

RECEIVED

The state of South Carolina

JUL 13 2015

IN the courts of APPEALS

SC Court of Appeals

Appeal From Horry County

Court of General Sessions

Honorable Benjamin Culbertson, Presiding Judge

Appellate Case No. 2015-000958

State of South Carolina,

Respondent,

v.

Domenic Merino

Appellant

### FACTUAL BASIS FOR APPEAL

I AM Filing this Motion of Appeal on behalf of Pro'se. I WAS CHARGE WITH ARMED Robbery, 1<sup>st</sup> Degree Burglary AND kidNAPPING. These Factual Basis will show that I have not be dealt with fairly by the State. AS you READ you will get A better understanding. If you have ANY question PLEASE CONTACT ME ASAP. I would also like COPIES of everything I sent PLEASE THANK YOU.

HERE COMES THE DEFENDANT (DOMENIC MERINO) PRAY THAT THIS HONORABLE COURT OF APPEALS OF SOUTH CAROLINA ENTERTAINS THIS MOTION OF APPEAL BRIEF, ARGUMENTS, GROUNDS OR FACTUAL BASIS FOR APPEAL. THE ABOVE APPELLANT WAS CHARGED WITH THE REFERENCED WARRANTS FOR 1ST DEGREE BURGLARY, ARMED ROBBERY AND KIDNAPPING ON OCTOBER 16, 2013 IN HORY COUNTY.

LEGAL ARGUMENT

THE DEFENDANT WAS SET FOR TRIAL ON APRIL 20, 2015 IN THE COURT OF GENERAL SESSION, ~~WHEREAS~~ WHEREAS THE COURT SCHEDULED PRETRIAL MOTIONS ON THE SAME DAY; ONE OF THESE MOTIONS WAS A MOTION TO ENFORCE THE PREVIOUS PLEA DEAL. (SEE ATTACHED EXHIBIT). THIS A CLEAR CASE OF PROSECUTORIAL MIS-CONDUCT "BAGELY-VS-STATE," RIDDLER-VS-STATE, "US-VS-SULLIVAN (US-VDC SD IC) 03-1339," US-VS WRIGHT (USDC), WDTN # 95 CB 2008." THE ASSISTANT SOLICITOR TOMAS GROOM TERREL III WITHIN WILLFULLY WITHHELD ONE CARL THOMAS STATEMENT THAT WAS IN HIS POSSESSIONS SINCE JULY 23, 2014. THIS STATEMENT WAS EXCULPATORY IN NATURE, IF THE DEFENSE COUNSEL WOULD HAVE REASONABLY KNOWN ABOUT IT COUNSEL WOULD EFFECTIVELY ENSURED THE ORIGINAL

(2)

PLEA offer that was implemented by ASSISTANCE SOLICITOR TOMAS GROOM TERREL III OR SENIOR ASSISTANT SOLICITOR NANCY LIVESAY ON August 4, 2014 in which the defendant would have received a sentence with recommendations of 13 years. According to ALCONTA-VS-TEXAS AND BRADY-VS-MARYLAND 373 US OF RULE 5 BRADY MOTION "ANY DISCOVERY OF EVIDENCE IS ADDED AFTER THE MOTION HAS BEEN MET SHOULD HAVE IN FACT BEEN DISCLOSED WITH ATTORNEY FOR THE DEFENCE MR. RALPH WILSON JR. AND THE DEFENDANT. IN THE SOUTH CAROLINA RULES OF CRIMINAL PROCEDURE IN REGARDS TO THE MOTION OF DISCOVERY THE STATE IS REQUIRED BY CERTAIN RULES TO GIVE FULL DISCOVER SO THAT DEFENCE CAN EFFECTLY PREPARE FOR PRE-TRIAL AND TRIAL MOTION WEATHER MATERIAL IS EXCULPATORY OR CAN BE UTILIZED FOR IMPEACHING PURPOSES; IN THIS CASE did NOT disclosed complete motion that contained the STATEMENT OF CARL THOMAS in which had ~~been~~ BEEN IN THE SOLICITOR files for 8 months AND 20 days; the defence WAS NOT GIVEN THE ~~opportunity~~ OPPORTUNITY TO REVIEW THE EVIDENCE OF THE STATE AT THAT TIME OF THE PLEA; SEE CASE LAWS OF BOTH STATE AND FEDERAL PROCEEDINGS THAT PROTECTS DEFENDANT FROM PROSECUTORIAL MISCONDUCT AND ESPECIALLY UNFAIR IN A PLEA OFFER SEE "US-VS-WILDER (USDC 5TH CIRCUIT) VACATED SENTENCE DUE TO BREACH OF PLEA,

(3)

"U.S.-VS-GRAY (USDC, ALABAMA) VACATED SENTENCE DUE TO THE GOVERNMENT BREACH OF PLEA; US-VS-MANDALL (USDC 6th CIRCUIT) VACATED SENTENCE DUE TO BREACH OF PLEA; WHEN THE STATE VIOLATES THE DEFENDANT'S CONSTITUTIONAL RIGHT AS THAT WHICH IS GUARANTEED BY THE 6th AMENDMENT IN A BREACH OF PLEA GOES AGAINST THE SPIRIT OF THE MEMORANDUM OF CHIEF JUSTICE TOAL DATED MARCH 1, 2004, NOR SHALL THE DEFENDENT'S COUNSEL VIOLATES SUCH MEMORANDUM DUE TO INEFFECTIVE ASSISTANCE OF COUNSEL" STRICKLAND-VS-WASHINGTON 466 U.S. 668, 104 S.Ct. 2052; 80 L. Ed. 2d 674 1984 U.S. LEXIS 79, 52 U.S.L.W. 4565" ARGUED 1-10-1984 AND DECIDED ON MAY 14, 1984, COUNSEL HOWEVER CAN ALSO DEPRIVE A DEFENDANT OF THE RIGHT TO EFFECTIVE ASSISTANCE SIMPLY BY FAILING TO RENDER ADEQUATE LEGAL ASSISTANCE "CUYLER-VS-SULLIVAN 466 U.S. AT 344 id AT 345-350 IN WHICH THE ACTUALY CONFLICT OF INTEREST ADVERSELY AFFECTING LAWYERS' PERFORMANCE RENDERS ASSISTANCE INEFFECTIVE; AT SENTENCING;" US-VS-WHITE (6th CIR) VACATED SENTENCE DUE TO INEFFECTIVE ASSISTANCE OF COUNCIL;" US-VS-NORMAN (5th CIRCUIT) VACATED SENTENCE DUE TO INEFFECTIVE ASSISTANCE AT SENTENCING; SEE ALSO" ORTIZ-VS-US (USDC PR #99 CV 1519) VACATED DUE TO INEFFECTIVE OF COUNSEL AT TRIAL IN WHICH THE COURT TOOK ACTION IN A CONDITIONAL WRIT OF HABEAS CORPUS RELEASING THE DEFENDANT FROM CUSTODY." STATE OF TN-VS-JAMES RAY BROWN (FAYETTE

(4)

County) conviction vacated due to the involuntary and unknowing plea entered due to counsel's erroneous advice; "In U.S.-vs-Hawkins" (USCA 5th Circuit) 09-10057 and 09-10253, vacated the sentence due to the fact the defendant's guilty plea was involuntary as he was not made aware of the offense, In U.S.-vs-Moreno (9th Circuit) 99-30347 vacated and sentence because plea was unknowing and involuntary. See also in U.S.-vs-Cargil (4th Circuit #94 CR 300) sentence vacated due to prosecutorial misconduct; see also Constitutional Article State-vs-Needs 508 SE 2nd 857 (199). In other cases similar to the above appellant (Domenic Merino) as in U.S.-vs-Gray (USDC 91-3103 violated due process likewise in both state and federal proceeding all evidence that is in nature exculpatory and impeaching is to be disclose is matter of the due process clause for the defendant, thereby violation of such automatically violates the defendant's 5th and 6th Constitutional Amendments as they apply equally to all citizens within the United States Constitution. The appellant "Domenic Merino" has the right to challenge the illegally obtained or with-held evidence especially when law enforcement recklessly enters false information into a warrant and warrant is

⑤  
facially deficient that no reasonable officer could believe it to be valid, SON-VS-UNITED STATES, BROWN-VS-ILLINOIS, U.S.-VS-LOPEZ-GARCIA 565 F.3d 1306, 1315-16 (11th Circuit 2009), FRANKS-VS-DEI 438 U.S. 154, 165 (1978): BEAR IN SUCH CASES OF TECHNICALITIES EXIST AUTOMATICALLY TAINTS THE WEIGHING OF THE SCALES OF JUSTICE THAT CAN PRODUCE AN UNFAVORABLE OUTCOME IN A TRIAL OR PLEA OF GUILT DUE TO SUBSTANTIAL ERROR.

---

THE ABOVE APPELLANT DOMENIC MERINO DID SEEK TO HAVE SEVERANCE BUT WAS DENIED WHICH DIRECTLY VIOLATED THE APPELLANT'S 5TH AND 6TH AMENDMENT; U.S.-V-SALEMEH 152 F.3d 88, 115 (2nd Cir 1998), U.S.-VS-WELLINGTON 754 F.2d 1457, 1466 (9th Circuit 1985), U.S.-VS-ESCALANTE 637 F.2d 1197, 1201 9th Cir 1980, U.S.-VS-MARISCAL, 939 F.2d 1472, 1478 9th Cir 1986) U.S.-VS-SARKISIAN No 98-10241 (9th Circuit 12-3-99).

---

APPELLANT DOMENIC MERINO DID ADVISED ATTORNEY OF THE FALSE STATEMENTS OF THE CO-DEFENDANTS WHO WAS UNDER THE INFLUENCE OF HEROIN (DRUGS).

---

APPELLANT DOMENIC WAS DENIED TWO KEY WITNESSES WHO WAS HIS MOTHER AND SISTER WHO HAD VERY EXCULPATORY AND MITIGATING EVIDENCE FOR THE DEFENCE.

\* DUE PROCESS OF THE DEFENDANT VIOLATED IN CLEAR AND OPEN VIEW.

---

\* VIOLATION OF EQUAL PROTECTION OF THE LAW

---

\* PROSECUTORIAL MISCONDUCT

---

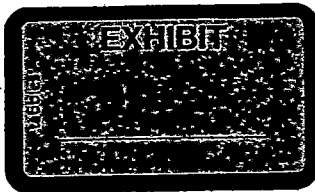
\* INEFFECTIVE ASSISTANCE OF COUNSEL

---

THE APPELLANT DOMENIC MERINO PRAY THAT THIS APPELLATE COURT OF APPEALS OF SOUTH CAROLINA ENTERTAIN THESE GROUNDS FOR MOTION OF APPEAL AND GRANTS THE REQUIRED REMEDY BY LAW:  
THANKS IN THE ADVANCE FOR THE ESSENTIAL HELP AS RECIPENT (APPELLANT) RESPECTFULLY SUBMITTS THIS BRIEF FOR APPEAL:

\_\_\_\_\_  
2015 Domenic Merino  
APPELLANT

\_\_\_\_\_  
WITNESS



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

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

**MOTION TO ENFORCE THE  
 PREVIOUS PLEA OFFER**

RECEIVED

JUL 13 2015

SC Court of Appeals

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

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

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

through Assistant Solicitor Terrell on February 11, 2014.

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

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

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

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

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

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

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

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

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

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

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

Respectfully submitted this 14<sup>th</sup> day of April, 2015,



Ralph J. Wilson, Jr.

WILSON & WILSON LAW GROUP

P.O. Box 2460

Conway, S.C. 29526

P (843) 381-0765 F(843) 381-0767

Attorney@RalphWilsonLaw.com

*Attorney for the Defendant*



DOMENIC MERINO #350098  
Fl. B 2218  
L.C. I  
990 wisacky Highway  
Bishopville, SC 29010



South Carolina Court of Appeals  
P.O. Box 11629  
Columbia, SC 29211

**RECEIVED**

JUL 13 2015

SC Court of Appeals

THE DEPARTMENT OF CORRECTIONS HAS NOT CERTIFIED  
THIS ITEM. THEREFORE, THE DEPARTMENT DOES NOT  
ASSUME RESPONSIBILITY FOR ITS WRITTEN CONTENTS.  
LEE CORRECTIONAL INSTITUTE  
SC DEPARTMENT OF CORRECTIONS

RECEIVED

JUL 9 2015

LEE CI MAIL ROOM

 SUSTAINABLE  
FORESTRY  
INITIATIVE  
Certified Fiber Sourcing  
[www.sfiprogram.org](http://www.sfiprogram.org)

THIS ENVELOPE IS RECYCLABLE AND MADE WITH 30% POST CONSUMER CONTENT 

© USPS 2013