

1 3 AND 3:30.

2 Q WELL, DIDN'T YOU TYPE THIS UP AS YOU WENT ALONG
3 OR DID YOU GO BACK AND TYPE IT UP FROM YOUR
4 NOTES?

5 A YOU'RE TAKING ABOUT THE STATEMENTS?

6 Q THE WHOLE DOCUMENT?

7 A SURE, RIGHT WHEN THE PEOPLE ARE GIVING THE
8 STATEMENT THEN I TYPE IT DOWN.

9 Q ALL RIGHT. AND YOU TYPE THE TIMES IN BEFORE
10 THEY SIGN BECAUSE YOU JUST SAID YOU DON'T WANT
11 TO CHANGE IT AFTER THEY SIGN IT?

12 A RIGHT.

13 Q WELL, YOU HAD A WATCH ON?

14 A AND MY BEST EXPLANATION FOR YOU, OKAY, BETWEEN 3
15 AND 3:30 IS I ALREADY SAW THAT AND I WASN'T
16 ABOUT TO CHANGE THE STATEMENTS AFTER THEY LEFT.
17 I JUST WOULDN'T DO THAT, SIR.

18 Q BUT ACCORDING TO THE STATEMENTS THAT Y'ALL
19 PRODUCED, YOU'RE WITH GARY MOFFAT FROM 3 TO 4:05
20 AND ANTONIO FROM 3:30 TO 4:10?

21 A RIGHT, SO NO MATTER WHAT THE OVERLAP THERE I
22 INTERVIEWED ANTONIO SOON AFTER GARY. BUT GARY
23 DID COME FIRST THAT I CAN TELL YOU.

24 Q SO YOU'RE SAYING YOU HAD ALL GARY'S INFORMATION
25 BEFORE YOU WENT AND TALKED TO ANTONIO?

1 A YES, SIR, AS WELL AS THAT LIST YOU HAD THERE, I
2 WOULD HAVE HAD THAT OTHER INFORMATION TOO
3 AVAILABLE TO ME. THAT'S HOW I KNEW THE
4 DISCREPANCIES YOU ASKED ME ABOUT.

5 Q ISN'T IT IMPORTANT TO ACCURATELY REFLECT
6 EVERYTHING ON A STATEMENT?

7 A IT CERTAINLY IS.

8 Q NOW THERE ARE INCONSISTENCIES BETWEEN GARY'S
9 STATEMENT, MONTA'S STATEMENT, AND TERRANCE'S
10 STATEMENT AS WELL, AREN'T THERE? NUMEROUS
11 INCONSISTENCIES BETWEEN THE OTHER THREE?

12 A I SAW SOME INCONSISTENCIES BETWEEN THE
13 STATEMENTS. NUMEROUS, THAT'S A JUDGMENT.

14 Q YOU DIDN'T GO BACK AND INTERVIEW ANY OF THEM,
15 DID YOU?

16 A WHO?

17 Q GARY, TERRANCE, OR MONTA?

18 A NO, SIR.

19 Q NOW WITH REGARD TO THE ARREST ITSELF, YOU WERE
20 THE LEAD OFFICER, YOU KNOW THAT MR. DIAZ WHEN HE
21 WAS QUESTIONED THAT NIGHT THAT MORNING?

22 A YEAH.

23 Q SAID THERE WERE ONLY THREE PEOPLE INVOLVED IN
24 THIS?

25 A MR. DIAZ SAID THAT, IS THAT IN HIS STATEMENT?

1 Q YES, SIR.

2 A OKAY.

3 Q YOU KNEW THAT THAT NIGHT. Y'ALL WERE LOOKING
4 FOR FOUR PEOPLE THAT NIGHT, Y'ALL WERE LOOKING
5 FOR THREE PEOPLE, ISN'T THAT CORRECT?

6 A WELL, YOU'RE STATING THAT BUT I DON'T KNOW THAT
7 TO BE THE TRUTH, SIR.

8 Q WELL, YOU ARE THE LEAD INVESTIGATOR. YOU'VE
9 REVIEWED THESE FILES. THAT'S WHAT YOU WERE
10 LOOKING FOR IMMEDIATELY AFTER THE SCENE. MR.
11 DIAZ TOLD EVERYBODY THAT IT WAS THREE PEOPLE.

12 A NO, SIR. WELL, MY STATEMENT WOULD BE, I DIDN'T
13 KNOW WHAT WE WERE LOOKING FOR.

14 Q WELL --

15 A OKAY.

16 Q OFFICER SIMMS WAS THE FIRST ONE ON THE SCENE,
17 WAS HE NOT?

18 A HE MAY HAVE BEEN. I'D HAVE TO LOOK AT THE CASE
19 FOLDER FOR ALL THAT.

20 Q LOOK AT HIS STATEMENT AND LOOK AT WHAT I
21 HIGHLIGHTED.

22 A ALL RIGHT.

23 Q WHAT DOES HE SAY Y'ALL ARE LOOKING FOR THAT DIAZ
24 TOLD HIM?

25 A YOU TALKING ABOUT OFFICER SIMMS?

1 Q YES, MASTER PATROL OFFICER SIMMS?

2 A WELL, WHAT PART OF THIS DO YOU WANT ME TO READ?

3 Q THE PART I HAVE HIGHLIGHTED TALKING ABOUT HOW
4 MANY PEOPLE MR. DIAZ SAID THEY WERE LOOKING FOR?

5 A OFFICER SIMMS NOW WOULD HAVE WRITTEN THE THREE
6 BLACK MALES APPROACHED THE BMW, ONE OF THEM TOLD
7 KRENN, DRIVER, GIVE HIM ALL HIS MONEY. KRENN
8 TOLD THE SUSPECT THAT HE DIDN'T HAVE ANY MONEY.
9 THE SUSPECT PULLED OUT A HANDGUN AND SHOT KRENN.
10 KRENN AND DIAZ GOT OUT OF THE VEHICLE AND KRENN
11 COLLAPSED AT THE REAR OF THE VEHICLE.

12 Q SO ACCORDING TO THE STATEMENT, INFORMATION Y'ALL
13 HAD FROM DIAZ IMMEDIATELY AFTERWARDS, Y'ALL WERE
14 LOOKING FOR THREE INDIVIDUALS.

15 A YOU'RE ASSUMING THAT.

16 THE COURT: EXCUSE ME JUST A MINUTE. YOU KEEP
17 ASKING HIM THAT BUT I DON'T INTERPRET THAT AS,
18 HE SAYS HE DOESN'T REMEMBER HOW MANY THEY ARE
19 LOOKING FOR AND THAT DOESN'T SAY IT WAS JUST
20 THREE PEOPLE. HE SAID THREE GOT OUT OF THE CAR.
21 I MEAN, I DON'T WANT TO GET ARGUMENTATIVE WITH
22 YOU BUT OF COURSE HE'S YOUR WITNESS, BUT I JUST
23 WANT YOU TO SEE THAT HIS ANSWERS, THE FACT THAT
24 THAT STATEMENT SAYS THREE PEOPLE GOT OUT OF THE
25 CAR, YOU'RE TRYING TO TRANSLATE THAT INTO THEM

1 LOOKING FOR THREE PEOPLE AND HE'S SAYING HE
2 DOESN'T KNOW, BUT YOU CAN KEEP GOING ON THAT
3 LINE AS LONG AS YOU WANT TO WITH HIM, BUT I JUST
4 WANT TO TELL YOU WHAT I'M HEARING. GO AHEAD.

5 THERE MAY BE SOMETHING ELSE IN THERE, BUT WHAT
6 YOU READ JUST SAID THAT THREE PEOPLE GOT OUT OF
7 THE CAR. DOESN'T MEAN THERE WEREN'T TEN MORE IN
8 THE CAR.

9 A SIR, TO TRY TO ANSWER YOUR QUESTION --

10 THE COURT: JUST LET HIM ASK YOU THE NEXT
11 QUESTION.

12 A OKAY.

13 Q LET ME JUST ASK YOU THIS.

14 A ALL RIGHT.

15 Q PRIOR TO THE CHASE OF ANTONIO, MONTA, AND THOSE
16 OTHER TWO BOYS?

17 A YES, SIR.

18 Q DID Y'ALL HAVE ANY MORE INFORMATION THAT THERE
19 WERE ANY MORE THAN THREE PEOPLE INVOLVED IN
20 THIS?

21 A RIGHT, HERE'S WHAT I CAN TELL YOU. WHEN I WAS
22 OUT AT THE CRIME SCENE AND THERE WERE ACTUALLY
23 TWO NOW WHERE THE CAR ENDED UP, THE BMW.

24 Q RIGHT.

25 A AND WHERE THE SHOOTING OCCURRED.

1 Q RIGHT.

2 A OKAY. PROBABLY WITHIN WHAT A QUARTER MILE OF
3 EACH OTHER.

4 Q CORRECT.

5 A OKAY. WHEN I GOT DONE LOOKING AT BOTH OF THOSE,
6 ALL I KNEW WAS WE WERE LOOKING FOR A BLUE CAR
7 WITH MORE THAN ONE PERSON IN IT AND THAT'S IT.

8 Q NOW YOU INTERVIEWED, YOU WERE THE ONE WHO TOOK
9 TOWANDA BURRIS ALSO KNOWN AS CHYENCA DIXON TO
10 THE POLICE STATION, RIGHT?

11 A YES, SIR.

12 Q DID Y'ALL PLACE HER UNDER ARREST AND TAKE HER TO
13 THE POLICE STATION?

14 A NO, SHE VOLUNTARILY WENT WITH ME.

15 Q SHE VOLUNTARILY WENT WITH YOU?

16 A YES, SIR.

17 Q WAS SHE FREE TO LEAVE THE POLICE STATION AT ANY
18 TIME?

19 A DEFINITELY.

20 Q AND DID YOU GIVE HER, DID SHE EVER ASK FOR AN
21 ATTORNEY WHILE SHE WAS BACK THERE WITH YOU?

22 A NO, SIR.

23 Q DID YOU GIVE HER THE MIRANDA RIGHTS?

24 A NO, SIR.

25 Q NOW WHEN YOU LET HER GO, Y'ALL DROVE HER BACK TO

1 THE HOUSE WHERE YOU SUBSEQUENTLY ARRESTED
2 ANTONIO AND MONTA, DID YOU NOT?

3 A DROVE HER BACK?

4 Q YES, SIR.

5 A I DON'T KNOW HOW SHE GOT BACK THERE. SHE
6 ACTUALLY HAD TO GET BACK THERE TWICE I THINK,
7 RIGHT?

8 Q WELL, I KNOW THE TIME, Y'ALL TOOK HER TO THE
9 POLICE STATION FIRST THING THAT MORNING?

10 A I TOOK HER THERE.

11 Q YOU TOOK HER THERE?

12 A RIGHT.

13 Q AND AFTER YOU GOT DONE QUESTIONING HER YOU LET
14 HER GO, RIGHT?

15 A RIGHT. SO THAT WOULD BE ONCE.

16 Q RIGHT.

17 A RIGHT.

18 Q DO YOU KNOW HOW SHE GOT BACK THAT TIME?

19 A NO, SIR, I DON'T REMEMBER HOW SHE GOT BACK. WE
20 MAY HAVE GIVEN HER A RIDE. I DON'T KNOW. WE
21 MIGHT NOT HAVE.

22 Q WITH REGARD TO THAT SITUATION, Y'ALL
23 SUBSEQUENTLY, IMMEDIATELY AFTER YOU GOT DONE
24 INTERVIEWING HER, Y'ALL WENT OUT TO ARREST
25 ANTONIO AND MONTA, DID YOU NOT?

1 A NOW WHEN YOU SAY Y'ALL WHO DO YOU MEAN?

2 Q THE POLICE DEPARTMENT. YOU, OTHER PEOPLE ON THE
3 SWAT TEAM. YOU WERE THE LEAD INVESTIGATOR,
4 THAT'S WHY I'M ASKING Y'ALL?

5 A OKAY, BUT WHEN YOU SAY Y'ALL I JUST DON'T KNOW
6 WHO YOU MEAN. WHO IT WAS, I STAYED IN THE
7 STATION BECAUSE I WAS DOING OTHER THINGS WITH
8 THIS INVESTIGATION AND CAPTAIN CABINESS CALLED A
9 NUMBER OF OFFICERS TO GO TO TWO LOCATIONS THAT
10 WE KNEW ABOUT THAT WE NEEDED TO LOOK INTO.

11 Q ALL RIGHT.

12 A THAT'S WHAT IT WOULD HAVE BEEN.

13 Q SO WHEN YOU LET CHYENCA DIXON ALSO KNOWN AS
14 TOWANDA BURRIS GO?

15 A YES, SIR.

16 Q DID YOU GO GET AN ARREST WARRANT FOR ANTONIO AND
17 MONTA?

18 A WHAT'S YOUR QUESTION NOW?

19 Q ONCE YOU LET HER GO THAT DAY, THAT MORNING, THAT
20 FIRST TIME, DID YOU GO TO GET AN ARREST WARRANT
21 FOR ANTONIO AND MONTA?

22 A WELL, THE WARRANTS WEREN'T PREPARED YET.

23 Q DID YOU GO AND ATTEMPT TO OBTAIN A WARRANT?

24 A YOU MEAN RIGHT AT THAT VERY MOMENT WHEN SHE
25 LEFT?

1 Q YEAH.

2 A ALL THAT WAS IN THE WORKS, BUT THERE WERE NO
3 WARRANTS BEING TYPED IF THAT'S YOUR QUESTION I'M
4 TRYING TO ANSWER IT. IN OTHER WORDS, WAS
5 SOMEBODY SITTING AT A TERMINAL OR AT A
6 TYPEWRITER TYPING OUT A WARRANT, NO, SIR.

7 Q WERE YOU IN THE PROCESS OF DOING THAT?

8 A THAT'S ONE OF THE THINGS THAT HAD TO GET DONE.

9 Q ALL RIGHT.

10 A BUT TYPICALLY NOW IN A CASE LIKE THIS JUST TO
11 LET YOU KNOW HOW IT GOES, WE WOULDN'T DO THOSE
12 WARRANTS UNTIL A LATER TIME WHEN WE DECIDED
13 EXACTLY WHAT THE CHARGES WERE EVEN THOUGH WE
14 WOULD KNOW THAT WE HAD A MURDER CASE WE THOUGHT,
15 ALL RIGHT, AND WE HAD PROBABLE CAUSE FOR ARREST
16 BUT THAT DOESN'T MEAN WE'RE GOING TO DO ARREST
17 WARRANTS. WE DON'T NEED AN ARREST WARRANT TO
18 MAKE AN ARREST.

19 Q YOU DON'T NEED AN ARREST WARRANT TO MAKE AN
20 ARREST?

21 A WE DON'T NEED TO BE HOLDING IT IN OUR HANDS TO
22 MAKE THAT ARREST, NO, SIR.

23 Q DO YOU NEED IT SIGNED SOMEWHERE?

24 A IT HAS TO BE SIGNED, THAT'S RIGHT.

25 Q HAS TO BE SIGNED. AT THE TIME YOU ARRESTED

1 ANTONIO YOU DIDN'T HAVE A SIGNED ARREST WARRANT?

2 A NO, I THINK YOU NEED TO DISTINGUISH BETWEEN
3 PROBABLE CAUSE FOR THE ARREST AND THE ARREST
4 WARRANT.

5 Q WELL --

6 A IS THAT WHAT YOU ARE ASKING ME?

7 Q I JUST ASKED YOU, AT THE TIME YOU ARRESTED
8 ANTONIO THERE WAS NO SIGNED ARREST WARRANT, WAS
9 THERE?

10 A NO, SIR, THAT'S WHAT I SAID.

11 Q AT THE TIME YOU ARRESTED ANTONIO, YOU HAD
12 SUFFICIENT TIME TO GO TO A MAGISTRATE TO GET A
13 WARRANT BECAUSE DELORES WILLIAMS WAS RIGHT THERE
14 AT THE POLICE STATION; SHE WAS ON DUTY, WASN'T
15 SHE?

16 MR. ANTHONY: YOUR HONOR, I OBJECT AT THIS
17 POINT. I UNDERSTAND THAT THERE IS SOME
18 RELEVANCE TO WHAT THE OFFICER KNEW WHEN HE BEGAN
19 THE INTERVIEW, BUT I THINK HE'S GETTING FAR
20 AFIELD OF THE DENNO HEARING THAT WE'RE SUPPOSED
21 TO BE DOING. I DON'T REALLY SEE HOW IT MATTERS
22 IF SOMEBODY WAS THERE TO TYPE UP THE WARRANT.

23 THE COURT: I OVERRULE THE OBJECTION. GO AHEAD.

24 MR. D'AGOSTINO: THANK YOU, YOUR HONOR.

25 Q DELORES WILLIAMS WAS ON DUTY, SHE'S THE

1 MAGISTRATE AND OFTEN SIGNS WARRANTS, SHE WAS
2 AVAILABLE TO SIGN A WARRANT THAT MORNING?

3 A THAT I DON'T KNOW. I DON'T KNOW DELORES
4 WILLIAMS WAS ON DUTY OR NOT.

5 Q WELL, THERE ARE MAGISTRATES AT THE POLICE
6 STATION?

7 A YES, THERE ARE.

8 Q ALMOST 24 HOURS AND DEFINITELY AT NINE A.M. IN
9 THE MORNING.

10 A THIS WOULD HAVE BEEN AFTER EIGHT O'CLOCK
11 PROBABLY SO, BUT DID I SEE THEM, NO.

12 Q DID YOU OBTAIN AN ARREST WARRANT BEFORE YOU WENT
13 TO ANTONIO'S OR YOU SENT WORD TO ARREST ANTONIO
14 GORDON?

15 A NO, WE WOULD HAVE DONE THOSE WARRANTS OURSELVES
16 TOO.

17 Q AND WHO MADE THE DECISION TO ARREST ANTONIO
18 GORDON?

19 A THAT WOULD HAVE BEEN CAPTAIN CABINESS BASED ON
20 THE INFORMATION I HAD GIVEN HIM FROM THE
21 STATEMENTS I TOOK FROM CHYENCA DIXON.

22 Q ALL RIGHT. WHAT DID YOU DO TO VERIFY ANY OF THE
23 INFORMATION IN THOSE STATEMENTS THAT YOU GOT
24 FROM CHYENCA DIXON CONSIDERING THAT SHE'D GIVEN
25 YOU AN ALIAS AND A TOTALLY DIFFERENT STATEMENT

1 THE FIRST TIME?

2 A VERIFICATION?

3 Q YES.

4 A AFTER SHE GAVE HER SECOND STATEMENT, THAT
5 PROVIDED THE PROBABLE CAUSE WE NEEDED FOR THE
6 ARREST.

7 Q WHAT INFORMATION DID YOU HAVE TO SUBSTANTIATE
8 THAT CHYENCA DIXON WAS A RELIABLE SOURCE OF
9 INFORMATION?

10 A WELL, WE HAD THE SUSPECT VEHICLE FIRST OF ALL,
11 OKAY, SO WE HAD THE CAR. ALL RIGHT. AND WE HAD
12 THE, QUITE A COMPREHENSIVE STATEMENT IN MY
13 ESTIMATION FROM CHYENCA DIXON, ALL RIGHT. NOW
14 IF YOU WANT ME TO EXPLAIN WHY HER STATEMENT WAS
15 RELIABLE I CAN DO THAT.

16 Q WELL, FIRST I WANT TO ASK YOU SOME QUESTIONS.

17 A OKAY.

18 Q YOUR FIRST STATEMENT FROM CHYENCA ISN'T --

19 A ---CHYENCA. IT'S TOWANDA BURRIS.

20 Q IT'S TOWANDA AND IT DOESN'T GIVE YOU ANY
21 INFORMATION. SHE LIED TO YOU ABOUT HER IDENTITY
22 SO THEN YOU TAKE HER BACK THERE AGAIN AND THEN
23 YOU TALKED TO HER AGAIN, RIGHT?

24 A RIGHT.

25 Q AND YOU GET, IN FACT, THAT STATEMENT IS IN THREE

1 DIFFERENT SECTIONS BECAUSE SHE LIED TO YOU
2 THROUGH THE FIRST PART OF IT THEN YOU'RE SAYING
3 SHE WENT BACK IN AS I REMEMBER THE STATEMENT AND
4 CHANGED SOME THINGS.

5 A THE FIRST OR SECOND STATEMENT?

6 Q IN THE SECOND STATEMENT.

7 A I HAVE TO LOOK AT IT AND SEE IT TO SEE WHAT YOU
8 ARE TALKING ABOUT.

9 Q I'M GOING TO GIVE IT TO YOU.

10 A OKAY.

11 Q I DON'T WANT YOU TO GO WITHOUT LOOKING AT IT.

12 A THANK YOU.

13 Q NOW DIDN'T SHE GIVE YOU A SUMMARY AND IT DOESN'T
14 IMPLICATE ANTONIO GORDON. IT IMPLICATES ANTONIO
15 COUSAR OR SOMETHING LIKE THAT?

16 A COUSAR.

17 Q IS THAT HOW THEY SAY THAT, WHATEVER.

18 A THIS IS HER SECOND STATEMENT.

19 Q THIS IS HER SECOND STATEMENT I BELIEVE. IS THAT
20 HER SECOND STATEMENT? I DON'T KNOW.

21 A THIS IS HER SECOND STATEMENT.

22 Q THAT'S WHAT I UNDERSTAND IT TO BE. THEN SHE'S
23 GOES BACK IN AND SAYS IN THE PARAGRAPH I LIED
24 IN MY FIRST STATEMENT BECAUSE I KNEW TERRANCE
25 SHOT THE BOY AND I DIDN'T WANT TO SEE HIM GO TO

1 JAIL AND ALSO BECAUSE THE CAR BELONGS TO MY
2 BOYFRIEND AND I DIDN'T WANT HIM TO GET IN ANY
3 TROUBLE.

4 A RIGHT.

5 Q TERRANCE SOMETHING JUST GOT A GOLD SOMETHING OR
6 OTHER?

7 A A RACK.

8 Q RACK. AND THEN SHE WENT BACK IN AND CHANGED AND
9 ADDED ANOTHER PARAGRAPH, RIGHT?

10 A THAT'S RIGHT.

11 Q DID SHE SIGN EACH ONE OF THOSE PARAGRAPHS?

12 A YES.

13 Q OR DID SHE JUST SIGN?

14 A SHE INITIALED HERE.

15 Q ALL RIGHT.

16 A OKAY. AND THEN SHE SIGNED THERE. OBVIOUSLY SHE
17 SIGNED THERE.

18 Q ALL RIGHT. SO ACTUALLY I WAS WRONG. SHE
19 ACTUALLY CHANGED IT, YEAH, SHE DID CHANGE IT TWO
20 TIMES AFTER THE INITIAL PARAGRAPH.

21 A AND I THINK I CAN ANSWER TWO OF YOUR QUESTIONS
22 AT THE SAME TIME BUT GO AHEAD.

23 Q GO AHEAD AND ANSWER THE QUESTIONS.

24 A WHAT YOU'RE ASKING IS WHY SHE WAS BELIEVABLE
25 WHEN OBVIOUSLY IN HER STATEMENT THERE WOULD BE

1 WHAT WOULD APPEAR TO YOU TO BE INCONSISTENCIES.
2 ONE BEING THAT I CAN POINT OUT COUSAR, ANTONIO
3 COUSAR. FIRST NAME ANTONIO AND THE SECOND NAME
4 COUSAR, OKAY. AND WE ALREADY KNEW ABOUT ANTONIO
5 GORDON. ALL RIGHT.

6 Q WHAT DID YOU KNOW ANTONIO GORDON?

7 A WELL, GO BACK TO THE FIRST STATEMENT. WHAT'S
8 HER FIRST STATEMENT?

9 Q HER FIRST STATEMENT?

10 A YEAH.

11 Q SURE.

12 A LOOK IN THIS STATEMENT HERE SHE MENTIONS MY
13 BOYFRIEND IS ANTONIO GORDON.

14 Q RIGHT.

15 A OKAY. SO I KNOW THAT WHEN I'M INTERVIEWING HER,
16 ALL RIGHT. I ALSO KNOW SHE'S LYING THROUGH THIS
17 STATEMENT HERE.

18 Q HOW DO YOU KNOW THAT?

19 A THAT'S WHY I INTERVIEWED HER A SECOND TIME, SIR.

20 Q HOW DID YOU KNOW SHE WAS LYING TO CAUSE YOU TO
21 INTERVIEW HER A SECOND TIME?

22 A BECAUSE ALL I CAN TELL YOU IS I DIDN'T BELIEVE
23 HER BASED ON MY EXPERIENCE. AND SHE GAVE A VERY
24 SHORT STATEMENT WHEN A LOT MORE WENT ON BUT
25 OBVIOUSLY BY HER FIRST STATEMENT SHE KNEW QUITE

1 A BIT ABOUT THIS. THERE IS TELLTALE SIGNS
2 THERE.

3 Q BUT SHE DIDN'T HAVE ANY DIRECT INFORMATION THAT
4 SHE KNEW?

5 A KNEW WHAT?

6 Q KNEW ANYTHING ELSE JUST IT WAS YOUR HUNCH?

7 A WELL, I THINK WHEN I TOOK THIS STATEMENT FROM
8 HER, I KNEW SHE KNEW.

9 Q AND THEN YOU GOT INTO THE SECOND STATEMENT AND
10 SHE LIED IN THE FIRST PART OF THE SECOND
11 STATEMENT AND THEN STARTED MAKING CHANGES AT THE
12 BOTTOM HALF?

13 A BUT YOU ASKED ME HOW I WOULD HAVE KNOWN ANYTHING
14 ABOUT ANTONIO GORDON AND THAT'S WHY WE BROUGHT
15 OUT THIS FIRST STATEMENT HERE AND THAT'S BECAUSE
16 SHE TOLD ME HER BOYFRIEND WAS ANTONIO GORDON AND
17 THEN IN HER SECOND STATEMENT SHE MENTIONED
18 ANTONIO GORDON AGAIN AND THEN WENT ON TO TRY TO
19 BLAME IT ON ANTONIO COUSAR AND DOWN HERE
20 TERRANCE MCCREARY. EVERYBODY EXCEPT ANTONIO
21 GORDON, OKAY, AND THAT'S HER BOYFRIEND. SO IT
22 WOULD OCCUR TO ME AS AN INVESTIGATOR, COULD SHE
23 TRY TO PROTECT HER BOYFRIEND.

24 Q WHY DIDN'T YOU GO GET AN ARREST WARRANT AS
25 OPPOSED TO IMMEDIATELY GOING OUT THERE AND

1 ARRESTING HIM WITHOUT A WARRANT?

2 A WELL, FIRST OF ALL, SIR, I DIDN'T GO OUT AND
3 ARREST THEM. AS I STATED BEFORE THAT WAS
4 HANDLED BY CAPTAIN CABINESS. SECOND OF ALL, ON

5 A CASE SUCH AS THIS WITH THE SERIOUSNESS OF IT
6 AND SO ON I WOULD SAY TIME IS OF THE ESSENCE.

7 ONCE YOU HAVE PROBABLE CAUSE TO GO TRY AND

8 ARREST THESE PEOPLE AND PUT THEM IN JAIL, THAT'S

9 WHY HE DIDN'T WAIT AROUND FOR AN ARREST WARRANT

10 AND HE DIDN'T HAVE TO LEGALLY EITHER SO.

11 Q I'LL LEAVE THAT FOR THE COURT TO DECIDE.

12 A OKAY.

13 Q NOW ANTONIO HAD A BOND HEARING THAT DAY, DID HE
14 NOT ON THE 23?

15 A NOW WE HAVE TO REFER TO THE PAPERWORK.

16 MR. D'AGOSTINO: I'D LIKE TO HAVE THIS MARKED
17 FOR IDENTIFICATION.

18 (DEFENDANT'S EXHIBIT ONE BOND PAPERS MARKED FOR
19 IDENTIFICATION.)

20 Q I HAND YOU WHAT'S BEEN MARKED AS DEFENDANT'S
21 ONE FOR IDENTIFICATION. THAT'S A COPY OF HIS
22 BOND PAPERS WAIVING HIM ON UP TO GENERAL
23 SESSIONS AND HAVE TO SET HIS BOND, RIGHT?

24 A RIGHT.

25 Q IS THAT RIGHT?

1 A DO THEY HAVE TO SET THE BOND, RIGHT.

2 Q THOSE ARE THE PAPERS RELATING TO BOND JULY 23,
3 1998.

4 A NOTICE OF INITIAL APPEARANCE DIRECTING HIM TO
5 APPEAR ON AUGUST 28.

6 Q RIGHT. AND THAT WAS SIGNED ON JULY 23, 1998,
7 CORRECT?

8 A THAT'S RIGHT.

9 Q AND THIS WOULD HAVE BEEN GIVEN TO HIM AT THE
10 TIME HE HAD HIS BOND HEARING?

11 A BY JUDGE LONG ON JULY 23, 1998.

12 Q RIGHT.

13 MR. D'AGOSTINO: I'D LIKE TO MAKE THIS PART OF
14 THE RECORD, BUT I DON'T WANT TO WAIVE ANY RIGHTS
15 FOR MOTIONS AT THE CLOSE OF THE STATE'S CASE BUT
16 SINCE IT'S JUST A PRE-TRIAL MATTER I SUBMIT I
17 CAN DO THAT WITHOUT.

18 THE COURT: BE ADMITTED. ANY OBJECTION.

19 MR. ANTHONY: NO, THERE IS NO OBJECTION.

20 Q DO YOU KNOW THE WHOLE TIME THAT ANTONIO WAS
21 THERE FROM THE TIME OFFICER WALDROP FINISHED TO
22 THE TIME YOU STARTED WITH HIM, WAS HE GIVEN
23 LUNCH OR WAS HE GIVEN THE OPPORTUNITY TO GO TO
24 THE RESTROOM OR ANYTHING OF THAT NATURE?

25 A I CAN'T ANSWER THAT.

1 Q WHEN YOU WERE TAKING ANTONIO'S STATEMENT, DID
2 YOU HAVE YOUR WEAPON WITH YOU, ON YOU?

3 A I WOULD HAVE, YES, SIR.

4 Q YOU WOULD HAVE?

5 A YUP.

6 Q AND THE ROOM WHERE OFFICER WALDROP TOOK THIS
7 STATEMENT, THAT CONFERENCE ROOM, IS THAT THE
8 SHIFT CHANGE ROOM AS WELL?

9 A NO, SIR.

10 Q IT'S NOT?

11 MR. D'AGOSTINO: THOSE ARE ALL THE QUESTIONS I
12 HAVE. THANK YOU VERY MUCH, OFFICER THICKENS.

13 MR. ANTHONY: JUST BRIEFLY.

14 REDIRECT EXAMINATION BY MR. ANTHONY:

15 Q OFFICER THICKENS, AFTER YOU FINISHED TAKING YOUR
16 STATEMENT FROM MR. GORDON, WHERE DID YOU TAKE
17 HIM?

18 A I BELIEVE HE WAS ESCORTED OUT OF THE DETECTIVE
19 DIVISION, BUT I DIDN'T TAKE HIM ANYWHERE MYSELF.

20 Q WHERE WOULD HE HAVE BEEN TAKEN EVENTUALLY?

21 A HE WOULD HAVE MOST LIKELY BE ESCORTED PROBABLY
22 BACK TO THE HOLDING FACILITY AT THAT POINT.

23 Q AND THAT'S ALL THE QUESTIONS I HAVE. I WOULD
24 MOVE THE STATEMENT INTO EVIDENCE AS STATE'S
25 EXHIBIT NUMBER FOUR FOR THE HEARING. I BELIEVE

1 I NEGLECTED TO DO THAT.

2 THE COURT: ANY OBJECTION?

3 MR. D'AGOSTINO: WITH THE SAME LIMITATION FOR
4 THIS HEARING ONLY.

5 THE COURT: BE RECEIVED. ALL RIGHT. YOU CAN
6 STEP DOWN. THANK YOU FOR YOUR TIME. YOU CAN BE
7 EXCUSED. CALL YOUR NEXT WITNESS.

8 MR. ANTHONY: WE CALL OFFICER TRIPP.

9 THE COURT: LET'S TAKE A BREAK.

10 (THE COURT'S IN RECESS AT 3:42.)

11 (COURT RESUMES AT 3:50.)

12 THE COURT: LET THE RECORD REFLECT MR.
13 D'AGOSTINO AND MR. GILLEN AND THEIR CLIENTS MR.
14 GORDON AND MR. MCCREARY ARE PRESENT.

15 MR. ANTHONY: WE'RE READY TO CALL OUR NEXT
16 HEARING OFFICER TRIPP.

17 KENYATTA TRIPP, BEING
18 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION BY MR. ANTHONY:

20 Q COULD YOU STATE YOUR FULL NAME?

21 A KENYATTA TRIPP.

22 Q AND MR. TRIPP, HOW ARE YOU EMPLOYED?

23 A ROCK HILL CITY STREET POLICE OFFICER.

24 Q HOW LONG HAVE YOU WORKED AT THE POLICE
25 DEPARTMENT IN THAT ROLE?

1 A JUST A LITTLE OVER FIVE YEARS.

2 Q AND WERE YOU WORKING BACK ON JULY 24 OF LAST
3 YEAR?

4 A YES, SIR, I WAS.

5 Q AND TELL THE COURT WHAT YOU HEARD AROUND 4:30 IN
6 THE AFTERNOON OF JULY 24 OF LAST YEAR?

7 A IT WAS ABOUT 4:30 THAT I WAS AT THE POLICE
8 DEPARTMENT TAKING A REPORT FOR SOMEONE IN THE
9 LOBBY IN REFERENCE TO SOMETHING, DIFFERENT THAN
10 THIS CASE HERE, AND I WAS WRITING A REPORT UP
11 AND I HAD OVERHEARD A SMALL PORTION OF A
12 CONVERSATION WHEN LIEUTENANT THICKENS WAS
13 PRESENT AS WELL AS A YOUNG GUY, I DIDN'T KNOW
14 WHO HE WAS AT THAT TIME, WAS TALKING WITH SOME,
15 I DON'T KNOW IF IT WAS FAMILY MEMBERS OR FRIENDS
16 OR EXACTLY WHO ANYBODY WAS THERE. A WOMAN HAD
17 ASKED THE YOUNG MAN, WHY DID YOU SHOOT THAT BOY,
18 PRETTY MUCH IN THOSE SAME WORDS, AND HE HAD
19 RESPONDED BY SAYING THAT HE DIDN'T HAVE THE GUN
20 AT FIRST, BUT THAT IT WAS GIVEN TO HIM AND HE
21 DID IT BECAUSE HE FELT IF HE DIDN'T AND THE
22 PEOPLE, HIS FRIENDS THAT WERE WITH HIM, WERE
23 GOING TO SHOOT HIM IF HE DIDN'T DO WHAT THEY
24 TOLD HIM TO DO WITH IT.

25 Q AND DID YOU COME TO FIND OUT WHO THE YOUNG MAN

1 WHO MADE THE STATEMENT WAS?

2 A YES, SIR, I DID.

3 Q AND WHO MADE THE STATEMENT?

4 A ANTONIO GORDON.

5 Q THIS STATEMENT THAT YOU HEARD WAS IT, DID IT
6 INVOLVE ANY QUESTIONS AT ALL BY YOURSELF?

7 A NO, IT DIDN'T.

8 Q DID IT ANY INVOLVE ANY QUESTIONING BY ANYBODY
9 ELSE AT THE ROCK HILL POLICE DEPARTMENT OR ANY
10 OTHER EMPLOYEES AT THE ROCK HILL POLICE
11 DEPARTMENT?

12 A NOT THAT I'M AWARE OF.

13 Q AND DID YOU DO ANYTHING TO FOLLOW UP WITH THEM?

14 A NO.

15 Q OR SPEAK TO HIM AFTER HE SAID THIS?

16 A NO, SIR, I DIDN'T. AS A MATTER OF FACT, I THINK
17 I LEFT AFTER THAT, WAS TIED UP ON WHAT I WAS
18 THERE FOR.

19 Q OKAY. THANK YOU. THAT'S ALL OF MY QUESTIONS OF
20 OFFICER TRIPP.

21 CROSS EXAMINATION BY MR. D'AGOSTINO:

22 Q OFFICER TRIPP, WHERE WERE YOU WHEN THIS
23 STATEMENT OCCURRED?

24 A THIS WAS IN THE REPORT WRITING AREA RIGHT WHERE
25 WE DO OUR REPORTS WHEN WE LIKE BRING A JUVENILE

1 IN, THIS IS WHERE WE DO OUR JUVENILE PAPERWORK.

2 Q IS THAT BACK HALL BEHIND THE DISPATCHER ROOM?

3 A YES.

4 Q AND HOW DO YOU KNOW IT WAS ANTONIO GORDON WHO
5 SAID THIS?

6 A WELL, I DIDN'T KNOW WHO HE WAS AT THE TIME.

7 Q WELL --

8 A --BUT NOW THAT I SEE, I DID SEE HIM WHEN I WAS
9 THERE.

10 Q ALL RIGHT.

11 A AND NOW THAT I SEE HIM TODAY AND KNOW WHO HE IS
12 I REMEMBERED THAT THAT WAS HIM SITTING UP BEHIND
13 ME.

14 Q WELL, YOU KNEW IT WAS HIM BEFORE YOU SAW HIM
15 TODAY?

16 A SIR?

17 Q YOU KNEW IT WAS HIM BEFORE YOU SAW HIM TODAY.
18 HOW DID YOU KNOW AT THE TIME YOU WROTE UP THE
19 SUMMARY OF WHAT YOU SAY YOU SAW OR HEARD, HOW
20 DID YOU KNOW IT WAS ANTONIO GORDON? HOW DID YOU
21 KNOW HIS NAME?

22 A I DIDN'T KNOW WHO HE WAS AT ALL. I JUST SIMPLY
23 SAID THAT IT WAS A YOUNG MAN THAT WAS BEHIND
24 ME. AT THAT TIME I HAD NEVER SEEN HIM BEFORE
25 THAT I REMEMBERED ANYWAY, DIDN'T KNOW WHAT HIS

1 NAME WAS.

2 Q WHEN DID YOU FIND OUT HIS NAME?

3 A MAYBE LATER ON IN THAT DAY. I'M NOT REALLY
4 SURE.

5 Q WHO TOLD YOU HIS NAME?

6 A I CAN'T RECALL THAT EITHER. JUST HEARING ABOUT
7 THE CASE OVER AND OVER THROUGH THE NEWSPAPERS
8 AND EVERYTHING LIKE EVERYBODY ELSE HAS HEARD
9 ABOUT IT IS HOW I LEARNED ABOUT HIS NAME.

10 Q YOU SUBSEQUENTLY WROTE UP A SHORT PARAGRAPH
11 ABOUT IT, RIGHT?

12 A YES.

13 Q AND IS THAT PARAGRAPH ACCURATE?

14 A YES, IT IS.

15 Q OKAY. LET ME HAND THAT TO YOU. IS THAT WHAT
16 YOU WROTE UP?

17 A YES, SIR, IT IS.

18 Q NOW WHEN YOU DID WRITE THAT UP?

19 A IT MUST HAVE BEEN MAYBE SHORTLY AFTER 5 OR 5:30.
20 IT WAS BEFORE I WENT HOME THAT DAY AND WE WOULD
21 HAVE GONE HOME AT 6 OR 6:15.

22 Q YOU SIGNED IT ON THE 28 THOUGH?

23 A UH-HUH.

24 Q RIGHT?

25 A YES, SIR. THAT'S WHAT IT SAYS HERE.

1 Q YOU WROTE THAT UP AS IF IT OCCURRED ON THE 24?

2 A THE 24 IS WHEN I WAS THERE.

3 Q SO THE 24 IS WHEN YOU WERE THERE?

4 A YES, SIR.

5 Q DID YOU KNOW THAT ANTONIO GORDON WAS OVER HERE
6 AT THE MOSS JUSTICE CENTER ON THE 24? WAS
7 TRANSPORTED ON THE NIGHT OF THE 23 AND WAS NEVER
8 AT THE ROCK HILL CITY DEPARTMENT?

9 A ALL I KNOW IS I HEARD A YOUNG MAN, JUST LIKE I
10 WROTE IN THE STATEMENT, WHO I LATER FOUND OUT TO
11 BE HIM MAKE THIS STATEMENT. I DIDN'T KNOW WHO
12 ANYBODY WAS AT THAT TIME.

13 Q WHAT I'M TRYING TO FIND OUT IS HOW YOU FOUND OUT
14 OR HOW YOU KNOW IT WAS THAT YOUNG MAN AND NOT
15 SOME OTHER YOUNG MAN?

16 A JUST BECAUSE HE WAS THE ONE THAT WAS SAID TO BE
17 THE SHOOTER ANYWAY FROM WHAT I UNDERSTAND.

18 Q WELL, THERE --

19 A SO THIS IS JUST BY HEARING ABOUT IT.

20 Q WELL, THERE WERE THREE OTHER BOYS INVOLVED IN
21 THIS?

22 A YES, SIR.

23 Q THEY DIDN'T COME OVER HERE UNTIL THE 24, THE
24 EVENING OF THE 24?

25 A OKAY.

1 Q COULD IT HAVE BEEN ONE OF THEM?

2 A IF THEY WERE THE SHOOTER. I MEAN, WHAT I'M
3 TELLING, I DON'T KNOW IF I MISUNDERSTAND YOUR
4 QUESTION, I'M JUST SAYING THAT AT THE TIME I SAW

5 A YOUNG MAN THERE, HE MADE THE STATEMENT WHEN HE
6 WAS ASKED BY A FAMILY MEMBER OR A FRIEND WHY DID
7 YOU SHOOT THAT BOY, WHO I LATER ON WAS SAID TO
8 ME THAT THAT WAS THE GUY WHO HAD PULLED THE
9 TRIGGER. I DON'T KNOW WHO I FOUND OUT THAT FROM
10 OR WHEN I FOUND IT OUT OR IF IT WAS JUST MEDIA
11 OR JUST HEARING ABOUT IT OVER AND OVER AGAIN
12 BUT.

13 Q THERE IS NO DOUBT IN YOUR MIND THAT WAS ON THE
14 24?

15 A IT WAS ON THE 24 THAT I WAS AT THE LAW CENTER
16 WRITING A REPORT AND I HEARD A YOUNG PERSON BE
17 QUESTIONED BY ANOTHER PERSON WHY DID YOU SHOOT
18 THAT BOY, YES, SIR.

19 Q ALL RIGHT. THOSE ARE ALL THE QUESTIONS I HAVE.
20 THANK YOU VERY MUCH, OFFICER.

21 REDIRECT EXAMINATION BY MR. ANTHONY:

22 Q AND YOU'VE LOOKED AT ANTONIO GORDON IN COURT
23 TODAY, IS THAT CORRECT?

24 A YES, SIR.

25 Q DO YOU RECOGNIZE HIM AS BEING THE PERSON WHO

1 SAID THAT, IS THAT RIGHT?

2 A YES, SIR.

3 Q AND WHICH PERSON, DO YOU, CAN YOU POINT OUT
4 ANTONIO GORDON HERE?

5 A TO THE BEST OF MY KNOWLEDGE HE'S WEARING THE
6 BLUE SHIRT SITTING CATTY-CORNER TO ME.

7 Q AND WHEN DID YOU WRITE THIS STATEMENT UP?

8 A I THINK I WROTE IT THE DAY, ACTUALLY, I'M NOT
9 SURE IF I WROTE IT THE DAY THAT THIS HAPPENED OR
10 IF I WAS APPROACHED BY LIEUTENANT THICKENS LATER
11 WHO ASKED ME TO WRITE THIS STATEMENT. I KNOW I
12 WAS THERE THE 24, I WAS SITTING AT 4:30 AT THE
13 LAW CENTER DOING THE REPORT LIKE I HAD STATED
14 THE 24. I HAVE IT SIGNED THE 28 SO IT IS VERY
15 MUCH POSSIBLE THAT A FEW DAYS LATER I WAS ASKED
16 TO WRITE A STATEMENT IN REFERENCE TO WHAT I
17 HEARD.

18 Q AND YOU DON'T THINK IT WAS POSSIBLE YOU MIGHT BE
19 MISTAKEN ABOUT THE DATE YOU HEARD THIS ON THE
20 23?

21 MR. D'AGOSTINO: OBJECTION TO THE LEADING, YOUR
22 HONOR.

23 THE COURT: I SUSTAIN THE OBJECTION.

24 Q ARE YOU SURE ABOUT THAT DATE?

25 A I'M SURE ABOUT THE DATE THAT I WAS AT THE LAW

1 CENTER, YES, I AM.

2 Q THANK YOU. THAT'S ALL MY QUESTIONS.

3 MR. D'AGOSTINO: YOUR HONOR, I WOULD JUST MOVE
4 FOR PURPOSES OF THIS HEARING ALONE, I'D LIKE TO

5 HAVE THIS INTRODUCED AND ENTERED INTO EVIDENCE.

6 THE COURT: YOU CAN STEP DOWN AND BE EXCUSED. WE
7 APPRECIATE YOUR TIME ALSO. CALL YOUR NEXT
8 WITNESS.

9 MR. ANTHONY: YOUR HONOR, THE STATE WOULD OFFER
10 NO OTHER WITNESSES EXCEPT WE WOULD ASK
11 PERMISSION TO RECALL LIEUTENANT THICKENS FOR
12 JUST ONE OR TWO BRIEF QUESTIONS.

13 (DEFENDANT'S EXHIBIT NUMBER TWO FOR
14 IDENTIFICATION, STATEMENT.)

15 THE COURT: ALL RIGHT. YOU ARE STILL UNDER
16 OATH.

17 REDIRECT EXAMINATION BY MR. ANTHONY:

18 Q DETECTIVE THICKENS, WHEN YOU WERE SHOWN THE
19 INITIAL APPEARANCE AND BOND HEARING PAPERWORK
20 DURING THE CROSS EXAMINATION, DO YOU RECALL
21 THAT?

22 A I RECALL SEEING THE BOND PAPERWORK AS PART, I
23 THINK IT'S IN THE CASE FOLDER.

24 Q AND YOU WERE ALSO SHOWN BY MR. D'AGOSTINO?

25 A THE INITIAL APPEARANCE PAPER, YES, SIR, RIGHT.

1 Q AND WHEN, IF YOU KNOW, WHEN WOULD ANTONIO
2 GORDON'S BOND HEARING HAVE BEEN HELD ON JULY 23?
3 WHAT PART OF THE DAY WOULD IT HAVE BEEN HELD?

4 A IT WOULD HAVE BEEN IN THE EVENING. AT THE EXACT
5 TIME, I DON'T KNOW, BUT IF YOU WANT ME TO
6 ESTIMATE, I WOULD ESTIMATE --

7 MR. D'AGOSTINO: YOUR HONOR, I --

8 THE COURT: I SUSTAIN THE OBJECTION.

9 MR. D'AGOSTINO: I WAS GOING TO OBJECT TO THIS
10 LINE OF QUESTIONING BECAUSE IT IS SOMETHING
11 CLEARLY HE COULD HAVE GONE INTO WHEN HE WAS UP
12 HERE EARLIER.

13 THE COURT: I'M GOING TO LET HIM BUT I SUSTAIN
14 THE OBJECTION ON THAT POINT.

15 Q YOU KNOW IT WOULD HAVE BEEN HELD IN THE EVENING?

16 MR. D'AGOSTINO: YOUR HONOR---

17 THE COURT: I SUSTAIN THE OBJECTION, THAT'S A
18 LEADING QUESTION. DON'T ANSWER THAT QUESTION.

19 Q DO YOU KNOW WHAT TIME IT WOULD HAVE BEEN HELD,
20 WITHOUT GIVING AN EXACT TIME, DO YOU KNOW WHAT
21 TIME OF DAY IT WOULD HAVE BEEN HELD?

22 MR. D'AGOSTINO: YOUR HONOR, I OBJECT.

23 THE COURT: I OVERRULE THAT OBJECTION.

24 A I WOULD ESTIMATE THAT IT WAS HELD AROUND 5:30 IN
25 THE LATE AFTERNOON.

1 THE COURT: YOU CAN'T GIVE AN ESTIMATED VALUE,
2 I JUST GOT THROUGH SAYING YOU COULDN'T.

3 Q YOU DON'T HAVE TO, WITHOUT GIVING AN EXACT TIME,
4 JUST WOULD YOU PLEASE TELL WHAT PART OF THE DAY

5 IT WOULD HAVE BEEN HELD?

6 A IT WOULD HAVE BEEN HELD IN THE LATE AFTERNOON.

7 Q ALL RIGHT. THANK YOU. THAT'S ALL MY QUESTIONS.

8 THE COURT: DO YOU HAVE ANY QUESTIONS, MR.
9 D'AGOSTINO?

10 MR. D'AGOSTINO: NO, SIR, YOUR HONOR.

11 THE COURT: YOU CAN STEP DOWN. THANK YOU.

12 MR. ANTHONY: YOUR HONOR, THAT'S ALL THE
13 EVIDENCE THE STATE WOULD OFFER. WE WILL ASK THE
14 COURT TO TAKE NOTICE OF THE TESTIMONY THAT WAS
15 GIVEN BY CAPTAIN CABINESS ON WEDNESDAY AS PART
16 OF OUR EVIDENCE IN THE DENNO HEARING THIS
17 AFTERNOON.

18 MR. D'AGOSTINO: MAY WE APPROACH THE BENCH, YOUR
19 HONOR.

20 THE COURT: CERTAINLY.

21 (BENCH CONFERENCE.)

22 MR. D'AGOSTINO: YOUR HONOR, AS I HAD SUBPOENAED
23 TO TESTIFY TODAY SEVERAL OFFICERS FROM THE ROCK
24 HILL LAW ENFORCEMENT CENTER, AND BASICALLY THOSE
25 OFFICERS WOULD HAVE, WERE SUBPOENAED TO TESTIFY

1 AS TO WHAT MR. WELLBORN TESTIFIED TO THAT HE DID
2 SPEAK WITH THEM, AND IT'S MY, THE STATE IS GOING
3 TO STIPULATE THAT THE OFFICER OR THAT CHRIS
4 WELLBORN DID SPEAK WITH THE DISPATCHERS AS WAS
5 TESTIFIED BY HIM, CAPTAIN CABINESS, AND CHIEF
6 FORTSON, THEREFORE, ANY CALLING OF THOSE
7 WITNESSES WOULD BE MERELY CUMULATIVE AND IT'S
8 UNNECESSARY SINCE THE STATE IS GOING TO
9 STIPULATE THAT MR. WELLBORN DID SPEAK WITH THEM
10 AND THE CONVERSATION AS HE RELATED TO THE COURT
11 DID IN FACT TAKE PLACE.

12 THE COURT: YOU AGREE WITH THAT?

13 MR. ANTHONY: THAT IS CORRECT. WE'RE NOT GOING
14 TO ARGUE THAT MR. WELLBORN DID COME TO THE LAW
15 CENTER AND DID ASK TO SPEAK TO MR. GORDON.

16 THE COURT: OKAY. I THINK THOSE WITNESSES OUGHT
17 TO BE ABLE TO BE EXCUSED.

18 MR. D'AGOSTINO: THANK YOU, YOUR HONOR. IF WE
19 CAN GO AHEAD AND LET THEM GO. YOUR HONOR, WE
20 WOULD CALL DR. JONATHAN VENN TO THE STAND.

21 JONATHAN VENN, BEING
22 FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 DIRECT EXAMINATION BY MR. D'AGOSTINO:

24 Q PLEASE TELL THE COURT YOUR NAME?

25 A MY NAME IS JONATHAN VENN.

1 Q AND WHAT DO YOU DO FOR A LIVING?

2 A I'M A PSYCHOLOGIST.

3 Q WHERE IS YOUR OFFICE?

4 A MY OFFICE IS IN COLUMBIA, SOUTH CAROLINA.

5 Q AND WHAT ARE YOUR FIELDS OF SPECIALIZATION?

6 A I SPECIALIZE IN CLINICAL PSYCHOLOGY AND FORENSIC
7 PSYCHOLOGY.

8 Q DO YOU ALSO TREAT ADULTS AND JUVENILE OFFENDERS?

9 A I EVALUATE THEM. I DON'T THINK I'M INVOLVED IN
10 ANY TREATMENT AT THIS TIME.

11 Q DO YOU HOLD ANY LICENSES?

12 A YES, I DO. I'M LICENSED IN THE STATE OF SOUTH
13 CAROLINA AND I'M ALSO LICENSED IN THE STATE OF
14 MARYLAND.

15 Q AND ARE YOU BOARD CERTIFIED? DO YOU HOLD ANY
16 BOARD CERTIFICATIONS?

17 A YES, I'M CERTIFIED BY THE AMERICAN BOARD OF
18 PROFESSIONAL PSYCHOLOGY AND CLINICAL PSYCHOLOGY
19 AND IN FORENSIC PSYCHOLOGY.

20 Q AND ARE YOU ALSO A DIPLOMAT IN NEUROPSYCHOLOGY
21 AND AMERICAN BOARD OF PSYCHOLOGICAL SPECIALTIES,
22 DID YOU RECEIVE THAT IN 1998?

23 A YES, I DID.

24 Q WHAT OTHER LICENSES OR?

25 A I'M ALSO CERTIFIED BY THAT BOARD IN CHILD

1 PSYCHOLOGY, DISABILITY EVALUATION, TRAUMA, AND
2 POST TRAUMATIC STRESS DISORDER.

3 Q TELL THE COURT A LITTLE BIT ABOUT YOUR EDUCATION
4 AND YOUR TRAINING?

5 A I HAVE A PH.D IN CLINICAL PSYCHOLOGY FROM
6 NORTHWESTERN UNIVERSITY IN CHICAGO, ILLINOIS. I
7 COMPLETED THREE YEARS OF TRAININGSHIPS IN
8 VETERAN HOSPITALS INCLUDING AN INTERNSHIP IN
9 CLINICAL PSYCHOLOGY.

10 Q AND DID YOU, TELL US ABOUT YOUR EMPLOYMENT
11 HISTORY?

12 A WELL, AFTER LEAVING SCHOOL I WAS COMMISSIONED AS
13 AN OFFICER IN THE UNITED STATES NAVAL RESERVE
14 AND I WAS ON ACTIVE DUTY FOR THE NEXT FOUR
15 YEARS. I SPENT MOST OF THAT TIME ON OKINAWA AT
16 A NAVAL HOSPITAL AND THEN AT A MARINE CORPS
17 BASE. UPON RETURNING TO THE STATES, WELL, THEN
18 I TAUGHT FOR THE UNIVERSITY OF MARYLAND FOR A
19 YEAR IN GERMANY. UPON RETURNING TO THE STATES,
20 I TOOK A POSITION WITH THE BALTIMORE GAS AND
21 ELECTRIC COMPANY. I WORKED FOR THEM FOR FOUR
22 YEARS. THEN WE RELOCATED TO SOUTH CAROLINA. I
23 WAS A FORENSIC PSYCHOLOGIST AT THE WILLIAM S.
24 HALL PSYCHIATRIC INSTITUTE FOR A YEAR AND THEN I
25 TRANSFERRED TO THE DEPARTMENT OF JUVENILE

1 JUSTICE WHERE I WORKED FOR THE NEXT EIGHT YEARS.

2 I'VE BEEN IN FULL TIME PRIVATE PRACTICE SINCE
3 1997.

4 Q ARE YOU AN ADJUNCT PROFESSOR ANYWHERE?

5 A YES, I AM. I AM AN ADJUNCT PROFESSOR AT THE
6 UNIVERSITY OF SOUTH CAROLINA.

7 Q AND DO YOU ALSO WORK WITH THE CHRISTIAN
8 COUNSELING OF COLUMBIA, IS THAT WHERE YOU WORK
9 NOW?

10 A YES. I'M THE PRESIDENT OF CHRISTIAN COUNSELING
11 OF COLUMBIA.

12 Q AND HAVE YOU BEEN CERTIFIED AS AN EXPERT OR
13 GIVEN EXPERT TESTIMONY IN OTHER CASES?

14 A YES, I HAVE.

15 Q ALL RIGHT. IN GENERAL SESSIONS HAVE YOU BEEN
16 CERTIFIED AS AN EXPERT IN ADULT CRIMINAL CASES?

17 A YES, I HAVE.

18 Q AND FAMILY COURT, HAVE YOU ALSO BEEN QUALIFIED
19 AS AN EXPERT?

20 A YES, I HAVE.

21 Q IN UNITED STATES FEDERAL COURT IN CIVIL CASES?

22 A YES, I HAVE.

23 Q AND HOW ABOUT COURT OF COMMON PLEAS IN SOUTH
24 CAROLINA?

25 A YES, I'VE ALSO BEEN QUALIFIED AS AN EXPERT IN

1 THE COURT OF COMMON PLEAS.

2 Q YOU ALSO, HAVE YOU ALSO PUBLISHED IN YOUR
3 CAREER, DURING YOUR CAREER?

4 A YES, I HAVE.

5 Q LET ME HAND YOU SO THAT WE DON'T GO THROUGH ALL
6 OF THESE. IS THAT A COPY, CURRENT COPY OF YOUR
7 C.V. RESUME?

8 A THIS IS THE JUNE COPY.

9 Q ALL RIGHT. HAVE THERE BEEN ANY ADDITIONS?

10 A I THINK I'VE TESTIFIED A COUPLE MORE TIMES IN
11 THE PAST MONTH.

12 Q OKAY. AND DO YOU HAVE ANY PUBLICATIONS THAT
13 WOULD STAND OUT OR ANYTHING THAT WOULD BE ON THE
14 ISSUES OF CHILD PSYCHOLOGY, PSYCHOLOGICAL
15 EVALUATION OF JUVENILE OFFENDERS, HAVE YOU DONE
16 ANY WORK IN THAT AREA?

17 A I DON'T THINK I'VE PUBLISHED IN THAT AREA.

18 Q ALL RIGHT. LET ME HAVE THIS MARKED AS
19 DEFENDANT'S NUMBER THREE.

20 (DEFENDANT'S EXHIBIT NUMBER THREE, C.V., MARKED
21 FOR IDENTIFICATION.)

22 MR. D'AGOSTINO: FOR THIS HEARING SO I DON'T
23 HAVE TO GO THROUGH ALL YOUR PUBLICATIONS AND ALL
24 THE OTHER QUALIFICATIONS, I MOVE TO INTRODUCE
25 DEFENDANT'S EXHIBIT NUMBER THREE, YOUR HONOR.

1 THE COURT: OKAY. ANY OBJECTION?

2 MR. THOMPSON: NO, YOUR HONOR.

3 THE COURT: BE RECEIVED.

4 MR. D'AGOSTINO: AT THIS TIME I ASK THE COURT TO

5 QUALIFY DR. VENN AS AN EXPERT IN CLINICAL AND
6 FORENSIC PSYCHOLOGY.

7 THE COURT: ANY VOIR DIRE BY THE STATE?

8 MR. THOMPSON: YES, YOUR HONOR, IF I COULD. I
9 BELIEVE I DON'T HAVE ANY QUESTIONS.

10 THE COURT: I FIND HE'S QUALIFIED IN BOTH
11 FORENSIC AND CLINICAL PSYCHOLOGY.

12 Q DID YOU HAVE OCCASION TO EVALUATE ANTONIO
13 GORDON?

14 A YES, I DID.

15 Q AND WAS THAT IN COLUMBIA AND WAS THAT RECENTLY?

16 A THAT WAS ON JULY 6 AT MY OFFICE IN COLUMBIA.

17 Q WHAT DID YOU DO DURING YOUR EVALUATION? WHAT
18 DID IT CONSIST OF?

19 A I TALKED TO MR. GORDON, I REVIEWED HIS
20 UNDERSTANDING OF MIRANDA RIGHTS. I REVIEWED
21 ISSUES RELEVANT TO HIS COMPETENCY TO STAND
22 TRIAL. I GAVE HIM A IQ TEST AND A MEMORY TEST
23 AND A TEST OF SUGGESTIBILITY.

24 Q NOW WHAT IQ TEST DID YOU USE?

25 A I USED THE WECHSLER ADULT INTELLIGENCE SCALE

1 INDIVIDUAL HIS AGE IS BASED UPON THE IQ SCORE
2 AND ADAPTIVE BEHAVIOR. THAT IS, HOW ARE THEY
3 FUNCTIONING IN THE WORLD.

4 Q AND DID YOU TRY TO FIND OUT HOW HE FUNCTIONS IN
5 THE WORLD?

6 A YES, I TRIED TO.

7 Q DID YOU TRY TO TALK TO FAMILY MEMBERS ABOUT
8 THAT?

9 A YES, I TALKED TO HIS GRANDFATHER THIS MORNING TO
10 TRY TO GET SOME INFORMATION ABOUT THAT.

11 Q WERE YOU ABLE TO GET ENOUGH INFORMATION TO COME
12 TO AN OPINION AS TO WHETHER HE WAS MENTALLY
13 RETARDED OR NOT.

14 A NO, I WAS NOT ABLE TO COME TO AN OPINION.

15 Q AS FAR AS THERE ARE TWO FACTORS YOU SAID BECAUSE
16 ANTONIO IS UNDER THE AGE OF 18, AS FAR AS THE
17 FIRST FACTOR, DOES HE FALL WITHIN THE
18 CHARACTERIZATION OF MENTALLY RETARDED HIS IQ
19 BEING LOW?

20 A YES, HE DOES.

21 Q NOW YOU SAT THROUGH THE TESTIMONY AND YOU HEARD
22 THE OFFICERS TESTIFY ABOUT HOW THEY READ ANTONIO
23 HIS RIGHTS, DID YOU NOT?

24 A I CAME IN DURING ONE OFFICER'S TESTIMONY, BUT
25 YES, I HEARD THAT HE HAD BEEN READ HIS RIGHTS.

1 Q DO YOU HAVE AN OPINION WITHIN A REASONABLE
2 DEGREE OF CERTAINTY AS TO WHETHER ANTONIO WOULD
3 UNDERSTAND HIS MIRANDA RIGHTS?

4 A YES, I DO.

5 Q WHAT IS YOUR OPINION?

6 A I DO NOT BELIEVE HE UNDERSTANDS HIS MIRANDA
7 RIGHTS.

8 Q IF YOU CAN EXPLAIN THAT FOR THE COURT?

9 A I ASKED ANTONIO A SERIES OF QUESTIONS TO SEE IF
10 HE UNDERSTOOD HIS MIRANDA RIGHTS, AND I WAS NOT
11 SATISFIED THAT DID HE IN FACT UNDERSTAND THEM
12 PARTICULARLY HIS RIGHT TO HAVE AN ATTORNEY. HE
13 DID NOT UNDERSTAND HOW AN ATTORNEY CAN BE
14 HELPFUL TO HIM IN A PRE-INTERROGATION SITUATION.

15 Q AND WITH REGARD TO, YOU SPENT SOME TIME TALKING
16 TO ANTONIO THAT DAY HE CAME DOWN THERE, DID YOU
17 NOT?

18 A YES, I DID.

19 Q WHAT WERE SOME OF THE LARGEST OR MOST COMPLEX
20 WORDS THAT HE USED?

21 A WELL, HE USED THE WORD CONFLICT. HE USED THE
22 WORD DEFEND. HE KNEW THAT THE PUBLIC DEFENDER
23 WAS NOT DEFENDING HIM BECAUSE OF A CONFLICT,
24 AND HE USED THOSE WORDS BUT HE COULD NOT EXPLAIN
25 THEM.

1 Q YOU TRIED TO GET HIM TO EXPLAIN WHAT THAT MEANT?

2 A YES, I ASKED HIM IF HE UNDERSTOOD WHAT THAT
3 MEANT AND HE DIDN'T.

4 Q AS FAR AS ANY COURT PROCEEDING, NOT ASKING YOU
5 WHETHER HE'S COMPETENT OR NOT, BUT AS FAR AS A
6 COURT PROCEEDING IS CONCERNED, IS HE GOING TO
7 NEED SPECIAL CONSIDERATIONS FOR WHAT'S GOING ON
8 TO BE EXPLAINED TO HIM AS THE TRIAL PROCEEDS?

9 A YES, HE WILL. HE'S VERY LIMITED IN HIS ABILITY
10 TO UNDERSTAND WORDS AND TO REMEMBER WORDS THAT
11 ARE SPOKEN. HE WILL NEED A LOT OF ASSISTANCE IN
12 GETTING THROUGH A TRIAL.

13 Q DO YOU HAVE AN OPINION WITHIN A REASONABLE
14 DEGREE OF CERTAINTY IN YOUR FIELD AS TO WHETHER
15 ANTONIO IS EASILY SUGGESTIBLE, IS EASILY LED
16 AROUND?

17 A YES, I DO HAVE AN OPINION.

18 Q WHAT IS YOUR OPINION?

19 A ANTONIO IS VERY SUGGESTIBLE. HE'S EASILY LED OR
20 MANIPULATED INTO SAYING THINGS THAT HAVE NO
21 BASIS IN FACT.

22 Q HOW ABOUT WITH REGARD TO DOING THINGS. IS HE
23 EASILY LED OR DIRECTED TO DO THINGS?

24 A PROBABLY. INDIVIDUALS WITH THAT LOW AN IQ ARE
25 VERY SUGGESTIBLE.

1 MR. D'AGOSTINO: ONE MOMENT, YOUR HONOR.

2 Q WERE THERE ANY OTHER TESTS THAT YOU PERFORMED OR
3 ANY OTHER OBSERVATIONS YOU MADE WITH REGARD TO
4 ANTONIO THAT WOULD BE IMPORTANT FOR THE COURT TO
5 KNOW, DR. VENN?

6 A NO, I BELIEVE WE'VE COVERED IT ALL.

7 Q THANK YOU. ANSWER ANY QUESTIONS THE SOLICITOR
8 MIGHT HAVE.

9 CROSS EXAMINATION BY MR. THOMPSON:

10 Q DR. VENN, DID YOU PRODUCE A REPORT AFTER YOUR
11 EXAMINATION OF THE DEFENDANT ANTONIO?

12 A NO, I DID NOT.

13 Q ISN'T IT UNETHICAL NOT TO DO A REPORT WHEN
14 YOU'RE GOING TO BE TESTIFYING IN COURT ON A
15 SITUATION SUCH AS THIS?

16 A NO, SIR, IT IS NOT UNETHICAL.

17 Q DOES IT NOT VIOLATE THE CANONS OF THE
18 PSYCHOLOGICAL ASSOCIATION TO DO THIS WITHOUT A
19 REPORT?

20 A NO, SIR, IT DOES NOT.

21 Q DON'T THEY SUGGEST YOU SHOULD WRITE A REPORT
22 WHEN YOU ARE GOING TO BE TESTIFYING CONCERNING
23 THIS SOMETHING LIKE THIS?

24 A I'M NOT AWARE OF THAT.

25 Q IF YOU WOULD, DOCTOR, YOU SAID HE SCORED AS FAR

1 AS HIS IQ 68, THAT CAN BE PLUS OR MINUS FIVE
2 POINTS, ISN'T THAT CORRECT?

3 A I DON'T KNOW WHAT THE STANDARD ERROR OF
4 MEASUREMENT AT THAT POINT. IT'S AROUND SEVERAL
5 POINTS.

6 Q AREN'T YOU AWARE OF THE STANDARD OF MEASUREMENTS
7 FOR THAT DEGREE OF ERROR IN THE TESTING YOU
8 PERFORMED?

9 A IT'S SEVERAL POINTS. I DON'T KEEP ALL THOSE
10 NUMBERS IN MY HEAD. NO, I CAN'T TELL YOU
11 PRECISELY WHAT THE STANDARD ERROR OF MEASUREMENT
12 IS.

13 Q BUT IT'S SEVERAL POINTS EITHER WAY?

14 A YES, IT WOULD BE SEVERAL POINTS.

15 Q AND ACTUALLY TO CONSIDER SOMEONE IN THAT AREA OF
16 ACTUALLY MILD MENTAL RETARDATION THAT WOULD BE
17 SOMEONE BETWEEN THE IQ LEVEL OF 50 TO 55 TO
18 APPROXIMATELY 70, ISN'T THAT CORRECT?

19 A APPROXIMATELY 70 WITHIN A FEW POINTS.

20 Q AND THAT'S ONLY ONE PRONG OF THE TEST, ISN'T IT?

21 A YES, IT IS.

22 Q AND IN ACTUALITY -- WELL, LET ME GO BACK JUST A
23 LITTLE BIT. DO YOU FEEL THAT WHEN HE WAS DOING
24 THE IQ TEST FOR YOU THAT HE WAS MOTIVATED IN
25 PERFORMING ON THAT IQ TEST?

1 A YES, I DID.

2 Q AND WHAT FACTORS DO YOU HAVE THAT MADE YOU
3 BELIEVE THAT?

4 A MY OBSERVATIONS OF HIM, I FELT HE WAS DOING HIS
5 BEST.

6 Q BUT THERE IS NOT SOMETHING SPECIFIC THAT WOULD
7 LEAD YOU TO BELIEVE THAT HE WAS NOT DOING HIS
8 BEST?

9 A WELL, I GAVE HIM A MALINGERING SCREENING TEST TO
10 SEE IF HE WOULD FAKE HAVING A MEMORY PROBLEM AND
11 HE DID NOT TRY TO FAKE A MEMORY PROBLEM.

12 Q AND IN THAT SCREENING TEST DID YOU ASK THE
13 QUESTION WHETHER HE KNEW THE COLORS OF THE
14 AMERICAN FLAG?

15 A NOT ON THE SCREENING TEST.

16 Q NOT ON THE SCREENING TEST. WHAT TYPE OF
17 QUESTIONS DID YOU ASK HIM ON THAT PARTICULAR
18 TEST?

19 A I GAVE HIM THE RAY 15 ITEM TEST WHICH IS A
20 STANDARD AND VERY WELL KNOWN, VERY WIDELY USED
21 TEST TO SEE IF PEOPLE WILL TRY TO FAKE HAVING A
22 MEMORY PROBLEM. THEY LOOK AT A PAGE OF LETTERS
23 AND NUMBERS FOR A NUMBER OF SECONDS AND THEN
24 THAT'S CONCEALED AND THEN YOU SEE IF THEY WILL
25 REPRODUCE IT FROM MEMORY.

1 Q AND HE SEEMED TO PERFORM WELL ON THAT?

2 A YES, HE DID FINE. HE DID JUST FINE.

3 Q BUT YOU'RE TELLING ME IN HIS MEMORY TEST THAT HE
4 ACTUALLY WAS ONLY IN THE LOW TWO PERCENTILE?

5 A THAT'S RIGHT.

6 Q BUT HE WAS ABLE TO PERFORM FINE AS FAR AS
7 MALINGERING AND THAT INCLUDED THE PORTION OF
8 MEMORY?

9 A YES, IT DOES.

10 Q NOW YOU'RE NOT SAYING, DOCTOR, THAT HE IS
11 MENTALLY RETARDED, ARE YOU?

12 A I HAVEN'T SAID THAT, NO.

13 Q SO IN YOUR EXPERT OPINION YOU CANNOT SAY THAT HE
14 IS MENTALLY RETARDED, CORRECT?

15 A THAT'S CORRECT, I HAVE NO OPINION ON THAT.

16 Q AND ACTUALLY IN YOUR EXPERT OPINION YOU DO NOT
17 SAY THAT HE IS NOT COMPETENT, CORRECT?

18 A THAT'S CORRECT.

19 Q AND I THINK IN ACTUALITY I THINK YOU WOULD
20 PROBABLY, IF YOU HAD TO RENDER AN OPINION, HAVE
21 TO SAY THAT HE COMPETENT?

22 A I HAVE NO OPINION ON THAT.

23 Q YOU ALSO HAVE NO OPINION AS TO HIS MENTAL
24 RETARDATION STATUS?

25 A I HAVE NO OPINION ON WHETHER HE'S MENTALLY

1 RETARDED.

2 Q DOCTOR, ISN'T WHAT YOU DO TO DETERMINE WHETHER
3 SOMEONE'S MENTALLY RETARDED OR WHETHER THEY ARE
4 COMPETENT TO STAND TRIAL?

5 A YES, IT IS.

6 Q AS A MATTER OF FACT YOU WERE ASKED TO DO THAT BY
7 MR. D'AGOSTINO FOR THIS CASE, RIGHT?

8 A YES, I WAS.

9 Q BUT YOU CAME BACK WITH NO OPINION ON THOSE
10 THINGS?

11 A THAT IS CORRECT.

12 Q IS THERE A FORENSIC PSYCHOLOGICAL TEST WHICH IS
13 USED TO DETERMINE A DEFENDANT'S UNDERSTANDING OF
14 HIS MIRANDA RIGHTS?

15 A YES, THERE IS.

16 Q DID YOU PERFORM THAT?

17 A I PERFORMED A VERSION OF THAT.

18 Q CAN YOU DESCRIBE WHAT THAT IS CALLED?

19 A WELL, THERE ARE SEVERAL TESTS. IT'S A TEST
20 ADAPTED FROM, THE TEST I GAVE IS AN ADDUCTION OF
21 ONE OF THE TESTS. DO I REMEMBER THE EXACT NAME
22 OF THAT TEST? NO, I KNOW IT'S A COMPREHENSION
23 OF MIRANDA RIGHTS INVENTORY OR SOMETHING LIKE
24 THAT.

25 Q WHAT DOES THAT TEST CONSIST OF?

1 A CONSISTS OF ASKING INDIVIDUALS A SERIES OF
2 QUESTIONS.

3 Q LIKE WHAT?

4 A LIKE DO YOU KNOW WHAT IT MEANS WHEN THE POLICE
5 SAYS YOU HAVE THE RIGHT TO REMAIN SILENT.

6 Q AND WHAT WAS HIS ANSWER TO THAT?

7 A EXCUSE ME, LET ME GET OUT. I ASKED HIM, WHAT
8 DOES IT MEAN WHEN WE SAY YOU HAVE THE RIGHT TO
9 REMAIN SILENT. AND HE SAID, BE QUIET AND DON'T
10 TALK TO NOBODY BUT ME. I WOULD CONSIDER THAT A
11 FAILURE, THAT HE FAILED THAT ITEM.

12 Q YOU WOULD CONSIDER IT A FAILURE FOR HIM TO SAY
13 THAT HIS RIGHT TO REMAIN SILENT TO BE QUIET AND
14 NOT TALK TO ANYBODY?

15 A YES, BE QUIET IS ONE OF THE COMMON FAILURES OF
16 THAT ITEM.

17 Q AND WHAT WOULD THE APPROPRIATE ANSWER BE?

18 A IT MEANS THAT I DON'T HAVE TO GIVE A STATEMENT
19 IF I DON'T WANT TO.

20 Q WHAT WERE THE OTHER QUESTIONS YOU ASKED?

21 A I ASKED A NUMBER OF QUESTIONS.

22 Q GO AHEAD PLEASE AND TELL ME HIS ANSWERS.

23 A I ASKED HIM IF THE POLICE ASK YOU A QUESTION
24 THAT YOU DO NOT WANT TO ANSWER, DO YOU HAVE TO
25 ANSWER IT. AND HE SAID NO. I ASKED --

1 Q IS THAT FAILING THAT QUESTION?

2 A NO, THAT'S A PASS. HE PASSED SOME AND FAILED
3 SOME. I ASKED HIM WHAT IS A RIGHT. AND HE SAID
4 I ONLY KNOW RIGHT HAND AND RIGHT. I ASKED HIM,
5 WHAT DOES IT MEAN WHEN WE SAY ANYTHING YOU CAN
6 SAY CAN AND WILL BE USED AGAINST YOU IN A COURT
7 OF LAW. HE SAID THAT MEANS THE COURT'S GOING TO
8 FIND OUT ABOUT IT.

9 I ASKED HIM, THE THINGS YOU TELL THE POLICE,
10 ARE THEY GOING TO KEEP THEM SECRET AND HE SAID
11 YES. I ASKED HIM WHAT DOES THE WORD SECRET
12 MEAN. HE SAID DON'T TELL ME OR DON'T TELL
13 NOBODY. I ASKED HIM WHOM ARE THEY GOING TO
14 TELL. HE SAID EVERYBODY. I ASKED HIM ARE THE
15 THINGS THAT YOU TELL THE POLICE GOING TO BE USED
16 AGAINST YOU AND HE SAID I DON'T KNOW.

17 Q WELL, ISN'T THAT TRUE? THINGS THAT HE TELLS THE
18 POLICE BEING USED AGAINST HIM, AT THIS POINT HE
19 DOESN'T KNOW, DOES HE?

20 A WELL, WE WOULD CONSIDER THAT A FAILURE.

21 Q BECAUSE HE DIDN'T KNOW THAT THOSE WILL BE USED
22 AGAINST HIM?

23 A HE DOESN'T KNOW WHETHER OR NOT THEY ARE GOING TO
24 BE USED AGAINST HIM.

25 Q BUT COULDN'T THAT ALSO RELATE TO THE FACT THAT

1 HE MAY HAVE SPOKEN WITH HIS ATTORNEY AND
2 UNDERSTANDS THERE HAS TO BE A HEARING ON HIS
3 STATEMENT AND SO HE WOULDN'T KNOW UNTIL THE
4 JUDGE RULED WHETHER THOSE STATEMENTS WOULD BE
5 USED AGAINST HIM?

6 A I'M NOT SURE IF IT COULD BE INTERPRETED THAT
7 WAY.

8 Q NOW THE TEST YOU PERFORMED YOU SAID YOU ADAPTED
9 THAT TEST?

10 A YES, I DID.

11 Q SO IN ACTUALITY IT'S NOT THE TEST THAT WAS
12 ACTUALLY PRINTED?

13 A THAT'S CORRECT.

14 Q SO THIS TEST HAS NOT BEEN ONE THAT HAS BEEN
15 ITSELF TESTED FOR ITS ACCURACY, HAS IT?

16 A THAT'S CORRECT.

17 Q SO THIS IS SOMETHING THAT YOU DID FOR YOUR OWN
18 SELF, CORRECT?

19 A WELL, YES, A TEST HAS TO BE MODIFIED TO THE
20 POPULATION YOU ARE WORKING WITH. THE TEST IN
21 PRINT WAS DEVELOPED FOR A POPULATION IN BOSTON
22 WHICH MAY WORK FINE IN BOSTON, BUT I FOUND I'VE
23 HAD TO ADAPT IT TO THIS POPULATION I WORK WITH
24 HERE.

25 Q I WAS INTERESTED TO HEAR, DOCTOR, THAT YOU

1 DIDN'T USE ANYTHING ELSE IN YOUR EVALUATION OF
2 HIM. YOU BASICALLY EVALUATED HIM FROM SCRATCH.
3 ISN'T IT TRUE THAT THINGS SUCH AS THE PRIOR
4 EVALUATION FROM THE DEPARTMENT OF JUVENILE
5 JUSTICE WOULD BE HELPFUL IN YOUR EVALUATION OF
6 THE DEFENDANT?

7 A I HAVE NO OPINION ON THAT.

8 Q DON'T YOU NORMALLY, IN THE COURSE OF EVALUATING
9 SOMEONE, USE THINGS OF PRIOR EVALUATIONS, THINGS
10 LIKE SCHOOL RECORDS OR THINGS LIKE THAT TO
11 DETERMINE IF THEY ARE COMPETENT AND IF THEY CAN
12 DO SOMETHING AS YOU SAY TO WAIVE OR PROPERLY
13 WAIVE THE MIRANDA RIGHTS?

14 A ONLY IF THEY ARE MADE AVAILABLE TO ME. COULD I
15 HAVE SOME MORE WATER PLEASE.

16 Q WERE THEY NOT MADE AVAILABLE TO YOU? WERE
17 THOSE REPORTS MADE AVAILABLE TO YOU, DOCTOR?

18 A WHICH ITEMS ARE YOU REFERRING TO?

19 Q ANY PRIOR REPORTS? DJJ REPORTS, PRIOR SCHOOL
20 RECORDS, ANYTHING OF THAT NATURE?

21 A I DID RECEIVE SCHOOL RECORDS.

22 Q AND WHAT WAS INCLUDED IN YOUR RECORDS?

23 A I HAVE AN IQ SCORE THAT IS A SCHOOL ABILITY
24 INDEX SCORE AND I THINK I HAVE SOME ACADEMIC
25 ACHIEVEMENT SCORES.

1 Q DID YOU CONSIDER THOSE IN YOUR EVALUATION?

2 A YES, I DID.

3 Q DID YOU CONSIDER ANY OTHER PRIOR REPORTS THAT
4 YOU HAD HANDED TO YOU IN YOUR EVALUATION?

5 A I DON'T THINK I HAD ANY OTHER PRIOR REPORTS.

6 Q WOULDN'T IT HAVE BEEN HELPFUL TO HAVE HAD PRIOR
7 REPORTS, PRIOR DJJ REPORTS?

8 A NOT NECESSARILY.

9 Q BUT ISN'T IT TRUE THAT PART OF DETERMINING
10 SOMEONE AS FAR AS THEIR ABILITY TO COMPREHEND
11 THINGS YOU HAVE TO LOOK AT THEIR PAST FORENSIC
12 HISTORY?

13 A NO, PAST FORENSIC HISTORY DOES NOT NECESSARILY
14 CONTRIBUTE TO SAY ABILITY TO UNDERSTAND MIRANDA
15 RIGHTS AND THAT'S BEEN DEMONSTRATED IN THE
16 RESEARCH.

17 Q BUT IT DOES THE COMPETENCE, DOESN'T IT?

18 A I DON'T KNOW.

19 Q YOU DON'T KNOW BUT YOU TEST FOR COMPETENCE ALL
20 THE TIME?

21 A I TEST FOR COMPETENCE. I CAN'T REMEMBER THAT
22 PARTICULAR PIECE OF RESEARCH.

23 Q YOU SAID AS PART OF YOUR REPORTS YOU WERE
24 CONSIDERING SOME OF HIS, I GUESS, SOME OF HIS
25 FUNCTIONING AND YOU SPOKE WITH I BELIEVE HIS

1 GRANDFATHER TODAY CONCERNING THAT?

2 A YES, I DID.

3 Q DID THEY TELL YOU ANYTHING ABOUT THE PARTICULAR
4 FACTS OF THIS CASE OR ANYTHING ABOUT HOW ANTONIO
5 LIVES HIS LIFE?

6 A THEY TOLD ME A LITTLE ABOUT HIM, NOTHING ABOUT
7 THIS CASE.

8 Q AND WHAT DID THEY TELL YOU ABOUT HIM THAT HELPED
9 YOU BASE YOUR OPINION ON?

10 A NOT THEY BUT HE, HIS GRANDFATHER. HIS
11 GRANDFATHER TOLD ME NOTHING TO HELP ME FORM MY
12 OPINION.

13 Q WOULD IT HAVE HELPED YOU TO FORM YOUR OPINION IF
14 YOU HAVE HAD SUCH INFORMATION AS THE FACT THAT
15 ANTONIO WAS ABLE ON HIS OWN TO GO OUT AND
16 PURCHASE A CAR?

17 MR. D'AGOSTINO: YOUR HONOR, I OBJECT. HE
18 HASN'T EXPRESSED AN OPINION AS TO MENTAL
19 RETARDATION.

20 THE COURT: WELL, HE'S TALKING ABOUT HIS ABILITY
21 TO UNDERSTAND MIRANDA RIGHTS. I THINK HE'S GOT
22 A RIGHT. I OVERRULE.

23 Q WOULD IT BE HELPFUL TO KNOW --

24 THE COURT: WELL, ASK YOUR QUESTION.

25 Q WOULDN'T IT BE HELPFUL TO KNOW HE WAS ABLE TO GO

1 OUT ON HIS OWN AND PURCHASE A CAR?

2 A I WOULD WANT TO KNOW MORE DETAILS ABOUT THAT.

3 Q I UNDERSTAND BUT WOULDN'T IT HELP YOU IF YOU
4 KNEW THE DETAILS ABOUT THAT AS TO DETERMINE

5 WHETHER HE'S ABLE TO WAIVE HIS MIRANDA RIGHTS
6 AND DETERMINE HIS COMPETENCY?

7 A NOT NECESSARILY. I CAN'T TELL IF SOMETHING IS
8 GOING TO HELP ME WITH AN OPINION OR NOT UNTIL I
9 KNOW THE INFORMATION.

10 Q DOESN'T THAT GO ALONG WITH HIS ABILITY TO
11 FUNCTION?

12 A I WOULD NEED TO KNOW MORE INFORMATION ABOUT IT.

13 Q HOW ABOUT THE FACT THAT HE IS ABLE TO INSTALL
14 STEREO EQUIPMENT IN THAT CAR, WOULD THAT HELP
15 YOU IN BEING ABLE TO LOOK AND DETERMINE HIS
16 ABILITY TO FUNCTION?

17 A I WOULD NEED TO KNOW MORE ABOUT THAT.

18 Q DID YOU ASK HIM ABOUT THE CHILD HE HAS?

19 A NO, I DID NOT.

20 Q BUT WOULDN'T THAT HELP IN DETERMINING HOW HE
21 FUNCTIONS?

22 A NOT NECESSARILY.

23 Q IF YOU ASK HIM ABOUT THE CARE OF THE CHILD, ARE
24 YOU SAYING IF HE IS ABLE TO CHANGE A DIAPER AND
25 BABYSIT AND DO THINGS LIKE THAT THAT THAT

1 WOULDNT HELP IN DETERMINATION OF HOW HE
2 FUNCTIONS?

3 A NO, THAT WOULD NOT NECESSARILY HELP. PEOPLE
4 WITH MENTAL RETARDATION ARE DOING THOSE THINGS
5 ALL THE TIME.

6 Q AND PEOPLE WITH, BUT HE'S NOT SOMEONE WITH
7 MENTAL RETARDATION, IS HE?

8 A I HAVE NO OPINION ON THAT.

9 Q SO YOU CANT SAY THAT HE IS THOUGH?

10 A THAT IS CORRECT.

11 Q SO YOU CANT LUMP HIM IN A GROUP OF PEOPLE WITH
12 MENTAL RETARDATION ARE DOING STUFF LIKE THAT ALL
13 THE TIME?

14 A THAT IS CORRECT.

15 Q AND PART OF FUNCTIONING YOU WOULD WANT TO
16 CONSIDER OTHER THINGS HE CAN DO, CORRECT?

17 A I DONT KNOW WHAT YOU ARE HEADING FOR.

18 Q AS A PART OF FUNCTIONING SEE, DOCTOR, YOU'RE
19 CONFUSING ME BECAUSE YOU'RE TELLING ME HE'S NOT
20 ABLE TO WAIVE HIS MIRANDA RIGHTS BUT AT THE SAME
21 TIME YOU'RE TELLING ME THAT SUCH THINGS AS BEING
22 ABLE TO DO AND LIVE IN A BASIC DAY-TO-DAY LIFE
23 AND DO VARIOUS CHORES AND THINGS THAT SEEM
24 FAIRLY COMPLICATED TO ME, WOULDNT IT HELP YOU
25 IN YOUR EVALUATION?

1 A CHANGING A DIAPER DOES NOT MEAN HE HAS THE
2 VERBAL SKILLS TO COMPREHEND MIRANDA RIGHTS.

3 Q BUT WOULDN'T SOME OF HIS LIFE EXPERIENCES HELP
4 IN DETERMINING WHAT HE WAS REALLY ABLE TO
5 UNDERSTAND AND WHAT REALLY HE WAS NOT ABLE TO
6 UNDERSTAND?

7 A THEY MIGHT.

8 Q NOW LET'S GO BACK, YOU SAID THAT YOU WERE
9 TALKING ABOUT SOME PEOPLE WHO WERE MENTALLY
10 RETARDED, PEOPLE WHO ARE MENTALLY RETARDED WELL,
11 LET'S PUT IT THE LOWEST I GUESS, DON'T WANT TO
12 BE CALLED THE LOWEST OR HIGHEST RANGE, BUT THE
13 MILD RANGE OF MENTAL RETARDATION, PEOPLE IN THE
14 MILD RANGE OF MENTAL RETARDATION YOU CANNOT SAY
15 THAT ALL OF THEM CANNOT UNDERSTAND AND WAIVE
16 MIRANDA RIGHTS, CORRECT?

17 A I DON'T KNOW.

18 Q WELL, LET ME PUT IT THIS WAY, THERE ARE SOME
19 PEOPLE WHO YOU WOULD CONSIDER MILD MENTALLY
20 RETARDED THAT YOU EVALUATED IN THE PAST THAT YOU
21 WOULD CONSIDER TO BE ABLE TO WAIVE MIRANDA
22 RIGHTS, IS THAT NOT CORRECT?

23 A THAT'S PROBABLY TRUE.

24 Q AND --

25 A I CAN'T RECALL ANY PARTICULAR CASES TODAY, BUT

1 THAT'S PROBABLY A FAIR STATEMENT.

2 Q AND THAT'S NOT THAT UNUSUAL, IS IT?

3 A I HAVE NO OPINION ON THAT.

4 Q ISN'T IT TRUE THAT LOOKING INTO HIS
5 INTERPERSONAL SKILLS WITH OTHER PEOPLE WOULD
6 HELP IN DETERMINING THE ABILITY HE HAD TO
7 UNDERSTAND HIS MIRANDA RIGHTS?

8 A NOT NECESSARILY.

9 Q BUT THAT WOULD INCLUDE VERBAL SKILLS, WOULDN'T
10 IT?

11 A IT MIGHT, YES.

12 Q BUT YOU DIDN'T GO OVER ANY OF THOSE THINGS WITH
13 ANTONIO, DID YOU?

14 A I DIDN'T SAY THAT.

15 Q WELL, DID YOU GO INTO ANY OF HIS INTERPERSONAL
16 SKILLS TO TRY AND HELP YOUR EVALUATION?

17 A I DON'T REMEMBER EVERYTHING I ASKED HIM.

18 Q NOW DID YOU EVER HAVE EITHER OF THE STATEMENTS
19 THAT HE GAVE TO THE POLICE TO LOOK AT, EITHER OF
20 THOSE STATEMENTS, DID YOU HAVE THOSE AT YOUR
21 DISPOSAL?

22 A YES, I DID.

23 Q DID YOU NOTICE IN THOSE TWO STATEMENTS THAT IN
24 THE INITIAL STATEMENT HE DID SOMETHING THAT WAS
25 BASICALLY IT WOULD BE SELF-PRESERVATION. HE DID

1 NOT SAY HE WAS THE SHOOTER IN THIS STATEMENT,
2 DID HE?

3 A I BELIEVE THAT'S TRUE.

4 Q AND SELF-PRESERVATION IS SOMETHING THAT SHOWS
5 THAT HE UNDERSTANDS WHAT HE'S DOING, DOESN'T IT?

6 A WELL, IT COULD BE SELF-PRESERVATION. IT COULD
7 BE THE TRUTH. I DON'T KNOW WHICH IT IS.

8 Q ARE YOU SUGGESTING, DOCTOR, THAT ANTONIO IS SO
9 SUGGESTIBLE THAT SOMEHOW HE IS NOW AGREEING TO
10 BEING THE SHOOTER WHEN HE IS NOT?

11 A I HAVEN'T SAID THAT.

12 Q BUT DOESN'T IT INDICATE THAT BY GIVING A
13 STATEMENT ON SELF-PRESERVATION THAT THAT SHOWS
14 AT LEAST SOME HIGHER LEVEL OF FUNCTIONING?

15 A WELL, YOU CHARACTERIZE IT AS SELF-PRESERVATION.
16 I DON'T KNOW IF IT'S SELF-PRESERVATION OR IF
17 IT'S JUST A STATEMENT OF THE TRUTH.

18 Q IF IT WAS SELF-PRESERVATION WOULD THAT BE
19 SOMETHING THAT YOU COULD CHARACTERIZE HAS HAVING
20 SOMEONE, THAT SOMEONE HAD TO HAVE A LITTLE BIT
21 OF A HIGHER KNOWLEDGE TO BE ABLE TO DO?

22 A NO, SIR. I'VE SEEN SOME VERY RETARDED PEOPLE
23 MAKE STATEMENTS THAT WERE SELF-PRESERVING.

24 Q YOU WEREN'T THERE AT THE TIME HIS MIRANDA RIGHTS
25 WERE READ AT THE POLICE DEPARTMENT, WERE YOU?

1 A THAT IS CORRECT.

2 Q SO YOU REALLY DON'T KNOW AT THAT TIME WHETHER HE
3 WAS ABLE TO UNDERSTAND AND COMPREHEND WHAT HIS
4 MIRANDA RIGHTS WERE, DO YOU?

5 A ALL I KNOW IS THE TESTIMONY I'VE HEARD ABOUT
6 THAT.

7 Q SO THE ANSWER WOULD BE YES OR NO?

8 A I HAVE AN OPINION THAT HE WAS NOT ABLE TO
9 UNDERSTAND HIS MIRANDA RIGHTS AT THE TIME THAT
10 THEY WERE READ TO HIM.

11 Q AT THE TIME THE POLICE READ THEM TO HIM?

12 A YES, SIR. IF HE DOES NOT UNDERSTAND THEM LATER
13 IN MY OFFICE IT'S NOT LIKELY THAT HE UNDERSTOOD
14 THEM AT THE TIME THEY WERE READ TO HIM.

15 Q WHEN HE WAS IN YOUR OFFICE, WHEN HE HAD
16 QUESTIONS HE WOULD ASK YOU, WOULDN'T HE?

17 A I'M SORRY?

18 Q WHEN HE WAS IN YOUR OFFICE, WHEN HE WOULD HAVE
19 QUESTIONS HE WOULD ASK YOU, WOULDN'T HE? IF HE
20 HAD A QUESTION AS TO WHAT YOU ASKED OR EXPLAIN
21 SOMETHING, HE WOULD ASK?

22 A I DON'T REMEMBER HIM DOING THAT. I REMEMBER HE
23 ASKED ABOUT A TOY THAT I HAD IN THE OFFICE. I
24 REMEMBER HE ASKED ABOUT THAT. I DON'T REMEMBER
25 HIM ASKING ME ABOUT ANY OF MY QUESTIONS.

1 Q BUT YOU BELIEVE THAT IF HE DIDN'T UNDERSTAND
2 SOMETHING THAT HE WOULD HAVE ASKED YOU?

3 A NO. NO. PEOPLE WHO FUNCTION AT A LOW LEVEL OF
4 INTELLIGENCE TYPICALLY DO NOT ASK QUESTIONS.

5 Q ARE YOU AWARE OF HIS PRIOR RUN-IN WITH THE LAW?

6 A JUST, NOT IN ANY SPECIFICS, JUST VAGUELY.

7 Q BUT YOU ARE AWARE THAT HE HAS AT LEAST A NUMBER
8 OF PAST RUN-INS WITH THE LAW, IS THAT CORRECT?
9 AND THERE HE WAS AT LEAST COMMITTED TO DJJ
10 TWICE?

11 A YES.

12 Q AND DID YOU GO INTO ANY OF THAT AS FAR AS THE
13 POLICE WORK OR ANYTHING ON THAT?

14 A NO, I DID NOT.

15 Q WOULDN'T IT BE HELPFUL TO, IN DETERMINING
16 WHETHER HE CAN WAIVE HIS MIRANDA RIGHTS, TO TALK
17 TO HIM ABOUT PRIOR CONTACT WITH THE POLICE AND
18 WHETHER HE'S EVER HAD TO DO THAT BEFORE?

19 A IT MAY BE BUT NOT NECESSARILY.

20 Q BUT YOU'LL NEVER KNOW WITHOUT GOING INTO IT,
21 WILL YOU?

22 A WELL, PREVIOUS EXPOSURE TO THE POLICE DOES NOT
23 CONTRIBUTE TO UNDERSTANDING OF MIRANDA RIGHTS.

24 Q BEING STREET SMART DOES, DOESN'T IT?

25 A NO, SIR, I DON'T BELIEVE IT DOES.

1 Q DID YOU INQUIRE OF HIM WHETHER HE'S EVEN SEEN ON
2 TV WHEN SOMEONE WAS GIVEN THE MIRANDA RIGHTS OR
3 HIS UNDERSTANDING OF WHAT THAT'S DOING?

4 A NO, SIR, I DID NOT.

5 Q THANK YOU. NO FURTHER QUESTIONS.

6 MR. D'AGOSTINO: NO FURTHER QUESTIONS. MAY
7 THIS WITNESS BE EXCUSED?

8 THE COURT: YOU CAN STEP DOWN. YOU ARE
9 EXCUSED. WE APPRECIATE YOUR TIME.

10 MR. D'AGOSTINO: JUST ONE OTHER WITNESS BRIEFLY,
11 YOUR HONOR.

12 THE COURT: ALL RIGHT FINE. CALL YOUR NEXT
13 WITNESS.

14 MR. D'AGOSTINO: OFFICER CORN.

15 SALLY CORN, BEING FIRST DULY
16 SWORN, TESTIFIED AS FOLLOWS:

17 DIRECT EXAMINATION BY MR. D'AGOSTINO:

18 Q OFFICER CORN, WHERE DO YOU WORK?

19 A YORK COUNTY DETENTION CENTER.

20 Q DO YOU HAVE ACCESS TO THE COMPUTERS DOWN THERE?

21 A YES, SIR, I DO.

22 Q LET ME HAND YOU A PRINTOUT WHICH IS MARKED
23 DEFENDANT'S EXHIBIT FOUR FOR ID, IS THAT A
24 PRINTOUT ON ANTONIO GORDON AS TO WHEN HE CAME TO
25 THE MOSS JUSTICE CENTER?

1 A YES, IT IS.

2 Q AND WHEN DID HE COME THERE?

3 A HIS BOOKING DATE WAS 7, LET ME PUT ON MY
4 GLASSES. EXCUSE ME A MOMENT. 7-23-98 AT 19:42
5 HOURS.

6 Q ALL RIGHT. THAT'S WHEN HE ACTUALLY GOT DOWN TO
7 THE MOSS JUSTICE CENTER DOWNSTAIRS?

8 A YES, SIR.

9 Q IS THIS ONE, LET ME HAND YOU WHAT'S BEEN MARKED
10 DEFENDANT'S EXHIBIT NUMBER FIVE, WHO IS THAT ONE
11 OF?

12 A THIS IS MONTA GORDON.

13 Q WHEN DID HE GET DOWN THERE?

14 A HIS ENTER DATE 7-24-98 AT 20 HUNDRED HOURS.

15 Q 8 O'CLOCK IN THE EVENING?

16 A YES, SIR.

17 MR. D'AGOSTINO: YOUR HONOR, I MOVE TO INTRODUCE
18 EXHIBIT NUMBER FOUR AND FIVE.

19 THE COURT: ANY OBJECTION.

20 MR. ANTHONY: NO OBJECTION.

21 (DEFENDANT'S EXHIBITS 4 & 5 PRINTOUTS MARKED FOR
22 IDENTIFICATION.)

23 Q AND DO YOU KNOW IF ANTONIO WOULD HAVE BEEN
24 TAKEN BACK OVER TO THE ROCK HILL POLICE
25 DEPARTMENT THAT DAY OR THE NEXT DAY. WOULD IT

1 BE INDICATED ON THAT REPORT IF HE HAD BEEN TAKEN
2 OUT AND BOOKED BACK IN?

3 A IF HE WOULD HAVE BEEN TAKEN OUT AND BOOKED BACK
4 IN, IT WOULD HAVE BEEN INTO THE COMPUTER.

5 Q ALL RIGHT. THOSE ARE ALL THE QUESTIONS I HAVE.

6 MR. ANTHONY: NO CROSS EXAMINATION. THANK YOU.

7 THE COURT: YOU CAN STEP DOWN AND BE EXCUSED.

8 A THANK YOU, JUDGE.

9 THE COURT: CALL YOUR NEXT WITNESS.

10 MR. D'AGOSTINO: THOSE ARE ALL THE WITNESSES,
11 YOUR HONOR.

12 THE COURT: ANYTHING ELSE FROM THE STATE?

13 MR. THOMPSON: NO, YOUR HONOR. NOTHING ON
14 BEHALF OF THE STATE.

15 THE COURT: MR. D'AGOSTINO, YOU WANT TO ARGUE
16 YOUR POSITION NOW AS TO WHY THE STATEMENT IS NOT
17 ADMISSIBLE.

18 MR. D'AGOSTINO: YES, SIR, YOUR HONOR. LET ME
19 GET MY NOTES ON THAT. LET ME JUST TAKE THESE,
20 EVERYTHING IN ORDER AS BEST I CAN. YOUR HONOR,
21 FIRST WE MOVE TO SUPPRESS THE STATEMENTS AS THE
22 STATE HAS NO PROBABLE CAUSE TO ARREST ANTONIO
23 GORDON WITHOUT A WARRANT. THE ONLY INFORMATION
24 THEY HAD AT THE TIME THEY ARRESTED HIM WAS A
25 STATEMENT FROM CHYENCA DIXON, TOWANDA BURRIS,

1 WHOEVER YOU WANT TO, WHATEVER YOU WANT TO CALL
2 HER, THE SAME PERSON HAD TWO STATEMENTS BE
3 ENTIRETY INCONSISTENT. ONE HAD INCONSISTENCIES
4 IN ITSELF. NOW THEY SAY THAT THEY SUBSEQUENTLY
5 LET HER GO AND THEN LETTING HER GO CREATED THE
6 EXIGENT CIRCUMSTANCES THEY SAY NECESSITATING HIS
7 ARREST. YOUR HONOR, I WOULD SUBMIT THAT THEY
8 CANNOT --

9 THE COURT: DO THEY HAVE TO HAVE EXIGENT
10 CIRCUMSTANCES? DON'T THEY JUST HAVE TO HAVE
11 PROBABLE CAUSE?

12 MR. D'AGOSTINO: TO ARREST SOMEONE I THINK
13 PROBABLE CAUSE TO BELIEVE, I THINK WHAT YOU NEED
14 IS A CRIME HAS TO BE COMMITTED IN THEIR
15 PRESENCE.

16 THE COURT: NOT FOR A FELONY.

17 MR. D'AGOSTINO: THEY NEED AN ARREST WARRANT TO
18 ARREST SOMEONE.

19 THE COURT: NOT FOR A FELONY, MAYBE, LET ME HEAR
20 FROM THE STATE ON THAT.

21 MR. ANTHONY: I THINK IT'S PRETTY WELL SETTLED
22 LAW THAT YOU CAN ARREST FOR A FELONY WITHOUT A
23 WARRANT.

24 THE COURT: THAT'S BASED ON PROBABLE CAUSE.

25 MR. ANTHONY: IF YOU HAVE PROBABLE CAUSE. YOU

1 OBVIOUSLY CAN'T ARREST ANYONE IF YOU DON'T HAVE
2 PROBABLE CAUSE, BUT YOU CAN ARREST FOR A FELONY
3 WITHOUT A WARRANT.

4 THE COURT: THAT'S MY UNDERSTANDING. YOU CAN
5 ARREST FOR A MISDEMEANOR WITHOUT A WARRANT ONLY
6 IF IT HAPPENS IN YOUR PRESENCE OR IT'S SO FRESH
7 AND SOME OTHER STUFF LIKE THAT BUT NOT FOR A
8 FELONY.

9 MR. D'AGOSTINO: I UNDERSTAND THE COURT'S
10 RULING, YOUR HONOR.

11 THE COURT: I MEAN, I'LL BE GLAD TO HEAR FROM
12 YOU FURTHER, BUT I THINK IT WAS PROBABLE CAUSE
13 AND I, WITHOUT HEARING FROM THE STATE, I
14 LISTENED BECAUSE I KNEW THAT WAS ONE OF THE
15 ISSUES AND VERY INTENT ON THAT, BUT IN FACT I
16 EVEN LOOKED UP A LITTLE LAW, ONE OF MY LITTLE
17 SUMMARY SHEETS TO SEE IF WHAT I REMEMBER WAS
18 CORRECT AND I BELIEVE THAT BASED ON THE
19 INFORMATION THAT THEY HAD AT THAT TIME THEY HAD
20 PROBABLE CAUSE TO ARREST.

21 MR. D'AGOSTINO: THAT'S WHAT I WAS GETTING AT.
22 I DIDN'T BELIEVE THEY HAD PROBABLE CAUSE BASED
23 UPON THE INFORMATION THEY HAD AT THE TIME, YOUR
24 HONOR.

25 THE COURT: WELL, I DENY THAT MOTION TO SUPPRESS

1 ON THAT GROUND.

2 MR. D'AGOSTINO: THANK YOU, YOUR HONOR. THE
3 NEXT GROUNDS AND THEY KIND OF ALL RUN TOGETHER,
4 I MOVE TO SUPPRESS ANTONIO GORDON'S STATEMENTS
5 ON BOTH THE FIFTH AND SIXTH AMENDMENTS, RIGHTS
6 TO COUNSEL, BOTH STATE AND FEDERAL, BOTH THE
7 FEDERAL FIFTH AND SIXTH AMENDMENTS OF RIGHT TO
8 COUNSEL, AND IN SOUTH CAROLINA CONSTITUTION
9 ARTICLE ONE SECTION 11, ARTICLE ONE SECTION 14,
10 AND ALSO I WOULD RELY UPON SOUTH CAROLINA STATE
11 LAW RELATING TO AN ARREST.

12 LET ME GO THROUGH EACH ONE OF THOSE IN MY
13 POSITION WITH REGARD TO THE STATEMENTS. YOUR
14 HONOR, FIRST OF ALL WE HAVE ANTONIO GORDON,
15 HE'S 16 YEARS OF AGE, HE'S TAKEN INTO THE POLICE
16 STATION. AS SOON AFTER, WHILE HE'S GIVING HIS
17 FIRST STATEMENT AN ATTORNEY WHO IS HIRED FOR HIM
18 COMES TO THE POLICE STATION, WHOSE BEEN HIRED BY
19 HIS FAMILY TO REPRESENT HIM. THE STATE
20 CONTINUES TO INTERROGATE HIM, DOES NOT INFORM
21 HIM OF HIS RIGHT TO COUNSEL, OF COUNSEL BEING
22 PRESENT. THERE IS AN ATTORNEY OUTSIDE ASKING TO
23 SEE HIM. YOUR HONOR, I SUBMIT THAT HE SHOULD
24 HAVE BEEN TOLD THAT THE ATTORNEY WAS THERE.

25 THE COURT: ALL RIGHT. YOU NEED TO SHOW SOME

1 CASE LAW ON THAT BECAUSE THAT'S A VERY
2 INTERESTING ISSUE. I HAVE NEVER HAD IT. I
3 DON'T HAVE ANY LAW THAT, THE RIGHT TO COUNSEL
4 LIES WITH THE ONE WHO IS ARRESTED AND.

5 MR. D'AGOSTINO: YES, SIR.

6 THE COURT: SO YOU'VE GOT TO SHOW ME SOME LAW ON
7 A THIRD PARTY, EVEN IF IT'S A JUVENILE, ENGAGES
8 COUNSEL THAT THE POLICE MUST ALLOW THAT PERSON
9 TO SEE THE ACCUSED EVEN IF THE ACCUSED DOES NOT
10 ASK FOR AN ATTORNEY.

11 MR. D'AGOSTINO: YOUR HONOR, THE UNITED STATES
12 SUPREME COURT HAS RULED, I WAS GOING TO GET TO
13 THAT, UNDER THE FEDERAL CONSTITUTION THAT IT'S
14 THE INDIVIDUAL'S RIGHT. HOWEVER, THERE ARE
15 OTHER STATES OR THERE ARE FEDERAL COURTS
16 DECISIONS BEFORE, I MEAN STATE COURT DECISIONS
17 BEFORE THAT CASE WENT UP THAT HELD THAT IT WAS
18 THE INDIVIDUAL'S, I MEAN THAT A STATEMENT TAKEN
19 WHEN THERE IS AN ATTORNEY OUTSIDE ASKING TO SEE
20 THE CLIENT EVEN IF IT CLIENT DOES NOT KNOW, THE
21 POLICE DO NOT INFORM THE CLIENT OF THE PRESENCE
22 OF THAT ATTORNEY, THEN THOSE STATEMENTS TAKEN
23 SHOULD BE SUPPRESSED AS BEING VIOLATIVE OF THOSE
24 STATE'S CONSTITUTIONS AND PRIOR TO THE U.S.
25 SUPREME COURT CASE, THE FEDERAL CONSTITUTIONAL

1 RIGHTS. HOWEVER, SINCE THE SUPREME COURT HAS
2 ADDRESSED THAT WITH REGARD TO THE FEDERAL FIFTH
3 AMENDMENT RIGHT TO COUNSEL AND BEING INFORMED OF
4 IT AND SAID THAT THE POLICE DO NOT HAVE TO
5 INFORM, I WOULD SUBMIT THAT OUR SOUTH CAROLINA
6 STATE CONSTITUTION, OUR SOUTH CAROLINA SUPREME
7 COURT HAS NOT RULED ON THAT RELATING TO OUR
8 STATE CONSTITUTIONAL RIGHT TO COUNSEL AND TO BE
9 INFORMED OF COUNSEL, AND YOUR HONOR, I WOULD
10 SUBMIT THAT ON THAT PARTICULAR ISSUE.

11 THE COURT: LET ME GET OUR CONSTITUTION.

12 MR. D'AGOSTINO: THAT WOULD BE ARTICLE 1
13 SECTION 11, YOUR HONOR, AND I COULD NOT FIND A
14 CASE WHERE OUR SUPREME COURT HAS RULED ON THAT
15 ISSUE AS IT RELATES TO OUR CONSTITUTION.

16 THE COURT: ARTICLE ONE.

17 MR. D'AGOSTINO: ARTICLE ONE SECTION 11 AS I
18 BELIEVE OUR STATE CONSTITUTION THEN CORRELATES
19 TO THE FIFTH AMENDMENT RIGHT TO COUNSEL.

20 THE COURT: AND WHEREIN DOES IT GIVE, I'M SORRY,
21 ARTICLE ONE SECTION WHAT?

22 MR. D'AGOSTINO: SECTION 11, YOUR HONOR.

23 THE COURT: ALL RIGHT.

24 MR. D'AGOSTINO: EXCUSE ME, I MIGHT BE---

25 THE COURT: I THINK YOU MIGHT BE WRONG. THIS IS

1 PRESENTATION ON INDICTMENTS.

2 MR. D'AGOSTINO: I APOLOGIZE FOR HAVING THE
3 WRONG SECTION. ARTICLE ONE SECTION 12 IS VERY
4 SIMILAR TO THE VERY CONSTITUTION, NOR SHALL ANY
5 PERSON BE COMPELLED IN ANY CRIMINAL CASE BE
6 COMPELLED TO WITNESS AGAINST THEMSELF, THAT'S
7 THE UNITED STATES CONSTITUTION ARTICLE.

8 THE COURT: WELL, WE'RE TALKING ABOUT A RIGHT TO
9 COUNSEL. NOT WITNESS AGAINST HIMSELF. YOU
10 STILL HADN'T HONED INTO WHAT WE ARE LOOKING
11 FOR. WE HAVE A WHOLE GROUP OF LAWYERS, WE OUGHT
12 TO KNOW THE SOUTH CAROLINA CONSTITUTION BETTER,
13 SHOULDN'T WE?

14 I BELIEVE IT'S 14. THERE IS NO, UNLESS THIS HAS
15 BEEN CHANGED, THERE IS NO CONSTITUTIONAL
16 STATUTORY REQUIREMENTS FOR SILENT COUNSEL EXCEPT
17 IN A CAPITAL CASE. WE'VE HAD A CHANGE TO THE
18 CONSTITUTION SINCE THEN OBVIOUSLY.

19 THERE IS NO QUESTION HE HAS A RIGHT TO COUNSEL.
20 MY CONCERN IS WHETHER OR NOT, YOU ALLEGE THAT,
21 IN ESSENCE YOU'RE ALLEGING THAT THE SOUTH
22 CAROLINA STANDARD WOULD BE HIGHER THAN THE
23 UNITED STATES CONSTITUTIONAL STANDARD OR
24 OTHERWISE I'D BE BOUND BY THE UNITED STATES
25 SUPREME COURT STANDARD WHICH HAS BEEN SET WHICH

1 WEIGHS AGAINST YOUR CLIENT, SO I WAS REALLY
2 LOOKING FOR ANY ADDITIONAL LANGUAGE IN THE SOUTH
3 CAROLINA CONSTITUTION THAT WOULD GIVE HIM A
4 GREATER RIGHT UNDER THE STATE CONSTITUTION THAN
5 IT HAS ON THE FEDERAL CONSTITUTION WHICH THE
6 UNITED STATES SUPREME COURT HAS ALREADY
7 ADDRESSED HIS RIGHT UNDER THE FEDERAL
8 CONSTITUTION.

9 MR. D'AGOSTINO: WHAT I WAS LOOKING AT, YOUR
10 HONOR, AS I UNDERSTAND THE LAW, YOU HAVE THE
11 FIFTH AMENDMENT RIGHT TO COUNSEL. MIRANDA WAS
12 DESIGNED TO INFORM YOU OF YOUR RIGHT TO, AGAINST
13 SELF INCRIMINATION AND MIRANDA IS BASED UPON THE
14 FIFTH AMENDMENT.

15 THE COURT: RIGHT.

16 MR. D'AGOSTINO: AND THE SUPREME COURT HAS SAID
17 THAT UNDER MIRANDA AND UNDER THE FIFTH AMENDMENT
18 IF AN ATTORNEY IS THERE IT IS THE CLIENT'S RIGHT
19 AND NOT THE ATTORNEY'S ABILITY TO ASSERT THAT
20 RIGHT OR FAMILY MEMBERS ABILITY TO ASSERT THAT
21 RIGHT, I UNDERSTAND THAT, AND I HAVE A DUTY TO
22 INFORM THE COURT OF THE SUPREME COURT FEDERAL
23 LAW AND THAT'S WHAT I WAS DOING. BUT MIRANDA
24 WAS BASED UPON THE FIFTH AMENDMENT AND I BELIEVE
25 THE LANGUAGE IN THE FIFTH AMENDMENT TO THE

1 CONSTITUTION, UNITED STATES CONSTITUTION,
2 SPECIFICALLY SAYS NOR SHALL, AND THIS IS WHERE
3 THEY GET MIRANDA, NOR SHALL BE COMPELLED IN ANY
4 CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF
5 NOR TO BE DEPRIVED OF LIFE, LIBERTY, PROPERTY
6 WITHOUT DUE PROCESS OF LAW; AND THAT'S WHY I
7 REFER BACK TO ARTICLE 1 SECTION 12, NO PERSON
8 SHALL BE SUBJECT TO SAME OFFENSE TO BE TWICE PUT
9 IN JEOPARDY OF LIFE OR LIBERTY NOR SHALL ANY
10 PERSON BE COMPELLED IN ANY CRIMINAL CASE TO BE A
11 WITNESS AGAINST HIMSELF. THAT'S WHY I
12 ORIGINALLY SAID ARTICLE 1 SECTION 12 BECAUSE I
13 WAS COMPARING THE LANGUAGE OF BOTH FEDERAL AND
14 STATE, THEY ARE VERY SIMILAR LANGUAGE, BUT I
15 WOULD SUBMIT, YOUR HONOR, THAT IN A CASE AND
16 THIS IS WHERE I'M GOING TO MOVE INTO THE STATE
17 LAW AS WELL WHERE YOU'RE DEALING WITH A 16
18 YEAR-OLD YOUNG BOY, THAT WE HAVE STATUTES THAT
19 SPECIFICALLY ALSO PROTECT THE INTERESTS AND THE
20 RIGHTS OF JUVENILES AS WELL. AND 16, I MEAN,
21 20-7-7205 DEALS WITH --

22 THE COURT: 20-7.

23 MR. D'AGOSTINO: 20-7-7205, YOUR HONOR. THAT'S
24 CUSTODY AND DETENTION AND IT'S UNDER THE
25 JUVENILE SECTION.

1 THE COURT: I GOT IT.

2 MR. D'AGOSTINO: WHEN A CHILD FOUND VIOLATING
3 CRIMINAL LAW OR ORDINANCE IS TAKEN INTO CUSTODY,
4 THE CUSTODY IS NOT AN ARREST. JURISDICTION OF
5 THE COURT ATTACHES FROM THE TIME OF THE TAKING
6 INTO CUSTODY. WELL, YOUR HONOR, I WOULD, THEN
7 IT GOES ON TO SAY WHEN A CHILD IS TAKEN INTO
8 CUSTODY, THE OFFICER TAKING THE CHILD INTO
9 CUSTODY SHALL NOTIFY THE PARENT, GUARDIAN, OR
10 CUSTODIAN OF THE CHILD AS SOON AS POSSIBLE.
11 YOUR HONOR, I WOULD SUBMIT THAT IN A SITUATION
12 WHERE YOU'RE DEALING WITH A JUVENILE, WHERE YOU
13 HAVE THE PARENTS WHO ARE LEGALLY CHARGED WITH
14 THE RESPONSIBILITY FOR THE CHILD HAS TO BE
15 PROSECUTED FOR TRUANCY FOR THEIR CHILDREN AND
16 THINGS OF THAT NATURE, WHERE YOU HAVE A JUVENILE
17 AND WHERE THE PARENTS HAVE ASSERTED THAT RIGHT
18 ON BEHALF OF THE JUVENILE, I WOULD SUBMIT THAT
19 EVEN THOUGH THERE IS THAT FEDERAL CASE OUT
20 THERE, THAT WE HAVE A VERY LIMITED SPECIAL
21 CIRCUMSTANCE HERE THAT WITH A JUVENILE, A
22 PARENT, A THIRD PARTY, SHOULD BE ALLOWED TO AND
23 THE COURT SHOULD RECOGNIZE THE ASSERTION OF BOTH
24 THE FEDERAL AND THE STATE CONSTITUTIONAL RIGHT
25 TO COUNSEL AS ASSERTED BY A PARENT OF THE

1 JUVENILE. IT'S CLEAR HE'S 16 YEARS OF AGE.
2 THERE IS NO QUESTION ABOUT THAT.

3 SO, YOUR HONOR, I WOULD SUBMIT THAT ON THAT
4 BASIS THE COURT, SINCE MR. WELLBORN ASSERTED THE
5 RIGHT TO COUNSEL AND STATEMENTS CONTINUING TO BE
6 TAKEN BOTH THE FIRST AND THE SECOND STATEMENT
7 TAKEN WITHOUT AFFORDING ANTONIO GORDON HIS
8 ATTORNEY, THAT THE COURT SHOULD SUPPRESS THOSE
9 STATEMENTS AS VIOLATIVE OF BOTH THE STATE AND
10 THE FEDERAL CONSTITUTION.

11 THE COURT: WELL, THIS IS A NOTICE, A
12 NOTIFICATION STATUTE AND THEY OBVIOUSLY WERE
13 NOTIFIED BY SOMEONE. I DON'T KNOW THAT LAW
14 ENFORCEMENT DID IT, BUT THEY WERE PRESENT
15 APPARENTLY, ACCORDING TO MR. WELLBORN, THEY WERE
16 ON THE PHONE TO HIM AND PRESENT, SO I DON'T
17 THINK THE FACT THAT THEY MAY NOT HAVE NOTIFIED
18 THE PARENTS IS MOOT BECAUSE THE PARENTS WERE
19 THERE.

20 MR. D'AGOSTINO: I DIDN'T SAY THEY DIDN'T NOTIFY
21 THE PARENTS. WHAT I SAID WAS THEY HAVE THE DUTY
22 TO NOTIFY THE PARENTS, READING THAT STATUTE,
23 TAKING INTO CONSIDERATION THAT PARENTS HAVE
24 CERTAIN RIGHTS, DUTIES, AND RESPONSIBILITIES
25 UNDER OUR STATUTES, OF COURSE, THEY ARE

1 CHILDREN. WHAT I'M SAYING IS THAT READING THE
2 STATE STATUTES IN CONJUNCTION WITH THE RIGHTS
3 AND RESPONSIBILITIES OF PARENTS THAT WITH A
4 JUVENILE, A PARENT'S ASSERTION OF THAT
5 JUVENILE'S FIFTH AMENDMENT RIGHT AND OUR
6 CONSTITUTIONAL RIGHT TO COUNSEL AFTER HE'S
7 ADVISED OF MIRANDA, THAT THE PARENTS ASSERTION
8 OF THAT RIGHT TO COUNSEL SHOULD SUFFICE FOR THEM
9 TO AFFORD MR. WELLBORN THE OPPORTUNITY TO
10 CONTACT HIS CLIENT, DISCUSS THE CASE WITH HIS
11 CLIENT, AND IMMEDIATELY CEASE INTERVIEWING HIS
12 CLIENT AT THE TIME HE REQUESTED THEM TO DO SO.

13 THE COURT: WELL, THAT IS AN INTERESTING
14 ARGUMENT, BUT DO YOU HAVE ANY CASE LAW?

15 MR. D'AGOSTINO: I COULD NOT FIND ANY CASE LAW
16 DIRECTLY ON POINT.

17 THE COURT: THANK YOU.

18 MR. D'AGOSTINO: DO YOU WANT ME TO GO INTO MY
19 OTHER ARGUMENTS AND OTHER REASONS WHY?

20 THE COURT: YES, AND I'VE THOUGHT THROUGH A LOT
21 OF THIS. I'M NOT TRYING TO USURP THE STATE'S
22 RIGHT TO BUT I KNEW WHAT THESE ISSUES WERE GOING
23 TO BE, I'VE BEEN THINKING ABOUT THEM, AND I'VE
24 DONE A LITTLE RESEARCH MYSELF AND LISTENING TO
25 THE TESTIMONY ALONG THE LINES OF WHAT WE'RE

1 GOING ON OVER, SO I DON'T WANT YOU OR MR. GORDON
2 TO THINK I'VE TAKEN THE STATE'S SIDE IN MAKING
3 THE ARGUMENTS. I'VE THOUGHT THROUGH THESE AND
4 I'M LOOKING, I'VE LOOKED AT THE RETARDATION
5 ISSUE, I'VE LOOKED AT THE AGE ISSUE. LIKE YOU I
6 COULDN'T FIND ANYTHING THAT REALLY ADDRESSED THE
7 PARENTAL OR THE THIRD PARTY ATTORNEY POSITION,
8 BUT GO AHEAD.

9 MR. D'AGOSTINO: WELL, I'VE GOT CASES FROM OTHER
10 JURISDICTIONS THAT DEAL WITH THIRD PARTY, NOT
11 WITH JUVENILES, I'LL BE GLAD TO HAND THEM UP FOR
12 THE COURT'S CONSIDERATION.

13 MR. ANTHONY: HAVE YOU GOT COPIES OF THOSE.

14 MR. D'AGOSTINO: NO. YOUR HONOR, WITH REGARD TO
15 THE SIXTH AMENDMENT RIGHT TO COUNSEL, IT'S
16 OBVIOUS THAT THERE WAS A BOND HEARING THAT DAY,
17 I WOULD SUBMIT THAT AT THAT POINT JUDICIAL
18 PROCEEDINGS BEGAN AND MR. WELLBORN'S ATTEMPTS TO
19 GET IN TO SEE HIS CLIENT WOULD INCLUDE
20 PREPARATION FOR BOND HEARINGS, AND AS SUCH THE
21 SIXTH AMENDMENT RIGHT TO COUNSEL WAS ALSO
22 PRESENT THAT DAY FOR MR. GORDON AND AS SUCH --

23 THE COURT: WAIT, I'M GETTING A LITTLE CONFUSED.
24 THE THING THAT, OKAY, IS THERE ANY TIME ON IT?

25 MR. D'AGOSTINO: THERE IS NO TIME ON IT AND IT

1 DID OCCUR THAT DAY AND OFFICER THICKENS SAID IT
2 HAPPENED THAT AFTERNOON.

3 THE COURT: WHICH WOULD BE AFTER THE TAKING OF
4 THE STATEMENT.

5 MR. D'AGOSTINO: THE STATEMENT WAS TAKEN IN THE
6 AFTERNOON AS WELL. I COULD NOT PIN DOWN A TIME
7 ON THE STATEMENT WHEN THE BOND HEARING WAS HELD.
8 I'VE CHECKED WITH THE MAGISTRATE.

9 THE COURT: HE SAID LATE AFTERNOON, THE BOND IN
10 THE STATEMENT WAS AROUND FOUR.

11 MR. D'AGOSTINO: THE LAST TIME WAS SOMETIME
12 AROUND FOUR, YES, SIR, YOUR HONOR. I COULD NOT
13 PIN DOWN CHECKING WITH JUDGE LONG'S OFFICE AS TO
14 WHETHER THEY KEEP RECORDS AS TO SPECIFIC TIMES
15 THAT BOND HEARINGS ARE HELD. I WAS INFORMED BY
16 THE SECRETARY THEY DO NOT, SO I COULD NOT
17 PRESENT ANY EVIDENCE AS TO WHAT TIME FROM THE
18 COURT AS TO WHAT TIME THAT BOND HEARING WAS
19 HELD, YOUR HONOR, BUT IN ANY EVENT WITH REGARD
20 TO THAT, THE BOND, IT IS CLEAR THAT ONE OF THE
21 FUNCTIONS OF AN ATTORNEY WOULD BE TO ASSIST HIS
22 CLIENT IN PREPARATION OF A BOND HEARING. I
23 WOULD SUBMIT THAT JUDICIAL PROCEEDINGS HAD BEGUN
24 OR WERE IN THE PROCESS AND AS SUCH MR. GORDON'S
25 RIGHT TO SEE HIS ATTORNEY ATTACHED UNDER THE

1 SIXTH AMENDMENT AS WELL IN WHICH CASE THE STATE
2 WOULD NOT EVEN BE ENTITLED TO INITIATE
3 CONVERSATIONS AND INTERROGATIONS OF MY CLIENT.
4 YOUR HONOR, I WOULD ALSO SUBMIT THAT JUST ON THE
5 FACTS OF THIS CASE ALONE, THE ISSUE OF THE
6 VOLUNTARINESS, THE VOLUNTARINESS WAIVER OF THE
7 STATEMENTS, ALL THE EVIDENCE DEMONSTRATES, I
8 WILL SUBMIT, THAT ANTONIO GORDON COULD NOT
9 VOLUNTARILY WAIVE HIS RIGHTS AND THAT IT WAS A
10 FREELY AND VOLUNTARY WAIVER OF HIS RIGHTS. I
11 WOULD SUBMIT THAT ALTHOUGH HE'S BEEN FOUND
12 COMPETENT TO STAND TRIAL, THE COURT SHOULD TAKE
13 NOTICE AND CAN TAKE INTO CONSIDERATION OF HIS
14 LIMITED MENTAL ABILITY AS WAS TESTIFIED TO
15 TODAY, THE FACT OF HOW THE MIRANDA STATEMENTS
16 WERE GIVEN TO HIM, IN A VERY, YOU KNOW, JUST
17 READ DIRECTLY TO HIM. THERE WASN'T THIS
18 SCENARIO OR THIS SETTING WHERE HE WAS ASKED A
19 QUESTION, ASKED IF HE UNDERSTOOD IT, THINGS OF
20 THAT NATURE, SO I WOULD SUBMIT THAT HIS
21 STATEMENTS SUBSEQUENT TO HIS INTERROGATION COULD
22 NOT BE FREELY AND VOLUNTARILY GIVEN BECAUSE HE
23 COULD NOT FREELY AND VOLUNTARILY WAIVE HIS
24 MIRANDA RIGHTS.

25 YOUR HONOR, I THINK THE COURT SHOULD ALSO

1 CONSIDER, AND I KNOW THE COURT HAS TO CONSIDER
2 ALL THE TESTIMONY WHEN CONSIDERING ALL THESE
3 VARIOUS ISSUES AND WHEN CONSIDERING FREELY, THE
4 FREENESS AND VOLUNTARINESS OF THE STATEMENTS, I
5 THINK YOU ALSO GOT TO CONSIDER AND LOOK AT WHEN
6 YOU LOOK AT THE OFFICER'S ACTIONS, WHAT SOME OF
7 THE TESTIMONY WE'VE HEARD ABOUT THE OFFICERS,
8 THEM COMING OUT INTO THE LOBBY AND YOU HAVE THE
9 INDIVIDUAL WHO THEY WANT TO TALK TO AND SHE
10 ASSERTS THAT SHE DOESN'T WANT TO TALK TO THEM
11 AND ASKS MR. WELLBORN TO REPRESENT HER AND THEN
12 COME BACK OUT INTO THE LOBBY AND PLACE HER UNDER
13 ARREST FOR ACCESSORY AFTER THE FACT AND THEN
14 UNARREST HER. YOU KNOW, YOUR HONOR, I THINK YOU
15 GOT TO CONSIDER ALL THOSE FACTS WHEN YOU ARE
16 CONSIDERING THE WHOLE SCENARIO HERE AND THAT IN
17 AND OF ITSELF I THINK THERE IS STATUTES AGAINST
18 THAT TYPE OF ACTIVITY BY THE POLICE DEPARTMENT.
19 17-13-30 SPECIFICALLY PROHIBITS THAT TYPE OF
20 ACTIVITY BY THE POLICE OFFICERS.

21 THE COURT: WHAT'S THAT CODE SECTION?

22 MR. D'AGOSTINO: 17-13-30 SPECIFICALLY
23 PROHIBITS, YOU HAVE TO FIND THAT IN THE
24 SUPPLEMENT, YOUR HONOR. I DON'T KNOW IF YOU
25 HAVE THE SUPPLEMENT THERE.

1 THE COURT: I HAVE IT.

2 MR. D'AGOSTINO: EXCUSE ME 17-13-50, RIGHT TO BE
3 INFORMED OF GROUNDS OF ARRESTS, CONSEQUENCES OF
4 A REFUSE TO ANSWER.

5 THE COURT: THAT'S HER RIGHT NOT HIS.

6 MR. D'AGOSTINO: I UNDERSTAND THAT. I'M NOT
7 ASSERTING THAT IS HIS RIGHT. WHAT I'M SAYING IS
8 YOU GOT TO CONSIDER ALL THE ACTIVITIES OF
9 EVERYTHING GOING ON THAT DAY WHEN YOU ARE
10 CONSIDERING THE FACTORS OR THE FACTS OF THIS
11 CASE AND WHETHER, AND THE CREDIBILITY AND
12 WHETHER MR. GORDON COULD FREELY AND DID FREELY
13 AND VOLUNTARILY WAIVE HIS RIGHT TO COUNSEL UNDER
14 THE STATE AND FEDERAL CONSTITUTIONS. THANK YOU,
15 YOUR HONOR.

16 AND YOUR HONOR, JUST FOR THE RECORD, YOU SAID,
17 I KNOW YOU CONSIDERED ALL THESE ISSUES BECAUSE
18 PRETRIAL BEFORE WE EVEN STARTED TODAY, JUST SO
19 MY CLIENT UNDERSTANDS, WE INFORMED YOU OF WHAT
20 THE ISSUES WERE GOING TO BE AS TO WHY WE'RE
21 HAVING THIS HEARING AND I UNDERSTAND THE COURT
22 HAS ALREADY THOUGHT AND CONSIDERED MANY OF THESE
23 ISSUES AND THAT'S SOLELY TO INFORM MY CLIENT OF
24 THAT AS WELL, YOUR HONOR.

25 THE COURT: WELL, NOT ONLY DID I THINK OF THEM,

1 BUT FROM THE LINE OF QUESTIONING WE'VE ALL BEEN
2 DOING THIS FOR WHILE AND WE CAN USUALLY SEE
3 WHERE SOMEONE IS AHEAD. ANYTHING FROM THE
4 STATE.

5 MR. ANTHONY: YES, SIR. WE HAVE SOME CASES TO
6 HAND UP. FIRST OFF I WOULD HAND UP MORAN VERSUS
7 BURBINE WHICH IS A UNITED STATES SUPREME COURT
8 CASE. IT'S AT 106 SUPREME COURT 1135. AND ALSO
9 HANDED UP STATE VERSUS DRAYTON WHICH IS ALSO A
10 SOUTH CAROLINA SUPREME COURT CASE AT 361
11 SOUTHEASTERN 2ND 329. YOUR HONOR, BOTH OF THESE
12 CASES POSE SITUATIONS THAT ARE SIMILAR TO THE
13 SITUATION WE'VE HAD HERE TODAY. THEY BOTH
14 INVOLVE CIRCUMSTANCES WHERE PEOPLE ARE TAKEN
15 INTO CUSTODY, THEY WERE INTERROGATED BY THE
16 POLICE, ATTORNEYS SHOWED UP, WANTED TO SPEAK TO
17 THE PERSON BEING INTERROGATED; THEY WERE DENIED
18 THE ABILITY TO SPEAK TO THE PERSON BEING
19 INTERROGATED BY LAW ENFORCEMENT BECAUSE THE
20 PERSON BEING INTERROGATED HAD WAIVED THEIR
21 RIGHTS TO COUNSEL AND WAIVED THEIR RIGHTS TO
22 REMAIN SILENT AND INDICATED THEY WANTED TO GIVE
23 STATEMENTS AND LAW ENFORCEMENT WAS IN THE
24 PROCESS OF TAKING THOSE STATEMENTS, AND THE
25 HOLDINGS OF BOTH THOSE CASES ARE THAT THE

1 RIGHTS, BOTH THE FIFTH AMENDMENT RIGHT TO REMAIN
2 SILENT AND THE FIFTH AMENDMENT RIGHT TO COUNSEL
3 IS A RIGHT THAT'S HELD BY THE DEFENDANT AND IF
4 THE DEFENDANT WANTS TO WAIVE IT TO GIVE A
5 STATEMENT THE DEFENDANT CAN DO THAT, AND IT
6 DOESN'T MATTER THAT SOMEONE IS WANTING TO
7 INFRINGE ON THE DEFENDANT'S RIGHT TO GIVE A
8 STATEMENT, THAT THERE IS AN ATTORNEY THERE
9 TRYING TO ASSERT THE DEFENDANT'S RIGHTS FOR
10 THEM. (THERE IS ONLY ONE PERSON WHO CAN ASSERT
11 THOSE RIGHTS AND THAT'S THE DEFENDANT.) AND IN
12 THIS CASE IT DIDN'T MATTER THAT MR. WELLBORN
13 CAME TO THE POLICE DEPARTMENT AND TRIED TO
14 ASSERT MR. GORDON'S RIGHTS FOR HIM BECAUSE HE
15 COULDN'T DO THAT. THE ONLY PERSON THAT COULD
16 ASSERT THE RIGHT TO REMAIN SILENT AND THE RIGHT
17 TO COUNSEL WAS MR. GORDON AND HE WAS IN THE
18 POLICE DEPARTMENT WAIVING THOSE RIGHTS AND I
19 REALLY BELIEVE THAT IF THE COURT REVIEWS THOSE
20 CASES YOU'LL FIND THAT THE FACTS OF THOSE CASES
21 ARE VERY ANALOGOUS TO THE CASE THAT YOU JUST
22 HEARD, THE HEARING YOU JUST HEARD, AND THE STATE
23 WOULD ARGUE THAT WE'VE SHOWN THAT THE FACT THAT
24 MR. WELLBORN WAS THERE TRYING TO ASSERT MR.
25 GORDON'S RIGHTS IS NOT RELEVANT TO WHAT THE

1 COURT'S ANALYSIS NEEDS TO BE AS TO WHETHER OR
2 NOT THE RIGHTS WERE VOLUNTARILY AND KNOWINGLY
3 WAIVED. MR. D'AGOSTINO HAS CITED A SECTION OUT
4 OF THE JUVENILE CODE AND HAS ARGUED THAT IN
5 SOMEWAY SHOULD AFFECT --

6 THE COURT: I DON'T FIND THAT HAS ANY AFFECT ON
7 WHAT WE HAVE BEFORE US.

8 MR. ANTHONY: THE ONLY OTHER THING I REALLY
9 WANT TO ARGUE TO THE COURT IS, JUST TO BRIEFLY
10 TOUCH ON THE EXPERT TESTIMONY THAT WAS OFFERED
11 THIS AFTERNOON, MR. D'AGOSTINO'S EXPERT WITNESS
12 WHO APPARENTLY EVALUATED MR. GORDON TRYING TO
13 FIND, AFTER BEING COMMISSIONED TO RENDER AN
14 OPINION AS TO COMPETENCY AND RETARDATION
15 COULDN'T DO THAT. HE RENDERED AN OPINION AS TO
16 THE MIRANDA WARNINGS BUT WHEN HE WAS ASKED THE
17 BASIS FOR HIS OPINION THE STATE WOULD ARGUE THAT
18 MR. GORDON ANSWERS WERE ACTUALLY QUITE ACCURATE
19 AND ACTUALLY SHOWED HE REALLY DID KNOW WHAT WAS
20 GOING ON. MY NOTES INDICATE THAT WHEN HE WAS
21 ASKED THE DEFINITION OF REMAIN SILENT HE SAID
22 THAT MEANS YOU CAN BE QUIET.

23 THE COURT: THAT DIDN'T SATISFY HIM THOUGH, DID
24 IT?

25 MR. ANTHONY: NO, SIR, IT DIDN'T, BUT THE STATE

1 WOULD ARGUE THAT'S A VERY COMMON SENSE
2 INTERPRETATION OF WHAT THE RIGHT TO REMAIN
3 SILENT MEANS.

4 THE COURT: I AGREE WITH YOU ON THAT. I
5 DISAGREE WITH THE PSYCHOLOGIST AND I'M NOT A
6 PSYCHOLOGIST AND HE MIGHT KNOW MORE ABOUT THAT
7 THAN I DO, BUT I THINK THE ANSWER WAS DEAD ON
8 THE MONEY.

9 MR. ANTHONY: HE ALSO WAS ASKED THE MEANING OF
10 THE WORDS THE EVIDENCE OR STATEMENTS CAN BE USED
11 AGAINST HIM AND HE SAID THE COURT WAS GOING FIND
12 OUT WHICH I THINK THE TESTIMONY WAS THAT WAS
13 CONSIDERED, I DON'T REMEMBER IF THAT WAS
14 CONSIDERED A FAIL ANSWER OR A PASS ANSWER TO BE
15 QUITE CANDID WITH THE COURT BUT IT WAS, THAT'S
16 OBVIOUSLY AN ANSWER THAT DEMONSTRATES AN
17 AWARENESS OF WHAT WAS GOING ON AT THE TIME. THE
18 OFFICERS HAD TESTIFIED, DETECTIVE WALDROP AND
19 LIEUTENANT THICKENS BOTH TESTIFIED THAT MR.
20 GORDON ASKED THEM NO QUESTIONS. HE TOLD BOTH OF
21 THEM THAT HE COULD READ. HE SIGNED STATEMENTS
22 THAT HE HAD READ THOSE STATEMENTS THAT ARE IN
23 EVIDENCE, THAT THEY WERE ACCURATE, AND
24 BASICALLY, YOUR HONOR, GIVEN THE TESTIMONY
25 YOU'VE HEARD TODAY THERE IS JUST NO REASON TO

1 BELIEVE BOTH ON THE LAW OF THIS CASE AND ALSO ON
2 THE FACTS OF THIS CASE THAT MR. GORDON DID NOT
3 EXECUTE A VALID WAIVER OF HIS MIRANDA RIGHTS AND
4 HIS STATEMENTS SHOULD NOT, THERE IS NO REASON
5 WHY HIS STATEMENTS SHOULD NOT BE ALLOWED INTO
6 EVIDENCE AT THE TRIAL, YOUR HONOR.

7 THE COURT: ALL RIGHT. LET ME MAKE A FEW
8 PREPARATORY REMARKS BEFORE I RULE. FIRST KEEP
9 IN MIND THE COURT LOOKS AT THE PREPONDERANCE OF
10 THE EVIDENCE. OF COURSE, WHEN THE JURY REVIEWS
11 THE STATEMENT OR EVER DOES, IT HAS TO REVIEW IT
12 WITH THE STANDARD OF BEYOND A REASONABLE DOUBT,
13 SO BE CLEAR I'M LOOKING AT IT FROM THAT
14 PROSPECTIVE.

15 I LISTENED WITH SOME CONCERN TO SOME OF THE
16 OFFICERS' TESTIMONY CONCERNING PERHAPS SOME
17 SUGGESTION THAT OTHERS WOULD GO TO JAIL FOR WHAT
18 HE HAD DONE. THERE IS ONE OTHER ONE THAT GAVE
19 ME A LITTLE CONCERN, BUT I DO NOT FIND THAT
20 EITHER ROSE TO THE LEVEL OF ANY PROMISE OF
21 REWARD OR COERCION, BUT I WANT THE RECORD CLEAR
22 WHEN SOMEBODY REVIEWS THIS LATER THAT I DID
23 HEAR, I CAN'T REMEMBER WHAT THE OTHER ONE WAS
24 BUT THERE WERE TWO, ONE BY OFFICER WALDROP AND
25 ONE BY OFFICER THICKENS, BOTH GAVE ME A LITTLE

1 CONCERN AND A LITTLE PAUSE BUT I DON'T FIND
2 EITHER ROSE TO THE LEVEL OF ANYTHING
3 IMPERMISSIBLE; THAT IS, I DO NOT FIND THEY WERE
4 COERCISIVE, ANY PROMISES, THEY WERE NOT HOLDING
5 OUT ANY HOPES OF REWARD OR ANY REWARD.

6 AS TO THE NOTIFICATION OF AN ATTORNEY, I THINK
7 THE LAW IS CLEAR, THE UNITED STATES SUPREME
8 COURT, ALTHOUGH THESE OTHER CASES FROM LOUISIANA
9 AND OKLAHOMA AND OREGON ARE OTHERWISE ABOUT THE
10 NOTIFICATION OF AN ATTORNEY PRESENT, OUR SUPREME
11 COURT SEEMS TO HAVE ADDRESSED THAT IN THE
12 DRAYTON CASE. JUSTICE FINNEY WROTE A DISSENT
13 AND QUITE CANDIDLY IF I WAS THE LAW-MAKER I
14 MIGHT BE MORE INCLINED TO JUDGE FINNEY'S VIEW
15 THAN THE OTHER, BUT I'M NOT THE LAW MAKER, I'M
16 THE LAW-FOLLOWER.

17 CONCLUDING THIS JACKSON VERSUS DENNO HEARING I
18 HAVE CONSIDERED ALL THE EVIDENCE OFFERED. I
19 LISTEN VERY CAREFULLY I BELIEVE TO ALL THE
20 EVIDENCE, GIVEN THE WEIGHT THAT I FEEL
21 APPROPRIATE TO BOTH DR. SANDLER AND DR. VENN,
22 ALONG WITH THE OTHER TESTIMONY AND I'M CONVINCED
23 BY A PREPONDERANCE OF THE EVIDENCE THAT BEFORE
24 THE INCRIMINATING STATEMENT OR CONFESSION WAS
25 OBTAINED FROM ANTONIO GORDON HE WAS FULLY

1 ADVISED OF HIS RIGHTS UNDER THE FIFTH AND SIXTH
2 AMENDMENT OF THE CONSTITUTION OF THE UNITED
3 STATES AND WAS ADVISED OF THE CONSTITUTIONAL
4 SAFEGUARDS OF MIRANDA. THAT HE WAS ADVISED THAT
5 PRIOR TO ANY SUCH QUESTIONING, INTERROGATION, HE
6 WOULD HAVE THE RIGHT TO REMAIN SILENT. HE WAS
7 ADVISED THAT ANYTHING HE SAID COULD BE USED
8 AGAINST HIM IN COURT. HE WAS ADVISED HE HAD THE
9 RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE HE
10 WAS ASKED QUESTIONS. I POINT OUT THAT THE WORDS
11 HERE ARE QUESTIONS AS OPPOSED TO INTERROGATION
12 OR INTERROGATORIES WHICH OBVIOUSLY ARE SIMPLE
13 WORDS BUT HE WAS ADVISED BEFORE HE WAS ASKED
14 QUESTIONS HE WOULD HAVE THE RIGHT TO HAVE AN
15 ATTORNEY WITH HIM DURING THE QUESTIONING. HE
16 HAD THE RIGHT TO HAVE THE ADVICE AND PRESENCE OF
17 A LAWYER EVEN IF HE CANNOT AFFORD TO HIRE ONE.
18 ADVISED THAT WHILE THE LAW ENFORCEMENT COULD NOT
19 APPOINT A LAWYER, ONE WOULD BE APPOINTED BY THE
20 COURT IF HE WISHED. THAT HE COULD STOP
21 ANSWERING QUESTIONS WITHOUT THE PRESENCE OF A
22 LAWYER AND MAY STOP ANSWERING ANY TIME HE
23 DESIRES UNTIL A LAWYER'S PRESENT. THEREAFTER,
24 HE SIGNED THAT HE HAD READ OR HAD READ THIS
25 STATEMENT. THAT HE UNDERSTOOD THE RIGHTS AND

1 WAS WILLING TO MAKE A STATEMENT. THAT HE DID
2 NOT WANT A LAWYER AT THIS TIME. UNDERSTOOD WHAT
3 HE WAS DOING, AND KNEW HE WAS TALKING TO A
4 POLICE OFFICER AND UNDERSTOOD WHAT HE WAS
5 TALKING ABOUT. ADDITIONALLY IN THE LAST
6 PARAGRAPH ON PAGE TWO, HE INDICATES AND THIS IS
7 THE STATEMENT THAT WAS TAKEN BETWEEN 3:30 AND 4
8 P.M. THAT HE HAD BEEN OFFERED TO HAVE HIS
9 GRANDMOTHER OR MOTHER WITH HIM AND HE CHOSE NOT
10 TO DO THAT. HE JUST WANTED TO TELL THE TRUTH.
11 AND HE ASKED IF HE WANTED SOMEONE FROM HIS
12 FAMILY OR A LAWYER, BUT AGAIN HE JUST SAID HE
13 WANTED TO GO AHEAD AND TELL THE TRUTH.

14 I FIND THAT HE KNOWINGLY AND INTELLIGENTLY
15 WAIVED HIS RIGHTS UNDER THE FIFTH AND SIXTH
16 AMENDMENTS OF THE CONSTITUTION OF THE UNITED
17 STATES AND THE CONSTITUTIONAL SAFEGUARDS BY
18 MIRANDA. I FIND THAT HE WAS COMPETENT TO DO
19 THAT. I'VE HEARD THE TESTIMONY, THERE IS NO
20 TESTIMONY EVEN FROM DR. VENN OF ANY MENTAL
21 RETARDATION. THE COMBINED TESTIMONY OF THE
22 DOCTORS MAKES IT CLEAR TO ME THAT HE IS
23 COMPETENT TO NOT ONLY STAND TRIAL, BUT TO HAVE
24 UNDERSTOOD THOSE PARTICULAR RIGHTS AS SET FORTH
25 IN THE MIRANDA AND I FIND THAT THE ALLEGED

1 STATEMENT OR THE STATEMENT, ALLEGED
2 INCRIMINATING STATEMENT OR CONFESSION GIVEN BY
3 ANTONIO GORDON WAS FREELY AND VOLUNTARILY GIVEN
4 WITHOUT DURESS, WITHOUT COERCION, WITHOUT UNDUE
5 INFLUENCE, WITHOUT REWARD, WITHOUT PROMISE OR
6 HOPE OF REWARD, WITHOUT PROMISE OF LENIENCY,
7 WITHOUT THREAT OF INJURY, AND WITHOUT COMPULSION
8 OR INDUCEMENT OF ANY KIND, AND THAT SUCH ALLEGED
9 INCRIMINATING STATEMENT WAS A VOLUNTARY PRODUCT
10 OF A FREE AND UNCONSTRAINED WILL OF THE
11 DEFENDANT. AGAIN I FIND THESE BY THE
12 PREPONDERANCE OF THE EVIDENCE. AND AGAIN I
13 SPECIFICALLY FIND THAT, AND I WISH I COULD
14 REMEMBER THE STATEMENT BY OFFICER THICKENS, THE
15 FIRST BEING, ONE HAD TO DO WITH SOMEBODY ELSE
16 WAS GOING TO GO TO JAIL, AND ONE BY MR. WALDROP
17 WAS SOMETHING ALONG THE LINES OF, I CAN'T
18 REMEMBER WHAT IT WAS, WHILE THOSE DO BORDER ON
19 BEING SUGGESTIVE, I DO NOT FIND THAT THEY ARISE
20 TO THE LEVEL OF UNDUE INFLUENCE.

21 ANYTHING FURTHER FROM THE STATE?

22 MR. ANTHONY: NO, SIR, NOTHING FURTHER FROM THE
23 STATE.

24 THE COURT: ANYTHING FROM THE DEFENSE?

25 MR. D'AGOSTINO: NOT AT THIS TIME, YOUR HONOR.

1 THE COURT: ALL RIGHT. WE'LL START MONDAY
2 MORNING ON THE TRIAL.

3 MR. GILLEN: YOUR HONOR, MAY I ASK THE COURT, IT
4 WON'T TAKE VERY LONG.

5 THE COURT: I'VE GOT ALL DAY.

6 MR. GILLEN: IF I COULD ASK ONE OF THE
7 SOLICITORS HERE TO A BRIEF MEETING IN CHAMBERS.

8 THE COURT: CERTAINLY. YOU WANT THE COURT
9 REPORTER TO STAY AROUND.

10 MR. GILLEN: NO, YOUR HONOR, IT'S NOTHING.

11 MR. THOMPSON: I WOULD ASK, I BELIEVE THERE IS
12 SOMETHING THE STATE IF WE COULD, I THINK WE
13 APPROACHED THE BENCH A LITTLE EARLIER.

14 THE COURT: WE'LL TAKE A SHORT BREAK THEN IN
15 CHAMBERS.

16 (COURT'S IN RECESS AT 5:20.)

17 (COURT RESUMES.)

18 MR. THOMPSON: THIS IS THE STATE OF SOUTH
19 CAROLINA VERSUS TERRANCE MCCREARY. INDICTMENTS
20 NUMBER 99-GS-46-2223 FOR ACCESSORY BEFORE THE
21 FACT TO MURDER. HE'S PLEADING GUILTY AS HE'S
22 CHARGED IN THIS INDICTMENT AND HE'S WAIVING HIS
23 RIGHT TO PRESENTMENT TO THE GRAND JURY ON THIS
24 CASE.

25 ALSO NUMBER 99-GS-46-2234 FOR ACCESSORY AFTER

1 THE FACT FOR MURDER WHICH HE'S PLEADING GUILTY
2 AS CHARGED IN THIS INDICTMENT AND WAIVING HIS
3 RIGHT TO THE PRESENTMENT TO THE GRAND JURY ON
4 THIS AS WELL.

5 AS PART OF THE PLEA AGREEMENT IN THIS CASE, YOUR
6 HONOR, WE ARE DISMISSING THE OTHER CHARGES THAT
7 HAVE BEEN CALLED BEFORE THE COURT TODAY. HE HAS
8 AS WELL AGREED TO TESTIFY AGAINST ANY REMAINING
9 CO-DEFENDANT IF THAT BECOMES NECESSARY. IT IS
10 BASICALLY THE SAME AGREEMENT AS MONTA GORDON HAD
11 SIGNED BUT DID NOT HAVE TIME TO CONSENT TO
12 WRITING. HE WILL BE SENTENCED ON MONDAY OF NEXT
13 WEEK OR AS SOON AS THE OTHER DEFENDANTS' CASES
14 ARE HANDLED. THE PLEA HERE WOULD LOCK HIM IN
15 AND WE WILL DISMISS THE OTHER CHARGES AND THERE
16 IS A RECOMMENDATION OF THE 30 YEARS. SO IN
17 OTHER WORDS, CONCURRENT SENTENCING AND THEN THE
18 RECOMMENDATION OF THE 30 YEARS AS ACCESSORY
19 BEFORE THE FACT.

20 THE COURT: AND AFTER THE FACT CARRIES UP TO 15?
21 MR. THOMPSON: YES, YOUR HONOR, THAT'S CORRECT.

22 THE COURT: MR. MCCREARY, HOW OLD ARE YOU?

23 MR. MCCREARY: 21.

24 THE COURT: ARE YOU MARRIED OR SINGLE?

25 MR. MCCREARY: NO, SIR, I'M SINGLE.

1 THE COURT: YOU EVER BEEN MARRIED?

2 MR. MCCREARY: NO, SIR.

3 THE COURT: DO YOU HAVE ANY CHILDREN?

4 MR. MCCREARY: NO, SIR.

5 THE COURT: HOW FAR DID YOU GO IN SCHOOL?

6 MR. MCCREARY: THE TENTH GRADE.

7 THE COURT: AND YOU WERE WORKING, IF YOU HAD,

8 WHAT KIND OF JOB DID YOU HAVE?

9 MR. MCCREARY: I WAS WORKING AT A DETAIL JOB.

10 MR. GILLEN: A CAR WASH, YOUR HONOR.

11 THE COURT: YOU'RE REPRESENTED BY MR. GILLEN?

12 MR. MCCREARY: YES, SIR.

13 THE COURT: YOU SATISFIED WITH HIS SERVICES?

14 MR. MCCREARY: YES, SIR.

15 THE COURT: ALL RIGHT, TAKE A MINUTE AND SIGN

16 THOSE. YOU SATISFIED WITH MR. GILLEN'S

17 REPRESENTATION?

18 MR. MCCREARY: YES, SIR.

19 THE COURT: HAVE YOU EVER BEEN TREATED FOR ANY

20 MENTAL OR EMOTIONAL DISABILITY?

21 MR. MCCREARY: NO, SIR.

22 THE COURT: ARE YOU AT THIS TIME UNDER THE

23 INFLUENCE OF ANYTHING THAT WOULD CAUSE YOU TO BE

24 INTOXICATED?

25 MR. MCCREARY: NO, SIR.

1 THE COURT: YOU'RE CHARGED IN TWO INDICTMENTS.
2 ONE FOR ACCESSORY BEFORE THE FACT AND ONE FOR
3 ACCESSORY AFTER THE FACT. IT IS ALLEGED IN
4 THESE THAT ON OR ABOUT JULY 23 OF 1998 THAT YOU
5 DID UNLAWFULLY AID IN THE COMMISSION OF A FELONY
6 OR AN ACCESSORY BEFORE THE FACT IN COMMISSION OF
7 A FELONY BY COUNSELING OR OTHERWISE PROCURING
8 THE FELONY OF THE COMMISSION OF A MURDER OF ERIC
9 KRENN BY ANTONIO GORDON IN VIOLATION OF STATE
10 LAW. AND IT'S ALLEGED THAT AFTER THE FACT ON
11 THAT DAY AND AFTER THE COMPLETION OF THE MURDER
12 OF MR. KRENN YOU DID AID, HARBOR, ASSIST MR.
13 GORDON TO ESCAPE DETECTION OR OTHERWISE AVOID
14 THE CONSEQUENCES OF HIS CRIME.

15 THE ACCESSORY BEFORE THE FACT WOULD CARRY UP TO
16 30 YEARS IN PRISON WHICH IS THE SAME AS MURDER.

17 MR. THOMPSON: I BELIEVE IT WOULD CARRY 30 YEARS
18 UP TO LIFE.

19 THE COURT: 30 YEARS UP TO LIFE AS WOULD MURDER.
20 AND AS TO ACCESSORY AFTER THE FACT IT WOULD
21 CARRY UP TO 15 YEARS. DO YOU UNDERSTAND THAT?

22 MR. MCCREARY: YES, SIR.

23 THE COURT: NOW NEITHER ONE OF THESE CASES HAVE
24 BEEN REVIEWED BY THE YORK COUNTY GRAND JURY.
25 THE YORK COUNTY GRAND JURY IS A GROUP OF

1 INDIVIDUALS OF UP TO 18 PEOPLE WHO WOULD HEAR
2 THE STATE'S CASE, THE STATE'S EVIDENCE, AND
3 DETERMINE WHETHER OR NOT THAT EVIDENCE WAS
4 SUFFICIENT FOR YOUR CASE TO GO FORWARD. 12

5 WOULD HAVE TO DO SO. 12 MEMBERS AT THAT TIME
6 WOULD HAVE TO FIND THAT THE CASE WAS STRONG
7 ENOUGH TO GO FORWARD. YOU HAVE A RIGHT TO HAVE
8 THESE REVIEWED BY THE GRAND JURY OR YOU COULD
9 GIVE UP THAT RIGHT. YOU UNDERSTAND THAT RIGHT?

10 MR. MCCREARY: YES, SIR.

11 THE COURT: YOU WISH TO HAVE THESE CASES
12 REVIEWED BY THE GRAND JURY OR GIVE UP THAT
13 RIGHT?

14 MR. MCCREARY: I WOULD LIKE THE RIGHT TO GO TO
15 THE GRAND JURY.

16 MR. GILLEN: MAY I HAVE A MOMENT, YOUR HONOR.
17 WE HAD DISCUSSED THIS PREVIOUSLY.

18 THE COURT: SURE.

19 (CONFERRING WITH COUNSEL.)

20 MR. MCCREARY: I'D ALIKE TO WAIVE THAT RIGHT,
21 YOUR HONOR.

22 THE COURT: ALL RIGHT. LET THE RECORD SHOW THAT
23 HE HAS ON EACH INDICTMENT SIGNED A WAIVER OF
24 PRESENTMENT. AND YOU CONFERRED WITH COUNSEL SO
25 YOU UNDERSTAND WHAT YOU ARE DOING?

1 MR. MCCREARY: YES, SIR.

2 THE COURT: AND THAT'S WHAT YOU WANT TO DO?

3 MR. MCCREARY: YES, SIR.

4 THE COURT: ALL RIGHT. AT ANY TIME IF YOU WANT
5 TO TALK TO MR. GILLEN, PLEASE DON'T HESITATE TO
6 TALK TO HIM. HE'S YOUR LAWYER, THAT'S WHAT HE'S
7 HERE FOR. I WOULDN'T BE OFFENDED WHATSOEVER IF
8 YOU SAY, YOUR HONOR, I NEED TO TALK TO MY
9 ATTORNEY, OKAY?

10 MR. MCCREARY: YES, SIR.

11 THE COURT: NOW IN ADDITION TO THE JAIL TIME
12 THAT THESE CARRY SINCE THEY ARE CONNECTED, THE
13 ACCESSORY BEFORE THE FACT IS CONNECTED TO THE
14 CHARGE OF MURDER, THIS IS WHAT'S CALLED A
15 VIOLENT OFFENSE, A MOST SERIOUS OFFENSE, AND A
16 NO PAROLE OFFENSE. YOU UNDERSTAND THAT?

17 MR. MCCREARY: YES, SIR.

18 THE COURT: MOST SERIOUS OFFENSE MEANS THAT IF
19 YOU GET TWO MOST SERIOUS OFFENSES IN YOUR
20 LIFETIME YOU WOULD BE LOOKING AT A POSSIBILITY
21 OF RECEIVING LIFE IN PRISON WITHOUT PAROLE OR IF
22 YOU GOT A MOST SERIOUS AND TWO SERIOUS OFFENSES
23 YOU'D BE LOOKING AT A POSSIBILITY OF LIFE IN
24 PRISON WITHOUT PAROLE. DO YOU UNDERSTAND THAT?

25 MR. MCCREARY: YES, SIR.

1 THE COURT: AND THIS IS A NO PAROLE OFFENSE. DO
2 YOU UNDERSTAND THAT?

3 MR. MCCREARY: YES, SIR.

4 THE COURT: ALL RIGHT. KNOWING THAT, HOW DO YOU
5 PLEAD TO ACCESSORY BEFORE THE FACT?

6 MR. MCCREARY: GUILTY.

7 THE COURT: HOW DO YOU PLEAD TO ACCESSORY AFTER
8 THE FACT?

9 MR. MCCREARY: GUILTY.

10 THE COURT: OTHER THAN THE AGREEMENT THAT YOU
11 ARE ENTERING THESE PLEAS AS OPPOSED TO THOSE
12 WITH WHICH YOU WERE ORIGINALLY CHARGED AND THAT
13 YOU HAVE BEEN PROMISED TO RECEIVE A SENTENCE OF
14 NO MORE THAN 30 YEARS AND TO TESTIFY IF ANY OF
15 THE OTHER CO-DEFENDANTS GO TO TRIAL, OTHER THAN
16 THESE PROMISES, HAS ANYONE MADE ANY PROMISE OR
17 GIVEN YOU ANYTHING OR TOLD YOU YOU'D BE REWARDED
18 IN ANY WAY FOR ENTERING YOUR PLEA OF GUILT?

19 MR. MCCREARY: NO, SIR.

20 THE COURT: HAS ANYONE THREATENED YOU, HAS
21 ANYBODY COERCED YOU, OR USED ANY FORCE
22 WHATSOEVER TO CAUSE YOU TO ENTER PLEAS OF GUILT
23 TO THESE TWO CHARGES?

24 MR. MCCREARY: NO, SIR.

25 THE COURT: ARE YOU ENTERING YOUR PLEAS FREELY

1 AND VOLUNTARILY?

2 MR. MCCREARY: YES, SIR.

3 THE COURT: AND ARE YOU UNDER THE INFLUENCE OF
4 ANYTHING AT THIS TIME?

5 MR. MCCREARY: NO, SIR.

6 THE COURT: YOU HAVE A RIGHT TO A TRIAL BY A
7 JURY ON EACH OF THESE CHARGES, MR. MCCREARY.
8 THEY CAN BE TRIED TOGETHER SINCE THEY ARISE OUT
9 OF A CONTINUING INCIDENT. YOU UNDERSTAND THAT?

10 MR. MCCREARY: YES, SIR.

11 THE COURT: YOU HAVE A RIGHT TO, WELL, YOU ARE
12 PRESUMED INNOCENT OF THESE CHARGES AGAINST YOU
13 AND ARE SO PRESUMED UNTIL SUCH TIME AS THE STATE
14 WOULD BE ABLE TO PROVE TO THAT JURY YOUR GUILT
15 BEYOND A REASONABLE DOUBT. YOU UNDERSTAND THAT?

16 MR. MCCREARY: YES, SIR.

17 THE COURT: YOU HAVE THE RIGHT TO REMAIN
18 SILENT. THAT IS, NO ONE CAN MAKE YOU TESTIFY OR
19 GIVE ANY STATEMENT TO ANYONE CONCERNING THIS.
20 DO YOU UNDERSTAND THAT?

21 MR. MCCREARY: YES, SIR.

22 THE COURT: YOU HAVE THE RIGHT TO HAVE YOUR
23 WITNESSES MADE TO COME TO COURT BY SUBPOENA IF
24 YOU GO TO TRIAL. DO YOU UNDERSTAND THAT?

25 MR. MCCREARY: YES, SIR.

1 THE COURT: YOU HAVE THE RIGHT TO CONFRONT THE
2 WITNESSES AGAINST YOU. THAT IS, YOU AND YOUR
3 ATTORNEY HAVE THE RIGHT TO SEE, HEAR, QUESTION,
4 AND CROSS EXAMINE WITNESSES WHO WOULD TESTIFY
5 FOR THE STATE AGAINST YOU. DO YOU UNDERSTAND
6 THAT?

7 MR. MCCREARY: YES, SIR.

8 THE COURT: AND YOU'VE GIVEN A STATEMENT IN THIS
9 CASE AND IT WOULD BE A QUESTION FOR THE COURT
10 AND FOR THE JURY WHETHER OR NOT THAT STATEMENT
11 WAS, YOU ARE GIVING UP ANY RIGHT TO HAVE THAT
12 STATEMENT REVIEWED ANY FURTHER REGARDING WHETHER
13 OR NOT IT WAS VOLUNTARILY GIVEN OR NOT. DO YOU
14 UNDERSTAND THAT?

15 MR. MCCREARY: YES, SIR.

16 THE COURT: YOU ALSO GIVE UP ANY DEFENSE THAT
17 YOU MAY HAVE TO THESE OFFENSES WHEN YOU ENTER A
18 PLEA OF GUILT. YOU UNDERSTAND THAT?

19 MR. MCCREARY: YES, SIR.

20 THE COURT: KNOWING ALL THOSE THINGS I ASK YOU
21 AGAIN, HOW DO YOU PLEAD TO ACCESSORY BEFORE THE
22 FACT?

23 MR. MCCREARY: GUILTY.

24 THE COURT: HOW DO YOU PLEAD TO ACCESSORY AFTER
25 THE FACT?

1 MR. MCCREARY: GUILTY.

2 THE COURT: ALL RIGHT. I WILL NOW ASK THE
3 SOLICITOR TO, FIRST I UNDERSTAND MR. KRENN IS
4 HERE, THE FATHER, AND IF HE WISHES TO COME
5 FORWARD AND MAKE ANY STATEMENT. THE VICTIM'S
6 RIGHTS ACT HAS BEEN COMPLIED WITH.

7 MR. THOMPSON: IT HAS BEEN COMPLIED WITH. MR.
8 KRENN WOULD LIKE TO ADDRESS THE COURT ON MONDAY
9 WHEN SENTENCING OCCURS, YOUR HONOR.

10 THE COURT: OKAY, THAT'S FINE.

11 MR. THOMPSON: AS FAR AS THE FACTS GO, DO WANT
12 ME TO PRESENT THOSE?

13 THE COURT: I'VE HEARD THE FACTS REPEATEDLY THIS
14 WEEK. I REVIEWED THE STATEMENTS, AND I THINK
15 THOUGH JUST FOR PURPOSES OF GETTING THE
16 AGREEMENT BY THE DEFENDANT AS TO THE FACTS, I
17 THINK YOU NEED TO JUST GO OVER THEM VERY BRIEFLY
18 BECAUSE I NEED TO HAVE CONFIRMATION FROM HIM.

19 MR. THOMPSON: MAY IT PLEASE THE COURT, YOUR
20 HONOR, IT OCCURRED ON JULY 23, 1998, HERE IN
21 YORK COUNTY ON SOUTH JONES STREET. THE
22 DEFENDANT WAS THE DRIVER OF THE CAR THE FOUR
23 DEFENDANTS WERE IN. AT THAT POINT TIME HE WAS
24 THE ONE WHO OBTAINED THE PISTOL THAT WAS USED.
25 HE OBTAINED THE BULLETS THEN FOLLOWING AND

1 LOADED THE GUN. HE WAS THE ONE WHO THEN AT SOME
2 POINT TRANSFERRED THE GUN TO WHERE IT ULTIMATELY
3 ENDED UP IN ANTONIO GORDON HANDS. HIS
4 STATEMENTS, AS WELL AS THE STATEMENTS OF HIS
5 CO-DEFENDANTS, POINTED TO THE FACT THAT HE RAN
6 UP UPON MR. KRENN, THAT HE WAS ONE THAT
7 SUGGESTED AT LEAST AT SOME POINT THAT THEY ROB
8 HIM. HE EVEN IN HIS OWN STATEMENT SUGGESTED
9 THAT THEY ROB HIM, IF HE HAD THE GUN HE WOULD
10 ROB THEM OF MARIJUANA. THE OTHERS SUGGESTED HE
11 PRODDED THEM TO GO AHEAD AND ROB THEM. OF
12 COURSE, AT THAT POINT THE ROBBERY DID OCCUR AND
13 THE KILLING OCCURRED WHEN ANTONIO GORDON SHOT
14 THE VICTIM IN THE CASE. AT THAT POINT HE IS THE
15 DRIVER OF THE CAR WHO THEN DROVE OFF, AND OF
16 COURSE WE WOULD HAVE PRESENTED STATEMENTS FROM
17 OTHER WITNESSES WHO SAID THAT HE HAD BRAGGED
18 ABOUT WHAT THEY HAD DONE AND EVEN AT SOME POINT
19 BRAGGED ABOUT BEING THE SHOOTER HIMSELF ALTHOUGH
20 HE WAS NOT. OF COURSE, HE WAS INVOLVED IN THE
21 CASE AND RAN FROM THE POLICE WHEN IT OCCURRED
22 AND SO THAT WOULD FIT ACCESSORY BEFORE AS WELL
23 AS ACCESSORY AFTER THE FACT.

24 THE COURT: YOU AGREE WITH THOSE FACTS, MR.
25 MCCREARY.

1 MR. MCCREARY: YES, SIR.

2 THE COURT: MR. MCCREARY, I ACCEPT YOUR PLEAS OF
3 GUILT. I FIND THEY ARE FREELY, VOLUNTARILY,
4 KNOWINGLY, AND INTELLIGENTLY ENTERED. THEY ARE
5 ENTERED WITH THE ADVICE OF COMPETENT COUNSEL
6 WITH WHOM YOU ARE SATISFIED. I FIND THAT YOU
7 ARE ENTERING IT FREELY AND VOLUNTARILY AND YOU
8 HAVE SIGNED A PLEA OF GUILT AND THE FACTS
9 SUPPORT YOUR PLEA.

10 NOW I'LL BE GLAD TO HEAR FROM YOU AND YOUR
11 ATTORNEY NOW OR WE CAN WAIT AND DO IT MONDAY
12 WHEN THE SENTENCING PHASE OF THIS PROCESS
13 OCCURS.

14 MR. GILLEN: WE WILL OPT FOR MONDAY AND PRESENT
15 MITIGATION BEFORE THE COURT AT THAT TIME.
16 HOWEVER, I WOULD LIKE TO ADDRESS ONE ISSUE. IT
17 WAS MY UNDERSTANDING IT WAS A NEGOTIATED PLEA.
18 MR. THOMPSON AND I NEVER DISCUSSED THE ACTUAL
19 WORD OR USE OF WORDS, BUT SINCE WE HAD GONE BACK
20 AND FORTH SO MANY TIMES AND, YOU KNOW, WORKED
21 THIS OUT, IT WAS AT LEAST MY UNDERSTANDING IT
22 WAS A NEGOTIATED PLEA. I DON'T KNOW IF THAT HAS
23 ANY DIFFERENCE IN YOUR HONOR'S DEALINGS WITH THE
24 CASE BUT.

25 THE COURT: WELL, I UNDERSTOOD THAT AND I

1 THOUGHT WHEN --

2 MR. THOMPSON: I WOULD CONSIDER IT A NEGOTIATED
3 PLEA.

4 THE COURT: I THOUGHT WHEN I WENT OVER HAD ANY
5 PROMISES BEEN MADE OTHER THAN DOING THIS.

6 MR. GILLEN: I WAS JUST CONCERNED WHEN MR.
7 THOMPSON SAID THAT IT WAS A RECOMMENDATION.

8 THE COURT: I'M TREATING IT AS A NEGOTIATED
9 PLEA, THAT WAS MY UNDERSTANDING.

10 MR. THOMPSON: WE WOULD CALL IT SUCH, YOUR
11 HONOR.

12 MR. GILLEN: THANK YOU, YOUR HONOR.

13 THE COURT: WE'LL SEE Y'ALL MONDAY THEN.

14 MR. THOMPSON: THANK YOU, YOUR HONOR.

15 (COURT'S IN RECESS.)

16 (COURT RESUMES.)

17 MR. THOMPSON: ANTONIO GORDON.

18 MR. THOMPSON: YOUR HONOR, THIS IS THE STATE OF
19 SOUTH CAROLINA VERSUS ANTONIO GORDON.

20 INDICTMENTS NUMBER 98-GS-46-2849 FOR ATTEMPTED

21 ARMED ROBBERY AND POSSESSION OF A FIREARM DURING

22 THE COMMISSION OF A VIOLENT CRIME. THE

23 DEFENDANT IS PLEADING GUILTY AS CHARGED.

24 98-GS-46-2850 ATTEMPTED ROBBERY ARMED AND

25 POSSESSION OF A FIREARM DURING THE COMMISSION OF

1 A VIOLENT CRIME. HE'S PLEADING GUILTY.

2 INDICTMENT NUMBER 98-GS-46-2851 FOR CRIMINAL
3 CONSPIRACY. THE DEFENDANT IS PLEADING GUILTY AS
4 CHARGED.

5 INDICTMENT NUMBER 98-GS-46-2852 INDICTMENTS FOR
6 POSSESSION OF A PISTOL BY A PERSON UNDER 21.
7 THE DEFENDANT IS PLEADING GUILTY AS CHARGED. ON
8 INDICTMENT NUMBER 98-GS-46-2847 FOR MURDER AND
9 POSSESSION OF A FIREARM WHILE IN THE COMMISSION
10 OF A VIOLENT CRIME. THE DEFENDANT IS PLEADING
11 GUILTY AS CHARGED.

12 EACH OF THE INDICTMENTS HAVE BEEN TRUE BILLED BY
13 THE GRAND JURY. THESE ARE THE CASES WE WOULD
14 HAVE CALLED FOR TRIAL. THIS IS A NEGOTIATED
15 PLEA. AS PART OF THE PLEA WE ARE DISMISSING THE
16 CHARGE OF CARJACKING. WE ARE ASKING FOR A
17 NEGOTIATED SENTENCE OF 40 YEARS. WE ARE ASKING
18 THE COURT TO STRUCTURE THAT SENTENCE SO THAT ALL
19 SENTENCES RUN CONCURRENT TO THE MURDER TO THE 30
20 YEARS EXCEPT FOR ONE THE ATTEMPTED ARMED ROBBERY
21 WHICH WILL RUN CONSECUTIVE FOR 10 YEARS.

22 THE COURT: MR. GORDON, YOU ARE 17, RIGHT?

23 MR. GORDON: YES, SIR.

24 THE COURT: HOW FAR DID YOU GO IN SCHOOL?

25 MR. GORDON: NINTH GRADE.

1 THE COURT: YOU'RE REPRESENTED BY MR.
2 D'AGOSTINO?

3 MR. GORDON: YES, SIR.

4 THE COURT: YOU SATISFIED WITH HIS SERVICES?

5 MR. GORDON: YES, SIR.

6 THE COURT: NOW HE IS YOUR ATTORNEY, SO WHILE I
7 GO THROUGH THESE QUESTIONS IF YOU AT ANY TIME,
8 JUST LIKE MR. MCCREARY DID BEFORE YOU, IF YOU
9 NEED TO DISCUSS ANYTHING WITH YOUR LAWYER JUST
10 TELL ME. I WON'T BE OFFENDED AND IT WON'T HURT
11 YOUR CASE AT ALL. HE'S HERE TO HELP YOU AND IF
12 YOU DON'T UNDERSTAND SOMETHING, ASK ME TO REPEAT
13 IT AND IF YOU STILL NEED SOMETHING EXPLAINED TO
14 YOU, STOP AT ANY TIME AND TALK TO MR.
15 D'AGOSTINO. WOULD YOU PROMISE ME YOU'LL DO
16 THAT?

17 MR. GORDON: YES, SIR.

18 THE COURT: ALL RIGHT. YOU ARE CHARGED IN
19 SEVERAL INDICTMENTS. THE FIRST IS THAT OF
20 MURDER. THESE ARE ALLEGED TO HAVE OCCURRED IN
21 YORK COUNTY ON JULY 23 OF 1998. IT'S ALLEGED IN
22 THAT INDICTMENT THAT ON THAT DATE WITH MALICE OF
23 AFORETHOUGHT YOU DID KILL ONE ERIC PETER KRENN
24 BY MEANS OF SHOOTING HIM WITH A FIREARM AND THAT
25 HE DIED AS A RESULT THEREOF.

1 THIS MURDER CARRIES 30 YEARS TO LIFE. IT IS
2 WHAT'S CALLED A VIOLENT OFFENSE AND A MOST
3 SERIOUS OFFENSE AND IT DOES NOT ALLOW FOR ANY
4 PAROLE. THE MOST SERIOUS OFFENSE MEANS THAT
5 SOMEONE, INCLUDING YOU, IF DURING YOUR LIFETIME
6 YOU RECEIVE TWO SERIOUS OFFENSES OR A
7 COMBINATION OF THREE SERIOUS AND MOST SERIOUS
8 OFFENSES, YOU COULD BE IMPRISONED FOR LIFE
9 WITHOUT ANY PAROLE. THE VIOLENT OFFENSE IS ONE
10 THAT RESTRICTS CERTAIN ACTIVITIES THAT OTHER
11 INMATES MIGHT BE ALLOWED WHILE THEY ARE
12 INCARCERATED. YOU UNDERSTAND ALL THAT?

13 MR. GORDON: YES, SIR.

14 THE COURT: HOW DO YOU PLEAD TO THE MURDER
15 CHARGE?

16 MR. GORDON: GUILTY.

17 THE COURT: YOU ARE CHARGED WITH POSSESSION OF A
18 FIREARM DURING THE COMMISSION OF A VIOLENT CRIME
19 IN THREE SEPARATE INDICTMENTS. IT'S ALLEGED
20 THAT YOU POSSESSED A FIREARM AT THE TIME OF THE
21 COMMISSION OF THE MURDER AND AT THE TIME OF THE
22 COMMISSION OF THE TWO ARMED ROBBERIES. THESE
23 EACH WILL CARRY AN ADDITIONAL 30 YEARS IN JAIL.
24 YOU UNDERSTAND THAT?

25 MR. GORDON: YES, SIR.

1 THE COURT: AS TO THE MURDER CHARGE AND THE
2 POSSESSION OF THE FIREARM DURING A VIOLENT
3 CRIME, HOW DO YOU PLEAD?

4 MR. GORDON: GUILTY, SIR.

5 THE COURT: ALL RIGHT. IT'S ALLEGED IN ANOTHER
6 INDICTMENT THAT BEING UNDER 21 YEARS OF AGE AT
7 THAT TIME YOU WERE IN POSSESSION OF A PISTOL AND
8 THAT'S IN VIOLATION OF STATE LAW AND THAT
9 CARRIES UP TO FIVE YEARS AND A FINE. YOU
10 UNDERSTAND THAT?

11 MR. GORDON: YES, SIR.

12 MR. THOMPSON: YOUR HONOR, I DON'T MEAN TO
13 INTERRUPT BUT ON THE ATTEMPTED ROBBERY YOU SAID
14 CARRIES UP TO 30 YEARS. THEY ACTUALLY CARRY UP
15 TO 20.

16 THE COURT: I HADN'T EVEN GOT TO THEM.

17 MR. THOMPSON: I'M SORRY. THERE WAS ONE THAT
18 I---

19 THE COURT: I WENT FROM THE MURDER, THEN I
20 EXPLAINED THE THREE FIREARMS. I HAVEN'T GOTTEN
21 TO THE ATTEMPTED ARMED ROBBERY YET.

22 MR. THOMPSON: OKAY. IT MUST HAVE BEEN THE
23 FIREARM YOU SAID CARRIED UP TO 30.

24 THE COURT: I JUST DIDN'T WANT TO HAVE TO REPEAT
25 IT.

1 MR. THOMPSON: THEY CARRY UP TO FIVE ON THE
2 FIREARMS.

3 THE COURT: THAT'S WHAT I SAID, ISN'T IT?

4 MR. D'AGOSTINO: NO, YOU SAID UP TO 30 ON THE
5 FIREARMS. THEY CARRY UP TO FIVE YEARS ON THE
6 FIREARMS.

7 THE COURT: OKAY. LET ME REPEAT IT. I DID MAKE
8 A GRIEVOUS ERROR. GOING BACK TO THE MURDER
9 CHARGE, IN CONJUNCTION WITH THAT YOU ARE CHARGED
10 WITH A SECOND OFFENSE THAT BEING POSSESSION OF A
11 FIREARM DURING THE COMMISSION OF A VIOLENT
12 CRIME. YOU UNDERSTAND THAT?

13 MR. GORDON: YES, SIR.

14 THE COURT: YOU ARE ALSO CHARGED WITH THAT SAME
15 OFFENSE IN REGARD TO BOTH ATTEMPTED ARMED
16 ROBBERIES. YOU UNDERSTAND THAT?

17 MR. GORDON: YES, SIR.

18 THE COURT: EACH OF THOSE WOULD CARRY AN
19 ADDITIONAL FIVE YEARS. THE FIREARM POSSESSION
20 DURING A VIOLENT CRIME ON THOSE THREE COUNTS.
21 DO YOU UNDERSTAND THAT?

22 MR. GORDON: YES, SIR.

23 THE COURT: HOW DO YOU PLEAD THEN GOING BACK ON
24 THE MURDER INDICTMENT AS TO POSSESSION OF A
25 FIREARM DURING THE COMMISSION OF THE MURDER?

1 MR. GORDON: PLEAD GUILTY, SIR.

2 THE COURT: ALL RIGHT. POSSESSION OF A PISTOL
3 BY A PERSON UNDER 21 ALLEGES THAT YOU AT THAT
4 TIME POSSESSED A PISTOL, THAT YOU WERE UNDER 21,
5 AND THAT THIS WAS IN VIOLATION OF STATE LAW AND
6 THIS WOULD CARRY UP TO FIVE YEARS AND A
7 POSSIBILITY OF A FINE. DO YOU UNDERSTAND
8 THAT --

9 MR. GORDON: YES, SIR.

10 THE COURT: ---CHARGE AND THAT PENALTY?

11 MR. GORDON: YES, SIR.

12 THE COURT: HOW DO YOU PLEAD TO THAT?

13 MR. GORDON: GUILTY, SIR.

14 THE COURT: YOU ARE CHARGED WITH CRIMINAL
15 CONSPIRACY, ALLEGED THAT AT THAT TIME JULY 23,
16 1998, THAT YOU ALONG WITH OTHERS AND TERRANCE
17 MCCREARY, GARY MOFFAT, AND MONTA GORDON DID
18 COMBINE AND CONFEDERATE AND AGREE AND HAVE AN
19 UNDERSTANDING WITH ONE AND THE OTHER TO ENTER
20 INTO THE OFFENSE OF MURDER AND ARMED ROBBERY
21 AND/OR CARJACKING.

22 CRIMINAL CONSPIRACY CARRIES UP TO FIVE YEARS AND
23 \$5,000 FINE. YOU UNDERSTAND THAT?

24 MR. GORDON: YES, SIR.

25 THE COURT: HOW DO YOU PLEAD TO THAT?

1 MR. GORDON: GUILTY, SIR.

2 THE COURT: YOU ARE CHARGED WITH TWO COUNTS OF
3 ATTEMPTED ARMED ROBBERY. IT'S ALLEGED THAT AT
4 THAT TIME ON JULY 23, 1998, WHILE ARMED WITH A
5 DEADLY WEAPON YOU DID ATTEMPT TO TAKE FROM ERIC
6 KRENN AND CHRISTOPHER DIAZ, FROM MR. KRENN A BMW
7 1985, AND CURRENCY FROM MR. DIAZ IN VIOLATION OF
8 STATE LAW.

9 ATTEMPTED ARMED ROBBERY WOULD CARRY UP TO 20
10 YEARS. YOU UNDERSTAND THAT?

11 MR. GORDON: YES, SIR.

12 THE COURT: IT'S ALSO WHAT'S CALLED A MOST
13 SERIOUS OFFENSE. YOU UNDERSTAND THAT?

14 MR. GORDON: YES, SIR.

15 THE COURT: AND IT'S WHAT'S CALLED A PAROLE
16 INELIGIBLE OFFENSE. THAT MEANS AS TO THE
17 ATTEMPTED ARMED ROBBERY CHARGE YOU HAVE TO SERVE
18 UP TO, AT LEAST 85 PERCENT OF THAT CHARGE. YOU
19 UNDERSTAND THAT?

20 MR. GORDON: YES, SIR.

21 THE COURT: ON EACH OF THESE YOU ARE CHARGED
22 WITH POSSESSION OF A WEAPON DURING THE
23 COMMISSION OF A VIOLENT CRIME. HOW DO YOU PLEAD
24 TO ATTEMPTED ARMED ROBBERY INVOLVING CHRISTOPHER
25 DIAZ?

1 MR. GORDON: GUILTY, SIR.

2 THE COURT: AND TO POSSESSION OF A WEAPON AT
3 THAT TIME?

4 MR. GORDON: GUILTY.

5 THE COURT: AND HOW DO YOU PLEAD TO ATTEMPTED
6 ARMED ROBBERY INVOLVING ERIC KRENN ON JULY 23,
7 1998?

8 MR. GORDON: GUILTY.

9 THE COURT: AND TO POSSESSION OF A FIREARM AT
10 THAT TIME?

11 MR. GORDON: GUILTY.

12 THE COURT: NOW I DON'T KNOW THAT YOU'VE EVER
13 BEEN TREATED FOR ANY MENTAL OR EMOTIONAL
14 DISABILITY, THAT IS, TREATED, BUT YOU HAVE BEEN
15 EXAMINED AND EVALUATED AT AN EARLIER TIME
16 THROUGH THE DEPARTMENT OF JUVENILE JUSTICE AND
17 BY TWO PARTICULAR SETS OF PSYCHOLOGISTS, NOT
18 MEDICAL DOCTORS, BUT PSYCHOLOGISTS IN REGARD TO
19 THIS MATTER. IS THAT CORRECT?

20 MR. GORDON: YES, SIR.

21 THE COURT: OTHER THAN THAT, HAVE YOU BEEN
22 TREATED OR RECEIVED ANY KIND OF PSYCHOLOGICAL
23 EVALUATIONS TO YOUR KNOWLEDGE? MR. D'AGOSTINO
24 IS NODDING IN THE AFFIRMATIVE. YOU WANT TO TELL
25 ME ABOUT THAT NOW?

1 MR. D'AGOSTINO: YES, YOUR HONOR. IN
2 CONJUNCTION WITH HIS DJJ SENTENCES HE DID ATTEND
3 AND RECEIVE COUNSELING FROM MENTAL HEALTH,
4 CATAWBA MENTAL HEALTH THAT WAS IN 1997, '98,
5 '97. IT MIGHT HAVE BEEN THE FIRST PART OF '98
6 AS WELL. IN ADDITION TO HAVING HIM EXAMINED BY
7 DR. VENN FOR AN EVALUATION, HE HAS ALSO BEEN
8 EXAMINED BY A PSYCHIATRIST, A DR. ELLEN BERG, A
9 DOCTOR WITH DR. HAROLD MORGAN'S OUTFIT, AND THAT
10 EXAMINATION WAS FOR SEVERAL PURPOSES, MENTAL
11 DEFECT, ISSUES RELATING TO MCNAUGHTON. I WAS
12 CONVINCED THERE WERE NO ISSUES AS FAR AS MENTAL
13 DEFECT AND NO ISSUES ASSOCIATED WITH MCNAUGHTON,
14 NOT GUILTY BY REASON OF INSANITY, SO THERE IS NO
15 MENTAL ILLNESS PROBLEMS. THERE WERE ISSUES AND
16 THAT'S WHY I GOT DR. VENN TO EXAMINE HIM BECAUSE
17 HE DEALT MORE WITH CHILDREN, ISSUES DEALING WITH
18 COMPETENCY, BUT THE COURT HAS ALREADY ADDRESSED
19 THE ISSUE OF COMPETENCY AND I THINK WE'VE HAD
20 TWO PSYCHOLOGISTS DISCUSS THAT, SO THAT'S THE
21 EXTENT OF HIS MENTAL HEALTH EVALUATION AND THE
22 TREATMENT THAT I'M AWARE OF, YOUR HONOR.

23 THE COURT: ALL RIGHT. THANK YOU. MR. GORDON,
24 OTHER THAN THE FACT THAT THEY ARE RECOMMENDING
25 THAT I GIVE YOU A SENTENCE THAT COMBINES TO A

1 TOTAL OF 40 YEARS, HAS ANYONE MADE ANY PROMISE,
2 USED ANY THREATS, OR TOLD YOU YOU'D RECEIVE ANY
3 REWARD OR ANY SPECIAL CONSIDERATION OR HAS
4 ANYBODY USED ANY FORCE OR COERCION TO CAUSE YOU
5 TO ENTER YOUR PLEAS OF GUILT TO THESE OFFENSES?

6 MR. GORDON: NO, SIR.

7 THE COURT: ARE YOU ENTERING THESE PLEAS FREELY
8 AND VOLUNTARILY?

9 MR. GORDON: YES, SIR.

10 THE COURT: ARE YOU AT THIS TIME UNDER THE
11 INFLUENCE OF ANYTHING THAT WOULD CAUSE YOU TO BE
12 INTOXICATED?

13 MR. GORDON: NO, SIR.

14 THE COURT: YOU HAVE A RIGHT TO A TRIAL BY A
15 JURY ON THESE CHARGES. THEY COULD BE TRIED
16 TOGETHER SINCE THEY OCCUR FROM ONE EVENT. YOU'D
17 BE TRIED BY A JURY OF 12 INDIVIDUALS, AND YOU
18 HAVE A RIGHT TO THAT TRIAL. AT THAT TRIAL THE
19 STATE WOULD BE REQUIRED TO PROVE YOUR GUILT
20 BEYOND A REASONABLE DOUBT BEFORE YOU COULD BE
21 CONVICTED OF OFFENSES. YOU DON'T HAVE TO PROVE
22 YOUR INNOCENCE. THE LAW PRESUMES YOU ARE
23 INNOCENT. THE STATE WOULD HAVE TO PROVE YOUR
24 GUILT BEYOND A REASONABLE DOUBT. DO YOU
25 UNDERSTAND THAT?

1 MR. GORDON: YES, SIR.

2 THE COURT: NOW YOU HAVE A RIGHT TO REMAIN
3 SILENT. THAT IS, YOU DO NOT HAVE TO TESTIFY.
4 YOU DO NOT HAVE TO GIVE ANY STATEMENTS. YOU DO
5 NOT HAVE TO SAY ANYTHING ABOUT THIS CASE
6 WHATSOEVER. DO YOU UNDERSTAND THAT?

7 MR. GORDON: YES, SIR.

8 THE COURT: YOU HAVE THE RIGHT TO SEE THE
9 WITNESSES, TO HEAR THE WITNESSES, TO HAVE YOUR
10 ATTORNEY CROSS EXAMINE AND YOU CROSS EXAMINE THE
11 WITNESSES WHO THE STATE WOULD CALL TO TESTIFY
12 AGAINST YOU AT THAT TRIAL IF YOU HAD A TRIAL.
13 DO YOU UNDERSTAND THAT?

14 MR. GORDON: YES, SIR.

15 THE COURT: YOU ALSO HAVE A RIGHT TO HAVE ANY
16 WITNESSES THAT YOU THINK WOULD TESTIFY WITH
17 INFORMATION THAT WOULD BE HELPFUL TO YOU, YOU
18 HAVE THE RIGHT TO HAVE THE STATE MAKE THOSE
19 WITNESSES OR ISSUE SUBPOENAS FOR THOSE WITNESSES
20 TO MAKE THOSE WITNESSES COME TO COURT TO TESTIFY
21 FOR YOU. YOU UNDERSTAND THAT?

22 MR. GORDON: YES, SIR.

23 THE COURT: NOW YOU'VE ALREADY, YOU MADE A
24 CONFESSION OR A STATEMENT IN THIS CASE AND I
25 HAVE ALREADY RULED THAT THEY WERE ADMISSIBLE AT

1 THE TRIAL, BUT IF YOU WENT TO TRIAL THE JURY
2 WOULD HAVE TO DETERMINE WHETHER OR NOT YOU HAD
3 MADE THOSE FREELY AND VOLUNTARILY AND
4 UNDERSTANDING YOUR RIGHTS. YOU UNDERSTAND THAT?

5 MR. GORDON: YES, SIR.

6 THE COURT: NOW BY ENTERING PLEAS OF GUILT TO
7 EACH OF THESE, AS TO EACH OF THOSE OFFENSES, TO
8 EACH AND EVERY ONE OF THEM, YOU ARE GIVING UP
9 THOSE RIGHTS THAT I HAVE JUST GONE OVER. DO YOU
10 UNDERSTAND THAT?

11 MR. GORDON: YES, SIR.

12 THE COURT: KNOWING ALL THESE THINGS THEN I ASK
13 AS TO THE EVENTS ON JULY 23, 1998, HOW DO YOU
14 PLEAD REGARDING THE CHARGE OF MURDER OF ERIC
15 PETER KRENN?

16 MR. GORDON: GUILTY, SIR.

17 THE COURT: AND TO POSSESSION OF A FIREARM AT
18 THAT TIME?

19 MR. GORDON: GUILTY.

20 THE COURT: HOW DO YOU PLEAD TO POSSESSION OF A
21 PISTOL BY A PERSON UNDER 21 AT THAT TIME?

22 MR. GORDON: GUILTY.

23 THE COURT: HOW DO YOU PLEAD TO CRIMINAL
24 CONSPIRACY AT THAT TIME?

25 MR. GORDON: GUILTY.

1 THE COURT: HOW DO YOU PLEAD TO ATTEMPTED ARMED
2 ROBBERY INVOLVING ERIC KRENN AND ONE BMW AT THAT
3 TIME?

4 MR. GORDON: GUILTY.

5 THE COURT: AND TO POSSESSION OF A WEAPON DURING
6 THE COMMISSION OF THAT EVENT.

7 MR. GORDON: GUILTY.

8 THE COURT: HOW DO YOU PLEAD TO ATTEMPTED ARMED
9 ROBBERY REGARDING CHRISTOPHER DIAZ IN CURRENCY
10 OR MONEY AT THAT TIME?

11 MR. GORDON: GUILTY.

12 THE COURT: AND HOW DO YOU PLEAD TO POSSESSION
13 OF A WEAPON DURING THAT?

14 MR. GORDON: GUILTY.

15 THE COURT: ALL RIGHT. NOW I'VE HEARD THE
16 FACTS, I HAVE READ YOUR STATEMENTS, BUT I'M
17 GOING TO ASK JUST FOR THE PURPOSES OF THIS
18 HEARING THAT THE SOLICITOR TO GO OVER AGAIN
19 BRIEFLY THE FACTS.

20 MR. THOMPSON: IF IT PLEASE THE COURT, THIS
21 OCCURRED JULY 23, 1998, HERE IN YORK COUNTY IN
22 ROCK HILL AT SOUTH JONES STREET. THE DEFENDANT
23 IN THIS CASE WAS INVOLVED, AND OF COURSE,
24 SITTING IN THE COURT ARE THE OTHER DEFENDANTS.
25 I HAD DISCUSSED WITH TERRANCE MCCREARY BEFORE

1 GETTING OUT OF THE CAR THAT THEY WOULD ROB MR.
2 KRENN AND TRY TO TAKE THE CAR. AS WELL AS WHEN
3 HE GOT OUT HE TOOK THE PISTOL WITH HIM. HE
4 WITNESSED MR. DIAZ PUTTING HIM AND MONTA GORDON
5 AT THE WINDOW OF THE VICTIM'S CAR TRYING TO
6 STEAL IT. AS A MATTER OF FACT, MR. DIAZ WOULD
7 HAVE TESTIFIED THAT THIS DEFENDANT HAD OR THAT
8 THE DEFENDANT AT THE WINDOW HAD PUT HIS HAND ON
9 THE CAR DOOR TRYING TO OPEN IT WHILE POINTING
10 THE GUN AT MR. KRENN. THE WINDOW OF THE CAR
11 BEING DOWN AT THAT TIME. THIS DEFENDANT'S PALM
12 PRINT WAS LIFTED OFF OF THE DOOR EXACTLY WHERE
13 THE WITNESS STATED (HE) WOULD HAVE BEEN TOUCHING
14 IT TRYING TO OPEN IT AND IT WAS MATCHED AND WE
15 WOULD HAVE HAD TESTIMONY TO THAT AFFECT.

16 THE SHOT WAS FIRED BY THIS DEFENDANT. HE TOOK
17 THE GUN BACK IN THE CAR AND RAN OFF AT THAT
18 POINT IN TIME. HE'S UNDER 21 YEARS OF AGE. AND
19 EVEN HIS GIRLFRIEND CHYENCA DIXON DID ADMIT TO
20 ME WHEN I INTERVIEWED HER TO PREPARE FOR THIS
21 TRIAL THAT MR. GORDON HAD ADMITTED TO HER THAT
22 NIGHT HE WAS THE ONE WHO FIRED THE SHOT AND SHE
23 SAID IF SHE WAS CALLED WOULD HAVE TESTIFIED TO
24 THAT.

25 THE STATE WOULD HAVE PRODUCED THOSE THINGS AT

1 TRIAL AND THAT IS THE BASIS FOR HIS GUILTY PLEA
2 AT THIS TIME, YOUR HONOR.

3 THE COURT: ALL RIGHT. YOU AGREE WITH THOSE
4 FACTS, MR. GORDON?

5 MR. GORDON: YES, SIR.

6 THE COURT: MR. GORDON, I ACCEPT YOUR PLEAS OF
7 GUILT. I FIND THEY ARE FREELY, VOLUNTARILY,
8 KNOWINGLY, AND INTELLIGENTLY ENTERED AND THEY
9 ARE ENTERED WITH THE ADVICE OF A COMPETENT
10 COUNSEL WITH WHOM YOU TELL ME YOU ARE SATISFIED.
11 I FIND THEY ARE FREELY AND VOLUNTARILY ENTERED.
12 YOU HAVE SIGNED PLEAS OF GUILT ON EACH
13 INDICTMENT AND THE FACTS SUPPORT YOUR PLEA.

14 NOW ANYTHING YOU WANT TO ASK ME AT THIS TIME?

15 MR. GORDON: NO, SIR.

16 THE COURT: ALL RIGHT. YOU HAVE A RIGHT NOW,
17 YOU AND YOUR ATTORNEY, TO MAKE A STATEMENT OR
18 YOU CAN WAIT AND DO THAT MONDAY WHEN WE ENTER
19 SENTENCE.

20 MR. D'AGOSTINO: WE'LL WAIT UNTIL MONDAY UNTIL,
21 DO YOU HAVE ANYTHING YOU WANT TO SAY?

22 MR. GORDON: (NODS HEAD.)

23 THE COURT: NOW AS FAR AS THE VICTIM'S RIGHTS
24 ACT I UNDERSTAND MR. KRENN IS PRESENT ALSO FOR
25 THIS.

1 MR. THOMPSON: YES, SIR.

2 THE COURT: DOES HE WISH TO STATE ANYTHING AT
3 THIS TIME?

4 MR. THOMPSON: HE WILL ADDRESS THE COURT MONDAY.

5 THE COURT: ALL RIGHT. THANK YOU. WE'LL SEE
6 YOU MONDAY.

7 THE COURT: THAT CONCLUDES THE COURT FOR THIS
8 WEEK.

9 (COURT'S IN RECESS AT 6:40 P.M.)

10 (COURT RESUMES ON MONDAY, JULY 19, 1999.)

11 MR. THOMPSON: ANTONIO GORDON, MONTA GORDON, AND
12 TERRANCE MCCREARY. PLEASE THE COURT, YOUR
13 HONOR.

14 MR. GILLEN: YOUR HONOR, MAY WE APPROACH
15 BRIEFLY.

16 THE COURT: YES.

17 (BENCH CONFERENCE.)

18 MR. THOMPSON: MAY IT PLEASE THE COURT, YOUR
19 HONOR.

20 THE COURT: YES, SIR.

21 MR. THOMPSON: WE'RE HERE AT THIS POINT WITH THE
22 STATE OF SOUTH CAROLINA VERSUS ANTONIO
23 GORDON, MONTA GORDON, AND TERRANCE MCCREARY ALL
24 WHICH ENTERED GUILTY PLEAS FRIDAY LAST WEEK.
25 THEY ARE HERE NOW FOR SENTENCING. THE VICTIM

1 MR. KRENN IS PRESENT AS WELL AS WITH CHRIS DIAZ.
2 MR. KRENN WISHES TO ADDRESS THE COURT AT THE
3 APPROPRIATE TIME. THERE ARE REMAINING TWO
4 VICTIM IMPACT STATEMENTS WHICH I PASS UP TO THE
5 COURT. I BELIEVE THEY ARE BASICALLY COPIES OF
6 THE FIRST ONE THAT WAS HANDED UP.

7 TO REMIND THE COURT AS TO ANTONIO GORDON, HE
8 PLEAD GUILTY TO MURDER, ATTEMPTED ARMED ROBBERY
9 TWO COUNTS, CONSPIRACY, AND THREE COUNTS OF
10 POSSESSION OF A FIREARM DURING THE COMMISSION OF
11 A VIOLENT CRIME. AS PART OF THE NEGOTIATIONS ON
12 HIM, WE HAVE NEGOTIATED 40 YEARS AS THE SENTENCE
13 THAT WE ARE REQUESTING. WE WOULD ASK FOR 30
14 YEARS ON THE MURDER CHARGE, THAT EVERYTHING ELSE
15 RUN CONCURRENT WITH THAT CHARGE EXCEPT FOR ONE
16 OF THE ATTEMPTED ARMED ROBBERIES WHICH IS TO RUN
17 TEN YEARS CONSECUTIVE.

18 AS TO MONTA GORDON, HE PLEAD GUILTY TO MURDER,
19 TWO COUNTS OF ATTEMPTED ARMED ROBBERY,
20 CONSPIRACY, AND FAILURE TO STOP FOR A BLUE
21 LIGHT. WE'RE ASKING, YOUR HONOR, FOR A
22 CONCURRENT SENTENCE ON THOSE AND A 30 YEAR
23 SENTENCE.

24 AS TO TERRANCE MCCREARY, HE PLEAD GUILTY TO
25 ACCESSORY BEFORE THE FACT TO MURDER AND

1999 Guilty Plea of Antonio Gordon
Exhibit 4

1 ACCESSORY AFTER THE FACT TO MURDER, AND

2 REQUESTING 30 YEARS SENTENCE ON HIM AS WELL.

3 THE STATE DOES HAVE THE RECORDS OF THE
4 DEFENDANTS YOUR HONOR, AT THE APPROPRIATE TIME.

5 THE COURT: ALL RIGHT. LET'S DO MR. ANTONIO
6 GORDON. TELL ME HIS RECORD.

7 MR. THOMPSON: MR. ANTONIO GORDON IS ALL A
8 JUVENILE RECORD. IN 1993 HE WAS CONVICTED OF AN
9 ATTEMPT CHARGE. WE TRIED TO FIND OUT EXACTLY
10 WHAT THAT IS BUT THE RECORDS WEREN'T QUITE
11 CERTAIN. IN 1995 THREE CONVICTIONS OF BURGLARY
12 SECOND AND MALICIOUS INJURY TO PROPERTY AND
13 THREE COUNTS OF PETITE LARCENY AND HE WENT TO R
14 AND E ON THOSE CHARGES.

15 IN 1997 ASSAULT AND BATTERY AND PETITE LARCENY
16 TO WHICH HE WENT TO R AND E AS WELL. AND IT'S
17 MY UNDERSTANDING THAT HE WAS RELEASED FROM R AND
18 E IN JANUARY OF 1998 AND ABOUT THREE OR FOUR
19 MONTHS LATER WAS RELEASED FROM PAROLE OR

20 PROBATION FROM THAT PARTICULAR CHARGE AT THAT
21 TIME.

22 THE COURT: MR. D'AGOSTINO, BE GLAD TO HEAR FROM
23 YOU AND THEN FROM MR. GORDON.

24 MR. D'AGOSTINO: THANK YOU, YOUR HONOR. YOUR
25 HONOR, AS YOU KNOW ANTONIO GORDON, HE WAS 16

1999 Guilty plea of Antonio Gordon
Exhibit 4

1 YEARS OF AGE AT THE TIME THIS OCCURRED. HE'S 17
2 YEARS OLD NOW. TODAY IN THE COURTROOM WITH HIM
3 IS HIS MOTHER LORETTA BROOKS AND HIS STEPFATHER
4 RANDY BROOKS.

5 HE DROPPED OUT OF SCHOOL IN THE 9TH GRADE. HE'S
6 OUT OF SCHOOL. HE DIDN'T EVEN COMPLETE THE 9TH
7 GRADE, YOUR HONOR.

8 THIS WHOLE SITUATION IS A VERY TRAGIC SITUATION.
9 IT'S VERY TRAGIC FOR THE VICTIMS, THE KRENN
10 FAMILY, MR. DIAZ AND HIS FAMILY. IT'S SOMETHING
11 THAT NEVER SHOULD HAVE HAPPENED AND THERE IS
12 ONLY ONE THING THAT I HAVE NOT DONE OR DID NOT
13 DO SINCE MY REPRESENTATION OF ANTONIO BEGAN AND
14 THAT WAS APRIL 21 WHEN I WAS FIRST APPOINTED TO
15 REPRESENT HIM AND SOON AFTER THAT HE ALWAYS, ONE
16 THING HE WANTED TO DO WAS APOLOGIZE TO MR. KRENN
17 AND FOR WHAT HAPPENED, FOR WHAT HE DID, HIS ROLE
18 IN IT AND EVERYTHING THAT WENT ON THAT NIGHT.
19 HE WROTE ME SEVERAL LETTERS AND I, OF COURSE,

20 COULD NOT, FOR OBVIOUS REASONS, COULD NOT ALLOW
21 HIM TO MEET WITH HIM. AND I DIDN'T THINK HE
22 THINK THAT MR. KRENN WOULD WANT TO MEET WITH
23 HIM, BUT ONE THING HE DID SAY AND WANT TO DO IS
24 APOLOGIZE FOR WHAT HE HAD DONE AND HE'S SORRY
25 FOR WHAT HE HAD DONE. AND I WAS ALSO NOTIFIED

1999 Guilty plea of Antonio Gordon
Exhibit 4

1 BY THE SOLICITOR'S OFFICE THAT SOME OF THE FACTS
2 THAT MIGHT HAVE COME OUT AT TRIAL INDICATES THAT
3 HE WAS, IN ANY EVENT HE WAS SORRY, HE IS SORRY
4 FOR WHAT HE DID. HE KNOWS WHAT HE DID WAS WRONG
5 AND THERE IS NO EXCUSE AND HE'S PLEADING GUILTY.
6 WE JUST ASK THE COURT TO GO ALONG WITH THE
7 NEGOTIATED SENTENCE FOR 40 YEARS. IT'S GOING TO
8 BE A VERY LONG TIME FOR HIM. HOPEFULLY HE CAN
9 GET HIS GED WHILE HE'S DOWN THERE. YOU HEARD
10 ABOUT HIS LIMITED MENTAL CAPACITY. ALTHOUGH
11 HE'S NOT RETARDED BECAUSE NOBODY'S HAD THE
12 OPPORTUNITY TO DO A FULL BACKGROUND. DR. VENN
13 DIDN'T GET TO SPEAK WITH HIS FAMILY MEMBERS,
14 THEY DIDN'T KNOW MUCH ABOUT HIM, BUT THE RECORDS
15 FROM DJJ FROM 1998 AND FROM 1995 ALL INDICATE
16 BORDERLINE FUNCTIONAL IQS. 1995 PSYCHOLOGICAL
17 SHOWS AN IQ 68. DR. VENN'S IQ EXAMINATION SHOWS
18 IQ 68. HE IS AN INDIVIDUAL THAT'S EASILY LEAD
19 AROUND, BUT THAT IS NOT AN EXCUSE.

20 WE JUST ASK THE COURT TO GO ALONG WITH THE
21 RECOMMENDATION.

22 ON BEHALF OF MR. ANTONIO GORDON, HE DOES
23 APOLOGIZE. I KNOW IT DOESN'T CHANGE ANYTHING,
24 BUT HE DOES APOLOGIZE TO MR. KRENN, MR. DIAZ,
25 AND WE ASK THE COURT TO ACCEPT THE NEGOTIATED

1 SENTENCE.

2 THE COURT: I THINK WHAT I'M GOING TO DO IS HEAR
3 FROM EACH LAWYER AND THEN FROM ANY OF THE
4 VICTIMS AND THEN FROM THE DEFENDANTS
5 THEMSELVES. ALL RIGHT. MR. MATLOCK, ON BEHALF
6 OF MONTA GORDON.

7 MR. MATLOCK: ON BEHALF OF MONTA GORDON JUST TO
8 ECHO SOME OF THE COMMENTS MR. D'AGOSTINO,
9 CERTAINLY THIS IS A CASE OF HUMAN TRAGEDY OF THE
10 HIGHEST ORDER.

11 I WOULD ALSO LIKE TO POINT OUT THAT MR. MONTA
12 GORDON, ANTONIO'S BROTHER, IS JUST VERY
13 REMORSEFUL AND PRAYS FOR THE FAMILY OF MR. KRENN
14 AND IT JUST ABSOLUTELY AGHAST ABOUT WHAT
15 HAPPENED AND HOW HE GOT INVOLVED IN THE ENTIRE
16 PROCESS. ALTHOUGH WE ARE NOT IN ANY WAY TRYING
17 TO DEFEND AN INDEFENSIBLE CRIME WE WOULD LIKE TO
18 POINT OUT THAT MR. GORDON REALIZES THAT AND
19 UNDERSTANDS THE LEGAL CONCEPTS OF THE HANDS OF
20 ONE IS THE HANDS OF ALL AND IS IN NO WAY TRYING
21 TO MITIGATE OR EXCUSE HIS BEHAVIOR HERE TODAY.
22 BUT HE WAS NEITHER THE ONE WHO ACTUALLY FIRED
23 THE SHOT NOR WAS IT HE WHO ENCOURAGED OR URGED
24 HIS BROTHER TO COMMIT THIS CRIME. HE WAS IN THE
25 BACK SEAT OF THE CAR AND WHEN HE GOT OUT AFTER

1 HIS BROTHER, AT THE URGING OF THE DRIVER, GOT
2 OUT WITH THE GUN AND WENT OVER TO THE DRIVER'S
3 SIDE OF THE CAR.

4 YOUR HONOR, AS I KNOW YOU ARE WELL AWARE A
5 GUILTY PLEA IS THE FIRST STEP ON THE ROAD TO
6 REHABILITATION AND AN ACKNOWLEDGEMENT OF
7 CULPABILITY AND REMORSE OF ITSELF. WE WOULD
8 JUST ASK THAT YOUR HONOR CONSIDER THAT AND
9 CONSIDER THE FACT THAT MR. MONTA GORDON HAD
10 AGREED TO WORK WITH THE PROSECUTION IN THIS CASE
11 AND THAT HE WOULD ASK THAT YOUR HONOR SENTENCE
12 HIM TO NO MORE THAN THE RECOMMENDATION OF THE
13 STATE IN THIS CASE.

14 ALSO I'D LIKE TO POINT OUT AT THE TIME OF THE
15 CRIME HE WAS ONLY 17 YEARS OLD. HE HAS AN
16 ELEVENTH GRADE EDUCATION.

17 THE COURT: MR. GILLEN.

18 MR. GILLEN: JUST BRIEFLY, YOUR HONOR, MY CLIENT
19 HAS ASKED ME OUT OF RESPECT FOR MR. KRENN NOT TO
20 PRESENT ANY MITIGATION. WE WOULD JUST
21 RESPECTFULLY ASK THE COURT TO GO ALONG WITH THE
22 NEGOTIATED PLEA.

23 MRS. CLARK: YOUR HONOR, WE'D LIKE TO POINT OUT
24 MR. MONTA GORDON IS CURRENTLY ON PROBATION.
25 WE'D LIKE TO HANDLE THE PROBATION MATTER AT THE

1 SAME TIME IF THAT WOULD BE OKAY.

2 THE COURT: YOU WANT TO GO AHEAD AND SERVE HIM.

3 MRS. CLARK: YOUR HONOR, HE'S ALREADY BEEN
4 SERVED.

5 THE COURT: ALL RIGHT.

6 MRS. CLARK: THE ONLY THING WE HAVE IS HE IS
7 PLEADING GUILTY TO THIS OFFENSE.

8 THE COURT: YOU GOT THE PAPERWORK TO GIVE ME.

9 MRS. CLARK: YES, SIR.

10 MR. THOMPSON: YOUR HONOR, WE DO HAVE THE RECORD
11 AS TO MONTA GORDON. HE WAS CONVICTED AS A
12 JUVENILE IN 1993 TWO COUNTS OF PETITE LARCENY
13 THEN THE REST OF HIS CONVICTIONS AS A JUVENILE
14 ARE IN 1995 POSSESSION OF CRACK COCAINE,
15 BREAKING AND ENTERING AN AUTOMOBILE, GRAND
16 LARCENY AUTO. POSSESSION OF BURGLARY TOOLS,
17 FAILURE TO STOP FOR A BLUE LIGHT, TWO COUNTS OF
18 SHOPLIFTING. THEN AS AN ADULT HE HAD
19 CONVICTIONS FOR INTIMIDATING A WITNESS. THIS
20 WAS A CONVICTION DATE IN 1998. ACTUALLY IN MAY
21 OF 1998 INTIMIDATING A WITNESS. SIMPLE ASSAULT
22 AND POSSESSION OF CRACK COCAINE, AND THAT'S WHAT
23 I BELIEVE HE WAS ON PROBATION FOR AT THE TIME
24 THIS OCCURRED.

25 AND AS FOR TERRANCE MCCREARY, YOUR HONOR, HIS

1 RECORD IS JUVENILE AND ADULT RECORD. JUVENILE
2 BEGINNING IN 1992 WITH BURGLARY SECOND AND GRAND
3 LARCENY AND MALICIOUS INJURY TO PROPERTY. THEN
4 IN 1993 GRAND LARCENY, SHOPLIFTING, AND DRIVING
5 WITHOUT A LICENSE. THEN AS AN ADULT IN 1994
6 PETITE LARCENY AND B AND E AUTO AND SHOPLIFTING.
7 AND STILL IN 1994 USE OF VEHICLE WITHOUT OWNER'S
8 CONSENT. IN 1995 POSSESSION OF CRACK COCAINE.
9 THEN IN 1996 STRONG ARMED ROBBERY.

10 THE COURT: MR. MONTA GORDON, I ALSO HAVE IN
11 FRONT OF ME A PROBATION MATTER. YOU'VE BEEN
12 SERVED WITH THE CITATION TODAY INDICATING YOU
13 VIOLATED A SENTENCE JUDGE MARTIN IMPOSED OF
14 THREE YEARS FOR POSSESSION OF CRACK COCAINE
15 FIRST OFFENSE BACK IN MAY OF 1998. IS THAT THE
16 CORRECT SENTENCE?

17 MR. GORDON: YES, SIR.

18 THE COURT: AND YOU WERE SERVED WITH THIS
19 CITATION?

20 MR. GORDON: YES, SIR.

21 THE COURT: AND IT'S TRUE THAT THEY ALLEGE THE
22 VIOLATION IS ENTERING THIS PLEA TODAY OR
23 ACTUALLY ON FRIDAY AND THAT, OF COURSE, IS A
24 FACT?

25 MR. GORDON: YES, SIR.

1 THE COURT: I FIND THAT IS A SUBSTANTIAL
2 VIOLATION AND I REVOKE THAT PAROLE SENTENCE.
3 ALL RIGHT. NOW I'LL BE GLAD TO HEAR FROM ANYONE
4 ELSE IN REGARD TO THIS MATTER, MR. THOMPSON.

5 MR. THOMPSON: PLEASE THE COURT, YOUR HONOR.
6 MR. KRENN.

7 THE COURT: GOOD MORNING.

8 MR. KRENN: GOOD MORNING. I'D LIKE TO MAKE A
9 LITTLE STATEMENT IF I COULD.

10 THE COURT: PLEASE.

11 MR. KRENN: OKAY. WHEN THEY ROBBED MY SON'S
12 LIFE, THEY NOT ONLY ROBBED HIM THEY ROBBED HIS
13 87-YEAR-OLD GRANDMOTHER OF HER ONLY GRANDSON
14 WHICH SHE LOST HER ONLY DAUGHTER TO CANCER BACK
15 IN '87. THEY ROBBED HIS FRIENDS OF A GREAT
16 OUTDOOR PERSON, A HANDSOME YOUNG MAN WHO LOVED
17 LIFE, AND HAD A LOT TO GIVE. THEY ROBBED HIS
18 TEACHERS OF A TALENTED ARTIST AND A GOOD
19 STUDENT. THEY ROBBED A COMMUNITY OF AN
20 OUTSTANDING YOUNG MAN WHO HAD BEEN A GREAT ASSET
21 TO THIS COMMUNITY. AND THEY ROBBED ME, HIS
22 FATHER, OF A SON I TAUGHT TO RESPECT PEOPLE, TO
23 LOVE LIFE, AND TO LOVE THIS GREAT COUNTRY WE
24 LIVE IN.
25 WE TRAVELLED ALL OVER THE COUNTRY AND WE LEARNED

1 A LOT ABOUT ITS PEOPLE. ERIC LEARNED WHAT THIS
2 COUNTRY IS ALL ABOUT. HE LEARNED HOW TO RESPECT
3 OTHER PEOPLE AND THEIR PROPERTY.

4 THESE CRIMINALS ALSO ROBBED ME OF EVER HAVING
5 JOY OF GRANDCHILDREN OR WATCHING MY SON GROW UP
6 AND PROSPER. THE GREED THESE PEOPLE SHOW, THEY
7 SAW SOMETHING AND THEY FELT THEY COULD JUST TAKE
8 IT WITH NO REMORSE OR GRIEF, JUST GREED. IN
9 THIS CASE MY 13-YEAR-OLD BMW WHICH I LET MY SON
10 DRIVE. HE WAS PROUD OF THAT CAR. HE WASHED IT
11 ALMOST EVERYDAY. HE CUT GRASS TO MAKE MONEY TO
12 PUT GAS IN IT AND I ADDED A CD PLAYER FOR HIS
13 BIRTHDAY PRESENT. HE FELT CLOSE TO THAT CAR AND
14 PAID FOR PART OF IT WITH INSURANCE MONEY AFTER
15 HIS MOTHER'S DEATH FROM CANCER WHEN HE WAS ONLY
16 FIVE YEARS, SO HE FELT LIKE IT WAS A LINK TO
17 HER. HE MISSED HIS MOM A LOT, BUT I DID THE
18 BEST I COULD AS A SINGLE FATHER. HE NEVER
19 FAILED TO TELL ME HE LOVED ME EVEN IN FRONT OF
20 HIS TEENAGE FRIENDS.

21 THESE PEOPLE NEVER CARED ABOUT ANY OF THAT.
22 THEY HAD A .357 CALIBER CHROME-PLATED GUN AND A
23 LIFE OF TROUBLE WITH THE LAW. BUT THEY WERE OUT
24 AMONG SOCIETY EVEN AFTER MOST HAD PREVIOUS
25 TROUBLE WITH THE LAW. SO THIS IS ONE MORE

1 HOLD-UP, A CARJACKING, OR ROBBERY, WHO CARES.

2 IN THE NIGHTMARE THAT THIS IS, AS ONE CAN
3 IMAGINE THE NIGHTMARE OF BEING CALLED TO THE
4 HOSPITAL AT 3 O'CLOCK IN THE MORNING AND YOU'VE
5 SEEN YOUR CHILD ON A STAINLESS STEEL TABLE, EYES
6 STILL HALF-OPEN, BUT NO LIFE COMING FROM THEM.
7 THE HOPE THAT SOMEHOW THEY HAD MADE A MISTAKE
8 AND HE WASN'T DEAD. THE NIGHTMARES AND THE
9 SENSE OF PAIN AND HURT AND LOSS THAT FOLLOWED.
10 ONE HOPES ONE WOULD NEVER HAVE TO HAVE ANOTHER
11 PARENT GO THROUGH A TRAGEDY LIKE THAT. EVEN
12 LIKE THE COLUMBINE HIGH SCHOOL IN COLORADO, MY
13 HEART GOES OUT TO ALL FRIENDS AND THEIR VICTIMS
14 AND AGAIN SOMEHOW YOU LIVE THE HORROR EVERY TIME
15 YOU SEE THIS.

16 AND IN CLOSING I'D LIKE TO THANK THE COURT, THE
17 SOLICITOR'S OFFICE, AND THE ROCK HILL POLICE
18 DEPARTMENT FOR THEIR ACTIONS THAT HAVE BEEN
19 DEPICTED OF JUSTICE. THANK YOU, YOUR HONOR.

20 THE COURT: THANK YOU, MR. KRENN.

21 MR. THOMPSON: YOUR HONOR, THE STATE WOULD HAVE
22 NOTHING ELSE.

23 THE COURT: MR. DIAZ DID NOT WANT TO.

24 MR. THOMPSON: NO, YOUR HONOR, MR. DIAZ DID NOT
25 WANT TO ADDRESS THE COURT.

1 THE COURT: ALL RIGHT. ANTONIO GORDON, ANYTHING
2 YOU WANT TO SAY?

3 MR. GORDON: I'M SORRY FOR MY ACTIONS THAT I,
4 TOOK PLACE AND THE CRIME. I'M SORRY FOR HIS
5 FAMILY. AND ALL THE PEOPLE THAT I DONE HURT
6 DURING THIS SITUATION.

7 THE COURT: MONTA GORDON, ANYTHING YOU WANT TO
8 SAY?

9 MR. GORDON: I'M SORRY FOR THE KRENN FAMILY FOR
10 THIS ACCIDENT THAT HAPPENED. WE KNEWED THAT IT
11 WAS A BIG MISTAKE IN OUR LIFE BECAUSE AS
12 TEENAGERS WE HAD A LOT TO LIVE FOR, BUT NOW
13 SINCE THE INDICTMENT WE HAVE NOTHING TO LIVE FOR
14 BUT TO SERVE THE TIME FOR THE CRIME THAT WE
15 DID. I WANT TO SAY I'M SORRY FOR MY FAMILY FOR
16 LETTING THEM GO THROUGH THE SITUATION I'M IN AND
17 ALL THAT. HOPEFULLY MR. KRENN WILL FORGIVE US
18 ONE DAY FOR THE SIN WE DID.

19 THE COURT: ALL RIGHT. MR. MCCREARY.

20 MR. MCCREARY: I'M SORRY FOR HURTING ALL THE
21 PEOPLE AND MR. KRENN AND HIS FAMILY FOR TAKING
22 THE LIFE OF HIS SON, HIS ONLY SON. I WISH WE
23 COULD BRING HIM BACK, BUT WE CAN'T. AND I'M
24 JUST SORRY.

25 THE COURT: THANK YOU. ANYTHING FURTHER, MR.

1 D'AGOSTINO.

2 MR. D'AGOSTINO: NO. THANK YOU, YOUR HONOR.

3 THE COURT: MR. MATLOCK.

4 MR. MATLOCK: NOTHING.

5 THE COURT: MR. GILLEN.

6 MR. GILLEN: NO, YOUR HONOR.

7 THE COURT: MR. MCCREARY, THE SENTENCE ON
8 ACCESSORY BEFORE THE FACT OF MURDER THE SENTENCE
9 IS 30 YEARS. ACCESSORY AFTER THE FACT OF MURDER
10 THE SENTENCE IS 15 YEARS TO RUN CONCURRENT. YOU
11 UNDERSTAND THAT?

12 MR. MCCREARY: YES, SIR.

13 THE COURT: IF YOU BELIEVE THERE HAS BEEN ANY
14 ERROR COMMITTED IN THE WAY WE'VE HANDLED YOUR
15 PLEA YOU HAVE TEN DAYS TO FILE AN APPEAL. YOU
16 UNDERSTAND THAT?

17 MR. MCCREARY: YES, SIR.

18 THE COURT: MONTA GORDON, ON MURDER YOUR
19 SENTENCE IS FOR 30 YEARS. ON CRIMINAL
20 CONSPIRACY THE SENTENCE IS FIVE YEARS TO RUN
21 CONCURRENT. THE SENTENCE ON ATTEMPTED ARMED
22 ROBBERY IS FOR 20 YEARS TO RUN CONCURRENT. THE
23 SENTENCE ON FAILURE TO STOP FOR A BLUE LIGHT IS
24 ONE YEAR TO RUN CONCURRENT. ON THE OTHER
25 ATTEMPTED ARMED ROBBERY THE SENTENCE IS FOR 20

1 YEARS TO RUN CONCURRENT. YOU UNDERSTAND THAT?

2 MR. GORDON: YES, SIR.

3 THE COURT: IF YOU BELIEVE THERE HAS BEEN ANY
4 ERROR COMMITTED IN THE WAY YOUR CASE HAS BEEN
5 HANDLED AND THE SENTENCE I'VE IMPOSED YOU HAVE
6 TEN DAYS TO FILE AN APPEAL. YOU UNDERSTAND
7 THAT?

8 MR. GORDON: YES, SIR.

9 THE COURT: MR. ANTONIO GORDON, YOUR SENTENCE ON
10 POSSESSION OF A PISTOL UNDER THE AGE OF 21 IS
11 FOR FIVE YEARS. THAT'S CONCURRENT WITH THE
12 OTHER SENTENCES. YOUR SENTENCE FOR CRIMINAL
13 CONSPIRACY IS FIVE YEARS. THAT'S TO RUN
14 CONCURRENT. YOU HAVE THREE CHARGES OF
15 POSSESSION OF A FIREARM DURING A VIOLENT CRIME.
16 THE SENTENCE ON EACH OF THOSE IS FOR FIVE YEARS
17 AND EACH OF THOSE ARE TO RUN CONCURRENT. ON
18 ATTEMPTED ARMED ROBBERY, ON INDICTMENT
19 98-46-2850 THE SENTENCE IS FOR TEN YEARS, AND
20 THAT'S TO RUN CONCURRENT. THE SENTENCE ON
21 MURDER IS FOR A TERM OF 30 YEARS, AND ON THE
22 OTHER ATTEMPTED ARMED ROBBERY 98-46-2849 THE
23 SENTENCE IS TEN YEARS AND THAT'S CONSECUTIVE TO
24 THE MURDER SENTENCE. YOU UNDERSTAND ALL THAT?

25 MR. GORDON: YES, SIR.

1 THE COURT: ALL RIGHT. IF YOU BELIEVE I'VE
2 COMMITTED ANY ERROR IN THE WAY I'VE HANDLED THE
3 PLEA OR THE SENTENCE I'VE IMPOSED YOU HAVE TEN
4 DAYS TO FILE AN APPEAL. DO YOU UNDERSTAND THAT?

5 MR. GORDON: YES, SIR.

6 THE COURT: THANK YOU.

7 MR. D'AGOSTINO: DID THEY ALL GET CREDIT FOR
8 TIME SERVED.

9 THE COURT: CREDIT FOR TIME SERVED.

10 MR. D'AGOSTINO: THANK YOU, YOUR HONOR.

11 (END OF PROCEEDINGS.)
12
13
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1 I, THE UNDERSIGNED JANET M. RICH, OFFICIAL COURT
2 REPORTER FOR THE 16TH JUDICIAL CIRCUIT OF THE
3 STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT
4 THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE
5 TRANSCRIPT OF RECORD OF ALL THE TESTIMONY HAD
6 AND EVIDENCE INTRODUCED IN THE TRIAL OF THE
7 CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT
8 OF GENERAL SESSIONS FOR YORK COUNTY, SOUTH
9 CAROLINA, ON THE 12, 14, & 16 OF JULY, 1999.

10 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
11 COUNSEL NOR INTEREST TO ANY PARTY HERETO.
12
13
14

APRIL 3, 2000

Janet M Rich

JANET M. RICH
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STATE OF SOUTH CAROLINA

County of York

In the Court of Common Pleas

Antonio G. Gordon # 234798

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

vs.

Charles Condon, Atty. General

Name of Respondent.

State of South Carolina

2000 CP 46-1414

APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — 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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention Kershaw Correctional Institution; Magnolia East 97
4545 Goldmine Hwy; Kershaw S.C. 29067
2. Name and location of Court which imposed sentence York Co Family Court; York S.C. 29732
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - (a) Murder, 98-Ju-46-2847, Attempted Armed Robbery, 98-Ju-46-2849, Attempted Armed Robbery 98-Ju-46-2850
 - (b) Poss Firearm comm violent crime, 98-Ju-46-2850-A, Poss Firearm comm violent crime, 98-Ju-46-2847-A
 - (c) Poss Firearm comm violent crime, 98-Ju-46-2847-A, Poss pistol under 21, 98-Ju-46-2852
Criminal Conspiracy, 98-Ju-46-2851
4. The date upon which sentence was imposed and the terms of the sentence:
 - (a) July 23, 1996, Waiver of Jurisdiction
 - (b) _____
 - (c) _____

 CERTIFIED TRUE COPY
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5. Check whether a finding of guilty was made

- (a) after a plea of guilty Yes
- (b) after a plea of not guilty _____
- (c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

No

7. If you answered "yes" to (6), 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. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

- (a) _____
- (b) _____
- (c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Allegations is being filed on grounds of ineffective Assistance of Counsel
- (b) pursuant to family court matters.
- (c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

- (a) _____
- (b) _____
- (c) _____

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO
- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO
- (d) any other petitions, motions or applications in this or any other Court?

12. If you answered "yes" to any part of (11), 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. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

404

(a) which grounds have been presented:

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

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

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

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) _____
- (b) _____
- (c) _____

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

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

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Harry Dest P.O. Box 691 1675-1E York Hwy, York S.C. 29745-0691
- ii. Roberts D'Agostino Attorneys at law, 300 West Liberty Street, P.O. Box 460 York S.C. 29745
- iii. _____

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

- i. _____
- ii. Sentencing Phase & Trial
- iii. _____

18. State clearly the relief you seek in filing this application.

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

NO

County of York

VERIFICATION

I, Antonio Gordon #254798, 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.

Antonio Gordon

SWORN to and subscribed before me this 12

day of

June, 192000

[Signature] (L.S.)
Notary Public

Notary Public, South Carolina, State at Large
My Commission Expires Feb. 6, 2008

My Commission Expires:

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, Antonio Gordon #254798, 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 therefor.

Antonio Gordon

Applicant

SWORN or affirmed to and subscribed before me this

12 day of June, 192000

[Signature]
Notary Public

Notary Public, South Carolina, State at Large
My Commission Expires Feb. 6, 2008

My Commission Expires:

406

CERTIFIED TRUE COPY

AUG 20 11 33 AM '01

STATE OF SOUTH CAROLINA

County of York.

In the Court of Common Pleas

Antonio Gordon#259798

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

vs.

State of South Carolina

Name of Respondent.

01 CP 46-1866
APPLICATION FOR
POST-CONVICTION RELIEFINSTRUCTIONS — 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 it clear to which question any such continued answer refers.

Since every application must be sworn to 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 applicant was convicted.

- Place of detention Kershaw Correctional Institution, Sycamore East,
Room#4-B, 4848 Goldmine Highway Kershaw, S.C. 29067
- Name and location of Court which imposed sentence York County General Session Court,
Post Office Box 649, York, South Carolina 29745-0649
- The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
 - Murder 98-GS-4647, Attempted Armed robbery 98-GS-46-2849, Poss. Firea
 - comm viol crime, 98-GS-46-2847-A, Criminal conspiracy 98-GS-46-2851,
 - Firearm comm violent crime 98-GS-46-2849, Poss Firearm Comm violent
98-GS-46-2850-A, Poss of a Handgun under (21) 98-GS-46-2852, Attempted Arm
- The date upon which sentence was imposed and the terms of the sentence: Robbery 98-GS-46-2850.
 - July, 19, 1999, 30 years for Murder, to ten (10) Consecutive year for or
 - Attempted Armed robbery, to ten (10) Concurrent year on the other and
 - robbery, and to five (5) years concurrent one each of the remaining

407

5. Check whether a finding of guilty was made

X(a) after a plea of guilty X

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes I did appeal.

7. If you answered "yes" to (6), list

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

i. State of South Carolina Court of Appeals.

ii. _____

iii. _____

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

i. Appeal dismissed.

ii. _____

iii. _____

(c) the date of each such result:

i. December 6, 2000

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of counsel(d)Denial of severance motion(b) Involuntary guilty plea(c) Lack of subject matter jurisdiction, ~~and denial of severance motion~~

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) see attached memorandum,(b) see attached memorandum,(c) see attached memorandum,

Involuntary Guilty Plea(ARGUMENT 1)

Entering a guilty plea results in a waiver of several constitutional rights, therefore the Due Process Clause requires that guilty pleas are entered into voluntarily, knowingly, and intelligently by defendants, Boykin v. Alabama, 395 U.S. 238, 89 S.C.T. 1709, 23 L.E.D. 2d 274 (1969). The United States Supreme Court has held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights, he or she is waiving. Specifically, a defendant must be aware of the privilege against self incrimination, the right to a Jury Trial, and the right to confront one's accusers. The S.C. Supreme Court considered the requirements of a ~~voluntary~~ and knowing guilty plea in State v. Hazel, 275 S.C. 392, 271 S.E2d 602 (1980), and Dover v. State, 304 S.C. 433, 405 S.E2d 391 (1991). In addition to the requirements of Boykin v. Alabama, a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the Constitutional Rights being waived.

When determining issues relating to guilty pleas, the court will consider the entire record, including the transcript of the guilty plea, and the evidence presented at the P.C.R. hearing. Harres v. Leeke, 282 S.C. 131, 318 S.E2d 360 (1984). However, in this case, the transcript of Gordon's guilty plea on its face provides enough evidence to hold Gordon's plea was not voluntary or knowing. See Pittman v. State, 524 S.E2d 623. In Gordon's case, the trial Judge did not affirmatively ask him for an admission of guilt.

Furthermore, the applicant's guilty plea was involuntary due to limited comprehension, whereas he responded systematically to the Judge's questioning during the plea proceedings even though there had surfaced much confusion between the Judge and counsel as to the sentencing stipulation and/or guidelines yet applicant still responded as "yes" even though the guidelines mentioned were inaccurate or inaccurately stated. Tr. pg. 178-179

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Exhibit (5)

Lack of Subject matter Jurisdiction (Argument 2)

When a juvenile is taken into custody he must immediately be taken before a referee, circuit Judge, or magistrate, and if there is a failure to do so, and it appears that primary purpose of delay was to obtain a confession from juvenile, any confession obtained as a result of that delay will be invalid. Code 49-5-8.

Decision to transfer juvenile to adult status is within sound discretion of district Judge, as district Judge considers and makes specific finding as to following six factors: Juvenile's age and social background; nature of alleged offense; prior record of offender; juvenile's intellect intellectual development and psychological maturity; nature of and response to past treatment; and availability of programs designed to treat juvenile's problems. U.S. v. Greald, 900 F2d 189. See U.S. v. CJTG, 913 F.Supp. 63 (Juvenile would not be transferred to adult status for prosecution and trial, even though he had been involved in carjacking in which victim was killed by gun shot).

Defendant was charged with Armed robbery and sentenced by the family court, Greenville County, James A.K. Roper, 3, as a youthful offender, "After a guilty plea to accessory before and after the fact, and defendant appealed". The Supreme court held that where defendant was sixteen (16) years of age at the time of charge offense of Armed robbery, but turned seventeen (17) years of age prior to final disposition of charge in family court, since Jurisdiction had not been relinquished in favor of another court under applicable statute, charge against defendant should have been handled under statute relating to youthful offenders.

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Severance Motion (Argument 3)

The trial Judge must act cautiously in allowing a joint trial; the Judge must carefully consider problems that may arise from a joint trial, such as redacted statements, and must assure protection of each defendant's constitutional right to confront witnesses against him. State v. Singleton, 303 S.C. 313.

Petitioner contends the trial judge, relying in part upon Zafiro v. United States, 506 U.S. 534, 113 S.Ct. 933, 122 L.Ed.2d 317 (1993), erred in denying his pretrial severance motion.

Petitioner's attorney made a motion to sever trial due to the fact that the appellant had, "Been tested on two prior occasions before this crime ever occurred...and he has consistently tested 68, which as I understand it is in the range of mental retardation". Tr. pg. 8, Lines 18-25; pg. 9, Lines 1-25. Petitioner's attorney informed the court that he would have to explain things to Petitioner and that to introduce two co-defendants, "Would create the definite result that the defendant will surely be lost in the entire trial process. The Court erred in denying this motion.

Ineffective Assistance of Counsel. (Argument 4)

Counsel was ineffective for allowing guilty plea that was not knowingly and intelligently given plea argued in ground (1). Counsel's ineffectiveness was so severe that it prejudiced petitioner's Constitutional Right to a fair trial.

Conclusion

Petition moves to have sentence vacated or in the alternative a new trial. I so move:

SI *Antonino Gordon*

Antonino Gordon #259798
Kershaw Correctional Institution
Sycamore East, Room #4-B
4848 Goldmine Highway
Kershaw, S.C. 29067

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11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. N/A

ii. _____

iii. _____

iv. _____

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

i. N/A

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. N/A
- ii. _____
- iii. _____

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

- i. N/A
- ii. _____
- iii. _____

15. If any ground set forth in (9) 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) Petitioner's first attempt at relief
- (b) _____
- (c) _____

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? No
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

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

- i. Harry Dest, 1675-3A York Hwy, York S.C. 29745
- ii. D. Agostino, "address unknown"
- iii. _____

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

- i. Harry Dest Got off case.
- ii. D. Agostino Plea and Sentencing,
- iii. _____

18. State clearly the relief you seek in filing this application.

Vacation of sentence

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

No

STATE OF SOUTH CAROLINA

County of York

VERIFICATION

I, Antonio Gordon, 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.

Antonio Gordon

SWORN to and subscribed before me this 13th

day of August, 19 2001
Denny F. West (L.S.)
 Notary Public

Exhibit(5)

My Commission Expires: 12-27-10

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, 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 therefor.

Antonio Gordon
 Applicant

SWORN or affirmed to and subscribed before me this

13th day of August, 19 2001
Denny F. West
 Notary Public

My Commission Expires 12-27-10

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
YORK COUNTY

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Exhibit 5

Antonio Gordon
Applicant,

v.

State of South Carolina
Respondent.

MOTION TO AMEND APPLICATION FOR

POST-CONVICTION RELIEF

case# 41-CP-46-1866

Applicant through his undersigned counsel moves the court an order granting him leave to amend his application for post-conviction relief to include the following ground for relief.

1. Should a sixteen year old charged with certain enumerated offences as specified in S.C. Code Ann § 20-7-6605(1) be given a competency hearing to determine whether the sixteen year old is competent to stand trial as an adult before the solicitor is granted with the arbitrary discretion of granting jurisdiction of the offence before making his discretionary decision?

2. Could a juvenile sixteen years of age be rehabilitated in juveniles facilities who commit classes A,B,C, and D felonies?

3. Does the solicitor have to notify the sixteen year old, that he is being charged and tried as a Adult?

4. Under S.C. Ann§ 20-7-7605 (6) Should the applicant be afforded a hearing under that statute?

5. Did trial court lack subject-matter jurisdiction to accept applicants guilty plea to murder, and attempted armed robbery?

[1-2] In determining whether a juvenile is to be transfered to the court of general sessions the following factors must be considered in State v. Avery 509 S.E.2d 476 (S.C.1998), and Kent v. United States. 86 S.Ct.1045 (1966). In determining should a juvenile be transfered to general sessions the testimony from the transfer hearing and Pre-waiver [evaluation] report is considered. State v. Avery 509 S.E.2d 476. A major factor in determining a transfer of a juvenile is whether the juvenile can be rehabilitated. Being rehabilitated requires that the juvenile be evaluated by the department of juvenile justice. when the solicitor makes his arbitrary determination whether sixteen year olds is going to be tried as adults or juveniles. The solicitor bases his arbitrary determination and discretion on the juveniles age and charge. Never the less, the solicitor investigate and focus on the juveniles mental history, family background, and or whether the juvenile could be rehabilitated at the age of sixteen. The law where pass to give the solicitor the discretion they have to try juveniles sixteen years of age because (16) year olds were committing adult crimes. Moreover when a juvenile sixteen years of age commit class A, B, C, or D felonies does not necessarily mean that a sixteen year old is capable of understanding the things that adults would. However, it has not been established that the solicitor should hold an evaluation hearing for individuals juveniles sixteen years of age who commit classes A, B, C, or D. felonies to be competent to stand trial as an adult.

*Being that the complete bench
has established our duty
and it is the responsibility
of the state to have a hearing
competence hearing as a right before the
petitioner (2.) we have discretion*

Exhibit 5

The court held in *Dusky v. United States* 80 S.Ct 788, that defendants competency to stand trial is whether he has the sufficient present ability to consult with his lawyer with a reasonable degree of rational as well as factual understanding of the proceeding against him. Ofcourse Dusky is an adult and Dusky is a test of standing trial. Thus a juvenile sixteen years of age may not be competentant to stand trial as a adult. The only true way to find out is to hold an evaluation hearing. Applicant contends that the evaluation hearing is not a transfer hearing, but more of a hearing for the solicitor to render his arbitrary determination to determine whether sixteen year olds should be tried as an adult or juvenile. Moreover, S.C. Code Ann § 20-7-6605 is a definition statute and are used to prosecute one group of juveniles, which are sixteen. There are no certain or mandatory factors that the solicitor has to go by, "To determine whether juveniles sixteen years of age are to be tried as adult or juveniles. The only mandatory factors the solicitor has to have to try a juvenile sixteen years of ageis, The juveniles age which is (16), and if the juvenile commit a class A, B, C, or D felony. The applicant contends that the solicitor should have held an evaluation hearing to make his determination. However, the common law question in the case at bar is whether the solicitor should hold an evaluation hearing for juveniles sixteen years old.

Petitioner contends that section 20-7-6605 is unconstitutional under the 14th Amendment because it does not provide any due process of law for a 16 year old along with a class A, B, C, or D felony. The liberty of a juvenile must be protected.

[3] The applicant contends that he was never told that he would be tried as a adult. The applicant was a juvenile and unaware of being charged and tried as a adult. Counsel nor the solicitor notified the defendant about being tried as an adult. However, applicant realize the state will argue that the defendants counsel was aware of the defendant being tried as an adult and should have notified the defendant. This is not the case. The courts have held that these rights are personal to the accused. It is the accused not counsel, who must be informed of the nature and cause of the accusation. see State v. Green 239 S.E.2d 487(1977).

[4-5] A statute is the law passed by a legislative body. In determining the scope of a statute the court must first look to language. The words of a statute are to be given their ordinary meaning. Moskal v. United States 111 S.Ct.461(1990), United States v. Stokley 881 F.2d 114(1989). A child in South Carolina who commits a class A,B,C, or D felony one who is sixteen years of age is not considered as a "CHILD". However it is at the discretion of the solicitor to determine if a child sixteen years of age is considered as a child. When reading the United States Constitution under the child provision it does not mention the word child. The United States Constitution uses the word "Juvenile". However when reading state statute 20-7-6605 it uses the word "Child".

Exhibit 5

The constitutional law is the body of law deriving from the, United States Constitution and dealing primarily with governmental powers and civil rights and liberties. Constitutional law originated in Marbury v. Madison 5 U.S.(1. Cranch) 137 (1803). Which declares the judicarys power to construe the constitution. However, if the constitution of the United States does not use the word child within the constitution, then the state should not use the word child. South Carolina has not defined who is a child. But the constitution has defined the word child as juvenile. In construing S.C. Code Ann § 20-7-6605 there are a conflict of definitions in the law when it relates to who is a child. Intention of the legislature is the first rule of construction of statutes and full effect must be given to each section, and words must be given their plain and ordinary meaning. State v. Sawyer 88 S.E.2d 894. Ashley v. Ware Shoals MFG. Co. 42 S.E.2d 390. The original definition of a child in S.C. Code Ann § 20-7-6605, is defined as a person under the age of seventeen. Applicant contends that the division of governmental are divided into three branches of Government....Legislative...Executive...and Judicial. Applicant submits while passing the law giving the solicitor the authorities to deny the family courts jurisdiction. And that by the legislative branch giving the solicitor the power to try "Juveniles" without first going through family court, or holding some type of evaluation hearing to determine the child or juveniles mental capacity is unconstitutional and that it encroaches on the family court jurisdiction while family court having exclusive jurisdiction over all juveniles until the juvenile has been transferred to the court of general sessions.

More-over, the applicant contends that while the state of South Carolina only treating sixteen year olds as adults, that the fourteen and fifteen year olds are committing the same acts, and are being tried in family court, or either waved up to the court of general sessions. Applicant contends that they are no different in age but one year. However, if a juvenile sixteen years of age commit a crime as a juvenile he will only be incarcerated for five years. When the fifteen year olds will be incarcerated for six years. More-over, when the solicitor determines to try the sixteen year old as an adult or not he the solicitor determine who is left in family court. There-fore, all juveniles sixteen years of age are not being treated equally. Since their are individuals juveniles under the age of sixteen committing the same exact offence sixteen year olds are, and are being waived up to the court of general sessions. then sixteen year olds should be afforded the same rights that those individuals have. Wherefore in light of the athrowities and statutes here in before mentioned, and additionally within reasonable reliance upon the constitutional law intent governing inquires of this nature, was denied his Fifth Amendment Right to Due Process of Law, as with his Fourteenth U.S. Constitutional right to Equal Protection of the law and Due Process.

Finally the general sessions court was with-out Subject-matter Jurisdiction to accept applicants guilty plea to murder and attempted armed robbery, due to the above mentioned matters.

;

Exhibit 5

(B)

The trial court lack subject matter jurisdiction to accept applicant guilty plea to murder and attempted armed robbery where family court granting jurisdiction to circuit court was unconstitutional.

To be arbitrarily denied the privilege of juvenile jurisdiction by discriminatory legislative classification is violative of due process and the equal protection of the law. Legislative classification are entitle to a strong presumption of validity an may be set aside only if no grounds can be conceived to justify them, "Bland". It is a salutary principle of judicial decision, long emphasized and followed by this court, that burden of establishing the unconstitutionality of a statute rests on him who assails it, and that courts may not declare a legislative discrimination invalid unless viewed in the light of facts made known origienally assumed, it is of such rests upon some rational basis within the knowledge and experience of the legislators. "Bland". However, there is a presumption of reasonableness of classification in state statute, but presumption is only in absence of evidence to the contrary which is clearly admissible. Evidence to the contrary which establishes the unconstitutionality of the statute in question as a denial of the equal protection of the law, lies upon the fact that, S.C. Code Ann § 20-7-6605(1), arbitrarily by age, discriminates against those individuals under the age of

(7)

~~Exhibit 5~~

seventeen (17), sixteen year olds charged with certain enumerated offenses by allowing those individuals to be charged in an adult court, without having to first bring charges in a family court and obtaining transfers, while other individuals under the age of seventeen (17), (14), and (15) year olds charged with the same enumerated offenses, must be charged in the family court first, and then may be transferred under some circumstances. No other age group, other than (16) sixteen year olds are arbitrarily classified as reflected in the fractured nature of statutes and subsections in the family court relating to this particular age group.

To begin S.C. Code Ann § 20-7-6605(1) defines a "child" in it's plain and ordinary meaning. "Child" means a person less than seventeen years of age, S.C. Code Ann § 20-7-6605(1) then proceeds to expand the plain and ordinary meaning of a "child" to arbitrarily exclude only those (16) year olds charged with a class A, B, C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of

fifteen years or more. (Only sixteen year olds are affected because a seventeen year old is never considered a "child" as the statute defines a "child" as a person less than seventeen years of age. However, these same individuals can be proceeded as juveniles or children at the discretion of the solicitor where the statute states..... However, a person sixteen years of age who is charged with a class A, B, C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of fifteen years or more may be remanded to the family court at

Exhibit 5

for disposition of the charge at the discretion of the solicitor.

S.C. Code Ann § 20-7-7605 then defines a sixteen year old as a child, if charged with an offense which if committed by an adult, would be a misdemeanor, a class E or F felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of ten years or less. S.C. Code ANN § 20-7-7605(5) then defines a "child" as a fourteen or fifteen year old, charged with an offense which would classify as a class A, B, C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more. In retrospect S.C. Code Ann § 20-7-7605 stipulates that any individual 14 years or older can be tried as an adult under certain circumstances. Anyone under the age 14, may be tried as an adult, only, if the individual has committed the offense of murder or criminal sexual conduct.

As shown § 20-7-6605(1) and § 20-7-7605 are identical in every aspect except that a 14 and 15 year old is given a chance and a 16 year old is out of sight-out of mind. "This arbitrary age discrimination rests upon the fact that there is no justification over a 14 and 15 year old who is arbitrarily classified as an adult, upon initiation of the charges. Here the original justification, "if there was one, is no longer justifiable where there is no longer any real distinction between 14, 15, and 16 year olds. If there was a disparity between 14, 15, and 16 year olds, there is little evidence that these differences exist today where the recidivist rate of 14 and 15 year old offenders, has equate with that of 16 year olds offenders if not surpassed

EXHIBIT 5

the number.

In Bland, the court held that in its original justification congress sought to improve the operation of the juvenile justice system by removing from its jurisdiction, individuals between the ages of 16 and 18, in which congress concluded (1) were beyond rehabilitation in juvenile justice system, and (2) whose presence in that system serve as a negative influence on other juveniles.....see Bland at 472 F.2d 1332, today this reason is also applicable to 14 and 15 yr olds. In revealing its rationale for excluding such persons from the jurisdiction of the family division, the house committee on the district of Columbia, gave the following as the basis for its exclusion of those 16 yrs of age or older charged with certain enumerated offenses. Because of the great increase in the number of serious felonies committed by juveniles and because of the substantial difficulties in transferring juvenile offenders charged with serious felonies to the jurisdiction of the adult court under present law, provisions are made in this subchapter for a better mechanism for separation of the violent Youthful Offenders and recidivist from the rest of the juvenile community, is arbitrarily and discriminatory applied in S.C. Code Ann § 20-7-6605(1). If differentiation of individuals is necessary, as it surely is, it should be made on the basis of facts about the individual, and not on the basis of an

Exhibit 5

assumption about a huge and diverse group.

The uncontroverted evidence is that such basis for the exclusion of only sixteen year olds as children when charged with certain enumerated offense is arbitrary and unreasonably discriminatory. This effect is not hypthetical or theoretical, but is quite real. Individuals, under the age of 17, if charged as an adult with a class A, B, C, or D felony.....will be tried as ,and if convicted be subject to the penalties of adults. If convicted they will be incarcerated in adult institutions upon ascertaining the age of 17, and largely, if not completely, be deprived of the social psychological and psychiatric services, and educational and vocational opportunities afforded juveniles. Further, if convicted as adults, these individuals may lose the right to vote; serve in the Armed Forces; to secure many types of government and private employment, and will carry forever the stigma of conviction. The only difference as addressed in the dissenting opinion in Bland is that 16 year old individuals, will be sentence (if convicted in an adult court). Moreover, without any meaningful inquiry into the possibility of rehabilitation through human juvenile disposition."see Bland at 1348, 1349.

Thus, it is evident that a statute which provives that a "child" is an individual, less than seventeen years of age, but that a "child" is not an 16 yr old individual charged with certain enumerated offenses, while an individual, 14 or 15 of age

~~Exhibit 5~~

charged with the same enumerated offense is a "child" where there is no real distinction (psychological or physical) between 14, 15 and 16 year olds, denies equal protection of law to those 16 year olds who are arbitrarily by age, excluded from juvenile court jurisdiction S.C. Code Ann § 20-7-400(A).

Statutory construction must begin with plain language of statute and court should not look beyond the plain language unless there is ambiguity or unless statute as literally read would contravene ambiguously expressed legislative intent gleaned from statute's legislative history; even if results appears to be anomalous or absurd in particular case, court may not disregard unambiguous language. U.S. v. Sheek, 990 F.2d 150.

The judicial action of constructing statute to eliminate exclusive original juvenile Jurisdiction in S.C. is an unforeseeable action. Because of the unclear, ambiguous nature of § 20-7-6605(1) where it provides that a "child" is an individual less than seventeen of age, a "child" is not a sixteen year old charged with certain enumerated offenses; a "child" maybe a sixteen year old charged with certain enumerated offense when that person is remanded to the family court, these ambiguities must resolve in favor of lenity for the accused. In Graham, the supreme court ruled that a sixteen year old charged with certain enumerated offenses may be charged in circuit court first without bringing charges in family court and obtaining transfer

Exhibit 5

based upon S.C. Code Ann § 20-7-6605(1). The court ruled that the family court had no original jurisdiction over the offense of murder. This judicial construction of the statute is an unforeseeable action where S.C. Code Ann § 20-7-400(A)(1)(D) and (3) specifically grants exclusive original jurisdiction of the offense to the jurisdiction of the family court.

S.C. Code Ann § 20-7-400(A) states: Except as otherwise provided herein, the court SHALL have exclusive original jurisdiction and SHALL be the sole court for initiating action:

(1) Concerning any child living or found within the geographical limits of its jurisdiction,

(d) Who is alleged to have violated or attempted to violate any state or local law or municipal ordinance, regardless of where the violation occurred except as provided in § 20-7-410

(3) Concerning any child seventeen years of age or over, living or found within the geographical limits of the court's jurisdiction, alleged to have violated or attempted to violate any state or local law or municipal ordinance prior to having become seventeen years of age and such person SHALL be dealt with under the provision of this chapter relating to children.

The family court is a statutory court created by the legislature and, therefore, its jurisdiction is limited to that expressly or by necessary implication, conferred by statute. See State v. Graham, supra.

State of South Carolina
County of York

Antonio Gordon
Applicant

V.

State of South Carolina
Respondent

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In the Court of Common Pleas
York County

Motion to amend application for
Post-Conviction Relief

Applicant through his undersigned Counsel move the court an order granting him leave to amend his application for Post-Conviction Relief to include the following ground for relief.

1). Where the applicant denied the assistance of Counsel?

To establish a claim of ineffective assistance of trial Counsel, a Post-Conviction relief applicant has a burden of proving Counsel's representation fell below an objective standard of reasonableness and, but for Counsel's errors, there is a reasonable probability the result of trial would have been different. *Glover v. State*, 458 S.E.2d 538.

The Court held in *Matter of Crossland* 270 S.C. 46, 243 S.E.2d 198 (1978) that a defendant's motion belongs to him and not the attorney. Applicant contends that he wrote letters to his trial Counsel indicating that he were in need of a copy of his statements, and basically a copy of the whole motion. Also the applicant advised his Counsel at that time that there were a lot of things he did not know. Counsel failed to provide the defendant at his request a copy of his motion. Besides Counsel never wrote a letter, nor came to visit the defendant and explain the reason why the defendant could not have a copy of his motion at his request.

SEE: BACK PAGE:

However, Counsel failed to render a copy of the motion to the defendant. Applicant was under the impression that Counsel were withholding information.

Moreover, Counsel would explain that Chyneca saw him and the baby are fine. However, the applicant contends that Chyneca Dixon where a state witness and where to testify on the applicant at his trial. Counsel where well aware that Chyneca were a state witness, but nevertheless, counsel cared to tell the applicant. Applicant contends that he found out about all state witness during pre-trial through the prosecutor. Applicant never knew anything about any witnesses. If Counsel would have explain to the applicant who the witness where, the applicant could have help ~~and~~ Counsel build a defense to impeach their credibility. The court held in Boria v. Keane 99 F.2d 92 (2nd Cir 1996), that Counsel where ineffective for failing to discuss plea bargain's desirability with the defendant. Even though Boria is dealing with Counsel failing to discuss a plea bargain "it is very similar to this case. It is the Counsel professional duty to advise his client of all aspects of his case. The case at bar Counsel failed to advise applicant of all witnesses, witnesses statement's, and more possible evidence which lead to a guilty plea of the applicant. Counsel failed to discuss with the applicant that the prosecutor had a palm-print which was never tested by sled under Rule 6 of South Carolina Rules of Criminal Procedure. "In fact Counsel failed to discuss with the applicant that the Palm-print on the victim car door was unidentified until the time of pre-trial. Instead, Counsel investigating these lines of defense, Counsel lead applicant to pleading guilty stating that he did not have any defense for the case.

Furthermore, Counsel failed to discuss with the applicant that both vehicle's were recovered and proceeded the same day, and that all of the latents were in the same envelope due to the early morning time frame. Counsel knew in fact that the Palm-print the prosecutor had "had came off of the applicant car.

SEE Back Page!

However, the victim were driving a BMW, and the BMW were towed to Clinton Family Ford. On the incident report it has "nothing of value." SEE BACK PAGE. Applicant contends that Counsel knew about the car incident reports but nevertheless Counsel cared to discuss them with the applicant, and failed to bring it to the court's attention. Due to Counsel's failure to provide the applicant with a copy of the motion in the County and lead the applicant into pleading guilty.

If there is only one plausible line of defense, the court concluded, Counsel must conduct a reasonably substantial investigation into that line of defense, since there can be no strategic choice that renders such investigation unnecessary. "The same duty exists if Counsel relies at trial on only one line of defense, although others are available. In that case, the investigation need not be exhaustive. It must include 'an independent examination of the facts, circumstances, pleadings and laws involved. The scope of the duty, however, depends on such facts as the likelihood that pursuing certain leads may prove more harmful than helpful. If there is more than one plausible line of defense, the court held, Counsel should investigate each line substantially before making a strategic choice about which lines rely on at trial. Strickland v. Washington 104 S.Ct 2052 (1984).

The case at bar Counsel failed to investigate the Im-Print which lead applicant into pleading guilty. However if Counsel would have put a timely motion in to suppress that line of evidence, "Applicant would not have Plead guilty. Though Counsel failed to do his Professional duty which rendered the applicant ineffective assistance of Counsel. In violation of the applicant's 6th Amendment constitutional right.

born to and subscribed
for me this 8 day of May 2003.

at: Bob Anderson

at: OCT-13, 2008.

Antonin Gordon

Antonin Gordon

Tara Shurling

Date! _____

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Antonio Gordon,
S.C.D.C. No., 259798

Applicant,

VS.

State of South Carolina,

Respondent.

IN THE COURT OF COMMON PLEAS
C.A. NO. 00-CP-46-1414

RETURN

In response to the post-conviction relief application filed June 15, 2000, the Respondent would show this Court:

I.

The Applicant, Antonio Gordon, is incarcerated with the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of commitment. On October 15, 1998, the York County Grand Jury indicted the Applicant for murder, three counts of possession of a firearm during the commission of a violent crime, two counts of attempted armed robbery, possession of a firearm by a person under twenty-one, and criminal conspiracy.

On July 16, 1999, the Applicant pled guilty as charged. On July 19, 1999, the Honorable John C. Hayes, III, sentenced the Applicant to thirty years imprisonment for murder, five years for each count of possession of a weapon during the commission of a violent crime, ten years for each count of attempted armed robbery, five years for criminal conspiracy, and five years for possession of a weapon by a person under twenty-one years of age. Robert D'Agostino, Esquire, represented the Applicant.

For the purpose of this Return, the Respondent attaches and incorporates the Clerk of Court's records by reference. The Respondent will furnish and attach a copy of the plea transcript when it becomes available. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant alleges that he is being held in custody unlawfully because he received ineffective assistance of counsel.

III.

In his only allegation the Applicant asserts that he was denied effective assistance of trial counsel. The State submits this allegation has no merit. For an applicant to be granted PCR as a result of ineffective assistance of counsel, he must show both: (1) that his counsel failed to render reasonably effective assistance under prevailing professional norms, and (2) that he was prejudiced by his counsel's ineffective performance. Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); Judge v. State, 321 S.C. 554, 471 S.E.2d 146 (1996). When there has been a guilty plea, the applicant must prove that counsel's representation was below the standard of reasonableness and that, but for counsel's unprofessional errors, there is a reasonable probability that 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, 99 L.Ed.2d 203 (1985); Alexander v. State, 303 S.C. 539, 402 S.E.2d 484 (1991).

The State submits that the extensive guilty plea record speaks for itself as to the competency of counsel and shows counsel demonstrated a normal degree of skill, knowledge, professional judgment, and representation that is expected of an attorney who practices criminal

law in South Carolina. Strickland, *supra*; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985); State v. Pendergrass, 270 S.C. 1, 239 S.E.2d 750 (1977). In addition, the State submits that the Applicant cannot meet the prejudice requirement. Hill, *supra*; Alexander, *supra*. Furthermore, the State submits that, if this Court finds that the Applicant's plea was voluntary and intelligent, said voluntary and intelligent plea of guilty results in a waiver of any non-jurisdictional defects and defenses, including the alleged defect of ineffective assistance of counsel. Whetsell v. State, 276 S.C. 295, 277 S.E.2d 891 (1981); LoPiano v. State, 270 S.C. 563, 243 S.E.2d 448 (1978).

Nevertheless, the allegation probably raises a question of fact which may not be conclusively refuted by the record and therefore requires that an evidentiary hearing be convened. Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

V.

Applicant must specify any claims he intends to raise at the PCR trial. Any claims not *specifically* laid out in this PCR application or in amendments will be opposed by the State at an evidentiary hearing. S.C. Code §17-27-10 et seq; SCRCP 71.1. All claims should be made well in advance of the PCR hearing. If Applicant has an attorney appointed, the attorney, and not the inmate, is the only one authorized to file amendments. SCRCP Rule 11. Filings by inmates will not be considered at the PCR hearing.

VI.

Further, should the Applicant make any false claims, commit perjury or abuse the legal

process, the State reserves the right to seek punitive and remedial sanctions. These include, but are not limited to, the forfeiture of all earned work, education and good time credits. See S.C. Code 24-27-200 (Supp. 2000).

-----VII.-----

WHEREFORE, having made Return, the Respondent requests that this Court hold an evidentiary hearing.

Respectfully submitted,

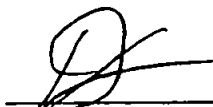
CHARLES M. CONDON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

B. ALLEN BULLARD
Assistant Deputy Attorney General

DAVE SPENCER
Assistant Attorney General

P.O. Box 11549
Columbia, SC 29211

By: 

Attorneys for the Respondents

May 2, 2001

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STATE OF SOUTH CAROLINA)
COUNTY OF YORK) IN THE COURT OF COMMON PLEAS

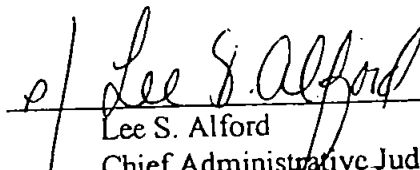
ANTONIO GORDON, 259798)
C.C.P. 2)
YORK COUNTY, SC) 00-CP-46-1414

Applicant,)
v.) *ORDER*
THE STATE,) ~~FOR~~ FOR CONSOLIDATION
Respondent.)

The Applicant in the above-captioned matter is represented by court-appointed counsel, Tara Dawn Shurling. This Court has now been advised that the Applicant has filed a second Application for Post-Conviction Relief addressing the same charges and sentences. The second Application for Post-Conviction Relief was docketed by the York County Clerk of Court's Office as 01-CP-46-1866. Ernest Harr, Esquire, was court-appointed to represent the Applicant in that action. It now appears that both Applications for Post-Conviction Relief address the same convictions and sentences. Accordingly, Attorney Shurling and Attorney Harr come before this Court requesting that these matters be consolidated for purposes of review. Counsel requests that these two Applications for Post-Conviction Relief be consolidated under the original docketing number, 2000-CP-46-1414 and, further, that Mr. Harr, who was court-appointed on the second filing, be relieved as counsel in this matter. Both Attorney Shurling and Attorney Harr have indicated their consent to this request by their signatures below. The two Applications for Post-Conviction Relief docketed at 2000-CP-46-1414 and 2001-CP-46-1866 appear to, in fact, arise from the same convictions and sentences. Accordingly, the request of counsel to consolidate these matters is hereby granted. Ernest Harr is relieved as counsel of

record. Attorney Shurling will remain court-appointed counsel for the Applicant.

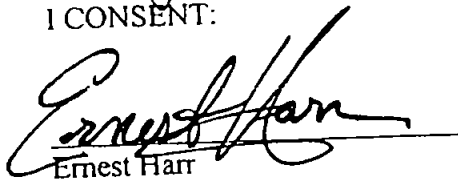
IT IS SO ORDERED.



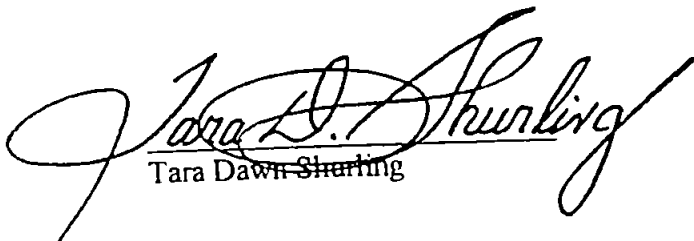
Lee S. Alford
Chief Administrative Judge
Sixteenth Judicial Circuit

This 8th day of February, 2002
York, South Carolina.

I CONSENT:



Ernest Harr



Tara Dawn Shurling

1 STATE OF SOUTH CAROLINA)

2 COUNTY OF YORK)

COURT OF COMMON PLEAS
00-CP-46-01414

3
4 ANTONIO GORDON,)

5 APPLICANT,)

6 VS.)

TRANSCRIPT OF RECORD

7 STATE OF SOUTH CAROLINA,)

8 RESPONDENT.)

9
10 JULY, 29, 2003
11 COLUMBIA, SOUTH CAROLINA
12
13
14

15 B E F O R E:

16 THE HONORABLE J. ERNEST KINARD, JR., JUDGE.
17

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

19 TARA D. SHURLING, ESQ.
20 ATTORNEY FOR THE APPLICANT

21 JEANETTE C. VANGINHOVEN, ASSISTANT ATTORNEY GENERAL
22 ATTORNEY FOR THE RESPONDENT
23

24 DEBORAH M. McCURDY
25 OFFICIAL COURT REPORTER

I N D E X O F W I T N E S S E S

ANTONIO GORDON

Direct Examination by Ms. Shurling.....18

Cross Examination by Ms. VanGinhoven.....23

Redirect Examination by Ms. Shurling.....31

RICHARD G. D'AGOSTINO

Direct Examination by Ms. VanGinhoven.....33

Cross Examination by Ms. Shurling.....45

Redirect Examination by Ms. VanGinhoven.....50

E X H I B I T S

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

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2 MS. VANGINHOVEN: This is the case of Antonio
3 Gordon versus State. This is a case that has been
4 transferred from York County. We did an order
5 transferring venue. Judge Hayes was the trial judge,
6 ended up the guilty plea judge, and Judge Alford had
7 recused himself. He had done the pretrial motions in this
8 matter.

9 The case number is 2000-CP-46-1414. And at this
10 time the State would just ask Ms. Shurling to lay out the
11 allegations for post-conviction relief.

12 THE COURT: All right, now, even though it was
13 transferred here by order of Judge Hayes, you say?

14 MS. VANGINHOVEN: I believe it is Judge Hayes. It
15 may have been Judge Alford. Judge Hayes.

16 THE COURT: It really does not matter, and it will
17 only take two seconds, but I am not a resident judge of
18 that circuit, and while a circuit judge can change venue,
19 he can't vest me with jurisdiction, so I just have to call
20 Court Administration, they will do an order giving me
21 concurrent York County jurisdiction today.

22 MS. VANGINHOVEN: Okay.

23 MS. SHURLING: Thank you, Your Honor. I wasn't
24 aware that had to be done.

25 THE COURT: Well,---

1 MS. SHURLING: For the record, if it makes any
2 difference, I will tell you that we consulted---

3 THE COURT: You can't waive jurisdiction.

4 MS. SHURLING: Exactly. But we did consult with
5 the client about it and we have a signed waiver from him
6 if you need to tell Court Administration that.

7 THE COURT: They don't care. The thing is, it
8 occurs frequently, and I'm correct on it, it doesn't
9 matter about that, but they will bring in a plea from
10 Lexington County, you know, while we are doing some for
11 Richland County; I can't do it. I can do one from Kershaw
12 because I am a resident judge of that circuit.

13 MS. SHURLING: That's scary. We do that all the
14 time.

15 THE COURT: I know, and it is not---

16 MS. SHURLING: Kosher.

17 THE COURT: Well, you can set some of them aside.
18 Of course, usually they get concurrent, so it doesn't
19 matter.

20 MS. SHURLING: I was going to say, Judge, thanks
21 for the tip.

22 (The Court steps off the bench to call Court
23 Administration.)

24 THE COURT: Lots of things get taken care of. It
25 is like when they assign me chief judge of the 14th

1 Circuit, I'm still resident judge of the 5th Circuit, so I
2 can hear anything in the 14th Circuit plus anything in the
3 5th Circuit. And every six months they do an order, and
4 for the next six months, I saw it, they gave me
5 jurisdiction in addition to my home circuit for the 6th
6 Circuit, so I can hear anything from the 6th Circuit come
7 January without getting an order.

8 MS. SHURLING: I understand. Thank you, Your
9 Honor.

10 THE COURT: All right.

11 MS. SHURLING: Your Honor, for the record, my
12 client's original application for post-conviction relief
13 alleged that he received ineffective assistance of counsel
14 at trial, prior to and during trial, that his pleas of
15 guilty were not voluntarily and intelligently entered, and
16 that the Court of General Sessions lacked subject matter
17 jurisdiction over his case for a number of reasons.

18 Subsequent meetings with my client have yielded a
19 further refinement of those general allegations, and I
20 will now list for the court in detail his specific
21 allegations in regards to the Sixth Amendment claim.

22 THE COURT: All right.

23 MS. SHURLING: The client alleges that trial
24 counsel was ineffective in preparing this case for trial
25 pretrial and that it was counsel's lack of preparation and

1 failure to pursue certain matters which led to his fear to
2 exercise his right to trial by jury and directly affected
3 his ultimately yielding to Defense counsel's desire that
4 ~~he plead guilty and waive his right to trial by jury.~~

5 There are a number of issues that he feels if
6 trial counsel had adequately explored and prepared prior
7 to the point in time when the decision had to be made
8 about a plea, that he would not have pleaded guilty and
9 would have exercised his right to trial by jury.

10 Among those are: The fact that a palm print,
11 which the State had announced intentions to use as
12 evidence against the client, was on the victim's car.

13 Pardon me one moment.

14 (Pause.)

15 MS. SHURLING: Okay, I apologize, Your Honor, we
16 withdraw that allegation.

17 THE COURT: Okay.

18 MS. SHURLING: So our new first issue would be the
19 lack of subject matter jurisdiction because the indictment
20 was, among other things, not filed with the Clerk of Court
21 within 90 days of his arrest.

22 It is his position, Your Honor, that court rules
23 have long held that the Solicitor is to prepare an
24 indictment and file it with the Clerk of Court and have a
25 criminal number assigned to it and the Clerk of Court is

1 then to present the indictment to the Grand Jury.

2 It is the policy in this jurisdiction that someone
3 who is in fact an employee of the Solicitor's Office
4 prepares indictments, assigns a General Sessions
5 indictment number, and they are presented directly to the
6 Grand Jury without having them previously filed with the
7 Clerk of Court's Office, nor is the Clerk of Court
8 responsible for presenting them to the Grand Jury.

9 I will note for the record that in previous
10 proceedings I have subpoenaed the woman from the
11 Solicitor's Office who has that job and verified and make
12 a proffer as an Officer of the Court under Cabbagestalk
13 that it is the policy of the Solicitor's Office that they
14 prepare the indictments, they assign it the next General
15 Sessions number, and they present the indictment to the
16 Grand Jury.

17 We have on previous occasions had her come to
18 court and bring with her pages from Court Administration's
19 Policies and Procedure Manual, which include a Policy and
20 Procedure consistent with what the 5th Circuit Solicitor's
21 Office is doing; however, it is the Applicant's position
22 that regardless of whether Court Administration has signed
23 off on that procedure, that it is inconsistent with the
24 South Carolina constitutional requirement that the Clerk
25 of Court present indictments to the Grand Jury.

Exhibit 6
2003 PCR hearing of Antonio Gordon

1 Additionally, Your Honor, it is his position that
2 counsel should have challenged the indictment in this case
3 because it failed to say that he willfully and feloniously
4 and with malice aforethought killed the victim in this
5 case.

6 I would note that while that was one of the issues
7 that my client wanted me to raise, we have now discussed
8 the fact that in a very recent Supreme Court case from
9 2002, Joseph v. State, the Court held that "willfully"
10 would be encompassed in the term "murder" and
11 "feloniously" would be part and parcel of the allegation
12 of "malice aforethought," and therefore that the omission
13 of the terms "willfully" and "feloniously" would not
14 render an indictment insufficient on its face.

15 Your Honor, my client also alleges that his
16 indictment is faulty in that he was indicted by the Court
17 of General Sessions and tried as an adult without trial
18 counsel having -- and this is actually more of a Sixth
19 Amendment argument, although my client has couched it in
20 terms of subject matter jurisdiction -- that trial counsel
21 never made a concerted effort as an advocate to convince
22 the Solicitor's Office to exercise its discretion under
23 Section 20-7-6605 to have his case remanded to the Family
24 Court.

25 Under the provisions of the Family Court Code, the

2003 PCR hearing of Antonio Gordon

1 ~~Children's Code, an individual charged with a Class A, B~~
2 or C felony or one which carries a penalty of 15 years or
3 higher, is automatically tried as an adult in the Court of
4 General Sessions; however, 6605 does vest the Solicitor
5 with the discretion to on a case-by-case basis if he deems
6 fit return the case to the protection of the Family Court
7 environment.

8 It is additionally my client's position that his
9 indictment as an adult is improper in that there is an
10 inherent conflict between Section 20-7-6605 and subsequent
11 provisions of the Code which provide children additional
12 protections when charged with crimes, that being Section
13 20-7-7605, specifically, Your Honor, again, while couched
14 in the---

15 THE COURT: 20 what?

16 MS. SHURLING: 20 -- Pardon me, Your Honor -- 6605
17 is the provision that gives the Solicitor the discretion
18 to waive it back up.

19 THE COURT: Okay.

20 MS. SHURLING: And, pardon, 7605 is the lengthy
21 statutory provision outlining the rights of children
22 charged with crimes in our courts.

23 And it is his position, Your Honor, although he
24 has once again in his amendments that he has asked me to
25 present, he couches this in terms of subject matter

1 jurisdiction, but it is really a Sixth Amendment argument,
2 that trial counsel should have constitutionally challenged
3 the Children's Code in that it provides very strict
4 guidelines for the protection of children charged with
5 crimes in South Carolina and carves out an exception for
6 someone 16 years of age or older charged with serious
7 crimes without any constitutional basis for depriving
8 those children of the inherent protections afforded by the
9 Family Court Judicial System versus the Courts of General
10 Sessions.

11 Additionally, Your Honor, he alleges that trial
12 counsel failed at an appropriate time to actively pursue a
13 remand of his case back to the Family Court.

14 Under, as I have noted, Section 20-7-6605,
15 Subsection (1), the Solicitor does in fact have that
16 discretion.

17 The records before the Court, and I am assuming
18 Your Honor will have copies of the Clerk of Court's file
19 and copies of all the pretrial motion hearings held in
20 this case in addition to the plea, indicate that after
21 indictment as an adult my client was evaluated both by the
22 State and by a mental health expert hired by Defense
23 counsel; however, there is no evidence in this record from
24 which I can glean any effort by Defense counsel to
25 convince the Solicitor's Office prior to the case being

Exhibit 6

2003 PCR hearing of Antonio Gordon

11

1 indicted as an adult crime to have the case remanded to
2 the care and custody of the Family Court.

3 This was a case involving a 16-year-old with no
4 serious criminal background. He had a very limited IQ.
5 There was dispute at trial as to whether or not he in fact
6 met the criterion for retardation. Those factors combined
7 both his age and his mental age and emotional immaturity
8 were factors which if they had been adequately pursued
9 prior to indictment by the Grand Jury may have convinced
10 the Solicitor's Office to have the case remanded to the
11 Family Court, and yet no effort was made. There was no --
12 apparently no cohesive plan to present to the Solicitor's
13 Office a justification for returning the case to the
14 Family Court.

15 As examples we would cite that Defense counsel
16 could have, as I'm aware in other cases Defense attorneys
17 have gotten statements from guidance counselors, teachers,
18 people who know the child from church, certainly getting
19 mental health experts, those ducks in a row, so to speak,
20 prior to the indictment stage, and having all of that
21 material presented to the Solicitor's Office in a cohesive
22 fashion prior to the indictment process would have
23 heightened the probability that this case could have been
24 returned to the Family Court versus proceeding as an adult
25 crime.

1 Now, truly under 6605 it has to be recognized that
2 the Solicitor would have had the discretion to return this
3 case to the Family Court or to ask the Family Court judge
4 to accept return of jurisdiction to the Family Court even
5 after the indictment stage; however, it would be our
6 position that once a Solicitor's Office has committed its
7 Office to prosecution of a case as a General Sessions
8 matter and has committed publicly to trying an offender as
9 an adult, that it is inherently more difficult to get them
10 to reverse their position and return that individual to
11 the care of the Family Court.

12 Your Honor, he would allege further that trial
13 counsel was ineffective in failing to adequately pursue
14 the question of his competency to stand trial. The record
15 in this case will indicate that he was evaluated just days
16 before the competency proceeding by Leslie N. Sandler on
17 the question of retardation. Her testimony at Page 104
18 indicates that she had less than a week to get this
19 together and further that she spent, on Page 136, she
20 spent approximately two hours with the Applicant.

21 She further acknowledged that she had not spoken
22 with any background people or anyone such as family
23 members to get any input as to how his adaptive behaviors
24 or coping behaviors might have affected her reading with
25 regard to the allegation that he was retarded.

Exhibit 6

2003 PCR hearing of Antonio Gordon

13

1 For that reason, Your Honor, we would submit that
2 trial counsel did not make an adequate challenge to the
3 State's assertion that he was not competent to proceed to
4 trial. We are not talking about his sanity, we are
5 talking about competency to assist his attorney in the
6 presentation and defense of his case at trial.

7 Additionally, Your Honor, it would appear that
8 while Defense counsel hired an expert in this case to
9 evaluate both the sanity and mental competency of the
10 client in this case, it was not done until after the
11 indictment stage, once again going to our argument that
12 this case was allowed to get way too far down the line
13 before anyone started talking about this young man's base
14 abilities, his base line IQ, his emotional maturity, and
15 other factors that should have been factored in the
16 decision of whether or not he should be tried as an adult.

17 We are aware, Your Honor, that the Solicitor also
18 has a right to consider the severity of the crime, the
19 circumstances of the crime, and other factors, but along
20 with that decision as a public official the Solicitor's
21 Office would have an inherent responsibility to take into
22 account the other Kent factors regarding whether or not a
23 case is one appropriately handled by the Family Court or
24 the Courts of General Sessions, and in this case that
25 information was not given to the Solicitor's Office until

1 the post-indictment stage.

2 Your Honor, he further alleges that trial counsel
3 failed to advise him of a double jeopardy argument that
4 could have and should have been made concerning attempted
5 armed robbery and possession of a weapon during the
6 commission of a violent crime.

7 It is his position that on those particular
8 offenses, since armed robbery requires the use of a
9 weapon, that possession of a weapon during the commission
10 of a violent crime would bring into play a double jeopardy
11 claim which could have been made, and further that this is
12 a claim that could have been made in the context of a
13 guilty plea and still argued on direct appeal inasmuch as
14 under Minner v. New York, which was decided in 1973, as
15 Your Honor knows, double jeopardy is the only issue that
16 one can raise and reserve for appellate review even in a
17 guilty plea context, it is his position that the attempted
18 armed robbery indictment in this case does not
19 sufficiently include -- is insufficient because it does
20 not include the element of asportation of the goods which
21 were attempted to be stolen.

22 Your Honor, he argues as well that his indictments
23 are insufficient in that they are violative of the
24 principles announced by the Supreme Court in The State v.
25 Anderson.

1 As Your Honor knows, way back in State v. David
2 Capps, the Supreme Court announced its displeasure with
3 the policy of having a single agent for the State, be it a
4 Prosecutor or some other single individual representing
5 the State, present a mere summary of the evidence at that
6 time. That is probably as close to an advisory opinion as
7 one will ever get from the Supreme Court, but after nearly
8 a decade of the practice continuing after the Capps
9 decision the Court in State v. Anderson finally held that
10 such indictments would not be sufficient.

11 And if Your Honor reviews the indictments in your
12 packet, it will reveal that a member of the Rock Hill
13 Police Department, an Officer Herring, was the only
14 witness before the Grand Jury on each of these
15 indictments, so he therefore alleges that he has a State
16 v. Anderson violation as well.

17 * And lastly, Your Honor, he would allege, well, two
18 more actually, he would allege that his attorney failed to
19 advise him that there would be a supervised release
20 requirement at the end of service of 85 percent of the
21 sentence he received as a result of his plea, that a plea
22 of guilty is not voluntarily and intelligently entered
23 unless it is entered with a full, cognitive understanding
24 of all of the consequences of the plea, and that in this
25 case he was not advised that if released after service of

Exhibit (C)

1 85 percent of his sentence he would be on supervised
2 release for the last 15 percent of his sentence. It is
3 his position that that renders his plea involuntary as
4 well.

5 Lastly, Your Honor, and perhaps most important in
6 this case, there was a serious argument about the
7 admissibility of this young man's statement to the police
8 after he was arrested.

9 The statements were challenged on various grounds,
10 including his mental ability to even make a knowing,
11 voluntarily, intelligent waiver of his right to counsel.

12 It was further alleged that his family had hired
13 an attorney, Chris Wellborn, who had gone to the jail
14 during the time when he was being detained and
15 interrogated by detectives, that he had very forcefully
16 and repeatedly insisted that he be taken to his client,
17 and that he was delayed time and time again until after
18 the Applicant had in fact given an incriminating statement
19 to the authorities.

20 It was the position of Defense counsel at trial
21 that this young man was not competent to enter into a
22 knowing, voluntary and intelligent waiver, both because of
23 his age, being 16, and because of his IQ, and a limited
24 intellectual ability and emotional maturity, also that
25 because of his status as a juvenile in the court system,

1 that coupled with the guardian/parent's exercise of his
2 right to counsel, that the interview should have been
3 interrupted and he should have been provided counsel.

4 Additionally, Your Honor, there was a hearing
5 conducted on the question of whether or not he was
6 competent to proceed to trial.

7 It is the Appellant's position, the Applicant's
8 position that his attorney never advised him that if he
9 proceeded to trial by jury and was convicted he would have
10 the right to appeal those issues as well as the question
11 of whether or not a severance should have been granted in
12 this case because of conflicting defenses, that those
13 issues are issues that if he had been tried and convicted
14 he would have had the right to have an appellate court
15 review and that he did not understand, nor was it
16 adequately explained to him, that if he pleaded guilty he
17 would be waiving all but subject matter jurisdictional
18 defects or any double jeopardy grounds that might have
19 been made and reserved at a plea.

20 It is his position that had he understood that, he
21 would not have waived his right to trial by jury and he
22 would have exercised his right to proceed with that trial
23 hoping to be successful in a subsequent appeal of
24 convicted.

25 Your Honor, those are the issues. I would propose

1 to call the Applicant to the stand. I don't see any need
2 to have him reinvent the wheel and restate everything that
3 I have already said, but I would like to put his testimony
4 on the record to verify that I have accurately and
5 efficiently covered the issues he wanted me to present
6 today.

7 Inasmuch as most of them are legal in nature and
8 supported by the record, I don't believe there will be a
9 need to get into much detail.

10 THE COURT: Okay.

11 (Mr. Gordon approaches the witness stand.)

12 THE COURT: All right, Mr. Gordon?

13 MR. GORDON: Yes, sir.

14 THE COURT: Do you swear or affirm you are about
15 to truthfully testify?

16 MR. GORDON: Yes, sir.

17 THE COURT: Okay.

18 ANTONIO GORDON, after being
19 duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MS. SHURLING:

22 Q Mr. Gordon, state your full name for the record.

23 A Antonio Gordon.

24 Q How old are you now, Antonio?

25 A Twenty-one.

1 Q Twenty-one?

2 A Yes, ma'am.

3 Q And how old were you when you were arrested?

4 A Sixteen.

5 Q Okay. You have heard me for about the last 20
6 minutes going over all the legal arguments that you
7 believe should be made in support of your request for a
8 new trial. Have I accurately set forth for Judge Kinard's
9 consideration all the allegations that you wanted me to
10 raise?

11 A Yes, ma'am.

12 Q Are there any issues that you wanted to raise that I
13 have not covered for Judge Kinard?

14 A No, ma'am.

15 Q Are you sure?

16 A Yes, ma'am.

17 Q Okay. You need to understand that this is in all
18 probability the only post-conviction relief hearing you
19 will ever have on these issues, I mean, pardon me, on
20 these charges, these sentences, so if there is anything
21 that I am leaving out, it is your responsibility to bring
22 it to the Judge's attention, so if you can think of any
23 issues that you really wanted me to present that I
24 haven't, please speak up and tell Judge Kinard.

25 A You got them all.

1 Q I got them all?

2 A Yeah.

3 Q All right. Thank you.

4 One thing that is very important for me to get on the
5 record, Mr. Gordon, is what you would have done if you had
6 had certain advice from your attorney, okay?

7 If you had known -- Let me rephrase that, I'm sorry.
8 Do you remember before your pleas going to court and
9 having these long hearings before the judge on certain
10 pretrial matters?

11 A Uh-huh, yes, ma'am.

12 Q You remember them discussing whether or not you were
13 competent, for example, to proceed to trial?

14 A Yes, ma'am.

15 Q And do you remember them discussing whether or not
16 your statement to the authorities should be admissible?

17 A Yes, ma'am.

18 MS. SHURLING: Your Honor, I just thought of one
19 he may not have, but I thought of another one he raised
20 that I didn't mention.

*21 Additionally, he challenges Defense counsel's
22 failure to challenge his statements on the ground that
23 there was no probable cause for his arrest and that his
24 statements were the fruit of the poisonous tree with
25 regard to an illegal arrest.

1 A No, he had raised the issue, but I was talking about
2 the judge discretion on the ruling.

3 Q Okay. So your trial attorney did raise the fact that
4 there was no probable cause for your arrest? -- -- --

5 A Yes, ma'am.

6 Q And raised the fact that your statement was the fruit
7 of the poisonous tree?

8 A He didn't raise that it was the fruit of the
9 poisonous tree.

10 Q Okay. So that is what you are saying trial counsel
11 was ineffective for failing to say that your statement was
12 part and parcel of your unconstitutional arrest without
13 probable cause?

14 A Yes, ma'am.

15 Q Okay. And did trial counsel ever advise you that if
16 you pleaded guilty you would be waiving your right to
17 appeal those issues?

18 A He didn't advise me of the appeal.

19 Q Okay. Did you understand that if you went to trial
20 and if 12 jurors convicted you of these crimes that you
21 would have a right to raise all of those issues in an
22 appeal to the Court of Appeals and then if necessary to
23 the Supreme Court?

24 A I didn't know at the time, but after I got to doing
25 research I found out about it.

1 Q Okay. And if you had known that if you went to trial
2 by jury and were convicted you could appeal those issues,
3 would you have gone ahead with your jury trial?

4 A Yes, ma'am.

5 Q And you would not have pleaded guilty?

6 A No, ma'am.

7 Q When you were first arrested, did you know anything
8 about the law concerning the differences between Family
9 Court and what we call big court, General Sessions Court?

10 A No, ma'am.

11 Q Did you know anything about the law insofar as that
12 allows for your attorney to try to convince the Solicitor
13 to try you in the Family Court instead of General Sessions
14 Court?

15 A No, ma'am.

16 Q If you had known that the law allowed for the
17 Solicitor to do that if he was given reason to, would you
18 have wanted your attorneys to forcefully seek for the
19 Solicitor to keep you in the Family Court?

20 A Yes, ma'am.

21 MS. SHURLING: A moment's indulgence, Your Honor.

22 THE COURT: Okay.

23 (Pause.)

24 Q When you were discussing the sentence that you would
25 likely receive if you entered these pleas, did your

1 attorney ever discuss with you the fact that after you had
2 served 85 percent of your sentence you would still be on
3 supervised release?

4 A No, ma'am.

5 Q For another 15 percent?

6 A No, no, ma'am.

7 Q And if you had understood that, would it have made a
8 difference in your accepting the plea bargain?

9 A Yes, ma'am.

10 Q Okay. I have no further questions. Please answer
11 any questions that Ms. VanGinhoven has for you.

12 CROSS-EXAMINATION

13 BY MS. VANGINHOVEN:

14 Q Mr. Gordon, you say you didn't know about that if you
15 pled guilty that you would be waiving any attacks on the
16 issues that have been brought up earlier, is that what you
17 are saying?

18 A No, I said that I wasn't aware that I could appeal
19 those issues if I went to trial and been found guilty.

20 Q Did Mr. D'Agostino ever advise you of your right to
21 appeal?

22 A No, ma'am. As a matter of fact, I had told him that
23 I wanted to appeal, and he advised me that I couldn't
24 appeal, but he would put in an appeal in anyway.

25 Q Okay, now you just said he never told you of your

1 right to appeal, is that correct?

2 A He didn't advise me of my right to appeal. I asked
3 him about the appeal and he---

4 Q When did you do that? _ _ _ _ _

5 A That same day I took -- I took the plea.

6 Q As a matter of fact, you did have an appeal from this
7 case?

8 A Yes, ma'am.

9 Q And it was dismissed, is that correct?

10 A Yes, ma'am.

11 Q Do you remember when the judge went over with you
12 that you had a right to a jury trial?

13 A Yes, ma'am.

14 Q Do you remember that?

15 A Yes, ma'am.

16 Q Do you remember when he told you you had a right to
17 remain silent?

18 A Yes, ma'am.

19 Q A right to see the witnesses and hear the witnesses?

20 A Yes, ma'am.

21 Q And do you remember when he -- Do you remember when
22 he explained to you that although you made a statement
23 that he ruled that was admissible, that if you went to
24 trial the jury would have to decide that, do you remember
25 him telling you that?

1 A Yes, ma'am.

2 Q And do you remember when he told you that entering
3 this plea of guilt that you were giving up all those
4 rights? Do you remember that? _____

5 A Yes, ma'am.

6 Q And then he said knowing all these things how do you
7 want to plead regarding the murder, and what did you say?

8 A I said guilty.

9 Q To the possession of a fire -- and to all the charges
10 that you pled to you wanted to plead guilty, right?

11 A I didn't want to plead guilty. Mr. D'Agostino was
12 talking to me about pleading guilty and he was explaining
13 to me that he didn't have no defense for me to go to trial
14 and for me to plead guilty.

15 Q Right. And this incident involved three other
16 Co-Defendants, is that correct?

17 A Yes, ma'am.

18 Q Gary Moffitt, Terrance McCrary and Monte Gordon, is
19 that correct?

20 A Yes, ma'am.

21 Q And Gary Moffitt pled guilty, is that correct?

22 A Yes, ma'am.

23 Q He was going to testify against you, is that right?

24 A Yes, ma'am.

25 Q All right. Terrance McCrary and Monte Gordon, they

1 both pled guilty and were going to testify against you, is
2 that correct?

3 A I wasn't aware that they were going to testify
4 against me. I didn't know that.

5 Q Mr. D'Agostino never told you that they were going to
6 testify against you?

7 A No, he never told me that.

8 Q And you and Monte weren't in the courtroom on the
9 same day or in the courthouse the same day?

10 A We was in the holding cell together, and inside the
11 courtroom together.

12 Q And you knew that he pled guilty that day, right?

13 A Yeah, yes, ma'am.

14 Q You just thought the Solicitor gave him a deal and he
15 wasn't going to testify against you?

16 A I wasn't aware of no deal.

17 Q So you are saying that you would have gone to trial
18 with an eyewitness along with your three Co-Defendants
19 testifying for the State? Is that what you are testifying
20 to today?

21 A Yes, ma'am.

22 Q And you would have---

23 A I wasn't aware of no three witness. The only witness
24 that he advised me was was Gary Moffitt, my Co-Defendant,
25 I wasn't aware of no other witness coming in.

1 Q You didn't know about the passenger in the car?

2 A I knew that it was a passenger inside the car, but I
3 didn't know that he would come to court to testify. I
4 wasn't aware of that. I never seen his statement, until I
5 received my motion.

6 Q Until you received what motion?

7 A Of disclosure.

8 Q Your discovery motion?

9 A Yes, ma'am.

10 Q Well, you received that before the trial, didn't you?

11 A No, ma'am. I had asked him to send me a copy of my
12 statements and stuff because I didn't know much of what
13 was going on with my case, and he never gave me a copy of
14 it.

15 Q Mr. D'Agostino never went over with you the statement
16 that you made to the police?

17 A He went over my statement with me.

18 Q He never went over what the other people might
19 testify to?

20 A No, ma'am, no one but Gary Moffitt.

21 Q And that would probably -- that would be because
22 Terrance McCrary and Monte -- Monte pled guilty the same
23 day you did, right?

24 A Monte pled guilty before I did.

25 Q But on the same day?

1 A Yes, ma'am.

2 Q And Terrance that same week?

3 A Yes, ma'am.

4 Q And you are saying that if you knew about community
5 supervision that you wouldn't have pled guilty, is that
6 what you're saying?

7 A Yes, ma'am.

8 Q And you were there when your attorney made the
9 argument concerning the fact that there was no probable
10 cause to arrest you, weren't you?

11 A Yes, ma'am.

12 Q And you heard the judge rule that there was probable
13 cause?

14 A Yes, ma'am.

15 Q And you were also there when the judge ruled that
16 your statement was voluntary, correct?

17 A Yes, ma'am.

18 Q This was a negotiated sentence, is that correct?

19 A As I understand, yes, ma'am.

20 Q And they dropped the carjacking and pled you to 40
21 years, is that correct?

22 A Yes, ma'am.

23 Q And that's what you ended up getting, right?

24 A Yes, ma'am.

25 Q So you knew before you pled guilty you were going to

1 get 40 years, and that's what you received?

2 A No. At first Mr. D'Agostino came to me and he said,
3 "Forty years for murder."

4 And at that time I said, "Forty years for murder?"

5 You can't get 40 years for murder, you can only get 30 to
6 life for murder."

7 And then at that time he said, "Well, I'll be back."

8 And when he came back he said, "Thirty, consecutive
9 ten."

10 At the time I didn't know what consecutive was. I
11 thought it meant it would run together.

12 Q Well, I guess my question would be when the Solicitor
13 went over what the negotiated sentence was, you understood
14 that, right?

15 A Did I understand it?

16 Q You understood that the Solicitor was saying it was a
17 negotiated sentence, 30 years for murder and 10 years
18 consecutive on attempted armed robbery? Did you
19 understand those words the judge said?

20 A No, ma'am.

21 Q You didn't understand that?

22 A No, ma'am.

23 Q At the guilty plea?

24 A At the time I didn't understand what consecutive and
25 concurrent was.

1 Q You didn't understand that consecutive meant---

2 A At that time my education was real low.

3 Q But, sir, you got -- you didn't understand that you

4 were having a 40 year negotiated sentence? Did you

5 understand that, 40 years?

6 A I thought he was giving me 30 and everything else ran
7 concurrent.

8 Q Let me just show you, just make it a little bit
9 clearer. This is what I'm going to ask you. On Page 175,
10 Line 16 through 17, it says, this is the Solicitor, "We
11 are asking for a negotiated sentence of 40 years." Did
12 you understand that?

13 A I understand it now, but at the time I didn't.

14 Q And do you remember when the judge asked you on 176
15 that if you had any questions to let him know, if you need
16 to discuss anything with your attorney to please let him
17 know? Do you remember when the judge asked -- told you
18 that?

19 A Yes, ma'am.

20 Q And why didn't you ask him then what 40 years meant,
21 or what consecutive meant?

22 A Because, at that time I was still young and I was
23 shook. I didn't know -- what to do.

24 Q You were 17 when you pled, correct?

25 A Yes, ma'am.

1 Q You were 16 when the murder -- when the murder
2 occurred?

3 A Yes, ma'am.

4 Q Okay. And do you remember the Solicitor went over
5 the facts of the case?

6 A Yes, ma'am.

7 Q During the plea?

8 A Yes, ma'am.

9 Q And do you remember agreeing with the Solicitor's
10 facts?

11 A Yes, ma'am.

12 Q So you don't deny that you committed these crimes?

13 A I -- I didn't -- didn't deny that I did commit the
14 crime or none of that.

15 Q Okay. And do you remember when you apologized to the
16 victim's family at the sentencing? Do you remember that?

17 A Yes, ma'am.

18 Q And do you remember when the -- when the judge gave
19 you your sentence and he said, "Do you understand all
20 that?"; and you said, "Yes"?

21 A Yes, ma'am.

22 Q Okay.

23 MS. VANGINHOVEN: I have no further questions.

24 REDIRECT EXAMINATION

25 BY MS. SHURLING:

1 Q During your plea when the judge explained to you that
2 even though he had ruled that your statement was
3 admissible, if you went to trial a jury would have to make
4 a determination about your statement as well, you do
5 remember that part?

6 A Yes, ma'am.

7 Q But he never told you, the judge didn't tell you and
8 neither did your lawyer, that if you went to trial you
9 would also have a right to have an appellate court review
10 that decision, correct?

11 A Yes, ma'am.

12 Q And nobody told you that by entering a plea of guilty
13 you were waiving your right to have an appellate review of
14 that ruling, did they?

15 A Yes, ma'am.

16 Q And so if they had told you -- Wait a minute, let's
17 get this straight, yes, ma'am, they did or they didn't?
18 Did anybody advise you you were waiving your right to an
19 appeal on that issue?

20 A No one did.

21 Q Okay. And if you had known that, you wouldn't have
22 pleaded guilty?

23 A Yes, ma'am, you're right.

24 Q Thank you.

25 MS. SHURLING: No further questions.

1 MS. SHURLING: No further questions.

2 THE COURT: You can step down, Mr. Gordon.

3 (Mr. Gordon steps down.)

4 MS. SHURLING: Your Honor, I would add to my--
5 earlier presentation only by noting that, and I am trying
6 my best to remember the case, I think it is Shirley vs.
7 State, wherein the Supreme Court held that there has been
8 an issue about the admissibility of a statement that
9 someone has a right to know not only that it would be a
10 question for the jury in addition to a question for the
11 judge, but also that they would have a right to appeal
12 that issue if they proceeded to trial.

13 Thank you.

14 THE COURT: Okay.

15 MS. SHURLING: No further witnesses, Your Honor.

16 MS. VANGINHOVEN: The State would call Dan
17 D'Agostino, Daniel D'Agostino.

18 (Mr. D'Agostino approaches the witness stand.)

19 THE COURT: Do you swear or affirm you will
20 truthfully testify?

21 MR. D'AGOSTINO: I do.

22 RICHARD G. D'AGOSTINO, after
23 being duly sworn, testified as follows:

24 THE COURT: All right, I have one question before
25 we go further. I just scanned the transcripts that were

1 handed to me. I just scanned the transcripts that were
2 handed to me, I made no in-depth study of them. The
3 Solicitor indicated that they were going to nol-pros the
4 possession of a weapon by a person committing a violent
5 crime, stated that on the record.

6 The judge did not go over any penalty for
7 possession of a weapon during commission of a violent
8 crime, but then he sentenced him, but he made it
9 concurrent, so it is going to be moot as far as that goes,
10 but that was not done.

11 MS. SHURLING: Your Honor, I am embarrassed to say
12 that I didn't make that observation, but you're correct.

13 THE COURT: I mean, apparently he just signed
14 everything that was up there, then the deal was made, and
15 the Solicitor said, "We are going to nol-pros them," and
16 after he said that the judge didn't advise him---

17 MS. SHURLING: Nobody went back and checked the
18 indictments.

19 THE COURT: Then the indictments were on the stack
20 and the judge was just signing them and he just makes it
21 concurrent because the deal was he just gets 40 years.

22 MS. SHURLING: Well, and further what complicated
23 matters, Your Honor, is that the possession of a firearm
24 during the commission of a violent offense was on the same
25 indictment as the murder, so by signing the line for a

1 guilty plea on this indictment it made it appear that he
2 had pleaded to the possession of weapon during the
3 commission of a violent offense.

4 MR. D'AGOSTINO: Your Honor, may I speak, Your
5 Honor?

6 THE COURT: I'm listening.

7 MS. SHURLING: Well,---

8 MR. D'AGOSTINO: On Page 175, the Solicitor says
9 that, "On indictment for murder and possession of a
10 firearm while in the commission of a violent crime the
11 Defendant is pleading guilty as charged."

12 What they were dropping was the carjacking charge.

13 THE COURT: Well,---

14 MR. D'AGOSTINO: But the charge that on the
15 possession of a firearm during the commission of a violent
16 crime, the only one I recall them saying they were going
17 to drop was the carjacking.

18 THE COURT: Well, I mean, I don't know where it
19 was.

20 MR. D'AGOSTINO: Page 175.

21 THE COURT: I understand what it may say on that
22 page, but at some point in here you broke for lunch and
23 when you came back the plea was made.

24 MR. D'AGOSTINO: That was a different Defendant,
25 Your Honor.

1 MS. VANGINHOVEN: There is three Defendants in
2 this transcript.

3 THE COURT: Okay.

4 MR. D'AGOSTINO: That was probably Terrance --
5 Excuse me, I can tell you who that was. That was---

6 THE COURT: All right.

7 MS. VANGINHOVEN: And I believe as part of their
8 -- Terrance McCrary pled guilty on Page 162, and I believe
9 as part of that they may have dropped that charge because
10 he was going to testify against Antonio Gordon, who ended
11 up then pleading guilty after Terrance McCrary.

12 THE COURT: Okay. All right, well, go ahead with
13 it.

14 DIRECT EXAMINATION

15 BY MS. VANGINHOVEN:

16 Q Mr. D'Agastino, when were you appointed to represent
17 the Applicant?

18 A In March of 1999.

19 Q And by this time an indictment had already been
20 brought by the Solicitor's Office?

21 A Yes. I looked it up while I was sitting back there.
22 I believe the indictments were in October of 1998. I can
23 flip and see. October 19th of 1998.

24 Q Were you concerned about the fact that the Applicant
25 was 16 and was in General Sessions Court?

EXHIBIT (2)

1 A I did. We hired Dr. Jonathan Venn. I first
2 contacted Dr. Harold Morgan. I talked to Dr. Harold
3 Morgan for a while about the case, a short while, to find
4 someone who was more experienced in dealing with
5 juveniles, young adults, and he referred me to Dr.
6 Jonathan Venn.

7 Q And his conclusion was he just couldn't come to an
8 opinion regarding mental retardation?

9 A He scored a 68 on the mental IQ score. There is a
10 deviation of standard of error in there. Dr. Venn
11 testified at length at the competency hearing about Mr.
12 Gordon's ability to comprehend, remember, understand what
13 is going on. I could not substantiate a competency issue
14 for purposes of presenting a competency to say -- that
15 said that he was incompetent to go to trial. I did not
16 have the evidence to do that. Mr. Venn -- Dr. Venn could
17 not support saying that he was incompetent from my
18 perspective. I mean, Mr. Gordon isn't the brightest
19 fellow, I'm not trying to be ugly or anything else, but he
20 is not, and he has some deficits. It was a concern of Dr.
21 Venn, but after discussing it with Dr. Venn, discussing
22 the results of his evaluations, I did not think we could
23 properly pursue a competency issue, so I had to pursue
24 what I could with Dr. Venn, and we presented him because
25 of the issues dealing with his ability to understand

1 Miranda, ability to understand what was happening to him
2 at the time it was happening.

3 Q And he did -- I mean, he was deemed to be competent
4 to assist you?

5 A He was deemed -- right. In fact, I went to the
6 competency evaluation that the State eventually wanted to
7 have, although I had some questions about how they could
8 make some determinations. He certainly was able to answer
9 the questions from their perspective. And I sat through
10 that evaluation here in Columbia. I thought it was
11 incumbent upon me to.

12 Q And to what Ms. Shurling referred to earlier, Leslie
13 Sandler is the expert hired by the State to evaluate the
14 Applicant?

15 A She was. Dr. Sanders, I think it is a he, but Dr.
16 Sanders was the expert hired by the State to evaluate him.
17 I had forgotten that he actually did that evaluation until
18 we were discussing it right before the hearing started
19 today, but I remembered coming down here to Columbia and
20 sitting through that evaluation with several different
21 people in the room.

22 Q His evaluation was that he was not mentally retarded
23 and was competent to stand trial?

24 A Right. Right.

25 Q Did you ever advise him -- Let's go back to the

Exhibit (A)

41

1 guilty plea. Did you advise him of the effect of the
2 guilty plea concerning any appellate rights that he may
3 have?

4 A Yes, I did advise him of the appellate rights. And
5 if I can -- That was a very long day. One of these
6 Co-Defendants was related to him, one of them had pled out
7 several months earlier, so he knew -- I think it was
8 Moffitt who pled out first. I ordered that transcript of
9 that plea. It is here somewhere in my stuff, my records.
10 I have the first Defendant who pled's records. That day
11 started out with motions. Then the second Defendant went
12 down. Now, mind you, all four boys were together this
13 night. The second one went down and agreed to testify
14 against Mr. Gordon, Antonio Gordon. I told him what was
15 going on. The third one went down, agreed to testify
16 against Mr. Gordon. I told him what was going on. At the
17 end of the day Mr. Gordon was standing there by himself
18 with one of these individuals, Co-Defendants, being his
19 cousin, the other two being friends or relatives somehow
20 distantly, or maybe even close, but friends, people he
21 knew. You got the other victim in the car, and you had
22 his statements.



23 And I explained to him, "We could go to trial and you
24 could challenge all this. You could go to trial. You
25 don't have much of a defense. All these people are going

1 to testify against you. And even if we win on the issue
2 of the statements being kept out, the fact of the matter
3 is you have got your three Co-Defendants going to testify
4 against you. You can't testify. And you've got this
5 other person out there, the victim." /

6 There were questions about the palm prints or
7 fingerprints. I knew that. But the fact of the matter is
8 he had those three Defendants, three Co-Defendants, all
9 testifying against him. And I told him that. *

10 I told him if he pled out he could not appeal the
11 judge's decisions on these pretrial motions, that if he
12 did not plead and go to trial he could appeal those
13 decisions and take his chance with the Court of Appeals
14 making a determination that the judge's decision as to the
15 admissibility of his statements was wrong, then he could
16 come back for retrial, or the Court might find it was
17 harmless, I don't know what would happen, but there are
18 many possibilities, but if he pled guilty he was not going
19 to be able to challenge that.

20 I explained to him that it was a negotiated sentence,
21 that everybody else was getting 30 years, but because he
22 was the shooter they wanted 40. Originally they wanted
23 more time. We got them down to 40. I told him that.

24 I will tell you he pled guilty on Friday, sentencing
25 was withheld until Monday so they could get Mr. Crim

* Ascarriage
of Justice

coercion
guilty plea

1 there, and I guess whoever else they wanted there, but
2 between Friday and Monday I also know that his cousins,
3 everybody who agreed to testify against him told him I
4 sold him out, but they were the ones who were testifying
5 against him. But he didn't change his mind on Monday when
6 sentencing came down.

7 He subsequently wrote me a letter -- I told him he
8 could appeal it. He subsequently wrote me a letter and
9 told me to appeal his decision before the ten days was up.
10 And I believe I filed the appeal in his case.

11 Then he wrote me another letter asking me to file
12 post-conviction relief against myself, and I told him how
13 to do that.

14 So everything was explained to him, except the one
15 thing I did not tell him, that 85 percent, I did not tell
16 him, I do not recall telling him that at the end of
17 serving 85 percent he would have to have supervised
18 release. I do not recall telling him that. I recall
19 telling him he is getting 40 years, he needs to expect 40
20 years. That is what I tell all my clients. If you get
21 40, expect 40. If you get out, it is by the grace of God,
22 or however they do that in Columbia.

23 Q And in fact there was a plea offer from the
24 Solicitor's Office originally, and that was for 45 years,
25 is that correct?

1 A That's correct.

2 Q Now, these issues concerning possession of a weapon
3 during the commission of a violent crime being, and
4 attempted armed robbery, double jeopardy issues, did you
5 see any reason to raise that at the time of the trial?

6 A The issue of -- Did you ask about severance or
7 just---

8 Q Just that---

9 A What was it?

10 Q The double jeopardy issue concerning attempted armed
11 robbery and possession of a weapon during the commission
12 of a violent crime?

13 A I cannot recall raising any issue about the -- I did
14 not make any motion about that, and I off the top of my
15 head, I don't recall making any motions about the double
16 jeopardy issue of attempted armed robbery and possession
17 of a weapon during the commission of a violent crime.

18 Q Okay.

19 A As to the motion to suppress, you will see in the
20 transcript I did make a motion to suppress the statements
21 because the arrest was unlawful. It specifically says
22 that. And the judge denied the motion to suppress. I
23 didn't use the words "fruit of the poisonous tree," but my
24 motion was to suppress those statements.*

25 Q Okay. And ultimately there was no need for severance

Reversible Cause

1 because everyone ended up pleading guilty?

2 A At the end of the day everybody else had pled guilty.
3 I had nothing to sever from.

4 Q Okay.

5 A I was the only one going to go to trial. I was the
6 very last one.

7 Q Okay.

8 MS. VANGINHOVEN: I have no further questions.

9 CROSS-EXAMINATION

10 BY MS. SHURLING:

11 Q I understand that you advised Mr. Gordon that he
12 could file an appeal from his plea, correct?

13 A Yes, I did.

14 Q Are you also, if I understood your testimony
15 correctly, are you certain here today, sir, that you
16 advised him that if he pleaded guilty he would not be able
17 to obtain an appellate review of the Court's findings with
18 regard to the admissibility of the statement and other
19 issues that had been argued pretrial?

20 A Yes, I discussed that with him. After his other
21 Co-Defendant pled guilty, we went in that back holding
22 room at the York County -- the Moss Justice Center, and I
23 told him we could proceed on to trial, his three
24 Co-Defendants were going to testify against him, if we
25 proceeded on to trial and he was convicted he could raise

1 these issues as to the admissibility of these statements.
2 I believe I told him I thought it would be a very
3 interesting decision, but I don't know if I got into that,
4 because I thought it would be a very interesting result.

5 But I also told him that if he pled guilty he could not --
6 the only thing he could appeal was his plea.

7 Q Okay. Did you ever discuss with him the possibility
8 of challenging these indictments based on the nature of
9 the presentation made to the Grand Jury, that being a
10 single witness---

11 A No, I did not.

12 Q Okay. Did you ever ask, specifically ask the
13 Solicitor's Office to reconsider their decision and allow
14 his case to be heard in the Family Court?

15 A I don't think I asked them to reconsider their
16 decision. I addressed it with them when I first got
17 involved in the case. I asked them why it was not there,
18 why we couldn't do it there. I don't think -- I don't
19 recall ever asking them to reconsider. I mean, it was a
20 long time from when it was indicted by the time I got
21 appointed. I got appointed in March. They were
22 originally -- They gave me an offer in May and said if I
23 don't plead in May they are going to trial in June. And I
24 was hustling, but---

25 Q I understand. If I understood your testimony

1 correctly, what you're saying is that when you first got
2 the case it is in General Sessions Court, and in the early
3 discussions with the Solicitor's Office you basically
4 said, "Why aren't we in Family Court on this?"

5 A Why aren't we in Family Court. I believe I asked
6 them why we couldn't be there. And after my initial
7 discussions with them in the very beginning, I didn't
8 bring up remanding it back to Family Court again with
9 them. I mean, the Solicitor's Office had that discretion,
10 and they kept talking about, you know, they might seek the
11 death penalty, they just had to see what the victim was
12 going to do.

13 I told them I didn't think they could get the death
14 penalty on this case because he was so young and they had
15 problems with their case. Their problems with their case
16 gradually went away as everybody agreed to testify, but---

17 Q At the time of these pleas, were you prepared to go
18 to trial?

19 A I was.

20 Q Had the State served you with a death notice?

21 A No, they had decided at that time they were not going
22 to go forward with it because Mr. Crim did not, I don't
23 want to say not believe in the death penalty, but he was
24 fine with not going forward with the death penalty.

25 Q So the threat of the Solicitor's Office seeking the

1 death penalty was not a factor in this decision to plead?
2 A No, it was not because at that time they had not
3 served a death penalty notice, and we were ready to go to
4 trial.

5 Q Okay. And just so the record will be clear, did you
6 ever, once you had your client evaluated and you
7 investigated the case, you never went back to the
8 Solicitor and made any attempt to get them to exercise
9 their discretion and return it to the Family Court?

10 A I did not -- I did not try to get it returned to the
11 Family Court. I tried to get them to come off of what
12 their offers were to be more lenient because of his low IQ
13 and his problems. He had a -- he had a troubled past. I
14 mean, he had been in DJJ for a while.

15 Q And in fact the Solicitor's Office had not allowed
16 any of the Co-Defendants to be handled in Family Court
17 either, had they?

18 A They had not. And, you know, it was all I could do
19 at the day that he pled to get them down to 40 years. I
20 mean, they were up at 45. That is what their letter was.
21 They didn't want to come off that. I mean, they were --
22 they had a tough stance on this case. It was a very
23 tragic set of events.

24 MS. SHURLING: A moment's indulgence, Your Honor.

25 A Sure.

1 (Pause.)

2 Q Just in the interest of the complete record, could
3 you tell us at the time of this trial in 1999 how long you
4 had been practicing law?

5 A I began practicing law in 1992. I began clerking
6 with Melvin Roberts, my partner, in 1989.

7 Q And did you have extensive experience in the area of
8 criminal law at the time you tried this case?

9 A About a third of my practice is devoted to criminal
10 law. I have tried multiple felony cases prior to that
11 time. I had handled another murder case in Family Court
12 with my partner prior to that time. I had handled
13 vehicular homicide, or first they charged him with Felony
14 DWI as a death case. And so I had handled multiple other
15 -- drug cases and violent offenses.

16 Q Had you ever been lead counsel in a murder trial
17 before?

18 A No, I had never been lead counsel in a murder trial.
19 I was co-counsel with Melvin, my partner, in Family Court,
20 and then I handled a good part of the case with the death
21 on that Felony -- I keep saying Felony DWI -- vehicular
22 homicide, whatever they called it. So, no, I have not
23 been lead counsel on a murder case.

24 Q Thank you.

25 MS. SHURLING: One moment, Your Honor.

1 (Pause.)

2 MS. SHURLING: No further questions, Your Honor.

3 REDIRECT EXAMINATION

4 Q ~~You testified you were prepared to go to trial?~~

5 A I was.

6 Q If you felt that you had needed help on this case,
7 would you have consulted one of your partners?

8 A Oh, yes. In fact, I mean, if I needed help, my
9 partner would have helped me, but I was fine trying it.

10 Q Okay.

11 A I tried my first felony case I think in 1993 on an
12 appointed case.

13 Q Okay.

14 MS. VANGINHOVEN: I have no further questions.

15 THE COURT: You can step down.

16 (Mr. D'Agostino steps down.)

17 MS. VANGINHOVEN: That's it for the State.

18 MS. SHURLING: Your Honor, the Applicant would
19 assert that under the standard announced by the Court in
20 Strickland vs. Washington he has laid out for the Court
21 both errors and omissions which he feels combined together
22 to deprive him of a fair trial.

23 He asserts that he has established that counsel
24 failed to provide him with reasonable professional
25 assistance of counsel, and for that reason, Your Honor, he

1 would assert that his pleas of guilty were the product of
2 ineffective assistance of counsel;

3 That his Sixth Amendment rights were violated
4 prior to and during his plea of guilty; — — — — —

5 That but for counsel's errors and omissions he
6 would not have waived his right to trial by jury and would
7 have proceeded to trial.

8 Therefore, under Hill vs. Lockhart he has met the
9 standard for showing that his pleas of guilty were not
10 voluntarily and intelligently entered. He asks that his
11 application be granted, that his judgments and sentences
12 be vacated, and that he be granted a new trial.

13 THE COURT: Okay.

14 MS. VANGINHOVEN: Can I just put on the record a
15 couple of things?

16 THE COURT: Anything you would like, Ms.
17 VanGinhoven.

18 MS. VANGINHOVEN: Okay. I juts want to go back.
19 Ms. Shurling went through all the allegations, and I just
20 wanted to speak to a few of them.

21 The allegation concerning lack of subject matter
22 jurisdiction because the indictment was not filed with the
23 Clerk of Court within 90 days I would submit is an
24 administrative procedure and doesn't affect subject matter
25 jurisdiction.

1 THE COURT: Hey, that's right. That's the way all
2 the counties do it, to my knowledge. I don't know of any
3 that send the clerk in.

4 MS. VANGINHOVEN: ~~As to the indictment issue with~~
5 "willfully" and "feloniously" being omitted, we have the
6 case of Joseph vs. State that says that that does not
7 render the indictment insufficient.

8 The allegation that double jeopardy was violated
9 because of the attempted armed robbery and possession of a
10 weapon during the commission of a violent crime we would
11 submit is not correct.

12 That the armed robbery indictment did not -- or
13 attempted armed robbery didn't contain the element of
14 asportation, it does include the words "attempt to
15 feloniously take from the person." We would submit that
16 that is valid.

17 The issue concerning The State v. Anderson case,
18 the police officer was at the Grand Jury hearing, not the
19 Solicitor. It was a Rock Hill Police Department employee.

20 And anything concerning community supervision, we
21 submit community supervision is a collateral consequence
22 of a guilty plea, that he does not -- the Applicant does
23 not have to be advised of that.

24 THE COURT: He may not get out at all.

25 MS. VANGINHOVEN: That's true. And that is all

1 the State would have except the application should be
2 denied.

3 THE COURT: All right. Well, I have read
4 everything now. The first thing I was talking about about
5 the judge not doing that, I am reading "Mr. Gordon," "Mr.
6 Gordon," "Mr. Gordon." Y'all hand me up all this stuff.
7 Monte Gordon's plea didn't have anything to do with this
8 case. Mr. Gordon just loses. I don't keep people in
9 suspense. I mean, I read the two transcripts, being
10 blessed with being a speed reader. The attorney had three
11 people going to testify against you. I'm sorry. Any
12 other thing, it doesn't really matter. I mean, he is up
13 against the wall. Maybe your friends and your relatives
14 shouldn't have testified against you, but they had all
15 pled and said they were going to do it. The attorney
16 doesn't have much choice at that point, you are going to
17 get convicted. He just has to do the best that he could.

18 He indicated he had asked about the Family Court
19 situation early on. The Solicitor took a hard line, in
20 fact a tougher line against you than the rest. He didn't
21 let anybody go into the Family Court situation. And for
22 better or worse, that is a Solicitor's prerogative. The
23 attorney can just ask; the Solicitor holds that power.
24 Just like the Solicitor can dismiss a claim, as he did
25 against Monte, if that is how you pronounce it, he didn't

1 have to do that, but he has that discretion. He can do
2 that.

3 As far as sending the only one officer in front of
4 the Grand Jury, in olden times they just allowed
5 Solicitors to walk in and summarize. Finally, that being
6 a bad practice, the Supreme Court said, "No, the Solicitor
7 can't summarize, you have to have an active investigator
8 at least to testify." And it would have been better to
9 have had more people, but they had enough on you. All
10 they have to tell the Grand Jury is, "We've got so and so
11 that will testify that you are the shooter." It turns out
12 you were the shooter. You don't even deny that at this
13 point. So nothing wrong with that.

14 On the competency situation, you had full hearings
15 on that. I mean, maybe another person could have examined
16 you, and so forth. A competent person did and testified
17 and the judge was satisfied with that.

18 On the double jeopardy situation on armed robbery,
19 actually there is a case that says that is okay, even
20 though that case is wrong. It has to be included in the
21 charge. How are you going to rob somebody armed if you
22 are not armed with a weapon? But judges recognizing that,
23 they always run it concurrent. Well, some might add it,
24 but, I mean, so it wouldn't impact you one way or another,
25 even if you were correct on that. That sentence was given

1 concurrent to the other time that you had.

2 And as far as having to serve supervised release
3 when you get out, it is almost impossible to get out,
4 unfortunately, Mr. Gordon, even after serving 85 percent
5 because you just have to be a model prisoner the whole
6 time. If you have any violations in there they are not
7 going to let you out after serving 85 percent, and I
8 recognize 40 years is a long time. If you do get out
9 earlier, that is a benefit. It wouldn't have impacted
10 anything. The attorney told you you might have to serve
11 the entire 40. That's true. That's true. You may get
12 out earlier. And of course the legislature can adjust
13 your release time at some point. I wouldn't put any hopes
14 on it, but if prisons get crowded they might back off of
15 some of these.

16 But I don't see anything you have raised that
17 would entitle you to a new trial. Sorry. And I could
18 jerk you around and tell Ms. Shurling to prepare an order
19 and I would study it and read it, which I would have done,
20 but I don't see how you are going to win, so why keep you
21 in suspense?

22 If you would prepare an order, Ms. VanGinhoven, or
23 however you pronounce it.

24 MS. VANGINHOVEN: Yes, sir.

25 THE COURT: VanGinhoven?

1 MS. VANGINHOVEN: There you go.

2 THE COURT: All right, VanGinhoven. Within 30
3 days.

4 And, of course, Mr. Gordon, you have the right to
5 appeal. And it doesn't start running until I sign that
6 order and you are given a copy of it.

7 Okay.

8 (WHEREUPON, the proceedings were concluded.)

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(END OF TRANSCRIPT)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA

COUNTY OF YORK

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 Common Pleas for Richland County, South Carolina, on the 29th day of July, 2003.

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

February 13, 2004

Robert M. McCord

Deborah M. McCurdy, Court Reporter

My Commission Expires: 5-24-09

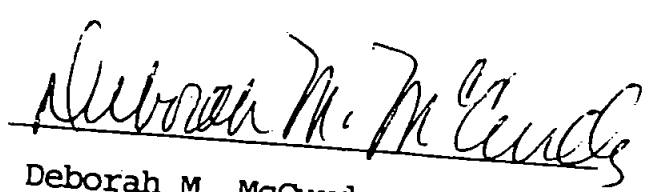
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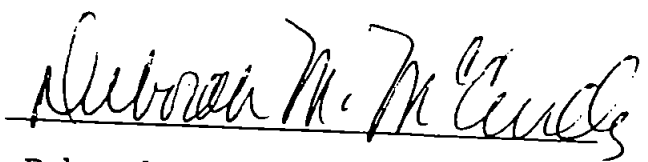
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February 13, 2004



Deborah M. McCurdy, Court Reporter

My Commission Expires: 5-24-09

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My Commission Expires: 5-24-09

STATE OF SOUTH CAROLINA

COUNTY OF YORK

2003 AUG 20

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUITDAVID HANLON
C.C.P. 406 S.
YORK COUNTY, SC

2000-CP-46-1414

Antonio Gordon, #259798,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

Attachment (D) (1)

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 15, 2000. The Respondent made its Return on May 2, 2001. An evidentiary hearing into the matter was convened on July 29, 2003, at the Richland County Courthouse. The parties agreed to change venue from York County to Richland County pursuant to the Consent Order Changing Venue signed by the Honorable John C. Hayes, III. Due to conflicts with the judges in the Sixteenth Circuit, this case was transferred to the Fifth Circuit in order to conduct the PCR hearing in a more timely manner. *IN ADDITION A SPECIAL ORDER WAS EXECUTED* The Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. The Respondent was represented by Jeanette Van Ginhoven of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Testifying on behalf of the State was Daniel D'Agostino, Esquire. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the York County Clerk of Court and the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of

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commitment. On October 15, 1998, the York County Grand Jury indicted the Applicant for murder, three counts of possession of a firearm during the commission of a violent crime, two counts of attempted armed robbery, possession of a firearm by a person under twenty-one, and criminal conspiracy.

On July 16, 1999, the Applicant pled guilty as charged. On July 19, 1999, the Honorable John C. Hayes, III, sentenced the Applicant to thirty years imprisonment for murder, five years for each count of possession of a weapon during the commission of a violent crime, ten years for each count of attempted armed robbery, five years for criminal conspiracy, and five years for possession of a weapon by a person under twenty-one years of age. Daniel D'Agostino, Esquire, represented the Applicant.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals was dismissed. State v. Antonio Gordon and Monta Gordon Op. No. 2000-UP-747 (S.C. Ct. App. filed December 6, 2000).

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).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that



"counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

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

INEFFECTIVE ASSISTANCE OF COUNSEL

The Applicant claims guilty plea counsel was ineffective for failing to prepare his case for trial by (1) failing to challenge the indictments for lack of subject matter jurisdiction because the indictments were not filed with the Clerk of Court within ninety (90) days after his arrest; (2) failing to challenge the murder indictment for lack of subject matter jurisdiction because the indictment did not contain the requisite elements in the body of the indictment; (3) failing to challenge the attempted armed robbery indictments for lack of subject matter jurisdiction because the indictment did not contain the requisite elements in the body of the indictments; (4) failing to challenge the indictments since an agent of the state was the only witness before the grand jury; (5) failing to make a concerted effort to get the Solicitor to remand the case to the Family Court; (6) failing to adequately pursue the Applicant's competency to stand trial; (7) failing to make a double jeopardy argument since the Applicant was charged with attempted armed robbery and possession of a weapon during the commission of a violent crime; (8) failing to advise the Applicant that if he pled guilty he would waive his right to challenge the admissibility of his statements on direct appeal; and



(9) failing to advise the Applicant he would be subject to community supervision.

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, 88 L.Ed. 2d 203 (1985).

1. Failure to Challenge Subject Matter Jurisdiction Because Indictment Not Filed with the Clerk of Court Within Ninety Days

The Applicant claims guilty plea counsel was ineffective for failing to challenge subject matter jurisdiction because the Applicant's indictments were not filed with the York Clerk of Court within ninety (90) days after his arrest. This allegation does not warrant relief. Each indictment was marked "True Bill" and signed by foreman of the grand jury. The failure to obtain an indictment within ninety days of arrest does not render it void for lack of jurisdiction. State v. Culbreath, 282 S.C. 38, 316 S.E.2d 681 (1984). This Court finds guilty plea counsel was not ineffective and that the Applicant has failed to show he was prejudiced by guilty plea counsel's performance. This Court further finds that the lower court had the subject matter jurisdiction to accept the Applicant's guilty pleas since the ninety day rule does not render an indictment void for lack of jurisdiction.



2. Failure to Challenge Subject Matter Jurisdiction Because the Murder Indictment Did Not Contain the Requisite Elements

The Applicant claims guilty plea counsel was ineffective for failing to challenge the murder indictment because the indictment failed to allege that the Applicant "willfully" and "feloniously" committed the crime. However, in Joseph v. State, the South Carolina Supreme Court held that a murder indictment was sufficient to confer subject matter jurisdiction on the court that accepted the defendant's guilty plea, even though the indictment omitted the words "willfully" and "feloniously," as the term "feloniously" was encompassed in "murder" and the term "willfully" was encompassed in "malice." 351 S.C. 551, 571 S.E.2d 280 (2002).

The Applicant's murder indictment read as follows:

That Antonio Gordon did in York County on or about July 23, 1998, with *malice aforethought*, kill one Eric Peter Krenn by means of shooting him with a firearm and said victim died as a result thereof, all in violation of Section 16-3-10, South Carolina Code of Laws (1976, as amended).

Although the Applicant's murder indictment did not state the words "willfully" or "feloniously", these words were encompassed by the words "kill" and "malice". Therefore, this Court finds guilty plea counsel was not ineffective for failing to challenge the murder indictment and that the Applicant was not prejudiced by guilty plea counsel's performance. This Court further finds that the lower court had subject matter jurisdiction to accept the Applicant's guilty plea to murder

3. Failure to Challenge Subject Matter Jurisdiction Because the Attempted Armed Robbery Indictments Did Not Contain the Requisite Elements

The Applicant claims guilty plea counsel was ineffective for failing to challenge the attempted armed robbery indictments because the indictments failed to allege the element of asportation.



The Applicant's indictments for attempted armed robbery read as follows:

That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to *feloniously take from the person or presence* of Eric Krenn, by means of force or intimidation good or monies of said Eric Krenn to wit: one 1985 BMW belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

In Locke v. State, 341 S.C. 54, 533 S.E.2d 324 (2000), the South Carolina Supreme Court held that the indictment language "taking of good and/or monies from the person or presence of" alleged the substance of asportation, one of the elements of common-law robbery and that this was sufficient because asportation merely meant the taking of an object with felonious intent. Therefore, this Court finds guilty plea counsel was not ineffective for failing to challenge the attempted armed robbery indictments and that the Applicant has failed to show he was prejudiced by guilty plea counsel's performance. This Court further finds that the lower court had subject matter jurisdiction to accept the Applicant's guilty pleas to attempted armed robbery.

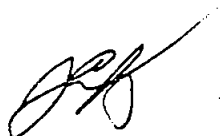
4. Failure to Challenge Subject Matter Jurisdiction Because Only an Agent of the State Was a Witness Before the Grand Jury

The Applicant claims guilty plea counsel was ineffective for failing to challenge the indictments since an agent of the State was the only witness before the grand jury. The Applicant cites the case of State v. Anderson, 312 S.C. 185, 439 S.E.2d 835 (1993), to support this proposition.

In State v. Anderson, the South Carolina Supreme Court held that prosecutors cannot appear as a sole witness before the grand jury. In the Applicant's case, the witness before the grand jury was Officer Herring from the Rock Hill Police Department, not a prosecutor.

Further, the circuit court does not have subject matter jurisdiction to hear a guilty plea unless:

(1) there has been an indictment which sufficiently states the offense; (2) there has been a waiver of



indictment; or (3) the charge is a lesser included offense of the crime charged in the indictment. Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777 (1998). South Carolina law provides an indictment is sufficient if it "charges the crime substantially in the language ... of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." S.C. Code Ann. §§ 17-19-20 (1985). "The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet." Browning v. State, 320 S.C. 366, 368, 465 S.E.2d 358, 359 (1995). South Carolina courts have held that the sufficiency of an indictment "must be viewed with a practical eye; all the surrounding circumstances must be weighed before an accurate determination of whether a defendant was or was not prejudiced can be reached." State v. Adams, 277 S.C. 115, 125, 283 S.E.2d 582, 588 (1981), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

The indictments in this case were marked "True Bill" and signed by the grand jury foreman. The witness before the grand jury was a police officer and not a prosecutor. The elements of the crimes were sufficiently alleged in the indictments. Therefore, this Court finds that guilty plea counsel was not ineffective for failing to challenge the Applicant's indictments and that the Applicant has failed to carry his burden in this action by failing to show prejudice from guilty plea counsel's performance. This Court further finds that the lower court had subject matter jurisdiction to accept the Applicant's guilty pleas.

5. Failure to Make Concerted Effort to Get the Solicitor's Office to Remand Case to Family Court

The Applicant claims guilty plea counsel was ineffective for failing to make a concerted effort to get the Solicitor's office to remand the case to Family Court. The Applicant claims guilty

plea counsel never discussed the differences between Family Court and General Sessions Court.

Pursuant to S.C. Code Ann. §20-7-6605, a "person sixteen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the *discretion of the solicitor*." The Applicant was sixteen years old when he committed the crime for which he was indicted and the crimes committed were Class A, B, C or D felonies. Therefore, the General Sessions Court had jurisdiction. The decision to remand the case to Family Court was within the Solicitor's discretion.

Guilty plea counsel testified that he was appointed to the case after the Applicant was indicted. He testified that he researched the fact that the Applicant was a child at the time of the commission of the crimes. Guilty plea counsel further testified that he brought this issue to the Solicitor's attention but that the Solicitor's office gave intimations that they wanted to seek the death penalty in this case and that they would not remand this case to the Family Court. Further, the Applicant did not provide testimony from the Solicitor's office stating that they would have used their discretion and remanded the case to the Family Court.

Therefore, this Court finds that guilty plea counsel was not ineffective. This Court further finds that the Applicant has not shown that he was prejudiced by guilty plea counsel's performance.

6. Failing to Pursue Applicant's Competency to Stand Trial

The Applicant claims guilty plea counsel was ineffective for failing to pursue the Applicant's competency to stand trial. The Applicant claims that if this avenue had been explored, he would have had a defense to the charges.

Guilty plea counsel testified that he was concerned with the Applicant's mental state. The

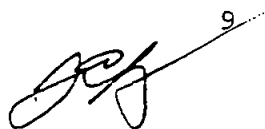
State provided the testimony of Dr. Leslie Sandler. Dr. Sandler was qualified as an expert in forensic psychology, clinical psychology and substance abuse. (T. p. 9). Dr. Sandler testified that the Applicant was not mentally retarded. (T. p. 118). The trial court found the Applicant competent to stand trial. (T. p. 147).

Guilty plea counsel also hired a psychologist, Dr. Jonathan Venn. Dr. Venn was qualified as an expert in forensic and clinical psychology. (T. p. 108). Dr. Venn testified during the hearing concerning the admissibility of the Applicant's statements given to law enforcement. However, Dr. Venn was not able to come to an opinion concerning mental retardation. (T. p. 113).

A criminal defendant is competent to enter his guilty plea if "the accused [has] sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and [has] a rational as well as a factual understanding of the proceeding against him." Jeter v. State, 308 S.C. 230, 417 S.E.2d 594, 596 (1992). An Applicant challenging his competency to plead must prove this allegation by a preponderance of the evidence. Id.

An Applicant claiming that trial counsel was ineffective in failing to pursue this defense "must produce some evidence of insanity or showing that with the exercise of due diligence, an insanity defense could have been developed." Jeter v. State, 308 S.C. 230, 233-34, 417 S.E.2d 594 (1992). The Applicant must show that he was "unable to distinguish moral or legal right from wrong and to recognize the particular act charged as morally or legally wrong."

The Applicant presented no testimony or evidence regarding the elements of the defense. The Applicant was also examined by two experts, one hired by the State and one by the defense, who either came to the conclusion the Applicant was not mentally retarded or could not reach an opinion. Therefore, this Court finds that guilty plea counsel was not ineffective. This Court further finds that the Applicant has not carried his burden in this action by showing he was prejudiced by

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guilty plea counsel's performance.

7. Failure to Make Double Jeopardy Claim

The Applicant claims guilty plea counsel was ineffective for failing to make a double jeopardy claim since he was charged with attempted armed robbery and possession of a weapon during the commission of a violent crime.

In State v. Bolden, 303 S.C. 41, 398 S.E. 2d 494 (1990), the South Carolina Supreme Court held that punishment for both armed robbery and possession of a weapon during a violent crime does not violate double jeopardy. The Supreme Court held that the legislature clearly intended to provide additional punishment for possession of a weapon during the commission of a violent crime. Id.

Therefore, this Court finds guilty plea counsel was not ineffective for failing to make a double jeopardy challenge. This Court further finds that the Applicant has failed to show he was prejudiced by guilty plea counsel's performance.

8. Failure to Advise Applicant Appellate Rights are Waived Upon Entry of Guilty Plea

The Applicant claims guilty plea counsel was ineffective for failing to advise him that if he pled guilty, he would waive his right to appeal the admissibility of his statements to law enforcement officers. The Applicant testified that he would have continued to trial if he knew pleading guilty would waive his right to attack his pre-trial issues.

However, guilty plea counsel testified he advised the Applicant of his appellate rights and that if he pled guilty he could not appeal issues raised prior to the plea. The trial judge also informed the Applicant of his appellate rights during his guilty plea. (T. p. 205). The Applicant subsequently filed an appeal that was later dismissed. Antonio Gordon and Monta Gordon v. State of South Carolina, 2000-UP-747, filed December 6, 2000.



This Court finds the testimony of guilty plea counsel to be more credible than that of the Applicant. This Court finds that guilty plea counsel was not ineffective and that the Applicant has failed to carry his burden in this action by showing he was prejudiced by guilty plea counsel's performance.

9. Failure to Advise of Community Supervision

The Applicant claims guilty plea counsel was ineffective for failing to advise the Applicant he would be subject to community supervision by the South Carolina Department of Corrections. Guilty plea counsel testified that he did not advise the Applicant concerning community supervision.

However, community supervision is a collateral consequence of a guilty plea. As such, guilty plea counsel was not ineffective for failing to advise the Applicant of community supervision. *See Smith v. State*, 329 S.C. 280, 494 S.E.2d 626 (1997), (counsel is not ineffective for failing to advise a defendant regarding parole eligibility because it is a collateral consequence of sentencing.) Therefore, this Court finds guilty plea counsel was not ineffective and that the Applicant has failed to show he was prejudiced by guilty plea counsel's performance.

As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court advises Applicant that he must file a notice of intent to appeal within thirty (30)

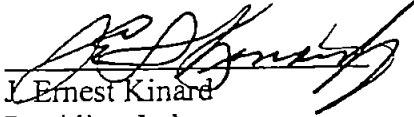


days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been timely filed.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 18 day of AUG, 2003.


Ernest Kinard
Presiding Judge
Fifth Judicial Circuit

Comde, South Carolina.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
Sixteenth Judicial Circuit
2000-CP-46-1414

Antonio Gordon,)
Applicant,)
vs)
State of South Carolina,)
Respondent.)

AFFIDAVIT OF SERVICE BY MAIL

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2003 AUG 20 PM 3:42
DAVID HAMILTON
C.C.P. & U.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Personally appeared before me, Jeanette VanGinhoven, who being first duly sworn,
states:

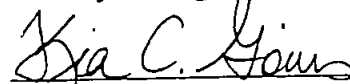
1. That I am an employee of the Office of the Attorney General.
2. That regular communication by mail exists throughout the State of South Carolina, and that this is a proper circumstance of service by mail.
3. That I have this day served a copy of the Order in the above-captioned matter on the following persons by depositing same in the United States mail, postage prepaid:

Tara D. Shurling, Esquire
3614 Landmark Drive, Suite D
Columbia, South Carolina 29204

DATED this 19th day of August, 2003.


JEANETTE VANGINHOVEN

SWORN to before me this
19th day of August, 2003.

 (L.S.)
Notary Public for South Carolina
My Commission Expires: June 2, 2007

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

The State,

Respondent,

v.

Antonio Gordon and Monta Gordon,

Appellants.

Appeal From York County
John C. Hayes, III, Circuit Court Judge

Unpublished Opinion No. 2000-UP-747
Submitted October 4, 2000 - Filed December 6, 2000

APPEAL DISMISSED

Assistant Appellate Defender Robert M. Pachak, of SC
Office of Appellate Defense, of Columbia, for appellant.

Attorney General Charles M. Condon, Chief Deputy
Attorney General John W. McIntosh, Assistant Deputy
Attorney General Donald J. Zelenka, all of Columbia;
and Solicitor Thomas E. Pope, of York, for respondent.

PER CURIAM: Monta Gordon was indicted for murder, two counts of attempted armed robbery, three counts of possession of a weapon during a violent crime, criminal conspiracy, and for failure to stop for a blue light. On July 16, 1999, Monta Gordon pled guilty to all charges excluding the weapons charges, which were dismissed. Antonio Gordon was indicted for murder, two

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STATE v. GORDON

counts of attempted armed robbery, three counts of possession of a weapon during a violent crime, criminal conspiracy, and possession of a pistol by a person under 21. On July 17, 1999, Antonio Gordon pled guilty to all charges.

On appeal, counsel for Monta and Antonio Gordon has filed final briefs along with petitions to be relieved as counsel. Monta and Antonio Gordon have filed pro se briefs.

After a thorough review of the record pursuant to Anders v. California, 386 U.S. 738 (1967), and State v. Williams, 305 S.C. 116, 406 S.E.2d 357 (1991), we dismiss the appeal and grant counsel's petition to be relieved.¹

APPEAL DISMISSED.

HUFF, HOWARD, and SHULER, JJ., concur.

¹ We decide this case without oral argument pursuant to Rules 215 and 220(b)(2), SCACR.

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from York County

John C. Hayes, III, Circuit Court Judge

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true copy of the Final Anders Brief of Appellant in the above referenced case has been served upon Robert E. Bogan, Esquire; a copy of the Record on Appeal and Final Anders Brief has been served on Antonio Gordon #259798, Kershaw Correctional Institution, PO Box 518, Kershaw, SC 29067, this 18th day of July, 2000.

Robert M. Pachak
Robert M. Pachak
Assistant Appellate Defender

ATTORNEY FOR APPELLANT

SUBSCRIBED AND SWORN TO before me
this 18th day of July, 2000.

Sandra R. Wise (L.S.)
Notary Public for South Carolina

My Commission Expires: February 3, 2005

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

MURDER

That Antonio Gordon did in York County on or about July 23, 1998, with malice aforethought, kill one Eric Peter Krenn by means of shooting with a firearm and said victim died as a result thereof, all in violation of Section 16-3-10, South Carolina Code of Laws, (1976, as amended).

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Murder, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

CERTIFIED TRUE COPY
 JUN 21 9 00 AM '00
 DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

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


 SOLICITOR

DOCKET NO. 98-GS-46- 2847

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

COURT OF GENERAL SESSIONS

October 15, Term 1998

THE STATE

VS.

ANTONIO GORDON

Antonio Gordon
Defendant

ARREST WARRANT NUMBER

Count One: F763891

Count Two: F763897

ACTION OF GRAND JURY

FILED

Robert Thompson
Foreperson of Grand Jury

10/19/98

VERDICT

Indictment for

MURDER

SC Code: 16-3-10
CDR Code: 0116

**POSSESSION OF A FIREARM DURING
THE COMMISSION OF A VIOLENT CRIME**

SC Code: 16-23-490
CDR Code: 1245

Foreperson of Petit Jury
Date:

I *Antonio Gordon*
hereby appear in my own proper person
and plead guilty to the within indictment or
to

STATE OF SOUTH CAROLINA 512

COUNTY OF York
STATE VS.

Antonio Gordon

AKA:
Race: B Sex: m
DOB: 3-21-82 Age:
SSN: 248-51-8012
DL#:
SID#:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

98-GS-416-2847-A

A/W#: F763897

Date of Offense: 7-23-98

S.C. Code §: 16-23-490

CDR Code #: 1121415

SENTENCE

☐ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: Poss Firearm Comm Violent Crime
in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 1121415

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Antonio Gordon Defendant John C. Hays Attorney for Defendant
Solicitor

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Five (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.

☐ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 - Assessments 100%..... \$

§ 14-1-211 - Surcharge..... \$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI)..... \$

County (3%)..... \$

TOTAL..... \$ 100.00

Clerk of Court/Deputy Clerk David Hamilton

Court Reporter: Janet Rich

PTUP _____
_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: _____

Plea accepted 2/16/99
Sentenced 7/19/99 John C. Hays

PRESIDING JUDGE John C. Hays

Judge Code: 0101419

Sentence Date: _____

ARREST WARRANT

F- 763897

STATE OF SOUTH CAROLINA

County ☒ Municipality of
ROCK HILL

11-29 11 46 AM

THE STATE

against

ANTONIO GORDON

Address: 3017 VERNSDALE RD

ROCK HILL, SC 29730

Phone: _____ SSN: _____

Date: 03/21/82 DL #: _____ Height: _____ Weight: _____

Agency ORI #: 04603

Prosecuting Agency: J. THICKENS

Prosecuting Officer: J. THICKENS

Offense: POSS FIREARM DURING COMM/V

10L. CRIM _____ Offense Code: 16

Code/Ordinance Sec. 16-23-490

This warrant is CERTIFIED FOR SERVICE in the

☐ County ☒ Municipality of

ROCK HILL

The accused

is to be arrested and brought before me to be
dealt with according to law.

Signature of Judge _____

(L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant ANTONIO GORDON
on 07-29-98Signature of Constable/Law Enforcement Officer
James O. Thomas

RETURN WARRANT TO:

ROCK HILL POLICE DEPT
120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA

County ☒ Municipality of
ROCK HILL

AFFIDAVIT

J. THICKENS

Personally appeared before me the affiant
being duly sworn deposes and says that defendant
did within this county and state on 07/23/98State of South Carolina (or ordinance of ☐ County ☒ Municipality of ROCK HILL)

in the following particulars:

POSS. FIREARM DUR COMM VIOL CRIME 16-23-490

*0544

+ who

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:
DID WILLFULLY AND UNLAWFULLY POSSESS A FIREARM (C.O.P. 4-BARREL
DERRINGER; SILVER IN COLOR) WHILE COMMITTING THE CRIME OF MURDER
AGAINST ONE ERIC KRENN. THIS INCIDENT OCCURRING IN THE 500 BLOCK OF S.
JONES AVENUE WITHIN THE CITY LIMITS OF ROCK HILL, SC. *POLICE
INVESTIGATION *RECOVERY OF EVIDENCE *SWORN STATEMENTS BY DEF.,
CO-DEF., AND WITNESSES

Sworn to and subscribed before me
on 7-24-98Signature of Issuing Judge James O. Thomas (L.S.)

Signature of Affiant John Thicken
Affiant's Address _____
Affiant's Telephone _____

STATE OF SOUTH CAROLINA
County ☒ Municipality of
ROCK HILL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that
on 07/23/98 defendant ANTONIO GORDON☐ County ☒ Municipality of ROCK HILLdid violate the criminal laws of the State of South Carolina (or ordinance of _____) as set forth below:
DESCRIPTION OF OFFENSE: POSS. FIREARM DUR COMM VIOL CRIME 16-23-490

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge James O. Thomas (L.S.)Judge's Address 120 E. BLACK ST.Judge Code: 0005Judge's Telephone _____
Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA

COUNTY OF York

STATE

AKA:

Race: B

DOB: 3-21-82

SSN: 248-51-8012

DL#:

SID#:

Sex: m

Age: 22

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: Attempted Armed Robbery

in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0101216

☐ NON-VIOLENT

☒ VIOLENT

☐ SERIOUS

☒ MOST SERIOUS

☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

[Signature]
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 2 1/2 (15) days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.

☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 99-GS-46-2847

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:\$ _____

§ 14-1-206 - Assessments 100%.....\$ _____

§ 14-1-211 - Surcharge.....\$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$ _____

County (3%).....\$ _____

TOTAL.....\$ 100.00

Clerk of Court/Deputy Clerk David Hamilton

Court Reporter: Janet Rich

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#:

514

99-GS-46-2847

A/W#: F7163898

Date of Offense: 7-23-98

S.C. Code § : 16-11-330

CDR Code #: 0101216

SENTENCE

☒ PLEA ☐ TRIAL

☐ CONVICTED OF or ☐ PLEADS

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
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: _____

PRESIDING JUDGE John H. Hager

Judge Code: 0101419

Sentence Date: _____

Pink - Defendant

SCCA217 (1/99)

ARREST WARRANT

F# 763838

STATE OF SOUTH CAROLINA

☐ County
☒ Municipality of
 ROCK HILL

JUL 29 11 16 AM '98

THE STATE
against15
15

ANTONIO GORDON

Address 3017 VERNSDALE RD

ROCK HILL, SC 29730

 Race: B Height: Weight: 0
 SSN:

DL State: DL #: Agency ORI #: 04603

DOB: 03/21/82

Prosecuting Agency: ROCK HILL POLICE DEPT

Prosecuting Officer: J. THICKENS

Offense: ATTEMPTED ARMED ROBBERY

Offense Code: 16

Code/Ordinance Sec. 16-11-330(2)

 This warrant is CERTIFIED FOR SERVICE in the
☐ County ☒ Municipality of
 ROCK HILL

 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

(L.S.)

RETURN

 A copy of this arrest warrant was delivered to
 defendant ANTONIO GORDON
 on 07-27-98

 Signature of Constable/Law Enforcement Officer
[Signature]

RETURN WARRANT TO:

 ROCK HILL POLICE DEPT
 120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA

☐ County
☒ Municipality of
 ROCK HILL

AFFIDAVIT

Personally appeared before me the affiant J. THICKENSbeing duly sworn deposes and says that defendant ANTONIO GORDONdid within this county and state on 07/23/98State of South Carolina (or ordinance of ☐ County ☒ Municipality of ROCK HILL)

in the following particulars:

DESCRIPTION OF OFFENSE: ATTEMPTED ARMED ROBBERY 16-11-330(2)

y0131

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

 DID WILLFULLY AND UNLAWFULLY ATTEMPT TO COMMIT THE CRIME OF ROBBERY
 AGAINST ONE ERIC KRENN BY POINTING AND FIRING A HANDGUN AT THE VICTIM
 IN AN ATTEMPT TO TAKE POSSESSION OF THE VICTIM'S VEHICLE, A 1985 BMW
 318. THIS INCIDENT OCCURRING IN THE 500 BLOCK OF S. JONES AVENUE
 WITHIN THE CITY LIMITS OF ROCK HILL, SC. *POLICE INVESTIGATION
 *RECOVERY OF EVIDENCE *SWORN STATEMENTS BY DEF., CO-DEF., AND
 WITNESSES

Sworn to and subscribed before me

Signature of Affiant

Affiant's Address

Affiant's Telephone

Signature of Issuing Judge

(L.S.)

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of
 ROCK HILL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that

on 07/23/98defendant ANTONIO GORDONdid violate the criminal laws of the State of South Carolina (or ordinance of ☐ County ☒ Municipality of ROCK HILL) as set forth below:

DESCRIPTION OF OFFENSE: ATTEMPTED ARMED ROBBERY 16-11-330(2)

 Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
 me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
 defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge

Judge's Telephone

Judge Code: 0005Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to feloniously take from the person or presence of Eric Krenn, by means of force or intimidation goods or monies of said Eric Krenn to wit: one 1985 BMW belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

**POSSESSION OF A WEAPON DURING
 THE COMMISSION OF A VIOLENT CRIME**

That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Attempted Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

DAVID HALL
 CLERK OF COURT
 YORK COUNTY, SC

JUN 21 9 05 AM '00

CERTIFIED TRUE COPY

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

[Signature]

SOLICITOR

WITNESSES

Herring/RHPD

DOCKET NO. 98-GS-46- 2849

The State of South Carolina

County of York

Defendant

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

hereby appear in my own proper person and plead guilty to the within indictment or to

Antonio Gordon

Antonio Gordon
Defendant

ARREST WARRANT NUMBER

Count One: F763898

Count Two: Direct Indictment

THE STATE

VS.

ANTONIO GORDON

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury

Date:

VERDICT

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-0330

CDR Code: 0026

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-490

CDR Code: 1245

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA,

COUNTY OF York

STATE

VS.

AKA:

Race:

Sex: m

DOB: 3-21-82

Age:

SSN: 248-51-8012

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

98 -GS- 46 - 2849-A

A/W#: DI

Date of Offense: 7-23-98

S.C. Code § : 16-23-490

CDR Code #: 1121415

SENTENCE

☐ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: Class Firearm Comm Violent Crime
in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 1121415

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

[Signature]
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Five (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.

☐ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:\$ _____

§ 14-1-206 - Assessments 100%.....\$ _____

§ 14-1-211 - Surcharge.....\$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$ _____

County (3%).....\$ _____

TOTAL.....\$ 100.00

Clerk of Court/Deputy Clerk David Hamilton

Court Reporter: Janet Rich

PTUP _____
_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: _____

PRESIDING JUDGE [Signature]

Judge Code: 0101419

Sentence Date: _____

Pink - Defendant

SCCA/217 (1/99)

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to feloniously take from the person or presence of Eric Krenn, by means of force or intimidation goods or monies of said Eric Krenn to wit: one 1985 BMW belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

**POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME**

That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Attempted Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

DEPT. OF CORRECTIONS
CLERK OF COURT
YORK COUNTY, SC

JUN 21 9 02 AM '00

CERTIFIED TRUE COPY

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



SOLICITOR

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:COUNTY OF York

CERTIFIED TRUE COPY

STATE

VS.

99-GS-46 2850

AKA:

Race:

Sex:

DOB:

Age:

SSN:

DL#:

SID#:

F 763914

Date of Offense:

S.C. Code §:

CDR Code #:

SENTENCE

☒ PLEA☐ TRIAL☐ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Attempted armed Robberyin violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0101216☐ NON-VIOLENT☒ VIOLENT☐ SERIOUS☒ MOST SERIOUS☐ 17-25-45The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center, for a determinate term of ten (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.

☐ The Defendant is to be given credit for _____ days/months jail time.☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:\$ _____

§ 14-1-206 - Assessments 100%.....\$ _____

§ 14-1-211 - Surcharge.....\$ _____

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$ _____

County (3%).....\$ _____

TOTAL.....\$ _____

Clerk of Court/Deputy Clerk David HamiltonCourt Reporter: Janet Rich

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: _____

Plea entered 7/16/99 by [Signature]
Sentenced 7/19/99 by [Signature]
 PRESIDING JUDGE John C. Hays

Judge Code: 0101419

Sentence Date: _____

ARREST WARRANT

F 763914

STATE OF SOUTH CAROLINA

☒ County ☐ Municipality of
 ROCK HILL

THE STATE

against

ANTONIO GORDON

Address: 3017 VERNSDALE RD

ROCK HILL, SC 29730

Phone: 803-325-1104 SSN: 248-51-8012

M. Race: B Height: 508 Weight: 145

DOB: 03/21/82 DL #: Agency ORI #: 04603

Prosecuting Agency: ROCK HILL POLICE DEPT

Prosecuting Officer: HERRING

Offense: ATTEMPTED ARMED ROBBERY

Offense Code: 16-11-330 (2)

Code/Ordinance Sec. 16-11-330 (2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County ☐ Municipality of
 ROCK HILL

The accused

is to be arrested and brought before me to be

dealt with according to law.

Signature of Judge (L.S.)

e. RETURN

RETURN

A copy of this arrest warrant was delivered to

defendant ANTONIO GORDONon 7/23/98

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ROCK HILL POLICE DEPT

120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of
 ROCK HILL

AFFIDAVIT

Personally appeared before me the affiant L.R. HERRINGbeing duly sworn deposes and says that defendant ANTONIO GORDONdid within this county and state on 07/23/98State of South Carolina (or ordinance of ☐ County ☒ Municipality of ROCK HILL)

in the following particulars:

DESCRIPTION OF OFFENSE: ATTEMPTED ARMED ROBBERY 16-11-330 (2)

I further state that there is probable cause to believe that the defendant named above did commit

the crime set forth and that probable cause is based on the following facts:

DID WILFULLY AND UNLAWFULLY ATTEMPT TO COMMIT THE CRIME OF ROBBERY AGAINST ONE CHRISTOPHER DIAZ BY POINTING A FIREARM AT HIM, WHILE ATTEMPTING TO TAKE VICTIM'S MONEY. THIS INCIDENT OCCURRING IN THE 500 BLOCK OF S. JONES AVE. WITHIN THE CITY LIMITS OF ROCK HILL, S.C. *POLICE INVESTIGATION. *RECOVERY OF EVIDENCE. *SWORN STATEMENTS.

Sworn to and subscribed before me

on 7/24/98

Signature of Issuing Judge (L.S.)

Signature of Issuing Judge

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of
 ROCK HILL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

 It appearing from the above affidavit that there are reasonable grounds to believe that
 on 07/23/98 defendant ANTONIO GORDON
☐ County ☒ Municipality of ROCK HILL as set forth below:
 DESCRIPTION OF OFFENSE: ATTEMPTED ARMED ROBBERY 16-11-330 (2)

 Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
 me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
 defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address

Signature of Issuing Judge (L.S.)

Judge Code: 8732

Judge's Telephone

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to feloniously take from the person or presence of Christopher Diaz, by means of force or intimidation goods or monies of said Christopher Diaz to wit: currency belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Attempted Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

CERTIFIED TRUE COPY
JUN 21 9 03 AM '00
DAVID H. HILL, JR.
CLERK OF COURT
YORK COUNTY, SC

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


SOLICITOR

DOCKET NO. 98-GS-46- 2850

WITNESSES

Harring/RHPD

3

2

15

ARREST WARRANT NUMBER

Count One: F763914

Count Two: Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

Robert Therman
For person of Grand Jury

Date: 10/19/98

VERDICT

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 15, Term 1998

THE STATE

vs.

ANTONIO GORDON

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Antonio Gordon

hereby appear in my own proper person and plead guilty to the within indictment or to

Antonio Gordon
Defendant

Witness:
Debra Duggins Clark
C.C.C. PLS. AND CLERK

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-0330

CDR Code: 0026

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-490

CDR Code: 1245

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA

COUNTY OF

STATE

AKA:

Race:

DOB:

SSN:

DL#:

SID#:

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: Pass Firearm Comm Violent Crime
in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 112415

☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 1715 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.

☐ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 - Assessments 100%..... \$ _____

§ 14-1-211 - Surcharge..... \$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI)..... \$ _____

County (3%)..... \$ _____

TOTAL..... \$ 100.00

Clerk of Court/Deputy Clerk David Hamilton

Court Reporter: Janet Rich

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

98 -GS- 46 - 2850-A

A/W#:

Date of Offense:

S.C. Code § :

CDR Code #:

SENTENCE

☐ PLEA

☐ TRIAL

☐ CONVICTED OF or ☐ PLEADS

TO: Pass Firearm Comm Violent Crime
in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 112415

☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 1715 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.

☐ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 - Assessments 100%..... \$ _____

§ 14-1-211 - Surcharge..... \$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI)..... \$ _____

County (3%)..... \$ _____

TOTAL..... \$ 100.00

Clerk of Court/Deputy Clerk David Hamilton

Court Reporter: Janet Rich

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: _____

Pls enforced 7/16/99
Sentenced 7/16/99
PRESIDING JUDGE John Hays

Judge Code: 0101419

Sentence Date: 7/19/95

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to feloniously take from the person or presence of Christopher Diaz, by means of force or intimidation goods or monies of said Christopher Diaz to wit: currency belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

**POSSESSION OF A WEAPON DURING
 THE COMMISSION OF A VIOLENT CRIME**

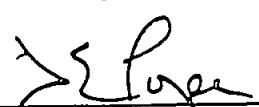
That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Attempted Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

FILED IN 1998
 CLERK OF COURT
 YORK COUNTY, SC

JUN 21 9 02 AM '00

CERTIFIED TRUE COPY

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


 SOLICITOR

103

STATE OF SOUTH CAROLINA
COUNTY OF York
STATE VS.
Antonio Gordon
AKA: _____
Race: B Sex: M
DOB: 3-21-82 Age: _____
SSN: 248-51-8012
DL#: _____
SID#: _____

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:
98-GS-46-2851
A/W#: F763902
Date of Offense: 7-23-98
S.C. Code §: 16-17-410
CDR Code #: 0101419

SENTENCE

☒ PLEA ☐ TRIAL
☐ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Crim Conspiracy
in violation of § 16-17-410 of the S.C. Code of Laws, bearing CDR Code # 0101419

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST: [Signature] Solicitor
[Signature] Defendant
[Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 7 mo 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.

☐ The Defendant is to be given credit for _____ days/months jail time.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____
*Fine: _____ \$
§ 14-1-206 - Assessments 100%..... \$
§ 14-1-211 - Surcharge..... \$ 100.00
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI)..... \$
County (3%)..... \$
TOTAL..... \$ 100.00

Clerk of Court/Deputy Clerk David Hamilton
Court Reporter: Janet Rich

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
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: _____

Pls accepted 7/16/98
Sentenced 7/17/98
PRESIDING JUDGE John B. Hager
Judge Code: 0101419
Sentence Date: _____

CERTIFIED TRUE COPY
JUN 21 9 04 AM '00
YORK COUNTY, SC

ARREST WARRANT

F= 763902

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 ROCK HILL

 THE STATE
 against

ANTONIO GORDON

Address: 3017 VERNSDALE RD

ROCK HILL, SC 29730

Phone: SSN: 0

Sex: M Race: B Height: Weight: 0

State: DL #: DOB: 03/21/82 Agency ORI #: 04603

Prosecuting Agency: ROCK HILL POLICE DEP

Prosecuting Officer: J. THICKENS

Offense: CRIMINAL CONSPIRACY

Offense Code: 16

Code/Ordinance Sec. 16-17-410

 This warrant is CERTIFIED FOR SERVICE in the
☐ County/ ☒ Municipality of

ROCK HILL The accused

is to be arrested and brought before me to be
deal with according to law.

Signature of Judge

(L.S.)

RETURN

 A copy of this arrest warrant was delivered to
 defendant ANTONIO GORDON
 on 07-23-98

 Signature of Constable/Law Enforcement Officer
James S. Glover

RETURN WARRANT TO:

 ROCK HILL POLICE DEPT
 120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 ROCK HILL

AFFIDAVIT

Personally appeared before me the affiant J. THICKENS

being duly sworn deposes and says that defendant ANTONIO GORDONdid within this county and state on 07/23/98 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County/ ☒ Municipality of ROCK HILL)in the following particulars:
DESCRIPTION OF OFFENSE: CRIMINAL CONSPIRACY 16-17-410
 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:
 DID WILLFULLY AND UNLAWFULLY SCHEME AND CONSPIRE WITH ANOTHER TO
 COMMIT THE CRIME OF ARMED ROBBERY OF ONE ERIC KRENN. THIS INCIDENT
 OCCURRING IN THE 500 BLOCK OF S. JONES AVENUE WITHIN THE CITY LIMITS
 OF ROCK HILL, SC. *POLICE INVESTIGATION *RECOVERY OF EVIDENCE *SWORN
 STATEMENTS BY DEF., CO-DEF., AND WITNESSES
Sworn to and subscribed before me on 7-24-98

Signature of Affiant

Affiant's Address

Signature of Issuing Judge John H. Hines (L.S.)

Affiant's Telephone

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of
 ROCK HILL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

 It appearing from the above affidavit that there are reasonable grounds to believe that
 defendant ANTONIO GORDON
☐ County/ ☒ Municipality of ROCK HILL as set forth below:
 DESCRIPTION OF OFFENSE: CRIMINAL CONSPIRACY 16-17-410

 Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
 me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
 defendant at the time of its execution, or as soon thereafter as is practicable.
Judge's Address 120 E. BLACK ST.Signature of Issuing Judge John H. Hines (L.S.)

Judge's Telephone

Judge Code: 5025Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

CRIMINAL CONSPIRACY

That Antonio Gordon did in York County, on or about July 23, 1998, wilfully and unlawfully unite, combine, conspire, confederate, agree and have tacit understanding with one or all of the following: Terrance McCrearey, Gary Moffatt, Monta Gordon and/or others for the purpose of committing the crime(s) of Murder, Armed Robbery and/or Carjacking, in violation of Section 16-17-410, Code of Laws of South Carolina, (1976, as amended).

RECEIVED
CLERK OF COURT
YORK COUNTY, SC

JUN 21 9 04 AM '00

CERTIFIED TRUE COPY

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


SOLICITOR

DOCKET NO. 98-GS-46- 2851

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

RH?D/Herring

The State of South Carolina

County of York

Defendant

529

COURT OF GENERAL SESSIONS

Antonio Gordon

hereby appear in my own proper person and plead guilty to the within indictment or to

October 15, Term 1998

ARREST WARRANT NUMBER

F763902

THE STATE

Antonio Gordon

Defendant

VS.

ACTION OF GRAND JURY

ANTONIO GORDON

FILED

Foreperson of Grand Jury

Date:

10/19/98

VERDICT

Indictment for

CRIMINAL CONSPIRACY

SC Code: 16-17-410

CDR Code: 0049

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA

COUNTY OF York

STATE

VS.

AKA:

Race:

DOB:

SSN:

DL#:

SID#:

Sex: m

Age: 32

248-51-8012

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

98-GS-46-2852

A/W#: F7163901

Date of Offense: 7-23-98

S.C. Code §: 16-23-30

CDR Code #: 2131614

SENTENCE

☒ PLEA ☐ TRIAL

☐ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Poss. Pistol Under 21

in violation of § 16-23-30 of the S.C. Code of Laws, bearing CDR Code # 2131614

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

John C. Anthony
Solicitor

Antonio Gordon
Defendant

De [Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of Five (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.

☐ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 - Assessments 100%..... \$

§ 14-1-211 - Surcharge..... \$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI)..... \$

County (3%)..... \$

TOTAL..... \$ 100.00

Clerk of Court/Deputy Clerk David Hamilton

Court Reporter: Janet Rich

PTUP _____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: _____

Plus assessed 7/16/98

Sentenced 7/19/98

for [Signature]

PRESIDING JUDGE

Judge Code: 0101419

Sentence Date: _____

ARREST WARRANT

F- 763901

STATE OF SOUTH CAROLINA

☒ County of ROCK HILL
☐ Municipality of ROCK HILL

JUL 29 11 46 AM

 THE STATE
 against

ANTONIO GORDON

3017 VERNSDALE RD

ROCK HILL, SC 29730

Phone: _____ SSN: _____

M _____ Race: B Height: _____ Weight: 0

Date: 03/21/82 DL #: _____ Agency ORI #: 04603

Prosecuting Agency: ROCK HILL POLICE DEPT

Prosecuting Officer: J. THICKENS

Offense: POSS. HANDGUN UNDER 21

Code/Ordinance Sec. 16-23-30(C)

 This warrant is CERTIFIED FOR SERVICE in the
☐ County ☒ Municipality of
 ROCK HILL The accused

is to be arrested and brought before me to be dealt with according to law.

Signature of Judge _____ (L.S.)

RETURN

 A copy of this arrest warrant was delivered to
 defendant ANTONIO GORDON
 on 07-28-98

 Signature of Constable/Law Enforcement Officer
James O. Thurman

RETURN WARRANT TO:

 ROCK HILL POLICE DEPT
 120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA

☒ County of ROCK HILL
☐ Municipality of ROCK HILL

AFFIDAVIT

J. THICKENS

 Personally appeared before me the affiant
 being duly sworn deposes and says that defendant
 within this county and state on 07/23/98

 State of South Carolina (or ordinance of ☐ County/☒ Municipality of ROCK HILL)

in the following particulars:

 DESCRIPTION OF OFFENSE: POSSESSION OF A HANDGUN UNDER 21 16-23-30(C)

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

DID WILLFULLY AND UNLAWFULLY POSSESS A G.O.P.-BARREL .357 CALIBER
 HANDGUN, SILVER IN COLOR, AT SIXTEEN YEARS OF AGE (DOB: 03-21-82).
 THIS INCIDENT OCCURRING IN THE 500 BLOCK OF S. JONES AVENUE WITHIN THE
 CITY LIMITS OF ROCK HILL, SC. *POLICE INVESTIGATION *RECOVERY OF
 EVIDENCE *SWORN STATEMENTS BY DEF., CO-DEF., AND WITNESSES

 Sworn to and subscribed before me
 on 7-24-98

 Signature of Issuing Judge J. Thickens (L.S.)

 Signature of Affiant
 Affiant's Address
 Affiant's Telephone

 STATE OF SOUTH CAROLINA
☐ County ☒ Municipality of
 ROCK HILL

ARREST WARRANT

 TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
 It appearing from the above affidavit that there are reasonable grounds to believe that
 of 07/23/98 defendant ANTONIO GORDON

 did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/☒ Municipality of ROCK HILL) as set forth below:
 DESCRIPTION OF OFFENSE: POSSESSION OF A HANDGUN UNDER 21 16-23-30(C)

 Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
 me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
 defendant at the time of its execution, or as soon thereafter as is practicable.

 Signature of Issuing Judge J. Thickens (L.S.)

 Judge's Address 120 E. BLACK ST.
 Judge's Telephone _____
 Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

POSSESSION OF A PISTOL BY PERSON UNDER TWENTY-ONE

That Antonio Gordon did in York County on or about July 23, 1998, unlawfully and knowingly have in his possession a pistol, said defendant being under Twenty-One (21) years of age at the time of incident, all in violation of §16-23-30, Code of Laws of South Carolina, (1976, as amended).

RECORDED
FILED IN COURT
YORK COUNTY, SC

JUN 21 9 04 AM '00

CERTIFIED TRUE COPY

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


SOLICITOR

DOCKET NO. 98-GS-46-2852

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

Herring/RHPD

County of York

Defendant

The State of South Carolina

Antonio Gordon

hereby appear in my own proper person and plead guilty to the within indictment or to

CS
CS
CS

COURT OF GENERAL SESSIONS

October 15, Term 1998

ARREST WARRANT NUMBER

F763901

Antonio Gordon
Defendant

THE STATE

VS.

Witness:
Deana Dianna Chert
C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

ANTONIO GORDON

TRUE BILL

Robert Freeman
Foreperson of Grand Jury

Date: 10/19/98

VERDICT

Indictment for

POSSESSION OF A PISTOL BY
PERSON UNDER TWENTY-ONE

Foreperson of Petit Jury
Date:

SC Code: 16-23-30(c)
CDR Code: 2364

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

MURDER

That Antonio Gordon did in York County on or about July 23, 1998, with malice aforethought, kill one Eric Peter Krenn by means of shooting with a firearm and said victim died as a result thereof, all in violation of Section 16-3-10, South Carolina Code of Laws, (1976, as amended).

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Murder, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

DAVID J. HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

JUN 21 9 03 AM '00

CERTIFIED TRUE COPY

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


 SOLICITOR

WITNESSES

Herring/RHPD

15

15

ARREST WARRANT NUMBER

Count One: F763891

Count Two: F763897

ACTION OF GRAND JURY



For person of Grand Jury

10/19/98

VERDICT

For person of Petit Jury

DOCKET NO. 98-GS-46- 2847

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 15, Term 1998

THE STATE

VS.

ANTONIO GORDON

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Antonio Gordon

I hereby appear in my own proper person and plead guilty to the within indictment or to

Antonio Gordon

Defendant

Witness:

Debra Duggins

C.C.C. PLS. AND G.S.

Indictment for

MURDER

SC Code: 16-3-10
CDR Code: 0116

POSSESSION OF A FIREARM DURING
THE COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-490
CDR Code: 1245

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

MURDER

That Antonio Gordon did in York County on or about July 23, 1998, with malice aforethought, kill one Eric Peter Krenn by means of shooting with a firearm and said victim died as a result thereof, all in violation of Section 16-3-10, South Carolina Code of Laws, (1976, as amended).

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Murder, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

DAVID H. L. LEE
 CLERK OF COURT
 YORK COUNTY, SC

JUN 21 9 00 AM '00

CERTIFIED TRUE COPY

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


 SOLICITOR

DOCKET NO. 98-GS-46- 2847

The State of South Carolina

County of York

WITNESSES

Herring/RHPD

1537

COURT OF GENERAL SESSIONS

October 15, Term 1998

THE STATE

VS.

ANTONIO GORDON

ARREST WARRANT NUMBER

Count One: F763891

Count Two: F763897

ACTION OF GRAND JURY

RETURN

For person of Grand Jury

10/19/98

VERDICT

Indictment for

MURDER

SC Code: 16-3-10
CDR Code: 0116

**POSSESSION OF A FIREARM DURING
THE COMMISSION OF A VIOLENT CRIME**

SC Code: 16-23-490
CDR Code: 1245

Foreperson of Petit Jury

Date:

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Antonio Gordon

hereby appear in my own proper person and plead guilty to the within indictment or to

Antonio Gordon
Defendant

Witness:

Debra L. Quinn
C.C.C. PLS. AND G.S.

08

STATE OF SOUTH CAROLINA

COUNTY OF York

STATE vs. Antonio Gordon

AKA: _____
Race: B Sex: M
DOB: 3-21-82 Age: _____
SSN: 248-51-8012
DL#: _____
SID#: _____

538
IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

98-GS-46-2847-A
A/W#: F-763897
Date of Offense: 7-23-98
S.C. Code §: 16-23-490
CDR Code #: 1121415

SENTENCE

☐ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: Poss Firearm Comm Violent Crime
in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 1121415

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] Solicitor Antonio Gordon Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Five (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.

☐ The Defendant is to be given credit for _____ days/months jail time.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____
*Fine: _____
§ 14-1-206 - Assessments 100%.....\$ _____
§ 14-1-211 - Surcharge.....\$ 100.00
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI).....\$ _____
County (3%).....\$ _____
TOTAL.....\$ 100.00

Clerk of Court/Deputy Clerk David Hamilton
Court Reporter: Janet Rich

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
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: _____

plea accepted 2/16/99
Sentenced 7/19/99
PRESIDING JUDGE John C. Hays
Judge Code: 0101419
Sentence Date: _____

ARREST WARRANT

F= 763897

STATE OF SOUTH CAROLINA

County of Rock Hill Municipality of Rock Hill

THE STATE

against

ANTONIO GORDON

Address: 3017 VERNSDALE RD

ROCK HILL, SC 29730

Phone: SSN: DL #: Agency ORI #: DOB: 03/21/82 04603Prosecuting Agency: ROCK HILL POLICE DEPTProsecuting Officer: J. THICKENSOffense: POSS FIREARM DURING COMM/VIOL. CRIM 16 Offense Code: 16Code/Ordinance Sec. 16-23-490This warrant is CERTIFIED FOR SERVICE in the County of Rock Hill Municipality of Rock Hill

The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge _____ (L.S.)

RETURN

A copy of this arrest warrant was delivered to defendant ANTONIO GORDON on 07-28-98

Signature of Constable/Law Enforcement Officer _____

RETURN WARRANT TO:

ROCK HILL POLICE DEPT
120 EAST BLACK STREET

ROCK HILL SC 29730

A

A

Form Approved by
S.C. Attorney General
July 26, 1990
SCCA 518

STATE OF SOUTH CAROLINA

County of Rock Hill Municipality of Rock Hill

AFFIDAVIT

Personally appeared before me the affiant J. THICKENSbeing duly sworn deposes and says that defendant ANTONIO GORDONdid within this county and state on 07/23/98 violate the criminal laws of the State of South Carolina (or ordinance of Rock Hill County) Rock Hill

In the following particulars:

DESCRIPTION OF OFFENSE: POSS. FIREARM DUR COMM VIOL CRIME 16-23-490

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

DID WILLFULLY AND UNLAWFULLY POSSESS A FIREARM (C.O.P. 4-BARREL DERRINGER; SILVER IN COLOR) WHILE COMMITTING THE CRIME OF MURDER AGAINST ONE ERIC KRENN. THIS INCIDENT OCCURRING IN THE 500 BLOCK OF S. JONES AVENUE WITHIN THE CITY LIMITS OF ROCK HILL, SC. *POLICE INVESTIGATION *RECOVERY OF EVIDENCE *SWORN STATEMENTS BY DEF., CO-DEF., AND WITNESSES

Sworn to and subscribed before me on 7-24-98

Signature of Issuing Judge _____ (L.S.)

Signature of Affiant _____
Affiant's Address _____
Affiant's Telephone _____STATE OF SOUTH CAROLINA
County of Rock Hill Municipality of Rock Hill

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

If appearing from the above affidavit that there are reasonable grounds to believe that defendant ANTONIO GORDONdid violate the criminal laws of the State of South Carolina (or ordinance of Rock Hill County) Rock HillDESCRIPTION OF OFFENSE: POSS. FIREARM DUR COMM VIOL CRIME 16-23-490

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge _____ (L.S.)
Judge's Address 120 E. BLACK ST.Signature of Issuing Judge _____
Judge Code: 0005 Judge's Telephone _____
Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

A

A

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

MURDER

That Antonio Gordon did in York County on or about July 23, 1998, with malice aforethought, kill one Eric Peter Krenn by means of shooting with a firearm and said victim died as a result thereof, all in violation of Section 16-3-10, South Carolina Code of Laws, (1976, as amended).

**POSSESSION OF A FIREARM DURING
THE COMMISSION OF A VIOLENT CRIME**

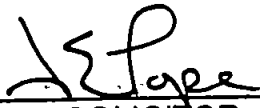
That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Murder, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

DAVID J. FORTIN
CLERK OF COURT
YORK COUNTY, SC

JUN 21 9 03 AM '00

CERTIFIED TRUE COPY

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


SOLICITOR

DOCKET NO. 98-GS-46- 2847

WITNESSES

Filing/RHPD

The State of South Carolina
County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Antonio Gordon

I hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

October 15, Term 1998

THE STATE

VS.

ANTONIO GORDON

ARREST WARRANT NUMBER

Count One: F763891

Count Two: F763897

ACTION OF GRAND JURY

RETURN

John Thomas
Person of Grand Jury
10/19/98

VERDICT

Indictment for

MURDER

SC Code: 16-3-10
CDR Code: 0116

POSSESSION OF A FIREARM DURING
THE COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-490
CDR Code: 1245

Foreperson of Petit Jury

Date:

Antonio Gordon
Defendant

Witness:
John Thomas
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA
COUNTY OF York Jail
STATE vs.
Antonio Gordon
AKA: _____
Race: B Sex: M
DOB: 3-21-82 Age: _____
SSN: 248-51-8012
DL#: _____
SID#: _____

542
IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:
98-GS-46-2849
A/W#: F763898
Date of Offense: 7-23-98
S.C. Code § : 16-11-330
CDR Code #: 0101216

SENTENCE

☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: Attempted Armed Robbery
in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0101216

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: [Signature] Solicitor [Signature] Defendant [Signature] Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 2 1/2 (16) 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.

☐ The Defendant is to be given credit for _____ days/months jail time.
☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 99-GS-46-2847

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: \$ _____ plus 20% fee \$ _____
Payment Terms: _____
☐ set by SCDPPPS _____

Recipient: _____
*Fine: \$ _____
§ 14-1-206 - Assessments 100%..... \$ _____
§ 14-1-211 - Surcharge..... \$ 100.00
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI)..... \$ _____
County (3%)..... \$ _____
TOTAL..... \$ 100.00

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
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: _____

plea entered 7/16/98
Sentenced 7/19/98
PRESIDING JUDGE [Signature]
Judge Code: 0101419
Sentence Date: _____

Clerk of Court/Deputy Clerk David Hamilton
Court Reporter: Janet Rich

ARREST WARRANT

F-763838

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of
 ROCK HILL

 THE STATE
 against

ANTONIO GORDON

Address: 3017 VERNSDALE RD

ROCK HILL, SC 29730

Phone: _____ SSN: _____

Race: B Height: _____ Weight: 0

L. State: _____ DL #: _____ Agency ORI #: 04603

DOB: 03/21/82

Prosecuting Agency: ROCK HILL POLICE DEPT

Prosecuting Officer: J. THICKENS

Offense: ATTEMPTED ARMED ROBBERY

Offense Code: 16

Code/Ordinance Sec. 16-11-330(2)

 This warrant is CERTIFIED FOR SERVICE in the
☐ County ☒ Municipality of
 ROCK HILL

 The accused
 is to be arrested and brought before me to be
 dealt with according to law.

Signature of Judge

(L.S.)

RETURN

 A copy of this arrest warrant was delivered to
 defendant ANTONIO GORDON
 on 07-27-98

 Signature of Constable/Law Enforcement Officer
[Signature]

RETURN WARRANT TO:

 ROCK HILL POLICE DEPT
 120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of
 ROCK HILL

AFFIDAVIT

 Personally appeared before me the affiant J. THICKENS

 being duly sworn deposes and says that defendant ANTONIO GORDON

 did within this county and state on 07/23/98 violate the criminal laws of the
 State of South Carolina (or ordinance of ☐ County ☒ Municipality of ROCK HILL)

In the following particulars:

DESCRIPTION OF OFFENSE: ATTEMPTED ARMED ROBBERY 16-11-330(2)

 I further state that there is probable cause to believe that the defendant named above did commit
 the crime set forth and that probable cause is based on the following facts:

 DID WILLFULLY AND UNLAWFULLY ATTEMPT TO COMMIT THE CRIME OF ROBBERY
 AGAINST ONE ERIC KRENN BY POINTING AND FIRING A HANDGUN AT THE VICTIM
 IN AN ATTEMPT TO TAKE POSSESSION OF THE VICTIM'S VEHICLE, A 1985 BMW
 318. THIS INCIDENT OCCURRING IN THE 500 BLOCK OF S. JONES AVENUE
 WITHIN THE CITY LIMITS OF ROCK HILL, SC. *POLICE INVESTIGATION
 *RECOVERY OF EVIDENCE *SWORN STATEMENTS BY DEF., CO-DEF., AND
 WITNESSES
Sworn to and subscribed before me on 7-27-98
 Signature of Issuing Judge [Signature] (L.S.)

 Signature of Affiant [Signature]
 Affiant's Address _____
 Affiant's Telephone _____

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of
 ROCK HILL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

 It appearing from the above affidavit that there are reasonable grounds to believe that
 defendant ANTONIO GORDON

 did violate the criminal laws of the State of South Carolina (or ordinance of
☐ County ☒ Municipality of ROCK HILL) as set forth below:
 DESCRIPTION OF OFFENSE: ATTEMPTED ARMED ROBBERY 16-11-330(2)

 Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before
 me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the
 defendant at the time of its execution, or as soon thereafter as is practicable.

 Signature of Issuing Judge [Signature] (L.S.)
 Judge Code: 0025

 Judge's Address 120 E. BLACK ST.
 Judge's Telephone _____
 Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

A

ORIGINAL

A

STATE OF SOUTH CAROLINA)
)
 COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to feloniously take from the person or presence of Eric Krenn, by means of force or intimidation goods or monies of said Eric Krenn, to wit: one 1985 BMW belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

**POSSESSION OF A WEAPON DURING
 THE COMMISSION OF A VIOLENT CRIME**

That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Attempted Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

DAVID M. HEDGECOCK
 CLERK OF COURT
 YORK COUNTY, SC

JUN 21 9 05 AM '00

CERTIFIED TRUE COPY

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

[Signature]

SOLICITOR

DOCKET NO. 98-GS-46- 2849

WITNESSES

Herring/RHPD

43

ARREST WARRANT NUMBER

Count One: F763898

Count Two: Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

Person of Grand Jury

18/19/98

VERDICT

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 15, Term 1998

THE STATE

VS.

ANTONIO GORDON

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Antonio Gordon
hereby appear in my own proper person and plead guilty to the within indictment or to

Antonio Gordon
Defendant

Witness:
Diana Higgins Clerk
C.C.C. PLS. AND G.S.

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-0330

CDR Code: 0026

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-490

CDR Code: 1245

Foreperson of Petit Jury

Date:

190/100

STATE OF SOUTH CAROLINA

COUNTY OF York

STATE

VS.

Antonio Jordan

AKA:

Race: B

Sex: m

DOB: 3-21-82

Age: 16

SSN: 248-51-8012

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

98 -GS- 46 - 2849-A

A/W#: DI

Date of Offense: 7-23-98

S.C. Code § : 16-23-490

CDR Code #:

1121415

SENTENCE

☐ PLEA

☐ TRIAL

☐ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Ass Firearm Comm Violent Crime

in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 1121415

☒ NON-VIOLENT

☐ VIOLENT

☐ SERIOUS

☐ MOST SERIOUS

☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

[Signature]
Defendant

[Signature]
Attorney for Defendant

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 _____ year 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.

☐ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine: _____ \$

§ 14-1-206 - Assessments 100%..... \$

§ 14-1-211 - Surcharge..... \$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI)..... \$

County (3%)..... \$

TOTAL..... \$ 100.00

Clerk of Court/Deputy Clerk David Hamilton

Court Reporter: Janet Rich

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/monthly

payments of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

[Signature]
PRESIDING JUDGE John C. Hargis

Judge Code: 0101419

Sentence Date: _____

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to feloniously take from the person or presence of Eric Krenn, by means of force or intimidation goods or monies of said Eric Krenn to wit: one 1985 BMW belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

**POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME**

That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Attempted Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

DO NOTED
CLERK OF COURT
YORK COUNTY, SC

JUN 21 9 02 AM '00

CERTIFIED TRUE COPY

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



SOLICITOR

DOCKET NO. 98-GS-46- 2844

WITNESSES

Harring/RHPD

8
4
13

ARREST WARRANT NUMBER

Count One: F763898
Count Two: Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

Person of Grand Jury
Date: 10/19/98

VERDICT

Foreperson of Petit Jury
Date:

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 15, Term 1998

THE STATE

vs.

ANTONIO GORDON

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-0330
CDR Code: 0026

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-490
CDR Code: 1245

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Antonio Gordon
hereby appear in my own proper person and plead guilty to the within indictment or to

Antonio Gordon
Defendant

Witness:
Olivia Higgins Clerk
C.C.C. PLS. AND G.S.

STATE OF SOUTH CAROLINA

COUNTY OF York
STATE VS.

CERTIFIED TRUE COPY

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

Antonio Gordon JUN 21 5 03 AM '98

98-GS-46 2850

AKA: _____
Race: B Sex: M
DOB: 3-21-82 Age: _____
SSN: 248-51-8012
DL#: _____
SID#: _____

FILE#: F 763914
Date of Offense: 7-23-98
S.C. Code § : 16-11-330
CDR Code #: 0101216

SENTENCE

☒ PLEA ☐ TRIAL
☐ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Attempted Armed Robbery

in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 0101216
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

John C. Atty
Solicitor

Antonio Gordon
Defendant

John C. Atty
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center
for a determinate term of Ten (10) days/months/years or ☐ under the Youthful Offender Act not to exceed _____ year;
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.

☐ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:\$

§ 14-1-206 - Assessments 100%.....\$

§ 14-1-211 - Surcharge.....\$

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$

County (3%).....\$

TOTAL.....\$

Clerk of Court/Deputy Clerk David Hamilton

Court Reporter: Janet Rich

PTUP _____
_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/month
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

Plea entered 7/16/98
Sentenced 7/14/98
PRESIDING JUDGE John C. Atty

Judge Code: 0101419

Sentence Date: _____

ARREST WARRANT

F- 763914

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of
 ROCK HILL
THE STATE
against

ANTONIO GORDON

Address: 3017 VERNSDALE RD

ROCK HILL, SC 29730

Phone: 803-325-1104 SSN: 248-51-8012

Sex: M Race: B Height: 508 Weight: 145

Date: 03/21/82 DL #: Agency ORI #: 04603

Prosecuting Agency: ROCK HILL POLICE DEPT

Prosecuting Officer: HERRING

Offense: ATTEMPTED ARMED ROBBERY

Offense Code: 16-11-330 (2)

Code/Ordinance Sec. 16-11-330 (2)

This warrant is CERTIFIED FOR SERVICE in the

☐ County ☒ Municipality of
 ROCK HILL

The accused

is to be arrested and brought before me to be

dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to

defendant ANTONIO GORDONon 7/23/98

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ROCK HILL POLICE DEPT

120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA

AFFIDAVIT

☐ County ☒ Municipality of
 ROCK HILL
Personally appeared before me the affiant L.R. HERRINGbeing duly sworn deposes and says that defendant ANTONIO GORDONdid within this county and state on 07/23/98 violate the criminal laws of theState of South Carolina (or ordinance of ☐ County ☒ Municipality of ROCK HILL)In the following particulars: ATTEMPTED ARMED ROBBERY 16-11-330 (2)DESCRIPTION OF OFFENSE: ATTEMPTED ARMED ROBBERY 16-11-330 (2)

I further state that there is probable cause to believe that the defendant named above did commit

the crime set forth and that probable cause is based on the following facts:

DID WILFULLY AND UNLAWFULLY ATTEMPT TO COMMIT THE CRIME OF ROBBERY

AGAINST ONE CHRISTOPHER DIAZ BY POINTING A FIREARM AT HIM, WHILE

ATTEMPTING TO TAKE VICTIM'S MONEY. THIS INCIDENT OCCURRING IN THE 500

BLOCK OF S. JONES AVE. WITHIN THE CITY LIMITS OF ROCK HILL, S.C. *POLICE

INVESTIGATION. *RECOVERY OF EVIDENCE. *SWORN STATEMENTS.

Sworn to and subscribed before me

on 7/24/98Signature of Affiant L.R. HERRING (L.S.)

Signature of Issuing Judge

Signature of Affiant

Affiant's Address 120 E. BLACK STREETAffiant's Telephone 803-329-7200

STATE OF SOUTH CAROLINA

☐ County ☒ Municipality of
 ROCK HILL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe the

defendant ANTONIO GORDON

did violate the criminal laws of the State of South Carolina (or ordinance of

☐ County ☒ Municipality of ROCK HILL

as set forth below:

DESCRIPTION OF OFFENSE: ATTEMPTED ARMED ROBBERY 16-11-330 (2)

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before

me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the

defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address

Judge's Telephone

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

JUL 26 1998

SCCA 518

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to feloniously take from the person or presence of Christopher Diaz, by means of force or intimidation goods or monies of said Christopher Diaz to wit: currency belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

**POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME**

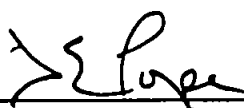
That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Attempted Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

DAVID H. HARRIS
CLERK OF COURT
YORK COUNTY, SC

JUN 21 9 03 AM '00

CERTIFIED TRUE COPY

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


SOLICITOR

DOCKET NO. 98-GS-46- 2820

WITNESSES

Herring/RHPD

2
5

ARREST WARRANT NUMBER

Count One: F763914

Count Two: Direct Indictment

ACTION OF GRAND JURY

RETURNED

F. person of Grand Jury

Date: 10/19/98

VERDICT

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 15, Term 1998

THE STATE

VS.

ANTONIO GORDON

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-0330

CDR Code: 0026

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-490

CDR Code: 1245

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Antonio Gordon

hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

Deena Higgins Clark
C.C.C. PLS. AND CLERK

STATE OF SOUTH CAROLINA

COUNTY OF

STATE

AKA:

Race:

DOB:

SSN:

DL#:

SID#:

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS

TO: Pass Firearm Comm Violent Crime

in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 112415

☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

John C. Antley
Solicitor

Antonio Gordon
Defendant

De [Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 170 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.

☐ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms: _____

☐ set by SCDPPPS _____

Recipient: _____

*Fine:\$

§ 14-1-206 - Assessments 100%.....\$

§ 14-1-211 - Surcharge.....\$ 100.00

(Exceptions: See § 14-1-211)

§ 56-5-2995 (DUI).....\$

County (3%).....\$

TOTAL.....\$ 100.00

Clerk of Court/Deputy Clerk David Hamilton

Court Reporter: Janet Rich

553
IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

98-GS-46-2850-A

A/W#: DI

Date of Offense: 7-23-98

S.C. Code § : 16-23-490

CDR Code #: 112415

SENTENCE

☐ PLEA ☐ TRIAL

CERTIFIED TRUE COPY
9 02 AM '00
CLERK OF COURT, SC
COUNTY, SC

PTUP _____
_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

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: _____

Plea entered 7/16/99
Sentenced 7/16/99
John [Signature]

PRESIDING JUDGE John [Signature]

Judge Code: 010419

Sentence Date: 7/19/99

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to feloniously take from the person or presence of Christopher Diaz, by means of force or intimidation goods or monies of said Christopher Diaz to wit: currency belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

**POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME**

That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Attempted Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

FILED
CLERK OF COURT
YORK COUNTY, SC

JUN 21 9 02 AM '00

CERTIFIED TRUE COPY

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


SOLICITOR

DOCKET NO. 98-GS-46- 2850

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

WITNESSES

Herring/RHPD

County of York

Defendant

The State of South Carolina

Antonio Gordon

hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

October 15, Term 1998

ARREST WARRANT NUMBER

Count One: F763914

Count Two: Direct Indictment

Antonio Gordon
Defendant

Witness:

Steven Douglas Clark
C.C.C. PLS. AND CLERK

VS.

THE STATE

ACTION OF GRAND JURY

ANTONIO GORDON

TRUE BILL

Robert Newman
Person of Grand Jury
Date: 10/19/98

VERDICT

Indictment for

ATTEMPTED ARMED ROBBERY

SC Code: 16-11-0330

CDR Code: 0026

POSSESSION OF A WEAPON DURING
THE COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-490

CDR Code: 1245

Foreperson of Petit Jury

Date:

STATE OF SOUTH CAROLINA

COUNTY OF York

STATE

VS.

Antonio Gordon

AKA:

Race: B

Sex: m

DOB: 3-27-82

Age:

SSN: 248-51-8012

DL#:

SID#:

556
IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

98 -GS- 46 - 2851

A/W#:

F763902

Date of Offense:

7-23-98

S.C. Code §:

16-17-410

CDR Code #:

0101419

SENTENCE

☒ PLEA

☐ TRIAL

☐ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Crim Conspiracy

in violation of § 16-17-410

of the S.C. Code of Laws, bearing CDR Code # 0101419

☒ NON-VIOLENT

☐ VIOLENT

☐ SERIOUS

☐ MOST SERIOUS

☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.

The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:

[Signature]
Solicitor

Antonio Gordon
Defendant

[Signature]
Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of 90 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.

☐ The Defendant is to be given credit for _____ days/months jail time.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered

Total: \$ _____ plus 20% fee \$ _____

Payment Terms:

☐ set by SCDPPPS

Recipient: _____

*Fine: \$
§ 14-1-206 - Assessments 100%..... \$
§ 14-1-211 - Surcharge..... \$ 100.00
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI)..... \$
County (3%)..... \$
TOTAL..... \$ 100.00

Clerk of Court/Deputy Clerk

David Hamilton

Court Reporter:

Janet Rich

PTUP _____

_____ days/hours Public Service Employment

Obtain GED _____

Attend Voc Rehab. or Job Corps _____

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol Testing _____

Fine may be pd. in equal, consecutive weekly/mont.

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund.

Other: _____

[Signature] 7/16/98
[Signature] 7/17/98
PRESIDING JUDGE John L. Hays

Judge Code:

0101419

Sentence Date:

Pink - Defendant

ARREST WARRANT

F- 763902

STATE OF SOUTH CAROLINA

County ☒ Municipality of

ROCK HILL

JUL 23 11 45 AM

THE STATE

against

ANTONIO GORDON

Address: 3017 VERNSDALE RD

ROCK HILL, SC 29730

Phone: SSN:

Sex: M Race: B Height: Weight: 0

State: DL #: Agency ORI #: 04603

JOB: 03/21/82

Prosecuting Agency: ROCK HILL POLICE DEPT

Prosecuting Officer: J. THICKENS

Offense: CRIMINAL CONSPIRACY

Offense Code: 16

Code/Ordinance Sec. 16-17-410

This warrant is CERTIFIED FOR SERVICE in the

County ☒ Municipality of

ROCK HILL

The accused

is to be arrested and brought before me to be

dealt with according to law.

Signature of Judge

(L.S.)

RETURN

A copy of this arrest warrant was delivered to

defendant

ANTONIO GORDON

on 07-27-98

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ROCK HILL POLICE DEPT

120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA

County ☒ Municipality of

ROCK HILL

AFFIDAVIT

Personally appeared before me the affiant J. THICKENS

Being duly sworn deposes and says that defendant ANTONIO GORDON

did within this county and state on 07/23/98

State of South Carolina (or ordinance of County ☒ Municipality of ROCK HILL

in the following particulars:

DESCRIPTION OF OFFENSE: CRIMINAL CONSPIRACY 16-17-410

X0049

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

DID WILLFULLY AND UNLAWFULLY SCHEME AND CONSPIRE WITH ANOTHER TO COMMIT THE CRIME OF ARMED ROBBERY OF ONE ERIC KRENN. THIS INCIDENT OCCURRING IN THE 500 BLOCK OF S. JONES AVENUE WITHIN THE CITY LIMITS OF ROCK HILL, SC. *POLICE INVESTIGATION *RECOVERY OF EVIDENCE *SWORN STATEMENTS BY DEF., CO-DEF., AND WITNESSES

Sworn to and subscribed before me

on 7-24-98

Signature of Affiant

Affiant's Address

Signature of Issuing Judge

Affiant's Telephone

STATE OF SOUTH CAROLINA

County ☒ Municipality of

ROCK HILL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

If appearing from the above affidavit that there are reasonable grounds and believe that

did violate the criminal laws of the State of South Carolina (or ordinance of

County ☒ Municipality of ROCK HILL

DESCRIPTION OF OFFENSE: CRIMINAL CONSPIRACY 16-17-410

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Judge's Address 120 E. BLACK ST.

Signature of Issuing Judge

Judge's Telephone

Judge Code: 0005

Issuing Court:

☐ Magistrate☒ Municipal☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

CRIMINAL CONSPIRACY

That Antonio Gordon did in York County, on or about July 23, 1998, wilfully and unlawfully unite, combine, conspire, confederate, agree and have tacit understanding with one or all of the following: Terrance McCrearey, Gary Moffatt, Monta Gordon and/or others for the purpose of committing the crime(s) of Murder, Armed Robbery and/or Carjacking, in violation of Section 16-17-410, Code of Laws of South Carolina, (1976, as amended).

FILED
CLERK OF COURT
YORK COUNTY, SC

JUN 21 9 04 AM '00

CERTIFIED TRUE COPY
LS

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

LS Pope
SOLICITOR

WITNESSES

RH:PD/Herring

The State of South Carolina

County of York

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

3
5
5

Antonio Gordon
hereby appear in my own proper person and plead guilty to the within indictment or to

COURT OF GENERAL SESSIONS

October 15, Term 1998

ARREST WARRANT NUMBER

F763902

Antonio Gordon
Defendant

THE STATE

vs.

Witness:
Debra Dunbar Clerk II
C.C.C. PLS. AND S.

ACTION OF GRAND JURY

ANTONIO GORDON

RECEIVED

Debra Dunbar
Clerk of Grand Jury

Date: 10/19/98

VERDICT

Indictment for

CRIMINAL CONSPIRACY

SC Code: 16-17-410
CDR Code: 0049

Foreperson of Petit Jury
Date:

STATE OF SOUTH CAROLINA

COUNTY OF York

STATE

VS. Antonio Gordon

AKA:

Race: B Sex: M

DOB: 3-21-82 Age: 16

SSN: 248-51-8012

DL#:

SID#:

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:

98-GS-46-2852

A/W#:

Date of Offense:

S.C. Code §:

CDR Code #:

SENTENCE

PLEA

TRIAL

CONVICTED OF or PLEADS

In disposition of the said indictment comes now the Defendant who was

TO: Poss. Pistol Under 21

in violation of § 16-23-30

NON-VIOLENT

VIOLENT

SERIOUS

MOST SERIOUS

17-25-45

The charge is: As Indicted, Lesser Included Offense, Defendant Waives Presentment to Grand Jury.

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

ATTEST

Solicitor

Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the State Department of Corrections, County Detention Center for a determinate term of 125 days/months/years or under the Youthful Offender Act not to exceed year and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payer 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, probation, which are incorporated by reference.

The Defendant is to be given credit for days/months jail time.

CONCURRENT or CONSECUTIVE to sentence on:

SPECIAL CONDITIONS:

RESTITUTION Heard, Waived, Ordered
Total: \$ plus 20% fee \$
Payment Terms:
set by SCDPPPS

Recipient:

*Fine: \$
§ 14-1-206 - Assessments 100% \$
§ 14-1-211 - Surcharge \$ 100.00
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI) \$
County (3%) \$ 100.00
TOTAL \$

Clerk of Court/Deputy Clerk

Court Reporter:

PTUP

days/hours Public Service Employment

Obtain GED

Attend Voc Rehab. or Job Corps

May serve W/E beginning

Substance Abuse Counseling

Random Drug/Alcohol Testing

Fine may be pd. in equal, consecutive weekly/mor pmts. of \$ beginning

\$ paid to Public Defender Fund.

Other:

PRESIDING JUDGE

Judge Code:

Sentence Date:

Canary - Probation

Pink - Defendant

SCCA217 (1/99)

ARREST WARRANT
F- 763901

STATE OF SOUTH CAROLINA
County ☒ Rock Hill Municipality of

THE STATE
against

ANTONIO GORDON

Address: 3017 VERNSDALE RD
ROCK HILL, SC 29730

Phone: SSN: Race: B Height: Weight: O

Date: 03/21/82 Agency ORI #: 04603

Prosecuting Agency: ROCK HILL POLICE DEPT

Prosecuting Officer: J. THICKENS

Offense: PDSS. HANDGUN UNDER 21

Code/Ordinance Sec. 16-23-30(C) Offense Code: 16

This warrant is CERTIFIED FOR SERVICE in the
County ☒ Municipality of

ROCK HILL The accused is to be arrested and brought before me to be dealt with according to law.

Signature of Judge (L.S.)

RETURN

A copy of this arrest warrant was delivered to
defendant ANTONIO GORDON
on 07-22-98

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ROCK HILL POLICE DEPT
120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA
County ☒ Rock Hill Municipality of

AFFIDAVIT

Personally appeared before me the affiant J. THICKENS

being duly sworn deposes and says that defendant ANTONIO GORDON

did within this county and state on 07/23/98 violate the criminal laws of the State of South Carolina (or ordinance of ☒ County ☒ Municipality of ROCK HILL)

in the following particulars: POSSESSION OF A HANDGUN UNDER 21 16-23-30(C)

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

DID WILLFULLY AND UNLAWFULLY POSSESS A G.O.P.-BARREL .357 CALIBER HANDGUN, SILVER IN COLOR, AT SIXTEEN YEARS OF AGE (DOB: 03-21-82). THIS INCIDENT OCCURRING IN THE 500 BLOCK OF S. JONES AVENUE WITHIN THE CITY LIMITS OF ROCK HILL, SC. *POLICE INVESTIGATION *RECOVERY OF EVIDENCE *SWORN STATEMENTS BY DEF., CO-DEF., AND WITNESSES

Sworn to and subscribed before me on 7-22-98

Signature of Issuing Judge (L.S.)

Signature of Affiant
Affiant's Address
Affiant's Telephone

STATE OF SOUTH CAROLINA
County ☒ Municipality of
ROCK HILL

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:
If appearing from the above affidavit that there are reasonable grounds to believe that defendant ANTONIO GORDON did violate the criminal laws of the State of South Carolina (or ordinance of ☒ County ☒ Municipality of ROCK HILL) as set forth below:

DESCRIPTION OF OFFENSE: POSSESSION OF A HANDGUN UNDER 21 16-23-30(C)

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

Signature of Issuing Judge (L.S.)

Judge Code: 0005 Judge's Address 120 E. BLACK ST.
Judge's Telephone
Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

POSSESSION OF A PISTOL BY PERSON UNDER TWENTY-ONE

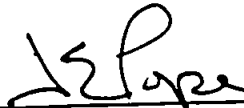
That Antonio Gordon did in York County on or about July 23, 1998, unlawfully and knowingly have in his possession a pistol, said defendant being under Twenty-One (21) years of age at the time of incident, all in violation of §16-23-30, Code of Laws of South Carolina, (1976, as amended).

RECORDED
INDEXED
JUN 21 9 04 AM '00
YORK COUNTY, SC

JUN 21 9 04 AM '00

CERTIFIED TRUE COPY

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


SOLICITOR

WITNESSES

Herring/RHPD

DOCKET NO. 98-GS-46-2852

The State of South Carolina

County of York

Defendant

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

33
10

COURT OF GENERAL SESSIONS

Antonio Gordon
hereby appear in my own proper person and plead guilty to the within indictment or to

October 15, Term 1998

ARREST WARRANT NUMBER

F763901

Antonio Gordon
Defendant

THE STATE

VS.

Witness:
Deana Dwyer
C.C.C. PLS. AND G.S.

ACTION OF GRAND JURY

ANTONIO GORDON

TRUE BILL

Robert Freeman
person of Grand Jury

Date:

10/19/98

VERDICT

Indictment for

POSSESSION OF A PISTOL BY
PERSON UNDER TWENTY-ONE

Foreperson of Petit Jury

Date:

SC Code: 16-23-30(c)

CDR Code: 2364

564

DMT1330D

SCDC OFFENDER MANAGEMENT SYSTEM
RELEASE DATE SCREEN08/15/00
C023981

DMCOMITA

SCDC# > 9259798

LOC: KERSHAW

GORDON, ANTONIO -

OFFENDER CATEGORY: VIOLENT

CURR SENT SERVING CAT: VIOLENT

OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL PREDATOR...: NOT APP

TOTAL SENTENCE...: 040-00-000

CONSECUTIVE SENTENCE ...: Y

CURRENT SENTENCE: 040-00-000

CURRENT SENT START DATE: 07/23/1998

PROJECTED COMPLETION DATES

MAXOUT DATE: 01/11/2037

CURRENT EWC ..: NOT CURRENTLY EARNING EWC

YOA SIX YEAR DATE: / /

CURRENT EEC ..: 5F

INITIAL PAROLE DATE: 0/ 0/ 0 0

NEXT PAROLE HEARING DATE: 0/ 0/ 0 0

TOTAL GT DAYS EARNED: 000000

LABOR CREW/WORK PROG DATE: 99/99/9999

TOTAL EARNED WORK CREDITS ...: 000000

LABOR CREW DISQ REASON:

TOTAL EDUCATION CREDITS: 000105

OFFENSE > CAT 3

TOTAL EXTRA EARNED CREDITS ..: 000

TOTAL SERVICE TIME EARNED ...: 000742

PFKEYS: 5:HISTORY OF DATE CHANGES

565

08/15/00

C023981

CMT11000

SCDC OFFENDER MANAGEMENT SYSTEM

OMCOMITA

COMMITMENT APPLICATION

S2DC# 9259798

CONVICTION SUMMARY

GORDON, ANTONIO -

CURR LOC: KERSHAW

OFFENDER TYPE: ADULT-STRAIGHT SENTENCE

OFFENDER CATEGORY: VIOLENT

CURR SENT SERVING CAT: VIOLENT

	NUM	CONVICTION OFFENSE	INCARC	SENT	SENT	SENT	START	PROJ	COMP	STAT	IND
			YRS	MO	DYS	DATE					
* _	S00006	ATTEMPTED ARMED ROBB	010	00	000	07/19/99	07/19/99	01/11/2037		ACT	V
_	S00005	FIREARMS PROVISION	005	00	000	07/19/99	07/23/98	07/22/2003		ACT	N
_	S00004	POSSESSION OF WEAPON	005	00	000	07/19/99	07/23/98	08/06/2001		ACT	N
_	S00003	CRIMINAL CONSPIRACY	005	00	000	07/19/99	07/23/98	08/06/2001		ACT	N
_	S00002	ATTEMPTED ARMED ROBB	010	00	000	07/19/99	07/23/98	01/19/2007		ACT	V
_	S00001	MURDER	030	00	000	07/19/99	07/23/98	07/15/2028		ACT	V

PAGE:90001

TAKE A SELECTION AND PRESS <ENTER>...

PF3-ADD PF4-MODIFY/REVOKE PF6-DISPLAY CONSEC PF9-DETAIN PF12-SUMREPT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 08/11/00

SMITH

GORDON, ANTONIO - FBI # 162429LB4 SID# SC01274377 SCDC # 259798

OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE

INSTITUTION ... KERSHAW CORR INST

SECURITY/CUST.: 3 MEDIUM

SOT INCARC SENT....: 40 YRS 0 MOS 0 DYS

CENTRAL MONITORING.: YES

SOCIAL SECURITY #....: 241518012

CURRENT PROGRAM...: NO CURRENT PROGRAM

AGE...: 18 DATE OF BIRTH...: 3/21/82

DORM.....: SE0004T

RACE....: B SEX....: M

PROJ MAXOUT DATE: 01/11/2037

PROJ PAROLE DATE: 00/00/0000

EWC JOB...: NO CURRENT JOB

EDUC PGM...: H.S. ACADEMIC

EWC LEVEL: 0 EEC LEVEL: 5F

ASSIGNMENT...: EDUC DEPT. ACADEMIC

PREVIOUS NUMBERS:

** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE				SENTENCE		
	YRS	MOS	DYS	COUNTY	START	U/NV	CATEGORY
ATTEMPTED ARMED ROBBERY	10	0	0	YORK	7/19/1999	V	4
FIREARMS PROVISION	5	0	0	YORK	7/23/1998	N	3
POSSESSION OF WEAPON	5	0	0	YORK	7/23/1998	N	3
CRIMINAL CONSPIRACY	5	0	0	YORK	7/23/1998	N	2
ATTEMPTED ARMED ROBBERY	10	0	0	YORK	7/23/1998	V	4
MURDER	30	0	0	YORK	7/23/1998	V	5

PRIOR COMMITMENTS OVER 90 DAYS:

INMATE HAS NO PRIORS

DETAINERS (HOLD, WANTED, NOTIFY):

NO DETAINERS

ESCAPES:

NO ESCAPE HISTORY

CRIMINAL CHARGES:

NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:

NO ASSAULTIVE DISCIPLINARY HISTORY

ON-ASSAULTIVE DISCIPLINARIES:

7/25/ 0	INCITING/CREATING A DIST	PENDING	MAJOR
7/25/ 0	USE OBSCENE, VULGAR, PROFA	PENDING	MAJOR
6/27/ 0	VIOLATIONS WRITE/POST IN	CONVICTED	MINOR
6/27/ 0	USE OBSCENE, VULGAR, PROFA	CONVICTED	MINOR
6/ 8/ 0	VIOLATIONS WRITE/POST IN	CONVICTED	MINOR
6/ 8/ 0	REFUSING OR FAILING OBEY	CONVICTED	MINOR
6/ 8/ 0	OUT OF PLACE	CONVICTED	MINOR
5/15/ 0	USE OBSCENE, VULGAR, PROFA	CONVICTED	MINOR
5/15/ 0	INCITING/CREATING A DIST	CONVICTED	MINOR
5/ 6/ 0	REFUSING OR FAILING OBEY	CONVICTED	MINOR
5/ 6/ 0	OUT OF PLACE	CONVICTED	MINOR
3/27/ 0	REFUSING TO WORK	CONVICTED	MINOR
3/27/ 0	REFUSING OR FAILING OBEY	CONVICTED	MINOR
3/ 7/ 0	VIOLATIONS WRITE/POST IN		OTHER
2/ 4/ 0	VIOLATIONS WRITE/POST IN	CONVICTED	MINOR
1/30/ 0	IN LIVING QUARTERS W/OUT	DROPPED	MINOR
1/30/ 0	REFUSING OR FAILING OBEY	DROPPED	MINOR
11/10/99	REFUSING OR FAILING OBEY	CONVICTED	MINOR
9/26/99	FIGHTING WITHOUT A WEAPD	DROPPED	MAJOR
8/31/99	USE OBSCENE, VULGAR, PROFA	CONVICTED	MINOR

HISTORY OF MOVEMENTS:

3/ 2/ 0	KERSHAW	INCARCERATED	ADMINISTRATIVE
3/ 2/ 0	KIRKLAND	INCARCERATED	MEDICAL
8/ 5/99	KERSHAW	INCARCERATED	ADMINISTRATIVE
7/19/99	KIRKLAND	INCARCERATED	NEW ADMISSION

STORY OF EARNED WORK CREDIT ASSIGNMENTS:

BORDON, ANTONIO - FBI # 162429LB4 SID# SC01274377 SCDC # 259798 (CONTINUED)

JOB	START	END	TERMINATION	JOB
DESCRIPTION	DATE	DATE	REASON	LVL

*NO WORK ASSIGNMENTS *

HISTORY OF EARNED EDUCATION CREDITS:

EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON
LVL 5 - FULL TIME(NO EWC)	07/06/00	0/ 0/ 0	
LVL 3 - FULL TIME(NO EWC)	08/11/99	7/ 5/ 0	CUSTODY REVIEW

***** END OF REPORT *****

Monta Gordon v.

State, PCR Appeal
appendix, 2001-CP-46-
2217;

pages 418-418

IN THE
COURT OF COMMON PLEAS
CASE NO.: 01-CP-46-2217

MONTA LAMONT GORDON,
PLAINTIFF,
-VS-
STATE OF SOUTH CAROLINA,
DEFENDANT.

TRANSCRIPT OF RECORD

SEPTEMBER 4, 2003
YORK, SOUTH CAROLINA

B E F O R E:

HONORABLE LEE S. ALFORD, JUDGE.

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

MR. LEELAND GREELEY
ATTORNEY AT LAW
ATTORNEY FOR THE PETITIONER
ROCK HILL, SOUTH CAROLINA

MS. JEANETTE VAN GINHOVEN
ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE STATE
COLUMBIA, SOUTH CAROLINA

SHANNON MCGILBERRY
COURT REPORTER

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>

JOSEPH D. MATLOCK

MR. GREELEY 5

MS. VAN GINHOVEN 27

MR. GREELEY 33

MONTA GORDON

MR. GREELEY 36

MS. VAN GINHOVEN 45

CERTIFICATE 61

E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
S-1	LIST OF CHARGES		41

(REPORTER'S NOTE: ALL EXHIBITS WERE FILED WITH THE OFFICE
OF THE YORK COUNTY CLERK OF COURT.)

1 MS. VAN GINHOVEN: YOUR HONOR, THIS IS THE CASE OF
2 MONTA GORDON VERSUS THE STATE. THE CP NUMBER IS 2001-CP-46-
3 2217. AT THIS TIME I'D JUST ASK THE APPLICANT TO LAY OUT
4 HIS GROUNDS FOR POST-CONVICTION RELIEF.

5 MR. GREELEY: YOUR HONOR, MAY IT PLEASE THE COURT.

6 THE COURT: YES, SIR.

7 MR. GREELEY: I'M LEELAND GREELEY. I WAS APPOINTED TO
8 REPRESENT MONTA GORDON IN THIS MATTER. HIS PETITION
9 ESSENTIALLY LAYS OUT THREE AREAS OF RELIEF THAT HE IS
10 SEEKING. WE ARE GOING TO PRIMARILY CONCENTRATE ON ONE OF
11 THOSE AREAS TODAY, WHICH I WILL TELL THE COURT WHAT THAT IS.
12 ONE OF THE AREAS THAT HE HAD REQUESTED WAS HE HAD ALLEGED IN
13 HIS PETITION THAT AT THE TIME OF THE INCIDENT THAT HE WAS A
14 MINOR AND THAT THE COURT DID NOT HAVE JURISDICTION OVER HIM.
15 THROUGH MY INVESTIGATIONS, YOUR HONOR, AT THE TIME OF THE
16 INCIDENT HE WAS SEVENTEEN YEARS OLD. HIS BROTHER IN THIS
17 CASE WAS SIXTEEN AND THAT MAY OR MAY NOT BE AN ISSUE IN
18 REGARDS TO HIS BROTHER, BUT IT IS NOT AN ISSUE IN REGARDS TO
19 MONTA AND SO WE WOULD NOT BE GOING FORWARD ON THAT ISSUE.

20 THE COURT: OKAY.

21 A SECOND ALLEGATION THAT IS MADE IS THAT HE WAS NOT
22 SPECIFICALLY ASKED WHETHER OR NOT HE WAS GUILTY DURING THE
23 PLEA. I BELIEVE THAT THE TRANSCRIPT WILL SPEAK FOR ITSELF
24 IN REGARDS TO THAT PARTICULAR ONE ISSUE AND SO I'M NOT GOING
25 TO PRESENT EVIDENCE IN REGARDS TO THAT EXCEPT JUST THAT THE

1 TRANSCRIPT WOULD SPEAK TO THAT ISSUE.

2 THE COURT: ALL RIGHT, SIR.

3 MR. GREELEY: THE THIRD ISSUE, YOUR HONOR, WHICH WE
4 WILL GO FORWARD WITH AND WE'RE GOING TO PRESENT EVIDENCE AND
5 TESTIMONY THIS MORNING IS MR. GORDON'S ASSERTION IN HIS
6 PETITION THAT HIS PLEA TO THE CHARGES IN THIS CASE WERE NOT
7 KNOWINGLY MADE AND THAT ONE OF THE CAUSES OF THAT WAS DUE TO
8 INEFFECTIVE ASSISTANCE OF COUNSEL AND SO THAT IS THE ISSUE
9 THAT WE WILL BE GOING FORWARD TODAY WITH OUR TESTIMONY.

10 THE COURT: ALL RIGHT. PLEASE CALL YOUR FIRST WITNESS,
11 SIR.

12 MR. GREELEY: OKAY. YOUR HONOR, I'D CALL MR. MATLOCK
13 TO THE STAND.

14 (JOSEPH D. MATLOCK, BEING FIRST DULY SWORN, WAS
15 EXAMINED AND TESTIFIED AS FOLLOWS):

16 MR. GREELEY: YOUR HONOR, GIVEN THE ASSERTIONS OF THE
17 PETITIONER, I WOULD LIKE TO HAVE THE OPPORTUNITY AT TIMES TO
18 ASK LEADING QUESTIONS OF MR. MATLOCK IN THIS REGARD UNDER
19 THE RULES OF PROCEDURE.

20 THE COURT: ALL RIGHT, SIR.

21 MR. GREELEY: OKAY.

22 DIRECT EXAMINATION

23 JOSEPH D. MATLOCK BY MR. GREELEY:

24 Q. MR. MATLOCK, STATE YOUR FULL NAME, PLEASE, SIR.

25 A. JOSEPH D. MATLOCK.

1 Q. AND YOU ARE AN ATTORNEY IN YORK COUNTY; IS THAT
2 CORRECT?

3 A. THAT'S CORRECT.

4 Q. AND IN 1999 YOU WERE LICENSED TO PRACTICE LAW IN THE
5 STATE OF SOUTH CAROLINA; IS THAT CORRECT?

6 A. CORRECT.

7 Q. AND WERE YOU REPRESENTING MONTA GORDON AT THAT TIME IN
8 1999?

9 A. YES, I WAS.

10 Q. AND WHAT WERE YOU REPRESENTING MR. GORDON ON?

11 A. WELL, THERE WERE MULTIPLE CHARGES. JUST FROM
12 RECOLLECTION, IT WAS MURDER, CONSPIRACY -- CAN I REFER TO MY
13 NOTES?

14 Q. YES. PLEASE DO. ANYTIME THAT YOU NEED TO DO THAT,
15 PLEASE FEEL WELCOME TO DO THAT.

16 A. THE CHARGES WERE MURDER, ATTEMPTED ARMED ROBBERY,
17 ATTEMPTED ARMED ROBBERY OF ERIC PETER KRENN, ATTEMPTED ARMED
18 ROBBERY OF CHRISTOPHER DIAZ, CONSPIRACY, FAILURE TO STOP FOR
19 BLUE LIGHTS AND THREE COUNTS OF POSSESSION OF A FIREARM
20 DURING THE COMMISSION OF A VIOLENT CRIME.

21 Q. OKAY. NOW, THIS ROSE OUT OF A SET OF FACTS THAT
22 HAPPENED A PARTICULAR EVENING; IS THAT CORRECT?

23 A. THAT'S CORRECT.

24 Q. AND I BELIEVE THAT THERE WERE THREE CO-DEFENDANTS IN
25 THIS CASE WITH MR. GORDON; IS THAT CORRECT?

- 1 A. YES.
- 2 Q. ONE WAS A MR. MCCREARY; IS THAT CORRECT?
- 3 A. YES.
- 4 Q. ALSO ANTONIO GORDON WHO WAS MR. GORDON'S BROTHER?
- 5 A. YES.
- 6 Q. YOUNGER BROTHER, IN FACT; IS THAT CORRECT?
- 7 A. YES.
- 8 Q. AND ALSO A MR. MOFFATT; IS THAT CORRECT?
- 9 A. YES, SIR.
- 10 Q. AND MR. MOFFATT, I BELIEVE, WAS REPRESENTED BY THE
- 11 PUBLIC DEFENDER'S OFFICE?
- 12 A. YES.
- 13 Q. MR. MCCREARY WAS REPRESENTED BY MR. GILLAN?
- 14 A. THAT'S CORRECT.
- 15 Q. AND ANTONIO GORDON WAS REPRESENTED BY MR. D'AGOSTINO?
- 16 A. DAN D'AGOSTINO.
- 17 Q. YES.
- 18 Q. AND YOU REPRESENTED MY CLIENT IN THAT CASE;---
- 19 A. CORRECT.
- 20 Q. ---IS THAT CORRECT?
- 21 A. UH-HUH.
- 22 Q. OKAY. NOW, THIS INVOLVED THE SHOOTING OF A YOUNG MAN
- 23 IN ROCK HILL; IS THAT CORRECT?
- 24 A. YES, SIR.
- 25 Q. ALL RIGHT. AND ACCORDING TO UNDISPUTED FACTS OF THAT

1 EVENING, THERE -- THE FOUR CO-DEFENDANTS WERE IN AN
2 AUTOMOBILE; IS THAT CORRECT?

3 A. THAT'S RIGHT.

4 Q. OKAY. AND THEY HAD A -- THEY CAME IN CONTACT WITH THE
5 DECEASED IN THIS CASE WHO WAS DRIVING THE BMW; IS THAT
6 CORRECT?

7 A. YES.

8 Q. AND AT SOME POINT IN TIME DURING THAT THERE WAS A
9 CONFRONTATION BY ONE OR MORE OF THE FOUR IN THE CAR WITH THE
10 DECEASED REGARDING HIS CAR AND/OR MONEY AND ALSO MR. DIAZ
11 WHO WAS A PASSENGER IN THAT CAR; IS THAT CORRECT?

12 A. RIGHT. THE FIRST CONFRONTATION, I BELIEVE, THEY JUST
13 BLOCKED HIM IN WITH THE VEHICLE AND THEN TWO OR SOME OF THE
14 OCCUPANTS GOT OUT AND WENT OVER TO THE CAR.

15 Q. OKAY. DO YOU RECALL WHERE YOUR CLIENT WAS SEATED IN
16 THE CAR THAT EVENING?

17 A. MY RECOLLECTION HE WAS IN THE REAR SEAT.

18 Q. OKAY. HE WAS SEATED BEHIND THE DRIVER; IS THAT
19 CORRECT?

20 A. THAT'S RIGHT.

21 Q. OKAY. AND MR. MCCREARY WAS THE DRIVER OF THE CAR?

22 A. CORRECT.

23 Q. AND WAS THERE ANY REAL DEBATE AS TO WHO THE SHOOTER WAS
24 IN THIS CASE?

25 A. NOT REALLY.

1 Q. IT WAS ANTONIO GORDON; IS THAT CORRECT?

2 A. CORRECT.

3 Q. MR. GORDON WAS SEATED IN THE FRONT SEAT PASSENGER SIDE
4 OF THE CAR; IS THAT CORRECT?

5 A. RIGHT.

6 Q. OKAY. AND THERE WAS ONE SHOT FIRED THAT EVENING; IS
7 THAT CORRECT?

8 A. THAT'S RIGHT.

9 Q. AND THE BMW DROVE AWAY FROM THE SCENE?

10 A. YES.

11 Q. LATER TO BE DETERMINED THAT THE YOUNG FELLOW HAD
12 ACTUALLY BEEN HIT BY THE SHOT AND DIED SOME BLOCKS LATER---

13 A. YES.

14 Q. ---AFTER HE HAD DRIVEN AWAY; IS THAT CORRECT?

15 A. THAT'S CORRECT.

16 Q. NOW, DURING THE -- HOW MANY TIMES DO YOU RECALL MEETING
17 WITH MR. GORDON ON HIS CASE?

18 A. LET ME CHECK ON IT.

19 Q. HE WAS INCARCERATED FOR ABOUT A YEAR PRIOR TO THE
20 DISPOSITION OF THIS CASE; IS THAT CORRECT?

21 A. YES, SIR. THAT'S CORRECT.

22 Q. OKAY. ALL THE DEFENDANTS HAD BEEN CHARGED WITH MURDER
23 IN THIS CASE; IS THAT CORRECT?

24 A. YES.

25 Q. AND ALL HAD BEEN CHARGED WITH TWO COUNTS OF ARMED

1 ROBBERY -- ATTEMPTED ARMED ROBBERY BECAUSE THERE WERE TWO
2 OCCUPANTS OF THE BMW; IS THAT CORRECT?

3 A. RIGHT; UH-HUH.

4 Q. THE STATE SHORTLY BEFORE THE DISPOSITION OF THE CASE
5 INDICTED THE FOUR DEFENDANTS WITH CARJACKING; IS THAT
6 CORRECT?

7 A. I'M NOT AWARE OF THE CARJACKING CHARGE.

8 Q. YOU DON'T REMEMBER THE CARJACKING INDICTMENT THAT WAS
9 DISMISSED AS A RESULT OF THE ALLEGED DEAL?

10 A. THAT'S RIGHT; YES. YES, AND IT WAS DISMISSED; RIGHT.
11 UH-HUH.

12 Q. ALL RIGHT. NOW, DID YOU EVER HAVE A CONVERSATION WITH
13 YOUR CLIENT REGARDING HIM BEING EVALUATED?

14 A. EVALUATED?

15 Q. AT THE --

16 A. MENTAL -- MENTALLY?

17 Q. YEAH, STATE HOSPITAL. EITHER INTELLECTUALLY OR
18 OTHERWISE.

19 A. I WOULD IMAGINE -- THERE WAS A -- I HAVE A VAGUE
20 RECOLLECTION OF THAT BECAUSE HIS BROTHER, I THINK, WAS
21 ANALYZED AND WE TALKED ABOUT IT, BUT I BELIEVE MY GUY SAID
22 THAT HE -- HE DIDN'T FEEL HE NEEDED THAT OR WORDS TO THAT
23 EFFECT BECAUSE HE -- HE FELT HE WAS COMPLETELY LUCID,
24 MENTALLY COMPETENT AND WITH A REQUISITE IQ TO PROCEED WITH
25 THE -- WITH HIS DEFENSE.

1 Q. ALL RIGHT. BUT HIS BROTHER WAS EVALUATED AS WELL AS---

2 A. YES.

3 Q. ---MR. MCCREARY, I BELIEVE?

4 A. I BELIEVE SO.

5 Q. OKAY. NOW, PRIOR TO HIS PLEA THERE WAS A COUPLE OF
6 DAYS OF PRE-TRIAL HEARINGS; IS THAT CORRECT?

7 A. RIGHT; UH-HUH.

8 Q. IN THIS PARTICULAR CASE ALL FOUR CO-DEFENDANTS HAD
9 ALLEGEDLY GIVEN STATEMENTS TO THE POLICE; IS THAT CORRECT?

10 A. YES.

11 Q. OKAY. AND THERE WERE PRE-TRIAL HEARINGS TO DETERMINE
12 THE VOLUNTARINESS OF THOSE STATEMENTS TO THE POLICE; IS THAT
13 CORRECT?

14 A. YES.

15 Q. OKAY. ALSO, PRIOR TO THE STATEMENTS AND THE HEARING ON
16 THE STATEMENTS THERE WAS A MOTION THAT WAS MADE BY ALL
17 DEFENDANTS, PRIMARILY MADE BY ANTONIO GORDON THROUGH HIS
18 ATTORNEY, MR. --

19 A. D'AGOSTINO.

20 Q. -- MR. D'AGOSTINO FOR SEVERANCE OF THE TRIAL SO THAT
21 THE FOUR CO-DEFENDANTS WOULD NOT BE TRIED TOGETHER; IS THAT
22 CORRECT?

23 A. YES.

24 Q. AND THE PRIMARY ARGUMENT THAT WAS MADE BY ALL OF THE
25 DEFENDANTS DURING THAT SEVERANCE HEARING HAD TO DO WITH THE

1 REDACTION OF THE FOUR STATEMENTS THAT THE STATE WANTED TO
2 GET INTO EVIDENCE; IS THAT CORRECT?

3 A. THAT'S RIGHT.

4 Q. AND I BELIEVE THAT THE ARGUMENT FROM ALL OF THE
5 DEFENDANTS WAS THAT THE REDACTION WAS UNSUITABLE IN THAT
6 ONCE EACH STATEMENT WAS REDACTED IT SERVED ONLY TO BOLSTER
7 MR. MOFFATT'S BELIEVED TESTIMONY, WHO WAS AT THAT TIME THE
8 ONLY PERSON WHO HAD TURNED AS A STATE'S WITNESS AND WOULD DO
9 AWAY WITH THE DISCREPANCIES IN THE DIFFERENT STATEMENTS; IS
10 THAT CORRECT?

11 A. PRETTY MUCH SO. THERE WAS, OF COURSE, SOME OTHER
12 ISSUES THAT WE ARGUED AS WELL, BUT --

13 Q. AND JUDGE HAYES TOOK THAT UNDER ADVISEMENT INITIALLY
14 RIGHT AFTER THE ARGUMENTS OF THAT; IS THAT CORRECT?

15 A. YES, SIR.

16 Q. AND THEN Y'ALL PROCEEDED INTO THE -- HAVING A JACKSON
17 VERSUS DENNO HEARING ON THE DIFFERENT STATEMENTS; IS THAT
18 CORRECT?

19 A. YES.

20 Q. HAD YOU FILED A MOTION FOR MY CLIENT'S STATEMENT TO BE
21 SUPPRESSED?

22 A. I DON'T BELIEVE I DID.

23 Q. OKAY.

24 A. I DON'T RECALL THAT WE HAD A JACKSON V. DENNO ON HIM. I
25 THINK THE OTHER --

1 Q. I BELIEVE THE TRANSCRIPT REFLECTS THAT THERE WAS A
2 JACKSON VERSUS DENNO HEARING ON MCCREARY'S STATEMENT; IS
3 THAT CORRECT?

4 A. YES.

5 Q. AND THERE WAS ALSO A JACKSON VERSUS DENNO HEARING ON
6 ANTONIO GORDON'S STATEMENT; IS THAT CORRECT?

7 A. UH-HUH; UH-HUH.

8 Q. AND IT WAS DURING THE BREAK IN ONE OF THOSE HEARINGS
9 AND AFTER THE LUNCH BREAK OF ONE OF THOSE HEARINGS THAT MY
10 CLIENT ENTERED HIS PLEA BEFORE JUDGE HAYES.

11 A. RIGHT.

12 Q. IS THAT CORRECT?

13 A. UH-HUH.

14 Q. AND SO WOULD IT BE A FAIR STATEMENT TO SAY THAT AT THE
15 TIME OF THESE HEARINGS, BEFORE JUDGE HAYES COULD RULE ON THE
16 SEVERANCE ISSUE, HE WAS GOING TO NEED TO DETERMINE WHICH OF
17 THOSE STATEMENTS WERE GOING TO COME INTO EVIDENCE?

18 A. YES; UH-HUH.

19 Q. BECAUSE IF A STATEMENT WASN'T GOING TO COME INTO
20 EVIDENCE, THEN IT WOULDN'T BE AN ISSUE OF REDACTION; IS THAT
21 CORRECT?

22 A. YES, OBVIOUSLY.

23 Q. OKAY. SO AT THE TIME OF MY CLIENT'S PLEA, HE WOULD NOT
24 HAVE ISSUED A FORMAL RULING YET ON SEVERANCE THAT HAD BEEN
25 REQUESTED?

1 A. I KNOW WE ARGUED AND I ARGUED AND GILLAN ARGUED. WELL,
2 ACTUALLY, D'AGOSTINO AND I GAVE THE MAJORITY OF THE
3 ARGUMENT, THEN GILLAN JUST KIND OF PIGGY-BACKED ON US. I'M
4 NOT SURE OF THE SEQUENCE.

5 Q. OKAY.

6 A. YOU MAY BE RIGHT. I JUST DON'T RECALL.

7 Q. OKAY. BUT YOU HAD MADE A MOTION FOR SEVERANCE?

8 A. YES, SIR.

9 Q. OKAY. AND THAT WAS AN IMPORTANT ISSUE TO YOU, WAS IT
10 NOT?

11 A. UH-HUH.

12 Q. OKAY. NOW, MR. GORDON, MR. MONTA GORDON, GAVE A
13 STATEMENT TO THE POLICE THAT INDICATED THAT HE WAS IN THE
14 BACK SEAT OF THE CAR; IS THAT CORRECT?

15 A. CORRECT.

16 Q. IT ALSO INDICATED THAT HE DID NOT GET OUT OF THE BACK
17 SEAT OF THE CAR.

18 A. THE STATEMENT SAID THAT?

19 Q. HIS STATEMENT. I KNOW THERE WERE VARYING---

20 A. UH-HUH.

21 Q. ---STATEMENTS AS TO THE---

22 A. UH-HUH.

23 Q. ---WHERE'S AND WHAT-FORS OF EACH PERSON.

24 A. YEAH. I GUESS HIS STATEMENT -- THAT MAY BE TRUE. I'M
25 NOT SURE WITHOUT REFERRING BACK TO MY NOTES ON THAT.

1 Q. OKAY. AND IT APPEARS FROM THE TRANSCRIPT AND THE FACTS
2 GIVEN AT THE PLEA THAT THE ALLEGED AGREEMENT AND DECISION TO
3 ROB THIS YOUNG MAN WAS MADE PROBABLY IN LESS THAN A MINUTE.
4 IT WAS MADE VERY QUICKLY AND THE TWO PEOPLE WHO GOT OUT OF
5 THE CAR FIRST WERE ANTONIO GORDON AND MR. MCCREARY.

6 A. THAT MAY BE TRUE.

7 Q. I MEAN, DOES THAT SOUND CONSISTENT?

8 A. SOUNDS CORRECT; UH-HUH.

9 Q. OKAY. AND THAT THE WHOLE INCIDENT PROBABLY LASTED LESS
10 THAN A MINUTE.

11 A. I DON'T RECALL ANY EVIDENCE OF HOW -- THE LENGTH OF
12 TIME THAT THE INCIDENT LASTED.

13 Q. OKAY.

14 A. IT SEEMED LIKE IT WOULD HAVE TO HAVE BEEN MORE THAN A
15 MINUTE BECAUSE OF THE -- WELL, JUST FROM THE FACTS.

16 Q. OKAY. NOW, DURING -- YOU HAD A MEETING -- DID YOU HAVE
17 A MEETING WITH MR. GORDON DURING THE LUNCH BREAK PRIOR TO
18 HIS PLEA?

19 A. I DON'T RECALL ANY MEETING.

20 Q. YOU DON'T RECALL A MEETING?

21 A. JUST PRIOR -- THAT LUNCH BREAK PRIOR TO THE PLEA. I
22 KNOW THERE WAS A BREAK IN THERE, BUT --

23 Q. OKAY. PRIOR TO THE LUNCH BREAK THERE WAS A HEARING
24 ABOUT WHETHER OR NOT THE STATEMENT WAS BEING ADMISSIBLE;
25 ISN'T THAT CORRECT?

1 A. DON'T RECALL.

2 Q. YOU DON'T RECALL?

3 A. HUH-UH.

4 Q. AND THEN IMMEDIATELY AFTER THE LUNCH BREAK MR. GORDON
5 ENTERED A PLEA OF GUILTY.

6 A. OKAY.

7 Q. OKAY?

8 A. YES.

9 Q. WHEN DID YOU TALK WITH MR. GORDON ABOUT CHANGING HIS
10 PLEA TO A PLEA OF GUILTY TO MURDER, ARMED ROBBERY, ATTEMPTED
11 ARMED ROBBERY, TWO COUNTS, FAILURE TO STOP FOR A BLUE LIGHT?
12 I THINK IT'S THOSE FOUR CHARGES.

13 A. WHEN DID I TALK TO HIM?

14 Q. YES.

15 A. WELL, I TALKED TO HIM MANY, MANY TIMES ABOUT IT. I
16 ALSO HAD HIM SIGN A STATEMENT FOR ME. UNFORTUNATELY IT'S
17 UNDATED, BUT IT'S -- IT REFLECTS THAT I ADVISED HIM -- HE
18 INITIALED BESIDE ALL THE STATEMENTS HERE AND SIGNED THE
19 STATEMENT ON THE BOTTOM THAT REFLECTS THAT I ADVISED HIM OF
20 THE CHARGES, THE MURDER, ATTEMPTED ROBBERY OF ERIC KRENN,
21 ATTEMPTED ARMED ROBBERY OF CHRISTOPHER DIAZ, CONSPIRACY,
22 FAILURE TO STOP FOR BLUE LIGHTS AND THREE COUNTS POSSESSION
23 OF A FIREARM DURING A VIOLENT CRIME. HE INITIALLED BESIDE
24 THAT AND (B), THE MAXIMUM PENALTY FOR THE CHARGE OF MURDER
25 IS DEATH/LIFE WITHOUT PAROLE OR THIRTY YEARS WITHOUT PAROLE.

1 ON A DAY-TO-DAY BASIS HE INITIALLED BESIDE THAT. THE NEXT
2 ONE, PENALTY FOR ATTEMPTED ARMED ROBBERY, IS TWENTY YEARS
3 WITHOUT PAROLE. HE INITIALLED BESIDE THAT. THE MAXIMUM
4 PENALTY FOR CONSPIRACY IS FIVE YEARS. HE INITIALLED BESIDE
5 THAT. THE MAXIMUM PENALTY FOR FAILURE TO STOP FOR BLUE
6 LIGHTS IS FIVE YEARS, INITIALLED BESIDE THAT. THE MAXIMUM
7 PENALTY FOR POSSESSION OF A FIREARM DURING THE COMMISSION OF
8 A VIOLENT CRIME IS FIVE YEARS. HE INITIALLED BESIDE THAT.
9 THE STATE IS OFFERING A PLEA AGREEMENT WHEREIN THEY WOULD
10 ALLOW ME TO PLEA TO MURDER, ATTEMPTED ARMED ROBBERY, TWO
11 COUNTS, CONSPIRACY AND FAILURE TO STOP FOR BLUE LIGHTS FOR A
12 MAXIMUM PENALTY OF THIRTY YEARS WITHOUT PAROLE. HE
13 INITIALLED BESIDE THAT. IF I REFUSE THIS AGREEMENT, I COULD
14 BE TRIED FOR ALL OFFENSES AND FACE THE DEATH PENALTY, LIFE
15 WITHOUT POSSIBILITY OF PAROLE OR PUNISHMENT OF NINETY-THREE
16 YEARS CONFINEMENT IF FOUND GUILTY OF ALL OFFENSES AND
17 SENTENCING IS CONSECUTIVE RATHER THAN CONCURRENT. HE
18 INITIALLED BESIDE THAT AND HE ALSO SIGNED AT THE BOTTOM OF
19 THIS DOCUMENT.

20 Q. OKAY. MAY I HAVE IT?

21 A. CERTAINLY.

22 Q. MAY I LOOK AT THAT? THANK YOU. DO YOU KNOW WHEN HE
23 SIGNED THIS?

24 A. I DON'T. UNFORTUNATELY, I DIDN'T DATE IT, BUT IT WAS
25 CERTAINLY LONG BEFORE WE EVER DECIDED ON -- LONG BEFORE THE

1 TIME OF THE GUILTY PLEA.

2 Q. WELL, WHEN DID THE STATE MAKE YOU THAT OFFER THEN?

3 A. WHEN DID THE STATE MAKE ME THE OFFER OF THE PLEA
4 AGREEMENT? THE EXACT DATE, I HAVE NO IDEA. I DON'T RECALL
5 THAT.

6 Q. WELL, WHAT -- EVIDENTLY AT THE TIME THAT YOU MADE A
7 MOTION TO SEVER HIS TRIAL, WHICH WAS DONE ABOUT THREE DAYS
8 BEFORE THE SCHEDULED TRIAL DATE,---

9 A. OKAY.

10 Q. ---YOU AND MR. GORDON HAD NOT AT THAT TIME ACCEPTED
11 THIS PLEA OFFER.

12 A. NO; I DON'T BELIEVE WE DID. WE HAD THE OFFER AND WE
13 WERE -- I HAD PRESENTED THIS TO MONTA IN CONTACT VISITS THAT
14 I'D HAD WITH HIM AND CERTAINLY WE WERE IN THE NEGOTIATION
15 STAGES, VERY, VERY, DEEP IN THE NEGOTIATION STAGES WITH
16 SOLICITOR THOMPSON AT THAT TIME AND WE WERE, I WOULD SAY,
17 NINETY PERCENT, MAYBE MORE THAN THAT, DECISION THAT WE WOULD
18 GO AHEAD AND ACCEPT THAT PLEA AGREEMENT.

19 Q. DID YOU RECOMMEND TO HIM TO ACCEPT THE PLEA AGREEMENT?

20 A. YES, I DID.

21 Q. OKAY. WOULD YOU TELL ME THE BASIS ON WHICH YOU
22 RECOMMENDED TO HIM TO ACCEPT THIS PLEA AGREEMENT?

23 A. WELL, THE BASIS WAS, IN REVIEWING ALL OF THE EVIDENCE,
24 THE STATEMENTS OF THE OTHER INDIVIDUALS INVOLVED, THE
25 EVIDENCE WAS OVERWHELMING THAT MR. MONTA GORDON WAS AT THE

1 DRIVER'S SIDE OF THE CAR BESIDE HIS BROTHER WHEN THE ACTUAL
2 SHOT WAS FIRED. THERE WAS ANOTHER WITNESS IN THE CAR, OF
3 COURSE, WHOSE STATEMENT WAS VERY COMPELLING, VERY KNOWING TO
4 THIS ISSUE AND IT JUST -- WITH THE OVERWHELMING WEIGHT OF
5 THE EVIDENCE, I FELT THAT HE WOULD BE CONVICTED OF MURDER
6 AND SENTENCED APPROPRIATELY IF WE WENT TO TRIAL.

7 Q. AND SO THERE WAS -- THERE WAS A STATEMENT YOU FELT LIKE
8 THE EVIDENCE WOULD BE THAT IT WOULD SHOW THAT MONTA GORDON
9 WAS STANDING OUTSIDE OF OR NEXT TO THE CAR?

10 A. CORRECT.

11 Q. OKAY. WOULD IT SHOW ANYTHING ELSE OTHER THAN THAT?

12 A. YEAH. THE OTHER BOY THAT WAS IN THE CAR,---

13 Q. MR. DIAZ?

14 A. ---THE PASSENGER, YES, HIS STATEMENT WAS VERY
15 INCRIMINATING, AS I RECALL IT. HE -- HE IDENTIFIED MONTA --
16 I THINK HE HAD -- IT WAS CLEAR THAT HE HAD MIXED UP THE TWO
17 BROTHERS AT THE TIME.

18 Q. OKAY. SO HE INITIALLY IDENTIFIED MONTA AS THE SHOOTER,
19 WHICH WAS INCORRECT?

20 A. THAT'S CORRECT.

21 Q. OKAY.

22 A. BUT IT WAS CERTAINLY CLEAR FROM THE REST OF THE
23 STATEMENT AND ONCE EVERYTHING WAS SORTED OUT, THAT IT WAS IN
24 FACT MONTA OR ANTONIO WHO WAS THE SHOOTER, BUT MONTA WAS
25 STANDING THERE, BASICALLY, ENCOURAGING HIM TO DO SO, NOT TO

1 SHOOT HIM, BUT TO --

2 Q. WHAT EVIDENCE -- SO THERE WAS EVIDENCE THAT MONTA WAS
3 ENCOURAGING HIM TO DO SO?

4 A. YEAH. THIS -- I BELIEVE IT WAS THE STATEMENT OF THE --

5 Q. AND YOU FELT THAT THAT'S WHY HE NEEDED TO ENTER A PLEA
6 TO MURDER AND ALL OF THESE----

7 A. YEAH. ALL OF THE STATEMENTS --

8 Q. ----CHARGES?

9 A. ALL OF THE STATEMENTS THAT I SAW INDICATED THAT HE
10 CERTAINLY WOULD BE --

11 Q. DID YOU TELL HIM ABOUT THE HAND OF ONE IS THE HAND OF
12 ALL?

13 A. YES.

14 Q. WHAT DID YOU EXPLAIN TO HIM WHAT THAT MEANS?

15 A. WELL, THAT IF YOU'RE PRESENT AND A PRINCIPAL IN THIS --
16 IN THE OFFENSE, YOU MAY BE CHARGED WITH WHATEVER CRIME IS
17 COMMITTED AT -- DURING THAT -- IN THE UNFOLDING OF THAT
18 OFFENSE, JUST AS THE ACTUAL -- WELL, IN THIS CASE AS THE
19 SHOOTER. HE COULD BE CONVICTED OF THE SAME OFFENSE, JUST AS
20 IF HE HAD SHOT HIM.

21 Q. AND WHAT WOULD CAUSE HIM TO REACH THAT LEVEL?

22 A. PARDON ME?

23 Q. WHAT WOULD CAUSE HIM TO REACH THE LEVEL?

24 A. JUST BY VIRTUE OF HIM BEING A PRINCIPAL TO THE CRIME,
25 IN OTHER WORDS, BEING THERE.

1 Q. SO HIS PRESENCE ALONE MAKES HIM A PRINCIPAL?

2 A. IF HE IS AIDING AND ABETTING IN A CRIME, WHICH HE WAS.

3 Q. IF HE IS ACTIVELY PARTICIPATING---

4 A. CORRECT; YES.

5 Q. ---SOMEHOW, EITHER ENCOURAGING OR---

6 A. YES.

7 Q. ---SOME OTHER AFFIRMATIVE ACT?

8 A. CORRECT.

9 Q. OKAY. AND YOU TOLD HIM THESE THINGS?

10 A. YES.

11 Q. OKAY.

12 A. NUMEROUS TIMES.

13 Q. WHAT DID YOU TELL HIM IN REGARDS TO THE ATTEMPTED ARMED
14 ROBBERY AS FAR AS WHAT THAT CONSTITUTED?

15 A. WHAT DID I TELL HIM ABOUT IT?

16 Q. YES.

17 A. I'M SURE I READ HIM THE ELEMENTS OF THE OFFENSE OF EACH
18 AND EVERY ONE OF THESE OFFENSES, 'CAUSE WE HAD -- AS I SAID,
19 WE HAD EXTENSIVE CONTACT VISITS AND CONVERSATIONS ON THE
20 TELEPHONE. I ALSO HAD THE INVESTIGATOR WITH ME AT SEVERAL
21 OF THESE TIMES -- CONTACT VISITS THAT WE HAD WITH MONTA AND
22 I CAN TELL YOU WHEN WE HAD THE VISITS. I CAN'T TELL YOU
23 WORD FOR WORD WHAT WAS SAID, BUT I KNOW WE DISCUSSED AT
24 LENGTH AND IN DEPTH EVERY SINGLE OFFENSE, EVERY SINGLE
25 OPTION, POSSIBLE CONSEQUENCES IF WE WENT FORWARD WITH A

1 TRIAL AS OPPOSED TO A GUILTY PLEA AND I'VE GOT MY -- GOT MY
2 ATTORNEY'S TIME SHEET HERE, IF YOU'D LIKE TO TAKE A LOOK AT
3 THAT, YOU CAN SEE THE NUMBER OF TIMES THAT I DID SPEAK TO
4 HIM.

5 Q. I MEAN, BUT YOU WERE CONVINCED AND YOU TOLD HIM THAT
6 YOU WERE SATISFIED WITH THE PLEA BECAUSE OF HIS ACTIVE,
7 AFFIRMATIVE INVOLVEMENT IN THIS CASE?

8 A. YES, AND -- OR -- THE TOTALITY OF THE EVIDENCE. IT
9 WASN'T ANY SPECIFIC --

10 Q. OKAY.

11 A. BUT CERTAINLY HE WAS INVOLVED.

12 Q. FOR EACH AND EVERY CHARGE THAT HE PLED TO, THE MURDER?

13 A. CORRECT.

14 Q. TWO ATTEMPTED ARMED ROBBERIES,---

15 A. UH-HUH.

16 Q. FAILURE TO STOP FOR A BLUE LIGHT?

17 A. RIGHT.

18 Q. AND CONSPIRACY?

19 A. RIGHT.

20 Q. OKAY. AND I THINK THOSE WERE ALL THAT HE PLED TO.

21 A. AS I RECALL, THAT WAS IT.

22 Q. OKAY. NOW, MR. MATLOCK, IN REGARDS TO THAT, I WOULD
23 ASK --

24 MR. GREELEY: IF YOUR HONOR WOULD GIVE ME A MINUTE.

25 THE COURT: YES, SIR.

1 MR. GREELEY: I'M LOOKING FOR A PLACE IN THE TRANSCRIPT
2 REGARDING MY CLIENT'S SENTENCING.

3 Q. HE WAS SENTENCED ON A SEPARATE DAY THAN HIS PLEA; IS
4 THAT CORRECT?

5 A. THAT'S RIGHT.

6 Q. SO JUDGE HAYES TOOK HIS PLEA AND ACCEPTED HIS PLEA ON
7 ALL OF THE CHARGES AND NOTHING WAS PRESENTED ON HIS BEHALF
8 UNTIL, I THINK, ON THE MONDAY WHEN THERE WAS SENTENCING FOR
9 THE OTHER TWO; IS THAT CORRECT?

10 A. THAT'S RIGHT; UH-HUH.

11 Q. AND -- OKAY. OKAY. YOU HAD TALKED ABOUT HOW YOU FELT
12 HE NEEDED TO PLEAD GUILTY BECAUSE OF HIS ACTIVE, AFFIRMATIVE
13 INVOLVEMENT AS A PRINCIPAL IN THIS; IS THAT CORRECT?

14 A. (NODS HEAD AFFIRMATIVELY)

15 Q. ON HIS SENTENCING ON PAGE 195 OF THE TRANSCRIPT, --

16 A. WHICH ONE WAS THAT, ONE OR TWO?

17 Q. OF THE TRANSCRIPT BEFORE JUDGE HONORABLE JOHN C. HAYES
18 OF JULY 12TH, 14TH AND 16TH, BOOK NUMBER TWO.

19 A. TWO. WHAT PAGE? 195?

20 Q. YES.

21 A. YES, SIR.

22 Q. OKAY. THEN IF YOU LOOK DOWN ON PAGE -- I MEAN, ON LINE
23 TWENTY-ONE OF 195,---

24 A. OKAY.

25 Q. ---BASED UPON WHAT YOU SAID, WHY DID YOU REPRESENT TO

1 THE COURT IN HIS SENTENCING WHEN YOU STATED, BUT HE WAS
2 NEITHER THE ONE WHO ACTUALLY FIRED THE SHOT, NOR WAS IT HE
3 WHO ENCOURAGED OR URGED HIS BROTHER TO COMMIT THIS CRIME?

4 A. WHY DID I SAY THAT?

5 Q. YEAH. WAS THAT TRUE?

6 A. WELL, I SAID IT.

7 Q. AND WAS THAT STATEMENT TRUE?

8 A. I PRESUME IT WAS TRUE AT THE TIME.

9 Q. WAS THAT STATEMENT TRUE?

10 A. YES.

11 Q. OKAY. BUT THAT WOULDN'T MAKE HIM A PRINCIPAL, WOULD
12 IT?

13 A. WHAT'S THAT?

14 Q. THAT WOULDN'T MAKE HIM A PRINCIPAL TO MURDER IF HE HAD
15 NOT URGED OR IN ANY WAY TRIED TO GET HIS BROTHER TO COMMIT
16 THIS CRIME?

17 A. WELL, HE WAS PRESENT AT THE TIME. HE WAS -- HE DID
18 NOTHING TO DISCOURAGE HIS BROTHER AND THERE WAS SOME
19 STATEMENT THAT I -- THAT I RECALL OF THE OTHER PASSENGER IN
20 THE CAR AT THE TIME THAT HE WAS -- GET THE CAR, LET'S THE
21 CARS OR WORDS TO THAT EFFECT. NOW, WHETHER HE ENCOURAGED OR
22 URGED HIS BROTHER, I JUST --

23 Q. OKAY.

24 MS. VAN GINHOVEN: I WOULD JUST THAT HE READ THE REST
25 OF THAT. IT FOLLOWS ON TO THE NEXT PAGE, IT MAY REFRESH HIS

1 MEMORY A LITTLE BIT.

2 A. OKAY. HE WAS IN THE BACK SEAT OF THE CAR. HE WAS IN
3 THE BACK SEAT OF THE CAR AND WHEN HE GOT OUT AFTER HIS
4 BROTHER AT THE URGING OF THE DRIVER, GOT OUT WITH A GUN, AND
5 WENT OVER TO THE DRIVER'S SIDE OF THE CAR. YOUR HONOR, AS
6 YOU ARE WELL AWARE --

7 Q. SO BASED ON THAT STATEMENT, HE WAS PRESENT?

8 A. RIGHT.

9 Q. OKAY. DID YOU TALK TO HIM ABOUT THE DEFENSE OF MERE
10 PRESENCE REGARDING THE LAW OF PRINCIPLES?

11 A. YEAH. AS I SAID, WE WERE INVOLVED IN SO MANY MEETINGS
12 AND EXTENSIVE CONTACT VISITS, TELEPHONE CALLS, I'M SURE I
13 DISCUSSED THE HAND OF ONE IS THE HAND OF ALL AND MERE
14 PRESENCE IS NOT IN AND OF ITSELF A -- DISPOSITIVE OF THAT
15 ISSUE. HOWEVER, HIS INVOLVEMENT WAS SUCH THAT CERTAINLY HE
16 -- HE WOULD BE CHARGED -- HE COULD BE CHARGED WITH THAT AND
17 HE WAS CHARGED WITH THAT.

18 Q. ALL RIGHT. AND TO YOUR KNOWLEDGE, IN REGARDS TO THE
19 MURDER, WHAT WAS HIS INVOLVEMENT?

20 A. WHAT WAS HIS INVOLVEMENT?

21 Q. YES. IN REGARDS TO THE ACTUAL SHOOTING.

22 A. OKAY. HIS -- HE HAD GOTTEN OUT OF THE CAR.

23 Q. NOW, HIS STATEMENT DID SAY -- I'M SORRY TO INTERRUPT
24 YOU, ---

25 A. THAT'S OKAY.

1 Q. ---BUT HIS STATEMENT DID SAY THAT HE STAYED IN THE CAR,
2 DIDN'T IT?

3 A. I UNDERSTAND, BUT THERE WAS OVERWHELMING EVIDENCE
4 OTHERWISE THAT HE GOT OUT OF THE CAR.

5 Q. THERE WAS OTHER EVIDENCE THAT HE GOT OUT OF THE CAR---

6 A. RIGHT.

7 Q. ---AND THAT WAS FROM MR. MOFFATT---

8 A. RIGHT.

9 Q. ---AND HIS BROTHER?

10 A. UH-HUH.

11 Q. OKAY. MR. MCCREARY DIDN'T HAVE HIM GETTING OUT OF THE
12 CAR, DID HE?

13 A. NO.

14 Q. OKAY.

15 A. AND IN MY CONFERENCES WITH MONTA HE SAID, YEAH, I DID.
16 I GOT OUT OF THE CAR. HE TOLD ME THAT.

17 Q. OKAY.

18 A. AND SO HE WAS THERE. HIS BROTHER GOT OF THE CAR, HE
19 GOT OUT OF THE CAR. THEY BOTH WENT TO THE SIDE OF THE
20 VEHICLE WHERE THE DECEASED WAS, THE DRIVER. THERE WAS
21 ANOTHER PERSON IN THE CAR THERE AND THAT OTHER PERSON
22 IMPLICATED HIM AS NOT MERELY BEING A PASSER-STANDBY PERSON,
23 BUT BEING ACTIVELY INVOLVED. NOW, I GUESS I SAID EARLIER
24 THAT HE'S -- THAT IN MY OPINION THE STATEMENT SAID URGED HIM
25 OR I MAY HAVE -- I DON'T HAVE THE STATEMENT IN FRONT OF ME

1 OBVIOUSLY, BUT HE CERTAINLY WAS NOT THERE TO TRY TO SAY,
2 LOOK, ANTONIO, WE GOT TO GET BACK IN THE CAR, STOP THIS. IT
3 WAS BASICALLY HE WAS NOT -- HE WAS A PARTICIPANT AND I THINK
4 THERE WAS LITTLE DOUBT IN THAT FROM THE STATEMENTS OF
5 EVERYONE INVOLVED AND MOST IMPORTANTLY FROM THAT PERSON IN
6 THE CAR, ALBEIT HE WAS MISTAKEN ORIGINALLY AS TO THE
7 IDENTITY, BUT THAT WAS SOMETHING THAT WAS JUST A MISTAKE
8 THAT WAS OBVIOUS AND WOULD BE CLEARED UP AT TRIAL WITHOUT
9 ANY PROBLEM WHATSOEVER.

10 Q. OKAY.

11 MR. GREELEY: YOUR HONOR, I DON'T HAVE ANY FURTHER
12 QUESTIONS OF THIS WITNESS. THANK YOU.

13 THE COURT: COUNSEL.

14 CROSS-EXAMINATION

15 JOSEPH D. MATLOCK BY MS. VAN GINHOVEN:

16 Q. MR. MATLOCK,---

17 A. OH, I'M SORRY. NOT USED TO BEING A WITNESS. YES.

18 Q. ---DID THIS COME OUT OF YOUR ATTORNEY FILE?

19 A. YES, IT DID.

20 MS. VAN GINHOVEN: OKAY. I WOULD LIKE TO MOVE THIS
21 INTO EVIDENCE. THIS IS THE LIST THAT MONTA GORDON
22 UNDERSTOOD WHAT HE DISCUSSED WITH HIS ATTORNEY.

23 MR. GREELEY: NO OBJECTION.

24 THE COURT: ADMITTED WITHOUT OBJECTION.

25 Q. AND DID YOU SAY YOU HAD A TIME SHEET TO SHOW HOW MANY

1 TIMES YOU MET WITH MR. GORDON?

2 A. YES, I DO.

3 Q. OR COULD YOU AT LEAST JUST TELL US WHEN ARE THE TIMES
4 YOU -- HOW MANY TIMES YOU MET WITH HIM?

5 A. YOU WANT ME TO JUST GO DOWN THE LIST, JUST COUNTING?

6 Q. JUST APPROXIMATELY HOW MANY TIMES YOU THINK.

7 A. OKAY. ONE, TWO, THREE -- I'M INCLUDING TELEPHONE CALL
8 CONVERSATIONS.

9 Q. OKAY.

10 A. ONE, TWO, THREE, FOUR, FIVE, SIX, SEVEN, EIGHT, NINE,
11 TEN, ELEVEN. I THINK I COUNTED TWELVE TIMES.

12 Q. AND THIS CASE, MONTA GORDON AND ANTONIO GORDON WERE
13 BROTHERS: IS THAT RIGHT?

14 A. YES, MA'AM.

15 Q. AND I THINK TERRENCE MCCREARY, WAS HE NOT A COUSIN OR
16 SOMEHOW RELATED TO THEM?

17 A. I THINK SO. I'M NOT SURE, BUT --

18 Q. SO THEY WERE ALL RELATED AND IT PROBABLY WASN'T VERY
19 EASY FOR ONE BROTHER TO TESTIFY AGAINST ANOTHER.

20 A. CERTAINLY.

21 Q. IS THAT PART OF THE REASON THAT THE PLEA WAS ACCEPTED
22 THEN?

23 A. I'M SORRY. I MISUNDERSTOOD YOUR QUESTION.

24 Q. WELL, MONTA GORDON -- YOU SAID -- WHEN DID THE
25 SOLICITOR MAKE YOU THE OFFER, PLEA OFFER?

1 A. YOU KNOW, IN MY RECOLLECTION, IT WAS PRETTY EARLY ON
2 AND THAT WE UNDERSTOOD THAT IN MY -- OUR CONSULTATIONS WITH
3 THE SOLICITOR -- LET'S SEE. OKAY. VERY EARLY ON. ON
4 OCTOBER 14TH I HAVE LISTED HERE A CONSULT WITH THE DEPUTY
5 SOLICITOR, THAT BEING WILLY THOMPSON AND THE ULTIMATE PLEA
6 DIDN'T OCCUR UNTIL JULY 16TH. SO, YOU KNOW, YOU'RE TALKING
7 ABOUT A PERIOD OF MANY MONTHS, YOU KNOW, PRIOR -- NOVEMBER
8 WAS WHEN I FIRST TALKED TO THE SOLICITOR. AT THAT TIME I
9 THINK EVEN BACK THEN WE WERE -- YOU KNOW, WERE STILL IN
10 SLUSHY CONCRETE AT THAT TIME, BUT WE WERE DISCUSSING
11 POSSIBILITIES IN THE CASE AND, YOU KNOW, WHAT -- JUST AS ANY
12 DEFENSE LAWYER KNOWS, WHEN YOU TALK TO A SOLICITOR THE FIRST
13 THING IS YOU SAY, WELL, WHAT ARE WE LOOKING AT HERE AND
14 THAT'S -- I THINK HE PROBABLY MENTIONED SOMETHING ABOUT THE
15 ULTIMATE PLEA AGREEMENT THEN.

16 Q. AS PART OF THE GUILTY PLEA THEY DISMISSED THE
17 CARJACKING INDICTMENT WHICH HAD BEEN DIRECTLY INDICTED;
18 CORRECT?

19 A. YEAH; THAT'S RIGHT.

20 Q. AND THEY DISMISSED THE POSSESSION OF WEAPON CHARGES OF
21 WHICH HE HAD THREE.

22 A. RIGHT.

23 Q. ONE ON THE MURDER INDICTMENT AND ONE ON EACH ATTEMPTED
24 ARMED ROBBERY INDICTMENT.

25 A. YES, MA'AM.

1 Q. AND THEY ALSO RECOMMENDED A SENTENCE OF THIRTY YEARS.

2 A. RIGHT.

3 Q. OKAY. NOW, IF THEY HAD GONE TO TRIAL, THEY WERE -- THE
4 SENTENCE WOULD HAVE BEEN LIFE WITHOUT PAROLE.

5 A. WELL, ACTUALLY, I THINK HE -- IT COULD HAVE BEEN A
6 DEATH PENALTY CASE, BUT I BELIEVE -- YOU KNOW, THEY WEREN'T
7 GOING WITH A CAPITAL CASE, SO WE KNEW THAT. THAT'S CORRECT.
8 SO, YEAH, IT WOULD HAVE BEEN LIFE WITHOUT PAROLE.

9 Q. AND, IN FACT, MONTA GORDON WAS THE FIRST ONE TO
10 ACTUALLY PLEAD GUILTY OF THE THREE? OUT OF TERRENCE---

11 A. I THINK SO; YES.

12 Q. ---AND ANTONIO, MONTA WENT FIRST?

13 A. RIGHT. BECAUSE HE WAS -- HE WAS BEING VIEWED AS A
14 POTENTIAL WITNESS FOR THE TRIAL THAT WAS SCHEDULED FOR
15 MONDAY.

16 Q. RIGHT. AND THAT WOULD HAVE BEEN -- AND BY THE END OF
17 THE DAY THE TRIAL WAS GOING TO BE, AGAIN, ANTONIO GORDON
18 BEING THE ONLY DEFENDANT LEFT WITH THE TESTIMONY OF MONTA
19 GORDON, TERRENCE MCCREARY AND GARY MOFFATT WHO WERE ALL
20 INVOLVED.

21 A. RIGHT.

22 Q. THEY WERE GOING TO TESTIFY AGAINST ANTONIO?

23 A. THAT'S CORRECT.

24 Q. AT THE LAST HOUR ANTONIO ENDED UP PLEADING GUILTY AS
25 WELL?

1 A. YES, MA'AM.

2 Q. AND HE RECEIVED LIFE WITHOUT PAROLE?

3 A. NO. I THINK IT WAS FORTY-FIVE YEARS.

4 Q. MAYBE HE DID RECEIVE THIRTY-FIVE YEARS. FORTY?

5 A. FORTY YEARS.

6 Q. BUT AS PART OF THIS -- AS PART OF THIS PLEA, HE -- HE
7 RECEIVED A THIRTY-YEAR SENTENCE?

8 A. YES.

9 Q. AND THAT WAS THE RECOMMENDATION FROM THE SOLICITOR'S
10 OFFICE?

11 A. THAT WAS -- YEAH. THAT WAS THE PLEA AGREEMENT THAT HE
12 SIGNED.

13 Q. NOW, WHOSE DECISION WAS IT TO PLEAD GUILTY?

14 A. IT WAS HIS, MONTA'S.

15 Q. AND FROM ALL THE EVIDENCE THAT WAS GATHERED, THE
16 STATEMENTS FROM THE DIFFERENT CO-DEFENDANTS, STATEMENTS FROM
17 THE VICTIMS, THE EVIDENCE WOULD SHOW THAT HE WAS---

18 A. OVERWHELMING.

19 Q. ---PARTICIPATING IN A CRIME?

20 A. YES. AND I'VE BEEN AN ATTORNEY IN THE MILITARY AND IN
21 CIVILIAN LIFE FOR PROBABLY TWENTY-FIVE YEARS, AT THAT TIME
22 TWENTY-SOME YEARS, AND I WAS EVEN A MILITARY JUDGE AND I'VE
23 SEEN AN AWFUL LOT OF CASES AND THIS WAS AS STRONG A CASE AS
24 I'D EVER SEEN AND THAT'S -- YOU KNOW, AND, OF COURSE, THAT'S
25 WHY WE -- I TALKED TO MONTA THAT I RECOMMENDED THIS BECAUSE

1 HE WAS FACING MUCH -- YOU KNOW, IF WE WENT TO TRIAL, I WOULD
2 HAVE GIVEN HIM TWO CHANCES OF WINNING AND THAT WAS ZERO AND
3 NONE.

4 Q. WELL, AND GOING BACK TO THE MOTION FOR SEVERANCE, LET'S
5 SAY JUDGE -- IF JUDGE HAYES HAD RULED THAT HE WAS GOING TO
6 SEVER THE CASES,---

7 A. UH-HUH.

8 Q. ---WOULD YOU THINK IT LIKELY THAT MR. MONTA GORDON
9 WOULD HAVE SUCCEEDED AT TRIAL?

10 A. NO. NO, BUT YOU -- AS YOU WELL KNOW, MA'AM, WHEN
11 YOU'RE MAKING -- GOING THROUGH THE MOTIONS PORTION OF A
12 TRIAL YOU HAVE TO GO WITH EVERY EVENTUALITY AND PURSUE EVERY
13 AVENUE THAT WOULD BE BENEFICIAL FOR YOUR -- FOR YOUR CLIENT,
14 BECAUSE IT IS ULTIMATELY HIS DECISION. IF HE WANTED TO GO
15 TO TRIAL, THEN CERTAINLY I WOULD HAVE GONE FORWARD AND MADE
16 MY BEST EFFORT, BUT IT WAS -- IT WOULD HAVE BEEN STRONGLY
17 AGAINST MY LEGAL OPINION AND ASSESSMENT OF HIS CHANCES.

18 Q. OKAY. IS THERE ANYTHING ELSE YOU'D LIKE TO SAY TO THE
19 COURT REGARDING THIS CASE?

20 A. THE EXTENSIVE CONVERSATIONS WE HAD WITH MONTA WITH THE
21 INVESTIGATOR PRESENT ON MANY OF THOSE, I CAN'T RECALL
22 EXACTLY EVERYTHING WE SAID BECAUSE THERE WERE HOURS AND
23 HOURS AND HOURS OF CONTACT VISITS AND TELEPHONE CALLS AND SO
24 ON, BUT I FELT CERTAINLY SECURE IN MY MIND THAT MONTA
25 UNDERSTOOD EVERYTHING WITH REGARD TO THE CHARGES, THAT THERE

1 WAS NO QUESTION IN HIS MIND, THAT HE UNDERSTOOD THE
2 CONSEQUENCES, THAT HE KNOWINGLY AND INTELLIGENTLY -- 'CAUSE
3 HE'S A VERY INTELLIGENT YOUNG MAN -- KNOWING AND
4 INTELLIGENTLY MADE THIS DECISION AND I CONCURRED IN IT.

5 Q. AND IF THERE HAD BEEN ANY ISSUES CONCERNING HIS
6 COMPETENCY, WOULD YOU HAVE REQUESTED A COMPETENCY HEARING---

7 A. ABSOLUTELY AND THERE WASN'T.

8 Q. ---OR AN EVALUATION?

9 A. THERE REALLY WASN'T. AS A MATTER OF FACT, I -- HE
10 JOKED AROUND ABOUT HIS BROTHER SAYING THAT HE, YOU KNOW, HE
11 WAS KIND OF A -- I DON'T WANT TO PUT WORDS IN HIS MOUTH, BUT
12 HE WAS SORT OF BONE HEAD OR SOMETHING LIKE THAT, YOU KNOW,
13 AND HE WAS -- HE WAS FINE. I MEAN, THERE'S NO QUESTION IN
14 MY MIND HE WAS COMPETENT.

15 MS. VAN GINHOVEN: OKAY. I HAVE NO FURTHER QUESTIONS.

16 MR. GREELEY: IF I MAY, YOUR HONOR.

17 THE COURT: YES, SIR.

18 RE-DIRECT EXAMINATION

19 JOSEPH D. MATLOCK BY MR. GREELEY:

20 Q. HE JOKED AROUND ABOUT HIS BROTHER BEING A BONE HEAD?

21 A. WORDS TO THAT EFFECT REALLY. THAT IS A LOOSE
22 INTERPRETATION, BUT FOR SOME REASON I HAVE A RECOLLECTION OF
23 THAT.

24 Q. WELL, HE TALKED TO YOU ABOUT HOW HIS BROTHER WAS KIND
25 OF -- WOULD FLY OFF THE HANDLE,---

1 A. YEAH.

2 Q. ---DIDN'T HE?

3 A. I BELIEVE HE DID.

4 Q. RIGHT. THE -- MAY I SEE YOUR TIME SHEET?

5 A. SURE.

6 Q. OKAY. AND THIS WAS THE TIME SHEET THAT YOU SUBMITTED
7 TO THE OFFICE OF INDIGENT DEFENSE; IS THAT CORRECT?

8 A. YES, SIR.

9 Q. OKAY. SO THE SEVERANCE HEARING WAS IMPORTANT TO YOU?

10 A. SURE.

11 Q. YOU SPENT SEVEN HOURS ON THAT---

12 A. RIGHT.

13 Q. ---PREPARING AND RESEARCHING FOR THAT?

14 A. YES, SIR.

15 Q. AND YOU BELIEVE THAT THE OFFER WAS MADE WAY BACK IN
16 ABOUT OCTOBER?

17 A. YOU KNOW, IF YOU LOOK ON THERE, THE FIRST CONFERENCE I
18 HAD WITH THE SOLICITOR, I THINK, WAS NOVEMBER OR SOMETHING.
19 UP TOP SIDE HERE. I THINK IT'S LIKE THE FIFTH ENTRY OR
20 FOURTH ENTRY OR SOMETHING LIKE THAT.

21 Q. YES. OCTOBER THE 14TH.

22 A. OKAY. YES. AT THAT TIME I -- MY RECOLLECTION IS THAT
23 WE -- WE DISCUSSED IT. I MEAN, IT WASN'T -- OF COURSE, IT
24 WASN'T FIRMED UP. I AS SAID, IT WAS SLUSHY CONCRETE AT THAT
25 TIME, BUT IT WAS JUST A -- JUST WANTED TO GET A FEEL FOR

1 WHAT HIS THINKING WAS AND I'M FAIRLY CERTAIN THAT THAT'S
2 WHEN HE SAID THE THIRTY YEARS.

3 Q. OKAY. THANK YOU.

4 A. SURE.

5 MR. GREELEY: THAT'S ALL I HAVE, YOUR HONOR.

6 MS. VAN GINHOVEN: I HAVE NO FURTHER QUESTIONS.

7 THE COURT: LET ME ASK YOU TO CLARIFY THIS AND PERHAPS
8 FOR ME. ON PAGE 197 OF THE SECOND TRANSCRIPT, TRANSCRIPT
9 NUMBER 2,---

10 MR. MATLOCK: YES, SIR.

11 THE COURT: ---IT APPEARS MR. THOMPSON, HE WAS ONLY
12 SEVENTEEN AT THE TIME THE OFFENSE OCCURRED, AS I UNDERSTAND,
13 AND THAT'S WHAT COUNSEL IS REPRESENTING TODAY. DID HE HAVE
14 A RATHER EXTENSIVE RECORD, JUVENILE RECORD, AND HAD SOME
15 ADULT RECORD?

16 MR. MATLOCK: YES, SIR.

17 THE COURT: AND WAS ON PROBATION AT THAT TIME FOR A
18 POSSESSION OF CRACK COCAINE CHARGE ACCORDING TO THIS; IS
19 THAT YOUR RECOLLECTION?

20 MR. MATLOCK: YES, SIR.

21 THE COURT: AND THAT PROBATION WAS REVOKED AND WHAT
22 HAPPENED WITH THAT SENTENCE? DO YOU KNOW?

23 MR. MATLOCK: I DON'T KNOW.

24 THE COURT: BUT THAT WAS DONE AT THE SAME TIME AS THE
25 GUILTY PLEA; IS THAT CORRECT?

1 MR. MATLOCK: YES, SIR.

2 THE COURT: PROBATION REVOCATION MATTER AND REVOCATION.
3 ALL RIGHT. ANY QUESTIONS RELATED TO THE QUESTION THAT I
4 JUST ASKED, COUNSEL?

5 MR. GREELEY: NO, YOUR HONOR.

6 MS. VAN GINHOVEN: NO, YOUR HONOR.

7 THE COURT: THANK YOU, SIR. YOU MAY STAND DOWN, SIR.

8 MR. MATLOCK: THANK YOU.

9 MR. GREELEY: YOUR HONOR, I CALL MONTA GORDON. MR.
10 GORDON, IF YOU'LL COME AROUND, PLEASE. PLACE YOUR LEFT HAND
11 ON THE BIBLE AND RAISE YOUR RIGHT HAND.

12 (MONTA GORDON, BEING FIRST DULY SWORN, WAS EXAMINED AND
13 TESTIFIED AS FOLLOWS):

14 DIRECT EXAMINATION

15 MONTA GORDON BY MR. GREELEY:

16 Q. MR. GORDON, PLEASE STATE YOUR NAME FOR THE RECORD?

17 A. MONTA GORDON.

18 Q. OKAY. NOW, HOW OLD ARE YOU NOW?

19 A. TWENTY-THREE.

20 Q. TWENTY-THREE? AND I BELIEVE THAT YOU WERE EIGHTEEN
21 WHEN YOU APPEARED BEFORE JUDGE HAYES IN THIS PLEA; IS THAT
22 CORRECT?

23 A. YES, SIR.

24 Q. AND TELL ME ABOUT YOUR MEETINGS WITH MR. MATLOCK. WHEN
25 DID YOU MEET WITH HIM?

1 A. THE FIRST TIME I MET WITH HIM WAS IN OCTOBER.

2 Q. OKAY.

3 A. MY WHOLE CONCERN WAS, BASICALLY, WAS TRYING TO GET A
4 BOND SET. DISCUSSING THIS PLEA AGREEMENT AND ALL THAT, I
5 DON'T RECALL THAT.

6 Q. ALL RIGHT. SO YOU DON'T RECALL HIM TALKING TO YOU
7 ABOUT A PLEA OFFER IN OCTOBER?

8 A. NO, SIR.

9 Q. YOU JUST TALKED WITH HIM ABOUT THE POSSIBILITY OF BOND?

10 A. YES, SIR.

11 Q. OKAY. WHEN WAS THE NEXT TIME THAT YOU RECALL SPEAKING
12 WITH HIM?

13 A. IT WAS LIKE THE BEGINNING OF THE -- BEGINNING OF THE
14 FOLLOWING YEAR.

15 Q. OKAY. WHERE WAS THAT?

16 A. IN '99, BEGINNING OF '99.

17 Q. OKAY. WHERE?

18 A. I WAS IN LOCK UP.

19 Q. AT THE JUSTICE MOSS CENTER?

20 A. UH-HUH.

21 Q. OKAY. IF YOU'LL ANSWER ORALLY SO THAT THE COURT
22 REPORTER DOESN'T---

23 A. YES, SIR.

24 Q. ---HAVE ANY AMBIGUITY ABOUT YOUR RESPONSES. AND WHAT
25 -- DO YOU RECALL WHAT YOU DISCUSSED THEN?

1 A. THE SAME THING, BUT WE HAD MADE A PLEA TO THIRTY YEARS,
2 BUT MY WHOLE CONCERN WAS, BASICALLY, GETTING A BOND SIGNED.

3 Q. SO HE CAME BACK AND PRESENTED YOU AGAIN WITH AN OFFER?

4 A. FOR THIRTY YEARS.

5 Q. OKAY. AND WERE YOU INTERESTED IN TALKING WITH HIM
6 ABOUT THAT AT THAT TIME?

7 A. NO, SIR.

8 Q. OKAY. IS THAT ALL THAT YOU TALKED ABOUT DURING THAT
9 MEETING?

10 A. YES, SIR.

11 Q. OKAY. BEFORE I GET TO THE NEXT MEETING, DID YOU GIVE A
12 STATEMENT TO THE POLICE?

13 A. YES, SIR, I DID.

14 Q. AND WHAT DID YOU TELL THE POLICE IN YOUR STATEMENT?

15 A. IN JULY THE 23RD OF '98 THAT ME, MY BROTHER, TERRENCE
16 MCCREARY AND GARY MOFFATT WAS OUT RIDING AROUND AROUND 1:27
17 THAT MORNING AND THAT WE WAS COMING OFF, I THINK IT WAS
18 WALNUT STREET GOING INTO SOUTH JONES. I TELL MCCREARY THAT
19 IT WAS A CAR COMING DOWN THE ROAD DRIVING A FAST WITH NO
20 LIGHTS ON. SO I TOLD HIM --

21 Q. THE CAR WAS COMING DOWN RATHER FAST AND HAD NO LIGHTS
22 ON; IS THAT RIGHT?

23 A. YES, SIR.

24 Q. OKAY.

25 A. SO WE WAS AT THE STOP SIGN AND I TELL MCCREARY TO BLINK

1 HIS LIGHTS ON AND OFF AND LET THE DRIVER OF THE OTHER CAR
2 KNOW TO CUT HIS LIGHTS ON AND SO THE DRIVER OF THE BMW
3 PULLED UP IN THE DRIVEWAY.

4 Q. AFTER YOU FLASHED YOUR LIGHTS?

5 A. YES, SIR.

6 Q. AND AT THAT TIME MY BROTHER YELLED OUT THE WINDOW CUT
7 YOUR LIGHTS ON. SO AFTER THAT WE STARTED TO PULL OFF A
8 LITTLE BIT, BUT MCCREARY ASKED MY BROTHER TO ASK THE TWO
9 LITTLE WHITE DUDES DO THEY SMOKE REEFER. THE WHITE DUDE
10 SAID YEAH AND THAT HE AIN'T GOT NONE RIGHT NOW. SO I LEFT
11 IT AT THAT, BUT MCCREARY DIDN'T. HE TELL MY BROTHER, WELL,
12 JUST GET HIS CAR, YOU KNOW, SO BY THAT TIME MY BROTHER
13 ALREADY HAD DONE GOT THE PISTOL FROM MCCREARY AND JUMPED OUT
14 OF THE CAR. BY THE TIME I JUMPED OUT OF THE CAR TO GO STOP
15 HIM, LIKE I SAY, I WAS ALREADY, YOU KNOW, ON TWENTY YEARS
16 SUSPENDED THREE YEARS PROBATION, SO I WASN'T OUT LOOKING FOR
17 ANY TROUBLE. WHEN I JUMPED OUT, I JUMPED OUT TO STOP MY
18 BROTHER, BUT IT WAS TOO LATE.

19 Q. OKAY. AT WHAT POINT DID YOU TALK WITH MR. MATLOCK
20 ABOUT ENTERING A PLEA IN THIS CASE?

21 A. I REALLY DIDN'T WANT TO TALK ABOUT NO PLEA BECAUSE THE
22 WHOLE TIME WHEN WE WAS MEETING I WAS TELLING HIM I DIDN'T
23 HAVE NO INVOLVEMENT IN IT SO I'M NOT GOING TO PLEA TO NO
24 THIRTY YEARS.

25 Q. WOULD YOU SAY IT AGAIN? I'M SORRY.

1 A. I SAID THE TIME THAT HE CAME WITH THE INITIAL THIRTY-
2 YEAR PLEA, I TELL HIM I'M NOT GOING TO PLEAD TO IT BECAUSE I
3 DIDN'T HAVE NO INVOLVEMENT IN THE THING, SO I AIN'T WANTING
4 TO PLEA TO NO THIRTY YEARS FOR SOMETHING I DIDN'T DO.

5 Q. OKAY. SO YOU DIDN'T WANT TO PLEAD TO SOMETHING THAT
6 YOU DIDN'T DO; CORRECT?

7 A. YES, SIR.

8 Q. ALL RIGHT. AND YOU MAINTAINED THAT POSITION UP UNTIL
9 ALMOST TRIAL; IS THAT CORRECT?

10 A. YES, SIR, I DID.

11 Q. LET ME ASK YOU THIS: WHEN YOU-ALL LEFT THE SCENE THAT
12 NIGHT, DID THE BMW DRIVE OFF?

13 A. YES, SIR. HE PULLED OFF LIKE THERE WASN'T NOTHING
14 WRONG WITH HIM.

15 Q. OKAY. DID YOU HAVE ANY -- YOU KNEW THAT A GUN HAD BEEN
16 FIRED?

17 A. YES, SIR.

18 Q. DID YOU KNOW THAT ANYONE HAD BEEN SHOT?

19 A. NO, SIR, I DIDN'T.

20 Q. DID YOU ASK YOUR BROTHER?

21 A. YES, SIR.

22 Q. WHAT DID HE SAY?

23 A. HE SAID HE SHOT THE CAR.

24 Q. OKAY. NOW, THE -- SO YOU GET UP ON THE EVE OF TRIAL
25 AND YOU'RE HAVING THESE MOTION HEARINGS.

1 A. YES, SIR.

2 Q. AT SOME POINT DURING THAT WEEK -- WAS IT THAT WEEK THAT
3 YOU CHANGED YOUR MIND TO ENTER A PLEA?

4 A. NO, SIR. IT WAS THAT FRIDAY, THE DAY I PLEADED.

5 Q. OKAY. SO YOU CHANGED YOUR MIND THAT DAY THAT YOU
6 ENTERED THE PLEA?

7 A. YES, SIR.

8 Q. WHEN DID YOU TALK WITH MR. MATLOCK ABOUT THAT?

9 A. THAT MORNING, LIKE, 10:55, ELEVEN O'CLOCK, BEFORE LUNCH
10 BREAK.

11 Q. OKAY. AND I'M GOING TO SHOW YOU WHAT'S BEEN MARKED AS
12 STATE'S EXHIBIT NUMBER 1. DO YOU RECOGNIZE THAT?

13 A. YES, SIR.

14 Q. IS THAT YOUR SIGNATURE?

15 A. YES, SIR.

16 Q. AND ARE THOSE YOUR INITIALS THAT YOU INITIALLED?

17 A. YES, SIR.

18 Q. DO YOU RECALL WHEN THAT WAS SIGNED?

19 A. NO, SIR.

20 Q. OKAY. WAS IT PRIOR TO YOUR PLEA?

21 A. IF IT WAS, HE DIDN'T NEVER TELL ME.

22 Q. OKAY. YOU DON'T REMEMBER WHEN YOU SIGNED IT?

23 A. NO, SIR.

24 Q. LEAVE THAT RIGHT THERE. THAT'S GOOD. DID MR. MATLOCK
25 EXPLAIN TO YOU ABOUT THE HAND OF ONE IS THE HAND OF ALL?

1 A. YES, SIR.

2 Q. WHAT DID HE TELL YOU ABOUT THAT?

3 A. HE KEPT GIVING ME THE EXAMPLE THAT, LIKE, IF SOMETHING
4 HAPPENED AND I HAPPEN TO BE THERE THAT AND IT'S MORE THAN
5 TWO PEOPLE, EVERYBODY GET CHARGED WITH EVERYTHING, WITH THE
6 SAME CHARGE.

7 Q. AND IS THAT THE WAY HE EXPLAINED IT TO YOU?

8 A. YES, SIR.

9 Q. DID HE TALK TO YOU AT ALL ABOUT MERE PRESENCE OF
10 SOMEONE---

11 A. NO, SIR.

12 Q. ---AT A CRIME?

13 A. NO, SIR.

14 Q. DID YOU EVER HEAR HIM MENTION THAT?

15 A. NO, SIR.

16 Q. AND SO WAS THAT YOUR UNDERSTANDING AS TO THE HAND OF
17 ONE IS THE HAND OF ALL?

18 A. YES, SIR.

19 Q. DID YOU HAVE ANY OTHER UNDERSTANDING?

20 A. NO, SIR.

21 Q. DID HE TELL YOU ANYTHING ELSE ABOUT IT?

22 A. NO, SIR.

23 Q. DID HE EXPLAIN TO YOU THE ELEMENTS, THE NECESSARY
24 ELEMENTS OF MURDER?

25 A. YES, SIR.

1 Q. OKAY. WHAT DID HE TELL YOU?

2 A. THAT IT'S A CAPITAL OFFENSE, THAT IT CAN CARRY LIFE
3 WITHOUT PAROLE OR --

4 Q. OKAY. SO HE TOLD YOU THE PENALTIES?

5 A. UH-HUH.

6 Q. IS THAT CORRECT?

7 A. YES, SIR.

8 Q. ALL RIGHT. BUT DID HE EXPLAIN TO YOU THE NECESSARY
9 CRUCIAL ELEMENTS---

10 A. NO, SIR.

11 Q. ---OF MURDER?

12 A. NO, SIR.

13 Q. HE DID NOT?

14 A. NO, SIR.

15 Q. DID HE EXPLAIN TO YOU WHAT WOULD HAVE BE PROVED BY THE
16 STATE FOR THAT?

17 A. NO, SIR.

18 Q. DID HE EXPLAIN TO YOU THE CRUCIAL ELEMENTS FOR
19 ATTEMPTED ARMED ROBBERY?

20 A. NO, SIR.

21 Q. DID HE EXPLAIN TO YOU THE ELEMENTS OF WHAT ATTEMPT IS?

22 A. NO, SIR.

23 Q. OR HOW ABOUT ARMED ROBBERY AND WHAT THE STATE WOULD
24 HAVE TO PROVE BEYOND A REASONABLE DOUBT AS TO YOU?

25 A. NO, SIR.

1 Q. DID HE EXPLAIN TO YOU THE ELEMENTS OF FAILURE TO STOP
2 FOR A BLUE LIGHT?

3 A. NO, SIR.

4 Q. DID HE EXPLAIN TO YOU WHAT THE STATE WOULD HAVE TO
5 PROVE BEYOND A REASONABLE DOUBT AS TO THOSE ELEMENTS BEFORE
6 YOU COULD BE CONVICTED OF THAT?

7 A. NO, SIR.

8 Q. DID HE EXPLAIN TO YOU WHAT CRUCIAL ELEMENTS OF
9 CONSPIRACY WAS?

10 A. NO, SIR.

11 Q. AND WHAT -- AND THAT THE STATE WOULD HAVE TO PROVE EACH
12 OF THOSE ELEMENTS BEYOND A REASONABLE DOUBT BEFORE YOU COULD
13 BE FOUND GUILTY?

14 A. NO, SIR.

15 Q. DO YOU REMEMBER ANY CONVERSATION WITH HIM AS TO THE
16 CRUCIAL ELEMENTS OF THE OFFENSES TO WHICH YOU ENTERED A PLEA
17 OF GUILTY THAT DAY?

18 A. NO, SIR.

19 Q. AND DID HE EVER MENTION TO YOU MERE PRESENCE?

20 A. NO, SIR.

21 Q. AND HOW THAT WOULD PLAY OR WOULD NOT PLAY INTO THIS
22 CASE?

23 A. NO, SIR, HE DIDN'T.

24 MR. GREELEY: ANSWER ANY QUESTIONS THE ATTORNEY GENERAL
25 MIGHT HAVE, MR. GORDON.

1 THE WITNESS: YES, SIR.

2 CROSS-EXAMINATION

3 MONTA GORDON BY MS. VAN GINHOVEN:

4 Q. MR. GORDON, DID YOUR ATTORNEY EVER GO OVER THE
5 INDICTMENTS WITH YOU?

6 A. NO, MA'AM.

7 Q. YOU NEVER SAW YOUR INDICTMENTS?

8 A. NO, MA'AM, NOT UNTIL THE MORNING OF MY PLEA.

9 Q. BUT YOU DID SEE THEM THE MORNING OF YOUR PLEA?

10 A. THAT WAS THE FIRST TIME.

11 Q. DID YOU LOOK AT THEM?

12 A. YEAH. I DIDN'T UNDERSTAND THEM.

13 Q. YOU DIDN'T READ THEM?

14 A. I READ THE BACK OF IT AND WHAT'S -- WHAT THEY GOT ME
15 CHARGED WITH.

16 Q. YOU READ THAT?

17 A. YES, MA'AM.

18 Q. DO YOU REMEMBER WHEN THE JUDGE READ OUT THE INDICTMENTS
19 DURING YOUR PLEA, READ WHAT YOU WERE CHARGED WITH?

20 A. WHEN HE READ THEM OUT?

21 Q. UH-HUH.

22 A. YES, MA'AM.

23 Q. AND HE ADVISED YOU OF THE POTENTIAL SENTENCES, DIDN'T
24 HE?

25 A. HE GIVE ME THE -- WELL, I SEEN THE PUNISHMENT FOR EACH

1 CHARGE WAS.

2 Q. RIGHT. DO YOU REMEMBER WHEN HE ASKED YOU IF YOU WERE
3 SATISFIED WITH YOUR ATTORNEY?

4 A. YES, MA'AM.

5 Q. DO YOU REMEMBER SAYING YES?

6 A. YES, MA'AM.

7 Q. ARE YOU SAYING YOU'D RATHER GO BACK TO SQUARE ONE AND
8 FACE THE CARJACKING CHARGES AS WELL AS POSSESSION OF WEAPON
9 CHARGES?

10 A. YES, MA'AM.

11 Q. YOU WOULD RATHER FACE ALL THAT AND GO TO TRIAL THAN
12 PLEAD GUILTY?

13 A. I MEAN, 'CAUSE I HAD A -- AT THE POINT I THINK I HAD A
14 BETTER CHANCE, 'CAUSE I DIDN'T KNOW NOTHING ABOUT THE
15 CARJACKING CHARGE UNTIL THAT MORNING. I NEVER SEEN A
16 WARRANT, ARREST WARRANT, FOR NO CARJACKING CHARGE.

17 Q. DO YOU REMEMBER WHEN THE SOLICITOR WENT OVER ALL THE
18 FACTS DURING THE GUILTY PLEA?

19 A. THE FACTS OF WHAT? ABOUT WHAT?

20 Q. WHAT?

21 A. THE FACTS ABOUT WHAT?

22 Q. ALL THE CHARGES, WHAT OCCURRED THAT NIGHT. THE
23 SOLICITOR TOLD THE JUDGE EVERYTHING THAT OCCURRED THAT NIGHT
24 OR WHAT THE STATE WOULD TRY TO PROVE AGAINST YOU.

25 A. YES, MA'AM.

1 Q. DO YOU REMEMBER THE SOLICITOR DOING THAT?

2 A. YES, MA'AM.

3 Q. DO YOU HAVE A COPY OF THE TRANSCRIPT WITH YOU?

4 A. YES, MA'AM. IT'S IN THE HOLDING CELL.

5 Q. AND DO YOU REMEMBER WHEN YOU AGREED WITH THE FACTS AS
6 THE SOLICITOR HAD STATED?

7 A. YES, MA'AM.

8 Q. SO YOU DON'T DISPUTE WHAT HAPPENED THAT NIGHT, DO YOU?

9 A. NO, 'CAUSE I KNOW WHAT HAPPENED.

10 Q. AND DO YOU REMEMBER BEING THE FIRST ONE TO PLEAD
11 GUILTY?

12 A. YES, MA'AM.

13 Q. AND YOU PLED GUILTY KNOWING YOU WERE GOING TO HAVE TO
14 TESTIFY AGAINST YOUR BROTHER AND YOUR COUSIN; RIGHT?

15 A. YES, MA'AM.

16 Q. AND YOU REMEMBER SIGNING A PLEA AGREEMENT, DON'T YOU?

17 A. YES, MA'AM, THAT MORNING.

18 Q. UH-HUH.

19 A. FRIDAY MORNING.

20 Q. AND YOU REMEMBER SIGNING THIS STATEMENT RIGHT HERE,
21 DON'T YOU?

22 A. YES, MA'AM.

23 Q. AND AS THE JUDGE POINTED OUT, YOU'VE BEEN IN COURT
24 BEFORE, HAVEN'T YOU?

25 A. YES, MA'AM. LIKE, THREE MONTHS BEFORE THIS INCIDENT

1 HAPPENED.

2 Q. AND ARE YOU SAYING TODAY THAT YOU WEREN'T COMPETENT TO
3 GO THROUGH WITH YOUR GUILTY PLEA?

4 A. CAN YOU EXPLAIN THAT?

5 Q. DO YOU THINK YOU'RE MENTALLY INCOMPETENT?

6 A. YEAH.

7 Q. YOU THINK YOU ARE?

8 A. YEAH.

9 Q. HAVE YOU EVER HAD PROBLEMS BEFORE?

10 A. NO.

11 Q. DO YOU REMEMBER WHEN THE JUDGE ASKED YOU IF YOU HAD
12 BEEN UNDER THE INFLUENCE OF ANY DRUGS OR ANYTHING DURING THE
13 PLEA?

14 A. YES, MA'AM; I REMEMBER THAT.

15 Q. DO YOU REMEMBER WHEN THE JUDGE ASKED YOU HOW YOU WISH
16 TO PLEAD?

17 A. YES, MA'AM.

18 Q. WHAT DID YOU SAY?

19 A. GUILTY.

20 Q. WELL, WHY DID YOU PLEAD GUILTY TO SOMETHING YOU DIDN'T
21 KNOW WHAT YOU WERE PLEADING GUILTY TO?

22 A. 'CAUSE THE WHOLE TIME MR. MATLOCK WAS SAYING THAT WOULD
23 BE A BETTER WAY TO GO ABOUT IT INSTEAD OF TAKING A TRIAL AND
24 BEING THAT HE WAS MY ATTORNEY, I'M GOING TO GO WITH WHAT HE
25 SAY.

1 Q. DO YOU KNOW WHY HE TOLD YOU THAT?

2 A. NO, MA'AM.

3 Q. YOU DON'T THINK IT'S 'CAUSE OF ALL THE EVIDENCE THAT
4 THE STATE HAD AGAINST YOU?

5 A. WELL, BEFORE THAT FRIDAY I PLEADED, HE WAS TELLING ME
6 THAT I HAVE A GOOD CHANCE AT TRIAL. THAT WHAT THE WHOLE
7 TIME HE WAS SAYING WHEN HE WAS COMING TO VISIT ME, BUT THAT
8 MONDAY BEFORE THAT FRIDAY HE COME AND SAW ME AND HE LET ME
9 KNOW THAT EVERYTHING WAS LOOKING GOOD. HE CAME AGAIN THAT
10 FOLLOWING WEDNESDAY, THAT WEDNESDAY, SAME WEEK OF THE
11 WEDNESDAY OF THAT PLEA, THAT'S WHEN HE TELL ME THINGS WAS
12 LOOKING BAD. SO FRIDAY I PLED.

13 Q. YOU UNDERSTAND THAT THE PASSENGER IN THE CAR WAS GOING
14 TO TESTIFY AGAINST YOU; RIGHT?

15 A. YES, MA'AM.

16 Q. AND THAT THE STATEMENTS THAT YOUR CO-DEFENDANTS HAD
17 MADE, ALTHOUGH THEY MAY NOT HAVE ALL BEEN THE SAME THING,
18 BUT SOME OF THEM IMPLICATED YOU; CORRECT?

19 A. YES, MA'AM.

20 Q. AND SO, AGAIN, YOU WANT TO GO BACK TO THE VERY
21 BEGINNING AND FACE ALL THESE CHARGES. IS THAT WHAT YOU WANT
22 FROM THIS COURT TODAY?

23 A. FACE ALL THE CHARGES. ALL WHAT CHARGES?

24 Q. IF YOU -- IF THE COURT GRANTED YOU YOUR PCR TODAY, YOU
25 COULD GO BACK AND IT WOULD BE AT SQUARE ONE. YOU'D BE

1 FACING MURDER, ATTEMPTED ARMED ROBBERY, THE CONSPIRACY
2 CHARGES, THE CARJACKING CHARGES, THE DRIVING UNDER
3 SUSPENSION CHARGES. YOU'D BE FACING THE SAME CHARGES THAT
4 YOU PLED GUILTY TO AND THE ONES THAT WERE DISMISSED AS PART
5 OF YOUR PLEA. DO YOU UNDERSTAND THAT?

6 A. YES, MA'AM.

7 Q. AND YOU UNDERSTAND THAT THEY DON'T HAVE TO MAKE ANY
8 TYPE OF RECOMMENDATION FOR SENTENCING? YOU UNDERSTAND THAT?

9 A. YES, MA'AM.

10 Q. AND YOU'D RATHER DO THAT?

11 A. THAT'S A TOUGH QUESTION THERE. NO, MA'AM. NO, MA'AM.
12 NO, MA'AM.

13 Q. YOU DON'T WANT TO DO THAT?

14 A. NO, MA'AM.

15 Q. WELL, WHAT DO YOU WANT THIS COURT TO DO, REDUCE YOUR
16 TIME?

17 A. NO. IT'S NOT ABOUT THE TIME. I'M NOT WORRIED ABOUT
18 THE TIME. THE TIME AIN'T WHAT'S GETTING TO ME. WHAT'S
19 GETTING TO ME IS KNOWING THAT I'M LOCKED UP FOR SOMETHING I
20 KNOW I DIDN'T DO.

21 Q. DID YOU TRY TO STOP ANTONIO FROM SHOOTING THE GUN INTO
22 THE CAR?

23 A. THAT'S MY BABY BROTHER. YOU WOULD THINK I WOULD STOP
24 HIM. I JUST DID THREE YEARS BEFORE THAT EVEN HAPPENED, SO I
25 KNEW HOW IT FEELS TO BE LOCKED UP.

1 A. NO.

2 Q. SO ANTONIO NEVER SHOT THE GUN?

3 A. YES.

4 Q. DO YOU REMEMBER MAKING A STATEMENT IN COURT SAYING THAT
5 YOU WERE SORRY FOR WHAT HAD HAPPENED?

6 A. YES, MA'AM.

7 MS. VAN GINHOVEN: OKAY. I HAVE NO FURTHER QUESTIONS.

8 MR. GREELEY: BRIEFLY. YOUR HONOR, I WOULD JUST -- THE
9 SOLICITOR BROUGHT UP THE -- HAD MENTIONED ABOUT MY CLIENT
10 LISTENING TO THE FACTS AS PRESENTED DURING THE PLEA. THOSE
11 ARE ON BOOK TWO, PAGE 189, LINE EIGHTEEN THROUGH 190 --
12 ABOUT 191, LINE EIGHTEEN. AND I WOULD JUST POINT OUT FOR
13 THE COURT THAT IN REGARDS TO ALL OF THOSE FACTS THAT ARE
14 LISTED, THE ONLY MENTION ABOUT MR. GORDON IS WHEN IT TALKS
15 ABOUT -- IT SAYS BEGINNING LINE TWENTY-FOUR ON PAGE 190,
16 ANTONIO GORDON HOPPED OUT AFTER GETTING THE GUN, WHICH
17 TERRENCE MCCREARY HAD ACQUIRED EARLIER THAT NIGHT. HE
18 HOPPED OUT WITH THE GUN AT THAT POINT. SHORTLY AFTERWARDS
19 MR. GORDON, MY CLIENT, GOT OUT OF THE CAR AND STOOD NEXT TO
20 THE CAR AND THE VICTIM AND THAT WAS THE EXTENT OF THE
21 FACTUAL CIRCUMSTANCES THAT WERE GIVEN IN REGARDS TO -- IN
22 REGARDS TO THE MURDER AND THE ATTEMPTED ARMED ROBBERY FOR MY
23 CLIENT. THAT'S ALL I HAVE. I DON'T HAVE ANY FURTHER
24 QUESTIONS OF MY CLIENT, YOUR HONOR.

25 THE COURT: ALL RIGHT. JUST A MINUTE. MR. GORDON,---

1 MR. GORDON: YES, SIR.

2 THE COURT: ---ON PAGE 185 OF THE -- PART ONE OF THE
3 TRANSCRIPT DURING YOUR SENTENCING PLEA THE JUDGE -- TRIAL
4 JUDGE ASKED YOU, HAS ANYONE MADE ANY KIND OF THREATS OR USED
5 PRESSURE OR COERCION TO CAUSE YOU TO ENTER YOUR GUILTY --
6 YOUR PLEA OF GUILTY AND YOU ANSWERED NO; IS THAT CORRECT?

7 MR. GORDON: YES, SIR.

8 THE COURT: THE COURT ASKED YOU, ARE YOU AT THIS TIME
9 UNDER THE INFLUENCE OF ANYTHING THAT WOULD CAUSE YOU TO BE
10 INTOXICATED AND YOUR ANSWER WAS, NO, SIR; IS THAT CORRECT?

11 MR. GORDON: YES, SIR.

12 THE COURT: THE COURT ASKED YOU, HAVE YOU EVER BEEN
13 TREATED FOR ANY MENTAL OR EMOTIONAL DISABILITY AND YOU
14 ANSWERED, NO, SIR; IS THAT CORRECT?

15 MR. GORDON: YES, SIR.

16 THE COURT: YOU WERE ASKED, YOU HAVE A RIGHT TO TRIAL
17 BY JURY. ARE YOU ENTERING YOUR PLEA FREELY AND VOLUNTARILY
18 TO EACH OF THESE CHARGES AND YOU ANSWERED, YES, SIR; IS THAT
19 CORRECT?

20 MR. GORDON: YES, SIR.

21 THE COURT: YOU WERE ADVISED YOU HAVE A RIGHT TO A
22 TRIAL BY JURY ON EACH OF THESE CHARGES. THEY CAN BE TRIED
23 TOGETHER BECAUSE THEY OCCURRED IN ONE CONTINUAL EVENT.
24 YOU'D BE ELIGIBLE TO BE TRIED BY TWELVE MEMBERS OF THE
25 COMMUNITY, TWELVE OF YOUR PEERS, AND THAT TRIAL IS SCHEDULED

1 THE COURT: AND THE COURT ASKED, DO YOU HAVE ANY
2 QUESTIONS ABOUT THOSE RIGHTS AND YOU ANSWERED, NO, SIR; IS
3 THAT CORRECT?

4 MR. GORDON: YES, SIR.

5 THE COURT: THE COURT ASKED YOU FURTHER, IF YOU'VE
6 GIVEN A STATEMENT IN REGARD TO THESE EVENTS, YOU HAVE THE
7 RIGHT AND YOU'VE SAT IN AND I'VE ALREADY DONE THAT THIS
8 MORNING ON ANOTHER STATEMENT, ONE GIVEN MY MR. MCCREARY, YOU
9 HAVE THE RIGHT TO HAVE THE STATE PROVE TO ME AND A RULING
10 MADE BY ME THAT THAT STATEMENT WAS GIVEN FREELY, VOLUNTARILY
11 AND UNDERSTANDING YOUR CONSTITUTIONAL RIGHTS. YOU
12 UNDERSTAND THAT? AND YOUR ANSWER IS, YES, SIR; IS THAT
13 CORRECT?

14 MR. GORDON: YES, SIR.

15 THE COURT: THE COURT ADVISED YOU FURTHER THAT WHEN YOU
16 ENTER A PLEA OF GUILTY YOU GIVE UP ALL THESE RIGHTS. YOU
17 GIVE UP YOUR RIGHT TO A JURY TRIAL, YOUR PRESUMPTION OF
18 INNOCENCE, YOUR RIGHT TO REMAIN SILENT, YOUR RIGHT TO
19 CONFRONT THE WITNESSES AGAINST YOU, THE RIGHT TO HAVE YOUR
20 WITNESSES COME TO COURT. YOU GIVE UP DEFENSE THAT YOU MAY
21 HAVE AND THE RIGHT TO HAVE YOUR STATEMENT REVIEWED BY A
22 COURT. DO YOU UNDERSTAND ALL OF THAT? AND YOUR ANSWER WAS,
23 YES, SIR; IS THAT CORRECT?

24 MR. GORDON: YES, SIR.

25 THE COURT: THEN THE COURT ASKED YOU, KNOWING ALL THESE

1 THINGS, I ASK AGAIN HOW DO YOU PLEAD TO MURDER INVOLVING THE
2 DEATH OF ERIC PETER KRENN, AND YOUR ANSWER WAS GUILTY; IS
3 THAT CORRECT?

4 MR. GORDON: YES, SIR.

5 THE COURT: AND, OF COURSE, HE GOES THROUGH EACH OF THE
6 CHARGES. NOW, HE ASKED YOU QUESTIONS ABOUT THE -- IN THE
7 INDICTMENTS AND WHAT IS ALLEGED TO HAVE OCCURRED AND YOU
8 AGREED WITH ALL OF THAT, THAT YOU UNDERSTOOD ALL THAT; IS
9 THAT CORRECT?

10 MR. GORDON: YES, SIR.

11 THE COURT: THAT'S ALL I HAVE. ANY QUESTIONS EITHER
12 WANT TO ASK AS A FOLLOW UP TO WHAT I JUST ASKED?

13 MR. GREELEY: NO, YOUR HONOR.

14 MS. VAN GINHOVEN: I HAVE NOTHING; NO.

15 THE COURT: THANK YOU. YOU MAY STAND DOWN, SIR.

16 MR. GREELEY: YOUR HONOR, THAT WOULD BE THE CASE OF THE
17 PETITIONER AND I WOULD LIKE TO SPEAK ON A SHORT MATTER.

18 THE COURT: ALL RIGHT. ANYTHING FROM -- ANYTHING ELSE
19 FROM THE STATE?

20 MS. VAN GINHOVEN: NO, YOUR HONOR.

21 THE COURT: ALL RIGHT. YOU MAY BE SEATED, SIR. YES,
22 SIR. I'LL HEAR YOU BRIEFLY.

23 MR. GREELEY: YOUR HONOR, I'M GOING TO MAKE MY ARGUMENT
24 DOWN TO A VERY NARROW ISSUE IN THIS CASE. I AM CITING AND
25 IT'S JUST FOR GENERAL CITE PURPOSES, NOT PARTICULAR ON A

1 CASE, ON-POINT CASE, BUT PITTMAN VERSUS STATE AND, OF
2 COURSE, THERE ARE SEVERAL REQUIREMENTS BEFORE A PERSON CAN
3 BE FOUND TO HAVE ENTERED A KNOWING PLEA AND THAT IS THE
4 ISSUE THAT I AM ADDRESSING HERE.

5 THERE ARE CERTAIN CONSTITUTIONAL RIGHTS THAT HAVE TO
6 EXPLAINED TO THAT PERSON. IN THIS PARTICULAR GUILTY PLEA,
7 IT APPEARS THAT THOSE WERE TOUCHED ON AND THOSE WERE
8 EXPLAINED, AS THE COURT HAS JUST READ OUT, UNDER BOYKIN. A
9 PERSON ALSO NEEDS TO BE TOLD THE MAXIMUM PENALTIES. IN THIS
10 PARTICULAR CASE THOSE WERE DONE AND HE WAS EXPLAINED THAT.
11 HOWEVER, YOUR HONOR, IT SAYS THAT IN ADDITION TO THE
12 REQUIREMENTS OF BOYKIN, A DEFENDANT ENTERING A GUILTY PLEA
13 MUST BE AWARE OF THE NATURE AND CRUCIAL ELEMENTS OF THE
14 OFFENSE.

15 IN THIS PARTICULAR SITUATION WE HAVE FIVE OFFENSES TO
16 WHICH HE PLED GUILTY. I WOULD SUBMIT TO THE COURT, IN
17 LOOKING THROUGH THE TRANSCRIPT AND THE LITANY OF THE GUILTY
18 PLEA, THE CRUCIAL ELEMENTS OF THE OFFENSE WERE NOT EXPLAINED
19 TO THE CLIENT, WERE NOT EXPLAINED TO THE DEFENDANT. THE
20 JUDGE DID READ THE INDICTMENT. I ADMIT THAT. IT IS IN
21 THERE. BUT AT NO TIME WERE THE CRUCIAL ELEMENTS OF EACH
22 OFFENSE EXPLAINED TO HIM, NOR WAS HE TOLD THAT A JURY WOULD
23 BE REQUIRED TO FIND EACH OF THOSE ELEMENTS -- HIM GUILTY OF
24 EACH OF THOSE ELEMENTS BEYOND A REASONABLE DOUBT. THIS
25 WOULD ESPECIALLY PLAY TRUE IN THIS CASE TO WHERE WE HAVE A

1 SITUATION OF A PERSON ENTERING A PLEA TO MURDER THAT IS
2 GOING TO BRING IN THE AGENCY OF PRINCIPAL WHEN HE IS NOT --
3 IT'S ADMITTED THAT HE IS NOT THE SHOOTER AS FAR AS HIS NEED
4 TO BE AN ACCESSORY.

5 I WOULD SUBMIT TO THE COURT THAT THE FACTS THAT WERE
6 GIVEN DURING HIS PLEA ARE VERY LEAN IN REGARDS TO HIM BEING
7 HELD CULPABLE AS A MURDERER, BECAUSE IT ONLY MENTIONS THAT
8 HE GOT OUT OF THE CAR AND STOOD BESIDE THE CAR. THAT'S ALL
9 HE -- ALL THE FACTS THAT ARE GIVEN IN REGARDS TO MY CLIENT
10 UNDER HIS PLEA OF MURDER IN THIS CASE. AND SO, YOUR HONOR,
11 I WOULD SUBMIT THAT THE EVIDENCE THAT'S BEEN SHOWN IN THIS
12 CASE AND IN THE TRANSCRIPT, HE WAS NOT PROPERLY APPRISED OF
13 THE NATURE AND UNDERSTANDING OF THE CRUCIAL ELEMENTS OF EACH
14 OF THE OFFENSE. HE WAS NOT APPRISED THAT EACH OF THOSE
15 WOULD HAVE TO BE PROVED BEYOND A REASONABLE DOUBT AND THERE
16 WAS NO LITANY OR ADEQUATE EXPLANATION TO HIM AS TO WHAT A
17 PRINCIPAL IS AND I WOULD POINT ALSO TO THE TRANSCRIPT TO
18 WHERE EVEN HIS DEFENSE ATTORNEY IN SENTENCING SEEMED TO TAKE
19 HIM OUT OF THE REALM OF PRINCIPAL IN ASKING FOR THE COURT TO
20 GO ALONG WITH THE SENTENCE AND THAT HE DID NOT URGE OR
21 CONTRIBUTE TO THIS CRIME OF HIS BROTHER.

22 THE COURT: ALL RIGHT. THANK YOU, SIR.

23 MS. VAN GINHOVEN: YOUR HONOR, THE STATE DISPUTES THE
24 APPLICANT'S ALLEGATIONS. WE'VE HAD TESTIMONY FROM MR.
25 MATLOCK THAT HE DID EXPLAIN ALL THE ELEMENTS OF THE CRIME OR

1 ESPECIALLY OF MURDER, THAT THEY DISCUSSED HAND OF ONE IS THE
2 HAND OF ALL. THEY MAY HAVE DISCUSSED MERE PRESENCE. THE
3 STATE WOULD JUST SUBMIT THAT THE APPLICANT DID ENTER A
4 VOLUNTARY GUILTY PLEA AND WAS QUESTIONED CLEARLY BY THE
5 JUDGE AND THAT ALTHOUGH THE SOLICITOR STATED A BRIEF
6 RECITATION OF THE FACTS, HAD THE CASE GONE TO TRIAL, MANY
7 OTHER FACTS WOULD HAVE COME OUT INCLUDING STATEMENTS FROM
8 THE PASSENGER OF THE CAR WHERE THE VICTIM WAS KILLED AND
9 ALSO THE CO-DEFENDANT THAT WOULD HAVE IMPLICATED MR. GORDON
10 IN MORE THAN JUST STANDING BESIDE THE CAR. SO ALTHOUGH THE
11 SOLICITOR JUST STATED A BRIEF SET OF FACTS, HAD THIS CASE
12 GONE TO TRIAL, HIS CULPABILITY WOULD HAVE BEEN SHOWN THROUGH
13 OTHER TESTIMONY.

14 THE COURT: ALL RIGHT. AND I WOULD SAY THAT, YOU KNOW,
15 THE COURT IS REQUIRED NOT TO LOOK AT JUST WHAT THE TRIAL
16 JUDGE OR PLEA JUDGE ADVISED THE DEFENDANT, BUT ALSO THE
17 COURT CONSIDERS IN ADDITION TO THAT, OF COURSE, WHAT
18 INFORMATION HE RECEIVED FROM HIS DEFENSE COUNSEL. ALL OF
19 THOSE ARE TAKEN IN CONSIDERATION IN DETERMINING WHETHER HE
20 UNDERSTOOD ALL OF THIS RIGHTS OR NOT OR WHETHER THE ELEMENTS
21 OF THE OFFENSE WERE EXPLAINED TO HIM, WHETHER HE UNDERSTOOD
22 THAT AND UNDERSTOOD THE PENALTIES AND WHAT CONSTITUTIONAL
23 RIGHTS HE WAS WAIVING, GIVING UP IN ENTERING A PLEA AND LOOK
24 NOT JUST TO THE TRIAL JUDGE'S COLLOQUY WITH THE DEFENDANT AT
25 THE PLEA HEARING, BUT ALSO AS TO WHAT ADVICE WAS GIVEN HIM

1 BY THE ATTORNEY AND ALL OF THAT IS CONSIDERED IN MAKING THAT
2 DETERMINATION. THAT'S WHAT THE CASES SAY. SO THAT'S WHAT
3 THE COURT HAS TO LOOK AT.

4 I'LL TAKE THE MATTER UNDER ADVISEMENT AND I'LL RULE
5 JUST AS SOON AS I HAVE AN OPPORTUNITY TO LOOK AT IT FURTHER.
6 THANK YOU.

7 (CONCLUSION WAS REQUESTED TRANSCRIPT)

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

)
)
)

C E R T I F I C A T E

I, THE UNDERSIGNED SHANNON E. MCGILBERRY, OFFICIAL COURT REPORTER FOR THE SIXTEENTH 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 PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE POST-CONVICTION RELIEF HEARING OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE CRIMINAL COURT FOR YORK COUNTY, SOUTH CAROLINA, ON THE 4TH DAY OF SEPTEMBER, 2003.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

IN WITNESS WHEREOF, I HAVE HEREUNTO SUBSCRIBED MY NAME, THIS 22ND DAY OF SEPTEMBER, 2004.


SHANNON E. MCGILBERRY

MY COMMISSION EXPIRES:

MAY 7, 2007

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in Court. You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning. You have this right to the advice and presence of a lawyer even if you cannot afford to hire one. We have no way of appointing you a lawyer, but one will be appointed by the Court for you if you wish. If you wish, you may answer questions without the presence of a lawyer. If you stop answering any time you do.

[Signature]
(Witness)

Written statements

in 10 Gordon
(Signed)

I have read
understand
not want a
know that
stand what

of July 23, 1998
to Rock Hill police

s shown above. I
a statement. I do
what I am doing. I
ficer and I under-

[Signature]
(Witness)

Department by Antonio
Gordon, Monte Gordon,

in 10 Gordon
(Signed)

PERSONALLY at
duly sworn de

Terrance McCreary and
Gary Moffitt.

Date of Birth

who after being
don

My address is

48-51-8012

Place of Empl

Home Phone Num

I completed 9

read and write."

Last night the 2:
him and ask him
up in my car. My
two other guys I
30 minutes, June
wire, me my broth
got into my car as
we were going to
in the Marshall St
about the car, I d
June Bug was drivi
me, June Bug said
it but Gary said h
the car in he got
the BMW to see who
was "No man I don't
started backing up

nce McCreary), I paged
kers and stereo hooked
a Feely, Willie Gordon
ot stay but about
and we run out of speaker
ance McCreary) and me all
irst and I ask June Bug when
ot home, We rode around
on, He said something
e back seat driver side,
and Gary was in the back with
emer there" I did not see
ne Bug pulled up and blocked
walked over and looked into
had any money, all I heard
back of the BMW and they
n in his hand when they

Antonio C

Signature of pers

"NT" on next page

x AG

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

PAGE 2

CONTINUATION OF STATEMENT GIVEN BY: Antonio Gordon

Started backing up June Bug kept saying Get out the car and he said this a bunch of times, They kept backing up just enough to wheel around to leave and that was when June Bug shot at the driver, They drove on off and I got back in my car and June Bug was still driving, We left and went to my house, Ask June Bug if he shot that guy and he said no I shot into the air, The guys in the BMW kept on driving and we did not see where they went before we left, After we got back to my house I went inside and they hang around for about 2 or 3 hours, When June Bug got ready to leave June Bug ask me if Monta could drive my car to take him home to Boyd Hill, I told him that htey could take my car but to come right back, That was when Monta, June Bug, and Gary got into my car and left my house, about 30 minutes after they left my house June Bug called me and said that the police is chasing your brother inside your car, about 5 minutes later Monta came flying down the road and jumped out of the car and started running, the police were behind him and he ran across the yard and into some bushes, after that one of the officers ask me who was driving my car during the shooting and I told him no body, later I told them that June Bug had been driving it all day, He told me to go back into the house and they would be back to talk to me later. When June Bug came to my house he was there about an hour before JUne Bug showed me a gun that he had, It was crome 357. cal. June Bug got out of the car after we blocked the BMW in saying that he was going to go take the car and their money, I got out of the car to see if I knew the boys and I was just looking inside the car.

JAC

A Antonio Gordon
Signature of person giving statement

PAGE 2

PERSONALLY appears before me: Antonio Gordon
who deposes and says: "I make this statement of my own free will and accord without
reward or hope of reward. I have not been mistreated or threatened in any way. All of
the above is the truth, the whole truth, and nothing but the truth so help me God."

I have read or had read to me the above statement consisting of 2 pages and have
received a copy of the same."

Antonio Gordon
Signature
[Signature]
Witness

SWORN TO AND SUBSCRIBED TO BEFORE ME
THIS 23 DAY OF July, 1998

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES ON 3-11-06

STATEMENT TAKEN ON July 23rd AT 10:55 AM ~~PM~~
STATEMENT SIGNED ON July 23rd AT 11:30 AM ~~PM~~

STATEMENT FROM: TAPE (); WRITTEN NOTES (); DICTATED ();
INTERVIEW (x).

STATEMENT PREPARED BY: J. Waldrop

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in Court. You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning. You have this right to the advice and presence of a lawyer even if you cannot afford to hire one. We have no way of appointing you a lawyer, but one will be appointed by the Court for you if you wish. If you wish, you may answer questions without the presence of a lawyer and you may stop answering any time you desire until a lawyer is present.

John Shuler
(Witness)

Antonio Gordon
(Signed)

I have read or had read to me the statement of my rights shown above. I understand what my rights are and I am willing to make a statement. I do not want a lawyer at this time. I understand and know what I am doing. I know that the person (s) talking with me is a police officer and I understand what he is talking about.

John Shuler
(Witness)

Antonio Gordon
(Signed)

PERSONALLY appears before me: Antonio Gordon, who after being duly sworn deposes and says: "My name is Antonio Gordon.
Date of Birth: 03-21-82 Social Security Number: 248-51-8012.
My address is 3017 Vernsdale Rd., RHSC.
Place of Employment: _____.
Home Phone Number: 325-1104. Work Phone Number: _____.
I completed 9 years in school and I can ~~XX~~ cannot () read and write."

A couple of weeks ago I bought a blue Cheverolet Celebrity from a girl named Tawanda Burris. I paid \$150.00. Then yesterday me, terrence McReary, and my brother Monte ^{and Gary Moffat} was riding around all day. We went swimming in the afternoon, then we were all down at my place on Vernsdale. Monte took the car with Terrance and Gary to ride around. I stayed at the trailer on Vernsdale until they came back around 10:30pm. When they got back I got in the car with the other three and we went riding. We went to Newport to Terrance people's place and took a tag off a Honda and put it on the Celebrity. I also wanted some speakers for my car that Terrance had so we got those. While we was riding around we just happened to see that car. It was a silver BMW. Terrance say it was two girls in the car ~~DX~~ and they was riding up the street with no lights on. Then we figured out that it was two boys. We heard some music like and Junebug heard the music and said he had to have the car. Junebug gave me the gun and told me to get the BMW. So I took the gun. The BMW was in a driveway and Junebug (Terrance) blocked them in. I went up to the drivers window and I told them I wanted their money. They say they din't have no money. I was holding the gun pointed at them sideways like. I told them get out the car because my boy want the car. Monte was standing next

Antonio Gordon
Signature of person giving statement

PAGE _____

CONTINUATION OF STATEMENT GIVEN BY: _____

to me and Gary got out and went around the other side of the car. They wouldn't get out the car and started backing up. I had the gun pointed at them and then it went off. I had only shot that gun once before and I don't really know how it works. I wished I could have got the bullets out but it went off. I thought the guy got hit in the leg. The BMW was driving straight. At first I didn't know where the bullet went because the car kept going. Then we all got back in my car. Terrance was sitting in the car the whole time but he was trying to talk junk to them from the car. Then we went to the country to my house on Vernsdale. Then Monte took the car to the other boys home. The next thing I know is the police chasing my brother because the car got chased back to my house. AG

I want to add that I want to make this statement and I have been offered the opportunity to have my grandmother or mother with me but I just want to tell the truth now and get this over with so I don't need no one with me. Captain Cabaniss asked me if I wanted someone from my family or a lawyer with me but I'm being truthful about what happened and I'm sorry for it. I would really like to just get this over with so I can see my 7 month old baby.

Antonio Gordon

Antonio Gordon
Signature of person giving statement

PAGE 3

PERSONALLY appears before me: Antonio Gordon,
who deposes and says: "I make this statement of my own free will and accord without
reward or hope of reward. I have not been mistreated or threatened in any way. All of
the above is the truth, the whole truth, and nothing but the truth so help me God.

I have read or had read to me the above statement consisting of 3 pages and have
received a copy of the same."

Antonio Gordon
Signature

Witness

SWORN TO AND SUBSCRIBED TO BEFORE ME
THIS 23 DAY OF July, 1998

John W. Thickens
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES ON 9-18-2001

STATEMENT TAKEN ON 07-23-98 AT 3:30 ~~AM~~ PM
STATEMENT SIGNED ON 07-23-98 AT 4:10 ~~AM~~ PM

STATEMENT FROM: TAPE (); WRITTEN NOTES (); DICTATED ();
INTERVIEW (x).

STATEMENT PREPARED BY: Lt. J. Thickens

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in Court. You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning. You have this right to the advice and presence of a lawyer even if you cannot afford to hire one. We have no way of appointing you a lawyer, but one will be appointed by the Court for you if you wish. If you wish, you may answer questions without the presence of a lawyer and you may stop answering any time you desire until a lawyer is present.

* Monta L. Gordon
(Witness)

Monta L. Gordon
(Signed)

I have read or had read to me the statement of my rights shown above. I understand what my rights are and I am willing to make a statement. I do not want a lawyer at this time. I understand and know what I am doing. I know that the person (s) talking with me is a police officer and I understand what he is talking about.

* Monta L. Gordon
(Witness)

Monta L. Gordon
(Signed)

PERSONALLY appears before me: Monta Lamark Gordon, who after being duly sworn deposes and says: "My name is Monta Lamark Gordon.
Date of Birth: 09-01-80 Social Security Number: 249-45-1078.
My address is 3017 Vernsdale Rd. RHSC.
Place of Employment: Unemployed.
Home Phone Number: 325-1104. Work Phone Number: .
I completed 11 years in school and I can ~~KX~~ cannot () read and write."

Last night July 22nd, 1998 about 8:30-9:00PM Junebug McCreary, Gary Moffatt and my brother Antonio Gordon came over to my grandfather's house. Me and Antonio both live with him. All 3 guys started working on my brother's car, a blue Chevrolet 4dr. After they got finished working on the car they all wanted to leave and go riding around. Me, Antonio, Junebug and Gary Moffatt left and went riding around. Junebug was driving and we all stopped by a house in Southland Park. We passed by the Glenn's and went to the 3rd or 4th house on the right and he said he was going to pick up his gun. He went inside the house and got the gun and came right back out. He had the gun in his right back pocket. We rode on down the street and he pulled the gun out. It was a 4 barreled chrome pistol with brown handles. He put the gun back in his pocket and went to his grandmother's house and got the bullets. She lives on S. Stonewall St. He went inside and came right back out again. The gun was already loaded, but he said he needed some more bullets. Junebug was driving the whole time. We rode around some more and wound up on S. Jones. We all saw a BMW that was silver or gray and the people in the car didn't have the lights on. Junebug said that the car must be stolen and he was going to steal the car from them. He blinked the lights to let the people know their lights weren't on. Junebug was driving and Antonio was in the front passenger seat. I was in the backseat behind the driver and Gary was in the backseat behind my brother. After Junebug blinked his lights the car pulled into a driveway and Junebug pulled up past the car and then backed up so the car couldn't back up. Antonio and Junebug asked them if they smoked weed. They said not right now.

Signature of person giving statement

Monta L. Gordon

(continued on next page)

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

PAGE 2

CONTINUATION OF STATEMENT GIVEN BY: Monta Lamark Gordon

Junebug gave Antonio the pistol and he told him that they were going to rob them. X
The people in the car looked like they were young white guys. Both Junebug and Antonio
got out of the car and they both went up to the driver's side of the BMW. I couldn't
hear much of what was being said, but they was telling the guy to get out of the car
and the dude in the car said no and he tried to pull off. At that time my brother Antoni
shot the driver one time. Both he and Junebug ran back to the car and got in and Junebug
floored it. Me and Gary was asking what the hell was going on and Junebug said set back
and ride. Junebug said that they had to shot the son-of-a-bitch because he wasn't acting
right, by not giving up the BMW. Junebug drove wideopen all the way back to my house. When
we got back home Antonio and Junebug was bragging about what they done. The only 2 peopl
that was hearing what they were talking about was my girlfriend-Vontella Feely and
Antonio's girlfriend-Shemikia Dixon. Dixon is nothing but a straight-up liar. Junebug and
Gary then left out and Gary was driving the car. He was suppose to be taking Junebug to
a girl's house in Boyd Hill. The next thing I know the police was chasing the car back
to my house, but I don't know who was driving at that time. MLC

Monta L. Gordon
Signature of person giving statement

PAGE 3

PERSONALLY appears before me: MONTA LAMARK GORDON,
who deposes and says: "I make this statement of my own free will and accord without
reward or hope of reward. I have not been mistreated or threatened in any way. All of
the above is the truth, the whole truth, and nothing but the truth so help me God..

I have read or had read to me the above statement consisting of 3 pages and have
received a copy of the same."

Monta L. Gordon
Signature

[Signature]
Witness

SWORN TO AND SUBSCRIBED TO BEFORE ME
THIS 23 DAY OF July, 1998

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES ON 9-18-2001

STATEMENT TAKEN ON 07-23-98 AT 11:30 AM PM
STATEMENT SIGNED ON 07-23-98 AT 12:30 AM PM

STATEMENT FROM: TAPE (); WRITTEN NOTES (); DICTATED ();
INTERVIEW (x).

STATEMENT PREPARED BY: LPHERIN 6

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in Court. You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning. You have this right to the advice and presence of a lawyer even if you cannot afford to hire one. We have no way of appointing you a lawyer, but one will be appointed by the Court for you if you wish. If you wish, you may answer questions without the presence of a lawyer and you may stop answering any time you desire until a lawyer is present.

William Burri
(Witness)

Terrance McCreary
(Signed)

I have read or had read to me the statement of my rights shown above. I understand what my rights are and I am willing to make a statement. I do not want a lawyer at this time. I understand and know what I am doing. I know that the person (s) talking with me is a police officer and I understand what he is talking about.

William Burri
(Witness)

Terrance McCreary
(Signed)

PERSONALLY appears before me: Terrance Eugene McCreary, who after being duly sworn deposes and says: "My name is Terrance Eugene McCreary.
Date of Birth: 07/19/77 Social Security Number: 247-41-0041.
My address is 437 Stoneycreek Lane RHSC.
Place of Employment: Unemployed.
Home Phone Number: 329-7946. Work Phone Number: NA.
I completed 10 years in school and I can ☒ cannot () read and write."

Wednesday afternoon around 3:00PM or it was 4:00PM I am not really sure of the time, but Antonio Gordon, his brother Monta Gordon, Gary Moffatt, came over to my grandmothers house at 1041 South Stonewall street to pick me up. Antonio had paged me earlier and told me that he was coming by for me. Antonio was driving his chevrolet cavalier color blue, we carried my two cousins to Southland Park to their mothers house, their mother is Jackie Baxter. We then left there and went to Tony Brice house, he also live in Southland Park, I went to his house to get a few dollars for gas for Antonios car, but Toney said that he did not have any money. We then left his house and drove to our grandfathers house on Vernsdale Road, our grandfather is Willie Ed Gordon. We rode around for a good part of the day, and we saw Anthony Lowery, and we all asked him where did his brother Albert keep his gun, because Albert always carried the gun around before he was arrested about a week ago for a drug violation. Anthony told us it was in Jay Neelys back yard in the bushes near a light post, but said that Jay did not know it was there, Jay also live in Southland Park. Gary and myself went and got the gun, it was a 357 magnum and a 38 special combined, it had four barrels. When we got back to the car we gave the gun to Monta Gordon. We went back to our grandfather house on Vernsdale Road and worked on his car radio.

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

PAGE _____

CONTINUATION OF STATEMENT GIVEN BY: Terrance E. McCreary
Terrance Eugene McCreary

Monta & Antonios girlfriends wanted to shoot the gun so we allowed to shoot it one time. We left there and rode around willowbrook for awhile, We also rode to the apartment complex behind the Tech looking for my uncle, but we did not locate him, we left and was riding through workman street and then we drove up Walnut street to Jones Ave. We saw a car driving past us with the head lights off, this was after midnight. this was a grey or silver BMW, I was driving at the time so I blinked my light to tell the driver his lights was off. There were two white males in the car. I then said man if I had the gun I would rob them guys. The men in the BMW pulled into a driveway on Jones Ave, I pulled near the and told them again that their lights was off, as I was going to drive off Antonio began asking them if they wanted to smoke some weed, first he asked them if they had some weed to sell, meaning marijuana. If they had any weed we was going to rob them of it. I was pulling off in the car and the guys in the BMW backed out into the street, then Antonio jumped out of the car and ran up to the drivers side of the BMW and asked ~~them~~ them if the car was stolen, and then he asked them if they had any money, the two guys said no. Gary was with Antonio, Monta and I was telling them to come on and lets go, then we heard the gun fire. Antonio and Gary then ran and got back in the car. We began asking Antonio why did he do that, and he was pointing the gun at all of us. I drove down the street and then I let Antonio drive his car. We went down on Crawford Road near where the new houses had be builded. Gary and Antonio got out and went up the street and later came back with amplifier, I dont know where it came from and I did not ask. He went back to my grandfathers house on Vernsdale Road and worked on the radio until around 4:30AM and then everyone said that they was ready to go home. I had asked Monta to take me to my mothers house up near York SC. As we were driving near Bynum Ave, an unmarked police car got behind us and continued to follow us, so Monta took off real fast in the car when the blue light in the unmarked car came on. Gary and I jumped out on Constituic Blvd near the park. Monta kept going. Later Gary and I went to Lakishas house at 290 Fargo street, and thats where we was arrested at. Lakisha and Tawana was also arreste. The police found the pistol in the kitchen at Lakishas house, Gary must have put the gun where the police found it.

Terrance E. McCreary
Signature of person giving statement

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

PAGE _____

PERSONALLY appears before me: Terrance Eugene McCreary
who deposes and says: "I make this statement of my own free will and accord without
reward or hope of reward. I have not been mistreated or threatened in any way. All of
the above is the truth, the whole truth, and nothing but the truth so help me God.

I have read or had read to me the above statement consisting of _____ pages and have
received a copy of the same."

Terrance McCreary
Signature

William Burris
Witness

SWORN TO AND SUBSCRIBED TO BEFORE ME
THIS 23RD DAY OF July, 19 98

William Burris
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES ON 02-21-99

STATEMENT TAKEN ON 07-23-98 AT 3:35 PM AM PM
STATEMENT SIGNED ON 07-23-98 AT 5:10PM AM PM

STATEMENT FROM: TAPE (); WRITTEN NOTES (); DICTATED ();
INTERVIEW (X).

STATEMENT PREPARED BY: Det William Burris

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

Before we ask you any questions, you must understand your rights. You have the right to remain silent. Anything you say can be used against you in Court. You have the right to talk to a lawyer for advice before we ask you any questions and to have him with you during questioning. You have this right to the advice and presence of a lawyer even if you cannot afford to hire one. We have no way of appointing you a lawyer, but one will be appointed by the Court for you if you wish. If you wish, you may answer questions without the presence of a lawyer and you may stop answering any time you desire until a lawyer is present.

John Chalker
(Witness)

Gary Moffatt
(Signed)

I have read or had read to me the statement of my rights shown above. I understand what my rights are and I am willing to make a statement. I do not want a lawyer at this time. I understand and know what I am doing. I know that the person (s) talking with me is a police officer and I understand what he is talking about.

John Chalker
(Witness)

Gary Moffatt
(Signed)

PERSONALLY appears before me: Gary Moffatt, who after being duly sworn deposes and says: "My name is Gary Moffatt.
Date of Birth: 08-20-80 Social Security Number: 250-55-1865.
My address is 1427 1/2 Edgewood Dr., RHSC.
Place of Employment: n/a.
Home Phone Number: 327-1605. Work Phone Number: .
I completed 12 years in school and I can (x) cannot () read and write."

Yesterday I was with Terrence McCreary, Monta Gordon, and Monta's brother Antonio Gordon. We was just riding all day in the blue car that belongs to Antonio. We went swimming at Gable Oaks behind Taco Bell on Cherry Rd. and we partied at Antomios on Vernsdale Rd. At 7:30pm about me, Monta, and Terrance went riding around. Then around 10:30pm we went back and got Antomio. The four of us went riding. Terrance was the driver. Terrance say he had a motel room- I don't know where but he had the key. We was looking for women. We were coming down Walnut St. and we saw the car with the lights out. It was a ~~X~~ BMW and was silver. I was in the back left seat of the blue Cheverolet ~~X~~Celebrity, Antonio was in the front left, Monta was behind the driver, and Terrance was driving the car. Terrance said there was a couple of girls driving the car. We thought they was white girls. Terrance say lets stop and see who it is. Then we seen it was two boys. Terrance said Y'all want to get them? I said I didn't want nothing to do with that. Antonio said Lets do it. He meant let's rob 'em. Me and Monta wasn't saying nothing. The BMW pulled into a driveway. Terrance pulled up behind them and tried to block them in. Antonio asked Terrance to let him hold the gun. Terrance had a 4-Barrel gun .357 he stopped on Stonewall at a house. This was when it

Gary Moffatt
Signature of person giving statenent

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

PAGE 2

CONTINUATION OF STATEMENT GIVEN BY: Gary Moffatt

was after dark. Just Terrance want inside to get the gun. I think it's his grandmother's house. He was holding the gun and Antonio said he wanted it when he was getting ready to get out to go to the BMW. Monte hopped out of the car a couple of seconds after Antonio got out. I looked out the window and watched what happened. The BMW started backing out. Antonio was at the driver's window pointing the gun in the car. Monte went around to get the other boy. I heard Antonio say You got money then give it up. The boy must have said he didn't have any money and he started trying to drive off. That's when Antoinio shot the driver. Monte didn't get the chance to do anything with the other boy. ~~AT~~Terrance told Antonio when he was getting ready to hop out to get the car. So they was going to get the boys money and their car. But it didn't work out. Terrance said we should have got the car. That's as we were driving back. We went back to Vernsdale RD. Antonio passed the gun back to Terrance in the car.

When we got back Chyneka and Fontella got up and we were all sitting in the living room and Terrance, Antonio, and Monte were laughing about shooting the boy and telling the girls about it. Then later around 4 or 4:30am Monte gave me and Terrance a ride back home but then the police tried to pull us over. Monte say he wasn't stoppi^{GM}g but we talked junk to him to let us out when he made a u-turn. Me and Terrance jumped out and ran to 290 Fargo where Lakisha Crockett stay. Lakisha, Tawana, and another girl were there. Terrance say the police were chasing us. We went to sleep and this morning Terrance ~~XXXXXXXXXXXXXXXXXXXX~~ had the gun in his pocket. Then the police got there. ^{GM}

Gary Moffatt

Signature of person giving statement

STATE OF SOUTH CAROLINA)
CITY OF ROCK HILL :
ROCK HILL POLICE DEPARTMENT)

PAGE 2

PERSONALLY appears before me: Gary Moffat,
who deposes and says: "I make this statement of my own free will and accord,
without reward or hope of reward. I have not been mistreated or threatened
in any way. All of the above is truth, the whole truth, and nothing but the
truth so help me God.

I have read or had read to me the above statement consisting of 3 pages
and have received a copy of the same."

Gary Moffat
(SIGNATURE)

(WITNESS)

SWORN TO AND SUBSCRIBED TO BEFORE ME
THIS 23 DAY OF July, 1998

John Thicken
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES ON 9-18-2001

STATEMENT TAKEN ON 7-23-98 AT 3:00 ~~AM~~ PM

STATEMENT SIGNED ON 7-23-98 AT 4:05 ~~AM~~ PM

STATEMENT FROM: TAPE (); WRITTEN NOTES (); DICTATED (); INTERVIEW (X).

STATEMENT PREPARED BY: lt. J. Thicken

12-1-9 J. Alferd

DANIEL D'AGOSTINO, ESQUIRE - DIRECT BY MS. KINZELER

1 THE COURT: Thank you, sir. You may stand
2 MS. KINZELER: Your Honor, the State would
3 like to call Mr. D'Agostino to the stand.
4 na that we
5 entered in
6 Antonio Gordon v. State
7 transcript of PCR testimony en first duly
8 sworn, test of Daniel D'Agostino
9 DIRECT EXH 2008-CP-46-4951
10 Q. Mr. I for the
11 court, please pages 72-84
12 A. Daniel
13 Q. And is final law?
14 A. 1992
15 Q. Do you Gordon's
16 case?
17 A. Either ostino, but I
18 believe in m here in
19 York County
20 Q. And or
21 attemptin ssions
22 regarding
23 A. I ha file out on
24 at least I gave my --
25 I know I I don't

1 have my file and haven't seen my file in years on this case.

2 I can't sit here and swear under oath that I spoke with
3 Ms. Dixon or my private investigator spoke with Ms. Dixon,
4 but based upon the questioning that was read into the
5 record, what I do remember about the case, what I remember
6 about the issues associated with the Jackson v. Denno
7 hearing, I feel confident that we spoke with Ms. Dixon, or
8 got that information, because the issues about the
9 voluntariness of that statement that she gave were
10 thoroughly explored in the Jackson v. Denno hearing. We
11 went through a whole day of pretrial that day. I had
12 hired --

13 And just so -- I mean, I'll cut to the chase. We hired
14 a psychologist to interview Mr. Gordon. I believe we had
15 him transported to Columbia. We could not use any type of
16 mental defect deficiency defense at all.

17 That morning when we began the pretrial, I believe it
18 was Friday before the trial was supposed to start on Monday,
19 his co-defendant -- I believe Mr. Matlock represented one of
20 the co-defendants, he pled guilty that morning at or near
21 the beginning --

22 Q. May I interrupt you for one second? Could you tell the
23 court how many days this went over? Was it one day? It all
24 happened in one day, or was it two or three days?

25 A. I believe it was all one day, on a Friday. I'm not

1 positive, but I think it was all one day. I know we started
2 that morning and went late into the day.

3 Q. Okay.

4 A. But one co-defendant, and I believe all of them -- at
5 least two of them were cousins, if not all three of the
6 co-defendants were cousins. That morning one of them pled
7 guilty. He agreed to testify against Mr. Gordon.

8 We continued on with the pretrial. The psychologist
9 testified. Judge Hayes ruled in the end that the
10 statement -- I lost the Jackson v. Denno. I lost the
11 voluntariness issues. Basically we lost everything.

12 Q. May I interrupt just for one second to ask you, did you
13 cross-examine Charles Cabiness regarding the admissibility
14 of the statement?

15 A. I did. Yes, ma'am.

16 Q. Do you recall asking him about these coerced threatened
17 statements?

18 A. Yes, ma'am.

19 Q. Do you recall what Mr. Cabiness told you?

20 A. He testified that -- I mean, from what you heard today.
21 He testified that they -- I mean, they used their standard
22 police tactics. They tried to intimidate them and get them
23 to cooperate with them.

24 Q. And I believe Mr. Cabiness actually testified during
25 your direct examination of him that he believed he told her

1 he would place her under arrest if she did not come back and
2 talk to you?

3 A. I have no doubt he told her that.

4 Q. And is there anything else that you would like to --

5 A. Well, I just want to tell that he testified -- I mean,
6 one co-defendant pled guilty. As the day went on, another
7 one pled guilty. As the day went on, the third one pled
8 guilty. All of them agreed to testify against Antonio.

9 Antonio, I couldn't put him on the stand. He confessed
10 to me what happened. His whole -- you know, he told me he
11 did it. There is no way to put him on the stand.

12 Putting his girlfriend on the stand wasn't going to
13 help any, because it wasn't his Fourth Amendment, Fifth
14 Amendment Rights that were violated, allegedly. So putting
15 her on the stand and the officer had already corroborated
16 what they said.

17 So you have got Antonio. You have got his three
18 co-defendants who had confessed and were going to testify
19 against him. You have got his statement that he confessed.
20 I couldn't put him on the stand because he confessed to me.
21 At the end of the day I was left standing with going to
22 trial with three co-defendants testifying against him and
23 his statement coming into evidence. He wanted to plead
24 guilty at that point because he had a chance of getting out
25 of jail before he died, because if he had gone to trial, he

1 could have gotten life.

2 Q. Right.

3 A. He got forty years instead.

4 Q. And that was a negotiated plea?

5 A. Whatever it was. I believe it was negotiated. Like I
6 said, I hadn't seen my file in years.

7 Q. I believe I have the indictment. I don't see any need
8 to admit it into evidence at this time.

9 So you were aware that Ms. Dixon existed?

10 A. Sure.

11 Q. And you were aware that there was an issue with her
12 statement that she was a juvenile, that she hadn't called
13 her mom, and all those issues you were aware of at the time?

14 A. I was aware of that.

15 I was aware that Mr. Wellborn was trying to talk to
16 Antonio Gordon. We thoroughly explored that in pretrial and
17 Judge Hayes ruled on all those issues.

18 Q. And in your professional opinion is witness
19 intimidation any kind of viable defense that you could put
20 up in a trial like this?

21 A. In this case, witness intimidation would not have gone
22 anywhere.

23 Q. All right.

24 A. I mean, you got four kids who thought they were coming
25 up to two girls in a car, to steal their BMW. His

1 testimony, if he would have testified, was he was high on
2 marijuana and he shot the boy. Now, I don't know what I
3 could have done at trial with that. I have testified once
4 before about this and that's all I got.

5 Q. I know.

6 A. He testified -- I mean, he chose to plead guilty,
7 because he could get out before he died.

8 Q. So was it your intention initially to go to trial until
9 y'all lost the Denno hearing?

10 A. I was ready to go to trial. I would have gone to trial
11 on Monday morning, if he wanted to go to trial.

12 Q. Was it ultimately the -- whose decision was it to plead
13 guilty in this case?

14 A. It was his decision.

15 Q. And at the time he pled guilty, did you advise him that
16 he was waiving certain Constitutional Rights, including the
17 ability to challenge evidence and witness statements?

18 A. I went over all those rights. I went over the fact
19 that he was pleading guilty. It was a negotiated plea and
20 this was what he was going to do, and he was going to do
21 forty years. If he got the chance to get out early on good
22 behavior, or whatever, that was up to the Department of
23 Corrections. He got forty years. He was going to do forty
24 years.

25 MS. KINZELER: I believe that's all we have, Your

1 Honor.

2 MS. BLANCHETTE: Very briefly, Your Honor.

3 THE COURT: Okay.

4 MS. BLANCHETTE: If I may provide the documents to
5 the State first.

6 CROSS EXAMINATION BY MS. BLANCHETTE:

7 Q. The transcript indicates that the hearings were
8 actually held over July 12th and 14th and 16th. Would you
9 dispute that?

10 A. Whatever the transcript shows. I know we had the
11 Jackson v. Denno when we had all the officers and everything
12 else. I thought that was on Friday beforehand.

13 Q. And then if it also shows that he was sentenced then on
14 a fourth day, July 19th, would you dispute that?

15 A. Oh, he was sentenced on a different day that he decided
16 to plead guilty. I believe the sentencing was, we had -- we
17 ended the pretrial on one day. He decided at the end of
18 that day that he was going to plead guilty and they had did
19 the sentencing either the next day or that was on a Monday.
20 But I believe we did the pretrial the week before, and then
21 we did the actual plea on that Monday, because the State had
22 to have their -- comply with -- I don't know if the victim's
23 rights were in effect then, but the state did not want to do
24 the plea at the end of the day.

25 Q. So it didn't all occur in one day, as you stated on

1 direct?

2 A. No, I think I said on direct that we had the pretrial
3 and pretrial motions. I thought the pretrial motions with
4 the psychologists and the police officers were one day. If
5 it wasn't, I stand corrected.

6 But the sentencing itself -- I mean, I do know that you
7 had one person plead -- decide to plead that morning and
8 took a deal. As the day went on, the second one went down.
9 The third one went down, if I remember right. And then
10 the -- and then Antonio went down, because I remember they
11 took him in lockup. And by the time we came back for
12 sentencing, they already were telling me he was saying that
13 I sold him out, not the fact that his three cousins agreed
14 to testify against him under oath and say that he was the
15 shooter.

16 Q. And if you could just identify these documents?

17 A. This is the order authorizing payment of my fees.

18 This is a petition for approval for the payment of my
19 fees.

20 And this is some of the time that I spent on the case.

21 Q. And if you could just in briefly looking over those, on
22 your time sheet there, does it indicate that you spoke with
23 Ms. Dixon, or did you report any time in speaking to Ms.
24 Dixon on that?

25 A. If it's not, I mean, I'll take your word for it. If

1 you want me to read the whole thing, I'll do it. Like I
2 said, I had a private investigator as well.

3 I can't sit here and tell you I spoke with Ms. Dixon.
4 I don't know. But I know, based upon the questions that
5 were in the record today, that I knew about the issue of
6 coercion and I questioned the officers about it, based upon
7 my experience in dealing with law enforcement and how they
8 investigate crimes and how they deal with witnesses. I'm
9 not saying they didn't do anything wrong, but I have been
10 doing this for eighteen years. At that time it was nine
11 years.

12 Q. And just on that document there, you wouldn't dispute
13 if it doesn't reflect you spoke with Ms. Dixon?

14 A. I'm not going to refute it, but I also tell you, and
15 you can ask anybody that I don't keep good track of all my
16 time and I rarely record everything that I do.

17 MS. BLANCHETTE: Your Honor, may I have just one
18 moment?

19 (Off the record)

20 (Back on the record)

21 BY MS. BLANCHETTE:

22 Q. And just to summarize, do you think it would have had
23 an impact in the case if you would have called Ms. Dixon to
24 the stand during the Jackson v. Denno hearing?

25 A. It would have had no impact at all. Her Constitutional

1 Rights could not be asserted by Mr. Gordon.

2 Mr. Gordon chose to plead guilty at the end of the day
3 based upon the fact that not only the Jackson v. Denno was
4 denied and it wouldn't change that result, but his three
5 co-defendants were going to testify against him. That's why
6 he pled.

7 MS. BLANCHETTE: Thank you, Your Honor. I have
8 nothing further.

9 A. And he was guilty.

10 BY MS. BLANCHETTE:

11 Q. I'm sorry, were you finished?

12 A. I am now. And he said he was guilty.

13 MS. BLANCHETTE: I have no further questions, Your
14 Honor.

15 MS. KINZELER: Just briefly, Your Honor.

16 REDIRECT EXAMINATION BY MS. KINZELER:

17 Q. I know that counsel showed you documents where you
18 indicated a number of things that you did to prepare for Mr.
19 Gordon's case. I believe some of that probably said that
20 you have met with Mr. Wellborn and your private
21 investigator.

22 If anyone were to have spoken with Ms. Dixon, would
23 that have been you or could your investigator have spoken
24 with her?

25 A. My investigator could have spoken with him. Chris

1 Wellborn may have told me about it.

2 Q. Is it primarily your practice that your investigator
3 interview witnesses? Is that why you have him?

4 A. When I have a case that's this magnitude, I hire a
5 private investigator. In years past I have always used Ed
6 Fewell. He and I have a very good working relationship.

7 I always get the discovery. You will notice there is a
8 motion on there associated with discovery.

9 Q. And just so we are all clear today, if you had known
10 anything else about Ms. Dixon's statement, whether or not
11 you or your investigator had spoken with her, do you believe
12 that the State had enough evidence against Mr. Gordon to
13 find him guilty beyond a reasonable doubt and that pleading
14 guilty was the best option?

15 A. In my opinion, he has a chance of getting out before he
16 dies. Yes, pleading guilty was his best option. He would
17 have been found guilty, in my opinion.

18 Q. Regardless of Ms. Dixon's testimony?

19 A. Regardless of Ms. Dixon's testimony. He said he did
20 it.

21 MS. KINZELER: I believe that's all, Your Honor.

22 MS. BLANCHETTE: Your Honor, just briefly.

23 RECROSS EXAMINATION BY MS. BLANCHETTE:

24 Q. Could you say the name of your investigator again?

25 A. Ed Fewell.

1 Q. And Mike Green was not the investigator that worked on
2 this case?

3 A. It might have been Mike Green. Ed -- if that shows
4 Mike Green, that means Ed was working for somebody else on
5 that case then.

6 MS. BLANCHETTE: Your Honor, if I may approach the
7 witness?

8 BY MS. BLANCHETTE:

9 Q. If you could just identify that?

10 A. Yeah, you are right. Mike Green is a private
11 investigator. He now works for the Family Court as -- he
12 was a former sheriff's deputies, if I remember right. He got
13 into private. He was working with Ed Fewell for awhile. Ed
14 was actually working for one of the other co-defendant's
15 attorneys at that time and could not use Ed. Ed referred me
16 to Mike. Mike has since stop doing private investigative
17 work. He's back working with the Family Court locating
18 fathers or mothers who are behind on their child support.

19 Let's see if this says anything about him.

20 Q. And could you identify what that appears to be?

21 A. That appears to be a summary of some of Mr. Green's
22 time associated with this case.

23 That's right, I hired Don Girndt for the fingerprints.
24 I forgot about him.

25 Q. So if you could just let me know if you see anywhere

1 where he indicates he spoke with Ms. Dixon?

2 A. Located two witnesses, Chyneca Dixon and Fontella
3 Feeley. Served subpoena on Dixon, Feeley in the hospital,
4 on July 14th, 1999, between the hours of four p.m. and seven
5 p.m., and he charged 25 miles on that trip and charged three
6 hours for doing that work.

7 I also note on here that we had a meeting with all the
8 defense attorneys and private investigators involved in
9 defending the case on July 1st, 1999, between the hours of
10 10:30 and 12:30. And it may have been we got some
11 information about Chyneca at that time as well, so
12 apparently we did locate her.

13 Other than that -- did you want to make this an
14 exhibit?

15 MS. BLANCHETTE: Your Honor, after I show it to
16 the State, I would like to move this as Applicant's No. 1.

17 (Investigator's Notes marked and admitted into
18 evidence as Applicant's Exhibit No. 1)

19 MS. BLANCHETTE: Your Honor, I have no further
20 questions.

21 MS. KINZELER: Nothing from the State, Your Honor.

22 THE COURT: Thank you, sir.

23 MS. KINZELER: Your Honor, at this time I believe
24 the State rests the newly-discovered evidence issue,
25 although we would like to reiterate -- we could address the

State v. Monte Gordon,
Written Plea Agreement,
July 16, 1949

FILED-RECEIVED
STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS

COUNTY OF YORK

JUL 15 12 PM '99

SIXTEENTH JUDICIAL CIRCUIT

State of South Carolina

v.

PLEA AGREEMENT

Monta L. Gordon,
Defendant.

98-GS-46-2853, 2854, 2855, 2856, 2857,
2858, 2859

AGREEMENT made this 16TH day of July, 1999 between and among the State of South Carolina, as represented by Thomas E. Pope, Solicitor, Sixteenth Judicial Circuit; the Defendant, Monta L. Gordon, and Defendant's attorney, Joseph Matlock.

IN CONSIDERATION of the mutual promises made herein, the parties hereto agree as follows:

1. The Defendant, Monta L. Gordon, agrees to plead guilty to the following indictments: murder of Eric Peter Krenn for a sentence of thirty years without parole, attempted armed robbery of Eric Peter Krenn for twenty years without parole, attempted armed robbery of Christopher Diaz for a sentence of twenty years without parole, conspiracy for a sentence of five year, and failure to stop for a blue light for a sentence of three years with a recommendation of concurrent sentencing. Both the State and the Defense remain free to be heard concerning sentencing.
2. In exchange for this plea the State agrees to dismiss the charge of carjacking, three counts of possession of a firearm during the commission of a violent crime, and driving under suspension.
3. The Defendant agrees to provide complete and thorough cooperation to both the Sixteenth Circuit Solicitor's Offices and all involved law enforcement agencies including a truthful and forthright statement

concerning his involvement in the pending charges, and to further cooperate by giving true and honest testimony at any appropriate judicial proceeding. Further, if deemed appropriate by the prosecution, this Agreement is contingent upon Monta L. Gordon passing a lie detector test to the satisfaction of the prosecution.

4. The State further agrees that this agreement remains enforceable in the event that the case against the co-defendants is resolved in such a way as to not require the testimony of the Defendant, provided, that all other conditions of cooperation have been performed by the Defendant.
5. The State agrees that any self-incriminating information provided by the Defendant as a result of his cooperation provided by the terms of this Agreement will not be used against the Defendant in the event that the Defendant withdraws his plea.
6. In the event that the Defendant withdraws his plea the State will proceed with a trial and will seek the maximum penalty allowed by law.
7. The parties hereby agree that this Plea Agreement contains the entire agreement of the parties and this Agreement may be modified only in writing, signed by all parties.

York, South Carolina

Willy Thompson, Assistant Deputy Solicitor
Thomas E. Pope, Solicitor
Sixteenth Judicial Circuit

Monta Gordon
Monta L. Gordon
Defendant

Joseph Matlock
Joseph Matlock
Attorney for Defendant

written statement of
Monta Gordon, August 6,
2012

CERTIFIED TRUE COPY

2012 NOV 21 PM 1:31

State of South Carolina

Lee County

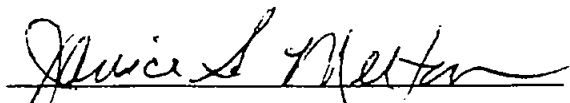
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Statement of Monta Gordon

I, Monta Gordon, having been duly sworn, depose and say that my brother Antonio "Tonio" Gordon and two other was together in July of 1998. I am the person who fired the shot that killed the man who died. I was the only person with a gun. My brother Tonio did not have a gun nor did he fire any gun that night. I alone am the only one who killed the victim. I told police Tonio fired the shot because he was a juvenile and I was an adult. I was on probation. As a juvenile I figured Tonio would get a lesser sentence. I never discussed robbing or killing anybody with Tonio. I was the only person with a gun that night and I fired the only shot that night.

This statement is honest and truthful. I have received a copy of this one (1) page statement.

Sworn to before me this 6th day of August ~~July~~ 2012.



Notary Public for South Carolina

My Commission expires: 4-26-2014

Monta Gordon

TERRANCE MCCREARY - DIRECT BY MR. BRADFORD

4

1 MS. CIABATTARI - YOUR HONOR, THIS IS THE CASE OF
2 TERRANCE MCCREARY VS. STATE. THE DOCKET NUMBER IS 2000-
3 CP-46-1368.

4 MR. BRADFORD - MAY WE PROCEED, YOUR HONOR?

5 THE COURT - YES, SIR.

6 MR. BRADFORD - THE PETITIONER IS TERRANCE
7 MCCREARY, AND WE CALL HIM AS THE FIRST WITNESS. MR.
8 MCCREARY, IF YOU'D COME AROUND AND BE SWORN IN.

9 TERRANCE MCCREARY, AFTER BEING FIRST DULY SWORN,
10 TESTIFIES AS FOLLOWS:

11 DIRECT EXAMINATION

12 BY MR. BRADFORD -

13 Q MR. MCCREARY, HOW OLD ARE YOU?

14 A 25.

15 Q AND WHERE DID YOU LIVE BEFORE YOU BEGAN SERVING TIME?

16 A IN ROCK HILL.

17 Q AND YOU UNDERSTAND THAT AS PART OF THIS PCR PROCESS,
18 SHOULD THE JUDGE DETERMINE THAT IT'S APPROPRIATE TO GRANT
19 YOU A NEW TRIAL, THAT YOU WOULD FACE THE POSSIBILITY OF
20 CHARGES OTHER THAN THE CHARGES THAT YOU ACTUALLY ARE
21 SERVING TIME FOR?

22 A YES, SIR.

23 Q YOU UNDERSTAND THAT IN THIS CASE, SINCE THE
24 UNDERLYING MATTER IS A MURDER, THAT YOU COULD FACE CHARGES
25 UP TO AND INCLUDING THE DEATH PENALTY IF YOU WERE TO

TERRANCE MCCREARY - DIRECT BY MR. BRADFORD

5

1 RECEIVE A NEW TRIAL AND THAT MATTER WERE TO GO FORWARD
2 AFTER THE SOLICITOR MADE A RECOMMENDATION THAT IT BE A
3 DEATH PENALTY CASE? DO YOU UNDERSTAND?

4 A YES, SIR. YES, SIR.

5 Q AND KNOWING THAT YOU WANT TO GO FORWARD WITH THIS
6 HEARING TODAY AND TO TALK WITH THE COURT ABOUT --- ABOUT
7 YOUR CASES. IS THAT RIGHT?

8 A YES, SIR.

9 Q NOW, IN THIS CASE FOR WHICH THERE IS A PLEA OF GUILTY
10 BY YOU, DID YOU WANT AND EXPECT TO HAVE A JURY TRIAL IN
11 THE CASE AS IT WAS GOING ALONG, AS YOU WERE BEING
12 REPRESENTED BY MR. GILLEN?

13 A YES, SIR.

14 Q AND HAD YOU DISCUSSED THAT FACT AT DIFFERENT TIMES
15 WITH MR. GILLEN?

16 A YES, ON --- ON THE FIRST MEETING WE HAD.

17 Q ALL RIGHT. SO THE FIRST TIME YOU MET WITH HIM, YOU
18 INDICATED TO HIM THAT YOU DID NOT PLAN TO PLEAD GUILTY TO
19 THE CHARGES, BUT YOU WANTED A JURY TRIAL.

20 A RIGHT.

21 Q NOW, AS THIS MATTER APPROACHED A TRIAL DATE, DID YOU
22 MEET WITH MR. GILLEN TO FURTHER DISCUSS YOUR DEFENSES AND,
23 YOU KNOW, WHETHER THE MATTER WOULD BE TRIED?

24 A CAN YOU SAY THAT AGAIN?

25 Q DO YOU RECALL THAT YOU HAD A DATE THAT THE MATTER WAS

TERRANCE MCCREARY - DIRECT BY MR. BRADFORD

6

1 SUPPOSED TO COME UP FOR TRIAL?

2 A YES.

3 Q AND AS THAT DATE GOT CLOSER, DO YOU RECALL MEETING
4 WITH MR. GILLEN TO DISCUSS THE CASE SOME MORE.

5 A NO, WE MET TWICE. I HAD MET WITH HIM THE FIRST TIME.
6 THE SECOND TIME WASN'T NO --- REALLY NO MEETING, AND THE
7 LAST TIME WE TALKED WAS WHEN WE CAME TO COURT ON THAT
8 JACKSON DENO HEARING.

9 Q ALL RIGHT, SO ARE YOU SAYING THAT YOU RECALL MEETING
10 THREE TIMES IN TOTAL WITH MR. GILLEN DURING THE COURSE OF
11 HIS REPRESENTATION WITH YOU?

12 A IT'LL BE TWO TIMES.

13 Q ALL RIGHT. AND ONE TIME WAS WHEN HE WAS FIRST ---
14 WHEN HE FIRST BECAME YOUR LAWYER?

15 A YES, SIR.

16 Q AND THEN --- AND YOU WERE --- WERE YOU IN JAIL?

17 A YES, SIR.

18 Q AWAITING TRIAL?

19 A YES, SIR.

20 Q ALL RIGHT. AND THEN THE SECOND TIME WAS AT THE TIME
21 OF THE JACKSON DENO HEARING?

22 A ~~NO, IT WAS A COUPLE WEEKS BEFORE THE DENO HEARING.~~

23 Q ALL RIGHT.

24 A THE LAST TIME WE SEEN EACH OTHER WAS AT THE HEARING.

25 Q ALL RIGHT. TELL ME WHAT YOU DISCUSSED WITH MR.

TERRANCE MCCREARY - DIRECT BY MR. BRADFORD

7

1 GILLEN AT THE TIME OF THE JACKSON DENO HEARING, EXCUSE ME,
2 AT TWO WEEKS PRIOR TO THE JACKSON DENO HEARING. WHAT DID
3 Y'ALL TALK ABOUT THEN?

4 A HE WANTED ME TO PLEAD TO 30 YEARS, AND I TOLD HIM I
5 DIDN'T WANT NO PLEA.

6 Q ALL RIGHT. WELL, WHAT --- DID HE TELL YOU WHAT
7 CHARGES YOU WOULD --- HE WAS SUGGESTING YOU PLEAD GUILTY
8 TO?

9 A IT WAS MURDER AND ARMED ROBBERY, SOMETHING ---
10 ATTEMPTED ARMED ROBBERY OR SOMETHING LIKE THAT.

11 Q ALL RIGHT. IT WAS DIFFERENT CHARGES THAN YOU
12 ULTIMATELY ENTERED YOUR PLEA ON. IS THAT RIGHT?

13 A YES, SIR.

14 Q BUT THE AMOUNT OF TIME THAT YOU WERE BEING ASKED TO
15 SERVE WAS THE SAME.

16 A YES, SIR.

17 Q 30 YEARS.

18 A YES, SIR.

19 Q AND WHAT --- WHAT DID YOU SAY TO THAT?

20 A I DIDN'T WANT NO PLEA.

21 Q ALL RIGHT. WELL, --- AND AT THAT POINT DID YOU HAVE

22 ~~DISCUSSIONS ABOUT TRIAL OR TRIAL PREPARATION OR ANY OTHER~~
23 THING?

24 A NO, SIR.

25 Q DID MR. GILLEN INDICATE TO YOU WHAT HE WAS DOING WITH

TERRANCE MCCREARY - DIRECT BY MR. BRADFORD

8

1 REGARD TO GETTING THE CASE READY FOR TRIAL?

2 A NO, SIR.

3 Q DID HE TELL YOU THAT A HEARING WAS PLANNED ON THE
4 VOLUNTARINESS OF YOUR CONFESSION, THE JACKSON DENO
5 HEARING?

6 A HE WAS --- HE SAID WE WOULD BE GOING TO A HEARING
7 WITHIN THAT WEEK, YES. THE WEEK OF THE 17TH, I THINK.

8 Q ALL RIGHT. AND DID YOU, IN FACT, GO TO COURT DURING
9 THE HEARING ABOUT THE VOLUNTARINESS OF YOUR CONFESSION?

10 A NO.

11 Q YOU WERE NOT PRESENT WHEN THE HEARING WAS HELD?

12 A OH, YES, I WAS PRESENT, YES.

13 Q YOU WERE PRESENT.

14 A (NO RESPONSE)

15 Q AND DID YOU SEE THE HEARINGS OF ANY OF YOUR CO-
16 DEFENDANTS OR WAS IT JUST YOUR HEARING THAT YOU WERE
17 INVOLVED IN?

18 A NO, IT WAS ANOTHER CO-DEFENDANT.

19 Q SO YOU SAW ONE OTHER CO-DEFENDANT'S HEARING.

20 A NO, THEY WAS --- THEY WAS AT MY --- THEY WAS ALL OF
21 US AT THE SAME HEARING.

22 Q I SEE. OKAY. AND WHAT WAS THE RESULT OF THAT
23 HEARING?

24 A WE WERE SENTENCED.

25 Q ALL RIGHT. BUT THE JACKSON DENO HEARING, DID THE

TERRANCE MCCREARY - DIRECT BY MR. BRADFORD

9

1 JUDGE DECIDE THAT THE CONFESSIONS WERE VOLUNTARY AND COULD
2 COME INTO EVIDENCE, OR DID HE DECIDE THAT THEY WOULD NOT
3 COME INTO EVIDENCE? DO YOU KNOW?

4 A I DON'T KNOW.

5 Q ANYWAY, AS A RESULT OF THAT HEARING, DID YOU HAVE
6 ANOTHER OCCASION TO MEET WITH MR. GILLEN ABOUT THE TRIAL
7 OF YOUR CASE?

8 A NO, SIR.

9 Q ALL RIGHT. WAS ANYTHING COMMUNICATED TO YOU BY MR.
10 GILLEN IN WRITING OR OTHERWISE BEFORE YOU MADE YOUR COURT
11 APPEARANCE IN WHICH YOU ENTERED A PLEA OF GUILTY?

12 A NO, SIR.

13 Q DID MR. GILLEN ADVISE YOU THAT HE THOUGHT YOU SHOULD
14 PLEAD GUILTY TO ACCESSORY BEFORE AND AFTER THE FACT OF
15 MURDER AND ACCEPT A SENTENCE, A NEGOTIATED PLEA OF 30
16 YEARS?

17 A NO, HE TELL ME I NEEDED --- I SHOULD PLEA GUILTY,
18 BECAUSE IF I GO TO TRIAL, I'M GOING TO LOSE.

19 Q WELL, I UNDERSTAND THAT, BUT DID HE MAKE A
20 RECOMMENDATION TO YOU THAT YOU ACCEPT SUCH A PLEA?

21 A NO.

~~22 Q AND YOU NEVER----- YOU NEVER AGREED-----OR DID YOU-----~~
23 AGREE TO ACCEPT SUCH A PLEA IN MR. GILLEN'S PRESENCE
24 BEFORE YOU WENT INTO COURT?

25 A NO.

TERRANCE MCCREARY - DIRECT BY MR. BRADFORD

10

1 Q NOW, AT SOME POINT YOU BECAME AWARE THAT YOU WERE
2 BEFORE A JUDGE AND WITH THE --- SOMEONE FROM THE
3 SOLICITOR'S OFFICE TALKING, AND THAT THE PROCEEDING
4 INVOLVED THE ISSUE OF WHETHER YOU WERE GUILTY OF ACCESSORY
5 BEFORE OR ACCESSORY AFTER THE FACT OF MURDER. WERE YOU
6 NOT?

7 A NO.

8 Q ALL RIGHT. TELL ME WHAT HAPPENED AFTER THE JACKSON
9 DENO HEARING ON THE VOLUNTARINESS OF YOUR CONFESSION.
10 WHAT HAPPENED?

11 A I WAS SENTENCED TO 30 YEARS.

12 Q SO IT WAS AT THAT TIME THAT YOU WENT RIGHT INTO A
13 HEARING AFTER THE JACKSON DENO HEARING THAT RESULTED IN
14 YOUR GETTING A SENTENCE OF 30 YEARS?

15 A (NO RESPONSE)

16 Q IS THAT RIGHT?

17 A SAY THAT AGAIN.

18 Q ALL RIGHT. DID YOU LEAVE THE COURTROOM AFTER THE
19 JACKSON DENO HEARING OR DID YOU STAY AND THEN GO RIGHT
20 INTO A --- INTO THE GUILTY PLEA?

21 A WE WENT --- IT WAS TWO DAYS. THEY SAID --- WE GOT
22 SENTENCED ON A MONDAY. THAT WAS THE END OF THE JACKSON
23 DENO HEARING.

24 Q OKAY. BUT YOU WERE SENTENCED ON MONDAY. THAT IS,
25 THE JUDGE PRONOUNCED SENTENCED AND SAID, YOU KNOW, YOU'RE

TERRANCE MCCREARY - DIRECT BY MR. BRADFORD

11

1 SENTENCED TO 30 YEARS ON THE ACCESSORY BEFORE THE FACT OF
2 MURDER AND 15 YEARS ON ACCESSORY AFTER THE FACT OF MURDER
3 TO RUN CONCURRENT. THAT HAPPENED ON THE MONDAY?

4 A YES, SIR.

5 Q ON THE FRIDAY BEFORE THAT, YOU WENT THROUGH A HEARING
6 WITH THE JUDGE AND HE ASKED YOU QUESTIONS AND SO FORTH?

7 A YES.

8 Q ALL RIGHT. WHAT DID YOU THINK WAS HAPPENING IN THAT
9 HEARING WHEN THE JUDGE WAS THERE ASKING YOU QUESTIONS AND
10 SO FORTH?

11 A I THOUGHT THEY WERE TRYING TO FIND --- FIND ENOUGH
12 EVIDENCE TO TAKE ME TO TRIAL. THAT WAS THE HEARING FOR.
13 RIGHT?

14 Q ALL RIGHT. DID YOU THINK YOU WERE --- YOU KNEW YOU
15 WEREN'T IN A JURY TRIAL.

16 A YES.

17 Q SINCE THERE WAS NO JURY PRESENT. RIGHT?

18 A YES.

19 Q ALL RIGHT. DID YOU THINK THAT WHAT YOU WERE --- WHAT
20 DID YOU THINK YOU WERE ENGAGED IN IN THAT MATTER WITH THE
21 JUDGE?

22 ~~A I WAS ENGAGED IN TO SEE IF I COULD GO --- HAVE ENOUGH~~
23 EVIDENCE TO GO TO TRIAL WITH. IF NOT, WE WOULD ---

24 Q DO YOU RECALL ON THAT FRIDAY, I THINK IT WAS JULY THE
25 16TH, THAT THE JUDGE ASKED YOU IF YOU WANTED YOUR --- THE

TERRANCE MCCREARY - DIRECT BY MR. BRADFORD

12

1 CHARGES AGAINST YOU --- INDICTMENTS --- TO BE PRESENTED TO
2 THE GRAND JURY. DO YOU RECALL THAT?

3 A YES, SIR.

4 Q NOW, INITIALLY, YOU ANSWERED THAT, YES, YOU DID WANT
5 INDICTMENTS TO BE PRESENTED TO THE GRAND JURY. WHY WAS
6 THAT?

7 A BECAUSE THAT'S WHAT I WANTED.

8 Q HAD --- WAS THAT SOMETHING THAT YOU AND MR. GILLEN
9 HAD DISCUSSED? THAT IS ---

10 A AT SOME POINT, YES.

11 Q WHAT HAD YOU DISCUSSED WITH MR. GILLEN ABOUT THE
12 GRAND JURY?

13 A I TOLD HIM THAT I WANTED TO GO TO TRIAL.

14 Q ALL RIGHT. WELL, DID HE TELL YOU THAT --- WHAT
15 CONNECTION THE GRAND JURY HAD OR WHAT PART IT PLAYED IN
16 YOUR GOING TO TRIAL?

17 A NO.

18 Q ALL RIGHT. NOW, BUT AFTER YOU SAID THAT YOU WANTED -
19 -- YOU WANTED TO HAVE YOUR INDICTMENTS PRESENTED TO THE
20 GRAND JURY, MR. GILLEN SPOKE UP --- SPOKE TO THE COURT,
21 ASKED TO TALK TO YOU, AND YOU AND HE, APPARENTLY STEPPED
22 TO THE SIDE AND TALKED ABOUT IT, AND THEN YOU CAME BACK,
23 AND YOU SAID THAT YOU WOULD WAIVE --- THAT YOU WOULD WAIVE
24 PRESENTMENT OF THE INDICTMENTS TO THE GRAND JURY.

25 A YES. BUT AT THAT POINT IN TIME HE TELL ME I SUPPOSED

TERRANCE MCCREARY - DIRECT BY MR. BRADFORD

13

1 TO SAY NO AT THAT POINT.

2 Q YOU WERE SUPPOSED TO SAY, NO, YOU DON'T WANT THINGS
3 TO GO TO THE GRAND JURY?

4 A YES.

5 Q AND YOU CAME BACK, YOU USED THE WORD WAIVE. WAS THAT
6 YOUR WORD OR WAS THAT HIS WORD? THAT YOU WAIVE THESE
7 GOING TO THE GRAND JURY?

8 A THAT WASN'T MY WORD, NO.

9 Q ALL RIGHT. WHAT DID YOU SAY TO HIM AT THAT POINT
10 ABOUT --- ABOUT HOW THAT WOULD AFFECT YOUR RIGHT TO A JURY
11 TRIAL?

12 A I THOUGHT IT WOULD STILL GO ON.

13 Q I'M SORRY. SAY THAT AGAIN.

14 A I THOUGHT IT WOULD STILL GO ON. I MEAN SO FOR A
15 JURY.

16 Q NOW, AFTER EVERYTHING WAS FINISHED UP, THE JUDGE HAD
17 ASKED YOU QUESTIONS. ON THAT FRIDAY, DECISION WAS MADE TO
18 WAIT UNTIL MONDAY TO SENTENCE YOU AND OTHER DEFENDANTS.
19 DID YOU SAY ANYTHING TO YOUR LAWYER AT THAT POINT, TO MR.
20 GILLEN ABOUT WHAT WAS GOING ON OR WHAT YOU WERE THINKING?

21 A NO, SIR.

22 Q ~~DID YOU HAVE THE OPPORTUNITY TO TALK TO HIM AT THAT~~
23 POINT AFTER YOU LEFT THE COURTROOM AND SO FORTH?

24 A YES.

25 Q DID YOU HAVE THE OPPORTUNITY TO TALK TO HIM?

TERRANCE MCCREARY - DIRECT BY MR. BRADFORD

14

- 1 A YES, SIR.
- 2 Q DID YOU TALK TO HIM AFTER YOU LEFT THE COURTROOM THAT
- 3 DAY?
- 4 A NOT LONG. YES.
- 5 Q NOT LONG? WHAT DID YOU SAY WHEN YOU DID TALK TO HIM?
- 6 A I DIDN'T REALLY SAY NOTHING.
- 7 Q YOU DIDN'T SAY ANYTHING?
- 8 A NO.
- 9 Q ALL RIGHT. DID YOU TALK AT ALL ABOUT WHAT YOU ---
- 10 WHAT YOU THOUGHT THE SITUATION WAS?
- 11 A NO.
- 12 Q WHAT DID YOU THINK THE SITUATION WAS AFTER THAT
- 13 FRIDAY AFTER YOU HAD BEEN BEFORE THE JUDGE?
- 14 A I THOUGHT THEY WOULD GO OVER YONDER I MEAN AND PICK
- 15 THE JURY. I MEAN, WELL, SEND MY INDICTMENT ON TO THE
- 16 GRAND JURY AND SET A DATE FOR A JURY TRIAL.
- 17 Q SO AS FAR AS YOU KNEW, YOU HAD NOT ENTERED ANY PLEA
- 18 OF GUILTY ON THAT DAY. IS THAT RIGHT?
- 19 A YES. YES.
- 20 Q ALL RIGHT. NOW, ON THE MONDAY WHEN YOU CAME BACK ---
- 21 DID YOU MEET WITH MR. GILLEN OVER THE WEEKEND OR ANY
- 22 MEMBER OF HIS STAFF?
- 23 A NO.
- 24 Q DID YOU ASK TO?
- 25 A NO.

TERRANCE MCCREARY - DIRECT BY MR. BRADFORD

15

1 Q DID YOU ASK TO MEET WITH HIM?

2 A NO.

3 Q YOU GOT TO SAY YES OR NO. I ---

4 A NO.

5 Q AND WHEN YOU CAME BACK INTO THE COURTROOM BEFORE
6 JUDGE HAYES TO BE SENTENCED OR --- AND, IN FACT, WERE
7 SENTENCED WHEN HE SAID, YOU KNOW, THE SENTENCE OF THIS
8 COURT IS 30 YEARS ON THE ACCESSORY BEFORE THE FACT OF
9 MURDER AND 15 YEARS FOR ACCESSORY AFTER THE FACT OF
10 MURDER, WHAT ABOUT AT THAT POINT? DID YOU UNDERSTAND WHAT
11 HAD HAPPENED?

12 A AT THAT TIME I COULDN'T SPEAK.

13 Q WELL, I MEAN DID YOU --- DID YOU UNDERSTAND AT THAT
14 POINT THAT YOU WERE NOT LOOKING AT THE POSSIBILITY OF A
15 JURY TRIAL?

16 A AT SOME POINT, YES, BUT I COULDN'T SAY ANYTHING. YOU
17 KNOW, I DIDN'T EVEN KNOW WHAT WAS GOING ON.

18 Q DID YOU SAY --- SO, YOU DIDN'T SAY ANYTHING TO THE
19 JUDGE.

20 A NO, SIR.

21 Q DID YOU SAY ANYTHING TO MR. GILLEN?

~~22 A AT THE END OF THE HEARING.~~

23 Q AT THE END OF THE HEARING? WHAT DID YOU SAY TO MR.
24 GILLEN?

25 A I TOLD HIM I WANT --- I WANT TO APPEAL.

TERRANCE MCCREARY - DIRECT BY MR. BRADFORD

16

1 Q AND WHAT WAS HIS RESPONSE TO YOU?

2 A HE WOULD GET WITH ME LATER.

3 Q ALL RIGHT. AND, NOW, DID ---

4 MS. CIABATTARI - YOUR HONOR, I JUST --- I'M
5 SORRY. I COULDN'T UNDERSTAND WHAT THAT LAST ANSWER WAS,
6 PLEASE.

7 THE COURT - CAN YOU SPEAK A LITTLE MORE CLEARLY,
8 SIR. HAVING TROUBLE UNDERSTANDING YOU.

9 MR. MCCREARY - ALL RIGHT.

10 THE COURT - I UNDERSTOOD HIM TO SAY HE SAID HE
11 WOULD TALK TO HIM LATER.

12 MR. BRADFORD - YES, I THINK HE SAID HE WOULD GET
13 WITH ME LATER.

14 Q IS THAT CORRECT? IS THAT WHAT YOU SAID?

15 A YES, SIR.

16 Q AND DID YOU MEET OR GET WITH MR. GILLEN AFTER YOU
17 WERE SENTENCED?

18 A NO, SIR.

19 Q DID YOU HEAR FROM HIM BY TELEPHONE OR BY MAIL?

20 A BY MAIL.

21 Q AND BY MAIL DID HE SAY ANYTHING TO YOU ABOUT
22 APPEALING?

23 A NO, SIR.

24 Q AND, IN FACT, DO YOU KNOW IF AN APPEAL WAS FILED
25 RELATING TO YOUR GUILTY PLEA AND SENTENCE?

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

17

1 A I HAD SOMEBODY --- I HAD A FAMILY MEMBER CALL
2 COLUMBIA ABOUT THE APPEAL, AND THEY SAID I WASN'T LISTED
3 UP UNDER THERE.

4 Q SO AS FAR AS YOU KNOW NO APPEAL WAS TAKEN?

5 A YES.

6 Q AND YOU NEVER HAD ANY DEALINGS WITH MR. GILLEN OR
7 ANYONE ELSE ABOUT AN APPEAL.

8 A YES.

9 MR. BRADFORD - IF YOU WOULD, ANSWER ANY
10 QUESTIONS THAT THE ATTORNEY GENERAL'S OFFICE MAY HAVE.

11 CROSS EXAMINATION

12 BY MS. CIABATTARI -

13 Q MR. MCCREARY, WHO ARE YOUR CO-DEFENDANTS IN THIS
14 CASE?

15 A MONTE GORDON, ANTONIO GORDON AND GARY MOFFITT.

16 Q GARY WHO?

17 A MOFFITT.

18 Q MOFFITT. OKAY. AND WERE YOU ORIGINALLY CHARGED WITH
19 MURDER?

20 A YES, MA'AM.

21 Q BUT YOU PLED --- YOU DIDN'T PLEAD TO MURDER.

22 A NO, MA'AM.

23 Q AND YOU SAY THAT YOU MET WITH YOUR ATTORNEY ONLY
24 TWICE?

25 A YES, MA'AM.

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

18

1 Q YOU MET WITH HIM ONE TIME WHEN YOU FIRST --- HE WAS
2 FIRST APPOINTED? IS THAT CORRECT?

3 A YES, MA'AM.

4 Q THEN YOU WERE WITH HIM --- YOU NEVER MET WITH HIM
5 BEFORE YOU WENT TO TRIAL?

6 A NO, MA'AM.

7 Q YOU NEVER MET WITH HIM BEFORE THE PRE-TRIAL MOTIONS?

8 A YES, IT WAS A --- IT WAS A BRIEF MEETING. IT WASN'T
9 NO MEETING MEETING.

10 Q YOU HAD A BRIEF MEETING BEFORE THE PRE-TRIAL MOTIONS?

11 A BEFORE THAT --- BEFORE THE DENO HEARING, JACKSON DENO
12 HEARING.

13 Q ALL RIGHT. SO YOU MET HIM ONCE WHEN HE WAS
14 APPOINTED. YOU MET HIM FOR A BRIEF TIME BEFORE THE PRE-
15 TRIAL MOTIONS.

16 A YES.

17 Q YOU HAD TWO DAYS OF PRE-TRIAL MOTIONS, AND THEN YOU
18 HAD ONE DAY OF SENTENCING.

19 A YES.

20 Q THAT'S AT LEAST FIVE TIMES. RIGHT?

21 A WELL, THAT AIN'T NO LEGAL MEETING.

22 Q OKAY.

23 A HE DIDN'T COME TO A MEETING AND MEET WITH ME. THAT
24 WAS IN THE COURTROOM.

25 Q OKAY. WHEN DID YOU ASK HIM TO FILE AN APPEAL? AFTER

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

19

1 THE GUILTY PLEA OR AFTER THE SENTENCING?

2 A RIGHT AFTER HE --- THE JUDGE GOT THROUGH TALKING.

3 Q I UNDERSTAND THAT, BUT DIDN'T YOU PLEAD GUILTY ONE
4 DAY, AND THEN ON THAT MONDAY YOU WERE SENTENCED?

5 A NO, I WAS SENTENCED ON THAT MONDAY.

6 Q MR. MCCREARY, LET ME ASK THIS AGAIN. THERE'S JACKSON
7 V. DENO HEARING, I THINK, ON THE --- PROBABLY WOULD'VE
8 BEEN ON THE 12TH. RIGHT?

9 A YES.

10 Q OKAY. AND THEN YOU WENT BEFORE THE JUDGE. ALL OF
11 THE CO-DEFENDANTS WENT BEFORE THE JUDGE AND Y'ALL PLED
12 GUILTY. RIGHT?

13 A THEY PLED GUILTY.

14 Q YOU NEVER PLED GUILTY.

15 A NO.

16 Q WERE ORIGINALLY ALL THREE OF YOU GUYS GOING TO TRIAL?

17 A NO. THEY PLED GUILTY. I WANTED A TRIAL.

18 Q NO, I'M TALKING ABOUT ORIGINALLY. OKAY? BEFORE THE
19 DAY WHEN THEY PLED GUILTY, WERE ALL THREE OF YOU GUYS,
20 ANTONIO, MONTE AND YOU, WERE Y'ALL GOING TO TRIAL?

21 A YES.

~~22 Q OKAY. DO YOU KNOW WHY YOU DIDN'T END UP GOING TO~~
23 TRIAL AND WHY THEY STARTED TO PLEAD GUILTY?

24 A NO.

25 Q NOW, IF YOU HAD GONE TO TRIAL, WOULD IT NOT HAVE BEEN

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

20

1 THAT YOUR THREE OTHER PEOPLE, THAT THEY HAD PLED GUILTY
2 AND WERE GOING TO TESTIFY AGAINST YOU?

3 A THAT WAS ON THEM.

4 Q I'M SORRY?

5 A THAT'S ON THEM. I WAS WANTING TO TAKE A --- I WAS
6 WANTING TO GO TO TRIAL.

7 Q YOU WANTED TO GO TO TRIAL EVEN THOUGH ANTONIO AND
8 MONTE WOULD'VE PLED GUILTY AND THEN WOULD'VE BEEN
9 TESTIFYING AGAINST YOU?

10 A YES.

11 Q EVEN THEN YOU WANTED TO GO TO TRIAL?

12 A YES.

13 Q FOR MURDER?

14 A YES.

15 Q OKAY. MR. MCCREARY, DO YOU REMEMBER WHEN YOU WERE
16 BEFORE A JUDGE AND THE SOLICITOR WENT OVER THE INDICTMENTS
17 AND SAID THAT YOU WERE PLEADING GUILTY TO ACCESSORY BEFORE
18 THE FACT AND ACCESSORY AFTER THE FACT? DO YOU REMEMBER
19 ALL THAT?

20 A YES, MA'AM.

21 Q OKAY. AND DO YOU REMEMBER WHEN THE SOLICITOR TOLD
22 ~~THE JUDGE THAT YOU WERE WAIVING PRESENTMENT?~~ YOU THINK
23 ONE OF THE REASONS YOU WERE WAIVING PRESENTMENT IS BECAUSE
24 THEY WERE LETTING YOU PLEAD TO THESE LESSER CHARGES AND
25 DROPPING THE MURDER CHARGE? DO YOU REMEMBER THAT?

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

21

1 A SAY THAT AGAIN.

2 Q DO YOU REMEMBER THEM LETTING TO PLEAD TO ACCESSORY
3 BEFORE THE FACT AND ACCESSORY AFTER THE FACT, AND THEN
4 THEY WERE GOING TO DROP THE MURDER CHARGE? DO YOU
5 REMEMBER THAT HAPPENING?

6 A THE PLEA THEY SAY WAS MURDER AND ATTEMPTED ARMED
7 ROBBERY AND I THINK A WEAPON CHARGE. IT WASN'T NO
8 ACCESSORY. THAT'S THE PLEA THEY OFFERED.

9 Q OKAY. CAN I JUST SHOW YOU THIS? AND IT'S ON PAGE
10 162, JUST SO WE'RE CLEAR. YOU SEE HERE WHERE IT SAYS ---
11 THIS IS THE SOLICITOR, NOW. ALL RIGHT. SHE SAYS, THIS IS
12 THE STATE VS. TERRANCE MCCREARY AND THE INDICTMENTS, AND
13 THERE ARE FOR ACCESSORY BEFORE THE FACT TO MURDER. HE'S
14 PLEADING GUILTY AS HE'S CHARGED AND WAIVING PRESENTMENT.
15 ALSO, ACCESSORY AFTER THE FACT FOR MURDER. HE'S ALSO
16 WAIVING PRESENTMENT TO THAT. AND THEN AS PART OF THE PLEA
17 AGREEMENT, WE'RE DISMISSING THE OTHER CHARGES. DO YOU
18 REMEMBER ALL THIS HAPPENING?

19 A YES.

20 Q YOU DO?

21 A YES, MA'AM.

22 Q OKAY. SO YOU WERE PLEADING GUILTY TO ACCESSORY
23 BEFORE THE FACT TO MURDER, ACCESSORY AFTER THE FACT OF
24 MURDER, AND THEY WERE DROPPING THE MURDER CHARGE?

25 A YES, THAT WHAT HE SAID. I DIDN'T WANT NO GUILTY

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

22

1 PLEA. THAT'S WHY WHEN THE JUDGE ASKED ME DID I WANT TO GO
2 BEFORE THE GRAND JURY, I SAID YES. THAT'S THE WHOLE POINT
3 OF ME SAYING YES.

4 Q OKAY. LET'S GET INTO THAT. ON PAGE 160 SAYS, THE
5 JUDGE SAID, YOU WISH TO HAVE THESE CASES REVIEWED BY THE
6 GRAND JURY OR GIVE UP THAT RIGHT. AND YOU SAY, I WOULD
7 LIKE THE RIGHT TO GO TO THE GRAND JURY?

8 A WELL, I SAID IT TWICE.

9 Q OKAY. AND THEN DID YOU TALK TO MR. --- WELL, YOU
10 SAID IT ONCE, AND THEN YOU TALKED TO MR. GILLEN. THAT'S
11 YOUR ATTORNEY. RIGHT?

12 A RIGHT.

13 Q AND Y'ALL HAD A DISCUSSION.

14 A (NO RESPONSE)

15 Q SEE HERE, IT SAYS, MAY I HAVE A MOMENT, YOUR HONOR?
16 WE HAD DISCUSSED THIS PREVIOUSLY. THE COURT SAID, SURE,
17 AND THEN THE COURT REPORTER IS SAYING THAT Y'ALL CONFERRED
18 TOGETHER.

19 A RIGHT.

20 Q OKAY. YOU REMEMBER THAT?

21 A (NO RESPONSE)

22 Q ~~AND WHAT DO YOU SAY RIGHT HERE?~~ I'D LIKE TO WAIVE
23 THAT RIGHT, YOUR HONOR. ALL RIGHT. DID YOU SIGN THAT
24 WAIVER OF INDICTMENT?

25 A THAT WHAT?

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

23

1 Q DID YOU SIGN THE WAIVER OF INDICTMENT ON THE
2 INDICTMENTS FOR ACCESSORY BEFORE THE FACT AND ACCESSORY
3 AFTER THE FACT?

4 A YES. YES.

5 Q DO YOU REMEMBER WHEN HE ASKED YOU HOW YOU PLED TO
6 ACCESSORY BEFORE THE FACT AND WHAT YOU SAID?

7 A GUILTY.

8 Q DO YOU REMEMBER WHEN HE SAID HOW DO YOU PLEAD TO
9 ACCESSORY AFTER THE FACT AND WHAT YOU SAID?

10 A GUILTY.

11 Q SO YOU DID PLEAD GUILTY THAT DAY BY SAYING I'M
12 GUILTY.

13 A WELL ---

14 Q DO YOU REMEMBER WHEN THE JUDGE ASKED YOU IF ANYONE
15 HAD PROMISED YOU OR THREATENED ANY FORCE TO GET YOU TO
16 PLEAD GUILTY AND WHAT YOU SAID?

17 A NO.

18 Q YOU DON'T REMEMBER OR THAT'S WHAT YOU SAID TO HIM?

19 A I DON'T REMEMBER.

20 Q IF I TOLD YOU YOU SAID NO, WOULD YOU DISAGREE WITH
21 THAT IF IT'S IN THE RECORD?

22 A I GOT TO SEE IT, MA'AM.

23 Q OKAY, I'LL SHOW YOU. SEE RIGHT HERE ON PAGE 168.

24 HAS ANYONE THREATENED YOU, COERCED YOU OR USED ANY FORCE?

25 WHAT DO YOU SAY?

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

24

1 A NO.

2 Q AND THEN HE ASKED YOU, ARE YOU ENTERING YOUR PLEAS
3 FREELY AND VOLUNTARILY? WHAT DO YOU SAY?

4 A YES.

5 Q DO YOU ALSO REMEMBER MAKING A STATEMENT DURING
6 SENTENCING CONCERNING THIS CASE?

7 A NO, MA'AM.

8 Q YOU DON'T REMEMBER IT?

9 A (NO RESPONSE)

10 Q HOW ABOUT THIS RIGHT HERE. PAGE 202. DO YOU
11 REMEMBER SAYING THAT? I'M SORRY FOR HURTING ALL THE
12 PEOPLE AND MR. KRENN AND HIS FAMILY, FOR TAKING THE LIFE
13 OF HIS SON, HIS ONLY SON. I WISH WE COULD BRING HIM BACK,
14 BUT WE CAN'T, AND I'M JUST SORRY. DO YOU REMEMBER SAYING
15 THAT?

16 A YES, I REMEMBER SAYING THAT.

17 Q ALL RIGHT. SO NOW YOU DO REMEMBER PLEADING GUILTY
18 AFTER LOOKING AT THIS TRANSCRIPT. YOU REMEMBER THAT.

19 A I'M SAYING, YES, THAT WHAT HE WANTED ME TO DO, YES.

20 Q DO YOU REMEMBER ANSWERING THE QUESTIONS AS YOU'VE ---

21 A YES.

22 Q --- JUST TESTIFIED THAT YOU DID?

23 A YES, MA'AM.

24 Q DO YOU REMEMBER ON PAGE 203 AFTER THE JUDGE GAVE YOU
25 YOUR SENTENCE HE SAYS, IF YOU BELIEVE THERE HAS BEEN ANY

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

25

1 ERROR COMMITTED IN THE WAY WE'VE HANDLED YOUR PLEA, YOU
2 HAVE TEN DAYS TO FILE AN APPEAL; YOU UNDERSTAND THAT? AND
3 WHAT YOU'D SAY?

4 A YES, SIR, AND THAT WHEN --- THAT'S WHEN I MENTIONED
5 TO MY LAWYER, MA'AM.

6 Q THAT'S RIGHT. BUT YOU KNEW YOU HAD TO FILE AN APPEAL
7 WITHIN TEN DAYS BECAUSE THE JUDGE TOLD YOU.

8 A RIGHT.

9 Q AND, NOW, LET'S TALK ABOUT THE SERVICES OF YOUR
10 ATTORNEY. DO YOU REMEMBER WHEN THE JUDGE ASKED YOU, HE
11 SAID ARE YOU SATISFIED WITH MR. GILLEN'S REPRESENTATION
12 AND WHAT YOU SAID?

13 A YES, MA'AM.

14 Q AND DO YOU REMEMBER WHAT YOU SAID?

15 A YES, MA'AM.

16 Q THAT YOU WERE SATISFIED?

17 A YES, MA'AM.

18 Q AND YOU UNDERSTOOD THAT THIS WAS A NEGOTIATED PLEA.
19 RIGHT? WHEN YOU PLED BEFORE THE JUDGE?

20 A NO.

21 Q YOU DIDN'T?

22 A --- (NO RESPONSE) ---

23 Q HERE, I'LL SHOW YOU. PAGE 174. SEE, MR. GILLEN,
24 YOUR ATTORNEY SAYS, I WAS JUST CONCERNED WHEN MR. THOMPSON
25 SAID THAT IT WAS A RECOMMENDATION. THE COURT SAYS, WELL,

TERRANCE MCCREARY - CROSS BY MS. CIABATTARI

26

1 I'M TREATING IT AS A NEGOTIATED PLEA; THAT WAS MY
2 UNDERSTANDING. AND MR. THOMPSON SAID, WE WOULD CALL IT
3 SUCH, YOUR HONOR.

4 A WELL, THAT AIN'T --- THAT AIN'T GOT NOTHING TO DO
5 WITH ME. THAT WAS BETWEEN HIM AND HIM TALKING. I HADN'T
6 NEGOTIATED WITH NOTHING.

7 Q THEY WERE TALKING ABOUT YOUR PLEA, THOUGH, YOUR
8 NEGOTIATED SENTENCE.

9 A WELL, I WANTED --- I WANTED A TRIAL. I DIDN'T WANT
10 NO PLEA.

11 Q THEN WHY DID YOU SAY YOU WERE PLEADING GUILTY?

12 A THEY --- THEY DID ALL THE TALKING, MA'AM. I DIDN'T
13 DID --- I AIN'T DID NO TALKING WITH NOBODY ABOUT NO PLEA.

14 Q DID YOU NOT --- DIDN'T YOU JUST SEE IN HERE WHEN YOU
15 SAID GUILTY ---

16 A I ANSWERED THE QUESTIONS ---

17 THE COURT - HOLD IT. THE COURT REPORTER CANNOT
18 RECORD TWO PEOPLE AT THE SAME TIME. SIR, LET HER ASK HER
19 QUESTION, THEN YOU CAN ANSWER IT. MA'AM, LET HIM ANSWER
20 THE QUESTION ONCE YOU'VE ASKED IT.

21 MR. MCCREARY - YES, SIR.

22 Q ~~OKAY. MY ONLY QUESTION WAS, EARLIER WHEN I SHOWED~~
23 YOU IN HERE, AND HE ASKED YOU HOW DO YOU WANT TO PLEA, AND
24 YOU SAID GUILTY. DO YOU REMEMBER THAT?

25 A YES, MA'AM.

TERRANCE MCCREARY - RE-DIRECT BY MR. BRADFORD

27

1 Q AND THAT CONVERSATION WAS BETWEEN YOU AND THE JUDGE.

2 A MA'AM?

3 Q THAT CONVERSATION WHERE YOU TOLD THE JUDGE YOU WERE
4 GUILTY WAS A CONVERSATION BETWEEN YOU AND THE JUDGE AT
5 THAT TIME.

6 A YES, MA'AM.

7 MR. CIABATTARI - OKAY, I HAVE NO FURTHER
8 QUESTIONS.

9 RE-DIRECT EXAMINATION

10 BY MR. BRADFORD -

11 Q TERRANCE, DURING THE TIME ON FRIDAY WHEN YOU WERE
12 BEFORE JUDGE HAYES AND HE WAS ASKING YOU QUESTIONS AND YOU
13 WERE ANSWERING, ONE OF HIS QUESTIONS WAS, DO YOU WANT YOUR
14 CASE TO GO THE GRAND JURY, AND YOU HAD INDICATED YOU DID,
15 BUT THEN YOU LATER SAID YOU WANTED TO WAIVE GOING TO THE
16 GRAND JURY, BUT DURING THAT WHOLE SEQUENCE WHEN THE JUDGE
17 WAS ASKING YOU ABOUT THE REPRESENTATION OF YOUR LAWYER,
18 ABOUT THE CHARGES OF ACCESSORY BEFORE AND AFTER THE FACT,
19 IF YOU UNDERSTOOD THEM, THE POTENTIAL PENALTIES AND SO
20 FORTH, WHAT DID YOU THINK YOU WERE PARTICIPATING IN?

21 A FOR GOING TO THE JURY TRIAL, MA'AM --- SIR.

22 Q WELL, YOU KNEW YOU WEREN'T IN A JURY TRIAL. IS THAT ---
23 RIGHT?

24 A RIGHT. I WAS PREPARING TO GO TO A JURY TRIAL.
25 THAT'S WHAT I WAS THINKING.

TERRANCE MCCREARY - RE-DIRECT BY MR. BRADFORD

28

1 Q SO YOU THOUGHT THAT WHAT YOU WERE GOING THROUGH WAS
2 SOME SORT OF PRELIMINARY STAGE BEFORE THE JURY TRIAL?

3 A RIGHT.

4 Q AND DID YOU EVER TELL YOUR LAWYER THAT YOU WANTED TO
5 ACCEPT THE GUILTY PLEA TO ACCESSORY BEFORE AND AFTER THE
6 FACT OF MURDER FOR 30 AND 15 YEARS?

7 A NO, SIR.

8 Q WHEN DID IT DAWN ON YOU THAT THOSE PROCEEDINGS WERE
9 NOT A PRELIMINARY BUT WERE, IN FACT, PART OF A GUILTY
10 PLEA?

11 A WHEN THE JUDGE SENTENCED ME, SIR.

12 Q WHEN --- SAY THAT AGAIN. REPEAT THAT.

13 A WHEN THE JUDGE SENTENCED ME.

14 Q AND AS SOON AS YOU REALIZED THAT, WHAT DID YOU DO?

15 A I DIDN'T DO NOTHING. I WENT TO --- I DIDN'T KNOW
16 WHAT TO DO.

17 Q BUT --- AND DID YOU SAY ANYTHING TO YOUR LAWYER AFTER
18 THAT PROCESS IN REALIZATION THAT, YOU KNOW, I'M IN --- I
19 GOT A PROBLEM?

20 A HE DIDN'T COME BACK TO TALK TO ME AFTER THE HEARING.

21 Q SO YOU'D INDICATED THAT YOU HAD SAID I WANT A --- I
22 WANT AN APPEAL.

23 A I SAID THAT IN COURT.

24 Q TO YOUR LAWYER.

25 A WELL, HE SUPPOSED TO HAVE CAME IN THE BACK AND TALK

MICHAEL GILLEN - DIRECT BY MS. CIABATTARI

29

1 WITH ME; HE NEVER DID. THE LAST TIME WE TALKED WAS ON
2 PAPER, THROUGH A MAIL.

3 MR. BRADFORD - THANK YOU.

4 MS. CIABATTARI - I HAVE NO FURTHER QUESTIONS.

5 THE COURT - THANK YOU, SIR. YOU MAY STAND DOWN,
6 SIR.

7 MR. BRADFORD - YOUR HONOR, PETITIONER REST.

8 MS. CIABATTARI - YOUR HONOR, THE STATE WOULD
9 CALL MR. GILLEN.

10 MICHAEL GILLEN. AFTER BEING FIRST DULY SWORN.
11 TESTIFIES AS FOLLOWS:

12 DIRECT EXAMINATION -

13 BY MS. CIABATTARI -

14 Q MR. GILLEN, DID YOU DISCUSS WITH MR. MCCREARY ALL THE
15 ELEMENTS OF THESE CHARGES, AS WELL AS THE POTENTIAL
16 SENTENCES HE WAS FACING?

17 A YES.

18 Q AND WERE YOU, IN FACT, PREPARING FOR TRIAL?

19 A YES, WE'D ACTUALLY STARTED THE TRIAL.

20 Q CAN YOU TELL US HOW THE PLEA SITUATION --- WELL, THE
21 PLEA DEAL DEVELOPED?

22 A FROM THE BEGINNING MR. MOFFITT HAD AGREED TO TESTIFY
23 AGAINST THE OTHER THREE CO-DEFENDANTS. UP UNTIL THAT
24 POINT THE OTHER THREE CO-DEFENDANTS, INCLUDING MR.
25 MCCREARY, DID NOT WANT TO PLEAD GUILTY, AND, IN FACT, AT

McCreary v. State, per
Testimony, Terrance

McCreary 16, 2002 PCR
proceeding

pages 415 - 440

Written Statement of
Tewanee McCreary,

July 13, 2012

STATE OF SOUTH CAROLINA CERTIFIED TRUE COPY
 COUNTY OF LANCASTER 2012 NOV 21 PM 1:31

STATEMENT OF

DAVID HAMILTON
 CLERK OF COURT
 YORK COUNTY, SC

Terrence E. McCreary

I, Terrence McCreary, HAVING BEEN DULY SWORN DEPOSE

AND SAY THAT I AM A RESIDENT OF SCDC - Kershaw Co., SC COUNTY.

I am not Represented by Counsel At This Time.
I am doing Time in SCDC For A Murder That
Occurred in July 1998 in York County.

At The Time of The Murder I was Driving
Antonio Gordon's Car. When We First Encountered
The Victims, Monte + Antonio got Out of The Car.
Monte Had A Gun, Antonio did not. The
Incident Occurred Behind Me So I did not
See What Happened. I heard One or Two Shots.
Monte + Antonio Returned To The Car, Monte
Still had The Pistol. They got in The Car.
While in The York County Jail Monte + I
discussed Blaming Antonio For The Shooting Since
He Was A Juvenile.

At No Time That Night did I See Antonio
With A Gun. Antonio has NEVER Told Me He did the

THIS STATEMENT IS HONEST AND TRUTHFUL TO THE BEST OF MY KNOWLEDGE. IT ^{Shooting}
 IS MADE FREELY AND VOLUNTARILY WITHOUT COERSION OR COMPENSATION.

I HAVE RECEIVED A COPY OF THIS 1 PAGE STATEMENT.

SWORN TO BEFORE ME THIS

13th DAY OF July 2012

NOTARY PUBLIC FOR SOUTH CAROLINA
 MY COMMISSION EXPIRES: 12/15/18

TERRENCE MCCREARY
 AFFIANT

Antonio Gordon v. State,
Order of Dismissal and
Maxton Order, (Judge
Alford, January 4, 2010)

Pages 1-25

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE DISTRICT OF SOUTH CAROLINA

ANTONIO GORDON, #259798,

Petitioner,

v.

LEROY CARTLEDGE, WARDEN,

Respondent.

CIVIL NO.: 8:10-2578-MBS-JDA

OBJECTIONS TO THE REPORT AND
RECOMMENDATION OF THE
MAGISTRATE JUDGE

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
Antonio Gordon, #259798)
Applicant,)
v.)
State of South Carolina,)
Respondent.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT
2008-CP-46-4951

ORDER OF DISMISSAL

FILED-RECEIVED
2010 JAN 25 AM 11:56
DAVID HAMILTON
C.P. & GS
YORK COUNTY, SC

This matter comes before the Court by way of an application for post-conviction relief filed January 9, 2009 and amended on May 19, 2009. The Respondent made its return and motion to dismiss on July 27, 2009. An evidentiary hearing into the matter was convened on December 1, 2009 at the Moss Justice Center in York County. The Applicant was present at the hearing and was represented by Tricia A. Blanchette, Esquire. Assistant Attorney General Jennifer A. Kinzeler represented the Respondent.

At the hearing, counsel for both parties presented argument to the Court. The Court also had before it copies of the records of the York County Clerk of Court regarding the subject convictions; the Applicant's records from the South Carolina Department of Corrections; the transcript from the motion to suppress hearing and guilty plea; the briefs from the direct appeal; the South Carolina Court of Appeals opinion dismissing the Applicant's appeal; the remittitur from the direct appeal dated January 9, 2001; the application for post-conviction relief (PCR) filed June 20, 2001 (2000-CP-46-1414)¹; the amendment to the application dated May 8, 2003;

¹ The Respondent notes that the Applicant filed a second PCR application on August 21, 2001 (2001-CP-46-1366),

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the Respondent's return to the first PCR action; the consent order changing venue; the transcript of the hearing held respecting the first PCR action; the order filed August 20, 2003 dismissing the first PCR action with prejudice; the order filed December 15, 2003 denying the Applicant's motion for a rehearing and/or motion for reconsideration of the facts; the Johnson petition for writ of certiorari filed on appeal from the denial of the first PCR action; the South Carolina Supreme Court order denying the petition; the remittitur of the appeal from the denial of the first PCR action dated August 9, 2005; the second PCR application filed July 6, 2004 (2004-CP-46-1700); the Respondent's return and motion to dismiss the second PCR action; the conditional order of dismissal filed December 30, 2004 with respect to the second PCR action; the final order filed May 20, 2005 denying and dismissing the second PCR action; the records and documents related to the Applicant's federal petition for writ of habeas corpus (2:05-3327-MBS-RSC) filed on December 22, 2005; the Applicant's state petition for writ of habeas corpus (2006-CP-46-010) filed on January 3, 2006; the Respondent's return and motion to dismiss the state habeas corpus petition; the Applicant's "complaint on unlicensed psychology/psychologist" filed January 23, 2006; an amendment to the state habeas corpus action filed January 23, 2007; the order filed June 1, 2007 dismissing the state habeas corpus action; the Applicant's Rule 60(b) motion to amend and clarify; the Respondent's return to the Rule 60(b) motion; the order granting the Applicant's Rule 60(b) motion to clarify and amend; the current PCR application and amended PCR application (2008-CP-46-4951) including two written statements attached as exhibits to the current PCR application; the Respondent's return and motion to dismiss the current PCR application; the conditional order of dismissal filed August 24, 2009; and the Respondent's

but that it was merged with 2001-CP-46-1414.

motion to restrict future filings filed on November 19, 2009.

PROCEDURAL HISTORY

The Applicant is currently incarcerated in the South Carolina Department of Corrections. He was indicted in October 1998 by the York County Grand Jury for Murder (1998-GS-46-2847), three counts of Possession of a Firearm During the Commission of a Violent Crime (1998-GS-46-2847-A; 1998-GS-46-1949-A; 1998-GS-46-1950-A), two counts of Attempted Armed Robbery (1998-GS-2849, 1998-GS-46-2850), Criminal Conspiracy (1998-GS-46-2851), and Possession of a Pistol by a Person Under Twenty-One (1998-GS-46-2852). Daniel D'Agostino, Esquire, represented the Applicant.

A hearing on the Applicant's motion to suppress was held on July 12, 14, and 16, 1999.

~~On July 16, 1999, following the suppression hearing, the Applicant pled guilty as indicted. On~~
July 19, 1999 the Honorable John C. Hayes, III sentenced the Applicant to confinement for thirty (30) years for Murder; five (5) years for Possession of a Firearm During the Commission of a Violent Crime; five (5) years for Criminal Conspiracy; five (5) years for Possession of a Pistol by a Person Under Twenty-One, all to run concurrently; and ten (10) years for Attempted Armed Robbery, running consecutive to the thirty (30) year sentence for Murder. This was a negotiated guilty plea to a cumulative forty (40) years confinement.

The Applicant filed a timely notice of appeal and an Anders brief was submitted on his behalf pursuant to Anders v. California, 386 U.S. 738 (1967). Of note to the present action, the Applicant filed a *pro se* brief in which he raised the issue of probable cause to arrest based on an "informant's" statement to law enforcement allegedly given without being advised of her rights.²

² The "informant" to whom the Applicant is referring is Chyneca Dixon, his girlfriend at the time he committed and

The Applicant also contended that both he and the informant were under age and should not have been questioned by law enforcement outside the presence of a parent or attorney. As a result, he argued, the informant's statement was inadmissible because it was obtained illegally and could not have established probable cause for his arrest. The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Gordon, 2000-UP-747 (S.C. Ct. App. Filed December 6, 2000). The remittitur was issued on January 9, 2001.

The Applicant subsequently filed a PCR application originally dated June 20, 2001 and amended on May 8, 2003 (2000-CP-46-1414). An evidentiary hearing was held on July 29, 2003. Tara D. Shurling, Esquire, represented the Applicant, who was present at the hearing. Jeanette C. Vanginhoven, of the South Carolina Attorney General's Office, represented the

~~Respondent. Of note to the present action, the Applicant alleged his guilty plea was involuntary~~
and that defense counsel was ineffective for failing to discuss with him evidence of a palm-print found on the victim's car door. The Applicant specifically contended that defense counsel failed to investigate or discuss with him "the fact that the palm print on the victim's car door was unidentified until the time of pre-trial," and that the South Carolina Law Enforcement Division (SLED) never tested the palm print. On August 20, 2003, the Honorable J. Ernest Kinard issued an Order denying and dismissing the application. The Applicant subsequently made a "Motion for Rehearing/Motion for Reconsideration of the Facts" on December 9, 2003. The Honorable J. Ernest Kinard dismissed the Applicant's motion by written Order filed December 15, 2003.

The Applicant filed a petition for writ of certiorari appealing the Order dismissing his

pled guilty to the crimes.

Handwritten signature/initials

present during questioning."⁴ In essence, he asserted that law enforcement's reliance on Chyneca Dixon's statement to establish probable cause led to an unlawful arrest that violated his Fourth Amendment rights. He also claimed that defense counsel was ineffective for failing to advise him that by pleading guilty he waived his right to challenge the lawfulness of his arrest or the statements he made to law enforcement after he was arrested. On February 16, 2007, the Honorable Margaret B. Seymour entered an Order dismissing the Applicant's petition without prejudice to permit him to exhaust all State remedies.

Subsequently, the Applicant filed a state petition for writ of habeas corpus on January 3, 2006 (2006-CP-46-0010). He then filed an amendment to the state habeas corpus action on January 23, 2007 to which he attached Chyneca Dixon's two statements given to law

~~enforcement on July 23, 1998. As it relates to this action, the Applicant alleged that law~~
 enforcement did not have probable cause to arrest him because the police relied on Chyneca Dixon's statement to law enforcement that she gave as a result of being threatened outside the presence of her parents. The Applicant asserted that the police should not have questioned Chyneca Dixon ("the minor") outside the presence of her attorney or parents, and that because she was the "probable cause provider," both of their statements to law enforcement, as well as the Applicant's arrest, were all unlawful. The Honorable John C. Hayes denied and dismissed the Applicant's state habeas corpus petition with prejudice by written order dated April 30, 2007 and filed on June 1, 2007.

The Applicant then filed a Rule 60(b) motion in which he alleged a conflict of interest with the Honorable John C. Hayes, III, who was original sentencing judge at the Applicant's

⁴ The Applicant raised this issue in his "Objection to Report and Recommendation of Magistrate Judge." The

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guilty plea. The Applicant also claimed that the order dismissing his state habeas corpus action did not advise him of right to appeal the order. On January 31, 2008 the Honorable Roger L. Couch granted the Applicant's Rule 60(b) motion to reconsider, amend, and clarify, and issued a written order finding that the Applicant was without prejudice to bring a petition for writ of habeas corpus in the original jurisdiction of the South Carolina Supreme Court.

On January 9, 2009, the Applicant filed his third PCR application currently pending before this Court. He amended the application on May 19, 2009. The Applicant attached to his current application two written statements given by Chyneca Dixon (hereinafter "Chyneca") and her mother, Geraldine Dixon (hereinafter "Ms. Dixon"), on January 20, 2008. The statements were given to an investigator who interviewed them on behalf of the Applicant. The Applicant alleges in his current application that he is being held in custody unlawfully for the following reasons:

1. Newly Discovered Evidence;
2. Ineffective Assistance of Trial Counsel;
3. Prosecutorial Misconduct;
4. Brady Violation;
5. Involuntary Guilty Plea;
6. Defense counsel failed to challenge applicant's statement's on the ground that there was no probable cause for the arrest and that "Applicant statement's was [sic] the fruit of the poisonous tree" with regard to the illegal arrest; and
7. Personal Jurisdiction.

"minor" to whom the Applicant refers is Chyneca Dixon.

The Respondent made its return and motion to dismiss on July 27, 2009 asserting that the application must be summarily dismissed as an improper successive action and as having been filed after the expiration of the applicable statute of limitations. The Honorable John C. Hayes, III issued a conditional order of dismissal on August 24, 2009, in which Judge Hayes expressed the intent to summarily dismiss the application because the Applicant failed to comply with the filing procedures of the Post-Conviction Procedure Act as set forth in S.C. Code Ann. §17-27-45(A) and §17-27-90, and because the application was an improper successive action, but granted the Applicant twenty (20) days to show why the order should not become final. The Respondent also filed a motion to restrict future filings on November 19, 2009 pursuant to In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996). The Applicant did not file a response to the conditional order of dismissal. A hearing into the Respondent's motion for summary dismissal was convened on December 1, 2009. At the hearing, the State proceeded on a motion to dismiss all of the Applicant's claims as procedurally barred by the statute of limitations and successiveness.⁵ The State also argued that the two written statements included with the application were not newly discovered evidence, and that any alleged newly discovered evidence was nonetheless barred by the statute of limitations. The State also made a verbal motion to restrict the Applicant from filing another PCR application in the future under In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996).

At the hearing, the Applicant, through counsel, acknowledged that he filed a lengthy

⁵ Section 17-27-45(A) imposes a one-year statute of limitations on any ground for post-conviction relief. Section 17-27-90 also requires all grounds for relief be raised in the original PCR application, and provides that any ground for relief finally adjudicated, or not so raised or waived, may not be alleged in a subsequent [or successive] application absent a court finding sufficient reason. Under Aice v. State, 305 S.C. 448, 409 S.E.2d 392, an Applicant cannot maintain a successive application alleging ineffective assistance of post-conviction relief counsel (1991).

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application in this case, and that he was only proceeding at the hearing with the newly discovered evidence claim and with an issue regarding the palm print found on the victim's car.

Specifically, the Applicant asserted that he discovered new evidence that law enforcement coerced and threatened Chyneca into giving her initial statements, outside the presence of her mother, and that those statements implicated him in the crimes. He contended that because Chyneca's statements were threatened and coerced, they could not have established probable cause to arrest him. Therefore, the Applicant asserts, his arrest was unlawful, and any incriminating statements he gave to law enforcement subsequent to his arrest were the "fruit of the poisonous tree."

The Applicant also raised an issue in his current application regarding the palm print obtained from the victim's car. He claimed that he has attempted to obtain certain documents from SLED regarding the palm print that allegedly show he was "not necessarily" the shooter, but that he has been unable to obtain those documents partly as a result of ineffective assistance of PCR counsel during his first PCR action. The Applicant also maintained that defense counsel was ineffective because he never had the palm print tested by his own expert. The Applicant also claimed that he attempted to raise this issue during his first PCR hearing, but he was "coerced into waiving this issue" at his first PCR hearing by PCR counsel.

At the hearing, the Applicant proffered the testimony of two witnesses, Chyneca Dixon and Geraldine Dixon, in support of his newly discovered evidence claim. The State offered the testimony of Mr. W. William ("Willy") Thompson, the Chief Deputy Solicitor for York County, and Daniel D'Agostino, Esquire, as rebuttal witnesses to the proffered testimony.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the argument of counsel presented at the hearing. Set forth below are the relevant findings of fact and conclusions of law as required by S.C. Code Ann. section 17-27-80 (2003).

First, the Applicant proffered the testimony of Chyneca Dixon. She testified that she is twenty-six years old now and currently lives in Lancaster County. She stated that she was involved in the Applicant's criminal case, and that she gave two statements to law enforcement in July 1998 regarding his case. She stated she was fourteen years old at the time she gave her initial statements. Chyneca testified that a police officer came to her house on the night of the murder, and asked her to come with him to the police station. She testified she agreed to go with him. When PCR counsel asked whether she felt free to leave at that time, Chyneca answered "no." When PCR counsel asked whether she had been escorted by police officers, she answered affirmatively.

Chyneca testified that her interview with law enforcement occurred at the police station in an office with a window, and that she was there for "a long time." She testified that an officer asked her questions and typed her answers as she gave them. She stated that officers kept "going back and forth" until one "finally said 'well, I'm getting kind of tired of this. You know more than you say.'" Chyneca stated that an officer told her she could not go home until she told them exactly what she knew. She testified that she told them she did not know much, but that Antonio Gordon was her boyfriend and that the car involved in the crime belonged to her. Chyneca testified that at that point, she was just saying anything she could to go home. When counsel asked her whether she was allowed to leave after she gave her statements, Chyneca responded affirmatively.

PCR counsel then asked Chyneca whether she had any further involvement with law enforcement. Chyneca testified that she was trying to get visitation for her and her baby, but that she was told she and her baby could not have any contact [with the Applicant].⁶ She testified that she believed it was because of her age, that she "called and called" but that calling "didn't go no where," so after a while she felt like everything was "done" and "just gave up." Chyneca further testified that after she "gave up," she "was real popular and it was all over the place, everybody knew," so she left. She said she did not want to stay in York County any more, and that she only came back one time to try to get child support.

Chyneca testified that she did not have any further contact from law enforcement, the Solicitor's Office, or the Applicant's defense counsel about the case. She also testified that she was not aware that she would have been called as a witness for the State to testify against the Applicant if the case had gone to trial, and that she did not even know the case went to trial. Chyneca explained that the reason she had not come forward before now was because she left after it all happened. She testified her family stayed in York County, but that she stayed in Lancaster County and Charleston County. She then stated that the only time she came back here (York County) is when her grandfather passed away, but that she otherwise tried to avoid York County as much as possible. She stated that she has not seen the Applicant in almost nine years.

When counsel asked whether Chyneca would have testified for the Applicant at his Jackson vs. Denno hearing about her statements, she answered affirmatively. Chyneca also testified that she was never contacted by Ms. Shurling regarding the Applicant's first PCR action, and that she never received any subpoenas or any other document asking her to come to court. She testified that she got

⁶ PCR Counsel clarified that the Applicant is the father of Chyneca's baby, and was a few months old at the time of

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back in touch with the Applicant recently because the Applicant talked with her mother. She testified that she was at her mother's house one day when the Applicant called, and that she started talking to him on the phone. Chyneca testified that after speaking with the Applicant, she agreed to give a statement to an investigator who came to her house on January 20, 2008.

When counsel asked if there was anything else she wanted to tell the Court during her proffer, she stated that "since that time [she has] grown up and [she] realized that someone was hurt and that cannot be changed." She further stated that she feels like over time "anybody can change," and now when she talks to the Applicant sometimes, she "can see how he has changed." She stated that she regrets any of these events ever happened, that she and the Applicant were young and that as a result, she had to take responsibility of their son by herself. Chyneca stated that she knew someone was hurt, but at the same time she felt "like the judge's sentence should also be fixed for so called witnesses and people who wanted to come forth to help in this situation, but at the same time they get—[she couldn't] find the same word for it." Chyneca also told the Court that she was grateful for the opportunity to say that "some parts of York County justice system is [sic] broken," and that the night she was interviewed by law enforcement "lost [her] faith in the justice system."

On cross-examination, Chyneca testified that her correct date of birth is December 12, 1982, and agreed that she gave her first statement to police under the name Tawanda Burris with a December 10, 1976 date of birth. She agreed that she testified on direct examination that she was fourteen at the time she gave her statement.⁷ Chyneca further agreed that in her first statement to the officer, she said she had been drinking that day and fell asleep around 6:30 p.m. and that she told police officers "Terrance shot the boy," "Terrance said he was driving," and

the murder.

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"Terrance says [*sic*] he shot the driver in the shoulder."⁸ Chyneca also agreed that she did not identify the Applicant as the shooter or driver of the car in either of her statements to law enforcement.

Chyneca testified that after giving her statements to the police, she walked to her grandmother's house by herself. She testified that after giving her initial statements, she was "never spoken with any more about this case" until the Applicant's investigator came to get another statement from her in January 2008. Chyneca agreed that the substance of her January 20, 2008 statement to the Applicant's investigator is that at the time she gave her initial statements, she was at the police station for a long time, that she was threatened, and that the officers told her she could not leave until she gave them a statement. Chyneca also testified that she was never charged with a crime in association with the Applicant's case.

The Applicant then proffered the testimony of Geraldine Dixon, Chyneca's mother. Ms. Dixon testified that Chyneca was not at home the night the police came to take her down to the station to give her statement, and that no one called her to let her know Chyneca was at the police department. She testified that she did not know Chyneca was taken to the police department for questioning during the early morning of July 23, 1998 until later that morning when the Applicant's aunt called to tell her. Ms. Dixon also testified that she went to the police station, and that when she tried to talk to the police they "shunned [her] off." She stated they would not give her any information, and that she told them they had no right to question Chyneca without a parent or attorney present. Ms. Dixon further stated the police told her they "had just turned her loose, not to worry about it."

⁸ Chyneca would have been fifteen years old at the time she gave her first statements to police.

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Ms. Dixon testified that she later picked Chyneca up at her "grand mamma's," and that the police never contacted her or told her anything else. She testified that she had concerns about her daughter being questioned without her being present. She stated that she was never contacted by any attorney for any of the Applicant's co-defendants, the Applicant's defense attorney, law enforcement, or the Solicitor's Office.

On cross-examination, Ms. Dixon confirmed that she did not know Chyneca was taken to the police department until the next morning. She also testified that she did not see any of the boys involved in what happened that night, and that she did not see anything regarding what happened that night. She agreed that all she knew about the case was that her daughter was questioned by law enforcement and that they never called her. Ms. Dixon then testified that the next time she saw Chyneca was at her "grand momma's" and that was when Chyneca told her what happened. She stated that up until that point, she had not spoken to Chyneca "or the law, or nobody else." Ms. Dixon also testified that the only person who contacted her about the case after that morning was the investigator that came to get her January 2008 statement.

Ms. Dixon then denied to this Court that she gave a sworn statement on January 20, 2008 in which she stated she got a call from the police department, and that she went down to the police department to pick her daughter up. She said that could not be true to her knowledge because the police never contacted her. This Court presented her with her January 2008 statement. Ms. Dixon agreed that it was her signature on the statement, and that it did say she went to pick her daughter up after someone from the police department called her. However, Ms. Dixon testified that she must have "got it wrong then" because she did not pick Chyneca up at

⁸ The witness was referring to Terrance McCreary, one of the Applicant's co-defendants.

the police station.

The State called Mr. Willy Thompson, Chief Deputy Solicitor for the York County Solicitor's Office, to testify as a rebuttal witness to the Applicant's proffered testimony. He testified that he has worked at the York County Solicitor's Office since 1992, and that he and Assistant Solicitor John Anthony prosecuted the Applicant for his underlying criminal charges. He stated that he was present during Chyneca's testimony at the hearing in which she testified that no one from the Solicitor's Office ever contacted her regarding the Applicant's case.

Mr. Thompson was shown a document that he identified to be a copy of the subpoena that his investigator at the time, Chuck Neal, personally served upon Chyneca on July 8, 1999. Referring to the subpoena, he stated that Chyneca was served at 362 Workman Street in Rock Hill, South Carolina, and that the subpoena was issued to "Chyneca Dixon a/k/a Tawanda Burris." The subpoena was entered into evidence as Respondent's Exhibit 1.

Mr. Thompson testified that he personally met with Ms. Dixon on July 14, 1999, after she was subpoenaed, and that he took notes during their meeting. He testified that at the meeting, he and Chyneca talked about what her testimony would be in this particular case, because the State was going to call her as a witness to testify against the Applicant if the case went to trial.

Mr. Thompson was shown a copy of his notes that he took during his meeting with Chyneca on July 14, 1999. He identified them as a fair and accurate copy of his original notes and confirmed that the notes were written in his handwriting. He testified that the notes from his meeting with Chyneca indicate that she was interviewed in the Solicitor's Office conference room, that it is a large room with a table and chairs, and that he and his investigator were the only people present during the meeting.

Mr. Thompson further testified that Chyneca told them about the night of the murder. He testified that Chyneca told him on the night of the murder, when the Applicant came back with the other boys, "everyone was hyped up," but that the Applicant did not say anything at first. He stated that Chyneca told him the Applicant had a look on his face that she could not explain, and that when she and the Applicant went in the back bedroom he told her "I killed someone" but "I don't know who."

Mr. Thompson testified that as he and Chyneca continued to talk, he asked her about any coercion when she gave her statements to law enforcement. He testified that she described her interview with law enforcement as "the officers laying a guilt trip on her" by talking about things "like the fact that someone was killed," and that she "wouldn't want this to happen to [her] family," but that she did not describe it to him as coercion. Mr. Thompson's notes from his July 14, 1999 meeting with Chyneca were then admitted into evidence as Respondent's Exhibit 2. Mr. Thompson further testified that it was his understanding if the case went to trial, Chyneca would testify.

Mr. D'Agostino, the Applicant's defense counsel, testified that he has been practicing law since 1992. He testified that he could not swear under oath that he or his investigator spoke with Chyneca Dixon, but that based on his recollection of the case and his reading of the transcript from the Jackson vs. Denno hearing, he felt confident that he or one of his investigators spoke to Chyneca. Defense counsel identified a document presented by PCR counsel that indicated his investigator billed him for serving Chyneca with a subpoena on July 14, 1999. He testified that his investigator billed him for three hours of work and for the twenty five (25) miles he traveled to serve her with the subpoena. The investigator's bill was admitted into the record as

Applicant's Exhibit 1.

Defense counsel testified that he made several motions to suppress statements and evidence, and that the issues about the voluntariness of Chyneca Dixon's statements were thoroughly explored during the Jackson vs. Denno hearing, but that Judge Hayes ruled against him on all of them. He stated that if he had called Chyneca Dixon to testify at the Jackson vs. Denno hearing, her testimony would have had no impact on the outcome of hearing. Defense counsel further testified that he vigorously cross-examined Captain Charles Cabiness regarding the circumstances surrounding Chyneca's statements to law enforcement.

Defense counsel testified that all three of the Applicant's co-defendants pled guilty on the same day, and that they all agreed to testify against the Applicant at trial. He also testified that he could not have put the Applicant on the stand if the case proceeded to trial because the Applicant confessed to him that "he did it." He further stated that he hired a psychologist to interview the Applicant, and as a result of the psychologist's findings, a mental deficiency defense was never an option.

Counsel testified that he could not put Chyneca on the stand, because her testimony would not have helped the Applicant. Counsel stated that because the Fourth and Fifth Amendment rights that were allegedly violated when she gave her statements to law enforcement were not the Applicant's rights to assert, her testimony would not have helped the defense. He also testified that the Applicant chose to plead guilty that day, after his three co-defendants pled guilty and agreed to testify against him, and after all of the statements made to law enforcement were ruled admissible. Defense counsel testified the Applicant chose to plead guilty, in light of the evidence against him, because he realized by doing so he had a chance of getting out of jail

before he died. Finally, counsel testified that in his opinion, the Applicant would have been found guilty had he proceeded to trial, which made pleading guilty the best option for the Applicant, and that was his opinion regardless of any testimony Chyneca could have ever given, particularly because the Applicant said he did it.

First, this Court finds that the proffered testimony and evidence admitted during this PCR hearing have no real significance to the Applicant's case. This Court finds that Geraldine Dixon's testimony is not credible. She previously gave a sworn statement that directly contradicted her testimony given under oath at the PCR hearing. One of her statements that she gave under oath must necessarily be false. Regardless, this Court finds that Geraldine Dixon's testimony is irrelevant and immaterial to anything related to the Applicant's case.

Secondly, to the extent the Applicant relies upon an allegation of newly discovered evidence to show good cause for permitting him to pursue this successive application for post-conviction relief, this Court finds that the Applicant failed to make the requisite showing that the matter constitutes newly discovered evidence. There was no new evidence presented in this case that was not available to the Applicant through his prior applications where the allegations could have been fully explored.

Third, with regard to Chyneca Dixon's testimony, this Court heard her testimony about how she was treated by law enforcement when she gave her statements, and notes its concern about making sure the justice system is fair to everyone, including victims. Nevertheless, this Court also finds that Chyneca Dixon was available to the Applicant during the time he filed his prior PCR applications and state and federal habeas corpus actions. Chyneca Dixon testified at the hearing under oath that no one ever contacted her about testifying at trial, or about anything related to this

case. This Court finds her testimony to be false, particularly in light of Solicitor Thompson's testimony. The Solicitor subpoenaed Chyneca Dixon for trial. Chyneca Dixon also came to the Solicitor's Office to give information to Solicitor Thompson, and she was prepared to testify at trial. The subpoena and Solicitor's Thompson's notes from the meeting with Chyneca Dixon were admitted as part of the record and testified to by the Solicitor. The Applicant was not misled as to the availability of Chyneca Dixon or as to the circumstances under which her statement was obtained.

Fourth, this Court finds that the Applicant's allegation regarding the palm print is not material or relevant. The Applicant has presented no evidence showing how this evidence is material to the Applicant's guilt or innocence, particularly in light of the Applicant's decision to plead guilty.

Finally, this Court finds that defense counsel's testimony is credible. According to Mr. D'Agostino, the Applicant pled guilty because all three of his co-defendants gave statements admitting their guilt, pled guilty, and agreed to testify against him. At the Jackson vs. Denno hearing, the court ruled the Applicant's statements would be admissible at trial. The Applicant had knowledge of all of this evidence against him at the time he pled guilty. Notably, Chyneca Dixon's statements, whether obtained through coercion, intimidation, or otherwise, were not self-incriminating and did not identify the Applicant as the shooter, although she later told Solicitor Thompson that the Applicant admitted to her that he shot someone. Therefore, any coercion or intimidation that may have accompanied Chyneca Dixon's statements to law enforcement was not a significant factor in the Applicant's decision to plead guilty.

Mr. D'Agostino testified that his investigator served a subpoena on Chyneca Dixon regarding

the trial, and thus he had no trouble finding her. Chyneca Dixon was certainly available and has been available, and the Applicant has failed to show any reason why he could not have called Chyneca Dixon as a witness at his prior PCR hearings.

Therefore, this Court finds that the current application for post-conviction relief must be summarily dismissed, first, because it is successive to the Applicant's prior applications for post-conviction relief and other action challenging the conviction and sentence. S.C. Code Ann. §17-27-90 provides that:

All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored, especially when the grounds raised could have been raised in the initial application; Tilley v. State, 334 S.C. 24, 432 S.E.2d 689 (1999); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991), and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. at 448, 409 S.E.2d at 392; Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992). The prohibition against successive actions includes federal habeas corpus petitions or "any other proceeding taken to secure relief." Id.

An Applicant requesting a new trial based on after discovered evidence must establish that the evidence:

(1) Is such as would probably change the result if a new trial was had; (2) Has been discovered since the trial; (3) Could not by the exercise of due diligence have been discovered before the trial; (4) Is material to the issue of guilt or innocence; and (5) Is not merely cumulative or impeaching. State v. Mercer, 381 S.C. 149, 672 S.E.2d (2009); State v. Spann, 334 S.C. 618, 513 S.E.2d 98 (1999); Clark v. State, 315 S.C. 385, 434 S.E.2d 266 (1993); State v. Kelly, 285 S.C. 373, 329 S.E.2d 442 (1985).

This Court finds that the Applicant has already presented this newly discovered evidence claim that Chyneca Dixon's statement to law enforcement was given without her mother present as a result of coercion and threats by law enforcement. The Applicant has also already raised the allegation that the palm print lifted from the victim's car does not identify him as the shooter. The Applicant continues to repeatedly pursue these claims which long ago ceased to constitute newly discovered evidence within the definition of the term and which have been decided adversely to him in previous actions. No item of evidence has been discovered since those earlier proceedings that could not have been discovered at the time of the Applicant's first PCR action. Under the rules governing state post-conviction relief actions, the Applicant is foreclosed from relitigating this claim that has been decided previously. Tilley v. State, 334 S.C. 24, 432 S.E.2d 689 (1999); Ajcc v. State, 305 S.C. 448, 409 S.E.2d 392 (1992).

Therefore, this Court finds the Applicant has not provided sufficient reason why he should be able to litigate the newly discovered evidence claim or any of the other allegations presented in this third application for post-conviction relief. The application for post-conviction relief must be dismissed because it is improperly successive to the prior applications or actions and is barred by S.C. Code Ann. §17-27-90.

This Court finds that this application for post-conviction relief must also be summarily

dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure

Act. S.C. Code Ann. §17-27-10, et. seq.

S.C. Code Ann. §17-27-45(A) (2003) reads as follows:

An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgment of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

Also, S.C. Code 17-27-45 (C) (2003) provides:

If the applicant contends that there is evidence of material facts not previously presented and heard that requires vacation of the conviction or sentence, the application must be filed under this chapter within one year after the date of actual discovery of the facts by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offense he challenges in this Application in July 1999. The Supreme Court's decision was filed, after the Applicant's unsuccessful appeal. The remittitur was issued on January 9, 2001. The Applicant was therefore required to file his application before January 9, 2002. This Application was filed on January 9, 2009 and amended on May 19, 2009, which is more than seven years after the expiration of the statutory filing period.

Moreover and to the extent the Applicant contends that newly discovered evidence should permit him to pursue this untimely post-conviction relief action, this Court finds that S.C. Code Ann. §17-27-45(C) requires that all newly discovered evidence claims be raised within one year after the actual date of discovery of the facts giving rise to the claim by the applicant or after the date when the facts could have been ascertained by the exercise of reasonable diligence. This Court finds that,

based upon the record before it, the Applicant was aware of and has pursued the basis for this claim beginning in July 1999. This Court finds, alternatively, that upon the exercise of due diligence, the Applicant could have ascertained the facts well in excess of one year prior to filing this current application. He has not presented an item of new evidence and has not established that he could not have ascertained the matter in a timely manner. This Court finds that newly discovered evidence has not been timely asserted in this current application for post-conviction relief, and that the allegation provides no basis to permit the applicant to pursue the current action.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings . . . that there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." Therefore, this Court summarily dismisses the application for post-conviction relief for successiveness, and for failure to file within the time mandated by the Post Conviction Procedure Act. This Court also finds that there is no newly discovered in this case.

This Court further finds that the Applicant has had ample opportunity to present his case. The Applicant has already litigated or had the opportunity to litigate all the claims he presents in this application. The Applicant continues to raise the same groundless claims by repeated collateral attacks on his conviction. The public interest in finality of judgments requires that litigation must eventually come to an end. As a result and pursuant to this Order, the Applicant is prohibited from filing another post-conviction relief application alleging any ground raised in this application, any grounds raised in previous applications, or any allegations that could have been raised previously.

CONCLUSION

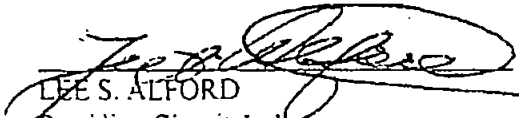
Based on the foregoing, this Court finds and concludes that the application for post-conviction relief must be summarily dismissed because it was filed beyond the applicable statute of limitations, and because it is an improper successive action. Furthermore, the Applicant's allegations and testimony in support of are not newly discovered evidence. Accordingly, the application is dismissed with prejudice.

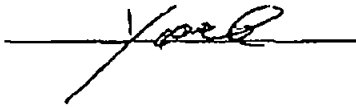
This Court advises the parties that in order to secure the appropriate appellate review, notice of appeal must be served and filed within thirty (30) days after receipt by counsel of notice of entry of this order. See Rules 203 and 243 of the South Carolina Appellate Court Rules. This Court notes that post-conviction relief counsel must advise an applicant of the right to seek appellate review of a post-conviction relief order. State v. Bray, 366 S.C. 137, 620 S.E.2d 743 (2005). Also, pursuant to Austin v. State, 305 S.C. 453, 409 S.E. 2d 395 (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 an applicant's behalf.

IT IS THEREFORE ORDERED:

1. That the application for post-conviction relief must be dismissed with prejudice;
2. The Applicant is prohibited from filing any future application for post-conviction relief that raises the same grounds raised in this action, any grounds raised in a prior action, or any allegations the Applicant could have raised; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 4th day of January, 2010, 2009.


LEE S. ALFORD
Presiding Circuit Judge
Sixteenth Judicial Circuit

, South Carolina

#25
2-8-11

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA,	)	CRIMINAL NO.: 98-GS-46-2847; 2849;
	)	2851
	)	
v.	)	MOTION FOR A NEW TRIAL BASED
	)	ON AFTER-DISCOVERED EVIDENCE
ANTONIO GORDON,	)	PURSUANT TO RULE 29(b), SCRCrimP
	)	
Defendant.	)	
	)	

NOW COMES the Defendant in the above-captioned matter, acting by and through undersigned counsel, respectfully moving this Honorable Court to grant a Motion for a New Trial Based on After-Discovered Evidence Pursuant to Rule 29(b), SCRCrimP. In support of this motion, the Defendant would show unto this Court the following.

PROCEDURAL HISTORY

The Defendant was charged with murder, two counts of attempted armed robbery, criminal conspiracy, possession of a pistol by a person under the age of twenty-one, and three counts of possession of a firearm during the commission of a violent crime in connection with the shooting death of Eric Peter Krenn on July 23, 1998. On July 16, 1999, the Defendant pleaded guilty as charged. On July 19, 1999, the Honorable John C. Hayes, III, presiding circuit court judge, sentenced the Defendant to thirty years' imprisonment for murder, five years' imprisonment for the firearms charges, five years' imprisonment for the conspiracy charge, and ten years' imprisonment for each attempted armed robbery charges. The sentences were to each run concurrently, with the exception of one ten-year attempted armed robbery sentence, which was to run consecutively to the remaining sentences.

ARGUMENT

“A motion for a new trial based on after-discovered evidence must be made within one (1) year after the date of actual discovery of the evidence by the defendant or after the date when the evidence could have been ascertained by the exercise of reasonable diligence.” Rule 29(b), SCRCrimP. To prevail on a motion for a new trial based on after discovered evidence, a defendant must show: (1) the evidence is such as will probably change the result if a new trial is granted; (2) the evidence has been discovered since the trial; (3) the evidence could not have been discovered prior to trial by the exercise of due diligence; (4) the evidence is material to the issue of guilt or innocence; and (5) the evidence is not merely cumulative or impeaching. State v. Needs, 333 S.C. 134, 157-158, 508 S.E.2d 857, 869 (1998).

The State’s theory of the case was that on the night of the incident, the Defendant and his co-defendants, Monta Gordon, Terrance McCreary, and Gary Moffatt, were in a vehicle together when they saw the victim’s BMW, which was occupied by the victim and his friend Christopher Diaz. The Defendant and Monta Gordon then went up to the vehicle under the guise of asking for marijuana but with the purpose of robbing the victim and stealing the vehicle. The Defendant then shot the victim, which was a wound that caused his death.

Following the incident, all of the co-defendants, including the Defendant, gave statements identifying the Defendant as the shooter. The Defendant challenged his statement prior to his guilty plea on the ground that it was not knowingly or intelligently made inasmuch as he was easily manipulated into making the statement and that he could not have understood his Miranda rights due to his mental deficiencies. This challenge was denied by this Court. Additionally, Diaz gave a statement identifying Monta Gordon as the shooter. Prior to pleading guilty, all of

the co-defendants pleaded guilty and intended to testify against the Defendant if he proceeded to trial.

The Defendant has attached to this motion two affidavits from two of his co-defendants: Monta Gordon and Terrance McCreary. Monta Gordon's affidavit states that he, not the Defendant, fired the shot that killed the victim. Attachment A. Furthermore, Monta Gordon's affidavit states that the Defendant did not have a gun the night of the incident, and that he did not discuss robbing or killing anyone with the Defendant. Attachment A. Finally, Monta Gordon's affidavit states that he told the police that the Defendant fired the shot because he believed that the Defendant would be treated less harshly because he was a juvenile at the time of the crime. Attachment A. McCreary's affidavit states that Monta Gordon, not the Defendant, had the gun the night of the crime. Attachment B. McCreary further states that Monta Gordon got out of their vehicle with the gun, shots were fired, and that Monta Gordon got back in the car with the gun. Attachment B. Finally, McCreary states that he discussed implicating the Defendant for the shooting with Monta Gordon while they were both housed at the York County Detention Center due to the Defendant's age and the likelihood that he would not be treated harshly because he was a juvenile. Attachment B.

The Defendant contends that the evidence presented in these affidavits satisfies all of the requirements for granting a new trial based on after-discovered evidence. The primary evidence against the Defendant was going to be his co-defendants' testimony. The Defendant's trial attorney has testified on numerous occasions that the Defendant pleaded guilty because his co-defendants were going to testify against him. Consequently, this new evidence would have changed the result of the plea. More importantly, this new evidence would have very likely resulted in a not guilty verdict at trial. The Defendant's primary defense would have been that he

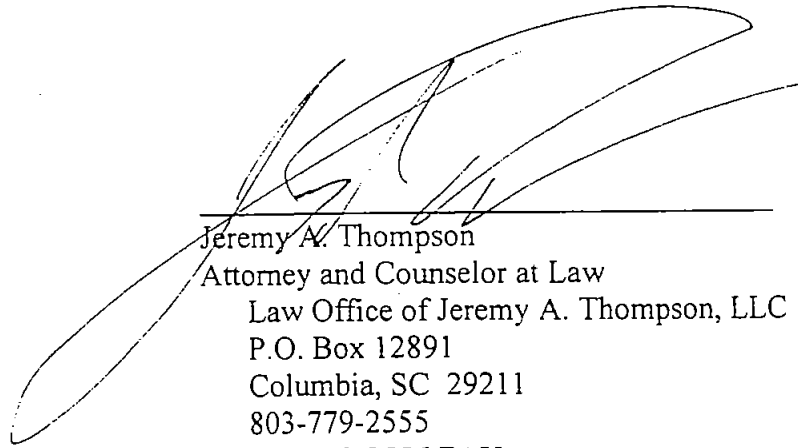
did not shoot the victim; Monta Gordon did. Monta Gordon's affidavit admits to shooting the victim, and McCreary's affidavit supports that conclusion. Diaz's statement given shortly after the incident also identifies Monta Gordon as the shooter. The impact of the Defendant's confession would have been minimalized with the evidence that both Monta Gordon and McCreary decided to blame the Defendant with the crime due to his young age. Finally, the Defendant could have presented the evidence that he was easily suggestible, was easily led into saying things that weren't true, and that he could not have understood his Miranda rights. Given this new evidence, it is extremely likely that the result at trial would have been a not guilty verdict.

Additionally, the new evidence has been discovered since the trial; the affidavits are dated July 13, 2012 (McCreary), and August 6, 2012 (Monta Gordon). The new evidence could not have been discovered prior to trial because both co-defendants planned on lying at the Defendant's trial to receive a lesser sentence and the Defendant could not have called either co-defendant to testify in a manner favorable to him. The new evidence is also extremely material to the issue of guilt or innocence, as the identification of the shooter would have been paramount to the jury's determination of guilt. Finally, the new evidence is not cumulative or merely impeaching, as the new evidence is a full recanting of potentially damaging testimony that both co-defendants would have given, and this testimony was the most damaging evidence against the Defendant. Given all of the above, the Defendant respectfully submits that he has met all five of the Needs factors and that this Court should grant him a new trial.

CONCLUSION

WHEREFORE, having set forth his grounds, the Defendant respectfully requests that this Court grant the Defendant a new trial pursuant to Rule 29(b), SCRCrimP.

Respectfully submitted,

A large, stylized handwritten signature in black ink, appearing to read 'J. Thompson', is written over a horizontal line.

Jeremy A. Thompson
Attorney and Counselor at Law
Law Office of Jeremy A. Thompson, LLC
P.O. Box 12891
Columbia, SC 29211
803-779-2555
803-779-2556 FAX
jeremyatlaw@yahoo.com
Attorney for the Defendant.

This 15th day of November, 2012.

State of South Carolina	)	
	)	Statement of Monta Gordon
Lee County	)	

I, Monta Gordon, having been duly sworn, depose and say that my brother Antonio "Tonio" Gordon and two other was together in July of 1998. I am the person who fired the shot that killed the man who died. I was the only person with a gun. My brother Tonio did not have a gun nor did he fire any gun that night. I alone am the only one who killed the victim. I told police Tonio fired the shot because he was a juvenile and I was an adult. I was on probation. As a juvenile I figured Tonio would get a lesser sentence. I never discussed robbing or killing anybody with Tonio. I was the only person with a gun that night and I fired the only shot that night.

This statement is honest and truthful. I have received a copy of this one (1) page statement.

Sworn to before me this 6th day of August 2012.

Murice S. Metter
 Notary Public for South Carolina
 My Commission expires: 4-26-2014

Monta Gordon
 Monta Gordon

STATE OF SOUTH CAROLINA

COUNTY OF LANCASTER

STATEMENT OF

TERRANCE E. MCCREARYI, TERRANCE MC CREARY, HAVING BEEN DULY SWORN DEPOSEAND SAY THAT I AM A RESIDENT OF SCDC - Kershaw Co., S.C. COUNTY.

I am not Represented by Counsel At This Time.
I am doing Time in SCDC For A Murder That
Occurred in July 1998 in York County.

At The Time of The Murder I was Driving
Antonio Gordon's Car. When We First Encountered
The Victims, Monte + Antonio got Out of The Car.
Monte Had A Gun, Antonio did not. The
Incident Occurred Behind Me So I did not
See What Happened. I heard One or Two Shots.
Monte + Antonio Returned To The Car, Monte
Still had The Pistol. They got in The Car.
While in The York County Jail Monte + I
discussed Blaming Antonio For The Shooting Since
He Was A Juvenile.

At No Time That Night did I See Antonio
With A Gun. Antonio has NEVER Told Me He did the
Shooting

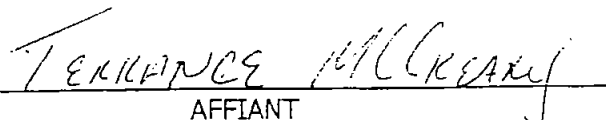
THIS STATEMENT IS HONEST AND TRUTHFUL TO THE BEST OF MY KNOWLEDGE. IT
 IS MADE FREELY AND VOLUNTARILY WITHOUT COERSION OR COMPENSATION.

I HAVE RECEIVED A COPY OF THIS 1 PAGE STATEMENT.

SWORN TO BEFORE ME THIS

13th DAY OF July 2012


NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 12/15/18


AFFIANT

STATE OF SOUTH CAROLINA)
) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT

STATE OF SOUTH CAROLINA,) CRIMINAL NO.: 98-GS-46-2847; 2849;
) 2851

v.

ANTONIO GORDON,

The undersigned hereby certifies that a true copy of the Motion for a New Trial Based on After-Discovered Evidence Pursuant to Rule 29(b), SCRCrimP in the above matter has been served on opposing counsel this 19 day of November, 2012, by mailing one (1) copy in a stamped envelope properly addressed to:

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

SWORN TO BEFORE ME this 19th day of
November, 2012.

Notary Public for South Carolina

10

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL
	)	SESSIONS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	2008-GS46-2847, 2849, 2850,
	)	1998 2851, and 2852
State of South Carolina	)	
	)	
v.	)	ORDER DENYING MOTION
	)	FOR A NEW TRIAL
Antonio Gordon,	)	
	)	
Defendant	)	

This matter comes before the Court by way of the Defendant's Motion for a New Trial Based on After-Discovered Evidence pursuant to Rule 29(b), SCRCrimP, filed November 21, 2012. An evidentiary hearing into the matter was convened on March 4, 2013, and March 8, 2013, at the Moss Justice Center in York County. The Defendant was present and represented by Jeremy Thompson, Esquire. The State was represented by Deputy Solicitor Willy Thompson.

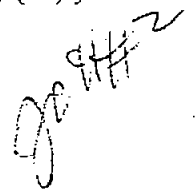
At the hearing, counsel for both parties presented argument to the Court. The Court also had the opportunity to review the following records: The transcript of the pretrial hearings, the guilty pleas, and the sentencing of Antonio Gordon, Monta Gordon, and Terrance McCreary which occurred over a period of several days in July of 1999; all of the written sworn statements given by Antonio Gordon, Monta Gordon, Terrance McCreary, and Gary Moffatt to various members of the Rock Hill Police Department on July 23, 1998; the PCR transcript of the sworn testimony of Antonio Gordon from a hearing held on July 29, 2003; the PCR transcript of the sworn testimony of Monta Gordon from a hearing held on September 4, 2003; the written plea agreement entered into by Monta Gordon on July 16, 1999; the sworn written statement of Monta Gordon dated August 6, 2012, and provided by Antonio Gordon; the PCR transcript of the sworn testimony of Terrance McCreary from a hearing held on December 16, 2002; the

sworn written statement of Terrance McCreary dated July 13, 2012, and provided by Antonio Gordon; the PCR transcript of the sworn testimony of Daniel D'Agostino from a PCR hearing held on December 1, 2009; the Maxton Order dismissing Antonio Gordon's most recent PCR application signed by the Honorable Lee S. Alford and dated January 4, 2010; and other documents that will not be addressed in this order.

PROCEDURAL HISTORY

The Defendant is currently incarcerated in the South Carolina Department of Corrections. He was indicted in October of 1998 by the York County Grand Jury for Murder (1998-GS46-02847), three counts of Possession of a Firearm During the Commission of a Violent Crime (1998-GS46-02847a; 1998-GS46-01949a; 1998GS46-1950a), two counts of Attempted Armed Robbery (1998-GS46-02849; 1998-GS46-02850), Criminal Conspiracy (1998-GS46-02851), and Possession of a Pistol by a Person Under Twenty-One (1998-GS46-02852). Daniel D'Agostino, Esquire, represented the Applicant.

A hearing on the Defendant's motion to suppress was held on July 12, 14, and 16, 1999. On July 16, 1999, following the suppression hearing, the Defendant pled guilty as indicted. On July 19, 1999, the Honorable John C. Hayes, III, sentenced the Defendant to confinement for thirty (30) years for Murder; five (5) years for Possession of a Firearm During the Commission of a Violent Crime; five (5) years for Criminal Conspiracy; five (5) years for Possession of a Pistol by a Person under Twenty-One, all to run concurrently; and ten (10) years for each count of Attempted Armed Robbery, one running concurrent and one running consecutive to the thirty (30) year sentence for Murder. This was a negotiated guilty plea to a cumulative forty (40) years confinement.



The Defendant filed a timely notice of Appeal and an Anders brief was submitted on his behalf pursuant to Anders v. California, 386 U.S. 738 (1967). Of note, the Defendant filed a *pro se* brief in which he raised the issue of probable cause to arrest based on an "informant's" statement to law enforcement allegedly given without being advised of her rights. The "Informant" to whom the Defendant was referring was Chyneca Dixon, his girlfriend at the time he committed the murder. The Defendant also contended that both he and the informant were under age and should not have been questioned by law enforcement outside the presence of a parent or attorney. As a result, he argued, the informant's statement was inadmissible because it was obtained illegally and could not have established probable cause for his arrest. The South Carolina Court of Appeals dismissed the Applicant's appeal. State v. Gordon, 2000-UP-747 (S.C. Ct. App. Filed December 6, 2000). The remittitur was issued on January 9, 2001.

The Defendant subsequently filed a PCR application originally dated June 20, 2001, and amended on May 8, 2003 (2000-CP46-1414). An evidentiary hearing was held on July 29, 2003. Tara D. Shurling, Esquire, represented the Defendant, who was present at the hearing. Jeanette C. Vanginhoven of the South Carolina Attorney General's Office represented the State. The Defendant alleged his guilty plea was involuntary and that defense counsel was ineffective for failing to discuss with him evidence of a palm print found on the victim's car door. The Defendant specifically contended that defense counsel failed to investigate or discuss with him "the fact that the palm print on the victim's car door was unidentified until the time of pre-trial," and that the South Carolina Law Enforcement Division (SLED) never tested the palm print. On August 20, 2003, the Honorable J. Ernest Kinard issued an Order denying and dismissing the application. The Defendant subsequently made a "Motion for Rehearing /Motion for

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Reconsideration of the Facts" on December 9, 2003. The Honorable J. Ernest Kinard dismissed the Defendant's motion by written Order filed December 15, 2003.

The Defendant filed a petition for writ of certiorari appealing the Order dismissing his first PCR action. On July 21, 2005, the South Carolina Supreme Court issued an Order denying the petition. The remittitur was issued on August 9, 2005.

On July 6, 2004, while his appeal from the denial of his first PCR action was still pending, the Defendant filed a second PCR application (2004-GS46-1700). The Defendant raised issues previously raised in his first PCR action, including allegations that his guilty plea was involuntary and that defense counsel was ineffective. On December 30, 2004, the Honorable Lee S. Alford issued a conditional Order of Dismissal in which he expressed the intent to summarily dismiss the application because the Defendant failed to comply with the filing procedures of the Post-Conviction Procedure Act as set forth in S.C. Code Ann. §17-27-45(A) and §17-27-90, and because the application was in improper successive action, but granted the Defendant twenty (20) days to show why the order should not become final. The Defendant did not respond to the conditional order of dismissal. Thereafter, by Order dated May 20, 2005, the Honorable Lee S. Alford denied and dismissed the Defendant's second PCR action.

The Defendant then filed a federal petition for writ of habeas corpus on December 22, 2005 (2:05-3327-MBS-RSC) and an amendment to his federal habeas corpus action on April 14, 2006. On October 16, 2006, Federal Magistrate Judge Robert S. Carr entered his Report and Recommendation that habeas relief should be denied. On October 30, 2006, the Defendant filed an "Objection to Report and Recommendation of Magistrate Judge." The Defendant raised the probable cause issue regarding his arrest. Specifically, the Defendant contended that his warrantless arrest was unlawful because law enforcement only found probable cause to arrest

him based on statements given to them "by a minor whose [sic] parents were not present during questioning." In essence, he asserted that law enforcement's reliance on Chyneca Dixon's statement to establish probable cause led to an unlawful arrest that violated his Fourth Amendment rights. He also claimed that defense counsel was ineffective for failing to advise him that by pleading guilty he waived his right to challenge the lawfulness of his arrest or the statements he made to law enforcement after he was arrested. On February 16, 2007, the Honorable Margaret B. Seymour entered an Order dismissing the Defendant's petition without prejudice to permit him to exhaust all State remedies.

Subsequently, the Defendant filed a state petition for writ of habeas corpus on January 3, 2006 (2006-CP46-0010). He then filed an amendment to the state habeas corpus action on January 23, 2007, to which he attached Chyneca Dixon's two statements given to law enforcement on July 23, 1998. The Defendant alleged that law enforcement did not have probable cause to arrest him because the police relied on Chyneca Dixon's statement to law enforcement that she gave as a result of being threatened outside the presence of her parents. The Defendant asserted that the police should not have questioned Chyneca Dixon ("the minor") outside the presence of her attorney or parents, and that because she was the "probable cause provider," both of their statements to law enforcement, as well as the Defendant's arrest, were all unlawful. The Honorable John C. Hayes, III, denied and dismissed the Defendant's state habeas corpus petition with prejudice by written order dated April 30, 2007, and filed on June 1, 2007.

The Defendant then filed a Rule 60(b) motion in which he alleged a conflict of interest with the Honorable John C. Hayes, III, who was original sentencing judge at the Defendant's guilty plea. The Defendant also claimed that the order dismissing his state habeas corpus action did not advise him of right to appeal the order. On January 31, 2008, the Honorable Roger L.

Couch granted the Defendant's Rule 60(b) motion to reconsider, amend, and clarify, and issued a written order finding that the Defendant was without prejudice to bring a petition for writ of habeas corpus in the original jurisdiction of the South Carolina Supreme Court.

On January 9, 2009, the Defendant filed his third PCR application. He amended the application on May 19, 2009. The Defendant attached two written statements given by Chyneca Dixon (hereinafter "Chyneca") and her mother, Geraldine Dixon (hereinafter "Ms. Dixon"), on January 20, 2008. The statements were given to an investigator who interviewed them on behalf of the Defendant. The Applicant alleged that he was being held in custody unlawfully for the following reasons:

1. Newly Discovered Evidence;
2. Ineffective Assistance of Trial Counsel;
3. Prosecutorial Misconduct;
4. Brady Violation;
5. Involuntary Guilty Plea;
6. Defense counsel failed to challenge Defendant's statements on the ground that there was no probable cause for the arrest and that Defendant's "statement's was [sic] the fruit of the poisonous tree" with regard to the illegal arrest; and
7. Personal Jurisdiction

The State made its return and motion to dismiss on July 27, 2009, asserting that the application must be summarily dismissed as an improper successive action and as having been filed after the expiration of the applicable statute of limitations. The Honorable John C. Hayes, III, issued a conditional order of dismissal on August 24, 2009, in which Judge Hayes expressed the intent to summarily dismiss the application because the Defendant failed to comply with the filing procedures of the Post-Conviction Procedure Act as set forth in S.C. Code Ann. § 17-27-

45(A) and § 17-27-90, and because the application was an improper successive action, but granted the Defendant twenty (20) days to show why the order should not become final. The State also filed a motion to restrict future filings on November 19, 2009, pursuant to In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996). The Defendant did not file a response to the conditional order of dismissal. A hearing into the State's motion for summary dismissal was convened on December 1, 2009. At the hearing, the State proceeded on a motion to dismiss all of the Defendant's claims as procedurally barred by the statute of limitations and successiveness. The State also argued that the two written statements included with the application were not newly discovered evidence, and that any alleged newly discovered evidence was nonetheless barred by the statute of limitations. The State also made a verbal motion to restrict the Defendant from filing another PCR application in the future under In re Theron Maxton, 325 S.C. 3, 478 S.E.2d 679 (1996).

At the hearing, the Defendant, through counsel, acknowledged that he filed a lengthy application in this case, and that he was only proceeding at the hearing with the newly discovered evidence claim and with an issue regarding the palm print found on the victim's car. Specifically, the Defendant asserted that he discovered new evidence that law enforcement coerced and threatened Chyneca into giving her initial statements, outside the presence of her mother, and that those statements implicated him in the crimes. He contended that because Chyneca's statements were threatened and coerced, they could not have established probable cause to arrest him. Therefore, the Defendant asserted, his arrest was unlawful and any incriminating statements he gave to law enforcement subsequent to his arrest were the "fruit of the poisonous tree."

The Defendant also raised an issue regarding the palm print obtained from the victim's car. He claimed that he has attempted to obtain certain documents from SLED regarding the palm print that allegedly show he was "not necessarily" the shooter, but that he has been unable to obtain those documents partly as a result of ineffective assistance of PCR counsel during his first PCR action. The Defendant also maintained that defense counsel was ineffective because he never had the palm print tested by his own expert. The Defendant also claimed that he attempted to raise this issue during his first PCR hearing, but he was "coerced into waiting the issue" at his first PCR hearing by PCR counsel.

After the December 1, 2009, hearing, the Honorable Lee S. Alford made the following findings:

1. Geraldine Dixon's testimony was not credible.
2. The evidence presented by Antonio Gordon was not newly discovered.
3. Chyneca Dixon's testimony was false and she was available to testify at trial.
4. Antonio Gordon's allegations regarding the palm print are not material or relevant.
5. The testimony of Antonio Gordon's defense counsel, Daniel D'Agostino, was credible, and any coercion or intimidation that may have accompanied Chyneca Dixon's statements to law enforcement was not a significant factor in Antonio Gordon's decision to plead guilty.

On January 4, 2010, the Honorable Lee S. Alford issued an order dismissing Antonio Gordon's application for post-conviction relief with prejudice. The Court further ordered that Antonio Gordon "is prohibited from filing any future application for post-conviction that raises the same grounds raised in this action, any grounds raised in a prior action, or any allegations the Applicant could have raised."

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has also had the opportunity to hear the testimony of Antonio Gordon, Monta Gordon, and Terrance McCreary, as well as, the arguments of counsel presented at the hearings on March 4, 2013, and March 8, 2013.

First, Antonio Gordon proffered the testimony of Monta Gordon. Monta Gordon is the brother of Antonio Gordon. Monta Gordon testified that on August 6, 2012, someone visited him in the South Carolina Department of Corrections and took a sworn statement from him.

Monta Gordon's statement reads as follows:

I, Monta Gordon, having been duly sworn, depose and say that my brother Antonio "Tonio" Gordon and two others was together in July of 1998. I am the person who fired the shot that killed the man who died. I was the only person with a gun. My brother Tonio did not have a gun nor did he fire any gun that night. I alone am the only one who killed the victim. I told the police Tonio fired the shot because he was a juvenile and I was an adult. I was on probation. As a juvenile I figured Tonio would get a lesser sentence. I never discussed robbing or killing anybody with Tonio. I was the only person with a gun that night and I fired the only shot that night.

During his testimony Monta Gordon admitted that this August 6, 2012, statement was the first statement that he gave admitting to being the "shooter". He went on to testify that he would have given this statement back in 1999 if someone had asked him. However, Monta Gordon's prior sworn statements and testimony tell a completely different story.

Monta Gordon was arrested a few hours after the Murder of Erik Krenn and gave a sworn statement to the Rock Hill Police that same morning. In his statement dated July 23, 1998, Monta Gordon admitted he rode around in Antonio Gordon's car with Antonio Gordon, Terrance McCreary, and Gary Moffatt during the time leading up to the murder. Terrance McCreary was driving and they were all with McCreary when McCreary stopped to pick up his pistol. They then went to McCreary's grandmother's house to pick up more bullets for the pistol. According to Monta Gordon, McCreary thought the victims were in a stolen car and McCreary "was going

to steal the car from them.” Monta Gordon’s statement goes on to say that just after the victims pulled their car into a driveway, McCreary pulled up past the victims then backed up blocking the victim’s car. Monta Gordon specifically told the police that McCreary gave the pistol to Antonio Gordon and told Antonio “that they were going to rob them.” Monta’s statement then states that McCreary and Antonio got out of their car, went over to the victim’s car and tried to get the victim out of his car. Then Monta’s statement details that when the victim tried to drive off, “my brother Antonio shot the driver one time.”

During Monta Gordon’s guilty plea to Murder, Attempted Armed Robbery (2 counts), and Conspiracy on July 16, 1999, Monta Gordon agreed with the facts as stated on the record by the solicitor which specifically included the fact that Antonio Gordon shot and killed Erik Krenn (Plea Transcript beginning at page 189, L 18, and ending on page 192, L 8). It should also be noted that these facts are the same facts to which Monta Gordon agreed to testify had any of his codefendants gone to trial (Written Plea Agreement dated July 16, 1999, and Plea Transcript page 179, LL 12-19).

At sentencing on July 19, 1999, when the Court gave Monta Gordon the opportunity to address the Court, Monta Gordon said,

I’m sorry for the Krenn family for this accident that happened. We knowed that it was a big mistake in our life because as teenagers we had a lot to live for, but now since the indictment we have nothing to live for but to serve the time for the crime that we did. I want to say I’m sorry for my family for letting them go through the situation I’m in and all that. Hopefully Mr. Krenn will forgive us one day for the sin we did. (Plea Transcript page 202, LL 7-18)

Monta Gordon’s apology in his own words at sentencing certainly re-enforces his original statement and the original statements of his codefendant that they acted together in committing this horrible crime.

On September 4, 2003, Monta Gordon gave sworn testimony at his PCR hearing. When testifying about the statement he gave the police on the day of the murder, Monta Gordon confirmed that McCreary told Antonio Gordon to "just get" the victim's car and that Antonio Gordon got the pistol from McCreary and "jumped out" of Antonio's car. Monta also confirmed again that Antonio Gordon was the shooter (PCR Transcript page 39, L 6 to page 40, L 23). Monta Gordon's testimony at his PCR only differed when he claimed, "By the time I jumped out of the car to go stop him [Antonio], like I say, I was already, you know, on twenty years suspended on three years probation, so I wasn't looking for any trouble. When I jumped out, I jumped out to stop my brother, but it was too late." (PCR Transcript page 39, LL 6-18). (It should be noted that during the March hearing for Antonio Gordon, Monta Gordon admitted that he was only facing three year on a probation violation not twenty years as he had testified.) Monta Gordon bemoans to the PCR Court that, "I'm locked up for something I know I didn't do." (PCR Transcript page 50, LL19-20). Monta Gordon goes on to testify that Antonio has said "from day one that I [Monta] didn't have nothing to do with it, that I [Monta] was trying to stop him [Antonio]." (PCR Transcript page 51, LL 4-8).

Monta Gordon now claims that the reason he blamed Antonio was because Antonio was a juvenile and he thought Antonio would get a lesser sentence. I find this new claim to be completely without merit. Monta Gordon has an extensive juvenile record as noted in his plea transcript (Plea Transcript page 197, LL 10-24) and is intimately familiar with the juvenile court system. It was immediately obvious that none of the defendants in this case were treated as juveniles. Certainly, when the State sought to try all of the defendants together in 1999, there could be no mistake that no one was treated as a juvenile. Yet, Monta Gordon continued point to Antonio Gordon as the shooter at his plea, in his plea agreement and in his September 4, 2003,

PCR testimony after Antonio Gordon had been sentenced to 40 years. It is the opinion of this Court that Monta Gordon's new "exonerating" testimony is a complete fabrication.

Second, Antonio Gordon proffered the testimony of Terrance McCreary. Terrance McCreary is a cousin of Antonio Gordon. Terrance McCreary testified that on July 13, 2012, someone visited him in the South Carolina Department of Corrections and took a sworn statement from him. In this statement Terrance McCreary claims,

I am not represented by counsel at this time. I am doing time in SCDC for a Murder that occurred in July 1998 in York County. At the time of the Murder I was driving Antonio Gordon's car. When we first encountered the victims, Monte + Antonio got out of the car. Monte had a gun, Antonio did not. The incident occurred behind me so I did not see what happened. I heard one or two shots. Monte + Antonio returned to the car. Monte still had the pistol. They got in the car. While in the York County Jail Monte + I discussed blaming Antonio for the shooting since he was a juvenile. At no time that night did I see Antonio with a gun. Antonio has never told me he did the shooting.

This July 13, 2012, statement is the first time Terrance McCreary insinuated Antonio Gordon might not be the shooter and the first time that he claimed Monta Gordon possessed the pistol during the robbery and murder. It should be noted that Terrance McCreary states the shooting occurred behind him and he did not see what happened. Terrance McCreary's prior sworn statements and testimony completely contradict this 2012 statement.

Like all of his co-defendants, Terrence McCreary gave a written sworn statement to a Rock Hill Police Detective on the day of the murder (July 23, 1998). In this sworn statement immediately after the crime, Terrance McCreary states, "I then said man if I had the gun I would rob them guys." He says Antonio Gordon and Gary Moffatt got out of the car and Antonio went over to the driver's side of the victim's car. According to McCreary, Antonio asked the victims if they had marijuana and money and whether their car was stolen. McCreary then says, "Monta and I was telling them [Antonio and Gary] to come on and lets go, then we heard the gun fire. Antonio and Gary then ran and got back in the car. We began asking Antonio why did he do

that, and he was pointing the gun at all of us.” McCreary also talks about how he picked up the gun shortly before the crime—a fact that is confirmed in the original statements given to the Rock Hill Police Department by each of the four defendants in this case. However, when McCreary testified in Antonio Gordon’s March 2013, hearing, McCreary denied ever touching the gun.

Terrance McCreary plead guilty on July 16, 1999, to Accessory before the fact to Murder and Accessory after the fact to Murder. In addition to waiving all of his rights and pleading guilty under oath, McCreary agreed to the facts of the case as stated by the solicitor. McCreary agreed that he obtained the gun and ammunition, that he gave the gun to Antonio Gordon, that he suggested they rob the victims, and that Antonio Gordon shot Erik Krenn (Plea Transcript page 171, L 13 to page 173, L 1). In addition, the record reflects that Terrance McCreary, as part of a plea agreement, agreed to testify against his co-defendants to facts as stated at the time of his guilty plea (Plea Transcript page 163, LL 5-19 and page 168, LL 10-19).

On December 16, 2002, Terrance McCreary gave sworn testimony at his own PCR hearing. During his PCR hearing Terrance McCreary testified under oath that he did not understand what was happening at his guilty plea and he actually never plead guilty (PCR Transcript page 11, L 5 to page 15, L 17, and page 19, LL 10-15, and page 26, L 9 to page 27, L 6). Nowhere in the PCR transcript did McCreary mention anything about Monta Gordon being the shooter in this case. The Plea transcript and Court paperwork make it clear that Terrance McCreary freely, voluntarily, knowingly, and intelligently entered guilty pleas in this case and agreed to the facts stated on the record. It is an obvious fabrication for Terrance McCreary to deny entering a guilty plea and attempt to change the facts of this case.

Like Monta Gordon, Terrance McCreary also makes a new claim that he blamed Antonio for the shooting because Antonio was a juvenile. During his testimony in Antonio Gordon's March 8, 2013, hearing, Terrence McCreary claimed that about six months after his arrest, he spoke with Monta Gordon in the York County Detention Center and they decided to blame Antonio for the shooting because Antonio was a juvenile. However, both Monta Gordon and Terrace McCreary gave sworn statements long before this on the day of the murder implicating Antonio as the shooter. In addition, Terrance McCreary has an extensive juvenile record as noted in his plea transcript (Plea Transcript page 197, L 25 to Page 198, L 9). Like Monta Gordon, McCreary is intimately familiar with the juvenile court system. It was immediately obvious that none of the defendants were treated as a juvenile. Certainly, six months after arrest when this "blame it on the juvenile" discussion allegedly took place, neither McCreary nor Monta Gordon could have been of the opinion that Antonio would be prosecuted as a juvenile. Then, almost a year after the crime, when the State was trying the defendants together at same time in General Sessions Court, there is no way anyone could have thought that Antonio would be tried as a juvenile. Instead of telling this "new" story at that time, McCreary plead guilty confirming his original statement to the police and agreeing to testify against Antonio Gordon. This Court finds that Terrance McCreary's attempt to bolster his "new" testimony with this "juvenile" claim is also a complete fabrication.

Finally, Antonio Gordon proffered his own testimony during the March 8, 2013, motion for a new trial based on after discovered evidence. Antonio Gordon claimed for the first time that he was not the shooter. Instead he claimed his brother, Monta Gordon, was the shooter. In fact, Antonio Gordon claimed he tried to stop his brother from robbing and shooting the victims and that he had no idea Monta was going to try and rob or shoot anyone. Just like the "new"

testimony of Monta Gordon and Terrance McCreary, Antonio's "new" testimony is completely contradicted by his prior sworn statements and testimony.

Antonio Gordon gave two written sworn statements to the Rock Hill Police on the day of the Murder (July 23, 1998). The first statement was given that morning and the second was given that afternoon at the same time Terrance McCreary was giving his statement to a different Rock Hill Detective. In his first statement, Antonio claimed that during the robbery he went over to the victim's car with Monta and Terrance and that Terrance shot the victim. Later that same day Detective John Thickens of the Rock Hill Police Department spoke with Antonio Gordon and took Antonio's second statement. Detective Thickens told Antonio that there were some discrepancies in Antonio's first statement compared to the information the police had collected. Then, without telling Antonio what those discrepancies were, Detective Thickens asked Antonio if he wanted someone else to go to jail for what Antonio had done (Plea/pretrial hearing Transcript page 50, L 22 to page 51, L 3, John Thickens Direct Testimony). Antonio responded by telling Detective Thickens that he did not want anyone else to be penalized for something he did and Antonio agreed to give a second statement (Plea/pretrial hearing Transcript page 51, LL 5-11).

In his second written sworn statement, Antonio Gordon admitted that he was the shooter. He said that McCreary gave him the gun and told him "to get the BMW [victim's car]." He also described that Terrance McCreary was driving and pulled Antonio's car up into a position that blocked the victim's car in the driveway. Then Antonio says, "I went up to the drivers window and I told them I wanted their money. They say they din't [sic] have no money. I was holding the gun pointed at them sideways like. I told them to get out the car because my boy want [sic] the car. Monte was standing next to me and Gary got out and went around the other side of the

car. They wouldn't get out the car and started backing up. I had the gun pointed at them and then it went off." These pertinent facts match very closely with the facts Terrance McCreary gave in his original statement to a different detective at the same time that Antonio gave his statement.

On July 16, 1999, Antonio Gordon entered a guilty plea to Murder, Attempted Armed Robbery (2 counts), Conspiracy, Possession of a Pistol by a person under 21 years of age and Possession of a Firearm during the commission of a violent crime (3 counts) and received a negotiated sentence of 40 years. Antonio Gordon listened to the Court go over each indictment one by one and plead guilty to each indictment. Antonio Gordon then listened as the State relayed the facts to the Court, and Antonio Gordon agreed to the facts presented. Antonio Gordon agreed that he had discussed robbing the victim and stealing the victim's car with Terrance McCreary, that he used the pistol during the robbery attempt, that he and Monta went to the victim's car window and attempted to steal the car, that Antonio's palm print was lifted off the driver's door of the victim's car, that he fired the deadly shot, and that he admitted to his girlfriend, Chyenca Dixon, that he was the shooter (Plea Transcript page 187, L15 to page 189, L 5). Antonio Gordon also has a lengthy criminal record including a number of impeachable offenses (Plea Transcript page 192, LL 7-21). Like his co-defendants, Antonio Gordon was very familiar with the juvenile court system. Antonio Gordon undoubtedly knew immediately that he was not being treated as a juvenile.

At sentencing on July 19, 1999, when the Court gave Antonio Gordon the opportunity to address the Court, Antonio Gordon said, "I'm sorry for my actions that I, took place and the crime. I'm sorry for his family. And all the people that I done hurt during this situation." (Plea Transcript page 202, LL 1-6). At no time during the pretrial hearings or the plea hearing did

Antonio Gordon say anything denying he was the shooter or claiming that Monta Gordon was the shooter. However, Antonio Gordon's trial counsel, Daniel D'Agostino, testified on December 1, 2009, in one of Antonio Gordon's many PCR hearings saying, "Antonio, I couldn't put him on the stand. He confessed to me what happened. His whole—you know, he told me he did it. There was no way to put him on the stand." (PCR Transcript page 75, LL 9-11). As he continued to testify about Antonio, Mr. D'Agostino went on to say, "His testimony, if he would have testified, was he was high on marijuana and he shot the boy. Now, I don't know what I could have done at trial with that." (PCR Transcript page 76, L 25 to page 77, L 4). Not only did Antonio Gordon confess to the police that he was the shooter and admit at his guilty plea that he was the shooter, he confided in his attorney that he was the shooter.

The lengthy procedural history of this case details seemingly endless attempts by Antonio Gordon to overturn his guilty plea over the course of more than 13 years. This Court is obligated to point out that despite the many hearings and motions various courts have entertained on Antonio Gordon's behalf, this is the first time that Antonio Gordon has claimed he was not the shooter and that Monta Gordon was the shooter. In fact the same can be said regarding the "new" testimony of Monta Gordon and Terrance McCreary. Neither Monta nor Terrance made these claims before in any of their own PCR or appeal proceedings. It is a clear fact that Antonio Gordon knew whether he was the shooter the moment this crime occurred. It is inconceivable that Antonio Gordon would wait until now, over 14 years since the crime, to make this claim if he was truly not the shooter. This Court finds Antonio Gordon's new claims to be completely fabricated and unsupported by any reliable evidence.

Gary Moffatt is the fourth co-defendant in this case. He is the only co-defendant who is not a relative of Antonio Gordon. Gary Moffatt also gave a sworn written statement to the Rock

Hill Police on the day of the murder. In his sworn statement Gary Moffatt said that Terrance McCreary got the pistol, that McCreary and Antonio talked about robbing the victims, that McCreary gave the pistol to Antonio Gordon just before Antonio got out of the car to rob the victims, that Monta followed Antonio out of the car, that Antonio demanded money from the victims, and that Antonio shot the driver. Gary Moffatt entered into a plea agreement with the State and agreed to testify against the other defendants. During Antonio Gordon's March 2013 hearing, Antonio Gordon testified that Gary Moffatt would not change his statement and testify for Antonio. Each of the four defendants involved in this case have remained constant since 1998 in pointing out Antonio Gordon as the shooter until this current Motion by Antonio Gordon for a New Trial Based on After-Discovered Evidence.

Antonio Gordon, Monta Gordon, and Terrance McCreary have each pursued their respective appeals and PCR applications. Only now, when all other avenues have failed, do these three co-defendants and relatives make this fantastic new claim which contradicts all of their previous claims. It is obvious to this Court that these new claims are complete fabrications capping off a string of attempts to escape responsibility for the horrible actions of each of these defendants on July 23, 1998.

A Motion for a New Trial cannot be used to challenge the validity of a plea of guilty. 58 Am. Jur. 2d. New Trial § 18; U.S. v. Lambert, 603 F.2d 808 (10th Cir. 1979); U.S. v. Forrest, 356 F. Sup. 343 (W.D. Mich. 1973); Roseborough v. State, 311 Ga. App. 530, 716 S.E.2d. 530 (2011); State v. Turco, 108 S.W. 3d 244 (Tenn. 2003) at Footnote 2.

The South Carolina Supreme Court did not reach the issue of plea vs. trial in State v. DeAngelis, 256 S.C. 364, 182 S.E.2d 732 (S.Ct. 1971). In DeAngelis, the lower court was

affirmed based on its denial of DeAngelis' Motion for a New Trial on the insufficiency of DeAngelis' affidavits in support of his Motion for a New Trial.¹

In Jamison v. State, Opinion 2012-UP-437 (Ct. App. 2012), the Court of Appeals strings out five cases in support of the Post-Conviction Relief trial judge's granting of post-conviction relief based on after-discovered evidence from a guilty plea. The Court's ruling does not confront and thus does not directly rule on the right of a defendant to seek a new trial from a guilty plea. In Jamison, the only issue raised on appeal was the State's argument that Jamison's post-conviction relief petition was successive. I find Jamison does not stand for the proposition that a defendant can seek a new trial of a guilty plea.

In Jamison, at the end of the string of cases, the Court cites this language from DeAngelis, "there are cases that motions of this character should be entertained and granted in order that wrongs done may be remedied." This statement follows this statement, "the courts do not look with favor upon applications for new trials on the ground of after-discovered evidence." The "character," the former quote addresses, is not a motion for a new trial from a guilty plea as in Antonio Gordon's case; rather, it is a motion for a new trial based on after-discovered evidence, where the defendant made a timely general sessions motion to withdraw his plea prior to his sentencing. This is not the case for Mr. Gordon, and he should not be awarded a new trial.

Even if a Motion for a New Trial based on after-discovered evidence was available to Antonio Gordon, he would still not be entitled to relief based on the merits of the motion.

Of note from DeAngelis is this language:

It is the fixed rule that the credibility of newly-discovered evidence offered in support of a motion for a new trial is a matter for determination by the circuit judge to whom it is offered. In him; not this court, resides the power to weigh such evidence; and, his

¹ The Supreme Court notes the trial judge granted his denial on the voluntariness of the plea at the top of 256 S.C. 369. However, a reading of the case reveals the Court focused solely on the denial based on the lack of affidavits.

judgment thereabout will not be disturbed except for error of law or abuse of discretion. (*citing State v. Parker*, 249 S.C. 139, 153 S.E.2d 183 (S.Ct. 1967), a trial case).

I find the issue of credibility lies with this Court and I find that neither Antonio Gordon, Monta Gordon, nor Terrance McCreary are worthy of belief.

I find Monta Gordon's testimony that he, not Antonio Gordon, was the shooter in the case at issue to be totally lacking in credibility. This is true not only because he is, in my opinion, innately not credible, but based on the evidence previously presented by all of the participants in this case through statements to law enforcement, testimony under oath, and colloquy with trial judges.

As to Terrance McCreary, even if he were worthy of belief, which he is not, his testimony would only be that Monta get out of and after he, Mr. McCreary, heard a shot, got back into the car holding a gun at both times.

Likewise, I find Antonio Gordon's testimony at the hearing on his motion to totally lack credibility. This is based on the observations below. Additionally, as the moving party, his testimony is self-serving and completely inconsistent with his own previous statements, testimony, and plea, as well as the previous statements, testimony, and pleas of Monta Gordon and Terrance McCreary.

Also, weighing against the believability of Antonio, Monta, and Terrance's testimony is the under oath testimony by Antonio Gordon's trial counsel, Dan D'Agostino, that Antonio Gordon confessed that "he did it." (PCR Trial Transcript page 75, LL 5-11). This not only reflects negatively on Monta and Terrance's credibility, along with reflecting negatively on Antonio Gordon's, it bolsters Antonio Gordon's plea of guilty and his confessions to law enforcement and the trial judge.

The Court must address language from State v. Mercer, 381 S.C. 149, 672 S.E.2d 556 (S.Ct. 2009), which the undersigned finds confusing and hard to work into its analysis. In Mercer, the court examined whether or not the trial judge had abused his discretion on ruling on a motion for a new trial based on after-discovered evidence. After affirming that the credibility determination lies with the trial judge, the Court states "... we are sensitive to the notion that a mere finding of a witness's lack of credibility does not complete the analysis, because a witness may lack persuasive credibility and still create reasonable doubt."² Credibility is "the quality that makes something (as a witness or some evidence) worthy of belief." Black's Law Dictionary, 7th Ed., p. 374. "Persuade" means "to induce to undertake a course of action or embrace a point of view by means of argument, reasoning on entreaty." The American Heritage College dictionary, 4th Ed., p. 1039.

The statement above seems to imply that there are degrees of credibility and that the Court must look at not only whether or not a witness is worthy of belief, but whether a witness is artful enough to lie effectively to the point of creating reasonable doubt. As shown below, that is not the case.

A Westlaw search finds nine cases using the term "persuasive credibility" in addition to Mercer. Turnbull v. Commissioner of Social Security, 2009 WL 688911, reported, W.D. Pa. 2009; Kershner v. Massanari, 16 Fed. App. 606 (Cal 2001); Santini v. Town of Ellington, unreported, 2000 WL 1918015; West v. State, 725 So. 2d 872 (Mass. 1958); Berry v. Stevinson Chevrolet, 74 F3d 980; People v. Manning, 156 A.D.2d 220 (N.Y.A.D. 1 Dept. 1989); U.S. v. Johnson, 713 F.2d 755 (C.A. Ga. 1983); U.S. v. Stein, 437 F.2d 755 (C.A. Ind. 1971). None of these cases defined the term, but rather, as noted below, seem to use the term for comparison.

² Franklin v. Lynaugh, 487 U.S. 164, 108 S. Ct. 2320, 101 L.Ed 2d 155 (1988) cited in the paragraph with the "persuasive credibility" statement deals with a jury instruction on "residual doubt" and not on the issue of credibility.

The above cases seem to establish that "persuasive credibility" is a weighing of credibility between witnesses, i.e. not whether or not one witness or others are credible but which of the credible witnesses is more credible. The weighing of credibility is an essential component of jury deliberation. However, here it is for the Court, sitting without a jury, to determine whether a witness is credible or lacks credibility. In the instant case the Court, at least as to the issues material to consideration of Antonio Gordon's motion, must first determine whether a witness has any credibility on the material issues. Here, the Court finds none of the three witnesses who testified before the Court in the hearing of Antonio Gordon's Motion for a New Trial based on after-discovered evidence have any credibility as to their testimony that Monta Gordon, not Antonio Gordon, fired the fatal shot in this case.

Antonio Gordon's claim is that, even though he has, since the day of the shooting, known he was not the shooter, the newly-surfaced exonerating testimony of Monta Gordon and Terrance McCreary is "newly discovered" evidence. That the two accomplices now have changed their versions of the events of the night of the killing is new. Though new, it is not new evidence. The new versions are dramatically opposed to all of the previous evidence presented by Antonio Gordon, Monta Gordon and Terrance McCreary. The Court has already established that it does not find Monta Gordon and Terrance McCreary credible and so affirmatively finds their recantations and current testimony to be fabrications. The exonerating testimonies of Monta Gordon and Terrance McCreary were not evidence available to Antonio Gordon at the time he entered his plea. However, Antonio Gordon knew the truth at the time of his plea, affirmed the truth to his attorney, affirmed the truth to law enforcement and affirmed the truth to the plea judge. That, for whatever reasons, Monta Gordon and Terrance McCreary are changing their

prior, numerous admissions, the change does not create evidence which did not exist at the time Antonio Gordon entered his plea of guilt.

Here, there is no after-discovered "evidence" of any nature. What is now on the table is two accomplices fabricating testimony in an effort to allow Antonio Gordon to attempt to flip 180 degrees from his own version of the events of the night of the shooting in hopes that he can be tried not as the shooter, but solely as an accomplice³ or as an innocent bystander.

CONCLUSION

Based on the foregoing, this Court finds and concludes that Antonio Gordon's Motion for a New Trial Based on After-Discovered Evidence is hereby denied and dismissed because a Motion for a New Trial cannot be used to challenge the validity of a guilty plea. Furthermore, had a Motion for a New Trial been available to Antonio Gordon, this Court still finds and concludes the motion is without merit and must be denied and dismissed. This Court finds the new testimony of Antonio Gordon, Monta Gordon and Terrance McCreary to be fabricated and further finds each of these individuals to be wholly without credibility. In addition, the Court finds that the testimony and evidence presented by the defendant in support of his motion are not after-discovered evidence.

IT IS THEREFORE ORDERED:

1. That the Defendant's motion for a New Trial Based on After-Discovered Evidence must be denied and dismissed; and
2. That the Defendant must be remanded to the custody of the State to serve his sentence.

AND IT IS SO ORDERED this 22nd day of April, 2013.

³ The Court need not, based on its ruling herein, further comment on accomplice liability and its possible application to the facts which are undisputed.