

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from York County

J. Ernest Kinard, Jr., Circuit Court Judge

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S.C. Supreme Court

DETRICK WILLIAMS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2014-002100

APPENDIX

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STATE OF SOUTH CAROLINA)

GENERAL SESSIONS

County of York)

2013-GS-46-0850

State of South Carolina,)

vs.)

TRANSCRIPT OF RECORD

Detrick Williams.)

June 19, 2013
York, South Carolina

BEFORE:

THE HONORABLE R. KNOX MCMAHON, JUDGE.

APPEARANCES:

ERIN JOYNER, ASSISTANT SOLICITOR
Attorney for the State

PHIL SMITH, ASSISTANT PUBLIC DEFENDER
Attorney for the Defendant

AMINAH R. HARDY, RPR, CVR-CM
Official Court Reporter

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THE COURT: All right. This is State versus Detrick Williams, 2013-GS-46-0850. That's the case the State is calling for trial, Solicitor?

MS. JOYNER: Yes, sir, Your Honor. I apologize. I was prepared to do an arraignment today for Mr. Williams and serve upon him a true copy of the indictment, and my paralegal put in my file the wrong certified, true copy. If I could just have two minutes, Your Honor, to correct that. I do apologize.

THE COURT: All right. Yes, ma'am.
All right, Solicitor.

MS. JOYNER: My paralegal is downstairs dealing with the clocked copy. If the Court wishes, I can go ahead and call the case and we could handle other matters prior to the arraignment.

THE COURT: All right. We can wait. I just -- when I saw you back, I thought you...

MS. JOYNER: Yes, sir.

THE COURT: Solicitor, you may proceed.

MS. JOYNER: Your Honor, I'm handing to Mr. Williams a clocked, true, certified copy of amended indictment 2013-GS-46-0850. That's a direct amended indictment for the offense of indecent exposure. Mr. Williams has not waived formal arraignment, so at this time I would ask

1 Mr. Williams to stand for the purpose of arraignment.

2 Detrick Williams, if you answer by that name, raise
3 your right hand. Indictment 2013-GS-46-0850, indecent
4 exposure is that on or about November 15th of 2012, the
5 defendant, Detrick Williams, did, in York County, South
6 Carolina, willfully, maliciously, and indecently expose
7 his person in a public place or property of others, all in
8 violation of Section 16-15-130, Code of Laws of South
9 Carolina, as amended.

10 What say you, Detrick Williams? Are you guilty or
11 not guilty of the charge for which you have been indicted?

12 THE DEFENDANT: Not guilty.

13 THE COURT: And how do you wish to be tried?

14 MR. SMITH: Your Honor, Mr. Williams has indicated to
15 me he contests this indictment, wishes me to make a motion
16 to quash concerning it. He was originally charged with
17 the lower charge of lewd and lascivious exposure. He
18 believes it is inappropriate for the State to go forward
19 on a direct indictment referencing that same warrant with
20 this higher charge.

21 THE COURT: All right. Well, let's do this, and I'll
22 be glad to hear the argument. For purposes of arraignment
23 only, how will he plead to the charge of indecent
24 exposure, guilty or not guilty?

25 THE DEFENDANT: Not guilty.

1 THE COURT: And how do you wish to be tried, by a
2 judge or by jury?

3 THE DEFENDANT: Judge.

4 THE COURT: You do not want a jury trial?

5 THE DEFENDANT: No. No, sir. I -- bench trial.
6 Bench trial.

7 THE COURT: You want a bench trial?

8 THE DEFENDANT: Yeah.

9 THE COURT: All right. Solicitor, do you have a
10 position as to jury trial or bench trial?

11 MS. JOYNER: I have no objection to a bench trial,
12 Your Honor.

13 THE COURT: Mr. Smith, you have no objection?

14 MR. SMITH: Do not, Your Honor.

15 THE COURT: Actually, the indictment also states
16 the -- the arraignment the answer is also, "How do you
17 wish to be tried, by God and by country?"

18 THE DEFENDANT: By God and by country.

19 THE COURT: Thank you. Thank you very much. We'll
20 revisit the jury trial momentarily.

21 Tell me your motion now Mr. Smith as to what he was
22 charged with originally and your -- his concerns, your
23 concerns as to the indictment 13-GS-46-0850.

24 MR. SMITH: Yes, Your Honor. Mr. Williams was
25 originally charged under Section 16-15-365 with exposure

1 of private parts in a lewd and lascivious manner. That
2 charge came about after not only the report filed by the
3 initial victim, but also after the review by the
4 administration at the Sheriff's Office concerning the
5 detention center, and Mr. Williams believes that that is
6 the appropriate charge for him to go forward on. There's
7 no indication that any new evidence surfaced after that
8 charge was made, no indication of any subsequent
9 testimony. In fact, there's indication in the reports
10 that before this decision was made, that there had been
11 review of the video by those who were in -- who were
12 charged with making the decision of what charge to proceed
13 under.

14 He was served with those warrants. He believes that
15 that is the charge he should face. He would also point
16 out to the Court that with this direct indictment, he
17 never received the right to a preliminary hearing or a
18 probable cause hearing on that charge. So he contests the
19 warrant -- I'm sorry, the indictment 2013-GS-46-0850, and
20 asks the Court to quash that indictment.

21 THE COURT: And do you have a copy of the arrest
22 warrant, Mr. Smith? May I see it, please.

23 MR. SMITH: I do, Your Honor.

24 THE COURT: All right. Anything further, Mr. Smith?

25 MR. SMITH: Nothing further on this issue, Your

1 Honor.

2 THE COURT: Thank you.

3 Solicitor?

4 MS. JOYNER: Your Honor, the State's position would
5 be we are within our rights to review charges and to
6 change certain charges. It's not uncommon to see a direct
7 indictment for a different charge, a different charge that
8 is still appropriate under the facts. The facts of this
9 case are susceptible to two different charges. The State
10 looked at the facts, we looked at the video, and we also
11 looked at Mr. Williams' prior record and history of the
12 same conduct, and the State determined it would be
13 appropriate to prosecute him under the charge that carried
14 the most -- that had the highest penalty, Your Honor. And
15 again, he's got two prior convictions for indecent
16 exposure that certainly factors into our consideration.

17 So we do believe it's within the State's power to
18 seek these direct indictments. The grand jury that passed
19 upon the indictment clearly felt there was sufficient
20 evidence to issue the indictment in the case. As to the
21 right for the preliminary hearing, I don't have the case
22 citation, but I know there is a case that says that any
23 indictment, the fact that a defendant was denied a
24 preliminary hearing is not grounds to attack the
25 indictment. And I could find that case if the Court would

1 give me just one moment. So we'd ask the Court to deny
2 the motion. Clearly the grand jury determined there were
3 appropriate facts to meet the elements of indecent
4 exposure.

5 Your Honor, this may not be the only case that says
6 this, but I'm looking at State versus Ballington. That is
7 at 346 SC 252. That is a Court of Appeals decision from
8 2002. And without reading all of it, it appears to say
9 that the court of general sessions has jurisdiction to try
10 a defendant for murder, even though the magistrate reduced
11 the grand jury murder indictment to manslaughter.
12 Following postindictment preliminary hearing, a
13 defendant's right to preliminary hearing ended with grand
14 jury indictment. The trial court obtained jurisdiction by
15 way of indictment.

16 And that's not the same situation, but it certainly
17 shows that once the grand jury has convened and passed
18 upon a charge, there's no further right to a preliminary
19 hearing. So I would say that that was, of course, the
20 State's position that the lack of preliminary hearing on a
21 direct indictment does not in any way negate our
22 jurisdiction that we have to amend that indictment.

23 THE COURT: Any response as to the preliminary
24 hearing issue, Mr. Smith?

25 MR. SMITH: No response.

1 THE COURT: I agree with that, Solicitor. The case I
2 would cite is State versus McClure, which is a Richland
3 County case from 1982. I guess that shows the
4 generational gap in that regard, from '82 to 2002. But it
5 stands for the proposition that a true billed indictment
6 against an individual and a preliminary hearing is not
7 held, it's not required because the indictment itself
8 establishes probable cause, and therefore would not have a
9 right to a preliminary hearing. Point out the trial judge
10 in that case was Judge John Grimball. I take it you never
11 practiced in front of him, Mr. Smith?

12 MR. SMITH: I have not, Your Honor.

13 THE COURT: Just as a historical aspect, Judge John
14 Grimball was one of the first people at the bridge of
15 Vermont during World War II, and I was actually probably
16 more scared of him than the German were when I was in the
17 courtroom. But be that as it may.

18 Yes, sir. You have another note? I thought they'd
19 be out of pen and ink by now. They reached a verdict.
20 Get the parties. Let me take this verdict.

21 (A recess was taken.)

22 THE COURT: All right. Back on the record on State
23 versus Detrick Williams. I believe I addressed the issue
24 on the preliminary hearing, and then the other issue had
25 to do with -- he was charged by warrant in November 231106

1 with obscene/exposure of private parts in a lewd or
2 lascivious manner, and then directly indicted under
3 indictment 2013-GS-46-00850 for indecent exposure. In
4 citing State versus Burdette, B-U-R-D-E-T-T-E, 513 SE 2d
5 525, a 1999 case from the Supreme Court of South Carolina.
6 This was actually I think the first case that addressed
7 the recidivist statute, however, within that case it cited
8 State versus Thrift, and it had to do with separation of
9 powers substantially. But within that case, I quote,
10 "Choosing which crime to charge a defendant with is the
11 essence of prosecutorial discretion."

12 I think the prosecutor is not bound by the charge
13 placed on an individual by law enforcement. You could
14 have a situation that could be overcharged, for example,
15 and the prosecutor couldn't reduce it or change it down.
16 You could have the situation where the prosecutor reviews
17 it and think they were undercharged. So they have that
18 unfettered prosecutorial discretion, so I would deny the
19 motion that the prosecutor would be bound to only a
20 prosecution of Mr. Williams under 16-15-0365. And when I
21 look at that particular statute and all the case notes
22 after that statute really has do with night clubs and nude
23 dancing was the purpose, appeared to be the legislative
24 intent. That is in no way being critical of law
25 enforcement's decision to charge him with that, but it

1 looks like that whole thing, that entire lewd and
2 lascivious statute is focused at the regulation of nude
3 dancing -- I guess they don't have to be nightclubs --
4 nude dancing club.

5 So I would respectfully deny Mr. Williams' motion in
6 that regard.

7 MR. SMITH: Thank you for your consideration, sir.

8 THE COURT: Yes, sir. Now, perhaps I misunderstood
9 Mr. Williams earlier, and I apologize when your
10 arraignment, the solicitor was substantially doing the
11 arraignment and there was some hesitancy by Mr. Williams
12 as to how he would be tried. Of course, you don't hear
13 very many formal arraignments anymore as you both know,
14 and the actual answer to that is "by God and country." I
15 asked him if he wanted a jury trial or a bench trial.
16 What does he want, Mr. Smith?

17 MR. SMITH: He does indicate he wishes a bench trial,
18 Your Honor.

19 THE COURT: A bench trial. You sure that's what he
20 wants?

21 MR. SMITH: He confirms he is sure, Your Honor.

22 THE COURT: Stand up for me, Mr. Williams.

23 ^DETRICK WILLIAMS, after having first being duly
24 sworn, testified under oath as follows:

25 THE COURT: Tell me your full name.

1 THE DEFENDANT: Detrick Williams.

2 THE COURT: And how old are you, Mr. Williams?

3 THE DEFENDANT: 31.

4 THE COURT: How much education do you have?

5 THE DEFENDANT: Ninth grade.

6 THE COURT: You understand what you're charged with?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you understand what you're indicted
9 for?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: What are you indicted for? What's the
12 charge?

13 THE DEFENDANT: Right now -- you saying the first one
14 or the one now?

15 THE COURT: The one now.

16 THE DEFENDANT: Indecent exposure.

17 THE COURT: All right. Indecent exposure. You
18 understand you have a right to a jury trial?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: You understand that's your right, that's
21 your constitutional right to exercise a jury trial. Do
22 you understand that?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Where they would select 12 people to make
25 the decision as to whether or not you were guilty beyond a

1 reasonable doubt. Do you understand?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Now, you can waive that right if you want
4 to. In other words, you can say I don't want a jury
5 trial; I want a bench trial. I want you, me, the judge to
6 try me. Do you understand that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Do you want a jury trial?

9 THE DEFENDANT: No, sir.

10 THE COURT: You want a bench trial?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Have you discussed this with your
13 attorney?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You need any more time to talk to your
16 attorney about it?

17 THE DEFENDANT: No, sir.

18 THE COURT: Is this your decision?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Decision you made of your own free will
21 and accord?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: You have any questions you'd like to ask
24 me about your right to a jury trial?

25 THE DEFENDANT: No, sir.

YOLANDA HILTON - DIRECT EXAMINATION BY MS. JOYNER

1 THE COURT: All right. Thank you. Thank you very
2 much. You may be seated, Mr. Williams. All right.
3 Solicitor, you may call your case for trial.

4 MS. JOYNER: Thank you, Your Honor. The State calls
5 as its first witness Yolanda Hilton.

6 THE COURT: Let me ask you this: Mr. Smith, did you
7 want to make an opening statement? I'm not requiring it
8 from either one of you, but...

9 MR. SMITH: Do not for a bench trial.

10 THE COURT: You may call your witness.

11 MS. JOYNER: Thank you.

12 YOLANDA HILTON, after having first being duly sworn,
13 testified under oath as follows:

14 DIRECT EXAMINATION

15 BY MS. JOYNER

16 Q. Can you please state your full name for the record.

17 A. Yolanda Hilton.

18 Q. And what is your occupation?

19 A. A nurse, LPN.

20 Q. And back in November of 2012, were you employed as a
21 nurse at the Moss Justice Detention Center?

22 A. Yes, ma'am.

23 Q. And is that located at [REDACTED] York Highway?

24 A. Yes, sir.

25 Q. Is that within York County, South Carolina?

YOLANDA HILTON - DIRECT EXAMINATION BY MS. JOYNER

1 A. Yes, it is.

2 Q. And if you could tell the judge just generally your
3 duties as a nurse for the detention center.

4 A. We took care of the medical needs of the inmates.

5 Q. And would those be all the inmates, or just those
6 inmates in the medical unit?

7 A. All inmates.

8 Q. Now specifically as to the medical unit, could you
9 please tell the judge what the makeup is of the medical
10 unit here at Moss Justice?

11 A. There are eight cells within the medical unit. There
12 are four -- actually, two on one end that are separated.
13 There's another separation of two more. And then the
14 other four are in the open area.

15 Q. Now the two areas that you indicate that are
16 separated, are those partitioned by a wall or a door?

17 A. Wall and a door.

18 Q. Okay. Were you working for the detention center back
19 on November 15th of 2012?

20 A. Yes.

21 Q. And on that day, did you come into the medical unit
22 to attend to the different inmates that were there?

23 A. Yes, I did.

24 Q. And when you first entered the medical unit, did you
25 begin with those four cells that were out in the open, or

YOLANDA HILTON - DIRECT EXAMINATION BY MS. JOYNER

- 1 did you go first to the partitioned area?
- 2 A. I began in the open area.
- 3 Q. And did you begin to speak with those other inmates?
- 4 A. Yes, I did.
- 5 Q. Do you recall Mr. Detrick Williams?
- 6 A. Yes.
- 7 Q. Do you recall him being an inmate at the Moss Justice
8 Center?
- 9 A. Yes, ma'am.
- 10 Q. Was he an inmate that was being housed in the medical
11 unit on November 15?
- 12 A. Yes, he was.
- 13 Q. And do you recall which cell he was being housed in?
- 14 A. He was in unit -- medical unit one.
- 15 Q. Was that one of the units out in the open or one of
16 the partitioned areas?
- 17 A. One of the partitioned areas.
- 18 Q. From the point in time from when you entered the
19 medical unit and you began your work, could he see you?
- 20 A. No.
- 21 Q. Is it possible he could have heard you speaking to
22 other people?
- 23 A. Yes.
- 24 Q. And did, in fact, he make any statements to you or
25 did he call to you while you were in the main medical

YOLANDA HILTON - DIRECT EXAMINATION BY MS. JOYNER

1 unit?

2 A. Yes, he did.

3 Q. And what did he say?

4 A. "Nurse, come here."

5 Q. Did he call you by name, or just simply nurse?

6 A. Just simply nurse.

7 Q. Were there other nurses other than yourself that
8 worked for the detention center?

9 A. Yes, that work at the detention center there were,
10 but I was the only one in the medical unit at the time.

11 Q. Okay. Were there any male nurse that were working at
12 the detention center at that time?

13 A. No.

14 Q. Okay. And when you heard the voice coming from that
15 area, did you recognize it as Mr. Williams' voice
16 initially?

17 A. Not initially.

18 Q. Okay. Did you reply to that voice?

19 A. I did.

20 Q. And what was your reply?

21 A. "Hold on. I'll be there in a minute."

22 Q. And did you, in fact, make -- that calling come from
23 back in the area where he was housed?

24 A. Yes, it did.

25 Q. Okay. And did you ultimately determine whose voice

YOLANDA HILTON - DIRECT EXAMINATION BY MS. JOYNER

1 you had heard?

2 A. Yes.

3 Q. And whose voice had you heard calling you?

4 A. Mr. Williams.

5 Q. How long do you think from the time you said "hold
6 on" until the time you actually arrived at his cell?

7 A. Within a couple minutes.

8 Q. And when you arrived at his cell, what does his cell
9 door look like?

10 A. There's a glass that you can see through and then
11 there's a flap on the door and the flap was open.

12 Q. Okay. Specifically what was the reason that
13 Mr. Williams was in the medical unit? You can tell the
14 judge without the jury present.

15 A. He was on suicide watch.

16 Q. Are individuals who are on suicide watch clothed in
17 something different than other medical inmates?

18 A. Yes. They're in a blue smock, Velcro smock.

19 Q. Basically, is it like a gown?

20 A. It's similar to a hospital gown. It velcros on the
21 shoulder and the back.

22 Q. Okay, so the shoulder and the back. Do all -- are
23 the inmates required to wear it that way, or do some wear
24 it with the opening to the front?

25 A. They're supposed to have it velcroed in the back.

YOLANDA HILTON - DIRECT EXAMINATION BY MS. JOYNER

- 1 Q. On this occasion, was Mr. Williams wearing that blue
2 smock? Do you remember?
- 3 A. Partially.
- 4 Q. Do you remember that he was partially wearing a blue
5 smock?
- 6 A. Yes.
- 7 Q. Okay. Did he have it opening to the front or open to
8 the back?
- 9 A. He had it open in the front.
- 10 Q. When you came to the cell door, where was
11 Mr. Williams standing?
- 12 A. At the door. He was standing on his side at the
13 door.
- 14 Q. Was he looking at you?
- 15 A. He was looking through the glass at me, yes.
- 16 Q. How was he dressed?
- 17 A. He had the smock open in the front.
- 18 Q. What was he doing?
- 19 A. He was masturbating.
- 20 Q. And were you able to see his penis?
- 21 A. Yes.
- 22 Q. Did Mr. Williams appear surprised to see you?
- 23 A. No.
- 24 Q. What did he -- did he observe you seeing him?
- 25 A. Yes.

YOLANDA HILTON - DIRECT EXAMINATION BY MS. JOYNER

1 Q. What did he do?

2 A. He looked at me and smiled.

3 Q. And what was your response?

4 A. I turned around and walked off.

5 Q. Do you recall the approximate time?

6 A. It was approximately 15:35.

7 Q. So that's military time so 15:35?

8 A. Yes.

9 Q. So about 3:35?

10 A. 3:35.

11 Q. Did you report this to the officers?

12 A. Yes.

13 Q. And did you later make a written report?

14 A. Yes, I did.

15 Q. Do you see in the courtroom the individual who
16 displayed his penis to you back on November 15, 2012?

17 A. Yes, ma'am, I do.

18 Q. Could you please point him out for the judge?

19 A. There.

20 MS. JOYNER: Let the record reflect she identified
21 the defendant, Mr. Williams.

22 THE COURT: So reflected.

23 MS. JOYNER: We have no further questions for this
24 witness.

25 THE COURT: Thank you, Solicitor.

YOLANDA HILTON - CROSS-EXAMINATION BY MR. SMITH

1 Mr. Smith?

2 MR. SMITH: May it please the Court.

3 CROSS-EXAMINATION

4 BY MR. SMITH

5 Q. Ms. Hilton, you indicated that where you were first
6 working when you heard this call that you could not see
7 Mr. Williams from that location; is that correct?

8 A. No, sir, I couldn't.

9 Q. And stands to reason that therefore he could not see
10 you; is that right?

11 A. That's correct.

12 Q. And you described a glass in the door. It's not a
13 big window like would be in a normal front door, a door in
14 a home; is that correct?

15 A. There's different types of glass doors, I mean, but
16 it wasn't like a window that you would raise, no.

17 Q. Okay. Well, do you recall this one to be a sort of a
18 narrow slit, maybe 4 inches across?

19 A. I would -- probably.

20 Q. Okay. And it was through that window that you saw my
21 client, Mr. Williams; is that correct?

22 A. I saw his face through the door, yes, sir.

23 Q. Okay. And you indicated also that you saw his penis;
24 is that correct?

25 A. Yes, sir.

YOLANDA HILTON - CROSS-EXAMINATION BY MR. SMITH

- 1 Q. Did you see that through the window as well?
- 2 A. No, sir.
- 3 Q. Okay. What was it that you saw that through?
- 4 A. The flap that was open.
- 5 Q. Now, the flap you described, how was that flap
- 6 opened?
- 7 A. It -- how is it opened?
- 8 Q. Yes, ma'am.
- 9 A. The officers open it with a key and it comes down.
- 10 Q. Okay.
- 11 A. And it makes a ledge.
- 12 Q. From the outside it's opened?
- 13 A. Yes, sir.
- 14 Q. Is it open or closed from the inside as well?
- 15 A. No, sir.
- 16 Q. And when you approach the window when you were first
- 17 able to see him, from that time to the time when you then
- 18 turned around, how long did this entire incident take
- 19 place?
- 20 A. A few seconds, maybe a minute? I -- from the time I
- 21 walked through the door into that area?
- 22 Q. Yes, ma'am.
- 23 A. And saw -- and saw him? 30 seconds, if that.
- 24 Q. 30 seconds or less. And you indicated you looked at
- 25 him and saw him looking at you?

YOLANDA HILTON - CROSS-EXAMINATION BY MR. SMITH

1 A. Yes, sir.

2 Q. Did you make any response to him at that point?

3 A. I turned around and walked off.

4 Q. And did you then right then go and file a report, or
5 what happened at that point?

6 A. I had to continue seeing the other inmates. And when
7 I completed my task in there, I went and read the report.

8 Q. Did you go to the Sheriff's Office, or did you just
9 turn and report in at the detention center?

10 A. We fill out an incident report in the detention
11 center, an events report.

12 Q. Were you ever brought back in to be interviewed by
13 any detective or anyone from the Sheriff's Department or
14 anything on that nature?

15 A. Yes, sir, I believe I did talk with someone.

16 Q. Do you know who?

17 A. I don't remember. I filled out the paperwork and
18 took it to the appropriate people, and that was about the
19 end of it at that point.

20 Q. Okay.

21 MR. SMITH: May I approach the witness, Your Honor?

22 THE COURT: Yes, sir.

23 Q. Going to show you a detention center event report and
24 ask if you recognize that item.

25 A. Yes, sir.

YOLANDA HILTON - CROSS-EXAMINATION BY MR. SMITH

1 Q. Let me pause for a moment and have it marked.

2 (Defendant's Exhibit Number 1 was marked.)

3 Q. And is that the report that you indicate that you
4 filled out?

5 A. Yes, sir.

6 Q. And in the narrative section where it speaks of nurse
7 doing things, is that someone else or is that you?

8 A. That's me.

9 Q. Okay. So it indicates that you were then instructed
10 to do some things regarding the case; is that correct?

11 A. Regarding? I'm sorry, I didn't...

12 Q. Regarding reporting with the case?

13 A. Yes.

14 Q. Okay. I have no further questions.

15 THE COURT: Thank you Mr. Smith.

16 Solicitor?

17 REDIRECT EXAMINATION

18 BY MS. JOYNER

19 Q. Just follow-up, Nurse Hilton. What the defense
20 attorney asked you if you were instructed to do anything,
21 was that simply just to -- you were instructed to write
22 down the events, the events to this report?

23 A. Just to do the report.

24 MS. JOYNER: Okay. No further questions, Your

25 Honor -- well --

YOLANDA HINTON - REDIRECT EXAMINATION BY MS. JOYNER

1 Q. In the window, Mr. Smith asked you about the size of
2 the window. Was the window in Mr. Williams' cell door
3 large enough for you to see clearly Mr. Williams and what
4 he was doing?

5 A. Yes.

6 MS. JOYNER: Okay. Thank you. No further questions.

7 THE COURT: Recross?

8 MR. SMITH: No, Your Honor.

9 THE COURT: Thank you very much. You may step down.

10 All right, Solicitor.

11 MS. JOYNER: Thank you. Your Honor, the next witness
12 is Captain Gary Davies.

13 THE COURT: Come around and be sworn, please.

14 CAPTAIN GARY DAVIES, after having first being duly
15 sworn, testified under oath as follows:

16 DIRECT EXAMINATION

17 BY MS. JOYNER

18 Q. Captain Davies, please give us your full name for the
19 record.

20 A. Gary L. Davies.

21 Q. Please tell the judge what is your occupation.

22 A. I'm the security commander at the detention center.

23 Q. What type of job duties do you have as a security
24 commander?

25 A. I supervise all the four security shifts

CAPTAIN GARY DAVIES - DIRECT EXAMINATION BY MS. JOYNER

1 classification unit, the 287-G immigration program and
2 classification, and the court officers.

3 Q. How long have you held that position?

4 A. Since June 1st, 2010.

5 Q. How long total have you been with the York County
6 detention center?

7 A. 17 years.

8 Q. Now if you can tell the judge, just explain in
9 general the layout of the York County detention center.

10 A. It is a direct supervision facility that houses -- we
11 have 11 housing unit and each individual is placed in a
12 housing unit according to their classification level.

13 Q. How many housing units do you have total?

14 A. 11.

15 Q. And how many of those are occupied?

16 A. Nine.

17 Q. Do you know just roughly how many inmates you would
18 normally have here at the Moss Justice Center?

19 A. The average daily population is around 320.

20 Q. Now, of those nine occupied housing units, how many
21 of those units are special units?

22 A. We have two, which is the medical unit and the
23 special medical unit, which is housing unit nine.

24 Q. Now, the roughly 320 inmates that are housed at the
25 detention center on a daily basis, are there -- is their

CAPTAIN GARY DAVIES - DIRECT EXAMINATION BY MS. JOYNER

1 assignment and location tracked contemporaneously and
2 entered into the computer --

3 A. Yes.

4 Q. -- with their location?

5 A. Everybody's individual activities, housing,
6 everything is always monitored on the MSP program, which
7 is the jail management program, which everything is
8 entered in there and stays on.

9 Q. So at any given moment if an inmate is being housed
10 in a particular housing block or special medical unit or
11 other location, that information would be up to date and
12 entered into your computer system?

13 A. Yes, ma'am.

14 Q. Okay. Now is the Moss Justice Center of the York
15 County detention center, does it have a system of video
16 surveillance?

17 A. Yes, ma'am, it does.

18 Q. And how many cameras are located throughout the
19 detention center?

20 A. We have approximately 255 cameras we monitor.

21 Q. Are they located in those areas only used by the
22 inmate?

23 A. They're throughout the whole facility, all common
24 areas, and some office areas.

25 Q. Do they record audio as well?

CAPTAIN GARY DAVIES - DIRECT EXAMINATION BY MS. JOYNER

1 A. No, ma'am, just video.

2 Q. And in the medical unit, is each cell equipped with
3 its own camera?

4 A. It is.

5 Q. And are these camera feeds monitored live?

6 A. Yes, ma'am.

7 Q. What are the locations from which they can be
8 monitored live?

9 A. Our master control unit can view video live at all
10 times. The supervisor's office, and also for the medical
11 unit, the booking office has the ability to monitor all
12 eight cells during live feed.

13 Q. And is everything also recorded?

14 A. Yes, ma'am.

15 Q. What type of video equipment do you have?

16 A. We have this Endure video surveillance system. And
17 they feed the video into what we call video collection
18 devices.

19 Q. And when -- how long are recordings saved?

20 A. Approximately 30 days maintained.

21 Q. Are there occasions where a recording may be
22 maintained longer?

23 A. If you receive a incident report or something like
24 that -- has you -- the ability to go in there and pull
25 that video. As long as you pull it off within that 30-day

CAPTAIN GARY DAVIES - DIRECT EXAMINATION BY MS. JOYNER

1 period and burn it on a DVD, then you can maintain it.

2 Q. Now within the 30-day period, are the recordings
3 stored on-site in servers?

4 A. Yes, ma'am.

5 Q. Now, who is trained to retrieve recordings from the
6 system?

7 A. The chief jail administrator, the assistant
8 administrator, myself, the administrative lieutenant. A
9 security sergeant -- I mean the professional standard
10 sergeant and the training lieutenant.

11 Q. So basically certain --

12 A. Folks who have --

13 (Indiscernible cross-talk interrupted by reporter.)

14 Q. Would it be fair to say certain members of higher-up
15 administration?

16 A. Yes, ma'am.

17 Q. Is there anybody at your facility who can edit or
18 change anything on a video?

19 A. No, we don't have that ability.

20 Q. And when you're trying to access a recording, how is
21 it that you're able to search within that server to
22 retrieve the recordings that you need?

23 A. We retrieve it by the location, date, and the time
24 and the camera numbers.

25 Q. Now, did you review a report or receive information

CAPTAIN GARY DAVIES - DIRECT EXAMINATION BY MS. JOYNER

1 about an incident that occurred with Mr. Williams on
2 November 15 of 2012?

3 A. Yes, ma'am, I did.

4 Q. And actually, there were -- were there two separate
5 incidents during the same period of time?

6 A. Yes, ma'am, there was.

7 Q. Okay. What was the -- was the first involving Nurse
8 Hilton?

9 A. It was, ma'am, yes.

10 Q. What was the second incident?

11 A. It was later on during that date on a damage to
12 property.

13 Q. Was that within the same cell?

14 A. Yes, ma'am.

15 Q. And did you look into the report and cross-reference
16 the reports to your computer system to determine which
17 cell Mr. Williams had been in?

18 A. Yes, ma'am.

19 Q. Okay. And do you recall the actual cell that
20 Mr. Williams was in?

21 A. In one medical, yes, ma'am.

22 Q. Did you go into the server and pull the corresponding
23 video from that date and time, approximate time?

24 A. Yes, ma'am, I did.

25 Q. What period of time did you select as a time period

CAPTAIN GARY DAVIES - DIRECT EXAMINATION BY MS. JOYNER

1 in which to pull the video?

2 A. Once I received the events reports or the incident
3 report, I pull up the video and observe it to make sure.
4 Usually we record it to about five minutes prior to the
5 incident to five minutes beyond the incident to make sure
6 you get all the pertinent information.

7 Q. Okay.

8 MR. SMITH: Your Honor, Mr. Williams has been
9 provided an opportunity to review the video and has no
10 objection to its introduction.

11 THE COURT: All right.

12 MS. JOYNER: And I'd ask it be marked as State
13 Exhibit 1, marked and entered.

14 (State's Exhibit Number 1 was marked and admitted.)

15 MS. JOYNER: Your Honor, I would like to play the
16 video for Your Honor.

17 THE COURT: All right. The angle I'm at, let me come
18 around where I can see it.

19 (Video recording played in open court.)

20 MS. JOYNER: Your Honor, with the Court's permission
21 at this time unless you wish to see more, there's no
22 further interaction between Mr. Williams and the door.
23 He's going to sit at this point and not engage in any
24 other activity that's relevant, unless the Court wishes to
25 watch it. It's approximately an hour long.

CAPTAIN GARY DAVIES - DIRECT EXAMINATION BY MS. JOYNER

1 THE COURT: Any objections, Mr. Smith?

2 MR. SMITH: No objection.

3 MS. JOYNER: All right. Thank you, Your Honor. Your
4 Honor, I don't know that I formally entered it before
5 publishing it to Your Honor, so I'd ask it be made a
6 Court's Exhibit 1.

7 THE COURT: Mr. Smith?

8 MR. SMITH: No objection.

9 THE COURT: State's 1 is in evidence without
10 objection.

11 MS. JOYNER: Thank you, Your Honor. No more
12 questions from the State. Please answer any questions
13 Mr. Smith has.

14 THE COURT: Thank you. Mr. Smith?

15 MR. SMITH: May it please the Court?

16 CROSS-EXAMINATION

17 BY MR. SMITH

18 Q. Captain, obviously Mr. Williams was being housed or
19 being detained at the time we've seen on video; is that
20 correct?

21 A. Yes.

22 Q. And obviously he's not free to get up and leave the
23 detention center; is that right?

24 A. That's correct, sir.

25 Q. His access is limited by not only that locked cell

CAPTAIN GARY DAVIES - CROSS-EXAMINATION BY MR. SMITH

1 door in front of him, but many other locked cells doors
2 that would be through hallways he would have to get
3 through before he could gain access to the outside?

4 A. That's correct, sir.

5 Q. And similarly, the public is not allowed access to
6 where Mr. Williams was; is that right?

7 A. That's correct.

8 Q. And in fact, where he was in that special medical
9 unit, he does not even get visitation down in that area;
10 is that true?

11 A. It depends on the current medical status, yes, sir.

12 Q. Okay. But he would not be -- if he were allowed
13 visitation, it wouldn't get to occur down there. He would
14 have to --

15 A. No, sir, he would be moved to another area.

16 Q. So in that area, he would only be in contact with
17 staff from the detention center who were working or the
18 medical personnel; is that correct?

19 A. That's correct.

20 Q. He's even segregated from other detainees where he
21 was located on that video; is that right?

22 A. That's correct, sir.

23 Q. All right. And the door that was depicted in that
24 video, there was some testimony about the window. Is it
25 fair to say that that window is a narrow, 4- to 5-inch

CAPTAIN GARY DAVIES - CROSS-EXAMINATION BY MR. SMITH

1 window?

2 A. I think it's six inches.

3 Q. Six inches?

4 A. Yes, sir.

5 Q. Okay. And it begin at a height of approximately
6 49 inches and goes up, is that correct?

7 A. It's about 10 inches above the food pass slot and
8 10 inches below the top of the door.

9 Q. Okay. And then the food pass slot that that -- what
10 we heard referred to as a flap; is that correct?

11 A. Yes, sir.

12 Q. And that flap or that food access slot is secured
13 from the outside, in other words, not from the side on
14 which Mr. Williams was; is that correct?

15 A. That's correct.

16 Q. And when it is opened, it can -- falls through a
17 hinge, falls all the way down into tray or whatever?

18 A. Falls into an L-shape position, yes, sir.

19 Q. And whatever item needs to be passed through could be
20 passed through, and then it can be put up and locked back
21 or secured; is that correct?

22 A. That's correct, sir.

23 Q. And in the medical unit, what is the policy for the
24 condition that that flap would be in?

25 A. They're supposed to be maintained closed at all times

CAPTAIN GARY DAVIES - CROSS-EXAMINATION BY MR. SMITH

1 unless either medication pass or food pass is going on.

2 Q. Okay. And obviously from the portion of the video
3 you've seen, medication or food were not being passed
4 through that cell at that time?

5 A. I could not see the other side.

6 Q. And --

7 (Defendant's Exhibit Numbers 2 through 5 were marked.)

8 Q. Show you Defendant's Exhibit 2, 3, 4, and 5. Ask you
9 to glance and those and see if you recognize them as
10 screen captures for the still picture of the video we just
11 viewed.

12 A. That's correct, sir.

13 Q. And the program that you talked about has the ability
14 to capture still photos like that?

15 A. Yes, sir.

16 Q. Okay.

17 MR. SMITH: And at this time, Your Honor, we would
18 introduce State's 2, 3, 4, and 5.

19 MS. JOYNER: No objection.

20 THE COURT: Defense?

21 MR. SMITH: Defense.

22 THE COURT: Defense 2 through 5 is in evidence
23 without objection.

24 (Defendant's Exhibits 2 through 5 were admitted.)

25 MR. SMITH: Thank you, Your Honor.

CAPTAIN GARY DAVIES - CROSS-EXAMINATION BY MR. SMITH

1 Q. And Captain, on those still captures of the video we
2 just saw, you can see the flap is, in fact, in the closed
3 position, can't you?

4 A. Appear to be so, yes.

5 MR. SMITH: No further questions, Your Honor.

6 THE COURT: Solicitor, any redirect?

7 MS. JOYNER: Just briefly, Your Honor.

8 REDIRECT EXAMINATION

9 BY MS. JOYNER:

10 Q. Captain Davies, did you -- is it your testimony the
11 window begins about 10 inches above the flap?

12 A. Yes.

13 Q. I'm looking at Defense Exhibit 4, that's a picture --
14 screen capture where you can see the defendant is standing
15 almost flush with the door?

16 A. Yes, ma'am.

17 Q. Does that flap appear to hit just around the hip
18 area?

19 A. Waist area, yes, ma'am.

20 Q. Waist area? Okay.

21 MS. JOYNER: Thank you. No further questions.

22 THE COURT: Cross?

23 MR. SMITH: No.

24 THE COURT: Thank you very much, Captain. You may
25 step down.

1 All right, Solicitor. You may call your next
2 witness.

3 MS. JOYNER: There are no further witnesses, Your
4 Honor. That's -- the State rests.

5 THE COURT: All right. Thank you very much.
6 Mr. Smith?

7 MR. SMITH: Your Honor, I discussed with
8 Mr. Williams, and he does not wish to offer any further
9 evidence in his case.

10 THE COURT: All right. Do you wish for me to
11 interview him as to his right to testify or not testify?

12 MR. SMITH: Yes, Your Honor.

13 THE COURT: All right. If you'd come around to the
14 rail for me please, Mr. Williams.

15 DETRICK WILLIAMS, after having first being duly
16 sworn, testified under oath as follows:

17 THE COURT: Mr. Williams, I need to go over some
18 things with you. I do this with everyone who is on trial.
19 I needed your response to be under oath. That's why I had
20 the clerk place you under oath. Tell me your full name,
21 please.

22 THE DEFENDANT: Detrick Williams.

23 THE COURT: Mr. Williams, we've reach the stage of
24 the trial where the State has rested. And your side, the
25 defense, now has the opportunity to present evidence for

1 the Court to consider. Do you understand where we're at
2 in the trial?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: In that regard, you may call witnesses to
5 testify. If you choose to testify yourself, you may do
6 so. Do you understand?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: No one can force you to testify. You
9 have the absolute right to remain silent and if you choose
10 not to testify, I will not hold that silence against you
11 in any way. Do you understand?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: If your side offers no evidence at all,
14 in other words, if neither you nor anyone on your behalf
15 testifies -- well, you've already admitted evidence into
16 the record so the solicitor would get the final closing
17 argument. That would not be relevant at this point.

18 Mr. Smith, Solicitor, does Mr. Williams have a
19 criminal record that would subject him to impeachment?

20 MR. SMITH: He does, Your Honor.

21 THE COURT: And what would that record be?

22 MR. SMITH: He's currently serving a sentence for a
23 lewd act. That conviction occurred --

24 MS. JOYNER: Indecent exposure.

25 MR. SMITH: I'm sorry. Indecent exposure. That

1 occurred earlier this year. That's within the ten years.

2 MS. JOYNER: He also has, Your Honor, a failure to
3 stop for a blue light from 2010, another indecent exposure
4 and burglary second degree, nonviolent from 2009. And I
5 believe those are the only sentences that could come in
6 under Rule 609.

7 THE COURT: Two indecent exposures?

8 MR. SMITH: Yes, Your Honor.

9 THE COURT: Burglary second degree, failure to stop
10 for a blue light.

11 MR. SMITH: Yes, Your Honor.

12 THE COURT: All right. If you were to testify, the
13 State could question you about that record. Then I, as
14 the fact finder, could use that record, if at all, solely
15 on the issue of your credibility or your believability.
16 Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: The decision about whether you testify or
19 not is your decision to make yours alone. I expect you
20 have conferred with your attorney and perhaps others whose
21 opinion you value on important matters. But the decision
22 about whether you testify or not is your call to make. Do
23 you understand that?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Has anyone exercised any undue influence

1 over you to get you to choose to testify or not to
2 testify?

3 THE DEFENDANT: No, sir.

4 THE COURT: Today are you under the influence of any
5 drug, alcohol, medication, or anything that affects your
6 thinking ability?

7 THE DEFENDANT: No, sir.

8 THE COURT: Do you suffer from any physical or mental
9 problems that affect your thinking today?

10 THE DEFENDANT: No, sir.

11 THE COURT: Have you made your decision about whether
12 or not you want to testify or not testify?

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Do you need any more time to think about
15 that decision?

16 THE DEFENDANT: No, sir.

17 THE COURT: Is that decision your decision, of your
18 own free will and accord?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you have any questions you would like
21 to ask me about your right to testify or not to testify?

22 THE DEFENDANT: No, sir.

23 THE COURT: And what is your decision?

24 MR. SMITH: I don't want to testify.

25 THE COURT: Okay. Thank you. Thank you very much.

1 You may be seated.

2 I find Mr. Williams is an intelligent young man. He
3 understand his right to testify or not to testify. He has
4 made his decision not to testify of his own free will,
5 knowingly and voluntarily.

6 Mr. Smith, did you have motions?

7 MR. SMITH: Yes, Your Honor. If I could, since it's
8 a bench trial format, I'll incorporated a directed verdict
9 motion to serve as my closing argument.

10 Your Honor, at this time the State -- the defendant
11 would move for a directed verdict on the charge of
12 indecent exposure. Indecent exposure, as Your Honor is
13 aware, says it is unlawful for a person to willfully,
14 maliciously, and indecently expose his person in a public
15 place, on the property of others, or to the view of any
16 person on a street or highway.

17 Based on the facts Your Honor has heard, this wasn't
18 in the view of any person on a street or highway, and we
19 would also argue, Your Honor, that this is not a public
20 place. Where he is being held is within the York County
21 detention center, which is a secure facility. The
22 testimony given by Captain Davies he indicated there were
23 areas that the public had access to, there were common
24 area and there were restricted inmate areas. Even within
25 those areas, there's a more secure area of the medical

1 unit. And even within that area as indicated by Nurse
2 Hilton, there's an area that is secluded with a wall and
3 door with one of these special housing units that he was
4 in.

5 So we would argue that it does not fit any definition
6 of public place. To -- the only definition I can find in
7 the code section for public place, Your Honor, comes from
8 the section that deals with litter control, which may not
9 be helpful. But under 44-67-30 it defines public place
10 meaning area any area that is used or held out for use by
11 the public, whether owned or operated by public or private
12 interest. So we would argue that certainly does not apply
13 the area that Mr. Williams is when this crime allegedly
14 occurred.

15 Turning from that, I would turn to Black's Law
16 Dictionary, definition of "public" relating to or
17 belonging to an entire community, state, of nation.
18 That's not applicable. The second is open or available
19 for all to use, share, or enjoy. We would argue the plain
20 meaning does not apply to that area that Mr. Williams was
21 housed in. Also says public that people of a nation or
22 community not applicable, but Number 2, a place open or
23 visible to the public.

24 MS. JOYNER: Your Honor, I would -- I don't mean to
25 interrupt. I would concede. I think the public place is

1 a place where the public has a right to gather. It does
2 not really actually go to the actual ownership of it being
3 a public or government building. So that was my position
4 in his prior trial was the definition of public Mr. Smith
5 is citing. So I think I do agree with that, that it's not
6 a public place.

7 MR. SMITH: We submit that if it is not a public
8 place, then 16-15-130 cannot apply, and that 16-15-365,
9 the exposure of private parts in a lewd or lascivious
10 manner does not require that public place element. But
11 that says any person who willfully and knowingly exposes
12 the private parts of his person in a lewd and lascivious
13 manner and in the presence of another, any other person,
14 or aids and abets to do the same thing and promotes. So
15 we would argue the defendant is entitled to a directed
16 verdict of not guilty concerning the indecent exposure
17 charge as it is not a public place.

18 Additionally, Your Honor, assuming that legally Your
19 Honor saw that it did not fit, we would say factually as
20 Your Honor being the finder of fact under the testimony
21 that Your Honor has heard today, the testimony has been
22 that there's a window some 36 inches from the flap, some
23 10 inches above it or approximately 49 inches there's a
24 window. Clearly as the testimony was from Nurse Hilton,
25 Mr. Williams was at the door level when she approached.

1 At the door level, she could have not seen his genital
2 area through that window. She indicated she saw it
3 through the flap, and as was evident from the video that
4 had been introduced as well as the stills that have been
5 introduced in Defense Exhibits 2 through 5, there is
6 simply an impossibility that any of his private parts
7 could have been seen through that flap. Therefore, as
8 finder of fact, we would ask Your Honor to return a
9 verdict of not guilty against Mr. Williams.

10 THE COURT: Thank you. Thank you very much,
11 Mr. Smith.

12 Solicitor?

13 MS. JOYNER: Beg the Court's indulgence just one
14 moment. Your Honor, first as to the legal argument, Your
15 Honor, the indecent exposure statute is -- provides it is
16 unlawful for a person to willfully, maliciously, and
17 indecently expose his person -- three scenarios, public
18 place, which we concede this is not a public place; on the
19 property of another or the view of person; or to the view
20 of a person on the street or highway. Clearly it's not on
21 the street or a highway, but the State believes that we
22 are -- he is clearly on the property of another.

23 Your Honor, this -- he is an inmate of the Moss
24 Justice Center. This is not his home. This is not his
25 property. Although he is confined here, Mr. Williams is

1 at the Moss Justice Center on -- in the -- on the property
2 of another. And I think that subsection qualifies and it
3 makes the statute applicable to the present case.

4 I think that -- I'm not sure of how the motion is --
5 I'm a little unclear as to the motion as to the lewd and
6 lascivious, whether the defense was asking the Court find
7 in the alternative guilty of that? I don't -- is that
8 your motion in part?

9 MR. SMITH: If he were to be found guilty, I think
10 that would be the appropriate charge.

11 MS. JOYNER: And just as to that legally, my concern
12 would be, Your Honor, that I don't think that the display
13 of private parts in a lewd and lascivious manner is a
14 lesser-included offense; therefore, I don't think that the
15 Court could make a finding -- could find him guilty
16 because I don't think it is a lesser-included offense. I
17 think that it does not meet the Blockberger test, and
18 although those two statutes may use similar language in
19 certain parts of the statute, that ultimately the lewd
20 and -- display of private parts in a lewd and lascivious
21 manner, that statute being 16-15-365, it contains elements
22 of the offense of -- elements that are not part of the I
23 indecent exposure statute. And again, their language is
24 so similar that upon a first reading, a person may be so
25 inclined to think they are. But if you really look

1 closely, I believe they're different elements and the
2 Court could not make that finding.

3 Your Honor, as to the facts of the case, the -- I
4 believe if you go back and look at the video, there's
5 approximately 13 minutes where the defendant is standing
6 clearly at 15:28 and approximately 30 seconds. The
7 defendant has loosened his gown, and essentially you can
8 see where it does appear that he's opened that gown and is
9 preparing to walk towards the door. I think that also if
10 you go to part of the video at 15:30 and 45 seconds, it is
11 very obviously that Mr. Williams is, in fact,
12 masturbating. You can see he has stepped back from the
13 door and he is looking at himself or at an angle where his
14 hand gestures are actually caught in the mirror. It can
15 be a little difficult to see. I'm trying to pull up that
16 exact section to present to the Court, but I think that
17 clearly what he's doing inside the cell, there's just
18 absolutely no doubt that he is, in fact, masturbating.
19 You see him a minute later come back to the mirror.
20 Again, that toilet mirror area, and the movement of the
21 gown is again consistent with him moving his hand as if to
22 masturbate.

23 You see at approximately 15:40 where the State has
24 stopped the video that you can see that he actually
25 Velcros his robe and gown back together. So clearly he

1 has had that gown open and is clearly been facing that
2 door.

3 I think if you also look, Your Honor, at the defense
4 Exhibit 4, you can get a feel for where Mr. Williams --
5 how Mr. Williams' height interacts with those windows and
6 flaps on the door. And I asked Lieutenant Davies if it
7 appeared to hit around the hip area. He said waist area.
8 I'd ask the Court to look at that picture and sort of
9 reach your own conclusions about it. And what I see from
10 that angle is a flap that hits lower than the waist area.
11 Again, that's my opinion, and I can't substitute my
12 opinion for the finder of fact, but that would be my
13 argument for the State. That flap does appear to be
14 somewhat lower, perhaps in the hip area.

15 Ms. Hilton did say that she saw it through a flap.
16 I'm going back to see the video. I don't -- I cannot
17 observe from what I see the flap is open, and I'm not sure
18 if that is, Your Honor, her mistaken recollection or if
19 there's just simply something we can't see on the video.
20 But what we can see on the video corroborate what
21 Ms. Hilton is saying, that he is, in fact, masturbating.
22 I think that she could see what she said she saw from the
23 vantage point of the window. Your Honor, there's no doubt
24 she knows is going on in that's cell, because I believe
25 it's very clear from the video Mr. Williams is, in fact,

1 masturbating. . And he is calling -- you can also see him
2 approaching the door and is frequently -- as if he's
3 trying to see whether someone is coming. He's definitely
4 trying to get someone's attention.

5 Nurse Hilton testified he was calling for her. There
6 were no female nurses that worked at the Moss Justice
7 Center, so when he heard the nurse come in, he would have
8 heard a female voice. He clearly heard a female voice,
9 because he started saying, "Nurse, nurse," to try to get
10 her attention. And she said, "Hold on. I'll be right
11 there." He wants to be discovered. He wants to be found.
12 You can see him back and forth, back and forth to the
13 door. And as I said, at 15:30 and 45 seconds with his
14 reflection in the mirror is clear -- let me get it back up
15 -- would be very clear in the mirror he is clearly
16 masturbating.

17 I think all total, Your Honor, the testimony leads to
18 the conclusion that he wanted to be seen. It was a
19 willful act; it was a malicious act. He was doing that
20 with the purpose of the -- being discovered, and that's
21 indicated by the fact that he is calling to the nurse --
22 in fact, Madame Clerk, if you could dim the lights -- and
23 this is the section I was speaking of from a different
24 angle to see it play it for one minute.

25 (Video recording played in open court.)

1 At that point you can see it's easier to see on a
2 smaller screen, but it's reflection in the mirror just
3 passed by that he's very clearly masturbating and that's
4 either his hand or his penis in the mirror's reflection.

5 I'd ask the Court to take note of the height of that
6 mirror. It just sort of indicates again that it comes in
7 at a sort of a crooked angle what would be visible at
8 different angles, and I can move it back in a slow
9 reverse. Right there you can see something in the mirror.
10 You can see clearly see movement and something going up
11 and down, and I would submit to the Court that that is
12 very clear angle that he is, in fact, masturbating.

13 And again, Your Honor, I understand that Mr. Williams
14 is confined to this area, but he is an inmate at the
15 detention center. He's on the property of another. He is
16 not a person that has been accidentally discovered
17 masturbating or exposing himself. He's a person that has
18 waited, heard a female voice, sought out, screamed for the
19 nurse, knowing only that female nurses were employed at
20 the detention center at the time. Wanted the female to
21 come see him, went back and forth repeatedly to the door,
22 would have been visible from the window. And although
23 it's a little difficult with these camera angles to
24 determine what Ms. Hilton would have been able to see, I
25 submit to the Court that there's corroboration of what she

1 said she saw. There's no reason for her to say she saw
2 his penis if she did not, and would ask the Court to
3 number one, deny the directed verdict but understanding
4 Mr. Smith has combined both, we also view this as our
5 closing argument as well and ask the Court to deny the
6 motion for directed verdict and find Mr. Williams guilty.

7 THE COURT: Thank you. Thank you very much. All
8 right. States 1 is the video; is that correct, Solicitor?

9 MS. JOYNER: Yes, sir.

10 THE COURT: I'll take it under advisement. I'll be
11 back out shortly.

12 (A recess was taken from 3:54 p.m. to 4:30 p.m.)

13 THE COURT: All right. I've reviewed the evidence
14 and the testimony presented by the witnesses, the exhibits
15 presented by the State and the defense. I considered
16 closely the testimony, reviewed the videotape.

17 As an initial matter, in reviewing 16-15-130,
18 indecent exposure and then comparing 16-15-365, exposure
19 of private parts in a lewd and lascivious manner and
20 applying the elements test, and determining whether one
21 crime is a lesser-included offense of another, the test is
22 whether the greater of the two offenses includes all the
23 element of the lesser offense. In other words, specific
24 question in this case is whether indecent exposure
25 includes all of the elements of exposure of private parts

1 in a lewd and lascivious manner.

2 I find the exposure of private parts in a lewd and
3 lascivious manner is a lesser-included offense of indecent
4 exposure. Indecent exposure includes all of the elements.
5 The reason I did that or do that and that's -- that's --
6 right now I'm just finding that's a lesser-included
7 offense. As I looked at the definition that we standardly
8 use when someone is charged with a lewd act on a minor,
9 and lewdness and lasciviousness includes indecent and
10 lustful and such like that, and all that 16-15-365
11 requires is willfully and knowingly exposing the private
12 parts of his person in a lewd and lascivious manner and in
13 the presence of any other person. So all those elements
14 are included in indecent exposure. So I did consider
15 16-15-365 as a lesser-included offense.

16 However, based on the evidence and testimony
17 presented to me, being the fact finder in the case, I have
18 found that the defendant is guilty of indecent exposure
19 beyond a reasonable doubt. I think there is direct
20 testimony by the nurse, Ms. Hilton, that he was
21 masturbating. There is corroborating evidence by the
22 video that he was masturbating. You can see both when
23 he's standing at the door, the openness of his smock. You
24 can see shadows on the -- as you face the video on the
25 right wall of movement when he comes back away, and he

1 backs away and there is a mirror shot and movement of the
2 hand and obviously the penis.

3 In doing that I do agree and accept and there was a
4 stipulation that it is not in a public place, but it's
5 clearly willfully, maliciously, and indecently exposed
6 himself on property of others.

7 With that being said, any motions, Mr. Smith?

8 MR. SMITH: Given Your Honor's dual role, I think I
9 have to make a motion for a judgment notwithstanding the
10 verdict.

11 THE COURT: Yes, sir. I believe you would. That's
12 why I asked, and I would respectfully deny that motion.

13 MR. SMITH: Thank you, Your Honor.

14 THE COURT: Any other matters you would care to place
15 on the record?

16 MR. SMITH: No, Your Honor.

17 THE COURT: And those cases I -- case I cited on
18 lesser-included offense defense test was Hope v. State,
19 492 SE 2d 76, 1997, State versus Bland, 457 SE 2d, 1995.

20 All right. Any reason sentence cannot be imposed at
21 this time, Mr. Smith?

22 MR. SMITH: No, Your Honor.

23 THE COURT: Solicitor?

24 MS. JOYNER: No, sir, Your Honor.

25 THE COURT: Anything further as far as -- and I would

1 clearly point out in the role as both the trial judge and
2 the fact finder, you know, you're cloaked as a judge and
3 the jury. I did not consider having the knowledge he had
4 a prior criminal history of what crimes that were
5 enumerated to me in any way my deliberation and my
6 determination of the verdict in the case.

7 All right. Thank you. Thank you very much.
8 Anything further, Solicitor?

9 MS. JOYNER: Yes, sir, Your Honor. I wanted to read
10 the record to Your Honor. I'm passing over the sentencing
11 sheets to Mr. Smith. Your Honor has heard most of the
12 defendant's record. Just to read it in total, a 2001 PWID
13 crack cocaine. He received a youthful offender sentence
14 for that offense. In 2002, that YOA was revoked. 2006,
15 open container. 2007, resisting arrest A, and that same
16 year, his YOA sentence was revoked. The indecent exposure
17 and burglary second degree, nonviolent in 2009. 2010
18 failure to stop for a blue light. Your Honor is aware
19 also of the 2013 -- January 2013 conviction for indecent
20 exposure.

21 Your Honor, from the same incident, Mr. Williams had
22 been charged with malicious damage to a courthouse and he
23 pled guilty to that prior to trial today. So he also has
24 that conviction from May of this year.

25 THE COURT: Thank you. Thank you very much.

1 Anything further on sentencing?

2 MS. JOYNER: Your Honor we leave the sentence to Your
3 Honor's good judgment. You've heard all the facts and his
4 record. We ask very adamantly that Your Honor exercise
5 your discretion in the matter to place him on the sex
6 offender registry and just take into consider his prior
7 record and history.

8 THE COURT: Thank you.

9 Mr. Williams, come around, please, Mr. Smith. All
10 right. Mr. Smith, I'll be glad to hear from you.

11 MR. SMITH: Thank you, Your Honor. May it please the
12 Court. I've known Mr. Williams for some time now. As the
13 solicitor indicated, he did enter a guilty plea back in
14 March for the -- that was March 8th for the charge of
15 the destruction of the property that Your Honor saw toward
16 the end of the video. If you watch that portion, there
17 were some tiles that were loose you could see on the
18 video. He did plead guilty to damaging those.

19 Your Honor, I bring that up to say he was placed in
20 that housing unit for a long time. He was on suicide
21 watch. That is one of those cells where he stays there by
22 himself all day. Obviously bored and frustration, all
23 those thing just build up in him. Not excusing criminal
24 conduct by way of explanation, that's what he did and
25 that's the interaction that I would submit he's having

1 with some of the persons who work at the facility here.

2 He has not been combative.

3 Your Honor did hear his prior record, but
4 Mr. Williams has been in court a number of times now
5 representing himself on one charge and with me with the
6 plea. He's been respectful of the Court and the process,
7 someone who thinks through the process, and we would ask
8 Your Honor to consider running any sentencing Your Honor
9 may give him concurrent with that which with he is
10 serving. And he does ask Your Honor even though he has
11 once been ordered on the registry, would ask Your Honor
12 not put him on the registry for this act --

13 THE COURT: He what?

14 MR. SMITH: Even though he was placed on the registry
15 on the -- for an earlier conviction, he would ask Your
16 Honor not to place him on the registry for this act that
17 occurred in such a private, confined space.

18 THE COURT: Is he already on the registry?

19 MR. SMITH: He is, Your Honor.

20 MS. JOYNER: Your Honor, that's a conviction that is
21 subject to an appeal, and that the reason why the State is
22 asking the Court to consider reimposing it because we
23 don't know what will happen with that appeal.

24 THE COURT: That's the prior indecent exposure?

25 MS. JOYNER: Yes, sir, and this did not --

1 THE COURT: And that's the issue with the jury issue;
2 is that correct?

3 MS. JOYNER: Yes.

4 THE COURT: Was there -- is there factual basis in
5 independent of the crime itself, the prior indecent
6 exposure, independent of that that led the sentencing
7 judge to place him on the registry at that time,
8 Solicitor?

9 MS. JOYNER: I believe it was -- I would assume it
10 was the 2008 conviction for indecent exposure -- or 2009
11 conviction. That did occur here in our detention center
12 under similar circumstance as this. That coupled with the
13 fact that the 2013 conviction resulted from him exposing
14 himself in a public place from a doorway into a public
15 parking area.

16 THE COURT: I guess what I'm asking is we as a group,
17 as a society, we evaluate individuals all the time as
18 sexual predators, and I realize the difference between
19 sexual predator and sex offender. I'm not comparing him
20 or saying this, that, and the other, but has there ever
21 been any evaluation of Mr. Williams as to the
22 appropriateness of placing him on the sex offender
23 registry beside his prior history in that regard?

24 MS. JOYNER: Not that I -- I'm not aware of any
25 evaluation that have been done for recidivism or anything

1 of that nature, Your Honor.

2 THE COURT: Can you do one?

3 MS. JOYNER: I don't know the mechanism, but I would
4 not oppose such a thing. I'm not sure how that would be
5 accomplished.

6 THE COURT: I guess you're not sure either.

7 MR. SMITH: I'm not, Your Honor.

8 THE COURT: Look, I don't mind placing someone on the
9 sex offender registry. I don't like doing it when I'm
10 flying by night without instruments, I guess. And I'm not
11 a pilot. My son is. I'm not saying I would fly with him
12 or my son. But I'm just saying -- which I would fly with
13 either one of them. How about -- I'm going to sentence
14 him now. And what's his current sentence?

15 MR. SMITH: He received a three-year sentence on the
16 first trial, and I believe he's now finished his sentence
17 for the destruction of property. So he received a
18 three-year sentence on January the 10th.

19 MS. JOYNER: That would have been with credit for
20 time served since September or August.

21 MR. SMITH: August 24th.

22 THE COURT: Do you have objection to a concurrent
23 sentence, Solicitor?

24 MS. JOYNER: I leave the sentencing in Your Honor's
25 discretion.

1 THE COURT: All right. I'll sentence him now, and
2 then I'll take under advisement the sex offender registry.
3 Mr. Smith if you would prepare me an order for him to be
4 evaluated --

5 MR. SMITH: Yes, Your Honor.

6 THE COURT: -- by -- y'all choose someone that is
7 familiar with that. It's part of the sexually violent
8 predator protocol and I'll be glad to sign an order in
9 that regard. So I'll take the offender part under
10 advisement.

11 MS. JOYNER: Yes, sir.

12 MR. SMITH: Thank you, Your Honor.

13 THE COURT: All right?

14 MS. JOYNER: Can we maybe meet tomorrow again to
15 review some doctors, and we probably need a order for
16 payment.

17 THE COURT: Correct. Excuse me. One other thing.
18 Anything you'd like to say, Mr. Williams?

19 THE DEFENDANT: No, sir.

20 THE COURT: On 2013-GS-46-00850, Detrick Williams,
21 Court having found him guilty of indecent exposure,
22 defendant's committed to the state Department of
23 Corrections for a determinate term of three years. That's
24 concurrent with his current active sentence. He would get
25 credit from 15 November 12 on this sentence, however.

1 Can't get credit -- when did his other crime occur that
2 you're serving now?

3 MR. SMITH: When was he convicted?

4 THE COURT: When did it occur?

5 MR. SMITH: He was arrested August 24th of 2012.

6 THE COURT: So he can't get credit for time --

7 MR. SMITH: Understand.

8 THE COURT: -- for a crime that hadn't even occurred.

9 So it would be from 15 November 2012. And I have noted on
10 here Court has taken sex offender registry issue under
11 advisement pending evaluation. All right. Thank you.
12 Thank you very much, Solicitor. Thank you, Mr. Smith.
13 Good luck to you, Mr. Williams.

14 (Whereupon, the proceedings were concluded.)

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CERTIFICATE OF REPORTER:

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

I, Aminah R. Hardy, RPR, Official Court Reporter for the 16th Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of General Sessions for York County, South Carolina, on the 19th day of June, 2013.

March 15th, 2014

Aminah R. Hardy

Aminah R. Hardy, RPR, CVR-CM

2013 CP4603997

CERTIFIED COPY

STATE OF SOUTH CAROLINA 2014 JAN -2 AM 9:53
COUNTY OF YORK IN THE COURT OF COMMON PLEAS
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Derrick T. Williams

Full name and prison number (if any) of Applicant

v.

State of South Carolina

FILED RECEIVED
2013 DEC 13 PM 4:15
APPLICATION FOR
POST-CONVICTION REVIEW
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

INSTRUCTIONS - READ CAREFULLY

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

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

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

1. Place of detention York County Detention Center (Miss Justice Center)
2. Name and location of Court which imposed sentence 1675 York Hwy, York, SC 29715
3. Name(s) of co-defendant(s) (if any) _____
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2311D6/4603958
 (b) _____
 (c) _____
5. The date upon which sentence was imposed and the terms of the sentence:
 (a) 10-19-13
 (b) 3 years

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty _____

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

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

NO

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

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

i. _____

ii. N/A

iii. _____

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

i. _____

ii. N/A

iii. _____

(c) the date of each such result:

i. _____

ii. N/A

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. _____

ii. N/A

iii. _____

9. If you answered "no" to (7), state your reasons for not so appealing:

(a) Trial Counsel failed to advise me about an appeal

(b) AND failed to file an appeal / I was refused my miranda

(c) rights / ineffective counsel

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

- (a) ~~Trical Counsel failed to advise me about an Appeal & failed to~~
- (b) ~~file an appeal.~~
- (c) ~~I was refused my Miranda Right / Ineffective Counsel~~
- (d) ~~I was not giving a preliminary hearing on warrant (231106)~~

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

- (a) Trical Counsel failed to advise me about an Appeal & failed to file an Appeal
- (b) I was refused my Miranda Right / Ineffective Counsel
- (c) I was not giving a preliminary hearing on warrant (231106)

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

- (a) any petition in a State Court under South Carolina Law? NA
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? NA
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? NA
- (d) any other petitions, motions or applications in this or any other Court? _____

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

- (a) the specific nature thereof:
 - i. _____
 - ii. NA
 - iii. _____
 - iv. _____
- (b) the name and location of the Court in which each was filed:
 - i. _____
 - ii. _____
 - iii. NA
 - iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. NA
 - iii. _____

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. ~~N/A~~

iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

i. _____

ii. _____

iii. ~~N/A~~

iv. _____

14. Has any ground set forth in (10) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

~~N/A~~

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

(a) which grounds have been presented:

i. _____

ii. ~~N/A~~

iii. _____

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

i. _____

ii. ~~N/A~~

iii. _____

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

(a) Trial Counsel failed to advise me about an appeal ^{(late entry) of} ~~of paper work~~

(b) I was refused my Miranda Right ^{(late entry) of paper work}

(c) I was not giving a preliminary hearing on warrant ^{(late entry) of paper work} (23/10/01)

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

- (a) your arraignment and plea? Yes
- (b) your trial, if any? Yes
- (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? Yes

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

- (a) the name and address of each attorney who represented you:
 - i. Phillip Smith
 - ii. York County Public Defenders Office
 - iii. P.O. BOX 691-1675-1E York Hwy York, SC 29745
- (b) the proceedings at which each such attorney represented you:
 - i. Trial by Jury
 - ii. _____
 - iii. _____

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

That I get a chance at Justice.

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

NO

STATE OF SOUTH CAROLINA)
)
County of York)

VERIFICATION

I, _____, 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.

Donald Williams

SWORN to and subscribed before me this 13
day of December, 2013.

Debra J. Kelly (L.S.)
Notary Public

My Commission Expires: 12/31/13

APPLICATION TO PROCEED WITHOUT PAYMENT
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 thereof.

Detrick Williams
Applicant

SWORN or affirmed to and subscribed before me this
13 day of December, 2013.

Vignette Hunt
Notary Public

My Commission Expires: 12-12-13

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS)
SIXTEENTH JUDICIAL CIRCUIT)

Detrick T. Williams, #288124,)

2013-CP-46-3897)

Applicant,)

v.)

RETURN)

State of South Carolina,)

Respondent.)

The Respondent, making its Return to the application for post conviction relief (PCR) filed December 20, 2013, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the York County Clerk of Court. The Applicant was indicted at the May 2013 term of the York County Grand Jury for Indecent Exposure (2013-GS-46-0850). Phil Smith, Esquire, represented him. On June 19, 2013, the Applicant pled guilty before the Honorable R. Knox McMahon and was sentenced to three (3) year's incarceration. Applicant did not appeal his convictions or sentences.

Attached herewith and incorporated herein are the records of the York County Clerk of Court regarding the subject conviction(s) and the guilty plea transcript. 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 for the following reasons:

1. "Trial counsel failed to advise me about an appeal and failed to file an appeal"
2. "I was refused my Miranda rights"
3. "Ineffective counsel"
4. "I was not giving(sic) a preliminary hearing on warrant"

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at evidentiary hearing. All amendments should be made well in advance of hearing and should be filed as required by Rule 11, SCRCP(a).

III.

Respondent construes these allegations as ineffective assistance of plea counsel. Respondent submits plea counsel rendered effective assistance of counsel. In a post-conviction relief action, the Applicant bears the burden of proving the allegations in their application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable

professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

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

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. RUTLEDGE JOHNSON
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

April 10, 2014.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS

2013-CP-46-3897

DETRICK T. WILLIAMS, 288124)

Applicant,)

vs)

AFFIDAVIT OF SERVICE BY MAIL

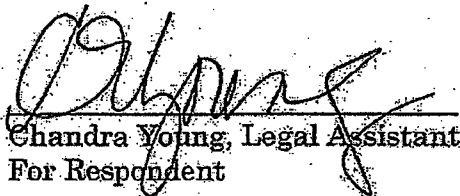
STATE OF SOUTH CAROLINA,)

Respondent.)

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

W. Michael Hemlepp, Jr., Esquire
 3027 S. Paraham Rd.
 York, SC 29745

DATED this 10th day of April, 2014.


 Chandra Young, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA)	COURT OF COMMON PLEAS
)	
County of York)	2013-CP-46-3897
)	
Deitrick Williams,)	
)	
Applicant,)	
)	
vs.)	TRANSCRIPT OF RECORD
)	
State of South Carolina,)	
)	
Respondent.)	

August 6th, 2014
York, South Carolina

BEFORE:

THE HONORABLE J. ERNEST KINARD, JR., JUDGE.

APPEARANCES:

WILLIAM MICHAEL HEMLEPP, JR., ESQ.
Attorney for the Applicant

J. RUTLEDGE JOHNSON, ASSISTANT ATTORNEY GENERAL
Attorney for the Respondent

AMINAH R. HARDY, CM
Official Court Reporter

INDEX

WITNESS

Direct

Cross

Deitrick Williams

4

Phillip Smith

9

12

CERTIFICATE

18

EXHIBITS

No.

Description

Page

(No exhibits were marked.)

P R O C E E D I N G S

1
2 MR. RUTLEDGE: May it please the Court, Your Honor.
3 This is the case of Deitrick Williams versus State of
4 South Carolina, case number 2013-CP-46-3897. Mr. Williams
5 was indicted at the May 2013 term of the York County grand
6 jury for indecent exposure. On June 19th, 2013, he
7 proceeded to a bench trial before the Honorable R. Knox
8 McMahon. He was found guilty and sentenced to three
9 years' incarceration concurrent with the time he was
10 already serving. He did not appeal his conviction of
11 sentences.

12 On December 20th, 2013, he filed a PCR application.
13 State filed its return April 10, 2014, and he's
14 represented here today by Mr. Mike Hemlepp.

15 THE COURT: Okay.

16 MR. HEMLEPP: Thank you, Your Honor. The applicant
17 recall -- I would call the applicant himself as our first
18 witness, Mr. Deitrick Williams.

19 DEITRICK WILLIAMS, after having first being duly
20 sworn, testified under oath as follows:

21 DIRECT EXAMINATION

22 BY MR. HEMLEPP

23 Q. Would you please give us your full name, and if you
24 could, spell your last name for the court reporter so she
25 can get it correctly in the record.

DEITRICK WILLIAMS -- DIRECT EXAMINATION BY MR. HEMLEPP

1 A. Deitrick Williams, W-I-L-L-I-A-M-S.

2 Q. Are you currently incarcerated in the South Carolina
3 Department of Corrections?

4 A. Yes, sir.

5 Q. And for what reason are you in the Department of
6 Corrections?

7 A. Indecent exposure.

8 Q. Indecent exposure. Now, Judge Kinard is going to be
9 making the decision in this case, and his decision is
10 based upon your testimony and the testimony of other
11 people as well as the record in this case. He needs be
12 able to hear what you're saying, so I need you to speak up
13 about as loud as I'm doing right now. Can you do that for
14 me?

15 A. Yes, sir.

16 Q. It's a big room, so it's hard to hear people.

17 You're in the Department of Corrections for indecent
18 exposure. Did you have a trial?

19 A. Yes, sir.

20 Q. Did you have a jury trial or a bench trial?

21 A. I had a bench trial.

22 Q. Okay. And do you remember -- at the time of your
23 bench trial, do you remember the date? Do you remember it
24 was June 19th?

25 A. Yes, sir.

DEITRICK WILLIAMS -- DIRECT EXAMINATION BY MR. HEMLEPP

1 Q. Okay. 2013?

2 A. Yes, sir.

3 Q. At the time of your trial, did you have an attorney?

4 A. Yes, sir.

5 Q. Who was your attorney?

6 A. Phillip Smith.

7 Q. Okay. And Mr. Smith was with the Public Defender's
8 Office, was he not?

9 A. Yes, sir.

10 Q. For how long had he represented you on this charge?

11 Do you understand the question?

12 A. Yes, sir, I understand. I'm trying to think of the
13 time period. I'd say for about six months.

14 Q. And did you have the opportunity to talk to him about
15 the case?

16 A. Yes, sir.

17 Q. When the case was called, there was a motion made
18 regarding your charge, whether you were correctly charged.

19 Do you remember that?

20 A. Yes, sir.

21 Q. Was that an issue you discussed with your lawyer
22 prior to the hearing, whether you were charged with
23 indecent exposure or not?

24 A. Yes, sir.

25 Q. Okay. And he, in fact, made that motion at the time

DEITRICK WILLIAMS -- DIRECT EXAMINATION BY MR. HEMLEPP

1 the case was called?

2 A. Yes, sir.

3 Q. Do you know what a direct indictment is?

4 A. I was explained what it was.

5 Q. You were tried on something that was not in your
6 warrant; is that correct?

7 A. Yes, sir.

8 Q. And you had to talk about that with the judge in
9 something called an arraignment. Do you remember that?

10 A. Yes, sir.

11 Q. A trial proceeded and there was testimony; is that
12 true?

13 A. Yes, sir.

14 Q. Okay. Prior to the end of the case, after people had
15 testified, but before the judge ruled in this matter, did
16 you talk to your lawyer about filing an appeal?

17 A. Yes, sir, I did.

18 Q. Would you tell Judge Kinard about that conversation?

19 A. Like during the time that we came back in after
20 recess, me and Phillip, we was sitting at the table and he
21 was -- we was discussing the outcome of the judge's
22 decision. He asked me, "Well, if it don't go in your
23 favor, do you want me to file an appeal?" And I was like

24 yeah. He gave me all kinds of appeal applications -- I

25 mean -- papers that showed different appeals that people

DETRICK WILLIAMS -- DIRECT EXAMINATION BY MR. HEMLEPP

1 filed through the appeal office or whatever, and he gave
2 me a stack of those papers. But then, you know, after the
3 judge ruled, I didn't never hear nothing about an appeal.

4 Q. Was an appeal ever filed in your case?

5 A. Not that I know of.

6 Q. Did you have an opportunity to talk to Mr. Smith
7 after the trial?

8 A. No, sir. I wrote him the mail.

9 Q. You wrote him?

10 A. Yeah, when I found out I didn't have an appeal
11 through the appeal office.

12 Q. Okay. Through the appeal office through the court?

13 A. I found out that way.

14 Q. And did you find out whether you had time to file an
15 appeal at that point at the -- had the time run already?

16 A. I know from my first trial that you have ten days.
17 And, you know, I was hoping -- I was thinking that he
18 would, you know, because he filed for me on the first case
19 that he would follow up with what we discussed, before the
20 judge came and, you know, gave his verdict or whatever.
21 But I didn't know.

22 Q. Okay. So had you appealed, would you have wanted to
23 appeal the process of the direct indictment?

24 A. Yes. Yes, sir.

25 Q. Would you have wanted to appeal the ruling based upon

DEITRICK WILLIAMS -- DIRECT EXAMINATION BY MR. HEMLEPP

1 the argument your lawyer made regarding whether you were
2 correctly charged?

3 A. Yes, sir.

4 Q. Would you want to appeal the bench trial?

5 A. Yes, sir.

6 Q. Would you want to appeal the ruling of the court at
7 the conclusion of the case finding you guilty of indecent
8 exposure rather than finding you guilty of the
9 lesser-included offense?

10 A. Yes, sir.

11 Q. With regard to this, is there anything else you
12 believe that Judge Kinard needs to know before he rules in
13 this matter? Okay. Thank you, Mr. Williams. Answer any
14 question the attorney general may have.

15 MR. HEMLEPP: Your Honor, thank you very much.

16 MR. RUTLEDGE: No questions from the state, Your
17 Honor.

18 THE COURT: Okay. You can step down.

19 THE DEFENDANT: Thank you.

20 MR. HEMLEPP: Your Honor, the applicant would call
21 Mr. Phil Smith to the stand.

22 PHILLIP SMITH, after having first being duly sworn,
23 testified under oath as follows:

24 MR. HEMLEPP: May it please the Court, Your Honor.

25

DIRECT EXAMINATION

PHILLIP SMITH -- DIRECT EXAMINATION BY MR. HEMLEPP

1 BY MR. HEMLEPP

2 Q Mr. Smith, you heard the testimony of the applicant
3 that you represented him at his jury trial on June 19.

4 A. It was a bench trial. It was a jury trial. I was
5 standby. I had actually gotten relieved on his earlier
6 bench trial, but I did file his appeal on that as I was
7 standby counsel. But I represented him at the bench

8 trial. That's correct.

9 Q. I apologize. It's my mistake. I meant to say bench
10 trial. I'm so used to saying jury trial. However, your
11 answer went forward into a fact that Judge Kinard may not
12 know. Could you explain your answer further, the fact
13 there was a jury trial, that there was an appeal filed,
14 but it wasn't in this case? Expand that for Judge Kinard.

15 A. Sure. I was originally appointed I believe it was
16 September of 2012 to a different indecent exposure case
17 that he's talking about. At some point in time during
18 that representation, he picked up the indecent exposure
19 charge which he testified about while he was in detention
20 center here. When they were calling the first case to
21 trial, he was dissatisfied with me and asked the judge
22 that I be relieved as counsel. I was appointed standby.
23 He represented himself at that trial, was found guilty by
24 a jury, but I did tell him I would file the appeal for him
25 in that case and filed that appeal.

PHILLIP SMITH -- DIRECT EXAMINATION BY MR. HEMLEPP

1 He did not ask I be relieved for the indecent
2 exposure from the detention center, the one he testified
3 about, so I did represent him in that case that was a
4 ultimately a bench trial in front of Judge McMahon.

5 Q. In that case we have a transcript, Judge Kinard has a
6 transcript, and the transcript speaks for itself. You
7 represented him. You also made several legal arguments.
8 Ultimately, Judge McMahon agreed that there was a
9 lesser-included offense, but found the evidence supported
10 the greater offense?

11 A. That's correct.

12 Q. Had you and your client talked about his desire to
13 appeal some of these legal issues that have arisen in the
14 bench trial?

15 A. We have.

16 Q. And when did that take place?

17 A. While the trial was ongoing at various breaks or
18 opportunities when we were sitting at the table as he
19 described.

20 Q. And did he indicate a desire he did want these issues
21 appealed?

22 A. He did.

23 Q. And ultimately was that appeal perfected?

24 A. It was not.

25 Q. Was there a reason why it wasn't perfected?

PHILLIP SMITH -- DIRECT EXAMINATION BY MR. HEMLEPP

1 A. Yes. When he was sentenced, Judge McMahon gave him
2 concurrent sentencing and did not order the registry.
3 There was to be an evaluation. In the courtroom, I asked
4 if he was okay with it. He said yes. I took that to mean
5 that he didn't want to go through with it, but knowing
6 Mr. Williams, I should have filed that appeal. And as
7 soon as I got his letter sometime later, I realized I
8 didn't tell him. And review the transcript indicates that
9 the judge didn't indicate he had the opportunity to
10 appeal, so I did not file it then.

11 I did contact appellate defense who was representing
12 him on the other case and mentioned this, asked could they
13 do something, but the time had lapsed for filing the
14 appeal.

15 Q. So the appeal wasn't filed. Would it be fair to
16 characterize that as an oversight?

17 A. Yes, it is.

18 Q. It wasn't purposeful, it wasn't a decision, it was
19 really a miscommunication and oversight?

20 A. That's correct.

21 Q. Answer any question the attorney general may have.

22 MR. HEMLEPP: Thank you, Your Honor.

23 MR. RUTLEDGE: Just a couple questions, Mr. Smith.

24 CROSS-EXAMINATION

25 BY MR. JOHNSON

PHILLIP SMITH - CROSS-EXAMINATION BY MR. JOHNSON

1 Q. As far as the bench trial was concerned, did you
2 discuss the advantages and disadvantages of a bench trial
3 versus a jury trial with Mr. Williams?

4 A. We did some. I was sort of surprised that he wanted
5 a bench trial, but I understood his reasoning because he
6 had just been through a jury trial and thought that the
7 jury knowing that he was already incarcerated when this
8 incident occurred would be difficult for them to put
9 aside, and he wanted to argue the legal issue of the
10 lesser-included offense. So I understood his reasoning.

11 Q. And did you argue against the process of the direct
12 indictment?

13 A. We did. We made a motion -- I believe it's in the
14 record. He -- Mr. Williams was always of the opinion that
15 he should have been tried for the charge that he was
16 originally charged.

17 Q. Did you ask for the lesser-included offense?

18 A. I did. In fact, Judge McMahon agreed to, in effect,
19 consider the lesser, so did consider it a lesser-included
20 offense. So we won that portion, but he ultimately
21 decided the greater offense was the appropriate (sic)
22 based on the evidence the state had presented.

23 MR. RUTLEDGE: That's all the questions I have, Your
24 Honor. Thank you.

25 MR. HEMLEPP: Thank you, Your Honor. I have nothing.

1 THE COURT: All right. Step down.

2 THE DEFENDANT: Thank you.

3 MR. HEMLEPP: Your Honor, for the purposes of
4 housekeeping, if I could ask the Court before I rest to
5 make sure the court record is complete.

6 THE COURT: Yeah, it's complete. It's got sentencing
7 sheets, got the transcript that I read and so forth.

8 MR. HEMLEPP: Okay. Thank you, Your Honor. The
9 applicant rests.

10 THE COURT: All right. Now, why is it he possibly
11 wants to appeal? I don't understand. He's got concurrent
12 time. I mean, Lord knows -- waste of everybody's time
13 even if he had an appeal on his trial. If the judge had
14 hammered him I could understand, but he's no legal scholar
15 I wouldn't think, so why does he just want to fool with
16 that?

17 MR. HEMLEPP: Your Honor, my client -- in my
18 discussions with my client, my client adamantly believes
19 he is not guilty of indecent exposure, although he would
20 admit to being guilty of the lesser-included offense.

21 THE COURT: Well, the evidence was presented in front
22 McMahon who made a full finding on that, and he's going to
23 give him as good a break as anybody. And he's -- if I set
24 it aside and he gets a new trial on it, even if he's
25 successful on the appeal, he's incarcerated when it

1 allegedly occurs, he's going to be done then. I don't
2 understand why we're here.

3 MR. HEMLEPP: I discussed with my client if it's
4 overturned and he's retried, he may not get consecutive
5 sentences. He could get -- he could not get --

6 THE COURT: He could get consecutive.

7 MR. HEMLEPP: I have discussed that with my client
8 and he indicated to me he wished to go forward.

9 THE COURT: Why? Why did he tell you he wants to go
10 forward? Because the judge made a mistake after reviewing
11 everything and listening to everything? I mean, if he had
12 given him consecutive, it might be worth an appeal. It
13 just costs too much money to do that. Plus, doesn't look
14 like he'd be successful on appeal, does it? Doesn't he
15 have to establish that?

16 MR. HEMLEPP: Yes, sir.

17 THE COURT: I -- just in his best interests, I'm just
18 going to deny it since it doesn't look like he would win
19 on appeal.

20 MR. HEMLEPP: Thank you, Your Honor.

21 THE COURT: Incidentally, I'd been a judge about four
22 months. I'm in Greenville. We didn't have judge's
23 schools back then, and they did that in front of me. They
24 wanted to do a direct indictment, you know. And so
25 fortunately I had two judges in the courthouse, I thought.

1 Traxler was there, who is now a federal judge, and Judge
2 Pyle who is -- still does some. So I asked Judge Pyle.
3 He said that would be fine. He lets them do that all the
4 time. I asked Traxler. He said, "No, man, don't let them
5 do that. Make them go back in front of the grand jury and
6 all that."

7 So, you know, reasonable minds differed then. I said
8 everybody was there ready to go with the trial, so I just
9 let it go. There was no appeal from that. That was --
10 answered his question. But having made that ruling 26
11 years ago, I'll stand by it today.

12 MR. RUTLEDGE: Thank you, Your Honor.

13 THE COURT: And I think it's in his best interests.
14 It's clearly not in his interests...

15 MR. RUTLEDGE: There is a risk to going forward and
16 succeeding in the case, which I discussed with my client.

17 THE COURT: That's his choice. Of course, you've got
18 time to file an appeal from my ruling once you get a copy
19 of the order, and the order will actually say that in
20 there, will put that in there just in case the judge
21 forgets to tell you that, you know. But looks to me like
22 it's in your best interests just to -- you won't have that
23 much longer to serve, do you?

24 MR. HEMLEPP: I don't believe so.

25 THE COURT: He would be out before his appeal got up

1 there.

2 MR. HEMLEPP: This is a 65 percent case, Your Honor.

3 THE COURT: Court of appeals -- even before it could
4 be ordered you'd be out on both charges. If you appeal
5 and win, they reindict you on that, you're looking at --
6 clearly not going get consecutive if you get convicted
7 because you've already maxed out on it. So...

8 MR. HEMLEPP: Yes, Your Honor.

9 THE COURT: Another thing to think about. But in the
10 United States, you have the absolute right to appeal.

11 MR. HEMLEPP: Yes, sir. He's set to be released in
12 January.

13 THE COURT: Goodness. Won't even get docketed.

14 MR. HEMLEPP: Thank you, Your Honor.

15 (Whereupon, the proceedings were concluded.)

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