

STATE OF SOUTH CAROLINA

IN THE SUPREME COURT

Appeal from Abbeville County

Donald B. Hocker, Circuit Court Judge

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S.C. Supreme Court

HERMAN D. BATTLES,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-001207

A P P E N D I X

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STATE OF SOUTH CAROLINA	)	
	)	
COUNTY OF GREENWOOD	)	COURT OF GENERAL SESSIONS
State of South Carolina,	)	
	)	
Plaintiff,	)	
v.	)	Case Nos.
	)	2010-GS-01-00225
	)	2010-GS-01-00228
Herman David Battles,	)	
	)	
Defendant.	)	

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on January 31, 2013, before The Honorable Frank R. Addy in the Greenwood County Courthouse, 528 Monument St., Greenwood, SC 29646; attended by counsel as follows:

APPEARANCES:

Cecil Yates Brown, Jr., Esq.,
Appearing for The State.

W. Townes Jones, IV, Esq.,
Appearing for Defendant

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I-N-D-E-X
JANUARY 31, 2013
(STATE OF SOUTH CAROLINA v. HERMAN DAVID BATTLES)
(PLEA HEARING)
(2010-GS-01-00225, 00228)

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E X H I B I T S
IDENTIFICATION ENTERED
NO EXHIBITS OFFERED

State of South Carolina v. Herman David Bowers
Case No. 2010-02-01-00232, 2010-02-01-00238
Hearing of January 31, 2013
Before The Honorable Frank R. Adams

2-14-D-E-X
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(STATE OF SOUTH CAROLINA v. HERMAN DAVID BOWERS)
(JURY TRIAL)
(2010-02-01-00232, 00238)

WITNESSES

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3

HERMAN DAVID BOWERS

4

EXAMINATION BY THE COURT

11

EXAMINATION BY THE COURT (REBUTED)

12

EXAMINATION BY THE COURT (REBUTED)

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STATE EXAMINATION OF BOWERS BY MR. BROWN

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REPORTER'S CERTIFICATION

STATE OF SOUTH CAROLINA

OFFICIAL

IDENTIFICATION

NO EXHIBITS OFFERED

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1 **THE COURT:** All right, Solicitor, go ahead.

2 **MR. YATES:** Your Honor, may it please The Court?

3 **THE COURT:** Yes, sir.

4 **MR. YATES:** Stands before you is Herman David
5 Battles on indictment 10-GS-01-225 and 10-GS-01-228.
6 He's waiving -- he is, uh, waiving jurisdiction to where
7 he is -- this is a (sic) Abbeville case, um, and he's
8 coming here to Greenwood today to plead to Burglary First
9 and also to Armed Robbery.

10 He was arrested by Abbeville County Sheriff's Office
11 and he's represented by Mr. Townes Jones.

12 This is a negotiated sentence of twenty years. In
13 consideration of his plea, uh, The State would nol pros
14 the remaining charges of an ABHAN, of Possession of a
15 Weapon During a Violent Crime, Conspiracy, and AB- --
16 ABWIK.

17 And also, uh, his sister has a charge of Accessory
18 Before the Fact, Warrant M-510092. That will also be
19 dismissed as a result of this plea today.

20 **THE COURT:** All right, very good. Mr. Jones, you
21 are representing Mr. Battles?

22 **MR. JONES:** I am, Your Honor.

23 **THE COURT:** I am told that he wants to plead guilty
24 to two charges, Burglary in the First Degree and Armed
25 Robbery. Is that correct?

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1 **MR. JONES:** That's correct.

2 **THE COURT:** All right. Have you reviewed with
3 Mr. Battles the potential penalties involved with these
4 offenses, his Constitutional Rights, and, uh, the
5 possible punishment that he's looking at?

6 **MR. JONES:** I have, Your Honor.

7 **THE COURT:** Do you agree with his decision to plead
8 guilty?

9 **MR. JONES:** Yes, sir.

10 **THE COURT:** All right. From your investigation of
11 the facts and circumstances surrounding this incident, do
12 you believe that The State possesses sufficient credible
13 evidence to convince a jury of Mr. Battles' guilt beyond
14 a reasonable doubt and that if he were to stand trial his
15 conviction would be probable?

16 **MR. JONES:** I do, Your Honor.

17 **THE COURT:** All right. Mr. Battles, if you would,
18 raise your right hand please, sir.

19 (WHEREUPON, **HERMAN DAVID BATTLES** WAS DULY SWORN AND
20 TESTIFIED AS FOLLOWS:)

21 **HERMAN DAVID BATTLES, EXAMINATION BY THE COURT:**

22 Q Are you Herman David Battles?

23 A Yes.

24 Q Mr. Battles, uh, how old are you, sir?

25 A I'm sixty-six.

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1 Q And how far did you go in school?

2 A I finished high school.

3 Q What kind of work have you done in the past?

4 A Um -- I worked, uh -- I did, uh, foreclosures for
5 different banks. I was in the carpet business for about
6 twenty years, uh -- basically just in and around real
7 estate.

8 Q Okay, so you can read, write?

9 A Yes, sir.

10 Q All right. Mr. Battles, within the last twenty-four
11 hours, have you taken any medication, uh, or any
12 substance that affects your thinking?

13 A No, sir.

14 Q And have you ever suffered from or have you ever
15 been treated from -- for any substance abuse issues,
16 mental health issues, anything concerning your mental
17 faculties?

18 A No, sir.

19 Q All right. Mr. Battles, I'm told that you want to
20 plead guilty to Armed Robbery and to Burglary First
21 Degree; is that correct?

22 A Yes, sir.

23 Q You understand, Mr. Battles, that Burglary First
24 Degree carries between fifteen years to life? You
25 understand that?

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1 A Yes, sir.

2 Q Armed robbery carries between ten years and thirty
3 years. You understand, sir?

4 A Yes, sir.

5 Q Do you understand, Mr. Battles, that these are also
6 eighty-five-percent offenses? They're considered violent
7 and serious. You understand that, sir?

8 A Yes, sir, I do.

9 Q Actually, they're considered most serious.

10 And I'm told that you-all have negotiated a
11 twenty-year straight time sentence. Is that correct,
12 sir?

13 A Yes, sir.

14 Q All right. Mr. Battles, what that means is that you
15 will have to serve eight-five percent of that twenty-year
16 sentence at least before you are eligible for parole. Do
17 you understand that, sir?

18 A Yes, sir.

19 Q And obviously, uh, you're a gentleman of sixty-six-
20 years of age. That's a lot of time for someone of --
21 you're sixty-six to serve. Do you understand that, sir?

22 A Yes, sir.

23 Q Mr. Battles, do you agree with that twenty-year
24 sentence?

25 A Yes, sir.

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1 Q Mr. Battles, The State alleges, in indictment 228
2 that you did, in Abbeville County, on October the 14th
3 2009, willfully and unlawfully, while armed with a deadly
4 weapon or while alleging either by acts or words you were
5 armed with the -- uh, you were armed while using a
6 representation of a deadly weapon or any object which a
7 person during -- present during the commission of a
8 robbery reasonably believed to be a deadly weapon, that
9 you did feloniously take from the person or presence of
10 Scott Tyman (phonetic), by means of force or
11 intimidation, goods or moneys described as follows. A
12 cell phone, a checkbook, one check written for the amount
13 of eighty-two-thousand dollars, two sets of keys, and
14 other personal paperwork with the intent to deprive the
15 owner permanently of such property.

16 How do you plead to that charge?

17 A Guilty, sir.

18 Q Okay. Indictment 225 alleges that you did, in
19 Abbeville County, on or about the 14th of October 2009
20 willfully and unlawfully enter a dwelling without the
21 consent and with the intent to commit a crime therein
22 when in effecting entry or while in the dwelling or in
23 immediate flight therefrom, you or another participant in
24 the crime was armed with a deadly weapon or explosive or
25 caused physical injury to a person who was not a

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1 participant in the crime or used or threatened the use of
2 a dangerous instrument or displayed what was or appeared
3 to be a knife, pistol, revolver, rifle, shotgun, machine
4 gun, or other firearm. The said dwelling being owned
5 and/or occupied by Scott Tyman, in violation of the laws
6 and against the peace and dignity of The State.

7 How do you plead to that indictment?

8 A Guilty, sir.

9 Q All right. Now, Mr. Battles, you realize that both
10 of these indictments, uh, arise out of charges that took
11 place in Abbeville County, or an incident that took place
12 in Abbeville County. Clearly you're in Greenwood County
13 today. You can waive venue and proceed today or you can
14 have these matters heard in Abbeville. Would you rather
15 proceed today or---

16 A Yes.

17 Q ---have them heard in Abbeville?

18 A I'd like to proceed today, please.

19 Q All right; very good.

20 A Now, Mr. Battles, uh, Mr. Brown is gonna give me the
21 facts in just a moment. When he does that, he'll tell me
22 what he alleges happened. I need you to listen closely,
23 'cause when he's done speaking I'll then turn back to you
24 and ask if you agree that that's what you did. Okay,
25 sir?

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1 A (Nod.)

2 **THE COURT:** Mr. Brown?

3 **MR. YATES:** Thank you, Your Honor. On or about --
4 or, on Wednesday, October 14, 2009, officers received a
5 call, uh, from 911 center stating that, uh, Mr. Scott
6 Tyman had been shot and while en route, deputies were
7 informed, uh, to enter the residence through a back door.

8 When they got there they found Mr. Tyman, uh, tied,
9 uh, with zip-ties around his ankles and handcuffs, uh, on
10 his wrists. Uh -- Mr. Tyman was able to tell the
11 deputies that Mr. Battles and his codefendant, Mr. Brown,
12 had left in a Lincoln, uh -- a Lincoln Town Car and were
13 headed to Greenwood County to cash a particular check
14 that, uh, Mr. Tyman had written out.

15 Based on Tyman's, uh, story of this, uh -- of this
16 case, that morning, uh, he and, uh, Mr. Yarger
17 (phonetic), Mr. Tyman's, uh -- uh, romantic, uh, partner,
18 uh, were at a -- at a café there in Abbeville when, uh,
19 the codefendant and Mr. Battles came in and began talking
20 with them.

21 Uh -- after that conversation, the codefendant,
22 Mr. Brown, left and Mr. Tyman realized that he had left
23 his cell phone at his house at [REDACTED] there in
24 Abbeville County, South Carolina.

25 Uh -- Mr. Tyman goes to his house, and when he

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1 enters his home, Mr. Brown is there with a gun pointed at
2 Tyman and instructed him to get face down on the floor.

3 Uh -- Brown then uses zip-ties to tie his legs up
4 and also duct tape. Uh -- Mr. Tyman is able to break
5 these ties and ran outside. And when he runs outside,
6 Mr. Brown, uh, started shooting and actually hit him in
7 the leg with a 22. Uh -- and also pistol-whipped him,
8 uh, in the head.

9 While Mr. Tyman was laying on the ground, uh, a
10 white male later identified to be Mr. Battles drove up
11 the the Lincoln automobile and Tyman, uh, recognized this
12 car from Mr. Battles' sister coming there about three
13 months prior.

14 Uh -- Mr. Battles and Mr. Brown took Mr. Tyman back
15 in the house where they handcuffed him, zip-tied his
16 legs, and also duct-taped him to a, um, column they had
17 in the house.

18 And during this time, uh, ask Mr. Tyman was he
19 expecting anybody to come into the residence. Mr. Tyman
20 instructed that he had a contractor that was supposed to
21 be there later on in the day. Uh -- they provided
22 Mr. Tyman, uh, the cell phone. Uh -- as Mr. Brown was
23 searching for the cell phone, Mr. Battles, according to
24 Mr. Tyman, uh, had the gun and held it on Mr. Tyman.

25 Uh -- instructed Mr. Tyman to call the contractor to

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1 let him know not to come, and then Mr. Battles told Tyman
2 he was there to collect eighty-two-thousand dollars from
3 Yarger.

4 Uh -- Yarger, who was the, uh -- Mr. Tyman's friend,
5 was not there, but they, uh -- Mr. Tyman agreed to write
6 a check for eighty-thousand dollars to Mr. Battles, uh,
7 which he did. Uh -- wrote a check for that amount, um,
8 payable at Wachovia in Greenwood.

9 Mr. Battles had Mr. Tyman call Wachovia to make sure
10 that they could, uh, fulfill that check. And at that
11 point, Mr. Battles and Mr. Brown left with, uh,
12 Mr. Tyman's wallet, the check, and also other, uh,
13 possessions belonging to Mr. Tyman, and made their way to
14 Greenwood County to the Wachovia, uh, leaving Mr. Tyman
15 in duct tape and, uh, handcuffs and -- and the zip-tie on
16 the floor.

17 Mr. Tyman was able to get loose, call 911, gave a
18 description of the vehicle and Highway Patrol was able to
19 make that stop as they entered Greenwood County.

20 **THE COURT:** All right. Does Mr. Battles have any
21 substantial prior criminal history that you're aware of,
22 Mr. Brown?

23 **MR. YATES:** He has, uh, a charge out of Texas; it's
24 Texas Common -- or, Tex- -- Texas Strong-arm Robbery.

25 He also, uh, has a pending charge in Florida, which

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1 I know he has a hold, uh, out of Florida.

2 And, uh, other minor charges here and there, uh,
3 throughout his -- his life.

4 **THE COURT:** All right. But the Florida charge is
5 pending, there's a hold on him---

6 **MR. YATES:** That's correct.

7 **THE COURT:** ---for that charge. Okay.

8 **MR. YATES:** And that is, as -- as I understand, is
9 very similar to this charge. It's a -- it appears to be
10 a Strong-arm Robbery.

11 **HERMAN DAVID BATTLES, EXAMINATION BY THE COURT (RESUMED):**

12 Q All right. Now, Mr. Battles, you heard what The
13 State alleged happened on October the 14th of 2009 in
14 Abbeville. Is that what happened, sir?

15 A Yes, sir.

16 Q All right. Now, you realize, Mr. Battles, that you
17 have pending Florida charges and we're not taking those
18 up today. I don't have jurisdiction over those; you
19 understand?

20 A Yes, sir.

21 Q And I can't tell you when those are gonna be
22 resolved. It may -- they may wait until you're ready to
23 be released from South Carolina before they come and pick
24 you up, but I've got no power over that. You understand,
25 sir?

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1 A Yes, sir.

2 Q And, Mr. Battles, I need to review with you rights
3 that you're giving up by pleading guilty. If at any time
4 you have any question about anything that I say to you,
5 stop me and I'll let you talk to Mr. Jones as long as you
6 want to. Okay, sir?

7 A Yes, sir.

8 Q Now, Mr. Battles, um, you do realize, of course,
9 that you have the right to a jury trial on this charge;
10 you don't have to plead guilty. You understand that,
11 sir?

12 A Yes, sir.

13 Q In a jury trial, Mr. Battles, you and Mr. Jones
14 would pick twelve people from Abbeville County; they
15 would be the jury. The State would bring the witnesses
16 that they have against you and you and Mr. Jones would
17 have the ability to confront and cross-examine those
18 witnesses. Do you understand that, sir?

19 A Yes, sir.

20 Q What that means, Mr. Battles, is that you and
21 Mr. Jones would be able to ask those witnesses any
22 question that you want to ask them; any question that was
23 relevant to any issue involved in this case. Do you
24 understand, sir?

25 A Yes, sir.

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1 Q Now, in a jury trial, Mr. Battles, you would have no
2 burden of proof. The burden would always be on The State
3 to prove your guilt beyond a reasonable doubt. Do you
4 understand that, sir?

5 A Yes, sir.

6 Q However, if you wanted to, you could call witnesses
7 to testify for you. If witnesses were hesitant to come
8 into Court, Mr. Battles, you understand that you could
9 use the subpoena power of The Court to force those
10 witnesses to come in. Do you understand?

11 A Yes, sir.

12 Q They would not have a choice as to whether or not to
13 come into Court, they would have to come into Court if
14 you wanted them there. Do you understand that, sir?

15 A Yes, sir.

16 Q Additionally, Mr. Battles, in a jury trial, if you
17 wanted to take the witness stand in your own defense, you
18 would be free to do that. Do you understand, sir?

19 A Yes, sir.

20 Q You would be subject to the same rules of
21 cross-examination as any other witness, meaning you could
22 be impeached for any crimes that I found, uh, were --
23 were qual- -- qualified for impeachment; any crimes of
24 dishonesty or that carried more than a year in prison
25 and, uh, the prejudicial effect was -- was not outweighed

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1 by the probative value. You understand that?

2 A Yes, sir.

3 Q So there -- you could be impeached, possibly, with
4 prior crimes, but at the same time, I might conclude that
5 The State could never go into that. Do you understand?

6 A Yes, sir.

7 Q The important thing for you to know, though, is that
8 you would be able to tell the jury your side of the
9 story; tell them in your own words what happened or did
10 not happen in the jury trial. Do you understand that,
11 Mr. Battles?

12 A Yes, sir.

13 Q However, sir, in a jury trial, if you did not want
14 to testify, I would tell the jury that they could not
15 hold that against you or use it as evidence of guilt.
16 Whether or not you chose to testify would be solely up to
17 you to determine. Mr. Jones couldn't make you testify,
18 The State couldn't make you testify, The Court couldn't
19 force you to testify.

20 So, if you didn't want to testify, I'd tell the jury
21 they couldn't consider that in any way. That's your
22 Fifth Amendment Right against self-incrimination. Do you
23 understand that, Mr. Battles?

24 A Yes, sir.

25 Q Obviously, you give that up when you plead guilty in

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1 that you admit that you did, in fact, commit this crime.

2 Do you understand, sir?

3 A Yes, sir.

4 Q In a jury trial, Mr. Battles, I would also instruct
5 the jury on your presumption of innocence.

6 You understand, though, if you plead guilty, you
7 waive that presumption of innocence. And the way a
8 presumption of innocence works, Mr. Battles, is that
9 right now, in the eyes of the law, because I've not
10 accepted your plea yet and because you have not been
11 convicted at trial, the law considers you to be an
12 innocent man as you stand here today. You understand
13 that, sir?

14 A Yes, sir.

15 Q And if you plead guilty, you waive that presumption
16 of innocence. You understand, Mr. Battles?

17 A Yes, sir.

18 Q Now additionally, sir, in a jury trial, you would be
19 able to challenge any evidence that The State has against
20 you. I've got no way of knowing what evidence they have
21 against you. You understand that, Mr. Battles?

22 A Yes, sir.

23 Q I don't know if you gave a statement to the police.
24 I don't know if they searched your person or your
25 property and found evidence in this particular case. I

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1 don't know what they've got against you. If you plead
2 guilty, though, you waive your right to challenge any
3 statement that you gave to the police, the voluntariness
4 of any statement, whether Miranda Rights were given to
5 you if you gave that statement. You waive your right to
6 challenge any search that was conducted of your person or
7 your property. Do you understand that, Mr. Battles?

8 A Yes, sir.

9 Q Okay. Additionally, in a jury trial, sir, do you
10 understand that you could present any defense that you
11 might have to this charge?

12 And again, I've got no way of knowing if you have
13 any defense or not; I hope that's something you've
14 discussed with Mr. Jones. Is that right?

15 A Yes.

16 Q You understand, though, if you plead guilty, you
17 waive your right to present any defense. A defense could
18 be something as simple as I wasn't there; I wasn't there
19 when this crime happened. You understand that, sir?

20 A Yes, sir.

21 Q Or, this is all just some big misunderstanding.
22 Or -- I don't know, but, you know, you understand, if you
23 plead guilty, you don't get to present a defense?

24 A Yes, sir.

25 Q Now, Mr. Battles, all these are very, very important

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1 rights guaranteed to you under the laws of our State and
2 our Country. Are you sure you want to waive them and
3 plead guilty?

4 A Yes, sir.

5 Q All right.

6 **THE COURT:** Now, Mr. Jones, have -- are you
7 satisfied with the discovery response from The State in
8 this case?

9 **MR. JONES:** Your Honor, uh, I am satisfied. I will
10 let The Court know that Mr. Battles and I sat down with,
11 uh, Solicitor Brown -- Yates Brown -- uh, and, uh,
12 Investigator Strickland with the Solicitor's Office along
13 with Marion Johnson, Chief Deputy of the Abbeville
14 Sheriff's Department, uh, about a week-and-a-half ago and
15 reviewed each and every piece of evidence that had been
16 collected by the Sheriff's Department along with SLED and
17 ATF, uh, in the case. Uh -- we reviewed each piece of
18 evidence, we opened sealed packages, um, and -- and went
19 through the evidence that was collected at --
20 --, the evidence that was collected from the vehicle
21 that, uh -- that, uh, Mr. Battle (sic) allegedly was
22 occupying when his arrest was effected, and, um, I --
23 we're satisfied that they have presented to us everything
24 they had in their possession, Judge.

25 Uh -- there was -- there were no -- apparently, none

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1 of the evidence had been, uh, sent down for forensic
2 examination, but, uh -- so there were no reports that
3 related to that. But, there was nothing there that --
4 that we felt, uh, would have benefited him, uh, had we,
5 uh, insisted that it be done prior to, uh, making a
6 decision about whether to plead or go forward to trial.

7 So, yes, to answer your question simply, we're
8 satisfied with, uh -- uh, their, uh, presentation of
9 discovery.

10 I have a trial notebook here that contains, uh,
11 about four inches of written material that came from
12 discs. I have a, uh -- uh -- even was offered the --
13 the, uh, notes that were made by, uh -- uh, the ATF agent
14 who interviewed, uh, Mr. Tyman. Uh -- uh, Mr. Tyman
15 didn't give a written statement, but -- but he did
16 give -- there were notes made of -- of his statement
17 which were helpful to us in making our decision, uh,
18 having prior knowledge of what Mr. Tyman, as a witness,
19 would testify to at trial.

20 So, uh, again, to answer your question simply, yes,
21 sir.

22 **THE COURT:** Okay.

23 **HERMAN DAVID BATTLES, EXAMINATION BY THE COURT (RESUMED):**

24 Q Now, Mr. Battles, you've had a chance to fully
25 review the discovery and you're satisfied?

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1 A Yes, sir.

2 Q Mr. Jones tells me that certain items have not been
3 tested by the, uh, Forensics Unit at SLED. You're still
4 okay to go forward today?

5 A Yes, sir.

6 Q Now, Mr. Battles, I have some questions to ask you
7 about how Mr. Jones, uh, has represented you. Are you
8 satisfied with Mr. Jones' help to you?

9 A Yes, sir.

10 Q And has he met with -- has he done everything you
11 want him to do?

12 A Yes, sir.

13 Q And have you talked with him for as often as you've
14 wanted, and for as long as you've wanted so that he can
15 properly and adequately represent you on these charges?

16 A Yes, sir.

17 Q Do you need any more time to talk to Mr. Jones?

18 A No, sir.

19 Q Okay. And have you understood all your
20 conversations with him?

21 A Yes.

22 Q Is there anything that he has failed to do that you
23 want him to do?

24 A No.

25 Q Okay. So you're totally satisfied?

State of South Carolina v. Herman David Battles
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1 A Yes.

2 Q Now, Mr. Battles, aside from the twenty-year, uh,
3 recommendation and the dismissal of those charges that
4 Mr. Brown mentioned at the beginning of the plea, has
5 anyone promised you anything else or held out any other
6 hope of reward to get you to plead guilty?

7 A No, sir.

8 Q And has anyone threatened you, forced you, tried to
9 pressure you or intimidate you to get you to plead
10 guilty?

11 A No, sir.

12 Q Do you have any complaints to make against the
13 Solicitor's Office, Law Enforcement, Court personnel,
14 anyone associated with this case?

15 A No, sir.

16 Q And, have you had enough time to make up your mind
17 on how you want to proceed with these charges?

18 A Yes, sir.

19 Q Do you need any more time to think about this?

20 A (Nod.)

21 Q Now, Mr. Battles, are you pleading guilty of your
22 own free will?

23 A Yes, sir.

24 Q Are you pleading guilty because you committed this
25 offense?

State of South Carolina v. Herman David Battles
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22

1 A Yes, sir.

2 Q And have you understood all my questions to you
3 today?

4 A Yes, I have.

5 Q Have you been truthful in your responses?

6 A Yes, sir.

7 Q And has anyone suggested to you how you should
8 answer my questions other than to just tell me the truth?

9 A No, sir.

10 Q All right. Have you been truthful in all of your --
11 all -- all your answers to my questions?

12 A Yes, sir.

13 **THE COURT:** All right, I do find that there is a
14 substantial, factual basis for these pleas. They are
15 freely, voluntarily, knowingly, and intelligently made.

16 Mr. Battles is happy with the services of Mr. Jones;
17 I'll be happy to accept this plea.

18 All right, um, Solicitor, I note the victim is not
19 here. Uh -- is there anything that he wanted me to know
20 or are you satisfied with what's been put on the record?

21 **MR. YATES:** Judge, uh, I talked with him, uh, last
22 night; uh, he was prepared to come for trial. Um -- what
23 I read to you was his statement of what happened that
24 day, and, uh, we have talked to him about this negotiated
25 plea and he's fully satisfied without being present.

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1 **THE COURT:** All right; very good. Mr. Jones, happy
2 to hear from you concerning Mr. Battles, sir.

3 **MR. JONES:** Well, thank you, Judge. I --
4 understanding it's a negotiated sentence, we appreciate
5 The Court's accepting the plea and sentencing
6 accordingly.

7 I would like The Court to, uh, hear briefly, uh,
8 some matters in mitigation---

9 **THE COURT:** Certainly.

10 **MR. JONES:** ---uh -- uh, for the record. I'd also
11 like to point out that, uh, under -- under South Carolina
12 law, Mr. Battles should be entitled to the time that
13 he's already served, uh, to go towards, uh, the -- the --
14 the -- his sentence, and we would advise The Court at
15 this time our records would indicate that amounts to two
16 hundred and eighty-two days. He was incarcerated, uh,
17 for these charges on two separate occasions. On the
18 first occasion, he served fifty-six days. Um -- that was
19 back in the beginning of October of '09. And then, uh,
20 he was released and reapprehended and served two hundred
21 and twenty-six days, uh, since he reapprehension. Uh --
22 and my math gives him two hundred and eighty-two, uh,
23 days that we would be entitled to. So we'd ask The Court
24 make note of that, uh, Your Honor.

25 **THE COURT:** Yes, sir.

State of South Carolina v. Herman David Battles
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Hearing of January 31, 2013
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1 **MR. JONES:** Additionally, with regard to his
2 sister's, uh, warrant, uh -- uh, Solicitor Brown has been
3 kind enough to, uh, represent to me that he intends to go
4 see to it that that warrant is -- is, uh, dismissed
5 and/or nol prosed today -- that M-510092 for Accessory
6 Before the Fact.

7 Uh -- she's in dire need of medical attention and
8 has been apprehensive about seeking what she needs as a
9 result of this warrant. And once it's, uh, dismissed and
10 removed from NCIC, she would feel much, uh, better about
11 entering, uh, the hospital. And so we would like to try
12 to get that done this afternoon if at all possible.

13 Judge, uh, Mr. Battles wanted me to let you know
14 that -- that, you know, it just really got out of hand.
15 At the time that he went to get money that he felt he
16 was owed to his family for the work that they had done
17 for Mr. Yeager and Mr. Tyman, who were in business
18 together -- they were not only, uh, close friends and --
19 and life partners, but they were also in business
20 together. And Mr. Battles' family had a cleaning-up
21 business that they would go in and clean up these, uh,
22 foreclosed, uh, condominiums that -- down in Florida.

23 Um -- the recession hit and Mr. Yeager, uh, shut
24 down his business and -- and left the State of Florida
25 and -- and left a lot people he owed money to in Florida

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1 and moved up to Abbeville.

2 Um -- as a matter of fact, uh, Chapter Seven
3 Bankruptcy proceedings, the trustee being a lawyer, Randy
4 Skinner, in Greenville, um, is -- is seeking the
5 whereabouts of Mr. Tyman because during -- prior to the
6 Bankruptcy being initiated, uh, it is -- it is our belief
7 that some three hundred and ninety-one thousand
8 dollars -- monies that were owed both to, uh, Mr. Battles
9 and -- and other people that had done work for Mr. Yarger
10 and Mr. Tyner (sic) -- were transferred, uh, into an
11 account of Mr., uh, Tyner's (sic). Uh -- one that --
12 that he and Mr. Yeager (sic) had, uh, formed as a -- as a
13 Corporation -- a business Corporation.

14 In any event, they are seeking the whereabouts of,
15 uh, Mr. Tyner (sic). Uh -- we believe that -- that he's
16 somewhere in the San Francisco area, and are assisting
17 the -- the Solicitor's Office can do so within the bounds
18 of -- of the regulations and -- and -- and laws. Assist
19 them in locating because they do have a subpoena they'd
20 like to serve process on him.

21 Uh -- but Mr. Battles went, uh -- uh -- uh, he made
22 two big mistakes. Number one, at the time of this
23 incident he was very ill and was even hospitalized within
24 ten days of his -- of his arrest at the Abbeville
25 Regional Hospital for, uh, significant health issues.

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1 His blood pressure dropped to ninety-nine over seventy,
2 and -- and -- and was -- was very sick.

3 He had hired this young man, Mr. Brown, to assist
4 him in -- in convincing Mr. Yeager (sic) and Mr. Tyman to
5 paying the money that they owed him. And he did not ask
6 Mr. Brown to shoot anybody, uh -- uh -- or -- or beat
7 anybody up. That was done, uh, by Mr. Brown without the
8 instruction from -- from Mr. Battles. He wanted me to --
9 and that -- and he's not being -- pleading guilty to
10 that.

11 Um -- it got out hand. Clearly, he -- in an effort
12 to get the money that he felt he and his family were
13 owed -- uh, exceeded the bounds of the law. He violated
14 the law, he took the law into his own hands. You can't
15 do that in this country; that's why he's standing before
16 you pleading guilty today.

17 But, just for the record, he wanted me to have you
18 know that he certainly never intended that anybody get
19 shot or beat up. He -- he was hopes (sic) that he'd be
20 able to convince them to pay them the money that he had
21 belief that they had. They had purchased businesses in
22 Abbeville, had purchased property in Abbeville that
23 he knew about, so he felt like they had access to his
24 sixty-eight thousand dollars that -- that he had earned,
25 uh, working for them.

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1 Be that as it may, Judge, we appreciate your
2 accepting the plea, and, uh, I have nothing further to
3 say on his behalf in mitigation. If he, uh, wanted to
4 say anything, I'd like you to give him an opportunity.

5 **THE COURT:** Certainly; Mr. Battles, anything that
6 you want to say, sir?

7 **MR. BATTLES:** No, sir; I think Mr. -- Mr. Townes
8 covered most it. You know, it's just, um -- it's an
9 unfortunate thing that happened.

10 **THE COURT:** I agree. Um -- Mr. Brown, one quick
11 point of clarification. The codefendant Brown, what
12 has -- has that been resolved or is that still
13 outstanding?

14 **MR. YATES:** Brown was -- it has been resolved.

15 **THE COURT:** Okay.

16 **MR. YATES:** Uh---

17 **MR. JONES:** You accepted that plea, Judge.

18 **THE COURT:** Oh, did I?

19 **MR. JONES:** Yes, sir; and you sentenced him, uh, to
20 fifteen years. He had no prior criminal record.

21 **THE COURT:** All right; that was a straight-up plea
22 or was it---

23 **MR. JONES:** It was, Your Honor.

24 **THE COURT:** All right. All right; very good.
25 Anything further?

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1 **MR. YATES:** Not from The State.

2 **THE COURT:** All right. Mr. Battles, the sentence of
3 The Court is that you are committed to the Department of
4 Corrections for twenty years.

5 You'll be given credit of two hundred and eighty-two
6 days that you have served in jail.

7 And, these sentences will run concurrently with each
8 other.

9 I wish you luck, sir; take care.

10 **MR. BATTLES:** Thank you.

11 **MR. YATES:** Thank you, Judge.

12 (WHEREUPON, HEARING ENDED AT 12:59 P.M.)

13 *****END OF REQUESTED TRANSCRIPT*****
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State of South Carolina v. Herman David Battles
Case Nos. 2010-GS-01-00225, 2010-GS-01-00228
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STATE OF SOUTH CAROLINA)
COUNTY OF GREENWOOD) CERTIFICATE OF REPORTER

I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE PROCEEDINGS REQUESTED AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR ABBEVILLE COUNTY (HEARD IN GREENWOOD COUNTY), SOUTH CAROLINA, ON THE 31ST DAY OF JANUARY 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

Vivian H. Cross
VIVIAN H. CROSS, COURT REPORTER
TENTH CIRCUIT AT LARGE
JANUARY 14, 2014

FORM 5

STATE OF SOUTH CAROLINA)

) IN THE COURT OF COMMON PLEAS

COUNTY OF Abbeville)

Herman David Battles #354133)

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

2013-CP-01-151

v.)

APPLICATION FOR

State of South Carolina

TRUE COPY POST-CONVICTION RELIEF
[Signature]
 ABBEVILLE COUNTY CLERK OF COURT

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 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 the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Corr. Inst. 386 Redemption Way, McCormick, SC 29899
2. Name and location of Court which imposed sentence General Sessions Court, Abbeville SC 29620
3. Name(s) of co-defendant(s) (if any) Jeffery D. Brown
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed: (20) years Concurrent
 - (a) Burglary #10GS01-0225
 - (b) Armed Robbery #10GS01-0228
 - (c) _____
5. The date upon which sentence was imposed and the terms of the sentence
 - (a) 1/31/13 (20) years
 - (b) 1/31/13 (20) years concurrent.

FILED
 STATE OF SOUTH CAROLINA
 COUNTY OF ABBEVILLE
 CLERK OF COURT
 Revised 3/2003

ATTORNEY GENERAL'S OFFICE
RECEIVED 5/10/13

ADMINISTRATIVE INSTRUCTIONS

 FILE OPEN END HAVE COPIES MADE ROUTE TO ORDER: TRANSCRIPT PEN RECORDS CLERK RECORDS OTHER:

- (c) _____
6. Check whether a finding of guilty was made:
- (a) after a plea of guilty x
- (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. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered "no" to (7), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully: Please see additional page 3(a)

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

11. State concisely and in the same order the facts which support each of the grounds set out in (10): Please see additional page 3(a)

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

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

- (a) any petition in a State Court under South Carolina Law? no
- (b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? no
- (c) any petition in the United States Supreme Court for certiorari other than petitions, if any, already specified in (8)? no
- (d) any other petitions, motions or applications in this or any other Court? no

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. _____
- iii. _____
- iv. _____

(b) the name and location of the Court in which each was filed:

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

(c) the disposition thereof:

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

Herman David Battles #354133
PCR additional page 3(a)

Allegations.

10(a). The Applicant's conviction and sentence was in violation of his Sixth and Fourteenth Amendments to the United States Constitution and the South Carolina State Constitution in violation of Article I, §14 because of (1) Ineffective assistance of counsel; (2) Guilty plea was not knowingly, intelligently, or voluntarily entered before the Court.

Supporting Facts.

11(a). The Applicant states that he received ineffective assistance of counsel prior to and during his plea of guilty, inasmuch as his attorney failed to withdraw his guilty plea when the plea bargain of (15) years was not kept by all parties. When counsel seen that plea hearing was not proceeding in accordance with the terms of negotiated agreement, or with trial counsel's understanding of the law, it was his duty to move to withdraw the plea.

1. The Applicant states that he received ineffective assistance of counsel prior to and during his plea of guilty, inasmuch as his attorney failed to show the court how that the Solicitor and other police official were using the Applicant's family members to coerce him into pleading guilty by threatening to put them in jail and charge them with false crimes.

2. The Applicant states that he received ineffective assistance of counsel prior to and during his plea of guilty, inasmuch as his attorney failed to do a proper investigation of the factual history concerning the charges and his codefendant because the facts will show that Applicant had no knowledge that his codefendant was going to commit these crimes. Applicant's codefendant is the one that took it upon himself to commit these crimes and then pulled Applicant on to the scene. (Please see attached Affidavit of Codefendant Jeffery D. Brown).

3. The Applicant states that he received ineffective assistance of counsel prior to and during his plea of guilty, inasmuch as his attorney failed to do a proper investigation of the facts that Sgt. M. Belcher, Det. Tara Scott, Derek Keller, interviewed Codefendant Jeffery D. Brown, at the Abbeville County Law Enforcement Center because this interview clearly shows that the Applicant did not commit any crime but was under the belief that Codefendant was just going to collect the money on his behalf without any violence. This interview was on November 16, 2009. (Please see copy of attached statement).

4. The Applicant states that he received ineffective assistance of counsel prior to and during his plea of guilty, inasmuch as his attorney failed to investigate the Solicitor's unconstitutional motives in bad faith concerning selective or vindictive prosecution of his client which denied him equal protection of the law and his due process rights because all the facts and evidence show Mr. Battles, the Applicant was and is innocent.

Herman David Battles #354133
PCR additional page 3(a) continues:

5. The Applicant states that his guilty plea was not knowingly, intelligently, or voluntarily entered before the Court because the Court before entering judgment, the Court did not determine that a factual basis for the plea nor was adequate factual basis established for the elements of a substantive criminal offense, and but for trial counsel's unprofessional errors, the Applicant would not have pled guilty but would have went on with his jury trial.

6. The Applicant states that his guilty plea was not knowingly, intelligently, or voluntarily entered before the Court because the plea was made under coercion of threats to his family members of false prosecution by the Solicitor and other police official, and but for trial counsel's unprofessional errors, the Applicant would not have pled guilty but would have went on with his jury trial.

The Applicant states that his guilty plea was not knowingly, intelligently, or voluntarily entered before the Court because trial counsel and the government breached my plea agreement of (15) years that was promised to me by both counsel and solicitor in order to waive my jury trial to plea, and but for trial counsel's unprofessional errors, the Applicant would not have pled guilty but would have went on with his jury trial.

These witnesses will be needed subpoena at my PCR hearing:

1. Jeffery D. Brown
2. Sgt. M. Belcher
3. Det. Tara Scott
4. Derek Keller

The Applicant leaves this application open, that he may amend after appointment of counsel or retained counsel or leave of the court.

iv. _____

(d) the date of each such disposition:

i. _____

ii. _____

iii. _____

iv. _____

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

i. _____

ii. _____

iii. _____

iv. _____

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?
no. _____

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

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

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: My first application.

(a) _____

(b) _____

(c) _____

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? _____
- (c) your sentencing? yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? _____
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? no

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. _____ W. Townes Jones, IV - Retained
Law Firm P.A.
- ii. _____ 116 W. Court Ave. Greenwood, SC 29646
- iii. _____

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

- i. plea
- ii. sentence
- iii. _____

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

Vacate guilty plea and sentence. New Trial. Appointment of Counsel. Copy
guilty plea transcript. Motion for Discovery. PCR Hearing.

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

no

STATE OF SOUTH CAROLINA)

VERIFICATION

County of Abbeville)

Herman David Battles #354133)

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.

Herman David Battles

SWORN to and subscribed before me this 01
day of May, 2013

[Signature] (L.S.)
Notary Public

My Commission Expires: 12-16-2019

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

Herman David Battles #354133

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.

Herman David Battles
Applicant

SWORN or affirmed to and subscribed before me this

01 day of may, 2013.

J. Frankle
Notary Public

My Commission Expires: 12-16-2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE	)	
	)	
Herman David Battles, #354133,	)	
	)	
Applicant,	)	
v.	)	PERSONAL AFFIDAVIT OF AFFIANT
	)	<u>JEFFERY D. BROWN</u>
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

PERSONALLY appeared before me, Jeffery D. Brown, who on oath, after being duly sworn, states the following:

1. That I am an inmate within the South Carolina Department of Corrections housed at McCormick Correctional Institution, 386 Redemption Way, McCormick, South Carolina 29899.

2. That I make this affidavit of my own free will to conform to the truth of the crime I committed on 10/14/09 against the victim Mr. Scott Tyman, without any prior knowledge or help or aid from the above Applicant Mr. Herman David Battles.

3. I want to set the record correct. When the crime occurred, I felt I could misrepresent myself to Mr. Herman Battles. I had bragged about being able to collect money (owed to other people) without violating the law. Mr. Battles, was in poor health and couldn't think or move around. I asked him to let me try and collect the money owed to him from the above victim Mr. Scott Tyman and Mr. Guy Yarger. Mr. Battles was not present when I went into victims house. Mr. Battles wasn't present when I shot Mr. Scott. Mr. Battles appeared after entry and shooting of Mr. Scott. Mr. Battles had no prior knowledge that this was going to happen. Mr. Battles is a non-violent person who was very upset about the outcome of this incident.

4. I have on record of my guilty plea that I did these crimes of shooting Mr. Scott and never intended for any violence to take place. I had been taking pain pills for a week. Mr. Battles was very sick and on medication and was in a zombie state when I took advantage of him and misrepresented myself to him before and at the time of the crime. He was to report to Emory Medical the next day after the crime. He came close to death after locked-up at Abbeville County. At my plea I didn't fully tell the truth concerning Mr. Battles lack of any knowledge, help, aid, or absence at the commission of this crime.

SWORN and Subscribed before this
23 day of April, 2013

Joyce L. Young
Notary Public for South Carolina
My Commission Expires 10/11/2021

S/ *J. Brown*
Jeffery D. Brown, #347789

Interview with Derek D Keller -

Monday November 16th, 2009

6:50 pm

Present during interview: Sgt. M Belcher, Det Tara Scott, Derek Keller

Place Interviewed: Abbeville Co. LEC

Around October 14th, 2009 Mr. Brown was arrested. I remember it was a Wednesday. About two weeks later he told me he shot a man. He said he went to the door and when he came to the door he said he hit him in the face. Then Brown said he threw him into some bricks. He was describing his charges to me at this time. He said he beat the man half to death and then hung him upside down. He also said that he shot the man in the knee with a 22. Brown said after he threw him down outside he took him inside and broke his hands and feet with brass knuckles. Then he said he hung him upside down and then shot the man. Brown said he shot him because he asked him for money that was owed him but he didn't give it to him. I think he said it was \$82 thousand for him and Battle and another \$50 thousand for someone else. Brown said he was to get \$20 thousand for leaving this guy "messed up forever". There were some other people involved from south Florida, but he didn't know names. Brown said he had known Battle all his life. Then he said he had known him for about 15 yrs. Brown said that David had hired him to go to Dallas and Chicago for him on other hits. He told me (Derek) that if I ever told any of this that he would look up my Social Security number and find me. Said he had connections in London that would let him find anyone. He said that he was a Collector and a Hit Man. When asked how the two ended up in Abbeville, he said that Brown told him they had stopped at a bar in Atlanta, GA that he thinks was called the Pink Pony. Then Brown told him they went to Elberton and stayed there with someone named Mike. Brown told him that he had staked out the house for about a week before the attack. He said that Mike (he thinks that what Brown said his name was) was a part of a network of criminal associates that the two have. Brown told Derek that the only mistake he made was when he left him (the victim) alive. Brown said that he had friends in South Florida who were coming up here to "blow the house up". He told him that they were going to put Abbeville on the map. Brown told him that there were three people from St. Petersburg coming to Abbeville. One of them he described as the "bodyguard" who put \$10 thousand dollars into Battle's canteen account. Brown told him that when he found out that there would be no bond for them, he said that he was going to blow the house up. Said that there wouldn't be a sniper in a tree, they would blow it up. He made the statement "no witness, no case". Brown told Keller that he left Scott's to get the check cashed and then got stopped because their car met the description. Keller said Brown told him that Battles owns property in the Cayman Islands, and that he took cash and checks from the house when he left. Brown said that Battles dropped him off at the driveway and then Brown called Battles to come back and get him after it was done. He said that he left the victim tied to a pole. Brown told him that they had reservations in Mississippi to gamble after they left Abbeville. He also told him that there was a 22 cal, a 357, and a knife in the vehicle with them. Brown also told Keller that the plan was to get them in the same room and Brown was going to hit Battles in the stomach to cause his kidney/liver to rupture because he didn't have long to live.

STATE OF SOUTH CAROLINA,)
) IN THE COURT OF COMMON PLEAS.
 COUNTY OF ABBEVILLE.)

Herman David Battles, #354133)
)
 Applicant,)
)
 v.) CERTIFICATE OF SERVICE BY MAIL
)
 State of South Carolina,) 13-CP-01-151
)
)

The undersigned, an employee of the Abbeville County Clerk of Court's Office, does hereby certify that copy of Application for Post Conviction Relief in the above-referenced matter was made upon the following persons by placing same in the United States Mail, first class postage prepaid, at the below listed address clearly indicated on said envelope this the 10th day of May, 2013, addressed as follows:

J. Rutledge Johnson ✓
 Asst. Attorney General
 Post Office Box 11549
 Columbia, SC 29211

Solicitor's Office
 ATTN: Yates Brown
 P. O. Box 516
 Greenwood, SC 29648

Herman David Battles, #354133
 McCormick Correctional Inst.
 386 Redemption Way - F3A-175
 McCormick, SC 29899


 Peggy A. Payne, Common Pleas Clerk

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ABBEVILLE	)	EIGHTH JUDICIAL CIRCUIT
	)	
Herman David Battles, #354133,	)	2013-CP-01-0151
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
_____	)	

The Respondent, making its Return to the application for post conviction relief (PCR) filed on May 10, 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 Abbeville County Clerk of Court. The Applicant was indicted at the March 2010 term of the Abbeville County Grand Jury for Armed Robbery (2010-GS-01-0225) and Burglary, 1st degree (2010-GS-01-0228). These charges were dismissed by the solicitor with leave to restore on August 8, 2010. The charges were reinstated on July 26, 2012. The Applicant was represented by W. Townes Jones, Esquire. On January 31, 2013, the Applicant pled guilty to both charges as indicted. The Honorable Frank R. Addy, Jr. sentenced the Applicant, pursuant to a negotiated sentence, to confinement for fifteen (15) years for each charge to run concurrently. The Applicant did not appeal his conviction and sentence.

Attached herewith and incorporated herein are the records of the Abbeville County Clerk of Court regarding the subject conviction(s), the Applicant's records from the South Carolina Department of Corrections 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. "Ineffective Assistance of Counsel"
2. "Guilty plea was not knowingly, intelligently, or voluntarily entered before the Court."

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

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 (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 (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.

In his second allegation the Applicant alleges that he did not plead guilty freely and voluntarily. The State submits this allegation has no merit. To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

The State submits the transcript reflects that the pleas were knowingly and voluntarily entered with a full understanding of the charges and consequences of the plea. Boykin, *supra*;

Dover, supra. Further, because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621, 52 L.Ed.2d 136 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976). The State submits the Applicant should not be allowed to depart from the truth of the statements he made during his guilty plea hearing.

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993). Given the Applicant's burden of proof and the analysis to be applied to this claim, the Respondent submits that the Applicant's claim of involuntary plea is, in essence, a claim of ineffective assistance of counsel, and it should therefore, be treated as such.

V.

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

VI.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held on Applicant's allegations.

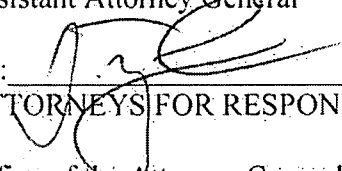
Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
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

February 4, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF ABBEVILLE)

IN THE COURT OF COMMON PLEAS

2013-CP-01-0151

HERMAN BATTLES, #354133)

Applicant,)

vs)

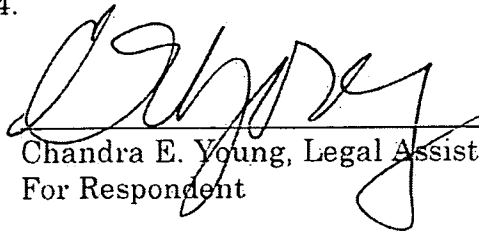
AFFIDAVIT OF SERVICE BY MAIL

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:

Joshua S. Nasrollahi
 PO Box 51523
 Greenwood, SC 29649

DATED this 4th day of February, 2014.


Chandra E. Young, Legal Assistant
 For Respondent

State of South Carolina)
)
 County of Abbeville)

In the Court of Common Pleas
 Eighth Judicial Circuit
 2013-CP-01-0151

Herman D. Battles,)
)
 Applicant,)
)
 vs.)
)
 State of South Carolina,)
)
 Respondent.)
)
 _____)

Transcript of Record

February 19, 2015
 Greenwood, South Carolina

B E F O R E:

The Honorable Donald B. Hocker, Judge

A P P E A R A N C E S:

Joshua Shaheen Nasrollahi, Esquire
 Attorney for Applicant

J. Rutledge Johnson, Esquire
 Attorney for Respondent

Carson M. Henderson, Esquire
 Attorney for Jeffrey Brown

Maryann S. Nevers, CVR-M-CM
 Circuit Court Reporter

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E X H I B I T S

<u>NO.</u>	<u>DESCRIPTION</u>	<u>I.D.</u>	<u>EVID.</u>
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TRANSCRIPT OF RECORD

(Whereupon, the proceeding was commenced at 9:51 a.m.)

MR. JOHNSON: Your Honor, the next case is Herman Battles.

THE COURT: Okay. All right, Mr. Johnson. Be glad to hear ---

MR. JOHNSON: May ---

THE COURT: --- from you.

MR. JOHNSON: May it please the Court, Your Honor: This is *Herman David Battles v. the State of South Carolina*. It's Case No. 2013-CP-01-0151. Mr. Battles was indicted at the March 2010 term of the Abbeville County Grand Jury for armed robbery and burglary in the first degree, along with a slew of other charges. There were other charges that were dismissed with leave to restore on August 8th, 2010. These charges were reinstated July the 26th, 2012. He was represented by Townes Jones.

On July 31st, 2013, he pled guilty to armed robbery and burglary in the first degree as indicted before the Honorable Frank R. Addy, Jr., and was sentenced, pursuant to a negotiated sentence, for confinement for -- I have 15 years here, but I believe it's actually 20 years. Am I correct, Josh ---

MR. NASROLLAHI: That's ---

MR. JOHNSON: --- 20 ---

1 MR. NASROLLAHI: -- 20.

2 MR. JOHNSON: --- years? -- to run concurrent. He did
3 not appeal this conviction or sentence.

4 The 15 years I referenced was his codefendant, a
5 Jeffrey Moore, I believe his name is -- Jeffrey Brown.
6 Excuse me. He did file a timely PCR application May the
7 10th, 2013. The state filed its return February 4th of
8 2014. And he is represented here today by Mr. Josh
9 Nasrollahi.

10 THE COURT: Okay. Mr. Nasrollahi, are you ready to
11 proceed, sir?

12 MR. NASROLLAHI: Yes, sir. And we concede the
13 procedural history that this attorney general has placed on
14 the record. As a matter of housekeeping, as we discussed
15 at a bench conference, there was a logistical problem with
16 transporting one of the witnesses from the Department of
17 Corrections. They went to Abbeville.

18 I've spoken with member of the solicitor's office,
19 who've been in communication with Abbeville. And it's my
20 understanding that they have been rerouted here. So that
21 witness should be arriving probably during ---

22 THE COURT: Is that ---

23 MR. NASROLLAHI: --- the pendency of ---

24 THE COURT: Is that ---

25 MR. NASROLLAHI: --- this proceeding.

1 THE COURT: --- a witness on your side? Is that -- is
2 that ---

3 MR. NASROLLAHI: I'm ---

4 THE COURT: --- one of your ---

5 MR. NASROLLAHI: Yes, Your Honor.

6 THE COURT: --- witnesses? Okay.

7 MR. NASROLLAHI: Yes, Your Honor. And that's the
8 witness we spoke about ---

9 THE COURT: Right.

10 MR. NASROLLAHI: --- about Mr. Carson Henderson
11 possibly ---

12 THE COURT: Yeah. If we ---

13 MR. NASROLLAHI: --- speaking with ---

14 THE COURT: --- have to take a break in the middle of
15 the case, that'll be fine.

16 MR. NASROLLAHI: Thank you, Your Honor.

17 THE COURT: Okay.

18 MR. NASROLLAHI: At this time I'd like to call Townes
19 Jones to the stand.

20 THE COURT: Okay.

21 (Whereupon, the witness came forward.)

22 W. TOWNES JONES, IV, having been first duly
23 sworn, testified as follows:

24 (Whereupon, the witness entered the witness stand.)

25 THE COURT: You may proceed.

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 7

1 DIRECT EXAMINATION

2 BY MR. NASROLLAHI:

3 Q Mr. Jones, for the record, please state your full
4 name.

5 A William Townes Jones, IV.

6 Q Okay. And give us some background into your career as
7 an attorney.

8 A Well, I graduated from University of South Carolina
9 School of Law in 1981; received news that I had passed the
10 bar in '82; was lucky enough to take a job with Circuit
11 Court Judge Luke Brown as a law clerk that summer.

12 Worked with him until the end of '80 -- summer of '83,
13 at which time I was lucky enough to be offered a job to go
14 to work with Donnie Myers as an assistant solicitor. I
15 worked with him for about a year and a half and made a
16 decision to return home here to Greenwood, where I was born
17 and raised, and -- and run for the office of solicitor.

18 I was elected in November of '84 and was sworn in, in
19 February of '85. I remained in that position, running for
20 reelection every four years, for the next 20 years. I
21 retired January 1st of -- of 2005 and entered the practice
22 of law here in Greenwood.

23 My primary practice consists of criminal defense.
24 Probably 90 percent of my work is criminal defense work.
25 And I have been engaged in that practice here in Greenwood

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 8

1 and surrounding counties for the last ten years.

2 Q And did you, at any point, represent Mr. Herman David
3 Battles?

4 A Yes. I was retained to represent Mr. Battles, I
5 believe, sometime in 2009.

6 Q Okay. And who retained you on that case?

7 A His sister.

8 Q Okay. So you had involvement with his family?

9 A Yes. His sister was calling me and came to my office.
10 I explained to her I needed to go speak to him about being
11 retained prior to that. And -- and I did meet with him in
12 the Abbeville County Detention Center on a couple of
13 occasions. And -- and ultimately, he decided that -- that
14 he would retain me.

15 I think they had pursued, at least best of my
16 recollection -- I don't have this documented anywhere --
17 the services of former solicitor Druanne White in Anderson,
18 but chose to -- elected to -- to retain me instead. And I
19 went forward with that representation.

20 Initially, at some point in time within the next
21 several months -- six months or so, I moved for a -- a
22 bond. His bond had been denied. And -- and in spite of
23 the allegations in the charges against him and the fairly
24 substantial nature of his prior criminal history and the
25 fact that he had no ties to the community -- he's from

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 9

1 Florida -- at the time this crime was committed was living
2 in Florida -- I was able to convince the judge that he was
3 not a flight risk and that he was not a risk to harm anyone
4 in the community. The judge precautioned -- he -- he set a
5 bond at -- at somewhere between 150 and 250 thousand
6 dollars and conditioned that bond with the wearing of an
7 ankle device, a monitoring device that required him to
8 remain in Abbeville County.

9 Mr. Battles put his Florida home up on the bond and
10 procured a -- a residence in Calhoun Falls, where he
11 intended to operate a business while he would await trial.

12 Q And when you were retained by Mr. Battles, do you
13 recall approximately how old he was at the time?

14 A You know, I remember we talked quite often in the
15 Abbeville jail before he was released about the fact that
16 he wasn't feeling well; that he had some illnesses; and,
17 you know, I wanted to get some information about his
18 background. He was a -- my recollection is mid-to-late
19 60s.

20 Q And -- and you just noted that he had had -- he was
21 complaining at that time of illnesses?

22 A He was not only complaining of them, but he was being
23 attended to on a couple of occasions. He -- he was taken
24 to the Abbeville County Hospital. The most serious
25 incident that occurred involved him being admitted to the

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 10

1 hospital. And I actually went to the Abbeville County
2 Hospital to visit with him while he was in a room out there
3 to make sure that -- that there were physicians that were,
4 you know, attending to his health problems in -- in a
5 manner that, you know, would be commensurate with any other
6 patient they might have out there that was not being held
7 by guard.

8 Q And after being retained, did you investigate the
9 factual and legal allegations pertaining ---

10 A To the best ---

11 Q --- to Mr. Battles' ---

12 A --- of my ---

13 Q --- case?

14 A --- ability, I did. Yes.

15 Q Okay. And -- and you brought a copy of your file with
16 you today?

17 A I have a number of items that I brought. And I -- you
18 know, I -- I -- I'm -- yes.

19 Q All right. And -- and for clarity's sake and for the
20 record, you have provided a copy of your file, to the best
21 of your ability, to applicant's counsel?

22 A What I did was -- is I provided a copy of what I
23 believed to be the discovery that was provided to me by the
24 state.

25 Q Okay.

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 11

1 A That -- that's what I considered to be the -- the
2 relevant portions of my file that -- that Mr. Battles was
3 entitled to.

4 Q Okay. And tell me what your understanding of what the
5 factual allegations underlying these charges was, as
6 conveyed to you by the state.

7 A My understanding was that ---

8 Q And if you need to refer to your notes, please ---

9 A Yes. Just one second.

10 Q Take your time.

11 MR. NASROLLAHI: And, Judge, while Mr. Jones is
12 looking through his notes, I've been informed by the guards
13 from the Department of Corrections that Mr. Brown is here.
14 I believe that right now, Mr. Henderson is still in the
15 back with the client.

16 THE COURT: Okay.

17 MR. NASROLLAHI: As soon as he becomes available,
18 we'll have him speak with Mr. Brown.

19 THE COURT: Certainly.

20 (Whereupon, Mr. Johnson and Mr. Nasrollahi conferred.)

21 A Just from a general standpoint, as far as, you know,
22 what I understood the charges against Mr. Battles were,
23 essentially, was that he had been arrested for taking part
24 in, along with a -- a codefendant, a Mr. Brown -- Mr.
25 Jeffrey Brown, on October 14th, 2009, in committing a -- a

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 12

1 -- a burglary at -- at the residence of -- of -- of Mr.
2 Scott Tyman and Guy Yarger, who lived in Abbeville County
3 and were operating a business at that time.

4 In addition to the charge of burglary in the first
5 degree, the state alleged that they had used a handgun in
6 an effort to commit the burglary, which, under our law,
7 would -- would put it into the first-degree category. That
8 they attempted -- or -- or in fact did rob Mr. Yarger of
9 some \$82,000 by forcing him, under the point of gun, to
10 write a check out to them for that amount and to call a
11 bank in Greenwood, asking the bank to cash the check prior
12 to their leaving, again at gunpoint. While he was tied up,
13 which, under our law, Mr. -- the -- the victim had stated
14 that he had initially been assaulted by Mr. Brown when he
15 returned home to retrieve an item during -- during the day
16 and -- and -- and found Mr. Brown in or about his home and
17 that Mr. Brown beat him and -- and threatened him and --
18 and -- and he was able to get away and -- and was shot by
19 Mr. Brown and, at that point in time, Mr. Battles appeared
20 on the scene and accompanied Mr. Brown as they carried him
21 back into the house and confined him in -- in a chair, tied
22 him up, and pistol-whipped -- pistol-whipped him and
23 threatened to -- to kill him, according to Mr. -- the
24 victim and that -- that, from his perspective, Mr. Battles,
25 who he said he had known prior to this incident -- had

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 13

1 employed him to do some work for him in Florida -- was one
2 of the participants and that he did write the check and
3 that the two of them left. He was able to untie himself,
4 call law enforcement. They notified the bank, and law
5 enforcement were able to -- to stop Mr. Battles and Mr.
6 Brown prior to their arrival in Greenwood with a BOLO that
7 had been issued and seized them and -- and searched the
8 vehicle and seized a number of items out of the vehicle.

9 But the charges were burglary-first, kidnapping,
10 assault and battery with intent to kill, armed robbery, and
11 -- let's see. I think those were the primary offenses.
12 There may have been an assault and battery of a high and
13 aggravated nature included in -- in -- in the charges. But
14 the primary charges: burglary-first, the kidnapping,
15 assault and battery with intent to kill, armed robbery.

16 Q All right. Do you recall which particular law
17 enforcement agency apprehended Mr. Brown and Mr. Battles?

18 A My understanding is that the ATF was involved at some
19 point in time. Abbeville County Sheriff's Office was
20 involved. Highway Patrol was involved. And -- and they --
21 that -- that there was a -- a combination of agencies that
22 -- that engaged in the apprehension and ultimate arrest and
23 search of Mr. Battles.

24 Q Okay. And do you recall -- and we're talking in
25 reference to time -- how long between the alleged incident

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 14

1 and their apprehension, how much time elapsed?

2 A Not exactly. But just based on the review of some
3 notes and reading some things, I'm -- I -- I'm going to --
4 I'm going to guess somewhere between 30 minutes and, you
5 know ---

6 Q So they were ---

7 A --- 45 minutes.

8 Q They were apprehended not too long after ---

9 A Right.

10 Q --- the alleged incident?

11 A Yes.

12 Q Okay.

13 MR. NASROLLAHI: If I could approach?

14 THE COURT: Sure.

15 Q I'm going to show you this document ---

16 A Uh-huh.

17 Q --- and ask you if you recall ever seeing that
18 document before.

19 A You know, I don't know if I've -- could tell you for
20 sure that I have ever seen this document before. But let
21 -- let me read through it. And it's going to take a little
22 while because it's two pages.

23 Q Yes, sir.

24 A But just glancing at it, I can see some comments that
25 -- that I have read somewhere before.

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 15

1 Q I understand.

2 A All right.

3 Q Take your time.

4 A I probably read this document before, but I can't tell
5 you for sure that -- that I did. The -- some of the
6 information in here -- the discovery included an extremely
7 voluminous number of -- of statements and reports. But
8 having read this, I would -- I would take this opportunity
9 to tell you that obviously ABHAN was one of the charges.
10 Conspiracy to commit a -- a crime was a charge, and
11 possession of a weapon in the commission of a violent crime
12 was also included in one of the charges that he was charged
13 with.

14 But after reading the document here, it appears that
15 Abbeville City was involved as well.

16 Q I understand. And -- but does that appear to be one
17 of the documents that was provided to you in discovery, to
18 the best of your knowledge?

19 A I can't say that it was or wasn't. I don't know.

20 Q But the information contained in that document, does
21 that -- for lack of a better word, does that jive with what
22 your understanding was that law enforcement was alleging in
23 this case? Is that consistent with ---

24 A It ---

25 Q --- other reports that you've read?

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 16

1 A It is consistent. Yes.

2 Q But you can't recall right now whether that document
3 was in your discovery packet?

4 A I cannot.

5 Q Okay.

6 MR. NASROLLAHI: At this time I'd like to move that
7 document into evidence ---

8 Q Or before -- before I do that, can you tell me what
9 the document purports to be?

10 A It purports to be -- at the top it says: "Herman
11 David Battles and Jeffrey Dwayne Brown incident
12 apprehension of two felons, events leading to arrest." And
13 there is a -- this report was prepared by Lance Corporal
14 R.S. Chasteen of the South Carolina Highway Patrol ACE
15 Team.

16 MR. NASROLLAHI: At this time I'd move this document
17 into evidence as ---

18 THE COURT: Mr. Johnson?

19 MR. NASROLLAHI: --- Plaintiff's 1.

20 MR. JOHNSON: Your Honor, I must object to the lack of
21 foundation. Mr. Jones has stated that he is not 100
22 percent sure that he has seen this document before. And
23 Mr. -- Corporal Chasteen is not here to testify that he
24 actually produced this document. Therefore, there is no
25 foundation to admit this into evidence."

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 17

1 THE COURT: Okay. Mr. Nasrollahi?

2 MR. NASROLLAHI: I would admit it as a document that
3 would've been a part of Mr. Jones's file at the time and
4 served -- and would've served ---

5 THE COURT: Well, that ---

6 MR. NASROLLAHI: --- as a basis ---

7 THE COURT: --- that may ---

8 MR. NASROLLAHI: --- towards ---

9 THE COURT: --- be your position but ---

10 MR. NASROLLAHI: Okay.

11 THE COURT: --- I think Mr. Jones indicated he
12 couldn't remember whether or not that was part of the
13 discovery package.

14 MR. NASROLLAHI: I understand.

15 THE COURT: I'll have to sustain the objection.

16 MR. NASROLLAHI: Okay.

17 THE COURT: If you want to proffer it, we can have it
18 marked and it can be a part of the record as a proffered
19 piece of evidence, if you like.

20 MR. NASROLLAHI: That was going to be my next step ---

21 THE COURT: Okay.

22 MR. NASROLLAHI: --- to have it marked.

23 THE COURT: All right. If you want to come get it
24 hand it to the court reporter.

25 MR. NASROLLAHI: (To the witness) Thanks.

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 18

1 THE WITNESS: Uh-huh.

2 (Whereupon, Plaintiff's Exhibit 1 was marked for
3 identification.)

4 MR. NASROLLAHI: You got a copy?

5 MR. JOHNSON: Yeah. This one.

6 Q Mr. Jones, specifically with regard to Mr. Battles'
7 apprehension by whatever law enforcement agent apprehended
8 him, what is your understanding of how that actually
9 happened, the actual events of his apprehension?

10 A When the victim called law enforcement to tell them
11 his version of what had occurred, he -- he gave them a
12 description of the two people that -- that he said had
13 committed this -- the crime: an older white male and a
14 younger white male. He gave them a description, a model,
15 and a make of a vehicle and a color. He said these people
16 were from Florida and -- and that they were headed to
17 Greenwood to -- he gave them the name of a bank -- I can't
18 remember if it was Wachovia or some bank like that -- and
19 that they had a check for \$82,000 that they had robbed him
20 of and that they were going to attempt to -- to cash it and
21 that law enforcement immediately put out a -- a BOLO; that
22 is, we're looking for a vehicle this color, this -- this
23 make and model -- and it -- it should be two white males in
24 it, one older, one younger -- headed to Greenwood and that
25 would notify highway patrol, City of Abbeville, County of

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 19

1 Abbeville -- I guess other agencies in Greenwood: County
2 of Greenwood, City of Greenwood, and -- and other law
3 enforcement agencies that were, you know, working -- had
4 people out on the road.

5 Q And do you recall whether Mr. Battles and Mr. Brown
6 were apprehended on -- on the road or in a home or ---

7 MR. JOHNSON: Your Honor, I'm failing to see the ---

8 A I -- I ---

9 MR. JOHNSON: --- the relevance ---

10 THE COURT: Wait ---

11 MR. JOHNSON: --- of this.

12 THE COURT: --- wait a minute, Mr. Jones. I've got an

13 ---

14 THE WITNESS: Yes, sir.

15 THE COURT: --- I think an objection.

16 MR. JOHNSON: The -- this was a negotiated guilty
17 plea. I'm failing to see that -- where I'm -- I'm starting
18 to see that Mr. Nasrollahi's trying to retry this case.
19 And that's not for PCR, Your Honor. This is completely
20 irrelevant as to what the police did or even what the
21 victim said.

22 THE COURT: Okay.

23 MR. JOHNSON: So I -- I would -- I would object to
24 this is on -- on: (a) speculation; and (b) relevance.

25 THE COURT: Okay.

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 20

1 MR. NASROLLAHI: First of all, it's not speculation.
2 I'm not asking him to speculate or offer an opinion. I'm
3 asking him what his understanding of events were. And I'm
4 looking at the application here. And it says Paragraph 6
5 and it states a general claim for ineffective assistance of
6 counsel. Right now we're addressing the issue of his
7 arrest. And -- and where I'm going with that is, you know,
8 certain evidence that was taken from the vehicle in which
9 Mr. Battles ---

10 THE COURT: Okay.

11 MR. NASROLLAHI: --- was found in.

12 THE COURT: All right.

13 MR. NASROLLAHI: And if there's a -- if -- if we're
14 going to go forward on a basis that he was illegally
15 arrested -- you know, if the Court decides that -- then,
16 you know ---

17 THE COURT: Okay.

18 MR. NASROLLAHI: --- the admissibility and the
19 possible suppression of that evidence would go into his
20 discussions with his client ---

21 THE COURT: Okay.

22 MR. NASROLLAHI: --- as to a plea.

23 THE COURT: I'll overrule the objection at this time.
24 But just -- just make sure you tie it in, okay?

25 MR. NASROLLAHI: I'll -- I'll -- I'll ---

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 21

1 THE COURT: You may proceed.

2 MR. NASROLLAHI: --- skip to the point.

3 A I -- I can't tell you that I recall the exact spot and
4 location where his car was -- was stopped. It was between
5 Abbeville and Greenwood.

6 Q Okay. And -- and to -- to get things sped up a little
7 bit, it's your understanding he wasn't -- the -- the
8 defendants were not arrested for any type of traffic
9 violation?

10 A Correct.

11 Q Okay. They were just -- they -- were they arrested
12 just on the basis of ---

13 A --- matching the description that was put out of a
14 vehicle and the -- the individuals that would -- would be
15 in the vehicle. Correct.

16 Q And do you believe that there was probable cause to
17 even initiate the stop?

18 A Based on the information that -- that I reviewed that
19 they had, I -- I would believe that there was sufficient
20 probable cause for an officer who followed the vehicle --
21 make, model, color -- that was driven by the two people
22 that were driving it, a -- a good-faith basis to -- to stop
23 that vehicle and to interview the persons that were there,
24 given the proximity in time and location to the alleged
25 crime.

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 22

1 Q Okay. So the -- what I'm hearing you say -- I'm ---

2 A Yes.

3 Q That was going to be ---

4 A I believe ---

5 Q --- a leading ---

6 A --- I believe they ---

7 Q --- question. I'm going ---

8 A --- had probable cause to pull him over.

9 Q Okay. Was it your understanding that any of the
10 evidence that was found in the car was found as a result of
11 that stop -- I mean, as a result of that detention and
12 interviewing?

13 A Yes.

14 Q Okay. And that evidence that was found in the
15 vehicle, was that important in your decision and your --
16 your advise and counseling of your client?

17 A Well, the check was important, the \$82,000 check. The
18 gun was important.

19 Q Okay.

20 A You know, there were some other items that may or may
21 not -- you know, rope, tape -- duct tape, gloves, FBI hats,
22 badges that -- that purported to, you know, be of -- some
23 of it was; some of it wasn't. But -- but there were
24 several items that were clearly -- that -- that were
25 clearly incriminating with regard to the -- the state's

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 23

1 position of -- of the way the crime occurred.

2 Q Okay. And did you have an opportunity to discuss any
3 of this evidence and the -- the documents and the discovery
4 you received with your client?

5 A I did. I met with Mr. Battles in the Abbeville County
6 Detention Center -- one of the sheriff's deputies' offices,
7 and we went through each item of evidence piece by piece:
8 photographs with -- with a detective who was there in
9 custody in charge of the evidence. And I believe there was
10 a solicitor there as well. I believe it was Solicitor
11 Yates Brown who was present when we went through all of the
12 evidence that was seized from the vehicle.

13 Q Okay. And were any offers ever made in this case?

14 A Yes.

15 Q And what was that offer?

16 A The last offer that I received, I negotiated basically
17 with -- along the way with two different solicitors.
18 Solicitor Peace was in charge of the case prior to the
19 election of Solicitor Stumbo. And I negotiated some with
20 Solicitor Demetri Andrews during Solicitor Peace's tenure.
21 And then, when Solicitor Stumbo was in office, he had
22 assigned Solicitor Yates to it -- Yates Brown. And -- and
23 I negotiated with Solicitor -- Solicitor Brown in the fall
24 -- late fall, November/December, of 2012 and -- and January
25 of -- of 2013.

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 24

1 The last offer that I received was from Solicitor
2 Brown. I have a copy of -- of it that he sent to me in
3 writing. It was actually in response to an offer that I
4 had extended after I had gotten permission from Mr. Battles
5 to extend an offer to the state.

6 But the -- the last offer that I received from -- from
7 Mr. Brown is in the letter I have. (As read): "Dear Mr.
8 Jones, I have received your offer that would allow your
9 client to plead guilty to burglary first-degree for the
10 statutory mandatory-minimum sentence of 15 years negotiated
11 and to plead to armed robbery with the statutory-minimum
12 sentence of 10 years negotiated, to run concurrent.
13 However, I am rejecting that offer and will offer your
14 client a 20-year negotiated sentence, where he would plead
15 guilty to burglary first-degree and armed robbery. These
16 sentences would run concurrently.

17 "In addition, this offer would include dismissing any
18 all warrants or charges pending against Brenda Joyce
19 Streeton by the Eighth Judicial Circuit Solicitor's Office
20 related to this incident. Please advise of defendant's
21 response to this offer as soon as possible."

22 Q Did he take the offer?

23 A Yes, he did.

24 Q Can you explain to me the -- the reference in there
25 about charges against Brenda Streeton?

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 25

1 A Yes. Well, you know, she was -- had been charged by
2 the state. I can't remember exactly what her charge were,
3 but it was -- it may have been a conspiracy charge
4 involving assisting or conspiring with Mr. Battles and Mr.
5 Brown to accomplish this. And she had been arrested,
6 released, and was -- and -- and had absconded the
7 jurisdiction of -- of the Court.

8 And so there was a -- at -- at the time of this
9 letter, a bench warrant for her arrest had been issued for
10 quite some time. And the state was intending to go forward
11 against her when they found her.

12 You know, I had talked with Mr. Battles -- he brought
13 it up. He said, "Look, if I'm going to plead, I want them
14 to drop the charges against Brenda. She's not well. She
15 -- she -- she needs medical attention. And I want her to
16 be able to get it without worrying about, you know, these
17 charges."

18 Q Uh-huh.

19 A And I explained to him at that time that, you know, I
20 -- I -- based on my review of his case, the charges against
21 her were pretty weak; that, you know, you never know what's
22 going to happen; but, you know, she -- she probably
23 wouldn't make bond if she turned herself in or if she was
24 apprehended because of her flight; but that she -- she
25 could possibly beat those charges. But he said no; he

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 26

1 wanted her to get the attention that she needed and if he
2 was going to plead, he was going to insist that that be a
3 part of his plea.

4 There were also two other relatives of his that --
5 that were charged. And -- and they were not outside the
6 jurisdiction of the Court. They had retained an attorney
7 in Mr. Wise. I spoke with him about those charges and his
8 clients. And he said he fully expected to -- to have them
9 found not guilty or for the charge to be dismissed.

10 But having said that, I will go on and answer your
11 question by saying that Mr. Battles brought up that
12 condition of his plea and the solicitor's office agreed to
13 include that condition as part of the 20-year concurrent
14 offer to burglary-first and armed robbery to Mr. Battles.

15 Q Okay. And my final question to you is: Based on your
16 recollection of the evidence in this case, was there
17 anything in the evidence that you recall the state
18 providing that indicated that Mr. Battles' involvement was
19 more than just his mere presence at the scene?

20 A Well, yes.

21 Q Okay.

22 A There was the victim's statement. The victim had
23 moved from Abbeville after this incident and was living out
24 of state. So Mr. Battles and I, in an -- in an effort to
25 prepare his defense, understanding that most likely the

DIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 27

1 most incriminating evidence was going to come from the
2 victim and some law enforcement officers that had been
3 involved in the investigation -- Shawn Stallo, an ATF
4 agent, had been involved and had -- had -- had interviewed
5 Mr. Battles about this incident, and some Abbeville
6 sheriff's deputies.

7 But the victim actually returned from -- from -- from
8 California. The solicitor's office flew him in when Mr.
9 Brown, the codefendant, pled a year or two prior to Mr.
10 Battles' plea. He had flown him in, and he was in the
11 courtroom and testified at Mr. Brown's plea.

12 So Solicitor Yates Brown had advised me that they had
13 that witness on standby and that if we didn't go forward
14 with the plea the week of January 31st, then the -- they
15 were going to withdraw the offer, including all conditions
16 and negotiations, and go forward with trial at the next
17 term in Abbeville, which was a week or so away.

18 So to answer your question, not only was the victim's
19 testimony going to be extremely critical and -- and, in my
20 opinion, culpatory with regard to Mr. Battles' involvement,
21 other than his mere presence, the victim stated, you know,
22 he -- he sat down inside his home and forced him at
23 gunpoint to -- to write that check out to him. He told him
24 that, you know, he was owed that money and he was going to
25 have to do it. He said that he was involved in

CROSS-EXAMINATION BY MR. JOHNSON - W. TOWNES JONES, IV 28

1 intimidating and threatening him and -- and that he had Mr.
2 Brown beat him -- beat him during the course of getting the
3 check written and during the course of him calling the bank
4 and telling them to cash the check. So based on those --
5 that testimony and the items that were recovered from the
6 car, there -- there was evidence that -- and -- and -- and
7 the fact that he was with Mr. Brown when he was arrested,
8 there was evidence that it was more than the mere presence
9 of him having been there. And again, we pled him to the
10 two -- the two crimes that I felt like the evidence would
11 most likely -- the burglary-first and the armed robbery,
12 not the kidnapping and the ABHAN and the conspiracy -- but
13 anyway, yeah, there was more than just mere presence, in my
14 opinion.

15 Q Okay. That's all the questions I have.

16 THE COURT: Anything in cross?

17 MR. JOHNSON: Just briefly, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. JOHNSON:

20 Q So the victim, in fact, identified Mr. Battles as
21 committing this crime inside the victim's home, correct?

22 A Yes.

23 Q Okay. Did Mr. Battles ever admit to you that he was
24 involved in this crime?

25 A You know, one of the things that -- that Mr. Battles

CROSS-EXAMINATION BY MR. JOHNSON - W. TOWNES JONES, IV 29

1 and I, if I could give you a -- a -- in way of explanation,
2 we spent a lot of time in preparing his defense, preparing
3 and trying to gather information that would verify that he
4 was owed this money by the victim; that the victim had been
5 sued by a number of -- of people for -- for theft, for
6 stealing money from them. And we were going to try to
7 attack the victim's character in the courtroom and -- and
8 -- and try to, you know, establish that -- that Mr. Battles
9 was owed the money.

10 He -- he -- he did maintain that, you know, he at no
11 time had -- had asked or -- or believed that Mr. Brown was
12 -- was -- was going to shoot the victim. But he did admit
13 to entering the residence. He actually, during the time
14 that we were reviewing the evidence with -- with the
15 solicitor and -- and law enforcement, made a statement
16 during that -- that review in the presence of the
17 solicitor, looking at some photographs of the crime scene:
18 "Oh, yeah. I'm -- I -- that -- that fireplace, I remember
19 -- I remember, you know, that being in there," and -- and
20 -- and that sort of stuff.

21 So he -- he -- he did, you know, admit to, you know --
22 his position was -- is that what he did was not a crime.
23 What he did was -- was retrieving money that was owed to
24 him that he was lawfully owed to him. And I tried to
25 explain to him that the facts that -- that we were dealing

CROSS-EXAMINATION BY MR. JOHNSON - W. TOWNES JONES, IV 30

1 with bore out that he took the law into his own hands to
2 get the money that was owed to him and -- and that is a
3 crime. You have to go through certain legal processes to
4 get it back in order not to be charged and/or convicted of
5 a crime and that he had gone a step beyond what was, in
6 fact, in -- in my opinion, plausible and defensible actions
7 in his effort to retrieve that money.

8 So does that answer your question or ---

9 Q Yes, sir.

10 A And I also have a document that I prepared -- I'm not
11 sure if Mr. Nasrollahi received a copy of this or not. But
12 it was a document that was signed on 1/31/13 by Mr. Battles
13 and by me. And it's just something that I go over with
14 clients who have very serious charges who are facing very
15 serious punishment and who have agreed to accept a very
16 serious sentence. And -- and I'd like for you take a look
17 at it, if -- if you'd like.

18 MR. JOHNSON: May I approach the witness, Your Honor?

19 THE COURT: Sure.

20 A I located it yesterday. I went over this file a
21 little bit with a former associate, Mr. Spivey, who
22 assisted me a good bit in this case and . . .

23 (Whereupon, Mr. Johnson and Mr. Nasrollahi conferred.)

24 MR. JOHNSON: Your Honor, may I take a moment to make
25 a few copies of this?

CROSS-EXAMINATION BY MR. JOHNSON - W. TOWNES JONES, IV 31

1 THE COURT: Sure.

2 (Off the record briefly.)

3 (Whereupon, Defendant's Exhibit 1 was marked for
4 identification.)

5 Q And this document you were referencing, is this --
6 Defendant's 1, is that a true and accurate copy of that
7 document?

8 A Yes, I believe so.

9 Q And that's something -- a document that you generated?

10 A It is.

11 Q And you had Mr. Battles sign?

12 A I went over it with him. I had him sign it. I -- I
13 went over -- there were actually approximately 20 questions
14 that I asked him concerning his case and -- and his plea
15 that included the time that he was exposed to if he pled to
16 armed robbery and burglary-first and the time that was
17 being recommended negotiated, 20 years concurrent, and the
18 condition that a dismissed charge against Brenda Steeton
19 and any other pending charges. And I had him initial each
20 and every one of the -- the questions that I asked him in
21 that document.

22 And then I had him, at the end of going over it with
23 him, date it and sign it. And I signed it as a witness to
24 his signature.

25 MR. JOHNSON: Your Honor, at this time I move that in

CROSS-EXAMINATION BY MR. JOHNSON - W. TOWNES JONES, IV 32

1 as Defendant's 1 ---

2 THE COURT: Okay.

3 MR. JOHNSON: --- into evidence.

4 MR. NASROLLAHI: No objection.

5 THE COURT: All right. Without objection, it'd be
6 Defendant's No. 1 into evidence.

7 (Whereupon, Defendant's Exhibit 1 was entered into
8 evidence.)

9 Q And so you would've discussed all the charges and all
10 the evidence with Mr. Battles in this case, correct?

11 A Yes.

12 Q Okay. Including his version of the facts?

13 A Yes.

14 Q Which includes how he was stopped by the police?

15 A Yes.

16 Q And then, you relayed this offer to him, correct?

17 A Yes.

18 Q And whose decision was it to plead guilty?

19 A His.

20 Q Did you ever threaten or coerce him to -- to plead
21 guilty?

22 A Not at all. As a matter of fact, I spent probably --
23 I discussed this with Mr. Spivey yesterday -- 80 to 100
24 hours preparing this case for trial and -- not for plea,
25 but for trial because I didn't -- I didn't anticipate that

CROSS-EXAMINATION BY MR. JOHNSON - W. TOWNES JONES, IV 33

1 Mr. Battles was going to plead. But at the 11th hour, he
2 chose to do so.

3 But I had put in a -- as -- time that included
4 spending an enormous amount of time with the ATF and the
5 Abbeville County Sheriff's Department and Mr. Battles in an
6 effort to prepare his case for trial. So it was his
7 decision to plead without a doubt. I mean, I told him
8 that, you know, the defense that he was asking me to
9 prepare in the event that, you know, the state's case was
10 -- after its presentation, had -- had passed muster of not
11 being, you know, dismissed due to directed verdict, that
12 his -- his defense was going to be weak, but that if he
13 wanted a trial, I was prepared to go forward and get him a
14 trial.

15 Q Was there an ever -- ever an offer of 15 years in this
16 case?

17 A Not that I recall. The -- the only 15-year was what
18 Mr. Battles authorized me to extend to the solicitor's
19 office that he would consider accepting.

20 Q And the solicitor, Mr. Yates Brown, rejected that
21 offer?

22 A That's correct.

23 Q And countered with the 20 years?

24 A Correct.

25 MR. JOHNSON: Court's indulgence, Your Honor.

REDIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 34

1 THE COURT: Sure.

2 MR. JOHNSON: No further questions for this witness.

3 THE COURT: Anything in redirect?

4 MR. NASROLLAHI: Very briefly.

5 REDIRECT EXAMINATION

6 BY MR. NASROLLAHI:

7 Q Mr. Jones, looking at the document that was just --
8 that you just showed us ---

9 A Yes.

10 Q --- can you read to us what Question No. 2 says?

11 A (As read): "If so, has anyone promised you anything
12 else to get you to" ---

13 Q Let me ---

14 A --- "plead" ---

15 Q --- let me ---

16 A --- "guilty or" ---

17 Q --- start with the -- that's Subsection 2. Let me
18 start ---

19 A Oh.

20 Q --- you off ---

21 A Oh.

22 Q --- with Question No. 2 right up here.

23 A Oh. (As read): "Has the state agreed to recommend a
24 sentence to the judge?"

25 Q And what -- and what are you saying Mr. Battles

REDIRECT EXAMINATION BY MR. NASROLLAHI - W. TOWNES JONES, IV 35

1 responded to that question -- or what was his response,
2 according to this document?

3 A "Yes."

4 Q Okay. And jumping down to Subsection 2, what's the --
5 what's the question that's asked there?

6 A "If so, what is that recommendation?"

7 Q No. The next one, Subsection 2.

8 A "If so, has anyone promised you anything else to get
9 you to plead guilty or assured you as to a particular
10 sentence?"

11 Q And what does he write there?

12 A "Yes. Dismiss charge against Brenda Streeton and
13 dismiss other pending charges against him."

14 Q Okay.

15 MR. NASROLLAHI: No further questions.

16 THE COURT: Okay. Thank you for your testimony, Mr.
17 Jones. You can step down.

18 MR. NASROLLAHI: I have no problem releasing Mr.
19 Jones, unless Mr. -- Mr. Johnson wants to call him ---

20 MR. JOHNSON: Your Honor ---

21 MR. NASROLLAHI: --- in his case.

22 MR. JOHNSON: --- I would like to hold him as a
23 witness, just in case I need him as rebuttal.

24 (Whereupon, the witness exited the witness stand.)

25 THE COURT: Sure.

DIRECT EXAMINATION BY MR. NASROLLAHI - HERMAN BATTLES 36

1 MR. NASROLLAHI: Okay.

2 THE COURT: Just stay with us a little longer, please.

3 THE WITNESS: Yes, sir.

4 MR. NASROLLAHI: I'm going to call the applicant,
5 Herman Battles, to the stand.

6 THE COURT: Okay.

7 (Whereupon, the witness came forward.)

8 HERMAN BATTLES, having been first duly sworn,
9 testified as follows:

10 (Whereupon, the witness entered the witness stand.)

11 (Off the record briefly.)

12 THE COURT: You may proceed.

13 DIRECT EXAMINATION

14 BY MR. NASROLLAHI:

15 Q For the record, please state your name.

16 A Herman David Battles.

17 Q Okay. And you're the applicant in this case?

18 A Yes.

19 Q Okay. All right. Tell me about your meetings with --
20 tell the Court about your conversations and discussions
21 with Mr. Jones regarding your case.

22 A Well, I detained -- when I got detained, I -- I hired
23 Townes Jones as an attorney. And I wanted to take a jury
24 trial on it. And it come down to -- well, actually, we --
25 when we started to talking about sentences, we were in the

DIRECT EXAMINATION BY MR. NASROLLAHI - HERMAN BATTLES 37

1 evidence room, going through the evidence, which had been
2 already opened and gone through back in the box. And --
3 and there were two guns in there; they were loaded. They
4 just threw them up on a table of about ten people sitting
5 there.

6 So -- but anyway, the -- Townes asked Mr. Yates would
7 he consider to conspiracy charges for me on this -- on this
8 case. And Yates said that ---

9 MR. JOHNSON: Objection to hearsay, Your Honor,
10 anything that Mr. Brown would've said as the solicitor.

11 THE COURT: Okay. Try not to repeat what someone ---

12 THE WITNESS: Oh.

13 THE COURT: --- else ---

14 THE WITNESS: Oh.

15 THE COURT: --- has told you, even though the Court
16 will note for the record that Solicitor Brown is in the
17 courtroom and would be available to testify if either side
18 wanted -- wanted him to.

19 Q Okay. Was your understanding -- was there ever -- was
20 it ever your understanding that there was a offer of 15
21 years?

22 A There was an offer of 15 years.

23 Q Okay. And ---

24 A And at the -- when I start -- when they offered me the
25 15 years, it -- it come with stipulations of if you don't

DIRECT EXAMINATION BY MR. NASROLLAHI - HERMAN BATTLES 38

1 take the 15 years, we'll lock up both your sisters, your
2 nephew, and, you know -- so at that point I tried to
3 explain to Mr. Jones that my sister was in real bad health
4 and that I -- you know, I -- I would do anything to keep
5 her from having to go to court. Because they did lock up
6 my nephew for this charge.

7 And when I agreed the -- to plead -- take a plea, they
8 released him immediately. Charges were dropped on him.
9 And so I -- I took -- I -- I did agree to take the 15 years
10 because of the threats on my sisters and -- and nephew and
11 family.

12 Q Okay. So were these threats, as you say -- did they
13 play any importance in your decision to plead or to take an
14 offer?

15 A Most definitely. I -- I would've went to a jury
16 trial. It was just that they were -- I mean, it -- it --
17 they act like they were just going lock them up right then,
18 you know, when they -- which they did. They went out and
19 got my nephew and locked him up at -- right at that point.

20 So my -- my agreeing to take the -- the 15 and then,
21 of course, the 20 years was for the same reason: because
22 they had threatened me with my family, that they were going
23 lock them all up ---

24 Q Okay.

25 A --- for nothing.

DIRECT EXAMINATION BY MR. NASROLLAHI - HERMAN BATTLES 39

1 Q How did -- what's your understanding of how we got
2 from 15 years to 20 years in the negotiations?

3 A You know, I don't remember that. I was -- I went to
4 the hospital three different times when I was in Abbeville
5 and almost died one of the times. And I'm -- I was -- I
6 was pretty sick at that time.

7 Q Okay. Do you recall what your illnesses were?

8 A Yes. I have cancer of the liver, and I have numerous
9 other health problems.

10 Q Okay.

11 A I have a hemoglobin-blood problem, where I'm -- right
12 now actually is on standby to go to Kirkland for -- to get
13 blood now.

14 Q Okay.

15 A So . . .

16 Q Were you on any kind of medication at the time?

17 A They had me on medications there at Abbeville. I
18 don't remember what all strong ones that I was taking. I
19 think they was Liprosil (phonetic) or -- I was on some
20 strong ones.

21 Q Okay. Did that affect your judgment, the medication
22 you were on?

23 A Yes.

24 Q How did it affect your judgment?

25 A Well ---

DIRECT EXAMINATION BY MR. NASROLLAHI - HERMAN BATTLES 40

1 THE COURT: Are you referring to at the time of the
2 plea, Mr. Nasrollahi ---

3 MR. NASROLLAHI: Yes.

4 THE COURT: --- or at ---

5 MR. NASROLLAHI: At the time of the -- I'll -- I'll --
6 I'll clarify, Your Honor.

7 THE COURT: Please.

8 MR. NASROLLAHI: All right.

9 Q At the time that you were discussing the -- the
10 negotiations and -- and whether to take a plea or not, were
11 you on medication?

12 A Yes.

13 Q Okay. Were you on any strong medication?

14 A Yes.

15 Q Did that medication affect your judgment and your
16 ability to understand your conversations with ---

17 A Yes.

18 Q --- your attorney? Okay.

19 A I even had tried to talk to Townes Jones and Agent
20 Stallo. And I think I threw up on them in -- in the -- in
21 the attorney's room. I was still so sick that -- that I,
22 you know . . .

23 Q Okay. And you were -- you referred earlier that you
24 wanted to take a jury trial.

25 A Yes.

DIRECT EXAMINATION BY MR. NASROLLAHI - HERMAN BATTLES 41

1 Q Why -- why'd you want to take a jury trial?

2 A Well, I -- I didn't feel like that my involvement on
3 this -- I had been in this piece of property four or five
4 other times prior to this. My nephew did the flooring work
5 in there. I mean, we had been in this property quite a few
6 different times. Guy Yarger, which owned the property,
7 which he had bought with, you know, some of the, I guess,
8 illegal funds or whatever -- whatever he come up here with
9 -- but I -- I lost my whole train of thought.

10 Q I was asking you why you wanted to take a jury trial
11 on this.

12 A I wanted to take a jury trial because I -- I didn't
13 think all the charges had anything to do with me. I was
14 actually a -- a mile down the road when majority of this
15 stuff happened. And I come in kind of at the latter part
16 of it. And -- and, you know, that was it.

17 Q Okay.

18 MR. NASROLLAHI: Beg the Court's indulgence.

19 THE COURT: Sure.

20 MR. NASROLLAHI: And if I could approach the witness?

21 THE COURT: Sure.

22 Q This document that's marked as Defendant's Exhibit 1

23 ---

24 A Yes.

25 Q --- you looked at a copy down here at ---

DIRECT EXAMINATION BY MR. NASROLLAHI - HERMAN BATTLES 42

1 A I did.

2 Q --- counsel table?

3 A I did.

4 Q And do you recall signing that document?

5 A When -- when this document was actually brought to the
6 Abbeville County Jail is the day I threw up, I think, on
7 the -- the agent and Mr. Jones. I was still under some
8 real heavy medications, and I was real sick -- real sick.
9 Like I say, I almost died on that trip. And ---

10 Q But it -- does that document look like -- does it look
11 like a document that you signed?

12 A I -- you know, I can't be sure. I mean, it looks like
13 my signature. But -- but I just can't be sure whether it's
14 ---

15 Q Does that look like your handwriting on there?

16 A It -- it does look like my handwriting on my -- on my
17 name.

18 Q Okay. And has your illness persisted since your plea?

19 A Yes.

20 Q Okay.

21 MR. NASROLLAHI: That's all the questions I have for
22 this witness.

23 THE COURT: Any cross-examination?

24 MR. JOHNSON: Yes, Your Honor.

25

CROSS-EXAMINATION

BY MR. JOHNSON:

Q Mr. Battles, when you pled guilty, you were under oath, just like you are here today, correct?

A Yes, sir.

Q Okay. And you told the Court that you wanted to waive your right to a jury trial and plead guilty; isn't that correct?

A I did.

Q And now you're saying you wanted a jury trial?

A Yes, sir.

Q Okay. So were you lying during your guilty plea?

A I was lying because the threats started after that.

Q So -- so you were lying at the guilty plea is what you're telling us?

A At the guilty plea.

Q Under oath?

A Yes. I didn't -- I didn't feel like I had a choice.

Q But you didn't tell the Court that, did you?

A Well, we were the only ones in the courtroom. And I had them -- you know, it started off bad. There were some lies told to start with. And it -- it was just -- it was another -- it was another day that I took medication that morning, that noon.

Q But the judge asked you if you had taken any

CROSS-EXAMINATION BY MR. JOHNSON - HERMAN BATTLES

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1 medication within the last 24 hours, and you told him no;
2 isn't that correct?

3 A I don't think I told him that. I'd be, you know ---

4 Q Or that you had any mental health issues, and you said
5 no ---

6 A I have ---

7 Q --- correct?

8 A --- no mental ill -- no.

9 Q But the Court asked you, on page 5 of your transcript
10 (As read): "Mr. Battles, within the last 24 hours, have
11 you taken any medication or any substance that affects your
12 thinking?" And you said: "No, sir," under oath.

13 MR. NASROLLAHI: I'm going to object.

14 MR. JOHNSON: It's -- Your Honor, it's part of the
15 record.

16 THE COURT: I'm looking at in the transcript of the
17 plea.

18 MR. NASROLLAHI: I'd just like to note my objection.

19 Q You told the Court, "No, sir," again, right? But here
20 you just testified that you were on medication. So which
21 is it? Are you lying now, or were you lying then?

22 A I was on medication from the time I went into
23 Abbeville till the time I went to Kirkland.

24 Q So you lied at the guilty plea once again is what
25 you're telling the Court here today?

REDIRECT EXAMINATION BY MR. NASROLLAHI - HERMAN BATTLES 45

1 A Like I say, I felt threatened.

2 Q But you never told the Court that, did you?

3 A Didn't get a chance.

4 Q Actually, the Court asked if you wanted to say
5 anything. And you didn't say anything about threats or
6 coercion, did you? It's a yes-or-no question.

7 A No.

8 MR. JOHNSON: Your Honor, I have no further questions
9 for this witness.

10 THE COURT: Redirect?

11 MR. NASROLLAHI: Brief redirect.

12 REDIRECT EXAMINATION

13 BY MR. NASROLLAHI:

14 Q Do you recall whether you were on medication the day
15 that you entered a guilty plea?

16 A Yes.

17 Q Okay. Did that medication, on the day that you
18 entered the guilty plea, affect your understanding of what
19 was happening?

20 A Yes. It -- I mean, it -- it always made me feel real
21 lightheaded, forgetfulness. I mean, I -- it was pretty
22 strong medication.

23 Q Okay. Did the -- did the Court ask you whether you
24 were on any kind of medication that would impact your
25 decision-making?

REDIRECT EXAMINATION BY MR. NASROLLAHI - HERMAN BATTLES 46

1 A You -- you know, I -- I was so used to taking
2 medication every day that -- that it -- if I had took it, I
3 could've probably answered that question and said no, I
4 haven't taken anything, when I probably had. You know, I
5 mean, it was an everyday thing, just like getting up and
6 eating or drinking a glass of water. It was just . . .

7 Q Okay. That's all the questions I have.

8 THE COURT: Anything in recross?

9 MR. JOHNSON: No, Your Honor.

10 THE COURT: Thank you for your testimony. You can
11 step down, sir.

12 MR. NASROLLAHI: And that's our case, Your Honor.

13 (Off the record briefly.)

14 (Whereupon, the witness exited the witness stand.)

15 (Whereupon, Mr. Johnson and Mr. Nasrollahi conferred.)

16 MR. NASROLLAHI: I spoke too soon. I think Mr.
17 Henderson needs to speak with Mr. Brown.

18 THE COURT: Okay. Has he spoken with him or not yet?
19 Is he ---

20 MR. JOHNSON: I think he's ---

21 THE COURT: --- currently speaking with him?

22 MR. JOHNSON: I think he's in the back, speaking with
23 another client.

24 MR. NASROLLAHI: I can check on him right now, if --
25 if -- if we -- if -- if the Court wants to -- if the

1 Court's tired of hearing me talk and ask questions, we can

2 ---

3 THE COURT: No.

4 MR. NASROLLAHI: --- stand down and ---

5 THE COURT: No. I mean, we -- we can either take a
6 break and take up another matter, if they still need some
7 time for Mr. Henderson and Mr. Brown to converse or, if you
8 think they're ready, we can -- we can move on.

9 MR. NASROLLAHI: I think we'll probably have to do the
10 first one, if the Court's ---

11 THE COURT: Okay. All right.

12 MR. NASROLLAHI: --- okay with that.

13 THE COURT: We're going to be in recess on the Battles
14 case.

15 (Off the record from 10:53 a.m. until 11:12 a.m.)

16 THE COURT: Okay. We're back on the record in the
17 Herman Battles PCR. Mr. Nasrollahi?

18 MR. NASROLLAHI: Thank you, Judge. Mr. Henderson
19 informs me that he's had the opportunity to speak with Mr.
20 Brown. And if you want to ask Mr. Henderson, but Mr.
21 Henderson informs me that Mr. Brown has declined to testify

22 ---

23 THE COURT: Okay.

24 MR. NASROLLAHI: --- and would be ---

25 THE COURT: Okay.

1 MR. HENDERSON: On -- on -- on the grounds that his
2 testimony could further incriminate him, Your Honor.

3 THE COURT: Okay.

4 MR. HENDERSON: And -- and -- and from our
5 conversation today and from lengthy conversations in the
6 past, it is my recommendation that he absolutely exercise
7 his right to remain silent.

8 THE COURT: Okay.

9 MR. HENDERSON: And he tell me that's what he wants to
10 do.

11 THE COURT: Okay. Mr. Nasrollahi, since he is one of
12 your potential witnesses, probably under subpoena, do you
13 want him on the stand on the record taking the fifth or are
14 you willing to accept Mr. Henderson's ---

15 MR. NASROLLAHI: I'd like to have him on the record

16 ---

17 THE COURT: Okay.

18 MR. NASROLLAHI: --- taking the fifth.

19 THE COURT: All right. Come around please, sir.

20 (Whereupon, the witness came forward.)

21 JEFFREY BROWN, having been first duly sworn,
22 testified as follows:

23 (Whereupon, the witness entered the witness stand.)

24 THE COURT: Okay. You may proceed.

25

1 DIRECT EXAMINATION

2 BY MR. NASROLLAHI:

3 Q State your name for the record.

4 A Jeffrey Dwayne Brown.

5 Q Okay. Mr. Brown, were you the codefendant of Mr.
6 Battles?

7 A I don't think I want to answer many questions. I'd
8 like to plead the fifth in order to not incriminate myself
9 in any way -- any further way.

10 Q Okay.

11 THE COURT: Okay. Thank you, sir. You can step down.

12 THE BAILIFF: Watch your step, sir.

13 THE COURT: Okay.

14 (Whereupon, the witness exited the witness stand.)

15 THE BAILIFF: Thank you.

16 THE COURT: Mr. Nasrollahi, any further witnesses from
17 you?

18 MR. NASROLLAHI: That's the applicant's case, Judge.

19 THE COURT: Okay.

20 MR. NASROLLAHI: We -- I'd ask to brief the issue
21 based on the ---

22 THE COURT: Certainly.

23 MR. NASROLLAHI: --- arguments -- or ---

24 THE COURT: Okay.

25 MR. NASROLLAHI: --- testimony presented at the

1 hearing.

2 THE COURT: Very good. Anything from the state?

3 MR. JOHNSON: Nothing from the state, Your Honor.

4 THE COURT: Okay. This matter will be taken under
5 advisement and give the attorneys the opportunity to submit
6 briefs.

7 MR. NASROLLAHI: Judge, can we have 30 days to submit
8 briefs?

9 THE COURT: Thirty days fine? Is that satisfactory to
10 the state?

11 MR. JOHNSON: Yes, Your Honor.

12 THE COURT: Okay.

13 MR. NASROLLAHI: Thank you, Judge.

14 THE COURT: All right. Thank you very much.

15 MR. JOHNSON: May I have the permission that he submit
16 his first? Because I have no idea what issues he's really
17 alleging.

18 THE COURT: Okay. Why don't we do this?

19 MR. NASROLLAHI: I'll have it in 15 days. How about
20 that?

21 THE COURT: Okay. How about 15 days from the
22 applicant's side and then, say, another 15 days from the
23 state's side ---

24 MR. JOHNSON: Be good ---

25 THE COURT: --- to respond?

1 MR. JOHNSON: Thank you, Your Honor.

2 THE COURT: Okay. Very good. Thank you.

3 MR. NASROLLAHI: Thank you, Judge.

4 (Whereupon, the proceeding was concluded at 11:15 a.m.)

5 --- END OF TRANSCRIPT OF RECORD ---

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CERTIFICATE

I, THE UNDERSIGNED MARYANN S. NEVERS, CERTIFIED
VERBATIM REPORTER - MASTER, CERTIFICATE OF MERIT,
OFFICIAL COURT REPORTER FOR THE EIGHTH JUDICIAL
CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY
CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND
COMPLETE TRANSCRIPT OF RECORD IN THE HEARING OF THE
CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT
COURT FOR ABBEVILLE COUNTY, SOUTH CAROLINA, ON THE
19TH DAY OF FEBRUARY, 2015.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.



MARYANN S. NEVERS, CVR-M-CM

COLUMBIA, SOUTH CAROLINA

AUGUST 15, 2015

STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE

IN THE COURT OF COMMON PLEAS
EIGHTH JUDICIAL CIRCUIT

Herman David Battles, #354133,

2013-CP-01-0151

Applicant,

ORDER OF DISMISSAL

v.

State of South Carolina,

Respondent.

TRUE COPY
BY *[Signature]*
ABBEVILLE COUNTY CLERK OF COURT

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 10, 2013. The Respondent made its Return on February 4, 2014. An evidentiary hearing into the matter was convened on February 19, 2015, at the Greenwood County Courthouse. Josh Nasrollahi, Esquire represented Applicant. J. Rutledge Johnson, Esquire, of the South Carolina Attorney General's Office, represented the Respondent.

At the hearing, Applicant testified on his own behalf. W. Townes Jones, IV, Esquire also testified. This Court also had before it a copy of the records of the Greenwood County Clerk of Court, records from the South Carolina Department of Corrections, and the guilty plea transcript.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Abbeville County Clerk of Court. Applicant was indicted at the March 2010 term of the Abbeville County Grand Jury for Armed Robbery (2010-GS-01-0225) and Burglary, 1st degree (2010-GS-01-0228). These charges were dismissed by the solicitor with leave to restore on August 8, 2010. The charges were reinstated on July 26, 2012. Applicant was represented

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by W. Townes Jones, IV, Esquire. On January 31, 2013, Applicant pled guilty to both charges as indicted. The Honorable Frank R. Addy, Jr. sentenced Applicant, pursuant to a negotiated sentence, to confinement for fifteen (15) years for each charge to run concurrently. Applicant did not appeal his conviction and sentence.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Ineffective Assistance of Counsel"
2. "Guilty plea was not knowingly, intelligently, or voluntarily entered before the Court."

At the PCR hearing, the Applicant proceeded on both of his claims.

SUMMARY OF TESTIMONY

Applicant called Counsel as his first witness. Counsel testified he was sworn into the S.C. Bar in 1982 and was the Solicitor for the 8th Judicial Circuit from 1984-2004. Counsel stated 90% of his practice is criminal defense and has been in private practice for ten years. Counsel then testified Applicant's sister retained him in 2009. Counsel stated he was familiar with Applicant's prior criminal history and a bond was set in between \$150,000-200,000, but Applicant was able to bond out of jail with the condition that he wears an ankle monitor in Abbeville County.

Counsel testified he investigated the legal and factual allegation in this case. Counsel stated Applicant was arrested for participating in a Burglary, 1st degree and Armed Robbery where he and a co-defendant forced Victim, in his own house, to write a check for \$82,000 and call the bank to have it cleared. Co-defendant also tied up and shot Victim, so Applicant was charged with Assault and Battery with Intent to Kill (ABWIK) and Kidnapping as well. Victim was able to untie himself and call police. Counsel then testified Applicant was apprehended between 30-45 minutes after the

crime occurred driving the vehicle which matched the description given by Victim. Victim was also able to give a description of both defendants to law enforcement. Counsel testified police had probable cause to stop the vehicle because of the description the Victim gave to law enforcement. Counsel stated police found the check for \$82,000, a .22 caliber handgun, rope, gloves, duct tape and a fake FBI hat and badges inside Applicant's car. Counsel testified he met with Applicant and discussed each item of evidence with Sol. Yates Brown also in attendance.

Counsel then testified the solicitor offered Applicant a negotiated plea for twenty (20) years for Burglary, 1st degree and Armed Robbery and the Solicitor would nol prosse the charges against Applicant's sister. Applicant accepted this offer. Counsel also testified that he attempted to get an offer for fifteen years from the solicitor. Counsel stated Applicant was implicated in this case by Victim's statement to police and in the police report. Counsel states the solicitor had Victim on standby to testify at Applicant trial, and this testimony would have been critical as Victim would have said that Applicant had his co-defendant beat Victim and also that Applicant made Victim call his bank and order that the check clear.

On cross-examination, Counsel testified Victim identified Applicant inside Victim's house. Counsel then stated he spent much time attempting to combat the Burglary, 1st charge and show that Victim owed Applicant a substantial amount of money. Applicant told Counsel that at no time did he know co-defendant would shoot Victim, but Applicant admitted he entered Victim's house. Applicant took the position that he was only retrieving money Victim owed him, but Counsel explained to Applicant that he was taking the law into his own hands. A plea affidavit signed by Applicant was then entered into evidence at the hearing, showing Applicant understood the charges he faced, the negotiations between Counsel and the State, and that he was pleading guilty freely and

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voluntarily. Counsel testified it was Applicant's decision to plead guilty, and Counsel neither threatened nor coerced Applicant to plead guilty. Counsel stated he prepared for trial because he did not expect Applicant to plead and that Applicant decided to plead guilty at the 11th hour. Counsel also stated there was never an offer of fifteen years, even though Applicant wanted this offer, but that the solicitor counter-offered with a twenty-year offer.

Applicant testified he retained Counsel to represent him and wanted to proceed to a jury trial. Applicant claims there was a fifteen-year offer, with stipulations that if Applicant did not accept the offer, the solicitor would have some of his family members arrested. Applicant stated he would do anything to keep his sister out of jail. He claims he accepted the fifteen-year offer. Then Applicant stated these alleged threats played into his decision to plead guilty, and he agreed to accept the twenty-year offer.

Applicant testified his medication affected his judgment during the pretrial process. Applicant also claimed he did not understand his conversation with Counsel. Applicant further claimed he was a mile down the road when the crimes occurred and was not on Victim's property until after the crimes had occurred. Applicant then stated he wanted a trial because he did not think he was involved with most of the crimes. Applicant lastly testified that he was not sure if he signed the plea affidavit.

On cross-examination, Applicant testified he was under oath at his guilty plea and told the plea court he wanted to waive his right to a jury trial. Applicant admitted he lied under oath at his guilty plea. Applicant claimed he did not feel like he had a choice. Applicant claimed he was on medications at the plea, although he told the plea court that he had not taken any medications in the last 24 hours that would affect his thinking. Applicant claimed he did not think he told the plea

judge that he was not on medications. Applicant admitted that he lied throughout the guilty plea hearing.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

The Applicant alleges he received ineffective assistance of counsel. In a PCR action, "[t]he burden of proof is on the applicant to prove his allegations by a preponderance of the evidence." Frasier v. State, 351 S.C. 385, 389, 570 S.E.2d 172, 174 (2002) (citing Rule 71.1(e), SCRCP). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064 (1984); Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, Id. The Applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

First, the Applicant must prove that counsel's performance was deficient. Under this prong,

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attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625, *citing Strickland*. Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625. With respect to guilty plea counsel, the Applicant must show that there is a reasonable probability that, but for counsel's alleged errors, he would not have pled guilty and would have insisted on going to trial. Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed. 2d 203 (1985).

This Court finds Counsel sufficiently advised the Applicant of the charges against him, the potential penalties if convicted at trial, and the evidence the State would produce at trial. Counsel satisfactorily investigated this case based on the information supplied by the Applicant and the evidence available. Counsel also engaged in plea negotiations which were beneficial to the Applicant. This Court also finds the Applicant was well informed by Counsel in this case. The Applicant expressed to the plea court that he was satisfied with Counsel's representation. The Applicant pled guilty without any threat or coercion and was not under the influence of any intoxicant at the plea. The Applicant also waived his Constitutional rights afforded to him. This Court finds the Applicant pled knowingly, voluntarily, and on his own free will.

This Court further finds the Applicant's testimony regarding Counsel's performance is not credible while also finding Counsel's testimony is credible. Specifically, the Applicant admitted he lied under oath numerous times during the guilty plea. This Court finds Applicant had a tough decision to make, but the decision to plead guilty was made by Applicant without any threats or coercion from Counsel or anybody else; thus, Applicant's plea was freely and voluntarily made with

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complete awareness of the consequences of his plea. This Court finds the Applicant has failed to meet his burden of proving counsel's performance was deficient or that he was prejudiced thereby. Accordingly, this allegation is denied.

Involuntary Guilty Plea

To be knowing and voluntary, a plea must be entered with a full understanding of the charges and the consequences of the plea. Boykin v. Alabama, 395 U.S. 238, 89 S.Ct. 1709 (1969); Dover v. State, 304 S.C. 433, 405 S.E.2d 391 (1991). In determining guilty plea issues, it is proper to consider the guilty plea transcript as well as evidence at the PCR hearing. Harris v. Leeke, 282 S.C. 131, 318 S.E.2d 360 (1984).

Because a guilty plea is a solemn, judicial admission of the truth of the charges against an individual, a criminal inmate's right to contest the validity of such a plea is usually, but not invariably, foreclosed. Blackledge v. Allison, 431 U.S. 63, 97 S.Ct. 1621 (1977). Therefore, statements made during a guilty plea should be considered conclusive unless a criminal inmate presents valid reasons why he should be allowed to depart from the truth of his statements. Crawford v. U.S., 519 F.2d 317 (4th Cir. 1975); Edmonds v. Lewis, 546 F.2d 566 (4th Cir. 1976).

A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of the plea by showing that counsel's representation fell below an objective standard of reasonableness and that there is a reasonable probability that, but for counsel's errors, the defendant would not have pled guilty, but would have insisted on going to trial. Roscoe v. State, 345 S.C.16, 546 S.E.2d 417 (2001); Richardson v. State, 310 S.C. 360, 426 S.E.2d 795 (1993).

As discussed above, Counsel testified he discussed all of the discovery with Applicant. Once again, this Court finds Counsel's testimony more credible. Further, this Court finds the guilty

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[Signature]

plea transcript, Counsel's testimony and Applicant's answers during cross-examination at the PCR hearing directly refute his claims. This Court also finds Applicant pled guilty freely, voluntarily and without any coercion, threats or promises. Therefore, this allegation is denied.

Accordingly, this Court finds Applicant has failed to prove the first prong of the Strickland test – that Counsel failed to render reasonably effective assistance under prevailing professional norms. The Applicant failed to present specific and compelling evidence that Counsel committed either errors or omissions in his representation of Applicant.

This Court also finds Applicant has failed to prove the second prong of Strickland – that he was prejudiced by Counsel's performance. This Court concludes Applicant has not met his burden of proving counsel failed to render reasonably effective assistance. Therefore, these allegations are denied.

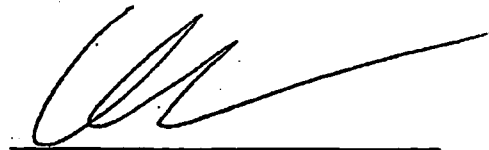
CONCLUSION

Based on all the foregoing, this Court finds and concludes that Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

This Court notifies Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRPC, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED!

Donald B. Hocker
Presiding Circuit Court Judge
Eighth Judicial Circuit

3-22, 2015

Clemens, South Carolina

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STATE OF SOUTH CAROLINA
COUNTY OF ABBEVILLE
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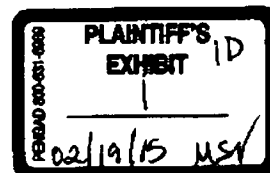
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**Herman David Battles
&
Jeffrey Dewayne Brown**

Incident: Apprehension of two felons

Events leading to the arrest:

On October 14, 2009 I was working in Abbeville County, assisting Troop 2 Post B during inclement weather. During the course of investigating a hit and run collision I arranged a meeting with Sgt. John Gray at the Abbeville Police Department (APD). Upon my arrival at the police department Sgt. Gray followed by an Abbeville city detective met me at the rear door. Sgt Gray stated "we just had a 10-75" (shooting incident). As Sgt. Gray walked to his car I asked for suspect information. The only thing Gray could advise was the suspects were possibly driving a grey Lincoln Town car and they could possibly be headed to Greenwood. I followed Sgt. Gray and the detective out of the parking lot to the intersection of SC 72. Sgt. Gray and the detective turned right. I assumed they were headed to the scene of the crime, I knew the suspects were mobile so I turned left and headed towards Greenwood. (At this point I was under the assumption the crime occurred within the city limits of Abbeville). Outside of the city limits I came across a grey Mercury Grand Marquis. The driver of the mercury was being overly cautious. I slowed down and stayed behind the car and attempted to make contact with Sgt. Gray via 800 mhz radio. After several unsuccessful attempts I requested that the SCHP Greenwood radio room make contact with Abbeville 911 and ascertain more details about the suspects and their vehicle. Greenwood dispatch advised the suspects were definitely driving a Lincoln Town car and it was occupied by two white males. Greenwood also advised the suspect could possibly be on the way to victimize another person. I picked my speed back up and continued on towards Greenwood. Just inside Greenwood County I came upon a green Lincoln Town car bearing Florida tag . The vehicle was in the right lane traveling the speed limit. I'm traveling in the left lane about a car length behind the Town car. I can see it's occupied by two white males. I advised dispatch that I may have the vehicle and asked them to find out more information about the suspects. As I waited on dispatch I eased up beside the suspects to gain a better view of the occupants. I could see that the driver was an older white male wearing a black suit and the passenger was a large framed younger white male wearing a red shirt. I noted neither occupant would look over at me. I also noted the driver had decreased his speed so he would not be beside me (creating distance). I mirrored the driver's actions until I was satisfied with my look at the occupants and their intentions, I then fell back behind the Town car, he remained in the right lane and I in the left. As we traveled down SC 72 dispatch confirmed the vehicle I was behind was in fact the suspects in the shooting incident in Abbeville. I requested another unit to roll my way before making the stop. At this point



the suspect began to make a series of turns. He first turned right onto SC 72 Business. We traveled 72 Business for about ¼ of a mile and the driver then turned onto west. I now know the driver is trying to lose me. I continued to follow waiting on another unit. A short distance on the driver slowed and began to turn into a private driveway. I could see an elderly female sitting under the carport of the driveway the suspects were about to turn into. At this point given the violent nature of the suspects I did not want the elderly woman to become another victim of the suspects or have them barricade in her house, I went ahead and initiated a felony traffic stop with out the back up unit. The suspects came to a stop half turned in to the driveway. Once again due to the suspects and their violent crimes I deployed my patrol rifle. I called the suspects out of the vehicle and moved them away from the cab of the car and any weapon that may have been present in the cab. I put them at a point of disadvantage and waited for back up to arrive. L/Cpl. B.R. Hozey was the first to arrive on scene. Hozey hand cuffed and search both suspect for weapons. After securing the suspects we quickly made sure no one else was in the car. After clearing the car both suspects were separated, the younger heavy set male was placed in my car and the older male in Hozey's car. Both subjects were informed as what was going on, neither seemed surprised. Dispatched Notified Abbeville 911 both suspect was in custody, they in return notified the Sheriff's Office. A short time later Deputy Jason Bonds arrived on scene. Deputy Bonds took custody of the older suspect. Investigator Belcher took possession of the vehicle when he arrived on scene. I along with Deputy Bonds transported the two suspects back to the Abbeville County Detention Center. Once at the Detention Center I along with Bonds collected the suspects clothing as evidence and waited for an investigator to arrive on scene to collect further evidence from the suspects. After the arrival of Investigator Patrick Thompson I left the detention center.

This stop resulted in the recovery of \$86,000.00 and two subjects responsible for multiple felonies. At last word from the Abbeville Sheriff's Office the two suspects were being charged with the following. 1st degree burglary; Armed robbery, kidnapping, ABWICK, ABHAN, Conspiracy, Possession of a weapon during the commission of a violent crime

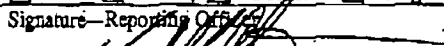
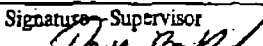
This report was prepared by L/Cpl. R.S. Chasteen of the SCEP ACE Team

SOUTH CAROLINA DEPARTMENT OF PUBLIC SAFETY
CRIMINAL ENFORCEMENT REPORT

Video Tape No. 09-8H-0842	Officer's Name/Badge No. Chasteen-R.S./811	Assisting Officer's Name/Badge No.	K-9 Unit Used? ☐ Yes ☒ No
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STATE OF SOUTH CAROLINA VS:

- | | | | |
|-----|--|---|---|
| (1) | Name: <u>Herman David Battles</u>
Address: <u>FL</u> | ☒ Driver ☐ Passenger
DL#: <u>1</u>
Social Security Number: <u>[REDACTED]</u> | Race: <u>W</u> Sex: <u>M</u> DOB: <u> </u>
State: <u>FL</u> |
| (2) | Name: <u>Jeffrey Dewayne Brown</u>
Address: <u>TN</u> | ☐ Driver ☒ Passenger
DL#: <u>1</u>
Social Security Number: <u> </u> | Race: <u>W</u> Sex: <u>M</u> DOB: <u> </u>
State: <u>TN</u> |
| (3) | Name: <u>N/A</u>
Address: <u> </u> | ☐ Driver ☐ Passenger
DL#: <u> </u>
Social Security Number: <u> </u> | Race: <u> </u> Sex: <u> </u> DOB: <u> / / </u>
State: <u> </u> |
| (4) | Name: <u>N/A</u>
Address: <u> </u> | ☐ Driver ☐ Passenger
DL#: <u> </u>
Social Security Number: <u> </u> | Race: <u> </u> Sex: <u> </u> DOB: <u> / / </u>
State: <u> </u> |

Case No.		Case No.		Case No.		Case No.	
Apprehension/Recovery		Apprehension/Recovery		Apprehension/Recovery		Apprehension/Recovery	
Def. #	Offense	Def. #	Offense	Def. #	Offense	Def. #	Offense
1	Multi Felony Warrants	2	Multi Felony Warrants				
Type:	Weight:	Type:	Weight:	Type:	Weight:	Type:	Weight:
N/A	N/A	N/A	N/A				
☐ Circuit Court	☐ Mag. Court	☐ Circuit Court	☐ Mag. Court	☐ Circuit Court	☐ Mag. Court	☐ Circuit Court	☐ Mag. Court
☐ Ticket	☐ Warrant	☐ Ticket	☐ Warrant	☐ Ticket	☐ Warrant	☐ Ticket	☐ Warrant
Number: N/A		Number: N/A		Number:		Number:	
Date of Offense: 10/14/2009		Time: 1021 hrs		Day: S ☐ M ☐ T ☐ W ☐ T ☒ F ☐ Sa ☐		County: Greenwood	
Offense Location:		Route: Identify Suspects' point of departure/destination (if known)					
		Abbeville, SC to Greenwood, SC					
Vehicle Color	Year	Make	Body Style	License No./State		VIN#	
Green	2000	Linc	4 DR				
Vehicle Towed By:			☐ Rotation	Reason For Traffic Stop BOLO			
N/A			☐ Request	Code:			
Location in vehicle where contraband was found			Method used to conceal (Type Packaging)		Notation on Package		Photos
N/A			N/A		☐ Yes ☐ No		
Describe other material found in vehicle (guns, records, etc.)					Forfeiture Action Planned on Vehicle		
N/A					☐ Yes ☐ No		
Money in Vehicle	Money on Subject	Forfeiture action planned		Amount Seized	Forfeiture Action Planned on Vehicle		
☐ Yes ☐ No	☐ Yes ☐ No	☐ Yes ☐ No		\$0.00	☐ Yes ☐ No		
EPIC Check Run	EPIC Checks	Place Suspect(s) incarcerated					
☐ Yes ☐ No	☐ Positive ☐ Negative	Abbeville County Sheriff's Office					
Signature—Reporting Officer				Signature—Supervisor			
							

ACKNOWLEDGEMENT OF RIGHTS GIVEN UP BY ENTERING GUILTY PLEA

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS

COUNTY OF ABBEVILLE)

INDICTMENT NO(S):

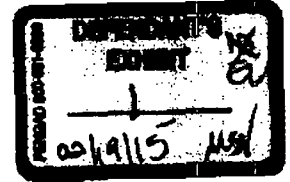
The State of South Carolina,)

Plaintiff,)

v.)

HERMAN DAVID BATTLES)

Defendant.)

Burg 1st 10GS-01-0225
Armed Robbery 10GS-01-0228

The Defendant desires to plead guilty to Burg 1st and Armed Robbery and certifies to the Court that the answers to the following are true:

- HB 1. The maximum sentence and penalty for my charge(s) is/are Armed Robbery 10-30
Burg 1st 15-Life
- HB 2. Has the State agreed to recommend a sentence to the Judge? YES
- (1) If so, what is that recommendation? 20 YEARS CONCURRENT
- (2) If so, has anyone promised you anything else to get you to plead guilty or assured you as to a particular sentence? YES, DISMISS CHARGES AGAINST BRANDA SIRETON
AND DISMISS OTHER PENDING
- HB 3. Has anyone promised you anything else, threatened you or put any pressure on you to get you to plead guilty?
NO
- If so, who and what? _____
- HB Are you under the influence of any medications, drugs or alcohol? NO
- If yes, explain. _____
- HB Are you aware of any physical, mental, emotional or nervous problem you may have that might affect your understanding of this plea or this court proceeding?
- If yes, explain: NO
- HB Do you understand that if you plead NOT GUILTY you have the right to have the help of a lawyer at all stages of the proceedings, and if you cannot afford to employ a lawyer, one would be provided to you free of charge?
- YES ✓ NO _____
7. Do you understand that when you plead guilty you give up your right to a jury trial? YES

7.B Do you understand that in a trial you would be presumed to be innocent? That you would not be required to prove you were innocent or that you were not guilty? YES ☒ NO ☐

9.B Do you understand that in a trial you have the right to see and hear all witnesses called to testify against you and to confront, cross examine and question them, and confront all of the evidence?

YES ☒ NO ☐

10.B Do you understand that in a trial you have the right to take the witness stand and testify, or not to take the witness stand as you choose, and that you cannot be required to take the witness stand?

YES ☒ NO ☐

7.B 11. Do you understand that at a trial you would have no burden of proof, and that the burden would instead be entirely on the State to prove you were guilty, and you could only be found guilty if all 12 jurors agreed that the State had proven each and every element of the crime against you beyond a reasonable doubt?

YES ☒ NO ☐

12. Have you talked with your lawyer about and do you fully understand the elements of each crime you are pleading guilty to?

7.B YES ☒ NO ☐

13. Do you understand that if you plead NOT GUILTY and that if you do not take the witness stand, the jury (1) cannot take that as evidence against you and (2) the court would tell the jury that, like any citizen, you have the absolute right to remain silent, and that your silence cannot be held against you whatsoever?

7.B YES ☒ NO ☐

14. Do you understand that if you plead NOT GUILTY you have a right to use the subpoena power of the Court to make witnesses attend your trial and testify, whether they want to or not?

7.B YES ☒ NO ☐

7.B 15. Do you know that if you plead GUILTY you will be found guilty without a trial and you will have given up all the rights mentioned in questions (9) to (14) along with your right to present any defense(s), and your right to challenge or contest any of the evidence against you including any searches or seizures made by law enforcement, any statements you may have made, and any testing that was done or should have been done?

YES ☒ NO ☐

16. If you are on Parole or Probation, do you know this plea could result in a revocation?

YES ☒ NO ☐

17. Has your lawyer gone over your rights and all circumstances of the charge(s) with you, and done everything you have asked him or her to do on your case?

YES ☒ NO ☐

18. Are you satisfied with your lawyer? YES ☒ NO ☐

19. Do you understand what you are doing and all the rights that you are giving up?

YES ☒ NO ☐

20. Are you pleading guilty of your own free choice and will?

YES ☒ NO ☐

DATE: 1-31-13

Henry David Battle
Defendant's Signature

I certify that the above questions were answered by the Defendant after a full explanation of each question by the undersigned and in my opinion the Defendant understands the elements of the crime(s), the possible punishment(s) and his/her Constitutional rights that will be waived if the plea is accepted.

DATE: 1-31-13

W. Townes Jones
Signature of Attorney for the Defendant

Attorney's Name Printed: W. Townes Jones

WITNESSES

Michael Belcher
Abbeville County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

March Term, 2010
Indictment # 10GS01-0225

WARRANT NUMBER

1282376

THE STATE

vs.

Herman David Battles
B/W 3-15-2010
Restore 7-26-2012

Foreman of the Grand Jury

Date MAR 12 2010

True Bill

VERDICT**INDICTMENT FOR**

BURGLARY
16-11-0311

Foreman

File 8/6/10
Dante C. C. C.
Dante C. C. C.

FILED
MAR 12 2010
CLERK OF COURT
ABBEVILLE COUNTY
SOUTH CAROLINA

MAY 1 1 5AM

THE STATE OF SOUTH CAROLINA

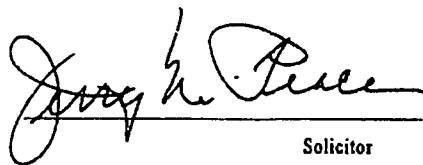
COUNTY OF ABBEVILLE

INDICTMENT FOR**BURGLARY
16-11-0311**

At a Court of General Sessions, convened on the 12th day of March, 2010 the Grand Jurors of Abbeville County present upon their oath:

That Herman David Battles, did in Abbeville County, state aforesaid, on or about the 14th day of October, 2009 willfully and unlawfully enter a dwelling without consent and with intent to commit a crime therein, when in effecting entry or while in the dwelling or in immediate flight there from, he or another participant in the crime: was armed with a deadly weapon or explosive; or caused physical injury to a person who was not a participant in the crime; or used or threatened the use of a dangerous instrument; or displayed what was or appeared to be a knife, pistol, revolver, rifle, shotgun, machine gun or other firearm, the said dwelling being owned and/or occupied by Scott Tyman, in violation of Section 16-11-311 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.


Solicitor

WITNESSES

Michael Belcher
Abbeville County Sheriff

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

COURT OF GENERAL SESSIONS

March Term, 2010
Indictment # 10GS01-0228

WARRANT NUMBER

J282386

THE STATE

vs.

Herman David Battles
31W 3-15-2010

Restore 7-26-12

Date: **MAR 12 2010**

Foreman of the Grand Jury

Trace Biv

VERDICT**INDICTMENT FOR**

ARMED ROBBERY
16-11-0330

Foreman

File 8/6/10
Deputy: Arthur
✓ Deputy Solon

10GS01-0228
March 12, 2010
Michael Belcher

THE STATE OF SOUTH CAROLINA

COUNTY OF ABBEVILLE

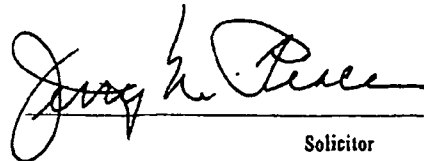
INDICTMENT FOR

ARMED ROBBERY
16-11-0330

At a Court of General Sessions, convened on the 12th day of March, 2010 the Grand Jurors of Abbeville County present upon their oath:

That Herman David Battles, did in Abbeville County, state aforesaid, on or about the 14th day of October, 2009 willfully and unlawfully while armed with a deadly weapon, or while alleging, either by action or words, he was armed while using a representation of a deadly weapon, or any object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, feloniously take from the person or presence of Scott Tyman by means of force or intimidation, goods or monies described as follows: one (1) cellular telephone, one (1) checkbook, one (1) check written for the amount of Eighty-two thousand (\$82,000.00) dollars, two (2) sets of keys and other personal paperwork, with intent to deprive the owner permanently of such property, in violation of Section 16-11-330 of the South Carolina Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such cases made and provided.



Solicitor