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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Lexington County

Honorable Thomas A. Russo, Circuit Court Judge

ANDERS
RESPONDENT'S BRIEF
ORIGINALS
RECEIVED
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SC Court of Appeals

THE STATE,

RESPONDENT,

V.

BRIAN JACOB TERRELL,

APPELLANT.

APPELLATE CASE NO 2015-001020

RECORD ON APPEAL

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1 State of South Carolina)
 2 County of Lexington) Indictment No.: 2015-GS-32-3211,
 3) 3212
 4 State of South Carolina,)
 5 Plaintiff,)
 6 vs.) Transcript of Record
 7 Brian Jacob Terrell,)
 8 Defendant.)

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April 15, 2015

Lexington, South Carolina

BEFORE:

The Honorable Thomas A. Russo, Judge

APPEARANCES:

Suzanne Mayes, Assistant State Solicitor
Attorney for the Plaintiff

Tommy Shealy, Assistant Public Defender
Attorney for the Defendant

ALSO PRESENT:

Brian Jacob Terrell
Probation Officer

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1 GUILTY PLEA

2 THE CLERK: Brian Jacob Terrell, come around.
3 Indictment 2015-GS-32-767, State versus Brian Jacob
4 Terrell indicted for indecent exposure. He is pleading
5 as charged. It is signed and properly attested to. True
6 billed, and he is represented by Mr. Shealy, Public
7 Defender's Office.

8 Thereupon,

9 BRIAN JACOB TERRELL
10 after having been first duly sworn, testified as follows,

11 PROBATION OFFICER: Your Honor, Mr. Terrell is also
12 on probation and this plea will violate that.

13 THE COURT: Okay. Has he been served?

14 PROBATION OFFICER: Yes. And I will, if I can, just
15 mention there are victims in the case. They did not -
16 are not notified today. They were notified initially
17 when he was placed on probation. They did not respond to
18 initial notification. It's usually our policy if they
19 don't respond, we do not notify them of future
20 proceedings.

21 THE COURT: All right. Thank you.

22 PROBATION OFFICER: Thank you, Your Honor.

23 THE COURT: Give me just a moment here. All right.
24 You are Brian Jacob Terrell?

25 MR. TERRELL: Yes, sir.

1 THE COURT: Mr. Terrell, indictment number
2 2015-GS-32-767 is a true billed indictment charging you
3 with the offense of indecent exposure. That offense, Mr.
4 Terrell, carries a maximum penalty of up to three years
5 at the Department of Corrections. Do you understand
6 that, sir?

7 MR. TERRELL: Yes, sir.

8 THE COURT: Understanding the nature of the charge
9 against you as well as the possible punishment that's
10 associated with this offense, how do you plead to that
11 charge, sir, guilty or not guilty?

12 MR. TERRELL: I plead guilty.

13 THE COURT: All right, sir. And, Mr. Shealy, you
14 represent Mr. Terrell?

15 MR. SHEALY: I do, Your Honor.

16 THE COURT: Have you discussed with him the charge
17 that he's before the Court on and his constitutional
18 rights to a trial?

19 MR. SHEALY: Yes, Your Honor.

20 THE COURT: All right. Thank you, sir.
21 Mr. Terrell, if I may, let me ask you, sir, am I correct
22 you're 33 years of age?

23 MR. TERRELL: Yes, sir.

24 THE COURT: What type of work do you do?

25 MR. TERRELL: Right now I'm employed at Lizard's

1 Thicket as a dish washer. I was previously employed by
2 Marco's delivering pizza.

3 THE COURT: Okay. And are you married or single,
4 sir?

5 MR. TERRELL: Right now I am divorced and have plans
6 to remarry my ex-wife.

7 THE COURT: Okay. Do you have any children?

8 MR. TERRELL: With my ex-wife I have one and then I
9 have two others.

10 THE COURT: All right, sir. And did you spend any
11 time in jail on these charges, sir?

12 MR. TERRELL: A day or two.

13 THE COURT: Okay. Mr. Terrell, I'm going to -- I
14 know you have talked with Mr. Shealy about your
15 constitutional rights. I'm just going to review those
16 with you. If at any time during our conversation about
17 anything, if you have any questions or if you need to
18 talk with your attorney before you respond to my
19 questions, let me know and I'll give you whatever time
20 you need to discuss whatever you need to discuss with
21 Mr. Shealy and then we'll resume, okay?

22 Any time anyone enters a guilty plea in General
23 Sessions court they give up certain constitutional rights
24 as they relate to the plea or the charge that they are
25 before the Court on. You have the right to remain

1 silent. You have the right to a jury trial. But when
2 you enter a plea of guilt, then for purposes of that plea
3 you give up both of those important constitutional
4 rights. Do you understand that, sir?

5 MR. TERRELL: Yes, sir.

6 THE COURT: When you give up your right to a jury
7 trial, you give up the rights that are associated with
8 that right or connected with that right. For example, if
9 you were to have a jury trial, you would be presumed
10 innocent of this charge. That presumption of innocence
11 places the burden of proof on the State to prove guilt.
12 The way they would attempt to do that, sir, is through
13 the course of that jury trial they would call witnesses
14 to the stand. Those witnesses would be placed under oath
15 and they would testify before the jury.

16 Now, the Constitution of the United States says that
17 a person charged with a criminal offense has the right to
18 face or to confront their accusers. What that means is
19 that during that trial through your attorney Mr. Shealy
20 you would have the right to question the State's
21 witnesses regarding their testimony or cross examine
22 them. That's your right of confrontation under the
23 constitution. Do you understand that?

24 MR. TERRELL: Yes, sir.

25 THE COURT: However, when you enter a plea of guilt,

1 by entering that plea you waive or you give up that
2 presumption of innocence I spoke about and that relieves
3 the State of their burden of proof. Since they are no
4 longer required to prove your guilt they don't have to
5 bring their witnesses into court and so you waive or you
6 give up the right to confront those folks. Do you
7 understand, sir?

8 MR. TERRELL: Yes, sir.

9 THE COURT: Now, Mr. Terrell, the State is not the
10 only one that can call witnesses in a trial. If you had
11 a jury trial and you wished to call witnesses in your
12 defense, you could do that. You yourself could take the
13 witness stand and testify in your behalf if you chose to
14 do that. You could do either one of those things or you
15 could do both of those things, however, you are not
16 required to do anything.

17 In this country a person charged with a criminal
18 offense is never required to prove themselves innocent.
19 The burden of proof rests on the State to prove guilt and
20 so if you did have a jury trial and if you did decide to
21 exercise your constitutional right to remain silent, I
22 would explain to the jury when I give them the charge on
23 the law, I would explain to them that the State has the
24 burden of proof and that you do not have to prove
25 anything. The fact that you chose to exercise your

1 constitutional right to remain silent could not in any
2 way be considered by the jury in their deliberations as
3 to your guilt or innocence.

4 I would instruct them further that the fact that you
5 chose to remain silent could not even be discussed in the
6 jury room. It's not anything that they are to consider
7 because it is your constitutional right to remain silent.
8 Do you understand, sir?

9 MR. TERRELL: Yes, sir.

10 THE COURT: Now, as I said earlier, the State has
11 the burden of proof. They have to prove guilt beyond a
12 reasonable doubt and they would have to prove guilt to a
13 unanimous decision. In other words, they would have to
14 convince all 12 members of the jury that you are guilty
15 of this offense or they could not convict you. If you
16 did, however, if you did have a jury trial and they did
17 convict you, you could appeal that conviction to a higher
18 court if you felt that was appropriate.

19 And finally, sir, you have an appellate right as it
20 relates to this proceeding here today. In other words,
21 if at the conclusion of this hearing today you wish to
22 appeal this court's decision, you may do so but you would
23 have to file a notice of intent to appeal within ten days
24 of today's date. Do you understand?

25 MR. TERRELL: Yes, sir.

1 THE COURT: Sir, you have all these rights but when
2 you plead guilty, you waive or you give up these rights.
3 You won't have a jury trial and your case will be
4 resolved pursuant to your plea. Understanding that do
5 you still wish to go forward with your plea?

6 MR. TERRELL: Yes, sir.

7 THE COURT: All right, sir. Now, Mr. Terrell, has
8 anybody promised you anything, held out any hope of
9 reward or threatened you in any way to get you to enter
10 this plea?

11 MR. TERRELL: No, sir.

12 THE COURT: Are you satisfied with the
13 representation and the advice that Mr. Shealy has
14 provided?

15 MR. TERRELL: Completely, sir.

16 THE COURT: Do you have any complaints against him
17 or any member of his office?

18 MR. TERRELL: No.

19 THE COURT: As you appear before the Court here
20 today are you under the influence of any substance that
21 would affect your ability to understand what you are
22 doing here?

23 MR. TERRELL: No, sir.

24 THE COURT: Are you entering this plea of your own
25 free will, sir?

1 MR. TERRELL: Yes, sir.

2 THE COURT: And are you guilty of this offense,
3 Mr. Terrell?

4 MR. TERRELL: Yes, sir.

5 THE COURT: Sir, I'm going to get the Solicitor to
6 go over the facts with me. I would ask you to listen
7 carefully and then I'll get back with you in just a
8 moment. Solicitor.

9 MS. MAYES: Yes, sir, Your Honor. This case
10 occurred on July 31st of this past summer in the Cayce
11 area of Lexington County and specifically, Your Honor,
12 this is in a neighborhood known as the Avenues in Cayce
13 which is a very quiet safe neighborhood. It's well known
14 as an established neighborhood where women or college
15 students feel safe walking their dogs in the morning or
16 jogging in the evening hours and as a result of that this
17 case was of particular interest to the Cayce police
18 department.

19 Your Honor, it was reported in the morning hours by
20 the victim Katie Mixon who is a life long resident of
21 that area in the Avenues that she had been walking her
22 dog and between the time frame of 8:30 and 8:45 she
23 reported in her statement, "I took my dog for a walk.
24 While walking up 8th Street from Lafayette to Jansen, a
25 four door white possibly '90s vehicle drove past me

1 playing loud music. The car turned around and drove past
2 me again. I heard, 'Hey, girl, or hey, girlie' and I
3 turned to see the car, windows down and a tall white man
4 probably 20's to 30's wearing a ball cap, glasses,
5 scruffy unshaven face, collared shirt and khaki pants.
6 He had his pants open and was fondling his penis. I
7 quickly turned away from the car. When I turned back to
8 see where the car had gone, it was out of sight. All of
9 this happened between 8:30 and 8:45 this morning."

10 So she observed this, Your Honor, and eventually
11 goes back home, calls law enforcement, and they come out
12 and take a report. At that point in time, however, all
13 they had was a vehicle description. She was not able to
14 get a tag and this was a stranger so she did not know the
15 defendant. So it was pretty much unsolved for that
16 period of time between July into October.

17 And then in October was when there was a break in
18 the case. Cayce police department got a lead based on
19 the fact that there was another female also in the
20 Avenues, the same neighborhood who reported that a man
21 matching the same or similar description was masturbating
22 and she observed him and she got a tag number or at least
23 a partial tag number and then ultimately her husband got
24 the full tag number.

25 So the Cayce police department traces that tag

1 number. It's not the same car. By this point it's a
2 Grand Cherokee. They trace that tag number and it comes
3 back to the defendant, Mr. Terrell. So Detective Herrera
4 does surveillance. And he actually makes a decision to
5 do surveillance because it was reported by the second
6 witness that there had been multiple occasions where this
7 subject had circled around her, come around her making
8 her feel very uncomfortable and he knew this was the
9 second such report in that small area of the Avenues. So
10 he was conducting surveillance on October 23rd again in
11 the early morning hours and he finds that Grand Cherokee
12 with the matching tag number.

13 Ultimately Mr. Terrell waived his Miranda Rights and
14 gave a statement to Detective Herrera. At that point in
15 time once he made the physical contact with him is when
16 he discovered that Mr. Terrell is wearing the GPS ankle
17 monitor because he is a registered sex offender. So once
18 he gets that information he was able to ascertain through
19 probation and parole the GPS coordinates for both the
20 morning of July 31st which is our incident involving
21 Katie Mixon as well as the October incident. Based on
22 that he develops a photo lineup which was ultimately
23 shown to the victim in our case Katie Mixon. She
24 immediately picked Mr. Terrell out of that lineup. She
25 had no trouble identifying him whatsoever. And

1 ultimately in preparation for trial we were able to
2 obtain his vehicle records from a used car dealer that,
3 in fact, established he was the owner of a white vehicle
4 that had been described almost to a T by Katie Mixon the
5 victim in our case and that he traded that vehicle in and
6 ended up getting the Grand Cherokee that he had in
7 October.

8 So, Your Honor, with that information he was
9 arrested on this charge for indecent exposure. I'm going
10 to go ahead and pass up at this time, Your Honor, some
11 photos that show that area of the Avenues as well as the
12 GPS coordinates for the morning of July 31st that have
13 him on the 8th Street area which is exactly where Katie
14 Mixon said the event occurred. He's also going at a very
15 low speed which is consistent with her description of the
16 event.

17 MR. SHEALY: Your Honor, I'm sure I have seen them.
18 I just didn't know which ones you have seen.

19 THE COURT: Yes (proffering).

20 MS. MAYES: And, Your Honor, in follow up as to the
21 prior record it's a very significant case in terms of
22 prior record. He has seven prior sex offenses. All of
23 them involve different victims. From what we were able
24 to ascertain and I was able to pull the prior
25 convictions, the indictments, the warrant and I believe a

1 statement from the defendant which I provided to.
2 Mr. Shealy as we were going through discovery, but what
3 we were able to ascertain, Your Honor, is that all of the
4 victims were female and five of the victims were children
5 at the time of the prior offenses. They are five counts
6 of lewd act upon a child and two counts of assault and
7 battery of a high and aggravated nature.

8 His sentence on the five counts of lewd act was a
9 straight 12 year sentence and he was sentenced on those
10 charges January 31st of 2008. And then on the two counts
11 of ABHAN which were also sexual in nature but involved
12 adult victims or victims over the age of 16 he was
13 sentenced to five years suspended to five years probation
14 on one count and then the other one is 10 years suspended
15 to five years probation and those were to run consecutive
16 with my understanding in looking at the sentencing sheets
17 and so he was actively on probation for those two ABHANS
18 even though he had maxed out the 12 year sentence on the
19 lewd act which is the lewd act conviction that caused him
20 to be wearing the mandatory GPS bracelet under Jessie's
21 Law.

22 He was released from what we understand in January
23 2014, and our incident occurred in July of 2014 so that's
24 roughly seven months after his release he's already
25 reoffending. What we know, of course, in our case is

1 that he was approaching a stranger. In the prior cases
2 all seven victims were strangers. All of them were
3 sexually assaulted in a public location. My
4 understanding is that they were all in Walmarts. These
5 were various Walmarts in Lexington County. I believe one
6 was in West Columbia. One was in the City of Lexington
7 and these occurred on different dates. But he was
8 actually entering the Walmarts and he was approaching
9 children in those Walmarts and fondling them. One child
10 was actually on the toy aisle looking at toys when she
11 was approached and fondled. The youngest victim was
12 eight years old.

13 So we consider him a tremendous threat to the
14 public. With the enactment of Jessie's law the hope was
15 that the GPS ankle bracelet would be a deterrent. In
16 some cases I do have faith that it is. In this case
17 unfortunately it is not. We are asking for the maximum
18 sentence, Your Honor, in this case of three years.

19 As to the victim impact statement from Katie Mixon,
20 Your Honor, she was here this morning. She works three
21 jobs. She had a work commitment to go take care of
22 during the lunch hour and was returning back this
23 afternoon, but she has prepared a victim impact
24 statement.

25 "The Town of Cayce has always been my home. My

1 family's home. I live in the same house that my great
2 grandparents built and where my mother grew up. But now
3 the comfort and safety I've always felt is gone. I
4 always think twice before going on walks or walking down
5 to the park alone. My happy memories of playing as a
6 child and running to my friends' homes have been replaced
7 with this nasty scary unpleasant thought of what happened
8 on July 31st. What I'm glad about is that I'm able to
9 stand up for myself and identify the person who has done
10 this. Knowing he's a convicted sex offender worries me
11 that he will do this again because he has before, but
12 maybe this time to someone too young or unable to stand
13 up for themselves. I hope that he will be in prison
14 somewhere he can't harm others and maybe somewhere he can
15 get help to correct this offensive behavior. I want to
16 feel safe in my neighborhood and I don't ever want to
17 come in contact with him again. Thank you everyone for
18 being supportive and kind. I really appreciate it." And
19 it's from Katie Mixon.

20 Your Honor, I would just close in saying that we did
21 go through the details with Miss Mixon repeatedly and she
22 made it clear that he looked directly at her while he was
23 doing this. First he called to her. He had actually
24 circled around, had seen her walking the dog, circled
25 around and came back around that block which is verified

1 by the GPS coordinates and it's on the second trip back
2 around her that he called out to her and then does this
3 and it was quite clear that he's looking at her. He's
4 not holding the phone. His only interest at that point
5 was to gain her attention during this offense.

6 THE COURT: All right. Thank you, ma'am.
7 Mr. Terrell, the facts that the Solicitor gave to the
8 Court with regards to this incident on July the 31st, are
9 those facts essentially correct, sir?

10 MR. TERRELL: Yes, sir.

11 THE COURT: All right. I find that the State has
12 provided a substantial factual basis to support the
13 charge that Mr. Terrell has pled guilty to. I find that
14 his decision to enter this plea has been done freely,
15 voluntarily and intelligently. He has had the advice and
16 counsel of an outstanding attorney in Mr. Shealy.
17 Mr. Terrell has indicated to the Court he's satisfied
18 with the representation and advice that Mr. Shealy has
19 provided. I'm going to accept his plea. Mr. Shealy, if
20 you don't mind, I'm going to hear from probation first
21 and then I'll just let you take up everything at one
22 time, okay?

23 MR. SHEALY: Thank you, Your Honor.

24 THE COURT: Yes, ma'am.

25 PROBATION OFFICER: Thank you, Your Honor. As Ms.

1 Mayes has mentioned Mr. Terrell was sentenced here in
2 Lexington County on January 31st of 2008. He received a
3 sentence of 10 years suspended to five years probation on
4 the one count of ABHAN and five years suspended to five
5 years probation on the second count. This plea does
6 violate his probation. We consider it a community safety
7 violation. We do consider him a danger to the community.
8 We are requesting a full revocation, Your Honor.

9 THE COURT: All right. Thank you, ma'am.
10 Mr. Shealy, I will be more than happy to hear from you,
11 sir, regarding this matter as well as the probation
12 matter, sir.

13 MR. SHEALY: Thank you, Your Honor. First as to
14 this matter, as you found out Brian is 33 years old and
15 although he's divorced he intends to remarry his fiancée
16 who is here Holly Terrell. She kept her maiden name.
17 They have a child together. Not maiden name. Married
18 name. I'm sorry, Your Honor. The child is seven years
19 old, a son, and Brian would like to eventually have a
20 relationship with his son, but he currently lives with
21 his mother because he's not allowed to live with his son
22 because of the probation requirements.

23 Your Honor, he's assimilated well into society
24 despite what you have heard up to now. Despite his
25 convictions, he was holding two jobs at the time he was -

1 of this incident. As he told you he was working at
2 Lizard's Thicket. Well, he also had just gotten a job at
3 Marco's Pizza delivering pizzas and the area of delivery
4 for Marco's was the Cayce area, primarily the Avenues
5 where this occurred.

6 Well, Brian is not from Cayce. He's from Gaston.
7 That's where he grew up. So that particular morning he
8 was out driving around learning the various routes, how
9 the streets were oriented, what the traffic patterns were
10 like, to acquaint himself with what possible deliveries
11 he might be making. That morning he was driving a white
12 automobile. It was essentially a loaner. He had a Saab
13 that the engine had blown up. The dealer took that car
14 back and he provided him with this white car in the
15 interim. This car's windows were tinted and the windows
16 were rolled up, but it was July 31st and it was hot and
17 the vehicle did not have any air conditioning and, Your
18 Honor, my client tells me he was having phone sex with
19 his fiancée and I understand that's a disputed point but
20 nevertheless that's our position. He rolled the window
21 down to get a breeze and the victim was there and the
22 victim heard him say what she says he said and she saw
23 what she said she saw. There's no disputing any of that.

24 Your Honor, he's extremely remorseful about it. We
25 are asking that you recognize the fact that he is taking

1 responsibility for his actions; that he is pleading
2 guilty freely and voluntarily and we would ask for
3 leniency in your sentence on this charge.

4 As to the probation violation, the allegations were,
5 one of them was failing to pay monies and our position
6 from that, of course, is that it was not willful. As he
7 told you he has two other children. While he was in
8 prison obviously he got behind on the child support and
9 so his paychecks were being garnished so that's one of
10 the reasons. Even though he was getting paid he was not
11 able to meet his financial obligations there.

12 There is no denying that this is a violation of
13 state law and he admits that, and it's an unfortunate
14 violation. Your Honor, we would ask you first off to
15 examine the sentencing sheets because first off we would
16 like for you to, should you consider making these
17 consecutive, that you ensure that that's what the
18 original sentencing sheets intended because there is a
19 little bit of an issue there. The words consecutive are
20 there, but I'm not sure that they are as clear as we
21 would like them to be.

22 THE COURT: Do we have the original sentencing
23 sheets?

24 MS. MAYES: Yes, sir, Your Honor. I will go ahead
25 and pass them up.

1 MR. SHEALY: And she has provided them to me. Your
2 Honor, we would ask that you consider that he's already
3 served his 12 year sentence on this matter. He asked me
4 to tell you that of that 12 years he served seven. We
5 would ask that you consider, Your Honor, inflicting less
6 time than the maximum times of the violations and that
7 you run them concurrent as opposed to consecutive. Thank
8 you, Your Honor.

9 THE COURT: All right. Thank you, Mr. Shealy.
10 Anything further, Mr. Terrell?

11 MR. TERRELL: No, sir.

12 MR. SHEALY: Your Honor, the dispute I have, I don't
13 know that it amounts to a dispute, but if I recall
14 correctly the sentencing sheets that deal with the
15 ABHANS, one says consecutive to the 12 years that he
16 served and the other one says consecutive to that, of
17 course, but it doesn't say consecutive to the 12 years he
18 served and we take the position, in fact, that's what it
19 says, that - that that 12 -- Well, we would argue, Your
20 Honor, that he's facing 10 years as opposed to 15.

21 THE COURT: All right. The way I read this is, and
22 I'm not the brightest bulb in the chandelier, but what
23 looks fairly clear to me is that Judge Nicholson wrote
24 consecutive. He checked consecutive to the sentence on
25 3211 which was the ABHAN. So this was - the other ABHAN.

1 So this was an ABHAN charge where he sentenced him to 10
2 years and he writes consecutive to the sentence on 3211
3 and concurrent to the lewd act charges.

4 So you look then to what was 3211. 3211 was the
5 other ABHAN charge and he wrote, on that one he wrote
6 consecutive to the sentence on 3212 and concurrent with
7 the lewd act charges. So I read this as a 10 year and a
8 five year sentence, that those are to run consecutive and
9 that 15 years to run concurrent with the lewd act
10 charges. That's the way it appears to me. So I think
11 with regards to any exposure on the probation violations
12 that he's exposed to 10 years on the one and a
13 consecutive five years on the other. I think it's a 15
14 year exposure.

15 MR. SHEALY: I guess the issue that -- I understand
16 what you're saying, but the other issue that I'm getting
17 at is that the probation was concurrent. With an active
18 sentence wouldn't it run at the time of the active
19 sentence?

20 THE COURT: All he has here is that you toll the
21 probation while in jail. So what are you saying?

22 MR. SHEALY: Well, it seems to me, Your Honor, that
23 if it's concurrent with an active sentence, then while
24 he's in prison he's also on probation.

25 THE COURT: No. It says toll the probation while in

1 jail.

2 MR. SHEALY: Thank you, Your Honor.

3 THE COURT: So he's not getting any credit for being
4 on probation while he's incarcerated. Typically what you
5 would see is you would see the probation. When you see
6 that, it's the probation begins once he's released from
7 prison.

8 MR. SHEALY: Thank you, Your Honor.

9 THE COURT: That's the way I read that. All right.
10 Let's see. All right. Ms. Mayes, let me give this back
11 to you, ma'am.

12 MS. MAYES: Yes, Your Honor.

13 MR. SHEALY: Your Honor, just could we make those
14 court's exhibits just --

15 THE COURT: Sure.

16 MR. SHEALY: -- as an exercise.

17 THE COURT: Sure. Let's go ahead and make those a
18 court's exhibit. Why don't we make them a one court's
19 exhibit as a total package.

20 MR. SHEALY: I think that would be convenient.

21 THE COURT: That way it will include all the
22 sentencing sheets.

23 (Whereupon, Court's Composite Exhibit #1 marked for
24 Identification.)

25 MR. SHEALY: Thank you, Your Honor. Your Honor,

1 what we would ask is you consider, as I said, inflicting
2 less time than what --

3 THE COURT: Yes.

4 MR. SHEALY: -- is imposed mandatory. And I believe
5 you do have the authority to run concurrent should you
6 decide that's appropriate. Thank you, Your Honor.

7 THE COURT: Now, let me get a clarification from
8 probation. I am beginning to get a little bit confused.
9 At some point in the past he received a 12 year sentence.
10 Was that suspended to 42 months and five years probation
11 or did he just serve 42 months of that sentence?

12 PROBATION OFFICER: He served the 42 months of that
13 sentence.

14 THE COURT: Okay. So that was a straight 12 years.
15 No probation involved in that?

16 PROBATION OFFICER: No, sir. That was straight
17 time.

18 THE COURT: Okay. So that's exhausted? That's
19 done?

20 PROBATION OFFICER: Yes, sir.

21 THE COURT: And then he later was convicted of these
22 multiple lewd acts?

23 PROBATION OFFICER: The ABHAN and the lewd acts were
24 the same conviction date.

25 THE COURT: Right. But what I'm saying is he had

1 these lewd acts and he had these ABHANS so that's where
2 -- You know what I didn't look at? I didn't look at the
3 sentences on the lewd acts.

4 MS. MAYES: My understanding is that he got a
5 straight 12 on each of the five counts of the lewd acts.

6 THE COURT: So he got 12 years on those lewd acts?

7 MS. MAYES: Yes, sir, Your Honor.

8 THE COURT: On each of those which are all running
9 concurrent and concurrent with the two ABHANS. The two
10 ABHANS are consecutive to each other. That's what I
11 gather from here.

12 MR. SHEALY: That's my understanding of your ruling
13 and your further inquiry as to the lewd acts.

14 THE COURT: And I guess -- So technically I guess
15 what I'm saying is if you want to look at it as a big
16 picture, there's a 15 year exposure here, but the reality
17 of it is there is a 12 year exposure, a 10 year exposure,
18 and a five year exposure. It's just whatever you do on
19 the lewd acts will run concurrent or at the same time
20 with what you do on the ABHANS. See what I'm saying?
21 Technically it's a 15 year exposure because the two
22 consecutives add up to 15 and he's only looking at 12 on
23 the lewd acts. So whatever you did over here on these
24 ABHANS -- and keep in mind now I'm not even addressing
25 our current charge. I'm talking about on the probation

1 revocation --

2 MR. SHEALY: Your Honor, as I understand it, and I
3 didn't express it very well, but this is what I was
4 getting at is the 10 -- It wasn't what I was getting at.
5 I just had this idea. But it's 10 consecutive to five.
6 So the total exposure he has is 15.

7 THE COURT: Correct.

8 MR. SHEALY: Both of those are concurrent with the
9 12 he served and so his ultimate --

10 THE COURT: Not the 12 he served. Not the 12 he
11 served. The 12 that he got on the lewd acts.

12 MR. SHEALY: That's what I mean. The 12 that he got
13 on the lewd acts.

14 THE COURT: Right.

15 MR. SHEALY: But those have been served.

16 THE COURT: They haven't been served.

17 MR. SHEALY: The 12 years on the lewd acts were
18 active time.

19 PROBATION OFFICER: Yes, sir. He received active
20 time back in January of 2008, the 12 years on those lewd
21 acts and he was --

22 THE COURT: That's the 12 years that we are
23 referring to here?

24 PROBATION OFFICER: Yes, sir.

25 THE COURT: Okay.

1 MR. SHEALY: So our argument would be that his
2 exposure, and it's creative, Your Honor, is a total of
3 three years on the probation violations separate from --
4 Because if you took them -- If you accept the fact that
5 the sentences were running concurrent, then there would
6 be no exposure and that would make the sentence
7 unenforceable because it would be concurrent with the
8 five that's already been served. Five that's already
9 been served. 12 concurrent with 10. 10 has already been
10 served. So it appears to me that the intent of the judge
11 was to expose him to 15, run it concurrent with what he
12 actually served and that would leave an exposure of
13 three. And as I said that's creative, but that's --

14 THE COURT: Well, I don't know that it's creative.
15 It may be correct. If you -- Because if you look at the
16 judge's sentencing on the ABHANS, those were to run
17 concurrent with the 12 years.

18 MS. MAYES: Yes, sir. Although he put tolled while
19 in jail. Probation is tolled while in jail.

20 THE COURT: Probation is tolled while in jail. In
21 other words, because he got probation on those ABHANS,
22 right?

23 MS. MAYES: Yes.

24 THE COURT: Okay. So the probation does not take
25 effect until he's released, okay? So his probation

1 didn't begin on those until he had done the 42 months and
2 he was released. So now the probation is in effect. And
3 if you violate those probations, and let's just for
4 argument sake like you mentioned, and I violate and
5 revoke in full, that's 15 years, but it ran concurrent
6 with the 12 so he would get credit for the time he served
7 on the 12.

8 You know, here I am, I'm trying to figure out what
9 the Department of Probation, Parol and Pardon Services
10 should know. They're going to calculate the time. I
11 really am not in a position to do that. I think I just
12 sentence how I think appropriate and let them figure out
13 how that time is calculated.

14 MS. MAYES: I wish the intent had been a little bit
15 more clear. I know he did write concurrent. It would
16 seem counter productive though to give him a probationary
17 sentence that tolled, but then would be ultimately
18 concurrent to a sentence that he served.

19 THE COURT: I don't disagree with you and that's why
20 I'm saying I'm not saying that's the way it is. I think
21 that has to be interpreted by the Department of
22 Corrections and have their attorneys however they -- I'll
23 make mine clear here. I'll make mine clear. But I don't
24 know how it's going to affect how they'll treat it with
25 regards to the 12, all right?

1 MS. MAYES: Okay..

2 THE COURT: With regards to the pending probation
3 cases, the two ABHANS, I'm going to revoke those in full.
4 And with regards to this charge 2015-GS-32-767 the
5 sentence of the court is that you be committed to the
6 State Department of Corrections for a period of three
7 years, be given credit for the three days that you have
8 served and that's to run consecutive to the probation
9 violations or the probation revocations. Good luck to
10 you, sir.

11 MS. MAYES: Thank you Your Honor.

12 MR. SHEALY: Thank you, Your Honor.

13 PROBATION OFFICER: Thank you, Your Honor.

14 WHEREUPON, THE HEARING WAS CONCLUDED.

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CERTIFICATE OF REPORTER

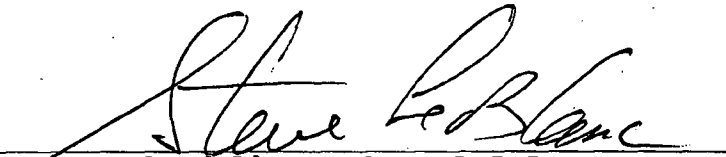
(STATE OF SOUTH CAROLINA)
(COUNTY OF LEXINGTON)

I, THE UNDERSIGNED, Steven E. LeBlanc, Sr., R.P.R., and Official Circuit Court Reporter for the Eleventh Judicial Circuit in and for the State of South Carolina, do hereby certify that I reported the proceedings in the before captioned case in the Court of General Sessions in and for the State of South Carolina on the 15th day of April, 2015.

I FURTHER CERTIFY that the forgoing 29 pages constitute a true and accurate record of said proceedings.

I FURTHER CERTIFY that I am neither related, counsel to, nor of interest to any party hereto.

IN WITNESS WHEREOF, I have hereunto set my hand at Lexington County, this 26th day of May, 2016.


Steven E. LeBlanc, Sr., R.P.R.
Eleventh Circuit Court Reporter
State of South Carolina.

WITNESSES

Cayce Department of Public Safety

E. L. Pereira

Law Enforcement Case #: 1405184

LSM

ARREST WARRANT NUMBER

2014A3220300389

ACTION OF GRAND JURY

TRUE BILL

[Signature]

Foreperson of Grand Jury
Date: 3/16/15

VERDICT

Foreperson of Petit Jury
Date:

DOCKET NO. 2015GS3200767

The State of South Carolina

County of Lexington

COURT OF GENERAL SESSIONS

MARCH TERM 2015

THE STATE
vs.

Brian Jacob Terrell

CDR #: 0091

Indictment for

Indecent Exposure

§ 16-15-0130

DONALD V. MYERS, SOLICITOR



STATE OF SOUTH CAROLINA)
)
COUNTY OF LEXINGTON)
)

INDICTMENT FOR
Indecent Exposure
§ 16-15-0130

At a Court of General Sessions, convened on MARCH 2015, the Grand Jurors of Lexington County present upon their oath:

That **Brian Jacob Terrell** did in Lexington County, South Carolina on or about July 31, 2014 did willfully, maliciously, and indecently expose his person in a public place, on property of others, or to the view of any person on a street or highway, to wit. the defendant did expose his genitalia to Patricia Mixon while near the location of Jansen Avenue and 8th Street in the Cayce area of Lexington County, in violation of Section 16-15-130 in the Code of Laws of South Carolina, (1976, as amended)

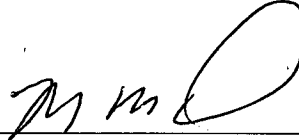
Against the peace and dignity of the State, and contrary to the statute in such case made and provided

Suzanne Mayes
ASSISTANT SOLICITOR

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability with the April 15, 2014 order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

Respectfully Submitted,



Robert M. Dudek
Chief Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S.C. 29211-1589

ATTORNEY FOR APPELLANT

This 1st day of February, 2017.

RECEIVED

FEB 01 2017

SC Court of Appeals