VOLUME ONE

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS
APPEAL FROM YORK COUNTY
COURT OF COMMON PLEAS
DANEIL D. HALL,CIRCUIT COURT JUDGE

RECEIVED
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SC Court of Appeals

APPELLATE CASE NO: 2015-001004

Antonio Gordon, Appellant,

v.

The State of South Carolina, Respondent.

RECORD ON APPEAL OF APPELLANT

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August 12, 2016

Antonio Gordon #254798
4848 Goldmine Hwy
Kershaw, SC 29067

STATE OF SOUTH CAROLINA

COURT OF GENERAL SESSIONS

COUNTY OF YORK

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STATE OF SOUTH CAROLINA	)	
-V-	)	TRANSCRIPT OF RECORD
ANTONIO GORDON,	)	98-GS-46-2847
MONTA GORDON, AND	)	98-GS-46-2853
TERRANCE MCCREARY,	)	98-GS-46-2860
DEFENDANTS	)	

JULY 12, 14, & 16, 1999
YORK, SOUTH CAROLINA

B E F O R E:

THE HONORABLE JOHN C. HAYES, III

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

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(COURT RESUMES.)

MR. ANTHONY: YOUR HONOR, AS MR. GORDON HAS ENTERED PLEAS NOW THE STATE WOULD EXCUSE LIEUTENANT HERRING AND DETECTIVE JETER. WE APPRECIATE Y'ALL COMING. THEY WERE WITNESSES IN THE HEARING CONCERNING MONTA GORDON. THAT WILL NOT BE NECESSARY GIVEN THE PLEA.

MR. ANTHONY: YOUR HONOR, THE NEXT MATTER WE WOULD TAKE UP THIS AFTERNOON IS THE JACKSON VERSUS DENNO HEARING AS THE STATEMENT MADE BY ANTONIO GORDON. I UNDERSTAND MR. D'AGOSTINO IS WANTING TO CALL A WITNESS FIRST IN THIS HEARING BEFORE THE STATE PRESENTED ANY EVIDENCE.

MR. D'AGOSTINO: YOUR HONOR, WE HAVE CHRIS WELLBORN BUT HE HAS A CONFLICT LATER ON THIS AFTERNOON.

THE COURT: I'VE GOT NO PROBLEM WITH THAT. WE'LL ACCOMMODATE THAT IN ANY WAY WE CAN. GET MR. GORDON ON OUT HERE THOUGH.

MR. D'AGOSTINO: THANK YOU, YOUR HONOR.

(MR. GORDON ENTERS THE COURTROOM.)

(MR. TERRANCE MCCREARY IS PRESENT WITH HIS ATTORNEY MR. GILLEN.)

THE COURT: MR. WELLBORN, YOU WANT TO COME UP AND BE SWORN. THIS IS UNDER JACKSON VERSUS

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DENNO I UNDERSTAND REGARDING ANTONIO GORDON.

MR. D'AGOSTINO: YES, SIR.

CHRISTOPHER WELLBORN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

THE COURT: THE COURT WILL TAKE JUDICIAL NOTICE THAT MR. WELLBORN IS A MEMBER OF THE SOUTH CAROLINA BAR AND YORK COUNTY BAR AND PROBABLY SEVERAL OTHER BARS, BUT HE IS IN FACT AN ATTORNEY LICENSED TO PRACTICE IN THE STATE OF SOUTH CAROLINA AND YOU MAY ASK HIM ANY QUESTIONS YOU WANT ABOUT THAT BUT I TAKE JUDICIAL NOTICE.

MR. D'AGOSTINO: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION BY MR. D'AGOSTINO:

Q MR. WELLBORN, JUST FOR THE RECORD GIVE US YOUR NAME AND WHAT AREA OF PRACTICE YOU SPECIALIZE IN?

A MY NAME IS CHRISTOPHER WELLBORN, LAST NAME W-E-L-L-B-O-R-N, AND SOUTH CAROLINA DOES NOT RECOGNIZE A SPECIALTY IN CRIMINAL DEFENSE BUT THAT'S, MY PRACTICE IS COMPLETELY DEVOTED TO CRIMINAL DEFENSE WORK.

Q NOW DID YOU HAVE AN OCCASION, AND I KNOW YOU'RE HERE AS A WITNESS OF THE STATE VERSUS ANTONIO GORDON, DID YOU HAVE OCCASION ON JULY 23, 1998, TO COME IN CONTACT AND/OR BE RETAINED TO

App. 7

REPRESENT ANTONIO GORDON?
A YES. I WAS ASKED TO REPRESENT HIM THAT DAY BY HIS PARENTS. I GOT FIRST PHONE CALLS THEN SUBSEQUENTLY MEET WITH HIS MOTHER AND I BELIEVE HIS STEPFATHER AS I RECALL TO REPRESENT MR. GORDON.
Q WHAT DID YOU DO AFTER YOU WERE CONTACTED?
A WELL MY, I WAS TOLD THAT HE WAS AT THE ROCK HILL POLICE DEPARTMENT OR BEING DETAINED AT THE ROCK HILL POLICE DEPARTMENT SO I IMMEDIATELY WENT TO THE ROCK HILL POLICE DEPARTMENT TO MEET WITH MY CLIENT.
Q WHAT HAPPENED WHEN YOU GOT THERE?
A WELL, I GOT THERE APPROXIMATELY 11:30 IN THE MORNING. I WENT UP TO THE DISPATCHER, PERSON AT THE FRONT DESK WHO I WAS, TO MY RECOLLECTION WAS A WOMAN NAMED CHARLENE. I MADE A REQUEST TO SEE MY CLIENT AND I ASSUMED THAT HE WAS IN THE BACK IN THE HOLDING AREA AND MADE BASICALLY A REQUEST TO SEE MY CLIENT.
Q WHAT HAPPENED AS A RESULT OF YOUR REQUEST OF CHARLENE TO SEE YOUR CLIENT?
A WELL, SOME TIME PAST AND NOTHING WAS HAPPENING SO I MADE A SUBSEQUENT REQUEST TO SEE MY CLIENT, ACTUALLY SEVERAL SUBSEQUENT REQUESTS AND WAS

App. 8

TOLD THAT MY CLIENT WAS IN THE BACK IN THE DETECTIVE AREA, WAS BEING INTERVIEWED BY OFFICERS WHO WERE NOT IDENTIFIED AT THAT TIME, I AGAIN ASSERTED THAT I WAS HIS ATTORNEY HAVING BEEN HIRED BY HIS PARENTS TO REPRESENT HIM, THAT I WISHED TO SEE HIM, AND, YOU KNOW, THAT I WISHED TO SEE HIM, ALL QUESTIONING TO CEASE UNTIL I HAD A CHANCE TO TALK TO MY CLIENT.

Q WHO WERE YOU TALKING TO AT THAT TIME?

A WELL, I STARTED, INITIALLY IT WAS CHARLENE. ULTIMATELY OTHER PERSON BECAME INVOLVED. AT ONE POINT DURING THIS PROCESS, APPROXIMATELY, I WANT TO SAY ABOUT 11:40 DETECTIVE CABINESS OR CAPTAIN CABINESS CAME OUT INTO THE LOBBY. HE CONFIRMED TO ME THAT MR. GORDON WAS IN THE BACK, THAT HE WAS BEING INTERVIEWED BY ROCK HILL POLICE DEPARTMENT PERSONNEL, AND I ASSERTED MY REQUEST AGAIN DIRECTLY TO HIM THIS TIME, LOOK, I'VE BEEN HIRED TO BE HIS LAWYER. I WOULD LIKE TO TALK TO MY CLIENT AND I'D LIKE QUESTIONING TO CEASE UNTIL I'VE HAD A CHANCE TO TALK TO MY CLIENT. ULTIMATELY MR. CABINESS WENT BACK INTO THE BACK ROOM. HE THEN CAME BACK OUT, THIS TIME ACCOMPANIED BY DETECTIVE BLACKWELDER OF THE ROCK HILL POLICE DEPARTMENT. ONCE AGAIN I ASSERTED

App. 9

THE SAME REQUEST, NOTHING WAS HAPPENING. APPROXIMATELY 11:51 I AT THIS POINT REALIZED THAT SOMETHING WAS SERIOUSLY WRONG IF I MADE MULTIPLE REQUESTS TO SEE A CLIENT AND THEY WERE CONTINUING TO DENY MY REQUEST TO MY CLIENT EVEN THOUGH THEY KNEW I HAD BEEN RETAINED TO REPRESENT HIM. OF COURSE, THIS IS A JUVENILE SO THE ISSUE OF THE FACT THAT THE PARENTS HAD HIRED ME WAS TO MY MIND A SERIOUS ISSUE, SO AT APPROXIMATELY 11:51 I MADE ANOTHER REQUEST. THIS TIME IT WAS TO A DISPATCHER WHOSE LAST NAME WAS COLLINS. I DON'T KNOW WHAT THE DISPATCHER'S FIRST NAME WAS. ONCE AGAIN NOTHING WAS HAPPENING. THEN AT APPROXIMATELY 11:56 THE DISPATCHER COLLINS RELAYED TO ME THAT MY CLIENT WAS STILL IN THE DETECTIVE DIVISION PRESUMABLY STILL BEING INTERVIEWED AND THAT QUOTE I COULD SEE HIM WHEN THEY WERE DONE WITH HIM.

AT 12:05 I WENT, AFTER MAKING A REQUEST, I TALKED TO CHIEF FORTSON. AFFIRMED MY REPRESENTATION, REAFFIRMED MY REPRESENTATION, COMPLAINED ABOUT THE FACT THAT I HAD MADE NUMEROUS REQUESTS TO SEE MY CLIENT AND I'VE BEEN GIVEN THIS RESPONSE, WELL, WHEN WE'RE DONE QUESTIONING HIM YOU CAN SEE YOUR CLIENT. ONCE

App. 10

AGAIN REAFFIRMED TO CHIEF FORTSON, PRESUMABLY A MAJOR SUPERVISOR OF THE WHOLE EVENT, THAT ALL QUESTIONING WAS TO CEASE UNTIL I HAD AN OPPORTUNITY TO TALK TO MY CLIENT. HE SAID THAT HE WOULD BE BACK WITH ME. I WENT BACK IN THE MAIN LOBBY. AT APPROXIMATELY 12:18 DETECTIVE CABINESS CAME OUT AGAIN, TOLD ME THAT MY CLIENT HAD BEEN CHARGED WITH MURDER, THAT HE WAS BEING BOOKED, AND I QUOTE, I COULD SEE HIM AFTER THAT. HE THEN ALSO MENTIONED QUOTE THE CO-DEFENDANT SAYS HE'S THE TRIGGER MAN, SO I, WHATEVER.

APPROXIMATELY 3:07 P.M. I WAS BACK AT THE ROCK HILL POLICE DEPARTMENT. THIS TIME I TALKED TO A DISPATCHER WHOSE LAST NAME WAS MERCHANT, A GENTLEMAN WHO WORKS AT THE ROCK HILL POLICE DEPARTMENT, AND MADE A REQUEST TO SEE MY CLIENT. I ASSUMED THAT BETWEEN 12:18 AND 3:07 THEY WOULD HAVE HAD TIME TO BOOK MY CLIENT. I WAS TOLD THAT THEY WOULD HAVE TO QUOTE NOTIFY THE ARRESTING OFFICER BEFORE I WOULD BE ALLOWED TO SEE MY CLIENT AND THEN I WAS TOLD BY DISPATCHER MERCHANT QUOTE THEY ARE TALKING ABOUT IT AND THEY WILL LET YOU KNOW.

AT 3:18 ONCE AGAIN I ASKED TO SPEAK TO CHIEF

App. 11

FORTSON. I WAS TOLD HE WAS ON THE PHONE THAT THEY'D LET ME KNOW AFTER HE WAS OFF THE PHONE. ULTIMATELY I WAS NOT ALLOWED TO SEE MY CLIENT THROUGHOUT THAT WHOLE DAY. I THEN MADE A DECISION BASICALLY BY THE END OF THE DAY THAT I COULD NOT REPRESENT MR. GORDON SIMPLY BECAUSE I REALIZED I WOULD BE A WITNESS ULTIMATELY IN THE CASE.

Q ALL RIGHT. NOW LET ME BACK UP FOR ONE SECOND HERE. WHEN YOU FIRST GOT TO THE POLICE STATION WERE THERE OTHER INDIVIDUALS IN THE LOBBY AND MORE SPECIFICALLY CHYENCA DIXON?

A YES, SHE WAS THERE. CHYENCA DIXON WAS THERE, MR. GORDON'S, MR. ANTONIO GORDON'S MOTHER WAS THERE. I BELIEVE HIS STEPFATHER WAS THERE AT SOME POINT. WHETHER HE WAS THERE INITIALLY OR WHETHER HE CAME IN SHORTLY AFTER I ARRIVED I HAVE NO SPECIFIC RECOLLECTION, BUT THERE WERE OTHER INDIVIDUALS THERE.

Q WAS THERE AN OCCASION WHEN CAPTAIN CABINESS CAME OUT TO THE LOBBY AND ASKED TO SPEAK WITH CHYENCA DIXON?

A YES, THERE WAS. AND AT THAT POINT MS. DIXON INDICATED TO ME THAT SHE DID NOT WANT TO SPEAK TO CAPTAIN CABINESS BY HERSELF, THAT SHE WANTED

App. 12

TO HAVE ME WITH HER. I ASKED HER IF SHE WAS ASKING ME TO REPRESENT HER. SHE AFFIRMED THAT SHE WAS THAT SHE WANTED ME TO REPRESENT HER AT LEAST FOR PURPOSES OF BEING QUESTIONED. I VOLUNTEERED TO DO THAT WHICH I TOLD CAPTAIN CABINESS. I SAID, YOU KNOW, LOOK SHE'S ASKED ME AND SHE AFFIRMED THAT IN FRONT OF CAPTAIN CABINESS AND IN FRONT OF ME TOLD HIM THAT SHE WANTED ME PRESENT AS HER LAWYER.

Q WHAT HAPPENED NEXT?

A CAPTAIN CABINESS WENT BACK INSIDE THE BACK ROOM THEN WHEN HE CAME OUT THE SECOND TIME WITH MS. BLACKWELDER THEY TOLD MS. DIXON SHE WAS UNDER ARREST AS QUOTE AN ACCESSORY AFTER THE FACT TO MURDER. THEY TOOK HER IN THE BACK ROOM AND QUESTIONED HER. I WAS NOT PRESENT.

Q DID SHE EVENTUALLY COME OUT AGAIN?

A SHE DID. SHE EVENTUALLY CAME BACK. SHE ULTIMATELY WAS NOT BOOKED. SHE ULTIMATELY, TO MY KNOWLEDGE, WAS NEVER CHARGED WITH ACCESSORY AFTER THE FACT AT LEAST WASN'T THAT DAY UNLESS THEY DID IT AT SOME POINT LATER, BUT THEY HAD THE OPPORTUNITY I ASSUME TO QUESTION HER BY CLAIMING THEY WERE CHARGING HER WITH THIS OFFENSE.

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Q HAVE YOU HAD ANY OTHER INVOLVEMENT WITH THIS CASE OTHER THAN WHAT YOU TOLD US?

A OTHER THAN BEING QUESTIONED BY VARIOUS PEOPLE WHO WANTED TO KNOW WHAT HAPPENED AND MY EXPERIENCES IN THE POLICE DEPARTMENT THAT DAY, NO.

AGAIN I HAVING BASICALLY BEEN PUT INTO THE POSITION OF BEING A WITNESS AS TO WHAT HAPPENED, I COULD NOT BE COUNSEL FOR ANYBODY INVOLVED. IN FACT, LATER I WAS CONTACTED BY FAMILY MEMBERS OF MR. GORDON'S CO-DEFENDANT ABOUT REPRESENTING THEM AND I EXPLAINED THE SAME THING THAT I WOULD HAVE A CLEAR CONFLICT AND ON TOP OF THAT I WAS ALSO A WITNESS TO WHAT HAPPENED THAT DAY.

Q THANK YOU. ANSWER ANY QUESTIONS THAT EITHER ONE OF THE SOLICITORS MIGHT HAVE.

A SURE.

CROSS EXAMINATION BY MR. ANTHONY:

Q MR. WELLBORN, YOU SAID YOU WERE ASKED TO REPRESENT MR. GORDON BY HIS PARENTS?

A THAT'S CORRECT.

Q AND DID, HOW DID THEY MAKE CONTACT WITH YOU?

A INITIALLY BY TELEPHONE.

Q TELEPHONE?

A UH-HUH.

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Q AND DID THEY WIND UP COMING TO YOUR OFFICE?
A I WOUND UP MEETING THEM AT THE ROCK HILL POLICE DEPARTMENT.
Q OKAY. YOU MET THEM AT THE POLICE DEPARTMENT. YOU SAID WHEN YOU TESTIFIED YOU ARRIVED AT ABOUT 11:30?
A I WAS ON OR ABOUT 11:30 IS WHEN I WAS AT THE POLICE DEPARTMENT. I WASN'T MAKING NOTE OF THE EXACT TIME THAT I ARRIVED BECAUSE I DIDN'T REALIZE UNTIL THEY REFUSED ME THE OPPORTUNITY TO TALK TO MY CLIENT THAT MAKING NOTES OF TIMES WOULD BE IMPORTANT.
Q OKAY. AND WHEN YOU MET MR. GORDON'S PARENTS THERE, DID YOU MAKE ARRANGEMENTS AT THAT TIME TO REPRESENT ANTONIO?
A I TOLD THEM THAT I WOULD REPRESENT HIM, THAT'S CORRECT.
Q DID YOU SECURE A RETAINER FROM THEM AT THAT TIME?
MR. D'AGOSTINO: YOUR HONOR, I'M GOING TO OBJECT AS TO RELEVANCY TO THE RETAINER CONTRACT.
THE COURT: IT'S CROSS EXAMINATION. I'M GOING TO ALLOW IT.
A WELL, FOR PURPOSES UNLESS I'M DIRECTED BY THE COURT AS I KNOW WHATEVER THE RETAINER WOULD BE

App. 15

WOULD BE A MATTER OF ATTORNEY/CLIENT PRIVILEGE.
Q I'M NOT ASKING YOU TO TELL HOW MUCH. I'M JUST ASKING DID YOU SECURE A RETAINER THAT DAY?
A I WAS RETAINED AT THAT TIME.
Q YOU WERE RETAINED, THEY ACTUALLY PAID YOU --
A ---I WAS RETAINED AT THAT TIME. THE ACTUAL SUBSTANCE OF THE RETAINER IS ATTORNEY/CLIENT PRIVILEGE AND UNLESS DIRECTED BY THE COURT I CANNOT DISCLOSE THAT ETHICALLY AS YOU WELL KNOW.
Q WELL, THE QUESTION IS DID THEY PAY YOU A FEE WITHOUT SAYING WHAT THE FEE WAS?
A AND MY RESPONSE IS I WAS RETAINED THAT DAY. I UNDERTOOK REPRESENTATION AT THAT TIME.
Q AND YOU NEVER SPOKE TO ANTONIO GORDON THAT DAY?
A I WAS NEVER ALLOWED AN OPPORTUNITY TO SPEAK TO ANTONIO GORDON, THAT IS CORRECT.
Q AND AT WHAT POINT DID YOU START MAKING THE NOTATIONS OF THE TIMES?
A AT THE POINT THAT I HAD MADE REQUESTS AND WAS TOLD THAT MY CLIENT WAS BACK BEING INTERVIEWED BY THE POLICE AND THAT THE INTERVIEWING WAS GOING ON EVEN THOUGH I HAD MADE REQUEST TO SEE MY CLIENT AND REQUESTING THAT THE QUESTIONING CEASE.
Q OKAY. AND SO SHORTLY AFTER THE TIME YOU ARRIVED

App. 16

YOU STARTED TAKING THOSE NOTES?
A AS TO EXACTLY HOW LONG, I CAN'T TELL YOU. I WOULD BE SURPRISED IF IT TOOK MORE THAN ABOUT 20 MINUTES TO HALF AN HOUR AFTER I ARRIVED THAT I BEGAN TAKING NOTES OF TIMES.
Q AND YOU'VE USED THOSE NOTES AS PART OF YOUR TESTIMONY TO REFRESH YOUR RECOLLECTION OF YOUR, WHEN YOU TESTIFIED TODAY?
A THAT'S WHY I MADE THE NOTES BECAUSE I ANTICIPATED BEING CALLED TO TESTIFY AT SOME POINT.
Q OKAY. MAY I SEE THOSE PLEASE?
A SURE. IF YOU HAVE TROUBLE WITH MY HANDWRITING PLEASE FEEL FREE TO ASK ME.
MR. ANTHONY: IF I COULD JUST HAVE A MOMENT PLEASE, YOUR HONOR.
Q AND MR. WELLBORN, WHEN MS. DIXON TOLD YOU THAT SHE WANTED YOU TO REPRESENT HER WHEN CAPTAIN CABINESS ASKED HER TO COME BACK AND QUESTION HER, IS THAT CORRECT?
A I'M SORRY. YOUR QUESTION WAS WHEN SHE TOLD ME?
Q NO, SHE JUST TOLD YOU THAT SHE WANTED YOU TO HELP HER, IS THAT CORRECT?
A THAT IS WHAT SHE TOLD ME, YES.
Q AND YOU SAID THAT YOU VOLUNTEERED TO REPRESENT

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HER?
A THAT'S CORRECT.
Q OKAY.
A SHE ASKED ME TO REPRESENT HER AND I TOLD HER I WOULD.
Q SO AT THAT POINT IN TIME DID YOU, I BELIEVE YOU HAD A ATTORNEY/CLIENT RELATIONSHIP WITH MS. DIXON AS WELL?
A WELL, AN ATTORNEY/CLIENT, MY UNDERSTANDING OF AN ATTORNEY/CLIENT PRIVILEGE, AT LEAST FROM THE RULES OF PROFESSIONAL RESPONSIBILITY IS THAT IF A CLIENT ASKS YOU TO UNDERTAKE REPRESENTATION AND YOU AGREE TO DO SO, AT THAT POINT IN TIME UNTIL THAT RELATIONSHIP IS SEVERED IN SOME WAY FORMALLY OR INFORMALLY BY YOU AND/OR THE CLIENT, THERE IS AN ATTORNEY/CLIENT RELATIONSHIP, YES.
Q OKAY. AND YOU KNEW THAT MS. DIXON WAS ANTONIO GORDON'S GIRLFRIEND AT THAT TIME, IS THAT CORRECT?
A AT THE TIME THAT SHE ASKED ME TO REPRESENT HER?
Q YES.
A NO.
Q WHAT DID YOU THINK HER RELATIONSHIP WAS?
A I KNEW SHE WAS A FRIEND. I DIDN'T KNOW SHE WAS A GIRLFRIEND.

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Q YOU KNEW SHE WAS A FRIEND OF ANTONIO GORDON?
A I ASSUMED SHE WAS A FRIEND. SHE WAS THERE WITH THE FAMILY SO I ASSUMED SHE MUST BE SOMEBODY WHO IS A FRIEND OR INTERESTED IN SOMEONE. THE SPECIFICS OF THE RELATIONSHIP WERE NEVER DISCLOSED TO ME.
Q HAD YOU SPOKEN TO HER ABOUT HER KNOWLEDGE OF THE SITUATION INVOLVING ANTONIO?
A WE SPOKE ABOUT VARIOUS LEGAL THINGS AND I GAVE HER SOME LEGAL ADVICE AT THE TIME SHE ASKED ME TO REPRESENT HER, YES.
Q OKAY. AND YOU WERE AWARE THEN THAT SHE WAS BASICALLY, THEY WERE BASICALLY WANTING HER FOR QUESTIONING TO TRY AND BUILD EVIDENCE AGAINST ANTONIO GORDON, IS THAT CORRECT?
A I WAS AWARE THAT SHE ASKED ME TO REPRESENT HER OR SHE ASKED ME LEGAL ADVICE ON SOME ISSUES. I GAVE HER LEGAL ADVICE AFTER SHE ASKED ME WHICH, OF COURSE, ESTABLISHES AN ATTORNEY/CLIENT PRIVILEGE. AT SOME POINT THEREAFTER CAPTAIN CABINESS CAME OUT INTO THE LOBBY, HE ASKED TO SPEAK WITH HER. SHE ASKED TO HAVE ME PRESENT AS HER LAWYER IN FRONT OF CAPTAIN CABINESS. CAPTAIN CABINESS WENT BACK INTO THE BACK ROOM, HE CAME OUT INTO THE LOBBY A SECOND TIME WITH

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MRS. BLACKWELDER, AND TOLD HER SHE WAS BEING CHARGED WITH ACCESSORY AFTER THE FACT TO MURDER.

Q WELL, MY QUESTION IS, YOU KNEW THAT SHE WAS WANTED FOR QUESTIONING IN REGARDS TO THE INCIDENT THAT ANTONIO GORDON HAD BEEN INVOLVED IN?

A I KNEW THEY WANTED TO QUESTION HER ABOUT THE INCIDENT, THAT'S CORRECT.

Q THAT'S RIGHT. AND YOU HAD AN ATTORNEY/CLIENT RELATIONSHIP WITH ANTONIO GORDON AT THAT TIME THAT YOU JUST TESTIFIED?

A THAT'S CORRECT.

Q AND YOU KNEW THAT HER STATEMENT COULD QUITE POSSIBLY BE DAMAGING TO ANTONIO GORDON WHO YOU ALREADY ESTABLISHED AN ATTORNEY/CLIENT RELATIONSHIP WITH?

A I HAD NO SPECIFIC KNOWLEDGE AS TO WHAT HER STATEMENT WOULD BE.

Q WELL, I'M NOT ASKING ABOUT SPECIFIC KNOWLEDGE. DIDN'T YOU KNOW THERE WAS A SIGNIFICANT POSSIBILITY THAT THAT STATEMENT COULD BE DAMAGING TO ANTONIO GORDON?

A I HAD NO KNOWLEDGE AS TO WHAT HER STATEMENT WOULD BE, SO I CAN'T ANSWER THAT QUESTION.

App. 20

WELL, ACTUALLY THE ANSWER TO YOUR QUESTION IS, NO, I DIDN'T KNOW THAT BECAUSE I DIDN'T KNOW WHAT HER STATEMENT WOULD BE.

Q BUT YOU KNEW THE POLICE WANTED TO QUESTION HER ABOUT --

A ---I KNEW THE POLICE WANTED TO QUESTION HER AND I KNEW THAT SHE WANTED SOMEBODY SHE TOLD THE POLICE WAS HER LAWYER PRESENT WHEN SHE WAS BEING QUESTIONED.

Q THAT'S RIGHT. AND YOU KNEW THAT THEY INTENDED TO QUESTION HER ABOUT WHAT SHE KNEW ABOUT WHAT ANTONIO GORDON HAD DONE OR HAD ALLEGEDLY DONE?

A I KNEW THEY WERE GOING TO QUESTION HER SUPPOSEDLY SOMETHING RELATED TO THIS INCIDENT WHETHER IT WAS SPECIFICALLY ABOUT ANTONIO GORDON OR WHETHER IT WAS ABOUT MR. MCCREARY OR MR. MONTA GORDON WHOSE NAMES I DIDN'T EVEN KNOW AT THAT TIME, OR WHETHER IT WAS ABOUT SOMETHING THAT SHE SUPPOSEDLY HAD DONE, I HAD NO IDEA.

Q AND YOU DID NOT WANT HER SPEAKING TO THE POLICE, IS THAT CORRECT?

A SHE WANTED ME PRESENT IF SHE WAS GOING TO SPEAK TO THE POLICE. IT'S NOT, WHAT I WANT REALLY IS IRRELEVANT. IT'S WHAT THE CLIENT WANTS BECAUSE THE CLIENT'S THE ONE WHO ASSERTS AND WHO GOVERNS

App. 21

THE ATTORNEY/CLIENT RELATIONSHIP.

Q AND YOU SAID WHEN YOU WERE GIVING YOUR DEFINITION OF ATTORNEY/CLIENT RELATIONSHIP THAT YOU FELT LIKE AN ATTORNEY/CLIENT RELATIONSHIP, UNDER YOUR UNDERSTANDING OF THE RULES, THAT IT STAYED IN EFFECT UNTIL THERE WAS SOMETHING THAT FORMALLY RELINQUISHED THAT RELATIONSHIP, IS THAT CORRECT?

A UNTIL THE CLIENT, IF A CLIENT ESTABLISHES A RELATIONSHIP WITH ME AS THEIR LAWYER, UNTIL THAT CLIENT TELLS ME THEY DON'T WANT ME AS THEIR LAWYER, IN SOME WAY INDICATES TO ME THEY DON'T WANT ME AS THEIR LAWYER OR IN SOME WAY I TELL THEM I CAN'T BE THEIR LAWYER, WE HAVE THAT RELATIONSHIP.

Q OKAY. AND DID YOU FORMALLY RELINQUISH YOUR ATTORNEY/CLIENT RELATIONSHIP WITH ANTONIO GORDON?

A DID I FORMALLY, YES, I TALKED TO HIS PARENTS WHO WERE THE ONES WHO RETAINED ME, AND LATER I TALKED TO ANTONIO AND TOLD HIM WHY I COULD NOT REPRESENT HIM BECAUSE I WOULD BE A WITNESS.

Q IS THERE ANYTHING DOCUMENTED IN YOUR FILE WHERE YOU RELINQUISHED YOUR RELATIONSHIP WITH ANTONIO GORDON?

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A THERE IS MY MEMORY. AS FAR AS DOCUMENTING IN MY FILE IN TERMS OF A LETTER, NO, I DID NOT WRITE A LETTER.

Q SO YOUR RELATIONSHIP WITH ANTONIO GORDON, IT WAS VERBALLY ESTABLISHED AND VERBALLY RELINQUISHED?

A THAT'S CORRECT. THAT'S CORRECT.

Q OKAY.

MR. ANTHONY: IF I COULD HAVE ONE MOMENT. I WANT TO RETURN MR. WELLBORN'S NOTES TO HIM. APPRECIATE HIM PROVIDING THOSE AND THAT'S ALL THE QUESTIONS THE STATE HAS.

THE COURT: ANYTHING ELSE?

MR. D'AGOSTINO: BRIEFLY, YOUR HONOR.

REDIRECT EXAMINATION BY MR. D'AGOSTINO:

Q AT THE TAIL END OF YOUR, THAT AFTERNOON AT THE POLICE STATION, WERE YOU EVER EVENTUALLY TOLD THAT YOU WOULD HAVE TO HAVE SOMETHING IN WRITING ESTABLISHING YOU AS THE ATTORNEY FOR ANTONIO?

A NO ONE EVER TOLD ME THAT AT THE POLICE STATION. IN FACT, I HAD NEVER HEARD OF THAT UNTIL SOMETIME LATER AND THAT WAS STRICTLY, THAT WAS THROUGH A THIRD PARTY. NO ONE'S EVER DIRECTLY TOLD ME THAT I HAVE TO HAVE SOMETHING IN WRITING FROM MY CLIENTS SAYING THAT I'M THEIR LAWYER BEFORE I CAN TALK TO THE CLIENT.

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MR. D'AGOSTINO: THOSE ARE ALL THE QUESTIONS I HAVE. THANK YOU.

MR. ANTHONY: JUST BRIEFLY, YOUR HONOR.

THE COURT: GO AHEAD.

MR. ANTHONY: THANK YOU. MAY I ASK HIM ANOTHER QUESTION?

THE COURT: YES.

RECROSS EXAMINATION BY MR. ANTHONY:

Q DID YOU ALSO CLAIM TO REPRESENT SOMEBODY ELSE THAT MORNING OTHER THAN MS. DIXON?

A DID I CLAIM TO REPRESENT SOMEONE ELSE?

Q YEAH.

A WELL, I HAVE APPROXIMATELY 300-SOMETHING CLIENTS.

Q I'M SORRY. I WILL REPHRASE THAT QUESTION. WAS THERE SOMEONE ELSE WHO WAS ASKED TO COME BACK FOR QUESTIONING THAT YOU SAID YOU REPRESENTED THEM THAT MORNING OTHER THAN MS. DIXON AND MR. GORDON?

A I HAVE NO SPECIFIC RECOLLECTION OF THAT.

Q OKAY. THANK YOU.

THE COURT: MR. GILLEN, I KNOW THIS ISSUE DOESN'T PERTAIN TO YOUR CLIENT BUT JUST OUT OF AN ABUNDANCE OF CAUTION WHILE YOU ARE HERE AND HE'S HERE, ANY QUESTIONS?

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MR. GILLEN: NO, YOUR HONOR. THANK YOU.

THE COURT: YOU CAN BE EXCUSED. WE APPRECIATE YOUR TIME.

MR. WELLBORN: THANK YOU.

THE COURT: CALL YOUR NEXT WITNESS. WELL, CALL YOUR FIRST WITNESS FOR THE STATE. ACTUALLY I GUESS YOUR FIRST WITNESS HAS BEEN CALLED CAPTAIN CABINESS.

MR. ANTHONY: THE STATE WOULD CALL AS ITS FIRST WITNESS IN THE DENNO HEARING LIEUTENANT WALDROP.

JERRY WALDROP, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. ANTHONY:

Q WOULD YOU STATE YOUR NAME PLEASE?

A JERRY W. WALDROP.

Q AND MR. WALDROP, WHERE DO YOU WORK AT?

A ROCK HILL POLICE DEPARTMENT.

Q WHAT IS YOUR POSITION AT THE ROCK HILL POLICE DEPARTMENT?

A AT THE PRESENT TIME I'M LIEUTENANT IN CHARGE OF PROPERTY CRIME SECTION.

Q GOING BACK TO JULY 23 OF LAST YEAR WHAT WAS YOUR POSITION AT THE POLICE DEPARTMENT ON THAT DAY?

A DETECTIVE ASSIGNED IN THE DETECTIVE DIVISION.

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Q AND WERE YOU WORKING ON JULY 23 OF LAST YEAR?
A I CAME ON DUTY THAT MORNING ABOUT 8 A.M.
Q AND WHEN YOU CAME ON DUTY THAT MORNING DID YOU BECOME AWARE OF THE INVESTIGATION OF THE SHOOTING INCIDENT EARLIER THAT MORNING?
A THAT'S CORRECT.
Q AND DURING THE COURSE OF THAT INVESTIGATION DID YOU HAVE OCCASION TO SPEAK TO ANTONIO GORDON?
A THAT'S CORRECT.
Q AND WHERE DID YOU SPEAK TO MR. GORDON AT?
A IN THE BACK HALL OF THE POLICE STATION, THERE IS AN AREA THAT WAS AT ONE TIME THAT WAS USED AS A LARGE CONFERENCE ROOM, I MEET WITH HIM THERE, AND WE CARRIED ON A CONVERSATION IN THE CONFERENCE ROOM.
Q AND WHERE WAS HE AT WHEN YOU INITIALLY, WELL, WAS THAT WHERE HE WAS AT WHEN YOU INITIALLY WENT TO SPEAK TO HIM AND TALK TO HIM?
A THAT'S CORRECT.
Q TO YOUR KNOWLEDGE HAD ANYONE TAKEN ANY STATEMENTS FROM HIM BEFORE THIS TIME?
A NO, SIR, NOT TO MY KNOWLEDGE.
Q OKAY. AND WHEN YOU WENT TO SPEAK TO MR. GORDON WHO WAS THERE WHEN YOU WENT TO TALK TO HIM?
A HE WAS SITTING IN THE ROOM BY HIMSELF. THERE

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WAS A UNIFORM OFFICER THAT WAS WATCHING THE ROOM, BUT I DON'T REMEMBER WHO THE UNIFORM OFFICER WAS. THEY WERE JUST WATCHING THE DOOR. HE WAS IN THE ROOM BY HIMSELF.

Q AND WHEN YOU WENT IN THE ROOM WITH MR. GORDON THERE, WHAT DID YOU DO?

A I WENT IN. HE WAS SEATED ON THE LEFT HAND SIDE OF THE TABLE. I SAT DOWN ON THE RIGHT HAND SIDE OF THE TABLE. I INTRODUCED MYSELF, TOLD HIM WHO I WAS, AND WHY I WAS THERE.

Q AND WHY DID YOU TELL HIM YOU WERE THERE?

A I TOLD HIM I WAS THERE TO TALK TO HIM IN REFERENCE TO THE INCIDENT THAT HAD HAPPENED EARLIER IN THE NIGHT.

Q AND BEFORE YOU BEGAN TO SPEAK TO HIM ABOUT THE INCIDENT, DID YOU ADVISE HIM OF ANY RIGHTS?

A THAT'S CORRECT. AFTER INTRODUCING MYSELF AND ASKING HIM HIS FULL NAME, I IN TURN TOOK THE STATEMENT FORM THAT WE USE WHICH HAS THE RIGHTS STATEMENT AT THE TOP OF IT AND READ HIM HIS RIGHTS AS WRITTEN ON THE STATEMENT FORM.

MR. ANTHONY: YOUR HONOR, I AM HANDING UP DETECTIVE WALDROP'S STATEMENT AND ASK IT BE MARKED STATE'S EXHIBIT NUMBER THREE FOR PURPOSES OF THE HEARING.

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(STATE'S EXHIBIT THREE ANTONIO GORDON'S STATEMENT MARKED FOR IDENTIFICATION.)

Q CAN YOU IDENTIFY THE DOCUMENT I'M HANDING TO YOU STATE'S EXHIBIT NUMBER THREE FOR PURPOSES OF THE HEARING, DETECTIVE?

A THAT'S CORRECT. THAT'S THE STATEMENT TAKEN BY ME FROM ANTONIO GORDON ON THE 23.

Q AND YOU REFERENCED CERTAIN RIGHTS BEING PRINTED AT THE TOP OF THAT FORM?

A THAT'S CORRECT.

Q WOULD YOU READ WHAT THOSE RIGHTS ARE PLEASE?

A IT SAYS BEFORE WE ASK YOU ANY QUESTIONS YOU MUST UNDERSTAND YOUR RIGHTS. YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT. YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS AND TO HAVE HIM WITH YOU DURING QUESTIONING. YOU HAVE THIS RIGHT TO THE ADVICE AND PRESENCE OF A LAWYER EVEN IF YOU CANNOT AFFORD TO HIRE ONE. WE HAVE NO WAY OF APPOINTING YOU A LAWYER, BUT ONE WILL BE APPOINTED TO YOU BY THE COURT FOR YOU IF YOU WISH. IF YOU WISH YOU MAY ANSWER QUESTIONS WITHOUT THE PRESENCE OF A LAWYER AND YOU MAY STOP ANSWERING QUESTIONS AT ANY TIME YOU SO

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DESIRE UNTIL A LAWYER IS PRESENT.

Q AND DID YOU ASK MR. GORDON TO DO ANYTHING TO INDICATE THAT HE UNDERSTOOD THESE RIGHTS THAT YOU JUST READ?

A FIRST I ASKED HIM IF HE UNDERSTOOD THEM AND HE INDICATED HE DID. AND I ASKED HIM TO SIGN ON THE LINE UNDER THE STATEMENT FORM.

Q OKAY. AFTER HE SIGNED IT, DID YOU DO ANYTHING?

A I SIGNED IT ALSO.

Q OKAY. THEN AFTER YOU ASKED HIM TO SIGN THE ACKNOWLEDGMENT OF HIS RIGHTS, WHAT DID YOU DO NEXT?

A AS AN ADDITIONAL PARAGRAPH UNDER THERE WHICH I READ TO HIM AT THAT TIME, IT SAYS I HAVE READ OR HAD READ TO ME THE STATEMENT OF MY RIGHTS SHOWN ABOVE. I UNDERSTAND WHAT MY RIGHTS ARE AND I'M WILLING TO MAKE A STATEMENT. I DO NOT WANT A LAWYER AT THIS TIME. I UNDERSTAND AND KNOW WHAT I AM DOING. I KNOW THE PERSON TALKING WITH ME IS A POLICE OFFICER AND I UNDERSTAND WHAT HE IS TALKING ABOUT.

Q AND DID YOU ASK MR. GORDON TO DO ANYTHING TO INDICATE THAT HE UNDERSTOOD THAT SECTION OF THE FORM?

A THAT'S CORRECT. I ASKED HIM TO SIGN IT WHICH HE

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DID.

Q AND DID YOU DO ANYTHING AFTER HE SIGNED IT?

A I DID. I SIGNED IT AS A WITNESS.

Q NOW AT THIS POINT IN TIME AFTER YOU READ HIM THESE RIGHTS AND HE SIGNED THE FORM, DID HE AT ANY TIME TELL YOU EITHER HE WANTED TO REMAIN SILENT OR HE WANTED AN ATTORNEY?

A NO, HE DID NOT.

Q OKAY. AND AFTER HE INDICATED THAT HE WOULD SPEAK TO YOU, WHAT HAPPENED NEXT?

A AFTER THOSE TWO STATEMENTS WERE SIGNED BY HIM, WE CARRIED ON CONVERSATION ABOUT THE EVENTS AS HE WANTED TO RELATE WHAT HAD HAPPENED. AT FIRST IT STARTED OUT THAT HE REALLY DON'T KNOW WHAT HAD HAPPENED, DIDN'T KNOW A LOT ABOUT IT, AND THEN AS WE TALKED IT BECAME APPARENT THAT HE KNEW MORE AND WAS WILLING TO TELL ME MORE. SUBSEQUENTLY HIS FINAL VERSION OF WHAT HAPPENED I TOOK A STATEMENT AS HE TOLD ME. I TYPED WHAT HE SAID. I EVEN HAD HIM SLOW DOWN AND REPEAT IT. AS HE SAID IT I TRIED TO TYPE HIS WORDS.

Q OKAY. AND DID YOU TYPE ANY INFORMATION ABOUT MR. GORDON ON THE FORM BEFORE YOU BEGAN TO TYPE OUT HIS STATEMENT?

A THAT'S CORRECT.

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Q AND WHAT INFORMATION DID YOU TYPE OUT ON THE FORM?
A I TYPED OUT HIS NAME, HIS DATE OF BIRTH, SOCIAL SECURITY NUMBER, HIS ADDRESS, HIS PLACE OF EMPLOYMENT AS BEING UNEMPLOYED, HIS HOME PHONE NUMBER. THE FACT THAT HE COMPLETED THE NINTH GRADE IN SCHOOL AND HE COULD READ AND WRITE.
Q THESE ARE THINGS THAT HE TOLD YOU?
A THAT'S CORRECT.
Q OKAY. AND DURING THE COURSE AND TIME THAT YOU WERE TALKING TO HIM, DID HE APPEAR TO UNDERSTAND THINGS THAT YOU ARE SPEAKING TO HIM ABOUT?
A THAT'S CORRECT.
Q DID HE APPEAR TO BE UNDER THE INFLUENCE OF ANY SUBSTANCE IN ANY WAY TO YOU?
A NO, SIR.
Q OKAY. AND WOULD YOU GO AHEAD AND TELL THE JUDGE WHAT MR. GORDON TOLD YOU WHEN HE FINALLY GAVE YOU THE FINAL STATEMENT DURING YOUR INTERVIEW WITH HIM.
A LAST NIGHT THE 22 ABOUT 7 OR 8 P.M. I CALLED JUNE BUG AND HE REFERENCED THAT TO TERRANCE MCCREARY. I PAGED HIM AND ASKED HIM TO COME TO MY HOUSE. I NEEDED MY AMP AND SPEAKERS AND STEREO HOOKED UP IN MY CAR. MY AUNT GLORIA

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WATSON, CHYENCA DIXON, FONTELLA FEELY, WILLIE GORDON, AND TWO OTHER GUYS I DID NOT KNOW CAME WITH JUNE BUG. THEY DID NOT STAY BUT ABOUT 30 MINUTES. JUNE BUG STAYED AND STARTING HOOKING THE STEREO AND WE RAN OUT OF SPEAKER WIRE. ME AND MY BROTHER MONTA GORDON, GARY MOFFAT, AND JUNE BUG, TERRANCE MCCREARY AND ME ALL GOT INTO MY CAR AND WE WENT TO TOWN. WE WENT TO SOUTHLAND FIRST AND I ASKED JUNE BUG WHERE WE WERE GOING TO GET THE WIRE. HE TOLD ME HIS AUNT WAS NOT HOME. WE RODE AROUND IN THE MARSHALL STREET AREA AS JUNE BUG SAW A BMW WITH NO LIGHTS ON. HE SAID SOMETHING ABOUT THE CAR. I DID NOT SEE IT AT FIRST. I WAS SITTING IN THE BACK SEAT DRIVER'S SIDE. JUNE BUG WAS DRIVING. MONTA WAS IN THE FRONT PASSENGER SIDE FRONT AND GARY WAS IN THE BACK WITH ME. JUNE BUG SAID SOMETHING LIKE, GOD DAMN, DID YOU SEE THAT BEEMER THERE. I DID NOT SEE IT, BUT GARY SAID HE DID. THE BEEMER PULLED INTO A DRIVEWAY. JUNE BUG PULLED UP AND BLOCKED THE CAR IN. HE GOT OUT AND I GOT OUT AND MY BROTHER GOT OUT. I WALKED OVER AND LOOKED INTO THE BMW TO SEE WHO WAS IN IT. JUNE BUG WAS ASKING THEM IF THEY HAD ANY MONEY. ALL I HEARD, NO MAN, I DON'T HAVE ANY MONEY. I HAD

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STARTED AROUND THE BACK OF THE BMW AND THEY STARTED BACKING UP AND JUNE BUG WAS STANDING THERE WITH THE GUN IN HIS HAND. WHEN THEY STARTED BACKING UP JUNE BUG KEPT SAYING, GET OUT OF THE CAR AND HE SAID THIS A BUNCH OF TIMES. THEY KEPT BACKING UP JUST ENOUGH TO WHEEL AROUND TO LEAVE AND THAT WAS WHEN JUNE BUG SHOT AT THE DRIVER. THEY DROVE ON OFF AND I GOT BACK IN MY CAR AND JUNE BUG WAS STILL DRIVING. WE LEFT AND WENT TO MY HOUSE. ASKED JUNE BUG IF HE SHOT THAT GUY. HE SAID, NO, I SHOT INTO THE AIR. THE GUYS IN THE BMW KEPT ON DRIVING AND WE DID NOT SEE WHERE THEY WENT BEFORE WE LEFT.

AFTER WE GOT BACK TO MY HOUSE, WENT INSIDE AND THEY HUNG AROUND FOR ABOUT TWO TO THREE HOURS. AND JUNE BUG GOT READY TO LEAVE. JUNE BUG ASKED ME IF MONTA COULD DRIVE MY CAR TO TAKE HIM HOME TO BOYD HILL. I TOLD HIM THAT THEY COULD TAKE MY CAR BUT TO COME RIGHT BACK. THAT WAS WHEN MONTA, JUNE BUG, AND GARY GOT IN MY CAR AND LEFT MY HOUSE.

ABOUT 30 MINUTES AFTER THEY LEFT MY HOUSE JUNE BUG CALLED ME AND SAID THE POLICE WAS CHASING YOUR BROTHER INSIDE OF YOUR CAR. ABOUT FIVE MINUTES LATER MONTA CAME FLYING DOWN THE ROAD,

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JUMPED OUT OF THE CAR, AND STARTED RUNNING. THE POLICE WERE BEHIND HIM AND HE RAN ACROSS THE YARD AND INTO SOME BUSHES. AFTER THAT ONE OF THE OFFICERS ASKED ME WHO WAS DRIVING MY CAR DURING THE SHOOTING. I TOLD HIM NOBODY. LATER I TOLD THEM THAT JUNE BUG HAD BEEN DRIVING IT ALL DAY. HE TOLD ME TO GO BACK INTO THE HOUSE AND THEY WOULD BE BACK TO TALK TO ME LATER. WHEN JUNE BUG CAME TO MY HOUSE HE WAS THERE ABOUT AN HOUR BEFORE, JUNE BUG SHOWED ME A GUN THAT HE HAD. IT WAS A CHROME .357 CALIBER. JUNE BUG GOT OUT OF THE CAR AND AFTER WE BLOCKED THE BMW AND SAYING THAT HE WAS GOING TO GO TAKE THE CAR AND THEIR MONEY, I GOT OUT OF THE CAR TO SEE IF I KNEW THE BOYS AND I WAS JUST LOOKING INSIDE THE CAR AND WHICH HE INITIALED AT THE END AND SIGNED IT AT THE BOTTOM.

Q AND DETECTIVE WALDROP, AFTER YOU TOOK THIS STATEMENT FROM MR. GORDON WHAT DID YOU DO NEXT?

A THERE IS A FORM WE CALL THE NOTARY PAGE THAT STATES PERSONALLY APPEARS BEFORE ME ANTONIO GORDON WHO DEPOSES AND SAYS THAT I MAKE THIS STATEMENT OF MY OWN FREE WILL AND ACCORD, WITHOUT A REWARD OR A HOPE OF A REWARD. I'VE NOT BEEN MISTREATED OR THREATENED IN ANY WAY.

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ALL OF THE ABOVE IS THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH SO HELP ME GOD. AT THAT TIME I ASKED MR. ANTONIO GORDON, AS A NOTARY PUBLIC FOR THE STATE OF SOUTH CAROLINA, TO RAISE HIS RIGHT HAND AND I ASKED HIM IF IT'S THE TRUTH, THE WHOLE TRUTH AND NOTHING BUT THE TRUTH THAT THE STATEMENT HE JUST GAVE ME AND HE INDICATED IT WAS. HE SIGNED THE NOTARY PAGE AND I SIGNED IT AND ALSO NOTORIZED IT AS A NOTORIZED STATEMENT.

Q AND DETECTIVE WALDROP, WHAT TIME DID YOU START TALKING TO ANTONIO GORDON, IS THAT INDICATED ON THE FORM AS WELL?

A I ACTUALLY STARTED TAKING THE WRITTEN STATEMENT AT ABOUT I'D SAY 10:55 ACCORDING TO THE THING, BUT WHAT TIME I ACTUALLY WENT AND STARTED TALKING TO HIM, I'M NOT SURE. SOMETIME BETWEEN 10:15 AND 10:30.

Q AND IS THE STATEMENT THAT YOU HAVE WITH YOU ON THE STAND UP THERE STATE'S EXHIBIT THREE FOR IDENTIFICATION IS THAT THE STATEMENT YOU TOOK FROM ANTONIO GORDON?

A THAT IS CORRECT.

Q DOES IT APPEAR THE SAME AS IT DID THE MORNING YOU TOOK IT ON JULY 23 OF LAST YEAR?

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A THAT'S CORRECT.

MR. ANTHONY: YOUR HONOR, I MOVE STATE'S EXHIBIT NUMBER THREE FOR PURPOSES OF THIS HEARING INTO THIS HEARING.

MR. D'AGOSTINO: SOLELY FOR THE PURPOSES OF THIS HEARING WE DON'T CONSENT THAT IT'S FREELY AND VOLUNTARILY.

THE COURT: IT WILL BE RECEIVED.

Q DETECTIVE WALDROP, WHEN YOU INTERVIEWED ANTONIO GORDON, DID YOU MAKE HIM ANY PROMISES OR ANY THREATS BEFORE HE GAVE A STATEMENT?

A NO, SIR.

Q AND AFTER YOU TOOK THE STATEMENT FROM HIM AND HE HAD SIGNED THE PAGE, THE LAST PAGE, WHAT DID YOU DO THEN?

A I LEFT OUT, MADE HIM A COPY OF IT, BROUGHT IT BACK, GAVE HIM A COPY OF IT, AND THEN I WENT ON ABOUT MY DAILY DUTIES ON OTHER STUFF.

Q DID YOU HAVE ANY FURTHER DEALINGS WITH ANTONIO GORDON?

A NO, SIR.

Q ON THIS DAY OR ANY DAYS AFTER THIS ARREST WAS MADE?

A NO, SIR.

Q OKAY. THANK YOU. THAT'S ALL ON DIRECT.

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CROSS EXAMINATION BY MR. D'AGOSTINO:

Q OFFICER WALDROP, WHO ASSIGNED YOU TO INTERVIEW MR. GORDON, ANTONIO GORDON?

A IF I REMEMBER CORRECTLY I THINK IT WAS CAPTAIN CABINESS.

Q WERE YOU EVER AT THE CRIME SCENE?

A NO, SIR.

Q WERE YOU EVER AT THE GORDON HOUSEHOLD?

A NO, SIR.

Q WAS HE UNDER ARREST WHEN YOU GOT TO HIM AND STARTED TAKING THE STATEMENT?

A TO MY KNOWLEDGE I ASSUMED HE WAS.

Q ALL RIGHT. HE WAS IN HOLDING, COULDN'T LEAVE THE POLICE STATION, COULD HE?

A THAT'S CORRECT.

Q THERE WAS SOMEBODY SITTING OUTSIDE THAT DOOR SO HE COULDN'T LEAVE IF HE WANTED TO?

A THAT'S CORRECT.

Q DID YOU EVER TELL HIM HE COULD LEAVE?

A NO, SIR.

Q THAT ROOM THAT YOU INTERVIEWED HIM IN IT'S ABOUT, HOW BIG IS IT, DO YOU KNOW?

A 12 BY 20.

Q OKAY. AND THERE WAS A BIG TABLE IN THE MIDDLE OF IT, WASN'T THERE?

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A THAT'S CORRECT.
Q IT TOOK UP MOST OF THE ROOM.
A A GOOD BIT OF IT, YEAH.
Q AND THE TABLE IS SO BIG THAT YOU CAN FIT TWO CHAIRS AT EACH END OF IT AND THEN THERE ARE A NUMBER OF CHAIRS DOWN THE SIDES, RIGHT?
A THAT'S CORRECT.
Q THAT'S JUST YOUR STANDARD CONFERENCE ROOM, RIGHT?
A THAT'S CORRECT.
Q IS THAT THE ROOM YOU TOOK THE STATEMENT IN?
A THAT'S CORRECT.
Q NOW DID YOU READ HIM THE MIRANDA RIGHTS ON YOUR STATEMENT LIKE YOU READ IT TO US TODAY SO YOU WOULD BE SURE TO COVER EVERYTHING?
A I READ IT JUST LIKE VERBATIM ON THE REPORT.
Q OKAY. YOU READ IT TO HIM LIKE YOU READ IT TODAY?
A THAT'S CORRECT.
Q THEN YOU READ HIM THE SECOND PARAGRAPH LIKE YOU READ IT TO US TODAY?
A THAT'S CORRECT.
Q AND YOU PHYSICALLY READ THESE OUT LOUD TO HIM OR DID YOU TELL HIM TO READ THEM AND YOU JUST PUT AN "X" THERE AND TELL HIM TO SIGN IT?

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A NO, I READ THEM TO HIM AND ASKED HIM IF HE UNDERSTOOD THEM.

Q OKAY.

A LAID IT DOWN IN FRONT OF HIM AND TOLD HIM HE WAS WELCOME TO READ IT OR WHATEVER HE WANTED TO DO.

Q OKAY. HAD YOU EVER MET ANTONIO GORDON BEFORE THIS DAY?

A ON OCCASION I THINK I HAD, BUT I DID NOT KNOW HIM PERSONALLY.

Q THAT WAS WHAT I WAS GETTING AT. YOU DIDN'T KNOW HIM FROM ANYBODY ELSE?

A NO, SIR.

Q NOW YOU SAID I BELIEVE THAT YOU ACTUALLY TALKED TO HIM FOR AWHILE BEFORE YOU STARTED TAKING THE STATEMENT, IS THAT TRUE?

A THAT'S CORRECT.

Q WHAT INFORMATION WERE YOU GIVEN BEFORE YOU WENT IN TO SPEAK WITH HIM ABOUT WHAT YOU WERE GOING TO SPEAK WITH HIM ABOUT?

A BASICALLY THE CONTENTS OF WHAT WE KNEW AT THAT TIME, THAT WE HAD AN INDIVIDUAL THAT HAD BEEN SHOT AND WAS DEAD.

Q AND WHAT INFORMATION, SO WHAT INFORMATION WAS THERE? WHAT DID YOU KNOW AT THAT TIME WHEN YOU WENT IN THERE AND TALKED TO ANTONIO GORDON?

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A JUST WHAT I SAID, I KNEW THAT WE HAD A INDIVIDUAL THAT HAD BEEN KILLED IN THE NIGHT.
Q OKAY.
A I DID NOT EVEN KNOW HIS NAME.
Q ALL RIGHT.
A I KNEW THAT IT HAD SOMETHING TO DO WITH A BMW. THEY HAD REASON TO BELIEVE THAT IT WAS THE TAKING OF THE BMW OR ROBBERY FOR THE BMW. I WAS NOT INVOLVED IN ANY OF THE THINGS PRIOR TO ME COMING TO WORK AT 8 O'CLOCK THAT MORNING.
Q DID YOU KNOW ANYTHING ABOUT WHAT MR. ANTONIO GORDON'S INVOLVEMENT IN THE CASE WAS SUPPOSED TO HAVE BEEN?
A NO, SIR.
Q SO YOU WEREN'T GIVEN ANY OF THAT INFORMATION?
A NOT AT THAT TIME, NO, SIR.
Q SO DID YOU JUST GO IN THERE BASICALLY COLD AS TO WHAT YOU WERE EXPECTING TO GET FROM HIM?
A WELL, NOT REALLY COLD. I HAD THE INFORMATION THAT THREE TO FOUR INDIVIDUALS HAD BEEN INVOLVED, THERE HAD BEEN A HIGH SPEED CHASE, THAT THERE HAD BEEN THE MURDER, SOMEBODY HAD BEEN KILLED, THAT THE INDIVIDUALS THAT WE THOUGHT TO BE RESPONSIBLE FOR IT WERE AT THE POLICE STATION, ONE OF THEM WAS IN THIS ROOM,

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AND TO FIND OUT WHAT I COULD AS FAR AS HIS STATEMENT.

Q OKAY. WHO DID YOU GET THAT INFORMATION FROM?

A A NUMBER OF PEOPLE. LIEUTENANT, I MEAN CAPTAIN CABINESS WAS AT THE STATION, DETECTIVE HERRING, LIEUTENANT THICKENS, BUT I DON'T THINK I TALKED TO THICKENS AT THAT TIME. I THINK IT WAS JUST CABINESS AND HERRING.

Q WHO WAS IN CHARGE OF THIS INVESTIGATION ANYWAY?

A TO SAY I'M NOT SURE. LIEUTENANT THICKENS WAS PART OF IT AND CAPTAIN CABINESS.

Q DID YOU EVER TELL, THREATEN ANTONIO TELLING HIM HE WAS GOING TO GO TO THE DEATH CHAIR, ELECTRIC CHAIR?

A DID I TELL HIM HE WAS GOING TO GO TO THE ELECTRIC CHAIR?

Q RIGHT.

A NO, SIR.

Q DID YOU EVER TELL HIM HE WAS GOING TO GO TO JAIL FOR LIFE IF HE DIDN'T TELL YOU WHAT YOU NEEDED TO KNOW?

A I DID NOT TELL HIM HE WAS GOING TO GO TO JAIL FOR LIFE. I DID TELL HIM THAT THE PENALTY FOR MURDER COULD BE LIFE OR IT COULD BE THE DEATH PENALTY, BUT TO THREATEN HIM WITH IT, NO, SIR, I

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DID NOT.

Q DID YOU TELL HIM HE WAS LOOKING AT THAT KIND OF TIME?

A YES, SIR.

Q AND WOULD BE BETTER OFF IF HE COOPERATED WITH YOU?

A I TOLD HIM THAT HE'D BE BETTER TO STRAIGHTEN IT OUT AND TELL HIS SIDE OF THE STORY.

Q DID YOU TELL HIM IT WOULD BE EASIER ON HIM IF HE DID, IF HE TOLD HIS SIDE OF THE STORY?

A BE EASIER ON HIM OR LOOK BETTER FOR HIM?

Q YES, SIR.

A YES, SIR, THAT IT WOULD LOOK BETTER FOR HIM.

Q WERE YOU EVER INFORMED THAT CHRIS WELLBORN WAS WAITING OUTSIDE TO SPEAK WITH HIM?

A YES, SIR, I WAS.

Q DID YOU TELL MR. ANTONIO GORDON THAT?

A NO, SIR.

Q AND YOU WERE TOLD THIS WHILE YOU WERE TAKING THIS STATEMENT DOWN?

A CAPTAIN CABINESS CAME TO THE DOOR, KNOCKED ON THE DOOR, I WENT TO THE DOOR. HE ASKED ME AT ANY POINT HAD ANTONIO ASKED FOR AN ATTORNEY. I SAID NO. HE SAID THANK YOU AND WALKED OFF.

Q WAS THERE ANYONE ELSE PRESENT WHILE YOU WERE

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MAKING THIS STATEMENT?
A NO, SIR.
Q WHILE HE WAS MAKING THE STATEMENT, NOT YOU, WHILE HE WAS MAKING THE STATEMENT?
A NO, SIR.
Q NOW THESE AREN'T ANTONIO'S EXACT WORDS. Y'ALL, IN FACT, Y'ALL CONVERSED FOR AWHILE BEFORE YOU EVEN GOT THE TYPEWRITER OUT AND START TAKING DOWN THE STATEMENT, IS THAT CORRECT?
A THAT'S CORRECT.
Q YOU DIDN'T MAKE ANY NOTES OF ANY OF THAT?
A NO, SIR.
Q THEN AFTERWARDS, IF I UNDERSTAND IT CORRECTLY, Y'ALL WOULD TALK ABOUT A PORTION OF IT THEN YOU'D TYPE OUT WHAT Y'ALL TALKED ABOUT?
A THAT'S CORRECT.
Q ALL RIGHT. THESE AREN'T HIS EXTRACT WORDS. THIS IS KIND OF WHAT WAS GOING ON AND Y'ALL TALK ABOUT A SMALL PORTION OF IT, YOU TYPE OUT THE SUBSTANCE?
A I WOULD --
Q --OF WHAT YOU THOUGHT HE SAID?
A I WOULD TYPE WORD FOR WORD TO THE BEST I COULD AS HE WAS TALKING AND WHEN I COULD NOT UNDERSTAND WHAT HE WAS SAYING, I'D HAVE HIM SLOW

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DOWN OR STOP UNTIL I CAUGHT UP WITH HIM. THE BEST OF MY RECOLLECTION AND ABILITY THIS IS WORD FOR WORD WHAT HE WAS TELLING ME AFTER I STARTED TAKING WHAT HE SAID WAS HIS STATEMENT.

Q AND WITH REGARD TO THE STATEMENT, THE STATEMENT TAKEN ON JULY 23, AT 10:55 A.M. THE STATEMENT SIGNED ON JULY 23 AT 11:30, DOES THAT MEAN THE STATEMENT WAS COMPLETED, TAKEN AT 10:55 OR YOU ACTUALLY TYPED THIS STATEMENT FROM 10:55 TO 11:30?

A THAT'S CORRECT.

Q YOU TYPED IT FROM 10:55?

A 10:55 TO 11:30.

Q ALL RIGHT. DID YOU ASK HIM HOW FAR HE HAD GONE SCHOOL?

A THAT'S CORRECT.

Q YOU DID?

A HE INDICATED THE NINTH GRADE AND THE NEXT QUESTION WAS, SO YOU CAN READ AND WRITE, AND HE SAID I CAN.

MR. D'AGOSTINO: ONE MOMENT, YOUR HONOR.

Q I MIGHT HAVE ALREADY ASKED YOU THIS AND I'M SORRY IF I HAVE, I DON'T MEAN TO BE REDUNDANT, BUT DID ANY OTHER OFFICERS OTHER THAN CAPTAIN CABINESS, HE CAME TO THE DOOR YOU SAID, DID ANY

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OTHER OFFICERS COME IN THERE DURING THE STATEMENT?

A NOT THAT I REMEMBER. I'M NOT SAYING THEY DIDN'T, BUT I DON'T REMEMBER ANYBODY ELSE.

Q DID YOU HAVE YOUR WEAPON ON THAT DAY?

A I CAN'T ANSWER THAT EITHER BECAUSE I DON'T KNOW IF I DID OR NOT.

Q ALL RIGHT.

A IN ALL FAIRNESS THAT'S MY ANSWER I DON'T KNOW.

Q ALL RIGHT. THANK YOU.

MR. D'AGOSTINO: THANK YOU. I DON'T HAVE ANY OTHERS QUESTIONS. THANK YOU, YOUR HONOR.

MR. ANTHONY: JUST BRIEFLY.

REDIRECT EXAMINATION BY MR. ANTHONY:

Q WHEN YOU WERE READING THESE RIGHTS TO ANTONIO GORDON AND ASKING HIM THESE QUESTIONS, DID HE HAVE TO ASK YOU, DID HE ASK YOU QUESTIONS INDICATING HE MIGHT NOT UNDERSTAND SOME OF THE THINGS YOU TOLD HIM?

A NO, HE DID NOT.

Q THANK YOU. THAT'S ALL.

THE COURT: YOU CAN STEP DOWN THANK YOU. WELL, MR. GILLEN, AGAIN.

MR. GILLEN: NO, YOUR HONOR. THANK YOU.

THE COURT: YOU CAN BE EXCUSED. APPRECIATE YOUR

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TIME. CALL YOUR NEXT WITNESS.

MR. ANTHONY: THE STATE WOULD CALL LIEUTENANT THICKENS AS ITS NEXT WITNESS.

JOHN THICKENS, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. ANTHONY:

Q WOULD YOU STATE YOUR NAME PLEASE?

A JOHN THICKENS.

Q MR. THICKENS, HOW ARE YOU EMPLOYED?

A I'M EMPLOYED WITH THE ROCK HILL POLICE DEPARTMENT.

Q WHAT'S YOUR CURRENT POSITION THERE?

A CURRENTLY I'M THE LIEUTENANT OVER THE PROFESSIONAL STANDARDS UNIT.

Q AND WHAT WAS YOUR POSITION THERE BACK ON JULY 23 OF LAST YEAR?

A I WAS LIEUTENANT IN THE DETECTIVE DIVISION.

Q AND WERE YOU WORKING ON THE 23 OF JULY?

A YES, SIR.

Q AND DURING THE COURSE OF THAT DAY, DID YOU BECOME INVOLVED IN THE CASE OF THE SHOOTING INVOLVING ANTONIO GORDON?

A YES, SIR.

Q AND DID YOU, DURING THAT DAY, HAVE OCCASION TO INTERVIEW MR. GORDON?

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A YES, I DID.
Q OKAY. WHERE DID YOU SPEAK TO HIM AT?
A IN MY OFFICE.
Q OKAY. AND APPROXIMATELY WHAT TIME DID YOU SPEAK TO HIM?
A IT WAS IN THE AFTERNOON. IT WAS PROBABLY AROUND THREE O'CLOCK OR SO.
Q OKAY. AND YOU JUST HEARD DETECTIVE WALDROP TESTIFY AS TO THE STATEMENT THAT MR. GORDON GAVE?
A YES, I DID.
Q THE MORNING OF JULY 23?
A YES, SIR.
Q AND WHY WAS IT THAT YOU DECIDED TO INTERVIEW HIM A SECOND TIME IN THE AFTERNOON OF JULY 23?
A I HAD DIFFERENT PEOPLE DOING DIFFERENT THINGS AND DOING INTERVIEWS AND SO ON, AND AS THESE THINGS WOULD GET DONE, I WAS REVIEWING DIFFERENT MATERIAL AND I SAW DISCREPANCIES IN MR. GORDON'S STATEMENT FROM WHAT I ALREADY KNEW HAD HAPPENED SO I DECIDED TO INTERVIEW HIM MYSELF.
Q OKAY. AND IF YOU RECALL WHERE WAS MR. GORDON AT WHEN YOU BROUGHT HIM INTO YOUR OFFICE? WHERE DID YOU GET HIM FROM?
A I DON'T REMEMBER IF HE WAS BROUGHT OVER OR IF

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BUT HE CAME OVER FROM ACROSS THE HALL IN THE CONFERENCE ROOM. SOMEBODY MAY HAVE BROUGHT HIM OR I MAY HAVE GONE TO GET HIM, BUT I DON'T REMEMBER.

Q OKAY. BUT HE WAS IN THE CONFERENCE ROOM?

A YES, SIR.

Q AND WAS THERE ANYONE ELSE THERE WHEN YOU BEGAN SPEAKING TO MR. GORDON?

A NO.

Q OKAY. AND WHEN YOU SET DOWN TO TALK TO HIM IN YOUR OFFICE, WHAT DID YOU SAY TO HIM? WHAT DID YOU TALK TO HIM ABOUT?

A I TOLD HIM I WANTED TO INTERVIEW HIM ABOUT THE INCIDENT AND TAKE A STATEMENT FROM HIM.

Q AND BEFORE YOU BEGAN TO SPEAK TO HIM, DID YOU ADVISE HIM OF ANY RIGHTS?

A YES, SIR, I DID THE SAME THING I ALWAYS DO WHEN I TAKE A STATEMENT.

Q DID YOU USE ANY FORM TO ADVISE DEFENDANTS OF THEIR RIGHTS BEFORE YOU BEGAN TO SPEAK TO THEM?

A YES, I USE THE DEPARTMENT'S FORM.

(STATE'S EXHIBIT FOUR FOR IDENTIFICATION RIGHTS FORM.)

Q I JUST HANDED UP AN ITEM MARKED STATE'S EXHIBIT FOUR FOR IDENTIFICATION FOR THE PURPOSES OF THE

App. 48

HEARING, COULD YOU IDENTIFY THAT DOCUMENT?
A YES, SIR, THIS WOULD BE THE STATEMENT THAT I TOOK FROM MR. GORDON.
Q AND ARE THE RIGHTS THAT YOU ADVISED HIM OF RECORDED ON THAT FORM?
A YES, SIR.
Q WOULD YOU GO AHEAD AND TELL THE COURT WHAT RIGHTS YOU ADVISED MR. GORDON OF?
A WOULD YOU LIKE ME TO READ THEM OFF?
Q YES, IF YOU WOULD PLEASE.
A BEFORE WE ASK YOU ANY QUESTIONS YOU MUST UNDERSTAND YOUR RIGHTS. YOU HAVE THE RIGHT TO REMAIN SILENT. ANYTHING YOU SAY CAN BE USED AGAINST YOU IN COURT. YOU HAVE THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE WE ASK YOU ANY QUESTIONS AND TO HAVE HIM WITH YOU DURING QUESTIONING. YOU HAVE THE RIGHT TO THIS ADVICE AND PRESENCE OF A LAWYER EVEN IF YOU CANNOT AFFORD TO HIRE ONE. WE HAVE NO WAY OF APPOINTING YOU A LAWYER, BUT ONE WILL BE APPOINTED BY THE COURT FOR YOU IF YOU WISH. IF YOU WISH YOU MAY ANSWER QUESTIONS WITHOUT THE PRESENCE OF A LAWYER AND YOU MAY STOP ANSWERING ANY TIME YOU DESIRE UNTIL A LAWYER IS PRESENT.
Q OKAY. AND DID YOU HAVE MR. GORDON DO ANYTHING

App. 49

TO INDICATE THAT HE UNDERSTOOD THOSE RIGHTS?
A YES, SIR, I HAVE THE PERSON I'M INTERVIEWING IF THEY UNDERSTAND THEIR RIGHTS I SHOW THEM WHERE THEY CAN SIGN INDICATING THAT, AND THAT'S WHAT HE DID AND THEN I SIGNED TO THE LEFT OF THAT.
Q OKAY. AND THEN AFTER HE SIGNED THAT SECTION OF THE FORM, DID YOU READ HIM ANYTHING ELSE?
A THE NEXT PARAGRAPH.
Q ALL RIGHT. WHAT DOES THE NEXT PARAGRAPH SAY?
A I HAVE READ OR HAD READ TO ME THE STATEMENT OF MY RIGHTS SHOWN ABOVE. I UNDERSTAND WHAT MY RIGHTS ARE AND I AM WILLING TO MAKE A STATEMENT. I DO NOT WANT A LAWYER AT THIS TIME. I UNDERSTAND AND KNOW WHAT I AM DOING. I KNOW THAT THE PERSON TALKING WITH ME IS A POLICE OFFICER AND I UNDERSTAND WHAT HE'S TALKING ABOUT.
Q AND DID YOU HAVE MR. GORDON DO ANYTHING TO INDICATE THAT HE UNDERSTOOD THAT PART OF THE FORM?
A YES, SIR, THE SAME THING. IF HE UNDERSTOOD I HAD HIM SIGN HERE AND THEN I SIGNED TO THE LEFT.
Q NOW DURING THE COURSE OF TIME THAT YOU WERE ADVISING MR. GORDON OF THESE RIGHTS, HOW DID HE APPEAR TO YOU?

App. 50

A WELL, NOTHING OUT OF THE ORDINARY AS FAR AS BEING STRAIGHT FORWARD, ACCEPTABLE TO TALKING WITH ME. SAT UP RIGHT IN HIS CHAIR, SEEMED ALERT TO ME.

Q DID HE APPEAR TO BE UNDER THE INFLUENCE OF ANY SUBSTANCE?

A NO, SIR.

Q OKAY. WHEN YOU WERE ADVISING HIM OF THESE RIGHTS, DID HE APPEAR TO UNDERSTAND WHAT YOU WERE TALKING TO HIM ABOUT?

A YES, SIR.

Q DID HE EVER ASK ANY QUESTIONS CONCERNING THE THINGS YOU WERE TELLING HIM?

A NO, SIR.

Q DID HE, ONCE YOU ADVISED HIM OF THESE RIGHTS, DID HE INVOKE HIS RIGHT EITHER TO REMAIN SILENT OR HIS RIGHT TO COUNSEL?

A NO, HE AGREED TO TALK WITH ME.

Q OKAY. AND WHEN YOU BEGAN TO INTERVIEW HIM AFTER HE AGREED TO TALK TO YOU, HOW DID YOUR CONVERSATION WITH HIM PROCEED?

A I INFORMED HIM THAT I HAD THE INFORMATION FROM THE OTHER PEOPLE INVOLVED IN THIS INCIDENT AND THAT THERE WAS SOME THINGS THAT DIDN'T ADD UP SO TO SPEAK, SOME DISCREPANCIES I WANTED TO ASK HIM

App. 51

ABOUT. I ASKED HIM IF HE REALLY WANTED SOMEBODY ELSE TO POSSIBLY GO TO JAIL FOR SOMETHING THAT I THOUGHT HE DID BASED ON THE INFORMATION I HAD.

Q AND WHAT HAPPENED AFTER YOU TOLD HIM THIS?

A HE SAID THAT, HE INDICATED HE DIDN'T WANT ANYBODY ELSE TO BE PENALIZED FOR SOMETHING THAT HE DID. AND I SAID, WELL, I HAVE SOME QUESTIONS FOR YOU THEN AND THEN HE AGREED TO GIVE A STATEMENT. I HAD MY TYPEWRITER THERE, AND SO I BEGAN QUESTIONING HIM AND HE GAVE THE STATEMENT RIGHT HERE.

Q OKAY. AND DID YOU TAKE ANY PRELIMINARY INFORMATION FROM MR. GORDON BEFORE YOU BEGAN TO TYPE UP THE STATEMENT?

A NO, SIR, HE BASICALLY GAVE ME HIS VERSION OF WHAT HAPPENED.

Q IS THERE INFORMATION RECORDED ON THIS FORM CONCERNING MR. GORDON?

A ON THE STATEMENT?

Q YES, SIR.

A YES, WHAT I TYPED ON IT.

Q IS THERE ANY INFORMATION CONCERNING WHO HE IS, WHERE HE LIVES, THAT TYPE OF THING?

A YEAH, THEY MENTION THE RESIDENCE ON VERNSDALE ROAD AND SO ON.

App. 52

Q DID YOU GATHER THAT INFORMATION FROM MR. GORDON?
A WELL, YEAH, HE GAVE THAT INFORMATION, BUT OF COURSE, I ALREADY KNEW THAT TOO.
Q OKAY. AND DID MR. GORDON TELL YOU HOW FAR HE HAD GONE IN SCHOOL AND WHETHER HE COULD READ AND WRITE BEFORE YOU BEGAN TO TALK TO HIM?
A YES, SIR, HE SAID HE COMPLETED UP TO THE NINTH GRADE AND THAT HE COULD READ AND WRITE.
Q OKAY. AND WOULD YOU GO AHEAD AND TELL THE COURT WHAT MR. GORDON SAID WHEN YOU SPOKE TO HIM THAT AFTERNOON JULY 23?
A OKAY. HERE'S HIS STATEMENT. A COUPLE OF WEEKS AGO I BOUGHT A BLUE CHEVROLET CELEBRITY FROM A GIRL NAMED TOWANDA BURRIS. I PAID $150. THEN YESTERDAY ME, TERRANCE MCCREARY AND MY BROTHER MONTA AND GARY MOFFAT WAS RIDING AROUND ALL DAY. WE WENT SWIMMING IN THE AFTERNOON THEN WE WERE ALL DOWN AT MY PLACE ON VERNSDALE. MONTA TOOK THE CAR WITH TERRANCE AND GARY TO RIDE AROUND. I STAYED AT THE TRAILER ON VERNSDALE UNTIL THEY CAME BACK AROUND 10:30 P.M. WHEN THEY GOT BACK I GOT IN THE CAR WITH THE OTHER THREE AND WE WENT RIDING. WE WENT TO NEWPORT TO TERRANCE'S PEOPLE'S PLACE AND TOOK A TAG OFF A HONDA AND PUT IT ON THE CELEBRITY. I ALSO

App. 53

WANTED SOME SPEAKERS FOR MY CAR THAT TERRANCE HAD SO WE GOT THOSE. WHILE WE WAS RIDING AROUND WE JUST HAPPENED TO SEE THAT CAR. IT WAS A SILVER BMW. TERRANCE SAY IT WAS TWO GIRLS IN THE CAR AND THEY WAS RIDING UP THE STREET WITH NO LIGHTS ON. THEN WE FIGURED OUT THAT IT WAS TWO BOYS. WE HEARD SOME MUSIC LIKE AND JUNE BUG HEARD THE MUSIC AND SAID HE HAD TO HAVE THE CAR. JUNE BUG GAVE ME THE GUN AND TOLD ME TO GO GET THE BMW, SO I TOOK THE GUN. THE BMW WAS IN THE DRIVEWAY AND JUNE BUG (TERRANCE) BLOCKED THEM IN. I WENT UP TO THE DRIVER'S WINDOW AND I TOLD THEM I WANTED THEIR MONEY. THEY SAY THEY DIDN'T HAVE NO MONEY. I WAS HOLDING THE GUN POINTING AT THEM SIDEWAYS LIKE. I TOLD THEM GET OUT OF THE CAR BECAUSE MY BOY WANT THE CAR. MONTA WAS STANDING NEXT TO ME AND GARY GOT OUT AND WENT AROUND THE OTHER SIDE OF THE CAR. THEY WOULDN'T GET OUT OF THE CAR. OR THEY WOULDN'T GET OUT THE CAR AND STARTED BACKING UP. I HAD THE GUN POINTED AT THEM AND THEN IT WENT OFF. I HAD ONLY SHOT THAT GUN ONCE BEFORE AND I DON'T REALLY KNOW HOW IT WORKS. I WISH I COULD HAVE GOT THE BULLETS OUT, BUT IT WENT OFF. I THOUGHT THE GUY GOT HIT IN THE LEG. THE BMW WAS DRIVING

App. 54

STRAIGHT. AT FIRST I DIDN'T KNOW WHERE THE BULLET WENT BECAUSE THE CAR KEPT GOING. THEN WE ALL GOT BACK IN THE CAR. TERRANCE WAS SITTING IN THE CAR THE WHOLE TIME BUT HE WAS TRYING TO TALK JUNK TO THEM FROM THE CAR. THEN WE WENT TO THE COUNTRY TO MY HOUSE ON VERNSDALE. THEN MONTA TOOK THE CAR TO TAKE THE OTHER BOYS HOME. THE NEXT THING I KNOW IS THE POLICE CHASING MY BROTHER BECAUSE THE CAR GOT CHASED BACK TO MY HOUSE.

THEN THERE IS A SECOND SMALL "P" INITIALED HERE AND THEN THERE IS ANOTHER PARAGRAPH I ADDED. I WANT TO ADD THAT I WANT TO MAKE THIS STATEMENT AND I'VE BEEN OFFERED THE OPPORTUNITY TO HAVE MY GRANDMOTHER OR MOTHER WITH ME, BUT I JUST WANTED TO TELL THE TRUTH NOW AND GET THIS OVER WITH SO I DON'T NEED NO ONE WITH ME. CAPTAIN CABINESS ASKED ME IF I WANTED SOMEONE FROM MY FAMILY OR A LAWYER WITH ME, BUT I'M BEING TRUTHFUL ABOUT WHAT HAPPENED AND I'M SORRY FOR IT. I WOULD REALLY JUST LIKE TO GET THIS OVER WITH SO I CAN SEE MY SEVEN-MONTH-OLD BABY.

Q AND THIS STATEMENT THAT HE MADE OR THIS PART OF THE STATEMENT CONCERNING CAPTAIN CABINESS, DID CAPTAIN CABINESS APPEAR OR COME TO YOUR OFFICE

App. 55

Pertinent Testimony To Capt. Cabiness

AT SOME POINT WHILE YOU WERE TALKING TO ANTONIO GORDON?

A RIGHT TOWARD THE END OF THE STATEMENT HE DID, YES. RIGHT ABOUT AT THE END.

Q AND DID CAPTAIN CABINESS SAY ANYTHING OTHER THAN WHAT'S RECORDED HERE IN THE STATEMENT THAT MR. GORDON IS SAYING THAT CAPTAIN CABINESS TALKED TO HIM ABOUT?

A WHEN HE KNOCKED ON THE DOOR CAPTAIN CABINESS, I OPENED IT, HE ASKED ME TO STEP OUT FOR A MOMENT, AND I WAS RIGHT AT THE END OF THE STATEMENT. I STEPPED OUT, AND HE ASKED ME IF I KNEW ANYTHING ABOUT MR. WELLBORN REPRESENTING MR. GORDON AND I DIDN'T. THAT'S THE FIRST I HAD HEARD OF THAT. AND HE SAID OKAY. AND HE ASKED MR. GORDON SOMETHING TO THE EFFECT OF YOU WANT A LAWYER AND THAT'S WHEN MR. GORDON MADE THAT STATEMENT SO HEARING THAT EXCHANGE I WENT AHEAD AND TYPED IT ON THE BOTTOM OF MY STATEMENT AND THEN ASKED MR. GORDON TO SIGN THAT TOO.

Q ALL RIGHT. AND DID YOU MAKE ANY PROMISES TO MR. GORDON BEFORE OR DURING THE COURSE OF THIS INTERVIEW CONCERNING TREATMENT HE MIGHT RECEIVE?

A NO, SIR.

Q OKAY. AFTER YOU TOOK THIS STATEMENT FROM MR.

App. 56

GORDON, WHAT DID YOU DO?
A AFTER I TOOK THE STATEMENT FROM MR. GORDON?
Q AFTER HE TOLD YOU WHAT HE HAD TO SAY AND YOU TYPED IT UP, WHAT DID YOU DO?
A AFTER IT WAS SIGNED OR -- WELL, WHAT I DO TO CLOSE OUT A STATEMENT IS I ASK HIM TO SIGN ALL THREE PAGES AT THE BOTTOM, SO YOU SEE ON THE FIRST, THE BOTTOM OF THE FIRST PAGE, THE SECOND PAGE, AND THE THIRD PAGE WE GO TO THIS PARAGRAPH, AND I CAN READ YOU THE PARAGRAPH, BUT IT SAYS HE GIVES HIS OWN STATEMENT OF HIS OWN FREE WILL AND ACCORD AND SO ON. IF YOU WANT ME TO READ THAT I CAN.
Q GO AHEAD AND READ WHAT YOU HAVE HIM SIGN.
A ON PAGE THREE BEFORE HE SIGNS IT SAYS, PERSONALLY APPEARS BEFORE ME ANTONIO GORDON WHO DEPOSES AND SAYS I MAKE THIS STATEMENT OF MY OWN FREE WILL AND ACCORD WITHOUT REWARD OR HOPE OF REWARD. I HAVE NOT BEEN MISTREATED OR THREATENED IN ANY WAY. ALL OF THE ABOVE IS THE TRUTH, THE WHOLE TRUTH, AND NOTHING BUT THE TRUTH SO HELP ME GOD. I HAVE READ OR HAD READ TO ME THE ABOVE THE STATEMENT CONSISTING OF THREE PAGES AND RECEIVED A COPY OF THE SAME.
Q AND DID MR. GORDON DO ANYTHING TO INDICATE THAT

App. 57

WHAT YOU JUST READ WAS THE CASE? DID HE SIGN ANYTHING?

A YES, HE SIGNED THE STATEMENT AND I ASK PEOPLE WHO GIVE STATEMENTS TO INITIAL AT THE END OF THE PARAGRAPH, SO YOU'LL SEE THAT HE DID THAT ALSO ON BOTH THOSE PARAGRAPHS ON THE SECOND PAGE AND SIGNED AT THE BOTTOM OF THE FIRST TWO PAGES AS WELL AS THE THIRD PAGE.

Q AND THEN WAS ANYTHING DONE, DID YOU NOTORIZE THE STATEMENT?

A YES, I DID. I NOTORIZED SEVERAL OF THE STATEMENTS IN THIS CASE FOLDER. THIS WAS ONE OF THEM.

Q AND WHAT TIME DID THIS STATEMENT BEGIN?

A AT 3:30 AND IT ENDED AT 4:10.

Q AND IS THE 3:30 TIME THE TIME YOU ACTUALLY STARTED TALKING TO MR. GORDON OR IS THAT THE TIME THAT YOU STARTED ACTUALLY TYPING UP THE STATEMENT?

A THAT IS WHEN I STARTED TALKING TO MR. GORDON.

Q OKAY. AND ONCE THE INTERVIEW WAS CONCLUDED AND MR. GORDON HAD SIGNED THE PAGES, WHAT DID YOU DO?

A AFTER CONCLUDING THE INTERVIEW THEN I DON'T REMEMBER EXACTLY WHO TOOK HIM TO THE BOOKING

App. 58

AREA, BUT THAT'S WHAT WOULD HAVE HAPPENED NEXT AND I WENT ON TO SOMETHING ELSE.

Q DID MR. GORDON GET A COPY OF THE STATEMENT?

A I OFFERED HIM A COPY OF THE STATEMENT AND IT'S VAGUE IF I REMEMBER IT AT ALL, BUT WHAT I DO IS MY STANDARD PROCEDURE IS ANYBODY WHO GIVES A STATEMENT WHETHER THEY ARE A VICTIM, A WITNESS, OR A SUSPECT IS I OFFER THEM A COPY OF THE STATEMENT. IF THEY WANT ONE I XEROX A COPY OF IT FOR THEM AND GIVE IT TO THEM. WHETHER OR NOT HE ASKED FOR IT OR NOT I DON'T REMEMBER.

Q THANK YOU.

MR. ANTHONY: THAT'S ON ALL ON DIRECT.

CROSS EXAMINATION BY MR. D'AGOSTINO:

Q GOOD AFTERNOON, OFFICER THICKENS.

A GOOD AFTERNOON.

Q NOW DID YOU GO TO EITHER THE CRIME SCENE OUT THERE IN DOWNTOWN ROCK HILL?

A YES, SIR.

Q SO YOU WERE OUT THERE FOR AWHILE?

A YES, SIR.

Q AND THEN DID YOU GO TO THE, DID YOU JOIN IN THE CHASE THAT STARTED ON CONSTITUTION?

A I WASN'T IN THE ACTUAL CHASE, BUT I WAS IN THE CAR WHEN IT BEGAN AND SO THE BEST WAY TO PUT IT

App. 59

I WOULD HAVE PARALLELED IT.

Q OKAY. THEN YOU ENDED UP AT THE GORDON HOUSEHOLD?

A YES, SIR.

Q THE FIRST TIME THAT MORNING?

A YES, SIR.

Q WERE YOU HERE YESTERDAY WHEN CAPTAIN CABINESS TESTIFIED?

A NO, SIR.

Q NOT YESTERDAY I'M SORRY. WEDNESDAY?

A WHICHEVER DAY I WASN'T HERE, NO.

Q YOU WEREN'T HERE. OKAY. ANYWAY HE TALKED ABOUT THE CHASE THAT'S THE ONLY REASON WHY I WAS ASKING.

A OKAY.

Q SO WHEN YOU TOOK THIS STATEMENT WHERE WAS ANTONIO GORDON WHEN YOU FIRST GOT HIM? WAS HE IN THAT ROOM WE HEARD OFFICER WALDROP TALKING ABOUT?

A HE CAME OVER FROM THE CONFERENCE ROOM ACROSS THE HALL, YES, SIR.

Q DID HE STAY IN THAT ROOM FROM THE TIME OFFICER WALDROP FINISHED WITH HIM UNTIL YOU GOT HIM OR DID HE GO TO THE JUVENILE LOCK UP SECTION IF YOU KNOW?

App. 60

A TO MY KNOWLEDGE HE WOULD HAVE COME DIRECTLY OVER FROM THE CONFERENCE ROOM. I DON'T THINK, THAT'S TO THE BEST OF MY KNOWLEDGE. I DON'T REMEMBER ESCORTING HIM MYSELF SO I DON'T KNOW.

Q WELL, THERE WAS SOME, OFFICER WALDROP FINISHED WITH HIM AT 11:30. YOU STARTED WITH HIM I THINK YOU SAID ABOUT 3 O'CLOCK?

A 3:30 I THINK.

Q THAT'S WHAT TIME YOUR STATEMENT INDICATES. DID YOU SPEND SOME TIME WITH HIM BEFOREHAND?

A I ONLY INTERVIEWED HIM ONCE.

Q RIGHT. THIS STATEMENT THAT YOU TOOK FROM HIM, THE ONE THAT'S THE THREE PAGE ONE YOU JUST TESTIFIED ABOUT.

A YES, SIR.

Q ON THE BACK IT SAYS STATEMENT TAKEN ON 7/23/98 AT 3:30.

A OKAY.

Q AND DOES THAT MEAN YOU STARTED THE STATEMENT AT 3:30 AND EVERYTHING ENDED WITH YOU AT 4:10?

A YES, SIR, THAT'S WHAT THAT MEANS. I WAS WITH HIM FROM 3:30 TO 4:10.

Q AND THAT'S THE PURPOSE OF THOSE TIMES THERE IS TO TELL US THE TIMES YOU WERE WITH HIM.

A WELL, THE PURPOSE WOULD BE TO SAY WHEN THE

App. 61

STATEMENT BEGAN AND WHEN IT ENDED.
Q OKAY. BUT IN ANY EVENT DID YOU TALK TO HIM ANY ABOUT IT BEFOREHAND OR ANY LENGTH OF TIME MORE THAN FIVE MINUTES BEFORE THE STATEMENT ITSELF BEGAN?
A NO, SIR, I DIDN'T SPEND MUCH TIME WITH MR. GORDON.
Q OKAY.
A I SPENT, WHAT WOULD THAT BE 40 MINUTES OR SO AT THE MOST.
Q RIGHT, SO YOU HEARD OFFICER WALDROP TESTIFY HE WENT IN THERE AND TALKED TO HIM MAYBE A HALF HOUR OR WHATEVER HE TESTIFIED TO THEN THE ACTUAL STATEMENT STARTED AND IT LASTED FROM THE TIME HE HAS ON HERE THE BEGINNING TO THE END. YOU DIDN'T DO ANY OF THAT, DID YOU?
A IT WAS PROBABLY FIVE MINUTES OR LESS WHILE I WAS GETTING READY TO TAKE A STATEMENT.
Q OKAY. AND I HEARD YOU READ WHAT'S ON THIS EXHIBIT IN COURT JUST A FEW MINUTES AGO, IS THAT THE WAY YOU READ THIS TO ANTONIO?
A AS FAR AS HIS RIGHTS?
Q YES, SIR.
A YES, SIR.
Q AND THEN THE SECOND PARAGRAPH AS FAR AS THE

App. 62

STATEMENT, THE STATEMENT OF HIS RIGHTS WHERE HE SIGNED IT A SECOND TIME, YOU READ IT TO US A LITTLE WHILE AGO, DID YOU READ IT THE SAME WAY TO HIM?

A THE PARAGRAPH UNDER THE ACTUAL MIRANDA?

Q YES, SIR.

A YES, SIR.

Q OKAY. NOW DURING YOUR INTERVIEW WITH HIM DID YOU AT ANY TIME TELL HIM THAT IF YOU GO AHEAD AND GIVE A STATEMENT YOU COULD GET HOME AND SEE HIS SEVEN-MONTH-OLD BABY?

A NO, SIR.

Q YOU DIDN'T TELL HIM THAT?

A NO, SIR.

Q DID YOU INDICATE THAT TO HIM THAT HE'D BE ABLE TO GO HOME?

A NO, SIR. I DIDN'T EVEN KNOW HE HAD A SEVEN-MONTH-OLD BABY.

Q WELL, YOU HAVE IT IN HIS STATEMENT?

A BUT I DIDN'T KNOW IT AT THE BEGINNING OF THE STATEMENT.

Q NOW YOU'RE SAYING CAPTAIN CABINESS CAME IN TOWARDS THE TAIL END OF THE STATEMENT, IS THAT RIGHT?

A YES, SIR.

App. 63

Q YOU DIDN'T KNOW, WERE YOU THE LEAD INVESTIGATOR ON THIS CASE?
A YES, SIR.
Q AND YOU'RE SAYING YOU DIDN'T KNOW UNTIL CAPTAIN CABINESS CAME IN AT THE END OF THE STATEMENT THAT CHRIS WELLBORN HAD BEEN OUTSIDE ASKING TO SEE HIM?
A CORRECT.
Q HAD YOU FINISHED ANTONIO'S STATEMENT AT THE TIME THAT CAPTAIN CABINESS CAME TO TALK TO YOU?
A NO, WE HADN'T ACTUALLY, I CAN SHOW YOU ABOUT WHERE I WAS.
Q TELL ME ABOUT WHERE?
A OKAY. IT WAS ABOUT THE LAST SENTENCE.
Q OKAY.
A OF THE SECOND PARAGRAPH ON THE LAST PAGE HERE. SO IN OTHER WORDS, HE CAME IN RIGHT ABOUT HERE.
Q WHEN YOU'RE SAYING RIGHT ABOUT HERE?
A WHICH WOULD BE, THE NEXT THING I KNOW THE POLICE CHASING MY BROTHER BECAUSE THE CAR GOT CHASED. I FINISHED TYPING THAT, I LISTENED TO THE EXCHANGE, CAPTAIN CABINESS ASKED ME A QUESTION, AND HEARING THAT THEN I TYPED DOWN WHAT HAD JUST OCCURRED RIGHT THERE TOO.
Q ALL RIGHT. AND AT THE TIME CAPTAIN CABINESS HAD

App. 64

COME IN YOU WERE IN THE MIDDLE OF THAT LAST SENTENCE YOU MEAN?

A I WAS RIGHT AT THE END OF THE STATEMENT.

Q ALL RIGHT. YOU HADN'T HAD ANTONIO SIGN ANYTHING OR DO ANYTHING YET?

A NOT YET, NO, SIR.

Q WELL, DID YOU THEN IMMEDIATELY TYPE THAT LAST PARAGRAPH ABOUT THE OFFER OF THE OPPORTUNITY TO HAVE THE GRANDMOTHER OR THE MOTHER OR DID YOU COME AND DO THAT LATER?

A WELL, I DIDN'T HARDLY LEAVE THE OFFICE. THIS WAS RIGHT AT THE DOOR, SO AFTER CAPTAIN CABINESS ASKED ME ABOUT MR. WELLBORN AND THEN TURNED TO MR. GORDON AND ASKED HIM IF HE WANTED AN ATTORNEY AND AFTER THAT CAPTAIN CABINESS LEFT AND THAT'S ALL THERE WAS TO THAT THEN I SAT BACK DOWN AND I WENT AHEAD AND TYPED THAT LAST PARAGRAPH AND MR. GORDON WAS TALKING AND THAT'S WHEN I LEARNED THAT, YOU KNOW, HE SAID SOMETHING ABOUT HIS SEVEN-MONTH-OLD BABY AND SO ON. I TYPED DOWN WHAT HE SAID.

Q SO THESE ARE HIS WORDS ABOUT NOT WANTING TO HAVE, THIS IS HIS WORD "OPPORTUNITY" TO HAVE MY GRANDMOTHER OR MOTHER, THOSE ARE HIS WORDS?

A ALL THOSE WORDS ON THE STATEMENT ARE HIS WORDS.

App. 65

Q "OPPORTUNITY" IS HIS WORD, ALL RIGHT.
A YOU CAN READ THE SECOND STATEMENT TOO. WOULD YOU WANT ME TO GO AHEAD AND START WITH I WANT TO ADD?
Q SURE, GO AHEAD.
A OKAY. I WANT TO ADD THAT I WANT TO MAKE THIS STATEMENT AND I'VE BEEN OFFERED THE OPPORTUNITY TO HAVE MY GRANDMOTHER OR MOTHER WITH ME BUT I JUST WANT TO TELL THE TRUTH NOW AND GET THIS OVER WITH SO I DON'T NEED NO ONE WITH ME. CAPTAIN CABINESS ASKED ME IF I WANTED SOMEONE FROM MY FAMILY OR A LAWYER WITH ME BUT I'M BEING TRUTHFUL ABOUT WHAT HAPPENED AND I'M SORRY FOR IT. I WOULD REALLY LIKE TO JUST GET THIS OVER WITH SO I CAN SEE MY SEVEN-MONTH-OLD BABY.
Q WHY DID YOU HAVE HIM INITIAL THE PARAGRAPH ABOVE, GO DOWN SOME SPACE, AND SIGN THIS LAST PARAGRAPH?
A THAT'S WHAT I DO AT THE END OF PARAGRAPHS IS AS WE'RE GOING THROUGH THE STATEMENT AT THE TIME OF SIGNATURE AND IF THEY UNDERSTAND IT THEN I HAVE THEM INITIAL, AND THAT'S A STANDARD WAY I DO MY STATEMENTS. JUST AN INDICATOR THAT THEY'VE READ AND UNDERSTAND WHAT THEIR STATEMENT IS AND THEY AGREE WITH IT.

App. 66

Q NOW SO YOU WOULD HAVE BEEN, JUST SO I UNDERSTAND IT CORRECTLY, THE ROOM YOU WERE IN IS YOUR OFFICE AS WELL, RIGHT?

A IT WAS MY OFFICE, YES, SIR.

Q AND THAT'S WHERE YOU TOOK IT DOWN, THE STATEMENT YOU TOOK DOWN RELATING TO THIS CASE WAS IN YOUR OFFICE?

A YOU ARE TALKING ABOUT THIS STATEMENT?

Q YES.

A THIS IS WHERE I TOOK THIS STATEMENT. IT WAS IN MY OFFICE.

Q DID YOU TAKE STATEMENTS FROM OTHER WITNESSES, TYPE UP STATEMENTS FROM OTHER WITNESSES IN ANY OTHER OFFICES?

A I WROTE SOME OUT. I COULD GO THROUGH THE CASE FOLDER AND SHOW YOU WHICH ONES I DID, BUT AS FAR AS INTERVIEWING ANY OF THE FOUR DEFENDANTS.

Q THAT'S WHAT I'M TALKING ABOUT.

A RIGHT.

Q THAT WAS IN YOUR OFFICE?

A THE ONLY OTHER ONE, I'D HAVE TO CHECK ON GARY MOFFAT, BUT I DIDN'T INTERVIEW TERRANCE MCCREARY AND I DIDN'T INTERVIEW MONTA GORDON.

Q I THINK YOU DID INTERVIEW GARY MOFFAT. WOULD IT HAVE BEEN IN YOUR OFFICE?

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App. 67

A IT WOULD, WELL, IT WOULD HAVE BEEN IN THE DETECTIVE DIVISION.

Q UH-HUH.

A IT MAY HAVE BEEN IN MY OFFICE.

Q NOW WERE YOU WITH ANTONIO THE WHOLE TIME YOU WERE DOING THE INTERVIEW OR WERE THERE OTHER PEOPLE COMING AND GOING OR WERE YOU COMING AND GOING OR DID YOU SIT THERE THE WHOLE TIME?

A NO, I SAT THERE THE WHOLE TIME, JUST HE AND I WERE THERE.

Q AND HOW LONG DID YOU SPEND WITH GARY MOFFAT BEFORE YOU TOOK HIS STATEMENT?

A I DON'T REMEMBER SPENDING ANY TIME AT ALL REALLY.

Q YOU PRETTY MUCH KNEW ALL THE FACTS, WHAT YOU BELIEVED TO BE THE FACTS OF THIS CASE BEFORE YOU WENT IN TO TALK TO ANTONIO, RIGHT?

A I HAD ALL THE INFORMATION AVAILABLE TO ME THAT HAD BEEN GATHERED THUS FAR.

Q YOU HAD INFORMATION FROM GARY MOFFAT AND SOME OF THE OTHER WITNESSES?

A I COULD SHOW YOU WHICH INFORMATION I HAD. WHEN YOU SAY SOME OF THE OTHER WITNESSES, I'M NOT SURE WHICH ONES YOU'RE TALKING ABOUT.

Q FOR PURPOSES OF, WHAT I'M TRYING TO FIND OUT IS

App. 68

WHAT INFORMATION YOU KNEW WHEN YOU WENT IN TO TALK TO ANTONIO GORDON AS TO HOW THE CRIME OCCURRED. YOU SAID THERE WERE INCONSISTENCIES WITH THE OTHER STATEMENTS?

A YES, SIR.

Q AND WHAT I UNDERSTOOD IS YOU TOOK THE STATEMENT FROM, THAT THERE HAD BEEN SEVERAL STATEMENTS TAKEN THAT MORNING. IN FACT, WHAT I'VE DONE IS I JUST MADE A LIST OF STATEMENTS AND THE OFFICERS TAKING THOSE STATEMENTS AND THE TIMES. DOES THAT LOOK LIKE ABOUT RIGHT? IF I CAN LOOK AT THAT WITH YOU.

A WHICH ONE?

Q OFFICER HERRING TALKED TO ASHWORTH, THAT WAS THE FIRST THING IN THE MORNING. HE WAS SOMEONE WHO THE, MR. KRENN AND MR. DIAZ HAD LET OFF, IS THAT CORRECT?

A RIGHT.

Q THEN YOU HAD TALKED TO TOWANDA BURRIS AND CHYENCA DIXON AND YOU TALKED TO THEM AS INDICATED ON YOUR STATEMENT FROM 6 TO 6:50 AND 7:30 TO 8:45?

A THESE TWO PEOPLE HERE?

Q THE SAME PERSON?

A RIGHT.

App. 69

Q SHE JUST GAVE AN ALIAS. THEN OFFICER WALDROP TALKED TO ANTONIO GORDON, DID YOU KNOW WHAT THE RESULT OF THAT TALK WAS? AFTER WALDROP GOT DONE GETTING THAT STATEMENT, DID YOU SEE THAT STATEMENT?

A YES.

Q ALL RIGHT. AND THEN FONTELLA FEELY, YOU KNEW WHAT SHE HAD SAID THAT WHEN THEY GOT DONE WITH THAT STATEMENT AT 12:30, RIGHT?

A I WOULD HAVE HAD IT AVAILABLE TO ME, BUT I DON'T REMEMBER READING THAT SPECIFICALLY BUT MOST LIKELY I WOULD HAVE READ IT.

Q MONTA'S STATEMENT, YOU WOULD HAVE READ THAT BECAUSE HIS ENDED AT 12:30?

A IS THIS YOUR LIST HERE?

Q YES, SIR.

A OF COURSE, ALL THESE WOULD BE P.M. SEE THAT'S A.M.

Q WELL, I THOUGHT ON YOUR, GO AHEAD AND GET YOUR STATEMENTS OUT. I THINK THAT'S WHAT THE STATEMENTS INDICATED.

A WELL, THESE WERE ALL DONE, YOU KNOW, THE INCIDENT HAPPENED AT NIGHT SO WE'RE TALKING ABOUT LUNCH TIME ON YOUR LIST THERE SO THAT SHOULD BE 12:30 P.M.

App. 70

Q WELL, THE INCIDENT HAPPENED AT ONE A.M. IN THE MORNING?
A RIGHT.
Q AND ON YOUR DOCUMENTS, WELL, LET ME JUST GIVE YOU.
A WELL, IF YOU TOOK IT RIGHT OFF THERE BUT I'M JUST TELLING YOU IT SHOULD BE P.M. NO MATTER WHAT THE INFORMATION IS. IN OTHER WORDS, WE'RE DEALING IN THE DAYTIME.
Q WELL, AFTER YOU TALKED, Y'ALL TALKED TO TOWANDA OR CHYENCA OR WHICHEVER WAY YOU WANT TO CALL HER, MS. BURRIS DIXON ARE THE SAME PERSON. Y'ALL TALKED TO HER THAT MORNING BEFORE YOU TALKED TO ANTONIO THAT MORNING, DIDN'T YOU?
A THAT'S CORRECT. I'M TALKING ABOUT 12:30 ON THERE. ALL THOSE 12:30'S.
Q OH, OKAY. I'M SORRY. I THOUGHT YOU WERE SAYING MY WHOLE LIST MEANT P.M. I APOLOGIZE.
A WELL, THERE IS A LOT OF 12:30'S ON THERE AND YOURS SAY A.M. BUT IT SHOULD BE P.M.
Q I THOUGHT YOU SAID, LET'S JUST CHANGE THAT TO P.M.
A THAT'S WHY I WASN'T SURE WHERE YOU GOT THAT INFORMATION.
Q SO THAT'S WHAT YOU'RE TALKING ABOUT. SO THAT'S

App. 71

12:30 P.M. 11:15 A.M. TO 12:30 P.M.
A AND THE NEXT ONE.
Q IS 11:30 A.M. TO 12:30 P.M.
A AND THE NEXT ONE.
Q WELL, I HAVE THAT ONE RIGHT 2:06, 1:15 P.M. TO 2:06 P.M. ONNA JOHNSON. AND THEN GARY MOFFAT FROM 3 TO 4:05 P.M.
A OKAY.
Q AND TERRANCE FROM 3:35 TO 5:10 AND ANTONIO FROM 3:30 TO 4:10 SO YOU WOULD HAVE HAD, PROBABLY WOULDN'T HAVE HAD TERRANCE BECAUSE THEY WEREN'T DONE WITH TERRANCE'S YET AND GARY'S, WELL, LET ME GET OUT GARY'S STATEMENT.
A A LOT OF THAT OCCURRED AT ---
Q LOOK AT THAT THIRD PAGE OF GARY MOFFAT'S STATEMENT. YOU TOOK THAT STATEMENT, DIDN'T YOU?
A RIGHT, SO YOU WANT TO ASK ME THE DIFFERENCE BETWEEN 3 AND 3:30?
Q WHAT I WANT TO ASK YOU IS IF YOU WERE WITH, YOU TESTIFIED THAT THE TIMES THAT ARE ON THE THIRD PAGE OF THE STATEMENT ARE THE TIMES THAT ARE RECORDED THERE TO INDICATE THE TIME YOU SPENT WITH THE SUSPECT, ALL RIGHT, AND ON GARY MOFFAT'S STATEMENT YOU HAVE THAT YOU WERE WITH HIM FROM 3 O'CLOCK TO 4:05?

App. 72

A YES, SIR.
Q ON ANTONIO GORDON'S STATEMENT THAT YOU WERE WITH HIM FROM 3:30 TO 4:10?
A THAT'S RIGHT.
Q AND YOU SAID YOU WEREN'T WITH EITHER ONE OF THEM AT THE SAME TIME?
A RIGHT.
Q HOW ARE YOU TAKING TWO STATEMENTS AT THE SAME TIME?
A WELL, I ALREADY NOTICED THIS, BUT I DIDN'T WANT TO GO BACK AND CHANGE THE TIMES ON THE STATEMENTS THAT THEY HAD SIGNED BECAUSE ONCE SOMEBODY SIGNED A STATEMENT I LEAVE IT EXACTLY LIKE IT IS. SO MY TIMES MIGHT BE OFF BY SEVERAL MINUTES 3-3:30 BUT I WASN'T ABOUT TO CHANGE MY STATEMENT.
Q SO YOU'RE NOT WRITING DOWN THE TIMES YOU ARE WITH THEM?
A WRITING THEM DOWN?
Q YOU'RE NOT?
A NO, SIR, I TYPE THEM.
Q YOU DIDN'T TYPE THEM DOWN ACCURATELY THEN IS WHAT YOU ARE SAYING?
A WELL, OBVIOUSLY THAT WOULD HAVE BEEN OFF A LITTLE BIT, BUT IT WAS IN THE AFTERNOON BETWEEN

App. 73

3 AND 3:30.

Q WELL, DIDN'T YOU TYPE THIS UP AS YOU WENT ALONG OR DID YOU GO BACK AND TYPE IT UP FROM YOUR NOTES?

A YOU'RE TAKING ABOUT THE STATEMENTS?

Q THE WHOLE DOCUMENT?

A SURE, RIGHT WHEN THE PEOPLE ARE GIVING THE STATEMENT THEN I TYPE IT DOWN.

Q ALL RIGHT. AND YOU TYPE THE TIMES IN BEFORE THEY SIGN BECAUSE YOU JUST SAID YOU DON'T WANT TO CHANGE IT AFTER THEY SIGN IT?

A RIGHT.

Q WELL, YOU HAD A WATCH ON?

A AND MY BEST EXPLANATION FOR YOU, OKAY, BETWEEN 3 AND 3:30 IS I ALREADY SAW THAT AND I WASN'T ABOUT TO CHANGE THE STATEMENTS AFTER THEY LEFT. I JUST WOULDN'T DO THAT, SIR.

Q BUT ACCORDING TO THE STATEMENTS THAT Y'ALL PRODUCED, YOU'RE WITH GARY MOFFAT FROM 3 TO 4:05 AND ANTONIO FROM 3:30 TO 4:10?

A RIGHT, SO NO MATTER WHAT THE OVERLAP THERE I INTERVIEWED ANTONIO SOON AFTER GARY. BUT GARY DID COME FIRST THAT I CAN TELL YOU.

Q SO YOU'RE SAYING YOU HAD ALL GARY'S INFORMATION BEFORE YOU WENT AND TALKED TO ANTONIO?

App. 74

A YES, SIR, AS WELL AS THAT LIST YOU HAD THERE, I WOULD HAVE HAD THAT OTHER INFORMATION TOO AVAILABLE TO ME. THAT'S HOW I KNEW THE DISCREPANCIES YOU ASKED ME ABOUT.

Q ISN'T IT IMPORTANT TO ACCURATELY REFLECT EVERYTHING ON A STATEMENT?

A IT CERTAINLY IS.

Q NOW THERE ARE INCONSISTENCIES BETWEEN GARY'S STATEMENT, MONTA'S STATEMENT, AND TERRANCE'S STATEMENT AS WELL, AREN'T THERE? NUMEROUS INCONSISTENCIES BETWEEN THE OTHER THREE?

A I SAW SOME INCONSISTENCIES BETWEEN THE STATEMENTS. NUMEROUS, THAT'S A JUDGMENT.

Q YOU DIDN'T GO BACK AND INTERVIEW ANY OF THEM, DID YOU?

A WHO?

Q GARY, TERRANCE, OR MONTA?

A NO, SIR.

Q NOW WITH REGARD TO THE ARREST ITSELF, YOU WERE THE LEAD OFFICER, YOU KNOW THAT MR. DIAZ WHEN HE WAS QUESTIONED THAT NIGHT THAT MORNING?

A YEAH.

Q SAID THERE WERE ONLY THREE PEOPLE INVOLVED IN THIS?

A MR. DIAZ SAID THAT, IS THAT IN HIS STATEMENT?

App. 75

Q YES, SIR.
A OKAY.
Q YOU KNEW THAT THAT NIGHT. Y'ALL WERE LOOKING FOR FOUR PEOPLE THAT NIGHT, Y'ALL WERE LOOKING FOR THREE PEOPLE, ISN'T THAT CORRECT?
A WELL, YOU'RE STATING THAT BUT I DON'T KNOW THAT TO BE THE TRUTH, SIR.
Q WELL, YOU ARE THE LEAD INVESTIGATOR. YOU'VE REVIEWED THESE FILES. THAT'S WHAT YOU WERE LOOKING FOR IMMEDIATELY AFTER THE SCENE. MR. DIAZ TOLD EVERYBODY THAT IT WAS THREE PEOPLE.
A NO, SIR. WELL, MY STATEMENT WOULD BE, I DIDN'T KNOW WHAT WE WERE LOOKING FOR.
Q WELL --
A OKAY.
Q OFFICER SIMMS WAS THE FIRST ONE ON THE SCENE, WAS HE NOT?
A HE MAY HAVE BEEN. I'D HAVE TO LOOK AT THE CASE FOLDER FOR ALL THAT.
Q LOOK AT HIS STATEMENT AND LOOK AT WHAT I HIGHLIGHTED.
A ALL RIGHT.
Q WHAT DOES HE SAY Y'ALL ARE LOOKING FOR THAT DIAZ TOLD HIM?
A YOU TALKING ABOUT OFFICER SIMMS?

App. '76

Q YES, MASTER PATROL OFFICER SIMMS?
A WELL, WHAT PART OF THIS DO YOU WANT ME TO READ?
Q THE PART I HAVE HIGHLIGHTED TALKING ABOUT HOW MANY PEOPLE MR. DIAZ SAID THEY WERE LOOKING FOR?
A OFFICER SIMMS NOW WOULD HAVE WRITTEN THE THREE BLACK MALES APPROACHED THE BMW, ONE OF THEM TOLD KRENN, DRIVER, GIVE HIM ALL HIS MONEY. KRENN TOLD THE SUSPECT THAT HE DIDN'T HAVE ANY MONEY. THE SUSPECT PULLED OUT A HANDGUN AND SHOT KRENN. KRENN AND DIAZ GOT OUT OF THE VEHICLE AND KRENN COLLAPSED AT THE REAR OF THE VEHICLE.
Q SO ACCORDING TO THE STATEMENT, INFORMATION Y'ALL HAD FROM DIAZ IMMEDIATELY AFTERWARDS, Y'ALL WERE LOOKING FOR THREE INDIVIDUALS.
A YOU'RE ASSUMING THAT.
THE COURT: EXCUSE ME JUST A MINUTE. YOU KEEP ASKING HIM THAT BUT I DON'T INTERPRET THAT AS, HE SAYS HE DOESN'T REMEMBER HOW MANY THEY ARE LOOKING FOR AND THAT DOESN'T SAY IT WAS JUST THREE PEOPLE. HE SAID THREE GOT OUT OF THE CAR. I MEAN, I DON'T WANT TO GET ARGUMENTATIVE WITH YOU BUT OF COURSE HE'S YOUR WITNESS, BUT I JUST WANT YOU TO SEE THAT HIS ANSWERS, THE FACT THAT THAT STATEMENT SAYS THREE PEOPLE GOT OUT OF THE CAR, YOU'RE TRYING TO TRANSLATE THAT INTO THEM

App. 77

LOOKING FOR THREE PEOPLE AND HE'S SAYING HE DOESN'T KNOW, BUT YOU CAN KEEP GOING ON THAT LINE AS LONG AS YOU WANT TO WITH HIM, BUT I JUST WANT TO TELL YOU WHAT I'M HEARING. GO AHEAD. THERE MAY BE SOMETHING ELSE IN THERE, BUT WHAT YOU READ JUST SAID THAT THREE PEOPLE GOT OUT OF THE CAR. DOESN'T MEAN THERE WEREN'T TEN MORE IN THE CAR.

A SIR, TO TRY TO ANSWER YOUR QUESTION --

THE COURT: JUST LET HIM ASK YOU THE NEXT QUESTION.

A OKAY.

Q LET ME JUST ASK YOU THIS.

A ALL RIGHT.

Q PRIOR TO THE CHASE OF ANTONIO, MONTA, AND THOSE OTHER TWO BOYS?

A YES, SIR.

Q DID Y'ALL HAVE ANY MORE INFORMATION THAT THERE WERE ANY MORE THAN THREE PEOPLE INVOLVED IN THIS?

A RIGHT, HERE'S WHAT I CAN TELL YOU. WHEN I WAS OUT AT THE CRIME SCENE AND THERE WERE ACTUALLY TWO NOW WHERE THE CAR ENDED UP, THE BMW.

Q RIGHT.

A AND WHERE THE SHOOTING OCCURRED.

App. 78

Q RIGHT.
A OKAY. PROBABLY WITHIN WHAT A QUARTER MILE OF EACH OTHER.
Q CORRECT.
A OKAY. WHEN I GOT DONE LOOKING AT BOTH OF THOSE, ALL I KNEW WAS WE WERE LOOKING FOR A BLUE CAR WITH MORE THAN ONE PERSON IN IT AND THAT'S IT.
Q NOW YOU INTERVIEWED, YOU WERE THE ONE WHO TOOK TOWANDA BURRIS ALSO KNOWN AS CHYENCA DIXON TO THE POLICE STATION, RIGHT?
A YES, SIR.
Q DID Y'ALL PLACE HER UNDER ARREST AND TAKE HER TO THE POLICE STATION?
A NO, SHE VOLUNTARILY WENT WITH ME.
Q SHE VOLUNTARILY WENT WITH YOU?
A YES, SIR.
Q WAS SHE FREE TO LEAVE THE POLICE STATION AT ANY TIME?
A DEFINITELY.
Q AND DID YOU GIVE HER, DID SHE EVER ASK FOR AN ATTORNEY WHILE SHE WAS BACK THERE WITH YOU?
A NO, SIR.
Q DID YOU GIVE HER THE MIRANDA RIGHTS?
A NO, SIR.
Q NOW WHEN YOU LET HER GO, Y'ALL DROVE HER BACK TO

App. 79

THE HOUSE WHERE YOU SUBSEQUENTLY ARRESTED ANTONIO AND MONTA, DID YOU NOT?

A DROVE HER BACK?

Q YES, SIR.

A I DON'T KNOW HOW SHE GOT BACK THERE. SHE ACTUALLY HAD TO GET BACK THERE TWICE I THINK, RIGHT?

Q WELL, I KNOW THE TIME, Y'ALL TOOK HER TO THE POLICE STATION FIRST THING THAT MORNING?

A I TOOK HER THERE.

Q YOU TOOK HER THERE?

A RIGHT.

Q AND AFTER YOU GOT DONE QUESTIONING HER YOU LET HER GO, RIGHT?

A RIGHT. SO THAT WOULD BE ONCE.

Q RIGHT.

A RIGHT.

Q DO YOU KNOW HOW SHE GOT BACK THAT TIME?

A NO, SIR, I DON'T REMEMBER HOW SHE GOT BACK. WE MAY HAVE GIVEN HER A RIDE. I DON'T KNOW. WE MIGHT NOT HAVE.

Q WITH REGARD TO THAT SITUATION, Y'ALL SUBSEQUENTLY, IMMEDIATELY AFTER YOU GOT DONE INTERVIEWING HER, Y'ALL WENT OUT TO ARREST ANTONIO AND MONTA, DID YOU NOT?

App. 80

A NOW WHEN YOU SAY Y'ALL WHO DO YOU MEAN?
Q THE POLICE DEPARTMENT. YOU, OTHER PEOPLE ON THE SWAT TEAM. YOU WERE THE LEAD INVESTIGATOR, THAT'S WHY I'M ASKING Y'ALL?
A OKAY, BUT WHEN YOU SAY Y'ALL I JUST DON'T KNOW WHO YOU MEAN. WHO IT WAS, I STAYED IN THE STATION BECAUSE I WAS DOING OTHER THINGS WITH THIS INVESTIGATION AND CAPTAIN CABINESS CALLED A NUMBER OF OFFICERS TO GO TO TWO LOCATIONS THAT WE KNEW ABOUT THAT WE NEEDED TO LOOK INTO.
Q ALL RIGHT.
A THAT'S WHAT IT WOULD HAVE BEEN.
Q SO WHEN YOU LET CHYENCA DIXON ALSO KNOWN AS TOWANDA BURRIS GO?
A YES, SIR.
Q DID YOU GO GET AN ARREST WARRANT FOR ANTONIO AND MONTA?
A WHAT'S YOUR QUESTION NOW?
Q ONCE YOU LET HER GO THAT DAY, THAT MORNING, THAT FIRST TIME, DID YOU GO TO GET AN ARREST WARRANT FOR ANTONIO AND MONTA?
A WELL, THE WARRANTS WEREN'T PREPARED YET.
Q DID YOU GO AND ATTEMPT TO OBTAIN A WARRANT?
A YOU MEAN RIGHT AT THAT VERY MOMENT WHEN SHE LEFT?

App. 81

Was not Charged

Q YEAH.
A ALL THAT WAS IN THE WORKS, BUT THERE WERE NO WARRANTS BEING TYPED IF THAT'S YOUR QUESTION I'M TRYING TO ANSWER IT. IN OTHER WORDS, WAS SOMEBODY SITTING AT A TERMINAL OR AT A TYPEWRITER TYPING OUT A WARRANT, NO, SIR.
Q WERE YOU IN THE PROCESS OF DOING THAT?
A THAT'S ONE OF THE THINGS THAT HAD TO GET DONE.
Q ALL RIGHT.
A BUT TYPICALLY NOW IN A CASE LIKE THIS JUST TO LET YOU KNOW HOW IT GOES, WE WOULDN'T DO THOSE WARRANTS UNTIL A LATER TIME WHEN WE DECIDED EXACTLY WHAT THE CHARGES WERE EVEN THOUGH WE WOULD KNOW THAT WE HAD A MURDER CASE WE THOUGHT, ALL RIGHT, AND WE HAD PROBABLE CAUSE FOR ARREST BUT THAT DOESN'T MEAN WE'RE GOING TO DO ARREST WARRANTS. WE DON'T NEED AN ARREST WARRANT TO MAKE AN ARREST.
Q YOU DON'T NEED AN ARREST WARRANT TO MAKE AN ARREST?
A WE DON'T NEED TO BE HOLDING IT IN OUR HANDS TO MAKE THAT ARREST, NO, SIR.
Q DO YOU NEED IT SIGNED SOMEWHERE?
A IT HAS TO BE SIGNED, THAT'S RIGHT.
Q HAS TO BE SIGNED. AT THE TIME YOU ARRESTED

App. 82

ANTONIO YOU DIDN'T HAVE A SIGNED ARREST WARRANT?
A NO, I THINK YOU NEED TO DISTINGUISH BETWEEN PROBABLE CAUSE FOR THE ARREST AND THE ARREST WARRANT.
Q WELL --
A IS THAT WHAT YOU ARE ASKING ME?
Q I JUST ASKED YOU, AT THE TIME YOU ARRESTED ANTONIO THERE WAS NO SIGNED ARREST WARRANT, WAS THERE?
A NO, SIR, THAT'S WHAT I SAID.
Q AT THE TIME YOU ARRESTED ANTONIO, YOU HAD SUFFICIENT TIME TO GO TO A MAGISTRATE TO GET A WARRANT BECAUSE DELORES WILLIAMS WAS RIGHT THERE AT THE POLICE STATION; SHE WAS ON DUTY, WASN'T SHE?
MR. ANTHONY: YOUR HONOR, I OBJECT AT THIS POINT. I UNDERSTAND THAT THERE IS SOME RELEVANCE TO WHAT THE OFFICER KNEW WHEN HE BEGAN THE INTERVIEW, BUT I THINK HE'S GETTING FAR AFIELD OF THE DENNO HEARING THAT WE'RE SUPPOSED TO BE DOING. I DON'T REALLY SEE HOW IT MATTERS IF SOMEBODY WAS THERE TO TYPE UP THE WARRANT.
THE COURT: I OVERRULE THE OBJECTION. GO AHEAD.
MR. D'AGOSTINO: THANK YOU, YOUR HONOR.
Q DELORES WILLIAMS WAS ON DUTY, SHE'S THE

App. 83

MAGISTRATE AND OFTEN SIGNS WARRANTS, SHE WAS AVAILABLE TO SIGN A WARRANT THAT MORNING?

A THAT I DON'T KNOW. I DON'T KNOW DELORES WILLIAMS WAS ON DUTY OR NOT.

Q WELL, THERE ARE MAGISTRATES AT THE POLICE STATION?

A YES, THERE ARE.

Q ALMOST 24 HOURS AND DEFINITELY AT NINE A.M. IN THE MORNING.

A THIS WOULD HAVE BEEN AFTER EIGHT O'CLOCK PROBABLY SO, BUT DID I SEE THEM, NO.

Q DID YOU OBTAIN AN ARREST WARRANT BEFORE YOU WENT TO ANTONIO'S OR YOU SENT WORD TO ARREST ANTONIO GORDON?

A NO, WE WOULD HAVE DONE THOSE WARRANTS OURSELVES TOO.

Q AND WHO MADE THE DECISION TO ARREST ANTONIO GORDON?

A THAT WOULD HAVE BEEN CAPTAIN CABINESS BASED ON THE INFORMATION I HAD GIVEN HIM FROM THE STATEMENTS I TOOK FROM CHYENCA DIXON.

Q ALL RIGHT. WHAT DID YOU DO TO VERIFY ANY OF THE INFORMATION IN THOSE STATEMENTS THAT YOU GOT FROM CHYENCA DIXON CONSIDERING THAT SHE'D GIVEN YOU AN ALIAS AND A TOTALLY DIFFERENT STATEMENT

App. 84

THE FIRST TIME?
A VERIFICATION?
Q YES.
A AFTER SHE GAVE HER SECOND STATEMENT, THAT PROVIDED THE PROBABLE CAUSE WE NEEDED FOR THE ARREST.
Q WHAT INFORMATION DID YOU HAVE TO SUBSTANTIATE THAT CHYENCA DIXON WAS A RELIABLE SOURCE OF INFORMATION?
A WELL, WE HAD THE SUSPECT VEHICLE FIRST OF ALL, OKAY, SO WE HAD THE CAR. ALL RIGHT. AND WE HAD THE, QUITE A COMPREHENSIVE STATEMENT IN MY ESTIMATION FROM CHYENCA DIXON, ALL RIGHT. NOW IF YOU WANT ME TO EXPLAIN WHY HER STATEMENT WAS RELIABLE I CAN DO THAT.
Q WELL, FIRST I WANT TO ASK YOU SOME QUESTIONS.
A OKAY.
Q YOUR FIRST STATEMENT FROM CHYENCA ISN'T --
A ---CHYENCA. IT'S TOWANDA BURRIS.
Q IT'S TOWANDA AND IT DOESN'T GIVE YOU ANY INFORMATION. SHE LIED TO YOU ABOUT HER IDENTITY SO THEN YOU TAKE HER BACK THERE AGAIN AND THEN YOU TALKED TO HER AGAIN, RIGHT?
A RIGHT.
Q AND YOU GET, IN FACT, THAT STATEMENT IS IN THREE

App. 85

DIFFERENT SECTIONS BECAUSE SHE LIED TO YOU THROUGH THE FIRST PART OF IT THEN YOU'RE SAYING SHE WENT BACK IN AS I REMEMBER THE STATEMENT AND CHANGED SOME THINGS.

A THE FIRST OR SECOND STATEMENT?

Q IN THE SECOND STATEMENT.

A I HAVE TO LOOK AT IT AND SEE IT TO SEE WHAT YOU ARE TALKING ABOUT.

Q I'M GOING TO GIVE IT TO YOU.

A OKAY.

Q I DON'T WANT YOU TO GO WITHOUT LOOKING AT IT.

A THANK YOU.

Q NOW DIDN'T SHE GIVE YOU A SUMMARY AND IT DOESN'T IMPLICATE ANTONIO GORDON. IT IMPLICATES ANTONIO COUSAR OR SOMETHING LIKE THAT?

A COUSAR.

Q IS THAT HOW THEY SAY THAT, WHATEVER.

A THIS IS HER SECOND STATEMENT.

Q THIS IS HER SECOND STATEMENT I BELIEVE. IS THAT HER SECOND STATEMENT? I DON'T KNOW.

A THIS IS HER SECOND STATEMENT.

Q THAT'S WHAT I UNDERSTAND IT TO BE. THEN SHE'S GOES BACK IN AND SAYS IN THE PARAGRAPH I LIED IN MY FIRST STATEMENT BECAUSE I KNEW TERRANCE SHOT THE BOY AND I DIDN'T WANT TO SEE HIM GO TO

App. 86

JAIL AND ALSO BECAUSE THE CAR BELONGS TO MY BOYFRIEND AND I DIDN'T WANT HIM TO GET IN ANY TROUBLE.

A RIGHT.

Q TERRANCE SOMETHING JUST GOT A GOLD SOMETHING OR OTHER?

A A RACK.

Q RACK. AND THEN SHE WENT BACK IN AND CHANGED AND ADDED ANOTHER PARAGRAPH, RIGHT?

A THAT'S RIGHT.

Q DID SHE SIGN EACH ONE OF THOSE PARAGRAPHS?

A YES.

Q OR DID SHE JUST SIGN?

A SHE INITIALED HERE.

Q ALL RIGHT.

A OKAY. AND THEN SHE SIGNED THERE. OBVIOUSLY SHE SIGNED THERE.

Q ALL RIGHT. SO ACTUALLY I WAS WRONG. SHE ACTUALLY CHANGED IT, YEAH, SHE DID CHANGE IT TWO TIMES AFTER THE INITIAL PARAGRAPH.

A AND I THINK I CAN ANSWER TWO OF YOUR QUESTIONS AT THE SAME TIME BUT GO AHEAD.

Q GO AHEAD AND ANSWER THE QUESTIONS.

A WHAT YOU'RE ASKING IS WHY SHE WAS BELIEVABLE WHEN OBVIOUSLY IN HER STATEMENT THERE WOULD BE

App. 87

WHAT WOULD APPEAR TO YOU TO BE INCONSISTENCIES. ONE BEING THAT I CAN POINT OUT COUSAR, ANTONIO COUSAR. FIRST NAME ANTONIO AND THE SECOND NAME COUSAR, OKAY. AND WE ALREADY KNEW ABOUT ANTONIO GORDON. ALL RIGHT.

Q WHAT DID YOU KNOW ANTONIO GORDON?

A WELL, GO BACK TO THE FIRST STATEMENT. WHAT'S HER FIRST STATEMENT?

Q HER FIRST STATEMENT?

A YEAH.

Q SURE.

A LOOK IN THIS STATEMENT HERE SHE MENTIONS MY BOYFRIEND IS ANTONIO GORDON.

Q RIGHT.

A OKAY. SO I KNOW THAT WHEN I'M INTERVIEWING HER, ALL RIGHT. I ALSO KNOW SHE'S LYING THROUGH THIS STATEMENT HERE.

Q HOW DO YOU KNOW THAT?

A THAT'S WHY I INTERVIEWED HER A SECOND TIME, SIR.

Q HOW DID YOU KNOW SHE WAS LYING TO CAUSE YOU TO INTERVIEW HER A SECOND TIME?

A BECAUSE ALL I CAN TELL YOU IS I DIDN'T BELIEVE HER BASED ON MY EXPERIENCE. AND SHE GAVE A VERY SHORT STATEMENT WHEN A LOT MORE WENT ON BUT OBVIOUSLY BY HER FIRST STATEMENT SHE KNEW QUITE

App. 88

A BIT ABOUT THIS. THERE IS TELLTALE SIGNS THERE.

Q BUT SHE DIDN'T HAVE ANY DIRECT INFORMATION THAT SHE KNEW?

A KNEW WHAT?

Q KNEW ANYTHING ELSE JUST IT WAS YOUR HUNCH?

A WELL, I THINK WHEN I TOOK THIS STATEMENT FROM HER, I KNEW SHE KNEW.

Q AND THEN YOU GOT INTO THE SECOND STATEMENT AND SHE LIED IN THE FIRST PART OF THE SECOND STATEMENT AND THEN STARTED MAKING CHANGES AT THE BOTTOM HALF?

A BUT YOU ASKED ME HOW I WOULD HAVE KNOWN ANYTHING ABOUT ANTONIO GORDON AND THAT'S WHY WE BROUGHT OUT THIS FIRST STATEMENT HERE AND THAT'S BECAUSE SHE TOLD ME HER BOYFRIEND WAS ANTONIO GORDON AND THEN IN HER SECOND STATEMENT SHE MENTIONED ANTONIO GORDON AGAIN AND THEN WENT ON TO TRY TO BLAME IT ON ANTONIO COUSAR AND DOWN HERE TERRANCE MCCREARY. EVERYBODY EXCEPT ANTONIO GORDON, OKAY, AND THAT'S HER BOYFRIEND. SO IT WOULD OCCUR TO ME AS AN INVESTIGATOR, COULD SHE TRY TO PROTECT HER BOYFRIEND.

Q WHY DIDN'T YOU GO GET AN ARREST WARRANT AS OPPOSED TO IMMEDIATELY GOING OUT THERE AND

App. 89

ARRESTING HIM WITHOUT A WARRANT?
A WELL, FIRST OF ALL, SIR, I DIDN'T GO OUT AND ARREST THEM. AS I STATED BEFORE THAT WAS HANDLED BY CAPTAIN CABINESS. SECOND OF ALL, ON A CASE SUCH AS THIS WITH THE SERIOUSNESS OF IT AND SO ON I WOULD SAY TIME IS OF THE ESSENCE. ONCE YOU HAVE PROBABLE CAUSE TO GO TRY AND ARREST THESE PEOPLE AND PUT THEM IN JAIL, THAT'S WHY HE DIDN'T WAIT AROUND FOR AN ARREST WARRANT AND HE DIDN'T HAVE TO LEGALLY EITHER SO.
Q I'LL LEAVE THAT FOR THE COURT TO DECIDE.
A OKAY.
Q NOW ANTONIO HAD A BOND HEARING THAT DAY, DID HE NOT ON THE 23?
A NOW WE HAVE TO REFER TO THE PAPERWORK.
MR. D'AGOSTINO: I'D LIKE TO HAVE THIS MARKED FOR IDENTIFICATION.
(DEFENDANT'S EXHIBIT ONE BOND PAPERS MARKED FOR IDENTIFICATION.)
Q I HAND YOU WHAT'S BEEN MARKED AS DEFENDANT'S ONE FOR IDENTIFICATION. THAT'S A COPY OF HIS BOND PAPERS WAIVING HIM ON UP TO GENERAL SESSIONS AND HAVE TO SET HIS BOND, RIGHT?
A RIGHT.
Q IS THAT RIGHT?

App. 98

A DO THEY HAVE TO SET THE BOND, RIGHT.
Q THOSE ARE THE PAPERS RELATING TO BOND JULY 23, 1998.
A NOTICE OF INITIAL APPEARANCE DIRECTING HIM TO APPEAR ON AUGUST 28.
Q RIGHT. AND THAT WAS SIGNED ON JULY 23, 1998, CORRECT?
A THAT'S RIGHT.
Q AND THIS WOULD HAVE BEEN GIVEN TO HIM AT THE TIME HE HAD HIS BOND HEARING?
A BY JUDGE LONG ON JULY 23, 1998.
Q RIGHT.

MR. D'AGOSTINO: I'D LIKE TO MAKE THIS PART OF THE RECORD, BUT I DON'T WANT TO WAIVE ANY RIGHTS FOR MOTIONS AT THE CLOSE OF THE STATE'S CASE BUT SINCE IT'S JUST A PRE-TRIAL MATTER I SUBMIT I CAN DO THAT WITHOUT.

THE COURT: BE ADMITTED. ANY OBJECTION.

MR. ANTHONY: NO, THERE IS NO OBJECTION.

Q DO YOU KNOW THE WHOLE TIME THAT ANTONIO WAS THERE FROM THE TIME OFFICER WALDROP FINISHED TO THE TIME YOU STARTED WITH HIM, WAS HE GIVEN LUNCH OR WAS HE GIVEN THE OPPORTUNITY TO GO TO THE RESTROOM OR ANYTHING OF THAT NATURE?
A I CAN'T ANSWER THAT.

App. 91

Q WHEN YOU WERE TAKING ANTONIO'S STATEMENT, DID YOU HAVE YOUR WEAPON WITH YOU, ON YOU?
A I WOULD HAVE, YES, SIR.
Q YOU WOULD HAVE?
A YUP.
Q AND THE ROOM WHERE OFFICER WALDROP TOOK THIS STATEMENT, THAT CONFERENCE ROOM, IS THAT THE SHIFT CHANGE ROOM AS WELL?
A NO, SIR.
Q IT'S NOT?

MR. D'AGOSTINO: THOSE ARE ALL THE QUESTIONS I HAVE. THANK YOU VERY MUCH, OFFICER THICKENS.

MR. ANTHONY: JUST BRIEFLY.

REDIRECT EXAMINATION BY MR. ANTHONY:

Q OFFICER THICKENS, AFTER YOU FINISHED TAKING YOUR STATEMENT FROM MR. GORDON, WHERE DID YOU TAKE HIM?
A I BELIEVE HE WAS ESCORTED OUT OF THE DETECTIVE DIVISION, BUT I DIDN'T TAKE HIM ANYWHERE MYSELF.
Q WHERE WOULD HE HAVE BEEN TAKEN EVENTUALLY?
A HE WOULD HAVE MOST LIKELY BE ESCORTED PROBABLY BACK TO THE HOLDING FACILITY AT THAT POINT.
Q AND THAT'S ALL THE QUESTIONS I HAVE. I WOULD MOVE THE STATEMENT INTO EVIDENCE AS STATE'S EXHIBIT NUMBER FOUR FOR THE HEARING. I BELIEVE

App. 92

I NEGLECTED TO DO THAT.

THE COURT: ANY OBJECTION?

MR. D'AGOSTINO: WITH THE SAME LIMITATION FOR THIS HEARING ONLY.

THE COURT: BE RECEIVED. ALL RIGHT. YOU CAN STEP DOWN. THANK YOU FOR YOUR TIME. YOU CAN BE EXCUSED. CALL YOUR NEXT WITNESS.

MR. ANTHONY: WE CALL OFFICER TRIPP.

THE COURT: LET'S TAKE A BREAK.

(THE COURT'S IN RECESS AT 3:42.)

(COURT RESUMES AT 3:50.)

THE COURT: LET THE RECORD REFLECT MR. D'AGOSTINO AND MR. GILLEN AND THEIR CLIENTS MR. GORDON AND MR. MCCREARY ARE PRESENT.

MR. ANTHONY: WE'RE READY TO CALL OUR NEXT HEARING OFFICER TRIPP.

KENYATTA TRIPP, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. ANTHONY:

Q COULD YOU STATE YOUR FULL NAME?

A KENYATTA TRIPP.

Q AND MR. TRIPP, HOW ARE YOU EMPLOYED?

A ROCK HILL CITY STREET POLICE OFFICER.

Q HOW LONG HAVE YOU WORKED AT THE POLICE DEPARTMENT IN THAT ROLE?

App. 93

A JUST A LITTLE OVER FIVE YEARS.
Q AND WERE YOU WORKING BACK ON JULY 24 OF LAST YEAR?
A YES, SIR, I WAS.
Q AND TELL THE COURT WHAT YOU HEARD AROUND 4:30 IN THE AFTERNOON OF JULY 24 OF LAST YEAR?
A IT WAS ABOUT 4:30 THAT I WAS AT THE POLICE DEPARTMENT TAKING A REPORT FOR SOMEONE IN THE LOBBY IN REFERENCE TO SOMETHING, DIFFERENT THAN THIS CASE HERE, AND I WAS WRITING A REPORT UP AND I HAD OVERHEARD A SMALL PORTION OF A CONVERSATION WHEN LIEUTENANT THICKENS WAS PRESENT AS WELL AS A YOUNG GUY, I DIDN'T KNOW WHO HE WAS AT THAT TIME, WAS TALKING WITH SOME, I DON'T KNOW IF IT WAS FAMILY MEMBERS OR FRIENDS OR EXACTLY WHO ANYBODY WAS THERE. A WOMAN HAD ASKED THE YOUNG MAN, WHY DID YOU SHOOT THAT BOY, PRETTY MUCH IN THOSE SAME WORDS, AND HE HAD RESPONDED BY SAYING THAT HE DIDN'T HAVE THE GUN AT FIRST, BUT THAT IT WAS GIVEN TO HIM AND HE DID IT BECAUSE HE FELT IF HE DIDN'T AND THE PEOPLE, HIS FRIENDS THAT WERE WITH HIM, WERE GOING TO SHOOT HIM IF HE DIDN'T DO WHAT THEY TOLD HIM TO DO WITH IT.
Q AND DID YOU COME TO FIND OUT WHO THE YOUNG MAN

App. 94

WHO MADE THE STATEMENT WAS?
A YES, SIR, I DID.
Q AND WHO MADE THE STATEMENT?
A ANTONIO GORDON.
Q THIS STATEMENT THAT YOU HEARD WAS IT, DID IT INVOLVE ANY QUESTIONS AT ALL BY YOURSELF?
A NO, IT DIDN'T.
Q DID IT ANY INVOLVE ANY QUESTIONING BY ANYBODY ELSE AT THE ROCK HILL POLICE DEPARTMENT OR ANY OTHER EMPLOYEES AT THE ROCK HILL POLICE DEPARTMENT?
A NOT THAT I'M AWARE OF.
Q AND DID YOU DO ANYTHING TO FOLLOW UP WITH THEM?
A NO.
Q OR SPEAK TO HIM AFTER HE SAID THIS?
A NO, SIR, I DIDN'T. AS A MATTER OF FACT, I THINK I LEFT AFTER THAT, WAS TIED UP ON WHAT I WAS THERE FOR.
Q OKAY. THANK YOU. THAT'S ALL OF MY QUESTIONS OF OFFICER TRIPP.

CROSS EXAMINATION BY MR. D'AGOSTINO:

Q OFFICER TRIPP, WHERE WERE YOU WHEN THIS STATEMENT OCCURRED?
A THIS WAS IN THE REPORT WRITING AREA RIGHT WHERE WE DO OUR REPORTS WHEN WE LIKE BRING A JUVENILE

App. 95

IN, THIS IS WHERE WE DO OUR JUVENILE PAPERWORK.
Q IS THAT BACK HALL BEHIND THE DISPATCHER ROOM?
A YES.
Q AND HOW DO YOU KNOW IT WAS ANTONIO GORDON WHO SAID THIS?
A WELL, I DIDN'T KNOW WHO HE WAS AT THE TIME.
Q WELL --
A --BUT NOW THAT I SEE, I DID SEE HIM WHEN I WAS THERE.
Q ALL RIGHT.
A AND NOW THAT I SEE HIM TODAY AND KNOW WHO HE IS I REMEMBERED THAT THAT WAS HIM SITTING UP BEHIND ME.
Q WELL, YOU KNEW IT WAS HIM BEFORE YOU SAW HIM TODAY?
A SIR?
Q YOU KNEW IT WAS HIM BEFORE YOU SAW HIM TODAY. HOW DID YOU KNOW AT THE TIME YOU WROTE UP THE SUMMARY OF WHAT YOU SAY YOU SAW OR HEARD, HOW DID YOU KNOW IT WAS ANTONIO GORDON? HOW DID YOU KNOW HIS NAME?
A I DIDN'T KNOW WHO HE WAS AT ALL. I JUST SIMPLY SAID THAT IT WAS A YOUNG MAN THAT WAS BEHIND ME. AT THAT TIME I HAD NEVER SEEN HIM BEFORE THAT I REMEMBERED ANYWAY, DIDN'T KNOW WHAT HIS

App. 96

NAME WAS.

Q WHEN DID YOU FIND OUT HIS NAME?

A MAYBE LATER ON IN THAT DAY. I'M NOT REALLY SURE.

Q WHO TOLD YOU HIS NAME?

A I CAN'T RECALL THAT EITHER. JUST HEARING ABOUT THE CASE OVER AND OVER THROUGH THE NEWSPAPERS AND EVERYTHING LIKE EVERYBODY ELSE HAS HEARD ABOUT IT IS HOW I LEARNED ABOUT HIS NAME.

Q YOU SUBSEQUENTLY WROTE UP A SHORT PARAGRAPH ABOUT IT, RIGHT?

A YES.

Q AND IS THAT PARAGRAPH ACCURATE?

A YES, IT IS.

Q OKAY. LET ME HAND THAT TO YOU. IS THAT WHAT YOU WROTE UP?

A YES, SIR, IT IS.

Q NOW WHEN YOU DID WRITE THAT UP?

A IT MUST HAVE BEEN MAYBE SHORTLY AFTER 5 OR 5:30. IT WAS BEFORE I WENT HOME THAT DAY AND WE WOULD HAVE GONE HOME AT 6 OR 6:15.

Q YOU SIGNED IT ON THE 28 THOUGH?

A UH-HUH.

Q RIGHT?

A YES, SIR. THAT'S WHAT IT SAYS HERE.

App. 97

Q YOU WROTE THAT UP AS IF IT OCCURRED ON THE 24?
A THE 24 IS WHEN I WAS THERE.
Q SO THE 24 IS WHEN YOU WERE THERE?
A YES, SIR.
Q DID YOU KNOW THAT ANTONIO GORDON WAS OVER HERE AT THE MOSS JUSTICE CENTER ON THE 24? WAS TRANSPORTED ON THE NIGHT OF THE 23 AND WAS NEVER AT THE ROCK HILL CITY DEPARTMENT?
A ALL I KNOW IS I HEARD A YOUNG MAN, JUST LIKE I WROTE IN THE STATEMENT, WHO I LATER FOUND OUT TO BE HIM MAKE THIS STATEMENT. I DIDN'T KNOW WHO ANYBODY WAS AT THAT TIME.
Q WHAT I'M TRYING TO FIND OUT IS HOW YOU FOUND OUT OR HOW YOU KNOW IT WAS THAT YOUNG MAN AND NOT SOME OTHER YOUNG MAN?
A JUST BECAUSE HE WAS THE ONE THAT WAS SAID TO BE THE SHOOTER ANYWAY FROM WHAT I UNDERSTAND.
Q WELL, THERE --
A SO THIS IS JUST BY HEARING ABOUT IT.
Q WELL, THERE WERE THREE OTHER BOYS INVOLVED IN THIS?
A YES, SIR.
Q THEY DIDN'T COME OVER HERE UNTIL THE 24, THE EVENING OF THE 24?
A OKAY.

App. 98

Q COULD IT HAVE BEEN ONE OF THEM?
A IF THEY WERE THE SHOOTER. I MEAN, WHAT I'M TELLING, I DON'T KNOW IF I MISUNDERSTAND YOUR QUESTION, I'M JUST SAYING THAT AT THE TIME I SAW A YOUNG MAN THERE, HE MADE THE STATEMENT WHEN HE WAS ASKED BY A FAMILY MEMBER OR A FRIEND WHY DID YOU SHOOT THAT BOY, WHO I LATER ON WAS SAID TO ME THAT THAT WAS THE GUY WHO HAD PULLED THE TRIGGER. I DON'T KNOW WHO I FOUND OUT THAT FROM OR WHEN I FOUND IT OUT OR IF IT WAS JUST MEDIA OR JUST HEARING ABOUT IT OVER AND OVER AGAIN BUT.
Q THERE IS NO DOUBT IN YOUR MIND THAT WAS ON THE 24?
A IT WAS ON THE 24 THAT I WAS AT THE LAW CENTER WRITING A REPORT AND I HEARD A YOUNG PERSON BE QUESTIONED BY ANOTHER PERSON WHY DID YOU SHOOT THAT BOY, YES, SIR.
Q ALL RIGHT. THOSE ARE ALL THE QUESTIONS I HAVE. THANK YOU VERY MUCH, OFFICER.

<u>REDIRECT EXAMINATION BY MR. ANTHONY</u>:

Q AND YOU'VE LOOKED AT ANTONIO GORDON IN COURT TODAY, IS THAT CORRECT?
A YES, SIR.
Q DO YOU RECOGNIZE HIM AS BEING THE PERSON WHO

App. 99

SAID THAT, IS THAT RIGHT?

A YES, SIR.

Q AND WHICH PERSON, DO YOU, CAN YOU POINT OUT ANTONIO GORDON HERE?

A TO THE BEST OF MY KNOWLEDGE HE'S WEARING THE BLUE SHIRT SITTING CATTY-CORNER TO ME.

Q AND WHEN DID YOU WRITE THIS STATEMENT UP?

A I THINK I WROTE IT THE DAY, ACTUALLY, I'M NOT SURE IF I WROTE IT THE DAY THAT THIS HAPPENED OR IF I WAS APPROACHED BY LIEUTENANT THICKENS LATER WHO ASKED ME TO WRITE THIS STATEMENT. I KNOW I WAS THERE THE 24, I WAS SITTING AT 4:30 AT THE LAW CENTER DOING THE REPORT LIKE I HAD STATED THE 24. I HAVE IT SIGNED THE 28 SO IT IS VERY MUCH POSSIBLE THAT A FEW DAYS LATER I WAS ASKED TO WRITE A STATEMENT IN REFERENCE TO WHAT I HEARD.

Q AND YOU DON'T THINK IT WAS POSSIBLE YOU MIGHT BE MISTAKEN ABOUT THE DATE YOU HEARD THIS ON THE 23?

MR. D'AGOSTINO: OBJECTION TO THE LEADING, YOUR HONOR.

THE COURT: I SUSTAIN THE OBJECTION.

Q ARE YOU SURE ABOUT THAT DATE?

A I'M SURE ABOUT THE DATE THAT I WAS AT THE LAW

App. 100

CENTER, YES, I AM.

Q THANK YOU. THAT'S ALL MY QUESTIONS.

MR. D'AGOSTINO: YOUR HONOR, I WOULD JUST MOVE FOR PURPOSES OF THIS HEARING ALONE, I'D LIKE TO HAVE THIS INTRODUCED AND ENTERED INTO EVIDENCE.

THE COURT: YOU CAN STEP DOWN AND BE EXCUSED. WE APPRECIATE YOUR TIME ALSO. CALL YOUR NEXT WITNESS.

MR. ANTHONY: YOUR HONOR, THE STATE WOULD OFFER NO OTHER WITNESSES EXCEPT WE WOULD ASK PERMISSION TO RECALL LIEUTENANT THICKENS FOR JUST ONE OR TWO BRIEF QUESTIONS.

(DEFENDANT'S EXHIBIT NUMBER TWO FOR IDENTIFICATION, STATEMENT.)

THE COURT: ALL RIGHT. YOU ARE STILL UNDER OATH.

REDIRECT EXAMINATION BY MR. ANTHONY:

Q DETECTIVE THICKENS, WHEN YOU WERE SHOWN THE INITIAL APPEARANCE AND BOND HEARING PAPERWORK DURING THE CROSS EXAMINATION, DO YOU RECALL THAT?

A I RECALL SEEING THE BOND PAPERWORK AS PART, I THINK IT'S IN THE CASE FOLDER.

Q AND YOU WERE ALSO SHOWN BY MR. D'AGOSTINO?

A THE INITIAL APPEARANCE PAPER, YES, SIR, RIGHT.

App. 101

Q AND WHEN, IF YOU KNOW, WHEN WOULD ANTONIO GORDON'S BOND HEARING HAVE BEEN HELD ON JULY 23? WHAT PART OF THE DAY WOULD IT HAVE BEEN HELD?

A IT WOULD HAVE BEEN IN THE EVENING. AT THE EXACT TIME, I DON'T KNOW, BUT IF YOU WANT ME TO ESTIMATE, I WOULD ESTIMATE --

MR. D'AGOSTINO: YOUR HONOR, I --

THE COURT: I SUSTAIN THE OBJECTION.

MR. D'AGOSTINO: I WAS GOING TO OBJECT TO THIS LINE OF QUESTIONING BECAUSE IT IS SOMETHING CLEARLY HE COULD HAVE GONE INTO WHEN HE WAS UP HERE EARLIER.

THE COURT: I'M GOING TO LET HIM BUT I SUSTAIN THE OBJECTION ON THAT POINT.

Q YOU KNOW IT WOULD HAVE BEEN HELD IN THE EVENING?

MR. D'AGOSTINO: YOUR HONOR---

THE COURT: I SUSTAIN THE OBJECTION, THAT'S A LEADING QUESTION. DON'T ANSWER THAT QUESTION.

Q DO YOU KNOW WHAT TIME IT WOULD HAVE BEEN HELD, WITHOUT GIVING AN EXACT TIME, DO YOU KNOW WHAT TIME OF DAY IT WOULD HAVE BEEN HELD?

MR. D'AGOSTINO: YOUR HONOR, I OBJECT.

THE COURT: I OVERRULE THAT OBJECTION.

A I WOULD ESTIMATE THAT IT WAS HELD AROUND 5:30 IN THE LATE AFTERNOON.

App. 102

THE COURT: YOU CAN'T GIVE AN ESTIMATED VALUE, I JUST GOT THROUGH SAYING YOU COULDN'T.

Q YOU DON'T HAVE TO, WITHOUT GIVING AN EXACT TIME, JUST WOULD YOU PLEASE TELL WHAT PART OF THE DAY IT WOULD HAVE BEEN HELD?

A IT WOULD HAVE BEEN HELD IN THE LATE AFTERNOON.

Q ALL RIGHT. THANK YOU. THAT'S ALL MY QUESTIONS.

THE COURT: DO YOU HAVE ANY QUESTIONS, MR. D'AGOSTINO?

MR. D'AGOSTINO: NO, SIR, YOUR HONOR.

THE COURT: YOU CAN STEP DOWN. THANK YOU.

MR. ANTHONY: YOUR HONOR, THAT'S ALL THE EVIDENCE THE STATE WOULD OFFER. WE WILL ASK THE COURT TO TAKE NOTICE OF THE TESTIMONY THAT WAS GIVEN BY CAPTAIN CABINESS ON WEDNESDAY AS PART OF OUR EVIDENCE IN THE DENNO HEARING THIS AFTERNOON.

MR. D'AGOSTINO: MAY WE APPROACH THE BENCH, YOUR HONOR.

THE COURT: CERTAINLY.

(BENCH CONFERENCE.)

MR. D'AGOSTINO: YOUR HONOR, AS I HAD SUBPOENAED TO TESTIFY TODAY SEVERAL OFFICERS FROM THE ROCK HILL LAW ENFORCEMENT CENTER, AND BASICALLY THOSE OFFICERS WOULD HAVE, WERE SUBPOENAED TO TESTIFY

App. 103

AS TO WHAT MR. WELLBORN TESTIFIED TO THAT HE DID SPEAK WITH THEM, AND IT'S MY, THE STATE IS GOING TO STIPULATE THAT THE OFFICER OR THAT CHRIS WELLBORN DID SPEAK WITH THE DISPATCHERS AS WAS TESTIFIED BY HIM, CAPTAIN CABINESS, AND CHIEF FORTSON, THEREFORE, ANY CALLING OF THOSE WITNESSES WOULD BE MERELY CUMULATIVE AND IT'S UNNECESSARY SINCE THE STATE IS GOING TO STIPULATE THAT MR. WELLBORN DID SPEAK WITH THEM AND THE CONVERSATION AS HE RELATED TO THE COURT DID IN FACT TAKE PLACE.

THE COURT: YOU AGREE WITH THAT?

MR. ANTHONY: THAT IS CORRECT. WE'RE NOT GOING TO ARGUE THAT MR. WELLBORN DID COME TO THE LAW CENTER AND DID ASK TO SPEAK TO MR. GORDON.

THE COURT: OKAY. I THINK THOSE WITNESSES OUGHT TO BE ABLE TO BE EXCUSED.

MR. D'AGOSTINO: THANK YOU, YOUR HONOR. IF WE CAN GO AHEAD AND LET THEM GO. YOUR HONOR, WE WOULD CALL DR. JONATHAN VENN TO THE STAND.

JONATHAN VENN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. D'AGOSTINO:

Q PLEASE TELL THE COURT YOUR NAME?

A MY NAME IS JONATHAN VENN.

App. 104

Q AND WHAT DO YOU DO FOR A LIVING?
A I'M A PSYCHOLOGIST.
Q WHERE IS YOUR OFFICE?
A MY OFFICE IS IN COLUMBIA, SOUTH CAROLINA.
Q AND WHAT ARE YOUR FIELDS OF SPECIALIZATION?
A I SPECIALIZE IN CLINICAL PSYCHOLOGY AND FORENSIC PSYCHOLOGY.
Q DO YOU ALSO TREAT ADULTS AND JUVENILE OFFENDERS?
A I EVALUATE THEM. I DON'T THINK I'M INVOLVED IN ANY TREATMENT AT THIS TIME.
Q DO YOU HOLD ANY LICENSES?
A YES, I DO. I'M LICENSED IN THE STATE OF SOUTH CAROLINA AND I'M ALSO LICENSED IN THE STATE OF MARYLAND.
Q AND ARE YOU BOARD CERTIFIED? DO YOU HOLD ANY BOARD CERTIFICATIONS?
A YES, I'M CERTIFIED BY THE AMERICAN BOARD OF PROFESSIONAL PSYCHOLOGY AND CLINICAL PSYCHOLOGY AND IN FORENSIC PSYCHOLOGY.
Q AND ARE YOU ALSO A DIPLOMAT IN NEUROPSYCHOLOGY AND AMERICAN BOARD OF PSYCHOLOGICAL SPECIALTIES, DID YOU RECEIVE THAT IN 1998?
A YES, I DID.
Q WHAT OTHER LICENSES OR?
A I'M ALSO CERTIFIED BY THAT BOARD IN CHILD

App. 125

PSYCHOLOGY, DISABILITY EVALUATION, TRAUMA, AND POST TRAUMATIC STRESS DISORDER.

Q TELL THE COURT A LITTLE BIT ABOUT YOUR EDUCATION AND YOUR TRAINING?

A I HAVE A PH.D IN CLINICAL PSYCHOLOGY FROM NORTHWESTERN UNIVERSITY IN CHICAGO, ILLINOIS. I COMPLETED THREE YEARS OF TRAININGSHIPS IN VETERAN HOSPITALS INCLUDING AN INTERNSHIP IN CLINICAL PSYCHOLOGY.

Q AND DID YOU, TELL US ABOUT YOUR EMPLOYMENT HISTORY?

A WELL, AFTER LEAVING SCHOOL I WAS COMMISSIONED AS AN OFFICER IN THE UNITED STATES NAVAL RESERVE AND I WAS ON ACTIVE DUTY FOR THE NEXT FOUR YEARS. I SPENT MOST OF THAT TIME ON OKINAWA AT A NAVAL HOSPITAL AND THEN AT A MARINE CORPS BASE. UPON RETURNING TO THE STATES, WELL, THEN I TAUGHT FOR THE UNIVERSITY OF MARYLAND FOR A YEAR IN GERMANY. UPON RETURNING TO THE STATES, I TOOK A POSITION WITH THE BALTIMORE GAS AND ELECTRIC COMPANY. I WORKED FOR THEM FOR FOUR YEARS. THEN WE RELOCATED TO SOUTH CAROLINA. I WAS A FORENSIC PSYCHOLOGIST AT THE WILLIAM S. HALL PSYCHIATRIC INSTITUTE FOR A YEAR AND THEN I TRANSFERRED TO THE DEPARTMENT OF JUVENILE

App. 106

JUSTICE WHERE I WORKED FOR THE NEXT EIGHT YEARS.

I'VE BEEN IN FULL TIME PRIVATE PRACTICE SINCE 1997.

Q ARE YOU AN ADJUNCT PROFESSOR ANYWHERE?

A YES, I AM. I AM AN ADJUNCT PROFESSOR AT THE UNIVERSITY OF SOUTH CAROLINA.

Q AND DO YOU ALSO WORK WITH THE CHRISTIAN COUNSELING OF COLUMBIA, IS THAT WHERE YOU WORK NOW?

A YES. I'M THE PRESIDENT OF CHRISTIAN COUNSELING OF COLUMBIA.

Q AND HAVE YOU BEEN CERTIFIED AS AN EXPERT OR GIVEN EXPERT TESTIMONY IN OTHER CASES?

A YES, I HAVE.

Q ALL RIGHT. IN GENERAL SESSIONS HAVE YOU BEEN CERTIFIED AS AN EXPERT IN ADULT CRIMINAL CASES?

A YES, I HAVE.

Q AND FAMILY COURT, HAVE YOU ALSO BEEN QUALIFIED AS AN EXPERT?

A YES, I HAVE.

Q IN UNITED STATES FEDERAL COURT IN CIVIL CASES?

A YES, I HAVE.

Q AND HOW ABOUT COURT OF COMMON PLEAS IN SOUTH CAROLINA?

A YES, I'VE ALSO BEEN QUALIFIED AS AN EXPERT IN

App. 107

THE COURT OF COMMON PLEAS.

Q YOU ALSO, HAVE YOU ALSO PUBLISHED IN YOUR CAREER, DURING YOUR CAREER?

A YES, I HAVE.

Q LET ME HAND YOU SO THAT WE DON'T GO THROUGH ALL OF THESE. IS THAT A COPY, CURRENT COPY OF YOUR C.V. RESUME?

A THIS IS THE JUNE COPY.

Q ALL RIGHT. HAVE THERE BEEN ANY ADDITIONS?

A I THINK I'VE TESTIFIED A COUPLE MORE TIMES IN THE PAST MONTH.

Q OKAY. AND DO YOU HAVE ANY PUBLICATIONS THAT WOULD STAND OUT OR ANYTHING THAT WOULD BE ON THE ISSUES OF CHILD PSYCHOLOGY, PSYCHOLOGICAL EVALUATION OF JUVENILE OFFENDERS, HAVE YOU DONE ANY WORK IN THAT AREA?

A I DON'T THINK I'VE PUBLISHED IN THAT AREA.

Q ALL RIGHT. LET ME HAVE THIS MARKED AS DEFENDANT'S NUMBER THREE.

(DEFENDANT'S EXHIBIT NUMBER THREE, C.V., MARKED FOR IDENTIFICATION.)

MR. D'AGOSTINO: FOR THIS HEARING SO I DON'T HAVE TO GO THROUGH ALL YOUR PUBLICATIONS AND ALL THE OTHER QUALIFICATIONS, I MOVE TO INTRODUCE DEFENDANT'S EXHIBIT NUMBER THREE, YOUR HONOR.

App. 108

THE COURT: OKAY. ANY OBJECTION?

MR. THOMPSON: NO, YOUR HONOR.

THE COURT: BE RECEIVED.

MR. D'AGOSTINO: AT THIS TIME I ASK THE COURT TO QUALIFY DR. VENN AS AN EXPERT IN CLINICAL AND FORENSIC PSYCHOLOGY.

THE COURT: ANY VOIR DIRE BY THE STATE?

MR. THOMPSON: YES, YOUR HONOR, IF I COULD. I BELIEVE I DON'T HAVE ANY QUESTIONS.

THE COURT: I FIND HE'S QUALIFIED IN BOTH FORENSIC AND CLINICAL PSYCHOLOGY.

Q DID YOU HAVE OCCASION TO EVALUATE ANTONIO GORDON?

A YES, I DID.

Q AND WAS THAT IN COLUMBIA AND WAS THAT RECENTLY?

A THAT WAS ON JULY 6 AT MY OFFICE IN COLUMBIA.

Q WHAT DID YOU DO DURING YOUR EVALUATION? WHAT DID IT CONSIST OF?

A I TALKED TO MR. GORDON, I REVIEWED HIS UNDERSTANDING OF MIRANDA RIGHTS. I REVIEWED ISSUES RELEVANT TO HIS COMPETENCY TO STAND TRIAL. I GAVE HIM A IQ TEST AND A MEMORY TEST AND A TEST OF SUGGESTIBILITY.

Q NOW WHAT IQ TEST DID YOU USE?

A I USED THE WECHSLER ADULT INTELLIGENCE SCALE

Exhibit 1 App. 109

THIRD EDITION.
Q AND WOULD YOU BRIEFLY EXPLAIN OR JUST EXPLAIN WHAT THAT TEST CONSISTS OF FOR THE COURT? EXPLAIN WHAT IT IS AND WHAT IT MEASURES?
A THE WECHSLER ADULT INTELLIGENCE SCALE IS THE MOST COMPREHENSIVE TEST OF INDIVIDUAL INTELLIGENCE AVAILABLE. IT'S A BROAD BASED TEST. IT CONSISTS OF 11 SEPARATE TESTS, SOME OF WHICH INVOLVE THE INDIVIDUAL'S ABILITY TO SPEAK WORDS AND SOME OF HIS ABILITY TO USE HIS HANDS AND EYES TO SOLVE VISUAL PROBLEMS AND MOTOR PROBLEMS, SO IT'S A VERY BROAD BASE TEST OF INTELLIGENCE.
Q DID YOU GIVE THE, I BELIEVE WE HEARD SOME TESTIMONY THAT THERE IS WECHSLER'S TEST FOR CHILDREN AND ONE FOR THE ADULTS AS WELL, DID YOU GIVE THE ONE FOR CHILDREN OR ADULTS?
A I GAVE THE ONE FOR ADULTS. I ALSO GIVE HIM A READING TEST, EXCUSE ME. I ALSO TESTED HIS READING ABILITY.
Q NOW AT THE TIME YOU EXAMINED ANTONIO GORDON DID YOU HAVE OR DO YOU HAVE OR HAVE YOU REVIEWED ANY OF THE PSYCHOLOGICAL EVALUATIONS BY THE DEPARTMENT OF JUVENILE JUSTICE.
A NO, I HAVE NOT.

Exhibit 1 App. 110

Q AND YOU WEREN'T PROVIDED WITH ANY OF THOSE SO YOU WERE DOING YOUR TESTS ALL ON YOUR OWN?
A YES, SIR, THAT'S CORRECT.
Q WHAT DID HE SCORE ON THE IQ TEST?
A HE SCORED AN IQ OF 68.
Q NOW YOU ALSO PERFORMED A MEMORY TEST, DESCRIBE THAT FOR THE COURT?
A I GAVE ANTONIO THE LOGICAL MEMORY SUBTEST OF THE WECHSLER MEMORY SCALE THIRD EDITION. IT INVOLVES READING A COUPLE OF PARAGRAPHS TO THE INDIVIDUAL THEN HAVING HIM RECITE FROM MEMORY WHAT I READ TO HIM. ONE OF THE PARAGRAPHS IS REPEATED ONCE SO IT GIVES TWO EXPOSURES TO THE SAME MATERIAL TO SEE IF MORE WILL BE REMEMBERED AFTER THE SECOND READING, AND THEN AFTER APPROXIMATELY 25 MINUTE DELAY YOU ASK THE PERSON AGAIN WHAT WERE THE STORY I READ TO YOU 25 MINUTES AGO, SO THERE IS AN IMMEDIATE MEMORY SCORE AND A DELAYED MEMORY SCORE.
Q WHAT WAS HIS SCORE ON THAT?
A HIS MEMORY SCORES WERE VERY LOW. HE'S AT THE SECOND PERCENTILE.
Q ABOUT HOW ABOUT HIS READING SCORES? I THINK YOU TESTIFIED, I DON'T MEAN TO JUMP BACK BUT YOU TESTIFIED YOU ALSO GAVE HIM A READING SCORE, THE

Exhibit 1 App. 111

IQ?
A YES, I GAVE HIM A READING TEST.
Q WHAT DOES IT SHOW AS FAR AS HIS READING LEVEL?
A HIS READING LEVEL IS AT THE THIRD GRADE LEVEL.
Q NOW GOING BACK TO THE MEMORY TEST, WAS THERE ANYTHING ELSE, WHAT IS THE SIGNIFICANCE OF THE MEMORY TEST?
A IT'S A TEST OF A PERSON'S ABILITY TO REMEMBER THINGS THAT ARE SAID TO THEM. IT INDICATES THAT ANTONIO'S ABILITY TO REMEMBER THINGS THAT HE HEARS IS VERY LOW.
Q AND YOU ALSO GAVE HIM A SUGGESTIBILITY TEST, I BELIEVE?
A YES, I DID.
Q WHAT IS THAT FOR AND WHAT DOES IT TELL YOU?
A THE SUGGESTIBILITY TEST IS INTENDED TO REFLECT HOW EASILY A PERSON CAN BE SUGGESTED OR MANIPULATED INTO SAYING SOMETHING THAT THEY HAVE NO BASIS FOR SAYING.
Q WHAT DID YOU FIND WITH REGARD TO THAT TEST WITH ANTONIO?
A HE'S VERY SUGGESTIBLE. HE OBTAINED A VERY HIGH SCORE.
Q NOW WITH REGARD TO THE TESTS, ARE THERE ALSO FLAGS OR INDICATORS TO TELL YOU WHETHER ANTONIO

Exhibit 1
App. 112

IS MALINGERING OR IS TRYING TO INCREASE HIS, MAKING HIM LOOK WORSE OR SOMETHING LIKE THAT? DID YOU SEE ANY OF THAT?

A NO, I DID NOT. I THINK I DID GIVE A MALINGERING TEST. IF I CAN BEG THE COURT'S INDULGENCE. YES, I ALSO GAVE A MALINGERING TEST.

Q WHAT DID THAT DEMONSTRATE?

A HE PASSED IT. HE DID FINE. THERE IS NO INDICATION HE WAS TRYING TO PRETEND TO HAVE MEMORY PROBLEMS.

Q COULD YOU DESCRIBE FOR THE COURT ANTONIO'S INTELLECTUAL ABILITIES AS FAR AS, YOU KNOW, OPPOSED TO AN AVERAGE CITIZEN OR AVERAGE INDIVIDUAL IN SOCIETY. WHERE WOULD HE FIT IN?

A WELL, HIS INTELLECTUAL ABILITY IS VERY LOW. HIS IQ SCORE IS AT THE SECOND PERCENTILE, SO IF YOU TOOK CROSS SECTION OF 100 CITIZENS HE'D BE THE THIRD FROM THE BOTTOM.

Q WITH REGARD TO, DID YOU ALSO LOOK TO SEE, TRY TO ASCERTAIN WHETHER ANTONIO WAS MENTALLY OR IS MENTALLY RETARDED?

A I TRIED TO GET SOME INFORMATION ABOUT THAT.

Q WHAT VARIOUS FACTORS DO YOU HAVE TO LOOK AT TO ASCERTAIN WHETHER SOMEONE IS MENTALLY RETARDED?

A WELL, THE DIAGNOSIS OF MENTAL RETARDATION IN AN

App. 113

INDIVIDUAL HIS AGE IS BASED UPON THE IQ SCORE AND ADAPTIVE BEHAVIOR. THAT IS, HOW ARE THEY FUNCTIONING IN THE WORLD.

Q AND DID YOU TRY TO FIND OUT HOW HE FUNCTIONS IN THE WORLD?

A YES, I TRIED TO.

Q DID YOU TRY TO TALK TO FAMILY MEMBERS ABOUT THAT?

A YES, I TALKED TO HIS GRANDFATHER THIS MORNING TO TRY TO GET SOME INFORMATION ABOUT THAT.

Q WERE YOU ABLE TO GET ENOUGH INFORMATION TO COME TO AN OPINION AS TO WHETHER HE WAS MENTALLY RETARDED OR NOT.

A NO, I WAS NOT ABLE TO COME TO AN OPINION.

Q AS FAR AS THERE ARE TWO FACTORS YOU SAID BECAUSE ANTONIO IS UNDER THE AGE OF 18, AS FAR AS THE FIRST FACTOR, DOES HE FALL WITHIN THE CHARACTERIZATION OF MENTALLY RETARDED HIS IQ BEING LOW?

A YES, HE DOES.

Q NOW YOU SAT THROUGH THE TESTIMONY AND YOU HEARD THE OFFICERS TESTIFY ABOUT HOW THEY READ ANTONIO HIS RIGHTS, DID YOU NOT?

A I CAME IN DURING ONE OFFICER'S TESTIMONY, BUT YES, I HEARD THAT HE HAD BEEN READ HIS RIGHTS.

App. 114

Q DO YOU HAVE AN OPINION WITHIN A REASONABLE DEGREE OF CERTAINTY AS TO WHETHER ANTONIO WOULD UNDERSTAND HIS MIRANDA RIGHTS?

A YES, I DO.

Q WHAT IS YOUR OPINION?

A I DO NOT BELIEVE HE UNDERSTANDS HIS MIRANDA RIGHTS.

Q IF YOU CAN EXPLAIN THAT FOR THE COURT?

A I ASKED ANTONIO A SERIES OF QUESTIONS TO SEE IF HE UNDERSTOOD HIS MIRANDA RIGHTS, AND I WAS NOT SATISFIED THAT DID HE IN FACT UNDERSTAND THEM PARTICULARLY HIS RIGHT TO HAVE AN ATTORNEY. HE DID NOT UNDERSTAND HOW AN ATTORNEY CAN BE HELPFUL TO HIM IN A PRE-INTERROGATION SITUATION.

Q AND WITH REGARD TO, YOU SPENT SOME TIME TALKING TO ANTONIO THAT DAY HE CAME DOWN THERE, DID YOU NOT?

A YES, I DID.

Q WHAT WERE SOME OF THE LARGEST OR MOST COMPLEX WORDS THAT HE USED?

A WELL, HE USED THE WORD CONFLICT. HE USED THE WORD DEFEND. HE KNEW THAT THE PUBLIC DEFENDER WAS NOT DEFENDING HIM BECAUSE OF A CONFLICT, AND HE USED THOSE WORDS BUT HE COULD NOT EXPLAIN THEM.

App. 115

Q YOU TRIED TO GET HIM TO EXPLAIN WHAT THAT MEANT?
A YES, I ASKED HIM IF HE UNDERSTOOD WHAT THAT MEANT AND HE DIDN'T.
Q AS FAR AS ANY COURT PROCEEDING, NOT ASKING YOU WHETHER HE'S COMPETENT OR NOT, BUT AS FAR AS A COURT PROCEEDING IS CONCERNED, IS HE GOING TO NEED SPECIAL CONSIDERATIONS FOR WHAT'S GOING ON TO BE EXPLAINED TO HIM AS THE TRIAL PROCEEDS?
A YES, HE WILL. HE'S VERY LIMITED IN HIS ABILITY TO UNDERSTAND WORDS AND TO REMEMBER WORDS THAT ARE SPOKEN. HE WILL NEED A LOT OF ASSISTANCE IN GETTING THOUGH A TRIAL.
Q DO YOU HAVE AN OPINION WITHIN A REASONABLE DEGREE OF CERTAINTY IN YOUR FIELD AS TO WHETHER ANTONIO IS EASILY SUGGESTIBLE, IS EASILY LED AROUND?
A YES, I DO HAVE AN OPINION.
Q WHAT IS YOUR OPINION?
A ANTONIO IS VERY SUGGESTIBLE. HE'S EASILY LED OR MANIPULATED INTO SAYING THINGS THAT HAVE NO BASIS IN FACT.
Q HOW ABOUT WITH REGARD TO DOING THINGS. IS HE EASILY LED OR DIRECTED TO DO THINGS?
A PROBABLY. INDIVIDUALS WITH THAT LOW AN IQ ARE VERY SUGGESTIBLE.

App. 116

MR. D'AGOSTINO: ONE MOMENT, YOUR HONOR.

Q WERE THERE ANY OTHER TESTS THAT YOU PERFORMED OR ANY OTHER OBSERVATIONS YOU MADE WITH REGARD TO ANTONIO THAT WOULD BE IMPORTANT FOR THE COURT TO KNOW, DR. VENN?

A NO, I BELIEVE WE'VE COVERED IT ALL.

Q THANK YOU. ANSWER ANY QUESTIONS THE SOLICITOR MIGHT HAVE.

CROSS EXAMINATION BY MR. THOMPSON:

Q DR. VENN, DID YOU PRODUCE A REPORT AFTER YOUR EXAMINATION OF THE DEFENDANT ANTONIO?

A NO, I DID NOT.

Q ISN'T IT UNETHICAL NOT TO DO A REPORT WHEN YOU'RE GOING TO BE TESTIFYING IN COURT ON A SITUATION SUCH AS THIS?

A NO, SIR, IT IS NOT UNETHICAL.

Q DOES IT NOT VIOLATE THE CANONS OF THE PSYCHOLOGICAL ASSOCIATION TO DO THIS WITHOUT A REPORT?

A NO, SIR, IT DOES NOT.

Q DON'T THEY SUGGEST YOU SHOULD WRITE A REPORT WHEN YOU ARE GOING TO BE TESTIFYING CONCERNING THIS SOMETHING LIKE THIS?

A I'M NOT AWARE OF THAT.

Q IF YOU WOULD, DOCTOR, YOU SAID HE SCORED AS FAR

App. 117

AS HIS IQ 68, THAT CAN BE PLUS OR MINUS FIVE POINTS, ISN'T THAT CORRECT?

A I DON'T KNOW WHAT THE STANDARD ERROR OF MEASUREMENT AT THAT POINT. IT'S AROUND SEVERAL POINTS.

Q AREN'T YOU AWARE OF THE STANDARD OF MEASUREMENTS FOR THAT DEGREE OF ERROR IN THE TESTING YOU PERFORMED?

A IT'S SEVERAL POINTS. I DON'T KEEP ALL THOSE NUMBERS IN MY HEAD. NO, I CAN'T TELL YOU PRECISELY WHAT THE STANDARD ERROR OF MEASUREMENT IS.

Q BUT IT'S SEVERAL POINTS EITHER WAY?

A YES, IT WOULD BE SEVERAL POINTS.

Q AND ACTUALLY TO CONSIDER SOMEONE IN THAT AREA OF ACTUALLY MILD MENTAL RETARDATION THAT WOULD BE SOMEONE BETWEEN THE IQ LEVEL OF 50 TO 55 TO APPROXIMATELY 70, ISN'T THAT CORRECT?

A APPROXIMATELY 70 WITHIN A FEW POINTS.

Q AND THAT'S ONLY ONE PRONG OF THE TEST, ISN'T IT?

A YES, IT IS.

Q AND IN ACTUALITY -- WELL, LET ME GO BACK JUST A LITTLE BIT. DO YOU FEEL THAT WHEN HE WAS DOING THE IQ TEST FOR YOU THAT HE WAS MOTIVATED IN PERFORMING ON THAT IQ TEST?

App. 118

A YES, I DID.
Q AND WHAT FACTORS DO YOU HAVE THAT MADE YOU BELIEVE THAT?
A MY OBSERVATIONS OF HIM, I FELT HE WAS DOING HIS BEST.
Q BUT THERE IS NOT SOMETHING SPECIFIC THAT WOULD LEAD YOU TO BELIEVE THAT HE WAS NOT DOING HIS BEST?
A WELL, I GAVE HIM A MALINGERING SCREENING TEST TO SEE IF HE WOULD FAKE HAVING A MEMORY PROBLEM AND HE DID NOT TRY TO FAKE A MEMORY PROBLEM.
Q AND IN THAT SCREENING TEST DID YOU ASK THE QUESTION WHETHER HE KNEW THE COLORS OF THE AMERICAN FLAG?
A NOT ON THE SCREENING TEST.
Q NOT ON THE SCREENING TEST. WHAT TYPE OF QUESTIONS DID YOU ASK HIM ON THAT PARTICULAR TEST?
A I GAVE HIM THE RAY 15 ITEM TEST WHICH IS A STANDARD AND VERY WELL KNOWN, VERY WIDELY USED TEST TO SEE IF PEOPLE WILL TRY TO FAKE HAVING A MEMORY PROBLEM. THEY LOOK AT A PAGE OF LETTERS AND NUMBERS FOR A NUMBER OF SECONDS AND THEN THAT'S CONCEALED AND THEN YOU SEE IF THEY WILL REPRODUCE IT FROM MEMORY.

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Q AND HE SEEMED TO PERFORM WELL ON THAT?
A YES, HE DID FINE. HE DID JUST FINE.
Q BUT YOU'RE TELLING ME IN HIS MEMORY TEST THAT HE ACTUALLY WAS ONLY IN THE LOW TWO PERCENTILE?
A THAT'S RIGHT.
Q BUT HE WAS ABLE TO PERFORM FINE AS FAR AS MALINGERING AND THAT INCLUDED THE PORTION OF MEMORY?
A YES, IT DOES.
Q NOW YOU'RE NOT SAYING, DOCTOR, THAT HE IS MENTALLY RETARDED, ARE YOU?
A I HAVEN'T SAID THAT, NO.
Q SO IN YOUR EXPERT OPINION YOU CANNOT SAY THAT HE IS MENTALLY RETARDED, CORRECT?
A THAT'S CORRECT, I HAVE NO OPINION ON THAT.
Q AND ACTUALLY IN YOUR EXPERT OPINION YOU DO NOT SAY THAT HE IS NOT COMPETENT, CORRECT?
A THAT'S CORRECT.
Q AND I THINK IN ACTUALITY I THINK YOU WOULD PROBABLY, IF YOU HAD TO RENDER AN OPINION, HAVE TO SAY THAT HE COMPETENT?
A I HAVE NO OPINION ON THAT.
Q YOU ALSO HAVE NO OPINION AS TO HIS MENTAL RETARDATION STATUS?
A I HAVE NO OPINION ON WHETHER HE'S MENTALLY

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RETARDED.

Q DOCTOR, ISN'T WHAT YOU DO TO DETERMINE WHETHER SOMEONE'S MENTALLY RETARDED OR WHETHER THEY ARE COMPETENT TO STAND TRIAL?

A YES, IT IS.

Q AS A MATTER OF FACT YOU WERE ASKED TO DO THAT BY MR. D'AGOSTINO FOR THIS CASE, RIGHT?

A YES, I WAS.

Q BUT YOU CAME BACK WITH NO OPINION ON THOSE THINGS?

A THAT IS CORRECT.

Q IS THERE A FORENSIC PSYCHOLOGICAL TEST WHICH IS USED TO DETERMINE A DEFENDANT'S UNDERSTANDING OF HIS MIRANDA RIGHTS?

A YES, THERE IS.

Q DID YOU PERFORM THAT?

A I PERFORMED A VERSION OF THAT.

Q CAN YOU DESCRIBE WHAT THAT IS CALLED?

A WELL, THERE ARE SEVERAL TESTS. IT'S A TEST ADAPTED FROM, THE TEST I GAVE IS AN ADDUCTION OF ONE OF THE TESTS. DO I REMEMBER THE EXACT NAME OF THAT TEST? NO, I KNOW IT'S A COMPREHENSION OF MIRANDA RIGHTS INVENTORY OR SOMETHING LIKE THAT.

Q WHAT DOES THAT TEST CONSIST OF?

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A CONSISTS OF ASKING INDIVIDUALS A SERIES OF QUESTIONS.
Q LIKE WHAT?
A LIKE DO YOU KNOW WHAT IT MEANS WHEN THE POLICE SAYS YOU HAVE THE RIGHT TO REMAIN SILENT.
Q AND WHAT WAS HIS ANSWER TO THAT?
A EXCUSE ME, LET ME GET OUT. I ASKED HIM, WHAT DOES IT MEAN WHEN WE SAY YOU HAVE THE RIGHT TO REMAIN SILENT. AND HE SAID, BE QUIET AND DON'T TALK TO NOBODY BUT ME. I WOULD CONSIDER THAT A FAILURE, THAT HE FAILED THAT ITEM.
Q YOU WOULD CONSIDER IT A FAILURE FOR HIM TO SAY THAT HIS RIGHT TO REMAIN SILENT TO BE QUIET AND NOT TALK TO ANYBODY?
A YES, BE QUIET IS ONE OF THE COMMON FAILURES OF THAT ITEM.
Q AND WHAT WOULD THE APPROPRIATE ANSWER BE?
A IT MEANS THAT I DON'T HAVE TO GIVE A STATEMENT IF I DON'T WANT TO.
Q WHAT WERE THE OTHER QUESTIONS YOU ASKED?
A I ASKED A NUMBER OF QUESTIONS.
Q GO AHEAD PLEASE AND TELL ME HIS ANSWERS.
A I ASKED HIM IF THE POLICE ASK YOU A QUESTION THAT YOU DO NOT WANT TO ANSWER, DO YOU HAVE TO ANSWER IT. AND HE SAID NO. I ASKED --

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Q IS THAT FAILING THAT QUESTION?
A NO, THAT'S A PASS. HE PASSED SOME AND FAILED SOME. I ASKED HIM WHAT IS A RIGHT. AND HE SAID I ONLY KNOW RIGHT HAND AND RIGHT. I ASKED HIM, WHAT DOES IT MEAN WHEN WE SAY ANYTHING YOU CAN SAY CAN AND WILL BE USED AGAINST YOU IN A COURT OF LAW. HE SAID THAT MEANS THE COURT'S GOING TO FIND OUT ABOUT IT.

I ASKED HIM, THE THINGS YOU TELL THE POLICE, ARE THEY GOING TO KEEP THEM SECRET AND HE SAID YES. I ASKED HIM WHAT DOES THE WORD SECRET MEAN. HE SAID DON'T TELL ME OR DON'T TELL NOBODY. I ASKED HIM WHOM ARE THEY GOING TO TELL. HE SAID EVERYBODY. I ASKED HIM ARE THE THINGS THAT YOU TELL THE POLICE GOING TO BE USED AGAINST YOU AND HE SAID I DON'T KNOW.

Q WELL, ISN'T THAT TRUE? THINGS THAT HE TELLS THE POLICE BEING USED AGAINST HIM, AT THIS POINT HE DOESN'T KNOW, DOES HE?
A WELL, WE WOULD CONSIDER THAT A FAILURE.
Q BECAUSE HE DIDN'T KNOW THAT THOSE WILL BE USED AGAINST HIM?
A HE DOESN'T KNOW WHETHER OR NOT THEY ARE GOING TO BE USED AGAINST HIM.
Q BUT COULDN'T THAT ALSO RELATE TO THE FACT THAT

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HE MAY HAVE SPOKEN WITH HIS ATTORNEY AND UNDERSTANDS THERE HAS TO BE A HEARING ON HIS STATEMENT AND SO HE WOULDN'T KNOW UNTIL THE JUDGE RULED WHETHER THOSE STATEMENTS WOULD BE USED AGAINST HIM?

A I'M NOT SURE IF IT COULD BE INTERPRETED THAT WAY.

Q NOW THE TEST YOU PERFORMED YOU SAID YOU ADAPTED THAT TEST?

A YES, I DID.

Q SO IN ACTUALITY IT'S NOT THE TEST THAT WAS ACTUALLY PRINTED?

A THAT'S CORRECT.

Q SO THIS TEST HAS NOT BEEN ONE THAT HAS BEEN ITSELF TESTED FOR ITS ACCURACY, HAS IT?

A THAT'S CORRECT.

Q SO THIS IS SOMETHING THAT YOU DID FOR YOUR OWN SELF, CORRECT?

A WELL, YES, A TEST HAS TO BE MODIFIED TO THE POPULATION YOU ARE WORKING WITH. THE TEST IN PRINT WAS DEVELOPED FOR A POPULATION IN BOSTON WHICH MAY WORK FINE IN BOSTON, BUT I FOUND I'VE HAD TO ADAPT IT TO THIS POPULATION I WORK WITH HERE.

Q I WAS INTERESTED TO HEAR, DOCTOR, THAT YOU

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DIDN'T USE ANYTHING ELSE IN YOUR EVALUATION OF HIM. YOU BASICALLY EVALUATED HIM FROM SCRATCH. ISN'T IT TRUE THAT THINGS SUCH AS THE PRIOR EVALUATION FROM THE DEPARTMENT OF JUVENILE JUSTICE WOULD BE HELPFUL IN YOUR EVALUATION OF THE DEFENDANT?

A I HAVE NO OPINION ON THAT.

Q DON'T YOU NORMALLY, IN THE COURSE OF EVALUATING SOMEONE, USE THINGS OF PRIOR EVALUATIONS, THINGS LIKE SCHOOL RECORDS OR THINGS LIKE THAT TO DETERMINE IF THEY ARE COMPETENT AND IF THEY CAN DO SOMETHING AS YOU SAY TO WAIVE OR PROPERLY WAIVE THE MIRANDA RIGHTS?

A ONLY IF THEY ARE MADE AVAILABLE TO ME. COULD I HAVE SOME MORE WATER PLEASE.

Q WERE THEY NOT MADE AVAILABLE TO YOU? WERE THOSE REPORTS MADE AVAILABLE TO YOU, DOCTOR?

A WHICH ITEMS ARE YOU REFERRING TO?

Q ANY PRIOR REPORTS? DJJ REPORTS, PRIOR SCHOOL RECORDS, ANYTHING OF THAT NATURE?

A I DID RECEIVE SCHOOL RECORDS.

Q AND WHAT WAS INCLUDED IN YOUR RECORDS?

A I HAVE AN IQ SCORE THAT IS A SCHOOL ABILITY INDEX SCORE AND I THINK I HAVE SOME ACADEMIC ACHIEVEMENT SCORES.

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Q DID YOU CONSIDER THOSE IN YOUR EVALUATION?
A YES, I DID.
Q DID YOU CONSIDER ANY OTHER PRIOR REPORTS THAT YOU HAD HANDED TO YOU IN YOUR EVALUATION?
A I DON'T THINK I HAD ANY OTHER PRIOR REPORTS.
Q WOULDN'T IT HAVE BEEN HELPFUL TO HAVE HAD PRIOR REPORTS, PRIOR DJJ REPORTS?
A NOT NECESSARILY.
Q BUT ISN'T IT TRUE THAT PART OF DETERMINING SOMEONE AS FAR AS THEIR ABILITY TO COMPREHEND THINGS YOU HAVE TO LOOK AT THEIR PAST FORENSIC HISTORY?
A NO, PAST FORENSIC HISTORY DOES NOT NECESSARILY CONTRIBUTE TO SAY ABILITY TO UNDERSTAND MIRANDA RIGHTS AND THAT'S BEEN DEMONSTRATED IN THE RESEARCH.
Q BUT IT DOES THE COMPETENCE, DOESN'T IT?
A I DON'T KNOW.
Q YOU DON'T KNOW BUT YOU TEST FOR COMPETENCE ALL THE TIME?
A I TEST FOR COMPETENCE. I CAN'T REMEMBER THAT PARTICULAR PIECE OF RESEARCH.
Q YOU SAID AS PART OF YOUR REPORTS YOU WERE CONSIDERING SOME OF HIS, I GUESS, SOME OF HIS FUNCTIONING AND YOU SPOKE WITH I BELIEVE HIS

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GRANDFATHER TODAY CONCERNING THAT?
A YES, I DID.
Q DID THEY TELL YOU ANYTHING ABOUT THE PARTICULAR FACTS OF THIS CASE OR ANYTHING ABOUT HOW ANTONIO LIVES HIS LIFE?
A THEY TOLD ME A LITTLE ABOUT HIM, NOTHING ABOUT THIS CASE.
Q AND WHAT DID THEY TELL YOU ABOUT HIM THAT HELPED YOU BASE YOUR OPINION ON?
A NOT THEY BUT HE, HIS GRANDFATHER. HIS GRANDFATHER TOLD ME NOTHING TO HELP ME FORM MY OPINION.
Q WOULD IT HAVE HELPED YOU TO FORM YOUR OPINION IF YOU HAVE HAD SUCH INFORMATION AS THE FACT THAT ANTONIO WAS ABLE ON HIS OWN TO GO OUT AND PURCHASE A CAR?
MR. D'AGOSTINO: YOUR HONOR, I OBJECT. HE HASN'T EXPRESSED AN OPINION AS TO MENTAL RETARDATION.
THE COURT: WELL, HE'S TALKING ABOUT HIS ABILITY TO UNDERSTAND MIRANDA RIGHTS. I THINK HE'S GOT A RIGHT. I OVERRULE.
Q WOULD IT BE HELPFUL TO KNOW --
THE COURT: WELL, ASK YOUR QUESTION.
Q WOULDN'T IT BE HELPFUL TO KNOW HE WAS ABLE TO GO

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OUT ON HIS OWN AND PURCHASE A CAR?
A I WOULD WANT TO KNOW MORE DETAILS ABOUT THAT.
Q I UNDERSTAND BUT WOULDN'T IT HELP YOU IF YOU KNEW THE DETAILS ABOUT THAT AS TO DETERMINE WHETHER HE'S ABLE TO WAIVE HIS MIRANDA RIGHTS AND DETERMINE HIS COMPETENCY?
A NOT NECESSARILY. I CAN'T TELL IF SOMETHING IS GOING TO HELP ME WITH AN OPINION OR NOT UNTIL I KNOW THE INFORMATION.
Q DOESN'T THAT GO ALONG WITH HIS ABILITY TO FUNCTION?
A I WOULD NEED TO KNOW MORE INFORMATION ABOUT IT.
Q HOW ABOUT THE FACT THAT HE IS ABLE TO INSTALL STEREO EQUIPMENT IN THAT CAR, WOULD THAT HELP YOU IN BEING ABLE TO LOOK AND DETERMINE HIS ABILITY TO FUNCTION?
A I WOULD NEED TO KNOW MORE ABOUT THAT.
Q DID YOU ASK HIM ABOUT THE CHILD HE HAS?
A NO, I DID NOT.
Q BUT WOULDN'T THAT HELP IN DETERMINING HOW HE FUNCTIONS?
A NOT NECESSARILY.
Q IF YOU ASK HIM ABOUT THE CARE OF THE CHILD, ARE YOU SAYING IF HE IS ABLE TO CHANGE A DIAPER AND BABYSIT AND DO THINGS LIKE THAT THAT THAT

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WOULDN'T HELP IN DETERMINATION OF HOW HE FUNCTIONS?

A NO, THAT WOULD NOT NECESSARILY HELP. PEOPLE WITH MENTAL RETARDATION ARE DOING THOSE THINGS ALL THE TIME.

Q AND PEOPLE WITH, BUT HE'S NOT SOMEONE WITH MENTAL RETARDATION, IS HE?

A I HAVE NO OPINION ON THAT.

Q SO YOU CAN'T SAY THAT HE IS THOUGH?

A THAT IS CORRECT.

Q SO YOU CAN'T LUMP HIM IN A GROUP OF PEOPLE WITH MENTAL RETARDATION ARE DOING STUFF LIKE THAT ALL THE TIME?

A THAT IS CORRECT.

Q AND PART OF FUNCTIONING YOU WOULD WANT TO CONSIDER OTHER THINGS HE CAN DO, CORRECT?

A I DON'T KNOW WHAT YOU ARE HEADING FOR.

Q AS A PART OF FUNCTIONING SEE, DOCTOR, YOU'RE CONFUSING ME BECAUSE YOU'RE TELLING ME HE'S NOT ABLE TO WAIVE HIS MIRANDA RIGHTS BUT AT THE SAME TIME YOU'RE TELLING ME THAT SUCH THINGS AS BEING ABLE TO DO AND LIVE IN A BASIC DAY-TO-DAY LIFE AND DO VARIOUS CHORES AND THINGS THAT SEEM FAIRLY COMPLICATED TO ME, WOULDN'T IT HELP YOU IN YOUR EVALUATION?

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A CHANGING A DIAPER DOES NOT MEAN HE HAS THE VERBAL SKILLS TO COMPREHEND MIRANDA RIGHTS.

Q BUT WOULDN'T SOME OF HIS LIFE EXPERIENCES HELP IN DETERMINING WHAT HE WAS REALLY ABLE TO UNDERSTAND AND WHAT REALLY HE WAS NOT ABLE TO UNDERSTAND?

A THEY MIGHT.

Q NOW LET'S GO BACK, YOU SAID THAT YOU WERE TALKING ABOUT SOME PEOPLE WHO WERE MENTALLY RETARDED, PEOPLE WHO ARE MENTALLY RETARDED WELL, LET'S PUT IT THE LOWEST I GUESS, DON'T WANT TO BE CALLED THE LOWEST OR HIGHEST RANGE, BUT THE MILD RANGE OF MENTAL RETARDATION, PEOPLE IN THE MILD RANGE OF MENTAL RETARDATION YOU CANNOT SAY THAT ALL OF THEM CANNOT UNDERSTAND AND WAIVE MIRANDA RIGHTS, CORRECT?

A I DON'T KNOW.

Q WELL, LET ME PUT IT THIS WAY, THERE ARE SOME PEOPLE WHO YOU WOULD CONSIDER MILD MENTALLY RETARDED THAT YOU EVALUATED IN THE PAST THAT YOU WOULD CONSIDER TO BE ABLE TO WAIVE MIRANDA RIGHTS, IS THAT NOT CORRECT?

A THAT'S PROBABLY TRUE.

Q AND --

A I CAN'T RECALL ANY PARTICULAR CASES TODAY, BUT

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THAT'S PROBABLY A FAIR STATEMENT.

Q AND THAT'S NOT THAT UNUSUAL, IS IT?

A I HAVE NO OPINION ON THAT.

Q ISN'T IT TRUE THAT LOOKING INTO HIS INTERPERSONAL SKILLS WITH OTHER PEOPLE WOULD HELP IN DETERMINING THE ABILITY HE HAD TO UNDERSTAND HIS MIRANDA RIGHTS?

A NOT NECESSARILY.

Q BUT THAT WOULD INCLUDE VERBAL SKILLS, WOULDN'T IT?

A IT MIGHT, YES.

Q BUT YOU DIDN'T GO OVER ANY OF THOSE THINGS WITH ANTONIO, DID YOU?

A I DIDN'T SAY THAT.

Q WELL, DID YOU GO INTO ANY OF HIS INTERPERSONAL SKILLS TO TRY AND HELP YOUR EVALUATION?

A I DON'T REMEMBER EVERYTHING I ASKED HIM.

Q NOW DID YOU EVER HAVE EITHER OF THE STATEMENTS THAT HE GAVE TO THE POLICE TO LOOK AT, EITHER OF THOSE STATEMENTS, DID YOU HAVE THOSE AT YOUR DISPOSAL?

A YES, I DID.

Q DID YOU NOTICE IN THOSE TWO STATEMENTS THAT IN THE INITIAL STATEMENT HE DID SOMETHING THAT WAS BASICALLY IT WOULD BE SELF-PRESERVATION. HE DID

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NOT SAY HE WAS THE SHOOTER IN THIS STATEMENT, DID HE?

A I BELIEVE THAT'S TRUE.

Q AND SELF-PRESERVATION IS SOMETHING THAT SHOWS THAT HE UNDERSTANDS WHAT HE'S DOING, DOESN'T IT?

A WELL, IT COULD BE SELF-PRESERVATION. IT COULD BE THE TRUTH. I DON'T KNOW WHICH IT IS.

Q ARE YOU SUGGESTING, DOCTOR, THAT ANTONIO IS SO SUGGESTIBLE THAT SOMEHOW HE IS NOW AGREEING TO BEING THE SHOOTER WHEN HE IS NOT?

A I HAVEN'T SAID THAT.

Q BUT DOESN'T IT INDICATE THAT BY GIVING A STATEMENT ON SELF-PRESERVATION THAT THAT SHOWS AT LEAST SOME HIGHER LEVEL OF FUNCTIONING?

A WELL, YOU CHARACTERIZE IT AS SELF-PRESERVATION. I DON'T KNOW IF IT'S SELF-PRESERVATION OR IF IT'S JUST A STATEMENT OF THE TRUTH.

Q IF IT WAS SELF-PRESERVATION WOULD THAT BE SOMETHING THAT YOU COULD CHARACTERIZE HAS HAVING SOMEONE, THAT SOMEONE HAD TO HAVE A LITTLE BIT OF A HIGHER KNOWLEDGE TO BE ABLE TO DO?

A NO, SIR. I'VE SEEN SOME VERY RETARDED PEOPLE MAKE STATEMENTS THAT WERE SELF-PRESERVING.

Q YOU WEREN'T THERE AT THE TIME HIS MIRANDA RIGHTS WERE READ AT THE POLICE DEPARTMENT, WERE YOU?

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A THAT IS CORRECT.
Q SO YOU REALLY DON'T KNOW AT THAT TIME WHETHER HE WAS ABLE TO UNDERSTAND AND COMPREHEND WHAT HIS MIRANDA RIGHTS WERE, DO YOU?
A ALL I KNOW IS THE TESTIMONY I'VE HEARD ABOUT THAT.
Q SO THE ANSWER WOULD BE YES OR NO?
A I HAVE AN OPINION THAT HE WAS NOT ABLE TO UNDERSTAND HIS MIRANDA RIGHTS AT THE TIME THAT THEY WERE READ TO HIM.
Q AT THE TIME THE POLICE READ THEM TO HIM?
A YES, SIR. IF HE DOES NOT UNDERSTAND THEM LATER IN MY OFFICE IT'S NOT LIKELY THAT HE UNDERSTOOD THEM AT THE TIME THEY WERE READ TO HIM.
Q WHEN HE WAS IN YOUR OFFICE, WHEN HE HAD QUESTIONS HE WOULD ASK YOU, WOULDN'T HE?
A I'M SORRY?
Q WHEN HE WAS IN YOUR OFFICE, WHEN HE WOULD HAVE QUESTIONS HE WOULD ASK YOU, WOULDN'T HE? IF HE HAD A QUESTION AS TO WHAT YOU ASKED OR EXPLAIN SOMETHING, HE WOULD ASK?
A I DON'T REMEMBER HIM DOING THAT. I REMEMBER HE ASKED ABOUT A TOY THAT I HAD IN THE OFFICE. I REMEMBER HE ASKED ABOUT THAT. I DON'T REMEMBER HIM ASKING ME ABOUT ANY OF MY QUESTIONS.

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Q BUT YOU BELIEVE THAT IF HE DIDN'T UNDERSTAND SOMETHING THAT HE WOULD HAVE ASKED YOU?
A NO. NO. PEOPLE WHO FUNCTION AT A LOW LEVEL OF INTELLIGENCE TYPICALLY DO NOT ASK QUESTIONS.
Q ARE YOU AWARE OF HIS PRIOR RUN-IN WITH THE LAW?
A JUST, NOT IN ANY SPECIFICS, JUST VAGUELY.
Q BUT YOU ARE AWARE THAT HE HAS AT LEAST A NUMBER OF PAST RUN-INS WITH THE LAW, IS THAT CORRECT? AND THERE HE WAS AT LEAST COMMITTED TO DJJ TWICE?
A YES.
Q AND DID YOU GO INTO ANY OF THAT AS FAR AS THE POLICE WORK OR ANYTHING ON THAT?
A NO, I DID NOT.
Q WOULDN'T IT BE HELPFUL TO, IN DETERMINING WHETHER HE CAN WAIVE HIS MIRANDA RIGHTS, TO TALK TO HIM ABOUT PRIOR CONTACT WITH THE POLICE AND WHETHER HE'S EVER HAD TO DO THAT BEFORE?
A IT MAY BE BUT NOT NECESSARILY.
Q BUT YOU'LL NEVER KNOW WITHOUT GOING INTO IT, WILL YOU?
A WELL, PREVIOUS EXPOSURE TO THE POLICE DOES NOT CONTRIBUTE TO UNDERSTANDING OF MIRANDA RIGHTS.
Q BEING STREET SMART DOES, DOESN'T IT?
A NO, SIR, I DON'T BELIEVE IT DOES.

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Q DID YOU INQUIRE OF HIM WHETHER HE'S EVEN SEEN ON TV WHEN SOMEONE WAS GIVEN THE MIRANDA RIGHTS OR HIS UNDERSTANDING OF WHAT THAT'S DOING?

A NO, SIR, I DID NOT.

Q THANK YOU. NO FURTHER QUESTIONS.

MR. D'AGOSTINO: NO FURTHER QUESTIONS. MAY THIS WITNESS BE EXCUSED?

THE COURT: YOU CAN STEP DOWN. YOU ARE EXCUSED. WE APPRECIATE YOUR TIME.

MR. D'AGOSTINO: JUST ONE OTHER WITNESS BRIEFLY, YOUR HONOR.

THE COURT: ALL RIGHT FINE. CALL YOUR NEXT WITNESS.

MR. D'AGOSTINO: OFFICER CORN.

SALLY CORN, BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. D'AGOSTINO:

Q OFFICER CORN, WHERE DO YOU WORK?

A YORK COUNTY DETENTION CENTER.

Q DO YOU HAVE ACCESS TO THE COMPUTERS DOWN THERE?

A YES, SIR, I DO.

Q LET ME HAND YOU A PRINTOUT WHICH IS MARKED DEFENDANT'S EXHIBIT FOUR FOR ID, IS THAT A PRINTOUT ON ANTONIO GORDON AS TO WHEN HE CAME TO THE MOSS JUSTICE CENTER?

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A YES, IT IS.
Q AND WHEN DID HE COME THERE?
A HIS BOOKING DATE WAS 7, LET ME PUT ON MY GLASSES. EXCUSE ME A MOMENT. 7-23-98 AT 19:42 HOURS.
Q ALL RIGHT. THAT'S WHEN HE ACTUALLY GOT DOWN TO THE MOSS JUSTICE CENTER DOWNSTAIRS?
A YES, SIR.
Q IS THIS ONE, LET ME HAND YOU WHAT'S BEEN MARKED DEFENDANT'S EXHIBIT NUMBER FIVE, WHO IS THAT ONE OF?
A THIS IS MONTA GORDON.
Q WHEN DID HE GET DOWN THERE?
A HIS ENTER DATE 7-24-98 AT 20 HUNDRED HOURS.
Q 8 O'CLOCK IN THE EVENING?
A YES, SIR.

MR. D'AGOSTINO: YOUR HONOR, I MOVE TO INTRODUCE EXHIBIT NUMBER FOUR AND FIVE.

THE COURT: ANY OBJECTION.

MR. ANTHONY: NO OBJECTION.

(DEFENDANT'S EXHIBITS 4 & 5 PRINTOUTS MARKED FOR IDENTIFICATION.)

Q AND DO YOU KNOW IF ANTONIO WOULD HAVE BEEN TAKEN BACK OVER TO THE ROCK HILL POLICE DEPARTMENT THAT DAY OR THE NEXT DAY. WOULD IT

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BE INDICATED ON THAT REPORT IF HE HAD BEEN TAKEN OUT AND BOOKED BACK IN?

A IF HE WOULD HAVE BEEN TAKEN OUT AND BOOKED BACK IN, IT WOULD HAVE BEEN INTO THE COMPUTER.

Q ALL RIGHT. THOSE ARE ALL THE QUESTIONS I HAVE.

MR. ANTHONY: NO CROSS EXAMINATION. THANK YOU.

THE COURT: YOU CAN STEP DOWN AND BE EXCUSED.

A THANK YOU, JUDGE.

THE COURT: CALL YOUR NEXT WITNESS.

MR. D'AGOSTINO: THOSE ARE ALL THE WITNESSES, YOUR HONOR.

THE COURT: ANYTHING ELSE FROM THE STATE?

MR. THOMPSON: NO, YOUR HONOR. NOTHING ON BEHALF OF THE STATE.

THE COURT: MR. D'AGOSTINO, YOU WANT TO ARGUE YOUR POSITION NOW AS TO WHY THE STATEMENT IS NOT ADMISSIBLE.

MR. D'AGOSTINO: YES, SIR, YOUR HONOR. LET ME GET MY NOTES ON THAT. LET ME JUST TAKE THESE, EVERYTHING IN ORDER AS BEST I CAN. YOUR HONOR, FIRST WE MOVE TO SUPPRESS THE STATEMENTS AS THE STATE HAS NO PROBABLE CAUSE TO ARREST ANTONIO GORDON WITHOUT A WARRANT. THE ONLY INFORMATION THEY HAD AT THE TIME THEY ARRESTED HIM WAS A STATEMENT FROM CHYENCA DIXON, TOWANDA BURRIS,

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WHOEVER YOU WANT TO, WHATEVER YOU WANT TO CALL HER, THE SAME PERSON HAD TWO STATEMENTS BE ENTIRETY INCONSISTENT. ONE HAD INCONSISTENCIES IN ITSELF. NOW THEY SAY THAT THEY SUBSEQUENTLY LET HER GO AND THEN LETTING HER GO CREATED THE EXIGENT CIRCUMSTANCES THEY SAY NECESSITATING HIS ARREST. YOUR HONOR, I WOULD SUBMIT THAT THEY CANNOT --

THE COURT: DO THEY HAVE TO HAVE EXIGENT CIRCUMSTANCES? DON'T THEY JUST HAVE TO HAVE PROBABLE CAUSE?

MR. D'AGOSTINO: TO ARREST SOMEONE I THINK PROBABLE CAUSE TO BELIEVE, I THINK WHAT YOU NEED IS A CRIME HAS TO BE COMMITTED IN THEIR PRESENCE.

THE COURT: NOT FOR A FELONY.

MR. D'AGOSTINO: THEY NEED AN ARREST WARRANT TO ARREST SOMEONE.

THE COURT: NOT FOR A FELONY, MAYBE, LET ME HEAR FROM THE STATE ON THAT.

MR. ANTHONY: I THINK IT'S PRETTY WELL SETTLED LAW THAT YOU CAN ARREST FOR A FELONY WITHOUT A WARRANT.

THE COURT: THAT'S BASED ON PROBABLE CAUSE.

MR. ANTHONY: IF YOU HAVE PROBABLE CAUSE. YOU

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OBVIOUSLY CAN'T ARREST ANYONE IF YOU DON'T HAVE PROBABLE CAUSE, BUT YOU CAN ARREST FOR A FELONY WITHOUT A WARRANT.

THE COURT: THAT'S MY UNDERSTANDING. YOU CAN ARREST FOR A MISDEMEANOR WITHOUT A WARRANT ONLY IF IT HAPPENS IN YOUR PRESENCE OR IT'S SO FRESH AND SOME OTHER STUFF LIKE THAT BUT NOT FOR A FELONY.

MR. D'AGOSTINO: I UNDERSTAND THE COURT'S RULING, YOUR HONOR.

THE COURT: I MEAN, I'LL BE GLAD TO HEAR FROM YOU FURTHER, BUT I THINK IT WAS PROBABLE CAUSE AND I, WITHOUT HEARING FROM THE STATE, I LISTENED BECAUSE I KNEW THAT WAS ONE OF THE ISSUES AND VERY INTENT ON THAT, BUT IN FACT I EVEN LOOKED UP A LITTLE LAW, ONE OF MY LITTLE SUMMARY SHEETS TO SEE IF WHAT I REMEMBER WAS CORRECT AND I BELIEVE THAT BASED ON THE INFORMATION THAT THEY HAD AT THAT TIME THEY HAD PROBABLE CAUSE TO ARREST.

MR. D'AGOSTINO: THAT'S WHAT I WAS GETTING AT. I DIDN'T BELIEVE THEY HAD PROBABLE CAUSE BASED UPON THE INFORMATION THEY HAD AT THE TIME, YOUR HONOR.

THE COURT: WELL, I DENY THAT MOTION TO SUPPRESS

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ON THAT GROUND.

MR. D'AGOSTINO: THANK YOU, YOUR HONOR. THE NEXT GROUNDS AND THEY KIND OF ALL RUN TOGETHER, I MOVE TO SUPPRESS ANTONIO GORDON'S STATEMENTS ON BOTH THE FIFTH AND SIXTH AMENDMENTS, RIGHTS TO COUNSEL, BOTH STATE AND FEDERAL, BOTH THE FEDERAL FIFTH AND SIXTH AMENDMENTS OF RIGHT TO COUNSEL, AND IN SOUTH CAROLINA CONSTITUTION ARTICLE ONE SECTION 11, ARTICLE ONE SECTION 14, AND ALSO I WOULD RELY UPON SOUTH CAROLINA STATE LAW RELATING TO AN ARREST.

LET ME GO THROUGH EACH ONE OF THOSE IN MY POSITION WITH REGARD TO THE STATEMENTS. YOUR HONOR, FIRST OF ALL WE HAVE ANTONIO GORDON, HE'S 16 YEARS OF AGE, HE'S TAKEN INTO THE POLICE STATION. AS SOON AFTER, WHILE HE'S GIVING HIS FIRST STATEMENT AN ATTORNEY WHO IS HIRED FOR HIM COMES TO THE POLICE STATION, WHOSE BEEN HIRED BY HIS FAMILY TO REPRESENT HIM. THE STATE CONTINUES TO INTERROGATE HIM, DOES NOT INFORM HIM OF HIS RIGHT TO COUNSEL, OF COUNSEL BEING PRESENT. THERE IS AN ATTORNEY OUTSIDE ASKING TO SEE HIM. YOUR HONOR, I SUBMIT THAT HE SHOULD HAVE BEEN TOLD THAT THE ATTORNEY WAS THERE.

THE COURT: ALL RIGHT. YOU NEED TO SHOW SOME

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CASE LAW ON THAT BECAUSE THAT'S A VERY INTERESTING ISSUE. I HAVE NEVER HAD IT. I DON'T HAVE ANY LAW THAT, THE RIGHT TO COUNSEL LIES WITH THE ONE WHO IS ARRESTED AND.

MR. D'AGOSTINO: YES, SIR.

THE COURT: SO YOU'VE GOT TO SHOW ME SOME LAW ON A THIRD PARTY, EVEN IF IT'S A JUVENILE, ENGAGES COUNSEL THAT THE POLICE MUST ALLOW THAT PERSON TO SEE THE ACCUSED EVEN IF THE ACCUSED DOES NOT ASK FOR AN ATTORNEY.

MR. D'AGOSTINO: YOUR HONOR, THE UNITED STATES SUPREME COURT HAS RULED, I WAS GOING TO GET TO THAT, UNDER THE FEDERAL CONSTITUTION THAT IT'S THE INDIVIDUAL'S RIGHT. HOWEVER, THERE ARE OTHER STATES OR THERE ARE FEDERAL COURTS DECISIONS BEFORE, I MEAN STATE COURT DECISIONS BEFORE THAT CASE WENT UP THAT HELD THAT IT WAS THE INDIVIDUAL'S, I MEAN THAT A STATEMENT TAKEN WHEN THERE IS AN ATTORNEY OUTSIDE ASKING TO SEE THE CLIENT EVEN IF IT CLIENT DOES NOT KNOW, THE POLICE DO NOT INFORM THE CLIENT OF THE PRESENCE OF THAT ATTORNEY, THEN THOSE STATEMENTS TAKEN SHOULD BE SUPPRESSED AS BEING VIOLATIVE OF THOSE STATE'S CONSTITUTIONS AND PRIOR TO THE U.S. SUPREME COURT CASE, THE FEDERAL CONSTITUTIONAL

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RIGHTS. HOWEVER, SINCE THE SUPREME COURT HAS ADDRESSED THAT WITH REGARD TO THE FEDERAL FIFTH AMENDMENT RIGHT TO COUNSEL AND BEING INFORMED OF IT AND SAID THAT THE POLICE DO NOT HAVE TO INFORM, I WOULD SUBMIT THAT OUR SOUTH CAROLINA STATE CONSTITUTION, OUR SOUTH CAROLINA SUPREME COURT HAS NOT RULED ON THAT RELATING TO OUR STATE CONSTITUTIONAL RIGHT TO COUNSEL AND TO BE INFORMED OF COUNSEL, AND YOUR HONOR, I WOULD SUBMIT THAT ON THAT PARTICULAR ISSUE.

THE COURT: LET ME GET OUR CONSTITUTION.

MR. D'AGOSTINO: THAT WOULD BE ARTICLE 1 SECTION 11, YOUR HONOR, AND I COULD NOT FIND A CASE WHERE OUR SUPREME COURT HAS RULED ON THAT ISSUE AS IT RELATES TO OUR CONSTITUTION.

THE COURT: ARTICLE ONE.

MR. D'AGOSTINO: ARTICLE ONE SECTION 11 AS I BELIEVE OUR STATE CONSTITUTION THEN CORRELATES TO THE FIFTH AMENDMENT RIGHT TO COUNSEL.

THE COURT: AND WHEREIN DOES IT GIVE, I'M SORRY, ARTICLE ONE SECTION WHAT?

MR. D'AGOSTINO: SECTION 11, YOUR HONOR.

THE COURT: ALL RIGHT.

MR. D'AGOSTINO: EXCUSE ME, I MIGHT BE---

THE COURT: I THINK YOU MIGHT BE WRONG. THIS IS

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PRESENTATION ON INDICTMENTS.

MR. D'AGOSTINO: I APOLOGIZE FOR HAVING THE WRONG SECTION. ARTICLE ONE SECTION 12 IS VERY SIMILAR TO THE VERY CONSTITUTION, NOR SHALL ANY PERSON BE COMPELLED IN ANY CRIMINAL CASE BE COMPELLED TO WITNESS AGAINST THEMSELF, THAT'S THE UNITED STATES CONSTITUTION ARTICLE.

THE COURT: WELL, WE'RE TALKING ABOUT A RIGHT TO COUNSEL. NOT WITNESS AGAINST HIMSELF. YOU STILL HADN'T HONED INTO WHAT WE ARE LOOKING FOR. WE HAVE A WHOLE GROUP OF LAWYERS, WE OUGHT TO KNOW THE SOUTH CAROLINA CONSTITUTION BETTER, SHOULDN'T WE?

I BELIEVE IT'S 14. THERE IS NO, UNLESS THIS HAS BEEN CHANGED, THERE IS NO CONSTITUTIONAL STATUTORY REQUIREMENTS FOR SILENT COUNSEL EXCEPT IN A CAPITAL CASE. WE'VE HAD A CHANGE TO THE CONSTITUTION SINCE THEN OBVIOUSLY.

THERE IS NO QUESTION HE HAS A RIGHT TO COUNSEL. MY CONCERN IS WHETHER OR NOT, YOU ALLEGE THAT, IN ESSENCE YOU'RE ALLEGING THAT THE SOUTH CAROLINA STANDARD WOULD BE HIGHER THAN THE UNITED STATES CONSTITUTIONAL STANDARD OR OTHERWISE I'D BE BOUND BY THE UNITED STATES SUPREME COURT STANDARD WHICH HAS BEEN SET WHICH

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WEIGHS AGAINST YOUR CLIENT, SO I WAS REALLY LOOKING FOR ANY ADDITIONAL LANGUAGE IN THE SOUTH CAROLINA CONSTITUTION THAT WOULD GIVE HIM A GREATER RIGHT UNDER THE STATE CONSTITUTION THAN IT HAS ON THE FEDERAL CONSTITUTION WHICH THE UNITED STATES SUPREME COURT HAS ALREADY ADDRESSED HIS RIGHT UNDER THE FEDERAL CONSTITUTION.

MR. D'AGOSTINO: WHAT I WAS LOOKING AT, YOUR HONOR, AS I UNDERSTAND THE LAW, YOU HAVE THE FIFTH AMENDMENT RIGHT TO COUNSEL. MIRANDA WAS DESIGNED TO INFORM YOU OF YOUR RIGHT TO, AGAINST SELF INCRIMINATION AND MIRANDA IS BASED UPON THE FIFTH AMENDMENT.

THE COURT: RIGHT.

MR. D'AGOSTINO: AND THE SUPREME COURT HAS SAID THAT UNDER MIRANDA AND UNDER THE FIFTH AMENDMENT IF AN ATTORNEY IS THERE IT IS THE CLIENT'S RIGHT AND NOT THE ATTORNEY'S ABILITY TO ASSERT THAT RIGHT OR FAMILY MEMBERS ABILITY TO ASSERT THAT RIGHT, I UNDERSTAND THAT, AND I HAVE A DUTY TO INFORM THE COURT OF THE SUPREME COURT FEDERAL LAW AND THAT'S WHAT I WAS DOING. BUT MIRANDA WAS BASED UPON THE FIFTH AMENDMENT AND I BELIEVE THE LANGUAGE IN THE FIFTH AMENDMENT TO THE

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CONSTITUTION, UNITED STATES CONSTITUTION, SPECIFICALLY SAYS NOR SHALL, AND THIS IS WHERE THEY GET MIRANDA, NOR SHALL BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF NOR TO BE DEPRIVED OF LIFE, LIBERTY, PROPERTY WITHOUT DUE PROCESS OF LAW; AND THAT'S WHY I REFER BACK TO ARTICLE 1 SECTION 12, NO PERSON SHALL BE SUBJECT TO SAME OFFENSE TO BE TWICE PUT IN JEOPARDY OF LIFE OR LIBERTY NOR SHALL ANY PERSON BE COMPELLED IN ANY CRIMINAL CASE TO BE A WITNESS AGAINST HIMSELF. THAT'S WHY I ORIGINALLY SAID ARTICLE 1 SECTION 12 BECAUSE I WAS COMPARING THE LANGUAGE OF BOTH FEDERAL AND STATE, THEY ARE VERY SIMILAR LANGUAGE, BUT I WOULD SUBMIT, YOUR HONOR, THAT IN A CASE AND THIS IS WHERE I'M GOING TO MOVE INTO THE STATE LAW AS WELL WHERE YOU'RE DEALING WITH A 16 YEAR-OLD YOUNG BOY, THAT WE HAVE STATUTES THAT SPECIFICALLY ALSO PROTECT THE INTERESTS AND THE RIGHTS OF JUVENILES AS WELL. AND 16, I MEAN, 20-7-7205 DEALS WITH --

THE COURT: 20-7.

MR. D'AGOSTINO: 20-7-7205, YOUR HONOR. THAT'S CUSTODY AND DETENTION AND IT'S UNDER THE JUVENILE SECTION.

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THE COURT: I GOT IT.

MR. D'AGOSTINO: WHEN A CHILD FOUND VIOLATING CRIMINAL LAW OR ORDINANCE IS TAKEN INTO CUSTODY, THE CUSTODY IS NOT AN ARREST. JURISDICTION OF THE COURT ATTACHES FROM THE TIME OF THE TAKING INTO CUSTODY. WELL, YOUR HONOR, I WOULD, THEN IT GOES ON TO SAY WHEN A CHILD IS TAKEN INTO CUSTODY, THE OFFICER TAKING THE CHILD INTO CUSTODY SHALL NOTIFY THE PARENT, GUARDIAN, OR CUSTODIAN OF THE CHILD AS SOON AS POSSIBLE. YOUR HONOR, I WOULD SUBMIT THAT IN A SITUATION WHERE YOU'RE DEALING WITH A JUVENILE, WHERE YOU HAVE THE PARENTS WHO ARE LEGALLY CHARGED WITH THE RESPONSIBILITY FOR THE CHILD HAS TO BE PROSECUTED FOR TRUANCY FOR THEIR CHILDREN AND THINGS OF THAT NATURE, WHERE YOU HAVE A JUVENILE AND WHERE THE PARENTS HAVE ASSERTED THAT RIGHT ON BEHALF OF THE JUVENILE, I WOULD SUBMIT THAT EVEN THOUGH THERE IS THAT FEDERAL CASE OUT THERE, THAT WE HAVE A VERY LIMITED SPECIAL CIRCUMSTANCE HERE THAT WITH A JUVENILE, A PARENT, A THIRD PARTY, SHOULD BE ALLOWED TO AND THE COURT SHOULD RECOGNIZE THE ASSERTION OF BOTH THE FEDERAL AND THE STATE CONSTITUTIONAL RIGHT TO COUNSEL AS ASSERTED BY A PARENT OF THE

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JUVENILE. IT'S CLEAR HE'S 16 YEARS OF AGE. THERE IS NO QUESTION ABOUT THAT.

SO, YOUR HONOR, I WOULD SUBMIT THAT ON THAT BASIS THE COURT, SINCE MR. WELLBORN ASSERTED THE RIGHT TO COUNSEL AND STATEMENTS CONTINUING TO BE TAKEN BOTH THE FIRST AND THE SECOND STATEMENT TAKEN WITHOUT AFFORDING ANTONIO GORDON HIS ATTORNEY, THAT THE COURT SHOULD SUPPRESS THOSE STATEMENTS AS VIOLATIVE OF BOTH THE STATE AND THE FEDERAL CONSTITUTION.

THE COURT: WELL, THIS IS A NOTICE, A NOTIFICATION STATUTE AND THEY OBVIOUSLY WERE NOTIFIED BY SOMEONE. I DON'T KNOW THAT LAW ENFORCEMENT DID IT, BUT THEY WERE PRESENT APPARENTLY, ACCORDING TO MR. WELLBORN, THEY WERE ON THE PHONE TO HIM AND PRESENT, SO I DON'T THINK THE FACT THAT THEY MAY NOT HAVE NOTIFIED THE PARENTS IS MOOT BECAUSE THE PARENTS WERE THERE.

MR. D'AGOSTINO: I DIDN'T SAY THEY DIDN'T NOTIFY THE PARENTS. WHAT I SAID WAS THEY HAVE THE DUTY TO NOTIFY THE PARENTS, READING THAT STATUTE, TAKING INTO CONSIDERATION THAT PARENTS HAVE CERTAIN RIGHTS, DUTIES, AND RESPONSIBILITIES UNDER OUR STATUTES, OF COURSE, THEY ARE

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CHILDREN. WHAT I'M SAYING IS THAT READING THE STATE STATUTES IN CONJUNCTION WITH THE RIGHTS AND RESPONSIBILITIES OF PARENTS THAT WITH A JUVENILE, A PARENT'S ASSERTION OF THAT JUVENILE'S FIFTH AMENDMENT RIGHT AND OUR CONSTITUTIONAL RIGHT TO COUNSEL AFTER HE'S ADVISED OF MIRANDA, THAT THE PARENTS ASSERTION OF THAT RIGHT TO COUNSEL SHOULD SUFFICE FOR THEM TO AFFORD MR. WELLBORN THE OPPORTUNITY TO CONTACT HIS CLIENT, DISCUSS THE CASE WITH HIS CLIENT, AND IMMEDIATELY CEASE INTERVIEWING HIS CLIENT AT THE TIME HE REQUESTED THEM TO DO SO.

THE COURT: WELL, THAT IS AN INTERESTING ARGUMENT, BUT DO YOU HAVE ANY CASE LAW?

MR. D'AGOSTINO: I COULD NOT FIND ANY CASE LAW DIRECTLY ON POINT.

THE COURT: THANK YOU.

MR. D'AGOSTINO: DO YOU WANT ME TO GO INTO MY OTHER ARGUMENTS AND OTHER REASONS WHY?

THE COURT: YES, AND I'VE THOUGHT THROUGH A LOT OF THIS. I'M NOT TRYING TO USURP THE STATE'S RIGHT TO BUT I KNEW WHAT THESE ISSUES WERE GOING TO BE, I'VE BEEN THINKING ABOUT THEM, AND I'VE DONE A LITTLE RESEARCH MYSELF AND LISTENING TO THE TESTIMONY ALONG THE LINES OF WHAT WE'RE

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GOING ON OVER, SO I DON'T WANT YOU OR MR. GORDON TO THINK I'VE TAKEN THE STATE'S SIDE IN MAKING THE ARGUMENTS. I'VE THOUGHT THROUGH THESE AND I'M LOOKING, I'VE LOOKED AT THE RETARDATION ISSUE, I'VE LOOKED AT THE AGE ISSUE. LIKE YOU I COULDN'T FIND ANYTHING THAT REALLY ADDRESSED THE PARENTAL OR THE THIRD PARTY ATTORNEY POSITION, BUT GO AHEAD.

MR. D'AGOSTINO: WELL, I'VE GOT CASES FROM OTHER JURISDICTIONS THAT DEAL WITH THIRD PARTY, NOT WITH JUVENILES, I'LL BE GLAD TO HAND THEM UP FOR THE COURT'S CONSIDERATION.

MR. ANTHONY: HAVE YOU GOT COPIES OF THOSE.

MR. D'AGOSTINO: NO. YOUR HONOR, WITH REGARD TO THE SIXTH AMENDMENT RIGHT TO COUNSEL, IT'S OBVIOUS THAT THERE WAS A BOND HEARING THAT DAY, I WOULD SUBMIT THAT AT THAT POINT JUDICIAL PROCEEDINGS BEGAN AND MR. WELLBORN'S ATTEMPTS TO GET IN TO SEE HIS CLIENT WOULD INCLUDE PREPARATION FOR BOND HEARINGS, AND AS SUCH THE SIXTH AMENDMENT RIGHT TO COUNSEL WAS ALSO PRESENT THAT DAY FOR MR. GORDON AND AS SUCH --

THE COURT: WAIT, I'M GETTING A LITTLE CONFUSED. THE THING THAT, OKAY, IS THERE ANY TIME ON IT?

MR. D'AGOSTINO: THERE IS NO TIME ON IT AND IT

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DID OCCUR THAT DAY AND OFFICER THICKENS SAID IT HAPPENED THAT AFTERNOON.

THE COURT: WHICH WOULD BE AFTER THE TAKING OF THE STATEMENT.

MR. D'AGOSTINO: THE STATEMENT WAS TAKEN IN THE AFTERNOON AS WELL. I COULD NOT PIN DOWN A TIME ON THE STATEMENT WHEN THE BOND HEARING WAS HELD. I'VE CHECKED WITH THE MAGISTRATE.

THE COURT: HE SAID LATE AFTERNOON, THE BOND IN THE STATEMENT WAS AROUND FOUR.

MR. D'AGOSTINO: THE LAST TIME WAS SOMETIME AROUND FOUR, YES, SIR, YOUR HONOR. I COULD NOT PIN DOWN CHECKING WITH JUDGE LONG'S OFFICE AS TO WHETHER THEY KEEP RECORDS AS TO SPECIFIC TIMES THAT BOND HEARINGS ARE HELD. I WAS INFORMED BY THE SECRETARY THEY DO NOT, SO I COULD NOT PRESENT ANY EVIDENCE AS TO WHAT TIME FROM THE COURT AS TO WHAT TIME THAT BOND HEARING WAS HELD, YOUR HONOR, BUT IN ANY EVENT WITH REGARD TO THAT, THE BOND, IT IS CLEAR THAT ONE OF THE FUNCTIONS OF AN ATTORNEY WOULD BE TO ASSIST HIS CLIENT IN PREPARATION OF A BOND HEARING. I WOULD SUBMIT THAT JUDICIAL PROCEEDINGS HAD BEGUN OR WERE IN THE PROCESS AND AS SUCH MR. GORDON'S RIGHT TO SEE HIS ATTORNEY ATTACHED UNDER THE

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SIXTH AMENDMENT AS WELL IN WHICH CASE THE STATE WOULD NOT EVEN BE ENTITLED TO INITIATE CONVERSATIONS AND INTERROGATIONS OF MY CLIENT. YOUR HONOR, I WOULD ALSO SUBMIT THAT JUST ON THE FACTS OF THIS CASE ALONE, THE ISSUE OF THE VOLUNTARINESS, THE VOLUNTARINESS WAIVER OF THE STATEMENTS, ALL THE EVIDENCE DEMONSTRATES, I WILL SUBMIT, THAT ANTONIO GORDON COULD NOT VOLUNTARILY WAIVE HIS RIGHTS AND THAT IT WAS A FREELY AND VOLUNTARY WAIVER OF HIS RIGHTS. I WOULD SUBMIT THAT ALTHOUGH HE'S BEEN FOUND COMPETENT TO STAND TRIAL, THE COURT SHOULD TAKE NOTICE AND CAN TAKE INTO CONSIDERATION OF HIS LIMITED MENTAL ABILITY AS WAS TESTIFIED TO TODAY, THE FACT OF HOW THE MIRANDA STATEMENTS WERE GIVEN TO HIM, IN A VERY, YOU KNOW, JUST READ DIRECTLY TO HIM. THERE WASN'T THIS SCENARIO OR THIS SETTING WHERE HE WAS ASKED A QUESTION, ASKED IF HE UNDERSTOOD IT, THINGS OF THAT NATURE, SO I WOULD SUBMIT THAT HIS STATEMENTS SUBSEQUENT TO HIS INTERROGATION COULD NOT BE FREELY AND VOLUNTARILY GIVEN BECAUSE HE COULD NOT FREELY AND VOLUNTARILY WAIVE HIS MIRANDA RIGHTS.

YOUR HONOR, I THINK THE COURT SHOULD ALSO

CONSIDER, AND I KNOW THE COURT HAS TO CONSIDER ALL THE TESTIMONY WHEN CONSIDERING ALL THESE VARIOUS ISSUES AND WHEN CONSIDERING FREELY, THE FREENESS AND VOLUNTARINESS OF THE STATEMENTS, I THINK YOU ALSO GOT TO CONSIDER AND LOOK AT WHEN YOU LOOK AT THE OFFICER'S ACTIONS, WHAT SOME OF THE TESTIMONY WE'VE HEARD ABOUT THE OFFICERS, THEM COMING OUT INTO THE LOBBY AND YOU HAVE THE INDIVIDUAL WHO THEY WANT TO TALK TO AND SHE ASSERTS THAT SHE DOESN'T WANT TO TALK TO THEM AND ASKS MR. WELLBORN TO REPRESENT HER AND THEN COME BACK OUT INTO THE LOBBY AND PLACE HER UNDER ARREST FOR ACCESSORY AFTER THE FACT AND THEN UNARREST HER. YOU KNOW, YOUR HONOR, I THINK YOU GOT TO CONSIDER ALL THOSE FACTS WHEN YOU ARE CONSIDERING THE WHOLE SCENARIO HERE AND THAT IN AND OF ITSELF I THINK THERE IS STATUTES AGAINST THAT TYPE OF ACTIVITY BY THE POLICE DEPARTMENT. 17-13-30 SPECIFICALLY PROHIBITS THAT TYPE OF ACTIVITY BY THE POLICE OFFICERS.

THE COURT: WHAT'S THAT CODE SECTION?

MR. D'AGOSTINO: 17-13-30 SPECIFICALLY PROHIBITS, YOU HAVE TO FIND THAT IN THE SUPPLEMENT, YOUR HONOR. I DON'T KNOW IF YOU HAVE THE SUPPLEMENT THERE.

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THE COURT: I HAVE IT.

MR. D'AGOSTINO: EXCUSE ME 17-13-50, RIGHT TO BE INFORMED OF GROUNDS OF ARRESTS, CONSEQUENCES OF A REFUSE TO ANSWER.

THE COURT: THAT'S HER RIGHT NOT HIS.

MR. D'AGOSTINO: I UNDERSTAND THAT. I'M NOT ASSERTING THAT IS HIS RIGHT. WHAT I'M SAYING IS YOU GOT TO CONSIDER ALL THE ACTIVITIES OF EVERYTHING GOING ON THAT DAY WHEN YOU ARE CONSIDERING THE FACTORS OR THE FACTS OF THIS CASE AND WHETHER, AND THE CREDIBILITY AND WHETHER MR. GORDON COULD FREELY AND DID FREELY AND VOLUNTARILY WAIVE HIS RIGHT TO COUNSEL UNDER THE STATE AND FEDERAL CONSTITUTIONS. THANK YOU, YOUR HONOR.

AND YOUR HONOR, JUST FOR THE RECORD, YOU SAID, I KNOW YOU CONSIDERED ALL THESE ISSUES BECAUSE PRETRIAL BEFORE WE EVEN STARTED TODAY, JUST SO MY CLIENT UNDERSTANDS, WE INFORMED YOU OF WHAT THE ISSUES WERE GOING TO BE AS TO WHY WE'RE HAVING THIS HEARING AND I UNDERSTAND THE COURT HAS ALREADY THOUGHT AND CONSIDERED MANY OF THESE ISSUES AND THAT'S SOLELY TO INFORM MY CLIENT OF THAT AS WELL, YOUR HONOR.

THE COURT: WELL, NOT ONLY DID I THINK OF THEM,

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BUT FROM THE LINE OF QUESTIONING WE'VE ALL BEEN DOING THIS FOR WHILE AND WE CAN USUALLY SEE WHERE SOMEONE IS AHEAD. ANYTHING FROM THE STATE.

MR. ANTHONY: YES, SIR. WE HAVE SOME CASES TO HAND UP. FIRST OFF I WOULD HAND UP MORAN VERSUS BURBINE WHICH IS A UNITED STATES SUPREME COURT CASE. IT'S AT 106 SUPREME COURT 1135. AND ALSO HANDED UP STATE VERSUS DRAYTON WHICH IS ALSO A SOUTH CAROLINA SUPREME COURT CASE AT 361 SOUTHEASTERN 2ND 329. YOUR HONOR, BOTH OF THESE CASES POSE SITUATIONS THAT ARE SIMILAR TO THE SITUATION WE'VE HAD HERE TODAY. THEY BOTH INVOLVE CIRCUMSTANCES WHERE PEOPLE ARE TAKEN INTO CUSTODY, THEY WERE INTERROGATED BY THE POLICE, ATTORNEYS SHOWED UP, WANTED TO SPEAK TO THE PERSON BEING INTERROGATED; THEY WERE DENIED THE ABILITY TO SPEAK TO THE PERSON BEING INTERROGATED BY LAW ENFORCEMENT BECAUSE THE PERSON BEING INTERROGATED HAD WAIVED THEIR RIGHTS TO COUNSEL AND WAIVED THEIR RIGHTS TO REMAIN SILENT AND INDICATED THEY WANTED TO GIVE STATEMENTS AND LAW ENFORCEMENT WAS IN THE PROCESS OF TAKING THOSE STATEMENTS, AND THE HOLDINGS OF BOTH THOSE CASES ARE THAT THE

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RIGHTS, BOTH THE FIFTH AMENDMENT RIGHT TO REMAIN SILENT AND THE FIFTH AMENDMENT RIGHT TO COUNSEL IS A RIGHT THAT'S HELD BY THE DEFENDANT AND IF THE DEFENDANT WANTS TO WAIVE IT TO GIVE A STATEMENT THE DEFENDANT CAN DO THAT, AND IT DOESN'T MATTER THAT SOMEONE IS WANTING TO INFRINGE ON THE DEFENDANT'S RIGHT TO GIVE A STATEMENT, THAT THERE IS AN ATTORNEY THERE TRYING TO ASSERT THE DEFENDANT'S RIGHTS FOR THEM. (THERE IS ONLY ONE PERSON WHO CAN ASSERT THOSE RIGHTS AND THAT'S THE DEFENDANT.) AND IN THIS CASE IT DIDN'T MATTER THAT MR. WELLBORN CAME TO THE POLICE DEPARTMENT AND TRIED TO ASSERT MR. GORDON'S RIGHTS FOR HIM BECAUSE HE COULDN'T DO THAT. THE ONLY PERSON THAT COULD ASSERT THE RIGHT TO REMAIN SILENT AND THE RIGHT TO COUNSEL WAS MR. GORDON AND HE WAS IN THE POLICE DEPARTMENT WAIVING THOSE RIGHTS AND I REALLY BELIEVE THAT IF THE COURT REVIEWS THOSE CASES YOU'LL FIND THAT THE FACTS OF THOSE CASES ARE VERY ANALOGOUS TO THE CASE THAT YOU JUST HEARD, THE HEARING YOU JUST HEARD, AND THE STATE WOULD ARGUE THAT WE'VE SHOWN THAT THE FACT THAT MR. WELLBORN WAS THERE TRYING TO ASSERT MR. GORDON'S RIGHTS IS NOT RELEVANT TO WHAT THE

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COURT'S ANALYSIS NEEDS TO BE AS TO WHETHER OR NOT THE RIGHTS WERE VOLUNTARILY AND KNOWINGLY WAIVED. MR. D'AGOSTINO HAS CITED A SECTION OUT OF THE JUVENILE CODE AND HAS ARGUED THAT IN SOMEWAY SHOULD AFFECT --

THE COURT: I DON'T FIND THAT HAS ANY AFFECT ON WHAT WE HAVE BEFORE US.

MR. ANTHONY: THE ONLY OTHER THING I REALLY WANT TO ARGUE TO THE COURT IS, JUST TO BRIEFLY TOUCH ON THE EXPERT TESTIMONY THAT WAS OFFERED THIS AFTERNOON, MR. D'AGOSTINO'S EXPERT WITNESS WHO APPARENTLY EVALUATED MR. GORDON TRYING TO FIND, AFTER BEING COMMISSIONED TO RENDER AN OPINION AS TO COMPETENCY AND RETARDATION COULDN'T DO THAT. HE RENDERED AN OPINION AS TO THE MIRANDA WARNINGS BUT WHEN HE WAS ASKED THE BASIS FOR HIS OPINION THE STATE WOULD ARGUE THAT MR. GORDON ANSWERS WERE ACTUALLY QUITE ACCURATE AND ACTUALLY SHOWED HE REALLY DID KNOW WHAT WAS GOING ON. MY NOTES INDICATE THAT WHEN HE WAS ASKED THE DEFINITION OF REMAIN SILENT HE SAID THAT MEANS YOU CAN BE QUIET.

THE COURT: THAT DIDN'T SATISFY HIM THOUGH, DID IT?

MR. ANTHONY: NO, SIR, IT DIDN'T, BUT THE STATE

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WOULD ARGUE THAT'S A VERY COMMON SENSE INTERPRETATION OF WHAT THE RIGHT TO REMAIN SILENT MEANS.

THE COURT: I AGREE WITH YOU ON THAT. I DISAGREE WITH THE PSYCHOLOGIST AND I'M NOT A PSYCHOLOGIST AND HE MIGHT KNOW MORE ABOUT THAT THAN I DO, BUT I THINK THE ANSWER WAS DEAD ON THE MONEY.

MR. ANTHONY: HE ALSO WAS ASKED THE MEANING OF THE WORDS THE EVIDENCE OR STATEMENTS CAN BE USED AGAINST HIM AND HE SAID THE COURT WAS GOING FIND OUT WHICH I THINK THE TESTIMONY WAS THAT WAS CONSIDERED, I DON'T REMEMBER IF THAT WAS CONSIDERED A FAIL ANSWER OR A PASS ANSWER TO BE QUITE CANDID WITH THE COURT BUT IT WAS, THAT'S OBVIOUSLY AN ANSWER THAT DEMONSTRATES AN AWARENESS OF WHAT WAS GOING ON AT THE TIME. THE OFFICERS HAD TESTIFIED, DETECTIVE WALDROP AND LIEUTENANT THICKENS BOTH TESTIFIED THAT MR. GORDON ASKED THEM NO QUESTIONS. HE TOLD BOTH OF THEM THAT HE COULD READ. HE SIGNED STATEMENTS THAT HE HAD READ THOSE STATEMENTS THAT ARE IN EVIDENCE, THAT THEY WERE ACCURATE, AND BASICALLY, YOUR HONOR, GIVEN THE TESTIMONY YOU'VE HEARD TODAY THERE IS JUST NO REASON TO

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BELIEVE BOTH ON THE LAW OF THIS CASE AND ALSO ON THE FACTS OF THIS CASE THAT MR. GORDON DID NOT EXECUTE A VALID WAIVER OF HIS MIRANDA RIGHTS AND HIS STATEMENTS SHOULD NOT, THERE IS NO REASON WHY HIS STATEMENTS SHOULD NOT BE ALLOWED INTO EVIDENCE AT THE TRIAL, YOUR HONOR.

THE COURT: ALL RIGHT. LET ME MAKE A FEW PREPARATORY REMARKS BEFORE I RULE. FIRST KEEP IN MIND THE COURT LOOKS AT THE PREPONDERANCE OF THE EVIDENCE. OF COURSE, WHEN THE JURY REVIEWS THE STATEMENT OR EVER DOES, IT HAS TO REVIEW IT WITH THE STANDARD OF BEYOND A REASONABLE DOUBT, SO BE CLEAR I'M LOOKING AT IT FROM THAT PROSPECTIVE.

I LISTENED WITH SOME CONCERN TO SOME OF THE OFFICERS' TESTIMONY CONCERNING PERHAPS SOME SUGGESTION THAT OTHERS WOULD GO TO JAIL FOR WHAT HE HAD DONE. THERE IS ONE OTHER ONE THAT GAVE ME A LITTLE CONCERN, BUT I DO NOT FIND THAT EITHER ROSE TO THE LEVEL OF ANY PROMISE OF REWARD OR COERCION, BUT I WANT THE RECORD CLEAR WHEN SOMEBODY REVIEWS THIS LATER THAT I DID HEAR, I CAN'T REMEMBER WHAT THE OTHER ONE WAS BUT THERE WERE TWO, ONE BY OFFICER WALDROP AND ONE BY OFFICER THICKENS, BOTH GAVE ME A LITTLE

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CONCERN AND A LITTLE PAUSE BUT I DON'T FIND EITHER ROSE TO THE LEVEL OF ANYTHING IMPERMISSIBLE; THAT IS, I DO NOT FIND THEY WERE COERCISIVE, ANY PROMISES, THEY WERE NOT HOLDING OUT ANY HOPES OF REWARD OR ANY REWARD.

AS TO THE NOTIFICATION OF AN ATTORNEY, I THINK THE LAW IS CLEAR, THE UNITED STATES SUPREME COURT, ALTHOUGH THESE OTHER CASES FROM LOUISIANA AND OKLAHOMA AND OREGON ARE OTHERWISE ABOUT THE NOTIFICATION OF AN ATTORNEY PRESENT, OUR SUPREME COURT SEEMS TO HAVE ADDRESSED THAT IN THE DRAYTON CASE. JUSTICE FINNEY WROTE A DISSENT AND QUITE CANDIDLY IF I WAS THE LAW-MAKER I MIGHT BE MORE INCLINED TO JUDGE FINNEY'S VIEW THAN THE OTHER, BUT I'M NOT THE LAW MAKER, I'M THE LAW-FOLLOWER.

CONCLUDING THIS JACKSON VERSUS DENNO HEARING I HAVE CONSIDERED ALL THE EVIDENCE OFFERED. I LISTEN VERY CAREFULLY I BELIEVE TO ALL THE EVIDENCE, GIVEN THE WEIGHT THAT I FEEL APPROPRIATE TO BOTH DR. SANDLER AND DR. VENN, ALONG WITH THE OTHER TESTIMONY AND I'M CONVINCED BY A PREPONDERANCE OF THE EVIDENCE THAT BEFORE THE INCRIMINATING STATEMENT OR CONFESSION WAS OBTAINED FROM ANTONIO GORDON HE WAS FULLY

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ADVISED OF HIS RIGHTS UNDER THE FIFTH AND SIXTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES AND WAS ADVISED OF THE CONSTITUTIONAL SAFEGUARDS OF MIRANDA. THAT HE WAS ADVISED THAT PRIOR TO ANY SUCH QUESTIONING, INTERROGATION, HE WOULD HAVE THE RIGHT TO REMAIN SILENT. HE WAS ADVISED THAT ANYTHING HE SAID COULD BE USED AGAINST HIM IN COURT. HE WAS ADVISED HE HAD THE RIGHT TO TALK TO A LAWYER FOR ADVICE BEFORE HE WAS ASKED QUESTIONS. I POINT OUT THAT THE WORDS HERE ARE QUESTIONS AS OPPOSED TO INTERROGATION OR INTERROGATORIES WHICH OBVIOUSLY ARE SIMPLE WORDS BUT HE WAS ADVISED BEFORE HE WAS ASKED QUESTIONS HE WOULD HAVE THE RIGHT TO HAVE AN ATTORNEY WITH HIM DURING THE QUESTIONING. HE HAD THE RIGHT TO HAVE THE ADVICE AND PRESENCE OF A LAWYER EVEN IF HE CANNOT AFFORD TO HIRE ONE. ADVISED THAT WHILE THE LAW ENFORCEMENT COULD NOT APPOINT A LAWYER, ONE WOULD BE APPOINTED BY THE COURT IF HE WISHED. THAT HE COULD STOP ANSWERING QUESTIONS WITHOUT THE PRESENCE OF A LAWYER AND MAY STOP ANSWERING ANY TIME HE DESIRES UNTIL A LAWYER'S PRESENT. THEREAFTER, HE SIGNED THAT HE HAD READ OR HAD READ THIS STATEMENT. THAT HE UNDERSTOOD THE RIGHTS AND

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WAS WILLING TO MAKE A STATEMENT. THAT HE DID NOT WANT A LAWYER AT THIS TIME. UNDERSTOOD WHAT HE WAS DOING, AND KNEW HE WAS TALKING TO A POLICE OFFICER AND UNDERSTOOD WHAT HE WAS TALKING ABOUT. ADDITIONALLY IN THE LAST PARAGRAPH ON PAGE TWO, HE INDICATES AND THIS IS THE STATEMENT THAT WAS TAKEN BETWEEN 3:30 AND 4 P.M. THAT HE HAD BEEN OFFERED TO HAVE HIS GRANDMOTHER OR MOTHER WITH HIM AND HE CHOSE NOT TO DO THAT. HE JUST WANTED TO TELL THE TRUTH. AND HE ASKED IF HE WANTED SOMEONE FROM HIS FAMILY OR A LAWYER, BUT AGAIN HE JUST SAID HE WANTED TO GO AHEAD AND TELL THE TRUTH.

I FIND THAT HE KNOWINGLY AND INTELLIGENTLY WAIVED HIS RIGHTS UNDER THE FIFTH AND SIXTH AMENDMENTS OF THE CONSTITUTION OF THE UNITED STATES AND THE CONSTITUTIONAL SAFEGUARDS BY MIRANDA. I FIND THAT HE WAS COMPETENT TO DO THAT. I'VE HEARD THE TESTIMONY, THERE IS NO TESTIMONY EVEN FROM DR. VENN OF ANY MENTAL RETARDATION. THE COMBINED TESTIMONY OF THE DOCTORS MAKES IT CLEAR TO ME THAT HE IS COMPETENT TO NOT ONLY STAND TRIAL, BUT TO HAVE UNDERSTOOD THOSE PARTICULAR RIGHTS AS SET FORTH IN THE MIRANDA AND I FIND THAT THE ALLEGED

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STATEMENT OR THE STATEMENT, ALLEGED INCRIMINATING STATEMENT OR CONFESSION GIVEN BY ANTONIO GORDON WAS FREELY AND VOLUNTARILY GIVEN WITHOUT DURESS, WITHOUT COERCION, WITHOUT UNDUE INFLUENCE, WITHOUT REWARD, WITHOUT PROMISE OR HOPE OF REWARD, WITHOUT PROMISE OF LENIENCY, WITHOUT THREAT OF INJURY, AND WITHOUT COMPULSION OR INDUCEMENT OF ANY KIND, AND THAT SUCH ALLEGED INCRIMINATING STATEMENT WAS A VOLUNTARY PRODUCT OF A FREE AND UNCONSTRAINED WILL OF THE DEFENDANT. AGAIN I FIND THESE BY THE PREPONDERANCE OF THE EVIDENCE. AND AGAIN I SPECIFICALLY FIND THAT, AND I WISH I COULD REMEMBER THE STATEMENT BY OFFICER THICKENS, THE FIRST BEING, ONE HAD TO DO WITH SOMEBODY ELSE WAS GOING TO GO TO JAIL, AND ONE BY MR. WALDROP WAS SOMETHING ALONG THE LINES OF, I CAN'T REMEMBER WHAT IT WAS, WHILE THOSE DO BORDER ON BEING SUGGESTIVE, I DO NOT FIND THAT THEY ARISE TO THE LEVEL OF UNDUE INFLUENCE.

ANYTHING FURTHER FROM THE STATE?

MR. ANTHONY: NO, SIR, NOTHING FURTHER FROM THE STATE.

THE COURT: ANYTHING FROM THE DEFENSE?

MR. D'AGOSTINO: NOT AT THIS TIME, YOUR HONOR.

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THE COURT: ALL RIGHT. WE'LL START MONDAY MORNING ON THE TRIAL.

MR. GILLEN: YOUR HONOR, MAY I ASK THE COURT, IT WON'T TAKE VERY LONG.

THE COURT: I'VE GOT ALL DAY.

MR. GILLEN: IF I COULD ASK ONE OF THE SOLICITORS HERE TO A BRIEF MEETING IN CHAMBERS.

THE COURT: CERTAINLY. YOU WANT THE COURT REPORTER TO STAY AROUND.

MR. GILLEN: NO, YOUR HONOR, IT'S NOTHING.

MR. THOMPSON: I WOULD ASK, I BELIEVE THERE IS SOMETHING THE STATE IF WE COULD, I THINK WE APPROACHED THE BENCH A LITTLE EARLIER.

THE COURT: WE'LL TAKE A SHORT BREAK THEN IN CHAMBERS.

(COURT'S IN RECESS AT 5:20.)

(COURT RESUMES.)

MR. THOMPSON: THIS IS THE STATE OF SOUTH CAROLINA VERSUS TERRANCE MCCREARY. INDICTMENTS NUMBER 99-GS-46-2223 FOR ACCESSORY BEFORE THE FACT TO MURDER. HE'S PLEADING GUILTY AS HE'S CHARGED IN THIS INDICTMENT AND HE'S WAIVING HIS RIGHT TO PRESENTMENT TO THE GRAND JURY ON THIS CASE.

ALSO NUMBER 99-GS-46-2234 FOR ACCESSORY AFTER

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THE FACT FOR MURDER WHICH HE'S PLEADING GUILTY AS CHARGED IN THIS INDICTMENT AND WAIVING HIS RIGHT TO THE PRESENTMENT TO THE GRAND JURY ON THIS AS WELL.

AS PART OF THE PLEA AGREEMENT IN THIS CASE, YOUR HONOR, WE ARE DISMISSING THE OTHER CHARGES THAT HAVE BEEN CALLED BEFORE THE COURT TODAY. HE HAS AS WELL AGREED TO TESTIFY AGAINST ANY REMAINING CO-DEFENDANT IF THAT BECOMES NECESSARY. IT IS BASICALLY THE SAME AGREEMENT AS MONTA GORDON HAD SIGNED BUT DID NOT HAVE TIME TO CONSENT TO WRITING. HE WILL BE SENTENCED ON MONDAY OF NEXT WEEK OR AS SOON AS THE OTHER DEFENDANTS' CASES ARE HANDLED. THE PLEA HERE WOULD LOCK HIM IN AND WE WILL DISMISS THE OTHER CHARGES AND THERE IS A RECOMMENDATION OF THE 30 YEARS. SO IN OTHER WORDS, CONCURRENT SENTENCING AND THEN THE RECOMMENDATION OF THE 30 YEARS AS ACCESSORY BEFORE THE FACT.

THE COURT: AND AFTER THE FACT CARRIES UP TO 15?

MR. THOMPSON: YES, YOUR HONOR, THAT'S CORRECT.

THE COURT: MR. MCCREARY, HOW OLD ARE YOU?

MR. MCCREARY: 21.

THE COURT: ARE YOU MARRIED OR SINGLE?

MR. MCCREARY: NO, SIR, I'M SINGLE.

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THE COURT: YOU EVER BEEN MARRIED?

MR. MCCREARY: NO, SIR.

THE COURT: DO YOU HAVE ANY CHILDREN?

MR. MCCREARY: NO, SIR.

THE COURT: HOW FAR DID YOU GO IN SCHOOL?

MR. MCCREARY: THE TENTH GRADE.

THE COURT: AND YOU WERE WORKING, IF YOU HAD, WHAT KIND OF JOB DID YOU HAVE?

MR. MCCREARY: I WAS WORKING AT A DETAIL JOB.

MR. GILLEN: A CAR WASH, YOUR HONOR.

THE COURT: YOU'RE REPRESENTED BY MR. GILLEN?

MR. MCCREARY: YES, SIR.

THE COURT: YOU SATISFIED WITH HIS SERVICES?

MR. MCCREARY: YES, SIR.

THE COURT: ALL RIGHT, TAKE A MINUTE AND SIGN THOSE. YOU SATISFIED WITH MR. GILLEN'S REPRESENTATION?

MR. MCCREARY: YES, SIR.

THE COURT: HAVE YOU EVER BEEN TREATED FOR ANY MENTAL OR EMOTIONAL DISABILITY?

MR. MCCREARY: NO, SIR.

THE COURT: ARE YOU AT THIS TIME UNDER THE INFLUENCE OF ANYTHING THAT WOULD CAUSE YOU TO BE INTOXICATED?

MR. MCCREARY: NO, SIR.

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THE COURT: YOU'RE CHARGED IN TWO INDICTMENTS. ONE FOR ACCESSORY BEFORE THE FACT AND ONE FOR ACCESSORY AFTER THE FACT. IT IS ALLEGED IN THESE THAT ON OR ABOUT JULY 23 OF 1998 THAT YOU DID UNLAWFULLY AID IN THE COMMISSION OF A FELONY OR AN ACCESSORY BEFORE THE FACT IN COMMISSION OF A FELONY BY COUNSELING OR OTHERWISE PROCURING THE FELONY OF THE COMMISSION OF A MURDER OF ERIC KRENN BY ANTONIO GORDON IN VIOLATION OF STATE LAW. AND IT'S ALLEGED THAT AFTER THE FACT ON THAT DAY AND AFTER THE COMPLETION OF THE MURDER OF MR. KRENN YOU DID AID, HARBOR, ASSIST MR. GORDON TO ESCAPE DETECTION OR OTHERWISE AVOID THE CONSEQUENCES OF HIS CRIME.

THE ACCESSORY BEFORE THE FACT WOULD CARRY UP TO 30 YEARS IN PRISON WHICH IS THE SAME AS MURDER.

MR. THOMPSON: I BELIEVE IT WOULD CARRY 30 YEARS UP TO LIFE.

THE COURT: 30 YEARS UP TO LIFE AS WOULD MURDER. AND AS TO ACCESSORY AFTER THE FACT IT WOULD CARRY UP TO 15 YEARS. DO YOU UNDERSTAND THAT?

MR. MCCREARY: YES, SIR.

THE COURT: NOW NEITHER ONE OF THESE CASES HAVE BEEN REVIEWED BY THE YORK COUNTY GRAND JURY. THE YORK COUNTY GRAND JURY IS A GROUP OF

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INDIVIDUALS OF UP TO 18 PEOPLE WHO WOULD HEAR THE STATE'S CASE, THE STATE'S EVIDENCE, AND DETERMINE WHETHER OR NOT THAT EVIDENCE WAS SUFFICIENT FOR YOUR CASE TO GO FORWARD. 12 WOULD HAVE TO DO SO. 12 MEMBERS AT THAT TIME WOULD HAVE TO FIND THAT THE CASE WAS STRONG ENOUGH TO GO FORWARD. YOU HAVE A RIGHT TO HAVE THESE REVIEWED BY THE GRAND JURY OR YOU COULD GIVE UP THAT RIGHT. YOU UNDERSTAND THAT RIGHT?

MR. MCCREARY: YES, SIR.

THE COURT: YOU WISH TO HAVE THESE CASES REVIEWED BY THE GRAND JURY OR GIVE UP THAT RIGHT?

MR. MCCREARY: I WOULD LIKE THE RIGHT TO GO TO THE GRAND JURY.

MR. GILLEN: MAY I HAVE A MOMENT, YOUR HONOR. WE HAD DISCUSSED THIS PREVIOUSLY.

THE COURT: SURE.

(CONFERRING WITH COUNSEL.)

MR. MCCREARY: I'D ALIKE TO WAIVE THAT RIGHT, YOUR HONOR.

THE COURT: ALL RIGHT. LET THE RECORD SHOW THAT HE HAS ON EACH INDICTMENT SIGNED A WAIVER OF PRESENTMENT. AND YOU CONFERRED WITH COUNSEL SO YOU UNDERSTAND WHAT YOU ARE DOING?

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MR. MCCREARY: YES, SIR.

THE COURT: AND THAT'S WHAT YOU WANT TO DO?

MR. MCCREARY: YES, SIR.

THE COURT: ALL RIGHT. AT ANY TIME IF YOU WANT TO TALK TO MR. GILLEN, PLEASE DON'T HESITATE TO TALK TO HIM. HE'S YOUR LAWYER, THAT'S WHAT HE'S HERE FOR. I WOULDN'T BE OFFENDED WHATSOEVER IF YOU SAY, YOUR HONOR, I NEED TO TALK TO MY ATTORNEY, OKAY?

MR. MCCREARY: YES, SIR.

THE COURT: NOW IN ADDITION TO THE JAIL TIME THAT THESE CARRY SINCE THEY ARE CONNECTED, THE ACCESSORY BEFORE THE FACT IS CONNECTED TO THE CHARGE OF MURDER, THIS IS WHAT'S CALLED A VIOLENT OFFENSE, A MOST SERIOUS OFFENSE, AND A NO PAROLE OFFENSE. YOU UNDERSTAND THAT?

MR. MCCREARY: YES, SIR.

THE COURT: MOST SERIOUS OFFENSE MEANS THAT IF YOU GET TWO MOST SERIOUS OFFENSES IN YOUR LIFETIME YOU WOULD BE LOOKING AT A POSSIBILITY OF RECEIVING LIFE IN PRISON WITHOUT PAROLE OR IF YOU GOT A MOST SERIOUS AND TWO SERIOUS OFFENSES YOU'D BE LOOKING AT A POSSIBILITY OF LIFE IN PRISON WITHOUT PAROLE. DO YOU UNDERSTAND THAT?

MR. MCCREARY: YES, SIR.

THE COURT: AND THIS IS A NO PAROLE OFFENSE. DO YOU UNDERSTAND THAT?

MR. MCCREARY: YES, SIR.

THE COURT: ALL RIGHT. KNOWING THAT, HOW DO YOU PLEAD TO ACCESSORY BEFORE THE FACT?

MR. MCCREARY: GUILTY.

THE COURT: HOW DO YOU PLEAD TO ACCESSORY AFTER THE FACT?

MR. MCCREARY: GUILTY.

THE COURT: OTHER THAN THE AGREEMENT THAT YOU ARE ENTERING THESE PLEAS AS OPPOSED TO THOSE WITH WHICH YOU WERE ORIGINALLY CHARGED AND THAT YOU HAVE BEEN PROMISED TO RECEIVE A SENTENCE OF NO MORE THAN 30 YEARS AND TO TESTIFY IF ANY OF THE OTHER CO-DEFENDANTS GO TO TRIAL, OTHER THAN THESE PROMISES, HAS ANYONE MADE ANY PROMISE OR GIVEN YOU ANYTHING OR TOLD YOU YOU'D BE REWARDED IN ANY WAY FOR ENTERING YOUR PLEA OF GUILT?

MR. MCCREARY: NO, SIR.

THE COURT: HAS ANYONE THREATENED YOU, HAS ANYBODY COERCED YOU, OR USED ANY FORCE WHATSOEVER TO CAUSE YOU TO ENTER PLEAS OF GUILT TO THESE TWO CHARGES?

MR. MCCREARY: NO, SIR.

THE COURT: ARE YOU ENTERING YOUR PLEAS FREELY

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AND VOLUNTARILY?

MR. MCCREARY: YES, SIR.

THE COURT: AND ARE YOU UNDER THE INFLUENCE OF ANYTHING AT THIS TIME?

MR. MCCREARY: NO, SIR.

THE COURT: YOU HAVE A RIGHT TO A TRIAL BY A JURY ON EACH OF THESE CHARGES, MR. MCCREARY. THEY CAN BE TRIED TOGETHER SINCE THEY ARISE OUT OF A CONTINUING INCIDENT. YOU UNDERSTAND THAT?

MR. MCCREARY: YES, SIR.

THE COURT: YOU HAVE A RIGHT TO, WELL, YOU ARE PRESUMED INNOCENT OF THESE CHARGES AGAINST YOU AND ARE SO PRESUMED UNTIL SUCH TIME AS THE STATE WOULD BE ABLE TO PROVE TO THAT JURY YOUR GUILT BEYOND A REASONABLE DOUBT. YOU UNDERSTAND THAT?

MR. MCCREARY: YES, SIR.

THE COURT: YOU HAVE THE RIGHT TO REMAIN SILENT. THAT IS, NO ONE CAN MAKE YOU TESTIFY OR GIVE ANY STATEMENT TO ANYONE CONCERNING THIS. DO YOU UNDERSTAND THAT?

MR. MCCREARY: YES, SIR.

THE COURT: YOU HAVE THE RIGHT TO HAVE YOUR WITNESSES MADE TO COME TO COURT BY SUBPOENA IF YOU GO TO TRIAL. DO YOU UNDERSTAND THAT?

MR. MCCREARY: YES, SIR.

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THE COURT: YOU HAVE THE RIGHT TO CONFRONT THE WITNESSES AGAINST YOU. THAT IS, YOU AND YOUR ATTORNEY HAVE THE RIGHT TO SEE, HEAR, QUESTION, AND CROSS EXAMINE WITNESSES WHO WOULD TESTIFY FOR THE STATE AGAINST YOU. DO YOU UNDERSTAND THAT?

MR. MCCREARY: YES, SIR.

THE COURT: AND YOU'VE GIVEN A STATEMENT IN THIS CASE AND IT WOULD BE A QUESTION FOR THE COURT AND FOR THE JURY WHETHER OR NOT THAT STATEMENT WAS, YOU ARE GIVING UP ANY RIGHT TO HAVE THAT STATEMENT REVIEWED ANY FURTHER REGARDING WHETHER OR NOT IT WAS VOLUNTARILY GIVEN OR NOT. DO YOU UNDERSTAND THAT?

MR. MCCREARY: YES, SIR.

THE COURT: YOU ALSO GIVE UP ANY DEFENSE THAT YOU MAY HAVE TO THESE OFFENSES WHEN YOU ENTER A PLEA OF GUILT. YOU UNDERSTAND THAT?

MR. MCCREARY: YES, SIR.

THE COURT: KNOWING ALL THOSE THINGS I ASK YOU AGAIN, HOW DO YOU PLEAD TO ACCESSORY BEFORE THE FACT?

MR. MCCREARY: GUILTY.

THE COURT: HOW DO YOU PLEAD TO ACCESSORY AFTER THE FACT?

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MR. MCCREARY: GUILTY.

THE COURT: ALL RIGHT. I WILL NOW ASK THE SOLICITOR TO, FIRST I UNDERSTAND MR. KRENN IS HERE, THE FATHER, AND IF HE WISHES TO COME FORWARD AND MAKE ANY STATEMENT. THE VICTIM'S RIGHTS ACT HAS BEEN COMPLIED WITH.

MR. THOMPSON: IT HAS BEEN COMPLIED WITH. MR. KRENN WOULD LIKE TO ADDRESS THE COURT ON MONDAY WHEN SENTENCING OCCURS, YOUR HONOR.

THE COURT: OKAY, THAT'S FINE.

MR. THOMPSON: AS FAR AS THE FACTS GO, DO WANT ME TO PRESENT THOSE?

THE COURT: I'VE HEARD THE FACTS REPEATEDLY THIS WEEK. I REVIEWED THE STATEMENTS, AND I THINK THOUGH JUST FOR PURPOSES OF GETTING THE AGREEMENT BY THE DEFENDANT AS TO THE FACTS, I THINK YOU NEED TO JUST GO OVER THEM VERY BRIEFLY BECAUSE I NEED TO HAVE CONFIRMATION FROM HIM.

MR. THOMPSON: MAY IT PLEASE THE COURT, YOUR HONOR, IT OCCURRED ON JULY 23, 1998, HERE IN YORK COUNTY ON SOUTH JONES STREET. THE DEFENDANT WAS THE DRIVER OF THE CAR THE FOUR DEFENDANTS WERE IN. AT THAT POINT TIME HE WAS THE ONE WHO OBTAINED THE PISTOL THAT WAS USED. HE OBTAINED THE BULLETS THEN FOLLOWING AND

LOADED THE GUN. HE WAS THE ONE WHO THEN AT SOME POINT TRANSFERRED THE GUN TO WHERE IT ULTIMATELY ENDED UP IN ANTONIO GORDON HANDS. HIS STATEMENTS, AS WELL AS THE STATEMENTS OF HIS CO-DEFENDANTS, POINTED TO THE FACT THAT HE RAN UP UPON MR. KRENN, THAT HE WAS ONE THAT SUGGESTED AT LEAST AT SOME POINT THAT THEY ROB HIM. HE EVEN IN HIS OWN STATEMENT SUGGESTED THAT THEY ROB HIM, IF HE HAD THE GUN HE WOULD ROB THEM OF MARIJUANA. THE OTHERS SUGGESTED HE PRODDED THEM TO GO AHEAD AND ROB THEM. OF COURSE, AT THAT POINT THE ROBBERY DID OCCUR AND THE KILLING OCCURRED WHEN ANTONIO GORDON SHOT THE VICTIM IN THE CASE. AT THAT POINT HE IS THE DRIVER OF THE CAR WHO THEN DROVE OFF, AND OF COURSE WE WOULD HAVE PRESENTED STATEMENTS FROM OTHER WITNESSES WHO SAID THAT HE HAD BRAGGED ABOUT WHAT THEY HAD DONE AND EVEN AT SOME POINT BRAGGED ABOUT BEING THE SHOOTER HIMSELF ALTHOUGH HE WAS NOT. OF COURSE, HE WAS INVOLVED IN THE CASE AND RAN FROM THE POLICE WHEN IT OCCURRED AND SO THAT WOULD FIT ACCESSORY BEFORE AS WELL AS ACCESSORY AFTER THE FACT.

THE COURT: YOU AGREE WITH THOSE FACTS, MR. MCCREARY.

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MR. MCCREARY: YES, SIR.

THE COURT: MR. MCCREARY, I ACCEPT YOUR PLEAS OF GUILT. I FIND THEY ARE FREELY, VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY ENTERED. THEY ARE ENTERED WITH THE ADVICE OF COMPETENT COUNSEL WITH WHOM YOU ARE SATISFIED. I FIND THAT YOU ARE ENTERING IT FREELY AND VOLUNTARILY AND YOU HAVE SIGNED A PLEA OF GUILT AND THE FACTS SUPPORT YOUR PLEA.

NOW I'LL BE GLAD TO HEAR FROM YOU AND YOUR ATTORNEY NOW OR WE CAN WAIT AND DO IT MONDAY WHEN THE SENTENCING PHASE OF THIS PROCESS OCCURS.

MR. GILLEN: WE WILL OPT FOR MONDAY AND PRESENT MITIGATION BEFORE THE COURT AT THAT TIME. HOWEVER, I WOULD LIKE TO ADDRESS ONE ISSUE. IT WAS MY UNDERSTANDING IT WAS A NEGOTIATED PLEA. MR. THOMPSON AND I NEVER DISCUSSED THE ACTUAL WORD OR USE OF WORDS, BUT SINCE WE HAD GONE BACK AND FORTH SO MANY TIMES AND, YOU KNOW, WORKED THIS OUT, IT WAS AT LEAST MY UNDERSTANDING IT WAS A NEGOTIATED PLEA. I DON'T KNOW IF THAT HAS ANY DIFFERENCE IN YOUR HONOR'S DEALINGS WITH THE CASE BUT.

THE COURT: WELL, I UNDERSTOOD THAT AND I

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THOUGHT WHEN --

MR. THOMPSON: I WOULD CONSIDER IT A NEGOTIATED PLEA.

THE COURT: I THOUGHT WHEN I WENT OVER HAD ANY PROMISES BEEN MADE OTHER THAN DOING THIS.

MR. GILLEN: I WAS JUST CONCERNED WHEN MR. THOMPSON SAID THAT IT WAS A RECOMMENDATION.

THE COURT: I'M TREATING IT AS A NEGOTIATED PLEA, THAT WAS MY UNDERSTANDING.

MR. THOMPSON: WE WOULD CALL IT SUCH, YOUR HONOR.

MR. GILLEN: THANK YOU, YOUR HONOR.

THE COURT: WE'LL SEE Y'ALL MONDAY THEN.

MR. THOMPSON: THANK YOU, YOUR HONOR.

(COURT'S IN RECESS.)

(COURT RESUMES.)

MR. THOMPSON: ANTONIO GORDON.

MR. THOMPSON: YOUR HONOR, THIS IS THE STATE OF SOUTH CAROLINA VERSUS ANTONIO GORDON. INDICTMENTS NUMBER 98-GS-46-2849 FOR ATTEMPTED ARMED ROBBERY AND POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. THE DEFENDANT IS PLEADING GUILTY AS CHARGED. 98-GS-46-2850 ATTEMPTED ROBBERY ARMED AND POSSESSION OF A FIREARM DURING THE COMMISSION OF

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A VIOLENT CRIME. HE'S PLEADING GUILTY.

INDICTMENT NUMBER 98-GS-46-2851 FOR CRIMINAL CONSPIRACY. THE DEFENDANT IS PLEADING GUILTY AS CHARGED.

INDICTMENT NUMBER 98-GS-46-2852 INDICTMENTS FOR POSSESSION OF A PISTOL BY A PERSON UNDER 21. THE DEFENDANT IS PLEADING GUILTY AS CHARGED. ON INDICTMENT NUMBER 98-GS-46-2847 FOR MURDER AND POSSESSION OF A FIREARM WHILE IN THE COMMISSION OF A VIOLENT CRIME. THE DEFENDANT IS PLEADING GUILTY AS CHARGED.

EACH OF THE INDICTMENTS HAVE BEEN TRUE BILLED BY THE GRAND JURY. THESE ARE THE CASES WE WOULD HAVE CALLED FOR TRIAL. THIS IS A NEGOTIATED PLEA. AS PART OF THE PLEA WE ARE DISMISSING THE CHARGE OF CARJACKING. WE ARE ASKING FOR A NEGOTIATED SENTENCE OF 40 YEARS. WE ARE ASKING THE COURT TO STRUCTURE THAT SENTENCE SO THAT ALL SENTENCES RUN CONCURRENT TO THE MURDER TO THE 30 YEARS EXCEPT FOR ONE THE ATTEMPTED ARMED ROBBERY WHICH WILL RUN CONSECUTIVE FOR 10 YEARS.

THE COURT: MR. GORDON, YOU ARE 17, RIGHT?

MR. GORDON: YES, SIR.

THE COURT: HOW FAR DID YOU GO IN SCHOOL?

MR. GORDON: NINTH GRADE.

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THE COURT: YOU'RE REPRESENTED BY MR. D'AGOSTINO?

MR. GORDON: YES, SIR.

THE COURT: YOU SATISFIED WITH HIS SERVICES?

MR. GORDON: YES, SIR.

THE COURT: NOW HE IS YOUR ATTORNEY, SO WHILE I GO THROUGH THESE QUESTIONS IF YOU AT ANY TIME, JUST LIKE MR. MCCREARY DID BEFORE YOU, IF YOU NEED TO DISCUSS ANYTHING WITH YOUR LAWYER JUST TELL ME. I WON'T BE OFFENDED AND IT WON'T HURT YOUR CASE AT ALL. HE'S HERE TO HELP YOU AND IF YOU DON'T UNDERSTAND SOMETHING, ASK ME TO REPEAT IT AND IF YOU STILL NEED SOMETHING EXPLAINED TO YOU, STOP AT ANY TIME AND TALK TO MR. D'AGOSTINO. WOULD YOU PROMISE ME YOU'LL DO THAT?

MR. GORDON: YES, SIR.

THE COURT: ALL RIGHT. YOU ARE CHARGED IN SEVERAL INDICTMENTS. THE FIRST IS THAT OF MURDER. THESE ARE ALLEGED TO HAVE OCCURRED IN YORK COUNTY ON JULY 23 OF 1998. IT'S ALLEGED IN THAT INDICTMENT THAT ON THAT DATE WITH MALICE OF AFORETHOUGHT YOU DID KILL ONE ERIC PETER KRENN BY MEANS OF SHOOTING HIM WITH A FIREARM AND THAT HE DIED AS A RESULT THEREOF.

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THIS MURDER CARRIES 30 YEARS TO LIFE. IT IS WHAT'S CALLED A VIOLENT OFFENSE AND A MOST SERIOUS OFFENSE AND IT DOES NOT ALLOW FOR ANY PAROLE. THE MOST SERIOUS OFFENSE MEANS THAT SOMEONE, INCLUDING YOU, IF DURING YOUR LIFETIME YOU RECEIVE TWO SERIOUS OFFENSES OR A COMBINATION OF THREE SERIOUS AND MOST SERIOUS OFFENSES, YOU COULD BE IMPRISONED FOR LIFE WITHOUT ANY PAROLE. THE VIOLENT OFFENSE IS ONE THAT RESTRICTS CERTAIN ACTIVITIES THAT OTHER INMATES MIGHT BE ALLOWED WHILE THEY ARE INCARCERATED. YOU UNDERSTAND ALL THAT?

MR. GORDON: YES, SIR.

THE COURT: HOW DO YOU PLEAD TO THE MURDER CHARGE?

MR. GORDON: GUILTY.

THE COURT: YOU ARE CHARGED WITH POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME IN THREE SEPARATE INDICTMENTS. IT'S ALLEGED THAT YOU POSSESSED A FIREARM AT THE TIME OF THE COMMISSION OF THE MURDER AND AT THE TIME OF THE COMMISSION OF THE TWO ARMED ROBBERIES. THESE EACH WILL CARRY AN ADDITIONAL 30 YEARS IN JAIL. YOU UNDERSTAND THAT?

MR. GORDON: YES, SIR.

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THE COURT: AS TO THE MURDER CHARGE AND THE POSSESSION OF THE FIREARM DURING A VIOLENT CRIME, HOW DO YOU PLEAD?

MR. GORDON: GUILTY, SIR.

THE COURT: ALL RIGHT. IT'S ALLEGED IN ANOTHER INDICTMENT THAT BEING UNDER 21 YEARS OF AGE AT THAT TIME YOU WERE IN POSSESSION OF A PISTOL AND THAT'S IN VIOLATION OF STATE LAW AND THAT CARRIES UP TO FIVE YEARS AND A FINE. YOU UNDERSTAND THAT?

MR. GORDON: YES, SIR.

MR. THOMPSON: YOUR HONOR, I DON'T MEAN TO INTERRUPT BUT ON THE ATTEMPTED ROBBERY YOU SAID CARRIES UP TO 30 YEARS. THEY ACTUALLY CARRY UP TO 20.

THE COURT: I HADN'T EVEN GOT TO THEM.

MR. THOMPSON: I'M SORRY. THERE WAS ONE THAT I---

THE COURT: I WENT FROM THE MURDER, THEN I EXPLAINED THE THREE FIREARMS. I HAVEN'T GOTTEN TO THE ATTEMPTED ARMED ROBBERY YET.

MR. THOMPSON: OKAY. IT MUST HAVE BEEN THE FIREARM YOU SAID CARRIED UP TO 30.

THE COURT: I JUST DIDN'T WANT TO HAVE TO REPEAT IT.

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MR. THOMPSON: THEY CARRY UP TO FIVE ON THE FIREARMS.

THE COURT: THAT'S WHAT I SAID, ISN'T IT?

MR. D'AGOSTINO: NO, YOU SAID UP TO 30 ON THE FIREARMS. THEY CARRY UP TO FIVE YEARS ON THE FIREARMS.

THE COURT: OKAY. LET ME REPEAT IT. I DID MAKE A GRIEVOUS ERROR. GOING BACK TO THE MURDER CHARGE, IN CONJUNCTION WITH THAT YOU ARE CHARGED WITH A SECOND OFFENSE THAT BEING POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. YOU UNDERSTAND THAT?

Enough not Convicted

MR. GORDON: YES, SIR.

THE COURT: YOU ARE ALSO CHARGED WITH THAT SAME OFFENSE IN REGARD TO BOTH ATTEMPTED ARMED ROBBERIES. YOU UNDERSTAND THAT?

MR. GORDON: YES, SIR.

THE COURT: EACH OF THOSE WOULD CARRY AN ADDITIONAL FIVE YEARS. THE FIREARM POSSESSION DURING A VIOLENT CRIME ON THOSE THREE COUNTS. DO YOU UNDERSTAND THAT?

MR. GORDON: YES, SIR.

THE COURT: HOW DO YOU PLEAD THEN GOING BACK ON THE MURDER INDICTMENT AS TO POSSESSION OF A FIREARM DURING THE COMMISSION OF THE MURDER?

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MR. GORDON: PLEAD GUILTY, SIR.

THE COURT: ALL RIGHT. POSSESSION OF A PISTOL BY A PERSON UNDER 21 ALLEGES THAT YOU AT THAT TIME POSSESSED A PISTOL, THAT YOU WERE UNDER 21, AND THAT THIS WAS IN VIOLATION OF STATE LAW AND THIS WOULD CARRY UP TO FIVE YEARS AND A POSSIBILITY OF A FINE. DO YOU UNDERSTAND THAT --

MR. GORDON: YES, SIR.

THE COURT: ---CHARGE AND THAT PENALTY?

MR. GORDON: YES, SIR.

THE COURT: HOW DO YOU PLEAD TO THAT?

MR. GORDON: GUILTY, SIR.

THE COURT: YOU ARE CHARGED WITH CRIMINAL CONSPIRACY, ALLEGED THAT AT THAT TIME JULY 23, 1998, THAT YOU ALONG WITH OTHERS AND TERRANCE MCCREARY, GARY MOFFAT, AND MONTA GORDON DID COMBINE AND CONFEDERATE AND AGREE AND HAVE AN UNDERSTANDING WITH ONE AND THE OTHER TO ENTER INTO THE OFFENSE OF MURDER AND ARMED ROBBERY AND/OR CARJACKING.

CRIMINAL CONSPIRACY CARRIES UP TO FIVE YEARS AND $5,000 FINE. YOU UNDERSTAND THAT?

MR. GORDON: YES, SIR.

THE COURT: HOW DO YOU PLEAD TO THAT?

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MR. GORDON: GUILTY, SIR.

THE COURT: YOU ARE CHARGED WITH TWO COUNTS OF ATTEMPTED ARMED ROBBERY. IT'S ALLEGED THAT AT THAT TIME ON JULY 23, 1998, WHILE ARMED WITH A DEADLY WEAPON YOU DID ATTEMPT TO TAKE FROM ERIC KRENN AND CHRISTOPHER DIAZ, FROM MR. KRENN A BMW 1985, AND CURRENCY FROM MR. DIAZ IN VIOLATION OF STATE LAW.

ATTEMPTED ARMED ROBBERY WOULD CARRY UP TO 20 YEARS. YOU UNDERSTAND THAT?

MR. GORDON: YES, SIR.

THE COURT: IT'S ALSO WHAT'S CALLED A MOST SERIOUS OFFENSE. YOU UNDERSTAND THAT?

MR. GORDON: YES, SIR.

THE COURT: AND IT'S WHAT'S CALLED A PAROLE INELIGIBLE OFFENSE. THAT MEANS AS TO THE ATTEMPTED ARMED ROBBERY CHARGE YOU HAVE TO SERVE UP TO, AT LEAST 85 PERCENT OF THAT CHARGE. YOU UNDERSTAND THAT?

MR. GORDON: YES, SIR.

THE COURT: ON EACH OF THESE YOU ARE CHARGED WITH POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME. HOW DO YOU PLEAD TO ATTEMPTED ARMED ROBBERY INVOLVING CHRISTOPHER DIAZ?

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MR. GORDON: GUILTY, SIR.

THE COURT: AND TO POSSESSION OF A WEAPON AT THAT TIME?

MR. GORDON: GUILTY.

THE COURT: AND HOW DO YOU PLEAD TO ATTEMPTED ARMED ROBBERY INVOLVING ERIC KRENN ON JULY 23, 1998?

MR. GORDON: GUILTY.

THE COURT: AND TO POSSESSION OF A FIREARM AT THAT TIME?

MR. GORDON: GUILTY.

THE COURT: NOW I DON'T KNOW THAT YOU'VE EVER BEEN TREATED FOR ANY MENTAL OR EMOTIONAL DISABILITY, THAT IS, TREATED, BUT YOU HAVE BEEN EXAMINED AND EVALUATED AT AN EARLIER TIME THROUGH THE DEPARTMENT OF JUVENILE JUSTICE AND BY TWO PARTICULAR SETS OF PSYCHOLOGISTS, NOT MEDICAL DOCTORS, BUT PSYCHOLOGISTS IN REGARD TO THIS MATTER. IS THAT CORRECT?

MR. GORDON: YES, SIR.

THE COURT: OTHER THAN THAT, HAVE YOU BEEN TREATED OR RECEIVED ANY KIND OF PSYCHOLOGICAL EVALUATIONS TO YOUR KNOWLEDGE? MR. D'AGOSTINO IS NODDING IN THE AFFIRMATIVE. YOU WANT TO TELL ME ABOUT THAT NOW?

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MR. D'AGOSTINO: YES, YOUR HONOR. IN CONJUNCTION WITH HIS DJJ SENTENCES HE DID ATTEND AND RECEIVE COUNSELING FROM MENTAL HEALTH, CATAWBA MENTAL HEALTH THAT WAS IN 1997, '98, '97. IT MIGHT HAVE BEEN THE FIRST PART OF '98 AS WELL. IN ADDITION TO HAVING HIM EXAMINED BY DR. VENN FOR AN EVALUATION, HE HAS ALSO BEEN EXAMINED BY A PSYCHIATRIST, A DR. ELLEN BERG, A DOCTOR WITH DR. HAROLD MORGAN'S OUTFIT, AND THAT EXAMINATION WAS FOR SEVERAL PURPOSES, MENTAL DEFECT, ISSUES RELATING TO MCNAUGHTON. I WAS CONVINCED THERE WERE NO ISSUES AS FAR AS MENTAL DEFECT AND NO ISSUES ASSOCIATED WITH MCNAUGHTON, NOT GUILTY BY REASON OF INSANITY, SO THERE IS NO MENTAL ILLNESS PROBLEMS. THERE WERE ISSUES AND THAT'S WHY I GOT DR. VENN TO EXAMINE HIM BECAUSE HE DEALT MORE WITH CHILDREN, ISSUES DEALING WITH COMPETENCY, BUT THE COURT HAS ALREADY ADDRESSED THE ISSUE OF COMPETENCY AND I THINK WE'VE HAD TWO PSYCHOLOGISTS DISCUSS THAT, SO THAT'S THE EXTENT OF HIS MENTAL HEALTH EVALUATION AND THE TREATMENT THAT I'M AWARE OF, YOUR HONOR.

THE COURT: ALL RIGHT. THANK YOU. MR. GORDON, OTHER THAN THE FACT THAT THEY ARE RECOMMENDING THAT I GIVE YOU A SENTENCE THAT COMBINES TO A

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TOTAL OF 40 YEARS, HAS ANYONE MADE ANY PROMISE, USED ANY THREATS, OR TOLD YOU YOU'D RECEIVE ANY REWARD OR ANY SPECIAL CONSIDERATION OR HAS ANYBODY USED ANY FORCE OR COERCION TO CAUSE YOU TO ENTER YOUR PLEAS OF GUILT TO THESE OFFENSES?

MR. GORDON: NO, SIR.

THE COURT: ARE YOU ENTERING THESE PLEAS FREELY AND VOLUNTARILY?

MR. GORDON: YES, SIR.

THE COURT: ARE YOU AT THIS TIME UNDER THE INFLUENCE OF ANYTHING THAT WOULD CAUSE YOU TO BE INTOXICATED?

MR. GORDON: NO, SIR.

THE COURT: YOU HAVE A RIGHT TO A TRIAL BY A JURY ON THESE CHARGES. THEY COULD BE TRIED TOGETHER SINCE THEY OCCUR FROM ONE EVENT. YOU'D BE TRIED BY A JURY OF 12 INDIVIDUALS, AND YOU HAVE A RIGHT TO THAT TRIAL. AT THAT TRIAL THE STATE WOULD BE REQUIRED TO PROVE YOUR GUILT BEYOND A REASONABLE DOUBT BEFORE YOU COULD BE CONVICTED OF OFFENSES. YOU DON'T HAVE TO PROVE YOUR INNOCENCE. THE LAW PRESUMES YOU ARE INNOCENT. THE STATE WOULD HAVE TO PROVE YOUR GUILT BEYOND A REASONABLE DOUBT. DO YOU UNDERSTAND THAT?

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MR. GORDON: YES, SIR.

THE COURT: NOW YOU HAVE A RIGHT TO REMAIN SILENT. THAT IS, YOU DO NOT HAVE TO TESTIFY. YOU DO NOT HAVE TO GIVE ANY STATEMENTS. YOU DO NOT HAVE TO SAY ANYTHING ABOUT THIS CASE WHATSOEVER. DO YOU UNDERSTAND THAT?

MR. GORDON: YES, SIR.

THE COURT: YOU HAVE THE RIGHT TO SEE THE WITNESSES, TO HEAR THE WITNESSES, TO HAVE YOUR ATTORNEY CROSS EXAMINE AND YOU CROSS EXAMINE THE WITNESSES WHO THE STATE WOULD CALL TO TESTIFY AGAINST YOU AT THAT TRIAL IF YOU HAD A TRIAL. DO YOU UNDERSTAND THAT?

MR. GORDON: YES, SIR.

THE COURT: YOU ALSO HAVE A RIGHT TO HAVE ANY WITNESSES THAT YOU THINK WOULD TESTIFY WITH INFORMATION THAT WOULD BE HELPFUL TO YOU, YOU HAVE THE RIGHT TO HAVE THE STATE MAKE THOSE WITNESSES OR ISSUE SUBPOENAS FOR THOSE WITNESSES TO MAKE THOSE WITNESSES COME TO COURT TO TESTIFY FOR YOU. YOU UNDERSTAND THAT?

MR. GORDON: YES, SIR.

THE COURT: NOW YOU'VE ALREADY, YOU MADE A CONFESSION OR A STATEMENT IN THIS CASE AND I HAVE ALREADY RULED THAT THEY WERE ADMISSIBLE AT

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THE TRIAL, BUT IF YOU WENT TO TRIAL THE JURY WOULD HAVE TO DETERMINE WHETHER OR NOT YOU HAD MADE THOSE FREELY AND VOLUNTARILY AND UNDERSTANDING YOUR RIGHTS. YOU UNDERSTAND THAT?

MR. GORDON: YES, SIR.

THE COURT: NOW BY ENTERING PLEAS OF GUILT TO EACH OF THESE, AS TO EACH OF THOSE OFFENSES, TO EACH AND EVERY ONE OF THEM, YOU ARE GIVING UP THOSE RIGHTS THAT I HAVE JUST GONE OVER. DO YOU UNDERSTAND THAT?

MR. GORDON: YES, SIR.

THE COURT: KNOWING ALL THESE THINGS THEN I ASK AS TO THE EVENTS ON JULY 23, 1998, HOW DO YOU PLEAD REGARDING THE CHARGE OF MURDER OF ERIC PETER KRENN?

MR. GORDON: GUILTY, SIR.

THE COURT: AND TO POSSESSION OF A FIREARM AT THAT TIME?

MR. GORDON: GUILTY.

THE COURT: HOW DO YOU PLEAD TO POSSESSION OF A PISTOL BY A PERSON UNDER 21 AT THAT TIME?

MR. GORDON: GUILTY.

THE COURT: HOW DO YOU PLEAD TO CRIMINAL CONSPIRACY AT THAT TIME?

MR. GORDON: GUILTY.

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THE COURT: HOW DO YOU PLEAD TO ATTEMPTED ARMED ROBBERY INVOLVING ERIC KRENN AND ONE BMW AT THAT TIME?

MR. GORDON: GUILTY.

THE COURT: AND TO POSSESSION OF A WEAPON DURING THE COMMISSION OF THAT EVENT.

MR. GORDON: GUILTY.

THE COURT: HOW DO YOU PLEAD TO ATTEMPTED ARMED ROBBERY REGARDING CHRISTOPHER DIAZ IN CURRENCY OR MONEY AT THAT TIME?

MR. GORDON: GUILTY.

THE COURT: AND HOW DO YOU PLEAD TO POSSESSION OF A WEAPON DURING THAT?

MR. GORDON: GUILTY.

THE COURT: ALL RIGHT. NOW I'VE HEARD THE FACTS, I HAVE READ YOUR STATEMENTS, BUT I'M GOING TO ASK JUST FOR THE PURPOSES OF THIS HEARING THAT THE SOLICITOR TO GO OVER AGAIN BRIEFLY THE FACTS.

MR. THOMPSON: IF IT PLEASE THE COURT, THIS OCCURRED JULY 23, 1998, HERE IN YORK COUNTY IN ROCK HILL AT SOUTH JONES STREET. THE DEFENDANT IN THIS CASE WAS INVOLVED, AND OF COURSE, SITTING IN THE COURT ARE THE OTHER DEFENDANTS. I HAD DISCUSSED WITH TERRANCE MCCREARY BEFORE

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GETTING OUT OF THE CAR THAT THEY WOULD ROB MR. KRENN AND TRY TO TAKE THE CAR. AS WELL AS WHEN HE GOT OUT HE TOOK THE PISTOL WITH HIM. HE WITNESSED MR. DIAZ PUTTING HIM AND MONTA GORDON AT THE WINDOW OF THE VICTIM'S CAR TRYING TO STEAL IT. AS A MATTER OF FACT, MR. DIAZ WOULD HAVE TESTIFIED THAT THIS DEFENDANT HAD OR THAT THE DEFENDANT AT THE WINDOW HAD PUT HIS HAND ON THE CAR DOOR TRYING TO OPEN IT WHILE POINTING THE GUN AT MR. KRENN. THE WINDOW OF THE CAR BEING DOWN AT THAT TIME. THIS DEFENDANT'S PALM PRINT WAS LIFTED OFF OF THE DOOR EXACTLY WHERE THE WITNESS STATED HE WOULD HAVE BEEN TOUCHING IT TRYING TO OPEN IT AND IT WAS MATCHED AND WE WOULD HAVE HAD TESTIMONY TO THAT AFFECT.

THE SHOT WAS FIRED BY THIS DEFENDANT. HE TOOK THE GUN BACK IN THE CAR AND RAN OFF AT THAT POINT IN TIME. HE'S UNDER 21 YEARS OF AGE. AND EVEN HIS GIRLFRIEND CHYENCA DIXON DID ADMIT TO ME WHEN I INTERVIEWED HER TO PREPARE FOR THIS TRIAL THAT MR. GORDON HAD ADMITTED TO HER THAT NIGHT HE WAS THE ONE WHO FIRED THE SHOT AND SHE SAID IF SHE WAS CALLED WOULD HAVE TESTIFIED TO THAT.

THE STATE WOULD HAVE PRODUCED THOSE THINGS AT

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TRIAL AND THAT IS THE BASIS FOR HIS GUILTY PLEA AT THIS TIME, YOUR HONOR.

THE COURT: ALL RIGHT. YOU AGREE WITH THOSE FACTS, MR. GORDON?

MR. GORDON: YES, SIR.

THE COURT: MR. GORDON, I ACCEPT YOUR PLEAS OF GUILT. I FIND THEY ARE FREELY, VOLUNTARILY, KNOWINGLY, AND INTELLIGENTLY ENTERED AND THEY ARE ENTERED WITH THE ADVICE OF A COMPETENT COUNSEL WITH WHOM YOU TELL ME YOU ARE SATISFIED. I FIND THEY ARE FREELY AND VOLUNTARILY ENTERED. YOU HAVE SIGNED PLEAS OF GUILT ON EACH INDICTMENT AND THE FACTS SUPPORT YOUR PLEA.

NOW ANYTHING YOU WANT TO ASK ME AT THIS TIME?

MR. GORDON: NO, SIR.

THE COURT: ALL RIGHT. YOU HAVE A RIGHT NOW, YOU AND YOUR ATTORNEY, TO MAKE A STATEMENT OR YOU CAN WAIT AND DO THAT MONDAY WHEN WE ENTER SENTENCE.

MR. D'AGOSTINO: WE'LL WAIT UNTIL MONDAY UNTIL, DO YOU HAVE ANYTHING YOU WANT TO SAY?

MR. GORDON: (NODS HEAD.)

THE COURT: NOW AS FAR AS THE VICTIM'S RIGHTS ACT I UNDERSTAND MR. KRENN IS PRESENT ALSO FOR THIS.

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MR. THOMPSON: YES, SIR.

THE COURT: DOES HE WISH TO STATE ANYTHING AT THIS TIME?

MR. THOMPSON: HE WILL ADDRESS THE COURT MONDAY.

THE COURT: ALL RIGHT. THANK YOU. WE'LL SEE YOU MONDAY.

THE COURT: THAT CONCLUDES THE COURT FOR THIS WEEK.

(COURT'S IN RECESS AT 6:40 P.M.)

(COURT RESUMES ON MONDAY, JULY 19, 1999.)

MR. THOMPSON: ANTONIO GORDON, MONTA GORDON, AND TERRANCE MCCREARY. PLEASE THE COURT, YOUR HONOR.

MR. GILLEN: YOUR HONOR, MAY WE APPROACH BRIEFLY.

THE COURT: YES.

(BENCH CONFERENCE.)

MR. THOMPSON: MAY IT PLEASE THE COURT, YOUR HONOR.

THE COURT: YES, SIR.

MR. THOMPSON: WE'RE HERE AT THIS POINT WITH THE STATE OF SOUTH CAROLINA VERSUS ANTONIO GORDON, MONTA GORDON, AND TERRANCE MCCREARY ALL WHICH ENTERED GUILTY PLEAS FRIDAY LAST WEEK. THEY ARE HERE NOW FOR SENTENCING. THE VICTIM

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MR. KRENN IS PRESENT AS WELL AS WITH CHRIS DIAZ. MR. KRENN WISHES TO ADDRESS THE COURT AT THE APPROPRIATE TIME. THERE ARE REMAINING TWO VICTIM IMPACT STATEMENTS WHICH I PASS UP TO THE COURT. I BELIEVE THEY ARE BASICALLY COPIES OF THE FIRST ONE THAT WAS HANDED UP.

TO REMIND THE COURT AS TO ANTONIO GORDON, HE PLEAD GUILTY TO MURDER, ATTEMPTED ARMED ROBBERY TWO COUNTS, CONSPIRACY, AND THREE COUNTS OF POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME. AS PART OF THE NEGOTIATIONS ON HIM, WE HAVE NEGOTIATED 40 YEARS AS THE SENTENCE THAT WE ARE REQUESTING. WE WOULD ASK FOR 30 YEARS ON THE MURDER CHARGE, THAT EVERYTHING ELSE RUN CONCURRENT WITH THAT CHARGE EXCEPT FOR ONE OF THE ATTEMPTED ARMED ROBBERIES WHICH IS TO RUN TEN YEARS CONSECUTIVE.

AS TO MONTA GORDON, HE PLEAD GUILTY TO MURDER, TWO COUNTS OF ATTEMPTED ARMED ROBBERY, CONSPIRACY, AND FAILURE TO STOP FOR A BLUE LIGHT. WE'RE ASKING, YOUR HONOR, FOR A CONCURRENT SENTENCE ON THOSE AND A 30 YEAR SENTENCE.

AS TO TERRANCE MCCREARY, HE PLEAD GUILTY TO ACCESSORY BEFORE THE FACT TO MURDER AND

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ACCESSORY AFTER THE FACT TO MURDER, AND REQUESTING 30 YEARS SENTENCE ON HIM AS WELL.

THE STATE DOES HAVE THE RECORDS OF THE DEFENDANTS YOUR HONOR, AT THE APPROPRIATE TIME.

THE COURT: ALL RIGHT. LET'S DO MR. ANTONIO GORDON. TELL ME HIS RECORD.

MR. THOMPSON: MR. ANTONIO GORDON IS ALL A JUVENILE RECORD. IN 1993 HE WAS CONVICTED OF AN ATTEMPT CHARGE. WE TRIED TO FIND OUT EXACTLY WHAT THAT IS BUT THE RECORDS WEREN'T QUITE CERTAIN. IN 1995 THREE CONVICTIONS OF BURGLARY SECOND AND MALICIOUS INJURY TO PROPERTY AND THREE COUNTS OF PETITE LARCENY AND HE WENT TO R AND E ON THOSE CHARGES.

wrong only ① Burglary

IN 1997 ASSAULT AND BATTERY AND PETITE LARCENY TO WHICH HE WENT TO R AND E AS WELL. AND IT'S MY UNDERSTANDING THAT HE WAS RELEASED FROM R AND E IN JANUARY OF 1998 AND ABOUT THREE OR FOUR MONTHS LATER WAS RELEASED FROM PAROLE OR PROBATION FROM THAT PARTICULAR CHARGE AT THAT TIME.

THE COURT: MR. D'AGOSTINO, BE GLAD TO HEAR FROM YOU AND THEN FROM MR. GORDON.

MR. D'AGOSTINO: THANK YOU, YOUR HONOR. YOUR HONOR, AS YOU KNOW ANTONIO GORDON, HE WAS 16

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YEARS OF AGE AT THE TIME THIS OCCURRED. HE'S 17 YEARS OLD NOW. TODAY IN THE COURTROOM WITH HIM IS HIS MOTHER LORETTA BROOKS AND HIS STEPFATHER RANDY BROOKS.

HE DROPPED OUT OF SCHOOL IN THE 9TH GRADE. HE'S OUT OF SCHOOL. HE DIDN'T EVEN COMPLETE THE 9TH GRADE, YOUR HONOR.

THIS WHOLE SITUATION IS A VERY TRAGIC SITUATION. IT'S VERY TRAGIC FOR THE VICTIMS, THE KRENN FAMILY, MR. DIAZ AND HIS FAMILY. IT'S SOMETHING THAT NEVER SHOULD HAVE HAPPENED AND THERE IS ONLY ONE THING THAT I HAVE NOT DONE OR DID NOT DO SINCE MY REPRESENTATION OF ANTONIO BEGAN AND THAT WAS APRIL 21 WHEN I WAS FIRST APPOINTED TO REPRESENT HIM AND SOON AFTER THAT HE ALWAYS, ONE THING HE WANTED TO DO WAS APOLOGIZE TO MR. KRENN AND FOR WHAT HAPPENED, FOR WHAT HE DID, HIS ROLE IN IT AND EVERYTHING THAT WENT ON THAT NIGHT. HE WROTE ME SEVERAL LETTERS AND I, OF COURSE, COULD NOT, FOR OBVIOUS REASONS, COULD NOT ALLOW HIM TO MEET WITH HIM. AND I DIDN'T THINK HE THINK THAT MR. KRENN WOULD WANT TO MEET WITH HIM, BUT ONE THING HE DID SAY AND WANT TO DO IS APOLOGIZE FOR WHAT HE HAD DONE AND HE'S SORRY FOR WHAT HE HAD DONE. AND I WAS ALSO NOTIFIED

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BY THE SOLICITOR'S OFFICE THAT SOME OF THE FACTS THAT MIGHT HAVE COME OUT AT TRIAL INDICATES THAT HE WAS, IN ANY EVENT HE WAS SORRY, HE IS SORRY FOR WHAT HE DID. HE KNOWS WHAT HE DID WAS WRONG AND THERE IS NO EXCUSE AND HE'S PLEADING GUILTY. WE JUST ASK THE COURT TO GO ALONG WITH THE NEGOTIATED SENTENCE FOR 40 YEARS. IT'S GOING TO BE A VERY LONG TIME FOR HIM. HOPEFULLY HE CAN GET HIS GED WHILE HE'S DOWN THERE. YOU HEARD ABOUT HIS LIMITED MENTAL CAPACITY. ALTHOUGH HE'S NOT RETARDED BECAUSE NOBODY'S HAD THE OPPORTUNITY TO DO A FULL BACKGROUND. DR. VENN DIDN'T GET TO SPEAK WITH HIS FAMILY MEMBERS, THEY DIDN'T KNOW MUCH ABOUT HIM, BUT THE RECORDS FROM DJJ FROM 1998 AND FROM 1995 ALL INDICATE BORDERLINE FUNCTIONAL IQS. 1995 PSYCHOLOGICAL SHOWS AN IQ 68. DR. VENN'S IQ EXAMINATION SHOWS IQ 68. HE IS AN INDIVIDUAL THAT'S EASILY LEAD AROUND, BUT THAT IS NOT AN EXCUSE.

WE JUST ASK THE COURT TO GO ALONG WITH THE RECOMMENDATION.

ON BEHALF OF MR. ANTONIO GORDON, HE DOES APOLOGIZE. I KNOW IT DOESN'T CHANGE ANYTHING, BUT HE DOES APOLOGIZE TO MR. KRENN, MR. DIAZ, AND WE ASK THE COURT TO ACCEPT THE NEGOTIATED

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SENTENCE.

THE COURT: I THINK WHAT I'M GOING TO DO IS HEAR FROM EACH LAWYER AND THEN FROM ANY OF THE VICTIMS AND THEN FROM THE DEFENDANTS THEMSELVES. ALL RIGHT. MR. MATLOCK, ON BEHALF OF MONTA GORDON.

MR. MATLOCK: ON BEHALF OF MONTA GORDON JUST TO ECHO SOME OF THE COMMENTS MR. D'AGOSTINO, CERTAINLY THIS IS A CASE OF HUMAN TRAGEDY OF THE HIGHEST ORDER.

I WOULD ALSO LIKE TO POINT OUT THAT MR. MONTA GORDON, ANTONIO'S BROTHER, IS JUST VERY REMORSEFUL AND PRAYS FOR THE FAMILY OF MR. KRENN AND IT JUST ABSOLUTELY AGHAST ABOUT WHAT HAPPENED AND HOW HE GOT INVOLVED IN THE ENTIRE PROCESS. ALTHOUGH WE ARE NOT IN ANY WAY TRYING TO DEFEND AN INDEFENSIBLE CRIME WE WOULD LIKE TO POINT OUT THAT MR. GORDON REALIZES THAT AND UNDERSTANDS THE LEGAL CONCEPTS OF THE HANDS OF ONE IS THE HANDS OF ALL AND IS IN NO WAY TRYING TO MITIGATE OR EXCUSE HIS BEHAVIOR HERE TODAY. BUT HE WAS NEITHER THE ONE WHO ACTUALLY FIRED THE SHOT NOR WAS IT HE WHO ENCOURAGED OR URGED HIS BROTHER TO COMMIT THIS CRIME. HE WAS IN THE BACK SEAT OF THE CAR AND WHEN HE GOT OUT AFTER

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HIS BROTHER, AT THE URGING OF THE DRIVER, GOT OUT WITH THE GUN AND WENT OVER TO THE DRIVER'S SIDE OF THE CAR.

YOUR HONOR, AS I KNOW YOU ARE WELL AWARE A GUILTY PLEA IS THE FIRST STEP ON THE ROAD TO REHABILITATION AND AN ACKNOWLEDGEMENT OF CULPABILITY AND REMORSE OF ITSELF. WE WOULD JUST ASK THAT YOUR HONOR CONSIDER THAT AND CONSIDER THE FACT THAT MR. MONTA GORDON HAD AGREED TO WORK WITH THE PROSECUTION IN THIS CASE AND THAT HE WOULD ASK THAT YOUR HONOR SENTENCE HIM TO NO MORE THAN THE RECOMMENDATION OF THE STATE IN THIS CASE.

ALSO I'D LIKE TO POINT OUT AT THE TIME OF THE CRIME HE WAS ONLY 17 YEARS OLD. HE HAS AN ELEVENTH GRADE EDUCATION.

THE COURT: MR. GILLEN.

MR. GILLEN: JUST BRIEFLY, YOUR HONOR, MY CLIENT HAS ASKED ME OUT OF RESPECT FOR MR. KRENN NOT TO PRESENT ANY MITIGATION. WE WOULD JUST RESPECTFULLY ASK THE COURT TO GO ALONG WITH THE NEGOTIATED PLEA.

MRS. CLARK: YOUR HONOR, WE'D LIKE TO POINT OUT MR. MONTA GORDON IS CURRENTLY ON PROBATION. WE'D LIKE TO HANDLE THE PROBATION MATTER AT THE

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SAME TIME IF THAT WOULD BE OKAY.

THE COURT: YOU WANT TO GO AHEAD AND SERVE HIM.

MRS. CLARK: YOUR HONOR, HE'S ALREADY BEEN SERVED.

THE COURT: ALL RIGHT.

MRS. CLARK: THE ONLY THING WE HAVE IS HE IS PLEADING GUILTY TO THIS OFFENSE.

THE COURT: YOU GOT THE PAPERWORK TO GIVE ME.

MRS. CLARK: YES, SIR.

MR. THOMPSON: YOUR HONOR, WE DO HAVE THE RECORD AS TO MONTA GORDON. HE WAS CONVICTED AS A JUVENILE IN 1993 TWO COUNTS OF PETITE LARCENY THEN THE REST OF HIS CONVICTIONS AS A JUVENILE ARE IN 1995 POSSESSION OF CRACK COCAINE, BREAKING AND ENTERING AN AUTOMOBILE, GRAND LARCENY AUTO. POSSESSION OF BURGLARY TOOLS, FAILURE TO STOP FOR A BLUE LIGHT, TWO COUNTS OF SHOPLIFTING. THEN AS AN ADULT HE HAD CONVICTIONS FOR INTIMIDATING A WITNESS. THIS WAS A CONVICTION DATE IN 1998. ACTUALLY IN MAY OF 1998 INTIMIDATING A WITNESS. SIMPLE ASSAULT AND POSSESSION OF CRACK COCAINE, AND THAT'S WHAT I BELIEVE HE WAS ON PROBATION FOR AT THE TIME THIS OCCURRED.

AND AS FOR TERRANCE MCCREARY, YOUR HONOR, HIS

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RECORD IS JUVENILE AND ADULT RECORD. JUVENILE BEGINNING IN 1992 WITH BURGLARY SECOND AND GRAND LARCENY AND MALICIOUS INJURY TO PROPERTY. THEN IN 1993 GRAND LARCENY, SHOPLIFTING, AND DRIVING WITHOUT A LICENSE. THEN AS AN ADULT IN 1994 PETITE LARCENY AND B AND E AUTO AND SHOPLIFTING. AND STILL IN 1994 USE OF VEHICLE WITHOUT OWNER'S CONSENT. IN 1995 POSSESSION OF CRACK COCAINE. THEN IN 1996 STRONG ARMED ROBBERY.

THE COURT: MR. MONTA GORDON, I ALSO HAVE IN FRONT OF ME A PROBATION MATTER. YOU'VE BEEN SERVED WITH THE CITATION TODAY INDICATING YOU VIOLATED A SENTENCE JUDGE MARTIN IMPOSED OF THREE YEARS FOR POSSESSION OF CRACK COCAINE FIRST OFFENSE BACK IN MAY OF 1998. IS THAT THE CORRECT SENTENCE?

MR. GORDON: YES, SIR.

THE COURT: AND YOU WERE SERVED WITH THIS CITATION?

MR. GORDON: YES, SIR.

THE COURT: AND IT'S TRUE THAT THEY ALLEGE THE VIOLATION IS ENTERING THIS PLEA TODAY OR ACTUALLY ON FRIDAY AND THAT, OF COURSE, IS A FACT?

MR. GORDON: YES, SIR.

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THE COURT: I FIND THAT IS A SUBSTANTIAL VIOLATION AND I REVOKE THAT PAROLE SENTENCE. ALL RIGHT. NOW I'LL BE GLAD TO HEAR FROM ANYONE ELSE IN REGARD TO THIS MATTER, MR. THOMPSON.

MR. THOMPSON: PLEASE THE COURT, YOUR HONOR. MR. KRENN.

THE COURT: GOOD MORNING.

MR. KRENN: GOOD MORNING. I'D LIKE TO MAKE A LITTLE STATEMENT IF I COULD.

THE COURT: PLEASE.

MR. KRENN: OKAY. WHEN THEY ROBBED MY SON'S LIFE, THEY NOT ONLY ROBBED HIM THEY ROBBED HIS 87-YEAR-OLD GRANDMOTHER OF HER ONLY GRANDSON WHICH SHE LOST HER ONLY DAUGHTER TO CANCER BACK IN '87. THEY ROBBED HIS FRIENDS OF A GREAT OUTDOOR PERSON, A HANDSOME YOUNG MAN WHO LOVED LIFE, AND HAD A LOT TO GIVE. THEY ROBBED HIS TEACHERS OF A TALENTED ARTIST AND A GOOD STUDENT. THEY ROBBED A COMMUNITY OF AN OUTSTANDING YOUNG MAN WHO HAD BEEN A GREAT ASSET TO THIS COMMUNITY. AND THEY ROBBED ME, HIS FATHER, OF A SON I TAUGHT TO RESPECT PEOPLE, TO LOVE LIFE, AND TO LOVE THIS GREAT COUNTRY WE LIVE IN.

WE TRAVELLED ALL OVER THE COUNTRY AND WE LEARNED

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A LOT ABOUT ITS PEOPLE. ERIC LEARNED WHAT THIS COUNTRY IS ALL ABOUT. HE LEARNED HOW TO RESPECT OTHER PEOPLE AND THEIR PROPERTY.

THESE CRIMINALS ALSO ROBBED ME OF EVER HAVING JOY OF GRANDCHILDREN OR WATCHING MY SON GROW UP AND PROSPER. THE GREED THESE PEOPLE SHOW, THEY SAW SOMETHING AND THEY FELT THEY COULD JUST TAKE IT WITH NO REMORSE OR GRIEF, JUST GREED. IN THIS CASE MY 13-YEAR-OLD BMW WHICH I LET MY SON DRIVE. HE WAS PROUD OF THAT CAR. HE WASHED IT ALMOST EVERYDAY. HE CUT GRASS TO MAKE MONEY TO PUT GAS IN IT AND I ADDED A CD PLAYER FOR HIS BIRTHDAY PRESENT. HE FELT CLOSE TO THAT CAR AND PAID FOR PART OF IT WITH INSURANCE MONEY AFTER HIS MOTHER'S DEATH FROM CANCER WHEN HE WAS ONLY FIVE YEARS, SO HE FELT LIKE IT WAS A LINK TO HER. HE MISSED HIS MOM A LOT, BUT I DID THE BEST I COULD AS A SINGLE FATHER. HE NEVER FAILED TO TELL ME HE LOVED ME EVEN IN FRONT OF HIS TEENAGE FRIENDS.

THESE PEOPLE NEVER CARED ABOUT ANY OF THAT. THEY HAD A .357 CALIBER CHROME-PLATED GUN AND A LIFE OF TROUBLE WITH THE LAW. BUT THEY WERE OUT AMONG SOCIETY EVEN AFTER MOST HAD PREVIOUS TROUBLE WITH THE LAW. SO THIS IS ONE MORE

HOLD-UP, A CARJACKING, OR ROBBERY, WHO CARES. App. P. 201

IN THE NIGHTMARE THAT THIS IS, AS ONE CAN IMAGINE THE NIGHTMARE OF BEING CALLED TO THE HOSPITAL AT 3 O'CLOCK IN THE MORNING AND YOU'VE SEEN YOUR CHILD ON A STAINLESS STEEL TABLE, EYES STILL HALF-OPEN, BUT NO LIFE COMING FROM THEM. THE HOPE THAT SOMEHOW THEY HAD MADE A MISTAKE AND HE WASN'T DEAD. THE NIGHTMARES AND THE SENSE OF PAIN AND HURT AND LOSS THAT FOLLOWED. ONE HOPES ONE WOULD NEVER HAVE TO HAVE ANOTHER PARENT GO THROUGH A TRAGEDY LIKE THAT. EVEN LIKE THE COLUMBINE HIGH SCHOOL IN COLORADO, MY HEART GOES OUT TO ALL FRIENDS AND THEIR VICTIMS AND AGAIN SOMEHOW YOU LIVE THE HORROR EVERY TIME YOU SEE THIS.

AND IN CLOSING I'D LIKE TO THANK THE COURT, THE SOLICITOR'S OFFICE, AND THE ROCK HILL POLICE DEPARTMENT FOR THEIR ACTIONS THAT HAVE BEEN DEPICTED OF JUSTICE. THANK YOU, YOUR HONOR.

THE COURT: THANK YOU, MR. KRENN.

MR. THOMPSON: YOUR HONOR, THE STATE WOULD HAVE NOTHING ELSE.

THE COURT: MR. DIAZ DID NOT WANT TO.

MR. THOMPSON: NO, YOUR HONOR, MR. DIAZ DID NOT WANT TO ADDRESS THE COURT.

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THE COURT: ALL RIGHT. ANTONIO GORDON, ANYTHING YOU WANT TO SAY?

MR. GORDON: I'M SORRY FOR MY ACTIONS THAT I, TOOK PLACE AND THE CRIME. I'M SORRY FOR HIS FAMILY. AND ALL THE PEOPLE THAT I DONE HURT DURING THIS SITUATION.

THE COURT: MONTA GORDON, ANYTHING YOU WANT TO SAY?

MR. GORDON: I'M SORRY FOR THE KRENN FAMILY FOR THIS ACCIDENT THAT HAPPENED. WE KNOWED THAT IT WAS A BIG MISTAKE IN OUR LIFE BECAUSE AS TEENAGERS WE HAD A LOT TO LIVE FOR, BUT NOW SINCE THE INDICTMENT WE HAVE NOTHING TO LIVE FOR BUT TO SERVE THE TIME FOR THE CRIME THAT WE DID. I WANT TO SAY I'M SORRY FOR MY FAMILY FOR LETTING THEM GO THROUGH THE SITUATION I'M IN AND ALL THAT. HOPEFULLY MR. KRENN WILL FORGIVE US ONE DAY FOR THE SIN WE DID.

THE COURT: ALL RIGHT. MR. MCCREARY.

MR. MCCREARY: I'M SORRY FOR HURTING ALL THE PEOPLE AND MR. KRENN AND HIS FAMILY FOR TAKING THE LIFE OF HIS SON, HIS ONLY SON. I WISH WE COULD BRING HIM BACK, BUT WE CAN'T. AND I'M JUST SORRY.

THE COURT: THANK YOU. ANYTHING FURTHER, MR.

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D'AGOSTINO.

MR. D'AGOSTINO: NO. THANK YOU, YOUR HONOR.

THE COURT: MR. MATLOCK.

MR. MATLOCK: NOTHING.

THE COURT: MR. GILLEN.

MR. GILLEN: NO, YOUR HONOR.

THE COURT: MR. MCCREARY, THE SENTENCE ON ACCESSORY BEFORE THE FACT OF MURDER THE SENTENCE IS 30 YEARS. ACCESSORY AFTER THE FACT OF MURDER THE SENTENCE IS 15 YEARS TO RUN CONCURRENT. YOU UNDERSTAND THAT?

MR. MCCREARY: YES, SIR.

THE COURT: IF YOU BELIEVE THERE HAS BEEN ANY ERROR COMMITTED IN THE WAY WE'VE HANDLED YOUR PLEA YOU HAVE TEN DAYS TO FILE AN APPEAL. YOU UNDERSTAND THAT?

MR. MCCREARY: YES, SIR.

THE COURT: MONTA GORDON, ON MURDER YOUR SENTENCE IS FOR 30 YEARS. ON CRIMINAL CONSPIRACY THE SENTENCE IS FIVE YEARS TO RUN CONCURRENT. THE SENTENCE ON ATTEMPTED ARMED ROBBERY IS FOR 20 YEARS TO RUN CONCURRENT. THE SENTENCE ON FAILURE TO STOP FOR A BLUE LIGHT IS ONE YEAR TO RUN CONCURRENT. ON THE OTHER ATTEMPTED ARMED ROBBERY THE SENTENCE IS FOR 20

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YEARS TO RUN CONCURRENT. YOU UNDERSTAND THAT?

MR. GORDON: YES, SIR.

THE COURT: IF YOU BELIEVE THERE HAS BEEN ANY ERROR COMMITTED IN THE WAY YOUR CASE HAS BEEN HANDLED AND THE SENTENCE I'VE IMPOSED YOU HAVE TEN DAYS TO FILE AN APPEAL. YOU UNDERSTAND THAT?

MR. GORDON: YES, SIR.

THE COURT: MR. ANTONIO GORDON, YOUR SENTENCE ON POSSESSION OF A PISTOL UNDER THE AGE OF 21 IS FOR FIVE YEARS. THAT'S CONCURRENT WITH THE OTHER SENTENCES. YOUR SENTENCE FOR CRIMINAL CONSPIRACY IS FIVE YEARS. THAT'S TO RUN CONCURRENT. YOU HAVE THREE CHARGES OF POSSESSION OF A FIREARM DURING A VIOLENT CRIME. THE SENTENCE ON EACH OF THOSE IS FOR FIVE YEARS AND EACH OF THOSE ARE TO RUN CONCURRENT. ON ATTEMPTED ARMED ROBBERY, ON INDICTMENT 98-46-2850 THE SENTENCE IS FOR TEN YEARS, AND THAT'S TO RUN CONCURRENT. THE SENTENCE ON MURDER IS FOR A TERM OF 30 YEARS, AND ON THE OTHER ATTEMPTED ARMED ROBBERY 98-46-2849 THE SENTENCE IS TEN YEARS AND THAT'S CONSECUTIVE TO THE MURDER SENTENCE. YOU UNDERSTAND ALL THAT?

MR. GORDON: YES, SIR.

THE COURT: ALL RIGHT. IF YOU BELIEVE I'VE COMMITTED ANY ERROR IN THE WAY I'VE HANDLED THE PLEA OR THE SENTENCE I'VE IMPOSED YOU HAVE TEN DAYS TO FILE AN APPEAL. DO YOU UNDERSTAND THAT?

MR. GORDON: YES, SIR.

THE COURT: THANK YOU.

MR. D'AGOSTINO: DID THEY ALL GET CREDIT FOR TIME SERVED.

THE COURT: CREDIT FOR TIME SERVED.

MR. D'AGOSTINO: THANK YOU, YOUR HONOR.

(END OF PROCEEDINGS.)

I, THE UNDERSIGNED JANET M. RICH, OFFICIAL COURT REPORTER FOR THE 16TH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE TESTIMONY HAD AND EVIDENCE INTRODUCED IN THE TRIAL OF THE CAPTIONED CASE, RELATIVE TO APPEAL, IN THE COURT OF GENERAL SESSIONS FOR YORK COUNTY, SOUTH CAROLINA, ON THE 12, 14, & 16 OF JULY, 1999.

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

APRIL 3, 2000

Janet M Rich

JANET M. RICH

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A (NODS HEAD.)
Q DID Y'ALL LEAVE WITH MONTA?
A NO, SIR.
Q YOU DIDN'T FIND MONTA WHEN YOU WERE OUT THERE THE FIRST TIME?
A WE TALKED TO MONTA. HE GAVE US A FICTITIOUS NAME AND WE DID NOT KNOW THAT WE WERE LOOKING FOR MONTA GORDON AT THAT TIME. HE HAD NOT BEEN DEVELOPED AS A SUSPECT AT THAT TIME.
Q SO WHAT HAPPENED NEXT? DID Y'ALL --
A WE LEFT THERE AND WENT BACK TO THE STATION.
Q ALL RIGHT.
A AT THAT TIME WE DEVELOPED INFORMATION THAT MONTA AND ANTONIO ALONG WITH TWO OTHER INDIVIDUALS WERE THE SUSPECTS THAT WE WERE LOOKING FOR IN THIS MURDER.
Q WHERE DID YOU GET THAT INFORMATION FROM?
A FROM TALKING WITH MS. DIXON.
Q WHAT TIME WAS THAT?
A 8:30, 9 O'CLOCK. I'M NOT REAL SURE.
Q AND THEN WHO ALL WENT BACK OUT TO THE HOUSE?
A MYSELF AND SEVERAL OFFICERS.
Q WHICH OFFICERS?
A SERGEANT WATTS, STEVE THOMPSON, DON DOLSTER, RODNEY PICKEL, DERRICK WILLIAMS.

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Q AND WHO WAS AT THE HOUSE THAT TIME?
A WE WENT BACK TO BOTH THE MOBILE HOMES, BEFORE WE GOT THERE, THERE AGAIN WE ARE SITTING AT RAMBO AND VERNSDALE, AND THE TWO GIRLS AND ANTONIO CAME UP THE DIRT ROAD AND WE ARRESTED ANTONIO THEN.
Q WHICH TWO GIRLS?
A MS. DIXON AND I BELIEVE THIS MS. KENNEDY, I'M NOT SURE, BUT I BELIEVE MS. KENNEDY.
Q SO YOU HAD TAKEN MS. DIXON TO THE LAW CENTER THEN LET HER GO?
A THAT'S CORRECT.
Q AND SHE CAME BACK HOME AND YOU GOT HER AGAIN?
A THAT'S CORRECT. WE DID NOT GET HER AGAIN. THE SECOND TIME.
Q WELL, I UNDERSTAND BUT SINCE SHE WAS COMING BACK OUT WITH ANTONIO?
A THAT'S CORRECT.
Q AND YOU PLACED ANTONIO UNDER ARREST THEN?
A THAT'S CORRECT.
Q DID YOU HAVE A WARRANT FOR HIM AT THAT TIME?
A NO, SIR.
Q HAD Y'ALL BEEN CHASING HIM OR NOT AT THAT TIME?
A NO, SIR.
Q SO AFTER YOU PLACED HIM UNDER ARREST, WHAT DID

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YOU DO NEXT?
A HE WAS PLACED IN THE BACK OF THE PATROL VEHICLE AND WE WENT DIRECTLY TO THE TRAILERS AND ARRESTED MONTA.
Q AT WHAT TIME WAS THIS?
A 9:30, 10 O'CLOCK, 10:30 MAYBE.
MR. D'AGOSTINO: ONE MOMENT, YOUR HONOR.
Q AND SO AT 9:30 OR 10 O'CLOCK YOU ARRESTED ANTONIO?
A IT MAY HAVE BEEN 10:30.
Q WHERE DID HE GO FROM THERE?
A TO THE LAW CENTER.
Q WHAT CONTACT DID YOU HAVE WITH HIM AT THE LAW CENTER?
A HE WAS BROUGHT TO THE LAW CENTER THERE AND WE WERE IN THE PROCESS OF TRYING TO TALK TO THOSE TWO INDIVIDUALS AND ALSO TRYING TO OBTAIN A LOCATION ON MR. MCCREARY AND MR. MOFFAT. SHORTLY AFTER WE GOT BACK TO THE LAW CENTER, I SAY SHORTLY, MAYBE 30 OR MINUTES OR AN HOUR, WE DID OBTAIN THE LOCATION WHERE THE OTHER TWO INDIVIDUALS WERE AT. AT WHICH TIME WE WENT TO FARGO STREET AND ARRESTED THEM.
Q DO YOU KNOW WHO TOOK ANTONIO FROM HIS HOUSE AND TRANSPORTED HIM TO THE LAW CENTER?

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A OFFICER DERRICK WILLIAMS.
Q AFTER ANTONIO WAS TAKEN TO THE LAW CENTER, DO YOU KNOW WHERE HE WAS PLACED?
A I SEEN HIM, I REMEMBER HIM ONE TIME SITTING IN THE CONFERENCE ROOM ON THE BACK HALL DIRECTLY ACROSS FROM THE DETECTIVE DIVISION. I THINK THAT'S WHERE HE WENT PROBABLY ABOUT AS SOON AS HE GOT TO THE LAW CENTER BECAUSE I REMEMBER SEEING HIM THERE FIRST AND THEN HE WAS LATER IN THE DETECTIVE DIVISION AND HE WAS FINALLY IN LIEUTENANT THICKENS' OFFICE.
Q WAS HE EVER PLACED IN A JUVENILE HOLDING CELL?
A HE MAY HAVE BEEN. I DON'T KNOW.
Q WERE YOU INVOLVED IN ANY WAY WITH REGARD TO THE TAKING OF THE FIRST STATEMENT FROM ANTONIO?
A NO, SIR.
Q WERE YOU PRESENT AT ALL WHEN THAT STATEMENT WAS TAKEN?
A NO, SIR.
Q DO YOU KNOW WHO TOOK THAT STATEMENT?
A DETECTIVE WALDROP.
Q DID YOU HAVE ANY CONTACT WITH CHRIS WELLBORN? YOU KNOW WHO CHRIS WELLBORN IS, DO YOU NOT?
A YES, I DO.
Q DID YOU HAVE ANY CONTACT WITH CHRIS WELLBORN

GORDON ANTONIO

SIGNATURE OF PERSON FINGER PRINTED

x Antonio Gordon

SIGNATURE OF OFFICIAL TAKING PRINTS AND DATE

x L Davis 07/23/98

SC 0450300

ROCK HILL POLICE DEPARTMENT

ROCK HILL, S.C. 29731

I12(S) 069807231114

198918 Tj 03/21/82

M B 5'08"145 BRO BLK MEDIUM NONE YORK COUNTY

MULTIPLE TATTOOS BOTH ARMS

SOC SOCIAL SE [illegible] 248-51-[illegible]012

LEAVE BLANK

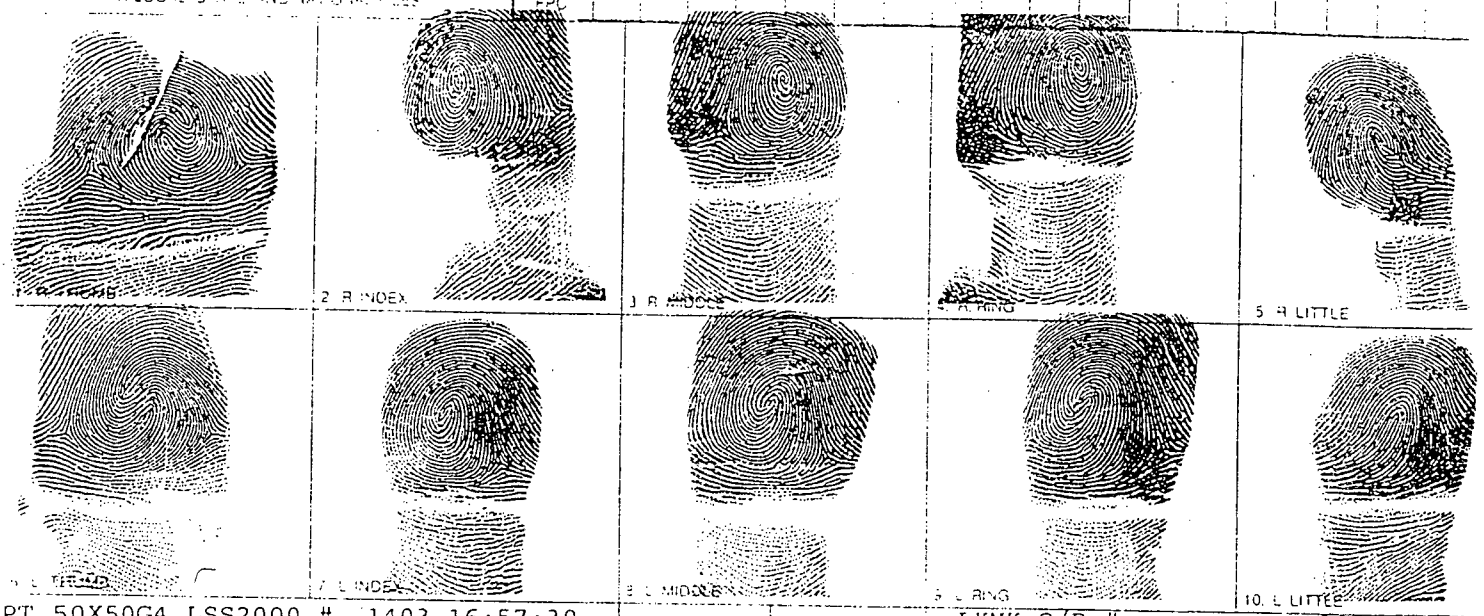
CLASS

REF

THIS DATA MAY BE COMPUTERIZED IN LOCAL, STATE AND NATIONAL FILES

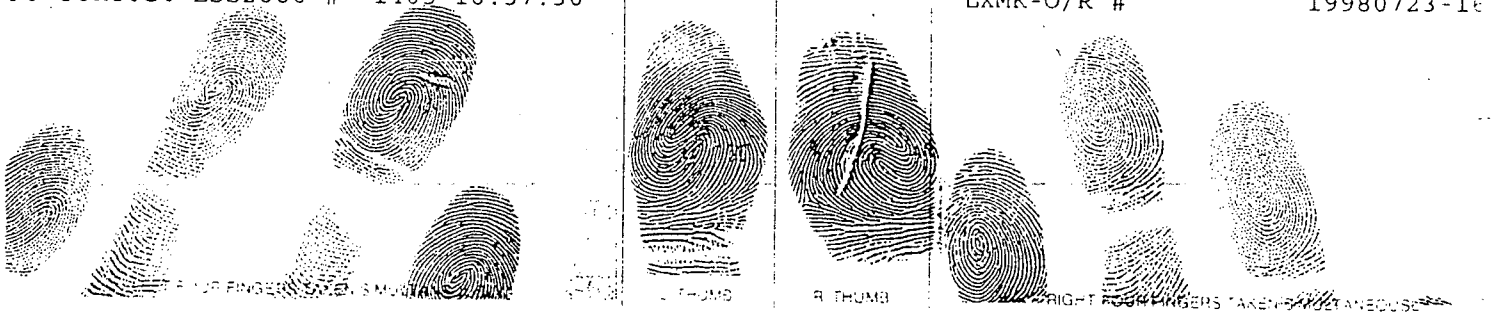
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FPC



PT 50X50G4 LSS2000 # 1403 16:57:30

LXMK-O/R # 19980723-16



RIGHT FOUR FINGERS TAKEN SIMULTANEOUSLY

App. P. 211

ROCK HILL POLICE DEPARTMENT - ROCK HILL, S.C. 29731

CHARGES	CITING GENERAL STATUTE	LOCAL DATE OF ARREST	LOCAL YOUR
1 F 763891 MURDER L98 9818 TS	16 3 10	07/23/98	
2		INTRA-AGENCY	
3		OFFICER'S NAME	
4		NUMBER	
5		COUNTY	

ARREST DISPOSITION: HELD FOR BOND

ADDITIONAL ARREST DATA:

DOB - DATE OF BIRTH: 03/21

RESIDENCE OF FINGERPRINTED PERSON: 3017 VERNSDALE ROAD RHSC

OCCUPATION: N/A

NEAREST RELATIVE: WILLIE GORGON SAME AS ABOVE

EMPLOYER NAME AND ADDRESS: NA

INDICATE IF A PHOTOGRAPH OF THE ARRESTED SUBJECT IS CONTAINED IN YOUR FILES ☒ YES ☐ NO

LEFT PALM PRINT



RIGHT PALM PRINT



THIS CARD IS NOT TO BE SUBMITTED TO OR RETAINED BY THE FBI.

App. P. 212

App. P. 213

I12
L989818
TS@



C/O L Davis 7/23/48

X Antonio Gordon

FILED-RECEIVED
JUL 27 4 56 PM '98

Antonio Gordon

App. P. 214

P.O. BOX 649
YORK, S.C. 29745

Office of Clerk of Court

P.O. DRAWER 11746
ROCK HILL, S.C. 29731

ATTORNEY REPRESENTATION

If you would like an attorney to represent you on your pending charges you should secure such attorney **prior to your first court date as listed on your bond.** You should be sure to get a letter of representation from your attorney and bring that letter to court with you.

PUBLIC DEFENDER

If you have been appointed a Public Defender you **must** contact their office to get a letter of representation **prior to your first court date.** You must bring this letter to court with you! To do so go by the Public Defender's Office at the Moss Justice Center, 1675 York Highway(Hwy 5), York SC or call their office Monday through Friday 8:00 am - 5:00 pm at (803) 628-3031 for an appointment.

PRIVATE COUNSEL

If you do not qualify for a public defender or you wish to retain private counsel, you should do so **prior to your first court date.** You should be sure to get a letter of representation from your private counsel when you retain them. You must bring this letter to court with you!

COURT ATTENDANCE August 28, 1998 1:00 P.M

When you attend roll call on your appointed court date you should bring a letter of representation from your attorney. You will be required to remain in court until your representation can be confirmed or your case is disposed.

I have read/had read to me, the above instructions and have been given a copy.

July 23, 1998
Date

Antonio Gordon
Signature of Defendant

Witness

CERTIFIED TRUE COPY

App. P. 215

STATE OF SOUTH CAROLINA
COUNTY OF YORK

STATE
VS.

BOND HEARING CERTIFICATION

CITY OF ROCK HILL

Antonio Gordon

General Sessions
Township

IT APPEARS that the defendant named above was arrested on or about the 23rd day of July, 1998 for the specific charges herein named. The defendant now appears before the undersigned RECORDER for ROCK HILL MUNICIPAL COURT on this the 23rd day of July, 1998 for the purpose of a Bond Hearing to determine if the defendant is entitled to such bond.

IT IS HEREBY ORDERED that the Defendant's bond be set for each charge as follows:

WARRANT/ TICKET#	CHARGE	TRIAL DATE/ TIME	BOND TYPE	AMOUNT
F-763891	MURDER	Sept 8, 98 8AM		$
				$
				$
This Court Can Not Set Bond For This Charge Bond Will Be Set By General Sessions Court				$
				$
				$

(Personal Recognizance, Surety Bond, Cash, Summons, Cash % In Lieu of Bond, Denied)

IT IS FURTHER ORDERED, that the Defendant remain in the custody of the ROCK HILL CITY JAIL until such time sufficient sureties are found and an Order of Discharge is issued.

IT IS SO ORDERED:

Ray Lamm
JUDGE/ASSOCIATE RECORDER
CITY OF ROCK HILL

App. P. 216

NOTICE OF INITIAL APPEARANCE

State of South Carolina
County of York

vs.

Mr./Ms. Anthony Cureton

you are charged with Murder

Uniform Warrant Numbers: 1. E-763871 3. _____ 5. _____
2. _____ 4. _____ 6. _____

Your Initial Appearance date is the 28th day of August, 1998, at 1:00 am/pm at the Joseph R. Moss Justice Center located at 1675 (Hwy. 5) York Highway, York, S.C. If you choose to obtain private legal counsel, you are required to have done so by this date. If you desire a preliminary hearing, one will be held on your case at this time. ATTENDANCE ON THIS DATE IS MANDATORY. FAILURE TO APPEAR WILL RESULT IN YOUR BOND BEING REVOKED.

Defendant's Signature

Judge's Signature

Aug 23, 1998
Date

White-Clerk's Office

Yellow-Arresting Agency

Pink-Defendant's Copy

CLERK OF COURT'S OFFICE
Post Office Box 649; York, South Carolina 29745

App. P. 217

March 21, 2016

Antonio Gordon #259798
Kershaw Corr Inst
4848 Goldmine Hwy
Kershaw SC 29067

Our records indicate that you were approved for the services of the Public Defender on 07/28/98. Our records indicate that Harry Dest was relieved as counsel on 02/19/99 due to a conflict of interest. Our records indicate that on 02/19/99, Daniel D'Agostino was appointed to represent you (copies enclosed).

General Sessions Division

App. p. 218

STATE OF SOUTH CAROLINA	)	**IN THE COURT OF GENERAL SESSIONS**
	)	**SIXTEENTH JUDICIAL CIRCUIT**
COUNTY OF YORK	)	**Charge:** **F-763891** **Murder**
STATE OF SOUTH CAROLINA	)	**F-763897** **Poss. Weap. Crime Viol.**
-v-	)	**F-763898** **Att. Armed Robbery**
	)	**F-763902** **Criminal Conspiracy**
	)	**F-763901** **Unlaw. Poss. Pistol < 21**
Antonio Gordon	)	**REQUEST PURSUANT TO SC RULES**
	)	**OF CRIMINAL PROCEDURE- RULE 5 & 6**
Defendant.	)	
	)	**EDWARDS NOTICE**

FILED-RECEIVED BOOK ___ PAGE ___ 30 4 16 PM '98 DAVID M. [illegible] C.C.C.P. & S.S. YORK COUNTY, SC

The Defendant respectfully requests that the Solicitor produce or otherwise make available to the Defense all documents, tangible objects, reports of examinations and tests, witness statements, physical evidence and any other information subject to disclosure pursuant to Rule 5 of the South Carolina Rules of Criminal Procedure.

The Defendant further requests the Solicitor to produce all evidence favorable to the Defendant, subject to disclosure pursuant to Brady v. Maryland, 373 U.S. 83 (1963) and its progeny.

This request is a continuing request for all such discoverable information as it becomes known to the Solicitor or any Prosecution Agents.

The Defendant hereby asserts his Fifth Amendment right to remain silent and does not wish to be questioned in the absence of counsel, pursuant to McNeil v. Wisconsin, 111 S.Ct. 220 (1991) and Edwards v. Arizona, 451 U.S. 477 (1981).

Furthermore, pursuant to Rule 6 of the South Carolina Rules of Criminal Procedure, Defendant objects to the introduction of a chemist's or analyst's report without such person being personally present at trial. Defendant also requests the appearance in Court of persons within the chain of custody of all physical evidence.

Respectfully Submitted,

[signature] BY HAD

Harry A. Dest
Attorney for Defendant

York, South Carolina
Dated: July 30, 1998

CERTIFICATE OF SERVICE

I hereby certify that this Specific Brady Motion was served on the Solicitor for the Sixteenth Judicial Circuit on 7/30, 1998.

[signature]

App. p. 219

STATE OF SOUTH CAROLINA	)	IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
STATE OF SOUTH CAROLINA	)	ORDER OF APPOINTMENT OF LEGAL
VS.	)	COUNSEL FOR INDIGENT DEFENDANT
Asterio Lyndon	)	

Defendant

SSN: 248-51-8012 DOB: 3/21/82 Race/Sex: B/M Date of Arrest: 1-23-98

3017 Jerrodale Rd CoDef (s):

Address

Rock Hill SC 29730

City/State/ZIP

325-1104 Victims (s):

Telephone

Offense:	Warrant #:	Mag:
Murder	I-163-891	

Total Bond: $_____ Type (Signature/Recog/Property/Bondsman): _____

* * * * * * * * * * * * *

The defendant contends that he is indigent and in need of services of an attorney as contemplated by law.

THEREFORE, Public Defender, Attorney at Law, is appointed as counsel for the defendant.

Approved ✓

Rejected ____

This 28 day of July, 1998

Peggy J. Carroll

Criminal Justice Coordinator

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
STATE OF SOUTH CAROLINA)
-VS-)
Antonio Gordon,)
Defendant.)

IN THE COURT OF GENERAL SESSIONS

O R D E R

App. P. 220

It appears to the Court that a **Conflict of Interest** exists with the Public Defender in the representation of the Defendant, Antonio Gordon.

It is ORDERED that the Public Defender be, and hereby is, relieved as counsel for Antonio Gordon and the Clerk of Court shall appoint the next Attorney on the list.

John C. Hayes II
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina

Date February 19th, 1999

App. P. 221

DEFENSE OF INDIGENTS ACT

FORM NO. IV

IN THE COURT OF GENERAL SESSIONS

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
DOCKET NO. _____)

STATE OF SOUTH CAROLINA)
VS.)
ANTONIO GORDON)
DEFENDANT)

CONFLICT OF INTEREST

ORDER OF APPOINTMENT OF LEGAL COUNSEL OF INDIGENT DEFENDANT

The Defendant contends that he is indigent and in need of services of an attorney as contemplated by law. THEREFORE, DANIEL D'AGOSTINO , Attorney-at-Law, is appointed as Counsel for the Defendant.

CONFLICT OF INTEREST

DANIEL D'AGOSTINO
ATTORNEY AT LAW
P.O. BOX 460
YORK, S.C. 29745

TELE: 684- 4807

This 19th day of FEBRUARY ,
1999 , at 4:15 P.M.
(A.M./P.M.)

_____

App. p. 222

STATE OF SOUTH CAROLINA
COUNTY OF YORK

STATE
VS.

BOND HEARING CERTIFICATION

CITY OF ROCK HILL

Antonio Gordon

General Sessions
Township

IT APPEARS that the defendant named above was arrested on or about the 27th day of July, 1998 for the specific charges herein named. The defendant now appears before the undersigned RECORDER for ROCK HILL MUNICIPAL COURT on this the 27th day of July, 1998 for the purpose of a Bond Hearing to determine if the defendant is entitled to such bond.

IT IS HEREBY ORDERED that the Defendant's bond be set for each charge as follows:

WARRANT/ TICKET#	CHARGE	TRIAL DATE/ TIME	BOND TYPE	AMOUNT
F-763897	Poss. Firearm. Comm. Viol. Crime	Sept 8, 98 8Am	Bond To Set	$
F-763898	Armed Robbery	Sept 8, 98 8Am	By Court	$
F-763901	Poss. Handgun Under 21	Sept 8, 98 8Am		$
F-763902	Criminal Conspiracy	Sept 8, 98 8Am		$
F-763914	Armed Robbery	Sept 8 98 8Am		$
				$
				$

*This Court Cant Set ~~a~~ BOND SINCE All TIED in with previous Charge of Murder

(Personal Recognizance, Surety Bond, Cash, Summons, Cash % In Lieu of Bond, Denied)

IT IS FURTHER ORDERED, that the Defendant remain in the custody of the ROCK HILL CITY JAIL until such time sufficient sureties are found and an Order of Discharge is issued.

IT IS SO ORDERED:

Previous Murder warrant served last ~~Tuesday~~ Thursday, July 23, '98, RH

JUDGE/ASSOCIATE RECORDER
CITY OF ROCK HILL

App. p. 223

FILED-RECEIVED
BOOK PAGE
JUL 29 11 46 AM '98
CLERK OF COURT
YORK COUNTY

NOTICE OF INITIAL APPEARANCE

State of South Carolina
County of York

vs.

Mr/Ms. Antonio Gordon

you are charged with Poss. Firearm Dur. Comm. Viol. Crime, att. Armed Robbery, Poss. Handgun Under 21, Criminal Conspiracy, att. armed Robbery

Uniform Warrant Numbers:
1. F-763897
2. F-763898
3. F-763901
4. F-763902
5. F-763914
6.

* Your Initial Appearance date is the 28th day of August, 1998, at 1:00 am/pm at the Joseph R. Moss Justice Center located at 1675 (Hwy. 5) York Highway, York, S.C. If you choose to obtain private legal counsel, you are required to have done so by this date. If you desire a preliminary hearing, one will be held on your case at this time. ATTENDANCE ON THIS DATE IS MANDATORY. FAILURE TO APPEAR WILL RESULT IN YOUR BOND BEING REVOKED.

Antonio Gordon
Defendant's Signature

Judge's Signature

July 27, 1998
Date

White-Clerk's Office Yellow-Arresting Agency Pink-Defendant's Copy

* date coincides with previous charge of murder

App. P. 224

NOTICE OF INITIAL APPEARANCE

State of South Carolina
County of York

vs.

Mr./Ms. _____

you are charged with _____

Uniform Warrant Numbers:

1. _____ 3. _____ 5. _____
2. _____ 4. _____ 6. _____

Your Initial Appearance date is the 25th day of _____, 19__, at ____ am/pm at the Joseph R. Moss Justice Center located at 1675 (Hwy. 5) York Highway, York, S.C. If you choose to obtain private legal counsel, you are required to have done so by this date. If you desire a preliminary hearing, one will be held on your case at this time. ATTENDANCE ON THIS DATE IS MANDATORY. FAILURE TO APPEAR WILL RESULT IN YOUR BOND BEING REVOKED.

_____
Defendant's Signature

_____
Judge's Signature

_____
Date

White-Clerk's Office Yellow-Arresting Agency Pink-Defendant's Copy

App. p. 225

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

MURDER

That Antonio Gordon did in York County on or about July 23, 1998, with malice aforethought, kill one Eric Peter Krenn by means of shooting with a firearm and said victim died as a result thereof, all in violation of Section 16-3-10, South Carolina Code of Laws, (1976, as amended).

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Murder, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

CERTIFIED TRUE COPY
JUN 21 9 00 AM '00
CLERK OF COURT
YORK COUNTY, S.C.

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

SOLICITOR

App. p. 225

Antonio Gordon

511

WITNESSES

Herring/RHPD

ARREST WARRANT NUMBER

Count One: F763891

Count Two: F763897

ACTION OF GRAND JURY

TRUE BILL

Libby Freeman

Foreperson of Grand Jury

10/19/98

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 98-GS-46- 2847

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 15, Term 1998

THE STATE

vs.

ANTONIO GORDON

Indictment for

MURDER

SC Code: 16-3-10
CDR Code: 0116

POSSESSION OF A FIREARM DURING THE COMMISSION OF A VIOLENT CRIME

SC Code: 16-23-490
CDR Code: 1245

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I Antonio Gordon hereby appear in my own proper person and plead guilty to the within indictment or to

Antonio Gordon
Defendant

Witness:
Teresa Scoggins Clerk II
C.C.C. PLS. AND G.S.

Attached Hereto App. P. 226

106

STATE OF SOUTH CAROLINA) 512 IN THE C[illegible]T OF GENERAL SESSIONS
)
COUNTY OF York)
) INDICTMENT/CASE#:
STATE) 98 -GS- 46 - 2847-A
VS.)
Jose Antonio Gordon) A/W#: F763897
) Date of Offense: 7-23-98
) S.C. Code § : 16-23-490
AKA:)
Race: B Sex: M) CDR Code #: 112415
DOB: 3-21-82 Age:)
SSN: 248-51-8014)
DL#:)
SID#:)

SENTENCE

☐ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
TO: Poss Firearm Comm Violent Crime
in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 112415

☐ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor

Antonio Gordon
Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ **State Department of Corrections,** ☐ **County Detention Center**
for a determinate term of Five (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 _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

CERTIFIED TRUE COPY
CLERK OF COURT
YORK COUNTY, S.C.
JAN 21 9 02 AM '00

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: $_____ plus 20% fee $ _____
Payment Terms: _____
☐ set by SCDPPPS _____
_____
Recipient: _____
_____

*Fine: ..... $_____
§ 14-1-206 - Assessments 100% ..... $_____
§ 14-1-211 - Surcharge ..... $ 100.00
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI) ..... $_____
County (3%) ..... $_____
TOTAL ..... $ 100.00

Clerk of Court/Deputy Clerk David Hamilton
Court Reporter: Janet Rich

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
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: _____

Plea accepted 2/16/99 John C Hayes
Sentenced 7/19/99 John C Hayes
PRESIDING JUDGE
Judge Code: 01 01 419
Sentence Date: _____

Canary - Probation Pink - Defendant SCCA/217 (1/99)

App. p. 227

ARREST WARRANT

F- 763897

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of ROCK HILL

513

THE STATE

against

ANTONIO GORDON

Address: 3017 VERNSDALE RD

ROCK HILL, SC 29730

Phone: _____ SSN: _____

Sex: M Race: B Height: 6 Weight: 0

State: _____ DL #: _____

DOB: 03/21/82 Agency ORI #: 04603

Prosecuting Agency: ROCK HILL POLICE DEP

Prosecuting Officer: J. THICKENS

Offense: POSS FIREARM DURING COMM/VIOL. CRIM Offense Code: 16

Code/Ordinance Sec. 16-23-490

This warrant is **CERTIFIED FOR SERVICE** in the ☐ County/ ☐ Municipality of ROCK HILL. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

RETURN

A copy of this arrest warrant was delivered to defendant ANTONIO GORDON on 07-28-98

James O. Howe
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
ROCK HILL POLICE DEPT
120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of) **AFFIDAVIT**
ROCK HILL)

July 26, 1990
SCCA 518

Personally appeared before me the affiant J. THICKENS who being duly sworn deposes and says that defendant ANTONIO GORDON did within this county and state on 07/23/98 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of ROCK HILL) in the following particulars:

DESCRIPTION OF OFFENSE: POSS. FIREARM DUR COMM VIOL CRIME 16-23-490 #0549

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

DID WILLFULLY AND UNLAWFULLY POSSESS A FIREARM (C.O.P. 4-BARREL DERRINGER; SILVER IN COLOR) WHILE COMMITTING THE CRIME OF MURDER AGAINST ONE ERIC KRENN. THIS INCIDENT OCCURRING IN THE 500 BLOCK OF S. JONES AVENUE WITHIN THE CITY LIMITS OF ROCK HILL, SC. *POLICE INVESTIGATION *RECOVERY OF EVIDENCE *SWORN STATEMENTS BY DEF., CO-DEF., AND WITNESSES

Sworn to and subscribed before me on 7-24-98

M C Neely (L.S.)
Signature of Issuing Judge

J. Thickens
Signature of Affiant

Affiant's Address _____

Affiant's Telephone _____

CERTIFIED TRUE COPY
JUN 21 9 02 AM '99
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)
☐ County/ ☒ Municipality of) **ARREST WARRANT**
ROCK HILL)

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe that on 07/23/98 defendant ANTONIO GORDON did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of ROCK HILL) as set forth below:

DESCRIPTION OF OFFENSE: POSS. FIREARM DUR COMM VIOL CRIME 16-23-490

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

M C Neely (L.S.)
Signature of Issuing Judge

Judge Code: 0005

Judge's Address 120 E. BLACK ST.

Judge's Telephone _____

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

App. P. 228

STATE OF SOUTH CAROLINA)
COUNTY OF York Jail)
VS.)
STATE Antonio Gordon)
AKA:)
Race: B Sex: M)
DOB: 3-21-82 Age:)
SSN: 248-51-8018)
DL#:)
SID#:)

IN THE CC T OF GENERAL SESSIONS
INDICTMENT/CASE#: 514
98-GS-46-2849
A/W#: F763898
Date of Offense: 7-23-98
S.C. Code § : 16-11-330
CDR Code #: 010216

SENTENCE

☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
TO: Attempted Armed Robbery
in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 010216

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:
Solicitor

Antonio Gordon
Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ **State Department of Corrections,** ☐ **County Detention Center,**
for a determinate term of Ten (10) 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.

☐ The Defendant is to be given credit for _____ days/months jail time.
☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: 98-GS-46-2847

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: $_____ plus 20% fee $ _____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____

*Fine: ..... $_____
§ 14-1-206 - Assessments 100% ..... $_____
§ 14-1-211 - Surcharge ..... $ 100.00
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI) ..... $_____
County (3%) ..... $_____
TOTAL ..... $ 100.00

Clerk of Court/Deputy Clerk David Hamilton
Court Reporter: Janet Rich

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
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: _____

Plea entered 7/16/98 Circuit Judge
Sentenced 7/19/98 Circuit Judge
PRESIDING JUDGE
Judge Code: 010419
Sentence Date: _____

JUN 1 9 04 AM '00
YORK COUNTY, SC
CERTIFIED TRUE COPY

White - Court Copy Canary - Probation Pink - Defendant SCCA217 (1/99)

App. p. 229

ARREST WARRANT

F- 763898

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

ROCK HILL

FILED-RECEIVED
JUL 29 11 1:6 AM '98

515

THE STATE

against

ANTONIO GORDON

Address 3017 VERNSDALE RD

ROCK HILL, SC 29730

Ph: _____ SSN: _____

Race: B Height: _____ Weight: 0

DL State: _____ DL #: _____

DOB: 03/21/82 Agency ORI #: 04603

Prosecuting Agency ROCK HILL POLICE DEP

Prosecuting Officer: J. THICKENS

Offense ATTEMPTED ARMED ROBBERY

Offense Code 16

Code/Ordinance Sec. 16-11-330(2)

This warrant is CERTIFIED FOR SERVICE in the ☐ County/☒ Municipality of ROCK HILL. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)
Signature of Judge

Date: _____

RETURN

A copy of this arrest warrant was delivered to defendant ANTONIO GORDON on 07-27-98

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
ROCK HILL POLICE DEPT
120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA)
☐ County/☒ Municipality of) AFFIDAVIT
ROCK HILL)

Form Approved by S.C. Attorney General July 26, 1990 SCCA 518

Personally appeared before me the affiant J. THICKENS + who being duly sworn deposes and says that defendant ANTONIO GORDON + did within this county and state on 07/23/98 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/☒ Municipality of ROCK HILL) in the following particulars:

DESCRIPTION OF OFFENSE ATTEMPTED ARMED ROBBERY 16-11-330(2) #0175

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

DID WILLFULLY AND UNLAWFULLY ATTEMPT TO COMMIT THE CRIME OF ROBBERY AGAINST ONE ERIC KRENN BY POINTING AND FIRING A HANDGUN AT THE VICTIM IN AN ATTEMPT TO TAKE POSSESSION OF THE VICTIM'S VEHICLE, A 1985 BMW 318. THIS INCIDENT OCCURRING IN THE 500 BLOCK OF S. JONES AVENUE WITHIN THE CITY LIMITS OF ROCK HILL, SC. *POLICE INVESTIGATION *RECOVERY OF EVIDENCE *SWORN STATEMENTS BY DEF., CO-DEF., AND WITNESSES

Sworn to and subscribed before me on 7-24-98

M C Neely (L.S.)
Signature of Issuing Judge

John J. Thickens
Signature of Affiant

Affiant's Address _____

Affiant's Telephone _____

CERTIFIED TRUE COPY
JUN 21 9 04 AM '05
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)
☐ County/☒ Municipality of) ARREST WARRANT
ROCK HILL)

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 07/23/98 defendant ANTONIO GORDON did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/☒ Municipality of ROCK HILL) as set forth below:

DESCRIPTION OF OFFENSE ATTEMPTED ARMED ROBBERY 16-11-330(2)

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

M C Neely (L.S.)
Signature of Issuing Judge

Judge Code: 0004

Judge's Address 120 E. BLACK ST.

Judge's Telephone _____

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

App. P. 230
516

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to feloniously take from the person or presence of Eric Krenn, by means of force or intimidation goods or monies of said Eric Krenn to wit: one 1985 BMW belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Attempted Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

CERTIFIED TRUE COPY
JUN 21 9 05 AM '00
DAVID [illegible]
CLERK OF COURT
YORK COUNTY, SC

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

J E Pope
SOLICITOR

App. p. 231

Amended Indictment

51-

WITNESSES

Herring/RHPD

ARREST WARRANT NUMBER

Count One: F763898
Count Two: Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 10/19/98

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 98-GS-46- 2844

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 15, Term 1998

THE STATE

vs.

ANTONIO GORDON

Indictment for

ATTEMPTED ARMED ROBBERY
SC Code: **16-11-0330**
CDR Code: **0026**

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME
SC Code: 16-23-490
CDR Code: 1245

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I Antonio Gordon
hereby appear in my own proper person and plead guilty to the within indictment or to

Antonio Gordon
Defendant

Witness:
Teresa Huggins Clerk
C.C.C. PLS. AND G.S.

App. p. 232

518

00/00

STATE OF SOUTH CAROLINA)
COUNTY OF York) IN THE COURT OF GENERAL SESSIONS
STATE) INDICTMENT/CASE#:
VS. 98 -GS- 46 - 249-A
Antonio Gordon
AKA:
Race: B Sex: m
DOB: 3-21-82 Age:
SSN: 248-51-8010
DL#:
SID#:
A/W#: DI
Date of Offense: 7-23-98
S.C. Code § : 16-23-490
CDR Code #: 1 12 14 15

SENTENCE

☐ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
TO: Poss Firearm Comm Violent Crime
in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 1 12 14 15

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:
Solicitor

Antonio Gordon
Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ **State Department of Corrections,** ☐ **County Detention Cente**
for a determinate term of Five (5) days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ yea
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or payme
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
probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.
☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: $_____ plus 20% fee $ _____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____

*Fine: ..... $_____
§ 14-1-206 - Assessments 100% ..... $_____
§ 14-1-211 - Surcharge ..... $ 100.00
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI) ..... $_____
County (3%) ..... $_____
TOTAL ..... $ 100.00

Clerk of Court/Deputy Clerk David Hamilton
Court Reporter: Janet Rich

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/mon
pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____

Plea entered 7/16/99
Sentenced 7/16/99 John C Hayes

PRESIDING JUDGE John C Hayes
Judge Code: 0 1 0 1 4 9
Sentence Date: _____

CERTIFIED TRUE COPY
JUN 21 9 08 AM '00
CLERK OF COURT
YORK COUNTY, S.C.

Probation Pink - Defendant

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to feloniously take from the person or presence of Eric Krenn, by means of force or intimidation goods or monies of said Eric Krenn to wit: one 1985 BMW belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Attempted Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

CERTIFIED TRUE COPY
JUN 21 9 02 AM '00
CLERK OF COURT
YORK COUNTY, SC

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

J E Pope

SOLICITOR

App. P. 234
520

STATE OF SOUTH CAROLINA)
COUNTY OF York) IN THE COURT OF GENERAL SESSIONS
STATE) INDICTMENT/CASE#: 98-GS-46 2850
VS.)
Antonio Gordon) ADV#: F763914
AKA:) Date of Offense: 7-23-98
Race: B Sex: M) S.C. Code §: 16-11-330
DOB: 3-21-82 Age:) CDR Code #: 010216
SSN: 248-51-801)
DL#:)
SID#:) SENTENCE

CERTIFIED TRUE COPY
JUN 21 9 03 AM
CLERK OF COURT
YORK COUNTY, SC

☒ PLEA ☐ TRIAL ☐ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Attempted armed Robbery
in violation of § 16-11-330 of the S.C. Code of Laws, bearing CDR Code # 010216
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:
Solicitor

Antonio Gordon
Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections,** ☐ **County Detention Center,** for a determinate term of Ten (10) 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.

☐ The Defendant is to be given credit for _____ days/months jail time.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: $_____ plus 20% fee $ _____
Payment Terms: _____
☐ set by SCDPPPS _____
_____
Recipient: _____
_____

*Fine: ..... $_____
§ 14-1-206 - Assessments 100% ..... $_____
§ 14-1-211 - Surcharge ..... $_____
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI) ..... $_____
County (3%) ..... $_____
TOTAL ..... $_____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/month pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____
_____
Plea entered 7/16/98 John C. Hayes
Sentenced 7/16/98 John C. Hayes

Clerk of Court/Deputy Clerk David Hamilton
PRESIDING JUDGE John C. Hayes
Judge Code: 010419
Court Reporter: Janet Rich
Sentence Date: _____

Canary - Probation Pink - Defendant

App. p. 235

ARREST WARRANT

F- 763914

STATE OF SOUTH CAROLINA

☐ County/☒ Municipality of ROCK HILL

RECEIVED 11 06 AM '98

521

THE STATE

against

ANTONIO GORDON

Address: 3017 VERNSDALE RD
ROCK HILL, SC 29730

Phone: 803-325-1104 SSN: 248-51-8018

Sex: M Race: B Height: 508 Weight: 145

State: ____ DL #: ____

DOB: 03/21/82 Agency ORI #: 04603

Prosecuting Agency: ROCK HILL POLICE DEP

Prosecuting Officer: HERRING

Offense: ATTEMPTED ARMED ROBBERY

Offense Code: ____

Code/Ordinance Sec. 16-11-330 (2)

This warrant is **CERTIFIED FOR SERVICE** in the ☐ County/☒ Municipality of ROCK HILL. The accused is to be arrested and brought before me to be dealt with according to law.

____ (L.S.)
Signature of Judge

e: ____

RETURN

A copy of this arrest warrant was delivered to defendant ANTONIO GORDON on 7-28-98.

James O. Howe III
Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:
ROCK HILL POLICE DEPT
120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA)
☐ County/☒ Municipality of) **AFFIDAVIT**
ROCK HILL)

S.C. Attorney General
July 26, 1990
SCCA 518

Personally appeared before me the affiant L.R.HERRING who being duly sworn deposes and says that defendant ANTONIO GORDON did within this county and state on 07/23/98 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/☒ Municipality of ROCK HILL) in the following particulars:

DESCRIPTION OF OFFENSE: ATTEMPTED ARMED ROBBERY 16-11-330 (2) #0179

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

DID WILFULLY AND UNLAWFULLY ATTEMPT TO COMMIT THE CRIME OF ROBBERY AGAINST ONE CHRISTOPHER DIAZ BY POINTING A FIREARM AT HIM, WHILE ATTEMPTING TO TAKE VICTIM'S MONEY. THIS INCIDENT OCCURRING IN THE 500 BLOCK OF S.JONES AVE. WITHIN THE CITY LIMITS OF ROCK HILL, S.C. *POLICE INVESTIGATION. *RECOVERY OF EVIDENCE. *SWORN STATEMENTS.

Sworn to and subscribed before me on 7/24/98

D. Williams (L.S.)
Signature of Issuing Judge

L.R. Herring
Signature of Affiant

Affiant's Address 120 E.BLACK ST.RHSC

Affiant's Telephone 803-329-7200

CERTIFIED TRUE COPY
JUN 21 9 03 AM '00
BY CLERK OF COURT
YORK COUNTY, S.C.

STATE OF SOUTH CAROLINA)
☐ County/☒ Municipality of) **ARREST WARRANT**
ROCK HILL)

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 07/23/98 defendant ANTONIO GORDON did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/☒ Municipality of ROCK HILL) as set forth below:

DESCRIPTION OF OFFENSE: ATTEMPTED ARMED ROBBERY 16-11-330 (2)

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

D. Williams (L.S.)
Signature of Issuing Judge

Judge Code: 8872

Judge's Address ____

Judge's Telephone ____

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

App. P. 236

522

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to feloniously take from the person or presence of Christopher Diaz, by means of force or intimidation goods or monies of said Christopher Diaz to wit: currency belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Attempted Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

CERTIFIED TRUE COPY
JUN 21 9 03 AM '00
CLERK OF COURT
YORK COUNTY, SC

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

SOLICITOR

App. p. 237

543

WITNESSES

Herring/RHPD

ARREST WARRANT NUMBER

Count One: F763914
Count Two: Direct Indictment

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 10/19/98

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 98-GS-46-

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 15, Term 1998

THE STATE

vs.

ANTONIO GORDON

Indictment for

ATTEMPTED ARMED ROBBERY
SC Code: **16-11-0330**
CDR Code: **0026**

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME
SC Code: 16-23-490
CDR Code: 1245

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I Antonio Gordon
hereby appear in my own proper person and plead guilty to the within indictment or to

Antonio Gordon
Defendant

Witness:
Teresa Scoggins Clerk II
C.C.C. PLS. AND G.S.

App. P. 238

524

STATE OF SOUTH CAROLINA)
COUNTY OF York)
STATE VS. Antonio Gordon)
AKA:)
Race: B Sex: M)
DOB: 3-21-82 Age:)
SSN: 248-51-8017)
DL#:)
SID#:)

IN THE CO[illegible]T OF GENERAL SESSIONS
INDICTMENT/CASE#:
98 -GS- 46 - 2850-A
A/W#: DI
Date of Offense: 7-23-98
S.C. Code § : 16-23-490
CDR Code #: 112415

SENTENCE

☐ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
TO: Poss Firearm Comm Violent Crime
in violation of § 16-23-490 of the S.C. Code of Laws, bearing CDR Code # 112415

☒ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:
Solicitor

Antonio Gordon
Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☒ **State Department of Corrections**, ☐ **County Detention Center** for a determinate term of 7 Yrs 5 days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ year 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.

☐ The Defendant is to be given credit for _____ days/months jail time.
☑ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

CLERK OF COURT YORK COUNTY, SC
9:02 AM '00
CERTIFIED TRUE COPY

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: $_____ plus 20% fee $ _____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____

*Fine: ..... $ _____
§ 14-1-206 - Assessments 100% ..... $ _____
§ 14-1-211 - Surcharge ..... $ 100.00
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI) ..... $ _____
County (3%) ..... $ _____
TOTAL ..... $ 100.00

Clerk of Court/Deputy Clerk David Hamilton
Court Reporter: Janet Rich

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
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: _____

Plea entered 7/16/99
Sentenced 7/19/99
PRESIDING JUDGE
Judge Code: 001419
Sentence Date: 7/19/99

Canary - Probation Pink - Defendant SCCA217 (1/99)

App. P. 239

525

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

ATTEMPTED ARMED ROBBERY

That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to feloniously take from the person or presence of Christopher Diaz, by means of force or intimidation goods or monies of said Christopher Diaz to wit: currency belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

POSSESSION OF A WEAPON DURING THE COMMISSION OF A VIOLENT CRIME

That Antonio Gordon did in York County on or about July 23, 1998, possess a firearm or visibly display what appeared to be a firearm during the commission of a violent crime, to wit: Attempted Armed Robbery, all in violation of Section 16-23-490, Code of Laws of South Carolina (1976, as amended).

CERTIFIED TRUE COPY
JUN 21 9 02 AM '00
CLERK OF COURT
YORK COUNTY, SC

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

SOLICITOR

App. P. 240
526

STATE OF SOUTH CAROLINA)
COUNTY OF York Jail)
STATE) VS.
Antonio Gordon)
AKA:)
Race: B Sex: M)
DOB: 3-21-82 Age:)
SSN: 248-51-8018)
DL#:)
SID#:)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:
98 -GS- 46 - 2851
A/W#: F763902
Date of Offense: 7-23-98
S.C. Code § : 16-17-410
CDR Code #: 010419

SENTENCE

☒ PLEA ☐ TRIAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☐ PLEADS
TO: Crim Conspiracy
in violation of § 16-17-410 of the S.C. Code of Laws, bearing CDR Code # 010419
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☒ Negotiated Sentence, ☒ Recommendation by the State.

ATTEST:
Solicitor

Antonio Gordon
Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center, for a determinate term of Five 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 _____ months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

FILED
YORK COUNTY, SC
JUN 21 9 04 AM '00
CERTIFIED TRUE COPY

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: $_____ plus 20% fee $ _____
Payment Terms: _____
☐ set by SCDPPPS _____
Recipient: _____

*Fine: ..... $ _____
§ 14-1-206 - Assessments 100% ..... $ _____
§ 14-1-211 - Surcharge ..... $ 100.00
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI) ..... $ _____
County (3%) ..... $ 100.00
TOTAL ..... $ _____

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/month pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____

Plea entered 2/16/99 Sentence 6/21/00

PRESIDING JUDGE John C. Hayes
Judge Code: 010149
Sentence Date: _____

Clerk of Court/Deputy Clerk David Hamilton
Court Reporter: Carol Rich

Pink - Defendant

App. p. 241

ARREST WARRANT

F- 763902

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of

ROCK HILL

FILED RECEIVED JUL 23 11 40 AM '98

THE STATE

against

ANTONIO GORDON

Address: 3017 VERNSDALE RD

ROCK HILL, SC 29730

Phone: _____ SSN: _____

Sex: M Race: B Height: _____ Weight: 0

State: _____ DL #: _____

DOB: 03/21/82 Agency ORI #: 04603

Prosecuting Agency: ROCK HILL POLICE DEP

Prosecuting Officer: J. THICKENS

Offense: CRIMINAL CONSPIRACY

Offense Code: 16

Code/Ordinance Sec. 16-17-410

This warrant is CERTIFIED FOR SERVICE in the ☐ County/ ☒ Municipality of ROCK HILL. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)

Signature of Judge

To: _____

RETURN

A copy of this arrest warrant was delivered to defendant ANTONIO GORDON on 07-27-98

James O. Thomas III

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ROCK HILL POLICE DEPT

120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA)

☐ County/ ☒ Municipality of) AFFIDAVIT

ROCK HILL)

S.C. Attorney General
July 28, 1990
SCCA 518

Personally appeared before me the affiant J. THICKENS + who being duly sworn deposes and says that defendant ANTONIO GORDON + did within this county and state on 07/23/98 violate the criminal laws of th State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of ROCK HILL in the following particulars:

DESCRIPTION OF OFFENSE CRIMINAL CONSPIRACY 16-17-410 #0049

I further state that there is probable cause to believe that the defendant named above did comm the crime set forth and that probable cause is based on the following facts:

DID WILLFULLY AND UNLAWFULLY SCHEME AND CONSPIRE WITH ANOTHER TO COMMIT THE CRIME OF ARMED ROBBERY OF ONE ERIC KRENN. THIS INCIDENT OCCURRING IN THE 500 BLOCK OF S. JONES AVENUE WITHIN THE CITY LIMITS OF ROCK HILL, SC. *POLICE INVESTIGATION *RECOVERY OF EVIDENCE *SWORN STATEMENTS BY DEF., CO-DEF., AND WITNESSES

Sworn to and subscribed before me on 7-24-98

Signature of Issuing Judge (L.S.)

John Allen Gr

Signature of Affiant

Affiant's Address _____

Affiant's Telephone _____

CERTIFIED TRUE COPY
JUN 21 9 04 AM '99
CLERK OF COURT
YORK COUNTY, SC

STATE OF SOUTH CAROLINA)

☐ County/ ☒ Municipality of) ARREST WARRANT

ROCK HILL)

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY

It appearing from the above affidavit that there are reasonable grounds to believe th on 07/23/98 defendant ANTONIO GORDON did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of ROCK HILL) as set forth below:

DESCRIPTION OF OFFENSE CRIMINAL CONSPIRACY 16-17-410

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her befo me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to t defendant at the time of its execution, or as soon thereafter as is practicable.

_____ (L.S.)

Signature of Issuing Judge

Judge Code: 5005

Judge's Address 120 E. BLACK ST.

Judge's Telephone _____

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circui

ORIGINAL

App. p. 242

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

CRIMINAL CONSPIRACY

That Antonio Gordon did in York County, on or about July 23, 1998, wilfully and unlawfully unite, combine, conspire, confederate, agree and have tacit understanding with one or all of the following: Terrance McCrearey, Gary Moffatt, Monta Gordon and/or others for the purpose of committing the crime(s) of Murder, Armed Robbery and/or Carjacking, in violation of Section 16-17-410, Code of Laws of South Carolina, (1976, as amended).

CERTIFIED TRUE COPY
JUN 21 9 04 AM '00
CLERK OF COURT
YORK COUNTY, SC

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

SOLICITOR

App. p. 243

529

WITNESSES

RHPD/Herring

ARREST WARRANT NUMBER

F763902

ACTION OF GRAND JURY

TRUE BILL

Foreperson of Grand Jury
Date: 10/19/98

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 98-GS-46- 2851

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 15, Term 1998

THE STATE

VS.

ANTONIO GORDON

Indictment for

CRIMINAL CONSPIRACY

SC Code: 16-17-410
CDR Code: 0049

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I Antonio Gordon hereby appear in my own proper person and plead guilty to the within indictment or to

Antonio Gordon
Defendant

Witness: Teresa Huggins Clerk II
C.C.C. PLS. AND G.S.

Attachment B 530 App. P. 244

STATE OF SOUTH CAROLINA)
COUNTY OF York)
STATE VS.)
Antonio Gordon)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT/CASE#:
98 -GS- 46 - 2852

AKA:)
Race: B Sex: M)
DOB: 3-21-82 Age:)
SSN: 248-51-80[illegible])
DL#:)
SID#:)

A/W#: F716901
Date of Offense: 7-23-98
S.C. Code § : 16-23-30
CDR Code #: 213614

SENTENCE

☒ PLEA ☐ TRIAL ☐ CONVICTED OF or ☐ PLEADS

In disposition of the said indictment comes now the Defendant who was
TO: Poss. Pistol Under 21
in violation of § 16-23-30 of the S.C. Code of Laws, bearing CDR Code # 213614

☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ 17-25-45

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury.
The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:
Solicitor

Antonio Gordon
Defendant

Attorney for Defendant

WHEREFORE, the Defendant is committed to the ☐ **State Department of Corrections,** ☐ **County Detention Center**
for a determinate term of Five days/months/years or ☐ under the **Youthful Offender Act** not to exceed _____ year
and/or to pay a fine of $ _____; provided that upon the service of _____ days/months/years and/or paymer
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
probation, which are incorporated by reference.

☐ The Defendant is to be given credit for _____ days/months jail time.
☒ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

FILED IN THE OFFICE OF THE CLERK OF COURT YORK COUNTY, SC
2001 JUL 21 9 03 AM '00
CERTIFIED TRUE COPY

SPECIAL CONDITIONS:

☐ RESTITUTION ☐ Heard, ☐ Waived, ☐ Ordered
Total: $_____ plus 20% fee $ _____
Payment Terms: _____
☐ set by SCDPPPS _____
_____
Recipient: _____
_____

*Fine: ..... $_____
§ 14-1-206 - Assessments 100% ..... $_____
§ 14-1-211 - Surcharge ..... $ 100.00
(Exceptions: See § 14-1-211)
§ 56-5-2995 (DUI) ..... $_____
County (3%) ..... $_____
TOTAL ..... $ 100.00

Clerk of Court/Deputy Clerk David Hamilton
Court Reporter: Janet Rich

PTUP _____
_____ days/hours Public Service Employment
Obtain GED _____
Attend Voc Rehab. or Job Corps _____
May serve W/E beginning _____
Substance Abuse Counseling _____
Random Drug/Alcohol Testing _____
Fine may be pd. in equal, consecutive weekly/mont
pmts. of $ _____ beginning _____
$ _____ paid to Public Defender Fund.
Other: _____
_____
Plea accepted 7/19/00 [illegible]
Sentenced 7/19/00 [illegible]
PRESIDING JUDGE _____
Judge Code: 610419
Sentence Date: _____

Canary - Probation Pink - Defendant SCCA217 (1/99)

App. P. 345

ARREST WARRANT

F- 763901

STATE OF SOUTH CAROLINA

☐ County/ ☒ Municipality of ROCK HILL

FILED-RECEIVED JUL 29 11 46 AM '98

531

THE STATE

against

ANTONIO GORDON

Address: 3017 VERNSDALE RD

ROCK HILL, SC 29730

Phone: _____ SSN: _____

Sex: M Race: B Height: _____ Weight: 0

State: _____ DL #: _____

DOB: 03/21/82 Agency ORI #: 04603

Prosecuting Agency: ROCK HILL POLICE DEP

Prosecuting Officer: J. THICKENS

Offense: POSS. HANDGUN UNDER 21

Offense Code: 16

Code/Ordinance Sec. 16-23-30(C)

This warrant is CERTIFIED FOR SERVICE in the ☐ County/ ☒ Municipality of ROCK HILL. The accused is to be arrested and brought before me to be dealt with according to law.

_____ (L.S.)

Signature of Judge

RETURN

A copy of this arrest warrant was delivered to defendant ANTONIO GORDON on 07-27-98

James O. Thickens

Signature of Constable/Law Enforcement Officer

RETURN WARRANT TO:

ROCK HILL POLICE DEPT

120 EAST BLACK STREET

ROCK HILL SC 29730

STATE OF SOUTH CAROLINA)

☐ County/ ☒ Municipality of ROCK HILL)

S.C. Attorney General July 26, 1990 SCCA 518

AFFIDAVIT

Personally appeared before me the affiant J. THICKENS who being duly sworn deposes and says that defendant ANTONIO GORDON did within this county and state on 07/23/98 violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of ROCK HILL) in the following particulars:

DESCRIPTION OF OFFENSE: POSSESSION OF A HANDGUN UNDER 21 16-23-30(C) #2364

I further state that there is probable cause to believe that the defendant named above did commit the crime set forth and that probable cause is based on the following facts:

DID WILLFULLY AND UNLAWFULLY POSSESS A G.O.P.4-BARREL .357 CALIBER HANDGUN, SILVER IN COLOR, AT SIXTEEN YEARS OF AGE (DOB: 03-21-82). THIS INCIDENT OCCURRING IN THE 500 BLOCK OF S. JONES AVENUE WITHIN THE CITY LIMITS OF ROCK HILL, SC. *POLICE INVESTIGATION *RECOVERY OF EVIDENCE *SWORN STATEMENTS BY DEF., CO-DEF., AND WITNESSES

Sworn to and subscribed before me on 7-24-98

M C Neely (L.S.)

Signature of Issuing Judge

John Thickens

Signature of Affiant

Affiant's Address _____

Affiant's Telephone _____

CERTIFIED TRUE COPY: JUN 21 9 04 AM '00 DAVID E. CLERK OF COURT YORK COUNTY, SC

STATE OF SOUTH CAROLINA)

☐ County/ ☒ Municipality of ROCK HILL)

ARREST WARRANT

TO ANY LAW ENFORCEMENT OFFICER OF THIS STATE OR MUNICIPALITY OR ANY CONSTABLE OF THIS COUNTY:

It appearing from the above affidavit that there are reasonable grounds to believe that on 07/23/98 defendant ANTONIO GORDON did violate the criminal laws of the State of South Carolina (or ordinance of ☐ County/ ☒ Municipality of ROCK HILL) as set forth below:

DESCRIPTION OF OFFENSE: POSSESSION OF A HANDGUN UNDER 21 16-23-30(C)

Now, therefore, you are empowered and directed to arrest the said defendant and bring him or her before me forthwith to be dealt with according to law. A copy of this Arrest Warrant shall be delivered to the defendant at the time of its execution, or as soon thereafter as is practicable.

M C Neely (L.S.)

Signature of Issuing Judge

Judge Code: 0005

Judge's Address 120 E. BLACK ST.

Judge's Telephone _____

Issuing Court: ☐ Magistrate ☒ Municipal ☐ Circuit

ORIGINAL

App. P. 246

532

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

INDICTMENT

At a Court of General Sessions, convened on October 15, 1998 the Grand Jurors of York County present upon their oath:

POSSESSION OF A PISTOL BY PERSON UNDER TWENTY-ONE

That Antonio Gordon did in York County on or about July 23, 1998, unlawfully and knowingly have in his possession a pistol, said defendant being under Twenty-One (21) years of age at the time of incident, all in violation of §16-23-30, Code of Laws of South Carolina, (1976, as amended).

CERTIFIED TRUE COPY
JUN 21 9 04 AM '00
YORK COUNTY, SC

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

SOLICITOR

App. p. 247

WITNESSES

Herring/RHPD

533

ARREST WARRANT NUMBER

F763901

ACTION OF GRAND JURY

TRUE BILL

Robert Freeman

Foreperson of Grand Jury

Date: 10/19/98

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 98-GS-46-2852

The State of South Carolina

County of York

COURT OF GENERAL SESSIONS

October 15, Term 1998

THE STATE

vs.

ANTONIO GORDON

Indictment for

POSSESSION OF A PISTOL BY PERSON UNDER TWENTY-ONE

SC Code: 16-23-30(C)
CDR Code: 2364

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

I Antonio Gordon hereby appear in my own proper person and plead guilty to the within indictment or to

Antonio Gordon
Defendant

Witness:
Teresa Higgins Clerk II
C.C.C. PLS. AND G.S.

App. P. 248

STATE OF SOUTH CAROLINA

County of York

In the Court of Common Pleas

2000 CP 46-1414

Antoine Gordon #254793

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

vs.

Charles Condon, Atty. General

Name of Respondent.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

JUN 20 4 50 PM

CERTIFIED TRUE COPY

INSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention Kershaw Correctional Institution; Magnolia East 9T 4848 Goldmine Hwy; Kershaw S.C. 29067

2. Name and location of Court which imposed sentence York Co Family Court; York S.C. 29730

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
   (a) Murder, 98-Ju-46-2847, Attempted Armed Robbery, 98-Ju-46-2849, Attempted Armed Robbery 98-Ju-46-2850
   (b) Poss Firearm Comm Violent Crime, 98-Ju-46-2850-A, Poss Firearm comm violent crime, 98-Ju-46-2847-A
   (c) Poss Firearm Comm Violent Crim, 98-Ju-46-2847-A, Poss pistol under 21, 98-Ju-46-2852 Criminal Conspiracy, 98-Ju-46-2851

4. The date upon which sentence was imposed and the terms of the sentence:
   (a) July 23, 1998, Waiver of Jurisdiction
   (b)
   (c)

5. Check whether a finding of guilty was made

(a) after a plea of guilty Yes

(b) after a plea of not guilty _____

(c) after a plea of nolo contendere _____

6. Did you appeal from the judgment of conviction or the imposition of sentence?

NO

7. If you answered "yes" to (6), 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. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Alligations is being Filed on grounds of ineffective Assistance of Counsel

(b) pursuant to family court matters.

(c) _____

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) _____

(b) _____

(c) _____

APP. P. 250

11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? NO

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? NO

(d) any other petitions, motions or applications in this or any other Court?

12. If you answered "yes" to any part of (11), 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.

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

NO

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. _____

ii. _____

iii. _____

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

i. _____

ii. _____

iii. _____

15. If any ground set forth in (9) 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) _____

(b) _____

(c) _____

16. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? Yes

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? N/A

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? N/A

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Harry Dest P.O. Box 691 1675-1E York Hwy, York S.C. 29745-0691

ii. Roberts D'Agostino Attorneys at law, 300 west Liberty Street, P.O. Box 460 York S.C. 29745

iii. _____

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

i. _____

ii. Sentencing Phase & Trial

iii. _____

18. State clearly the relief you seek in filing this application.

_____

_____

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

NO

STATE OF SOUTH CAROLINA

County of York

VERIFICATION

I, Antonio Gordon #259798, 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.

Antonio Gordon

SWORN to and subscribed before me this 12 day of June, 19 2000.

(L.S.)
Notary Public

Notary Public, South Carolina, State at Large
My Commission Expires Feb. 6, 2008

My Commission Expires:

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, Antonio Gordon #259798, 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 therefor.

Antonio Gordon
Applicant

SWORN or affirmed to and subscribed before me this 12 day of June, 19 2000.

Notary Public

Notary Public, South Carolina, State at Large
My Commission Expires Feb. 6, 2008

My Commission Expires

App. P. 254 406

FILED/RECEIVED
AUG 21 2 33 PM '01

CERTIFIED TRUE COPY
AUG 23 10 33 AM '01

STATE OF SOUTH CAROLINA

County of York.

In the Court of Common Pleas

01 CP 46 1866

Antonio Gordon#259798
Full name and prison number (if any) of Applicant.

vs.

State of South Carolina
Name of Respondent.

APPLICATION FOR POST-CONVICTION RELIEF

INSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention Kershaw Correctional Institution,Sycamore East, Room#4-B,4848 Goldmine Highway Kershaw,S.C.29067

2. Name and location of Court which imposed sentence York County General Session Court, Post Office Box 649,York,South Carolina 29745-0649

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

   (a) Murder 98-GS-4647,Attempted Armed robbery 98-GS-46-2849,Poss.Fire

   (b) comm viol crime,98-GS-46-2847-A,Criminal conspiracy 98-GS-46-2851

   (c) Firearm comm violent crime 98-GS-46-2849,Poss Firearm Comm violen 98-GS-46-2850-A,Poss of a Handgun under(21)98-GS-46-2852,Attempted Ar

4. The date upon which sentence was imposed and the terms of the sentence: Robbery 98-GS-46-2850

   (a) July,19,1999,30 years for Murder,to ten(10)Consecutive year for o

   (b) Attempted Armed robbery,to ten(10)Concurrent year on the other ar

   (c) robbery,and to five(5)years concurrent one each of the remaining

Involuntary Guilty Plea(ARGUMENT 1)

Entering a guilty plea results in a waiver of several cnatitutional rights,therefore the Due Process Clause requires that guilty pleas are entered into voluntarily,knowingly,and intelligently by defendants,Boykin v. Alabama,395 U.S.238,89 S.C.T.1709,23 L.E.D.2d274 (1969).The United States Supreme Court has held that before a court can accept a guilty plea,a defendant must be advised of the constitutional rights,he or she is waiving.Specifically,a defendent must be aware of the privilege against self incrimination,the right to a Jury Trial,and the right to confront one's accusers.The S.C. Surpeme Court considered the requirements of a voluntary and knowing guilty plea in State v. Hazel,275 S.C.392,271 S.E2d 602(1980),and Dover v. State,304 S.C.433,405 S.E2d 391(1991).In addition to the requirements of Boykin v. Alabama,a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense, the maximum and any mandatory minimum penalty, and the nature of the Constitutional Rights being waived.

When determining issues relating to guilty pleas,the court will consider the entire record,including the transcript of the guilty plea,and the evidence presented at the P.C.R.haering.Harres v.Leeke, 282 S.C.131,318 S.E2d 360(1984).However,in this case,the transcript of Gordon's guilty plea on its face provides enough evidenac to hold Gordon's plea was not voluntary or knowing.See Pittman v. State, 524 S.E2d 623.In Gordon's case,the trial Jude did not affirmatively ask him for an admission of guilt.

Furthermore,the applicant's guilty plea was involuntary due to limited comprehension,whereas he responded systematically to the Judge's questioning during the plea proceedings even though there had surfaced much confusion between the Judge and counsel as to the sentencing stipulation and/or guidelines yet applicant still responded as"yes"even though the guidelines mentioned were inaccurate or inaccurately stated.Tr.pg.178-179

407

5. Check whether a finding of guilty was made [redacted] App. P. 256

X (a) after a plea of guilty X

(b) after a plea of not guilty

(c) after a plea of nolo contendere

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes I did appeal.

7. If you answered "yes" to (6), list

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

i. State of South Carolina Court of Appeals.

ii.

iii.

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

i. Appeal dismissed.

ii.

iii.

(c) the date of each such result:

i. December 6, 2000

ii.

iii.

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

i.

ii.

iii.

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b)

(c)

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Ineffective assistance of counsel(d)Denial of severance motion

(b) Involuntary guilty plea

(c) Lack of subject matter jurisdiction, [redacted]

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) see attached memorandum,

(b) see attached memorandum,

(c) see attached memorandum,

409

App. P. 257

Lack of Subject matter Jurisdiction(Argument 2)

When a juvenile is taken into custody he must immediately be taken before a referee,circuit Judeg,ormagistrate,and if there is a failure to do so,and it appears that primary purpose of delay was to obtain a confession from juvenile,any confession obtained as a result of that delay will be invalid.Code 49-5-8.

Decision to tarnsfer juvenile to adult status is within sound discretion of district Judge,as district Judge considers and makes specific finding as to following six factors! Juvenile's age and social background;nature of alleged offense;prior record of offender;juvenile's intellect intellectual development and psychological maturity;nature of and response to past treatment; and availability of programs designed to treat juvenile's problems. U.S. v. Greald,900 F2d 189.See U.S. v. CJTG,913 F.Supp.63(Juvenile would not be transferred to adult status for prosecution and trial, even though he had been involved in carjacking in which victim was kill by gun shot).

Defendant was charged with Armed robbery and sentenced by the family court,Greenvill County,James AK.Roper,3.as a youthful offender,"After a guilty plea to accessory before and after the fact,and defendant qppealed".The Supreme court held that where defendant was sixteen(16) years of age at the time of charge offense ot Armed robbery,but turned seventeen(17) years of age prior to final disposition of charge in family court,since Jurisdiction had not been relinquished in favor of another court under applicable statute,charge against defendant should have been handled under statue relating to youthful offenders.

Severance Motion (Argument 3)

The trial Judge must act cautiously in allowing a joint trial;the Judge must carefully consider problems that may arise from a joint trial,such as redacted statements, and must assure protection of each defendant's constitutional right to confront witnesses against him.State v. Singleton,303 S.C.313.

Petitioner contends the trial judge,relying in part upon Zafiro v. United States,506 U.S.534,113 S.C.T.933,122 L.Ed.2d 317 (1993),erred indenying his pretrial severance motion.

Petitioner's attorney made a motion to sever trial due to the fact that the appellant had,"Been tested on two prior occassions before this crime ever occurred...and he has Consistently tested 68,which as I understand it is in the range of mental retardation".Tr.pg.8,Lines 18-25;pg.9,Lines 1-25.Petitioner's attoreny informed the court that he would have to explain things to Petitioner and that to introduce two co-defendants,"Would create the definite result that the defendant will surely be lost in the entire trial process.The Court erred in denying this motion.

Ineffective Assisiance of Counsel. (Argument 4)

Counsel was ineffective for allowing guilty plea that was not knowingly and intelligentty given plea argued in ground (1). Counesl's ineffectiveness was so severe that it prejudiced petitioner's Constitutional Right to a fair trial.

Conclusion

Petition moves to have sentence vacated or in the alternative a new trial.I so move:

S/ Antonio Gordon

Antonino Gordon#259798
Kershaw Correctional Institution
Sycamore East,Room#4-B
4848 Goldmine Highway
Kershaw,S.C. 29067

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11. 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 petitions in State or Federal Courts for habeas corpus or post-convictions relief? No

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? No

(d) any other petitions, motions or applications in this or any other Court?

No

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. N/A

ii.

iii.

iv.

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

i. N/A

ii.

iii.

iv.

(c) the disposition thereof:

i. N/A

ii.

iii.

iv.

(d) the date of each such disposition:

i. N/A

ii.

iii.

iv.

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

i. N/A

ii.

iii.

iv.

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

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App. p. 260

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

15. If any ground set forth in (9) 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) Petitioner's first attempt at relief

(b) _____

(c) _____

16. 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? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Harry Dest, 1675-3A York Hwy, "York S.C. 29745

ii. D. Agostino, " address unknown

iii. _____

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

i. Harry Dest Got off case.

ii. D. Agostino Plea and Sentencing,

iii. _____

18. State clearly the relief you seek in filing this application.

Vacation of sentence

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

No

APP. P. 261

STATE OF SOUTH CAROLINA

County of York

VERIFICATION

I, Antonio Gordon, 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.

Antonio Gordon

SWORN to and subscribed before me this 13th day of August, 19 2001

Penny F. West (L.S.)
Notary Public

My Commission Expires: 12-27-10

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Antonio Gordon
Applicant

SWORN or affirmed to and subscribed before me this

13th day of August, 19 2001

Penny F. West
Notary Public

My Commission Expires 12-27-10.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF MMON PLEAS
YORK COUNTY

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Exhibit 5

App. P. 262

Antonio Gordon
Applicant,

v.

State of South Carolina
Respondent.

MOTION TO AMEND APPLICATION FOR POST-CONVICTION RELIEF

case# 41-CP-46-1866

Applicant through his undersigned counsel moves the court an order granting him leave to amend his application for post-conviction relief to include the following ground for relief.

1. Should a sixteen year old charged with certain enumerated offences as specified in S.C. Code Ann § 20-7-6605(1) be given a competency hearing to determine whether the sixteen year old is competent to stand trial as an adult before the solicitor is granted with the arbitrary discretion of granting jurisdiction of the offence before making his discretionary dicision?

2. Could a juvenile sixteen years of age be rehabilitated in juveniles facilities who commit classes A,B,C,and D felonies?

3. Does the solicitor have to notify the sixteen year old, that he is being charged and tried as a Adult?

4. Under S.C. Ann§ 20-7-7605 (6) Should the applicant be afforded a hearing under that statute?

5. Did trial court lack subject-matter jurisdiction to accept applicants guilty plea to murder, and attempted armed robbery?

Exhibit 5 415 APP. P. 263

[1-2] In determining whether a juvenile is to be transfered to thecourt of general sessions the following factors must be considered in State v. Avery 509 S.E.2d 476(S.C.1998), and Kent v. United States. 86 S.Ct.1045(1966).In determining should a juvenile be transfered to general sessions the testimony from the transfer hearing and Pre-waiver [evaluation] report is considered. State v. Avery 509 S.E.2d 476. A major factor in determining a transfer of a juvenile is whether the juvenile can be rehabilitated. Being rehabilitated requires that the juvenile be evaluated by the department of juvenile justice. when the solicitor makes his arbitary determination whether sixteen year olds is going to be tried as adults or juveniles. The solicitor bases his arbitary determination and discretion on the juveniles age and charge. Never the less, the solicitor investigate and focas on the juveniles mental history, family background, and or whether the juvenile could be rehabilitated at the age of sixteen. The law where pass to give the solicitor the discretion they have to try juveniles sixteen years of age because (16) year olds were committing adult crimes. Moreover when a juvenile sixteen years of age commit class A,B,C, or D felonies dos not nessarily mean that a sixteen year old is capable of understanding the things that adults would. However, it has not been established that the solicitor should hold an evaluation hearing for individuals juveniles sixteen years of age who commit classes A,B,C, or D. felonies to be competent to stand trial as an adult.

Exhibit 5 App. P. 264

The court held in Dusky v.United States 80 S.Ct 788, that defendants competency to stand trial is whether he has the sufficient present ability to consult with his lawyer with a reasonable degre of rational as well as factual understanding of the proceeding against him. Ofcorse Dusky is an adult and Dusky is a test of standing trial. Thus a juvenile sixteen years of age may not be competentant to stand trial as a adult. The only true way to find out is to hold an evaluation hearing. Applicant contends that the evaluation hearing is not a transfer hearing, but more of a hearing for the solicitor to render his arbitary determination to determine whether sixteen year olds should be tried as an adult or juvenile. Moreover, S.C. Code Ann § 20-7-6605 is a definition statute and are used to prosecute one group of juveniles, which are sixteen. There are no certain or mandatory factors that the solicitor has to go by,"To determine whether juveniles sixteen years of age are to be tried as adult or juveniles. The only mandatory factors the solicitor has to have to try a juvenile sixteen years of ageis, The juveniles age which is (16),and if the juvenile commit a class A,B,C, or D felony. The applicant contends that the solicitor should have held an evaluation hearing to make his determination. However, the common law question in the case at bar is whether the solicitor should hold an evaluation hearing for juveniles sixteen years old.

Exhibit 5

[3] The applicant contends that he was never told that he would be tried as a adult. The applicant was a juvenile and unaware of being charged and tried as a adult. Counsel nor the solicitor notified the defendant about being tried as an adult. However, applicant realize the state will argue that the defendants counsel was aware of the defendant being tried as an adult and should have notified the defendant. This is not the case. The courts have held that these rights are personal to the accused. It is the accused not counsel, who must be informed of the nature and cause of the accusation. see State v. Green 239 S.E.2d 487(1977).

[4-5] A statute is the law passed by a legislative body. In determining the scope of a statute the court must first look to language. The words of a statue are to be given their ordinary meaning. Moskal v. United States 111 S.Ct.461(1990), United States v. Stokley 881 F.2d 114(1989). A child in South Carolina who commits a class A,B,C, or D felony one who is sixteen years of age is not considered as a "CHILD". However it is at the descretion of the solicitor to determine if a child sixteen years of age is considered as a child. When reading the United States Constitution under the child provision it does not mention the word child. The United States Constitution uses the word "Juvenile". However when reading state statute 20-7-6605 it uses the word "Child".

Exhibit 5

The constitutional law is the body of law deriving from the, United States Constitution and dealing primarily with governmental powers and civil rights and liberities. Constitutional law originated in Marbury v. Madison 5 U.S.(1. Cranch) 137 (1803). Which declares the judicarys power to construe the constitution. However, if the constitution of the United States does not use the word child within the constitution, then the state should not use the word child. South Carolina has not defined who is a child. But the constitution has defined the word child as juvenile. In construing S.C. Code Ann § 20-7-6605 their are a conflict of definitions in the law when it relates to who is a child. Intention of the legislature is the first rule of construction of statutes and full effect must be given to each section, and words must be given their plain and ordinary meaning. State v. Sawyer 88 S.E.2d 894. Ashley v. Ware Shoals MFG. Co. 42 S.E.2d 390. The original definition of a child in S.C. Code Ann § 20-7-6605, is defined as a person under the age of seventeen. Applicant contends that the division of governmental are devided into three branches of Government....Legislative...Executive...and Judicial. Applicant submits while passing the law giving the solicitor the athorities to denie the family courts jurisdiction. And that by the legislative branch giving the solicitor the power to try "Juveniles" With-out first going through family court, or holding some type of evaluation hearing to determine the child or juveniles mental capicity is unconstitutional and that it encroaches on the family court jurisdiction while family court having exclusive jurisdiction over all juveniles until the juvenile has been transfered to the court of general sessions.

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More-over, the applicant contends that while the state of South Carolina only treating sixteen year olds as adults, that the fourteen and fifteen year olds are committing the same acts, and are being tried in family court, or either waved up to the court of general sessions. Applicant contends that they are no diffrent in age but one year. However, if a juvenile sixteen years of age commit a crime as a juvenile he will only be incarcerated for five years. When the fifteen year olds will be incarcerated for six years. More-over, when the solicitor determines to try the sixteen year old as an adult or not he the solicitor determine who is left in family court. There-fore, all juveniles sixteen years of age are not being treated equally. Since their are individuals juveniles under the age of sixteen committing the same exact offence sixteen year olds are, and are being waived up to the court of general sessions. then sixteen year olds should be afforded the same rights that those individuals have. Wherefore in light of the athorities and statutes here in before mentioned, and additionally within reasonable reliance upon the constitutional law intent governing inquires of this nature, was denied his Fifth Amendment Right to Due Process of Law, as with his Fourthteenth U.S. Constitutional right to Equal Protection of the law and Due Process.

Finally the general sessions court was with-out Subject-matter Jurisdiction to accept applicants guilty plea to murder and attempted armed robbery, due to the above mentioned matters.

Exhibit 5

(B)

The trial court lack subject matter jurisdiction to accept applicant guilty plea to murder and attempted armed robbery where family court granting jurisdiction to circuit court was unconstitutional.

To be arbitrarily denied the privilege of juvenile jurisdiction by discriminatory legislative classification is violative of due process and the equal protection of the law.Legislative classification are entitle to a strong presumption of validity an may be set aside only if no grounds can be conceived to justify them, "Bland".It is a salutory principle of judicial decision,long emphasized and followed by this court,that burden of establishing the unconstitutionality of a statute rests on him who assails it,and that courts may not declare a legislative discrimination involid unless viewed in the light of facts made known origenally assumed,it is of such rests upon some rational basis within the knowledge and experience of the legislators."Bland".However, there is a presumption of reasonableness of classification in state statute,but presumption is only in absence of evidence to the contrary which is clearly admissible.Evidence to the contary which establishes the unconstitutionality of the statute in question as a denial of the equal protection of the law,lies upon the fact that,S.C. Code Ann § 20-7-6605(1),arbitrarily by age,discriminates against those individuals under the age of

Exhibit 5

seventeen (17),sixteen year olds charged with certain enumerated offenses by allowing those individuals to be charged in an adult court,without having to first bring charges in a family court and obtaining transfers,while other individuals under the age of seventeen (17),(14),and (15) yaer olds charged with the same enumerated offenses,must be charged in the family court first, and then may be transferred under some circumstances.No other age group,other than (16) sixteen year olds are arbitrarily classified as reflected in the fractured nature of statutes and subsections in the family court relating to this particular age group.

To begin S.C. Code Ann § 20-7-6603(1) defines a "child" in it's plain and ordinary meaning."Child" means a person less than seventeen years of age,S.C. Code Ann § 20-7-6605(1) then proceeds to expand the plain and ordinary meaning of a "child" to arbitrarily exclude only those (16) year olds charged with a class A,B,C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more.(Only sixteen year olds are affected because a seventeen year old is never considered a "child" as the statute defines a "child" as a person less than seventeen years of age.However,these same individuals can be proceeded as juveniles or children at the discretion of the solicitor where the statute states.....However,a person sixteen years of age who is charged with a class A,B,C,or D felony as defined in section 16-1-20or a felony which provides for a maximum term of fifteen years or more may be remanded to the family court at

Exhibit 5

for disposition of the charge at the discretion of the solicitor.

S.C. Code Ann § 20-7-7605 then defines a sixteen year old as a child,if charged with an offense which if committed by an adult,would be a misderminor,a class E or F felony as define in section 16-1-20 or a felony which provides for a maximum term of imprisonment of ten years or less.S.C. Code ANN § 20-7-7605(5) then defines a "child" as a fourteen or fifteen year old,charged with an offense which would classify as a class A,B,C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more.In retrospect S.C. Code Ann § 20-7-7605 stipulates that any individual 14 years oo older can be tried as an adult under certain circumstances.Anyone under the age 14,may be tried as an adult,only,if the individual has committed the offense of murder or criminal sexual conduct.

As shown § 20-7-6605(1) and § 20-7-7605 are identical in every aspect except that a 14 and 15 year old is giving a chance and a 16 year old is out of sight-out of mind."This arbitrary age discrimination rests upon the fact that there is no justification over a 14 and 15 year old who is arbitrarily classified as an adult,upon initiation of the chargeds.Here the original justification,"if there was one,is no longer justifiable where there is no longer any real distination between 14,15,and 16 year olds.If there was a disparity between 14,15,and 16 year-olds,there is little evidence that these differences exist today where the recidivist rate of 14 and 15 year old offenders, has equate with that of 16 year olds offenders if not surpassed

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Exhibit 5

the number.

In Bland, the court held that in it's original justification congress sought to improve the operation of the juvenile justice system by removing from it's jurisdiction, individuals between the ages of 16 and 18, in which congress concluded (1) were beyond rehabilitation in juvenile justice system, and (2) whose presence in that system serve as a negative influence on other juveniles.....see Bland at 472 F.2d 1332, today this reason is also applicable to 14 and 15 yr olds. In revealing it's rationale for excluding such persons from the jurisdiction of the family division, the house committee on the district of Columbia, gave the following as the basis for it's exclusion of those 16 yrs of age or older charged with certain enumerated offenses. Because of the great increase in the number of serious felonies committed by juveniles and because of the substantial difficulties in transferring juvenile offenders charged with serious felonies to the jurisdiction of the adult court under present law, provisions are made in this subchapter for a better mechanism for separation of the violent Youthful Offenders and recidivist from the rest of the juvenile community, is arbitrarily and discriminatory applied in S.C. Code Ann § 20-7-6605(1). If differentation of individuals is necssary, as it surely is, it should be made on the basis of facts about the individual, and not on the bais of an

Exhibit 5

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assumption about a huge and diverse group.

The uncontroverted evidence is that such basis for the exclusion of only sixteen year olds as children when charged with certain enumerated offense is arbitrary and unreasonably discriminatory.This effect is not hypthetical or theoretical, but is quite real.Individuals,under the age of 17,if charged as an adult with a class A,B,C,or D felony.....will be tried as ,and if convicted be subject to the penalties of adults.If convicted they will be incarcerated in adult institutions upon ascertaining the age of 17,and largely,if not completely,be deprived of the social psychological and psychiatric services, and educational and vocational opportunities afforded juveniles. Further,if convicted as adults,these indiividuals may lose the right to vote;serve in the Armed Forces;to secure many types of government and private employment,and will carry forever the stigma of conviction.The only difference as addressed in the dissenting opinion in Bland is that 16 year old individuals, will be sentence (if convicted in an adult court).Moreover, without any meaningful inquiry into the possibility of rehabilitation through human juvenile disposition."see Bland at 1348,1349.

Thus,it is evident that a statute which provives that a "child" is an individual,less than seventeen years of age,but that a "child" is not an 16 yr old individual charged with certain enumerated offenses,while an individual,14 or 15 of age

App.

Exhibit 5

the number.

In Bland,the court held that in it's original justification congress sought to improve the operation of the juvenile justice system by removing from it's jurisdiction,individuals between the ages of 16 and 18,in which congress concluded (1) were beyond rehabilitation in juvenile justice system,and (2) whose presence in that system serve as a negative influence on other juveniles.....see Bland at 472 F.2d 1332,today this reason is also applicable to 14 and 15 yr olds.In revealing it's rationale for excluding such persons from the jurisdiction of the family division,the house committee on the district of Columbia,gave the following as the basis for it's exclusion of those 16 yrs of age or older charged with certain enumerated offenses.Because of the great increase in the number of serious felonies committed by juveniles and because of the substantial difficulties in transferring juvenile offenders charged with serious felonies to the jurisdiction of the adult court under present law,provisions are made in this subchapter for a better mechanism for separation of the violent Youthful Offenders and recidivist from the rest of the juvenile community,is arbitrarily and discriminatory applied in S.C. Code Ann § 20-7-6605(1).If differentation of individuals is necssary,as it surely is,it should be made on the basis of facts about the individual,and not on the bais of an

charged with the same enumerated offense is a "child" where there is no real distinction (psychological or physical) between 14,15 and 16 year olds,denies equal protection of law to those 16 year olds who are arbitrarily by age,excluded from juvenile court jurisdiction S.C. Code Ann § 20-7-400(A).

Statutory construction must begin with plain language of statute and court should not look beyond the plain language unless there is ambiguity or unless statute as literally read would contravene ambiguously expressed legislative intent gleaned from statute's legislative history;even if results appears to be anomalous or absurd in particular case,court may not disregard unambiguous language.U.S v. Sheek,990 F.2d 150.

The judicial action of constructing statute to eliminate exclusive original juvenile Jurisdiction in S.C. is an unforeseeable action.Because of the unclear,ambiguous nature of § 20-7-6605(1) where it provides that a "child" is an individual less than seventeen of age,a "child" is not a sixteen year old charged with certain enumerated offenses;a "child" maybe a sixteen year old charged with certain enumerated offense when that person is remanded to the family court,these ambiguities must resolve in favor of lenity for the accused.In Graham,the supreme court ruled that a sixteen year old charged with certain enumerated offenses may be charged in circuit court first without bringing charges in family court and obtaining transfer

Exhibit 5

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based upon S.C. Code Ann § 20-7-6605(1).The court ruled that the family court had no original jurisdiction over the offense of murder.This judicial construction of the statute is an unforeseeable action where S.C. Code Ann § 20-7-400(A)(1)(D) and (3) specifically grants exclusive original jurisdiction of the offense to the jurisdiction of the family court.

S.C. Code Ann § 20-7-400(A) states:Except as otherwise provided herein,the court SHALL have exclusive original jurisdiction and SHALL be the sole court for initiating action:

(1)Concerning any child living or found within the geographical limits of it's jurisdiction,

(d)Who is alleged to have violated or attempted to violate any state or local law or municipal ordinance,regardless of where the violation occured except as provided in § 20-7-410

(3)Concerning any child seventeen years of age or over,living or found within the geographical limits of the court's jurisdiction,alleged to have violated or attempted to violate any state or local law or municipal oridance prior to having become seventeen years of age and such person SHALLbe dealt with under the provision of this chapter relating to children.

The family court is a stautory court created by the legislature and,threfore,it's jurisdiction is limited to that expressly or by necessary implication,conferred by statute. See State v. Graham,supra.

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Antonio Gordon #259798
Kershaw.C.I. S.E.#21-B
4848 Goldmine Hwy
Kershaw, SC 29067

2 / 4 /2002.

Dear Counsel,

Enclose is some case notes on the Juvenile Law. Statute 20-7-6605, states that, when used in this article and unless otherwise defined or the specific context indicates otherwise. (1). On

(1). Child means a person less than seventeen years of age. "Child" dose not mean a person sixteen years of age or older who is charged with a class A, B, C, or D-felony as maximum term of imprisonment of fifteen years of more. However, a person sixteen years of age who is chared with a class A, B, C, or D felony as d define in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the discretion of the Solictor. An additional or accompanying charge associate with the charge contained in this item must be heard by the court with Jurisdiction over the offenses contain in this item.

Statute 20-7-7605, states that an sixteen year old defendant, sixteen years of age or older is charged with an offense which if committed by an adult, would be a misdemeanor, a class E or F felony as defined in section 1601-20, or a felony which provides for a maximum term of imprisonment of ten years or less, and if the court, after full investigation, considers it contrary to the best interest of the child or of the public to retain Jurisdiction, the court, in its discretion, acting as committing magistrate, may bind over the child for proper criminal proceedings to a court which would have trial Jurisdiction of the offense if committed by an adult.

Statute 20-7-400, states the same as statute 20-7-7605, but the age limit is higher. Those three statutes is conflicting with each other. Here are some of the cases I looked up on statutes conflicting each others.

(1). Williams v. State 410 SE.2d 563 (SC 1991).
(2). Stats v. Cutler 274 S.C. 376, 264 SE.2d 420 (1980).
(3). State v. Life Insurance Company of Gorgia 175 SE.2d 205.
(4). Scouill v. Johnson 3 SE.2d 543, 545.

Therefore General Sessions lack subject matter jurisdiction for accepting my guilty plea, and attorney D. Agostin is Ineffective Assistance for allowing me to plea to that. I appreciate the time you have put in this matter.

Sincerely Your's, Antonio Gordon

Antonio Gordon #259798

Sworn to and Subscribed
before me this 4th day of Feb 02.
Notary: Penny F. West.
Exp: 12-27-10 .

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK	)	SIXTEENTH JUDICIAL CIRCUIT
	)	
	)	2000-CP-46-1414
	)	
Antonio Gordon, #259798,	)	
	)	
Applicant,	)	
	)	
vs.	)	CONSENT ORDER CHANGING VENUE
	)	
State of South Carolina,	)	
	)	
Respondent.	)	

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Attachment

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 15, 2000. The Respondent made its Return on May 2, 2001.

This matter is presently before the Court to change venue in order to conduct the PCR hearing. The trial judge in this matter was the Honorable John C. Hayes, III. The other judge for the Sixteenth Circuit, the Honorable Lee S. Alford, has recused himself due to a conflict. Judge Alford heard oral arguments and ruled on discovery issues in the Applicant's case before his trial occurred. Because both judges for the Sixteenth Circuit are unable to hear this case, this case should be transferred to Richland County for the PCR hearing in order for the case to be heard in a more timely manner.

It appearing that counsel for both parties as well as the Applicant consent to the change of venue this Application for Post-Conviction Relief is transferred to Richalnd County for the sole purpose of conducting the PCR hearing. The Applicant further agrees to allow Judge Hayes to sign this Order for Change of Venue in his capacity as Administrative Judge for the Sixteenth Judicial Circuit even though he was the actual trial judge

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IT IS THEREFORE ORDERED:

1. That this case is transferred from York County to Richland County for the sole purposes of conducting the PCR hearing; and

2. That this case will remain as a Sixteenth Circuit PCR for the purposes of filing pleadings and other documents because the county of conviction is York County.

AND IT IS SO ORDERED this 26th day of June, 2003.

John C. Hayes, III
Administrative Judge
Sixteenth Judicial Circuit

June 26th, South Carolina.

WE CONSENT:

Antavi Gordon
Applicant

Tara D. Shurling
Tara D. Shurling, ESQUIRE
Attorney for the Applicant

Jeanette Van Ginhoven
JEANETTE VAN GINHOVEN, ESQUIRE
Attorney for the Respondent

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STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF YORK) 00-CP-46-01414

ANTONIO GORDON,)
)
APPLICANT,)
)
VS.) TRANSCRIPT OF RECORD
)
STATE OF SOUTH CAROLINA,)
)
RESPONDENT.)

Attachment (D)

JULY, 29, 2003
COLUMBIA, SOUTH CAROLINA

B E F O R E:

THE HONORABLE J. ERNEST KINARD, JR., JUDGE.

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

TARA D. SHURLING, ESQ.
ATTORNEY FOR THE APPLICANT

JEANETTE C. VANGINHOVEN, ASSISTANT ATTORNEY GENERAL
ATTORNEY FOR THE RESPONDENT

DEBORAH M. McCURDY
OFFICIAL COURT REPORTER

Exhibit 5

charged with the same enumerated offense is a "child" where there is no real distinction (psychological or physical) between 14,15 and 16 year olds,denies equal protection of law to those 16 year olds who are arbitrarily by age,excluded from juvenile court jurisdiction S.C. Code Ann § 20-7-400(A).

Statutory construction must begin with plain language of statute and court should not look beyond the plain language unless there is ambiguity or unless statute as literally read would contravene ambiguously expressed legislative intent gleaned from statute's legislative history;even if results appears to be anomalous or absurd in particular case,court may not disregard unambiguous language.U.S v. Sheek,990 F.2d 150.

The judicial action of constructing statute to eliminate exclusive original juvenile Jurisdiction in S.C. is an unforeseeable action.Because of the unclear,ambiguous nature of § 20-7-6605(1) where it provides that a "child" is an individual less than seventeen of age,a 'child" is not a sixteen year old charged with certain enumerated offenses;a "child" maybe a sixteen year old charged with certain enumerated offense when that person is remanded to the family court,these ambiguities must resolve in favor of lenity for the accused.In Graham,the supreme court ruled that a sixteen year old charged with certain enumerated offenses may be charged in circuit court first without bringing charges in family court and obtaining transfer

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RICHARD G. D'AGOSTINO

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EXHIBITS

(WHEREUPON, no exhibits were introduced during these proceedings.)

Attachment (D)

App. P 280

JULY 29, 2003

MS. VANGINHOVEN: This is the case of Antonio Gordon versus State. This is a case that has been transferred from York County. We did an order transferring venue. Judge Hayes was the trial judge, ended up the guilty plea judge, and Judge Alford had recused himself. He had done the pretrial motions in this matter.

The case number is 2000-CP-46-1414. And at this time the State would just ask Ms. Shurling to lay out the allegations for post-conviction relief.

THE COURT: All right, now, even though it was transferred here by order of Judge Hayes, you say?

MS. VANGINHOVEN: I believe it is Judge Hayes. It may have been Judge Alford. Judge Hayes.

THE COURT: It really does not matter, and it will only take two seconds, but I am not a resident judge of that circuit, and while a circuit judge can change venue, he can't vest me with jurisdiction, so I just have to call Court Administration, they will do an order giving me concurrent York County jurisdiction today.

MS. VANGINHOVEN: Okay.

MS. SHURLING: Thank you, Your Honor. I wasn't aware that had to be done.

THE COURT: Well,---

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MS. SHURLING: For the record, if it makes any difference, I will tell you that we consulted---

THE COURT: You can't waive jurisdiction.

MS. SHURLING: Exactly. But we did consult with the client about it and we have a signed waiver from him if you need to tell Court Administration that.

THE COURT: They don't care. The thing is, it occurs frequently, and I'm correct on it, it doesn't matter about that, but they will bring in a plea from Lexington County, you know, while we are doing some for Richland County; I can't do it. I can do one from Kershaw because I am a resident judge of that circuit.

MS. SHURLING: That's scary. We do that all the time.

THE COURT: I know, and it is not---

MS. SHURLING: Kosher.

THE COURT: Well, you can set some of them aside. Of course, usually they get concurrent, so it doesn't matter.

MS. SHURLING: I was going to say, Judge, thanks for the tip.

(The Court steps off the bench to call Court Administration.)

THE COURT: Lots of things get taken care of. It is like when they assign me chief judge of the 14th

Circuit, I'm still resident judge of the 5th Circuit, so I can hear anything in the 14th Circuit plus anything in the 5th Circuit. And every six months they do an order, and for the next six months, I saw it, they gave me jurisdiction in addition to my home circuit for the 6th Circuit, so I can hear anything from the 6th Circuit come January without getting an order.

MS. SHURLING: I understand. Thank you, Your Honor.

THE COURT: All right.

MS. SHURLING: Your Honor, for the record, my client's original application for post-conviction relief alleged that he received ineffective assistance of counsel at trial, prior to and during trial, that his pleas of guilty were not voluntarily and intelligently entered, and that the Court of General Sessions lacked subject matter jurisdiction over his case for a number of reasons.

Subsequent meetings with my client have yielded a further refinement of those general allegations, and I will now list for the court in detail his specific allegations in regards to the Sixth Amendment claim.

THE COURT: All right.

MS. SHURLING: The client alleges that trial counsel was ineffective in preparing this case for trial pretrial and that it was counsel's lack of preparation and

failure to pursue certain matters which led to his fear to exercise his right to trial by jury and directly affected his ultimately yielding to Defense counsel's desire that he plead guilty and waive his right to trial by jury.

There are a number of issues that he feels if trial counsel had adequately explored and prepared prior to the point in time when the decision had to be made about a plea, that he would not have pleaded guilty and would have exercised his right to trial by jury.

Among those are: The fact that a palm print, which the State had announced intentions to use as evidence against the client, was on the victim's car.

Pardon me one moment.

(Pause.)

MS. SHURLING: Okay, I apologize, Your Honor, we withdraw that allegation.

THE COURT: Okay.

MS. SHURLING: So our new first issue would be the lack of subject matter jurisdiction because the indictment was, among other things, not filed with the Clerk of Court within 90 days of his arrest.

It is his position, Your Honor, that court rules have long held that the Solicitor is to prepare an indictment and file it with the Clerk of Court and have a criminal number assigned to it and the Clerk of Court is

then to present the indictment to the Grand Jury.

It is the policy in this jurisdiction that someone who is in fact an employee of the Solicitor's Office prepares indictments, assigns a General Sessions indictment number, and they are presented directly to the Grand Jury without having them previously filed with the Clerk of Court's Office, nor is the Clerk of Court responsible for presenting them to the Grand Jury.

I will note for the record that in previous proceedings I have subpoenaed the woman from the Solicitor's Office who has that job and verified and make a proffer as an Officer of the Court under Cabbagestalk that it is the policy of the Solicitor's Office that they prepare the indictments, they assign it the next General Sessions number, and they present the indictment to the Grand Jury.

We have on previous occasions had her come to court and bring with her pages from Court Administration's Policies and Procedure Manual, which include a Policy and Procedure consistent with what the 5th Circuit Solicitor's Office is doing; however, it is the Applicant's position that regardless of whether Court Administration has signed off on that procedure, that it is inconsistent with the South Carolina constitutional requirement that the Clerk of Court present indictments to the Grand Jury.

Exhibit 6 [redacted] App. p. 2858

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Additionally, Your Honor, it is his position that counsel should have challenged the indictment in this case because it failed to say that he willfully and feloniously and with malice aforethought killed the victim in this case.

I would note that while that was one of the issues that my client wanted me to raise, we have now discussed the fact that in a very recent Supreme Court case from 2002, Joseph v. State, the Court held that "willfully" would be encompassed in the term "murder" and "feloniously" would be part and parcel of the allegation of "malice aforethought," and therefore that the omission of the terms "willfully" and "feloniously" would not render an indictment insufficient on its face.

Your Honor, my client also alleges that his indictment is faulty in that he was indicted by the Court of General Sessions and tried as an adult without trial counsel having -- and this is actually more of a Sixth Amendment argument, although my client has couched it in terms of subject matter jurisdiction -- that trial counsel never made a concerted effort as an advocate to convince the Solicitor's Office to exercise its discretion under Section 20-7-6605 to have his case remanded to the Family Court.

Under the provisions of the Family Court Code, the

Exhibit 6 App. P. 286

2003 PCR hearing of Antonio Garden

children's code, an individual charged with a Class A, B or C felony or one which carries a penalty of 15 years or higher, is automatically tried as an adult in the Court of General Sessions; however, 6605 does vest the Solicitor with the discretion to on a case-by-case basis if he deems fit return the case to the protection of the Family Court environment.

It is additionally my client's position that his indictment as an adult is improper in that there is an inherent conflict between Section 20-7-6605 and subsequent provisions of the Code which provide children additional protections when charged with crimes, that being Section 20-7-7605, specifically, Your Honor, again, while couched in the---

THE COURT: 20 what?

MS. SHURLING: 20 -- Pardon me, Your Honor -- 6605 is the provision that gives the Solicitor the discretion to waive it back up.

THE COURT: Okay.

MS. SHURLING: And, pardon, 7605 is the lengthy statutory provision outlining the rights of children charged with crimes in our courts.

And it is his position, Your Honor, although he has once again in his amendments that he has asked me to present, he couches this in terms of subject matter

jurisdiction, but it is really a Sixth Amendment argument, that trial counsel should have constitutionally challenged the Children's Code in that it provides very strict guidelines for the protection of children charged with crimes in South Carolina and carves out an exception for someone 16 years of age or older charged with serious crimes without any constitutional basis for depriving those children of the inherent protections afforded by the Family Court Judicial System versus the Courts of General Sessions.

Additionally, Your Honor, he alleges that trial counsel failed at an appropriate time to actively pursue a remand of his case back to the Family Court.

Under, as I have noted, Section 20-7-6605, Subsection (1), the Solicitor does in fact have that discretion.

The records before the Court, and I am assuming Your Honor will have copies of the Clerk of Court's file and copies of all the pretrial motion hearings held in this case in addition to the plea, indicate that after indictment as an adult my client was evaluated both by the State and by a mental health expert hired by Defense counsel; however, there is no evidence in this record from which I can glean any effort by Defense counsel to convince the Solicitor's Office prior to the case being

Exhibit 6

2003 PCR hearing of Antonio Gordon

indicted as an adult crime to have the case remanded to the care and custody of the Family Court.

This was a case involving a 16-year-old with no serious criminal background. He had a very limited IQ. There was dispute at trial as to whether or not he in fact met the criterion for retardation. Those factors combined both his age and his mental age and emotional immaturity were factors which if they had been adequately pursued prior to indictment by the Grand Jury may have convinced the Solicitor's Office to have the case remanded to the Family Court, and yet no effort was made. There was no -- apparently no cohesive plan to present to the Solicitor's Office a justification for returning the case to the Family Court.

As examples we would cite that Defense counsel could have, as I'm aware in other cases Defense attorneys have gotten statements from guidance counselors, teachers, people who know the child from church, certainly getting mental health experts, those ducks in a row, so to speak, prior to the indictment stage, and having all of that material presented to the Solicitor's Office in a cohesive fashion prior to the indictment process would have heightened the probability that this case could have been returned to the Family Court versus proceeding as an adult crime.

Exhibit 6 App. P. 289

Now, truly under 6605 it has to be recognized that the Solicitor would have had the discretion to return this case to the Family Court or to ask the Family Court judge to accept return of jurisdiction to the Family Court even after the indictment stage; however, it would be our position that once a Solicitor's Office has committed its Office to prosecution of a case as a General Sessions matter and has committed publicly to trying an offender as an adult, that it is inherently more difficult to get them to reverse their position and return that individual to the care of the Family Court.

Your Honor, he would allege further that trial counsel was ineffective in failing to adequately pursue the question of his competency to stand trial. The record in this case will indicate that he was evaluated just days before the competency proceeding by Leslie N. Sandler on the question of retardation. Her testimony at Page 104 indicates that she had less than a week to get this together and further that she spent, on Page 136, she spent approximately two hours with the Applicant.

She further acknowledged that she had not spoken with any background people or anyone such as family members to get any input as to how his adaptive behaviors or coping behaviors might have affected her reading with regard to the allegation that he was retarded.

Exhibit 6 App. P. 290

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For that reason, Your Honor, we would submit that trial counsel did not make an adequate challenge to the State's assertion that he was not competent to proceed to trial. We are not talking about his sanity, we are talking about competency to assist his attorney in the presentation and defense of his case at trial.

Additionally, Your Honor, it would appear that while Defense counsel hired an expert in this case to evaluate both the sanity and mental competency of the client in this case, it was not done until after the indictment stage, once again going to our argument that this case was allowed to get way too far down the line before anyone started talking about this young man's base abilities, his base line IQ, his emotional maturity, and other factors that should have been factored in the decision of whether or not he should be tried as an adult.

We are aware, Your Honor, that the Solicitor also has a right to consider the severity of the crime, the circumstances of the crime, and other factors, but along with that decision as a public official the Solicitor's Office would have an inherent responsibility to take into account the other Kent factors regarding whether or not a case is one appropriately handled by the Family Court or the Courts of General Sessions, and in this case that information was not given to the Solicitor's Office until

the post-indictment stage.

Your Honor, he further alleges that trial counsel failed to advise him of a double jeopardy argument that could have and should have been made concerning attempted armed robbery and possession of a weapon during the commission of a violent crime.

It is his position that on those particular offenses, since armed robbery requires the use of a weapon, that possession of a weapon during the commission of a violent crime would bring into play a double jeopardy claim which could have been made, and further that this is a claim that could have been made in the context of a guilty plea and still argued on direct appeal inasmuch as under Minner v. New York, which was decided in 1973, as Your Honor knows, double jeopardy is the only issue that one can raise and reserve for appellate review even in a guilty plea context, it is his position that the attempted armed robbery indictment in this case does not sufficiently include -- is insufficient because it does not include the element of asportation of the goods which were attempted to be stolen.

Your Honor, he argues as well that his indictments are insufficient in that they are violative of the principles announced by the Supreme Court in The State v. Anderson.

As Your Honor knows, way back in State v. David Capps, the Supreme Court announced its displeasure with the policy of having a single agent for the State, be it a Prosecutor or some other single individual representing the State, present a mere summary of the evidence at that time. That is probably as close to an advisory opinion as one will ever get from the Supreme Court, but after nearly a decade of the practice continuing after the Capps decision the Court in State v. Anderson finally held that such indictments would not be sufficient.

And if Your Honor reviews the indictments in your packet, it will reveal that a member of the Rock Hill Police Department, an Officer Herring, was the only witness before the Grand Jury on each of these indictments, so he therefore alleges that he has a State v. Anderson violation as well.

And lastly, Your Honor, he would allege, well, two more actually, he would allege that his attorney failed to advise him that there would be a supervised release requirement at the end of service of 85 percent of the sentence he received as a result of his plea, that a plea of guilty is not voluntarily and intelligently entered unless it is entered with a full, cognitive understanding of all of the consequences of the plea, and that in this case he was not advised that if released after service of

85 percent of his sentence he would be on supervised release for the last 15 percent of his sentence. It is his position that that renders his plea involuntary as well.

Lastly, Your Honor, and perhaps most important in this case, there was a serious argument about the admissibility of this young man's statement to the police after he was arrested.

The statements were challenged on various grounds, including his mental ability to even make a knowing, voluntarily, intelligent waiver of his right to counsel.

It was further alleged that his family had hired an attorney, Chris Wellborn, who had gone to the jail during the time when he was being detained and interrogated by detectives, that he had very forcefully and repeatedly insisted that he be taken to his client, and that he was delayed time and time again until after the Applicant had in fact given an incriminating statement to the authorities.

It was the position of Defense counsel at trial that this young man was not competent to enter into a knowing, voluntary and intelligent waiver, both because of his age, being 16, and because of his IQ, and a limited intellectual ability and emotional maturity, also that because of his status as a juvenile in the court system,

that coupled with the guardian/parent's exercise of his right to counsel, that the interview should have been interrupted and he should have been provided counsel.

Additionally, Your Honor, there was a hearing conducted on the question of whether or not he was competent to proceed to trial.

It is the Appellant's position, the Applicant's position that his attorney never advised him that if he proceeded to trial by jury and was convicted he would have the right to appeal those issues as well as the question of whether or not a severance should have been granted in this case because of conflicting defenses, that those issues are issues that if he had been tried and convicted he would have had the right to have an appellate court review and that he did not understand, nor was it adequately explained to him, that if he pleaded guilty he would be waiving all but subject matter jurisdictional defects or any double jeopardy grounds that might have been made and reserved at a plea.

It is his position that had he understood that, he would not have waived his right to trial by jury and he would have exercised his right to proceed with that trial hoping to be successful in a subsequent appeal of convicted.

Your Honor, those are the issues. I would propose

to call the Applicant to the stand. I don't see any need to have him reinvent the wheel and restate everything that I have already said, but I would like to put his testimony on the record to verify that I have accurately and efficiently covered the issues he wanted me to present today.

Inasmuch as most of them are legal in nature and supported by the record, I don't believe there will be a need to get into much detail.

THE COURT: Okay.

(Mr. Gordon approaches the witness stand.)

THE COURT: All right, Mr. Gordon?

MR. GORDON: Yes, sir.

THE COURT: Do you swear or affirm you are about to truthfully testify?

MR. GORDON: Yes, sir.

THE COURT: Okay.

ANTONIO GORDON, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MS. SHURLING:

Q Mr. Gordon, state your full name for the record.

A Antonio Gordon.

Q How old are you now, Antonio?

A Twenty-one.

Q Twenty-one?
A Yes, ma'am.
Q And how old were you when you were arrested?
A Sixteen.
Q Okay. You have heard me for about the last 20 minutes going over all the legal arguments that you believe should be made in support of your request for a new trial. Have I accurately set forth for Judge Kinard's consideration all the allegations that you wanted me to raise?
A Yes, ma'am.
Q Are there any issues that you wanted to raise that I have not covered for Judge Kinard?
A No, ma'am.
Q Are you sure?
A Yes, ma'am.
Q Okay. You need to understand that this is in all probability the only post-conviction relief hearing you will ever have on these issues, I mean, pardon me, on these charges, these sentences, so if there is anything that I am leaving out, it is your responsibility to bring it to the Judge's attention, so if you can think of any issues that you really wanted me to present that I haven't, please speak up and tell Judge Kinard.
A You got them all.

Q I got them all?
A Yeah.
Q All right. Thank you.
One thing that is very important for me to get on the record, Mr. Gordon, is what you would have done if you had had certain advice from your attorney, okay?
If you had known -- Let me rephrase that, I'm sorry. Do you remember before your pleas going to court and having these long hearings before the judge on certain pretrial matters?
A Uh-huh, yes, ma'am.
Q You remember them discussing whether or not you were competent, for example, to proceed to trial?
A Yes, ma'am.
Q And do you remember them discussing whether or not your statement to the authorities should be admissible?
A Yes, ma'am.
MS. SHURLING: Your Honor, I just thought of one he may not have, but I thought of another one he raised that I didn't mention.
Additionally, he challenges Defense counsel's failure to challenge his statements on the ground that there was no probable cause for his arrest and that his statements were the fruit of the poisonous tree with regard to an illegal arrest.

A No, he had raised the issue, but I was talking about the judge discretion on the ruling.
Q Okay. So your trial attorney did raise the fact that there was no probable cause for your arrest?
A Yes, ma'am.
Q And raised the fact that your statement was the fruit of the poisonous tree?
A He didn't raise that it was the fruit of the poisonous tree.
Q Okay. So that is what you are saying trial counsel was ineffective for failing to say that your statement was part and parcel of your unconstitutional arrest without probable cause?
A Yes, ma'am.
Q Okay. And did trial counsel ever advise you that if you pleaded guilty you would be waiving your right to appeal those issues?
A He didn't advise me of the appeal.
Q Okay. Did you understand that if you went to trial and if 12 jurors convicted you of these crimes that you would have a right to raise all of those issues in an appeal to the Court of Appeals and then if necessary to the Supreme Court?
A I didn't know at the time, but after I got to doing research I found out about it.

Q Okay. And if you had known that if you went to trial by jury and were convicted you could appeal those issues, would you have gone ahead with your jury trial?

A Yes, ma'am.

Q And you would not have pleaded guilty?

A No, ma'am.

Q When you were first arrested, did you know anything about the law concerning the differences between Family Court and what we call big court, General Sessions Court?

A No, ma'am.

Q Did you know anything about the law insofar as that allows for your attorney to try to convince the Solicitor to try you in the Family Court instead of General Sessions Court?

A No, ma'am.

Q If you had known that the law allowed for the Solicitor to do that if he was given reason to, would you have wanted your attorneys to forcefully seek for the Solicitor to keep you in the Family Court?

A Yes, ma'am.

MS. SHURLING: A moment's indulgence, Your Honor.

THE COURT: Okay.

(Pause.)

Q When you were discussing the sentence that you would likely receive if you entered these pleas, did your

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attorney ever discuss with you the fact that after you had served 85 percent of your sentence you would still be on supervised release?

A No, ma'am.

Q For another 15 percent?

A No, no, ma'am.

Q And if you had understood that, would it have made a difference in your accepting the plea bargain?

A Yes, ma'am.

Q Okay. I have no further questions. Please answer any questions that Ms. VanGinhoven has for you.

CROSS-EXAMINATION

BY MS. VANGINHOVEN:

Q Mr. Gordon, you say you didn't know about that if you pled guilty that you would be waiving any attacks on the issues that have been brought up earlier, is that what you are saying?

A No, I said that I wasn't aware that I could appeal those issues if I went to trial and been found guilty.

Q Did Mr. D'Agostino ever advise you of your right to appeal?

A No, ma'am. As a matter of fact, I had told him that I wanted to appeal, and he advised me that I couldn't appeal, but he would put in an appeal in anyway.

Q Okay, now you just said he never told you of your

right to appeal, is that correct?
A He didn't advise me of my right to appeal. I asked him about the appeal and he---
Q When did you do that?
A That same day I took -- I took the plea.
Q As a matter of fact, you did have an appeal from this case?
A Yes, ma'am.
Q And it was dismissed, is that correct?
A Yes, ma'am.
Q Do you remember when the judge went over with you that you had a right to a jury trial?
A Yes, ma'am.
Q Do you remember that?
A Yes, ma'am.
Q Do you remember when he told you you had a right to remain silent?
A Yes, ma'am.
Q A right to see the witnesses and hear the witnesses?
A Yes, ma'am.
Q And do you remember when he -- Do you remember when he explained to you that although you made a statement that he ruled that was admissible, that if you went to trial the jury would have to decide that, do you remember him telling you that?

A Yes, ma'am.
Q And do you remember when he told you that entering this plea of guilt that you were giving up all those rights? Do you remember that?
A Yes, ma'am.
Q And then he said knowing all these things how do you want to plead regarding the murder, and what did you say?
A I said guilty.
Q To the possession of a fire -- and to all the charges that you pled to you wanted to plead guilty, right?
A I didn't want to plead guilty. Mr. D'Agostino was talking to me about pleading guilty and he was explaining to me that he didn't have no defense for me to go to trial and for me to plead guilty.
Q Right. And this incident involved three other Co-Defendants, is that correct?
A Yes, ma'am.
Q Gary Moffitt, Terrance McCrary and Monte Gordon, is that correct?
A Yes, ma'am.
Q And Gary Moffitt pled guilty, is that correct?
A Yes, ma'am.
Q He was going to testify against you, is that right?
A Yes, ma'am.
Q All right. Terrance McCrary and Monte Gordon, they

both pled guilty and were going to testify against you, is that correct?

A I wasn't aware that they were going to testify against me. I didn't know that.

Q Mr. D'Agostino never told you that they were going to testify against you?

A No, he never told me that.

Q And you and Monte weren't in the courtroom on the same day or in the courthouse the same day?

A We was in the holding cell together, and inside the courtroom together.

Q And you knew that he pled guilty that day, right?

A Yeah, yes, ma'am.

Q You just thought the Solicitor gave him a deal and he wasn't going to testify against you?

A I wasn't aware of no deal.

Q So you are saying that you would have gone to trial with an eyewitness along with your three Co-Defendants testifying for the State? Is that what you are testifying to today?

A Yes, ma'am.

Q And you would have---

A I wasn't aware of no three witness. The only witness that he advised me was was Gary Moffitt, my Co-Defendant, I wasn't aware of no other witness coming in.

Q You didn't know about the passenger in the car?
A I knew that it was a passenger inside the car, but I didn't know that he would come to court to testify. I wasn't aware of that. I never seen his statement, until I received my motion.
Q Until you received what motion?
A Of disclosure.
Q Your discovery motion?
A Yes, ma'am.
Q Well, you received that before the trial, didn't you?
A No, ma'am. I had asked him to send me a copy of my statements and stuff because I didn't know much of what was going on with my case, and he never gave me a copy of it.
Q Mr. D'Agostino never went over with you the statement that you made to the police?
A He went over my statement with me.
Q He never went over what the other people might testify to?
A No, ma'am, no one but Gary Moffitt.
Q And that would probably -- that would be because Terrance McCrary and Monte -- Monte pled guilty the same day you did, right?
A Monte pled guilty before I did.
Q But on the same day?

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A Yes, ma'am.
Q And Terrance that same week?
A Yes, ma'am.
Q And you are saying that if you knew about community supervision that you wouldn't have pled guilty, is that what you're saying?
A Yes, ma'am.
Q And you were there when your attorney made the argument concerning the fact that there was no probable cause to arrest you, weren't you?
A Yes, ma'am.
Q And you heard the judge rule that there was probable cause?
A Yes, ma'am.
Q And you were also there when the judge ruled that your statement was voluntary, correct?
A Yes, ma'am.
Q This was a negotiated sentence, is that correct?
A As I understand, yes, ma'am.
Q And they dropped the carjacking and pled you to 40 years, is that correct?
A Yes, ma'am.
Q And that's what you ended up getting, right?
A Yes, ma'am.
Q So you knew before you pled guilty you were going to

get 40 years, and that's what you received?

A No. At first Mr. D'Agostino came to me and he said, "Forty years for murder."

And at that time I said, "Forty years for murder? You can't get 40 years for murder, you can only get 30 to life for murder."

And then at that time he said, "Well, I'll be back."

And when he came back he said, "Thirty, consecutive ten."

At the time I didn't know what consecutive was. I thought it meant it would run together.

Q Well, I guess my question would be when the Solicitor went over what the negotiated sentence was, you understood that, right?

A Did I understand it?

Q You understood that the Solicitor was saying it was a negotiated sentence, 30 years for murder and 10 years consecutive on attempted armed robbery? Did you understand those words the judge said?

A No, ma'am.

Q You didn't understand that?

A No, ma'am.

Q At the guilty plea?

A At the time I didn't understand what consecutive and concurrent was.

Q You didn't understand that consecutive meant---
A At that time my education was real low.
Q But, sir, you got -- you didn't understand that you were having a 40 year negotiated sentence? Did you understand that, 40 years?
A I thought he was giving me 30 and everything else ran concurrent.
Q Let me just show you, just make it a little bit clearer. This is what I'm going to ask you. On Page 175, Line 16 through 17, it says, this is the Solicitor, "We are asking for a negotiated sentence of 40 years." Did you understand that?
A I understand it now, but at the time I didn't.
Q And do you remember when the judge asked you on 176 that if you had any questions to let him know, if you need to discuss anything with your attorney to please let him know? Do you remember when the judge asked -- told you that?
A Yes, ma'am.
Q And why didn't you ask him then what 40 years meant, or what consecutive meant?
A Because, at that time I was still young and I was shook. I didn't know -- what to do.
Q You were 17 when you pled, correct?
A Yes, ma'am.

Q You were 16 when the murder -- when the murder occurred?
A Yes, ma'am.
Q Okay. And do you remember the Solicitor went over the facts of the case?
A Yes, ma'am.
Q During the plea?
A Yes, ma'am.
Q And do you remember agreeing with the Solicitor's facts?
A Yes, ma'am.
Q So you don't deny that you committed these crimes?
A I -- I didn't -- didn't deny that I did commit the crime or none of that.
Q Okay. And do you remember when you apologized to the victim's family at the sentencing? Do you remember that?
A Yes, ma'am.
Q And do you remember when the -- when the judge gave you your sentence and he said, "Do you understand all that?"; and you said, "Yes"?
A Yes, ma'am.
Q Okay.

MS. VANGINHOVEN: I have no further questions.

REDIRECT EXAMINATION

BY MS. SHURLING:

Q During your plea when the judge explained to you that even though he had ruled that your statement was admissible, if you went to trial a jury would have to make a determination about your statement as well, you do remember that part?

A Yes, ma'am.

Q But he never told you, the judge didn't tell you and neither did your lawyer, that if you went to trial you would also have a right to have an appellate court review that decision, correct?

A Yes, ma'am.

Q And nobody told you that by entering a plea of guilty you were waiving your right to have an appellate review of that ruling, did they?

A Yes, ma'am.

Q And so if they had told you -- Wait a minute, let's get this straight, yes, ma'am, they did or they didn't? Did anybody advise you you were waiving your right to an appeal on that issue?

A No one did.

Q Okay. And if you had known that, you wouldn't have pleaded guilty?

A Yes, ma'am, you're right.

Q Thank you.

MS. SHURLING: No further questions.

MS. SHURLING: No further questions.

THE COURT: You can step down, Mr. Gordon.

(Mr. Gordon steps down.)

MS. SHURLING: Your Honor, I would add to my earlier presentation only by noting that, and I am trying my best to remember the case, I think it is Shirley vs. State, wherein the Supreme Court held that there has been an issue about the admissibility of a statement that someone has a right to know not only that it would be a question for the jury in addition to a question for the judge, but also that they would have a right to appeal that issue if they proceeded to trial.

Thank you.

THE COURT: Okay.

MS. SHURLING: No further witnesses, Your Honor.

MS. VANGINHOVEN: The State would call Dan D'Agostino, Daniel D'Agostino.

(Mr. D'Agostino approaches the witness stand.)

THE COURT: Do you swear or affirm you will truthfully testify?

MR. D'AGOSTINO: I do.

RICHARD G. D'AGOSTINO, after being duly sworn, testified as follows:

THE COURT: All right, I have one question before we go further. I just scanned the transcripts that were

handed to me. I just scanned the transcripts that were handed to me, I made no in-depth study of them. The Solicitor indicated that they were going to nol-pros the possession of a weapon by a person committing a violent crime, stated that on the record.

The judge did not go over any penalty for possession of a weapon during commission of a violent crime, but then he sentenced him, but he made it concurrent, so it is going to be moot as far as that goes, but that was not done.

MS. SHURLING: Your Honor, I am embarrassed to say that I didn't make that observation, but you're correct.

THE COURT: I mean, apparently he just signed everything that was up there, then the deal was made, and the Solicitor said, "We are going to nol-pros them," and after he said that the judge didn't advise him---

MS. SHURLING: Nobody went back and checked the indictments.

THE COURT: Then the indictments were on the stack and the judge was just signing them and he just makes it concurrent because the deal was he just gets 40 years.

MS. SHURLING: Well, and further what complicated matters, Your Honor, is that the possession of a firearm during the commission of a violent offense was on the same indictment as the murder, so by signing the line for a

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guilty plea on this indictment it made it appear that he had pleaded to the possession of weapon during the commission of a violent offense.

MR. D'AGOSTINO: Your Honor, may I speak, Your Honor?

THE COURT: I'm listening.

MS. SHURLING: Well,---

MR. D'AGOSTINO: On Page 175, the Solicitor says that, "On indictment for murder and possession of a firearm while in the commission of a violent crime the Defendant is pleading guilty as charged."

What they were dropping was the carjacking charge.

THE COURT: Well,---

MR. D'AGOSTINO: But the charge that on the possession of a firearm during the commission of a violent crime, the only one I recall them saying they were going to drop was the carjacking.

THE COURT: Well, I mean, I don't know where it was.

MR. D'AGOSTINO: Page 175.

THE COURT: I understand what it may say on that page, but at some point in here you broke for lunch and when you came back the plea was made.

MR. D'AGOSTINO: That was a different Defendant, Your Honor.

MS. VANGINHOVEN: There is three Defendants in this transcript.

THE COURT: Okay.

MR. D'AGOSTINO: That was probably Terrance -- Excuse me, I can tell you who that was. That was---

THE COURT: All right.

MS. VANGINHOVEN: And I believe as part of their -- Terrance McCrary pled guilty on Page 162, and I believe as part of that they may have dropped that charge because he was going to testify against Antonio Gordon, who ended up then pleading guilty after Terrance McCrary.

THE COURT: Okay. All right, well, go ahead with it.

DIRECT EXAMINATION

BY MS. VANGINHOVEN:

Q Mr. D'Agastino, when were you appointed to represent the Applicant?

A In March of 1999.

Q And by this time an indictment had already been brought by the Solicitor's Office?

A Yes. I looked it up while I was sitting back there. I believe the indictments were in October of 1998. I can flip and see. October 19th of 1998.

Q Were you concerned about the fact that the Applicant was 16 and was in General Sessions Court?

Exhibit 4 App. P. 314 37

2003 PCR hearing of Antonio Gordon

A One of the first things I did, as I recall, and I studied the file last night, was look up the Children's Code as it relates to individuals under the age of 17 -- 18 years of age. I looked up the statute, and under the statutory scheme, I left my book and Ms. Shurling has my copy of my statute, but under the statutory scheme, under 6605, because he was 16 years of age and charged with murder and several other felonies that fall within the A, B, C, D categories, he was not considered a child under the Code, so he was considered an adult and his case automatically went up.

I raised this issue as to him being a minor or a child or a young man with the Solicitor's Office, Willie Thompson, I specifically recall speaking with them about it. I did not write them any letters or -- and I did not file any motions. I knew they had -- By the time I got involved in this case it was nine months after it occurred, it was already indicted, it was in General Sessions, but I raised this issue with them, I told them my concerns about it. We had discussions about it because they kept giving intimations that they were going to seek the death penalty. They were saying that they had aggravating circumstances to convert it to a death penalty.

Mr. Gordon had a prior juvenile record. I pulled

that out last night. They brought that up as well. He had several incidents of burglary seconds on his juvenile record, assault and battery, petit larcenies, he had been in and out of the Department of Juvenile Justice several different times. My file contains numerous records I obtained from the Department of Juvenile Justice.

Because of concerns of them converting this to a capital case, I began preparing for it as a capital case. I also obtained and looked at this information because of his mental status. So this was a concern of mine. It is something I brought up with the Solicitor's Office. It is -- I asked them why we weren't in Family Court, if we could not be there, and they did not -- they had made their decision before I had gotten involved in the case, but they weren't going back there from my perspective because of the seriousness of the charges, the fact that they could seek the death penalty, and the fact that Mr. Gordon had a prior record.

Q And as to his competency and his mental level, you were concerned about that?

A I was very concerned about that. In fact, I tried to be careful any time I spoke with him even during the negotiations, during the long day of pretrial hearings.

Q And you hired a psychologist to evaluate him, is that correct?

A I did. We hired Dr. Jonathan Venn. I first contacted Dr. Harold Morgan. I talked to Dr. Harold Morgan for a while about the case, a short while, to find someone who was more experienced in dealing with juveniles, young adults, and he referred me to Dr. Jonathan Venn.

Q And his conclusion was he just couldn't come to an opinion regarding mental retardation?

A He scored a 68 on the mental IQ score. There is a deviation of standard of error in there. Dr. Venn testified at length at the competency hearing about Mr. Gordon's ability to comprehend, remember, understand what is going on. I could not substantiate a competency issue for purposes of presenting a competency to say -- that said that he was incompetent to go to trial. I did not have the evidence to do that. Mr. Venn -- Dr. Venn could not support saying that he was incompetent from my perspective. I mean, Mr. Gordon isn't the brightest fellow, I'm not trying to be ugly or anything else, but he is not, and he has some deficits. It was a concern of Dr. Venn, but after discussing it with Dr. Venn, discussing the results of his evaluations, I did not think we could properly pursue a competency issue, so I had to pursue what I could with Dr. Venn, and we presented him because of the issues dealing with his ability to understand

Miranda, ability to understand what was happening to him at the time it was happening.

Q And he did -- I mean, he was deemed to be competent to assist you?

A He was deemed -- right. In fact, I went to the competency evaluation that the State eventually wanted to have, although I had some questions about how they could make some determinations. He certainly was able to answer the questions from their perspective. And I sat through that evaluation here in Columbia. I thought it was incumbent upon me to.

Q And to what Ms. Shurling referred to earlier, Leslie Sandler is the expert hired by the State to evaluate the Applicant?

A She was. Dr. Sanders, I think it is a he, but Dr. Sanders was the expert hired by the State to evaluate him. I had forgotten that he actually did that evaluation until we were discussing it right before the hearing started today, but I remembered coming down here to Columbia and sitting through that evaluation with several different people in the room.

Q His evaluation was that he was not mentally retarded and was competent to stand trial?

A Right. Right.

Q Did you ever advise him -- Let's go back to the

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guilty plea. Did you advise him of the effect of the guilty plea concerning any appellate rights that he may have?

A Yes, I did advise him of the appellate rights. And if I can -- That was a very long day. One of these Co-Defendants was related to him, one of them had pled out several months earlier, so he knew -- I think it was Moffitt who pled out first. I ordered that transcript of that plea. It is here somewhere in my stuff, my records. I have the first Defendant who pled's records. That day started out with motions. Then the second Defendant went down. Now, mind you, all four boys were together this night. The second one went down and agreed to testify against Mr. Gordon, Antonio Gordon. I told him what was going on. The third one went down, agreed to testify against Mr. Gordon. I told him what was going on. At the end of the day Mr. Gordon was standing there by himself with one of these individuals, Co-Defendants, being his cousin, the other two being friends or relatives somehow distantly, or maybe even close, but friends, people he knew. You got the other victim in the car, and you had his statements.

And I explained to him, "We could go to trial and you could challenge all this. You could go to trial. You don't have much of a defense. All these people are going

to testify against you. And even if we win on the issue of the statements being kept out, the fact of the matter is you have got your three Co-Defendants going to testify against you. You can't testify. And you've got this other person out there, the victim."

There were questions about the palm prints or fingerprints. I knew that. But the fact of the matter is he had those three Defendants, three Co-Defendants, all testifying against him. And I told him that.

I told him if he pled out he could not appeal the judge's decisions on these pretrial motions, that if he did not plead and go to trial he could appeal those decisions and take his chance with the Court of Appeals making a determination that the judge's decision as to the admissibility of his statements was wrong, then he could come back for retrial, or the Court might find it was harmless, I don't know what would happen, but there are many possibilities, but if he pled guilty he was not going to be able to challenge that.

I explained to him that it was a negotiated sentence, that everybody else was getting 30 years, but because he was the shooter they wanted 40. Originally they wanted more time. We got them down to 40. I told him that.

I will tell you he pled guilty on Friday, sentencing was withheld until Monday so they could get Mr. Crim

there, and I guess whoever else they wanted there, but between Friday and Monday I also know that his cousins, everybody who agreed to testify against him told him I sold him out, but they were the ones who were testifying against him. But he didn't change his mind on Monday when sentencing came down.

He subsequently wrote me a letter -- I told him he could appeal it. He subsequently wrote me a letter and told me to appeal his decision before the ten days was up. And I believe I filed the appeal in his case.

Then he wrote me another letter asking me to file post-conviction relief against myself, and I told him how to do that.

So everything was explained to him, except the one thing I did not tell him, that 85 percent, I did not tell him, I do not recall telling him that at the end of serving 85 percent he would have to have supervised release. I do not recall telling him that. I recall telling him he is getting 40 years, he needs to expect 40 years. That is what I tell all my clients. If you get 40, expect 40. If you get out, it is by the grace of God, or however they do that in Columbia.

Q And in fact there was a plea offer from the Solicitor's Office originally, and that was for 45 years, is that correct?

A That's correct.
Q Now, these issues concerning possession of a weapon during the commission of a violent crime being, and attempted armed robbery, double jeopardy issues, did you see any reason to raise that at the time of the trial?
A The issue of -- Did you ask about severance or just---
Q Just that---
A What was it?
Q The double jeopardy issue concerning attempted armed robbery and possession of a weapon during the commission of a violent crime?
A I cannot recall raising any issue about the -- I did not make any motion about that, and I off the top of my head, I don't recall making any motions about the double jeopardy issue of attempted armed robbery and possession of a weapon during the commission of a violent crime.
Q Okay.
A As to the motion to suppress, you will see in the transcript I did make a motion to suppress the statements because the arrest was unlawful. It specifically says that. And the judge denied the motion to suppress. I didn't use the words "fruit of the poisonous tree," but my motion was to suppress those statements.
Q Okay. And ultimately there was no need for severance

because everyone ended up pleading guilty?
A At the end of the day everybody else had pled guilty. I had nothing to sever from.
Q Okay.
A I was the only one going to go to trial. I was the very last one.
Q Okay.

MS. VANGINHOVEN: I have no further questions.

CROSS-EXAMINATION

BY MS. SHURLING:

Q I understand that you advised Mr. Gordon that he could file an appeal from his plea, correct?
A Yes, I did.
Q Are you also, if I understood your testimony correctly, are you certain here today, sir, that you advised him that if he pleaded guilty he would not be able to obtain an appellate review of the Court's findings with regard to the admissibility of the statement and other issues that had been argued pretrial?
A Yes, I discussed that with him. After his other Co-Defendant pled guilty, we went in that back holding room at the York County -- the Moss Justice Center, and I told him we could proceed on to trial, his three Co-Defendants were going to testify against him, if we proceeded on to trial and he was convicted he could raise

these issues as to the admissibility of these statements. I believe I told him I thought it would be a very interesting decision, but I don't know if I got into that, because I thought it would be a very interesting result. But I also told him that if he pled guilty he could not -- the only thing he could appeal was his plea.

Q Okay. Did you ever discuss with him the possibility of challenging these indictments based on the nature of the presentation made to the Grand Jury, that being a single witness---

A No, I did not.

Q Okay. Did you ever ask, specifically ask the Solicitor's Office to reconsider their decision and allow his case to be heard in the Family Court?

A I don't think I asked them to reconsider their decision. I addressed it with them when I first got involved in the case. I asked them why it was not there, why we couldn't do it there. I don't think -- I don't recall ever asking them to reconsider. I mean, it was a long time from when it was indicted by the time I got appointed. I got appointed in March. They were originally -- They gave me an offer in May and said if I don't plead in May they are going to trial in June. And I was hustling, but---

Q I understand. If I understood your testimony

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correctly, what you're saying is that when you first got the case it is in General Sessions Court, and in the early discussions with the Solicitor's Office you basically said, "Why aren't we in Family Court on this?"

A Why aren't we in Family Court. I believe I asked them why we couldn't be there. And after my initial discussions with them in the very beginning, I didn't bring up remanding it back to Family Court again with them. I mean, the Solicitor's Office had that discretion, and they kept talking about, you know, they might seek the death penalty, they just had to see what the victim was going to do.

I told them I didn't think they could get the death penalty on this case because he was so young and they had problems with their case. Their problems with their case gradually went away as everybody agreed to testify, but---

Q At the time of these pleas, were you prepared to go to trial?

A I was.

Q Had the State served you with a death notice?

A No, they had decided at that time they were not going to go forward with it because Mr. Crim did not, I don't want to say not believe in the death penalty, but he was fine with not going forward with the death penalty.

Q So the threat of the Solicitor's Office seeking the

death penalty was not a factor in this decision to plead?
A No, it was not because at that time they had not served a death penalty notice, and we were ready to go to trial.
Q Okay. And just so the record will be clear, did you ever, once you had your client evaluated and you investigated the case, you never went back to the Solicitor and made any attempt to get them to exercise their discretion and return it to the Family Court?
A I did not -- I did not try to get it returned to the Family Court. I tried to get them to come off of what their offers were to be more lenient because of his low IQ and his problems. He had a -- he had a troubled past. I mean, he had been in DJJ for a while.
Q And in fact the Solicitor's Office had not allowed any of the Co-Defendants to be handled in Family Court either, had they?
A They had not. And, you know, it was all I could do at the day that he pled to get them down to 40 years. I mean, they were up at 45. That is what their letter was. They didn't want to come off that. I mean, they were -- they had a tough stance on this case. It was a very tragic set of events.
MS. SHURLING: A moment's indulgence, Your Honor.
A Sure.

(Pause.)

Q Just in the interest of the complete record, could you tell us at the time of this trial in 1999 how long you had been practicing law?

A I began practicing law in 1992. I began clerking with Melvin Roberts, my partner, in 1989.

Q And did you have extensive experience in the area of criminal law at the time you tried this case?

A About a third of my practice is devoted to criminal law. I have tried multiple felony cases prior to that time. I had handled another murder case in Family Court with my partner prior to that time. I had handled vehicular homicide, or first they charged him with Felony DWI as a death case. And so I had handled multiple other -- drug cases and violent offenses.

Q Had you ever been lead counsel in a murder trial before?

A No, I had never been lead counsel in a murder trial. I was co-counsel with Melvin, my partner, in Family Court, and then I handled a good part of the case with the death on that Felony -- I keep saying Felony DWI -- vehicular homicide, whatever they called it. So, no, I have not been lead counsel on a murder case.

Q Thank you.

MS. SHURLING: One moment, Your Honor.

(Pause.)

MS. SHURLING: No further questions, Your Honor.

REDIRECT EXAMINATION

Q You testified you were prepared to go to trial?

A I was.

Q If you felt that you had needed help on this case, would you have consulted one of your partners?

A Oh, yes. In fact, I mean, if I needed help, my partner would have helped me, but I was fine trying it.

Q Okay.

A I tried my first felony case I think in 1993 on an appointed case.

Q Okay.

MS. VANGINHOVEN: I have no further questions.

THE COURT: You can step down.

(Mr. D'Agostino steps down.)

MS. VANGINHOVEN: That's it for the State.

MS. SHURLING: Your Honor, the Applicant would assert that under the standard announced by the Court in Strickland vs. Washington he has laid out for the Court both errors and omissions which he feels combined together to deprive him of a fair trial.

He asserts that he has established that counsel failed to provide him with reasonable professional assistance of counsel, and for that reason, Your Honor, he

would assert that his pleas of guilty were the product of ineffective assistance of counsel;

That his Sixth Amendment rights were violated prior to and during his plea of guilty;

That but for counsel's errors and omissions he would not have waived his right to trial by jury and would have proceeded to trial.

Therefore, under Hill vs. Lockhart he has met the standard for showing that his pleas of guilty were not voluntarily and intelligently entered. He asks that his application be granted, that his judgments and sentences be vacated, and that he be granted a new trial.

THE COURT: Okay.

MS. VANGINHOVEN: Can I just put on the record a couple of things?

THE COURT: Anything you would like, Ms. VanGinhoven.

MS. VANGINHOVEN: Okay. I juts want to go back. Ms. Shurling went through all the allegations, and I just wanted to speak to a few of them.

The allegation concerning lack of subject matter jurisdiction because the indictment was not filed with the Clerk of Court within 90 days I would submit is an administrative procedure and doesn't affect subject matter jurisdiction.

THE COURT: Hey, that's right. That's the way all the counties do it, to my knowledge. I don't know of any that send the clerk in.

MS. VANGINHOVEN: As to the indictment issue with "willfully" and "feloniously" being omitted, we have the case of Joseph vs. State that says that that does not render the indictment insufficient.

The allegation that double jeopardy was violated because of the attempted armed robbery and possession of a weapon during the commission of a violent crime we would submit is not correct.

That the armed robbery indictment did not -- or attempted armed robbery didn't contain the element of asportation, it does include the words "attempt to feloniously take from the person." We would submit that that is valid.

The issue concerning The State v. Anderson case, the police officer was at the Grand Jury hearing, not the Solicitor. It was a Rock Hill Police Department employee.

And anything concerning community supervision, we submit community supervision is a collateral consequence of a guilty plea, that he does not -- the Applicant does not have to be advised of that.

THE COURT: He may not get out at all.

MS. VANGINHOVEN: That's true. And that is all

the State would have except the application should be denied.

THE COURT: All right. Well, I have read everything now. The first thing I was talking about about the judge not doing that, I am reading "Mr. Gordon," "Mr. Gordon," "Mr. Gordon." Y'all hand me up all this stuff. Monte Gordon's plea didn't have anything to do with this case. Mr. Gordon just loses. I don't keep people in suspense. I mean, I read the two transcripts, being blessed with being a speed reader. The attorney had three people going to testify against you. I'm sorry. Any other thing, it doesn't really matter. I mean, he is up against the wall. Maybe your friends and your relatives shouldn't have testified against you, but they had all pled and said they were going to do it. The attorney doesn't have much choice at that point, you are going to get convicted. He just has to do the best that he could.

He indicated he had asked about the Family Court situation early on. The Solicitor took a hard line, in fact a tougher line against you than the rest. He didn't let anybody go into the Family Court situation. And for better or worse, that is a Solicitor's prerogative. The attorney can just ask; the Solicitor holds that power. Just like the Solicitor can dismiss a claim, as he did against Monte, if that is how you pronounce it, he didn't

have to do that, but he has that discretion. He can do that.

As far as sending the only one officer in front of the Grand Jury, in olden times they just allowed Solicitors to walk in and summarize. Finally, that being a bad practice, the Supreme Court said, "No, the Solicitor can't summarize, you have to have an active investigator at least to testify." And it would have been better to have had more people, but they had enough on you. All they have to tell the Grand Jury is, "We've got so and so that will testify that you are the shooter." It turns out you were the shooter. You don't even deny that at this point. So nothing wrong with that.

On the competency situation, you had full hearings on that. I mean, maybe another person could have examined you, and so forth. A competent person did and testified and the judge was satisfied with that.

On the double jeopardy situation on armed robbery, actually there is a case that says that is okay, even though that case is wrong. It has to be included in the charge. How are you going to rob somebody armed if you are not armed with a weapon? But judges recognizing that, they always run it concurrent. Well, some might add it, but, I mean, so it wouldn't impact you one way or another, even if you were correct on that. That sentence was given

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concurrent to the other time that you had.

And as far as having to serve supervised release when you get out, it is almost impossible to get out, unfortunately, Mr. Gordon, even after serving 85 percent because you just have to be a model prisoner the whole time. If you have any violations in there they are not going to let you out after serving 85 percent, and I recognize 40 years is a long time. If you do get out earlier, that is a benefit. It wouldn't have impacted anything. The attorney told you you might have to serve the entire 40. That's true. That's true. You may get out earlier. And of course the legislature can adjust your release time at some point. I wouldn't put any hopes on it, but if prisons get crowded they might back off of some of these.

But I don't see anything you have raised that would entitle you to a new trial. Sorry. And I could jerk you around and tell Ms. Shurling to prepare an order and I would study it and read it, which I would have done, but I don't see how you are going to win, so why keep you in suspense?

If you would prepare an order, Ms. VanGinhoven, or however you pronounce it.

MS. VANGINHOVEN: Yes, sir.

THE COURT: VanGinhoven?

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MS. VANGINHOVEN: There you go.

THE COURT: All right, VanGinhoven. Within 30 days.

And, of course, Mr. Gordon, you have the right to appeal. And it doesn't start running until I sign that order and you are given a copy of it.

Okay.

(WHEREUPON, the proceedings were concluded.)

(END OF TRANSCRIPT)

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF YORK)

I, Deborah M. McCurdy, Official Court Reporter for the Fifth Judicial Circuit of the State of South Carolina, 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 Richland County, South Carolina, on the 29th day of July, 2003.

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

February 13, 2004

Deborah M. McCurdy, Court Reporter

My Commission Expires: 5-24-09

LAW OFFICES OF

App. P. 345

TARA DAWN SHURLING, PA

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(Fax) (803) 738-1600

October 7, 2003

The Honorable David Hamilton
Clerk of Court of York County
Post Office Box 649
York, SC 29745-0649

RE: Antonio Gordon v. State of South Carolina
00-CP-46-1414

Dear Mr. Hamilton:

It has recently come to my attention that when Judge Kinard's Order of Dismissal was filed in the above captioned matter, it was served by your staff upon Laurie Ann Baker, Esquire, this client's former counsel of record. You should have on file an Order substituting me as counsel of record in this matter. In order to protect the client's right to file a timely notice of appeal from Judge Kinard's Order, I need for your office to send me another Form 4 properly serving me as counsel of record in this matter with Judge Order. My time limits for filing a Notice of Appeal from this Order would run from the date the Order is served on me by your Form 4. Your cooperation in this matter is greatly appreciated. For now, I remain

Sincerely yours,

Tara Dawn Shurling
Attorney and Counselor at Law

TDS /st
cc: Jeanette C. VanGinhoven, Assistant Attorney General
Laurie Ann Baker, Esquire
Antonio Gordon, 259798

LAW OFFICES OF

App. P. 346

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(Fax) (803) 738-1600

November 24, 2003

Antonio Gordon, 259798
McCormick Correctional Institution
Route 2, Box 100
McCormick, SC 29835-0000

RE: Antonio Gordon, 259798 v. State of South Carolina; 00-CP-46-1414.

Dear Mr. Gordon:

Enclosed please find a copy of the Order of Dismissal signed by the Honorable J. Ernest Kinard in your case. This Order denies your request for Post-Conviction Relief. The original Order has been filed with the York County Clerk of Court. I will serve opposing counsel with Notice of Appeal, unless I hear from you advising me not to do so.

As soon as the original Notice of Appeal is filed with the Supreme Court Clerk, your file will be turned over to the South Carolina Office of Appellate Defense. That state agency will be responsible for representing you on appeal from the denial of your Application for Post-Conviction Relief. My representation of you concludes once the Notice of Appeal is filed.

I will send you a copy of the Notice of Appeal when it is filed in your case. Until then, if you have any questions, please feel free to contact me.

Sincerely,

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/cep
Enclosure
cc: Dorothy Wilson

LAW OFFICES OF

TARA DAWN SHURLING, PA

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App. P 347

November 25, 2003

Antonio Gordon, 259798
McCormick Correctional Institution
Route 2, Box 100
McCormick, SC 29835-0000

RE: Antonio Gordon, 259798 v. State of South Carolina; 00-CP-46-1414.

Dear Mr. Gordon:

Enclosed you will find a copy of the Notice of Appeal I filed on your behalf with the Supreme Court of South Carolina. This Notice advises both the Attorney General's Office and the Supreme Court of your intent to appeal the Order of Dismissal issued in your case by Judge J. Ernest Kinard.

I was court-appointed to represent you in the Circuit Court. Now that the Circuit Court has denied your Application, it will be the responsibility of the South Carolina Office of Appellate Defense to represent you on appeal to the Supreme Court of South Carolina. In the next few days, I will be sending the Office of Appellate Defense a package concerning your case which will include all documents necessary to perfect this appeal on your behalf. Your right to appeal the decisions of Judge Kinard has been preserved. Feel free to write me or call if you have any further questions concerning the status of your case. For now, I remain,

Yours sincerely,

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/cep
Enclosure

App. P 348

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
)
2003 AUG 20 AM 8:52
DAVID M. HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC
Antonio Gordon, #259798,) 2000-CP-46-1414
)
Applicant,)
)
v.) ORDER OF DISMISSAL
)
State of South Carolina,)
)
Respondent.)

Attachment (d) (1)

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed June 15, 2000. The Respondent made its Return on May 2, 2001. An evidentiary hearing into the matter was convened on July 29, 2003, at the Richland County Courthouse. The parties agreed to change venue from York County to Richland County pursuant to the Consent Order Changing Venue signed by the Honorable John C. Hayes, III. Due to conflicts with the judges in the Sixteenth Circuit, this case was transferred to the Fifth Circuit in order to conduct the PCR hearing in a more timely manner. IN ADDITION A SPECIAL ORDER WAS EXECUTED GRANTING THIS The Applicant was present at the hearing and was represented by Tara D. Shurling, Esquire. The Respondent was represented by Jeanette Van Ginhoven of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Testifying on behalf of the State was Daniel D'Agostino, Esquire. This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the York County Clerk of Court and the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to the York County Clerk of Court's orders of

commitment. On October 15, 1998, the York County Grand Jury indicted the Applicant for murder, three counts of possession of a firearm during the commission of a violent crime, two counts of attempted armed robbery, possession of a firearm by a person under twenty-one, and criminal conspiracy.

On July 16, 1999, the Applicant pled guilty as charged. On July 19, 1999, the Honorable John C. Hayes, III, sentenced the Applicant to thirty years imprisonment for murder, five years for each count of possession of a weapon during the commission of a violent crime, ten years for each count of attempted armed robbery, five years for criminal conspiracy, and five years for possession of a weapon by a person under twenty-one years of age. Daniel D'Agostino, Esquire, represented the Applicant.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals was dismissed. State v. Antonio Gordon and Monta Gordon Op. No. 2000-UP-747 (S.C. Ct. App. filed December 6, 2000).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

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, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, Id.

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

INEFFECTIVE ASSISTANCE OF COUNSEL

The Applicant claims guilty plea counsel was ineffective for failing to prepare his case for trial by (1) failing to challenge the indictments for lack of subject matter jurisdiction because the indictments were not filed with the Clerk of Court within ninety (90) days after his arrest; (2) failing to challenge the murder indictment for lack of subject matter jurisdiction because the indictment did not contain the requisite elements in the body of the indictment; (3) failing to challenge the attempted armed robbery indictments for lack of subject matter jurisdiction because the indictment did not contain the requisite elements in the body of the indictments; (4) failing to challenge the indictments since an agent of the state was the only witness before the grand jury; (5) failing to make a concerted effort to get the Solicitor to remand the case to the Family Court; (6) failing to adequately pursue the Applicant's competency to stand trial; (7) failing to make a double jeopardy argument since the Applicant was charged with attempted armed robbery and possession of a weapon during the commission of a violent crime; (8) failing to advise the Applicant that if he pled guilty he would waive his right to challenge the admissibility of his statements on direct appeal; and

(9) failing to advise the Applicant he would be subject to community supervision.

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

1. Failure to Challenge Subject Matter Jurisdiction Because Indictment Not Filed withe Clerk of Court Within Ninety Days

The Applicant claims guilty plea counsel was ineffective for failing to challenge subject matter jurisdiction because the Applicant's indictments were not filed with the York Clerk of Court within ninety (90) days after his arrest. This allegation does not warrant relief. Each indictment was marked "True Bill" and signed by foreman of the grand jury. The failure to obtain an indictment within ninety days of arrest does not render it void for lack of jurisdiction. State v. Culbreath, 282 S.C. 38, 316 S.E.2d 681 (1984). This Court finds guilty plea counsel was not ineffective and that the Applicant has failed to show he was prejudiced by guilty plea counsel's performance. This Court further finds that the lower court had the subject matter jurisdiction to accept the Applicant's guilty pleas since the ninety day rule does not render an indictment void for lack of jurisdiction.

2. Failure to Challenge Subject Matter Jurisdiction Because the Murder Indictment Did Not Contain the Requisite Elements

The Applicant claims guilty plea counsel was ineffective for failing to challenge the murder indictment because the indictment failed to allege that the Applicant "willfully" and "feloniously" committed the crime. However, in Joseph v. State, the South Carolina Supreme Court held that a murder indictment was sufficient to confer subject matter jurisdiction on the court that accepted the defendant's guilty plea, even though the indictment omitted the words "willfully" and "feloniously," as the term "feloniously" was encompassed in "murder" and the term "willfully" was encompassed in "malice." 351 S.C. 551, 571 S.E.2d 280 (2002).

The Applicant's murder indictment read as follows:

> That Antonio Gordon did in York County on or about July 23, 1998, with *malice aforethought, kill* one Eric Peter Krenn by means of shooting him with a firearm and said victim died as a result thereof, all in violation of Section 16-3-10, South Carolina Code of Laws (1976, as amended).

Although the Applicant's murder indictment did not state the words "willfully" or "feloniously", these words were encompassed by the words "kill" and "malice". Therefore, this Court finds guilty plea counsel was not ineffective for failing to challenge the murder indictment and that the Applicant was not prejudiced by guilty plea counsel's performance. This Court further finds that the lower court had subject matter jurisdiction to accept the Applicant's guilty plea to murder

3. Failure to Challenge Subject Matter Jurisdiction Because the Attempted Armed Robbery Indictments Did Not Contain the Requisite Elements

The Applicant claims guilty plea counsel was ineffective for failing to challenge the attempted armed robbery indictments because the indictments failed to allege the element of asportation.

The Applicant's indictments for attempted armed robbery read as follows:

> That Antonio Gordon did in York County on or about July 23, 1998, while armed with a deadly weapon, attempt to *feloniously take from the person or presence* of Eric Krenn, by means of force or intimidation good or monies of said Eric Krenn to wit: one 1985 BMW belonging to said victim, all in violation of §16-11-330, Code of Laws of South Carolina, (1976, as amended).

In Locke v. State, 341 S.C. 54, 533 S.E.2d 324 (2000), the South Carolina Supreme Court held that the indictment language "taking of good and/or monies from the person or presence of" alleged the substance of asportation, one of the elements of common-law robbery and that this was sufficient because asportation merely meant the taking of an object with felonious intent. Therefore, this Court finds guilty plea counsel was not ineffective for failing to challenge the attempted armed robbery indictments and that the Applicant has failed to show he was prejudiced by guilty plea counsel's performance. This Court further finds that the lower court had subject matter jurisdiction to accept the Applicant's guilty pleas to attempted armed robbery.

4. Failure to Challenge Subject Matter Jurisdiction Because Only an Agent of the State Was a Witness Before the Grand Jury

The Applicant claims guilty plea counsel was ineffective for failing to challenge the indictments since an agent of the State was the only witness before the grand jury. The Applicant cites the case of State v. Anderson, 312 S.C. 185, 439 S.E.2d 835 (1993), to support this proposition.

In State v. Anderson, the South Carolina Supreme Court held that prosecutors cannot appear as a sole witness before the grand jury. In the Applicant's case, the witness before the grand jury was Officer Herring from the Rock Hill Police Department, not a prosecutor.

Further, the circuit court does not have subject matter jurisdiction to hear a guilty plea unless: (1) there has been an indictment which sufficiently states the offense; (2) there has been a waiver of

indictment; or (3) the charge is a lesser included offense of the crime charged in the indictment. Carter v. State, 329 S.C. 355, 362, 495 S.E.2d 773, 777 (1998). South Carolina law provides an indictment is sufficient if it "charges the crime substantially in the language ... of the statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood." S.C. Code Ann. §§ 17-19-20 (1985). "The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprises the defendant of what he must be prepared to meet." Browning v. State, 320 S.C. 366, 368, 465 S.E.2d 358, 359 (1995). South Carolina courts have held that the sufficiency of an indictment "must be viewed with a practical eye; all the surrounding circumstances must be weighed before an accurate determination of whether a defendant was or was not prejudiced can be reached." State v. Adams, 277 S.C. 115, 125, 283 S.E.2d 582, 588 (1981), *overruled on other grounds by* State v. Torrence, 305 S.C. 45, 406 S.E.2d 315 (1991).

The indictments in this case were marked "True Bill" and signed by the grand jury foreman. The witness before the grand jury was a police officer and not a prosecutor. The elements of the crimes were sufficiently alleged in the indictments. Therefore, this Court finds that guilty plea counsel was not ineffective for failing to challenge the Applicant's indictments and that the Applicant has failed to carry his burden in this action by failing to show prejudice from guilty plea counsel's performance. This Court further finds that the lower court had subject matter jurisdiction to accept the Applicant's guilty pleas.

5. Failure to Make Concerted Effort to Get the Solicitor's Office to Remand Case to Family Court

The Applicant claims guilty plea counsel was ineffective for failing to make a concerted effort to get the Solicitor's office to remand the case to Family Court. The Applicant claims guilty

plea counsel never discussed the differences between Family Court and General Sessions Court.

Pursuant to S.C. Code Ann. §20-7-6605, a "person sixteen years of age or older who is charged with a Class A, B, C, or D felony as defined in Section 16-1-20 or a felony which provides a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charge at the *discretion of the solicitor*." The Applicant was sixteen years old when he committed the crime for which he was indicted and the crimes committed were Class A, B, C or D felonies. Therefore, the General Sessions Court had jurisdiction. The decision to remand the case to Family Court was within the Solicitor's discretion.

Guilty plea counsel testified that he was appointed to the case after the Applicant was indicted. He testified that he researched the fact that the Applicant was a child at the time of the commission of the crimes. Guilty plea counsel further testified that he brought this issue to the Solicitor's attention but that the Solicitor's office gave intimations that they wanted tot seek the death penalty in this case and that they would not remand this case to the Family Court. Further, the Applicant did not provide testimony from the Solicitor's office stating that they would have used their discretion and remanded the case to the Family Court.

Therefore, this Court finds that guilty plea counsel was not ineffective. This Court further finds that the Applicant has not shown that he was prejudiced by guilty plea counsel's performance.

6. Failing to Pursue Applicant's Competency to Stand Trial

The Applicant claims guilty plea counsel was ineffective for failing to pursue the Applicant's competency to stand trial. The Applicant claims that if this avenue had been explored, he would have had a defense to the charges.

Guilty plea counsel testified that he was concerned with the Applicant's mental state. The

State provided the testimony of Dr. Leslie Sandler. Dr. Sandler was qualified as an expert in forensic psychology, clinical psychology and substance abuse. (T. p. 9). Dr. Sandler testified that the Applicant was not mentally retarded. (T. p. 118). The trial court found the Applicant competent to stand trial. (T. p. 147).

Guilty plea counsel also hired a psychologist, Dr. Jonathan Venn. Dr. Venn was qualified as an expert in forensic and clinical psychology. (T. p. 108). Dr. Venn testified during the hearing concerning the admissibility of the Applicant's statements given to law enforcement. However, Dr. Venn was not able to come to an opinion concerning mental retardation. (T .p. 113).

A criminal defendant is competent to enter his guilty plea if "the accused [has] sufficient capability to consult with his lawyer with a reasonable degree of rational understanding and [has] a rational as well as a factual understanding of the proceeding against him." Jeter v. State, 308 S.C. 230, 417 S.E.2d 594, 596 (1992). An Applicant challenging his competency to plead must prove this allegation by a preponderance of the evidence. Id.

An Applicant claiming that trial counsel was ineffective in failing to pursue this defense "must produce some evidence of insanity or showing that with the exercise of due diligence, an insanity defense could have been developed." Jeter v. State, 308 S.C. 230, 233-34, 417 S.E.2d 594 (1992). The Applicant must show that he was "unable to distinguish moral or legal right from wrong and to recognize the particular act charged as morally or legally wrong."

The Applicant presented no testimony or evidence regarding the elements of the defense. The Applicant was also examined by two experts, one hired by the State and one by the defense, who either came to the conclusion the Applicant was not mentally retarded or could not reach an opinion. Therefore, this Court finds that guilty plea counsel was not ineffective. This Court further finds that the Applicant has not carried his burden in this action by showing he was prejudiced by

guilty plea counsel's performance.

7. Failure to Make Double Jeopardy Claim

The Applicant claims guilty plea counsel was ineffective for failing to make a double jeopardy claim since he was charged with attempted armed robbery and possession of a weapon during the commission of a violent crime.

In State v. Bolden, 303 S.C. 41, 398 S.E. 2d 494 (1990), the South Carolina Supreme Court held that punishment for both armed robbery and possession of a weapon during a violent crime does not violate double jeopardy. The Supreme Court held that the legislature clearly intended to provide additional punishment for possession of a weapon during the commission of a violent crime. Id.

Therefore, this Court finds guilty plea counsel was not ineffective for failing to make a double jeopardy challenge. This Court further finds that the Applicant has failed to show he was prejudiced by guilty plea counsel's performance.

8. Failure to Advise Applicant Appellate Rights are Waived Upon Entry of Guilty Plea

The Applicant claims guilty plea counsel was ineffective for failing to advise him that if he pled guilty, he would waive his right to appeal the admissibility of his statements to law enforcement officers. The Applicant testified that he would have continued to trial if he knew pleading guilty would waive his right to attack his pre-trial issues.

However, guilty plea counsel testified he advised the Applicant of his appellate rights and that if he pled guilty he could not appeal issues raised prior to the plea. The trial judge also informed the Applicant of his appellate rights during his guilty plea. (T. p. 205). The Applicant subsequently filed an appeal that was later dismissed. Antonio Gordon and Monta Gordon v. State of South Carolina, 2000-UP-747, filed December 6, 2000.

This Court finds the testimony of guilty plea counsel to be more credible than that of the Applicant. This Court finds that guilty plea counsel was not ineffective and that the Applicant has failed to carry his burden in this action by showing he was prejudiced by guilty plea counsel's performance.

9. Failure to Advise of Community Supervision

The Applicant claims guilty plea counsel was ineffective for failing to advise the Applicant he would be subject to community supervision by the South Carolina Department of Corrections. Guilty plea counsel testified that he did not advise the Applicant concerning community supervision.

However, community supervision is a collateral consequence of a guilty plea. As such, guilty plea counsel was not ineffective for failing to advise the Applicant of community supervision. *See* Smith v. State, 329 S.C. 280, 494 S.E.2d 626 (1997), (counsel is not ineffective for failing to advise a defendant regarding parole eligibility because it is a collateral consequence of sentencing.) Therefore, this Court finds guilty plea counsel was not ineffective and that the Applicant has failed to show he was prejudiced by guilty plea counsel's performance.

As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed.

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 advises Applicant that he must file a notice of intent to appeal within thirty (30)

days from the receipt of this Order to secure the appropriate appellate review. His attention is also directed to South Carolina Appellate Court Rule 227 for appropriate procedures after notice has been timely filed.

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 18 day of AUG, 2003.

J. Ernest Kinard
Presiding Judge
Fifth Judicial Circuit

Camden, South Carolina.

506

App. p. 360

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	Sixteenth Judicial Circuit
COUNTY OF YORK)	2000-CP-46-1414
Antonio Gordon,)	
Applicant,)	
vs)	AFFIDAVIT OF SERVICE BY MAIL
State of South Carolina,)	
Respondent.)	

FILED-RECEIVED
2003 AUG 20 PM 3:42
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

Personally appeared before me, Jeanette VanGinhoven, who being first duly sworn, states:

1. That I am an employee of the Office of the Attorney General.

2. That regular communication by mail exists throughout the State of South Carolina, and that this is a proper circumstance of service by mail.

3. That I have this day served a copy of the Order in the above-captioned matter on the following persons by depositing same in the United States mail, postage prepaid:

Tara D. Shurling, Esquire
3614 Landmark Drive, Suite D
Columbia, South Carolina 29204

DATED this 19th day of August, 2003.

Jeanette VanGinhoven
JEANETTE VANGINHOVEN

SWORN to before me this
19th day of August 2003.

Kia C. Goins (L.S.)
Notary Public for South Carolina
My Commission Expires: June 2, 2007

App. P. 361

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

ANTONIO GORDON, #259798

PLAINTIFF(S)

JUDGMENT IN A CIVIL CASE

CASE NO. 00-CP-46-1414

STATE OF SOUTH CAROLINA

DEFENDANT(S)

CHECK ONE:

[ ] **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

[ ] **DECISION BY THE COURT.** This action came to trial of hearing before the court. The issues have been tried or heard and a decision rendered.

[ ] **ACTION DISMISSED** (*CHECK REASON*): [ ] Rule 12(b), SCRCP; [ ] Rule 41(a) SCRCP (Vol. Nonsuit); [ ] Rule 43(k), SCRCP (Settled); [ ] Other _____.

[ ] **ACTION STRICKEN** (*CHECK REASON*): [ ] Rule 40(j) SCRCP; [ ] Bankruptcy; [ ] Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; [ ] Other _____

IT IS ORDERED AND ADJUDGED:[x] See attached order; [ ] Statement o Judgment by the Court.

ORDER

Dated at YORK, South Carolina, this 12TH of JANUARY, 2004.

S/J. ERNEST KINARD
PRESIDING JUDGE

CERTIFIED TRUE COPY
2006 JUL 27 PM 3:36
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

This judgment was entered on the 15TH ay of DECEMBER, 2003 and a copy mailed first class this 22ND day of JANUARY, 2004, to attorneys of record or to parties (when appearing pro se) as follows:

LAURIE ANN BANKER
SUITE 100
454 S ANDERSON RD
ROCK HILL SC 29730

ATTORNEY(S) FOR THE PLAINTIFF(S)

JEANNETTE VANGINHOVEN
P O BOX 11549
COLUMBIA SC 29211-1549

ATTORNEY(S) FOR THE DEFENDANT(S)

DAVID HAMILTON
CLERK OF COURT

SCRCP APP-24

SCRCP FORM 4 (REVISED 5/00)

App. P. 362

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK) Case Number: 2000-CP-46-1414
)
ANTONIO GORDON, #259798) **ORDER**
)
Applicant,)
)
v.)
)
STATE OF SOUTH CAROLINA,)
)
Respondent.)

FILED-RECEIVED
2003 DEC 15 PM 4:33
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

This matter came before the Court on the Applicants Motion for Rehearing and/or Motion for Reconsideration of Facts relating to a Post-Conviction Relief ("PCR") hearing on July 29, 2003. This Court dismissed the Applicants PCR application and an Order of Dismissal was signed on August 18, 2003. After careful consideration of the Applicants memorandum, the Motion for Rehearing and/or Motion for Reconsideration of Facts is denied as all issues that were brought before this Court in the PCR application were considered and ruled upon in the initial dismissal. A party may not raise additional issues after the original PCR hearing and seek a rehearing based upon those new issues.

IT IS SO ORDERED

December 9, 2003

Judge J. Ernest Kinard
Circuit Court Judge
Fifth Judicial Circuit

CERTIFIED TRUE COPY
2006 JUL 27 PM 3:37
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

App. P. 363

FILED-RECEIVED
2003 DEC 15 PM 4:33
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

State of South Carolina
The Circuit Court of the Fifth Judicial Circuit

J. ERNEST KINARD, JR.
RESIDENT JUDGE
FIFTH JUDICIAL CIRCUIT
POST OFFICE DRAWER 1707
CAMDEN, SOUTH CAROLINA 29020-1707
(803)425-7182
FAX: (803)425-5519

December 10, 2003

The Honorable David Hamilton
Clerk of Court for York County
P. O. Box 649
York, South Carolina 29745

RE: Antonio Gordon v. State of S.C.
00-CP-46-1414

Dear Mr. Hamilton::

Enclosed for filing is the Order in the above referenced matter. Please forward a copy to the Order to the parties of record.

Yours very truly,

Wes Jackson
Law Clerk to The Honorable
J. Ernest Kinard, Jr.

wj/

Enclosure

16

App. P. 364

The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA 29211

(803) 734-1080

FAX (803) 734-1499

August 9, 2005

REMITTITUR

The Honorable David Hamilton
1675 -1G York Highway
PO Box 649
York, SC 29745-0649

Re: Gordon, Antonio v. The State – 2000-CP-46-01414

Dear Mr. Hamilton:

The above referenced matter is hereby remitted to the lower court. A copy of the judgment of this Court is attached.

Very truly yours,

Daniel E. Shearouse

CLERK

DES/jj

cc: Antonio Gordon #259798 - F3-B-124
Assistant Appellate Defender Robert M. Dudek
Assistant Attorney General Arie D. Bax

App. p. 365

The Supreme Court of South Carolina

Antonio Gordon, Petitioner,

v.

State of South Carolina, Respondent.

Appellate Case No. 2013-002153

Attachment (1)(A)

ORDER

Petitioner has filed a *pro se* "Belated Notice of Appeal[]" from an order dated December 9, 2003, denying petitioner's *pro se* motion for rehearing or reconsideration in this post-conviction relief matter. Petitioner has also filed a "Motion Requesting Permission to File a Belated PCR Under Austin[] v. State, 409 S.E.2d 395 (1991)" and a motion to relieve Tara Shurling as counsel.

We hereby vacate the order denying the *pro se* motion for rehearing or reconsideration, as the motion was improper since at the time it was filed, petitioner was represented by counsel. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010). Having vacated the order on appeal, we dismiss as moot petitioner's belated notice of appeal and deny as moot the motion to relieve Ms. Shurling as counsel. The "Motion Requesting Permission to File a Belated PCR Under Austin[] v. State, 409 S.E.2d 395 (1991)" is denied.

C.J.

J.

J.

J.

J.

LAW OFFICE OF

App. p. 366
Exhibit D

TARA DAWN SHURLING, PA

Attorneys and Counselors at Law
3614 Landmark Drive
Suite A
Columbia, South Carolina 29204

(803) 738-8622
Fax (803) 738-1600
E-Mail: tdslaw@shurlinglaw.com

Christina Dixon Parnall
Associate Attorney

December 8, 2011

Tiffany N. Richardson, Esquire
Office of Disciplinary Counsel
P. O. Box 12159
Columbia, South Carolina 29211

RE: Complaint - Antonio Gordon
Matter Number- 11-DE-L-1149

Dear Ms. Richardson:

My response to this complaint was due yesterday. The Commission was kind enough to give me another 30 day extension. Fortunately, I was able to complete my response today. I have reviewed my closed file in this case. Despite Mr. Gordon's claims to the contrary, much of the file was sent to Appellate Defense once I filed a Post-Conviction Relief appeal for this client after the circuit court denied his Post-Conviction Relief Application. I attach a copy of my transmittal letter to Appellate Defense for your information. In his grievance letter, Mr. Gordon mentions certain documents he supposedly sent me *in a notarized letter dated* April 8, 2002. I enclose a copy of that letter for your convenient reference. As you can see, it says nothing about any enclosures.

The Order of Dismissal was filed in this case on August 20, 2003. That same day, a copy of the Order of Dismissal was mailed to the client. I am attaching a copy of that transmittal letter. In that letter I advised the client that I would be filing a Post-Conviction Relief appeal on his behalf, and would be turning his file over to Appellate Defense. On October 7, 2003 I wrote the Clerk of Court and requested a Form 4 documenting service on me because the Order was served on a previous lawyer and I was never served by the Clerk's Office. I subsequently filed a Notice of Appeal with the Supreme Court and sent the client another copy of the clocked Order of Dismissal along with a copy of the Notice of Appeal. See letter dated November 24, 2003. Apparently, I did receive a letter dated November 19, 2003 from the client asking that I file a Motion for Rehearing and Motion for Reconsideration. I did not file the motions in question because in my judgment the Order made the finding of fact and rulings of law required by statute on all the issues presented in this case. In addition, by the time the client sent the request it had been more than 10 days since I originally received the Order, and therefore it was too late to file a Motion pursuant to Rule 59(e) SCRCP. Actually, I did not see a basis for such a motion anyway. If the Order had not covered all the issues addressed at the evidentiary hearing I would have filed a Rule 59(e) Motion on or before the tenth day following my receipt of the Order on August 20, 2003.

App. p. 367

Mr. Gordon complains that I didn't file a motion pursuant to Rule 60(b). I did not do so because the issues he wanted me to raise were not appropriate for such a motion. As regards the retardation issue, I did not raise that issue in this Post-Conviction Relief action, because despite an early evaluation describing this client as borderline/mildly mentally retarded, my communications with him, both verbally and in writing, had not given me any cause for concern about his competence. To the contrary, I would actually question that assessment based upon my interaction with this client.

I was subsequently advised that the client had hired Trisha Blanchette to file a second Post-Conviction Relief Application based upon a claim of after discovered evidence. Ms. Blanchette did initially call and asked to come and pick up Mr. Gordon's file. Ultimately, she came to my office and reviewed the file here and indicated that she already had everything she needed and didn't need my file. I called Mrs. Blanchette yesterday and discussed this issue with her. She confirmed my recollection that she ultimately only *reviewed* my file instead of *taking it* because prior to our conference here at my firm she had been able to obtain a CD from the Office of the Attorney General with everything she needed on it. I did however make her welcome to anything she wanted from my file. I was also able to confirm that the second Post-Conviction Relief action she pursued on this client's behalf addressed new evidence that had been discovered about a statement taken from a minor witness. That information was not the basis for the client's earlier request that I file a Rule 60(b) Motion on his behalf. To the best of my recollection, I had no knowledge of that information prior to turning this case over to Appellate Defense.

In reviewing this file I see that I did receive a letter from this client on May 14, 2003 requesting copies of some documents. I do not see a return letter from me transmitting the requested documents. Ordinarily, I would send any requested material to a client *or*, in the alternative, write and explain that the documents were not in my file. I honestly do not know why my file fails to reflect such a response to this particular request. The materials may have been sent by someone on my staff without a formal transmittal letter. We used to occasionally use a transmittal form that was filled in by longhand to return copies of documents to inmates. I ceased that practice because staff members sometimes forgot to keep a copy for our file. That could very well be what happened here. The mail system at the SCDC is not terribly reliable at times so Mr. Gordon may not have gotten a packet from us. I have searched my closed file, and I think I have located at least some of what he says he wants. In his letter he specifically references the following: " car towing incident reports, sled latin prints analysis reports, and Police Incident reports from Rock Hill Police Dept" from his letter.

I have located the following documents that I believe may be part, if not all, of what he wants:

1. A four page fax from forensic expert, Don Girndt, which contains a two page list of questions from Mr. Girndt to Daniel D. D'Agostino, Esquire. There are no other reports from Mr. Girndt in my file nor do I see any indication I ever had any.

2. A two page document titled Vehicle Tow Inventory Report and dated July 23, 1998.

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3. Photos of what appears to be the victim's car.

Both of these documents were in this file when Mrs. Blanchette reviewed it back in approximately September of 2009.

I do not have a copy of a SLED latent prints analysis report nor do I have any documents identified as Police Incident Reports from Rock Hill Police. I would imagine these documents should be available from his trial lawyer's file. I do have three witness statements from the Rock Hill Police Department. Perhaps these statements are what Mr. Gordon is referring to. They are as follows:

1. A July 23, 1998 statement from Chyneca Davis.
2. An updated two page statement from Tawanda Burris.
3. A three page statement from Antonio Gordon dated July 23, 1998.

In addition to the above, I located another document captioned "Form 5 Client Information." I am not certain what this document is.

I am enclosing copies of each of the documents referenced herein, and I am sending Mr. Gordon copies of the same along with a copy of this letter in response to his grievance. I also enclose my verification.

Once again, all these documents were in my file from this case, when Mrs. Blanchette reviewed the file, and indicated she did not need copies of anything from my file. I hope this addresses all of your concerns, if not, please let me know what further I can do to assist with your inquiry. I am,

Sincerely,

Tara Dawn Shurling
Attorney and Counselor at Law

TDS/sg
Enclosures
cc: Antonio Gordon (w/enclosures)

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The Supreme Court of South Carolina

DANIEL E. SHEAROUSE
CLERK OF COURT

BRENDA F. SHEALY
CHIEF DEPUTY CLERK

POST OFFICE BOX 11330
COLUMBIA, SOUTH CAROLINA
29211

1231 GERVAIS STREET
COLUMBIA, SOUTH CAROLINA 29201
TELEPHONE: (803) 734-1080
FAX: (803) 734-1499
www.sccourts.org

December 10, 2013

Tara Dawn Shurling, Esquire
3614 Landmark Drive
Suite A
Columbia SC 29204

Exhibit (8)(B)

Re: Antonio Gordon v. State
Appellate Case No. 2013-002153
Lower Court Case No. 2000-CP-46-01414

Dear Counsel:

This Court has received the enclosed *pro se* notice of appeal and Rule 243(c) explanation in this matter. I remind you that under Rule 71.1(g) of the South Carolina Rules of Civil Procedure and Rule 264(a), SCACR, that you remain his counsel of record before this Court.

This case has been assigned the appellate case number that appears above. Please use this number on all future correspondence relating to this matter.

All parties to this matter are advised that all filings must comply with the requirements of Rule 267 of the South Carolina Appellate Court Rules (SCACR). The SCACR are available online at www.sccourts.org/courtreg. Additionally, any filings submitted by counsel admitted in South Carolina must include counsel's bar number.

The attention of the parties is directed to the order relating to the inclusion of personal data identifiers and other sensitive information in documents filed with

the Supreme Court of South Carolina and the South Carolina Court of Appeals. The order can be found at www.sccourts.org/courtOrders/HTMLFiles/2007-08-13-02.htm. Please note that the responsibility for insuring that information is redacted or sealed as required by this order rests with counsel and the parties. This office will not review filings for redaction or to determine if materials should be sealed.

To determine the timeliness of this appeal, it will be necessary for you to advise this Court of the date on which you received written notice of entry of the order of December 9, 2003.[1] This is an order that denied a *pro se* motion for rehearing or reconsideration that your client filed regarding the order of August 18, 2003. I have enclosed a copy of the order dated August 18, 2003, the motion for rehearing or reconsideration (without attachments) dated November 18, 2003, and the order dated December 9, 2003. I note that the latter two items have been provided to this Court by the clerk of the circuit court.

Further, as you may remember, you served and filed an appeal from the order of August 18, 2003, and the Division of Appellate Defense then represented the petitioner. A copy of this notice of appeal is enclosed. This Court denied the petition for writ of certiorari after conducting a review pursuant to *Johnson v. State*[2] on July 21, 2005, and the remittitur was sent on August 9, 2005. *Gordon v. State*, Appellate Case No. 2003-028198. I did not see any indication that any request was made to dismiss this appeal due to the pendency of any post-trial motion. *See Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986).

It appears that the *pro se* motion for rehearing or reconsideration was filed with the clerk of the circuit court on the same day (November 25, 2003) that you served and filed the notice of appeal from the order of August 18, 2003. Since you represented him at that time, it appears that this *pro se* motion for rehearing or reconsideration was essentially a nullity and should not have been accepted for filing or ruled on by the circuit court. Therefore, I ask you to explain why the December 9, 2003, order should not be vacated and *pro se* notice of appeal should not be dismissed as moot. *Miller v. State*, 388 S.C. 347, 697 S.E.2d 527 (2010)

---

[1] In the *pro se* notice of appeal, petitioner indicates that the order denying the motion for rehearing or reconsideration is dated August 25, 2006. Despite a request from this office, petitioner has not provided this Court with a copy of any order dated August 25, 2006. If such an order exists, I ask that you please provide this Court with a copy of it.

[2] 294 S.C. 310, 364 S.E.2d 201 (1988).

("Since there is no right to 'hybrid representation' that is partially *pro se* and partially by counsel, substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a person represented by counsel are not to be accepted unless submitted by counsel. [citations omitted]. Because petitioner was represented by counsel, the *pro se* [Rule 59, SCRCP] motion was not proper, should not have been accepted, and should not have been ruled upon. The motion was essentially a nullity. We therefore vacate the order ruling on the motion and dismiss petitioner's notice of appeal as moot. We also take this opportunity to remind judges and clerks of court of our directive in *Foster* not to accept substantive documents, with the exception of motions to relieve counsel, filed *pro se* by a party who is represented by counsel.").

I ask that you please provide the requested information and explanation within fifteen (15) days of the date of this letter. I thank you in advance for your assistance.

Very truly yours,

CLERK

Enclosures

Notice of Appeal and Rule 243(c) explanation dated October 4, 2013
Order dated August 18, 2003
Motion for Rehearing or Reconsideration (without attachments) dated November 18, 2003
Order dated December 9, 2003
Notice of Appeal dated November 25, 2003

cc: James Rutledge Johnson, Esquire
Mr. Antonio Gordon, 259798

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FILED-RECEIVED
2004 JUL -6 AM 10:48
DAVID HAMILTON
C.C.C.& GS
YORK COUNTY, S.C.

STATE OF SOUTH CAROLINA

County of York

In the Court of Common Pleas

2004CP46-1700

Antonio Gordon 259798
Full name and prison number (if any) of Applicant,

vs.

State of South Carolina
Name of Respondent.

APPLICATION FOR POST-CONVICTION RELIEF

CERTIFIED TRUE COPY
2004 JUL -6 P
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, S.C.

INSTRUCTIONS — READ CAREFULLY

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

Since every application must be sworn to 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 applicant was convicted.

1. Place of detention McCormick, S.C. Department of Corrections/FI-A-181 386 Redemption Way, McCormick S.C. 29899

2. Name and location of Court which imposed sentence York County General session Court, Post office Box 649, York, South Carolina 29745-0649

3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:

   (a) Murder 98-GS-46-2847, Attempted Armed Robbery 98-GS-46-2849, Poss. Firearm during
   (b) Comm Violent Crime, 98-GS-46-2847-A, Criminal Conspiracy 98-GS-46-2849, Poss Firearm
   (c) 2nd mm Violent Crime, 98-GS-46-2850-A, Poss of a Handgun under (21) 98-GS-46-2850.

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

   (a) July 19, 1999, 30 years for Murder, to ten (10) Consecutive year for one Attempted
   (b) Armed Robbery, to ten (10) Concurrent year on the other armed robbery, and to five (5)
   (c) years Concurrent one each of the remaining Charge.

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5. Check whether a finding of guilty was made

(a) after a plea of guilty X

(b) after a plea of not guilty

(c) after a plea of nolo contendere

6. Did you appeal from the judgment of conviction or the imposition of sentence?

Yes I did appeal

7. If you answered "yes" to (6), list

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

i. State of South Carolina Court of Appeals

ii.

iii.

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

i. Appeal dismissed

ii.

iii.

(c) the date of each such result:

i. December 6, 2000

ii.

iii.

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

i.

ii.

iii.

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) N/A

(b)

(c)

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) Violation of Due Process of law 5th Amendment

(b) Violation of Equal Protection of the laws 14th Amendment

(c) Lack of subject matter Jurisdiction

10. State concisely and in the same order the facts which support each of the grounds set out in (9):

(a) See attached memorandum,

(b) see attached memorandum,

(c) See attached memorandum,

App. p. none
377

DID THE TRIAL COURT LACK THE SUBJECT MATTER JURISDICTION? (A)

The jurisdiction of a court over the subject matter jurisdiction proceeding is fundamental. Anderson v. Anderson, 382 S.E.2d 897 (1987). Lack of subject matter jurisdiction may not be waived even by consent of the parties and should be taken notice of by the court. See Brown v. State, 540 S.E.2d 846 (S.C. 2001).

When used in this article and unless otherwise defined or the specific context indicates otherwise.

"Child" means a person less than seventeen years of age. "Child does not mean a person sixteen years of age or older who is charged with a class A, B, C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more. However, a person sixteen years of age who is charged with a class A, B, C, OR D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more may be remanded to the family court for disposition of the charged at the discretion of the solicitor. S.C. Code ANN § 20-7-6605(1).

In construing a statute, words must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation. The unconstitutionality in South Carolina Code ANN § 20-7-6605(1), it break it's plain and ordinary meaning, it also expand the meaning of a "child". "Child" means a person less than seventeen years of age, is a clear and understandable, and are readable in it's plain and ordinary meaning, without expanding the statute's operation.

Further, penal statute's must be construed "strictly" against the "State" and in favor of the "Defendant". See William v. State, 410

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S.E.2d 563, Brown v. State, 540 S.E.2d 846 (S.C. 2001), Which the court held that penal laws are to be "Strictly" is founded.....on the plain principle that the power of punishment is vested in the legislative, not the court, which is to define a crime, and ordain its punishment.... ..Id, Quoting United States v. Wilterger (18 U.S.) 5Wheaton 76, 95-96, 5 L.Ed.37 42 (1820). The court's primary function in interpreting a statute is to ascertain the intention of the legislature. In Blackmon 403 S.E.2d 660 (1991), the court held, When the term of a statute are clear and unambiguous, the court must apply them according to their literal meaning.

Furthermore, applicant submits that while passing the law giving the solicitor the authority to deny the family court's jurisdiction is unconstitutional and that it encroaches on the family court's jurisdiction while family court is supposed to have "Exclusive Jurisdiction" over all juveniles until the juvenile has been transferred to the court of general session. The solicitor in the present case incorrectly applied S.C. Code ANN § 20-7-6605(1) "Definition of a "child", and used his discretion to circumvent the family court's jurisdiction in order to try said child as an adult. The solicitor in this case recognized the legislative intent to mean that he could try the child as an adult without family court waiving the "Child" upSSee S.C. CODE ANN § 20-7-7805(c).

No adjucation by the court of the state of child is a conviction, nor does the adjucation operate to impose civil disabilities ordinarily resulting from conviction, nor may a "child" be charged" with a crime or convicted in a court, except as provided in section 20-7-7605(6), (10).

Thus the applicant being a "CHILD" at the time was under the "EXCLUSIVE JURISDICTION" of the family court. Therefore, being the solicitor never "petitioned" the family court to waive it's jurisdiction, the applicant was denied his 5TH, and 14TH Amendment Right to due process of law and equal protection of the law, Applicant further contends that

App. p. 4[illegible]
[illegible] 376

since the solicitor did not petition the family court to obtain jurisdict ion the general session court was without. It may be at the solicitor discretion to decide what charges ars to be brought against a child, but he still must petition the family court in oder to charged them and try a child.

Furthermore, to be arbtrarily denied the privilege of juvenile jurisdiction by discriminatory legislative classification is violative of DUE PROCESS and EQUAL PROTECTION of the law. Legislative classification are entitled to a strong presumption of validity and may be set aside only if no grounds can conceived to justify them. It is a statutory p- rinciple of judicial decision, long emphasized and followed by this court , that burden of establishing the unconstitutionality of a statute rests on him who assails it, and that courts may not declare a legislative discrimination invalid unless viewed in the light of facts made known or generally assumed, it is if such rests upon some rational basis within the knowledge and experience of the legislators. However, there is a presumption of reasonableness of classification in state statute, but presumption is only in absence of evidence to the contrary which is admissible, Evidence to the contrary which establish the unconstitutionality of the statute as in a question denial of the EQUAL PROTECTION Of the law, lies upon the fact that;

S.C. Code ANN § 20-7-6605(1), arbitrarily by age, discriminates against those individuals under the age of seventeen, sixteen year old charge with certain enumerated offenses, by allowing thos individuals to be charged in an adult court without having to first bring charges in family court and obtaining transfers, while other individuals under the age of seventeen (14 and 15 year olds), charged with the same enumerated offenses must be charged in the family court first, and then

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Argument 377

MAY be transferred under some circumstances.No other age group other than 16 year olds are arbitrarily classified as reflected in the fragment nature of statutes and subsection in the family court relating to this particular age group.However,S.C. Code ANN § 20-7-6605(1),define a "CHILD" in it's plain and ordinary meaning."Child" means a person less than seventeen years of age.S.C. Code ANN § 20-7-6605(1),than proceeds to expand the plain and ordinary meaning of a "child" arbitrarily exclude only those 16 year olds who are charged with a class A,B,C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum term of imprisonment of fifteen years or more maybe remanded to the family court for dispositibn of the charge at the discretion of solicitor.S.C. Code ANN § 20-7-7605(6),(10),then defines that if a "child" fourteen years of age or older is charged with an offense which,if committ by an adult,provides for a term of imprisonment of ten years or more and the "child" previously has been adjudicated delinquent in family court or convicted in circuit court for two prior offenses which,if committed by an adult,provid for a term of imprisonment of ten years or more,the court acting as committing magistrate"SHALL" bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult.For the purpose of this item,an adjudication or conviction is considered a second adjudication or conviction only if the date of the second offense occurred subsequent to the imposition of the sentence for the first offense.If a "child" commit murder or criminal sexual conduct will be transferred in some circumstance.S.C. Code ANN §-20-7-7605(6).S.C. Code ANN § 20-7-7605(5),then defines a child as a fourteen or fifteen year old,charged with an offense which would classify as a class A,B,C, or D felony as defined in section 16-1-20 or a felony which provides for a maximum

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term of imprisonment of fifteen years or more,will be transferred in the respectful manner.In S.C. Code ANN § 20-7-7605,it stipulates that any individual 14 years or older can be tried as an adult under certain circumstances.Anyone under the age of 14 may be tried as an adult,only if the individual has committed the offense of murder or criminal sexual conduct.As shown § 20-7-6605(1),and § 20-7-7605(6),(10),are identical in every aspect except that a 14 and fifteen year olds is given a chance and 16 year olds is out of sight out of mind.

This arbitrary age discrimination rest upon the fact that there is no justification for exclusive juvenile jurisdiction over a 14 and 15 year old charged with the same enumerated offenses as 16 year old, who is arbitrarily classified as an adult,upon initiation of the charges. Here the original justification,if there was one,is no longer justifiable where there was a disparity between 14,15,and 16 year olds,there is little evidence that thos diffrences exist today where the rate of 14 and 15 year old offenders,has equaled with that of 16 year old offenders, if not surpassed the number.In Bland,the court held that in it's original justification,congress sought to improve the operation of the juvenile justice system by removing from it's jurisdictior individuals between the age of 16 and 18,in which congress concluded:

(1)Were beyond rehabilitation in juvenile justice system,and

(2)Who's presence in that system served as a negative influence on other juveniles,see Bland at 472 F.2d 1348,1349.Today these reason is also applicable to 14 and 15 year olds.In revealing it's rational for excluding such persons from the jurisdiction of the family court division, the house committee on the District of Columbia,gave the following as the basis for it's exclusion of those 16 years of age or older charged with certain enumerated offenses.Because of the great

increasing in the number of serious felonies committed by juveniles and because of the substantial difficulties in transferring juveniles offenders charged with serious felonies to the jurisdiction of the adult court under present law, provisions are made in this subchapter for a better mechanism for seperation of the violent youthful offender and recidivist from the rest of the juvenile community, is arbitrarily and discriminatorily applied in S.C. Code ANN § 20-7-6605(1).

Moreover, if diffrentation of individuals is necessary, as it surely is, it should be made on the basis of facts about the individual, and not on the basis of an assumption about a huge and diverse group. The unc ontroverted evidence is that such basis for the exclusion of only sixteen year olds as children when charged with certain enumerated offenses is arbitrary and unreasonably discriminatory. This effect is not hypothetical or therectical, but is quite real. Individuals, under the age 17, if charged as an adult with a class A, B, C, or D felony or a felony will be tried as , and if convicted be subject to the penalties of adults. If convicted they will be incarcerated in adult institution upon ascertaining the age of 17, and largely, if not completely, be deprived of social , psychological and psychiatric services, and educational and vocational opportunities afforded juveniles.

Further, if convicted as adults these individuals may lose the right to vote, serve in the Armed forces, to secure many types of goverament and private employment, and will carry forever the stigma of conviction. The only difference as addressed in the dissenting opinion in Bland supra, is that 16 year old individuals, 'will be sentence(if conviction in an adult court). Moreover without any meaningful inquiry into the possibility of rehabilitation through human juvenile disposition see Bland at 472 F.2d 1348. A "child" is not a 16 year old individual charged with certain enumvated offenses.

While an individual,14 and 15 years of age,charged with the same enumerated offenses is a child,where there is no real distinction (Psycological or Physical) between a 14,15,and 16 year olds,whereas denies the applicant equal protection of the law, and along with violative of the due proces of law.Violative of the 5th and 14th Amendment right of the applicant.

LACK OF SUBJECT MATTER JURISDICTION. (B)

SHOULD THE APPLICANT BEEN AFFORDED A COMPETENCY HEARING BEFORE BEING TRIED AS AN ADULT,VIOLATIVE OF DUE PROCESS,AND EQUAL PROTECTION OF THE LAW.

In determining whether a child is to be waived up to the court of general session the factors in Kent v. United States,86 S.CT 1045 (1966),must be considered.However,evaluation of a child must take place in the Department of Juvenile Justice.WHEN the solicitor makes his decision to try a child 16 years of age as an adult,the solicitor basis his determination and discretion on the child age and charged.SEE S.C. Code ANN § 20-7-6605(1).Never,the,less does the solicitor investigate and focus on the child (MENTAL HISTORY,FAMILY BACK GROUND,AND OR WHETHER THE CHILD COULD BE REHABILITATED AT THE AGE OF SIXTEEN).However,all juvenile's has the right to procedure due process of law,see In re Winship,397 U.S. 358,90 S.CT 1068,25 L.Ed.2d 368 (1970).The applicant will further point out,that a child sixteen years of age commit a class A,B,C, or D felony does not necessarily means that the sixteen year old is capable of understanding the things that adults could. It has not been establish should the solicitor hold an evaluation hearing for juveniles sixteen years of age before they are tried and considered to be an adult who commit class A,B,C, or D felony's.To be competent to stand trial as an adult,the court held in Dusky v. United States,80 S.CT 788,that a defendants competency to stand trial is whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational

as well as factual understanding of the proceeding against him.Of course DUSKY supra,is a competency to stand trial case,Dusky,also was an adult However,applicant was 16 years of age with a low IQ of 68,which placed the applicant in the (MILDLY,MENTALLY RETARDATION,BORDERLINE OF FUNCTION RANGE)See(S.C. Department of Juvenile Justice Reception and Evaluation center Social work report).Thus a sixteen year old,are more likely to have a low IQ and very limitted understanding,and comprendion to things as to criminal nature then adult's would.Although applicant submit that the only true way to find out is a sixteen year old is competent to be tried as an adult,is to hold an evaluation hearing before the applicant is considered to be an adult.Applicant further contends,that,the evaluation hearing is not a waiver or transfer hearing,but more of a hearing for the solicitor to render his arbitrary determination opinion,as to,rather sixteen year olds is to be tried as a child or an adult.As the statute indicates,a child sixteen years of age commit a class A,B,C or D felony may be tried in the family court at the discretion of the solicitor S.C. Code ANN § 20-7-6605(1).

However,S.C. Code ANN § 20-7-6605(1),has no stipulation as to the solicitor discretion as trying juvenile's sixteen years of age. Further,before a 12,13,14,and 15 year old is charged and tried as an adult they go through evaluation hearing.See State v. Corey D,529 S.E.2d 20 (2000 S.C.).A waiver hearing that involved Chris,Carlos,and Toby.Dr Charles Sailor,the forensic psychologist who performed the "EVALUATION WAIVER" of Carlos,testified that although Carlos was fifteen year old with an IQ of 70,Dr Sailor characterized Carlos as an the borderline of mildly mentally retarded.The psychologists who performed the waiver evaluations of Chris and Toby,both 14 years old,classified both boys as mildly mentally retarded.However,neither of the defendant's was pass the age of 15,and where afforded there right to determine there abilities

(11)

to consult as an.....adult with a reasonable degeee of rational as well as factual understanding,before being tried as an adult.Though a sixteen year old charged with few of the same charges are immediately tried and considered as an adult.However,the common law question in the case at bar,is whether the solicitor shouldheld evaluation hearing for juvenile's sixteen years of age who commit class A,B,C or D felonies, before he makes his determination as rather the child should be tried as an adult or an child.Further,applicant submit that he was denied his 5th and 14th Amendment right to Due Process and Equal protection of the law,whereas,juvenile's from the age of 12-15 are afforded the right to "evaluation hearing" before being tried as an adult.Applicant was denied his 5th and 14 amendment right,constitutional right in nature,And finally ,general session court where without the subject matter jurisdiction to accept applicant's guilty plea,where applicant where under the jurisdiction of the family court.S.C. Code ANN § 20-7-400,20-7-7605.

LACK OF SUBJECT MATTER JURISDICTION (C)

SHOULD THE APPLICANT BEEN AFFORDED A JUVENILE WAIVER HEARING UNDER 20-7-7605(6),(10),IN VIOLATION OF DUE PROCESS,AND EQUAL PROTECTION OF THE LAW.

Applicant contends that he should have been afforded a juvenile waiver hearing before being tried as an adult.THE law states that a " child" is defined under the age of seventeen,20-7-6605(1).In order to be tried as an adult the factors in Kent v. United States supra,must be considered.Every juvenile have the right to predure due process of law In re Winship supra,under S.C.C Code ANN § 20-7-7605(6),(10),THE APPLICANT should have been transferred to the court of general session within thirty days after the filing of a petition in the family court alleging the child has committed murder or criminal sexual conduct,the person executing the petition may request in writing that the case be transferred to the court of general session with a view to proceeding against the child

as a criminal rather than as a adult coming within the purview of this article.The judge of the family court is authorized to determine this request.If the request ir denied,the petitioner may appeal within five days to the circuit court upon the hearing of the appeal,the judge of the circuit court is vested with the discretion of exercising and asserting the jurisdiction of the general session court for trial of the case ,he shall issue an order to that effect,and the family court has no further jurisdiction in the matter.

The applicant in the case at bar where charged with murder,and were immediately tried as an adult according to S.C. Code ANN § 20-7-6605 (1).The solicitor in the case at bar fail to look to subscetion (6),(10). Subscetion (6),of the transfer statute which specifically deals with when a child has been charged with murder or criminal sexual conduct. Subscetion (6) contain no explicit age limitation,and apply to sixteen year old offenders who commit murder.The reason there is no express age disignation in section 20-7-7605(6),whereas other subscetion expressly contain age restrictions,"The legislature intended these seperate subscetion,"to cover seperate situation.See Shaw 274 S.C. at 539,265 S.E.2d at 524.THE legislature intended that subscetion (6) apply to all juvenile's who commit the offense of murder.

Thus subscetion (10) of the transfer statute applies to sixteen year old offenders as well.If a child fourteen years of age or older is charged with an offense which,if committed by an adult,provides for a term of imprisonment of ten years or more and the child previously has been adjudicated delinquent in family court or convicted in circuit court for two prior offenses which,if committed by an adult,provides for a term of imprisonment of ten years or more,the court acting as committing magistrate shall bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult."For the purpose of this item,an adjudication

or conviction is considered a second adjuication or conviction only if the date of the commission of the second occurred subsequent to the imposition of the sentence for the first offense.

Thus the said applicant at the time had only one conviction as a child that could carry a imprisonment sentence of ten years or more,which where "BURGLARY 2nd.Penal statutes is to be construed strictly against state and in favor of the defendant.William v.STate supra.(20-7-6605(1) and 20-7-7605(6),(10).Applicant submit that an individual sixteen years of age are a child in the nature of common law.See 20-7-6605(1),20-7-7605 (6),(10).It is established in this state that where there is any doubt as to which of two statutes of limitation applies,the doubt must go in favor of the longer period.State v.Life Ins ofGeorgia 175 S.E.2d 203 209 (1970).

Furthermore,the applicant being said "child" at the time was under the "Exclusive Jurisdiction" of the family court judge.THEREFORE, being that the slocitor never petition the family court,for waiver of jurisdiction ,the court of general session in York County did not have jurisdiction to try the applicant,whereas applicant was denied his 5th and 14th Amendment Right,Due Process,and Equal Protection of the law. Finally general session court lack the subject matter jurisdiction in accepting the applicant guilty plea.

CONCLUSION

Applicant guilty plea should be reversed and afforded a new trial.

App. P. [illegible]
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11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law? _____

(b) any petitions in State or Federal Courts for habeas corpus or post-convictions relief? _____

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)? _____

(d) any other petitions, motions or applications in this or any other Court?

Yes

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. Post-Conviction application

ii. _____

iii. _____

iv. _____

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

i. In the Court of Common Pleas

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. Dismissed

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

i. October 27th 2003

ii. _____

iii. _____

iv. _____

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

i. Dismissed

ii. _____

iii. _____

iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed?

No

App. P. [illegible] 386

14. If you answered "yes" to (1), identify:

(a) which grounds have been presented:

i. N/A

ii. _____

iii. _____

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

i. N/A

ii. _____

iii. _____

15. If any ground set forth in (9) 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) _____

(b) _____

(c) _____

16. 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? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? _____

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

i. Harry Dest, 1675-3A York Hwy, York SC, 29745

D'Agostino "address unknown

ii. Tara Dawn Shurling, 3614 Landmark Drive, Suite D, Columbia SC, 29204

iii. _____

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

i. Harry Dest Got off case

ii. D'Agostino Plea and sentencing

iii. Tara Dawn Shurling, Post-conviction hearing

18. State clearly the relief you seek in filing this application.

Vacation of sentence

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

NO

App. P. 4775

STATE OF SOUTH CAROLINA

County of York

VERIFICATION

387

I, Antonio Gordon, 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.

Antonio Gordon

SWORN to and subscribed before me this 28TH day of JUNE, 20 04.

Notary Public (L.S.)

My Commission Expires: MAY 5, 2008

APPLICATION TO PROCEED WITHOUT PREPAYMENT OF COSTS AND AFFIDAVIT IN SUPPORT THEREOF

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty of perjury that the following facts are true:

(1) I am the applicant in this action and I believe I am entitled to redress.

(2) Because of my poverty I am unable to pay the costs of said proceeding or give security therefor.

Antonio Gordon
Applicant

SWORN or affirmed to and subscribed before me this 28TH day of JUNE, 20 04.

Notary Public

My Commission Expires MAY 5, 2008.

App. P. #0716
358

STATE OF SOUTH CAROLINA COUNTY OF YORK Antonio Gordon, S.C.D.C. No. 259798 Applicant, v. State of South Carolina, Respondent.	)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT C.A. No. 2004-CP-46-1700 **RETURN AND MOTION TO DISMISS**

In response to the post-conviction relief application filed July 6, 2004, the Respondent would show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. The Applicant was indicted at the October, 1998 term of General Sessions for the York County Grand Jury for Murder (count one) and Possession of a Firearm During the Commission of a Violent Crime (count two) (98-GS-46-2847), Attempted Armed Robbery (count one) and Possession of a Weapon During the Commission of a Violent Crime (count two) (98-GS-46-2849), and Attempted Armed Robbery (count one) and Possession of a Weapon During the Commission of a Violent Crime (count two) (98-GS-46-2850). He was represented by Daniel D'Agostino, Esq. On July 16, 1999, the Applicant pled guilty as indicted. On July 19, 1999, he was sentenced by the Honorable John C. Hayes to confinement for a period of thirty (30) years for Murder, ten (10) years for Attempted Armed Robbery, five (5) years for Possession of a Firearm During the

Commission of a Violent Crime, and ten (10) years for Attempted Armed Robbery with one ten year sentence consecutive to the thirty year sentence and the rest concurrent.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Gordon, Op. No. 2000-UP-747 (S.C. Ct. App. filed December 6, 2000).

The Applicant subsequently filed an application for post conviction relief on June 15, 2000. An evidentiary hearing was convened on July 29, 2001 at the Richland County Courthouse. The parties agreed to change venue from York County to Richland County pursuant to the Consent Order Changing Venue signed by the Honorable John C. Hayes, III. Due to conflicts with the judges in the Sixteenth Circuit, this case was transferred to the Fifth Circuit in order to conduct the PCR hearing in a more timely manner. In addition, a special Order was executed granting jurisdiction to the presiding judge. The Applicant raised the following issues in his first PCR:

1. Ineffective assistance of counsel.

The Honorable J. Ernest Kinard denied and dismissed the Applicant's PCR application by written Order on August 18, 2003. The Applicant then filed a timely notice of appeal. The appeal is still pending in the South Carolina Supreme Court.

II.

In his current application for post conviction relief the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. "Violation of Due Process of law 5th Amendment";
2. "Violation of Equal Protection of the law 14th Amendment"; and
3. "Lack of Subject Matter Jurisdiction."

App. p. 4[illegible]
[illegible]
3-10

For the purpose of this Return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections' records, the guilty plea transcript, and the prior PCR records. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

III.

The Court should summarily dismiss the current Application because it is clearly successive to the previous application for post-conviction relief. Successive applications for post-conviction relief are clearly disfavored. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980). S.C. Code Ann. § 17-27-90 (1985) states:

> All grounds for relief available to an applicant under this chapter must be raised in his original, supplemental or amended application. Any ground finally adjudicated or not so raised, or knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence, or in any other proceeding the applicant has taken to secure relief, may not be the basis for a subsequent application, unless the court finds a ground for relief asserted which, for sufficient reason, was not asserted or was inadequately raised in the original, supplemental or amended application.

Under this statute, successive post-conviction relief applications are forbidden unless an applicant can point to a "sufficient reason" why new grounds for relief were not raised or were not properly raised in previous applications. Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991). Any new ground raised in a subsequent application is limited to those grounds that **"could not have been raised** . . . in the previous application." [Emphasis in original]. Id., 305 S.C. at 450, 409 S.E.2d at 394. If the Applicant could have raised these allegations in a previous application, then the Applicant may not raise those grounds in successive applications. Id. The Applicant bears the burden of showing that the allegations could not have been raised previously. Land, Id.

App. p. [illegible]
391

The Applicant could have raised the new grounds for relief in his prior post-conviction relief application. The Applicant has failed to present **any** reasons why he could not have raised the current allegations in his previous post-conviction relief applications.

IV.

The Respondent submits that this Application for Post-Conviction Relief should also be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. §17-27-10, et. seq.

S.C. Code Ann. §17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this Application on July 16, 1999. The South Carolina Court of Appeals decision affirming the Applicant's conviction was filed December 6, 2000. This Application was filed on July 6, 2004 which was well beyond the time that the statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. § 17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law." Therefore, the Respondent requests that this Court summarily

App. p. 488
Accumulated
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dismiss the application for post conviction relief for failure to file within the time mandated by the Post Conviction Procedure Act.

V.

The Respondent concedes that the Applicant's subject matter jurisdiction allegation is not barred by the statute of limitations. Issues related to subject matter jurisdiction may be raised at any time. Browning v. State, 320 S.C. 366, 465 S.E.2d 358 (1995). However, the Respondent respectfully submits that this allegation is without merit and should be summarily dismissed.

A circuit court has subject matter jurisdiction to convict a criminal defendant if: (1) there has been an indictment returned true billed by a grand jury which sufficiently states the offense; (2) there has been a waiver of presentment to the grand jury indictment; or (3) the charge is a lesser included charge of the crime charged in the indictment. Locke v. State, 341 S.C. 54, 533 S.E.2d 324 (2000). Circuit court does not have subject matter jurisdiction to convict a defendant of an offense unless there has been an indictment which sufficiently states the offense, the defendant has waived presentment of the indictment, or the offense is a lesser included offense of the crime charged in the indictment. State v. Timmons, 349 S.C. 389, 563 S.E.2d 657 (2002); State v. Primus, 349 S.C. 576, 564 S.E.2d 103 (2002).

An indictment is sufficient to convey jurisdiction if it apprizes the defendant of the necessary elements of the offense intended to be charged and informs the defendant of the circumstances he must be prepared to defend. State v. Parker, 344 S.C. 250, 543 S.E.2d 255 (Ct. App. 2001). An indictment passes legal muster if it "charges the crime substantially in the language of the ... statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood ...." Reddick v. State, 348 S.C. 631, 560 S.E.2d 441 (2002).

The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprizes the defendant of what he must be prepared to meet. Browning v. State, 320 S.C. 366, 368, 465 S.E.2d 358, 359 (1995).

In the present case, the indictment gave the time, place, and manner of the events in which Applicant was accused of having participated. All of the necessary elements of the crime were included in the indictment. Therefore, the indictment was sufficient to inform applicant of the circumstances which he would be called upon to defend and the Court had subject matter jurisdiction to take his guilty plea.

VI.

The Respondent denies each allegation that is not expressly admitted, qualified or explained.

VII.

WHEREFORE, Respondent moves to summarily dismiss the application because it is successive to the Applicant's prior PCR action and was filed after the statute of limitations had expired. The Respondent also moves to summarily dismiss the subject matter jurisdiction allegation as being without merit.

Amp. P. 4302
Argument
394

Respectfully submitted,

HENRY D. MCMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Chief Criminal Appeals & Post Conviction Relief

ARIE D. BAX
Assistant Attorney General

P.O. Box 11549
Columbia, S.C. 29211

By: Arie Bax

Attorneys for the Respondents

Columbia, South Carolina
11/19, 2004

APP. P. 1156

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

395

2004-CP-46-1700

Antonio Gordon, 259798

Applicant,

vs

State of South Carolina,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Return and Motion to Dismiss in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Antonio Gordon, 259798
McCORMICK CORRECTIONAL INSTITUTION
FI-A-181, 386 Redemption Way
McCormick, SC 29899

DATED this 2nd day of December, 2004.

Jean R. Indriago, Legal Assistant
For Respondent

App. p. 384
Plaintiff 396

STATE OF SOUTH CAROLINA COUNTY OF YORK	IN THE COURT OF COMMON PLEAS
Antonio Gordon, # 259798, Applicant, vs. State of South Carolina, Respondent.	2004-CP-46-1700 CONDITIONAL ORDER OF DISMISSAL

FILED-RECEIVED
BOOK ___ PAGE ___
DEC 30 3 52 PM '04

This matter comes before this Court by way of an application for post-conviction relief filed July 6, 2004. The Respondent made its return and motion to dismiss on November 19, 2004.

I. PROCEDURAL HISTORY

The records before this Court reflect that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. The Applicant was indicted at the October, 1998 term of General Sessions for the York County Grand Jury for Murder (count one) and Possession of a Firearm During the Commission of a Violent Crime (count two) (98-GS-46-2847), Attempted Armed Robbery (count one) and Possession of a Weapon During the Commission of a Violent Crime (count two) (98-GS-46-2849), and Attempted Armed Robbery (count one) and Possession of a Weapon During the Commission of a Violent Crime (count two) (98-GS-46-2850). He was represented by Daniel D'Agostino, Esq. On July 16, 1999, the Applicant pled guilty as indicted. On July 19, 1999, he was sentenced by the Honorable John C. Hayes to confinement for a period of thirty (30) years for Murder, ten (10) years for Attempted Armed Robbery, five (5) years for Possession of a Firearm During the Commission of a Violent Crime, and ten (10) years for Attempted

#1

Armed Robbery with one ten year sentence consecutive to the thirty year sentence and the rest concurrent.

A timely Notice of Appeal was filed on Applicant's behalf and an appeal was perfected. The South Carolina Court of Appeals affirmed Applicant's conviction and sentence. State v. Gordon, Op. No. 2000-UP-747 (S.C. Ct. App. filed December 6, 2000).

The Applicant subsequently filed an application for post conviction relief on June 15, 2000. An evidentiary hearing was convened on July 29, 2001 at the Richland County Courthouse. The parties agreed to change venue from York County to Richland County pursuant to the Consent Order Changing Venue signed by the Honorable John C. Hayes, III. Due to conflicts with the judges in the Sixteenth Circuit, this case was transferred to the Fifth Circuit in order to conduct the PCR hearing in a more timely manner. In addition, a special Order was executed granting jurisdiction to the presiding judge. The Applicant raised the following issues in his first PCR:

1. Ineffective assistance of counsel.

The Honorable J. Ernest Kinard denied and dismissed the Applicant's PCR application by written Order on August 18, 2003. The Applicant then filed a timely notice of appeal. The appeal is still pending in the South Carolina Supreme Court.

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

1. "Violation of Due Process of law 5th Amendment";
2. "Violation of Equal Protection of the law 14th Amendment"; and
3. "Lack of Subject Matter Jurisdiction."

#2
2006

App. p. 4856
Hold w/ Writ
398

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court finds that the current application for post-conviction relief must be summarily dismissed because it is successive to his prior application for post-conviction relief. S.C. Code Ann. §17-27-90 provides that:

> All grounds for relief available to an application under this chapter must be raised in his original, supplemental or amended Application. Any ground finally adjudicated or not so raised, knowingly, voluntarily and intelligently waived in the proceeding that resulted in the conviction or sentence or in any other proceeding the Applicant has taken to secure relief, may not be the basis for a subsequent Application, unless the court finds a ground for relief asserted which for sufficient reason was not asserted or was inadequately raised in the original, supplemental or amended Application.

Successive applications are disfavored and the burden is on the Applicant to establish that any new ground raised in a subsequent application could not have been raised by him in a previous application. Foxworth v. State, 275 S.C. 615, 274 S.E.2d 415 (1981); Aice v. State, 305 S.C. 448, 409 S.E.2d 392 (1991); Arnold v. State/Plath v. State, 309 S.C. 157, 420 S.E.2d 834 (1992).

This Court finds that the current allegations were or could have been raised in the proceedings based on Applicant's prior application for post-conviction relief and thus the current application is successive and barred under S.C. Code § 17-27-90. The Applicant has failed to establish sufficient reason why he could not have raised his current allegations in his previous application for post-conviction relief; therefore, he has failed to meet the burden imposed upon him. Land v. State, 274 S.C. 243, 262 S.E.2d 735 (1980); Aice v. State, supra; Arnold v. State/Plath v. State, supra.

#3
2008

App. p. 384
Addendum 399

This Court finds, further, that this Application for Post-Conviction Relief should be summarily dismissed for failure to comply with the filing procedures of the Uniform Post-Conviction Procedure Act. S.C. Code Ann. § 17-27-10, et. seq. S.C. Code Ann. §17-27-45(a) reads as follows:

> An application for relief filed pursuant to this chapter must be filed within one year after the entry of a judgement of conviction or within one year after the sending of the remittitur to the lower court from an appeal or the filing of the final decision upon an appeal, whichever is later.

The South Carolina Supreme Court has held that the statute of limitations shall apply to all applications filed after July 1, 1996. Peloquin v. State, 321 S.C. 468, 469 S.E.2d 606 (1996). The Applicant was convicted of the offenses he challenges in this Application on July 16, 1999. The Supreme Court's decision was filed, after the Applicant's unsuccessful appeal, on December 6, 2000. This Application was filed on July 6, 2004, well after the one year statutory filing period had expired.

A motion for summary judgment may properly be used to raise the defense of statute of limitations. McDonnell v. Consolidated School District of Aiken, 315 S.C. 487, 445 S.E.2d 638 (1994). In addition, S.C. Code Ann. §17-27-70(c) (1985) authorizes the Court to "grant a motion by either party for summary disposition of [an] application when it appears from the pleadings ... that there is no genuine issue of material fact and the moving party is entitled to judgement as a matter of law." Therefore, this Court finds that the application for post-conviction relief is summarily dismissed for failure to file within the time mandated by statute and for being successive.

The Applicant's allegation that the trial court lacked subject matter jurisdiction is without merit. A circuit court has subject matter jurisdiction to convict a criminal defendant if: (1) there has been an indictment returned true billed by a grand jury which sufficiently states the offense;

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384

App. P. 1188

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(2) there has been a waiver of presentment to the grand jury indictment; or (3) the charge is a lesser included charge of the crime charged in the indictment. Locke v. State, 341 S.C. 54, 533 S.E.2d 324 (2000). An indictment is sufficient to convey jurisdiction if it apprizes the defendant of the necessary elements of the offense intended to be charged and informs the defendant of the circumstances he must be prepared to defend. State v. Parker, 344 S.C. 250, 543 S.E.2d 255 (Ct. App. 2001). An indictment passes legal muster if it "charges the crime substantially in the language of the ... statute prohibiting the crime or so plainly that the nature of the offense charged may be easily understood ...." Reddick v. State, 348 S.C. 631, 560 S.E.2d 441 (Ct. App. 2002). The true test of the sufficiency of an indictment is not whether it could be made more definite and certain, but whether it contains the necessary elements of the offense intended to be charged and sufficiently apprizes the defendant of what he must be prepared to meet. Browning v. State, 320 S.C. 366, 368, 465 S.E.2d 358, 359 (1995).

In the present case, the indictment gave the time, place, and manner of the events in which Applicant was accused of having participated. All of the necessary elements of the crime were included in the indictment. This Court finds the Applicant failed to carry his burden of proof to show that the trial court lacked subject matter jurisdiction. Therefore, this Court finds the trial court had subject matter jurisdiction. Accordingly, this allegation is denied.

III. CONCLUSION

Based upon its review of the pleadings in this matter, this Court does not see the need to appoint counsel to represent the Applicant and expresses its intent to summarily dismiss this matter unless the Applicant advises this Court with specific reasons, factual or legal, why it should not dismiss the matter in its entirety. The Applicant is granted twenty (20) days from the

#5 2004

App. P. [illegible]

date of service of this Order upon him to show why this Order should not become final by filing any reasons he may have with the Clerk of Court for York County, South Carolina and shall serve opposing counsel at the following addresses: 4/01

Office of the Attorney General
Attn: Arie D. Bax, Esquire
P.O. Box 11549
Columbia, South Carolina 29211

AND IT IS SO ORDERED this 29th day of December, 2004.

Lee S. Alford
Administrative Judge
Sixteenth Judicial Circuit

York, South Carolina

#6

App. P. 470
402

FILED-RECEIVED
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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK) 2004-CP-46-1700

MAY 20 12 06 PM '05
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Antonio Gordon, No. 259798,

Applicant,

v.

State of South Carolina,

Respondent.

FINAL ORDER

This matter comes before the Court pursuant to an application for post-conviction relief (PCR) filed July 6, 2004. The Respondent made its Return and Motion to Dismiss on November 19, 2004, requesting that the Application be summarily dismissed.

Pursuant to this request, and after reviewing the pleadings in this matter and all of the records attached thereto, this Court issued a Conditional Order of Dismissal dated December 29, 2004, provisionally denying and dismissing this action, while giving the Applicant thirty (30) days from the date of service of said Order in which to show why the dismissal should not become final. Attached to this Final Order and incorporated herein by reference is an Affidavit of Service dated January 19, 2005, serving the above-mentioned Conditional Order of Dismissal on the Applicant.

The Applicant failed to provide this Court with any reason as to why the Conditional Order of Dismissal should not become final.

Accordingly, the Conditional Order of Dismissal is incorporated herein as if set forth verbatim and becomes a Final Order in this matter.

#1
EBH

App. P. [illegible] 403

IT IS THEREFORE ORDERED THAT:

1. The post-conviction relief application is **DENIED AND DISMISSED WITH PREJUDICE.** The Court advises the Applicant and his attorney of record that any Notice of Appeal must be filed within thirty (30) days of service of the signed copy. Your attention is directed to South Carolina Appellate Court Rule 227 for appropriate procedures on appeal.

2. The Applicant is remanded to the custody of the Respondent for the completion of his sentence.

AND IT IS SO ORDERED this 16th day of May, 2005.

Lee S. Alford
Presiding Judge
Sixteenth Judicial Circuit

York, South Carolina

#2

App. P 404

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

2004-CP-46-1700

FILED-RECEIVED
BOOK ____ PAGE ____
MAY 20 12 07 PM '05
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

Antonio Gordon, #259798

Applicant,

vs

State of South Carolina,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Proposed Final Order of Dismissal in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Antonio Gordon, #259798
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

DATED this 9th day of May, 2005.

Gianandrea A. Maoli, Legal Assistant
For Respondent

App. P. 405

STATE OF SOUTH CAROLINA
COUNTY OF YORK

COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Antonio Gordon, #259798
Applicant,
vs.
State of South Carolina
Respondent

Case No.: 04-CP-46-1700

Affidavit of Service

PERSONALLY APPEARED BEFORE ME, the undersigned deponent, who being first duly sworn, deposes and says that on 19 January, 2005, (s)he served the Conditional Order of Dismissal in this action on Antonio Gordon, #259798 by delivery to personally; that deponent knows the person so served, and that deponent is not a party of this action, is not less than eighteen (18) years of age and has no interest therein or connection therewith.

Signature of Deponent

James S. Purdie
Printed Name of Deponent

Sworn to and Subscribed before me
This 19 day of Jan, 2005

Joyce L Young L.S.
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 5 28 2011

Attachment (2)

App. p 406

STATE OF SOUTH CAROLINA COUNTY OF YORK Antonio Gordon, #259798 Petitioner, Vs. John Ozmit Director of the South Carolina Dept. of Corrections and the Henry D. McMaster, Attorney General of South Carolina	IN THE COURT OF COMMON PLEAS 06-CP46-010 PETITIONER FOR WRIT OF HABEAS CORPUS F-763891, F-763897, F-763898, F-763901, F-763902 F-763914

FILED-RECEIVED
2006 JAN -3 PM 4:44
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

Petitioner, Antonio Gordon, hereinafter Gordon an inmate of the South Carolina Department of Corrections, is seeking release from incarceration and respectfully requests that this Court grant a writ of habeas corpus and order of the Court requiring the State of South Carolina to: vacate Gordon's sentence's and set a new trial. These issues bring into the legality of the Petitioner's detention, and he entreats this Court to weigh this arguements carefully and to not allow the delay in their presentation in inure to this prejudic

JURISDICTION

The Supreme Court of South Carolina held that relief pursuant to a writ of habeas corpus, is appropiate when there has been a violation, which, in the setting constitutes a denial of fundemental fairness shocking to the universal sense of justice, Butler v. State 302 S.C. 466, 468, 397 S.E.2d. 87, 88 (1990). "The general and central office of the writ of habeas corpus is to test the legality of a prisoner's current detention". Butler, 468 at 302 S.C. 88 397 S.E.2d (Quoting Walker v. Wainwright, 390 U.S. 335, 88 S.Ct. 962, 19 L.Ed. 1215 (1968).

CERTIFIED TRUE COPY
2006 JAN 27 AM 10:21
DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC

App. P. # 407

QUESTION PRESENTED

1. Is petitioner guilty plea involuntary (a)?
2. Is petitioner guilty plea involuntary (b)?
3. Petitioner was denied due process, petitioner pled guilty without the ability to withdrawn plea where double jeopardy issue was prejudice?
4. Petitioner due process right were violated where statement on appeal was inadmissible if petitioner went to trial rather then plea guilty??
5. Petitioner was denied due process where he was allowed to plea guilty under unambigous statute children's code of laws?
6. Did General Session Court lack jurisdiction in accepting petitioner guilty plea, where jurisdiction had not been relinquished by the family court?
7. Should a sixteen year old charged with a Class A, B, C, or D felony specified in S.C. Code Ann § 20-7-6605(1), receive a competence hearing under due process of law before the solicitor use's his discretion in trying the child as an adult?
8. Petitioner was denied due process where State psychologist was qualified to testify to petitioner competence to stand trial but was not licenses as a psychologist under South Carolina law and regulation?

STATEMENT OF CASE

On October 15,1998,the York County Grand Jury indicted the petition for murder,three counts of possession of a firearm during the commission of a violent crime,two counts of attempted armed robbery, possession of a firearm by a person under twenty-one,and criminal conspiracy.

On July 16,1999,the petitioner pled guilty to all charges.On July 19,1999,the Honorable John C. hayes,III,sentenced the petitioner to thirty years for murder,five years for each count of possession of a weapon during the commission of a violent crime,ten years for each count of attempted armed robbery,and five years for criminal conspiracy and five years for possession of a weapon under twenty one.

A timely Notice of Appeal was filed on petitioner's behalf and an appeal was perfected.The South Carolina Court of Appeals was dismissed.State v. Antonio and Monta Gordon,Op. No. 2000-UP-747 (S.C.Ct.App.filed December 6,20000).

Petitioner filed for post-conviction relief June 15,2000.The respondent made its return on May 2,2001.An evidentiary hearing into the matter was convened on July 29,2003,at the Richland County Courthouse.Petitioner post-conviction was denied August 18,2003,by Honorable J. Ernest Kinard.This Court subsequent denied a petition for writ for certiorari.Petitioner now raises issues that are not cognizable under the PCR act.

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STATEMENT OF FACTS

On July 23,1998,Gordon got arrested for murder,two counts of attempted armed robbery,three counts of possession of a weapon during the commission of a violent crime,possession of a weapon by a person under twenty-one,and criminal conspiracy.Petitioner's mother retained counsel to represent petitioner on July 23,1998,counsel requested to see his client which his request were denied.Petitioner made a self-incriminating statement.The first statement petitioner made he denied any involement in the crime,the second statement petitioner confessed to the alleged crimes.

Petitioner proceeded to pre-trial on the following dates,July 12, 14, & 16,1999.During the pre-trial petitioner counsel argued to the court several issues that he felt was in violation of petitioner's Constitutional rights.Counsel argued that it should be a separate trial that of his co-defendant's being that petitioner had a low IQ that of 68,The State did not have probable cause to arrest the petitioner,petitioner statement to the police should be surpressed due to petitioner age and his limited of understanding at the time the self-incriminating statement was made,and finally,petitioner statement's should be surpressed due to the police did not have probable cause to arrest.

Counsel requested that petitioner be evulated by Dr.Jonathan Venn,which he testified that he could not come to an opinion to whether the petitioner was competent to stand trial,or whether the petitioner was mentally retarded.Dr.Jonathan Venn,testified that he did not have no back-ground information,nor did he get the chance to speak with petitioner family members to try and see if he could have came up with any helpful information.However,the State requested that petitioner under-go evaluation to determine whether petitioner was competent to stand trial.Dr.Leslie N. Sandler rendered an opinion that petitioner was competent to stand trial,and that petitioner was not mentally retarded.

The trial judge ruled that he agree with the State's opinion that petitioner was competent to stand trial.The trial judge also ruled that petitioner statement's was allowed into trial and that they will not be admissible at trial.Thereafter the judge ruled that

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petitioner was competent to waive his Miranda rights,and that the police had probable cause to arrest.Thereafter,the petitioner pled guilty to all charges.Petitioner recieved a letter from the South Carolina Board of Examiners in Psychology dated January 9,2002 stating that"DR.LESLIE N. SANDLER" is not and has not been "licensed" as a psychologist in "South Carolina".

App. P. # 411

INVOLUNTARY GUILTY PLEA(A)

Entering a guilty plea results in a waiver of several constitution rights,therefore the due process clause requires that guilty pleas are entered into voluntarily knowingly and intelligently by defendants.Boykin v. Alabama,395 U.S. 238,89 S.Ct.1709.The United States Supreme Court has held that before a court can accept a guilty plea, a defendant must be advised of the constitutional rights he or she is waiving.Id.Specifically,a defendant must be aware of the privilege against self-incrimination,the right to a jury trial and the right to confront one's accusers.This court considered the requirements of a voluntary and knowing guilty plea in State v. Hazel,275 S.C. 433,271 S.E.2d.602 (1980) and Dover v. State,304 S.C. 433, 405 S.E.2d.39 (1991).In addition to the requirements of BOYKIN,a defendant entering a guilty plea must be aware of the nature and crucial elements of the offense,the maximum and mandatory minmum penalty,and the nature of the constitutional rights being waived.Id. [3-5]

When determining issues relating to guilty pleas,the court will consider the entire record,including the transcript of the guilty plea,and the evidence presented at the P.C.R. hearing.Harres v. Leeke,282 S.C. 131,318 S.E.2d.360 (1984).In this case,the transcripts of Gordon's plea on its face provides enough evidence to hold Gordon's plea was not entered into voluntary or knowing.A defendant's knowing and voluntary waiver of the constitutional rights which accompany a guilty plea "may be accomplished by colloquy between the court and the defendant,between the court and defendant's counsel or both".State v. Ray,360 S.C. 431,437,

427 S.E.2d.171,174 (1993).Although the trial court is not required to direct defendant's attention to each right and obtain a separate waiver,the record should indicate the defendant was fully aware of the consequences of his guilty plea.State v. Lambert,206 S.C. 574,225 S.E.2d.340 (1975).The court failure to inform Gordon that the murder charge carried a mandatory minmum sentence of thirty years without the possibility of earning "good behavior" and "work credits",rendered the plea invalid.The mandatory minmum was only mention in passing by the judge.

The judge informed Gordon that the offense did not allow for parole,but he failed to inform Gordon that he would not be eligible for any "good time" or "earn work credits".

§ 24-13-100(B) states in part:"a prisoner convicted of a "no parole offense" against this State as defined in section § 24-13-100 and sentenced to the custody of the Department of Corrections, including a prisoner serving time in a local facility pursuant to a designated facility agreement authorized by section § 24-3-30, whose record of conduct shows that he has faithfully observed all the rules of the institution...is entitled to deduction from the term of his sentenc...However,no prisoner serving a sentence for life imprisonment or a mandatory minmum term of imprisonment for thirty years pursuant to section § 16-3-20 is entitled to credits under this provision.

Gordon also pled guilty to attempted armed robbery.The judge explained to him that he would have to serve 85% of his sentence. Therefore,Gordon was under the impression that he would have to do only 85% of both sentences,if he exhibited good behavior.Gordon was under the impression that he could reduce his total time actually serving by six years,when actually it could only be

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reduced by 1½ years. Involving as it does, a liberty interest, the court should scrutinize the transcript closely to determine if Gordon's constitutional rights were violated.

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INVOLUNTARY GUILTY PLEA(B)

The petitioner contends that his guilty plea was involuntary and unintelligently made,and in violation of due process due to the fact that petitioner suffered from a psycological chemical imbalance which had [NOT] yet been thoroughly examined nor dispositioned of before the petitioner was called for plea and sentencing in the York County Court of General Session on the date of July 19 1999.Trans.Pg.194(9-19):See Trans,Pg.194(9-21)

Quote from the transcript of the record to show the court of the error of law:

> 9.You heard about his "limited mental capacity although he's not retarded" because nobody's had the opportunity to do a (full examination)Dr.Venn [did'nt] get to speak with the family members,they didn't know much about him but the records from DJJ from 1998 and 1995 psycological check indicate borderline functional IQ's,1995 psycological shows an IQ 68.Dr. Venn IQ examination shows IQ 68,he is a individual that's easly lead around.

Absent a "thorough psycological examination being allowed to have been conducted on the petitioner the petitioner contends that his guilty plea was involuntarily unintelligently and in violation of due process,and therefore,petitioner's guilty plea and time sentence should be vacated as a result of this action.Boykin v. Alabama, Supra,Moody v. united States,469 F.2d.at 700;Durant v. United States 410 F.2d.689.As the record clearly violated Rule 11 Federal Rules of criminal procedures and U.S. Constitution laws as defined by the U.S.C.A. 6th&14th Amendments as determined by the United States Supreme Court,and on that IPSO FACTO,counsel should have withdrawn

the petitioner's guilty plea and trial judge erred in allowing the petitioner to enter into a plea of guilty,absent a adequate and thorough psycological examination which would have determined if petitioner was competent to enter a plea of guilty.Tolliver v. U.S.,563 F.2d.1117 (4th.cir.1997);U.S. v. Cain,653 F.2d.883 (4th. cir.1981).

Based on the alleged due process violation and all the above mentioned facts petitioner request that his case be vacated and a new trial set.

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PETITIONER WAS DENIED DUE PROCESS, PETITIONER PLED GUILTY WITHOUT THE ABILITY TO WITHDRAWN PLEA, WHERE DOUBLE JEOPARDY ISSUE WAS PREJUDICE.

South Carolina statute § 16-23-490 provides that any person who commits any felony under the laws of the state through the use of a dangerous or deadly weapon is also guilty of the crime of "Possession of a weapon during the commission of a violent crime" punishment by imprisonment for not more than five years, which punishment shall be in addition to any punishment provided by law for the felony. Another S.C. statute provides that any person convicted of the felony of attempted armed robbery while armed with a deadly weapon shall be punished by imprisonment for not more than twenty years. Petitioner, as the result of an attempted armed robbery in which he used a firearm, was convicted in S.C. State Court of both "attempted armed robbery and possession of a weapon during the commission of a violent crime and pursuant to the statutes was sentenced to five years for possession of a firearm during the commission of a violent crime and ten years consecutive for attempted armed robbery.

The petitioner seeks reversal of his convictions and sentence for attempted armed robbery on the ground that his sentence for both Possession of a weapon during the commission of a violent crime and attempted armed robbery violated due process and violated the protection against multiple punishment for the same offense provided by the Double Jeopardy Clause of the Fifth Amendment as made applicable to the States by the Fourteenth Amendment. The petitioner construes the commission of a violent crime as defining the "same

offense" under the test announced in Blockburger v. United States, 284 U.S. 299,52 S.Ct.180,76 L.Ed.306.,where the same act or transaction constitutes a violation of two distinct statutes,the test for determining whether there are two offense or only one,is whether each statute requires proof of a fact which the other does not.

Most recently,in State v. Haggard,the Missouri Supreme Court reexamined its decisions in Sours I,Supra,and Sours II,Supra,In light of the 1981 holding in Albernaz v. U.S.,450 U.S. 333,101 S.ct. 1137,67 L.Ed.2d 275.The Missouri Court,however,remained unpersuaded, stating:

Until such time as the Supreme Court of the United States declares clearly and unequivocally that the Double Jeopardy Clause of the Fifth Amendment to the United States Constitution does not apply to the legislative branch of government,we cannot do other then what we perceive to be our duty to refuse to enforce multiple punishments for the same offense arising out of a single transaction "619 S.W. 2d.at 51.

The Double Jeopardy Clause forbids either multiple prosecutions or multiple punishment for the same offense See E.g.,North Carolina v. Pearce,395 U.S. 711,711 717-718,89 S.Ct.2072,2076-2077,23 L.Ed.2d 656 (1969);United States v. Benz,282 U.S. 304,307-308,51 S.Ct 113 114,75 L.Ed.354 (1931),Ex Parte Lange 18 wall,163,169 173-175 21 L.Ed.872 (1874).Petitioner was convicted of both attempted armed robbery and possession of a weapon during the commission of a violent crime,and sentenced for both crimes.Had petitioner been tried for these two crimes in separate trials he would plainly have been subjected to multiple prosecutions for "the same offense" in violation of the Double Jeopardy Clause.See Harris v. Oklahoma,

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433 U.S. 682,97 S.Ct.2912,53 L.Ed.2d 1054 (1977) (Persuriam): Brown v. Ohio,432 U.S. 161,97 S.Ct 2221,53 L.Ed.2d 187 (1977),for the reasons stated below,I do not beleive that the phrase "the same offense" should be interpreted to mean one thing for purposes of the prohibtion against multiple prosecutions and something else for purpose of the prohibition against multiple punishment.

Attempted Armed Robbery and Possession of a weapon during the commission of a violent crime constitute the same offense under the test set forth in Blockburger V. United States,Supra,To punish petitioner for possession of a weapon during the commission of a violent crime,the state was not required to prove a single fact in addition to what it had to prove to punish him for attempted armed robbery.The punshment imposed for possession of a firearm was not predicted upon proof of any act,state of mind,or result different from that required to establish,attempted armed robbery, petitioner was thus punished twice for the elements of attempted armed robbery:once when he was convicted and sentenced for possession of a weapon during the commission of a violent crime.A State has wide latitude to define crime and prescribe the pnishment for a given crime.For example,a State is free to prescribe two different punishments (e.g;a fine and a prison term) for a single offense. But the Constitution does not permit a State to punish as two crimes conduct that only constitutes one "offense" within the meaning of double jeopardy clause,for whenever a person is subject to the risk that he will be convicted of a crime under State law,he is "put in jeopardy of life or limb" for the same offense is to have any real meaning,aState cannot be allowed to convict a defendant two,three or more times simple by enacting separate statutory provisions

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defining nominally distinct crimes,if the Double Jeopardy Clause imposed no restrictions on legislature's power to authorize multiple punishment,there would be no limit to the number of conviction that a State could obtain on the basis of the same act,state of mind, and result.A State would be free to create substantively identical crimes differing only in name,or to create a series of greater and lesser included offense of the second,the second lesser included offense of the third,and so on.

Contrary to the assertion of the United States in its Amicus Brief for United States as Amicus Curiae 18-19,the entry of two convictions and the imposition of two sentence cannot be justified on the ground that the legislature could have simply created one crime but prescribed harsher punishment for that crime.This arguement incorrectly assumes that the total sentence imposed is all that matters,and the number concerns underlying the Double Jeopardy Clause when multiple charges are brought,the defendant is "put in jeopardy" as each charge.To retain his freedom,the defendant must obtain an aquittal on all charges;to put the defendant in prison,the prosecution need only obtain a single guilty verdict.The prosecution ability to bring multiple charges increase the risk that the defendant will be convicted on one or more charges.The very fact that a defendant has been arrested,charged and brought to trial on several charges may suggest to the jury that he must be guilty of at least one of those crimes.Moreover,where the prosecution's evidence is weak its ability to bring multiple charges may substantially enhance the possibility that,even though innocent,the defendant may be found guilty on one or more charges as a result of a compromise verdict. the submission of two charges rather than one gives the prosecution

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"the advantage of offering the jury a choice-a situation which is apt to induce a doubtful jury to find the defendant guilty of the less serious offense rather than to continue the debate as to his innocence."Cichos v. Indiana,87 S.Ct.271 (1966).

However,in petitioner case he was denied due process ,petitioner pled guilty without the ability to withdrawn plea,where double jeopardy issue was prejudice.In violation of the Fifth,Sixth,and Fourteenth Amendment to the United States Constitutional.

For the foregoing reason's the petitioner should be granted a new trial.

App. P. 16

PETITIONER DUE PROCESS RIGHT WERE VIOLATED WHERE STATEMENT ON APPEAL WAS INADMISSIBLE IF PETITIONER WENT TO TRIAL RATHER THEN PLEA GUILTY.

Defense counsel testified he told Gordon he could go to trial and still challenge "all this".However,defense counsel also told Gordon he did not have a defense and "even if we win on the issue of the statement being kept out,the fact of the matter is you have got your three co-defendants [who are] going to testify against you".You can't testify.You've got this other person out there,the victim.App.477,1.1-0 478,1.5.Gordon unequivocally testified he would not have pled guilty and would have insisted on going to trial if he knew he was waiving the right on appeal to challenge the issue of his statement being invuluntary and coerced.

In Shirely v. State,306 S.C. 241,411 S.E.2d.215 (1991),this court held defense counsel was ineffective for failing to advise petitioner prior to his guilty plea that his statements may have been involuntar because the investigating officer promised him a four-year cap.The court noted that statements are inadmissible at trial when they are involuntary,or the result of a promise.State v. Frnklin,299 S.C. 133 382 S.E.2d.911 (1989).

As here,Shirely,testified he would have insisted on going to trial to challenge his involuntary statement had he been properly advised. Shirely v. State,411 S.E.2d.216

Furthermore,defense counsel's arguement in this case that Gordon's statement was involuntary was meritorious.The Fifth Amendment guarantees the right to speak with counsel upon request in a custodial setting.Edward v. Arizona,451 U.S. 477 101 S.Ct.1880 (1981). It is true that where a suspect,such as Gordon,is indecisive in his request for counsel,the police need not always cease questioning. Davis v. United States,512 U.S. 452,114 S.Ct.2350 (1994).Yet this is an unusual case.Gordon was a juvenile and as a juvenile he did not possess the authority to waive his right to counsel without his parent or legal gaurdian's consent.

The U.S. Supreme Court has held that a person accused of crime "required the guiding hands of counsel at every step in the proceedin

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against him, Powell v. Alabama, 287 U.S. 45 (1932) and that constitutional principle is not limited to the presence of counsel's presence at trial, the accused is guaranteed that he need not stand alone against the State at any stage of the prosecution, formal or informal, in court or out, where counsel's absence might derogate from the accused's right to a fair trial. United States v. Wade, 338 U.S. 218 (1967). According, "the principle of Powell and suceeding cases requires that we scrutinize any pretrial confrontation of the accused to determine whether the presence of his counsel is necessary to preserve the defendant's basic right to a fair trial as affected by his right meaningfully to cross-examine the witness against him and to have effective assistance of counsel at trial itself. It calls upon us to analyze whether potential substantial prejudice to defendant's rights inheres in the particular confrontation and the ability of counsel to help avoid that prejudice."

Applying this test, the Court has held that "critical stages" including the pre-trial type of arraignment where certain rights may be sacrified or lost, Hamilton v. Alabama, (1961) and the pre-trial line up, United States v. Wade, ; Miranda v. Arizona, (1966) where the court held that the privilege against compulsory self-incrimination includes a right to counsel at a pre-trial custodial interrogation. The question arises.....may a suspect who has retained or been appointed counsel and or been indicted (or had other "adversary criminal proceedings initiated against , e.g, appeared at preliminary hearing be question or allowed to talk) in the absence of counsel so long as he is given the Miranda warnings and waives his rights? The difficulties raised by the interplay of Massiah, supra, and Miranda are illustrated by United States v. Durham, 475 F.2d.208 (7th Cir. 1973), where a three judge panel "split" three ways. Swgert, C.J., maintained that even though defendant had been informed of and waived his Miranda rights, Massiah barred the admissibility of statements obtained from him in the absence of counsel, since the police knew that defendant had a lawyer and that the lawyer had already represented him him at the preliminary hearing. Dissenting judge Castle stressed that the facts demonstrate defendant's clear and knowing waiver of any right to have his counsel notified of the interview and contended that Massiah and Mcleod, supra, are "irrelevant to

situations involving a waiver of the right to have counsel present, "for both cases involved the deliberate acquisition of information under circumstances preventing an effective exercise or waiver of rights to counsel.Pell,J.,concurring in part,agreed with the dissent that a defendant already represented by counsel "may waive the presence and assistance of that counsel,provided it very clearly appears that the accused deliberately and understandingly chose to forego that assistance" but disagreed that the record demonstrated defendant had done so.

A.B.A.,Code of Professional Responsibility DR 7-104 (A)(1) (1970), provided that during the course of his representation a lawyer "shall not communicate or cause another to communicate on the subject of the representation with a party he knows to be represented by a lawyer in that matter unless he has the prior consent of the lawyer representing such other party or by law is authorized to do so. "Considering United States v. Thomas,474 F.2d.110 (10th Cir.1973), viewing law enforcement officials as agents of the prosecution attorney for purposes of this cannon and deeming the cannon violated even though defendant requested the interview with the Federal agents and then read and signed a Miranda waiver of rights form before making a statement.'[The Cannon] is obvisiously not something which the defendant alone can waive."

The Thomas case,however,reflects a distinctly minority view.Most courts take the position that the police may question a prisoner known to be represented by counsel without notifying his lawyer of their purpose.See e.g.,United States v. Vasquez,476 F.2d.730 (5th Cir.1973);Coughlam v. United States,391 F.2d.371 (9th Cir.1968) (foreful dissent by Hamley,J),sharply criticized in note,1968 Duke, L.J.816;People v. Patterson,39 Mich.App.467,198 N.W.2d.175 (1971) (forceful dissent by Levin,J.);State v. Graham,59 N.J.365,283 A.2d 321 (1971).Most courts have even less trouble upholding the admissibility of the statement when the person represented by counsel initiated the conversation or request an interview with particular officer.See e.g. United States v. Crisp,435 F.2d.354 (7th Cir.1970); Reinke v. U.S.,405 F.2d.228 (9th Cir.1969);State v. Sample,107 Ariz 407,489 P.2d.44 (1971).

People v. Arthur,22 N.Y.2d.325,239 N.E.2d.537 (1968),holds that

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"once an attorney enters the proceeding,the police may not question the defendant in the absence of counsel unless there is an affirmative waiver,in the presence of the attorney,it is the defendant's right to counsel,and that "there is no requirement that the attorney or the defendant request the police to respect this right."

Footnote 35 to the Miranda opinion and the lawyer's right to assist a "cleint" who does not ask for,or says he doesn't want any,assistance.Section 140.7(1) of the 1974 Model Code provides that counsel who informs the station officer that he represents an arrested person shall have prompt access to such person,by telephone,and in person on counsel's arrival at any place where such person is detained "and,further that "if no counsel for the arrested person isn't present,similar privileges must be accorded to a relative or friend of the arrested person."Consider also in footenote 35 to Miranda the court looked back on ESCO BEDO as follows;The police also prevented the attorney from consulting with his client independent of any other constitutional proscription,this action constitutes a violation of the Sixth Amendment right to the assistance of counsel and excludes any statements obtained in its wake."

Furthermore,the public defender,upon his request and with due regard for reasonable law enforcement administrative procedures,shall be permitted to communicate with any person in custody to determine whether that person has counsel and,if such person desires that the public defender represent him or her,to make an initial determination as to whether the person is indigent.Gordon's due process right where violated when the Rock Hill Police Department refused to allow Gordon's counsel to interview him at counsel request,and finally Gordon's due process right were violated when counsel allowed Gordon to plea guilty and waive on appeal the right to challenge a Fifth Amendment issue to the United States Constitutional.

For the foregoing reasons and facts Gordon case should be vacated and a new trial set.

PETITIONER WAS DENIED DUE PROCESS WHERE HE WAS ALLOWED TO PLEA GUILTY UNDER UNAMBIGOUS STATUTE CHILDREN'S CODE OF LAWS.

The Supreme Court directed that,prior to transfer,a hearing must be held in which certain rights are afforded to juveniles.In an appendix to its opinion in Kent,the Supreme Court quoted,with approval,a District of Columbia policy memorandum which recited eight factors to be considered by the Juvenile Court in making a transfer decision.Although the Supreme Court did not explicitly hold that these factor's must be followed by lower courts.In Patton v. Toy,867 F.Supp.356 (D.S.C.1994),at 362 the Court held,this court believes that these factors provided excellent general guidence quoting the eight factors in Kent.

However,a juvenile waiver hearing must measure up to the essential of due process and fair treatment.Application of Gault,387 U.S. 1,30,87 S.Ct.1428 (1967), quoting from Kent v. United States,86 S.Ct.1045 (1966)."Kent and Gault make it unquestionably clear that JUvenile Court proceedings affect a young person's substantial rights must measure up to the essential of due process and fair treatment.See Kemplen v. Maryland,428 F.2d.172 (4th Cir.1970).However,In the Interest of Shaw,274 S.C. 534,265 S.E.2d.522,526 (1980),the Court encourages Family Court judges in South Carolina to apply the principles of the Kent case when making the decision of whether to transfer a child to adult court.With the increases participation of juveniles in more serious crimes, the Family Court judge will be called upon to make even more transfer decisions,and the Kent case will provide excellent guidence in assisting the Family Court judge to present records which a review court can consider in a meaningful manner.

With the onset of more of these cases,the burden on Family Court judges will be even greater,but it must be remembered that the objective of the Family Court

is to provide measures of guidence and rehabilitation for the child and to protect society,not fix criminal responsibility,guilt or punishment.Each "child" is entitled to due process a transfer to adult court,and any reviewing court must ensure that each "child" recieves such process.

See section § 20-7-7605(1) and (10) If,during the pendency of a criminal or quasi-criminal charge against a child in a circuit court of this state,it is ascertained that the child was under the age of "seventeen" years at the time of committing the allege offense,it is the duty of the circuit court immediately to transfer the case,together with all the papers,documents,and testimony connected with it,to the Family Court of competent jurisdiction,"However,under the same statutory subsection (10) authorize waiver on the basis of ages fourteen years or older is charged with an offense which,if committed by an adult,provides for a term of imprisonment of ten years or more and the child previously has been adjudicated delinquent in family court or convicted in circuit court for two prior offenses which,if committed by an adult,committed magistrate shall bind over the child for proper criminal proceedings to a court which would have trial jurisdiction of the offense if committed by an adult.For purpose of this item,an adjudication or conviction is considered a second adjudication or conviction only if the date of the commission of the second offense occurred subsequent to the imposition of the sentence for the first offense.

In the case at bar,petitioner contends that his due process right to a juvenile transfer hearing were violated when the prosecutor failed to motion the court for proper jurisdiction,and obtain a waiver prior to petitioner taking a guilty plea.Petitioner was sixteen years of age and turn seventeen while awaiting on trial in the detention center,and was ultimately tried as an adult upon turning seventeen years of age.However,the solicitor in the present case failed to look to subsection § 20-7-400 and 20-7-7605(1),(10)

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where petitioner is entitled to a juvenile waiver hearing under due process of law,and S.C. statutory.The arguement that the petitioner was sixteen years of age and committed the offense's murder and several other felonies is ambigous because S.C. statute § 20-7-6605(1 defining a child is in violation of the United States Constitution. However,in that statute S.C. legislature defined a child as a person less then seventeen years of age,then stated that a child is not a person sixteen years of age who commit a class A,B,C. or D felony. In William v. State,410 S.E.2d.563 (1991),the S.C. Supreme Court held that penal statutes are construed strictly against State and in favor of defendant.As here in the case at bar,S.C. statute § 20-7-6605(1) is in favor of the petitioner and the State of South Carolina

However,the S.C. Code Ann § 20-7-6605(1) not only in favor of the petitioner and the State,it give no set guidlines in which the prosecutor must go by to try such person sixteen years of age which rendered the statutory unconstitutional in violation of due process.

For the foregoing reasons and facts petitioner case should be vacated and a new trial set.

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SHOULD A SIXTEEN YEAR CHILD RECEIVE A COMPETENCE HEARING UNDER DUE PROCESS OF LAW BEFORE THE SOLICITOR US'S HIS DISCRETION IN TRYING THE CHILD UNDER S.C. CODE ANN § 20-7-6605(1)?

Petitioner contends that while S.C . Code Ann § 20-7-6605(1) give no set guidlines while the prosecutor is vested with the discretion in trying him as an adult or child violates the petitioner right to due process of law.South Carolina,vest the prosecutor with the discretion in trying a child as an adult or child at the age of sixteen years.The United States Constitution give juvenile's certain rights,one is if a child is going to be tried as an adult he must be competent to stand trial as an adult. However,the prosecutor will not know whether a sixteen year old is competent to stand trial as an adult unless a evaluation is done on the child before the child is considered to be tried as an adult.Therefore, the theory assist his attorney and competence to stand trial has to be determined before the child is tried as an adult.Petitioner received a evaluation upon turning seventeen years old.In State v. Corey D,529 S.E.2d.20 (2000),a waiver hearing that involve Carlos and Toby..Dr.Charles Sailor,the forensic psychologist who performed the evaluation,the evaluation was done while the three defendant's was awaiting the juvenile waiver hearing to see whether the prosecutor,and the family court judge will waive there case to the court of General Session.However, in the present case the petitioner wasn't given that chance to foresee that if he was competent as an adult or function as a juvenile to stand trial.The factors in Kent v. United States,Supra,will be considered in determining whether a child will be tried as an adult or remain in family court.In Kent,supra,looking at the sixth factor,[The sophistication and maturity of the juvenile as determined by consideration of his home,environmental situation,emotional attitude and pattern of living]. In the petitioner case that factor was not look at nor taken into consideration.

Therefore,the petitioner's due process right to the S.C. Constitutional and the United States Constitutional was violated...

For the foregoing reason's the petitioner case should be vacated and granted a new trial.

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DID GENERAL SESSION COURT LACK JURISDICTION IN ACCEPTING PETITIONER GUILTY PLEA,WHERE JURISDICTION HAD NOT BEEN RELINQUISHED BY THE FAMILY COURT.

The Supreme Court directed that,prior to transfer,a hearing must be held in which certain rights are afforded to juvenile.In an appendix to its opinion in Kent,The Supreme Court quoted,with approval,a District of Columbia policy memorandum which recited eight factors to be considered by the Juvenile Court in making a transfer decision,Although the Supreme Court did not explicitly hold that these factors must be followed by lower courts.In Patton v. Toy,867 F.Supp.356 (D.S.C.1994),at 362 the court held,this court beleives that these factors provided excellent general guidance quoting the eight factor's in Kent.

However,a juvenile waiver hearing must measure up to the essential of Due Process and Fair Treatment.Application of Gault,387 U.S. 1,30,87 S.Ct.1428,(1967), Quoting from Kent v. United States,86 S.Ct.1045 (1966)."Kent and Gault make it unquestionably clear that Juvenile Court proceedings that effect a young person's substantial rights must measure up to the essential of Due Process and fair treatment.Kemplen v. Maryland,428 F.2d.172 (4th Cir.1970).However,in Shaw,274 S.C. 534,265 S.E.2d.522 (1980),the Court encourages Family Court judges in South Carolina to apply the principles of the Kent case when making the decision of whether to transfer a child to adult court.The objective of the Family Court is to provide measures of guidance and rehabilitation for the child and to protect society,not to fix criminal responsibility,guilt or punishment.Each "child" is entitled to Due Process a transfer to adult court,and reviewing court must ensure that each "child" receives such process.

In the case at bar the petitioner was sixteen years of age and was tried as an adult without the ability to go before a Family Court Judge,to determine whether petitioner would be waived up to be tried asa Juvenile or an adult.Petitioner f-urther contends that he received violation of his Due Process right where jurisdiction had not been relinquished in favor of another court.Petitioner was sixteen years of age with only one charge that could carry the penalty of fifteen years or more in which that was burglary 2nd degree.

Therefore,for the forgoing reasons petitioner received violation of his Due Process right.

App. P. [illegible]
[illegible] 430

PETITIONER WAS DENIED DUE PROCESS WHERE STATE PSYCHOLOGIST WAS QUALIFIED TO TESTIFY TO PETITIONER COMPETENCE TO STAND TRIAL BUT WAS NOT LICENSED AS A PSYCHOLOGIST UNDER SOUTH CAROLINA LAW AND REGULATION

Petitioner contends that he was denied due process during and before his pre-trial and guilty plea.Petitioner was ordered to unders a competence evaluation before the petitioner proceeded to trial to determine whether or not in fact the petitioner was competent to stand trial or whether the petitioner was retarded.Dr.Jonathan Venn who was retained by petitioner counsel to undergo a comptence evaluation to determine whether or not the petitioner was competent to stand trial,or whether the petitioner was mentally retarded and competent to waive his Fifth Amendment right to remain silent.However psychologist Jonathan Venn stated that he could not come up with an opinion to whether the petitioner was competent to stand trial,but did render an opion as to the petitioner competence to waive his Miranda right to remain silent,and stated that petitioner could not have voluntarily waive his Miranda right to remain silent.The State argued to the court that if they could not get there own psychologist to do the evaluation on petitioner that the weight would not be equal and that the retained psychology by counsel could get on the stand and testify that the petitioner is not competent to stand trial.Honorable John C. Hayes,III,order Gordon to undergo another evaluation.

This evaluation was did by Dr.Leslie N. sandler,Ed.D. a Psychologis from Columbia,South Carolina who testified that the petitioner was competent to stand trail and that the petitioner were competent to waive his Miranda right to remain silent.Not only did the psychologist for the State testify that petitioner was competent to stand trial and waive his miranda right,his opinion rendered the judge opinion in his ruling stating the psychologist provided enough testimony to show that the petitioner was competent to stand trial.Petitioner contends that the psychologist testimony is in violation of the petitioner due process right,the right to receive a fair hearing according to law,and the psychologist further in violation for violating South Carolina statute of laws that read as follow:

App. P. 26

§ 40-55-55 "It is unlawful for a person to engage in the pratice of psychology in this State without obtaining a license from the board, except as otherwise authorized by this chapter.

As in the case at bar, the psychologist who evaluated petitioner was not license in the State of south Carolina. The psychologist in this case rendered an opinion that the petitioner was competent to stand trial and waive his Fifth Amendment right to remain silent. For the forgoing reason's petitioner due process right to the United States Constitutional and South Carolina Constitution where violated.

For the forgoing reason's the petitioner should receive a new trial and afforded a new evaluation.

App. P. 432

CONCLUSION

For the forgoing reasons stated above, Gordon submits that he is entitled to a writ of habeas corpus and an order directing the State of South Carolina to vacate and set a new trial.

Respectfully Submitted,
/S/ Antonio Gordon
A.Gordon#259798

December 16, 2005

App. P. 208

MEMORANDUM OF LAW

Gordon argues that a decision by a Court not to entertain a request is not a final judgement on the merits.Ratherit is a decision only as to whether the court should entertain a case on the merits. "Entertain has been defined as"To bear in mind or consider;esp.,to give judicial consideration to [the court then entertained motions for continuance]."Black's Law Dictionary (7th,Ed.1999),entertain.

Further they Key,opinion itself refutes the State's position. The Court stated in Key:

> Although article V § 5,of the South Carolina Constitution vests this Court with authority to issue extraordinary writs and entertain actions in it's original jurisdiction,this Court's primary function is to act as an appellate Court to review appeals from the trial courts.In rule 229,SCACR,this Court indicated it will not entertain matters in its original jurisdiction where the matter can be entertained in the trial courts of this State.Only when there is an extraordianary reason such as eastion of significant public interest or an emergency will this court excersise its original jurisdiction.Key,305 S.C. at 116 406 S.E.2d.at 357 (emphasis added).

Gordon submits that the Supreme Courts dismissal of his application pursuant to Key is based upon the Court's determination that the matter could be entertained in the trial courts and that no siginicant public interest nor emergency existed.No mention of the merits of Gordon's request for relief was made (see Wilson v. Moore,999 F. Supp)..

SWORN TO AND SUBSCRIBED BEFORE
ME THIS 16th DAY OF December 05
NOTARY: [signature]
EXP: MAY 5. 2008

/S/ Antonio Gordon

06CP46 - 10

App. P. 434

CLERK OF COURT'S OFFICE

P.O. Box 649, York, South Carolina 29745

January 30, 2006

Antonio Gordon 259798
Mccormick Correctional Institute F-1-A-164
386 Redemption Way
McCormick , South Carolina 29899

Re: Petition for Habeas Corpus

Dear Mr. Gordon:

The documents referenced above have already been filed in the Clerk of Courts office as a Post Conviction Relief and therefore cannot be returned to you. If you are trying to file your document elsewhere you will need to prepare the appropriate paperwork and forward it to the correct office in which you would like it filed. The Clerk of Courts office does not forward documents and would not be able to forward this anyway because it has been filed in our office and we are awaiting direction from the Attorney General as to whether or not we are to appoint an attorney for you.

The copies of your documents were mailed to you the week of January 23, 2006 so you should receive them within the next week or so.

Sincerely,

Lisa Bennefield

Lisa Bennefield
Associate Deputy Clerk

YORK COUNTY GOVERNMENT CORRESPONDENCE IS PRINTED ON RECYCLED PAPER.

App. P. [illegible]
435

STATE OF SOUTH CAROLINA COUNTY OF YORK Antonio Gordon, SCDC No. 259798, Petitioner, v. State of South Carolina, Respondent.	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT 2006-CP-46-010 [illegible] **RETURN AND MOTION TO DISMISS PETITION FOR WRIT OF HABEAS CORPUS**

This matter comes before the Court by way of a document filed January 3, 2006, and captioned "Petitioner for Writ of Habeas Corpus." The Respondent submits the petition should be summarily dismissed because it fails to support the requested relief.

I. PROCEDURAL HISTORY

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. On October 15, 1998, the York County Grand Jury indicted the Applicant for murder, three counts of possession of a firearm during the commission of a violent crime, two counts of attempted armed robbery, possession of a firearm by a person under twenty-one, and criminal conspiracy.

On July 16, 1999, the Applicant pled guilty as charged. On July 19, 1999, the Honorable John C. Hayes, III, sentenced the Applicant to thirty years imprisonment for murder, five years for each count of possession of a weapon during the commission of a violent crime, ten years for each count of attempted armed robbery, with one consecutive to the murder sentence, five years for criminal conspiracy, and five years for possession of a weapon by a person under twenty-one years of age. Robert D'Agostino, Esquire, represented the Applicant.

The Petitioner timely filed a notice of appeal and an Anders brief was submitted on his behalf. The Supreme Court of South Carolina affirmed the Petitioner's convictions and sentence.

App. p. 436

The Petitioner subsequently filed his first PCR application on June 19, 2000.[1] (2001-CP-46-1414). The Respondent made its return on May 4, 2001, and an evidentiary hearing was convened at the Moss Justice Center in York County on July 29, 2003. The application was denied and dismissed by the Honorable J. Ernest Kinard by Order dated August 19, 2003.

The Applicant filed a timely notice of appeal and a Johnson petition was submitted on his behalf. The South Carolina Supreme Court denied the petition for writ of certiorari.

The Applicant then filed a second PCR application on July 6, 2004. The Respondent made its return and motion to dismiss on December 12, 2004. The Application was summarily dismissed without a hearing as being successive and barred by the statute of limitations. The Order of Dismissal was dated May 20, 2005. The Applicant did not appeal the denial of his second PCR application.

The Applicant also has a pending petition for writ of habeas corpus in federal court (2:05-3327-MBS-R). This petition was filed on December 12, 2005.

For the purpose of this return, the Respondent incorporates the Clerk of Court records, the South Carolina Department of Corrections records, and petition for writ of habeas corpus. The Respondent reserves the right to amend this return upon receipt of any relevant materials.

II. APPLICABLE LAW

A habeas corpus petition must support the requested relief. Gibson v. State, 329 S.C. 37, 495 S.E.2d 426 (1998); Hunter v. State, 316 S.C. 104, 447 S.E.2d 203 (1994). Although the allegations in the petition are to be treated as true, the Petitioner must make out a prima facie case showing he is entitled to relief and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. Gibson, supra.

---

1 The Respondent notes that the Applicant filed a second PCR application on August 21, 2001. (2001-CP-46-1866) but that it was merged with 2001-CP-46-1414.

To warrant a hearing, the petition must include the two allegations described below. First, the petition must allege the petitioner has exhausted all available post-conviction relief (PCR) remedies. Gibson, supra; Hunter, supra; Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994). Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review. Gibson, supra.

Second, the petition must allege sufficient facts to show why other remedies, such as PCR, are unavailable or inadequate. Gibson, supra. PCR is not rendered "unavailable or inadequate" merely because the petitioner's application might be dismissed as successive. In fact, any matter which is cognizable under the Uniform Post Conviction Procedure Act, S.C. Code Ann. §§ 17-27-10 to -120 (1976 & Supp. 1995), may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts of this State. Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998) (emphasis added); Gibson, supra; Keeler v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (Ct. App. 1998). The Uniform Post Conviction Procedure Act (the Act) is broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention. Gibson, supra. A petitioner may even allege constitutional violations in PCR proceedings, unless the issue could have been raised by direct appeal. Id.; Keeler v. Mauney, supra. Thus, "[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application." Keeler v. Mauney, supra. "Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court. S.C. Const. Art. V, § 5." Id.[2]

---

[2] Before a petitioner may proceed in the original jurisdiction of the Supreme Court, the petition must set out a constitutional claim that meets the standard delineated in Butler v. State, 302 S.C. 466, 397 S.E.2d 87, cert. denied, 498 U.S. 972, 111 S.Ct. 442, 112 L.Ed.2d 425 (1990). In Butler, the South Carolina Supreme Court held that the writ of habeas corpus will only issue when there has been a constitutional violation which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice. Gibson, supra; Butler v. State, 302 S.C. 466, 397 S.E.2d 87 (1990); Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994).

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The Respondent submits that Petitioner's allegations fail to meets the standards required for the issuance of this extraordinary writ. Gibson, supra; Butler, supra. Therefore, the petition should be dismissed.

In addition, the Respondent submits that the claims made in the Petition for Writ of Habeas Corpus could have been raised in a post conviction relief application, and to a large extent were raised in his PCR application. Therefore, these claims cannot be raised in a Petition of Habeas Corpus in the Circuit Courts of South Carolina. Accordingly, the Petition should be summarily dismissed.

WHEREFORE, having made its Return and Motion to Dismiss, the Respondent requests that the matter be summarily dismissed.

Respectfully submitted,

HENRY D. MCMASTER
Attorney General

JOHN W. MCINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

JULIE M. THAMES
Assistant Attorney General

By: _____
ATTORNEYS FOR RESPONDENT

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

Columbia, South Carolina
4/28, 2006.

App. P. 439

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)

2006-CP-46-010

Antonio Gordon, #259798

Applicant,

vs

State of South Carolina,

Respondent.

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.

2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.

3. I have this day served a copy of the Return in the above-captioned matter on the following person(s) by depositing same in the United States mail, postage prepaid:

Antonio Gordon, #259798
McCormick Correctional Institution
386 Redemption Way
McCormick, SC 29899

DATED this 28th day of April, 2006.

Gianandrea A. Maoli, Legal Assistant
For Respondent

(Attachment (3)

App. p. 340

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FOR THE 16TH JUDICIAL CIRCUIT
COUNTY OF YORK) Case No.: 2006-CP-46-0010

FILED/RECEIVED
2007 JUN -1 AM 8:40
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

Antonio Gordon, #259798,

Petitioner,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL WITH PREJUDICE

This matter comes before the Court by way of a document filed January 3, 2006, and captioned "Petitioner for Writ of Habeas Corpus." The South Carolina Post Conviction Procedure Act (the Act) comprehends and takes the place of all other common laws, statutory or other remedies theretofore available for challenging the validity of a conviction or sentence and it must be used exclusively in place of them. S.C. Code Ann. §17-27-10 et seq. (Supp. 2001).

I. PROCEDURAL HISTORY

The Petitioner is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Clerk of Court for York County. On October 15, 1998, the York County Grand Jury indicted the Applicant for murder, three counts of possession of a firearm during the commission of a violent crime, two counts of attempted armed robbery, possession of a firearm by a person under twenty-one, and criminal conspiracy.

On July 16, 1999, the Applicant pled guilty as charged. On July 19, 1999, the Honorable John C. Hayes, III, sentenced the Applicant to thirty years imprisonment for murder; five years for each count of possession of a weapon during the commission of a violent crime; ten years for each count of attempted armed robbery, with one consecutive

App. p. [illegible] 441

to the murder sentence; five years for criminal conspiracy; and five years for possession of a weapon by a person under twenty-one years of age. Robert D'Agostino, Esquire, represented the Applicant.

The Petitioner timely filed a notice of appeal and an Anders brief was submitted on his behalf. The Supreme Court of South Carolina affirmed the Petitioner's convictions and sentence.

The Petitioner subsequently filed his first PCR application on June 19, 2000[1] (2000-CP-46-1414). Tara D. Shurling, Esquire, represented the Petitioner. The Respondent made its return on May 4, 2001, and venue was changed due to judicial conflicts. An evidentiary hearing was convened in Richland County on July 29, 2003. The application was denied and dismissed by the Honorable J. Ernest Kinard by Order dated August 19, 2003.

The Applicant filed a timely notice of appeal and a Johnson petition was submitted on his behalf. The South Carolina Supreme Court denied the petition for writ of certiorari.

The Applicant then filed a second PCR application on July 6, 2004. The Respondent made its return and motion to dismiss on December 12, 2004. The application was summarily dismissed without a hearing as being successive and barred by the statute of limitations. The Order of Dismissal was dated May 20, 2005. The Applicant did not appeal the denial of his second PCR application.

The Applicant filed a petition for writ of habeas corpus in federal court (2:05-3327-MBS-RJ) on December 22, 2005. This petition was denied by order dated February 16, 2007.

Before this Court are the Clerk of Court records, the South Carolina Department of

[1] The Respondent notes that the Applicant filed a second PCR application on August 21, 2001, (2001-CP-46-1866) but that it was merged with 2001-CP-46-1414.

App. p. 442

Corrections records, and the petition for writ of habeas corpus. Incorporated by reference are the Clerk's records for all previous PCR actions.

II. FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has reviewed the Clerk of Court records, the South Carolina Department of Corrections records, the records of the prior proceedings, and the petition for writ of habeas corpus.

A habeas corpus petition must support the requested relief. Gibson v. State, 329 S.C. 37, 495 S.E.2d 426 (1998); Hunter v. State, 316 S.C. 104, 447 S.E.2d 203 (1994). Although the allegations in the petition are to be treated as true, the Petitioner must make out a prima facie case showing he is entitled to relief and he must present sufficient factual allegations to support the petition before he is entitled to a hearing. Gibson, supra.

To warrant a hearing, the petition must include the two allegations described below. First, the petition must allege the petitioner has exhausted all available post-conviction relief (PCR) remedies. Gibson, supra; Hunter, supra; Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994). Exhaustion includes filing of an application, the rendering of an order adjudicating the issues, and petitioning for, or knowingly waiving, appellate review. Gibson, supra.

Second, the petition must allege sufficient facts to show why other remedies, such as PCR, are unavailable or inadequate. Gibson, supra. PCR is not rendered "unavailable or inadequate" merely because the petitioner's application might be dismissed as successive. In fact, any matter which is cognizable under the Uniform Post Conviction Procedure Act, S.C. Code Ann. " 17-27-10 to -120 (1976 & Supp. 1995), may not be raised by a petition for a writ of habeas corpus before the circuit or other lower courts of this State. Simpson v. State, 329 S.C. 43, 495 S.E.2d 429 (1998) (emphasis added); Gibson,

App. P. 443

supra; Keeler v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (Ct. App. 1998). The Uniform Post Conviction Procedure Act (the Act) is broadly inclusive and will rarely be inadequate or unavailable to test the legality of the detention. Gibson, supra. A petitioner may even allege constitutional violations in PCR proceedings, unless the issue could have been raised by direct appeal. Id.; Keeler v. Mauney, supra. Thus, "[a] person is procedurally barred from petitioning the circuit court for a writ of habeas corpus where the matter alleged is one which could have been raised in a PCR application." Keeler v. Mauney, supra. "Furthermore, if a person is procedurally barred, his only means of obtaining state habeas corpus relief is to file a petition in the original jurisdiction of the Supreme Court. S.C. Const. Art. V, ' 5." Id.[2]

This Court finds that the Petitioner's allegations fail to meet the standards required for the issuance of this extraordinary writ. Gibson, supra; Butler, supra. Therefore, the petition should be dismissed.

In addition, this Court finds that the claims made in the Petition for Writ of Habeas Corpus could have been raised in a post conviction relief application, and to a large extent were raised in his PCR application. Therefore, these claims cannot be raised in a Petition of Habeas Corpus in the Circuit Courts of South Carolina. Accordingly, the Petition should be summarily dismissed.

III. CONCLUSION

This Court finds that the allegations raised by Petitioner are cognizable under the Act; therefore, they may not be raised in this Writ for Habeas Corpus. Simpson, supra; Gibson, supra,

[2] Before a petitioner may proceed in the original jurisdiction of the Supreme Court, the petition must set out a constitutional claim that meets the standard delineated in Butler v. State, 302 S.C. 466, 397 S.E.2d 87, cert. denied, 498 U.S. 972, 111 S. Ct. 442, 112 L.Ed.2d 425 (1990). In Butler, the South Carolina Supreme Court held that the writ of habeas corpus will only issue when there has been a constitutional violation which, in the setting, constitutes a denial of fundamental fairness shocking to the universal sense of justice. Gibson, supra; Butler v. State, 302 S.C. 466, 397 S.E.2d 87 (1990); Pennington v. State, 312 S.C. 436, 441 S.E.2d 315 (1994).

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Keeler v. Mauney, supra. This Court finds that the Petitioner is barred from bringing a Writ of Habeas Corpus in the circuit court. Keeler v. Mauney, supra. The Respondent's Motion to Dismiss the Petitioner's Writ of Habeas Corpus is granted.

IT IS THEREFORE ORDERED THAT:

1. The habeas corpus petition is DENIED AND DISMISSED WITH PREJUDICE;
2. The Petitioner is remanded to the Respondent's custody for the completion of his sentence.

AND IT IS SO ORDERED!

John C. Hayes, III,
Administrative Judge #5
Sixteenth Judicial Circuit

April 30th, 2007
York, South Carolina.

App. p 444

State of South Carolina
York County
Antonio Gordon 259798
APPlicant
V.
State of South Carolina
Respondant

In the Court of Common Pleas
Motion for relief from order
Pursuant to 60 B.S.C.R.CIV.Pro.

Attachment (4)

To: Honorable John C. Hayes III, and Ashley A. McMahan: Attorney Ge

This matter is presently before the court where the Applicant seeks for Honorable John C. Hayes III, to recuse himself from the pending habeas corpus due to the court's inability to make conclusions and facts of law to All issues raised upon the record for review due to Conflict of Interest with Honorable John C. Hayes III, which prejudice the Applicant. Applicant's habeas corpus was denied review of those issues raised and presented to this Honorable Court, therein depriving this applicant of a fair "adjudication" of the issues properly raised in the habeas corpus.

History

The applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitments of the Clerk of Court for York County. On october 15, 1998, the York County Grand Jury indicted the Applicant for murder, two counts of Attempted Armed robbery, three counts of Possession of a weapon during the commission of a violent crime, Possession of a weapon by a person under twenty-one, and Criminal Conspiracy.

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On July 16, 1999, the applicant pled guilty as charged. On July 19, 1999, the Honorable John C. Hayes ~~III~~, Sentenced the applicant to thirty years imprisonment for murder, five years for each count of Possession of a weapon during the commission of a violent crime, ten years for each count of attempted armed robbery, with one consecutive to the murder sentence, five years for criminal conspiracy, and five years for a weapon by a person under twenty-one years of age. Robert D'Agostino, Esquire, represented the Applicant.

The Applicant timely filed Notice of Appeal and an anders brief was submitted on his behalf. The Supreme Court of South Carolina affirmed the Applicant's convictions and sentence.

The Applicant Subsequently filed his first PCR application on June 19, 2000. (2001-CP-46-1441. The Respondents made its return on May 4, 2001, and an evidentiary hearing was convened at the Richland County Courthouse on July 29, 2003. The application was denied and dismissed by the Honorable J. Ernest Kinard by order dated August 1, 2003.

The Applicant filed a timely notice of appeal and Johnson Petition was submitted on his behalf. The South Carolina Supreme Court denied and dismissed the Petition - Writ of Cafiorari.

2.

APP. P. [redacted]

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The applicant then filed a second PCR application on July 6, 2004. The respondent made its return and motion to dismissed on December 12, 2004. The application was summerily dismissed without a hearing as being successive and barred by the statute of limitations. The order of dismissal was dated May 20, 2005. The applicant did not appeal the denial of his second PCR application. Applicant's Federal Habeas was dismissed without Prejudice to allow applicant to exhaust All state remedies.

Statement of facts

Rule 60 B of the S.C. Rules of Civil Procedure allows any party to seek relief from judgement or order after a demonstration of mistake, inadvertance, surprise, excusable, neglect, fraud, misrepresentation, or other misconduct of an adverse party has been brought before the court, specially where such a judgement has been imposed through nflict of Interest upon the court. Such conflict upon the ourt places the judiciary's integrity into serious Question nd jeopardizes the machinery of Judicial decision-making y causing it to become unfair and fundamentally flawed; See: hewning Vi Ford Motor Co., 354 S.C. 72, 78, 579 S.E.2d 605, 08 (S.C. 2003).

It is recongnizable that there is usually a one ear statute of limitations on Rule 60 B, S.C.R. CIV, Proc., s that the preservation of final judgement can be strictly

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enforced. However, no limitations exist when a party seeks to set aside judgement due to a conflict of Interest with the Judicial Judges. Hagy V. Pruitt, 339 S.C. 425, 529 S.E. 2d 714 (S.C. 2000).

Consent order changing venue was issued on June 26, 2003 by Honorable John C. Hayes III, the Honorable Lee S. Alford, has recused himself due to a conflict. Judge Alford heard oral arguements and ruled on discovery issues in the Applicant's case before his trial occurred. Because both judges for the sixteenth circuit are unable to hear this case, this case should be transferred to Richland County for the PCR hearing to be heard in a more timely manner.

It is apperent through the language of Rule 60(B) that such order of Dismissal with Prejudice should be void, specially where there exists evidence presented either by ctual or implied Consent that supports the party's claims, and uch ability to void the ruling is allowed even after udgement has been rendered.

The purpose of the applicable statutes and procedural les is to preserve all available claims that have merit in -der to garantee a complete adjudication of the facts and issues relevant to the proceedings. This Court has competent risdiction and is vested with the authority to entertain this otion pursuant to Rule 60(B) of the S.C. Rules of Civil ocedure, where the Claim is Conflict of Interest with a

App, P. 448

Judicial Honorable Judge who signed a consent to change Venue order stating that it will be a conflict with the Honorable himself.

Furthermore, even after the order was signed to dismiss applicant's habeas corpus with preJudice, In the order applicant was not advised of his appeal rights. Applicant should be entitled to an evidentiary hearing on the state habeas corpus pursuant to S.C. Code Ann § 17-17-10 to 17-17-12 17-27-10 to 17-27-120 and Rule 60(B), to determine the facts, merits and constitutional Rights properly raised in the state habeas corpus.

Finally, the applicant is entitled to his evidentiary hearing by and through the rights granted in the S.C. Rules of Civil Procedure, S.C. Code of laws, and due process protection of the South Carolina and united States Constitutions, and now seeks such relief from this Court. I so pray that Honorable John C. Hayes III, recuse himself from the "order of Dismissal with Prejudice" and that an Honorable who are Not in Conflict with the case hear the pending habeas.

Respectfully Submitted
Antonia Gordon

Antonia Gordon 259798
McCorm. Corr. Inst
386 Redemption Way
McCormick, SC 29899

worn to and subscribed before
e this 7 day of Dec 07
tary: Phyllis Young
xp: 8/28/2011

State of South Carolina
County of York

Antonio Gordon 259798
Applicant

v.

State of South Carolina
Respondent

In the Court of Common Plea

Motion for 60 B

[redacted]

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Affidavit of service by Mail

I, Antonio Gordon 259798, place in the hand of McCormick Correction Institution mail-room hands, one motion for 60 B, pursuant to Rule 60 B, on August 7, 2001. This is a sworn affidavit and the information enclosed in the motion is to be facts and the truth.

/s/ Antonio Gordon
Antonio Gordon 259798
McCorm. Corr. Inst.
386 Redemption Way
McCormick, SC 29899

Sworn to me and subscribed before me this 17 day of Aug of 07
Notary: Joyce L Young
Exp: 8 28 2011

STATE OF SOUTH CAROLINA COUNTY OF YORK	)))	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT 2006-CP-46-010

App. p. 450

Antonio Gordon, SCDC No. 259798,

Petitioner,

v.

State of South Carolina,

Respondent.

ORDER GRANTING RULE 60(b) MOTION

2008 FEB -6 P 12:42
CLERK C.P. & G.S.
YORK COUNTY, SC

This matter comes before me on a Motion for Reconsideration under Rule 60(b). The Petitioner, Antonio Gordon, requested an amendment and clarification of Judge John C. Hayes, III.'s Order dated April 30, 2007, filed June 1, 2007.

The Petitioner claims that the manner in which Judge Hayes' Order reads might prejudice him from filing a State Habeas Corpus Petition in the original jurisdiction of the Supreme Court. Judge Hayes' Order recites a quotation from Keeler v. Mauney, 330 S.C. 568, 500 S.E.2d 123 (Ct. App. 1998), but does not recite in the Order that the Petitioner is not prejudiced to bring a Habeas Corpus Petition in the South Carolina Supreme Court.

The State's representative, Ashley McMahan, does not dispute the Petitioner's right to file a Habeas Corpus Petition in the original jurisdiction of the South Carolina Supreme Court.

Therefore, I grant the Petitioner's Motion to Reconsider and amend and clarify Judge Hayes' Order that the Petitioner is without prejudice to bring a Habeas Corpus Petition in the original jurisdiction of the South Carolina Supreme Court.

AND IT IS SO ORDERED.

Roger L. Couch

Spartanburg, South Carolina

1/31, 2008.

Antonio Gordon #259798
A.C.I. SMU B 242
P.O. Box 1151
Fairfax, SC 29827

February 2, 2015

RE: Gordon v. State, Case No: 2006-CP-46-010

Dear clerk:

Please find enclosed a S.C.R. Civ. Proc. Rule 60 (b) motion I am filing in this Courts jurisdiction. Can you please stamp file and send me a stamp true copy back for my records?

Furthermore, Can You Please Provide Judge Alford or Rogers L. Couch with a copy? Judge Hayes recused himself from this case due to a conflict of interest. Thanks.

Sincerely,

Antonio Gordon

FILED-RECEIVED
2015 MAR -9 PM 3:15
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

App. B 452

FILED-RECEIVED
2015 MAR -9 PM 3:15
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, S.C.

State of South Carolina
County of York

Antonio Gordon #259798,
Petitioner,

Vs.

State of South Carolina,
Respondent.

Attachment (0)

IN THE COURT OF Common PLEAS
Sixteenth Judicial Circuit

Case No: 2006-CP-46-010

Motion for relief from Judgment Pursuant to S.C.R. Civ. Proc. Rule 60(b)(5) - Austin v. State, 409 S.E.2d 395 (1991)

Now Comes the Petitioner in the above-captioned matter respectfully moving this Honorable Court to grant a motion ~~for~~ for relief from Judgment Pursuant to SCRCP Rule 60(b)5) - Austin v. State, Supra. The Petitioner would show unto this Honorable Court the following:

Statement of the case

The Petitioner filed a statutory habeas corpus January 3, 2006. Gordon v. State, case No: 2006-CP-46-010. In the Petition Gordon asserted "General sessions was without Jurisdiction" in accepting his guilty plea because "Jurisdiction had not been relinquished by family Court". See FN1 The Honorable John C. Hayes, III, dismissed with Prejudice without holding an evidentiary hearing. See Attachment (A) (order of dismissal dated April 30, 2007, filed June 1, 2007.

On August 7, 2007 Petitioner filed a SCRCP Rule 60(b) motion asserting Honorable John C. Hayes, III, was a conflict of interest and asked that a different Honorable Preside over the Habeas Corpus. See Attachment (b)(1) page 5 (Rule 60(b) motion). Charles B. Burnette, III, was appointed to represent Gordon. On January 31, 2008, the Honorable Rogers L. Couch issued an order granting the Rule 60(b) motion amending and clarifying Judge Hayes original order. See Attachment (b)(2). Thus the Court did not reach the merits of Petitioner's claim. See FN2 Petitioner asked Counsel to file a Rule 59(e) motion and notice of appeal and Counsel failed to do so. See Attachment (c)(1)(2)(3) (Letters written to attorney)

FN1 In the case sub judice Petitioner was 16 yrs of age with an IQ 68 when he was taken into custody July 23, 1998, for murder, two counts of attempted armed robbery, three counts of Poss of a weapon during the commission of a violent Crime, Poss of a weapon by a person under twenty-one and criminal conspiracy. The York County Grand Jury indicted the petitioner as charged on October 15, 1998. On July 16, 1999, the Petitioner pled guilty in "General Sessions" without "first" being waived to General Sessions Jurisdiction as those similarly situated less than seventeen years of age charged with a class A, B, C, or D felony. On July 19, 1999 the Honorable Court John C. Hayes, III, sentenced the Petitioner to forty years of imprisonment.

FN2 Lack of Subject matter Jurisdiction of the cause or subject matter Jurisdiction can be raised at any time. See State v. Funderburk, 191 S.E.2d 520 (1972).

Argument

The movant in a motion for relief from Judgment under Rule 60(b) bears the burden of Presenting evidence Proving the facts essential to entitle him to relief. See BB & T v. Taylor, 369 S.C. 548, 633 S.E.2d 501 (2006). A Party requesting relief from Judgment may not invoke Rule 60(b) for relief from Judgment where the issue could have been Pursued on appeal. Tench v. South Carolina Dept of Educ, 347 S.C. 117, 553 S.E.2d 451 (2001).

In the instant case the Petitioner filed a Rule 60(b) motion alleging Judge Hayes was a Conflict of interest and could not Preside over his Statutory habeas Corpus and also requested that a different Honorable Preside over the habeas Corpus. See Attachment (b)(1) Page 5. However, the Honorable Rogers L. Couch erroneously Construed Petitioner's Rule 60(b) as a motion for reconsideration under Rule 59(e), stating Gordon requested an amendment and clarification of Judge Hayes Order dated April 30, 2007, filed June 1, 2007. See FN 1 Judge Hayes Order is a nullity void ab initio. Judge Couch dismissed the habeas Corpus without Prejudice. See FN 2 without deciding the merits of Gordon's "Jurisdiction" claim. Petitioner did not voluntarily and knowingly waive his statutory right and Constitutional remedy to seek release from unlawful Custody as those similarly situated. See Attachment (D) Affidavit of Antonio Gordon

Furthermore, Petitioner was denied his right to appellate review on Judge Couch Order which he failed to reach the merits of his "Jurisdiction" claim. See FN 3 As a result of ineffective assistance of Counsel, (failing to file a Rule 59(e) and notice of Appeal) at Gordon's request. See Attachment (c)(1)(2)(3) In violation of Austin v. State, supra, where the Supreme Court held Applicant has a right to 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 applicant's behalf. See FN 4

Wherefore, Gordon's case is inopposit that of Tench and he have met his burden of Presenting evidence Proving the facts essential to entitle him to relief. BB & T v. Taylor, supra, and he is entitled to an Austin Belated Appeal.

FN 1 A motion to amend and reconsideration is in actuality a Rule 59(e) motion to alter or amend Judgment.

FN 2 Lack of Subject matter Jurisdiction may not be waived and should be taken notice of by the Court. Anderson v. Anderson, 382 S.E.2d 897 (1989).

FN 3 A Judgment by a Court without Jurisdiction of the Subject matter is a nullity and must be so treated by the Court's whenever and for whatever Purpose it is Presented and relied on. Brown v. Malloy, 546 S.E.2d 195 (2001).

FN 4 Petitioner's Jurisdiction claim was the first time it could be appealed as of right because Post-Conviction relief was unavailable or inadequate because he was entitled to his immediate release.

General Sessions was without "Jurisdiction" in accepting Gordon's guilty plea to the charges where "Jurisdiction" had not been relinquished by family Court.

Petitioner asserts that Section 20-7-6605(1) (Supp. 1998) statutory define a "child" as a Person less than seventeen years of age but arbitrarily "exclude" sixteen year old children's charged with a class A, B, C, or D felony as defined in Section 16-1-20 from the definition of being a "child" is penal in nature and must be Construed strictly against the State and in favor of him Pursuant to William v. State, 306 S.C. 89, 410 S.E.2d 563 (S.C. 1991) (When a statute is penal in nature, it must be construed strictly against the State and in favor of the defendant.)

However, because section 20-7-6605(1) is penal in nature and must be Construed strictly against the State, Gordon was considered "Person" under Family Court's exclusive original Jurisdiction Pursuant to S.C. Code Ann § 20-7-400(a)(3) (Supp. 1998) title "Exclusive Original Jurisdiction of family Court"; When he Pled guilty in General Sessions and since "Jurisdiction" had not been relinquished by family Court his indictments and Conviction is a nullity Void ab initio Pursuant to State v. McClure, 289 S.E.2d 158 (S.C. 1982) (No indictments may be true billed by Grand Jury when Circuit Court lacks Jurisdiction.) - And State v. England, 245 S.E.2d 608 (S.C. 1978) (Defendant was a "Person" under family Court's exclusive Original Jurisdiction and since Jurisdiction had not been relinquished in favor of another Court under applicable statute, that section states that.... such Person shall be dealt under § 14-21-620.)

Therefore, Petitioner is being illegally held in Custody in violation of his due Process rights under S.C. Const Art I. §3 and the 14th Amendment to the United States Constitution and he is entitled to his immediate release de jure. See Gibson v. Bechtold, 245 S.E.2d 258 (W. Va. 1978) (The Juvenile law governs and the Circuit Court was without Criminal Jurisdiction over the relater, he is being illegally restrained of his liberty.)

The Constitutionality of a statute under which Petitioner held in Custody can be tested on habeas Corpus

Petitioner asserts the Constitutionality of a statute under which defendant held in Custody may be tested on habeas Corpus. See Ex Parte Hollman, 160 S.E. 19 (The Constitutionality of a statute under which defendant held in Custody may be tested on habeas Corpus.)

Petitioner asserts that S.C. Code Ann § 20-7-6605(1) is unconstitutional under the equal Protection Clause because it arbitrarily "exclude" children's sixteen years of age Charged with a class A, B, C, or D felony from being a "child" as those similarily situated less than seventeen years of age Charged with a Class A, B, C, or D felony. This is inconsistent with rudimentary demands of Justice and renders the Provision "void" and Constitutionally defective, as there is no rational Justification for singling out "Sixteen Year old children's charged with a class A, B, C, or D felony from being a "child" as others similarily situated less than seventeen years of age

charged with a class A, B, C, or D felony. Thus in violation of the equal Protection clause under S.C. Const Art I. § 3 and the 14th Amendment to the United States Constitution, also in violation of Gordon's right to equal Protection of the law under S.C. Const. Art I. § 3 and the 14th Amendment to the United States Constitution. See Marley v. Kirby, 245 S.E.2d 604 (S.C. 1978) (All persons similarly situated should be treated alike.); Barbier v. Connolly, 113 U.S. 27 (1885) (same).

Therefore, the unconstitutional Provision deprived the York County Grand Jury and General Sessions of its jurisdiction and renders Gordon's indictments and conviction a nullity and void ab initio. Petitioner is being illegally held in custody in violation of his due Process rights under S.C. Const. Art. I. § 3 and the 14th Amendment to the United States Const and he is entitled to his immediate release De Jure.

Post-Conviction Relief is unavailable and inadequate where the "only" relief available is to release Gordon immediately

Petitioner asserts that Post-Conviction Relief is unavailable and inadequate because he is entitled to his immediate release and habeas corpus is his "only" remedy. See McCall v. State, 244 S.C. 15, 145 S.E.2d 419 (1965) (The purpose of habeas corpus is to test the legality of the Prisoner's Present detention. The "only" remedy that can be granted is release from custody.)

Its clear Gordon was sixteen years of age and family court did not issue an order relinquishing its Exclusive Jurisdiction to General Sessions as those similarly situated less than seventeen years of age charged with a class A, B, C, or D felony, its clear section 20-7-6605(1) is penal in nature and must be construed strictly against the State, its clear that section 20-7-6605(1) is unconstitutional which deprived the York County Grand Jury and the General Sessions of its jurisdiction which all entitle Gordon to his immediate release and therefore, renders PCR remedy unavailable and inadequate. Gibson v. State, 495 S.E.2d 426 (1998); McCall v. State, Supra.

Conclusion

It is respectfully asked that this Court grant Petitioner's Rule 60(b)(5) - Austin v. State, Supra, belated Notice of Appeal and decide the merits of his claims and release him immediately from unlawful Confinement.

This 2nd day of February, 2015

Respectfully submitted

Antonio Gordon

Antonio Gordon #259798
A.C.I. Smu B 242
P.O. Box 1151
Fairfax, SC 29827

App. P. 456

Antonio Gordon #259798
McCormick Correctional Inst
386 Redemption WAY
McCormick, SC 29899

February 21, 2008

Attachment (C)(1)

RE: Antonio Gordon #259798 v. State of South Carolina
Case No: 2006-CP-46-0010

Dear Mr. Burnette:

I received the Order Granting Rule 60(b) Motion signed by Judge Couch on January 31, 2008. However, I am requesting that you file a Rule 59(e) motion and notice of Appeal because I wish to have my claims decided on the merits.

Antonio Gordon

App. p. 154

Antonio Gordon #259798
McCormick Correctional Inst
346 Redemption Way
McCormick, SC 29899

March 13, 2009

Attachment (c)(2)

Dear Mr. Burnette:

I wrote to you concerning a Rule 59(e) motion and appealing Judge Couch order granting the Rule 60(b) motion. As you know I did not wish to have my claims waived. Have you filed the Rule ~~60(b)~~ 59(e) motion and Notice of Appeal. Please write me back. Thanks.

Antonio Gordon

Dear Mr. Burnette:

I've written to you twice concerning filing a rule 59(e) motion and notice of apped from Judge Leach order and I have not heard back from you or no one. I am requesting the status of the 59(e) and notice of Appeal.

Antonio Gordon

July 18, 2010

LEGAL MAIL

App. P. 459

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF YORK
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2006CP4600010

PLAINTIFF(S)	DEFENDANT(S)
Antonio Gordon	John Ozmit South Carolina State Of Henry D Mcmaster
Submitted by:	Attorney for: ☐ Plaintiff ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED (*CHECK REASON*):** ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other: _____

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other: _____

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):** ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other:

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order; (formal order to follow) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: **ORDER**

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

s/ John C. Hayes, III. — **2049** — 3/4/2015

Circuit Court Judge — **Judge Code** — **Date**

CPFORM4Cm
SCCA SCRCP Form 4C (Revised 3/2013)

For Clerk of Court Office Use Only

This judgment was entered on **March 9, 2015**, and a copy mailed first class or placed in the appropriate attorney's box on **March 9, 2015**, to attorneys of record or to parties (when appearing pro se) as follows:

Anotolo Gordon ACI SMU B 242 PO Box 1151 Fairfax SC 29827

ATTORNEY(S) FOR THE PLAINTIFF(S)

Ashley Anne McMahan PO Box 11549 Columbia, SC 29211-1549

ATTORNEY(S) FOR THE DEFENDANT(S)

Court Reporter

David Hamilton

David Hamilton - Clerk of Court

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

App. P. 457
Exhibit
461

STATE OF SOUTH CAROLINA COUNTY OF YORK Antonio Gordon, #259798, Petitioner, v. State of South Carolina, Respondent.	)	IN THE COURT OF COMMON PLEAS SIXTEENTH JUDICIAL CIRCUIT Case No.: 2006-CP-46-0010 ORDER

FILED-RECEIVED
2015 MAR -9 PM 3:18
DAVID HAMILTON
C.C.C.P.&GS
YORK COUNTY, SC

Petitioner seeks to file with the Court a "Motion for Relief from Judgment Pursuant to S.C.R. Civ. Proc. Rule 60(b)(5) – Austin v. State, 409 S.E. 2d 395 (1991)" (The Motion).

Petitioner alleges the undersigned has recused himself from matters dealing with Petitioner due to a "conflict of interest." There is nothing in the file, nor in the motion, which supports this claim. In fact, the undersigned has addressed prior filings in this proceeding. The undersigned is unaware of any "conflict of interest" and therefore, will address Petitioner's motion as I am the Chief Judge for Administrative Purposes for the Sixteenth Judicial Circuit.

The last activity in this file is an Order of the Honorable Roger L. Couch granting Petitioner relief pursuant to rule 60(b) SCRCP. The relief was, in effect, a finding that Petitioner could pursue a Habeas Corpus in the original jurisdiction of the Supreme Court.[1]

The file does not reflect whether or not Petitioner filed a Habeas Corpus petition in the Supreme Court subsequent to the issuance of the Order of Judge Couch (January 31, 2008).

A review of the file reflects that the issue the current motion raises, namely that the jurisdiction of his case was in the Family Court due to his age and not in the Court of General

[1] The undersigned's Order of April 30, 2007, notes the presence of some "judicial conflicts," but obviously such did not pertain to the undersigned as the author of said Order.

JOH #1

Sessions, was raised in this proceeding previously in his initial filing, dated December 16, 2005, in this case.

I find that Petitioner now seeks to raise for at least the second time, an issue regarding Family Court/General Sessions jurisdiction and therefore, the current proceeding on this issue is dismissed as it is a subsequent request for relief which has been previously ruled on and unappealed.

Petitioner also has claimed a right to an Austin review regarding his prior counsel's failure to appeal Judge Couch's Order of January 31, 2008.

Attached to the instant motion are copies of letters from Petitioner to prior counsel regarding an appeal of Judge Couch's Order which granted petitioner the relief he sought in his Rule 60(b) SCRCP Motion. As stated above, the relief was acknowledgment that Petitioner could file a Habeas Corpus proceeding in the South Carolina Supreme Court. This Order is the law of the case and is not a ruling which would appear to generate an appeal by the prevailing party. However, to the extent Petitioner has been denied his right to appeal, the undersigned has conducted an Austin review.

I find that the failure to appeal a ruling, which granted petitioner the relief he sought, resulted in no prejudice to Petitioner. Petitioner asked to and was granted the right to file a Habeas Corpus proceeding in the Supreme Court of South Carolina. Therefore, there existed no grounds upon which an appeal favorable to Petition could be predicated.

Therefore, Petitioner's Motion is to be filed, without costs, and by this Order Dismissed without Prejudice.

JGHH2

IT IS SO ORDERED.

App. p. 463

John C. Hayes, III
Chief Judge for Administrative Purposes
Sixteenth Judicial Circuit

#3

March 24, 2015
York, South Carolina

App. P. 464

Antonio Gordon # 259745
Kershaw CI Smu Room 46
4848 Goldmine Hwy
Kershaw, SC 29067

March, 23, 2015

FILED-RECEIVED
2015 MAR 25 PM 4:02
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

RE: Gordon v. State, CASE NO: 2006-CP-46-0010

Dear clerk:

Please find enclosed A motion TO Reconsider, Alter amend Judgment Pursuant TO S.C.R. Civ. Proc. Rule 59(e) I am filing with the Court in the order issued March 4, 2015. Attachment (b)(1) goes with the Rule 59(e) motion.

Also find enclosed A petition for Belated Notice of Appeal In the original ~~order~~ Petitioner's order issued in this case on April 30, 2007, filed June 1, 2009, signed by Judge Hayes. There Are Attachments. ~~Thanks~~ Can You please Stamp file And Send me a certified true copy back? Thanks

Antonio Gordon

State of South Carolina)
County of York)

Antonio Gordon #259798
Petitioner,
v.
State of South Carolina,
Respondent.

Attachment (8)

In The Court of Common Pleas
Sixteenth Judicial Circuit
Case No: 2006-CP-46-0010

App. P. 465

Motion To Reconsider, Alter and Amend Judgment Pursuant To S.C.R. Civ. Proc. Rule 59(e)

FILED-RECEIVED
2015 MAR 25 PM 4:02
YORK COUNTY, SC

Now Comes Antonio Gordon, the Petitioner in the above caption-matter moving in this Honorable Court on a Motion to Reconsider, Alter and Amend Judgment Pursuant To S.C.R. Civ. Proc. Rule 59(e). This motion arises from the Order of dismissal entered by the Court on March 9, 2015 and recieved by the Petitioner on March 19, 2015.

It is asked that this Honorable Court recuse himself from the case due to a motion to Change Venue due To a Conflict of interest Signed by Honorable Hayes himself in Antonio Gordon V. State, Case No: 2000-CP-46-1414 which is law of the case. Therefore, this Court should reconsider, alter and amend its Judgment. See Attachment (6)(1) (Letter from Attorney Charles B. Burnette To Judge Hayes showing he recused himself from case No: 2006-CP-46-0010)

It is asked that this Honorable Court reconsider, alter and amend its finding, Conclusion of law and Judgement and grant a evidentiary hearing on Petitioner's [Jurisdiction] claim, claim "B". This Court found that Petitioner seeks To raise for at least the second time, an issue regarding Family Court / General Sessions Jurisdiction and therefore, the Current Proceeding on this issue is dismissed as it is a subsequent request for relief which has been Previously ruled on and unappealed.

Petitioner will Point out the difference on the two (2) Seperate "[Jurisdiction]" claims. Claim "A" in which Gordon asserted Section 20-7-6605(1) is "Penal" in nature and must be construed Strictly against respondent are totally inopposit that of Claim "B". Yes Claim "A" was attached to the initial habeas but however its obvious that Gordon are asserting in Claim "B" that Section 20-7-6605(1) is unconstitutional under the equal Protection clause of S.C. Const Art I. § 3 and the 14th Amendment To the united states Constitution, which the unconstitutional Provision deprive York County Grand Jury and General Sessions of its [Jurisdiction] over Gordon's Person and renders his indictments, Conviction, and Custody all a nullity and void ab initio. See FN1 Its clear from Petitioner's

FN1 Petitioner asserts this [Jurisdiction] claim could be raised at any time Pursuant To State v. Funderburk, 191 S.E.2d (Lack of Subject matter Jurisdiction of the Cause or Subject matter Jurisdiction can be raised at any time), And Should be taken notice of by the Court Pursuant To Anderson v. Anderson, 382 S.E.2d 897 (1989)

initial filing this "Jurisdiction" claim was "not" encluded and what this Court is doing is trying to sweep Gordon's claim under the rug to avoid ruling on the merits of the claim Put before it, which is obvious the claim does have merits.

Petitioner will also Point out he did ~~not~~ make a claim that the "Constitutionality of a statute" under which a defendant held in "custody" may be tested on Habeas Corpus Pursuant to Ex Parte Hollman, 160 S.E. 19. Its Clear Petitioner assented Section 20-7-1605(1) was unconstitutional which deprived Respondent of its [custody] and Petitioner also asserted he was entitled to his immediate release. Therefore, its clear these claims was not in the initial Habeas Corpus.

To the Contrary Petitioner did make an assertion in the initial Petition that section 20-7-1605(1) was unconstitutional because it give no set guidelines in which the Solicitor must go by in trying sixteen year old defendant's which rendered the Statutory unconstitutional under due Process of law.

Wherefore, Petitioner asserts his Jurisdiction claim that Section 20-7-1605(1) is unconstitutional under the "Equal Protection clause" requires an evidentiary hearing Pursuant to Ex Parte Hollman, supra, State v. Funderburk, supra, and was "not" filed in the initial Petition and this Court should reconsider, alter, amend its finding of fact and conclusion of law and Judgment.

Petitioner will ask that the Court reconsider, alter and amend its Judgment to find Petitioner did "not" ask to have Judge Hayes "original" Order dated April 30, 2009, filed June 1, 2009 "reconsidered amended and clarified". The relief Petitioner asked for in his Rule 60(b) motion states: "I so Pray that Honorable John C. Hayes, III, recuse himself from the Order of dismissal with PreJudice and that a Honorable who are not in Conflict with the Case hear the Pending habeas." Note: the record in the Case of Antonio Gordon v. State, Case No.: 2000-CP-46-1414 reflects Honorable Hayes signed a change of venue Order alleging he was a Conflict of interest which is law of the Case. See Attachment (b)(1)

However, Petitioner's Rule 60(b) motion speaks for it self, there is "nowhere" therein Petitioner asked to have Judge Hayes Order amended and clarified. See Rule 60(b) motion on file. Gordon's Rule 60(b) motion was to have Judge Hayes Order "Reopen" and a different Judge Considered the habeas on the merits and when Judge Couch granted relief in which Petitioner did "not" ask for in his motion was controlled by abuse of discretion and error of law. See FN2 Therefore, Gordon was PreJudice and Counsel was ineffective in failing to seek appellate review at Gordon's request. this Court should reconsider its Austin review.

Respectfully Submitted
Antonio Gordon

this 23rd day of March, 2015.

FN2 Generally, a moving Party should be confined to the relief asked for in his motion. See Coosler v. California Ins. Co of San Francisco, 5 S.E.2d 459 (S.C. 1939). And Judge Couch granted his Rule 60(b) motion under Rule 59(e) analysis which time had laps ~~ed~~ this error of law too was appealable, as the Court was without Jurisdiction.

App. P. 467

BURNETTE & PAYNE, P.A.

Attorneys at Law

Charles B. Burnette III
Connie H. Payne

414 E. Main Street
P.O. Box 12186
Rock Hill, SC 29731

Telephone (803) 328-1800
Fax (803) 328-9494
INTERNET E-MAIL
burnettelaw @ Comporium.Net

September 11, 2007

The Honorable John C. Hayes, III.
1675-1H York Highway
York, SC 29745

RE: Antonio Gordon, #259798 v. State of South Carolina
Case No.: 2006-CP-46-0010

Dear Judge Hayes:

I have recently been appointed on the above captioned case. It is my understanding that you have recused yourself in this matter. I have been in communication with Ashley McMahon regarding a CLE conflict along with the fact that I have no file materials to date.

Ashley has agreed to schedule this matter for the week of December 3, 2007 in Spartanburg. Therefore, it is respectfully requested that the matter set before Judge Patterson on October 24, 2007 be continued to the week of December 3, 2007.

Hopefully by then, I will have received a copy of the Application, Return, prior transcripts and orders in order to properly prepare for the hearing.

With best wishes, I am

Sincerely,

Charles B. Burnette, III.

CBBIII/jow

cc Ashley McMahon, Asst. Atty. Gen.
cc Antonio Gordon ✓

State of South Carolina
County of York

Antonio Gordon #259798
Petitioner,
V.
State of South Carolina
Respondent,

In The Court of Common Pleas
Sixteenth Judicial Circuit
CASE NO: 2006-CP-46-0010

Certificate of service

App. P. 468

FILED-RECEIVED
2015 MAR 25 PM 4:02
DAVID HAMILTON
C.C.C.P. & G.S.
YORK COUNTY, SC

I, Antonio Gordon, hereby certify that I served Petitioner S.C.R. Civ.Proc. Rule 59(e) motion on opposing Counsel at:

Attorney General office
Ashley Anne McMahan
P.O. Box 11549
Columbia, SC 29211

by depositing one copy in the mail with sufficient postage this 23 day of March 2015.

Antonio Gordon

App. p. 469

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
) CASE NO: 2006-CP-46-0010
Antonio Gordon,)
S.C.D.C. No. 259798,)
)
Petitioner,)
)
v.)
)
State of South Carolina,)
)
Respondent.)

FILED-RECEIVED
2015 APR 20 AM 11:21
DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

ORDER

This matter comes before this Court by way of Antonio Gordon's ("Petitioner") Motion to Reconsider, Alter, and Amend Judgment pursuant to Rule 59(e) of the S.C. Rules of Civil Procedure.

This Court received a handwritten post-trial motion on April 8, 2015. This case was fully adjudicated, complete with an Order granting a Rule 60(b). The Petitioner then had a second PCR action, complete with a full evidentiary hearing (2008-CP-46-4951) and an appeal.

This handwritten motion requests that the court reconsider "for at least a second time" the jurisdictional issues previously brought before the court. These issues have been litigated and orders issued. Also, as per S.C.R. Civ.P. 59(e) mandates, the motion must be made "not later than 10 days after the receipt of written notice of entry of judgment." Since these issues have been previously heard and ruled on, and since these issues are untimely, the Defendant's motions are DENIED.

AND IT IS SO ORDERED.

Daniel D. Hall
Sixteenth Judicial Circuit

April 14, 2015
York, South Carolina

App. P. 470

FORM 5

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
County of YORK)

08-CP46-4951

Antonio Gordon#259798
Full name and prison number (if any) of Applicant

v.

State of South Carolina

APPLICATION FOR

POST-CONVICTION RELIEF

2009 JAN 19 PM 2:45

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 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.

2009 JAN 19 PM 1:33

CERTIFIED TRUE COPY

If the application is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which the applicant was convicted.

1. Place of detention McCormick Corr.Inst,386 Redemption way McCormick,South Carolina,29899

2. Name and location of Court which imposed sentence York County Moss Justice Center,York,South Carolina,29745

3. Name(s) of co-defendant(s) (if any) Monta Gordon,Gary Moffit,Terrence McCreary

4. The indictment number or numbers (if known) upon which and the offenses for which sentence was imposed:

   (a) murder,two counts attempted armed robbery,three counts of possession of a weapon during the commission of a violent crime,poss of weapon under 21 and criminal consp

(b) _____

(c) _____

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

(a) July 19,1999,30 years for murder,ten for attempted

(b) armed robbery,with ten consecutive foe attempted armed

(c) robbery,with all other charges ran concurrent

6. Check whether a finding of guilty was made:

(a) after a plea of guilty pled guilty

(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?
SEE ATTACH BACK-GROUND AND HISTORY

8. If you answered Ayes@ to (7), list:

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

i. SEE ATTACH BACK-GROUND AND HISTORY

ii. _____

iii. _____

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

i. SEE ATTACH BACK-GROUND AND HISTORY

ii. _____

iii. _____

(c) the date of each such result:

i. SEE ATTACH BACK-GROUND AND HISTORY

ii. _____

iii. _____

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

i. SEE ATTACH BACK-GROUND AND HISTORY

ii. _____

iii. _____

9. If you answered Ano@ to (7), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

10. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

(a) SEE ATTACH BackGround And History

(b) _____

(c) _____

11. State concisely and in the same order the facts which support each of the grounds set out in (10):

(a) SEE ATTACH BACKGround AND History

(b) _____

(c) _____

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

(a) any petition in a State Court under South Carolina Law? Yes

(b) any petition in State or Federal Courts for habeas corpus or post-convictions relief? Yes

(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? Yes

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. Writ of Feberal Habeas corpus

ii. _____

iii. _____

iv. _____

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

i. SEE ATTACH BackGround And History

ii. _____

iii. _____

iv. SEE History

(c) the disposition thereof:

i. SEE History

ii. SEE History

iii. SEE History

iv. SEE History

(d) the date of each such disposition:

i. SEE History

ii. SEE History

iii. SEE History

iv. SEE History

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

i. SEE History

ii. SEE History

iii. SEE History

iv. SEE History

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?

Yes YES

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

(a) which grounds have been presented:

i. SEE ATTACH History

ii. SEE Attach History

iii.

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

i. SEE Attach History

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) _____

(b) _____

(c) _____

17. Were you represented by an attorney at any time during the course of:

(a) your arraignment and plea? Yes

(b) your trial, if any? _____

(c) your sentencing? Yes

(d) your appeal, if any, from the judgment of conviction or the imposition of sentence? Yes

(e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed? Yes

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. SEE Attach History

ii. _____

iii. _____

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

i. SEE Attach History

ii. _____

iii. _____

App.P. 475

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

~~Re-Instatement of Post Conviction Relief~~ Sentence set aside and a New trial granted.

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

NO NO

NO NO

Revised 3/2003

STATE OF SOUTH CAROLINA)
) VERIFICATION
County of York)

I, Antonio Gordon #259798, 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.

Antonio Gordon

SWORN to and subscribed before me this 20 day of November, 2008.

Jennifer C Franklin (L.S.)
Notary Public
My Commission Expires January 31, 2010

My Commission Expires: _____

App. p. 476

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

I, Antonio Gordon, 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.

Antonio Gordon
Applicant

SWORN or affirmed to and subscribed before me this 16 day of December, 2008.

Jennifer C Frankl
Notary Public

My Commission Expires: 01-31-2010

App. P. 477

Antonio Gordon#259798

McCorm.Corr.Inst Fl-A-276

386 Redemption Way

McCormick,South Carolina,29899

2008 DEC 19 PM 2:15

RE:Filing of PCR

Dear Clerk:

I enclosed a post-conviction relief application in which I am filing in your office to be filed.However,Clerk,could your office please send me a certified stamp true copy back of the same.I thank you for the time you have put in this matter.

Sincerely Your's

/s/ Antonio Gordon

Sworn to and subscribed

before me this 20 Day of November 2008

Notary: Jennifer Franklin

Exp: My Commission Expires January 31, 2010

Date: 11.20.08

App. P. 478

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
Antonio Gordon,#259798 Applicant,) MOTION FOR FUNDS FOR AN INVESTIGATOR
v.
State of South Carolina Respondent,

I,Antonio Gordon,will request that the Court authorize and order the release of 5,000 from the INDIGENT DEFENSE FUND of another such appropriate fund for an investigator to obtain the service of INVESTIGATING the underlying case which resulted in a guilty plea of applicant.I firmly believes the service of and investigator are needed to conduct investigation based upon:

(1) Investigator Whiteside and Steward discovered for the first time on January 20,2008,that "Chyneca Dixon" a minor at the time and possible others including applicant were threaten, intimidated,coerced and denied the "RIGHT" to speak with her mother/counsel at her request until she signed a "SWORN AFFIDAVIT IMPLICATING APPLICANT IN THE CRIME".

(2) Evidence that silicitor had "misrepresented facts" at guilty plea IN RE: to alleged placement of palm print on victim vehicle was misplaced/lost/destroyed by PCR counsel Tara D. Shurling (Esq) causing her to withdraw this issue.Her malpractice /complicity with the State to cover Fact that solicitor alleged false facts deprived applicant of his day in Court at his first PCR hearing.This needs to be investigated by the PCR investigator.

(3) Palm print unidentified on victim's car door,two subject were standing by the door,thus both vehicles were process the same day and all latent lifts could be mislabeled,thus since it appears that two subjects were standing by the victim's car door the orientation of the print does not necessarily make applicant the shooter as the solicitor represented during the guilty plea, especially when live victim ID Monta Gordon as shooter and I Antonio Gordon was merely present.

Applicant alleges that he should be entitled to Indigent Defense Funds for an Investigator to prevent a grave injustice.

App. p. 84
479

Antonio Gordon

/s/ Antonio Gordon
Antonio Gordon

Date: 12/3/08

Sworn to and subscribed before
me this 04 Day of December 2008
Notary: Jennifer Franke
Exp: 01.31.2010

App.P.. 480

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF YORK) SIXTEENTH JUDICIAL CIRCUIT
Antonio Gordon,#259798
-Applicant,)
v.) MOTION FOR FUNDING OF EXPERT
State of South Carolina)
Respondent)

I,Antonio Gordon,will request that the Court authorize and order the release of 5,000 from the Indigent Defense Fund or another such appropriate fund for expert fees to obtain the service of a fingerprint expert to examine the fingerprint in the underlying case which resulted in a guilty plea of Antonio Gordon,for the following reasons:

(1) Unidentified palm print on victim's car door,since it appears that two subjects were standing by the car,thus both vehicles were recovered and processed the same day,it could be possible that the latent lifts from the vehicles could be mislabeled,since it appears that two subjects were standing by the car the orientation of the print does not necessarily make applicant Antonio Gordon,the shooter as the solicitor represented in his facts especially when a live victim ID Monta Gordon as the shooter and stated that applicant was merely present.

Applicant alleges that the palm print was never tested by his own expert,that this was ineffective assistance of trial counsel, that he was coerced into waiving this issue at the initial PCR in this matter by Tara D. Shurling,Esquire,and therefore did not get his full "one bite at the apple",and that,in the event that this palm print was not applicant,Antonio Gordon,or it was planted or otherwise fabricated,applicant alleges that he should be entitled to Indigent Defense Funds for expert to prevent a grave injustice.

/s/ Antonio Gordon
Antonio Gordon,#259798
McCorm.Corr.Inst.F-1-A-276
386 Redemption Way
McCormick,S.C. 29899

Sworn to and subscribed
before me this 04 Day of
December 20,08
Notary: Jennifer C Franklin
Exp: 01.31.2010

Antonio Gordon

App. P. 481

State of South Carolina
County of York

Antonio Gordon 259798
Applicant,
v.
State of South Carolina
Respondent

In The Court of Common Pleas
Sixteenth Judicial Circuit
Amendment to Post-Conviction Relief
08-CP46-4951, Filed December 19, 2008

Applicant Antonio Gordon, Pro SE filed an action for Post-Conviction Relief filed December 19, 2008 (08-CP46-4951). The respondent has not made its return and response to the Pending Post-conviction Relief. In Applicants original Post-Conviction Relief which was filed on June 19, 2000 (2000-CP-46-1414), and a Evidentiary hearing was convened in the Richland County Courthouse on July 29, 2003, the Application was Dismissed without ALL issues being raised, adjudicated, misconstrued, and addressed by Honorable J. Ernest Kinard by written order Dated August 19, 2003. Applicant has several meritorious defenses to the claims of the Respondent. Applicant Pro SE moves the Court an order granting him leave to amend the Pending Post-conviction to include the following grounds for Relief,

1). Lack of Subject Matter Jurisdiction,
2). Involuntary Guilty Plea,

and moves for an Evidentiary hearing Pursuant to S.C. Code Ann § 17-27-10 to 17-27-120. I support this application Applicant show the following Error of Law.

RECEIVED
2009 MAY 19 AM 8:52
BARBARA HAMILTON
C.C.P.&GS
YORK COUNTY, SC

Amendment of Facts / History

In applicant's original PCR application applicant allege that he was being held unlawful in custody and cited "Lack of Subject matter Jurisdiction"; Issue (2) Page 409, amendment was made and stipulated in the record at Page 414. This issue was not addressed with the PCR Court in Regards to S.C. Code Ann 7-27-10 to 17-27-120, PCR Judge DID NOT ADDRESS And MAKE

specific Finding Fact and conclusion of Law, and was not address in the Attorney General Order of Dismissal Date August 19, 2003.

It appears that PCR Counsel Tara D. Shurling, Esquire misconstrued / Destroyed / waived applicants "Lack of Subject matter Jurisdiction", issue on Record at Page 444 Line 15 - Page 448 Line 11, to allege 6th Amendment Claim. (Failure to make concerted Effort to Get the Solicitor's office to Remand case to Family Court), issue 5 of the order of Dismissal. Thus prohibiting applicant the "one bite at the APPLE", in regards to the Subject matter Jurisdiction issue.

Applicant Points to the Record for Physical Evidence of NOT Voluntarily waiving this "Lack of Subject Matter Jurisdiction Due Process issue on record, and PCR Counsel misconstrued waived applicant's issue. Pruitt v. state.

NOTE 1

Applicant are asserting that the Failure of the Solicitor to "Petition" the Family Court for Jurisdiction Pursuant to S.C. Code Ann § 20-7-400, EXclusive original Jurisdiction of Family Court, History: 1990 Act No. 511 3 2 eff June 12, 1990 (NOT REPeal), and 20-7-7605 (1), and (6) "Transfer of Jurisdiction", which Specifically deals with when a child has been charged with "murder", and contain no age Limitation under subsection 6 OF the Transfer Jurisdiction Statute, And that 20-7-6605(1) "Definition OF Child", statutory Violates Due Process of Law under the 14th amendment and Conflict with other children Code of Laws Specifically 20-7-400 and 20-7-7605(1), (6), that General session Court was without subject matter Jurisdiction to accept Applicants guilty Plea without solicitor "Petition" Family Court for its original Jurisdiction.

Applicant was Denied his "one bite at the APPle", in regards to his "Involuntary Guilty Plea", issue which is attach to the original Post-conviction Relief Application (2000-CP-46-1414), and this issue was misconstrued to allege (Failure to advise of community supervision) issue 9 of the order of dismissal. Thus applicant was not allegeing anything about community supervision as applicant Point out that Counsel Tara D. Shurling misconstrued this Involuntary Guilty Plea issue. Pruitt v. State. Failure of the PCR Judge to Rule on original issue attach to the PCR application.

Applicant move for an Evidentiary Hearing to Determine the merit of issues Presented to this Court that was timely raised according to the PCR statute and was not knowingly waived by applicant. In applicant's original PCR Application.

NOTE 2

Applicant Guilty Plea was Involuntary made as the Judge did not ask Gordon for affirmative Guilt and Sentence Gordon under 16-3-20 when Gordon was indicted for 16-3-10 and failed to inform Gordon that the murder Charge was mandatory and did NOT Warrant for 85 Percent under 24-21-640, and did not warrant any work Credits, good behavior Credits, and that it was 30 Years Day for Day. Boykin v. Alabama, Pittman v. State. Thus Sentencing Judge did NOT HAVE subject matter Jurisdiction to Sentence applicant under 16-3-20 when indicted for 16-3-10.

App. P. 484

Conclusion

Upon the Error of Law which has been braught to this Court's Attention Applicant should be granted an evidentiary hearing to reach conclusion of Law.

K'Antoni Gordon

Sworn to and Subscribed before me this 12 DAY OF May 09

Notary: Penny G Morta

EXP: Feb 28 2018

STATE OF SOUTH CAROLINA COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS
Antonio Gordon,#259798 Applicant,	)	SIXTEENTH JUDICIAL CIRCUIT
v.	)	POST-CONVICTION RELIEF PURSUANT
State of South Carolina Respondent,	)	TO S.C. Code Ann §17-27-10 to 17-27-120,

APP.P. 485

Applicant filed an action for Post-Conviction Relief on June 19,2000,(2000-CP-46-1414). The respondent made its return on May 4,2001,and venue was changed due to judicial conflicts. An evidentairy hearing was convened in the Richland County Courthouse on July 29,2003,the application was dismissed without ALL issues being raised adjudicated and addressed by Honorable J.Ernest Kinard,by written order dated August 19,2003. Applicant has several meritorious defenses to the claims of the respondent and moves for an evidentiary hearing pursuant to S.C. Code Ann §17-27-10 to 17-27-120. I support this application applicant shows the following.

BACKGROUND

The record before this Court indicates that applicant is presently confined in the South Carolina Department of Correction pursuant to orders of commitment of the York County Clerk of Court. Applicant was indicted by the York County Grand Jury for murder,two counts of attempted armed robbery,three counts of possession of a weapon during the commission of a violent crime,possession of a weapon by a person under twenty-one,and criminal conspiracy.

Applicant was a child sixteen years of age with an IQ that of 68 which placed applicant in the range of boarderline function,arrested without an arrest warrant nor probable cause. Probable cause was provided by a minor (Chyneca Dixon),who was held against her will,coerced,manipulated,threaten,intimidated,and denied the right to speak with her mother/counsel until she signed an affidavit implicating applicant in the allege crime,this minor made two hearsay statements,the first statement taken under a

false identification and the second statement under the minor (Chyneca Dixon) legal name. This minor hearsay coerced,intimidated,threaten,manipulated,and denied the right to speak with her mother/counsel statement's was not taken to a magistrate judge to determine probable cause to make the warrantless arrest upon this minor's hearsay statement's.

However,during the illegal arrest applicant's made two self incriminating statement's which applicant's mother retained attorney Christopher Welborn to represent applicant who at the time was under-age also,and asserted the "RIGHT" to speak with counsel,Attorney Christopher Welborn,demanded that questioning cease of applicant and that he be allowed the right to speak with his juvenile client in which the parent had asserted the right. Rock Hill Police Department denied applicant the right to speak with counsel during important stages of the judicial proceedings.See Miranda v. Arozona,Foote Note 35

A Jackson v. Denno, hearing was held in which trial counsel argued before Honorable John C. Hayes III,that there was no probable cause for the arrest of applicant. Honorable John C. Hayes III,denied the motion on probable cause to make the warrantless arrest. During applicant's first PCR hearing applicant challenge that trial counsel was ineffective for failing to challenge applicant's statement's on the ground that there was no probable cause for the arrest and that the statement's was the fruit of the poisonous tree with regard to the illegal arrest. This claim has been raised by the applicant in his first PCR. See transcript pg 454 line 21-25. However,the Court has failed to address this issue and rule on it,thus applicant has NOT had his "one bite at the apple",particularly in regards to this issue. See Pruitt v. State.

Applicant was sixteen years of age with an IQ that of 68 which placed applicant in the range of boarderline function and immediately tried as an adult without "FAMILY COURT" relinquishing "JURISDICTION",to the Court of General Sessions. Applicant arguing to the Court that his sentence as an adult is faulty because "jurisdiction" had not been relinquished from "family court",pursuant to S.C. Code Ann §20-7-7605(1),(6),and

(10),and that S.C. Code Ann §20-7-6605(1),"Definition of a Child" violates procedural due process and statutory rights under the 14th Amendment to the United States Constitution,both State and Federal Constitutions,and also conflict with other statutory children's code of laws. South Carolina Code Ann §20-7-6605(1),"Definition of a Child",specifically conflict with statute 20-7-400,"EXCLUSIVE ORIGINAL JURISDICTION OF FAMILY COURT,and 20-7-7605(1),(6),and (10),"TRANSFER OF JURISDICTION",and that applicant should have been provided a waiver hearing pursuant to due process of law. Thus General Sessions Court was without personal jurisdiction in accepting Gordon's guilty plea which resulted in a huge miscarriage of justice.Kent

Daniel D. D'Agostino,Esquire represented applicant on the charges ,on July 16,1999,applicant pled guilty to all charges and received 30 years for murder,ten years for attempted armed robbery,5 years for each count of possession of a weapon during the commission of a violent crime,and 5 years for possession of a weapon by a person under twenty-one,and five years for criminal conspiracy. A Notice of Appeal was filed and an Anders Brief was submitted on applicant's behalf. The Court of Appeal affirmed applicant's conviction and sentence's.

FIRST POST-CONVICTION RELIEF APPLICATION

Applicant subsequently filed his first Post- Conviction Relief Application on June 19,2000,(2000-CP-46-1414). An evidentiary hearing was convened on July 23,2003,at the Richland County Courthouse,at which applicant was present and represented by Tara D. Shurling,Esquire. Applicant raised the following issues in his first PCR:

1.. Defense counsel failure to challenge applicant's statement's on the ground that there was no probable cause for the arrest and that applicant's statement's was the fruit of the

1. Lack of Subject Matter Jurisdiction was raised in applicant's original post-conviction,but PCR counsel waived applicant's issue to allege trial counsel was ineffective for failing to make an concerted effort to get the solicitor to remand applicant's case back to family court,thus denying PCR Court to make specific finding,fact and conclusion of law pursuant to 17-27-80,Pruitt v. State,Now applicant alleges that General Sessions Court are without "PERSONAL JURISDICTION" in accepting applicant's guilty plea.

poisonous tree with regard to the illegal arrest,

2.. Lack of Subject Matter Jurisdiction,

3.. Involuntary guilty plea.

Honorable J.Ernest Kinard denied and dismissed applicant's PCR by written order on August 19,2003. However the order failed to address applicant's claim of "defense counsel ineffective for failing to challenge applicant's statement's on the ground that there was no probable cause for the arrest and that applicant's statement's was the fruit of the poisonous tree with regard to the illegal arrest.

Tara D. Shurling,Esquire,filed a "motion" for "59(e)", this motion was filed on November 25,2003,on the same day counsel filed a "Notice of Appeal" in the South Carolina Supreme Court. The South Carolina Supreme Court was without jurisdiction to entertain the Notice of Appeal when the motion for 59(e) still pending in the lower Court for Reconsideration of the Facts. See Aice v. State,Pruitt v. State,Anthony Marlar,Supra,thus applicant has not had his "one bite at the apple",particularly in regards to these issues.

THE SECOND POST-CONVICTION RELIEF APPLICATION

Because applicant has not had his "one bite at the apple",applicant filed a second application for post-conviction relief on July 6,2004. The respondent made its return and motion to dismiss on December 6,2004,which applicant asserted "lack of subject matter jurisdiction". The application was summarily dismissed without a hearing as being successive and barred by the statute of limitations. The Order or dismissal was dated May 20,2005. Applicant did not appeal due to motion for 59(e) still pending before the lower Court.

Applicant filed a "Petition for Writ of habeas Corpus",in Federal Court,(2:05-3327-MBS-R),on December 22,2005. This

2. Extrinsic fraud is fraud that induce a person not to present case or claim and deprives a person of the opportunity to be heard.Relief is granted for extrinsic fraud because applicant is seeking redress is prevented from fully exhibiting and presenting their case,as there has never been real contest before the Court on subject matter.Hilton Head Center of S.C. v. Public Service Commission,294 S.C. 9,11,362 S.E.2d 176 (S.C.1987). (3) Intrinsic fraud ,on the other hand,is fraud which was presented and Considered by the Court. Hagy v. Pruitt, It is fraud which leads a Court in determining issues and induces that Court to find for a party preparing the fraud.Chewing v. Ford Motor,Which in the present case was order of "Dismissal" prepared for applicant by RESPONDENT

"Petition" was dismissed without prejudice to allow applicant to "EXHAUST ALL STATE REMEDIES",on February 16,2007

On January 3,2006,applicant filed a "Petition" for State "Writ of Habeas Corpus",in the York County Clerk of Court. Honorable John C. Hayes III,denied and dismissed the "habeas corpus" on April 30,2007. Applicant then file a "Motion" for "60(b)",pursuant to South Carolina Rules of Civil Procedure alleging that Honorable Hayes III was in conflict with the case and an evidentiary hearing should be held on the merits of the issues presented to that Court. An evidentiary hearing was held before Honorable Roger L. Couch,who dismissed the State habeas corpus "without prejudice",on January 31,2008,to allow applicant to file State habeas corpus in the original jurisdiction of the South Carolina Supreme Court. Article 5 section 5.

THE CURRENT POST-CONVICTION RELIEF APPLICATION AND AMENDED APPLICATION

Because applicant has "NOT HAD",his "one bite at the apple",in his current application and amended application thereof,the applicant alleges that he is being held in custody unlawfully for the following reasons:

1.. Newly Discovered Evidence/Ineffective Assistance Of Trial Counsel/Prosecutorial Misconduct/Brady Violation/Involuntary Guilty Plea,

2.. Defense counsel failed to challenge applicant's statement's on the ground that there was no probable cause for the arrest and that applicant statement's was the fruit of the poisonous tree with regard to the illegal arrest,

3.. Lack Of Personal Jurisdiction,("JURISDICTION CAN BE RAISED AT ANY TIME,INCLUDING FOR THE FIRST TIME ON APPEAL OR PCR.

Applicant relies on the aforenamed case authority,the South Carolina Rules of Civil Procedure,United State Constitution,State and Federal Constitution,in bringing this action and declaring his "RIGHT TO APPEAL" all claims properly presented to the Court in applicant's July 29,2003 PCR. Applicant believes he is entitled to an evidentiary hearing pursuant to Pruitt v. State,McCray v. State,and hayden v. State,"NEWLY DISCOVERED EVIDENCE".

App. P. 490

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	SIXTEENTH JUDICIAL CIRCUIT
Antonio Gordon,#259798)	
Applicant,)	POST-CONVICTION RELIEF,Pursuant to
v.)	NEWLY DISCOVERED EVIDENCE,17-27-45
State of South Carolina)	(c)
Respondent,)	

Applicant,Antonio Gordon,pursuant to South Carolina Code Ann.§17-27-45(c) and Hayden v. State,278 S.C. 610,611-12,299 S.E.2d 854 (1983),move for a New Trial based on "NEWLY DISCOVERED EVIDENCE"/INEFFECTIVE ASSISTANCE OF TRIAL COUNSEL,which by due diligence could NOT have been discovered in time to move for a new trial under Rule 52,59(b) based on the following facts;

1. Applicant discovered for the first time that probable cause provider "Chyneca Dixon" did on January 20,2008,provide a "sworn affidavit" to INVESTIGATOR WHITESIDE AND STEWARD,This "sworn affidavit" "Chyneca Dixon" sworn to on January 20,2008,has relevance to the applicant's case.

2. After gain of access to the "NEWLY DISCOVERED EVIDENCE" and reading the "sworn affidavit",applicant "discovered for the first time" that Rock Hill police officer's use bad tatics,manipulated,coerced,threaten,intimidated,and denied ("Chyneca Dixon") a MINOR at that time the right to speak with her mother/counsel until she signed a written "sworn affidavit" implicating applicant in the allege crime.See Sworn Affidavit January 20,2008 (EXHIBIT 3),

3. Trial counsel was ineffective for failing to conduct a pre-trial investigation and interview a "key witness" who implicated applicant in a crime through the use of coerce,threats,intimidation,manipulation,and denying ("MINOR CHYNECA DIXON") the right to speak with her mother counsel until she implicated applicant in the allege crime,See Strickland v. Washington,Supra

App. P. [illegible] 491

4. Through no lack of due diligence could this evidence previously brought to the Courts attention but through counsel conducting a pre-trial investigation and interviewing "Chyneca Dixon" before pre-trial and plea. Officer Cabiniss and John Thickens withheld information favorable to applicant to make an unlawful arrest a valid arrest,and testified to some of the bad tatics during applicant's pre-trial Jackson v. Denno,hearing,the officer's continue to produce bad agency practice by denying applicant the right to consult with counsel, at counsel demand that questioning cease of his juvenile client in which applicant's mother retained.See Miranda v. Arozona,Strickland v. Washington,Brady v. Maryland,State v. Hill,and State v. Kennerly,Supra.

Applicant made two self-incriminating statement's, the first statement applicant denied any involvement in the allege crime, the second statement applicant confessed to the allege crime which the statement's are fruit of the poisonous tree with regard to the illegal arrest,through the use of manipulation,threats,coercing,intimidation and denying ("MINOR Chyneca Dixon") the right to speak with her mother/counsel until she signed a written sworn affidavit implicating applicant in the allege crime, by the Rock Hill Police Department.

Applicant contends he would NOT have entered a plea of guilty had he known of ("MINOR CHYNECA DIXON") and "Geraldine Dixon" statements and the possible defense of intimidation of witness "Minor Chyneca Dixon" in order to establish probable cause for arrest by police.State v. Williams,CF: Gibson v. State. The act of police threaten,manipulating,coercing,intimidating, and denying ("MINOR CHYNECA DIXON") the right to speak with her mother/counsel until she signed a written sworn affidavit implicating applicant in the allege crime, amounts to prosectorial misconduct.State v. Williams,Supra and violation of due process, and was a legimate defense that applicant was not aware of until the recent statement made by "Chyneca Dixon"/"G.Dixon" to "INVESTIGATOR WHITESIDE AND STEWARD" and rendered applicant's plea INVOLUNTARY.

Applicant asserts had he been informed ("MINOR CHYNECA DIXON") had been held against her will threaten,coerced,intimidated,manipulated, and denied the right to speak with her mother/counsel until she signed a written sworn affidavit implicating applicant in the allege crime, applicant could have made a informed decision about whether to take case to trial based on intimidation of a key witness MINOR Chyneca Dixon question without parent/counsel.U.S. v. Bagley,See Fact witness 3 times has changed her statement (See exhibits 1,2,3,..

5. Further,this is cummulative evidence that trial counsel did not indepently investigate witness, facts or circumstances of case.See Ard v. Catoe,(March 2007 S.C Supreme Court). Counsel had duty to indepently investigate case.See exhibit PCR issue Antonio Gordon v. State, PCR (2000-CP-46-1414) where applicant alleged "Defense counsel failure to challenge applicant's statement's on the ground that there was no probable cause for applicant's arrest and that applicant's statement's were the fruit of the poisonous tree with regard to the illegal arrest". Threats,coercing,intimidating,manipulating,and denying "MINOR Chyneca Dixon" the right to speak with her mother/counsel until she signed a written sworn affidavit implicating applicant in the allege crime is further evidence sole probable cause affidavit of "Chyneca Dixon" based on threats,manipulation,intimidation,coercing,and denying a "MINOR

Note:

1.Issue,DEFENSE COUNSEL FAILURE TO CHALLENGE APPLICANT'S STATEMENT'S ON THE GROUND THAT THERE WAS NO PROBABLE CAUSE FOR APPLICANT ARREST AND THAT APPLICANT STATEMENTS WERE THE FRUIT OF POISONOUS TREE,WITH REGARD TO THE ILLEGAL ARREST,WAS NOT RULED ON PURSUANT TO 17-27-80,In the first PCR. Also,this "NEWLY DISCOVERE EVIDENCE" of "C.Dixon" statement and G.Dixon are cummulative evidence in support of this same issue,which require further Judicial Analysis under the 4th,5th,6th, and 14th Amendment USCA.

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Chyneca Dixon" the right to speak with her mother/counsel until she signed a written affidavit implicating applicant in the allege crime must be considered in totality of circumstances. U.S. v. Bagley, Supra

BRADY VIOLATION

Further, the State withheld favorable evidence of Cabiniss, and John Thickens, threaten, intimidating, coercing, manipulating, and denying ("key witness minor Chyneca Dixon") the right to speak with her mother/counsel until she signed a written affidavit implicating applicant in the crime in order to establish probable cause for arrest. These facts meet requirements of Gibson v. State, (1) the evidence was known to agents of prosecution (Cabiniss/Thickens) Etal. and by the solicitor. State v. Kennerly, 503 S.E.2d 214 (S.C. App 1998) (knowlege of State agents imputed Id at 220), and suppressed by police/silicitor.

Further, this evidence was "material" as preparation of defense strategy was effected, as a (2) "TRIAL DEFENSE COULD HAVE BEEN FOUNDED UPON" that this was a case of witness intimidation/prosecutorial misconduct where police was using illegal tatics to coerce, threaten, intimidate witnesses, including "key witness Chyneca Dixon" who was a minor and not allowed to speak with her mother/counsel until she signed a sworn affidavit implicating applicant in the allege crime, eve though at jail. See U.S. v. Bagley, 473 U.S. 667 at 682-83 (1985) (Court may assess effect of suppressed evidence on trial strategy).

Due to the miscarriage of justice applicant guilty plea should be vacated and a new trial set.

Note 2,

This evidence could have also been used in the Pre-Trial Suppressing hearing upon applicant statement's based on Prosecutorial/misconduct witness intimidation to establish probable cause for arrest, and subsequent statement's was thus "FRUIT OF THE POISONOUS TREE" See Wong Sun v. US,

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CONCLUSION

Due to the failure of applicant's counsel conducting a pre-trial investigation ,rendered applicant guilty plea involuntary made, which have NOW been discovered that applicant was arrested through the use of police officer's threaten,coercing,intimidating,manipulating, and denying "Chyneca Dixon" a minor at that time the right to speak with her mother/counsel until she signed a written affidavit implicating applicant in the allege resulted in a "huge miscarriage of justice", and therefore,Gordon's guilty plea should be set aside and a new trial set.

NEW TRIAL SHOULD BE GRANTED.

/s/ Antonio Gordon

A.Gordon,#259798
386 Redemption Way
Mc.Cormick,SC 29899

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AFFIDAVIT

RE:Antonio Gordon v. State(Pending York County) C/A No._____

I,Antonio Gordon,hereby attests and affirms foregoing is true and correct statement of the facts to the best of my knowledge and belief,that,

1. I was arrested by the Rock Hill Police Department for murder,two counts of attempted armed robbery,three counts of possession of a weapon during the commission of a violent crime,possession of a weapon by a person under twenty-one,and criminal conspiracy along with Monta Gordon,Terrance McCreary,and Garry Moffatt on July 23,1998.

2. I was interrogated by detective J.Thickens other detectives,when Antonio Gordon mother retained attorney Christopher Welborn,who demanded that questioning cease of his juvenile client,in which the Rock hill police department denied me the right to consult with C.Welborn,esquire.See Chyneca Dixon Affidavit attach hereto,and threaten and denied opportunity to meet with counsel/parent.

3. Investigator Whiteside and Stewart discovered on January 20,2008 that Chyneca Dixon and possibly others including affiant were threaten,intimidated,manipulated,and coerced into making material false statements to establish probable cause to make warrantless arrest.

4. I,would have ellected to go to trial with a defense of witness intimidation/prosecutorial misconduct had I known of Chyneca Dixon affidavit that she had been threaten,intimidated,and coerced as a minor.And not allowed to meet with parent/counsel EXACTLY IN THE SAME MANNER AS I ANTONIO GORDON.

5. I would have assisted on my right to a jury trial on the facts heretofore stated herein especially since the victim had stated he could have only ID Monta Gordon as the shooter that I,Antonio Gordon was merlely present at sence.

6. At no time did the York County solicitor's office disclosed any of the above facts to the defense in this case.

7. I firmly believe the service of investigators are needed to further conduct investigation based upon,

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a. Evidence that silicitor had "misrepresented facts" at guilty plea IN RE: to alleged placement of palm print on victim vehicle was misplaced/lost/destroyed by PCR counsel Tara D. Shurling (Esq) causing her to withdraw this issue.Her malpractice/complicity with State to cover Fact that solicitor alleged false facts deprived affiant of his day in court at his first PCR hearing.This needs to be investigated by the PCR investigator.

b. Affiant asserts had he known his palm print was NOT on vehicle of victim as FALSELY REPRESENTED BY SOLICITOR AT PLEA he would have NOT pled guilty but would have went to trial.(1) Also the affiant relied upon the solicitor representation that the palm print of affiant was on the victim vehicle as presented by the solicitor at the guilty plea

/s/ Christopher Gordon

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 20 DAY OF November 2008
NOTARY: Jennifer Franklin
EXP: My Commission Expires January 31, 2010

Note:(1)
See Gibson v. State,513 S.E.2d 320 (1999),Involuntary guilty plea

DEFENSE COUNSEL FAILURE TO CHALLENGE APPLICANT'S STATEMENTS ON THE GROUND THAT THERE WAS NO PROBABLE CAUSE FOR APPLICANT'S ARREST AND THAT APPLICANT STATEMENTS WERE THE FRUIT OF THE POISONOUS TREE WITH REGARD TO THE ILLEGAL ARREST.Transcipt pg 456 LINE 21-25..

Applicant asserts that trial counsel failed to challenge applicant's statement's on the ground that there was no probable cause for applicant's arrest and that applicant's statement's were the fruit of the poisonous tree with regard to the illegal arrest.In this case the police relied upon a statement from a minor which was not reliable,to establish probable cause,Said statement was not the first statement the minor made,the minor made the initial statement under a fictious name.The aforementioned statement given under a false identification was obtained by the police refusing to allow the minor to speak with her mother/counsel until the minor made a sworn written affidavit.This statement did not serve to incriminate the applicant,but rather excluded the applicant from having any possibility of involvement in the alleged crime.

The second statement,however,did implicate the applicant as being involved in the alleged crime,This second statement was made under the minor legal name,which is "Chyneca Dixon",this secon statement was contradictory to the first statement,in that it implicated the applicant in the alleged crime.See transcript book 2 line 8-pg 88,This minor should not have been deemed credible,nor the alleged information she provided reliable,when the police use illegal tactics to establish probable cause,the police relied upon this minor statements to establish probable cause to make the warrantless arrest of the applicant.

The Fourth Amendment to the United States Constitution and article I,§ 10 of the South Carolina Constitution protect citizens from warrantless arrest,both State and Federal constitutions provide that arrest warrants may not be issued except upon "probably cause",supported by oath of affirmation,"U.S. Const.Amend.IV;S.C. Const.art I,§10;See also State v. Weston,329 S.C. 287,290,494 S.E.2d 801,802 (1997) ("Arrest warrant may issue only upon a finding of probable

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cause").

Hearsay may be the basis for issuance of the warrant so long as there [is] a substantial basis for crediting the hearsay [Emphasis added].See Jones v. United States,80 S.ct 736,however,in the instant case the hearsay given by the minor was proved unreliable and ultimately discredited as such.In United States v. Campell,920 F.2d 793,796-97 (11th Cir.1991),the Court held that "no probable cause" to arrest defendant nor search defendants vehicle when confidential informant proved unreliable and no other or suspicious activity took place during police investigatory stop.Although this is a Federal Court case the context and language still apply to the instant case.However,the case of Campell,Supra,does deal with search and seizures,but in Giordenello,Id. U.S.,at 485-486,78 S.ct,at 1250,it is said,although the Court construed the requirement of "Probable cause" contained in Rule 4 of the Federal Rule of criminal Procedure,it did so "in light of the constitutional" requirement of probable cause which that rule implements.Id.,357 U.S. at 485 78 S.ct 1250,The case also involved an arrest warrant rather than a search warrant,but the Court said,"The language of the Fourth Amendment that *** no warrant shall issue,but upon probable cause *** of course applies to arrest as well as search warrants.

Moreover,the arrest were made without a warrant,probable cause,nor exception of exigent circumstance.The police had no other probable cause (see transcript pg 78 line 23-pg 79 line 3).Government agents may conduct a warrantless search seizure [or arrest] when exigent circumstances justify the intrusion.Exigent

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(1) Applicant has cummulative new evidence supporting that there was no legal probable cause for the warrantless arrest,and that trial counsel failed to conduct a pre-trial investigation and interview key witness minor ("Chyneca Dixon") who was threaten, manipulated,coerced,intimidated and denied the right to speak with her mother/counsel at her request until she signed a written affidavit implicating applicant in the alleged crime.Thus applicant's statement's are fruit of the poisonous tree with regard to the illegal arrest.See Wong Sun v. United States.(2) The pre-trial period constitutes a "critical period" in criminal proceedings because it encompasses counsel's constitutionally imposed duty to investigate the case.Mitchell v. Mason,325 F.3d 732 (6th Cir.2003).(3) Further during the illegal arrest in violation of the fourth amendment to the United States constitution,applicant was denied the right to speak with parent/

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circumstances exist when there is "probable cause" for search seizure,or arrest and evidence is in imminent danger of destruction.See Cupp v. Murphy,412 U.S. 291,294-96 (1973). In fact,applicant's counsel attempted to address the exigent circumstances,but was only argued against which no further action to the subject aroused.See transcript pg 136-138 line 10. the arrest was made without a warrant in this case,nor probable cause,because the officer knew that in order for an arrest warrant to be issued upon hearsay information provided by a minor,who was held against her will coerced,threaten,intimidated manipulated and denied the right to speak with her mother/counsel until she signed a sworn affidavit implicating applicant in the alleged crime,the minor's report must first be measured against standards of the Supreme Court decision that (1) affidavit for arrest must set forth underlying circumstances necessary to enable magistrate indenpendantly to judge on validity of minor's conclusion and that (2) affiant-officers [must] support their claim that "Chyneca Dixon",was credible of her information reliable,so that probative value of report can be assessed [Emphasis added].See Spinelli v. United States,89 S.ct 584.

In the instant case there was no probable cause for the warrantless arrest of applicant and there was no exigent circumstances admitted for the record for a warrantless arrest.Cupp v. Murphy,Supra,Accord U.S.v. v. Reed,935 F.2d 641,643 (4th Cir.). An officer has reasonable time to obtain a warrant because a "MAGISTRATE" were at their immediate disposal.See transcript pg 79 line 22-pg 83 line 21. An unlawful arrest is one made without probable cause,See United States v. Waston,96 S.ct 820 (1976).Because there was no probable cause for a

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counsel until applicant signed an affidavit confessioning to the allege crime why an attorney demanding that questioning cease of his juvenile client,though applicant was threaten,coerce intimidated,manipulated and denied the right to parent/counsel in the same manner as probable cause provider minor "Chyneca Dixon" was,thus warrant suppression of applicant's statement's inviolation of applicant's 4th,5th,6th,and 14th amendment right to the United States Constitution denial of counsel during custodial interrogation.Mirand v. Arozona,Foote Note 35