamin
16 sentence applicant to 18 years imprisonment for each count
17 of armed robbery, five years imprisonment for possession
18 of a weapon during the commission of a violent crime, 18
19 years imprisonment for attempted murder, 10 years
20 imprisonment for assault -- assault and battery in the
21 first degree, and 10 years imprisonment for pointing and
22 presenting a firearm, as well as 18 years for kidnapping.
23 The sentences were all to be served concurrently.

24 He did not file a direct appeal challenging his
25 convictions or sentence. On March 14, 2013, he filed an

1 application for post-conviction relief, alleging various
2 allegations of ineffective assistance of counsel, due
3 process violations, Brady violations, and involuntary
4 guilty plea.

5 The State made its return on June 21 of 2013. He's
6 represented in this action by Anna Good.

7 Your Honor presided over an initial hearing of Mr.
8 Samuels's PCR on October 2 of last year; and Your Honor
9 recessed it following the testimony from Applicant to the
10 January term. So we're here for the continuation of that
11 hearing.

12 THE COURT: All right. Did his testimony conclude?

13 MS. HARRIGAN: Yes, Your Honor. My records reflect
14 that he was directly examined by Ms. Good, and then cross-
15 examined by myself. He was off the stand when the hearing
16 concluded.

17 THE COURT: All right. Ms. Good?

18 MS. GOOD: Your Honor, after we spoke with you in
19 chambers, I came back out here and Mr. Samuels informed me
20 he does not want me to represent him and he's prepared to
21 go forward by himself today. I don't know if you would
22 like to relieve me as counsel; if you would like to hear
23 from him on that issue?

24 THE COURT: All right. Mr. Samuels, what you want to
25 tell me about that?

1 THE APPLICANT: Um --

2 THE COURT: Stand, if you would, please.

3 THE APPLICANT: Yes, sir. Good morning, sir. I just
4 -- I just don't feel that she's gonna assist me the way I
5 need to present these claims, because I can't get her for
6 ineffect [sic] assist [sic] of counsel, Your Honor. We
7 ain't had good contact. I don't feel that she -- she had
8 -- she had let me present my issues the way I need to
9 present them; because each and every issue was separate,
10 it was not all ineffect assist of counsel claims. And I
11 don't feel that in the last hearing that I got the chance
12 to prove the prejudice prong ---

13 THE COURT: Didn't get a chance to prove what?

14 THE APPLICANT: The -- the prejudice prong with the
15 *Hill vs. Lockhart* standard. Yes, sir.

16 THE COURT: All right. Well, tell me: You think you
17 can represent yourself?

18 THE APPLICANT: I'm not fully aware of all the rules
19 of Court, but I -- I believe I can question the witnesses.
20 But I do have a list of questions that I would like to add
21 before moving pro se, though.

22 THE COURT: You have a list of questions you'd like to
23 ask what?

24 THE APPLICANT: Before moving pro se.

25 THE COURT: Well, Ms. Good just informed me that you

1 have -- that you want to relieve her and proceed pro se,
2 right?

3 THE APPLICANT: Yes, sir. But I want make it
4 voluntary, make sure I know the certain things that I'm
5 doing before moving pro se.

6 THE COURT: Well, I'm not sure what it is that you are
7 inquiring about. What is it you -- what kind of questions
8 you want to ask?

9 THE APPLICANT: How do I file an appeal? How do I
10 file an appeal grant --

11 THE COURT: You mean, on -- on this application?

12 THE APPLICANT: Yes, sir.

13 THE COURT: Well, first of all, you've got to wait til
14 the Court rules before you can file any kind of an appeal.
15 If you prevail, you won't need to appeal. I can promise
16 you the State will -- will appeal it and you'll have to --
17 then you can seek counsel to -- Appellate Defense would
18 probably be in a position that they could assist you on
19 any appeal.

20 If you lose the -- the matter, then you can --
21 Appellate Defense would probably proceed as well. But it
22 would be your responsibility to ---

23 THE APPLICANT: Inform them?

24 THE COURT: --- make sure that they do that. I think
25 the State would probably -- well, I'm not sure. Normally

1 if -- if Ms. Good were involved in the case and she --
2 you did not prevail, she would probably advise Appellate
3 Defense of the -- of an appeal.

4 THE APPLICANT: Yes, sir.

5 THE COURT: She would probably file a notice -- y'all
6 file notice of intent to appeal and then turn it over to
7 Appellate Defense?

8 MS. GOOD: Yes, sir.

9 THE COURT: So you would be responsible for doing
10 that.

11 THE APPLICANT: A notice of intent?

12 THE COURT: You have to file a notice of intent to
13 appeal.

14 THE APPLICANT: Okay. And who you file that to?

15 THE COURT: You file that with the clerk --

16 THE APPLICANT: The clerk of court?

17 THE COURT: -- and serve the other side.

18 THE APPLICANT: Of Richland County?

19 THE COURT: Richland County. That's where your case
20 is.

21 THE APPLICANT: Yes, sir. And once I ---

22 THE COURT: I -- I -- I can tell you, in my opinion, I
23 don't know -- I don't recall much about your case, but Ms.
24 Good is an excellent lawyer and has probably had as good
25 of results as anybody in handling PCRs. You understand

1 PCRs are difficult at best to -- to prevail, because not
2 only do you have to show that there was ineffective
3 assistance of counsel, you have to show -- if that's your
4 issue, you have to show that the likelihood is that you
5 would prevail but for that, which is a high standard for
6 you -- for any applicant to meet. It's not impossible,
7 because PCRs are granted all the time. But it is
8 difficult. It is more difficult when you're proceeding
9 pro se.

10 THE APPLICANT: Yes, sir.

11 THE COURT: And you know, there are some lawyers that
12 I would probably, on -- on the face of it, say the
13 applicant -- that they are not getting good
14 representation. But my experience with Ms. Good is not
15 that situation. But, you know, it's your case and I will
16 be happy to listen to you and whatever you have to say.

17 THE APPLICANT: Yes, sir. I don't know if you
18 remember from the previous hearing, but I -- after cross-
19 examination, I had asked can I finish testifying. And you
20 -- you told me that I couldn't.

21 But I feel that if she was representing me properly,
22 she would know that I ain't had met that second prong of
23 *Hill vs. Lockhart* proving the prejudice. I had -- I
24 believe I proved the deficiency, but I don't believe that
25 I met the prejudice prong with that. And I don't feel

1 that -- that she -- she asked me questions to get each and
2 every issue said on the record for a finder of facts and
3 conclusion of law.

4 THE COURT: Well, in South Carolina, we don't have
5 hybrid representation. Do you know what that means?

6 THE APPLICANT: Yes, sir. I can't get her for
7 ineffective assistance of ---

8 THE COURT: No. That's not -- you can't PCR your PCR
9 lawyer.

10 THE APPLICANT: Yes, sir.

11 THE COURT: But we don't have -- we don't have hybrid
12 representation, which means that the applicant and the
13 lawyer are both -- participate in the hearing. If you
14 have a lawyer, then your lawyer is the one that proceeds
15 with the case and ultimately makes the calls in the case.

16 The lawyers -- a good lawyer will confer with his or
17 her client to see what wishes that his or her client may
18 have in the case. But ultimately, they have to make the
19 decision as to whether they think those are appropriate
20 questions to ask pursuant to the Rules, and also pursuant
21 to the case itself because they don't want to ask case --
22 questions that are not going to be beneficial to their
23 applicant.

24 THE APPLICANT: Yes, sir.

25 THE COURT: You know, I -- you, as with many

1 applicants, come in here, I would assume, emotionally
2 involved in your case because it is your case, it is your
3 time that you are giving to serve your sentence. But at
4 the end of the day, she will walk home and you won't.
5 You're going to go back to the Department of Corrections.

6 That doesn't mean that you may not ultimately prevail
7 on this, but you have some emotional attachment to your
8 case.

9 THE APPLICANT: Yes, sir.

10 THE COURT: Sometimes that clouds what it is that you
11 need to do. But again, as I told you, I would be happy to
12 listen to you. There are certain criteria that you're
13 going to have to meet before I'm going to let you
14 represent yourself, and that is that you're going to have
15 to satisfy me that you're competent to do so.

16 THE APPLICANT: Yes, sir. I --

17 THE COURT: Sure.

18 THE APPLICANT: -- say -- it just, the burden of proof
19 is really like on the applicant, right?

20 THE COURT: Correct.

21 THE APPLICANT: And you said I have no constitutional
22 right to a PCR attorney, correct? I -- I already raised -
23 -

24 THE COURT: Well, we -- we appoint PCR attorneys in
25 South Carolina.

1 THE APPLICANT: To assist me, right?

2 THE COURT: That's right. To represent you.

3 THE APPLICANT: Yes, sir. And I can't get her -- it --
4 - it'll have to be raised as procedure default that's
5 ineffect assist of counsel, correct?

6 THE COURT: Say that again.

7 THE APPLICANT: It -- if -- if she not doing something
8 right and I say --

9 THE COURT: You ---

10 THE APPLICANT: I can't blame it on her for
11 ineffective assist of counsel, correct?

12 THE COURT: That's correct.

13 THE APPLICANT: Yes, sir. That's -- that's like kind
14 of the reason why I want to move pro se, because I feel
15 that I didn't meet the burden of proof with the prejudice
16 prong based upon questions she had asked me. And she
17 didn't even cross-examine.

18 THE COURT: Well, she doesn't cross-examine her own
19 witness.

20 THE APPLICANT: I mean, redirect, Your Honor.

21 THE COURT: Well, you know, there's always another
22 question that can be asked. Everybody, at the end of
23 their case, lawyers and litigants, walk out thinking, "You
24 know, maybe I should have asked this?"

25 But you can't go on forever, and asking questions for

1 the sake of asking questions doesn't necessarily help you
2 in your case.

3 THE APPLICANT: Yes, sir.

4 THE COURT: I don't know what it is that you think
5 that Ms. Good did not do or did do that she shouldn't have
6 done. But I -- you know, you tell me -- do you want to
7 represent yourself?

8 THE APPLICANT: Yes, sir.

9 THE COURT: All right. Tell me what your education
10 is.

11 THE APPLICANT: I graduated from high school.

12 THE COURT: Where?

13 THE APPLICANT: C.A. Johnson Preparatory Academy.

14 THE COURT: All right. When?

15 THE APPLICANT: 2010.

16 THE COURT: All right. And what kind of experience do
17 you have in the criminal courts? You ever been in --
18 other than when this case was up for a plea, did -- have
19 you ever been charged with any crime before?

20 THE APPLICANT: No, sir, Your Honor.

21 THE COURT: You had no prior record.

22 THE APPLICANT: No, sir.

23 THE COURT: And this is the only experience you've had
24 in the criminal court.

25 THE APPLICANT: As an adult.

1 THE COURT: I didn't say as an adult. Have you been
2 charged as a juvenile?

3 THE APPLICANT: Yes, sir.

4 THE COURT: Have you been in Family Court before?

5 THE APPLICANT: That's juvenile, right?

6 THE COURT: Yes.

7 THE APPLICANT: Yes, sir.

8 THE COURT: How many times?

9 THE APPLICANT: Twice.

10 THE COURT: All right. So you did have some
11 experience in the court system.

12 THE APPLICANT: Yes, sir. Involve same issue now. I
13 accept the advice of counsel, which now, I believe, in the
14 research I've done, I shouldn't have accepted those pleas
15 either.

16 THE COURT: Well, you know, it's kind of -- it's kind
17 of hard once you've let the horse -- let the horse out of
18 the barn to come back and say, "I should have done this or
19 I shouldn't have done that." It's -- if you don't get
20 what you want, you always think maybe you should have done
21 something else.

22 THE APPLICANT: Yes, sir. But it was a learning
23 experience for me. I --

24 THE COURT: Well, this was a guilty plea.

25 THE APPLICANT: Yeah.

1 THE COURT: You got in front of a judge, Judge
2 Benjamin, and admitted your guilt.

3 THE APPLICANT: Based upon advice I received from
4 Attorney Shadd.

5 THE COURT: Well, you told the judge that you, in
6 fact, committed the offense.

7 THE APPLICANT: Based upon the ---

8 THE COURT: I don't -- I don't think your lawyer told
9 you to get up and tell a story. I doubt whether your
10 lawyer said, "Mr. Samuels, you didn't do this, but tell
11 the judge you did."

12 Now, if that's the case, there's a way to do that, and
13 your lawyer probably would have done it, and that's a
14 *North Carolina vs. Alford* plea. You familiar with that?

15 THE APPLICANT: That's what I'm trying to question my
16 lawyer about now.

17 THE COURT: Question your lawyer?

18 THE APPLICANT: He never did inform me of those type
19 of pleas.

20 THE COURT: Well, it still would have been treated as
21 a guilty plea.

22 THE APPLICANT: Yes, sir. But it would have been
23 challengeable later against saying I wasn't content with
24 the evidence and the -- the facts of the State's case.

25 THE COURT: I don't know why it would have been

1 challenged. Why would it have been challenged? If you
2 had gotten up and said, "Yeah. I didn't do this, but I
3 understand that the State has a great case and will
4 probably convict me; and they're offering me a super deal,
5 so I'm gonna go ahead and do it," what challenge do you
6 have after that?

7 THE APPLICANT: Based upon the discovery that I have
8 received and -- received after I had pled guilty. And ---

9 THE COURT: What -- if the -- that wouldn't be any
10 different from now.

11 THE APPLICANT: Sir?

12 THE COURT: That wouldn't be any different than now.

13 THE APPLICANT: That -- that -- that -- I -- I told --
14 -

15 THE COURT: *North Carolina vs. Alford* plea is a guilty
16 plea in the eyes of the Court.

17 THE APPLICANT: Uh-huh.

18 THE COURT: The same as that plea you that you -- you
19 gave to Judge Benjamin. It would -- would not have been
20 treated any differently in the eyes of the Court. And
21 that is that you are -- the plea is gonna be treated as a
22 guilty plea and you understand that. So you wouldn't have
23 had any different remedy to come in on an *Alford* plea than
24 you do on what you're doing here today.

25 THE APPLICANT: Yes, sir. But I -- I initially had

1 wanted Shadd to conduct a investigation. But he never did
2 conduct a investigation.

3 THE COURT: Well, that's why we're having this hearing
4 now.

5 THE APPLICANT: Yes, sir. And that's what I didn't
6 get to explain what the hearing -- if he would have
7 investigated, what the investigation would have -- would
8 have produced, like, hindsight. He had prior knowledge
9 that I told him ---

10 THE COURT: Well, y'all will have the opportunity to -
11 - Mr. Shadd is here and will testify. Y'all have the
12 opportunity to examine Mr. Shadd and ask him what he did
13 or didn't do. If that's what you want to do, you'll have
14 the opportunity to do it or Ms. Good will have the
15 opportunity to do it.

16 THE APPLICANT: Yes, sir. But like you say, you're
17 emotional involved with your case. I done did [sic] a lot
18 of studying, and I don't know if she will ask the correct
19 question revealing me meeting the burden of proof. And I
20 have ---

21 THE COURT: You know who's going to determine whether
22 you met the burden of proof?

23 THE APPLICANT: You, Your Honor.

24 THE COURT: It isn't going to be Ms. Good.

25 THE APPLICANT: Yes, sir.

1 THE COURT: It's not going to be the Attorney General.

2 THE APPLICANT: Yes, sir.

3 THE COURT: And it's not going to be you.

4 THE APPLICANT: Yes, sir.

5 THE COURT: It's going to be me.

6 THE APPLICANT: Yes, sir. And if she can -- she -- if
7 she could possibly -- it's a possibility she can get up
8 there and ask him one question, and then I have to go
9 through a long, drawn out process of habeas corpus and
10 file a procedure default based upon a error that she
11 caused.

12 THE COURT: You may have to do that any way.

13 THE APPLICANT: Yes, sir. But I -- if -- if -- if --
14 I think that if I'm going to correct --

15 THE COURT: Mr. Samuels, I will allow you to tell me
16 why it is you think you can represent yourself.

17 THE APPLICANT: Yes, sir.

18 THE COURT: And if I agree with you, I will let you do
19 -- do so. I can tell you there is an axiom in the -- in
20 the law that says, "He who represents himself generally
21 has a fool for a client."

22 (To Ms. Harrigan) Why did we break last time?

23 MS. HARRIGAN: My notes indicate that Your Honor
24 paused the proceeding, I think, two or three times, to
25 allow Ms. Good to talk to Mr. Samuels. And at the end of

1 the hearing, Mr. Samuels wanted some additional witnesses.
2 And so Your Honor allowed Ms. Good additional time to talk
3 to her client, try to get those witnesses. Is -- is that
4 ---

5 THE COURT: To secure those witnesses.

6 MS. HARRIGAN: Anna, is that different than you
7 recall?

8 MS. GOOD: That's how I recall it, Your Honor.

9 THE COURT: All right. And -- and of course, the
10 State had not put up Mr. Shadd, right?

11 MS. GOOD: Correct.

12 THE COURT: Do you have additional witnesses?

13 THE APPLICANT: Yes, Your Honor.

14 THE COURT: Are there some witnesses here?

15 THE APPLICANT: Yes, Your Honor.

16 MS. GOOD: I'm not sure, Your Honor. When I went to
17 your office ---

18 THE COURT: I know, but ---

19 MS. GOOD: --- there were no witnesses. I'm not sure
20 ---

21 THE COURT: Who are the witnesses, Mr. Samuels?

22 THE APPLICANT: Tyreesha Hopkins.

23 THE COURT: Where is she?

24 THE APPLICANT: (No audible response.)

25 MS. GOOD: Your Honor, she was ---

1 THE COURT: All right. And who else?

2 MS. GOOD: --- here before, and I was not aware she
3 was a witness. I even spoke with her before the hearing,
4 and she did not tell me she was testifying or anything of
5 that nature.

6 THE COURT: All right. You have a problem with
7 calling her?

8 MS. GOOD: As an attorney, I will say ethically I
9 cannot put someone on the stand I do not know what they're
10 going to say. He may know what she's going to say ---

11 THE COURT: I'll give you a few minutes to talk to
12 her.

13 MS. GOOD: That's fine. It's just whether he wants me
14 to ---

15 THE COURT: What -- what other witnesses you have
16 here?

17 THE APPLICANT: Stanley Samuels.

18 THE COURT: Who? Stan -- Stanley Samuels?

19 THE APPLICANT: Yes, sir.

20 THE COURT: What is that, a family member?

21 THE APPLICANT: Yes, sir.

22 THE COURT: Where is he?

23 Mr. Samuels: Right here.

24 THE COURT: All right. Do you -- are you
25 knowledgeable about this witness?

1 MS. GOOD: I spoke with him beforehand, Your Honor. I
2 was planning to call him. Then when I came back, Mr.
3 Samuels ---

4 THE COURT: All right. Who else ---

5 MS. GOOD: --- informed me they did not want ---

6 THE COURT: --- Mr. Samuels?

7 MS. GOOD: --- him to testify.

8 THE APPLICANT: Sir?

9 THE COURT: Who else?

10 THE APPLICANT: Currently, the victim in the case. He
11 said he was on the way, but he not -- he hasn't got here
12 yet.

13 THE COURT: Well, if he comes, we'll let him testify
14 if that's what you and your lawyer want. But -- but if he
15 doesn't show up, I can't do anything about that.

16 THE APPLICANT: Yes, sir. But I can ask one question?

17 THE COURT: You can ask one question to who?

18 THE APPLICANT: You, sir. I got a lot of questions.
19 I'm sorry about that.

20 THE COURT: Well, you may not get answers, but go
21 ahead and ask it.

22 THE APPLICANT: Yes, sir. What I understand, you keep
23 saying affidavits are not permissible.

24 THE COURT: That's right.

25 THE APPLICANT: But is it possible that under 17-27 --

1 I believe -- 80, that I can submit the affidavit as long
2 as it's not prejudice towards the State?

3 THE COURT: No. You can't submit an affidavit. They
4 can't cross-examine an affidavit. That's hearsay.

5 THE APPLICANT: Yes, sir.

6 THE COURT: You have -- the -- the witness comes into
7 court and testifies, and the other side has the right to
8 cross-examine, to ask that witness questions. If they're
9 not here, the other side -- you wouldn't want the State
10 prosecuting this case based on affidavits and you never
11 got to question their witnesses, would you?

12 THE APPLICANT: (No audible response.)

13 THE COURT: Would you want Mr. Shadd to give an
14 affidavit, "I did the best job possible," and -- and you
15 didn't have a chance to question him?

16 THE APPLICANT: I feel that would be prejudice towards
17 me.

18 THE COURT: And it would be prejudice to them if they
19 have an affidavit by your witnesses. And it violates the
20 rule on hearsay.

21 THE APPLICANT: For -- for a statement, correct?

22 THE COURT: An out-of-court statement can be submitted
23 if they -- if they don't have the right to cross-examine
24 them. We will not accept affidavits. They're not proper.
25 If you have a witness here, that witness can testify.

1 THE APPLICANT: Yes, sir.

2 THE COURT: What else you got? What other witnesses?

3 THE APPLICANT: They not here yet.

4 THE COURT: All right. Well, I guess we'll wait and
5 see whether they come.

6 THE APPLICANT: Yes, sir, Your Honor. I can keep
7 going with the questions to prove voluntariness of me
8 moving pro se?

9 THE COURT: I'm going to make that decision. You tell
10 me that you have a high school education. What kind of
11 work have you done?

12 THE APPLICANT: (No audible response.)

13 THE COURT: Ever had a job?

14 THE APPLICANT: Yes, sir.

15 THE COURT: Doing what?

16 THE APPLICANT: Laying bricks, brick mason.

17 THE COURT: You were a helper.

18 THE APPLICANT: Yes, sir. Labor.

19 THE COURT: All right. How long did you do that?

20 THE APPLICANT: About a year, year and a half.

21 THE COURT: All right. And you -- are you married?

22 THE APPLICANT: Commonly law.

23 THE COURT: All right. So you're married. You have
24 any children?

25 THE APPLICANT: Yes.

1 THE COURT: How many children do you have?

2 THE APPLICANT: I have one biologically, but I accept
3 the responsibility of ---

4 THE COURT: All right. You have one child. And you
5 have -- you do have some experiences in the criminal court
6 system having appeared in the Family Court on several
7 occasions based on some charges. Where you were
8 represented there, you did have the opportunity to observe
9 and learn about the process.

10 Since then, you have -- you have been charged,
11 indicted, and ultimately pled guilty in Circuit Court on a
12 number of charges with which you are now serving 18 years.
13 So you have some experience as -- as to being in the
14 Circuit Court, correct?

15 THE APPLICANT: This Circuit?

16 THE COURT: Yes.

17 THE APPLICANT: Yes, sir.

18 THE COURT: And you think you're capable of
19 representing yourself.

20 THE APPLICANT: I'm not completely sure, but I still
21 would like to move pro se.

22 THE COURT: Mr. Samuels, if you're not capable of
23 representing yourself, I'm not going to let you do that.
24 And this is not a situation where you're going to come
25 back later and say, "Oh. The judge shouldn't have let me

1 represent myself, because I've now changed my mind after
2 the fact."

3 THE APPLICANT: No, sir. I wouldn't do that.

4 THE COURT: You're going to live by the decisions that
5 you've made --

6 THE APPLICANT: Yes, sir.

7 THE COURT: -- if, in fact, those decisions are freely
8 and voluntarily made, and they're made with the advice of
9 counsel.

10 Obviously, in this instance, my guess is, Ms. Good,
11 you would think he probably would be better off not
12 representing himself, right?

13 MS. GOOD: Your Honor, I don't believe he's as
14 knowledgeable about the situation; however, he does not
15 have any trust with me -- or every time we try to have a
16 discussion about this case we'd argue. So I'm not sure
17 how I can defend him if he won't cooperate with me.

18 THE COURT: All right. So you think you're in a
19 position where you can't represent him.

20 MS. GOOD: Correct. And he does do a lot of research,
21 Your Honor. He does know a lot of case law. I -- I don't
22 know if he knows about the rules of hearsay and all, Your
23 Honor, but he's ---

24 THE COURT: Well, he's ---

25 MS. GOOD: --- he's very knowledgeable of the law.

1 THE COURT: He'll have to -- he'll be treated the same
2 as the lawyer would be treated. He'll follow the rules
3 the same way. If he wants to represent himself, I think
4 I'm inclined to let him do so.

5 And I've already told you what I thought.

6 Mr. Samuels, you want me to let you represent yourself
7 and excuse Ms. Good?

8 THE APPLICANT: Yes, sir.

9 THE COURT: And you want -- maybe I'll let you be an -
10 -- an advisor.

11 MS. GOOD: Yes, sir.

12 THE COURT: All right. If that's what you want. All
13 right. I'm going to find that Ms. Good says that she --
14 she believes that her relationship with Mr. Samuels -- Mr.
15 Samuels -- no, sir. You look at me.

16 THE APPLICANT: Yes, sir.

17 THE COURT: Mr. Samuels, Ms. Good believes that the
18 relationship is broken to such an extent that her client
19 has no confidence in her, no trust in her, and is probably
20 something that she can't overcome; and does not believe
21 that she can -- it would be in his best interest to
22 represent him.

23 Mr. Samuels believes that the -- Ms. Good has not
24 presented the case the way he thought it was -- should be
25 presented in his best interest. He believes he's capable

1 of representing himself. He does have a high school
2 education, and he's had limited work experience. But he
3 is -- he's in a marriage situation with one child.

4 He has been in criminal court on several occasions,
5 twice in the Family Court and once in the Circuit Court.
6 The time in the Circuit Court when he had these charges
7 that -- which he's got the application pending right now.
8 So he does have some experience. And he indicates he
9 understands what's going on in the Circuit Court. He also
10 indicates that he may have some questions about the rules
11 that apply to him, but I promise you, I will see to it
12 that the rules are applied evenly and fairly.

13 And I'm going to let Mr. Samuels represent himself.
14 And I'm going to ask that Ms. Good be -- she be relieved
15 as his attorney, but be appointed to be his advisor; and
16 will sit with him, in terms of he can ask her questions if
17 he wants to ask her questions.

18 But she will not participate in the -- that -- asking
19 questions as in a reasonable basis. We're not going to
20 every time we -- you want to ask a question, you ask her.
21 That's not -- she's going to advise you as to the law.
22 You're going to have to put up whatever you want to put
23 up.

24 THE APPLICANT: Yes, sir.

25 THE COURT: All right. You ready to proceed and call

1 your witness?

2 THE APPLICANT: Shadd's going first, right?

3 THE COURT: No. This is your case. You're -- the
4 State hasn't -- you're putting up your witnesses right
5 now. Whoever you want to call.

6 THE COURT: Ms. Blanchette, this may be a while. If
7 you want to head back to your office, we can call you.

8 MS. BLANCHETTE: Thank you, Your Honor. I will be on
9 ---

10 THE COURT: I mean, it may -- it's no point in you
11 sitting around. All right.

12 THE APPLICANT: Yes, sir.

13 THE COURT: No. I'm talking to that -- she's got ---

14 MS. BLANCHETTE: Do you mind if I leave my evidence
15 here so ---

16 THE COURT: I don't mind.

17 (Brief pause.)

18 THE COURT: All right. Call your witness, please, Mr.
19 Samuels.

20 THE APPLICANT: My first witness be Kouassi Ogoubi, if
21 I'm correct.

22 THE COURT: Who?

23 THE APPLICANT: Kouassi Ogoubi.

24 THE COURT: Where is that witness?

25 THE APPLICANT: In the back.

DIRECT EXAMINATION BY THE APPLICANT - KOUASSI OGOUBI 29

1 THE COURT: Come on up here, please.

2 KOUASSI OGOUBI, having been first
3 duly sworn, testifies as follows:

4 CLERK OF COURT: Please have a seat there, sir. State
5 your full name for the record and spell your name.

6 THE WITNESS: Kouassi Ogoubi; K-o-u-a-s-s-i, O-g-o-u-
7 b-i.

8 THE COURT REPORTER: K-o-u-a-s-s-i --

9 THE WITNESS: Uh-huh.

10 THE COURT REPORTER: -- O-g-o-u-b-i.

11 THE WITNESS: -- o-u-b-i.

12 THE COURT REPORTER: Thank you.

13 THE COURT: Proceed, please.

14 DIRECT EXAMINATION BY THE APPLICANT:

15 Q Good morning, sir. Were you a victim in the case?

16 A No. I was just a witness.

17 Q Just a witness?

18 A Yeah.

19 Q Okay. And did you write a statement involving this
20 incident?

21 A Yes.

22 Q Okay. And did the police write a statement for you
23 also?

24 A Not really.

25 Q They didn't?

DIRECT EXAMINATION BY THE APPLICANT - KOUASSI OGOUBI 30

1 THE COURT: They did or did not?

2 A No. Only thing the police did, because I'm from
3 French country, I can't write good English, when I write
4 my statement and it look at it and write it back. So --
5 and I read it, that's exactly what I wrote. He wrote it
6 the same way back.

7 THE COURT: All right. So you wrote -- they wrote the
8 statement and they made some corrections on it ---

9 THE WITNESS: Yeah.

10 THE COURT: You -- you read it back and ---

11 THE WITNESS: That is same thing. He just corrected
12 for --

13 THE COURT: All right.

14 THE WITNESS: That's it.

15 THE COURT: All right.

16 DIRECT EXAMINATION BY THE APPLICANT:

17 Q Yes, sir. And did you say you witnessed it --
18 witnessed the incident occur?

19 A (No audible response.)

20 Q Were -- were you inside the -- where the --

21 A No. I come in when the incident was in progress. I
22 don't see the beginning, but I saw the rest to the end.

23 Q Okay. And do you know whether this incident was a arm
24 robbery or not based upon what you had saw when you walked
25 in?

DIRECT EXAMINATION BY THE APPLICANT - KOUASSI OGOUBI 31

1 A It -- it's not up to me to determine that. That's up
2 to the police. But I could say what I saw and I can --
3 I'm not a law enforcement. I can't determine what I --

4 Q Okay. And were you shown a picture of Alvin Samuels
5 the night?

6 A Yes.

7 Q You were?

8 A Uh-huh.

9 Q Were you -- would you agree that this is the picture
10 (indicating)?

11 MS. HARRIGAN: Your Honor, if I could see this
12 picture. I've never seen it before.

13 (The Applicants hands a document to Ms. Harrigan.)

14 THE APPLICANT: Excuse me, Your Honor. Can I submit
15 that into evidence?

16 THE COURT: If you do it right.

17 MS. HARRIGAN: Are you attempting to introduce both
18 documents or just the picture?

19 THE APPLICANT: Both documents.

20 MS. HARRIGAN: The State would object to the document
21 with the picture. There's writing on the top. I don't
22 know where this writing came from. If we have -- and
23 there's writing on the back as well. If we have a clean
24 copy of his driver's record, but in this form, the State
25 would object to this coming in.

DIRECT EXAMINATION BY THE APPLICANT - KOUASSI OGOUBI 32

1 And I do not know what this additional document is.
2 It's up here -- it could just be some random writing, and
3 I've never seen it before. So the State would object to
4 this. If the proper foundation ---

5 THE COURT: All right. What do you say to that?

6 THE APPLICANT: (No audible response.)

7 THE COURT: Mr. Truett, you're going to have to come
8 up here, because we're going to need -- somebody's going
9 to have to transport these documents. How bout ---

10 MS. GOOD: I'll do it, Your Honor.

11 THE COURT: Show those documents to this witness and
12 ask if he can identify them.

13 (Documents are handed to the witness.)

14 THE COURT: (To the witness) You know what they are?
15 That document is?

16 THE WITNESS: Yes.

17 THE COURT: What is it?

18 THE WITNESS: I remember that's my signature and I --
19 I remember that's my handwriting. But when they show it
20 to me, it was clearer than that.

21 THE COURT: It was what?

22 THE WITNESS: It was clear. It's a little bit blurry
23 right now.

24 THE COURT: All right

25 THE WITNESS: Yeah. I think.

DIRECT EXAMINATION BY THE APPLICANT - KOUASSI OGOUBI 33

1 THE COURT: So that's a photograph of you that was
2 shown to you by the police.

3 THE WITNESS: Yes.

4 THE COURT: All right.

5 DIRECT EXAMINATION BY THE APPLICANT:

6 Q And would -- would you agree that it has my full name,
7 my address, and my date of -- birthday on it?

8 A Ask the question again.

9 Q Would you agree that that document contains my name,
10 my address, and my date of birth?

11 A No. I don't do -- just the picture. He was
12 questioning about the picture. It wasn't about address,
13 name. He just show me the picture. That's all. I don't
14 concern about it or the writing on it.

15 Q So they showed you exactly one picture.

16 A They showed me the picture.

17 Q Only one picture.

18 A I can't recall what, but I remember they showed me a
19 picture with -- with you on it.

20 Q Okay. And that -- that picture, that was the only
21 picture they showed you?

22 A I can't recall that, but I know they showed me one
23 picture to identify you.

24 Q Okay.

25 A That ---

DIRECT EXAMINATION BY THE APPLICANT - KOUASSI OGOUBI 34

1 Q Okay.

2 THE APPLICANT: That can be submitted into evidence?

3 THE COURT: Well, is that the picture they showed you
4 or is it ---

5 THE WITNESS: Yes.

6 THE COURT: Or was it another picture with other
7 pictures with it?

8 THE WITNESS: This picture -- like I say, this picture
9 is too dark. The picture they show me -- this look like a
10 copy. The picture -- when they show me the picture that
11 night and I signed it was ---

12 THE COURT: You don't know whether that's the document
13 they showed you.

14 THE WITNESS: My signature is there, but I don't know
15 if it change it back, because this picture, I can't
16 determine who that is. It's not clear enough.

17 THE COURT: All right. I'm going to admit the
18 picture. He's indicated that was his signature on top.

19 MS. HARRIGAN: The State would withdraw any objections
20 ---

21 THE COURT: We'll admit it as -- I don't know which
22 Court -- I mean, exhibit it is.

23 THE APPLICANT: Yes, sir.

24 DIRECT EXAMINATION BY THE APPLICANT:

25 Q Did you see this picture

DIRECT EXAMINATION BY THE APPLICANT - KOUASSI OGOUBI 35

1 THE COURT REPORTER: Excuse me, Your Honor. Well,
2 it's a continuation from another hearing, I don't know if
3 there were any exhibits in that hearing or not.

4 MS. HARRIGAN: If I could look at my notes briefly. I
5 don't believe there were.

6 (Brief pause as Ms. Harrigan confers with Ms. Good.)

7 MS. HARRIGAN: There's been one Court Exhibit, which
8 was a sentencing sheet. And Applicant did introduce one
9 exhibit that was medical records ---

10 THE COURT: So it'd be Applicant's Exhibit No. 2,
11 Madame Court Reporter.

12 THE COURT: All right. What's next?

13 THE COURT REPORTER: Both of these pages -- excuse me.
14 Both of these pages, Your Honor?

15 THE COURT: Yeah.

16 (Marked Applicant's Exhibit No. 2, 2-page document, in
17 evidence.)

18 MS. HARRIGAN: The State does have an objection to the
19 second page. I don't think that the witness identified
20 what the second page was or he'd seen it before. So the
21 State would like to object for the record.

22 THE COURT: All right. Objection noted.

23 THE APPLICANT: Sir?

24 THE COURT: The objection was noted and overruled. So
25 proceed.

DIRECT EXAMINATION BY THE APPLICANT - KOUASSI OGOUBI 36

1 THE APPLICANT: Yes, sir.

2 DIRECT EXAMINATION BY THE APPLICANT:

3 Q Were you shown this picture?

4 THE COURT: Mr. Bailiff, if you could hand him that
5 picture.

6 (The bailiff hands the picture to the witness.)

7 A No.

8 Q You weren't?

9 A No.

10 Q Okay.

11 THE APPLICANT: Can that be submitted into evidence,
12 Your Honor?

13 THE COURT: No, sir. He can't identify it. He's
14 never seen it.

15 THE APPLICANT: Yes, sir.

16 DIRECT EXAMINATION BY THE APPLICANT:

17 Q Okay. Were you ever interviewed or investigated by a
18 private investigator name Watkins?

19 A I don't -- one time -- I don't know his name. I know
20 he's a private investigator come talk to me.

21 Q Okay. And would you agree that this is his statement?

22 (The Applicant hands a document to Ms. Harrigan.)

23 MS. HARRIGAN: The State will have an objection at the
24 appropriate time.

25 THE COURT REPORTER: You said "will have"?

DIRECT EXAMINATION BY THE APPLICANT - KOUASSI OGOUBI 37

1 MS. HARRIGAN: Yes.

2 (The bailiff hands a document to the witness.)

3 A Yeah. It was signed by me. Yeah.

4 Q Yes, sir. And could you read the last line to them?

5 THE APPLICANT: Could I show him the last line?

6 Q Would you --

7 A Could you read it for me? My -- I forget to bring my
8 glass --

9 Q It's on the back page. When it's relating to anything
10 regarding sentencing or punishment, when they ask you what
11 do -- what do you consider a proper punishment in the --
12 in the adjudication of these charges.

13 A I do remember I talked to ...

14 (The applicant and Ms. Good confer.)

15 THE COURT: Do you have a question for this witness?

16 THE APPLICANT: Sir?

17 THE COURT: What's your question?

18 THE APPLICANT: Do -- do he -- did he -- did he give
19 any recommendations as towards the sentencing or
20 punishment in relation to these charges?

21 A Yeah. He ask me about a crime, what I expect. I say,
22 "Really, I wasn't a victim in this crime. I was just a
23 witness. Only thing, it happen on my property. Since you
24 a young kid, and I raise you since when you were, like,
25 14, you to have me -- for you doing like two years in a --

DIRECT EXAMINATION BY THE APPLICANT - KOUASSI OGOUBI 38

1 I hope -- they could tell you send you boot camp,
2 something like that." That's what I told him.

3 Q Okay. Were you aware that the minimum amount of time
4 for these charges carry 10 years?

5 A Because, like I said again, I don't know the charges,
6 because I'm not a professional. So I don't know the
7 charge and I can't tell what time he got.

8 Q "So -- so you are not aware that the minimum amount of
9 time was 10 years?

10 A I don't know the charge. How I'm going to know the --
11 uh-huh.

12 Q Okay. Okay. Okay. Did -- did you ever get
13 investigated by anyone else?

14 A Repeat the question.

15 Q Was that the only person that investigated you?

16 A Yeah. That's all. Beside the -- the detective that
17 night who I talked to, that's -- that was the
18 investigator. Yeah.

19 Q So you -- so you were never interviewed by my
20 attorney, in the back?

21 THE APPLICANT: May he stand here -- do he need to
22 stand?

23 A No. I never talked to no attorney.

24 Q You never talked to him?

25 A No.

DIRECT EXAMINATION BY THE APPLICANT - KOUASSI OGOUBI 39

1 Q But if he would have contacted you, you would have --
2 you would have talked to him, right?

3 A Yes, sir.

4 Q And would you have told him that you was willing to
5 attend the plea proceeding?

6 A If I would?

7 Q If you would of came to the ---

8 A If ---

9 Q --- plea hearing, which in I got sentenced that day,
10 would you have came if he contacted you?

11 A Yeah, if would have called me. Yeah.

12 Q And did he contact you?

13 A No. Never.

14 Q Okay. And at the time, did you have the number that
15 you gave to the -- to the -- to the Courts to reach you?

16 A Yes.

17 Q And did you have the same address?

18 A Let me see.

19 Q Academy Street?

20 A No. I moved back -- it's still my property. I still
21 have mail goes to there.

22 Q So you were receiving mail ---

23 A Yeah. I receive it. Yeah.

24 Q But what about the business? At the time ---

25 A The business is still there now.

DIRECT EXAMINATION BY THE APPLICANT - KOUASSI OGOUBI 40

1 Q Still there. So if he came by the business, he could
2 have --

3 A Yeah.

4 Q Okay. So you're saying you would have came and
5 testified on my behalf. But he never did that, right?

6 A He never contact me.

7 Q Okay. Regarding the incident, did you -- did you --
8 did you -- excuse me, Your Honor. I'm trying to get my
9 questions correct.

10 (Brief pause.)

11 THE APPLICANT: That'll be all, Your Honor.

12 THE COURT: All right. What is it that he would have
13 testified on your behalf?

14 THE APPLICANT: To saying that -- I'm saying that
15 Attorney Shadd should have investigated him and got a --
16 procured him for the plea hearing.

17 THE COURT: To say what?

18 THE APPLICANT: To offer mitigation.

19 THE COURT: And what was that mitigation?

20 THE APPLICANT: That he ain't want me to get as much
21 time that I did receive.

22 THE COURT: All right. All right. What you want to
23 ask him?

24 THE APPLICANT: And to the facts and circumstances of
25 the case, Your Honor.

CROSS-EXAMINATION BY MS. HARRIGAN - KOUASSI OGOUBI

41

1 THE COURT: All right.

2 THE APPLICANT: Excuse me -- I can --

3 THE COURT: Well, you just said you were finished
4 asking questions. If she's going to ask a question, what
5 you want to ask? Want you want to ask, Ms. Attorney
6 General?

7 MS. HARRIGAN: Okay. I didn't know -- I didn't know
8 if Mr. Samuels was finished or not.

9 CROSS-EXAMINATION BY MS. HARRIGAN:

10 Q Good morning. How do you pronounce your last name
11 again, sir?

12 A Ogoubi.

13 Q Mr. Ogoubi.

14 A Yes.

15 Q You're the owner of the Hip Hop Shop where this
16 incident occurred, correct?

17 A Yes, ma'am.

18 Q And Mr. Samuels pointed a gun at you, correct?

19 A Is no -- he don't point a gun at me like he rob me.
20 He just hold the gun like this (indicating), "You, get
21 out. Get back out."

22 Q So he did point a gun at you and tell you to get out.

23 A He was waving the gun. "Get out, get out." But he's
24 not -- you get out, you know. He say, "Get out." You
25 know, that mean he don't point a gun on me. He only have

1 empty hands when he say, "Get out. Get out."

2 Q Did you see him with a gun?

3 A Yes.

4 Q And I believe your testimony was that the incident had
5 already been occurring when you walked in. You walked in
6 mid -- mid robbery.

7 A Uh-huh.

8 THE COURT REPORTER: Is that a "yes"? A "yes"?

9 THE WITNESS: Yes.

10 Q Did you walk in before or after Ms. Williams was
11 pistol whipped twice?

12 A (No audible response.)

13 Q Did -- did you observe Ms. Williams being pistol
14 whipped?

15 A Yes. But once. I saw once.

16 Q You saw one.

17 A Yes. She try to get up, I say, "You sit down."

18 Q Can you elaborate on that? You said you -- Ms.
19 Williams -- who is Ms. Williams?

20 A Oh. It's the friend of the one owner prior who was
21 there. She just come say "hi" to her and he come to --
22 the incident occur at the same time she just was there.

23 Q And you observed her trying to leave and Mr. Samuels
24 pistol whipping her?

25 A Yeah. He hit her with the pistol, "You sit right

1 back."

2 Q Did you observe another witness, Mr. Kual, being shot
3 in the face?

4 A Yes.

5 THE COURT REPORTER: Do you have the spelling on the
6 name?

7 MS. HARRIGAN: K-u-a-l.

8 Q Do you recall telling law enforcement that you knew
9 Mr. Samuels because he frequented your shop?

10 A Yeah.

11 MS. HARRIGAN: Your Honor, may I approach briefly?

12 THE COURT: (No audible response.)

13 (Ms. Harrigan confers with the court reporter
14 briefly.)

15 MS. HARRIGAN: Court's indulgence.

16 (Brief pause.)

17 Q Can you please -- you previously identified this --
18 this -- this statement, correct? It's the ---

19 A Yes. Uh-huh.

20 Q --- statement you gave law enforcement.

21 A Uh-huh.

22 Q Can you please read the question at the top of page 2
23 and the full answer that you provided for law enforcement?

24 A (As read) "Have you ever had any confrontation with
25 Alvin?" I say, "Yes." I say, "Yeah. Because he come --

1 chain smoke --

2 THE COURT: He doesn't have his glasses --

3 THE WITNESS: Uh-huh.

4 THE COURT: -- so it's difficult for him to read.

5 Isn't that right, Mr. Ogoubi?

6 A Yeah. I complaining against him.

7 Q Let me ---

8 A Okay. Yeah.

9 Q Since you ---

10 A Ask me a question, ma'am.

11 Q Did you have any knowledge of Mr. Samuels's, based on
12 your review of that statement --

13 A Uh-huh.

14 Q -- getting into similar type situations in other area
15 businesses, perhaps a barber shop?

16 A Yes.

17 Q Can you describe that for the Court as you set forth
18 in your statement?

19 A Now, what I say, the detective ask me why we still
20 allow him to ---

21 THE APPLICANT: Objection, Your Honor.

22 THE COURT: You can't say what the detective said.

23 Q No. Can you just -- I asked you if you could please
24 describe your previous experiences with Mr. Samuels in a
25 similar incident with other businesses in the area.

CROSS-EXAMINATION BY MS. HARRIGAN - KOUASSI OGOUBI 45

1 THE APPLICANT: Objection, Your Honor. Relevance.

2 THE COURT: All right. It's overruled.

3 THE APPLICANT: Sir?

4 THE COURT: It's overruled. You made the statement --
5 you opened the door on this statement, so ...

6 THE APPLICANT: On that statement, on ---

7 THE COURT: This is not a matter of guilt on other
8 offenses. This is a matter of his -- what he told the
9 police after you asked him what -- about the statement.

10 (To the witness) You can answer the question.

11 A Yes. Is - I just repeat what the barber shop was
12 telling him -- himself. You were telling the barber shop,
13 "You do this. That's why I shot you." And he just --
14 some argument with a barber shop and --

15 Q Did this incident at the barber shop involve a weapon
16 as well?

17 A Yeah.

18 Q And did you put that in your statement that you
19 provided to law enforcement?

20 A Yeah.

21 Q If you'd been contacted by Mr. Samuels's attorney, Mr.
22 Shadd, would you have also told him this information if
23 asked?

24 A No.

25 Q If he asked you if you knew about another incident,

1 you wouldn't have told Mr. Shadd about this?

2 A Yeah. If he ask me about it, I would tell him the
3 truth.

4 Q And I believe your testimony on direct examination was
5 that if you'd been asked to come to court, you would have
6 said you didn't want Mr. Samuels to receive a sentence of
7 a lot of years, correct?

8 A Yes.

9 Q Are you aware as to -- and you weren't present for the
10 plea, correct?

11 A Uh-huh.

12 Q Were you present for the plea, the guilty plea?

13 A No. When I come, they already finish, and I talk to
14 the solicitor. I was -- and like I say, in the -- I was
15 no victim. I was just a witness, because -- three victim,
16 he was charge with three count. I just was witness. So I
17 don't think my -- my -- it my business, but being I raise
18 him from 14, he only do something wrong, I would have want
19 the rehabilitation.

20 Q Are you aware if Mr. Shadd told the Court that he
21 didn't want -- that you didn't want Mr. Samuels to receive
22 a harsh sentence, you were more interested in
23 rehabilitation?

24 A Yeah. Because the detective talk to both at the same
25 time. Yeah.

1 Q You talked to the detective and who else at the same
2 time?

3 A Yeah -- no at the same time. One at a time, but one
4 time he talk to me, he talk to Shy. And that's what -- I
5 don't believe no -- that's what Shy told me. He said,
6 "Yeah. He forgive them," because he -- we just like a
7 family, you know.

8 Q When you say, "that's what Shadd told you," I thought
9 you testified you never talked to Shadd. You have talked
10 to Shadd?

11 A I talked to -- I talk to Shy. We was at the store ---

12 THE APPLICANT: Objection, Your Honor.

13 A --- when the detective come.

14 THE COURT: Overruled.

15 A The detective talk to me about the -- everything,
16 about Alvin, and we talk. When I finish, he talk to Shy,
17 too.

18 So after I was finish with that, me and Shy, we have a
19 conversation. And I tell Shy what I told the detective.
20 He said, "Yeah. He told him the same."

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

22 THE COURT: All right. Anything further you want to
23 ask this witness?

24 THE APPLICANT: Yes, sir. Redirect, right? Yes, sir.

25 REDIRECT EXAMINATION BY THE APPLICANT:

REDIRECT EXAMINATION BY THE APPLICANT - KOUASSI OGOUBI 48

1 Q When you're referring to "Shy," that is Nathaniel
2 Irvin, correct?

3 A Yes.

4 Q And that is a victim in the case, right?

5 A Yes.

6 Q So that's different from the attorney, right? That's
7 not the same man as the attorney, right? That's -- that's
8 not the attorney right there in the back of the courtroom,
9 is it?

10 A I never spoke to attorney.

11 Q You never spoke to him, right?

12 A Uh-uh.

13 Q But you was willing to tell him that you were willing
14 to come to the plea hearing to testify, correct?

15 A Yeah. If he had contact me, I would have came.

16 Q Okay. And were you in the -- you said you walked in
17 and this incident had already occurred?

18 A It was in progress.

19 Q It was in progress, and you had left out before the
20 incident had ended?

21 A No. Because I really don't -- like, I was walking
22 outside -- if you want to repeat the end of the incident,
23 if you don't want me to ...

24 Q Did -- did the gunshot look intentional?

25 A I can't determine that.

REDIRECT EXAMINATION BY THE APPLICANT - KOUASSI OGOUBI 49

1 Q You can't determine that?

2 A I can say what I saw.

3 Q Okay. And was it a door -- door there?

4 A It's more easy just -- you want me to continue ---

5 Q Can you describe it for me?

6 A --- yeah. Describe to the end.

7 Okay. I was next door when I come back to the store.
8 And I saw him waving the gun like this (indicates.) I
9 thought he was playing with the gun. And after I see the
10 other guy like this (indicates) -- the other guy like this
11 and I walk in there. And I ask him, "Hey. What you
12 doing?" He said, "You, I have no problem with you. Go
13 back out. That's no your problem. That's no your
14 business. Go back out."

15 And the time you are telling me, "Go back out," the
16 other guy have opportunity to run in the bathroom and
17 close the door. And that's why -- you run behind him, and
18 kick the door. The guy lean on it and it no open; and he
19 put the gun on the door and shot through the door.

20 And -- and I was outside by the door watching
21 everything. I -- I really want to close -- the middle
22 gate, I want to close it down til the police get there.
23 But I think if I do that, then I kill everybody in the
24 store. That's why I let him go. That's it. That's what
25 happened.

REDIRECT EXAMINATION BY THE APPLICANT - KOUASSI OGOUBI 50

1 Q And the Shy, victim in this case. Shy.

2 A I can't ---

3 Q Nathaniel Irvin, is he -- was he ---

4 A I see you pull a gun on him. Yeah. He have in his
5 hand like this (indicates.)

6 Q Did you see money taken from anybody in the store?

7 A No. I don't see it ---

8 Q Did ---

9 A --- the money. I see everybody they like this
10 (indicates.)

11 Q Okay. And would you say that that this statement's --
12 this statement right here (indicates) --

13 (The applicant hands a document to Ms. Harrigan.)

14 THE APPLICANT: I'd like to submit this into evidence.

15 Q -- that you said that it was a robbery in progress.
16 The police re-wrote that statement you gave and said that
17 it was a robbery in progress?

18 A Yes.

19 Q Okay.

20 (The applicant confers with Ms. Harrigan.)

21 MS. HARRIGAN: I apologize, Your Honor. I haven't
22 seen this before.

23 (Brief pause.)

24 THE COURT: That your statement?

25 THE WITNESS: Yes.

REDIRECT EXAMINATION BY THE APPLICANT - KOUASSI OGOUBI 51

1 THE COURT: All right. What do you want to ask him?

2 Q Would -- would you agree that it said that it was a
3 robbery in progress within that statement that the police
4 wrote?

5 A What?

6 THE COURT: When you went in the store, was there a
7 robbery in progress?

8 THE WITNESS: Yeah. In progress -- I see gun point
9 and ---

10 THE COURT: All right.

11 THE WITNESS: --- two people like this (indicates) and
12 you -- one escape. But I know this ---

13 THE COURT: You want to keep asking this fellow about
14 ---

15 THE WITNESS: --- robbery in progress.

16 THE COURT: --- the facts of this crime?

17 THE APPLICANT: No, sir. No, sir. I'll move on.

18 REDIRECT EXAMINATION BY THE APPLICANT:

19 Q So you -- you -- you -- you said that you don't know -
20 - did -- did you see any money taken from anybody in the
21 store?

22 A I don't see ---

23 MS. HARRIGAN: Your Honor, asked and answered.

24 THE COURT: He did not see any money. He said there
25 was a robbery in progress.

1 THE APPLICANT: Yeah.

2 Q All right.

3 THE COURT REPORTER: Is this in evidence, this ---

4 THE APPLICANT: I'd like to move that into evidence.

5 MS. HARRIGAN: He hasn't moved it in.

6 THE COURT: All right. Well, he just did. Do you
7 have any objection?

8 MS. HARRIGAN: No objection.

9 THE COURT: All right. So admitted.

10 (Applicant's Exhibit No. 3, 5-page statement document,
11 in evidence.)

12 THE COURT: All right. Anything on re -- anything
13 else?

14 REDIRECT EXAMINATION BY THE APPLICANT:

15 Q But you -- you said you would have talked to my
16 attorney if he'd contacted you.

17 MS. HARRIGAN: Asked and answered.

18 THE COURT: You've said all that, Mr. -- Mr. Samuels.

19 Any other questions?

20 MS. HARRIGAN: Very briefly.

21 RE-CROSS-EXAMINATION BY MS. HARRIGAN:

22 Q Mr. O ---

23 A Ogoubi.

24 Q O -- Ogagubu [phonetic.] Sorry.

25 A Uh-huh.

RECROSS-EXAMINATION BY MS. HARRIGAN - KOUASSI OJOUBI 53

1 Q Am I correct you said you let Mr. Samuels go because
2 you were afraid if you closed the gate, he would kill
3 everyone in the store?

4 A Yeah. Because when I was running out -- you know, I
5 have middle gate. I could close it down. But soon as I
6 see shots, I think about what he might kill -- that's why
7 I let him -- the door open and I let him go. And I call
8 the police.

9 THE COURT: All right.

10 Q And were you afraid for your life?

11 A One time, because I don't think somebody I know like
12 that do something. But the same time, he tell me, "I got
13 no problem with you. You can go." I think if he want do
14 anything to me, because I ---

15 THE COURT: Anything else?

16 A --- know him since baby.

17 THE COURT: Thank you, sir. You may step down.

18 THE WITNESS: You welcome.

19 (The witness exits the stand.)

20 THE COURT: Who's your next witness?

21 THE APPLICANT: Stanley Samuel.

22 THE WITNESS: Good morning, Your Honor.

23 THE COURT: Good morning.

24 STANLEY SAMUEL, having been first
25 duly sworn, testifies as follows:

DIRECT EXAMINATION BY THE APPLICANT - STANLEY SAMUEL 54

1 CLERK OF COURT: Please have a seat there, sir. State
2 your full name for the record and spell your last name.

3 THE WITNESS: Alvin Stanley Samuel, S-a-m-u-e-l.

4 THE COURT: Proceed.

5 DIRECT EXAMINATION BY THE APPLICANT:

6 Q Good morning. Do you know who the attorney is in my
7 case when -- with these charges, developing these charges?

8 A Yes.

9 Q And could you say his name?

10 A Yeah. Attorney Shadd.

11 Q Did you ever discuss my case with him?

12 A Yes.

13 Q Do you remember when you discussed my case with him?

14 A Yes. Sometime after December, 2011.

15 Q Okay. Up until the time I pled guilty?

16 A Yes.

17 Q Okay. And what -- in those discussions, what did you
18 discuss?

19 A Basically, about you having a public defender when
20 your case first started, and you wanted him to do an
21 investigation and get your motion of discovery.

22 Q And did he tell you at that time that he had the
23 discovery or ---

24 MS. HARRIGAN: Objection to hearsay.

25 THE COURT: Sustained.

DIRECT EXAMINATION BY THE APPLICANT - STANLEY SAMUEL 55

1 Q Did you discuss the discovery?

2 A Yes.

3 Q What about the discovery?

4 A Well, he said that he had -- that he'd got ---

5 MS. HARRIGAN: Objection to hearsay.

6 THE COURT: You can't testify to what somebody else
7 told you. That's hearsay. You can ask Mr. Shadd that.

8 Q Okay. Did -- did -- did you inform him that you
9 wanted to do an investigation?

10 A Yes.

11 Q To your knowledge, do he -- did he do an
12 investigation?

13 A No.

14 Q Okay. And did you attend the plea hearing of -- of
15 Alvin Samuel, July 12, 2012?

16 A Yes.

17 Q Did you meet with Attorney Shadd outside the hearing -
18 - outside the courtroom that morning?

19 A Yes.

20 Q Did he tell you that I was accepting a plea?

21 MS. HARRIGAN: Objection to hearsay.

22 THE COURT: Well, I'm going to allow, not for the
23 truth of the matter asserted. To see whether he did ---

24 MS. HARRIGAN: Thank you.

25 THE COURT: You can answer the question. Did he tell

DIRECT EXAMINATION BY THE APPLICANT - STANLEY SAMUEL 56

1 you he was accepting -- are you related to him?

2 THE WITNESS: Yes, sir. I'm his father, Your Honor.

3 THE COURT: Did he tell you your son was pleading
4 guilty?

5 THE WITNESS: Yes, sir, he did.

6 THE COURT: All right.

7 DIRECT EXAMINATION BY THE APPLICANT:

8 Q Yes, sir. Did he tell you the terms of the plea
9 agreement?

10 A Yes, he did.

11 Q What was those terms, and -- if you can recall them?

12 MS. HARRIGAN: Objection to hearsay.

13 THE COURT: Sustained.

14 (To the witness) Do you know what the plea arrangement
15 was?

16 THE WITNESS: Yes, sir.

17 THE COURT: What was it?

18 THE WITNESS: It was from 10 to 25, Your Honor.

19 THE COURT: All right.

20 THE WITNESS: With not this stipulation of -- or no
21 recommendation of the State. It was supposed to have been
22 a 10 to 25 cap, if I'm going to say ---

23 THE COURT: Apparently, according to the ---

24 THE WITNESS: --- for the record.

25 THE COURT: It was a negotiated plea arrangement,

DIRECT EXAMINATION BY THE APPLICANT - STANLEY SAMUEL 57

1 right?

2 THE WITNESS: Yes, sir.

3 THE COURT: All right.

4 THE WITNESS: From 10 to 25, Your Honor, cap.

5 THE COURT: You understand ---

6 THE WITNESS: With no recommendation from ---

7 THE COURT: You understand if your son wins this
8 hearing, he goes back for a re-trial?

9 THE WITNESS: Yes, sir, Your Honor.

10 THE COURT: You understand he can get up to 145 years
11 in this case?

12 THE WITNESS: Yes, sir.

13 THE COURT: You understand -- the witness that just
14 testified in this case?

15 THE WITNESS: Yes, sir.

16 THE COURT: You think your son has a chance to prevail
17 if he goes back for a trial?

18 THE WITNESS: Well, Your Honor, I -- I -- I will have
19 to leave that in the hands of the jury, Your Honor.

20 THE COURT: Well, all right. Long as he understands
21 he's looking at 145 years if he -- if he wins.

22 THE WITNESS: Yes, sir.

23 DIRECT EXAMINATION BY THE APPLICANT:

24 Q Yes, sir. Did he inform you -- did he tell you
25 anything else about the plea handling?

1 THE COURT: He can't testify to what your lawyer said.
2 You can ask your lawyer.

3 DIRECT EXAMINATION BY THE APPLICANT:

4 Q Were you aware of any witnesses coming to the plea
5 hearing?

6 A Yes.

7 Q And who were they?

8 A He was saying that -- which is I know him as
9 "Mandella" -- the witness that just was up here, and
10 another guy by the name of "Shy."

11 Q You know ---

12 A Supposed to been to appear to the plea hearing.

13 Q But they never did show?

14 A (No audible response.)

15 Q Did you -- did you attend the plea hearing?

16 A Yes.

17 Q And were these two victims there?

18 A No, they were not.

19 Q Okay.

20 THE APPLICANT: All right, Your Honor.

21 THE COURT: Anything on cross?

22 MS. HARRIGAN: Yes. Briefly, Your Honor.

23 CROSS-EXAMINATION BY MS. HARRIGAN:

24 Q Mr. Samuels, how many times did you meet with Mr.
25 Shadd?

CROSS-EXAMINATION BY MS. HARRIGAN - STANLEY SAMUEL

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1 A I met Mr. Shadd approximately three -- three times.

2 Q And was your son incarcerated before his guilty plea
3 or was he out on bond?

4 A He was incarcerated.

5 Q And you testified you understood that the plea your
6 son was going to accept had a range of 10 to 25 years,
7 correct?

8 A Yes, ma'am. With a cap, with a -- with no
9 recommendation from the State.

10 Q And you were present at the plea proceeding?

11 A Yes, ma'am.

12 Q Do you recall two of the victims, a Mr. Kual and Ms.
13 Williams, testifying?

14 A Yes, ma'am.

15 Q Do you recall Mr. Kual telling the Court that he
16 didn't think your son should be on the street, and that he
17 was violent and dangerous, more or less?

18 A Yes, ma'am. I can actually recall that.

19 Q And do you recall Ms. Williams saying something
20 similar, that she was also afraid?

21 A Yes, ma'am. I actually recall that.

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

23 THE COURT: All right.

24 THE APPLICANT: Redirect?

25 THE COURT: (No audible response.)

REDIRECT EXAMINATION BY THE APPLICANT - STANLEY SAMUEL 60
RE-CROSS EXAMINATION BY MS. HARRIGAN - STANLEY SAMUEL

1 REDIRECT EXAMINATION BY THE APPLICANT:

2 Q What was your understanding of what your -- what Alvin
3 Samuels would receive that day when you pled guilty --
4 when he pled guilty?

5 A Ten years.

6 Q How did you know that?

7 A By speaking with the attorney before the plea that
8 morning. He actually said he had -- done had spoke with
9 them and said that we was looking at the 10 years, was
10 confident we will receive the 10 years.

11 Q You was confident ---

12 A Yes.

13 Q --- correct?

14 A Confident that we will receive the 10 years.

15 Q Okay.

16 THE APPLICANT: I have -- that's it, Your Honor.

17 THE COURT: All right.

18 MS. HARRIGAN: Very -- very briefly, Your Honor.

19 RE-CROSS-EXAMINATION BY MS. HARRIGAN:

20 Q Mr. Samuels, you testified before, though, that you
21 understood your son could have received any sentence
22 between 10 and 25 years, correct?

23 A That's correct.

24 Q But his attorney -- based on your conversations with
25 his attorney, you were hoping he'd get 10 years, correct?

1 A No, ma'am. When he was come back and he was actually
2 stated that, we was pretty confident that we would get 10
3 years.

4 Q But he never informed you that there was a negotiation
5 for a 10-year sentence, correct?

6 A I'm not quite aware of that ---

7 Q You knew that he could get 25 years, correct, when he
8 ---

9 A Well, according -- well, no. Not exactly. According
10 to -- what the attorney come back and said that we was
11 actually looking at the 10 years. Because prior -- before
12 then, we was actually set up for the trial.

13 MS. HARRIGAN: No further questions.

14 THE COURT: All right. Thank you, sir. You may step
15 down.

16 THE WITNESS: Thank you, sir.

17 (The witness exits the stand.)

18 THE COURT: All right. Call your next witness,
19 please.

20 THE APPLICANT: Tyreshia Samuels. I mean, Tyreshia
21 Hopkins.

22 TYRESHIA HOPKINS, having been
23 first duly sworn, testifies as follows:

24 CLERK OF COURT: Please have a seat there, speak into
25 that microphone. State your full name for the record.

DIRECT EXAMINATION BY THE APPLICANT - TYRESHIA HOPKINS 62

1 THE WITNESS: Tyreshia Hopkins.

2 THE COURT REPORTER: Spell your name, please.

3 THE WITNESS: T-y-r-e-s-h-i-a, H-o-p-k-i-n-s.

4 THE COURT REPORTER: Thank you.

5 DIRECT EXAMINATION BY THE APPLICANT:

6 Q Good morning.

7 A Good morning.

8 Q Did you hire Attorney Shadd to represent Alvin
9 Samuels?

10 A Yes, I did.

11 Q When do you -- do you recall when you hired him?

12 A I know it was in March.

13 Q March of what year?

14 A 2010.

15 Q 2010?

16 A Uh-huh.

17 Q Okay. Did you discuss my case with Attorney Shadd?

18 A Not until after December.

19 Q December? Of what year?

20 A 2011.

21 Q 2011?

22 A I didn't discuss the case before then because he said
23 he had to get -- he had to get the okay from you to ---

24 Q Consent.

25 A --- discuss -- yeah, to discuss your case.

DIRECT EXAMINATION BY THE APPLICANT - TYRESHIA HOPKINS 63

1 Q So after December of -- or somewhere 2012 to the time
2 I pled guilty, July, 2012, that you discussed my case with
3 Attorney Shadd?

4 A Yes.

5 Q What did you discuss regarding the case?

6 A That he would do an investigation on the case.

7 Q Okay. From your knowledge, did he conduct an
8 investigation?

9 A No.

10 Q Were -- were you -- did you attend the plea hearing?

11 A Yes.

12 Q Did you speak with Attorney Shadd outside the
13 courtroom before the plea hearing?

14 A Yes.

15 Q Do you -- do you recall anything he told you regarding
16 --

17 MS. HARRIGAN: Objection to hearsay.

18 THE COURT: Sustained.

19 Q What were your understandings of what the plea
20 negotiation was?

21 A 10 to 25 years, cap; no recommendation from the State
22 and no sex offender registry.

23 Q Okay. And did he inform you of anything else?

24 MS. HARRIGAN: Objection to hearsay.

25 THE COURT: Sustained.

DIRECT EXAMINATION BY THE APPLICANT - TYRESHIA HOPKINS 64

1 Q Was this all -- was that all you recall about --

2 A The 10 years that -- that you would get. You would
3 receive the 10 years.

4 Q Did Samuels receive 10 years that day?

5 A No.

6 Q Okay. Were you aware of any witnesses that you were
7 informed that would attend the plea hearing by Attorney
8 Shadd?

9 A Yes. It was supposed to be Shy and Mandella.

10 Q Shy and Mandella?

11 A Uh-huh.

12 Q Okay. Did they attend the plea hearing?

13 A No.

14 Q Okay. Did -- did you hear the solicitor make a
15 recommendation?

16 A Yes.

17 Q What was that recommendation?

18 A 25 years.

19 Q Okay. Was that contrary -- contradicting what
20 Attorney Shadd had informed you?

21 A Yes. He said that it was capped to 25 years, but you
22 would get the 10 years with ---

23 Q With no ---

24 A --- no statement -- recommendation and no sex offender
25 registry.

CROSS-EXAMINATION BY MS. HARRIGAN - TYRESHIA HOPKINS 65

1 Q Okay.

2 THE APPLICANT: That's it, Your Honor.

3 THE COURT: All right. Anything?

4 MS. HARRIGAN: Yes, Your Honor.

5 CROSS-EXAMINATION BY MS. HARRIGAN:

6 Q Ms. Hopkins, you testified that you retained Mr. Shadd
7 to represent Mr. Samuel in March of 2010, correct?

8 A Yes.

9 Q But the event didn't take place until July 22, 2010,
10 correct?

11 A Well, it was -- it was March of 2011.

12 Q Okay. So you retained him in March, 2011. And you
13 testified that you didn't speak with Mr. Shadd regarding
14 the details of the case until December, correct?

15 A Yes.

16 Q And you testified that was because Mr. Shadd wanted to
17 make sure that his client was okay with you discussing the
18 case.

19 A Yes. Because he said it was confidential.

20 Q How many times did you meet with Mr. Shadd to discuss
21 Mr. Samuels case?

22 A A few times, but I'm not exactly sure how many times.

23 Q Five times?

24 A May have been, but I'm not sure.

25 Q More than once or twice?

1 A Yes.

2 Q Were you present at the plea proceeding?

3 A Yes, ma'am.

4 Q Did you hear the victim Mr. Kual testify to the Court?

5 A Yes, ma'am.

6 Q Do you recall him telling the Court that he wanted Mr.
7 Samuels to receive a harsh sentence, and that he was
8 fearful?

9 A Yes.

10 Q Did you hear another victim, Ms. Williams, testify to
11 the Court?

12 A Yes.

13 Q And she was pistol -- pistol whipped by Mr. Samuels
14 twice, correct?

15 A That's what she stated.

16 Q And did you hear her also tell the Court that she was
17 fearful?

18 A Yes.

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

20 THE COURT: Anything further?

21 (Brief pause.)

22 THE APPLICANT: I have no further questions.

23 THE COURT: All right. Thank you, ma'am. You may
24 step down.

25 THE APPLICANT: Oh. Excuse me. One question, one

REDIRECT EXAMINATION BY THE APPLICANT - TYRESHIA HOPKINS 67

1 question.

2 THE COURT: What is that?

3 REDIRECT EXAMINATION BY THE APPLICANT:

4 Q Were -- when you met -- when -- when you were outside
5 the courtroom, was anybody else present with you when
6 Attorney Shadd discussed this matter with you?

7 A Your father.

8 Q Alvin Samuels? Stanley Samuels?

9 A Uh-huh. Uh-huh.

10 Q Okay. No further questions.

11 THE COURT: Thank you, ma'am.

12 (The witness exits the stand.)

13 THE COURT: Any more witnesses?

14 THE APPLICANT: No, sir.

15 THE COURT: All right.

16 THE APPLICANT: Oh. One more witness.

17 THE COURT: Pardon me?

18 THE APPLICANT: One more witness.

19 THE COURT: Who is that?

20 THE APPLICANT: Shane Felder; Shane William Felder.

21 THE COURT: Come on up here.

22 WILLIAM SHANE FELDER, having been
23 first duly sworn, testifies as follows:

24 CLERK OF COURT: Please have a seat there, sir. State
25 your full name for the record and spell your last.

DIRECT EXAMINATION BY THE APPLICANT - WILLIAM FELDER 68

1 THE WITNESS: Yes, sir. My name is William Felder,
2 William Shane Felder.

3 THE COURT REPORTER: Spell your last name.

4 THE WITNESS: F-e-l-d-e-r, ma'am.

5 THE COURT REPORTER: Could you back up just a little
6 bit?

7 THE WITNESS: Yes, ma'am.

8 THE COURT: All right. What you want to ask him?

9 DIRECT EXAMINATION BY THE APPLICANT:

10 Q Would you have attended the plea proceeding if you
11 were made aware that I was "pleaing" guilty?

12 A Yes, I would have.

13 Q And what would you have testified to?

14 A I would have spoke as a character witness for you,
15 being that I've known you all my life and you worked for
16 me as --

17 (To the Court) He was a laborer for me. I have a
18 brick mason company. I have a brick mason company here in
19 Columbia, sir. I sub-contract for Sal Timbers Masonry out
20 of Lexington. And I would have just spoke as a character
21 witness, just a lot of things that he was going through at
22 the time. I personally know, because I usually have to
23 take him back and forth.

24 Like, Alvin has never been violent. You know, but I
25 remember when he became violent. I remember incidents --

DIRECT EXAMINATION BY THE APPLICANT - WILLIAM FELDER 69

1 I remember when he was going through this with this little
2 fellow where the fellow was shooting at him about a girl,
3 this and that. You know, paralyzed one of his -- one of
4 his friends got paralyzed right where the shop at -- right
5 where the shop is, the Hip Hop Shop.

6 I've been -- I've got a grandma stay over there. I've
7 actually been to my grandmother's house, and he couldn't
8 walk from -- from the Hip Hop Shop to cross the street
9 cause it was three guys standing there across the street
10 with guns.

11 So I understand where -- I've had to actually take
12 him, put myself in harm's way and say, "Son, come on get
13 in this car. Don't -- don't walk cross the street, cause
14 these -- they already paralyzed your home boy. You see
15 what's gonna happen."

16 And he like, "Well, Unc, I gotta do this. I gotta do
17 that."

18 I'm like, "Man, you don't need to carry no gun. You
19 don't need to do this. You don't need to do that."

20 But I also understand that I couldn't be there for him
21 every day, all day. But this particular day, I did take
22 him home, you know. And -- and they didn't mess with him
23 cause he was in the car with me.

24 But that's no excuse, and -- and you know, everything
25 that's happened is all -- it was all a misunderstanding.

DIRECT EXAMINATION BY THE APPLICANT - WILLIAM FELDER 70

1 I know the guy that got hurt, and we talked to him a
2 little earlier, you know. And I know the -- there's no
3 excuse for what happened. You know, what happened
4 happened, you know what I mean? And it was all a -- it
5 was a lot of misunderstanding going on.

6 I'm aware of when he -- when the fellow ran into the
7 bathroom and all that. You might have thought he had a
8 weapon or whatever, but that's to be determined, you know
9 what I mean?

10 But at this point, I just wanted the Court to know
11 that he is not the monster that he's betrayed -- or what
12 the facts -- because facts are. You can't -- you can't
13 deny what happened. But I'm just speaking on his
14 character from what I know as a child. You know, coming
15 up, he was a good man.

16 And I just wish it was some kind of program where --
17 he was in the ROTC. I used to beg him, "Son, just
18 graduate. Stay in school."

19 I mean, it hurt me now just to see him like that. I
20 really just wish he could have went on in the Army where
21 they have some kind of program for him, you know. Because
22 the Army would have been real good for you.

23 But I know this is not up to you, sir. But whatever -
24 - whatever the Courts can do to -- you know, to satisfy
25 the -- I know the -- I know the victims need to be

DIRECT EXAMINATION BY THE APPLICANT - WILLIAM FELDER 71

1 satisfied, too, you know. But I just wish it was some
2 kind of place, like a Army or something, that he could --
3 or any kind of place like that, sir. Anything other than
4 just sitting around a bunch of criminals, you know, that's
5 -- that's not helping him.

6 He need to be -- he need to be rehabilitated. Need to
7 be working, restitution. Should be able to be able to pay
8 these folks back for the mistake, and be able to just make
9 it right.

10 THE COURT: Anything further?

11 DIRECT EXAMINATION BY THE APPLICANT:

12 Q Did you speak to Nathaniel Irvin about this case?

13 A Nathaniel Irvin? I'm trying to think ---

14 Q His name is "Shy."

15 A Oh, yeah.

16 THE COURT REPORTER: Are you saying "Shy," S-h-y?

17 THE WITNESS: Shy, yes, ma'am.

18 Q Okay. But if you was contacted by my attorney, you
19 would have came to the plea hearing and verified my
20 character?

21 A Of course.

22 Q Okay. And were you contacted by my attorney to
23 establish my character?

24 A No, sir.

25 Q Okay.

1 THE APPLICANT: No further questions.

2 THE COURT: All right. Anything?

3 MS. HARRIGAN: Briefly, Your Honor.

4 CROSS-EXAMINATION BY MS. HARRIGAN:

5 Q Mr. Felder, you testified that you remember incidents
6 when Alvin had been violent in the past, correct?

7 A No, ma'am. I said I -- I said that I remember
8 incidents where he was -- where guys were being violent
9 towards him, and had paralyzed one of his friends. I was
10 just -- I was trying to show how he even got in the
11 lifestyle of carrying guns and being.

12 Because he was going to C. A. Johnson. He was in --
13 he was in the ROTC. He hadn't been in no trouble. He was
14 working with me. He was -- he was on the right path.

15 But I was just trying to show when he took that curve,
16 because I saw when that curve came. After his friend got
17 paralyzed and I seen him with a gun, and I was trying to
18 explain to him, "Son, you don't need to do this."

19 But then I saw in my own eyes, in the midst of him
20 having a conversation, I seen three fellows across the
21 street that he was going through it with. And they were
22 sitting there and waiting for him to walk to home, which
23 he would have never made it home. He would have died.

24 So I understood. So I put myself in harm's way, and
25 say, "Come on. Get in the car with me and I'll take you,"

CROSS-EXAMINATION BY MS. HARRIGAN - WILLIAM FELDER 73

1 knowing that these fellows shot up this person car. They
2 don't care nothing bout me or nobody else. I was just
3 saying -- stating a facts that I saw where he -- he took
4 the turn at, ma'am.

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

6 THE COURT: All right. Thank you, sir. You may step
7 down.

8 THE WITNESS: Yes, sir.

9 (The witness exits the stand.)

10 THE COURT: Anything further?

11 THE APPLICANT: No. No more witnesses.

12 THE COURT: All right. Anything from the State?

13 MS. HARRIGAN: Yes. The State would call Mr. Shadd.

14 May we have a very brief break, Your Honor?

15 THE COURT: All right.

16 MS. HARRIGAN: Thank you, Your Honor.

17 THE COURT: I don't know what "very brief" means.

18 MS. HARRIGAN: I need to run to the restroom, if
19 that's all right with Your Honor.

20 THE COURT: All right.

21 MS. HARRIGAN: Thank you. I apologize.

22 THE COURT: Anybody else?

23 (No audible response.)

24 (Off the record at 11:31 a.m.)

25 (Back on the record at 11:33 a.m)

DIRECT EXAMINATION BY MS. HARRIGAN - JAMES SHADD III 74

1 MS. HARRIGAN: Thank you, Your Honor. I apologize.

2 May it please the Court?

3 THE COURT: Yes, ma'am.

4 MS. HARRIGAN: The State would call James Shadd III to
5 the stand.

6 JAMES SHADD III, having been first
7 duly sworn, testifies as follows:

8 CLERK OF COURT: Please have a seat there. State your
9 full name for the record.

10 THE COURT REPORTER: Spell your last name.

11 THE WITNESS: James Shadd III. Shadd, S-h-a-d-d.

12 DIRECT EXAMINATION BY MS. HARRIGAN:

13 Q Good morning, Mr. Shadd.

14 A Good morning.

15 Q How long have you been practicing law?

16 A 13 years.

17 Q What percentage of your practice is comprised of
18 criminal defense work?

19 A About 40 percent.

20 Q Have you previously represented clients charged with
21 violent crimes?

22 A Yes.

23 Q Armed robberies previously?

24 A Absolutely.

25 Q Were you retained or appointed in this case?

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1 A Retained.

2 Q Do you recall the approximate date?

3 A Approximate -- I know it was in March of 2011.

4 Q Who were you retained by?

5 A Tyreshia Hopkins.

6 Q And who is Ms. Hopkins?

7 A Ms. Hopkins came to me as the girlfriend of Mr.
8 Samuels. I knew her before -- well, indirectly I knew her
9 because I represented Mr. Samuels in a criminal domestic
10 violence case where Ms. Hopkins was the victim. We won
11 that case.

12 Q The prior time representing Mr. Samuels, is that the
13 only prior representation you had of him?

14 A Yes. Prior representation. But I knew him, I guess
15 you could say, personally as well, after that.

16 Q How many times did you meet with Mr. Samuels before
17 his guilty plea?

18 A I would say at least three times; maybe three to five
19 times.

20 Q Where were these meetings?

21 A They took place here at the courthouse; they took
22 place primarily at the jail. He was -- he never was
23 released on his \$500,000 bond.

24 Q Did you file any Brady or Rule 5 motions in this case?

25 A I did.

1 Q Did you receive discovery from the State?

2 A I did.

3 Q Did you review this material with Mr. Samuels?

4 A I did.

5 Q How many times did you review it with him?

6 A At least three times.

7 Q Did he seem to understand these discussions?

8 A Very well.

9 Q Did you provide him a copy of discovery?

10 A I did. I provided -- some of the discovery came in
11 stages. And so I provided to -- provided it to him, a
12 copy of them or I would show it to him.

13 Q Did you discuss the elements of the various offenses
14 he was charged -- with him, and what the State would be
15 required to prove at trial?

16 A I did.

17 Q And what offenses was Mr. Samuels charged with?

18 A Initially it was three arm robberies, attempted
19 murder, possession of a weapon during a violent crime,
20 kidnapping, and assault and battery first degree. I
21 believe that's all of it.

22 Q Did you have any other related weapons charges or
23 pointing and presenting charges?

24 A Yes. I think it was a pointing and presenting as
25 well, I believe.

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1 Q Did you advise him of the potential sentences he could
2 receive for these charges?

3 A Yes. The maximums and the minimums.

4 Q Do you recall the maximum sentence Mr. Samuels was
5 facing for these charges?

6 A If they ran consecutive, 145 years, I believe.

7 Q Did you advise Mr. Samuels of this?

8 A Yes.

9 Q And he seemed to understand this?

10 A Absolutely.

11 Q Did you discuss his version of the facts with him
12 giving rise to these charges?

13 A As far as receiving information of his version, yes.

14 Q And can you describe what he told you gave rise to
15 these charges.

16 A He admitted to me the offenses. His version still
17 clearly shows that he is guilty of what he did. While he
18 may disagree with some of the statements that were made by
19 the witnesses and the -- and the law enforcement's version
20 of it, the fact remains is that he still committed these
21 offenses under the laws of South Carolina.

22 Q Did you explain to him that even in the light most
23 favorable to his version of the facts, he would still be
24 guilty of all these offenses?

25 A If he went to trial, he -- it's most likely that he

1 would be found guilty, yes. And he agreed with me.

2 Q Did you discuss possible defenses with Mr. Samuels?

3 A We discussed them, yes.

4 Q What defenses did you discuss with him?

5 A Well, perhaps alibi; perhaps he may have been under
6 certain substances that may have caused him to -- to react
7 in a certain fashion that -- that may have led to him
8 doing that.

9 Q Can you elaborate on "certain substances"? What
10 substances did you know of that ---

11 A One -- one of the first things that he told me was
12 that he was highly intoxicated at the time. In fact, he
13 had been drinking prior to. And someone made some comment
14 to him that upset him to the point where he wanted to
15 retaliate or -- or do something to cause harm to persons -
16 - personal persons inside the store.

17 But I told him that any acts that may have occurred
18 from alcohol would not be a valid defense.

19 Q Do you recall telling the Court in mitigation that
20 your client was highly intoxicated ---

21 A Yes.

22 Q --- during the events?

23 A Yes.

24 Q You said you discussed alibi with Mr. Samuels. Did he
25 have any alibi witnesses that would come forward on his

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1 behalf?

2 A No. He -- no. He put himself there in the -- at the
3 scene.

4 Q Did he ever deny having a weapon?

5 A No.

6 Q Would you briefly characterize the State's evidence
7 against Mr. Samuels?

8 A Overwhelming. We had three witnesses -- we had three
9 victims, perhaps four witnesses. And I would still
10 consider Mr. Ojoubi as a victim. He may not see himself
11 as that, but even he acknowledge that the gun was waved at
12 him; that he was cautioned to leave his establishment, his
13 store, his property, his business.

14 But the other victims -- one was a female. I think
15 there's already been testimony that she was hit with a gun
16 at least once, possibly twice; that Shy -- everyone's
17 talking about Shy, who's also Nathaniel Irvin -- it's my
18 understanding that Mr. Irvin was working for Mr. Ojoubi.
19 He was the clerk there, and he was behind the counter.
20 And he dropped any money that he had on him, and I
21 believe, a cell phone was involved as well.

22 Mr. Daniel Kual was a friend of Mr. Ojoubi and Shy,
23 and was in the store as well. But all -- they all knew
24 Mr. Samuels.

25 When Mr. Samuels's attention was diverted to Mr.

1 Ojoubi, telling him to leave his own store, then Mr. Kual,
2 I guess, saw fit after seeing Ms. Williams get hit, he ran
3 to the bathroom and tried to prop himself up against the -
4 - the door.

5 Mr. Samuels tried to enter the door -- he followed
6 him, he tried to enter into the bathroom, and he shot
7 through the door. It's my understanding that the bullet
8 went through the door, hit Mr. Kual in his -- his
9 mandible. He was shot in the face. And then, after the
10 shooting, Mr. Samuels fled the scene.

11 If I could get ---

12 Q Did Mr. ---

13 A I'm sorry. If I recall, I believe Mr. Samuels may
14 have admitted that he took money, but not to -- not to the
15 amount that they were claiming that he took.

16 Q Did he give you any potential witnesses he wanted you
17 to speak to?

18 A He did not give me any potential witnesses. He agreed
19 that the people who were on the scene, that were the
20 victims, were the witnesses that potentially would testify
21 for and against him.

22 And the reason I say "for and against him," is because
23 I don't believe any of these folks doubted that he was the
24 one who committed these acts. But they felt compassion
25 for him, and when questioned prior to, they were willing

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1 to share that they wanted him to get help, that they
2 wanted him to be rehabilitated because they had mentored
3 him.

4 Q Did you share that with the Court during the guilty
5 plea?

6 A Absolutely. That was part of our mitigation.

7 Q Did you enter into plea negotiations with the State on
8 Mr. Samuels's behalf?

9 A Yes. At his request, almost immediately after I -- he
10 engaged my services and I met with him. He -- he almost
11 gave me specific instructions sort -- sort of marching
12 orders on what to do.

13 Q And to the best of your recollection, what did he want
14 you to do?

15 A Well, initially he wanted me to try to get him less
16 than 10 years for attempted murder, kidnapping, three arm
17 robberies, possession of a weapon with a violent crime,
18 pointing and presenting a firearm.

19 Q Did you ---

20 A And then, I believe, later on in the conversation, he
21 said that he would like to have a cap of 15 years.

22 Q Did you advise him of the mandatory minimum sentence
23 he would have to receive was 10 years?

24 A I did. In fact, I told him the only way we would be
25 able to get past the 10-year minimum was to try and

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1 convince the prosecution to dismiss the arm robbery
2 charges and possibly allow a strong-arm robbery charge, so
3 it would reduce that charge. So that way we'd then be
4 able to get under a 10-year minimum, because all the other
5 ones were -- did not have any minimums, as I recall.

6 Q Did you request the prosecutor reduce the sentence to
7 strong-armed robbery?

8 A Multiple times.

9 Q And what was the prosecutor's response?

10 A (No audible response.)

11 Q Or did the prosecutor -- was the prosecutor inclined
12 to do so?

13 A Not so. In fact, the prosecutor continued to say,
14 "He shot a man in the face."

15 Q Was the offer of a negotiated cap of 25 years the
16 first offer Mr. Samuels received?

17 A I don't recall. I think that may have been the only
18 one.

19 Q Did you communicate this offer to Mr. Samuels?

20 A Yes. And his family.

21 Q Did you advise him it was possible he would receive a
22 25-year sentence, if he pled guilty, based on the State's
23 offer?

24 A Oh, yes.

25 Q Did they seem to understand that Mr. Samuels -- or did

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1 Mr. Samuels seem to understand that he could receive a 25-
2 year sentence on the day of the plea?

3 A Yes.

4 Q Did you advise Mr. Samuels that you would present
5 mitigation on his behalf in hope of getting in the lower
6 range of that sentence?

7 A Yes.

8 Q And did you, in fact, present mitigation to the Court?

9 A Yes.

10 Q What type of mitigation did you present to the Court?

11 A Well, we talked about I'd inform the Court about the -
12 - the victims/witnesses who had provided information well
13 before we got to this point. Then talking to law
14 enforcement and talking to the Watkins Detective Agency
15 early on, without giving them a whole lot of time to
16 change their story or to, you know, have any type of
17 sympathy for Mr. Samuels.

18 So I thought that was key and pointed that out to the
19 judge, that even the victims felt as though he needed to
20 get just some help. I believe Mr. Ojoubi said, "Boot
21 camp; maybe a two-year sentence." You know, something
22 just to address his issues, because there's obviously some
23 underlying issues. But that this young man should not
24 have, effectively, the rest of his life, you know, be
25 thrown away because of really some foolish acts. But

1 really -- and really some things that was done out of
2 emotion.

3 We also presented witnesses in support of him. If I
4 recall, Mr. Samuels Sr., his father, spoke. And I can't
5 recall who else spoke. I believe maybe Ms. Hopkins may
6 have spoken as well on his behalf.

7 And of course, I had Mr. Samuels as well to speak to
8 the Court and give his -- his plea, his final plea to
9 Judge Benjamin, so that she would appropriately sentence
10 him.

11 Q Do you recall calling any other character witnesses,
12 perhaps who had known Mr. Samuels through education or
13 other avenues?

14 A I believe I did at that plea. I can't recall, but I
15 know Mr. Kerry Abel -- who was really the one who put us
16 together years ago -- I believe he was there as well. He
17 may have spoken on his behalf there. I know that we had a
18 bond reduction hearing about a month before that, and I
19 know Mr. Abel was -- had attended that. But I believe
20 Kerry Abel was there.

21 He -- Mr. Abel is well-known throughout Richland
22 School District One. He is the head of the -- I guess,
23 the Richland County School District Middle College, where
24 Mr. Samuels had attended. He is -- he was a mentor of Mr.
25 Samuel, and I believe he may have spoken at the plea

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1 hearing as well.

2 MS. HARRIGAN: Your Honor, may I approach with a copy
3 of the transcript to refresh his recollection?

4 THE COURT: All right.

5 (Ms. Harrigan confers with the applicant.)

6 THE COURT: I read that.

7 (Ms. Harrigan confers with the applicant.)

8 (Ms. Harrigan hands a document to the witness.)

9 DIRECT EXAMINATION BY MS. HARRIGAN:

10 A Yes, that's correct. Mr. Abel did testify.

11 Q Did Mr. Samuels -- you indicated that early on he
12 wanted you to secure a favorable plea offer. Did he ever
13 want to go to trial?

14 A I believe, based on our conversations, that he never
15 realistically wanted to go to trial. I believe that --
16 and a lot of times this happens, we are sort of on two
17 tracks. You want to work out a deal if you're, in fact,
18 guilty. At the same time, you also want to test the State
19 on their facts.

20 At times, the decision may be to go to trial. At
21 times, the decision may be to plead guilty, but in
22 negotiating that, you may be able to show the prosecution
23 that maybe their case is not as strong as they believe it
24 is, and therefore, they need to consider a better deal so
25 that, you know, your client won't have as much exposure.

1 So from Day One, we were talking about a plea, but we
2 also wanted to see what the discovery was, see where the
3 State -- their mindset was, the prosecutor's mindset. But
4 I never felt that he strongly considered going to trial.

5 Q Whose decision was it to plead guilty, yours or your
6 client's?

7 A It's always the client's, even in this case.

8 THE COURT: (To unknown, unrelated people in the
9 courtroom) Can y'all go somewhere else, please?

10 MS. HARRIGAN: No further questions.

11 THE COURT: All right. Mr. Samuels, you want to ask
12 some questions?

13 CROSS-EXAMINATION BY THE APPLICANT:

14 Q Good morning, Mr. Shadd.

15 A Good morning, Mr. Samuel.

16 Q You said that initially you was -- I pled guilty to
17 seven charges, correct?

18 A I'm not sure if I counted them, but there were --
19 there were many.

20 Q But you said kidnapping was -- kid -- kidnapping and
21 pointing and presenting and assault and battery was the
22 first that was initially discussed in me accepting the
23 plea?

24 A I don't understand your question.

25 Q You said that we -- in our initial meeting, we

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 87

1 discussed me "pleaing" guilty to kidnapping, assault and
2 battery, and pointing and presenting?

3 A I don't know if it was to those specific charges. I
4 know you were looking for a plea.

5 Q Okay.

6 A And a favorable sentence.

7 Q And are you aware that a defendant has no
8 constitutional right to a plea bargain?

9 A I don't know -- I don't know what you're asking.

10 Q Do you know that it's not a guarantee that he could
11 have -- I could have received a plea, right?

12 A Absolutely. And I tell you that there's no guarantee.

13 Q Okay. So you said that in the beginning, you
14 initially filed for discovery.

15 A Yes.

16 Q Okay. Did I request the discovery?

17 A Yes, you did.

18 Q Okay. And would you verify that these are the letters
19 requesting discovery?

20 (Mr. Samuels hands documents to the witness.)

21 THE COURT: Is that an issue in the case?

22 THE APPLICANT: Yes, sir.

23 THE COURT: How you requested discovery?

24 MS. HARRIGAN: I -- I don't believe it's alleged in
25 his --

1 THE COURT: He says you requested discovery.

2 THE APPLICANT: Yes, sir.

3 THE COURT: What's ---

4 THE APPLICANT: This showing when I asked him for the
5 discovery.

6 THE COURT: Well, that's not -- is -- is that an
7 issue?

8 THE APPLICANT: Huh?

9 THE COURT: Is that an issue, when you asked?

10 THE APPLICANT: This this proving that he didn't
11 procure discovery in a timely manner.

12 MS. HARRIGAN: I don't believe that's one of the
13 allegations. There are quite a few, Your Honor. If I can
14 have a brief minute to look at the allegations.

15 (Brief pause.)

16 THE COURT: Do you -- do you know when you requested
17 discovery, Mr. Shadd? You show him what --

18 THE WITNESS: If I can look at my file, Your Honor, I
19 may be able to see when I filed for it.

20 But to further answer Mr. Samuels's question, when I
21 first met with him, I'd already had the discovery. I
22 actually got it before I talked to him.

23 So our first meeting, while I was sharing with him the
24 discovery that I received, apparently he had already
25 received a good bit of his discovery, because the public

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1 defender had provided him with a copy as well, and I
2 distinctly remember him saying, "I already have that."

3 CROSS-EXAMINATION BY THE APPLICANT:

4 Q But I did say that I didn't have the entire discovery,
5 correct?

6 A I recall you saying that you did not have all the --
7 the entire discovery.

8 Q In the initial meeting, correct?

9 A Yes. But I -- at that point, I wasn't sure what your
10 basis for it was. I -- I guess if you had -- was told
11 "there's other stuff out there, but I can't tell you what
12 it is," -- I mean, "but I'm not sure what it is," that
13 would be an issue.

14 Q Did you ---

15 A But you can't say I believe there's more out there. I
16 believe I need to get this, I need to get that. But that
17 doesn't mean that that is, first of all, discoverable, and
18 it doesn't mean that it actually exists.

19 Q Would you agree that there was a check list involved
20 in this case, a check list saying what -- what discovery
21 was in the case?

22 A I believe that there was a check list from the
23 solicitor's office and -- and it's a typed list. And then
24 they check off the things that they say that they are
25 submitting to the -- to the defense in response to the

1 Rule 5 motion. Yes.

2 Q Would you -- would you agree that this document --
3 these documents said that --

4 THE APPLICANT: (To Ms. Harrigan) May I submit them?

5 (The applicant hands documents to Ms. Harrigan.)

6 (No audible response.)

7 Q These documents said that they -- they did exist?

8 A (No audible response.)

9 Q It was a medical record in the case, correct? There
10 was a victim in the case, right?

11 A There were several victims in the case.

12 Q Well, one that ---

13 (Ms. Harrigan confers with the applicant.)

14 THE APPLICANT: Huh?

15 MS. HARRIGAN: If he can identify it by ---

16 Q This is a document showing that certain stuff they
17 had, like identification, investigative notes. And then
18 it shows here that these certain things, like, you hadn't
19 given it til later on down the line.

20 A Because I didn't have it.

21 Q Okay. And did -- did you do any other kind of motions
22 to compel?

23 A No.

24 Q Why not?

25 A For what purpose?

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 91

1 Q To get it in a timely manner, to discuss trial
2 strategies or any kind of things, to present a defense.

3 A There was no defense, Mr. Samuels, that you gave me
4 that -- that even you believed would carry the day in
5 having you exonerated from these very serious charges.

6 Q So you agree that you said trial would be fruitless,
7 correct?

8 A Would I agree that trial would be fruitless?

9 Q Yes, sir.

10 A You felt it was.

11 Q I felt it was?

12 A From Day One, sir, you told me that you wanted to
13 plea.

14 Q But -- so you never did say that trial would be fruit
15 -- you came to agree with me, with that decision, correct?

16 A (No audible response.)

17 Q Did you agree with me that -- you trying to say that I
18 said that trial would be fruitless, correct?

19 A That's not my call. It's your call. A trial may be
20 difficult because of the facts and because of the
21 witnesses.

22 Q Okay. Well, what was your reason for referring to the
23 case as if pursuing trial -- it being fruitless? What was
24 your reason for that?

25 A I'm sorry. I don't know what you mean by me saying

1 that the trial would be fruitless.

2 Q Okay. Did I ever inform you that I didn't take
3 anything from the victim?

4 A That you physically took it from them?

5 Q Did I tell you ---

6 A I believe you did tell me that.

7 Q I did tell you that, right?

8 A Yes. I think -- but I believe you told me that
9 someone dropped their money, they dropped their cash.
10 They took money out of their pockets at your direction.
11 They opened up their pockets to show you that they didn't
12 have anything on them.

13 Q But I informed you that I didn't take anything from
14 Danny Kual, correct?

15 A From who?

16 Q Danny Kual.

17 A I believe you told me that, yes, sir.

18 Q Would you agree that you wrote it down right here?

19 THE APPLICANT: (Hands document to Ms. Harrigan) May I
20 submit that into evidence?

21 MS. HARRIGAN: (No audible response.)

22 A I just testified that you told me that.

23 Q I told you that?

24 A Yes.

25 Q And one of the counts for robbery was for Nathaniel

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 93

1 Irving, correct?

2 A Yes.

3 Q And you advised me to plead guilty after -- after I
4 informed you that I didn't take anything from --

5 THE APPLICANT: Can you submit it into evidence?

6 MS. HARRIGAN: I don't believe he's identified that
7 document yet that he's shown to the witness.

8 THE COURT: He's already admitted that you told him
9 that.

10 THE APPLICANT: Yeah. But I can't submit it into
11 evidence?

12 THE COURT: You can. I mean, what -- what's the
13 point? Is that going to say something different than what
14 he's admitted?

15 THE APPLICANT: No, sir. But I just wish to have ---

16 THE COURT: All right. Admitted -- so admitted.

17 (Marked Applicant's Exhibit No. 4, one-page document,
18 in evidence.)

19 CROSS-EXAMINATION BY THE APPLICANT:

20 Q So you're saying that you advised me to plead guilty
21 after I informed you that I didn't take anything from --

22 A No, sir. I told you what your options were, and you
23 chose to plead guilty.

24 Q Based upon your advice, correct?

25 A That's -- that's you -- you -- I don't know if you

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 94

1 testified to that already, but you made that decision.

2 Q Okay. And you agree that we made met in multiple
3 meetings, correct?

4 A Yes.

5 Q Okay. In the initial meeting, you discussed the plea?
6 We discussed a plea throughout the hearing -- throughout -
7 - throughout your representation of me?

8 A Yes.

9 Q Okay. And did you discuss the case with other -- with
10 family -- you would agree that you discussed the case with
11 my family, I mean, Tyreshia Hopkins and Alvin Samuels,
12 right?

13 A Yes.

14 Q Senior.

15 THE APPLICANT: I can submit this showing that I gave
16 him consent to speak my case with -- I mean, my --

17 THE COURT: So admitted.

18 MS. HARRIGAN: No objection from the State.

19 THE APPLICANT: No objection.

20 CROSS-EXAMINATION BY THE APPLICANT:

21 Q What was your reason for advising me to plead guilty?

22 THE COURT REPORTER: Hold on one second.

23 (Marked Applicant's Exhibit No. 5, one-page document,
24 in evidence.)

25 A I'm sorry. Ask the question again.

1 Q What was your reason for advising me to plead guilty?

2 A I discussed with you your options to either go to
3 trial or to plead guilty. You made the decision early on
4 that you wanted to plead guilty.

5 Q But you were aware that I informed you that I did not
6 take anything from the victim, Danny Kual, correct?

7 A From Daniel Kual?

8 Q Correct?

9 A Yes. You told me that you did not take anything from
10 Daniel Kual.

11 Q Was it reasonable that a competent lawyer would advise
12 his client to prove this -- to plead guilty to a charge he
13 didn't commit?

14 A (No audible response.)

15 Q Was it reasonable to say, "Samuels, plead guilty to
16 this," being that you -- your client advised you that he
17 didn't take anything?

18 A Well, the only way I can answer that, Mr. Samuel, is I
19 was not there. So I can't say for sure whether you were
20 telling me the truth or not. I can't take -- I always
21 take my client's word when they tell me something. Just
22 because you deny it at some point during this
23 representation does not mean that it's the truth.

24 But when we went before Judge Benjamin and you took
25 the oath, you admitted to that.

1 Q Based upon your advice.

2 A Based on your decision to plead guilty.

3 Q And you was advising me to plead guilty, correct?

4 A I advised you on the benefits and drawbacks from going
5 to trial, the benefits and drawbacks of going to take a
6 plea, to plead guilty. And then you made the decision to
7 plead guilty.

8 Q Okay. And you said that you viewed the discovery with
9 me, correct?

10 A Yes.

11 Q Do you know when you viewed -- reviewed the discovery?

12 A I don't.

13 Q You don't recall?

14 A No.

15 Q When did you provide me with a copy of the discovery?

16 A Well, I guess it depends on what -- what -- what time
17 you mean, because when we first met, I tried to show you
18 the -- well, I did show you some of the discovery that we
19 had, and you said you already have that. So that was my
20 attempt to show you the discovery that we had that I'd
21 already received.

22 Now, there was a later time, and I believe it was
23 shortly before we pled guilty, that the State provided --
24 and understand that they have a duty, up until trial, to
25 provide information. They provided us with Daniel Kual's

1 medical records.

2 Q What ---

3 A But you had already made the decision early on that
4 you wanted to plead guilty, regardless of whether there
5 was a medical record on Mr. Kual or not.

6 Q So -- so you basically telling -- telling me that you
7 were saying that you advised me to plead guilty before I
8 had received the entire discovery, correct? You saying
9 that I made a voluntary decision to plead guilty before I
10 had all the discovery, correct?

11 A You made a voluntary -- okay. Which question you want
12 me to answer?

13 Q You saying that I made the decision to plead guilty
14 before I had the entire discovery, correct? That's --
15 that's what you just "inerated" [phonetic], correct?

16 A (No audible response.)

17 Q You saying I already decided to plead guilty before I
18 had received the medical records, correct?

19 A I believe you did, yes, sir.

20 Q Okay. May I show you the document right here?

21 THE APPLICANT: I'll submit that into evidence.

22 THE COURT: Let -- let me understand something: If
23 you had gotten the medical records, how would that have
24 changed things?

25 THE APPLICANT: The -- alleged in the indictment it

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1 said that I robbed Daniel Kual of 6 to \$700. But ---

2 THE COURT: If you had gotten the medical records, how
3 would that have changed things?

4 THE APPLICANT: The -- the -- the medical records
5 state that when he was taken to the hospital, that \$679
6 and personal property was found in -- within his
7 possession at the hospital. Being that I had informed
8 Attorney Shadd prior to me "pleaing" guilty ---

9 THE COURT: So you want me to remand back the case of
10 armed robbery on Daniel Kual?

11 THE APPLICANT: Yes, sir.

12 THE COURT: All right.

13 MS. HARRIGAN: Your Honor, this has already been
14 admitted as, I believe, Applicant's Exhibit No. 1.

15 THE COURT: So you want to look at a new trial on that
16 -- on that charge.

17 THE APPLICANT: I want to go back under pacific [sic]
18 breach of the plea -- pacific [sic] performance, being
19 that he advised me that I will receive 10 years.

20 THE COURT: Well, ask him that. You hadn't asked him
21 that.

22 THE APPLICANT: I ain't get to it yet, Your Honor.

23 THE COURT: Well, let's -- let's move it.

24 THE APPLICANT: Okay.

25 CROSS-EXAMINATION BY THE APPLICANT:

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1 Q Did you view the sentencing sheets with me prior to me
2 "pleaing" guilty?

3 A Of course.

4 Q You -- you -- you viewed that document, right? This
5 document, right?

6 A I don't know which document you're showing me from 20
7 feet away.

8 Q The medical -- the medical.

9 THE APPLICANT: (To bailiff) Will you take that to
10 him?

11 Q It's already submitted ---

12 THE COURT: The question is: Did you review the
13 sentencing sheets?

14 THE APPLICANT: Okay.

15 Q Did you review the sentencing sheet with me prior to
16 me "pleaing" guilty?

17 A Yes, I did.

18 Q Okay. And did you notice that three or four of the
19 boxes were checked by -- it was checked by State
20 recommendation? Want me to show you?

21 A I've reviewed those sentencing sheets since then, and
22 I believe, yes, two or three of them were checked
23 "recommendation by the State," and sometimes there are
24 errors that occur. But then it was scratched through and
25 then the appropriate box was -- was checked, and that was

1 -- this was a negotiated sentence.

2 Q Okay. And what -- do you know why the boxes was
3 scrubbed through?

4 A I do not. I didn't do it, so I don't know ---

5 Q You didn't ---

6 A --- why. I can't speak for the State, who -- I assume
7 they prepare a portion of it, and then we're supposed to
8 prepare the remaining portion of it.

9 And so those were checked before we -- I received
10 them.

11 Q So did you advise me that it was not -- what -- what
12 was your terms of the plea when you advised me to plead
13 guilty? What was the terms you were ---

14 A My understanding is that we agreed that this would be
15 a cap of 25 years. We were, of course, already aware that
16 you had a 10-year minimum on the armed robbery charges.
17 So therefore, your range -- if Judge Benjamin, first of
18 all, agreed to accept the terms of our negotiated
19 sentence, the range would be from a minimum of 10 years --
20 that means you can't get anything under -- she can't go
21 under that -- and a maximum of 25 years; she can not go
22 above that. So that took off 120 years off of your
23 potential sentence. So it was a cap of 25 years.

24 It does not mean that the State cannot ask for 25
25 years. It does not mean that the State cannot ask for 12

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 101

1 years. But it means that the judge is limited, if she
2 agrees, to not go any further than 25 years. And you
3 agreed to that.

4 Q Did you ever tell me that you had secured 10 years?

5 A Absolutely not. I make no guarantees, especially in
6 criminal cases because you can't -- you don't know what a
7 judge may do.

8 Q So you -- you --

9 A I asked for it. I asked for the minimum.

10 Q Okay.

11 A But there's nothing guaranteed in criminal law.

12 Q So you want to say that you never did inform me that
13 you could get me 10 years, correct?

14 A Absolutely.

15 Q You saying you never did tell me that?

16 A I would try.

17 Q You would try?

18 A Yes.

19 Q No. Do you recall informing me that you could get me
20 10 years?

21 A That I would try. That's what I'm telling you.

22 Q Try, no. Could. Did you ever inform me ---

23 A Try, could. I think that's similar.

24 THE COURT: Did you tell him that he would get 10
25 years?

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 102

1 THE WITNESS: No, sir.

2 Q No, sir?

3 A Absolutely not.

4 Q Okay.

5 THE APPLICANT: Give me one minute, Your Honor. I got
6 to find it.

7 (Brief pause.)

8 THE APPLICANT: It's in the ...

9 Q And you say you didn't, right?

10 A I didn't what?

11 (Brief pause.)

12 THE APPLICANT: I'd like to submit this into evidence.

13 THE COURT: I don't know what it is.

14 (The applicant and Ms. Harrigan confer briefly.)

15 THE COURT: What do we have there, Madam Attorney
16 General?

17 MS. HARRIGAN: If -- if he recognizes this as from his
18 files, the State will have no objection. It appears to be
19 case notes. I don't -- I'm not familiar with ---

20 THE COURT: All right. It's an exhibit. See if he
21 can identify it.

22 (Bailiff hands a document to the witness.)

23 (Brief pause.)

24 THE WITNESS: Yes. I recognize these.

25 CROSS-EXAMINATION BY THE APPLICANT:

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 103

1 Q Okay. And what -- what does it state -- can you state
2 on the record what does it say?

3 THE COURT: Well, first of all, Mr. Shadd, what --
4 what is it?

5 THE WITNESS: These are my notes regarding the
6 conversation I had with Mr. Samuel on March 27, 2012,
7 after I had a meeting with Solicitor Dan Johnson, and I
8 believe Mr. Cathcart was in there as well. So I was
9 giving him a recitation of the conversation I had.

10 THE COURT: Those are your notes.

11 THE WITNESS: Yes, sir.

12 THE COURT: You prepared them.

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. What is it that he -- what --
15 what's the question?

16 Q What does the line say about you saying the 10 years?
17 Dan Johnson said 10 years, but you could get -- you could
18 get me 10 years, which is better. Could you read it?

19 A Yes, sir.

20 Q Could you read it?

21 A I read verbatim (as read): "Johnson" -- you ready,
22 Mr. Samuel?

23 THE COURT: Go ahead.

24 THE WITNESS: Okay.

25 A (As read) "Johnson said 20 years, but I could still

1 get him 10, which is better."

2 Q But -- and didn't you just say you never did told me
3 that you could get me 10 years?

4 A That -- that's -- that's exactly what I said.

5 Q Okay.

6 A This is -- I'm quoting what Mr. Johnson said, sir.

7 Q So -- so you never did inform me that you had 10
8 years, which is better, right?

9 A I told you what Mr. Johnson said.

10 Q What -- what was your reason for informing me of that?
11 What was your reason for saying that?

12 A My reason, sir, was because Mr. Johnson, in that
13 meeting -- well, let's back up. Because I really wasn't
14 impressing upon Mr. Cathcart of who you are and who I knew
15 you to be, I asked for a meeting with Mr. Johnson, who is
16 his boss. I tried to appeal Mr. Johnson, his
17 sensibilities.

18 Mr. Johnson said that his -- if it was his case, it
19 would be even more than what Mr. Cathcart was considering.

20 Q And what was Mr. Cathcart considering?

21 A I don't recall at the moment what he was considering.

22 Q Well, where'd the 10 years come into play?

23 A Because that's your minimum. That's your minimum for
24 -- for armed robbery, 10-year minimum.

25 Q Well, why -- why would you say that you could get it?

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 105

1 A I did not say that, sir.

2 Q That's what you just said a minute ago.

3 A Actually, it's not. It's what Mr. Johnson said.

4 Q But you -- so you never did inform me or anybody that
5 you talked to that you could and will get me 10 years.

6 A That I would and -- I'm sorry. Say it again.

7 Q That you will get me 10 years.

8 A No.

9 Q You never informed nobody ---

10 A Absolutely not. Because it's not in my hands. It's
11 in the judge's decision. She has to make -- she has to
12 make that decision.

13 Q I understand that. But I'm asking you --

14 THE COURT: Mr. Samuels, we've been over this. He
15 says that you could have gotten 10 years because that was
16 the man -- the mandatory minimum.

17 THE WITNESS: Yes, sir.

18 THE COURT: Up to the judge. But he -- and he would
19 ask for it. But he says he never told you you will get 10
20 years because he doesn't know what the judge is going to
21 give you. If the judge accepts the penalty -- I mean, the
22 negotiated plea, it will be something 25 years or less.
23 If she doesn't, then you're on your own again. That's
24 what he's testified to.

25 I'm not telling you that that's true or not true.

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 106

1 That's what he's testified to.

2 THE APPLICANT: Yes, sir.

3 THE COURT: We don't need to keep going over it.

4 THE APPLICANT: Okay.

5 THE COURT: I want to know does anybody know in here,
6 where it says the State asked for something other than 25
7 years?

8 MS. HARRIGAN: Your Honor, I believe it's -- I can
9 find it. It's highlighted in here. The State --

10 THE COURT: Is it at the end?

11 MS. HARRIGAN: Yes. It's towards the end, Your Honor.

12 THE COURT: Okay.

13 MS. HARRIGAN: The State tells the Court that it is a
14 range of 10 to 25, but they're asking for the maximum 25-
15 year sentence.

16 THE COURT: All right. Anything further?

17 MS. HARRIGAN: Your Honor, it's on page 41 --

18 THE COURT: Okay.

19 MS. HARRIGAN: -- to 42, by Mr. Cathcart, starting at
20 line 22, continuing on to line 1 on 42.

21 THE COURT: Thank you.

22 CROSS-EXAMINATION BY THE APPLICANT:

23 Q Did you investigate or interview any of -- of the
24 witnesses regarding the shooting?

25 A Did I personally talk to them? No ---

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 107

1 Q Yes.

2 A --- sir. No, sir.

3 Q Why -- why not? What was your reason for not
4 investigating the witness?

5 A I didn't say I didn't investigate. You asked if I
6 spoke to them.

7 Q Did you interview any of the witnesses in this case?

8 A No, sir. We had the benefit -- a couple of things:
9 One, we had the State's case, which had their statements
10 in there. Mr. Shealy's office, the Public Defender's
11 Office, had engaged the services of Mr. -- Investigator
12 Watkins, Detective Watkins.

13 They had spoke to -- personally spoken to these
14 witnesses. These witnesses, for the most part, were
15 consistent with what they told law enforcement after they
16 had time to consider if they wanted to change their
17 stories. And they were consistent with what happened with
18 the shooting.

19 I had you telling me that, yes, you dis -- you -- you
20 discharged your firearm. And you confirmed that these
21 people were there.

22 Q Did I inform you that it was intentional?

23 A That you intentionally shot through the door? Yes.

24 Q I did?

25 A Yes.

1 Q Okay.

2 A The firearm didn't go off accidentally, sir.

3 And then we also had your father, who obviously loves
4 his son, and wants to do what he can for his son; and told
5 me that he was going to try to talk to these witnesses;
6 told me that they were reluctant to come to court; told me
7 that they have checkered pasts, and that's part of the
8 reason why they didn't want to come to court.

9 And I actually thought that would be helpful to us in
10 trying to convince Mr. Cathcart to reduce or eliminate the
11 armed robbery charges, because it's possible that their
12 witnesses may never show up, these victims or witnesses
13 may never show up, because they had a history.

14 Some of that criminal history you were a part of, but
15 never the less, they were reluctant witnesses.

16 Q So you're saying I never told you that I did not
17 intend to shoot the victim, right? You just said that I
18 did -- I told you that I did intend to shoot victim?

19 A No, sir. I didn't say that. I said you intended to
20 shoot through the door.

21 Q I intended to shoot through the door?

22 A Yes, sir. And you knew -- you knew someone was behind
23 the door.

24 Q Okay.

25 THE APPLICANT: I would like to submit this into

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 109

1 evidence, Your Honor.

2 THE COURT: All right.

3 (The applicant hands a document to Ms. Harrigan.)

4 MS. HARRIGAN: It appears again to be his -- his
5 handwriting from his file. And if he can identify it,
6 there'll be no objection from the State.

7 (The bailiff hands a document to the witness.)

8 CROSS-EXAMINATION BY THE APPLICANT:

9 Q Can you read the first paragraph for the record?

10 THE COURT: Well, first of all, identify it.

11 A Yes, sir. These are my notes from our discussion on
12 July 25, 2011.

13 THE COURT: You moving to admit this?

14 THE APPLICANT: Yes, sir.

15 THE COURT: So admitted.

16 THE WITNESS: So it's in evidence ---

17 THE COURT REPORTER: Wait, wait, wait. Hold on a
18 second.

19 (Marked Applicant's Exhibit No. 6, one-page document,
20 in evidence.)

21 CROSS-EXAMINATION BY THE APPLICANT:

22 Q Could you read it for us?

23 A Which -- the whole thing?

24 Q The top paragraph, just the top.

25 A I wrote down -- this is what you said (as read): "We

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 110

1 were tussling over the door. I had the gun in my hand.
2 Didn't intend on shooting. He ran out in front of me.
3 Then I saw the blood dripping. I ran out after him."

4 Q That's -- that's enough. And did you explain to me
5 malice, the malice element of attempted murder?

6 A I don't recall.

7 Q You don't recall. So you not -- you don't know
8 whether I was aware of malice had to be intentional,
9 purposefully, or knowingly?

10 A I'm sorry. Go ahead.

11 Q Did you know that -- did you know whether I was aware
12 that attempted murder had to be knowingly, purposefully, -
13 - knowingly or purposefully acted?

14 A Yes. I believe you had the understanding of what
15 attempted murder was.

16 Q But you didn't advise me what malice was, correct, or
17 you don't recall?

18 A I don't recall.

19 Q So it's a possibility that I didn't know what malice
20 was at the time, correct?

21 A I can't say ---

22 MS. HARRIGAN: That calls for speculation. Objection.

23 THE COURT: Sustained. He says he doesn't recall.

24 Q So -- but you would agree that malice is a element of
25 attempted murder, correct?

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 111

1 A Yes. Because it's an attempt of murder, and murder
2 comes with malice aforethought. That's one of the
3 elements.

4 Q Okay. And you had in your notes I did not intend to
5 shoot anyone, correct?

6 A I quoted what you said, yes.

7 Q Okay. And did you -- did that contradict the
8 indictment? Did that -- was that contrary to the
9 indictment of the State's case of malice?

10 A Your version to me, on that particular day, is
11 different than what the indictment said. Yes, sir.

12 Q Okay. And wouldn't you have found that reasonable to
13 investigate, being that you are my attorney?

14 A I don't know how you would want me to investigate what
15 you told me.

16 Q Malice ---

17 A If a person goes into an establishment, pistol whips a
18 woman, points a gun at three different people, runs behind
19 another person who goes into the bathroom, tries to kick
20 in the door and shoot through the door so that they can,
21 apparently, go into that bathroom, I think there's a lot
22 of malice there.

23 Q And would -- these are -- you getting this from the
24 statements, correct?

25 A And you.

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 112

1 THE COURT: We're -- we're not going to argue --
2 malice is ill will, hatred. It has nothing to do with
3 intent.

4 THE APPLICANT: Malice, that mean that I had to think
5 about it before ---

6 THE COURT: Ill will, hatred.

7 CROSS-EXAMINATION BY THE APPLICANT:

8 Q So was there anything in this case showing hatred?

9 A Yes, sir.

10 Q What was that?

11 THE COURT: Ill will.

12 A You want me to tell you?

13 THE COURT: We're not going to argue the law in here.

14 Q Okay. Did you meet with Tyreshia Hopkins and Stanley
15 Samuels before the plea hearing?

16 A When ---

17 THE COURT: Ms. Hopkins the one that testified at your
18 plea?

19 THE APPLICANT: Yes.

20 A I'm going to have to answer "yes," but I don't know
21 what -- I mean, I don't know if you mean on that day, I
22 don't know if you mean prior to that hearing date. But
23 yes.

24 Q Did you discuss the terms of the plea with them?

25 A As I understood them, and that you and I talked about.

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 113

1 Yes, sir.

2 Q Okay. And so you saying you do agree with it,
3 correct?

4 A I agree with what?

5 Q That you told them the terms of the plea agreement.

6 A Yes.

7 Q Okay.

8 A In fact, I even told you that your dad was upset that
9 we could not get under the 10 years.

10 Q Okay. And did you inform them that Nathaniel Irving -
11 - did you inform them that any victims was coming to the
12 plea hearing? You want to read ---

13 A That we expected victims to be there, yes. That's ---

14 Q Did you ---

15 A --- when you ---

16 Q Did you contact any of the victims?

17 A No.

18 Q Why? What was your reason for not contacting them?

19 A Because you don't necessarily know what they're going
20 to say, and they are also the victims for -- I mean, the
21 witnesses for the State.

22 Daniel Kual was there; Ms. Williams was there; and I
23 believe the other two gentlemen, one of your witnesses
24 today, was not there. I think he testified he was aware
25 of the hearing. He showed up for the hearing, but it

1 turned out that he was late.

2 Q But prior -- prior to this, you had -- did you have
3 the -- the statements from Investigator Watkins?

4 A Yes.

5 Q Was there any beneficial information in them?

6 A Absolutely.

7 Q It was?

8 A Yes.

9 Q And ---

10 A And I presented that to the judge.

11 Q And do you recall what it was?

12 A With regard to what your sentencing should be.

13 Q Okay. What ---

14 A And -- and also that you were a good kid, you know ---

15 Q Just the sentencing.

16 A --- that they knew you about the -- they -- they knew
17 about, you know, who you were as a person; that they could
18 easily identify you because, you know, you stood on the
19 stoop and -- and they kind of brought you under their
20 wings. So there was no issue with positive identification
21 of who you were.

22 Q Okay. In regards to the sentencing, did -- did -- did
23 -- what did -- what does the statements recall with the
24 sentencing? What was they recommending with the
25 sentencing?

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 115

1 A I remember at least one of them said "boot camp" for
2 these charges.

3 Q And you are aware that I wasn't eligible for boot
4 camp, correct?

5 A Absolutely. You weren't eligible for the two years
6 either.

7 Q Okay. And so you -- you didn't find that reasonable
8 to go and advise them to at least write a statement or
9 come to the hearing to say they recommend the minimum,
10 being that the State is saying that they was asking
11 beneficial information, but the minimum was 10?

12 A These are also people who were reluctant to come to
13 court, and I think that showed out. Two persons didn't
14 come. The two people who were willing to speak on your
15 behalf to an agent -- I mean, to a detective outside of
16 court, did not come to court on your behalf; even though
17 they were notified by the State, as they are required to
18 do under our Victim's Statute, they -- under our Victim's
19 Rights Statute, they did not show up.

20 Q Okay. Did -- did you do anything to attempt to secure
21 them?

22 THE COURT: He says he did not. He ---

23 THE APPLICANT: He ---

24 THE COURT: --- thought it was in the best interest --
25 sometimes they don't testify. They're not there. You

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 116

1 know, we ---

2 THE APPLICANT: So can I -- can I recall him then?

3 THE COURT: No, sir. You're test -- you're
4 questioning this witness right now. Are you finished
5 questioning him?

6 THE APPLICANT: No, sir.

7 CROSS-EXAMINATION BY THE APPLICANT:

8 Q And you didn't -- you said you didn't, because there
9 was no investigation, right?

10 A I did not say that.

11 Q What kind of investigation did you conduct -- conduct?

12 A I had meetings with you. I talked to your dad. Your
13 dad said that he would go and find these witnesses to talk
14 to me, perhaps about their stories, what they told to law
15 enforcement, as well as the agent. And then he came back
16 and told me that he is -- efforts were fruitless. But he
17 would still continue working ---

18 THE COURT: Mr. Samuels, asking the same question
19 several times does not change things in my mind. He said
20 they had -- that he had investigative reports from some
21 prior investigation. He had discovery. He talked to you.
22 We don't need to keep going over the same ---

23 CROSS-EXAMINATION BY THE APPLICANT:

24 Q Okay. What was the overwhelming evidence? What was
25 the overwhelming evidence in the case? Was it any

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 117.

1 physical evidence?

2 A We had a lady who was pistol whipped.

3 Q Excuse me. Before you go on, did -- was -- was she
4 taken to the hospital?

5 A I don't recall. This -- this is a few years ago, so I
6 don't recall.

7 Q So you didn't investigate that either, right --
8 correct?

9 A To investigate what?

10 THE COURT: He says he doesn't recall.

11 A We also had Mr. Kual, who did receive medical
12 attention. There's a record of that. We have all
13 witnesses positively identifying you.

14 If you recall, personally, after this happened, you
15 and I met with Mr. Abel in his vehicle. You were on the
16 run. I advised you to turn yourself in as soon as
17 possible. You left the vehicle. I did not hear back from
18 you until you had turned yourself in a few weeks later.

19 In the law, if you run, that shows an admission of
20 guilt.

21 Q Did you ever inform me that you had secured any
22 witnesses to testify?

23 MS. HARRIGAN: Your Honor, asked and answered. We've
24 been over this several times.

25 THE COURT: Sustained.

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 118

1 THE APPLICANT: Okay.

2 Q So you -- you would agree that you advised me to plead
3 guilty, right?

4 A No, sir. I showed you the benefits -- oh. I'm sorry.

5 MS. HARRIGAN: Asked and answered again. We've been
6 through this several times.

7 THE COURT: He denies he advised you.

8 Q Okay. Was there more than one plea in this case? Was
9 there more than one plea offer in this case?

10 A I don't recall.

11 Q You don't recall. So do you recall take -- talking to
12 Dan Johnson regarding the 20 years on the previous sheet?

13 A Yes.

14 Q Okay. And then later on, there was a plea of 10 to 25
15 years, correct?

16 A Effectively, they didn't ask -- they didn't say 10 was
17 the minimum. But we knew that 10 was going to be the
18 minimum based ---

19 Q So ---

20 A --- on the charges.

21 Q So was the 20 years that Dan Johnson offered more
22 favorable than the 10 to 25 years?

23 A Are you saying -- and I -- I apologize. But are you
24 saying ---

25 Q Did ---

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 119

1 A --- a cap of 20 or are you saying 20 years is what
2 they would recommend, which, of course, you would never go
3 for. But which offer are -- are you talking about?

4 Q I'm talking about the offer you had received from
5 Richard -- no, Dan -- Dan Johnson.

6 A Mr. Johnson did not make any formal offer. He was
7 just telling me that if it was his case, he would be
8 asking for 20 years.

9 At that time, you and I were asking for a cap of 15.
10 He went five years over the cap that we were asking for.
11 So they rejected our cap of 15 -- we wanted 0 to 15 -- we
12 wanted to try to get under 10. But at -- but we -- we
13 would try to limit the judge's discretion to just 15.

14 Dan Johnson said that if it was his case, he'd be
15 looking for 20, based on the facts as they were in front
16 of him at the time.

17 Q So what did you do to apply the testing process? Did
18 you do anything to dispute the State's case?

19 A In what matter?

20 Q Any matter?

21 A Well, I told Mr. Cathcart ---

22 Q --- an element of the armed robbery.

23 A To the what element?

24 Q To the armed robbery charge.

25 A What ---

CROSS-EXAMINATION BY THE APPLICANT - JAMES SHADD III 120

1 Q Did you do anything to dispute their indictments or
2 the statements of the witnesses?

3 A That probably wouldn't occur until we had a trial, and
4 then if you chose to testify, you -- you would be the only
5 person in the -- in the store that would refute that, sir.

6 Q Okay. And ---

7 A Because you weren't apprehended right after to see
8 whether there was cash on you or whether there were cell
9 phones on you. This was several weeks later. So only you
10 would be the one to -- to address that, because you were
11 the only witness there.

12 Q But nothing was found on me, correct? Is there any
13 evidence saying they -- any of these possessions was
14 within my possession?

15 A No, sir. When you turned yourself in, I don't believe
16 you had cash or cell phones on you. I don't ---

17 Q And did you ---

18 A --- know.

19 Q And did you rely on the private investigator's notes
20 basically? Did you accept that what the prosecutor was
21 saying and the public defender investigative statements
22 that they had got was correct?

23 A I believe that there was corroboration, when one
24 witness pretty much says what another witness says and
25 they were there. And then when the investigator, that

1 went out on your behalf, got information, not part of law
2 enforcement, but got information, and that was also
3 consistent with what they said, then we tend to rely on
4 that evidence, unless you receive something to the
5 contrary. And even you didn't dispute many things
6 associated with what they said.

7 Q But I did dispute it, correct?

8 A In some parts, yes.

9 Q Okay.

10 THE APPLICANT: I have no further questions.

11 THE COURT: Anything?

12 MS. HARRIGAN: No, Your Honor.

13 THE COURT: All right. Thank you, sir. You may step
14 down.

15 (The witness exits the stand.)

16 THE COURT: Anything further from the State?

17 MS. HARRIGAN: No, Your Honor.

18 THE COURT: Anything further from the applicant?

19 THE APPLICANT: Yes, sir.

20 THE COURT: What?

21 THE APPLICANT: The plea -- the plea -- the plea --
22 when -- when you are promised something and they say it's
23 supposed to be fulfilled, correct? And when those --
24 those -- well, the constitution says ---

25 THE COURT: What -- what is your witness going to

1 testify to?

2 THE APPLICANT: Sir, I'm just saying that ---

3 THE COURT: What is your witness -- you say you got a
4 witness, another witness? Is ---

5 THE APPLICANT: No, sir. No, sir.

6 THE COURT: All right. So what is it you want to ---

7 THE APPLICANT: I'm just saying ---

8 THE COURT: You want to make a closing argument?

9 THE APPLICANT: Yes, sir. Regarding the breach of the
10 plea.

11 THE COURT: All right. Go ahead.

12 MS. HARRIGAN: Your Honor, if he's not going to be
13 calling any additional witnesses, I'd ask that Mr. Shadd
14 be excused.

15 THE COURT: All right. You -- you are free to leave.
16 Thank you, sir.

17 MR. SHADD: Thank you, Your Honor.

18 MS. HARRIGAN: Thank you.

19 THE APPLICANT: Would you -- breach of the plea means
20 that the plea I agreed to plead to was breached, right? I
21 mean, they hadn't fulfilled their bargain, correct?

22 THE COURT: Yes, sir.

23 THE APPLICANT: That's one of my issues ---

24 THE COURT: Far as I ---

25 THE APPLICANT: --- that they breached the plea.

1 THE COURT: That's what it means.

2 THE APPLICANT: Okay. And then, the -- the plea was -
3 - it was 10 to 25 years, no State recommendation, which -
4 - and the victims was gonna come and testify on my behalf,
5 which -- and Shadd had told me that he will secure 10
6 years, which he not only told me that, but he told
7 somebody else that.

8 And if you review the transcript, it's -- the judge
9 never did ask me was I promised anything. So it was,
10 like, no way to tell was I ever promised anything. But at
11 that day, if I was asked if I was promised anything, I
12 would have -- I would have told the judge that, Your
13 Honor.

14 THE COURT: All right.

15 THE APPLICANT: So what I'm saying, under the pacific
16 [sic] performance of the -- it's -- it's two remedies, but
17 the remedies are not left up to the defendant, correct?

18 THE COURT: I'm not here to answer your questions.
19 You got -- you have something you want to tell me, tell
20 me.

21 THE APPLICANT: Yes, sir. I -- I was saying that I
22 never would accept that plea if I knew that -- that I
23 wasn't going to get that 10 years. And the judge never
24 did ask me was I gonna -- was I promised anything. But if
25 she asked me, I would have -- I would have surely -- but I

1 pleaded based upon advice I received from Counsel Shadd.

2 THE COURT: All right.

3 THE APPLICANT: And now I learned that you never ---

4 THE COURT: You not -- you're not here to testify.

5 You're here to make a closing.

6 THE APPLICANT: Yes, sir. Well, what I want to argue
7 that before -- before -- before I signed that sentencing
8 sheet, those box -- those boxes was checked before I
9 signed it. And then, they -- he got them struck through.
10 I don't know whether he did it, or somebody else did it.
11 They struck through them. And they told me -- his advice
12 to me was that it wasn't going to be no recommendation by
13 the State. Everything gonna be left up to the judge,
14 which he had done secured 10 years.

15 Now, I put great emphasis on those boxes being not
16 checked, being I ain't think that the recommendation was
17 the cap. He never did pacifically [sic] inform me of
18 that. You hear what I'm saying, Your Honor?

19 So my -- my thing was I went in there thinking they
20 was not going to say any pacific [sic] number as to a
21 number of years, the State wasn't. And that was the term
22 which I agreed to plea. And if it wasn't for that, I
23 wouldn't have plead guilty, Your Honor.

24 THE COURT: All right. Anything you want to tell me?

25 MS. HARRIGAN: Just briefly, Your Honor. Based on the

1 testimony before Your Honor on October 2 of 2013, today,
2 and along with the guilty transcript -- guilty plea
3 transcript, all show that this was a voluntary and knowing
4 guilty plea, following advice from competent counsel. The
5 State would submit that Applicant has not met his burden
6 of showing required deficiency. And additionally, he did
7 not meet his showing of prejudice based on overwhelming
8 evidence of guilt.

9 THE COURT: All right. Thank you.

10 MS. HARRIGAN: Thank you, Your Honor.

11 THE COURT: Now, I can't think of a better person I'd
12 rather remand something back and let them try it. Don't
13 know that you've met your burden, but I can't think of --

14 THE APPLICANT: I can stand up again? I really only
15 challenging the breach of the plea, Your Honor.

16 THE COURT: I understand what your argument is ---

17 THE APPLICANT: And the pacific ---

18 THE COURT: --- Mr. Samuels. As I said, I can't think
19 of a better person to go back and let the State see if
20 they can convict you and get you 145 years.

21 THE APPLICANT: Yes, sir.

22 THE COURT: I -- I would seriously, seriously think
23 about what you're doing. And your family's said to you,
24 well, that's your decision.

25 Based on the evidence that I've heard that existed at

1 the time that you went before this plea, you -- you would
2 be convicted at a trial.

3 THE APPLICANT: Yes, sir. But I'm challenging -- I'm
4 really ---

5 THE COURT: Mr. Samuels, I understand what you're
6 doing, and I -- and I -- if I could, I would like to say,
7 "Go back, Solicitor, and try him and see what happens."

8 THE APPLICANT: I get what you're saying, Your Honor.

9 THE COURT: But I'll have to review the evidence and
10 see whether you made your case. I -- I may not be able to
11 do that, even though I would like to do it.

12 THE APPLICANT: And in dealing with the breach of the
13 plea, ain't it supposed to be pacific [sic] performance?

14 THE COURT: Mr. -- you know, we're not arguing about
15 it.

16 THE APPLICANT: Yes, sir.

17 THE COURT: I will take this under advisement. But as
18 I said, you know, if you win this thing --

19 THE APPLICANT: I'll be facing 145 years.

20 THE COURT: -- you understand that even the ones that
21 you admitted to, I didn't -- I didn't mean to shoot him.
22 Well, it doesn't have to be specific intent. It's general
23 intent. When you fire a gun, which is a deadly weapon, at
24 somebody and they get hit, there's a general intent that
25 you meant to shoot him.

1 The State says you robbed somebody, and you said you
2 didn't. That would be up to the jury, but that would be a
3 heck of a thing to -- the jury, when you have all those
4 other charges pending, and they're deciding them.

5 THE APPLICANT: Yes, sir.

6 THE COURT: But ---

7 THE APPLICANT: But ---

8 THE COURT: --- Mr. Samuels, you might win it; you
9 might get -- let the State see if you ever get out of
10 prison. All right.

11 MS. HARRIGAN: Thank you, Your Honor.

12 THE COURT: Good luck to you.

13 (Marked Applicant's Exhibit No. 7, one-page document,
14 in evidence.)

15 (Off the record at 12:41 p.m.)

16

17 -- END OF TRANSCRIPT OF RECORD --

18

19

20

21

22

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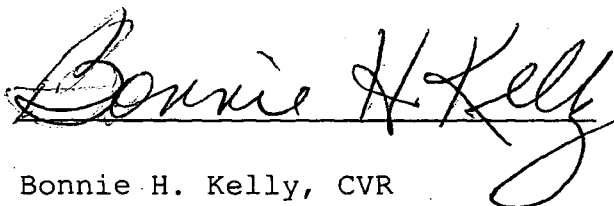
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25

CERTIFICATE

I, the undersigned Bonnie H. Kelly, 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 hearing of the captioned cause, relative to appeal, in the Fifth Circuit Court for Richland County, South Carolina, on the 22nd day of January, 2014.

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



Bonnie H. Kelly, CVR

Official Court Reporter

Columbia, South Carolina

September 23, 2014

Case No. 2013-CP-40-01556
 Plaintiff: Alvin Samuels
 Defendant: State of SC
 Date Trial Started: 1-22-14

Judge Barber
 Plt's Atty. Pro Se
 Def's. Atty. Megan Harrigan
 Date Trial Ended: 1-22-14

Received of Bonnie Kelly, Court Reporter for the above case, these exhibits:

		Clerk of Court Use
		Not Received
A-1	<u>Previous Hearing</u>	
A-2	<u>2pg Document w/ Photo</u>	✓
A-3	<u>5pg Statement Document</u>	✓
A-4	<u>1pg document</u>	✓
A-5	<u>1pg document</u>	✓
A-6	<u>1pg document</u>	✓
A-7	<u>1pg document</u>	✓
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This 22 day of JANUARY 2014.

Page 1 of 1

By: [Signature]

Richland County Clerk of Court

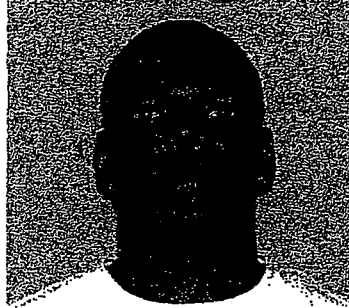
Clerk should retain white copy in Civil cases, yellow copy in Criminal cases.

K B. C. S.



7/24/10

3 YEAR DRIVER RECORD



Customer No: 31434537		Driver License No:	
Name: SAMUELS, ALVIN STANLEY			
Address: FARROW RD			
City: COLUMBIA	State: SC	Zip: 292037001	
County: RICHLAND	Sex: M	Driver Training: N	
Status - DL: NO SUSPENSION		CDL: NO DISQUALIFICATION	

License Information

Type	Class	Function	Issued	Expires	First Issued	Restrictions	Endorsements
Current							
BP	D	Renewal	05/26/2010	05/26/2011	04/23/2007	N	N
Prior							
BP	D	Re-exam	05/27/2009	05/27/2010	04/23/2007	N	N
BP	D	Renewal	06/15/2007	06/15/2008	04/23/2007	N	N
BP	D	Original	04/23/2007	04/23/2008	04/23/2007	N	N

Point Summary

Total Current Points:	0
Driver Credit:	-0
Adjusted Current Points:	0

End of Report



07/24/2010 - Reeves showed this photo to Kouassi OguB291
at CPD HQ. at 0200hrs. He signed & dated it.
He confirmed that this is the person who Robbed
them.

**COLUMBIA S.C. POLICE DEPARTMENT
STATEMENT FORM**

Page 1 of 3

Date: 07/24/2010 Time: 0056 hrs Place: 1 Justice Square

I am KOUASSI OGUBI My birthday is 15/05/2004

My address and phone number are: C Academy St, Col SC / 6

I am giving this statement concerning Shooting

to L.C. Reeves who has identified himself as Police Officer

ON the night of 07/23/2010, around 11:45pm, I was coming from outside going inside the store on 2500 Booker St Suite B. This is my business and the name of it is "HIPHOP WEAR". I SAW the SUBJECT NAMED "ALVIN" - NICKNAME "AR" POINT the GUN AT my friend named Daniel, while he was making him take off his clothes. IT looked like a Robbery in Progress and I screamed "What's Going on!" Alvin then turned and pointed the Gun at me and told me to "Get the fuck out of here". At the same time, Daniel had the opportunity to Run to the Bathroom and lock the door. Alvin then ran towards Daniel and tried to kick the door open. He tried to kick the door about two times. While this was happening I had Ran out of the store for Help. I was able to look through the glass window and saw Alvin shoot through the Bathroom door.

Sworn and subscribed to me this
 _____ day of _____

NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES:

, KOUASSI OGUIBI received a copy of this statement consisting of 3 pages.

from Inv. L. C. Reeves 13 K. Chas.

COLUMBIA S.C. POLICE DEPARTMENT
STATEMENT CONTINUATION

THE OTHER TWO PEOPLE THAT WERE IN THE STORE RAN OUT AND GOT INTO THE GIRLS CAR AND DROVE AWAY. I GOT ON MY PHONE AND CALLED 911. MY PHONE # IS 261-0045. I THEN SAW ALVIN RUN OUTSIDE TO THE BACK OF THE BUILDING. DANIEL THEN RAN OUT OF THE STORE AND ACROSS THE STREET TO THE HOT SPOT. I CALLED FOR DANIEL TO COME BACK ACROSS THE STREET AT WHICH TIME HE DID AND HE SAT ON THE GROUND IN THE PARKING LOT UNTIL THE POLICE ARRIVED.

Earlier Around 9:00 pm, Alvin came to the stores parking lot, drinking. We don't allow consumption or loitering on the premises but we can't tell him to leave because the last time we tried to, he went and got a shot gun and shot the Barber next door. The BARBERS NAME ALLEN LUCIOUS.

Q: WOULD YOU BE ABLE TO RECOGNIZE ALVIN IF YOU SAW HIM AGAIN? A: YES 100% K C

Sworn and subscribed to me this
day of

NOTARY PUBLIC OF SOUTH CAROLINA

MY COMMISSION EXPIRES:

KOUASSI OGUBI

received a copy of this statement consisting of 3 pages

from INV. L.C. Reeves

COLUMBIA S.C. POLICE DEPARTMENT
STATEMENT CONTINUATION

Q: What is Alvin's full name? LOR

A: ALVIN SIMMON K G

Q: Can you describe Alvin? LOR

A: LIGHT SKIN H 5 11 WEIGHT 100
19 years Low cut K G

Q: How do you know Alvin and how long have you known him? LOR

A: 6 years K G

He USE TO HELP ME AT THE
STORE K GQ: Did Alvin take anything from your
Person/body? LOR

A: NO K G

Q: Can you describe the guns Alvin had? LOR

A: ① SEMI AUTOMATIC SILVER
LOOK LIKE 380

② LOOK RUSTIC K G

Sworn and subscribed to me this
day ofNOTARY PUBLIC OF SOUTH CAROLINA
MY COMMISSION EXPIRES:

KOUASSI OGUBI

received a copy of this statement consisting of 3 pages

from Inv. C. C. Rees

Statement

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
 _____)

Personally appeared before me this 11th day March 2011 at 9:30 p.m., a private investigator of Watkins Detective and Security Agency in the above-named county and state aforesaid, comes one Kouassi Ogubi at 2500 Booker Avenue, Columbia, SC who makes the following statement under oath to wit:

Q = Inv. B.G. Watkins A = Kouassi Ogubi

Q: Mr. Ogubi it is my understanding that you were at your place of business on July 23, 2010 when a robbery took place is that correct?

A: Yes

Q: Would you give me a description of the person that committed the robbery?

A: 5-11 to 5-12 and weighed 185lbs to 200lbs light skinned. He was wearing white t-shirt and jeans blue or black in color and I don't remember the shoes.

Q: As best you can please lead me th

A: I am in and out so I left the store in charge of Nathaniel Irvin. When I came back I see Alvin pointing two guns one Nathaniel Irvin and Daniel Kual. Next to Alvin was a big girl next Irvin name Carletta Williams. I said what is going on. Then I turned and he said you said shut the fuck up. When he turned towards me has the opportunity Daniel ran towards the bathroom. He then turned back towards Daniel. That's when I ran out the front door with the intention to close the gate and hold everyone in until the police came. Then I heard the shot so I did not close the gate because I thought he was going crazy. I went next door to the barbershop to call for help and everyone was running and panicking. We see Alvin and the others run out through the barbershop window. Before I could get back inside Daniel ran outside past me.

Q: Is the name of your business the Hip Hop Shop

A: Yes

Q: Did you go to the barbershop and talk to anyone if so who?

A: I ran in the barbershop panicking and screaming what happened what happened. I talked with Allen later in the day once I calmed down

Q: Have you ever been robbed before at this place of business?

A: Yes

Q: Have you ever had any confrontations with Alvin?

A: Yes because they come here, sell drugs and drinking, and smoke weed. I told them they can't do that here. I didn't file a complaint against him. Alvin shot the barbershop with a shotgun because they said they didn't want him to stand around here selling drugs and loitering. He went home and got a shotgun and shot Allen at the barbershop. The ambulance came and the police were called but the police did not return to followup. I complained directly to the police several times. These were the only confrontations we had. He would oftentimes come to my place of business and attempt to intimidate me by saying what you gone do now. People would tell me to not

Nathanial Irvin told me after the incident that Alvin made him open the register and give him the money and jewelry. Carletta Williams and Mr. Irvin are friends.

Q: When you called 911 you never called him by his name is there a reason?

A: I was in a panic, because I saw blood. There were just continuously asking me about a description.

Q: IF you were asked by the court what you would like to Mr. Samuels receive as bond, punishment, sentencing, etc what would be your reply be?

A: Because he is young I think they should try to help him instead of focusing on incarceration time. I know him since he was eight years old. I mentored him since that time. If they give him some bootcamp and help rehabilitate him that would be fine for me.

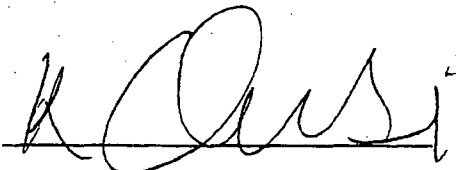
END OF STATEMENT

This statement was made in the presence of Private Detective B.G. Watkins of Watkins Detective and Security Agency.

I make this statement of my own free will and accord without reward or intimidation. All of the above is the truth, the whole truth and nothing but the truth.

Sworn to and subscribed before me ^{11/18}
this 11/18 day of March, 2010

Sheryl D. Bryant
Notary Public for South Carolina

Signed: 

Witness: _____

My Commission Expires: 10/2/2017

Witness: _____

Girl said my name - Carlita

2/11/12 297

Daniel - ID, not pointed out

Neil v. Brown

Mandela said - Alvin Simmons they showed them a picture
w/ my name on it - Mandela shy
client asked me

Mandela called 911 - did not mention my name

No fingerprints, no guns recovered

I never hit her.

She said I hit Mandela too - Mandela didn't say that

Client asked about bringing up other robberies - NO

Daniel said I had on grey / Everyone else had on white

I did not take any \$ from him

Plea Offer

Cap of 25 / 30 (drop kidnapping)

- tell Dad I called all week but his phone is not answering

2/12/12

Gave client ~~copy~~ copy of Karl's medical
records as part of his discovery



Alvin S. Samuels II
201 John Mark Court
Columbia, SC 29209

December 19, 2011

James James Shadd III
5200 Thurmond Mall
PO Box 969
Columbia, SC 29201

Re: Letter of Consent

Dear Mr. Shadd:

I as Alvin S. Samuels II, am hereby submitting this letter to you James James Shadd III as my attorney on warrant #s K-668468-72 of Armed Robbery, Attempted Murder, and Poss. of a Firearm, on this day of December 19, 2011. I'm writing this letter as a letter of consent, for you my attorney may discuss the terms, progress, and updates of my case with my father Alvin S. Samuels I. I agree to the terms of you discussing the outcome of my case. To further discuss this agreement I wish to speak with you in person, therefore my father can take over the case instead of Tyreshia Hopkins.

I would like to thank-you for your time and cooperation in this matter, here fore I look forward to us meeting soon. Thank-you

Yes I Alvin S. Samuels II agree for you to discuss the progress, and terms of my case with my father Alvin S. Samuels I.

Alvin S. Samuels II # (803) 477-6723

Sincerely,

Alvin S. Samuels II
Alvin S. Samuels II

SWORN AND SUBSCRIBED BEFORE ME

THIS 20th DAY OF Dec., 20 11

Vanessa James (L.S.)

MY COMMISSION EXPIRES: 2016





7DS/11

we were fussing over the day I had the gun in my hand - didn't intend on shooting
~~he~~ ran out in front of me - then I saw the blood dripping

I ran out after him

I used to sell ~~stuff~~ merchandise for Mandela - on street & in the store
 brook leg stuff
 he got his stuff from a Chinese man
 " " " shoes from Solomon

we would go up to NY and thousands of \$
 & buy from Dominicans & Japanese
 as teenagers we held the \$ so they
 wouldn't be rabbed.

I had guns for protection b/c I was shot at. I shot them before

He pulled on me @ Mandela I asked him for a gun. He said no. That's my child spit so I got armed.

I fined myself in August 27

I was wrote up Assault on a officer
 I snatched the laundry from his hands - they
 fined the officer - he has 6 assaults on him
 I sat 25 days

3/27/12

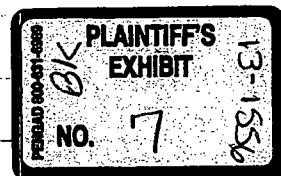
told him about mtg w/ Dan Johnson
 mt w/ Cathcart last week - can pick judge
 I don't want you as an attorney
 any more - didn't do further investigation
 told him the stn's were good & bad
 to show the y contractor themselves & had good
 client walked out I don't want you anymore

→ says I told him I wouldn't turn it in
 said just the opposite - disarray require
 me to give stn's over
 they followed up & wasn't convinced

Johnson said 20 yrs but I could still
 get him 10 - which is better

client walked out - ignored re.

Cathcart said the by guy was consistent
 + we can ~~move~~ forward



STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Alvin Samuels, II, #351567,

Case No. 2013-CP-40-1556

Applicant,

v.

ORDER OF DISMISSAL

State of South Carolina,

Respondent.

RICHLAND COUNTY
FILED
2014 MAR -4 AM 8:48
JEANETTE W. MCNEIDE
C.C.P. & G.S.

PROCEDURAL HISTORY

This matter comes before the Court by way of an application for post-conviction relief filed March 14, 2013. The Respondent made its Return on June 21, 2013, requesting an evidentiary hearing be held. Evidentiary hearings into the matter were convened October 2, 2013 and January 22, 2014, both at the Richland County Courthouse. Applicant was present at the hearing and was represented by counsel, Anna Good, Esquire. At the beginning of the second hearing, Applicant moved to relieve counsel, Anna Good, and proceed *pro se*. This Court made an inquiry of both counsel and Applicant, and after determining that the decision was made knowingly, voluntarily, and intelligently, this Court relieved counsel and allowed Applicant to proceed *pro se*.¹ The 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 Richland County Clerk of Court. Applicant was indicted during the June 2012 term of the Richland County Grand Jury for: two counts of Armed Robbery (2011-GS-40-01806, -01807), Possession

¹ At this Court's request, counsel Good remained at counsel table for the hearing as "stand by" counsel and to answer any legal questions that Applicant may have during the proceeding.

SCANNED

of a Weapon During the Commission of a Violent Crime (2011-GS-40-01808), Attempted Murder (2011-GS-40-01809), Assault and Battery – First Degree (2012-GS-40-03497), Pointing and Presenting a Firearm (2012-GS-40-03498), and Kidnapping (2012-GS-40-03499). He was represented by James Shadd, III, Esquire. On July 12, 2012, Applicant appeared before the Honorable DeAndrea G. Benjamin, where he pled guilty as indicted. Pursuant to negotiations with the State, Judge Benjamin sentenced Applicant to eighteen years imprisonment for each count of Armed Robbery, five years imprisonment for Possession of a Weapon During the Commission of a Violent Crime, eighteen years imprisonment for Attempted Murder, ten years imprisonment for Assault and Battery – First Degree, ten years imprisonment for Pointing and Presenting a Firearm, and eighteen years imprisonment for Kidnapping; with the sentences to be served concurrently. Applicant did not appeal his conviction and sentence.

In his application for post-conviction relief, Applicant alleged he was being held in custody unlawfully based on claims of:

1. Ineffective assistance of counsel;
 - a. "...trial counsel failed to conduct constitutionally 'reasonable' investigation thereby violating Hill Standard such that Applicant's plea is rendered involuntary."
 - b. "...trial counsel failed to investigate and procure exculpatory evidence regarding the 'Asportation' element of the armed robbery charge violated Hill Standard such that Applicant plea is render involuntary."
 - c. "...trial counsel failed to investigate and procure evidence which demonstrates mitigation to Applicant's convictions and sentences to the trial courts violated Hill Standard such that Applicant's plea is rendered involuntary."
 - d. "...trial counsel failed to object and move to withdrawal of plea on grounds of 'Breach of Plea Agreement' violated Hill Standard, such that Applicant's plea is involuntary, where plea agreement called for no recommendation from the state as to Applicant's sentence but state solicitor recommended the trial court to sentence Applicant to the maximum sentence."
 - e. "...trial counsel failed to object to and to move to quash of dismiss the Armed Robbery charge for insufficient proof of the 'Asportation'

element of the Armed Robbery charge violated Hill Standard such that Applicant plea is rendered involuntary.”

- f. “...trial counsel’s misrepresentation and gross misadvice in advising Applicant that the ‘Malice’ element of Attempted Murder charge may be implied by a jury because the use of a deadly weapon violated Hills Standard such as that Applicant’s plea is involuntary.”
 - g. “...trial counsel failed to move for a continuance in order to secure the presence of victim Nathaniel Irvin and witness Konassi Ogubi to attend the plea proceedings to testify on Applicant’s behalf to mitigate Applicant’s convictions and sentencing liabilities violates Hills Standard such that Applicant’s plea is rendered involuntary.”
 - h. “...trial counsel misadvised Applicant to the elements of ‘Asportation’ regarding the Armed Robbery indictment violated Hills Standard such that Applicant pleas is rendered involuntary.”
2. Due process violation;
- a. “Applicant was denied the right to due process under the U.S. Constitution and South Carolina Constitution when State solicitor breached the plea agreement by recommending the trial court to sentence Applicant to the maximum term of negotiated plea, while the plea agreement clearly called for ‘No State Recommendation’ from the state.”
 - b. “Applicant was denied the right to due process under the U.S. Constitution and South Carolina Constitution when trial counsel misadvised and lied to Applicant that if the Applicant agreed to plea guilty the counsel promised to secure victim Nathaniel Irvin and witness Kouassi Ogubi attendance for the plea proceeding to testify on Applicant’s behalf to mitigate Applicant’s conviction and sentencing liabilities.”
 - c. “Applicant was denied the right to due process under the U.S. Constitution and South Carolina Constitution by trial counsel coercing and inducing Applicant to plea guilty through gross misadvice and misrepresentation.”
 - d. “Applicant was denied the right to due process under the U.S. Constitution and South Carolina Constitution by the state solicitor procuring Applicant’s plea of guilty through deceptive tactics.”
3. Brady Violation; and
- a. “Applicant was denied the right to Brady Rule (5) under the U.S. Constitution and South Carolina Constitution where applicant was denied constitutional right pursuant Brady v. Maryland, 83 S.Ct. 1194 where state solicitor failed to fully and timely disclose Brady Material to Applicant.”
 - b. “Applicant was denied U.S. Constitutional and South Carolina Constitutional rights pursuant to Brady v. Maryland, when solicitor illegally suppressed favorable material and exculpatory evidence from the Applicant.”

4. Involuntary guilty plea.
 - a. "Applicant's plea of guilty was involuntary, unknowingly and unintelligently under the U.S. Constitution and South Carolina Constitution when prosecution breached plea agreement."

At the evidentiary hearing, Applicant proceeded forward on the following allegations of ineffective assistance of counsel:

1. Failure to explain all elements of the charged offenses to Applicant;
2. Failure to move to quash the indictments based on the State's failure to satisfy the elements necessary for each crime charged;
3. Failure to investigate, including failure to investigate that the State had met each element necessary for the crimes charged;
4. Failure to present mitigation to the plea court, including witness Konassi Ogubi; and
5. Failure to object and/or move to withdraw Applicant's plea when the State made a recommendation for sentence length in violation of the plea agreement.

SUMMARY OF TESTIMONY PRESENTED

At the evidentiary hearing, Applicant testified on his own behalf and presented testimony from Konassi Ogubi, Stanley Samuels, Tyrisha Hopkins, and William Feldon. Respondent presented testimony from plea counsel, James Shadd, III, Esquire (herein "Counsel"). This Court also had before it Applicant's guilty plea transcript, the records of the Richland County Clerk of Court, and Applicant's records from the South Carolina Department of Corrections.

Applicant testified first on his own behalf. He testified that he was originally represented by Luke Shealey, Esquire, from the Richland County Public Defender's Office, but retained

Counsel to represent him in March, 2011. He testified that he met with Counsel four times prior to his guilty plea. He testified that he had numerous bond reduction hearings with Counsel, but that he was never released on bond. He testified that he told Counsel that he wanted a trial, but that Counsel told him he would receive a sentence of ten years if he pled guilty, so he decided to enter a plea. He testified that Counsel never fully reviewed discovery materials with him, but only showed him "loose papers." He testified that he thinks his statement was included in these papers, but he is not sure. He testified that Counsel informed him that if he proceeded to trial, his statement would likely be used against him by the State. He testified that he told Counsel that he should not have been charged with armed robbery, because he did not take any money from anyone. He testified that he asked Counsel to hire an investigator and gave him the names of potential witnesses, but Counsel did not get an investigator or do any independent investigation. He testified that Counsel refused to prepare for trial, telling him that a trial would be "fruitless" because of the State's evidence. He testified that he filed a motion to relieve counsel, but that he withdrew this motion voluntarily.

He testified that Counsel presented him with various plea deals, including one for ten years imprisonment and one for a cap of twenty years imprisonment, which he turned down. He testified that Counsel finally presented him with a plea offer for a cap of twenty-five years imprisonment, which he reluctantly accepted because he did not think he could proceed forward to trial with Counsel's "misrepresentation" and receive a harsher sentence. He testified that Counsel told him on the day of the plea that although the plea agreement was for a cap of twenty-five years imprisonment, Counsel informed him on the day of the plea that he would not receive a sentence of more than ten years. He testified that Counsel told him the State would not

make a recommendation of what sentence he should receive within the range of ten to twenty-five years imprisonment. He testified that during the guilty plea, the State asked for a sentence of twenty-five years in violation of the plea agreement. He testified that Counsel should have objected to this comment and moved to withdraw his guilty plea. He testified that he would not have pled guilty if he knew the State was going to ask for a twenty-five year sentence, but acknowledged that he knew he could possibly receive a twenty-five year sentence when he pled guilty. He acknowledged several times that he knew he was facing a total of one-hundred and forty-five years imprisonment based on the various charges. He also acknowledged that he told the plea court while under oath that he was guilty, agreed with the State's facts, apologized to the victims, and was completely satisfied with Counsel's representation. Applicant testified that he is guilty.

Applicant testified that he discussed an appeal with Counsel before his guilty plea and understood that he only had ten days to request one. He testified that he asked Counsel to file an appeal immediately after his plea while he was sitting in the jury box, as well as by letter sent on the 17th or 19th. He was unable to produce a copy of the letter during the hearing.

Following Applicant's testimony, Konassi Ogubi testified on Applicant's behalf. He testified that he is the owner of the clothing store where the incident took place and also a victim. He testified that Applicant pointed a gun at him during the incident and that he witnessed Applicant pistol whip a female victim more than once. He testified that he was asking Applicant to leave the store because he was afraid he would kill everyone. He testified that he witnessed Applicant shoot through a closed door, seriously injuring another victim. He testified that he gave a statement to law enforcement following the event, as well as identified Applicant by his

photograph. He testified that he has known Applicant for years, as Applicant frequented his store. He testified that he was also contacted by an investigator, to whom he gave a second statement where he indicated that he wanted Applicant to be rehabilitated rather than punished. He testified that he asked for Applicant to be sent to boot camp, but acknowledged that he did not know the mandatory minimum sentence that Applicant could receive was ten years. He testified that he was never contacted by Counsel, but would have spoken to Counsel or come to Applicant's plea proceeding if requested to tell the court that he wanted Applicant to receive rehabilitation.

Following Ogubi's testimony, Applicant's father, Stanley Samuels, testified on his son's behalf. He testified that he was present at his son's guilty plea and discussed the plea terms with Counsel prior to the plea. He testified that he understood the terms of the plea to be for a sentence within the range of ten to twenty-five years, but that the State would make no recommendation as to a particular sentence. He testified that he understood his son could receive a sentence of twenty-five years if he pled guilty. He testified that Counsel was also supposed to have several witnesses present but failed to have any on the day of the plea.

Next, Applicant presented testimony from his girlfriend, Tyrisha Hopkins. Hopkins testified that she hired Counsel to represent Applicant in March, 2010, but did not discuss the case with him until December, 2011 because Counsel was waiting on Applicant's approval for Counsel to discuss the case with her. However, on cross examination, Hopkins admitted that she was confused regarding dates and that she had actually not hired Counsel until March, 2011. She testified that she met with Counsel a "few times" but was unsure of an exact number of meetings. She testified that prior to the plea, Counsel informed her that Applicant could receive a sentence

of between ten to twenty-five years, but that the State would not make a recommendation as to a specific sentence. She testified that she was at the plea and heard Applicant tell the court he was guilty and apologize to the victims. She testified that she also heard the victims state that they were fearful of Applicant and asked for a significant sentence.

Applicant also called William Feldon, his former employer, to testify on his behalf. He testified that he was not contacted by Counsel but would have come to the plea to speak on behalf of Applicant's good character. He testified that he knew that Applicant had experienced violence from other neighborhood gang members and was aware that Applicant carried a weapon. He testified that there is no excuse for what Applicant did but thinks the event was "a lot of misunderstanding." He testified that Applicant is a "good kid" who started going down the wrong path. He testified that he thinks the army or another rehabilitative program would be best for Applicant.

Following Applicant's witnesses, Respondent presented testimony from Counsel. Counsel testified that he has been practicing law for thirteen years and that approximately forty percent of his practice is criminal defense. He testified that he was retained in March, 2011 by Applicant's girlfriend, Tyrisha Hopkins. He testified that he had previously represented Applicant on a Criminal Domestic Violence charge in which Hopkins was the victim, as well as knew Applicant personally. He testified that he filed several bond reduction motions on Applicant's behalf, but was never able to secure a bond that would allow for Applicant's release. He testified that he filed all necessary discovery motions and reviewed the materials thoroughly with Applicant at least three times and gave Applicant a copy of the discovery. He testified that Applicant understood what evidence the State had against him "very well." He testified that he

reviewed the elements for each crime with which Applicant was charged with him, as well as what the State would need to prove at trial. He testified that he believed that the State's evidence satisfied each element necessary for each charge and he saw no reasonable meritorious ground on which to move to quash the indictments. He testified that he reviewed the sentencing ranges with Applicant and explained to him that he was facing a maximum of one-hundred and forty-five years imprisonment for all charges. He testified that Applicant understood these conversations.

Counsel testified that Applicant readily admitted to having a gun, pistol whipping the female victim, taking money, and shooting through the door at another victim. He characterized the State's evidence as "overwhelming," including three victims who would testify at trial, four witnesses, including Mr. Ogubi, and all witnesses knew Applicant well and could readily identify him. He testified that Applicant turned himself in to law enforcement at Counsel's urging after evading law enforcement for a period of time. He testified that Applicant had no viable defense, as he had no alibi, was easily identified by all witnesses, and readily admitted his guilt. He testified that Applicant told him that he was highly intoxicated during the incident, but Counsel explained to him that voluntary intoxication is never a viable defense. He testified that he was aware of Mr. Ogubi's desire for Applicant to receive rehabilitation, as he had been provided with a copy of his statement. He testified that he informed the plea court of this during Applicant's guilty plea. He testified that Applicant did not provide him with any additional witnesses. He testified that when he took over representation, the Public Defender's office had already used a private investigator. He testified that he fully reviewed the investigator's notes and report, and that Applicant's father was also working on tracking down and talking to witnesses. Counsel

testified that based on these two things, he did not see any benefit from hiring another private investigator.

He testified that Applicant wanted him to secure a favorable plea deal from the very beginning. Counsel testified that Applicant told him he wanted a sentence of less than ten years, and that he explained to Applicant that this was not possible, as the mandatory minimum sentence for armed robbery is ten years imprisonment. He testified that he tried to get the State to allow Applicant to plead to strong armed robbery rather than armed robbery to reduce the mandatory minimum sentence below ten years, but the State refused. He testified that the best offer he received was for a cap of twenty-five years, which he immediately conveyed to Applicant and his family. He testified that he informed Applicant and his family that the plea would mean Applicant could receive a sentence between ten to twenty-five years and that he never promised Applicant or his family that Applicant would receive a specific sentence. He testified that he also explained to Applicant that this did not mean that the State could not ask for him to receive the full twenty-five year sentence, and advised Applicant that he very well may receive the full sentence. He testified that he informed Applicant of the consequences of his guilty plea and that it was Applicant's decision to plead guilty. He testified that he prepared and presented mitigation at Applicant's guilty plea, which included several character witnesses. He testified that he advised Applicant of his right to appeal his guilty plea, as did the plea court. He testified that Applicant never requested he file an appeal.

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, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRPC; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, 106 S.Ct. 366 (1985).

After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action. Specifically, this Court finds that Counsel's testimony is very credible while Applicant's testimony, along with the testimony of Applicant's witnesses, is lacking credibility. Below are this Court's findings in regards to each of Applicant's allegations of ineffective assistance of counsel.

Counsel's alleged failure to explain all elements of the charged offenses to Applicant

Applicant asserts that Counsel was ineffective for failing to explain all elements of the offenses charged to him. This Court finds that this allegation is without merit. Counsel's credible testimony reveals that he thoroughly reviewed all the elements of the various offenses with Applicant, along with what the State would be required to prove at trial. Counsel testified that Applicant understood all of these conversations. This Court finds that the Applicant has not shown that Counsel's performance fell below "professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Furthermore, the Applicant has failed to establish any resulting prejudice from the alleged deficiency of counsel. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

Counsel's alleged Failure to move to quash the indictments based on the State's failure to satisfy the elements necessary for each crime charged

Applicant asserts that Counsel was ineffective for failing to move to quash the indictments against him for the State's failure to satisfy all required elements for each offense.

However, this Court finds that this allegation is without merit and must be denied. Counsel testified that the discovery provided to him, along with Applicant's own testimony, revealed that the State had satisfied the elements for all offenses charged. Counsel testified that he explained this to Applicant, as well as told Applicant that there was no meritorious grounds on which he could move to quash the indictments. This Court agrees with Counsel and finds that the State was able to meet each element for the variety of offenses with which Applicant was charged. Therefore, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to investigate, including failure to investigate that the State had met each element necessary for the crimes charged

Applicant asserts that Counsel was ineffective for failing to investigate his case. However, Counsel's credible testimony was that by the time he was retained, the Public Defender's office had already employed an investigator and that he was privy to the investigator's notes and reports. Additionally, he testified that Applicant's father was actively tracking down potential witnesses and gathering statements. Furthermore, Counsel testified that Applicant readily admitted to his guilt. Counsel testified that he did not believe there was any benefit to be derived from hiring another investigator. This Court agrees and finds that Counsel's investigation and performance was reasonable given the facts of the case. Additionally, this Court finds that Applicant has failed to meet his burden of establishing any resulting prejudice, as he failed to present any favorable evidence which could have been garnered from additional investigation. Therefore, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to present mitigation to the plea court

Applicant asserts that Counsel was ineffective for failing to present sufficient mitigation to the plea court. However, Counsel's credible testimony and the record from the guilty plea proceeding show that Counsel presented several character witnesses in mitigation at Applicant's plea proceeding. Additionally, Counsel testified and the record shows that Counsel informed the plea court that Mr. Ogubi wanted Applicant to receive a minimal and rehabilitative sentence. See Tr. pp. 29-30. This Court finds that Counsel's performance was reasonable based upon professional norms and that Counsel was not deficient. Therefore, this allegation must be denied and dismissed with prejudice.

Counsel's alleged failure to object and/or move to withdraw Applicant's plea when the State made a recommendation for sentence length in violation of the plea agreement

Applicant asserts that Counsel was ineffective for failing to object to the State's recommendation that Applicant receive a twenty-five year sentence and for failing to move to withdraw Applicant's guilty plea based on the State's comment as a violation of his plea agreement. However, Counsel testified that he fully explained to Applicant and his family that Applicant could receive any sentence between ten to twenty-five years and that the State could still ask the plea court to sentence Applicant to twenty-five years. Counsel testified that he did not find this comment by the State to be in violation of Applicant's plea agreement, so he did not think there was a basis to object or move to withdraw his client's plea. This Court agrees and finds that Counsel's performance was reasonable. Therefore, this Court finds this allegation must be denied and dismissed with prejudice.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that 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 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 the Application for Post-Conviction Relief shall be denied and dismissed with prejudice; and
2. The Applicant shall be remanded to and remain in the custody of the Respondent.

AND IT IS SO ORDERED this 3rd day of MARCH, 2014.


 JAMES R. BARBER, III
 Presiding Judge
 Fifth Judicial Circuit

Blensie, South Carolina.

ALVIN S. SAMUELS, II #351567

McCI F-4 144-B
386 Redemption Way
McCormick, South Carolina

March 20, 2014

Ms. Jeanette McBride
Clerk of Court - Richland County

RE: Motion to Alter or Amend
Pursuant to Rule 59(e)
Case No.: 2013-CP-40-1556

Dear Clerk:

Enclosed for filing is the Motion to Alter or Amend Pursuant to Rule 59(e), SCRCF, along with the Certificate of Service..

Please clock-stamp the enclosed documents and return to me a copy at your earliest convenience.

Thank you kindly for your attention and assistance in this very important matter.

Sincerely,

Enclosure(s)

Alvin S. Samuels, II

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Alvin S. Samuels, II, #351567)
)
 Applicant,)

Case No.: 2013-CP-40-1556

vs.)

MOTION FOR REHEARING PURSUANT
 TO RULE 59(a) AND ALTER OR
 AMEND PURSUANT TO RULE 59(e)

State of South Carolina,)
)
 Respondent.)

PLEASE TAKE NOTICE, NOW COMES the above named Applicant who moves before this Honorable Court, pro-se, in the above entitled matter, to direct the entry of a new judgment and hearing pursuant to S.C.R.C.P., Rule 59(a) to alter and to amend the findings of facts and conclusions of law to EACH and EVERY issue instituted in the Applicant's application and not addressed in the final signed order of judgment dismissing his PCR which was dated March 3, 2014 and filed by the Clerk of Court March 4, 2014 pursuant to Rule 59(e).

The Applicant made a number of constitutional violations in his application, dated and filed by the Clerk of Court March 14, 2013, alleging Ineffective Assistance of Counsel, Due Process Violations, Brady Violations and Involuntary Guilty Plea. After this Court had the opportunity to review the record in its entirety and had heard the testimony of Applicant, Tyreshia Hopkins, Alvin Samuels, I, Kouassi Ogubi (witness and victims)

and trial counsel at the post-conviction relief hearing. The Court has also had the opportunity to review evidence presented by the Applicant pursuant to §17-27-90. The Court observed the witnesses presented at the hearing, closely passed upon their credibility and weighed their testimony accordingly. The order does not address Applicant's amended issues of ineffective assistance of counsel pursuant to Missouri v. Frye, 132 S.Ct. 1399. Nor does the order find at finding of facts and conclusion of law to each issue Applicant raised at the evidentiary hearing on October 2, 2013 and January 22, 2014.

Pursuant to Marlar v. State, 653 S.E.2d 266, the South Carolina Supreme Court made clear that a P.C.R. judge order MUST make a specific finding of facts and state expressly the conclusion of law relating to EACH issue. Also see Bryson v. State, 493 S.E.2d 500, Pruitt v. State, 408 S.E.2d 24, and §17-27-80. Further see §17-27-90 where "all" grounds was before this Court, but not addressed or addressed inadequately.

The Applicant would direct the Court's attention to the following specific matters in support of the instant motion:

(1) DENIAL OF DUE PROCESS, the Applicant was denied the right to testify in "full" to institute for the record a complete testimony at his first P.C.R. hearing on October 2, 2013. Here, the Applicant was the moving party in this civil matter, where he had the RIGHT to be heard in person to ensure a "full and fair bite at the apple" which the Court did not hear his entire testimony, which denied the Court the opportunity to observe

Applicant as a witness and to closely pass upon his credibility. The Court was not able to weigh Applicant's testimony accordingly to make relevant findings of fact per §17-27-80 when he was denied the opportunity to testify in full by threat of contempt of court for stating "I needed my 'full bite at the apple".

(2) SUMMARY OF TESTIMONY PRESENTED IN THE COURT'S ORDER states inaccurate truth in regards to testimony which was intended to establish proof in Applicant's meeting his burden. These inaccurate and omissions may be justified in the "Evidentiary Hearing Transcript".

A) Applicant's Testimony

The order states Applicant testified that he told counsel that he wanted a trial, but that counsel told him he would receive a sentence of ten years if he pled guilty, so he decided to enter a plea. This Court's order omits the critical testimony of Applicant who wanted to pursue trial. This reason being in which he testified he informed counsel that he wanted a trial because he did not commit the charges as the State described in the indictment. He also testified that he had evidence to corroborate this rebuttal and submitted the evidence into the records for the Court pursuant to §17-27-80. This order omits that Applicant testified that the State's case against him was weak, lacked physical evidence, and contained multiple different contradicting statements that exhibited impeachable credibility. None in which, the Applicant states he himself wrote, and can not

be presented by the Respondent. He testified that he informed counsel the only evidence against him was witnesses and victims statements which had several contradictions and that he and counsel discussed the goods of this. This order omits that he testified the Columbia Police Department identification was tainted and suggestive, and the indictments were insufficient and inconsistent with that of the State's case, instituting a "reasonable doubt", had he pursued trial, base upon his Fifth and Sixth Amendments rights of the United States and South Carolina Constitutions. Applicant testifies further, stating he surrendered these rights after considering the advice he received from counsel. He testified counsel informed him trial will be "fruitless" and he should enter a guilty plea. He testified he informed counsel he did not take "money and/or currency and/or personal property from anyone, prior to counsel advising him to plead guilty. He testifies in advising him to plea, counsel verified to him a specific number of years which was ten (10) years that he "will" receive when he pled guilty July 12, 2012, he picked the judge, that counsel secured witness Kouassi Ogubi and victim Nathaniel Irvin to testify at the hearing. He also testified that counsel informed him that the state was not going to make a recommendation as to a specific number of years. He testified that counsel made sure the boxes on the sentencing sheets regarding a recommendation from the State, prior to him signing the sentencing sheets just as in Hill v. Lockhart. He testified that if it was not for these promises, considerations

and inducements by counsel and the State, he would not have pled guilty. He testified that counsel gave him absolutely no reliability of the adversarial testing process or an adequate opportunity to meet the case of the prosecution. He testified counsel rejected the plea of twenty (20) years by Solicitor Dan Johnson. He additionally submitted counsel's case notes verifying such rejections because he secured a ten (10) year plea which is better. This order omits he testified he received critical discovery material after he pled guilty. Specifically consisting of victim "Daniel Kual's medical record", which refuted the asportation element of armed robbery, presenting a reasonable doubt, and amended indictments, sufficient enough the change a defense. He never testified he turned down any various plea deals. The State order states Applicant testified "counsel informed him the State would not make a recommendation of what he should receive within the range of ten (10) to twenty-five (25) years imprisonment". This is incorrect, He testified, "counsel informed him the State would not make a recommendation as to a specific number of years imprisonment. he testified counsel did not object to the State recommending twenty-five (25) years, which was contrary to the advice he received from counsel that influenced him to plead guilty.

The Applicant request the above omissions and inaccuracies be altered or amended to the State's order pursuant to Rule 59(e) of South Carolina Rules of Court. To ensure the Applicant the

right of "DUE PROCESS", pursuant to the United States and South Carolina Constitutions for a finding of facts and conclusion of law, §17-27-80, Marlar v. State, 653 S.E.2d 266; Bryson v. State, 493 S.E.2d 500.

(B) Kouassi Ogubi Testimony

The State's order omitted that he testified he witnessed the entire incident of July 23, 2010. He also testified that throughout this incident he did not see the Applicant take anything from the victims and that he did not see the victim hand Applicant any money, U.S. currency or personal property to the Applicant. He testifies that the Columbia Police Department Investigators wrote his statement implicating the incident looked as a "robbery in progress". The Court order omits he testified that he was shown a single photo-line-up of Applicant. He testified had he been contacted by Applicant's counsel regarding attending the hearing he would have attended to testify on Applicant's behalf. This order also omits he testified that he was never contacted by counsel in regards to attending the plea hearing of July 12, 2012. Furtherly omitted his testimony of attending this hearing if he had been made aware,

The Applicant requests the above omissions and inaccuracies be altered or amended to the State's order pursuant to Rule 59(e) of South Carolina Rule of Court to ensure the Applicant's right to "DUE PROCESS" pursuant to the United States and South Carolina Constitutions for a finding of facts and conclusions of law

pursuant to §17-27-80, Marlar v. State, 653 S.E.2d 266; Bryson v. State, 493 S.E.2d 500.

(C) Alvin Samuel, I Testimony

This Court's order omits that he testified that counsel informed him Applicant will receive ten (10) years and that counsel informed him the State would not make a recommendations as to a specific number of years. The order inaccurately states he testified counsel supposed to have several witnesses present but failed to have "any" on the day of the plea. Samuel's accurate testimony states none of the specific victims (Nathaniel Irvin and Kouassi Ogubi) that counsel informed him were there which he informed the Applicant were going to be present at the hearing, attended. He testified he met with counsel on the morning of the plea hearing and informed him the terms of the Applicant's guilty plea. This testimony corroborated the same terms, inducements and considerations Applicant detrimentally relied on in accepting counsel's advice to plead guilty.

The Applicant requests that the above omissions and shrewed testimony be altered or amended to the State's order pursuant to Rule 59(e) of the South Carolina Rules of Court, to ensure the Applicant's right to "DUE PROCESS" pursuant to the United States and South Carolina Constitutions, for a finding of facts and conclusion of law. §17-27-80; Marlar v. State, 653 S.E.2d 266; Bryson v. State, 493 S.E.2d 500.

(D) Tyreshia Hopkins Testimony

The State's order inaccuracy states she testified that she was confused Ms. Hopkins' testimony clearly states she met with counsel multiple times, but did not specifically state an exact number. It omits she testified that counsel informed her of the terms, inducements and consideration of Applicant's guilty plea on the morning of the plea hearing. Corroborating Applicant's testimony of counsel promise of ten years exactly without any specific recommendations from the State. It also omits that she testified counsel informed her that he would do an investigation of his own, but did not prior to Applicant pleading.

The Applicant requests that the above omissions and inaccuracies in the State's order be altered or amended pursuant to Rule 59(e) of the South Carolina Rules of Court. To ensure the Applicant's right to "DUE PROCESS" pursuant to the United States and South Carolina Constitutions. For a finding of facts and conclusion of law. §17-27-80; Marlar v. State, 653 S.E.2d 266; Bryson v. State, 493 S.E.2d 500.

(2) SUMMARY OF TESTIMONY PRESENTED in the COURT'S ORDER

The Applicant requests the reserved the right to an accurate finding of facts and conclusion of law pursuant to §17-27-80 and Marlar v. State, 653 S.E.2d 266 of the "Actual" record displayed in the transcript of Evidentiary Hearing: October 2, 2013, and January 22, 2014. The Applicant requests that any inaccuracies or

omissions of any witnesses present at the hearings be considered in the full context of the record. Harres v. Leeke, 318 S.E.2d 360. Rather than a presumption of reiterated facts proposed by the opposing party, and not supported by evidence, Glover v. State, 458 S.E.2d 538.

(3) The State's order specifically states: "At the evidentiary hearing, Applicant proceeded forward on the following allegations of Ineffective Assistance of Counsel.

- 1.) Failure to explain all elements of the charged offenses to Applicant;
- 2.) Failure to move to quash the indictment based on the State's failure to satisfy the elements necessary for each crime charged;
- 3.) Fail to investigate including failure to investigate that the State had met each element necessary for the crime charged;
- 4.) Failure to present mitigation to the plea court, including witness Kouassi Ogubi; and
- 4.) failure to object and/or move to withdraw Applicant's plea when the State made a recommendation for sentence length in violation of the plea agreement.

These are not the accurate allegations the Applicant moved forward on at the proceeding. The Applicant proceeded on the below listed allegations as described below:

ALLEGATIONS

1. Ineffective Assistance Of Counsel

a."...trial counsel failed to conduct constitutionally "reasonable" investigation thereby violating Hill Standard such the Applicant's plea is rendered involuntary".

b."...trial counsel failed to investigate and procure exculpatory evidence regarding the asportation element of armed robbery charge violated Hill Standard such that Applicant's plea is rendered involuntary".

c."...trial counsel failed to investigate and procure evidence which demonstrates mitigation to Applicant's convictions and sentences to the trial court violated Hill Standard such that Applicant's plea is rendered involuntary."

d."...trial counsel failed to object and move to withdraw of plea on grounds of Breach of Plea Agreement violated Hill Standard, such that Applicant's plea is involuntary, where plea agreement called for recommendation from the State as to Applicant's sentence, but the State Solicitor recommended the trial court to sentence Applicant to the maximum sentence".

e."...trial counsel failed to object and move to quash or dismiss the Armed Robbery charge for insufficient proof of the "Asportation element of the Armed Robbery charge violated Hill Standard such that the Applicant's plea is rendered involuntary".

f."...counsel's misrepresentation and gross misadvice in advising Applicant that the 'Malice' element of the Attempted

Murder charge may be implied by a jury because the use of a deadly weapon violated Hill Standard such as that Applicant's plea is involuntary".

g."...trial counsel failed to move for a continuance in order to secure the presence of victim Nathaniel Irvin and witness Kouassi Ogubi to attend the plea proceedings to testify on Applicant's behalf to mitigate Applicant's convictions and sentencing liabilities violates Hill Standard such that Applicant's plea is rendered involuntary".

h."...trial counsel misadvised Applicant to the elements of Asportation regarding the Armed Robbery indictment violated Hill Standard such that Applicant's plea is rendered involuntary".

i."...counsel failed to secure an enforceable written 10-20 year plea with no State recommendation to resolve Applicant's criminal charges".

2. Due process violation under Unites States and South Carolina Constitutions:

a."...wnen State Solicitor breached the plea agreement by recommending the trial court to sentence Applicant to the maximum term of negotiated plea, while the plea agreement clearly called for "No State Recommendation from the State".

b."...when trial counsel misadvised and lied to Applicant that if the Applicant agreed to plead guilty the counsel promised

to secure victim Nathaniel Irvin and witness Kouassi Ogubi attendance for the plea proceedings to testify on Applicant's behalf to mitigate Applicant's conviction and sentencing liabilities".

c."...when trial counsel coercing and inducing Applicant to plead guilty through gross misadvise and misrepresentation".

d."...by Solicitor procuring Applicant's plea guilty through gross misadvise and misrepresentation".

3. BRADY VIOLATIONS: and

a. "Applicant was denied the right to Brady Rule under the United States Constitution and South Carolina Constitution where Applicant was denied constitutional right pursuant to Brady v. Maryland, 83 S.Ct. 1194, where state solicitor failed to fully and timely disclose Brady Material to Applicant".

b. "Applicant was denied the United States Constitutional and South Carolina Constitutional rights to Brady v. Maryland when Solicitor illegally suppressed favorable material and exculpatory evidence from the Applicant".

4. Involuntary Guilty Plea

a. "Applicant's plea of guilty was involuntary, unknowingly and unintelligently under the United States Constitution and South Carolina Constitution when prosecution breath plea agreement".

These allegations are not all allegations of Ineffective Assistance of Counsel. They also consist of "Due Process Violations", Brady Violations, and Involuntary Guilty Plea.

Therefore, the Applicant reserves the right of "Due Process" and prays the finding of facts and conclusion of law be consistent with the way the Applicant has set them forth in his application and at the evidentiary hearing. The Applicant also moved forward on all the above listed allegations, and requests that a finding of facts and conclusion of law be exercised to each issue separately as required by Marlar v. State, 653 S.E.2d 266, to those specifically addressed in the State's order.

(4) In the State's order the Finding of Facts and Conclusion of Law addressed first allegation of: Counsel's alleged failure to explain all elements of the charged offense to Applicant. To accurately make a judgment on this issue for a finding of facts and conclusion of law the allegation must be altered or amended stated and addressed as the Applicant presented them. Applicant's issue accurately states: Trial counsel misadvised Applicant to the elements of Asportation regarding the Armed Robbery indictment violated Hill Standard such that Applicant plea is rendered involuntary. This allegation is meritorious, meets the Hill Standard of ineffective assistance of counsel and supported by evidence Applicant submitted to the Court as exhibits. Counsel testified that he reviewed indictments with Applicant, and agreed with Applicant's decision to plead guilty. Counsel testified that

the State evidence was overwhelming and he was pretty sure the State could prove the asportation element in the indictment beyond a reasonable doubt. Counsel further testified that prior to Applicant pleading guilty he had a copy of victim Daniel Kual's medical records. This medical records contained a document labeled "Palmetto Health Richland ED Trauma Flow Sheet" which verified the possessions of victim Daniel Kual, all which included U.S. Currency and personal property. See Exhibit 1 (one). This is the same elements listed in the indictment charging the Applicant. Counsel testified that prior to Applicant pleading, Applicant informed him he did not take anything from victims. See Exhibit 2 (two), contradicting victim's statements. In the plea transcript counsel testified, he did agree with Applicant decision to plead guilty, see plea transcript, pg. 4, line 8-12. Prejudicing Applicant greatly, what competent attorney advise his client to plead guilty to indictments that were insufficient, McMann v. Richardson, 90 S.Ct. 1441; Pelzer v. State, 672 S.E.2d 790, and where he had evidence in his possession to establish substantial reasonable doubt, and had prior knowledge of the facts and circumstances of the State's case that refuted the charges, as they are alleged in the true bill indictment. Counsel should not have advised the Applicant that the State's indictment of asportation was sufficient, when there existed exculpatory and mitigating evidence in the discovery, and Applicant had previously advised counsel the refutation and insufficiencies in the indictments, all which

corroborated reasonable doubt. These refruttal are more than a mere contradiction, Crawford v. U.S., 519 F.2d 347, and are supported by evidence. Porter v. State, 629 S.E.2d 353. The indictment states Applicant committed robbery by feloniously taking from the person or presence of Nathaniel Irvin and Daniel Kual, by means of force or intimidation, goods or monies of Hip Hop Wear, such goods or monies being described as PERSONAL PROPERTY AND U.S. CURRENCY...Counsel advised Applicant to plead to (two) 2 indictments (2011-CP-40-1806, 1807) because of the body of the indictment listed above. Counsel should not have advised Applicant to plead guilty to these elements of these Armed Robbery offenses, when he had a reasonable defense to dispute such elements, that would be supported by evidence, constituting innocence had Applicant pursued trial as he stated in the PCR hearing.

(5) In the State's order the Finding of Facts and Conclusion of Law addressed second that: Counsel's alleged failure to move to quash the indictments based on the State's failure to satisfy the elements necessary for each crime charged. This is not as the Applicant raised it in his application. To accurately make a judgment on this issue for a finding of facts and conclusion of law the allegation must be altered or amended and stated and addressed as the Applicant presented the claim.

The Applicant's issue accurately states: (E) "trial counsel failed to object and to move to quash or dismiss the Armed

Robbery charge for insufficient proof of the "Asportation" element of Armed Robbery charge violated Hill Standard such that Applicant's plea is rendered involuntary". This allegation is meritorious being counsel advised Applicant to plead guilty to Armed Robbery charges when there existed proof Applicant did not act as the elements described in the indictment/State's case/discovery implied. Counsel did not object or move to quash indictment, and testified to this at PCR hearing. Counsel had multiple grounds to move to quash or object to the insufficient proof of Asportation element. One (1) being counsel and Applicant testified that victims statements contained contradiction around how and what property or U.S. Currency were feloniously taken. Two (2) Applicant advised counsel prior to pleading guilty that he did not take anything (see Exhibit two (2)). Three (3) counsel testified prior to Applicant pleading guilty that he possessed the discovery and it contained the medical records of Daniel Kual. This medical record contained the documentation verifying victim's property after the alleged robbery (see Exhibit (1) one, Four (4) Counsel testified that Applicant's father relied to him facts of the case given to him by victim that testified at hearing. Kouassi is the victim who relied such facts to Applicant's father who relied this information to counsel. Kouassi: Ogubi testified that he did not see Applicant take anything from victims nor did he see victims give him any money or personal property. Counsel had prior knowledge of the insufficient proof of Asportation of Armed Robbery. Instead

counsel advised Applicant to plead guilty to Armed Robbery, prejudicing Applicant greatly. Where Applicant surrendered the constitutional right to trial, violating his right to Due Process and had a valid defense, because of counsel advice to pleading being his best option.

(6) The third addressed issue in the States's order addresses Applicant's allegation that: (A) trial counsel failed to conduct constitutionally "reasonable" investigation thereby violating Hill Standard such the the Applicant's plea is rendered involuntary. This allegation is meritorious, being counsel advised Applicant to plead guilty without conducting a reasonable investigation of his own, solely relying on the State's case to be true, Porter v. State, 629 S.E.2d 353, and the defendants admission of the underlying facts of a crime. This is not strategic reason for not interviewing potential witnesses and conducting a reasonable investigation of HIS OWN, Lounds v. State, 670 S.E.2d 646, Ard v. Catoe, 642 S.E.2d 597. A criminal defense attorney has a duty to perform a reasonable investigation, including at a minimum, the duty to interview potential witnesses and make an independent investigation of the FACTS AND CIRCUMSTANCES, or strategic reason for not investigating. Roseboro v. State, 454 S.E. 2d 312, Ford v. State, 442 S.E.2d 604, Stroke v. State, 419 S.E.2d 778. Counsel testified that Applicant father was actively tracking down

potential witnesses and gathering statements. It's the duty of the lawyer to investigate and come familiar with the facts and circumstances. Walker v. State, 723 S.E.2d 610, counsel claiming that her investigator was exploring the defendant's role in the case does not satisfy her obligation under the Sixth Amendment. The duty to represent the client belongs to the lawyer. This is not a strategic reason for not investigating. Ingle v. State, 560 S.E.2d 401. Counsel testified that Applicant admitted his guilt. A defendant's admission by defendant that he acted criminally or culpably. Solomon v. State, 557 S.E.2d 666. The State carries the burden regardless of which particular elements are expressly contravorted by a defendant citing In re Winship, 90 S.Ct. 1068. "It is possible for a defendant, under our system of jurispruden, it is technically possible for a criminal defendant to enter a plea of not guilty, introduce little or no evidence in his own defense and rely exclusively on his presumption of innocence. In this case the defendant disputed the State's case and informed counsel to conduct an investigation into the facts and circumstances because evidence existed to mitigate and institute innocence, instead counsel believed the information given to him by the investigator and Solicitor was true. Porter v. State, 629 S.E.2d 353. Applicant presented evidence and testimony showing a interview or investigation of the witnesses would have yield a different story from that counsel believed at the time of the plea. Being ineffective and deficient. Counsel testified that he

did not believe there was any benefit to derived from hiring another investigator. This is contradicted by counsel's testimony. Counsel testified during the evidentiary hearing that the investigator's notes provided to him by the Public Defender Luke Shealey's investigator Waklins contained multiple contradictions. These contradictions ~~corroborated~~ corroborated the lack of Asportation element. The Applicant presented evidence at the hearing showing what would have been garnered from additional investigation. This evidence was contradicting statements made by the witnesses, documentation to mitigate and institute innocence of the charges against the Applicant, and testimony from a witness (Kouassi, Ogubi) verifying no asportation element transpired as they are instituted in the indictments, and corroborating the identification was suggestive and tainted. If counsel would have investigated the facts of the case he would have discovered this mitigating and exculpatory material presented by the Applicant. Instead he failed to investigate and relied on the good faith of the prosecutor, denying the Applicant the reliability of the adversary process. Gideon v. Wainwright, 83 S.Ct. 792, 796, Kimmelman v. Morrison, 106 S.Ct. 2574, or a chance to meet the case of the prosecution. Moreso prejudicing the Applicant severely, where this material and testimony from this further investigation would have corroborated Applicant facts and established mitigating and exculpatory material for trial defenses, all in which the Applicant wish to pursue. Counsel conducted no investigation of his own and advised the

Applicant to plead guilty. The decision to advise a defendant to plead guilty before all the evidence is in is quite difficult. McMann v. Richardson, 90 S.Ct. 1441. No presumption however, is warranted when a lawyer advise his client to plea bargain to offense which the attorney has not investigated. Woodard v. Collins, 898 F.2d 1027. The Applicant request a new finding of facts and conclusion to address the issue as the Applicant raised them in the evidentiary hearing pursuant to Marlar v. State, 653 S.E.2d 266.

(7) In the State's order the Finding of Facts and Conclusion of Law fourth issue addressed counsel's alleged failure to present mitigation to the plea court. This issue or allegation is inaccurate as to the Applicant's actual issue raised in his application. For a proper finding of facts and conclusion of law the issue should be corrected to state the following: "G...trial counsel failed to move for a continuance in order to secure the presence of victim Nathaniel Irvin and witness Kouassi Ogubi to attend the plea proceedings to testify on Applicant's behalf to mitigate Applicant's convictions and sentencing liabilities violates "Hill Standard such that Applicant's plea is rendered involuntary, and a new order be consistent with the Applicant's actual allegation.

Counsel testified that he did not secure two of the victims for the plea hearing. These victims being Nathaniel Irvin and Kouassi Ogubi. The transcript reveals counsel did not move for a continuance after the absence of these victims. Prejudicing the

Applicant's conviction mitigation and sentencing liability. This is verified by testimony provided at the PCR hearing by Stanley Samuel, Sr., Tyreshia Hopkins, Kouassi Ogubi. Kouassi Ogubi testified at the hearing that he was not contacted by counsel prior to the plea hearing. Counsel had Mr. Ogubi's contact information. He also stated that had counsel moved for a continuance and secured his present for the plea hearing, he would have testified that he witnessed the entire incident of July 23, 2010 and throughout this incident he did not see the Applicant take anything from the victims nor did he see the victims give "any" money or personal property to the defendant. Kouassi Ogubi was no present at the guilty plea proceedings of July 12, 2012, nor was he contacted by counsel. Trial counsel was deficient and below professional norm for not requesting a continuance because Mr. Ogubi's testimony including factual information and mitigation towards Applicant's guilt and sentencing liability given the drastic distinction between his absence and present at the plea proceedings. McKnight v. State, 661 S.E.2d 354. Hence, the judge is required to listen and given serious consideration to any information material to punishment. State v. Green, 67 S.E.2d 509. Mr. Ogubi's testimony totally contradicted the State's facts. Prejudicing the Applicant because the denial of a continuance because the trial in absentia subjected the Applicant to a mandatory minimum, and charges of armed robbery the Applicant did not commit. Morris v. State, 639 S.E.2d 53; State v. Williams, 469 S.E.2d 49, 51. The difference

between the minimums are ten (10) years, and two less most violent crimes, conviction raising great significance. Given the drastic distinction between the mitigation provided at the hearing and this mitigating testimony given by Mr. Ogubi, a continuance request was reasonable, given difference between convictions and incarceration time of the actual charges the Applicant pled guilty to. A refusal of a continuance would have amounted to an abuse of discretion. See Williams, supra. Absent the testimony provided by Mr. Ogubi establishes a violation of Hill Standard concerning the advice of counsel, rendering the Applicant's plea involuntary, unknowingly and unintelligently.

(8) The fifth issue in the State's order states: Counsel alleged failure to object and/or move to withdraw Applicant's plea when the State made a recommendation for sentence length in violation of the plea agreement". This issue is incorrect and should correctly state the following. "Counsel failed to object and move to withdraw of plea on grounds of Breach of Plea Agreement" violated Hill Standard such that Applicant's plea is involuntary, where plea agreement called for no recommendation from the state as to Applicant's sentence but the State Solicitor recommended the trial court to sentence Applicant to the maximum sentence.

For a proper finding of facts and conclusion of the law this issue needs to be corrected and addressed as the Applicant raised

it in his application, and at the evidentiary hearing of October 2, 2013, and January 22, 2014. Pursuant to Rule 59(e) the Applicant reserves the right to alter or amend the State order regarding a finding of facts and conclusion of law, to adequately address the issue as it is so raised. The Applicant testified at the evidentiary hearing that he only decided to plead guilty because of counsel's advice verifying that the State Solicitor was not going to make a recommendation as to a specific number of years. The Applicant submitted evidence at the hearing confirming the State was not to make a recommendation as a specific number of years regarding incarceration time. This evidence consisted of the Applicant's sentencing sheets, see Exhibit 3-9, the "Recommendation by the State" boxes are either struck through and/or not checked, verifying "no recommendation". Witnesses Tyreshia Hopkins and Alvin Samuel, Sr. testified counsel informed them both prior to the hearing that counsel had advised the Applicant that the Solicitor was not going to make a recommendation as to a specific number of years. Not the sentencing length. The State made a specific recommendation at at the guilty plea proceeding twice. See Plea transcript, pg. 24, line 9 and page 41, line 25, pg. 42, line. This is contrary from the advice the Applicant received from counsel. Hill v. Lockhart, 106 S.Ct. 366. Applicant testified to this breach and submitted evidence of probative value, Cherry v. State, 385 S.E.2d 625. The Applicant detrimentally relied on this consensual character of no recommendation by the State in considering accepting counsel

advice to plead guilty and surrender his constitutional right to trial. Being counsel advised Applicant to plea based on this advice he should have objected or withdraw Applicant's plea on the ground of Breach of Plea Agreement. Jordon v. State, 374 S.E.2d 683; Thompson v. State, 531 S.E.2d 294. Counsel failed to protect the Applicant's rights governed by the Sixth Amendment in enforcing the plea agreement. The Applicant testified he would not have pled if counsel advice was not correct. Anytime a defendant surrenders his constitutional rights for an inducement or consideration those inducement and consideration must be fulfilled. Santobello v. New York, 92 S.Ct. 495; Thompson v. State, 531 S.E.2d 294; Sprouse v. State, 585 S.E.2d 278. Prior to signing plea agreement Applicant insisted on pursuing trial.

Moreso the Applicant's plea is rendered involuntary and unintelligently entered.

(9) The Applicant preserved the right of the issue not addressed period in the order and those not adequately addressed for a finding of facts and conclusion of law, pursuant to Marlar v. State, supra; and Rule 59(e).

(10) The Applicant request that a new order is entered by the judge (James Barber) and specifically address the facts and State and Federal law, and there relation to relief or denial of each and every separate issue instituted in the record.

On this 20 day of March, 2014

Respectfully submitted,

Alvin S. Samuel, II 351565

Alvin Samuel II

McCI F-4 144-B

386 Redemption Way
McCormick, SC 29899
Applicant

Girl said my name - Carlita

Exhibit 2 2/11/12 343
Neil v. Buggs

Daniel - ID, not pointed out

Mandela said - Alvin Simmons they showed them a picture
w/ my name on it - Mandela's
Christ shared me

Mandela called 911 - did not mention my name

No fingerprints, no guns recovered

I never hit her

She said I hit Mandela too - Mandela didn't say that

Christ asked about bringing up other robbery - NO

Daniel said I had on grey / Everyone else had on white

I did not take any \$ from him

Plea Offer

Cap of 25 / 30 (drop kidnapping)

-tell Dad I called all week but his phone is not answering

2/12/12
Gave client copy of Paul's medical
records as part of his discovery

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.Alvin Stanley Samuels

AKA:

Race: AA Sex: M Age: 21DOB: SS#: [REDACTED]Address: FARROW ROADCity, State, Zip: COLUMBIA, SC 29923 203DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life with

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS4001808A/W#: K668471Date of Offense: 7/23/2010S.C. Code §: 16-23-0490CDR Code #: 0549

SENTENCE SHEET

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45The charge is: ☒ 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:

CATHCART, RICHARDSC Bar#DefendantAttorney for DefendantSC Bar#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:☒ 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. 685 days☐ 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	\$
§ 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	\$	\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

Presiding Judge

Judge Code:

Sentence Date:

_____ 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

Judge Code:

Sentence Date:

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
 STATE VS.
Alvin Stanley Samuels

INDICTMENT/CASE#: 2011GS4001807A/W#: K668470Date of Offense: 7/23/2010S.C. Code §: 16-11-0330(A)CDR Code #: 0139

AKA:

Race: AA Sex: M Age: 21DOB: SS#Address: FARROW ROADCity, State, Zip: COLUMBIA, SC 29823-203DL#: SID#

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADSTO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC) ☐ §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: [Signature] 66485 Alvin S. Samuels II [Signature] 68622
 CATHCART, RICHARD 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 10 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. 60 days☐ 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 (SCCA Surcharge)	\$5	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/ Deputy Clerk Creamer W. McBrideCourt Reporter: D. McClary

SCCA/217 (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 public defender; § 47.12 requires \$500 be paid to Clerk during probation.

Presiding Judge

Judge Code: 2161Sentence Date: 7-12-12
 CERTIFIED COPY
 OF CRIMINAL FILED
 JACOB L. W. McBride
 CLERK OF COURT
 RICHLAND COUNTY
 SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.Alvin Stanley Samuels

AKA:

Race: AA Sex: M Age: 21DOB: SS#:Address: FARROW ROADCity, State, Zip: COLUMBIA, SC 29023 203DL#: SID#:*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADSTO: Robbery / Armed Robbery, robbery while armed or allegedly armed with a deadly weaponin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §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:

CATHCART, RICHARD

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 18 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. 689 days☐ 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	\$
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§ 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		\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2011GS4001806 ✓ Exhibit 5A/W#: K668469Date of Offense: 7/23/2010S.C. Code § 16-11-0330(A)CDR Code #: 0139

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §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:

CATHCART, RICHARD

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 18 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. 689 days☐ 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		\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (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 to be paid to Clerk
during probation.

Presiding Judge

Judge Code: 216Sentence Date: 7-1-2012RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

Exhibit 6

COUNTY OF Richland
STATE VS.

Alvin Stanley Samuels

AKA:

Race: AA Sex: M Age: 21DOB: SS#Address: FARROW ROADCity, State, Zip: COLUMBIA, SC 29023 203DL#: SID#*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder / Attempted MurderINDICTMENT/CASE#: 2011GS4001809A/W#: K668472Date of Offense: 7/23/2010S.C. Code §: 16-03-0029CDR Code #: 3410

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin 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 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:

CATHCART, RICHARD

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 18 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. 685 days☐ 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 (SCCA Surcharge)	\$5	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)	\$	\$
TOTAL	\$	\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (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 Counsel, § 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2161Sentence Date: 7-12-12RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF Richland
 STATE VS.
Alvin Stanley Samuels

AKA: _____
 Race: _____ Sex: M Age: 21
 DOB: _____ SS#: _____
 Address: FARROW ROAD
 City, State, Zip: COLUMBIA, SC 29203
 DL#: _____ SID#: _____

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

in violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095
☐ 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: 6548 Alvin S. Samuels II 68622
CATHCART, RICHARD 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 18 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. 60 days
☐ 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	\$
§ 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	\$	\$

Clerk of Court/ Deputy Clerk Jeanette W. McBride

Court Reporter: D. McCurdy

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4003499
 A/W#: DP12139
 Date of Offense: 7/22/2010
 S.C. Code § : 16-03-0910
 CDR Code #: 0095

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADS

Presiding Judge _____
 Judge Code: 210
 Sentence Date: 7-1
HIGHLAND COUNTY
SOUTH CAROLINA

Exhibit 7

NO sex offender
registry

☐ 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..

OF ORIGINAL FILED,

7-1
210
7-1

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.Alvin Stanley Samuels

AKA:

Race: AA Sex: M Age: 21DOB: SS#: [REDACTED]Address: FARROW ROADCity, State, Zip: COLUMBIA, SC 29023 203DL#: [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: Weapons / Pointing and presenting firearms at a person

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4003498 *Exhibit 8*A/W#: DP12138Date of Offense: 7/22/2010S.C. Code §: 16-23-0410CDR Code #: 0122

SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADSin violation of § 16-23-0410 of the S.C. Code of Laws, bearing CDR Code # 0122☒ 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: [Signature] 66485 Alvin Stanley Samuels II [Signature] 68622
CATHCART, RICHARD 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 10 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. 685 days☐ 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	\$	\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (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

Judge Code: 216Sentence Date: 7-13-2012

RICHLAND COUNTY

SOUTH CAROLINA

STATE OF SOUTH CAROLINA

COUNTY OF Richland
STATE VS.

Alvin Stanley Samuels

AKA:

Race: AA Sex: M Age: 21

DOB: SS#: [REDACTED]

Address: FARROW ROAD

City, State, Zip: COLUMBIA, SC 29023 203

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: Assault & Battery of a High & Aggravated Nature

in violation of § 16-03-0600(1) of the S.C. Code of Laws, bearing CDR Code # 3412

☒ 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: CATHCART, RICHARD 66485 Alvin Samuels II John H. [REDACTED] 88622
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 10 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. 608 5 days

☐ 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	\$
§ 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	\$
§ 44-53-450(C) (Conditional Discharge)	\$350	\$
3% to County (if paid in installments)		\$
TOTAL		\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (06/2010)

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2012GS4003497

A/W#: DP12137

Date of Offense: 7/22/2010

S.C. Code §: 16-03-0600(1)

CDR Code #: 3412

SENTENCE SHEET

☐ CONVICTED OF ☒ PLEADS

Presiding Judge

Judge Code:

Sentence Date:

FILED
21 RICHLAND COUNTY
7 SOUTH CAROLINA

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS
 FOR THE FIFTH JUDICIAL CIRCUIT

Alvin S. Samuels, II, #351567)
)
 Applicant,)
)
)
 vs.)
)
)
 State of South Carolina,)
)
)
 Respondent.)

Case No.: 2013-CP-40-1556

CERTIFICATE OF SERVICE

FILED MAR 21 AM 9:00

The Applicant, Alvin S. Samuels, II, #351567, does hereby certify that a true-copy of a MOTION TO ALTER OR AMEND PURSUANT TO RULE 59(e) and attached exhibits has been delivered upon Richland County Clerk of Court, Jeanette McBride, Assistant Attorney General Megan E. Harrigan and Judge James Barber.

SWORN to and subscribed before me this

21 day of March, 2014

J. C. Franklin
 Notary Public of South Carolina

My Commission Expires 12-16-2019

Alvin S. Samuels II
 Alvin S. Samuels, II, #351567
 McCI F-4 144-B
 386 Redemption Way
 McCormick, SC 29899
 Applicant

Jeanette McBride
 Clerk of Court
 1701 Main Street
 P.O. Box 2766
 Columbia, S.C. 29201

Megan E. Harrigan
 Assistant Attorney General
 P.O. Box 11549
 Columbia S.C. 29211

Judge James Barber
 Presiding Judge
 1701 Main Street
 Columbia S.C. 29201

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

Alvin S. Samuels, II, #351567,)
Applicant,)

v.)

State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2013-CP-40-1556

**ORDER DENYING "MOTION
FOR REHEARING PURSUANT TO
RULE 59(a) AND TO ALTER OR
AMEND PURSUANT TO RULE 59(e)"**

2014 APR -7 AM 10:55
RICHLAND COUNTY
CLERK OF COURT
DEANETTE M. BERNIERE
G.S.

This matter comes before this Court by way of Applicant's "Motion for Rehearing Pursuant to Rule 59(a) and to Alter or Amend Pursuant to 59(e)," asking this Court to alter or amend its Order of Dismissal denying Applicant post-conviction relief.

I.

The records before this Court show that Applicant was during the June 2012 term of the Richland County Grand Jury for: two counts of Armed Robbery (2011-GS-40-01806, -01807), Possession of a Weapon During the Commission of a Violent Crime (2011-GS-40-01808), Attempted Murder (2011-GS-40-01809), Assault and Battery – First Degree (2012-GS-40-03497), Pointing and Presenting a Firearm (2012-GS-40-03498), and Kidnapping (2012-GS-40-03499). He was represented by James Shadd, III, Esquire. On July 12, 2012, Applicant appeared before the Honorable DeAndrea G. Benjamin, where he pled guilty as indicted. Pursuant to negotiations with the State, Judge Benjamin sentenced Applicant to eighteen years imprisonment for each count of Armed Robbery, five years imprisonment for Possession of a Weapon During the Commission of a Violent Crime, eighteen years imprisonment for Attempted Murder, ten years imprisonment for Assault and Battery – First Degree, ten years imprisonment for Pointing and Presenting a Firearm, and eighteen years imprisonment for Kidnapping; with the sentences to be served

concurrently. Applicant did not appeal his convictions and sentences.

II.

Applicant filed an application for post-conviction relief on March 14, 2013. Respondent made its Return on June 21, 2013, requesting an evidentiary hearing be held. Evidentiary hearings into the matter were convened October 2, 2013 and January 22, 2014, both at the Richland County Courthouse. Applicant was present at the hearing and was represented by counsel, Anna Good, Esquire. At the beginning of the second hearing, Applicant moved to relieve counsel, Anna Good, and proceed *pro se*. This Court made an inquiry of both counsel and Applicant, and after determining that the decision was made knowingly, voluntarily, and intelligently, this Court relieved counsel and allowed Applicant to proceed *pro se*.¹ The Respondent was represented by Assistant Attorney General Megan E. Harrigan of the South Carolina Attorney General's Office. By written Order signed March 3, 2014 and filed March 4, 2014, this Court denied and dismissed Applicant's post-conviction relief action with prejudice. A copy of this Order was served on Applicant by the Richland County Clerk of Court as well as Respondent.

On March 20, 2014, Applicant served his "Motion for Rehearing Pursuant to Rule 59(a) and to Alter or Amend Pursuant to 59(e)."

III.

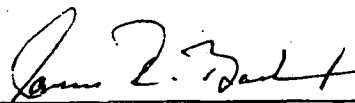
This Court's Order of Dismissal contains the required findings of facts and conclusions of law as required by S.C. Code Ann. § 17-27-80 (1976) and Rule 52(a) SCRPC. See also McCray v. State, 305 S.C. 329, 408 S.E.2d 241 (1991). Having carefully reviewed the entire record in this matter, this Court finds

¹ At this Court's request, counsel Good remained at counsel table for the hearing as "stand by" counsel and to answer any legal questions that Applicant may have during the proceeding.

that no basis for altering or amending is prior ruling.² Therefore, this Court hereby denies the Applicant's Motion in its entirety, and affirms the previous Order of Dismissal.

This Court notes that if the Petitioner desires to secure appellate review of this Order and the Order of Dismissal, a notice of appeal must be filed and served within thirty days of the service of this Order. Petitioner is directed to Rules 203, 206, and 243 of the South Carolina Appellate Court Rules for the appropriate procedures to follow after notice of appeal has been timely filed.

AND, IT IS SO ORDERED this 2nd day of April, 20



JAMES R. BARBER, III
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

² The Court, in its discretion, has considered this matter based upon the motions submitted by the parties and the post-conviction relief file, since oral argument will not aid the Court in reaching its decision. See Rule 59(f), SCRCP.

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2013CP4001556

Alvin S #351567 Samuels II

State of South Carolina

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: _____

Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried, heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit);
☐ Rule 43(k), SCRPC (Settled); ☐ Other _____
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other _____
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other _____

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge _____ Judge Code _____ Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20 _____ and a copy mailed first class or placed in the appropriate attorney's box on this 7 April 2014 to attorneys of record or to parties (when appearing pro se) as follows:

Alvin S #351567 Samuels II

Anna Rawl Good

Megan E. Harrigan

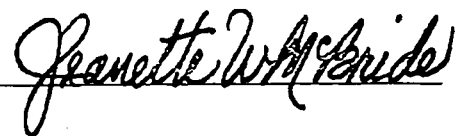
Alvin S #351567 Samuels II

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter _____

Clerk of Court



WITNESSES

(S) LANCE REEVES - CPD

DOCKET NO. 2012GS4003497

The State of South Carolina

County of

Richland

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

JUNE TERM 2012

ARREST WARRANT NUMBER

DP12137

Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

Alvin Stanley Samuels

TRUE BILL

Foreperson of Grand Jury
Date JUN 07 2012

VERDICT

Indictment for
ASSAULT AND BATTERY 1ST DEGREE

SC Code: 16-03-0600(B)(1)

CDR Code: 3411

Foreperson of Petit Jury

Date:

356

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on JUNE 6, 2012, the
Grand Jurors of Richland County present upon their oath:

ASSAULT AND BATTERY 1ST DEGREE

That Alvin Stanley Samuels did in Richland County on or about July 23, 2010, commit an assault and battery upon the victim, CARLETTA WILLIAMS, constituting an unlawful act of injuring the victim likely producing death and/or great bodily injury. All in violation of S.C. Code of Laws, §16-03-0600(c)(1)

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


DAN JOHNSON, SOLICITOR

WITNESSES

(S) LANCE REEVES - CPD

DOCKET NO. 2012GS4003498

The State of South Carolina

County of

Richland

Defendant

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

JUNE TERM 2012

ARREST WARRANT NUMBER

DP12138

Defendant

THE STATE

vs.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

Alvin Stanley Samuels

TRUE BILL

For person of Grand Jury JUN 07 2012
Date

VERDICT

Indictment for
POINTING AND PRESENTING A
FIREARM

SC Code: 16-23-0410

CDR Code: 0122

Foreperson of Petit Jury

Date:

358

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on JUNE 6, 2012, the
Grand Jurors of Richland County present upon their oath:

POINTING AND PRESENTING A FIREARM

That Alvin Stanley Samuels did in Richland County on or about July 23, 2010, point or present a loaded or unloaded firearm, to wit: A PISTOL, at one KOUASSI OGUBI, in violation of Section 16-23-0410, 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

WITNESSES

(S) LANCE REEVES - CPD

DOCKET NO. 2012GS4003499

The State of South Carolina

County of

Richland

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

ARREST WARRANT NUMBER

DP12139

COURT OF GENERAL SESSIONS

JUNE TERM 2012

Defendant

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

Alvin Stanley Samuels

TRUE BILL

For person of Grand Jury
Date JUN 07 2012

VERDICT

Indictment for
KIDNAPPING

SC Code: 16-03-0910

CDR Code: 0095

Foreperson of Petit Jury

Date

360

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

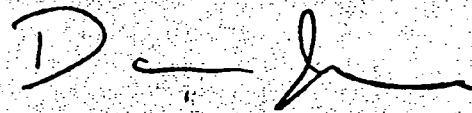
INDICTMENT

At a Court of General Sessions, convened on JUNE 6, 2012, the
Grand Jurors of Richland County present upon their oath:

KIDNAPPING

That Alvin Stanley Samuels did in Richland County on or about July 23, 2010, unlawfully seize, confine, inveigle, decoy, kidnap, abduct or carry away one CARLETTA WILLIAMS, without authority of law, in violation of Section 16-03-0910, 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

WITNESSES

(S) -- Columbia Police Department
Inv. L.C. Reeves

DOCKET NO. 2011GS4001806

The State of South Carolina

County of

Richland

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

APRIL TERM 2011

67

Defendant

K668469

THE STATE

vs.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

ALVIN STANLEY SAMUELS

RECEIVED

Foreperson of Grand Jury APR 14 2011
Date:

VERDICT

Indictment for
ARMED ROBBERY

SC Code: 16-11-0330(A)
CDR Code: 0139

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

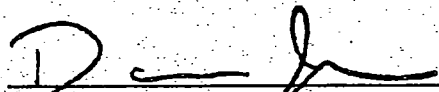
At a Court of General Sessions, convened on **APRIL 13, 2011**, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That ALVIN STANLEY SAMUELS did in Richland County on or about July 23, 2010, commit robbery by feloniously taking from the person or presence of NATHANIEL IRVIN AND DANIEL KUAL, by means of force or intimidation, goods or monies of HIP HOP WEAR, such goods or monies being described as PERSONAL PROPERTY AND U.S. CURRENCY, 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

WITNESSES

(S) - Columbia Police Department
Inv. L.C. Reeves

DOCKET NO. 2011GS4001807

The State of South Carolina

County of

Richland

Defendant

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

APRIL TERM 2011

67

Defendant

K668470

THE STATE

Witness:

C.C.C. PLS. AND G.S.

vs.

ALVIN STANLEY SAMUELS

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury APR 14 2011
Date:

VERDICT

Indictment for
ARMED ROBBERY

SC Code: 16-11-0330(A)
CDR Code: 0139

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on **APRIL 13, 2011**, the Grand Jurors of Richland County present upon their oath:

ARMED ROBBERY

CDR: 0139 16-11-0330(A)

That ALVIN STANLEY SAMUELS did in Richland County on or about July 23, 2010, commit robbery by feloniously taking from the person or presence of NATHANIEL IRVIN AND DANIEL KUAL, by means of force or intimidation, goods or monies of HIP HOP WEAR, such goods or monies being described as PERSONAL PROPERTY AND U.S. CURRENCY, 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

WITNESSES

(S) - Columbia Police Department
Inv. L.C. Reeves

DOCKET NO. 2011-GS-40-01808

The State of South Carolina
County of Richland

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

ARREST WARRANT NUMBER

K668471

67

Defendant

THE STATE
vs.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: APR 14 2011

VERDICT

ALVIN STANLEY SAMUELS

Indictment for

**POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT
CRIME**

SC Code: 16-23-0490
CDR Code: 0549

Foreperson of Petit Jury
Date:

366

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

INDICTMENT

At a Court of General Sessions, convened on **APRIL 13, 2011**, the Grand Jurors of Richland County present upon their oath:

**POSSESSION OF A WEAPON DURING THE COMMISSION
OF A VIOLENT CRIME**

CDR: 0549 16-23-0490

That **ALVIN STANLEY SAMUELS** did in Richland County, on or about **JULY 23, 2010**, possess a firearm, or visibly display what appeared to be a firearm, or visibly displayed a knife, during the commission or attempted commission of a violent crime, in violation of Section 16-23-0490, 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

WITNESSES

(S) - Columbia Police Department
Inv. L.C. Reeves

DOCKET NO. 2011GS4001809

The State of South Carolina

County of

Richland

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

APRIL TERM 2011

67

ARREST WARRANT NUMBER

K668472

Defendant

THE STATE
vs.

Witness:

C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

TRUE BILL

ALVIN STANLEY SAMUELS

Foreperson of Grand Jury APR 14 2011
Date.

VERDICT

Indictment for

ATTEMPTED MURDER

SC Code: 16-03-0029

CDR Code: 3410

Foreperson of Petit Jury
Date:

368

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

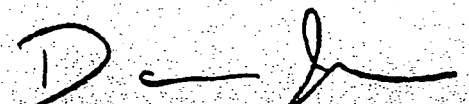
INDICTMENT

At a Court of General Sessions, convened on **APRIL 13, 2011**, the Grand Jurors of Richland County present upon their oath:

ATTEMPTED MURDER

That ALVIN STANLEY SAMUELS did in Richland County on or about July 23, 2010, did with the intent to kill, attempt to kill NATHANIEL IRVIN AND DANIEL KUAL with malice aforethought, either expressed or implied. All in violation of SC Code of Laws § 16-3-29 (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

370

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF
STATE

Richland

VS.

Alvin Stanley Samuels

AKA:

Race: AA Sex: M Age: 21DOB: SS#Address: FARROW ROADCity, State, Zip: COLUMBIA, SC 29023-203DL#: SID#*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Assault & Battery of a High & Aggravated NatureINDICTMENT/CASE#: 2012GS4003497A/W#: DPI2137Date of Offense: 7/22/2010S.C. Code §: 16-03-0600(1)CDR Code #: 3412

SENTENCE SHEET

in violation of § 16-03-0600(1) of the S.C. Code of Laws, bearing CDR Code # 3412☒ 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: CATHCART, RICHARD SC Bar# 66485 Defendant Alvin S. Samuels II Attorney for Defendant Indy Hill SC Bar# 68622WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of 10 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. 685 days☐ 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	\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA/217 (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, § 47.12 requires \$500 be paid to Clerk during probation. **CERTIFIED TRUE COPY OF ORIGINAL FILED**

Presiding Judge

Judge Code: 21Sentence Date: 7-12-2010

21 RICHLAND COUNTY
SOUTH CAROLINA

COUNTY OF Richland
STATE VS.
Alvin Stanley Samuels

INDICTMENT/CASE#: 2012GS4003498

AKA:

A/W#: DP12138Race: AA Sex: M Age: 21Date of Offense: 7/22/2010DOB: SS#: [REDACTED]S.C. Code §: 16-23-0410Address: FARROW ROADCDR Code #: 0122City, State, Zip: COLUMBIA, SC 29033 203DL#: SID#:

SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADSTO: Weapons / Pointing and presenting firearms at a personin violation of § 16-23-0410 of the S.C. Code of Laws, bearing CDR Code # 0122
☒ 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:

CATHCART, RICHARD

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 10 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. 685 days☐ 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 _____

*Fine:

Substance Abuse Counseling ☐

§ 14-1-206 (Assessments 107.5 %)

\$

Random Drug/Alcohol testing ☐

§ 14-1-211(A)(1) (Conv. Surcharge)

\$100

Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge)

\$100

pmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment)

\$12

\$ _____ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test)

\$25

Other: _____

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/ca

Proviso 90.5 (SCCJA Surcharge)

\$5

§ 44-53-450(C) (Conditional Discharge)

\$350

3% to County (if paid in installments)

\$

TOTAL

\$

Presiding Judge

Judge Code: 216Sentence Date: 7-1

Clerk of Court/ Deputy Clerk

Court Reporter: D. Maundy

SCCA/217 (06/2010)

RICHLAND COUNTY

SOUTH CAROLINA

372 STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF Richland
STATE VS.
Alvin Stanley SamuelsINDICTMENT/CASE#: 2012GS4003499A/W#: DP12139Date of Offense: 7/22/2010S.C. Code §: 16-03-0910CDR Code #: 0095AKA: _____
Race: _____ Sex: M Age: 21
DOB: _____ SS#: [REDACTED]
Address: FARROW ROAD
City, State, Zip: COLUMBIA, SC 29023 29203
DL#: _____ SID#: _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Kidnapping / Kidnapping

SENTENCE SHEET

☐ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0910 of the S.C. Code of Laws, bearing CDR Code # 0095☐ 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: [Signature] 6048 Alvin S Samuels II [Signature] 68622
CATHCART, RICHARD 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 18 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. 685 days☐ 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
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ca
Proviso 90.5 (SCCJA Surcharge)	\$5
§ 44-53-450(C) (Conditional Discharge)	\$350
3% to County (if paid in installments)	\$
TOTAL	\$

Clerk of Court/ Deputy Clerk

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: _____

NO sex offender
registry
☐ 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.CERTIFIED TRUE COPY
OF ORIGINAL FILED,

Presiding Judge

Judge Code: 210Sentence Date: 7-15

RICHLAND COUNTY

SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

373

COUNTY OF Richland

STATE VS.

Alvin Stanley Samuels

AKA:

Race: AA Sex: M Age: 21

DOB: SS#: [REDACTED]

Address: FARROW ROAD

City, State, Zip: COLUMBIA, SC 29023 203

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 / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

INDICTMENT/CASE#: 2011GS4001806 ✓

A/W#: K668469

Date of Offense: 7/23/2010

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45
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] CATHCART, RICHARD SC Bar# 6685 Alvin J. Samuels II Defendant [Signature] Attorney for Defendant 686222 SC Bar#

 WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 18 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. 60 days☐ 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	\$	\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCC 1212 (05/2010)

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

Judge Code: 216Sentence Date: 7-18-2012

RICHLAND COUNTY

SOUTH CAROLINA

CERTIFIED TRUE COPY OF ORIGINAL FILED

374 STATE OF SOUTH CAROLINA
COUNTY OF Richland
STATE VS.
Alvin Stanley Samuels

INDICTMENT/CASE#: 2011GS4001807

A/W#: K668470

Date of Offense: 7/23/2010

S.C. Code § : 16-11-0330(A)

CDR Code #: 0139

AKA:

Race: A.A. Sex: M Age: 21

DOB: SS#: [REDACTED]

Address: FARROW ROAD

City, State, Zip: COLUMBIA, SC 29623-203

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 / Armed Robbery, robbery while armed or allegedly armed with a deadly weapon

SENTENCE SHEET

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

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

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] CATHART, RICHARD SC Bar# [Signature] Defendant [Signature] Attorney for Defendant [Signature] SC Bar# 68622

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

for a determinate term of 10 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. 60 days

☐ 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	\$

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:

☐ Condition Discharge, § 44-53-450(C) requires \$350 be paid to the Clerk prior to case disposition

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

Presiding Judge

Judge Code:

Sentence Date:

2011 GS 4001807
JUDGE
OF ORIGINAL FILED
JUL 27 2011
CLERK OF COURT
RICHLAND COUNTY
SOUTH CAROLINA

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

375

COUNTY OF Richland

STATE VS.

Alvin Stanley Samuels

INDICTMENT/CASE#: 2011GS4001808

A/W#: K668471

Date-of-Offense: 7/23/2010

S.C. Code § 16-23-0490

CDR Code #: 0549

AKA:

Race: AA Sex: M Age: 21

DOB: SS#: [REDACTED]

Address: FARROW ROAD

City, State, Zip: COLUMBIA, SC 29033 203

DL#: SID#:

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

☐ CONVICTED OF or ☒ PLEADS

TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life witho

SENTENCE SHEET

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

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45 w/minor 1st or Lewd Act)The charge is: ☒ A. Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The pleas is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

CATHCART, RICHARD

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 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:☒ 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. 685 days☐ 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	\$
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§ 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	\$	\$

Clerk of Court/ Deputy Clerk

Court Reporter:

SCCA017 (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

Judge Code: 2161Sentence Date: 7-12-12

