

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case No.: 2015-002282

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SC SUPREME COURT

Devin M. Nimmons #355132..... Petitioner,

vs.

State of South Carolina, ...Respondent.

APPENDIX

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) IN THE TENTH JUDICIAL CIRCUIT
) THE COURT OF GENERAL SESSIONS
) 2011-GS-04-01366

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DATE: APRIL 23-24, 2013
ANDERSON, SOUTH CAROLINA

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THE HONORABLE R. LAWTON MCINTOSH

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CATHARINE T. HUEY, ATTORNEY AT LAW
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OFFICIAL COURT REPORTER
SOUTH CAROLINA JUDICIAL DEPARTMENT

1 MS. HUEY: Your Honor, may it please the Court?

2 THE COURT: Yes, ma'am.

3 MS. HUEY: Before you is Devin Michael Nimmons,
4 pleading guilty to accessory before the fact to a felony,
5 second degree, violent, 2011-GS-04-1364. He's also
6 pleading guilty to accessory before the fact to a felony
7 strong arm robbery, 2011-GS-04-1365. Also, accessory
8 before the fact to a felony kidnapping, 2011-GS-04-1366.
9 Additionally, Your Honor, he is pleading guilty to
10 conspiracy, 2011-GS-04-527.

11 Your Honor, it's my understanding, in speaking with
12 the Defense, that Mr. Nimmons is going to enter a plea this
13 morning and then he wishes to meet with Detective Gebing
14 prior to being sentenced, Your Honor, and so this would be
15 a deferred sentence.

16 THE COURT: All right. Is that correct?

17 MR. EPPS: Yes, sir.

18 THE COURT: Would you swear Mr. Nimmons.

19 (Clerk of Court administers the oath to Mr. Nimmons)

20 THE COURT: You are Devin Michael Nimmons?

21 MR. NIMMONS: Yes, sir.

22 THE COURT: Okay, Mr. Nimmons, I'm going to ask you to
23 speak loud enough so I can hear you. Okay, sir?

24 MR. NIMMONS: Yes, sir.

25 THE COURT: It says you are 23 years old. Is that

THE STATE OF SOUTH CAROLINA VERSUS DEVIN M. NIMMONS

1 correct?

2 MR. NIMMONS: Yes, sir.

3 THE COURT: How far did you go in school?

4 MR. NIMMONS: Graduated.

5 THE COURT: High School?

6 MR. NIMMONS: Yes, sir.

7 THE COURT: Did you do any post high school educational
8 work?

9 MR. NIMMONS: Yes, sir. I went to Tri-County for a
10 short time. I attempted to go to Lander and then back to
11 Tri-County, so, some college.

12 THE COURT: Are you employed?

13 MR. NIMMONS: Yes, sir.

14 THE COURT: Where do you work?

15 MR. NIMMONS: Southern Concrete Construction.

16 THE COURT: How long have you worked with them?

17 MR. NIMMONS: About eight months, sir.

18 THE COURT: About eight months?

19 MR. NIMMONS: Yes, sir.

20 THE COURT: Where did you work before that?

21 MR. NIMMONS: Well, I've been on house arrest for a
22 while.

23 THE COURT: Sir?

24 MR. NIMMONS: I've been on house arrest for a while,
25 sir.

1 THE COURT: How long were you on house arrest?

2 MR. NIMMONS: I've been on it for about, right at two
3 years now.

4 THE COURT: Two years?

5 MR. NIMMONS: Yes, sir.

6 THE COURT: Is that stemming from these two charges?

7 MR. NIMMONS: Yes, sir.

8 THE COURT: Before that, did you have a job before you
9 were arrested or put on house arrest for these charges?

10 MR. NIMMONS: Yes, sir.

11 THE COURT: Where did you work?

12 MR. NIMMONS: I worked at Furniture From Highpoint.

13 THE COURT: Sir?

14 MR. NIMMONS: Furniture From Highpoint.

15 THE COURT: Furniture From Highpoint?

16 MR. NIMMONS: Yes, sir.

17 THE COURT: Is that here locally or is that in
18 Highpoint, North Carolina?

19 MR. NIMMONS: No, it's from Highpoint, but we sell it.
20 It's right beside T.L. Hanna. That's where the warehouse
21 is.

22 THE COURT: Okay, sir. Are you married?

23 MR. NIMMONS: No, sir.

24 THE COURT: Do you have any children?

25 MR. NIMMONS: No, sir.

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1 THE COURT: Are you under the influence of any
2 medication, drugs or alcohol today?

3 MR. NIMMONS: No, sir.

4 THE COURT: Mr. Epps, are you satisfied that Mr.
5 Nimmons is competent to plead guilty today?

6 MR. EPPS: Yes, sir, Your Honor.

7 THE COURT: Now, Mr. Nimmons, as you know, this is the
8 term of court where your cases are supposed to be tried.

9 MR. NIMMONS: Yes, sir.

10 THE COURT: Has anybody forced, threatened or promised
11 you anything to get you to plead guilty today?

12 MR. NIMMONS: No, sir.

13 THE COURT: ~~Are you doing so freely and voluntarily?~~

14 MR. NIMMONS: ~~Yes, sir.~~

15 THE COURT: Do you understand that you will not be
16 sentenced today, but your sentence will be deferred so you
17 can cooperate with law enforcement?

18 MR. NIMMONS: Yes, sir.

19 THE COURT: And then, at the end of the day when you
20 come back before me this week -- I understand the State
21 says they want that cooperation or help this week?

22 MS. HUEY: Yes, sir, Your Honor, and that's, at most.
23 We feel, preliminarily, that we should be able to do
24 sentencing this afternoon.

25 THE COURT: Okay. I'll be here and I'll be available

THE STATE OF SOUTH CAROLINA VERSUS DEVIN M. NIMMONS

1 if that's the case, but Mr. Nimmons, a part of the
2 situation today is that I will take your plea if you go
3 forward with it. The sentencing will be deferred until
4 this afternoon or some other time. It's at the discretion
5 of the Solicitor's office, but for your purposes, not to
6 extend past this week unless the Solicitor's office or law
7 enforcement thinks that's the thing to do.

8 MR. NIMMONS: Yes, sir.

9 THE COURT: At which time, you will be sentenced.

10 MR. NIMMONS: Yes, sir.

11 THE COURT: Okay, sir. Now, do you understand that all
12 these charges carry up to, if my math is right, sixty-five
13 years?

14 MR. NIMMONS: Yes, sir.

15 THE COURT: And looking at the accessory of burglary
16 second, violent, that's 15. The accessory of strong arm
17 robbery is 15. The accessory for the kidnapping is 30,
18 and the conspiracy is 5, which would be up to sixty-five
19 years.

20 MR. NIMMONS: Yes, sir.

21 THE COURT: You understand that although there may be a
22 recommendation in this case, I don't have to accept that
23 and I don't know what the recommendation is. I think when
24 I met in chambers with the attorneys there was a
25 recommended range. Is that correct?

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1 MS. HUEY: Yes, sir.

2 MR. EPPS: Yes, sir, Your Honor.

3 MS. HUEY: The State is going to be arguing for 15,
4 Your Honor.

5 THE COURT: Okay. And the range was from zero to
6 fifteen, but the State wants the high side and Mr. Epps
7 wants the low side. Is that your understanding?

8 MR. EPPS: Yes, sir.

9 MS. HUEY: Yes, sir.

10 THE COURT: Okay. Mr. Nimmons, you understand that
11 regardless, I don't have to accept that and I could
12 sentence you to sixty-five years in prison if you go
13 forward with your plea.

14 MR. NIMMONS: I understand.

15 THE COURT: Do you still want to go forward with your
16 plea?

17 MR. NIMMONS: Yes, sir.

18 THE COURT: Do you understand that you have a right to
19 a jury trial on these charges?

20 MR. NIMMONS: Yes, sir.

21 THE COURT: In that jury trial or trials, you would be
22 presumed innocent and the State would have to prove each
23 and every element of all the charges against you, beyond a
24 reasonable doubt, before you could be found guilty. Do you
25 understand that?

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1 MR. NIMMONS: Yes, sir.

2 THE COURT: Do you understand that a reasonable doubt
3 is the highest burden recognized in our state for the
4 burden of proof? Do you understand that?

5 MR. NIMMONS: Yes, sir.

6 THE COURT: Now, if you go forward with your plea
7 today, even though your sentencing will be deferred to
8 another time, you will give up your right to have a jury
9 trial on all charges you are pleading guilty to. Do you
10 understand that?

11 MR. NIMMONS: Yes, sir.

12 THE COURT: So, if after the fact I accept your plea,
13 if you want to come back and say I want a jury trial now,
14 you'll be too late. Do you understand?

15 MR. NIMMONS: I understand.

16 THE COURT: Do you still want to go forward with your
17 plea?

18 MR. NIMMONS: Yes, sir.

19 THE COURT: Do you freely and voluntarily waive your
20 right to a jury trial with regard to all four of these
21 indictments?

22 MR. NIMMONS: Yes, sir.

23 THE COURT: Now, Mr. Nimmons, do you understand that if
24 you were to choose to go to trial, during that trial you
25 could exercise the following constitutional rights: You

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1 could present evidence in your defense, you could cross
2 examine any of the State's witnesses who they bring to
3 court to testify against you, you could subpoena people to
4 come to court to testify on your behalf and you could
5 exercise your right under the Fifth Amendment of the United
6 States Constitution to remain silent. Do you understand
7 that?

8 MR. NIMMONS: Yes, sir.

9 THE COURT: If you were to go to trial and not testify
10 in any of these cases, whether they all be tried together
11 or separately, and you were to choose not to testify during
12 that case, the trial judge would explain to the jury and
13 charge the jury that they could not and shall not consider
14 your failure to testify, whatsoever, because that is your
15 constitutional right and the burden remains on the State to
16 prove your guilt beyond a reasonable doubt. Do you
17 understand?

18 MR. NIMMONS: Yes, sir.

19 THE COURT: Now, if you go forward with your plea
20 today, you will waive your right to remain silent and as a
21 condition of your plea, you will have to admit your guilt
22 to all charges you are pleading guilty to. Do you
23 understand?

24 MR. NIMMONS: Yes, sir.

25 THE COURT: Also, Mr. Nimmons, if you go forward with

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1 your plea today, those other constitutional protections
2 I've gone over with you will be lost or you will waive or
3 give up those rights. Do you understand that?

4 MR. NIMMONS: Yes, sir.

5 THE COURT: Do you freely and voluntarily waive your
6 constitutional rights in favor of pleading guilty today?

7 MR. NIMMONS: Yes, sir.

8 THE COURT: Now, two of the charges will be considered
9 violent and most serious. That is, accessory after the
10 fact of kidnapping and - well, not most serious. Accessory
11 after the fact of kidnapping will be most serious and
12 violent and then accessory after the fact of burglary
13 second will be violent and serious.

14 MS. HUEY: That's accessory before the fact.

15 THE COURT: Before the fact. I said after the fact.
16 Before the fact. Correct. Accessory before the fact.

17 MR. NIMMONS: Yes, sir.

18 THE COURT: Now, has the attorney explained to you the
19 strikes that we have in South Carolina?

20 MR. NIMMONS: Yes, sir.

21 THE COURT: Let me make sure you understand. I want
22 both attorneys to correct me if I make a mistake, but in
23 South Carolina, if you have most serious charges, in those,
24 you only get two and this will be one against you now and
25 if you have another and you're found guilty of plead guilty

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1 to a most serious charge, you will be sent to jail without
2 the possibility of parole, meaning, you will die in jail.
3 Also, serious has three. So, if you come back with two
4 more serious, the same result, you'll go to jail without
5 any possibility of parole and you'll die in jail. Do you
6 understand that?

7 MR. NIMMONS: Yes, sir.

8 THE COURT: Okay. Also, the fact that these are
9 classified as violent, it will affect any time you have in
10 prison. I have no way to calculate that. Your attorney
11 has no way to calculate that and so, but it will affect
12 when you will be eligible to get out. Do you understand?

13 MR. NIMMONS: Yes, sir.

14 THE COURT: Okay. And so, regardless today, whether or
15 not you go forward with your plea, you need to understand
16 that as far as calculations for your getting out day, you
17 should calculate that you will serve day for day for any
18 sentence you receive. Do you understand?

19 MR. NIMMONS: Yes, sir.

20 THE COURT: Do you still want to go forward with your
21 plea?

22 MR. NIMMONS: Yes, sir.

23 THE COURT: Do you have any questions for me?

24 MR. NIMMONS: No, sir.

25 THE COURT: Do you have any questions of your attorney?

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1 MR. NIMMONS: No, sir.

2 MR. EPPS: Your Honor, I do want to address one thing.
3 On the kidnapping, on accessory before the fact of
4 kidnapping charge, I understand on a kidnapping charge,
5 there is a sex offender registry. I want to make sure this
6 does not involve any sexual offense and these charges ---

7 THE COURT: Do I need to make a finding on the record?

8 MS. HUEY: Yes, sir.

9 THE COURT: It does not involve the sex registry?

10 MS. HUEY: That is correct.

11 THE COURT: Would you agree with that Ms. Huey?

12 MS. HUEY: Yes, sir.

13 THE COURT: Okay. Well, I'm going to make the finding
14 now that this kidnapping charge does not involve the
15 registry as a sex offender and you will not be required to
16 do so. Do I need to make any further findings, from the
17 State?

18 MS. HUEY: I don't think so, Judge. It may need to be
19 noted on the sentencing sheet just to make sure.

20 THE COURT: All right. Y'all make sure that I do that.
21 And that's on the kidnapping?

22 MS. HUEY: Yes, sir.

23 THE COURT: All right. I've so noted. Mr. Nimmons,
24 under indictment 2011-1366, are you guilty of accessory
25 before the fact of a felony, being a kidnapping?

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1 MR. NIMMONS: Yes, sir.

2 THE COURT: Under indictment 2011-527, are you guilty
3 of conspiracy?

4 MR. NIMMONS: Yes, sir.

5 THE COURT: Under indictment 2011-1364, are you guilty
6 of accessory before the fact of a felony, being a burglary
7 second, violent?

8 MR. NIMMONS: Yes, sir.

9 THE COURT: Under indictment 2011-1365, are you guilty
10 of accessory before the fact of a felony, being strong arm
11 robbery?

12 MR. NIMMONS: Yes, sir.

13 THE COURT: Are you satisfied with the services of your
14 attorney?

15 MR. NIMMONS: Yes, sir.

16 THE COURT: Has he reasonably done all you've asked him
17 to do?

18 MR. NIMMONS: Yes, sir.

19 THE COURT: As we stand here in court today, on April
20 22, 2013, is there anything, whatsoever, that you contend
21 your attorney has not done on any of these cases that he
22 should have performed before coming to court today?

23 MR. NIMMONS: No, sir.

24 THE COURT: Are you totally and completely satisfied
25 with the services of your attorney?

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1 MR. NIMMONS: I am.

2 THE COURT: All right. Mr. Epps, have you gone over
3 the elements of each one of these charges with Mr. Nimmons,
4 have you explained to him the time he could get on each one
5 of these charges, have you explored whether or not he has
6 any defenses to any of these charges, and have you also
7 explained to him his constitutional rights?

8 MR. EPPS: Yes, sir, Your Honor.

9 THE COURT: And do you agree with his decision to plead
10 guilty?

11 MR. EPPS: Yes, sir, Your Honor.

12 THE COURT: Is there a substantial, factual basis with
13 regard to his decision to plead to each indictment?

14 MR. EPPS: Yes, sir, Your Honor.

15 THE COURT: Now, Mr. Nimmons, what I'm going to ask you
16 to do is listen to the facts cited on the record by Ms.
17 Huey. I'll ask you in a few minutes whether or not you
18 agree you committed those acts. Okay, sir?

19 MR. NIMMONS: Yes, sir.

20 THE COURT: All right. Ms. Huey?

21 MR. HUEY: Yes, sir, Your Honor. May it please the
22 Court. On December 9th of 2010, Gerald Helgeson, who was
23 aged 77 at the time, was robbed at gunpoint at his own home
24 at 8 Tidewater Lane, which is in Anderson County. Around
25 8:00 PM, after nightfall, a young man dressed in camouflage

1 uniform, knocked on his door and asked him to complete an
2 army survey. Since ---

3 THE COURT: What type of survey?

4 MS. HUEY: An army survey. Since Mr. Helgeson was
5 himself an army vet, Your Honor, he let the young man in.
6 While completing the survey in his kitchen, another young
7 man entered the home. This young man was wearing a ski
8 mask over his face and was armed with a pistol. The two
9 young men then forced Mr. Helgeson to open his safe and
10 eventually robbed him of two long guns as well as over
11 \$200.00. This incident lasted about twenty to thirty
12 minutes, Your Honor, and throughout the incident, Mr.
13 Helgeson was forced to go room to room while being held at
14 gunpoint, Your Honor. The young man who came in camouflage
15 and was unmasked, Your Honor, was later identified as
16 Christopher Brown. His fingerprints were located on an
17 abandoned army survey he'd brought in to have Mr. Helgeson
18 complete. Mr. Brown was approached. He ended up
19 confessing, Your Honor, and pled guilty on May 22nd of
20 2012. He was actually sentenced to ten years on these
21 particular charges, Your Honor. Mr. Brown implicated Devin
22 Nimmons. Furthermore, when Devin Nimmons was approached,
23 Your Honor, he himself gave a confession. However, he gave
24 a confession as to his involvement prior to the incident as
25 opposed to the actual incident itself. His confession

1 included that he was the one that had information about
2 this victim, knew that there was a gun safe, potentially,
3 the rumor was that he had over \$4,000,000.00 in his safe,
4 Your Honor. He knew where he lived. He admitted to casing
5 the victim's house a couple nights before. He admitted to
6 planning this robbery with Chris Brown and another co-
7 defendant, Jay Tubbs, Your Honor. He provided a gun for
8 this incident. He went all the way up to the point of the
9 incident, Your Honor, at least by way of his confession and
10 then decided to change his mind and "walked home". Phone
11 records, Your Honor, indicate that the Defendant was in the
12 vicinity of Mr. Helgeson's home, within a three mile
13 radius. Phone records also indicate that Jake Tubbs,
14 Christopher Brown and Defendant Nimmons were all
15 communicating via telephone before the incident and at or
16 around the time of the incident, as well. Your Honor, that
17 would be the facts as to the accessory charges.

18 In terms of the conspiracy, Your Honor, that occurred
19 on or about December 23rd of 2010 at Starlight Cinemas,
20 located at 141 Interstate Boulevard, which is in Anderson
21 County. The Defendant previously worked at the Starlight
22 Cinemas, Your Honor, and as a result, he had information
23 about where money was kept, who worked when and just the
24 general course of procedures when keeping money. He
25 conspired with Alex McBride, who is his step-brother, and

1 an unnamed female individual for a robbery to take place at
2 this Starlight Cinemas, Your Honor, and no money was taken
3 as a result of the incident.

4 THE COURT: All right. Mr. Nimmons, did you hear the
5 facts recited on the record by the Solicitor's office?

6 MR. NIMMONS: Yes, sir.

7 THE COURT: Do you agree that you committed or
8 participated in those acts?

9 MR. NIMMONS: Yes, sir.

10 THE COURT: All right. Mr. Epps, anything you want to
11 state at this stage?

12 MR. EPPS: Your Honor, at this stage, particularly at
13 sentencing, we will address the Court at sentencing. I
14 would respectfully ask, Mr. Nimmons has prepared a short
15 statement and he would like to address the Court, address
16 Mr. Helgeson and anybody else in this room, in the
17 courtroom.

18 THE COURT: All right. Before we do that, Ms. Huey, is
19 there a victim that would like to come forward and speak?

20 MS. HUEY: Yes, sir. But it was our understanding we
21 would do all that at sentencing, Your Honor, if that would
22 be okay with you.

23 THE COURT: Okay. Absolutely. Is that correct, sir?
24 Did you wish to speak at the sentencing hearing instead of
25 now? Is that correct?

1 MS. HUEY: Yes, sir.

2 THE COURT: All right. Thank you. Sir. Officer, I
3 assume that that would be the same with law enforcement at
4 this stage, just would rather wait and see how he helps you
5 out before you speak, at this stage?

6 UNNAMED OFFICER: That's correct, Your Honor.

7 THE COURT: All right. I appreciate your being here.
8 All right?

9 MR. EPPS: Yes, sir, Your Honor. We respectfully, Mr.
10 Nimmons has a short statement. Obviously, we will go into
11 more at sentencing, but he would like to address the
12 victims, the Court at this time.

13 THE COURT: All right. Go right ahead, Mr. Nimmons.

14 MR. NIMMONS: Mr. Helgeson, from the bottom of ---

15 THE COURT: Just one second. Can he hear? Make sure
16 he can hear. If not, tell him to come forward and that way
17 he can hear. (Mr. Helgeson comes forward) Okay. Speak
18 slowly and loudly.

19 MR. NIMMONS: Mr. Helgeson, from the bottom of my
20 heart, I apologize to you and all the other victims that
21 were affected by the decisions I made. I lost a part of my
22 life. I have disgraced myself and dishonored my military
23 background. I have dishonored my family. Shame will
24 follow me the rest of my life knowing that I took part in
25 something that took peace of mind from someone, someone in

1 this case, you, and the other victims. I sincerely
2 apologize to all of you. I may not deserve it, but I hope
3 you can find it in your heart to at least forgive me. I
4 can assure you and everyone in this courtroom that I will
5 watch every step I take from now on to make sure I am never
6 in a situation like this again. I pray that one day my
7 victims, meaning you, will get your peace of mind back that
8 you deserve and sleep good at night. That is what I hope
9 more than anything. It's hard to look at myself in the
10 mirror knowing that I got involved in this. It tears me to
11 pieces. I also want to apologize to the Court and
12 investigators for the problems I brought them. I don't
13 deserve it, but I sincerely ask that the victims will
14 sincerely accept my apology and I would do anything in the
15 world to make it up to you. Thank you.

16 THE COURT: All right. Thank you, sir. Anything
17 further, from the State?

18 MR. EPPS: Nothing further at this time, Your Honor.

19 THE COURT: I'm sorry. I was looking at Ms. Huey. Mr.
20 Epps, from your side, nothing further from the defense?

21 MR. EPPS: Not at this time, Your Honor.

22 THE COURT: Ms. Huey?

23 MS. HUEY: Not at this time, Your Honor.

24 THE COURT: All right. Mr. Nimmons, I'm going to
25 accept your plea as knowingly, intelligently and

1 voluntarily made as to all four indictments with the advice
2 of counsel with whom you are well satisfied and find that
3 there is a substantial, factual basis as to your decision
4 to plead to all four indictments. I am going to accept it
5 and the sentencing will be deferred and you will be
6 required to cooperate with law enforcement and then report
7 back. Again, for the record, for purposes of this case, it
8 won't extend beyond this week. So, the sentence will be
9 carried out this week unless law enforcement or the
10 Solicitor's office, in their sole discretion, decide that
11 they want to carry that out longer in that regard, that
12 will be up to you to do. Thank you, guys.

13 MR. HUEY: Yes, sir. Thank you, Your Honor.

14 MR. EPPS: Thank you, Your Honor.

15 APRIL 23, 2013 - LATER IN THE MORNING

16 THE COURT: Are you ladies here on the Nimmons case?
17 (Nod heads) Let me just give everybody an understanding of
18 where we are, especially our victim here who came here
19 today, whose house was actually intruded in on. Mr. Nimmons
20 plead guilty earlier this morning. We deferred sentencing
21 for certain things to occur. Those things, apparently,
22 have occurred. There are some folks that Mr. Nimmons is
23 asking to have here to speak on his behalf at the
24 sentencing hearing. Either they are going to make it today
25 or we are going to have to do it tomorrow, okay? And I

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1 don't want you sitting - I know, I can see you shaking your
2 head. Let me tell you. Everybody has a fair shot in the
3 courtroom whether they are defendants or victims or the
4 State. Do you understand? Okay? So, that's the way it's
5 going to be. I'm trying to give you the courtesy of
6 understanding what's happening. Otherwise, it will be
7 scheduled as we desire.

8 APRIL 23, 2013 - AFTERNOON

9 THE COURT: All right, the issue in this case, as I
10 understand it in the State versus Nimmons, we have
11 previously taken Mr. Nimmons' plea. The sentencing was
12 deferred for certain activities to take place. The
13 question is whether we proceed with sentencing as we speak
14 or whether the Defendant will be remanded to the Detention
15 Center for sentencing tomorrow or whether the Defendant
16 will be allowed to remain out until sentencing tomorrow.
17 The State's position is that he needs to be sentenced as we
18 speak. On the converse, if he's not, he needs to be
19 remanded to the Detention Center. Is that correct, Ms.
20 Huey?

21 MS. HUEY: Yes, sir, Your Honor. That's the State's
22 position.

23 THE COURT: The Defendant's position or request is
24 that, "Let me stay out until tomorrow under any conditions
25 that you impose."

1 MR. EPPS: Yes, sir, Your Honor.

2 THE COURT: Let me ask you this.

3 MR. EPPS: Yes, sir.

4 THE COURT: One, does your client understand that all
5 the time that he spends away from the penitentiary, he will
6 not get credit for, but if he spends the night in jail, he
7 will get credit towards his sentence, if he spends the
8 night in jail?

9 MR. EPPS: Yes, sir, Your Honor.

10 THE COURT: Okay. What purpose does he wish to serve
11 by staying out of jail tonight?

12 MR. EPPS: Your Honor, the purpose of ---

13 THE COURT: Besides staying out of jail.

14 MR. EPPS: Staying out, as you know, Your Honor, this
15 case was scheduled for trial. We had discussed and reached
16 a plea agreement for his plea, which my client accepts full
17 responsibility. He's been out on bond on electronic
18 monitoring since August of 2011, I believe. Your Honor,
19 I've spoken and understand that if he comes off his bond,
20 his bond is revoked.

21 THE COURT: No, no. What I said or if I understand
22 what you are saying, when he reported today, then that
23 ended the bond.

24 MR. EPPS: Yes, sir. That ended the bond. Based on my
25 conversations with the Solicitor's office, we did call Mr.

1 Ben Sheriff. He's here in the courtroom and he's the
2 owner, the owner of Eagle Eye. He can attest that the
3 electronic monitoring that Mr. Nimmons has on his ankle,
4 that he can monitor that at all times, 24/7, and certainly,
5 keep the restrictions that he's made on the monitoring.
6 Your Honor, we tried to get the plea potentially set for
7 this afternoon, but because of how this is sort of a last
8 minute thing, we worked on this, this weekend, we are ready
9 for trial. We came to plead. There are certain witnesses
10 that we believe are necessary on Mr. Nimmons' behalf to get
11 to come here.

12 THE COURT: Those are his employer folks, character
13 witnesses, for his plea?

14 MR. EPPS: Yes, sir. His sisters, his employer, the
15 owners of the company as well as his employer's father who
16 is still affiliated with the company as a consultant and
17 maybe his wife. My client -- most have confirmed for 9:00
18 in the morning. He can still be at home tonight. It's
19 going to be his family, but just to make sure, to get in
20 touch with his employers and the owners.

21 THE COURT: To get in touch with his employers.

22 MR. EPPS: Well...

23 THE COURT: They know that he's up here going to trial
24 for charges that could land him in jail 65 years. Right?

25 MR. EPPS: Yes, sir.

1 THE COURT: So, that's not really relevant.

2 MR. EPPS: Yes, sir. I understand. I wanted to make
3 sure that everybody knows to be here at 9:00 in the morning
4 for his sentencing.

5 THE COURT: Okay. Here is the concern that the State
6 has voiced to me and that is, that although I can add
7 restrictions on his overnight movements, i.e.: he ain't
8 going nowhere, he will have an ankle monitor on, that those
9 are not fail proof and that if he gets involved in some
10 other fracas and we could have avoided that by his being
11 here and having him detained at the Detention Center.

12 MR. EPPS: I understand.

13 THE COURT: Okay? On the other hand, to the State, I
14 fail to see in some regard if it's a deferred sentence
15 which we've done on a number of cases and did on this case,
16 the fact that he was allowed to remain out even for a short
17 time, when we put that on the record this morning, it was
18 going to last until the end of the week, so just because
19 we're waiting for people to be here on his behalf in the
20 morning, if it was going to be sometime during the week, he
21 still would not be in the Detention Center or he would have
22 been out with the ankle bracelet on, so what would be the
23 difference?

24 MS. HUEY: Yes. I understand his having this week,
25 Your Honor, but it's always been our position that

1 sentencing would take place this afternoon.

2 THE COURT: Well, I mean, but any deferred sentence. I
3 don't mean just Mr. Nimmons, but any of them.

4 MS. HUEY: Usually, Judge, when any other person,
5 typically, those cases are looking at probation or
6 something along those lines.

7 THE COURT: I'm sorry?

8 MS. HUEY: On a lot of the deferred sentences that I
9 do, Your Honor, the sentence they are looking at is much
10 less than what this Defendant is actually looking at.

11 THE COURT: That's not necessarily the case for me, in
12 my experience with your office. I mean, and I hear you.
13 What I'm asking is for a very practical solution. Is there
14 anything particular about Mr. Nimmons, other than the fact
15 he committed the crimes he plead guilty to?

16 MS. HUEY: Your Honor, I'm not saying he has violated.
17 I don't know that he's violated. There's just been rumor
18 that he may not have been exactly where he was supposed to
19 be on electronic monitoring. I have no evidence to present
20 to you today in that regard. There have been rumors of
21 that.

22 THE COURT: Okay.

23 MR. EPPS: We would ---

24 THE COURT: Just one second. Would you raise your
25 right hand.

1 (Defendant is duly sworn by Judge McIntosh)

2 THE COURT: Now, Ms. Huey, I know you say you don't
3 have any hard evidence to say he violated, but what is your
4 concern that there has been deviation from what he is
5 required to do, because I'm going to ask you to address
6 each one of these.

7 MS. HUEY: Your Honor, in preparing for this trial, I
8 met with one witness, in particular, who said, Mr. Wyatt --
9 it involves hearsay, Your Honor, obviously -- but he said
10 that his wife would see Mr. Nimmons at the gym and whatnot.
11 A co-defendant said ---

12 THE COURT: Which gym, the YMCA or Gold's?

13 MS. HUEY: Yes, sir. The YMCA.

14 THE COURT: I'm at the YMCA most every afternoon and
15 I've never seen this gentleman there.

16 MS. HUEY: Okay, Judge, and I'm not sure what time he's
17 going, and that's why I say these are rumors, these are
18 just rumors that I've heard. I just don't know how serious
19 he is in taking this house arrest, because the conditions
20 of his house arrest were as long as he was at a job or
21 something like that, meeting with his attorney or whatnot,
22 then he could do that. He wasn't literally at his house
23 and so I think a lot of times he was using the guise, in
24 the rumors I've heard, that he was using the guise of a job
25 to go to other places that may not have necessarily been

1 offering him a job.

2 THE COURT: Do you have, on your monitoring -- what
3 were the requirements? Was he on house arrest, home
4 incarceration?

5 MR. SHERIFF: Yes, sir. He, originally, he was placed
6 on what I consider lock down. He could not go to work or
7 anything. That was modified and I don't know the exact date
8 of modification, but it was modified to allow him to go to
9 work and he has been working. He's employed with Southern
10 Concrete for quite some time and I actually spoke with an
11 individual and I don't remember the individual's name, but
12 an individual called me last week and brought these rumors
13 up, these allegations about house arrest and I asked, do
14 you have specific dates and times, and the person I spoke
15 with, and like I said, I don't remember the name of the
16 individual that spoke with me, and they said they did not
17 have specific dates and times and I said, if you say he was
18 at the gym but you don't know the exact date and time he
19 was there I can't tell you if he was there or not.

20 THE COURT: Well, I mean, let me ask you this: Why
21 would somebody put the burden on somebody else to tell me
22 he violated when you are doing the monitoring?

23 MR. SHERIFF: Because the question is, they were
24 saying, "at a gym" and I need to know if you suspect him
25 being at a gym and the reason being, because during the

1 morning time, with his work situation, and I think that
2 he works out of town occasionally with the concrete
3 company, so we have him tracked going to and from. For
4 instance, when he leaves from Columbia, he works at that
5 job site in Columbia and then comes home and we have that
6 job tracked from Columbia all the way home. So, my
7 question is, if the allegation is that he stopped off at a
8 gym, I need to know so I can narrow that down because we
9 have a lot of dates and the date the report was generated.

10 THE COURT: Well, let me ask you this. If I put him on
11 home incarceration tonight with no reason for him to leave
12 for any reason, even medical, without there being somebody
13 to say on the line that this needs to be done.

14 BONDSMAN: Yes, sir.

15 THE COURT: Can you monitor that?

16 BONDSMAN: Yes, sir.

17 THE COURT: And how accurate is your monitoring?
18 Within how many feet?

19 BONDSMAN: To within six feet.

20 THE COURT: Six feet?

21 BONDSMAN: Yes, sir.

22 THE COURT: All right.

23 BONDSMAN: And basically, the way it works is, we would
24 set a zone and we could make that zone as small as you
25 would like. Basically, we can make a zone around his

1 house. If he leaves that zone it will notify us and the
2 way we set it up, that would be the inclusion zone.

3 THE COURT: Where does he live Mr. Epps?

4 MR. EPPS: 105 Ridgeway Drive.

5 THE COURT: With whom?

6 MR. EPPS: With his mother.

7 THE COURT: With his mother?

8 MR. EPPS: Yes, sir. That's Mrs. McBride.

9 THE COURT: Okay. Would you come around, please ma'am.
10 (She complies) What is your name, for the record, please?

11 MS. MCBRIDE: Lisa McBride.

12 THE COURT: I'm sorry?

13 MS. MCBRIDE: Lisa McBride.

14 THE COURT: Ms. McBride, I'm going to ask you a
15 question and you certainly do not have to respond or even
16 consent to this, but if I were to order that your son be
17 allowed to stay out tonight in your home under strict
18 conditions and I would add to it him not being allowed out,
19 would you be willing to also be an extra set of eyes in the
20 event he leaves the house?

21 MS. MCBRIDE: I would take full responsibility.

22 THE COURT: Are you willing to make yourself subject to
23 the jurisdiction of this Court so if that does occur, I
24 could hold you in contempt and put you in jail?

25 MS. MCBRIDE: Yes, sir.

1 THE COURT: Ma'am?

2 MS. MCBRIDE: Yes.

3 THE COURT: Okay. Do you mind raising your right hand.

4 (Judge McIntosh administers oath to Ms. Lisa McBride)

5 THE COURT: Let me say several things. Number one, I
6 understand your concerns. I also understand that I have
7 dealt with a number of deferred sentences that involved
8 some fairly significant time, too, and I don't necessarily
9 see a big difference there. Let me tell you, Mr. Nimmons,
10 you are looking at 65 years. If you think that you are not
11 going to honor what I tell you right now, I will give you
12 way above any cap when you come back and you have been
13 caught, and you will be caught. Okay? Any trouble you get
14 into, it will be bad news for you and in addition to that,
15 your mother could go to jail, too. Do you understand that?

16 MR. NIMMONS: Yes, sir.

17 THE COURT: I am going to order this: You will be here
18 at 9:00 in the morning for sentencing. I want everybody
19 else to be here. This case has been pending for a while.
20 I'm giving you the benefit because you are looking at a
21 long time in jail, but you will be here at 9:00 in the
22 morning. I'm going to ask Eagle Eye to maintain their
23 ankle monitor. I want the zone in his house, not even in
24 the yard. He's inside. Well, the perimeter of his house.
25 The yard is okay. You shall not, shall not, step off of

1 that property. You will be inside your house. Curfew at
2 6:00 today and you will remain there until you leave your
3 house tomorrow to come to court. Okay? You shall have no
4 alcohol nor drugs. Do you see any need, Mr. Nimmons, for
5 you to have visitors at your home tonight?

6 MR. NIMMONS: No, sir.

7 THE COURT: No? Okay. Now, other than immediate
8 family. I know your husband, Ms. McBride, but other than
9 you, your husband, direct family members, no other
10 visitors at your house at all. Now, Ms. McBride, do you
11 understand the terms I have given to him? That means he
12 cannot ride to the store, he can't walk next door to the
13 neighbor. After 6:00 PM, he remains inside until he
14 comes tomorrow to come back here. Do you understand that?
15 No friends over.

16 MS. MCBRIDE: I understand.

17 THE COURT: No drugs, no alcohol.

18 MS. MCBRIDE: Yes.

19 THE COURT: Now, do you have any problem being under
20 oath and being required to report that immediately to law
21 enforcement if he violates that?

22 MS. MCBRIDE: I don't have a problem with that.

23 THE COURT: Are you sure?

24 Ms. MCBRIDE: Yes.

25 THE COURT: Okay. Do you understand that if you don't

1 and you intentionally turn a blind eye, then you will be up
2 here.

3 MS. MCBRIDE: Yes, sir.

4 THE COURT: I'm not trying to be ugly, but I'm just
5 trying to make sure we have the rules straight. Okay?

6 MS. MCBRIDE: Yes, sir.

7 THE COURT: Now, is there anything that you need to do
8 to have that done?

9 MR. SHERIFF: The monitoring is still on him. It's
10 been in place the entire time.

11 THE COURT: Okay. Again, Mr. Nimmons, let me tell you,
12 the recommended cap is 15 years. Now, I know your attorney
13 wants you to get less than that. I've already told you
14 when I took your plea, I don't have to accept any
15 recommendation. I could sentence you to 65 years. I'm
16 telling you right now, if you violate any of these
17 conditions, you get into any trouble, you cause any
18 problems, you will not get anywhere close to that cap. Do
19 you understand that?

20 MR. NIMMONS: Yes, sir.

21 THE COURT: That means it will be well above any other
22 troubles you may get into. Do you understand?

23 MR. NIMMONS: I understand.

24 THE COURT: Okay. Subject to the State's objection,
25 I'm going to go ahead and add these conditions to it. Nine

1 o'clock in the morning. To the victims out here, I know
2 this is a painful process. I don't know if you are the
3 victim or not, who you are, I saw the dismay on her face
4 earlier. Sometimes this is a painstaking process.
5 However, because this gentleman is looking at a significant
6 amount of time in jail, he wants to have some people here
7 to speak on his behalf and just like you having a victim's
8 advocate, I'm going to allow them that opportunity. I
9 apologize to you, but I appreciate your patience with me
10 and the process that we are going through. Tomorrow
11 morning at 9:00 is when this will occur. Thank you very
12 much.

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14 THE COURT: Are you ready to proceed with Nimmons?

15 MS. HUEY: Yes, sir, Your Honor. We are.

16 THE COURT: I assume, at this time, it would be best to
17 hear from the victims in the case?

18 MS. HUEY: Yes, sir, as well as law enforcement would
19 like to speak.

20 THE COURT: Absolutely.

21 MS. HUEY: And, Your Honor, Mr. Calhoun Pruitt is also
22 back and would like to address the Court as well.

23 THE COURT: All right.

24 MS. HUEY: I will pass up the indictments, Your Honor.

25 (Mr. Nimmons approaches the bench with attorneys Mr. Epps

1 and Mr. Sams)

2 MS. HUEY: Your Honor, just to put on the record. I
3 believe we discussed this in chambers. The State is
4 seeking a 15-year sentence in this matter. I don't know if
5 that came out on the record or not, Judge. Your Honor,
6 would you like to hear from the victim first?

7 THE COURT: Absolutely. Good morning.

8 MR. HELGESON: Good morning, sir.

9 THE COURT: I appreciate your patience.

10 MR. HELGESON: I'm Gerald Helgeson.

11 THE COURT: Good morning.

12 MR. HELGESON: I'm from South Carolina. I'm 81 years
13 old and as far as what I've done for a living, I founded,
14 I'm a co-founder of Engineering Custom Plastics here in
15 South Carolina in 1969 and retired from that in 1990 when
16 we sold the business and that's when I retired and since
17 then I've been living in Tidewater in Anderson, in that
18 sub-division and that's where I was living at the time this
19 incident took place and where it took place.

20 THE COURT: Yes, sir.

21 MR. HELGESON: And looking at this, understanding this
22 is a sentencing period, quite frankly, since I'm the victim
23 and knowing all the incidents that took place, which I will
24 bring out in detail, I would only recommend the maximum
25 allowable sentence be issued and I'll point out the reasons

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1 why.

2 THE COURT: Okay, sir. Glad to hear from you.

3 MR. HELGESON: Thank you. But basically, on December
4 9th, I was just finishing my dinner. It was almost 8:00.
5 My doorbell rang and I went to the door and there was a
6 gentleman in military battle dress uniform. He approached
7 me and he wanted to know if I would be willing to fill out
8 a survey on the National Guard and Reserve. Well, I have
9 spent time in the military, myself, which as a matter of
10 fact, I joined the National Guard when I was 16 years old
11 in 1948. I ended up going to Korea in 1952 and serving
12 with the 2nd division over there for about a year. I came
13 back and got back in the National Guard and stayed in that
14 until 1990 for a total of 43 1/2 years. As a matter of
15 fact, I started out as a recruit and held every job in the
16 infantry unit from a private to a Brigadier General when I
17 retired. I had significant military experience so
18 something like this didn't upset me too much, because of
19 some of the things I had experienced in my life, but as
20 this gentleman asked me if I would fill out this survey, I
21 asked him if I could just mail it into him or something and
22 he said, "No, we have to have it tonight. As a matter of
23 fact, we have another gentleman out here taking another
24 survey. We've got to have these in the morning." So, I
25 reneged and I let him come in and we sat down, I sat down

1 in my kitchen at a little bar that I have there and I
2 filled out the survey. As I filled out the survey, why
3 after I filled it out, I picked it up to hand it to this
4 guy and what was there? Here was a man with a mask on and
5 a .40 caliber pistol pointed right at me and he let me know
6 -- I didn't hear him come in. I made the mistake of not
7 locking the door after the other fellow come in so I didn't
8 know he came in. I didn't even know he was there until I
9 looked up. He said, "I understand that you have
10 \$4,000,000.00 in your safe down here and we want every
11 penny of it and we'll do whatever we have to, to get it and
12 so we went around quite a while there and discussing
13 various things and he knew so much about my house. I had a
14 hard time understanding how he knew all about my house, the
15 safe, the rifle range I had done down in the basement and
16 things like that and he mentioned my ex-wife's name several
17 times and so I related to that was where his information
18 came from. I was married for 53 1/2 years. My wife passed
19 away in 2003. Later, I married a lady by the name of Faye
20 Lester and quite frankly, that marriage only lasted seven
21 months and that was probably seven months too long. That
22 was my mistake, nobody else's, but based upon the things he
23 knew about my house, it was obvious he had a relationship
24 with her and as I later found out, was very close with a
25 couple of her grandchildren. There was a lot of Facebook

1 information and stuff going back and forth between them and
2 stuff like that and so that's where he found out a lot
3 about me and my house and everything else and when we were
4 in the process of a divorce, I know she was trying to make
5 it look like I had all kinds of money and as it all worked
6 out, thanks to Calhoun Pruitt, it worked out very
7 favorably. But that's how this got started. I have to say
8 it was her talking to her grandchildren and her family
9 about me that these other people found out about me and of
10 course, I found out later that they had made contact, had
11 talked to other people at their place of work. As a matter
12 of fact, Devin had talked to people to see if they could
13 join him in going to that place on the lake and getting
14 this money from this guy. I didn't know that until
15 sometime after all this took place and one of the people
16 that has a lot in the area where we are at mentioned to me
17 or talked to the fellow that has the furniture place out
18 there on 81 and he told me about the fact that, or he
19 called me and said, "I understand that you got robbed.
20 Well, I'd like to meet you because I've had someone working
21 out here talking about robbing someone on the lake and I
22 spoke to some people about it, but that never happened."
23 And so with that, it kind of showed that there had been a
24 lot of planning going into this program. He tried to get
25 some people out there to recruit and they wouldn't do it.

1 Somewhere along the way, he got some people who would
2 participate in the act and came on in and done it. So, I
3 had those two in the house and we covered a lot of
4 different subjects and I was trying to maneuver my way into
5 where I had a handgun and as it started, why finally, they
6 kept pushing and pushing and threatening me and I guess the
7 reason that I was so strong and got the on him was that I
8 was threatened with three major things. The first one was,
9 they threatened my life. Well, with that, the way I
10 handled that, I'm an old man go ahead and shoot me and if
11 you do, you are going to end up going to prison and you're
12 going to get the electric chair, so I've lived a good life
13 so go ahead and shoot me if you want to." They said if I
14 didn't cooperate that's what they were going to do. Well,
15 when I said that, the next comment was, "Well, maybe we
16 should go ahead and kill your relatives." I said, "Go
17 ahead, I don't care." He said, "You don't love your
18 relatives?" I love my relatives, but I've trained them
19 well. I challenge you to go ahead and see if you can do
20 it. That was the second threat that I had. The third
21 threat I had, if I didn't cooperate, that they had a large
22 man, strong and tough, out in the car. They would have him
23 come in and cut off my hands and my feet. That was the
24 third threat. So, threats and insults, as far as I'm
25 concerned, deserve a pretty heavy sentence. Anyway, after

1 all those threats and everything, I agreed to go down to my
2 safe which is down on the lower level and I've got an
3 elevator in my home so I walked towards the elevator and
4 when I got near my elevator and got near my bedroom, why
5 they didn't want to go down the elevator. I managed to
6 walk into my bedroom and sit down next to my bed about two
7 feet from where I had my handgun, but with a .40 caliber,
8 all the time and I mean all the time, pointed right at my
9 head, I didn't have a move. I couldn't make a move at all.
10 A couple of times I thought about maybe making a run for it
11 and hoping the shot would miss me, but I had a .45 in the
12 drawer there and I decided against it and it was a good
13 thing. So, finally, I agreed to go downstairs. They
14 forced me, instead of going down the elevator, they forced
15 me in going down the stairway. We went down the stairway.
16 The guy said, "Open up the safe." I opened up the safe.
17 With that, when I opened up the safe, why the man with the
18 mask on at that time went in. He gave the gun to the other
19 gentleman and the other gentleman was very nervous with it.
20 Instead of having it pointed right at me, he had it in his
21 left hand up in the air like this (indicating) and the
22 other fellow that had the mask on then went into the safe
23 and started looking through my drawers and cabinets and
24 things to see if he could find money. There was no money
25 in there. If I had that kind of money I would have it

1 invested or in the bank. It sure wouldn't be in this safe
2 at all, but anyway, he was in that safe looking for that
3 money and I said, "If there's any in there, you can have it
4 all. There's no money in there." And this other gentleman
5 was standing out there with his gun like this and outside
6 the door and I was just inside the safe. Well, the more I
7 watched this going on, the more I was concerned about what
8 they were going to do to me when they find out there's no
9 money in there. There may be some consequences here and I
10 didn't know what they were going to be. I kind of made up
11 my mind I had to get that gun if at all possible and so
12 with that I waited for the right moment and he had that gun
13 up like this (indicating) with his left hand and I was
14 standing here. I reached out, stuck my finger into the
15 trigger area, grabbed it, pulled it down towards him and
16 pulled the trigger. With that, he hit it and the ball went
17 up towards the ceiling. Well, I had the gun. With that, I
18 pulled the gun down on him. So, help me God, I pulled the
19 trigger right then right on him, but in the commotion of
20 getting the gun, evidently, a magazine release or something
21 was bumped and it was jammed. It wouldn't go off. With
22 that, Nimmons was in the safe with the mask on. He was
23 coming at me from behind. I turned around, put it on him.
24 I pulled the trigger and it wouldn't go off again. With
25 that, he and I started to fight. He's trying to get the

1 gun away from me. We fought for probably ten minutes or so
2 there and, let's face it, I'm 79 years old. I'm an old guy
3 and he's probably 20 years old or so and with the old
4 arthritis in my hands, he finally overcame my strength in
5 my hand and got the gun away from me. Well, with that I
6 really didn't know where we were going, but we went ahead
7 and walked upstairs. I went ahead and went into the
8 bedroom again and sat down. I saw that there was no chance
9 to go for my gun, because I didn't know if he had cleared
10 that stoppage in that gun or not, so I didn't dare take a
11 chance. But by that round being fired, while he had it, it
12 was time to get out of there, because the law might be
13 coming and he said to me, "Well, what have you got in your
14 billfold? If you can give it to me, that will get me out
15 of here." With that, I pulled out my billfold and I gave
16 him two one hundred dollar bills and either a five or a
17 fifty. I don't remember for sure which it was. I didn't
18 know exactly, I just gave it to him. I thought about it
19 later and I couldn't say which it was. But anyway, I gave
20 him that money, he took me to the front porch. He said,
21 "You sit down on that bench out here until I get out of
22 here." Now, the one thing was, as, when he and I were
23 fighting down there over the gun, the other man went in and
24 I had a gun collection on one wall. He took two long guns
25 out of there. At that time, I wasn't exactly sure what.

1 they were, but I, when I went to inventory the next day, I
2 realized what they were. They weren't exactly what I
3 thought they were the night before. One was a German Second
4 World War gun that had been given to me. The other was a
5 double-barreled .16 gauge Fox shotgun. And even though
6 nobody saw it, my son and I did inventory in great detail
7 there. It was a 1911 .45 pistol there that had been a
8 cousin's of mine and my grandfather used it in the Second
9 World War and that pistol has never turned up. So, whether
10 that went when I fought with him or not I don't really
11 know. I can't swear to it. But we absolutely know that
12 the German gun went and the .16 gauge Fox is what he had.
13 He walked out with that. Different ones have said, "Do you
14 know where he went?" Well, it's kind of obvious that he
15 went out to wherever he was going, but anyway, as I went
16 out on the front porch, at that time, a voice just hollered
17 out at him and it was a voice from up on the hill in the
18 general area where they had a vehicle parked and came back
19 to it so obviously he was up there. Well, anyway, I sat
20 down on the bench and after just a few moments when he
21 started walking up there, I got my cell phone and called
22 911. Now, the deputies told me that he would get them to
23 bring the guns back if he would bring the guns back to me.
24 Well, I slipped into the house and quickly went outside and
25 sat on the bench. Needless to say, nobody ever came back

1 at that time. I will have to compliment the Anderson
2 County Sheriff's Department. I've never seen such a fine
3 performance of them getting out there with dogs, people,
4 and fingerprinting. I mean, it was just fantastic the way
5 they got out there. They moved real fast and went through
6 everything. I was very pleased with their performance.
7 They went through and really did a great job. I sat down
8 with a gentleman until probably one in the morning, going
9 over the report that he was writing and that was kind of
10 the incident report. There were a couple of things in
11 there I didn't have exactly right. I didn't have a chance
12 to check on some things, which I corrected that with a
13 letter later on and the next morning, why the investigator
14 was assigned to me and that would be Mr. Gebing and I have
15 to say he did a great job and he had the first man in jail
16 the first night and he had the other two in jail the next
17 night. And that's all about that I can say as far as the
18 incident itself goes, but needless to say, there's a lot of
19 concern with my family and my neighbors. My neighbors have
20 been upset to no end over this. Many of them because it
21 was so totally unexpected. As a matter of fact, when I
22 called the Sheriff's Office and they came out to Tidewater,
23 there they were and that's the situation and from there we
24 went through the meetings here with various people and we
25 sit here today with Mr. Devin Nimmons. As far as I'm

1 concerned, he can say what he wants. He was there, he was
2 a ringleader and there's no difference than that.

3 Regardless of what he says, I'm telling the truth, so help
4 me God.

5 THE COURT: Thank you, sir. Thank you for your
6 patience. Mr. Pruitt?

7 MR. CALHOUN PRUITT: Your Honor, I'm not here as an
8 attorney for Mr. Helgeson. He's my neighbor, my friend.
9 We have a subdivision that has seven houses in it. We do
10 everything we can to watch out for each other. We look for
11 suspicious cars. We have a gate we keep at the front.
12 These people defeated all that by parking in a cul-de-sac
13 way away and coming overland to get to Mr. Helgeson's
14 house. So, the neighbors have tried to help each other in
15 this matter as best they can, but it's terrorized my wife
16 and all the other women in the subdivision and we've about
17 become an armed camp. So, when people do things in this
18 society, it hurts the whole society, but the victims are
19 often larger than the immediate victim. It affects the
20 lives of all the people around them and so I'd ask Your
21 Honor to consider the impact it's been on my family, our
22 other neighbors and give this man the sentence he
23 deserves.

24 THE COURT: All right. Thank you. Thank you for your
25 patience as well. Any other victims that would like to

1 speak?

2 MS. HUEY: No, sir, Your Honor.

3 THE COURT: All right. Mr. Epps, I'll be glad to hear
4 from you, sir, and your side of the case.

5 MS. HUEY: I'm sorry to interrupt.

6 THE COURT: I'm sorry?

7 MS. HUEY: Investigator Gebing would like to address
8 the Court.

9 THE COURT: I'm sorry. I cut you off, Detective
10 Gebing. I'm sorry. Go ahead.

11 DETECTIVE GEBING: That's all right, Your Honor. As
12 usual, I'm here in case you have any questions of the facts
13 in the case, but I'd also like to reiterate some of the
14 items from law enforcement's point of view. Jerry Helgeson
15 is a true victim. He was 78 at the time. He was home
16 minding his own business. He did nothing to bring this
17 upon himself except work hard throughout his life and have
18 a nice house. Devin Nimmons claims to have gotten out of
19 the truck and walked away from this incident, but that was
20 after he helped plan it out with two friends. He provided
21 knowledge of the victim that only he had. He provided
22 directions there, he provided the gun and instructions how
23 to use it and then he lied to conceal his role in it and
24 tried to establish an alibi which did not exist. His
25 reasoning for getting out of the truck, according to him,

1 is because he was worried about his co-defendants being too
2 drunk or too high, not that he had a change of heart.
3 There is evidence to support more than what he has pled to
4 that indicates that he was, in fact, the masked intruder.
5 Regardless of whether one believes he was the intruder or
6 got out of the truck in an attempt to separate himself from
7 the situation, the fact is, he helped plan and orchestrate
8 it and it was carried out using his gun and Mr. Helgeson
9 was robbed and terrorized in his own home. He has since
10 decided to cooperate involving another robbery that took
11 place and one he took part in, that being the Starlight
12 Cinemas, one of two businesses he worked for that he has
13 since committed a crime against, the other being the
14 furniture store he mentioned yesterday and that case is
15 still pending as well. Yesterday after his plea, he did
16 speak with law enforcement and admitted to active
17 participation in the Starlight Cinemas robbery with a co-
18 defendant. Devin, a former employee, transported a female
19 co-defendant and acted as a lookout inside and another
20 lookout on the outside also drove the getaway car. I
21 assume he cooperated so his Defense could come here today
22 and point out his willingness to do so and try to get some
23 credit for his act. I acknowledge, Your Honor, that law
24 enforcement has and will benefit from this statement
25 yesterday as Detective Williams now has actually secured

1 warrants on the co-defendant, but ~~Devin is only able to~~
2 ~~give this cooperation because he participated in yet~~
3 ~~another violent crime.~~ I question the timing of his
4 willingness to do so and his motivation. ~~I also point out~~
5 ~~that Starlight Cinemas took place after Mr. Helgeson's~~
6 ~~robbery,~~ which he says he tried to walk away from. Nimmons
7 has been enjoying the comfort of his own home and been
8 allowed to work while the victims have had to endure
9 knowing that one of their alleged attackers has been free
10 from jail. Jerry has repeatedly expressed his concern over
11 this due to the threats made against him and his family and
12 his concern that he may have to defend himself. It will
13 likely be brought up and Ms. Huey would like to clarify or
14 elaborate that to date one of the co-defendants, ~~the one~~
15 ~~who cooperated first, has been serving a ten-year prison~~
16 ~~sentence and his cooperation was given with no promises or~~
17 ~~leniency for cooperation.~~ It will probably be also brought
18 up that ~~the third co-defendant got credit for the year-and-~~
19 ~~a-half time served that he served in jail and has since~~
20 ~~been put on probation. He was also the least culpable, had~~
21 ~~the least amount of evidence against him. He cooperated~~
22 ~~the day of his arrest~~ and provided information about cases
23 that he did not participate in, including Starlight
24 Cinemas. Your Honor, I agree with the 15-year request and
25 then some and I would ask that all this be taken into

1 consideration, in particular, that Mr. Helgeson truly did
2 not deserve this. Thank you.

3 THE COURT: Thank you. Mr. Epps.

4 MR. EPPS: Yes, sir, Your Honor. May it please the
5 Court.

6 THE COURT: Yes, sir.

7 MR. EPPS: William Norman Epps, III and I represent the
8 Defendant, Devin Nimmons today. Your Honor, Mr. Nimmons
9 also would like to address the Court today and Mr. Helgeson
10 and law enforcement and individuals in this case. He would
11 like to do so again today. I'm also going to speak on
12 behalf of Mr. Nimmons to tell the Court about his
13 background, his upbringing. His mother and step-father are
14 here. Mr. Clay Bolt is here to speak on his behalf as well
15 as Mr. Gene Christianson from The Haven of Rest Ministries.
16 Your Honor, this is a, it is a senseless, horrible crime.
17 As Mr. Nimmons stated yesterday, he's brought it on
18 himself, he's brought dishonor on everybody else, he is
19 going to live the rest of his life trying to make amends
20 for his participation in this act, in what happened the
21 night of December 9, 2011, as well as at the Starlight
22 Cinemas. Your Honor, I know the State is asking for a
23 sentence of 15 years. Obviously, there is a range of up to
24 15 years and Your Honor, I want to go through Mr. Nimmons'
25 background plus speak to the Court on alternative types

1 that recognize the goal of sentencing, which are:
2 punishment, deterrent, rehabilitation and restitution that
3 would apply to Mr. Nimmons for the Court's consideration
4 that deal with punishment and deterrents and rehabilitation
5 with regards to Mr. Nimmons. Mr. Nimmons is 23 years old.
6 His date of birth is 3/14/1990. When these, when this took
7 place he was 20 years old. Your Honor, Mr. Nimmons
8 graduated from Westside High School in 2008. Throughout
9 his high school years there were no problems. Mr. Nimmons
10 has college credit at Tri-County and Lander. His time at
11 Lander and Tri-County, he's had no problems. He's close to
12 getting a welding degree. He was 17 years of age when he
13 entered the National Guard. Up until the time of this
14 incident, obviously, he's not in the guard anymore. He's
15 in the inactive army reserve and this today has effectively
16 ended any, any possibility of his serving in the military
17 again, thus bringing dishonor on himself, thus bringing
18 dishonor on all the military, thus bringing dishonor on the
19 honorable military service of Mr. Helgeson as well as
20 everybody else that has served time honorably in the
21 military. Mr. Nimmons recognizes that. He deals with that
22 and he has to live with that the rest of his life. Your
23 Honor, he, he is without -- up until a span of a few
24 months, but when he was 20, he has background, his growing
25 up years, his high school years, his elementary school

1 years, he has no violent history. He also has no history
2 of drug abuse. He has no history of criminal behavior when
3 he was younger, nor has he any history with DJJ or DSS.
4 He's had no significant problems with his family prior to
5 these incidents or prior to these problems or incidents
6 that he participated in and pled guilty to in December,
7 around December 10th. So, prior to this incident, he has,
8 he really has not, this is not indicative of somebody who
9 has had problems previously and then came to this place.
10 There has been no indication of any of these tendencies or
11 any violent history, drug abuse or any problems in his
12 childhood. We think that is a credit. That is something
13 that needs to be considered by the Court.

14 Also, he is, he is, he's in a relationship, a
15 committed relationship that at this time he may have, there
16 may be a child on the way. We'd like to tell the Court
17 that he takes that responsibility very seriously, if that's
18 the case. We'd also tell that he has, he has, at this
19 point in time he has worked, he has worked for a period of
20 time before these incidents.

21 I'd also state that he didn't really have any trouble
22 until he started hanging around older individuals, Jake
23 Tubbs and Mr. Chris Brown, the other participants in this
24 crime. Not to minimize it any, but he was, Devin was the
25 younger, he was the youngest. Jake Tubbs was the older

1 guy. They got into certain, they got into a, at that
2 particular point in time that's when he started, that's
3 when some of the abuse of going out drinking, abusing
4 prescription pills like Klonopin, things of that nature.
5 He met Jake in 2009 and yet he was older than Devin. Devin
6 looked up to him. Mr. Tubbs, at that time, was working in
7 Greenville at a bar and was involved, got him involved in
8 situations like this or situations that happened,
9 situations but not situations, but around people and around
10 people that were all in on what happened December 9th,
11 2010. We'd also, and I would note that the State noted
12 again, just for the Court's information, Chris Brown was
13 the individual that had the folder that came in first at
14 Mr. Helgeson's house. He pled guilty to armed robbery,
15 burglary second, kidnapping and received a 10-year
16 sentence.

17 THE COURT: Was he involved at all in the Starlight
18 matter?

19 MR. EPPS: No, sir, Your Honor.

20 THE COURT: Okay.

21 MR. EPPS: Mr. Jake Tubbs pled to three counts of
22 accessory after the fact and received a YOA sentence
23 suspended to five years probation. I would note at this
24 time that Mr. Nimmons pled guilty to accessory before the
25 fact for kidnapping, burglary second and strong arm robbery

1 and conspiracy on the kidnapping. I would note that after
2 this took place at Mr. Helgeson's house, Mr. Tubbs and Mr.
3 Brown were together immediately afterwards. They were
4 pulled over at Anderson University with the guns. Mr.
5 Nimmons was not a part of that. Mr. Nimmons was away from
6 that. He did not take part in anything else that happened
7 that night, which included getting rid of the guns and
8 committing more crimes, particularly committed by Mr. Brown
9 and Mr. Tubbs. Mr. Nimmons had nothing to do with that.
10 He was away from that and had no part in that. I minimize
11 his part in the role of what took place and again, he wants
12 to address the Court to fully apologize to the Court and to
13 the victims, Mr. Helgeson and everyone in here for the
14 problems he's caused for his role in this.

15 Your Honor, we would ask to take that into account as
16 well as the account of statements from his family,
17 statements from his work and I want to go into that, too,
18 because even though, even though Mr. Nimmons is young, even
19 though he's facing -- he's facing the music. He's facing
20 these sentences. He has, while on home incarceration, and
21 this is a credit also to Mr. Nimmons, he's been able to
22 have employment over the last eight months with Southern
23 Concrete. Kyle Bolt is here. He would like to address the
24 Court with regards to Mr. Nimmons and this is a good thing.
25 This is, this is, Mr. Nimmons, usually someone in this

1 situation does not, generally, they are going to go to
2 prison and get out and have a hard time, they end of a lot
3 of times with a hard time finding employment, finding
4 opportunities for employment and drifting back into their
5 old habits, their old ways and getting right back into
6 society and in this case, Your Honor, I would submit that
7 Mr. Nimmons is doing good. He is a laborer with Southern
8 Concrete. Now, however, Mr. Bolt would tell you that he is
9 in a program to accelerate him to a supervisory position.
10 He works with, he's, they work on highways. This is a,
11 it's a good profession. I mean, he's a laborer, but he's
12 building forms. They do them with bridge rehabilitation on
13 I-20. They work for state jobs and they have, they form
14 concrete holders for asphalt to go on top of and that's
15 some of his duties. And Mr. Bolt can go into more detail,
16 but he has an opportunity, Your Honor, to continue, even
17 with all, with everything that's happened, with everything
18 that's happened, he has continued to work, he's continued
19 to make amends for what he's done, intends to make amends
20 for not only for what he's done, but to help everybody else
21 and to live a productive life and be a productive member of
22 society. Again, this is in essence except for, he has no
23 criminal record except for a petit larceny down in
24 Charleston that happened around the time that this incident
25 happened. So, except for this one, this period of several

1 months, Mr. Nimmons, as serious as it is, and Mr. Nimmons
2 understands the seriousness of this nature, the seriousness
3 of these crimes, the seriousness of the punishment, the
4 seriousness of what he's looking at and other than that, he
5 has no criminal history.

6 Now, obviously, he needs, he pled guilty and he needs
7 to be, number one, he needs to be punished, but I'd ask the
8 Court to consider other forms of punishment that we can
9 deal with here to adhere to rehabilitation, particularly,
10 you know, the range that we spoke about. You know, there
11 are alternatives to a straight 15 years, alternatives to a
12 prison sentence and in this case, Your Honor, I believe
13 with Mr. Nimmons' background, what he's doing now, his job
14 possibilities, the fact of some other things he's trying to
15 do now, he's attending church, he's helping with youth
16 groups.

17 Prior to this happening when he was young he took a
18 mission trip, he's taken mission trips, he's taken a
19 mission trip to Honduras. There's an individual named
20 Myron Anderson who works at Milliken and is involved in his
21 church and involved in his individual church and he has
22 stories of testament and he has stories of testament
23 hopefully in regards to hopefully help troubled youths.
24 Your Honor, we would, and these are alternative forms of
25 sentencing that we would submit to the Court that I believe

1 addresses, appropriately addresses the facts of sentencing
2 with the Court and I'm thinking it would also take into
3 consideration the nature of circumstances of the offense
4 and the characteristics of the Defendant, the need for the
5 sentence imposed, taking into account the seriousness of
6 the crime, promoting respect for the law and just
7 punishment to afford adequate deterrence to criminal
8 conduct and to provide the Defendant with educational and
9 vocational training, and other treatment or programs in the
10 most efficient manner.

11 Your Honor, obviously, he's pled guilty to accessory
12 before the fact of kidnapping. It was a most serious crime
13 and so right off the bat, Your Honor, if he ever gets in
14 trouble again, if he gets a most serious crime again, which
15 I don't think he will, and I think he has learned not only,
16 not only more than learned his lesson, he understands that
17 if he ever gets in trouble again in any way shape or form,
18 that he is going away, he's going away forever for a most
19 serious crime and he'll spend life in prison with no chance
20 of parole. Burglary second, violent, is a serious crime,
21 so there again, he is subject to enhanced penalties. Also,
22 with the accessory before the fact of strong arm robbery,
23 the conspiracy with the Starlight, we would ask the Court
24 to take these kinds of sentences into account. We would
25 also ask or throw it out or allow the Court to consider

1 this like the conspiracy. Conspiracy is zero to five years
2 and is subject to YOA. YOA can be or if the Court would
3 sentence him, he's twenty-three years old, Mr. Nimmons
4 would sign the consent to do YOA. YOA is not a walk in the
5 park. It's a sentence of treatment or probation or
6 confinement with the YOA program just for conspiracy.
7 Accessory before the fact, strong arm robbery are also
8 eligible for YOA. Your Honor, we would submit to hang, to
9 put a lot of time over Mr. Nimmons' head, like for
10 instance, 15 years suspended for the accessory before the
11 fact for the civil conspiracy case a sentence of YOA and
12 confinement for treatment of a YOA program, a sentence
13 pursuant to the YOA program for that conspiracy and/or
14 conspiracy and accessory before the fact for strong arm
15 robbery. We'd also submit it would be appropriate to also
16 deal with punishment, deterrents, rehabilitation and
17 restitution to run a 15 year sentence on accessory before
18 the fact of kidnapping and accessory before the fact of
19 burglary second, if the Court would suspend that to five
20 years probation, but run that consecutive to the YOA
21 sentence so that, your Honor, that would necessarily, that
22 would in effect, that is up to ten years where not only is
23 he serving his YOA sentence which is difficult, in and of
24 itself, but he's subject to strict restrictions and
25 control. On top of that, once he finishes that sentence,

1 he's looking at another, he's looking at 15 years. If he
2 messes up, he's gone for a long period of time. He's also
3 looking, he would also look at that sentence to go to five
4 years probation with 15 years hanging over his head, so not
5 only I don't think Mr. Nimmons will get in trouble again
6 for the fact of the matter that is a long period of, that
7 is up to eleven years that Mr. Nimmons is going to be
8 subject to some of the YOA, probationary strict measures or
9 restrictions put into place, where again, if he messes up
10 or he presents a problem or even a little bit of a problem,
11 he's looking at going down, he's looking at going down the
12 road for a long period of time. A long period of time,
13 Your Honor. And he's also with these others, with the most
14 serious crime, obviously, if he gets in trouble again he's
15 looking at life without parole. Your Honor, we think that
16 a straight prison sentence of 15 years, of 10 years, 7
17 years, based on Mr. Nimmons lack of prior history, what
18 he's been doing, especially since he has a job opportunity,
19 that longer would be detrimental. I understand the
20 incarceration, looking them up as punishment for the crime,
21 but also, I ask the Court to take into these other accounts
22 that he would be, he wants to make amends and live a good
23 life, live a better life and help others and use his
24 experience of what he's going through now to better, to
25 maybe help other people. Now, if something like that was

1 fashioned instead of straight time that could be
2 detrimental. A lot of times they go in for 10 or 15 years,
3 they come out, they've got no, they end up, again, turning
4 back again to the old habits, old ways and Your Honor, in
5 this case with Mr. Nimmons, with his previous, with his
6 history growing up, his lack of criminal history, what he's
7 got the ability to do, even if he has to, even if he does
8 some incarceration, some time in YOA, Mr. Bolt will tell
9 you that he's willing to work with Mr. Nimmons. He's
10 willing to, because of how he's performed on the job and
11 his relationship with him, he knows he's willing to work
12 with him in any way, shape or form and I think that's
13 important.

14 Also, Your Honor, another thing to throw out there,
15 Mr. Gene Christianson is here. He's with The Haven of
16 Rest, the Haven of Rest's Ministries Program and he lives
17 next door to Mr. Nimmons. He knows and he says that, you
18 know, if the Court saw fit, obviously -- he's been through
19 the program, the Haven of Rest program and any
20 restrictions, anything of that nature, so that is an
21 option. He's there. He said it's an 18-month program.
22 Certainly, that's not a walk in the park either. Your
23 Honor, we respectfully submit that a sentence like that is
24 punishment. It punishes him, plus gives him an opportunity
25 -- it punishes him, it addresses deterrent, it addresses

1 the aspect of rehabilitation. Mr. Nimmons is 23. He's a
2 young kid.

3 Again, Your Honor, he wants to address the Court, he
4 wants to address Mr. Helgeson, he wants to address Mr.
5 Pruitt, everybody in the courtroom regarding just,
6 regarding, again, how sorry he is and what he wishes to
7 accomplish in the future. So, I believe if he's given
8 another chance, a chance, not, not straight, straight
9 probation, but a chance to right his wrongs, to amend his
10 mistakes, to make it right and to be a good, a good,
11 productive member of society and I think he can do that and
12 he has the potential to do that. Obviously, he needs to be
13 punished, but with regards to deterrence and
14 rehabilitation, the sentence of YOA and consecutive
15 probation with a lot of time over his head or a sentence to
16 complete Haven of Rest Ministries to address those factors
17 in sentencing and, Your Honor, at this time, if I could
18 have Mr. Bolt come forward and speak on Mr. Nimmons behalf.

19 THE COURT: Okay, sir. Would you state your name for
20 the record, please?

21 MR. BOLT: Kyle Bolt.

22 THE COURT: Yes, sir. Glad to hear from you, Mr. Bolt.

23 MR. BOLT: Devin was hired in October of last year and
24 since then, he's been an exceptional employee. He shows up
25 everyday and he works overtime. He started off working in

1 the shop and after about three months he moved and started
2 working on the highway and since then he's been learning
3 skills of pouring concrete and he shows exceptional ability
4 to take charge and he's started learning and a few other
5 tools and tasks. I didn't know Devin before this time, but
6 since then, he shows somebody that wants to work, wants to
7 learn and grow in the company and if given the opportunity,
8 I think he has a chance to grow with us.

9 THE COURT: I appreciate it. Thank you, sir. Who else
10 do you have?

11 MR. EPPS: Yes, sir. Also, Mr. Gene Christianson would
12 like to speak to the Court on behalf of Mr. Nimmons.

13 THE COURT: Good morning, Mr. Christianson. How are
14 you doing?

15 MR. CHRISTIANSON: Fine, sir. Thank you. Gene
16 Christianson. I've known Devin about three years. Since
17 he lives next door to my parents, I see Devin all the time.
18 Character-wise, I speak to what I know. Devin has always
19 been considerate, courteous, a good neighbor. We clearly
20 didn't discuss much beyond spiritual issues. I work for
21 the Haven of Rest. I work as an industrial coordinator at
22 the men's training center and really encourage him and
23 would like to give him an opportunity to work, to be
24 involved with the program. My colleague, Curtis Pless,
25 takes them in and Devin's talked to him and there's a green

1 light on that. Basically, we are here to help them change
2 as they come in, you know, with the Court's understanding
3 they have to complete the course of Bible training,
4 stewardship, and basically that's where we are at, to offer
5 him a chance.

6 THE COURT: Thank you, sir.

7 MR. EPPS: Yes, sir, Your Honor. I would also like --
8 his mother, Lisa McBride would like to address the Court,
9 also.

10 THE COURT: Ms. McBride.

11 MS. MCBRIDE: I just want to say that this whole
12 experience, Devin's charges and the trouble he's gotten
13 into, has been devastating for him and for our entire
14 family. It has affected all of us. We've been affected
15 financially, but mostly emotionally, since this happened.
16 I want to say to Mr. Helgeson that I'm sorry this happened
17 to you. We do understand that these are serious charges.
18 Just four years ago, we had a break-in at our house and my
19 daughter and my two-year-old grandson were victims. It was
20 two masked individuals. They were drunk, also. We did not
21 feel like prison was right as mad and hurt as we were by
22 what happened. We didn't push for prison time but more I
23 think it was a shock probation program, but they ended up
24 getting three years probation for what was done and they
25 made her strip down to her underwear and it was a violent

1 situation as well. We do understand the feelings and the
2 emotions behind all that and again, I'm sorry that Mr.
3 Helgeson experienced that, himself.

4 THE COURT: All right. Thank you, Ms. McBride.

5 MR. EPPS: Mr. Watson McBride in support.

6 THE COURT: All right. Good morning.

7 MR. MCBRIDE: I'm Watson McBride and I am Devin's step-
8 father and I would like to say thanks for the time you've
9 given to us to speak on his behalf. And I would also like
10 to say to Mr. Helgeson and Mr. Pruitt, we do apologize that
11 this happened to you guys because, you know, it did happen
12 to us and we understand how you feel and I know our
13 apologies right now probably don't mean a whole lot, but we
14 do apologize and for Devin, too, because these are very
15 serious charges and carries a lot of weight and there
16 again, we do apologize and one day maybe, y'all can forgive
17 us and our stepson for what he's done. I would like to say
18 this, too. What has happened is bad and I think for us to
19 be able to move forward, there has to be some forgiveness
20 in this case. I think the only way we can make him better,
21 we have to probation now as we start this process, because,
22 I mean, he is so young and he does have his life ahead of
23 him and I would say to the Court that probation would be
24 fair and would show favor, too, at the same time. I would
25 say this, too. Me and Devin have had a rapport together.

1 Me and his Mom have been together for twelve-and-a-half
2 years. I'd say that out of all the kids, me and him have
3 the best rapport and Devin, to me, with the concrete place,
4 I know Kyle that owns the company. I have a son a little
5 older than Devin that needs a job, but you know what, I
6 didn't call Kyle for him, I called him for Devin, because I
7 know his work ethic. I knew he would go out there and do a
8 great job, without a doubt. My son, not as much, but for
9 Devin, that's why I called him. I said, "Kyle, can you do
10 me a favor, can you help me out and he did and Devin took
11 advantage of it and I wouldn't put my name on the line for
12 somebody that's not going to do that and Devin has been a
13 great kid, no problems in school, no problems, whatsoever.
14 And I have to say this, too. His Mom had wrote him a
15 letter because of the path he was taking over those several
16 months we are talking about and she seen it and I guess
17 it's just a Mom's intuition, but she seen it and she wrote
18 Devin a letter and told him that this is not you, what are
19 you doing and it was always denial, but our hearts go out,
20 because it has been devastating for us as a family and like
21 I say, I don't make light of it Mr. Helgeson and Mr. Pruitt
22 or anybody that's involved in this whole situation, but
23 like I say, I would say to the Court today, Your Honor,
24 that I pray you show favor and I understand because Devin
25 is still a kid and I think it's time now to start the

1 healing process and start to move forward because anything
2 that's done at this stage now we can't change, but we can
3 move forward and make a better tomorrow. Thank you.

4 THE COURT: Thank you.

5 MR. EPPS: Your Honor, also, we'd like Devin's sister
6 Megan, to make a statement to the Court.

7 THE COURT: Okay, sir.

8 (She decides not to speak)

9 MR. EPPS: Your Honor, Mr. Nimmons, at this time, would
10 like to make a statement.

11 THE COURT: All right.

12 MR. NIMMONS: Once again, Mr. Helgeson, I sincerely
13 apologize to you and the rest of my victims. No one
14 deserves the hardship I put you through. I will always
15 have a hard time dealing with these mistakes I made.
16 That's a part of my life I will never forgive, but one
17 thing I do know is that I'm ready to move forward with my
18 life. At age 19 and 20, I was confused on every aspect of
19 my life at the time. I will say that the time out in the
20 county and on house arrest has been a blessing because it
21 give me time to reevaluate my priorities in life and now
22 I'm working for a great company that I would love to have a
23 career with. I acknowledge the fact that these crimes are
24 serious and that it won't be overlooked, but I just pray
25 that the Court will grant me a second chance to show

1 society the man that I am now and allow me to use the
2 testimony from this at church to help prevent other teens
3 from possibly making the same kind of mistake. There are a
4 lot of good things that I can make from all this and that's
5 how I will live every moment of my life from here on up
6 through. I'm not a criminal and once again, I'm sorry to
7 any lives I've caused a hardship to. Thank you.

8 THE COURT: What is his record?

9 MS. HUEY: Your Honor, I don't believe he had
10 convictions on his record. As has been indicated several
11 times today, there are several pending incidents. This
12 will, obviously, dispose of all that. But there was a
13 burglary second that the State will dismiss on him being
14 sentenced that involved his employer at the furniture
15 store, Your Honor. Obviously, the home invasion involving
16 Mr. Helgeson as well as Starlight, Your Honor, and I will
17 point out that the common denominator in Mr. Helgeson's
18 case and Starlight, Your Honor, is this Defendant, Devin
19 Nimmons, not the co-defendants in this case.

20 THE COURT: All right. Anything further from the
21 Defense?

22 MR. EPPS: Nothing further, Your Honor.

23 THE COURT: From the State?

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

25 THE COURT: Has he spent any time incarcerated other

1 than he doesn't get credit for home incarceration, but has
2 he spent any time incarcerated?

3 MR. EPPS: Yes, sir. He spent from, I believe, January
4 5th until July, 2011.

5 THE COURT: January 5th through July?

6 MS. HUEY: He was arrested on January 5th.

7 MR. CLAMP: He was arrested January 5th, Your Honor.
8 He did spend several months, but I don't, myself, have the
9 dates. I'm sorry.

10 MR. EPPS: July of 2011. I can get the exact dates.

11 THE COURT: Give me the number of days if you would.
12 All right. It's never easy sitting on this side of the
13 coin for either side, especially when you see a young man
14 do things fairly inexplicable. That being said, it's
15 obvious to me that you were engaged in a pattern of conduct
16 that would send you down the road and you are just
17 fortunate that you aren't here on some other type of
18 charge, such as murder. It's also fortunate that the State
19 agreed to let you plea to a lesser charge that had a lesser
20 time behind it.

21 That being said, the proper sentence and judgment of
22 the Court under Indictments 2011-1365, 2011-1364, and
23 2011-1366, which is strong arm robbery, burglary violent,
24 second and kidnapping is 15 years. Under Indictment 2011-
25 527, conspiracy, the sentence is five years, suspended to

1 five years probation. Your probation shall not begin until
2 your period of incarceration has ended. In other words,
3 after you get out, you still will have five years
4 probation. You will have random drug testing and you will
5 go to job corp or voc rehab. Good luck to you.

6 MS. HUEY: Your Honor, I will get those dates for you.

7 THE COURT: All right.

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

CERTIFICATE

BE IT KNOWN THAT I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE GUILTY PLEA IN THE CAPTIONED CASE, RELATIVE TO APPEAL, BEFORE THE CIRCUIT COURT FOR ANDERSON COUNTY, SOUTH CAROLINA, SO GIVEN ON APRIL 23-24, 2013 TO THE BEST OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE OUTCOME OF THIS ACTION.

IN WITNESS WHEREOF I HAVE HERE UNTO SET MY HAND AND SEAL THIS 25TH DAY OF SEPTEMBER, 2013.



JO RICE
OFFICIAL COURT REPORTER

1 STATE OF SOUTH CAROLINA)
2) IN THE COURT OF
3 COUNTY OF ANDERSON) COMMON PLEAS
4 -----) 2013-CP-10-1769

5 DEVIN M. NIMMONS,)
6 APPLICANT)
7 vs.) TRANSCRIPT OF RECORD
8 STATE OF SOUTH CAROLINA.)
9 RESPONDENT)
10 -----)

11 FEBRUARY 20, 2014
12 ANDERSON, SOUTH CAROLINA

13
14 B E F O R E:

15 THE HONORABLE J. CORDELL MADDOX, JR.
16

17
18 A P P E A R A N C E S:

19 HUGH W. WELBORN, ESQUIRE
20 ATTORNEY FOR APPLICANT

21 JOHN W. WHITMIRE, ESQUIRE
22 ATTORNEY FOR RESPONDENT

23
24 VIVIAN CROSS,
25 CIRCUIT COURT REPORTER

I N D E X

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* * * P R O C E E D I N G S * * *

THE COURT: Okay.

MR. WHITMIRE: May it please the court. The last PCR case before Your Honor is Devin Michael Nimmons v. State of South Carolina, 2013-CP-04-1769. Mr. Nimmons was indicted for three counts of accessory before the fact of a felony; conspiracy; among other things. On April 23, 2013, the State called its case for trial for the plea. Norman Epps represented Mr. Nimmons.

Mr. Nimmons entered guilty pleas for burg 2nd violent, strong armed robbery; kidnapping and conspiracy. Judge McIntosh sentenced Mr. Nimmons to 15 years imprisonment on those charges, an aggregate term. Mr. Nimmons did not file a notice of appeal.

He is present today and is alleging ineffective assistance of counsel by timely application, post conviction relief, and is represented by Mr. Hugh Welborn.

His allegations are as follows: Involuntary plea deal; conflict of interest. Counsel has amended this application to add one more allegation, failure to file appeal.

At this time, I turn matters over to Mr. Welborn, and would just like to announce the victim in

1 this case, Mr. Heggleston(ph), is present with his son.

2 THE COURT: All right. Yes, sir.

3 MR. WELBORN: Please the court. I call Norman
4 Epps.

5 WILLIAM NORMAN EPPS, III,
6 having been first duly sworn, testified as follows:

7 THE CLERK: If you would take the witness stand,
8 and state your name and spell your last name for the
9 record, please, sir.

10 THE WITNESS: Yes. My name is William Norman
11 Epps, III. E-p-p-s.

12 MR. WELBORN: Please the court?

13 THE COURT: Yes, sir.

14 **DIRECT EXAMINATION BY MR. WELBORN:**

15 Q. Mr. Epps, you represented Mr. Nimmons here in
16 his charges that were before the court there on post
17 conviction relief?

18 A. Yes, sir.

19 Q. Now, in that regard, how long have you been
20 practicing law?

21 A. Since 2005.

22 Q. And what did -- in your discussions with Mr.
23 Nimmons, tell the court please, did he ask you to
24 prepare this case for trial?

25 A. It -- yes. And we -- when Mr. Nimmons was

1 arrested on about January of -- December of 2010,
2 January of 2011, our firm was hired, so I represented
3 him from the very beginning. And he was originally
4 charged with and indicted on burglary 1st degree;
5 kidnapping, and armed robbery. And that dealt with a
6 December 9th home -- 2010 home invasion at Mr.
7 Heggleston's house.

8 Subsequently, about two weeks later, he -- Mr.
9 Nimmons was charged with attempted armed robbery,
10 indicted on that, with the Starlight Movie Theater
11 case. Once we got -- once his mother -- his mother
12 contacted my office; didn't sit down with me --
13 actually sat down with my partner, Samantha Nelson, and
14 we were retained to represent -- represent Mr. Nimmons.

15 So I visited him out at the jail. He was
16 subsequently indicted again -- or charged and indicted
17 on burglary 2nd from a November theft of a -- of a
18 furniture store that he previously worked at.

19 So if you want a little bit of background of
20 what we did and what -- how I prepared --

21 Q. That's what I want. Go ahead.

22 A. All right, sir. What we did, initially we
23 filed -- well, obviously I filed -- I served discovery,
24 notified the courts that I represented Mr. Nimmons
25 and requested -- and sent Rule 5 and Brady motions,

1 discovery. I requested a preliminary hearing on -- on
2 all charges that we represented him on, as well as --
3 at the time, his bond was denied. So we requested a --
4 we filed a motion for bond. And we actually went to
5 court at least three times to try to get a bond for Mr.
6 Nimmons, and that was denied initially.

7 Sub -- that -- at a -- the last bond hearing we
8 had, he was granted \$250,000 surety bond, home
9 incarceration, and he could only go on lock-down. He
10 could only -- he could only come to my office and I
11 believe the doctors. I mean, he couldn't leave. He
12 was constantly 24/7 and had a GPS on him. So he
13 couldn't work.

14 So then after that, a few months -- I think it
15 was in August of 2011, -- these incidents happened in
16 December of 2010. We immediately started our
17 representation. I filed a motion to amend his bond
18 conditions to allow him to work while -- while he was
19 on house arrest. That was denied by Judge McIntosh.

20 We got discovery. We got phone records. We got
21 audio recordings of the two co-defendants of Mr.
22 Nimmons' in the -- in the home invasion case, and that
23 was Chris Brown (ph) and Jacob Tubbs (ph).

24 They got -- as soon as they were arrested, they
25 gave recorded statements implicating -- implicating Mr.

1 Nimmons. We got -- we got copies of -- of those
2 recordings.

3 We also had -- Mr. Nimmons gave a statement -- I
4 think he gave two statements. I had a copy of that.
5 Also, there was a time that he had -- he had made
6 statements that he was with a Heather Campbell
7 immediately after or during the time that -- that Mr.
8 Heggleston -- the incident at Mr. Heggleston's house
9 was taking place.

10 They actually -- they actually -- or Heather
11 Campbell actually put a microphone on, and got Mr.
12 Nimmons in the car, and there was a recorded
13 conversation with that.

14 Q. She was a codefendant?

15 A. No. She wasn't a codefendant, she was a
16 witness. She was not a witness, but she was -- she was
17 Mr. Nimmons' girlfriend.

18 Q. Thank you. Go ahead.

19 A. So -- so -- I -- she had contacted or law
20 enforcement had got her to wear a wire and that
21 conversation was recorded. We had that. There were a
22 -- a -- as the discovery came in, I saw -- I gave it to
23 my client. I reviewed it with my client.

24 I've been out -- I went out to the jail multiple
25 times to talk to my client. My client, at the very

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1 beginning, gave me permission to talk with his family
2 who are here today, his stepfather, his mother. We --
3 I was in contact with them. I stayed in contact with
4 his mother from February -- I mean from the beginning
5 of this case to the end of the case.

6 I explained it to them, and they understood that
7 these charges -- I mean, they -- from the very
8 beginning, Mr. Nimmons understood the seriousness and
9 the penalties and what these charges entailed, and we
10 fought hard for bond.

11 The State -- the State took a hard line with Mr.
12 Nimmons. They just -- they -- they did not consent to
13 a bond, and we had -- we had to fight for a bond. My
14 client wanted out of jail. His family wanted him out
15 of jail. We got him a bond.

16 I then -- we -- my firm helped get -- put their
17 house up -- they put their house up as a surety for
18 that bond. We did that. We helped them do that.

19 So this -- you know, it -- it kind of rocks on.
20 As discovery came in, I would share it with my client.
21 Once he got out on bond, there was numerous times a lot
22 -- I've got it listed down how many times he came to my
23 office. Because every time he came to my office, I
24 would write a letter to Eagle Eye Monitoring -- Eagle
25 Eye Monitoring to let them know he was with me. He was

1 at my office during those periods of time, so that was
2 going on during that time.

3 Also, what was going on -- and I'm assuming this
4 is what he was saying was a conflict of interest --
5 during that time, he -- in the home invasion case, he
6 had two co-defendants. Like I said, one being Chris
7 Brown and one being Jacob Tubbs.

8 In the Starlight Movie Theater attempted armed
9 robbery, he had his stepbrother -- was a co-defendant,
10 Alex McBride. There was an issue about who actually
11 went into the manager's office and pulled a gun on the
12 manager and -- and -- and was going after the money.

13 Mr. Nimmons was seen walking through the --
14 through the lobby of the movie theater around that
15 period of time. There were also some emails -- or text
16 messages, or cell phone records, that you know had some
17 things on it during that period of time, that they said
18 was sent between Mr. Nimmons and his -- his
19 stepbrother, Alex McBride.

20 During that time when this issue came up, Sara
21 Drawdy represented his stepbrother. At -- when this
22 happened, like I said, we filed a motion for a
23 preliminary hearing. From my review of my file, that
24 that -- the initial prelim was continued until January.
25 The same with my client's taking with -- or talking

1 with my client, talking with the family, he gave me
2 permission to talk -- he gave me permission to talk to
3 Sarah Drawdy in regards to -- Sarah Drawdy had
4 contacted me about representing -- like a co --
5 representing Devin and his stepbrother together in that
6 attempted armed robbery at the movie theatre. So we
7 agreed to do the prelim together.

8 So we went and we actually did a joint prelim.
9 We did a joint prelim on the -- on the Starlight Movie
10 Theater case. I -- I then had a prelim with -- on
11 the -- on the home invasion case. And I actually had a
12 prelim -- this is in March of 2011 -- and had a prelim
13 on the burglary 2nd from the furniture store, so I did
14 all those.

15 Now, we had -- I mean, me and Sarah had
16 discussed -- particularly we had discussed the
17 Starlight Movie Theater. Because Jacob Tubbs, who was
18 a co-defendant of Mr. Nimmons in the home invasion
19 case, he at the very beginning, when he was arrested,
20 he gave up information on Mr. Nimmons and gave up
21 information on his stepbrother regarding the Starlight
22 Movie Theater case. And I think that's probably the
23 basis or the main reason, the basis for the probable
24 cause to go get the arrest warrant on my client.

25 So subsequently after that, Sarah Drawdy starts

1 representing Jacob Tubbs while she is representing the
2 stepbrother.

3 Well, we find out about it. My client finds out
4 about it. His family find outs about it, and everybody
5 is upset. I was upset. My client was upset. It's
6 just -- it was a problem.

7 She went -- and as she was still representing
8 the stepbrother, she went and had another interview or
9 sent the co-defendant in Jacob Tubbs, in the home
10 invasion case, she took him down to law enforcement and
11 made another statement. This time basically Jacob
12 Tubbs, the co-defendant, was -- was saying, I don't
13 remember anything I did, but I remember everything
14 Devin did. Devin went in the house and he's the one
15 that went in the house.

16 So I had a big problem with how that
17 interview -- or how that -- how that -- that interview
18 took place. And it was mainly Sarah Drawdy doing the
19 questioning, doing the interview. Then the
20 investigators got in at the tail end of it. So I
21 got -- we got that in discovery. I had had some
22 conversations with law enforcement about that being a
23 problem prior to this happening.

24 So I wrote a letter to -- to Sarah Drawdy.
25 Because at that point, the tape was cut off. And we

WILLIAM EPPS -- DIRECT EXAMINATION

1 had concerns if that -- if that interview had lasted
2 longer, or there were other things that came up in that
3 interview, that -- that dealt with my client and his
4 stepbrother in the -- in the movie theater case or the
5 attempted armed robbery. So I wrote a letter and asked
6 her to recuse herself, and to let me know if any -- any
7 communications or anything that had happened after the
8 tape had cut off, or anything of that nature. Well,
9 you know, she responded she didn't have any duty to my
10 client. So that's certainly an issue.

11 And then subsequent to that -- and that issue
12 was a little bit concerning. It upset me. I'm sure it
13 upset my client. I'm sure it upset Devin. It upset
14 his family to the point that I even went -- now, my --
15 my thing in representing my client, I -- number one, I
16 believed it was a conflict even though it wasn't a
17 direct conflict with my client, but it concerned me
18 because we had agreed collectively to work together in
19 the -- in the armed robbery case. I mean, we had
20 attempted to work together. It bled over -- there was
21 some overlap with statements and evidence from the home
22 invasion case that we had discussed, so I had big
23 concerns about that.

24 So I even went to discuss hypothetically with --
25 with the office of Desa Ballard, Professor Wilcox, just

1 kind of hypothetically because that did concern -- it
2 was an issue with me. I'm sure it was an issue with my
3 client. It concerned us all. How it implicated him in
4 regards to, number one, ethically, you know, I was just
5 as concerned as they were. It was never an issue with
6 me. It was like, what did she do. What -- how did
7 this -- what happened in that case with that
8 representation, with his stepbrother and Jacob Tubbs.
9 Number one, you know, I wouldn't have done it. But I
10 was thinking how -- does that affect -- how would that
11 affect, you know, these charges? Could it affect these
12 charges. And I looked at -- we discussed that, I mean
13 extensively.

14 We discussed -- we discussed any -- any -- any
15 defenses. We discussed the elements. We discussed the
16 minimum -- the minimum -- the minimum or maximum
17 penalties. I mean, certainly burg 1st and armed
18 robbery, you're looking at a 15 year minimum, as well
19 as a 10 year minimum.

20 I will -- you know, I would have discussions
21 with the Solicitor's Office regarding, you know,
22 trying -- trying to work something out, and they were
23 steady at the beginning, 20 years, 20 years to Mr.
24 Nimmons. They -- they thought he was the ringleader.
25 They thought that he was the one that -- that was the

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WILLIAM EPPS -- DIRECT EXAMINATION

1 head of this, he just wanted -- I mean they wanted
2 him -- they were after Devin. Okay.

3 I had Detective Williams, who was the lead
4 detective on the attempted armed robbery, came to my
5 office. He had a conversation with me. He said, look,
6 I want the girl. I want who went into that office.

7 And there was a -- a -- a girl in the beginning,
8 Hailey Nichols, who had been arrested for the crime but
9 she had been misidentified. So that case against her
10 got dismissed. Okay. But Williams came to see me and
11 was -- he said I want her.

12 I had -- I had numerous conversations with the
13 Solicitor's Office trying to get something -- trying to
14 maybe negotiate a plea if my client -- if he -- if he
15 knew anything or could to cooperate with -- with the
16 Starlight. They didn't want to -- the Solicitor's
17 Office and law enforcement didn't -- they didn't
18 want -- they weren't willing to do that. They weren't
19 willing to come down on -- on the sentence or come
20 down -- or negotiate a sentence based on that.

21 So it goes on a little bit longer. And then we
22 had entered into a consent order so -- so Mr. Nimmons
23 can work while he's on house arrest. He starts working
24 with Southern Concrete.

25 Then -- then I get an offer, I think -- then I

1 get an offer of 12 years. If Devin pled to everything,
2 they would offer him 12 years straight up. I got --
3 Devin came to my office as he did. I mean anything --
4 anytime we got some discovery in, and anything -- any
5 time anything came in from the Solicitor's Office, I
6 would sit down with him and explain it to him and we'd
7 look at it, and he would turn that down. We discussed
8 that extensively.

9 You know, he was fully aware that if he was --
10 went to trial and he was found guilty for these
11 charges, particularly the burg 1st or armed robbery,
12 that he was looking at mandatory minimums. But burg
13 1st, you're looking at 15 -- 15 to life. So -- and he
14 turned that down. I mean, he declined the 12 years.

15 And there were issues. We talked about it. You
16 know, certainly we talked about any defenses that he
17 may have, withdraw -- in his statement -- I mean he
18 gave a statement at the beginning. And in that
19 statement, the one that that -- the last statement he
20 gave, he said that you know he -- he helped plan it.
21 He gave the gun. He reconned the place, that they got
22 up to the point of being there and every -- and Chris
23 Brown and Jacob Tubbs were so messed up on pills and --
24 and alcohol and drugs, that they almost had a wreck.
25 And he got out, and he got in a big argument. he got

1 out of the car.

2 I explained to him what the defenses would
3 draw -- would draw on this; i.e., if you withdraw from
4 a situation, you communicate that to your co-defendants
5 or your confederates and you try to -- you let them
6 know you withdraw, it's a defense. We discussed that.

7 It -- it -- you know, so we discussed all
8 aspects of the case. I mean there were cases -- I know
9 Mr. Heggleston is here. He misidentified what was
10 taken from his house that night. He didn't see too
11 good. There was only two people there.

12 We got phone records from -- from -- from law --
13 we got phone records -- they took his phone. They took
14 Devin's phone. They took Chris Brown's phone. They
15 took Jake Tubb's phone. I mean, I got and looked
16 through all the phone records. There were videos on
17 these phones that -- that we were given. I mean, all
18 this -- all this was reviewed with Devin.

19 I mean, I have got -- I got them in my notes
20 here. I have got -- I have got my file box over here
21 of dates and times. I mean, you have got -- during
22 Chris Brown's interview with Investigator Gebing,
23 Gebing asked him why -- why is -- if Nimmons -- if Mr.
24 Nimmons is in the house with you, why is he calling you
25 during this period of time -- because they said it

1 happened between 8:00 and 8:30ish, something around
2 that. And Chris didn't know. You know, it was a lot
3 of these -- these phone records were -- you know, he
4 did everything, but we don't know what we did.

5 All that was reviewed. Jim Bolt had -- there
6 was a bunch of phone records that really nobody -- I
7 don't think anybody could make heads or tails of what
8 they -- what they were, which you could say who called
9 who at certain periods of time.

10 And, you know, I -- it would benefit -- well, to
11 my client, that there were some calls going to Chris
12 Brown, who was definitely in the house because he's the
13 individual who walked in the house with the -- with the
14 application, the survey -- the -- the survey for
15 National Guard or the Armory -- or the Army without a
16 mask. And then somebody come in after him with a gun.

17 And that they're in the house arguably for 20 to
18 30 minutes. All this is reviewed with -- with Mr.
19 Nimmons. So he gets set for -- we come down to -- down
20 to April, we're notified that it's going to be set on
21 the trial docket.

22 And let me -- I want to back up a little bit
23 because he got indicted -- the Solicitor's Office
24 indicted him again in August -- I think it was August
25 of 2011 for accessory before the fact to burg 1st;

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1 accessory before the fact of kidnapping; and accessory
2 before the fact of armed robbery.

3 Now, that carries the same penalties as the
4 principle prime. And they base that off of his
5 statement that he gave saying that I planned it, I
6 helped. I gave him the gun. I reconned the house. I
7 told him where it was. And I got out. I left and got
8 out of the car and walked home.

9 So it comes down to trial. They -- they notify
10 me of trial. I notify Mr. Nimmons. We talked to him.
11 We get together. I'm reviewing everything. I'm
12 reviewing the whole file, making notes, going back
13 through all of the discovery, going through defenses
14 that I had an issue with the -- with the indictment
15 for -- for the assessment before the fact because it
16 did not include the element of him not being present at
17 the scene. We discussed that.

18 I actually went down to the -- I actually
19 contacted the Solicitor and said, look, they were going
20 to try him -- it was on the trial roster or the trial
21 docket for that -- that term of court, but it was for
22 all six -- it was four -- it was just for the home
23 invasion. But it was for the principle charges, as
24 well as the accessory before the fact on those charges.

25 So I contacted the Solicitor and said, listen,

1 I -- you know, you -- I -- you got -- it's my position
2 you're going to have to elect what you want to go
3 forward on. You need to elect either the principle
4 charges or the accessory before the fact. So she
5 elected to try the accessory before the fact. She
6 notified me we are going to do accessory before the
7 fact on all three of those charges.

8 I also notified her at that point in time that I
9 had a real problem regarding what had transpired --
10 what had happened between -- with Sara Drawdy, what had
11 happened with Jacob Tubbs, and what had happened with
12 the stepbrother and how that affected -- how -- number
13 one, how that -- the way that happened in the context
14 of those two cases, and the -- you know, how I believe
15 it affected my client in cases -- in both cases that
16 were pending against him.

17 So I -- you know, it was -- I filed a motion to
18 quash the indictments. And I filed a motion to
19 disqualify the 10th Circuit Solicitor's Office, which
20 it was heard, I think, on May -- April 18th of 2013 up
21 in Oconee.

22 Now, you know -- and Judge McIntosh denied it.
23 Now, Judge McIntosh had represented Watson McBride, who
24 was Mr. Nimmons' stepfather. And twice we had a -- the
25 bond modification hearing that I asked that he be

1 allowed to work at -- work on house arrest. Judge
2 McIntosh covered that hearing.

3 Judge McIntosh told us up front said, look, I
4 represented Mr. McBride in the past, do you want me to
5 recuse myself? My client didn't -- didn't want him to
6 be recused, nor did his family. That -- Judge McIntosh
7 was the trial judge for that term of court that week
8 that it was set for trial.

9 At the motion to quash the indictments, Judge
10 McIntosh asked again, do you want me to recuse myself
11 because I represented -- formerly represented Watson
12 McBride? I talked to my client. I talked to Mr.
13 McBride, his mother, Ms. McBride. They were in the
14 courtroom. They -- they didn't -- they declined --
15 they did not want him -- they did not object to him
16 hearing the case. They did not object to him hearing
17 the motion. They did not object to him hearing the
18 case.

19 So he denied the motion to quash the
20 indictments. And I spent the better part of the week,
21 two weeks, going through the file, getting ready for
22 trial as far as putting in my defenses, you know, to
23 quash the indictment; reviewing all the records,
24 talking with my client. And I know Devin was in
25 Columbia for his -- for his job. There was a couple of

1 times he wasn't able to come in.

2 So mainly that weekend, we spent a lot of time
3 mainly on the Sunday, all day Sunday. It was myself;
4 it was my associate at the time, Cliff Sams, and Devin.
5 And we went through -- we went through our preparation
6 to go to trial.

7 We talked about the maximum penalties, what the
8 elements were, what they would have to prove. Our
9 defenses, and our defenses that that -- that, you know,
10 we could put out there that the State would have to
11 disprove them. You know -- you know, just everything
12 about what we needed to do to prepare.

13 At that point in time, he was -- Devin was like,
14 well, I don't feel like I'm ready to go. Then he asked
15 me -- it came up, well, see if you can get a
16 continuance to, you know, just say you don't -- we
17 object to Judge McIntosh hearing the case at that time.
18 Well, I couldn't -- I wasn't going to do that because
19 we had twice pre -- prior to that, had no objection to
20 Judge McIntosh presiding over -- over this case of this
21 trial.

22 Also, at that point in time, the Solicitor's
23 Office, I sat down -- I went out -- actually I went out
24 to the Sheriff's Department and I reviewed all the
25 evidence they had in evidence.

1 I went and had conversations with the
2 Solicitor's Office, I mean, as far as trying to you
3 know -- if they were -- you know, they obviously can't
4 -- they were wanting -- they were trying to negotiate a
5 plea, too, at the end.

6 I honestly -- when I -- you know -- when I filed
7 that motion to quash the indictment to disqualify their
8 office, you know, they got a little upset. So, you
9 know, they wouldn't talk to me for -- for a couple of
10 days. But then they came back, well, what about this.
11 What about -- then the -- but the conversations at that
12 time started -- started reducing some of these charges
13 so that these mandatory minimums are taken away.

14 I.e., first, I think they were offering, you
15 know, if he plead to reduced charges of accessory
16 before the fact, with a range from zero to 20 -- you
17 know, my problem -- you know, also, in preparing for
18 that case, and them going with the accessory before the
19 fact, I mean it's clear, they had to prove that he was
20 not there at the scene. That it happened, that he
21 aided, abetted, helped them, but he was not present at
22 the scene when this crime took place.

23 And I knew that, you know, they had -- they
24 had -- I had the list of the witnesses. The
25 Solicitor's Office said that they're going to be --

WILLIAM EPPS -- DIRECT EXAMINATION

1 Tubbs and Brown are going to be there. They are going
2 to be -- they are there. They've given statements
3 saying Devin is at the scene. Mr. Heggleston, I know
4 he was going to testify. He is a good bet. I mean, he
5 is going to say what he said in all the bond hearings
6 prior, that Devin was at the scene. So they were going
7 to put him at the scene.

8 And, you know, if it's just accessory before the
9 fact, and that's all the evidence they had, then you
10 know, I -- in my opinion, that's -- you know, that's
11 grounds for a directed verdict, because they are
12 putting him at the scene and not away from the scene.
13 However, his statement would have -- would have come
14 in.

15 And I tried and looked, and tried to think of
16 some way to get -- keep his statement out. And that's
17 his own statement, said I got out of the car and I was
18 not there. So if that came in, then you have got a
19 jury question. Then you've got a jury issue. And
20 it -- it doesn't get dismissed, but it goes to the jury
21 to make a determination, was he there or was he not
22 there.

23 It was kind of an -- I mean, it's -- it's a
24 difficult -- that was a problem. That was certainly a
25 problem.

1 So as I talked with the Solicitor, as we got
2 into -- you know, talking about something -- working --
3 or just talking about, all right, what are you
4 offering. They offered to take away the mandatory
5 minimums, he'd end up with zero -- zero to 20, a range.
6 They argued for the high side; we argued for the low
7 side.

8 You know, during that time, we discussed that.
9 Devin has got a lot of good qualities about him. He
10 has got his background. You know, no trouble in his
11 background. Never been involved with DJJ; never been
12 involved with DSS. Comes from a, you know, a good
13 family; never had any drug problem; never had any
14 history of violence; never had any criminal history;
15 never been arrested except for a two or three month
16 span of time in two -- the end of 2010 when, you know,
17 he really -- he -- he did it up. It was very
18 serious -- serious charges that -- that he did -- or
19 was in that time -- that time span in -- in December,
20 the end of 2010.

21 However, other than that, he didn't -- I mean,
22 he had no other record. He had done some good things.
23 He had -- he had -- he was in the National Guard
24 Reserves. He had, you know, been on a mission trip.

25 He -- he -- he was working for Southern -- that

1 was prior, but he had -- you know, he was working for
2 Southern Concrete. And when he got on with Southern
3 Concrete, I mean, he was doing real well. I mean, at
4 the plea hearing, Mr. Bolt came and testified that he
5 was doing -- he is doing very well. He has got an
6 opportunity with us, even with all this going on, we
7 would like to keep him working. We'd like to -- we'd
8 like to -- he can move up. You know, I think he was in
9 a program for, you know, to -- to -- to move up in that
10 company.

11 Gene Christenson (ph) who was -- was employed at
12 the Haven of Rest Ministries, he's their neighbor. He
13 said look, I've known him for three years. You know,
14 it's a good -- it's a -- you know, he's a good kid. He
15 made some mistakes. We'll put him in -- I sent him up.
16 We walked over there, talked to Curtis Poless (ph).
17 Curtis Poless talked to him, agreed to put him in the
18 Haven of Rest. I threw that out. I tried to negotiate
19 that with Katherine of the Solicitor's Office.

20 You know, that was -- I threw it out -- YOA, it
21 was a YOA. You know, they were not -- they took a hard
22 line with Devin, and they wouldn't consider that.
23 Again, I tried to -- to even throw that in. I tried to
24 work something out with that in the context of him
25 cooperating in the -- in the Starlight Movie Theater.

WILLIAM EPPS -- DIRECT EXAMINATION

1 You know, they wouldn't -- at that point in
2 time, before -- before that that -- that trial week,
3 they didn't want to -- they refused to -- to really
4 discuss it or really talk about it. They wanted him.
5 They offered that 12, and that was it. He either
6 agreed to the 12 or not, and it's off the table.

7 And then -- then they started coming in at 20 to
8 zero. All right. And then we eventually got it
9 down -- we got it down to zero to 15. And they dropped
10 it down to the accessory before the fact of burglary
11 1st, to accessory to before the fact of burglary 2nd
12 violence. Accessory before the fact of kidnapping;
13 accessory before the fact of strong armed robbery,
14 which took off -- took the mandatory minimums off the
15 table, and the range from zero to 15.

16 So I couldn't -- you know, I thought I was -- I
17 mean I -- legally, you know, at that point in time, I
18 advised him, you know, if you -- if -- I had to. I
19 mean you, if you go to trial and you're found guilty,
20 you are looking at a mandatory minimum of 15, up to
21 life on the burg 1st. You are looking up to 30 years
22 on the kidnapping, and a mandatory minimum of 10 to 20
23 on the armed robbery. That's just -- that's just --
24 that's just the case that they -- that was -- that was
25 the cases that were going to be tried that week. If

1 they had told me -- the Solicitor's office had told me
2 that if he's -- if something happens and he's not
3 convicted, or if he's found not guilty on those
4 charges, or that -- then we are going to try him on the
5 on the principle charges.

6 And I looked into that. You know, can they do
7 that? Can they -- can they -- you know, is that a
8 violation of his due process? Is that a violation of
9 double jeopardy? I looked into all of that, you know.

10 And from what I saw, you know, they -- they
11 could -- they could at least -- I think they may
12 have -- could have tried him. I would have had some
13 arguments against it, but they could have tried it on
14 the principle charges of the home invasion.

15 They could also come back, and they are going to
16 try it on the Starlight, and then they got that
17 burglary 2nd. You know, that was a problem there
18 because, you know, they had actually closed that case
19 out. They closed that case out because the law
20 enforcement thought somebody else had done it. But
21 then they went back and talked to his cousin, Chris
22 Nimmons, and they -- he gave a statement saying it was
23 stuff from that furniture store in his truck that he
24 borrowed from Devin, so they opened it back up. So
25 they had a couple of bites of the apple at Devin.

WILLIAM EPPS -- DIRECT EXAMINATION

1 So, you know, we had a long -- we had a long
2 conversation. It was -- it was, you know, that Sunday
3 about -- you know, what they -- what they were
4 offering. And it was down to 15 to -- you know, he
5 was -- he said, well, I want zero to 10. Well, I'll
6 see what I can do. Okay. They got it down to 15; zero
7 to 15, and he had some good qualities. He had some
8 positive points. And in my opinion that I -- that I
9 thought would be good as mitigation for Devin.

10 When he left my office that Sunday, before the
11 trial started on that Monday, he had agreed -- he said,
12 okay, we'll -- you know, he agreed to -- to the plea of
13 zero to 15. When he got home that night, he texted me,
14 and said, no, I don't agree anymore. Okay. All right.
15 I think there was some push back with his family. You
16 know, with Mr. Watson which I understand -- you know,
17 here again, he had given me permission to talk to his
18 family, so I actually that -- that weekend, I had
19 talked to his stepfather. All right. And, you know,
20 talked to them about the situation. I mean, he had
21 concerns. He had legitimate concerns about -- or he
22 had concerns about his son, which I understand, but he
23 had concerns about his son who was a co-defendant in
24 the Starlight case.

25 And, you know, we discussed that. It

1 shouldn't -- you know, my opinion it wouldn't affect
2 him. I mean, this is dealing with the -- with the
3 actual perpetrator of that -- of what happened that
4 night, you know -- not the stepbrother, but actually
5 the person who law enforcement, you know, wanted --
6 that actually went into the manager's office, and then
7 she was a female. So, you know, there was some --
8 there was some issue with that.

9 And we set out to talk to -- to Devin, you know,
10 prior to the plea. And I, you know, we talked about it
11 and he accepted it. And I fully explained to Devin,
12 you know, look -- you know, I think you got -- I -- I
13 think we can make some good arguments as to mitigation,
14 but there is no guarantee -- and I never guarantee
15 anything. I never guarantee -- I never guarantee any
16 outcomes. You know, this is -- this is what we -- this
17 is this is the high side; this is the low side. Here's
18 what we are doing.

19 You know, this issue about the house arrest,
20 credit for time served on house arrest, now generally
21 you're not going to get it, but -- you know, I talked
22 with other attorneys, and you know they took -- and
23 they have gotten periods -- they have gone before
24 judges who have given their clients credit for house
25 arrest. And I thought he had a good argument on his

1 house -- he received credit on his house arrest,
2 because this was not your normal house arrest. This
3 was, in effect, lockdown. I mean, this was, you know,
4 this was -- he couldn't go anywhere. So, you know, I
5 thought that maybe we -- we -- he had to make a strong
6 argument from doing --

7 THE COURT: Go ahead. We need to take a break
8 though. This is getting a little longer than I thought
9 it would be, but go ahead.

10 MR. WELBORN: I think he's about finished.

11 THE WITNESS: Yes, yes, sir. I'm sorry. So we
12 sat -- so, he accepts that plea. He decides he
13 wants -- he decides to take it, you know. Then, you
14 know, we -- he pleads.

15 You know, Judge McIntosh fully -- he fully
16 understands the elements. He fully understands that
17 one is most serious and one is serious, and it
18 constitutes a strike, that he's looking at the time
19 he's looking at. You know, he is fully aware that
20 Judge McIntosh is going to sentence him that day up to
21 65 years as opposed to, you know, what we're asking
22 for, a range from zero to 15.

23 So, obviously, we asked for, you know, the low
24 side of that. They asked for the high side of that.
25 I've tried to, you know, factor in. I tried to fashion

1 or to present to the court as mitigation alternative
2 forms of punishment, YOA, consecutive to a sentence on
3 the accessory before the fact burg 2nd, and kidnapping
4 with -- with more -- with five years probation, with a
5 lot of time hanging over his head which would be, in
6 essence, you know, like 11 years under a probationary
7 period.

8 He pled to that. He pled -- Judge McIntosh gave
9 him 15 years. And, you know, and five years probation
10 on a conspiracy. And the rest of the charges were
11 dismissed.

12 Obviously, you know, I was to -- hoped that
13 based on his background, based on his history, based on
14 his family, based on some of the good things that he
15 had done, that the court would take that into account
16 and give him less than that. That's not what happened.

17 I went down -- I went downstairs -- downstairs
18 in the holding room and had -- talked to him. And
19 that's where I explained his -- he had, you know, a
20 couple of rights. His, you know, ten days to appeal,
21 and discussed that with him.

22 Third, he was upset, which I -- I mean I
23 understand. He was upset. He blamed me. He said I
24 got him 15 years. He -- I asked him point blank, I
25 said, do you want me to appeal? Do you want me to

1 appeal? And he told me, look, you know, it doesn't
2 matter. I'm going to kill myself. Okay. And he said
3 that a few times.

4 And I asked him again, I explained it to him. I
5 said, look, do you want me to appeal? I -- it doesn't
6 matter. It's not going to matter anyway, because I'm
7 not going to do -- I can't do this. I'm going to kill
8 myself.

9 So then I said then -- you know, you got me 15
10 years. I said, well, if you don't like what I did -- I
11 mean, if you got a problem with what I did, then I
12 explained to him post conviction relief. That's -- you
13 got this. I mean, if you don't like what I did, you
14 have a problem with what I did, then you can certainly
15 file a petition for post conviction relief, and I
16 explained that to him. And at that point in time, I
17 left.

18 And at that point in time, I -- I -- you know,
19 his mother had emailed me a couple of times. She said
20 I don't understand about an appeal. I explained that,
21 you know, it's very difficult to appeal a guilty plea.
22 I didn't think it would be very likely that it would be
23 overturned in this one, as it was free and voluntary.

24 I -- I did discuss with her, because he did give
25 up -- he did make a statement regarding the female who

WILLIAM EPPS -- DIRECT EXAMINATION

1 went into the manager's office at Starlight. Based on
2 what he did -- and law enforcement admitted that it
3 benefited them -- based on what he said, they went and
4 got a warrant on that girl, and they went -- went and
5 arrested her.

6 And there's that statute that you -- you can
7 come back, that's on the State's motion, within a year
8 and maybe get some -- a sentence reduction based on
9 substantial assistance. And I -- I let his momma know
10 about that. I let his mother know about that.

11 Also, I had -- you know, I had -- I had a
12 conversation -- I had approached the Solicitor's
13 Office. And, you know, then -- then, you know, I guess
14 here we are.

15 Q. Mr. Epps, I want to thank you for that
16 explanation.

17 A. Okay.

18 Q. A couple of short questions.

19 A. Yes, sir.

20 Q. Did you push the issue of the home
21 incarceration as being counted as time served --
22 testify to a little bit to that.

23 A. No, sir. I -- I told him, listen, I've --
24 I've -- I've never guaranteed anything. I make it a
25 point to not -- I don't guarantee anybody any outcome

1 in any case. I said, listen, you've got generally a
2 home incarceration -- based on the conditions that were
3 imposed on him, I certainly -- it's the judges's
4 discretion, but I would argue that because it's not
5 your typical house arrest, it is in essence in
6 lockdown, that I would argue and hope that the judge
7 would give him some credit for his house arrest.

8 Q. A couple of brief more questions and I'm done.
9 Did you interview every person that he told you to
10 interview?

11 A. That he told me to interview?

12 Q. Yes, sir.

13 A. Yes.

14 Q. And I think there were a couple of people,
15 maybe his co-defendants that were pulled over at
16 Anderson University; are you familiar with that? That
17 happened the same night?

18 A. Yes.

19 Q. Did you talk to those people or check out what
20 happened with them?

21 A. I didn't -- I didn't actually -- no, I did
22 not -- did I talk with Chris Brown or Jacob Tubbs?

23 Q. Yes.

24 A. No, I didn't physically speak with them
25 because they had statements. I mean, we reviewed

1 their -- their statements. We reviewed the reports of
2 the Anderson University Police Department. I had those
3 reports, plus we had the detailed notes that they --
4 they were more detailed notes that came in prior to
5 trial that we reviewed.

6 Q. All right. One more question now, did he --
7 my client alleges that he separated himself from this
8 deal before it came down in Mr. Heggleston's -- if I am
9 pronouncing his name correctly?

10 A. Yes, sir.

11 Q. Did you review all of the phone records, or
12 did you allege you would hire an expert to look at
13 those phone records to prove that that's what happened?
14 That what he said is true?

15 A. I -- I reviewed the phone records, and
16 actually the State, Ted Savinski (ph), who I had -- we
17 discussed hiring -- the State hiring. And he issued a
18 report. And he said -- and Devin saw the report. The
19 report is in the file.

20 And actually, I've got it right here, is the --
21 the calls that Jacob Tubbs made to Chris that night,
22 the calls that Chris made to Devin that night, and
23 Devin called Chris. And based on Savinski's report,
24 based on that report, he had around 7:14 or so, and
25 8:12, had Devin's phone in the vicinity or within a

1 three mile radius -- or -- of what he called it of Mr.
2 Heggleston's home. And then about 8:45 to after 9:00,
3 had him on the other side of town in that area --

4 Q. So what you're saying is, at some time he was
5 close enough to where he could say he was there; is
6 that what you're saying?

7 A. There was -- I mean you couldn't put him --
8 you couldn't put him exactly, but there was an issue --
9 there was a three mile -- there was an argument there,
10 but there was a -- the way that the report read, there
11 was a span of -- of -- he termed it a three mile
12 radius.

13 Q. My client said that he did ask you to appeal;
14 what is your position on that?

15 A. He didn't ask me to appeal? I asked him three
16 or four times, do you want me appeal. And he said, no,
17 I'm going to kill himself. He never specifically said
18 "appeal my case". I asked him -- because when that
19 happened, he was emotional. And I went down and
20 explained it to him, and I asked him multiple times --

21 MR. WHITMIRE: Your Honor, I'm going to object;
22 the question is asked and answer.

23 THE COURT: Yeah. Yeah. Asked and answered.

24 MR. WHITMIRE: He gave a thorough answer on the
25 record.

WILLIAM EPPS -- DIRECT EXAMINATION

1 THE COURT: Yeah. Sustained.

2 MR. WELBORN: Okay.

3 THE COURT: All right.

4 MR. WHITMIRE: No cross examination.

5 THE COURT: All right. Thank you, sir. You can
6 step down.

7 THE WITNESS: Thank you, Your Honor.

8 THE COURT: All right. We need to take a quick
9 break. I've got this luncheon -- who -- who -- how
10 many more witness have you got?

11 MR. WHITMIRE: I -- that's it. I would like to
12 have counsel here just in case I want to call him in my
13 case in chief, but...

14 THE COURT: And you've got one more?

15 MR. WELBORN: Are you talking to me, Your Honor?

16 THE COURT: Yes, sir.

17 MR. WELBORN: I may -- may have two or three more,
18 but they'll be very short witnesses.

19 THE COURT: All right. We'll be back.

20 MR. WELBORN: What time, Your Honor?

21 THE COURT: Ten or 15 minutes.

22 MR. WELBORN: Oh, okay.

23 THE COURT: Okay.

24 MR. WHITMIRE: Thank you, Judge.

25 (After a recess, court reconvened.)

D. NIMMONS -- DIRECT EXAMINATION

1 THE COURT: Okay. Sorry about that. You have
2 rested?

3 MR. WELBORN: No, sir.

4 THE COURT: Okay. You have rested?

5 MR. WHITMIRE: I haven't called my case.

6 THE COURT: You haven't called anybody. All
7 right. Call your next witness. Somebody had to have
8 rested -- I've been doing too many of these back to
9 back.

10 MR. WELBORN: I'm sorry, Your Honor, I was --

11 THE COURT: No, that's okay. Go ahead.

12 MR. WELBORN: I call Devin Nimmons.

13 DEVIN NIMMONS, having been
14 first duly sworn, testified as follows:

15 THE COURT: All right. Place your left hand on
16 the Bible and raise your right hand. All right. Come
17 around here. And if you would, give us your full name
18 and spell your last name.

19 THE WITNESS: Devin Michael Nimmons.

20 N-I-M-M-O-N-S.

21 **DIRECT EXAMINATION BY MR. WELBORN:**

22 Q. Mr. Nimmons, you filed this post conviction
23 relief also -- and in it, you have alleged that there
24 was an involuntary plea deal, as I think you phrased
25 it, and you also allege there was a conflict of

1 interest. You would also allege that you asked for an
2 appeal; that appeal was never made on your behalf.

3 So let's talk about these for a little bit.

4 First of all, without going through all the facts again
5 on the charges -- I think that's ample before the
6 court. You allege that there was an involuntary plea
7 deal. By that I assume you mean that you were forced
8 to plead guilty when you didn't want to plead guilty;
9 is that what you're saying?

10 A. Yes. That's what I'm saying.

11 Q. And you're saying that because -- but for your
12 lawyer's ineffective assistance of counsel, you would
13 have insisted upon going to trial; is that correct?

14 A. That's correct.

15 Q. Now, you need to speak up so the court
16 reporter can hear you, as well as everyone in the
17 courtroom. All right. Tell the court please, sir, why
18 you were alleging that you were involuntarily forced to
19 plead guilty to these numbers of charges?

20 A. Because my day -- the day that I plead guilty,
21 I was under the impression that I was going to trial;
22 that we were preparing to go to trial. If -- in -- at
23 the -- at the -- when I had done my jury roster and
24 everything the night before, when I came in here for my
25 day of trial, I was called to a room out there in the

1 corridor, in which Norman came at me with the last
2 chance to take that zero to 15, and pretty much stated
3 like he -- I mean, he really -- he wasn't prepared like
4 --

5 Q. Did he tell you that? Did he say, Mr.
6 Nimmons -- or whatever he calls you -- did he say, I'm
7 not prepared to go forward?

8 A. He says that it didn't look good. That he --
9 he couldn't keep my -- he doesn't think he could keep
10 my statement out. And that if I went on, I could
11 receive 15 to life. And when I heard that, I mean, I
12 have never been in any kind of trouble before. And
13 when I heard that kind of number, it -- it scared me.

14 Q. Well, you listened to Mr. Epps testify earlier
15 today about the preparations he made and all the
16 procedural background of this case?

17 A. Right.

18 Q. You would agree that the procedural
19 background, the number of charges you had, was
20 substantial; would you agree with that?

21 A. I would agree.

22 Q. Now, did you meet with Mr. Epps?

23 A. Yeah, I met with Mr. Epps.

24 Q. And how frequently or how often, how many
25 times did you meet with Mr. Epps?

1 A. I would say anywhere from six to 10 times. I
2 don't know the exact number.

3 Q. And did you ever call Mr. Epps?

4 A. Yes.

5 Q. Did he return those phone calls?

6 A. He did.

7 Q. And do you have an idea, roughly, of how many
8 times you called him?

9 A. No. I don't know exactly how many times I
10 have called him.

11 Q. But he returned the calls that you made to
12 him; would that be fair to say?

13 A. Yes.

14 Q. I want you to tell the court specifically
15 then, after listening to what he says he did to prepare
16 for your trial, I want you to tell the court
17 specifically what he was not prepared for in going
18 forward that day.

19 A. Well, he says --

20 Q. You need to speak up.

21 A. Okay. He never interviewed any of those
22 officers at Anderson University that could put Jake
23 Tubbs and my co-defendant with the stolen merchandise
24 from Mr. Heggleston's house together. He never
25 interviewed them. All we had was their statements, but

1 still, I mean, at minimum, you're supposed to interview
2 witnesses.

3 And he -- Heather Campbell, who wore a wire on
4 me, it would have been -- she was going to be, from
5 what the Solicitor's Office made me aware of, she was
6 going to be called up on the stand. She was never
7 interviewed by Norman, who also was my alibi for that
8 night after -- after this incident, and who also wore
9 the wire on me that -- what I told her corroborated
10 with my statement. She was never interviewed by him.

11 Q. All right. So two -- the officers at Anderson
12 University -- how many -- how many of those were there?

13 A. There was three of them.

14 Q. And he didn't interview any of those three?

15 A. No.

16 Q. He looked at their statements?

17 A. Yes.

18 Q. Now, based upon their statements -- and I'm
19 just asking you to tell the court, why should he have
20 interviewed them if he looked at their statements and
21 for some reason felt, I know this is what they're going
22 to say; why should he have interviewed them?

23 A. I mean, if you are going to interview -- if
24 they are going to be called as witnesses in a trial,
25 you're supposed to interview potential witnesses.

D. NIMMONS -- DIRECT EXAMINATION

1 Q. Did -- would you have, looking back, would you
2 have insisted upon them testifying?

3 A. Yes.

4 Q. What would their testimony have been based on
5 those statements?

6 A. Their testimony would have been based upon the
7 statements, but they could have gave -- if they could
8 have gave the facts about it that might not have been
9 stated in the statements.

10 Q. Well, in general, what -- what would the
11 statements, what -- wouldn't their testimony have been
12 based upon those statements? Just in general?

13 A. The three officers?

14 Q. Yes.

15 A. The three officers --

16 MR. WHITMIRE: Objection, hearsay.

17 THE COURT: Sustained. You -- don't tell me what
18 somebody else told you. Okay. That's hearsay.

19 MR. WELBORN: I apologize, Your Honor. I asked
20 him what the statements basically said.

21 THE COURT: All right. I'll allow you to testify
22 about what you know the statements said. Don't tell me
23 what anybody else said.

24 BY MR. WELBORN:

25 Q. Tell me what those statements said.

1 A. The statements said that Jake Tubbs and Chris
2 Brown were caught at Anderson University campus, like
3 roughly 10 to 15 minutes after the 911 call was made
4 from Mr. Heggleston. The statements said that they
5 were together. Chris was in Army fatigues, and Jake
6 was in darker -- darker fatigues. And that they --
7 they seen the stocks of a rifle.

8 And after that, they searched the vehicle and
9 found another weapon, which both of those weapons --
10 after the -- after all that was done, it was the
11 statement of weapons that were described stolen by Mr.
12 Heggleston. And also that Chris was wearing the Army
13 fatigues, which was -- which he used to get into Mr.
14 Heggleston's home.

15 Q. All right. What would the statement from the
16 girl who wore the wire -- what's her name?

17 A. Heather Campbell.

18 Q. Yeah. He didn't interview her?

19 A. No.

20 Q. What was her statement?

21 A. That I was with her from 9:00 after. And when
22 she wore the wire on me, the -- what I told her on that
23 recording was the same thing I told them on the
24 statement about removing myself from the situation.

25 Q. When did you remove yourself from the

1 situation, Devin? What time?

2 A. It was right before I made those calls to
3 Chris Brown, telling him to turn around -- seven
4 something. I don't remember the exact time.

5 Q. Now, did you ask your lawyer, Mr. Epps, to
6 hire an expert regarding these phone calls to show, in
7 some fashion, your position would have been far away
8 from the alleged victim's home?

9 A. Well, he told me he was going to, so -- I
10 mean, I didn't think I needed to tell him to do that.

11 Q. So you told him to do that?

12 A. Yes.

13 Q. To your knowledge, he didn't hire an expert?

14 A. That's -- that's right. He went off the
15 State's expert.

16 Q. Yeah. Who else would have testified at your
17 trial that would have been favorable to your position,
18 Devin?

19 A. I'm not sure of anyone else that would be
20 favorable --

21 Q. I'm sorry, sir?

22 A. I don't think there's anyone else that would
23 be a favorable witness.

24 Q. Okay. So who would have been your witnesses
25 at trial, Devin? I think that's the better question.

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1 A. Okay. I would have called those three A.U.
2 officers, and I would have called Heather Campbell.

3 Q. Okay.

4 A. Those statements from the --

5 Q. And those are people he didn't interview?

6 A. That's correct.

7 Q. Now, you've been lead to believe up until what
8 point that you were going to trial, that you were
9 trying this case? Up to what day and hour did -- were
10 you still believing that?

11 A. Until -- until the day of April -- April 21st,
12 I had turned down 20 years. I had turned down 12
13 years. If I intended to take the -- a solid plea deal,
14 it seems like I would have took something that -- that
15 was offered, that I knew I wouldn't get 15.

16 Q. All right. Now, there was testimony from Mr.
17 Epps that on Sunday, y'all met at his office before the
18 Monday trial; did y'all do that?

19 A. Yes.

20 Q. And did y'all prepare for trial that day?

21 A. No, we talked -- mainly, we were arguing about
22 the plea arrangement that they offered, the zero to 20.
23 And all he did is acted like he went and made a phone
24 call, and came back all of a sudden and said, the
25 Solicitor had went down to zero to 15. By then, it's

1 already too late for me to take the 12 years that was
2 offered to me twice.

3 Q. All right. Now, do you understand that if you
4 had taken this case to trial, Devin, that you could
5 have ended up with maybe even life imprisonment?

6 A. That's right.

7 Q. And do you understand that if the court grants
8 your request for post conviction relief, what you get
9 is a new trial; do you understand that?

10 A. Right.

11 Q. And do you understand that based upon the
12 conversations we've had, you can get a worse sentence
13 if you're found guilty in a subsequent trial; do you
14 understand that?

15 A. That's correct.

16 Q. Do you understand that the charges that were
17 dismissed as a part of this plea deal, those charges
18 could be brought back up -- all of them could be
19 brought back up; do you understand that?

20 A. Right.

21 Q. And you want to do that?

22 A. Yes, or I want -- when it comes to a plea
23 arrangement, you're still supposed to be ready,
24 effective counsel. If my plea arrangement would have
25 been right, it would have been right for me to be

1 advised to take 12 years versus getting 15, and also
2 five years probation consecutive to that. That doesn't
3 make any sense.

4 Q. Well, I want to make sure I understand this
5 and the court does, too. Okay. Are you telling the
6 court that had you been given 12 years, you would have
7 taken it; is that what you're telling the court?

8 A. I'm saying that if -- if Norman would have
9 advised me rightly about -- if he was wanting me to
10 take that plea arrangement at the time -- because he
11 was -- he had me pumped like we -- you know, we had
12 good arguments for trial. If -- if he wouldn't have
13 came to me like he did back there and scared me into
14 taking a plea like I did that day, of course I would
15 have took 12 years then. I mean, that makes more
16 sense. But when we're back there, it's already too
17 late for me to take it, so that prejudices me there.

18 Q. Well, did he tell you that there had been at
19 some point 12 years offered?

20 A. Of course.

21 Q. He did tell you that?

22 A. He did tell me that.

23 Q. And you turned that down?

24 A. Because of his advice, yes.

25 Q. Did he advise you to turn it down?

1 A. He did.

2 Q. He said, "turn this down"?

3 A. Yes. That we had a good fight if we went to
4 trial.

5 Q. All right. So let me understand this and the
6 court to understand it, he told you, don't take the
7 deal that's offered, let's try this case. You've got a
8 good case?

9 A. Yes.

10 Q. Is that what he told you?

11 A. Yes.

12 Q. Did he make you any kind of promises or
13 assurances of an outcome if you tried the case?

14 A. He assured me I had a good opportunity and a
15 good shot. I had a good argument.

16 Q. All right. Now, after you plead guilty -- let
17 me back up -- you've also alleged there was a conflict
18 of interest. There's been some discussions by Mr. Epps
19 about Sara Drawdy being involved with another
20 co-defendant -- it was somewhat confusing --

21 A. Right.

22 Q. Tell the court about that conflict of interest
23 and why, as a result of that, there should be a
24 different result in this case?

25 A. Well, Tubbs -- the co--

1 Q. That's the co-defendant?

2 A. Right.

3 Q. In this case?

4 A. Right.

5 Q. Go ahead.

6 A. Okay. Norman had came to me and asked me if
7 it was all right for him to have this joint preliminary
8 hearing, and if he could, you know, talk about defense
9 strategies with Sara Drawdy. Okay. So he -- he does
10 all that because I'm out in the county at the time. He
11 discusses strategy with her, and she is representing my
12 stepbrother, and she also -- she was at my preliminary
13 hearing. Well, it -- a year later or so, once I -- or
14 six months after I had bonded out, I seen that Tubbs
15 was taking a plea deal, and where -- who he was being
16 represented by. So once I seen that and found out it
17 was Sara Drawdy, that's when I started, you know, I --
18 I was afraid of that issue itself because not only was
19 Sara Drawdy involved, she had an interview with
20 Katherine --

21 MR. WHITMIRE: Objection; hearsay.

22 THE COURT: Sustained.

23 BY MR. WELBORN:

24 Q. Don't say what someone else said, just say
25 what the result was. Go ahead.

1 A. Okay.

2 Q. Let me help you a little bit, did Mr. Epps
3 file some motion at some point to try to quash
4 indictments because of some type of misconduct by Mrs.
5 Drawdy?

6 A. He did, but he didn't appeal it. Of course
7 the State's going to deny the allegations.

8 Q. All right. Did you ask him to appeal that?

9 A. Of course.

10 Q. And what was his response to that?

11 A. The same response about -- I mean, it wasn't
12 really no response to that.

13 Q. I'm sorry, what did you say, sir?

14 A. He never really said nothing about that.

15 Q. But you asked him to appeal the judges denial
16 of the motion then to quash the indictment as it
17 related to conflict of interest?

18 A. Yes.

19 Q. Okay. And did you ask him to appeal any of
20 the issues related to this conflict of interest because
21 of that motion?

22 A. Say that again.

23 Q. That's not stated very well. I think I asked
24 it correctly the first time. You asked him to appeal
25 the denial of the motion to quash?

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1 A. Correct.

2 Q. All right. Let's talk about after you pled
3 guilty, you were given this sentence of 15 years. Did
4 you ask Mr. Epps to appeal that sentence?

5 A. Norman came down to the basement and started
6 talking to me. And he's right, I was upset. And he --
7 he explained to me that it would be more of a
8 reconsideration for -- for a sentence because it was a
9 guilty plea. There was only ten days to do this.
10 After I calmed down, yes, I told him to do that and so
11 did my mother and stepfather. Why would I not want a
12 chance at a reconsideration when I just got the max.

13 Q. I'm sorry. You asked him to either request a
14 reconsideration of the sentence or to appeal; is that
15 what you're telling the court?

16 A. Correct.

17 Q. And he didn't do that?

18 A. No. We tried to email him afterwards and
19 everything, and he -- he went on to state there was
20 nothing to appeal.

21 Q. And are you asking the court today to allow a
22 belated appeal of that sentence?

23 A. If possible, yes.

24 Q. Okay. Devin, what else did Mr. Epps not do
25 for you that if he -- because he didn't do it, you had

1 to take this plea and not go to trial?

2 A. That's it. That's it.

3 Q. So it's your position that the whole time you
4 were led to believe you've got a great case, we're
5 going to try this case, and then you find out he hadn't
6 interviewed the witnesses, and you were sort of forced
7 to take whatever; is that basically a summary of it?

8 A. Pretty much.

9 MR. WELBORN: Thank you. Answer anything opposing
10 might have.

11 **CROSS EXAMINATION BY MR. WHITMIRE:**

12 Q. Now, Mr. Epps had numerous consultations with
13 you prior to the guilty plea?

14 A. Correct.

15 Q. Did y'all ever discuss the impact of Mr.
16 Heggleston, the victim's testimony at your trial?

17 A. Say that again.

18 Q. Did y'all ever discuss how Mr. Heggleston
19 would testify at your trial if you went to trial?

20 A. Yes.

21 Q. What did Mr. Epps tell you?

22 A. He said that if -- with the victims' being
23 there, and as hard as they are against us, it would be
24 hard for me -- or it wouldn't look good.

25 Q. Did Mr. Heggleston put you inside his house

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1 during the home invasion?

2 A. To start with, no. It was just a masked
3 individual, in a ski mask.

4 Q. Didn't your attorney, Mr. Epps, advise you the
5 State would argue that you were indeed that masked
6 individual?

7 A. That we would argue that I was the masked
8 individual?

9 Q. That the Solicitor would argue -- accuse you
10 of being that masked individual?

11 A. At first, yes, but then they charged me with
12 accessory before the fact which put -- they've got to
13 put me away from the scene. He said then they would
14 use the cell phone records to put me away from the
15 scene, so I was kind of confused as to how I was going
16 to even have -- I didn't even know how to prepare for a
17 trial with that, because I'm charged with accessory
18 before and the principle charges.

19 Q. And you don't deny your guilt on those
20 accessory charges, do you?

21 A. No.

22 Q. Mr. Epps advised you that Mr. Heggleston is an
23 Army veteran, and would come across really credible to
24 the jury; is that correct?

25 A. I can't account for that, no.

1 Q. Now, you appeared before Judge McIntosh twice
2 for your guilty plea?

3 A. Right.

4 Q. He accepted your guilty plea on April 3rd
5 --23rd?

6 A. I think it was the 22nd he accepted it and
7 sentencing was on the 23rd for cooperation.

8 Q. Now, did you ever express any of these
9 concerns to Judge McIntosh about Mr. Epps'
10 representation?

11 A. During the guilty plea?

12 Q. Yes.

13 A. No, because I was assured, like I said, that I
14 would not get at least no more than the principle, but
15 got ten years at the time -- he told me several times,
16 and my parents, that I would not get 15 years.

17 Q. Judge McIntosh advised you of your full
18 sentencing exposure; correct?

19 A. Right.

20 Q. So you just believed that Mr. Epps allegedly
21 guaranteed you a sentence despite a judge telling you
22 what he possibly could sentence you to?

23 A. He's my attorney, I believed him.

24 Q. Did Mr. Epps advise you that it's your
25 ultimate right to enter a guilty plea, to make that

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L. MCBRIDE -- DIRECT EXAMINATION

1 decision?

2 A. Right.

3 Q. He advised you it's your ultimate decision to
4 appeal?

5 A. Yes.

6 MR. WHITMIRE: No further questions, Your Honor.

7 THE COURT: Any questions?

8 MR. WELBORN: No, sir.

9 THE COURT: All right. Thank you, sir. You can
10 step down.

11 MR. WELBORN: I'll call my next witness.

12 THE COURT: Yes, sir.

13 MR. WELBORN: I call Lisa McBride.

14 LISA MCBRIDE, having been
15 first duly sworn, testified as follows:

16 THE COURT: You can come around here and sit. And
17 if you would, give us your full name and spell your
18 last.

19 THE WITNESS: It's Lisa McBride, M-C-B-R-I-D-E.

20 **DIRECT EXAMINATION BY MR. WELBORN:**

21 Q. Ms. McBride, you are the biological mother of
22 Devin Michael Nimmons; is that correct?

23 A. Yes, it is.

24 Q. During the course of these charges, during the
25 period of time these charges were pending, did you at

L. MCBRIDE -- DIRECT EXAMINATION

1 some point get permission from your son to talk with
2 Mr. Epps on his behalf?

3 A. Yes.

4 Q. And did you do that?

5 A. I did.

6 Q. And roughly how many times did you meet with
7 Mr. Epps? Just roughly?

8 A. I met with him almost every time Devin did. I
9 -- I was present at the -- at the meetings -- most of
10 the meetings between the two. So it's however many he
11 met, I may -- and we had conversations, via email, Mr.
12 Epps and myself, and the telephone.

13 Q. And there were numbers of emails, isn't that
14 correct?

15 A. Yes.

16 Q. Now, your son has alleged that basically he
17 was kind of forced to plead guilty because Mr. Epps
18 wasn't prepared. Being that you were present during
19 most of these conferences, what opinion did you come to
20 as to whether or not Mr. Epps was prepared for it?

21 A. I felt that he was prepared up until the time
22 of trial --

23 MR. WHITMIRE: Objection; relevance.

24 THE COURT: Well, that's -- I'll allow that. Go
25 ahead.

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1 THE WITNESS: I felt that he was prepared up until
2 the time of trial as Devin said. He gave us every
3 indication that Devin had a good argument, and we were
4 told that and the reason why. I had full faith in him
5 and his representation of my son. And up until the
6 last -- and I was not present for that meeting, the
7 weekend before trial was to -- to begin, that's when
8 the plea started, you know.

9 I -- I even asked Norman myself for the 12 year
10 -- when the 12 year plea came around, I said, if this
11 is something that he needs to take, if this is in his
12 best interest, you know, let us know. And we were
13 told, you know, well, Devin, I've got good arguments.
14 You know, I'm not going to show my whole hand right
15 now, I've got -- you know, there's things in place
16 here, and he stated -- he stated before, you know,
17 reasons why he felt like he had good argument, and we
18 trusted that.

19 BY MR. WELBORN:

20 Q. Well, on the day of the plea, did you -- were
21 you convinced -- up until that point, were you
22 convinced that he was prepared and ready to go to
23 trial?

24 A. I had a little hesitation when we went for the
25 motion to quash. I -- that is -- I first felt some

1 uneasiness there.

2 Q. That motion -- that was not that particular
3 day?

4 A. It was just days prior to the trial.

5 Q. Well, did you express this concern to Mr.
6 Epps?

7 A. No. No, I didn't.

8 Q. Now, tell me what specifically bothered you on
9 the day of the plea -- that causes you to believe Mr.
10 Epps wasn't prepared to try this case?

11 A. Because he began pushing the plea deal, take
12 the plea instead of going to trial, and I didn't
13 understand why. Why not tell us this prior to -- he
14 was on house arrest for almost two years, which we
15 invested almost \$9,000 in that, paying for the
16 monitoring, why -- that, too, we were under the
17 impression -- understood that he would get credit for
18 that, and he didn't.

19 Q. Did you -- did he ask for that credit at that
20 guilty plea hearing? You were there, weren't you?

21 A. Yes, I was there.

22 Q. Did he ask for that at that hearing?

23 A. I don't recall him asking. I recall that the
24 judge said about the -- he made mention that he had
25 been on house arrest for two years, he did; but I don't

1 recall him asking for the credit.

2 Q. Now, you're aware that sometime after this
3 plea, that there was a statute that came out that said
4 home incarceration could be considered as part of the
5 --

6 MR. WHITMIRE: Your Honor, I'm going to object to
7 the line of questioning. It's irrelevant for this
8 forum of post conviction relief; that's the Department
9 of Corrections sentencing issue --

10 THE COURT: Yes. Sustained as -- as regards to
11 credit given for home incarceration.

12 BY MR. WELBORN:

13 Q. Now, did you or your son -- let me rephrase
14 this question -- your son just testified that there
15 were three Anderson College security officers that
16 should have been interviewed by Mr. Epps; and then
17 there was this woman that had the wire on -- I keep
18 forgetting her name -- Katherine I believe.

19 A. Heather.

20 Q. Heather. And he didn't interview her. Now,
21 would those persons have made a case, in your opinion
22 based on your knowledge of those statements, would they
23 have made a case that would have led possibly to a
24 different result in a trial? In other words, an
25 acquittal?

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1 MR. WHITMIRE: Objection; hearsay. Lack of
2 foundation on whether the witness has seen those
3 statements.

4 BY MR. WELBORN:

5 Q. Have you seen those statements?

6 A. I have the statements.

7 Q. You provided those to me, did you not?

8 A. Yes, I have.

9 THE COURT: All right. I'll allow you to answer
10 the question.

11 BY MR. WELBORN:

12 Q. Go ahead and answer the question.

13 A. I believe there would have been a --

14 MR. WHITMIRE: Objection; relevance.

15 THE COURT: Overruled. I'll allow you to answer
16 the question.

17 THE WITNESS: I'm sorry, what was the question?

18 BY MR. WELBORN:

19 Q. Do you think there would have been a different
20 result at trial, possibly a not guilty verdict based on
21 those three witness' statements that you read?

22 A. Yes.

23 Q. Or four statements --

24 A. Yes.

25 Q. -- I believe; is that correct?

1 A. I believe so.

2 Q. Thank you. What about the statements -- I'm
3 not -- I'm not going to talk hearsay, but what you've
4 read the statements to say, what about them would
5 convince you of that; do you remember specifically?

6 A. What the individuals were wearing, and what
7 was found in the vehicle they were in. The -- the
8 reason the Anderson University's security was called in
9 the first place was because they had guns on the
10 university property. That's the entire reason they
11 were called out there.

12 Q. And your son was not with them?

13 A. He was not with them.

14 Q. And this happened around the time or shortly
15 thereafter of this alleged home invasion?

16 A. Yes.

17 Q. Were you, as a parent of Devin, allowed on
18 this plea day to talk personally with Mr. Epps, or did
19 he tell you in so many words you can't come in here?

20 A. It -- at his office, my husband and I both
21 spoke with him.

22 Q. On the date of the trial?

23 A. On the day on the trial. But when Devin was
24 called into the room out here --

25 Q. Next to the courtroom?

L. MCBRIDE -- DIRECT EXAMINATION

1 A. Yes.

2 Q. Go ahead.

3 A. And this is when we were prepared to go to
4 trial -- when he was called into the room out there, he
5 asked me not to come in. Norman asked me not to come
6 in, to wait outside. And I could hear -- I couldn't
7 hear what was being said inside, I could just hear, you
8 know, some voices being raised. And when Devin came
9 out, he had changed his mind.

10 Q. Okay. Now, after he changed his mind and
11 decided to plea, what, if anything, did you do to try
12 to talk to Mr. Epps about where we were at this point
13 in time? Why was the plea being made? Did you talk to
14 him about that?

15 A. Well, everything was in the process at that
16 time, so I just trusted that Devin -- they had made the
17 decision, and that's what they were going with. I just
18 -- it happened so quickly. And I unexpectedly -- I
19 didn't expect that to happen as we -- as we walked
20 over, we were prepared to go to trial.

21 Q. All right. There's been some allegations --
22 I'm not going to go into this conflict of interest
23 situation. I've done the best I can do with that. But
24 let's talk about your son's request that the motion to
25 quash be appealed and his sentence be appealed; what do

1 you know about any of that? Did you personally ask Mr.
2 Epps to appeal any of these things?

3 A. I asked him to appeal when -- when the
4 sentencing was over, the day of the trial, and -- now,
5 I can't say -- I'm not supposed to say this -- but he
6 told us that Devin would not get 15 years.

7 Q. Well, it's okay for you to say that if he told
8 you that. Did Mr. Epps tell you that?

9 A. He did at his office because we didn't want
10 him to take the plea deal. When we walked out, and I
11 asked -- I said -- the first thing out of my mouth to
12 Norman was, "you said he wouldn't get 15". And he
13 responded, "I didn't think he would".

14 Q. Okay. Now, at that point, did you say, Mr.
15 Epps, you've got to appeal this?

16 A. I was too upset at the moment. We walked over
17 to his office. He had gone to speak with Devin
18 downstairs, that's where they had their conversation.
19 He told me at his office, we had two options: We could
20 appeal or do a PCR. Well, I didn't -- never heard of a
21 PCR before. He said the PCR would be against him. I
22 said, "Do the appeal". He said "Okay".

23 Q. So he told him to do the appeal?

24 A. I said, "Do the appeal".

25 Q. And did he say, well, there's more money, and

1 when you pay that, I will do that?

2 A. No.

3 Q. All right.

4 A. No.

5 Q. And did you put anything in writing to him
6 backing up your request for the appeal?

7 A. No. We had the conversation outside of his
8 office.

9 Q. Okay. Now, this was asking him to appeal the
10 sentence of 15 years; is that correct? That's what
11 we're talking about; is that correct, Mrs. McBride?

12 A. Yes. Yes.

13 Q. Okay. Now, there's also allegations by your
14 son that he asked Mr. Epps to appeal the denial of the
15 motion to quash an indictment; did you also ask Mr.
16 Epps to do that?

17 A. I don't recall asking him to appeal that. It
18 was -- like I said, it was just days -- it -- that may
19 have been on a Thursday, and then the -- the next week
20 was when trial began.

21 Q. Mrs. McBride, did you ever ask Mr. Epps to
22 hire an expert regarding these phone calls to position
23 where your son would have been?

24 A. He told us on several occasions that he was
25 going to have someone look at those phone records.

1 Q. Well, he said that they did. Did you ever ask
2 him to hire an expert?

3 A. He told us he was going to get someone to do
4 it. We didn't have to ask him to.

5 Q. You assumed that was an expert, what he was
6 talking about?

7 A. Yes.

8 Q. Okay. Mrs. McBride, is your primary complaint
9 that y'all were led to believe this was a good case and
10 you're disappointed in it? Is that your primary
11 complaint?

12 A. That is my complaint. My complaint is that we
13 -- I -- in my opinion, we were led to believe that
14 Devin had a good case. I have every piece of discovery
15 documentation. I have multiple copies of it, that
16 Devin had a good case. And we never dreamed that he
17 would have the worst outcome of the three that were
18 involved.

19 Q. In that regard, what should Mr. Epps had done
20 differently than what he did that would have led to a
21 better result, in your opinion?

22 A. Each time I asked him if a plea deal -- on
23 more than occasion, if he -- if Devin needed to take
24 it, if that was the best he was going to get, or if he
25 felt like that was the best he was going to get, to

1 please let us know. And each time, we were told, well,
2 I've got good -- we've got good argument, and he would
3 give us reasons why.

4 Q. Mrs. McBride, are there any other complaints
5 you have about Mr. Epps' preparation for this case?

6 A. No. My biggest complaint is that he didn't
7 appeal, and he didn't -- he could have been more
8 upfront and honest about everything, his -- what he was
9 looking at long before we go -- almost two years.

10 Q. And he didn't interview those four witnesses?

11 A. True.

12 Q. All right. Thank you. Answer anything
13 opposing counsel may have.

14 MR. WHITMIRE: Just a few questions, Your Honor.

15 **CROSS EXAMINATION BY MR. WHITMIRE:**

16 Q. I just want to understand a few things.

17 MR. WHITMIRE: May it please the court?

18 THE COURT: Yes, sir.

19 BY MR. WHITMIRE:

20 Q. I believe you testified had counsel gone over
21 and interviewed the Anderson Police Officers and the
22 girl with the wire, you believe your son would have
23 been acquitted had he gone to trial; is that correct?

24 A. I'm sorry, say again please.

25 Q. I -- I'm -- just to understand your testimony

1 from earlier. I believe -- what I understand it to be,
2 you allege had Mr. Epps interviewed the Anderson Police
3 Officers and Heather, you think he would have done real
4 well at trial?

5 A. I think he had -- yes, I think he had a good
6 opportunity.

7 Q. And you're also alleging Mr. Epps should have
8 been more upfront with you in telling you and the
9 family and your son to take that 12 year offer when it
10 was still available?

11 A. Yes.

12 Q. Thank you. Now, when was your son arrested,
13 the date?

14 A. It was January of 2011. January 5th maybe.

15 Q. When was his guilty plea?

16 A. April 22, 2013.

17 Q. And I believe you testified that you have a
18 copy of all the discovery in this case?

19 A. That was provided to me, yes.

20 Q. Did the State's evidence change during that
21 two year timeframe?

22 A. No.

23 Q. Thank you. Now, what is your educational
24 level?

25 A. High school.

1 Q. And is your son the first person in your
2 family to be in this situation?

3 A. Yes.

4 Q. You don't want to see him in prison?

5 A. No, I don't want to see him in prison.

6 MR. WHITMIRE: Thank you. No further questions.

7 THE COURT: Anything else?

8 MR. WHITMIRE: Ah -- I apologize, Your Honor. One
9 quick question.

10 BY MR. WHITMIRE:

11 Q. You say you have detailed records of
12 everything that happened during that two year timeframe
13 involving Mr. Epps; is that correct? The discovery?

14 A. Yes.

15 Q. Do you have any records of the emails that Mr.
16 Epps has sent you about your son's case?

17 A. I have every email that was sent between Mr.
18 Epps and myself.

19 MR. WHITMIRE: No more -- no further questions,
20 Your Honor.

21 THE COURT: All right. Thank you, ma'am. You can
22 step down. Thank you. Thank you for your patience.

23 MR. WELBORN: That's our case.

24 THE COURT: Okay. Anything else from the State?

25 MR. WHITMIRE: Your Honor, I would like to recall

1 Mr. Epps just for a few quick questions.

2 THE COURT: Okay. Just a few quick ones.

3 MR. WHITMIRE: May it please the court?

4 THE COURT: Yes, sir.

5 **DIRECT EXAMINATION BY MR. WHITMIRE:**

6 Q. Mr. Epps, what investigation did you do
7 regarding the Anderson Police Officers who arrested Mr.
8 Nimmons' co-defendants from the first home invasion?

9 A. What investigation -- what investigation? Are
10 you talking -- what -- are you talking about the
11 University Police Department?

12 Q. The University Police.

13 A. All right. The University Police -- okay.
14 All right. We got the statements. I don't understand
15 how in the world that's connected. I brought that up
16 at sentencing. I brought up as a mitigating factor in
17 sentencing, he was not with them. I have argued that
18 from day one. I argued that at every bond hearing. I
19 argued at pretty much any motion we had during --
20 during this case, that it was clear that almost
21 immediately after this -- this home invasion, is Chris
22 Brown and Jacob Tubbs together with the weapons, at
23 Anderson -- at the Anderson University. They couldn't
24 remember what really had happened.

25 They -- not only were they together at Anderson

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1 University, those -- those officers showed up, it's
2 clear what they said, what they thought. My guy,
3 Devin, wasn't with them.

4 Now, there was some argument between -- there
5 was some allegations by -- from Investigator Gebing,
6 and my conversations with him earlier that -- that
7 these officers would say, well, they saw an individual
8 running away who they -- they -- they were going to say
9 or thought to -- thought to believe that it was going
10 to be -- it was going to be Devin. Okay. Well, come
11 to find out, that's -- that's not the case. I -- I got
12 with them some more, Gebing, they eventually admitted
13 they -- they owned up, they said, look, that's not him.
14 And the --

15 Q. Not to cut you off, Mr. Epps. I apologize.
16 Did you actually have the opportunity to sit down and
17 interview these Anderson University Police Officers?

18 A. No, I did not.

19 Q. In your general practice, do you interview the
20 police officers in criminal defense cases?

21 A. I -- I talk with the lead investigator. I
22 talk with Investigator Williams in the Starlight
23 Theater case; yeah. But as far as the university
24 police, everybody knew from day one, my client wasn't
25 with them after this -- this home invasion, which was a

N. EPPS -- DIRECT EXAMINATION

1 bone -- that was a strong point for him. Okay. And we
2 talked about all aspects of the case. I said there --
3 there were issues in regards to -- I've got a duty to
4 not only tell them the good points in the case, but the
5 bad points in the case, what his defenses are.

6 We talked about withdrawal. Okay. And that's a
7 -- I mean, that's a -- that's a point -- that is a
8 point in favor that he was not with those two
9 individuals when this -- when all this went down. And
10 it was noted -- and I think that the -- that the
11 officers came out, and I was advised by Gebing, the
12 lead investigator, that the person they saw running
13 away, actually was not Devin. And that was brought up
14 in mitigation and that was brought up multiple times.

15 And I also want to say Heather Campbell, all
16 right. That alibi -- that alibi fell through. The
17 alibi, at least I think Devin's initial statement was
18 that he was with her during -- when this happened.
19 Well, that's not the case because --

20 Q. Again, I don't mean to interrupt you, Mr.
21 Epps. I just have one follow-up question regarding
22 Anderson University Police. Were you prepared to
23 present your client's case at trial regarding his
24 theory in these police reports?

25 A. Yes.

1 Q. Now, go on with Heather Campbell. I
2 apologize.

3 A. Okay. I mean, that was -- that's -- Heather
4 Campbell, that was his ali -- that was going to be -- I
5 mean, that's -- that's -- was his alibi. He was with
6 her when this happened. Well, come to find out, she
7 didn't get off work until 9:00. This happened between
8 -- around 8:00 to on or about 8:20 or 8:30. Okay. So
9 that kind of fell through.

10 Not only did she wear a mic and recorded the
11 conversation between her and Devin, she gave a
12 statement. And that statement was dated December 31,
13 2010, and she was coming to testify. I mean, she was
14 -- she was there. She was under subpoena. She was
15 going to be here to testify.

16 And what Devin told her in a statement was that
17 -- all right. He said -- he said, she went to meet
18 him, and he was wearing a t-shirt and sweatshirt, and
19 was bundled up and is comfortable. That's what he
20 said. That's what -- when he got home after -- after
21 he got away from that situation, or got out of the car,
22 that's what he told me. He went home, got on the
23 comforter, and she came after she got off work. Okay.

24 But in her statement -- in Heather Campbell's
25 statement to -- this was Detective Williams. She says

1 when I got there, he was bundled up in his comforter --
2 this is her statement. He laid there for a little
3 while. He said if I tell you something, will you
4 promise not to tell anybody. I told him yes. And he
5 said while he was at El Patron (ph) with Jake, some
6 other friends came there, and they were all messed up.
7 He said that as they were walking out of El Patron,
8 they saw an older man in the parking lot and his
9 friends were talking about it would be fun to rob him.
10 He said his friends then robbed the old man and beat
11 him up. He said they got into a pickup truck and left.
12 It is my understanding the guy that was driving turned
13 himself in for treatment. Devin said that the guy that
14 was driving was messed up and hit a mailbox or
15 something.

16 All right. Devin said that they went back to
17 the guy that was driving the truck home, from what I
18 understood -- Devin said that he couldn't handle what
19 had just happened with the old man, and he kept playing
20 it over and over in his mind, so he left walking.

21 That was a problem. So I -- me interviewing
22 those witnesses would have done absolutely --

23 Q. One moment, Mr. Epps.

24 MR. WHITMIRE: For the record, we would like to
25 reflect that Mr. Epps has just read the statement from

1 Heather Campbell provided to him in discovery.

2 THE COURT: Okay.

3 BY MR. WHITMIRE:

4 Q. Continue.

5 A. Well, that's -- I mean, that's -- it certainly
6 wasn't a -- I -- in regard -- in the trial that was
7 coming -- the trial that was happening that Monday was
8 accessory before the fact, you know, certainly he
9 wasn't with them. Certainly accessory before the fact,
10 he wasn't at the scene of the crime when it -- when it
11 -- when it took place, so would that have been
12 exculpatory? Would that have -- have led to a not
13 guilty verdict? I -- I don't believe it would.

14 You know, I never ever guarantee any outcome. I
15 didn't guarantee he would not get 15 years. They were
16 clear -- it's clear from the transcript -- I mean, the
17 transcript that it was a range from zero to 15. He
18 could get up to 15. We wanted the low side; the State
19 wanted the high side, and the judge could give him up
20 to 65 years. So I --

21 Q. Mr. Epps, a few more questions for you. These
22 are three sets of charges?

23 A. Yes.

24 Q. The 2010, '11 timeframe?

25 A. Yes.

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N. EPPS -- DIRECT EXAMINATION

1 Q. At what point did you receive the bulk of
2 discovery in these cases?

3 A. I got the bulk of discovery the first -- the
4 bulk of it was probably the first six or seven months.
5 And then -- then it would come in. They had
6 supplemental discovery particularly in January with
7 Jake Tubbs' interview. There was a DNA swab that Devin
8 gave and then more discovery came in prior to trial.

9 Q. And based on this and all the investigation
10 work you put in for six or seven months, were you able
11 to develop a theory on the State's strength in its case
12 against Mr. Nimmons?

13 A. The problem is -- and when -- when I first
14 testified, the problem was this: I mean, there were --
15 there were -- there were points in the defense for
16 Devin -- okay -- but there were also weaknesses, i.e.,
17 his statement. You know, nobody -- this thing had
18 rocked on for like two years. Once he got out on bond,
19 once he was working, nobody kind of just -- it didn't
20 come up. Okay. Nobody wanted to push it. Nobody
21 wanted to -- you know, it -- and then it came up for
22 trial --

23 Q. Going back to what you just testified to your
24 -- on the strength of the State's case, did it differ
25 with the accessory charges vs. the burglary?

1 A. No, it didn't differ. The problem was that
2 you got -- you're going to have evidence -- I'm sure
3 evidence would have come in that he was at the scene,
4 but then you're going to have -- you're going to have
5 evidence from Devin, himself, that he was not at the
6 scene. Okay. That goes to the jury. That's very
7 problematic when you're looking at serious -- charges
8 that's going to carry anywhere from 15 years to life,
9 or 10 years to 20, and the jury has got to chose.
10 Well, was he there participating or did he plan it, did
11 he give them the gun, did he recon the house and jump
12 out the car before he got there.

13 Q. I just have -- just a few quick more questions
14 for you regarding plea negotiations and advice. Did
15 you take into account, when communicating with Mr.
16 Nimmons and his family, that he had no experience in
17 General Sessions?

18 A. Yes.

19 Q. He came from a good family?

20 A. Yes.

21 Q. Were you extra vigilant in explaining the
22 process of entering a plea or going to trial as a
23 result?

24 A. Yes. The 12 -- he didn't want the 12, the 12
25 years straight up. The difference in this -- in this

1 arrangement was there was no straight -- it was zero to
2 15. They didn't want to take the 12 years straight. I
3 mean, there was -- there was problems with -- I mean,
4 there were -- there were defenses. Okay. But there
5 was -- there was weaknesses to the case, too, which we
6 discussed. And -- and the -- the downside of that, if
7 he would have been found guilty, he would have been
8 looking at -- at like -- a lot more time than what he
9 has now.

10 Q. I appreciate how thorough you have been in
11 your testimony today. I really appreciate it. But had
12 he wanted to take the 12 year deal, would you have let
13 him?

14 A. I didn't tell him not to take it. I gave him
15 all the -- every -- all -- I explained to him, there
16 was -- there was an email regarding some timeframes and
17 phone calls. I showed it to him. We discussed it. We
18 discussed -- we discussed everything. I mean, we
19 discussed the weaknesses, the strengths of the case,
20 any defenses, but it was ultimately up to him to make
21 that decision. I didn't tell him not to take it. I
22 advised him, as I would anybody else, the decision
23 would be -- would be his.

24 Q. Did you relay that same information to his
25 family?

1 A. Yes. That decision was his -- was Devin's to
2 make.

3 Q. Regarding his mother's testimony, did you ever
4 promise him or his family that he would get a certain
5 amount of time?

6 A. No. No.

7 Q. Did you represent Mr. Nimmons to the best of
8 your ability?

9 A. I believe I did.

10 MR. WHITMIRE: No further questions, Your Honor.
11 Thank you very, very much, Mr. Epps.

12 THE COURT: Anything else?

13 MR. WELBORN: No, sir.

14 THE COURT: Thank you, sir. You can step down.
15 Okay. Is that everything I need to hear?

16 MR. WHITMIRE: Yes, Your Honor, the respondent
17 rests.

18 THE COURT: All right. Anything else?

19 MR. WELBORN: No, sir.

20 THE COURT: All right. Obviously, as I do, I want
21 to read all of these, and they're backed up -- is this
22 the last one we have this week?

23 MR. WHITMIRE: I'm sad to say, Your Honor, this is
24 the last PCR for the week.

25 THE COURT: Boy, am I sad. I will -- that will

1 give me time tomorrow to read it. I'll read through
2 everything and we'll let one of y'all know tomorrow.
3 Okay.

4 MR. WHITMIRE: Thank you, Judge.

5 THE COURT: Thank you, sir. And I appreciate
6 y'all's patience in waiting. It's one of those days.

7 (Whereupon, the hearing adjourned.)

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END OF TRANSCRIPT

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CERTIFICATE OF REPORTER

I, SHARON D. JONES, CERTIFIED COURT REPORTER,
DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE,
ACCURATE AND COMPLETE TRANSCRIPT OF RECORD OF THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF
THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF
COMMON PLEAS FOR ANDERSON COUNTY, SOUTH CAROLINA, ON
THE 20TH OF FEBRUARY, 2014.

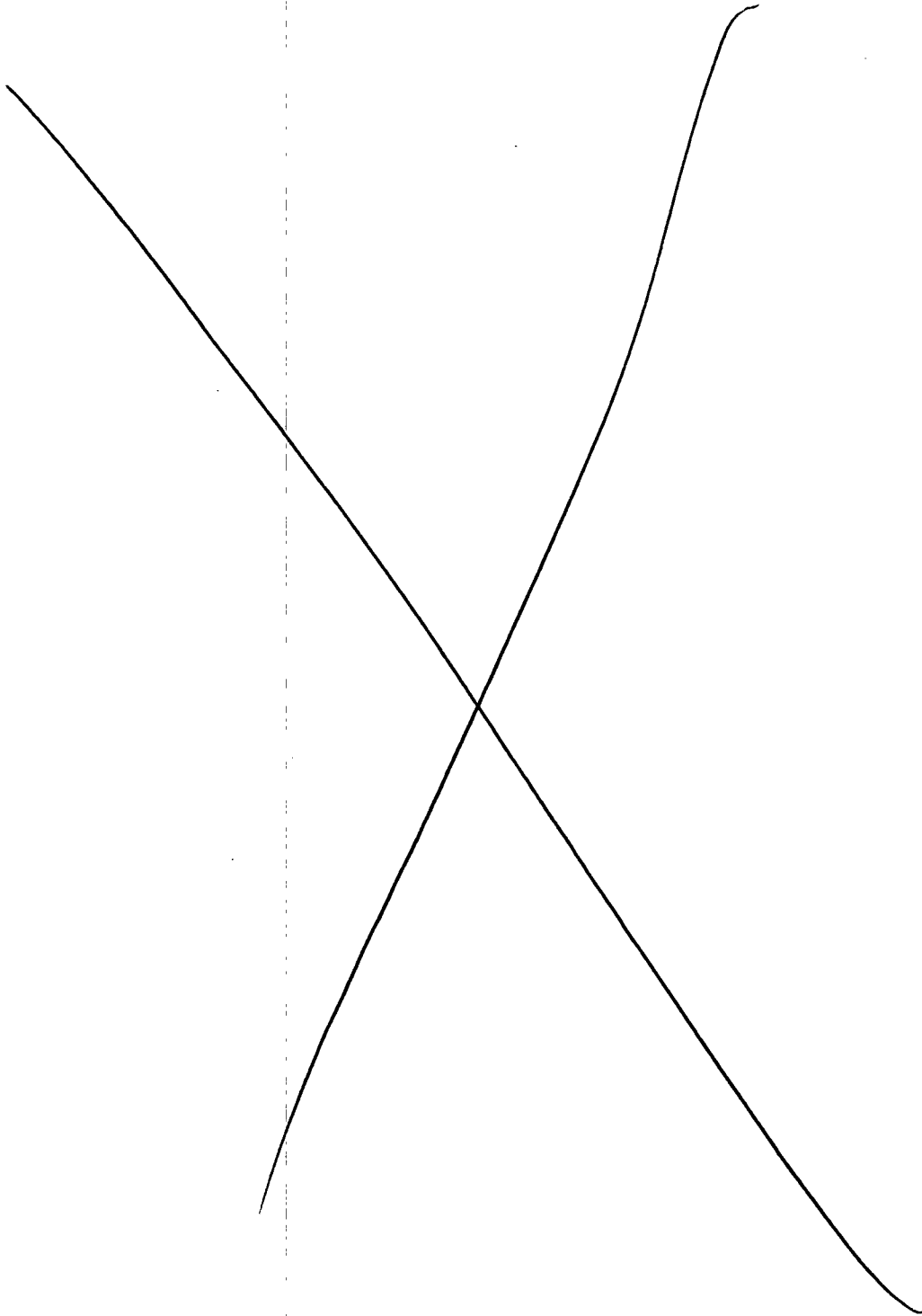
I DO FURTHER CERTIFY THAT I AM NEITHER OF
KIN, COUNSEL NOR INTEREST TO ANY PARTY HERETO.

1.25.16

Sharon D. Jones

SHARON D. JONES,
CERTIFIED COURT REPORTER

000150



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON) TENTH JUDICIAL CIRCUIT

Devin M. Nimmons,
S.C.D.C. No. 355132

OCT 30 2015

Rupel X. Kirby
CLERK OF COURT

C.A. No. 2013-CP-04-1769

COMMON PLEAS AND
GENERAL SESSIONS

2015 OCT 30 AM 9:46

FILED-CLERK'S OFFICE
ANDERSON SC

Applicant,

v.

State of South Carolina,

Respondent.

**ORDER OF DISMISSAL
(with prejudice)**

This matter comes before the Court by way of a post-conviction relief (PCR) application filed on July 31, 2013. Respondent responsive pleadings followed. An evidentiary hearing into the matter was convened on February 18, 2015 at the Anderson County Courthouse. Applicant was present at the hearing and was represented by Hugh Welborn, Esq. Respondent was represented by Walt Whitmire, Esq., of the Office of the Attorney General.

PROCEDURAL HISTORY

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted by the August 2011 term of the Anderson County Grand Jury for three counts of accessory/accessory before the fact to a felony (2011-GS-04-1364; -1365; -1366), and conspiracy (2011-GS-04-0527), Applicant was represented by W. Norman Epps, III., Esq. On April 23, 2013, the State called its case. Applicant entered guilty pleas to burglary, second-degree violent (-1364); strong armed robbery (-1365), kidnapping (-1366) and conspiracy (-0527). The Honorable R. Lawton McIntosh sentenced Applicant to fifteen (15) years imprisonment for burglary, second-degree violent, fifteen (15) years imprisonment for strong armed robbery, fifteen (15) years imprisonment for kidnapping. The sentences were to be served concurrently. Judge McIntosh

further sentenced Applicant to five (5) years imprisonment for conspiracy suspended on the service of five (5) years probation. The conspiracy sentence was to be served consecutively. Applicant did not appeal his sentence or conviction.

At the PCR hearing, Applicant alleged that he is being held in custody unlawfully for the following reasons:

- (a) Ineffective assistance of counsel for failing to interview Heather Campbell;
- (b) Ineffective assistance of counsel for failing to interview the arresting officers;
- (c) Ineffective assistance of counsel for failing to advise Applicant to accept the State's initial plea offer of recommended twelve (12) year aggregate sentence;
- (d) Ineffective assistance of counsel for failing to address the conflict of interest created by Attorney Drawdy;
- (e) Ineffective assistance of counsel for failing to move to recuse Judge McIntosh from presiding of the plea;
- (f) Ineffective assistance of counsel for failing to file a notice of appeal.

SUMMARY OF TESTIMONY

At the PCR hearing, Applicant testified to his impressions of counsel and to his concerns on the competency of representation that he received. Applicant testified that his guilty plea was rendered involuntary because he was under the impression that his case was proceeding to trial on the day of his plea. He claimed he was forced to accept the plea because he believed that counsel was not prepared to try his case. Applicant testified that he met with counsel on six occasions prior to the plea; he noted that counsel was always diligent in returning his phone calls. Applicant testified that he was not aware of the State's overwhelming evidence of guilt until the eve of his guilty plea. Applicant testified that he was originally promised a five (5) year sentence in the early stages of the cases.

Applicant testified to his impression that counsel did not thoroughly investigate his case. Applicant testified that counsel reviewed police reports but neglected to interview the relevant

police officers. He further testified that counsel neglected to interview a woman named Heather Campbell, his purported post-offense alibi. Applicant claimed that Campbell's testimony would have shown that he distanced himself from the co-defendants. Applicant testified that counsel indicated to him that an expert would be consulted on the case; yet, this did not occur.

Applicant testified that he would have accepted the State's initial plea offer had he known the true strength of the State's evidence. He testified that he was still discussing trial strategy with counsel on the weekend leading up to the plea. He testified that he should have taken the twelve (12) year offer.

Applicant testified that counsel, with Applicant's permission, discussed his trial strategy with Attorney Drawdy. Applicant testified that counsel did this without the knowledge that Attorney Drawdy was retained on co-defendant Tubbs' case: the main person that implicated Applicant. Applicant testified that counsel should have moved to recuse Judge McIntosh from presiding over the plea because the Judge represented a member of Applicant's family prior to election to the bench. Last Applicant testified that he wanted an appeal. He stated that he made attempts to contact counsel on the matter.

Applicant's mother, Lisa McBride, testified to her interactions with counsel; she also testified to her impressions of counsel on the day of the plea hearing. McBride held the lay opinion that counsel was not fully prepared to try Applicant's case on the day of the plea. She testified that counsel should have been "more upfront" about the strength of the State's evidence. McBride recalled counsel's discussions on an appeal, amongst other post-trial maneuverings.

Counsel testified to his course of conduct during the representation. Counsel summarized the underlying facts concerning the litany of offenses that Applicant committed. Counsel testified to his efforts to successfully obtain a pre-trial bond. The State made numerous discovery disclosures during the course of the representation that included: Applicant's statements, recorded

statements from the co-defendants, and wiretap recordings. Upon reviewing each new item of evidence, counsel would discuss the matter with Applicant. Counsel noted that the possible defenses to the various charges were weak at best. The war veteran victim of the home invasion placed Applicant in his residence. Counsel testified that the prosecuting solicitors intended to proceed to trial on six indictments; the accessory charges sunk any viable defense theory of the case because of Applicant's own confessions. The State also had the discretion to prosecute additional charges. Regardless, counsel rigorously prepared for trial.

Counsel also had numerous meetings with prosecuting solicitors and law enforcement where he made strides to negotiate a favorable plea offer from the start of the case. Counsel was weary about the mandatory-minimums for the indicted offenses. He communicated the State's twelve (12) year offer to Applicant. Counsel had extensive negotiations with Applicant on benefits and detriments of entering a plea. Applicant was aware that he was exposed to sixty-five (65) years imprisonment. Once Applicant made the decision to accept the State's offer to plead to lesser-included offenses, counsel turned his attentions to preparing an extensive mitigation case. Counsel was adamant that he never guaranteed Applicant a certain prison sentence.

Counsel testified that he attempted to discuss an appeal with Applicant immediately after the sentencing pronouncement; however, Applicant was distraught and terminated the conversation. Neither Applicant nor his family communicated a desire for counsel to pursue an appeal during the relevant filing period. Counsel also noted that he told Applicant and his family that he would move to have a different Circuit Judge preside over Applicant's plea if they desired him to do so; however, Applicant was adamant that the prior relationships would inure to his benefit in sentencing.

Last, counsel provided a full accounting of the circumstances that surrounded the purported conflict of interest. Counsel explained that: (1) Tubbs and Brown were the two co-defendants on

the home invasion; (2) McBride was the co-defendant on the movie theatre robbery. Through counsel's investigation, counsel made the strategic decision to form a united Attorney Drawdy on one of the sets of charges. He later learned that Attorney Drawdy also represented a separate co-defendant from home invasion that turned State's evidence against Applicant. Counsel met with Attorney Drawdy to discuss his concerns about the potential for a conflict of interest where she assured counsel that there was no conflict. Counsel took additional steps to consult Rob Wilcox, Dean of the State's established law school, and Dessa Ballard. After these consultations, counsel continued with the representation. Counsel noted that he was careful to not violate privilege during his interviews, inter alia.

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 and exhibits presented at the hearing, closely pass upon their credibility, and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

INEFFECTIVE ASSISTANCE OF COUNSEL

In a post-conviction relief action, the applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). 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, (1984); Butler, 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, 286 S.C. 441, 334 S.E.2d 813 (1985). The applicant must overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. 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). After careful review based on the standard discussed above, the Applicant has failed to carry his burden in this action.

A.

~~Applicant's abandoned his burden of production to prove: (a) Ineffective assistance of counsel for failing to interview Heather Campbell; and (b) Ineffective assistance of counsel for failing to interview the arresting officers.~~

In a PCR proceeding, the applicant bears the burden of establishing that he is entitled to relief. Caprood v. State, 338 S.C. 103, 109, 525 S.E.2d 514, 517 (2000). The court may receive proof by affidavits, depositions, oral testimony or other evidence and may order the applicant brought before it for hearing. S.C. Code Ann. § 17-27-80. This Court will uphold the findings of the PCR court when there is any evidence of probative value to support them. However, it will reverse the decision of the PCR court when its decision is not supported by probative evidence of record or it is controlled by an error of law. Suber v. State, 371 S.C. 554, 558-59, 640 S.E.2d 884, 886 (2007).

In light of counsel's convincing testimony on the matter, Applicant has produced no credible evidence to corroborate his incredible testimony that counsel's performance was deficient for failing to investigate purported witnesses. See Moorehead v. State, 329 S.C. 329, 496 S.E.2d 415 (1998) ("failure to conduct an independent investigation does not constitute ineffective

assistance of counsel when the allegation is supported only by mere speculation as to the result"). Furthermore, this Court finds McBride's testimony to be of little relevance and dubious at best. Therefore, these allegations are denied and dismissed.

B.

Applicant has fallen well short of meeting his burden to prove (c) Ineffective assistance of counsel for failing to advise Applicant to accept the State's initial plea offer of recommended twelve (12) year aggregate sentence.

"The Sixth Amendment right to effective assistance of counsel extends to the consideration of plea offers that lapse or are rejected. That right applies to 'all 'critical' stages of the criminal proceedings." Missouri v. Frye, --- U.S. ---, ---, 132 S.Ct. 1399, 1402 (2012). "The question is whether defense counsel has the duty to communicate the terms of a formal offer to accept a plea on terms and conditions that may result in a lesser sentence, a conviction on lesser charges, or both." Id., --- U.S. at ---. 132 S.Ct. at at 1408. "A defendant who enters a plea on the advice of counsel may only attack the voluntary and intelligent character of a plea by showing that counsel's representation fell below an objective standard of reasonableness." Roscoe v. State, 345 S.C. 16, 20, 546 S.E.2d 417, 419 (2001). "To show prejudice from ineffective assistance of counsel in a case involving a plea offer, petitioners must demonstrate a reasonable probability that (1) they would have accepted the earlier plea offer had they been afforded effective assistance of counsel, and (2) the plea would have been entered without the prosecution canceling it or the trial court refusing to accept it, if they had the authority to exercise that discretion under state law." Merzbacher v. Shearin, 706 F.3d 356, 366 (4th Cir. 2013) cert. denied, 134 S. Ct. 71, 187 L. Ed. 2d 56 (U.S. 2013) reh'g denied, 134 S. Ct. 725, 187 L. Ed. 2d 580 (U.S. 2013) (internal quotations omitted).

The present case presents a classic example of a criminal defendant who did not want to plead guilty, but also did not want to go trial. See Merzbacher at 366-67 ("But it is entirely clear that to demonstrate a reasonable probability that he would have accepted a plea, a petitioner's testimony that he would have done so must be credible.") In contrast, this Court finds counsel's testimony dispositive concerning his extensive efforts to investigate Applicant's case; This Court finds counsel went above and beyond for Applicant. Despite the fact that this allegation is fatally reliant on speculation, this Court finds it hard to believe that there was anything further counsel could have investigated or done on behalf of Applicant; furthermore, this Court notes that counsel spent countless hours counseling and advising Applicant. This Court finds Applicant received the full benefit of competent counsel and then some. Regardless, this allegation is without merit because there was no discernable difference between the first and ultimate plea offer. Just because Judge McIntosh exercised his full discretion in sentencing does not mean the plea agreement was any less beneficial to Applicant. Therefore, this allegation is denied and dismissed.

C.

Applicant has fallen well short of his burden to prove (d) Ineffective assistance of counsel for failing to address the conflict of interest created by Attorney Drawdy.

To establish a violation of the Sixth Amendment right to effective counsel due to a conflict of interest arising from multiple representation, a defendant who did not object at trial must show an actual conflict of interest adversely affected his attorney's performance." Thomas v. State, 346 S.C. 140, 143, 551 S.E.2d 254, 256 (2001). "An actual conflict of interest occurs where an attorney owes a duty to a party whose interests are adverse to the defendant's." Staggs v. State, 372 S.C. 549, 551, 643 S.E.2d 690, 692 (2007). "To be valid, a waiver of a conflict of interest must not only be voluntary, it must be done knowingly and intelligently." United States v. Swartz, 975 F.2d 1042, 1048-49 (4th Cir.1992).

In light of counsel's convincing testimony that he took every precaution to ensure his work with Attorney Drawdy did not harm Applicant's case, Applicant failed to produce any authority that denotes counsel's performance here as deficient. Most importantly, Applicant has produced no evidence to establish a prima facie case that counsel's limited cooperation with Attorney Drawdy on one of Applicant's numerous sets of charges adversely impacted Applicant. See Jones v. Gomez, 66 F.3d 199, 204 (9th Cir. 1995) ("Conclusory allegations not supported by specifics do not warrant relief."). Therefore, this allegation is denied and dismissed with prejudice.

Similarly, this Court finds Applicant's allegation (e) Ineffective assistance of counsel for failing to move to recuse Judge McIntosh from presiding of the plea to be entirely without merit. This Court finds counsel astutely advised Applicant that he could proceed in front of a separate Circuit Judge. However, Applicant specifically wanted to plead in front of Judge McIntosh because he thought it would inure to his benefit. This Court finds this allegation is indicative of the Applicant's entire PCR action: wishful thinking. See Wolfe v. State, 485 S.E.2d 367, 371, 326 S.C. 158, 165 (1997) (Wishful thinking regarding sentencing does not equal a misapprehension concerning the possible range of sentences, especially where one acknowledges on the record that one knows the range of sentences and that no promises have been made). Therefore, this allegation is also denied and dismissed with prejudice.

D.

Applicant has failed to meet his burden to prove (f) Ineffective assistance of counsel for failing to file a notice of appeal.

"[C]ounsel has a constitutionally imposed duty to consult with the defendant about an appeal when there is reason to think either (1) that a rational defendant would want to appeal (for example, because there are nonfrivolous grounds for appeal), or (2) that this particular defendant

000160

reasonably demonstrated to counsel that he was interested in appealing.” Roe v. Flores-Ortega, 528 U.S. 470, 480, 120 S. Ct. 1029, 1036, 145 L. Ed. 2d 985 (2000).

In light of counsel’s credible testimony on this matter, this Court finds Applicant was advised of his right to appeal but choose to ignore counsel while he made juvenile outbursts. See White v. Livingston, 231 S.C. 301, 308, 98 S.E.2d 534, 537 (1957) (“[E]vidence adduced before the referee indicates that the result of the case is not a serious miscarriage of justice, if it is a miscarriage at all. At any rate, appellant has made his bed and he must lie in it”). Therefore, this allegation is denied and dismissed with prejudice.

ALL OTHER ALLEGATIONS

As to any and all allegations that were raised in the application or at the hearing in this matter and not specifically addressed in this order, the Court finds Applicant failed to present any evidence regarding such allegations. Accordingly, the Court finds Applicant has abandoned any such allegations.

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 notes that that Applicant must file and serve a notice of appeal within thirty 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 post-conviction relief. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, post-conviction relief counsel must serve and file a Notice of Appeal on the Applicant’s

behalf. Applicant is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

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

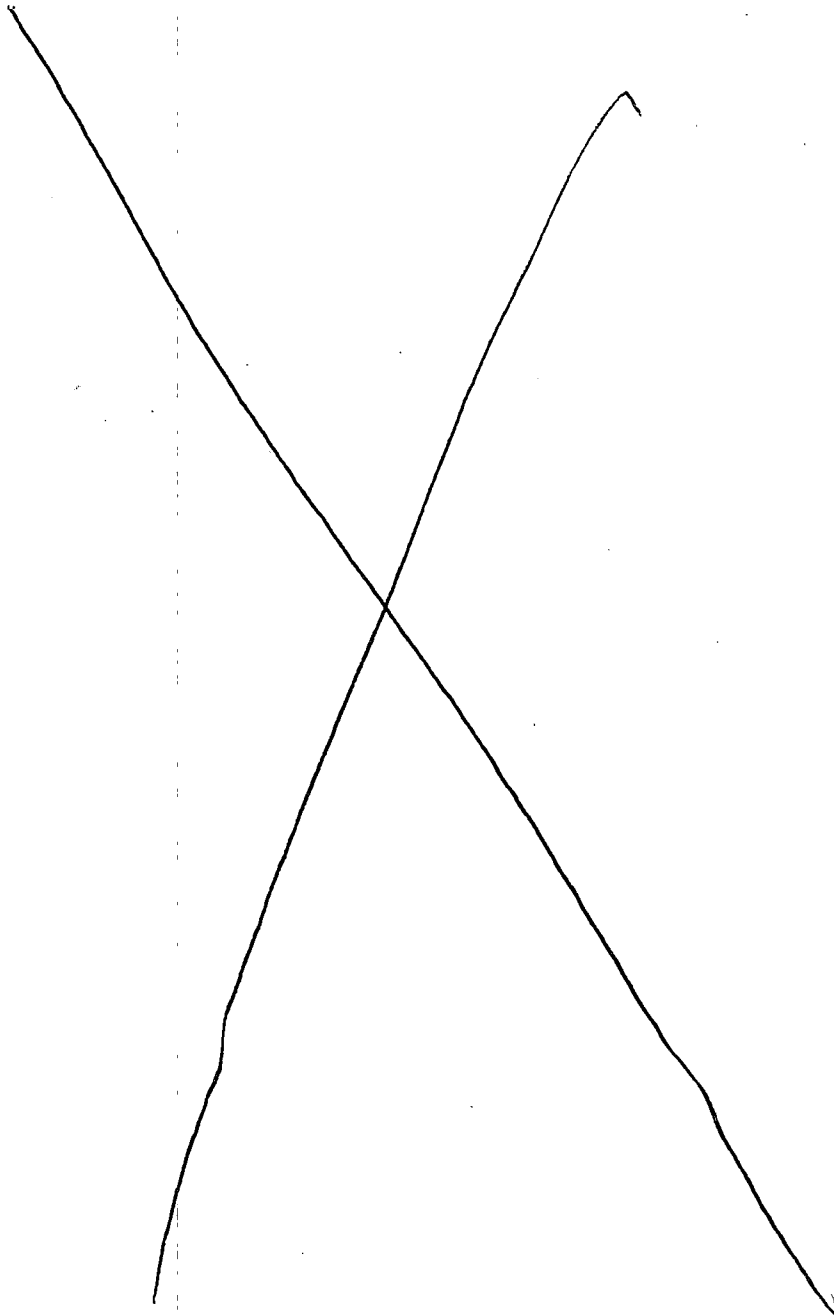
AND IT IS SO ORDERED this 28 day of October, 2015.


 HONORABLE J. CORDELL MADDOX, JR.
 Presiding Judge
 Eleventh Judicial Circuit

Anderson, South Carolina

FILED-CLERK'S OFFICE
 ANDERSON SC
 2015 OCT 30 AM 9:54
 COMMON PLEAS AND
 GENERAL SESSIONS

000162



WITNESSES

Gebing, Anderson County Sheriff's Dept.

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

Term

THE STATE

vs.

Devin Michael Nimmons

CTH

Indictment for

**Accessory / Accessory before the fact to a
Felony**

SC Code: 16-01-0040, 0050
CDR Code: 0002

ARREST WARRANT NUMBER

Direct Ref. J892636

ACTION OF GRAND JURY

TRUE BILL

AUG 30 2011

Foreperson

VERDICT

0006164

STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF Anderson)

At a Court of General Sessions, convened on _____, the Grand Jurors of Anderson County present upon their oath:

Accessory / Accessory before the fact to a Felony

That Devin Michael Nimmons did in Anderson County, on or about December 9, 2010, aid, hire, counsel, or procure the commission of a felony, to wit: Burglary 1st Degree by Christopher M. Brown and/or Jacob S. Tubbs. This is in violation of §16-1-40 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.

Catherine J. Hays
ASSISTANT SOLICITOR

WITNESSES

R Gebing, Anderson County Sheriff's Dept.

ARREST WARRANT NUMBER

Direct Ref. J892639

ACTION OF GRAND JURY

TRUE BILL

AUG 30 2011

For person of Grand Jury person
Date:

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2011-GS-04- 01365

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

Term

THE STATE

vs.

Devin Michael Nimmons

CTH

Indictment for

**Accessory / Accessory before the fact to a
Felony**

SC Code: 16-01-0040, 0050
CDR Code: 0002

0-00166
STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF Anderson)

At a Court of General Sessions, convened on _____, the Grand Jurors of
Anderson County present upon their oath:

Accessory / Accessory before the fact to a Felony

That Devin Michael Nimmons did in Anderson County, on or about December 9,
2010, aid, hire, counsel, or procure the commission of a felony, to wit: Armed Robbery
by Christopher M. Brown and/or Jacob S. Tubbs. This is in violation of §16-1-40 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.

Catherine J. Hays
ASSISTANT SOLICITOR

WITNESSES

R Gebing, Anderson County Sheriff's Dept.

ARREST WARRANT NUMBER

Direct Ref. J892636

ACTION OF GRAND JURY

TRUE BILL

AUG 30 2011

Foreperson of Grand Jury
Foreperson

VERDICT

DUCKET NO. 2011-GS-04-01364

The State of South Carolina

County of Anderson

COURT OF GENERAL SESSIONS

Term

THE STATE

vs.

Devin Michael Nimmons

CTH

Indictment for

**Accessory / Accessory before the fact to a
Felony**

SC Code: 16-01-0040, 0050
CDR Code: 0002

0000168
STATE OF SOUTH CAROLINA)

INDICTMENT

COUNTY OF Anderson)

At a Court of General Sessions, convened on _____, the Grand Jurors of Anderson County present upon their oath:

Accessory / Accessory before the fact to a Felony

That Devin Michael Nimmons did in Anderson County, on or about December 9, 2010, aid, hire, counsel, or procure the commission of a felony, to wit: Burglary 1st Degree by Christopher M. Brown and/or Jacob S. Tubbs. This is in violation of §16-1-40 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.

Catherine J. Hays
ASSISTANT SOLICITOR

COUNTY OF Anderson
STATE VS.
Devin Michael Nimmons
AKA:
Race: W Sex: M Age: 23
DOB: 03-14-1990 SS#: 251-81-8480
Address: 105 Ridgeway Trl
City, State, Zip: Anderson, SC 29621-2671
DL#: 100905551 SID#: SC01793642

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Accessory / Accessory before the fact to a Felony, general provision (violent if violent Felony)

in violation of § 16-01-0040, 0050 of the S.C. Code of Laws, bearing CDR Code # 0002

☐ NON-VIOLENT ☒ VIOLENT ☒ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: /without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Catherine T. Huey 68416 SC Bar# Defendant Attorney for Defendant 73158 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,

for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed years

and/or to pay a fine of \$; provided that upon the service of days/months/years and/or payment

of \$; plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. (171 DAYS)

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$

TOTAL \$130.00

Clerk of Court/Deputy Clerk: Richard A. Huey

Court Reporter: J. Rice

SCCA/217 (03/2011)

INDICTMENT/CA: 2011GS0401364 000169

A/W#: 2011GS0401364

Date of Offense: 12/9/2010

S.C. Code § : 16-01-0040, 0050

CDR Code #: 0002

Sentence Referred RUD 4-22-13
SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

Burglary 2nd Violent C

0002

☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

(defendant's initials)

☐ Negotiated Sentence, ☐ Recommendation by the State.

Attorney for Defendant 73158 SC Bar#

☐ County Detention Center,

under the Youthful Offender Act not to exceed years

days/months/years and/or payment

plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$

TOTAL \$130.00

Clerk of Court/Deputy Clerk: Richard A. Huey

Court Reporter: J. Rice

SCCA/217 (03/2011)

INDICTMENT/CA: 2011GS0401364 000169

A/W#: 2011GS0401364

Date of Offense: 12/9/2010

S.C. Code § : 16-01-0040, 0050

CDR Code #: 0002

Sentence Referred RUD 4-22-13
SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

Burglary 2nd Violent C

0002

☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

(defendant's initials)

☐ Negotiated Sentence, ☐ Recommendation by the State.

Attorney for Defendant 73158 SC Bar#

☐ County Detention Center,

under the Youthful Offender Act not to exceed years

days/months/years and/or payment

plus costs and assessments as applicable*; the balance is suspended with probation for

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONSECUTIVE to sentence on:

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.

The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ plus 20% fee: \$

Payment Terms:

☐ Set by SCDPPPS

Recipient:

*Fine:

§ 14-1-206 (Assessments 107.5 %) \$

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$

§ 56-5-2995 (DUI Assessment) \$12 \$

§ 56-1-286 (DUI Breath Test) \$25 \$

Proviso 47.9 (Public Def/Prob) \$500 \$

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$

§ 50-21-114 (BUI Breath Test Fee) \$50 \$

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$

Proviso 90.5 (SCCA Surcharge) \$5 \$5.00

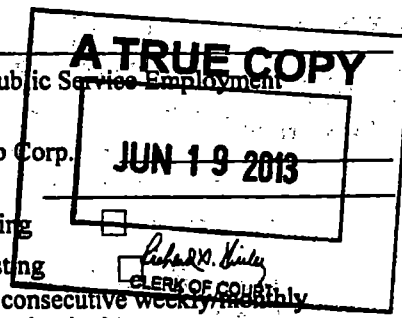
3% to County (if paid in installments) \$

TOTAL \$130.00

Clerk of Court/Deputy Clerk: Richard A. Huey

Court Reporter: J. Rice

SCCA/217 (03/2011)



PTUP days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. ☐

May serve W/E beginning

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ beginning

\$ paid to Public Defender Fund

Other:

☐ Appointed PD or appointed other counsel,

§ 47.12 requires \$500 be paid to Clerk

during probation.

Presiding Judge

Judge Code:

Sentence Date: 4-22-13

Sentence 4-23-13

STATE VS. Anderson
Devin Michael Nimis
AKA:
Race: W Sex: M Age: 23
DOB: 03-14-1990 SS#: 251-81-8480
Address: 105 Ridgeway Trl
City, State, Zip: Anderson, SC 29621-2671
DL#: 100905551 SID#: SC01793642

INDICTMENT/CASE#: 2011GS0401365
A/W#: 2011GS0401365
Date of Offense: 12/9/2010
S.C. Code §: 16-01-0040, 0050
CDR Code #: 0002
Sentencing Defended 4-22-13
SENTENCE SHEET

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐
In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Accessory / Accessory before the fact to a Felony, general provision (violent if violent Felony) Strongarm Robbery (15)
in violation of § 16-01-0040, 0050 of the S.C. Code of Laws, bearing CDR Code # 0002
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.
TEST
Catherine J. Huey 68416 73158
Huey, Catherine T. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:
☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections. (171 Days)
☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

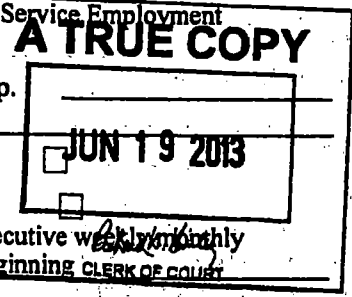
Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP
Total: \$ _____ plus 20% fee: \$ _____
Payment Terms: _____
☐ Set by SCDPPPS _____

_____ days/hours Public Service Employment

Obtain GED ☐
Attend Voc. Rehab. or Job Corp. _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol testing _____
Fine may be pd. in equal, consecutive weekly/monthly pmts. of \$ _____



\$ _____ paid to Public Defender Fund
Other: _____

*Fine:	\$
§ 14-1-206 (Assessments 107.5 %)	\$
§ 14-1-211(A)(1) (Conv. Surcharge)	\$100
§ 14-1-211(A)(2) (DUI Surcharge)	\$100
§ 56-5-2995 (DUI Assessment)	\$12
§ 56-1-286 (DUI Breath Test)	\$25
Proviso 47.9 (Public Def/Prob)	\$500
§ 14-1-212 (Law Enforce. Funding)	\$25
§ 14-1-213 (Drug Court Surcharge)	\$150
§ 50-21-114 (BUI Breath Test Fee)	\$50
§ 56-5-2942(J) (Vehicle Assessment)	\$40/ea
Proviso 90.5 (SCCA Surcharge)	\$5
3% to County (if paid in installments)	\$
TOTAL	\$

☐ Appointed PD or appointed other counsel, § 47.12 requires \$500 be paid to Clerk during probation.

Clerk of Court/Deputy Clerk: Richard A. Huey
Court Reporter: J. Rice
SCCA/217 (03/2011)

Please Only
Presiding Judge
Judge Code: 2155
Sentence Date: 4-23-13
Sentencing Jan 2013

COUNTY OF ANDERSON
STATE VS.
Devin Michael Nimmons
AKA:
Race: W Sex: M Age: 23
DOB: 03-14-1990 SS#: 251-81-8480
Address: 105 Ridgeway Trl
City, State, Zip: Anderson, SC 29621-2671
DL#: 100905551 SID#: SC01793642

*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐

In disposition of the said indictment comes now the Defendant who was

TO: Accessory / Accessory before the fact to a Felony, general provision (violent if violent Felony)

in violation of § 16-01-0040, 0050 of the S.C. Code of Laws, bearing CDR Code # 0002

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Catherine T. Huey 68416 SC Bar# Defendant
Huey, Catherine T. Attorney for Defendant 73158 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. (171 Days)

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Clerk of Court/Deputy Clerk: Richard S. Huey

Court Reporter: J. Rice

SCCA/217 (03/2011)

INDICTMENT/CA: 2011GS0401366

A/W#: 2011GS0401366

Date of Offense: 12/9/2010

S.C. Code § : 16-01-0040, 0050

CDR Code#: 0002

Sentence: 4-22-13
SENTENCE SHEET

☐ CONVICTED OF or ☒ PLEADS

Kidnapping (30)

☐ Mandatory GPS(CSC w/minor 1st or Lewd Act) ☐ §17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)

The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: Catherine T. Huey 68416 SC Bar# Defendant
Huey, Catherine T. Attorney for Defendant 73158 SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of 15 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:

☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections. (171 Days)

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal
Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

Proviso 47.9 (Public Def/Prob) \$500 \$ _____

§ 14-1-212 (Law Enforce. Funding) \$25 \$25.00

§ 14-1-213 (Drug Court Surcharge) \$150 \$ _____

§ 50-21-114 (BUI Breath Test Fee) \$50 \$ _____

§ 56-5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

Proviso 90.5 (SCCA Surcharge) \$5 \$5.00

3% to County (if paid in installments) \$ _____

TOTAL \$ _____

Clerk of Court/Deputy Clerk: Richard S. Huey

Court Reporter: J. Rice

SCCA/217 (03/2011)

A TRUE COPY

JUN 19 2013

CLERK OF COURT

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐

Random Drug/Alcohol testing ☐

Fine may be pd. in equal, consecutive weekly/monthly

pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

COUNTY OF 172 Anderson
STATE VS.

Devin Michael Nimmons

AKA:

Race: W Sex: M Age: 23DOB: 03-14-1990 SS#: 251-81-8480Address: 105 Ridgeway TrlCity, State, Zip: Anderson, SC 29621-2671DL#: 100905551 SID#: SC01793642*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Conspiracy (5)in violation of § 59-150-0400(6) of the S.C. Code of Laws, bearing CDR Code # 2903☒ NON-VIOLENT☐ VIOLENT☐ SERIOUS☐ MOST SERIOUS☐ Mandatory GPS(CSC
w/minor 1st or Lewd Act)☐ §17-25-45The charge is: ☐ As Indicted, ☒ Lesser Included Offense,☐ Defendant Waives Presentment to Grand Jury.

(defendant's initials)

The plea is: Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Huey, Catherine T.

68416

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 5 days/months/years or☐

under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____

; provided that upon the service of _____

days/months/years and/or payment

of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 26-13-13.

*Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

Fine:

14-1-206 (Assessments 107.5 %)

\$

14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

14-1-211(A)(2) (DUI Surcharge)

\$100

\$

56-5-2995 (DUI Assessment)

\$12

\$

56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$500

\$

14-1-212 (Law Enforce. Funding)

\$25

\$

14-1-213 (Drug Court Surcharge)

\$150

\$

50-21-114 (BUI Breath Test Fee)

\$50

\$

56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCJA Surcharge)

\$5

\$

% to County (if paid in installments)

\$

TOTAL

\$

Clerk of Court/Deputy Clerk

Court Reporter: J. RICE

SCA/217 (03/2011)

INDICTMENT/CASE#: 2011GS0400527A/W#: J892635Date of Offense: 12/23/2010S.C. Code §: 16-11-0330(B) 59-150-0400(6)CDR Code #: 0026 2903Sentence Deferred (Rin) 4-22-13
SENTENCE SHEET☐ CONVICTED OF or ☒ PLEADSThe charge is: ☐ As Indicted, ☒ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: Without Negotiations or Recommendation,☐ Negotiated Sentence,☐ Recommendation by the State.

ATTEST:

Huey, Catherine T.

68416

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the

☒ State Department of Corrections,☐ County Detention Center,for a determinate term of 5 days/months/years or☐

under the Youthful Offender Act not to exceed _____ years

and/or to pay a fine of \$ _____

; provided that upon the service of _____

days/months/years and/or payment

of \$ _____, plus costs and assessments as applicable*; the balance is suspended with probation for 5

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☒ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code

§ 24-13-40 to be calculated and applied

by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 26-13-13.

*Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing☐ Ordered

PTUP

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

Fine:

14-1-206 (Assessments 107.5 %)

\$

14-1-211(A)(1) (Conv. Surcharge)

\$100

\$

14-1-211(A)(2) (DUI Surcharge)

\$100

\$

56-5-2995 (DUI Assessment)

\$12

\$

56-1-286 (DUI Breath Test)

\$25

\$

Proviso 47.9 (Public Def/Prob)

\$500

\$

14-1-212 (Law Enforce. Funding)

\$25

\$

14-1-213 (Drug Court Surcharge)

\$150

\$

50-21-114 (BUI Breath Test Fee)

\$50

\$

56-5-2942(J) (Vehicle Assessment)

\$40/ea

\$

Proviso 90.5 (SCCJA Surcharge)

\$5

\$

% to County (if paid in installments)

\$

TOTAL

\$

Clerk of Court/Deputy Clerk

Court Reporter: J. RICE

SCA/217 (03/2011)

☐ Appointed PD or appointed other counsel,
§ 47.12 requires \$500 be paid to Clerk
during probation.

Presiding Judge

Judge Code: 2158Sentence Date: 4-22-13

Southern 12-13 12-13-13

CMTI330D SCDC OFFENDER MANAGEMENT SYSTEM 08/13/13
OMCOMITA RELEASE DATE SCREEN C023981

SCDC# > 355132 LOC: LEE
NIMMONS, DEVIN MICHAEL SCDC CLASSIFICATION... VIOLENT
OFFENDER TYPE...: ADULT-STRAIGHT SENTENCE SEXUAL REGISTRY...: N
SEXUAL PREDATOR...: NOT APP
DNA STATUS...: N/A
GPS REQUIREMENT...: N
PREA DECISION....:

CURRENT SENTENCE: 015-00-000 CONSECUTIVE SENTENCE ...: N
015-00-000 CURRENT SENT START DATE: 11/03/2012

PROJECTED COMPLETION DATES

MAXOUT DATE: 07/31/2025 CURRENT EWC ..: 3 F 5
YOA SIX YEAR DATE: / / CURRENT EEC ..: NOT CURRENTLY EARNING EEC
INITIAL PAROLE DATE: 08/03/2025 NEXT PAROLE HEARING DATE: 08/03/2025

TOTAL GT DAYS EARNED: 000000 LABOR CREW/WORK PROG DATE: 08/01/2020
TOTAL EARNED WORK CREDITS ...: 000066 LABOR CREW DISQ REASON:
TOTAL EDUCATION CREDITS: 000000
TOTAL EXTRA EARNED CREDITS ..: 000 SUPERVISED REENTRY DATE...: 00/00/00
TOTAL SERVICE TIME EARNED ...: 000280 ISS.....:

PFKEYS: 5: HISTORY OF DATE CHANGES

4-© 1 Sess-1 167.7.50.33 SCD1545 3/11

70000174

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

RECORD SUMMARY REPORT DATED 08/13/13

C0239

NIMMONS,DEVIN MICHAEL FBI # 394671VC1 SID# SC01793642 SCDC # 355132
OFFENDER TYPE.: ADULT-STRAIGHT SENTENCE
INSTITUTION ...: LEE CORR INST
SECURITY/CUST.: 3 MINIMUM IN
CURR INCARC SENT...: 15 YRS 0 MOS 0 DYS
CENTRAL MONITORING.: YES
SOCIAL SECURITY #...:251818480

DORM.....: FLO1112B
RACE.....:W SEX....:M
PROJ MAXOUT DATE: 07/31/2025
PROJ PAROLE DATE: 08/03/2025
EWC JOB...: HORT SPEC GROWER, IN
EDUC PGM.: NO CURR EDUC PROGRAM
EWC LEVEL: 3F5 EEC LEVEL:
ASSIGNMENT...: HORTICULTURE DETAIL

CURRENT PROGRAM...: NO CURRENT PROGRAM
AGE...: 23 DATE OF BIRTH...: 3/14/90

PREVIOUS NUMBERS:
** NO PREVIOUS NUMBERS **

CURRENT OFFENSES	SENTENCE			COUNTY	SENTENCE			V/NV	CATEGORY
	YRS	MOS	DYS		START				
KIDNAPPING	15	0	0	ANDERSON	11/ 3/2012	V			5
CRIMINAL CONSPIRACY	0	0	0	ANDERSON	11/ 3/2012	N			2
BURGLARY-2ND DEGREE	15	0	0	ANDERSON	11/ 3/2012	V			4
STRONG ARM ROBBERY	15	0	0	ANDERSON	11/ 3/2012	N			3

PRIOR COMMITMENTS OVER 90 DAYS:
MISSING PRIORS DATA

DETAINERS (HOLD,WANTED,NOTIFY):
NO DETAINERS
NO DETAINERS

ESCAPES:
NO ESCAPE HISTORY

CRIMINAL CHARGES:
NO CRIMINAL CHARGES WHILE IN CUSTODY
NO CRIMINAL CHARGES HISTORY

ASSAULTIVE DISCIPLINARIES:
NO ASSAULTIVE DISCIPLINARY HISTORY

NON-ASSAULTIVE DISCIPLINARIES:
NO NON-ASSAULTIVE DISCIPLINARY HISTORY

HISTORY OF MOVEMENTS:		INCARCERATED		ADMINISTRATIVE	
5/23/13	LEE	INCARCERATED		ADMINISTRATIVE	
4/25/13	KIRKLAND	INCARCERATED		R&E PROCESSING	
4/25/13	PERRY	INCARCERATED		NEW ADMISSION	

HISTORY OF EARNED WORK CREDIT ASSIGNMENTS:					JOB
JOB	START	END	TERMINATION		LVL
DESCRIPTION	DATE	DATE	REASON		YF5
HORT SPEC GROWER, IN	06/12/13	0/ 0/ 0			

HISTORY OF EARNED EDUCATION CREDITS:			
EEC	START	END	TERMINATION
DESCRIPTION	DATE	DATE	REASON

NO SCHOOL ASSIGNMENTS
***** END OF REPORT *****

STATE OF SOUTH CAROLINA)
)
)
)
)2011GS0400528
INDICTMENT NUMBER

COUNTY OF ANDERSON

J892639
CASE NUMBER**CASE DISPOSITION HISTORY****Defendant:**Nimmons, Devin Michael
105 Ridgeway Trl

SS# 251818480

Sex: M

Race: W

DOB: 1990-03-14

DL#: 100905551

DL State: SC

Anderson, SC

Date of Arrest:

Filed with Clerk:

2011-01-20

Offense Description:

armed with a deadly weapon

Robbery / Armed Robbery, robbery while armed or allegedly

Disposition:

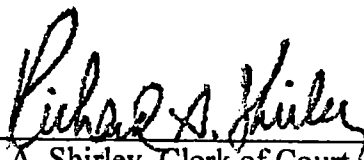
Nolle Prosequi

Disposition Judge:

Solicitor / Master In Equity G S And C P

Disposition Date:

April 23, 2013


Richard A. Shirley, Clerk of Court

General Sessions, Anderson County

A TRUE COPY

APR 23 2013


CLERK OF COURT

000076

STATE OF SOUTH CAROLINA

2011GS0400529
INDICTMENT NUMBER

COUNTY OF ANDERSON

J892644
CASE NUMBER

CASE DISPOSITION HISTORY

Defendant:

Nimmons, Devin Michael
105 Ridgeway Trl

SS# 251818480
Sex: M
Race: W

DOB: 1990-03-14
DL#: 100905551
DL State: SC

Anderson, SC

Date of Arrest:

Filed with Clerk: 2011-01-20

Offense Description: Kidnapping / Kidnapping

Disposition: Nolle Prosequi

Disposition Judge: Solicitor / Master In Equity G S And C P

Disposition Date: April 23, 2013

Richard A. Shirley

Richard A. Shirley, Clerk of Court

General Sessions, Anderson County

A TRUE COPY

APR 23 2013

Richard A. Shirley
CLERK OF COURT

STATE OF SOUTH CAROLINA

2011GS0400530
INDICTMENT NUMBER

COUNTY OF ANDERSON

J892636
CASE NUMBER**CASE DISPOSITION HISTORY****Defendant:**Nimmons, Devin Michael
105 Ridgeway Trl

SS# 251818480

Sex: M

Race: W

DOB: 1990-03-14

DL#: 100905551

DL State: SC

Anderson, SC

Date of Arrest:

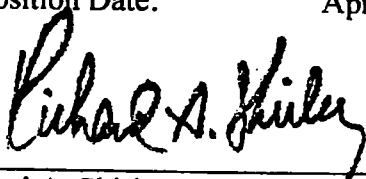
Filed with Clerk: 2011-01-20

Offense Description: Burglary / Burglary (After June 20, 1985) - First degree

Disposition: Nolle Prosequi

Disposition Judge: Solicitor / Master In Equity G S And C P

Disposition Date: April 23, 2013



Richard A. Shirley, Clerk of Court

General Sessions, Anderson County

A TRUE COPY

APR 23 2013


CLERK OF COURT

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

2011GS0400683
INDICTMENT NUMBERJ899583
CASE NUMBER

CASE DISPOSITION HISTORY

Defendant:Nimmons, Devin Michael
105 Ridgeway Trl
Anderson, SCSS# 251818480
Sex: M
Race: WDOB: 1990-03-14
DL#: 100905551
DL State: SC

Date of Arrest: 2011-01-14

Filed with Clerk: 2011-01-26

Offense Description: Burglary / Burglary (Non - Violent) - Second degree

Disposition: Nolle Prosequi

Disposition Judge: Solicitor / Master In Equity G S And C P

Disposition Date: April 23, 2013



Richard A. Shirley, Clerk of Court

General Sessions, Anderson County

A TRUE COPY

APR 23 2013


CLERK OF COURT

STATE OF SOUTH CAROLINA CLERK'S OFFICE IN THE COURT OF (Select one.)
COUNTY OF ANDERSON ☒ COMMON PLEAS ☐ FAMILY COURT

Devin M. Nimmons,
Plaintiff(s),

10th JUDICIAL CIRCUIT
CASE NO.: 2013-CP-04-1769

-vs-
State of South Carolina,
Defendant(s).

APPOINTMENT OF COUNSEL OR GAL
(Select one.)

☒ ORDER
☐ AMENDED ORDER

A TRUE COPY

AUG 13 2013

☐ Juvenile
☐ Abuse and Neglect

Richard D. Shuley
CLERK OF COURT

TYPE OF CASE/PROCEEDING: (Check one.)
☒ Post-Conviction Relief (PCR)/habeas case ☐ Adoption
☐ SVP case ☐ Custody and/or Visitation
☐ Minor Name Change ☐ Other:

It appears that Devin M. Nimmons, who is a litigant in this case, is entitled to court-appointed counsel or a guardian ad litem.

- It further appears that: (Select only one.)
- ☐ counsel/guardian ad litem has not yet been appointed by the court; therefore, an appointment for counsel/guardian ad litem is necessary.
 - ☐ counsel or a guardian ad litem was previously appointed by the court but has indicated either a possible conflict of interest, an entitlement to exemption, or other good cause warranting the appointment of new counsel or guardian ad litem based on: _____
 - ☐ counsel was previously appointed by the court but has not indicated that the litigant has retained private counsel and is no longer entitled to appointed counsel.
 - ☐ court appointed counsel has obtained _____, Esquire as substitute counsel pursuant to Rule 608(h)(2); provided, however, only the member who originally received the appointment and who sought substitute counsel shall receive credit.
 - ☐ Other:

Therefore, it is ordered that Hugh W. Welborn, Sr., hereby is appointed as (Select one.)
☒ counsel ☐ lead counsel (if capital PCR case) ☐ guardian ad litem
for the above-named person. Any counsel or GAL previously appointed is/are hereby relieved.

☐ (If Death Penalty PCR Case) It is further ordered that _____, Esquire, is hereby appointed as second counsel in this capital PCR case.

The clerk of court is directed to forward a copy of this order to all persons entitled to notice.

IT IS SO ORDERED THIS 13 DAY OF August, 2013
Richard D. Shuley
☐ Circuit Judge ☒ Clerk of Court

NOTICE: SC Supreme Court Order of September 29, 2006, requires appointed counsel entitled to payment from the Office of Indigent Defense (OID) to register the case online with OID within fifteen (15) days of this appointment at www.sccid.sc.gov, and further directs that reimbursement vouchers be submitted directly to SCCID and not to the trial judge or clerk of court. See SCCID website for further details.



FORM 5

STATE OF SOUTH CAROLINA

County of Anderson

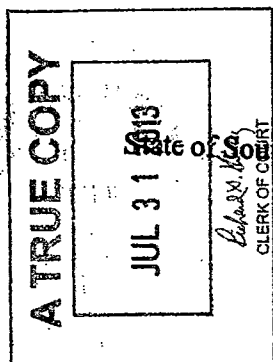
IN THE COURT OF COMMON PLEAS

Devlin Michael Nimmons 355132
 Full name and prison number (if any) of Applicant

20 13 CP - 04 - 01769

FILED-CLERK'S OFFICE
 ANDERSON SC
 2013 JUL 31 AM 11:49
 COMMON PLEAS AND
 GENERAL SESSIONS

APPLICATION FOR
 POST-CONVICTION RELIEF



v.

State of South Carolina

INSTRUCTIONS B 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 Lee Correctional Institution
2. Name and location of Court which imposed sentence Anderson County
General Sessions Court, 10th Judicial Circuit, Anderson, SC.
3. Name(s) of co-defendant(s) (if any) Christopher M. Brown, Jacob S.
Tubbs.
4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:
 (a) 2011 GSO 401366

- (b) 2011GS0401364
- (c) 2011GS0401365
5. The date upon which sentence was imposed and the terms of the sentence:
- (a) 4-23-2013
- (b) 4-23-2013
- (c) 4-23-2013
6. Check whether a finding of guilty was made:
- (a) ☒ after a plea of guilty After my guilty 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?
No
8. If you answered Ayes@ to (7), list:
- (a) the name of each Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. _____
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. _____
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
9. If you answered Ano@ to (7), state your reasons for not so appealing:
- (a) My lawyer was told to appeal but did not, and cut contact from me and my family.

- (b) Nor did he ask for a reconsideration following the op
 (c) plea.
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) _____
 (c) _____
11. State concisely and in the same order the facts which support each of the grounds set out in (10):
- (a) Involuntary plea deal.
 (b) Conflict of interest
 (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 Ayes@ to any part of (12), list with respect to each petition, motion or application:
- (a) the specific nature thereof:
- i. _____
 ii. _____
 iii. _____
 iv. _____
- (b) the name and location of the Court in which each was filed:
- i. _____
 ii. _____
 iii. _____

- iv. _____
- (c) the disposition thereof:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (d) the date of each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____
- (e) if known, citations of any written opinions or orders entered pursuant to each such disposition:
 - i. _____
 - ii. _____
 - iii. _____
 - iv. _____

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

No

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

- (a) which grounds have been presented:
 - i. _____
 - ii. _____
 - iii. _____
- (b) the proceedings in which each ground was raised:
 - i. _____
 - ii. _____
 - iii. _____

16. If any ground set forth in (10) has not previously been presented to any Court, State or Federal, set forth the ground and state concisely the reasons why such ground has not previously been presented:
- (a) Ineffective Counseling
- (b) _____
- (c) _____
17. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? Yes
- (b) your trial, if any? No
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence? No
- (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No
18. If you answered Ayes@ to one or more parts of (17), list:
- (a) the name and address of each attorney who represented you:
- i. William Norman Eggs III, P.O. Box 2167,
Anderson, SC 29622 (864)-224-2111
- ii. _____
- iii. _____
- (b) the proceedings at which each such attorney represented you:
- i. Preliminary Hearing, Bond Hearing, Open plea/
Sentencing arraignment.
- ii. _____
- iii. _____

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

A New trial. That right was taken from me due to ineffective assistance of counsel.

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

No

Revised 3/2003

STATE OF SOUTH CAROLINA)

County of Anderson)

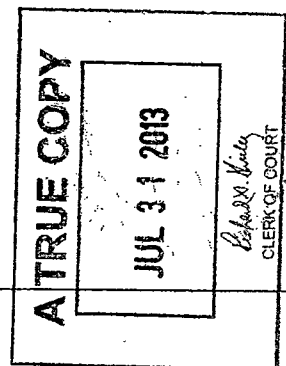
VERIFICATION

I, Devin Michael Nimmens, 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 30 day of July, 2013.

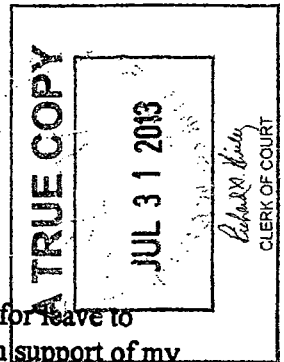
Debra Sims (L.S.)
Notary Public

My Commission Expires: 11-4-2015



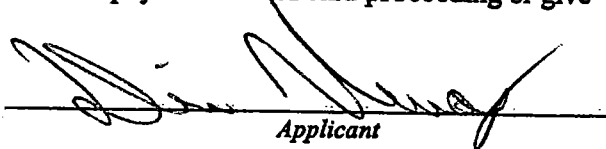
2013- CP - 04 -01769

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



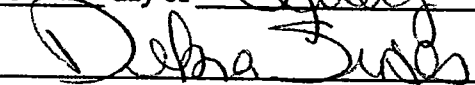
I, Devin Michael Nimmons, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

- (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.


Applicant

SWORN or affirmed to and subscribed before me this

30 day of July, 2013.


Notary Public

My Commission Expires: 11-4-2015

FILED-CLERK'S OFFICE
ANDERSON SC
2013 JUL 31 A 11:50
COMMON PLEAS AND
GENERAL SESSIONS

Devin M. Nimmans
Lee Correctional Institution
940 Wisacky Highway
Bishopville, SC 29010
Florence, North Room 1112

29622800202

USA
FIRST-CLASS
FOREVER



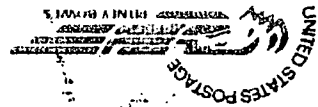
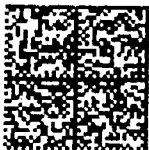
Anderson Clerk of Court
P.O. Box 8002
Anderson, SC 29622

COMMON PLEAS AND
GENERAL SESSIONS

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	
	)	Case No. 2013-CP-04-1769
Devin Michael Nimmons,	)	
S.C.D.C. No. 355132,	)	
	)	
Applicant,	)	
	)	
v.	)	RETURN
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

Respondent, making its Return to the application for post-conviction relief filed July 31, 2013 would respectfully show this Court:

I.

Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Anderson County Clerk of Court. Applicant was indicted by the August 2011 term of the Anderson County Grand Jury for three counts of accessory/accessory before the fact to a felony (2011-GS-04-1364; -1365; -1366), and conspiracy (2011-GS-04-0527), Applicant was represented by W. Norman Epps, III., Esq. On April 23, 2013, the State called its case. Applicant entered guilty pleas to burglary, second-degree violent (-1364); strong armed robbery (-1365), kidnapping (-1366) and conspiracy (-0527). The Honorable R. Lawton McIntosh sentenced Applicant to fifteen (15) years imprisonment for burglary, second-degree violent, fifteen (15) years imprisonment for strong armed robbery, fifteen (15) years imprisonment for kidnapping. The sentences were to be served concurrently. Judge McIntosh further sentenced Applicant to five (5) years imprisonment for conspiracy suspended on the

service of five (5) years probation. The conspiracy sentence was to be served consecutively. Applicant did not appeal his sentence or conviction.

Attached herewith and incorporated herein are the records of the Anderson County Clerk of Court regarding the subject conviction, the applicant's records from the South Carolina Department of Corrections, and the guilty plea transcript. Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

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

1. Ineffective Assistance of Counsel:
 - a. "Involuntary Plea deal;"
 - b. "Conflict of interest;"

Any claims not specifically enumerated in the PCR application or amendments **not filed timely ten (10) days prior of the evidentiary hearing** will be opposed by the State, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRPC.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his 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 (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 (1985).

Respondent submits that 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, Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

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

V.

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

Respectfully submitted,

ALAN WILSON
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

KAREN C. RATIGAN
Senior Assistant Deputy Attorney General

J. WALT WHITMIRE
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

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

Dec 30th, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	IN THE TENTH CIRCUIT
COUNTY OF ANDERSON	)	
	)	
	)	2013-CP-04-1769
	)	
DEVIN M. NIMMONS, # 355132	)	
	)	
Applicant,	)	
	)	
vs	)	AFFIDAVIT OF SERVICE BY MAIL
	)	
STATE OF SOUTH CAROLINA,	)	
	)	
Respondent	)	

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

Hugh W. Welborn, Esq.
P.O. Box 173
Anderson, SC 29622

DATED this 30th day of December, 2013


 Troyesh Brailey, Legal Assistant
 For Respondent

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