

ORIGINAL

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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SC SUPREME COURT

Appeal from Charleston County

Honorable Larry B. Hyman, Circuit Court Judge

JOSHUA MONROE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT

APPELLATE CASE NO. 2015-002434

APPENDIX

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	)	COURT OF GENERAL SESSIONS
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State of South Carolina,	)	Case Nos.
	)	2008-GS-10-08109
Plaintiff,	)	2008-GS-10-08111
v.	)	2008-GS-10-08120
	)	2008-GS-10-08123
	)	2008-GS-10-08144
Joshua Monroe.	)	2008-GS-10-08145
	)	2008-GS-10-08149
Defendant.	)	

ORIGINAL

TRANSCRIPT OF HEARING

The within Hearing in the above-captioned matter was held on November 18, 2010 before The Honorable J. C. Nicholson in the Charleston County Courthouse, 100 Broad St., Charleston, SC 29401; attended by counsel as follows:

APPEARANCES:

Burns Malone Wetmore, Esq.,
Appearing for The State.

Milton Demetrios Stratos, Esq.,
Appearing for Defendant

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I-N-D-E-X

NOVEMBER 18, 2010

(STATE OF SOUTH CAROLINA -v- JOSHUA MONROE)

(PLEA HEARING)

**(2008-GS-10-08109, 08111, 08120, 08123, 08144, 08145,
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E X H I B I T S

IDENTIFICATION ENTERED

NO EXHIBITS OFFERED

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P R O C E E D I N G S

(11:39 A.M.)

THE COURT: You-all wanted to talk to me before we did this plea?

(WHEREUPON, PROCEEDINGS BEGAN WITH A BENCH CONFERENCE, OFF THE RECORD.)

(WHEREUPON, PROCEEDINGS CONTINUED.)

MR. WETMORE: Thank you, Judge.

THE COURT: Thank you.

(WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A CONFERENCE, OFF THE RECORD.)

(WHEREUPON, PROCEEDINGS CONTINUED.)

THE COURT: All right; Mr. Monroe?

MR. MONROE: Yes, sir.

THE COURT: Would you raise you right hand, please sir? The best you can.

(WHEREUPON, JOSHUA MONROE WAS DULY SWORN AND TESTIFIED AS FOLLOWS:)

THE COURT: All right, Mr. Monroe, how old are you?

MR. MONROE: Twenty-two.

THE COURT: Twenty-two? And how far did you go in school, Mr. Monroe?

MR. MONROE: To the eleventh grade.

THE COURT: Well, did you complete the eleventh grade?

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1 **MR. MONROE:** Yes, sir.

2 **THE COURT:** All right; I'm gonna ask you some
3 questions. And during this process, if you want to
4 discuss anything with your attorney, let me know and I
5 will stop and allow you to do that; okay?

6 **MR. MONROE:** Yes, sir.

7 **THE COURT:** Can you do that?

8 **MR. MONROE:** Yes, sir.

9 **THE COURT:** All right, how far did you go in school,
10 Mr. Monroe?

11 **MR. MONROE:** The eleventh grade.

12 **THE COURT:** I just asked you that. Did you complete
13 the eleventh grade?

14 **MR. MONROE:** Yes, sir.

15 **MR. STRATOS:** He obtained his diploma through, uh,
16 the GED program.

17 **THE COURT:** He's got his GED?

18 **MR. STRATOS:** Yes, sir.

19 **THE COURT:** All right, have you worked anywhere?

20 **MR. MONROE:** Yes, sir.

21 **THE COURT:** What kind of work do you do?

22 **MR. MONROE:** I do excavation.

23 **THE COURT:** Okay; how -- have you worked at any
24 particular place very long?

25 **MR. MONROE:** Not necessarily.

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1 **THE COURT:** What's the longest place you've been --
2 you have maintained employment?

3 **MR. MONROE:** Ten months at a grocery store.

4 **THE COURT:** Okay; how long did you work there?

5 **MR. MONROE:** Ten months.

6 **THE COURT:** Are you married?

7 **MR. MONROE:** No, sir.

8 **THE COURT:** Have you ever been married?

9 **MR. MONROE:** No, sir.

10 **THE COURT:** Have any children?

11 **MR. MONROE:** No, sir.

12 **THE COURT:** Do you have a prior criminal record?

13 **MR. MONROE:** No, sir.

14 **THE COURT:** Have you ever been treated for abuse of
15 alcohol or drugs?

16 **MR. MONROE:** No, sir.

17 **THE COURT:** Ever been treated for mental illness?

18 **MR. MONROE:** No, sir.

19 **THE COURT:** Have you taken any medication, drugs, or
20 alcohol within the last twenty-four hours?

21 **MR. MONROE:** No, sir.

22 **THE COURT:** Have you ever been diagnosed with a
23 mo- -- emotional, nervous, or mental condition by a
24 doctor?

25 **MR. MONROE:** No, sir.

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1 **THE COURT:** Are you satisfied with the services of
2 your attorney?

3 **MR. MONROE:** Yes, sir.

4 **THE COURT:** Has he done everything you've asked him
5 to do?

6 **MR. MONROE:** Yes, sir.

7 **THE COURT:** Is there anything that he has done that
8 you feel like he should not have done?

9 **MR. MONROE:** No, sir.

10 **THE COURT:** Have you -- do you need more time to
11 talk to your attorney?

12 **MR. MONROE:** No, sir.

13 **THE COURT:** Have you talked to you attorney for as
14 often and as long as you feel necessary?

15 **MR. MONROE:** Yes, sir.

16 **THE COURT:** Are you completely satisfied with your
17 attorney's services?

18 **MR. MONROE:** Yes, sir.

19 **THE COURT:** Let me see, these -- how many are --
20 most -- most of 'em are -- the Kidnap is most -- Armed
21 Robbery is most serious, how about the Kidnapping? Most
22 serious?

23 **MR. WETMORE:** Yes, sir.

24 **THE COURT:** Does he have any other serious or most
25 serious?

7
7

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1 **MR. WETMORE:** Uh, the C-S-C First would be as well,
2 Judge.

3 **THE COURT:** Pardon?

4 **MR. WETMORE:** The C-S-C First would be.

5 **THE COURT:** I know, but prior to this.

6 **MR. WETMORE:** Oh; no, sir, he has no prior record.

7 **THE COURT:** Okay. All right, Mr. Monroe, some of
8 these charges are most serious and some of them are
9 serious; do you understand?

10 **MR. MONROE:** Yes, sir.

11 **THE COURT:** In South Carolina, if you get three
12 serious crimes, then The State could move to have -- have
13 you, uh, placed behind bars for life; do you understand?

14 **MR. MONROE:** Yes, sir.

15 **THE COURT:** Or, if you get two most serious you
16 could also receive life without parole; do you
17 understand?

18 **MR. MONROE:** Yes, sir.

19 **THE COURT:** So you've got your first strike; do you
20 understand?

21 **MR. MONROE:** Yes, sir.

22 **THE COURT:** Have any questions about it?

23 **MR. MONROE:** No, sir.

24 **THE COURT:** Do you also understand that the
25 Armed Robbery and the Kidnapping and -- let me see --

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1 the Kidnapping and the Attempted Armed Robbery are
2 non parolable offenses; do you understand?

3 **MR. MONROE:** Yes, sir.

4 **THE COURT:** You will not be eligible for parole; do
5 you understand?

6 **MR. MONROE:** Yes, sir.

7 **THE COURT:** And I believe the Criminal Sexual
8 Conduct, First Degree, is also non -- non parolable; do
9 you understand?

10 **MR. MONROE:** Yes, sir.

11 **THE COURT:** In other words, whatever sentence you
12 receive on these crimes, you will not be eligible for
13 parole, do you understand?

14 **MR. MONROE:** Yes, sir.

15 **THE COURT:** Have any questions about it?

16 **MR. MONROE:** No, sir.

17 **THE COURT:** Have you ever been through the criminal
18 system before? Even Magistrate's Court or any kind?

19 **MR. MONROE:** No, sir.

20 **THE COURT:** No -- no criminal charges at all?

21 **MR. MONROE:** No, sir.

22 **THE COURT:** Do you understand, under the Fifth
23 Amendment of the Constitution, You have the right to
24 remain silent?

25 **MR. MONROE:** Yes, sir.

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1 **THE COURT:** No one can make you testify against
2 yourself; do you understand?

3 **MR. MONROE:** Yes, sir.

4 **THE COURT:** When you enter a guilty plea you will be
5 acknowledging your guilt; do you understand?

6 **MR. MONROE:** Yes, sir.

7 **THE COURT:** And I understand you're going to enter
8 an Alford plea to three indictments; is that correct?

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

10 **THE COURT:** Has your attorney explained to you the
11 Alford plea?

12 **MR. MONROE:** Yes, sir.

13 **THE COURT:** Mr. Stratos, have you explained to the
14 Defendant the charge contained in the indictments?

15 **MR. STRATOS:** I have, Your Honor.

16 **THE COURT:** Have you explained to him the possible
17 punishment?

18 **MR. STRATOS:** I have, Your Honor.

19 **THE COURT:** Have you explained to him his
20 constitutional rights, including a Jury trial?

21 **MR. STRATOS:** I have, Your Honor.

22 **THE COURT:** Did he appear to understand?

23 **MR. STRATOS:** I believe he does.

24 **THE COURT:** How does he wish to plea?

25 **MR. STRATOS:** He wishes to plead guilty on each one

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1 of the charges.

2 **THE COURT:** And then the Alford on the other three?

3 **MR. STRATOS:** Yes, sir.

4 **THE COURT:** Do you agree with his decision?

5 **MR. STRATOS:** I do.

6 **THE COURT:** And from your investigation of the facts
7 and circumstances, do you feel that The State could
8 produce sufficient evidence to convince the Jury the
9 Defendant's guilty beyond a reasonable doubt?

10 **MR. STRATOS:** I do.

11 **THE COURT:** Have you had any indication that he
12 needs to be submitted to a mental evaluation to determine
13 his competency?

14 **MR. STRATOS:** No, sir.

15 **THE COURT:** All right Mr. Monroe, do you understand
16 that you have the right of a presumption of innocence? A
17 presumption of innocence -- under the law, you're
18 presumed innocent under the law until a Jury has found
19 you guilty; until a Jury has determined, uh -- oh, excuse
20 me. Until The State has proven you guilty beyond a
21 reasonable doubt and all twelve Jurors have voted to find
22 you guilty. You're presumed innocent until that occurs;
23 do you understand?

24 **MR. MONROE:** Yes, sir.

25 **THE COURT:** Do you understand you're entitled to a

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1 Jury trial?

2 **MR. MONROE:** Yes, sir.

3 **THE COURT:** Do you understand at a Jury trial The
4 State would be required to prove you guilty beyond a
5 reasonable doubt? All twelve Jurors would have to find
6 you guilty; do you understand?

7 **MR. MONROE:** Yes, sir.

8 **THE COURT:** You're entitled to cross-examine the
9 witnesses, challenge any statements or evidence that was
10 being presented by The State; do you understand?

11 **MR. MONROE:** Yes, sir.

12 **THE COURT:** You or other witnesses could testify on
13 your behalf at the Jury trial; do you understand?

14 **MR. MONROE:** Yes, sir.

15 **THE COURT:** Knowing that about a Jury trial, do you
16 want a Jury trial?

17 **MR. MONROE:** No, sir.

18 **THE COURT:** Do you understand you have the right to
19 appeal the guilty plea ten days from today?

20 **MR. MONROE:** Yes, sir.

21 **THE COURT:** Has anybody threatened you?

22 **MR. MONROE:** No, sir.

23 **THE COURT:** Has anybody coerced you?

24 **MR. MONROE:** No, sir.

25 **THE COURT:** Has anybody intimidated you to make you

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1 plead guilty?

2 **MR. MONROE:** No, sir.

3 **THE COURT:** Have any promises been made to you?

4 **MR. MONROE:** No, sir.

5 **THE COURT:** Have you had enough time to make your
6 decision to plead guilty?

7 **MR. MONROE:** Yes, sir.

8 **THE COURT:** Are you pleading guilty of your own free
9 will and accord?

10 **MR. MONROE:** Yes, sir.

11 **THE COURT:** Have you understood all my questions?

12 **MR. MONROE:** Yes, sir.

13 **THE COURT:** Have you answered 'em truthfully and
14 correctly?

15 **MR. MONROE:** Yes, sir.

16 **THE COURT:** Have any questions you want to ask The
17 Court or your attorney?

18 **MR. MONROE:** No, sir.

19 **THE COURT:** (After pause) Solicitor, I presume you
20 don't have any objection to the Alford plea?

21 **MR. WETMORE:** No, sir.

22 **THE COURT:** On the Alford pleas on the, uh, Armed
23 Robbery and the, uh, Kidnapping -- that's indictment
24 number 8149, 8145, and 8143, the Criminal Sexual Conduct,
25 First Degree.

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1 And I understand all we are doing today is taking
2 his guilty plea; is that correct?

3 **MR. WETMORE:** That's correct, Judge.

4 **THE COURT:** The sentences could be deferred until
5 when?

6 **MR. WETMORE:** Uh, Judge, after the final
7 co-Defendant is resolved, uh, then I'll -- I'll -- I'll
8 bring, uh, Mr. Monroe back before you and -- and you can
9 sentence him at that point.

10 **THE COURT:** And I -- I presume Mr. Monroe is willing
11 to testify against the co-Defendants; is that correct?

12 **MR. WETMORE:** Uh, Judge, he's -- he's gonna be
13 subpoenaed and called as a witness if needed. Um, he's
14 already given a written statement so I think he would --
15 he would be okay to testify; yes, sir.

16 **THE COURT:** All right. Do you -- do you need his
17 testimony in order to convict the co-Defendants?

18 **MR. WETMORE:** Yes, sir.

19 **THE COURT:** Pardon?

20 **MR. WETMORE:** That -- that sure would help, sir;
21 yes, sir.

22 **THE COURT:** It would help?

23 **MR. WETMORE:** Yes, sir.

24 **THE COURT:** Okay. Let me see the attorneys up here,
25 um, just a second.

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1 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A BENCH
2 CONFERENCE, OFF THE RECORD.)

3 (WHEREUPON, PROCEEDINGS CONTINUED.)

4 **THE COURT:** All right, from my understanding, an
5 Alford plea has to be a -- a Defendant has to receive a
6 benefit. Solicitor, what benefit would the Defendant be
7 receiving on the Kidnapping and the indictments that --
8 on the Kidnapping, Armed Robbery, and the C-S-C First
9 that I just read out?

10 **MR. WETMORE:** Yes, sir, Judge. As to that
11 particular incident, um, first of all, he is -- he is not
12 being tried individually and life without parole is not
13 being sought.

14 Um, as to this incident, uh, he was -- he's pleading
15 guilty to an Armed Robbery and there were two other
16 identical Armed Robbery indictments from the same
17 incident, uh, that are being nol prossed.

18 Uh, he's pleading to Kidnapping and there was
19 another Kidnapping Indictment from the same incident, the
20 same facts, that's being nol prossed.

21 Um, also, there was a -- a lesser Burglary charge
22 and a Firearm charge, all from that same incident, that
23 are being nol prossed.

24 So, it's dup- -- duplicates and -- and lesser
25 indictments are being nol prossed.

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1 **THE COURT:** Okay.

2 **MR. WETMORE:** Um, and thirdly, I think it's
3 important that he is -- you know, not being sentenced; he
4 does have the opportunity to, uh, to ingratiate himself
5 to the -- The Court by -- by testifying.

6 So those would be the -- the -- the benefits, Judge.

7 **THE COURT:** Okay. And, Mr. Stratos, do you agree
8 that those are benefits that your client's receiving?

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

10 **THE COURT:** Mr. Monroe, do you also agree that those
11 are benefits you are receiving under these Alford pleas?

12 **MR. MONROE:** Yes, sir.

13 **THE COURT:** Okay; thank you so very much. All
14 right, uh, Mr. Monroe, what I'm going to try to do, I'm
15 gonna do the guilty plea indictments separate from the
16 Alford plea; okay?

17 **MR. MONROE:** Yes, sir.

18 **THE COURT:** Now, as far as the Attempted Armed
19 Robbery, indictment number 8109; the Armed Robbery, 8120;
20 the Kidnapping, 8111; and indictment number 8123 -- which
21 is also Kidnapping -- how do you wish to plea?

22 **MR. MONROE:** Guilty.

23 **THE COURT:** Are you guilty?

24 **MR. MONROE:** Yes, sir.

25 **THE COURT:** All right, what I'm going to do -- are

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1 these -- do all these arise out of separate incidents,
2 the same incident, or -- or what? I haven't read the
3 indictments yet.

4 **MR. WETMORE:** Judge, it's three, uh, incidents.

5 **THE COURT:** Okay. All right, Mr. Monroe, I'm going
6 to get the Solicitor to give me the facts of all those
7 indictments and I want you to listen, okay?

8 **MR. MONROE:** (Nod.)

9 **THE COURT:** After he gives me the facts, I'm gonna
10 ask you if you agree with the facts or disagree. If you
11 disagree, I want to know specifically what facts you
12 disagree with; can you do that?

13 **MR. MONROE:** Yes, sir.

14 **THE COURT:** Solicitor?

15 **MR. WETMORE:** Judge, uh, would you like to hear the
16 facts for all three incidents---

17 **THE COURT:** Yes, please -- please.

18 **MR. WETMORE:** ---or just the ones he's pleading
19 guilty to?

20 **THE COURT:** The one -- the ones he's pleading guilty
21 to please.

22 **MR. WETMORE:** Okay. And to include the Alford or
23 just the guilty pleas?

24 **THE COURT:** Just the ones he's pleading to and we'll
25 do the Alford next, okay?

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1 **MR. WETMORE:** Okay; so just the guilty pleas.

2 **THE COURT:** Just the guilty pleas please.

3 **MR. WETMORE:** Uh, Judge, Mr. Mon- -- Monroe and
4 others participated in a series of armed -- armed
5 robberies at restaurants in North Charleston. Uh, they
6 were masked, they wore gloves, and they were armed with
7 handguns and stun guns.

8 Um, the first incident that he's pleading guilty to,
9 uh, happened April 28th 2008; it was Applebee's on Rivers
10 Avenue. Mr. Monroe participated armed with a handgun.
11 It was about 2:40 in the morning; the employees were
12 leaving after closing up the restaurant. They were met
13 in the parking lot, uh, guns were pointed at them and
14 they were forced back into the restaurant. Uh, they were
15 forced to disarm the alarm and open up the safe. Uh,
16 fifty-five hundred dollars was taken.

17 The other incident that he is pleading just plain
18 old guilty to is the June 2nd 2008, uh, armed robbery of
19 the Chuck E. Cheese -- or, the attempted armed robbery of
20 the Chuck E. Cheese. Um, once again, Mr. Monroe, um,
21 armed with a -- a handgun -- a stun gun, um, it was about
22 12:50 in the morning. An employee was closing up shop
23 and exiting the restaurant. Um, they actually missed
24 catching that employee. He got to his car and drove away
25 but they followed him to his home up in Dorchester County

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1 and then at gunpoint, uh, Mr. Monroe and his
2 co-Defendants, um, assaulted him and -- and -- and
3 kidnapped him and put him into the back seat of his own
4 car and took him down the highway back to North
5 Charleston to the restaurant he had just left.

6 Um, while on the road, his car ran out of gas -- the
7 victim's car ran out of gas. And so, he was forced into
8 the Defendant's vehicle that was following. Um, while in
9 the vehicle, he was assaulted, he was -- he was tased, he
10 was threatened. Um, and when they arrived back at the
11 restaurant, he was forced, uh, at gunpoint back in there,
12 disarm the alarm, and he was -- he was actually not able
13 to open the safe, Judge, uh, it was on a time delay.
14 And, uh, no money was -- was -- was taken and he was left
15 tied up inside the restaurant.

16 Um, the, uh, police were able to identify, uh, the
17 vehicle used and a co-Defendant, uh, was, uh, arrested in
18 this and confessed, uh, fully implicating Mr. Monroe.
19 Uh, Mr. Monroe was -- was honest with the police, um, as
20 to these two incidents and gave a full written confession
21 as to his involvement in the robbery, um, of the
22 Applebee's and the attempted armed robbery of the Chuck
23 E. Cheese.

24 Those are the two facts that, uh, he's pleading
25 guilty to, Judge.

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1 **THE COURT:** Okay; thank you very much. Mr. Monroe,
2 do you agree with those facts that the Solicitor gave to
3 The Court on Chuck E's and -- and Applebee's?

4 **MR. MONROE:** Yes, sir.

5 **THE COURT:** Mr. Stratos, is there anything you want
6 to add as to the facts in those three -- on those three,
7 uh---

8 **MR. STRATOS:** Nothing further, Your Honor.

9 **THE COURT:** ---or, on those four indictments?

10 **MR. STRATOS:** No, sir.

11 **THE COURT:** All right, thank you very much. All
12 right, I find there is a factual basis for the pleas and
13 he's freely, voluntarily, knowing, and intelligently made
14 a decision to plead guilty with advice of his attorney.
15 All elements of the charges have been met.

16 All right, Mr. Monroe, now we're going to do the
17 Alford plea, okay?

18 **MR. MONROE:** Yes, sir.

19 **THE COURT:** And I'm going to ask the Solicitor to
20 give me the facts of the Alford plea and then I'm going
21 to ask you, in your opinion, if those facts were given to
22 a Jury as the Solicitor is giving them to The Court, in
23 your opinion, do you -- do you think a Jury would find
24 you guilty? Do you understand?

25 **MR. MONROE:** Yes, sir.

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1 **THE COURT:** All right; Solicitor?

2 **MR. WETMORE:** Thank you, Judge. Uh, May 25th 2008,
3 at the Noisy Oyster restaurant in North Charleston, uh,
4 Mr. Monroe participated in an armed robbery, um, armed
5 with a handgun, a stun gun once again. Um, very similar
6 facts. About 3:20 in the morning, the employees were
7 closing up, exiting, they were met in the parking lot
8 and, um, guns were pointed at them and they were forced
9 back into the restaurant.

10 Uh, they -- they took the night deposit bag and
11 they forced the employees to open up the safe. Uh,
12 sixty-seven-hundred dollars and some personal property
13 was taken. Uh, but Judge, it did not stop there
14 unfortunately.

15 Uh, at gunpoint, one of the Defendants -- one of the
16 three -- uh, forced a female employee to take off her
17 clothes; uh, forced the female employee to perform oral
18 sex on him. And, uh, the other Defendants watched and --
19 and they actually tased the male employee that was --
20 that was kidnapped as well.

21 Uh, after that -- that -- that sexual assault, the,
22 uh, the Defendant forced the female employee over to a
23 sink and made her wash her mouth out. Um, and while she
24 was doing that, the other two Defendants, uh, sexually
25 assaulted her. They touched her vagina, her breasts.

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1 Um, after that, Judge, the Defendants forced the,
2 um, employees -- both of them -- into the walk-in
3 refrigerator, um, and at that point they forced the male
4 employee to take off his clothes. And at gunpoint they
5 forced the female employee to perform oral sex on the
6 male employee. Um, and -- and as -- as she did that --
7 as she was forced to do that, they -- they watched and
8 made threatening comments.

9 Um, the Defendants left both employees, um, naked,
10 shut up in the refrigerator.

11 Um, Judge, it is -- it is tough to tell exactly
12 who -- which one of the masked Defendants was the one
13 that forced the female to perform oral sex.

14 Um, according to the co-Defendant that's given a
15 complete statement, um, he says it was -- it was not
16 Mr. Monroe but a third person, Mr. Mulligan. Um, but
17 Judge, it is -- it's tough to say for sure since they
18 were all masked, um, but even if -- if it's true that it
19 was Mr. Mulligan and -- and -- and not this Defendant,
20 uh, all the Defendants were armed, uh, they all
21 participated in the sexual assault, and we'd say the hand
22 of one is -- is the hand of all as to the C-S-C.

23 **THE COURT:** All right, Mr. -- excuse me.
24 Mr. Monroe, if those facts were presented to a Jury, do
25 you think a Jury would find you guilty?

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1 **MR. MONROE:** No, sir.

2 **THE COURT:** You do not? Okay, then I can't take
3 your Alford plea. Okay?

4 **MR. MONROE:** Can I talk to my lawyer?

5 **THE COURT:** Pardon?

6 **MR. MONROE:** Can I talk to my lawyer?

7 **THE COURT:** Yeah, you can talk to your lawyer.

8 (WHEREUPON, PROCEEDINGS WERE INTERRUPTED FOR A
9 CONFERENCE, OFF THE RECORD.)

10 (WHEREUPON, PROCEEDINGS CONTINUED.)

11 **MR. STRATOS:** Your Honor, um, if The Court might,
12 uh, attempt to explain exactly---

13 **THE COURT:** All right, I will -- I will.

14 **MR. STRATOS:** ---what the---

15 **THE COURT:** I will.

16 **MR. STRATOS:** It might---

17 **THE COURT:** I will; I'll try. Okay, Mr. Monroe---

18 **MR. MONROE:** Yes, sir?

19 **THE COURT:** ---I'm not -- The Court's not asking you
20 if you have a defense to these charges or if you were
21 directly participating in these charges, okay? As the
22 Solicitor says, the, uh, theory under the law is hand of
23 one is hand of all. In other words, if you -- if you and
24 I go into a convenience store and I have a gun and I --
25 you're standing there with me, assisting me, and I

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1 actually have the gun and I actually open up the cash
2 register but you drive the car to do the get-away, the
3 hand of one is hand of all; you're as guilty as I am.

4 Uh, and in order for an Alford plea to be effected,
5 you don't have to acknowledge your guilty, but in this
6 Court's opinion you have to have three things.

7 Number one, The State's got to consent to it, which
8 they have.

9 Number two, uh, they have -- have to receive some
10 benefit. The, uh, State's put that benefit on the
11 record. Your attorney's agreed to that benefit and
12 you've agreed to it.

13 Number three, you have to acknowledge that if those
14 facts as The State presented them to The Court were
15 presented to the Jury -- and I'm not talking about
16 anything else being presented to the Jury, just those
17 facts -- do you, in your opinion, do you think the Jury
18 would find you guilty? And it's this Court's opinion you
19 have to acknowledge that yes -- affirmatively -- in order
20 for that guilty -- the Alford plea to take effect. Do
21 you understand?

22 **MR. MONROE:** Yes, sir.

23 **THE COURT:** So, we went through that process and I
24 asked you, do you think a Jury would find you guilty
25 based on those facts? Not whether you were the actual

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1 one that had intercourse with the girl or whatever --
2 whatever your participation was, but based upon the hand
3 of one is hand of all and the presentation presented by
4 The State. Do you understand?

5 **MR. MONROE:** Yes, sir.

6 **THE COURT:** And you said no. So if you -- if that's
7 your feelings and that's what you believe, that's fine;
8 that's your opinion. But, I can't take the Alford plea
9 the way I understand the way an Alford is supposed to
10 function, okay?

11 **MR. MONROE:** Yes, sir.

12 **THE COURT:** Do you understand? Now, I'll ask you
13 again, based upon the facts as the Solicitor gave to The
14 Court, if those facts, and those facts alone, were
15 presented to a Jury, do you think a Jury would find you
16 guilty?

17 **MR. MONROE:** Yes, sir.

18 **THE COURT:** Do you understand what I'm explaining to
19 you?

20 **MR. MONROE:** Yes, sir.

21 **THE COURT:** Did you understand what -- what your
22 attorney explained to you about the Alford plea?

23 **MR. MONROE:** Yes, sir.

24 **THE COURT:** I'm not asking you to acknowledge that
25 you were the actual participant in the -- the sexual

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1 intercourse or whatever transpired, okay? I'm not asking
2 you to admit to that; do you understand?

3 **MR. MONROE:** Yes, sir.

4 **THE COURT:** Do you have any questions about the
5 Alford plea?

6 **MR. MONROE:** No, sir.

7 **THE COURT:** Do you need to talk to your attorney any
8 more about the Alford plea?

9 **MR. MONROE:** No, sir.

10 **THE COURT:** Mr. Stratos, anything you want to put on
11 the record concerning the Alford plea?

12 **MR. STRATOS:** Nothing further, Your Honor; I believe
13 that was fully explained.

14 **THE COURT:** Pardon?

15 **MR. STRATOS:** I believe you fully explained it; I --
16 I have nothing further that I -- that I believe needs to
17 be placed on the record.

18 **THE COURT:** Okay. All right, I'm going to find
19 there is a factual basis for the Alford plea and the
20 Defendant has freely, voluntarily, knowingly, and
21 intelligently made the decision to enter the Alford plea
22 with the advice of his attorney. All elements of the
23 charges have been met.

24 I understand sentence is to be postponed to a later
25 day; is that correct?

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1 **MR. WETMORE:** That's correct, Judge; I appreciate
2 it.

3 **THE COURT:** Okay. All right, I have filled -- I
4 have, uh, accepted the plea. I have signed it and dated
5 today on the plea and put on the sentence sheet it's --
6 the sentence will be postponed.

7 **MR. STRATOS:** Thank you very much, Your Honor.

8 **MR. WETMORE:** Thank you, Your Honor.

9 **THE COURT:** Okay? Thank you all very much.
10 Mr. Monroe, good luck to you.

11 (WHEREUPON, HEARING ENDED AT 12:03 P.M.)

12 *****END OF REQUESTED TRANSCRIPT*****
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1 STATE OF SOUTH CAROLINA)
2) CERTIFICATE OF REPORTER
3 COUNTY OF CHARLESTON)
4

5 I, THE UNDERSIGNED VIVIAN H. CROSS, OFFICIAL COURT
6 REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF
7 SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A
8 TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF THOSE
9 PROCEEDINGS REQUESTED AND EVIDENCE INTRODUCED IN THE TRIAL
10 OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
11 GENERAL SESSIONS FOR CHARLESTON COUNTY, SOUTH CAROLINA, ON
12 THE 18TH DAY OF NOVEMBER 2010.

13 I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
14 COUNSEL NOR INTEREST TO ANY PARTY HERETO.
15
16
17
18
19
20

21 Vivian H. Cross

22 VIVIAN H. CROSS, COURT REPORTER

23 TENTH CIRCUIT AT LARGE

24 MAY 31, 2015
25

STATE OF SOUTH CAROLINA COURT OF GENERAL SESSIONS

COUNTY OF DORCHESTER 2008-GS-18-1107
 2008-GS-18-1109
 2008-GS-18-1113
 2008-GS-18-1121
 2008-GS-18-1108
 2008-GS-18-1112
 2008-GS-18-1120

STATE OF SOUTH CAROLINA)
) TRANSCRIPT OF RECORD
)
) February 3, 2011
)
 BRYAN LEON MULLIGAN,)
 JOSHUA MONROE, and COREY) Charleston, South Carolina
 LARKIN,)
)
)
) Defendants.)

B E F O R E:

The Honorable Roger M. Young, Sr., Judge.

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

Byrnes Wetmore, Assistant Solicitor
 Russell Hilton, Assistant Solicitor
 Attorneys for the State

Andrew Savage, Esquire
 Attorney for Defendant Mulligan

Milton Demetrios Stratos, Esquire
 Attorney for Defendant Monroe

David Haselden, Esquire
 Attorney for Defendant Larkin

Amanda K. Haffenden, RPR, CRR
 Circuit Court Reporter

1 (February 3, 2011.)

2 THE COURT: All right. Are you Bryan Leon
3 Mulligan?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. Mr. Mulligan, you got
6 a number of charges here against you, and I understand
7 that you want to plead guilty to these charges today, so
8 let's work through them one by one.

9 First of all, we have indictment
10 2008-GS-18-1108 is an indictment out of Dorchester County
11 for kidnapping. You can get up to 30 years in prison for
12 that. I'm told you want to plead guilty to that
13 indictment; is that correct?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: Do you understand this Dorchester
16 County charge, you have the right to have it resolved in
17 Dorchester County. Do you want to waive your right to
18 have this resolved in Dorchester County?

19 THE DEFENDANT: Yes, sir, Your Honor.

20 THE COURT: All right. These are all
21 sentencing sheets. Is there more than one Dorchester
22 County charge here? I only have one from Dorchester
23 County.

24 MR. HILTON: I passed up six, I believe, Your
25 Honor.

1 THE COURT: All right. Next is an indictment
2 out of Dorchester County, indictment 2008-GS-18-1121.
3 It's for armed robbery. You could get ten to 30 years
4 for that. Do you want to waive your right to have this
5 treated in Dorchester County and plead guilty here today?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: I hate being so slow, but there
8 are a lot of indictments, and none of them are in order,
9 so I want to make sure we get this right so we only have
10 to do this once.

11 Next, we've got indictment 2008-GS-18-1120,
12 another Dorchester County indictment for kidnapping, zero
13 to 30 years. You want to waive your right to have this
14 handled in Dorchester County and plead guilty to it
15 today?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: Next is indictment
18 2008-GS-18-1112, a Dorchester County indictment for armed
19 robbery. Again, 10 to 30 years. You want to waive your
20 right to have this treated in Dorchester County and plead
21 guilty to it today?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Next is Dorchester County
24 indictment 2008-GS-18-1113. It is for kidnapping, zero
25 to 30 years. Do you want to waive your right to have

1 this treated in Dorchester County and plead guilty to it
2 today?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: And I think the last one out of
5 Dorchester County is indictment 2008-GS-10 -- or
6 GS-18-1107, Dorchester County indictment for assault and
7 battery of a high and aggravated nature, zero to ten
8 years. You want to waive your right to have this handled
9 in Dorchester County and plead guilty to it today?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: All right. Now, now we'll do the
12 Charleston County ones. I got seven sentencing sheets
13 and many more indictment. You got charges you're
14 dropping?

15 MR. WETMORE: Yes, sir. He's pleading to
16 seven indictments in Charleston.

17 THE COURT: Hold on.

18 MR. WETMORE: I'll give you the indictment
19 numbers, if that helps.

20 THE COURT: Let me go through the ones I got,
21 and then what's left over, I assume, will be the ones
22 we'll go through those in a minute so we can get those in
23 order.

24 All right. Here is what I got sentencing
25 sheets for: Indictment 2008-GS-10-8072 is an indictment

1 for kidnapping, zero to 30 years. You want to plead
2 guilty to that indictment?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Indictment 2008-GS-10-8073 is an
5 indictment for attempted armed robbery, zero to 20 years.
6 You want to plead guilty to that indictment?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Indictment 2008-GS-10-8126 is an
9 indictment for armed robbery, 10 to 30 years. You want
10 to plead guilty to that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Indictment 2008-GS-10-8127,
13 kidnapping, zero to 30 years. You want to plead guilty
14 to that?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Indictment 2008-GS-10-8135,
17 criminal sexual conduct first degree, zero to 30 years.
18 You want to plead guilty to that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Indictment 2008-GS-10-8137,
21 kidnapping, zero to 30 years. You want to plead guilty
22 to that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: And then the last one I have a
25 sentencing sheet on is 2008-GS-10-8141, armed robbery, 10

1 to 30 years. You want to plead guilty to that?

2 THE DEFENDANT: Yes, Your Honor.

3 THE COURT: All right. That leaves me with
4 the following indictments, and we'll go along with these
5 and make sure these are all being dismissed. All
6 2008-GS-10-8074, 8075, 8124, 8125, 8128, 8136, 8138,
7 8139, 8140, and 8142. Are all of those being dismissed?

8 MR. WETMORE: Yes, sir.

9 THE COURT: All right. Well, let me go
10 through a few things with you, because I'm told you want
11 to plead guilty to each of these. You're going to give
12 up some rights, and I need to make sure you understand
13 some things that you do that have consequences that go
14 beyond today.

15 First of all, I think with the exception of
16 the assault and battery of a high and aggravated nature,
17 each of these are strike offenses. I'm sure Mr. Savage
18 has gone over those with you, but I will go over it with
19 you on the record to make sure you understand what strike
20 offenses are.

21 We have classifications of crimes in this
22 state where if you get enough of them you go to jail for
23 the rest of your life without the possibility of parole.
24 We have two classifications of those in the state, three
25 strike offenses and two strike offenses. Two strike

1 offenses are called most serious offenses, and if you get
2 two of those, you go to jail for the rest of your life
3 without the possibility of parole. Three strike offenses
4 are called serious offenses, and if you get three of
5 those, you go to jail for the rest of your life without
6 the possibility of parole.

7 It goes without saying today that you have
8 gotten all the strike offenses you're ever going to get
9 in this life without going to jail for the rest of your
10 life, because the state is not seeking life without
11 parole against you today or they would have served you
12 notice on these. They are all being treated for
13 sentencing purposes as one strike, but after today, if
14 you ever get convicted of another strike offense, you'll
15 go to jail for the rest of your life without the
16 possibility of ever getting out.

17 Do you understand that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. You also have the
20 consequences. These are no parole offenses. Except for
21 the assault and battery of a high and aggravated nature,
22 you have to serve at least 85 percent of these before you
23 are eligible to get out, and because of the nature of
24 that classification of violent no parole offense, once
25 you get out after you serve 85 percent, you still have

1 two years of community supervision, and you have to
2 basically meet with parole officers, not get involved in
3 any more crimes, not use drugs, that sort of thing. If
4 you do, you'll get sent up before a hearing officer and
5 ultimately a judge and if they determine you violated the
6 terms of your community supervision, you'll go back and
7 finish out the balance of whatever you have left on the
8 15 percent of your sentence.

9 Do you understand that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Also, one of the charges is
12 criminal sexual conduct of the first degree, and that is
13 going to trigger a collateral consequence of having the
14 sexually violent predator program take a look at you when
15 all this is said and done. We have a sexually violent
16 predator program in this state.

17 It's a civil commitment process, but it does
18 come about as a result of a criminal conviction, and, at
19 least as it's currently set up, you go into the sexually
20 violent predator program. They house those folks at the
21 Broad River Correctional Institute, which is, of course,
22 a prison, but what happens is at the end of the time,
23 they'll look at these charges.

24 They'll look at the fact that one of them was
25 a criminal sexual conduct, and there will be a couple of

1 committees that take a look at it, determine whether or
2 not they think that based on your prior convictions and
3 the circumstances surrounding that, they think that it is
4 a possibility that you might reoffend, and they will ask
5 the Attorney General's office to bring the case in
6 circuit court and ask to have a judge or a jury have you
7 adjudicated to be a criminal sexual -- sexually violent
8 predator, and if you are adjudicated to be a sexually
9 violent predator, then you would be housed, again,
10 currently at Broad River Correctional. Who knows where
11 it will be in a couple of decades, and you could go to
12 jail. You could be in there the rest of your life.

13 You have to, basically, if adjudicated to be
14 a sexually violent predator, convince them that you will
15 no longer be a threat to reoffend, but that is down the
16 road, but that is a consequence of your plea today, that
17 it is not an automatic thing, but it is very likely they
18 will stake a strong, hard look at it.

19 Do you understand that?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: All right. Understanding those
22 things, do you still want to plead guilty today to these
23 charges?

24 THE DEFENDANT: Yes, Your Honor.

25 THE COURT: Let me explain to you that you

1 have some rights that you are waiving when you enter a
2 guilty plea. First of all, you have the right to a jury
3 trial, so if you change your mind and decide you want a
4 jury trial, all you have to do is let me know, and we'll
5 arrange that for you. The state then has to present
6 enough evidence to convince 12 jurors you're guilty
7 beyond a reasonable doubt. All 12 jurors have to agree
8 you're guilty in order to convict you, and, if convicted,
9 you have the right to appeal.

10 You can challenge the admissibility of the
11 evidence the state offers against you, you can put up
12 evidence of your own, you can testify, if you want, and
13 tell the jury your side of the story, and if you don't
14 want to testify, the judge will tell the jury they're not
15 to hold that against you while they are deliberating.

16 Do you understand all of those rights?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: And you want to give up all those
19 rights and enter these guilty pleas today?

20 THE DEFENDANT: Yes, sir, Your Honor.

21 THE COURT: All right. So this indictment,
22 I'm going to read through these and ask you about them,
23 2008-GS-18-1107 says on June 2, 2008 you did violent
24 injury to the person of Guy Ahlstrom with circumstances
25 of aggravation struck him in the head again.

1 Did you do that?

2 THE DEFENDANT: As far as I can remember, no,
3 sir, Your Honor.

4 THE COURT: As far as you can remember, no?

5 THE DEFENDANT: No, sir.

6 THE COURT: Well, then why are you pleading
7 guilty to it? I'm going through each of these, and if
8 you're going to give me the, I don't remember it, then
9 you're going to go to trial.

10 THE DEFENDANT: You said was I involved, Your
11 Honor?

12 THE COURT: Yeah. Were you involved in doing
13 this?

14 THE DEFENDANT: Yes, Your Honor.

15 THE COURT: All right. You understand -- I'm
16 sure your lawyers have told you that even if you didn't
17 necessarily do it yourself, you were involved with others
18 and at least somebody did it, and under the hand of one,
19 hand of all theory, you're just as guilty as the person
20 that struck the person or did it, but you were involved
21 in it, and you could be convicted of it and you're saying
22 that is exactly what you did; is that right?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right. 2008-GS-18-1113 is
25 the kidnapping out of Dorchester County, May 14, '08. It

1 says you kidnapped Timothy Rabang. Did you do that?

2 THE DEFENDANT: Yes, sir, Your Honor.

3 THE COURT: 2008-GS-18-1112 says on May the
4 14th, 2008 in Dorchester County, you used force and
5 intimidation armed with a deadly weapon robbed employees
6 of Applebee's restaurant in Charleston County. Did you
7 do that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: 2008-GS-18-1120 says that on May
10 the 10th, 2008, you kidnapped Ferdinand Lopez in
11 Dorchester County. Do you admit to that?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: All right. 2008-GS-18-1121 says
14 that on May the 10th, 2008 in Dorchester County, this is
15 an armed robbery indictment, says that you used a deadly
16 weapon, force, and intimidation, robbed person Ferdinand
17 Lopez of goods and money. Do you admit to that?

18 THE DEFENDANT: Yes, sir, Your Honor.

19 THE COURT: And on 2008-GS-18-1108,
20 Dorchester County indictment for kidnapping says that you
21 kidnapped Guy Ahlstrom in Dorchester County.

22 Do you admit to that?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: All right.

25 MR. SAVAGE: Judge, to be clear, jurisdiction

1 of those indictments were in Dorchester County. He
2 admits to committing those crimes in Dorchester County.

3 THE COURT: Okay. Well, I thought I covered
4 that, but --

5 MR. SAVAGE: One of them was -- I think one
6 of them you said Charleston County.

7 THE COURT: Did I misspeak? I'm sorry.

8 MR. SAVAGE: The Applebee's restaurant.

9 THE COURT: Okay. I know this all took place
10 in the area where Applebee's and Chuck E. Cheese and
11 Noisy Oyster, so I may have had this in my head.

12 Okay. Let's go on to the next indictment in
13 Charleston County, 2008-GS-10-8126 is armed robbery. It
14 says on April 28, 2008, Charleston County, that
15 Applebee's on Rivers Avenue, you used a deadly weapon to
16 rob the employees at Applebee's.

17 Do you admit to that?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: And then June the 2nd, 2008,
20 Charleston County, Chuck E. Cheese, Rivers Avenue, you're
21 charged with attempted armed robbery, in which you
22 represented you had a deadly weapon and attempted to rob
23 the Chuck E. Cheese, Guy Ahlstrom, at Chuck E. Cheese.

24 Do you admit to that?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: 2008-GS-10-8072, Charleston
2 County says you kidnapped Guy Ahlstrom on or about June
3 2, 2008.

4 Do you admit to that?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: 2008-GS-10-8127, kidnapping
7 indictments says that on or about April 28, 2008 in
8 Charleston County, you kidnapped Jonathan Walker, an
9 Applebee's employee. Do you admit to that?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: 2008-GS-10-8135, an indictment
12 for criminal sexual conduct first degree says May the
13 25th, 2008 you committed sexual battery upon a Noisy
14 Oyster employee, Barbara Carter without her consent,
15 using aggravated force. Do you admit to that?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: 2008-GS-10-8137, indictment for
18 kidnapping, Charleston County, May the 25th, 2008 says
19 that you kidnapped a Noisy Oyster employee, Justin
20 Carter.

21 Do you admit to that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And, finally, 2008-GS-10-8141 is
24 armed robbery indictment, says that on or about May 25,
25 2008, at the Noisy Oyster on Rivers Avenue in Charleston

1 County, you robbed Noisy Oyster's employees representing
2 you had a deadly weapon.

3 Do you admit to that?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: All right. Now, are you under
6 the influence of any drugs or alcohol today?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: Do you take any kind of
9 prescription medications?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Do you know of any physical,
12 emotional, or mental conditions which keep you from
13 understanding what you're doing today?

14 THE DEFENDANT: No, Your Honor.

15 THE COURT: Now, you're standing next to your
16 lawyers. Have you had enough time to talk with them
17 about this case?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: All right. You all set down and
20 talked about the evidence the state has against you?
21 Y'all talked about that?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: And they explained to you about
24 the law that applies to each of these charges?

25 THE DEFENDANT: Yes, Your Honor.

1 THE COURT: Did they explain to you about how
2 sometimes you can go into court and try to have evidence
3 suppressed, such as DNA evidence, photographic lineups,
4 statements that either you or other people made, that
5 sort of thing. Did y'all talk about things like that,
6 trying to have evidence suppressed?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: And you talked about whether or
9 not you could present any kind of defenses. Did y'all
10 talk about that?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Did you talk about whether or not
13 you could get up and tell the jury your side of the
14 story?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And based on all of those
17 discussions, you decided ultimately that you didn't want
18 to pursue any of that and you just wanted to go ahead and
19 plead guilty; is that correct?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: All right. Now, you've had all
22 this time to talk with your lawyers, and their job is to
23 advise you, but ultimately it's your decision and your
24 decision alone on whether or not to plead or go to trial
25 because ultimately you're the one that does the time, and

1 it's your convictions.

2 These decisions to waive all those rights
3 that I told you about and whether or not you were going
4 to try to suppress any evidence or put up a defense or
5 testify, all that sort of thing, and you didn't want to
6 do that, is that your decision and your decision alone?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Did anybody promise you anything
9 or threaten you in any way in order to get you to plead
10 today?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: All right. Other than they have
13 agreed that they were going to dismiss some charges that
14 were pending against you; is that correct?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: Nobody has promised you anything
17 about what your sentence would be?

18 THE DEFENDANT: No, Your Honor.

19 THE COURT: All right. How old are you?

20 THE DEFENDANT: Twenty-two.

21 THE COURT: How far did you get in school?

22 THE DEFENDANT: High school education.

23 THE COURT: All right. Do you work?

24 THE DEFENDANT: I been working since I bonded
25 out, up until about -- around the time that our case was

1 coming to an end.

2 THE COURT: Are you married?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you have any children?

5 THE DEFENDANT: Two, two daughters.

6 THE COURT: Yeah? All right. Well,
7 Mr. Savage, you and your office has been representing
8 this gentleman now for a while on it, I take it. In your
9 opinion, does he understand what he is doing when he
10 waives his right to a jury trial and enters his pleas
11 today?

12 MR. SAVAGE: There is no question in my mind
13 that he does, Your Honor. Because of his age, his
14 grandmother who is present, his wife who is present, his
15 mother, who is present, have all accompanied him on a
16 dozen or more occasions in our office when we reviewed
17 his rights and his options to go to trial of pleading
18 guilty. There is no question in my mind that he fully
19 comprehends the seriousness of the charges, the possible
20 penalties, and the rights that he's giving up.

21 Among those rights are his right not to
22 testify and that this Court would instruct the jury not
23 to hold that against him.

24 THE COURT: All right. Has Mr. Savage's
25 office done everything you've asked them to do?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: And you're fully satisfied with
3 their representation?

4 THE DEFENDANT: Yes, Your Honor.

5 THE COURT: And you don't need any more time
6 with him?

7 THE DEFENDANT: No, sir, Your Honor.

8 THE COURT: All right. I find his plea is
9 freely, voluntarily and intelligently made.

10 Why don't we do this: We have some other
11 people that were codefendants. They've already pled. I
12 took their pleas some time ago. I took one, I think
13 Judge Nicholson took one, and I'll hear then from the
14 state, the recitation of the facts, and then we'll hear
15 any mitigation and any statements from the victims at
16 that time. So let's bring out the other guys.

17 MR. WETMORE: May we approach, sir?

18 (Sidebar discussion held.)

19 THE COURT: We're going to take about a
20 ten-minute break right now while one of the codefendants
21 needs a little bit of time with his lawyer, so we'll just
22 stand down and take about ten minutes. Go ahead.

23 (Recess taken.)

24 THE COURT: All right. We have everybody
25 back in that was in? All right.

1 So where we left off is I took Mr. Mulligan's
2 plea. I have previously have taken Mr. Larkin's plea.
3 Mr. Larkin, that is you?

4 DEFENDANT LARKIN: Yes, sir.

5 THE COURT: All right. And Mr. Joshua
6 Monroe, is that you?

7 DEFENDANT MONROE: Yes, sir.

8 THE COURT: I took your pleas previously,
9 accepted them, deferred sentencing until later time, that
10 being now. I still need to hear from the record the
11 recitation of the facts for Mr. Mulligan, so,
12 Mr. Solicitor, when you're ready, go ahead.

13 MR. WETMORE: Yes, sir, Judge. May it please
14 the Court: These three individuals were involved in a
15 series of aggravated armed robberies in North Charleston
16 restaurants.

17 The first one that Mr. Mulligan participated
18 in to our knowledge took place April 28, 2008 at the
19 Applebee's with these other two individuals, armed with
20 handguns. It was about 2:40 in the morning. The
21 employees were closing and exiting the restaurant. The
22 defendants met them in the parking lot and pointed guns
23 at them and at gunpoint forced them back into the
24 Applebee's. They disarmed an alarm, made them open up a
25 safe. \$5,500 was taken.

1 The next incident happened, once again, North
2 Charleston, May 25, 2008 at the Noisy Oyster. Once
3 again, all individuals here participated, armed with
4 handguns, and at this time also stun guns. This was
5 about 3:20 in the morning. Once again, employees were
6 closing up shop and met in the parking lot by the
7 defendants who had guns and at gunpoint they were forced
8 back into the restaurant.

9 They took the night deposit bag. They opened
10 up the safe. They took \$6,700 and some personal property
11 as well. It did not end there, unfortunately, at the
12 Noisy Oyster.

13 At gunpoint, they forced -- one of the
14 defendants forced a female employee to take her clothes
15 off and to perform oral sex on him. The other two
16 watched, and they actually Tased the male employee while
17 they watched. They forced female employee to wash her
18 mouth out in the kitchen sink. The other defendants
19 sexually assaulted her, touched her, groped her. Then
20 they forced both employees into the walk-in refrigerator,
21 and at that time they forced the female employee to
22 perform sex on the male employee, all the time watching
23 and making comments. They left both of them naked and
24 closed up in the cooler.

25 It's difficult to tell which of the masked

1 individuals was the one that initiated the CSC. .
2 According to co-defendants Larkin and Monroe, it was
3 Mulligan, but our position is they're all armed, they're
4 all there, the hand of one is the hand of all.

5 Finally, June 2, 2008 at the Chuck E. Cheese
6 in North Charleston, once again all three individuals
7 participated, armed with handguns and stun guns. This
8 time it was about 12:50 at night, and the employees were
9 closing and exiting. This time the employee actually got
10 to his car and left.

11 They followed him to his home in Dorchester
12 County, and at gunpoint they assaulted him, they
13 kidnapped him, and they put him back in his own car, and
14 another individual followed them in their car, and along
15 the way, the victim's car ran out of gas and broke down
16 on the interstate.

17 They abandoned it and they forced the
18 employee into Mulligan's car, took him back to the Chuck
19 E. Cheese at gunpoint, and they forced him to disarm the
20 alarm, tried to open the safe. He could not do it. It
21 was on a time delay, so no money was taken. That is the
22 attempted part of the armed robbery. He was left tied up
23 in that restaurant.

24 Now, that victim was able to identify
25 Mulligan's vehicle. North Charleston located the

1 vehicle. Inside it they found evidence of the armed
2 robberies. They found Mulligan's identification. In
3 fact, Mulligan had asked his girlfriend to report it
4 stolen, and she had done that.

5 Mulligan turned himself in first, I believe,
6 and he gave a confession. He gave a statement verbally
7 to being involved in the Chuck E. Cheese case. He would
8 not put it down in writing, but he did make a statement
9 to the investigating officer.

10 The girlfriend further assisted the police,
11 and she directed them to the apartment where these two
12 live, Larkin and Monroe. Now, they stopped the car
13 Mr. Larkin was in, leaving the apartment in, and inside
14 they found more evidence of the armed robberies, and at
15 that point, Mr. Larkin confessed to all the incidents and
16 he actually gave a written statement, and he implicated
17 these other two.

18 After that, Monroe turned himself in, and he
19 gave a written statement confessing to the Applebee's
20 incident in Charleston and to the Chuck E. Cheese
21 incident in Charleston. He did not admit initially the
22 Noisy Oyster but later confessed to our office in meeting
23 with them.

24 Judge, all these individuals are young. They
25 have no criminal history, and we make no recommendation

1 as to sentence, Judge. I know that Dorchester has some
2 facts for you as well.

3 MR. HILTON: May it please the Court, Your
4 Honor, as to the Dorchester County charges, backing up a
5 little bit in time to May 10, 2008, the three defendants
6 went over to the Frankie's Fun Park, which is located at
7 5000 Ashley Phosphate Road, and in all the Dorchester
8 events, it's a similar set of facts where these were
9 businesses that were closing up.

10 The defendants waited outside where employees
11 from Frankie's Fun Park were coming out at the end of the
12 day. At that time they rushed on them with guns, forced
13 them back inside of the building, and there they ended up
14 taking cell phones, some car keys worth about \$100, and
15 they fled after the alarm had sounded on that building.

16 That was the armed robbery and kidnapping.
17 As for the May 14, 2008 incident, this occurred at the
18 Applebee's restaurant at 4910 Ashley Phosphate Road in
19 Dorchester County where, again, employees were closing up
20 the restaurant, headed out to their vehicles to leave
21 when they were confronted by three black defendants with
22 handguns and stun guns in their possession. They forced
23 them back into the store, ordered them to shut off the
24 alarm, and open the safe. There they were forced to lay
25 down on the floor while the defendants fled.

1 As for the final incident, that was one that
2 Mr. Wetmore alluded to. That is actually the Chuck E.
3 Cheese episode. It began at the Chuck E. Cheese in North
4 Charleston. They were unable to get to Mr. Ahlstrom
5 there at the restaurant because of an individual parked
6 in the adjacent parking lot, so they followed him back to
7 500 Woodward Boulevard in the Corey Woods subdivision in
8 Dorchester County.

9 When he pulled up in his driveway, a car
10 pulled in behind him. It was the three defendants, and
11 they rushed on him, again, armed, masked, ordered him
12 back into his car. One of them got into the car with him
13 and ordered him to drive back to the Chuck E. Cheese
14 restaurant.

15 Actually, I think one of the defendants was
16 driving, and he was riding in the car. On his way back,
17 he hesitated to give them some information they wanted.
18 They Tased him there and ended up striking him with a
19 pistol. That forms the basis for the assault and battery
20 of a high and aggravated nature charge that they have.

21 When they got back to the Chuck E. Cheese
22 restaurant in North Charleston, that's where the
23 Charleston facts pick up again, and then ultimately they
24 were apprehended on all these charges.

25 THE COURT: All right. There is certainly a

1 substantial factual basis for the pleas. I'll accept it.
2 What is Mr. Mulligan's prior record?

3 MR. WETMORE: Judge, I don't know that any of
4 them have any prior record.

5 THE COURT: This is a first offense for
6 everybody?

7 MR. WETMORE: That's my understanding, yes,
8 sir.

9 THE COURT: All right. Do any of the victims
10 want to be heard? I see there is a large number of
11 people here.

12 MR. WETMORE: Yes, Your Honor. We have some
13 of the victims from the Noisy Oyster in Charleston
14 County. I know they would like to address the Court.

15 THE COURT: All right. Whoever wants to
16 speak, move down towards the center there and identify
17 yourself for the record.

18 THE WITNESS: I'm Barbara Carter. I just
19 want to express that the events of May 25th have greatly
20 affected me, emotionally, physically, financially, and I
21 very much would like them to go to jail forever. And
22 they're obviously dangerous, and I think they're just a
23 threat and they should spend the rest of their life in
24 jail.

25 Thank you.

1 THE COURT: All right. Your name?

2 THE WITNESS: My name is Justin Carter. I
3 was a victim from the Noisy Oyster. It's been a long
4 couple of years. We spent a lot of time trying to get
5 over what happened, trying to get better with each other,
6 and just trying to put this behind us. We've looked
7 forward to this day for a long time, knowing that these
8 gentlemen, these guys, are going to go to jail and
9 hopefully do so for a long time.

10 We have had no control over this situation
11 since day one, and it's probably -- excuse me -- the only
12 thing that justice is going to be served is probably the
13 most gratifying thing that we've heard in a long time and
14 a step to putting this behind us and hope that they go
15 away for a while, sir.

16 Thank you.

17 THE COURT: Anyone else?

18 THE WITNESS: Your Honor, I'm Chandler
19 Carter, Barbara's father. The last almost three years
20 have been extraordinarily difficult for us, very painful,
21 very hard to deal with, as you can tell. We ask that you
22 do what is right for the victims and society as a whole.
23 We would personally like to see sentencing at the max and
24 consecutive so that my daughter, who is still going to
25 counselling and her boyfriend, who is still going to

1 counselling, can continue with the rest of their lives
2 and once again feel safe at night and not suffer from the
3 emotional and mental anguish of these events, and for
4 that we ask you to do what is the best thing to do for
5 the victims and for society as a whole. Thank you.

6 THE COURT: Thank you. Anyone else from the
7 state?

8 MR. WETMORE: I don't believe so, Judge. I
9 appreciate it.

10 THE COURT: All right. Well, let's go with
11 Mr. Mulligan first.

12 MR. SAVAGE: Judge, Mr. Mulligan has asked
13 that he be given an opportunity to respond to the
14 statements of the victims. He wanted to provide them his
15 thoughts about what he admits that he did.

16 THE COURT: He wants to respond to what?

17 MR. SAVAGE: He would like to respond to the
18 victims and tell the victims how he feels about --

19 THE COURT: He'll get a chance. I'm just
20 giving you the opportunity to speak first and then him
21 and then we'll go down the line.

22 MR. SAVAGE: Judge, we provided you with a
23 packet of information containing some background
24 information about Bryan, along with some 33 character
25 witnesses of people who know him best, ranging from

1 relatives to former teachers to pastors to employees.
2 Bryan was born in Charleston on the 7th day of January
3 1989. He graduated by obtaining a GED through Job Corps
4 in Bamberg where he attended from March of 2007 to
5 February of 2008.

6 He has always been gainfully employed in a
7 number of different types of occupations, most of them
8 blue color labor situations, including Pegasus Steel.
9 He's been a warehouse technician in the past for
10 Pearlstein Distributors and for Coca-Cola as well.

11 I think the most interesting job that he's
12 had and reflects on the inconsistency of his upbringing
13 and his youth and what he could be, had he chosen not to
14 be what he chose to be on these occasions, is contained
15 in the package under D-2.

16 There is a letter there from restoration,
17 Marion Morton, the owner of Restoration Home Care Sitting
18 Service. I've been in business for nine years serving
19 the Charleston and surrounding areas. I manage the
20 restoration ministry conference along with my staff.
21 Bryan has been an excellent employee, has always
22 exhibited the highest degree of professionalism in the
23 time he's been with me. He's also meticulous,
24 disciplined as well as caring and compassionate. I found
25 Bryan to be an honest individual who truly has his

1 family's best interest at heart.

2 Bryan still works with Restoration Home Care
3 Sitting Service three nights out of the week, along with
4 his full-time day job, and still maintains his family
5 life, and he goes on. What speaks louder than his letter
6 are these photographs of this accused, convicted,
7 admitted armed robber, rapist, and kidnapper.

8 In caring for the elderly of Charleston
9 County, these pictures speak volumes as to what
10 compassion he could have had, and did have, except on the
11 occasions which bring us here today.

12 There are a number of people here on his
13 behalf. Not to excuse his conduct in any way, nor does
14 he seek to excuse his conduct, but to explain to you that
15 these acts, these continuous series of acts, were an
16 aberration from the Bryan Mulligan that they raised and
17 that they had in the family.

18 First of all, his wife is present. She
19 chooses not to speak, but if you would raise your hand.
20 His mother is present. His mother works at the Medical
21 University of South Carolina and had not determined
22 whether or not she wanted to speak when I last spoke with
23 her, yes, no? You have a letter you want me to provide
24 to the Court? Would you like to do that in writing or
25 read it? Now is your chance.

1 THE WITNESS: Thank you. Thank you, Your
2 Honor, for letting me have this time to talk. I would
3 like the victims to know that we, as a family are sorry
4 for all your pain and suffering. We are sorry for
5 whatever happened to you, but we ask you to give us
6 another chance, and I ask you, Your Honor, to please have
7 mercy on my son and all involved.

8 And my family and I want you to know whatever
9 the sentence is today, you are sentencing a whole family.
10 My son's two daughters, ages four and nine months, his
11 wife, his pastor, myself, his father and his brother and
12 his sister, his grandmother and his great-grandmother,
13 his grandfather, his mother-in-law, his sister and
14 brother-in-law, his nieces and nephews and cousins and
15 friends. So I beg you, please have mercy today.

16 Have mercy in knowing that you are not just
17 sentencing my son and the others involved, but with all
18 of them, you are sentencing a whole family. In closing I
19 would like you to know that it doesn't take a whole lot
20 of time to know that you have done some things wrong.

21 It doesn't take 30 years, 20, 15, or even 10
22 years to know that you have messed up badly. And my son,
23 along with our family, knows that he has to be punished,
24 but I beg you, please, show mercy in his punishment.
25 Please allow him to come back to us, to his daughters,

1 most of all, and I beg you, please, not to let them spend
2 most of their lives in the correctional institution going
3 back and forth visiting their father.

4 Please allow them to have a life with him
5 outside of prison and we, the family, would like to
6 thank -- really, we thank you for showing mercy today,
7 and we will continue to pray for all who are involved,
8 and thank you and may God bless you.

9 MR. SAVAGE: Judge, that is the mother of
10 Bryan, and I must say that this family has come united on
11 dozens of occasions to my office. I also did want to
12 point out that Bryan knows that the Court is not
13 sentencing his family. Bryan accepts responsibility for
14 sentencing his family, his own family, based on the
15 actions which he alleged to have conducted himself in, so
16 you will hear from Bryan, but I want his family to know
17 that it's not the Court that is sentencing them, it's
18 their own child that's sentencing them.

19 The dad is present. I'm not sure he wants to
20 say anything, and I know the grandmother, who I have
21 known for many, many, many years, is extremely troubled
22 by Bryan's actions, and I know she wants to say to the
23 Court her love for her grandson.

24 THE WITNESS: Yes, I do. Your Honor, my name
25 is Lenora Fulton. I'm Bryan's grandmother. I'm so

1 distraught about this. I had two heart attacks since
2 this happened. It -- what has happened is I just -- I
3 can't believe that Bryan did this. I just can't. In my
4 heart, I feel in my heart that, they -- he's a good
5 child. We never had one problem out of Bryan, not one
6 time, not even in school.

7 I mean, he never give us no problems. In the
8 nighttime, sometime he used to work at the place in Mount
9 Pleasant, the beer distributor place, and he be working
10 every night, so I don't know. How could he did this?
11 How could he did this? I mean, every night this boy is
12 working. He worked all the time, and I am so sorry for
13 the victims who had to go through this, but, Your Honor,
14 in my heart, I feel in my heart, I can't help the way I
15 feel.

16 My grandson is a good young man, very smart
17 young man, and just like I always tell him, tell him,
18 telling the truth sometimes, it will set you free.
19 Telling the truth, you'll be free in your heart. You'll
20 be free in your spirit when you tell the truth. I have
21 always taught him, Bryan, I don't care what happens, you
22 hold on to the truth and don't lie, and Bryan -- you can
23 look at him.

24 Bryan was raised very well. I've been a
25 minister for 14 years, but what I have learned, I instill

1 it in my grandson. He's a good young man. He's a good
2 father. And, I mean, if he ain't doing landscaping in
3 the day, landscaping, cleaning people's yards, helping
4 out older people, he's a good boy, and if he did this,
5 this is very surprising to me.

6 He's a good child. He's a good young man. I
7 mean, I know y'all say all grandmothers would feel this
8 way, but I can tell you this, in the name of Jesus,
9 that's a good child there. I partly raised him. I
10 remember when he come out of his mother's womb. He's a
11 good boy.

12 MR. SAVAGE: Thank you, Mrs. Fulton. I think
13 Bryan can appreciate the harm to his own family, the type
14 of harm that has been caused to the victim's families as
15 well.

16 Your Honor, there are a number of other
17 people who are here on Bryan's behalf to show their
18 support and -- do you want to say something? Briefly,
19 please.

20 THE WITNESS: I'm not going to take much of
21 y'all's time, but on my behalf, I want to apologize for
22 anything that may have happened. Knowing that my
23 children's father could have done these things hurts me,
24 because I didn't grow up with a father and I don't want
25 them to, so I'm asking the judge to please show mercy,

1 knowing that he has gone through punishment for what he
2 have done or what he was involved in, so on behalf of
3 myself and my daughters, I want to apologize for Bryan.

4 MR. SAVAGE: Judge, there are a number of
5 other people in the community that wanted to speak. Most
6 of them wrote you a letter. You have those letters
7 available. I think it's time for Bryan to address the
8 people he has so grievously harmed.

9 THE COURT: Do you want to say anything?

10 THE DEFENDANT: Yes, sir. To the victims,
11 I'm sorry. And I was young, I made some mistakes and I
12 apologize. I'm sorry for all the pain and trouble I
13 caused you and I ask for your forgiveness. That's all.

14 MR. SAVAGE: Bryan was released on bond, and
15 since he was out on bond, he's led a productive life. He
16 worked. He took care of his family. He's regretted the
17 actions that he's had since he turned himself in. His
18 grandmother talks about telling the truth.

19 Well, he surrendered to authorities, admitted
20 his misconduct, and has been living with the terrible
21 acts that he committed, series of acts, ever since. We
22 would ask the Court to show some mercy on Mr. Mulligan.

23 THE COURT: All right. Let's go down next to
24 Mr. Monroe. Mr. Stratos, do you want to say anything?

25 MR. STRATOS: Your Honor, in joining

1 Mr. Savage in representing to the Court that the time
2 period spent with each one of these kids would reveal to
3 the person experiencing that visit that there is truly an
4 aberration of the conduct they had exhibited prior to
5 your seeing them here today. The acts that they engaged
6 in are just so against the grain of everything that they
7 were taught to be. As Mr. Savage is saying, my client
8 comes from a decent family of hardworking people, of
9 educated people.

10 He's an educated child. His mother tells me
11 he had the ability in his youth to be in the gifted and
12 talented programs. One thing this case really reminds me
13 of is on the ride to court today, there is a thing my
14 father would always tell us, I'm sure your father said
15 the same thing, and that is life is short, and when you
16 and I look back on our lives, I think most of us would
17 look back and think of the days after we turned 18 and we
18 experienced some of the first things for the first times
19 in our lives, and the realization that we have today,
20 that these young men are not going to experience those
21 things.

22 We know they're going to be in jail for a
23 substantial period of time, and not only a substantial
24 period of time, but the time which each one of them would
25 probably agree was probably the essence of our existence

1 and it defined us, and their definition for the rest of
2 their lives will be here today, unfortunately, for each
3 one of them.

4 I'm going to plead for the mercy of my
5 client, because that's all I can do. I know him better
6 than you know him, because I've had the opportunity to
7 spend so much more time with him, just as Mr. Savage has
8 had time to spend with his client, and we know for a
9 fact, I think we believe if we had to bet everything
10 we've earned till this day, obviously, Mr. Savage would
11 have more on the line, but if we put everything on the
12 line we would bet that these young men would not ever
13 engage in the activities they engaged in, and my client
14 is remorseful.

15 He's been in prison and we would ask for the
16 credit of 37 months. His 20th birthday, his 21st
17 birthday, his 22nd birthday have all been spent behind
18 bars, time that he will never, ever, get back.

19 Now, I also want to bring out to the Court's
20 attention that there were promises made from the onset to
21 my client. Nothing that we're going to have any
22 negotiated settlement, but promises made that cooperation
23 would render him, or grant him, certain leniency with
24 this Court, and I think you've been apprised of the fact
25 of his cooperation in this matter, and it would go even

1 further with the solicitor, because he met with him, and
2 in order to give this family closure, my client should be
3 credited with that because here today, all the parties
4 are together.

5 I also want to bring out the fact that there
6 are two individuals here that are involved in the most
7 heinous of the crime here, and that is the sexual assault
8 upon that little girl, and that shakes the grounds of all
9 of us that stand on it, but I'm here to tell you, that
10 albeit they were involved in that, they weren't the
11 perpetrators, and they should be given credit for that.

12 And hand of one, hand of all, they were
13 involved to the degree that they were there, they kept --
14 you know, they kept the enforcement, but in watching the
15 video, the individual was in the room was not them, and I
16 would ask the Court to consider that as well when we're
17 talking about how much of the youth of this child we're
18 going to have extract in order to impose retribution for
19 the things that he's done.

20 Meet some of his family members. Would y'all
21 please step forward? His grandmother is here. His
22 father is here. Would you like to address the Court?

23 THE WITNESS: My name is Lorraine White, and
24 I raised Josh from when he was two years old, between
25 going back and forth to me and his mother, and I taught

1 him the values of right and wrong, so whatever he did, I
2 don't know what happened, but something went very wrong.

3 And he's not violent like an animal or
4 anything like that, but he's not. He's a loving child,
5 and like I said, I don't know what went wrong, but please
6 have mercy on them, all three of them, Lord, and I
7 apologize to you people for what happened, but Jesus said
8 forgive, and forgive me love and give people loving
9 because if you were in that situation, would you want
10 them to take your life away? Thank you.

11 THE WITNESS: My name is Chanel Germany, and
12 Joshua is my brother. My brother is not a bad person.
13 This has destroyed my family. My kids don't know their
14 uncle. They know him from meeting in jail. My brother
15 made a mistake. I don't know what happened, but please
16 don't take my brother away.

17 THE COURT: All right. Anyone else? Is that
18 it? All right.

19 MR. STRATOS: Mr. Monroe, would you like to
20 say anything?

21 THE DEFENDANT: Yes, sir.

22 DEFENDANT MONROE: Yes, sir.

23 THE COURT: Go ahead.

24 DEFENDANT MONROE: To the victims, I do truly
25 apologize, and my sincerest apologies to your family as

1 well as the other parties involved in these series of
2 crimes, because as a young man I know that each and every
3 one of y'all who have been in our lives, to bring you
4 here today is just a drastic measure, and to know that
5 what's about to occur is just hard.

6 I mean, it's hard to y'all and it's hard to
7 us because we put ourselves in the situation as well as
8 y'all, who are here for us, and I just want to appreciate
9 each and every one who has said something on all of our
10 behalfs, and Your Honor, I do just want to say I
11 apologize for having to even be present in a place like
12 this, to even have been involved in any of these things
13 that occurred.

14 I do accept responsibility for my actions,
15 and I just ask upon all three of us as well as myself
16 that you have mercy.

17 THE COURT: All right. Let's hear then from
18 Mr. Larkin.

19 MR. HASELDEN: Thank you, Judge. Corey
20 Larkin is 20 years old today. He was 18 when these
21 events occurred. He has a large family, multiple of them
22 are here today. He is one of seven kids here in the
23 Charleston County, born and raised. At 14 years old he
24 was turned out by his mother and just sent to an
25 orphanage for two months. With time his grandmother came

1 in and rescued him from that where he lived with her up
2 until just before these incidents occurred. He did at
3 the end of his ninth grade year in North Charleston
4 realize that he was not destined for scholarship and
5 enrolled in Job Corps in Bamberg to learn a trade as a
6 forklift operator. He had hoped to be licensed in that
7 but was sent home through no fault of his own.

8 There were threats made to people from
9 Charleston there, Job Corps, and he was sent home. He
10 did gain some employment working in various restaurants
11 as a cashier and things of that nature, Your Honor. He
12 was a church-going young man, with his grandmother at
13 Joshua Baptist church, and pastors continued to meet with
14 him at the jail to help provide some strength and
15 guidance to him in this.

16 He is, a, you know, very remorseful young
17 man. He's ashamed and embarrassed, not so much for the
18 fact that he's going to do a substantial amount of time
19 in jail, but for the hurt and pain that he has put the
20 victims through.

21 I know it's, you know, three defendants, same
22 crimes, you know, it's easy to feed them out of the same
23 pot, but there is a distinction up here. The
24 codefendants on the left and the right would not be here
25 had it not been for the statement. They would not have

1 been apprehended. The truth has been talked about in
2 here, and there was one truthful and honest statement
3 given and it led to the arrest of the other people here.

4 He does have aspirations for when he gets to
5 the other side of this. He wants to be a family man,
6 wants to have a family, wants to help to try and pay back
7 some of the love his grandmother has given him. She's
8 been a guiding influence in his life since he came to
9 live with her and while in prison as well.

10 It's shock. I remember Ms. Runey sent a
11 letter to present to you, and she has had a lot longer
12 relationship with this young man than I have, but to echo
13 some of the things she said, it's shocking when I got to
14 meet him the first time. I was expecting -- I don't know
15 what I was expecting, but I wasn't expecting a polite,
16 humble, respectful young man the first day I met him.

17 I was expecting something totally different,
18 and I think because of that, he recognizes, you know,
19 what his actions have done, what they have done, the pain
20 they have caused to the victims. That is a lot of what
21 he wanted to talk about was his regret and remorse for
22 what he's put them through.

23 He has no children, hopes to one day, Your
24 Honor. Like I said, he did give an honest and accurate
25 statement to police. Detective Krametz, Detective Watson

1 both speak of his statement being the one that, you know,
2 was truthful, honest, helped apprehend some of the other
3 codefendants, some of which were more culpable of some of
4 the offenses than he is.

5 With that, Your Honor, we would ask that you
6 take into consideration his cooperation, his
7 truthfulness, and honesty when speaking with these
8 officers to gain closure to this case for them and these
9 victims, and that can be done multiple ways, lesser time,
10 a split sentence, a suspended sentence because we hope
11 you take that into account when rendering center, Your
12 Honor.

13 THE COURT: Would you like to say anything,
14 Mr. Larkin?

15 DEFENDANT LARKIN: Yes, sir. First I would
16 like to apologize to my family, the victims and their
17 families for the pain and grief I have caused. I was
18 young and under the wrong influence at the time, but now
19 sitting in the county for 30 months it taught me a
20 valuable lesson. I got a chance to find God and find
21 myself, and I do actually be at the mercy, myself and all
22 three, of this. I do apologize for all these charges.

23 THE COURT: All right. Okay. Well, I've
24 heard a lot today. This is -- I've been doing this job
25 for going on, I guess, about eight years now, and,

1 without a doubt, the worst part of the job is putting
2 young people in prison. I remember when I first started,
3 I had lunch with an older colleague, and I said, What is
4 the worst part of the job?

5 He didn't bat an eye. He said, Sending young
6 people to prison, because, you know, nothing good comes
7 out of it, not one good thing comes out of sending
8 somebody to prison, especially when you do it for a long
9 period of time, because there is a lot of loss that goes
10 on, and in a case like this, we haven't had any loss of
11 actual life in that nobody died on this, but there is a
12 lot of loss on a lot of different levels.

13 The victims, first and foremost, lost the
14 innocence of the life that they had going on, and their
15 lives are never going to be the same. Families on both
16 sides, their lives are never going to be the same, and
17 these fellows are going off to a place where I assure you
18 nobody in this room wants to go to, and their lives are
19 going to be forever changed.

20 There is just not anything good that comes
21 out of this at this point, but it's my job, it's what I
22 signed on for, and this one gentleman said, You got to be
23 the god that figures out what's good for the victims, for
24 the defendants, and for society.

25 And so that is what I do. I sit and listen,

1 listen to all this, try to figure it all out, because I
2 assure you there is not a little secret book that you get
3 when you become a judge hat says, Here is all the right
4 answers.

5 They didn't teach this in law school.
6 Everybody has been keeping it a secret. They only give
7 this to judges it's got the right answers in it, and it's
8 in the back. That book does not exist. You take that
9 information and then you try to do what you think is best
10 for everybody involved in the case.

11 So here is the way I see it: You know, when
12 you hear a case like this, your first thought is
13 everybody goes to jail for the rest of your life. That
14 what you deserve. That is the easy thing to do, and,
15 under the facts and circumstances of this case, is what
16 you easily deserve. I very seldom hear anything that is
17 quite as awful.

18 If you took aside the criminal sexual conduct
19 component of it, it's bad, and you go, what is the matter
20 with young people that they do this? And, it would be
21 bad enough, you deserve a lot of years, just for the
22 robberies and what that does to the victims and they no
23 longer feel safe and you have to protect society from
24 people that are out there doing violent crimes.

25 And then you throw in that component of it,

1 which just takes it to a different level, and you just
2 go, There is something wrong with you people to do
3 something like that.

4 And so there's that component of it. That's
5 a big factor. You weigh that against what would happen
6 if these guys did not come in here and plead, and this is
7 just a part of the job where I guess I just have to ask
8 you to trust me a little bit on having done this for a
9 while and having some experience to go, if these guys
10 don't come in here and plead guilty, and they do so
11 ultimately, because they think it's in their best
12 interest, they think, well, if I come before the judge,
13 I've talked with my lawyers. This is bad. If I go to
14 trial, there's no question, I'm going to go to jail
15 probably for the rest of my life, but if I go and plead
16 guilty and take responsibility, try to make amends, try
17 to own up to it, apologize to the victims, show remorse,
18 show I got family support, maybe I won't go to jail for
19 the rest of my life, and so that's an expectation of what
20 happens when you come in and plead guilty, and you got
21 people that plead guilty and cooperate with the police
22 sooner than other people and you take that into
23 consideration.

24 What happens if you go to trial? Well,
25 realistically, on a case like this, you probably got

1 three separate trials that you got to go through, and as
2 awful as it has been so far and as bad as today is, you
3 know, you're talking about probably a week long, close to
4 a week long trial on every single one of these guys,
5 separately, and we would have to live through it.

6 And, you know, these lawyers, they're good
7 people. I know them. They try, but their job is to
8 represent their client, and to represent their client,
9 they have to protect their client's rights, challenge
10 every single bit of evidence that comes in, cross-examine
11 victims, make sure your identifications are right,
12 challenge the admissibility of evidence, and let's just
13 assume that every single thing gets done right in a trial
14 and the state gets in all of their evidence and -- I will
15 never forget a trial I had just before Christmas a couple
16 years ago where there were two employees of a fast food
17 restaurant, not far from where we're talking about here.

18 They had an inside job. They staged an armed
19 robbery with another guy. Two people were involved with
20 it. They came forward, like these two guys did,
21 cooperated against the other guy who didn't go to trial,
22 said he did it, they had photographic evidence, they had
23 everything you could do. Jury wasn't out 30 minutes and
24 they said not guilty. I still don't know how that
25 happened, so you go, well, you just never know what

1 happens when you go before a jury.

2 Most of the time, I'm telling you, 99 percent
3 of the time, juries do the right thing, but you never
4 know. Pleading guilty takes that element of uncertainty
5 off the table, because if a jury would not see it and
6 they get hung up on one little strange thing that nobody
7 sees, these guys walk.

8 So there is an expectation of, well, we
9 cooperate, we want to throw ourselves on the mercy of the
10 Court, and please don't give us the rest of our lives in
11 prison and all I can say is that while I know that you
12 would like to have them go to jail for the rest of their
13 lives in prison, the facts could easily do that and I
14 could see if they went to trial and got convicted they
15 get it, they take that uncertainty of trial off, and you
16 don't have to go through a trial, and it's just not a
17 pleasant thing to be the victim of a crime and testify on
18 facts like this. That's off the table. That's a big
19 factor.

20 The two things stand out to me about the
21 case, one is the heinous nature of what these guys did
22 and was involved in, but it's also equal troubling to me
23 is the fact that we're on the opposite end of the
24 spectrum. You have three guys who don't have any
25 criminal record. That is so unusual in a case where you

1 have violent crimes and stuff like this, where they have
2 no prior record that I can't even begin to express to you
3 how, one, unusual it is; and, two, how unexplainable it
4 is, because normally you have a juvenile record.

5 You have priors and they build up. Very few
6 people jump into the deep end of the pool like these guys
7 did, with no warning shots off to anybody else that, Hey,
8 I got a troubled character. You got no criminal record.
9 You seem to be doing pretty well, you know, jobs -- I
10 don't know what went on that night. That explanation
11 about how this all got concocted hasn't come out, but it
12 is totally baffling that it is out of character for these
13 fellows to be involved in a crime like this and have no
14 prior record. That is an extraordinarily unusual factor.

15 And so when you're sentencing people who have
16 never been in court before, you take that into
17 consideration as well, and probably one of the biggest
18 things is you go, Well, these are very, very, very young
19 people, especially when you consider how old they were at
20 the time.

21 So we go, well, do we throw them away or do
22 we give them a chance to pay their debt to society and
23 come out the other end and have some chance at a life as
24 well? Because they're going to end up, you know, as part
25 of our society. Either they'll spend it behind bars or

1 they'll spend part of it behind bars and come back out on
2 the other end of it or some combination in between there,
3 so that is kind of what the calculus is that I'm trying
4 having to go through in the sentence.

5 The lawyers came back and talked to me a
6 little bit before and reminded me -- it's been a long
7 time since I had taken the plea, several months ago since
8 Monroe and Martin, refreshed me on it, and I told them, I
9 said, Well, you know, I have sentenced a number of people
10 to life without parole. I have yet to sentence somebody
11 to consecutive sentences where it wasn't asked for by the
12 state. I'll listen to the facts. I won't make any
13 promises. I want to hear what these folks have to say.
14 I want to hear what the victims have to say. I want to
15 hear the package, but I won't make any promises on what
16 I'll do, but none of these guys should expect that they
17 will walk out of here with 30 years, but to the extent
18 that it is anything less than that, well, I take into
19 consideration that Mr. Monroe and Mr. Larkin were first
20 on board with cooperating and that, you know, had some,
21 you know, factor in making the state's investigation
22 easier, which then they were able to present Mulligan
23 with this is it, pal. We're going to go to trial and
24 we're going to convict you and we're going to ask for a
25 lot more time than you get if you went to plead guilty.

1 So, you know, maybe they deserve a little bit
2 of credit for this.

3 MR. SAVAGE: Your Honor, may I be heard on
4 that?

5 THE COURT: Yeah.

6 MR. SAVAGE: Mr. Mulligan turned himself in.

7 THE COURT: I understand.

8 MR. SAVAGE: He was not caught red handed
9 like his codefendant was with the guns.

10 THE COURT: I figured that, and I knew you
11 would jump on that. There was not a full confession.

12 MR. SAVAGE: He did not delay the plea from
13 October. The reason the plea was delayed is because --

14 THE COURT: You were waiting on DNA. I
15 understand that. But there was a sequence of events in
16 which people cooperated and investigations get easier. I
17 got that. The thing that I do -- that is troublesome to
18 me, and again it comes back to this criminal sexual
19 conduct, there is a big differentiator between the three
20 perpetrators here, and everything points to Mulligan
21 being involved as an active participant in that awful
22 event and these other two basically were, you know, not
23 involved in a physical sense, but still involved in the
24 eyes of the law under the hand of one, hand of all
25 theory.

1 That is still troublesome to me. I explained
2 to him here in the preliminary part of the plea about how
3 the sexually violent predator program works. Each of
4 these fellows have pleas to criminal sexual conduct.
5 They don't rubber stamp those programs. They look at
6 them hard, they look at them long, and each of these
7 fellows, because of pleas to the criminal sexual conduct,
8 will be looked at hard when they come out on the end, but
9 I suspect Mr. Mulligan is going to get a lot harder of a
10 look and will very likely get a recommendation for
11 prosecution of that.

12 Whether or not these other two do because
13 they weren't actively involved in the physical aspect of
14 the rape, I suspect that that is -- for somebody else to
15 decide down the road, but it wouldn't surprise me if they
16 didn't since they were not involved in that.

17 So that is something to keep in mind, that,
18 you know, it's possible Mr. Mulligan may spend more time
19 beyond whatever I sentence him to off the streets if he
20 is not able to convince these folks that he's made
21 efforts toward rehabilitation in prison and that he's not
22 likely to reoffend to a sexually violent crime.

23 But that is for another day. The bottom line
24 is there is no question in my mind he deserves every day
25 of the 30 years I'm giving him. I'll give Mr. Monroe and

1 Mr. Larkin a little bit of a break, and I will give them
2 25 years on their charges. They will all run concurrent
3 and you'll get credit for any time you've already served.
4 Good luck to you.

5 MR. HILTON: Your Honor, if I may put on the
6 record, for Mr. Monroe's case, he has not pled to his
7 Dorchester County charges yesterday, and that has been
8 through no fault of Mr. Monroe. That is for scheduling
9 issues. My intention is to have him transported to
10 Dorchester County where he will then plead and we will
11 recommend the concurrent sentence to those charges.

12 THE COURT: On Mulligan, his indictment for
13 attempted armed robbery is 20 years. His assault and
14 battery of a high and aggravated nature is ten years, and
15 everything else was thirty. And on Monroe, his attempted
16 armed robbery was 20 years. Everything else was 25. And
17 then on Larkin, his ABHAN was 10 years, and everything
18 else -- he had an attempted armed robbery of 20 years,
19 and everything else was 25.

20 - - -

21 (Whereupon, the proceedings were concluded.)

22 - - -

23

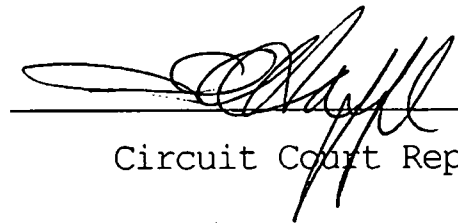
24

25

I, the undersigned Amanda K. Haffenden, RPR, CRR, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Circuit Court for Charleston County, South Carolina, on the 3rd of February 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

September 20, 2011

A handwritten signature in dark ink, appearing to read 'A. Haffenden', is written over a horizontal line.

Circuit Court Reporter

STATE OF SOUTH CAROLINA

County of CHARLESTONJoshua Monroe #344735

Full name and prison number (if any) of Applicant

v.

State of South Carolina

FORM 5

2013-CP-10-5445
IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

APPLICATION FOR

POST-CONVICTION RELIEF

FILED
2013 SEP 17 AM 10:14
JULIE J. ABSTRONG
CLERK OF COURT
BY**INSTRUCTIONS - READ CAREFULLY**

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

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

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay 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 Correctional Institution, 386 Redemption Way, McCormick, South Carolina 29899
2. Name and location of Court which imposed sentence Charleston County Court of General Sessions, 100 Broad Street, Charleston, SC 29401
3. Name(s) of co-defendant(s) (if any) Bryan Leon Mulligan and Corey Larkin
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 - (a) See attached Memorandum

5. The date upon which sentence was imposed and the terms of the sentence:

(a) See attached Memorandum

(b) _____

(c) _____

6. Check whether a finding of guilty was made:

(a) after a plea of guilty Alford Plea

(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?

Yes

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

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

i. South Carolina Court of Appeals

ii. _____

iii. _____

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

i. Appeal Dismissed

ii. _____

iii. _____

(c) the date of each such result:

i. September 18, 2012

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

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

(a) N/A

- (b) _____
- (c) _____
10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) Ineffective Assistance of Counsel
- (b) Denial of Due Process of Law
- (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) See attached Memorandum
- (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. N/A
- ii. _____
- iii. _____
- iv. _____
- (b) the name and location of the Court in which each was filed:
- i. N/A
- ii. _____
- iii. _____

iv. _____

(c) the disposition thereof:

i. _____ N/A

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. _____ N/A

ii. _____

iii. _____

iv. _____

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

i. _____ N/A

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. _____ N/A

ii. _____

iii. _____

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

i. _____ N/A

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:

(a) This is Applicant's first opportunity to present all of
 (b) the issue set forth in (10).
 (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? Guilty Plea Hearing
 (c) your sentencing? Yes
 (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes
 (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? 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. Milton Demetrios Stratos, Esquire - Charleston, SC 29402

 ii. _____

 iii. _____

 (b) the proceedings at which each such attorney represented you:
 i. 17(a)(b)(c) & (d)

 ii. _____

 iii. _____

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

Vacate guilty pleas and remand this case back to the trial court
for a new trial, and any other relief this Court deems just and proper.

20. Are you now under sentence from any other court that you have not challenged?
 No

Revised 3/2003

STATE OF SOUTH CAROLINA)

VERIFICATION

County of McCormick)

I, Joshua Monroe #344735, 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.

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

J. Franklin (L.S.)
 Notary Public

My Commission Expires: 12-16-2019

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

I, Joshua Monroe #344735, 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.

Joshua Monroe
Applicant

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

Franklin
Notary Public

My Commission Expires: 12-16-2015

2013-CP-10-5445

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

Joshua Monroe, #344735,)
Applicant,)

vs.)

State of South Carolina,)
Respondent.)

MEMORANDUM OF LAW IN SUPPORT
OF APPLICATION FOR POST
POST-CONVICTION RELIEF

FILED
2013 SEP 17 AM 10:14
JULIE L. ANDERSON
CLERK OF COURT

COMES NOW, the above named Applicant, who submits this Memorandum of Law in Support of his Application for Post-Conviction Relief. The Applicant will show this Court that his right to a fair trial and due process of law was violated.

The Applicant will further show that his pleas hearing attorney was ineffective and that the Applicant was prejudiced by counsel's ineffectiveness and that, the facts and citation to relevant case laws would justify this Court granting the requested relief.

See following pages:

Answer to question 4 of the application:

- (a) Kidnapping - 2008-GS-10-8123; Kidnapping - 2008-GS-10-8145;
- (b) Kidnapping - 2008-GS-10-8111; Armed Robbery - 2008-GS-10-8149;
- (c) Armed Robbery - 2008-GS-10-8120; Attempted Armed Robbery - 2008-GS-10-8109
- (d) Criminal Sexual Conduct, 1st Degree - 2008-GS-10-8143.

Answer to question 5 of the application:

- (a) February 3, 2011 - 25-years for each of the Kidnaping charges.
- (b) February 3, 2011 - 25-years for each of the Armed Robbery charges.
- (c) February 3, 2011 - 20-years for the Attempted Armed Robbery charge.
- (d) February 3, 2011 - 25-years for the CSC 1st Degree charge.

All sentences are ran concurrently.

INEFFECTIVE ASSISTANCE OF COUNSEL

The Sixth Amendment of the United States Constitution guarantees the right to the effective assistance of counsel in criminal prosecutions. See Yarborough v. Gentry, 540 U.S. 1, 5 (2003); see also McMann v. Richardson, 397 U.S. 759, 771 n. 14 (1970). The Sixth Amendment right to effective assistance of counsel applies to both retained and appointed counsel. See Cuyler v. Sullivan, 466 U.S. 335, 344-45 (1980).

To obtain reversal of a conviction, the defendant must prove that (1) counsel's performance "fell below the objective standard of reasonableness" and; (2) counsel's deficient performance prejudiced the defendant, resulting in an unreliable or fundamentally unfair outcome in the proceeding. Glover v. U.S., 531 U.S. 198, 201, 204 (2001).

The Applicant believes that he will meet his burden of proving that his trial attorney was both deficient, and that he was prejudiced by that deficiency. See the issues presented on the following pages where the Applicant will show that but for counsel's errors, he would not have pled guilty and would have insisted on going to trial. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); accord Hill v. Lockhart, 106 S.Ct. 366 (1985).

COUNSEL WAS INEFFECTIVE FOR FAILING TO PROPERLY FILE THE APPLICANT'S APPEAL, WHICH IS A DENIAL OF DUE PROCESS OF LAW.

A criminal defendant has a right to appeal his guilty plea, there is no constitutional requirement that he be advised of his right absent extraordinary circumstances. Weathers v. State, 319 S.C. 59, 459 S.E.2d 838 (1995). A defendant inquiring about an appeal, as the Applicant did, is an extraordinary circumstance that requires counsel to advise his client of the right to appeal. *Id.*

Where appeal is available as a matter of right, a decision to seek or forego review is for the convict himself, not his lawyer, Jones v. Barnes, 463 U.S. 745, 751, 103 S.Ct. 3308, 77 L.Ed.2d 987 (1983), who owes a duty of effective assistance at the appellate stage, Evitt v. Lucey, 469 U.S. 387, 396, 105 S.Ct. 830, 83 L.Ed.2d 821 (1985); Penson v. Ohio, 488 U.S. 75, 85, 109 S.Ct. 346, 102 L.Ed.2d 300 (1988). It follows, that if a defendant requests counsel to file an appeal, a lawyer who fails to do so is, without more, ineffective for constitutional purposes. But, as the Court says, a lesser infidelity than that may fail the test of lawyer competence under Strickland v. Washington, 104 S.Ct. 2052 (1984), which governs this case.

In the instant case, counsel failed to properly file the Applicant's notice of appeal in that he failed to serve a copy of the notice on opposing (Attorney General's Office) counsel. The Applicant's appeal was abandoned at that point. The Applicant was under the impression that his issues on appeal were being

reviewed by the South Carolina Court of Appeals until he received a letter, dated March 21, 2013, Exhibit - A, attached, from appellate attorney Robert M. Dudek advising the Applicant that his case was dismissed on September 18, 2012, due to trial counsel's failure to serve opposing counsel with a copy of the notice.

The Applicant believes that he has met the burden of showing that he did not knowingly and voluntarily waive his right to a direct appeal of his conviction and is entitled to a belated appeal. See Wilson v. State, 348 S.C. 215, 559 S.E.2d 581 (2002); Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986); White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974).

COUNSEL WAS INEFFECTIVE FOR ADVISING THE APPLICANT TO PLEAD GUILTY TO CRIMINAL SEXUAL CONDUCT IN THE FIRST DEGREE AND FAILING TO MOVE TO QUASH THE INDICTMENT FOR THAT CHARGE IN LIGHT OF THE APPLICANT'S DENIAL AND THE STATE'S LACK OF EVIDENCE, WHICH RENDERED THE APPLICANT'S PLEA OF GUILTY NOT INTELLIGENTLY AND VOLUNTARILY MADE, AND DENIED THE APPLICANT DUE PROCESS OF LAW.

The Applicant is charged with "Criminal Sexual Conduct in the First Degree" according to his Sentencing Sheet". He pled guilty pursuant to an "Alford" plea and maintained his innocence.

Criminal Sexual Conduct in the First Degree under S.C. Code Ann. §16-3-652 (2003) states as follows:

(1) A person is guilty of criminal sexual conduct in the first if the actor engages in sexual battery with the victim and any one or more of the following circumstances are proven:

- (a) The actor uses aggravated force to accomplish sexual battery.
- (b) The victim submits to sexual battery by the actor under circumstances where the victim is also the victim of forcible confinement, kidnapping, robbery, extortion, burglary, housebreaking, or any other similar offense or act.
- (c) The actor causes the victim, without the victim's consent, to become mentally incapacitated or physically helpless by administering, distributing, dispensing, delivering, or causing to be administered, distributed, dispensed, or delivered a controlled substance, a controlled analogue, or any intoxicating substance.

The Applicant contends that his plea of guilty in this case is not knowingly and voluntarily made because he could not be guilty of anyone else's action when he did not participate or have knowledge of this person's action.

The Applicant did not participate or have knowledge of a "criminal sexual conduct". The State did not charge the Applicant or anyone else with conspiracy in this matter. The Applicant has always maintained his innocence to committing a criminal sexual conduct, which he stated at his plea hearing in front of Judge Nicholson, nor did he conspire with anyone to commit such an act. In the "Sentencing Transcript", page 21, lines 13-25 - p. 22, lines 1-4, the Solicitor is stating that the Applicant did not initiate or participate in an act of criminal sexual conduct in the first degree, but also states that the State's position is "the hand of one is the hand of all". See "Sentencing transcript, page 22, lines 3-4.

Under the "hand of one, the hand of all" theory, "one who joins with another to accomplish an illegal purpose is liable criminally for everything done by his confederate incidental to the execution of the common design and purpose. State v. Woomer, 276 S.C. 258, 277 S.E.2d 696 (1981). To admit evidence under this theory, the existence of the common design and participation of the accused against whom the evidence is offered should first be shown. Id. The common design in this case is "robbery", none of the individuals in this case came together to plot and execute a criminal sexual conduct, that had absolute nothing to do with a robbery and if someone wanted to have sex, that was of their own doing. The State cannot show any participation of the Applicant in the sexual assault. although the Solicitor stated at the

sentencing hearing that "they actually Tased the male employee while they watched", and that "the other co-defendants sexually assaulted her, touched her, groped her". The Applicant contends that that incident never occurred and there is no state or police report that indicates such acts occurred, that is just the Solicitor's personal opinion. The Solicitor went so far as to say that the Applicant confessed to the criminal sexual conduct, which is not true.

Even under an "accomplice liability" theory, the State is required to show that the Applicant personally committed the crime or he was present at the scene of the crime and intentionally, or through a common design, aid, abet, or assist in the commission of that crime through some overt act". State v. Langley, ___ S.C. ___, 515 S.E.2d 98, 101 (1999).

The Applicant only pled guilty on this issue because his attorney advised him to do so. Counsel should have move to quash the indictment for criminal sexual conduct in the first degree when there is no evidence the Applicant participated in such an act.

The Applicant believe that he has shown that: (1) counsel's representation fell below an objective standard of reasonableness and (2) there is reasonable probability that but counsel's errors, the Applicant would not have pled guilty and would have insisted on going to trial. Wolfe v. State, 326 S.C. 158, 485 S.E.2d 367 (1997); accord Hill v. Lockhart, 474 U.S. 52, 106 S.Ct. 366, 88 L.Ed.2d 203 (1985); Roscoe v. State, 345 S.C. 16,

546 S.E.2d 417 (2001); Carter v. State, 329 S.C. 355, 360, 495 S.E.2d 773, 775 (1998); Richardson v. State, 310 S.C. 360, 363, 426 S.E.2d 795, 797 (1993).

For the foregoing reasons the Applicant's plea to criminal sexual conduct in the first degree was not intelligently and voluntarily made.

COUNSEL WAS INEFFECTIVE FOR FAILING TO MOVE FOR DISMISSAL OF THE ARMED ROBBERY CHARGES AGAINST THE APPLICANT BECAUSE OF THE VARIANCE BETWEEN THE ALLEGATIONS IN THE INDICTMENTS AND THE FACTUAL BASIS FOR THE PLEA, WHICH RENDERED THE APPLICANT PLEAS OF GUILTY NOT KNOWINGLY AND INTELLIGENTLY MADE, AND WAS A DENIAL OF DUE PROCESS OF LAW.

One of the indictment for "armed robbery" of the Noisy Oysters restaurant at 7842 Rivers Avenue reads as follows:

That on or about May 25, 2008, in Charleston County, South Carolina, the Defendant, JOSHUA ANDREW MONROE, at 7842 Rivers Avenue, by use of force, threats or intimidation and 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 other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Justin Carter with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

The other indictment for "armed robbery" of the Noisy Oysters restaurant is identical to the previous one but identifies a different victim and reads as follows:

That on or about May 25, 2008, in Charleston County, South Carolina, the Defendant, JOSHUA ANDREW MONROE, at 7842 Rivers Avenue, by use of force, threats or intimidation and 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 other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Barbara Carter with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) of the South Carolina Code of Laws (1976) as amended.

The indictments very clearly identifies Justin Carter and Barbara Carter as the victims of the armed robberies and it was their property taken. During the Applicant's "Sentencing Hearing" the Solicitor stated the following as the factual basis for the plea:

The next incident happened, once again, North Charleston, May 25, 2008 at the Noisy Oyster. Once again, all individuals here participated, armed with handguns, and at this time also stun guns. This was about 3:20 in the morning. Once again, employees were closing up shop and met in the parking lot by the defendants who had guns and at gunpoint they were forced back into the restaurant.

They took the night deposit bag. They opened up the safe. They took \$6,700 and some personal property as well.

The Solicitor's statements during the sentencing hearing clearly shows that the property taken belonged to the owner of Noisy Oyster and the Applicant did not intend to deprive Justin Carter or Barbara Carter permanently of any of the property taken because none of the property belonged to them, although the Solicitor alleges that some personal property were also taken, he does not indicate whether the personal property was in the night deposit bag, in the safe or who owned the property.

By charging two-separate armed robberies, it shows that the Solicitor believed that at the time he drafted the indictments that these two individuals were robbed and not the restaurant, but at sentencing hearing it was evident that the Applicant was being sentenced for robbing the restaurant, not he victims alleged in the indictments.

A criminal defendant is entitled to be tried only on indicted offenses. State v. Munn, 292 S.C. 497, 357 S.E.2d 461 (1987); Bailey v. State, 392 S.C. 422, 709 S.E.2d 671 (S.C. 2011). In South Carolina, "[i]t is a rule of universal observance in administering the criminal law that a defendant must be convicted, if convicted at all, of the particular offense charged in the bill of indictment". State v. Gunn, 313 S.C. 124, 136, 437

S.E.2d 75, 82 (1993)(Quoting State v. Cody, 180 S.C. 417, 186 S.E. 165 (1936)). "A material variance between charge and proof entitles the defendant to a directed verdict; such a variance is not material if it is not an element of the offense. Id.

The variance in the instant case is material because a named victim is an element of an armed robbery offense. Since the Applicant's attorney could not move for a directed verdict in a guilty plea proceeding, counsel should have moved for dismissal of the armed robbery charges.

For the foregoing reasons the Applicant's pleas of guilty to armed robbery was not knowingly and intelligently made, and if not for counsel's deficient performance, the Applicant would not have pled guilty and would have insisted on going to trial.

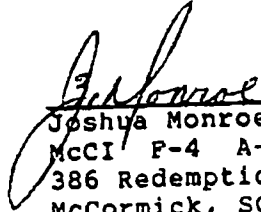
CONCLUSION

The Applicant request that this Court grant him an evidentiary hearing in this matter. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

The Applicant also request that this Court appoint counsel to represent him in this action. See Rule 71.1(d), SCRCP.

This 13th day of September, 2013

Respectfully submitted,


Joshua Monroe #344735
McCI F-4 A-side
386 Redemption Way
McCormick, SC 29899
Applicant

JOSHUA ANDREW MONROE #344735

McCI F-4 A-side
386 Redemption Way
McCormick, South Carolina 29899

September 13, 2013

Julie Armstrong
Clerk of Court-Charleston County
100 Broad Street
Charleston, SC 29401

RE: Original Application for Post-Conviction Relief
Joshua A. Monroe vs. State of South Carolina

Dear Clerk:

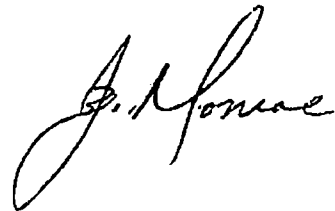
Enclosed for filing is the original application for
post-conviction relief in reference to the above entitled matter.

Please return to me a clock-stamped copy of the enclosed
application, along with a case number, at your earliest
convenience.

Thank you for your attention and assistance in this very
important matter'

Enclosure(s)

cc: Personal file



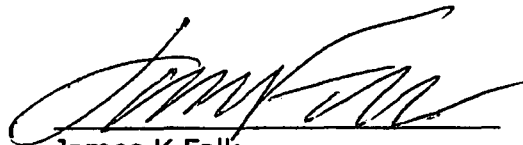
STATE OF SOUTH CAROLINA	)	IN THE COMMON PLEAS COURT
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
	)	
Joshua Monroe	)	CASE NO.: 2013-CP-10-5445
Applicant	)	
vs.	)	
	)	First Amended PCR Application
State of South Carolina	)	
Respondent,	)	
_____	)	

To: Rutledge Johnson, Office of the South Carolina Attorney General, PO Box 11549, Columbia, SC 29211-1549.

Applicant, Joshua Monroe, by and through undersigned counsel hereby amends his PCR Application previously filed September 17, 2014. As additional grounds for PCR relief Applicant states:

1. Applicant reasserts and incorporates herein the grounds for PCR relief stated in his original Application for relief and accompanying Memorandum of Law in Support of PCR application.
2. Former trial counsel Michael DuPree Esq. 147 Wappoo Road Suite 101, Charleston SC 29412, provided ineffective assistance of counsel by advising Applicant to make incriminating proffer statement to the Ninth Circuit Solicitor's office, without first:
 - a. Adequately investigating and analyzing the strength of the evidence against Applicant, and;
 - b. Advising Applicant of weaknesses in the State's case and evidence against Applicant.

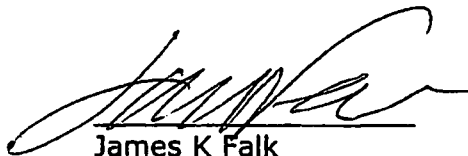
Respectfully Submitted,



James K Falk
Falk Law Firm
PO Box 1058
Charleston, SC 29402
(843) 606 6007
(843) 972 9005 fax
jfalklaw@gmail.com

CERTIFICATE OF SERVICE

Undersigned certifies that a copy of the above was mailed to Rutledge Johnson,
Esq. at the above address on August 20, 2015.



James K Falk

August 20, 2015

Charleston, SC

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	
	)	
	)	2013-CP-10-5445
	)	
Joshua Monroe, #344735,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	
	)	

The Respondent, making its Return to the application for post-conviction relief (PCR) filed August 17, 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 Charleston County Clerk of Court. The Applicant was indicted at the October 2008 term of the Charleston County Grand Jury for three counts of kidnapping (2008-GS-10-8123, -8145, -8111), two counts of armed robbery (2008-GS-10-8149, -8120), attempted armed robbery (2008-GS-10-8109), and criminal sexual conduct- first degree (2008-GS-10-8143). The Applicant was represented by Milton Stratos, Esquire.

On November 18, 2010, the Applicant pled guilty as indicted. On February 3, 2011, the Applicant was sentenced by the Honorable Roger M. Young, Sr. to confinement for a period of twenty years for attempted armed robbery and twenty-five years for all remaining charges. The sentences were to be served concurrently.

The Applicant filed a timely Notice of Appeal. His appeal was perfected by Milton Stratos, Esquire. The Appeal was dismissed for failure to serve opposing counsel pursuant to Rule 203, SCACR. The Remittitur was issued on October 11, 2012.

Attached herewith and incorporated herein are the records of the Charleston County Clerk of Court regarding the subject convictions, the Applicant's records from the South Carolina Department of Corrections, and the Applicant's appellate records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective assistance of counsel.
 - a. Failing to properly file the Applicant's appeal.
 - b. Advising the Applicant to plea to CSC.
 - c. Failing to move to quash the indictment for CSC in light of Applicant's denial and State's lack of evidence.
 - d. Failing to move for dismissal of armed robbery charge because of variance between allegations in the indictments.
2. Denial of due process of law.

III.

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

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

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

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

IV.

The Respondent construes the Applicant's remaining claim as an allegation of infringement upon the Applicant's constitutional rights. However, the Applicant does not

explain with any specificity the grounds upon which these constitutional violations are based. The Uniform Post-Conviction Procedure Act requires the Applicant to "specifically set forth the grounds upon which the application is based." S.C. Code Ann. § 17-27-50 (1985).

Before the Court will hold an evidentiary hearing, the Applicant must make a *prima facie* showing that he is entitled to relief. Welch v. MacDougall, 246 S.C. 258, 143 S.E.2d 455 (1965); Blandshaw v. State, 245 S.C. 385, 140 S.E.2d 784 (1965). This allegation is so vague that it is impossible for the State to respond. Since the Applicant has not made the minimum *prima facie* showing, the Court should dismiss this ground for failure to comply with the Uniform Post-Conviction Procedure Act.

V.

Each and every allegation contained within the application not herein before 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 the issue of ineffective assistance of counsel and that the remaining allegation be summarily dismissed.

[Signature on the following page.]

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

ASHLEIGH R. WILSON
Assistant Attorney General

By: Alan Wilson
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211
Telephone: (803) 734-3737

February 19, 2014.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JOSHUA MONROE, #344735

Applicant,

vs

STATE OF SOUTH CAROLINA,

Respondent.

IN THE COURT OF COMMON PLEAS

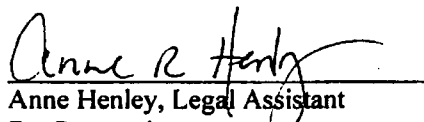
2013-CP-10-5445

AFFIDAVIT OF SERVICE BY MAIL

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 by depositing same in the United States mail, postage prepaid:

Rodney D. Davis, Esquire
4000 Faber Place Drive
Suite 300
Charleston, SC 29405

DATED this 19th day of February, 2014


 Anne Henley, Legal Assistant
 For Respondent

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF CHARLESTON) CASE NO. 2013-CP-10-5445
 3
 4 JOSHUA MONROE,)
 5 Plaintiff,) Transcript of Record
 6 vs.)
 7 THE STATE OF SOUTH) Date: September 10, 2015
 8 CAROLINA,)
 9 Defendant.)

10 * * * * *

11

12

B E F O R E:

13

The Honorable LARRY B. HYMAN

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Denise J. Lauder, RPR

21

Ninth Judicial Circuit

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A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:

JAMES K. FALK, ESQUIRE
3 Broad Street, Suite 450
Charleston, SC 29401-3011
(843) 300-1047

REPRESENTING THE DEFENDANT:

J. RUTLEDGE JOHNSON, ESQUIRE
Office of the Attorney General
Rembert Dennis Building,
1000 Assembly Street, Room 519
Columbia, SC 29201
(803) 734-3970

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E X H I B I T S

(No Exhibits Proffered)

1 (The following proceedings were held
2 September 10, 2015, Charleston County, Charleston,
3 South Carolina @9:59 a.m.)

4 THE COURT: Joshua Monroe.

5 MR. FALK: May it please the Court.
6 Your Honor, this is Joshua Monroe v. State of South
7 Carolina, case number 2013-CP-10-5445. Mr. Monroe
8 was indicted at the October 2008 term of the
9 Charleston County Grand Jury for three counts of
10 kidnapping, two counts of armed robbery, an
11 attempted armed robbery, and criminal sexual
12 conduct in the first degree.

13 On November 18, 2010, he pled guilty as
14 indicted, and on February 3, 2011, he was sentenced
15 by the Honorable Roger M. Young, Senior for
16 20 years for the attempted armed robbery and
17 25 years for each other charge. There was an
18 appeal filed, but was dismissed for failure to
19 serve opposing counsel. The remittitur was issued
20 on October 11th, 2012. He filed this timely PCR
21 application on August 17, 2013, the State filed its
22 return on February 19, 2014, he is represented here
23 today by Mr. Jim Falk.

24 THE COURT: Mr. Falk.

25 MR. FALK: Yes, Your Honor.

JOSHUA MONROE - DIRECT EXAM BY MR. FALK

1 THE COURT: Good to see you this
2 morning. You represent Mr. Monroe?

3 MR. FALK: I do, Your Honor.

4 THE COURT: All right. And you are
5 ready to proceed in this matter.

6 MR. FALK: Yes, Your Honor.

7 THE COURT: All right. I'll hear you

8 MR. FALK: We would like to call Mr.
9 Monroe to the stand.

10 THE COURT: Mr. Monroe, please come
11 around.

12 JOSHUA MONROE,
13 being first duly sworn, testified as follows:

14 THE CLERK: State your full name and
15 spell your last name.

16 THE DEFENDANT: Right now?

17 THE CLERK: Yes, sir. Give us your
18 full name and spell your last name.

19 THE DEFENDANT: Joshua Monroe,
20 M-O-N-R-O-E.

21 DIRECT EXAMINATION

22 BY MR. FALK:

23 Q. Thank you, Mr. Monroe. Can you tell me
24 who your attorney was -- who did you originally
25 hire to represent you in the case?

JOSHUA MONROE - DIRECT EXAM BY MR. FALK

1 A. Michael Dupree.

2 Q. How did you find Mr. Dupree?

3 A. He was recommended by a family friend.

4 Q. Okay. And can you -- and did he
5 request discovery in this case?

6 A. What do you mean by that?

7 Q. Did he get the Rule 5 materials from
8 the State in this case?

9 A. Yes.

10 Q. Did he ever review those with you?

11 A. No.

12 Q. How many meetings did you have with
13 Mr. Dupree?

14 A. Two.

15 Q. Okay. Can you tell me what happened at
16 the first meeting with Mr. Dupree?

17 A. First meeting was in his office.

18 Q. Okay. So you were out on bond?

19 A. No. I hadn't spoken to the detective
20 or anything like that. This was when we were going
21 to meet with Mr. Dupree.

22 Q. Beg your pardon?

23 A. This is when we were going to meet him.

24 Q. And then you met with him one other
25 time before your plea?

JOSHUA MONROE - DIRECT EXAM BY MR. FALK

1 A. Yeah, in county.

2 Q. And did he make any recommendations to
3 you in this case as to how you should go forward?

4 A. In his office.

5 Q. And what was that?

6 A. He told me that the only way he could
7 help me, if I involved myself in two of the crimes.

8 Q. And what does that mean, involve
9 yourself in two of the crimes?

10 A. Saying I was part of the criminal
11 activities that occurred.

12 Q. And who were you going to say that to?
13 Were you going to make a statement?

14 A. Yes.

15 Q. Okay. Did he discuss with you the
16 ramifications of making the statement?

17 A. He said we would do it under a proper
18 agreement, which when I asked him what it was, he
19 said it was me -- what I'm saying can't be used
20 against me basically.

21 Q. Okay. And what were you going to get
22 in exchange for making the statement?

23 A. He didn't tell me anything to that
24 nature.

25 Q. Okay. When you were arrested, had you

JOSHUA MONROE - DIRECT EXAM BY MR. FALK

1 -- did you make any statements?

2 A. I signed the statement.

3 Q. Is that the statement that we're
4 talking about here that he told you to make?

5 A. Yes.

6 Q. Did you make any other statements to
7 law enforcement prior to the statement that he
8 suggested that you make?

9 A. No.

10 Q. You said that -- and what was the
11 effect of the statement? What exactly did you say,
12 or can you summarize what your statement was?

13 A. I said I was a lookout in two of the
14 crimes that may have occurred.

15 Q. Did he explain to you hand of one, hand
16 of all?

17 A. No.

18 Q. Okay. What did you think you were
19 being exposed to by saying you were a lookout on
20 two of the crimes?

21 A. From what I was told, it was to exempt
22 me from every other charge I may have been charged
23 with.

24 Q. Okay. Would that include the CSC
25 charge?

JOSHUA MONROE - DIRECT EXAM BY MR. FALK

1 A. Yes.

2 Q. Was it your understanding that it
3 exempted you from the kidnapping charge?

4 A. Yes. It was exempted, that I wouldn't
5 be charged with that whole crime in itself, period,
6 other than the two that I involved myself in.

7 Q. Which two did you involve yourself in?

8 A. The Chuck E. Cheese robbery and the
9 Applebee's robbery.

10 Q. So you thought that by making the
11 statements, you weren't going to get involved in
12 the Noisy Oyster robbery?

13 A. That I wasn't going to get involved in
14 any other robberies that came with the case.

15 Q. Okay. And had you -- had you reviewed
16 the evidence that they had against you at that
17 time?

18 A. No; I didn't see any evidence or
19 anything like that.

20 Q. Okay. Why did you make the statement?

21 A. Mr. Dupree is a professional. I didn't
22 know anything about the law or anything to the
23 nature of the crimes or anything. So I felt like
24 if he was telling me to do something, that was the
25 only way for me to come out better at the end. I

JOSHUA MONROE - DIRECT EXAM BY MR. FALK

1 just should go on what he tells me.

2 Q. Okay. Did he ever explain to you that
3 you could have gone to trial on the cases?

4 A. No.

5 Q. Now, when you -- you had entered -- you
6 had entered a plea in this case; is that correct?

7 A. Yes.

8 Q. Okay. And the Judge, when you entered
9 your plea, he asked you a bunch of questions; did
10 he not?

11 A. The first judge did.

12 Q. Okay. And I'm sure he asked you
13 whether or not you were satisfied with your
14 attorney?

15 A. Yes.

16 Q. And what was your answer?

17 A. I didn't have Dupree at that time.

18 Q. Okay. So, then -- well, let's talk
19 about that. How did you no longer -- how did
20 Mr. Dupree no longer become your lawyer?

21 A. Mr. Dupree came to see me in Charleston
22 County Detention Center and we had a discussion.
23 And I asked him to get me a bond in the case, which
24 he told me I wouldn't be able to receive a bond due
25 to the CSC charge and the extent of the other

JOSHUA MONROE - DIRECT EXAM BY MR. FALK

1 charges that I had.

2 I then, therefore, told him that due to
3 his representation and what he recommended me to do
4 was the reason that I was in the situation I was
5 in. Had he not told me to do it, I wouldn't be
6 here talking to him at that time in the county, you
7 know. And it became a discussion where he -- he
8 got aggravated, agitated, you know, he got upset.

9 And he was like, I'm trying to help
10 you. But like I'm telling you, you're not trying
11 to help me if you're not trying to get me a bond,
12 and this is something that you told me to do, you
13 are the reason I'm locked up. That's what I told
14 him.

15 So, you know, after his frustration, he
16 walked out of the visitation room and told me he
17 wished me good luck on my case.

18 Q. What did you take that comment to mean?

19 A. I didn't take it to mean anything. I
20 thought he was still my attorney.

21 Q. Did he ever withdraw from the case?

22 A. Not to my knowledge.

23 Q. He never served you with any --

24 A. No.

25 Q. Okay. So then how did you hire

JOSHUA MONROE - DIRECT EXAM BY MR. FALK

1 Mr. Stratos?

2 A. My grandmother hired him. I had no
3 dealings with that.

4 Q. How did you know to hire another
5 lawyer?

6 A. When Dupree jumped off my case, I
7 didn't have any representation. I was appointed a
8 pro bono, but he wasn't doing his job to the best
9 of his ability, in my eyes and my family's eyes, so
10 they sought another attorney.

11 Q. Okay. So when the judge asked you
12 whether or not you were satisfied with the
13 attorney, which attorney did you think the judge
14 was asking you about? Because you said, yes, you
15 were satisfied with your attorney.

16 A. To the first judge?

17 Q. Yeah.

18 A. The judge that I originally took my
19 plea in front of, yes, he asked me that.

20 Q. Which attorney were you referring to?

21 A. Milton Stratos.

22 Q. Okay. So did you feel like -- did the
23 judge ever ask you if you were satisfied with
24 Mr. Dupree's services?

25 A. No.

JOSHUA MONROE - DIRECT EXAM BY MR. FALK

1 Q. Had he asked you, what would you have
2 said?

3 A. No.

4 Q. So why didn't you take -- you pled.
5 That meant you didn't want to go to trial. Why did
6 you decide that you didn't want to go to trial on
7 your charges?

8 A. I didn't decide that I didn't want to
9 go to trial. It was more so I had no choice to
10 take a plea due to that statement. I had no fair
11 chance to fight my case.

12 Q. When you -- you said you had no choice.
13 What do you mean by that?

14 A. The statement alone made it to where it
15 was either you plea or go to trial, and if you go
16 to trial, that statement alone would hinder me in
17 any defense that could possibly -- that I would
18 have.

19 Q. So when you say you couldn't go to
20 trial, you mean --

21 THE COURT: Did you know you had a
22 right to go to trial?

23 THE DEFENDANT: During my plea sentence
24 was I told?

25 MR. FALK: Yes.

JOSHUA MONROE - DIRECT EXAM BY MR. FALK

1 THE DEFENDANT: In front of the first
2 Judge, not the Judge I got sentenced by.

3 MR. FALK: Okay.

4 THE COURT: Counsel, can you clear that
5 up?

6 MR. FALK: Yes, Your Honor. There was
7 an original -- there was a delayed sentencing in
8 this case because I think there were other
9 individuals who were involved in it, and so there
10 was a -- there were actually two plea colloquies,
11 and they should both be in the file.

12 THE COURT: I have them both.

13 MR. JOHNSON: Do you have one from
14 February 3, 2011, and one from --

15 MR. FALK: November 18, 2010.

16 THE COURT: All right.

17 MR. FALK: So that's the first one that
18 I believe he's talking about that he was sentenced.

19 THE COURT: Okay.

20 MR. FALK: There should also be a
21 transcript.

22 THE COURT: I have a transcript from
23 February 3rd of 2011, before Judge Young, and then
24 one from November 18th of 2010, before Judge
25 Nicholson.

JOSHUA MONROE - DIRECT EXAM BY MR. FALK

1 MR. FALK: Those are the two I'm
2 referring to.

3 THE COURT: All right. I'm sorry.

4 BY MR. FALK:

5 Q. So you knew that you could go to trial?

6 A. In November --

7 Q. Yes.

8 A. -- of 2010? Yes, I was told I could go
9 to trial.

10 Q. Okay. You didn't go to trial though?

11 A. No.

12 Q. You felt you didn't have any options?

13 A. Basically, yes.

14 Q. Because you were worried about how the
15 plea would affect you in the trial?

16 A. How the statement would affect me in a
17 trial?

18 Q. Excuse me, how the statement would
19 affect you?

20 A. Yes.

21 Q. Did you ever speak with Mr. Dupree
22 about trying to withdraw your statement?

23 A. Yes, I did.

24 Q. What was that -- can you explain that
25 conversation?

JOSHUA MONROE - DIRECT EXAM BY MR. FALK

1 A. I told him to get me a bond and
2 withdraw my statement, because he told me to do it.

3 Q. Okay. Did he take any steps to try to
4 withdraw the statement?

5 A. No. He said he's not going to do it
6 and the detectives wouldn't believe me.

7 Q. Okay. Other than the grounds of -- you
8 think you were given bad advice to make that
9 statement, are there any other grounds that you
10 want to raise at this PCR?

11 A. The fact that I wasn't read my rights
12 when I was actually sentenced.

13 Q. That was at the second sentencing?

14 A. Yes.

15 Q. Okay.

16 THE COURT: I'm confused; what does he
17 mean by read my rights at the sentencing?

18 MR. FALK: I believe he's referring to
19 the fact that there wasn't a full Boykin-type
20 colloquy when he -- right before he was sentenced.

21 THE COURT: All right.

22 BY MR. FALK:

23 Q. But you had already pled before your
24 sentence; is that correct?

25 A. Pled before I went into the courtroom

JOSHUA MONROE - DIRECT EXAM BY MR. FALK

1 or --

2 Q. No. I mean, you had pled in November,
3 and then you were sentenced in February; is that
4 correct?

5 A. I pled in November and signed plea
6 papers, and when I went back to court in February I
7 had to sign plea papers over.

8 Q. Was it for the same deal?

9 A. No.

10 Q. How was it different?

11 A. Well, when I went in front of -- who
12 was that -- Nicholson, from the discussion it
13 wasn't the hand of one is hand of all theory. So I
14 was solely in the court by myself in front of the
15 Judge. You know, there was no other influences
16 other than what I was faced with.

17 Q. Are there any other grounds that you
18 wish to raise?

19 A. My appeal.

20 Q. Okay. Let's talk about that. Did you
21 ask -- did you ask Mr. Stratos that you wanted to
22 appeal?

23 A. Did I ask him if I want to, or did I
24 tell him I want to?

25 Q. Was there a discussion about whether or

JOSHUA MONROE - DIRECT EXAM BY MR. FALK

1 not you wanted to appeal?

2 A. Yes.

3 Q. When did that take place?

4 A. That took place -- I went back to court
5 on a reconsideration after I received my time. And
6 at the reconsideration, he said the Judge -- he
7 don't think it would be right to go in front of the
8 Judge. You know, they don't usually cut time in a
9 case like mine, so we can waive the reconsideration
10 and file an appeal.

11 Q. Okay. So what you're saying is -- are
12 you saying Mr. Stratos filed a motion for
13 reconsideration because of the harshness of the
14 sentence and you were looking for a lower sentence
15 in the motion to reconsider?

16 A. At that time, yes.

17 Q. And that was pending?

18 A. Yes.

19 Q. Okay. But after February, did you tell
20 him -- did you tell Mr. Stratos you wanted to
21 appeal?

22 A. Yes.

23 Q. Did he file an appeal on your behalf?

24 A. I received paperwork saying he filed an
25 appeal.

JOSHUA MONROE - CROSS EXAM BY MR. JOHNSON

1 Q. Okay. Did you discuss which grounds
2 you wanted to raise for your appeal?

3 A. We didn't have that discussion. He
4 said he doesn't work on appeals, he only filed the
5 paperwork.

6 Q. Okay. And did you file an appeal in
7 this case? Were you given a hearing in this case?

8 A. No, sir.

9 Q. Okay. And why was that?

10 A. I received the paper from the appellate
11 defense saying that my -- my appeal had been
12 dismissed due to failure to timely serve on
13 opposing counsel.

14 MR. FALK: Okay. I have no further
15 questions.

16 THE COURT: Mr. Johnson?

17 MR. JOHNSON: Yes, sir. Thank you.
18 May it please the Court.

19 CROSS-EXAMINATION

20 BY MR. JOHNSON:

21 Q. Mr. Monroe, do you remember pleading
22 guilty November 18, 2010?

23 A. Yes.

24 Q. And the Judge explained to you that you
25 were, in fact, pleading guilty to these three

JOSHUA MONROE - CROSS EXAM BY MR. JOHNSON

1 crimes?

2 A. Yes.

3 Q. And that would be Applebee's, Chuck E.
4 Cheese, and the Noisy Oyster?

5 A. The Noisy Oyster I --

6 Q. You took an Alford plea?

7 A. Yeah.

8 Q. But you, in fact, pled?

9 A. Yeah, but I didn't want to.

10 Q. But you never told the Judge you didn't
11 want to plead, correct?

12 A. When the judge asked me a question, he
13 said, do you think they would find me guilty, and I
14 told him no. He said he couldn't take my plea.

15 Q. And then he said, I will offer you an
16 Alford plea, and that shows that you believe the
17 State had enough evidence that 12 reasonable jurors
18 would believe beyond a reasonable doubt that you
19 were guilty of that crime, correct?

20 A. No.

21 Q. You accepted the plea; did you not?

22 A. I stopped. He told me if I needed to
23 speak to my attorney to tell him. During that time
24 he told me that he could not take the plea because
25 my -- I didn't feel they could find me guilty.

JOSHUA MONROE - CROSS EXAM BY MR. JOHNSON

1 I asked if I could speak to my attorney
2 at that time, which I spoke to my attorney. He
3 told me I had to say yes in order for the Judge to
4 take the plea.

5 Q. And you said yes; isn't that correct?

6 A. Yes.

7 Q. And then your Complaint is that the
8 other Judge, Judge Young, did not go over your
9 rights with you, correct?

10 A. Right.

11 Q. But you had already waived those
12 rights, correct, under Judge Nicholson?

13 A. But that's not the same Judge.

14 Q. It doesn't matter. You had already
15 waived your rights, correct?

16 A. I waived my rights once. So when I go
17 in front of another Judge and then have to sign
18 sentencing papers again, he's not supposed to read
19 me my rights? Anything could have changed the
20 moment I left that courtroom with Judge Nicholson
21 because I wasn't sentenced.

22 Q. Sir, do you have a copy of your
23 transcript?

24 A. Yes.

25 Q. From Judge Young?

JOSHUA MONROE - CROSS EXAM BY MR. JOHNSON

1 A. Yes, I do.

2 Q. Will you agree with me that he asked
3 you if you were under any influence of alcohol or
4 drugs?

5 A. He didn't ask me that.

6 MR. JOHNSON: May I approach?

7 THE COURT: Yes.

8 MR. JOHNSON: Let the record reflect
9 that I'm showing Mr. Monroe a copy of his
10 transcript from February 3, 2011, on page 15.

11 BY MR. JOHNSON:

12 Q. If you would, read lines 5 through 7,
13 please? Out loud please? I'm asking you to read
14 page 15, lines 5 through 7.

15 A. He's not talking to me.

16 Q. Who is he talking to then?

17 A. He's not talking to me.

18 Q. Who was he talking to? It says, The
19 Defendant. You're the defendant, aren't you?

20 THE COURT: You are referring to Judge
21 Nicholson's --

22 MR. JOHNSON: I was referring to Judge
23 Young's.

24 THE COURT: Okay. I'm sorry.

25 BY MR. JOHNSON:

JOSHUA MONROE - CROSS EXAM BY MR. JOHNSON

1 Q. Regardless, Mr. Monroe, you had waived
2 your rights, correct?

3 A. Did I waive my rights?

4 Q. Under Judge Nicholson you waived your
5 rights and you pled guilty in this case?

6 A. Yes.

7 Q. And you have already testified on
8 direct examination that you admitted you were part
9 of the lookout team for the Applebee's and Chuck E.
10 Cheese, right?

11 A. I didn't say I admitted it. I said I
12 signed a statement saying I was.

13 Q. Which is basically admitting that you
14 were involved, correct?

15 A. If you say that.

16 Q. But then you say Mr. Dupree shouldn't
17 have allowed you to make that statement, right?

18 A. Mr. Dupree shouldn't have recommended
19 that's something his client do.

20 Q. And he didn't get you a bond?

21 A. He didn't get me a bond or show me no
22 evidence.

23 Q. And that's the whole reason you were
24 locked up, correct?

25 A. That's the reason I'm locked up.

JOSHUA MONROE - CROSS EXAM BY MR. JOHNSON

1 Q. And then Mr. Stratos didn't do what he
2 was supposed to do apparently, correct?

3 A. I didn't say that either.

4 Q. Well, are you satisfied with Mr.
5 Stratos?

6 A. Mr. Stratos failed to do his part on my
7 notice of appeal.

8 Q. Is that the only thing you have against
9 him?

10 A. No.

11 Q. So you're not satisfied with Mr.
12 Stratos?

13 A. To some degree.

14 Q. So at the plea when you said you were
15 satisfied with counsel, I guess you lied under
16 oath?

17 A. You keep saying that, I didn't say that
18 in front of Judge Young. That's the Judge I was
19 sentenced in front of.

20 Q. But nobody threatened you to plead
21 guilty, did they?

22 A. Yes, they did.

23 Q. That's not what you told Judge
24 Nicholson, is it?

25 A. No.

EXAM BY THE COURT

1 Q. Okay. And that was under oath?

2 A. Yeah.

3 Q. So that means you lied under oath at
4 that guilty plea?

5 A. No.

6 Q. You just said that somebody threatened
7 you, but then you told the Judge under oath that
8 you didn't. You can't have it both ways. Which
9 one is it?

10 A. I was following orders of my attorney.

11 Q. It's always somebody else's fault,
12 isn't it?

13 A. (No response)

14 MR. JOHNSON: No further questions,
15 Your Honor.

16 EXAMINATION

17 BY THE COURT:

18 Q. Well, did somebody threaten you or not?

19 A. Threatened me with time.

20 Q. Threatened you with time. Who did?

21 A. Attorney, Solicitor.

22 Q. So you were under threat that you might
23 go to jail?

24 A. Yes.

25 Q. And that was go to jail for a lot

MICHAEL DUPREE - EXAM BY MR. FALK

1 longer time than you actually got?

2 A. Going to jail in general. Prison to be
3 exact.

4 MR. FALK: I have no redirect.

5 THE COURT: Okay. You may step down.

6 MR. FALK: Your Honor, can I ask
7 questions from here and move the podium?

8 THE COURT: Yes, sir.

9 MR. FALK: I would like to call Michael
10 Dupree to the stand.

11 THE COURT: Very well.

12 MICHAEL DUPREE,
13 being first duly sworn, testified as follows:

14 THE CLERK: Have a seat. Give us your
15 full name and spell the last.

16 THE WITNESS: Michael Dupree,
17 D-U-P-R-E-E.

18 DIRECT EXAMINATION

19 BY MR. FALK:

20 Q. Mr. Dupree, did you ever represent
21 Joshua Monroe?

22 A. I did.

23 Q. Can you explain how that engagement
24 started?

25 A. He and his family came to me -- it's

MICHAEL DUPREE - EXAM BY MR. FALK

1 been some time ago, so -- but he and his family
2 came to me and we met in the conference room and we
3 were discussing these charges. And he gave me some
4 information that there may have been an alibi
5 involved with these crimes.

6 So at that point, I went out and
7 retained or hired Dick Vance, who is a private
8 investigator. Dick Vance came out and did some --
9 went over everywhere where Mr. Monroe asked or told
10 us that he had been, and Mr. Vance went out and did
11 some investigating. Mr. Vance came back to me a
12 couple of days later and said there is -- it
13 doesn't match up.

14 At that point I called North Charleston
15 and spoke to Chief Scott Decker. And so I went
16 down to North Charleston and Chief Decker kind of
17 showed me some of the evidence of what they had.
18 One of the videos that I looked at you could see
19 there were three individuals involved and you could
20 see the three individuals, and Mr. Monroe had some
21 tattoos that I had remembered seeing.

22 At that point I went back to the
23 office, I called Mr. Monroe and his family back in.
24 We went into my office, me and Mr. Monroe by
25 ourselves, and we began talking, at which point Mr.

MICHAEL DUPREE - EXAM BY MR. FALK

1 Monroe started telling me his involvement. I had
2 been doing -- at that point I had been doing this
3 -- I had been a prosecutor for 14 years and I'd
4 been practicing law in private practice since '03,
5 and I know that usually if you're first in line to
6 the table, so to speak, to cooperate, then you're
7 going to get the benefit of that cooperation.

8 Burns Whetmore was the prosecutor, so I
9 called Burns and he gave -- we did a profer. We
10 went down to North Charleston, me and Mr. Monroe,
11 and he gave a statement. A co-defendant in the
12 case, I believe it was his cousin, might be Riker I
13 think, had already given a statement and had
14 already implicated Mr. Monroe and the other
15 individual.

16 So at that point we went and he sat
17 down and he gave a statement. And this was really
18 to help him because what he was -- he was looking
19 at some very serious time. The State could have
20 tried him on all three of these charges
21 individually and he'd be looking at life without
22 parole. And these -- these were some pretty bad
23 crimes.

24 Q. Can you explain how the State could
25 have tried him individually?

MICHAEL DUPREE - EXAM BY MR. FALK

1 A. Well, there were three separate
2 incident dates, and so they could have tried him on
3 the Applebee's going first. The co-defendant, his
4 cousin, had already given a statement so they could
5 have used that at that point, gotten a conviction
6 there. I believe that was an armed robbery charge
7 and maybe a kidnapping. So now we're at the most
8 serious stage, and they could have come back again
9 and tried him on the Chuck E. Cheese or the Noisy
10 Oyster, whichever one was next.

11 So at some point in time he could have
12 been looking at life without parole, or in the
13 alternative, at least, a whole lot longer than what
14 he ended up getting.

15 Q. He got 25 years on the CSC charge?

16 A. Correct.

17 Q. Most he could get on that charge is
18 30 years?

19 A. I believe so.

20 Q. So what was the exact conversation you
21 had with the Solicitor about what kind of
22 consideration he could get?

23 A. Well, one of the things that we -- that
24 we talked about was the CSC. We actually did a
25 preliminary hearing on that charge, and all three

MICHAEL DUPREE - EXAM BY MR. FALK

1 defendants had their prelim at the same time. At
2 that point it was bound over, all the evidence was
3 presented. I don't know -- I don't remember
4 correctly if Mr. Monroe ever put anything in the
5 statement about that incident. I know he discussed
6 the other two and kind of said he was a lookout at
7 the third one. That's -- you know, that's kind of
8 where we were at that point.

9 And so I think I met with -- his dad
10 was actually at the prelim, and we went -- his bond
11 was set very high. He was not going to get a bond
12 reconsideration based on these charges. I mean, I
13 just -- I just know that.

14 And I think we had a discussion at the
15 jail where he wanted me to retract the statement
16 because it was all a lie, and I said that was not
17 to your benefit. And then he said, well, our
18 business is done.

19 Q. When you and -- you said you went to
20 North Charleston?

21 A. Yes.

22 Q. And you spoke with somebody you knew
23 there?

24 A. Chief Deputy Decker.

25 Q. Had you seen all the evidence against

MICHAEL DUPREE - EXAM BY MR. FALK

1 him?

2 A. I had seen what they had. The
3 Dorchester County stuff was still in the mix, but I
4 know that I -- I saw what Chief Deputy Decker had.
5 And I said it was in his best interest that he
6 needs to go ahead and get to the table.

7 Q. How many -- how many crimes were
8 implicated by the evidence that you saw? Was it
9 the Noisy Oyster tape?

10 A. I think it was -- I can't remember
11 which one, but they were in there running around
12 and -- but the evidence that he showed me
13 implicated him in all three, but one he really
14 stood out in. The one video I looked at.

15 Q. Do you know if they had tried to --
16 SLED had sought any kind of forensic evidence from
17 any of the crime scenes?

18 A. This was very early on. I don't think
19 DNA had been involved yet. It was really early in
20 the process.

21 Q. So had any of the forensic evidence
22 come back that would have exculpated my client, you
23 would have known that when you made the
24 recommendation?

25 A. You know, based on what I saw, he was

MICHAEL DUPREE - CROSS EXAM BY MR. JOHNSON

1 involved.

2 Q. Okay.

3 A. And I know, based on what I've read in
4 the transcripts, Judge Young gave him and the
5 co-defendant the benefit for cooperating and,
6 actually, didn't give him the 30 years that I think
7 the co-defendant got -- or one of the -- the
8 third-party got.

9 MR. FALK: No further questions.

10 THE COURT: Mr. Johnson.

11 CROSS-EXAMINATION

12 BY MR. JOHNSON:

13 Q. Mr. Dupree, your advice to Mr. Monroe
14 was not to go back and try to retract the
15 statement, correct?

16 A. Correct, because that -- that would not
17 have been to his benefit.

18 Q. And that's because they can use it
19 against him in trial?

20 A. Yes. Because the proffer states they
21 are not -- if he lies to them, then they can use
22 the statement.

23 Q. That's based on your years of
24 experience as a prosecutor?

25 A. Yes. And I know that's what the proffer

EXAM BY THE COURT

1 says and that's what -- if he lies -- as long as he
2 doesn't lie and he cooperates, then everything is
3 good. The minute he -- if he retracts the
4 statement and then it's a lie, and they find out
5 it's a lie, then he has serious problems.

6 MR. JOHNSON: No further questions,
7 Your Honor.

8 EXAMINATION

9 BY THE COURT:

10 Q. Mr. Dupree, it's my understanding that
11 your recommendation to cooperate was based upon
12 primarily two things; first, a co-defendant had
13 given --

14 A. The co-defendant had --

15 Q. -- had implicated him.

16 A. Yes, sir.

17 Q. And, secondly, the video evidence shows
18 certain tattoos that would identify the defendant,
19 or petitioner, in this case as being a participant?

20 A. Correct, Your Honor.

21 Q. Okay. And based upon that primarily --

22 A. Yes, sir.

23 Q. -- you recommended he cooperate --

24 A. Yes.

25 Q. -- early on?

EXAM BY THE COURT

1 A. Yes.

2 THE COURT: Okay. Thank you.

3 MR. FALK: I have no further questions.

4 THE COURT: You may step down.

5 MR. FALK: I would like to call Mr.

6 Stratos to the stand.

7 THE COURT: All right.

8 MR. JOHNSON: We'd ask that Mr. Dupree
9 be released.

10 MR. FALK: I do not -- yes.

11 THE COURT: You are released from your
12 Subpoena.

13 MR. DUPREE: Thank you, Your Honor.

14 MILTON STRATOS,

15 being first duly sworn, testified as follows:

16 THE CLERK: Have a seat, state your
17 full name and spell your last name.

18 THE WITNESS: Milton Demetrius Stratos.

19 DIRECT EXAMINATION

20 BY MR. FALK:

21 Q. Mr. Stratos, were you retained in this
22 case?

23 A. I was, yes, sir.

24 Q. Can you tell me when during the process
25 you were retained? Was it after the preliminary

MILTON STRATOS - DIRECT EXAM BY MR. FALK

1 hearing?

2 A. Yes.

3 Q. Had the State already provided
4 discovery on all charges?

5 A. Yes.

6 Q. Okay. When you got the case, were you
7 aware that Mr. Monroe had already given a
8 statement?

9 A. I was.

10 Q. Okay. When you looked at the
11 discovery, were there any other statements in
12 there?

13 A. There were. Mr. Larkin --

14 Q. Beg your pardon?

15 A. Mr. Larkin is not only his
16 co-defendant, it's also his cousin and they lived
17 together. He had given a full and complete
18 statement implicating Mr. Monroe not only in the
19 Chuck E. Cheese, Noisy Oyster, and Applebee's
20 cases, but also several other armed robberies they
21 had committed, not only in Charleston County but
22 also in Dorchester County.

23 Q. In the discovery, were there additional
24 -- was there a statement from my client that
25 preceded the statement that --

MILTON STRATOS - DIRECT EXAM BY MR. FALK

1 A. Yes, there was. Subsequent to
2 Mr. Corey giving his statement, Mr. Monroe had
3 given a statement while counsel was present.

4 Q. Okay.

5 A. And at that point, Mr. Dupree was his
6 counsel of record.

7 Q. Had he given any other statement to law
8 enforcement when counsel wasn't present?

9 A. Not that I was aware of.

10 Q. So there was no other evidence in the
11 file of a statement to law enforcement without
12 benefit of counsel?

13 A. There was just the one statement signed
14 by Mr. Larking of four pages implicating himself in
15 Chuck E. Cheese and Applebee's robberies, and other
16 than that I don't believe -- he had Mr. Larkin's
17 statement, but those were the only statements in
18 the file.

19 Q. Why did you not take the case to trial?

20 A. Because there was just no way to take
21 that case to trial and risk that boy's life. He
22 was looking square in the face at LWOP and he was
23 going to spend his life in prison. He was a
24 20-year-old kid when I got the case. He's not a
25 bad kid. He just very -- he didn't do the

MILTON STRATOS - DIRECT EXAM BY MR. FALK

1 brightest things that one would do.

2 No question in my mind he was involved
3 in the case. No question in my mind that he was
4 involved in each one of the robberies that he plead
5 guilty to. And I told the family early on, after
6 reviewing the discovery, that this was not a
7 triable case, that I wasn't being hired to try this
8 case. I was being hired to work out the best plea
9 on his behalf that I possibly could.

10 In my estimation, and I guess at that
11 point I had been practicing law 20 something years,
12 there was just no way to risk a life in prison
13 sentence over the facts and circumstances facing
14 him.

15 Q. His statement, did that implicate him
16 in any of the --

17 A. It was not only the -- you know, I
18 think he said in Applebee's in the statement he
19 indicated he was a lookout. Okay. Which --
20 neither here nor there; again, one hand of all,
21 didn't help him in the least. What really
22 concerned me was the Chuck E. Cheese robbery which
23 he implicated himself in.

24 That's where they followed a man from
25 Chuck E. Cheese all the way back to his home in

MILTON STRATOS - DIRECT EXAM BY MR. FALK

1 Summerville across county lines, pulled guns on him
2 in his driveway, put him in their vehicle, was
3 driving back, and at that point their car broke
4 down. So they had to transfer the poor man from
5 that car to another car and then continued on to
6 Chuck E. Cheese, at which point they went inside
7 and couldn't get any money because the safe had a
8 timer on it. So they really didn't get anything
9 out of the robbery.

10 But he was clearly -- I mean, he gave
11 details in his statement on that particular crime
12 that probably only -- it matched Corey's statement,
13 but it was probably only something that a person
14 who was there would have such knowledge.

15 Q. Okay. So my question was, his
16 statement would have prejudiced him in going to
17 trial; would it not?

18 A. Absolutely.

19 Q. Okay. You had -- because he would have
20 been -- it's your opinion he would be prejudiced
21 because of his statement at trial? You've tried
22 criminal cases --

23 A. In part. There was substantial other
24 evidence to -- to tie him to the crimes. There
25 were videotapes. There was a video, I'm thinking

MILTON STRATOS - DIRECT EXAM BY MR. FALK

1 it was Chuck E. Cheese, it was a very, very good
2 video. Usually you get the grainy videos; this was
3 very clear. They did have wraps on their faces and
4 their black T-shirts and their jeans, but you could
5 see the tattoo on the arm, which I believe matched
6 Mr. Monroe's tattoo.

7 And so, you know, then you go to the
8 Noisy Oyster where the sexual conduct occurred, was
9 not a clear video. It was one of those grainy --
10 it was in a very dark room, but you could see all
11 three individuals. You could make out their shapes
12 and sizes. And based on Corey's statement that Mr.
13 Larkin was -- I mean, that Josh was involved in
14 that crime as well, I believe there was substantial
15 circumstantial evidence which would have proven --
16 based on the direct evidence of the statement,
17 would have proven beyond any doubt that he was also
18 involved in that crime as well.

19 Moreover, you still had Mr. Larkin in
20 the background here who had denied any involvement
21 in any of the crimes. He was being represented by
22 a very good attorney and my -- in my estimation, if
23 we pushed for trial and Mr. Savage decided to get
24 his client the deal that I was trying to get my
25 client, I would be out in the cold and so would my

MILTON STRATOS - DIRECT EXAM BY MR. FALK

1 client. So it would have done us no good
2 whatsoever to have tried anything different.

3 It would have been great to have the
4 ability to defend him completely, but the risk far
5 exceeded any benefit we might have gotten out of a
6 trial.

7 Q. What was the evidence that implicated
8 him in the CSC?

9 A. Direct evidence from Corey, his cousin,
10 roommate, the fellow who was -- the co-defendant.
11 And then there was a video of the individuals in
12 the room with the little girl, and the things they
13 were doing at the time to the little girl was rape
14 -- or made to commit an act of fellatio on one of
15 the defendants. But if they believed -- if they
16 believed -- I know that Josh always said, you know,
17 he tried to keep it -- he did admit to being there,
18 to me as well as to Burns Whetmore, the Solicitor.

19 I took him -- I took -- Burns and I met
20 Mr. Monroe up at the jail -- and was still trying
21 to get him the best deal possible -- and he
22 admitted at that point that he was involved in that
23 as well, but I was -- you know, even before then, I
24 thought the evidence was substantial enough that a
25 jury, based on the evidence presented, would have

EXAM BY THE COURT

1 found him guilty of that charge as well.

2 Q. What discussion did you have with him
3 about the collateral consequences of pleading to
4 the CSC charge?

5 A. Collateral consequences? What do you
6 mean by that? What could he be sentenced to?

7 THE COURT: Are you talking about
8 non-parolability and things like that.

9 MR. FALK: No. I'm talking about
10 lifetime registry on the --

11 THE WITNESS: Oh, yeah, I think he was
12 quite aware of that as well.

13 BY MR. FALK:

14 Q. Did you have a discussion with him
15 about it?

16 A. Yes, sir.

17 MR. FALK: No further questions.

18 MR. JOHNSON: No questions for this
19 witness, Your Honor.

20 EXAMINATION

21 BY THE COURT:

22 Q. Mr. Stratos.

23 A. Yes, sir.

24 Q. You tell me that you've had some
25 20 years of practice?

EXAM BY THE COURT

1 A. During this case. 28 now.

2 Q. And a lot of that would be criminal
3 work I'm assuming?

4 A. Yes, sir.

5 Q. If you look back at prior counsel's
6 actions in this matter and his recommendations, do
7 you find that to be within the professional norms?

8 A. Absolutely. I mean, I know Michael
9 fairly well. I was a public defender when he was
10 an Assistant Solicitor. I know he does a very good
11 and thorough job. I know he fights hard for his
12 client, either on the prosecution side or the
13 defense side.

14 He was faced with basically the same
15 thing I was faced with before he gave his
16 statement, and that was an opportunity for his
17 client potentially getting in on the first part of
18 the -- of -- of the -- giving the statements in the
19 case and implicating the other defendants in order
20 to gain himself a better position in terms of
21 sentencing.

22 Q. And do you have an opinion as to
23 whether or not that is a reasonable thing for a
24 seasoned defense attorney to do?

25 A. Under the circumstances he just

REDIRECT EXAM BY MR. FALK

1 finished testifying to, I would say, yes.

2 MR. FALK: Your Honor, may I open up
3 questioning on another topic?

4 THE COURT: Yes.

5 REDIRECT EXAMINATION

6 BY MR. FALK:

7 Q. Did he speak with you about an appeal?

8 A. He did.

9 Q. Can you tell me what happened on that?

10 A. We discussed it. I had -- he also
11 asked me to file for reconsideration. I filed that
12 motion as well. I went ahead and sent the appeal
13 up before the motion of reconsideration was --
14 because I drafted it so that Mr. Monroe signed it
15 and I just submitted it on his behalf. And I sent
16 also paperwork to appellate defense indicating that
17 I don't do appeals, I had already told the Monroe
18 family I don't do appeals. It's in my contract
19 that I don't do appeals, but I did tell him I would
20 file that.

21 I filed it, they kicked it back. I
22 then refiled it with the information regarding the
23 motion for reconsideration and they kicked it back
24 again. Even though I'd sent up the notice that I'd
25 sent to Burns, they kicked it back and dismissed

REDIRECT EXAM BY MR. FALK

1 the appeal.

2 Q. Was it dismissed on procedural grounds
3 it was improperly perfected?

4 A. That's correct.

5 MR. FALK: No further questions.

6 MR. JOHNSON: Nothing from the State,
7 Your Honor.

8 THE COURT: You may step down.

9 THE WITNESS: Thank you.

10 THE COURT: Anything further?

11 MR. FALK: No, Your Honor.

12 THE COURT: Mr. Johnson?

13 MR. JOHNSON: No, nothing from the
14 State.

15 THE COURT: Submit orders please in
16 30 days.

17 MR. JOHNSON: And, Your Honor, just as
18 an interest of -- as an officer of the court, I
19 cannot contest that, he's not entitled to a belated
20 review of appellate issue pursuant to White v.
21 State. So I will submit an order stating that as
22 well.

23 THE COURT: All right. It is granted
24 in that regard.

25 MR. JOHNSON: Thank you, Your Honor.

1 THE COURT: Thank you.

2 (These proceedings were concluded at

3 10:43 a.m.)

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CERTIFICATE OF REPORTER

I, Carol Denise Lauder, Registered Professional Reporter and Notary Public for the State of South Carolina at Large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 26th day of January, 2016 at Charleston, Charleston County, South Carolina.

Carol Denise Lauder
Registered Professional
Reporter, CP
My Commission expires
August 2, 2017

Respondent.

2013-CP-10-5445

**ORDER OF DISMISSAL AND
GRANT OF APPEAL PURSUANT
TO WHITE V. STATE**

FILED
2015 NOV 23 PM 4:30
JULIE J. ANDERSON
CLERK OF COURT
ALABAMA
SHERIFF
TE

Page 1 of 10

kidnapping (2008-GS-10-8123, -8145, -8111), two counts of armed robbery (2008-GS-10-8149, -8120), attempted armed robbery (2008-GS-10-8109), and criminal sexual conduct- first degree (2008-GS-10-8143). The Applicant was represented by Milton Stratos, Esquire.

On November 18, 2010, the Applicant pled guilty as indicted. On February 3, 2011, the Applicant was sentenced by the Honorable Roger M. Young, Sr. to confinement for a period of twenty years for attempted armed robbery and twenty-five years for all remaining charges. The sentences were to be served concurrently.

The Applicant filed a timely Notice of Appeal. The Appeal was dismissed for failure to serve opposing counsel pursuant to Rule 203, SCACR. The Remittitur was issued on October 11, 2012.

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

1. Ineffective assistance of counsel.
 - a. Failing to properly file the Applicant's appeal.
 - b. Advising the Applicant to plea to CSC.
 - c. Failing to move to quash the indictment for CSC in light of Applicant's denial and State's lack of evidence.
 - d. Failing to move for dismissal of armed robbery charge because of variance between allegations in the indictments.
2. Denial of due process of law.

In his amended application, the Applicant, through counsel, alleged:

1. "Former trial counsel Michael Dupree... Provided ineffective assistance counsel by advising applicant to make incriminating proffer statement to the Ninth circuit Solicitor's office, without first:
 - a. Adequately investigating in analyzing the strength of the evidence against applicant, and;
 - b. Advising applicant of weakness in the State's case and evidence against applicant."

At the hearing, the Applicant proceeded on his claims of ineffective assistance of plea counsel.

SUMMARY OF TESTIMONY

At the evidentiary hearing, Applicant testified he retained Mike Dupree as counsel, who filed a Rule 5 motion, but did not review with applicant. Applicant then stated he met with Counsel Dupree twice in preparation for a guilty plea. Counsel had applicant give a statement to law enforcement under a proffer, and it was Applicant's understanding that the statement could not be used against him and he did not know if he got a benefit from giving the statement. Applicant stated he signed the statement and that he was acting as a lookout for his codefendants. Applicant testified Counsel did not explain the theory of hand of one, hand of all. Applicant stated he felt he was exempt from other charges, because he admitted his involvement in the Chuck E. Cheese and Applebee's incidents. Applicant then testified he did not review evidence with Counsel and that Counsel did not explain a trial to him. Applicant stated he went along with Counsel's advice, and that when he entered the plea, he was satisfied with Counsel's performance. Applicant also testified he told Counsel Dupree that he wanted to make bond, but could not get bond because of the charges. Applicant stated Counsel got upset with Applicant because Applicant said Counsel was the reason he was still locked up. Applicant stated Counsel would not withdraw from this case.

As to Counsel Stratos, applicant testified his grandmother hired him. Applicant testified that during the guilty plea he stated to the judge that he was satisfied with Counsel Stratos, but felt that he had no choice but to pursue a trial because of the statement he gave to law enforcement. Applicant stated his only choice was a plea or trial, but that his statement would hinder any defense.

Additionally, Applicant stated Counsel Stratos filed his appeal and waived reconsideration of his sentence. Lastly, Applicant alleged counsel filed the appeal, but failed to serve it timely.

On cross-examination, Applicant admitted that at the guilty plea, he stated he was satisfied with Counsel and needed no more time with Counsel prior to pleading guilty. Applicant also admitted that he waived his constitutional rights, including the right to trial. Applicant stated there were no promises made to get him to plead guilty and that no one threatened or coerced him to plead guilty. However, Applicant attempted to say that he was threatened to plead guilty based on the amount of time he was facing. Also, he admitted at the plea that he truthfully answered the judge's questions, and he was pleading guilty because he was guilty. At the guilty plea, Applicant agreed to the facts as the State presented them under Alford.

Counsel Dupree testified he was retained to represent Applicant, and met Applicant in his conference room to discuss the charges and defenses, including an alibi defense. Counsel testified he retained a private investigator and contacted the North Charleston Police Department. Counsel stated that he was shown the evidence, including the videos from the restaurants, which clearly showed applicant on the video. Counsel stated he spoke with Applicant, and Applicant admitted his involvement. Counsel explained to Applicant that if he was the first one to the table, he could benefit from his cooperation. Counsel contacted the solicitor concerning the proffer to law enforcement. Counsel also stated that he had Applicant go to the North Charleston Police Department to give a statement, but Applicant's codefendants had already given statements. Counsel stated he tried to help Applicant and that the State could try Applicant on 3 separate incidents and attempt to get a life without parole sentence for Applicant. Counsel further stated, as to the criminal sexual conduct charge, there was a preliminary hearing where all 3 codefendants were bound over and evidence was

presented. Counsel stated Applicant was not going to get a bond reconsideration. Additionally, Counsel stated that Applicant wanted to retract his statement because Applicant claimed it was a lie. Counsel advised Applicant that retracting the statement was not to his benefit and that the evidence shown implicated Applicant in the incidents. Specifically, one video showed Applicant extensively involved. Counsel then testified Judge Young gave Applicant and codefendant benefits for cooperating. Upon questioning from this Court, counsel testified that he advised Applicant to give the statement; however, one codefendant had already given a statement before Applicant did.

Counsel Stratos testified he was retained after the preliminary hearing and filed for discovery. Counsel testified he was aware Applicant had already given a statement to law enforcement and that codefendant, who was Applicant's cousin, had given a full statement implicating applicant in the three charged arm robberies, but also various other Dorchester County armed robberies. Counsel testified Applicant had given his statement while being represented by Counsel Dupree. Counsel stated there were no other statements given in this case. Counsel opined that this was not a case to take to trial, and he was not willing to risk Applicant's life; because applicant was facing a potential life without parole sentence. Counsel testified he was hired to work out the best plea offer he could. Counsel testified Applicant's statement implicated Applicant as a lookout and that he explained the theory of hand of one, hand of all to Applicant. Counsel then stated that the Chuck E. Cheese incident had bad facts, and only someone who was involved could have such knowledge. Counsel testified that Applicant's statement would have prejudiced his trial, and that there was substantial other evidence tying Applicant to the crimes. Counsel stated that in the video you could see Applicant's tattoos, and that the risk of trial outweighed the potential reward. Counsel also testified there was a video and statement tying Applicant to the Noisy Oyster incident. Importantly, Counsel

stated Applicant admitted to being at the Noisy Oyster to him and the solicitor. Applicant also admitted he was involved in this incident, and Counsel advised him about the sex offender registry.

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 fact and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (2003).

Ineffective Assistance of Counsel

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), SCRPC). 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, 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 (1985).

This Court finds the Applicant's testimony regarding Counsel Dupree's and Counsel Stratos's ineffectiveness is not credible while also finding both Counsels' testimony is credible.

This Court also finds both Counsel Dupree and Counsel Stratos provided effective assistance of counsel in this case. Counsel advised Applicant of the charges and the sentences the charges carried. Counsel negotiated with the State in Applicant's best interest. Counsel was able to negotiate a plea agreement which eliminated applicant's potential exposure to a life without parole sentence. Applicant admitted nobody threatened him to plead guilty, and there were no promises other than the negotiations to entice him to plead guilty. This Court finds Applicant made the decision to plead guilty on his own accord with the help of learned counsel. Additionally, this Court finds Applicant made this decision freely and voluntarily without any threats or promises from anyone else. Furthermore, this Court finds that it was ultimately the Applicant's decision to plead guilty.

Accordingly, this Court finds the 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 the Applicant.

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

Nevertheless, this Court agrees that the allegation that the Applicant was denied a direct appeal is meritorious. In the absence of an intelligent waiver by the defendant, counsel must either initiate an appeal if requested or comply with the procedure required by Anders v. California, 386 U.S. 738, 87 S.Ct. 1396 (1967). White v. State, 263 S.C. 110, 208 S.E.2d 35 (1974). Where the post-conviction relief judge determines that the applicant did not freely and voluntarily waive his appellate rights, the applicant may petition the South Carolina Supreme Court for review of direct appeal issues pursuant to White v. State. See Rule 227(g)(1), SCACR; Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986).

The Court affirmatively finds that the Applicant did not knowingly and voluntarily waive his right to a direct appeal. The Court concludes that the Applicant is entitled to a belated review of his conviction(s). A petition for belated review pursuant to White v. State can remedy the Applicant’s lack of a direct appeal.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the 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 also finds as to all other allegations that Applicant failed to present evidence of such claims and thus, this Court deems them abandoned.

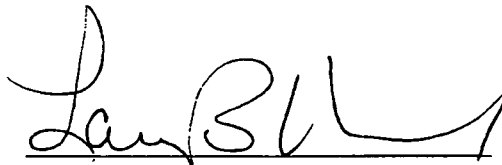
This Court notifies the Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has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

IT IS THEREFORE ORDERED:

1. That this current Application for Post-Conviction Relief be dismissed with prejudice.
2. That the Applicant is granted a belated review of direct appeal issues pursuant to White v. State, 263 S.C. 110, 108 S.E.2d 35 (1974). Within thirty days of service of this Order, counsel for the Applicant must file a Notice of Appeal to secure the appropriate review of the Applicants' convictions. Counsel and the Applicant are directed to Davis v. State, 288 S.C. 290, 342 S.E.2d 60 (1986) and South Carolina Appellate Court Rule 227(g) for the appropriate procedure for securing belated appellate review.

3. That Applicant be remanded to the custody of Respondent.

AND IT IS SO ORDERED!

A handwritten signature in black ink, appearing to read "Larry B. Hyman", written over a horizontal line.

Larry B. Hyman
Presiding Circuit Court Judge
Ninth Judicial Circuit

11-18, 2015

Conway, South Carolina

2013-CP-10-5445

BMW20080703910

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008024382

ARREST WARRANT NUMBER

K350032

DATE OF ARREST

June 5, 2008

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

OCT 07 2008

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1008109

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

THE STATE

vs.

JOSHUA ANDREW MONROE

DOB: 09-16

B/M

Indictment for
ATTEMPTED ARMED ROBBERY

FILED

2008 OCT 10 PM 2:39

JULIE STRONG
CLERK OF COURT

BY

08-3627-4

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

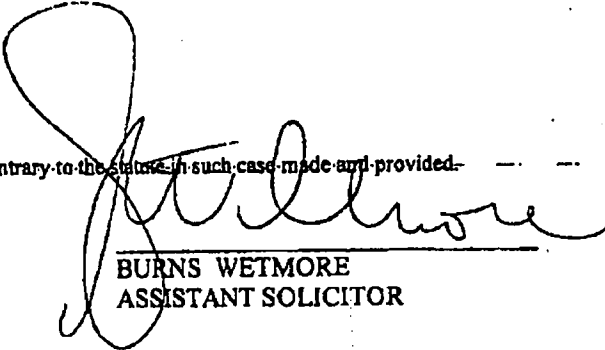
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

ATTEMPTED ARMED ROBBERY

That on or about June 2, 2008, in Charleston County, South Carolina, Chuck E. Cheese located at 7250 Rivers Avenue, the Defendant, JOSHUA ANDREW MONROE, by use of force, threats or intimidation and 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 other object which a person present during the commission of the attempted robbery reasonably believed to be a deadly weapon, did attempt to take and carry away goods or monies from the person or immediate presence of Guy Ahlstrom employee of Chuck E Cheese with the intent to permanently deprive him of possession thereof; in violation of Section 16-11-330(B) 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 case made and provided — —



BURNS WETMORE
ASSISTANT SOLICITOR

BMW20080703910

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008024382

ARREST WARRANT NUMBER

K300711

DATE OF ARREST

June 5, 2008

ACTION OF GRAND JURY

[Signature]
 For person of Grand Jury OCT 07 2008
 Date:

VERDICT

TRUE BILL

For person of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1008111

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

THE STATE

vs.

JOSHUA ANDREW MONROE

DOB: [REDACTED]-09-16

B/M

Indictment for

KIDNAPPING

FILED

2008 OCT 10 PM 2:39

JULIA A. STONG
CLERK OF COURT

BY

08-3627-7

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

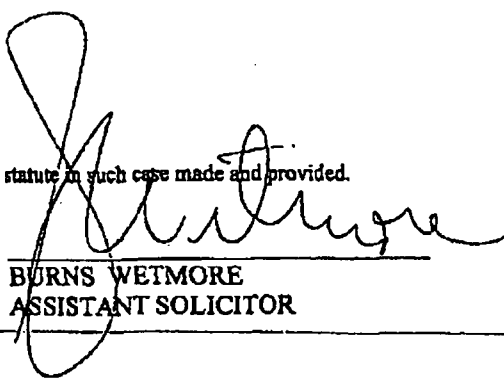
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

KIDNAPPING

That in Charleston County, South Carolina, on or about June 2, 2008, the Defendant, JOSHUA ANDREW MONROE, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Guy Ahlstrom, without authority of law; all in violation of Section 16-3-910 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 case made and provided.



BURNS WETMORE
ASSISTANT SOLICITOR

BMW20080603518

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008018508

ARREST WARRANT NUMBER

K350017

DATE OF ARREST

June 5, 2008

ACTION OF GRAND JURY



Foreperson of Grand Jury

OCT 07 2008

Date:

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1008120

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

THE STATE

vs.

JOSHUA ANDREW MONROE

DOB: [REDACTED]-09-16

B/M

Indictment for
ARMED ROBBERY

FILED

2008 OCT 10 PM 2:39

JULIA L. STICKING
CLERK OF COURT

BY _____

08-3627-16

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

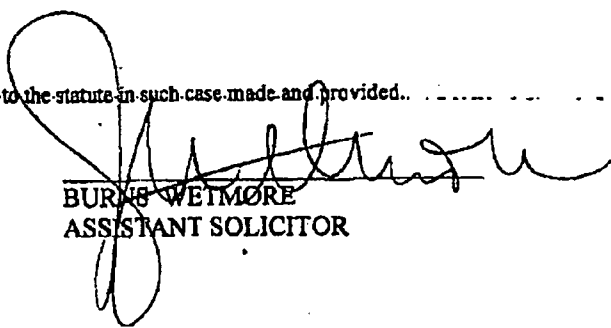
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

ARMED ROBBERY

That on or about April 28, 2008, in Charleston County, South Carolina, the Defendant, JOSHUA ANDREW MONROE, at Applebee's located at 7818 Rivers Avenue, North Charleston, South Carolina, by use of force, threats or intimidation and 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 other object which a person present during the commission of the robbery reasonably believed to be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of employees of Applebee's with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-11-330(A) 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 case made and provided. -----


BURNS WETMORE
ASSISTANT SOLICITOR

BMW20080603518

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008018508

ARREST WARRANT NUMBER

K350020

DATE OF ARREST

June 5, 2008

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date: OCT 07 2008

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1008123

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

THE STATE

vs.

JOSHUA ANDREW MONROE

DOB: [REDACTED] 09-16

B/M

Indictment for

KIDNAPPING

FILED

2008 OCT 10 PM 2:39

JULIA M. STANING
CLERK OF COURT

BY _____

08-3627-11

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

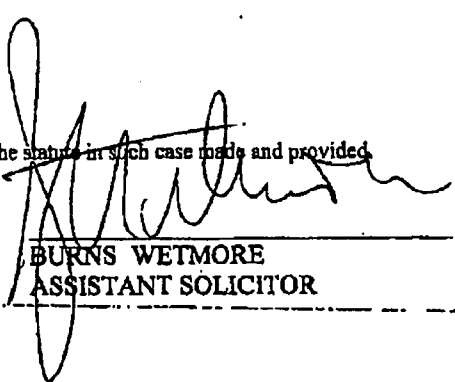
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

KIDNAPPING

That in Charleston County, South Carolina, on or about April 28, 2008, the Defendant, JOSHUA ANDREW MONROE, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Applebee's, employee Jonathan Walker without authority of law; all in violation of Section 16-3-910 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 case made and provided.


BURNS WETMORE
ASSISTANT SOLICITOR

BMW20080703909

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008023157

ARREST WARRANT NUMBER

K300733

DATE OF ARREST

June 5, 2008

ACTION OF GRAND JURY

Foreperson of Grand Jury
Date:

OCT 07 2008

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1008143

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

THE STATE

vs.

JOSHUA ANDREW MONROE

DOB: 09-16

B/M

Indictment for

CRIMINAL SEXUAL CONDUCT FIRST
DEGREE

FILED

2008 OCT 10 PM 2:39

JULIA J. STINEBAUGH
CLERK OF COURT

BY

08-3627-15

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

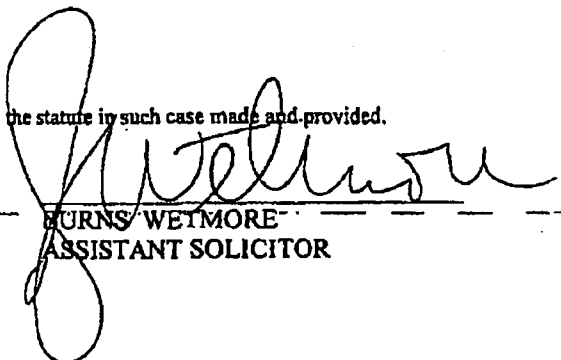
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County present upon their oath:

CRIMINAL SEXUAL CONDUCT FIRST DEGREE

That in Charleston County, South Carolina, on or about May 25, 2008, the Defendant, JOSHUA ANDREW MONROE, did commit a sexual battery upon the victim, Noisy Oyster employee Barbara Carter, without her consent, and with the use of aggravated force, to wit: the defendant force the victim to perform oral sex and fondled her about her breasts and vaginal area; all in violation of Section 16-3-652, Code of Laws of South Carolina, (1976, as amended).

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


J. WETMORE
ASSISTANT SOLICITOR

BMW20080703909

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008023157

ARREST WARRANT NUMBER

K300735

DATE OF ARREST

June 5, 2008

ACTION OF GRAND JURY

For person of Grand Jury
Date:

OCT 07 2008

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1008145

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

THE STATE

vs.

JOSHUA ANDREW MONROE

DOB: [REDACTED] 09-16

B/M

Indictment for

KIDNAPPING

FILED

2008 OCT 10 PM 2:39

JULIA L. STONG
CLERK OF COURT

BY

08-3627-8

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

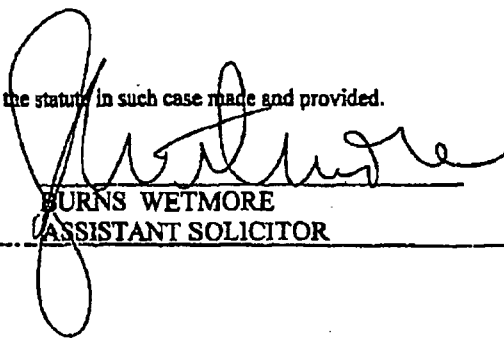
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County
present upon their oath:

KIDNAPPING

That in Charleston County, South Carolina, on or about May 25, 2008, the Defendant, JOSHUA ANDREW
MONROE, unlawfully did seize, confine, inveigle, decoy, kidnap, abduct or carry away the victim, Noisy Oyster,
employee Justin Carter without authority of law; all in violation of Section 16-3-910 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 case made and provided.


BURNS WETMORE
ASSISTANT SOLICITOR

BMW20080703909

WITNESSES

North Charleston Police Department

AGENCY CASE NUMBER

2008023157

ARREST WARRANT NUMBER

K300739

DATE OF ARREST

June 5, 2008

ACTION OF GRAND JURY

For person of Grand Jury
Date: OCT 07 2008

VERDICT

TRUE BILL

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2008GS1008149

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

OCTOBER TERM 2008

THE STATE

vs.

JOSHUA ANDREW MONROE

DOB: [REDACTED]-09-16
B/MIndictment for
ARMED ROBBERY

FILED

2008 OCT 10 PM 2:39

JULIA J. STINEBAUGH
CLERK OF COURT

BY _____

08-3627-17

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

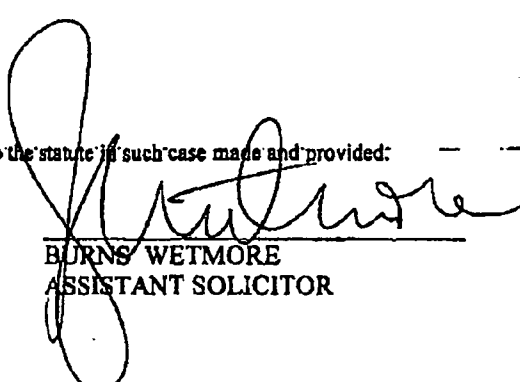
INDICTMENT

At a Court of General Sessions, convened on October 6, 2008 the Grand Jurors of Charleston County
present upon their oath:

ARMED ROBBERY

That on or about May 25, 2008, in Charleston County, South Carolina, the Defendant, JOSHUA ANDREW
MONROE, at Noisy Oyster located at 7842 Rivers Avenue, by use of force, threats or intimidation and 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 other object which a person present during the commission of the robbery reasonably believed to
be a deadly weapon, did take and carry away goods and/or monies from the person or immediate presence of Noisy
Oyster employees with the intent to permanently deprive the victim of possession thereof, in violation of Section 16-
11-330(A) 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 case made and provided: —

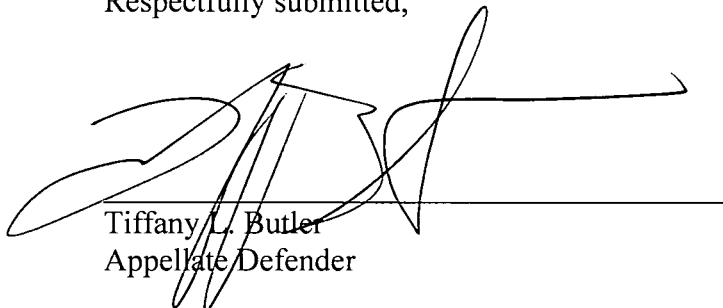


BURNS WETMORE
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully submitted,



Tiffany L. Butler
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 5th day of July, 2016.

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

ORIGINAL

RECEIVED

JUL 05 2016

SC SUPREME COURT

Appeal from Charleston County
Honorable Larry B. Hyman, Circuit Court Judge

JOSHUA MONROE,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

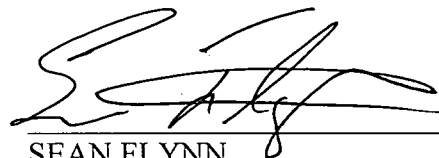
RESPONDENT

APPELLATE CASE NO. 2015-002434

CERTIFICATE OF SERVICE

Appendix

I certify that a copy of the ~~Record on Appeal~~ in the above referenced case has been served upon J. Rutledge Johnson, Esquire, at Rembert Dennis Building 1000 Assembly Street, Room 519, Columbia, SC 29201; and upon Joshua Monroe, #344735, at McCormick Correctional Institution, 386 Redemption Way, McCormick, SC 29899, this 5th day of July, 2016.



SEAN FLYNN
Administrator Specialist

SUBSCRIBED AND SWORN TO before me
this 5th day of July, 2016.

Christian Ford (L.S.)

Notary Public for South Carolina

My Commission Expires: March 1, 2024