

"ATTACHED EXHIBIT PERTINENT TO THIS CASE".

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)
)

IN THE GENERAL SESSIONS COURT
IN THE THIRD JUDICIAL CIRCUIT

Warrant Number(s): F-413307

The State of South Carolina)

Plaintiff,)

-vs-)

Mark A. McCoy,)

Defendant.)

BRADY MOTION

TO: CATHERINE FANT, SOLICITOR FOR THE THIRD JUDICIAL CIRCUIT:

The Defendant herein, by and through his undersigned attorney, hereby requests you pursuant to the authority of Brady -vs- Maryland, 373 U.S. 83(1963), to give him without undue delay any information in your possession or gathered for your use and available to you or which in the exercise of reasonable diligence could be in your possession which tends to show that the Defendant is not guilty of the offenses charged or which tends to show that the Defendant is not guilty of the offense charged or which tends to mitigate the severity of the offenses charged or any sentence which might result therefrom.

This request includes, but is not limited to, the following:

1. Copies of any statements by the Defendant, co-Defendants or other witnesses containing relevant information or which contradicts any evidence which the State tends to introduce at trial;

2. A list of physical evidence items;

3. Copies of any relevant expert reports;

4. The names and addresses of all witnesses, including law enforcement personnel, having relevant information about the case;

5. A copy of any statements made by the informant;
6. A copy of the criminal record, if any, of the informant and other State witnesses;
7. Any information indicating psychological instability or insanity, or habitual drunkenness on the part of the informant, any other State witnesses or the Defendant;

8. Any information indicating that the informant has been furnished drugs. Any information that the informant has any uncharged or unindicted criminal activity. Any information that the informant has been paid in any way by the State or County;

9. Any information contradicting the Defendant's intent to commit the charged offenses;

10. Any information tending to show that someone else actually committed the crime with the Defendant is charged.

To minimize the possibility of unnecessary delay or reversible error, the undersigned further requests that you describe in general fashion any requested information which you are withholding, along with your reasons for doing so. In the absence of such a statement, the undersigned will assume that no requested information has been withheld.

JOHNSON, TOAL & BATTIESTE, P.A.

BY: 

I.S. Leevy Johnson
Attorney for Defendant
Post Office Box 1431
Columbia, South Carolina 29202
(803) 252-9700

Columbia, South Carolina
November 9, 2007

STATE OF SOUTH CAROLINA)
)
COUNTY OF SUMTER)
_____)

IN THE GENERAL SESSIONS COURT
IN THE THIRD JUDICIAL CIRCUIT

The State of South Carolina)
)
Plaintiff,)

Warrant Number(s): F-413307

-vs-

MOTION FOR DISCLOSURE
OF EVIDENCE

Mark A. McCoy,)
)
Defendant.)
_____)

Pursuant to Criminal Practice Rule 108, Defendant herein moves the Court for an Order requesting the prosecution to disclose the following items in the manner requested.

1.

To permit the Defendant to inspect, copy, and photograph any relevant written or recorded statements made by the Defendant, or copies thereof, within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution the substance of any oral statement which the prosecution intends to offer in evidence at the time of trial made by the Defendant whether before or after arrest in response to interrogation by any person then known to the Defendant to be a prosecution agent.

2.

To furnish a copy of Defendant's prior criminal record, if any, as is within the possession, custody or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution.

3.

To permit Defendant to inspect and copy books, papers, documents photographs, tangible objects, buildings or places, or copies or portions thereof, which are within the possession, custody or control of the prosecution, and which are material to the preparation of his defense or are intended for use by the prosecution as evidence in chief at the trial, or were obtained from or belong to the Defendant.

4.

To inspect and copy any results or reports of physical or mental examinations, and of scientific tests or experiments, or copies thereof, which are within the possession, custody, or control of the prosecution, the existence of which is known, or by the exercise of due diligence may become known, to the attorney for the prosecution, and which are


material to the preparation of the defense or are intended for use by the prosecution as evidence in chief at the trial.

5.

To inspect and copy prior to trial any statement of any prosecution witness, or in the alternative, after such witness has testified.

JOHNSON, TOAL & BATTISTE, P.A.

BY:



I.S. Leevy Johnson

Attorney for Defendant

Post Office Box 1431

Columbia, South Carolina 29202

(803) 252-9700

Columbia, South Carolina
November 9, 2007

EXHIBIT #4
PAGES 1-8

PAGE 7
INFORMATION
SEEKED



SUMTER POLICE DEPARTMENT
INTERVIEW FORM

BEFORE WE ASK YOU ANY QUESTIONS, YOU MUST UNDERSTAND YOUR RIGHTS.

- KD • YOU HAVE THE RIGHT TO REMAIN SILENT.
- KD • ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT.
- KD • YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS, AND TO HAVE HIM/HER WITH YOU DURING THE QUESTIONING.
- KD • IF YOU CANNOT AFFORD A LAWYER, ONE WILL BE APPOINTED FOR YOU BEFORE ANY QUESTIONING IF YOU WISH.
- KD • IF YOU DECIDE TO ANSWER ANY QUESTIONS NOW WITHOUT A LAWYER PRESENT, YOU WILL STILL HAVE THE RIGHT TO STOP ANSWERING AT ANY TIME UNTIL YOU TALK WITH A LAWYER.

WAIVER OF RIGHTS

BEFORE ANY QUESTIONING, I WAS FURNISHED THE ABOVE STATEMENT OF MY RIGHTS AT 10:15 A.M. / P.M. ON JAN 22 2008 AT LEC BY OFFICER Lt. Braiman OF THE SUMTER POLICE DEPARTMENT.

I HAVE READ OR HAD READ TO ME THIS STATEMENT OF MY RIGHTS. I UNDERSTAND WHAT MY RIGHTS ARE. I AM WILLING TO ANSWER QUESTIONS AT THIS TIME WITHOUT A LAWYER PRESENT. NO PROMISES OR THREATS HAVE BEEN MADE TO ME, AND NO PRESSURE HAS BEEN USED AGAINST ME.

SIGNED: Kimberly Delany
DATE: 1-22-08 TIME: 10:17 AM

WITNESSES:

[Signature]
[Signature]
[Signature]

* INVESTIGATING DETECTIVE *
OF THE
MURDER CASE

~~EXHIBIT~~ ~~1~~

SUMTER POLICE DEPARTMENT REPORT OF INVESTIGATION

CASE NUMBER: 07129390	FILE TITLE: "D-MO" ARCHIE, Ca-brall	01-22-2008
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RE: Interview of Kimberly DELAY and acquisition of Exhibit N-10

SYNOPSIS:

1. On Tuesday, January 22, 2008 Lt. F. Bradshaw and Detective K. Coker of the Sumter Police Department's OCVC Unit and Lt. E. Williams of the Sumter Police Department's ISD Unit interviewed Kimberly DELAY at the Law Enforcement Center concerning her knowledge of criminal activity and involvement with Mark MCCOY aka WISE.
2. The following details outline that interview and acquisition of Exhibit N-10.

DETAILS:

1. On January 22, 2008 Kimberly DELAY was interviewed by Lieutenants F. Bradshaw, E. Williams and Detective K. Coker of the Sumter Police Department concerning DELAY's knowledge of criminal activity and association with Mark MCCOY aka WISE.
2. Lt. Bradshaw advised DELAY of her Miranda warnings both verbally and had DELAY read, recite and sign the waiver in the presence of Lt. Williams and Detective Coker. DELAY stated she understood her rights, did not have an attorney nor wished to have one during the interview and voluntarily signed the waiver agreeing to be interviewed by the Police Officers.
3. Kimberly DELAY was born and reared in Sumter, South Carolina where she grew up and attended public schools. DELAY stated she is the youngest of three children and has two older brothers. DELAY stated her Mother died when DELAY was two years old and was reared by her Aunt who DELAY calls her Mother. DELAY stated she had a normal childhood and grew up attending church. DELAY graduated from Sumter High School in 2001 where she played basketball and then attended Sumter area TEC for two years seeking a degree in accounting. DELAY stated she never obtained her degree and dropped out of TEC.

4.

23. According to DELAY, MCCOY was locked up in October 2007 for a murder he allegedly committed in 2004. DELAY claims she never heard MCCOY talk about it nor does she know anything about the murder. MCCOY stated she talks with MCCOY daily from jail and has received only one letter from MCCOY. DELAY gave Detective Coker this letter (Exhibit N-10) which is now a part of this file. DELAY claims MCCOY has told DELAY several times he does not know why Attorney Brunson is not trying to get her out of jail. According to DELAY, she believed that MCCOY had hired Attorney Brunson to represent her. Magistrate Tindal contacted Attorney Brunson on January 22, 2008 concerning representation in a preliminary hearing and was told by Attorney Brunson he did not represent DELAY.

#4 (PG 7)

25

26.

27.

28.

SUSPECT(S):

3. MCCOY, Mark aka Wise

I Kimberly Delay of my own free will, without any promises or threats of any kind, request to speak with Officers of the Sumter Police Department without my attorney, or any other representation present. I initiated this contact, and request on my own behalf.

Kimberly Delay 1-22-08
Date

[Signature] 1-22-08
Date

[Signature] 1-22-08
Date

EXHIBIT # 5

PAGES 1-5

PAGE 4
INFORMATION
SEEKED

Report of Investigation

U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Title of Investigation: MARK McCOY et al	Investigation Number: 763035-08-0039	Report Number: 14
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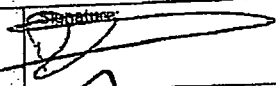
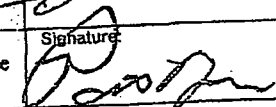
SUMMARY OF EVENT: On January 22, 2008, Kimberly DELAY was interviewed by Investigators with the Sumter Police Department. A Summary of the interview is provided below.

NARRATIVE:

On January 22, 2008, LT F. Bradshaw, LT E. Williams and Detective K. Coker of the Sumter Police Department interviewed Kimberly DELAY. DELAY was provided with a Sumter Police Department interview form which advised DELAY of her Miranda rights. DELAY waived her rights and spoke with the aforementioned investigators. Unless otherwise noted, the following is a summary of the facts provided by DELAY:

- 1.
- .
- .
- .
- 2.
- M.
- .
- .
- 3.
- .
- .
- .
- .
- .
- .
- .

#5 (PG 1)

Prepared by: J. Richard Brown	Title: Special Agent, Columbia Field Office	Signature: 	Date: 4/10/08
Authorized by: Patrick M. Dumais	Title: Resident Agent in Charge, Columbia Field Office	Signature: 	Date: 4-11-08
Second level reviewer (optional): Zebedee T. Graham	Title: Special Agent in Charge, Charlotte Field Division	Signature:	Date:

#5

7.

8

19.

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21.

22. During October 2007, MCCOY was arrested for a murder allegedly committed in Sumter during 2004.
- MCCOY contacted DELAY from jail and told DELAY where money was hidden in the house and she retrieved the cash.
 - DELAY carried the cash, \$17,000 in drug proceeds, to I.S. Levy Johnson's Law Office, located in Columbia, SC. DELAY did not receive a receipt from the law firm for the cash transaction.
 - DELAY has never heard MCCOY talk about the murder and she does not know anything about the murder.
 - DELAY speaks daily with MCCOY from jail and has received one letter from MCCOY.
 - DELAY provided the letter to the interviewers.

23.

24.

#5 (pg 4)

Title of Investigation: MARK McCOY et al	Investigation Number: 763035-08-0039	Report Number: 14
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25.

26.

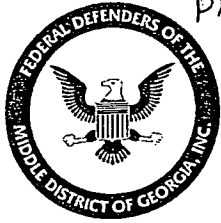
ATTACHMENTS

- Sumter PD Interview Form, signed by DELAY on 01/22/2008
- Sumter PD Report of Investigation, DELAY Interview, dated 01/22/2008
- Copy of letter to DELAY from MCCOY, dated 01/09/2008

#5 (PG5)

EXHIBIT #6

PAGE 1



**FEDERAL DEFENDERS OF THE
MIDDLE DISTRICT OF GEORGIA, INC.**

440 Martin Luther King, Jr. Boulevard
Suite 400
Post Office Box 996
Macon, Georgia 31202-0996

Phone: (478) 743-4747 • Fax: (478) 207-3419 • Toll Free: (866) 517-8892

Cynthia W. Roseberry
Executive Director

Assistant Federal Defenders
C. Brian Jarrard
Catherine M. Leek
D. Nicole Williams
LaRae D. Moore

Research and Writing Specialist
Morad Fakhimi

October 13, 2009

VIA FACSIMILE NO. 803-436-2236

Ms. Catherine Fant
Third Circuit Solicitor's Office
141 N. Main Street
Sumter SC 39150

RE: *U.S. vs. Kimberly Delay, Civil Action No. 3:08-CR-7*

Dear Ms. Fant:

As you know, I represent Kim Delay in a federal case in the Middle District of Georgia. We spoke several months ago as you were preparing for murder trial against Mark McCoy. My client, Kim Delay, ultimately became a witness for the state in that trial and you were able to obtain and conviction and life sentence against Mark McCoy. At that time, you indicated to me that all of Ms. Delay's pending South Carolina charges would be dismissed in return for her cooperation and testimony in the McCoy trial.

The reason why I am contacting you is that we are preparing for Ms. Delay's sentencing on her federal charge. The most current information that I have is that she still has pending SC charges. These warrants are numbered J-303562, J-303569, and J-303572 (Larceny, Possession of Cocaine, Possession of Marijuana). If you are unable to dismiss these charges, please contact me at the above number.

Also, in lieu of subpoenaing you for her sentencing hearing, could you provide me with a signed affidavit of her cooperation and assistance she provided you in the Mark McCoy murder trial.

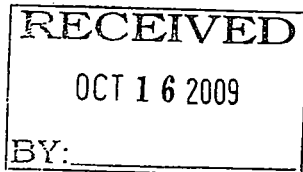
Sincerely

Catherine M. Leek
Assistant Federal Defender

sd/cml

EXHIBIT #7

PAGE 1



The State of South Carolina

SCANNED



C. Kelly Jackson
Solicitor

SOLICITOR
Third Judicial Circuit
Sumter County Courthouse
141 North Main Street
Sumter, South Carolina 29150

Phone: (803) 436-2185
Fax: 436-2236

October 13, 2009

Catherine M. Leek, Esq.
Assistant Federal Defender
440 MLK, Jr. Blvd., Ste 400
P.O. Box 996
Macon, GA 31202-0996

RE: Kimberly Delay

Dear Ms. Leek:

I have received your letter regarding Kim Delay and although I am inclined to dismissed the charges still pending against her (which include one additional warrant – J303570 – for distribution within ½ mile of a school) I cannot do so at the present time.

Unfortunately, Kim's actions and refusal to testify against Mark McCoy in Georgia signal a potential change of heart that could affect my homicide case in the event of an appellate reversal. For this reason, I feel I must wait until McCoy's appeals are exhausted before dismissing any charges against Kim.

As you requested, I am also attaching an affidavit outlining her cooperation with the state in the prosecution of McCoy's murder trial. Should you have any further questions or concerns, please do not hesitate to contact me at (803) 436-2222.

Sincerely,

Catherine Fant

Catherine Fant
Assistant Solicitor

/cbf
Enclosure



Sumter County Third Judicial Circuit Public Index Search



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[South Carolina Judicial Department Home Page](#)

Name	Party Type	Case Number	Filed Date	Case Status	Disp Date	Case Type	Case Subtype	Judgment #
Delay, Kimberly	Plaintiff	2007CP4300668	03/30/2007	Dismissed	07/23/2007	Common Pleas	Motor Veh Accid 320	
Delay, Kimberly Rena	Defendant	H109055	04/25/2002	Disposed	07/18/2003	Criminal-Clerk		
Delay, Kimberly Renee	Defendant	H589413	05/08/2008	Disposed	10/13/2008	Criminal-Clerk		
Delay, Kimberly Renee	Defendant	J302424	06/08/2007	Disposed	10/22/2008	Criminal-Clerk		
Delay, Kimberly Renee	Defendant	J303562	12/21/2007	Disposed	05/17/2010	Criminal-Clerk		
Delay, Kimberly Renee	Defendant	J303569	12/21/2007	Disposed	05/17/2010	Criminal-Clerk		
Delay, Kimberly Renee	Defendant	J303570	12/21/2007	Disposed	05/17/2010	Criminal-Clerk		
Delay, Kimberly Renee	Defendant	J303571	12/21/2007	Disposed	05/17/2010	Criminal-Clerk		
Delay, Kimberly Renee	Defendant	J303572	12/21/2007	Disposed	05/17/2010	Criminal-Clerk		

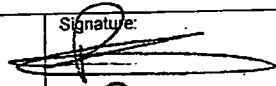
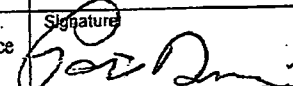
U.S. Department of Justice
Bureau of Alcohol, Tobacco, Firearms and Explosives

Title of Investigation: MARK MCCOY et al	Investigation Number: 763035-08-0039	Report Number: 4
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SUMMARY OF EVENT: A CONFIDENTIAL SOURCE OF INFORMATION WITNESSED MARK MCCOY MURDER DONALD PETTIS IN 2004.

NARRATIVE:

1. ATF SA Richard Brown and DEA TFO Phil Ardis spoke with a confidential source of information (SOURCE) concerning a murder committed by Mark MCCOY during 2004. The SOURCE observed MCCOY commit the murder. The SOURCE believes no one is aware that the SOURCE observed the murder. This is the first time the SOURCE has spoken with an investigator about the murder.
2. On June 8, 2004, the SOURCE observed the murder of Donald Tyrone PETTIS. According to the SOURCE, PETTIS was breaking into stores in the Sumter area. One of the stores broken into belonged to Ivan SANDERS. Mark MCCOY and SANDERS figured out who had broken into SANDERS' store. MCCOY and DUKES were planning on beating up PETTIS for breaking into the stores.
3. MCCOY and Robin DUKES aka Robbie DUKES were able to locate PETTIS walking in the vicinity of Edwards Street. The SOURCE was able to observe the murder from a position in a nearby backyard. The SOURCE described MCCOY as wearing camouflage clothing and a black ski mask. The SOURCE recognized MCCOY and observed MCCOY pull a black ski mask down, over his (MCCOY'S) face, prior to the assault. MCCOY began assaulting PETTIS and PETTIS got in a hit on MCCOY. The SOURCE observed MCCOY pull out a silver in color revolver and shoot PETTIS in the back. The SOURCE estimates that PETTIS was only a couple of feet away from MCCOY when the fatal shot was fired. MCCOY only fired one round and PETTIS dropped to the ground; PETTIS did not get back up.
4. The SOURCE identified potential witnesses to the murder. In addition to DUKES, there were 2 people watching from a nearby porch and people playing horseshoes at the Wilson's house, which is across the street from where the murder occurred. Additionally, Linda BROWN watched MCCOY hide the murder weapon under the eave of a nearby CRACK HOUSE. The SOURCE believes that the revolver may have been removed sometime after the murder.
5. According to the SOURCE, AARON LUCAS and AARON LUCAS' Mother's Boyfriend were the 2 people watching from the porch. After the murder, MCCOY took out hits on AARON LUCAS and his Mother's Boyfriend. The SOURCE explained that "hits" refers to MCCOY wanting someone to murder the 2 witnesses.

Prepared by: J. Richard Brown	Title: Special Agent, Columbia Field Office	Signature: 	Date: 1/25/08
Authorized by: Patrick M. Dumais	Title: Resident Agent in Charge, Columbia Field Office	Signature: 	Date: 1-28-08
Second level reviewer (optional): Zebedee T. Graham	Title: Special Agent in Charge, Charlotte Field Division	Signature:	Date:

SOURCE - LATIMORE HOLMES

Title of Investigation:
MARK McCOY et al

Investigator Number:
763035 J039

Report Number:
4

6. AARON LUCAS is the brother of MIKE LUCAS. MIKE LUCAS and MCCOY have been partners for many years. MIKE LUCAS spoke with MCCOY and smoothed things over, resulting in MCCOY canceling the "hit" on AARON LUCAS. The SOURCE believes that within two weeks of the murder, the Mother's Boyfriend was assaulted and his throat was cut. He survived the assault.

7. The SOURCE does not know the identities of the people playing horseshoes at the Wilson's house.

ATTACHMENT

Sumter Police Department Incident Report# 04057789, dated 06/08/2004

IMPENDING INCONSISTENT

PULL OUT

Latimore Holmes-cross by Johnson

* 1 Q Did you see Mark McKoy hit Tyrone Pettis? *

2 A No, sir. I saw him pull the gun out.

3 Q Did you see Mark McKoy knock Tyrone Pettis
4 off a bicycle?

5 A No, sir.

6 Q Okay. And it's your testimony that you
7 saw Mark McKoy's face, and then he put a mask on?

8 A Yes, sir.

9 Q And it is your testimony that Mark McKoy
10 had on what? What was he wearing?

11 A Dark clothes.

12 Q Dark clothing. And what was Tyrone Pettis
13 wearing?

14 A I don't know.

15 Q You don't know what he was wearing? You
16 didn't earlier say he had on dark clothing?

17 A Did I say Tyrone Pettis had on dark
18 clothing?

19 Q Yes.

20 A No, I said, I believe they asked me about
21 Robin Dukes.

22 Q What, Robin Dukes had on dark clothing?

23 A I said his clothes might have been dark.
24 I didn't say Tyrone Pettis. I don't even -- I've
25 never seen that guy before.

Latimore Holmes-cross by Johnson

1 Q Okay. But you don't remember what he had
2 on?

3 A No, sir.

4 Q But you remember he and Robin Dukes were
5 walking up Edwards Street toward Kelly. And that
6 Mark McKoy came up behind them on Bartlet Street.
7 You do remember that?

8 A Yes, sir.

9 Q And you're testifying today that Mark
10 McKoy had a gun, is that right?

11 A Oh, yes, sir.

12 Q Did you see the color of the gun?

13 A I said it looked like it was silver
14 chrome.

15 Q T looked like silver chrome. And so
16 immediately after you witnessed all of this you ran
17 and told the police?

18 A Say that again?

19 Q Immediately after you witnessed what you
20 claim you saw that day, you went and told the police
21 what you had seen?

22 A No, sir.

23 Q Were you here on June 9th? Did you do it
24 on June 9th?

25 A June 9th of what?

Latimore Holmes-cross by Johnson

- 1 Q 2004.
- 2 A No, sir.
- 3 Q June 10th?
- 4 A No, sir.
- 5 Q June 11th?
- 6 A No, sir.
- 7 Q 12th?
- 8 A No, sir.
- 9 Q 13th?
- 10 A No, sir.
- 11 Q 14th?
- 12 A No, sir.
- 13 Q 15th?
- 14 A No, sir.
- 15 Q 16th?
- 16 A No, sir.
- 17 Q Would you show me a copy of your statement
- 18 where you told the police what you are telling us
- 19 here today?
- 20 A I don't have a copy of the statement.
- 21 Q You don't have a copy of the statement?
- 22 A No.
- 23 Q You didn't write out a statement?
- 24 A Me?
- 25 Q Yeah.

Latimore Holmes-cross by Johnson

- 1 A I didn't write out a statement.
- 2 Q You didn't? Well all this stuff you are
3 telling us today---
- 4 A They wrote the statement.
- 5 Q Oh, they wrote the statement?
- 6 A They wrote t. I didn't write it.
- 7 Q And you signed it?
- 8 A Never signed a statement. I talked with
9 them about it.
- 10 Q When did you did that?
- 11 A January.
- 12 Q January when?
- 13 A Of this year.
- 14 Q January of 2008, you did that? Are you
15 serious?
- 16 A Yes, sir.
- 17 Q 2004 you didn't tell them, 2005, 2006,
18 2007. 2008 in January. And you said you wrote out,
19 the statement.
- 20 A I never said I wrote the statement; that,
21 they wrote the statement.
- 22 Q They wrote the statement.
- 23 A They wrote the statement.
- 24 Q Did you tell them what to put in the
25 statement?

Latimore Holmes-cross by Johnson

1 A They asked me about it, and I told them
2 about it. That was it. I didn't sign the
3 statement.]

4 Q How did it come about? They just came out
5 of the blue? You called them or they called you?

6 A Somebody else wrote them and told them
7 about me.

8 Q Somebody else wrote them. Who wrote them
9 and told them about you?

10 A Somebody was talking to them about it and
11 they wrote and told them.

12 Q Well who did you tell about it you didn't
13 tell the police?

14 A Another inmate at the prison.

15 Q So another inmate at the prison, you told
16 an inmate, but you didn't tell the police?

17 A No, sir.

18 Q Isn't that a bit strange?

19 A Right.

20 THE COURT: You don't -- ask the question,
21 please.

22 Q Isn't that a bit strange that you would
23 tell an inmate what you claim happened, but you
24 didn't tell the police?

25 A When they came I told them.

Latimore Holmes-cross by Johnson

1 Q But it was not until they came in 2008,
2 that's when you told them, and you they wrote out
3 your statement.

4 A Yes, sir.

5 Q Did you see a copy of your statement?

6 MS. FANT: Your Honor, I object. There is,
7 no statement. He keeps saying---

8 MR. JOHNSON: Objection. Goodness
9 gracious.

10 MS. FANT: He indicated---

11 THE COURT: It's cross examination. I'm
12 going to allow it. Clear it up on cross
13 examination. Objection overruled. I will
14 allow it, Mr. Johnson.

15 Q Who did you talk with in January of 2008?

16 A Detective Williams and ATF agent Mr.
17 Richard Brown.

18 Q And who did Detective Williams work for?

19 A And Mr. Ardis. Mr. Phil Ardis also.

20 Q And who did they work for?

21 A Mr. Brown said he worked for ATF.

22 Q How about Mr. Williams?

23 A Sumter County Police Department.

24 Q And you repeatedly said that you gave them
25 a statement, isn't that true?

1 money and just being a lot nicer to her than he ever had
2 been.

3 Latimore Holmes. Before we talk about his testimony,
4 I just want to briefly address the fact that there were
5 witnesses that are incarcerated and witnesses that have
6 been charged with federal crimes, that every one of them
7 told you that they were offered no promises, no deals for
8 their testimony in this case. The fact that they came
9 forward later on rather than at the time indicates more
10 about their status in the hood on the west side than it
11 does their credibility. You heard from -- excuse me, all
12 of them and law enforcement indicated that no promises
13 were made and that most important, all of the major
14 details that they testified to were corroborated by other
15 people.

16 So these are people in federal institutions and the
17 department of -- or in Richland County detention center.
18 They're not even allowed to communicate with each other.
19 How did they all manage to coordinate their stories and
20 get things straight when they were unable to even do that.
21 That would be because they knew what they were talking
22 about because they were there either when it happened or
23 when Mr. McCoy told them what happened. Latimore said he
24 knew Wise, had known him for a while, he saw him in
25 camouflage, saw him pull on a mask and saw him shoot

Latimore Holmes-direct by Fant

1 Q Okay. And this is the agreement that you.
2 made with the Federal Government?

3 A Yes, ma'am.

4 Q And as part of that plea agreement, what
5 were you required to do?

6 A Tell everything I did, or what I knew. Or
7 what I had done.

8 ~~Q Were you also supposed to tell on other~~
9 ~~people, what you knew other people had done?~~

10 A Yes, ma'am.

11 Q And is that what you did?

12 A Yes, ma'am.

13 Q Now were you promised anything in this
14 case as far as testifying here today?

15 A No, ma'am.

16 Q And what would happen to you if in fact
17 you did testify today and that was found to be
18 untruthful, or if you came in here and told a lie?

19 A That would be perjury, I guess.

20 Q Do you know whether or not your plea
21 agreement has a provision for perjury?

22 A I never really read it. I had an
23 attorney, and he said sign this and sign that.

24 ~~Q You must have trusted him.~~

25 A My mistake.

Latimore Holmes-direct by Fant

1 Q Could you just read though this section
2 beginning right there, and ending right there? Out
3 loud, please. I am sorry.

4 A "The defendant must also testify fully and
5 truthfully before any grand jury at any trial, or
6 proceeding if called upon to do so by an attorney
7 for the government, subject to prosecution. Perjury
8 for not testifying truthfully. The Failure of the
9 defendant to be fulfilled truthfully and forthright
10 at any stage will at the sole election of the
11 attorneys for the government, causes obligations of
12 the attorneys for the government then this agreement
13 to become null and void."

14 MS. FANT: Thank you. Please answer any
15 questions Mr. Johnson has.

16 THE COURT: Cross examination,
17 Mr. Johnson?

18 CROSS EXAMINATION BY MR. JOHNSON

19 Q Mr. Holmes, my name is I.S. Levy Johnson
20 along with my son, George Johnson. We represent
21 Mark McKoy. And as I understand it, you signed a
22 Plea Agreement according to Exhibit No 7. On
23 December 28th 2005, admitting that you had
24 distributed drugs, isn't that true?

25 A That I had distributed drugs?

Latimore Holmes-cross by Johnson

1 Q Yes, sir.

2 A Possession with intent to distribute
3 drugs.

4 Q Possession with intent to distribute
5 drugs.

6 A Yes, ma'am. Yes, sir.

7 Q And what that means that you had a large
8 amount of drugs that was your intent to distribute
9 them?

10 A Yes, sir.

11 Q And you were in fact distributing drugs,
12 weren't you?

13 A Yes, sir.

14 Q All right, sir. And according to your
15 testimony in March of 2006, you were sentenced,
16 isn't that true?

17 A Yes, sir.

18 Q And prior to before you were sentenced,
19 you entered into this Plea Agreement, isn't that
20 right?

21 A Yes, sir..

22 Q And the Plea Agreement as Ms. Fant has
23 indicated, and I direct your attention to the parts
24 you just read, it says that if you lie, the
25 government, referring to the United States of

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IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION

UNITED STATES OF AMERICA,) Cr. No. 3:05-559
)
)
VERSUS) Columbia, SC
) November 20, 2008
)
LATIMORE LERON HOLMES,)
)
Defendant.)
)
-----)

TRANSCRIPT OF MOTION TO REDUCE SENTENCE HEARING
BEFORE THE HONORABLE MATTHEW J. PERRY, JR.
SENIOR UNITED STATES DISTRICT JUDGE

Appearances:

For the Government: STANLEY D. RAGSDALE, ESQ.
Assistant U.S. Attorney
1441 Main Street, Suite 500
Columbia, SC 29201

For the Defendant: JAMES P. ROGERS, ESQ.
Assistant Federal Public Defender
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Court Reporter: Gary N. Smith, CM
901 Richland Street
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Stenotype/Computer-Aided Transcription

1 THE COURT: All right. I'm entering an order
2 appointing the Office of Federal Public Defender to represent
3 the defendant in this matter, and it is done.

4 Mr. Rogers --

5 MR. ROGERS: Thank you, Your Honor.

6 THE COURT: -- you are on board.

7 MR. ROGERS: Yes, sir.

8 THE COURT: All right. Mr. United States Attorney.

9 MR. RAGSDALE: Thank you, Your Honor, may it please
10 the court. At this time we would call the case of United
11 States versus Latimore Leron Holmes, Criminal Number 3:05-559.

12 Mr. Holmes is present, along with his attorney,
13 Mr. Rogers, and we are here on the government's motion to
14 reduce his sentence pursuant to Rule 35(b) of the Federal Rules
15 of Criminal Procedure.

16 THE COURT: Very good.

17 Ms. Adams, may I have a copy -- well, perhaps I have
18 one here -- the judgment, the amended judgment. All right.
19 The court observes that Mr. Holmes appeared and was sentenced
20 by this court -- all right, Mr. Holmes was sentenced by this
21 court on March 20, 2006, to imprisonment for a period of 60
22 months, together with, of course, the other provisions that
23 were imposed upon him. The requirement of the service of a
24 period of supervised release -- what was that, three years? --
25 and as has just been stated, the government now moves for a

1 downward departure. And I will be glad to hear your reasons
2 and your suggested -- the suggested and the extent of the
3 departure, Mr. Ragsdale.

4 MR. RAGSDALE: Very well. Thank you, Your Honor, may
5 it please the court. Your Honor, what precipitated this motion
6 was there was a trial in Sumter County General Sessions Court,
7 a defendant named Mark McCoy, who goes by the street name of
8 Wise.

9 Mr. Wise was not aware of it, but we had him on our
10 radar screen up here federally, although it looks like now we
11 won't have to prosecute him because he's doing a life sentence
12 in state court, plus five years, thanks to Mr. Holmes, in large
13 part.

14 But as I said, we were looking at him. They have
15 pending federal drug charges in Georgia, and Mr. Wise was
16 facing these state murder charges, murder of an individual with
17 whom he had -- he had encountered this individual, they had
18 crossed paths. He felt like this individual had broken into a
19 store of an -- of a friend of Mr. Wise's, so Mr. Wise ended up
20 killing this person.

21 So, anyway, they didn't have all that great a case
22 against Mr. Wise at the state court level. By happenstance --
23 or, well, what happened was, I received a letter from
24 Mr. Holmes, and it was in -- it was in 2007. I can't remember
25 the month.

1 But in any event, Mr. Holmes said, "I have
2 information regarding the murder that was committed by Mr. Wise
3 and I believe that authorities would be interested in that
4 information."

5 So not knowing the value of it, I passed it on to
6 ATF, to Richard Brown here with the ATF, who followed up and
7 who brought the information that Mr. Holmes provided to the
8 attention of the state authorities.

9 The Sumter County Solicitor's Office, based on
10 hearing that, got a writ and used Mr. Holmes at the trial of
11 Mr. Wise. Catherine Fant was the assistant solicitor in that
12 case. I asked her to prepare a summary of Mr. Holmes'
13 testimony and its value in those proceedings.

14 And it's very brief, so I will hand that up to the
15 court rather than read it. But I think the court will get from
16 this the critical value he provided in the case.

17 THE COURT: Thank you. I would like -- Mr. Rogers --

18 MR. ROGERS: I have a copy.

19 THE COURT: You have a copy of it?

20 MR. ROGERS: Yes, Your Honor.

21 THE COURT: All right. I'm entering this letter as a
22 part of the record.

23 And Mr. Ragsdale, you -- I'm going to invite further
24 comments by you concerning any suggested extent of the
25 departure that you would now recommend.

1 MR. RAGSDALE: Yes, sir, Your Honor. As the court
2 has observed from this letter, Mr. Holmes was a really critical
3 witness for the state.

4 THE COURT: Yes.

5 MR. RAGSDALE: And assisted -- he was the only
6 eyewitness. I remember the days that Mr. Rogers and I were in
7 state court, and some of the evidence that they would have in
8 cases. But he was obviously a very important witness against a
9 very dangerous individual. As a result of that, Mr. Wise
10 received a sentence of life plus five years.

11 So based on that and that alone, I sought authority
12 from my office, and received authority, to recommend that
13 Mr. Holmes' sentence be cut in half; basically from 60 months
14 to 30 months.

15 Now, I would also mention, in my duty of candor to
16 the court, that I overlooked -- in my internal request, the
17 internal office deliberations, and the ATF agent brought it to
18 my attention this afternoon -- Mr. Holmes provided additional
19 assistance that was not part of my calculation or
20 recommendation.

21 He provided assistance against an individual named
22 Emil Eaglin, who I prosecuted a couple of years ago, and he
23 also cooperated in the Georgia prosecution -- or the Georgia
24 case against Mr. Wise, and I was not aware of that until this
25 afternoon.

1 But the information that Mr. Holmes provided against
2 Mr. Wise on the Georgia drug cases assisted in getting Mr. Wise
3 indicted federally in Georgia. So, I didn't take that into
4 account. I just wanted to bring that to the court's attention,
5 the additional cooperation. I do have the authority, based on
6 his state court involvement, to recommend 30 months.

7 THE COURT: But he has rendered further assistance?

8 MR. RAGSDALE: Yes, sir, but I did not -- quite
9 frankly, I did not take that into account. But Richard Brown,
10 who's happy to enthusiastically support the recommendation for
11 a reduction of sentence here, if the court would want to hear
12 from him --

13 THE COURT: Yes, I would be pleased to hear from him.
14 And Mr. Rogers, do you need any --

15 MR. ROGERS: We briefly talked and I'm confident what
16 he says will be in my client's best interest.

17 THE COURT: Very good. All right.

18 MR. RAGSDALE: Would the court care to hear from the
19 agent?

20 THE COURT: Yes, I would be pleased to.

21 AGENT BROWN: Hello, Your Honor.

22 THE COURT: Yes.

23 AGENT BROWN: Mr. Holmes has been very valuable --

24 THE COURT: Yes. And you are Mr. --

25 AGENT BROWN: Richard Brown, sir, with ATF.

1 THE COURT: Yes, all right. Proceed.

2 AGENT BROWN: Yes, sir. He had a lot of historical
3 drug information that was very important in getting Mr. Mark
4 McCoy, a/k/a Wise, indicted in Georgia. I'm the case agent on
5 that.

6 I have been looking at Mr. McCoy for a very long
7 time. He's very violent, very dangerous. There was a lot of
8 threatening of witnesses and witness tampering prior to his
9 state trial. Very dangerous individual that Mr. Holmes was
10 very important in getting off the street.

11 And like I said, also with the case against Emil
12 Eaglin, important information there. And then there's also a
13 lot of information that he provided that -- individuals I
14 know -- there's one that is under indictment out of Florence,
15 federally indicted on a drug conspiracy. I believe his
16 information will help in that case whenever it does go to
17 court, as well as a bunch of other individuals that he may
18 potentially be able to cooperate on later on down the line.

19 MR. RAGSDALE: And Mr. Brown was involved in the
20 state court prosecution. I believe he testified to the jury
21 about what proffer agreements are. So he was involved and
22 understands that the solicitor was very appreciative of
23 Mr. Holmes' testimony and evidence in that case.

24 THE COURT: Very good. Thank you.

25 AGENT BROWN: Thank you, Your Honor.

1 MR. ROGERS: May it please, Your Honor.

2 THE COURT: Mr. Rogers.

3 MR. ROGERS: Your Honor, I think that based on
4 everything that Mr. Holmes has done and all the assistance that
5 he has provided, the government and the state, I would ask you
6 to consider a sentence of time served.

7 As Mr. Ragsdale indicated, he had already gotten
8 authority, based on Mr. Holmes' assistance in the state court
9 matter in Sumter, to get a sentence down to 30 months.

10 Those efforts by Mr. Holmes were over and above. As
11 you can tell by Assistant Solicitor Fant's letter, that
12 Mr. Holmes was a crucial witness in that murder trial, that he
13 was the only eyewitness. And not only that, he helped persuade
14 another witness to come forward and give testimony for the
15 government.

16 So, those two things, according to Assistant
17 Solicitor Fant, greatly increased her ability to prosecute
18 Mr. McCoy. So, based on that information, Mr. Ragsdale was
19 able to get approval down to 30 months.

20 I believe the additional information against
21 Mr. Wise -- I'm sorry, against Mr. McCoy -- that resulted in
22 the indictment in Georgia, as well as the information that
23 Mr. Holmes has already provided against Mr. Eaglin, and based
24 on what I have been told, which resulted in an increased
25 sentence for Mr. Eaglin, would warrant a sentence of time

1 served.

2 It's not often that I as a defense attorney will have
3 positive things to say about an increased sentence, but in this
4 instance, because it will inure to the benefit of Mr. Holmes, I
5 think that testimony is worth an additional 30 months. And I
6 would ask the court to consider -- I mean -- yes -- that
7 testimony and that information is worth an additional 30
8 months. Therefore I would ask the court to respectfully
9 consider reducing Mr. Holmes' sentence to time served, as well
10 as reducing his supervised release. As I understand now it's
11 four years supervised release.

12 THE COURT: It's four years?

13 MR. ROGERS: Four years, based on the -- based on the
14 J and C I'm reading. So, for those reasons, Your Honor, I
15 would ask you to rule for time served.

16 MR. RAGSDALE: Beg the court's --

17 THE COURT: Does the government have a reaction to
18 that request?

19 MR. RAGSDALE: I beg the court's indulgence one
20 moment?

21 THE COURT: Yes. Yes.

22 MR. ROGERS: In light of Mr. Ragsdale's clarification
23 of Mr. Holmes' position, I understand now that he only has 24
24 months left to serve. So I would ask the court to reduce his
25 sentence to reflect -- to reduce that 24 months so that he

1 would not have to serve any more time.

2 THE COURT: Now, your original request was that the
3 amended sentence be that of a sentence to time served?

4 MR. ROGERS: That's correct. So, I'm asking the
5 court to reduce an additional 24 months, at this time, as of
6 today, so that as a practical matter he would not have to serve
7 any more time. He has 24 months more to serve --

8 THE COURT: Well, wouldn't time served, assuming I
9 accepted your request, accomplish that?

10 MR. ROGERS: Yes, sir.

11 THE COURT: All right. Does the government have any
12 reaction to that request?

13 MR. RAGSDALE: No, sir.

14 THE COURT: All right. You may bring your client
15 forward, Mr. Rogers.

16 Mr. Holmes, refresh me, please, how old are you now?

17 THE DEFENDANT: 33.

18 THE COURT: How much education have you had?

19 THE DEFENDANT: 12 years. I took a lot of courses,
20 you know, in the different prisons I have been to. A lot of
21 what they call -- I forgot the name -- programming, get
22 certificates where you program computer classes, small
23 appliances, inside out, dealing with outside world, community,
24 things like that. I took about 24 of them while I was in.

25 THE COURT: What family do you have?

1 THE DEFENDANT: Right here? Got my aunt --

2 THE COURT: Well, I want to know, are your parents
3 living --

4 THE DEFENDANT: No, my mother --

5 THE COURT: -- are you married?

6 THE DEFENDANT: -- my mother is dead. I got my
7 future wife with me here, my aunt, my grandfather, and my other
8 aunt.

9 THE COURT: I see. Have you got brothers and
10 sisters?

11 THE DEFENDANT: Yeah, I got one brother. Kids, six
12 kids. One brother. Father is still living. He's in and out
13 of my life a little bit.

14 THE COURT: What is your occupation? I know, of
15 course, you have been in custody now for a while, and I need to
16 know, what do you do for a living?

17 THE DEFENDANT: Well, I used to sell drugs for a
18 living, but now -- I mean, we got a family business that my
19 aunt and them running, and I'm getting back out here to get in
20 and help them run it --

21 THE COURT: What is the nature of that business?

22 THE DEFENDANT: It's a convenience store slash
23 restaurant.

24 THE COURT: Now you say your previous occupation has
25 been that of dealing in drugs?

1 THE DEFENDANT: Yes, Your Honor, it was.

2 THE COURT: Do you now realize that that was a bad
3 choice?

4 THE DEFENDANT: Oh, yes, sir. It was a very bad
5 choice.

6 THE COURT: Do you realize that the congress has
7 passed laws prohibiting engaging in drug trafficking?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: And has laid out very strict and very
10 serious consequences. Do you realize that?

11 THE DEFENDANT: Yes, Your Honor, sir, I do.

12 THE COURT: In imposing the sentence upon you, of
13 course, this court acted with respect to and in accordance with
14 not only the statute, but in accordance with the guidelines
15 that governed the disposition of your case at that time.

16 The guidelines at that time were mandatory. They are
17 no longer mandatory, they are now advisory. But even so, the
18 court is required to pay attention to them.

19 So dealing in drugs is ill advised. Drugs can --
20 well, they are serious. Dealing in drugs is very, very
21 serious. Do you have any children?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: How many?

24 THE DEFENDANT: Six.

25 THE COURT: Six children?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: How old are they?

3 THE DEFENDANT: 17, 14, 13, 13, 10, and two.

4 THE COURT: Well, you haven't set a very good example
5 for them, have you?

6 THE DEFENDANT: No, sir.

7 THE COURT: You realize, of course, that -- well, you
8 have already indicated that you realize that your involvement
9 in the drug field has been a mistake?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Now I know you are and have been in
12 custody for quite some time. Do your children go to school?

13 THE DEFENDANT: Yes, sir, all except for one of them,
14 the two-year-old.

15 THE COURT: How old is that child?

16 THE DEFENDANT: Which one? The one that doesn't go
17 to school?

18 THE COURT: The one that does not go to school?

19 THE DEFENDANT: Two years.

20 THE COURT: Oh, two years. Okay. You agree that
21 those children need to go to school?

22 THE DEFENDANT: Yes, sir, school and college.

23 THE COURT: And that they need to get as much
24 education as they can?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you agree that if they follow your
2 example, they will suffer serious consequences?

3 THE DEFENDANT: Yes, sir, that's my old example.
4 Won't follow that one.

5 THE COURT: You are in this court today wearing a red
6 suit. You, I would imagine, do not wish to spend the rest of
7 your life wearing red suits appearing before judges?

8 THE DEFENDANT: No, sir.

9 THE COURT: Do you agree that you ought to provide
10 guidance for your children?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: And try and prohibit them from entering
13 into that field?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Now, of course, you know that you have
16 got a record that is going to create a problem for you out in
17 the community?

18 THE DEFENDANT: Yes, sir, I know.

19 THE COURT: Are you going to try to live down that
20 record?

21 THE DEFENDANT: I sure don't plan on getting no more
22 record, that's for sure.

23 THE COURT: Where are you going to live, if -- when
24 and if you are released?

25 THE DEFENDANT: Where I would live?

1 THE COURT: Yes.

2 THE DEFENDANT: Me and my future wife have a place.

3 THE COURT: She has a place?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: You are in a fortunate position in that
6 the government has come before the court and has reported on
7 the substantial assistance that you have rendered the
8 government and the state authorities. Except for that, I would
9 not be able to do anything for you. Do you understand that?

10 THE DEFENDANT: Yes, sir, I understand that.

11 THE COURT: Do you -- are you going to demonstrate to
12 the government that you are worthy of the efforts that are
13 being made in your behalf?

14 THE DEFENDANT: Oh, yes, sir.

15 THE COURT: I have the request made by your attorney,
16 Mr. Rogers, of the Federal Public Defender's Office, that the
17 amended sentence be one that will release you from further
18 confinement. I can only assume that you want me to do that,
19 don't you?

20 THE DEFENDANT: Yes, sir, I would like for you to do
21 it, yes, sir.

22 THE COURT: Are you going to try and live up to what
23 you have been saying to me?

24 THE DEFENDANT: Yes, sir, try my best.

25 THE COURT: Now you have mentioned that you have

1 members of your family -- did you say your aunt and -- who
2 else?

3 THE DEFENDANT: Two of my aunts, my future wife, and
4 my grandfather.

5 THE COURT: And grandmother?

6 THE DEFENDANT: Grandfather.

7 THE COURT: Grandfather?

8 THE DEFENDANT: Yes, sir, right there (indicating).

9 THE COURT: My sense is they are kind of depending on
10 you at this moment to demonstrate that you are worthy of all
11 the efforts that are being made in your behalf.

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you appreciate what they are doing?

14 THE DEFENDANT: Oh, yes, sir, greatly.

15 THE COURT: Are you prepared to demonstrate to them
16 that you are now capable of living a law-abiding life?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And that you will endeavor to become a
19 productive law-abiding citizen?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: You make that promise to this court?

22 THE DEFENDANT: Yes, sir, I make that promise.

23 THE COURT: Anything further, Mr. Rogers?

24 MR. ROGERS: No, Your Honor, I don't believe so.

25 THE COURT: Anything further for the government?

1 MR. RAGSDALE: No, sir, Your Honor. Thank you.

2 THE COURT: All right. I grant the government's
3 motion for a downward departure, and the court will grant the
4 request of the defendant that Mr. Holmes' amended sentence --
5 the sentence previously imposed is hereby amended -- or rather
6 the sentence previously imposed is hereby vacated and the
7 defendant is hereby sentenced to a term of time served. Time
8 served. The other provisions of the sentence previously
9 imposed remain in effect --

10 Now, you made a request with respect to the
11 supervised release portion, Mr. Rogers?

12 MR. ROGERS: Yes, Your Honor, I was requesting that
13 the four years be reduced as well.

14 THE COURT: Well, I will reduce the four-year
15 supervised release in half. You will have to continue under
16 supervised release and so -- 24 months supervised release.

17 MR. ROGERS: Yes, Your Honor.

18 THE DEFENDANT: Thank you, sir.

19 THE PROBATION OFFICER: Your Honor, did you ask a
20 question of probation?

21 THE COURT: I did not ask --

22 THE PROBATION OFFICER: Okay, I'm sorry.

23 THE COURT: I reduced the supervised release to 24
24 months. Anything further?

25 MR. ROGERS: No, Your Honor. Thank you.

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THE COURT: For the government?

MR. RAGSDALE: No, sir.

THE COURT: Best of luck to you.

THE DEFENDANT: Thank you.

MR. RAGSDALE: Thank you, Your Honor.

THE COURT: Mr. Rogers, I'm signing the judgment, and I understand the effect of that is Mr. Holmes can be released forthwith.

MR. ROGERS: He's going to have to go back to Lexington.

THE COURT: All right. Whatever is necessary, but I have signed the judgment.

MR. ROGERS: Thank you, Your Honor.

(Thereupon, the proceedings were adjourned.)

* * * * *

CERTIFICATE OF REPORTER

I certify that the foregoing is a correct transcript from my stenographic notes in the above-entitled matter.

Gary N. Smith
s/ Gary N. Smith

April 18, 2013

Gary N. Smith, CM
Official Court Reporter
United States District Court
District of South Carolina