

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM HORRY COUNTY
Court of General Sessions
Honorable Benjamin Culbertson, Presiding Judge

Appellate Case No. 2015-000958

State of South Carolina,

Respondent,

v.

Domenic Merino,

Appellant.

FACTUAL BASIS FOR APPEAL

Ralph Wilson, Jr., attorney for Appellant during his guilty plea ONLY provides the following factual basis explanation pursuant to Rule 203(d)(1)(B)(iv) of the South Carolina Appellate Court Rules for the filing of Notice of Appeal on behalf of Domenic Merino:

The Appellant was charged with Burglary 1st Degree, Armed Robbery, and Kidnapping in the Horry County General Sessions Court on April 20, 2015. Appellant was set for trial. Additionally, the Court scheduled pretrial motions on the same day. One of these motions was the Motion to Enforce the Previous Plea Deal. (See attached exhibit). This motion stated that Appellant received correspondence from Assistant Solicitor Tomas Glenn Terrell, III on January 9, 2014 extending an offer for Appellant to plead guilty to kidnapping for a negotiated sentence of 13 years. The correspondence stated that the offer must be accepted by February 28, 2014, or it is considered rejected. This plea was extended again verbally by Senior Assistant Solicitor Donna Elder on July 16, 2014. A subsequent offer to plead to arm robbery with no recommendation was extended by Senior Assistant Solicitor Nancy Livesay on August 4, 2014. Appellant served a Motion for Rule 5 Disclosure and Brady Material on the state by and through Assistant Solicitor Terrell on February 11, 2014. On February 11, 2014, I received a response to discovery request containing 80 pages of documents and 1 CD which contained statement from alleged victims, various witnesses, codefendant Paige Martin, and codefendant Kyla Saitta. On March 30, 2015, Appellant was served with a supplemental Brady response enclosing a DVD of a recorded interview of Carl Thomas dated July 23, 2014. This statement was exculpatory in nature. The State does not have the ability to decide what, if any, materials

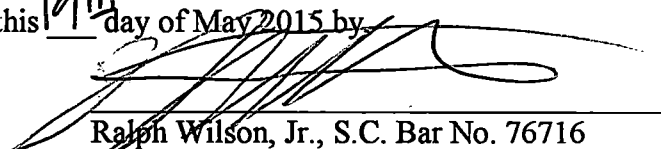
are utilized by a defendant in his defense. Appellant was not given the opportunity to review the evidence in possession of the state at the time the offer was given although it did exist at the time. Appellant would have accepted the plea offer and counsel would have advised him as to the same if Counsel had been aware of this evidence. The Court heard the motion and questioned the State as to why the evidence was not turned over before March 30, 2015 and the State responded with no valid reason. After arguments, the Court denied the Motion to Enforce Original Plea Offer. My argument before the court on behalf of Appellant at the time was simply that the Prosecutor had a duty to deal with Defendant fairly.

Client requested a Notice of Intent to Appeal be filed on his behalf. The Notice of Intent to Appeal was filed and served on behalf of Pro Se Appellant on April 28, 2015.

The reasons stated above and any other reasons Appellant has for filing the action are the subject of this appeal.

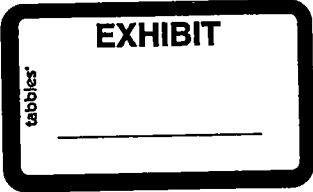
Pursuant to the Attorney-Client Representation Agreement executed by Appellant and myself, I represented Appellant during the primary disposition of this matter only and it was specifically acknowledged by Appellant our representation did not include any appeals.

RESPECTFULLY submitted this 19th day of May 2015 by



Ralph Wilson, Jr., S.C. Bar No. 76716
Plea Attorney for Appellant

ORIGINAL

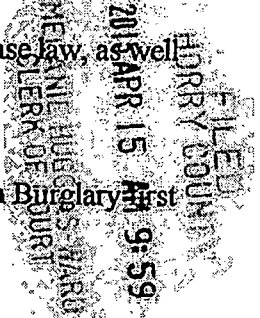


STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)
)
 THE STATE SOUTH CAROLINA,)
)
 Plaintiff,)
)
 v.)
)
 DOMENIC JOHN MERINO,)
)
 Defendant.)

IN THE GENERAL SESSIONS COURT
 FIFTEENTH JUDICIAL CIRCUIT
 Warrants 2013A2610700933, 934, 935 &
 2015GS2600361

**MOTION TO ENFORCE THE
 PREVIOUS PLEA OFFER**

NOW COMES the defendant, Domenic Merino, by and through his undersigned counsel, and moves for an Order of this Court enforcing the plea offer extended by the Fifteenth Circuit Solicitor's office on January 9, 2014 whereby the Defendant would plead guilty to a charge of kidnapping with a negotiated 13 year sentence. This motion is based upon all applicable statutes and case law, as well as any testimony or evidence offered at the hearing and the following:



1. On or about October 16, 2013, the defendant was arrested and charged with Burglary first degree, Kidnapping and Possession of a weapon during a violent crime.
2. Defendant through his counsel of record received correspondence from Assistant Solicitor Tomas Groom Terrell, III dated January 9, 2014, extending an offer for the defendant to plead guilty to kidnapping for a negotiated sentence of 13 years. The correspondence stated the offer must be accepted by February 28, 2014, or it is considered rejected. This plea offer was extended again verbally by Senior Assistant Solicitor Donna Elder on July 16, 2014. A subsequent offer to plead to Armed Robbery with no recommendation was extended by Senior Assistant Solicitor Nancy Livesay on August 4, 2014.

3. Defendant served a Motion for Rule 5 Disclosure and Brady Material on the state by and

through Assistant Solicitor Terrell on February 11, 2014.

4. Defendant through his counsel received the State's response to the discovery request dated February 11, 2014, enclosing 80 pages of documents and one (1) CD. In this discovery material was statements from the alleged victims, various witnesses, codefendant Paige Martin, codefendant Kyla Saitta.

5. On March 30, 2015, Defendant was served with a supplemental Brady response enclosing a DVD of a recorded interview of Carl Thomas dated July 23, 2014.

6. The July 23, 2104 statement of Carl Thomas is exculpatory in nature. Favorable evidence includes both exculpatory evidence and evidence which may be used for impeachment. The duty to disclose material exculpatory evidence is a matter of the due process clause. *Porter v. State*, Opinion No. 26121 (SC 3/6/2006) (SC, 2006).

7. That the state should not have the ability to decide what, if any, materials are utilized by the defendant in his defense.

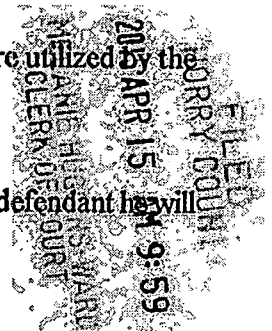
8. The state, by and through Assistant Solicitor Terrell, has since informed the defendant he will not allow the defendant to plead guilty and receive the agreed upon sentences.

9. That Defendant was not given the opportunity to review the evidence in possession of the state at the time the offer was given. Had the defendant had the statement of Carl Thomas while the plea was offered, the defendant would have accepted.

10. That Assistant Solicitor Terrell stated in an email to defendant's counsel he thought the defendant was in possession of the statement.

11. Not allowing the defendant to plea under the previously extended offer goes against the spirit of the Memorandum of Chief Justice Toal dated March 1, 2004.

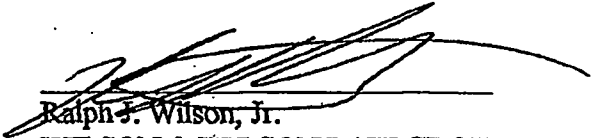
12. The undersigned would state that he has attempted to resolve this matter with the Fifteenth



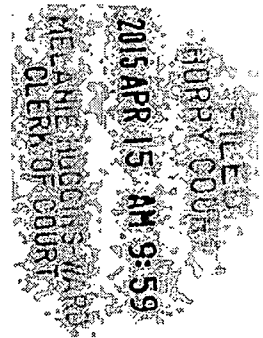
Circuit Solicitor's Office prior to the filing of this Motion but was unsuccessful.

THEREFORE, Defendant request this court grant his motion and allow the defendant to plead guilty under the previously extended offer with a recommended sentence of 13 years.

Respectfully submitted this 14th day of April, 2015,



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Attorney for the Defendant



PROOF OF SERVICE OF A NOTICE OF APPEAL

THE STATE OF SOUTH CAROLINA
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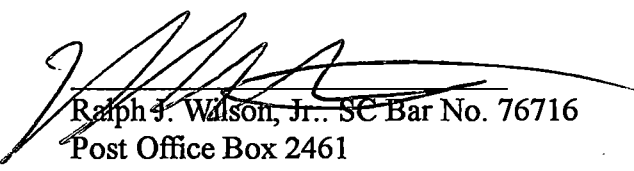
Appellant.

PROOF OF SERVICE

I certify that I have served the Corrected Notice of Appeal and Factual Basis for Appeal, filed by plea attorney Ralph J. Wilson, Jr., on the following:

1. Thomas Groom Terrell, III, Esq., P.O. Box 1276, Conway, SC 29528
2. Salley W. Elliot, Esq., PO Box 11549, Columbia, SC 29211
3. Robert Michael Dudek, Esq., PO Box 11589, Columbia, SC 29211
4. Alan McCrory Wilson, Esq., 203 Laurel St., Conway, SC 29526

Service was completed by depositing a copy of it in the United States Mail, postage prepaid, on May 19, 2015.


Ralph J. Wilson, Jr., SC Bar No. 76716
Post Office Box 2461
Conway, SC 29528

RECEIVED
MAY 21 2015
SC Court of Appeals